4/11/03

IN THE MATTER OF ENSOR PROPERTY /PDM VII-352 THE GONZALES CO - DEVELOPER NE & SW/S MIDDLETOWN ROAD, BETWEEN I-83 AND YORK ROAD & I-83 AND FALLS ROAD 7TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY
RE: DEVELOPMENT PLAN DECISION (Case No. CBA-01-145 and 01-114-SPH)	* * *	Civil Action No.: 03-C-01-012166

* * * * * * * * *

ORDER OF REMAND BY ORDER
OF THE CIRCUIT COURT FOR BALTIMORE COUNTY
PURSUANT TO ORDER OF THE MARYLAND COURT OF SPECIAL APPEALS

At the joint request of parties, this matter having been remanded with specific instructions to the Circuit Court for Baltimore County by the Maryland Court of Special Appeals by Order dated October 22, 2002, in Case No. 00062, September Term, 2002, this matter comes before the Board of Appeals on remand by Order of Judge Lawrence R. Daniels, Circuit Court for Baltimore County, filed March 11, 2003, in which Judge Daniels orders as follows:

This Court's Order of February 27, 2002 having been vacated by the Court of Special Appeals, it is this 11th day of March 2003, hereby

ORDERED, that the Order of Dismissal, dated October 26, 2001, issued by the County Board of Appeals for Baltimore County, is hereby **VACATED**, and it is further

ORDERED, that the County Board of Appeals for Baltimore County shall remand this case to the Hearing Officer for Baltimore County for further proceedings consistent with the Hearing Officer's Opinion and Development Plan Order of September 25, 2001."

IT IS THEREFORE this 4th day of April, 2003, by the County Board of Appeals of Baltimore County

ORDERED that, pursuant to the Remand Order of the Circuit Court for Baltimore County, filed March 11, 2003 (copy of which is attached hereto), pursuant to the Order of the Maryland Court of Special Appeals dated October 22, 2002 (a copy of which is attached hereto), this matter is hereby **REMANDED** to the Hearing Officer for Baltimore County for further proceedings consistent with said Order.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Lawrence S. Wescott

Charles L. Marks

for
7-01-145
01-114-SPH

	*	IN THE
JAN STAPLES, *et al* Appellants	*	CIRCUIT COURT
	*	FOR
V.		
	*	BALTIMORE COUNTY
ARTHUR S. TRACEY, *et al* Respondents	*	CASE NO. 03-C-01-012166

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

ORDER

This Court's Order of February 27, 2002 having been vacated by the Court of Special Appeals, it is this 11TH day of March 2003, hereby

ORDERED, that the Order of Dismissal, dated October 26, 2001, issued by the County Board of Appeals for Baltimore County, is hereby **VACATED**, and it is further

ORDERED, that the County Board of Appeals for Baltimore County shall remand this case to the Hearing Officer for Baltimore County for further proceedings consistent with the Hearing Officer's Opinion and Development Plan Order of September 25, 2001.

LAWRENCE R. DANIELS
JUDGE

cc: Howard L. Alderman, Jr., Esquire
J. Carroll Holzer, Esquire
County Board of Appeals

RECEIVED
MAR 13 2003
BALTIMORE COUNTY
BOARD OF APPEALS

BEFORE THE COURT OF SPECIAL APPEALS OF MARYLAND

Jan Staples, *et al.* *Appellants* v. Arthur S. Tracey, *et al.* *Appellees.*	September Term, 2002 No. 00062

ORDER

This matter having come before the Court on a Joint Stipulation, it is this 22nd day of October, 2002,

ORDERED, that the February 27, 2002 Order of the Circuit Court for Baltimore County is hereby VACATED, with each party to the appeal to pay their own and respective costs; and it is

FURTHER ORDERED, that this case is hereby remanded to the Circuit Court for Baltimore County with specific instructions to that Court to vacate the Order of Dismissal, dated October 26, 2001, issued by the County Board of Appeals for Baltimore County and to direct that Board to remand this case to the Hearing Officer for Baltimore County for further proceedings consistent with the Hearing Officer's Opinion and Development Plan Order of September 25, 2001.

Mandate to issue forthwith.

Bert F. Murphy Jr.
CHIEF JUDGE

Copies to:

Howard L. Alderman, Jr., Esquire
Levin & Gann, PA
Nottingham Centre, 8th Floor
502 Washington Avenue
Towson, Maryland 21204

J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 Fairmount Avenue
Towson, Maryland 21204

BEFORE THE COURT OF SPECIAL APPEALS OF MARYLAND

Jan Staples, *et al.* *Appellants* v. Arthur S. Tracey, *et al.* *Appellees.*	September Term, 2002 No. 00062

JOINT STIPULATION

The parties to the above-captioned appeal, pursuant to Maryland Rules 2-311 & 7-209, hereby stipulate that, based on an agreement in settlement reached, this appeal should resolved by this Court with specific instructions to the lower court for further remand for further proceedings consistent with the Hearing Officer's Opinion and Development Plan Order of September 25, 2001.

Howard L. Alderman, Jr., Esquire
Levin & Gann, PA
Nottingham Centre, 8th Floor
502 Washington Avenue
Towson, Maryland 21204
410-321-0600
Attorneys for David E. Gonzales, Appellee

J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 Fairmount Avenue
Towson, Maryland 21204
410-825-6961
Attorney for Appellants

4/4/03

County Board of Appeals of Baltimore County

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

April 4, 2003

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

RE: *In the Matter of: Ensor Property*
Civil Action No. 03-C-01-012166
Case No. CBA-01-145 /PDM VII-352
On Remand from Circuit Court

Dear Mr. Holzer:

Enclosed please find a copy of the Board's Order of Remand issued this date by Order of the Circuit Court for Baltimore County, pursuant to the Order of the Court of Special Appeals.

Very truly yours,

Kathleen C. Bianco /kts

Kathleen C. Bianco
Administrator

Enclosure

c: Andy & Page Crosby
Dr. & Mrs. Richard McQuaid
Jan Staples
Howard L. Alderman, Jr., Esquire
Mr. & Mrs. A. Richard Tracey
Mr. & Mrs. Arthur Tracey
David Gonzales
KCI Technologies, Inc.
Roger & Trudi Simeone
Alicia Barbers
Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Donald T. Rascoe, Development Manager /PDM
Walt Smith, Project Manager /PDM
Arnold Jablon, Director /PDM

Printed with Soybean Ink
on Recycled Paper

3/4/02

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 849

September Term, 2001

PAUL DORSEY, ET AL.

v.

BETHEL A.M.E. CHURCH

Davis,
Hollander,
Barbera,

JJ.

Opinion by Davis, J.

Filed: March 4, 2002

Appellee Bethel A.M.E. Church purchased approximately 255 acres upon which it intended to construct a church complex in the Granite community of Baltimore County. Because the proposed site had previously been zoned for churches and similar buildings for religious worship, appellee was only required to have a development plan reviewed and approved through the development review and approval process, as outlined in the Baltimore County Code (B.C.C.)(1988, 2001 Supp.) §§ 26-201 through 26-220 (Development Regulations). Pursuant to the Development Regulations, the Zoning Commissioner, in his or her capacity as Hearing Officer, was to determine whether the "concept plan" submitted by the applicant, conformed with applicable regulations and laws.

On August 28, 2000, a public hearing regarding appellee's development plan was conducted before Baltimore County Hearing Officer Larry Schmidt. Appellant Greater Patapsco Community Association, Inc. (the Association), appeared as a protestant to the plan.[1] The Hearing Officer heard testimony and evidence on September 6-8, 15, and 19, 2000. In lieu of oral closing arguments, the parties submitted written memoranda on or before

---

[1]Initially, the Association was the sole protestant to appellee's development plan. As explained later in the opinion, however, Paul Dorsey, Rosalyn Roddy, Kathleen Skullney, Susan Meekins, James and Jean Higgs, Celia Lange, Dana B. Marvel, and Joseph Tatarewicz, all members of the Association, filed an Amended Petition for Judicial Review, thereby joining them as individual parties to the present appeal. We decide their status as appellants, *infra*, in our discussion of standing.

October 13, 2000 and, on October 30, 2000, the Hearing Officer issued an interlocutory order, which stated, in relevant part:

> . . . [A] fair review of the record of this case could support a finding that Old Court Road and the surrounding road network are adequate to carry anticipated traffic volumes from the Bethel Church. . . . [T]he undersigned Hearing Officer recognizes the significant traffic volumes on Sunday morning that will be generated by this project. Given the anticipated volumes, I feel compelled to require further investigation and analysis of the three issues identified above before I reach those conclusions and approve this plan. Although not persuaded to deny or condition the plan based on the record thus far, I am not willing to grant unconditional approval either, until such time as an investigation and analysis of the capacity of Old Court Road on Sunday is completed. . . .
>
> Therefore, I will reconvene the Hearing Officer's Hearing to consider this analysis when completed. . . . Thus, the Order that follows hereinafter is interlocutory in nature, and any final Order, either denying or approving with conditions the development plan, will be issued upon completion of those further proceedings and consistent herewith. It bears noting that these additional proceedings shall be limited to this traffic issue, only. . . .
>
> IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 30th day of October, 2000, that within ninety . . . days of the date of this Order, the Developer shall submit the requisite traffic analysis described herein[ ]above; and
>
> IT IS FURTHER ORDERED that this matter shall thereafter be scheduled for further proceedings before this Hearing Officer.

Disputing the legality of the Hearing Officer's interlocutory order, appellant noted its timely appeal with the Baltimore County Board of Appeals (Board) on November 27, 2000. On December 28, 2000, a hearing was conducted during which appellee moved to dismiss the appeal on the basis that the Hearing Officer had not taken final action on the development plan and, therefore, appellants' appeal was not ripe. The Board issued a written opinion on January 12, 2001, granting appellee's motion to dismiss, as the interlocutory order was "not a final decision on the subject development plan, and therefore, [was] not ripe for appeal." The Board noted that judicial review of an interlocutory order is provided for in Md. Code (1999 Repl. Vol.), State Gov't (S.G.) § 10-222(2)(b):

> *Review of interlocutory order.* Where the presiding officer has final decision-making authority, a person in a contested case who is aggrieved by an interlocutory order is entitled to judicial review if:
>
> . . .
>
> (2) the interlocutory order:
> (i) determines the rights and liabilities, and
> (ii) has immediate legal consequences; and
> (3) postponement of judicial review would result in irreparable harm.

In light of the relevant statute, the Board concluded that "neither side [was] harmed by [the] interlocutory order, and . . . each has

preserved the right to appeal the ultimate final opinion and order by the Hearing Officer . . . without prejudice."

Appellants filed a timely Petition for Judicial Review in the Circuit Court for Baltimore County on February 12, 2001.[2] On March 26, 2001, an Amended Petition for Judicial Review was filed by the Association, Paul Dorsey, Rosalyn Roddy, Kathleen Skullney, Susan Meekins, James and Jean Higgs, Celia Lange, Dana B. Marvel, and Joseph Tatarewicz. Appellee filed a Preliminary Motion to Dismiss Appeal on March 12, 2001, on the grounds that the appeal was not ripe. On May 21, 2001, after hearing argument from both sides, the trial judge granted appellee's motion to dismiss and, as a result, invalidated the proposed amendments.

Appellants noted this timely appeal on June 19, 2001, wherein they presented one question for review, which we rephrase for clarity as follows:

> Did the trial court err in dismissing appellants' Petition for Judicial Review without a hearing on the merits?

In addition, appellee filed a Motion to Dismiss Appeal, contending that none of appellants have standing.[3]

---

[2]Appellants additionally filed a Motion for Stay of County Board of Appeals for Baltimore County Proceedings on February 27, 2001, which was denied on March 6, 2001.

[3]Appellee's counsel appeared for oral argument; appellants' counsel submitted on brief.

We grant appellee's Motion to Dismiss Appeal with regard to Paul Dorsey, Rosalyn Roddy, Kathleen Skullney, Susan Meekins, James and Jean Higgs, Celia Lange, Dana B. Marvel, and Joseph Tatarewicz, but deny its motion with regard to the Association. We answer appellants' question in the affirmative and, therefore, reverse the judgment of the circuit court.

STANDARD OF REVIEW

In reviewing a trial court's grant of a motion to dismiss, an appellate court is to determine whether it was legally correct in its decision. *See Hrehorovich v. Harbor Hosp. Center, Inc.*, 93 Md. App. 772 (1992).

LEGAL ANALYSIS

I[4]

Appellee contends that none of the parties to this appeal have standing and, as a result, their appeal should be dismissed. Apparently conceding that the Association is a proper party to this appeal, appellee points out that "[t]he only individuals who spoke clearly did so in their capacity as representatives for the Association," noting that "Ros[a]yln Roddy spoke as 'President of

---

[4]As a decision to grant appellee's motion to dismiss would obviate the need to address the merits of appellants' question presented, we consider the motion to dismiss first.

the Greater Patapsco Community Association,' and Kathleen Skullney spoke as 'a member of the Public Affairs Committee designated by the Board of Directors of the Greater Patapsco Community Association to speak on its behalf on certain issues.'" Acknowledging that, regardless of appellee's failure to raise the issue at the circuit court level, we have the authority to consider the issue of standing, appellant responds by arguing that, "[o]nce the appeal is properly noted, nothing in the rules prevents anyone . . . from being recognized as a party to the appeal." We consider this to be an overly broad statement of Maryland law.

Appellants direct us to *Sugarloaf Citizens' Ass'n. v. Dep't. of Environment*, 344 Md. 271 (1996), as a roadmap to the issue of standing in administrative appeals. There, the Court recognized a distinction between standing to be a party to an administrative proceeding and standing to request judicial review of an administrative order in court. *Id.* at 286. Although the distinction has been the subject of much discussion in Maryland appellate courts,[5] the rule can easily be summed up: "In order to be entitled to judicial review in a contested case, one must both

---

[5]*Sugarloaf*, 344 Md. 271 (1996); *Medical Waste Assoc., Inc. v. Maryland Waste Coalition, Inc.*, 327 Md. 596 (1992); *Hitzrot v. County Board of Appeals of Baltimore County*, 262 Md. 297 (1971); *Shore Acres Improvement Assoc., Inc. v. Anne Arundel County Board of Appeals*, 251 Md. 310 (1968); *Bryniarski v. Montgomery County Board of Appeals*, 247 Md. 137 (1967); *Hertelendy v. Montgomery County Board of Appeals*, 245 Md. 554 (1967); and *Dubay v. Crane*, 240 Md. 180 (1965).

be a 'party' to the administrative proceedings and be 'aggrieved' by the final decision of the agency." *Medical Waste Ass'n. v. Maryland Waste Coalition, Inc.*, 327 Md. 596, 611 (1992). As established by the Court of Appeals, one must satisfy two elements in order to appeal from the board of appeals to the circuit court; however, as appellee does not take issue with the second condition, we limit our analysis to determine whether appellants, as delineated in *Medical Waste, supra*, constitute parties to the action.

Clearly, the Association was a "party" to the proceedings at the administrative level. As further explained in *Medical Waste:*

> Bearing in mind that the format for proceedings before administrative agencies is intentionally designed to be informal so as to encourage citizen participation, we think that absent a reasonable agency or other regulation providing for a more formal method of becoming a party, anyone clearly identifying himself to the agency for the record as having an interest in the outcome of a matter being considered by the agency, thereby becomes a party to the proceedings.

Id. (citing *Morris v. Howard Res. & Dev. Corp.*, 278 Md. 417, 423 (1976)). From the record it is apparent that the Association represented itself to the Board as having an interest in the outcome of the proceedings. Indeed, the Association appealed the order of the Zoning Commission on its letterhead. *See, e.g., Hitzrot v. County Board of Appeals of Baltimore County*, 262 Md.

297, 298-99 (1971)(noting appeal to the board of appeals constitutes a party to the proceeding).

The individuals listed on the Amended Petition for Judicial Review, on the other hand, failed to represent their individual interests to the Board. As noted by appellee, all involvement by Roddy was in her capacity as President of the Association, including her signature on the above-referenced Notice of Appeal. *See, e.g., Shore Acres Improvement Assoc., Inc. v. Anne Arundel County Board of Appeals*, 251 Md. 310 (1968)(upholding lower court ruling that party lacked standing because his signature only appeared in the proceedings in his capacity as president of the association). Similarly, Skullney's involvement was solely in her capacity as a "member of the Public Affairs Committee designated by the Board of Directors of the Greater Patapsco Community Association to speak on its behalf," as noted in the transcript of the Board's proceedings. Although Roddy and Skullney actually appeared before the Board - albeit in a representative role - Dorsey, Meekins, the Higgses, Lange, Marvel, and Tatarewicz were not named in the transcript until the Amended Petition was filed on February 12, 2001. In light of the dearth of any reference to these individuals, we decline to denominate them as parties to the underlying administrative hearing. We, therefore, concur with appellee with respect to the individuals and strike them from this appeal.

II

Appellant[6] contends that the trial judge erred in its dismissal of appellant's appeal without a hearing, as the decision of the Board constituted a final order, triggering its statutory right to review at the circuit court level. Appellee counters that the interlocutory nature of the Hearing Officer's order caused any appeal taken therefrom to be premature. The appeal, concludes appellee, was, therefore, properly dismissed. For the reasons expressed *infra*, we agree with appellant.

Due to the confusing nature of the proceedings leading to the instant appeal, we deem it helpful, if not indispensable, to rely on the following time line:

> 10/30/00 - Hearing Officer issues interlocutory order
>
> 12/28/00 - Hearing before Board on propriety of Hearing Officer's actions; upon appellee's preliminary motion to dismiss the appeal as unripe, Board dismisses; in addition, Board declares Hearing Officer's decision proper
>
> 2/12/01 - Appellant files Petition for Judicial Review in Circuit Court for Baltimore County; appellee again moves for preliminary dismissal of action as premature
>
> 5/21/01 - Trial court dismisses, concluding that only an appeal from a final development plan order could be heard

---

[6]Here, and through the end of the opinion, we refer to appellant in the singular, as we concluded in Section I that Paul Dorsey, Rosalyn Roddy, Kathleen Skullney, Susan Meekins, James and Jean Higgs, Celia Lange, Dana B. Marvel, and Joseph Tatarewicz do not have standing on appeal.

Appellee points out that, during the period of time summarized above, appellee submitted a revised traffic report to the Hearing Officer pursuant to the interlocutory order of the Hearing Officer. The Hearing Officer reconvened the hearing on March 6, 2001. The hearing continued on March 9 and concluded on March 29, 2001. The Hearing Officer issued a final decision approving the development plan with conditions on May 10, 2001. That decision was appealed to the Board of Appeals by appellants, including the issue of the Hearing Officer's authority to reconvene the original hearing and that appeal is pending. Had the circuit court affirmed the Board's dismissal rather than granting appellee's motion to dismiss, the result would have been that the parties would be in the same position they now find themselves in the proceedings below - awaiting the Board's decision regarding the approval of the development plan with conditions. As stated above, however, we must merely determine the propriety of the trial court's decision to dismiss appellant's appeal on grounds of ripeness.

Generally, an action for judicial review of an administrative order must stem from a final administrative order. *Holiday Spas v. Montgomery County Human Relations Commission*, 315 Md. 390, 395 (1989). To constitute a final judgment, the ruling of a lower court or similar entity "must be so final as either to determine and conclude the rights involved or to deny the appellant the means of further prosecuting or defending his or her rights and interests

in the subject matter of the proceeding." *Rohrbeck v. Rohrbeck*, 318 Md. 28, 42 (1989). An administrative order is final if it determines rights and liabilities or has legal consequences and leaves nothing further for the agency to do. *Md. Comm'n on Human Relations v. Baltimore Gas and Electric Co.*, 296 Md. 46, 52 (1983). Because a dismissal of a party's claim "puts the plaintiff out of court and terminates the particular action," it constitutes an appealable order under the final judgment rule. *Moore v. Pomory*, 329 Md. 428, 432 (1993).

The Board, in the case *sub judice*, clearly dismissed appellant's appeal and remanded the case to the Hearing Officer "for findings in accordance with his interlocutory order." That appellant "would have the right to appeal, in full, to [the] Board, on all issues of the subject Development Plan," had no effect on the appealability of the decision. *See id.* (opining that dismissals with and without prejudice constitute final orders). As stated by the Court of Appeals:

> [T]he action of an administrative agency, like the order of a court, is final if it determines or concludes the rights of the parties, or if it denies the parties means of further prosecuting or defending their rights and interests in the subject matter in proceedings before the agency, thus leaving nothing further for the agency to do.

Md. Comm'n, 296 Md. at 56. The dismissal of appellant's claim by the Board constituted a final judgment, as there was nothing

further for it to adjudicate. Indeed, the Board's decision could not have been more final.

Contrary to appellee's arguments, the issue before the trial judge in the case *sub judice* was not whether the Hearing Officer's interlocutory order was proper under the relevant B.C.C. section; rather, it was *whether the Board properly dismissed appellant's appeal of that order as premature.* As stated above, the grant of a motion to dismiss constitutes a final order. Presented with the task of reviewing the propriety of the Board's dismissal, therefore, the trial court had only two choices. If it concluded that the Board correctly determined the Hearing Officer's order to be interlocutory and, therefore, not ripe, it could have affirmed the dismissal. Or, in the event he determined that the Board had incorrectly dismissed appellant's claim, the trial judge could have reversed the decision of the Board. The trial judge chose neither of these options before him, electing instead to dismiss appellant's appeal. In analyzing the ripeness of appellant's appeal to the Board, the trial court engaged in clear error, as it essentially ignored the ruling of the Board. As established in *Hope v. Baltimore County*, 44 Md. App. 481 (1980), the decision of the Board was the only decision before it for judicial review.

Moreover, dismissal without review of the Board's decision constituted clear error:

> A court ordinarily should not . . . remand an administrative proceeding before initiating

> any review whatsoever. Where an administrative decision is final and is subject to judicial review, the party aggrieved by the decision is entitled to review. Remanding a case without any review is tantamount to denying review. If remand is permitted at this point, a circuit court could effectively render meaningless the aggrieved party's right.

Holiday Spas, 315 Md. at 400. In light of the above analysis, we remand to the circuit court to address the merits of appellant's appeal regarding the Board's order.

APPELLEE'S MOTION TO DISMISS GRANTED WITH REGARD TO PAUL DORSEY, ROSALYN RODDY, KATHLEEN SKULLNEY, SUSAN MEEKINS, JAMES HIGGS, JEAN HIGGS, CELIA LANGE, DANA B. MARVEL, AND JOSEPH TATAREWICZ.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID ONE-THIRD BY APPELLANT ASSOCIATON, ONE-THIRD BY INDIVIDUAL PROTESTANTS AND ONE-THIRD BY APPELLEE.

3/2/02

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

FILE COPY

PETITION OF JAN STAPLES, PAGE CROSBY and RICHARD McQUAID *Appellants.* **IN RE: ENSOR PROPERTY DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING [N&S Side of Middletown Road, E&W of Interstate 83] 7th Election District 3rd Councilmanic District** **Arthur S. Tracey, *et al*, Owner;** **David E. Gonzales Companies, Developer,** *Respondents.* **Case Nos. CBA 01-145 & 01-114-SPH**	**Case No.: 03-C-01-012166**

MOTION TO ALTER/AMEND/REVISE JUDGMENT

The David E. Gonzales Companies and David E. Gonzales, two of the Respondents in the above-captioned matter (referred to collectively herein as "**Gonzales**") by and through their undersigned legal counsel, in accordance with Maryland Rules 2-534 and 2-535, hereby move that the Court alter, amend and/or revise the judgment rendered in the above-referenced case on February 27, 2002, and in support thereof state as follows:

1. Gonzales is currently processing a proposed plan of residential development and a Zoning Petition for Special Hearing in concert therewith through the Baltimore

RECEIVED AND FILED
02 MAR 12 PM 4: 24
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

County development process pertaining to property owned by Arthur S. Tracey, *et al* (other of the Respondents in the above-captioned action.) (the "Development Plan").

2. After conducting approximately five full or partial days of hearing on the Development Plan, the Hearing Officer issued a paper captioned *Hearing Officer's Opinion and Development Plan Order* on September 25, 2001 (the "interim order").

3. The interim order addressed itself only to certain of the issues raised on appeal and noted specifically that additional evidence was necessary to address an issue raised relating to noise emanating from Interstate 83 (Harrisburg Expressway).

4. The Development Regulations provide specifically that "[a]ny person aggrieved or feeling aggrieved by **final action** on a [development] plan may appeal to the county board of appeals within thirty (30) days **after the date of the final decision** of the hearing officer." (Emphasis added.) (Code § 26-209(a)(1))

5. Appeals from the zoning commissioner or the director of zoning administration and development management to the County Board of Appeals for Baltimore County ("Board") are set forth in Code § 26-132, which provides in pertinent part that "[n]otice of such appeals shall be filed, in writing, with the director within thirty (30) days from the date of any **final order** appealed . . . ." (Emphasis added.)

6. The Appellants in this matter (who were Protestants before the Hearing Officer/Zoning Commissioner) purported to file an appeal of the interim order ("Appellants' Appeal").

7. The Board, *sua sponte*, issued an Order of Dismissal (without prejudice) of Appellants' Appeal on October 26, 2001 (the "Dismissal Order"; a copy of which is attached hereto under Tab "A" and incorporated herein), after concluding that ". . . the matter is not ripe for appeal at this time. At such time as the Hearing Officer renders a Final Opinion and Development Plan Order, any party then aggrieved shall have the right to appeal **in full** to this Board **on all issues** of the subject Development Plan and Petition for Special Hearing." (Emphasis added.) (Dismissal Order at 2.)

8. On or about October 28, 2001, the Appellants sought reconsideration by the Board of its Dismissal Order. Gonzales filed with the Board its opposition to the requested reconsideration.

9. On November 7, 2001, the Board issued its Response to Motion for Reconsideration (the "Board's Response"; a copy of which is attached hereto under Tab "B" and incorporated herein), affirming its Dismissal Order reasserting that the subject matter of the appeal as filed "is not ripe for appeal at this time."

10. On November 20, 2001, the Appellants filed a Petition for Judicial Review with this Court, seeking a review of the Dismissal Order and the Board's Response ("Appellants' Petition").

11. On November 27, 2001, Gonzales, through counsel, filed their Response to Notice of Appeal as required by Maryland Rule 7-204.

12. On December 18, 2001, Gonzales, through counsel, filed its Motion to Dismiss

Appellants' Petition (the "Dismissal Motion").

13. Appellants filed their Answer to Motion to Dismiss Appeal and Request for Hearing with this Court.

14. On February 27, 2002, this Court heard oral argument from counsel involved in this case, including argument by counsel for the Appellants that the Hearing Officer exceeded his statutory authority in issuing the interim order (the "Motion Hearing").

15. At the conclusion of the Motion Hearing, the Court granted the Dismissal Motion after finding that the Hearing Officer, acting pursuant to the authority granted to him by Baltimore County Code Section 26-206(e) [incorporating the rules of the zoning commissioner by reference], indeed had the authority to issue the interim order and that pursuant to that interim order there was additional evidence and testimony to be considered by the Hearing Officer.

16. On Monday, March 4, 2002, five days after the Motion Hearing, the Maryland Court of Special Appeals issued its reported decision in the case of *Paul Dorsey, et al. v. Bethel A.M.E. Church*, No. 849, September Term, 2001. A copy of the opinion in the *Dorsey* case, obtained from the judicial website maintained by the Maryland Court of Appeals, is attached hereto under Tab "C" and is incorporated herein.

17. On somewhat similar facts, the Court of Special Appeals considered whether or not the County Board of Appeals for Baltimore County properly dismissed [after the filing of a motion to dismiss by counsel for Bethel and after conducting a hearing on that

motion] an appeal of an interlocutory order issued by the Hearing Officer for Baltimore County pertaining to a development plan for the property owned by respondent, Bethel.

18. The *Dorsey* court concluded that the Board's dismissal of the appeal of the interlocutory order constituted a final order. *Dorsey* at 12.

19. The *Dorsey* court held that when reviewing an action of the Board dismissing an appeal of an interlocutory order of the Baltimore County Hearing Officer, the Circuit Court for Baltimore County has two choices:

> [1] If it concluded that the Board correctly determined the Hearing Officer's order to be interlocutory and, therefore, not ripe, **it could have affirmed the dismissal.** [2] Or, in the event he determined that the Board had incorrectly dismissed appellant's claim, the **trial judge could have reversed the decision of the Board.**

Dorsey at 12. (Emphasis added.)

20. The *Dorsey* court then found that in not exercising either of the two articulated options, the Circuit Court "engaged in clear error, as it essentially ignored the ruling of the Board." *Dorsey* at 12.

21. In order to promote judicial economy and recognition of a very recent, reported decision of the Maryland Court of Special Appeals, Gonzales has filed this Motion to request that the Court alter, amend and/or revise its decision in the instant case consistent with the holding of the *Dorsey* court.

22. The decision of the *Dorsey* court was a case of first impression relative to an interlocutory order issued by the Baltimore County Hearing Officer, issued after the decision

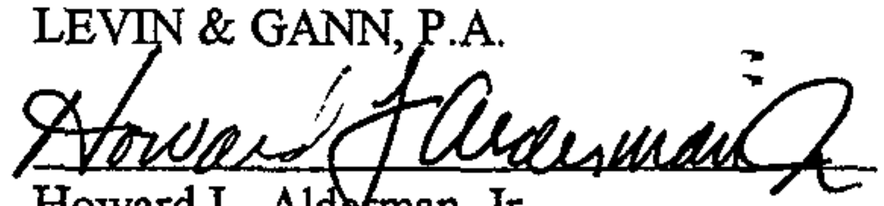
in the instant case, and counsel for Gonzales newly-discovered the *Dorsey* opinion only after the Motion Hearing.

For all of the above reasons, in accordance with Maryland Rules 2-534 and 2-535, Gonzales respectfully requests that:

A. The Court alter/amend and/or revise its judgment in this matter, affirming the October 26, 2001 *Order of Dismissal* and the December 7, 2001 *Response to Motion for Reconsideration* issued by the County Board of Appeals for Baltimore County; and

B. For such further relief as the nature of this case and justice may require.

LEVIN & GANN, P.A.



Howard L. Alderman, Jr.
LEVIN & GANN, P.A.
Nottingham Center, 8th Floor
502 Washington Avenue
Towson, MD 21204
(410) 321-0600/ (410) 296-2801 [FAX]

Attorneys for David E. Gonzales Companies
and David E. Gonzales

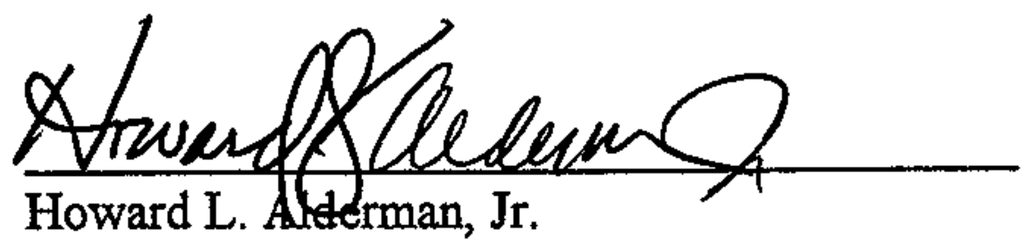
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 2002, a copy of the foregoing Motion to Alter/Amend/Revise Judgment was mailed via First-Class, United States Mail to the following:

J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 Fairmount Avenue
Towson, Maryland 21286
Attorneys for Appellants

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

Robert D. Porter, Esquire
Hodes, Ulman, Pessin & Katz, PA
901 Dulaney Valley Road, Suite 400
Towson, Maryland 21204
Attorneys for Arthur S. Tracey, et al



Howard L. Alderman, Jr.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF JAN STAPLES, PAGE CROSBY and RICHARD McQUAID *Appellants.* **v.** **Arthur S. Tracey, *et al*, Owner,** **David E. Gonzales Companies, *et al*, Developer,** *Respondents.* **Case Nos. CBA 01-145 & 01-114-SPH**	**Case No.: 03-C-01-012166**

ORDER

This matter having come before the Court and after consideration of the Motion to Alter/Amend/Revise Judgment, filed by the David E. Gonzales Companies and David E. Gonzales, and any response thereto filed by the Appellants, and this Court having determined that the judgment rendered on February 27, 2002, should be revised, it is this _____ day of _____, 2002,

ORDERED, that the October 26, 2001 *Order of Dismissal* and the December 7, 2001 *Response to Motion for Reconsideration* issued by the County Board of Appeals for Baltimore County are hereby AFFIRMED, and it is

FURTHER ORDERED, that the February 27, 2002 judgment of this Court is hereby revised and amended consistent with this Order.

