

IN RE: PETITION FOR SPECIAL HEARING
SW and SE/S Cedar Ave. & Glen Gate Rd.;
W/S Clark Boulevard
(Highgate) (fka Hilltop Place)
13th Election District
1st Councilmanic District

Sycamore Realty Company
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 00-358-SPH

*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owner of the subject property, Sycamore Realty Company, by Lloyd N. McNutt, through their attorneys, G. Scott Barhight and Julie A. DiGrigoli, Esquires. The Petitioner requests a special hearing to approve a waiver, pursuant to Section 26-172(a)(1) of the Baltimore County Code, of Section 26-237 thereof, so as to not require road improvements to the intersection of Clark Boulevard and Washington/Southwestern Boulevard, and the installation of curb, gutter, sidewalk, and lighting along Clark Boulevard. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing on behalf of the Petitioners were Rick Chadsey, Professional Engineer who prepared the site plan for this property, Wes Guckert, Traffic Engineering expert, and G. Scott Barhight, Esquire, attorney for the Petitioner. Also appearing and testifying was Rahee Famili, a representative of the Developer's Plans Review Division of the Baltimore County Department of Permits and Development Management (PDM). Appearing as Protestants in the matter were several residents from the surrounding community, all of whom signed the Protestants' Sign In Sheet, which is contained within the record of this case.

Testimony and evidence offered revealed that the subject property consists of a gross area of 23.84 acres, more or less, zoned D.R.5.5, and is located in southwestern Baltimore County,

ORDER RECEIVED FOR FILING

Date 2/25/00

By [Signature]

between Metropolitan Boulevard and Clark Boulevard in Catonsville. The property is presently unimproved; however, is proposed for development with 124 townhouse dwelling units. The northern border of the tract abuts the rear property line of a number of single family dwellings which front on Cedar Avenue. Although the northern property line does not directly adjoin Cedar Avenue, it is close enough thereto to allow access to the development from Cedar Avenue. The eastern property line of the tract abuts Clark Boulevard. The property's southern border lies adjacent to a right-of-way for the Baltimore and Ohio Railroad and the bed of a railway track system that lies therein. To the west, the property abuts Metropolitan Boulevard (I-195).

As noted above, the property is proposed for development with 124 townhouse dwelling units. Vehicular access thereto will be by way of a new road, to be known as Glen Gate Road, which will lead from Cedar Avenue. This road will be a divided road with opposing lanes of traffic separated by a median. There is no vehicular access to the proposed community from Clark Boulevard or Metropolitan Boulevard. In addition to the townhouses, the plan shows areas of open space, a stormwater management facility, forest buffer/easement areas, and 329 parking spaces. The particulars of the project are more specifically shown on the site plan marked as Petitioner's Exhibit 1. Inasmuch as there is no direct access to Clark Boulevard or Metropolitan Boulevard, the Petitioner requests a waiver of those requirements relating to those road improvements in conjunction with this project.

The history of this development is of particular note to the question presented in the instant Petition. That history is well laid out in an opinion by the County Board of Appeals regarding this property in Case No. CBA #97-155. Therein, it is observed that the Petitioner filed a CRG plan for the subject project on December 4, 1990. At that time, the site was split zoned D.R.10.5 and D.R.5.5. The CRG process, as it existed at that time, was the mechanism by which development proposals were reviewed and approved by Baltimore County. The two-member CRG was comprised of a representative of the Department of Public Works and a representative of the Office of Planning.

Apparently, subsequent to the filing of a CRG plan, consideration of the proposal was suspended when Baltimore County placed a reservation on the parcel to explore converting same into a public park. During this stay of the proceedings, the parcel was rezoned to D.R.5.5 as part of Baltimore County's comprehensive rezoning process in 1992. That zoning remained the same under the 1996 comprehensive rezoning process. The parcel remains entirely zoned D.R.5.5 at this time. Ultimately, Baltimore County did not pursue the conversion of the parcel to a public park. Thus, the CRG plan proceeded through the process and was subsequently approved on July 8, 1993. A series of appeals followed. The CRG approval was affirmed on appeal by the County Board of Appeals and in the Circuit Court for Baltimore County. However, this approval was reversed by the State's appellate courts in Annapolis, which held that the property was subject to the density limits brought about by the down-zoning of the site to entirely D.R.5.5.

In 1992, while this project was undergoing the CRG review process, Baltimore County materially altered the development review process by eliminating the CRG and replacing same with the development review process now in effect. Under the current review process, a development proposal is submitted for review through a series of meetings and conferences which culminate in a Hearing Officer's Hearing before either the Zoning Commissioner or Deputy Zoning Commissioner. The Hearing Officer, rather than the members of the CRG, consider development proposals, subject to appeal to the County Board of Appeals, and ultimately the Courts of this State.

In any event, returning to the instant matter, following the Appellate Court's reversal of the approved CRG plan, the Petitioner sought County advice, and pursuant thereto, filed a First Amended CRG Plan on June 4, 1997. This plan was filed pursuant to Sections 26-169 and 26-209 of the Baltimore County Code, which provide, in part, that development, "...shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be." That is, since the developer had originally filed its plan under the CRG process, its amended plan, necessitated by the Appellate Courts' decision, was filed within the parameters of the CRG process. The CRG approved the plan at its meeting of July 31, 1997. An appeal to the

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Date 11/28/00
By [Signature]

County Board of Appeals brought about an affirmation of that approval by Order of the Board dated April 20, 1998. Apparently that Order was not appealed. Thus, the procedural issues raised in those proceedings relating to the applicability of the CRG process viz a viz the current development review process, have been resolved. Sycamore Realty Company now has an approved CRG plan, pursuant to the actions of that body on July 31, 1997, and affirmed on appeal by the County Board of Appeals on April 20, 1998.

Testimony and evidence presented during the course of the hearing before me was that this project has evolved significantly over the years. Some of the changes have been the result of the downzoning of the property and others due to site constraints associated with this tract. Apparently, the developer originally proposed a means of vehicular access to the interior of the site from Clark Boulevard. As shown on the present plan, that means of access has been eliminated and the plan now shows a sole means of access through the median road to be known as Glen Gate Road. This new road will access Cedar Avenue.

Longstanding practice and procedure by Baltimore County's Department of Public Works (DPW) has been to require a developer to improve public roads along the developer's frontage adjacent to that road. That is, DPW typically insists that a developer improve a public road (be it widening, and/or the installation of curb, gutter and sidewalk, etc.) along that portion of the roadway adjacent to the parcel to be developed. Obviously, as adjacent parcels of land are developed, public roadways will be improved in a consistent and appropriate manner so that the public streets (infrastructure) can accommodate the increased volumes of traffic that will be generated by a particular development. This County policy makes sense and is appropriate. It insures that adequate infrastructure exists to support development and discourages public expenditures to support private development.

In this case, when the original CRG plan was submitted, the developer apparently acquiesced to the required improvements mandated by DPW. Under the originally approved CRG plan, the developer showed improvements to Clark Boulevard, including the appropriate widening

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thereof, the installation of curb, sidewalks, and gutters, and lighting. Improvements to the intersection of Clark Boulevard and Washington/Southwestern Boulevard were also shown.

