

IN RE: DEVELOPMENT PLAN HEARING \* BEFORE THE  
 and PETITIONS FOR SPECIAL HEARING  
 AND VARIANCE – S/S Lyons Mill Rd.; \* ZONING COMMISSIONER  
 W/S Painters Mill Road  
 3<sup>rd</sup> Election District \* OF BALTIMORE COUNTY  
 2<sup>nd</sup> Councilmanic District \* Cases Nos. II-581 & 00-333-SPHA  
 L. C. Apartments, LLC, Owner/Developer \*

\* \* \* \* \*

ORDER ON THE MOTION FOR RECONSIDERATION

This matter comes before this Hearing Officer/Zoning Commissioner on a Motion for Reconsideration filed by the Office of People’s Counsel of Baltimore County, Maryland. People’s Counsel seeks a reconsideration of the Hearing Officer’s Opinion and Development Plan Order issued on May 8, 2000, which approved the development plan and granted Petitions for Special Hearing and Variance relief in the above-captioned matter, for the development known as Owings Park Apartments. The Motion for Reconsideration was timely filed within thirty (30) days of the date of the Hearing Officer’s Opinion and Order, pursuant to Rule K of the Rules of Practice and Procedure before the Zoning Commissioner/Hearing Officer of Baltimore County. These Rules are codified in Appendix G of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition to its Motion, People’s Counsel filed a Memorandum in Support thereof. The Developer/Petitioner, L. C. Apartments, LLC, filed a memorandum in Opposition to the Motion. A public hearing on the Motion was held on June 13<sup>th</sup> and 14<sup>th</sup>, 2000.

At the hearing on the Motion, the Office of People’s Counsel was present and represented by Peter Max Zimmerman, Esquire, People’s Counsel, and Carole S. DeMilio, Esquire, Deputy People’s Counsel. The Developer/Petitioner was represented by Jeffrey H. Scherr, Esquire, and H. Tripp Burgunder, III, Esquire. Representatives of the Baltimore County Office of Law also appeared and participated in the proceedings through Paul N. Mayhew, Esquire, and John Beverungen, Esquire.

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People's Counsel offers three bases for its Motion for Reconsideration. First, it is alleged that the Hearing Officer failed to apply the provisions of the Adequate Public Facilities Law (Bill No. 110-99). Second, it is alleged that the plan was wrongly approved in that it provides for the extension of public utilities (water/sewer) into the site. People's Counsel argues that the property is outside the Baltimore County Metropolitan District and therefore, that public utilities cannot be extended to serve the proposed development. Finally, People's Counsel argues that the Petitions for Special Hearing and Variance should have been denied.

**ADEQUATE PUBLIC FACILITIES LAW (Bill No. 110-99)**

Consideration is first given to the arguments by the parties relative to the applicability of Bill No. 110-99, the Adequate Public Facilities legislation. In discussing this issue, the time line which has developed for the subject proposal and relevant dates associated therewith are to be observed. Testimony offered at the original hearing was that representatives of the Developer initially met with County officials regarding the proposed development at a pre-concept conference on June 6, 1999. Thereafter, pursuant to Section 26-202(f) of the Baltimore County Code, a concept plan was submitted and a conference held thereon on September 7, 1999. Thereafter, a community input meeting to allow participation by neighboring property owners was conducted on September 30, 1999. Ultimately, the Developer submitted "check prints" of its proposed development plan to Baltimore County on December 13, 1999. These prints were delivered to County agencies for their review as to the plan's technical compliance with County regulations. Following delivery and review of those check prints, the development plan itself was filed on February 4, 2000.

As noted in my Opinion of May 8, 2000, questions are often raised within the development review process as to what constitutes the "filing" of a development plan. In this case, it is undisputed that the requisite number of plans required were delivered to Baltimore County on February 4, 2000, that a check payable to Baltimore County in the amount of \$4,389 was delivered on that date, and that the associated supporting plans and reports were included therewith.

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Thereafter, a development plan conference was held by the County reviewing agencies on March 29, 2000. The property was subsequently posted and a Hearing Officer's Hearing (pursuant to Section 26-206 of the Baltimore County Code) held on April 21, 2000. As noted above, the Hearing Officer's Opinion and Development Plan Order followed on May 8, 2000.

This is not the first case which has required an interpretation of the effective date of Bill No. 110-99. Among others, this Hearing Officer considered this issue in the matter of Mathena Estates, Sections I and II, Case No. II-598. In the written decision rendered in that case, I examined Bill No. 110-99 and its provisions. That decision was rendered on February 2, 2000 and was not appealed. I continue to believe that the discussion of the Bill and my holdings in that opinion represent the correct interpretation of Bill No. 110-99.

As noted in Mathena, the Bill is divided into nine sections. The sections are labeled by head note, as Sections 1 through 9. The delineation and division of the Bill into sections is not to be confused with those sections of the County Code which were repealed and re-enacted by the Bill. The Bill repealed and/or re-enacted parts or all of Sections 26-491 through 26-499 of the Baltimore County Code.<sup>1</sup> Those Sections fall generally within Title 26 of the Code, which regulates development in Baltimore County.

As to the nine sections of the Bill, Section 1 introduces the Bill and contains a brief statement of legislative intent. Section 2 identifies those Sections of the County Code (26-491 through 26-499) that are repealed. Section 3 is the lengthiest section of the Bill and contains the substance thereof. It sets out the new language of Sections 26-491 through 26-500. As noted in Mathena, Section 3 is the primary focus of the legislation.

Section 4 provides generally that the Bill should be considered as supplemental and conditional to all other requirements of State, Federal or Local law. Section 5 requires the Office of Planning and the Department of Permits and Development Management to promulgate regulations pursuant to the adoption of the Bill.

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<sup>1</sup> It also added Section 26-500.

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The Court of Special Appeals discussed the applicability of the new/amended law. The Court noted that the rules governing the applicability/effective dates of new laws, "... are easy to state but difficult to apply." (Page 283). The Court cited a number of cases for the general proposition that a statute is presumed to operate prospectively from its effective date, absent a clear expression of legislative intent that the statute is to be applied retroactively. (Pg. 283) Despite this presumption, however, the Court also observed that other cases support the proposition that when a legislative change in the law effects a procedural matter only, rather than substantive rights, the new law applies to all actions, whether accrued, pending, or future, unless a contrary intention is expressed. (Pg. 283) The Court further held that the question of determining what is a procedural matter versus what is a substantive issue, "often is a difficult one to determine." (Pg. 283)

Adding to the confusion, the Court cited other cases which stand for a proposition that an Appellate Court must apply the law in effect at the time a case is decided, provided that its application does not effect intervening vested rights. (Pg. 284) Finally, it was noted that a change in procedural law will not be applied retroactively to undo proceedings that have already concluded prior to the passage of the law. (Pg. 284) The Court went on to a lengthy discussion of these four principles, which appear to be at odds and are, at the least, confusing. However, in summary, the Court held that, absent clear legislative intent to the contrary: 1) a statute ordinarily will be presumed to operate prospectively; 2) a statute that changes procedure, only, will ordinarily be applied to pending cases; and, 3) new procedural law, although applicable to pending cases, will not ordinarily be applied to undo procedures that have already been concluded. (Pg. 287) These principles enunciated in Holland were restated, with approval, in Blackburn v. Liquor License Comm., 130 Md. App. 614 (2000).

The Court of Special Appeals' decision in Holland referenced an earlier case in the Court of Appeals, W.S.C.C. v. Riverdale Fire Company, 308 Md. 556 (1987). This was not a zoning case, but a matter relating to an act which conferred immunity on fire or rescue companies, except for willful or grossly negligent acts. The question presented was whether the act should be

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applied retroactively to confer immunity for alleged tortious conduct occurring prior to the act's effective date. In W.S.C.C., the Court of Appeals cited a long line of cases, among them, State Farm Mutual Automobile Insurance Company v. Hearn, 242 Md. 575 (1966), and Janda v. General Motors Corp., 237 Md. 161 (1964). The Court's decision in W.S.C.C. was affirmed in Waters v. Montgomery Co., 337 Md. 15 (1994) and Informed Physician v. Blue Cross, 350 Md. 308 (1998). In these cases, the Court of Appeals held that an act is presumed to operate prospectively. The Court also held that the presumption of retrospectivity is rebuttable only where there are clear expressions to the contrary in the statute.

Finally, a recent decision in the Court of Appeals is of note. In County Council v. Collington Corporate Center, 358 Md. 296 (2000), the Court of Appeals, in a zoning context, revisited the issue raised in W.S.C.C., *infra*. The Court affirmed the principles stated therein, namely, that statutes are presumed to operate prospectively and are to be construed accordingly, and that the presumption against retrospectivity is rebutted only where there are clear expressions to the contrary. Moreover, the Court found that retrospective application is not found except in the plainest mandate of the legislation. The Court also noted in Collington, and it is significant here, that a property owner's vested rights, from a zoning perspective, require that, at a minimum, a valid building permit be issued. There is no basis for the claim of vested rights in the instant case.

In Mathena, I attempted to reconcile the provisions of Bill No. 110-99 by applying separately the language found in Sections 6, 7, 8 and 9 of the Bill. (See Mathena, Pg. 6). That is, I first determined if the Bill was applicable under Section 6, then turned to consideration under Section 7, and so on. Analyzing the Bill in this manner results in a harmonious interpretation of the entire Bill.

In applying this process to the instant case, consideration is first given to the impact of Section 7 of the Bill. As noted above, Section 7 provides that the "new" provisions of Section 26-498 of the Code do not apply to development plans filed with the Department of Permits and Development Management on or before November 15, 1999. It is clear that the Council intended to grandfather development plans actually filed with Baltimore County on or before November 15,

ORDER RECEIVED FOR FILING  
Date 11/21/00  
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1999, from its amendment to Section 26-498 of the Code. In that it is clear that the Applicant's development plan was not filed on or before November 15, 1999, the Developer/Petitioner in this instance is not insulated from the impact of the Bill under Section 7.

A more difficult issue, however, is applying the language of Section 8. As noted above, that language provides that the Bill shall take effect on March 1, 2000. It is clear that on that date, the Developer had already filed its development plan. However, although the plan had been filed, the development plan conference was held thereafter, as was the Hearing Officer's Hearing, and the issuance of the Hearing Officer's decision.

In Monkton Preservation Assoc. v. Gaylord Brooks Realty Corp., 107 Md. App. 573 (1996), the Court of Special Appeals confirmed that the regulations codified in Title 26 of the Code encourage an evolutionary approach to development review. That is, plans evolve and are amended frequently until a decision is rendered by the Hearing Officer.<sup>2</sup> The development plan frequently contains significant changes from what was presented in the concept plan. Even after the development plan is filed, it can be amended by way of red-lined changes made at, or immediately before, the Hearing Officer's Hearing, and amendments can be required pursuant to the Hearing Officer's decision. It is clear that the County Council intended for the new provisions of Section 26-498 to "take effect" on March 1, 2000. Indeed, the new Open Space Manual was adopted by the County Council prior to that date (i.e., February 22, 2000). Although it is clear that the case law requires new laws to be applied prospectively, the ultimate question in this case is, in what context should the law be applied, as of March 1, 2000.

Upon reconsideration, due to the fact that the development plan conference, Hearing Officer's Hearing, and the Opinion and Order issued in this case all occurred after that date, I find that the provisions of the Adequate Public Facilities Law, as they relate to Section 26-498, are applicable to the plan. Thus, I reverse my findings in my Order of May 8, 2000. Such a decision is consistent with the evolutionary approach endorsed in Monkton Preservation, *infra*. When I considered the merits of this development plan on April 21, 2000 and issued a Hearing Officer's

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<sup>2</sup> The Hearing Officer's decision is identified in Section 26-206 of the Code as the "final action" on the plan.

Opinion and Order on May 8, 2000, I was required to apply the law in effect on those dates. As of March 1, 2000, the Code had been amended by the Adequate Public Facilities Act. The filing of the plan, only, prior to its approval, does not insulate it from changes in the law.

