

IN RE: PETITION FOR SPECIAL HEARING  
NE/Cor. Seminary Ave. and Francke Ave.  
(1501 Francke Avenue)  
8<sup>th</sup> Election District  
4<sup>th</sup> Council District

C. John Thomson, III  
Petitioner

\* BEFORE THE  
\* ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 01-487-SPH  
\*

\* \* \* \* \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owner of the subject property, C. John Thomson, III. As filed, the Petitioner requests approval of, "an amendment to zoning Case #01-136-SPH, due to the reduction of area for nonconforming use." The subject property and requested relief are more particularly described on the site plan submitted with the Petition filed and marked into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were C. John Thomson, III, property owner, and his attorney, Carroll S. Klingelhofer, Esquire. Also appearing on behalf of the Petitioner were Bruce E. Doak and Scott Lindgren, representatives of Gerhold, Cross & Etzel, the consultants who prepared the site plan for this property; C. John Thomson, IV, and Linda A. Langrall. Appearing as Protestants in the matter were numerous residents from the surrounding locale including Patricia Prugh-Furman, adjacent property owner, Robert Windsor, a nearby property owner, Marie Frederick, Brian Hickey, and Robert P. Wingard. Also appearing in opposition to the request was Mark Cunningham, who appeared on behalf of the Baltimore County Office of Planning. In this regard, a lengthy written Zoning Advisory Committee (ZAC) comment opposing the request was received from the Office of Planning. That comment recommended a denial of the request and raised similar objections as correspondence received from the Lutherville Historic Advisory Committee, dated July 15, 2001.

ORDER RECEIVED FOR FILING

Date 9/13/01

By [Signature]

The undersigned Zoning Commissioner is familiar with this property by virtue of previous Case No. 01-136-SPH in which the Petitioner came before me seeking special hearing relief. Specifically, the Petitioner sought approval of an existing three-apartment dwelling and a separate single family dwelling, making four total dwellings units on the subject property, as a legal, nonconforming use. That special hearing relief was granted on November 30, 2000. To the extent applicable, the Findings of Fact and Conclusions of Law issued therein are adopted.

The subject property is an L-shaped parcel located on the northeast corner of Seminary Avenue and Francke Avenue in the historic district of Lutherville. The property contains approximately 2.0 acres in area, zoned D.R.2, and is improved with two dwellings, one of which is a large, two-story structure containing three apartments. That building fronts Francke Avenue and bears the address 1501 Francke Avenue. The second structure is a smaller, two-story frame dwelling located to the rear of the main structure and fronts Seminary Avenue. The property also features a circular driveway which provides access to both buildings from both Francke Avenue and Seminary Avenue.

In Case No. 01-136-SPH the undisputed testimony and evidence offered was that the property contained the above two described residential buildings and was used in a residential/apartment manner for many years. In fact, Mr. Thomson testified in that case that he had resided on the property off and on since 1924. He indicated that the three-apartment dwelling had been used as an apartment house for many years and offered testimony regarding the historic and ongoing use of the single family structure.

I found that the use of the subject property for two structures, one a three-apartment building and the second, a single family dwelling, was nonconforming and, therefore, permissible. A nonconforming use is defined in Section 101 of the B.C.Z.R. as "a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use." Nonconforming uses are regulated in Section 104 of the B.C.Z.R. Specifically, Section 104.1 of the B.C.Z.R. provides that a nonconforming use may continue, except as otherwise specifically provided, unless same is abandoned or discontinued for a period of one year

or more. Moreover, Section 104.1 provides that any change of the nonconforming use to another use shall cause the nonconforming use to terminate.

Essentially, the nonconforming use designation is utilized to grandfather and legitimize an otherwise illegal use. In the instant case, the property's zoning classification (D.R.2) does not permit the three-story apartment building and a second dwelling use on the property. However, because those structures and uses existed prior to the advent of zoning in Baltimore County (1945), the uses are grandfathered and permitted to continue. The nonconforming use statute recognizes that it would be inappropriately harsh to require a property owner to lose the historic use of his/her property. Thus, nonconforming uses recognize long-standing and historic uses of a given property.

Nonetheless, nonconforming uses are not favored by law. In Jahnigen v. Staley, 245 Md. 130 (1967), the Court of Appeals emphasized the inherent incompatibility of nonconforming uses with the underlying zoning regulations. Moreover, it has been stated, "Such nonconforming uses pose a formidable threat to the success of zoning. They limit the effectiveness of land use controls, contribute to urban blight, imperil the success of the community plan, and injure property values." County Council of Prince George's County v. E. L. Gardner, Inc., 293 Md. 259 at 267 (1982). Thus, it is clear that nonconforming uses represent an inconsistent and incompatible land use with the comprehensive zoning scheme.

It is also to be particularly noted that the B.C.Z.R. expressly provides that the nonconforming character of a given parcel can be tied to either a specific structure thereon, or the land itself. Section 104.3 of the B.C.Z.R. provides that, "no nonconforming building or structure and no nonconforming use of a building, structure or parcel of land..." (emphasis added).