As Mr. Famili candidly testified at the hearing before me, the County policy requiring improvements to public roads is not applicable when a development does not access a particular road. That is, if the developer does not provide direct access from an anticipated development to an adjoining public road, road improvements to that street are not required. In essence, in that there is no direct access to a public road, County policy recognizes the lack of reasonable nexus or link to the requirement that the given roadway be improved.

In this case, it is to be noted again that the original plan called for access to Clark Boulevard and road improvements thereto. For whatever reason, after the plan was revised to eliminate that access, the improvements remained shown on the plan. That is, notwithstanding revisions to the plan eliminating access to Clark Boulevard and a proposed sole means of access to Cedar Avenue, the revised plans continued to show road widening, and the installation of curb, gutter, sidewalk and lighting along Clark Boulevard. It was that plan, with both the elimination of access to Clark Boulevard and retained improvements, which was approved by the CRG in 1997 and affirmed on appeal by the County Board of Appeals in 1998. However, both the minutes of the CRG from July 31, 1997, as well as the opinion issued by the County Board of Appeals in April 1998 noted that the developer contemplated at that time a possible requested revision to the plan, eliminating those improvements. The CRG minutes reflect, "He (the Developer's engineer) also stated that his client would apply for a waiver of road improvements to Clark Boulevard and that an updated traffic study would be done to see if the improvements to the intersection of Clark and Washington Boulevards are still required." The County Board of Appeals also noted in its opinion, "The Board admittedly is troubled by the developer's probable plan to seek a waiver of improvements to be made to Clark Boulevard, but concedes that its concerns do not rise to the level of reversible error." (Pg. 4)

Through its instant Petition for Special Hearing, the developer (Petitioner) has indeed requested the elimination of the proposed road improvements and the requisite revision of its CRG

plan. This request is made by way of a waiver, pursuant to Section 26-172 of the Baltimore County Code. Section 26-172 of the Baltimore County Code was enacted and amended so as to provide a process through which waivers from certain County requirements or standards could be granted. Section 26-172 allows the Hearing Officer to grant waivers from Divisions 3, 4 and 5 of the development regulations, upon recommendation of a Department Director, and a finding that the waiver is justified. Section 26-172(b) allows the Director of the Department of Permits and Development Management to waive certain requirements of the development review process.

Frequently, this Zoning Commissioner/Hearing Officer is requested to grant a waiver in the context of a development plan hearing case. That is, most waivers are granted during the course of a Hearing Officer's Hearing, as set out in Section 26-206 of the Baltimore County Code. For those projects where this is no Hearing Officer's Hearing, waivers can be granted by the Zoning Commissioner/Hearing Officer, pursuant to a Petition for Special Hearing. That is, Baltimore County has adopted a policy enabling the Hearing Officer/Zoning Commissioner to exercise the jurisdiction provided in Section 26-172 of the Code when there is no Hearing Officer's Hearing because a project is exempt from same. In such cases, jurisdiction is authorized pursuant to a Petition for Special Hearing.

This case is somewhat unusual. Obviously, there is no Hearing Officer's Hearing in that the project was approved pursuant to the old CRG process rather than the current development regulations. Not only is there no Hearing Officer's Hearing, but there is no development review of this project under the current development regulations. Nonetheless, in order to resolve the question as to whether the road improvements are warranted, the question is presented as a Petition for Special Hearing. Presentation of the question in that manner seems appropriate.¹

In evaluating the waiver request, consideration is first given to improvements to Clark Boulevard. Testimony was received on this topic from Mr. Guckert, Mr. Famili, and several of the

¹ Section 26-172 of the Baltimore County Code requires that this Hearing Officer consider waiver requests upon the "recommendation" of a Department Director. Arguably, the recommendation need not be supportive. In view of the history of this project, I believe that the question is properly presented to this Zoning Commissioner. Indeed, the Zoning Advisory Committee (ZAC) comments could be considered as a "recommendation" to resolve this question.

residents from the surrounding locale. Mr. Guckert's testimony was particularly persuasive as same is summarized in his written report (Petitioner's Exhibit 4.) Essentially, he believes that improvements to Clark Boulevard are unnecessary. He described Clark Boulevard as a two-lane roadway without shoulders and striping. He testified about the traffic counts and volumes for Clark Boulevard which were studied and evaluated. In his judgment, the roadway is capable of carrying a substantially greater volume of traffic than its current levels. Even with projected levels as a result of the proposed development, the road will be able to accommodate the anticipated traffic volumes. In Mr. Guckert's judgment, improvements to Clark Boulevard by this developer are unwarranted.

Mr. Famili's testimony did not dispute Mr. Guckert's remarks nor did the testimony of the residents. On behalf of his department, Mr. Famili obviously supports improvements to Clark Boulevard to be paid for by the developer. However, Mr. Famili recognized that County policy could not require such improvements in view of the lack of direct access from that development to that road and recognized that the road capably handles existing traffic volumes and those anticipated. The residents' testimony was helpful in understanding existing conditions on Clark Boulevard.

Based upon the testimony and evidence offered, I am persuaded to grant the waiver as it relates to road improvements to Clark Boulevard, specifically, the widening of said road, and the installation of curb, gutter and lighting. I find that those improvements are not warranted. The installation of sidewalk is a different matter, however. Testimony offered from a number of residents in the area was instructive regarding the location of a nearby elementary school adjacent to the intersection of Cedar Avenue and Selford Road. An examination of the site plan shows that it is likely that the development will produce sufficient pedestrian traffic along Clark Boulevard to access that school. Surely, pedestrian traffic would be made much safer if sidewalks were installed. Moreover, testimony offered at the hearing indicated that grading and clearing had already been completed along that portion of the roadway.

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Based on these concerns, I will require a modification of the approved plan to provide pedestrian access from the development and the construction of a sidewalk adjacent to Clark Boulevard. Although I will not set out the precise design of this pedestrian system, I will require that the developer, in consultation with the appropriate County agencies, provide a means of access from the residential community to a sidewalk to be installed along Clark Boulevard. The sidewalk need not be extended from its connection point from the community southward towards Washington Boulevard, but should be extended along Clark Boulevard towards the north and in the direction of the elementary school. Thus, the waiver for sidewalks will not be granted.