In sum, I find that in view of the evolutionary approach in the development review regulations, it is the date of the Hearing Officer's Hearing, and not the date the plan was filed, that is controlling. This view is not inconsistent with Mathena. In Mathena, I held that because the Hearing Officer's Hearing was conducted prior to March 1, 2000, the amendments to the various Code sections were not yet applicable. They did not become effective until March 1, 2000 and the law had not changed until that date. The distinction in the instant case relates to the date of the Hearing Officer's Hearing and decision thereon, which are after the effective date of the law. Thus, the Motion for Reconsideration filed by People's Counsel as to this issue shall be granted.<sup>3</sup>

**PUBLIC UTILITY AVAILABILITY**

People's Counsel also contends that the property is outside the boundaries of the Metropolitan District Map recorded in the books and records kept by the Baltimore County Department of Public Works. As such, People's Counsel argues that the development plan cannot be approved in that it shows service to the proposed buildings by public water and sewer.

A history of the law which establishes the geographic areas of Baltimore County to be served by public utilities is instructive. In 1924, the general assembly of Maryland enacted Chapter 539, which established the Baltimore County Metropolitan District. This district is the area which was defined by a metes and bounds description for the provision of public water and sewer. Originally, the limits of the district were under the jurisdiction of the County Commissioners. In 1929, the General Assembly of Maryland enacted Chapter 61 which amended the law. Chapter 61 included language identifying a "marginal strip of land" which would extend to a distance of 150 feet from the district boundary. Essentially, this allowed for the construction of public utilities to a distance of 150 feet into properties which abutted the defined Metropolitan

<sup>3</sup> Thus, the date of the adoption of the new local Open Space Manual on February 12, 2000 does not disturb this result. The Manual was enacted prior to March 1, 2000. I also decline to examine the issue as to whether the Manual was properly adopted, believing that such issue is beyond the Zoning Commissioner's jurisdiction.

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Date 6/27/00  
By [Signature]

District. Chapter 61 was ultimately codified in the Code of Public Local Laws for Baltimore County in 1948. After Baltimore County became a chartered County, this language was continued in the first published edition of the Baltimore County Code (1958). In successive editions of the Code (1968 and 1978), the language became part of Section 34-11B. That Section read, in part, "In addition, the Baltimore County Metropolitan District shall include, for purposes of assessing front foot benefits charges for water supply, sewage and drainage systems, a marginal strip of land without the Metropolitan District to a distance of 150 feet over the Metropolitan District Line..."

Thus, language providing for a 150-foot wide "marginal strip" existed within the law (be it State legislation or County Code), from 1929 through 1990. In 1990, the County Council passed Bill No. 126-90, which includes the provisions now codified in Sections 35-126 and 35-127 of the County Code. Importantly, that Bill deleted the lengthy metes and bounds description of the Baltimore County Metropolitan District, which had been part of the law up until that time. This boundary description was transferred from within the Code to a book maintained by the Director of the Baltimore County Department of Public Works. Additionally, Section 35-126(a) stated, "Those general public lands involving the Metropolitan District, as adopted by the General Assembly, and as contained in this Article, which have been deleted by Bill No. 126-90, Section 2, are still valid. Such laws may be located in the Chapter laws of this State and must be adhered to by the County."

As People's Counsel noted at the hearing on the Motion for Reconsideration and within their Memorandum, it appears that the language in Section 35-126(a) contains a technical error. The fourth word quoted above ("lands") is clearly an error in diction. Certainly, the word "laws" should be substituted therefore. With such substitution, Section 35-126(a) makes sense. In essence, it provides that those laws involving the Metropolitan District which had been deleted from the Code and transferred to the book maintained by the Director of Public Works would continue in full force and effect. It is clear to this Hearing Officer that the language previously set out in Section 34-11(b), which was deleted by Bill No. 126-90, remains in effect.

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Date 02/10  
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The Office of People's Counsel called two witnesses to testify at the public hearing held on their Motion for Reconsideration. These witnesses were Arnold Jablon, Director of the Department of Permits and Development Management, and David Thomas, a representative of the Department of Public Works. Their testimony is fully recounted in the record of the case. Interestingly, their testimony differed as to the proper interpretation of the background set forth above and the current state of the law. That is, these two Baltimore County supervisory employees differ as to the impact of the language quoted above, and the present state of regulation of the Metropolitan District.

For his part, Mr. Jablon questions whether the language in former Code Section 34-11(b) is still effective. He also believes that in the context of development plan hearing relief, a Developer may need to obtain a waiver, pursuant to Section 26-172 of the Code.

Mr. Thomas testified about the procedure followed by his office. Apparently, the Department of Public Works continues to operate as if the authority for the "150-foot marginal strip" still exists. Although limiting the circumstances in which utilities may be extended, the Department of Public Works' current practice is to utilize this prior language.

In my judgment, the language of Bill No. 126-90 did not delete the law under consideration. Rather, the modifications brought about by that Bill were as to the place where the law was recorded (Public Works' Director's Book v. County Code) and not as to the validity of the law. Therefore, I conclude that the language previously set forth in Section 34-11(b) of the 1978 County Code remains in full force and effect.

That determination having been reached, consideration is next given to the meaning of the words that were used in Section 34-11(b). As stated above, the cardinal rule of statutory construction is to ascertain the intent of the legislature. (See State v. Fabritz, 76 Md. 416 (1975)). Moreover, the reviewing body should glean that intent from the ordinary and properly understood meanings of the words used therein. The relevant language provides, in part, "In addition, the Baltimore County Metropolitan District shall include, for the purposes of assessing front foot benefits charges for water supply, sewage and drainage systems, a marginal strip of land without

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Date

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the Metropolitan District to a distance of 150 feet over the Metropolitan District line..." (emphasis added) The emphasized words noted above are significant. Clearly, it was the intent of the legislature to include within the District the 150-foot marginal strip of land. Moreover, that strip is in addition to the geographic areas enclosed within the boundary of the legislatively established Metropolitan District. Therefore, any portion of the subject property located within 150 feet of the currently established Metropolitan District boundary is included in, and must be considered a part of, the Metropolitan District. Thus, those areas within the subject site so defined can legally be served by extensions of public water and sewer.

People's Counsel offers a number of arguments to negate what I believe is the intent of the language used. For example, People's Counsel argues that the establishment of the marginal strip serves the limited purpose of assessing front foot benefit charges for water supply, sewage and drainage systems. Such a contention is illogical and could result in the obviously unintended result of requiring a property owner to be assessed for public utilities to which his or her property could not be connected. Also, People's Counsel argues that to adopt such an interpretation would render the legislatively established Metropolitan District boundary meaningless. That is, People's Counsel contends that the 150-foot marginal strip law would allow for the unending extensions of the boundary of the District, by adding areas of such width, one atop the next. However, clearly that is not what was intended or envisioned. Indeed, it is the legislature which is cloaked with the authority to establish the location of the Metropolitan District boundary line. That line remains as legislatively established until a change by the act of the County Council. However, measured from that legislatively ascertained boundary, the area of the District includes an additional 150-foot wide strip.

Next, People's Counsel contends that the Developer's attempts in this case to legislatively extend the District somehow defeat its theory that the property is already within the District by virtue of the 150-foot marginal strip rule. Such an assertion is without merit. This Developer has pursued alternative approaches in order to insure that public utilities are connected

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Date 12/11/11  
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to the property. The pursuit of different methods is appropriate and one claim is without prejudice to another.

Finally, People's Counsel contends that the classification of properties for public utilities service, as set out in the Baltimore County Water Supply and Sewage Plan, 1990-2000, 1997 Triennial Review prohibit the conclusion that the 150-foot strip permits the extension of utilities. I do not agree that the designations set out in the County's Water Supply and Sewage Plan are in conflict with the language formerly codified in Section 34-11(b) of the Code. The County's Water Supply and Sewage Plan sets out a rational plan for the extension of public utilities in the area of the County where growth is considered appropriate. This does not conflict with the language formerly codified in Code Section 34-11(b) which provides that wherever the Metropolitan District boundary is placed, the additional 150-foot marginal strip permits extensions of public utilities.

The testimony of Mr. Thomas and of the Department of Public Works was also of interest. As noted above, Public Works considers the former language in Section 34-11(b) valid. Examples were offered during the hearing where public utilities were extended, with the authorization and permission of Baltimore County, into areas that were clearly outside the limits of the Metropolitan District boundary. (See Kirk Property, Exhibit 16; Eidel Property, Exhibit 17; and Mercy Ridge, Exhibit 18). In those cases, and others identified at the hearing, the Department of Public Works authorized the extension of public utilities outside the Metropolitan District boundary line under the authority formerly codified in Section 34-11(b).

In my judgment, the Department of Public Works' mistake was not in authorizing these connections into the 150-foot strip area, but the adoption of arbitrary controls associated therewith and the failure of that Department to require strict adherence with the 150-foot limitation. Mr. Thomas testified that his Department considered that public utility extensions into the 150-foot marginal strip area should be reserved only for single dwelling uses. There is no language within the relevant statute which sets out such a limitation. Moreover, as Mr. Thomas admitted, there have been no policies/regulations duly and properly adopted by Baltimore County authorizing this

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limitation. In addition, testimony was offered regarding examples of where extensions were permitted beyond 150 feet. Again, there was no legal authority or justification presented which authorizes Baltimore County to adopt this approach.

In my judgment, the County has acted improperly in its administration of the law. Government cannot favor one individual property owner or a perceived preferred land use over another. Absent legislation to the contrary, the law should be applied and administered even handedly. In summary, it is my judgment that the 150-foot marginal strip as last codified in Code Section 34-11(b) remains the law. As such, public utilities may and can be extended to a distance of 150 feet from the Metropolitan District boundary. Applying this rationale to this case, it is to be noted that the subject property is surrounded by the Metropolitan District boundary on three sides. It is also located within, as noted by the Developer/Petitioner, the Urban Rural Demarcation Line, the Master Plan area for water and sewer, and the Owings Mills Growth area. Mr. Thaler testified as to the precise locations of the Metropolitan District Line which do not, in this case, coincide with the property line. He indicated that nearly the entire site was within the 150-foot marginal strip area, except for a small "donut-hole" in the center. His calculations were disputed by Mr. Thomas and based upon the contrary explanations offered, I find Mr. Thaler's projections more accurate, based on the documents used as a basis. In any event, the development plan can be approved and this site served by public utilities to the extent of that part of the property within the marginal strip. The plan may need amendment to insure that buildings are relocated within the 150-foot area. However, in my judgment, the law allows a 150-foot strip (no less, nor no greater), regardless of the perceived merits or type of development. Finally, no waiver is needed to achieve this result, only the abiding of the provisions of the law.

**ZONING RELIEF**

Finally, People's Counsel ask that I revisit the special hearing and variance relief previously granted. In essence, People's Counsel argues that variances should rarely be granted and cites as authority, Cromwell v. Ward, 102 Md. App. 691 (1995) and, Chesterhaven Beach Partnership v. Board of Appeals, 103 Md. App. 324 (1994). Indeed, People's Counsel's recitation

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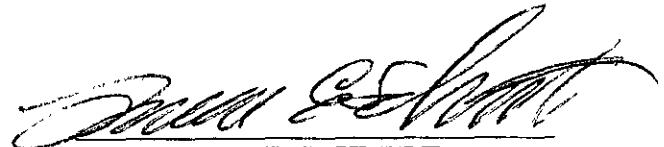
of the law is correct. However, there was no new testimony or evidence offered on these issues at the hearing. Thus my decision must be based on the record of the case as it was made at the original hearing on April 11, 2000. As set forth in my Opinion and Order of May 8, 2000, I find sufficient testimony and evidence to grant the relief requested. I am appreciative of People's Counsel's established position regarding the grant of variance relief. However, I believe that the record before me is sufficient to meet the legal requirements.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 21<sup>st</sup> day of June, that having considered the testimony and evidence offered as well as the arguments of the parties, the Motion for Reconsideration filed by the Office of People's Counsel shall be GRANTED, in part, in accordance with the following terms and conditions:

- 1) The Developer/Petitioner shall be required to resubmit its development plan to insure compliance with the Adequate Public Facilities law. Moreover, changes to the plan will be required to insure that public utilities are extended no further into the property than a distance of 150 feet from the Metropolitan District boundary.