The undersigned Zoning Commissioner addressed this concept in Case No. 93-37-SPH, a Petition for Special Hearing filed by the Baltimore Country Club of Baltimore City for their property located in Timonium known as Five Farms. In that case, testimony and evidence presented was that the Baltimore Country Club had owned that parcel of over 400 acres for many years. The property was developed well prior to the adoption of the first zoning ordinance in Baltimore County as a Country Club. After discussing the history of that parcel, I stated,

"Specifically after tracing the legislative history of nonconforming use law in Baltimore County in examining the existing language in Section 104.3, I must conclude that the use of land, a building and/or both may be nonconforming. That is, a given parcel of property may enjoy a nonconforming character, even if same is unimproved and there are no structures thereon." This finding is significant in the instant case in that it is obvious that both the buildings and lot itself are nonconforming. The three-apartment building is not permitted in the D.R.2 zone and the use of the property to support two dwellings collectively containing four apartments is clearly contrary to the B.C.Z.R. However, both the buildings and lot were granted nonconforming status by Order issued in Case No. 01-136-SPH.

In the instant case, the Petitioner has prepared and submitted a new site plan as part of the Petition. That plan shows a proposed subdivision of the property into three lots. Specifically, the property will be divided so that the existing two-story dwelling containing three apartments will occupy Lot 1 and contain .940 acres in area. Lot 2 will contain the existing two-story single family dwelling and .507 acres in area. Newly created Lot 3, which is presently unimproved, will contain .651 acres. That lot has limited road frontage and a proposed building thereon is shown on the site plan. Access to the interior of Lot 3 is by way of a proposed driveway that will access Seminary Avenue.

The Zoning Advisory Committee (ZAC) comment submitted by the Office of Planning opposes the grant of the Petition for a number of reasons. That comment will not be repeated verbatim herein as it is contained within the record of this case. However, the comment does indicate that the Petitioner does not clearly state what approval is actually being sought in this case. In my judgment, it is obvious that the Petitioner is seeking approval of a proposed subdivision of the property while retaining the benefit of the existing nonconforming uses. Specifically, the site plan clearly shows that the Petitioner seeks the retention of the building on Lot 1 as an "existing two-story frame dwelling with three apartments" and the building on Lot 2 as an "existing two-story frame dwelling." At the hearing, the Petitioner expressed a willingness to remove one of the apartments within the larger dwelling, in effect, to "exchange" that "density

ORDER RECEIVED FOR FILING  
Date 9/23/01  
By [Signature]

right" for the proposed new building on Lot 3. That is, the Petitioner is agreeable to utilizing no more than four residential dwelling units (a two-apartment structure, and two single family structures) on the subject property.

Maryland case law is replete with references to the "expansion of nonconforming uses" versus "intensification of same." See e.g. McKemy v. Baltimore County, 39 Md. App. 257 (1978). Generally, the law recognizes that an expansion of a nonconforming use is not permitted and that discontinuance of the use will render it invalid. This is to be contrasted with the permitted intensification of the subject use.

Subsequent to the hearing, the Petitioner submitted in support of his request, the opinion authored by Deputy Zoning Commissioner Timothy M. Kotroco in Case No. 00-157-SPH. In that case, Deputy Commissioner Kotroco acknowledged that a nonconforming use to allow the applicant to park and store four trash trucks on a property could continue, notwithstanding that part of the original parcel had been subdivided and sold. The Petitioner offers this case in support of the argument that the area of a property may be reduced while the nonconforming character may yet be retained.

I find that the case before me is distinguished from that case for the reasons set forth in the matter of the Baltimore Country Club case. As noted above, the nonconforming use granted in Case No. 01-136-SPH was not only as to the buildings, but the entire property at issue. That is, the relief granted therein was to allow two structures, one with three residential units and the other with a single residential unit, to continue to be located on a single lot. That nonconforming use designation is, in my judgment, limited to those precise circumstances, only. If the Petitioner chooses to change the character of this lot by subdividing same and adding yet another unit, it will no doubt alter, and in my judgment, destroy the nonconforming use designation. In essence, the property owner cannot have his cake and eat it, too. He may either retain the nonconforming use as it has been specifically identified, or, develop/subdivide the property in compliance with current zoning and development regulations.

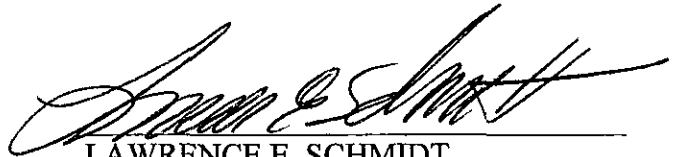
ORDER RECEIVED FOR FILING  
Date 9/13/01  
By [Signature]

Based upon the zoning and acreage of the property, the applicant may very well be able to subdivide this parcel into separate residential lots. The project may be a "minor" subdivision as defined by the development regulations, or a "major" subdivision. I make no judgment herein as to what may or may not be done and what process should be followed. However, in answer to the specific question raised in the Petition for Special Hearing, I must answer in the negative. Specifically, I will not approve an amendment to prior Case No. 01-136-SPH to reduce the area of the nonconforming use. In my judgment, such a reduction would constitute an alteration and/or abandonment of the use and therefore, would be fatal to the nonconforming use.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held and for the reasons set forth herein, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 13<sup>th</sup> day of September, 2001 that the Petition for Special Hearing to approve an amendment to the site plan and relief granted in prior Zoning Case #01-136-SPH to allow a reduction of the area for nonconforming use, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

The Petitioner shall have thirty (30) days from the date of this Order to file an appeal of this decision.



LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING  
Date 9/13/01  
By [Signature]



Baltimore County  
Zoning Commissioner

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

September 14, 2001

Carroll S. Klingelhofer, Esquire  
409 Washington Avenue, Suite 820  
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING  
NE/Corner Seminary Avenue & Francke Avenue  
(1501 Francke Avenue)  
8<sup>th</sup> Election District – 4<sup>th</sup> Council District  
C. John Thomson, III - Petitioner  
Case No. 01-487-SPH

Dear Mr. Klingelhofer:

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

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

Very truly yours,

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

cc: Mr. C. John Thomson, III  
1501 Francke Avenue, Lutherville, Md. 21093  
Messrs. Scott Lindgren & Bruce E. Doak, Gerhold, Cross & Etzel  
320 E. Towsontown Boulevard, Suite 100, Towson, Md. 21286  
Ms. Patricia Prugh-Furman, 1505 Francke Avenue, Lutherville, Md. 21093  
Mr. Robert Windsor, 1513 Francke Avenue, Lutherville, Md. 21093  
Mr. Robert P. Wingard, 214 Morris Avenue, Lutherville, Md. 21093  
Ms. Marie Frederick, 223 Morris Avenue, Lutherville, Md. 21093  
Mr. Brian Hickey, 109 W. Seminary Avenue, Lutherville, Md. 21093  
Mr. Mark Cunningham, OP; People's Counsel; Case/File





# Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

1501 Francke Ave. (NORTHEAST CORNER OF SEMINARY  
for the property located at AVENUE AND FRANCKE AVENUE)

which is presently zoned DR 2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

AN AMENDMENT TO ZONING CASE #01-136-SPH DUE TO THE  
REDUCTION OF AREA FOR NON-CONFORMING USE.

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

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

## Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

## Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

## Legal Owner(s):

Name - Type or Print

Signature

Name - Type or Print

C. JOHN THOMSON, III

Signature

1501 FRANCKE AVENUE 410-823-3356

Address Telephone No.

LUTHERVILLE MD 21093

City State Zip Code

## Representative to be Contacted:

SCOTT A. LINDGREN

GERHOLD, CROSS & ETZEL, LTD.

Name SUITE 100

320 E. TOWSON TOWN BLVD 410-823-4470

Address Telephone No.

TOWSON MD 21286

City State Zip Code

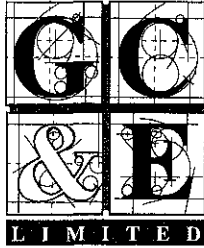
## OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 4.00

UNAVAILABLE FOR HEARING

Reviewed By [Signature] Date 5-16-01





## Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286  
Phone: (410) 823-4470 • Fax: (410) 823-4473 • [www.gcelimited.com](http://www.gcelimited.com)

May 16, 2001

### ZONING DESCRIPTION PROPERTY OF C. JOHN THOMSON, 3<sup>rd</sup>

Beginning for the same at the intersection of the centerlines of Seminary Avenue and Francke Avenue, running thence in the paving of Seminary Avenue, (1) South 73 degrees 06 minutes 23 seconds East 300.00 feet, thence leaving Seminary Avenue, (2) North 18 degrees 22 minutes 54 seconds East 21.51 feet, (3) South 73 degrees 06 minutes 23 seconds East 5.00 feet, (4) North 17 degrees 56 minutes 26 seconds East 348.43 feet, (5) North 73 degrees 06 minutes 23 seconds West 2.32 feet, (6) North 18 degrees 22 minutes 54 seconds East 45.50 feet, (7) North 73 degrees 06 minutes 23 seconds West 143.90 feet, (8) South 16 degrees 00 minutes 09 seconds West 214.87 feet, and (9) North 73 degrees 06 minutes 23 seconds West 165.02 feet to the centerline of Francke Avenue, thence binding in the center of Francke Avenue, (10) South 18 degrees 22 minutes 54 seconds West 200.58 feet, to the point of beginning.

Containing 2.098 Acres of land, more or less.

This description only satisfies the requirements of the Office of Zoning and should not be used for conveyance purposes.



48m

BALTIMORE COUNTY, MARYLAND  
OFFICE OF BUDGET & FINANCE  
MISCELLANEOUS RECEIPT

Ch. No. 92888  
01-487-SPH  
-06-

DATE 5-16-01 ACCOUNT R-001-6150  
AMOUNT \$ 250.00

RECEIVED FROM: MR. C. John Thompson III  
FOR: Commercial (3rd) Special Hearing  
1501 Franke Ave. L. Day Inc

DISTRIBUTION  
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT  
SYSTEM ACTUAL TIME  
5/17/2001 5/16/2001 15:16:59  
MS05 CASHIER NAME REG. DRIVER 5  
RECEIPT # 213450 OFLN  
5 528 ZONING VERIFICATION  
092090  
Recpt. Tot. 250.00  
250.00 CK .00 CA  
Baltimore County, Maryland

