

IN RE: PETITIONS FOR SPECIAL EXCEPTION, * BEFORE THE
HEARING AND VARIANCE *
W/S Harlem Lane, 36' N * ZONING COMMISSIONER
centerline of Maple Forest Road *
1st Election District * OF BALTIMORE COUNTY
1st Councilmanic District *
(333 Harlem Lane) * CASE NO. 01-209-SPHXA

Catonsville Eldercare, Inc. *
Petitioner *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Exception, Special Hearing and Variance filed by the legal owners of the subject property, the Catonsville Eldercare, Inc. The petitions were prepared and filed by Sarkis Nazarian, President of Catonsville Eldercare, Inc. The special exception request is to approve an assisted living facility developed in conjunction with an existing nursing home, in accordance with Section 1B01.1.C.27 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, the Petitioner is requesting a special hearing to amend the previously approved Special Exception Plan and relief in Case No. 90-103-SPH, to permit a total of 138 nursing home beds and 45 assisted living beds. In addition, the special hearing relief is being requested to allow parking on the north side of Maple Forest Road and a proposed landscape buffer, which is shown on the plan to accompany this petition, as meeting the spirit and intent of the landscaping described by the County Board of Appeals in the previous special hearing case. Finally, special hearing relief is requested to approve a modified parking plan in lieu of the variance requested. As stated previously, the variance request is filed in the event the special hearing for a modified parking plan is not granted, to allow 55 on-site parking spaces in lieu of the required 61 spaces and to permit a 20 ft. wide drive aisle in lieu of the required 22.

COPIES RECEIVED FOR FILING

Date

By

2/2/01
R. J. [Signature]

Appearing at the hearing on behalf of these requests were Sarkis Nazarian, on behalf of Catonsville Eldercare, Jack Hollick, with Dileo & Associates, Richard Matz, the professional engineer who prepared the site plan of the property and Howard Alderman, attorney at law, representing the Petitioner. There were no protestants or any other persons in attendance.

Testimony and evidence indicated that the property, which is the subject of this hearing, consists of a gross area of 3.14 acres, more or less, zoned DR 5.5. The subject property is already improved with an existing two-story nursing home facility. The existing building is depicted on Petitioner's Exhibit No. 1, the site plan submitted into evidence at the hearing. The Petitioner is desirous of renovating and upgrading the old existing nursing home and proposes several additions as shown on the site plan. The testimony and evidence indicated that the nursing home is currently vacant and Catonsville Eldercare, the Petitioner herein, is desirous of operating an assisted living facility in conjunction with the nursing home, in accordance with the improvements shown on the Petitioner's site plan. In order to proceed with the renovations of the old nursing home building and the construction of the new areas to the facility, the special exception and special hearing relief are necessary.

The Petitioner is requesting special exception relief to approve the assisted living facility which consists of 45 assisted living beds in conjunction with a 138-bed nursing home and have filed their request pursuant to Section 1B01.1.C.27 of the B.C.Z.R.

It is clear that the B.C.Z.R. permits the use proposed in a DR 5.5 zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

2/12/01
Sarkis Nazarian

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted.

In addition to the special exception request, the Petitioner is also requesting special hearing relief to amend the previously approved special exception in Case No. 90-103-SPH. That relief is being requested to allow the new use of the property consisting of 138 nursing home beds and 45 assisted living beds. The special hearing relief is also being requested to allow parking on the north side of Maple Forest Road as shown on the site plan submitted. In addition, the Petitioner is requesting that the proposed landscape buffer, as shown on the west side of the subject property, be and is consistent with the spirit and intent of the previously approved landscape buffer. Finally, in lieu of the companion variance request, the Petitioner is requesting approval of the modified parking plan as shown on the site plan and as described at the hearing before me.

APPROVED FOR THE
10/2/01
J. P. Gemesa

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R. The Petitioner is making a considerable investment into what was formerly an abandoned nursing home facility. The improvements as described at the hearing before me and as shown on the site plan submitted are necessary in order to allow the Petitioner to obtain the proper licensing to operate an assisted living facility and nursing home. Therefore, it is appropriate to approve the special hearing request to amend the previously approved special exception relief. In addition, the parking, as shown on the north side of Maple Forest Road is appropriate, as is the 30 ft. landscaping strip as shown along the western boundary line of the subject property. Finally, it is not necessary for the Petitioner to request a variance for parking in that the modified parking plan as described at the hearing is appropriate and shall be approved pursuant to the special hearing request.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 2nd day of February, 2001, that the special exception relief for an assisted living facility developed in conjunction with an existing nursing home, pursuant to Section 1B01.1.C.27 of the B.C.Z.R., be and is hereby GRANTED.

IT IS FURTHER ORDERED, that the special hearing relief to amend the previously approved special exception plan and relief in Case No. 90-103-SPH; and to permit parking to be located on the north side of Maple Forest Road and approval of the proposed 30 ft. landscape buffer along the western edge of the property, as well as the modified parking plan as shown on

ORDERED FOR FILING
Date 2/2/01
BY R. J. [Signature]

1. The Petitioner may apply for their building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning same property to its original condition.
2. The Petitioner shall be required to submit a landscape plan for review and approval by Avery Harden, Landscape Architect for Baltimore County. Said landscape plan shall show appropriate landscaping within the 30 ft. landscape buffer, along the western property line of the subject site, as well as other required landscaping.
3. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED, that the special exception relief granted herein shall be extended beyond the normal 2 year period of utilization. The Petitioner shall have 5 years within which to utilize this special exception request.

TMK:raj

5



Baltimore County
Zoning Commissioner

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

February 2, 2001

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

RE: Petitions for Special Exception, Special Hearing & Variance
Case No. 01-209-SPHXA
Property: 333 Harlem Lane

Dear Mr. Alderman:

Enclosed please find the decision rendered in the above-captioned case. The Petitions for Special Exception and Special Hearing have been granted in accordance with the enclosed Order. The Petition for Variance has been dismissed.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Office of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure



Census 2000



For You, For Baltimore County



Census 2000



Printed with Soybean Ink
on Recycled Paper

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

Copies to:

**Sarkis Nazarian, President
Catonsville Eldercare, Inc.
c/o 1213 Light Street
Baltimore, MD 21230**

**Richard E. Matz, P.E.
Colbert, Matz & Rosenfelt, PE
2835 Smith Avenue, Suite "G"
Baltimore, MD 21209**

**Jack Hollick
Dileo & Associates, LLC
1106 N. Charles Street
Baltimore, MD 21201**



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 333 Harlem Lane
which is presently zoned DR 5.5

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 bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

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

Attorney For Petitioner:

Howard L. Alderman, Jr., Esquire
Name - Type or Print _____ City _____
Signature _____
LEVIN & GANN, PA
Company 502 Washington Avenue
8th Floor 410-321-0600
Address _____ Telephone No. _____
Towson, MD 21204
City _____ State _____ Zip Code _____

Legal Owner(s): CATONSVILLE ELDERCARE, INC.

By: Sarkis Nazarian, President

Name - Type or Print _____
Signature S. Nazarian President
Name - Type or Print _____

Signature _____
c/o 1213 Light Street 410-727-1600
Address _____ Telephone No. _____
Baltimore, MD 21230
State _____ Zip Code _____

Representative to be Contacted:

RICHARD E. MATZ, PE
Name Colbert, Matz & Rosenfelt, PE
2835 Smith Avenue, Suite "G" 410-653-3838
Address _____ Telephone No. _____
Baltimore, MD 21209
City _____ State _____ Zip Code _____

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING all day

UNAVAILABLE FOR HEARING _____

Reviewed By TAG Date 11/20/00

Case No. 01-209-5P/HA

REV 9/15/98

ORDER RECEIVED FOR FILING
Date 11/20/01
By [Signature]

PETITION FOR SPECIAL EXCEPTION

CASE NO: _____

Address: 333 Harlem Lane

Legal Owners: Catonsville Eldercare, Inc.

Present Zoning: DR 5.5

REQUESTED RELIEF:

Approval of a Special Exception for an Assisted Living Facility developed in conjunction with an existing Nursing Home, in accordance with BCZR § 1B01.1.C.27 and in accordance with the specific detail shown on the Plats to accompany this Petition.

01-209-SPHXA

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 333 Harlem Lane

which is presently zoned DR 5.5

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 Variance from Section(s)

SEE ATTACHED

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

SEE ATTACHED

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

I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Howard L. Alderman, Jr., Esquire

Name - Type or Print

Signature

LEVIN & GANN, PA

Company 502 Washington Avenue

8th Floor

410-321-0600

Address

Telephone No.