IT IS FURTHER ORDERED, except as inconsistent with these requirements as fully set forth herein, the Hearing Officer's Opinion and Order, dated May 8, 2000, is ratified and incorporated herein.

Any appeal of this decision must be taken in accordance with Section 26-209 of the Baltimore County Code.



LAWRENCE E. SCHMIDT  
Zoning Commissioner/Hearing Officer  
for Baltimore County

LES:bjs

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Baltimore County  
Zoning Commissioner

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June 21, 2000

Jeffrey H. Scherr, Esquire  
Herbert Burgunder, III, Esquire  
Kramon & Graham  
One South Street, suite 2600  
Baltimore, Maryland 21202

RE: MOTION FOR RECONSIDERATION (Owings Park Apartments)  
L & C Apartments, LLC – Owner/Developer  
Cases Nos. II-581 and 00-333-SPHA

Dear Messrs. Scherr & Burgunder:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Motion for Reconsideration has been granted, in part, in accordance with the attached Order.

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

Very truly yours,

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

cc: Mr. Kevin Carney, L & C Apartments, LLC  
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Ms. Kacey Macomber, McDonogh School, Inc.  
8600 McDonogh Road, Owings Mills, Md. 21117-0380  
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Case Files

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For You, For Baltimore County

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IN RE: DEVELOPMENT PLAN HEARING \* BEFORE THE  
 and PETITIONS FOR SPECIAL HEARING  
 AND VARIANCE – S/S Lyons Mill Rd.; \* ZONING COMMISSIONER  
 W/S Painters Mill Road \* OF BALTIMORE COUNTY  
 3<sup>rd</sup> Election District \*  
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 L. & C. Apartments, LLC, Owner/Developer  
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HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Zoning Commissioner pursuant to Title 26 of the Baltimore County Code, for consideration of a development plan, prepared by D. S. Thaler & Associates, Inc., and Petitions for Special Hearing and Variance filed by the Owner/Developer of the subject property, L. & C. Apartments, LLC. The Owner/Developer proposes development of the subject site with 202 multi-family apartment units, to be known as Owings Park Apartments. In addition to development plan approval, the Owner/Developer requests a special hearing to approve an amendment to all prior zoning cases relative to the subject property, maintaining all previous special hearing and variance requests, and to modify Special Permit No. 2812, and variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: From Section 1B01.2.C.1.e to permit a rear setback of 10 feet in lieu of the required 40 feet for proposed Building 4, and from Section 400.1 to permit accessory buildings (detached garages and a pavilion) to be located in the front and side yards, in lieu of the required rear yard, and, for any corner lot, to permit such accessory structures to be located outside the third of the rear yard farthest removed from the street and to occupy more than 50% of such third. The subject property consists of 14.16 acres, more or less, zoned D.R.16, and is located on the south side of Lyons Mill Road, near its intersection with Painters Mill Road in Owings Mills. The proposed development and relief requested are more particularly described on the development plan submitted into evidence and marked as Developer's Exhibit 1.

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 By [Signature]

The Hearing Officer's Hearing represents the final step of Phase I of the development review process, as that process/procedure has been set out in the Baltimore County Code. Appearing at this Hearing Officer's Hearing on behalf of the Developer were David S. Thaler, principal of D. S. Thaler & Associates, Inc., the engineering/landscaping firm which prepared the development plan for this project, and Alan Scoll, Landscape Architect and Ernest I. Schepp, Professional Engineer, both of that firm. The Developer was represented by Jeffrey H. Scherr, Esquire, and H. Tripp Burgunder, III, Esquire. Numerous representatives of the various Baltimore County agencies that reviewed the plan attended the hearing, including Robert Bowling, Developers Plans Review; Mitch Kellman, Zoning Review; and Donald Rascoe, Project Manager, Development Management Review, all divisions of the Department of Permits and Development Management (PDM). Also appearing at the hearing were Jan M. Cook with the Department of Recreation and Parks (R&P), Jeffrey Long, with the Office of Planning (OP), and R. Bruce Seeley, with the Department of Environmental Protection and Resource Management (DEPRM). Several individuals from the surrounding locale appeared, including Joseph Bruno, Al Hohman, Charles Nass, Kacey Macomber from the McDonogh School, Inc., Christopher S. Howell, and Sam Rothblum, all nearby residents/property owners of the area.

Testimony was received from Messrs. Thaler and Scoll on behalf of the Developer relative to the history of this project. Collectively, these witnesses indicated that their firm was originally engaged to prepare a proposal for the subject site in January, 1999. At that time, they were approached by T. Kevin Carney, a principal in the L. & C. Apartments, LLC, Owner/ Developer. After a series of studies, representatives of D. S. Thaler & Associates, Inc. met with County officials regarding the proposal at a pre-concept conference on June 6, 1999. This work session was for the purpose of acquainting the County with the proposed development and obtaining preliminary input regarding same.

Title 26 of the Baltimore County Code sets out the process by which development projects are considered in Baltimore County. The first required step in that process is the filing of a concept plan with the County. A concept plan conference is subsequently held between

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representatives of the Owner/Developer and the various County agencies that review the project. Prior to the filing of the concept plan, the Developer may informally meet with the County at an informational meeting (pre-concept plan conference) as set out in Section 26-202(a) of the Baltimore County Code. This informational meeting is to acquaint the County with the proposal and obtain preliminary input.

In any event, following the pre-concept plan conference on June 6, 1999, the Developer reworked its plan and officially submitted a concept plan. As required by the Code, a concept plan conference was held on September 7, 1999 and written concept plan comments from the reviewing agencies were submitted. They are contained within the case file.

Mr. Scoll indicated that the plan has evolved over the many months of its preparation. Specifically, he indicated that the initial plan called for 227 apartment units on the subject property, .3 acres of amenity open space, and 2.5 acres of open space. Ultimately, that plan was amended, in part because of concerns raised by neighbors to the south regarding the location of certain of the apartment buildings and their proximity to the common property line. As a result of these concerns, buildings were moved further away from the southern property line shared with those concerned residents and an increased buffer was provided. Additionally, the plan was amended to decrease the number of apartment units from 227 to 218. Moreover, amenity open space was increased to .6 acres.

Returning to the progress of this project through the development review process, following the concept plan conference the Developer conducted a Community Input Meeting (CIM) as is required by the Code. This meeting is to be conducted during the evening hours, at a location within the affected community. In this case, the CIM was held on September 30, 1999 at the Owings Mills High School.

The purpose of the concept plan conference and CIM is for the Developer to share its plans with the County and community in order to elicit comment and feedback. The Development Review Regulations contained within Title 26 of the Baltimore County Code envision a process and plan which evolves and allows for the plan to be refined as the process

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Date 2/3/00  
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continues. The statute contemplates that issues will be raised by the County agencies and/or community representatives and that these issues are addressed/resolved as the plan develops.

In this case, the process has certainly followed that course. The plan currently at issue (Developer's Exhibit 1) has been further modified from the original proposal so that now same provides for 202 apartment units, and 1 acre, more or less, of amenity open space. Moreover, as more particularly shown on the plan, there are 37 freestanding garages and a number of units which feature attached garages, and a pavillion. In this regard, it was indicated at the hearing that the proposal calls for the construction of luxury apartments, which will feature both two-bedroom and one-bedroom models. Moreover, an over-sized stormwater management facility is proposed which will handle runoff from not only this site, but also, at the County's request, from nearby public streets. The details of the project are more particularly shown on Developer's Exhibit 1, and the landscape plan submitted at the hearing and marked as Developer's Exhibit 2.

In any event, following the concept plan conference, the CIM, and ongoing contact with the community and County representatives, Mr. Thaler testified that "check prints" of a revised development plan were delivered to Baltimore County on December 13, 1999. Apparently, multiple copies of the plan are delivered to County agencies for their review as to their technical compliance with County requirements. Following delivery of those items, the development plan was filed with the County on February 4, 2000.

For reasons which will be fully explained hereinafter, there was a great amount of discussion at the Hearing Officer's Hearing regarding what precisely occurred on February 4, 2000, and whether that constituted "filing" of the plan as envisioned under the Development Review Regulations. Nonetheless, it is absolutely clear that the requisite number of plans required by the County were delivered thereto on February 4, 2000, that a check in the amount of \$4,389 payable to Baltimore County was delivered on that date, and that the associated supporting plans and reports were included therewith.

Following the receipt of that material, the County scheduled the matter for a Development Review Conference, pursuant to Section 26-205 of the Baltimore County Code.

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This conference was conducted on March 29, 2000. The property was then duly posted providing public notice of the Hearing Officer's Hearing, which was conducted in its entirety on April 21, 2000.

Section 26-206 of the Code requires the Hearing Officer to identify any open issues or unresolved agency comments at the onset of the hearing. Following the identification of those issues, testimony is taken regarding those matters. In this case, two primary issues were identified; namely, the applicability of the County's Adequate Public Facilities law (Bill No. 110-99), more specifically, the local open space requirements pursuant thereto, as administered by the Department of Recreation & Parks; and, the availability of public water and sewer to the subject site.

Attention is first turned to the adequate public facilities act and the local open space requirements which have been adopted thereto. Both Counsel for the Developer and Jan Cook, a representative of the Department of Recreation & Parks identified this issue at the Hearing Officer's Hearing. Essentially, there is no dispute as to the facts surrounding this issue. Mr. Scoll testified, without contradiction, that the plan meets the local open space requirements of Baltimore County which existed prior to the adoption of the Adequate Facilities Act (Bill No. 110-99). Moreover, the Developer's representatives and Mr. Cook opined that the plan does not meet the local open space requirements set out in the manual that was adopted pursuant to Bill No. 110-99. It was also testified, without contradiction, that the new local open space manual was adopted by vote of the County Council on February 22, 2000. That is, it was on that date that the Council actually approved, by vote at a Council meeting on that date, the updated local open space manual.<sup>1</sup>

This Hearing Officer has considered the impact of Bill No. 110-99 in a prior development plan/Hearing Officer's Hearing. That case involved the property of Walter J. McLellan, Owner/Developer, and the project known as the Mathena Estates in Case No. II-598.

<sup>1</sup> The Adequate Public Facilities law (Bill No. 110-99) was passed by the County Council at its December 30, 1999 meeting. It required, among other things, that a new local open space manual be adopted, consistent with the goals of the Act.

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The seven-page decision that I rendered in that matter discusses the provisions of the Bill and the difficulty encountered in determining the effective date of same. I opined therein that the Sections regarding the effective date of the Bill are inconsistent and unclear. The difficulty one experiences in attempting to ascertain the legislative intent regarding the effective date of the Bill is obvious. No decision has been rendered by the County Board of Appeals, Circuit Court for Baltimore County, or the Appellate Courts of this state overturning my interpretation of the Adequate Facilities Bill and the holding in Mathena Estates. In my judgment, that holding remains the correct interpretation of that Bill and is therefore, to the extent appropriate, incorporated herein. Additionally, Developer's Counsel in the instant case submitted a well-written memorandum and supplemental memorandum of points and authorities regarding this issue. I will not recite the arguments and points made therein as those documents speak for themselves. However, the Developer's Memoranda raise a number of points to support its contention that Bill No. 110-99 and the "updated" open space manual are not applicable to the subject plan.

The most compelling of these is the fact that the new manual was not adopted by the Baltimore County Council until February 22, 2000. The fact that the Council met and acted on that date is undisputed. It is abundantly clear that this date was 18 days after the Developer delivered the requisite number of development plans, along with its check and accompanying studies and reports to Baltimore County.

