IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE - S/S Sudbrook Lane, 765' W of the c/l Reisterstown Road (105 Sudbrook Lane) 3rd Election District 2nd Council District	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 02-328-SPHXA
The Fabian-Kolker Foundation, Inc., Owners; Eric Anderson, Contract Purchaser	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by the owners of the subject property, The Fabian-Kolker Foundation, Inc., by Patricia F. MacDonald, President, and the Contract Purchaser, Eric Anderson. As filed, the Petitioners request a special hearing "to incorporate models for construction in the design of the office building." Specifically, a special hearing is requested to allow rehabilitation and utilization of an existing dwelling with a proposed building for the redevelopment of the subject site with a Class B Office Building. In addition, a special exception is requested to approve the use of the subject property for a Class B Office Building, pursuant to Section 204.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.); and, variance relief from the B.C.Z.R. as follows: From Section 204.4.C.9.c(1)&(2) to provide a landscape buffer of 10 feet along the front property line in lieu of the required 20 feet, and a 0-foot landscape buffer along the east side of the property in lieu of the required 10 feet; and, from Section 450.4 to permit an illuminated, freestanding, double-faced sign of 24 sq.ft. per face (48 sq.ft. total) in lieu of the maximum allowed 8 sq.ft., non-illuminated, wall-mounted sign. The Petitioners also requested relief from Section 204.4.C.3 of the B.C.Z.R. to permit a front yard setback of 60 feet in lieu of the minimum required 25 feet, or the average of the setbacks of adjacent structures, whichever is less. However, at the hearing, they indicated that this variance may not be necessary. The subject

ORDER RECEIVED FOR FILING
Date 4/22/02
By

property and requested relief are more particularly shown on the site plan submitted, which was accepted into evidence and marked as Petitioner's Exhibit 1.

This matter was originally scheduled for a public hearing on March 26, 2002. Appearing at that time in support of the Petition were Eric Anderson, Contract Purchaser of the property, Gabriel W. Rosenbush, Jr., a representative of the Pikesville Chamber of Commerce, Shara Simon, a nearby resident, and James S. Patton, Professional Engineer who prepared the site plan for this property. Appearing as a Protestant in the matter was Darragh Brady, a representative of Sudbrook Park, Inc., a local community association. At that hearing, it was discovered that the property had not been posted; however, at the request of the parties present, testimony and evidence was taken on that date. Thereafter, the property was properly posted, as required, for a period of 15 days and the hearing reconvened on April 15, 2002. At that hearing, Messrs. Anderson, Patton and Rosenbush appeared; however, no other individuals appeared. Thus, the decision that follows is based upon the record made on March 26, 2002.

The subject property is a rectangular shaped parcel, located on the south side of Sudbrook Lane, not far from Reisterstown Road in Pikesville. The property contains a gross area of 0.361 acres, more or less, zoned R.O., and is improved with a small dwelling which is proposed to be rehabilitated and used in conjunction with the proposed Class B office building use. Also proposed for construction is a two-story, 38' x 28' detached building, which will be connected to the existing structure via an internal hallway. In addition to the buildings, a 10-space parking lot is proposed. In this regard, 6 spaces will be provided to the rear of the property and 4 spaces in front. The plan also shows an area of amenity open space and landscaping along a portion of the perimeter of the site.

Mr. Anderson owns and operates a business known as USA Rehab. The nature of the business is to provide products to the physically disabled. These products include such items as wheelchairs, stair lifts, etc. Mr. Anderson proposes operating his business at the subject location. He will have a small showroom where items will be displayed. Most of his business is by referral. Typically, he anticipates individuals will visit the site to discuss with him their needs and view the

ORDER RECEIVED FOR FILING
Date 4/22/02
By

products he has to offer. He will thereafter order any requested item directly from the manufacturer. There will be no storage of goods, per se; however, there will be a small workshop for the repair of items. The business will operate 8:30 AM to 4:30 PM, Monday through Friday, with an occasional appointment in the evening or on Saturday. Mr. Anderson employs 5 individuals.

Turning to the Petition for Special Exception, a Class B Office Building is permitted by special exception in the R.O. zone. A Class B Office Building is defined in Section 101 of the B.C.Z.R. as "A principle building used for offices and which is not a Class A office building." A Class A office building is defined as "A principle building that was originally constructed as a one-family or two-family detached dwelling and that is converted by proper permit to office use without any external enlargement for the purpose of creating the office space or otherwise accommodating the office use." In view of the proposed two-story, 38' x 28' building/addition to the existing dwelling, the subject proposal is clearly a Class B Office Building.

Testimony and evidence presented was that the proposed office building is consistent with uses in the locale. Immediately abutting this property on one side is a dwelling that has been converted to office use. To the other side of the property abutting Sudbrook Lane, is a structure that has been converted to a Realtor's office. Thus, office uses are predominant in this vicinity, although there are residences and institutional uses (i.e., a cemetery) nearby.

Based upon the testimony and evidence offered, I am persuaded that the Petition for Special Exception should be granted. In my judgment, the proposed use will not be detrimental to the health, safety or general welfare of the locale, and is consistent with existing uses in the area. Mr. Anderson's operation appears appropriate for this location and satisfies the requirements set out in Section 502.1 of the B.C.Z.R.