Towson

Maryland

21204

City

State

Zip Code

By: Sarkis Nazarian, President

Name - Type or Print

Signature

Name - Type or Print

Signature

c/o 1213 Light Street

410-727-1600

Address

Telephone No.

Baltimore, MD

21230

State

Zip Code

Representative to be Contacted:

Richard E. Matz, PE

Name

Colbert, Matz & Rosenfelt, Inc.

2835 Smith Avenue, Suite "G"

410-653-3838

Address

Telephone No.

Baltimore

MD

21209

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

all day

UNAVAILABLE FOR HEARING

Reviewed By

TAG

Date

11/20/00

Case No. 01-209-SPHA

REV 9/15/98

PETITION FOR VARIANCE
[*Alternate Relief*]

CASE NO: _____

Address: 333 Harlem Lane

Legal Owners: Catonsville Eldercare, Inc.

Present Zoning: DR 5.5

REQUESTED RELIEF:

In the event that the requested modified parking plan is not approved: [1] a variance from: BCZR §§ 409.6.A.1 & 409.6.A.4 to permit a total of 55 on-site parking spaces in-lieu of the 61 spaces otherwise required; and [2] from BCZR § 409.4.C to permit a 20 foot wide drive aisle in lieu of the 22 feet otherwise required.

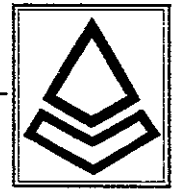
JUSTIFICATION:

1. Irregularly shaped lot;
2. Existing topographic constraints;
3. Bifurcation by existing public road improvements; and
4. For such further reasons that will be presented at the hearing on this Petition.

01-209 SPHXA

Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners



ZONING DESCRIPTION 333 HARLEM LANE

Parcel One:

Beginning at a point on the west side of Harlem Lane, which is 60 feet wide, at the distance of 36 feet north of the centerline of Maple Forest Road, which is of varying width, thence the following courses and distances:

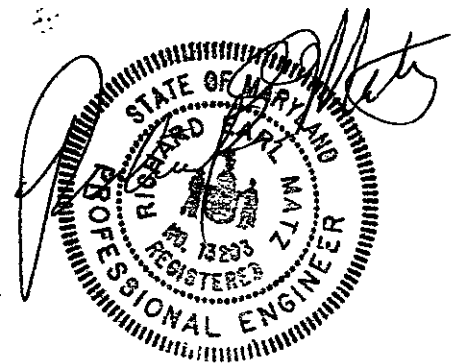
S 47°00'59" W 14.14 ft.;
thence by a curve to the left with a radius of 206.49 ft.
and a length of 118.19 ft.;
S 59°13'19" W 107.76 ft.;
thence by a curve to the right with a radius of 128.00 ft.
and a length of 45.80 ft.;
S 79°43'19" W 5.00 ft.;
N 02°13'21" E 113.79 ft.;
N 79°43'19" E 275.25 ft., and
S 02°00'59" W 52.50 ft. to the point of beginning

Containing 0.4699 acres and located in the 1st Election District.

Parcel Two

Beginning at a point on the west side of Harlem Lane, which is 60 feet wide, 38 feet south of the centerline of Maple Forest Road, which is of varying width, thence the following courses and distances:

S 02°00'59" W 363.34 ft.;
N 87°59'01" W 270.49 ft.;
N 02°13'21" E 273.47 ft.;
N 79°43'19" E 14.75 ft.;
thence by a curve to the left with a radius of 172.00 ft.
and a length of 61.54 ft.;
N 59°13'19" E 70.38 ft.;
thence by a curve to the right with a radius of 220.51 ft.
and a length of 126.21 ft.;
S 87°59'01" E 9.96 ft., and
S 42°59'01" E 14.14 ft. to the point of beginning.



Containing 2.0618 acres. Also known as #333 Harlem Lane and located in the 1st Election District.

No. 5673

ACCOUNT 16076130

AMOUNT \$ 100.00

RECEIVED CITY OF VILLAGE OF EDINBURGH FROM: _____

FOR: Stella Lee X (..) TONY

01-109-57417

YELLOW - CUSTOMER

CASHIER'S VALIDATION

Figure 1 is a schematic representation of the experimental design. It shows a sequence of three stages: Stimulus, Response, and Judgment. In the Stimulus stage, a subject is presented with a line drawing of a face. In the Response stage, the subject provides a response, also shown as a line drawing of a face. In the Judgment stage, the subject judges the response, indicated by a line drawing of a face with a response line and a judgment line. The sequence is labeled with 'Stimulus', 'Response', and 'Judgment'.

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 21. *Salts* (mg/g)
 22. *Other* (mg/g)

Abstract

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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

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BALTIMORE COUNTY, MARYL D
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 86771

DATE 11-20-00 ACCOUNT K001 6150

AMOUNT \$ 500.00

RECEIVED FROM: Catonsville Elder Care

FOR: Vaccine & Special Hearing

81-209-SPHA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

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CASHIER'S VALIDATION

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: #01-209-SPHXA

333 Harlem Lane

Parcel 1-W/S Harlem Lane, 36' N of centerline Maple Forest Road; Parcel 2-W/S Harlem Lane, 38' S of centerline Maple Forest Road.

1st Election District - 1st Councilmanic District
Legal Owner(s): Catonsville Eldercare, Inc.

Special Hearing: to approve an amendment to the special exception plan and relief in Case Number 90-103-SPH. **Variance:** to permit 55 On-site parking spaces in lieu of the 61 spaces otherwise required and to permit a 20-foot wide drive aisle in lieu of the 22 feet required. **Special Exception:** to approve for an Assisted Living Facility developed in conjunction with an existing Nursing Home, in accordance with Baltimore County Zoning Regulations Section 1801.1.C.27 and in accordance with the specific detail shown on the plats to accompany this petition.

Hearing: Wednesday, January 17, 2001 at 2:00 p.m. in Room 407, County Courts Building, 401 Besley 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.

12/208 Dec. 28 C441581

CERTIFICATE OF PUBLICATION

TOWSON, MD, 12/28, 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 12/28, 2000.

THE JEFFERSONIAN,
J. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 01-209-SPHXA

Petitioner/Developer: D. MATZ, ETAL

Date of Hearing/Closing: 1/17/01

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law
were posted conspicuously on the property located at #333 HARLEM LA. ©

361 E. W. MAPLE FOREST RD.

The sign(s) were posted on 1/2/01
(Month, Day, Year)

Sincerely,

Patrick M. O'Keefe 1/5/01
(Signature of Sign Poster and Date)

PATRICK M. O'KEEFE
(Printed Name)

523 PENNY LANE
(Address)

HUNT VALLEY, MD. 21030
(City, State, Zip Code)

410-666-5366 ; CELL-410-905-8571
(Telephone Number)



RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
PETITION FOR VARIANCE		
333 Harlem Lane, Parcel 1 - W/S Harlem Ln, 36' N of c/l	*	ZONING COMMISSIONER
Maple Forest Dr; Parcel 2 - W/S Harlem Ln, 36' S of c/l	*	
1st Election District, 1st Councilmanic	*	FOR
Legal Owner: Catonsville Eldercare, Inc.	*	BALTIMORE COUNTY
Petitioner(s)	*	Case No. 01-209-SPHA

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.


 PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November, 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



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

December 6, 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: 01-209-SPHXA

333 Harlem Lane

Parcel 1-W/S Harlem Lane, 36' N of centerline Maple Forest Road; Parcel 2-W/S Harlem Lane, 38' S of centerline Maple Forest road

1st Election District – 1st Councilmanic District

Legal Owner: Catonsville Eldercare, Inc.

Special Hearing to approve an amendment to the special exception plan and relief in Case Number 90-103-SPH. Variance to permit 55 On-site-parking spaces in lieu of the 61 spaces otherwise required and to permit a 20-foot wide drive aisle in lieu of the 22 feet required. Special Exception to approve for an Assisted Living Facility developed in conjunction with an existing Nursing Home, in accordance with Baltimore County Zoning Regulations Section 1B01.1.C.27 and in accordance with the specific detail shown on the plats to accompany this petition

HEARING: Wednesday, January 17, 2001 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue

A handwritten signature in black ink, appearing to read "Arnold Jablon". Below the signature, the initials "GDZ" are written in a smaller, simpler font.