In my judgment, it is unreasonable and inequitable to expect a development plan to comply with regulations/standards which were not adopted until after the plan is filed with Baltimore County. Such a requirement would require the Developer to anticipate and speculate what those requirements might be. Although a draft of the proposed manual was no doubt available prior to its passage on February 22, 2000, the Council was free to entertain amendments at its meeting on that date. The manual was not "final" until it was approved and passed by law. Absent strict legislative direction, it should not be applied retroactively to plans filed prior to that date.

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It might be argued that the plan was not "filed" with Baltimore County until the development plan conference was conducted on March 29, 2000. I am well-aware of the County's position in this respect; occasioned by the difficulty in scheduling and processing development plans in accordance with the tight time lines established in Title 26 of the County Code. As Mr. Rascoe testified, the County considers a plan "accepted for filing" on the date of the required sign posting giving public notice of the Hearing Officer's Hearing. Such a policy and position may well have merit in determining whether the time lines established in Title 26 have been met. Nonetheless, that position is not a basis upon which the date of filing, for purposes of considering the adequate public facilities act, can be determined. In this case, the Developer delivered and the County accepted the Developer's plans and money. The date of that delivery was within the schedule and time line set established in Title 26 of the Baltimore County Code and before the updated local open space manual was adopted by the County Council. Therefore, I find that the new local open space manual is not applicable to this development. For so long as the plan meets the local open space requirements which were in force prior to the presently adopted manual, the plan should not be denied.<sup>2</sup>

Further support for this conclusion is found in the development plan comment submitted by the Office of Planning. Just as the Adequate Public Facilities Bill required an updated local open space manual, it also required new school impact analysis regulations to be administered by the Office of Planning. These regulations were also adopted subsequent to the filing of the development plan and, as noted by Planning in their comment, were not in force when the plan was filed, and therefore, not applicable.

The second major issue raised relates to the availability of public water/sewer for the project. As filed, the development plan shows that the proposed apartment complex will be served by a private well/septic system. The plan was designed in this fashion, no doubt to comply with the development plan comments offered by the County agencies. On its face, such a

<sup>2</sup> The Developer also presented other arguments in support of the contention that the Adequate Facilities Act and resultant updated manual are not applicable. Those arguments, in the context of this case, need not be addressed in view of the holdings set out above. Consideration of those issues is quite possibly reserved to another case on another day.

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By [Signature]

proposal is inappropriate. This project should be served by public water and sewer. This Hearing Officer will not approve the plan without access to such public facilities. I am not persuaded, based upon the testimony and evidence offered, that a project of this magnitude is appropriate for private well and septic systems.

This issue is raised by a portion of the development plan comment from the Developer's Plans Review Division of PDM. That comment reads quite simply, "This property is located outside of the Baltimore County Metropolitan District. An extension of the Metropolitan District boundary is required, to include the property, before public water can be extended to serve this property." In lieu of such access, the Developer proposed the private well/septic systems.

A substantial volume of testimony was received on this issue from the Developer's consultants, including Messrs. Thaler and Scoll. The Developer also discussed this issue in its written Memorandum.

Essentially, the Developer argues that the Metropolitan District is a geographic area within which public water and sewer services are provided. Originally, the Code described the physical borders of the District. Under the 1988 County Code, a detailed description of the area of the Metropolitan District was not provided. Rather, Section 35-126 of the Code stated that, "Those general public lands involving the Metropolitan District, as adopted by the General Assembly and as contained in this Article, which have been deleted by Bill No. 126-90, Section II, are still valid." Bill No. 126-90 deleted the specific description of the Metropolitan District from the Code and referred to a source book maintained by the Director of the Department of Public Works (See Section 35-127).

Additionally, the Developer argues that former Section 34-111B of the 1978 Code described the Metropolitan District as, "A marginal strip of land without the Metropolitan District to a distance of 150 feet over the Metropolitan District Line..." The Developer cited this Section for the proposition that this property can be served by public water and sewer since the proposed improvements thereon are within 150 feet of the Metropolitan District Line.

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By [Signature]

Moreover, the Developer cited a number of cases, several of which this Hearing Officer presided over, where public sewer and water were extended beyond the District Line to serve a proposed development. One such example was the elderly housing community of Mercy Ridge, located on the campus of Stella Maris near the Loch Raven Watershed. In that case, certain development was over the District line; however, water and sewer were extended to serve it. There are numerous other examples where utilities were extended under the authority provided in Section 34-111B of the 1978 Code.

In this case, it is clear that the Metropolitan District borders the subject site on three sides. It is also clear that the property is located within the Urban Rural Demarcation Line, is within the area of the Master Plan for Water and Sewer, and is within the Owings Mills Growth Area. I find that any property located within 150 feet of the Metropolitan Line is included within the Metropolitan District, as a matter of law. Prior County policy and regulations dictate this result.

From a practical standpoint, a letter from the City of Baltimore, Department of Public Works, dated March 23, 2000, is also significant. That letter provides that neither service can be taken from an existing 20-inch main in Painters Mill Road to serve the subject site. The letter also references an active service on the site. It was indicated at the hearing, the VFW lodge which is located on a portion of this property has a connection to public facilities.

For all of these reasons, it is clear that both as a matter of law and from a practical standpoint, the site should be served by public utilities. In my judgment, the plan should be amended to delete the proposed private well and septic system and provide for public connections in accordance with the letter from Baltimore City's Department of Public Works. The plan will therefore be approved with that amendment.

Zoning relief as described above is also requested. After due consideration of the testimony and evidence presented, I am persuaded to grant the special hearing and variances. In my view, the location of the garage buildings in the front/side yards is appropriate as a matter of security and convenience to potential residents. Moreover, the grouping of the buildings in a

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Date 5/18/00  
By [Signature]

central area to provide additional buffering along the perimeter is appropriate for this site and will not result in any detrimental impact upon the surrounding locale. Mr. Thaler's testimony regarding the requests within the zoning Petitions was persuasive and undisputed. Thus, the requested relief should be granted.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the advertising of the property and public hearing held thereon, the development plan shall be approved consistent with the comments contained herein and the Petitions for Special Hearing and Variance relief granted, subject to the restrictions set forth hereinafter.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 31st day of May, 2000 that the development plan for Owings Park Apartments, identified herein as Developer's Exhibit 1, be and is hereby APPROVED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve an amendment to all prior zoning cases relative to the subject property, maintaining all previous special hearing and variance requests, and to modify Special Permit No. 2812, in accordance with Developer's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: From Section 1B01.2.C.1.e to permit a rear setback of 10 feet in lieu of the required 40 feet for proposed Building 4, and from Section 400.1 to permit accessory buildings (detached garages and a pavilion) to be located in the front and side yards, in lieu of the required rear yard, and, for any corner lot, to permit such accessory structures to be located outside the third of the rear yard farthest removed from the street and to occupy more than 50% of such third, in accordance with Developer's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) The Owner/Developer may apply for their permits and be granted same upon receipt of this Order; however, the Owner/Developer is 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

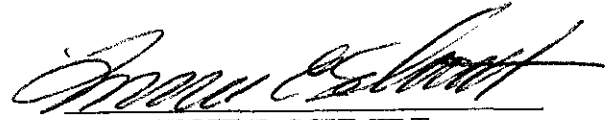
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By [Signature]



rescinded.

- 2) The development plan shall be amended as set forth herein to delete the private well and septic systems proposed and provide for public water and sewer connections in accordance with the letter from Baltimore City's Department of Public Works.

Any appeal of this decision must be taken in accordance with Section 26-209 of the Baltimore County Code.



LAWRENCE E. SCHMIDT  
Zoning Commissioner/Hearing Officer  
for Baltimore County

LES:bjs

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Date 5/14/11  
By [Signature]



Baltimore County  
Zoning Commissioner

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

May 8, 2000

Jeffrey H. Scherr, Esquire  
Herbert Burgunder, III, Esquire  
Kramon & Graham  
One South Street, suite 2600  
Baltimore, Maryland 21202

RE: DEVELOPMENT PLAN HEARING and  
PETITIONS FOR SPECIAL HEARING & VARIANCE  
S/S Lyons Mill Road, W/S Painters Mill Road (Owings Park Apartments)  
3<sup>rd</sup> Election District – 2<sup>nd</sup> Councilmanic District  
L. & C. Apartments, LLC – Owner/Developer  
Cases Nos. II-581 and 00-333-SPHA

Dear Messrs. Scherr & Burgunder:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The development plan has been approved and the Petitions for Special Hearing and Variance 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. Kevin Carney, L & C Apartments, LLC  
10705 Charter Drive, Suite 450, Columbia, Md. 21044
- Messrs. David S. Thaler & Alan Scoll, D. S. Thaler & Assoc., Inc.  
7115 Ambassador Road, Baltimore, Md. 21244-7428
- Mr. George H. Burnham, Sr., American Legion Liberty Post 122  
P.O. Box 112, Randallstown, Md. 21133
- Messrs. Samuel R. Rothblum & Christopher S. Howell, Seneca Harbor Dev. Corp.  
212 Washington Avenue, Towson, Md. 21204
- Mr. Joseph Bruno, 8601 Lugano Road, Randallstown, Md. 21133
- Ms. Kacey Macomber, McDonogh School, Inc.  
8600 McDonogh Road, Owings Mills, Md. 21117-0380
- Mr. Charles Nass, 639 S. Linwood Avenue, Baltimore, Md. 21224
- Don Rascoe, DPDM; DEPRM; OP; R&P; People's Counsel; Case File



# Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

American Legion Parcel 30  
for the property located at Painters Mill Road  
which is presently zoned DR-16

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

See attached

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:

LC Apartments, LLC  
Name - Type or Print  
*[Signature]*  
Signature 410-  
10705 Charter Drive, Suite 450 740-5335  
Address Telephone No.  
Columbia MD 21044  
City State Zip Code

### Legal Owner(s):

American Legion Liberty Post 122  
Name - Type or Print  
*[Signature]*  
Signature  
GEORGE H. BURNHAM SR  
Name - Type or Print  
Signature  
Address Telephone No.  
State Zip Code

### Attorney For Petitioner:

Jeffrey H. Scherr, Esquire  
Name - Type or Print City  
*[Signature]*  
Signature  
Kramon & Graham, P.A.  
Company 410-  
One South Street, Suite 2600 752-6030  
Address Telephone No.  
Baltimore MD 21202  
City State Zip Code

### Representative to be Contacted:

Jeffrey H. Scherr, Esquire  
Name Kramon & Graham, P.A.  
One South Street, Suite 2600 410-752-6030  
Address Telephone No.  
Baltimore MD 21202  
City State Zip Code

### OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING \_\_\_\_\_

UNAVAILABLE FOR HEARING \_\_\_\_\_

Reviewed By JRF Date 2/14/00

Case No. 00-333-SPHA

REV 9/15/98

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By [Signature]

**OWINGS PARK APARTMENTS**  
Petition for Special Hearing

an amendment of all prior zoning cases on the property and to maintain all previous variances and special hearings and to modify special permit 2812-S.

ORDER RECEIVED FOR FILING

Date 5/8/00

By [Signature]



# Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at Painters Mills Rd. & Lyons Mill Rd  
which is presently zoned DR-16

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 Variance from Section(s)

See attached

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:  
(indicate hardship or practical difficulty)

See attached

Property is to be posted and advertised as prescribed by the zoning regulations. I, or we, agree to pay expenses of above Variance, 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:**

LC Apartments, LLC  
Name - Type or Print  
[Signature]  
Signature 410-  
10705 Charter Drive, Suite 450 740-5335  
Address Telephone No.  
Columbia MD 21044  
City State Zip Code

**Attorney For Petitioner:**

Jeffrey H. Scherr, Esquire  
Name - Type or Print City  
[Signature]  
Signature  
Kramon & Graham, P.A.  
Company  
One South Street, Suite 2600 410-752-6030  
Address Telephone No.  
Baltimore MD 21202  
City State Zip Code

**Legal Owner(s):**

Samuel R. Rothblum  
Name - Type or Print  
See attached  
Signature  
Christopher S. Howell  
Name - Type or Print  
[Signature]  
Signature  
212 Washington Avenue 410-296-4122  
Address Telephone No.  
Towson MD 21204  
City State Zip Code

**Representative to be Contacted:**

Jeffrey H. Scherr, Esquire  
Name  
Kramon & Graham, P.A.  
Company  
One South Street, Suite 2600 410-752-6030  
Address Telephone No.  
Baltimore MD 21202  
City State Zip Code

**OFFICE USE ONLY**

Case No. 00 - 333 - 3PHA

ESTIMATED LENGTH OF HEARING \_\_\_\_\_

UNAVAILABLE FOR HEARING \_\_\_\_\_

Reviewed By JRF Date 2/14/00

REV 9/15/98

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Date 2/15/00  
By [Signature]

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

**Legal Owner(s):**

Samuel R. Rothblum

Name - Type or Print

*SR Rothblum*

Signature

Christopher S. Howell

Name - Type or Print

*CS Howell*

Signature

212 Washington Avenue 410-296-4122

Towson MD 21204  
Address Telephone No.  
State Zip Code

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

**Legal Owner(s):**

Seneca Harbor Development Corp.