Special hearing relief is requested essentially to approve the design of the building. In this regard, a Zoning Advisory Committee (ZAC) comment was received from the Office of Planning with recommendations regarding the character, design and construction of the addition. The design of the roof, exterior façade and landscaping, etc., were all subjects of the Planning

ORDER RECEIVED FOR FILING
Date 1/22/12
By

Office's comment. In this regard, the Petitioners submitted building elevation drawings (Petitioner's Exhibit 2), which apparently have been reviewed and approved by the Office of Planning. As a condition of approval, the building shall be constructed substantially in accordance with those drawings. That is, it is appropriate for the new building to have a dwelling-like appearance, irrespective of the proposed use. The Petition for Special Hearing shall be granted and a restriction added requiring compliance with the comments submitted by the Office of Planning insofar as the office building is concerned.

A series of variances are also requested. The first is to provide a 10-foot landscape buffer along the front property line in lieu of the required 20 feet. In this regard, the plan shows a 10-foot area along the front of the property to be landscaped. It was indicated at the hearing that the area of landscaping in the front yard is somewhat limited due to the need to provide parking. Particularly, handicapped spaces are shown in the front lot. These spaces are necessary in view of the anticipated clientele of the business. The narrowness of the parcel and the layout of the site are persuasive factors to support a grant of that variance. The second variance relates to the landscape buffer along the east (side) of the property. As shown on the site plan, vehicular access to the site will be by way of a 24-foot wide driveway, which will lead to the interior of the site from Sudbrook Lane. As noted above, there will be a front parking lot and the driveway will then narrow to 20 feet immediately between the proposed addition and side property line. The driveway then widens to 22 feet at the rear parking lot. Again, due to the narrowness of the lot and the need to provide on-site parking, variance relief in this regard is warranted. The plan shows landscaping to the front, rear, and west sides of the property. There is no practical manner in which landscaping can be provided on the east side, given the requirements to provide on-site parking and vehicular access into the site.

The third variance requested is for signage. In this regard, the Petitioner requests approval for an illuminated, 24 sq.ft., double-faced, freestanding sign in lieu of the maximum allowed 8 sq.ft., non-illuminated, wall-mounted sign. Photographs submitted at the hearing show that a sign approximately the same size as requested by the Petitioner is located on the adjacent lot

ORDER RECEIVED FOR FILING
Date 4/22/02
By

advertising the Realtor's business. Similarly, photographs show a large freestanding sign on the other (east) side advertising the address and that business. At the hearing, the Petitioner indicated that the sign would not be internally illuminated, but would be lit by spotlight. Additionally, the Petitioner agreed that a timer would be utilized so that the sign would not be lit after 11:00 PM.

Under these circumstances, I am persuaded that the variance should be granted. The proposed sign appears appropriate for the locale and is consistent with other signs in the area. I note that the Sudbrook Park, Inc. community association faxed a letter on April 15, 2002 in which they indicated they have no objection to the proposal, provided the sign is reduced to 6 sq.ft. In that the regulations allow a maximum 8 sq.ft. sign, I will not require a reduction in the size of the sign. Moreover, in view of the character of other signs in the neighborhood, I am persuaded that the Petitioners have met the requirements of Section 307 of the B.C.Z.R. for relief to be granted. However, the restrictions noted above will be imposed to assure that there will be no detrimental impact on adjacent properties or the surrounding locale.

The fourth variance requested is unusual and may not be applicable to this site. Section 204.4.C.3 of the B.C.Z.R. requires that the front setback of the building be a minimum of 25 feet, or the average of the setbacks of adjacent structures, whichever is less. The site plan shows that the building on the east side of the property is set back approximately 45 to 50 feet from the front property line, and the building on the west side is set back approximately 56 feet. Thus, the average setback is approximately 50 feet. The proposed addition, which will be constructed in front of the existing structure, will be set back a similar distance. That is, the improvements will be set back a distance from Sudbrook Lane consistent with the buildings on adjacent properties. Obviously, it was the intent of the County Council in enacting Section 204.4.C.3 that buildings in the R.O. zone be set back a uniform and consistent distance. To require the Petitioner to place the building 25 feet from the front property line would be inappropriate and inconsistent with adjacent structures. Moreover, it would be unattractive and detrimental to the aesthetics of the community. Although it is questionable whether the intent of the legislation is to require that setback, variance relief will be granted here to allow the building to be situated where shown on the site plan.

ORDER RECEIVED FOR FILING
Date 4/22/02
By

In summary, the relief requested should be granted. I am persuaded that the proposal represents an appropriate improvement to the property and will not cause detrimental impact to the neighborhood. I will incorporate certain restrictions to insure the impacts of this business will be mitigated.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 22nd day of April, 2002 that the Petition for Special Hearing to allow the incorporation of the existing structure into the design of the proposed office building, in accordance with Petitioner's Exhibit 1, be ad is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Exception to approve a Class B Office Building, pursuant to Section 204.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the B.C.Z.R. as follows: From Section 204.4.C.9.c(1) & (2) to provide a landscape buffer of 10 feet for the front property line in lieu of the required 20 feet, and a 0-foot landscape buffer along the eastern side of the property in lieu of the required 10 feet; from Section 450.4 of the B.C.Z.R. to permit an illuminated, freestanding, double-faced sign of 24 sq.ft. (48 sq.ft. total) in lieu of the maximum allowed 8 sq.ft., non-illuminated, wall-mounted sign; and, from Section 204.4.C.3 of the B.C.Z.R. to permit a front yard setback of 60 feet in lieu of the minimum required 25 feet, or the average of the setbacks of adjacent structures, whichever is less, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

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 the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) With the exception of the sign, Petitioners shall comply with all other

ORDER RECEIVED FOR FILING
Date 4/22/02
By

recommendations made within the ZAC comments submitted by the Office of Planning, dated March 15, 2002, a copy of which is attached hereto and made a part hereof.

3) The proposed freestanding sign shall be limited to 24 sq.ft. per face, (or 48 sq.ft. total), and shall be spot-lit with a timer to extinguish same by no later than 11:00 PM.

