7/23/04

IN THE MATTER OF THE APPLICATION OF JOHN MANGIONE, ET AL - PETITIONERS FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE N/S OF EAST PADONIA ROAD, EAST OF GREENSIDE DRIVE (LORIEN PADONIA) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	* ON REMAND * FROM THE * CIRCUIT COURT FOR * BALTIMORE COUNTY * Civil Action No.: 03-C-03-009661
(Zoning Case No. 01-283-X)	*

* * * * * * * * *

ORDER OF REMAND BY ORDER OF THE HONORABLE JOHN O. HENNEGAN, JUDGE CIRCUIT COURT FOR BALTIMORE COUNTY

This matter comes before the Board on remand by Order of The Honorable John O. Hennegan, Judge, Circuit Court for Baltimore County, filed May 21, 2004.

In his Opinion and Order, Judge Hennegan addressed two issues:

(1) **Did the County Board of Appeals have jurisdiction to review a special exception on appeal where the height and length of the proposed building have both significantly increased;** and

(2) **Was the County Board of Appeals' decision conclusory, vague, and thus legally insufficient to justify the approval of the special exception?**

On page 4 of his Opinion and Order, Judge Hennegan states:

> Based upon the Court's consideration of the entire record of the proceedings below, and its review of the applicable law, **this Court answers in the negative for the first issue** and **in the affirmative for the second issue**. Accordingly, this Court finds that this case must be remanded for a new hearing in accordance with the BCZR and the Baltimore County Code (BCC). **[Emphasis added.]**

On page 11, Judge Hennegan orders:

> ...that the case be **REMANDED** for a new hearing in accordance with the BCZR and the BCC.

IT IS THEREFORE this 23rd day of July, 2004, by the County Board of

Appeals of Baltimore County

ORDERED that, pursuant to the Remand Order of the Circuit Court for Baltimore County, filed May 21, 2004, this matter is hereby **REMANDED** to the Zoning Commissioner "for a new hearing in accordance with the BCZR and the BCC" as set forth in the Opinion and Order of Judge John O. Hennegan, Circuit Court for Baltimore County, a copy of which is attached hereto.

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

July 23, 2004

Peter Max Zimmerman
People's Counsel for Baltimore County
Carole S. Demilio
Deputy People's Counsel
400 Washington Avenue
Towson, MD 21204

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
210 E. Pennsylvania Avenue
Towson, MD 21204-4515

RE: *In the Matter of: John Mangione, et al*
Case No. 01-283-X /Order for Remand
by Order of the Circuit Court for Baltimore County
Civil Action No. 03-C-03-009661

Dear Counsel:

Enclosed please find a copy of the Board's Remand Order issued this date in the subject matter, by Order of the Circuit Court for Baltimore County.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: David L. Jordan, President /County Home
Park Community Assn, Inc.
and Gary & Tricia L. Lay
Jennifer R. Busse, Esquire
Louis, John, Nicholas & Mary Mangione
John Seefried /DMW
Stephen Weber
David MacCubbin
Rhoda Wolfe-Carr, Health Policy Analyst
Md Health Care Comm
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

5/18/04

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
IN THE MATTER OF: JOHN MANGIONE, ET AL	*	**CIVIL ACTION Case no: 03-C-03-009661**
PETITION OF PEOPLE'S COUNSELFOR BALTIMORE COUNTY	*	
CROSS PETITION OF JOHN MANGIONE, ET AL	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	
BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse 400 Washington Avenue Towson, MD 21204	*	

RECEIVED
JUN 0 2 2004
BALTIMORE COUNTY
BOARD OF APPEALS

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

OPINION AND ORDER

This case comes to the Circuit Court for Baltimore County as administrative appeal from the ruling of the Board of Appeals of Baltimore County.

On November 28, 2000, the Baltimore County Permits and Development Management granted a special exemption to John Mangione, Louis Mangione, Nicholas Mangione, and Mary Mangione (hereinafter Petitioners) pursuant to Baltimore County Code Section 26-171(b)(9), for a continuing care facility (hereinafter facility). The facility was to be located on the North Side of East Padonia Road, east of Greenside Drive. On January 17, 2001, Petitioners filed a petition for a special exception requesting approval for the facility in the BR zone. On March 16, 2001, Deputy Zoning

FILED MAY 2 1 2004

Commissioner of Baltimore County issued an order granting the special exception after a hearing had been held. The County Home Park Community Association, David Jordan, President, and Gary and Patricia Lay (hereinafter Protestants) appealed the order to the Baltimore County Board of Appeals (hereinafter Board). The Board held hearings de novo on November 13, 2002, December 4, 2002, and April 3, 2003.

On Thursday, May 29, 2003, the Board held its public deliberation and affirmed the decision of the Zoning Commissioner to approve the requested special exception on August 13, 2003. On September 3, 2003, Protestants filed a timely appeal of the Board's decision and on September 11, 2003, Petitioners also filed a timely appeal of portions of the Board's decision to the Circuit Court for Baltimore County.

Facts

The property at issue in this case is located on the north side of East Padonia Road, approximately 360' east of Greenside Drive. The property is split zoned BL, BR, DR 3.5 and DR 16. The majority of the property is zoned BR. In its original petition to the Zoning Commissioner, the Petitioners proposed to construct a facility that would be 50 feet in height and 240 feet in length. On November 13, 2002, the Petitioners presented an amended site plan to the Board. The amendment increased the dimensions of the building to 60 feet in height and to 260 feet in length.

Protestants argued that due to the amendment, the case should be remanded to the Zoning Commissioner with a new public notice and hearing so that the public would have an opportunity to be heard on the amendment. The Board, however, stated that it had the discretion to accept the amendment and affirmed the decision of the Zoning

Commissioner. The Board then placed six restrictions on the property, which were conditions precedent to the relief granted.

The Protestants appealed the Board's decision arguing that: (1) the Board did not have jurisdiction to review the petition for special exception because the petition was not amended until the hearing; (2) the Board did not correctly approve the petition for special exception pursuant to the standards set for the in the Baltimore County Zoning Regulations (BCZR) section 502.1; (3) the proposed building did not satisfy the applicable height standards; (4) the proposed facility is subject to the standards for Class B assisted living facilities; (5) the proposed facility must satisfy the BCZR Residential Transition Area standards; and (6) the issuance of a Certificate of Need by the Maryland Health Care Commission has an effect on the special exception approval.

The Petitioners also filed an appeal arguing that: (1) the Board erred as a matter of law in imposing vague conditions as part of their approval of the requested special exception, and therefore the vague conditions should be declared void; and (2) the Board erred as a matter of law in imposing a condition on their approval of the requested special exception, which delegates the authority to approve the subject project to the Baltimore County Office of Planning.

ISSUE

This Court, for the reasons cited below, will only address two issues for review:

1. Did the County Board of Appeals have jurisdiction to review a special exception on appeal where the height and length of the proposed building have both significantly increased?

2. Was the County Board of Appeals' decision conclusory, vague, and thus legally insufficient to justify the approval of the special exception?

Based upon the Court's consideration of the entire record of the proceedings below, and its review of the applicable law, this Court answers in the negative for the first issue and in the affirmative for the second issue. Accordingly, this Court finds that this case must be remanded for a new hearing in accordance with the BCZR and the Baltimore County Code (BCC).

STANDARD OF REVIEW

The Court of Special Appeals of Maryland, in Maryland Department of Education v. Shoop, explains that the standard of review of the Court of Special Appeals for decisions of administrative panels is precisely that of the circuit court. 119 Md. App. 181, 196, 704 A.2d 499 (citing Dep't of Human Res. v. Thompson, 103 Md. App. 175, 188, 652 A.2d 1183 (1995)), cert. denied, 349 Md. 495, 709 A.2d 140 (1998). The appellate court reviews appeals from such panels under a two-tiered scheme. Dep't of Health & Mental Hygiene v. Reeders Mem'l Home, Inc., 86 Md. App. 447, 452, 586 A.2d 1295 (1991).

The appellate court examines the panel's findings of fact under the substantial evidence test. Id. The appellate court cannot, however, substitute its judgment for that of the administrative panel. Zeitschel v. Bd. of Educ., 274 Md. 69, 82, 332 A.2d 906 (1975). As for the appellate court's review of the findings of law, when no such deference is appropriate, it may substitute its judgment for that of the administrative panel. Shanty Town Assoc. v. Dep't of the Env't, 92 Md. App. 103, 116, 607 A.2d 66 (1992); see Younkers v. Prince George's County, 333 Md. 14, 19, 633 A.2d 861 (1993)

(citing People's Counsel v. Md. Marine Mfg. Co., 316 Md. 491, 496-97, 560 A.2d 32 (1989)).

Furthermore, for a reviewing court to uphold an administrative hearing board's order, the order must be sustainable on its findings of fact and for the reasons stated by the agency. See Regan v. Bd. of Chiropractic Exam'rs, 120 Md. App. 494, 508-09, 707 A.2d 891 (1998). Indeed, on appeal the court asks whether a reasoning mind reasonably could have reached the factual conclusion that the agency reached. Eberle v. Baltimore County, 103 Md. App. 160, 166, 652 A.2d 1175 (1995) (quoting Hill v. Baltimore County, 86 Md. App. 642, 659, 587 A.2d 1155 (1991)).

The reviewing court, however, must not go beyond the findings of fact of the administrative hearing. See Supervisor of Assessments v. Ely, 272 Md. 77, 321 A.2d 166 (1974). The Court of Appeals held that judicial review of the act of the administrative agency "need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment." Id. Furthermore, it is not only within the province of the agency to resolve conflicting evidence, but to also draw the ruling inference. See Bulluck v. Pelham Wood Apts., 283 Md. 505 (1978). As such, the reviewing court is bound to the record of the administrative hearing. Id.

DECISION

1. **Did the County Board of Appeals have jurisdiction to review a special exception on appeal where the height and length of the proposed building have both significantly increased?**

The Petitioners, in their original proposal for the facility, submitted a site plan to the Zoning Commissioner in which the dimensions of the facility were 50 feet in height and 240 feet in length. On November 13, 2002, without prior notice to the Protestants,

the Petitioners submitted to the Board an amended site plan in which the facility's dimensions were increased to 60 feet in height and 260 feet in length.

Notice is an element of procedural due process of law. It is incorporated in the Express Powers Act, Article 25A, Section 5 (U), Maryland Code, in County Charter Section 603 for the Board of Appeals, and County Code Section 26-127 pertaining to zoning commissioner hearings. As stated in Rule 2a of the Practice and Procedure of the Baltimore County Board of Appeals, "[n]o hearing shall be conducted without at least ten (10) days' notice to all parties of record or their counsel of record, unless otherwise agreed to by all such parties or their counsel of record."

In the case at bar, the Protestants argue that the Board, at the very least, should have remanded the case to the Zoning Commissioner for a new public notice and hearing on the amended site plan. By remanding the case, the Board could have afforded the Zoning Commissioner the opportunity to apply the facility's new dimensions to the criteria in section 502.1 and the public an opportunity to be heard.

The Board found that accepting the amendment was in its sole discretion.

> The Board feels the amended site plan which shows a taller and longer building does not detrimentally affect anyone's ability to prepare for this hearing. With more than [five] months between the granting of the amended site plan and the conclusion of the case, the Board feels that this was more than a sufficient amount of time for the Protestants to prepare their case.

In the Matter of: John Mangione, No. 01-283-X at 2 (Balt. County Bd. App. 2003).

The Board, however, incorrectly assessed its amount of discretion. The Board has de novo review, yet it still exercises appellate jurisdiction. UPS v. People's Counsel, 336 Md. 569 (1994). Although the Board has the right to hear additional evidence,[1] if the

[1] See UPS, 336 Md. at 587-88; People's Counsel v. Crown Dev., 438 Md. 303, 316 (1992).

additional evidence is material, then the other party must have proper notice of that evidence. Cassidy v. County Board of Appeals, 218 Md. 418 (1958).

The Petitioners argue that the Board had the discretion to accept the amended site plan because the changes in the facility's dimensions were minor. Furthermore, the site plan was amended, not the petition, and there is no requirement that the petition lay out the dimensions of the facility. Hence, Petitioners assert that there is no additional requirement that the public be notified.

In the case at bar, the Zoning Commissioner made his decision based on the petition and site plan presented to him. The Zoning Commissioner found that the use for which the special exception was requested would not violate the criteria for granting a special exception within Section 502.1 of the BCZR. Section 502.1 states that

> [b]efore any special exception may be granted, it must appear that the use for which the special exception is requested will not:
> A. Be detrimental to the health, safety or general welfare of the locality involved;
> B. Tend to create congestion in roads, streets or alleys therein;
> C. Create a potential hazard from fire, panic or other danger;
> D. Tend to overcrowd land and cause undue concentration of population;
> E. Interfere with adequate provisions of schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvement;
> F. Interfere with adequate light and air; [Bill No. 45-1982]
> G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]
> H. Be inconsistent with impermeable surface and vegetative retention provisions of these Zoning Regulation; [Bill No. 45-1982]
> I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone. [Bill No. 74-2000]

In order to comply with the criteria in section 502.1, the Zoning Commissioner needed the dimensions of the facility at his disposal. By changing the facility's

dimensions, a new determination is required as to whether or not section 502.1's criteria were met. The increased height and width of the facility could possibly not satisfy the criteria of 502.1, which would prevent the granting of a special exception.[2]

This Court finds that Petitioners' claim is without merit. A decision on whether the facility meets the criteria of section 502.1 cannot be made without looking at the site plan. Therefore, this Court finds that the site plan is an integral part of the petition.

Petitioners contend that even if the amendment were material, the Protestants had enough time to respond and prepare for the hearings. On November 13, 2002, the Board granted the requested amendment. Hence, Petitioners argue that the

> Protestants had until April 3, 2003, more than five months, to complete the preparation of their case in opposition. It is hard to imagine that this was not a sufficient amount of time for the Protestants to prepare their case. It is important to note that pursuant to Rule 2.a of the Board's Rules of Practice and Procedure, only 10 days notice is required for a public hearing.

(Appellee/ Cross-Appellants' Response to People's Counsel's Mem. at 8.)

Petitioners, however, fail to recognize that Appendix H, Rule 9(d)(2) of the BCZR states, "[p]etitions may be amended prior to the hearing only if said amendment takes place prior to the first public advertisement of the petition." The amendment at issue was not introduced to the Board until the first hearing on November 13, 2002. Thus, it is immaterial that the hearings were not completed until April 3, 2003 because the Protestants were unprepared for any testimony concerning the new dimensions put forth by the Petitioners on November 13, 2002.

Overall, this Court finds that the material change in the site plan required proper notice to be given to the public, giving the public an opportunity to be heard. As a result,

---

[2] More specifically, but not limited to subsections B, C, E, F, and I.

this Court further finds that this case must be remanded for a new hearing after proper notice is provided in accordance with BCZR and BCC.

2. Was the County Board of Appeals' decision conclusory, vague, and thus legally insufficient to justify the approval of the special exception?

In the instant case, the Board gave no facts or legal reasoning for its granting of the special exception. The Board only stated that

> [a]fter review of the testimony and evidence, this Board through a majority finds that the Petitioners have met their burden and will grant the special exception relief to approve a Continuing Care Facility in a BR zone for property located on the north side of East Padonia Road, east of Greenside Drive.

In the Matter of: John Mangione, No. 01-283-X at 5.

In Board of County Commissioners v. South Resources Management, Inc., the Court of Special Appeals of Maryland held that

> [i]n order to determine whether sufficient evidence existed to allow the Board to render a decision under a correct legal standard, [the court] must turn to the factual findings provided by the Board. As an administrative board, the Board is required to issue findings of fact and conclusions of law in support of its opinion. See Mehrling v. Nationwide Ins. Co., 371 Md. 40, 62-3, 806 A.2d 662 (2002) (noting that "administrative agencies are required to resolve all significant conflicts in the evidence and then chronicle, in the record, full, complete and detailed findings of fact and conclusions of law." (quoting Forman v. Motor Vehicle Admin., 332 Md. 201, 221, 630 A.2d 753 (1993))). The Court of Appeals further specified that "findings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions." Mehrling, 371 Md. at 62-3, 806 A.2d 662 (quoting Bucktail v. Talbot County, 352 Md. 530, 553, 723 A.2d 440 (1999)). The purpose of the findings requirement is threefold: (1) requiring an articulation of the reasoning process makes the decision-maker accountable to the public; (2) it allows the injured party to understand the reasons behind the agency's decision; and (3) most important, the findings requirement assists in facilitating judicial review of the agency's decision. Sweeney v. Montgomery County, 107 Md. App. 187, 197, 667 A.2d 922 (1995) (citing Baltimore Gas and Electric Co. v. Public Service Commission, 75 Md. App. 87, 540 A.2d 820 (1988)). With regard to the issue of judicial review, the Court of Appeals held that "[a]t a minimum, one must be able to discern from

the record the facts found, the law applied, and the relationship between the two...." Mehrling, 371 Md. at 62-3, 806 A.2d 662 (quoting Forman, 332 Md. at 220-21, 630 A.2d 753).

154 Md. App. 10, 34-5, 837 A.2d 1059 (2003).

In the instant case, the Board provided no factual findings or legal analysis of the evidence and testimony; the Board merely condensed some of the testimony and evidence presented by the parties before making its decision. In summarizing the testimony at the hearing, the Board laid out the testimony of Ms. Melanie Moser and Mr. John Seefried, two expert witnesses of the Mangiones. The Board cited Ms. Moser's conclusion that the visual impact, "activities, noise, and movement anticipated from the proposed . . . [f]acility" on the adjoining and surrounding properties would have less of an adverse impact "than those that would ordinarily be expected from such a use located elsewhere in the BR zone." In the Matter of: John Mangione, No. 01-283-X at 2-3. The Board also cited Mr. John Seefried's conclusion that the facility would not adversely impact "traffic congestion, potential hazards from dangers, or interference with adequate provisions for public services." Id. at 3.

The Board, however, gave little to no background of the testimony of the Protestants' witnesses. The Board briefly mentioned the testimony of David Jordan and Stephen Weber, witnesses who spoke on behalf of the community. The Board did not summarize any other testimony provided by the other Protestants' witnesses, except to state that there were, "[s]everal other witnesses on behalf of the Protestants [who] testified about concerns with noise, visual, safety, and property sale." In the Matter of: John Mangione, No. 01-283-X at 4.

After summarizing the testimony presented before it, the Board, without analyzing the law or facts of the case, decided: The Residential Transition Area

regulations in BCZR section 1B01.1.B "do not apply outside of the DR zone;" the letter of John Lewis of the County Permits and Development Management, which stated, "the maximum building height is sixty feet" is accepted; and, the special exception is granted. In the Matter of: John Mangione, No. 01-283-X at 5.

In following the Court of Special Appeals' decision in South Resources Management, Inc., this Court finds that the Board's "[f]ailure to provide specific findings of fact constitutes a legal error and prevents [the reviewing court] from fully understanding the Board's decision." 14 Md. App. 10, 36 (citing Lewis v. Department of Natural Resources, 377 Md. 382, 434, 833 A.2d 563 (2003)). Hence, this Court finds that its ability to address the other issues presented by both parties in their appeal and cross appeal is "hindered because the Board failed to make specific findings of fact" and conclusions of law. South Resources Management, Inc., 14 Md. App. at 35.

After careful review of all of the evidence, submitted memoranda, oral arguments, and all applicable law, it is therefore **ORDERED** this 18th day of May 2004, that the case be **REMANDED** for a new hearing in accordance with the BCZR and the BCC.

John O. Hennegan, Judge

Cc: Peter Zimmerman, Esq.
G. Scott Barhight, Esq.
County Board of Appeals

10/31/03

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
PEOPLE'S COUNSEL *
FOR BALTIMORE COUNTY
Room 47, Old Courthouse *
400 Washington Avenue
Towson, MD 21204 *

COUNTY HOME PARK *
COMMUNITY ASSOCIATION, INC.
c/o David L. Jordan, President *
120 Gibbons Boulevard
Cockeysville, MD 21030 *

STEPHEN E. WEBER, Individually *
9801 Van Buren Lane
Cockeysville, MD 21030 *

DAVID L. JORDAN, Individually *
120 Gibbons Boulevard
Cockeysville, MD 21030 *

GARY LAY, Individually *
TRICIA LAY, Individually
109 Gibbons Boulevard *
Cockeysville, MD 21030

*

FOR JUDICIAL REVIEW OF THE OPINION OF CIVIL ACTION
THE COUNTY BOARD OF APPEALS * No. **3-C-03-9661**
OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

IN THE MATTER OF: *
JOHN MANGIONE, et al

*

RE: SPECIAL EXCEPTION /PADONIA ROAD
8th Election District; 4th Councilmanic District *

CASE NO.: 01-283-X *

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

RECEIVED AND FILED
2003 OCT 31 A 10:34
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY:

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

ENTRIES FROM THE DOCKET OF THE BOARD APPEALS AND DEPARTMENT OF PERMITS & LICENSES OF BALTIMORE COUNTY

01-283-X

January 17, 2001	Petition for Special Exception filed by Jennifer R. Busse, Esquire, on behalf of Louis Mangione, John Mangione, Nicholas B. and Mary C. Mangione, to allow a Continuing Care Facility as use of subject property.
January 31	Notice of Zoning Hearing
January 31	Entry of Appearance filed by People's Counsel for Baltimore County
February 9	Certificate of Posting
February 15	Publication in newspaper
March 2	ZAC Summary of Comments
March 5	Hearing Held before the Zoning Commissioner
March 16	Findings of Fact and Conclusions of Law issued by the Zoning Commission. Petition for Special Exception APPROVED with restrictions.

April 13	Notice of Appeal from David L. Jordan, President, on behalf of County Home Park Community Association, Inc., and Gary P. Lay and Tricia L. Lay, Individually.
November 13, 2002	Hearing by Board of Appeals /Day #1
December 4	Hearing by Board of Appeals /Day #2
April 3, 2003	Hearing by Board of Appeals /Day #3/Hearing concluded

People's Counsel Exhibits

1	Concept Plan A / Lorien Padonia / dtd 1/02/01
2	Excerpt from standard ADC map showing site in yellow
3	Real Property Search – MDAT – 3 parcels that comprise this site consisting of 12 pages
4	Baltimore County Zoning Map, year 2000
5	GIS photograph marked (1997)
6	Red folder marked 'County Home Park Community Assn. Position Statement Mangione Property Padonia Road'
7	Red folder marked 'County Home Park Community Assn. Comparative Study Mangione Property Padonia Road'
8	Black and white aerial photographs consisting of 6 pages
9	Baltimore County Inter-Office Correspondence dated March 27, 2003 from Arnold F. "Pat" Keller, III, Director, Office of Planning to Lawrence S. Wescott, Chairman, Board of Appeals; re: zoning anomaly
10	Letter dated July 27, 1979 from Nicholas B. Mangione, President, Commercial Contractors Incorporate to Director of Planning and Zoning for Baltimore County; re: zoning request consisting of 3 pages
11A	County Home Park Community Association, Inc., Resolution dated March 20, 2003, one page

	11B	County Home Park Community Association, Inc., document affirming Executive Committee, dated March 20, 2003, one page

Petitioner's Exhibits

1	Plan to Accompany Petition for Special Exception – Lorien Padonia – dated 11/12/02 – amended
2	Floor plan of Lorien Padonia
3	Letter dated November 28, 2000 from Arnold Jablon, Director, Baltimore County Department of Permits and Development Management to Daft-McCune-Walker, Inc.; re: recommendations of DRC adopted
4	C.V. – John W. Seefried, P.E., consisting of one page
5	Plan to Accompany Petition for Special Exception – Lorien Padonia – dated 1/17/02 – original
6	Plan to Accompany Petition for Special Exception – Lorien Padonia – dated 11/11/02 – red-lined
7	Letter dated August 1, 2002 from John L. Lewis, Planner III, Zoning Review, Baltimore County Department of Permits and Development Management to Mitchell J. Kellman, Draft McCune Walker Inc.; re: 60 foot height permitted
8	Letter dated December 7, 2000 from John L. Lewis, Planner III, Zoning Review, Baltimore County Department of Permits and Development Management to Mitchell J. Kellman, Draft McCune Walker Inc.; re: continuing care facility is permitted in BR zone – special exception /adjoining DR zone
9	C.V. – Melanie Moser, Vice President, consisting of one page
10	Vicinity Map
11A	Photograph marked 'Sunrise Towson'
11B	Photograph marked ' Edenwald'

	11C	Photograph marked 'Heart Homes Luthv.'
	11D	Photograph marked 'Blakehurst Towson'
May 5, 2003		People's Counsel For Baltimore County's Memorandum filed by Mr. Zimmerman; letter filed by David Jordan, President of County Home Park Community Association supporting People's Counsel's Memorandum; and Petitioner's Memorandum in Lieu of Closing Argument filed by G. Scott Barhight, Esquire
August 13		Majority Opinion issued by the Board of Appeals GRANTING Petition for Special Exception, with restrictions
September 3		Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County; County Home Park Community Association, Inc.; Stephen E. Weber, Individually; David L. Jordan, Individually; and Gary and Tricia Lay, Individually. **Civil Action No.: 3-C-03-9661**
September 10		Certificate of Notice sent to interested parties
September 11		Second Petition for Judicial Review filed in the Circuit Court for Baltimore County by G. Scott Barhight, Esquire, on behalf of John Mangione, et al **Civil Action No.: 3-C-03-010007**
September 17		Second Certificate of Notice sent to interested parties.
September 25		Motion to Transfer and Order filed by G. Scott Barhight, Esquire, on behalf of John Mangione, et al, requesting that the Petition for Judicial Review filed in Case No.: 3-C-03-010007 be transferred to Case No.: 3-C-03-9661 and that one record extract/transcript/pleadings be filed with the Circuit Court in Case No.: 3-C-03-9661.
October 28		Circuit Court Order signed by Judge Bollinger that all pleadings and record of proceedings shall be filed in Case No.: 3-C-03-9661
October 31		Transcript of Proceedings filed.
October 31		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, together with exhibits entered before the Board.

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: Peter Max Zimmerman
People's Counsel For Baltimore County
County Home Park Community Association, Inc.
Stephen E. Weber, Individually
David L. Jordan, Individually
Gary Lay, Individually
Tricia Lay, Individually
G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

PETITION OF: PEOPLE'S COUNSEL FOR BALTIMORE COUNTY; COUNTY HOME PARK COMMUNITY ASSOCIATION, INC., STEPHEN E. WEBER, DAVID L. JORDAN, GARY LAY AND TRICIA LAY.

CIVIL ACTION NO.: 3-C-03-9661

MATTER OF: JOHN MANGIONE, ET AL

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS AND BOARD'S RECORD EXTRACT AND TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE AND EXHIBITS.

Donna Reddish

CLERK'S OFFICE

DATE: October 31, 2003

9/25/03

PETITION OF JOHN MANGIONE, ET AL.	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
IN THE MATTER OF: JOHN MANGIONE, et al. Re: SPECIAL EXCEPTION/PADONIA RD 8th ELECTION DIST.; 4th COUNCILMANIC DIST	*	Case No. 3-C-03-01007
Case No. 01-283-X	*	
* * * * * * * * * *	*	* * * * * * * * * *
PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	FOR
	*	BALTIMORE COUNTY
IN THE MATTER OF: JOHN MANGIONE, et al. Re: SPECIAL EXCEPTION/PADONIA RD 8th ELECTION DIST.; 4th COUNCILMANIC DIST	*	Case No. 3-C-03-9661
Case No. 01-283-X	*	
* * * * * * * * * *	*	* * * * * * * * * *

MOTION TO TRANSFER

Petitioners below and Appellants herein, John Mangione, et al, hereby move to transfer the Petition for Judicial Review filed in Case No. 3-C-03-01007 to Case No. 3-C-03-9661. The grounds for the Motion are as follows:

1. An Order of the County Board of Appeals In the Matter of John Mangione, et al. was issued on August 13, 2003 after three days of hearing on the merits.

2. Pursuant to Maryland Rule 7-203(a), People's Counsel for Baltimore County, on September 3, 2003, filed a timely Petition for Judicial Review of said Order; said Petition for Judicial Review was docketed as Case No. 3-C-03-9661.

3. Also pursuant to Maryland Rule 7-203(a), John Mangione, et al., by G. Scott Barhight and Whiteford, Taylor & Preston L.L.P., on September 11, 2003, filed a timely Petition for Judicial Review of the aforesaid Order of the County Board of Appeals in the matter of John Mangione, et al.; said Petition for Judicial Review was inadvertently docketed as a separate Case No. 3-C-03-01007.

4. A Petition for Judicial Review of an Administrative Order may be filed by more than one party as provided in Maryland Rule 7-203(b); the Rule does not direct nor indicate that each said Petition for Judicial Review shall be treated as a separate case.

5. Maryland Rule 7-206(a) provides that the Record of the agency proceeding (in this case the Baltimore County Board of Appeals), including exhibits, papers filed and the transcript of the testimony, shall be transmitted to the Circuit Court; said Rule further states that the first Petitioner to file for Judicial Review shall bear the cost of transcribing the testimony unless otherwise order by the Court; thus only one complete Record must be transmitted to the Circuit Court regardless of the number of Petitions for Judicial Review filed.

6. In the cases at hand, if the two Petitions for Judicial Review are maintained as separate cases, a copy of the record of the proceedings before the County Board of Appeals, including all exhibits, papers and a transcript of the testimony, must

be filed in each case, creating an unnecessary expense for the parties and a hardship for the County Board of Appeals which would be required to provide an extra set of all exhibits filed.

7. That as provided in Maryland Rule 7-208, one date for a hearing on the merits would be set for all petitions for Judicial Review filed in the matter, and all parties and counsel would be heard in a single hearing; a duplicate of the Record and proceedings of the County Board of Appeals would not be required, nor assist the Circuit Court in reaching a decision in this matter.

8. That attorneys for Petitioners/Appellants consulted with People's Counsel for Baltimore County who has consented to the relief requested in this Motion to Transfer Case No. 3-C-03-01007 to Case No. 3-C-03-9661, that said counsel is in accord with the request that only one Record of the proceedings before the County Board of Appeals, including the transcript of testimony, shall be required to be transmitted to the Circuit Court.

G. Scott Barhight 1/6

G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
400 Court Towers
210 W. Pennsylvania Ave
Towson, Maryland 21204
(410) 832-2050
Attorneys for Petitioners/Appellants,
John Mangione, et al.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of September, 2003, a copy of the aforegoing Motion to Transfer and proposed Order was mailed, postage prepaid to:

Kathleen C. Bianco, Administrator
Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Peter M. Zimmerman, Esquire
Carole S. DeMilio, Esquire
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

Mr. Stephen E. Weber
9801 Van Buren Lane
Cockeysville, Maryland 21030

Gary and Tricia Lay
109 Gibbons Blvd.
Cockeysville, Maryland 21030

Mr. David L. Jordan
120 Gibbons Blvd.
Cockeysville, Maryland 21030

County Home Park Community
Association, Inc.
c/o David L. Jordan
120 Gibbons Blvd.
Cockeysville, Maryland 21030

G. Scott Barhight/jb
G. Scott Barhight

290147

PETITION OF JOHN MANGIONE, ET AL.	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	CIRCUIT COURT FOR BALTIMORE COUNTY
IN THE MATTER OF: JOHN MANGIONE, et al. Re: SPECIAL EXCEPTION/PADONIA RD 8th ELECTION DIST.; 4th COUNCILMANIC DIST Case No. 01-283-X	*	Case No. 3-C-03-01007
* * * * * * * * * *	*	* * * * * * * * * *
PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	CIRCUIT COURT FOR BALTIMORE COUNTY
IN THE MATTER OF: JOHN MANGIONE, et al. Re: SPECIAL EXCEPTION/PADONIA RD 8th ELECTION DIST.; 4th COUNCILMANIC DIST Case No. 01-283-X	*	Case No. 3-C-03-9661
* * * * * * * * * *	*	* * * * * * * * * *

ORDER

IT IS HEREBY ORDER this _____ day of September, 2003, by the Circuit Court for Baltimore County that the Petition for Judicial Review filed in Case No. 3-C-03-01007 shall be transferred to Case No. 3-C-03-9661; and it is further

ORDERED that one record of the proceedings before the County Board of Appeals, including transcript therein, shall be required to be transmitted to the Circuit Court for Baltimore County and that all pleadings pertinent to this case shall be filed in Case No. 3-C-03-9661.

_____

Judge, Circuit Court for Baltimore County

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jgbusse@wtplaw.com

September 25, 2003

Ms. Suzanne Mensch
Clerk of the Circuit Court of Maryland for
Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

RECEIVED
SEP 26 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Re: Petition for Judicial Review
Petition of John Mangione, et al.
Case No. 3-C-03-01007

Petition of People's Counsel for Baltimore County, et al.
Case No. 3-C-03-9661

Dear Madam/Sir:

You will please find enclosed a Motion to Transfer and proposed Order to be filed in the above-referenced case. I have enclosed a copy of the Motion and would appreciate it if you would date stamp the copy and return it in the enclosed, self-addressed envelope.

If you have any questions or need further assistance, please do not hesitate to contact me.

Sincerely,

Jennifer R. Busse

Enclosures

cc: Peter Max Zimmerman, Esquire
Kathleen C. Bianco, Administrator
Mr. Stephen E. Weber
Gary and Tricia Lay
Mr. David L. Jordan
County Home Park Community Association, Inc.
Mr. John D. Mangione

289031

9/20/03

PETITION OF JOHN MANGIONE, ET AL.	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	CIRCUIT COURT
	*	FOR
IN THE MATTER OF: JOHN MANGIONE, et al. Re: SPECIAL EXCEPTION/PADONIA RD 8th ELECTION DIST.; 4th COUNCILMANIC DIST Case No. 01-283-X	*	BALTIMORE COUNTY Case No. 3-C-03-01007
* * * * * * * * * *	*	* * * * * * * * * *
PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	FOR
	*	BALTIMORE COUNTY
IN THE MATTER OF: JOHN MANGIONE, et al. Re: SPECIAL EXCEPTION/PADONIA RD 8th ELECTION DIST.; 4th COUNCILMANIC DIST Case No. 01-283-X	*	Case No. 3-C-03-9661
* * * * * * * * * *	*	* * * * * * * * * *

ORDER

IT IS HEREBY ORDER this 24th day of September, 2003, by the Circuit Court for Baltimore County that the Petition for Judicial Review filed in Case No. 3-C-03-01007 shall be transferred to Case No. 3-C-03-9661; and it is further

ORDERED that one record of the proceedings before the County Board of Appeals, including transcript therein, shall be required to be transmitted to the Circuit Court for Baltimore County and that all pleadings pertinent to this case shall be filed in Case No. 3-C-03-9661.

True Copy Test
SUZANNE MENSH, Clerk
Per _____
Assistant Clerk

Thomas J. Bollinger
Judge, Circuit Court for Baltimore County

290147

FILED OCT 23 2003

9/17/03

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:

*

JOHN MANGIONE, et at

*

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS * No. 3-C-03-010007
OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

IN THE MATTER OF: *
JOHN MANGIONE, et al

*

RE: SPECIAL EXCEPTION /PADONIA ROAD
8th Election District; 4th Councilmanic District *

CASE NO.: 01-283-X *

RECEIVED AND FILED
2003 SEP 17 A 11:41
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

SECOND 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:

Peter Max Zimmerman
People's Counsel For Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204

Carole S. Demilio
Deputy People's Counsel For Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204

David L. Jordan, President
County Home Park Community Association, Inc., 120 Gibbons Boulevard, Cockeysville, MD 21030

Stephen E. Weber
9801 Van Buren Lane, Cockeysville, MD 21030

David L. Jordan
120 Gibbons Boulevard, Cockeysville, MD 21030

Gary Lay
109 Gibbons Boulevard, Cockeysville, MD 21030

Tricia Lay
109 Gibbons Boulevard, Cockeysville, MD 21030

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, 210 W Pennsylvania Avenue,
Towson, MD 21204-4515

Jennifer R Busse, Esquire
Whiteford, Taylor & Preston, 210 W Pennsylvania Avenue,
Towson, MD 21204-4515

Louis Mangione, John Mangione
Nicholas B. Mangione and Mary C. Mangione
1205 York Road, Lutherville, MD 21093

Rhoda Wolfe-Carr
Maryland Health Care Commission, O'Conor Building, 201 W. Preston Street,
Baltimore, MD 21201

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: Peter Max Zimmerman, People's Counsel For Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204; Carole S. Demilio, Deputy People's Counsel For Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204; David L. Jordan, President, County Home Park Community Association, Inc., 120 Gibbons Boulevard, Cockeysville, MD 21030; Stephen E. Weber, 9801 Van Buren Lane, Cockeysville,

MD 21030; David L. Jordan, 120 Gibbons Boulevard, Cockeysville, MD 21030 ; Gary Lay, 109 Gibbons Boulevard, Cockeysville, MD 21030; Tricia Lay, 109 Gibbons Boulevard, Cockeysville, MD 21030; G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W Pennsylvania Avenue, Towson, MD 21204-4515; Jennifer R Busse, Esquire, Whiteford, Taylor & Preston, 210 W Pennsylvania Avenue, Towson, MD 21204-4515; Louis Mangione, John Mangione, Nicholas B. Mangioneand Mary C. Mangione, 1205 York Road, Lutherville, MD 21093; and Rhoda Wolfe-Carr, Maryland Health Care Commission, O'Conor Building, 201 W. Preston Street, Baltimore, MD 21201, this 17th day of September, 2003.

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)

County Board of Appeals of Baltimore County

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

September 17, 2003

Peter Max Zimmerman
People's Counsel For Baltimore County
Room 47, Old Courthouse
400Washington Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-03-010007
Petition for Judicial Review
John Mangione, et al
Case No.: 01-283-X

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules, that a Second Petition for Judicial Review was filed on September 11, 2003, 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-03-9661**, not 03-010007.

Enclosed is a copy of the Second Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
County Home Park Community Association, Inc.
Stephen E. Weber, Individually
David L. Jordan, Individually
Gary Lay, Individually
Tricia Lay, Individually
Louis Mangione
John Mangione
Nicholas B. Mangione
Mary C. Mangione
Rhoda Wolfe Carr, Maryland Health Care Commission
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director/PDM

Printed with Soybean Ink on Recycled Paper

County Board of Appeals of Baltimore County

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

September 17, 2003

G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Whiteford, Taylor & Preston
210 W Pennsylvania Avenue
Towson, MD 21204-4515

RE: Circuit Court Civil Action No. 3-C-03-010007
Petition for Judicial Review
John Mangione, et al
Case No.: 01-283-X

Dear Mr. Barhight and Ms. Busse:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid prior to the record being submitted. Please verify payment of the transcript in this matter. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be paid, prior to the filing of the record. Please call me to verify that the costs for the certified copies have been paid.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with the Maryland Rules.

