

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY

PETITION OF:

Central Catonsville Neighborhood Assn., Inc. et al;
Individuals Patricia Stack, Brian Nippard, Scott
Westcoat, and Steve Wimbrow all of Catonsville,
Maryland

IN THE MATTER OF THE APPLICATION OF
746 ASSOCIATES LLC/THOMAS BOOTH
PETITIONER FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE N/S
MELROSE AVE., 312' W OF THE
CENTERLINE OF INGLESIDE AVENUE
1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS
Case No. 00-320-SPH

* IN THE
*
* CIRCUIT COURT
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* FOR
*
* BALTIMORE COUNTY
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* 03-C-01-005617

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OPINION

This is an appeal by the Central Catonsville Neighborhood Association (Protestants) from a decision of the Board of Appeals dated April 25, 2001, granting a petition for special hearing filed by 746 Associates, LLC, (Petitioners) permitting an additional 27 parking spaces on a parcel of RO zoned land on which there were already 54 parking spaces.

To put this case in proper perspective, a little history is in order. 7436 Associates, LLC, owns a number of properties in the Catonsville area of Baltimore County. Several years ago, it sought approval of a development plan (Case CBA-99-105) involving several properties on or adjacent to Frederick Road in downtown Catonsville. The property involved in the development plan lies between Frederick Avenue and Melrose Avenue to the north and is zoned BL-CCC.

True Copy Test

SUZANNE MENSCH, Clerk

Per

Joann Jones
Deputy Clerk

FILED APR 10 2002

The RO zoned property involved in this appeal lies north of Melrose Avenue but adjacent to the property involved in the development plan.

The development plan called for the construction of a 4,228 square foot Friendly's Restaurant on a portion of the property which is located immediately adjacent to Frederick Road. To the rear of the restaurant and adjacent to Melrose Avenue, approval was granted for the construction of a two-story office building containing 14,950 square feet. Part of the development plan called for the Baltimore County Revenue Authority to sell a public parking lot adjacent to the property to Petitioners. The lot contained 282 parking spaces. These spaces satisfied the zoning requirements for parking spaces for the developed property. As part of the plan, Petitioners agreed that the parking spaces could be used not only for the patrons of the buildings involved in the development plan but also for the general public in the Catonsville area.

Shortly thereafter, Petitioners filed a petition for a Special Hearing (Case Number 00-122-SPH) seeking approval of business parking in an OR zone north of Melrose Avenue and a use permit for the use of land in a residential office zone for additional parking. Petitioners' proposal was to use the property as a parking lot in order to provide an additional 54 parking spaces for the office building. The petition was granted with a number of conditions and no appeal was taken from that decision by the Board.

In the instant petition, Petitioners seek an additional 27 spaces on this same property. As noted, the Board of Appeals affirmed the finding of the Zoning Commissioner and has granted the Petition for Special Hearing subject to certain conditions.

STANDARD OF REVIEW

When reviewing an appeal from an order of a County or zoning authority, this Court is to determine whether the findings by the Board were premised upon a correct application of the law and whether the findings of fact and conclusions reached by the Board are fairly debatable and based upon substantial evidence. *Umerly v. Peoples Counsel*, 108 Md. App. 497, 672 A.2d 173, *cert denied*, 342 Md. 584, 678 A.2d 1049 (1996). The Court must first determine whether the Board recognized and applied the correct principle of law and, having determined that, the Court turns to a review of the application of the facts found by the Board to the applicable law. In doing so, the Court must determine whether the action by the Board is "fairly debatable"; that is to say, whether a reasoning mind reasonably could have reached the factual conclusion the Board reached. There may not be a substitution of judgment for that of the Board's. *Umerly, supra*. Each side presented five witnesses in support of its respective position. As noted above, notwithstanding the additional 54 spaces which were granted by Special Hearing in Case Number 00-122-SPH, Petitioners concluded that it was in need of yet more parking spaces. The need was occasioned by the fact they had identified a single tenant for the office building, Measurements, Inc., a corporation engaged in the business of administering standardized tests to the Maryland grade and secondary school students.

Protestants initially argue that under the BCZR it is inappropriate to approve commercial or business parking in a residential zone when the parking is not "required." First of all, it should be noted that it is undisputed that parking is a serious problem in downtown Catonsville. It is also undisputed that it is an area which is the subject of intensive revitalization. Protestants argue that

Regulations Section 409.2 requires that application for a building permit of any Building plan shall show all off-street parking. This being so, they argue, when the original development plan was approved, it necessarily had to have contained all of the required parking, therefore, the spaces permitted as a result of Case Number 00-122-SPH should not have been approved, and the spaces approved in this application should likewise not be approved. The argument is interesting but unpersuasive. "Required," as used in the regulations, refers to the minimum number of spaces not a maximum number. There was evidence before the Board that as part of the leasing arrangements with the office building, Petitioners had agreed that the tenant could have 160 dedicated parking spaces. Mr. Thomas Booth, a co-owner of 746 Associates, LLC, testified that there was a need for more parking spaces in the area around the office building. He also opined that the additional spaces would free up other spaces in the former Revenue Authority parking lot. These spaces could be used by the general public. There is ample evidence that there is a need for this parking. The Board's conclusion that there was a need is at a bare minimum fairly debatable.

Next, Protestants argue that Baltimore County Zoning Regulation 409.7, B.2 requires off-street parking spaces in RO zones be provided on the same lot as the structure or use to which they are accessory except in certain circumstances which are not applicable here. This argument is also misplaced. The requested parking is incident to the developed property. Section 409.7, B, requires that the parking spaces be located within five hundred feet walking distance from the building entrance. The Board concluded that this standard was met. The design standards applicable to this facility are set forth in BCZR 409.8(a) and (b). Section 409.8, B.2 sets out the conditions and requirements in which Petitioners must comply. The Board concluded that all have been or will be met. The Board found that Protestants had not been provided any

substantive evidence to say that the parking facility would be detrimental to the health, safety and welfare of the surrounding community.

Protestants next argue that the granting of the Petition would result in serious water runoff problems with a resultant safety hazard, and further that the plan did not have an appropriate reforestation plan.

Petitioners called as a witness Iwona Rostek-Zarska, a professional engineer, who explained the cite plan in detail. She discussed Petitioner's Exhibit No. 5, which is a letter of approval of stormwater outfall which had been accepted by DEPRM in Case No. 00-122-SPH. She further described the stormwater management facility, which included a storm septic to hold and retain waters and release them at an acceptable rate. She pointed out that there were no adverse comments from Baltimore County Agency regarding this petition.

Protestants presented Thomas Schueler on the issues of stormwater management and reforestation. The Board was impressed with his testimony, but concluded that the granting of the Petition would not be adverse to the health, safety and welfare of the community. Nevertheless, the Board found that based on BCCR, Section 409.8B certain conditions must be met as a part of the granting of the Petition. It should also be noted that

The Board will require that the Baltimore County Department of Public Works review the adequacy of the present stormwater management system, and whether it is sufficient to allow drainage and outfall, and will not cause icing conditions during the winter months and excessive water conditions in the summer months during heavy rainstorms as it flows across Melrose Avenue.

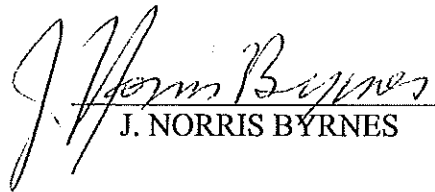
Next, Protestants questioned the adequacy of the reforestation. The evidence was that the plan was reviewed in detail by DEPRM, which concluded that a forest conservation plan was not required. Indeed, Mr. Schueler agreed that there were precious few trees in the area of the

parking lot prior to its construction. Notwithstanding this, the Board required the Department of Environmental Protection and Resource Management to revisit and review the forestation issue. The Board assessed the conflicting evidence on these issues and concluded that Petitioners had met their burden. Again, at a minimum the issues were fairly debatable. *Umerly, supra.*

Finally, Catonsville Protestants argue that Petitioners intend to use the property in a fashion that would be in violation of Zoning Regulation 409.8, B, 2, b through g. It reaches this conclusion because Mr. Booth testified that he would permit the property to be used for community activities. This may or may not occur. The Board in its order requires Petitioners to post property with signs indicating parking restrictions. It must also periodically monitor the lot and tow unauthorized vehicles. If indeed there are zoning violations, there is a process to deal with them.

The Board was not clearly erroneous in the manner in which it dealt with this issue. Accordingly, the decision of the Board of Appeals dated April 25, 2001 is AFFIRMED.

It is so ORDERED this 3rd day of April, 2002 by the Circuit Court for Baltimore County.


J. NORRIS BYRNES

10/9/01

PC NOT INV?

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IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

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PETITION OF:
CENTRAL CATONSVILLE NEIGHBORHOOD
ASSN., INC., ET AL;
INDIVIDUALS PATRICIA STACK, BRIAN
NIPPARD, SCOTT WESTCOAT, AND STEVE
WIMBRO ALL OF CATONSVILLE, MD
c/o J. CARROLL HOLZER, ESQUIRE
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND 21286

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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

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CIVIL ACTION
No. 3-C-01-5617

IN THE MATTER OF THE APPLICATION OF
746 ASSOCIATES, LLC/THOMAS BOOTH
FOR A SPECIAL HEARING
ON PROPERTY LOCATED ON THE NORTH SIDE
MELROSE AVE. 312' W OF THE CENTERLINE
OF INGLESIDE AVENUE
1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

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CASE NO. 00-320-SPH

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**PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF 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
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY**

No. 00-320-SPH

February 4, 2000	Petition for Special Hearing filed by 746 Associates LLC, by Thomas Booth, Managing Member, through their attorney, Michael P. Tanczyn, Esquire, to approve business parking in a predominantly residential office (RO) zone, a use permit for parking facilities in RO zone and to provide required parking to support the commercial or business use on the adjacent parcel; and an amendment to previously approved site plan in Case No. 00-122-SPH to expand the proposed parking facilities /lot to provide additional parking
February 16	Certificate of Posting.
February 17	Publication in newspaper.
February 25	Entry of Appearance filed by People's Counsel for Baltimore Count
February 25	ZAC Comments.
March 3	Hearing held before the Zoning Commissioner
March 29	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Special Hearing is GRANTED.
April 28	Notice of Appeal filed by Central Catonsville Neighborhood Association, Inc.
January 17, 2001	Hearing held before the Board of Appeals. (Originally scheduled for 11/09/00; postponed by mutual request of J. Carroll Holzer, Esquire, counsel for protestants, and Michael P. Tanczyn, Esquire, counsel for Petitioners.)