4) The proposed building will be constructed substantially in accordance with the elevation drawings reviewed and approved by the Office of Planning, and submitted into evidence as Petitioner's Exhibit 2.

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

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 4/22/02
By

3/10/03

IN THE MATTER OF THE APPLICATION OF PATRICIA F. MACDONALD; FABIAN -KOLKER FOUNDATION FOR A SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SE/S OF SUDBROOK LANE, 765' SW C/L OF REISTERSTOWN ROAD (105 SUDBROOK LANE) 3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT	* * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 02-328-SPHXA

* * * * * * * * *

OPINION

This case comes to the Baltimore County Board of Appeals based on an appeal from the Zoning Commissioner's ruling in which the Petitioner's requested relief was granted with restrictions under an "Order and Opinion" dated April 22, 2002. People's Counsel for Baltimore County filed a timely appeal on May 17, 2002. A number of issues were present:

1. A special hearing "to incorporate models for construction in the design of the office building. In particular to permit rehabilitation and utilization of an existing dwelling with a proposed building for the redevelopment of the subject site with a Class B office building."
2. A special exception to approve the use of the subject property for a Class B office building, pursuant to § 204.3B of the *Baltimore County Zoning Regulations* (BCZR).
3. A variance from the BCZR from § 204.4C.9.c(1) and (2) to provide a landscape buffer of 10 feet along the front property line in lieu of the required 20 feet.
4. A 0-foot landscape buffer along the east side of the property in lieu of the required 10 feet.

The Petitioner had also requested relief from § 450.4 to permit an illuminated freestanding double-faced sign of 24 square feet per side; however, this variance sign request was later abandoned before the Board by the Petitioner.

The Board held its first public hearing on July 17, 2002 at 10:00 a.m., with day #2 held on November 12, 2002. The Office of People's Counsel was represented by Peter Max Zimmerman, Esquire. J. Carroll Holzer, Esquire, represented the Contract Purchaser, Mr. Eric Anderson. Both counsel offered opening statements. Preliminary exhibits were submitted that were as follows:

Petitioner's Exhibit #1 - "Plat to Accompany Petition"
Petitioner's Exhibit #2 – "Drawing of the Proposed Building"
Petitioner's Exhibit #3 – "Red-lined Plan of Exhibit #1"

Mr. Holzer indicated that there were currently present only two variances being requested which were the regulation requiring 25 feet from street residence to be parallel with existing homes; and vegetative screening to shield parking to give appearance of a home. A sign-in sheet was accepted by the Board to be included in the Board's file.

The Appellant produced several witnesses to support his contention that the Contract Purchaser ("Purchaser") was not the type of office allowed in an R.C. zone but was more of a commercial use. Dr. Barry S. Lever testified that he was resident agent for Sudbrook Lane Properties, Inc. He opined that, based on personal observation, the subject property had fallen into decay, non-use, and abandonment for at least 20 years. He was personally involved with the immediate property to the left of the subject site which he maintains, with his partner, as an orthodontic practice. He opined that the subject property had been abandoned for at least 5 years.

He stated that the County had been called numerous times about the overgrown grass. He described the character of the immediate neighborhood as basically offices with a nursing home on the corner. He characterized the area as having good parking and did not see any need for landscaping, if, in fact, landscaping would cause traffic visibility difficulties. The existing building was built in 1950. Mr. Fabian had purchased the building for his son to establish an ophthalmologist office. On cross-examination, Dr. Lever opined that he had called the attorney for Fabian-Kolker a substantial number of times to mow the grass. There had been no visible activity on the property since 1973. He indicated the lot size was approximately 60 feet by 200 feet. He was also aware that the property had been up for sale for a number of years with various real estate companies whose signs appeared on the front of the property – with no apparent buyers. He opined it was a serious issue to see a building stand vacant for excessive periods and amounted to a community eyesore.

Dr. Lever was permitted to testify out of turn as an objecting protestant by mutual agreement of counsel because of prior commitments.

The first witness on behalf of the Petitioner was Mr. Eric Kyle Anderson. Mr. Anderson resides in the nearby Rallston community which is about four streets away, and has resided in the area since September. He indicated he was the contract purchaser at 105 Sudbrook Lane. His business was presently located on Church Lane, one block away in an office building. He described his activities at his present location. Petitioner's Exhibits 4A-D were admitted representing photographs taken about 6 months ago representing the property situated between two houses. Petitioner's Exhibit 5A through 5G represented area facilities (a nursing home, Sudbrook Station, and other offices).

Mr. Anderson indicated a desire to relocate from his present facility to the proposed Sudbrook property. He stated that he employs seven people with administrative functions. He described the proposed location. The first floor would consist of a dining room, living room and kitchen. The second floor would have two open spaces for bedrooms and there also would be a basement with open space. There would be the usual office equipment on all three floors that would include desks, chairs, computer equipment, file cabinets, etc. The kitchen would be a functional one with appliances to accommodate individuals with physical disabilities such as model cabinets, sinks, cabinet tops, lazy susans, etc., with additional various appliances to show how they could be utilized by handicapped individuals. The term "model" was used to designate each item. The building would be "Americans with Disabilities" accessible. The bathroom would have hand access shower, sink and toilets; and would demonstrate how your new or present home could be adapted to accommodate an individual's limited physical needs. Everything in the building would be functionally designed as required by the State to meet accessibility codes. There would also be a stair platform lift to go to each floor in the building. His present facility did carry a very small inventory. The existing building would not be able to handle any inventory. No cash/carry sales would take place on the Sudbrook site.