Enclosed is a copy of the Second Certificate of Notice.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Legal Secretary

/trs
Enclosure
c: Office of People's Counsel
County Home Park Community Association, Inc.
Stephen E. Weber, Individually
David L. Jordan, Individually
Gary Lay, Individually
Tricia Lay, Individually
Louis Mangione
John Mangione
Nicholas B. Mangione
Mary C. Mangione

Printed with Soybean Ink on Recycled Paper

9/16/03

PETITION OF: JOHN MAGIONE, et al.	*	**IN THE**
	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY 400 WASHINGTON AVENUE OLD COURTHOUSE ROOM 49 TOWSON MD 21204	*	**CIRCUIT COURT**
	*	**FOR**
IN THE MATTER OF : JOHN MANGIONE, ET AL FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON N/SIDE OF E PADONIA RD, E OF GREENSIDE DR (LORIEN PADONIA) 8TH Election District, 4th Councilmanic District	*	**BALTIMORE COUNTY**
	*	
CASE NO.: 01-283-X BEFORE THE COUNTY BOARD OF APPEALS	*	**CASE NO.: 03-C-03-01007**

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

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed by JOHN MANGIONE, et al., and states that it intends to participate in this action for Judicial Review. The undersigned participated in the proceeding before the County Board of Appeals.

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 11th day of September, 2003, a copy of the foregoing Petition for Judicial Review was mailed to:

G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Whiteford, Taylor & Preston, LLP
210 W Pennsylvania Avenue
Towson, Maryland 21204

Kathleen C. Bianco, Administrator
County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

September 16, 2003

Chief Clerk, Civil Division
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Hand-delivered

Re: Response to Petition for Judicial Review
In the Matter of John Mangione, et al
Case Number: 03-C-03-010007

Dear Sir or Madam:

Please file the enclosed the Response to Petition for Judicial Review with regard to this matter. If you need anything further, please contact my office.

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman/rmw

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw

Enclosures
cc: G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Kathleen Bianco, Administrator

RECEIVED
SEP 16 2003
BALTIMORE COUNTY
BOARD OF APPEALS

9/11/03

PETITION OF: JOHN MANGIONE, et al.	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY	*	CIRCUIT COURT
IN THE MATTER OF: JOHN MANGIONE, ET AL. PETITIONERS FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE N/SIDE OF EAST PADONIA ROAD, EAST OF GREENSIDE DRIVE (LORIEN PADONIA) (Board of Appeals Case No. 01-283-X)	*	FOR BALTIMORE COUNTY
		CASE NO. C-03-10007

RECEIVED
SEP 15 2003
BALTIMORE COUNTY
BOARD OF APPEALS

* *

PETITION FOR JUDICIAL REVIEW

The Petitioner, John Mangione, et al., hereby files this Petition for Judicial Review of the conditions imposed in the Opinion and Order of the County Board of Appeals of Baltimore County, dated August 13, 2003, in Case No. 01-283-X. Petitioner was a party to the proceedings before the County Board of Appeals of Baltimore County in this matter.

This Petition is filed pursuant to Rule 7-202 of the Maryland Rules of Procedure.

Respectfully submitted,

Jennifer Busse

G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Whiteford, Taylor & Preston L.L.P.
400 Court Towers
210 W. Pennsylvania Ave
Towson, Maryland 21204
Attorneys for John D. Mangione, et al.

RECEIVED AND FILED
2003 SEP 11 P 12:06
CLERK OF THE CIRCUIT COURT
289026 BALTIMORE COUNTY

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2003, a copy of the foregoing Petition for Judicial Review was mailed, first class, postage prepaid, to:

Kathleen C. Bianco, Administrator
Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Peter M. Zimmerman, Esquire
Carole S. DeMilio, Esquire
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

Mr. Stephen E. Weber
9801 Van Buren Lane
Cockeysville, Maryland 21030

Gary and Tricia Lay
109 Gibbons Blvd.
Cockeysville, Maryland 21030

Mr. David L. Jordan
120 Gibbons Blvd.
Cockeysville, Maryland 21030

County Home Park Community
Association, Inc.
c/o David L. Jordan
120 Gibbons Blvd.
Cockeysville, Maryland 21030

Jennifer Busse

Jennifer R. Busse, Esquire

289026

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

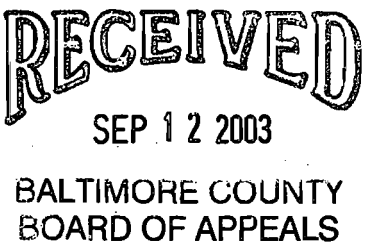
20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jgbusse@wtplaw.com

September 11, 2003



VIA HAND DELIVERY

Ms. Suzanne Mensch
Clerk of the Circuit Court of Maryland for
Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: Petition For Judicial Review
John Mangione, et al.
Baltimore County Board of Appeals Case No. 01-283-X

Dear Madam/Sir:

You will please find enclosed an original and three (3) copies of a Petition for Judicial Review to be filed in the above-referenced case as well as our firm's check in the amount of $100.00 to cover the filing cost. I would appreciate it if you would date stamp the extra copy and return it, as well as the receipt, to the courier.

If you have any questions or need further assistance, please do not hesitate to contact me.

Sincerely,

Jennifer R. Busse

Enclosures
cc: Peter Max Zimmerman, Esquire
Kathleen C. Bianco, Administrator
Mr. Stephen E. Weber
Gary and Tricia Lay
Mr. David L. Jordan
County Home Park Community Association, Inc.
Mr. John D. Mangione

289031

9/10/03

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
PEOPLE'S COUNSEL *
FOR BALTIMORE COUNTY
Room 47, Old Courthouse *
400 Washington Avenue
Towson, MD 21204 *

COUNTY HOME PARK *
COMMUNITY ASSOCIATION, INC.
c/o David L. Jordan, President *
120 Gibbons Boulevard
Cockeysville, MD 21030 *

STEPHEN E. WEBER, Individually *
9801 Van Buren Lane
Cockeysville, MD 21030 *

DAVID L. JORDAN, Individually *
120 Gibbons Boulevard
Cockeysville, MD 21030 *

GARY LAY, Individually *
TRICIA LAY, Individually
109 Gibbons Boulevard *
Cockeysville, MD 21030

*

FOR JUDICIAL REVIEW OF THE OPINION OF CIVIL ACTION
THE COUNTY BOARD OF APPEALS * No. **3-C-03-9661**
OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

IN THE MATTER OF: *
JOHN MANGIONE, et al

*

RE: SPECIAL EXCEPTION /PADONIA ROAD *
8th Election District; 4th Councilmanic District

CASE NO.: 01-283-X *

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

RECEIVED AND FILED
2003 SEP 10 A 10:42
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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:

Peter Max Zimmerman
People's Counsel For Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204

Carole S. Demilio
Deputy People's Counsel For Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204

David L. Jordan, President
County Home Park Community Association, Inc., 120 Gibbons Boulevard, Cockeysville, MD 21030

Stephen E. Weber
9801 Van Buren Lane, Cockeysville, MD 21030

David L. Jordan
120 Gibbons Boulevard, Cockeysville, MD 21030

Gary Lay
109 Gibbons Boulevard, Cockeysville, MD 21030

Tricia Lay
109 Gibbons Boulevard, Cockeysville, MD 21030

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, 210 W Pennsylvania Avenue, Towson, MD 21204-4515

Jennifer R Busse, Esquire
Whiteford, Taylor & Preston, 210 W Pennsylvania Avenue, Towson, MD 21204-4515

Louis Mangione, John Mangione
Nicholas B. Mangione and Mary C. Mangione
1205 York Road, Lutherville, MD 21093

Rhoda Wolfe-Carr
Maryland Health Care Commission, O'Conor Building, 201 W. Preston Street, Baltimore, MD 21201

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: Peter Max Zimmerman, People's Counsel For Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204; Carole S. Demilio, Deputy People's Counsel For Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204; David L. Jordan, President, County Home Park Community Association, Inc., 120 Gibbons Boulevard, Cockeysville, MD 21030; Stephen E. Weber, 9801 Van Buren Lane, Cockeysville, MD 21030; David L. Jordan, 120 Gibbons Boulevard, Cockeysville, MD 21030 ; Gary Lay, 109 Gibbons Boulevard, Cockeysville, MD 21030; Tricia Lay, 109 Gibbons Boulevard, Cockeysville, MD 21030; G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W Pennsylvania Avenue, Towson, MD 21204-4515; Jennifer R Busse, Esquire, Whiteford, Taylor & Preston, 210 W Pennsylvania Avenue, Towson, MD 21204-4515; Louis Mangione, John Mangione, Nicholas B. Mangioneand Mary C. Mangione, 1205 York Road, Lutherville, MD 21093; and Rhoda Wolfe-Carr, Maryland Health Care Commission, O'Conor Building, 201 W. Preston Street, Baltimore, MD 21201, this 10th day of September, 2003.

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)

County Board of Appeals of Baltimore County

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

September 10, 2003

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
210 W Pennsylvania Avenue
Towson, MD 21204-4515

RE: Circuit Court Civil Action No. 3-C-03-9661
Petition for Judicial Review
John Mangione, et al
Case No.: 01-283-X

Dear Mr. Barhight:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on September 3, 2003, 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-03-9661.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: People's Counsel for Baltimore County
County Home Park Community Association, Inc.
Stephen E. Weber, Individually
David L. Jordan, Individually
Gary Lay, Individually
Tricia Lay, Individually
Jennifer R. Busse, Esquire
Louis Mangione
John Mangione
Nicholas B. Mangione
Mary C. Mangione
Rhoda Wolfe Carr, Maryland Health Care Commission
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director/PDM

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on Recycled Paper

County Board of Appeals of Baltimore County

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

September 10, 2003

Peter Max Zimmerman
People's Counsel For Baltimore County
Room 47, Old Courthouse
400Washington Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No: 3-C-03-9661
Petition for Judicial Review
John Mangione, et al
Case No.: 01-283-X

Dear Mr. Zimmerman:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with the Maryland Rules.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure
c: County Home Park Community Association, Inc.
Stephen E. Weber, Individually
David L. Jordan, Individually
Gary Lay, Individually
Tricia Lay, Individually
G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Louis Mangione
John Mangione
Nicholas B. Mangione
Mary C. Mangione

Printed with Soybean Ink on Recycled Paper

9/3/03

PETITION OF **PEOPLE'S COUNSEL FOR BALTIMORE COUNTY,** OLD COURTHOUSE ROOM 47, 400 WASHINGTON AVENUE TOWSON MD 21204	*	**IN THE**
COUNTY HOME PARK COMMUNITY ASS'N, INC 120 GIBBONS BOULEVARD COCKEYSVILLE MD 21030 C/O DAVID L JORDAN, President	*	**CIRCUIT COURT**
STEPHEN E. WEBER, individually 9801 VAN BUREN LANE COCKEYSVILLE MD 21030	*	
DAVID L JORDAN, individually 120 GIBBONS BOULEVARD COCKEYSVILLE MD 21030	*	**FOR**
GARY AND TRICIA LAY, individually 109 GIBBONS BOULEVARD COCKEYSVILLE MD 21030	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY 400 WASHINGTON AVENUE OLD COURTHOUSE ROOM 49 TOWSON MD 21204	*	**BALTIMORE COUNTY**
IN THE MATTER OF : JOHN MANGIONE, ET AL FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON N/SIDE OF E PADONIA RD, E OF GREENSIDE DR (LORIEN PADONIA) **8TH Election District, 4th Councilmanic District**	*	**CASE NO.:**
CASE NO.: 01-283-X BEFORE THE COUNTY BOARD OF APPEALS	*	

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

PETITION FOR JUDICIAL REVIEW

The Petitioners, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, COUNTY HOME PARK COMMUNITY ASSOCIATION, INC, STEPHEN E. WEBER, DAVID L JORDAN, AND GARY AND TRICIA LAY hereby Petition for Judicial Review of the Opinion and Order of the

County Board of Appeals of Baltimore County, dated August 13, 2003, in Case No. 01-283-X.

Petitioners were parties to the proceedings before the County Board of Appeals of Baltimore County in this matter.

This Petition is filed pursuant to Rule 7-202 of the Maryland Rules of Procedure.

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

Stephen E. Weber
STEPHEN E.WEBER, Individually
9801 VAN BUREN LANE
COCKEYSVILLE MD 21030

Gary Lay
GARY LAY, Individually
109 GIBBONS BOULEVARD
COCKEYSVILLE MD 21030

Tricia Lay
TRICIA LAY, Individually
109 GIBBONS BOULEVARD
COCKEYSVILLE MD 21030

David Jordan
DAVID L JORDAN, Individually
120 GIBBONS BOULEVARD
COCKEYSVILLE MD 212030

COUNTY HOME PARK COMMUNITY ASSOCIATION, INC

By: David Jordan
DAVID L JORDAN, President
120 GIBBONS BOULEVARD
COCKEYSVILLE MD 21030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of September, 2003, a copy of the foregoing Petition for Judicial Review was mailed to:

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, LLP
210 W Pennsylvania Avenue
Towson, Maryland 21204

Kathleen C. Bianco, Administrator
County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

September 3, 2003

HAND DELIEVERED

Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: John Mangione, et al.

Dear Madam Clerk:

Enclosed please find the original Petition for Judicial Review to be filed with regard to the above-mentioned case.

Thank you for your anticipated consideration in this matter.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw

Enclosures

cc: G. Scott Barhight, Esquire
Kathleen Bianco, Administrator

RECEIVED
SEP - 3 2003
BALTIMORE COUNTY
BOARD OF APPEALS

8/13/03

IN THE MATTER OF THE APPLICATION OF JOHN MANGIONE, ET AL –PETITIONERS FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE N/SIDE OF EAST PADONIA ROAD, EAST OF GREENSIDE DR. (LORIEN PADONIA)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	Case No. 01-283-X

* * * * * * * * *

OPINION

This case comes to the Baltimore County Board of Appeals based on the granting of a special exception by the Deputy Zoning Commissioner. The public hearing before this Board was held on 11/13/02, 12/04/02, and 4/03/03. A public deliberation was also held on 5/29/03.

The Petitioners, Louis, John, Nicholas, & Mary Mangione. were represented by G. Scott Barhight, Esquire. The Protestants, David L. Jordan, President/County Home Park Community Association, Inc. (CHPCA), Stephen Weber, a nearby resident, also a representative of the CHPCA, and Gary & Tricia L. Lay were also present. In addition, Peter Max Zimmerman, Peoples Counsel for Baltimore County, participated in these proceedings.

The Board of Appeals, hearing the case *de novo*, must determine if the conditions as delineated in Baltimore County Zoning Regulations (BCZR), Section §502.1 have been satisfied.

People's Counsel made a preliminary motion to dismiss or remand asserting that this Board does not have jurisdiction over this matter because the Petitioners improperly amended their petition for a special exception in the site plan before the Board. The Board of Appeals is authorized to decide, within its discretion, whether or not to allow amendments to petitions. This Board did accept the amended plan to accompany petition for special exception into evidence.

The Board feels the amended site plan which shows a taller and longer building does not detrimentally affect anyone's ability to prepare for this hearing. With more than 5 months between the granting of the amended site plan and the conclusion of the case, the Board feels that this was more than a sufficient amount of time for the Protestants to prepare their case. The Motion to Dismiss or Remand was unanimously denied by this Board of Appeals.

The Petitioners were seeking a special exception, pursuant to *Baltimore County Zoning Regulations* § 502.1 for a Continuing Care Facility to be located on the north side of East Padonia Road, east of Greenside Drive. The subject property contains 5.562 acres, split-zone BL/BR/DR 3.5, and DR 16. The majority of the property is zoned BR, consisting of 4.74 acres. The proposal is to build and construct a six story Continuing Care Facility on the property in accordance with the site plan submitted into evidence (Petitioners Ex. #1).

The Petitioners proposed a building six stories high on the south façade and 5 stories high on the north façade. The proposed building height is 60 feet and the length is 260 feet. The Continuing Care Facility will be comprised of a 56-bed nursing home and a 139-unit assisted living facility.

Ms. Melanie Moser, an expert in the fields of land planning, development and zoning, testified that the topographic condition of this site creates a unique situation where the proposed Continuing Care Facility will have less of an adverse visual impact on the adjoining and surrounding properties than the adverse visual impact that would ordinarily be expected from such a use located elsewhere in the BR zone. The upper floors would be visible to a very few homes in the County Home Park Community since the building pad would be roughly 35 feet below the level of the County Home Park Community. The lower three floors of the building

would be below the eye level of the County Home Park Community. She stated that, if the proposed building were placed on a site level with or above adjacent residential development, then the full building height would be visible. She said the site is unique in that its grade allows the proposed building to be located below the plateau level of the adjacent properties. Ms. Moser also testified that the activities, noise, and movement anticipated from the proposed Continuing Care Facility at this site will actually be less than those that would ordinarily be expected from such a use located elsewhere in the BR Zone. The comings and goings of traffic associated with this type of facility will all occur out of sight and likely out of hearing of the community. This is because these activities will occur significantly below the grade of the existing community. As a result, the noise related activities associated with the use at this site will be significantly less than those that would be ordinarily expected from a similar use located elsewhere in the BR zone.

Ms. Moser testified as to the conditions set forth in § 502.1. a, d, f, and g. Specifically, the proposed use will not tend to overcrowd the land or cause undue population concentration, or interfere with adequate light and air; the proposed use is consistent with the spirit and intent of the zoning regulations and will not be detrimental to the health, safety and general welfare of the locality involved.

Mr. John Seefried, an expert in land development and civil engineering, testified as to the conditions set forth in § 502.1. b, c, e, and h. Specifically, none of the following adverse impacts – traffic congestion, potential hazards from dangers, or interference with adequate provisions for public services, will be greater at the subject property as a result of the proposed Continuing Care Facility than those that would ordinarily be expected from such a use located elsewhere in

the BR zone. He also stated the proposed development meets all applicable environmental protection regulations.

Several Protestant witnesses testified. David Jordan, 120 Gibbons Boulevard. has lived there for 17 years. He is current President of the County Home Park Association and has been since 1995. He circulated a resolution to members of the community through a newsletter, and the majority of the responses were not in favor of the current plan. Hence, the community association took up the appeal in this case.

Mr. Stephen Weber, 9801 Van Buren Lane, has lived there for 22 years. Mr. Weber was speaking as a citizen and also on behalf of the County Home Park Community Association. CHPCA formed in 1991, 73 members in all, all single family homes (1 duplex on Gibbons Blvd.). Most homes were constructed in the 40's, most are ranch style. Homes closest to the site are on private water and sewage. Concerns of the CHPCA are with the height and length of the proposed building. Existing businesses are not affecting homes on Gibbons Boulevard. Mr. Weber did a study of business zones surrounded by lower density zones, mostly in the Cockeysville and Timonium area. He observed building heights up to four stories. He has no objections to the proposed building use; his concerns are with the visual change impact. He feels the proposed building will overcrowd the land and have an impact on properties located adjacent to the rear of the proposed site. He also testified that he could not see the property from his home.

Several other witnesses on behalf of the Protestants testified about concerns with noise, visual, safety, and property resale impacts.

The Protestants proposed that the property is subject to the Residential Transition Area (RTA) regulations found in BCZR § 1B01.1.B. This Board feels that the RTA regulations do not apply outside the DR zones. In conclusion the Board considers the RTA issue moot.

With regard to the allowable building height, Petitioners' Ex. #7, a letter executed by John L. Lewis of the Baltimore County Department of Permits and Development Management, states that the maximum building height allowed is 60 feet.

After review of the testimony and evidence, this Board through a majority finds that the Petitioners have met their burden and will grant the special exception relief to approve a Continuing Care Facility in a BR zone for property located on the north side of East Padonia Road, east of Greenside Drive. However, the subject property will have the following restrictions, which are conditions precedent to the relief granted herein:

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 same property to its original condition.

2. The Petitioners shall be required to submit elevation drawings of the building to the Office of Planning and the citizens who attended the hearing. The citizens shall have an opportunity to comment on those drawings and discuss them with the representatives of the Office of Planning. However, it shall be the final decision of the Office of Planning as to the approval of these elevation drawings.

3. The petitioners shall be required to submit a lighting plan to Avery Harden, Landscape Architect for Baltimore County, for approval. In addition, the Petitioners shall submit a landscape plan to Mr. Harden for his review and approval which shall include landscaping both on the Petitioners' property, as well as on the property of Gary and Tricia Lay, in the even the Lays give permission for such landscaping to be installed on their property. Screening placed on the property owned by Mr. & Mrs. Lay will be more effective than any screening or landscaping that will be placed on the Petitioners' property, given the change in elevation between the two sites. Therefore, only if the Lays give permission shall the Petitioners be required to install landscaping on their property. In any event, the landscaping plan approved by Mr. Harden shall take into consideration both landscaping on the Petitioners' property, as well as landscaping on adjacent property.

4. The Petitioners shall be required to install appropriate safety fencing around the retaining walls to be used on the property. The design and location of this safety fencing shall be reviewed by Mr. Avery Harden, Landscape Architect for Baltimore County.

5. The Petitioners shall be required to minimize the amount of mechanical equipment to be installed on the roof of the building. In the event any mechanical equipment is actually placed on the roof of the building, it shall be shielded so that the sound of the equipment itself will not cause a nuisance to surrounding residents.

6. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions included in this Order.

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 13th day of August, 2003, that the Petitioners' request for special exception for a Continuing Care Facility to be located on the north side of East Padonia Road, east of Greenside Drive be and is hereby **GRANTED,** subject to the following restrictions, which are conditions precedent to the relief granted herein:

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 same property to its original condition.

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5. The Petitioners shall be required to minimize the amount of mechanical equipment to be installed on the roof of the building. In the event any mechanical equipment is actually placed on the roof of the building, it shall be shielded so that the sound of the equipment itself will not cause a nuisance to surrounding residents.

6. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions included in this Order.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Melissa Moyer Adams

Richard K. Irish

8/13/03

IN THE MATTER OF THE APPLICATION OF JOHN MANGIONE, ET AL –PETITIONERS FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE N/SIDE OF EAST PADONIA ROAD, EAST OF GREENSIDE DR. (LORIEN PADONIA)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	Case No. 01-283-X

* * * * * * * * *

DISSENTING OPINION

This writer respectfully dissents from the Majority decision in this case. There are some cases which the Board hears relative to requests for special exceptions that, after hearing all the testimony and evidence, are so close as to the merits of the case presented, and the application of the law to the facts, that making a final determination is a difficult one for the panel members. This was such a case in determining whether or not the Board should grant the Petitioners' request for a special exception to develop a continuing care facility on the proposed site.

The basic decision, however, must be made without emotion as to the benefit to society that would be achieved if granted or denied – in this case, the continuing care facility. Ultimately, the case must be decided on two factors:

1. Did the Petitioner, based on the testimony and evidence presented by the Petitioners satisfy the preponderance or weight of the evidence to establish his case; and, if so,

2. Were the legislative requirements of BCZR § 502.1 satisfied as well as the judicial requirements set forth in the leading case of *Schultz v. Pritts*, 291 Md. 1 (1981)

In the instant case, this writer believes that, while the Petitioner produced a meritorious case, it fell short on the "preponderance" factor and the *Schultz* case as to whether the proposed use has adverse effects "above and beyond those inherently associated with such uses, regardless of its location within the zone."

There are a number of relevant factors which the Majority panel, I believe, failed to take into consideration in their decision-making process. Initially, the property containing 5.576 acres (+/-) is split-zoned B.L, B.R., D.R. 3.5 and D.R. 16. The Petitioner is proposing to build on the site a building six stories in height on the south façade; and five stories high on the north façade. Once constructed, the Petitioners are preparing to operate a "continuing care facility" consisting of 56 beds for nursing home usage, and an assisted living facility with 139 units. The amended proposed height of the building would be 60 feet, with a length of 260 feet. It is significant to note that originally, during negotiations with the local community associations, the proposed building was limited to one story less in height and 20 feet less in length, which is clearly reflected on the Petitioners' red-line plan (Petitioner's Exhibit No. 6). It was only after the public hearing commenced that the Petitioner decided to make the expansion. While the Petitioner makes the compelling argument that "petitions may be amended before the Board of Appeals," in its Brief, page 13, and the Board agreed with the procedure as being lawful, nevertheless this Board member takes a dim view of such amendments, even though the Board does have discretion to allow such amendments to Petitioners' Plan based on the "de novo" hearing at which the Board entertains such cases. There is a fundamental process that is involved with such amendments which is prejudicial to the opposing side.

Community groups, or individuals, do not have the vast resources, funds or time that Developers, such as the Petitioners, possess to counter new documentation which such groups were originally led to believe they were opposing. The vast documentation produced by the Protestants, i.e., resolution, People's Counsel Exhibit #6, and the extensive study, People's Counsel #7, involved immense time, effort, resources and financial engagement to produce a very fine presentation as to why the special exception should not be granted. <u>These were all based on the original plan</u>, with at least one schematic drawing of the outline of the facility atop the hill based on the original height of 50 feet before the Petition was amended. The Petitioners'

response is that "public notice that is provided for in a special exception does not include any information regarding proposed structure's dimensions," while citing *Cassidy v. County Board of Appeals*, 146 A.2d 809 (1958), which involved a reclassification petition that eventually evolved into a special exception being granted.

While the amendment involved did not involve the "use" requested, nevertheless, there is a question of the "spirit and intent" of the law that dictates the ability of the public, and more importantly, the protestant's ability to prepare for the hearing. The Petitioners argue that the Protestants had 5 months to complete the preparation of their case. Was this a sufficient time for Protestants to prepare the case? It all depends on "who has the most toys, wins." In this case, who has the most resources to win? The Petitioners or the Protestants!

While the Petitioners clearly amended their plan on November 13, 2002 at the County Board of Appeals hearing, this was the first opportunity that the Protestants had seen the amended Petition and site plan. Would not fairness dictate that "within the spirit and intent" of the law, Petitioners at least have the courtesy to notify the Protestants of the change, considering the fact that good faith negotiations were ongoing between the parties subsequent to the Deputy Zoning Commissioner's ruling approving a special exception on March 16, 2001. As reflected in the Brief submitted by People's Counsel, substantial delay before the initial County Board of Appeals hearing of November 13, 2002 and the Deputy Zoning Commissioner's approval of March 16, 2001 "was attributable to discussions between the Petitioners and the community, which unfortunately did not bear fruit." Failure on the part of Petitioners to disclose the amended plan is a factor which, to the writer, materially affected the presentation of the case put forth by the Protestants. Significant is the support that is provided by Petitioners' Exhibit 7, a letter dated August 1, 2002, executed by Mr. John Lewis of the Baltimore County Department of Permits & Development Management, who agreed with Mr. John Seefried, an accepted expert in land development and civil engineer, that BCZR § 302 provides that residences located in

business zones are governed by the height and area regulations for the predominant residential zone, including residential zones adjoining the property.

Mr. Seefried testified that the predominant residential zone immediately adjoining the property was zoned D.R. 16. Mr. Lewis's letter of August 1, 2002 agreed that the allowable building height for the proposed building was 60 feet. This writer does not disagree that the building regulations are constrained to rely on the official 2000 Comprehensive Zoning Map; however, comment must be made to inter-office correspondence dated March 27, 2003, addressed to Board Member Lawrence Wescott, from Arnold F. "Pat" Keller III, Director of Planning. Significantly, this correspondence was "received post-hearing day one" on March 31, 2003. The Board concluded its third day of hearing on April 3, 2003. The contents of the letter are quoted in its entirety:

> TO: Lawrence S. Wescott, Chairman [sic] DATE: March 27, 2003
> Baltimore County Board of Appeals
>
> FROM: Arnold F. "Pat" Keller, III
> Director, Office of Planning
>
> SUBJECT: Mangione Property
>
> The Office of Planning has reviewed the applicant's request based upon our notice of a potential zoning anomaly. This particular matter was not considered by this office when staff comments were submitted to the zoning Commissioner. What is more, the request was modified to [sic] subsequent to the filing of the appeal. It appears that the Petitioner is opining that a small sliver of BR zoned land on properties in separate ownership provides an opportunity to extend the height of the structure proposed for the site. The Office of Planning is of the opinion that commercial zoning was not meant to be applied to this small sliver of land. Clearly, the zone line and properties lines should be coincident. The small sliver of commercial zoning located on a portion of the adjoining residential properties does not constitute commercialization of those properties and does not warrant a height increase. [Emphasis supplied.]
>
> The Office of Planning will be raising a staff issue to correct this problem as part of the 2004 Comprehensive Zoning Map Process. As part of the process, all interested parties will be notified as required as set forth in the Baltimore County Code.

Significant is the comment that "the small sliver of commercial zoning located on a portion of the adjoining residential properties does not constitute commercialization of those properties and does not warrant a height increase." Also significant is the fact that "this particular matter was not considered by this office [the Planning Office] when staff comments were submitted to the Zoning Commissioner."

My observation is that there are times when the equitable demands of "the spirit and intent of the law" are more compelling than the actual law itself.

It is of utmost important to note that the most compelling objection to this special exception request was not the desire to exclude an assisted living /convalescent home combination from the proposed site. The Protestants have acknowledged the diverse area in which the proposed site is located. Again, it is not the use that drives the opposition to the project but rather the "size, scale, and specific location" that causes the major concern of the Protestants. As in the case of *Schultz*, a funeral home special exception carries with it certain adverse effects, and, as in *Mossberg*, 107 Md.App. at 222, "such general conditions are themselves subject to the limitation that adverse effects must be greater than or above and beyond the effects normally inherent with such a use anywhere in the relevant zone in the regional district."

There is no question on either side that the proposed structure at location selected is massive, six stories high, 60 feet in height at the north side; and 70 feet high at the south side – 260 feet long placed on a plateau in the northern section of the property, almost on the top of a hill, and in proximity to the Country Home Park residential area. It was undisputed that the proposed building would completely dominate the landscape and be visible from virtually every direction. This Board Member was particularly impressed by the work of Mr. Stephen Weber, and his comparative study (People's Counsel Exhibit 7). Having read the prior Mangione case (85 Md. 738) (1991), this writer was tremendously impressed with the "comparative study"

undertaken by Mr. Weber on behalf of the Protestants. This extensive "comparative study" consists of 45 pages and represents one of the finest citizen efforts to establish their case in the 8½ years this writer has served on the Board of Appeals.

In my evaluation, it was more convincing than the expert testimony offered by the Petitioners and referenced in the Majority Opinion and should have weighed more heavily as to the uses to be observed on the business zones and the "significantly less impact than that by the proposed continuing care facility."

This writer is fully aware that, upon review by a higher adjudicatory, that this is limited in nature to determine "whether or not substantial evidence is present to justify the decision of the Board Majority," and "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached," and need not and must not be either a judicial fact-finding or substitution of judicial judgement for agency judgement." *Holbrook*, 314 Md, at 218 (quoting Supervisor of Assessments v. Ely, 272 Md. 77, 84 (1974)). The duties given the Board are to judge whether or not the neighboring properties in the general neighborhood would be adversely affected, and whether the use in the present case is in harmony with the general purpose and intent of the plan (*Schultz, 291 at 11).*

It is the writer's conclusion that, the Petitioners, who had the burden of establishing this case, failed to do so on the basis of the testimony and presentation of the evidence.

The Board heard evidence from experts provided by the Petitioners in the form of Mr. John Seefried, a professional engineer and accepted as an expert in land development and civil engineering, and Ms. Melanie Moser, an expert in the field of land planning, development and zoning. Both of them testified in a superficial manner that the proposed site met the requirements of § 502.1(b), (c), (e), (h), that is traffic, potential dangers, overcrowding of land, etc. These were countered by several witnesses from the immediate community and community organizations. David Jordan, Gary Lay, Theresa Land and Michael Noppenberger, who added

support to Mr. Weber's testimony and study relative to why the enlarged use would be detrimental to the immediate neighborhood, property enjoyment, and, potentially, property values. Admittedly, the writer finds no disagreement with their observations. What the writer considers to be the most compelling factor that was not taken into considerations by the Majority panel is best stated in the "Comparative Study" (People's Counsel Exhibit #7) undertaken by the Protestants, County Home Park Community Association, and is best left to be presented as originally submitted into evidence by Mr. Stephen Weber on behalf of the Protestants.

> In comparing the impacts of the proposed Continuing Care facility on the adjacent DR 3.5 single-family homes and be able to adequately assess the impacts that business zones have on such residential properties, it is necessary to consider the existing impacts that such business zones have. In granting a special exception for this facility, it should be found that this use will have no greater impact on the adjacent residential properties than if the property were developed with a use as allowed outright with no variances or special exceptions.
>
> To form a basis for the impacts such businesses have, we examined and cataloged every BL, BM, & BR zone which is adjacent to a DR 1, DR 2, and/or DR 3.5 zone between Park Heights Avenue and Harford Road in the central corridor of Baltimore County. Basically this is observing how each business zone that is located adjacent to a low-density residential zone is being used. The attached report provides seven zoning maps (Z1 thru Z7) with all the applicable business zones highlighted and indications of where photographs were taken of each site (direction & location). Descriptions are provided under every photograph indicating what is in each of these areas. [**See People's Counsel's Exhibit #7 for referenced "attached report."**]
>
> Upon examining the full study, we have concluded that all of the uses observed on these business zones have significantly less impacts than that proposed by the Continuing Care facility. The proposed facility's height and mass cause the building to have an unusually adverse and unique impact on what is currently a very isolated rural-type community. The topography adjacent to our neighborhood and on the subject site is a key element in the impacts to which we would be subjected and is a key element in how this neighborhood has been protected from all the business activity that is near it. The fact that the site is steeply sloped would essentially cause all uses to be built at an elevation significantly below the adjacent homes. Of all the buildings examined, it is typical that buildings on these business zones are one and two-story buildings. If such a building were built on this site, it would not present any unusual impacts since the top of the building would still be below the houses on top of this hill. When examining nearly 40 sites in the subject corridor, only one building stood out as being somewhat prominent in the surrounding landscape. It is a 4-story office building at the southwest quadrant of Providence Road at the Beltway and

it is the tallest building in the subject business zones. However, when comparing the mass of this building against the mass of the proposed Continuing Care facility, we find that proposed building is **FIVE** times the volume of what is currently the tallest building in the central corridor on the subject business zones. *A more detailed examination of this building is provided following the pictures after Page Z5 and it is strongly recommended that this be read.* **[See People's Counsel's Exhibit #7 – Page Z5.]** In addition, besides the proposed building being 5 times larger, it is also 60% closer to the nearest house, making the building even more impactive and extremely overpowering. The fact that the proposed building is also 6 stories tall makes it actually dominate the rear yards of these properties. [Emphasis added.]

If the existing BR site were used for something allowed outright, like an office building, the impacts would also be far less. Currently, this site provides a total of 135 parking spaces. Based on the Baltimore County zoning requirements, this would allow for an office building with a total gross floor area of 40,900 square feet. Based on the same approximate proposed footprint for the proposed building, this would allow only a 2-story office building. The fact that the petitioner is requesting a special exception to allow a building that requires significantly less parking than normally required thus allows him to propose a building of substantially greater size, height, and mass than would be allowed by the BR zoning regulations outright. The same would be the case for other typical uses of BR property due to the significant topographical constraints of the site along with the environmental constraints closer to Padonia Road.

Therefore the granting of the special exception would actually create an unusual adverse impact on the adjacent residential properties, over and above what would normally occur with such zoning. The fact that the Zoning Commissioner granted a special exception which would allow for the construction of a building 5 times the size of the current tallest building on the subject business zones in the central corridor would seem to clearly speak to the fact that his proposal is quite unique and a definite exception to what is normally seen throughout the County. It is also 2 ½ times the size of the largest area building in any non-industrial zone. However, the height of the building, which would be towering over everything in this area (residential and commercial) is only another factor that appeared to be ignored by the Zoning Commissioner.

In addition, attached at the back of this study is a copy of the Community Conservation Area map from the 2000 Master Plan. **[See People's Counsel's Exhibit #7 for attachment.]** The intent of the County Council is [sic] adopting this portion of the Master Plan is to insure the viability of old residential neighborhoods and to take actions to strengthen those communities to insure that they remain stable. Back in 1990, the Council indicated that the County should require a compatibility review for infill development in community conservation areas. (Item B.3., attached) **[See People's Counsel's Exhibit #7 for attachment.]** Development of this parcel is definitely infill since there is development surrounding the site. Besides the findings that would need to exist to prove that the granting of a special exception would not create an unusual adverse impact on the adjacent residential properties, over and above what would

> normally occur with such zoning, the findings should also find that this infill development is **compatible** with the adjacent residential low-density housing. It is our belief that such findings are impossible and that the preponderance of the existing uses on similar business zoning parcels proves that this special exception should not be granted. [Emphasis added.]

The Majority Opinion fails to state with specificity why the impact at the subject location would be no greater here than elsewhere in the zone other than that based on the expert testimony of Ms. Moser and Mr. Seefried. Again, it is not the use to which the Protestants object as to the site, but that the size and scope of the building that would house the "use" that creates the adverse impact at the subject site in relationship to other sites within the zone. It is the Majority view that the testimony and evidence submitted by the Petitioners was more compelling and convincing than that of the Protestants. It is fundamental in hearings such as the one which was presented to the Board in this case that the standard is "whether neighboring properties in the general neighborhood would be adversely affected" and "that the applicant has the burden of producing testimony which will show that his use meets the prescribed standards...." The proposed use must not cause "harm or disturbance..." or disruption of the harmony of the comprehensive plan."

The Court of Special Appeals has noted that expert testimony is only as valid as are the reasons for the basis of his /her opinions, or other supporting facts relied on by him/her, are substantive and strong enough to do so. *People's Counsel v. Beachwood*, 107 Md.App. 627, 678 A.2d 484, 495 (See also *Mayor & City Council of Rockville v. Henley*, 268 Md. 469, 473-474 (1973))

The file will reflect that the Board was offered the CV of Mr. Seefried (Petitioners' Exhibit #4) and the CV of Ms. Moser (Petitioners' Exhibit #9) and a Vicinity Map by Daft, McCune & Walker (Petitioners' Exhibit #10) and four photographs (Petitioners' Exhibit 11A through 11D) of other such facilities – but nothing substantive from the experts except as recited in the Majority Opinion (reference Majority Opinion, pgs 2 and 3). In order to pass the "expert"

test, there must be more than "opinion"; there must be substantive facts or evidence to support those conclusions.

It is this writer's conclusion that the Majority of the panel failed to take into consideration the zoning and character of the surrounding neighborhood. As indicated in the Brief submitted by People's Counsel, there is no genuine dispute that the proposed facility borders the County Home Park residential area to the north. Mr. Stephen Weber drew the boundaries on the zoning map (People's Counsel's Exhibit #4). He identified the residential area east to Greenside Drive as the rural residential setting which is most affected. It extends to the County Home Park and Alms House on the north and the Dulaney Valley Memorial Gardens to the east. It occupies the hill above the more intense mixed-use area to the south, which focuses on Padonia Road. The residential area is zoned D.R. 3.5 with the exception of one spot of R.O. zoning along Greenside Drive. It consists of single-family homes, mainly on ½ acre lots. It is unusual in that these homes are served by private water and sewer.