_____
LAWRENCE R. DANIELS, JUDGE

Copies to:

Howard L. Alderman, Jr.
Levin & Gann, PA
NOTTINGHAM CENTRE, 8TH FLOOR
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND 21286

County Board of Appeals for Baltimore County
400 WASHINGTON AVENUE, SUITE 49
OLD COURTHOUSE
TOWSON, MARYLAND 21204

Robert D. Porter, Esquire
HODES, ULMAN, PESSIN & KATZ, PA
901 DULANEY VALLEY RD, SUITE 400
TOWSON, MD 21204

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

DIRECT DIAL
410-321-4640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
FACSIMILE 410-296-2801

FILE COPY

ELLIS LEVIN (1893-1960)

March 12, 2002

VIA HAND DELIVERY
Clerk
Circuit Court for Baltimore County
401 Bosely Avenue, Second Floor
Towson, Maryland 21204

RE: Petition of Jan Staples, et al.
Motion to Alter/Amend/Revise Judgment
Case No. 03-C-01-001342

Madame Clerk:

Enclosed, please find a Motion to Alter/Amend/Revise Judgment and proposed Order for the Court's consideration, filed on behalf of David E. Gonzales and the David E. Gonzales Companies. As noted below, a courtesy copy is also being provided to Judge Lawrence R. Daniels.

Please transmit the Court's file, together with this Motion, to Judge Lawrence R. Daniels as soon as possible. Should you additional information with respect to either paper filed herewith, please do not hesitate to contact me.

Thank you.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosure
c (w/encl.): Mr. David E. Gonzales
The Honorable Lawrence R. Daniels
J. Carroll Holzer, Esquire
County Board of Appeals for Baltimore County
Robert D. Porter, Esquire

02 MAR 14 PM 12:28

1/15/02

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
	*	
PETITION OF: JAN STAPLES, PAGE CROSBY, AND DR. RICHARD MCQUAID	*	
	*	CIVIL ACTION NO.: 03-C-01-012166
FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	
OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE	*	
TOWSON, MARYLAND 21204	*	
IN THE MATTER OF: DEVELOPMENT PLAN HEARING AND PETITION FOR	*	
SPECIAL HEARING	*	
NE AND SW/S MIDDLETOWN ROAD (ENSOR PROPERTY)	*	
ARTHUR S. TRACEY AND RICHARD TRACEY – OWNERS	*	
DAVID E. GONZALES – CONTRACT PURCHASER	*	
CASE NOS: 01-114-SPH AND CBA-01-145	*	

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

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

RECEIVED AND FILED
02 JAN 15 PM 12: 28

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND OFFICE OF ZONING ADMINISTRATION AND THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY:

01-114-SPH

September 9, 2001	Petition for Special Hearing
April 11, 2001	Notice of Zoning Hearing
May 8, 2001	Certificate of Publication/The Jeffersonian
October 16, 2001	Notice of Appearance by People's Counsel

CBA-01-145 and 01-114-SPH

September 25, 2001	HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER by Lawrence E. Schmidt, Zoning Commissioner/Hearing Officer that the Developer shall complete a noise assessment study, pursuant to the requirements of Policy X, and submit same to the Hearing Officer, with a copy to Protestants' Counsel, within 120 days of the date of the Order.
October 11, 2001	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of Janice Staples, Dr. Wayne Hunt, Andy and Page Crosby, Dr. and Mrs. Richard McQuaid, individually, and the Parkton Area Preservation Assn., Inc.; the Maryland Line Area Assn., Inc.; and the North County Coalition, Inc.
October 26, 2001	Order of Dismissal by Board without prejudice to any party; not ripe for appeal.
October 29, 2001	Motion for Reconsideration filed by J. Carroll Holzer.
November 6, 2001	RESPONSE TO MOTION FOR RECONSIDERATION, filed November 6, 2001 by Howard L. Alderman, Jr., on behalf of Developer.
November 7, 2001	RESPONSE TO MOTION FOR RECONSIDERATION, filed November 7, 2001 by Lawrence S. Wescott, Chairman, Board of Appeals for Baltimore County.
November 20, 2001	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Jan Staples, Page Crosby, and Dr. Richard McQuaid.

November 26, 2001	Copy of Petition for Judicial Review received by the County Board of Appeals from the Circuit Court for Baltimore County.
November 29, 2001	Certificate of Notice sent to interested parties.
January 15, 2002	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court (no exhibits were entered before the Board and/or the Hearing Officer).

Respectfully submitted,

Theresa R. Shelton

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

c: J. Carroll Holzer, Esquire
Howard L. Alderman, Jr., Esquire
People's Counsel of Baltimore County

12/18/01

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF JAN STAPLES, PAGE CROSBY and RICHARD McQUAID *Appellants.* **IN RE: ENSOR PROPERTY DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING [N&S Side of Middletown Road, E&W of Interstate 83] 7th Election District 3rd Councilmanic District** **Arthur S. Tracey, *et al*, Owner;** **David E. Gonzales Companies, Developer,** *Respondents.* **Case Nos. CBA 01-145 & 01-114-SPH**	**Case No.: 03-C-01-012166**

MOTION TO DISMISS APPEAL

The David E. Gonzales Companies and David E. Gonzales, two of the Respondents in the above-captioned matter (referred to collectively herein as "**Gonzales**") by and through their undersigned legal counsel, in accordance with Maryland Rule 7-204 hereby moves that the appeal in this case be dismissed, and in support thereof states as follows:

1. Gonzales is currently processing a proposed plan of residential development and a Zoning Petition for Special Hearing in concert therewith through the Baltimore County development process pertaining to property owned by Arthur S. Tracey, *et al* (other of the Respondents in the above-captioned action.) (the "Development Plan").

2. After conducting approximately five full or partial days of hearing on the Development Plan, the Hearing Officer issued a paper captioned *Hearing Officer's Opinion and Development Plan Order* on September 25, 2001 (the "Interim Order").

3. The Interim Order addressed itself only to certain of the issues raised on appeal and noted specifically that additional evidence was necessary to address an issue raised relating to noise emanating from Interstate 83 (Harrisburg Expressway).

4. The Interim Order (a copy of which is attached hereto under Tab "A" and incorporated herein), at page 14, ordered three (3) actions without making a final decision on the Development Plan as proposed. Those three actions were: i) "the Developer shall complete a noise assessment . . . within 120 days of the date of this Order"; ii) "following the receipt of such study, the Hearing Officer's **Hearing shall be reconvened** to accept further testimony and evidence on the noise issue"; and *iii*) "all further proceedings involving this matter, **including the issuance of any Order approving or denying this plan and/or imposing conditions thereto**, are STAYED [capitals in original], pending disposition of the noise issue." (Emphasis added in bold.) Thus, the Interim Order required that additional information be produced for consideration and review at a subsequent, public hearing before the Hearing Officer and stayed all proceedings until such time.

5. The development process is governed by the Baltimore County Development Regulations ("Development Regulations") adopted at Section 26-166 *et seq.* of the Baltimore County Code ("Code").

6. The Development Regulations provide that the "**final decision** of the hearing officer shall be issued within fifteen (15) days after the **final hearing** held on the [development] plan." (Emphasis added.) (Code § 26-206(i))

7. The Development Regulations provide specifically that "[a]ny person aggrieved or feeling aggrieved by **final action** on a [development] plan may appeal to the county board of appeals within thirty (30) days **after the date of the final decision** of the hearing officer." (Emphasis added.) (Code § 26-209(a)(1))

8. Appeals from the zoning commissioner or the director of zoning administration and development management to the County Board of Appeals for Baltimore County ("Board") are set forth in Code § 26-132, which provides in pertinent part that "[n]otice of such appeals shall be filed, in writing, with the director within thirty (30) days from the date of any **final order** appealed . . . ." (Emphasis added.)

9. The Appellants in this matter (who were Protestants before the Hearing Officer/Zoning Commissioner) purported to file an appeal of the Interim Order ("Appellants' Appeal").

10. The Board, *sua sponte,* issued an Order of Dismissal (without prejudice) of Appellants' Appeal on October 26, 2001 (the "Dismissal Order"; a copy of which is attached hereto under Tab "B" and incorporated herein), after concluding that ". . . the matter is not ripe for appeal at this time. At such time as the Hearing Officer renders a Final Opinion and Development Plan Order, any party then aggrieved shall have the right to appeal **in full** to

this Board **on all issues** of the subject Development Plan and Petition for Special Hearing." (Emphasis added.) (Dismissal Order at 2.)

11. On or about October 28, 2001, the Appellants filed a Motion for Reconsideration with the Board, seeking reconsideration by the Board of its Dismissal Order. Gonzales filed with the Board its opposition to the requested reconsideration. (A copy of the "Respondent's Opposition to Motion for Reconsideration" is attached hereto under Tab "C" and incorporated herein.)

12. On November 7, 2001, the Board issued its Response to Motion for Reconsideration (the "Board's Response"; a copy of which is attached hereto under Tab "D" and incorporated herein), affirming its Dismissal Order reasserting that the subject matter of the appeal as filed "is not ripe for appeal at this time."

13. On November 20, 2001, the Appellants filed a Petition for Judicial Review with this Court, seeking a review of the Dismissal Order and the Board's Response. Attached to that Petition was a copy of the Motion for Reconsideration as filed with the Board by the Appellants.

14. On November 27, 2001, Gonzales, through counsel, filed their Response to Notice of Appeal as required by Maryland Rule 7-204.

15. The Interim Order did not result in a final decision of the matter pending before the Hearing Officer nor does the Interim Order fall within one of the statutory exceptions codified in the Courts and Judicial Proceedings Article, *Annotated Code of*

Maryland, Section 12-303.

16. The Interim Order did not settle the rights of the parties to the appeal pending before the Hearing Officer and, therefore, is not a final judgment from which an appeal can be taken. *See, Mitchell Properties v. Real Estate Title*, 62 Md. App. 473 (1985).

17. Appellants have not been denied the means to prosecute further their interests in the subject matter of the above-referenced development plan, if any they have, once a final decision has been rendered. *See, Breuer v. Flynn*, 64 Md. App. 409 (1985).

18. A mere suggestion by the Appellants of an alleged abuse of the discretion conferred by the Baltimore County Council on the Hearing Officer does not make the otherwise unappealable Interim Order somehow appealable. *Walters v. Smith*, 277 Md. 189 (1976).

19. A ruling is appealable if it finally determines and concludes the rights of the parties to the appeal or denies the appellant the opportunity to prosecute further his interests in the subject proceeding. Such is not the case here; there is still work for the Hearing Officer to do. The Appellants can participate in the continued hearing by the Hearing Officer under his Interim Order and again in front of the Board thereafter, together with any additional, authorized appeals. *Brock v. American Mfrs. Mut. Ins. Co.*, 94 Md. App. 194, 198; *Kim v. Comptroller*, 350 Md. 527, 534 (1988).

20. To qualify as an appealable, final judgment, the Interim Order must leave nothing more to be done in order to effectuate disposition of the matter. *Anderson v.*

Anderson, 349 Md. 294 (1998) In the instant case the Interim Order provides specifically that the Hearing Officer's Hearing is to be "reconvened to accept further testimony and evidence on the noise issue". Interim Order at 14. *See, Holiday Spas v. Mont. Co. HRC*, 315 Md. 390, 396-400 (1989).

21. On review by this Court, any final decision of the Board must be sustainable on the Board's findings of fact and/or conclusions of law reached. The Board's Order dismissing an appeal of an Interim Order that specifically is not appealable under the Development Regulations (only "final orders' are appealable) is completely sustainable on the conclusions of law recited therein and Appellants have asserted no legal authority in their Motion for Reconsideration to support any other result.

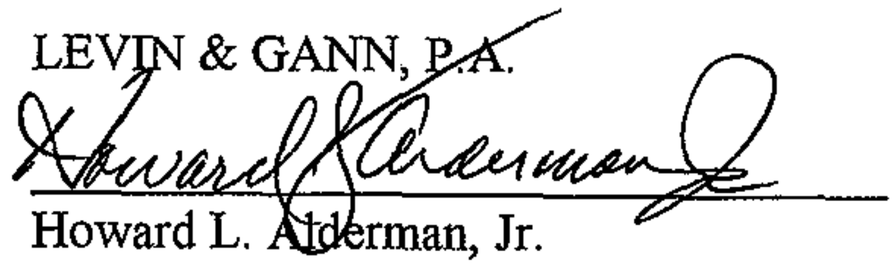
22. Nor is the Board's Response [to Appellants' Motion for Reconsideration] appealable, either on its face or as a second, appealable order. *See, Mitchell* at 484.

For all of the above reasons, Gonzales respectfully requests that:

A. The appeal filed by the Appellants to this Court be DISMISSED; and

B. For such further relief as the nature of this case and justice may require.

LEVIN & GANN, P.A.



Howard L. Alderman, Jr.
LEVIN & GANN, P.A.
Nottingham Center, 8th Floor
502 Washington Avenue
Towson, MD 21204
(410) 321-0600/ (410) 296-2801 [FAX]

Attorneys for David E. Gonzales Companies
and David E. Gonzales

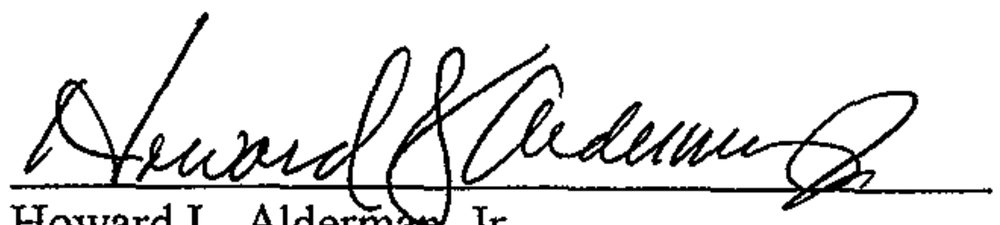
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of December 2001, a copy of the foregoing Motion to Dismiss Appeal was mailed via First-Class, United States Mail to the following:

J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 Fairmount Avenue
Towson, Maryland 21286
Attorneys for Appellants

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

Robert D. Porter, Esquire
Hodes, Ulman, Pessin & Katz, PA
901 Dulaney Valley Road, Suite 400
Towson, Maryland 21204
Attorneys for Arthur S. Tracey, et al



Howard L. Alderman, Jr.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF JAN STAPLES, PAGE CROSBY and RICHARD McQUAID *Appellants.* **v.** **Arthur S. Tracey, *et al*, Owner,** **David E. Gonzales Companies, *et al*, Developer,** *Respondents.* **Case Nos. CBA 01-145 & 01-114-SPH**	**Case No.: 03-C-01-012166**

ORDER

This matter having come before the Court and after consideration of the Motion to Dismiss filed by the David E. Gonzales Companies and David E. Gonzales, and any response thereto filed by the Appellants, and this Court having determined that the matter appealed from was not a final order and, therefore, not ripe for appeal at this stage of the County development process, it is this _____ day of _____, 2002,

ORDERED, that the appeal of the Order of Dismissal issued by the County Board of Appeals for Baltimore County on October 26, 2001, and of the Response to Motion for Reconsideration issued by the County Board of Appeals for Baltimore County on November 7, 2001, be and the same are hereby DISMISSED.

_____
JUDGE

Copies to:

Howard L. Alderman, Jr.
Levin & Gann, PA
NOTTINGHAM CENTRE, 8TH FLOOR
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND 21286

County Board of Appeals for Baltimore County
400 WASHINGTON AVENUE, SUITE 49
OLD COURTHOUSE
TOWSON, MARYLAND 21204

Robert D. Porter, Esquire
HODES, ULMAN, PESSIN & KATZ, PA
901 DULANEY VALLEY RD, SUITE 400
TOWSON, MD 21204

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE, 8TH FLOOR
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4525
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

DIRECT DIAL
410-321-4640

December 18, 2001

01D 19 PM 12:08

HAND DELIVERED
Clerk of the Circuit Court
for Baltimore County
Civil Division
401 Bosley Avenue, 2nd Floor
Towson, Maryland 21204

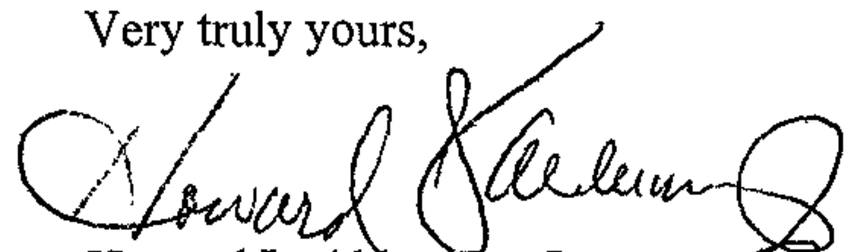
Re: Petition of Jan Staples, et al
Case No.: 03-C-01-012166
Motion to Dismiss Appeal

Dear Madam:

On behalf of the David E. Gonzales Companies and David E. Gonzales, I am enclosing an original of a Motion to Dismiss Appeal of the above-captioned matter. Included with that Motion is a proposed Order for the Court's consideration and the Exhibits referenced in the Motion.

Should you or any member of the Court desire additional information in this regard, please do not hesitate to contact me.

Very truly yours,



Howard L. Alderman, Jr.

HLA/pal
Enclosure
cc/enc: J. Carroll Holzer, Esquire
Robert D. Porter, Esquire
County Board of Appeals for Baltimore County
Mr. David E. Gonzales
Mr. Stephen D. Rosen
G:\Clients\Gonzales-D\clerk-circ-ct.ltr-9957-1.wpd

County Board of Appeals of Baltimore County

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

November 29, 2001

Howard L. Alderman, Jr., Esquire
Levin & Gann, PA
502 Washington Avenue, 8th Flr.
Towson, MD 21286

RE: Circuit Court Civil Action No. 3-C-01-12166
Petition for Judicial Review /*(Ensor Property)*
Arthur S and A. Richard Tracey – Owners
David E. Gonzales, Contract Purchaser
Case Nos.: 01-114-SPH and CBA 01-145

Dear Mr. Alderman:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on November 20, 2001, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-01-12166.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: J. Carroll Holzer, Esquire
Andy and Page Crosby
Dr. and Mrs. Richard McQuaid
Jan Staple

Printed with Soybean Ink
on Recycled Paper

c: continued

Mr. and Mrs. A. Richard Tracey
Mr. and Mrs. Arthur Tracey
David Gonzales
c/o Howard L. Alderman, Jr., Esquire
KCI Technologies, Inc.
Roger and Trudi Simeone
Alicia Barbers
Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Donald T. Rascoe, Development Manager /PDM
Walt Smith, Project Manager /PDM
Arnold Jablon, Director /PDM

11/29/01

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
	*	
PETITION OF: JAN STAPLES, PAGE CROSBY, AND DR. RICHARD MCQUAID	*	
	*	CIVIL ACTION NO.: 03-C-01-012166
FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD	*	
OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE, ROOM 49	*	
400 WASHINGTON AVENUE TOWSON, MARYLAND 21204	*	
IN THE MATTER OF: DEVELOPMENT PLAN HEARING AND PETITION FOR	*	
SPECIAL HEARING	*	
NE AND SW/S MIDDLETOWN ROAD (ENSOR PROPERTY)	*	
ARTHUR S. TRACEY AND RICHARD TRACEY – OWNERS	*	
DAVID E. GONZALES – CONTRACT PURCHASER	*	
CASE NOS: 01-114-SPH AND CBA-01-145	*	

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

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

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

Andy Crosby and Page Crosby
18920 Hillcrest Road, Parkton, MD 21120
Dr. and Mrs. Richard W. McQuaid
1501 Harris Mill Road, Parkton, MD 21120

Jan Staples
900 Old Barn Road, Parkton, MD 21120

RECEIVED AND FILED
01 NOV 29 PM 2:01
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Howard L. Alderman, Jr., Esquire
Levin & Gann, PA, 502 Washington Ave., 8th Flr., Towson, MD 21204

Mr. David Gonzales
c/o Howard L. Alderman, Jr., Esquire, Levin & Gann, PA,
502 Washington Ave., 8th Flr., Towson, MD 21204

Mr. and Mrs. Arthur Tracey
20815 Middletown Road, Freeland, MD 21053

Mr. and Mrs. A. Richard Tracey
2934 Rockdale Road, Freeland, MD 21053

Peter Max Zimmerman
People's Counsel, 400 Washington Ave., Basement, Old Court House, Towson, MD 21204

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

Theresa R. Shelton

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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to: J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, MD 21286; Andy Crosby and Page Crosby, 18920 Hillcrest Road, Parkton, MD 21120; Dr. and Mrs. Richard W. McQuaid, 1501 Harris Mill Road, Parkton, MD 21120; Jan Staples, 900 Old Barn Road, Parkton, MD 21120; Howard L. Alderman, Jr., Esquire, Levin & Gann, PA, 502 Washington Ave., 8th Flr., Towson, MD 21204; Mr. David Gonzales, c/o Howard L. Alderman, Jr., Esquire, Levin & Gann, PA, 502 Washington Ave., 8th Flr., Towson, MD 21204; Mr. and Mrs. Arthur Tracey, 20815 Middletown Road, Freeland, MD 21053; Mr. and Mrs. A. Richard Tracey, 2934 Rockdale Road, Freeland, MD 21053; and Peter Max Zimmerman, People's Counsel, 400 Washington Ave., Basement, Old Court House, Towson, MD 21204, this 29th day of November, 2001.

Theresa R. Shelton

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

11/27/01

FILE COPY

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF Jan Staples, Page Crosby and Richard McQuaid, PhD, Appellants For Judicial Review of the Decision of the County Board of Appeals for Baltimore County	
IN RE: DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING NE and SW/S Middletown Road (Ensor Property) 7th Election District 3rd Councilmanic District Case Nos. CBA-01-145 [PDM File No. IV-533] & 01-114-SPH DAVID E. GONZALES COMPANIES, INC. and DAVID E. GONZALES, Respondents	Case No.: 03-C-01-012166

RECEIVED
COUNTY BOARD OF APPEALS
01 NOV 29 PM 12: 10

RESPONSE TO NOTICE OF APPEAL

David E. Gonzales Companies, Inc., a Maryland corporation and David E. Gonzales, each a party below before the County Board of Appeals for Baltimore County and the Hearing Officer for Baltimore County ("Respondents"), by and through their undersigned legal counsel, in accordance with Maryland Rule 7-204 hereby serve notice that they intend to participate in the above-captioned appeal.

LEVIN & GANN, P.A.

Howard L. Alderman, Jr.
LEVIN & GANN, P.A.
Nottingham Center, 8th Floor
502 Washington Avenue
Towson, MD 21204
(410) 321-0600/ (410) 296-2801 [FAX]
Attorneys for Respondents

RECEIVED AND FILED
01 NOV 27 PM 2: 26
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

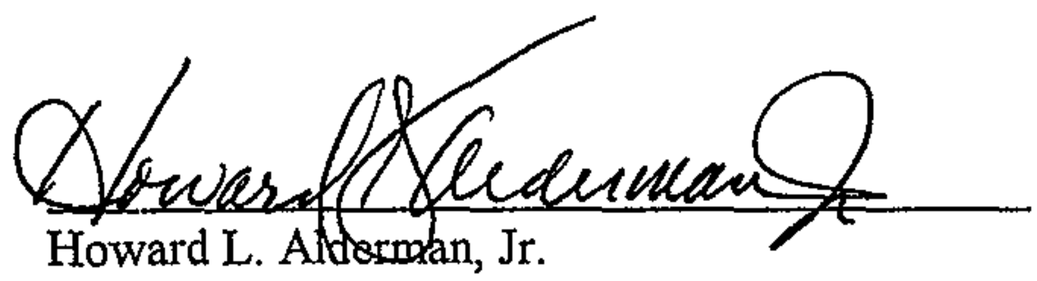
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of November, 2001, a copy of the foregoing Response to Notice of Appeal was mailed via First-Class, United States Mail to the following:

J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 Fairmount Avenue
Towson, Maryland 21286
Attorneys for Appellants

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

Robert D. Porter, Esquire
Hodes, Ulman, Pessin & Katz, PA
901 Dulaney Valley Road, Suite 400
Towson, Maryland 21204



Howard L. Alderman, Jr.

11/19/01

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
	*	
PETITION OF: JAN STAPLES, PAGE CROSBY, and Dr. RICHARD McQUAID	* *	Case No. C01-121666
	*	
IN THE MATTER OF DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING	*	
NE and SW/S Middletown Road (ENSOR PROPERTY)	*	
7TH ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	*	
	*	
Arthur S. & A. Richard Tracey, Owners; David E. Gonzales, Contract Purchaser	* *	
Case No. VII-352 & 01-114-SPH	*	

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

NOV 26 AM 9:16

PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioners and individuals Jan Staples, et al., by and through their attorney, J. Carroll Holzer, Holzer & Lee, request Judicial Review of the Order of Dismissal dated October 26, 2001 and Response to Motion for Reconsideration dated November 7, 2001 by the County Board of Appeals of Baltimore County in Case No. CBA-01-145 (No. VII-352) and Case No. 01-114-SPH and attached hereto. Also attached hereto is Petitioners' Motion for Reconsideration dated October 29, 2001.

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

RECEIVED AND FILED
01 NOV 20 PM 1:11
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of November, 2001 a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid to Howard Alderman, Jr., Esquire at Levin & Gann, 502 Washington Avenue, 8th Floor, Towson, Maryland 21204; and to the Board of Appeals, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

J. Carroll Holzer, Esq.

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-01-012166

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

11/15/02

IN RE: DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING - NE & SW/S Middletown Road, between I-83 and York Road & I-83 and Falls Road (Ensor Property) 7th Election District 3rd Council District	* BEFORE THE * ZONING COMMISSIONER * OF BALTIMORE COUNTY * Case Nos. VII-352 & 01-114-SPH
Arthur S. Tracey & A. Richard Tracey, Owners; David E. Gonzales, Contract Purchaser/Developer	*

* * * * * * * * * * *

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter returns before the undersigned Hearing Officer/Zoning Commissioner for further proceedings regarding the proposed development of the subject property by Arthur S. Tracey and A. Richard Tracey, Owners, and the Contract Purchaser/Developer, The Gonzales Companies. The Owners/Developer (Applicants) propose development of the subject property with 34 single family dwellings, in accordance with the revised, six-page development plan, prepared by KCI Technologies, Inc., submitted at the Hearing Officer's Hearing and marked into evidence as Developer's Exhibits 2A-2F. In addition to development plan approval, the Owners/Developer sought special hearing relief to approve the conservancy areas and dwellings to be constructed thereon, which are physically separated from one another by two separate roadways (Middletown Road and I-83) and an intervening R.C.5 zone. The property at issue consists of four separate parcels, containing a combined gross area of 183.30 acres, more or less, currently split zoned R.C.5 (3.44 acres) and R.C.4 (179.86 acres). The property is located on both the east and west sides of Interstate 83, and the north and south sides of Middletown Road in the Parkton area of northern Baltimore County.

The history of this case through the County's development review process codified in Title 26 of the Baltimore County Code is significant. The original concept plan for this proposal was submitted by the Applicants at a Concept Plan Conference (CPC) held on November 29, 1999. Subsequently, a second CPC was held on December 20, 1999. The original plan proposed a 52-

ORDER RECEIVED FOR FILING
Date 11/15/02
By

single family dwelling lot subdivision on the property. Following the concept plan conferences, a community input meeting (CIM) was conducted on January 19, 2000 at Hereford High School. Following the CIM on January 19, 2000, the Applicants next participated in a meeting before the Baltimore County Landmarks Preservation Commission on February 10, 2000. This meeting was held because the two existing dwellings on the property were proposed for inclusion on the County's Preliminary Landmarks List. A second CIM was conducted on March 2, 2000. As a result of information received at these meetings, the plan was modified to reduce density from 52 lots to 49 lots. Later, after the Landmarks Preservation Committee meeting, two additional lots were deleted so that when the project was ultimately submitted for a Development Plan Conference (DPC) on July 5, 2000, only 47 lots were then proposed. A second Landmarks Preservation Committee meeting was held on July 13, 2000, after which Planning Board meetings took place on July 17th, September 7th and 21st, 2000.

In the midst of these various hearings and meetings, the Baltimore County Council rezoned a portion of the subject property as part of its quadrennial Comprehensive Zoning Map review process. As a result of this change, the property was almost entirely reclassified to R.C.4; however, a small portion of the property retained the R.C.5 designation. The impact of this rezoning was significant in that it altered the permitted subdivision of the property and lot yield.

The Applicants then submitted a revised development plan, dated February 28, 2001, depicting 35 single family lots, including preservation of the 2 existing lots. This plan was reviewed by County agencies at the second Development Plan Conference on May 2, 2001. The matter then came before the undersigned for a Hearing Officer's Hearing on May 24, 2001. Due to the changing nature of the plan, the matter was remanded for another DPC which was conducted on June 20, 2001. The Hearing Officer's Hearing then reconvened on July 20, 2001 and continued on August 5th and 21st, 2001. Ultimately, 34 lots are now proposed, including the 2 existing lots.

Following the Hearing Officer's Hearing, the undersigned accepted Memoranda from Counsel and ultimately issued a decision on September 25, 2001. That decision addressed a number of issues which had been raised at the HOH, including the following: 1) the application of Council

ORDER RECEIVED FOR FILING
Date 11/15/02
By

Bill No. 34-01 regarding residential performance standards; 2) a requested referral to the Planning Board for consideration of historic structures; 3) the potential use of the property for a non-residential/institutional (church) use; 4) a review of the development plan review process as applied to this case; and, 5) consideration of the adequacy of the proposed conservancy area. As to these issues, the undersigned approved the plan and found that same was compliant with all development standards, regulations and policies adopted thereto. Additionally, the special hearing relief requested in companion Case No. 01-114-SPH was granted. However, the undersigned did not grant full approval of the plan because of an outstanding issue relating to the Department of Permits and Development Management (DPDM) Policy X. Policy X was implemented, pursuant to County Code Sections 26-135 and 26-218, and enacted in accordance with County Code Section 2-416. Policy X applies to development plans and provides standards regarding potential "noise issues." Policy X is applicable in this case because the property lies adjacent to I-83, which is a "designated highway," and certain building lots lie within 500 feet of the edge of paving of that road. The under signed Hearing Officer provided a lengthy discussion of the impact of Policy X on this project. In sum, I concluded that the development plan could not be approved and that the Developer was required to complete a noise assessment study pursuant to the requirement of Policy X.