Exhibits submitted at 1/17/01 hearing before the Board of Appeals:

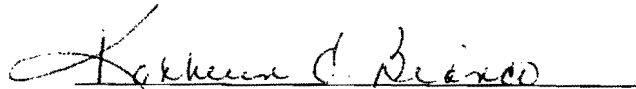
Petitioner's Exhibit No. 1A – CBA-99-105 Opinion
1B – 00-122-SPH /ZC Order
1C – 00-320-SPH /ZC Order
2 – Nov. 1, 2000 letter Greater Catonsville Chamber of Commerce
3 – Letter Oct 28, 1999 from Salem Reiner to L. Schmidt
4 – Site plan Jan 12, 2000 submitted w/Petition

- 5 – Oct 20, 1999 letter to Larry Yeager from Morseberger
- 6 – Site plan—amended plan introduced at ZC Pet #2 March 3, 2000
- 7 – Letter Oct 31, 2000 to Morseberger from Councilman
- 8 – Feb 3, 1999 letter to Balto CBA, signed by Brian Nippard

- Protestants' Exh No.
- 1 – Landscape Plan
 - 2 – 1999 Zoning Map w/photographs - enlarged
 - 3 – Photographs (**LARGE EXHIBIT IN BOARD'S CLOSET /RM 49 /CH**)
 - 4 – Photographs (“ “ “ “ “ “ “ ”)
 - 5 – Photographs (“ “ “ “ “ “ “ ”)
 - 6 – Rule 8 papers for Pat Stack
 - 7 – Thomas Schueler, CV
 - 8 – Forest Conservation Manual
 - 9 – Performance of a Proprietary Stormwater Treatment Device: The Stormceptor
 - 10 – Master Plan – Catonsville Design Study

- March 9 Petitioners' Legal Memorandum of Law filed by Michael P. Tanczyn, Esquire, on behalf of 746 Associates, LLC; Protestants' Memorandum in Lieu of Final Argument filed by J. Carroll Holzer, Esquire, on behalf of Central Catonsville Neighborhood Assn, Inc., Pat Stack, Tom Schueler, Brian Nippard, Scott Westcoat, and Marti Dirscherl, Protestants.
- March 21 Public deliberation held by Board of Appeals.
- April 25 Final Opinion and Order issued by the Board in which Petition for Special Hearing was GRANTED subject to restrictions as stated.
- May 25 Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Central Catonsville Neighborhood Association, Inc., and individuals Patricia Stack, Brian Nippard, Scot Wescoat, and Steve Wimbrow.
- August 15 Copy of Petition for Judicial Review retrieved from the Circuit Court for Baltimore County by the Board of Appeals (subsequent to telephone call from Mr. Holzer's office as to status of this Petition filed May 25, 2001).
- August 16 Certificate of Notice sent to interested parties.
- October 9 Transcript of testimony filed.
- October 9 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted is hereby forwarded to the Court, together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals office, and upon request of the parties or the Court, will be transmitted to the Court by whomever institutes the request.



Kathleen C. Bianco, Administrator
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

c: J. Carroll Holzer, Esquire
Central Catonsville Neighborhood Assn, Inc., et al
c/o J. Carroll Holzer, Esquire
Michael P. Tanczyn, Esquire
746 Associates, LLC /Thomas Booth, Managing Member
Peter Max Zimmerman, People's Counsel for Baltimore County

8/16/01
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
CENTRAL CATONSVILLE NEIGHBORHOOD
ASSN., INC., ET AL;
INDIVIDUALS PATRICIA STACK, BRIAN
NIPPARD, SCOTT WESTCOAT, AND STEVE
WIMBRO ALL OF CATONSVILLE, MD
c/o J. CARROLL HOLZER, ESQUIRE
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND 21286

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-01-5617

IN THE MATTER OF THE APPLICATION OF
746 ASSOCIATES, LLC/THOMAS BOOTH
FOR A SPECIAL HEARING
ON PROPERTY LOCATED ON THE NORTH SIDE
MELROSE AVE. 312' W OF THE CENTERLINE
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1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

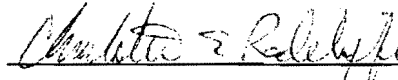
CASE NO. 00-320-SPH

* * * * *
CERTIFICATE OF NOTICE

Madam Clerk:

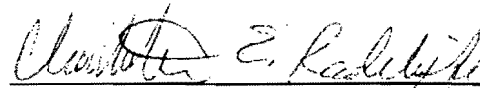
Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, J. Carroll Holzer, Esquire, HOLZER and LEE, The 508 Building, 508 Fairmount Avenue, Towson, Maryland 21286, Counsel for Petitioners; Central Catonsville Neighborhood Assn., Inc., et al, and individuals Patricia Stack, Brian Nippard, Scott Westcoat, and Steve Wimbro, Petitioners c/o their attorney J. Carroll Holzer, Esquire; 746 Associates, LLC /Thomas Booth, Managing

Member, 623 Edmondson Avenue, Baltimore, Maryland 21228, Property Owners; Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204; Counsel for the Property Owners; 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 J. Carroll Holzer, Esquire, HOLZER and LEE, The 508 Building, 508 Fairmount Avenue, Towson, Maryland 21286, Counsel for Petitioner; Central Catonsville Neighborhood Assn., Inc., et al, and individuals Patricia Stack, Brian Nippard, Scott Westcoat, and Steve Wimbro, Petitioners c/o their attorney J. Carroll Holzer, Esquire; 746 Associates, LLC /Thomas Booth, Managing Member, 623 Edmondson Avenue, Baltimore, Maryland 21228, Property Owners; Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204; Counsel for the Property Owners and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 16th 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 16, 2001

CP/42

Michael Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, MD 21204

RE: 746 ASSOCIATES, LLC /THOMAS BOOTH
CCt Civil Action No. 3-C-01-5617
Zoning Case No. 00-320-SPH

Dear Mr. Tanczyn:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on May 25, 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-01-5617.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

cc: 746 Associates, LLC /Thomas Booth, Managing Member
Iwona Rostek-Zarska /Baltimore Land Design Group
Louis Morseberger
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM

4/25/01

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
<u>746 ASSOCIATES, LLC /THOMAS BOOTH -</u>	*	COUNTY BOARD OF APPEALS
PETITIONER FOR A SPECIAL HEARING		
ON PROPERTY LOCATED ON THE N/S	*	OF
MELROSE AVENUE, 312' W OF THE		
CENTERLINE OF INGLESIDE AVENUE	*	BALTIMORE COUNTY
1 ST ELECTION DISTRICT		
1 ST COUNCILMANIC DISTRICT	*	Case No. 00-320-SPH

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OPINION

This case comes to the Baltimore County Board of Appeals based on an appeal from a decision of the Zoning Commissioner in which a Petition for Special Hearing was granted by the Zoning Commissioner. The Petitioner was represented by Michael P. Tanczyn, Esquire; and J. Carroll Holzer, Esquire, represented the Appellants /Protestants. A hearing was held in two public sessions on January 17, 2001 and March 9, 2001.

The Special Hearing involved a request for a business parking lot in a predominantly R.O. (residential office) zone and to grant a use permit for the use of land in an R.O. zone to parking facilities to meet the requirements of *Baltimore County Zoning Regulations* (BCZR) § 409.6 and § 409.8(B).1.(d) and (e); and to provide the required parking to support the commercial or business use adjacent thereto, and to amend the site plan approval in Case No. 99-122-SPH to expand the parking facilities to provide additional parking as reflected on the Plan to Accompany the Petition for Special Hearing.

The Zoning Commissioner had approved the business parking along with a use permit for parking facilities in the R.O. zone, and also to provide required parking to support commercial use and to amend the previously approved site plan. A timely appeal was filed to this Board by the Protestants.

In support of the Petitioner's request were several witnesses. Mr. Bruce Vandervort, Executive Director of the Greater Catonsville Chamber of Commerce, along with Ms. Renee Barrett from the Baltimore County Department of Economic Development, spoke strongly in support of the proposal, both outlining various reasons for the parking lot to strengthen the commercial core of Catonsville.

Mr. Thomas Booth, a co-owner of 746 along with Mr. Louis P. Morseberger, testified concerning the need for additional parking based on tenancy demands of the office building. Mr. Booth stated that he needed a 160 dedicated spots. When the spaces are not being utilized, he stated that they were available for general public use. He opined that there were certain peak periods in which the current parking was not adequate. Present parking is limited and also used by other Catonsville merchants, along with many spaces open to the public. He indicated that he lives just about 5 blocks away from the office building and described in general fashion the character of the area. He stated that there could be public use of the spaces, when they were not being used and possibly a Farmers' Market could be featured on the new lot. Petitioner's Exhibits No. 1A, B and C were introduced with commentary concerning the proposed landscape plan approved by Avery Harden, Baltimore County.

On cross-examination by Mr. Holzer, Mr. Booth acknowledged that the lot is already in use as a parking lot with 81 spaces already constructed, even though the case was on appeal. He indicated that there were originally 54 spaces with Petitioner's Exhibit No. 4 specifying the parking and restrictions. The 81 spaces were used by building tenants, and, if not, they were available for public use. The restrictions outlined on the Plan were reviewed. This development of the site was discussed, along with community opposition and the lease which was signed for

the two-story building in 1999, and the move in the building in January 2000. Again, Mr. Booth stressed the need for the additional parking provided by the lease.

Ms. Iwona Rostik-Zarksa, the Professional Engineer who prepared the site plan for the proposal, also testified. She was familiar with the zoning regulations and the development regulations. She had experience with a variety of over 100 properties developed in Baltimore County over 14 years and was accepted as an expert in civil engineering and site development. She opined that she had visited the site approximately four to five times, the last time being in October 2000. She explained her role in the plat development, surveying, parking, County involvement, and described the various businesses in the area. Petitioner's site is zoned R.O. with a small B.L. portion. There were many small businesses in the general area of the subject site. Eighty-one additional parking spaces were needed to accommodate the building's tenants. Fifty-three had existed before the requested additional increase of 28 spaces. It was her opinion that the site plan complied with Baltimore County regulations. The County had approved the stormwater management facility and stormceptor. Petitioner's Exhibit No. 5 was discussed at length and the stormwater management design and drainage. The parking lot design had been approved and met County standards as to required length and width with the plan for the landscaping approved by the County. The building is approximately 500 feet from the proposed lot. The lighting was in accordance with § 409 of the BCZR. It was her opinion that none of the proposals would be detrimental to community interests. DEPRM had no adverse comments. The traffic flow in and out of the lot was discussed if the additional 28 spaces were approved.