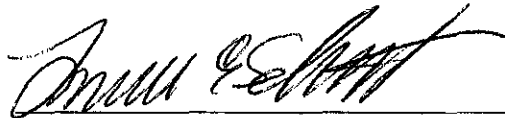
As to the potential improvements to the intersection of Clark Boulevard and Washington Boulevard, I also find Mr. Guckert's testimony persuasive. He suggests that the developer install flex posts along Clark Boulevard and a sign prohibiting left turns from Clark Boulevard onto Washington Boulevard. The undisputed testimony was that the erection of such a sign and the prohibition of such a traffic movement are appropriate in view of traffic conditions. However, but for these changes, I agree with Mr. Guckert's conclusion that, "It does not seem reasonable to expect the developer to make any other modifications to an intersection that has needed improvement for over 20 years and an intersection that the County and State knew needed improvements." (Emphasis added) There is simply not a nexus between the need for the improvements and the development of the subject property." I agree.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 28th day of April, 2000 that the Petition for Special Hearing seeking approval of a waiver, pursuant to Section 26-172(a)(1) of the Baltimore County Code, of Section 26-237 thereof, so as to not require improvements to Clark Boulevard and Washington/Southwestern Boulevard, including the installation of curb, gutter and lighting, be and is hereby GRANTED, subject to the following restrictions:

ORDER RECEIVED FOR FILING
Date 4/28/00
By [Signature]

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The relief granted herein is limited to a waiver from the requirement of installing curb, gutter and lighting along Clark Boulevard and Washington/Southwestern Boulevard. The developer/Petitioner shall be required to install sidewalk along Clark Boulevard towards the north and in the direction of the elementary school on Selford Road. The sidewalk need not be extended from its connection point at the community southward towards the Washington/Southwestern Boulevard intersection.
- 3) Prior to the issuance of any building permits, the Petitioner shall submit a revised plan showing the installation of sidewalk along Clark Boulevard as set forth above.
- 4) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 4/28/00
By [Signature]



Baltimore County
Zoning Commissioner

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

April 26, 2000

G. Scott Barhight, Esquire
Julie A. DiGrigoli, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Suite 400
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
SW/S and SE/S Cedar Avenue & Glen Gate Road, W/S Clark Boulevard
(Highgate) (fka Hilltop Place)
13th Election District – 1st Councilmanic District District
Sycamore Realty Company - Petitioner
Case No. 00-358-SPH

Dear Mr. Barhight & Ms. DiGrigoli:

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

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

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Lloyd N. McNutt, Sycamore Realty Co., 10 Parks Ave., Hunt Valley, Md. 21030
Mr. Rick Chadsey, GW Stephens, Jr. & Assoc., 1020 Cromwell Br. Rd, Towson, Md. 21286
Mr. Wes Guckert, The Traffic Group, 9900 Franklin Square Dr., #H, Baltimore, Md. 21236
Mr. & Mrs. Alex Kundrick, 1108 Raven Drive, Baltimore, Md. 21227
Mr. & Mrs. John G. Roth, 1201 Sparrow Court, Baltimore, Md. 21227
Mr. Donald Perkins, 1202 Sparrow Court, Baltimore, Md. 21227
Ms. Gina Hrybyk, 4947 Cedar Avenue, Baltimore, Md. 21227
Mr. John Heinrichs, 5124 S. Rolling Road, Baltimore, Md. 21227
Mr. & Mrs. Alan J. DeSa, 1816 Sutton Avenue, St. Denis, Md. 21227
Ms. Ruth Carruba, 1723 Sutton Avenue, St. Denis, Md. 21227
Mr. Harold Harrison, 5840 Oakland Road, Baltimore, Md. 21227
Mr. Rich Graul, 5727 Oakland Road, Baltimore, Md. 21227
Ms. Wilma Peachey, 5727 Oakland Road, Baltimore, Md. 21227
Ms. Kathleen Pryor, 1721 Magnolia Avenue, Baltimore, Md. 21227

Mr. Rahee Famili PDM: People's Counsel; Case File
Census 2000 For You, For Baltimore County

Census 2000





Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at Cedar Avenue and Glen Gate Rd.
which is presently zoned D.R.5.5 & D.R.10.5

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

Waiver, pursuant to section 26-172(a)(1) of the Baltimore County Code, from the obligations of section 26-237 of the Baltimore County Code for improvements of Clark Blvd. and Southwestern Blvd. road, including curb, gutter, sidewalks and lighting.

Property is to be posted and advertised as prescribed by the zoning regulations. I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print _____
Signature _____
Address _____ Telephone No. _____
City _____ State _____ Zip Code _____

Attorney For Petitioner:

G. Scott Barhight
Name - Type or Print _____
Signature _____
Whiteford, Taylor & Preston LLP
Company _____
210 W. Pennsylvania Ave. 410/832-2050
Address Suite 400 Telephone No. _____
Towson, MD 21204
City _____ State _____ Zip Code _____

Legal Owner(s):

Sycamore Realty Company
Name - Type or Print _____
Signature *Lloyd N. McNeill* _____
Name - Type or Print _____
Signature _____

10 Parks Ave. (Contact Attorney)
Address _____ Telephone No. _____
Hunt Valley MD 21030
City _____ State _____ Zip Code _____

Representative to be Contacted:

Julie A. DiGrasso
G. Scott Barhight
Name Whiteford, Taylor & Preston LLP
210 W. Pennsylvania Ave. 410-832-2050
Address _____ Telephone No. _____
Towson MD 21204
City _____ State _____ Zip Code _____

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By SPH Date 03-01-00

Case No. 00-358-SPH

ORDER RECEIVED FOR FILING

Date 2/15/98
By _____

FROM THE OFFICE OF

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CONSULTING ENGINEERS • LAND PLANNERS • LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD • TOWSON, MARYLAND 21286-3396

Description to Accompany Petition for Special Hearing
Highgate
Baltimore County, Maryland

February 16, 2000
Page 1

Beginning for the same at the northern most point as shown on a plat entitled "Plat One Of Two Highgate (Formerly Hilltop Place) A Resubdivision Of Plats E.H.K. Jr. 66, folios 101 and 102, said plat dated January 10, 2000 and recorded or intended to be recorded among the Land Records of Baltimore County, Maryland, said point being South 01 20 27 West 103.30 feet from the intersection of Cedar Avenue and Richard Mews Square thence leaving said point of beginning and binding on the outline of said plat and on the outline of a plat entitled "Plat Two Of Two Highgate (Formerly Hilltop Place) A Resubdivision Of Plats E.H.K. Jr. 66, folios 101 and 102, said plat dated January 10, 2000 and recorded or intended to be recorded among the Land Records of Baltimore County, Maryland, the twenty nine following courses, viz:

- 1) South 28 32 23 East 139.14 feet
- 2) North 61 06 09 East 349.29 feet
- 3) South 58 38 23 East 140.03 feet
- 4) North 24 11 50 East 24.59 feet
- 5) North 23 10 57 East 149.18 feet
- 6) Southeasterly by a curve to the right having a radius of 640.00 feet and a length of 92.29 feet, said curve being subtended by a chord bearing South 24 51 57 East 92.21 feet
- 7) South 20 44 04 East 602.86 feet
- 8) Southeasterly by a curve to the left having a radius of 477.04 feet and a length of 223.61 feet, said curve being subtended by a chord bearing South 34 09 47 East 227.57 feet
- 9) Southeasterly by a curve to the left having a radius of 308.78 feet and a length of 14.79 feet, said curve being subtended by a chord bearing South 48 57 51 East 14.79 feet
- 10) South 21 49 04 East 89.40 feet
- 11) North 68 10 17 East 72.96 feet
- 12) South 70 12 49 East 8.44 feet
- 13) Southeasterly by a curve to the left having a radius of 583.06 feet and a length of 124.03 feet, said curve being subtended by a chord bearing South 76 18 26 East 123.79 feet

- 14) South 66 00 00 West 118.34 feet
- 15) South 35 32 16 West 68.82 feet
- 16) South 73 39 50 West 60.44 feet
- 17) South 67 18 01 West 248.77 feet
- 18) South 60 37 33 West 95.82 feet
- 19) South 68 54 28 West 150.05 feet
- 20) South 64 10 35 West 294.14 feet
- 21) South 81 56 56 West 40.98 feet
- 22) South 70 05 05 West 269.14 feet
- 23) North 08 51 39 East 185.94 feet
- 24) North 02 32 14 East 109.14 feet
- 25) North 02 03 39 East 164.15 feet
- 26) North 07 18 23 West 489.61 feet
- 27) North 02 28 02 West 249.84 feet
- 28) North 26 38 22 West 76.11 feet
- 29) North 53 45 11 East 133.50 feet to the place of beginning.