Petitioner's Exhibit #6 was admitted. It represented a contract with the Easy Storage Company to allow storage of items. He opined that he currently conducts business over the telephone. His firm works extensively with home care facilities. Among his services rendered is handicapped assistance in non-dial phones, computer technology, etc. He indicated there was to be no walk-in traffic. The vast majority of services are performed in the client's home. Some clients do come in to examine his various models working with a trained consultant on site.

Petitioner indicated all orders are delivered to the storage facility for ultimate client delivery. He opined that because of the proposed building it was necessary to go through the special hearing process. Mr. Anderson did not believe that the proposed operation would be detrimental to the existing community, no traffic impact, no school, park, lighting or air quality issues.

Petitioner's Exhibit #8 dated March 20, 2002 was admitted representing a letter from David O. Feldman in support of Petitioner's request.

Mrs. Eleanor Spokes, 1017 Windsor Lane, one mile from the subject site also testified as co-president of the Sudbrook Park Community Association, Inc. People's Counsel's Exhibit #2 was admitted representing the Sudbrook Park Community Plan. She had received a notification from Councilman Kamenetz' office relative to the proposed building, and she referenced page 1 of Petitioner's Exhibit #7 (the purchaser's web site) which indicated to her that the proposed facility was for a "showroom of products for handicapped individuals" and that products were available on site. She opined that the proposed location was not consistent with the zone. The 20-foot width driveway would be inconsistent with existing properties. She related her frequent drives passed the property and familiarity with the area, and that the proposed building would not be compatible with existing structures in the community. She stated that the Board should consider the retail aspects of the operation. She acknowledged that the Petitioner had indicated that all deliveries would be made from their office facility.

Mrs. Colleen Rosenberg, 218 Church Lane, learned of the pending case through the Sudbrook Community Association. She had briefly reviewed the Zoning Commissioner's decision. She described the character of Church Lane and Sudbrook. She opined concerning the number of residential homes in the Sudbrook community and her concerns were relative to

traffic increases and trucks coming in the area. She acknowledged, on cross-examination by Mr. Holzer, that she could not see the site from her home on Petitioner's Exhibit #5 and was also familiar with the nursing home, Dr. Lever's office, and other commercial activities on the street. She did acknowledge that the building would be an improvement over the existing structure.

Mr. Jeffrey Long also testified. He is a Division Chief in the Baltimore County Planning Office with 23 years experience, and has reviewed numerous applications for special hearings, specializing in that field for the past 6 years. He was accepted by the Board as an expert in the field of R.O. zoning uses and the planned office building submitted. He was also familiar with the site and proposed uses on same. He referenced the March 13, 2002 Planning comments, and his previous meetings with Mr. Anderson and Mr. Patton, and expressed no concerns as it applied to the Baltimore County Zoning Office. He opined that the proposed use "fits in" with the R.O. site, and based upon his conversation, was not a cash-and-carry facility, no storage, and nothing different than what is normally found in other Baltimore County homes. In fact, the zoning office has been both encouraging and recommending ADA facilities in homes in the County. Mr. Long saw no issue of compatibility since, based upon the floor plan, the structure would be similar to others in the area as long as the color was to be compatible.

Petitioner's Exhibit #10 was admitted reflecting Planning Office comments, that Baltimore County was interested in working closely with others that are interested in this type of service.

Mr. Zimmerman raised questions concerning certain assumptions made by Mr. Long: namely, that no customers were to come to site for orders or pick ups; that the rear building would continue to exist; that some inventory would be available on site for demonstration; and, further, that the activities conducted on the proposed site would be consistent with zoning. In his

opinion, this would not be considered as a retail site. Mr. Long considered United Parcel Service traffic service as normal traffic in the area.

Mrs. Sherry Bocker, President of the Pikesville Chamber of Commerce, also testified. Her offices are in the same building and on the same floor as the Purchaser's current facilities. The Chamber's offices have been there for quite some time. She related the present activity of the Petitioner in the Church Lane building from 9:00 a.m. to 2:30 p.m., and she had not personally observed any cash-and-carry business. She indicated the facilities to be very quiet, with no disturbances and that the Chamber supported the business. Her belief was that any clients coming in were by appointment only.

Mr. Anderson was called on re-direct by Mr. Zimmerman. His desire was to buy and own a facility instead of rent. He holds a Bachelor of Science degree in Exercise Psychology. He indicated there would be other physical therapists on site beside himself to determine clients' needs and that only petty cash would be maintained. He opined that the rear building would be used for record retention as required by statute for 7 years. The largest product to be carried would be the stairway ramp. Only a minimal amount of products would be carried on site; i.e., two to three wheelchairs, one to two mobile scooters inside, with some portable demonstrative ramps outside the building. He again described the interior which had models available for visibility to clients, including TV and electronic controls.

His advertisement in the Yellow Pages provides for visits by appointment only. Most customers come from the greater Baltimore Area, about 65 percent. A considerable portion of the equipment is shipped direct from the manufacturer to the client. Some wheelchairs are made available on the premises for demo purposes. A patient advocate would make medical repairs if

necessary on their scooters and wheelchairs. He indicated he was an expert, trained technician. And again, only emergency repairs would be done on site with all others off site.

His office hours would be from 8:30 a.m. to 4:30 p.m., limited after those hours by appointment until 8:00 p.m. Mr. Anderson indicated he would change his web site relative to any pick-ups on site. He would support buffers as long as there were no safety issues involved.

Ms. Peggy Hau, 222 Sudbrook Lane, testified. She lives ¼ mile down from the site and has been a registered nurse in the State of Maryland for 32 years working as an independent contractor doing medical billings. She was familiar with the Petitioner's business when it became USA Rehab and does billing work for them. She stated that no inventory was currently carried in the present location.