CASHIER'S VALIDATION

# CERTIFICATE OF POSTING

RE Case No. 01-487-SPH

Petitioner/Developer: THOMSON/ETAL

Date of Hearing/Closing: 7/23/01

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

44.23

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law  
were posted conspicuously on the property located at #1501 - FRANCKE AVE

@ SEMINARY AVE

The sign(s) were posted on

7/3/01

(Month, Day, Year)

Sincerely,

*Patrick M. O'Keefe* 7/5/01

(Signature of Sign Poster and Date)

PATRICK M. O'KEEFE

(Printed Name)

523 PENNY LANE

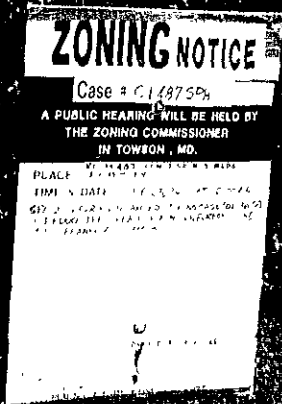
(Address)

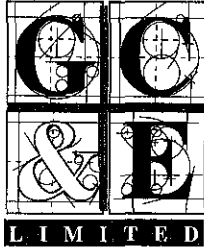
HUNT VALLEY, MD. 21030

(City, State, Zip Code)

410-666-5366 ; CELL 410-905-8571

(Telephone Number)





# Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286  
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

## CERTIFICATE OF POSTING

RE: CASE # 01-487-SPH  
PETITIONER/DEVELOPER  
C. John Thomson III  
DATE OF HEARING  
July 23, 2001

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

ATTENTION: GEORGE ZAHNER

LADIES AND GENTLEMEN:

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

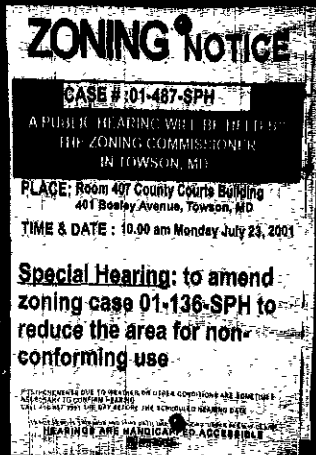
LOCATION  
NEC Francke Avenue & Seminary Avenue

DATE July 9, 2001

SIGNATURE OF SIGN POSTER

BRUCE DOAK

GERHOLD, CROSS & ETZEL, LTD  
SUITE 100  
320 EAST TOWSONTOWN BLVD  
TOWSON, MARYLAND 21286  
410-823-4470 PHONE  
410-823-4473 FAX



7/6/01

POSTED ON July 6, 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: #01-487-SPH  
1501 Francke Avenue  
NEC Francke & Seminary  
Avenues  
8th Election District  
4th Councilmanic District  
Legal Owner(s): C. John  
Thomson, III

**Special Hearing:** to amend  
zoning case 01-136-SPH to  
reduce the area for non-  
conforming use.

**Hearing:** Monday, July 23,  
2001 at 10:00 a.m. in  
Room 407, County Courts  
Building, 401 Bosley Ave.

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 con-  
cerning the File and/or  
Hearing, Contact the Zoning  
Review Office at (410) 887-  
3391

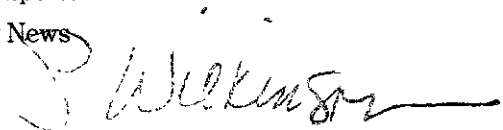
7/018 July 5 C479316

**CERTIFICATE OF PUBLICATION**

7/5/2001

THIS IS TO CERTIFY, that the annexed advertisement was published  
in the following weekly newspaper published in Baltimore County, Md.,  
once in each of 1 successive weeks, the first publication appearing  
on 7/5/2001.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

  
LEGAL ADVERTISING



Baltimore County  
Department of Permits and  
Development Management

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

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighbor property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Card  
Item No.: 01-487-SPH

Petitioner: C. JOHN THOMSON, III

Location: NORTHEAST CORNER OF SEMINARY AVENUE & FRANCKE AVENUE

PLEASE FORWARD ADVERTISING BILL TO:

NAME: C. JOHN THOMSON, III

ADDRESS: 1501 FRANCKE AVENUE

LUTHERVILLE, MD 21093

PHONE NUMBER: 410-823-3356

AJ:ggs

(Revised 09/24/96)

TO: PATUXENT PUBLISHING COMPANY  
Thursday, July 5, 2001 Issue – Jeffersonian

Please forward billing to:  
C. John Thomson III  
1501 Francke Avenue  
Lutherville MD 21093

410 823-356

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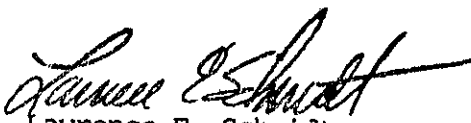
## NOTICE OF ZONING HEARING

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: 01-487-SPH  
1501 Francke Avenue  
NEC Brancke & Seminary Avenues  
8<sup>th</sup> Election District – 4<sup>th</sup> Councilmanic District  
Legal Owner: C. John Thomson III

Special Hearing to amend zoning case 01-136-SPH to reduce the area for non-conforming use.