Containing 22.99 acres of land more or less.

Note: The above description is for zoning purposes only and is not to be used for contracts, conveyances or agreements.



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: #00-358-SPH

NE & SW/S Glen Gate Road, 230' S of centerline Cedar Avenue opposite Richard Mews Square (Highgate, FKA Hilltop Place)

13th Election District - 1st Councilmanic District

Legal Owner(s): Sycamore Realty Company

Special Hearing: to approve a waiver of Public Works Standards, pursuant to Sections 26-172(a)(1) and 26-237 of the Baltimore County Code, for improvements of Clark Boulevard and Southwestern Boulevard Road, including curb, gutter, sidewalks and lighting.

Hearing: Monday, April 10, 2000 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley 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.

3/312 Mar 23

C378472

CERTIFICATE OF PUBLICATION

TOWSON, MD,

3/23/

, 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 3/23/, 2000.

THE JEFFERSONIAN,
S. Wilkinson

LEGAL ADVERTISING

YES

CERTIFICATE OF POSTING

**RE: CASE # 00-358-SPH
PETITIONER/DEVELOPER
(Sycamore Realty Co.)
DATE OF Hearing
(4-10-00)**

**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 at Cedar Ave. & Glen Gate Road also on Clark Blvd. Baltimore, Maryland
21227 _____**

**THE SIGN(S) WERE POSTED ON _____ 3-24-00 _____
(MONTH, DAY, YEAR)**

SINCERELY,

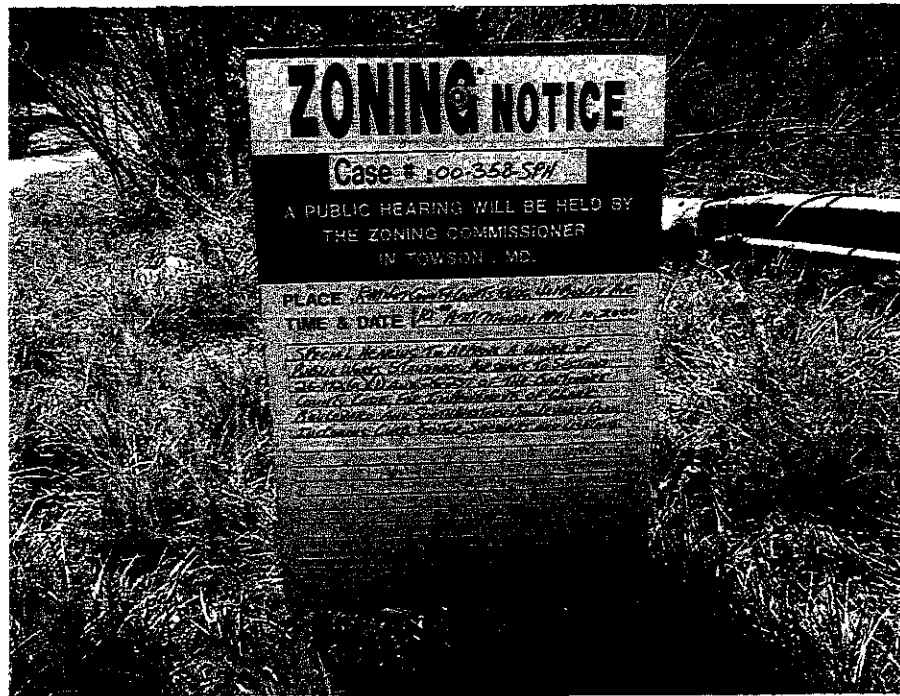

(SIGNATURE OF SIGN POSTER & DATE)

_____**THOMAS P. OGLE SR.**_____

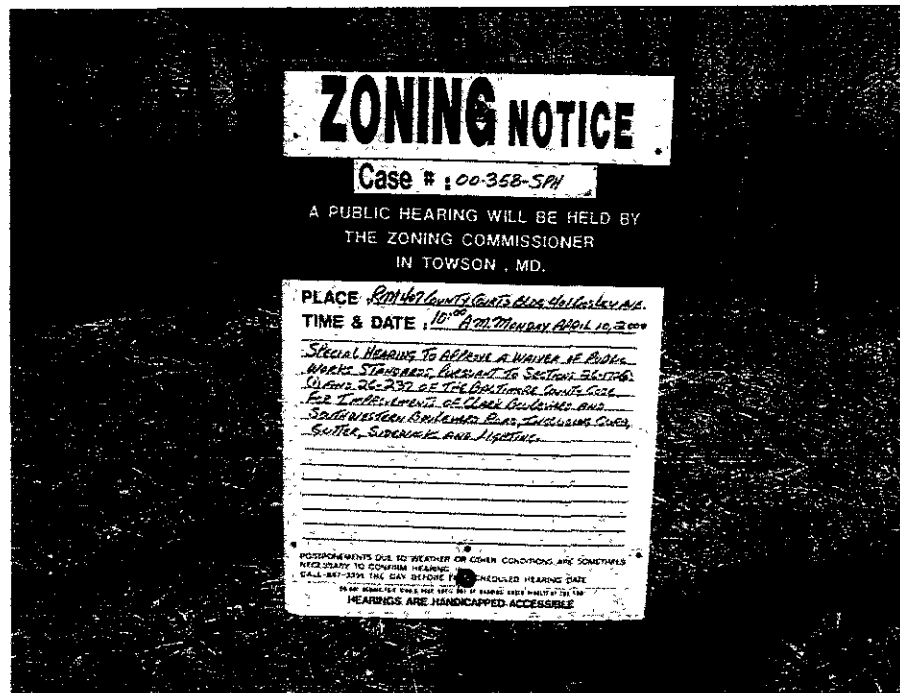
_____**325 NICHOLSON ROAD**_____

_____**BALTIMORE, MARYLAND 21221**_____

_____**410-687-8405**_____
(TELEPHONE NUMBER)



Cedar Ave. & Glen Gate Road



Clark Blvd

RE: PETITION FOR SPECIAL HEARING
Highgate, Sycamore at Cedar Ave and Glen Gate Rd, S/S
Cedar Ave, directly across from Richard Mews Square
13th Election District, 1st Councilmanic

Legal Owner: Sycamore Realty Co.
Petitioner(s)

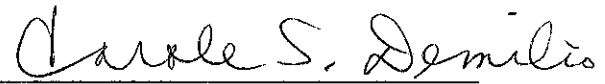
* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 00-358-SPH

* * * * *

ENTRY OF APPEARANCE

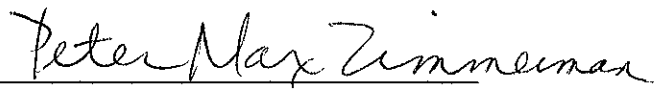
Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of March, 2000 a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner(s).