Ms. Ginger Palmer testified that she had been a client of USA Rehab since August 2000. Her initial contact came via her insurance company. She described her need for rehabilitative services, walkers, wheelchairs, ramps, etc. and how the evaluation was performed in her home at least 8 times. She had actually only visited the office once which she described as an unusual occurrence. Petitioner's Exhibit #11, representing a list of services provided to date on her behalf, was admitted.

Mr. Mike Morrow, residing in the Sparrows Point area, testified concerning his two years of rehabilitative association with the Petitioner. He is paralyzed from the neck down. Petitioner had supplied his disability needs at two separate residences providing wheelchairs, grab bars, shower bars, etc. All work was done at his home, all merchandise approved by his insurance company for testing.

Mr. James Patton testified as an accepted expert in civil engineering and land planning. Mr. Patton prepared the Plan to Accompany the Zoning Request and visited the site three times.

Petitioner's Exhibit 4A through 4D represented photographs Mr. Patton had taken around the end of February and the beginning of March 2002. Petitioner's Exhibit 5A through 5G represented photographs of offices in the westerly portion of Sudbrook separating the neighborhood from the offices. He opined he had had many conversations with Mr. Anderson about the proposed site and needs necessary relative to zoning requirements; hence the Petition for Special Hearing for a Class B office building. He opined that the existing structure set back between two structures to expand by 25 percent would not be adequate space. By utilizing the home by connecting the two would give Petitioner sufficient relief. He stated that a similar example would be a Baltimore Gas and Electric energy house that would demonstrate various ways of energy usage and saving methods. The proposal was modeled after that type of a situation and at the same time an attempt was made to maintain a residential appearance. He opined that this was a typical Class B office building that just happened to have demonstrative models included. He opined that the sign variance had been dropped by the Petitioner.

He basically concurred with the decision of the Zoning Commissioner as to the variances requested that any landscape standards would be as promulgated by the land manual. The uniqueness in his opinion lay relative to the borders of the structure and adjoining forced location of the building. He related his opinions concerning § 502.1 and stated no objection as each issue was raised by Mr. Holzer.

Mr. Zimmerman introduced People's Counsel Exhibit #3 and 3A, zoning map and excerpt of same; People's Counsel Exhibit #4, ADC map; and People's Counsel #5, tax maps. Mr. Patton acknowledged that most of the lots are the same with substantial zoning at D.R. 5.5 along Glenbeck and Church Lane. He described § 409.4 of the BCZR (12 feet for one-way movement in driveway and 20 feet for two-way movement). He opined parking spaces need 22

feet aisles and that the Petitioner could not comply with the request of People's Counsel for a 12-foot driveway. Section 204.4C, the present building issue, was discussed. He did not believe that the new building was simply a connection to an older building and that the existing home pre-dated the zoning regulations.

Ms. Melanie Anson testified. She resides at 1007 Windsor Road and marked her residence on People's Counsel Exhibit #3. She has been an area resident for 32 years and a community activist since 1972. She opined that she believed that the proposed project would be an encroachment into the Sudbrook area residential community. Her concerns centered on increased traffic. She related the history of Sudbrook Park that she had authored as the first planned community in Sudbrook. She worked on the community plan submitted as People's Counsel Exhibit #2. She opined concerning adequate landscaping, the intrusion of retail operations into a residential zone, and expressed concern that the Sudbrook area was a fragile area that required conservation from further encroachment. She felt the model room setups were clearly too close to retail. She opined she would prefer that there be no inventory, no showroom, no assembly, and no deliveries on site. She stated that there was nothing unique or unusual about the property. She acknowledged on cross-examination that she could not see or hear anything relative to the subject site. She also stated that, if the site were approved, the Board needed to place severe restrictions on the site usage.

Mr. Alan P. Zuckerberg, residing in the Pikesville area, also testified. He previously served as President of the Pikesville Chamber but was appearing as an individual resident. He has also run for various elective offices in the area. His concerns identified most of the previous areas stated by other protestants; that is, increased encroachment into a residential area; a belief that other commercial sites would be better for this type of operation; and increased traffic due to

localized greater Baltimore area patronage of the Purchaser's facilities; and also a concern that the operation was essentially retail in nature. He offered a number of photographs as examples. People's Counsel Exhibits 6A through E; People's Counsel Exhibit #7, A to G were admitted and viewed by the Board.

On cross-examination, Mr. Zuckerberg acknowledged that he was not an adjacent neighbor who would be immediately affected by approval of the Petitioner's proposal.

Mrs. Elizabeth Stellmann, 1008 Windsor Road, 21208, testified. She is the zoning chair of the Sudbrook Park, Inc., and is a practicing attorney specializing in estate planning and practice. She related the boundaries of the association and that they represented 520 families. Objections were raised over the ability of the association to participate in the proceedings which the Chairman permitted, acknowledging that each Board member would individually review the weight in their individual consideration of the case. The association's concerns were with a mixed use in an R.O. zone.

Mr. Anderson was called on rebuttal by Mr. Holzer. The Board particularly was interested in hearing how the proposed site differed from any other displays or showrooms. A number of differences were cited:

- The basic function of the subject site was for administrative purposes
- There is no storage or showroom; the models were actually built into the home
- There was to be no cash or carry
- Deliveries are made off-site
- Business is not for the closing of a sale but for providing services essentially performed in the client's home
- He explained the difference between a furniture store and their operation

- Their operation was not a drive-in or a walk-in; by appointment only
- Much of their work is billed to the insurance company and not directly to the client.