To quote from People's Counsel's Brief, "in a nutshell, County Home Park is a residential jewel adjacent to an area of more intense development. Despite its proximity to this development, it is protected up to now by topography and its Greenside Drive access." Petitioners' planner, Melanie Moser, did not dispute the rural description of County Home Park. Indeed, she saw it as isolated from the area along Padonia Road. But she had to admit that it is the relevant adjoining area for consideration of land uses.

People's Counsel also identifies that the County Home Park area and the neighboring Padonia Road corridor as testified to by Mr. Weber are "two very different areas within the same general neighborhood." The subject property poses particular problems for the adjoining residential neighborhood because of its location and topography. It is the only property of the three which has a lengthy border with the County Home Park area. Even more importantly, its buildable area is atop a hill, in contrast to Fox Chevrolet and the nearby office building, which

are at a much lower elevation. Based on geography alone, the proposed use of the subject property is more likely to have an adverse effect here than at other properties in the zone.

While the Majority was impressed by the expert testimony offered by the Petitioners, one must also take into consideration the testimony and evidence submitted by lay individuals as recognized by the higher courts in the State of Maryland. Significantly, the Protestants surveyed, analyzed and photographed uses in other business zones in northern and central Baltimore County which adjoin low density residential zones. They also described other continuing care facilities and assisted living facilities in residential zones. (Reference People's Counsel's Exhibits #6, #7 and #8.) As to other business zones, the documents show that the proposed continuing care facility's size, height, length and mass far exceed that of uses permitted by right in the other business zones reviewed. Mr. Weber testified that the higher parking requirements for business uses usually lead to smaller buildings and also demonstrated to the Board that the prominent location of the subject site would make the facility very visible for a great distance. The evidence submitted to the Board also examined other continuing care and assisted living facilities in residential areas, and the evidence, at least to this Board member, indicated that the great majority were much smaller in scale and not located on a hill. The evidence submitted did reveal other large facilities but also indicated that they were distinguishable, which include Edenwald, adjoining the Towson Town Centre, Goucher College, the Sheridan Hotel and mid-rise condominiums, and at a great distance from any single-family homes; Blakehurst on a campus like setting, not so high or massive, set back from neighboring homes, subject to an agreement with the nearby Ruxton/Riderwood community (reference *Blakehurst v. Baltimore County*, 146 Md.App. 502 [2002]); College Manor, a longstanding building on a campus-like setting on Seminary Avenue and not so large; and Oak Crest Village, set back on a large campus.

In comparing the testimony and evidence of both the Petitioners and Protestants, it is this Board member's conclusion that all comparisons indicate that the location and intensity of the

proposed use do produce adverse impacts above and beyond those inherently associated with the use and that the Majority opinion failed to adequately give the credible weight which the law requires to the testimony and evidence offered by the Protestants and essentially on the unsubstantiated evidence offered by the "experts."

Charles L. Marks, Member
County Board of Appeals of Baltimore County

DATE: August 13, 2003

County Board of Appeals of Baltimore County

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

August 13, 2003

David L. Jordan, President
County Home Park Community Assn., Inc.
120 Gibbons Boulevard
Cockeysville, MD 21030

RE: *In the Matter of: Louis, John, Nicholas and Mary Mangione* /Case No. 01-283-X

Dear Mr. Jordan:

Enclosed please find a copy of the Majority Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of Mr. Marks' Dissenting Opinion.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco /tks

Kathleen C. Bianco
Administrator

Enclosure

c: Gary & Tricia L. Lay
G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Louis, John, Nicholas & Mary Mangione
John Seefried /DMW
Stephen Weber
David MacCubbin
Rhoda Wolfe-Carr
Health Policy Analyst /Md Health Care Commission
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

Case No.01-283-X

SE – To approve a continuing care facility in a B.R. zone

3/16/2001 – DZC's Order in which requested Petition for Special Exception was GRANTED with restrictions.

9/07/2001 –Notice of Assignment sent to following; assigned for hearing on Thursday, December 27, 2001 at 10 a.m.:

David L. Jordan, President /County Home
Park Community Assn, Inc. and Gary & Tricia L. Lay
G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Louis, John, Nicholas & Mary Mangione
John Seefried /DMW
Stephen Weber
David MacCubbin
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

12/10/01 – Request for postponement from Jennifer R. Busse, Esquire, on behalf of Petitioners – both parties have agreed to postpone.

12/14/01 – Notice of PP and Reassignment sent to parties; reassigned to Wednesday, May 8, 2002 at 10:00 a.m.

4/22/02 – Letter from G. Scott Barhight – requesting postponement of 5/08/02 as agreed by parties. T/C to D. Jordon and M/M Lay to confirm same. Upon confirmation, will postpone and reassign to next available date.

4/23/02 – Confirmation of agreement to postponement received by telephone call from David Jordan. Hearing date to be reassigned and notice sent.

4/25/02 – Second Notice of PP and Reassignment sent to parties; reassigned to Wednesday, August 14, 2002 at 10:00 a.m.

6/25/02 – Letter from Scott Barhight requesting postponement of 8/14/02 hearing date by agreement of parties; ongoing negotiations; request reset 2 to 3 months after August.

6/26/02 – Third Notice of PP and Reassignment sent to parties; case reassigned to Wednesday, November 13, 2002 at 10:00 a.m.

11/13/02 – Concluded hearing day #1 (Marks, Adams, Irish); tentative 12/04/02 for day #2 (awaiting confirmation from counsel in 12/04/02 scheduled case re pulling from docket). Upon confirmation of availability, will send notice for day #2; if 12/04/02 is not possible, new day #2 will be selected and notice sent.

11/14/02 – Confirmed availability of 12/04/02 for day #2; Notice of Assignment, Day #2 sent this date to all parties; assigned for Wednesday, December 4, 2002 at 10:00 a.m.

11/21/02 – Motion to Dismiss or for Remand filed by People's Counsel for Baltimore County; awaiting response from S. Barhight (scheduled for Day #2 on 12/04/02).

12/04/02 – Board convened for Day #2 (C.M.R.); concluded day #2; to be assigned for third day of hearing (attempting to utilize 12/19/02; will notify parties by notice if this can be done; otherwise, will be assigned to 4/03/02).

12/10/02 – Notice of Assignment /Day #3 sent to parties; assigned for Thursday, April 3, 2003 at 10:00 a.m. (Mr. Barhight unavailable on 12/19/02).

3/31/03 – Memo from Pat Keller, Planning Director, to L. Wescott – Office of Planning comments re this matter.

4/03/03 – Board convened for day #3 (C.M.R.); completed case this date. Memos due from counsel on 5/05/03; deliberation assigned for Thursday, May 29, 2003 at 9:00 a.m. Notice sent this date; FYI copy to C.M.R.

5/05/03 – People's Counsel for Baltimore County's Memorandum filed by Mr. Zimmerman; letter filed by David Jordan, President of County Home Park Comm Assn, supporting People's Counsel's Memo; and Petitioners' Memorandum in Lieu of Closing Argument filed by G. Scott Barhight, Esquire. Copies to be sent to C.M.R. for 5/29/03 deliberation.

5/07/03 – Copies of above memos sent to Marks, Adams and Irish; deliberation to take place on 5/29/03 at 9 a.m.

5/29/03 – Board convened for Deliberation (5-6-7); Granted special exception by Majority (Irish and Adams); Marks Dissented; Majority Opinion /Order and Dissent to be issued. Appellate period to run from date of written order.

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:	Louis, John, Nicholas and Mary Mangione Case No.: 01-283-X	
DATE:	May 29, 2003	
BOARD/PANEL:	Richard K. Irish	RKI
	Charles L. Marks	CLM
	Melissa Moyer Adams	MMA
RECORDED BY:	Theresa R. Shelton / Legal Secretary	

PURPOSE: To deliberate the Petition for Special Exception filed Louis, John, Nicholas B. & Mary C. Mangione; requesting a SE to approve a continuing care facility in a BR zone.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

Motion to Dismiss/Remand

- Took amendment under consideration/advisement
- case has been ongoing for two years; there has been sufficient time
- height/length is not a fatal defect/impact is the same

502.1

- Difficult case/Excellent Briefs/
- Same cases cited by both sides in Memorandums to support each position
- law plainly states what can occur/need to apply the facts to the law
- will special exception cause adverse conditions and how do they impact
- look at testimony of experts/exhibits and also community input
- location – site – size – scope
- is it harmful if it were anywhere else in the zone
- site is definitely unique
- visibility of building and levels due to topography
- commercial area; apartments in front of proposed building
- comparison to Oak Crest, which is surrounded by nothing but residential; and that building is big
- some area are more residential; this area is more commercial
- location is zoned BL and can petition for Special Exception
- are the adverse affects greater here then any other
- was there sufficient evidence/testimony provided for the petitioner to prove that this building will have no adverse affect here than elsewhere in the zone
- wooded areas can always be developed in BL zone
- if anywhere else in BL zone you would see all six stories

- discussed comparison studies
- future re-zoning can not be considered
- Did Petitioner meet the burden that impact was no greater than at any other site in BL zone
- determining factor is facts
- the uniqueness of the site makes the impact less

DECISIONS BY BOARD MEMBERS:

RKI Petitioner established sufficient proof that the impact of this building was no greater than any other site in the BL zone; therefore Special exception is GRANTED

MMA Petitioner established sufficient proof that the impact of this building was no greater than any other site in the BL zone; therefore Special exception is GRANTED

CLM Petitioner did not established sufficient proof that the impact of this building was no greater than any other site in the BL zone; therefore Special exception is DENIED

FINAL DECISION: MAJORITY OPINION by the Board of Appeals that the Petition for Special Exception filed Louis, John, Nicholas B. & Mary C. Mangione; requesting a SE to approve a continuing care facility in a BR zone is AFFIRMED.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted,

Theresa R. Shelton
County Board of Appeals

5/5/03

RE: PETITION FOR SPECIAL EXCEPTION N/S East Padonia Road, 360' E of Greenside Drive (Lorien Padonia) 8th Election District 4th Councilmanic District	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	FOR
Legal Owners: Louis Mangione, John Mangione, Nicholas B. & Mary C. Mangione Petitioners	*	BALTIMORE COUNTY
	*	**Case No. 01-283-X**

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MEMORANDUM

Introduction

Petitioner requests a special exception for a continuing care facility on the north side of Padonia Road, 360 feet east of Greenside Drive.

The case comes to the County Board of Appeals on a *de novo* appeal by the County Home Park Community Association (David Jordan, President), and Gary and Patricia Lay, nearby residents. People's Counsel and other neighboring residents, including Stephen Weber and Theresa Land, participated in the proceedings. Louis Miller, a citizen active in the Greater Timonium Community Council and land use issues in the area, appeared on his own behalf.

The case began before the Deputy Zoning Commissioner, who approved the special exception on March 16, 2001. The substantial delay before the CBA hearing is attributable to discussions between the Petitioner and the community, which unfortunately did not bear fruit.

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BALTIMORE COUNTY
BOARD OF APPEALS

The property occupies 5.562 acres and is zoned primarily B.R. (4.74 acres) with fractions of B.L., D.R. 16, and D.R. 3.5. For the purposes of this case, we will call the zoning B.R. That is where the main use and building are proposed.

A continuing care facility is, by definition, a combination of an assisted living facility and a convalescent home. BCZR 101. It is not directly an enumerated use in the B.R. zone. BCZR 236. But it is allowed by incorporation of uses " permitted and as limited in the adjoining residential zone." BCZR 236.1 (B.R. incorporates B.M. zone use), BCZR 233.1 (B.M. incorporates B.L.), 230.1 (B.L. incorporates adjoining residential zone). Here, there are several adjoining residential zones, the most protective of which is D.R. 3.5. A continuing care facility is allowed by special exception in all of the residential zones. BCZR 1B01.1C.25 (See BCZR 432).

The complex nature of the definition of the use and the incorporation of residential uses in the B.R. zones gives rise to a number of legal issues. Other issues surfaced when Petitioner decided to expand the height and length of the building at the CBA level. While the CBA Chair justifiably focused on Schultz v. Pritts and the special exception inquiry at the conclusion of the hearing, the case presents other interesting and important issues.

At the outset, it is helpful to underline that the value of or need for continuing care facilities is not the issue. Indeed, a moderately sized facility at this site would not have triggered opposition. The problem is the size, scale, and specific location of the proposal. The proposed building is six stories high, 60 feet high at the north side and

70 feet high at the south side. It is 260 feet long. It is placed on a plateau in the northern section of the property, virtually on top of a hill and close to the County Home Park residential area. It also will be visible and aesthetically offensive from a great distance to the west.

The case is a kind of sequel to People's Counsel v. Mangione 85 Md.App. 738 (1991). There, the Court of Special Appeals affirmed the CBA's denial of the special exception for a convalescent home in Lutherville mainly because of its size, scale, and impact on the adjoining neighborhood. The citizens of County Home Park viewed the proposal here as excessive even before its proposed expansion. The expansion in height and length only aggravates the harmful impact.

Questions Presented

The first question presented involves jurisdiction, the second focuses on the special exception, and the others focus on specific legal issues:

1. Does the CBA have jurisdiction to review a special exception on appeal where the height and length of the proposed building have both significantly increased?
2. Does the proposed special exception satisfy BCZR 502.1 standards?
3. Does the proposed building satisfy the applicable height standards for buildings permitted in residential zones under BCZR 1B02.2?

4. Insofar as the proposal is, in large measure, an assisted living facility with 132 units, must it satisfy the standards applicable to Class B (new or expanded) assisted living facilities under BCZR 432.5?

5. Does the proposed facility have to satisfy residential transition area standards under BCZR 1B01.1B?

ARGUMENT

I. JURISDICTION

We have already stated our position in the Motion to Dismiss or to Remand. It is impermissible to enlarge the scope of the proposal in midstream. The public notice at the zoning commissioner level sets the parameters of the case. Notice is an element of procedural due process of law. It is incorporated in the Express Powers Act, Article 25A, Sec. 5(U), Maryland Code, in County Charter Sec. 603 for the Board of Appeals, and Code Sec. 26-127 pertaining to zoning commissioner hearings. It is unacceptable for the Petitioner to add a story to the building and lengthen it by 20 feet. It breaks the established boundaries of the case. It sets an unacceptable precedent for looseness and relaxation in acquiescing to the whims of petitioners.

The situation here is particularly offensive because the expansion came at the hearing. The Community Association prepared its presentation and documents based on the original plan. This includes the Resolution, P.C. Exh.6 and the Comparative Study, P.C. Exh.7, with detailed discussions of the project. For example, Mr. Weber introduced a photograph with a schematic drawing of the outline of the facility atop

the hill. His drawing was based on the original height of 50 feet. It would have shown even more remarkably the adverse aesthetic impact if the height were drawn at the newly proposed 60 feet.

The CBA has reserved on the motion. For the sake of this case and the message sent for future cases, it should reject the proposed expansion for lack of jurisdiction. The legal reasoning and authorities are set forth in more detail in the motion. We incorporate it by reference here.

II. THE SPECIAL EXCEPTION

A. Standards

The CBA has had many special exception cases in recent years. Nevertheless, on each occasion, there is renewed interest in the meaning and application of Schultz v. Pritts 291 Md. 1 (1981). The discussion of the standard of whether "neighboring properties in the general neighborhood would be adversely affected" begins at page 11. It is elementary that "the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards . . ." The proposed use must not cause "harm or disturbance . . ." or "disruption of the harmony of the comprehensive plan."

Judge Rita Davidson explained that, by implication, the harm must be particular, "above and beyond the inherent ones ordinarily associated with such uses" 291 Md. at 14. She illustrated this with examples of cases involving high-tension wires and funeral homes. The inherently offensive, ugly, or depressing aspects of these uses,

wherever they appear, do not warrant denial. Otherwise, a special exception could never be granted. Other the other hand, as she emphasized :

> **These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. 291 Md., at 12.**

The use of examples to understand legal reasoning is critical to Schultz and later cases. In Schultz, the court remanded the case for consideration of the particular harm related to traffic access and safety. Subsequently, in County Comm'rs v. Holbrook 314 Md. 210 (1988), the Court applied Schultz to reinstate a denial of a special exception because of adverse visual impact of a motor home on a residence. In Mangione, the Court of Special Appeals affirmed denial of a convalescent home in a residential zone and explicitly noted that "size and scope of the project are relevant considerations." 85 Md.App. at 747, n.6. In People's Counsel v. Country Ridge Shopping Center 144 Md.App. 580 (2002), the court affirmed the denial of a pawnshop in a shopping center zoned for business use. In each of these cases, there was something particular about the project or neighborhood, which justified denial.

Petitioners often cite Mossburg v. Montgomery County 107 Md.App. 1 (1995) as a case where the law compelled approval of a special exception. There, the proposed transfer station was in a heavy industrial zone on a main road in an industrial corridor. There was no evidence that the use or location posed more problems them any other potential transfer station in that corridor or in any of the three other heavy

industrial zones in the county. Mossburg is simply an example of one situation where the use was typical and did not cause a particular problem.

The most recent special exception decision is Futoryan v. Mayor & City Council 1371 (2003), No. 1371, September Term 2001. There, in affirming the denial of a conditional use (special exception) for an automobile repair garage in a business zone, Judge Charles Moylan discussed in depth the Schultz standard at pages 19-27 of the slip opinion, attached as Exhibit A.

Judge Moylan pointed out that Schultz "... was particularly helpful in clarifying the distinction between a permitted and a merely conditional use (or special exception)." Page 19. The thrust of Judge Davidson's opinion was that particular adverse neighborhood effects tolerated for permitted uses would not be acceptable for special exception. It is thus false to say that a special exception should be approved where it would be no more harmful (or less harmful) than a potential permitted use. It has to be viewed on its merits.

So, where evidence showed how the garage operation was " ... a detriment to the general welfare of the adjoining residential community," it warranted denial of the special exception. Page 21-22.

There followed an illuminating discussion of the "locational comparison" test of Schultz, the inquiry as to whether the proposed use has adverse effects "above and beyond those inherently associates with such uses" regardless of their location within the zone. Futoryan's neighborhood involved an isolated business zone. There was no

other location in that zone to which his property could be compared. There was also a lack of evidence as to how it compared with other business zones around the city. How, then, should the court deal with this part of Schultz which is so often cited?

Judge Moylan explained that Schultz does not dictate automatic approval of a special exception where locational comparison is difficult or impossible. Otherwise, "a mere conditional use would thereby become a permitted use." Page 25.

He observed that other comparisons might also be relevant. A basic point of comparison would be the zoning and character of the surrounding neighborhood. So, a special exception which might be acceptable in a commercial or institutional setting may be unacceptable where the surrounding area is residential. Another point of comparison involves the intensity of the use. Judge Moylan illustrated the point:

> **Even within the same zoning geography, the intensity of the proposed conditional use could also be a factor. A large-scale operation of automobile storage, automobile repair, and body and fender work completely filling, and perhaps spilling over, the entire lot could well be deemed to constitute a degree of adverse influence not constituted by a much smaller automobile repair operation as an auxiliary of a service station. Page 26**

These concepts will be important in our analysis of the current proposal.

B. Analysis

1. The Neighborhood

There is no genuine dispute that the proposed facility borders the County Home Park residential area to the north. Stephen Weber drew the boundaries on the zoning map, P.C. Exh. 4. He identified the residential area east of Greenside Drive as the virtual rural residential setting which is most affected. It extends to the County Home

Park and Alms House on the north, and the Dulaney Valley Memorial Gardens to the east. It occupies a hill above the more intensive mixed use area to the south, which focuses on Padonia Road.

The residential area is zoned D.R. 3.5, with the exception of one spot of R.O. zoning along Greenside Drive. It consists of single family homes, mainly on half-acre lots. It is unusual in that these homes are served by private water and sewer. The County Home Park Association has presented a more detailed description in its Rule 8 documents. P.C. Exh 6.

In a nutshell, County Home Park is a residential jewel adjacent to an area of more intense development. Despite its proximity to this development, it is protected up to now by topography and its Greenside Drive access. Petitioner's planner, Melanie Moser, did not dispute the rural description of County Home Park. Indeed, she saw it as isolated from the area along Padonia Road. But she had to admit that it is the relevant adjoining neighborhood for consideration of land use impacts.

An unusual aspect of this case is thus the extreme contrast between the County Home Park area and the neighboring Padonia Road corridor. Mr. Weber observed that these are two very different areas within the same general neighborhood.

In sum, the County Home Park neighborhood is the relevant adjoining neighborhood for special exception review. The controversy over the proposed continuing care facility surrounds the extent of adverse impact and whether, by virtue

of location and/or intensity, it exceeds that inherently associated with the use elsewhere in the zone.

2. The Zone; Relevant Comparisons

The Futoryan case's guidance on implementation of Schultz is especially helpful here. The subject property is essentially zoned B.R. Unlike the isolated business zone in Futoryan, the B.R. zone here includes the Fox Chevrolet property at the northeast corner of Padonia and Greenside Roads. If we add the 5-story office building at the northwest corner, zoned B.L., to assemble a relevant business zone, this gives us three properties to compare.

The subject property poses particular problems for the adjoining residential neighborhood because of its location and topography. It is the only property of the three which has a lengthy border with the County Home Park area. Even more important, its buildable area is atop a hill, in contrast to Fox Chevrolet and the office building, which are at a much lower elevation. Based on geography alone, the proposed use at the subject property is likely to have more adverse effects than at the other properties in the zone.

There is more. While the evidence did not disclose any other continuing care or assisted living facilities in business zones, the County Home Park Association and Stephen Weber provided other helpful comparisons. They surveyed, analyzed and photographed uses in other business zones in northern and central Baltimore County which adjoin low density residential zones. They also described other continuing care

facilities and assisted living facilities in residential zones. See People's Counsel's Exhibits 6, 7 and 8. We attach the text of Exhibits 6 and 7 to this memorandum as memorandum Exhibits B and C.

As to other business zones, the documents showed that the proposed continuing care facility's size - height, length and mass – far exceeds that of uses permitted by right in the other business zones reviewed. Mr. Weber explained that the higher parking requirements for business uses usually lead to smaller buildings. He also demonstrated that the prominent location of the subject property would make the facility visible and jarring at great distance.

Petitioner did not dispute this as a matter of fact, but objected to its relevance. Its relevance is grounded in Schultz and reinforced by Futoryan. These cases underline that zoning law allows for permitted uses by right which may cause particular adverse impacts. The law tolerates these impacts because of the benefits of the permitted use. If, however, a special exception use produces the same impact, it is likely unacceptable because the use is conditional. It follows logically that where a special exception use produces adverse impacts above and beyond those produced by permitted uses in the zone, then that is a strong factor to weigh against the proposed special exception.

As to continuing care and assisted living facilities in residential zones, the evidence showed the great majority are much smaller in scale and not located atop a hill. The evidence did reveal a few large facilities but showed they were distinguishable. These include: Edenwald, adjoining the Towson Town Center,

Goucher College, the Sheraton Hotel, and mid-rise condominiums, and is at a great distance from any single-family homes; Blakehurst, on a campus-like setting, not so high or massive, set back from the neighboring homes, and subject to an agreement with the nearby Ruxton-Riderwood community, see Blakehurst v Baltimore County 146 Md. App. 509 (2002); College Manor, a longstanding building on a campus-like setting on Seminary Avenue and not so large; and Oak Crest Village, set back on a large campus.

The cumulative effect is to give the CBA a perspective which is helpful in judging the adverse impact of the proposed facility. Schultz and Futoryan encourage comparison wherever feasible. In the present case, all comparisons indicate that the location and intensity of the proposed use do produce adverse impacts above and beyond those inherently associated with the use.

3. Adverse Effects; The Record; The Merits of the Special Exception

As a framework for analysis of the testimony and documentary evidence, we put forth these propositions:

1. As stated in Schultz and repeated in Futoryan, the burden of proof is on the petitioner.
2. Expert testimony must be based on facts and sound reasons, and must not be conclusory or "quasi-conclusory." People's Counsel v. Beachwood 107 Md.App. 627 (1995), cert. denied. 342 Md.472 (1996)

3. Citizen testimony is legitimate where based on valid observations and reasons. Eger v Stone 253 Md. 372 (1969); see Futoryan.

4. Preservation of the character and quality of life in residential neighborhoods is a basic and classic goal of zoning law. Euclid v Ambler Realty Co. 272 U.S. 365 (1926); Eger; Schultz; Holbrook; Mangoine; Futoryan. It accomplishes this goal by dividing an area into districts with uses of appropriate type and intensity to prevent or minimize nuisances and incompatible uses, and to promote a positive land use plan. Euclid, *supra.*

With the above in mind, consider the presentations of the Petitioner and neighboring citizens. Petitioner presented what amounted to an advocacy team of John Mangione and the DMW experts, engineer John Seefried and landscape planner Melanie Moser. Mr. Mangione's testimony was promotional in nature, as is to be expected. Mr. Seefried explained the amended site plan and its engineering details. He went through the paces of BCZR 502.1, but in a perfunctory mode. Ms. Moser gave the planning prospective. She differentiated the highly developed area along Padonia Road from the semi-rural ambiance of the County Home Park residential section, as if they were two different worlds. Her view that the proposal satisfied BCZR 502.1 rested on the premise that the facility satisfied minimum area and height standards. She perceived no impact on the residential area, noting that the hillside would likely obscure two of the six stories on the north side.

In its entirety, Petitioner's case came across superficially, as a routine exercise. Moreover, a close look at Ms. Moser's testimony reveals a false assumption. It misreads

Schultz to say a special exception should be approved simply because it meets area and height standards. This is like the theory (which Schultz rejected) that if a proposed use is no worse than a potential permitted use, then it must be approved. Similarly, it is not enough for a special exception use to meet minimum area and height standards. Otherwise, the special exception concept would merge into the permitted use category.

Rather, the law calls for thoughtful review of the particular adverse effects of the proposed special exception use. To the extent feasible, it calls for comparative analysis to provide perspective. Petitioner's presentation lacked such thoughtful review.

Remarkably as already noted, it was the citizens who provided the detailed evidence and comparative analysis which put in perspective the adverse impact on the County Home Park area, P.C. Exhibits 6 and 7. They identified the disproportionate height, length, mass, and intensity of the proposed use, its proximity to single-family homes, and its prominent location atop a hillside. To be sure, it was helpful that one of the citizens, Stephen Weber, has substantial expertise about Baltimore County neighborhoods and zoning because of his expertise with the Bureau of Traffic Engineering. While not appearing in his official capacity, he was still able to contribute his knowledge. Indeed, it is difficult to remember a past case where any party has contributed such a carefully researched comparative study.

To illustrate, we include these observations from the County Home Park Association Resolutions

> **"The proposed building will tower over the houses in this area and change what is currently a tranquil secluded private area into an area on public display for all those living in the top floors of the proposed building. In addition, the removal of the vast majority of vegetative cover between these homes and Padonia Road will result in increased noise levels from Padonia Road and the adjacent Padonia Road**

Shopping Center. It will also leave the adjacent properties far more exposed to the noise and commotion emanating from the commercial areas below. Changing the entire character of these properties from a very rural pastoral setting to one with a large monolithic structure hovering over them will also significantly reduce the value of these properties and diminish their marketability.

* * *

However, we find that in particular the height and bulk of the building is dissimilar from anything else in the entire area. First of all, it is unique in the size and height of a Continuing Care Facility or an Assisted-Living Facility within the central corridor of the County, specifically with regard to any such use that lies adjacent to single family homes averaging half-acre lots. Most of such facilities in the corridor range from 1 to 3 stories in height where they are located adjacent to single family home developments. One example of a high-rise elderly housing building is Edenwald in Towson, however, it is in a Town Center area adjacent to other multi-story buildings and in view of no single family homes.

The proposed building is entirely out of scale from other Continuing Care or Assisted-Living facilities in the corridor that are located adjacent to low density single family homes and presents a unique situation and is uniquely detrimental to the adjacent residential properties as a result. The building is even out of scale with other commercial structures in the general area. While there is one tall 5-story office building located at Padonia Road & Greenside Drive (which is adjacent to the property zone O-1), the footprint of the building is smaller and the base of the building rests at approximately 400 feet above sea level. As such, the roof of the building is a minimum of 30 feet below the floor level of the homes on the top of the hill and also cannot even be seen due to the vegetation blocking vision of the building even if one tried to look down on it. The footprint of the building is 125 feet X 65 feet with a mass of approximately 16,500 cubic yards. The proposed building however has an average footprint of 240 feet X 80 feet with a mass of approximately 43,000 cubic yards. Thus 160% greater in mass than the largest building in the area. In addition, the top of the building would be at an approximate elevation of 537 feet above sea level, far higher than anything in the entire area. Because the building is located so far off Padonia Road and up the side of the hill, its height and mass will not only make it an overpowering presence to the County Home Park Community, it will also have a commanding presence of the entire valley area between I-83 and Greenside Drive. People will be able to see this building rising above everything for a few miles up and down the York Road corridor.

* * *

We find that the proposed building significantly impacts the adjacent residents and the community in a unique way, primarily due to the height and mass of the proposed building. It is much bigger in mass than any other multi-story building in the area in all the business zones, it's height and mass will make it an over shadowing presence not only for the residents of our community but also will overpower the view of the valley area along York Road, that this Continuing Care facility is significantly larger and taller than any other Continuing Care facility in the Central corridor, and perhaps the County, which is adjacent to existing low density single family homes. The rural setting and isolation of this very old community (which was present when Cockeysville was still a little rural town in the middle of the country) would be forever changed and adversely impacted with the construction of this massive tall structure. It is not compatible with the community in any way and presents a particular hardship on the adjacent residents that would rarely be seen anywhere in the County with the development of a BR site next to a DR 3.5 site which sits 40-60 feet above the BR site. The development of other adjacent business parcels have had no ill effects on these residential properties because they have been developed consistent in a manner with other business zoned property in the area. We ask for the Board to give significant consideration to the compatibility issue and find that if this property must be developed with the use that is proposed, that it be done in a manner which is totally compatible with this old rural community and that hardships would not normally occur in these situations be prevented."

The Comparative Study attached to this memorandum and the testimony of Protestants elaborated on these observations. Mr. Weber's testimony and study were reinforced by the testimony of David Jordan, Gary Lay, Theresa Land, and Michael Noppenberger. As neighboring citizens, they were able to add specific testimony that the facility would be detrimental to their neighborhood, to the enjoyment of their properties, and potentially to property values.

All of the evidence points to the conclusion that the Petitioner's proposal is excessive and will produce adverse effects far above and beyond the effects inherently associated with the use elsewhere in the zone. There is not a single other facility which has such massive

appearance, such prominence, and such proximity to residences. While there are a few other facilities of substantial size, we have seen they are not comparable in location, mass, and impact.

Ultimately, the citizens have proven in detail what appears at first glance to be common sense. The proposed facility is too big, too high, and to close to homes. The size will undoubtedly enable the production of more revenue and profit, but at the expense of the community. It does not belong at this location.

If a facility is to go in at this location, it must be downsized. That is a case for another day. If Petitioner desires a six-story facility with the length approaching a football field, it should find another site where it may fit.

III. THE HEIGHT LIMIT

In the previous section, we assumed the proposal meets height and area standards. We do not, however, concede the point. In raising the height from 50 feet to 60 feet, Petitioner not only ran a foul of procedural ground rules, but also exceeded the relevant height restriction.

The continuing care facility special exception is permitted in the B.R. zone only to the extent it is a "use permitted and as limited in the adjoining residential zone." There are several adjoining residential zones with varying height restrictions. BCZR 102.2 sets the maximum height at 50 feet for buildings in all D.R. zones, except for D.R. 16, which has a limit of 60 feet.

There is no dispute that D.R. 3.5 zoning adjoins this B.R. zone and adjoins this property. In our view, so long as there is any adjoining D.R. 3.5 zone, then the applicable restriction for D.R. 3.5 of 50 feet comes into play.

It is unnecessary to decide which adjoining residential zone is "predominant." The word "predominant" does not appear in the law. Rather, the use is "limited" by the adjoining residential zone, and this includes D.R. 3.5.

In other words, we disagree with the theory of "predominance" assumed by John Lewis of the zoning office in his correspondence. Pet. Exhibits 7 and 8. Even if it applies, however, it is evident that the predominant adjoining zoning (57%) consists of D.R. 3.5 and D.R. 5.5. This is reflected in the original density calculations and chart on Petitioner's site plan. It was disingenuous for Petitioner to change its tune and argue that the predominant adjoining zoning is one thing for density and another for height.

The relevant statutory language refers not to the adjoining property but rather to the adjoining zone. In this context, the sliver of B.R. zoning on neighboring residential properties to the north does not matter, The adjoining residential zone is still D.R. 3.5. The same goes for the paper street to the east zoned B.R. The adjoining zoning remains D.R. 3.5 and D.R. 5.5.

To be sure, the sliver of B.R. zone to the north is an obvious drafting error. See P.C. Exhibits 9 and 10. Likewise, the paper street does not affect the obvious presence of D.R. 3.5 and D.R. 5.5, which adjoins B.R. on the east side.

At the end of the day, the Petitioner has put together a hypertechnical argument, both on the law and the facts, to avoid the height restriction of 50 feet which is dictated by the adjoining D.R. 3.5 zone. This is another example of overreaching and excessiveness in the proposal. In order to support the increase in height, Petitioner needed to file a petition for variance. This did not happen. In any event, there is no legal justification for a variance.

IV. THE CLASS B ASSISTED LIVING FACILITY STANDARDS

The County Home Park Association in P.C. Exh. 6 identified the project as consisting, in part, of a new assisted living facility, a Class B facility under BCZR 101. We agree. As such, it fails to meet several standards under BCZR 432.5B, including the detailed compatibility findings under Code Sec. 26-282 and the required frontage on a principal arterial road. BCZR Sec. 432.5B1d, 432.5B3b.

There have been several zoning commissioner and CBA decisions on the classification of large assisted living facilities, but no judicial decision. A panel of this Board has declined to identify facilities with over 15 residents as Class B facilities. We believe this is contrary to the legislative intent and makes no sense at all in view of the BCZR 432.5 standards.

V. RESIDENTIAL TRANSITION AREA (RTA) STANDARDS

The County Home Park Association also identified a failure to meet RTA standards under BCZR 1B01.1B. Again, we agree. The legislative history of the RTA standards shows that the earlier explicit application to D.R. zones only has been eliminated. See Bill 100, 1970; Bill 124, 1981; Bill 2, 1992. Moreover, insofar as the continuing care facility is allowed in the B.R. zone only because "permitted and as limited in the adjoining residential zones," the RTA law is one of the limitations. Clearly, the purpose of the RTA applies as much to residential uses in business zones as in residential zones.

Recently, in the Oella Mill, LLP case, (I-498, 02-412-SPHA), the CBA declined to apply the RTA to a development in a BM-CCC zone/district. We disagree with that decision, but it is, in any event, distinguishable because of the specific provisions of the C.C.C. District.

BCZR 235A. In the absence of the C.C.C. overlap, there is no reasonable argument to avoid the RTA.

The proposed facility here does not include the setback of 75 feet and the landscape buffer of 50 feet in the RTA to the single family home area to the north of County Home Park. 1B01.1B1e. Petitioner has not tried to comply, and has claimed the RTA is not applicable.

The avoidance of RTA standards is another illustration of the excessiveness of this proposal. Even if the CBA believes that the law provides a loophole to avoid RTA for D.R. zone uses in business zones, there is still the matter of the spirit of the law. Once again, we must ask the CBA to take a hard look at the RTA standards in a business zone setting.

CONCLUSION

For all of the above reasons, the CBA should deny the special exception as legally insufficient.

Peter Max Zimmerman

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People's Counsel for Baltimore County

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of May, 2003 a copy of the foregoing People's Counsel for Baltimore County's Memorandum was mailed to Stephen E. Weber, 9801 Van Buren Lane, Cockeysville, MD 21030 and Scott Barhight, Esq., WHITEFORD, TAYLOR & PRESTON, 210 W. Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioner(s)

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Deputy People's Counsel

May 5, 2003

Kathleen Bianco, Administrator
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of: Louis Mangione, et al.
Case No.: 01-283-X

Dear Ms. Bianco:

Enclosed please find the original People's Counsel for Baltimore County's Memorandum along with three copies of such for filing with regard the above-referenced case.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel

PMZ\rmw

cc: Scott Barhight, Esquire
Stephen E. Weber

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MAY 05 2003
BALTIMORE COUNTY
BOARD OF APPEALS

5/5/03

IN THE MATTER OF:	*	BEFORE THE
Petition for Special Exception Lorien Padonia – N/S East Padonia Rd., 360' E of Greenside Drive	*	COUNTY BOARD OF APPEALS FOR
Louis Mangione, John Mangione, Nicholas & Mary Mangione Petitioners/Legal Owners	*	BALTIMORE COUNTY **Case No.: 01-283-X**

* * * * * * *

PETITIONERS' MEMORANDUM IN LIEU OF CLOSING ARGUMENT

Petitioners, by and through their attorneys, G. Scott Barhight, Jennifer R. Busse and Whiteford, Taylor & Preston, L.L.P., hereby submit this Memorandum in Lieu of Closing Argument, and in support thereof, state as follows:

I. STATEMENT OF THE CASE

On November 28, 2000, Petitioners were granted an exemption from proceeding through the full development process, pursuant to Baltimore County Code § 26-171(b)(9), for a Continuing Care Facility to be located on the North Side of East Padonia Road, east of Greenside Drive (the "Property").

On January 17, 2001, Petitioners filed a petition for special exception requesting approval for a Continuing Care Facility in the BR zone. A hearing was held before the Deputy Zoning Commissioner and an Order granting the special exception was issued on March 16, 2001. The Order was appealed by the Protestants. This Board held hearings *de novo* on this matter on three separate days, November 13, 2002, December 4, 2002, and April 3, 2003.

On the first of these three hearing days before the Board, Petitioners amended their site plan accompanying their petition for special exception to show a building 60' high and 260' long.

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BOARD OF APPEALS

People's Counsel filed a Motion to Dismiss or for Remand on November 21, 2002. The Board granted Petitioner's request to respond to that Motion within this Memorandum in Lieu of Closing Argument. Public deliberation has been scheduled for Thursday, May 29, 2003

II. STATEMENT OF FACTS

The Property is located on the north side of East Padonia Road, approximately 360' east of Greenside Drive. The Property is adjacent to the Padonia Village Apartments (to the east and south) and a car dealership (to the west). To the rear of the Property is the County Home Park Community, a small residential community. To the southwest is a community shopping center. Beyond the car dealership, to the west, are additional office and retail users. The Property contains 5.562 acres, more or less, and is split zoned BL, BR, DR 3.5 & DR 16. The majority of the Property, in fact 4.74 acres, is zoned BR.

Petitioners propose to construct a building six stories high on the south façade and five stories high on the north façade. Within this building, Petitioners propose to operate a Continuing Care Facility comprised of a 56 bed nursing home and an assisted living facility containing 139 units. The height of the proposed building is 60', and the length is 260'.

III. THE SPECIAL EXCEPTION STANDARD AND RELATED ANALYSIS

The Baltimore County Council has determined that Continuing Care Facilities are to be allowed by special exception in DR zones. *See* BCZR § 1B01.1.C. Per the Baltimore County Zoning Regulations ("BCZR"), Continuing Care Facilities are thereby also allowed via special exception in the BL, BM and BR zones. *See* BCZR § 230.2, 233.1 and 236.1. The Maryland Courts of Appeal have clearly explained the standard to be applied in analyzing special exception requests.