The decision issued by the undersigned on September 25, 2001 was appealed through the County Board of Appeals, the Circuit Court of Maryland for Baltimore County, and the Court of Special Appeals of Maryland. Ultimately, the case has been remanded to the undersigned Hearing Officer for further proceedings. The Hearing Officer's Hearing on remand was reconvened on November 8, 2002. At that time, members of the Tracy family appeared on behalf of the property owners, as did Steven Rosen on behalf of the Developer, along with their attorney, Howard L. Alderman, Jr., Esquire. Others who appeared in support of the plan included Nicholas Linehan of KCI Technologies, Inc, Raymond Hopkins, and W. Neil Zurowski. Appearing as interested citizens were Dr. & Mrs. Richard McQuaid on behalf of the North County Coalition, and Janice L. Staples on behalf of the Parkton Area Preservation Association, Inc. Ms. Staples and Dr. McQuaid also appeared in their individual capacities, as did Page Crosby, a community activist in the area.

ORDER RECEIVED FOR FILING
Date 11/25/02
By

Collectively, they were represented by J. Carroll Holzer, Esquire. Also appearing were numerous representatives of the various County agencies who reviewed the project. These included Anne Roane from the Office of Planning (OP); R. Bruce Seeley from the Department of Environmental Protection and Resource Management (DEPRM); Jan Cook from the Department of Recreation and Parks (R&P); Jim Mezick, Fire Department; and the following individuals from the Department of Permits and Development Management (DPDM): John Sullivan, Zoning Review; Robert W. Bowling, Development Plans Review; Don Stires, Land Acquisition; and, Walt Smith, Project Manager.

At the Hearing Officer's Hearing, Counsel for the Developer and the community offered a written agreement, dated July 19, 2002, and marked into evidence as Developer's Exhibit 1. The document represents an agreement between the Developer and the community and identifies a series of terms and conditions that have been agreed upon by the parties relative to the proposed development. The parties collectively requested that the document be made part of any approval of the plan through the County's development review process.

Additionally, the Developer submitted a series of studies, evaluations and recommendations, collectively marked as Developer's Exhibit 2, relative to a noise analysis conducted by Staiano Engineering, Inc. This packet of materials relates to the Policy X issue fully described in the Hearing Officer's prior decision of September 25, 2001. In sum, the Developer arranged for the completion of a noise assessment study which has resulted in a series of recommendations. These recommendations will be incorporated as part of the development plan approval.

It was noted at the hearing that the development plan agreement (Exhibit 1), noise assessment study and exhibits (Developer's Exhibit 2) resolved nearly all open issues by and between the residents of the community who had objected to this plan and the Developer. A single issue which remained outstanding relates to a so-called "beauty berm." In this regard, the Developer and residents have agreed that the project will include an earthen beauty berm to mitigate the impacts of I-83 on the site. The berm will range in height from 4' to 8' and be located along the

ORDER RECEIVED FOR FILING
Date 11/13/02
By

property's frontage on I-83. It was further agreed that the specifics of the design and construction of the berm will be developed by representatives of DEPRM (Wally Lippincott), the Office of Planning (OP), the County's Landscape Architect (Avery Harden), members of the community (Dr. McQuaid and Ms. Staples), and representatives of the Developer. Collectively, this committee of individuals will prepare details of the proposed berm, which will be submitted and ultimately included in the case file. In the event of any dispute, the parties agree to submit to jurisdiction of the Hearing Officer for resolution; however, it was anticipated that this committee would reach consensus on the plan.

With the disposition of the design and construction of the beauty berm, the submissions of the noise assessment study and Agreement, the undersigned was advised that there were no open issues by and between the Developer and community representatives. Insofar as the reviewing agencies of Baltimore County, it was indicated that the plan complies with nearly all of the County regulations and standards. Certain "housekeeping items" were raised at the hearing by County agency representatives and were agreed to by the Developer. Specifically, it was noted that the Development Review Committee (DRC) need approve the out-conveyance of a small portion of the property (Parcel 496) prior to the recordation of the record plat for this property. Secondly, Mr. Seeley from DEPRM noted that the plan should be amended to show that no septic reserve areas will be located within an area of a public or private easement. Likewise, wells shall not be located within private or public easement areas. Finally, it was also indicated that approval of the noise assessment study will require a partial waiver of Policy X.

Based upon the testimony and evidence offered, I am persuaded that the development plan in its present form meets all County requirements and should be approved. I am appreciative of the numerous hearings, meetings and negotiations that occurred by and between the parties, which ultimately resolved many issues. Based on their Agreement, I easily find that the current plan is appropriate and should be approved, subject to the following conditions and limitations.

ORDER RECEIVED FOR FILING
Date 11/6/12
By

1) Except as expressly amended and/or modified herein, the Findings of Fact and Conclusions of Law dated September 25, 2001 are incorporated herein.

2) The development agreement by and between David E. Gonzales, individually and on behalf of the David E. Gonzales Companies, Janice L. Staples, individually, Page Crosby, individually, Richard McQuaid, individually, the Parkton Area Preservation Association, Inc., and the North County Coalition, Inc., marked into evidence as Developer's Exhibit 1, shall be incorporated herein and made a part hereof.

3) A partial waiver of the requirements of Policy X (noise mitigation) is granted, pursuant to the terms, conditions and recommendations contained within the Noise Assessment Study (Developer's Exhibit 2).

4) The Development Review Committee (DRC) shall approve the out-conveyance of a portion of the property, identified as Parcel #496, prior to the recordation of a record plat.

5) No septic reserve areas or wells shall be shown within areas of public or private easement and the plan shall be amended accordingly.

Therefore, pursuant to the zoning and development plan regulations of Baltimore County as contained with the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the advertising of the property and public hearing held thereon,

IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 15th day of November, 2002 that the revised, six-page development plan for the Ensor Property, marked as Developer's Exhibits 2A through 2F, be and is hereby APPROVED, subject to the restrictions and conditions set forth above.

Any appeal from 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

ORDER RECEIVED FOR FILING
Date 11/15/02
By

Developer Exhibit NO1
11/8/02

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") made this 19th day of July, 2002 by and among **DAVID E. GONZALES**, individually and on behalf of the David E. Gonzales Companies (referred to collectively hereafter as "Gonzales"); **JANICE L. STAPLES**, individually (referred to herein as "Staples"); **PAGE CROSBY**, individually (referred to hereafter as "Crosby"); **RICHARD MCQUAID**, individually (referred to hereafter as "McQuaid"); **THE PARKTON AREA PRESERVATION ASSOCIATION, INC.**, a Maryland corporation (referred to hereafter as "Parkton"); and **THE NORTH COUNTY COALITION, INC.**, a Maryland corporation (referred to hereafter as "NCC") (Staples, Crosby McQuaid, Parkton and NCC are referred to collectively hereafter as the "Neighbors").

RECITALS:

WHEREAS, Gonzales is the contract purchaser of certain property, located in the 7th Election District of Baltimore County owned by Arthur S. & A. Richard Tracey, which property is located on the northeast and southwest side of Middletown Road, west of York Road and on both sides of Interstate I-83, and which property is generally know as the "Ensor Property"; and

WHEREAS, Gonzales and the owners of the Ensor Property have submitted: i) a certain layout of residential development for the Ensor Property as shown on the development plan filed with Baltimore County and assigned the processing/identification number of VII-352 (the "Development Plan"; and ii) a Zoning Petition for Special Hearing and accompanying plats seeking approval of certain aspects of the development and environmental easement areas shown on the Development Plan, said zoning submission having been assigned Case No. 01-114-SPH (the "Zoning Plat") (the Development Plan and the Zoning Plat are referred to collectively hereafter as the "Ensor Development Proposal"); and

WHEREAS, the Ensor Development Proposal was referred to, considered by and approved by the Baltimore County Planning Board with specific conditions, including without limitation required landscaping, specification of exterior materials to be used on certain proposed lots, etc. (the "Planning Board Conditional Approval"); and

WHEREAS, the Hearing Officer/Zoning Commissioner for Baltimore County, after holding several days of hearing on the Ensor Development Proposal, issued an interim order, dated September 25, 2001, staying further processing of the Ensor Development Proposal and requiring Gonzales to have prepared and submit a Noise Assessment Study meeting the requirements of Policy X as adopted as part of the Code of County Regulations by the Department of Permits and Development Management (the "Interim Order"); and

WHEREAS, the Neighbors noted an appeal of the Interim Order (the "CBA Appeal") to the

ORDER RECEIVED FOR FILING
Date 11/15/02
By

County Board of Appeals for Baltimore County (the "Board") and the Board, *sua sponte* dismissed the appeal as filed; and

WHEREAS, the Neighbors filed with the Board a *Motion for Reconsideration* of its order of dismissal, which Gonzales opposed and the Board voted not to reconsider its prior order of dismissal; and

WHEREAS, the Neighbors noted an appeal of the orders of the Board, dismissing the appeal and refusing to reconsider such dismissal, to the Circuit Court for Baltimore County, which appeal was docketed as Case No. 03-C-01-012166 (the "Circuit Court Appeal"); and

WHEREAS, Gonzales filed with the Circuit Court a *Motion to Dismiss* the Circuit Court Appeal which the Court, after considering oral argument by legal counsel for Gonzales and the Neighbors, granted (the "Circuit Court Dismissal"); and

WHEREAS, the Neighbors noted an appeal of the Circuit Court Dismissal to the Maryland Court of Special Appeals, which appeal is pending and which docketed as [CSA] No. 00062, September Term, 2002 (the "CSA Appeal") (the CBA Appeal, the Circuit Court Appeal and the CSA Appeal are referred to collectively hereafter as the "Neighbors' Appeals"); and

WHEREAS, Gonzales filed with the Circuit Court a *Motion to Alter/Amend/Revise Judgment* of the Circuit Court Dismissal, before the Neighbors filed the CSA Appeal, with the order granting the relief requested by the motion issued after the CSA Appeal; and

WHEREAS, Gonzales and the Neighbors have discussed, in settlement and resolution of the Neighbors' Appeals, the development of the Ensor Property in accordance with the Ensor Development Proposal, modified by certain landscaping, as well as certain other points of agreement; and

WHEREAS, the parties hereto intend to resolve the outstanding issues related to the Ensor Property, the Neighbors 'Appeals and the Ensor Development Proposal in accordance with the agreements and enforcement provisions hereof.

NOW, THEREFORE, in consideration of the sum of One Dollar ($1) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. The above recitals form an integral part of this Agreement and are incorporated herein as if set forth again in their entirety.

2. Upon complete execution hereof by all parties, the Neighbors agree to dismiss immediately with prejudice the Neighbors' Appeals.

ORDER RECEIVED FOR FILING
Date 11/15/02
By

3. Gonzales agrees that within thirty-five (35) days of obtaining final, non-appealable approval of the Ensor Development Proposal, he will deposit the sum of with the Escrow Agent (defined below) to be used for additional landscaping to be installed on the Ensor Property (the "Additional Landscape Funds"). The Additional Landscape Funds shall be placed in an interest bearing account with all earned interest becoming part of the Additional Landscape Funds. Upon complete installation of the landscaping required as part of the approved Ensor Development Proposal, Gonzales or his representatives shall meet with the Neighbors to determine those areas of the Ensor Property to receive additional landscaping (the "Additional Landscape Areas") and the particular types of plantings to be installed within said Additional Landscape Areas. Upon determination of the Additional Landscape Areas, the Escrow Agent shall release to the Neighbors the Additional Landscape Funds which funds shall be used for the purchase and installation of landscaping within said Additional Landscape Areas.

4. Gonzales agrees that he will submit for approval as part of the approval of the Ensor Development Proposal, a revised Noise Assessment Study meeting the requirements of Policy X as adopted as part of the Code of County Regulations by the Department of Permits and Development Management.

5. Gonzales agrees that the plantings to be installed in the rear of the homes proposed on Lot Nos. 3, 4, 5, 6, 7 and 8, buffering the Frederick House on the east side of Middletown Road and in all other areas that will not be affected by the construction of homes or other required improvements, including without limitation water quality facilities, etc., concurrently with the completion of curb, gutter and road stone base paving within the proposed development, weather conditions permitting or immediately during the next planting season following completion of said curb, gutter and road stone base paving.

6. Within thirty-five (35) days of Gonzales' obtaining final, non-appealable approval of the Ensor Development Proposal, depicting not less than thirty-four (34) residential lots (two (2) existing and thirty-two (32) proposed), which approval incorporates the material provisions of this Agreement, Gonzales agrees to pay to Parkton the sum of ; to assist Parkton in its efforts to preserve local historical sites and quality residential development and Parkton agrees to accept such sum as a donation/contribution.

7. The Neighbors understand that, in accordance with Policy X (as adopted by the Department of Permits and Development Management) of the Code of County Regulations and current traffic volumes as determined by the Maryland State Highway Administration in the area of the Ensor Property, some type of noise mitigation may be required as part of the Ensor Development Proposal. Gonzales and the Neighbors agree to work together toward a mutually acceptable form of mitigation that is acceptable to Baltimore County and the Baltimore County Hearing Officer.

8. The Neighbors agree not to oppose the approval of the Ensor Development Proposal presented for review and approval by the Hearing Officer for Baltimore County, provided that the agreed upon terms of this Agreement are made conditions thereof and/or incorporated therein.

ORDER RECEIVED FOR FILING
Date 11/5/02
By

9. Prior to any party hereto seeking judicial enforcement of this Agreement, Gonzales, the Neighbors and/or Parkton or any one or more of them as the case may be, shall give the other written notice of the alleged grievance as provided herein. Within twenty-one (21) days thereafter representatives of the respective parties to this Agreement shall meet to attempt to resolve amicably the alleged non-compliance or grievance. Failure to comply with the dispute resolutions of this enumerated paragraph shall nullify the complaining party's ability to enforce the alleged grievance.

10. After the dispute resolution provisions contained herein have been complied with, any party to this Agreement or any party's successor or assign that is required to institute legal or equitable action in enforcement hereof, shall be deemed to have standing to institute such action, including without limitation an action for injunctive relief. Any party that is successful in obtaining judgment in favor of its action filed in enforcement of the Agreement shall be entitled to recover reasonable attorney's fees and court costs of the action from the person or entity against whom enforcement is obtained as the same may be determined or fixed by the court. The provisions of this enumerated paragraph shall not be applicable unless and until the dispute resolution provisions set forth herein have been followed strictly.

11. Neither the Neighbors, acting individually or in concert, nor Parkton shall in any way, directly or indirectly, privately or publicly oppose the approvals to be obtained by Gonzales to complete the development shown on the approved Ensor Development Proposal, provided that the terms of this Agreement are adhered to by Gonzlaes.

12. If the Ensor Development Proposal is approved as submitted to the Hearing Officer for Baltimore County and in accordance with this Agreement, the parties hereto waive irrevocably the right to appeal any and all development approvals necessary for the Ensor Property. If the Ensor Development Proposal is approved as proposed and in accordance with this Agreement, and an appeal is taken by other than a party hereto and on appeal the Ensor Development Proposal approval is reversed, this Agreement shall automatically terminate and be null and void and of no further force and effect.

13. The parties hereto agree that reasonable adjustments in the location of buildings, lot lines, septic reserve areas, well locations and other residential features of the development of the Ensor Property shall be permitted provided that the same meets with approvals obtained from the governmental agency having jurisdiction thereover. However, notwithstanding the provisions of this enumerated paragraph there shall not be permitted any increase in the number of dwelling units beyond that approved on the Ensor Development Proposal.

14. This Agreement shall be construed, interpreted and enforced according to the laws of the State of Maryland, without regard to principles of conflict of law. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms of any such provision shall be more strictly construed against one party or the other by reason of the rule of construction that a document is to be construed most strictly against the party who itself or through its agent who prepared the same, it being agreed that the agents of all parties hereto

ORDER RECEIVED FOR FILING
Date 11/15/02
By

have participated in the preparation of this Agreement.

15. The terms, conditions, rights and obligations of this Agreement shall be binding on the parties hereto and their respective heirs, personal representatives, successors and assigns of the parties hereto as if they had been original signatories hereto.

16. This Agreement contains the full and complete agreement of the parties hereto and no oral agreements, past, present or future shall be effective or binding on or against the parties unless the same shall be reduced to writing and executed in the same manner as this Agreement.

17. Each of the parties hereto warrant that they or it have the authority to enter into this Agreement and to bind themselves hereby and have carefully read and understand this Agreement and are cognizant of the terms and conditions hereof and the obligations associated herewith.

18. The signature of the authorized officer of Parkton below represents and warrants that Parkton has joined in this Agreement intending to be bound and intending that each of its members acting in their respective capacity as a member of Parkton be bound hereby.

19. The parties hereto each warrant and represent that they have the power and requisite legal authority to bind themselves, their organization if acting in a representative capacity and their successors and assigns to the agreements herein contained, and if a corporation, limited liability company, partnership or similar entity, each further warrants and represents that it is duly organized and is in existence in accordance with Maryland law and that it has taken all necessary action required to be taken by its charter, by-laws, or other organizational documents to authorize the execution of this Agreement.

20. Any notices required or permitted to be given by either party to the other shall be addressed to the parties as follows:

To Gonzales: David E. Gonzales
c/o 8016 Acorn Ridge Road
Jacksonville, FL 32256

with a copy to: Howard L. Alderman, Jr., Esquire
Levin & Gann, PA
Nottingham Centre, 8th Floor
502 Washington Avenue
Towson, Maryland 21204

To Staples: Ms. Janice L. Staples
900 Old Barn Rd.
Parkton, MD 21120

ORDER RECEIVED FOR FILING
Date 11/15/12
By

with a copy to: J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 Fairmount Avenue
Towson, Maryland 21286

To Crosby: Ms. Page Crosby
18920 Hillcrest Avenue
Parkton Md 21120

with a copy to: J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 Fairmount Avenue
Towson, Maryland 21286

To McQuaid: Richard McQuaid, PhD
President - North County Coalition, Inc.
1501 Harris Mill Road
Parkton, Maryland 21120

with a copy to: J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 Fairmount Avenue
Towson, Maryland 21286

To Parkton: The Parkton Area Preservation Association, Inc.
Attn: Janice L. Staples
900 Old Barn Rd.
Parkton, MD 21120

with a copy to: J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 Fairmount Avenue
Towson, Maryland 21286

21. Any notice that is required to be given pursuant to this Agreement shall be in writing, and shall be deemed given upon actual receipt and shall be sent to all other parties by certified or registered mail, prepaid, or by federal express or other commercial overnight courier service to the last known address of the receiving party.

22. This Agreement may be amended only by a subsequent written instrument and signed by

ORDER RECEIVED FOR FILING
Date 11/15/02
By

the parties hereto or their respective successors and/or assigns.

23. The failure in any instance to enforce any of the covenants, restrictions and conditions contained in this Agreement shall in no event constitute a waiver or estoppel of the right to enforce the same or any other covenant, restriction or condition in the event of another violation occurring prior or subsequent thereto. In the event any one or more of the covenants, restrictions and conditions herein contained should for any reason be declared invalid, the remaining covenants, restrictions or conditions shall continue in full force and effect.

24. Each of the parties hereto have had the benefit of private legal counsel before entering into this Agreement and except for the payment by Gonzales described above, each has agreed to be responsible for their respective counsel fees.

25. This Agreement may be executed in counterparts, each of which shall be deemed an original for all purposes, all of which shall together constitute a single and the same Agreement; each counterpart may be signed and transmitted initially by telefacsimile and the facsimile shall be considered as containing original signatures, provided that said counterpart is provided subsequently to each other party in its original form.

26. The parties hereto covenant and agree to execute such instrument or instruments as may be necessary from time to time to carry out the intent of the Agreement or to amend this Agreement as may be required by any governmental agencies having jurisdiction over the Ensor Development Proposal approved by the Hearing Officer in order to obtain all required approvals required and to otherwise comply with all applicable laws, regulations and codes in keeping with the spirit and intent of this Agreement.

27. Notwithstanding any provision hereof to the contrary and irrespective of any rule, construction or precedent under the common law of the United States and/or Maryland, neither this Agreement nor any provision hereof shall be binding on any party hereto nor shall any portion of this Agreement be enforceable in any proceeding or otherwise disclosed to any person or entity other than the parties hereto and their respective legal counsel unless and until the complete signatures of all parties to this Agreement have been affixed hereto as provided herein.

28. Escrow Agent/Waiver of Conflict of Interest. The Escrow Agent for the purposes of this Agreement shall be Holzer & Lee, PA, having an office address at 508 Fairmount Avenue, Towson, Maryland 21286. The parties hereto, by their respective signatures below, acknowledge that J. Carroll Holzer, Esquire and the law firm of Holzer & Lee, PA, its attorneys and staff (collectively the "Neighbor's Counsel") represent the Neighbors in this Agreement. Also by their signature below, the parties hereto ***waive any actual, implied or potential claim of conflict of interest***, at present and in the future, in connection with Neighbor's Counsel providing legal advice and/or representation to the Neighbors with respect to the negotiation of the Agreement and/or any disputes, claims and/or causes of action arising out of the Agreement. Escrow Agent may act in reliance upon any writing, instrument or signature, which, in

ORDER RECEIVED FOR FILING
Date 11/5/12
By

good faith, it believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advise or instruction in connection with the provisions hereof have been authorized to do so. Escrow Agent's duties hereunder shall be limited solely to disbursing the Additional Landscape Funds placed in escrow in accordance with the terms hereof. Neighbors and Gonzales jointly and severally, hereby agree to indemnify Escrow Agent and hold it harmless form any and all claims, liabilities, losses, actions or proceedings, or any other expense, fees or charges of any character which Escrow Agent may incur or with which it may be threatened by reason of acting as Escrow Agent under this Agreement, except in the case of any gross negligence, or willful misconduct by Escrow Agent. The parties hereto further agree that the Escrow Agent shall not be liable for the failure of the bank or lending institution into which the Additional Landscape Funds are placed. In the event of any dispute between or among the parties as to the release of the sums held in Escrow, the Escrow Agent shall have the right to disburse the full amount then held in escrow, in accordance with the final Order of a Court of competent jurisdiction or to deposit the amount then held in escrow by way of interpleader or other action with the Court, pending a final decision of any such controversy. Escrow Agent may resign upon ten (10) days written notice to the parties to this Agreement at the Escrow Agent's last known address of each such party. The parties shall select a mutually agreed upon successor Escrow Agent prior to the expiration of such ten (10) day period. The obligations, liabilities and responsibilities of the Escrow Agent shall be discharged at such time as the Escrow Agent shall have distributed the sums held in escrow as provided herein. Escrow Agent's signature below constitutes only acknowledgment of receipt of the Additional Landscape Funds. Neighbors and Gonzales agree that the Escrow Agent assumes no responsibility for, and shall not be liable for, the performance of the obligations of the parties hereto as contained in the Agreement.

29. Nothing in this Agreement shall preclude the Neighbors, or one or more of them, from opposing any future development of any portion of the Ensor Property not consistent with thirty-four (34) residential lots.

IN WITNESS WHEREOF, the parties hereto have affixed their respective hands and seals the date and year first above written.

WITNESS/ATTEST:

Francine Gonzales

GONZALES:

_____(SEAL)
David E. Gonzales, Individually and on behalf of the David E. Gonzales Companies

NEIGHBORS:
STAPLES:

_____

_____(SEAL)
Janice L. Staples, Individually

ORDER RECEIVED FOR FILING
Date 11/15/02
By

good faith, it believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advise or instruction in connection with the provisions hereof have been authorized to do so. Escrow Agent's duties hereunder shall be limited solely to disbursing the Additional Landscape Funds placed in escrow in accordance with the terms hereof. Neighbors and Gonzales jointly and severally, hereby agree to indemnify Escrow Agent and hold it harmless form any and all claims, liabilities, losses, actions or proceedings, or any other expense, fees or charges of any character which Escrow Agent may incur or with which it may be threatened by reason of acting as Escrow Agent under this Agreement, except in the case of any gross negligence, or willful misconduct by Escrow Agent. The parties hereto further agree that the Escrow Agent shall not be liable for the failure of the bank or lending institution into which the Additional Landscape Funds are placed. In the event of any dispute between or among the parties as to the release of the sums held in Escrow, the Escrow Agent shall have the right to disburse the full amount then held in escrow, in accordance with the final Order of a Court of competent jurisdiction or to deposit the amount then held in escrow by way of interpleader or other action with the Court, pending a final decision of any such controversy. Escrow Agent may resign upon ten (10) days written notice to the parties to this Agreement at the Escrow Agent's last known address of each such party. The parties shall select a mutually agreed upon successor Escrow Agent prior to the expiration of such ten (10) day period. The obligations, liabilities and responsibilities of the Escrow Agent shall be discharged at such time as the Escrow Agent shall have distributed the sums held in escrow as provided herein. Escrow Agent's signature below constitutes only acknowledgment of receipt of the Additional Landscape Funds. Neighbors and Gonzales agree that the Escrow Agent assumes no responsibility for, and shall not be liable for, the performance of the obligations of the parties hereto as contained in the Agreement.

29. Nothing in this Agreement shall preclude the Neighbors, or one or more of them, from opposing any future development of any portion of the Ensor Property not consistent with thirty-four (34) residential lots.

IN WITNESS WHEREOF, the parties hereto have affixed their respective hands and seals the date and year first above written.

WITNESS/ATTEST:

_____

GONZALES:

_____(SEAL)
David E. Gonzales, Individually and on behalf of the David E. Gonzales Companies

NEIGHBORS:
STAPLES:

_____(SEAL)
Janice L. Staples, Individually

ORDER RECORDED FOR FILING
Date 11/15/12
By

CROSBY:

* Page Crosby (SEAL)
Page Crosby, Individually

MCQUAID:

x Richard W. McQuaid (SEAL)
Richard McQuaid, PhD

PARKTON:
THE PARKTON AREA PRESERVATION ASSOCIATION, INC., a Maryland corporation

By: Janice L. Staples (SEAL)
Janice L. Staples
[PRINTED/TYPED NAME]
Co-Chairperson
[TITLE/AUTHORITY]

NCC:
THE NORTH COUNTY COALITION, INC., a Maryland corporation

By: x Richard W. McQuaid (SEAL)
Richard McQuaid, President

ORDER RECEIVED FOR FILING
Date 11/15/02
By

Baltimore County
Zoning Commissioner

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

November 15, 2002

Howard L. Alderman, Jr., Esquire
Levin & Gann, PA
502 Washington Avenue, 8th Floor
Towson, Maryland 21204

RE: REMAND HEARING for the ENSOR PROPERTY -
DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING
NE and SW/S Middletown Road between I-83 & York Road
7th Election District – 3rd Council District
Arthur S. & A. Richard Tracey, Owners; David E. Gonzales, Contract Purchaser/Developer
Case Nos. VII-352 & 01-114-SPH

Dear Mr. Alderman:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The revised development plan has been approved 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. & Mrs. Arthur Tracey, 20815 Middletown Road, Freeland, Md. 21053
Mr. & Mrs. A. Richard Tracey, 2934 Rockdale Road, Freeland, Md. 21053
Mr. David Gonzales, Gonzales Corp., 8016 Acorn Ridge Road, Jacksonville, Fla. 32256
Mr. Steven Rosen, KCI Technologies, Inc., 10 North Park Drive, Hunt Valley, Md. 21030
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286
Andy & Page Crosby, 18920 Hillcrest Road, Parkton, Md. 21120
Dr. & Mrs. Richard W. McQuaid, 1501 Harris Mill Road, Parkton, Md. 21120
Ms. Janice Staples, 900 Old Barn Road, Parkton, Md. 21120
Walt Smith, PDM; Bob Bowling, PDM; DEPRM; OP; R&P; People's Counsel; Case Files

Printed with Soybean Ink
on Recycled Paper

Baltimore County
Zoning Commissioner

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

November 15, 2002

Howard L. Alderman, Jr., Esquire
Levin & Gann, PA
502 Washington Avenue, 8th Floor
Towson, Maryland 21204

RE: REMAND HEARING for the ENSOR PROPERTY -
DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING
NE and SW/S Middletown Road between I-83 & York Road
7th Election District – 3rd Council District
Arthur S. & A. Richard Tracey, Owners; David E. Gonzales, Contract Purchaser/Developer
Case Nos. VII-352 & 01-114-SPH

Dear Mr. Alderman:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The revised development plan has been approved 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. & Mrs. Arthur Tracey, 20815 Middletown Road, Freeland, Md. 21053
Mr. & Mrs. A. Richard Tracey, 2934 Rockdale Road, Freeland, Md. 21053
Mr. David Gonzales, Gonzales Corp., 8016 Acorn Ridge Road, Jacksonville, Fla. 32256
Mr. Steven Rosen, KCI Technologies, Inc., 10 North Park Drive, Hunt Valley, Md. 21030
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286
Andy & Page Crosby, 18920 Hillcrest Road, Parkton, Md. 21120
Dr. & Mrs. Richard W. McQuaid, 1501 Harris Mill Road, Parkton, Md. 21120
Ms. Janice Staples, 900 Old Barn Road, Parkton, Md. 21120
Walt Smith, PDM; Bob Bowling, PDM; DEPRM; OP; R&P; People's Counsel; Case Files

Printed with Soybean Ink
on Recycled Paper

11/7/01

IN THE MATTER OF DEVELOPMENT PLAN HEARING AND PETITION FOR SPECIAL HEARING ARTHUR S. TRACEY AND A. RICHARD TRACEY – Owners; DAVID E. GONZALES - DEVELOPER ON PROPERTY LOCATED ON THE NE & SW/S MIDDLETOWN ROAD BETWEEN I-83 AND YORK ROAD & I-83 AND FALLS ROAD (ENSOR PROPERTY) 7th Election District 3rd Councilmanic District	*	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. CBA-01-145 [VII-352] & 01-114-SPH

* * * * * * * * *

RESPONSE TO MOTION FOR RECONSIDERATION

In response to Appellants' Motion for Reconsideration , the position set forth in the Order of Dismissal issued on October 25, 2001 is hereby re-affirmed. The subject matter is not a final action of the Hearing Office and therefore is not ripe for appeal to this Board. At such time as the Hearing Officer renders a Final Opinion and Development Plan Order, any party then aggrieved shall have the right to appeal in full to this Board on all issues of the subject Development Plan and Petition for Special Hearing.

ORDER

IT IS THEREFORE THIS 7th day of November, 2001 by the County Board of Appeals of Baltimore County

ORDERED that Appellants' Motion for Reconsideration in the subject matter cannot be considered as the appeal filed in the subject case has been **DISMISSED** on the basis that the subject matter is not ripe for appeal at this time. At such time as the Hearing Officer renders a Final Opinion and Development Plan Order, any party then aggrieved shall have the right to appeal in full to this Board on all issues of the subject Development Plan and Petition for Special Hearing.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman

County Board of Appeals of Baltimore County

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

November 7, 2001

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

RE: *In the Matter of: Arthur S. Tracey and A. Richard Tracey* - Owners; David Gonzales, Developer (Ensor Property)
Case No. CBA-01-145 [VII-352] and Case No. 01-114-SPH

Dear Mr. Holzer:

Enclosed please find a copy of the Response to Motion for Reconsideration regarding the subject matter..

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: Andy & Page Crosby
Dr. & Mrs. Richard McQuaid
Jan Staples
Howard L. Alderman, Jr., Esquire
Mr. & Mrs. A. Richard Tracey
Mr. & Mrs. Arthur Tracey
David Gonzales
KCI Technologies, Inc.
Roger & Trudi Simeone
Alicia Barbers
Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Donald T. Rascoe, Development Manager /PDM
Walt Smith, Project Manager /PDM
Arnold Jablon, Director /PDM

Printed with Soybean Ink
on Recycled Paper

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

DIRECT DIAL
410-321-4640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
FACSIMILE 410-296-2801

ELLIS LEVIN (1893-1960)

COPY

November 6, 2001

RECEIVED
COUNTY BOARD OF APPEALS
01 NOV -7 PM 2:01

Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
Old Courthouse, Suite 49
400 Washington Avenue
Towson, Maryland 21204

RE: Response to Motion for Reconsideration
Case Nos. VII-352 & 01-114-SPH
David E. Gonzales Companies, Developer

Dear Ms. Bianco:

I am enclosing an original and three (3) copies of the *Respondent's Opposition to Motion for Reconsideration*, filed on behalf of the David E. Gonzales Companies, in response to the Motion filed by J. Carroll Holzer, Esquire in the above-referenced cases. As outlined in the enclosed response, Mr. Holzer's Motion should be disposed of *sua sponte* by the Board without the necessity of convening a hearing on an issue that is well settled as a matter of law.