HEARING: Monday, July 23, 2001 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

  
Lawrence E. Schmidt

LAWRENCE E. SCHMIDT G.D.Z.  
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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



Baltimore County  
Department of Permits and  
Development Management

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

June 13, 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: 01-487-SPH  
1501 Francke Avenue  
NEC Brancke & Seminary Avenues  
8<sup>th</sup> Election District – 4<sup>th</sup> Councilmanic District  
Legal Owner: C. John Thomson III

Special Hearing to amend zoning case 01-136-SPH to reduce the area for non-conforming use.

HEARING: Monday, July 23, 2001 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon G.D.Z.  
Director

C: C. John Thomson III, 1501 Francke Avenue, Lutherville 21093  
Scott A Lindgren, Gerhold, Cross & Etzel Ltd, 320 E Towsontown Blvd,  
Towson 21286

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, JULY 7, 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.







Baltimore County  
Department of Permits and  
Development Management

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

July 20, 2001

C. John Thomson III  
1501 Francke Avenue  
Lutherville MD 21093

Dear Mr. Thomson:

RE: Case Number: 01-487-SPH, 1501 Francke Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 16, 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: Scott A Lindgren, Gerhold Cross & Etzel Ltd, Suite 100, 320 E Towsontown Blvd,  
Towson 21286  
People's Counsel





Baltimore County  
Fire Department

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

June 12, 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 June 11, 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.

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

460, 484, 486, 487, 488, 489, 490, 491, 492, 493, 495,  
496, 497, 498, 500, and 501

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

cc: File

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





**Maryland Department of Transportation**  
**State Highway Administration**

*Term 7/23*  
Parris N. Glendening  
Governor

John D. Porcari  
Secretary

Parker F. Williams  
Administrator

Date: 6.13.01

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

RE: Baltimore County  
Item No. 487

JJL

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

RE: PETITION FOR SPECIAL HEARING  
1501 Francke Avenue,  
NEC Francke & Seminary Aves  
8th Election District, 4th Councilmanic

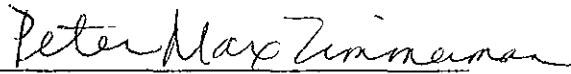
Legal Owner: C. John Thomson, III  
Petitioner(s)

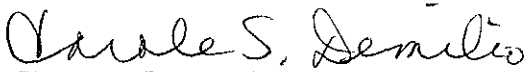
\* BEFORE THE  
\* ZONING COMMISSIONER  
\* FOR  
\* BALTIMORE COUNTY  
\* Case No. 01-487-SPH

\* \* \* \* \*

**ENTRY OF APPEARANCE**

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

  
PETER MAX ZIMMERMAN  
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

JUL 23

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18th day of June, 2001 a copy of the foregoing Entry of Appearance was mailed to Scott A. Lindgren, Gerhold, Cross & Etzel, 320 E. Towsontowne Blvd., Suite 100, Towson, MD 21286, representative for Petitioners.

  
PETER MAX ZIMMERMAN

# ZONING HEARING FILE INTERNAL CHECKLIST

Zoning Case No. 01-487-~~4~~ SPH

Date Completed/Initials

6-8-01

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

6-8-01

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

6-12-01

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

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

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

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

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

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

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

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

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

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

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

**DATE:** July 20, 2001

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

**SUBJECT:** No. 1501 Francke Avenue

JUL 23

### INFORMATION

Item Number: 01-487-SPH  
Petitioner: John Thomson (owner)  
Zoning: DR 2  
Requested Action: Special Hearing

### RECOMMENDATIONS ON THE PROPOSAL

The Office of Planning strongly recommends that this Petition be denied, for the following reasons:

1. The Petition does not clearly state what approval is being sought from the Zoning Commissioner. The entry on the application form and the note on the accompanying plat merely request "an amendment to" a prior zoning case without in any way describing the nature or effect of the "amendment." Reviewing agencies are left to guess about the nature or extent of, or the justification for the actual request.
2. Whatever may be the substance of the request, the application states that it is "due to the reduction of area for non-conforming use." The apparent implication of this cryptic phrasing is that the "reduction" was caused by Case # 01-139-SPH. That case involved the simple, factual determination of whether or not the two existing structures on this single lot, with a total of four existing dwelling units, constitute a legal, non-conforming use. The Order approving the Petition is unambiguous, from the following text on page 3, that the approval did not in any way cause, or authorize, a "reduction of area":

It need be emphasized, however, that the findings set out herein are only as to the narrow question presented. I make no judgement as to the propriety of any potential subdivision of the property. Apparently, the neighbors who appeared are concerned over the possible future subdivision and/or expansion of the existing uses on the property. *This opinion does not address those potential issues, but only grants the specific relief requested in the Petition.* [emphasis supplied]