Mr. Anderson acknowledged that he had purchased the building in July 2002 and had rehabilitated the existing building and was operating out of it. He submitted Petitioner's Exhibit #16 as an updated storage contract.

On cross-examination, Mr. Zimmerman noted 105 Sudbrook Lane not listed on the web site. Mr. Anderson indicated no customer would come to Sudbrook Lane due to the zoning appeal.

The Board held a public deliberation on the matter on January 16, 2003. At that time, the Board members expressed appreciation to both Mr. Holzer and Mr. Zimmerman for the fine briefs and research submitted to the Board for preliminary review. Based upon a review of the testimony taken and evidence submitted, and review of applicable statutory and case law, the Board has made the following determinations.

The subject site is located in an area zoned R.O. (Residential, office). That form of zoning permits new office buildings by special exception. The Petitioner is proposing to construct a new 38-foot by 28-foot, two-story building that would be connected to an existing 30-foot by 24-foot former residence. The new building would essentially consist of offices and be constructed to act as a model home incorporating many features that would assist the physically handicapped in their normal life activities. The older, converted building would be utilized as a storage room for record retention and repair work on handicapped equipment (wheelchairs, scooters, etc.) on an emergency basis.

The Board has reviewed the legislative history relative to the regulations for the R.O. zone presently codified in *Baltimore County Zoning Regulations*, § 204, and in particular,

People's Counsel Exhibit #9 which traces the legislation to Bill 13-80. There is no question but that the zone was developed so that uses in the R.O. zone would be highly compatible with the present or perspective uses of nearby properties. When it was enacted, the R.O. zone was the most restrictive of the office zones, and continues to this time to be the most controlled of the office zones that permit new buildings. Following the chain of legislative history, it is patently obvious to the Board that any new office buildings had to be compatible with the surrounding residential uses. With each new legislation, additional restrictions were imposed, the most significant of which in this case is represented by BCZR 204.4.C8:

> The office building shall be the only principle building on the lot on which it is situated and shall not be attached to any other building.

The intent, obviously, was to reduce the number of buildings on each lot in an R.O. zone. It is the Board's conclusion, based upon the testimony and evidence, that one building clearly exists at the present time on the lot. An examination of Petitioner's Exhibit #1 reflects an existing building that is proposed to be "reused as part of property – Class B office with a functional connection" to the proposed Class B office. The buildings are substantial in size. The existing residential building is 30 feet by 24 feet. The proposed building is 38 feet by 28 feet.

Petitioner's Exhibit 3 reflects a very impressive design of the new building – quite residential in character and appearance. However, there can be no avoidance of the fact that there would be two separate and distinct buildings connected by the "functional connection." That connection does not draw with it the conclusion that there is but one building incorporating the old with the new. It is, as counsel for Petitioner has indicated in his brief, the "rehabilitative utilization of an existing dwelling functionally connected with the proposed addition for a Class B office building" [p 1, Petitioner's Brief]. It is the Board's observation that there would exist

two separate buildings, the old and the new. The functional connection does not make one building. For this reason alone, the R.O. zone does not permit two buildings on the same lot.

Assuming that the Board had determined that the two buildings were considered as one, the additional question remains of whether or not the proposed building would function for office purposes or as a display home /showroom used to promote the sale of products. The Board considered the usage of both the existing and proposed buildings. In addition to the request for what the Board considered as a second principle building in an R.O. zone (which is in serious conflict with the R.O. requirements), the question of the function of the building comes into focus. The R.O. zone permits, under § BCZR 204.3B.2, Class B office buildings by special exception. Section 101 of the BCZR defines "office" as:

> A building or portion of a building used for conducting the affairs of a business, profession, service, industry or government, including a medical office. The term "office" does not include a bank, post office, veterinarian's office or an establishment where merchandise is stored on or sold from the premises.

Based upon the testimony and evidence reviewed by the Board members, there is no question but that the proposed building would function as an "office." Mr. Anderson's testimony describing his current office at the proposed facility would have the usual complement of telephones, fax equipment, cabinets, desks, chairs, and computers necessary to adequately function as an office. However, the key element that is present in this case is whether or not it is "an establishment where merchandise is stored or sold from the premises."

The Board is convinced that at the present location merchandise is not stored. Here again, however, what is contemplated at the new proposed location is that which is not featured there. The function of the new building is "incorporate models for construction in the design of the office building, which models such as doorways and toilet fixtures, cabinetry, access ways, would be all demonstrable of functions to assist physically disabled person to function in these

residences." (page 1 & 2, Petitioner's Brief). These would all be designed to demonstrate what was available for purchase in the homes of individuals coming to the building, including stairs, lifts, ramps, and door ways accessible to the physically handicapped. Trained physical therapists would be available to assist those coming to the site. A limited number of motorized scooters and wheelchairs would also be available for test purposes on site, some, presumably, for outdoor demonstration.

While the Board is convinced that only limited inventory would be on site for demonstrative purposes, and that the bulk of what would constitute "inventory" was off site (based on storage records), with inventory delivered by the manufacturer to the storage facility and directly to the Petitioner's clients, nevertheless the weight of the evidence which the Board is required to measure weighs heavily that the merchandise is sold on the premises with the orders taken at that location. Under Maryland case law, even if inventory was stored off site, a use cannot qualify as an office if it is essentially a sales office.