Should the Board desire any additional information from the Developer in opposition to the Protestants' Motion, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosures (4)
c (w/encl.): David E. Gonzales Companies
Robert D. Porter, Esquire
J. Carroll Holzer, Esquire

11/6/01

IN RE: ENSOR PROPERTY DEVELOPMENT PLAN HEARING PETITION FOR SPECIAL HEARING N&S Side of Middletown Road, E&W of Interstate 83 7th Election District 3rd Councilmanic District Arthur S. Tracey, *et al*, Owner David E. Gonzales Companies, Developer	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY CASE NOS.: VII-352 & 01-114-SPH

01 NOV -7 PM 2:07
COUNTY BOARD OF APPEALS

RESPONDENT'S OPPOSITION TO MOTION FOR RECONSIDERATION

The David E. Gonzales Companies, Developer/Applicant in the above-captioned matter (referred to hereinafter as "**Respondent**") by and through its undersigned legal counsel, files its opposition to the *Motion for Reconsideration* filed on behalf of Janice Staples, *et al* ("**Appellants**") and states:

1. Pursuant to Board of Appeals' Rule 10, this Board has revisory power over the entry of an order issued by it only "in the event of fraud, mistake or irregularity."

2. Appellants allege that the Order of Dismissal issued by this Board on October 26, 2001 was based on "an error of law and mistake".

3. Appellants have submitted no legal points, authorities or other support in furtherance of their bald allegations of purported legal error and mistake.

4. In the common parlance of motions practice, the term "mistake" refers to a jurisdictional mistake as opposed to a mistake of judgment or mistake in the application

of law. It does not mean a mere error or even an error as to the applicable law. *See*, *Clairbourne v. Willis*, 347 Md. 684, 702 A.2d 293 (1997); *Chapman v. Kamara*, 356 Md. 426 (1999); *Home Indem. Co. v. Killian*, 94 Md. App. 205, 616 A.2d 906 (1992).

5. The Board had sole jurisdiction over the purported appeal and properly dismissed it as it was not an appeal of a final judgment and as being not ripe for appeal.

6. The Board was not required to hold a hearing before dismissing Appellants' appeal nor have Appellants cited any applicable rule of law requiring such advance hearing.

7. The Hearing Officer, *sua sponte*, adjourned the hearing before him pending receipt of a revised noise assessment for the subject property. *See*, *Baltimore County Code* §26-206(e); *Rules of Practice and Procedure Before the Zoning Commissioner/Hearing Officer of Baltimore County.*

8. The paper issued by the Hearing Officer for Baltimore County which Appellants attempted to appeal to this Board was not a "final" decision by its express terms or by the statutory framework adopted by the County Council for the processing of development plans.

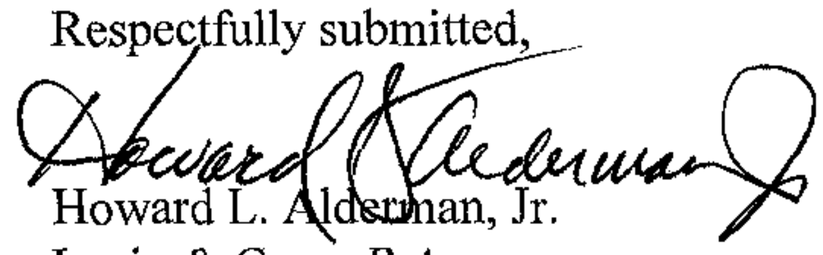
9. Since the "final hearing" has not yet been held on the development plan, the final decision of the Hearing Officer is not even due. *Baltimore County Code* §26-206(i).

10. Neither Appellants nor Respondent have lost any right of appeal that exists

once the Hearing Officer issues a "final decision" in the above-captioned matter.

For all of the above-stated reasons and points and authorities, Appellants' Motion for Reconsideration should be denied ***sua sponte***.

Respectfully submitted,

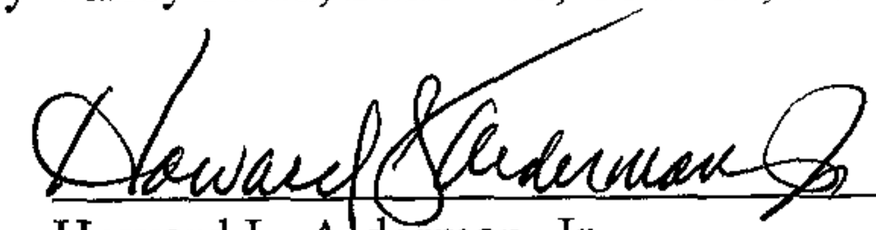


Howard L. Alderman, Jr.
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
410.321.0600 [voice]
410.296.2801 [fax]
Halderman@LevinGann.com [e-mail]

Attorneys for the Respondent/Developer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of November, 2001, a copy of the foregoing Respondent's Opposition to Motion for Reconsideration was mailed, postage prepaid, First-Class United States Mail to: J. Carroll Holzer, Esquire, Holzer & Lee, PA, 508 Fairmount Avenue, Towson, Maryland 21286 and Robert D. Porter, Esquire, Hodes, Ulman, Pessin & Katz, PA, 901 Dulaney Valley Road, Suite 400, Towson, MD 21204.



Howard L. Alderman, Jr.

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

DIRECT DIAL
410-321-4640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
FACSIMILE 410-296-2801

ELLIS LEVIN (1893-1960)

November 6, 2001

01 NOV -7 PM 2:07
COUNTY BOARD OF APPEALS

Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
Old Courthouse, Suite 49
400 Washington Avenue
Towson, Maryland 21204

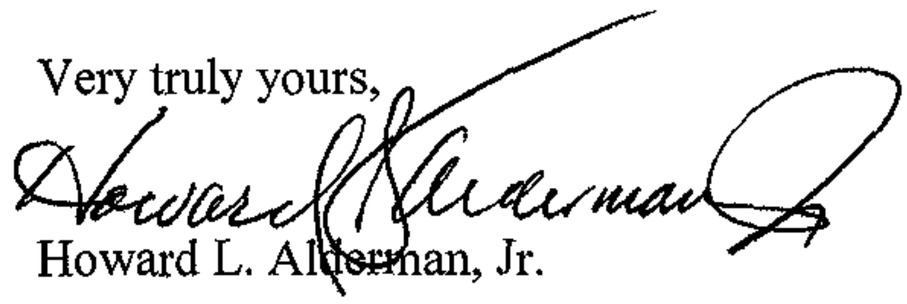
RE: Response to Motion for Reconsideration
Case Nos. VII-352 & 01-114-SPH
David E. Gonzales Companies, Developer

Dear Ms. Bianco:

I am enclosing an original and three (3) copies of the *Respondent's Opposition to Motion for Reconsideration*, filed on behalf of the David E. Gonzales Companies, in response to the Motion filed by J. Carroll Holzer, Esquire in the above-referenced cases. As outlined in the enclosed response, Mr. Holzer's Motion should be disposed of *sua sponte* by the Board without the necessity of convening a hearing on an issue that is well settled as a matter of law.

Should the Board desire any additional information from the Developer in opposition to the Protestants' Motion, please do not hesitate to contact me.

Very truly yours,



Howard L. Alderman, Jr.

HLA/gk
Enclosures (4)
c (w/encl.): David E. Gonzales Companies
Robert D. Porter, Esquire
J. Carroll Holzer, Esquire

10/29/01

IN THE MATTER OF DEVELOPMENT PLAN HEARING AND PETITION FOR SPECIAL HEARING ARTHUR S. TRACEY AND A. RICHARD TRACEY – Owners: DAVID E. GONZALES- DEVELOPER ON PROPERTY LOCATED ON THE NE & SW/S MIDDLETOWN ROAD BETWEEN I-83 AND YORK ROAD & I-83 AND FALLS ROAD (ENSOR PROPERTY) 7th Election District 3rd Councilmanic District	* * * * * * * *	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. CBA-01-145 (VII-352) & 01-114-SPH

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

MOTION FOR RECONSIDERATION

The Appellants Janice Staples, et al., by and through their attorney J.Carroll Holzer, Holzer & Lee, hereby files this Motion for Reconsideration of the Board's Order of Dismissal sua sponte granted on October 26, 2001 by the County Board of Appeals (Order of Dismissal attached hereto) pursuant to Board of Appeals Rule 10 in that the Board has failed to provide a hearing to the Appellants and its decision is an error of law and mistake in regard to the action of the Hearing Officer not being final. Appellants allege that the matter is ripe for appeal at this time and that the Order of the Zoning Commissioner and Hearing Officer dated September 25th, 2001 was illegal and without authority of the Hearing Officer to grant subject to the Development Regulations §26-206 and 26-208. Wherefore, Appellants respectfully request a hearing on this Motion for Reconsideration to be heard by the Board.

Respectfully submitted,

J. Carroll Holzer
508 Fairmount Ave.
Towson, MD 21286
410-825-6961

01 OCT 29 PM 3:52

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

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

C:\My Documents\Motions\Jan Staples-Motion for Reconsideration.doc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 29 day of October, 2001 a copy of the foregoing Request for Reconsideration was mailed first class, postage pre-paid to Arnold Jablon, Director at Baltimore County Department Permits and Development Management, 111 West Chesapeake Ave., Towson, MD 21204, and to Peter Max Zimmerman at People's Counsel, 400 Washington Ave., Basement, Old Court house, Towson, MD 21204, and to Howard Alderman at Levin & Gann, 502 Washington Ave., 8th Floor, Towson, MD 21204.

J. Carroll Holzer

IN THE MATTER OF	*	BEFORE
DEVELOPMENT PLAN HEARING AND PETITION FOR SPECIAL HEARING	*	COUNTY BOARD OF APPEALS
ARTHUR S. TRACEY AND A. RICHARD TRACEY – Owners; DAVID E. GONZALES - DEVELOPER ON PROPERTY LOCATED	*	OF
ON THE NE & SW/S MIDDLETOWN ROAD BETWEEN I-83 AND YORK ROAD & I-83	*	BALTIMORE COUNTY
AND FALLS ROAD (ENSOR PROPERTY)	*	CASE NO. CBA-01-145 [VII-352] & 01-114-SPH
7th Election District		
3rd Councilmanic District	*	

* * * * * * * * *

ORDER OF DISMISSAL

On September 25, 2001, Zoning Commissioner Lawrence E. Schmidt issued a Hearing Officer's Opinion and Development Plan Order in the above-entitled case. In the final paragraph of his Order, the Zoning Commissioner /Hearing Officer [hereinafter "Hearing Officer"] stated:

> IT IS FURTHER ORDERED that all further proceedings involving this matter, including the issuance of any Order approving or denying this plan and/or imposing conditions thereto, are stayed, pending disposition of the noise issue.

From a review of the Hearing Officer's decision, it is apparent that the Hearing Officer's hearing has been adjourned and held open for the purpose of receiving a complete noise assessment study, and that no final order has been issued by the Hearing Officer. Section 26-209(a)(1) of the *Baltimore County Code* states: "Any person aggrieved or feeling aggrieved by **final action** on a plan may appeal to the county board of appeals within thirty (30) days after the date of the **final decision of the Hearing Officer**." [Emphasis added.] Further, § 26-132 of the Code entitled, **Appeals to county board of appeals**, subsection (a), further states: "...Notice of such appeals shall be filed...within thirty (30) days from the date of any **final order**...." [Emphasis added.]

Therefore, the Board, *sua sponte*, will dismiss, without prejudice, the appeal filed by J. Carroll Holzer, Esquire, on behalf of Janice Staples, Dr. Wayne Hunt, Andy and Page Crosby, Dr. and Mrs. Richard McQuaid, individually, and the Parkton Area Preservation Association, Inc.; the

Maryland Line Area Association, Inc.; and the North County Coalition, Inc., Appellants in the above-captioned case, on the grounds that the matter is not ripe for appeal at this time. At such time as the Hearing Officer renders a Final Opinion and Development Plan Order, any party then aggrieved shall have the right to appeal in full to this Board on all issues of the subject Development Plan and Petition for Special Hearing.

ORDER

IT IS THEREFORE THIS 26th day of October, 2001 by the County Board of Appeals of Baltimore County

ORDERED that the appeal filed in the subject case be and is hereby **DISMISSED without prejudice to any party** on the grounds that the matter is not ripe for appeal at this time. At such time as the Hearing Officer renders a Final Opinion and Development Plan Order, any party then aggrieved shall have the right to appeal in full to this Board on all issues of the subject Development Plan and Petition for Special Hearing.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman

10/20/01

IN THE MATTER OF DEVELOPMENT PLAN HEARING AND PETITION FOR SPECIAL HEARING ARTHUR S. TRACEY AND A. RICHARD TRACEY – Owners; DAVID E. GONZALES - DEVELOPER ON PROPERTY LOCATED ON THE NE & SW/S MIDDLETOWN ROAD BETWEEN I-83 AND YORK ROAD & I-83 AND FALLS ROAD (ENSOR PROPERTY) 7th Election District 3rd Councilmanic District	* BEFORE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * CASE NO. CBA-01-145 [VII-352] & 01-114-SPH *	

* * * * * * * * *

ORDER OF DISMISSAL

On September 25, 2001, Zoning Commissioner Lawrence E. Schmidt issued a Hearing Officer's Opinion and Development Plan Order in the above-entitled case. In the final paragraph of his Order, the Zoning Commissioner /Hearing Officer [hereinafter "Hearing Officer"] stated:

> IT IS FURTHER ORDERED that all further proceedings involving this matter, including the issuance of any Order approving or denying this plan and/or imposing conditions thereto, are stayed, pending disposition of the noise issue.

From a review of the Hearing Officer's decision, it is apparent that the Hearing Officer's hearing has been adjourned and held open for the purpose of receiving a complete noise assessment study, and that no final order has been issued by the Hearing Officer. Section 26-209(a)(1) of the *Baltimore County Code* states: "Any person aggrieved or feeling aggrieved by **final action** on a plan may appeal to the county board of appeals within thirty (30) days after the date of the **final decision of the Hearing Officer**." [Emphasis added.] Further, § 26-132 of the Code entitled, **Appeals to county board of appeals**, subsection (a), further states: "...Notice of such appeals shall be filed...within thirty (30) days from the date of any **final order**...." [Emphasis added.]

Therefore, the Board, *sua sponte*, will dismiss, without prejudice, the appeal filed by J. Carroll Holzer, Esquire, on behalf of Janice Staples, Dr. Wayne Hunt, Andy and Page Crosby, Dr. and Mrs. Richard McQuaid, individually, and the Parkton Area Preservation Association, Inc.; the

Maryland Line Area Association, Inc.; and the North County Coalition, Inc., Appellants in the above-captioned case, on the grounds that the matter is not ripe for appeal at this time. At such time as the Hearing Officer renders a Final Opinion and Development Plan Order, any party then aggrieved shall have the right to appeal in full to this Board on all issues of the subject Development Plan and Petition for Special Hearing.

ORDER

IT IS THEREFORE THIS 26th day of October, 2001 by the County Board of Appeals of Baltimore County

ORDERED that the appeal filed in the subject case be and is hereby **DISMISSED without prejudice to any party** on the grounds that the matter is not ripe for appeal at this time. At such time as the Hearing Officer renders a Final Opinion and Development Plan Order, any party then aggrieved shall have the right to appeal in full to this Board on all issues of the subject Development Plan and Petition for Special Hearing.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman

County Board of Appeals of Baltimore County

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

October 26, 2001

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

RE: *In the Matter of: Arthur S. Tracey and A. Richard Tracey* - Owners; David Gonzales, Developer (Ensor Property)
Case No. CBA-01-145 [VII-352] and Case No. 01-114-SPH

Dear Mr. Holzer:

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

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Andy & Page Crosby
Dr. & Mrs. Richard McQuaid
Jan Staples
Howard L. Alderman, Jr., Esquire
Mr. & Mrs. A. Richard Tracey
Mr. & Mrs. Arthur Tracey
David Gonzales
KCI Technologies, Inc.
Roger & Trudi Simeone
Alicia Barbers
Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Donald T. Rascoe, Development Manager /PDM
Walt Smith, Project Manager /PDM
Arnold Jablon, Director /PDM

Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
FAX COVER SHEET

DATE: October 26, 2001

TO:	Howard Alderman, Jr., Esquire	***TELEPHONE:*** 410-296-2801 ***FAX*** : 410-321-0600
	AND	
	J. Carroll Holzer, Esquire	***TELEPHONE:*** 410-825-4923 ***FAX*** : 410-825-6961
FROM:	Kathi Bianco	***TELEPHONE:*** 410-887-3180 ***FAX*** : 410-887-3182
RE:	Order of Dismissal - *In the Matter of Ensor Property* /Case No. 01-114-SPH and Case No. CBA-01-145 (PDM VII-352)	

Attached is a copy of the Order of Dismissal issued this date by the Board with regard to the subject matter.

Should you have any questions, please call me at the above number.

Number of pages including this page: Three (3)

Original copy to follow : Yes __X__ No ____

10/11/01

IN RE:	**DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING**	*	**BEFORE THE**
	NE & SW/S Middletown Road	*	**ZONING**
	Between I 83 and York Rd. & I 83 and Falls Rd.	*	**COMMISSIONER OF**
	7th Election District		
	3rd Councilmanic District	*	**BALTIMORE COUNTY**
	Arthur S. Tracey & A. Richard Tracey, Owners	*	**Case No. VII-352 & 01-114-SPH**
	David E. Gonzales, Developer	*	

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

NOTICE OF APPEAL

Janice Staples, Dr. Wayne Hunt; Andy and Page Crosby; Dr. and Mrs. Richard McQuaid, individually, and the Parkton Area Preservation Assn., Inc.; the Maryland Line Area Assn., Inc.; and the North County Coalition, Inc., Appellants in the above captioned case, by and through their attorney, J. Carroll Holzer and Holzer and Lee, feeling aggrieved by the decision of the Zoning Commissioner in the above captioned cases, hereby note an appeal to the County Board of Appeals from the Hearing Officer's Opinion and Development Plan Order of the Zoning Commissioner of Baltimore County dated September 25, 2001, attached hereto, and incorporated herein as **Exhibit #1**.

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

Respectfully submitted,

J. Carroll Holzer

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

RECEIVED
OCT 11 2001
By GDZ

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of October, 2001, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to Howard Alderman, Jr., Levin & Gann, 502 Washington Ave., 8th Floor, Towson, MD 21204; County Board of Appeals, Basement Old Court House, 400 Washington Ave., Towson, MD 21204; and People's Counsel for Baltimore County, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

J. Carroll Holzer

J. Carroll Holzer

Baltimore County
Department of Permits and
Development Management

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

October 16, 2001

Howard L Alderman Jr, Esquire
Levin & Gann PA
Nottingham Centre
502 Washington Avenue
8th Floor
Towson MD 21204

Dear Mr. Alderman:

RE: Case No. 01-114-SPH, Ensor Property

Please be advised that an appeal of the above-referenced case was filed in this office on October 11, 2001 by J. Carroll Holzer on behalf of Janice Staples, Dr. Wayne Hunt, Andy and Page Crosby, Dr. & Mrs. Richard McQuaid. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

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

Sincerely,

Arnold Jablon GDZ
Director

AJ: gdz

c: A. Richard & Arthur S Tracey, 801 Falls Road, Parkton 21120-9495
People's Counsel

Printed with Soybean Ink
on Recycled Paper

9/25/01

IN RE: DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING - NE & SW/S Middletown Road, between I-83 and York Road & I-83 and Falls Road (Ensor Property)
7th Election District
3rd Council District

Arthur S. Tracey & A. Richard Tracey, Owners;
David E. Gonzales, Contract Purchaser/Developer

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Cases Nos. VII-352 & 01-114-SPH
*

* * * * * * * * * * *

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

These matters come before this Hearing Officer/Zoning Commissioner within a single public hearing combining consideration of a development plan and Petition for Special Hearing filed by the Owners of the subject property, Arthur S. Tracey and A. Richard Tracey, and the Contract Purchaser/Developer, David E. Gonzales. A combined zoning and plan approval hearing is permitted, pursuant to Section 26-206.1 of the Baltimore County Code. The Owners/Developer (Applicants) propose development of the subject property with 49 single family dwellings, in accordance with the six-page development plan, prepared by KCI Technologies, Inc., submitted at the Hearing Officer's Hearing and marked into evidence as Developer's Exhibits 2A-2F. In addition to development plan approval, the Applicants request special hearing relief to approve the conservancy areas and dwellings to be located thereon as shown on the plan, which are physically separated from one another by two separate roadways (Middletown Road and I-83) and an intervening R.C.5 zone. The property at issue consists of four separate parcels, containing a combined gross area of 183.30 acres, more or less, currently split zoned R.C.5 (3.44 acres) and R.C.4 (179.86 acres). The property is located on both the east and west sides of Interstate 83, and the north and south sides of Middletown Road in Parkton.

The chronology of this case is significant and is described in post-hearing memoranda submitted by the parties. Those memoranda fully set out the history of the project through the County's development review process as codified in Title 26 of the Baltimore County Code. The

ORDER RECEIVED FOR FILING
Date 9/25/01
By

original concept plan for this proposal was submitted by the Applicants at a concept plan conference held on November 29, 1999. Subsequently, a second concept plan conference was held on December 20, 1999. The original plan proposed a 52-single family dwelling lot subdivision on the property. Although the property was split zoned R.C.4/R.C.5 at that time, there was a greater percentage of R.C.5 zoned land than at present. As noted above, the property straddles I-83 on both its east and west sides, near the interchange of that highway with Middletown Road. Moreover, the property is bisected by Middletown Road, and extends easterly towards York Road (Maryland Route 45).

Following the concept plan conferences, a community input meeting (CIM) was conducted on January 19, 2000 at Hereford High School. As described in Section 26-202 of the Baltimore County Code, the purpose of the CIM is to provide interested neighbors with an opportunity to review the plan, offer comments and ask questions about the proposal. The CIM is held during the evening hours at a facility within the affected community which can accommodate a large number of individuals. Following the CIM on January 19, 2000, the Applicants next participated in a meeting before the Baltimore County Landmarks Preservation Commission on February 10, 2000. This meeting was scheduled because certain existing buildings (i.e., the two existing dwellings) on the property were proposed for inclusion on the County's Preliminary Landmarks List. A second CIM was conducted on March 2, 2000. Again, that meeting was held within the locale at Hereford High School. The record of the case will show that a series of amendments were made to the plan which reduced the number of lots proposed. After the first series of County concept plan conferences and CIMs, the plan was reduced from 52 lots to 49 lots. Later, after the Landmarks Preservation Committee meeting, two additional lots were deleted. Thus, when the project was ultimately submitted for a development plan conference on July 5, 2000, 47 lots were then proposed.

Due to the existence of historic structures on the property, additional referrals and meetings were held in accordance with the applicable provisions of the Baltimore County Code. The record reflects that a second Landmarks Preservation Committee meeting was held on July 13,

original concept plan for this proposal was submitted by the Applicants at a concept plan conference held on November 29, 1999. Subsequently, a second concept plan conference was held on December 20, 1999. The original plan proposed a 52-single family dwelling lot subdivision on the property. Although the property was split zoned R.C.4/R.C.5 at that time, there was a greater percentage of R.C.5 zoned land than at present. As noted above, the property straddles I-83 on both its east and west sides, near the interchange of that highway with Middletown Road. Moreover, the property is bisected by Middletown Road, and extends easterly towards York Road (Maryland Route 45).

Following the concept plan conferences, a community input meeting (CIM) was conducted on January 19, 2000 at Hereford High School. As described in Section 26-202 of the Baltimore County Code, the purpose of the CIM is to provide interested neighbors with an opportunity to review the plan, offer comments and ask questions about the proposal. The CIM is held during the evening hours at a facility within the affected community which can accommodate a large number of individuals. Following the CIM on January 19, 2000, the Applicants next participated in a meeting before the Baltimore County Landmarks Preservation Commission on February 10, 2000. This meeting was scheduled because certain existing buildings (i.e., the two existing dwellings) on the property were proposed for inclusion on the County's Preliminary Landmarks List. A second CIM was conducted on March 2, 2000. Again, that meeting was held within the locale at Hereford High School. The record of the case will show that a series of amendments were made to the plan which reduced the number of lots proposed. After the first series of County concept plan conferences and CIMs, the plan was reduced from 52 lots to 49 lots. Later, after the Landmarks Preservation Committee meeting, two additional lots were deleted. Thus, when the project was ultimately submitted for a development plan conference on July 5, 2000, 47 lots were then proposed.

Due to the existence of historic structures on the property, additional referrals and meetings were held in accordance with the applicable provisions of the Baltimore County Code. The record reflects that a second Landmarks Preservation Committee meeting was held on July 13,

2000, that a Planning Board meeting took place on July 17, 2000 and that second and third Planning Board meetings were held on September 7th and 21st, 2000, respectively.

In addition to these required meetings and conferences, it is to be noted that during the summer/fall of 2000, the Baltimore County Council was in the midst of the Comprehensive Zoning Map review process. On October 10, 2000, the Council voted to change the zoning classification of portions of the tract. As a result of this vote and changes, the property was almost entirely reclassified to R.C.4; however, a small portion of the property retained the R.C.5 designation. The impact of this rezoning was significant in that it altered the permitted subdivision of the property and lot yield.

The Applicants then submitted a revised development plan, dated February 28, 2001, depicting 35 single family lots, including preservation of the 2 existing lots and 33 new lots. This plan was reviewed by County agencies at the second Development Plan Conference held on May 2, 2001. The matter then came before me for a Hearing Officer's Hearing on May 24, 2001. At that time, the Applicants submitted a red-lined development plan which was revised as the result of comments received from Baltimore County at the second development plan conference. The amended plan offered at that time proposed a total of 34 dwellings (2 existing and 32 proposed).

At the May 24, 2001 Hearing Officer's Hearing, certain County agency comments were identified which had not been reviewed by the Protestants. At that time, Counsel for the Protestants objected to the then consideration of the plan, claiming that the project was a "moving target" and that the community had not had an opportunity to study and prepare for the hearing on the newest version of the plan. The Protestants' objection was sustained. Thus, the Hearing Officer's Hearing was continued and a schedule established by the undersigned which required all agency comments to be submitted and a third development plan conference conducted on June 20, 2001. The Hearing Officer's Hearing then resumed on July 20, 2001, and continued on August 15th and August 21st, 2001. Written memoranda in lieu of closing argument, were submitted on September 10, 2001.

The colorized plan submitted for approval depicts information in four colors. The black lines reflect all of the information contained on the revised plan dated February 28, 2001. The blue

drawn lines and notes reflect that information submitted as an amendment to the February 28, 2001 plan, which was received at the initial Hearing Officer's Hearing on May 24, 2001. The green lines show those changes made during the May 24th and May 31st, 2001 Hearing Officer's Hearings, and those changes made after May 31, 2001 but before the third development plan conference held on June 20, 2001. The red-lined changes are all those changes made to incorporate the comments made by County agencies since the final development plan conference. Thus, in chronological order, the plan depicts information in black, blue, green and red colors.

The various dates of the Hearing Officer's Hearing were well-attended. Members of the Tracy family, who are the current owners of the property, appeared, as did a number of neighbors and residents in the locale who support the project. Also present was Toby Kestor, formerly of KCI Technologies, Inc., the consultants who prepared the plan. Ms. Kestor had been employed by KCI during the original formulation of the plan. Present employees of KCI who appeared were Mark Richmond, Raymond J. Hopkins and Bruce Thompson. The Applicants were represented by Howard L. Alderman, Jr., Esquire. A number of individuals appeared in opposition to the request. These included Andy and Paige Crosby, Dr. Wayne Hunt and Janice Staples, and Dr. & Mrs. Richard McQuaid. Additionally, these individuals served as representatives of the Parkton Area Preservation Association, Inc., the Maryland Area Association, Inc., and the North County Coalition. Collectively, these groups were represented by J. Carroll Holzer, Esquire.

Representatives of the various County agencies who reviewed the project also appeared at one or more hearings. These included Lynn Lanham from the Office of Planning; R. Bruce Seeley and Todd Taylor from the Department of Environmental Protection and Resource Management (DEPRM); Jan Cook from the Department of Recreation and Parks; and the following individuals from the Department of Permits and Development Management (DPDM): John Sullivan, Zoning Review; Robert W. Bowling, Development Plans Review; Colleen Kelly, Land Acquisition; and, Walt Smith, Project Manager. The sign-in sheets circulated on the various hearing dates and the record of this case will reflect the voluminous amount of testimony and evidence offered as well as the significant public interest raised by this case.

There were a number of issues raised during the course of the hearings. For ease of discussion, these will be addressed separately.

1) County Council Bill No. 34-01, Residential Performance Standards:

The record will reflect that at the Hearing Officer's Hearing on May 24, 2001, an issue was raised regarding the applicability of Council Bill No. 34-01, which enacted into law certain "residential performance standards" and amended Section 260 of the Baltimore County Zoning Regulations (B.C.Z.R.). This issue was made moot during the course of the continued proceedings by virtue of Council's adoption of Bill No. 58-01, which repealed and re-enacted Bill No. 34-01. The new Bill contains several exceptions that directly apply to the development plan proposed for consideration in this case. Thus, it is clear that the development plan offered for consideration is exempt from the requirements contained in Bill No. 58-01, as codified in Section 260.1 of the B.C.Z.R.

2) Referral to Planning Board for consideration of Historic Structures:

Section 26-207(a)(3) of the Baltimore County Code requires that the Hearing Officer refer the plan to the Planning Board, if the project involves a building, structure or site included on Baltimore County's Landmarks Preservation Commission's Preliminary or Final List, or is located within a County historic district. Indeed, the record of this case will show that a referral by the Hearing Officer to the Planning Board was ordered on June 6, 2000, due to the historic buildings/ dwellings. Moreover, as described in the chronology stated above, the matter came before the Planning Board for consideration on three occasions. Additionally, the project was the subject of a hearing before the Landmarks Preservation Commission.

At the May 24, 2001 Hearing Officer's Hearing, the Protestants moved that the plan be referred again to the Planning Board. That Motion was denied by this Hearing Officer for reasons which are stated in the record. Although this issue was resolved at that time, it deserves brief comment within this written Opinion. Essentially, the Protestants argued that an additional referral was mandated because of two changed circumstances relating to this project. First, the most recent plan is different from the previously referred plan, and second, the zoning of the property changed

during the Comprehensive Zoning Map review process, which was after the initial referral. Although the plan indeed is not identical, an examination of the current plan shows that there is no significant or material change relative to the historic dwellings between the development plan submitted to the Planning Board in 2000 and the development plan now at issue. The newer plan shows 13 fewer lots than the old plan and there is no change in the location of roads or other infrastructure. None of the changes in the plan relate, in any manner, to the historic dwellings. Thus, the new plan, in terms of the number of proposed lots and areas of disturbance, cannot conceivably have a greater impact on the historic structures involved than the previous plan. Obviously, it has a lesser impact since there is less development. The change in zoning is likewise not a significant fact. As a result of the Council's act in rezoning the land, the project became less dense and contained fewer proposed lots. Importantly, there were no changes to the infrastructure associated with either plan (e.g., roads). Thus, I find neither no material change nor reasonable basis to require another referral.