A. The Special Exception Standard as Explained by the Maryland Courts of Appeal

Special exception uses are "expressly permissible." *Mossburg v. Montgomery County*, 107 Md.App. 1, 666 A.2d 1253 (1995). "[T]he legislature has determined special exception uses to be

permissible absent any fact or circumstance negating the presumption." Schultz v. Pritz, 291 Md. 1, 11, 432 A.2d 1319 (1981). The fact that special exception uses may have adverse effects at their proposed locations is not an issue involved in the approval of a special exception use.

Special exception uses are recognized to have *inherent* adverse effects. See Mossburg, 107 Md.App. at 8. The conditions imposed on special exception uses and the proper standard used to evaluate their approval was explained in Mossburg. The special exception at issue in Mossburg was for a solid waste transfer station. The Court, recognizing the inherent adverse effects of a solid waste transfer station, stated:

> [I]t is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered by the agency. As Judge Davidson opined in *Schultz*:
>
> The appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects *above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.*
>
> Id. at 22-23, 432 A.2d 1319 (emphasis added). The question in the case *sub judice,* therefore, is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at issue here will have adverse effects at this proposed location. Certainly it will and those adverse effects are contemplated by the statute. The proper question is whether those adverse effects are above and beyond, *i.e., greater here* than they would generally be elsewhere within the areas of the County where they may be established, *i.e.*, the other few I-2 Industrial Zones.

Id. at 8 - 9.

Special exception uses inherently involve factors that many would consider to be detrimental. However, special exception uses are nonetheless "valid". Schultz, 291 Md. at 11. The legislature has determined that special exception uses, are "desirable and necessary ... provided certain standards are met." Mossburg, 107 Md.App. at 8.

B. The Special Exception Standard Espoused in the Gowl Case was Overuled in Schultz v. Pritts

In *Schultz v. Pritts, supra,* the Court of Appeals clearly held that it did not agree with the Court of Special Appeals' utilization of the Special Exception standard in *Gowl v. Atlantic Richfield Co.*, 27 Md.App. 410 (1975). Specifically, the Court of Appeals in *Schultz* explained the *Gowl* court's holding and then plainly stated that it [the Court of Appeals in *Schultz*] did not agree with that analysis and holding. Discussing the *Gowl* case, the Court of Appeals in *Schultz* stated:

> There, that Court stated that the proper standard by which to determine whether a requested special exception use should be denied on the ground of traffic is a comparison between the traffic problems that might arise under the requested special exception use and those that might arise under a permitted use. It held that when "the potential volume of traffic under the requested use would appear to be no greater than that which would arise from permitted uses," the requested special exception use must be granted. *Gowl*, 27 Md.App. at 417-18, 341 A.2d at 836. **We do not agree.**

Schultz, 291 Md. 1, 10-11 (emphasis added).

In explaining why they did not agree with this holding, the Court of Appeals stated:

> It is precisely because a permitted use may be developed even though it may have an adverse effect on traffic at the particular location proposed, whereas a special exception use may not, that to grant a requested special exception use on the ground that it generates traffic volume no greater than that generated by a permitted use is logically inconsistent and in conflict with previously established standards. **We now hold** that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Schultz, supra, at 22-23 (emphasis added).

Said another way, denial of a requested special exception is appropriate if it "would result in an adverse effect upon adjacent and surrounding properties unique and different from the adverse effects that would otherwise result from the development of such a special exception use located anywhere within the zone." *Id.* at 15.

C. BCZR § 502 and the "Overlay" of these Statutory Conditions with the Maryland Case Law

The Baltimore County Council has provided conditions which all special exception uses must meet before being properly approved. See BCZR § 502.. Special Exceptions and their approval are governed by § 502 of the Baltimore County Zoning Regulations, and the review of those conditions set forth in that Section are further subject to the special exception standard set forth through case law, first in the *Schultz v. Pritts* case, and then in numerous cases by the Maryland Courts. See e.g., Mossburg, 107 Md.App. at 22 (holding that "such general conditions are themselves subject to the limitation that the adverse effects must be greater than or above and beyond the effects normally inherent with such a use anywhere within the relevant zones in the regional district").

As explained in the case of *Hayfields v. Valleys Planning Council*, 122 Md.App. 616 (1998):

> In Mossburg, Judge Cathell for this Court provided an example of how to "overlay" the statutory conditions of a county's special exception law with the restrictions in Schultz. Mossburg, 107 Md.App. at 21-22, 666 A.2d 1253. Based on the Mossburg example, we have added the limiting language of Schultz to BCZR 502.1(a). The test becomes:
>
> -- Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:
>
> a. Be [more] detrimental to the health, safety, or general welfare of the locality involved [than the effects normally inherent with such a use would be generally elsewhere in the zone].

Id., at 641.

Petitioner thoroughly demonstrated to the Board, through the use of expert testimony, that the proposed Continuing Care Facility meets all of the conditions of BCZR §502.1, and that it does not involve adverse impacts "greater than or above and beyond the effects normally inherent with [a Continuing Care Facility] anywhere within the relevant zones ...". Mossburg, 107 Md.App. at 22.

Lastly, it is clear that in performing the above explained analysis, the standard requires a comparison of the proposed use's adverse impacts with "the inherent ones ordinarily associated

with such uses." Schultz, 291 Md. at 14; Mossburg, 107 Md.App. at 21. Therefore, the focus in this regard is on the adverse impacts that would be expected from, in this case, any Continuing Care Facility that would be allowed by special exception in the BR zone. Id.

In Sharp v. Howard County Board of Appeals, 98 Md.App. 57, 632 A.2d 248 (1993), the Court of Special Appeals affirmed the grant of a special exception use for an airport in an R (Rural) zone in Howard County. In explaining the relevant special exception standard, the Sharp Court provided the following excerpt from the Schultz case which included a quote from Anderson v. Sawyer, a case which dealt with a special exception use for a funeral home in a residential zone.

> Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in a way other than would result from the location *of any funeral home in a residential zone*, the evidence presented by the protestants was, in effect, no evidence at all.

Sharp, 98 Md.App. 57, 79, *quoting* Schultz, 291 Md. at 13-14, *quoting* Anderson, 23 Md.App. 612, 624-25, 329 A.2d 716 (1974)(emphasis added).

IV. ARGUMENT

A. Petitioner Satisfied Its Burden Regarding The Special Exception Standard

The evidence and testimony in this matter clearly demonstrates that the adverse effects that will result from the proposed Continuing Care Facility will actually be less than those ordinarily expected from such a use in the BR zone. The only potential adverse impacts alleged during the hearing by the opposition related to visual and noise impacts. As discussed below, these impacts on the adjacent and surrounding properties are actually less than would be ordinarily expected from this use. Furthermore, through the testimony of Petitioners' expert witnesses, Petitioner satisfied each of the conditions set forth in BCZR § 502.1.

1. **The Visual Impact**

As testified to by Ms. Melanie Moser, a Registered Landscape Architect who was accepted as an expert in the fields of land planning, development and zoning, the topographic condition of this site creates the unique situation where the proposed Continuing Care Facility will have less of an adverse visual impact on the adjoining and surrounding properties than the adverse visual impact that would ordinarily be expected from such a use located elsewhere in the BR zone. Ms. Moser explained that on this particular site, only the upper floors will be visible to a very few homes in the County Home Park Community since the building pad elevation will be roughly 35' below the plateau level of the County Home Park Community. The lower three floors of the proposed building will be below the eye level of the County Home Park Community. The majority of the proposed building will not be visible from the homes in the County Home Park Community.

If the proposed use were placed on a site level with or above adjacent residential development, then the full building height would be visible. This subject site is unique in that its grade allows for the proposed building to be located below the plateau level of the adjacent properties. In sum, the visual impacts of the Continuing Care Facility building on the County Home Park Community are less than the visual impacts that would be ordinarily expected from a similar use located elsewhere in the BR zone since typically such a use would be located on a level or elevated site.

2. **The Noise Impact**

Ms. Moser also testified that the activities, noise and movement anticipated from the proposed Continuing Care facility at this site will actually be less than those that would ordinarily be expected from such a use located elsewhere in the BR Zone. The comings and goings of visitor and staff cars, unloading from delivery vehicles,

trash pickup, and outdoor recreation, will all occur out of sight and likely out of hearing of the community. This is because these activities will occur significantly below the grade of the existing community - at the proposed building's first floor level, which will be roughly 35 feet below the plateau level of the County Home Park homes.

Ordinarily, it would be expected that such a use would be located on a level or potentially elevated site. If the proposed use was located on a site level with the surrounding homes, or a site above these homes, these types of activities would be somewhat visible and potentially audible. As a result, the noise related activities associated with this use at this site will be significantly less than those that would be ordinarily expected from a similar use located elsewhere in the BR zone.

Additionally, the proposed building will screen the surrounding residential area from the noise that currently results from the traffic on East Padonia Road. The proposed building will shield the homes atop the plateau from this existing noise such that the noise levels after the building is constructed are anticipated to be less than those currently existing. While the existing vegetation provides somewhat of a visual screen for the surrounding residential community, it is a recognized fact that trees do not mitigate noise.

3. **Petitioners Satisfied All Of The Conditions in BCZR § 502.1.**

BCZR § 502.1 sets forth a total of eight conditions which Petitioners must satisfy since they are seeking special exception approval.[1] Mr. John Seefried, a Professional Engineer who was accepted as an expert in land development and civil engineering, testified as to the conditions set forth in § 502.1.b, c, e, and h. Specifically, Mr. Seefried testified that in his expert opinion, none of the following adverse impacts - traffic

congestion, potential hazards from dangers, or interference with adequate provisions for public services, will be greater at the Property as a result of the proposed Continuing Care Facility than those that would ordinarily be expected from such a use located elsewhere in the BR zone. Mr. Seefried also testified that the Petitioners' proposed development meets all applicable environmental protection regulations.

Ms. Melanie Moser, a Registered Landscape Architect who was accepted as an expert in the fields of land development, planning and zoning, testified as to the conditions set forth in § 502.1.a, d, f, and g. Specifically, Ms. Moser testified that in her expert opinion, the proposed use will not tend to overcrowd the land or cause undue population concentration, or interfere with adequate light and air. Ms. Moser also testified that the proposed use is consistent with the spirit and intent of the zoning regulations and will not be detrimental to the health, safety and general welfare of the locality involved.

B. The RTA Regulations Do Not Apply Outside the DR Zone.

The Protestants assert that the Property is subject to the Residential Transition Area ("RTA") regulations found in BCZR § 1B01.1.B. However, this issue has recently been decided to the contrary by both the Baltimore County Board of Appeals and the Baltimore County Zoning Commissioner. Specifically, in the *Oella Mill* case (Case No. CBA-02-137 and Case No. 02-412-SPHA), both the Zoning Commissioner and then the Board of Appeals held that it was the County Council's intent that the RTA does not apply to development outside the DR zones. *See*, Board of Appeals' Opinion and Order dated December 4, 2002 in Case No. CBA-02-137 and Case No. 02-412-SPHA, at pp. 19-25.

---

[1] BCZR § 502.1 actually lists nine conditions but the last condition only applies to relief sought on property within an RC Zone.

The RTA is generated by a proposed use on a DR zoned property that lies within 150' of existing single family detached or attached homes on DR or RC zoned property. The subject Property is predominately zoned BR, and the proposed development all lies in the BR zone. Therefore, the RTA regulations are not applicable to this project.

C. The Proposed Use Is Not An Assisted Living Facility, Class B, and Therefore Is Not Subject To The Requirement For A Compatibility Finding.

The Protestants purport that Petitioners' request for special exception approval should be denied on the grounds that the Petitioners have not obtained a Compatibility Finding from the Baltimore County Office of Planning. Yet, Compatibility Findings are not required for Continuing Care Facilities. While BCZR § 432.5.B.1.d requires Compatibility Findings for Assisted Living Facilities, Class B, no such requirement is provided for Continuing Care Facilities.

Most importantly, the proposed use does not qualify as an Assisted Living Facility, Class B. The BCZR provides clear definitions for both an Assisted Living Facility, Class B and a Continuing Care Facility. The proposed use which is the subject of this matter only qualifies as a Continuing Care Facility, which is defined as:

> A building or group of buildings that contains dwelling facilities for assisted living, and facilities for convalescent or nursing care on the same site, where occupancy of the facility is restricted to persons 60 years or age or older or couples where either the husband or wife is 60 years of age or older.

BCZR § 101, p. 1-12.

The proposed use in this matter will house, within the same building, both dwelling facilities for assisted living and facilities for nursing care. In sum, Continuing Care Facilities incorporate both assisted living and nursing care components into the same use instead of treating them as separate features. The concept behind Continuing Care Facilities is that the level of care can be increased within one facility as the resident's needs increase, allowing the setting to remain familiar and convenient.

An Assisted Living Facility, on the other hand, is defined within BCZR §101 as:

> A building, or a section of a building, or a residence that provides: (1) a residential 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 persons, regardless of age, who have physical or developmental disabilities; or (2) three daily meals in a family setting, housekeeping and personal services such as assistance with bathing, dressing or laundry for no more than 15 persons 62 years of age or older and which satisfies and complies with Section 432 of these regulations. Such a facility must be certified and licensed by the Maryland Office on Aging as is otherwise required in COMAR, Title 14.11.07.
>
> ...
>
> B. Where such services are located in a new building constructed for that purpose or in a dwelling or other building that has been enlarged to accommodate the facility by 25% or more of ground floor area within a period of five years prior to the date of application, it shall be referred to in these regulations as assisted living facilities Class B.

BCZR § 101, p. 1-7.

The proposed project will not be certified and licensed as an Assisted Living Facility, Class B, it will be certified and licensed as a Continuing Care Facility. The BCZR clearly provides for separate treatment of each of these two types of facilities. If the Baltimore County Council had intended to subject Continuing Care Facilities to the same additional requirements which Assisted Living Facilities, Class B are subjected to per BCZR § 432.5, then § 432 would clearly provide for these requirements. To the contrary, Continuing Care Facilities and Assisted Living Facilities, Class B are not treated identically by the BCZR. It is completely improper for the Board of Appeals to act legislatively and impose requirements on Continuing Care Facilities that are not specifically called for in the BCZR. The Board of Appeals is confined to interpreting and applying the existing law. Therefore, this Board is restricted from finding that this proposed Continuing Care Facility is subject to the requirements of § 432.5 which clearly relate only to Assisted Living Facilities, Class B.

In any event, even if this Board were to find that Continuing Care Facilities are subject to this requirement, it would be premature for Petitioners to have requested a Compatibility Finding.

Compatibility Findings are provided through the development process, not the zoning approval process. The section from the BCZR requiring Compatibility Findings for Assisted Living Facilities, Class B, § 432.5.B.1.d, states that such Compatibility Findings are required pursuant to Baltimore County Code ("BCC") § 26-282. That specific section from the BCC falls within Title 26, Article 5, entitled "Development Regulations". This proposed Continuing Care Facility obtained an exemption from proceeding through the full development process pursuant to BCC §26-171(b)(9). Therefore, the appropriate time for Petitioners to request a Compatibility Finding, if one is required, is during the processing of the development plan. Petitioners have not yet proceeded through the development process since the zoning approval process has not yet been resolved.

D. There Is No Requirement That A Continuing Care Facility Front On A Principal Arterial.

Protestants have also asserted that Petitioners request for a special exception should fail since the proposed building will not front on a principal arterial. The requirement for fronting on a principal arterial, however, only applies to Assisted Living Facilities, Class B, per BCZR § 432.5.B.3.b. As explained above, the proposed use does not qualify as an Assisted Living Facility, Class B. The proposed use only fits within the definition of a Continuing Care Facility, and will only be licensed as such by the State of Maryland. The specific requirements in BCZR § 432.5 which relate only to Assisted Living Facilities, Class B, cannot be imposed on Continuing Care Facilities. Since the proposed project can only properly be defined as a Continuing Care Facility, the requirement of fronting on a principal arterial does not apply to this project.

E. Response To People's Counsel's Motion To Dismiss: This Board Has Jurisdiction - Notification Of The Amended Petition Was Adequate And The Amendment Itself Did Not Detrimentally Affect The Public's Ability To Prepare In Opposition.

People's Counsel's Motion to Dismiss or for Remand asserts that this Board of Appeals does not have jurisdiction over this matter and in support claims that Petitioners improperly amended their petition for special exception and site plan before the Board. Preliminarily, the

changes of which People's Counsel complains relate to the building height and length. Therefore, since Petitioners are seeking approval for a special exception use and not a variance, the actual petition did not need to be amended, it was simply the plan to accompany Petitioners' petition for special exception which was amended before the Board. In any event, People's Counsel's Motion loosely bases its argument on two grounds and Petitioners respond to each of these below.

1. **Petitions May Be Amended Before the Board of Appeals.**

It is true that the Board of Appeals enjoys appellate jurisdiction over appeals from the Zoning Commissioner of requests for special exception. *See, UPS v. People's Counsel for Baltimore County*, 336 Md. 569, 587-88 (1994), *citing*, Maryland Annotated Code, Art. 25A, § 5(U), and Baltimore County Charter, § 602(a). Nevertheless, these appeals are heard in accordance with the Rules of the Zoning Commissioner and are heard *de novo*. *See*, BCZR, Appendix H, Rule 1.d from the Rules of Practice and Procedure of the Board of Appeals; BCC § 26-132(a).

Importantly, the fact that the Board of Appeals enjoys only appellate jurisdiction over such matters does not mean that the Board is prohibited from hearing these cases *de novo* or receiving additional evidence. *UPS*, *supra*, at 589-90, *citing*, *People's Counsel v. Crown Development*, 438 Md. 303, 316 (1992). The Board of Appeals is authorized to decide, within its discretion, whether to allow amendments to petitions, and Petitioners' requested amendments in this matter were accepted by this Board.

2. **The Public Notice Provided Was Not Defective.**

People's Counsel claims that the public notice provided in this matter was defective since Petitioners amended the site plan for a slightly taller and longer building. Practically speaking, however, this argument fails simply because the public notice that is provided for a special exception does not include any information regarding proposed structures' dimensions. The

special exception relief relates to the *use*. Therefore, the public notice was not affected by Petitioners' site plan amendment.

In support of its argument, People's Counsel generally cited to Cassidy v. County Board of Appeals, 146 A.2d 809 (1958). People's Counsel's assertion, that the Court in Cassidy held that a petition cannot be amended to increase the proposal's impact, is misleading.[2] The relevant facts of the Cassidy case were that the public notice provided stated that the petition was seeking a reclassification, yet the petitioner was granted a special exception at the hearing. The Court of Appeals affirmed the Board of Appeals which had noted that all of the elements of a special exception case are included in a reclassification case such that notice was sufficient. The Court further explained:

> The notification is adequate if it fairly informs the notice of the nature of the proceedings and the capacity in which he is required to appear and answer. ... Finally, and here is the heart of the requirement ... the notice should be apprised clearly of the character of the action proposed and enough of the basis upon which it rests to enable him intelligently to prepare for the hearing. If this minimum requirement is met, the notification is adequate...".

Cassidy, 146 A.2d at 900. The Court in Cassidy upheld the grant of a special exception where a reclassification was what was actually sought by the petitioner. Clearly, the minor change to the site plan in this matter, which involves no change to the use relief requested, is supported by the Cassidy Court's ruling.

The most important issue with regard to notice is that the public be provided with sufficiently accurate information to enable anyone interested with enough information to properly prepare for a hearing. The fact that Petitioners amended the site plan before the Board of Appeals to show a slightly taller and longer building size did not detrimentally affect the public's ability to prepare for the hearing. The underlying concern is that improper notice would result in someone

[2] People's Counsel fails to provide a cite to any page from the Cassidy case, and as explained herein, the Court's ruling in Cassidy does not support People's Counsel's position.

choosing not to participate in a hearing whereas they would decide differently if the notice was proper and adequate. In this matter, obviously this is not a concern since the ability of Protestants to participate was not hindered in any way by the Petitioners' amendment to the site plan.[3]

As a practical matter, the requested amendment was granted by the Board on November 13, 2002. The Protestants had until April 3, 2003, more than five months, to complete the preparation of their case in opposition. It is hard to imagine that this was not a sufficient amount of time for the Protestants to prepare their case.

F. Allowable Building Height

Protestants and People's Counsel incorrectly assert that the maximum allowable building height at this site is 50'. BCZR § 302 provides that newly constructed residences located in business zones are governed by the height and area regulations for the predominant residential zone immediately adjoining the property. Mr. John Seefried testified that the predominant residential zone immediately adjoining the Property is DR 16. As evidenced by Petitioners' Exhibit #7, a letter dated August 1, 2002 and executed by Mr. John Lewis, the Baltimore County Department of Permits and Development Management agrees with Mr. Seefried's expert opinion. Mr. Lewis's letter states that the allowable building height for the proposed building is 60'.

Protestants' principal argument in support of their claim that the allowable building height is 50' is that there is an error on the official 2000 Comprehensive Zoning Map. No such zoning error has been proven. By law, the Board must rely on the official 2000 Comprehensive Zoning Map. Both the Petitioners and the Baltimore County Zoning Office have properly relied on the

---

[3] None of the other cases attached to People's Counsel's Motion are Maryland cases and are not primary authority for this matter. The California case of Drum v. Fresno Co., 144 Cal.App.3d 777 (1983) dealt with a drastically different set of facts. The petitioner in Drum applied for a variance for a garage and never mentioned that he planed to construct two bedrooms and a bathroom on top of the garage. The court there held that the notice provided did not provide the neighbors adequate information to apprise them that their property interests would be affected by a second story dwelling/garage unit.

official 2000 Comprehensive Zoning Map in their analysis of this issue. The only conclusion that can be reached is that DR 16 is the predominant residential zone which is immediately adjoining the Property.

As this Board is aware, the Protestants encouraged the Baltimore County Office of Planning to seek a correction of the official 2000 Comprehensive Zoning Map per BCC § 26-134. Such an effort requires a certification by the Director of the Office of Planning supporting the alleged technical drafting error. To date, no such certification has been issued by the Director of the Office of Planning. In fact, the Office of Planning has affirmatively decided not to file a petition to correct any alleged technical drafting error.

Instead, the Office of Planning will raise a Staff issue as part of the 2004 Comprehensive Zoning Map Process for this issue. Ultimately, the County Council will determine whether to change the official zoning designations for the lands adjacent to the Property. Only the County Council and not the Board of Appeals may change the official Comprehensive Zoning Map relating to the properties in this matter. Therefore, this Board must apply the zoning as depicted on the current and official 2000 Comprehensive Zoning Map.

G. Allowable Building Length

Protestants and People's Counsel complain that the proposed building exceeds the allowable building length. They did not offer any expert testimony in this regard. Ms. Melanie Moser, a Registered Landscape Architect who offered expert testimony on behalf of the Petitioners, testified that, in fact, no building length requirement exists for this proposed use in this zone.

In support of their argument, the opposition points to the Comprehensive Manual of Development Policies ("CMDP"), Part II, Section A, p. 29, which sets forth area regulations for Non-Residential Principal Buildings in DR Zones. Obviously, the proposed building is not subject to these area regulations since it is a residential building in the BR zone. These particular CMDP

regulations are for different types of buildings and for buildings in different zones than the proposed building at the Property.

Even assuming that these CMDP area regulations for Non-Residential Principal Buildings in DR Zones apply to this subject project, the proposed building is less than 300' in length - the maximum building length allowed with a favorable recommendation by the Director of the Office of Planning. Should the Board decide that this proposed building is subject to these CMDP regulations, the issue regarding approval of the building's length is a development process issue. Therefore, it would be decided when this project's development plan is processed pursuant to the exemption received pursuant to BCC § 26-171(b)(9).

V. CONCLUSION

For the reasons stated above, Petitioners respectfully request the County Board of Appeals grant its request for Special Exception approval for a Continuing Care Facility in the BR zone.

Respectfully submitted,

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May 5, 2003

DELIVERY BY HAND

Ms. Kathleen C. Bianco
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Lorien-Padonia - Case No. 01-283-X

Dear Ms. Bianco:

On behalf of the Petitioners, enclosed please find the Petitioners' Memorandum in Lieu of Closing Argument.

Thank you for your cooperation in this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

G. Scott Barhight

G. Scott Barhight

GSB:sll
cc: Mr. David L. Jordon
Mrs. Trisha L. Lay and Mr. Gary P. Lay
Peter Max Zimmerman, Esquire
Mr. John D. Mangione
Jennifer R. Busse, Esquire

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BALTIMORE COUNTY
BOARD OF APPEALS

11/21/02

RE: PETITION FOR SPECIAL EXCEPTION N/S East Padonia Road, 360' E of Greenside Drive (Lorien Padonia) 8th Election District 4th Councilmanic District	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	FOR
Legal Owners: Louis Mangione, John Mangione, Nicholas B. & Mary C. Mangione Petitioners	*	BALTIMORE COUNTY
	*	**Case No. 01-283-X**

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

MOTION TO DISMISS or for REMAND

People's Counsel for Baltimore County moves to dismiss this petition, at the conclusion of Petitioner's case, on the following grounds; (1) lack of jurisdiction based on lack of public notice on the amended petition; and (2) failure to meet the burden of production of proof under Schultz v. Pritts, 291 Md. 1 (1981):

I. Lack of Jurisdiction

1. On November 13, 2002, at the County Board of Appeals (CBA) hearing, Petitioners presented for the first time an amended petition and site plan.

2. Despite Petitioners' assurance at the beginning of the hearing that the amendment would reduce the petition, that turned out not to be the case, in that the proposed building height increased from 50 feet to 60 feet, as shown explicitly on Petitioner's red-lined site plan, Exhibit 6.

3. In addition, upon detailed study, scaling and comparison of the original plan dated January 17, 2001 (Exhibit 5) with the amended plan dated November 12, 2002 (Exhibit 6), it turns out that the length of the building increased from 240 feet to 260 feet. The amended plan does not affirmatively state or explain this difference by "red-line" or any other way.

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BOARD OF APPEALS

4. The public notice required at the Zoning Commissioner level was in reference to the original petition and site plan, which proposed a continuing care facility with a maximum building height of 50 feet and a length of 240 feet. Code Sec, 26-127 (a).

5. The Deputy Zoning Commissioner's decision of March 16, 2001, was based explicitly on the proposed height of 50 feet and the statement that this is the maximum height allowed. See page 2, last paragraph. It was also based on a site plan, which showed a 240 feet long building.

6. While CBA hearings on appeal are de novo, the CBA exercises appellate jurisdiction. UPS v. People's Counsel 336 Md. 569 (1994).

7. A petition may not be amended at the CBA in such a way as to increase the impact of the proposal or add a new element which a member of the public reasonably would find material in considering whether to participate. Cassidy v. County Board of Appeals 218 Md. 418 (1958).

8. In addition to the increases in height and length, the amendments raise the issues of the maximum height of the proposed facility, which the Deputy Zoning Commissioner found, and People's Counsel agrees, is 50 feet; and the degree of deviation from the maximum length of the building, which People's Counsel asserts is 200 feet based on the applicable CMDP development policy.

9. Defective notice is fatal to jurisdiction. Cassidy, *supra.*

10. Under these circumstances, the case must be dismissed or remanded to the Deputy Zoning Commissioner for a new public notice and new hearing. This also will afford the Deputy Zoning Commissioner the opportunity to exercise his original jurisdiction over the new proposal, and afford county agencies and existing parties, as well as the public, an opportunity to prepare for it.

II. Failure to Meet the Burden of Proof Under **Schultz v. Pritts**

11. The burden of proof in a special exception case is on the petitioner. Heard v. Foxshire Associates 145 Md. App. 695 (2002).

12. Despite conclusory statements by Petitioners' expert witnesses, John Seefried and Melanie Moser, Petitioners' evidence did not meet the Schultz v. Pritts standard.

13. There were no specific facts and reasons to support their conclusions that the proposed building, 60 feet high and 260 feet long, would not have adverse effects above and beyond those ordinarily expected in the zone. The experts failed to address or compare other continuing care or similar facilities elsewhere adjacent to residential zones and areas. In addition, Ms. Moser admitted she could not identify a single facility (continuing care or its components, assisted living and nursing home) of this size in Baltimore County which backs up to single-family homes.

14. Under Schultz v. Pritts, adverse visual impact, and size and scale, is a relevant consideration. See also Board of County Comm'rs. v. Holbrook 314 Md. 210 (1988). Ms. Anson admitted that no specific visual impact study was done.

15. An expert's opinions must be based on facts and supporting reasons. A quasi-conclusory planning or engineering opinion is not sufficient. People's Counsel v. Beachwood, 107 Md. App. 627, 650-58 (1995), cert. denied 342 Md. 472 (1996).

Wherefore, People's Counsel prays that the County Board of Appeals dismiss or remand this case for lack of jurisdiction, or dismiss this case for failure to meet the burden of proof in omitting evidence on key elements.

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

SUPPLEMENTAL POINTS AND AUTHORITIES, ATTACHED

1. Drum v. Fresno County Department of Public Works 144 Cal.App.3d 777, 192 Cal.Rptr. 782 (1983).
2. Fedder v. McCurdy 768 P.2d 711 (Colo. App. 1988).
3. Lunt v. Zoning Board 191 A.2d 553 (Conn. 1963).
4. Mello v. Board of Adjustment 177 A.2d 533 (R.I. 1962).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of November, 2002 a copy of the foregoing Motion to Dismiss or Remand was mailed to Stephen E. Weber, 9801 Van Buren Lane, Cockeysville, MD 21030 and Scott Barhight, Esq., WHITEFORD, TAYLOR & PRESTON, 210 W. Pennsylvania Avenue, Towson, MD 21204 Attorney for Petitioner(s)

PETER MAX ZIMMERMAN

developed by Eastern without any suggestion from the complainants that they be adopted, and it is also apparent that neither of these plans even approximated what the complainants were seeking by their suit.

From this full recital of the facts we think it clear that neither the complainants nor their counsel contributed to the formulation or execution of the plans to use available funds to purchase and retire outstanding preferred stock of Eastern. The most that they can be said to have accomplished was to help to block a totally different plan—the abortive recapitalization plan of 1955—which seemed doomed to failure even before they whittled down management's inadequate proxy support. The plan which the complainants advocated was radically different from the plan finally adopted.

The case has been fully and ably presented as to the various questions of law involved and the different rules of law which the respective parties assert to be correct. Harris v. Chicago Great Western Ry. Co., 7 Cir., 197 F.2d 829; Kroese v. General Steel Castings Corp., 3 Cir., 179 F.2d 760, 15 A.L.R.2d 1117, and Gordon v. Elliman, 306 N.Y. 456, 119 N.E.2d 331, seem to be the cases most heavily relied upon by the complainants, and Knapp v. Bankers Securities Corporation, 3 Cir., 230 F.2d 717, seems to be that most heavily relied upon by Eastern. Whether this suit should be regarded as a derivative suit or as a representative suit, and whether counsel for the complainants in a suit such as this would be entitled to compensation as much as in the case of an undoubtedly derivative suit in which their efforts resulted in benefit to the corporation, are questions which we need not decide. Under any possible applicable rule of law which has been urged upon us, we think it essential that the efforts of counsel shall have contributed to the beneficial result for which they seek compensation. There was no contract in this case under which Eastern agreed to pay the complainants' counsel fees, and, as we understand the position of the complainants' counsel, they do not contend that such a contract would be valid unless they had contributed to a result beneficial to the corporation.

The trial court found that the complainants and their counsel did not contribute to the result here accomplished—the application of Eastern's funds to the purchase on tenders of its preferred stocks at prices equivalent to their asset preference upon voluntary liquidation. We think that this finding of the trial court was fully supported. Accordingly the decree dismissing the petition for a counsel fee to the complainants' solicitors is affirmed.

Decree affirmed, with costs.



218 Md. 418

Edward T. CASSIDY et al.

v.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY and Baltimore Gas and Electric Company.

No. 125.

Court of Appeals of Maryland.

Dec. 22, 1958.

Appeal from decree of the Circuit Court for Baltimore County, John E. Raine, Jr., J., affirming order of county board of appeals granting utility special exception authorizing construction of steam electric generating station and related facilities. The Court of Appeals, Prescott, J., held that notice which stated that public hearing would be held upon utility's petition for a change or reclassification constituted substantial compliance with county zoning regulation, notwithstanding fact that notice did not specifically state that a request for a special exception had been made.

Affirmed.

1. Administrative Law and Procedure ⇐453

Failure of an administrative official or board to give a proper notice of a hearing required by law is fatal to jurisdiction of official or board to conduct hearing.

2. Counties ⇐21½

Where notice given by county zoning commissioner stated that a public hearing would be held on petition of utility for a change or reclassification of certain property, notice constituted sufficient compliance with zoning regulation notwithstanding fact that it failed to call attention to fact that a special exception was sought.

3. Counties ⇐21½

County zoning commissioner and county zoning board of appeals had jurisdiction to grant public utility special exception to permit erection of electric steam generating plant and related facilities in residence zone permitting one and two family dwellings.

4. Counties ⇐21½

County zoning regulation permitting granting of special exceptions in residential zones for "public utility uses" comprehended a steam electric generating plant and related facilities.

See publication Words and Phrases, for other judicial constructions and definitions of "Public Utility Uses".

5. Counties ⇐21½

On appeal from decree of circuit court affirming order of county zoning board of appeals granting public utility special exception which authorized construction of a steam electric generating station in residential zone, there was substantial evidence to support board's finding that use would not be detrimental to the locality involved.

6. Counties ⇐21½

In review of order of county board of appeals granting special exception to public utility to permit erection of steam electric generating plant and related facilities in residential zone, there was substantial evidence to justify granting of special exception without resort being had to any principle of preferential treatment for public utility.

7. Counties ⇐21½

Where there was sufficient and substantial evidence adduced upon issue so as to render decision of county zoning board of appeals with respect to granting of special exception fairly debatable, action of board must be affirmed.

James N. Phillips, Baltimore (Leonard A. Vadala and Fletcher Krause, Baltimore, on the brief), for appellants.

Wilmer H. Driver, Baltimore (Paul S. Clarkson, Baltimore, and John Grason Turnbull, Towson, on the brief), for appellees.

Before BRUNE, C. J., and HAMMOND, PRESCOTT and HORNEY, JJ.

PRESCOTT, Judge.

This is an appeal from a decree of the Circuit Court for Baltimore County, filed June 13, 1958, affirming an order of the County Board of Appeals of Baltimore County (Board) granting the appellee, Baltimore Gas and Electric Company (hereinafter referred to as the "Gas and Electric Company" or the "Company"), a special exception subject to certain conditions and restrictions, which authorized the construction of a steam electric generating station and related facilities on Carroll Island Neck between Saltpeter and Seneca Creeks, in the 15th Election District of Baltimore County.

I

The first, and one of the principal, contentions of the appellant is an attack upon the jurisdiction of the Zoning Commissioner (Commissioner) who originally granted a special exception upon an application for

[Deleted 768-776]

Opinion (*Aloy* v. *Mash*) on pages 768-776 omitted.

HEARING GRANTED

[Civ. No. 6056. Fifth Dist. June 10, 1983.]

ROBERT E. DRUM et al., Plaintiffs and Respondents, v.
FRESNO COUNTY DEPARTMENT OF PUBLIC WORKS et al., Defendants and Appellants.

COUNTY OF FRESNO, Plaintiff and Appellant, v.
ROBERT E. DRUM et al., Defendants and Respondents.

SUMMARY

Following the issuance by a county of a zoning variance and building permit, a homeowner commenced construction of a two-story addition to his home. Deeming the addition to be in excess of the terms of the variance, the county issued a stop-work order. The owner filed a petition for an alternative writ of mandate against the county, which was consolidated with the county's action for injunctive relief. The trial court issued the writ of mandate sought by the owner and denied the county's request for a preliminary injunction. (Superior Court of Fresno County, Nos. 254421-1, 254698-4, Hollis G. Best, Judge.)

The Court of Appeal reversed the judgments with directions to the trial court to vacate its order issuing the writ of mandate and to grant a preliminary injunction. The court held that since the notice given to the owner's neighbors regarding the application for a zoning variance mentioned only his plan to build a garage, and made no mention of a second story dwelling unit to be built on top of the garage, such notice was insufficient, as to the dwelling unit, to meet due process requirements or the notice requirements of local and state law (Gov. Code, §§ 65901, 65905). The court held that a variance granted without the mandated reasonably adequate notice cannot be construed as granting a privilege beyond that of which notice was given. (Opinion by Andreen, Acting P. J., with Hamlin and Martin, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) Zoning and Planning § 33—Exceptions by Way of Variance—Proceeding to Obtain; Recommendation or Determination—Sufficiency

the stipulation. We accept the stipulation and order that the respondent be disbarred and that he be ordered to pay restitution to the estate of Ada Schreiner in the amount of $70,602.76.

I.

Donald C. Hanneman was admitted to the bar of this court in October 6, 1961 and is registered as an attorney on the records of this court. At all pertinent times, he was licensed to practice law in Colorado. He is, therefore, subject to the jurisdiction of this court in all matters relating to the practice of law. C.R.C.P. 241.1(b), 7A C.R.S. (1988 Supp.).

According to the stipulation, the respondent prepared a will for Ada Schreiner, who died on May 15, 1986. Schreiner's will named Frederick Kurtz as personal representative of her estate and named Schreiner's two granddaughters as beneficiaries. In June 1986 the respondent filed an Application for Informal Probate of Will in Arapahoe County District Court. An estate was opened, Kurtz was appointed as personal representative, and the respondent, acting as Kurtz' attorney, counseled him in administration of the estate.

Rather than opening a new bank account, Kurtz and the respondent maintained the decedent's bank accounts. Over a period of time, the respondent repeatedly requested that Kurtz withdraw funds to be delivered to him, supposedly for estate purposes. Kurtz complied and the respondent eventually received a total of $74,809.76, which he used for personal purposes which were unrelated to Schreiner's estate. The beneficiaries of the will retained another attorney for the purpose of removing Kurtz as the personal representative.

The respondent billed $6,707.00 for services performed regarding Schreiner's estate and is entitled to an offset in that amount against the funds taken from the estate. Because no repayment has been made by the respondent, the net amount he misappropriated is $68,102.76. In addition, the beneficiaries expended $2,500.00 in attorney fees because of the respondent's misappropriation.

The parties agree that the respondent's misappropriation amounts to dishonesty in violation of DR 1-102(A)(4),[1] and adversely reflects on his fitness to practice law in violation of DR 1-102(A)(6).[2] As an aggravating factor, the respondent was the subject of a private censure by this court in March 1985. In mitigation, the respondent asserted severe financial problems experienced by him from 1982 through 1986.