Name - Type or Print Samuel R. Rothblum, President

*SR Rothblum*

Signature

Name - Type or Print

Signature

212 Washington Avenue 410-296-4122

Towson MD 21204  
Address Telephone No.  
State Zip Code

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

**Legal Owner(s):**

American Legion Liberty Post 122

Name - Type or Print

*George W. Burdham S*

Signature

Name - Type or Print

Signature

Address Telephone No.  
State Zip Code

**OWINGS PARK APARTMENTS**  
Variance Petition

1. 1B01.2.C.1.e to permit a rear setback of 10 feet instead of the required 40 feet for Building 4; and
2. 400.1 to permit accessory buildings (detached garages and a pavilion) to be located in the front and side yards and, for any corner lot, to permit the accessory buildings to be located outside the third of the rear yard farthest removed from the street and to permit the accessory buildings to occupy more than 50% of such third.

The unique shape of the parcel along with the accommodation of a large storm water management pond for offsite drainage (required by Baltimore County for Lyons Mill Road) creates a practical difficulty and an unreasonable hardship because the usable land for principal structures is reduced. The reduced area requires principal structures to be closer together and closer to rear property lines. The proximity of principal structures does not permit accessory structures to be placed in the rear yards, and they must be placed in side yards and front yards of neighboring principal structures.

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Date 3/9/10  
By [Signature]

September 15, 1999

**Owings Park Apartments  
(Description for Zoning Purposes Only)**

Beginning at a point located approximately 229 feet, more or less, southwest of the intersection of the center line of Lyons Mills Road and the west side of Painters Mills Road thence, running the following ten (10) courses and distances:

1. South 03° 08' 07" East 208.75 feet to a point; thence,
2. South 88° 17' 25" West 626.25 feet to a point; thence,
3. South 03° 08' 07" East 212.57 feet to a point; thence,
4. South 85° 51' 23" West 166.61 feet to a point; thence,
5. South 82° 36' 50" West 417.53 feet to a point; thence,
6. North 84° 54' 11" West 149.91 feet to a point; thence,
7. North 07° 25' 34" West 603.60 feet to a point; thence,
8. North 86° 40' 29" East 776.49 feet to a point; thence,
9. South 03° 08' 07" East 170.75 feet to a point; thence,
10. North 88° 17' 25" East 626.25 feet to the point of beginning.

333

Containing approximately 13.492 acres of land, more or less.



**00-333-SPHA**



February 7, 2000

**Owings Park Apartments  
Special Hearing  
(Description for Zoning Purposes Only)**

Beginning at a point located approximately 229 feet, more or less, southwest of the intersection of the center line of Lyons Mills Road and the west side of Painters Mills Road thence, running the following seven (7) courses and distances:

1. South 03°08'07" East 216.33 feet, more or less, to a point; thence,
2. South 14°53'07" East 70.15 feet, more or less, to a point; thence,
3. by a curve to the left, having a length of 136.48 feet and radius of 989.93 chord bearing South 16°16'06" East, 136.38 feet, more or less, to a point; thence,
4. South 88°17'25" West 562.48 feet, more or less, to a point; thence,
5. South 85°51'23" West 109.04 feet, more or less, to a point; thence,
6. North 03°08'07" West 421.32 feet, more or less, to a point; thence,
7. North 88°17'25" East 626.25 feet, more or less, to a point of beginning

Containing approximately 6.09 acres of land, more or less.



POS 4/21

**NOTICE OF ZONING HEARING**

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

Case: #00-333-SPHA  
SW of intersection of centerline Lyons Mill Road and WS Painters Mill Road (Owings Park Apartments)  
2nd Election District - 3rd Councilmanic District  
Legal Owner(s): American Legion Liberty Post 122 & Samuel R. Rothblum & Christopher S. Howell & Seneca Harbor Development Corp.  
Contract Purchaser: LC Apartments, LLC

**Special Hearing:** to amend zoning case 2912-S. **Variance:** to permit a rear setback of 10 feet in lieu of the required 40 feet for Building 4; and to permit accessory buildings to be located in the front and side yards for any corner lot, to permit the accessory buildings to be located outside the third of the rear yard farthest removed from the street and to permit the accessory buildings to occupy more than 50% of such third.

Hearing: Friday, April 14, 2000 at 9:00 a.m. in Room 106, County Office Building, 111 Chesapeake Avenue.

LAWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.  
3/30/00 March 30 C379721

**CERTIFICATE OF PUBLICATION**

TOWSON, MD, 3/30/, 2000

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 3/30/, 2000.

THE JEFFERSONIAN,  
*S. Wilkinson*

LEGAL ADVERTISING

Reset 4/21/00 9<sup>00</sup> AM. #106

BALTIMORE COUNTY, MARYLAND  
OFFICE OF BUDGET & FINANCE  
MISCELLANEOUS RECEIPT

No. 078685

DATE 1-14-00 ACCOUNT R-001-0150

AMOUNT \$ 500.00

RECEIVED FROM: Kevin Conway

Winters Mills Rd. & Lyons Mills Rd.

FOR: SPH 3 A ITEM # 333

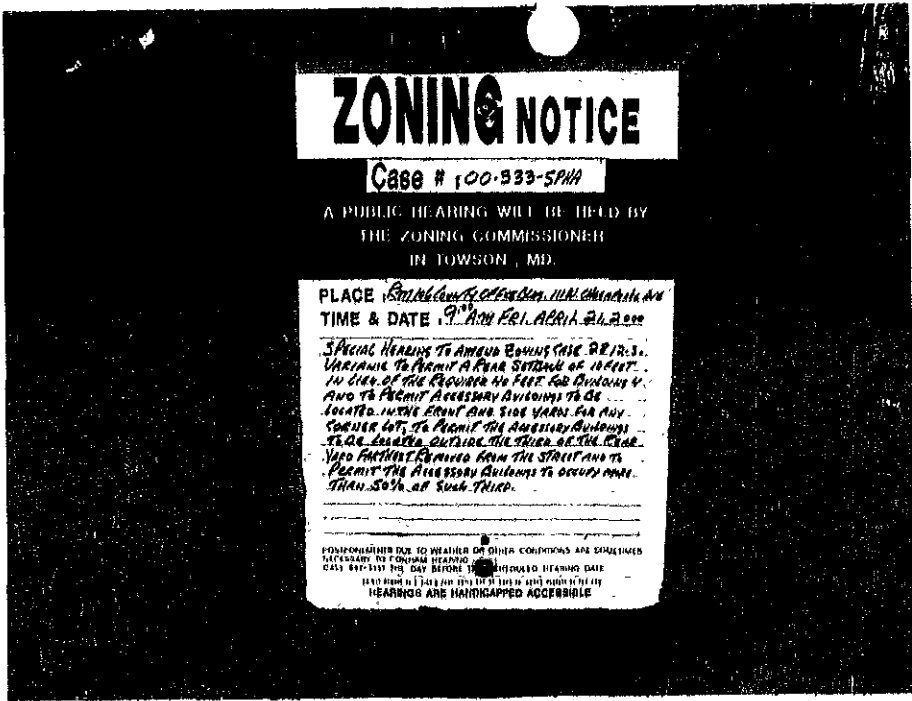
Taken by - RTA

DISTRIBUTION  
WHITE - CASHIER      PINK - AGENCY      YELLOW - CUSTOMER

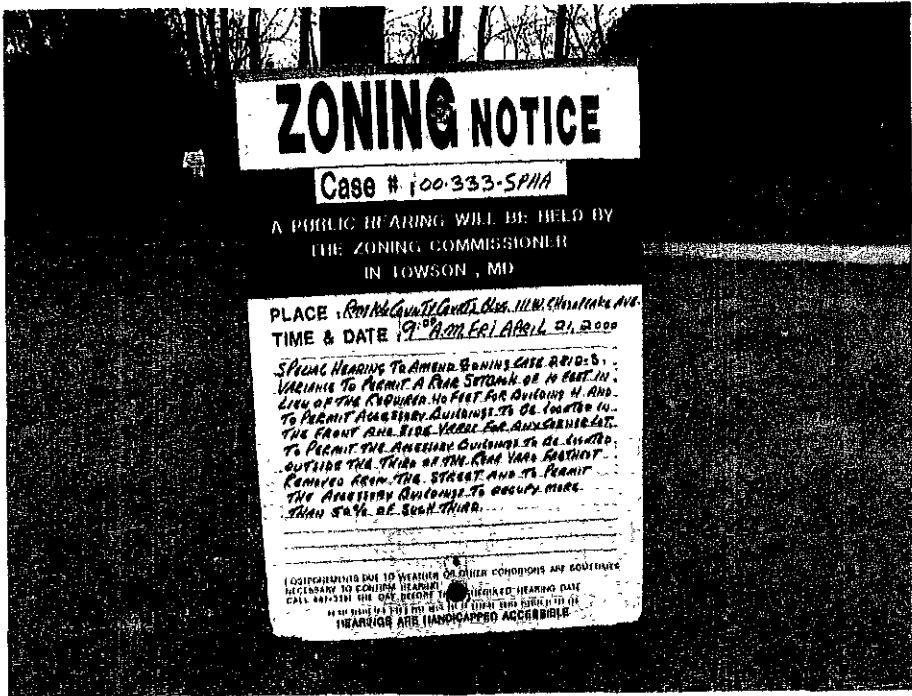
PAID RECEIPT  
DATE 01/14/00  
AMOUNT \$500.00  
BY [Signature]  
FOR [Signature]  
CASHIER'S SIGNATURE

00-333 SPHA

CASHIER'S VALIDATION



Posted on Lyons Mill Road



Posted on Painters Mill Road

**CERTIFICATE OF POSTING**

**RE: CASE # 00-333-SPHA  
PETITIONER/DEVELOPER  
(Owings Park Apartments)  
DATE OF Hearing  
( 4-21-00)**

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

**ATTENTION : MS. GWENDOLYN STEPHENS**

**LADIES AND GENTLEMEN:**

**THIS LETTER IS TO CERTIFY UNDER THE PENALTIES OF PERJURY THAT THE NECESSARY  
SIGNS(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON THE PROPERTY LOCATED AT**

**Posted on Lyons Mill & Painters Mill Roads Baltimore, Maryland 21117 \_\_\_\_\_**

---

**THE SIGN(S) WERE POSTED ON \_\_\_\_\_ 4-4-00 \_\_\_\_\_  
(MONTH, DAY, YEAR)**

**SINCERELY,**

  
**(SIGNATURE OF SIGN POSTER & DATE)**

**\_\_\_\_\_ THOMAS P. OGLE SR. \_\_\_\_\_**

**\_\_\_\_\_ 325 NICHOLSON ROAD \_\_\_\_\_**

**\_\_\_\_\_ BALTIMORE, MARYLAND 21221 \_\_\_\_\_**

**\_\_\_\_\_ 410-687-8405 \_\_\_\_\_  
(TELEPHONE NUMBER)**

RE: PETITION FOR SPECIAL HEARING  
PETITION FOR VARIANCE  
Owings Park Apartments, S/W of intersection of c/l  
Lyons Mills Rd and W/S Painters Mill Rd  
2nd Election District, 3rd Councilmanic

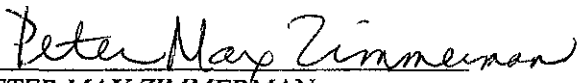
Legal Owner: American Legion Liberty Post 122  
Contract Purchaser: LC Apartments., LLC  
Petitioner(s)

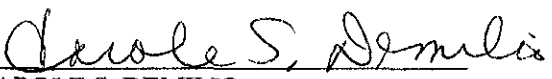
\* BEFORE THE  
\* ZONING COMMISSIONER  
\* FOR  
\* BALTIMORE COUNTY  
\* Case No. 00-333-SPHA

\* \* \* \* \*

**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

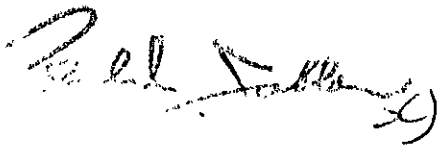
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8<sup>th</sup> day of March, 2000 a copy of the foregoing Entry of Appearance was mailed to Jeffrey H. Scherr, Esq., Kramon & Graham, 1 South Street, Suite 2600, Baltimore, MD 21202, attorney for Petitioner(s).