It is also to be noted that testimony was offered during the course of the hearing by Marion Ruckles, one of the owners of the Weisburg Inn, which is listed on the County's Landmarks Preservation List. The Weisburg Inn is located within proximity of the property. Mr. Ruckles suggested during his testimony that the plan need be referred because of its potential impact on his property. I am not persuaded by his testimony. Surely, the Weisburg Inn is located farther from the proposed development than the historic structures that are actually located on the subject property. Moreover, the Weisburg Inn site is separated from the property by a natural buffer (tree-lined ridge), as well as an intervening land use (Our Lady of Grace Roman Catholic Church). For all of these reasons, I do not believe that additional referral to the Planning Board is warranted. There is no reasonable basis to suggest that the Planning Board would consider the current plan any differently than an earlier version.

3) Potential Institutional Church or Non-residential Use:

Certain testimony was raised by the Protestants regarding the acquisition of a portion of the subject site by Our Lady of Grace Roman Catholic Church. Indeed, some documentary

evidence submitted suggested that the Church might acquire and develop certain residential lots on this property. It is clear that any institutional church or non-residential use of the subject property would constitute a material amendment to the plan. The Developer is restricted to the use and development of the property as actually shown on the current plan. If the sale of a portion of the property to the Church is undertaken, such transfer would be deemed to be a material change to the plan and require further County review, pursuant to Section 26-211 of the Baltimore County Code.

4) The Development Plan Review Process:

The chronology of the project through the development review process is highlighted in detail above. Clearly, this project has had an inordinate number of stops and starts. The record of the proceedings before the Hearing Officer will reflect many of the reasons for these interruptions, particularly, the Hearing Officer's ruling on May 24, 2001, remanding the matter for a further development plan conference.

It is clear that the development review process in Baltimore County is evolutionary in nature and requires ongoing plan review and amendment. (See Monkton Preservation Assoc. v. Gaylord Brooks Realty Corp., 107 Md. App. 573 (1996). In an effort to insure community participation and adequate opportunity for review, both by the Protestants and County agencies, the Hearing Officer's Hearing was continued for an additional development plan conference. The record of the case will show that the Protestants consented to the schedule set forth by the Hearing Officer. I find no procedural defect in the process for this case.

5) Noise Issue and Implementation of Policy X:

Section 26-206(b) of the Baltimore County Code sets out the Hearing Officer's responsibilities in evaluating a plan. It provides, in part, "The Hearing Officer shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations promulgated pursuant to Section 22-416, et seq. of the Code, provided that the final approval of a plan shall be subject to all appropriate standards, rules, regulations, conditions and safeguards set forth therein." Obviously, a plan not meeting these criteria cannot be approved. A difficult issue in this case is whether the plan meets applicable standards as they relate to noise.

The impact of noise by a proposed development is governed, in part, by the Department of Permits and Development Management (DPDM) Policy X. Policy X was designed to implement County Code Section 26-135 (Authority of Director of Permits and Development Management) and Code Section 26-218 (Development Management). Policy X was enacted in accordance with County Code Section 2-416, and applies to all concept plans filed with the Department of Permits and Development Management (DPDM) after June 30, 1999. Policy X is applicable in this case because the initial concept plan was filed after that date.

The applicability of Policy X is set out in Section 4 of the Policy. Interestingly, the language of Section 4 requires the Developer to submit a noise assessment report in conjunction with the concept plan, if the plan proposes any residential building lots adjacent to and within 500 feet from the edge of paving of a designated highway. In this case, it is agreed that I-83 is such a "designated highway" and certain building lots (i.e., Lots 3, 4, 5, 6, 25, 26, 27 and 28) lie within 500 feet of the edge of paving of that road.

It is to be emphasized that it is the location of the lot that triggers the applicability of Policy X and the requirement that a noise assessment report be submitted. It is not the location of the proposed dwelling, which is relevant in determining whether a noise assessment report be submitted.

This language may potentially lead to an absurd result. As noted in Developer's Post-Hearing Memorandum, an individual might own a rectangularly-shaped lot, 300 feet wide by 5280 feet in length. If the 300-foot side abutted the right-of-way to a highway, the farthest point of the lot would be nearly one mile from that location. That property owner could choose to build a house at the "far end" of the lot, nearly a mile from the highway. Nonetheless, because the lot itself is within 500 feet of the road, a noise assessment study would be required.

When considering the issue of noise, a reasonable assumption might be made that the primary objectives of any regulation should be to protect existing properties and structures from either the creation of noise generators, or, the loss of buffer that development might cause between an existing building and the highway. For proposed homes, it may be reasonable to

believe that the forces of the market will self-regulate this issue. That is, if a Developer chooses to build adjacent to an interstate highway, the desirability of homes in the proposed subdivision would be limited. Remarkably, Policy X, as written, does not bear upon either of these assumptions.

In any event, having determined that Policy X is applicable in this case because the concept plan was filed after June 30, 1999 and lots are within 500 feet of the paving of a designated highway, attention is next turned to the requirements of the Policy. Those requirements are set out in Section 5 of the Policy. That Section states, "If a noise assessment report shows that day/night exterior sound levels (Ldn) measured between the building line and the highway will reach or exceed 66 (dBA), the report shall make proposals for the location and form of noise mitigation or attenuation to reduce Ldn noise levels to below 66 (dBA)..." Again, it might be assumed that the drafters of Policy X should have been concerned about the level of noise at the location of a particular dwelling or structure. However, that is not the case. The Policy clearly states that if a 66 dBA noise level exists anywhere "measured between the building line and the highway," certain noise mitigation or attenuation will be required.

It is well-settled that the Hearing Officer is required to ascertain the legislative intent when interpreting any law or regulation. (Montgomery Co. v. Buchanan, 333 Md. 516 (1994). To do so, I must consider the language of the regulation and give that language its natural and ordinary meaning. (Harford Co. v. University, 381 Md. 525 (1990). If there is no ambiguity or obscurity in the language of the regulation, there is no need to look elsewhere to ascertain the legislative intent. (State v. Fabritz, 276 Md. 416 (1975). In this case, the terms of Policy X are clear and unambiguous. "Between" means, "from one to the other." (Webster's Third New International Dictionary). For so long as a reading equaling or exceeding the 66 dBA sound level exists on any portion of the lot from the building line to the highway, noise mitigation or attenuation is required.

The manner of preparation of the noise assessment study is also defined under Policy X. Policy X sets out the methodology that must be utilized for preparation of the noise

assessment. It is also required that the study be prepared by a Professional Engineer. These requirements are clear and unambiguous.

The testimony and evidence presented by the Developer leads to the conclusion that the noise assessment submitted in this case was deficient. First, candid testimony offered by the Developer was that the study was prepared by Bruce Thompson of KCI Technologies, Inc. Without any disrespect to Mr. Thompson, he admitted that he was not a Professional Engineer, as is required by Policy X. Moreover, his testimony was that, although the report was sealed by a Professional Engineer, D. Dwight Walters, Mr. Walters has limited, if any, experience in this field, and essentially rubber-stamped Mr. Thompson's findings without adequate inquiry or review. Just as the County Code requires that a development plan be sealed by a professional engineer, registered landscape architect, or surveyor, (Section 26-203(b)(11)), Policy X requires that the noise assessment study be prepared by a professional engineer, or, at the least, under a professional engineer's active supervision. In this case, testimony was compelling that it was not.

The study also needs to be based on current volumes of traffic. In this case, the study submitted was based on traffic volumes that existed in 1996. Testimony and evidence offered clearly established that the I-83 corridor at this location has had traffic increases in recent years. I am not persuaded that the data utilized in this case reflects current volumes.

It is also to be noted that the Protestants objected to the methodology used by Mr. Thompson in the preparation of his report. I find those objections without merit. Kenneth Polchak testified on behalf of the Protestants and indicated that other methodology was available which would be more accurate in determining noise levels generated by traffic on I-83. Whether that is the case is irrelevant. Section 3(c) mandates that the noise assessment study be in accordance with one of two methods set out therein. Either of these methods must be utilized; other criteria are simply not allowed.

In sum, a compelling argument could be made that Policy X is ineffective and an unreasonable regulation. It is not designed to protect existing structures. Unbelievably, it does not require that attention be given to the noise levels at the location of proposed buildings.

Nonetheless, the Hearing officer cannot substitute his judgment when the terms of the policy are clear and unambiguous.[1] In this case, I find that the report was not prepared by an engineer or under an engineer's active supervision. Moreover, although proper methodology was applied, the raw data entered is of questionable validity. For these reasons, I find that the requirements of Policy X are not met.

Upon making this determination, the next issue is to determine the proper sanction for the Developer's failure to comply with Policy X. In their memorandum, the Protestants argue "Therefore the Protestants request the plan be denied; that the four lots be eliminated; or, the plan rejected until a noise assessment is performed by the Developer, taking into account current data..." In my judgment, a denial of the plan or elimination of lots at this time would not be appropriate. However, before the project can be approved, the Developer must submit a noise assessment report, in accordance with the requirements set out in Policy X. If that study shows that noise mitigation is required, the Developer must demonstrate the mitigation or attenuation proposed, or request a waiver, pursuant to Section 5 of Policy VI.

The Developer is forewarned that this Hearing Officer would not approve any plan requiring alteration of the scenic vista afforded from I-83. In my judgment, the construction of a wall at this location would be inappropriate. Moreover, if the Developer intends to rely upon construction methods or materials on the houses to attenuate or mitigate impacts of noise, those methods or materials should be sufficiently detailed.

It is recognized that my decision on this issue is confounding to the extent that there was no testimony or evidence offered in the record of this case that this project will in any manner adversely impact existing properties or land uses in the vicinity from a noise perspective. This project does not, for example, create noise or eliminate any noise buffer presently in existence. As noted above, a reasonable assumption might be made that future buyers will be well aware of the

[1] I shall reluctantly abide by the admonition of Judge Cathell in Cromwell v. Ward, 102 Md. App. 691 (1995), wherein he stated, "When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of statutes enacted by the legislative branch of government, they substitute their policies for those of the policy makers. That is improper." (Pg. 726)

ORDER RECEIVED FOR FILING
Date
By

existence of I-83. Nonetheless, I feel compelled to this result. The language and requirements of Policy X are clear and unambiguous. The standards set out for the preparation of the noise assessment study which is clearly required were simply not adhered to in this case. They need be, prior to the approval of any plan.

6) The Conservancy Area:

The subject property contains 183 acres of land, most of which is zoned R.C.4 (179.86 acres). The R.C.4 zoning regulations require that not less than 70% of the gross area proposed for development must be designated as a conservancy area (B.C.Z.R., Section 1A03.4.B.1(b)1). As shown on the plan, a total of 126.32 acres of conservancy area are provided. This is slightly in excess of the 70% (125.90 acres) required. The conservancy is bisected in a number of areas by existing public roads including Middletown Road and I-83. The Petitioners seek approval of the conservancy area as proposed on the development plan and also special hearing relief for a finding that the conservancy area complies with the relevant Sections of the B.C.Z.R.

It is to be noted that Section 1A03.5 of the B.C.Z.R. sets out performance standards for rural cluster development. Section 1A03.5.A establishes the conservancy area standards. Moreover, Section 1A03.5.A.4 provides that the Director of the Office of Planning and the Director of Environmental Protection and Resource Management (DEPRM) "...shall determine whether the conservancy area meets the requirements of this paragraph and the standards of the Comprehensive Manual of Development Policies." (CMDP) Both the Director of Planning and the Director of DEPRM, through written development plan comments and by the testimony of their representatives at the hearing, indicated that the proposed conservancy area was appropriate and met the conservancy area standards of the CMDP. That testimony is compelling.

The Developer is proposing a conservancy area comprised of two areas (Lots 1 and 2) that will be subject to a deed of conservancy area agreement. Each of these two areas is improved with an occupied historic dwelling. The plan shows one of these dwellings on the east side of I-83 and the other on the west side of I-83. These dwellings have been occupied by members of the Tracey family for years. In addition, the total area of Lot 1 on the east side of I-83 is 65.2 acres

ORDER RECEIVED FOR FILING
Date 9/25/01
By

and the area of the Lot 2 on the west side of I-83 is 39.14 acres. In addition to these two lots containing the historic structures, the Applicants also propose four additional areas of isolated pockets of open space to be owned and maintained by a Homeowners' Association. The Protestants object to the layout of the conservancy areas as described on the plan.

Generally, the Protestants argue that the B.C.Z.R. do not permit non-contiguous, multiple conservancy areas separated by existing roads, under separate ownership. Although indeed the conservancy area regulations set out in Section 1A03 of the B.C.Z.R. establish a preference for a single conservancy area owned by a single owner, flexibility is built into the regulations. It is clear that the conservancy regulations were adopted in order to protect prime and productive soils, steeps, slopes, wetlands, stream buffers, forests, open space and other environmental, natural or historic features. As such, the regulations provide the Zoning Commissioner, the Director of Planning, and the Director of DEPRM flexibility in the layout of the conservancy area. The Developer's Memorandum sets out many of the Sections of the B.C.Z.R. which generally provide this flexibility. For example, Section 1A03.4.B.1(b)1 allows a dwelling on a conservancy lot, and Section 1A03.5.A.1 and 2 allows a conservancy area with a diameter of less than 100 feet in certain circumstances.

The historic nature and ongoing use of the property as a farm, the environmental constraints associated with the property, the two historic dwellings, and existing roads, including I-83 and Middletown Road, which traverse the property, are all compelling factors in this case. Clearly, any development on this tract could not realistically permit a single, contiguous conservancy lot under sole ownership.

Testimony offered by the Developer's consultant, Toby Kestor, was persuasive that the standards and objectives of the conservancy area were met by the design and location of the area as shown on the plan. Moreover, the Directors of the Office of Planning and DEPRM have approved the plan. I believe the B.C.Z.R. provides a degree of flexibility sufficient to allow this proposal. In sum, I will accept the recommendation of those Directors and approve the conservancy area as submitted. The Petition for Special Hearing will be approved.

CONCLUSION:

With the exception of the noise issue, I find that the plan is compliant with all development standards and regulations and policies adopted thereto. I also believe that the conservancy area meets the requirements as contained in the B.C.Z.R. However, as discussed above, the noise issue remains an item that prohibits approval at this time.

Therefore, pursuant to the zoning and development plan regulations of Baltimore County as contained with the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the advertising of the property and public hearing held thereon,

IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 25th day of September, 2001 that the Developer shall complete a noise assessment study, pursuant to the requirements of Policy X, and submit same to this Hearing Officer, with a copy to Protestants' Counsel, within 120 days of the date of this Order; and

IT IS FURTHER ORDERED that following the receipt of such study, the Hearing Officer's Hearing shall be reconvened to accept further testimony and evidence on the noise issue; and,

IT IS FURTHER ORDERED that all further proceedings involving this matter, including the issuance of any Order approving or denying this plan and/or imposing conditions thereto, are STAYED, pending disposition of the noise issue.

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

LES:bjs

Baltimore County
Zoning Commissioner

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

September 25, 2001

Howard L. Alderman, Jr., Esquire
Levin & Gann, PA
502 Washington Avenue, 8th Floor
Towson, Maryland 21204

RE: DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING
NE and SW/S Middletown Road between I-83 & York Road (Ensor Property)
7th Election District – 3rd Council District
Arthur S. & A. Richard Tracey, Owners; David E. Gonzales, Contract Purchaser/Developer
Case Nos. VII-352 & 01-114-SPH

Dear Mr. Alderman:

Enclosed please find a copy of the decision rendered in the above-captioned matter. In essence, no Order approving or denying the development plan will be issued until such time as a noise assessment study has been prepared in accordance with the requirements of Policy X.

Should anyone have any questions concerning this matter, please do not hesitate to call me.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Arthur Tracey, 20815 Middletown Road, Freeland, Md. 21053
Mr. & Mrs. A. Richard Tracey, 2934 Rockdale Road, Freeland, Md. 21053
Mr. David Gonzales, 17 Glenberry Court, Phoenix, Md. 21131
KCI Technologies, Inc., 10 North Park Drive, Hunt Valley, Md. 21030
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286
Andy & Page Crosby, 18920 Hillcrest Road, Parkton, Md. 21120
Roger & Trudi Simeone, 1116 Rayville Road, Parkton, Md. 21120
Dr. & Mrs. Richard W. McQuaid, 1501 Harris Mill Road, Parkton, Md. 21120
Jan Staples, 900 Old Barn Road, Parkton, Md. 21120
Alicia Barbers, P.O. Box 461, Parkton, Md. 21120
Resident, 18815 York Road, Parkton, Md. 21120
Walt Smith, PDM; Bob Bowling, PDM; DEPRM; OP; R&P; People's Counsel; Case Files

Printed with Soybean Ink
on Recycled Paper

FLOODPLAIN

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at East/West of Middletown Road & I-83, South of Frederick Road

which is presently zoned RC-4 & RC-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

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:

DAVID E. GONZALES
Name - Type or Print

Signature

17 Glenberry Court 410-785-9630
Address Telephone No.

Phoenix, MD 21131
City State Zip Code

Attorney For Petitioner:

Howard L. Alderman, Jr., Esquire
Name - Type or Print

Signature

LEVIN & GANN, PA Nottingham Centre
Company

502 Washington Ave. 8th Floor 4103210600
Address Telephone No.

Towson, MD 21204
City State Zip Code

[NOTE: ADDRESS EFFECTIVE 09/01/2000]

Legal Owner(s):

ARTHUR S. TRACEY
Name - Type or Print

Signature

A. RICHARD TRACEY
Name - Type or Print

Signature

801 Falls Road 410-343-0424
Address Telephone No.

Parkton, MD 21120-9495
City State Zip Code

Representative to be Contacted:

Tobi Kester, RLA; KCI Technologies, Inc.
Name

10 North Park Drive 410-316-7800
Address Telephone No.

Hunt Valley, MD 21030
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BR Date 9/8/00

Schedule hearing with HOH
Ensor Property

ORDER RECEIVED FOR FILING
Date 9/8/00
By

Case No. 01-114-SPH

REV 9/15/98

Attachment 1

PETITION FOR SPECIAL

CASE NO: 01- -SPH

Address: East & West of Middletown Road & I-83, South of Frederick Road ("Ensor Property")

Legal Owners: Arthur S. Tracey & A. Richard Tracey

Contract Purchaser: David E. Gonzlaes

Present Zoning: RC 4 & RC 5

REQUEST:

to approve: The conservancy areas and dwellings to be located thereon, as shown on the Plat to Accompany the Petition for Special Hearing/Development Plan which are physically separated from one another by two, separate roadways (Middletown Road and Interstate 83) and an intervening RC 5 zone.

For Additional Information Contact:

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
Nottingham Centre
502 Washington Centre
8th Floor
Towson, Maryland 21204

(Effective 09/01/2000)
(410) 321-0600
Fax: (410) 296-2801

ORDER RECEIVED FOR FILING
Date 9/25/01
By

#114

ZONING DESCRIPTION
Parcel "A" – Part of Parcel 308
THE ENSOR PROPERTY AT FALLS ROAD
7th Election District
Baltimore County, Maryland

BEGINNING for the same at a point on the approximate centerline of Falls Road, a 30 foot wide right-of-way, at a distance of approximately 38 feet southwesterly from the centerline of Old Barn Road, 50 feet wide; thence running in Falls Road

1) Northerly by a curve to the left with a length of 66.28 feet, having a radius of 2,000.00 feet and being subtended by a chord bearing of North 52 degrees 19 minutes 00 seconds East a distance of 66.28 feet; thence leaving Falls Road
2) South 44 degrees 23 minutes 15 seconds East a distance of 19.83 feet; thence
3) South 60 degrees 57 minutes 50 seconds East a distance of 37.95 feet; thence
4) South 10 degrees 36 minutes 05 seconds West a distance of 167.50 feet; thence
5) Southerly by a curve to the left with a length of 20.85 feet, having a radius of 170.00 feet and being subtended by a chord bearing of South 07 degrees 05 minutes 17 seconds West a distance of 20.83 feet; thence
6) South 61 degrees 37 minutes 25 seconds West a distance of 372.16 feet; thence
7) North 67 degrees 17 minutes 06 seconds West a distance of 40.73 feet; thence
8) North 12 degrees 11 minutes 58 seconds West a distance of 28.04 feet; thence
9) North 42 degrees 56 minutes 04 seconds East a distance of 352.86 feet; thence
10) Northerly by a curve to the left with a length of 13.89 feet, having a radius of 700.00 feet and being subtended by a chord bearing of North 48 degrees 49 minutes 58 seconds East a distance of 13.89 feet; thence
11) Northerly by a curve to the right with a length of 69.47 feet, having a radius of 900.00 feet and being subtended by a chord bearing of North 51 degrees 03 minutes 31 seconds East a distance of 69.45 feet to the point of beginning.

CONTAINING 61,397 square feet or 1.4095 acres of land, more or less, which includes the bed of Falls Road.

BEING a portion of Tract 3 of a deed dated, June 9,1987 from Edward Harry Ensor and Wife to Edward Harry Ensor and Wife, which is recorded among the Land Records of Baltimore County, Maryland in Liber SM No. 7573, Folio 507.

This description was derived from a survey prepared by Colbert, Matz, & Rosenfelt, Inc.

STATE OF MARYLAND
ROBERT PHILIP
NO. 354
REGISTERED
PROPERTY LINE SURVEYOR

01-114-SPH

#114

ZONING DESCRIPTION

Parcel "B" - Parcel 25, Part of Parcel 308 & Part of Parcel 270
THE ENSOR PROPERTY AT FALLS ROAD
7th Election District
Baltimore County, Maryland

BEGINNING for the same at a point on the approximate centerline of Falls Road, a 30 foot wide right-of-way, at a distance of approximately 188.0 feet northeasterly from the centerline of Old Barn Road, 50 feet wide; thence running in Falls Road

1) Northerly by a curve to the left with a length of 43.00 feet, having a radius of 2,000.00 feet and being subtended by a chord bearing of North 46 degrees 09 minutes 56 seconds East a distance of 43.00 feet; thence leaving Falls Road
2) North 47 degrees 03 minutes 56 seconds West a distance of 41.59 feet; thence
3) North 42 degrees 56 minutes 04 seconds East a distance of 460.40 feet, thence
4) North 88 degrees 03 minutes 44 seconds East a distance of 393.48 feet to a point in Falls Road; thence
5) South 20 degrees 33 minutes 48 seconds East a distance of 29.29 feet; thence
6) Northerly by a curve to the left with a length of 235.72 feet, having a radius of 633.08 feet and being subtended by a chord bearing of North 58 degrees 46 minutes 12 seconds East a distance of 234.36 feet; thence
7) Northerly by a curve to the left with a length of 144.95 feet, having a radius of 466.70 feet and being subtended by a chord bearing of North 39 degrees 12 minutes 20 seconds East a distance of 144.37 feet; thence
8) North 75 degrees 30 minutes 06 seconds East a distance of 43.56 feet; thence
9) Southerly by a curve to the right with a length of 48.00 feet, having a radius of 80.00 feet and being subtended by a chord bearing of South 26 degrees 08 minutes 27 seconds East a distance of 47.28 feet; thence
10) South 08 degrees 57 minutes 07 seconds East a distance of 251.00 feet; thence
11) Southerly by a curve to the right with a length of 93.47 feet, having a radius of 530.00 feet and being subtended by a chord bearing of South 03 degrees 53 minutes 58 seconds East a distance of 93.35 feet; thence
12) South 88 degrees 50 minutes 49 seconds East a distance of 40.00 feet; thence
13) Northerly by a curve to the left with a length of 100.53 feet, having a radius of 570.00 feet and being subtended by a chord bearing of North 03 degrees 53 minutes 58 seconds West a distance of 100.40 feet; thence
14) North 08 degrees 57 minutes 07 seconds West a distance of 82.88 feet; thence
15) North 08 degrees 57 minutes 07 seconds West a distance of 168.12 feet; thence
16) Northerly by a curve to the left with a length of 88.80 feet, having a radius of 120.00 feet and being subtended by a chord bearing of North 30 degrees 09 minutes 05 seconds West a distance of 86.79 feet; thence
17) North 23 degrees 14 minutes 29 seconds West a distance of 45.42 feet; thence

18) Northerly by a curve to the left with a length of 139.97 feet, having a radius of 466.70 feet and being subtended by a chord bearing of North 09 degrees 23 minutes 11 seconds East a distance of 139.45 feet; thence
19) North 80 degrees 04 minutes 26 seconds East a distance of 39.34 feet to the westerly side of I-83; thence
20) South 22 degrees 16 minutes 40 seconds East a distance of 356.17 feet; thence
21) South 22 degrees 12 minutes 56 seconds East a distance of 1,163.63 feet; thence
22) South 19 degrees 21 minutes 12 seconds East a distance of 151.73 feet; thence leaving I-83
23) South 75 degrees 29 minutes 52 seconds West a distance of 631.66 feet; thence
24) South 48 degrees 48 minutes 42 seconds East a distance of 24.75 feet; thence
25) North 78 degrees 48 minutes 42 seconds West a distance of 941.73 feet to a point in Miller Lane; thence
26) North 76 degrees 54 minutes 20 seconds West a distance of 97.74 feet; thence
27) North 44 degrees 15 minutes 43 seconds West a distance of 53.43 feet; thence
28) North 30 degrees 22 minutes 02 seconds West a distance of 51.96 feet; thence
29) North 21 degrees 07 minutes 12 seconds West a distance of 8.03 feet; thence
30) Northerly by a curve to the left with a length of 96.49 feet, having a radius of 260.00 feet and being subtended by a chord bearing of North 31 degrees 45 minutes 06 seconds West a distance of 95.93 feet; thence
31) North 43 degrees 49 minutes 15 seconds East a distance of 25.70 feet; thence
32) North 46 degrees 10 minutes 50 seconds West a distance of 74.36 feet; thence
33) Northerly by a curve to the right with a length of 128.83 feet, having a radius of 130.00 feet and being subtended by a chord bearing of North 17 degrees 47 minutes 20 seconds West a distance of 123.62 feet; thence
34) North 10 degrees 36 minutes 05 seconds East a distance of 251.50 feet; thence
35) North 27 degrees 16 minutes 58 seconds East a distance of 60.03 feet; thence
36) North 43 degrees 34 minutes 55 seconds West a distance of 12.23 feet to the point of beginning.

CONTAINING 1,818,770 square feet or 41.7532 acres of land more or less, which includes the bed of Falls Road.

BEING a portion of Tracts 1, 3 and 5 of a deed dated June 9,1987 from Edward Harry Ensor and wife to Edward Harry Ensor and wife, which is recorded among the Land Records of Baltimore County, Maryland in Liber SM No. 7573, Folio 507.

STATE OF MARYLAND
ROBERT PHILIP
NO. 354
REGISTERED
PROPERTY LINE SURVEYOR

ZONING DESCRIPTION
Parcel "C" - Part of Parcel 150
ENSOR PROPERTY AT MIDDLETOWN ROAD
7th Election District
Baltimore County, Maryland

BEGINNING for the same at a point on the westerly side of Frederick Road, 60 feet wide approximately 173 feet northerly from the centerline of the pavement of Middletown Road, a variable width right-of-way; thence running on the northerly side of said Middletown Road

1) South 76 degrees 27 minutes 55 seconds West 71.82 feet; thence
2) Westerly by a curve to the left with a length of 38.37 feet, having a radius of 3,381.93 feet and being subtended by a chord bearing of North 58 degrees 12 minutes 42 seconds West a distance of 38.37 feet; thence
3) North 58 degrees 32 minutes 12 seconds West a distance of 277.54 feet; thence
4) North 67 degrees 11 minutes 49 seconds East a distance of 419.52 feet; thence
5) North 49 degrees 05 minutes 53 seconds East a distance of 150.07 feet to the westerly side of Frederick Road; thence
6) Southerly by a curve to the right with a length of 441.77 feet, having a radius of 1,302.12 feet and being subtended by a chord bearing of South 21 degrees 28 minutes 45 seconds West a distance of 439.66 feet to the point of beginning.

CONTAINING 85,020 square feet or 1.952 acres of land, more or less.

BEING a portion of Tract 2 of a deed dated, June 9,1987 from Edward Harry Ensor and Wife to Edward Harry Ensor and Wife, which is recorded among the Land Records of Baltimore County, Maryland in Liber SM No. 7573, Folio 507.

This description was derived from a survey prepared by Colbert, Matz, & Rosenfelt, Inc.

STATE OF MARYLAND ROBERT PHILIP [illegible] No. 354 REGISTERED PROPERTY LINE SURVEYOR

#114

ZONING DESCRIPTION

Parcel "D" - Part of Parcel 270 & Part of Parcel 150
ENSOR PROPERTY AT MIDDLETOWN ROAD
7th Election District
Baltimore County, Maryland

BEGINNING for the same at a point on the westerly side of York Road, 66 feet wide, approximately 216 feet northerly from the centerline of the pavement of Middletown Road, a variable width right-of-way; thence leaving York Road and crossing over Middletown Road

1) South 73 degrees 40 minutes 55 seconds West a distance of 658.75 feet; thence
2) South 54 degrees 17 minutes 21 seconds West a distance of 659.29 feet; thence
3) South 42 degrees 06 minutes 41 seconds West a distance of 330.21 feet; thence
4) South 66 degrees 07 minutes 19 seconds West a distance of 323.70 feet; thence
5) South 75 degrees 01 minutes 02 seconds West a distance of 647.17 feet to the westerly side of I-83; thence
6) North 28 degrees 47 minutes 09 seconds West a distance of 205.42 feet; thence
7) North 21 degrees 56 minutes 38 seconds West a distance of 1,163.63 feet; thence
8) North 14 degrees 20 minutes 14 seconds West a distance of 494.02 feet; thence
9) North 14 degrees 28 minutes 56 seconds West a distance of 46.73 feet; thence
10) North 28 degrees 16 minutes 34 seconds East a distance of 39.42 feet; thence
11) North 35 degrees 56 minutes 34 seconds East a distance of 34.75 feet; thence
12) North 49 degrees 08 minutes 34 seconds East a distance of 50.00 feet; thence
13) North 59 degrees 03 minutes 34 seconds East a distance of 377.91 feet to Middletown Road; thence
14) Southeasterly by a curve to the left with a length of 307.70 feet, having a radius of 750.0 feet and being subtended by a chord bearing of South 53 degrees 22 minutes 26 seconds East a distance of 305.55 feet; thence
15) South 65 degrees 07 minutes 38 seconds East a distance of 181.04 feet; thence
16) Southeasterly by a curve to the left with a length of 117.76 feet, having a radius of 2,325.83 feet and being subtended by a chord bearing of South 55 degrees 23 minutes 31 seconds East a distance of 117.75 feet; thence

17) North 33 degrees 09 minutes 27 seconds East a distance of 150.00 feet; thence

18) Northwesterly by a curve to the right with a length of 225.01 feet, having a radius of 2,175.83 feet and being subtended bt a chord bearing of North 53 degrees 52 minutes 47 seconds West a distance of 224.91 feet; thence

19) Northwesterly by a curve to the left with a length of 251.36 feet, having a radius of 3,381.93 feet and being subtended by a chord bearing of North 53 degrees 02 minutes 47 seconds West a distance of 251.30 feet; thence

20) North 13 degrees 08 minutes 43 seconds West a distance of 69.92 feet to Frederick Road; thence

21) Northerly by a curve to the left with a length of 544.93 feet, having a radius of 1,362.12 feet and being subtended by a chord bearing of North 20 degrees 01 minutes 38 seconds East a distance of 541.30 feet; thence

22) North 49 degrees 05 minutes 53 seconds East a distance of 766.75 feet; thence

23) North 78 degrees 34 minutes 30 seconds East a distance of 651.20 feet; thence

24) South 07 degrees 48 minutes 14 seconds East a distance of 453.75 feet; thence

25) South 81 degrees 56 minutes 46 seconds West a distance of 343.20 feet; thence

26) South 46 degrees 38 minutes 14 seconds East a distance of 320.10 feet; thence

27) North 80 degrees 56 minutes 46 seconds East a distance of 532.24 feet to York Road; thence

28) Southeasterly by a curve to the left with a length of 226.33 feet, having a radius of 231.58 feet being subtended by a chord bearing of South 26 degrees 52 minutes 44 seconds East a distance of 217.43 feet; thence

29) South 54 degrees 52 minutes 39 seconds East a distance of 35.79 feet; thence

30) Southeasterly by a curve to the right with a length of 150.18 feet, having a radius of 453.42 feet and being subtended by a chord bearing of South 45 degrees 23 minutes 19 seconds East a distance of 149.50 feet; thence

31) South 35 degrees 54 minutes 00 seconds East a distance of 252.51 feet; thence

32) Southerly by a curve to the right with a length of 350.18 feet, having a radius of 483.42 feet and being subtended by a chord bearing of South 15 degrees 08 minutes 52 seconds East a distance of 342.58 feet; thence

33) South 05 degrees 36 minutes 16 seconds West a distance of 68.85 feet; thence

34) Southerly by a curve to the left with a length of 233.18 feet, having a radius of 1,293.00 feet and being subtended by a chord bearing of South 00 degrees 26 minutes 16 seconds West a distance of 232.87 feet; thence

35) South 04 degrees 43 minutes 43 seconds East a distance of 312.05 feet; thence

36) Southerly by a curve to the left with a length of 151.46 feet, having a radius of 5,033.00 feet and being subtended by a chord bearing of South 05 degrees 35 minutes 26 seconds East a distance of 151.46 feet to the place of beginning.