PETER MAX ZIMMERMAN



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 16, 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:

CASE NUMBER: 00-358-SPH

NE & SW/S Glen Gate Road, 230' S of centerline Cedar Avenue opposite Richard Mews Square (Highgate, FKA Hilltop Place)
13th Election District – 1st Councilmanic District
Legal Owner: Sycamore Realty Company

Special Hearing to approve a waiver of Public Works Standards, pursuant to Sections 26-172(a)(1) and 26-237 of the Baltimore County Code, for improvements of Clark Boulevard and Southwestern Boulevard road, including curb, gutter, sidewalks and lighting.

HEARING: Monday, April 10, 2000 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

C: G. Scott Barhight, Esquire, 210 W. Pennsylvania Ave., Towson 21204
Sycamore Realty Co., 10 Parks Avenue, Hunt Valley 21030

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MARCH 26, 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.



TO: PATUXENT PUBLISHING COMPANY
Thursday, March 23, 2000 Issue – Jeffersonian

Please forward billing to:

Julie DiGrigoli 410-832-2000
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

NOTICE OF ZONING HEARING

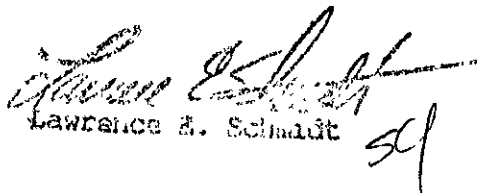
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 00-358-SPH

NE & SW/S Glen Gate Road, 230' S of centerline Cedar Avenue opposite Richard Mews Square (Highgate, FKA Hilltop Place)
13th Election District – 1st Councilmanic District
Legal Owner: Sycamore Realty Company

Special Hearing to approve a waiver of Public Works Standards, pursuant to Sections 26-172(a)(1) and 26-237 of the Baltimore County Code, for improvements of Clark Boulevard and Southwestern Boulevard road, including curb, gutter, sidewalks and lighting.

HEARING: Monday, April 10, 2000 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley 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: 00-358-SP4
Petitioner: Sycamore Realty Company
Address or Location: "Highgate", Cedar Avenue

PLEASE FORWARD ADVERTISING BILL TO:

Name: Julie D. Grigoli, Whiteford, Taylor &
Preston
Address: 210 W. Pennsylvania Ave
Towson MD: 21204
Telephone Number: 410-832-2000

Revised 2/20/98 - SCJ

00-358-SP4



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 7, 2000

Attorney G. Scott Barhight
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson MD 21204

Dear Attorney Barhight:

RE: Case Number 00-358-SPH , Cedar Avenue and Glen Gate Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 1, 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



Census 2000



For You, For Baltimore County



Census 2000



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on Recycled Paper

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

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

DATE: April 21, 2000

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

SUBJECT: Zoning Advisory Committee Meeting
For March 20, 2000
Item Nos. 353, 355, 356, 357, ~~359~~ 360
and 361

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

RWB:HJO:jrb

cc: File

ZAC-3-20-2000-NO COMMENT ITEMS



Baltimore County
Fire Department

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

March 21, 2000

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

ATTENTION: Gwen Stephens

RE: Property Owner:
358 - SYCAMORE REALTY CO.

Location: DISTRIBUTION MEETING OF MARCH 13, 2000

Item No.: 358

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.

2. A second means of vehicle access is required for the site.

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 *RB*

DATE: March 15, 2000

SUBJECT: Zoning Petitions
Zoning Advisory Committee Meeting of March 13, 2000

DEPRM has no comments for the following zoning petitions:

Item #	Address
354	7922-7930 Wise Avenue
355	7531 Bel Air Road
358	Highgate/Cedar Avenue
359	313 Weatherbee Road
360	1434 Darius Court
361	13803 Manor Glen Road

Ho
4/10

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: April 7, 2000

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

SUBJECT: Highgate

APR - 7

INFORMATION:

Item Number: 358SPH

Petitioner: Sycamore Realty

Property Size: 23.84 acres

Zoning: DR5.5

Requested Action: Special Hearing

Hearing Date: April 10, 2000

The petitioner requests a waiver of public works standards for improvements pursuant to Section 26-172(a)(1) of the Baltimore County Code. While specifics have not been indicated either on the petition form or on the site plan, it is the understanding of this office that the requested relief is from the requirement of curb, gutters and sidewalks to be provided on Cedar Avenue and Clark Boulevard. It is unclear whether relief is also sought for improvements to the intersection of Washington Boulevard and Clark Boulevard.

It should be noted that the site plan shows zoning that is inaccurate. The entire parcel is zoned DR 5.5 and not DR 10.5 and DR 5.5 as shown.

This office requested that the zoning be corrected and that a signed copy of the CRG plan should be filed with this request. As of this date, this office has not received revised plans.

SUMMARY OF RECOMMENDATIONS:

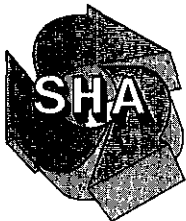
1. This office opposes waivers of public improvements for this development of 124 townhouses. In this medium density residential zone, curb, gutter and sidewalks are standard improvements that add to the quality of life for the new development and overall community. Granting such waivers is not in keeping with the county's community conservation strategy as outlined in both Master Plan 2010 and the Southwestern Revitalization Strategy.

Ref No 3

2. As for off-site improvements, if SHA and Baltimore County Department of Public Works deems it necessary for public safety, this office supports these improvements.

Section Chief: Jeffery W. Long

AFK:JL



Maryland Department of Transportation
State Highway Administration

yes
Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

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

Date: April 3, 2000
RE: Baltimore County
Item No. 358 (JRA)
Special Hearing

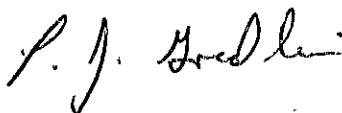
Dear Ms. Jackson:

Please be advised that we are changing our original position (letter March 13, 2000) to the following comment:

We support the County's' position to recommend intersection improvements at US 1 and Clark Boulevard, based on an inadequate southbound intersection sight distance, as shown on drawing #94-0307.