  
PETER MAX ZIMMERMAN

**NOTICE OF ZONING HEARING  
HEARING OFFICER HEARING  
PROJECT NAME: Owings Park Apartments  
CASE NUMBER: 00-333-SPHA  
PAGE 2**

HEARING: Friday, April 14, 2000 at 9:00 a.m. in Room 106, County Office Building,  
111 West Chesapeake Avenue



Arnold Jablon  
Director

C: Jeffrey H. Scherr, Esquire, Kramon & Graham, P.A., One South Street, Suite  
2600, Baltimore, MD 21202  
Samuel R. Rothblum & Christopher S. Howell, 212 Washington Avenue, Towson,  
MD 21204  
Seneca Harbor Development Corp., Samuel R. Rothblum, President, 212  
Washington Avenue, Towson, MD 21204  
American Legion Liberty Post 122, George H. Burnham, Sr., c/o Jeffrey Scherr,  
Esquire, Kramon & Graham, P.A., One South Street, Suite 2600, Baltimore, MD  
21202

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN  
APPROVED POSTER ON THE PROPERTY BY MARCH 30, 2000.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS  
PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE  
ZONING REVIEW OFFICE AT 410-887-3391.



Baltimore County  
Department of Permits and  
Development Management

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

March 1, 2000

## NOTICE OF ZONING HEARING

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

### HEARING OFFICER HEARING

PROJECT NAME: Owings Park Apartments

Project Number: 2-581

Location: W/S Painters Mill Road, S Lyons Mill Road

Acres: 14.16

Developer: L & C Apartments Inc.

Engineer: D S Thaler & Assoc. Inc.

Proposal: 202 Apartment Units

\*\*\*\*\* AND \*\*\*\*\*

CASE NUMBER: 00-333-SPHA

SW of intersection of centerline Lyons Mill Road and W/S Painters Mill Road (Owings Park Apartments)

2<sup>nd</sup> Election District – 3<sup>rd</sup> Councilmanic District

Legal Owner: American Legion Liberty Post 122 & Samuel R. Rothblum & Christopher S. Howell & Seneca Harbor Development Corp.

Contract Purchaser: LC Apartments, LLC

Special Hearing to amend zoning case 2812-S. Variance to permit a rear setback of 10 feet in lieu of the required 40 feet for Building 4; and to permit accessory buildings to be located in the front and side yards for any corner lot, to permit the accessory buildings to be located outside the third of the rear yard farthest removed from the street and to permit the accessory buildings to occupy more than 50% of such third.





TO: PATUXENT PUBLISHING COMPANY  
Thursday, March 30, 2000 Issue – Jeffersonian

Please forward billing to:

Herbert Burgunder, III  
Kramon & Graham, P.A.  
One South Street  
Suite 2600  
Baltimore, MD 21202

410-752-6030

---

## NOTICE OF ZONING HEARING

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

CASE NUMBER: 00-333-SPHA

SW of intersection of centerline Lyons Mill Road and W/S Painters Mill Road (Owings Park Apartments)

2<sup>nd</sup> Election District – 3<sup>rd</sup> Councilmanic District

Legal Owner: American Legion Liberty Post 122 & Samuel R. Rothblum & Christopher S. Howell & Seneca Harbor Development Corp.

Contract Purchaser: LC Apartments, LLC

Special Hearing to amend zoning case 2812-S. Variance to permit a rear setback of 10 feet in lieu of the required 40 feet for Building 4; and to permit accessory buildings to be located in the front and side yards for any corner lot, to permit the accessory buildings to be located outside the third of the rear yard farthest removed from the street and to permit the accessory buildings to occupy more than 50% of such third.

HEARING: Friday, April 14, 2000 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue

  
Lawrence E. Schmidt

LAWRENCE E. SCHMIDT  
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT  
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighbor property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

**OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.**

---

---

**For Newspaper Advertising:**

Item Number or Case Number: 333

Petitioner: LC Apartments, LLC

Address or Location: Painters Mill Road and Lyons Mill Road

**PLEASE FORWARD ADVERTISING BILL TO:**

Name: Herbert Burgunder, III

Address: Kramer & Graham, P.A. One South Street, Suite 2600  
Baltimore, MD 21202

Telephone Number: 410-752-6030

Revised 2/20/98 - SCJ

**00-333-SPHA**



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

April 14, 2000

Attorney Jeffrey H. Scherr  
Kramon & Graham, P.A.  
One South Street, Suite 2600  
Baltimore MD 21202

Dear Attorney Scherr:

RE: Case Number 00-333-SPHA , Parcel 30, Painters Mill Road, American Legion Post 122

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 14, 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

BALTIMORE COUNTY, MARYLAND  
INTEROFFICE CORRESPONDENCE

4/12/00

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

**DATE:** April 10, 2000

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

**SUBJECT:** Zoning Advisory Committee Meeting  
for *March 5, 2000*  
Item Nos. *333, 334, 335, 336, 337, 338,*  
*339, 340, 342, 346, and 347*

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File



Baltimore County  
Fire Department

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

March 1, 2000

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

RECEIVED MAR 0 3 2000

RE: Property Owner: AMERICAN LEGION LIBERTY POST 122 AND SAMUEL  
R. ROTHBLUM AND CHRISTOPHER S. HOWELL AND SENECA HARBOR  
DEVELOPMENT CORP. - 333

Location: DISTRIBUTION MEETING OF FEBRUARY 28, 2000

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.

1. Fire hydrants for the referenced property are required and shall be located at proper intervals, along an approved road in accordance with Baltimore County Standard Design Manual Sec. 2.4.4 Fire Hydrants, as published by the Department of Public Works. **\*\*ADDITIONAL HYDRANTS NEEDED.**
3. The vehicle dead end condition shown at: NAME: \*EAST SIDE OF BUILDING 7, EXCEEDS the maximum allowed by the Fire Department.
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.
10. IF ACCESS FOR FIRE DEPARTMENT EMERGENCY APPARATUS CANNOT BE PROVIDED AT THE **\*ADDITIONAL HYDRANTS NEEDED OF THE BUILDING, ALL STAIRWELLS SHALL BE PROVIDED WITH WET STANDPIPES.**

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

cc: File

BALTIMORE COUNTY, MARYLAND  
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon  
FROM: R. Bruce Seeley *RBS*  
DATE: March 8, 2000  
SUBJECT: Zoning Petitions  
Zoning Advisory Committee Meeting of February 28, 2000

DEPRM has no comments for the following zoning petitions:

Item #	Address
333	Owings Park Apartments
334	8757 Mylander Lane
335	Liberty Road/Offut Road
338	11406 Reisterstown Road
339	12423 Eastern Avenue
340	6,8,14,16 Al-Hannah Circle
346	2749 Rolling Road
347	1055 West Joppa Road
320	14-28 Melrose Avenue

**BALTIMORE COUNTY, MARYLAND**

Inter-Office Correspondence

**TO:** Case Files Nos. II-581 & 00-333-SPHA      **DATE:** September 21, 2000

**FROM:** Lawrence E. Schmidt  
Zoning Commissioner

**SUBJECT:** Owings Park Apartments Development Plan



On Wednesday, September 20, 2000, I presided over a hearing/meeting concerning the above-referenced matter and the status of same. Those in attendance included Kevin Carney, a representative of L & C Apartments, LLC, the Owner/Developer of the subject property, attorneys Jeffrey H. Scherr and Tripp Burgunder, III, who represent the Owner/Developer, Carol DiMelio from the Office of People's Counsel, and Amanda Kahn and John Beverungen, attorneys from the Baltimore County Office of Law. Also present were Donald Rascoe (Project Manager), and other representatives of various County departments.

By way of background, this matter came before me at a Hearing Officer's Hearing held on April 21, 2000. By Order dated May 8, 2000, I granted approval of the development plan and certain zoning relief requested within the Petition for Special Hearing. Thereafter, the Office of People's Counsel filed a timely Motion for Reconsideration and the matter was scheduled for further proceedings. Following the hearing on the Motion for Reconsideration, I issued an Order on June 21, 2000, granting, in part, the Motion for Reconsideration. Essentially, the ruling on the Motion required the Developer comply with the Adequate Public Facilities Law (Bill No. 110-99) and confirmed that the Developer could access public utilities to a distance of 150 feet from the Metropolitan District Line. No timely appeal was taken from either my original Order of May 8, 2000, or the Order issued on the Motion dated June 21, 2000.

On July 27, 2000, more than thirty (30) days following the issuance of my second Order, I met with David Thaler, the engineer for this project. Mr. Thaler requested that I review the plan that he had prepared subsequent to the ruling of the Petition for Special Hearing, and advise whether same was in **general** compliance with the terms and conditions of my Order of June 21, 2000. Indeed, I reviewed the plan and placed a handwritten note thereon that it was in general compliance with my Order, but that I was making no representation as to the accuracy of the plan, nor performing any technical review of that document.

Apparently, the Department of Permits and Development Management (PDM) subsequently received the plan from Mr. Thaler's office. Although signed by Donald Rascoe as

Case File Nos. II-581 and 00-333-SPHA  
September 21, 2000  
Page 2

Project Manager, PDM has refused to issue grading permits and the Development Review Committee (DRC) has met to review the new plan. A number of County agencies believe that the plan does not comply with the law, nor my Order, and for some reason, the matter was scheduled before me for further proceedings.

I entertained the arguments of Counsel on September 20, 2000 and a record of the case was kept by a Court Reporter hired by Mr. Scherr. Mr. Scherr objected to the hearing/meeting and contended that there was no authority for same. However, he acknowledged that PDM would not issue a grading permit without a confirmatory Order from me and thus, grudgingly participated. He offered arguments regarding the correctness of the plan and its compliance with my prior Order and County development regulations.

Ms. DiMelio objected to the hearing/meeting, contending that public notice had not been given. She cited a number of cases and relevant sections of the County Code requiring notice of public hearings held by the Zoning Commissioner/Hearing Officer. The Office of Law supported Ms. DiMelio's position and also made arguments that the plan had not been properly accepted by Baltimore County.