CONTAINING 6,019,247 square feet or 138.1829 acres of land, more or less.

BEING a portion of Tract 1 and 2 of a deed dated, June 9,1987 from Edward Harry Ensor and Wife to Edward Harry Ensor and Wife, which is recorded among the Land Records of Baltimore County, Maryland in Liber SM 7573 at Folio 507.

This description was derived from a survey prepared by Colbert, Matz, Rosenfelt, Inc.

STATE OF MARYLAND
ROBERT PHILLIP COLBERT
NO. 354
REGISTERED
PROPERTY LINE SURVEYOR

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: #01-114-SPH
Ensor Property
NE & SW/S Middletown Road between I-83 & York Road; also SE/S Falls Road and SW/S I-83 (Ensor Property)
7th Election District - 3rd Councilmanic District
Legal Owner(s): Arthur S. & A. Richard Tracey
Contract Purchaser: David E. Gonzales

Special Hearing: to approve the conservancy areas physically separated from one another by two separate roadways and an intervening R.C.5 zone.

Hearing: Friday, November 17, 2000 at 9:00 a.m. in Room 106, Baltimore County Building, 111 W. 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.

T/10/806 Oct. 31 C430774

CERTIFICATE OF PUBLICATION

TOWSON, MD, 11/2/, 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 10/31/, 2000.

THE JEFFERSONIAN,

S. Wilkinson

LEGAL ADVERTISING

[redacted]

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: #01-114-SPH
Ensor Property
NE & SW/S Middletown Road between I-83 and York Road; also SE/S Falls Road and SW/S I-83 (Ensor Property)
7th Election District – 3rd Councilmanic District
Legal Owner(s): Arthur S. & A. Richard Tracey
Contract Purchaser: David E. Gonzales

Special Hearing: to approve the conservancy area physically separated from one another by two, separate roadways and an intervening R.C. 5 zone.

Hearing: Thursday, May 24, 2001 at 9:00 a.m. in Room 106, Baltimore County Office Building, 111 W. 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.

JT/5/651 May 8 C467677

CERTIFICATE OF PUBLICATION

5/10/, 2001

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 5/8/, 2001.

- [x] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 066

DATE 10/11/01 ACCOUNT R001 006 6150

AMOUNT $ 385.00

RECEIVED FROM: J. CARROL HOLZER

FOR: APPEAL ENSOR PROPERTY
210.00 01-114-SPH
175.00 VII-352
7TH ED 3RD CD

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PAYMENT ACTUAL TIME
10/12/2001 10/12/2001 11:54:20
REG W905 CASHIER R006 LRB DRAWER 3
>>RECEIPT # 215512 OFLN
DESC 5 528 ZONING VERIFICATION
CR NO. 006693
Recpt Tot 385.00
385.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 92932

DATE 3/30/01 ACCOUNT R001-006-6150

AMOUNT $ 100.00

RECEIVED FROM: Levin & Green, P.A.

FOR: Revised sign case #01-114-SPH

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROJECT ACTIVITY DATE
03/30/2001 03/30/2001 14:39:50
PROJECT: FORMER DOG AND DRINKER
DESCRIPTION: 6196
PAYMENT METHOD: CHECK VERIFICATION
UNIT DETAIL: 0000
Dept 101 100.00
Unit 0 .00 CR
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 86625

DATE 9/8/00 ACCOUNT R001-6150

AMOUNT $ 200.00

RECEIVED FROM: KCT Technologies, L.L.C.

FOR: Special Hearing & Variance
11 acres

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PAYMENT ACTUAL TIME
9/11/2000 9/08/2000 15:11:54
W302 CASHIER DBOL DMD DRAWER 2
5 528 ZONING VERIFICATION
Rcpt # 1:2622 OTLN
NO. 00425
Fact Tot 200.00
200.00 CK .00 CA
Baltimore County, Maryland

01-114-SPH

CASHIER'S VALIDATION

PETITION OF: Staples et. al (Ensor property)

CIVIL ACTION # 03-C-01-012166

IN THE MATTER OF

Ensor Property

CBA-01-145 ← RECEIVED FROM THE COUNTY BOARD OF APPEALS CERTIFIED DOCUMENTS, (EXHIBITS + file) AND BOARD'S RECORD EXTRACT FILED IN THE ABOVE-ENTITLED CASE. 01-114-SPH

Clerk's Office

Date: 1/15/02

BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

APPROVED SIGN POSTERS

Stacy Gardner Shannon-Barm Signs, Inc. 105 Competitive Goals Drive Eldersburg, MD 21784	Telephone: 410-781-4000 Toll Free: 800-368-2295 Fax: 410-781-4673
Richard Hoffman 904 Dellwood Drive Fallston MD 21047	Telephone: 410-879-3122
SSS Robert Black 1508 Leslie Road Dundalk, MD 21222	Telephone: 410-282-7940 Fax: 410-282-7940 Cell Phone: 410-499-7940 Pager: 410-373-9662
Garland E Moore 3225 Ryerson Circle Baltimore, MD 21227	Telephone: 410-242-4263 Mobile: 410-382-4470
Patrick M. O'Keefe, Sr. 523 Penny Lane Hunt Valley, MD 21030	Telephone: 410-666-5366 Cell: 410-905-8571 Fax: 410-666-0929 410-882-2469
Linda M. Jones Daft-McCune-Walker, Inc. 200 E Pennsylvania Avenue Towson, MD 21286	Telephone: 410-296-3333 Fax; 410-296-4705

THE PETITIONER MUST USE ONE OF THE SIGN POSTERS ON THIS APPROVAL LIST. ANY REPOSTING MUST BE ALSO BE DONE BY ONE OF THESE APPROVED POSTERS. IF YOU WISH TO SELECT A POSTER NOT SHOWN ON TH LIST ABOVE, PRIOR APPROVAL BY THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT/ZONING REVIEW IS REQUIRED.

THIS DEPARTMENT IS NOT ASSOCIATED WITH ANY OF THE ABOVE POSTERS, NOR DO WE RECOMMEND ANY SPECIFIC ONE. WE DO SUGGEST THAT YOU CONTACT A NUMBER OF THEM TO COMPARE PRICES SINCE THEIR CHARGES MAY VARY.

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/neighboring 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: 01-114-SPH

Petitioner: THE GONZALES COMPANIES (ENSOR PROPERTY)

Address or Location: 17 GLENBURY COURT PHOENIX, MD. 21131

PLEASE FORWARD ADVERTISING BILL TO:

Name: DAVE GONZALES

Address: 17 GLENBURY COURT PHOENIX, MD. 21131

Telephone Number: (410) 785-9630

Revised 2/20/98 - SCJ

01-114-SPH

TO: PATUXENT PUBLISHING COMPANY
Tuesday, October 31, 2000 Issue – Jeffersonian

Please forward billing to:
Dave Gonzales
17 Glenbury Court
Phoenix, MD 21131

410 785-9630

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: 01-114-SPH
Ensor Property
NE & SW/S Middletown Road between I-83 & York Road; also SE/S Falls Road and SW/S I-83 (Ensor Property)
7th Election District – 3rd Councilmanic District
Legal Owners: Arthur S. & A Richard Tracey
Contract Purchaser: David E. Gonzales

Special Hearing to approve the conservancy areas physically separated from one another by two, separate roadways and an intervening R.C.5 zone.

HEARING: Friday, November 17, 2000 at 9:00 a.m. in Room 106, Baltimore County Building, 111 W Chesapeake Avenue

Lawrence E. Schmidt
GDZ

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.

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

September 28, 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: 01-114-SPH
Ensor Property
NE & SW/S Middletown Road between I-83 & York Road; also SE/S Falls Road and SW/S I-83 (Ensor Property)
7th Election District – 3rd Councilmanic District
Legal Owners: Arthur S. & A Richard Tracey
Contract Purchaser: David E. Gonzales

Special Hearing to approve the conservancy areas physically separated from one another by two, separate roadways and an intervening R.C.5 zone.

HEARING: Friday, November 17, 2000 at 9:00 a.m. in Room 106, Baltimore County Building, 111 W Chesapeake Avenue

GDZ

Arnold Jablon
Director

C: Howard L. Alderman, Jr., Esquire, Levin & Gann, PA, 502 Washington Avenue 8th Floor, Towson 21204
Arthur S. & A. Richard Tracey, 801 Falls Road, Parkton 21120-9495
David Gonzales, 17 Glenberry Court, Phoenix 21131
Tobi Kester, RLA, KCI Technologies, Inc., 10 N. Park Drive, Hunt Valley 21030

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

Printed with Soybean Ink
on Recycled Paper

TO: PATUXENT PUBLISHING COMPANY
Tuesday, May 8, 2001 Issue – Jeffersonian

Please forward billing to:
Dave Gonzales
17 Glenbury Court
Phoenix MD 21131

410 785-9630

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: 01-114-SPH
Ensor Property
NE & SW/S Middletown Road between I-83 and York Road; also SE/S Falls Road and SW/S I-83 (Ensor Property)
7th Election District – 3rd Councilmanic District
Legal Owners: Arthur S & A Richard Tracey
Contract Purchaser: David E Gonzales

Special Hearing to approve the conservancy area physically separated from one another by two, separate roadways and an intervening R.C.5 zone.

HEARING: Thursday, May 24, 2001 at 9:00 a.m. in Room 106, Baltimore County Office Building 111 W Chesapeake Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT GDZ
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.

Baltimore County
Department of Permits and
Development Management

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

April 11, 2001

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: 01-114-SPH
Ensor Property
NE & SW/S Middletown Road between I-83 and York Road; also SE/S Falls Road and SW/S I-83 (Ensor Property)
7th Election District – 3rd Councilmanic District
Legal Owners: Arthur S & A Richard Tracey
Contract Purchaser: David E Gonzales

Special Hearing to approve the conservancy area physically separated from one another by two, separate roadways and an intervening R.C.5 zone.

HEARING: Thursday, May 24, 2001 at 9:00 a.m. in Room 106, Baltimore County Office Building 111 W Chesapeake Avenue

Arnold Jablon
Director

C: Howard L Alderman Jr, Esquire, Levin & Gann, 502 Washington Avenue, 8th Floor, Towson 21204
Arthur S & Richard Tracey, 801 Falls Road, Parkton 21120
David E Gonzales, 17 Glenberry Court, Phoenix 21131
Tobi Kester, KCI Technologies Inc, 10 North Park Dr, Hunt Valley 21030

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, MAY 9, 2001**
(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.

Printed with Soybean Ink
on Recycled Paper

Baltimore County
Department of Permits and
Development Management

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

May 18, 2001

Richard & Arthur S Tracey
801 Falls Road
Parkton MD 21120

Dear Mr.'s. Tracey:

RE: Case Number: 01-114-SPH, Ensor Property

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 8, 2000.

The Zoning Advisory Committee (ZAC), which consists of representatives from several 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.

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr. GDZ
Supervisor, Zoning Review

WCR: gdz

Enclosures

c: Howard L Alderman Jr Esquire, Levin & Gann, Nottingham Centre,
502 Washington Avenue 8th Floor, Towson 21204
David Gonzales, 17 Glenberry Court, Phoenix 21131
Tobi Kester, KCI Technologies Inc, 10 North Park Drive
Hunt Valley 21030
People's Counsel

Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: October 17, 2000

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

SUBJECT: Zoning Advisory Petition(s): **Case(s) 01-114, 01-124, 01-126, 01-129, 01-131, 01-150, 01-151 and 01-152.**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For any further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared by: Mark

Section Chief: Jeffrey W. Long

AFK/JL:MAC

\\NCH_NW\VOL3\WORKGRPS\DEVREV\ZAC\nocomment doc

Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

October 3, 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: SEE BELOW

Location: DISTRIBUTION MEETING OF OCTOBER 2, 2000

Item No.: See Below

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.

8. The Fire Marshal's Office has no comments at this time, IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

114, 127, 128, 129, 130, 131, 133, AND 135

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

cc: File

Printed with Soybean Ink
on Recycled Paper

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

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

DATE: October 10, 2000

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

SUBJECT: Zoning Advisory Committee Meeting
for October 10, 2000
Item Nos. 114, 127, 128, 130, 131,
132, 134, and 135

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

RWB:HJO:jrb

cc: File

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 10.2.00

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

RE: Baltimore County
Item No. 114 BR

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,

L. F. Gredlein

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

My telephone number is _____

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

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

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 4 · 9 · 01

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

RE: Baltimore County
Item No. 01-114-SPH

Dear. Ms. Jackson:

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

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

Very truly yours,

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

My telephone number is _____

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

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

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley RBS

DATE: April 13, 2001

SUBJECT: Zoning Item #114 Revised
Ensor Property

Zoning Advisory Committee Meeting of April 9, 2001

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

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

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

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).

_____ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

__X__ Groundwater Management: The plan is currently being reviewed by Groundwater Management.

Reviewer: Sue Farinetti Date: April 13, 2001
Reviewer: Dave Lykens Date: April 11, 2001

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley RMS

DATE: October 10, 2000

SUBJECT: Zoning Item #114
Ensor Property

Zoning Advisory Committee Meeting of October 2, 2000

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

_____ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).

_____ Development of this property may need to comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).

_____ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

__X__ Agricultural Preservation: Separation of a Conservancy Area by a road does not create two separate conservancy areas. The Zoning Regulations require the RC4 Conservancy Area to be under a single ownership. This position was upheld in the zoning decision in the Graystone Estates RC4 hearing.

Reviewer: Wally Lippincott Date: October 10, 2000

RE: PETITION FOR SPECIAL HEARING Middletown Road & I-83, NE & SW/S Middletown Rd betw I-83 and York Rd; also SE/S Falls Rd and SW/S I-83 7th Election District, 3rd Councilmanic	*	BEFORE THE
	*	ZONING COMMISSIONER
	*	FOR
Legal Owner: Arthur S. Tracey and A. Richard Tracey Contract Purchaser: David E. Gonzales *Petitioner(s)*	*	BALTIMORE COUNTY
	*	Case No. 01-114-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.

All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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 16th day of October, 2000 a copy of the foregoing Entry of Appearance was mailed to Howard L. Alderman, Jr., Esq., Levin & Gann, 502 Washington Avenue, 8th Floor, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

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

October 16, 2001

Howard L Alderman Jr, Esquire
Levin & Gann PA
Nottingham Centre
502 Washington Avenue
8th Floor
Towson MD 21204

Dear Mr. Alderman:

RE: Case No. 01-114-SPH, Ensor Property

Please be advised that an appeal of the above-referenced case was filed in this office on October 11, 2001 by J. Carroll Holzer on behalf of Janice Staples, Dr. Wayne Hunt, Andy and Page Crosby, Dr. & Mrs. Richard McQuaid. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

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

Sincerely,

Arnold Jablon GDZ
Director

AJ: gdz

c: A. Richard & Arthur S Tracey, 801 Falls Road, Parkton 21120-9495
People's Counsel

Printed with Soybean Ink
on Recycled Paper

APPEAL

Petition for Special Hearing
Ensor Property
NE & SW/S Middletown Road Between I-83 and
York Road and I-83 and Falls Road
7th Election District – 3rd Councilmanic District
Arthur S & A. Richard Tracey - Legal Owner
David E. Gonzales - Contract Purchaser
Case No.:01-114-SPH

Petition for Special Hearing (dated 09/09/00)

Zoning Description of Property

Notice of Zoning Hearing (dated 04/11/01)

Certification of Publication (The Jeffersonian issue 05/08/01)

Certificate of Posting (no copy in file posted)

Entry of Appearance by People's Counsel (dated 10/16/00)

Petitioner(s) Sign-In Sheet
(None)

Protestant(s) Sign-In Sheet
(None)

Citizen(s) Sign-In Sheet
(None)

Zoning Advisory Committee Comments

Petitioners' Exhibits:
(None)

Protestants' Exhibits:
(None)

Miscellaneous (Not Marked as Exhibits):

- KCI Technologies Inc Plan to Accompany the Petition for Special Hearing Revised dated 3/27/01

Zoning Commissioner's Order (09/25/01 - APPROVED)

Notice of Appeal received on October 11, 2001 from J. Carroll Holzer on behalf of Janice Staples, Dr. Wayne Hunt, Andy & Page Crosby, Dr. & Mrs. Richard McQuaid

c: Howard L Alderman Jr Esquire, Levin & Gann, Nottingham Centre,
502 Washington Avenue, 8th Floor, Towson 21204
People's Counsel of Baltimore County, MS #2010
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

Baltimore County Government
Department of Permits and Development Management

111 West Chesapeake Avenue
Towson MD 21204

(410) 887-3321
(410) 887-2877 (fax)

October 23, 2001

Howard Alderman, Jr., Esq.
Levin & Gann
502 Washington Avenue
8th Floor
Towson, MD 21204

RE: Appeal of Hearing Officer's Opinion
and Development Plan Order
NE & SW/S Middletown Road, between
I-83 and York Road & I-83 and Falls Road
Ensor Property
District: 7 c 3
Janice Staples, et.al.- Applicant
PDM # VII-352

Dear Mr. Alderman:

Please be advised that an appeal of the above-referenced case was filed in this office on October 11, 2001 by J. Carroll Holzer, Esq. and Holzer and Lee on behalf of Janice Staples, et. al. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

Sincerely,

Arnold Jablon
Director

AJ:kw
Enc.
c: J. Carroll Holzer, Esq.
KCI Technologies, Inc.
People's Counsel
Baltimore County Board of Appeals
File

CONTINUATION SHEET

The following people are listed as Appellants represented by J. Carroll Holzer and Holzer and Lee regarding the Notice of Appeal filed on October 11, 2001 for the Ensor Property:

Janice Staples
Dr. Wayne Hunt
Andy and Page Crosby
Dr. and Mrs. Richard McQuaid
Parkton Area Preservation Association, Inc.
Maryland Line Area Association, Inc.
North County Coalition, Inc.

Carl —

Case # 01-114-SPH (Ensor Property)

Planning office will not make a recommendation regarding the need for a Special Hearing for the historic structure on the site until 9/21/00. Stay tuned. Put on hold.

Bruno
9/11/00

Carl —

cc: Sullivan

This case should proceed as requested. Planning Board found that this development will not impact the historic buildings on the site.

as per Kim Alle.

01-114-SPH 9/25/00 BK

Baltimore County
Zoning Commissioner

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

June 7, 2001

Howard L. Alderman, Jr., Esquire
Levin & Gann, PA
502 Washington Avenue, 8th Floor
Towson, Maryland 21204

RE: DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING
NE and SW/S Middletown Road between I-83 & York Road (Ensor Property)
7th Election District – 3rd Council District
Arthur S. and A. Richard Tracey, Owners; David E. Gonzales, Contract Purchaser/Developer
Case Nos. VII-352 & 01-114-SPH

Dear Mr. Alderman:

This letter is to confirm the schedule for the above-captioned matter, which was continued in open hearing on May 31, 2001 for a second development plan conference. Pursuant to the agreement reached by all parties present at that hearing, the Developer has submitted 36 copies of the red-lined plan for distribution to all County agencies as required, and a Development Plan Conference has been scheduled for Wednesday, June 20, 2001. All County comments regarding any additional red-lined items must be produced by that date, and if there are no additional comments, a "no-comment" shall be issued by each agency. Any further changes to the plan by the Owner/ Developer must be made by June 27, 2001 and copies of those amendments provided to all concerned. Thereafter, the Hearing Officer's Hearing will reconvene on Friday, July 20, 2001 at 9:00 AM in Room 407 of the County Courts Building.

Should anyone have any questions in this regard, please do not hesitate to call Walt Smith, Project Manager, at 887-3321, or me. Thank you for your consideration in this matter.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Arthur Tracey, 20815 Middletown Road, Freeland, Md. 21053
Mr. & Mrs. A. Richard Tracey, 2934 Rockdale Road, Freeland, Md. 21053
Mr. David Gonzales, 17 Glenberry Court, Phoenix, Md. 21131
KCI Technologies, Inc., 10 North Park Drive, Hunt Valley, Md. 21030
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286
Andy & Page Crosby, 18920 Hillcrest Road, Parkton, Md. 21120
Roger & Trudi Simeone, 1116 Rayville Road, Parkton, Md. 21120
Dr. & Mrs. Richard W. McQuaid, 1501 Harris Mill Road, Parkton, Md. 21120
Jan Staples, 900 Old Barn Road, Parkton, Md. 21120
Alicia Barbers, P.O. Box 461, Parkton, Md. 21120
Resident, 18815 York Road, Parkton, Md. 21120
Walt Smith, PDM; Bob Bowling, PDM; DEPRM; OP; R&P; People's Counsel; Case Files

Printed with Soybean Ink
on Recycled Paper

HOWARD L. ALDERMAN, JR.
Halderman@LevinGann.com

DIRECT DIAL
410-321-4640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE, 8TH FLOOR
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4525
410-321-0600
TELECOPIER 410-296-2801

BR

ELLIS LEVIN (1893-1960)

01-734

MAR 16 2001

PERMITS AND DEVELOPMENT MANAGEMENT

File No.: 9957/1

3/14/01
TO WCR

March 14, 2001

VIA HAND DELIVERY

Mr. Arnold Jablon, Director
Baltimore County Department of Permits and
Development Management
111 West Chesapeake Avenue, Suite 109
Towson, Maryland 21204

Re: Ensor Property, Case No. 01-114-SPH
Revised Plats to accompany petition

Dear Mr. Jablon:

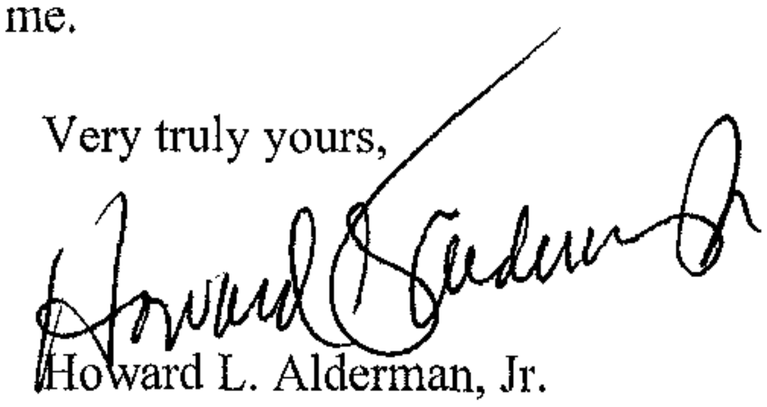
As you may be aware, the above-referenced case was originally scheduled, in combination with a Hearing Officer's Hearing, for November 17, 2000. A request was submitted by our client, the David E. Gonzales Corporation to be postponed until a date in the future, as a result of a change of zoning classification on the subject property.

I am enclosing twelve (12) copies of a revised Plat to be considered in connection with the relief filed in the above-referenced case. I am also sending our check in the amount of $100 to cover the revised Plat filing fee. We would appreciate it if this hearing would be scheduled in combination with the Hearing Officer's Hearing on the same property.

U:\hla\jablon-a3.ltr.wpd

Upon your receipt and review of this letter and its enclosures, should you have any questions, please do not hesitate to contact me.

Very truly yours,



Howard L. Alderman, Jr.

HLA/sgw
Enclosures (12)
cc: David E. Gonzales Corporation
Toby Kester, RLA

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE, 8TH FLOOR
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4525
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

DIRECT DIAL
410-321-4640

May 3, 2001

SENT BY TELECOPIER
and MAIL

Mr. Carl W. Richards, Jr.
Baltimore County Department of Permits
and Development Management
111 West Chesapeake Avenue, Suite 109
Towson, Maryland 21204

Re: Case No.: 01-114-SPH
Legal Owners: Arthur S. and A. Richard Tracey
Contract Purchaser: David E. Gonzales

Dear Mr. Richards:

The above-referenced case is set to be heard later this month in a combined hearing with the development plan known as the Ensor Property which has been assigned the number of PDMVII-352. The Development Plan Conference was held on Wednesday, May 2, 2001 and comments were received from all agencies, including without limitation, DEPRM. Subsequent to the DPC, I received a telephone call from Wally Lippincott on behalf of one of the DEPRM agencies.

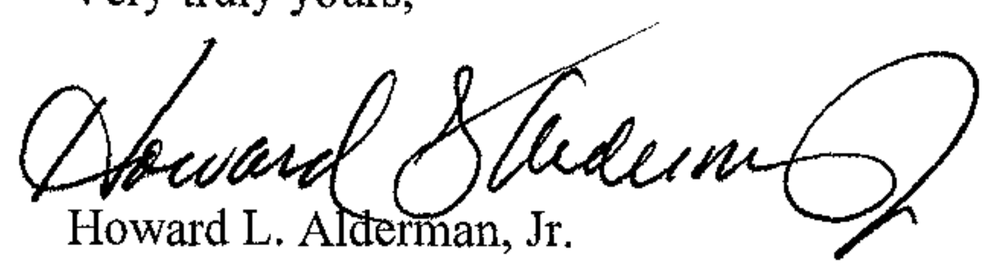
As you may be aware, the majority of the subject property was changed to a zoning classification of RC-4 by vote of the Baltimore County Council on October 10, 2000. In connection with the development of the site, seventy percent of the land area must be set aside for conservancy purposes. As shown on sheet 3 of 4 on the plat to accompany the Petition for Special Hearing, three separate areas labeled "Conservancy Area have been created east of Interstate 83. The first which adjoins the right-of-way of the Interstate is approximately 11.6 acres in size. The second which is northeast of that parcel is approximately 3.18 acres in size and the third to the southeast is approximately 3.63 acres in size.

The purpose of Mr. Lippincott's call was to advise that while the acreage of these three separate areas would count toward the total acreage to be included as conservancy area, these three (3) particular areas should be considered "isolated open space pockets in the building area" and therefore should be identified as HOA space. Mr. Lippincott, relying on BCZR §1A03.5.G.4, indicated that he would be either writing comments or appearing at the time of the Hearing Officer's Hearing to request that these three (3) areas be identified as open space pockets, with the acreage

counted toward the total conservancy area, but that the land area itself would not be included in the Declaration of Conservancy Area Agreement to be delivered to the County.

The purpose of this letter is, at Mr. Lippincott's request, to ensure that the position of DEPRM on this matter will not result in any negative comment from your department. Therefore, upon your receipt and review of this letter and the zoning file, I would appreciate it if you would drop me a quick note indicating that while the acreage of these three (3) isolated land areas will be included as part of the acreage counted as Conservancy Area, they will qualify and be treated as isolated pockets of open space in accordance with the section of the BCZR as cited. Should you need additional information to enable you to prepare the response as requested, as always, please do not hesitate to contact me.

Very truly yours,



Howard L. Alderman, Jr.