Should any additional information be required please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

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

LG

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

ZONING HEARING FILE INTERNAL CHECKLIST

Zoning Case No. 00-358-SPH

Date Completed/Initials

3/16/00 SCJ

PREPARE HEARING FILE (put case number on all papers; hole punch and place appropriately; put label and case number on folder; complete information on stamp on front of folder)

DETERMINE HEARING DATE (schedule within 45 days of filing; post and advertise at least 15 days prior to hearing)

TYPE HEARING NOTICE AND ADVERTISING NOTICE (type according to sample, taking billing information for advertising from advertising form in file; make appropriate copies; mail original and copies of hearing notice; place original advertising notice in Patuxent's box; file copies of both notices in hearing file; update ZAC in computer for hearing date, time and place)

UPDATE ZONING COMMISSIONER'S HEARING CALENDAR (keep original in "red" folder; mail copy to zoning commissioner's office)

COMPLETE FILE (write hearing date, time, and room on front of hearing folder; file in numerical order in cabinet next to copier until it is pulled for sending to zoning commissioner's office)

POSTPONEMENTS (type postponement letter; make appropriate copies; mail original and copies; send copy to zoning commissioner; file copy in hearing file; update hearing calendar and ZAC in computer)

RESCHEDULING (determine hearing date; type letter confirming new date; make appropriate copies; mail original and copies; file copy in hearing file; update hearing calendar and ZAC in computer; refile hearing folder)

INDEX CARDS (prepare index cards, according to sample; file cards in cabinet)

ADVERTISING/POSTING CERTIFICATES (check off on front of hearing file; put certificates in file)

COMMENTS (check off agency comments received on front of hearing file; make copies; type comments letter; mail original to petitioner; file copy in hearing file)

FILES TO ZONING COMMISSIONER'S OFFICE (pull the files for the following week every Friday and administrative files on Tuesday; verify that checklist on front of hearing file has been completed; secure all papers under clips in file; send files for hearings to zoning commissioner's office by noon on Friday and files for administrative on Tuesday morning)

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

G. Scott Barhight

WES GUCKERT

RICK CHADSEY

210 W. Penn Ave, Towson MD 21204
Suite H 9900 FRANKLIN SQ. DR.
BALD MD. 21236

1020 CREMUELL ²¹²⁸⁶ Berdie R. Tabor



PROTESTANT(S) SIGN-IN SHEET

ADDRESS

1108 RAVEN DR 21227

10 11 12 13

1202 SPARROW CT 21277

1201 SPANHOW Ct 21227

1. 1. 1.

4947 Cedar Ave 21227

5124 S ROLLING RD 21227

1816 Sutton Ave St Denis

1723 Sutton Cove ST. Denis 21027

5840 BAKLAND RD. 21227

1816 SUTTON AVE ST. DENIS

5727 Oakland Rd 21227

3727 Oakland Rd W 1227

1721 MAGNOLIA AVE.





Maryland Department of Transportation
State Highway Administration

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

Date: 3.13.00

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

RE: Baltimore County
Item No. 358

JRA

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,

1- 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

Ref Nos

C.R.G. MEETING MINUTES
OF
JULY 31, 1997

HIGHGATE f.k.a. HILLTOP PLACE

STAFF REPRESENTATIVES:

NAME:

DEPARTMENT:

Ref
Robert Bowling
Ervin McDaniel
Colleen Kelly
Michael Grossman
Diana Itter
R. Bruce Seeley
John Lewis
Don Rascoe

P.D.M. - Development Plans Review
Planning Office
P.D.M. - Land Acquisition
Recreation & Parks
Planning Office
D.E.P.R.M.
Zoning
P.D.M. - Development Management

DEVELOPER/ENGINEER:

NAME:

COMPANY NAME:

PHONE:

Frederick Chadsey
Anthony J. DiPaula

G. W. Stephens, Jr. & Assoc., Inc. 410-825-8120
Covahey & Boozer, P.A. 410-828-9441

CITIZENS:

NAME:

ADDRESS:

Anne Heinrichs.....	5124 S. Rolling Road
Louise Vanderbeek.....	5112 S. Rolling Road
Gina Hrybyk.....	4949 Cedar Avenue
John Heinrichs.....	5124 S. Rolling Road
Joe Twilley.....	5806 Oakland Road
Charles Langrehr.....	4701 Ruby Avenue
R. D. Clarke.....	4710 Ruby Avenue
Sam Pecsek.....	4704 Ruby Avenue
Robert Wissman.....	4709 Ruby Avenue
Steve DeBoy.....	1810 Palo Circle 21227
Rich Graul.....	5727 Oakland Road

C.R.G. Summary for Hillgate a.k.a. Hilltop Place
District: 13C1
Date: 7/31/97

Robert Bowling, Chairman and Ervin McDaniel, Co-Chairman opened the meeting at 10:15, introduced the staff, and explained the purpose of the meeting. Rick Chadsey presented the Plan.

Ervin McDaniel summarized the staff comments submitted from Development Plans Review, Storm Water Management, Department of Environmental Protection and Resource Management (D.E.P.R.M.), Office of Planning, Department of Recreation and Parks, and Bureau of Land Acquisition. These comments have been made a part of this summary, and a copy was also given to the developer and developer's engineer.

The citizens were invited to comment. The following people commented:

Anne Heinrichs	R. D. Clarke
Louise Vanderbeek	Same Pecek
Gina Hrybyk	Robert Wissman
John Heinrichs	Steve DeBoy
Joe Twilley	Rich Gaul
Charles Langrehr	

The following questions or comments were raised and answered:

1. WHY IS THE OLD PROCESS BEING USED?
This process was allowed because the original plan had been approved through the C.R.G. process, and the new code states that a C.R.G. that has a material change may come through the process it was originally approved under.
2. DOES THIS DEVELOPMENT NEED 2 MEANS OF ACCESS FOR OVER 100 UNITS?
This development needs two means of access. This requirement is satisfied by a bifurcated entrance road. Each side of the median is classified as a means of access.
3. WHERE ARE THE NOISE BARRIERS PROPOSED BY THE STATE GOING TO BE PLACED?
The developer's representative was not positive where they were to be placed.
4. WHAT ABOUT THE OVERCROWDING OF SCHOOLS?
The school in question is not part of the moratorium so there is no limitation on developing.
5. WE PREFER THAT THE TOWNHOUSES BE IN FEE FOR SALE LOTS. WILL THE DEVELOPER GUARANTEE THIS?
The developer's engineer said that they would prefer to sell the lots and houses but that it would be market driven.
6. PROBLEMS WITH TRAFFIC AT FRANCIS AVENUE AND SELFORD ROAD.
Baltimore County's Traffic Engineering studys only intersections with stop lights for basic services. No intersections in this are under a moratorium.
7. CLARK BOULEVARD AND WASHINGTON BOULEVARD INTERSECTION. WILL THERE BE ANY MODIFICATIONS DONE?
When the subdivision was approximately 200 units, the County was asking for improvements. We are asking the developer to do a traffic study for re-evaluation.

8. MORE RECREATIONS AND PARKS ARE NEEDED IN THE AREA.
9. THERE WAS AN AGREEMENT THAT CLARK BOULEVARD SHOULD BE WIDENED ALONG THE DEVELOPER'S FRONTAGE.
10. SOILS ON SITE ARE VERY UNSTABLE.
The developer's engineer explained that the developer has hired the geotechnic firm of Hills & Carnes.
11. WHEN WILL CONSTRUCTION OF HOUSES BE COMPLETED?
Roads and utilities will be constructed in the Spring of 1998 and houses will go in as sales dictate.
12. HOW MANY TWO-BEDROOM UNITS ARE TO BE SOLD?
Rick Chadsey stated depending on market demand.
13. SIGN WAS PLACED BEHIND TRACTOR.
Signs were posted and certified by a Baltimore County sign poster.
14. Cost of homes probably will be from \$112,000 to \$140,000 depending on amenities.
15. HOW IS THE AREA INFRASTRUCTURE?
A pressure and flow test on the water system must be done prior to record plat. The sewer mains are "OK" in this area.