The witness was subject to cross-examination by Mr. Holzer. The witness acknowledged that the surrounding streets are narrow and that proposed lighting was not on Petitioner's Exhibit No. 4 and that no formal lighting proposal had been made. However, lighting would be on the

four corners of the proposed lot, 16 feet in height, and with 150 to 200 wattage. Lighting needed to be approved by the appropriate Baltimore County agency.

The issue of stormwater management was discussed. Petitioner's Exhibit No. 4, dated January 12, 2000, and Petitioner's Exhibit No. 6, an amended Petition, were reviewed. Two revisions had been made. Petitioner's Exhibit No. 6 reflects most of the site zoned R.O., except for a small section. The history of the site was reviewed. The prior Development Plan had been approved which called for substantial redevelopment of a parcel situated adjacent to and across Melrose Avenue from the subject property. That Plan called for development of a two-story office building covering 14,956 square feet and a 4,200-square-foot Friendly's Restaurant. The Friendly's facility is in the front with the office building in the rear – abutting Melrose Avenue. Additionally, a parking lot to serve both buildings and allow public parking for the general vicinity was granted. Thereafter, a special hearing request was filed to permit use of a portion of the subject property for a parking facility to support the office building and commercial uses across Melrose Avenue. This property is located across Melrose Avenue from the B.L. zoned portion of the property described above and is designated as 14-28 Melrose Avenue with 16,214 square feet, zoned R.O. The present request would provide for another row of parking spaces, 28, in addition to the present 53 spaces. The additional spaces are due to a different use of the office building.

The Protestants also offered several witnesses in opposition to the request. Ms. Pat Stack testified and offered Protestants' Exhibit No. 2 reflecting the parking lot in question. She stated that she resided in proximity to the subject site and stated her prior objections to development on the site. She submitted photographs of the neighborhood which consisted of approximately 250 single-family households, numerous apartment buildings, and some large homes converted to

office use. Part of the community was older in nature, some historic, streets about 12 to 15 feet in width, mostly two-way. She submitted Protestants' Exhibit No. 7, the proposed lot before development. It was wooded, the existing house was demolished, the trees were removed around November 1999, and the parking lot installed in the Spring of 2000. Her concerns were the continued expansion of the lot; the impact of the lot on the health safety and welfare of the community, increased traffic, and child safety issues, along with no sidewalks available for pedestrian traffic, and the additional noise from increased vehicular traffic, lighting expansion, asphalt heat, fences not being available and cars parked on the lot for extensive periods of time (5 to 6 months). She also cited individuals using the lot as a short cut to her community. Her basic questions was, "Is there a real need for additional parking based on current low parking usage." She opined that, if the Board granted the request, she suggested that signs be posted indicating that the lot was for the exclusive use of the tenants of the office building and that parking should be limited to the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday, with lighting height to be no greater than 12 feet and fencing placed around the perimeter of the property, with increased plantings along Melrose Avenue. She testified that her appearance before the Board was as an individual.

On cross-examination, Mrs. Stack acknowledged that the fire department had access to the parking facility and that the development plan had been approved and further that she had, on occasion, seen the lot full and had not personally observed any criminal activity on the lot.

Two other nearby neighbors also appeared in opposition to the request (Scott Westcoat and Marti Dirscherl). Both opined that the parking lot is rarely filled to capacity except possibly towards the end of the week. One of the witnesses indicated that the existing building was ugly, citing "cut through traffic," that an additional 28 spaces would create additional fumes, exhaust,

vehicle trips and was a continued intrusion of commercialization into the residential area. The other resident cited the wooded lot that was present when she moved into the area and of its removal when the parking lot had been installed.

Mr. Thomas Schueler also testified. He related his considerable expertise in stormwater management and forest conservation efforts. A manual he prepared for both stormwater management control and another for forest conservation were currently being used by the State of Maryland. His vast experience and education background, in addition to teaching and supervising civil engineers and planners, led the Board to accept him as an expert in stormwater management and forest conservation. As a nearby resident of the site, he was familiar with the character of the neighborhood. The Board found his testimony enlightening, educational, and offered technical aspects of his expertise in terms easily understood by lay people. The major thrust of his testimony was two-fold:

1. He opined that consideration should have been given by DEPRM in their review of the requested 28 parking spaces to also consider the prior approval of 53 spaces granted in Special Hearing 00-122-SPH (Petitioner's Exhibit No. 1B). The combined spaces totaling 81 and amounting to an increase of .45 acres to 1.08 acres in size required a forest conservation plan which DEPRM had overlooked in considering that only 28 spaces had been requested. He suggested that consideration be given to reforestation as this had not been done.

2. He also questioned whether or not the stormceptor system being utilized did not remove pollutants from the storm water as required in the Maryland Design Manual. As an expert in the stormwater management field, he stated that 80 percent of the pollutants had to be removed and that the stormceptor was not equipped to perform this function. His personal observations were that inadequate outfall from the pond was flowing to the Morseberger

property along the road and eventually into the road, creating a flood pond on Melrose Avenue in direct violation of the State regulations. He did acknowledge, however, that the State-wide regulations became effective October 1, 2000. Baltimore County had received a waiver until July 1, 2001. There were also concerns relative to the parking lot and heavy rains that could produce considerable water on the lot, up to 6 to 7 inches, creating a hazard to the health and safety of the community.

Mr. Brian Nippard also testified, with his focus on continued encroachment of the commercial area into the residential area, which by its very nature resulted in excessive traffic, noise and environmental issues.

At the conclusion of the hearing, both counsel agreed to submit, simultaneously, written memorandums in lieu of closing argument. Both briefs adequately outlined the factual aspects of the case, along with argument supporting their respective views. The Board is appreciative of the quality of both briefs. A public deliberation took place on March 21, 2001.

It should be recalled that the present hearing had prior events that led to the filing of the special hearing petition by the Petitioner. Under Case No. CBA-99-105, the Board of Appeals approved the development plan which had been appealed by three local residents. Many of the concerns expressed at this hearing were expressed at the earlier hearing which the Protestants believed to be approved in error by the Hearing Officer. On such appeals, the authority granted to this Board is limited in scope. Concerns expressed by the Protestants relative to unrestricted parking in the new facility, in agreement with the Revenue Authority increase, that the public have access to the new parking area. Subsequent to the development plan approval, the Petitioner entered into a lease with Measurement, Inc., a corporation engaged in the business of administering standardized testing to Maryland grade and secondary school students. The issue

in that case related to the same property, which is across Melrose Avenue from the B.L. zoned portion of the tract. That lot encompasses the property known as 14-28 Melrose Avenue, with 16,214 square feet in area, zoned R.O. The Petitioner filed a special hearing to request 54 additional spaces to provide parking for the staff of Measurement, Inc. Essentially the same players were involved, and again the same issues -- traffic, safety, crime, noise levels, congestion, etc. After public hearing, the Zoning Commissioner approved the special hearing on November 5, 1999 subject to five restrictions. Several months thereafter, the Petitioner filed for another special hearing to request an expansion of the site by amendment of the previously approved site plan in Case No. 00-122-SPH. The request for additional parking spaces was approved by the Zoning Commissioner by Order dated March 29, 2000, hence this appeal.

Appearing before this Board is a *de novo* proceeding. Initially, the Board must determine, based on the testimony and evidence produced by the Petitioner, that:

1. That the requirements of § 409.6 and § 409.8(B).1(d) and (e) of the BCZR have been satisfied to secure a use permit for a business parking lot in an R.O. zone;
2. Whether the approval of the 28 spaces supports the commercial or business use on an adjacent parcel.

Certain facts are undisputed. The expansion of the parking lot which is the subject of this special hearing will support the Petitioner's B.L.-C.C.C. property beyond Frederick Avenue and Melvin Avenue if granted. Both sites are in the Catonsville Town Center, an area which is the subject of intensive revitalization area efforts on the part of the County.

Mr. Bruce Vandervort, Executive Director of the Greater Catonsville Chamber of Commerce, testified in support of the request, as did Ms. Renee Barrett, Baltimore County Department of Economic development. The need for additional off-street parking in the area has been uncontested. Where it is to be located, however, is another questions.

Based on the facts of the case and the testimony, the Board concludes that, while the development plan as adopted established the parking criteria for the then-submitted plan, and the plan contained all the County "required" parking calculations, despite the fact that the County is not requiring the additional parking space, nevertheless, Petitioner has established a need to accommodate the County's goals in the areas of revitalization; and Petitioner is always free to request a special hearing to request an amendment to the original development plan – always subject to County requirements imposed by the BCZR as to parking. It is obvious to the Board that this parking lot would serve a dual purpose of providing dedicated spaces for the employees of the new office building and, simultaneously, reduce the number of office employee vehicles that would use the former revenue authority lot purchased by the Developer and kept as a free parking lot for all Catonsville merchants. The Board does not believe, based on the testimony and evidence submitted at the hearing, that the Protestants offered any substantive evidence that would cause this Board to consider that the parking facility would be detrimental to the health, safety or welfare of the surrounding community. A review of the development plan approval and first special hearing reflect a rehashing of old issues by the Protestants that reflect perception and not fact. There was simply no clear and convincing evidence submitted to the Board by the Protestants that the additional lighting (that would have to be approved by Baltimore County) would be of a detriment to the community or that noise emanating from car doors /operations would be of a significant volume to constitute a detrimental effect; and, in the eyes of many, the wooded area itself had originally presented a haven for criminal activity or suspicious individuals moving about.

The Board also finds, as a matter of fact, that the original 53 spaces were not improperly located in violation of BCZR § 409.7 in that the off-street parking spaces are located within a

500-foot walking distance of the building entrance to the use that the spaces serve [see § 409.7(d)].