Here again, the Board is convinced that the Petitioner is not engaged in "cash and carry" sales, nor are most of the Petitioner's customers coming in "off the street." However, a large number of employees proposed on site and the number of parking spaces required (6 in the rear; 4 in the front) would tend to indicate a large number of customers arriving on a daily basis. Petitioner has attempted to align his business as that of a "manufacturer's representative," who normally functions from an office with no showroom or display area, and accepts orders and checks for manufacturers' items – with shipment going directly to the clients. Petitioner has created a very fine building, which from the exterior would give the appearance of an attractive residential home, which, standing along, without the existing building, would certainly compliment the immediate community. However, there is no question but that the essence of the

proposed building is to function as a model or display showroom throughout to demonstrate what is available for purchase and the goods are sold on site. It is, as People's Counsel identified it in his Brief on page 9:

> Showroom: A room where merchandise is exposed for sale or where samples are displayed. *Webster's Third New International Dictionary*, page 206

The Board is convinced that the proposed residential "model" home is a "showroom" with offices where orders are taken and sales made, no different than the operations of a "Stuarts Kitchens" facility which is well-known to all members of the panel and which clearly identifies itself as a "showroom" in a nonresidential setting. In addition, the Board, based on the testimony and evidence, is not totally convinced that the existing building would be used for administrative purposes; i.e., storage of records. There was testimony that some "repairs" would take place on site. Such repairs are not permitted in the zone.

While an effort was made by the Petitioner to convince the Board that it should conclude, and concur with the Planning Office via Mr. Long's testimony and recommendation, that the intended use was consistent with the R.O. zone in the sense of it being a "model home," the Board is constrained to conclude otherwise on the basis as previously stated. If it is the intention of the Planning Board to recommend such projects for appropriate consideration by the County Council, it should do so. For this administrative body to so state, would be to thwart the intent of the County Council to restrict uses in the R.O. zone and not allow sales or showroom use therein, even if for such worthwhile and sympathetic uses in the nature of rehabilitative products.

For the reasons cited, the Board declines to approve the special hearing.

The third item is that of the special exception required. The Board is mindful of the requirements of § 502.1 of the BCZR and case law. This case was heard by the Board on a *de novo* basis. As was explained by the Court of Special Appeals in *Pollard's Towing, Inc. v.*

Berman's Body Frame and Mechanical, Inc., 137 Md.App. 277, 288, 768A.2d 138, 137 (2001), "Unless otherwise limited by statute or Court rule, a de novo hearing is an entirely new hearing at which time all aspects of the case should be heard anew as if no decision had been previously rendered."

The Board is well aware of the case of *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1989), and also the case of *Eastern Advertising Co. v. Mayor and City Council of Baltimore*, 128 Md.App. 499, 739 A.2d 854 (1999), Cert. denied, 358 Md. 163 (2000). In *Schultz*, the Court held 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 use irrespective of its location within the zone.

As to § 502.1, the Board is not so concerned with many of the issues contained therein as related to schools, parks, overcrowding of land, and environmental concerns. While traffic issues were present, the primary issues are: "the spirit and intent" of the law, and (2) did the proposed location have "any adverse effects above and beyond those inherently associated with such a special use...." The Board believes both to be issues.

The Board has reviewed the legislative history of the R.O. zone as set forth in evidence and the Brief submitted by People's Counsel (People's Counsel #9; People's Counsel #12; People's Counsel #13; People's Counsel #14; and People's Counsel #15), with emphasis on the latter exhibit identified concerning the purpose of the R.O. zone in the new BCZR 203.2B as:

> A transition or buffer between residential and the more intense office, retail or industrial use or property by permitting office development highly compatible with residential uses (R-O, S-E).

This Bill also enacted the new restriction on the number of principal buildings, found in

current BCZR 204.4.C8:

> The office building shall be the only principal building on the lot on which it is situated and shall not be attached to another building.

There is no question but that the history and development of the R.O zone reflects the intent of the legislative body to a more restrictive employment of the use and bulk regulations. The Board concludes that the proposed facility is a showroom use designed for rehabilitative purposes in what exists as a commercial use not permitted in an R.O zone, and would violate the spirit and intent of the R.O legislation. In addition, the Board must consider the community opposition expressed by local community groups and individuals concerned that approval of the special exception would be in conflict with the previously adopted County community plans and would create an adverse effect greater here than if located in any of the other numerous available commercial or business zones in proximity to this site. While the evidence, various area photographs, and testimony was available to demonstrate the existence of office buildings, a church, a convalescent home, and other professional service offices (real estate, dentistry) along Sudbrook Park, nevertheless there was testimony and evidence submitted to reflect that there currently exists a low to moderate density transition area between the heavily commercialized portion of nearby downtown Pikesville on Reisterstown Road and the single-family homes constituting residential areas of Sudbrook Park, Rallston, and Pikesville, for which essentially the residential R.O zone was designed to protect from commercial intrusion.

The Board has also examined the Sudbrook Park community plan, People's Counsel Exhibit #2 and Exhibit #16 and the Rallston evidence adopted by the Planning Board in May 1998 which states that:

> The existing zoning classification discourages the spread of non-residential uses into the residential neighborhoods...does not recognize any requests which threaten the residential character of the neighborhood.

Clearly the proposed use is in direct conflict with the "spirit and intent" of the R.O. zone, and, by its very nature of sales being made on the premises, is a commercial /retail usage better suited in other permitted business /commercial zones in proximity to the site.

Finally there is present the question of the variances being sought for relief from § 204.4.C.9c (1) and (2), a landscape buffer of 10 feet from the front property line in lieu of the required 20 feet; and a 0 foot landscape buffer along the east side of the property in lieu of the required 10 feet. The Board agrees with the conclusions reached that the Petitioner did not reach the threshold requirements under BCZR 307.1, much less the requirements set forth under the leading case of *Cromwell v. Ward*, 102 Md.App. 691 (1995). Other than the existing building appearing much smaller than any other residential building in the immediate area, there is nothing else "unique" or "peculiar" about the lot as clearly demonstrated by the various photographs, the State Department of Assessments tax maps (People's Counsel Exhibit #5). The Board has concluded that the function of the variances is to expand the use of the property. The nature of the building currently on the lot does not create a uniqueness on the property. {*Riffin v. People's Counsel for Baltimore County*, 137 Md.App. 90 (2001), Cert. denied).