3. In the absence of an understandable written description of the approval now being requested, reviewing agencies are left to make suppositions about the nature of the "amendment" by examining the accompanying plat dated May 16, 2001. The plat depicts a three-lot, panhandle minor subdivision. Is the Petition, in fact, a request for approval of this subdivision? If so, on what basis does the petitioner assert that any zoning density remains within this property that could be allocated for a new dwelling on the proposed Lot 3? It appears self-evident that the prior approval of four dwelling units as a non-conforming use thereby makes use of *all* available zoning density on the undivided, 2.098-ac. property zoned D.R.-2. The "Density Calculations" note on the plat purports to justify a maximum of "4 lots." This assertion misinterprets the Density Residential zoning regulations, which grant "density (i.e., dwelling) units, not separate "lots." The Office of Planning recommends a finding by the Zoning Commissioner that the Petition must be denied because no density remains within this property for any further residential development (with or without land subdivision).
4. Even if, somehow, despite the ruling in Case # 01-139-SPH, another density or dwelling unit remains available from this original property, the Petition should be denied for its failure to comply with the panhandle subdivision requirements, as well as for failure to request other necessary approvals. It may be noted that the Office of Planning's file on this property does contain a March 16, 2001 plat showing an identical proposal for a three-lot, panhandle subdivision, which apparently was assigned PDM Project No. 01033m. If the current Special Hearing Petition somehow, or instead, constitutes a Petition for approval of the subdivision, it should not be approved unless it satisfactorily addresses the following comments.

Panhandle lots are not a matter of right. Section 26-266 of the Baltimore County Code specifies that:

Panhandle lots may only be permitted to achieve better use of irregularly shaped parcels, avoid development in environmentally sensitive areas, and to provide better access to interior lots where a public road is neither desirable nor feasible. Panhandle lots may be permitted only where such lots would not be detrimental to adjacent properties and would not conflict with efforts to provide for public safety and general welfare.

It is incumbent upon the Petitioner to demonstrate how the above criteria have been met. The petitioner must file a complete panhandle submittal through the Department of Permits and Development Management. In addition to fulfilling the criteria stated above, the petitioner must provide appropriate building envelope and dimension setbacks for each lot (e.g., justification for a side yard setback Variance for the proposed Lot 2), and show the profile of the panhandle driveway.

5. The Office of Planning supports the comments in the July 15, 2001 letter from The Lutherville Historic Advisory Committee. The property in question is situated within the Lutherville Historic District as enacted by the County Council. County law (Sec. 26-542) thus makes "any excavation or the construction or erection of any building, fence, wall, or other new structure of any kind..." within this property subject to prior approval from the Landmarks Preservation Commission. Past interpretation has been that the subdivision of land, per se, is not subject to approval by the Commission. If, however,

NOTE TO COMMISSIONER

HIST. DIST. PROP.

LANDMARKS COMMISSIONER  
Must Comment.



action on this ambiguous Petition somehow does constitute or facilitate a subdivision of the property, subsequent development will be subject to the Commission's authority. For the sake of administrative efficiency, and for predictability to the land-owner, it would be inappropriate for the Petition to be approved before the Commission has had the opportunity at least to advise on the appropriateness of the intended development. The commission's next scheduled meeting is September 13, 2001.

6. In summary, the Office of Planning recommends denial because the Petition does not clearly describe the specific action requested from the Zoning Commissioner; because the property does not contain any remaining zoning density by which an additional dwelling could be authorized (if that actually is the request); and because the property does not qualify for the approval of a panhandle lot. If the matter is referred to the Landmarks Preservation Commission, the Office of Planning will recommend that the Commission agree with the conclusion that a panhandle lot is not appropriate at this location in the Lutherville Historic District.

Prepared by:

TIM DUGAN

Approved by:

Section Chief

AFK:TD

# IMPORTANT MESSAGE

FOR Ms 8/22  
 DATE Scott Lindgren TIME CCE A.M. P.M.  
 M 823-4470  
 OF 823-4470  
 PHONE 823-4470 AREA CODE 823 NUMBER 4470 EXTENSION  
☐ FAX  
☐ MOBILE

|                    |                   |                                     |
|--------------------|-------------------|-------------------------------------|
| TELEPHONED         | PLEASE CALL       | <input checked="" type="checkbox"/> |
| CAME TO SEE YOU    | WILL CALL AGAIN   |                                     |
| WANTS TO SEE YOU   | RUSH              |                                     |
| RETURNED YOUR CALL | SPECIAL ATTENTION |                                     |

MESSAGE

re: Thompson property  
 (John Brown)  
 00-157-5PH

SIGNED

# IMPORTANT MESSAGE

FOR Ms 8/16  
 DATE John Alexander TIME 9:50 A.M. P.M.  
 M 3391  
 OF 3391  
 PHONE 3391 AREA CODE 3391 NUMBER 3391 EXTENSION  
☐ FAX  
☐ MOBILE

|                    |                   |                                     |
|--------------------|-------------------|-------------------------------------|
| TELEPHONED         | PLEASE CALL       | <input checked="" type="checkbox"/> |
| CAME TO SEE YOU    | WILL CALL AGAIN   |                                     |
| WANTS TO SEE YOU   | RUSH              |                                     |
| RETURNED YOUR CALL | SPECIAL ATTENTION |                                     |

MESSAGE

status of  
 re: Thompson prop.  
 01-467-5PH  
 (he's doing minor work)  
 needs to know our  
 position in above case

SIGNED

**The Lutherville Historic Advisory Committee**  
to the Baltimore County Landmarks Preservation Commission

7/19/01  
work  
file

To George  
File

01-2408  
JUL 17 2001

July 15, 2001

Zoning Commissioner  
Baltimore County  
Department of Permits and Development  
111 West Chesapeake Avenue  
Towson, MD 21204