HLA/pal
cc: Mr. David E. Gonzales
Mr. Wally Lippincott
Ms. Tobi Kester, RLA
Mr. Ray Hopkins
G:\Clients\Gonzales-D\richards-c.ltr-9957-1.wpd

6/17 to CSA (Alderman is attorney)

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

06/25/02

Case Number: 03-C-01-012166 AE
Date Filed: 11/21/2001
Status: Open/Active
Judge Assigned: To Be Assigned,
Location :

In The Matter of: Jan Staples, et al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C01012166V01
Administrative Agency	CBA 01 145

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title) / Addr Str/End	Disposition / Addr Update	Entered
PET	001	Staples, Jan Party ID: 0464800		11/21/01
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee The 508 Building 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961		11/21/01
PET	002	Crosby, Page Party ID: 0464801		11/21/01
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee		11/21/01

The 508 Building
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
PET	003	McQuaid, Richard	Party ID: 0464802		11/21/01
		Capacity : Dr			
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee The 508 Building 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961			11/21/01
RES	001	Tracey, Arthur S	Party ID: 0464803		11/21/01
		Capacity : Owner			
RES	002	Tracey, Richard A	Party ID: 0464805		11/21/01
		Capacity : Owner			
RES	003	Gonzales, David E	Party ID: 0464807		11/21/01
		Capacity : Contract Purchaser			
		Attorney: 0804260 Alderman, Howard L Levin & Gann, P.A. Nottingham Center 8th Fl 502 Washington Ave Towson, MD 21204 (410)321-0600			11/30/01
ITP	001	County Board Of Appeals Of Baltimore County	Party ID: 0464809		11/21/01
		Mail: Old Courthouse 400 Washington Ave Baltimore, MD 21204	11/21/01		

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User ID
02/27/02	09:30A	06Q	yes	MOTN	S		LRD	01	/01	CON	C	02/27/02	LRD	P	01/23/02	Y	PB
Stenographer(s): Rhonda Smith																	
04/24/02	09:30A	01H	yes	CIVI	S		TBA	01	/01	VAC	C	04/22/02		P			KLS LLH

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	11/21/01	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review with exhibits.	11/20/01	11/21/01	PET001	TBA			JM JM
0001001	*Response to Notice of Appeal	11/27/01	11/30/01	RES003	TBA			AR AR
0002000	Motion to Dismiss Appeal with exhibits	12/18/01	12/19/01	RES003	TBA			AR AR
0002001	Answer with Request for Hearing Filed by PET001-Staples, Jan, PET002-Crosby, Page, PET003-McQuaid, Richard	01/18/02	01/22/02	PET001	TBA			MF MF
0003000	Stipulation extending time until January 18, 2002 for Petitioners to answer respondents Motion to Dismiss Appeal on or about December 18, 2001.	01/02/02	01/07/02	000	TBA		01/07/02	MJ MJ
0004000	Transcript of Record from Adm Agency *	01/15/02	01/17/02	ITP001	TBA			DFF DFF
0005000	Notice of Transcript of Record Sent	01/17/02	01/17/02	ITP001	TBA		01/17/02	DFF DFF
0006000	Notice of Transcript of Record Sent	01/17/02	01/17/02	PET001	TBA		01/17/02	DFF DFF
0007000	Notice of Transcript of Record Sent	01/17/02	01/17/02	RES001	TBA		01/17/02	DFF DFF
0008000	Notice of Transcript of Record Sent	01/17/02	01/17/02	RES002	TBA		01/17/02	DFF DFF
0009000	Notice of Transcript of Record Sent	01/17/02	01/17/02	RES003	TBA		01/17/02	DFF DFF
0010000	Hearing Notice	01/23/02	01/23/02	000	TBA		01/23/02	PB PB
0011000	Scheduling Order	01/23/02	01/23/02	000	TBA		01/23/02	KLS KLS

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0012000	Motion to Extend Time to file Memorandum of Law	02/04/02	02/05/02	PET001	TBA			MJ MJ
0013000	Memorandum Filed by PET002-Crosby, Page, PET001-Staples, Jan, PET003-McQuaid, Richard	02/22/02	02/22/02	PET002	TBA		02/22/02	PH PH
0014000	Open Court Proceeding February 27, 2002. Hon. Lawrence R. Daniels. Hearing had in re: Motion to Dismiss Appeal with Exhibits (p.2000) - granted.	02/27/02	02/27/02	000	LRD			MB PH
0015000	Motion to Alter/Amend Judgment	03/12/02	03/13/02	RES003	TBA	Ruled	04/09/02	PH PH
0015001	Order from Judge Daniels affirming the Order of dismissal of 10/26/01 and revising the judgment of 2/27/02 consistent with this order	04/09/02	04/09/02	000	TBA			PH PH
0016000	Pre Trial Hearing Letter Issued	03/18/02	03/18/02	000	TBA		03/18/02	ED ED
0017000	*Notice of Appeal to COSA 12/39 Filed by PET001-Staples, Jan, PET002-Crosby, Page, PET003-McQuaid, Richard	03/18/02	03/18/02	PET001	TBA			AR AR
0018000	Invoice 11733 TO HOWARD ALDERMAN	04/12/02	04/12/02	000	TBA			LG LG
0019000	*Order to proceed w/out prehearing conf.	04/23/02	04/23/02	000	TBA			MJ MJ
0020000	Original Record sent to COSA sent by certified mail, 1 volume, 1 transcript, #7001 1940 0002 0865 0193.	06/17/02	06/17/02	000	TBA			ED ED

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	OPEN	11/27/01	0	no	no	DANS	D	001	001
1YRT	One Year Tickle (Jud	OPEN	11/20/02	365	no	no	DAAA	D	001	000
SLMH	Set List For Motions	CANCEL	01/18/02	0	no	no	SLMM	T	002	001
SLMM	Set List Motions Mar	DONE	10/13/04	999	yes	yes	DARH	D	002	001
SLMR	Set List For Motions	CANCEL	01/09/02	22	no	no	MDIS	D	002	000
SLMR	Set List For Motions	CANCEL	02/26/02	22	no	no	MEXT	D	012	000

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
SLMR	Set List For Motions	CANCEL	04/03/02	22	no	no	MJAA	D	015	000
SLTR	Set List For Trial	DONE	11/27/01	0	yes	yes	1ANS	T	001	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 County Board Of Appeals Of Ba								
000		I	BOX 300/EXHIBITS		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 01/23/02 Order Date : 01/23/02
Start Date : 01/23/02 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		02/07/02		OPEN
All Motions (excluding Motions in Limine		03/14/02		OPEN
TRIAL DATE is		04/23/02		OPEN

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F M O T I O N S H E A R I N G

Case Number: 03-C-01-012166
Administrative Agency : CBA 01 149
C I V I L

In The Matter of: Jan Staples, et al

02 JAN 24 PM 1:18

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

TO: County Board Of Appeals Of Baltimore County
Old Courthouse
400 Washington Ave
Baltimore, MD 21204

This case has been assigned a hearing on all open motions on:

CIRCUIT COURT FOR BALTIMORE COUNTY County Courts Building 401 Bosley Avenue Towson, MD 21285-6754	Court date: February 27, 2002 At: 09:30 AM Motion Hearing (Civil) 1/2 HOUR MOTION HEARING

PLEASE NOTE: If you desire to submit prior to this hearing date, please contact the Motion Assignment Clerk. A total of no more that one-half hour is allotted for a hearing on "Motion Days". If motions will take more than one-half hour, please contact the Motion Assignment Clerk for reassignment.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

A court reporter will not be present at the motion hearing unless specifically requested. Requests for reporters should be directed to the Motion Assignment Clerk. All requests for a postponement **MUST BE MADE IN WRITING AS SOON AS POSSIBLE**. This should be directed to the Motion Assignment Clerk with a copy to all counsel. Claim of not receiving this notice will not constitute reason for postponement.

Please refer to Information Desk for Court Room Designation.

Assignment Clerk: Burdynski Pearl

Assignment Office Phone: (410)-887-2660

Date Issued: 01/23/02

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

County Board Of Appeals Of Baltimore County
Old Courthouse
400 Washington Ave
Baltimore MD 21204

Assignment Date: 01/23/02

COUNTY BOARD OF APPEALS
JAN 24 PM 1:19

Case Title: In The Matter of: Jan Staples, et al
Case No: 03-C-01-012166 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 02/07/02
2. All Motions (excluding Motions in Limine) are due by..... 03/15/02
3. TRIAL DATE is..... 04/24/02
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned; 1 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

cc: Arthur S Tracey
cc: Richard A Tracey
cc: J Carroll Holzer Esq
cc: Howard L Alderman Jr
Issue Date 01/23/02

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F R E C O R D

Case Number: 03-C-01-012166
Administrative Agency : CBA 01 145
C I V I L

In The Matter of: Jan Staples, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 15th day of January, 2002.

Suzanne Mensh
Clerk of the Circuit Court, per D.F.

Date issued: 01/17/02

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

02 JAN 18 AM 11:51
CIRCUIT COURT

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND OFFICE OF ZONING ADMINISTRATION AND THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY:

01-114-SPH

September 9, 2001	Petition for Special Hearing
April 11, 2001	Notice of Zoning Hearing
May 8, 2001	Certificate of Publication/The Jeffersonian
October 16, 2001	Notice of Appearance by People's Counsel

CBA-01-145 and 01-114-SPH

September 25, 2001	HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER by Lawrence E. Schmidt, Zoning Commissioner/Hearing Officer that the Developer shall complete a noise assessment study, pursuant to the requirements of Policy X, and submit same to the Hearing Officer, with a copy to Protestants' Counsel, within 120 days of the date of the Order.
October 11, 2001	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of Janice Staples, Dr. Wayne Hunt, Andy and Page Crosby, Dr. and Mrs. Richard McQuaid, individually, and the Parkton Area Preservation Assn., Inc.; the Maryland Line Area Assn., Inc.; and the North County Coalition, Inc.
October 26, 2001	Order of Dismissal by Board without prejudice to any party; not ripe for appeal.
October 29, 2001	Motion for Reconsideration filed by J. Carroll Holzer.
November 6, 2001	RESPONSE TO MOTION FOR RECONSIDERATION, filed November 6, 2001 by Howard L. Alderman, Jr., on behalf of Developer.
November 7, 2001	RESPONSE TO MOTION FOR RECONSIDERATION, filed November 7, 2001 by Lawrence S. Wescott, Chairman, Board of Appeals for Baltimore County.
November 20, 2001	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Jan Staples, Page Crosby, and Dr. Richard McQuaid.

November 26, 2001	Copy of Petition for Judicial Review received by the County Board of Appeals from the Circuit Court for Baltimore County.
November 29, 2001	Certificate of Notice sent to interested parties.
January 15, 2002	Record of Proceedings filed in the Circuit Court for Baltimore County.
April 8, 2002	Order by Judge Lawrence R. Daniels, Circuit Court for Baltimore County that the dismissal and Response issued by the Board of Appeals on December 7, 2001 is AFFIRMED.
October 22, 2002	Order signed by Chief Judge Joseph Murphy, before the Court of Special Appeals, ORDERED that the February 27, 2002 Order of the Circuit Court is VACATED and further ORDERED that the Court VACATE the Order of Dismissal dated October 26, 2001, issued by the Board of Appeals and to direct the Board to REMAND this case to the Hearing Officer for further proceedings.
November 4, 2002	Mandate issued by the Court of Special Appeals
March 11, 2003	Order issued by the Circuit Court of Baltimore County by Judge Lawrence R. Daniels, that the Dismissal dated October 26, 2001 issued by the County Board of Appeals is VACATED and that the Board of Appeals shall remand this case to the Hearing Officer for Baltimore County for further proceedings.
April 4, 2003	Order of Remand by Order of the Circuit Court for Baltimore County pursuant to Order of the Maryland Court of Special Appeals.

Case No. CBA-01-145
and Case No. 01-114-SPH

Development Plan –Ensor Property /David E. Gonzales Developer VII-352
Petition for Special Hearing re conservancy area filed by Legal Owners, A. Richard Tracey and Arthur S. Tracey, and David E. Gonzales.

9/25/01 –Hearing Officer's Order (ZC): all further proceedings involving this matter, including the issuance of any Order approving or denying this plan and/or imposing conditions thereto, are stayed, pending disposition of the noise issue. HO will reconvene upon receipt of noise assessment study.

10/25/01 – Order of Dismissal issued by Board; CBA, *sua sponte* dismissed without prejudice to any party the appeal filed in this matter; HO's decision was NOT final; therefore not ripe for appeal at this time; upon issuance by HO of "Final Opinion and Development Plan Order, any party then aggrieved shall have the right to appeal in full to this Board on all issues of the subject Development Plan and Petition for Special Hearing." (Order signed by Chairman Lawrence S. Wescott)

10/29/01 – Motion for Reconsideration filed by J. Carroll Holzer, Esquire.

11/07/01 – Respondent's Opposition to Motion for Reconsideration filed by Howard L. Alderman, Jr., Esquire
-- Response to Motion for Reconsideration issued by CBA; Motion cannot be considered by CBA as appeal has been dismissed on basis of not ripe for appeal at this time. When final decision is issued by Hearing Officer, any party then aggrieved shall have right to appeal to the Board on all issues.

BALTIMORE COUNTY, CORRESPONDENCE

INTER-OFFICE CORRESPONDENCE

DATE: April 28, 2004

TO: Kristen
PDM

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: Status of case files

Listed below are files that were remanded to PDM (Zoning Commissioner for further action). Could you please provide this office with a status of these matters, i.e. open, pending; closed, resolved, etc.? If finalized, could you please send a copy of the Zoning Commissioner's Order on Remand so I can close my files?

If you have any questions or if I can be of any further help, please call me on Extension 3180. Thank you for your time and attention in this matter. Thank you

NAME		CASE NUMBER	REMAND DATE	STATUS
NANCY LEE FARMS		CBA-00-166 **PDM # IV-577** CCT C-01-001342	3/7/2003	Closed per PDM
NEW LIFE FELLOWSHIP WORSHIP CENTER		02-392-A	1/29/2003	Settlement Agreement attached (6/11/03) Order - AMENDED
KELKERRY DEVELOPMENT ENCLAVE @ PERRY HALL		03-402-SPHA	1/22/2004	Case Pending per Z.C. as of 5/3/04.
MARY AND RAYMOND YOST		03-484-SPHA	1/20/2004	Closed (Granted) Order Attached
AT&T Wireless Services Dunkin- Owner 801 Bacon Hall Road		01-054-X	5/17/02	Proposed Waiting for decision [illegible]
ENSOR PROPRTY		CBA-01-145 **PDM # VII – 352** CCT C-01-12166	4/4/2003	Closed per PDM
WILLIAM MATTHEWS 16 E. BURKE AVENUE		CBA-03-146 **CC-02-1819**	1/29/2004	Closed 3/2/04 | Refund sent to Attorney
LISA HARDY 3033 ARIZONA AVENUE 21234		CBA-02-115 PDM : Denial of fence Waiver CCT C-02-6663	9/23/2003	Dismissed by CC
2900 HAMMONDS FERRY LLC		02-214-SPHXA	4/17/2003	Petition Amended - Granted on 6/10/03

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

DATE: May 5, 2004

TO: Timothy Kotroco, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILES**

The following case(s) have been finalized and the Board of Appeals is closing the copy of the appeal case file(s) and returning the file(s) and exhibits (if applicable) attached herewith.

BOARD OF APPEALS CASE NUMBER	*PDM FILE NUMBER*	NAME	LOCATION
01-114-SPH WITH CBA-01-145	*01-114-SPH WITH VII-352*	ENSOR PROPERTY	MIDDLE TOWN ROAD

Attachment: SUBJECT FILE(S) / EXHIBIT(S) ATTACHED;

PLAT TO ACCOMPANY THE PETITION FOR SPECIAL HEARING – DEVELOPMENT PLAN

FOR

ENSOR PROPERTY (REVISED)

801 FALLS ROAD & 81429 MIDDLETOWN ROAD PARKTON, MARYLAND 21120

ELECTION DISTRICT NO. 7 COUNCILMANIC DISTRICT 3 BALTIMORE COUNTY, MARYLAND

ZONING DESCRIPTION
THE ENSOR PROPERTY AT FALLS ROAD
7th Election District
Baltimore County, Maryland

Parcel "A" - Part of Parcel 308

BEGINNING for the same at a point on the approximate centerline of Falls Road, a 30 foot wide right-of-way, at a distance of approximately 38 feet southwesterly from the centerline of Old Barn Road, 50 feet wide; thence running in Falls Road

1) Northerly by a curve to the left with a length of 66.28 feet, having a radius of 2,000.00 feet and being subtended by a chord bearing of North 52 degrees 19 minutes 00 seconds East a distance of 66.28 feet; thence leaving Falls Road
2) South 44 degrees 23 minutes 15 seconds East a distance of 19.83 feet; thence
3) South 60 degrees 57 minutes 50 seconds East a distance of 37.95 feet; thence
4) South 10 degrees 36 minutes 05 seconds West a distance of 167.50 feet; thence
5) Southerly by a curve to the left with a length of 20.85 feet, having a radius of 170.00 feet and being subtended by a chord bearing of South 07 degrees 05 minutes 17 seconds West a distance of 20.83 feet; thence
6) South 61 degrees 37 minutes 25 seconds West a distance of 372.16 feet; thence
7) North 67 degrees 17 minutes 06 seconds West a distance of 40.73 feet; thence
8) North 12 degrees 11 minutes 58 seconds West a distance of 28.04 feet; thence
9) North 42 degrees 56 minutes 04 seconds East a distance of 352.86 feet; thence
10) Northerly by a curve to the left with a length of 13.89 feet, having a radius of 700.00 feet and being subtended by a chord bearing of North 48 degrees 49 minutes 56 seconds East a distance of 13.89 feet; thence
11) Northerly by a curve to the right with a length of 69.47 feet, having a radius of 900.00 feet and being subtended by a chord bearing of North 51 degrees 03 minutes 31 seconds East a distance of 69.45 feet to the point of beginning.

CONTAINING 61,397 square feet or 1.4095 acres of land, more or less, which includes the bed of Falls Road.
BEING a portion of Tract 3 of a deed dated, June 9,1987 from Edward Harry Ensor and Wife to Edward Harry Ensor and Wife, which is recorded among the Land Records of Baltimore County, Maryland in Liber 9M No. 7573, Folio 507.
This description was derived from a survey prepared by Colbert, Matz, & Rosenfelt, Inc.

Parcel "B" - Parcel 25, Part of Parcel 308 & Part of Parcel 270

BEGINNING for the same at a point on the approximate centerline of Falls Road, a 30 foot wide right-of-way, at a distance of approximately 188.0 feet northeasterly from the centerline of Old Barn Road, 50 feet wide; thence running in Falls Road

1) Northerly by a curve to the left with a length of 43.00 feet, having a radius of 2,000.00 feet and being subtended by a chord bearing of North 46 degrees 09 minutes 56 seconds East a distance of 43.00 feet; thence leaving Falls Road
2) North 47 degrees 03 minutes 56 seconds West a distance of 41.59 feet; thence
3) North 42 degrees 56 minutes 04 seconds East a distance of 460.40 feet, thence
4) North 88 degrees 05 minutes 44 seconds East a distance of 393.46 feet to a point in Falls Road; thence
5) South 20 degrees 33 minutes 48 seconds East a distance of 29.29 feet; thence
6) Northerly by a curve to the left with a length of 235.72 feet, having a radius of 633.06 feet and being subtended by a chord bearing of North 58 degrees 46 minutes 12 seconds East a distance of 234.36 feet, thence
7) Northerly by a curve to the left with a length of 144.95 feet, having a radius of 466.70 feet and being subtended by a chord bearing of North 39 degrees 12 minutes 20 seconds East a distance of 144.37 feet; thence
8) North 75 degrees 30 minutes 06 seconds East a distance of 43.56 feet; thence
9) Southerly by a curve to the right with a length of 45.00 feet, having a radius of 80.00 feet and being subtended by a chord bearing of South 26 degrees 08 minutes 27 seconds East a distance of 47.28 feet, thence
10) South 08 degrees 57 minutes 27 seconds East a distance of 251.00 feet; thence
11) Southerly by a curve to the right with a length of 93.47 feet, having a radius of 530.00 feet and being subtended by a chord bearing of South 03 degrees 53 minutes 58 seconds East a distance of 93.35 feet; thence
12) South 88 degrees 50 minutes 49 seconds East a distance of 40.00 feet; thence
13) Northerly by a curve to the left with a length of 100.53 feet, having a radius of 570.00 feet and being subtended by a chord bearing of North 03 degrees 53 minutes 58 seconds West a distance of 100.40 feet; thence
14) North 08 degrees 57 minutes 07 seconds West a distance of 82.88 feet; thence
15) North 08 degrees 57 minutes 07 seconds West a distance of 168.12 feet; thence
16) Northerly by a curve to the left with a length of 86.80 feet, having a radius of 120.00 feet and being subtended by a chord bearing of North 30 degrees 09 minutes 05 seconds West a distance of 86.79 feet; thence
17) North 23 degrees 14 minutes 29 seconds West a distance of 45.42 feet; thence
18) Northerly by a curve to the left with a length of 139.97 feet, having a radius of 466.70 feet and being subtended by a chord bearing of North 09 degrees 23 minutes 11 seconds East a distance of 139.45 feet; thence
19) North 80 degrees 04 minutes 26 seconds East a distance of 39.34 feet to the westerly side of I-83; thence
20) South 22 degrees 16 minutes 40 seconds East a distance of 356.17 feet; thence
21) South 22 degrees 12 minutes 56 seconds East a distance of 1,163.63 feet; thence
22) South 19 degrees 21 minutes 12 seconds East a distance of 151.73 feet; thence leaving I-83
23) South 75 degrees 29 minutes 52 seconds West a distance of 631.66 feet; thence
24) South 48 degrees 48 minutes 42 seconds East a distance of 24.75 feet; thence
25) North 78 degrees 46 minutes 42 seconds West a distance of 941.73 feet to a point in Miller Lane; thence
26) North 76 degrees 54 minutes 20 seconds West a distance of 97.74 feet; thence
27) North 44 degrees 15 minutes 43 seconds West a distance of 53.43 feet; thence
28) North 30 degrees 22 minutes 02 seconds West a distance of 51.96 feet; thence
29) North 21 degrees 07 minutes 12 seconds West a distance of 8.03 feet; thence
30) Northerly by a curve to the left with a length of 96.49 feet, having a radius of 260.00 feet and being subtended by a chord bearing of North 31 degrees 45 minutes 06 seconds West a distance of 95.93 feet; thence
31) North 43 degrees 49 minutes 15 seconds East a distance of 25.70 feet; thence
32) North 46 degrees 10 minutes 50 seconds West a distance of 74.36 feet; thence
33) Northerly by a curve to the right with a length of 126.63 feet, having a radius of 130.00 feet and being subtended by a chord bearing of North 17 degrees 47 minutes 20 seconds West a distance of 123.62 feet; thence
34) North 10 degrees 36 minutes 05 seconds East a distance of 251.50 feet; thence
35) North 27 degrees 16 minutes 58 seconds East a distance of 60.03 feet; thence
36) North 43 degrees 34 minutes 55 seconds West a distance of 12.23 feet to the point of beginning.

CONTAINING 1,818,770 square feet or 41.7532 acres of land more or less, which includes the bed of Falls Road.

BEING a portion of Tracts 1, 3 and 5 of a deed dated June 9,1987 from Edward Harry Ensor and wife to EdwardHarry Ensor and wife, which is recorded among the Land Records of Baltimore County, Maryland in Liber 9M No. 7573, Folio 507.

Parcel "C" - Part of Parcel 150

BEGINNING for the same at a point on the westerly side of Frederick Road, 60 feet wide approximately 173 feet northerly from the centerline of the pavement of Middletown Road, a variable width right-of-way; thence running on the northerly side of said Middletown Road

1) South 76 degrees 27 minutes 55 seconds West 71.82 feet; thence
2) Westerly by a curve to the left with a length of 38.37 feet, having a radius of 3,381.93 feet and being subtended by a chord bearing of North 58 degrees 12 minutes 42 seconds West a distance of 38.37 feet; thence
3) North 58 degrees 32 minutes 12 seconds West a distance of 277.54 feet; thence
4) North 67 degrees 11 minutes 49 seconds East a distance of 419.52 feet; thence
5) North 49 degrees 05 minutes 53 seconds East a distance of 150.07 feet to the westerly side of Frederick Road; thence
6) Southerly by a curve to the right with a length of 441.77 feet, having a radius of 1,302.12 feet and being subtended by a chord bearing of South 21 degrees 28 minutes 45 seconds West a distance of 439.66 feet to the point of beginning.

CONTAINING 85,020 square feet or 1.952 acres of land, more or less.

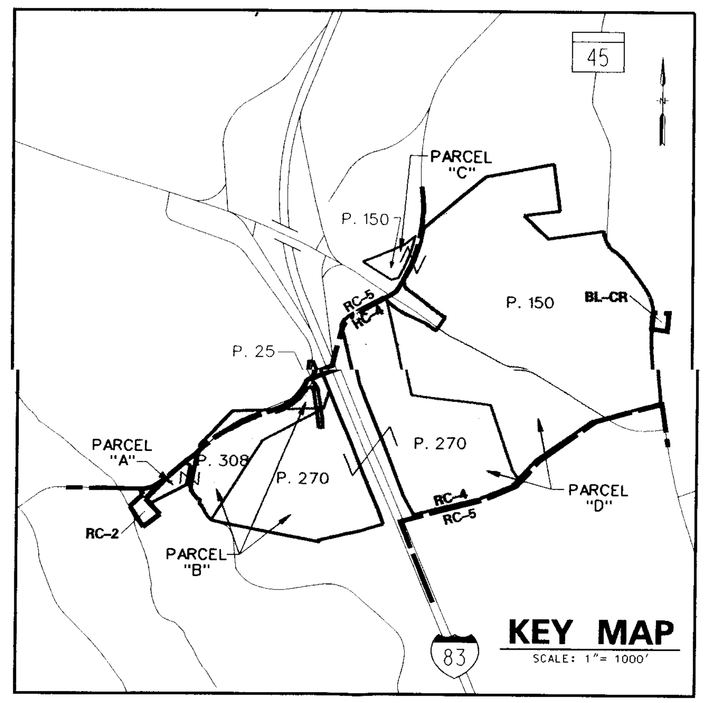
BEING a portion of Tract 2 of a deed dated, June 9,1987 from Edward Harry Ensor and Wife to Edward Harry Ensor and Wife, which is recorded among the Land Records of Baltimore County, Maryland in Liber 9M No. 7573, Folio 507.
This description was derived from a survey prepared by Colbert, Matz, & Rosenfelt, Inc.

Parcel "D" - Part of Parcel 270 & Part of Parcel 150

BEGINNING for the same at a point on the westerly side of York Road, 66 feet wide, approximately 216 feet northerly from the centerline of the pavement of Middletown Road, a variable width right-of-way; thence leaving York Road and crossing over Middletown Road

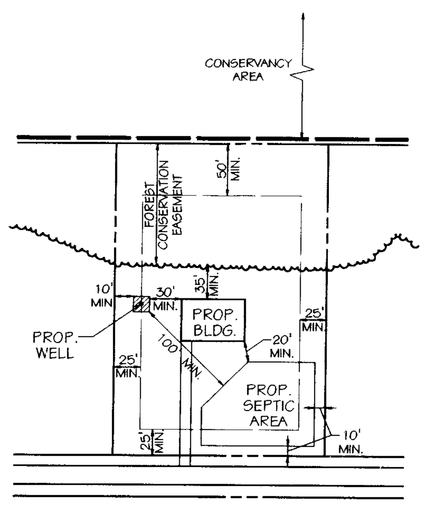
1) South 73 degrees 40 minutes 55 seconds West a distance of 658.75 feet; thence
2) South 54 degrees 17 minutes 21 seconds West a distance of 659.29 feet; thence
3) South 42 degrees 06 minutes 41 seconds West a distance of 330.21 feet; thence
4) South 66 degrees 07 minutes 19 seconds West a distance of 323.70 feet; thence
5) South 75 degrees 01 minutes 02 seconds West a distance of 647.17 feet to the westerly side of I-83; thence
6) North 28 degrees 47 minutes 09 seconds West a distance of 205.42 feet; thence
7) North 21 degrees 56 minutes 38 seconds West a distance of 1,163.63 feet; thence
8) North 14 degrees 20 minutes 14 seconds West a distance of 494.02 feet; thence
9) North 14 degrees 28 minutes 56 seconds West a distance of 46.73 feet; thence
10) North 28 degrees 16 minutes 34 seconds East a distance of 39.42 feet; thence
11) North 35 degrees 56 minutes 34 seconds East a distance of 54.75 feet; thence
12) North 49 degrees 08 minutes 34 seconds East a distance of 50.00 feet; thence
13) North 59 degrees 03 minutes 34 seconds East a distance of 377.91 feet to Middletown Road, thence
14) Southeasterly by a curve to the left with a length of 307.70 feet, having a radius of 750.0 feet and being subtended by a chord bearing of South 53 degrees 22 minutes 26 seconds East a distance of 305.55 feet; thence
15) South 65 degrees 07 minutes 38 seconds East a distance of 181.04 feet; thence
16) Southeasterly by a curve to the left with a length of 117.76 feet, having a radius of 2,325.83 feet and being subtended by a chord bearing of South 55 degrees 23 minutes 31 seconds East a distance of 117.75 feet; thence
17) North 33 degrees 09 minutes 27 seconds East a distance of 150.00 feet; thence
18) Northwesterly by a curve to the right with a length of 225.01 feet, having a radius of 2,175.83 feet and being subtended bt a chord bearing of North 53 degrees 52 minutes 47 seconds West a distance of 224.91 feet; thence
19) Northwesterly by a curve to the left with a length of 251.36 feet, having a radius of 3,381.93 feet and being subtended by a chord bearing of North 53 degrees 02 minutes 47 seconds West a distance of 251.30 feet; thence
20) North 13 degrees 08 minutes 43 seconds West a distance of 69.92 feet to Frederick Road; thence
21) Northerly by a curve to the left with a length of 544.93 feet, having a radius of 1,362.12 feet and being subtended by a chord bearing of North 20 degrees 01 minutes 38 seconds East a distance of 541.30 feet; thence
22) North 49 degrees 05 minutes 53 seconds East a distance of 766.75 feet; thence
23) North 78 degrees 34 minutes 30 seconds East a distance of 651.20 feet; thence
24) South 07 degrees 48 minutes 14 seconds East a distance of 453.75 feet; thence
25) South 61 degrees 56 minutes 46 seconds West a distance of 343.20 feet; thence
26) South 46 degrees 38 minutes 14 seconds East a distance of 320.10 feet; thence
27) North 80 degrees 56 minutes 46 seconds East a distance of 532.24 feet to York Road; thence
28) Southeasterly by a curve to the left with a length of 226.33 feet, having a radius of 231.58 feet being subt ended by a chord bearing of South 26 degrees 52 minutes 44 seconds East a distance of 217.43 feet; thence
29) South 54 degrees 52 minutes 39 seconds East a distance of 35.79 feet; thence
30) Southeasterly by a curve to the right with a length of 150.18 feet, having a radius of 453.42 feet and being subtended by a chord bearing of South 45 degrees 23 minutes 19 seconds East a distance of 149.50 feet; thence
31) South 35 degrees 54 minutes 00 seconds East a distance of 252.51 feet; thence
32) Southerly by a curve to the right with a length of 350.18 feet, having a radius of 483.42 feet and being subtended by a chord bearing of South 15 degrees 08 minutes 52 seconds East a distance of 342.58 feet; thence
33) South 05 degrees 36 minutes 16 seconds West a distance of 68.85 feet; thence
34) Southerly by a curve to the left with a length of 233.18 feet, having a radius of 1,293.00 feet and being subtended by a chord bearing of South 00 degrees 26 minutes 16 seconds West a distance of 232.67 feet; thence
35) South 04 degrees 43 minutes 43 seconds East a distance of 312.05 feet; thence
36) Southerly by a curve to the left with a length of 151.46 feet, having a radius of 5,033.00 feet and being subtended by a chord bearing of South 05 degrees 35 minutes 26 seconds East a distance of 151.46 feet to the place of beginning.

CONTAINING 6,019,247 square feet or 138.1829 acres of land, more or less.
BEING a portion of Tract 1 and 2 of a deed dated, June 9,1987 from Edward Harry Ensor and Wife to Edward Harry Ensor and Wife, which is recorded among the Land Records of Baltimore County, Maryland in Liber 9M 7573 at Folio 507.
This description was derived from a survey prepared by Colbert, Matz, Rosenfelt, inc.



KEY MAP
SCALE: 1" = 1000'

OWNERS:
ARTHUR S. TRACEY & A. RICHARD TRACEY
801 FALLS ROAD, PARKTON, MD 21120



TYPICAL RC-4 ZONE SETBACK LAYOUT
SCALE: 1" = 100'

SITE DATA

1. OWNER: MR. ARTHUR TRACEY &
MR. A. RICHARD TRACEY
20815 MIDDLETOWN ROAD
FREELAND, MD 21053
(410) 343-0424
2. DEVELOPER: THE GONZALES COMPANIES
17 GLENBURY COURT
PHOENIX, MD 21131
(410) 785-9630
3. TAX MAP: 17
4. PARCELS: 270, 150, 308, AND 25
5. TAX ACCOUNT NUMBERS: 0705061200, 0705061201, 0705061475, 0705060476
6. DEED REFERENCE: 7637/507
7. EXISTING ZONING: RC-4 & RC-5
8. ZONING MAPS: NW 30-C AND NW 31-C
9. SITE AREA (ACRES +) 183.30 AC. TOTAL SITE (GROSS ACREAGE)
3.44 AC. RC-5 TOTAL
179.86 AC. RC-4 TOTAL
2.78 AC. 70' R/W ALONG MIDDLETOWN ROAD TO BE DEDICATED TO BALTO. CO.
177.08 AC. RC-4 ACREAGE FOR DETERMINING CONSERVANCY REQUIREMENTS.
10. WATERSHED: 13 AND 14
11. SUBSEWERSHED: 81
12. FLOWN TOPO PROVIDED BY KCI TECHNOLOGIES, INC., 4/1999
13. SOILS TAKEN FROM THE USDA SOIL SURVEY OF BALTIMORE COUNTY.
14. THE ELEVATIONS SHOWN HEREON ARE BASED ON MARYLAND STATE NAVD, 1988.
15. THE HISTORIC SITE IDENTIFIED AS "MARYLAND HISTORIC TRUST (MHT) BA #1206-FREDERICK HOUSE, DRIVE-THROUGH BARN, AND ASSOCIATED BUILDINGS" AT 18429 MIDDLETOWN ROAD SHALL BE PRESERVED PER SECTION 26-278 OF THE BALTIMORE COUNTY CODE. THIS MHT SITE HAS BEEN PLACED ON THE FINAL LANDMARKS LIST. THE FARMSTEAD LOCATED AT 801 FALLS ROAD IS CURRENTLY UNDER CONSIDERATION BY MARYLAND HISTORIC TRUST.
16. MDE HAS INDICATED THAT THERE ARE NO FEDERAL OR STATE RECORDS OF RARE, THREATENED, OR ENDANGERED PLANTS OR ANIMALS WITHIN THE PROJECT SITE.
17. THREE (3) VARIANCES WERE GRANTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT (DEPRM) FROM THE REGULATIONS FOR THE PROTECTION OF WATER QUALITY, STREAMS, WETLANDS AND FLOODPLAINS WHICH BECAME EFFECTIVE ON JANUARY 1, 1991. THE FOREST BUFFER EASEMENTS AND BUILDING SETBACKS SHOWN HEREON ARE REFLECTIVE OF THE FACT THAT THESE VARIANCES HAVE BEEN GRANTED. CONDITIONS WERE PLACED ON THIS VARIANCE TO REDUCE WATER QUALITY IMPACTS. THE VARIANCES PERMIT THE FOLLOWING:
(A) LOTS 15 AND 22 ARE PERMITTED TO LIE WITHIN THE FBE AS SHOWN. (GRANTED 8/19/99).
(B) THE FOREST BUFFER EASEMENT ADJACENT TO MIDDLETOWN ROAD HAS BEEN REDUCED BY 100 FEET TO ALLOW FOR THE CONTINUED USE OF THE BARN AND PERMIT CATTLE TO PASS BETWEEN THE NORTH AND SOUTH PASTURE AREAS ASSOCIATED WITH THE FARMSTEAD. (GRANTED 3/24/00).
(C) THE FOREST BUFFER EASEMENT ADJACENT TO I-83 (TO THE WEST) HAS BEEN REDUCED BY 100 FEET TO PERMIT CATTLE TO PASS BETWEEN THE BARN AND THE SOUTH PASTURE AREA. (GRANTED 3/24/00).