County staff comments were then reviewed:

The developer's engineer agreed that they would make all the changes and notes that were asked from the County agencies. He also stated that his client would apply for a waiver of road improvements to Clark Boulevard and that an updated traffic study would be done to see if the improvements to the intersection of Clark and Washington Boulevards are still required.

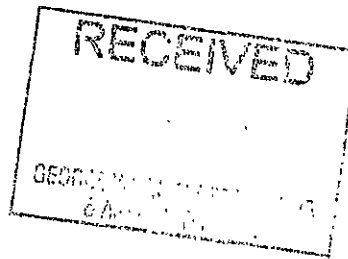
CONCLUSION: The plan was approved, the appeal process was explained, and the meeting was adjourned at 1:00 p.m.

RWB:jrb
8/8/97



County Board of Appeals of Baltimore County

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



April 20, 1998

J. Carroll Holzer, P.A.
305 Washington Avenue, Suite 502
Towson, MD 21204

Re: Case No. CBA-97-155
Highgate /Sycamore Realty
Revisions to CRG Plan

Dear Mr. Holzer:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure, with a photocopy provided to this office concurrent with filing in Circuit Court. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco
Administrator

encl.

cc: Louise Vanderbeek, Vice President
Relay Improvement Assn., Inc
Herbert Plitt c/l J. C. Holzer, Esquire
Anthony J. DiPaula, Esquire
Sycamore Realty Company
✓ Frederick Chadsey /G.W. Stephens, Jr. and Assoc., Inc.
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Donald T. Rascoe, Project Manager
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

IN THE MATTER OF	*	BEFORE
HIGHGATE (F.K.A. HILLTOP	*	
PLACE) /SYCAMORE REALTY CO.	*	COUNTY BOARD OF APPEALS
- DEVELOPER PROPERTY LOCATED	*	
ON THE WEST SIDE CLARK BLVD.,	*	OF
NORTH SIDE OF B & O RAILROAD	*	
	*	BALTIMORE COUNTY
RE: CRG DECISION /AMENDMENT	*	
TO PREVIOUSLY APPROVED	*	CASE NO. CBA-97-155
PLAN	*	
* * * * *		

O P I N I O N

This case comes before this Board by virtue of an appeal filed by the Protestants on August 29, 1996 to County Review Group (CRG) approval of the development plan for Highgate by way of CRG Plan Amendment. After timely filing their Notice of Appeal, they did file, within the requisite 10 days, a Petition on Appeal which set forth with particularity alleged grounds of error on the part of the CRG that related to school population, traffic, soil, historic and safety concerns, but made no mention of any concern that the CRG process was the incorrect route of review. It was not until the case came before this Board for hearing that the issue was raised by a Motion to Dismiss.

As a procedural matter, it appears the Motion to Dismiss should be denied for failure even to set forth the ground in the Petition on Appeal. In the interest of efficiency, however, and out of a desire to consider the merits of the issue and eliminate one more layer of appeal, the Board will continue with its findings.

Under Section 26-169 of the Baltimore County Code, it is clear that the current zoning regulations and procedures are meant to apply to all development with two exceptions, only one of which

arguably applies; it provides in relevant part as follows:

...such development as has received a CRG approval...or such development for which a CRG plan has been accepted for filing by the department of public works prior to the date of adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing as the case may be.

In order to ascertain the statute's applicability, a brief history is in order. On December 4, 1990, Petitioner filed a CRG plan for the subject site which was zoned D.R. 10.5 for about 18 acres and D.R. 5.5 for about 6 acres. The CRG process was suspended when Baltimore County placed a reservation on the property to explore converting it to a public park. During the stay, the entire parcel was rezoned to D.R. 5.5 as part of Baltimore County's Comprehensive Rezoning Process, effective December 15, 1992, zoning which remains under the 1996 Comprehensive Rezoning Maps. The CRG ultimately approved the development as originally submitted, despite the zoning change, on July 8, 1993.

While the CRG's approval initially was affirmed on appeal by the Board of Appeals and the Baltimore County Circuit Court, it was reversed by the Courts of Special Appeals and Appeals as now containing too many units as a result of the downzoning.

In the interim, in 1992, Baltimore County altered the development process by eliminating CRG as the current process and establishing a community input procedure including a Community Input Meeting. Accordingly, the Petitioner apparently sought

County advice and, pursuant thereto, filed a First Amended CRG Plan dated June 4, 1997. The CRG convened its open meeting on July 31, 1997..

The Board thus finds that the development did receive CRG approval, but such approval ultimately was reversed. If its reversal renders the original plan one that has not received a CRG approval, it nonetheless survives as a development for which a CRG plan had been accepted for filing by the Department of Public Works prior to the 1992 adoption date.

In such an instance, Section 26-169 goes on to provide that the development of such an exception "shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be." Appeals of CRG plans are governed by Section 26-209. The standard of review is deferential under subsection (c) inasmuch as final action on such a plan must be presumed correct, and Protestants have the burden of persuading the Board that the CRG applied the incorrect law, acted in an arbitrary, capricious or illegal fashion or was fraudulently induced.

There being no claim of illegal or fraudulent activity, the Board thus is left with the inquiry as to whether any of the enumerated problems specified in the Petition on Appeal rise to the level of making approval below arbitrary or capricious. Protestants' objections are that 1) Highgate's development will have a negative impact upon the population of its neighboring schools; 2) traffic problems of various types remain, including no

traffic study and unresolved problems regarding Clark Boulevard, Route 1 and Cedar Avenue; 3) soil types on the development plan are incompatible with residential uses and can result in structural failure; 4) Highgate will have a negative impact on the Relay Historic District; and 5) a generalized concern regarding Highgate's impact on the health, safety and welfare of the surrounding community.

Taking the concerns in order, the schooling issue is not even an item to be addressed under Section 26-203(b)(1)-(30) of the old CRG statute. Were it properly before the Board, however, the Developer did present concrete evidence dispelling any such concerns. Moreover, the issue will be revisited at the time of application for building permits.

Under the collective traffic concerns, the traffic study also was not required under Section 26-203(b)(1)-(30). Nonetheless, The Traffic Group, Inc., has conducted a traffic study that has been produced to Protestants which establishes that the present traffic controls are adequate and that the anticipated increase in traffic as a result of development will not unduly burden the existing roadways. The Board admittedly is troubled by the Developer's probable plan to seek a waiver of improvements to be made to Clark Boulevard, but concedes that its concerns do not rise to the level of reversible error.

As to the issue of soil types and their compatibility for residential development, the CRG process merely requires the identification of soil types, which the Developer did. Moreover,

the Developer offered solid testimony in the person of Richard M. Hillis who clarified that the soil type does affect the nature and location of buildings, but does not preclude all development. To put the matter in context, he testified that these soils were present in pre-existing developments such as Arbutus and the Baltimore Highlands as well as Franklin Square Hospital and Golden Ring Mall. Mr. Hillis explained that the soils in fact were fine for pavement and houses. He further explained that the roadways were more affected by this condition than anything else, but that something as simple as grading can overcome a "severe" limitation.