Mr. Robert C. Scott, Chairperson  
Landmarks Preservation Commission  
County Courts Building  
401 Bosley Avenue – Suite 405  
Towson, MD 21204

Re: Hearing to Amend Previous Decision  
**Case File No. 01-487-SPH**  
1501 Francke Avenue

JUL 23

The owner of the property at the above-mentioned address is petitioning the Zoning Commissioner in Special Hearing for an amendment to a previous Zoning decision in Special Hearing that allowed legal continuation of a non-conforming use, specifically three (3) apartments in a non-owner occupied house. The Lutherville Historic Advisory Committee stated our opposition to the grandfathering decision in a letter to the Commissioner dated November 2, 2000. In large part, our opposition was based *not* on the non-conforming use per se, but on the potential for setting harmful precedents by legitimizing certain development options that are not in the best interests of the Historic District, namely the creation of panhandle lots.

The following passage is from our November 2000 letter:

“The total property at this address is approximately two (2) acres. There is a distinct possibility that this owner (or a future owner) could pursue a minor subdivision, separating the “apartment building” lot from the remaining acreage. The land area required for a multi-family dwelling like this is a minimum of 32,000 square feet with a minimum frontage of 150 feet. This would leave slightly more than one acre remaining, or enough property theoretically for two homes ...located on panhandle lots, a situation we are trying to avoid in the Historic District, where the vast majority of homes have full street frontage. “

With this current petition, our fears have been fully realized. The owner now seeks to create a minor subdivision of three parcels, at least one of which requires a panhandle configuration.

We have a number of objections to this proposal:

1. The current proposal ignores or confuses the earlier decision to allow the 3-unit apartment building. 1501 Francke Avenue is entirely within the boundaries of Lutherville's DR2 zoning and now legally supports it's allowable maximum of four (4) DU's.
2. The Lutherville Historic District was established along with the downsizing of the zoning to DR2 in order to preserve the openness and gracious ambience of the existing community and to prevent the visual clutter of inappropriate densities so common to new infill development. This proposal would create a density that is inconsistent with the traditional scale of the surrounding neighborhood.

3. Panhandle lots invariably end up with a front yard facing on a backyard. The current proposal illustrates just such a condition, which requires variances and special exceptions for accessory structures common to most backyards.
4. The creation of an actual paved driveway in the proposed panhandle would require an additional curb cut on Seminary Avenue in an area already complicated by excessive vehicle speed, traffic congestion and new, un-matching traffic patterns.

While The Lutherville Historic Advisory Committee urges you to disallow this request, we are prepared to offer some suggestions for ways to mitigate the impact if, in your judgment, the request merits approval.

1. The proposed house should be required to face north, thereby creating a front-to-front situation with the property at 1513 Francke Avenue and a back-to-back situation with 1505 Francke Avenue and Mr. Thompson's own residence (which will become one of the subdivided properties).
2. Direct vehicular connection of the property to and from Seminary Avenue (both new and existing) should be abandoned except for emergency access. The existing connection to Francke Avenue would become the access point for all properties, in effect a private cul-de-sac that would preserve the condition that currently exists whereby residents feed from a central parking area. Provision could be made for a driveway connection from this central space to the proposed new home.

Finally, we urge you to withhold final judgment until the Landmarks Preservation Commission has had the opportunity to review and comment on this plan. The date of their next meeting is Thursday, August 9, 2001.

The Lutherville Historic Advisory Committee is not trying to thwart or usurp the rights of the Owner to use his property as he sees fit, within the limitations of applicable zoning regulations and with a sincere regard for the Community both now and in the future. However, to again paraphrase our November 2000 letter, we are very concerned that actions taken and judgments made at this time may ultimately undermine the true nature of what makes Lutherville a valuable and permanent historic asset.

Sincerely,

LUTHERVILLE HISTORIC ADVISORY COMMITTEE



Robert P. Wingard AIA  
Chairperson

cc: Kimberly Abe, Landmarks Preservation Comm.  
Eric Dana, President, Lutherville Community Assn.  
B. Hickey, Zoning Committee Chairperson, Lutherville Community Assn.

Lutherville Community Association  
P.O. Box 6  
Lutherville, MD 21094

Mr. Robert C. Scott, Chairperson  
Landmarks Preservation Commission  
County Courts Building  
401 Bosley Avenue - Suite 405  
Towson, MD 21204

July 12, 2001

Zoning Commissioner  
Baltimore Co. Dept. of Permits and Development  
111 West Chesapeake Avenue  
Towson, MD 21204

RE: Case File no. 01-487-SPH

Dear Mr. Scott:

With regard to the hearing to allow the creation of a new panhandle lot at 1501 Francke Avenue in Lutherville as part of a possible minor subdivision, we respectfully provide the following: It is the official position of the Lutherville Community Association to deny support for such lots. Panhandle lot configurations do not reinforce the traditional streetscape that is integral to Lutherville's established neighborhoods.

Although this current application is within the Lutherville Historic District (both National and Baltimore County limits), our position extends to the entire area within our Association's boundaries. Acceptable development would include proper street frontage and traditional orientation. This standard is consistent with the Lutherville Community Conservation Plan established in 1996, the review standards of the Lutherville Historic Advisory Committee (which has previously denied recommendation of approval for similar panhandle lot configurations), and with the Baltimore County Planning and Zoning Department's own position, not favoring such configurations.