While the Board is being requested to consider only the amendments to Case No. 00-122-SPH and the proposed expansion of the parking lot, nevertheless, considering the request made for 53 spaces in the prior request, based upon the tenants' known requirements, the Board questions why the 28 spaces being requested at the present time were not requested originally, since the same professional engineer was involved. At that time, surely the Petitioner must have known that 53 spaces would not be adequate for the tenants' needs. This piecemeal approach, while permitted by law, does little to enhance the image of the Petitioner in the eyes of the community, who are obviously weary and suspicious of such requests and continued intrusion into the nearby residential area. While the testimony and evidence produced at the hearing did not provide sufficient weight to deny the Petitioner's request based on any substantial increases caused by the additional parking in connection with light, noise or traffic flow, the Board is aware that legitimate concerns were expressed in some areas that this Board feels necessary to consider. Based upon § 409.8.B, the Board concurs that certain conditions must be placed upon the granting of the petition request. There was sufficient testimony that the stormceptor by way of a basin beneath the parking lot would cause a storm depth of 6 to 7 inches in time for it to be drained through the center and eventually into the outfall. The outfall is located at the adjacent Morseberger property. The Protestants allege that a safety hazard is caused from the drainage outfall which flows across Melrose Avenue and creates an icing condition in the winter months and hazardous water conditions in the summertime during heavy rainfall. This needs to be investigated by the Department of Public Works to insure that there is not present a safety or health.

Additionally, the Board was impressed by the testimony of Mr. Thomas Schueler. His credentials have previously been recited. He also expressed concern relative to the outfall from the pond, and was concerned about the piecemeal approach used by the Petitioner in initially requesting 53 parking spaces (already approved) and the subsequent application for the additional 28 spaces. The County, in fact, did receive a waiver from the State of Maryland relative to the stormceptor and certain regulations that became effective October 1, 2000. The County has been granted until July 1, 2001 to comply with the State requirements. That is a County agency decision which this Board will not disturb. However, the question of reforestation is another matter. Had the application for the original 53 parking spaces and 28 additional parking spaces been requested and processed concurrently, for a total lot of 81 spaces, forest retention would have been requested, according to Mr. Schueler. The Board believes that DEPRM should review this matter, and determine if requirements relative to reforestation and forest conservation are applicable in view of the total parking spaces that had been requested. However, considering the testimony and evidence, the Board will approve the special hearing request, subject to the conditions as listed below.

ORDER

THEREFORE, IT IS THIS 25th day of April, 2001 by the
County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing in Case No. 00-320-SPH be and the same is hereby **GRANTED**, subject to the following conditions:

1. The Board will require that the Baltimore County Department of Public Works review the adequacy of the present stormwater management system, and whether it is sufficient to allow drainage and outfall, and will not cause icing conditions during the winter months and excessive water conditions in the summer months during heavy rainstorms as it flows across Melrose Avenue;

2. The Board will require that the Department of Environmental Protection & Resource Management reexamine the question of reforestation or forest conservation, considering that separate applications were requested for a total of 53 parking spaces, and the total acreage and construction that has already taken place on the site; and

3. The Board will require that the Petitioner post signage at the entrance(s) to the parking facility indicating that parking is restricted to the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday, and is limited to tenants, employees, or patrons of the office building located at 746 Frederick Road.

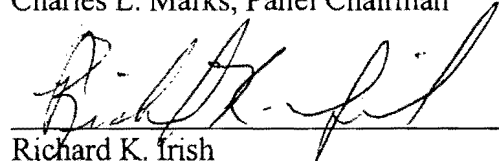
The Petitioner shall periodically monitor the restricted parking imposed by the parking restrictions, and provide for the towing of unauthorized vehicles at the violator's expense after the permitted hours of parking or unauthorized weekend parking.

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

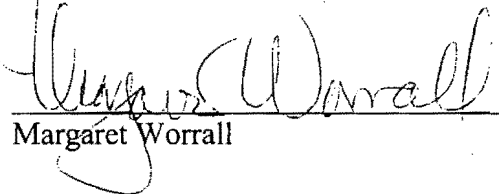
**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Charles L. Marks, Panel Chairman



Richard K. Irish

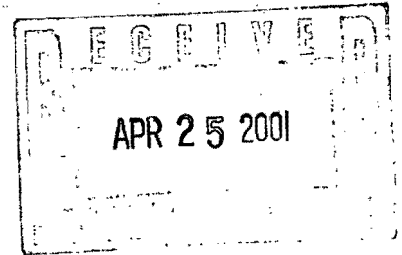


Margaret Worrall



County Board of Appeals of Baltimore County

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



April 24, 2001

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

RE: *In the Matter of: 746 Associates, LLC /Thomas Booth*
- Managing Member /Case No. 00-320-SPH

Dear Mr. Holzer:

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. Rockcliffe per
Kathleen C. Bianco
Administrator

Enclosure

c: Central Catonsville Neighborhood Assn, Inc, et al
Pat Stack, President
Brian Nippard, Vice President
Scott Westcoat, Vice President
Michael P. Tanczyn, Esquire
746 Associates, LLC /Thomas Booth, Managing Member
Iwona Rostek-Zarska /Baltimore Land Design Group
Louis Morseberger
✓ Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney



IN RE: PETITION FOR SPECIAL HEARING

N/S Melrose Avenue, 312' W of the c/l
 Ingleside Avenue
 (41 - 18 Melrose Avenue)
 1st Election District
 1st Councilmanic District

746 Associates, L.L.C.

Petitioners

BEFORE THE

BOARD OF APPEALS

FOR

BALTIMORE COUNTY

CASE NO. 00-320-SPH

* * * * *

PETITIONERS' LEGAL MEMORANDUM OF LAW

Petitioners 746 Associates, L.L.C., by their undersigned Counsel, submits their within Memorandum to assist the Board in its deliberation of this matter.

STATEMENT OF THE CASE

This Petition for a Special Hearing seeks to expand by twenty-eight (28) spaces the parking facility previously approved in Case 00-122-SPH, which was a final Order. In this case, the Zoning Commissioner, after hearing the Petition for Special Hearing for an additional twenty-eight (28) spaces, approved by Order March 29, 2000 the request to approve business parking in a predominantly residential office zone for use permit for parking facilities in an RO zone to meet the requirements of § 409.6 and § 409.8.B.1(d)(e) of the *Baltimore County Zoning Regulations*, and to provide required parking to support the commercial or business use on an adjacent parcel. Following appeal of that decision by the Central Catonsville Neighborhood Association, Inc., the matter was heard by the Board of Appeals of Baltimore County. The matter was first scheduled for hearing in November 2000 and was actually heard by the Board of Appeals on January 17, 2001.

STATEMENT OF FACTS

The expansion of the parking lot which was the subject of this Special Hearing, was requested to support the Petitioners' BL-CCC zoned property located between Frederick Avenue

and Melrose Avenue, immediately across the street from the parking lot. That commercial development, which was part of the revitalization effort for the Catonsville Town Center, included the development plan approved in CBA-99-105 (Petitioners' Exhibit 1A) by which that property was improved with a Friendly's Restaurant, and an office building to the rear of the parcel adjacent to Melrose Avenue. Importantly, that development included the purchase by the developers of the former Revenue Authority parking lot from Baltimore County, which was dedicated to unrestricted free public use, and could not be restricted to patrons of the Friendly's or the office building to the rear once a tenant was secured. That development plan had been approved by the County Board of Appeals, after hearing, by its Order March 24, 1999.

Soon thereafter, a tenant was identified who required dedicated parking due to the nature of its business. The 746 Associates, LLC, property owners who owned land directly across Melrose Avenue, petitioned at a Special Hearing for a parking lot in the RO zone with a use permit to use that land for parking facilities pursuant to *Baltimore County Zoning Regulations* § 409.6 and § 409.8B1(d)(e), to provide required parking to support the commercial or business use adjacent thereto. That case, 00-122-SPH, was heard by the Zoning Commissioner who granted approval for a parking lot providing fifty-three (53) parking spaces by his Opinion and Order November 5, 1999 produced in this hearing as Petitioners' Exhibit 1B. No appeal was taken by the Protestants from that Order, which became a final Order. Relatively soon thereafter, the needs of the same tenant for private parking increased due to the number of employees that the tenant utilized to correct tests and the instant case, 00-320-SPH, for an expansion of the approved parking facility to allow twenty-eight (28) additional spaces was filed. That case was heard the first quarter of 2000 and by Order March 29, 2000, the Zoning Commissioner approved the expansion of the parking lot to provide an additional twenty-eight (28) parking spaces (Petitioners' Exhibit 1C in the instant hearing).

At the appeal hearing before the Board, Bruce Vandevort, Executive Director of the Greater Catonsville Chamber of Commerce, appeared and spoke strongly in support of the expansion request for the parking facility. The development across the street for which this parking facility was requested would principally serve Measurement, Inc., noted by the Greater Catonsville Chamber of Commerce as part of a successful large scale revitalization of the downtown Catonsville area. Next, Renee Barrett, of the Baltimore County Department of Economic Development, endorsed the Memorandum of her department in favor of the parking facility, which had been submitted in the original parking facility case 00-122 (Petitioners' Exhibit 3). The Baltimore County Department of Economic Development saw this parking lot as serving the two purposes of providing dedicated spaces for the employees of the new office building, and simultaneously reducing the number of office employee vehicles that would use the former Revenue Authority lot purchased by the developer and kept as a free parking lot for all Catonsville merchants.

Thomas L. Booth, Managing Member of 746 Associates, L.L.C., the Petitioner, testified in summary that this parking lot was needed in order to meet the parking needs of a tenant, and was a key provision to be provided by the property owner in order to secure the long term lease with Measurements, Inc., which took the entire rear office building. In order to honor the commitment to keep the former Revenue Authority parking lot free and open to the public for parking purposes, the developer sought approval to build a dedicated parking lot for the use of its tenants and, if permitted, to the use of the community or the Greater Catonsville Chamber of Commerce flea markets, or as overflow parking for their festivals when not needed by the tenant, Measurements, Inc. He further testified that it was his understanding that in the approval of Case 00-122-SPH, the fencing request of the adjacent property owner, Gladys Boardley, were committed to by the developer for a fence along part of her property. He testified that he had no plans to close off or

barricade the parking lot, but would reserve it for use of Measurements, Inc. and would enforce towing for unauthorized users if that became necessary.