Upon due consideration of this issue, I declined to continue the proceedings. In my judgment, there is no authority for the hearing before me and there was no posting or advertising of same. The failure to advertise the property and provide public notice, particularly since members of the public and interested adjacent property owners did appear at the prior Hearing Officer's Hearing, are particularly dispositive. Since a hearing was not properly scheduled or held, there is a fundamental failure of jurisdiction and I declined to continue the proceedings further. In order to avoid an appealable event, I declined to issue any formal written Order.

cc: Donald Rascoe, Project Manager



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cc: Donald Rascoe, Project Manager



**Maryland Department of Transportation  
State Highway Administration**

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

Date: 3.1.00

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

RE: Baltimore County  
Item No. 333 JRF

RECEIVED MAR 06 2000

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,

lc 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



Baltimore County  
Zoning Commissioner

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

May 16, 2000

Jeffrey H. Scherr, Esquire  
Herbert Burgunder, III, Esquire  
Kramon & Graham  
One South Street, suite 2600  
Baltimore, Maryland 21202

RE: DEVELOPMENT PLAN HEARING and  
PETITIONS FOR SPECIAL HEARING & VARIANCE  
S/S Lyons Mill Road, W/S Painters Mill Road (Owings Park Apartments)  
3<sup>rd</sup> Election District – 2<sup>nd</sup> Councilmanic District  
L. & C. Apartments, LLC – Owner/Developer  
Cases Nos. II-581 and 00-333-SPHA

Dear Messrs. Scherr & Burgunder:

It was recently brought to my attention, through David Thaler, that a typographical error was found in the Order issued in the above-captioned matter. Specifically, Page 9, Paragraph 3, Line 2, the sentence beginning with the words "That letter provides ...", the word "neither" should be replaced with the word "water". Kindly make a note of this correction on your copy of the Order.

Thank you for your attention in this matter and should anyone have any questions, please feel free to call me.

Very truly yours,

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

cc: Mr. Kevin Carney, L & C Apartments, LLC  
10705 Charter Drive, Suite 450, Columbia, Md. 21044  
Messrs. David S. Thaler & Alan Scoll, D. S. Thaler & Assoc., Inc.  
7115 Ambassador Road, Baltimore, Md. 21244-7428  
Mr. George H. Burnham, Sr., American Legion Liberty Post 122  
P.O. Box 112, Randallstown, Md. 21133  
Messrs. Samuel R. Rothblum & Christopher S. Howell, Seneca Harbor Dev. Corp.  
212 Washington Avenue, Towson, Md. 21204  
Mr. Joseph Bruno, 8601 Lugano Road, Randallstown, Md. 21133  
Ms. Kacey Macomber, McDonogh School, Inc.  
8600 McDonogh Road, Owings Mills, Md. 21117-0380  
Mr. Charles Nass, 639 S. Linwood Avenue, Baltimore, Md. 21224  
Don Rascoe, DPDM; DEPRM; OP; R&P; People's Counsel; Case File



Baltimore County  
Zoning Commissioner

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

May 30, 2000

Jeffrey H. Scherr, Esquire  
Herbert Burgunder, III, Esquire  
Kramon & Graham  
One South Street, suite 2600  
Baltimore, Maryland 21202

RE: DEVELOPMENT PLAN HEARING and  
PETITIONS FOR SPECIAL HEARING & VARIANCE  
S/S Lyons Mill Road, W/S Painters Mill Road (Owings Park Apartments)  
3<sup>rd</sup> Election District – 2<sup>nd</sup> Councilmanic District  
L. & C. Apartments, LLC – Owner/Developer  
Cases Nos. II-581 and 00-333-SPHA

Dear Messrs. Scherr & Burgunder:

Pursuant to the request for reconsideration filed in the above-captioned matter by the Office of People's Counsel, by letter dated May 17, 2000, please be advised that a hearing on the Motion has been scheduled for Tuesday, June 13, 2000 at 2:00 PM in Room 106 of the County Office Building. By copy of this letter, all parties to the case have been notified of the Motion hearing date, time and location.

In the meantime, should anyone wish to review the case files, please contact Don Rascoe, Project Manager, at 887-3353.

Very truly yours,

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

cc: Mr. Kevin Carney, L & C Apartments, LLC  
10705 Charter Drive, Suite 450, Columbia, Md. 21044  
Messrs. David S. Thaler & Alan Scoll, D. S. Thaler & Assoc., Inc.  
7115 Ambassador Road, Baltimore, Md. 21244-7428  
Mr. George H. Burnham, Sr., American Legion Liberty Post 122  
P.O. Box 112, Randallstown, Md. 21133  
Messrs. Samuel R. Rothblum & Christopher S. Howell, Seneca Harbor Dev. Corp.  
212 Washington Avenue, Towson, Md. 21204  
Mr. Joseph Bruno, 8601 Lugano Road, Randallstown, Md. 21133  
Ms. Kacey Macomber, McDonogh School, Inc.  
8600 McDonogh Road, Owings Mills, Md. 21117-0380  
Mr. Charles Nass, 639 S. Linwood Avenue, Baltimore, Md. 21224  
Don Rascoe, DPDM; DEPRM; OP; R&P; People's Counsel; Case File

★ Census 2000 ★ For You, For Baltimore County ★ Census 2000 ★



Printed with Soybean Ink  
on Recycled Paper

Come visit the County's Website at [www.co.ba.md.us](http://www.co.ba.md.us)



Baltimore County  
Zoning Commissioner

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

June 1, 2000

Jeffrey H. Scherr, Esquire  
Herbert Burgunder, III, Esquire  
Kramon & Graham  
One South Street, suite 2600  
Baltimore, Maryland 21202

RE: DEVELOPMENT PLAN HEARING and PETITIONS FOR SPECIAL HEARING & VARIANCE  
S/S Lyons Mill Road, W/S Painters Mill Road (Owings Park Apartments)  
3<sup>rd</sup> Election District - 2<sup>nd</sup> Councilmanic District  
L. & C. Apartments, LLC - Owner/Developer  
Cases Nos. II-581 and 00-333-SPHA

Dear Messrs. Scherr & Burgunder:

In response to recent concerns expressed regarding the time period for filing an appeal in the above-captioned matter, the following comments are offered. All parties are advised that Motions for Reconsideration are governed by Rule K of the Zoning Commissioner/Hearing Officer Rules of Practice and Procedure, as found in Appendix G of the Baltimore County Zoning Regulations (B.C.Z.R.). Rule K provides that the timely filing of any Motion for Reconsideration stays all further proceedings on the matter, including the time limits/deadlines for filing an appeal.

Thus, the recent filing of the Motion for Reconsideration by the Office of People's Counsel stays the time limit for filing any appeal to the County Board of Appeals, pending a decision on the request made in their Motion. At the hearing on the Motion, which has been scheduled for June 13, 2000, I will consider the arguments presented by the parties and thereafter, issue a supplemental Order from which any party shall have thirty (30) days from the date thereof to file an appeal.

Should there be any further questions on the matter, please do not hesitate to call me.

Very truly yours,

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

- cc: Mr. Kevin Carney, L & C Apartments, LLC  
10705 Charter Drive, Suite 450, Columbia, Md. 21044
- Messrs. David S. Thaler & Alan Scoll, D. S. Thaler & Assoc., Inc.  
7115 Ambassador Road, Baltimore, Md. 21244-7428
- Mr. George H. Burnham, Sr., American Legion Liberty Post 122  
P.O. Box 112, Randallstown, Md. 21133
- Messrs. Samuel R. Rothblum & Christopher S. Howell, Seneca Harbor Dev. Corp.  
212 Washington Avenue, Towson, Md. 21204
- Mr. Joseph Bruno, 8601 Lugano Road, Randallstown, Md. 21133
- Ms. Kacey Macomber, McDonogh School, Inc.  
8600 McDonogh Road, Owings Mills, Md. 21117-0380
- Mr. Charles Nass, 639 S. Linwood Avenue, Baltimore, Md. 21224
- Don Rascoe, PDM; Bob Bowling, PDM; DEPRM; OP; R&P; People's Counsel; Case File



Baltimore County  
Department of Permits and  
Development Management

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

March 2, 2000

Jeffrey H. Scherr, Esquire  
Kramon & Graham, P.A.  
One South Street  
Suite 2600  
Baltimore, MD 21202

Dear Mr. Scherr:

RE: Case Number 00-333-SPHA & Owings Park Apartments HOH

The above matter, previously scheduled for April 14, 2000, has been postponed at your request. The hearing has been **rescheduled for Friday, April 21, 2000 in room 106, County Office Building, 111 West Chesapeake Avenue.**

Please be advised that, as the individual requesting and receiving the postponement, the responsibility and costs associated with the appropriate posting of the property now lies with you. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so. If the property has been posted with notice of the original hearing date, as quickly as possible a notice of the new hearing date should be affixed to the sign(s).

If you need further information or have any questions, please do not hesitate to contact Sophia Jennings at 410-887-3391.

Very truly yours,

Arnold Jablon  
Director

AJ:scj

C: Samuel Rothblum & Christopher Howell, 212 Washington Ave., Towson 21204  
Seneca Harbor Development Corp., 212 Washington Ave., Towson 21204  
American Legion Liberty Post 122, c/o Jeffrey Scherr, Esquire  
LC Apartments, 10705 Charter Dr., Suite 450, Columbia 21044





**Baltimore County, Maryland**

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse  
400 Washington Ave.  
Towson, MD 21204

(410) 887-2188

To wer  
file  
✓

PETER MAX ZIMMERMAN  
People's Counsel

May 17, 2000

CAROLE S. DEMILIO  
Deputy People's Counsel

Arnold Jablon, Esq., Director  
Baltimore County Department of  
Permits & Development Mgmt.  
111. W. Chesapeake Avenue  
Towson, MD 21204

Re: Development Plan Hearing and  
Petitions for Special Hearing and Variance  
Owings Park Apartments, S/S Lyons Mills  
Road and W/S Painters Mill Road  
2nd Election Dist., 3<sup>rd</sup> Councilmanic  
**Legal Owner: American Legion Liberty  
Post 122**  
**Contract Purchaser/Developer:**  
**LC Apartments, LLC**  
**Case Nos. II-581 and 00-333-SPHA**

Dear Mr. Jablon:

Please file in each of the above case files this request for reconsideration of the Zoning Commissioner/Hearing Officer's Opinion and Development Plan Order dated May 8, 2000. We are also transmitting a copy directly to the Commissioner and to counsel for Petitioners.

The reasons for the request are as follows:

1. Zoning Variances. There does not appear to be any legal justification for the blanket and diverse variances for principal and accessory buildings. BCZR 307.1. The property is not unique, and there is no genuine practical difficulty which prevents compliance with the law.
2. Special Hearing. There is no indication of any legal justification for the amendment to the American Legion Liberty Post's special permit, in the nature of a

00-1380

Arnold Jablon, Esq., Director  
Baltimore County Department of  
Permits & Development Mgmt.  
May 17, 2000  
Page Two

special exception or conditional use, in conjunction with variances on the part of their site purchased by the developer.

3. Open Space. It is uncontradicted that the development plan conflicts with the heightened standards of the Adequate Facilities Act, Bill 110-99, passed on November 15, 1999, effective December 30, 1999. The provision of open space is a core purpose of zoning and a goal of master plans, past and present.

Sections 7 and 8 of Bill 110-99 include explicit provisions for the effective date of open space standards, Sec. 26-498, and their application to development plans. Section 26-498 does not apply to plans filed before November 15, 1999. However, the plan in question was filed after that, on February 4, 2000.

Section 26-498 took effect March 1, 2000. The combined zoning/development plan comments, public hearing, and decision all came on or after March 1, 2000. The Recreation & Parks comment is dated March 29, 2000. The hearing was scheduled April 21, 2000.

Ordinarily, the new law applies unless a project is vested. See Sycamore Realty Co. v. People's Counsel, 344 Md. 57 (1996); Enviro-Gro v. Bockelman, 88 Md.App. 323 (1991). In order to acquire vested rights, the developer must have a valid building permit and do substantial construction, none of which has occurred here. Bill 110-99 does afford additional protection for development plans filed before November 15, 1999. But, once again, this project does not qualify.

It further appears that the Department of Recreation and Parks is applying Sec. 26-498 consistently to development plans filed after November 15, 1999. Their position is plainly correct. The Deputy Zoning Commissioner also applied the new law in a case with a similar time line. GH Development, Case No. XIV-252, Opinion and Order dated May 10, 2000.

4. Adequate School Facilities. There is no indication that this development presently conflicts with the new adequate facilities standards pertaining to schools. However, once again, the standards do apply. Section 6 of Bill 110-99 exempts only

At 15  
15 would  
see 526-216C



Arnold Jablon, Esq., Director  
Baltimore County Department of  
Permits & Development Mgmt.  
May 17, 2000  
Page Three

projects with vested rights, building permits, or a public works agreement before March 1, 2000. The Council again was very specific.