Arnold Jablon
Director

C: Howard L. Alderman, Jr., Esquire, Levin & Gann, PA., 502 Washington Avenue,
8th Floor, Towson 21204
Sarkis Nazarian, President, Catonsville Eldercare, Inc., 1213 Light Street,
Baltimore 21230
Richard E. Matz, PE., Colbert, Matz & Rosenfelt, PE., 2835 Smith Avenue, Suite G,
Baltimore 21209

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN
APPROVED POSTER ON THE PROPERTY BY FRIDAY, DECEMBER 29, 2000**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS
PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE
ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Thursday, December 28, 2000 Issue – Jeffersonian

Please forward billing to:

Catonsville Eldercare, Inc.
Sarkis Nazarian, President
1213 Light Street
Baltimore, MD 21230

410 727-1600

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: 01-209-SPHXA

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1st Election District – 1st Councilmanic District

Legal Owner: Catonsville Eldercare, Inc.

Special Hearing to approve an amendment to the special exception plan and relief in Case Number 90-103-SPH. Variance to permit 55 on-site-parking spaces in lieu of the 61 spaces otherwise required and to permit a 20-foot wide drive aisle in lieu of the 22 feet required. Special Exception to approve for an Assisted Living Facility developed in conjunction with an existing Nursing Home, in accordance with Baltimore County Zoning Regulations Section 1B01.1.C.27 and in accordance with the specific detail shown on the plats to accompany this petition

HEARING: Wednesday, January 17, 2001 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley 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.

**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 01-209^X-SPHA

Petitioner: Catonsville Eldercare, Inc.

Address or Location: 333 Harlem Lane, Baltimore, MD 21228

PLEASE FORWARD ADVERTISING BILL TO:

Name: Sarkis Nazarian, President

Address: Catonsville Eldercare, Inc.

1213 Light Street

Baltimore, MD 21230

Telephone Number: 410-727-1600



Baltimore County
Department of Permits and
Development Management

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

January 12, 2001

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

Dear Mr. Alderman:

RE: Case Number: 01-209-SPHXA, 333 Harlem Lane

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on December 5, 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. 622
Supervisor, Zoning Review

WCR: gdz

Enclosures

c: Sarkis Nazarian President, 1213 Light Street, Baltimore 21230
Richard E Matz PE, Colbert Matz & Rosenfelt, PE, 2835 Smith Avenue,
Suite G, Baltimore 21209
People's Counsel



BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Mgmt.

DATE: December 4, 2000

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

SUBJECT: Zoning Advisory Committee Meeting
For December 4, 2000
Item No. 209

The Bureau of Development Plans Review has reviewed the subject zoning item. The existing 20-foot-wide drainage and utility easement running under the proposed Phase 1 addition at the back of the existing two-story building must be extinguished before a building permit is issued.

RWB:HJO:jrb

cc: File



Baltimore County
Fire Department

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

November 30, 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:

ANTHONY S. BRAGLIO & ANTHONY S. BRAGLIO, SR. - 208
CATONSVILLE ELDERCARE, INC. - 209

Location: DISTRIBUTION MEETING OF November 27, 2000

Item No.: 208 AND 209

Dear Ms. Stephens:

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

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

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

cc: File

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



Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley *MS*

DATE: December 5, 2000

SUBJECT: Zoning Item #209
333 Harlem Lane

Zoning Advisory Committee Meeting of November 27, 2000

- 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 The CRG Plan for Maple Woods indicates existing wetlands onsite in the proposed parking lot north of Maple Forest Road. Any wetlands onsite must be verified by DEPRM.
 - X Any wetland and/or buffer impacts proposed will require review and approval from State and Federal agencies as well as from DEPRM.
 - X Proposed forest buffer impacts will require an alternatives analysis and forest buffer variance to be submitted to DEPRM for review. Please be aware that a variance request does not guarantee approval.

Reviewer: John Russo

Date: December 4, 2000

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: January 11, 2001

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

JAN 12

SUBJECT: 333 Harlem Lane

INFORMATION:

Item Number: 209
Petitioner: Catonsville Eldercare
Property Size: 3.14 gross acres
Zoning: DR 5.5
Requested Action:
Hearing Date: January 17, 2001

ZONING HISTORY

The subject property, 333 Harlem Lane, was the subject of several previous special hearings. The instant case is a special hearing to amend Case No. 90-103 SPH, and a request for a modified parking plan and a landscape buffer as meeting the spirit and intent of the Board of Appeals' order. On December 18, 1990, the County Board of Appeals affirmed the Zoning Commissioner's order reducing the area of the special exception for a nursing home from 7.4 acres to 1.052 acres. This allowed for the subsequent approval on June 6, 1991 of a CRG plan for Maple Woods townhouses, an 80-unit townhouse development and one existing single family dwelling. The development plan approved on August 11, 1992 contained 14.247 gross acres zoned DR 5.5 and DR 16 at maximum allowable density.

On the current plan prepared by Colbert, Matz, Rosenfelt, Inc. (dated July 19, 2000) it does not appear that a "use area" of 1.052 acres for the nursing home was deducted from the overall development tract, which is the current zoning practice. (This is according to Section 102.2 of the BCZR which states that no yard space of minimum area required for a building or use shall be considered as part of the yard space or minimum area for another building or use.)

Additionally, the right-of-way for Maple Forest Road was included in its entirety in the gross site area for Maple Woods townhouses. Therefore, the 3.14 gross acres should be revised downwardly by approximately 2.744 acres and a "use area" of 1.052 acres should be deducted

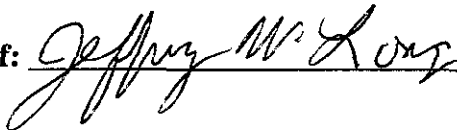
from the "adjusted" gross area. Density for the assisted living units should be determined on the remaining acreage which is 1.692 acres x 5.5 units = 9.306 dwellings or 37 assisted living units.

Additionally, assisted living facilities (other than Class A or B) developed in conjunction with a nursing home require a special exception. As of this date, this office has not received such a petition. Lastly, the proposed parking and the 20-bed nursing home addition may conflict with the area the Board of Appeals designated as a landscape buffer, a 30 foot wide, 10 foot high buffer along the northern and western boundary lines of the special exception. (See restriction #3, Case No. 90-103 SPH).

SUMMARY OF RECOMMENDATIONS:

1. It is the opinion of the Office of Planning that the requested special hearing and variance may not be within the spirit and intent of the Board of Appeals Case No. 90-103SPH or the FOP approval.
2. The petitioner must demonstrate how the revised landscape buffer will comply with restriction #3 of the Board of Appeals order.
3. It appears that 138 nursing home beds and 45 assisted living beds on a property of this size may result in an overcrowding of the land. It appears that a maximum of 37 assisted living units and the 58 additional nursing beds (for a total of 138 nursing home beds and 37 assisted living units) would be permitted on this site provided the buffer issue is adequately addressed.

Section Chief:



AFK:DI:lsn



**Maryland Department of Transportation
State Highway Administration**

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 11.27.00

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

RE: Baltimore County
Item No. 209 (TAG)

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

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

JACK HOLICK

SARKIS NAZARIAN

Howard L Alderman Jr Esq

RICHARD E. MATZ

ADDRESS

DABOGASSO, LLC
1100 N. CHARLES ST

CATONSVILLE Elder Care Inc

Levin & Gann PA

Nottingham Centre, 8th Floor

502 West Ave 21204

COLDERT MATZ ROSENFELT, INC.
2835 SMITH AVENUE, SUITE G

21209



Pickersgill

IN RE: . PETITION FOR SPECIAL HEARING
SE/S Chestnut Avenue
988' S of Joppa Road
(615 Chestnut Avenue)
9th Election District
4th Councilmanic District

Pickersgill, Inc.
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case Nos. 89-538-SPH and
* Case No. 89-444-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case comes before the Zoning Commissioner as a result of two separately filed Petitions for Special Hearing, specifically, Case No. 89-444-SPH, filed by Mary R. Wolfe, et al, hereinafter referred to as Protestants, and Case No. 89-538-SPH, filed by Pickersgill, Inc., hereinafter referred to as Petitioners.

The Petitioners herein request a special hearing to approve an amendment to the special exception and site plan granted in Case No. 4324-X to permit the modification and expansion of an existing nursing home (formerly known as a convalescent home) and the addition of 100 Class B elderly housing units, together with accessory facilities, as an integrated facility as being consistent with Section 102.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), as more particularly described in Petitioner's Exhibit 1.