The parties to the stipulation recommended disbarment as the appropriate discipline. The inquiry panel approved the stipulation and we agree with the grievance committee's recommendation. The respondent, Donald C. Hanneman, is disbarred and his name is ordered stricken from the roll of attorneys licensed to practice before this court. The respondent is directed to comply with the requirements of C.R.C.P. 241.21, specifying certain action to be taken after disbarment. The respondent is ordered to pay restitution in the amount of $70,602.76 plus interest at the statutory rate from the date of this order, to the estate of Ada Schreiner or to her beneficiaries if the estate has been closed. It is further ordered that the respondent shall not be readmitted to the bar of this state until he has made restitution as ordered. The respondent's readmission is further conditioned upon full compliance with C.R.C.P. 241.22(a).



1. DR 1-102(A)(4) states that a lawyer shall not "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

2. DR 1-102(A)(6) states that a lawyer shall not "[e]ngage in any other conduct that adversely reflects on his fitness to practice law."

Bruce FEDDER, Marsha Fedder, Don Anderson, Ann Anderson, Bob G. Fullen, Dave Padgett, Lynn Padgett, Ed West, Ronnie West, Bob Hoefer, May Lou Hoefer, Steve Beasley, and Joan Beasley, Plaintiffs-Appellees,

v.

Francis McCURDY, Sonya Blackstock and Suzy McDanal, as Members of the Board of County Commissioners of the County of Douglas, State of Colorado, and as Members of the Board of Adjustment of the County of Douglas, State of Colorado, Lewis Christiansen, Theresa Christiansen as Members of the Board of Adjustment of the County of Douglas, State of Colorado, and Mobile Premix Concrete, Inc., Defendants-Appellants.

Bruce FEDDER, Marsha Fedder, Don Anderson, Ann Anderson, Bob G. Fullen, Dave Padgett, Lynn Padgett, Ed West, Ronnie West, Bob Hoefer, May Lou Hoefer, Steve Beasley, and Joan Beasley, Plaintiffs-Appellees,

v.

MOBILE PREMIX CONCRETE, INC., Defendant-Appellant.

Nos. 85CA1221, 85CA1228.

Colorado Court of Appeals, Div. I.

March 31, 1988.

As Modified on Denial of Rehearing July 14, 1988.

Certiorari Denied Feb. 6, 1989.

Landowner seeking to construct concrete batch plant applied for rezoning and a height variance, and local zoning authorities granted both applications. On challenge by nearby owners, however, the District Court, Douglas County, Thomas J. Curry, J., reversed both decisions, and appeal was taken. The Court of Appeals, Metzger, J., held that: (1) owners living near site of proposed plant had standing to challenge decisions; (2) competent evidence supported rezoning decision; (3) notice of board of adjustment hearing on height variance was insufficient; and (4) members of board of county commissioners could appoint themselves to board of adjustment.

Affirmed in part, reversed in part, and remanded.

1. Action ⇐13

Proper inquiry on standing is whether plaintiff has suffered injury in fact to legally protected interest as contemplated by statutory or constitutional provisions.

2. Action ⇐13

Proper resolution of standing question involves two considerations: whether petitioner has suffered actual injury from challenged governmental action, and whether injury is to legally protected or cognizable interest.

3. Zoning and Planning ⇐571

If legal right to rely on zoning of land, absent substantial reasons for change, is invaded by rezoning decision such that neighboring landowners are adversely affected, they have right to seek judicial relief.

4. Zoning and Planning ⇐571

Nearby landowners had standing to challenge rezoning and variance granted for construction of concrete batch plant; plant was to be located only one-half mile from residential area where landowners lived, and it would cause severe dust problems and increased traffic.

5. Administrative Law and Procedure ⇐676

When court reviews agency decision, it is limited to matters contained within record of proceeding before agency. Rules Civ.Proc., Rule 106.

6. Zoning and Planning ⇐604

Court must look to entire record and must uphold rezoning decision unless there is no competent evidence to support it.

7. Administrative Law and Procedure ⇐750

Burden is on individual challenging administrative action to overcome presumption that agency's acts were proper.

have been dismissed on basis that he had no standing in court as competitor and was therefore not aggrieved. C.G.S.A. §§ 14–321, 14–322, 14–324.

7. Zoning ⇐571

Mere fact that one will be business competitor of party granted certificate of approval of location of gasoline station does not disqualify one from being aggrieved person entitled to appeal for other valid reasons, but aggrievement for reasons other than competition is essential. C.G.S.A. § 14–324.

John W. Colleran, New Haven, with whom, on the brief, was Dennis N. Garvey, New Haven, for appellant (named plaintiff).

Anthony S. Avallone, New Haven, with whom, on the brief, was Joseph E. Bove, New Haven, for appellee (defendant Granato); with him also was Charles H. Fischer, Jr., West Haven, for appellee (named defendant).

Before BALDWIN, C. J., and KING, MURPHY, SHEA and ALCORN, JJ.

BALDWIN, Chief Justice.

The plaintiff Bernard McDermott owns and operates a gasoline station at 9 Kimberly Avenue in West Haven. Kimberly Avenue is a heavily traveled main thoroughfare between West Haven and New Haven. McDermott also owns and resides in a house in the general neighborhood. The defendant zoning board of appeals, acting under General Statutes § 14–322, granted a certificate of approval to the defendant Mark Granato for the location of a gasoline station at 36–42 Kimberly Avenue, which is across the avenue and about 150 feet from McDermott's station. The Court of Common Pleas dismissed the plaintiffs' appeal from the action of the board, and McDermott has appealed from that judgment.

[1, 2] The board was acting pursuant to General Statutes §§ 14–321 and 14–322. In determining the suitability of the proposed location for a gasoline station, the board was performing a special statutory function as an agency of the state. Dubiel v. Zoning Board of Appeals, 147 Conn. 517, 520, 162 A.2d 711. Any person aggrieved by the board's action was entitled to appeal to the Court of Common Pleas under General Statutes § 14–324. In the present appeal, McDermott alleged that he was a resident, property owner and taxpayer in West Haven, that frequently he traveled past the proposed location, that his property would be adversely affected if the location was approved, and that for these reasons he was aggrieved by the board's action. To invoke judicial power to review the board's action, McDermott had the burden of proving that he was aggrieved within the meaning of § 14–324 and therefore was in a position to challenge the action taken by the board. Milford v. Commissioner of Motor Vehicles, 139 Conn. 677, 681, 96 A.2d 806. McDermott attempted to sustain this burden by showing that a gasoline station on the site proposed would increase the existing traffic congestion on this heavily traveled highway and would depreciate the value of his property. The court, however, failed to credit his proof of property devaluation, found that McDermott had "no standing in court as a competitor," and concluded that he was not aggrieved.

[3, 4] To show that he was aggrieved and therefore entitled to appeal under General Statutes § 14–324, it was not essential for McDermott to prove that his property would be depreciated in value. General Statutes § 14–322 is primarily concerned with factors pertaining to public safety rather than property values. Esso Standard Oil Co. v. Zoning Board of Appeals, 148 Conn. 507, 508, 172 A.2d 607. To issue a certificate of approval under § 14–322, the board was required to find that the proposed location was suitable, due consideration being given to the factors designated in the statute, and that the proposed use would not imperil the public safety. A person is aggrieved within the meaning of § 14–324 if he has a personal or property interest which will be substantially and adversely affected by a finding of the board that the location is suitable and that its use for a gasoline station will not imperil the safety of the public. Milford v. Commissioner of Motor Vehicles, supra; see Norton v. Shore Line Electric Ry. Co., 84 Conn. 24, 33, 78 A. 587; Kamerman v. LeRoy, 133 Conn. 232, 237, 50 A.2d 175; O'Connor v. Board of Zoning Appeals, 140 Conn. 65, 72, 98 A.2d 515.

[5] In addition to the evidence concerning depreciation in the value of his property, McDermott offered evidence that the proposed station would be located on a curve approximately across the avenue from his gasoline station, that the traffic on the avenue is extremely heavy now and that another gasoline station would increase the already existing congestion and create more cross traffic. The court, in determining the issue of aggrievement, should have considered this evidence from the viewpoint not alone of property values but of whether McDermott's interests would be substantially and materially affected by the board's finding that the proposed location was suitable and that its use for a gasoline station would not imperil the safety of the public. There is no rule of thumb applicable to every case. Whether a person is aggrieved by the action of an administrative authority must depend, in large part, on the circumstances of the particular case.

[6, 7] Although an appellant may not prove that he is aggrieved solely by reason of the fact that a proposed gasoline station would, in view of competition, depreciate the value of his property, he is not to be penalized because that feature is in the case. The mere fact that one is a business competitor does not disqualify him from being an aggrieved person for other valid reasons. 1 Rathkopf, Law of Zoning and Planning (3d Ed.) p. 40–16; accord, Zuckerman v. Board of Zoning Appeals, 144 Conn. 160, 163, 128 A.2d 325; Farr v. Zoning Board of Appeals, 139 Conn. 577, 583, 95 A.2d 792. This is not to say, of course, that an aggrievement for valid reasons other than competition is not an essential element. See Langbein v. Planning Board of City of Stamford, 145 Conn. 674, 676, 146 A.2d 412. The trial court, in dismissing the appeal applied an incorrect standard of aggrievement.

There is error, the judgment is set aside and a new trial is ordered.

In this opinion the other Judges concurred.

WEST KEY NUMBER SYSTEM

Donald C. LUNT et al.

v.

ZONING BOARD OF APPEALS OF the TOWN OF WALLINGFORD et al.

Supreme Court of Errors of Connecticut.

May 15, 1963.

Proceeding for change of nonconforming use to another nonconforming use. The defendant board granted permission to change to the requested nonconforming use and appeal was taken. The Court of Common Pleas in New Haven County, Healey, J., entered judgment dismissing appeal after trial to the court, and appeal was taken. The Supreme Court of Errors, Murphy, J., held that notice which was published on November 3 concerning hearing to take place on request for zoning variance on November 13 was fatally defective on ground that intervening period between date of publication of notice and date of hearing was nine days instead of the 10 day minimum required by statute.

Error; judgment set aside and remanded with direction to sustain appeal.

the terms of the ordinance, is without jurisdiction to deny a variance on the ground that, if granted, it would adversely affect the public interest. This argument of petitioner, as we understand it, predicates a misconception on the part of the board as to the effect to be given to that provision of the statute that authorizes the board to grant variances which "will not be contrary to the public interest" in that the board appears to consider this provision as if it were passing upon an application for an exception and considers it as a condition precedent to its authority to act affirmatively upon an application for a variance. See Hazen v. Zoning Board of Review, R.I., 155 A. 2d 333.

It must be conceded that the decision as stated by the board is susceptible of such an interpretation. Its effect is to raise a question as to whether a board may deny a variance on the ground that, if granted, it would adversely affect the public interest where it had already made a finding that unnecessary hardship had been proved. A substantial constitutional question would be raised in such case. This court has held repeatedly that to deprive the owner of land of all beneficial use thereof by a literal enforcement of a zoning ordinance would be confiscatory and that it is the duty of a board to exercise its discretion to avoid such confiscation. Denton v. Zoning Board of Review, 86 R.I. 219, 221, 133 A.2d 718; Heffernan v. Zoning Board of Review, 50 R.I. 26, 32, 144 A. 674.

It is our opinion that the instant case emphasizes the desirability of a precise and clear exercise of the fact-finding power conferred upon boards of review by the enabling act. Robinson v. Town Council, 60 R.I. 422, 199 A. 308. Because of an inadequate exercise of the fact-finding power of the board we are confronted with a substantial question of statutory construction that might well not have arisen had there been an adequate exercise of the board's fact-finding power. However, be that as it may, we are of the opinion that it would be most inappropriate to construe the pertinent provision of the statute on the basis of a fact situation that arises entirely out of implication. On the other hand, we recognize the injustice that would be done petitioner here if we were to reject completely her contentions concerning those inferences which she asserts are warranted by the findings that the board did make. Only on the basis of speculation could we conclude that the board reached its decision to deny the variance here sought on the ground that there had been a failure to establish unnecessary hardship. Such speculation this court will not attempt. Berg v. Zoning Board of Review, 64 R.I. 290, 12 A.2d 225.

[2, 3] It is our opinion that it is the duty of a board of review to exercise the fact-finding power conferred upon it to such an extent that the ultimate facts upon which its decision rests are sufficiently stated to enable this court to intelligently determine on review by certiorari that error of law either does or does not inhere in that decision. This court on many occasions in seeking to avoid putting parties to further inconvenience through a remand of the cause has undertaken to overcome deficiencies in the decisions of boards called here on the writ. Winters v. Zoning Board of Review, 80 R.I. 275, 277, 96 A.2d 337. This we have done, however, only within well-established rules of law. In the instant case it is our opinion that the ends of justice will best be served if the respondent board reconsiders the application of the petitioner and bases such determination as it may then make on an adequate exercise of its fact-finding power.

The petition for certiorari is granted, the record of the decision denying the petitioner's application for a variance is quashed, and the records certified are sent back with instructions to the board to reconsider such application in accordance with this opinion, reserving to the board the right to hear further evidence if it so desires.

FROST, J., not participating.

Philip M. MELLO et al.

v.

The BOARD OF REVIEW OF the CITY OF NEWPORT.

M. P. No. 1410.

Supreme Court of Rhode Island.

Feb. 8, 1962.

A petition for certiorari was brought to review a decision of the zoning board of review of the City of Newport granting an application for a variance in the application of a zoning ordinance of the city. The Supreme Court, Roberts, J., held that the board of review was without jurisdiction to hear and determine the application, where the notice of hearing was limited to an application for a variance to convert a building which was located on lot 52, but building was located in part on lot 52 and in part on lot 165.

Petition for certiorari granted, decision of board quashed for want of jurisdiction, and records, which had been certified to Supreme Court, ordered sent back to board.

1. Zoning ⇐486

Power conferred on boards of review of cities to grant variances in application of zoning ordinances is subject neither to enlargement nor restriction by provisions contained in local ordinances. Gen.Laws 1956, §§ 45-24-13, 45-24-19.

2. Zoning ⇐444

Landowner, who has unsuccessfully applied to building inspector for permit, and whose application is denied because proposed use is not permitted use under zoning ordinance of city, may on appeal to board of review raise question of his entitlement to variance. Gen.Laws 1956, §§ 45-24-13, 45-24-19.

3. Zoning ⇐534

Application to board of review of city for variance in application of zoning ordinance is in nature of appeal within statute requiring giving of notice when hearings are to be held on appeals to board of review. Gen.Laws 1956, §§ 45-24-18, 45-24-19.

4. Zoning ⇐534

Board of review of city was without jurisdiction to hear and determine application for variance of zoning ordinance of city, where notice of hearing stated that building, proposed for conversion into warehouse, was located on lot 52, but building was located in part on lot 52 and in part on lot 165. Gen.Laws 1956, §§ 45-24-13, 45-24-18, 45-24-19.

Corcoran, Peckham & Hayes, William W. Corcoran, Newport, for petitioners.

James S. O'Brien, Jr., City Sol., Newport, for respondent.

ROBERTS, Justice.

This petition for certiorari was brought to review a decision of the zoning board of review of the city of Newport wherein the board granted an application for a variance to the terms of the zoning ordinance of that city. Pursuant to the writ the respondent board has returned to this court the records of the proceedings before it.

It appears therefrom that Egan's Laundry & Cleaners, Inc., hereinafter referred to as Egan's, is the owner of certain real estate located at the corner of Halsey and Garfield streets designated as lot 52 on assessor's plat 9 and presently zoned for residential uses. This property was acquired by Egan's in 1958, and the building, part of which is located on lot 52, was used by that corporation in the conduct of its laundry business. The building had been used as a laundry by prior owners for many years, and such use became a nonconforming use after the enactment of the zoning ordinance by the city council. It further appears that Egan's discontinued its laundry operations in the building and has negotiated a sale

APPEAL SIGN POSTING REQUEST

CASE NO. 01-283-X

Louis Mangione, John Mangione; & Nicholas B. & Mary C. Mangione- LO

N/s East Padonia Road, 360' E of Greenside Drive
(Lorien Padonia)

8th Election District

Appealed 4/13/01

Attachment – (Plan to accompany Petition
- Petitioner's Exhibit No. 1)

**********COMPLETE AND RETURN BELOW INFORMATION**********

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Charlotte Radcliffe
Appeals Clerk

RE: Case No. 01-283-X
Petitioner/Developer:
MANGIONE

This is to certify that the necessary appeal sign(s) was posted conspicuously on

property located at PADONIA RD. OPP. HILLBROOK CT.

The sign(s) was posted on 5/11/, 2001.

By Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

APPEAL

Petition For Special Exception
Padonia Road
N/S East Padonia Road, 360' E of Greenside Drive (Lorien Padonia)
8th Election District – 4th Councilmanic District
Louis, John, Nicholas & Mary Mangione- Legal Owner
Case No.: 01-283-X

Petition for Special Exception (dated 1/17/01)

Zoning Description of Property

Notice of Zoning Hearing (dated 1/31/01)

Certification of Publication (The Jeffersonian issue 2/15/01)

Certificate of Posting (John Seefried posted 2/9/01)

Entry of Appearance by People's Counsel (1/31/01)

Petitioner(s) Sign-In Sheet (1 page)

Protestant(s) Sign-In Sheet (1 page)

Citizen(s) Sign-In Sheet (none)

Zoning Advisory Committee Comments

Petitioners' Exhibits:
1. Plan to Accompany Petition for Special Exception Lorien Padonia
2. Padonia Business Park dated 3/96

Protestants' Exhibits:
1. Letter to Baltimore County Zoning Commissioner from David L Jordan, President, County Home Park Community Assn. Inc

Miscellaneous (Not Marked as Exhibits): (none)

Deputy Zoning Commissioner's/Zoning Commissioner's Order (3/16/01 – Approved with restrictions)

Notice of Appeal received on 4/13\01from David L Jordan, President, County Home Park Community Assn. Inc, on behalf of Gary & Tricia Lay

RECEIVED
COUNTY BOARD OF APPEALS
01 APR 17 AM 11:55

c: Louis, John, Nicholas & Mary Mangione, 1205 York Rd, Lutherville 21093
Scott Barhight, Whiteford Taylor & Preston, 210 W Pennsylvania Avenue, Towson 21204
Jennifer R Busse, Whiteford Taylor & Preston, 210 W Pennsylvania Avenue, Towson 21204
People's Counsel of Baltimore County, MS #2010
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM
John Seefried, Daft, McCune & Walker, 200 W. Pennsylvania Ave., 21204
Stephen Weber, 9801 Van Buren Lane, Balto., MD 21030
*Tricia Lay, 109 Gibbons Boulevard, Balto, MD 21030 (and Gary Lay)
David MacCubbin, 115 Gibbons Boulevard, Balto., MD 21030
*David Jordan, 120 Gibbons Boulevard, Balto., MD 21030

Rhonda Wolfe-Carr
Md. Health Care Commission

ARNOLD AND THERESA LAND
107 GIBBONS BOULEVARD
COCKEYSVILLE MD 21030

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 16, 2001

RECEIVED
COUNTY BOARD OF APPEALS
01 APR 17 AM 11:55

Jennifer R Busse
Whiteford Taylor & Preston
210 W Pennsylvania Avenue
4th Floor
Towson MD 21204

Dear Ms Busse:

RE: Case No. 01-283-X, Address Lorien Padonia

Please be advised that an appeal of the above-referenced case was filed in this office on April 13, 2001 by County Home Park Community Assn. Inc, David L Jordan, President on behalf of Gary & Tricia Lay. 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
Director GDZ

AJ: gdz

c: Louis, John, Nicholas and Mary Mangione, 1205 York Road, Lutherville 21093
Scott Barhight, Whiteford Taylor & Preston, 210 W Pennsylvania Avenue, Towson 21204
John Seefried, 200 E Pennsylvania Avenue, Towson 21204
People's Counsel

Printed with Soybean Ink on Recycled Paper

3/16/01

IN RE: PETITION FOR SPECIAL EXCEPTION N/S East Padonia Road, 360' E of Greenside Drive (Lorien Padonia) 8th Election District 4th Councilmanic District (N/S E. Padonia Road, 360' E Greenside Dr.) Louis Mangione, John Mangione, Nicholas B. & Mary C. Mangione Petitioners	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 01-283-X

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Exception filed by the legal owners of the subject property, Louis Mangione, John Mangione, Nicholas B. & Mary C. Mangione, requesting a special exception to approve a continuing care facility in a BR zone. The special exception petition involves property located on the north side of East Padonia Road, 360 ft. east of Greenside Drive.

Appearing at the hearing on behalf of the special exception request were John Seefried, a representative of Daft, McCune & Walker, the engineering firm who prepared the site plan of the property, John Mangione, appearing on behalf of the owners of the property and Scott Barhight, attorney at law, representing the Petitioners. Appearing in opposition to the Petitioners' request were several residents of the surrounding community, namely Stephen Weber, Tricia Lay, David McCubbin and David Jordan.

Testimony and evidence indicated that the property, which is the subject of this special exception request, contains 5.562 acres, more or less, split-zoned BL/BR/DR 3.5 & DR 16. The majority of the property consisting of 4.74 acres is zoned BR. The Petitioners propose to build and construct a six-story continuing care facility on the property in accordance with the site plan submitted into evidence as Petitioners' Exhibit No. 1. The subject property is located on the

ORDER RECEIVED FOR FILING
Date 3/16/01
By P. Jenuss

3/16/01

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	*	CASE NO. 01-283-X
Louis Mangione, John Mangione, Nicholas B. & Mary C. Mangione Petitioners	*	

* * * * * * * * * *

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By

north side of East Padonia Road, adjacent to the Padonia Village Apartments. The Mangione family owns and operates several continuing care and nursing home facilities in and around the Baltimore metropolitan area. They are interested in constructing a 56 bed nursing home in conjunction with an assisted living facility containing 139 units. Their family would own and operate the facility. The building itself would be six stories high on the south façade and only five stories to the rear of the site, as a result of the topography of the property. In order to proceed with the construction of this continuing care facility, the special exception request is necessary.

As stated previously, several residents from the surrounding community appeared in opposition to the Petitioners' request. Mr. Stephen Weber, a nearby resident, represented the County Home Park Association. Mr. Weber and members of his association are concerned over the loss of screening between their homes and the proposed facility. These residents understand that as a result of grading and clearing, the subject building will be seen from their properties. Therefore, they are very much concerned over the height of the building and its appearance.

Also testifying in opposition to the Petitioners' request was Ms. Tricia Lay. Ms. Lay will perhaps be the most affected neighbor to the property, given that her house and property abuts the proposed development on the northeast corner of the site. Ms. Lay is concerned over the use of retaining walls on the property and the visual impact that the building will have on her property. She, as well as others in attendance, asked that the building be reduced in height and appropriate screening placed along the borders of the property.

The Baltimore County Zoning Regulations specifically allows for a building of this type to be a height of 50 ft. That is what is proposed by the Petitioners. Therefore, I believe the height of the building is appropriate so long as appropriate screening is installed on the property

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Date 3/16/01
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and that the facades of the building are architecturally pleasing. Therefore, I shall require the Petitioners to submit elevation drawings to the Office of Planning for their review and approval prior to any building permit being issued for this project. These elevation drawings shall also be provided to the citizens who attended the hearing, so that they may see what the building is proposed to look like. The citizens shall be permitted to communicate with the Office of Planning and give their input as to the design of the building. However, it shall be the decision of the Office of Planning as to the ultimate approval of the elevation drawings.

It is clear that the B.C.Z.R. permits the use proposed in a BR 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.

The Petitioners 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 Petitioners have 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.

ORDER RECEIVED FOR FILING
Date 3/16/01
By

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 16th day of March, 2001, that the special exception relief to approve a continuing care facility in a BR zone for property located on the north side of East Padonia Road, 360 ft. east of Greenside Drive, be and is hereby APPROVED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

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 same property to its original condition.

2. The Petitioners shall be required to submit elevation drawings of the building to the Office of Planning and the citizens who attended the hearing. The citizens shall have an opportunity to comment on those drawings and discuss them with the representatives of the Office of Planning. However, it shall be the final decision of the Office of Planning as to the approval of these elevation drawings

3. The Petitioners shall be required to submit a lighting plan to Avery Harden, Landscape Architect for Baltimore County, for approval. In addition, the Petitioners shall submit a landscape plan to Mr. Harden for his review and approval which shall include landscaping both on the Petitioners' property, as well as on the property of Gary and Tricia Lay, in the event the Lays give permission for such landscaping to be installed on their property. Screening placed on the property owned by Mr. & Mrs. Lay will be more effective than any screening or landscaping that will be placed on the Petitioners' property, given the change in elevation between the two sites. Therefore, only if the Lays give permission shall the Petitioners be required to install landscaping on their property. In any event, the landscaping plan approved by Mr. Harden shall take into consideration both landscaping on the Petitioners' property, as well as landscaping on adjacent property.

4. The Petitioners shall be required to install appropriate safety fencing around the retaining walls to be used on the property. The design and location of this safety fencing shall be reviewed by Mr. Avery Harden, Landscape Architect for Baltimore County.

ORDER RECEIVED FOR FILING
Date 3/16/01
By

5. The Petitioners shall be required to minimize the amount of mechanical equipment to be installed on the roof of the building. In the event any mechanical equipment is actually placed on the roof of the building, it shall be shielded so that the sound of the equipment itself will not cause a nuisance to surrounding residents.

6. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

ORDER RECEIVED FOR FILING
Date 3/16/01
By R. Jamieson

ELDERLY HOUSING

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at N side of E. Padonia Rd, 360' E ~~side~~ of Greenside Drive

which is presently zoned BL, BR, DR-16 DR 3.5

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 Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

a Continuing Care Facility in the B.R. zone

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

Jennifer R. Busse
Name - Type or Print

Signature

Whiteford, Taylor & Preston
Company

210 W Pennsylvania Ave, 4th Flr
Address Telephone No.

Towson, MD 21204 (410) 832-2077
City State Zip Code

Legal Owner(s):

Louis Mangione, John Mangione
Name - Type or Print

Signature 1/16/01

Nicholas B. and Mary C. Mangione
Name - Type or Print

Signature

1205 York Road (410) 825-8400
Address Telephone No.

Lutherville MD 21093
City State Zip Code

Representative to be Contacted:

Jennifer R. Busse (410) 832-207
Name

210 W. Pennsylvania Ave,
Address Telephone No.

Towson, MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By JNP Date 1/17/01

ORDER RECEIVED FOR FILING
Date 3/16/01
By R. Ameen

Case No. 01-283-X

REV 09/15/98

Description

To Accompany Petition For Special Exception

5.306 Acre Parcel

Lorien Padonia

Northeast side of Padonia Road, Southeast of Greenside Road

Eighth Election District, Baltimore County, Maryland

DMW

Daft•McCune•Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21286
http://www.dmw.com
410 296 3333
Fax 410 296 4705

A Team of Land Planners, Landscape Architects, Engineers, Surveyors & Environmental Professionals

Beginning for the same on the northeast side of Padonia Road (80' wide) at the end of the second of the two following courses and distances measured from the point formed by the intersection of the centerline of Padonia Road with the centerline of Greenside Road (70' wide), (1) Southeasterly along said centerline of Padonia Road, 360 feet, more or less, and thence, (2) Northeasterly 40 feet to the point of beginning, thence leaving said beginning point and said road for the eight following courses and distances, viz : (1) North 25 degrees 12 minutes 54 seconds East 225.03 feet, thence (2) South 64 degrees 47 minutes 06 seconds East 140.00 feet, thence (3) North 08 degrees 26 minutes 21 seconds East 345.68 feet, thence (4) South 31 degrees 48 minutes 54 seconds East 80.95 feet, thence (5) South 83 degrees 29 minutes 02 seconds East 404.94 feet, thence (6) South 06 degrees 57 minutes 58 seconds West 346.90 feet, thence (7) North 84 degrees 00 minutes 29 seconds West 319.11 feet, and thence (8) South 05 degrees 56 minutes 43 seconds West 219.21 feet to the northeast side of Padonia Road, thence binding on said road the two following courses and distances, viz : (9) Northwesterly, by a line curving to the right with a radius of 1760.00 feet for a distance of 33.61 feet (the arc of said curve being subtended by a chord bearing North 65 degrees 19 minutes 55 seconds West

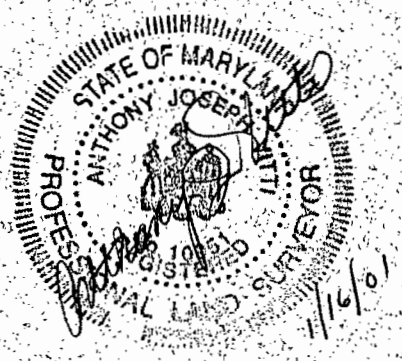
01-283-X

33.61 feet) and thence (10) North 64 degrees 47 minutes 06 seconds West 337.77 feet to the point of beginning; containing 5.306 acres of land, more or less.

THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED TO BE USED FOR CONVEYANCE.

January 15, 2001

Project No. 97114.B (L97114.B)



[redacted]

5/21

PETITION CORRESPONDENCE

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: #01-283-X
Padonia Road
N/S East Padonia Road, 360' E of Greenside Drive (Lorien Padonia)
8th Election District
4th Councilmanic District
Legal Owner(s): Louis, John, Nicholas B. & Mary C. Mangione
Special Exception: for a continuing care facility.
Hearing: Monday, March 5, 2001 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.
2/190 Feb. 15 C450325

CERTIFICATE OF PUBLICATION

TOWSON, MD, 2/15, 2001

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 2/15, 2001.

THE JEFFERSONIAN,

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No. 01-283-X

Petitioner/Developer John Mangione

Date of Hearing/Closing March 5, 2001
9:00 a.m.

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 penalties of perjury that the necessary sign(s) required by law were posted conspicuously for the property known as

Lorien Padonia

N/S East Padonia Rd.. 360' E of Greenside Drive

The signs were posted on Friday, February 9, 2001
(Month, Day, Year)

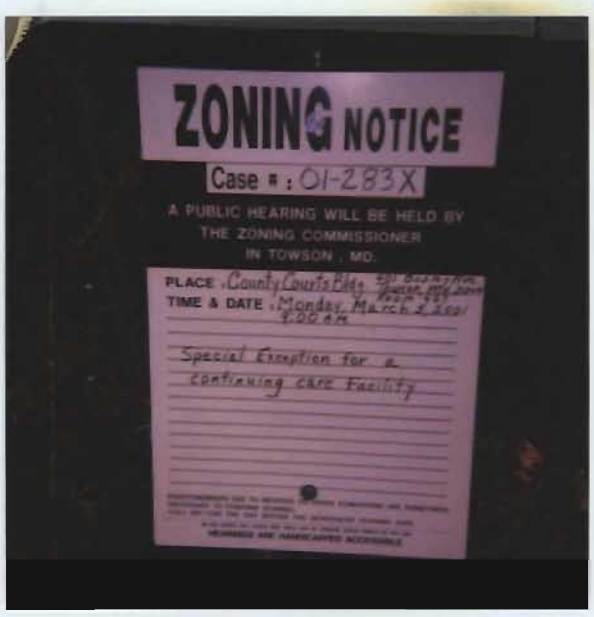
Sincerely,

(Signature of Sign Poster and Date)

John Seefried
(Printed Name)

Daft- McCune- Walker, Inc.
200 East Pennsylvania Avenue
Towson, MD 21286
(Address)

410-296-3333
(Telephone Number)



LORIEN PADONIA
97114, B 2/2/01
TSH 24



LORIEN PADONIA
97114 2/2/01
TSH 24

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Scott Barhight / WTHP	210 W. Penn Ave., Towson 21204
John Seefried / OMW	200 E. Penn Ave Towson 21204
John Mangione	1205 York Rd 21093

Printed with Soybean Ink on Recycled Paper

APPEAL SIGN POSTING REQUEST

CASE NO. 01-283-X

Louis Mangione, John Mangione; & Nicholas B. & Mary C. Mangione- LO

N/s East Padonia Road, 360' E of Greenside Drive
(Lorien Padonia)

8th Election District

Appealed 4/13/01

Attachment – (Plan to accompany Petition
- Petitioner's Exhibit No. 1)

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

January 31, 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: 01-283-X
Padonia Road
N/S East Padonia Road, 360' E of Greenside Drive (Lorien Padonia)
8th Election District – 4th Councilmanic District
Legal Owners: Louis, John, Nicholas B & Mary C Mangione

Special Exception for a continuing care facility.

HEARING: Monday, March 5, 2001 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

GJZ

Arnold Jablon
Director

C: Jennifer R. Busse, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, 4th Floor, Towson 21204
Louis, John, Nicholas B & Mary C Mangione, 1205 York Road, Lutherville 21093

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, FEBRUARY 17, 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.

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WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
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410 832-2000
FAX 410 832-2015
www.wtplaw.com

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FAX 410 884-0719

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FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

July 3, 2001

RECEIVED
COUNTY BOARD OF APPEALS
01 JUL -5 AM 11:46

Lawrence Wescott, Esq.
Chairman, Board of Appeals for Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Scheduling Before the Board
In the Matter of: Lorien Padonia
Zoning Case #: 01-283-X:

Dear Chairman Wescott:

Please accept this letter as my request that the above-referenced case be scheduled for hearing. Below is a summary of the procedural status of this matter.

- Matter involves a Petition for Special Exception to approve a Continuing Care Facility in the BR Zone.
- Deputy Zoning Commissioner's Opinion, dated March 16, 2001, approved the Petition for Special Exception.
- Appeal filed April 13, 2001 by County Home Park Community Assn., Inc.

As you can imagine, my client is anxious to procedure with this appeal. I recognize that the Board is busy and that the time in which an appeal must be heard for a Special Exception such as this one is not prescribed. Nevertheless, we hope that this matter can proceed expeditiously.

County Board of Appeals of Baltimore County

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

pp'd to 5/02/02 by consent of Counsel for Petitioner

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

September 7, 2001

NOTICE OF ASSIGNMENT

CASE #: 01-283-X

IN THE MATTER OF: *Louis, John, Nicholas & Mary Mangione* – Legal Owners
E Padonia Road, E of Greenside (Lorien Padonia)
8th Election District; 4th Councilmanic District

3/16/2001 - DZC's Order in which Petition for Special Exception was GRANTED with restrictions

ASSIGNED FOR: **THURSDAY, DECEMBER 27, 2001 at 10:00 a.m.**

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

---

c: Appellants /Protestants : David L. Jordan, President /County Home Park Community Assn, Inc.
and Gary & Tricia L. Lay

Counsel for Petitioners : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Petitioners : Louis, John, Nicholas & Mary Mangione

John Seefried /DMW

Stephen Weber
David MacCubbin

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

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WHITEFORD, TAYLOR & PRESTON
L.L.P.
210 WEST PENNSYLVANIA AVENUE
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FAX 410 832-2015
www.wtplaw.com

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
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FAX 202 331-0573

30 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

December 7, 2001

Ms. Kathleen C. Bianco
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

RECEIVED
01 DEC 10 PM 12:58
COUNTY BOARD OF APPEALS

Re: Lorien-Padonia - Case No. 01-283-X

Dear Ms. Bianco:

Please accept this letter as a request for postponement of this matter which is currently scheduled for a hearing on Thursday, December 27, 2001, at 10:00 a.m. On behalf of the Petitioner, John Mangione met with the Appellants on Wednesday, December 5, 2001, and both parties have agreed to postpone this matter at this time. Please set this matter in for a new hearing date as soon as possible.

Thanks for your cooperation in this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Jennifer R. Busse

JRB:sll
cc: Mr. David L. Jordon
Mrs. Trisha L. Lay and Mr. Gary P. Lay
Mr. John D. Mangione
G. Scott Barhight, Esquire

240419

County Board of Appeals of Baltimore County

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

pp'd to 8/14/02 notice sent

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

December 14, 2001

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 01-283-X

IN THE MATTER OF: ***Louis, John, Nicholas & Mary Mangione*** **– Legal Owners**
E Padonia Road, E of Greenside (Lorien Padonia)
8th Election District; 4th Councilmanic District

3/16/2001 - DZC's Order in which Petition for Special Exception was GRANTED with restrictions

which was assigned to be heard on 12/27/01 has been **POSTPONED** at the request of Counsel for Petitioner, and with agreement of parties, and has been

REASSIGNED FOR: **WEDNESDAY, MAY 8, 2002 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco /Administrator

c: Appellants /Protestants : David L. Jordan, Presdent /County Home Park Community Assn, Inc. and Gary & Tricia L. Lay

Counsel for Petitioners : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Petitioners : Louis, John, Nicholas & Mary Mangione

John Seefried /DMW

Stephen Weber
David MacCubbin

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

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FAX 410 832-2015
www.wtplaw.com

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COLUMBIA, MARYLAND 21044
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FAX 410 884-0719

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FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

April 22, 2002

Ms. Kathleen C. Bianco
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

02 APR 22 PM 4:07
RECEIVED
COUNTY BOARD OF APPEALS

Re: Lorien-Padonia - Case No. 01-283-X

Dear Ms. Bianco:

On behalf of the Petitioner, John Mangione, please accept this letter as a request for postponement of this matter which is currently scheduled for a hearing on Wednesday, May 8, 2002, at 10:00 a.m. Both parties have agreed to postpone this matter at this time. Please set this matter in for a new hearing date as soon as possible.

Thanks for your cooperation in this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

G. Scott Barhight

GSB:sll
cc: Mr. David L. Jordon
Mrs. Trisha L. Lay and Mr. Gary P. Lay
Mr. John D. Mangione
G. Scott Barhight, Esquire

240419v2

County Board of Appeals of Baltimore County

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

pp'd let agmt 11/13/02 do

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

April 25, 2002

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 01-283-X

IN THE MATTER OF: ***Louis, John, Nicholas & Mary Mangione*** **– Legal Owners**
E Padonia Road, E of Greenside (Lorien Padonia)
8th Election District; 4th Councilmanic District

3/16/2001 - DZC's Order in which Petition for Special Exception was GRANTED with restrictions

which had been reassigned to be heard on 5/08/02 has been **POSTPONED** by agreement of the parties; and has been

REASSIGNED FOR: **WEDNESDAY, AUGUST 14, 2002 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco/Administrator

c: Appellants /Protestants : David L. Jordan, President /County Home Park Community Assn, Inc. and Gary & Tricia L. Lay

Counsel for Petitioners : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Petitioners : Louis, John, Nicholas & Mary Mangione

John Seefried /DMW

Stephen Weber
David MacCubbin

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

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FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

June 25, 2002

DELIVERY BY HAND

Ms. Kathleen C. Bianco
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Lorien-Padonia - Case No. 01-283-X

Dear Ms. Bianco:

On behalf of the Petitioner, John Mangione, please accept this letter as a request for postponement of this matter which is currently scheduled for a hearing on Wednesday, August 14, 2002. Both parties have agreed to postpone this matter at this time. Due to ongoing negotiations with the County Home Park Community Association, and the difficulty of arranging meetings during the summer months, I would appreciate it if you would set this matter in for a new hearing date within 2 to 3 months after August.

I apologize for any inconvenience that this request for postponement may cause the Board. However, since the parties continue to negotiate in good faith, we thought it in everyone's best interest to seek the postponement.