GOOD VEGETATIVE COVER, AS DETERMINED BY DEPRM, SHALL BE ESTABLISHED PRIOR TO THE APPROVAL OF THE GRADING PLAN FOR THIS PROJECT, IN THE FBE ADJACENT TO LOTS 15 AND 22. ALL FBE AREAS ADJACENT TO CATTLE GRAZING AREAS SHALL BE FENCED PRIOR TO SIGNATURE OF RECORD PLAT. NO CATTLE GRAZING ADJACENT TO THE FBE UNLESS OR UNTIL THE FENCE IS CONSTRUCTED.
18. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST CONSERVATION AND FOREST BUFFER EASEMENTS EXCEPT AS PERMITTED BY BALTIMORE COUNTY DEPRM.
19. ANY FOREST CONSERVATION OR FOREST BUFFER EASEMENTS SHOWN HEREON ARE SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS.
20. THE FOREST CONSERVATION EASEMENTS AND FOREST BUFFER EASEMENTS LOCATED BETWEEN MIDDLETOWN ROAD AND YORK ROAD MAY BE ACCESSED FROM EITHER MIDDLETOWN ROAD OR YORK ROAD.
21. THE FOREST CONSERVATION EASEMENTS AND FOREST BUFFER EASEMENTS LOCATED BETWEEN MIDDLETOWN ROAD AND I-83 MAY BE ACCESSED OFF OF COURT C AS SHOWN ON THE PLAN.
22. THE FOREST CONSERVATION EASEMENTS AND FOREST BUFFER EASEMENTS LOCATED WEST OF I-83 MAY BE ACCESSED FROM FALLS ROAD.
23. NO PRIME AGRICULTURAL SOILS EXIST ON SITE. HOWEVER, PORTIONS OF THE RC 4 ZONED PROPERTY CURRENTLY REMAIN IN AGRICULTURAL USE.
24. THE 2 EXISTING FARMSTEADS (DWELLINGS AND ACCESSORY BUILDINGS) ON LOTS 1 AND 2 WILL BE ESTABLISHED AS REDUCED ACREAGE FARMS.
25. THE EXISTING BARNS LOCATED ALONG MIDDLETOWN ROAD ARE TO REMAIN. THE PROPOSED 70' WIDE R/W ALONG MIDDLETOWN ROAD AND 20' REVERTIBLE SLOPE EASEMENTS ON EITHER SIDE OF THE ROAD HAVE BEEN ADJUSTED ACCORDINGLY.
26 INCONVENIENCES ARISING FROM AGRICULTURAL OPERATIONS.
ANY DWELLING IN A RC-4 ZONE MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATIONS, INCLUDING BUT NOT LIMITED TO NOISE, ODORS, FUMES, DUST, THE OPERATIONS OF MACHINERY OF ANY KIND DURING 24-HOUR PERIODS (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. THE COUNTY SHALL NOT CONSIDER ANY AGRICULTURAL OPERATION TO BE A PUBLIC NUISANCE, IF THE OPERATION COMPLIES THESE REGULATIONS AND ALL FEDERAL, STATE, OR COUNTY HEALTH OR ENVIRONMENTAL REQUIREMENTS.
27. NO KNOWN UNDERGROUND STORAGE TANKS OR OTHER HAZARDOUS MATERIALS EXIST ON THE PROJECT SITE.
28. NO KNOWN DESIGNATED AREAS OF CRITICAL STATE CONCERN EXIST ON THE PROJECT SITE.
29. NO PUBLIC TRANSIT SERVICES ARE AVAILABLE TO THE PROJECT SITE.
30. A PROJECT IDENTIFICATION SIGN IS PROPOSED AT THE INTERSECTION OF PROP. ROAD C AND MIDDLETOWN ROAD.
31. NO RESIDENTIAL TRANSITION AREAS APPLY TO THIS PROJECT.
32. FIRE SUPPRESSION WILL BE PROVIDED BY THE INSTALLATION OF UNDERGROUND TANKS WITH APPROPRIATE FITTINGS AS REQUIRED BY THE FIRE DEPARTMENT.
33. THE BUREAU OF TRAFFIC ENGINEERING AND TRANSPORTATION HAS CONFIRMED THAT THE SUBJECT SITE IS NOT WITHIN A TRAFFIC DEFICIENT AREA.
34. A STORMWATER MANAGEMENT WAIVER IS CURRENTLY UNDER REVIEW BY BALTIMORE COUNTY.
35. A NOISE STUDY WAS COMPLETED FOR THE PROJECT SITE IN DECEMBER, 1999. THE RESULTING 66 Ldn LINE EAST AND WEST OF I-83 ARE SHOWN ON THE PLANS HEREIN.
36. AS A RESULT OF PLANNING BOARD REVIEW OF THE PROJECT, RESTRICTIVE COVENANTS HAVE BEEN PLACED ON LOTS 3 THROUGH 12 REGARDING ARCHITECTURAL STANDARDS, REAR YARD USE, AND LANDSCAPING REQUIREMENTS. A COPY OF THESE COVENANTS IS INCLUDED WITH THE REVISED DEVELOPMENT PLAN SUBMISSION. A COPY HAS ALSO BEEN SUBMITTED TO BALTIMORE COUNTY ZONING WITH THE PETITION FOR SPECIAL HEARING.

SITE DATA

EXISTING ZONING AND MAXIMUM DENSITY PERMITTED

ZONE	ACRES	UNITS ALLOWED	DENSITY UNITS	UNITS PROPOSED
RC-4	177.08	35		35
RC-5	3.44	2		0
TOTAL	180.52	37		35

RC-4 RURAL CLUSTER INFORMATION	DATA
RC-4 ACREAGE	177.08
LOTS ALLOWED IN RC-4 (ACREAGE x .20)	35
EXISTING LOTS	2
PROPOSED LOTS	33
REMAINING DENSITY	0
MAXIMUM RC-4 BUILDING AREA (ACREAGE x .30)	53.12
PROPOSED RC-4 BUILDING AREA	52.17
MINIMUM RC-4 CONSERVANCY AREA (ACREAGE x .70)	123.96
PROPOSED RC-4 CONSERVANCY AREA	124.91

SITE DEVELOPMENT PROPOSAL

DWELLING TYPE	PROPOSED UNITS	PARKING REQUIRED	PARKING PROVIDED	OPEN SPACE REQUIRED (ACRES)	OPEN SPACE PROPOSED (ACRES)	AVERAGE DAILY TRIPS	PHASE	DEVELOPMENT SCHEDULE
S.F.D.	35	70	70	0.80	0.83	434		
TOTAL	35	70	70	0.80	0.83	434		

OPEN SPACE PROPOSAL

LOCAL OPEN SPACE TYPE	ACRES
PASSIVE OPEN SPACE	0.30
ACTIVE OPEN SPACE	0.54
100 YEAR FLOODPLAIN*	10.54
FOREST BUFFER	38.71
AMENITY AREAS	N/A
TRAILS AND CONNECTORS	N/A
OTHER	
TOTAL PROVIDED	39.55
PROPOSED OWNERSHIP	

UNDEVELOPED AREAS	ACRES
STORMWATER MANAGEMENT	0.00
HOA/COA AREAS	0.00
OTHER	0.00
WATER QUALITY SWALES	1.72
TOTAL PROVIDED	1.72

* 100 YEAR FLOODPLAIN IS LOCATED WITHIN THE FOREST BUFFER

ANTICIPATED ACTIONS (VARIANCES, WAIVERS, SPECIAL EXCEPTIONS, ETC.): SEE SITE NOTES

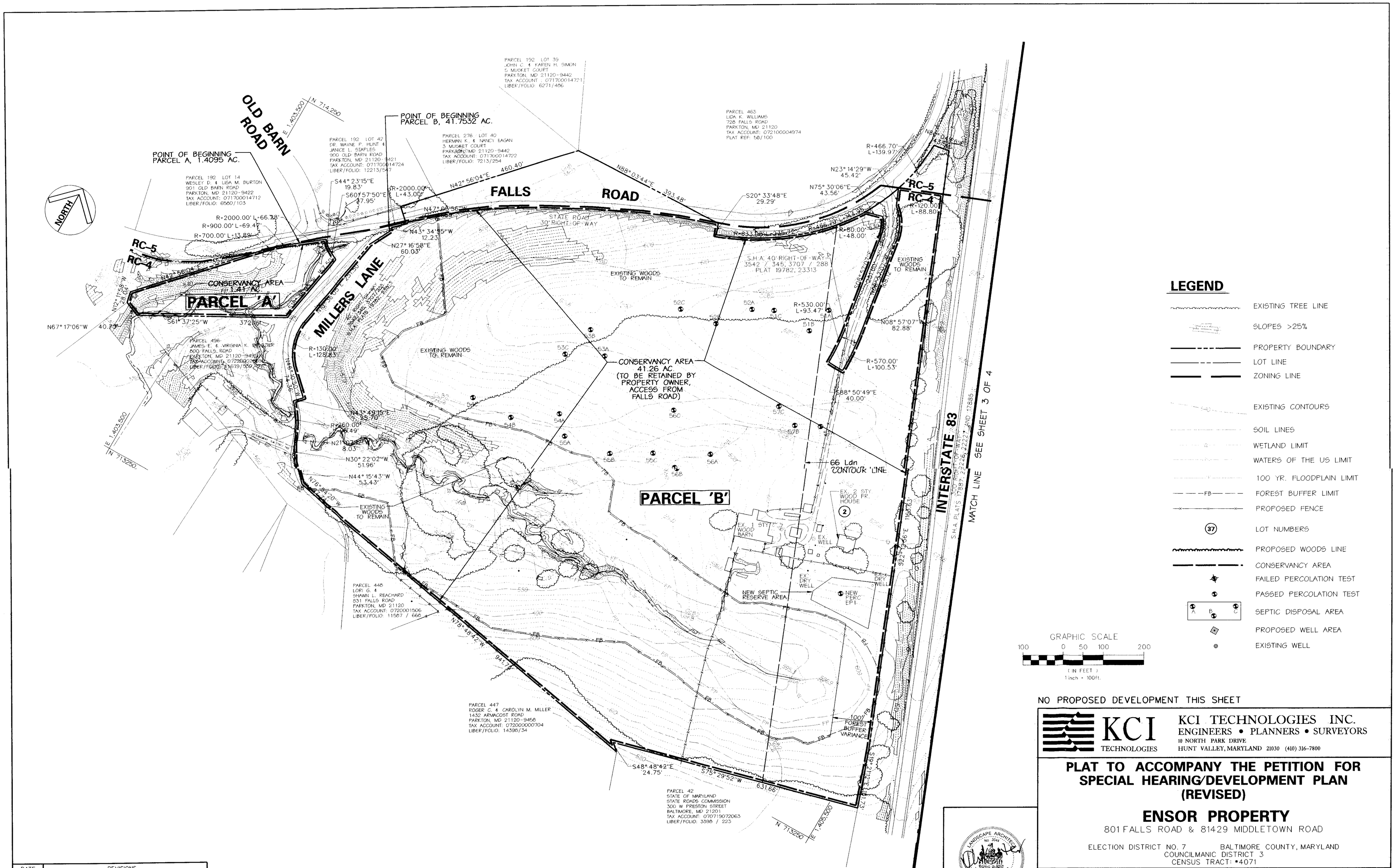
LANDSCAPE ARCHITECT
NO. 3044
STEVEN L. KESTER
STATE OF MARYLAND
3-27-01

DATE	REVISIONS
3/27/01	REVISED PER COUNTY COMMENTS

SHEET 1 OF 4

KCI TECHNOLOGIES
KCI TECHNOLOGIES INC.
ENGINEERS • PLANNERS • SURVEYORS
10 NORTH PARK DRIVE
HUNT VALLEY, MARYLAND 21030 (410) 316-7800

M:\ 1998 \ 0198208 \ SPHRNG01.DGN © KCI Technologies, Inc.



LEGEND

- EXISTING TREE LINE
- SLOPES >25%
- PROPERTY BOUNDARY
- LOT LINE
- ZONING LINE
- EXISTING CONTOURS
- SOIL LINES
- WETLAND LIMIT
- WATERS OF THE US LIMIT
- 100 YR. FLOODPLAIN LIMIT
- FB — FOREST BUFFER LIMIT
- PROPOSED FENCE
- (37) LOT NUMBERS
- PROPOSED WOODS LINE
- CONSERVANCY AREA
- FAILED PERCOLATION TEST
- PASSED PERCOLATION TEST
- A B C — SEPTIC DISPOSAL AREA
- PROPOSED WELL AREA
- EXISTING WELL

NO PROPOSED DEVELOPMENT THIS SHEET

KCI TECHNOLOGIES

KCI TECHNOLOGIES INC.
ENGINEERS • PLANNERS • SURVEYORS
10 NORTH PARK DRIVE
HUNT VALLEY, MARYLAND 21030 (410) 316-7800

PLAT TO ACCOMPANY THE PETITION FOR SPECIAL HEARING/DEVELOPMENT PLAN (REVISED)

ENSOR PROPERTY

801 FALLS ROAD & 81429 MIDDLETOWN ROAD

ELECTION DISTRICT NO. 7 — BALTIMORE COUNTY, MARYLAND
COUNCILMANIC DISTRICT 3
CENSUS TRACT: •4071

LANDSCAPE ARCHITECT No. 3044 — JOHN LOUISE KESTER — STATE OF MARYLAND
3-27-01

DATE	REVISIONS
3/27/01	REVISED PER COUNTY COMMENTS

DESIGN BY: TLK	SCALE	DATE	SHEET NUMBER	JOB NUMBER
DRAWN BY: JLT	1" = 100'	2/20/01	2 OF 4	0198208H
CHECKED BY: RH				

M:\ 1998 \ 0198208 \ SPHRNG02.DGN © KCI Technologies, Inc.

RESTRICTIVE COVENANTS HAVE BEEN PLACED ON LOTS 3 THROUGH 12 REGARDING ARCHITECTURAL STANDARDS, REAR YARD USE, AND LANDSCAPING REQUIREMENTS. A COPY OF THESE COVENANTS WAS INCLUDED WITH THE REVISED DEVELOPMENT PLAN SUBMISSION. A COPY WAS ALSO SUBMITTED TO BALTIMORE COUNTY ZONING WITH THE PETITION FOR SPECIAL HEARING.

20' REVERTIBLE SLOPE EASEMENT TO BE DEDICATED TO BALTO. CO.

NOTE: EXISTING DRIVE-THROUGH BARN — MHT# BA#1206

MATCH LINE SEE SHEET 4 OF 4

NORTH

R=2325.83' L=117.76'

S65°07'38"E 181.02'

R=750.00' L=307.70'

CONSERVANCY AREA 3.18 AC.±

PARCEL FOR FIRE SUPPRESSION TANK

RC-5

RC-4

PARCEL 50 NASH PROPERTY LLC 10 NORTH PARK DRIVE HUNTVALLEY, MD 21030 TAX ACCOUNT 2070132000 LIBER/FOLIO 4787/ 0410

N35°56'54"W 34.25'

N49°03'34"E 50.00'

PRIVATE WATER QUALITY EASEMENT

PARCEL 'D'

66 Ldn CONTOUR LINE

LOCAL OPEN SPACE 36,000 S.F.

CONSERVANCY AREA 11.64 AC.±

ROAD "C" (PUBLIC 40' R/W)

COURT "D" (PUBLIC 40' R/W)

PRIVATE WATER QUALITY EASEMENT

CONSERVANCY AREA 3.63 AC.±

EX. WOODS TO REMAIN

EX. WOODS TO REMAIN

EX. 1.5 STY. WORSHIP CENTER

EX. WELL

EX. PARKING

EX. SEPTIC AREA & PERCS FOR CHURCH PROPERTY

PARCEL 240 ARCHDIOCESE OF BALTIMORE 408 NORTH CHARLES STREET BALTIMORE, MD 21201 TAX ACCOUNT 0705000290 LIBER/FOLIO 4087/ 184

S24°17'21"W 659.29'

E 1,405,000

N 713,500

N21°56'38"W 116.83'

S28°47'09"W 208.42'

S47°10'02"W 64.17'

S00°50'00"E 1,406.00'

S.H.A. PLATS 17887 AND 17885 300' RIGHT OF WAY 22227, 22226

INTERSTATE 83

MATCH LINE SEE SHEET 2 OF 4

LEGEND

- EXISTING TREE LINE
- SLOPES >25%
- PROPERTY BOUNDARY
- LOT LINE
- ZONING LINE
- EXISTING CONTOURS
- SOIL LINES
- WETLAND LIMIT
- WATERS OF THE US LIMIT
- 100 YR. FLOODPLAIN LIMIT
- FB — FOREST BUFFER LIMIT
- PROPOSED FENCE
- (37) LOT NUMBERS
- PROPOSED WOODS LINE
- CONSERVANCY AREA
- FAILED PERCOLATION TEST *
- PASSED PERCOLATION TEST *
- FAILED PERCOLATION TEST
- PASSED PERCOLATION TEST
- PASSED PERCOLATION TEST **
- A B C — SEPTIC DISPOSAL AREA
- PROPOSED WELL AREA
- EXISTING WELL

* PRELIMINARY TEST PITS AND SOIL PERCOLATION TESTS WERE PERFORMED ON FEBRUARY 10, 1999 IN LOACTIONS ON PLAT. DAVE LAWSON, LAWSON ENTERPRISES, INC. PERFORMED THE EXCAVATION.
DOUGLAS L. KENNEDY, P.E. (KCW ENGINEERING TECHNOLOGIES, INC.) AND JOHN HOBNER (FORMER DEPRM) OBSERVED THE TESTS.

** PERCOLATION TESTS WERE PERFORMED BY COLBERT, MATZ, ROSENFELT, INC. 10/23/1997

KCI TECHNOLOGIES

KCI TECHNOLOGIES INC.
ENGINEERS • PLANNERS • SURVEYORS
10 NORTH PARK DRIVE
HUNT VALLEY, MARYLAND 21030 (410) 316-7800

PLAT TO ACCOMPANY THE PETITION FOR SPECIAL HEARING/DEVELOPMENT PLAN (REVISED)

ENSOR PROPERTY

801 FALLS ROAD & 81429 MIDDLETOWN ROAD

ELECTION DISTRICT NO. 7 BALTIMORE COUNTY, MARYLAND
COUNCILMANIC DISTRICT 3
CENSUS TRACT: •4071

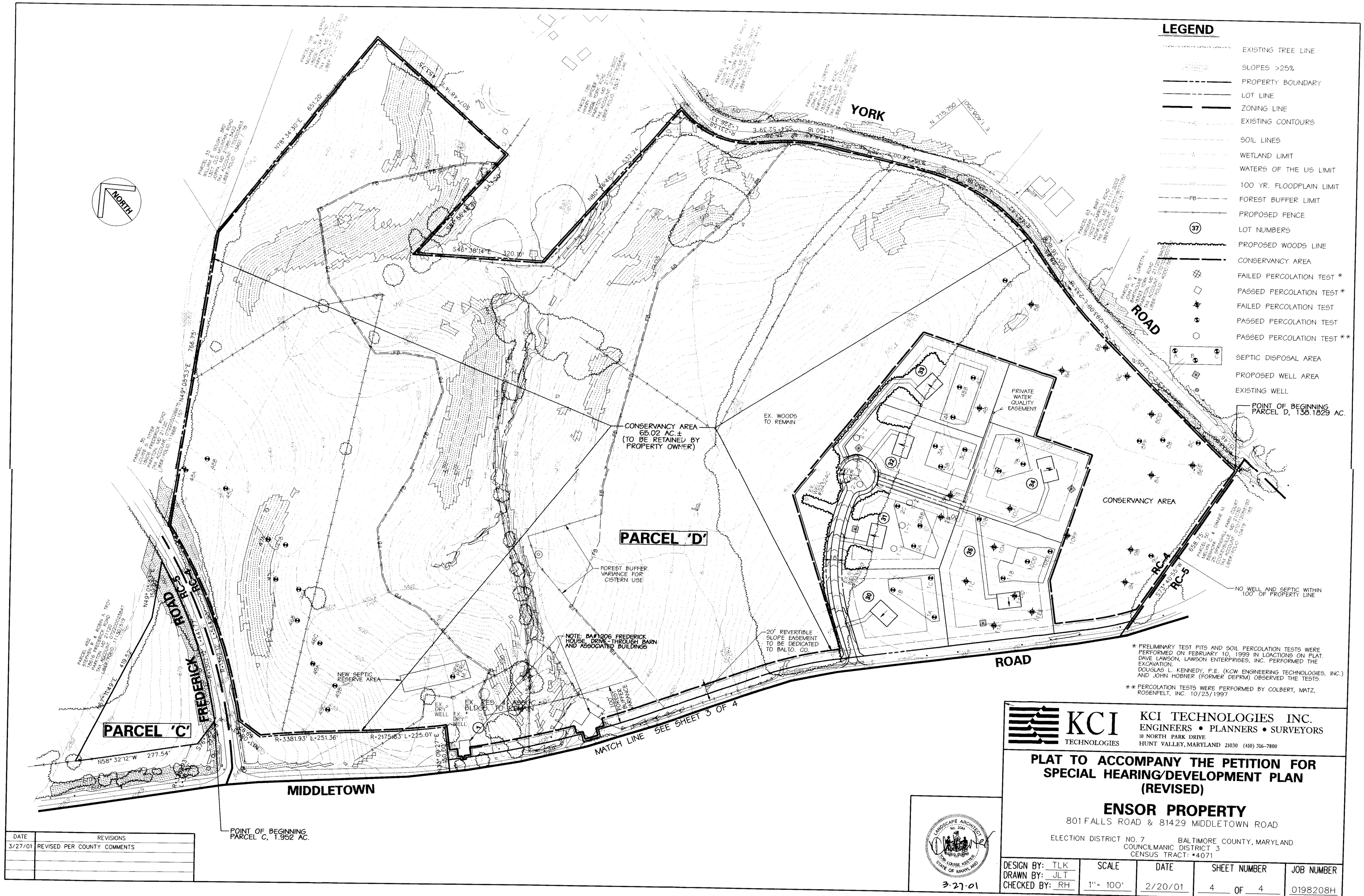
LANDSCAPE ARCHITECT No. 3044 RICHARD LOUISE KESSLER STATE OF MARYLAND

3-27-01

DATE	REVISIONS
3/27/01	REVISED PER COUNTY COMMENTS

DESIGN BY: TLK	SCALE	DATE	SHEET NUMBER	JOB NUMBER
DRAWN BY: JLT	1" = 100'	2/20/01	3 OF 4	0198208H
CHECKED BY: RH				

M:\ 1998 \ 0198208 \ SPHRNG03.DGN © KCI Technologies, Inc.


LEGEND
EXISTING TREE LINE
SLOPES >25%
PROPERTY BOUNDARY
LOT LINE
ZONING LINE
EXISTING CONTOURS
SOIL LINES
WETLAND LIMIT
WATERS OF THE US LIMIT
100 YR. FLOODPLAIN LIMIT
FOREST BUFFER LIMIT
PROPOSED FENCE
LOT NUMBERS
PROPOSED WOODS LINE
CONSERVANCY AREA
FAILED PERCOLATION TEST *
PASSED PERCOLATION TEST *
FAILED PERCOLATION TEST
PASSED PERCOLATION TEST
PASSED PERCOLATION TEST **
SEPTIC DISPOSAL AREA
PROPOSED WELL AREA
EXISTING WELL
POINT OF BEGINNING PARCEL D, 138.1829 AC.
NO WELL AND SEPTIC WITHIN 100' OF PROPERTY LINE
NORTH
YORK
ROAD
FREDERICK
ROAD
MIDDLETOWN
ROAD
PARCEL 'D'
PARCEL 'C'
CONSERVANCY AREA 65.02 AC.± (TO BE RETAINED BY PROPERTY OWNER)
EX. WOODS TO REMAIN
PRIVATE WATER QUALITY EASEMENT
CONSERVANCY AREA
FOREST BUFFER VARIANCE FOR CISTERN USE
NOTE: BA#1206 FREDERICK HOUSE DRIVE-THROUGH BARN AND ASSOCIATED BUILDINGS
20' REVERTIBLE SLOPE EASEMENT TO BE DEDICATED TO BALTO. CO.
NEW SEPTIC RESERVE AREA
EX. DRY WELL
EX. FES. & ASSOC. BLDGS. TO REMAIN
MATCH LINE SEE SHEET 3 OF 4
POINT OF BEGINNING PARCEL C, 1.952 AC.
N 715,750
E 1,400,250
N49°05'53"E 766.75'
N78°34'30"E 651.20'
S46°38'14"E 320.10'
N88°50'46"E 532.24'
S36°56'40"W 34.40'
S07°48'14"E 45.75'
S33°40'55"W 658.75'
R=3381.93' L=251.36'
R=2175.63' L=225.01'
N58°32'12"W 277.54'
N49°05'53"E 419.52'
N49°05'53"E 54.00'
S16°27'47"W 49.69'
S30°09'27"E 130.00'
R=1150.18' L=226.33'
R=2145.56' L=231.58'
S05°36'50"E 400.84'
S12°05'50"E 97.15'
S12°05'50"E 97.15'
S12°05'50"E 97.15

HH-NW HH-NE
KK-SW KK-SE

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

1996 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 2, 1995
Bills Nos. 129-96, 130-96, 131-96, 132-96, 133-96, 134-96, 135-96

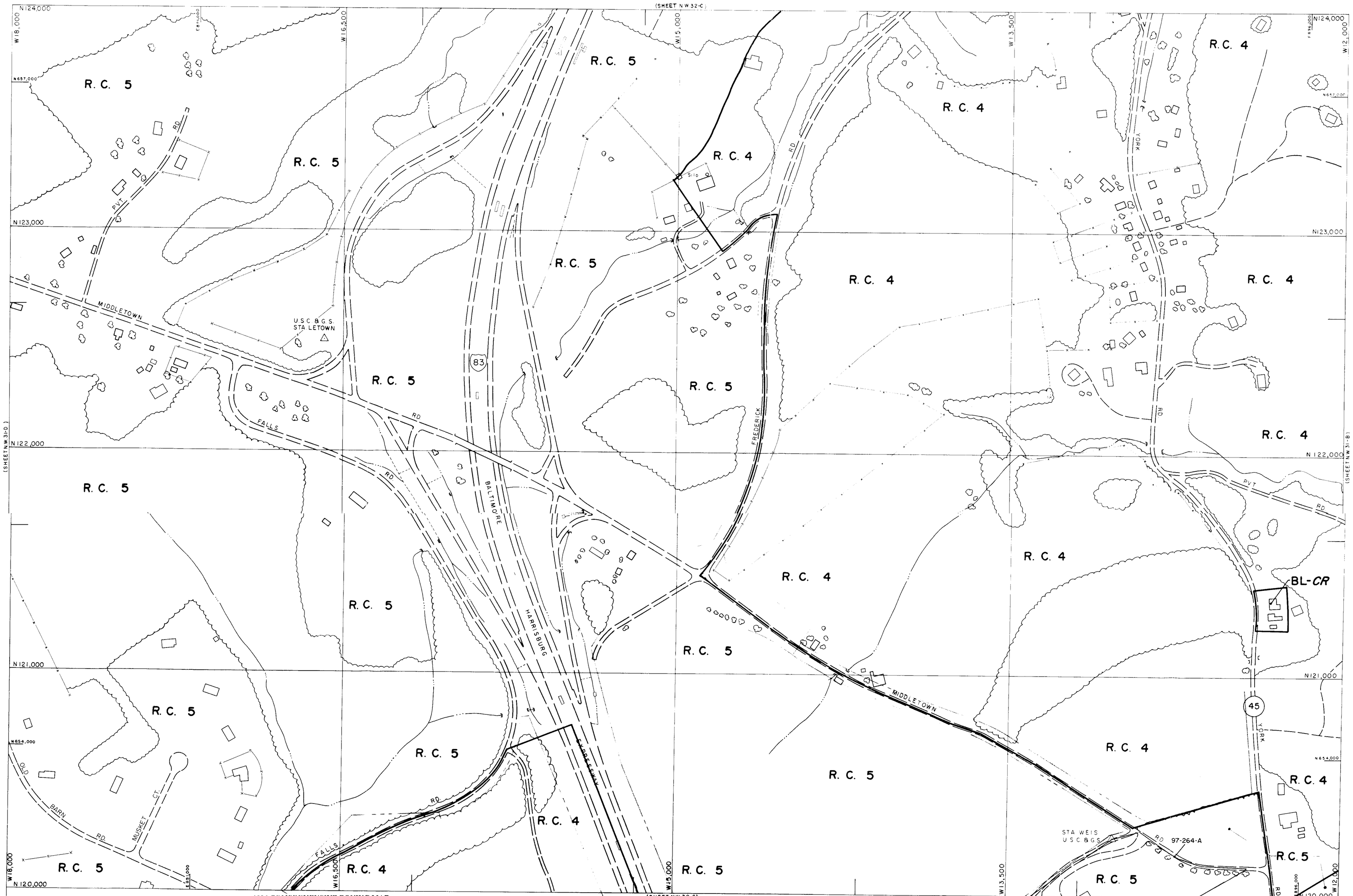
Kevin Kamenetz
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	WEST OF WISEBURG	NW 30-C
DATE OF PHOTOGRAPHY JANUARY 1986		

NW 30-C

01-114-SPH



KK-SW KK-SE
HH-NW HH-NE

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

1996 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 2, 1996
Bills Nos. 129-96, 130-96, 131-96, 132-96, 133-96, 134-96, 135-96

Kevin Kamenetz
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	SOUTHWEST OF PARKTON	N.W. 31-C
DATE OF PHOTOGRAPHY JANUARY 1986		

NW 31-C