The Protestants request a determination by the Zoning Commissioner that the proposed additions and alterations to Pickersgill must be developed pursuant to Sections 101, 432, 1B01.1, 1B01.1.C, 1B02.2.C.1 and 1B02.2.A of the B.C.Z.R., and also a determination that a special exception is required.

Julius W. Lichter, Esquire and Howard L. Alderman, Esquire, appeared on behalf of Petitioners. J. Carroll Holzer, Esquire, appeared on

behalf of the Protestants. Numerous witnesses appeared on behalf of both parties over the five plus days of testimony taken in this matter. The case files are replete with letters and petitions from neighbors and community groups representing concerns both in opposition to and in support of Petitioners' request. In view of the multitude of concurring opinions that were presented both in favor of and in opposition to Petitioners' request, the recount of testimony herein shall appear in summary fashion to avoid unnecessary repetition, hopefully enhancing the readability of this Opinion.

Testimony indicated that the subject property, known as 615 Chestnut Avenue, consists of 16.40 acres more or less, split zoned D.R. 3.5 and D.R. 5.5, and is the site of the Pickersgill Nursing Home, hereinafter referred to as Pickersgill. Pickersgill has a rich history as was indicated by the testimony of Mrs. Sally Diggs. The pertinent zoning history is as follows: In 1958, a special exception was granted in Case No. 4324-X for the operation of a convalescent home on the subject site. In 1978, a building permit (No. 272-78) was granted for a three-story addition to the nursing home. However, a search of the public records revealed no indication of a public hearing being held regarding the granting of the aforementioned permit for the addition. In 1983, a special hearing was held in Case No. 83-253-SPH for the approval of an amendment to the site plan previously approved in Case No. 4324-X to permit a one-story, 1600 sq.ft. storage facility on the site. This relief was granted and a new site plan was accepted.

Pickersgill is now proposing major renovations to the existing facility by installing additional bathroom facilities for each existing apartment, an additional floor, kitchen renovations, a new "skin" on the

and auxiliary support units. (See Petitioner's Exhibits 12, 14, 19, 20 and 21.)

Testimony indicated that Petitioners are proposing the addition of 100 apartments/efficiency units, which will be "incorporated" onto the site in two new buildings. Petitioners contend that the proposed apartments will be rented for approximately \$795 to \$1900 per month, and tenants will receive cooking facilities, one meal per day (proposed as the dinner meal) in the proposed community dining areas, cleaning of apartments once each week, laundry services, access to group transportation for shopping and recreation, access on a "pay as you go basis" to medical professionals who visit the existing facility, and emergency notification capabilities to enable Pickersgill staff to notify emergency personnel if the need arises.

Brantley Hart, Jr., Executive Director of Pickersgill, testified at length regarding the historical development of the subject property. He testified that in view of the rising costs in supplying affordable housing for the elderly, the infusion of the proposed apartments and existing facility is essential for the practical management and financial survival of Pickersgill. Mr. Hart testified that the proposed apartments will create a more "independent" living arrangement for residents as compared to the domiciliary care patients in the existing facility, who receive personal services in the nature of medical and nursing care. Mr. Hart testified that Pickersgill is licensed by the State of Maryland for the 94 domiciliary care beds and 75 comprehensive care beds currently within the facility.

Neil Weinstein, a land planner and registered landscape architect, testified on behalf of the Petition regarding the density implications of

Petitioners' proposal. He testified that in his opinion, the 100 proposed elderly apartments could be constructed on the site without a change in zoning classification or density increase under Section 432.2 or 432.3 of the B.C.Z.R. He stated that, in his opinion, the existing nursing home facility would have no assigned density. According to his interpretation of the B.C.Z.R., the necessary density units for the proposed apartment building are present on the site. Mr. Weinstein further testified that although the proposed apartments provide an "independent living environment" for the tenants, the tenants will still have access to the community center and will have medical and nursing care available through the existing facility. Additionally, he testified that in his opinion, Petitioners' proposal will not adversely impact on the health, safety or general welfare of the community, and otherwise meets the requirements of Section 502.1 of the B.C.Z.R.

Leslie Pittler, Director of Baltimore County's Department of Community Development, testified generally regarding the need for elderly housing in Baltimore County. He stated that Baltimore County has the largest elderly population in the metropolitan area. Mr. Pittler testified that it is important for the elderly to stay in the community that they are familiar with and that the integration of the proposed apartments with the existing Pickersgill facility will provide desirable and affordable housing for the elderly of this community.

Richard Matz, a civil engineer, testified regarding the wetlands and storm water management. He stated that a dry storm water management pond will be located on the southern corner of the subject property (See Petitioner's Exhibits 12 and 13) and will be designed to accommodate a 100-year storm. Mr. Matz testified that water outfall studies have been

conducted along the perimeter of the Pickersgill property and as a result, a new drainage system will be implemented to divert water runoff away from the adjoining properties, specifically, Lots 95 through 100, as referenced on Petitioner's Exhibit 1. Water runoff will be diverted into the pond and then discharged at a controlled rate. Mr. Matz indicated that the proposed storm water management program is expected to not only prevent the additional discharge of water onto Lots 95 through 100, but will reduce the amount of water runoff currently entering these lots. Additionally, he testified that a fence, compatible with the surrounding neighborhood, will be erected around the proposed pond for safety purposes.

Mr. Larry Yeager, professional engineer, testified that in his opinion, the proposed storm water management system will be adequate to accommodate the water runoff from the subject property.

Mr. James L. Melhorn, President of Fairhaven Nursing Home and Episcopal Services for the Aging, testified on behalf of the Petition. Mr. Melhorn testified regarding what he perceives as a considerable need in Baltimore County for affordable elderly rental housing, nursing care and domiciliary care facilities. He testified that Pickersgill is becoming less competitive in this market, and will, in his opinion, be facing financial problems in the foreseeable future if it does not diversify.

Henry Schwartz, Esquire, formerly legal counsel for the Maryland State Health Department, testified regarding the licensing requirements for a facility such as Pickersgill. Mr. Schwartz indicated that Pickersgill is currently licensed to offer both comprehensive and domiciliary care, of which there are currently 75 and 94 beds, respectively. Further, he stated that no additional state license is required for the proposed

apartment complex, as neither comprehensive or domiciliary care will be offered at the proposed facility.

Gregory Jones, architect, appeared and testified on behalf of the Petition. Mr. Jones indicated that from a Baltimore County Code standpoint, the buildings will be considered as "separate" structures, for purposes of fire, safety, and zoning code purposes.

Wes Guckert, traffic engineer, testified regarding the impact Petitioners' proposal will have on traffic patterns in the surrounding community. Mr. Guckert estimated a total of 19 morning peak hour trips and 30 evening peak hour trips would be generated by the proposed apartment building. He testified that a site distance of approximately 634 feet along Chestnut Avenue is sufficient for safe ingress and egress at the subject site. Additionally, he testified that in his opinion, the proposed additions for Pickersgill will have no negative impact on the traffic in the surrounding community or adversely affect the health, safety or general welfare of this residential neighborhood.

Numerous individuals and community association representatives appeared and testified in opposition to Petitioners' proposal. The areas which generated the majority of concern for the Protestants were increased traffic, the environment, property values, and the general health and safety of the community. The environmental impact of Petitioners' proposal was of primary concern among the majority of those in opposition. A number of the Protestants testified regarding their past experiences in this neighborhood with flooding and were concerned that Petitioners' proposal will exacerbate this situation, particularly, but not limited to, Lots 95 through 100 along Piccadilly Road, as indicated on Protestant's Exhibit 8. Testimony indicated that considerable amounts of surface water flows onto

these lots from the Pickersgill property. Neighbors testified that they have installed, at their own expense, drainage to divert some of this surface water away from their properties.