Thanks for your cooperation in this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

G. Scott Barhight

RECEIVED
BOARD OF APPEALS
02 JUN 25 PM 12:39

GSB:sll
cc: Mr. David L. Jordon
Mrs. Trisha L. Lay and Mr. Gary P. Lay
Mr. John D. Mangione
G. Scott Barhight, Esquire

240419v3

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

June 27, 2002

THIRD NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 01-283-X

IN THE MATTER OF: ***Louis, John, Nicholas & Mary Mangione*** **– Legal Owners**
E Padonia Road, E of Greenside (Lorien Padonia)
8th Election District; 4th Councilmanic District

3/16/2001 - DZC's Order in which Petition for Special Exception was GRANTED with restrictions

which had been reassigned to be heard on 8/14/02 has been **POSTPONED** by agreement of the parties; and has been

REASSIGNED FOR: **WEDNESDAY, NOVEMBER 13, 2002 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco /Administrator

c: Appellants /Protestants : David L. Jordan, President /County Home Park Community Assn, Inc. and Gary & Tricia L. Lay

Counsel for Petitioners : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Petitioners : Louis, John, Nicholas & Mary Mangione

John Seefried /DMW

Stephen Weber
David MacCubbin

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

November 14, 2002

NOTICE OF ASSIGNMENT /Day #2

CASE #: 01-283-X

IN THE MATTER OF: ***Louis, John, Nicholas & Mary Mangione*** **– Legal Owners**
E Padonia Road, E of Greenside (Lorien Padonia)
8th Election District; 4th Councilmanic District

Day #2 from 11/13/02

3/16/2001 - DZC's Order in which Petition for Special Exception was GRANTED with restrictions

ASSIGNED FOR: **WEDNESDAY, DECEMBER 4, 2002 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco /Administrator

c: Appellants /Protestants : David L. Jordan, President /County Home Park Community Assn, Inc.
and Gary & Tricia L. Lay

Counsel for Petitioners : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Petitioners : Louis, John, Nicholas & Mary Mangione

John Seefried /DMW

Stephen Weber
David MacCubbin

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

December 10, 2002

NOTICE OF ASSIGNMENT /Day #3

CASE #: 01-283-X

IN THE MATTER OF: ***Louis, John, Nicholas & Mary Mangione*** **-- Legal Owners**
E Padonia Road, E of Greenside (Lorien Padonia)
8th Election District; 4th Councilmanic District

Day #3 from 12/04/02

3/16/2001 - DZC's Order in which Petition for Special Exception was GRANTED with restrictions

ASSIGNED FOR: **THURSDAY, APRIL 3, 2003 at 10:00 a.m. /Day #3**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco /Administrator

c: Appellants /Protestants : David L. Jordan, President /County Home Park Community Assn, Inc.
and Gary & Tricia L. Lay

Counsel for Petitioners : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Petitioners : Louis, John, Nicholas & Mary Mangione

John Seefried /DMW

Stephen Weber
David MacCubbin

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

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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 3, 2003

NOTICE OF DELIBERATION

IN THE MATTER OF:

LOUIS, JOHN, NICHOLAS &
MARY MANGIONE – Legal Owners
Case No-01-283-X

Having heard this matter over 3 days of hearing (11/13/02; 12/04/02; and 4/03/03), public deliberation has been scheduled for the following date /time:

DATE AND TIME : **THURSDAY, MAY 29, 2003 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

Note: Memos are due from counsel on Monday, May 5, 2003
(Original and three [3] copies)

Kathleen C. Bianco
Administrator

c: Appellants /Protestants : David L. Jordan, President /County Home Park Community Assn, Inc. and Gary & Tricia L. Lay

Counsel for Petitioners : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Petitioners : Louis, John, Nicholas & Mary Mangione

John Seefried /DMW

Stephen Weber
David MacCubbin
Arnold and Theresa Land
Marlene Bauer

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

fyi: C.M.R.

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Baltimore County
Department of Permits and
Development Management

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

March 2, 2001

Jennifer R. Busse
Whiteford, Taylor & Preston
210 W Pennsylvania Ave 4th Floor
Towson MD 21204

Dear Ms. Busse:

RE: Case Number: 01-283-X, Padonia Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on January 17, 2001.

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: Louis, John, Nicholas & Mary Mangione, 1205 York Road, Lutherville 21093
People's Counsel

Sept 3/5

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: February 23, 2001

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

MAR - 1 2001

SUBJECT: North side of E. Padonia Road
East side of Greenside Drive

INFORMATION:

Item Number: 01-283-X

Petitioner: Louis & John Mangione

Property Size: 5.562 acres

Zoning: BL, BR, DR.16 & DR 3.5

Requested Action: Special Exception

SUMMARY OF RECOMMENDATIONS:

The Office of Planning has no objection to this Special Hearing provided the petitioner submit a package including building elevations, signage elevations, landscaping detail, and a parking plan to this office for review and approval prior to the issuance of any building permits.

Prepared by: Mark A Cough

Section Chief: Jeffrey W. Long

AFK/JL:MAC

W:\DEVREV\ZAC\01-283.doc

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 1.31.01

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

RE: Baltimore County
Item No. 283 JNT

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

INTEROFFICE CORRESPONDENCE

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

DATE: March 6, 2001

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

SUBJECT: Zoning Advisory Committee Meeting
For February 5, 2001
Item Nos. 279, 280, 281, 283, 285,
286, and 287

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

RWB:HJO:jrb

cc: File

ZAC-2-5-2001-NO COMMENT ITEMS-362001.doc

Baltimore County
Fire Department

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

January 31, 2001

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 January 29, 2001

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.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

279, 280, 283, AND 284

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

cc: File

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on Recycled Paper

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley

DATE: February 1, 2001

SUBJECT: Zoning Item #283
Lorien Padonia

Zoning Advisory Committee Meeting of January 29, 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__ This project requires an alternatives analysis and a variance to the above referenced set of regulations (Protection of Water Quality,Streams, Wetlands and Floodplains).

Reviewer: Paul Dennis Date: February 1, 2001

RE: PETITION FOR SPECIAL EXCEPTION Padonia Road (Lorien Padonia), N/S E. Padonia Rd, 360' E of Greenside Dr 8th Election District, 4th Councilmanic Legal Owner: Louis, John, Nicholas and Mary Mangione Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY Case No. 01-283-X

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

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 31st day of January, 2001 a copy of the foregoing Entry of Appearance was mailed to Jennifer R. Busse, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

TRANSCRIPT REQUEST

Appealed: 9/3/2003

Received: 9/5/2003

Case: Mangione
Case No.: 01-283-X

Hearing date(s): 11/13/02
12/4/02
4/3/02

Petition filed by: **People's Counsel – County Ext 2188**
County Home Park Community Association, Inc.
C/o David Jordan
Stephen W. Weber, individually
David Jordan, individually
Gary and Tricia Lay, individually

Due Date: **October 31, 2003**

THANK YOU

September 5, 2003

TRANSCRIPT REQUEST

Appealed: 9/11/2003

Received: 9/17/2003

Case: Mangione, Second Petition filed
Case No.: 01-283-X

Hearing date(s): **11/13/02; 12/4/02; and 4/3/03**

Petition filed by: G. Scott Barhight
Jennifer R. Busse
410-832-2077

Due Date: November 7, 2003

IF PEOPLE'S COUNSEL DOES NOT FILE THE TRANSCRIPT; THEN BARHIGHT'S OFFICE WILL BE RESPONSIBLE FOR PAYMENT OF SAME FOR FILING. JENNIFER IS AWARE OF THIS MATTER.

THANK YOU

September 18, 2003

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-04-000239

RECEIVED
MAR 16 2004
BALTIMORE COUNTY
BOARD OF APPEALS

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

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-04-000239
Administrative Agency : 03-160-SPH
C I V I L

In The Matter of: David F Albright Sr, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 10th day of March, 2004.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 03/14/04

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

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

RECEIVED
JAN - 8 2004
BALTIMORE COUNTY
BOARD OF APPEALS

County Board Of Appeals Of Baltimore County
400 Washington Avenue
Old Courthouse Room 49
Baltimore MD 21204

Assignment Date: 01/06/04

Case Title: In The Matter Of: John Mangione
Case No: 03-C-03-009661 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..... 01/21/04
2. All Motions (excluding Motions in Limine) are due by..... 03/04/04
3. TRIAL DATE is..... 04/13/04
   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.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

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

cc: County Home Park Community Ass

cc: Stephen E Weber
cc: David L Jordan
cc: Gary Lay
cc: Tricia Lay
cc: John Mangione
cc: Peter M Zimmerman Esq
cc: Carole S Demilio Esq
Issue Date 01/06/04

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-03-009661
Administrative Agency : 01-283-X
C I V I L

In The Matter Of: John Mangione

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 31st day of October, 2003.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 11/21/03

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
400 Washington Avenue
Old Courthouse Room 49
Baltimore, MD 21204

RECEIVED
DEC 01 2003
BALTIMORE COUNTY
BOARD OF APPEALS

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

06/01/04

Case Number: 03-C-03-009661 AE
Date Filed: 09/03/2003
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :

In The Matter Of: John Mangione

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	01-283-X
Case Folder ID	C03009661V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End		Disposition Addr Update	Entered
PET	001	Peoples Counsel For Baltimore County	Party ID: 0610539		BT DO 05/21/04	09/04/03
	Mail:	Old Courthouse Room 47 400 Washington Avenue Baltimore, MD 21204	09/04/03			
	Attorney:	0029075 Zimmerman, Peter M People's Counsel For Baltimore County Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188		Appear: 09/04/2003		09/04/03
		0804268 Demilio, Carole S		Appear: 09/03/2003		09/04/03

Deputy Peoples Counsel
Old Courthouse Room 47
400 Washington Ave
Towson, MD 21204
(410)887-2188

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition / Addr Update	Entered
PET	002	County Home Park Community Assn Inc	Party ID: 0610540	BT DO 05/21/04	09/04/03
	Mail:	120 Gibbons Blvd Cockeysville Hunt Valley, MD 21030 Serve On: David L Jordan, President	09/04/03		
PET	003	Weber, Stephen E	Party ID: 0610541	BT DO 05/21/04	09/04/03
		Capacity : Individually			
	Mail:	9801 Van Buren Lane Cockeysville Hunt Valley, MD 21030	09/04/03		
PET	004	Jordan, David L	Party ID: 0610542	BT DO 05/21/04	09/04/03
		Capacity : Individually			
	Mail:	120 Gibbons Blvd Cockeysville Hunt Valley, MD 21030	09/04/03		
PET	005	Lay, Gary	Party ID: 0610543	BT DO 05/21/04	09/04/03
		Capacity : Individually			
	Mail:	109 Gibbons Blvd Cockeysville Hunt Valley, MD 21030	09/04/03		
PET	006	Lay, Tricia	Party ID: 0610544	BT DO 05/21/04	09/04/03
		Capacity : Individually			
	Mail:	109 Gibbons Blvd Cockeysville Hunt Valley, MD 21030	09/04/03		
RES	001	Mangione, John	Party ID: 0610549	BT DO 05/21/04	09/04/03
	Attorney:	0803639 Busse, Jennifer R Whiteford, Taylor & Preston, L.L.P. 210 West Pennsylvania Ave Towson, MD 21204-4515 (410)832-2000	Appear: 01/09/2004		01/09/04

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
RES	002	Mangione, Louis	Party ID: 0651349	BT DO 05/21/04	02/23/04
	Attorney:	0803639 Busse, Jennifer R Whiteford, Taylor & Preston, L.L.P. 210 West Pennsylvania Ave Towson, MD 21204-4515 (410)832-2000	Appear: 02/23/2004		02/23/04
RES	003	Mangione, Nicholas	Party ID: 0651350	BT DO 05/21/04	02/23/04
	Attorney:	0803639 Busse, Jennifer R Whiteford, Taylor & Preston, L.L.P. 210 West Pennsylvania Ave Towson, MD 21204-4515 (410)832-2000	Appear: 02/23/2004		02/23/04
RES	004	Mangione, Mary	Party ID: 0651351	BT DO 05/21/04	02/23/04
	Attorney:	0803639 Busse, Jennifer R Whiteford, Taylor & Preston, L.L.P. 210 West Pennsylvania Ave Towson, MD 21204-4515 (410)832-2000	Appear: 02/23/2004		02/23/04
ITP	001	County Board Of Appeals Of Baltimore County	Party ID: 0610556	BT DO 05/21/04	09/04/03
	Capacity : Agency Mail:	400 Washington Avenue Old Courthouse Room 49 Baltimore, MD 21204	09/04/03		

CALENDAR EVENTS

Date	Time	Dur	Event Description	Text	SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge		Rec			
04/13/04	09:30A	02Q	Civil Non-Jury Trial	Y		JOH 01 /01		KLS
Conclude			04/13/04 F J.Hennegan		Y			
Stenographer(s): Sharon Arnoult								

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	User
05/21/04	DO	Decree or Order	BT	BEFORE TRIAL/HEARING	PH

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	09/04/03	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001000	Petition for Judicial Review Filed by PET001-Peoples Counsel For Baltimore County, , PET002-County Home Park Community Assn Inc, , PET003-Weber, Stephen E, PET004-Jordan, David L, PET005-Lay, Gary, PET006-Lay, Tricia	09/03/03	09/04/03	PET001	TBA	05/21/04	CS PH
0002000	Notice of Service of Discovery	09/10/03	09/12/03	000	TBA	05/21/04	NW PH
0003000	Order that all pleadings pertinent to this case shall be filed in Case No. 3-C-03-9661.	10/23/03	10/23/03	000	TJB Granted	10/23/03	CKC CKC
0004000	*Transcript of Record from Adm Agency	10/31/03	11/21/03	000	TBA	05/21/04	MJ PH
0005000	Notice of Transcript of Record Sent	11/21/03	11/21/03	ITP001	TBA	11/21/03	MJ MJ
0006000	Notice of Transcript of Record Sent	11/21/03	11/21/03	PET001	TBA	11/21/03	MJ MJ
0007000	Notice of Transcript of Record Sent	11/21/03	11/21/03	PET002	TBA	11/21/03	MJ MJ
0008000	Notice of Transcript of Record Sent	11/21/03	11/21/03	PET003	TBA	11/21/03	MJ MJ
0009000	Notice of Transcript of Record Sent	11/21/03	11/21/03	PET004	TBA	11/21/03	MJ MJ
0010000	Notice of Transcript of Record Sent	11/21/03	11/21/03	PET005	TBA	11/21/03	MJ MJ
0011000	Notice of Transcript of Record Sent	11/21/03	11/21/03	PET006	TBA	11/21/03	MJ MJ
0012000	Notice of Transcript of Record Sent	11/21/03	11/21/03	RES001	TBA	11/21/03	MJ MJ
0013000	People's Counsel For Baltimore County's	12/19/03	12/23/03	000	TBA	12/23/03	NW NW

Memorandum

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0014000	People's Counsel For Baltimore County's Memorandum	12/19/03	12/23/03	PET001	TBA		12/23/03	NW NW
0015000	*Stipulation for Extention of Time Filed by PET001-Peoples Counsel For Baltimore County, , RES001-Mangione, John	12/18/03	12/24/03	PET001	RND	Granted	12/24/03	MI MI
0016000	Scheduling Order	01/06/04	01/06/04	000	TBA		01/06/04	KLS KLS
0017000	Memorandum	01/05/04	01/09/04	RES001	TBA		01/09/04	NW NW
0017001	Answer	01/20/04	01/22/04	RES001	TBA		05/21/04	MI PH
0018000	*Memorandum In Response To Cross Appellants Memorandum	02/02/04	02/06/04	PET001	TBA		02/06/04	NW NW
0019000	*Reply Memorandum To Appellees/Cross Appellants Response Memorandum	02/02/04	02/06/04	PET001	TBA		02/06/04	NW NW
0020000	*Reply To People's Counsel's Response To Appellees/Cross Apellants' Memorandum	02/17/04	02/23/04	000	TBA		05/21/04	NW PH
0021000	Open Court Proceeding April 13, 2004. Hon. John O. Hennegan. Hearing had re: Administrative Appeal. Opinion and Order to be filed.	04/13/04	04/13/04	000	JOH		05/21/04	RG PH
0022000	Opinion and Order remanding case	05/21/04	05/21/04	000	JOH	Granted	05/21/04	PH PH
0023000	Docket entries sent to Board of Appeals of Baltimore County	06/01/04	06/01/04	000	TBA			CVM CVM

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	01/20/04	0	no	no	DANS	D	017	001
1YRT	One Year Tickle (Jud	CLOSED	09/02/04	365	no	no	DAAA	D	001	000
EXPU	Exhibit Pickup Notic	CLOSED	07/20/04	30	no	no			000	000
SLTR	Set List For Trial	Done	10/31/03	0	yes	yes	DTRA	D	004	000
SLTR	Set List For Trial	CANCEL	01/20/04	0	yes	no	1ANS	T	017	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 County Board Of Appeals Of Ba								
000		B	BOX 384/CBA TRANSC		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 01/06/04 Order Date : 01/06/04
Start Date : 01/06/04 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		01/21/04	05/21/04	CLOSED
All Motions (excluding Motions in Limine		03/04/04	05/21/04	CLOSED
TRIAL DATE is	04/13/04	04/05/04	04/13/04	REACHED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Lawrence S. Wescoft, Chairman
Baltimore County Board of Appeals

DATE: March 27, 2003

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

RECEIVED POST-HEARING
DAY ONE

RECEIVED
POST-APPEAL

SUBJECT: Mangione Property

The Office of Planning has reviewed the applicant's request based upon our notice of a potential zoning anomaly. This particular matter was not considered by this office when staff comments were submitted to the Zoning Commissioner. What is more, the request was modified to subsequent to the filing of the appeal. It appears that the Petitioner is opining that a small sliver of BR zoned land on properties in separate ownership provides an opportunity to extend the height of the structure proposed for the site. The Office of Planning is of the opinion that commercial zoning was not meant to be applied to this small sliver of land. Clearly, the zone line and properties lines should be coincident. The small sliver of commercial zoning located on a portion of the adjoining residential properties does not constitute commercialization of those properties and does not warrant a height increase.

The Office of Planning will be raising a staff issue to correct this problem as part of the 2004 Comprehensive Zoning Map Process. As part of the process, all interested parties will be notified as required and set forth in the Baltimore County Code.

AFK:JL:lsn

c: Scott Barhight, Esq., Whiteford, Taylor & Preston
Peter Max Zimmerman, People's Counsel

RECEIVED
MAR 3 1 2003
BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED
POST-APPEAL

RECEIVED POST-HEARING
DAY ONE

S:\COMPLAN\JEFF-L\Memo-Lawrence Wescoft-Mangione Property.doc

BALTIMORE COUNTY
BOARD OF APPEALS
410-887-3180
FAX – 410-887-3182

Fax

To:	Rhoda Wolfe Carr	**From:**	Theresa Shelton
Fax:	410-358-1311	**Pages:**	12 incl cover
Phone:		**Date:**	September 5, 2003
Re:	Mangione	**CC:**	

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:** ATTACHED IS THE JUDICIAL REVIEW FILED IN CIRCUIT COURT ON SEPTEMBER 3, 2003. THE CIRCUIT COURT CASE NUMBER IS 03-C-03-9661.

ALSO ATTACHED ARE THE DEFINITIONS OF THE ZONING LETTERS. (7 PAGES). THIS WAS UPDATED THROUGH 7/15/2003, SO IT IS CURRENT. YOU WILL SEE THAT B.R IS BUSINESS, ROADSIDE.

BALTIMORE COUNTY ZONING REGULATIONS 1998 Edition *As updated through July 15, 2003*

BALTIMORE COUNTY OFFICIALS

County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

2003

County Executive
JAMES T. SMITH, JR.

Baltimore County Council

S. G. SAMUEL MOXLEY	**First District**
KEVIN KAMENETZ	**Second District**
T. BRYAN McINTIRE	**Third District**
KENNETH N. OLIVER	**Fourth District**
VINCENT J. GARDINA	**Fifth District**
JOSEPH BARTENFELDER	**Sixth District**
JOHN OLSZEWSKI, SR.	**Seventh District**

TIMOTHY M. KOTROCO
Director, Department of Permits and Development Management

LAWRENCE E. SCHMIDT
Zoning Commissioner

JOHN V. MURPHY
Deputy Zoning Commissioner

Property of: _____

Address: _____

_____

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

April 12, 2001

RECEIVED
COUNTY BOARD OF APPEALS
01 APR 13 PM 5:29

Lawrence S. Wescott, II, Esquire
Chair, County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Louis Mangione, John Mangione, Nicholas B and Mary C. Mangione (Lorien Padonia) Case No. 01-283-X

Dear Mr. Wescott:

Please accept this letter as notification that Louis Mangione, John Mangione, Nicholas B and Mary C. Mangione, by and through their attorneys, G. Scott Barhight, Jennifer R. Busse, and Whiteford, Taylor & Preston L.L.P., intend to participate in the appeal of this matter before the Board of Appeals for Baltimore County.

Please refer to contact Jennifer R. Busse with any questions or concerns.

Sincerely,

Jennifer R. Busse

JRB:sll
cc: Mr. John D. Mangione

COUNTY HOME PARK COMMUNITY ASSN., INC.

120 Gibbons Boulevard
Cockeysville, MD 21030

March 9, 2001

Mr. Arnold Jablon, Director
Department of Permits & Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

RE: PETITION FOR SPECIAL EXCEPTION
Lorien Padonia, N/S E. Padonia Rd., 360' E of Greenside Dr
8th Election District, 4th Councilmanic District
Louis, John, Nicholas & Mary Mangione, Petitioners
Case No.: 01-283-X

Dear Mr. Jablon:

Please enter an appeal of the County Home Park Community Assn., Inc. and Gary & Tricia Lay to the County Board of Appeals from the Findings of Fact and Conclusions of Law of the Baltimore County Zoning Commissioner dated March 16, 2001 in the above-entitled case.

Enclosed is our check in the amount of $285.00 for the filing fee. Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Sincerely,
County Home Park Community Assn., Inc.

By: _____
David L. Jordan, President
120 Gibbons Blvd., Cockeysville, MD 21030
410-628-0623

_____ _____
Gary P. Lay Tricia L. Lay
109 Gibbons Blvd., Cockeysville, MD 21030
410-666-2717

cc: G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Ave., Towson, MD 21204
People's Counsel for Baltimore County, 400 Washington Ave., Room 47, Towson, MD 21204

RECEIVED
APR 13 2001
GDZ
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

County Home Park Community Assn., Inc.
120 Gibbons Boulevard
Cockeysville, Maryland 21030
May 4, 2003

Chairman, Baltimore County Board of Appeals
400 Washington Avenue
Towson, MD 21204

RE: Case No. 01-283-X

Dear Mr. Marks:

The County Home Park Community Association would like to go on record supporting the People's Counsel Memorandum that is being provided to the Board of Appeals regarding the subject case. We agree that the arguments are appropriate and that there is excellent justification for not granting the petitioner's request for a special exception for a continuing care facility on the north side of Padonia Road east of Greenside Drive. We ask that the Board give full consideration not only to the People's Counsel arguments but also those provided by the community association in writing and those provided in testimony by both the association and its residents.

We thank you for your patience in hearing all the arguments and in fully evaluating their merits.

Sincerely,

David L. Jordan, President
County Home Park Community Assn., Inc.

cc: Peter Max Zimmerman, People's Counsel

RECEIVED
MAY 05 2003
BALTIMORE COUNTY
BOARD OF APPEALS

4/03/03 Put on Mangione notification List

Arnold & Theresa Landl
107 Gibbons Blvd
Cockeysville 21030 ✓

Marlene Bauer
106 Gibbons Blvd ✓
Cockeysville, MD 21030

Gary Lay
109 Gibbons Blvd
Cockeysville MD 21030 } already in file

DATE: 11/13/02

PEOPLE'S COUNSEL'S SIGN-IN SHEET

CASE NAME: 01-283-X - MANGIONE

CASE NO.:

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check if you wish to testify	Name / Address Phone Number	Community Group You Represent / Basis of Your Concerns
✓	Stephen Weber 9801 Van Buren Ln, 21030	County Home Park Comm Assn.
✓	DAVID L. Jordan 120 Gibbons BLVD, 21030	County Home Park Comm. Assoc.
	Theresa Land 21030 107 Gibbons Blvd	" " " " "
	MICHAEL NOPPENBERGER 9 GIBBONS BLVD 21030	" " " " "

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Stephen Weber	9801 Van Buren Ln, 21030
Tricia Lay	109 Gibbons Blvd, 21030
DAVID MACCUBBIN	115 GIBBONS BLVD, 21030
David Jord	120 Gibbons BLVD 21030

Prot Ex #

COUNTY HOME PARK COMMUNITY ASSN., INC.

120 Gibbons Boulevard
Cockeysville, MD 21030

March 4, 2001

Baltimore County Zoning Commissioner
401 Bosley Avenue
Towson, MD 21204

RE: Mangione Property, Padonia Road / Assisted Living Facility
Hearing Date - March 5, 2001

Dear Mr. Commissioner:

We wish to express our sincere concern with the proposed development of the subject Mangione property, which lies between the north side of Padonia Road, east of Greenside Drive, and the single family homes on the south side of Gibbons Boulevard in our community. While the efforts of "Smart Growth" seem to be ever pushing for providing such infill development, these kinds of developments can be very destructive to long-standing adjacent residential developments. Our subdivision is a rather unique one, dating back to the early 1920's when the surrounding area was still entirely country and adjacent properties were still being actively farmed. The three single family homes which are most directly impacted by this project are owned by Barbara Brumley on the west, Arnold & Theresa Land in the middle, and Gary & Tricia Lay on the east. Mr. Land built his house back in 1951 and at the time he built it, Gibbons Boulevard wasn't even paved and York Road was still a two-lane rural highway. Padonia Road east of York Road didn't even exist and none of the commercial developments currently in the area existed. These three properties are positioned at the top of a fairly steep hill with a densely wooded area behind it. While the extension of Padonia Road and all the ensuing commercial development has been happening over the past 50 years, the woods to the south of these homes have well protected the houses from much of the impact of the nearby developments by visually shielding them and by also helping to absorb much of the associated commercial and traffic noises along the Padonia & York Road corridors. Such a secluded environment was much of the reason the Lays purchased their home a few years ago and caused them to provide recent improvements to the back of their home to help enjoy the adjacent forest and isolation which it provides.

The steepness of the Mangione property had always presented many difficulties in its development. Now we have a situation where the property owner wants to grade practically the entire site right up to these homeowners' property lines, grade the property to the maximum 2:1 slopes, remove the entire forest which has provided these homes much of their unique value, and erect a four-story building which appears will have the top floor residents looking level into the back yards of these three houses. These three homes will no longer have any seclusion but will now be presented with a "vista" of the top floors of a multi-story structure, a "wonderful view"

of the Padonia Shopping Center and all the traffic and noise along Padonia and York Roads, Fox Chevrolet and its garages, parking lots, and outdoor P.A. systems, and the entire loss of all privacy for these homeowners. They will go from being entirely protected and secluded to being totally exposed and open up to public view from distances far away.

It is our request, while you review this plan, that you will take into account the significant impact that this development will have upon these homes and do everything within your power to protect them. In reviewing numerous plans throughout the County, it is interesting to note that with the vast majority of infill developments, the County usually seems to do all it can to try and provide continuing buffers between older residential developments and their new neighbors, even when the new neighbors may also be single family homes. The preservation of wooded buffers to protect older developments from such Smart Growth infill is only appropriate and we applaud the County in these efforts. In this particular case, it would seem more critical that the County give even greater consideration to providing such continuing protection. The adjacent use, while still residential in nature, by its size and height is still very much a commercial use. It could as easily be an office building as a residential unit. The impacts will be the same.

We ask for your consideration of the following items:

1. Retain a minimum 50-foot wide buffer of existing forest between the back properties of these three homes and the area where the ground would be graded.
2. Keep the top elevation of the building at or below the floor elevation of the Land's house.
3. Insure that no air handling units and/or air conditioning units of any kind will be placed on the roof of the building. Such units should be placed at the ground level of the building to insure that the noise from them is not directed right into the back yards of these long-standing homes.
4. If you find that maintaining a 50-foot wide forest buffer is impossible or impractical, we would ask that the maximum amount of forest buffer be retained and that everything possible be done on the commercial side of the buffer to plant reasonably large evergreen trees to provide for blockage of views and noise. Such plantings should be dense enough to eventually provide for a solid "wall" of visual protection. We would ask that Avery Harden, the County landscape architect, work with the developer and especially with the Lay family in coordinating a landscape plan to reasonably address the significant concerns these residents have with the removal of any forest land and ways to mitigate those impacts if they are absolutely unavoidable.
5. We realize that this project already has approximately 400 linear feet of retaining walls, some of them already 20 feet tall. If some of them have to be made taller to achieve the requested results, or the building elevation has to be lowered, we would ask that you require such examinations to be made and that all reasonable engineering efforts be made to protect these homes. It is clear that the developer is already spending considerable sums of money to scarify and severely grade the entire site in order to cram every bit of floor area onto what is a terrible site to develop. While we would admit that

the County put this commercial zoning right next to D.R. 3.5 land, probably everyone, including us, thought that due to the steep slopes, anything that would be developed would at least be sitting down in a hole out of sight. We always thought there would still be a reasonable buffer left between any development and the houses due to the severe geographic constraints of the site. Unfortunately, the apparent decision of the developer to make the slopes even steeper, build 400 feet of retaining wall, and slap a four-story building on it to make it work was never envisioned by us, unfortunately, and was probably not envisioned by the County either. We would ask that the County provide the same type of buffers and residential transition areas it requires of other developments, residential and commercial, when they are adjacent to existing long-standing single-family home communities.

Mr. & Mrs. Land have seen many changes to this community and to the Cockeysville/Timonium area in their 50 years living here. The forest behind their house, and that of Mr. & Mrs. Lay and Ms. Brumley, is what provides a tremendous asset to the value of these properties and provides a vital element to the residential integrity of this entire neighborhood. The houses on top of this hill (east of Greenside Drive) could be much like they were 30-40 years ago. This community is isolated so much in still a rural atmosphere and the homes are still on private well and septic systems, while totally surrounding us is denser housing and commercial development, but out of view. The destruction of these woods and this buffer would be a severe detriment to this atmosphere which this community current possesses and has possessed for over 50 years. We request your support and that of the Office of Planning to help protect our community as much as possible from this development, just as you have done with innumerable other older residential communities over the past several years. Please give your consideration to our requests above. Should you wish, I would be more than willing to establish any meetings between the County, developer, adjacent residents, and the Association that would assist in reaching our goals. If you have any questions, please feel free to call me at home at 410-628-0623.

Sincerely,

David L. Jordan, President
County Home Park Community Assn., Inc.

cc: The Honorable Wayne Skinner, Councilman, 4th District
Jeff Long, Office of Planning
Robert Bowling, Developers Plans Review; Attn: Avery Harden
Barbara Brumley, 105 Gibbons Boulevard
Arnold & Theresa Land, 107 Gibbons Boulevard
Gary & Tricia Lay, 109 Gibbons Boulevard

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1371

September Term, 2001

LEV FUTORYAN

v.

MAYOR AND CITY COUNCIL
OF BALTIMORE

Murphy, C.J.
Hollander
Moylan, Charles E., Jr.
(retired, specially assigned),

JJ.

Opinion by Moylan, J.

Filed: March 26, 2003

REPORTED

IN THE COURT OF SPECIAL APPEALS

Exhibit A

County Home Park Community Association, Inc.

120 Gibbons Boulevard
Cockeysville, MD

November 11, 2002

Be it resolved, by the County Home Park Community Assn., Inc., that we find the granting of a Special Exception for a Continuing Care Facility in a BR zone, for the property reviewed by the Zoning Commissioner under Case No. 01-283-X to be incorrect; that the proposed development in its current proposed form would cause an adverse effect upon adjoining properties which is unique and different from that which would normally be inherently associated with such a development in a BR zone. The primary impacts deal with the height and mass of the proposed structure and the removal of the dense vegetative cover and forest which protects the single family homes from the commercial intrusions along Padonia Road.

To give a brief description of the residential area adjacent to the subject site, we offer the following information. The subdivision to the north of the site is part of the Timonium Heights, Section 2 subdivision which was recorded in 1921 when the area was completely rural. It is composed of single family homes, all built at different times and styles over a long period of time on land which is zoned DR 3.5. The entire development runs from York Road in the west to the Dulaney Valley Memorial Gardens in the east and contains 73 active members in the County Home Park Community Assn. However, while this neighborhood is near urban developments, the area east of Van Buren Lane is extremely unique to this area of the County since it is composed of a small area which is located outside the Metropolitan District and therefore is never intended to be serviced by water & sewer, even though all nearby neighborhoods are inside the Metropolitan District. As such, while the property is zoned DR 3.5, the actual lot sizes in the 100 block of Gibbons Boulevard average 0.50 acres, thus reflecting a DR 2 area. This is due to the need for larger lot sizes to allow for septic tank fields and wells. This area is also very isolated and peaceful, being on dead-end streets and lying on the top of a hill at elevations ranging from 480 to 528 feet above sea level while Greenside Drive is at approximately 400 feet and Padonia Road at the subject site ranges from 410-420 feet above sea level. The area to the south of the 100 block of Gibbons Boulevard is covered with dense forest while the area to the north of this subdivision is open space provided by the County Home Park. Therefore, with the low density housing, isolated location, high elevation, and lack of any visual references to urban facilities, one feels as though they live in a totally rural area and the community easily presents that image.
Attached are copies of the maps prepared for the 1996 rezoning of the property to the east of the subject site for your information. One map shows the 1921 subdivision plan with the Metropolitan District lines superimposed on the map, another map is the State Assessment Map, showing the rezoning area as hatched and the subject parcel is shown as Parcel #111, and a copy of the Office of Planning's recommendations for downzoning the property from DR 16 to DR 3.5 and DR 5.5. The County Council determined that placing high density residential properties next to our single family homes in this area would be detrimental to the community and would not provide for compatible housing types.

The Special Exception is for a **Continuing Care Facility**, which according to the Baltimore County Zoning Regulations (BCZR) in Sec. 101 is a building that contains dwelling facilities

Exhibit B

County Home Park Community Assn., Inc.
120 Gibbons Boulevard
Cockeysville, Maryland

COMPARATIVE STUDY

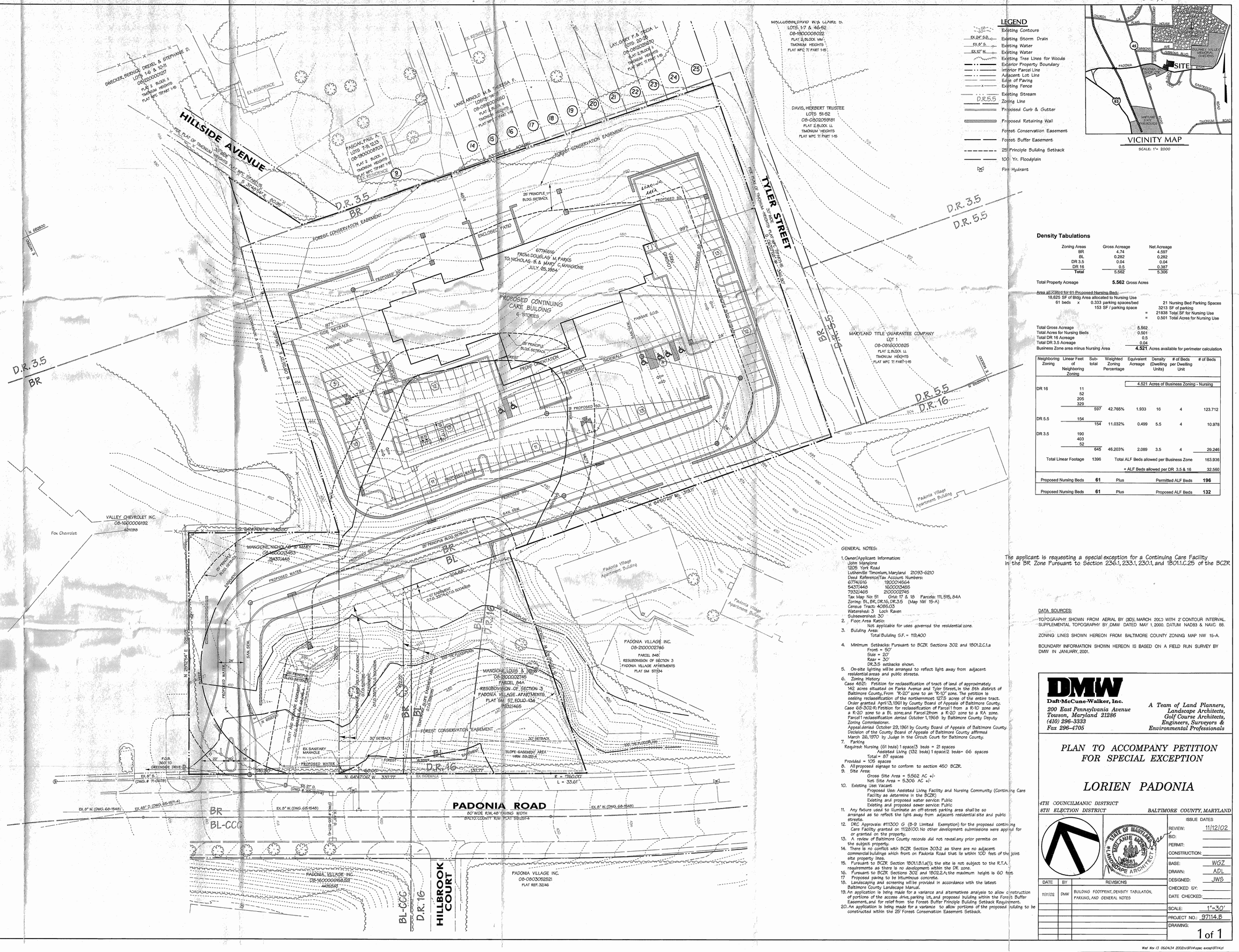
In comparing the impacts of the proposed Continuing Care facility on the adjacent DR 3.5 single-family homes and be able to adequately assess the impacts that business zones have on such residential properties, it is necessary to consider the existing impacts that such business zones have. In granting a special exception for this facility, it should be found that this use will have no greater impact on the adjacent residential properties than if the property were developed with a use as allowed outright with no variances or special exceptions.

To form a basis for the impacts such businesses have, we examined and cataloged every BL, BM, & BR zone which is adjacent to a DR 1, DR 2, and/or DR 3.5 zone between Park Heights Avenue and Harford Road in the central corridor of Baltimore County. Basically this is observing how each business zone that is located adjacent to a low density residential zone is being used. The attached report provides seven zoning maps (Z1 thru Z7) with all the applicable business zones highlighted and indications of where photographs were taken of each site (direction & location). Descriptions are provided under every photograph indicating what is in each of these areas.