With respect to the impact upon the Relay Historic District, Mr. Guckert's testimony as well as the visual assessment of the plan demonstrate that the impact is tangential at best, certainly nothing approaching the level of persuasion warranting reversal. The Developer did comply with its obligation under Section 26-203(b)(8) insofar as there are no historic properties or buildings contained within the parameters of the proposed development. Finally, the generalized concerns set forth in the petition lacked any meaningful factual basis in terms of probative testimony and cannot serve as a basis for reversal or remand.

In short, the CRG has acted properly in considering and deciding upon all issues properly before it. Protestants have not rebutted the presumption of correctness on any count and thus not persuaded the Board in accordance with its burden of proof.

O R D E R

IT IS THEREFORE THIS 20th day of April, 1998

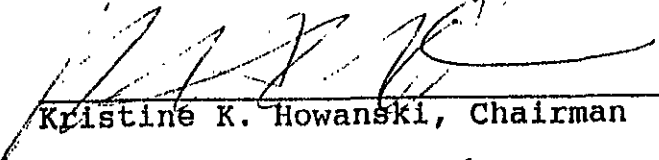
by the County Board of Appeals of Baltimore County

ORDERED that the Motion to Dismiss filed in these proceedings be and is hereby DENIED; and it is further

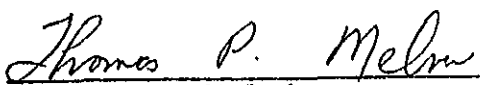
ORDERED that the decision of the County Review Group dated July 21, 1997, wherein the development plan for Highgate (f.k.a. Hilltop Place) was approved by way of CRG Plan Amendment, be and the same is hereby AFFIRMED.

Any Petition for Judicial Review from this decision will be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY



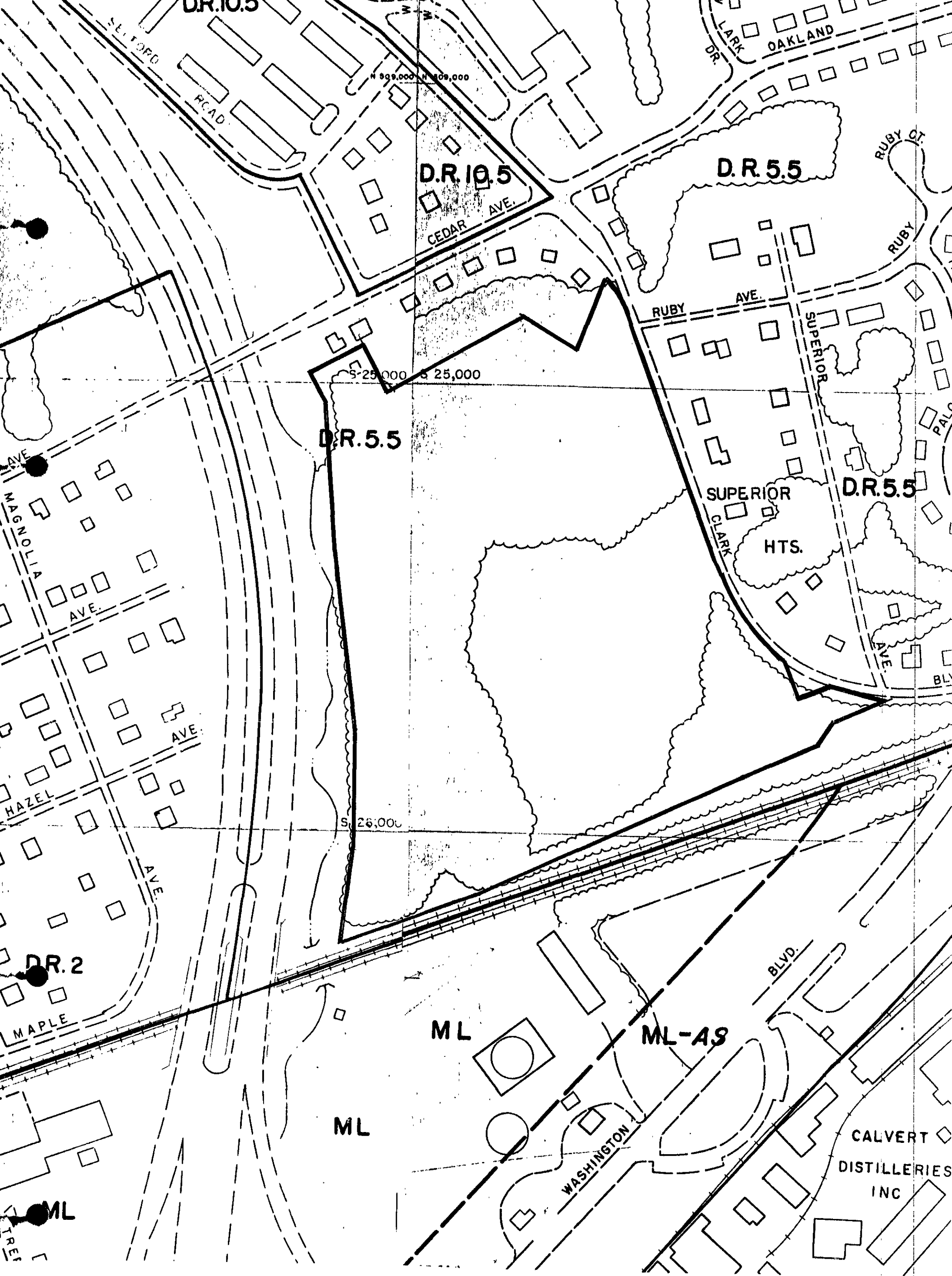
Kristine K. Howanski, Chairman



Thomas P. Melvin



Harry E. Buchheister, Jr.



HIGHGATE

EXCERPTS FROM ZONING
MAPS, SW 6 & 7 D

BALTO. CO., MD.

ELECT. DIST. # 13, C-1

SCALE: 1" = 200'

FEB. 24, 2000

507

00-358 SPA

The
Traffic
Group

Ref No
4

April 4, 2000

Apartment Services, Inc.
Lawrence E. Julio, President
10 Parks Avenue
Hunt Valley, Maryland 21030

RE: Hilltop Place
Baltimore County, Maryland
Our Job No.: 930402

Dear Mr. Julio:

The Traffic Group, Inc. has undertaken a traffic analysis relating to the need for two off-site road improvements as follows:

1. *MODIFICATIONS TO THE INTERSECTION OF US 1 AND CLARK BOULEVARD.*
2. *NEED TO WIDEN CLARK BOULEVARD ALONG THE SITE FRONTAGE FROM CEDAR AVENUE TO THE RAILROAD TRACKS NEAR US 1.*

Neither of these improvements can be justified from a traffic engineering or transportation planning point of view to be constructed by the developer of the subject property. The reasons for our opinion are as follows:

US 1 and Clark Boulevard - this intersection has experienced poor sight distance looking to the south along US 1 from Clark Boulevard since The Traffic Group, Inc. was involved in this project over ten years ago. In December, 1992, the Maryland State Highway Administration sent a letter to Baltimore County indicating that the intersection required improvements and requested Baltimore County to examine what the improvements would be and what role the developer would need to play in making modifications to the intersection. The Traffic Group, Inc. prepared a traffic impact analysis on 4/16/93 and determined that, indeed, the sight distance is inadequate and that improvements would/should be undertaken. (See Exhibit 1 photographs)