Messrs. Powell, Gwynn, Maschas and Mrs. Willey testified regarding the adverse impact they believe would result to the existing stream and wetlands, as depicted on Protestant's Exhibit 8, should Petitioners' request be granted. The Protestants testified that the subject stream receives considerable storm water runoff during heavy rains and its banks are routinely flooded. Mr. Powell stated that the stream curves abruptly as it passes his property and during heavy rains reaches the top of the retaining wall along his property. He also indicated, as did other Protestants, that a distinct odor of oil is present along the stream and is visible in the stream after heavy rains. The uncontradicted testimony indicated that the oil originates on the Pickersgill property from two underground heating oil storage tanks. Testimony also indicated that Pickersgill has taken steps, in cooperation with the EPA, to minimize oil seepage into the subject wetlands. The Protestants testified that the stream in recent years is overflowing its banks more frequently and has caused some homeowners living in close proximity to the stream and the subject community to experience basement flooding. Mrs. Willey testified that the water discharge pipe exiting the proposed storm water management pond passes underneath her property (See Protestant's Exhibit 8) and she voiced concern as to who would be responsible for maintaining the pipe. She testified that the wetlands on the subject property are usually discharging water year round and she is concerned that the proposed storm water management will not adequately protect her property. Mrs. Willey testified, as did others, regarding oil in the subject stream. She indi-

cated she is concerned that further disturbance of the land on the site adjacent to the wetlands may release pools of sub-surface oil and adversely impact the environment.

Petitioners argue that Protestants' "oil concerns" are not germane to the issues before the Commissioner and therefore, should not be considered when granting or denying the requested relief. However, there is no evidence that the oil problems do not create a health and safety issue. In fact, there is no evidence concerning the impact of the new development on the oil problem. Pursuant to Sections 500.6, 500.7 and 502.2 of the B.C.Z.R., the Zoning Commissioner has the authority to pass such orders that are necessary for the enforcement of all zoning regulations, for the protection of the surrounding and neighboring properties -- for the ultimate protection and preservation of the health, safety and general welfare of the locality involved. It is the opinion of the Zoning Commissioner that the Protestants' "oil concerns" are germane to the issues presented for determination. The Protestants indicated that their concerns would be placated given an appropriate testing/monitoring restriction in the Commissioner's Order. Restrictions Nos. 3 and 4 are designed to meet these concerns and will safeguard the health, safety and general welfare of the community.

Also of great concern to the Protestants was how Petitioners' proposal will impact traffic in this community. Messrs. Williams, Tully, Ridder, and Maschas indicated that this neighborhood experiences heavy traffic, which they attribute in large part to Loyola High School, Mission Helpers, and Pickersgill. Testimony indicated that homeowners along Chestnut Avenue and Piccadilly Road have considerable difficulty backing out of their driveways during peak traffic hours at which time traffic occasional-

ly backs up along the entire length of Chestnut Avenue. Protestants took issue with the findings of Mr. Guckert (Petitioner's Traffic Expert) relative to the safety of the proposed entrance to the site and the existing "dip" on Chestnut Avenue.

Officer Rooney of the Baltimore County Police Department appeared and testified on behalf of the Protestants. Officer Rooney patrols the subject community in the course of his employment with the Baltimore County Police Department. He discussed the vehicular accident and citation history of the area in proximity to the Pickersgill site.

Mr. Patton, who was qualified as a land planner expert, testified at length on behalf of the Protestants regarding the issue of density relative to the subject site. Mr. Patton, referencing Bill Nos. 36-88, 37-88 and pertinent zoning regulations, testified that in his opinion, an "elderly housing facility" as defined in Section 101 of the B.C.Z.R., is an umbrella definition which encompasses "assisted living facility", "continuing care facility", and "housing for the elderly facility." Mr. Patton testified that Pickersgills' 94 domiciliary care beds and 75 comprehensive care beds are synonymous with an assisted living facility (defined infra.), which requires a .25 density calculation for each bed. (See Protestant's Exhibit 10.) Mr. Patton calculated the subject property to have 82.86 density units. He then calculated the existing facility to be using 43.25 density units, which, when deducted from 82.86 density units, leaves 39.61 density units available for developing the proposed elderly housing facility. Mr. Patton stated that in his opinion, this approach of reducing density based on the existing facility is consistent with Bill No. 36-88 and that it avoids "double counting" by counting the existing beds at Pickersgill. Mr. Patton discussed a second approach for calculating densi-

ty. (See Protestant's Exhibit 10) which involves the application of Zoning Commissioner's Policy Manual Rule No. RM-22 which reads in pertinent part as follows:

"If mixed uses or like uses each with separate zoning requirements are proposed on one property, each separate use must be supported on its own land area. Residential density may be calculated on the overall acreage if both uses are residential and it is allowed in that zone."

Mr. Patton introduced Protestant's Exhibit 9 (overlay on Protestant's Exhibit 8) to support his ascertainment that the existing Pickersgill facility is supported by 9.13 acres, which leaves a balance of 7.27 acres for the proposed elderly housing facility. The 7.27 acres consist of 1.33 acres zoned D.R. 3.5 and 5.94 acres zoned D.R. 5.5, providing a total of 37.34 density units for the proposed facility.

The Protestants argue that the B.C.Z.R., Bill Nos. 36-88 and 37-88, and Zoning Commissioner's Policy Manual Rule RM-22 require Pickersgill to either subtract the land area subject to the original special exception in Case No. 4324-X from the gross acreage in determining density units, or calculate density by applying the required .25 density calculation to the subject site as aforementioned.

Petitioners contend that the B.C.Z.R. have been consistently applied so as not to require the decrease of available area for density calculation because of the presence of any other permitted use. Addressing Section RM-22 of the Zoning Commissioner's Policy Manual, Petitioners assert that the proposed apartment complex, to be physically and functionally "integrated" with the existing use, is a residential use permitted as of right in the D.R. zones. Petitioners contend that as both the existing and proposed uses are "like" residential uses situated on the same piece of property, one permitted as of right and the other by special exception,

the B.C.Z.R. only requires a density calculation for the proposed apartment facility. Petitioners assert that although the existing facility and proposed apartments will be physically attached and integrated, each will occupy a separate area of the Pickersgill property. Thereupon, the Petitioners erroneously assert that as a matter of policy, residential density may be calculated on the overall acreage of the site, leaving the proposed facility under allowable density for the subject property.

Additionally, citing Pickersgill's continuous operation since 1958, Petitioners contend that Bill Nos. 36-88 and 37-88, specifically, the definitional sections contained therein, have no significant impact on the subject operation. Petitioners opined that the term "Assisted Living Facility" as defined by Bill No. 36-88 (which requires a density calculation), describes a use separate and distinct from the domiciliary care currently provided at Pickersgill. Further, Petitioners assert that the term "nursing home", as defined by the B.C.Z.R., includes the former term "Convalescent Home" (i.e. Pickersgill). Petitioners testified that their reading of Bill Nos. 36-88 and 37-88, enacted June 13, 1988, reveal no intent on behalf of the County Council to have the new definitions enunciated therein apply to pre-existing uses, and therefore, no density should be assigned to existing Pickersgill.

Relying on the modifications made to Section 1B02.2A by Bill No. 36-88, Petitioners reasoned that said modifications provide that the gross residential density for elderly housing facilities, except as provided in Sections 432.2 and 432.3 of the B.C.Z.R., shall be calculated in density units per acre. Petitioners thereupon assert that their density calculation (82 density units) for the proposed elderly housing facility is in accordance with the requirements and within the spirit and intent of the

B.C.Z.R. The Petitioners' application of the B.C.Z.R. is not consistent with Zoning Commissioner's Policy RM-22 and the Protestants' application of Bill Nos. 36-88 and 37-88 is misguided. Both parties failed to apply Zoning Commissioner's Policy RM-22 and Bill Nos. 36-88 and 37-88 do not change the application of RM-22 to a special exception.

Both the Protestants and the Petitioners agreed that the subject property, containing a gross site area of 16.40 acres more or less, contains a total of 82.96 density units. The parties reached impasse in determining the number of these density units that are available to support the proposed elderly housing facility.

The facts are that the Baltimore County Council left the issue of density for elderly housing facilities and the application of special exception uses unaddressed. Therefore, the correct application of these interrelated issues is left to the Zoning Commissioner under the authority of Section 500.6 and 500.7 of the B.C.Z.R. I believe the application of Zoning Commissioner's Policy RM-22 must be followed. Policy RM-22 was applied in many zoning cases before Bill Nos. 36-88 and 37-88 were enacted. Clearly, the County Council was in agreement with the Zoning Commissioner's application of Policy RM-22 and, therefore, that policy must be applied in this instance.

Zoning Commissioner's Policy RM-22 clearly requires an area review and not a density review. Therefore, for the purposes of argument, I will review the density calculations method. The parties have argued this point very strongly and the record must be resolved.