Upon examining the full study, we have concluded that all of the uses observed on these business zones have significantly less impacts than that proposed by the Continuing Care facility. The proposed facility's height and mass cause the building to have an unusually adverse and unique impact on what is currently a very isolated rural-type community. The topography adjacent to our neighborhood and on the subject site is a key element in the impacts to which we would be subjected and is a key element in how this neighborhood has been protected from all the business activity that is near it. The fact that the site is steeply sloped would essentially cause all uses to be built at an elevation significantly below the adjacent homes. Of all the buildings examined, it is typical that buildings on these business zones are one and two-story buildings. If such a building were built on this site, it would not present any unusual impacts since the top of the building would still be below the houses on top of this hill. When examining nearly 40 sites in the subject corridor, only one building stood out as being somewhat prominent in the surrounding landscape. It is a 4-story office building at the southwest quadrant of Providence Road at the Beltway and it is the tallest building in the subject business zones. However, when comparing the mass of this building against the mass of the proposed Continuing Care facility, we find that proposed building is **FIVE** times the volume of what is currently the tallest building in the central corridor on the subject business zones. *A more detailed examination of this building is provided following the pictures after Page Z5 and it is strongly recommended that this be read.* In addition, besides the proposed building being 5 times larger, it is also 60% closer to the nearest house, making the building even more impactive and extremely overpowering. The fact that the proposed building is also 6

Exhibit C

Pet X 1


HILLSIDE AVENUE
TYLER STREET
PADONIA ROAD
HILLBROOK COURT
PROPOSED CONTINUING CARE BUILDING
6 STORIES
SWECKER, BERNICE DIEKEL & STEPHANIE D.
LOTS 1-6 & 10-11
08-2000001027
PLAT 2 BLOCK K
TIMONIUM HEIGHTS
PLAT WPC 7/PART 1-15
EX. RESIDENCE
FASCIA, PAUL A.
LOTS 7-9,12,13
08-1900008703
PLAT 2, BLOCK K
TIMONIUM HEIGHTS
PLAT WPC 7/PART 1-15
LAND, ARNOLD M.& THERESA F.
LOTS 15 & 16
08-0810013650
PLAT 2, BLOCK K
TIMONIUM HEIGHTS
PLAT WPC 7/PART 1-15
LAY, GARY P.& LINDA L.
LOTS 22-25
08-0810025670
PLAT 2, BLOCK K
TIMONIUM HEIGHTS
PLAT WPC 7/PART 1-15
MACLUDDIN, DAVID W.& CLAIRE S.
LOTS 1-7 & 46-52
08-1900008022
PLAT 2, BLOCK MM
TIMONIUM HEIGHTS
PLAT WPC 7/ PART 1-15
DAVIS, HERBERT TRUSTEE
LOTS 51-52
08-0802058181
PLAT 2, BLOCK LL
TIMONIUM HEIGHTS
PLAT WPC 7/ PART 1-15
MARYLAND TITLE GUARANTEE COMPANY
LOT 1
08-0816000825
PLAT 2, BLOCK LL
TIMONIUM HEIGHTS
PLAT WPC 7/ PART 1-15
VALLEY CHEVROLET INC.
08-1600006192
6211/98
Fox Chevrolet
MANGIONE, NICHOLAS & MARY
08-1600013453
5437/446
MANGIONE, LOUIS J. & JOAN
08-2100002745
PARCEL 84A
RESUBDIVISION OF SECTION 3
PADONIA VILLAGE APARTMENTS
PLAT SM 57, FOLIO 134
7932/465
PADONIA VILLAGE INC.
08-2100002746
PARCEL 84B
RESUBDIVISION OF SECTION 3
PADONIA VILLAGE APARTMENTS
PLAT SM 57/134
PADONIA VILLAGE INC.
08-1600009158
4456/545
PADONIA VILLAGE INC.
08-0803052521
PLAT REF. 32/46
Padonia Village Apartment Building
6774/616
FROM DOUGLAS M. PARKS
TO NICHOLAS S. & MARY C. MANGIONE
JULY 25, 1984
D.R. 3.5
D.R. 5.5
D.R. 16
BR
BL
BL-CCC
N 64°47'02" W 337.77'
N 64°47'02" W 340.00'
N 25°25'54" E 228.00'
S 25°25'54" W 228.00'
N 64°50'29" W 318.11'
R = 1760.00'
L = 33.61'
FOREST CONSERVATION EASEMENT
25' PRINCIPLE BLDG. SETBACK
ENCLOSED PATIO
PROPOSED 8" W.
PROPOSED 6" W.
PROPOSED 4" W.
PROPOSED WATER
SAN. SEW.
SIDEWALK
PASSIVE OPEN SPACE
FRONT ORIENTATION
LOADING AREA
EX. SANITARY MANHOLE
EX. 8" D. (DWG. # 71-0679)
EX. 8" W. (DWG. 68-1548)
EX. 48" D. (DWG. 65-1571-A)
EX. 21" D. (DWG. # 65-1571-A)
EX. 8" W. (DWG. 68-1548)
EX. SIDEWALK
100 YR. FLOODPLAIN
30' SETBACK
FOREST BUFFER EASEMENT
SLOPE EASEMENT AREA
10' EASEMENT (L.6129, F.377 & D.G.S. 50-SHEET)
20' DRAINAGE & UTILITY EASEMENT
20' DRAINAGE & UTILITY EASEMENT (L.6129, F.377 & D.G.S. 50-SHEET)
UTILITY AND DRAINAGE EASEMENT (L.6129, F.377 & D.G.S. 50-SHEET)
P.O.B. 360' TO GREENSIDE DRIVE
N 69500
N 69600
N 69700
N 69800
N 69900
N 70000
N 70100
N 70200
N 70300
N 70400
N 70500
N 70600
N 70700
N 70800
N 70900
N 71000
N 71100
N 71200
N 71300
N 71400
N

Petitioners Exhibit No. 2



100 0 100 200 300 Feet

DMW

Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Engineers, Surveyors & Environmental Professionals

Padonia Buisness Park

Source: Baltimore County OIT/GIS
March 1996

DATE	BY	REVISIONS

ISSUE DATES
REVIEW:
BID:
PERMIT:
CONSTRUCTION:

BASE:
DRAWN:
DESIGNED:
CHECKED BY:
DATE:
SCALE:
PROJECT NO.:
DRAWING: 94117.S

PETITIONER'S EXHIBITS

Verified 12/04/02

CASE#: 01-283-X

Verified 4/03/03

EXHIBITS

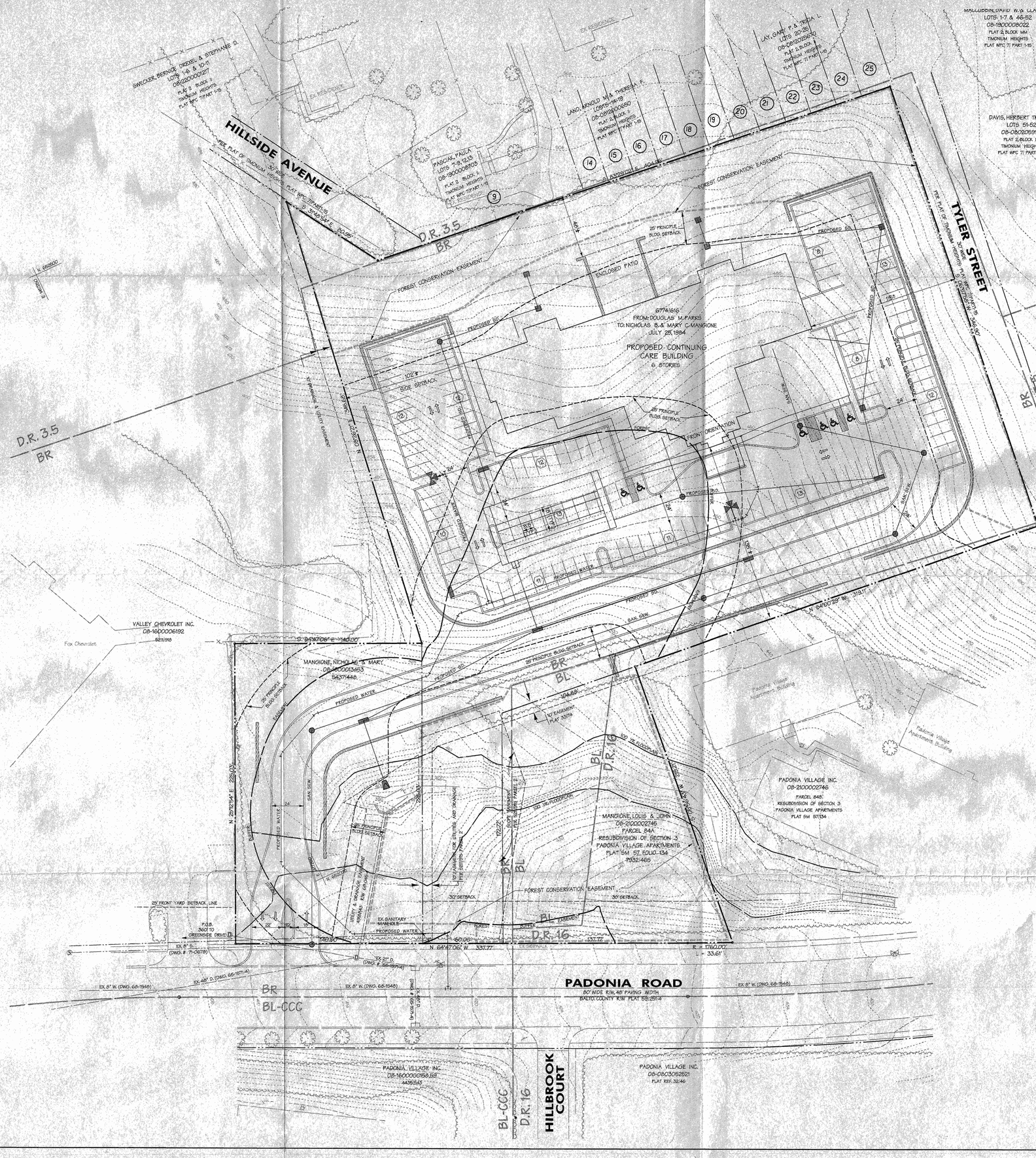
PETITIONER

ON Large Board

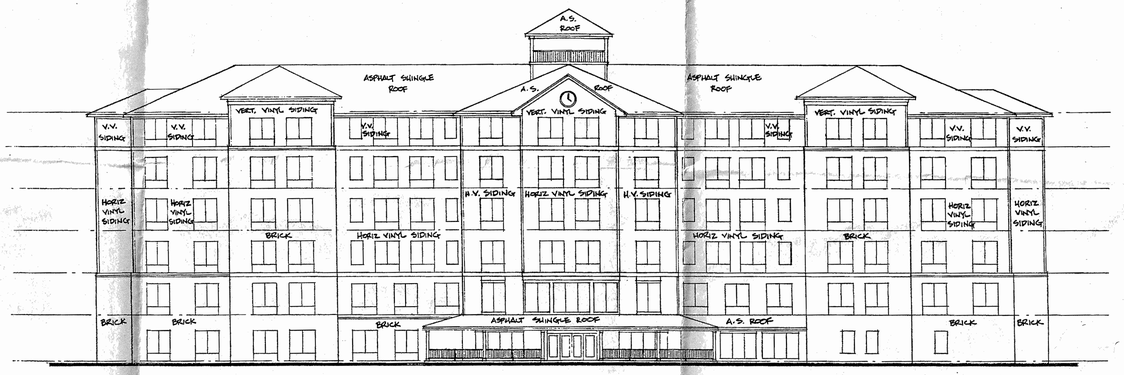
1. Plan to Accompany Petition For Special Exception - dated 11/12/02 (Amended Plan)
2. Floor Plan of LORIEN PATAPSCO
3. Letter from Arnold Jablon to DMW, Inc. dated 11/28/00
4. ~~Testimony~~ CV of John W. Seefried
5. Plan to Accompany Petition For Special Exception - dated 1/17/02 (original)
6. " " " " " " " - dated 11/02 (red-lined)
7. letter from John L. Lewis to DMW, Inc. dated 8/1/02
8. letter from John L. Lewis to DMW, Inc. dated 12/7/00
9. ~~Resume~~ CV of Melanie Moser
10. Vicinity Map by DMW
11A. Photo - Sunrise, Towson
11B. Photo - Edenwald
11C. Photo - Hearthomes At Lutherville
11D. Photo - Blakehurst @ Towson

People's Counsel

1. Conceptual Plan dated 1/2/01 - Concept Plan A
2. Excert from standard ADC road map showing site in yellow.
3. Taxation of 3 parcels that comprise this site. MDAT.
4. B.C. Zoning map, year 2000, scale: 200' NW 15A
5. Ortho photo of area. scale: 125' 3/97
6. Rule 8 documents (?) resolution
7. Study done by County Home Park Community Assn.
8. Aerial photos on paper (B+W)
9. BC INTEROFFICE CORRESPONDENCE FROM PAT KELLER, DIR. Office of Planning 3/27/03
10. Commercial Contractors INC. 7/27/79
11A. CHPCA, INC. RULE 8, 3/20/03
11B. CHPCA, INC. RULE 8, 3/20/03


HILLSIDE AVENUE
TYLER STREET
PADONIA ROAD
HILLBROOK COURT
PROPOSED CONTINUING CARE BUILDING
6 STORIES
97741616
FROM: DOUGLAS M. PARKS
TO: NICHOLAS S.& MARY C. MANGIONE
JULY 25, 1984
FOREST CONSERVATION EASEMENT
ENCLOSED PATIO
25' PRINCIPLE BLDG. SETBACK
FRONT ORIENTATION
PROPOSED SIGN
PROPOSED WATER
PROPOSED SEWER
EX. SANITARY MANHOLE
EX. WATER MANHOLE
EX. 8" W. (DWG. 68-1548)
EX. 6" S. (DWG. # 7-0678)
EX. 48" D. (DWG. 68-1671-4)
EX. 21" D. (DWG. # 68-1671-4)
EX. SIDEWALK
25' FRONT YARD SETBACK LINE
P.O.B. 360' TO GREENSIDE DRIVE
SWEIGER, BERNICE DIEDEL & STEPHANIE D.
LOTS 1-6 & 10-11
06/2300/00217
PLAT 2, BLOCK II
TIMONIUM HEIGHTS
PLAT WPC 7/PART 1-15
PASCAL, PAULA
LOTS 7-9,12,13
08-1900006705
PLAT 2 BLOCK II
TIMONIUM HEIGHTS
PLAT WPC 7/PART 1-15
LAND, ARNOLD M/A THERESA F.
LOTS 17-19
08-0812400660
PLAT 2, BLOCK II
TIMONIUM HEIGHTS
PLAT WPC 7/PART 1-15
LAY, GARY P.& TRIDA L.
LOTS 20-25
08-0810205610
PLAT 2, BLOCK II
TIMONIUM HEIGHTS
PLAT WPC 7/PART 1-15
MALLUDDIN, DAVID W.& CLAIRE S.
LOTS 1-7 & 46-52
08-1900008022
PLAT 3, BLOCK MM
TIMONIUM HEIGHTS
PLAT WPC 7/ PART 1-15
DAVIS, HERBERT TRUSTEE
LOTS 51-52
08-0820259181
PLAT 2, BLOCK LL
TIMONIUM HEIGHTS
PLAT WPC 7/ PART 1-15
MARYLAND TITLE GUARANTEE COMPANY
LOT 1
08-0816000825
PLAT 2, BLOCK I
TIMONIUM HEIGHTS
PLAT WPC 7/ PART 1-15
VALLEY CHEVROLET INC.
08-1600006192
6211/316
Fox Chevrolet
MANGIONE, NICHOLAS & MARY
08-1600013483
5437/448
MANGIONE, LOUIS & JOHN
08-2100002745
PARCEL 84A
RESUBDIVISION OF SECTION 3
PADONIA VILLAGE APARTMENTS
PLAT SM 57, FOLIO 134
7932/465
PADONIA VILLAGE INC.
08-2100002746
PARCEL 84B
RESUBDIVISION OF SECTION 3
PADONIA VILLAGE APARTMENTS
PLAT SM 57/134
PADONIA VILLAGE INC.
08-1600006158,68
4436/543
PADONIA VILLAGE INC.
08-0803062521
PLAT REF. 32/46
Padonia Village Apartment Building
Padonia Village Apartment Building
Padonia Village Apartment Building
Padonia Village Apartment Building
Padonia Village Apartment Building
D.R.3.5
D.R.5.5
D.R.16
BR
BL
BL-CCC
N 25°05'54" E 225.03'
S 64°47'06" E 140.00'
N 64°47'06" W 337.77'
N 64°02'39" W 313.11'
S 31°48'54" E 90.98'
R = 1760.00'
L = 33.61'
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6
LOT 7
LOT 8
LOT 9
LOT 10
LOT 11
LOT 12
LOT 13
LOT 14
LOT 15
LOT 16
LOT 17
LOT 18
LOT 19
LOT 20
LOT 21
LOT 22
LOT 23
LOT 24
LOT 25
EX. RESIDENCE
EX. RESIDENCE
EX. RESIDENCE

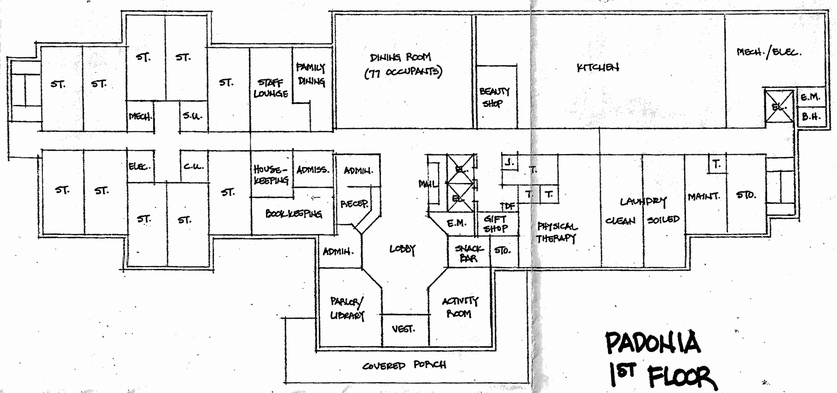
Pet X 2



FRONT (SOUTH) ELEVATION

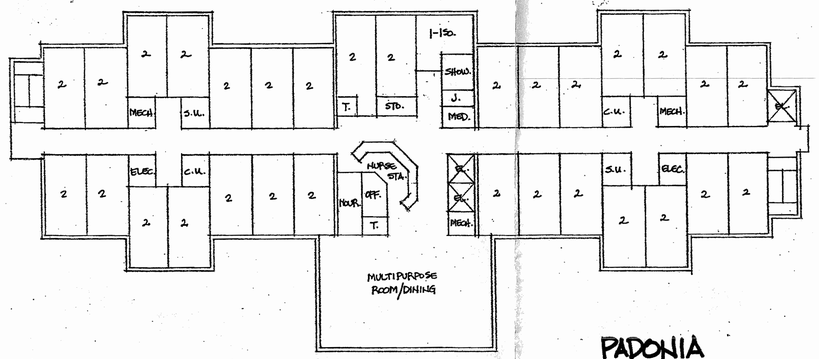


REAR (NORTH) ELEVATION



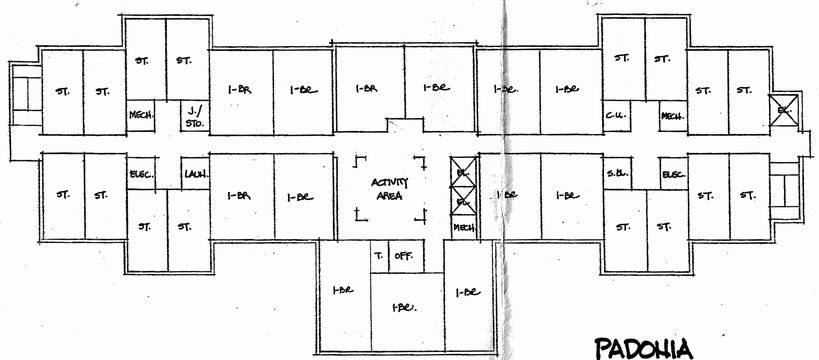
PADONIA
1ST FLOOR

NO SCALE



PADONIA
2ND FLOOR

NO SCALE



PADONIA
FLOORS 3-6

NO SCALE

SCHEMATIC FOR ILLUSTRATIVE PURPOSES ONLY

Kann and Associates Inc.
207 East Redwood Street
Fourth Floor
Baltimore, MD 21202
410 234 0900
410 539 4921 Fax

Architecture
Planning
Preservation
Interior Design
Facilities Management

These drawings are the property of the Architect, Kann and Associates, Inc. Unauthorized reproduction for any purpose is an infringement upon copyright laws. Violators will be subject to prosecution by the fullest extent of the law.

Written dimensions on these drawings shall have precedence over scale dimensions. Contractors shall verify and be responsible for all dimensions and conditions on the job and this office must be notified of any variation from the dimensions and conditions shown by these drawings.

LORIEN PADONIA

Revisions:	Date:

Released For:	
■ Preliminary Only	11-11-02
☐ Bidding	
☐ Permits	
☐ Construction	
Drawn by:	
Designed by:	
Quality Check by:	

KA Project Number: 98132

Sheet Title:

Scale: AS NOTED

Scott
97114-AO
File
File
John Seefried
Tom Repsher

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, Md. 21204

410-887-3335

November 28, 2000

Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, MD 21286

RE: Padonia Village
N/S Padonia Village; E of Grenside Dr.
DRC Number 111300G; Dist. 8C4

Dear Sir or Madam:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 26-171 and Section 26-211 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management.

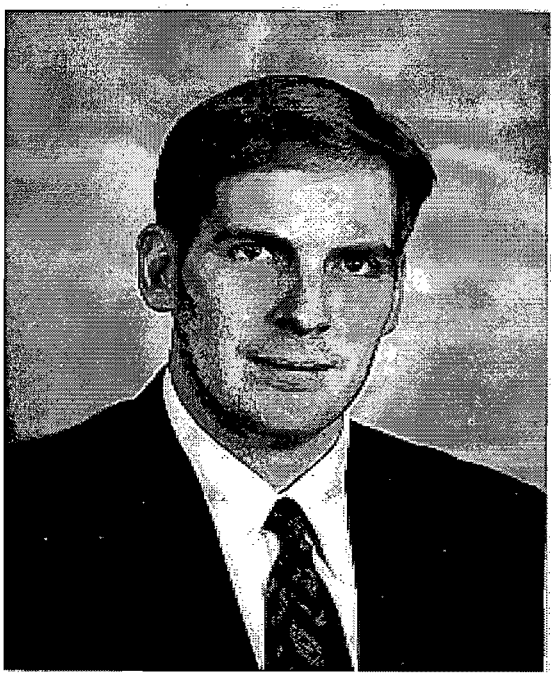
The DRC has, in fact, met in an open meeting on November 13, 2000, and made the following recommendations:

The DRC has determined that your project meets the requirements of a limited exemption under Section 26-171 (B) (9). Please be advised that your project will require a Spirit and Intent letter from the Zoning Review Section. They may be reached at 410-887-3391.

PET #3 11/13/02

John W. Seefried, P.E.

Associate



DMW

Daft·McCune·Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21204
Phone 410 296 3333
Fax 410 296 4705
jseefried@dmw.com

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

With over 11 years in design and project management, John brings a thorough, practical approach to planning and scheduling. He has supervised efforts for residential, commercial, industrial, and institutional projects of different sizes and complexities, from planning through construction. His particular skills include overseeing preparation of development plan processing and public road and utility plans, identifying potential problem areas in the planning, resolving them with clients to minimize impact on costs and schedule, selecting computer applications that increase efficiency.

Significant Projects

Hunt Valley Mall Expansion
Hunt Valley, MD

Garrison Forest School
Owings Mills, MD

Westview Mall
Catonsville, MD

MCI Junction Facility
Relay, MD

Hopewell Pointe
Essex, MD

A.V. Williams Properties
Essex, MD

Avalon East
Owings Mills, MD

Rosewood Technology Center
Owings Mills, MD

Professional Background

Daft-McCune-Walker, Inc.
Towson, Maryland
1997 - Present

KCI Technologies, Inc.
Towson, Maryland and
Newark, Delaware
1985 - 1997

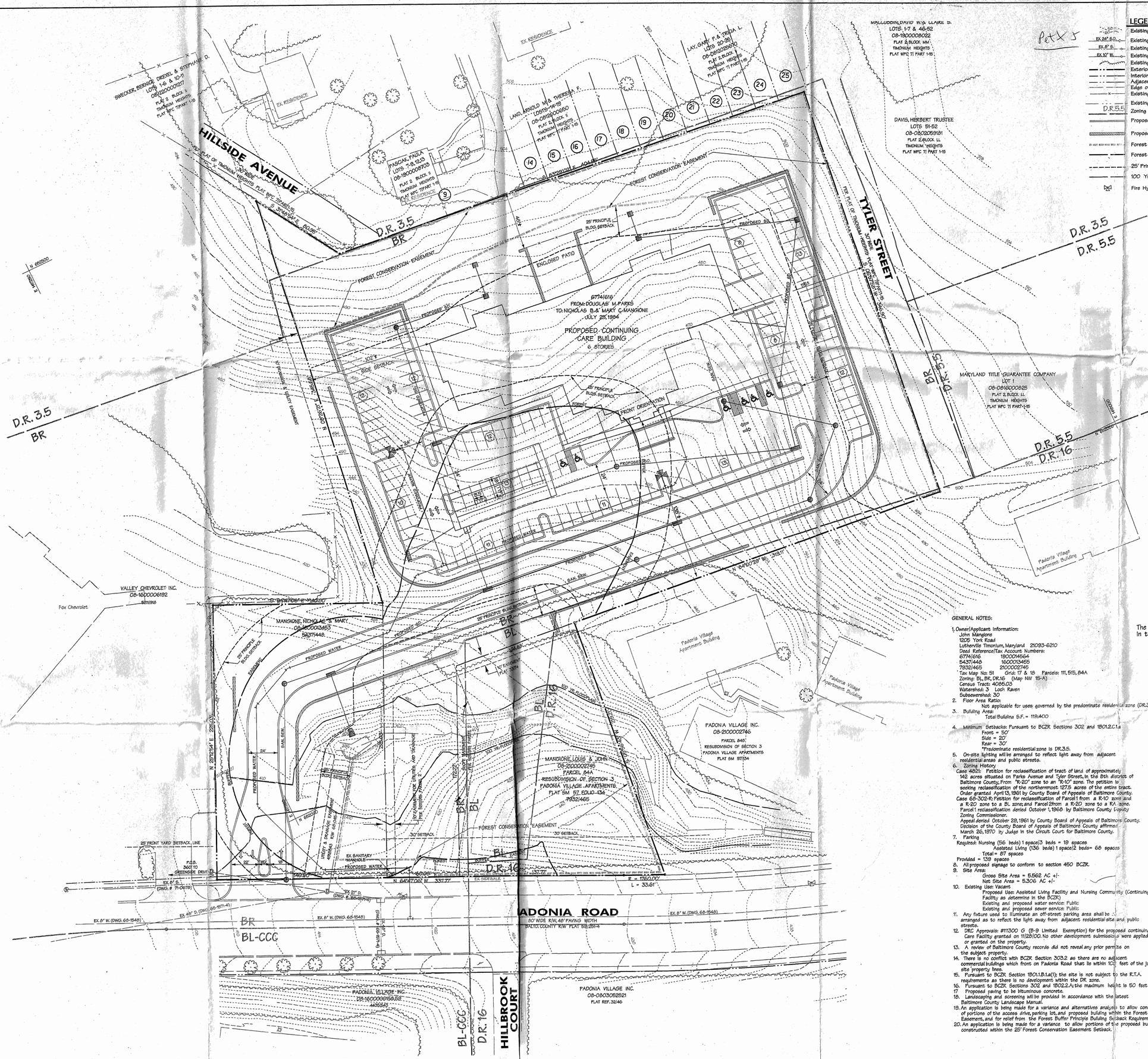
Education

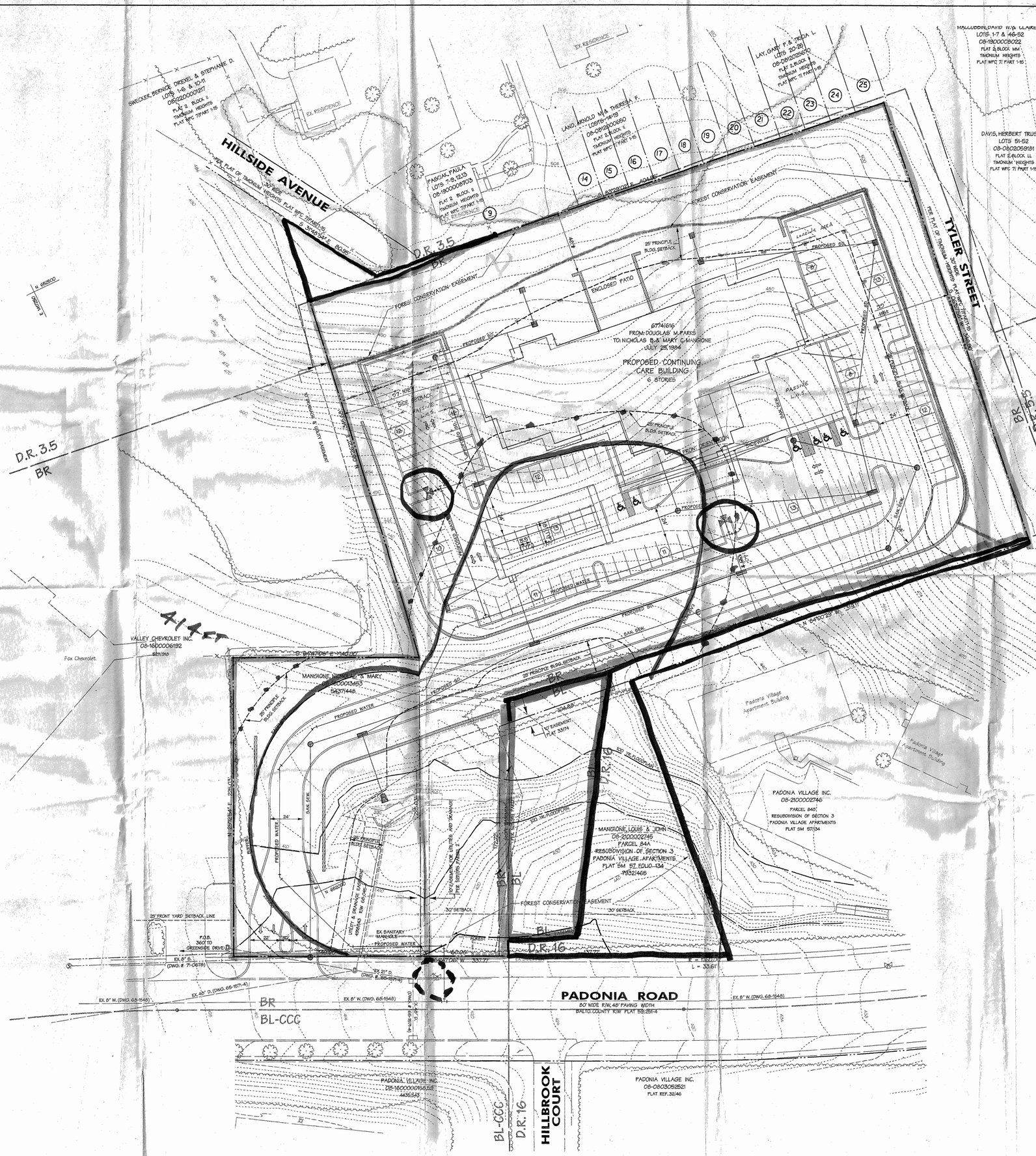
Bachelor of Engineering
Civil Engineering
University of Delaware

Registration

Civil Engineer
Maryland, Delaware

PET #4 11/13/02


HILLSIDE AVENUE
TYLER STREET
HILLBROOK COURT
PADONIA ROAD
PROPOSED CONTINUING CARE BUILDING
6 STORIES
ENCLOSED PATIO
FOREST CONSERVATION EASEMENT
D.R. 3.5
BR
D.R. 5.5
D.R. 16
BL
BL-CCC
SWICKER, BERNICE DREXEL & STEPHANIE D.
LOTS 1-6 & 10-11
08-2002000207
FLAT 2 BLOCK II
TIMONIUM HEIGHTS
FLAT WPC 7/PART 1-B
PASCAL, PAULA
LOTS 7-9, 12,13
08-1900008703
FLAT 2 BLOCK II
TIMONIUM HEIGHTS
FLAT WPC 7/PART 1-B
LAND, ARNOLD M & THERESA F.
LOTS 14-16
08-0812500650
FLAT 2 BLOCK II
TIMONIUM HEIGHTS
FLAT WPC 7/PART 1-B
LAY, GARY P & TRINA L
LOTS 20-25
08-2912705540
FLAT 2 BLOCK II
TIMONIUM HEIGHTS
FLAT WPC 7/PART 1-B
MCLUDDIN, DAVID W. & CLARE D.
LOTS 1-7 & 46-52
08-1900008022
FLAT 2 BLOCK MM
TIMONIUM HEIGHTS
FLAT WPC 7/ PART 1-B
DAVIS, HERBERT TRUSTEE
LOTS 51-52
08-0820059151
FLAT 2 BLOCK LL
TIMONIUM HEIGHTS
FLAT WPC 7/ PART 1-B
MARYLAND TITLE GUARANTEE COMPANY
LOT 1
08-0816000625
FLAT 2 BLOCK LL
TIMONIUM HEIGHTS
FLAT WPC 7/ PART 1-B
VALLEY CHEVROLET INC.
08-1600006192
5211/116
Fox Chevrolet
MANGIONE, NICHOLAS & MARY
08-1600013463
5437/448
MANGIONE, LOUIS & JOHN
08-2100002746
PARCEL 844
RESUBDIVISION OF SECTION 3
PADONIA VILLAGE APARTMENTS
PLAT 6M 57/134
7932/465
PADONIA VILLAGE INC.
08-2100002746
PARCEL 845
RESUBDIVISION OF SECTION 3
PADONIA VILLAGE APARTMENTS
PLAT 6M 57/134
PADONIA VILLAGE INC.
08-1600009150,56
4456/545
PADONIA VILLAGE INC.
08-0803052521
PLAT REF. 32/46
Padonia Village Apartment Building
67714/616
FROM: DOUGLAS M. PARKS
TO: NICHOLAS & MARY C. MANGIONE
JULY 25, 1984
S 31°45'54" E 90.48'
S 31°29'00" E 404.85'
N 25°12'54" E 225.00'
S 64°47'06" E 440.00'
N 64°47'06" W 337.77'
N 25°12'54" E 330.00'
S 64°47'06" E 440.00'
N 64°47'06" W 337.77'
N 25°12'54" E 330.00'
S 64°47'06" E 440.00'
N 64°47'06" W 337.77'
R = 1760.00'
L = 33.61


HILLSIDE AVENUE
30' WIDE
PER PLAT OF TIMONIUM HEIGHTS PLAT WPC 71 PART 1-5
TYLER STREET
PER PLAT OF TIMONIUM HEIGHTS PLAT WPC 71 PART 1-5
PADONIA ROAD
80' WIDE R/W, 40' PAVING WIDTH
BALTO. COUNTY R/W PLAT E&S 251-4
HILLBROOK COURT
SWECKER, BERNICE DREXEL & STEPHANIE D.
LOTS 1-6 & 10-11
08-2202000207
PLAT 2 BLOCK II
TIMONIUM HEIGHTS
PLAT WPC 71 PART 1-5
EX. RESIDENCE
LAY, GARY P. & TERESA L.
LOTS 20-25
08-0812056210
PLAT 2 BLOCK II
TIMONIUM HEIGHTS
PLAT WPC 71 PART 1-5
LAND, ARNOLD M. & THERESA F.
LOTS 7-19
08-0812000650
PLAT 2 BLOCK II
TIMONIUM HEIGHTS
PLAT WPC 71 PART 1-5
PASCAL, PAULA
LOTS 7-9, 12-13
08-1800008703
PLAT 2 BLOCK II
TIMONIUM HEIGHTS
PLAT WPC 71 PART 1-5
EX. RESIDENCE
MALLUDDA, DAVID W. & CLAIRE D.
LOTS 1-7 & 46-52
08-1800008022
PLAT 2 BLOCK MM
TIMONIUM HEIGHTS
PLAT WPC 71 PART 1-5
DAVIS, HERBERT TRUSTEE
LOTS 51-52
08-0802059181
PLAT 2 BLOCK LL
TIMONIUM HEIGHTS
PLAT WPC 71 PART 1-5
MARYLAND TITLE GUARANTEE COMPANY
LOT 1
08-0816000825
PLAT 2, BLOCK LL
TIMONIUM HEIGHTS
PLAT WPC 71 PART 1-5
VALLEY CHEVROLET INC.
08-1600006192
6211/316
Fox Chevrolet
MANGIONE, NICHOLAS J. & MARY
08-1600013453
5437/448
MANGIONE, LOUIS & JOHN
08-2100002745
PARCEL 844
RESUBDIVISION OF SECTION 3
PADONIA VILLAGE APARTMENTS
PLAT SM 57, FOLIO 134
7932/465
PADONIA VILLAGE INC.
08-2100002746
PARCEL 845
RESUBDIVISION OF SECTION 3
PADONIA VILLAGE APARTMENTS
PLAT SM 57/134
PADONIA VILLAGE INC.
08-1600006156
4436/343
PADONIA VILLAGE INC.
08-0803052521
PLAT REF. 32/46
6774/616
FROM: DOUGLAS M. PARKS
TO: NICHOLAS B. & MARY C. MANGIONE
JULY 25, 1984
PROPOSED CONTINUING CARE BUILDING
6 STORIES
ENCLOSED PATIO
LOADING AREA
PROPOSED SIDEWALK
PROPOSED ENTRANCE
PROPOSED WATER
PROPOSED SEWER
FOREST CONSERVATION EASEMENT
25' PRINCIPLE BLDG. SETBACK
30' SETBACK
50' SETBACK
24' FRONT YARD SETBACK LINE
EX. SANITARY MANHOLE
EX. 8" W. (DWG. 68-1548)
EX. 48" D. (DWG. 68-1671-4)
EX. 21" D. (DWG. # 68-1671-4)
EX. 6" G. (DWG.# 71-0678)
EX. 24" D. (DWG. # 68-1671-4)
EX. 8" W. (DWG. 68-1548)
EX. 8" W. (DWG. 68-1548)
EX. 8" W. (DWG. 68-1548)
F.O.B. 360' TO GREENSIDE DRIVE
100 YR. FLOODPLAIN
EX. 24" S.D.
EX. 8" S.
EX. 12" W.
EX. STORM DRAIN
EX. WATER
EX. SANITARY SEWER
EX. TREE LINES FOR WOODS
EX. PROPERTY BOUNDARY
INTERIOR PARCEL LINE
ADJACENT LOT LINE
EDGE OF PAVING
EX. FENCE
EX. STREAM
ZONING LINE
PROPOSED CURB & GUTTER
PROPOSED RETAINING WALL
FOREST CONSERVATION EASEMENT
FOREST BUFFER EASEMENT
25' PRINCIPLE BUILDING SETBACK
100 YR. FLOODPLAIN
FIRE HYDRANT
BR
BL
BL-CCC
D.R. 3.5
D.R. 5.5
D.R. 16
N 84°00'29" W 394.68'
S 84°00'29" E 404.68'
N 84°00'29" W 394.68'
S 84°00'29" E 404.68'
N 82°52'54" E 225.00'
S 82°52'54" W 225.00'
S 84°00'29" E 440.00'
N 84°00'29" W 394.68'
S 5°40'24" E 80.95'
N 5°40'24" W 80.95'
R = 1260.00'
L = 33.61'
R = 1260.00'
L = 33.61'
R = 1260.00'
L = 33.61

97114-A0
File J. Siefrick
File

Baltimore County
Department of Permits and
Development Management

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

August 1, 2002

Mitchell J. Kellman
Draft McCune Walker, Inc.
200 East Pennsylvania Avenue
Towson, MD 21204

Re: 8th Election District, Lorien Padonia
Continuing Care Facility
Padonia Road (VIII-401)
01-283-X

Dear Mr. Kellman:

Staff has reviewed your request for a zoning determination that the BR and BL zoning on the site will allow for a maximum building height of 60 feet pursuant to the DR 16 zone being the dominant and immediately adjoining residential zone, which regulates the height of this use.