The Petitioners' engineer, Iwona Rostek-Zarska, professional engineer, was admitted as an expert witness and explained in detail the site plan, uses in the neighborhood, which were to the north of Frederick Road and to the north of Melrose Avenue. She described this area as a mixed use neighborhood including the Baltimore Gas and Electric maintenance and storage yard, assisted living healthcare facility, and Baltimore County Health Department facility. She described the traffic patterns that vehicles would follow exiting or entering the site. She identified as a Petitioners' Exhibit 5 the letter of approval of the storm water outfall that had been accepted by DEPRM in the prior case 00-122. She further described the storm water management facility incorporated in the facility called a stormceptor incorporated in the parking facility to hold and retain waters and release them at an acceptable rate. She noted there were no adverse comments from Baltimore County agencies as to this Petition. She authenticated the site plan accepted as Petitioners' Exhibit 6, which was the plan submitted before the Zoning Commissioner at his hearing March 2, 2000. She expressed her opinion that the need here for the parking lot to serve the tenant was caused and created because the parking lot on the former Revenue Authority lot is open for free unrestricted public use. Because of that, the owner cannot reserve spaces for this tenant, Measurement, Inc. She saw this facility as a benefit to the community by providing, at the developer's expense, an off street parking facility to make sure that any of the tenant's employees' cars could be accommodated on the parking lot rather than parked on the community roads and streets. She noted that the request from Planning that a detailed landscape plan should be submitted to Avery Harden for review and approval, had already occurred and had been approved by Mr. Harden. She authenticated on cross examination as Protestants' Exhibit 1, the landscape plan previously approved by Avery Harden of Baltimore County.

Several citizens testified in opposition to this Petition. The first, Pat Stack, who resided at 29 Fusting Avenue, attempted to appear as an authorized community representative for Central Catonsville Neighborhood Association, Inc. who had filed the Appeal from the Zoning Commissioner's decision in Case 00-320. The Baltimore County Board of Appeals, as empowered by the enabling Ordinance, has adopted rules of practice and procedure before the Baltimore County Board of Appeals. Rule 8 deals with persons appearing before the Board as representatives of civic or improvement associations. When questioned about her association, Mrs. Stack testified that it was incorporated under the laws of the State of Maryland. As such, the corporation is a separate person under the law. The resolution submitted by Mrs. Stack for the Community Association as the authorization required under Board Rule 8(b) (c) and (d) were objected to because the entity named in those documents was not incorporated with the proper name for the incorporated association. All tendered documents reflected the name of the association as Central Catonsville Neighborhood Association, an unincorporated association. Essentially, Mrs. Stack was attempting to testify for an association of different name and unincorporated from the entity which she said existed and which had filed the Appeal. Therefore, all of the authorizations, resolutions, and affidavits, were not for Central Catonsville Neighborhood Association, Inc., which Mrs. Stack said was the entity which had taken the Appeal, but rather an unincorporated association. They were therefore fatally defective. The Board had asked at the time of hearing that this be an item mentioned in this Memo. A neighborhood association which does not own real property and is not a taxpayer has no inherent standing to participate as a party in a zoning case, Bryniarski v. Montgomery County Board of Appeals, 47 Md. 137 at 144 (1967); Sipes v. Board of Mun. and Zoning Appeals, 99 Md. App. 78 at 99 (1994). A person aggrieved by the decision of a Board of Zoning Appeals is one whose personal or property rights are adversely affected by the decision of the Board. Sipes supra at 99. Here, Central Catonsville Community Association, Inc. filed the

appeal. The Rule 8 papers, which are at variance, describe a different unincorporated association and there was no showing it met the test of being a taxpayer or property owner to have standing independent of the incorporated association. As it lacked party status, by inference, no one could speak for it under Rule 8, if it existed at all and was not a figment of someone's imagination.

Mrs. Stack also authenticated a number of different picture boards illustrating various roads and views in the neighborhood. She testified that the road widths vary between twelve (12') and sixteen (16') feet wide, and provide two way traffic on Oak Grove, Howard Avenue, Fusting and Egges Lane, as well as Melrose and Winters Lane. She identified on the photo boards the Baltimore Gas and Electric substation and storage yard north of Fusting and maintenance yard; the Catonsville Commons Nursing Home; and the Keypoint Baltimore County Health Facility.

Her concerns included her fear that the additional twenty-eight (28) cars, which were the subject of this Petition, would cause congestion in the roads, streets, and alleys of the neighborhood coming and going from the facility. She further believed that the eighty-one (81) space lot did not belong there just as she had felt that the fifty-three (53) space lot did not belong there, although she admitted no Appeal had been taken from that decision. She claimed this twenty-eight (28) space expansion of the parking facility would have a negative impact on the health, safety, and general welfare of the community by virtue of the increased traffic. She testified that there were no sidewalks in the neighborhood and that children play in the streets. She further testified that she had seen pedestrians walk through the Petitioners' site to go to the store and to get to the bus. She further testified that since the site had been cleared and the parking facility built, she could see lights from the commercial strip shine through the remaining woods, although she produced no photographic evidence to illustrate that contention. She feared that if all twenty-eight (28) vehicles left at the same time, they would have trouble leaving the area. Among her requests to the Board if this expansion of the facility were to be approved, would be a request that signs be posted that this

facility was strictly for the use of what she called the 746 building and subject to towing, and that it be made a gated entrance. She requested that any lighting installed be ground directed with a height limit of twelve feet (12'), and she requested a fencing around the perimeter of the site except for the entrance. She further requested a dedicated conservation easement on the north side of the parking lot with evergreens and deciduous trees. Upon cross examination, Mrs. Stack admitted that she had not measured the width of Melrose Avenue in the vicinity of the parking facility and she did not contest the width of the road scaled on the site plan of twenty-five feet (25') rather than the sixteen feet (16') width she testified existed at that point. She had done no traffic studies or traffic counts, nor could she trace any traffic on her street to this site.

Protestants' second witness was a resident of 12 Howard Avenue, Margi Dirscherl, who had lived in the community for eleven (11) years. Her objections to the additional twenty-eight (28) parking spaces were based on increased traffic and her experience that drivers of cars had cut down her street to get to Frederick Road. She concluded that twenty-eight (28) more spaces would yield fifty-six (56) more car trips past her house, with increased exhaust fumes. On cross examination, she admitted that she had not followed any of the cars so as to be able to tell whether they came to or from this parking facility, nor did she explain why she felt all the additional cars would pass her house.

Protestants' third witness was Scott Westcoat, who had resided at 14 Fusting Avenue for the last three years. His objections to the expansion of the parking lot by twenty-eight (28) spaces was due to his apprehension of increased traffic in the neighborhood.

Protestants' fourth witness was Thomas Schueler, who resided at 117 Ingleside Avenue. He testified that his employment was as Executive Director for CFWP, founded in 1992. He had graduated from George Washington in 1982 with a degree in environmental studies, and had worked in areas of forest conservation, although he was not a licensed engineer. He was admitted by the

Board over objection as an expert in forest conservation and storm water management. He testified he was first aware of the request for fifty-three (53) spaces, and that the area proposed for the original parking lot was a forested area, approximately seven-tenths (7/10) of an acre. He contended that a forest conservation plan was required but had not been done. He further contended that he had concerns about the quantity and quality of the storm water runoff. He estimated the paved area to have increased from .45 acres to .80 acres in size with the increase in size from fifty-three (53) to eighty-one (81) parking spaces. He noted that the stormceptor had not been increased in size from that approved in case 00-122-SPH, and he expressed his opinion that the uncalculated pollutant runoff associated with an addition of twenty-eight (28) spaces to the approved parking facility would not be removed to a sufficient degree. He testified to the Board that from walking in the area, he observed a storm drain system clogged with leaves and debris, which he acknowledged was part of the public drainage system in Melrose Avenue and not part of this private site. He claimed that the stormceptor would not be approved and was no longer acceptable as a storm water management facility. He later admitted on cross examination that was not a requirement in Baltimore County as of the time of hearing and would not be until July or August of 2001 at the earliest and would be prospective in nature at that time for future projects. He contended that he did not see the need for this parking lot since there was the former Revenue Authority parking lot, which the tenants, in his opinion, could use to park their vehicles. On cross examination, Mr. Schueler admitted that there were not many trees previously in the area where the expansion of the parking lot was proposed over the area which had been previously cleared for the original parking lot approved in Case 00-122-SPH.

The final Protestants' witness was Brian Nippard, who had resided at 19 Egges Lane for the past six (6) years and before that, in a home three doors down. His concerns were summarized that he saw this parking lot as an encroachment into the residential neighborhood, and would result in

increased traffic, noise, and trash, would bring additional crime, would create storm water management problems, and would destroy existing architecture, and would cause the removal of trees.

ARGUMENT

Baltimore County Zoning Regulations § 409.1 provides that all structures built and all uses established hereafter shall provide accessory off street parking and loading in accordance with the following regulations and that an existing structure or uses enlarged, accessory off street parking and loading shall be provided in accordance with the following regulations for the area or capacity of such enlargement. *Baltimore County Zoning Regulations* § 409.7 provides all required off street parking spaces shall be located either on the same lot as the structure or use to which they are accessory or offsite as provided otherwise. Section 409.7(b) Uses Other Than Residential, § 1 requires that offsite parking spaces be located within five hundred feet (500') walking distance of the building entrance to the use that such spaces serve. The design standards applicable to such a facility are set forth in B.C.Z.R. § 409.8(a) and in § (b), provide for business or industrial parking in residential zones. The Petition in this case sought that allowed under that section, namely, the issuance of a Use Permit to use residentially zoned lands for parking facilities to meet the requirements of § 409.6 under the procedure stated. In considering such a request, the hearing body has defined that the character of the surrounding community and the anticipated impact of the proposed use on that community in the manner in which the requirements of § 409.8.B.2 are met. Finally, the Hearing Officer may order any additional requirements deemed necessary to ensure the parking facility will not be detrimental to the health, safety, or general welfare of the surrounding community. The laundry list of mandatory conditions are stated immediately thereafter in § 409.8.B.2 and include that the land used must adjoin or be across the street from the business or industry involved, and that only passenger vehicles may use the parking facility. Loading is not

permitted and lighting is to be regulated in accordance with the provision. A Petitioner must further show a satisfactory parking plan and vehicular access plan. The method of operation, provisions for maintenance, and permitted hours are to be set forth, and any other conditions deemed necessary to ensure the parking facility will not be detrimental to adjacent properties, may be considered.