Petitioner contends that the existing facility, for reasons aforementioned, is not subject to density calculations and therefore, the total 82.96 density units are available to support the proposed facility. Peti-

tioner contends that the current "domiciliary care" beds at Pickersgill, as defined by Section 19.301(e) of the Health-General Article of the Maryland Annotated Code, have no parallel definitive section within the B.C.Z.R. that addresses this use for purposes of calculating density. This argument is unpersuasive. Section 19.301(e) defines domiciliary care as follows:

"(e) Domiciliary care:

(1) "Domiciliary care" means services that are provided to aged or disabled individuals in a protective, institutional or home-type environment.

(2) "Domiciliary care" includes:

- (i) Shelter;
- (ii) House;
- (iii) Board;
- (iv) Facilities and resources for daily living; and,
- (v) Personal surveillance or direction in the activities of daily living."

A comparison of this language to Section 101 - "Assisted Living Facility" of the B.C.Z.R. reveals a remarkable parallel in language and, arguably, intent. The B.C.Z.R. defines "Assisted Living Facility" as follows:

"Assisted Living Facility: A building or section of a building that provides a residential living environment assisted by congregate meals, housekeeping, and personal services, for persons 62 years of age or older, who have temporary or periodic difficulties with one or more essential activities of daily living, such as feeding, bathing, dressing or mobility, and for any person, regardless of age, who has a physical or developmental disability. Density for such facilities shall be calculated at .25 for each bed."

The aforementioned Sections from the Health-General Article and the B.C.Z.R., when broken down into their relative component requirements, list as follows:

Domiciliary Care

Shelter
House
Board
Facilities & Resources for
daily living

Personal surveillance or direc-
tion in the activities of
daily living.

Assisted Living Facility

Residential living environment
Building
Meals
Residential living environ-
ment; housekeeping, feed
ing, bathing, etc.
Personal Services

A simple comparison of the above Sections clearly indicates that the domiciliary care provided at Pickersgill is synonymous with an "Assisted Living Facility" as that term is defined by Section 101 - Definitions of the B.C.Z.R. It therefore logically follows that the 94 domiciliary care beds currently at Pickersgill are indeed subject to the density calculations promulgated in the B.C.Z.R. at .25 per bed.

Petitioners argue, relative to the 75 comprehensive care beds provided by Pickersgill, that "The State requirements for nursing care to be provided by a comprehensive care facility correlates to the B.C.Z.R. definition of "nursing home" (formally "convalescent home") which stated in the conjunctive, requires all three elements of board, shelter, and nursing care." Bill No. 37-88 amended the B.C.Z.R. by deleting the definition of a convalescent home and adding the following definition of "nursing home" which incorporates the former convalescent home:

"Nursing Home (Formerly Convalescent Home)": A facility which provides board, shelter, and nursing care to chronic or convalescent patients. This term also includes facilities which provide domiciliary care within a nursing home."

Section 10.07.02.01E of the Code of Maryland Regulations (COMAR) defines "comprehensive care facility", reading in pertinent part:

"Comprehensive Care Facility" means a facility which admits patients suffering from disease or disabilities

or advanced age, requiring medical service and nursing service rendered by or under the supervision of a registered nurse."

The parallels between these two Sections are compelling and Petitioner's argument regarding same persuasive. It is therefore the opinion of the Zoning Commissioner that the term "Comprehensive Care Facility" is synonymous with the term "nursing home" as those terms describe uses regulated by the B.C.Z.R. It therefore logically follows, that as the B.C.Z.R. does not require density calculations for a "nursing home", the 75 comprehensive care beds at Pickersgill will likewise receive no density calculation (See Section 101 - Definitions on "Nursing Home", B.C.Z.R.).

This density calculation review is the wrong methodology to be applied in Baltimore County in a case where a special exception use and a density supported use are mixed on the same unified lot. As stated above, the separate and distinct area methodology set forth in Zoning Commissioner's Policy RM-22 is the correct methodology to be employed when both a special exception use and a density use are to exist on the same site.

The Protestants presented two approaches for calculating density on the subject site as set forth on Protestant's Exhibit 10. The first approach subtracts the 9.13 acres associated with the original special exception from the gross site area of 16.40 acres, leaving 7.27 acres available for density calculations. This method provides 37.34 density units for the proposed facility.

Although the Protestants articulated the correct methodology in calculating area, they used erroneous information in their formula. Assigning 9.13 acres more or less to the existing special exception, dedicates more land than is necessary to support the proposed use at this

particular location given the nature of the use and the interrelationship of all the uses.

Neither the Protestants nor the Petitioner have accurately applied the B.C.Z.R. density guidelines in the subject case in a manner consistent with the spirit and intent of the Regulations. Policy RM-22 has been for many years, the yardstick utilized by Baltimore County for calculating density for mixed uses on one property. Further, the enactment of Bill Nos. 36-88 and 37-88 did nothing to change the way density is calculated for an elderly housing facility. Therefore, Policy RM-22 must be applied to the Pickersgill facility. Consistent with Policy RM-22, a land area with its respective density units must be designated to support the existing special exception nursing home use. The remaining acreage and its respective density units may then be utilized to support other uses. This is not a legally "rigid" formula and must be applied on a case by case basis. Every case creates its own unique set of facts and circumstances, and this Order is narrowly tailored to address the facts and circumstances arising out of the particular use proposed at the subject location.

Expert and lay witnesses for both the Petitioners and the Protestants candidly recognized the growing need for quality, affordable housing and care for Baltimore County's growing elderly population. Further, the preamble of County Council Bill No. 36-88 aforementioned, now Section 432 of the B.C.Z.R., clearly indicates the intent of the drafters of this legislation to "especially encourage" and "promote" housing for the elderly.

In view of the above, the Zoning Commissioner should afford every benefit and right to the elderly residents of this County insofar as the

relief is consistent with the B.C.Z.R. Upon careful scrutiny of the testimony, evidence, and pertinent law, it is the finding of the Zoning Commissioner that Petitioner's request for special hearing shall be granted in part and denied in part. The Protestant's Petition for Special Hearing is hereby rendered moot in view of the above, and is therefore dismissed.

The relief requested by Petitioners shall be granted in part as to the assignment of appropriate density for the subject property as follows: Referencing Zoning Commissioner's Exhibit 1, the area supporting the existing special exception shall be redrawn to include only that area indicated on Zoning Commissioner's Exhibit 1, consisting of 3.72 acres, more or less. Of this area within the special exception, approximately .078994 acres lies within the D.R. 3.5 zone and 3.641 acres lies within the D.R. 5.5 zone. The entire acreage within the special exception, when deducted from the gross site area of 16.40 acres, leaves 12.68 acres, more or less, on which density may be calculated to support the proposed facility. The density computes as follows:

D.R. 3.5	=	3.62 acres, plus or minus
D.R. 5.5	=	<u>12.78</u> acres, plus or minus
Total Gross Acreage	=	16.40 acres, plus or minus
 D.R. 3.5 x 3.62	=	12.67
D.R. 5.5 x 12.78	=	<u>70.29</u>
Total Density Units	=	82.96

Total Acreage inside Special Exception Area = 3.719994 acres,
more or less.

Gross D.R. 3.5 acreage	=	3.62
Minus D.R. 3.5 acreage within special exception area	=	<u>.078994</u>
Total D.R. 3.5 acreage available for density calculation	=	3.541
 Gross D.R. 5.5 acreage	=	12.78
Minus D.R. 5.5 acreage within special exception area	=	<u>3.641</u>
Total D.R. 5.5 acreage available for density calculation	=	9.139

D.R. 3.5 x 3.541 = 12.353
D.R. 5.5 x 9.139 = 50.264

TOTAL DENSITY UNITS AVAILABLE FOR PROPOSED
ELDERLY HOUSING FACILITY = 62.657

Generally, all necessary parking, open space, etc., must be located within the land area designated to support the special exception use. However, in view of the uniqueness of this site, specifically, the interrelated nature of the uses, open space, buffer zones, parking, etc., this site may be calculated for the entire site. Both the existing Pickersgill and the proposed facility will share many support facilities, such as the storm water management system, open space and parking. For these reasons, this order is narrowly tailored to address the particular set of facts and circumstances presented by Petitioner's request.

A nursing home, by special exception, must have a minimum land area designated to support it and this determination must be made on a case by case basis. In view of the uniqueness of this site and the unified nature of the uses thereon, it is not necessary to require the open space and parking facilities to be located entirely within the designated area for the special exception. All of the facilities are under the control of one owner and for the benefit of all uses. The buffer zones separating the community and the institutional uses were calculated in consideration of the entire site and will more than support both uses.