Based on your provided information and a review of the provided site plan, staff confirms the 60 foot height as being permitted for the proposed Continuing Care Facility. Please be aware that this determination is subject to the acceptance by the Board of Appeals through revised site plans to be submitted to the Board.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions please do not hesitate to contact me at 410-887-3391.

Very truly yours,

John L. Lewis
Planner II
Zoning Review

JLL/rjc

PET #7 11/13/02

Printed with Soybean Ink

Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

December 7, 2000

Mitchell Kellman
Daft McCune Walker
200 East Pennsylvania Avenue
Towson, MD 21286

RE: Padonia Village
8th Election District

Dear Kellman;

Staff has reviewed your request for a zoning determination; that a continuing care facility or an assisted living facility is permitted by right in a BR zone.

Regretfully; staff cannot concur with your interpretation of an oversite in the zoning regulations concerning the use in a BR zone. Without a C.C.C. or C.T. district overlay on the BR zoning, the only way that this type of facility can be approved is established by section 236.1, as it references sections 233.1 and section 230.1. This refers to "uses permitted as limited in the residential zone immediately adjoining..." Therefore; an adjoining D.R. zone will allow the use to be established, after a special exception, as required in a D.R. zone.

Please be aware that as this site is bordered by at least 3 D.R. zones, the density would have to be calculated based on the percentage of tract boundary bordering the zones; not D.R.16 exclusively as stated in your letter.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need any further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John L. Lewis
Planner II
Zoning Review

PET #8 11/13/02

Melanie Moser
Vice President

DMW
Daft·McCune·Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21204
Phone 410 296 3333
Fax 410 296 4705
mmoser@dmw.com

A Team of Land Planners,
Landscape Architects,
Golf Course Architects,
Engineers, Surveyors &
Environmental Professionals



Melanie Moser coordinates planning and engineering for land development projects, prepares zoning issues petitions and presentations, and serves as liaison with public review agencies.

After more than 20 years designing and leading projects through the development process, Melanie is a specialist in coordinating cross-disciplinary efforts. Her work includes public and private developments ranging from mixed-use developments, office and retail complexes, to institutional facilities. She is also an experienced expert witness, testifying in Howard, Baltimore, Harford and Anne Arundel Counties and Baltimore City, Maryland.

Significant Projects

Key Property
Howard County, Maryland

Montpelier Research Park
Howard County, Maryland

The Heartlands Retirement Community
Ellicott City, Maryland

Crestpointe Corporate Center
Columbia, Maryland

Loyola College - Baltimore County Campus
Timonium, Maryland

Russett Phase 3
Anne Arundel County, Maryland

Piney Orchard Planned Unit Development
Anne Arundel County, Maryland

Professional Background

Daft-McCune-Walker, Inc.
Towson, Maryland
1995 - Present

Riemer Muegge & Associates, Inc.
Columbia, Maryland
1983 - 1995

Slater Associates
Columbia, Maryland
1980 - 1983

Registrations

Landscape Architect
Maryland

Education

M.A. - Landscape Architecture
University of Michigan

B.A. - Fine Arts
College of New Rochelle

Associations

American Society of Landscape Architects.

Board of Directors
Howard County Chapter, HBAM, Home Builders Association of Maryland

Friends of Maryland's Olmsted Parks and Landscapes

Guest Lecturer

NAHB National Council on Senior Housing Conference.

Home Builders Association of Maryland Land Development Seminars

Howard Community College Real Estate Seminar

PET#9 11/13/02

o:/proj/ecte/9711d/padonia.apr ko 11-1-02

200 0 200 400 Feet

DATA SOURCES:
BALTIMORE COUNTY GIS
HORIZONTAL DATUM: NAD 83
VERTICAL DATUM: NAVD 88
DATE OF CAPTURE: MARCH 1998
W/O PROPERTY VIEW 2000

DMW
Dale McGraw Wallace, Inc.
320 Jane Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-6333
Fax 296-6233

A Team of Land Planners, Landscape Architects, Engineers & Surveyors

Loren Padonia

DATE	BY	REVISIONS

ISSUE DATES
DRAWN:
CHECKED:
PROJECT MGR:
CHIEF SURVEYOR:
CHIEF DESIGNER:
DATE CREATED:

SCALE: 1"=200' DRAWING NO. 1 OF 1
PROJECT NO. 9711d

Park X 10

PEOPLE'S COUNSEL EXHIBITS

CASE#: 01-283-X

Verified 4/03/03

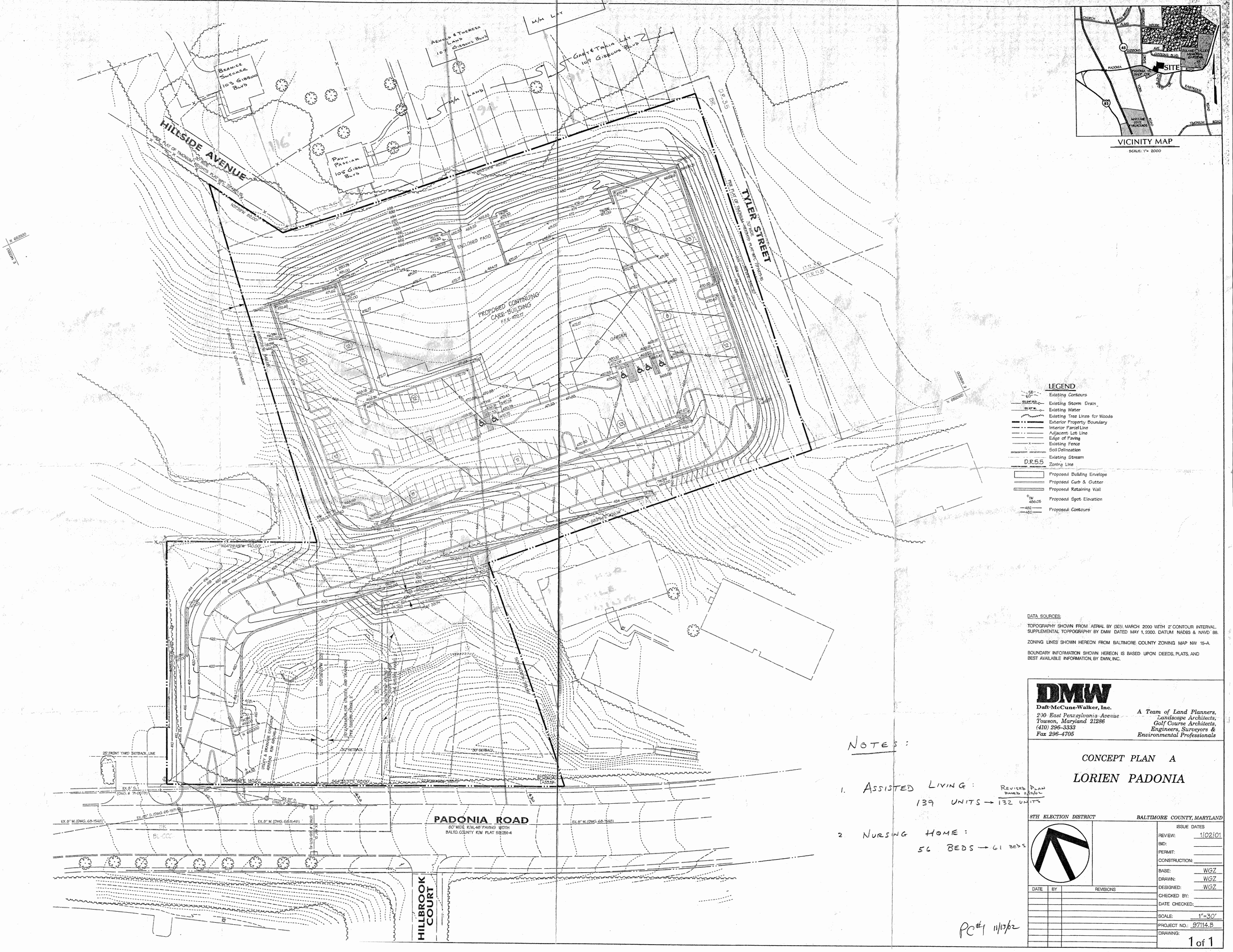
EXHIBITS

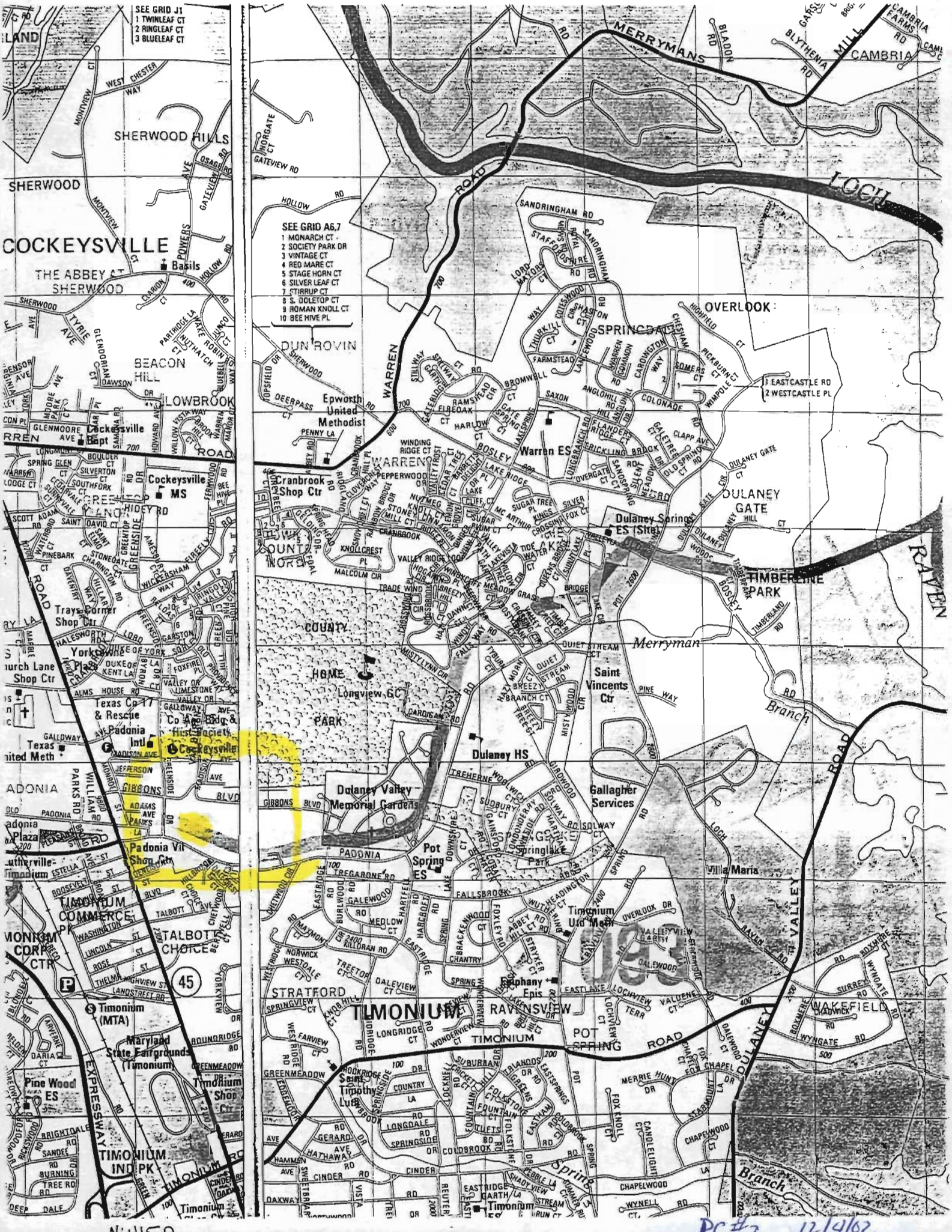
PETITIONER

1. Plan to Accompany Petition For Special Exception - dated 11/12/02 (Amended Plan)
2. Floor Plan of LORIEN PATAPSCO
3. Letter from Arnold Jablon to DMW, Inc. dated 11/28/00
4. ~~Resume~~ CV of John W. Seefried
5. Plan to Accompany Petition For Special Exception - dated 1/17/02 (original)
6. " " " " " " " " - dated 11/02 (red-lined)
7. letter from John L. Lewis to DMW, Inc. dated 8/1/02
8. letter from John L. Lewis to DMW, Inc. dated 12/7/00
9. ~~Resume~~ CV of Melanie Moser
10. Vicinity Map by DMW
11A. Photo - Sunrise, Towson
11B. Photo - Edenwald
11C. Photo - Hearthomes At Lutherville
11D. Photo - Blakehurst @ Towson

People's Counsel

1. Conceptual Plan dated 1/2/01 - Concept Plan A
2. Excert from standard ADC roadmap showing site in yellow.
3. Taxation of 3 parcels that comprise this site. MDAT.
4. B.C. Zoning map, year 2000, scale: 200' NW 15A
5. Ortho photo of area. scale: 125' 3/97
6. Rule 8 documents (?) resolution
7. Study done by County Home Park Community Assn.
8. Aerial photos on paper (B+W)
9. BC INTEROFFICE CORRESPONDENCE FROM PAT KELLER, DIR. Office of Planning 3/27/03
10. Commercial Contractors INC. 7/27/79
11A. CHPCA, INC. RULE 8, 3/20/03
11B. CHPCA, INC. RULE 8, 3/20/03


HILLSIDE AVENUE
TYLER STREET
PADONIA ROAD
HILLBROOK COURT
PROPOSED CONTINUING CARE BUILDING
F.F.E. 472.27
ENCLOSED PATIO
GARDEN
Bernice Swecker 103 Gibbons Blvd
Paul Pascian 105 Gibbons Blvd
Armen & Theresa 107 Gibbons Blvd
Gary & Talia 109 Gibbons Blvd
N/F LAND
N/F PARCEL
N/F PARCEL 'A'
N/F PARCEL 'B'
N/F PARCEL 'C'
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N/F PARCEL 'JJJJJJJJJJJJJJJJJJJJJJJJJ'
N/F PARCEL 'KKKKKKKK


SEE GRID J1
1 TWINLEAF CT
2 RINGLEAF CT
3 BLUELEAF CT
SEE GRID A6,7
1 MONARCH CT
2 SOCIETY PARK DR
3 VINTAGE CT
4 RED MARE CT
5 STAGE HORN CT
6 SILVER LEAF CT
7 STIRRUP CT
8 S. DOLETOP CT
9 ROMAN KNOLL CT
10 BEE HIVE PL
1 EASTCASTLE RD
2 WESTCASTLE PL
SHERWOOD HILLS
SHERWOOD
COCKEYSVILLE
THE ABBEY AT SHERWOOD
BEACON HILL
LOWBROOK
DUN ROVIN
SPRINGDALE
OVERLOOK
WARREN
Epworth United Methodist
Cockeysville Bapt
Cockeysville MS
Cranbrook Shop Ctr
Warren ES
Dulaney Spring ES (Site)
DULANEY GATE
TIMBERLINE PARK
COUNTY
HOME
Longview GC
PARK
Merryman
Saint Vincents Ctr
Dulaney HS
Dulaney Valley Memorial Gardens
Gallagher Services
Springlake Park
Pot Spring ES
Villa Maria
Timonium Utd Meth
Epiphany Epis
TIMONIUM
RAVENSVIEW
POT SPRING
STRATFORD
WAKEFIELD
Trays Corner Shop Ctr
Yorkridge Plaza
Church Lane Shop Ctr
Texas Co-Op & Rescue
Co Agric Bldg & Hist Society
Padonia Intl
Cockeysville
Texas United Meth
ADONIA
Padonia Plaza
Padonia Vil Shop Ctr
TIMONIUM COMMERCE PK
TALBOTT CHOICE
MONKTON CORP CTR
Timonium (MTA)
Maryland State Fairgrounds (Timonium)
Pine Wood ES
TIMONIUM IND PK
Timonium Shop Ctr
Saint Timothy Luth
EXPRESSWAY
MERRYMANS MILL ROAD
LOCH RAVEN
DULANEY VALLEY ROAD
POT SPRING ROAD
Padonia Branch
Spring Branch
NWISA
PC #2 12/4/02

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

Account Identifier: **District** - 08 **Account Number** - 2100002745

Owner Information

Owner Name:	MANGIONE LOUIS MANGIONE JOHN	**Use:**	APARTMENTS
		Principal Residence:	NO
Mailing Address:	1205 YORK RD LUTHERVILLE TIMONIUM MD 21093-6210	**Deed Reference:**	1) / 7932/ 465 2)

Location & Structure Information

Premises Address	Zoning	Legal Description
PADONIA RD	DR16	PARCEL A .6035 AC PADONIA VILLAGE APTS

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
51	18	84			3			81	Plat Ref: 57/ 134

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		.60 AC	11

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2002	As Of 07/01/2003
Land:	17,300	17,300		
Improvements:	0	0		
Total:	17,300	17,300	17,300	17,300
Preferential Land:	0	0	0	0

Transfer Information

Seller:	PADONIA VILLAGE INC	**Date:** 08/03/1988	**Price:** $50,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:** / 7932/ 465	**Deed2:**
Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**
Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2002	07/01/2003
County	000	0	0
State	000	0	0
Municipal	000	0	0

PC #3 12/4/02

P.C. Exhibit 4

FROM GALLOWAY AVE

(SHEET N.W.-16-A)

(SHEET N.W.-15-B)

(SHEET N.E.-15-A)

(SHEET N.W.-14-A)

Issue 4-4-1996

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 10, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00

Chairman, County Council

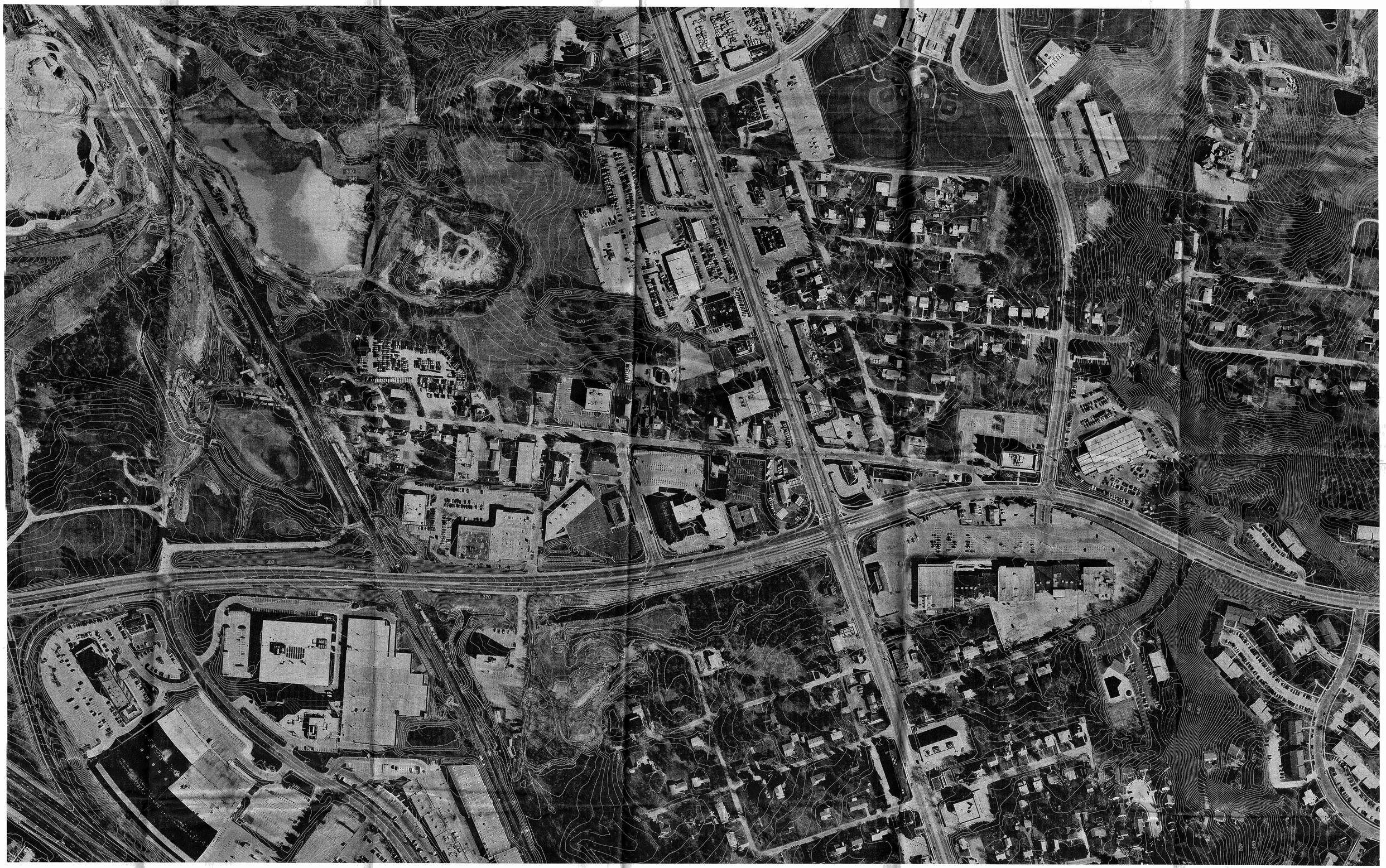
S-NE R-NW
V-SE U-SW

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

SCALE	LOCATION	SHEET
1" = 200' ±	PADONIA	N.W. 15-A
DATE OF PHOTOGRAPHY JANUARY 1986		

NW 15 A

PC#4 12/9/02



SCALE: 1"=125'

P.C. Exh. 5
(1997)
GIS

County Home Park Community Assn.

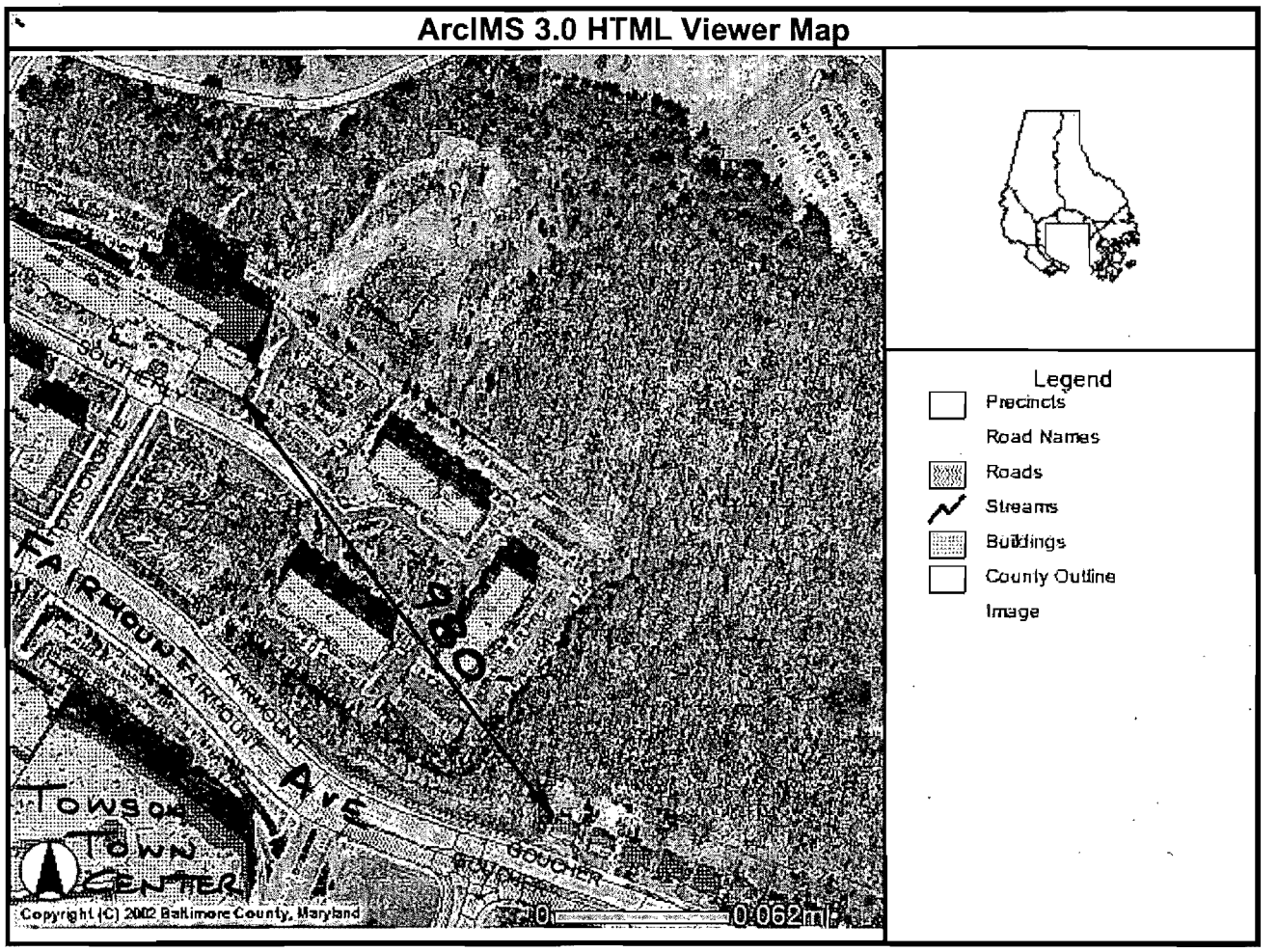
Position Statement

Mangione Property
Padonia Rd

County Home Park Community Assn.

Comparative Study

Mangione Property
Padonia Rd



EDENWALD
SOUTHERLY RD
TOWSON, MD 21286

PC #8 12/4/02

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Lawrence S. Wescoft, Chairman
Baltimore County Board of Appeals

DATE: March 27, 2003

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

SUBJECT: Mangione Property

The Office of Planning has reviewed the applicant's request based upon our notice of a potential zoning anomaly. This particular matter was not considered by this office when staff comments were submitted to the Zoning Commissioner. What is more, the request was modified to subsequent to the filing of the appeal. It appears that the Petitioner is opining that a small sliver of BR zoned land on properties in separate ownership provides an opportunity to extend the height of the structure proposed for the site. The Office of Planning is of the opinion that commercial zoning was not meant to be applied to this small sliver of land. Clearly, the zone line and properties lines should be coincident. The small sliver of commercial zoning located on a portion of the adjoining residential properties does not constitute commercialization of those properties and does not warrant a height increase.

The Office of Planning will be raising a staff issue to correct this problem as part of the 2004 Comprehensive Zoning Map Process. As part of the process, all interested parties will be notified as required and set forth in the Baltimore County Code.

AFK:JL:lsn

c: Scott Barhight, Esq., Whiteford, Taylor & Preston
Peter Max Zimmerman, People's Counsel

S:\COMPLAN\JEFF-L\Memo-Lawrence Wescoft-Mangione Property.doc

PC #9 4/3/03

COMMERCIAL CONTRACTORS INCORPORATED

GENERAL CONTRACTORS

1205 York Road • York Place • Penthouse Suite • Lutherville, Maryland 21093

825-8400

Nicholas Mangione, Sr.
President

July 27, 1979

Director of Planning & Zoning
Office of Planning and Zoning
Baltimore County Office Bldg.
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Parcel D - Parks Property
N/S Padonia Road

Gentlemen:

Let this letter serve as our request to have the entire property known as parcel D as shown on the Parks Plat north of Padonia Road zoned BR. The entire parcel consists of 3.77 acres. At present 3.17 acres or 84 percent of the property is zoned BR and the remaining .60 acres DR 3.5.

Although it does consist of .60 acres, that portion of property zoned DR 3.5 has no useful value with its present zoning in view of its long strip-like configuration (50'x460'). In view of the fact that the zoning line and the property line are so close we feel that they should be made to coincide.

We trust the Office of Planning and Zoning will look favorably upon this request.

Respectfully,

COMMERCIAL CONTRACTORS, INC.

Nicholas B. Mangione

President

NBM/mrm

PC #10 4/3/03



PET #11A 4/3/03 (10)



PET #11B 4/3/03 (8)



PET #11D 4/3/03 (6)



PET #11C 4/3/03 (5)

County Home Park Community Association, Inc.

120 Gibbons Boulevard
Cockeysville, Maryland

March 20, 2003

Be it resolved, by the membership of the County Home Park Community Association at its meeting of March 20, 2003, that the members of the Executive Committee are duly authorized to speak for or testify on behalf of the Association in matters before the County government, the Zoning Commissioner, Board of Appeals, and similar bodies with regard to zoning matters and other matters of interest to the Association,

and be it further resolved, that the members of the Executive Committee are specifically authorized to speak for and testify on behalf of the members of the Association with regard to the Board of Appeals case involving the Mangione property requesting a Special Exception for an Assisted Living/Continuing Care facility on Padonia Road, east of Greenside Drive, which adjoins the south property lines of those properties located at the west end of the 100 block of Gibbons Boulevard (south side of street), and furthermore that it was the intent of the Association's members to provide such authorization to the Executive Committee members at its general meeting held September 17, 2001.

Approved by affirmative vote at a General Meeting of the members of the Association on the 20th of March, 2003.

David Jordan, President

Attested to: Denise Buck
Denise Buck, Secretary

Date: 3/20/2003

PC #11A 4/3/03

County Home Park Community Association, Inc.

120 Gibbons Boulevard
Cockeysville, MD

March 20, 2003

This document is to affirm the current names and offices of those individuals on the Association's Executive Committee:

President	David Jordan
Vice President	George Cummings
Treasurer	Stephen Weber
Secretary	Denise Buck
Community Member At-Large	Andy Spera

These members' terms are current, running from October 1, 1999 to September 30, 2003, having been voted on by the general membership.

David Jordan, President

Attested to: Denise Buck
Denise Buck, Secretary

Date: 3/20/2003

PC #11B 4/3/03

IN THE MATTER OF * BEFORE THE

THE APPLICATION OF * COUNTY BOARD OF APPEALS

JOHN MANGIONE, ET AL - * OF

PETITIONERS - FOR SPECIAL * BALTIMORE COUNTY

EXCEPTION ON PROPERTY LOCATED * Case No. 01-283-X

ON THE N/SIDE OF EAST PADONIA * April 3, 2003

ROAD, EAST OF GREENSIDE DR. *

(LORIEN PADONIA) *

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland at 10 o'clock a.m., April 3, 2003.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

GORE BROTHERS
Reporting & Video Company, Inc.
Since 1961 – Serving MD, D.C. & No. VA
115 W. Mulberry Street • Baltimore, MD 21201
(24 Hrs./7 Days) 410-837-3027 • 800-734-5292
Towson Reporting Co. ✦ Baltimore Video/Conferencing Center, Inc.

IN THE MATTER OF * BEFORE THE

THE APPLICATION OF * COUNTY BOARD OF APPEALS

JOHN MANGIONE, ET AL - * OF

PETITIONERS - FOR SPECIAL * BALTIMORE COUNTY

EXCEPTION ON PROPERTY LOCATED * Case No. 01-283-X

ON THE N/SIDE OF EAST PADONIA * December 4, 2002

ROAD, EAST OF GREENSIDE DR. *

(LORIEN PADONIA) *

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland at 10 o'clock a.m., December 4, 2002.

* * * * *

ORIGINAL

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IN THE MATTER OF * BEFORE THE

THE APPLICATION OF * COUNTY BOARD OF APPEALS

JOHN MANGIONE, ET AL - * OF

PETITIONERS - FOR SPECIAL * BALTIMORE COUNTY

EXCEPTION ON PROPERTY LOCATED * Case No. 01-283-X

ON THE N/SIDE OF EAST PADONIA * November 13, 2002

ROAD, EAST OF GREENSIDE DR. *

(LORIEN PADONIA) *

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland at 10 o'clock a.m., November 13, 2002.

* * * * *

ORIGINAL

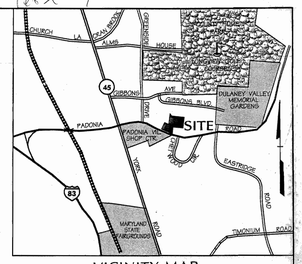
Reported by:

C.E. Peatt

Plat X

LEGEND

- Existing Contours
- EX. 24" S.D. — Existing Storm Drain
- EX. 8" S. — Existing Water
- EX. 10" W. — Existing Water
- Existing Tree Lines for Woods
- Exterior Property Boundary
- Interior Parcel Line
- Adjacent Lot Line
- Edge of Paving
- Existing Fence
- Existing Stream
- D.R.5.5 — Zoning Line
- Proposed Curb & Gutter
- Proposed Retaining Wall
- Forest Conservation Easement
- Forest Buffer Easement
- 25' Principle Building Setback
- 100 Yr. Floodplain
- Fire Hydrant



VICINITY MAP

SCALE: 1" = 2000

SWECKER, BERNICE DREXEL & STEPHANIE D.
LOTS 1-6 & 10-11
08-2200000027
PLAT 2 BLOCK II
TIMONIUM HEIGHTS
PLAT WFC 7/ PART 1-15

EX. RESIDENCE

HILLSIDE AVENUE
30' WIDE
PER PLAT OF TIMONIUM HEIGHTS PLAT WFC 7/ PART 1-15
S 37°43'54" E 50.00'

FASCAK, PAUL A.
LOTS 7,9,12,13
08-1900008703
PLAT 2 BLOCK II
TIMONIUM HEIGHTS
PLAT WFC 7/ PART 1-15
EX. RESIDENCE

LANG, ARNOLD M. & THERESA F.
LOTS 16-19
08-0812000660
PLAT 2 BLOCK II
TIMONIUM HEIGHTS
PLAT WFC 7/ PART 1-15

LAY, GARY P. & FREDA L.
LOTS 20-25
08-0812025670
PLAT 2 BLOCK II
TIMONIUM HEIGHTS
PLAT WFC 7/ PART 1-15

MAYLUDDIN, DAVID W. & CLAIRE S.
LOTS 1-7 & 46-52
08-1900008022
PLAT 2, BLOCK MM
TIMONIUM HEIGHTS
PLAT WFC 7/ PART 1-15

DAVIS, HERBERT TRUSTEE
LOTS 51-52
08-0802059181
PLAT 2, BLOCK LL
TIMONIUM HEIGHTS
PLAT WFC 7/ PART 1-15

N 65°00'00" E 1046.85'

FOREST CONSERVATION EASEMENT

D.R. 3.5
BR

25' PRINCIPLE BLDG. SETBACK

ENCLOSED PATIO

97714616
FROM: DOUGLAS W. PARKS
TO: NICHOLAS B. & MARY C. MANGIONE
JULY 25, 1984

PROPOSED CONTINUING CARE BUILDING
6 STORIES

TYLER STREET
PER PLAT OF TIMONIUM HEIGHTS PLAT WFC 7/ PART 1-15
S 52°23'47" W 346.90'

D.R. 5.5

MARYLAND TITLE GUARANTEE COMPANY
LOT 1
08-0816000825
PLAT 2, BLOCK LL
TIMONIUM HEIGHTS
PLAT WFC 7/ PART 1-15

D.R. 16

Padonia Village Apartment Building

VALLEY CHEVROLET INC.
08-1600006192
621/169
Fox Chevrolet

MANGIONE, NICHOLAS & MARY
08-1600013453
3437/448

PROPOSED WATER

PADONIA VILLAGE INC.
08-1600006958
4656/545

PADONIA VILLAGE INC.
08-2100002746
PARCEL 848
RESUBDIVISION OF SECTION 3
PADONIA VILLAGE APARTMENTS
PLAT SM 87134

MANGIONE, LOUIS & JOAN
08-2100002745
PARCEL 844
RESUBDIVISION OF SECTION 3
PADONIA VILLAGE APARTMENTS
PLAT SM 57, FOLIO 134
793/321465

100 YR. FLOODPLAIN

30' SETBACK

EX. SANITARY MANHOLE

P.O.B. 360' TO GREENSIDE DRIVE (R)

EX. 8" S. (DWG. # 71-0676)

EX. 8" W. (DWG. 68-1546)

EX. 48" D. (DWG. 68-1671-A)

EX. 6" D. (DWG. # 68-1671-A)

PADONIA ROAD
80' WIDE R/W, 48' PAVING WIDTH
BALTO. COUNTY R/W PLAT 59/251-4

PADONIA VILLAGE INC.
08-0803052521
PLAT REF. 32146

HILLBROOK COURT

BL-CCC

The applicant is requesting a special exception for a Continuing Care Facility in the BR Zone Pursuant to Section 236.1, 233.1, 230.1, and 1B01.1.C.25 of the BCZR

DATA SOURCES:

TOPOGRAPHY SHOWN FROM AERIAL BY (3D), MARCH 2000 WITH 2' CONTOUR INTERVAL. SUPPLEMENTAL TOPOGRAPHY BY DMW DATED MAY 1, 2000. DATUM NAD83 & NAVD 88.

ZONING LINES SHOWN HEREON FROM BALTIMORE COUNTY ZONING MAP NW 15-A.

BOUNDARY INFORMATION SHOWN HEREON IS BASED ON A FIELD RUN SURVEY BY DMW IN JANUARY, 2001.

DMW
Daft·McCune·Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION

ILLUSTRATIVE

LORIEN PADONIA

4TH COUNCILMATIC DISTRICT
8TH ELECTION DISTRICT

BALTIMORE COUNTY, MARYLAND

DATE	BY	REVISIONS

ISSUE DATES
REVIEW: 11/12/02
BID:
PERMIT:
CONSTRUCTION:

BASE: WGZ
DRAWN: ADL
DESIGNED: JWS
CHECKED BY:
DATE CHECKED:
SCALE: 1"=30'
PROJECT NO.: 97114.B
DRAWING:

1 of 1

Tue Nov 12 15:08:57 2002 n:\97114\spec excep\97114J01