The Petitioners' demonstrated need for this parking facility was caused by the developer's extraordinary contribution to the Catonsville revitalization effort in agreeing that the entire former metered Revenue Authority lot, which the developer purchased for one million dollars from Baltimore County, would be available for unrestricted free public parking. That meant that a parking starved Catonsville village neighborhood, as part of the revitalization effort, was afforded free parking to benefit all merchants and customers in the village neighborhood. Measurement, Inc., the tenant for the rear building of the site which borders Melrose Avenue directly across the street from the parking lot, as was testified at the hearing, is a corporation engaged in the business of grading standardized tests, administered by Maryland and other states, to students. The proposed parking lot, as originally configured and the subject of a twenty-eight (28) space expansion in this Petition, were necessary to provide dedicated parking for the staff of that tenant. Although the community appeared in opposition at the Zoning Commissioner's Hearing in Case 00-122-SPH, there was no appeal filed to the grant of that Petition and it became a final Order after thirty (30) days. The scope of this Petition therefore is for a twenty-eight (28) space expansion to accommodate the additional needs of that same tenant who took the entire two story building as part of the lease agreement for the same purpose to provide parking for its employees.

The portion of the community opposition to this parking lot as being unnecessary is ironic. When the Board reviews its Opinion in Case 99-105 (Petitioners' Exhibit 1A), some of the same Protestants were most concerned that the unrestricted free parking be insured for the revenue lot. Now, in their testimony before the Board on Case 00-320-SPH, they claim the developer does not

need this additional parking space because of the parking available on the former revenue lot, none of which can be dedicated or reserved to either tenant of the developer under the terms of the approved hearing plan which the community so strenuously sought and which the developer never opposed. Similarly, the community's testimony before the Board evidencing a fear of increased criminal activity if this parking lot expansion was approved, ironically, was undercut by the testimony of the most immediately affected property owner, Gladys Boardley at the hearing on the Petition of the original parking lot. Mrs. Boardley submitted testimony, as did the neighbor on the other side, which the Zoning Commissioner found credible, that the wooded lot where the parking lot is now located was frequently a haven for undesirable and dangerous individuals, and that her house had been robbed twice. She testified that the open parking lot would promote a safer environment and the lighting on the lot would provide more security to the area (Petitioners' Exhibit 1B, page 3).

The community's fears about traffic congestion clogging their interior streets was undercut by the testimony of the professional engineer for the Petitioners, who testified and demonstrated to the Board the road network in the community, which naturally flows towards Frederick Road or Ingleside Avenue and to the Beltway and not to the closed loop roads interior to this community on Fusting or Howard. Given the spirited nature of the opposition presented in the testimony of various Protestants, there was nary a word spoken about any problems with the existing stormceptor and its ability to handle any rain since it was put in place in the Summer of 2000. That is if the parking lot as built in accordance with the approval granted in Petitioners's Exhibit 1C by the Zoning Commissioner in 00-320-SPH which was built to the eighty-one (81) space configuration, was causing a storm water management or storm water runoff problem, there were certainly enough heavy rainstorms between July of 2000 when the parking lot was fully built and the time of hearing

on January 24, 2001 so that if a problem was being caused by that, the Board certainly would have heard about it from one of the many Protestants' witnesses.

The community's vague, generalized opposition as stated in the testimony of Pat Stack was to the effect that they were unhappy with the original parking lot, chose not to appeal it, and when it became a final Order, looked upon the additional twenty-eight (28) space addition as salt being rubbed into the wound. That is not a reasonable basis for objecting to this expansion under the caselaw authority. In Jacobs v. County Board of Appeals for Baltimore County, 234 Md 242 (1964), such generalized protest formed no basis to deny a use permit for a residentially zoned parking lot to support an adjacent commercial shopping center.

Petitioners see the parking lot as further evidence of the developer's conscientious discharge of his obligations to provide required off street parking for a tenant because the developer cannot reserve or dedicate spaces on the former Revenue Authority parking lot for his tenants.

The testimony of Mr. Schueler about his belief that the stormceptor was inadequate was undercut by the fact that the regulations dealing with storm water management to which he referred were prospective and would not take effect at the earliest until July 1, 2001, and therefore would not be properly considered as part of this application. Further, the Board has in its file the Baltimore County agency comments, and should note that Mr. Schueler's concerns were not a concern of DEPRM or any approving authorities in Baltimore County. Similarly, his assertion of the need for a forest conservation plan was not shared by DEPRM in Baltimore County, and he admitted in cross examination that the area of the expansion for the parking lot for the additional twenty-eight (28) spaces was an area that had few, if any, trees on it prior to the construction of the parking lot. In Lutherville Community Association v. Wingard, 239 Md 163 at 168, the Court of Appeals observed:

"It is not the function of the courts to zone or rezone or to substitute their judgments for that of the expertise of the zoning officials."

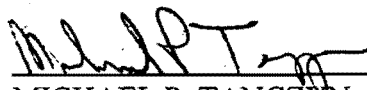
The Baltimore County Departments which routinely review zoning petitions are entrusted with utilizing their expertise to raise issues in their comments. They are afforded deference due to their expertise in their assigned area of review. Neither DEPRM, Public Works nor the Traffic Department identified as issues the stormceptor utility, forest buffer or traffic circulation problems either for the original parking lot or the 28 space expansion. The developer's engineer testified the County reviewed and approved the stormceptor which since installation, has performed without complaints raised as to its adequacy.

Finally, the community's request for landscape buffer to the north represents overkill since Avery Harden of Baltimore County has already reviewed and approved the landscape plan for the property and a portion of the landscaping has already been installed prior to the onset of cold weather in 2000. Since the developer owns the lands located north of the parking lot, the community is asking this Board to impose a landscaping requirement to the north of the existing parking lot, in effect buffering the parking lot from those developer lands which go to the south side of Fusting Avenue.

CONCLUSION

The Petitioners have demonstrated not only a need for the twenty-eight (28) space expansion in the parking lot, but yet one more example of the developer's conscientious discharge of its responsibilities to provide off street parking for dedicated tenant use. The location of the lot and restrictions shown on the developer's plan show full compliance with the provisions of the *Baltimore County Zoning Regulations*. Petitioner respectfully requests that the Board grant the use permit for this parking lot.

Respectfully submitted,



MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Attorney for the Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 9th day of March, 2001 a copy of the foregoing Petitioners' Memorandum of Law was mailed by first class mail, postage prepaid to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, Maryland, 21286, Attorney for the Protestants, and to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Room 47 Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204.



MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Attorney for the Petitioners

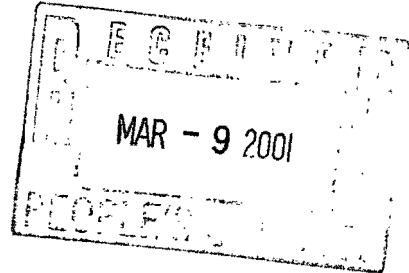
LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204

Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

W/PMT

March 9, 2001



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

RECEIVED
COUNTY BOARD OF APPEALS
01 MAR - 9 PM '01

Re: Petition of 746 Associates, L.L.C. and Morseberger Development, Inc., Case 00-320-SPH

Dear Mr. Chairman and Members of the Board of Appeals:

Enclosed herewith per the Board's direction is the Memorandum of the Petitioner, 746 Associates, L.L.C., for the Board's consideration in deliberating this case.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/gr
Enclosure

cc: 746 Associates, L.L.C.
J. Carroll Holzer, Esquire
People's Counsel of Baltimore County ✓

3/29/00
IN RE: PETITION FOR SPECIAL HEARING
N/S Melrose Avenue, 312' W of the c/l
Ingleside Avenue
(14 - 28 Melrose Avenue)
1st Election District
1st Councilmanic District

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 00-320-SPH

746 Associates, LLC
Petitioners

* * * * *
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, 746 Associates LLC, by Thomas Booth, Managing Member, through their attorney, Michael P. Tanczyn, Esquire. The Petitioners request a special hearing to approve business parking in a predominantly residential office (R.O.) zone, a use permit for parking facilities in a R.O. zone to meet the requirements of Sections 409.6 and 409.8.B.1.d&e of the Baltimore County Zoning Regulations (B.C.Z.R.) and to provide required parking to support the commercial or business use on the adjacent parcel, and an amendment to the previously approved site plan in prior Case No. 00-122-SPH to expand the proposed parking facilities/lot to provide additional parking. The subject property and relief requested are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 2.

Appearing at the requisite public hearing held in this case were Thomas Booth and Louis P. Morseberger, representatives of 746 Associates LLC, property owners, Iwona Rostek-Arska, Professional Engineer who prepared the site plan for this property, and Michael P. Tanczyn, Esquire, attorney for the Petitioners. Appearing in opposition to the request was Patricia A. Stack, a resident of the area. Although Ms. Stack was the only individual who appeared at the hearing, a number of letters from other area residents were received and reviewed by this Zoning Commissioner prior to the hearing.

This is actually the third public review by this Zoning Commissioner of the proposed project which relates to the redevelopment of a portion of the "downtown" Catonsville town center. The first case related to a parcel located adjacent to and across Melrose Avenue from the subject property. That parcel fronts Frederick Road and abuts Egges Lane to the west (side) and Melrose Avenue to the rear. Pursuant to Baltimore County's development review process, that matter came before me under Case No. I-457 for consideration of a development plan which proposed a substantial redevelopment of that tract. Ultimately, approval was granted to develop the site with a two-story office building, encompassing approximately 14,950 sq.ft., and a 4200 sq.ft. Friendly's Restaurant. The Friendly's building is located on the front of the parcel, immediately adjacent to Frederick Road, and the office building is located to the rear of the site, abutting Melrose Avenue. In addition to these buildings, a parking lot serving both buildings and providing public parking for the vicinity in general was also permitted. In fact, during my site visit to the property following the hearing in the instant case, I observed that the Friendly's Restaurant is now open for business and that the office building has been constructed and is now occupied.

The development proposed in prior Case No. I-457 was approved by this Zoning Commissioner on January 5, 1999. That approval was appealed, however, to the County Board of Appeals, which affirmed in Case No. CBA 99-195. A subsequent appeal of the Board's affirmation to the Circuit Court of Maryland for Baltimore County was voluntarily dismissed by the Protestants.