5. Public Water and Sewer, Extension of Metropolitan District. The Department of Permits and Development Management and Office of Planning both stated there would have to be legislative approval of a Metropolitan District extension to allow public water and sewer to the site. They are correct.

Baltimore County Code Sec. 35-126 and 35-127 now provide for Metropolitan District boundaries to be kept in a book maintained by the Department of Public Works. Apparently, departmental books and records for the Metropolitan District do not include this site.

The above provisions, in context, do not intend to include the "marginal strip of land without the Metropolitan District to a distance of 150 feet over the Metropolitan District line." Earlier Code Section 34-11(b) (1978) included "for the purpose of assessing front foot benefit charges." The current County law does not have a comparable provision and Code Sec. 35-126 does not carry it forward.

6. Master Water and Sewer Plan Amendment. The Groundwater Management Section comment dated March 29, 2000 states, among other things, that in order to utilize public water and sewer, it is a prerequisite to development approval that the Baltimore County Master Water and Sewer Plan be amended. We are not aware of any reason to disregard this comment. But the opinion does not address it.

7. Interrelationship of Issues: While we have discussed the above topics separately, they are combined and intertwined. In particular, the variances and special hearing are affected by the conflict with open space standards and the need for Metropolitan District extension and Master Water and Sewer Plan Amendment.

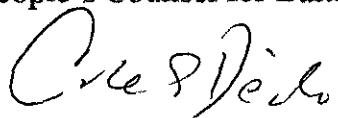
For all of the above reasons, we respectfully request that the Zoning Commissioner/Hearing Officer reconsider his May 8, 2000 decision and deny the zoning/development plan as submitted.

Arnold Jablon, Esq., Director  
Baltimore County Department of  
Permits & Development Mgmt.  
May 17, 2000  
Page Four

Very truly yours,



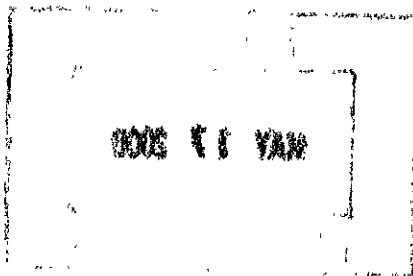
Peter Max Zimmerman  
People's Counsel for Baltimore County



Carole S. Demilio  
Deputy People's Counsel

PMZ/caf

cc: Lawrence E. Schmidt, Zoning Commissioner/Hearing Officer  
Jeffrey Scherr, Esq.  
Virginia Barnhart, Esq., County Attorney  
Robert Bowling, PDM  
Jan Cook, Recreation and Parks  
Jeffrey Long, Office of Planning



**RECEIVED**

**MAY 17 2000**

DEPT. OF PERMITS AND  
DEVELOPMENT MANAGEMENT

3/1/00

Don Rascoe said attorney  
has conflict with date.

Since we do not have a  
letter requesting a postponement,  
Don went to talk to AS.

AS said it was OK to  
change date to 4/21.

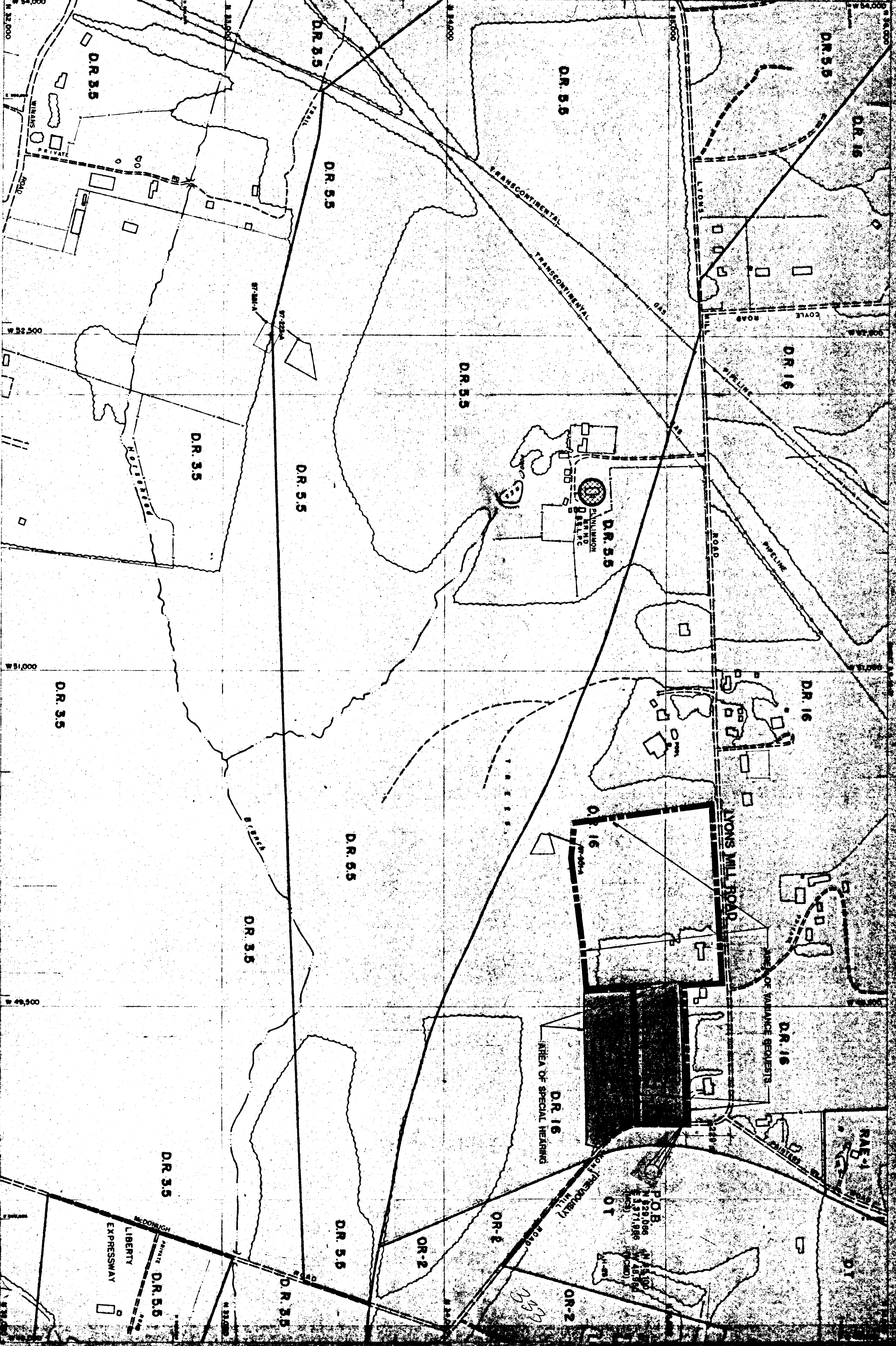
Sophia

00-333-SPHA

WER said to  
send legal owner's  
copy\* to any  
address on  
petition form.

Sophia  
3/1/00

\* for American Legion



THIS MAP HAS BEEN REPRODUCED IN SELECTED AREAS.  
 TOPOGRAHY COMPILED BY PHOTOGRAMMETRIC METHODS  
 BY BUCKHART-KOHN, INC. BALTIMORE, MD. 21210

1986 COMPREHENSIVE ZONING MAP  
 ADOPTED BY  
 THE BALTIMORE COUNTY COUNCIL  
 OCTOBER 8, 1986  
 Ord. Nos. 129-86, 130-86, 131-86, 132-86, 133-86, 134-86, 135-86  
*Kevin Kamenev*  
 Chairman, County Council

BALTIMORE COUNTY  
 OFFICE OF PLANNING AND ZONING  
 OFFICIAL ZONING MAP

SCALE  
 1" = 200'  
 DATE  
 OF  
 PHOTOGRAPHY  
 JANUARY  
 1985

LOCATION  
 Mc DONOUGH  
 VICINITY

SHEET  
 A.W.  
 9-1

003553

Sections 6 through 9 discuss the effective date of this legislation. As stated in Mathena, these Sections are, at best, confusing. Section 6 of the Bill discusses the Bill's effective date as it relates to the amendments to Sections 26-493 of the Code. That Code Section relates to the impact of development on school districts. For the purpose of this Motion for Reconsideration, an interpretation of Section 6 of the Bill is not necessary. There is no evidence in the record to support a finding that the proposed development is violative of either the "old" or "new" language in Section 26-493 of the Code. Thus, a determination as to the effective date of the Bill, as it relates to the amendment of Section 26-493 of the Code, is unnecessary.

Section 7 relates to the effective date of the Bill's amendments to Section 26-498 of the Code dealing with recreational space and requirements reviewed by the Department of Recreation and Parks. Testimony at the original hearing was that the plan, as approved, complied with the "old" requirements of Section 26-498, but was not in compliance with the new provisions incorporated by Bill No. 110-99. Section 7 of the Bill provides language which grandfathers plans from the reach of the new language/amendments to Section 26-498. Specifically, Section 7 of the Bill provides that the new standards do not apply to development plans filed with the Department of Permits and Development Management (PDM) on or before November 15, 1999.

Section 8 is the most confusing portion of the Bill. This Section contains two paragraphs. In paragraph one, it is provided that Sections 2, 3 and 6 of the Bill become effective on March 1, 2000. Section 2 of the Bill, as noted above, identifies those sections of the Code that were repealed and re-enacted. Section 3 is the substance of the Bill, and Section 6 relates to amendments to Section 26-493 of the Code (the overcrowding of school districts). Paragraph one of Section 8 states that those three sections of the Bill shall take effect on March 1, 2000, while Paragraph two provides that Section 26-498 shall take effect March 1, 2000.

Section 9 reads that the Bill shall take effect on December 30, 1999. Thereafter, on the final page of the legislation containing the signatures of the Secretary of the County Council, the County Executive, and the Chairman of the County Council, it is stated that the Bill was read and passed on December 20, 1999, presented to the County Executive for approval on December 21,

ORDER RECEIVED FOR FILING

Date

By

1999, approved and enacted by the County Executive on December 22, 1999 and takes effect on December 30, 1999.

I said in Mathena that it is the responsibility of the Hearing Officer to attempt to ascertain and effectuate the legislative intent of the Adequate Public Facilities law. I also recognize that as a fundamental premise, all parts of a statute are to be reconciled and harmonized, if possible, including those which appear to be in conflict. (See Cloverfields Improvement Association, Inc., v. Seabreeze Properties, Inc., 280 Md. 382 (1977)). Where two provisions of a statute appear to be inconsistent or contradictory, it is the duty of the Hearing Officer to reconcile them as to effectuate the legislative purpose. (See Maryland Industrial Development Financing Authority v. Meadow-Croft, 243 Md. 515 (1966)).

I also noted that in the event of an ambiguity within a statute or regulation, such intent should be gleaned from the ordinary and properly understood meaning of the words used therein, absent manifest contrary legislative intent. (See State v. Bricker, 321 Md. 86 (1990)). Also, it has been held that a Court or reviewing body should presume that in enacting a statute, the legislature did not intend to create an ineffective or invalid law. (See First National Bank of Maryland v. Shpritz, 63 Md. App. 623 (1985)).

In support of their respective positions, the parties submitted a series of cases for consideration. One such instructive decision is the Court of Special Appeals opinion in Holland v. Woodhaven Bldg., 113 Md. App. 274 (1996). In that case, a residential subdivision was approved by the local zoning authority. Certain residents sought review of that decision by appeal to the Board of Zoning Appeals. The Board declined to reach the merits of the appeal and dismissed same on the grounds that the Appellants were not parties aggrieved under the local statute. The residents appealed to the Circuit Court. While that appeal was pending, legislation was passed amending the local statute to broaden the class of those individuals who could appeal to the Board. The Circuit Court affirmed the Appeals Board action and an appeal to the Court of Special Appeals followed.

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Date

By