In considering the requested relief, the Zoning Commissioner must impose such conditions, restrictions, or regulations as may be deemed necessary and advisable for the protection of the surrounding and neighboring properties (Section 502.2, B.C.Z.R.). The aforementioned approach is within the spirit and intent of the B.C.Z.R. and the on-going use of the

special exception nursing home clearly complies with the requirements of Section 502.1 of the B.C.Z.R.

It is clear that the B.C.Z.R. permits the continued use of the existing nursing home in the D.R. 5.5 zone by special exception. It is equally clear that the continued use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the continued use of the existing nursing home met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the continued use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the continued use at the particular location described by Petitioner's Exhibits 1, 12 and 14 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The continued use of the existing nursing home and the proposed elderly housing facility will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

Pursuant to the advertising, posting of the property, and public hearing on these Petitions held and for the reasons given above, the relief requested in the Petitioner's Petition for Special Hearing shall be

granted, in part, and the Protestant's Petition for Special Hearing dismissed, as more particularly described below.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 15th day of February, 1990 that Special Exception Case No. 4324-X shall be amended to reflect the decrease in acreage supporting the existing nursing home, in accordance with Zoning Commissioner's Exhibit 1, and as such, the Petitioner's Petition for Special Hearing be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2) Petitioner shall erect a six-foot high wooden stockade fence around the southern and eastern portions of the storm water management pond. Further, Petitioner shall provide a vegetative buffer on the side of the fence facing Pickersgill's neighbors, said buffer to be consistent with Zoning Commissioner's Exhibit 2, appended hereto and made a part hereof.

3) Petitioner shall submit a plan, both statistical and written narrative, describing the affirmative measures that will be taken by Petitioner to guarantee that construction of the proposed facility will not disturb, so as to injure the environment, any underground oil pools resulting from the buried oil tanks on the subject site. Petitioner shall submit said plan to the Director of the Department of Environmental Protection and Resource Management and the Zoning Commissioner for approval prior to the issuance of any permits.

4) Further, prior to the commencement of construction, six months after the commencement of construction, and one year following completion of such construction, Petitioner shall have an independent firm submit a report to the Director of the Department of Environmental Protection and Resource Management and

the Zoning Commissioner regarding the capture, retention, and disposal of oil emanating from the tanks on the subject site.

5) Petitioner shall submit to the Zoning Commissioner for approval by no later than May 15, 1990, a new site plan prepared by a registered professional engineer and/or land surveyor, which clearly identifies all buildings, landscaping, required fencing and any other information as may be required to be a certified site plan.

6) The entire site, consisting of 16.40 acres, more or less, shall not be subdivided. Further, the existing nursing home and the proposed elderly housing facility shall remain under the sole ownership and control of a single entity.

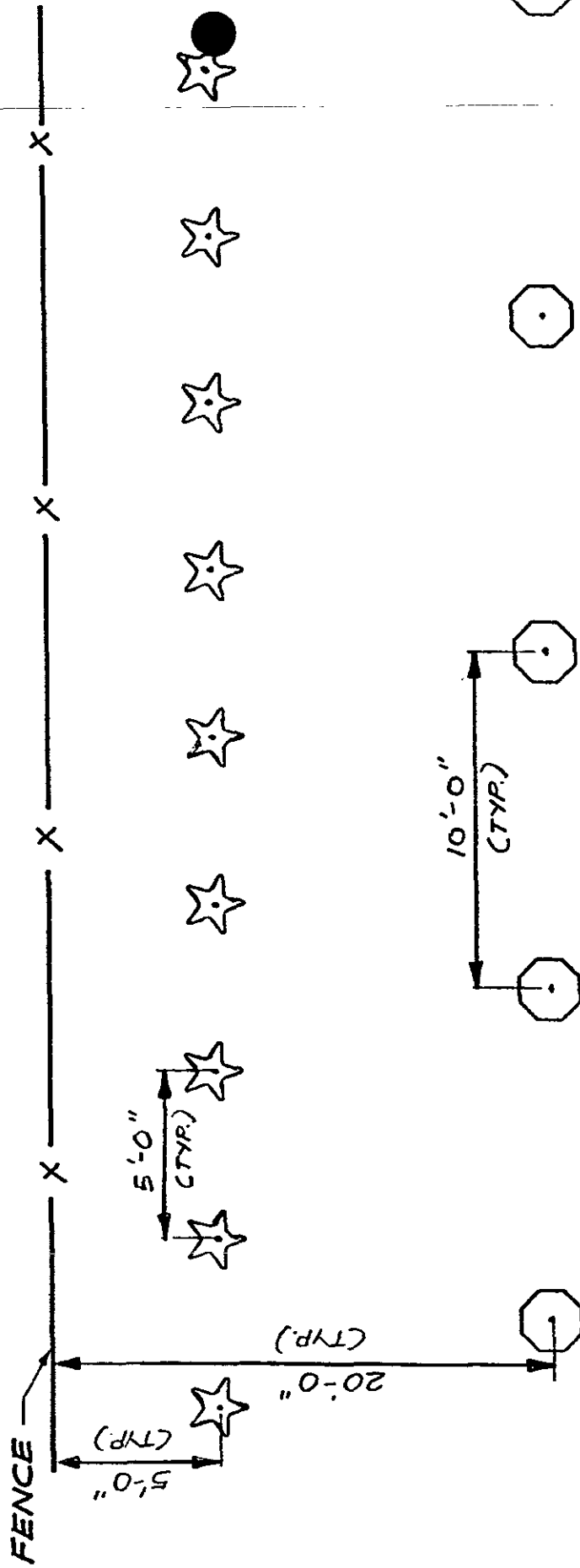
IT IS FURTHER ORDERED that the Protestant's Petition for Special Hearing to determine that the proposed additions and alterations to Pickersgill, Inc., must be developed pursuant to Sections 101, 432, 1B01.1A.1, 1B01.1.C, 1B01.2.C.1, and 1B02.2.A of the B.C.Z.R, and to determine if a special exception is required, be and is hereby DISMISSED as moot.

JRH:JCM:bjs


J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

ZONING COMMISSIONER

EXHIBIT # 2

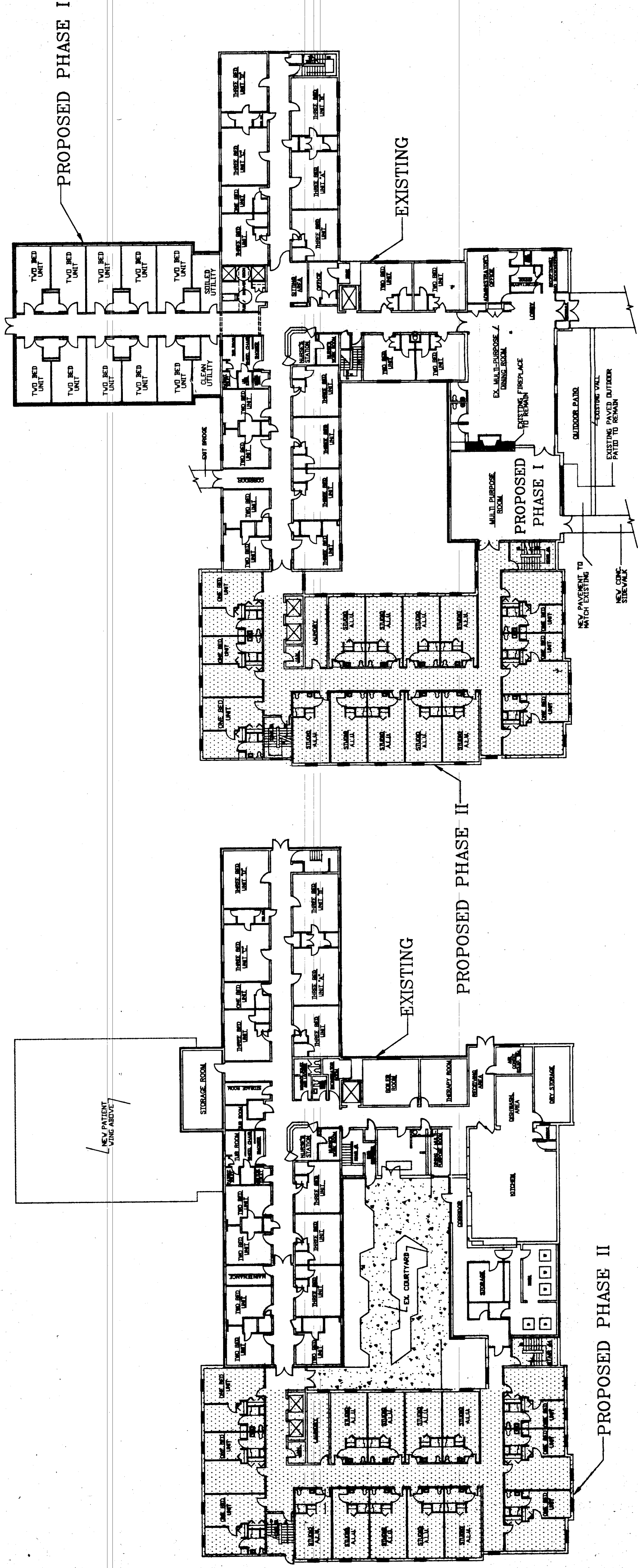


LEGEND:

--- 4' TALL AMERICAN ARBORVITAE (*THUJA ACCIDENTALIS*)

--- 6' TALL BALSAM FIR (*CALBIES BALSAMEA*)

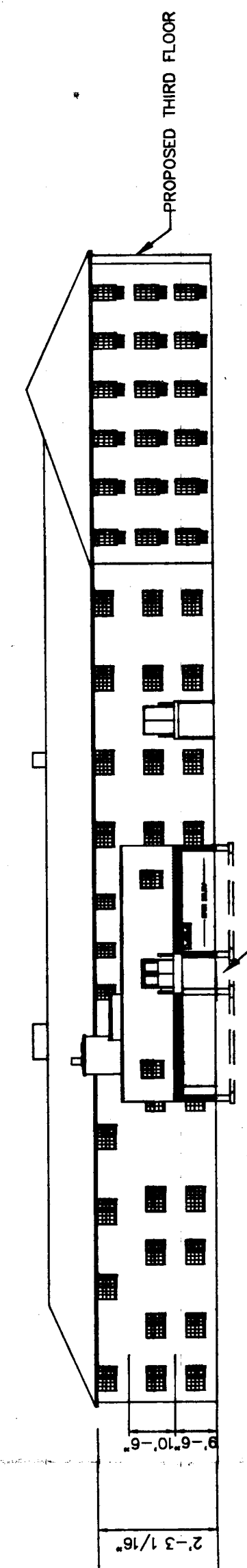
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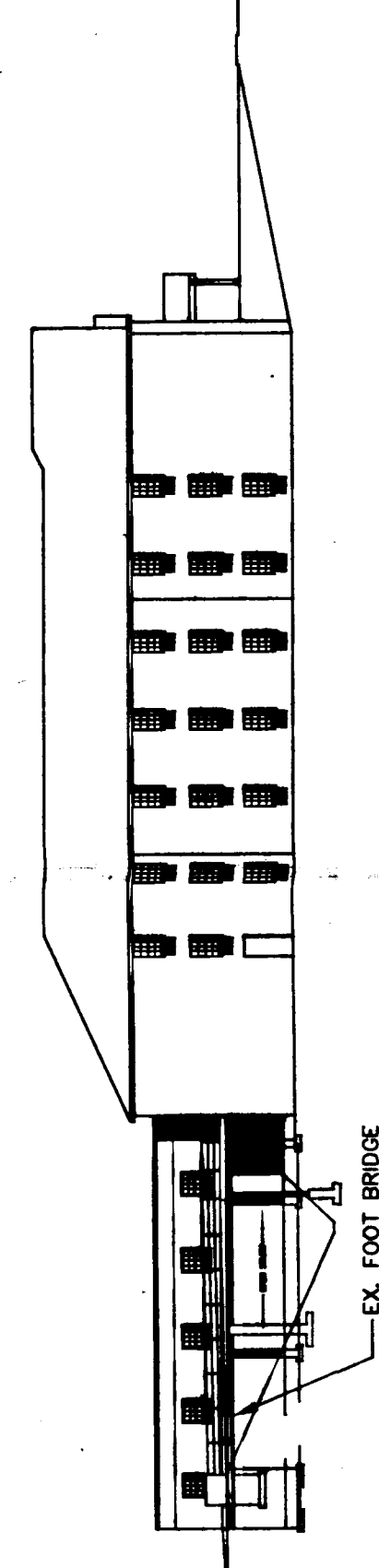
PROPOSED PHASE II
THIRD FLOOR PLAN
NOT TO SCALE

SECOND FLOOR
NOT TO SCALE

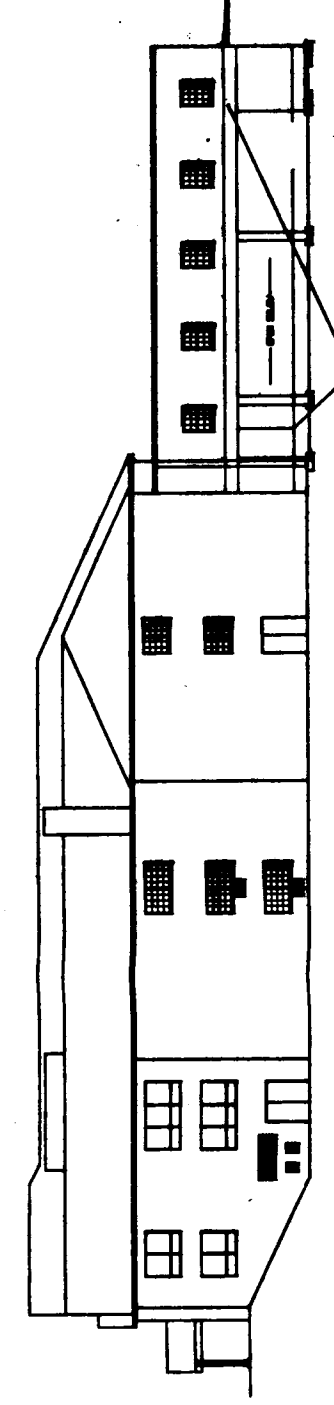
FIRST FLOOR
NOT TO SCALE



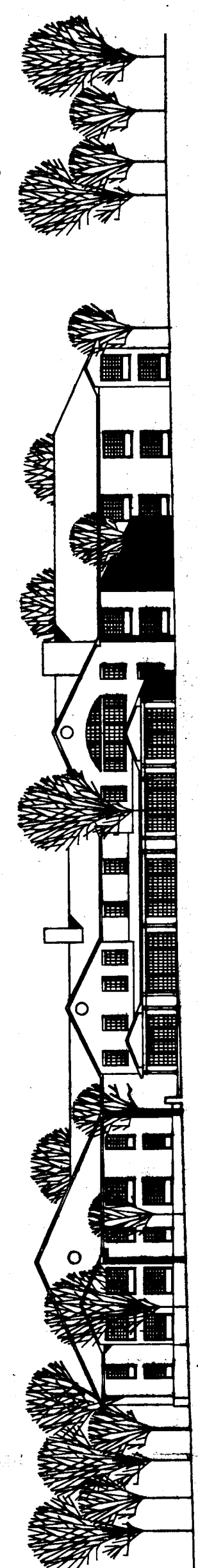
WEST ELEVATION
NOT TO SCALE



SOUTH ELEVATION
NOT TO SCALE



NORTH ELEVATION
NOT TO SCALE



EAST ELEVATION
NOT TO SCALE

Retex #2

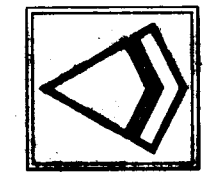
PLAN TO ACCOMPANY SPECIAL HEARING
AND VARIANCE

CATONSVILLE ELDERCARE
#333 HARLEM LANE

1st ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

Colbert Matz Rosenfelt, Inc.

Engineers & Surveyors & Planners
2835 Smith Avenue, Suite G
Baltimore, Maryland 21209
Telephone: (410) 653-3838
Facsimile: (410) 653-7953



SCALE	NOT TO SCALE
DATE	JUL 19, 2000
JOB NO.	98193
DESIGNED BY	
DRAWN BY	
CHECKED BY	
FILED BY	
PLANNING NUMBER	P-1
NO.	DATE
REVISIONS	BY SHEET 2 OF 2

9-18-00 EYT