We strongly urge you to not break precedent by allowing the current proposal for 1501 Francke Avenue to proceed. We are opposed to this proposal.

Very truly yours,

Eric C. Dana, President  
Lutherville Community Association

**PETITIONER(S) SIGN-IN SHEET**

ADDRESS LUTHERVILLE

1501 FRUNCKE AVE. 21093  
SUITE 100

SLITE 100  
320 E. TOWSON TOWN BLVD 21286

“ “ “ “

409 Washington Ave #810  
Towson, Md. 21204

8 CARRIAGE WALK CT BALTIMORE 21234

9634 DEERE RD. TAYLOR, MD. 21093



Case Number 81-478

**PLEASE PRINT LEGIBLY**

## PROTESTANT'S SIGN-IN SHEET

[illegible]

Revised 4/17/00

photographs

Case #01-487-SPH







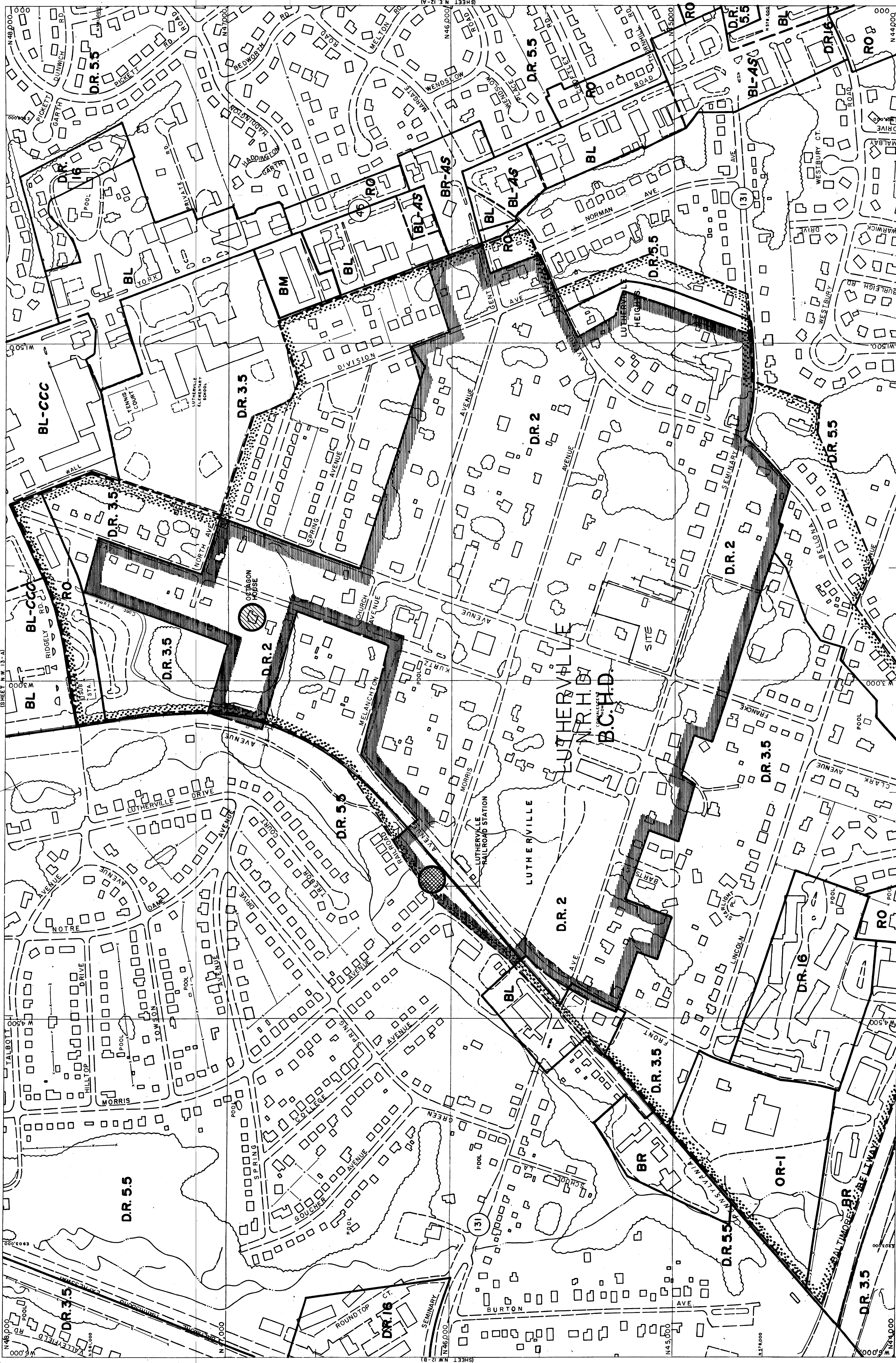












2000 COMPREHENSIVE ZONING MAP

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,

THIS MAP HAS BEEN REVISED IN SELECTED AREAS

TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS

BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

Chairman, County Council

*James B. Bateman*

DATE OF PHOTOGRAPHY

JANUARY 1986

SCALE

1" = 200'

LOCATION

LUTHERVILLE

SHEET

N.W. 12-A

S - SE

R - SW