The second act in this drama occurred in prior Case No. 00-122-SPH. In that matter, the Petitioners came before me seeking approval of a Petition for Special Hearing to use a portion of the subject property for parking facilities to support the office building and commercial uses across Melrose Avenue. As noted above, the subject property is located across Melrose Avenue from the B.L. zoned portion of the property which has been developed as described above. The subject parcel encompasses those properties known as 14 - 28 Melrose Avenue, is 16,214 sq.ft. in area, and is zoned R.O. Ms. Stack also appeared at that hearing, as did a number of other Protestants. In addition to the neighbors who appeared in opposition to the request, two

individuals from the community appeared in support of the request. Those two neighbors are arguably the most impacted by the proposed parking lot in that they reside immediately adjacent to that property. Following the public hearing in that matter, and upon due consideration of the testimony and evidence offered, the Petition for Special Hearing to approve the parking lot was granted on November 5, 1999. Apparently, there was no appeal of that decision.

The Petitioners now come before me seeking an amendment to the prior relief granted. Specifically, the Petitioners now propose to expand the parking lot by providing another row of parking spaces. Where the originally proposed parking lot would provide 53 parking spaces, the proposed expansion will provide an additional 28 spaces, or 81 parking spaces total.

On behalf of the Petitioners, Mr. Thomas Booth testified. He explained why the additional parking was requested, specifically reciting the fact that the demands of the tenants of the office building required that a substantial number of spaces be provided for employees. He also pointed out that downtown Catonsville itself is undergoing a certain amount of renovation and rehabilitation and the increased area of parking is necessary for the vicinity at large. This is but a synopsis of Mr. Booth's testimony; his recorded testimony is part of the record of this case.

For her part, Ms. Stack objects to the expanded parking. She fears detrimental environmental impacts, including additional noise and air pollution. She also is concerned about traffic congestion in the neighborhood, fearing that users of the lot will overburden the small residential streets in the area. Correspondence received subsequent to the hearing from others in the neighborhood expressed similar concerns as well as feared detrimental impacts relating to storm water runoff and sediment control.

In considering the merits of the instant Petition, it is to be emphasized that the matter before me relates only to the proposed expansion of the parking lot. That is, the commercial development on the large tract of land adjacent to Frederick Road, was approved in prior Case No. I-457 and has been built out. Moreover, the parking facilities to support those uses were approved in prior Case No. 00-122-SPH. I cannot revisit those issues. The scope of my inquiry here is restricted only to the proposed expansion of the parking lot.

Following the hearing in this matter, I again visited the site. I conducted a site visit in the earlier cases; however, returned to inspect the progress of the development project. As noted above, the Friendly's Restaurant is open for business and the office building is occupied. I drove the area and also walked along Melrose Avenue. Based upon the testimony and evidence offered, as well as my site inspection, I am persuaded to grant the Petition for Special Hearing.

Turning first to the concerns expressed by the Protestants over traffic, that issue was primarily considered and decided in prior Case No. 00-122-SPH. Admittedly, there will be additional traffic in that the capacity of the parking lot itself will be enlarged; however, I suspect that the traffic patterns in the area will remain the same. I paid particular attention to this issue when I drove and walked the neighborhood. Despite Ms. Stack's protestations to the contrary, I do not believe that there is a reasonable possibility of increased traffic on the residential streets to the interior. It is anticipated that most individuals using the subject lot will access same from either Frederick Road or Ingleside Avenue. I frankly do not see why the traffic Ms. Stack fears would utilize Fusting Avenue or the other residential streets nearby. Access to major corridors, including Frederick Road and I-695, is to the south and east of this property, and the residential community is to the north and west.

Additionally, as was pointed out in my earlier decision, Melrose Avenue is not purely a residential street. There are a number of commercial/institutional uses in this area, even further into the residential community of Catonsville than the subject lot. I observed government offices, elderly housing facilities, and other parking lots much further away from Frederick Road and Ingleside Avenue than the subject lot. I do not perceive the proposed expansion of the parking lot to be an intrusion of a commercial use in a residential community. In my judgment, the lot is entirely appropriate for the area.

As to the storm water management and sediment control concerns, the County does have and enforce regulations relating to sediment control. Testimony was offered at the hearing regarding storm water management and runoff from the subject site. This will be managed in accordance with County regulations. I do not believe that the expansion to the subject lot will

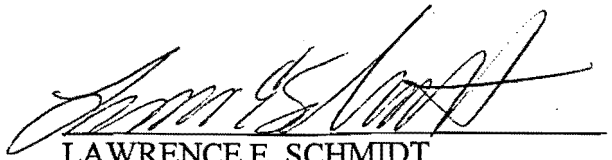
cause any deleterious impacts on the existing storm water management plan. Again, my inquiry in the instant case is restricted only to the proposed expansion of the parking lot.

Based upon the testimony and evidence offered, I am persuaded to grant the Petition for Special Hearing. I am appreciative of concerns raised by residents when development expands from major arterial roads, such as Frederick Road, towards the interior of residential communities. However, that is not the case here. In my judgment, the Protestants' concerns do not adequately form the basis under which the Petition for Special Hearing can be denied.

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 29th day of March, 2000 that the Petition for Special Hearing to approve business parking in a predominantly residential office (R.O.) zone, a use permit for parking facilities in a R.O. zone to meet the requirements of Sections 409.6 and 409.8.B.1.d&e of the Baltimore County Zoning Regulations (B.C.Z.R.) and to provide required parking to support the commercial or business use on the adjacent parcel, and an amendment to the previously approved site plan in prior Case No. 00-122-SPH to expand the proposed parking facilities/lot to provide additional parking, in accordance with Petitioner's Exhibit 2, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioners may apply for their use 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.


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs



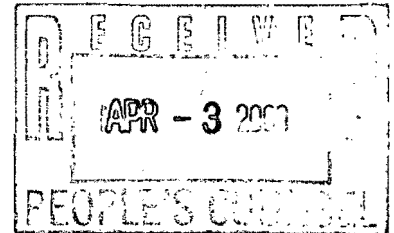
Baltimore County
Zoning Commissioner

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

March 29, 2000

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
N/S Melrose Avenue, 312' W of the c/l Ingleside Avenue
(14-28 Melrose Avenue)
1st Election District – 1st Councilmanic District
746 Associates LLC - Petitioners
Case No. 00-320-SPH



Dear Mr. Tanczyn:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing 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 Zoning Administration and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Thomas Booth, 623 Edmondson Avenue, Catonsville, Md. 21228
Mr. Louis P. Morseberger, 612 Hilton Avenue, Catonsville, Md. 21228
Ms. Iwona Rostek-Zarska, 24 English Saddle Court, Parkton, Md. 21120
Ms. Patricia A. Stack, 29 Fusting Avenue, Baltimore, Md. 21228
Mr. & Mrs. Thomas R. Schueler, 117 Ingleside Avenue, Catonsville, Md. 21228
Mr. Brian Nippard, 19 Egges Lane, Catonsville, Md. 21228
DEPRM; OP; People's Counsel; Case File



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Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

14-28 Melrose Avenue

for the property located at Catonsville, MD 21228

which is presently zoned RO/BL

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve a business parking lot in a predominantly RO residential office zone and to grant a use permit for the use of land in a residential office zone for parking facilities to meet the requirements of BCZR Section 409.6 and Section 409.8(b)(1), (d), and (e), and to provide required parking to support the commercial or business use adjacent thereto, and to amend the site plan approved in Case00-122-SPH to expand the parking facilities to provide additional parking as shown on the plat to accompany the Petition for Special Hearing.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded 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:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Michael P. Tanczyn, Esq.

Name - Type or Print

Signature

Law Offices of Michael P. Tanczyn

Company

606 Baltimore Ave., Ste. 106 410-296-8823

Address

Telephone No.

Towson, Maryland

21204

City

State

Zip Code

Legal Owner(s):

746 Associates, LLC by:

Thomas Booth, Managing Member

Name - Type or Print

Signature

Name - Type or Print

Signature

623 Edmondson Avenue 410-788-5390

Address

Telephone No.

Catonsville, Maryland

21228

City

State

Zip Code

Representative to be Contacted:

Iwona Rostek-Zarska

Baltimore Land Design Group, Inc.

Name

24 English Saddle Court 410-329-8234

Address

Telephone No.

Parkton, Maryland

21120

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Case No. 00-320-SPH

Reviewed By WCR

Date 2/4/00

REV 9/15/98

DROP OFF

NO REVIEW



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

February 25, 2000

Mr. Michael Tanczyn
Law Office of Michael P. Tanczyn
606 Baltimore Ave., Suite 106
Towson MD 21204

Dear Mr. Tanczyn:

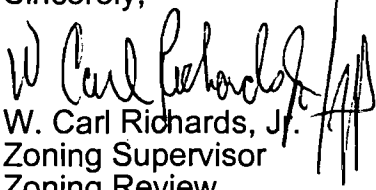
RE: Case Number 00-320-SPH , 14-28 Melrose Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 4, 2000.

The Zoning Advisory Committee (ZAC), which consists of representatives from several Baltimore County approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Sincerely,


W. Carl Richards, Jr.
Zoning Supervisor
Zoning Review

WCR:ggs

Enclosures



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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

February 25, 2000

Mr. Michael Tanczyn
Law Office of Michael P. Tanczyn
606 Baltimore Ave., Suite 106
Towson MD 21204

Dear Mr. Tanczyn:

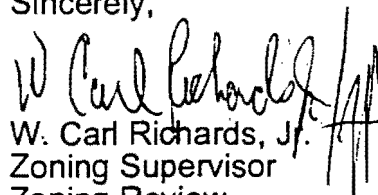
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Sincerely,


W. Carl Richards, Jr.
Zoning Supervisor
Zoning Review

WCR:ggs

Enclosures

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley *RBS*

DATE: February 16, 2000

SUBJECT: Zoning Petitions
Zoning Advisory Committee Meeting of February 14, 2000

DEPRM has no comments for the following zoning petitions:

Item #	Address
314	55 Music Fair Road
315	16 Trojan Horse Drive
316	201 N. Tyrone Road
317	12 Barthel Court
318	24 Sagewood Court
319	9644 Dixon Avenue
320	14 - 28 Melrose Avenue
287	5780 Baltimore National Pike

CD

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Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

February 17, 2000

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED FEB 25 2000

ATTENTION: Gwen Stephens

RE: Property Owner: NATICK FIFTH REALTY CORP. - 314
746 ASSOCIATES, LLC - 320

Location: DISTRIBUTION MEETING OF February 14, 2000

Item No.: 314 and 320

Dear Ms. Stephens:

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

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1994 edition prior to occupancy.

REVIEWER: LIEUTENANT HERB TAYLOR, Fire Marshal's Office
PHONE 887-4881, MS-1102F

cc: File





Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

February 17, 2000

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Development Management (PDM)
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Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
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PHONE 887-4881, MS-1102F

cc: File



cd

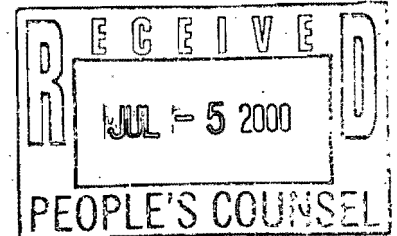
BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 16, 2000

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



SUBJECT: Zoning Advisory Petition(s): Case 320, 451 and 456

The Office of Planning has reviewed the above referenced case and has no comments to offer.

For any further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared by: *[Signature]*

Section Chief: *[Signature]*

AFK/JL:MAC

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley *RB*

DATE: May 19, 2000

SUBJECT: Zoning Item #99-320
11761 - 11775 Belair Road

Zoning Advisory Committee Meeting of May 15, 2000

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

_____ The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.

X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

X Groundwater Management: Potential sources of contamination (i.e., gasoline tanks and conveyance piping) may not be located within 100 feet of a water well. Therefore, water well BA 92-1051, located along the southwest property line must be abandoned and sealed with bentonite grout by a licensed well driller prior to installation of the service station. In addition, the location of the underground fuel tanks must be shown on the plan and must be greater than 100 feet from the other well serving the property, BA 88-2057.

Reviewer: Sue Farinetti

Date: May 18, 2000



Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor
John D. Porcari
Secretary
Parker F. Williams
Administrator

Date: 5-15-00

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

RE: Baltimore County
Item No. 99-320-SPHXA

Dear Ms. Jackson:

We have reviewed the referenced item and have no objection to approval, as a field inspection reveals that the existing entrance(s) on to MD/US 1 are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA 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



**Maryland Department of Transportation
State Highway Administration**

Parris N. Glendening
Governor
John D. Porcari
Secretary
Parker F. Williams
Administrator

Date: 2.14.00

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

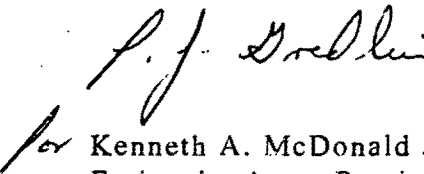
RE: Baltimore County
Item No. 320 WCR

Dear Ms. Jackson:

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 HEARING
14-28 Melrose Avenue, N/S Melrose Ave,
appx. 200' E of c/I Egges Ln
1st Election District, 1st Councilmanic

Legal Owner: 746 Associates, LLC
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 00-320-SPH

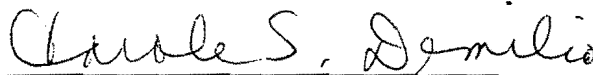
* * * * *

ENTRY OF APPEARANCE

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



PETER MAX ZIMMERMAN
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 25th day of February, 2000 a copy of the foregoing Entry of Appearance was mailed to Michael P. Tanczyn, Esq., , 606 Baltimore Avenue, Suite 106, Towson, MD 21204, attorney for Petitioner(s).



PETER MAX ZIMMERMAN

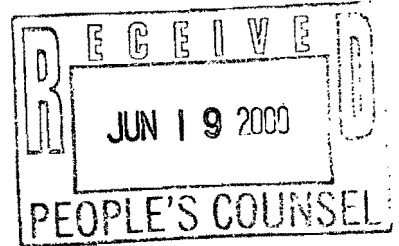


Baltimore County
Department of Permits and
Development Management

PMZ
de

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

June 15, 2000



Mr. Thomas Booth
623 Edmondson Avenue
Baltimore, MD 21228

Dear Mr. Booth:

746 ASSOC. LLC

RE: Petition for Special Hearing, Case No.00-320-SPH, 14-28 Melrose Ave., 1st
Election District

Please be advised that an appeal of the above-referenced case was filed in this office on April 28, 2000, by Central Catonsville Neighborhood Associates Inc. 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.

Sincerely,

Arnold Jablon
Director

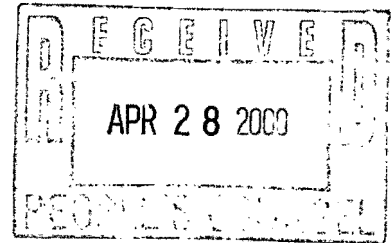
AJ:rsj

c: Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Ste 106, Towson, MD 21204
Iwona Rostek-Zarska, Baltimore Land Design Group, Inc., 24 English Saddle Court, Parkton, MD 21120
Louis P. Morseberger, 612 Hilton Avenue, Baltimore, MD 21228
People's Counsel, M.S. 2010
Arnold Jablon, PDM Director
Zoning Commissioner

Are we helping out on this?



Carl Richards
Zoning Administrative and Development
Management Office
111 W. Chesapeake Avenue
Towson, MD 21204



RE: PETITION FOR SPECIAL HEARING
N/S Melrose Avenue, 312' W of
the c/I Ingleside Avenue
(14-28 Melrose Avenue)
1st Election District
1st Councilman District
746 Associates LLC - Petitioners
Case No. 00-320-SPH

Dear Mr. Richards:

The Central Catonsville Neighborhood Association Inc. and Scott A. & Kathleen L. Westcoat, Chas Stump & Marti Dirscherl, Tom & Sharon Schueler, Brian Nippard, Pat Stack, Steve & Betsy Wimbrow, Darryl Lewis & David Bare, requests an appeal for the decision of a petition for Special Hearing, Case No. 00-320-SPH regarding 14-28 Melrose Avenue to the County Board of Appeals from the Findings of Fact and Conclusions of Law of the Baltimore County Zoning Commissioner dated March 29, 2000 in the above-entitled case.

Enclosed is our check in the amount of \$ 235.00 for the filing fee. Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Central Catonsville Neighborhood
Association Inc.

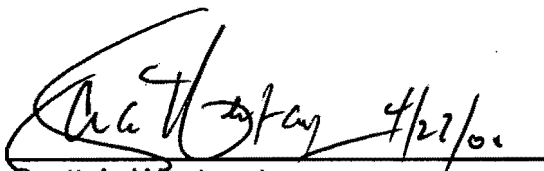
By:

Pat Stack 4/27/00
Pat Stack, President
29 Fusting Ave.
Catonsville, MD 21228
410.744.0407

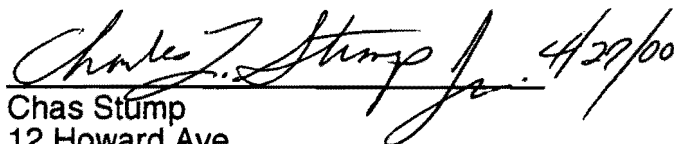
Brian Nippard 4/27/00
Brian Nippard, VP
19 Egges Ln.
Catonsville, MD 21228
410.788.1806

Scott Westcoat 4/27/00
Scott Westcoat, VP
14 Fusting Ave.
Catonsville, MD 21228
410.869.8565

CC: Michael P. Tanczyn, Esq., 606 Baltimore Ave., Suite 106, Towson, MD 21204, Attorney for Petitioners
People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Ave., Towson, MD 21204

 4/27/00

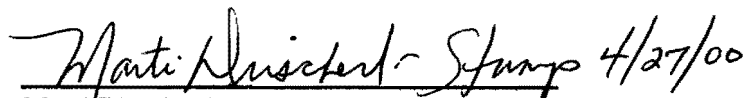
Scott A. Westcoat
14 Fusting Ave.
410 869 8565

 4/27/00

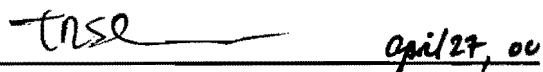
Chas Stump
12 Howard Ave.
410 455 0958

 4-27-00

Kathleen L. Westcoat
14 Fusting Ave.
410 869 8565

 4/27/00

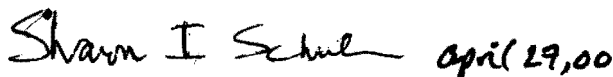
Marti Dirscherl
12 Howard Ave.
410 455 0958

 4/27/00

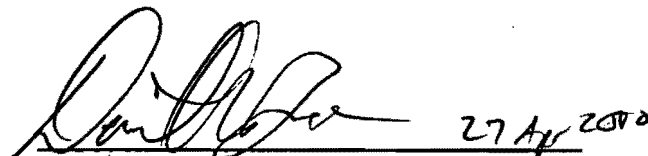
Tom Schueler
117 Ingleside Ave.
410 455 9441

 27 Apr 00

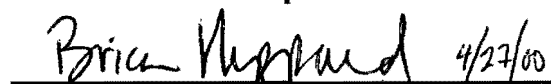
Darryl Lewis
309 Ingleside Ave.
410 744 3991

 4/27/00

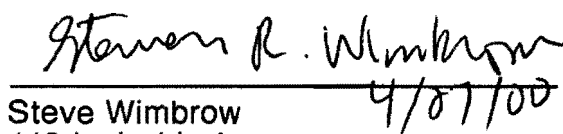
Sharon Schueler
117 Ingleside Ave.
410 455 9441

 27 Apr 2000

David Bare
309 Ingleside Ave.
410 744 3991

 4/27/00

Brian Nippard
19 Egges Ln.
410 788 1806

 4/27/00

Steve Wimbrow
113 Ingleside Ave.
410 788 4472

 4/27/00

Pat Stack
29 Fusting Ave.
410 744 0407

 4-27-00

Betsy Wimbrow
113 Ingleside Ave.
410 788 4472

7/28/2000 746 Area, 00-320-5PH

Third stage in Frederick/Melrose
development

Did not participate in other
case

Use permit in R.O. zone /
judgment call

No participation warranted

PMZ