Having found uniqueness not to be present, the Board is required to go no further other than to state that it believes that the practical difficulty is driven by the Petitioner's desire to achieve his business goal that forces that requirement. The building, if used for office uses, has the ability to function as an office building and could do so without requiring that a new building be created.

For the reasons stated, the Board will deny the variance request.

ORDER

THEREFORE, IT IS THIS 6th day of March, 2003 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to allow the incorporation of the existing structure into the design of the proposed office building be and is hereby **DENIED**; and it is further

ORDERED that the Petition for Special Exception to approve a Class B Office Building pursuant to § 204.3.B of the *Baltimore County Zoning Regulations* be and is hereby **DENIED**; and it is further

ORDERED that Petitioner's requested variance relief from the BCZR from § 204.4C.9.c(1) and (2) to provide a landscape buffer of 10 feet along the front property line in lieu of the required 20 feet and to permit a 0-foot landscape buffer along the east side of the property in lieu of the required 10 feet be and the same is **DENIED.**

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 of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Charles L. Marks, Panel Chairman

C. Lynn Barranger

Lawrence S. Wescott

2/16/02

RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE	*	BEFORE THE
105 Sudbrook Lane	*	COUNTY BOARD
3rd Election District		
2nd Councilmanic District	*	OF APPEALS
Legal Owner: Fabian-Kolker Foundation, Inc	*	FOR BALTIMORE COUNTY
Contract Purchaser: Eric Anderson		
Petitioner(s)	*	Case No. 02-328-SPHXA

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

People's Counsel's Memorandum

Petitioner Eric Anderson has bought from the Fabian-Kolker Foundation a 0.36 acre property at 105 Sudbrook Lane in Pikesville. It is zoned R.O., Residential-Office. Eric Anderson wants to relocate his business, USA Rehab. It sells rehabilitation products via catalog, internet, and display. It now operates from leased space in a nearby Reisterstown Road office building.

The Issues

The move presents Mr. Anderson an opportunity for investment and expansion of the business. It raises, however, significant legal problems:

1) The R.O. zone allows new office buildings by special exception, but not retail uses or showrooms. The proposal is to use a new 38'X28' 2-story building as a model house/showroom to display and promote the sale of products, and to use an existing 30'X24' converted residence as a workshop for repair of products.

2) The Zoning Commissioner (ZC) granted a sign variance for an illuminated sign, freestanding instead of the allowed wall-mounted and 24 square feet instead of the maximum 8. While withdrawn at the Board, its initial filing and initial approval is evidence of intent to utilize the property commercially.

3) The requested landscape buffer setback variances -- at the east boundary for a driveway 24-feet wide and at the front to cut the buffer in half – connote retail customer parking. The requests also fail to satisfy variance standards because the property is not unique, the driveway is too wide, and there is no good reason to eliminate landscaping which is important in the R.O. zone.

4) The proposal involves both an existing building and a separate new building. While the buildings will be close together, they are distinct principal buildings. The R.O. zone allows only one principal building on a lot.

5) A special exception is required. The use, landscape buffer, and principal building problems all contribute to failure to meet relevant standards.

The trial focused more on the first issue than the other four. The delineation of the permissible use boundaries between office and sales uses in the R.O. zone is a matter of first impression. The decision in this case will serve as a precedent or guide for other cases. The concerns are that the proposed use is not actually an office use and that it will open the door for other retail uses to slide into the R.O. zone, undermine the zone's purpose, and turn it into a business zone in disguise.

While use delineation is paramount, the other issues are also important. It is rare to see a request for a second principal building in an R.O. zone. The reason is that it absolutely conflicts with R.O. zone standards. Petitioner has failed to request a variance. On this ground alone, the case must fall. Were a variance requested, it could not in any event satisfy applicable standards.

There is also a special exception request, a kind of conditional use. Because the use is impermissible, the proposal conflicts with the spirit and intent of zoning law. Failure to meet landscape buffer standards and conflict with the one-principal-building limit also undermine the legitimacy of the special exception.

Facts: To Separate Wheat from Chaff

1) Dr. Lever owned the neighboring property, a home converted to professional office use. He described deterioration of the subject property in the decade-long ownership of Fabian-Kolker Foundation. He favored this proposal because it would improve a blighted property. He felt that only USA Rehab is available to buy the property and relieve him from this eyesore.

The CBA should not be seduced by this stratagem. There was no direct evidence of efforts to sell the property or pricing. Other properties on Sudbrook Lane function as offices. The alleged failures of Fabian-Kolker and the current condition of the property are irrelevant and not an excuse for anything.

The zoning process is not a reward for owners who fail to maintain properties. Moreover, even if USA Rehab were the only available purchaser, it would not justify an illegal use. But this is not even substantiated factually. There was no one from the Fabian-Kolker Foundation who attended the hearing.

2) Mr. Anderson emphasized ways in which his business helps disabled people. He produced several disabled customers. He told of helping a police officer that was paralyzed in an accident while trying to catch snipers. There is a tendency, consciously or unconsciously, to sympathize when such evidence is

presented. But the issue is not the value of serving disabled persons. The issue is whether this business is allowed in the R.O. zone. The CBA must be alert to avoid deciding this case on the basis of sympathy.

3) There is a contradiction between what USA Rehab does --- based on their own documents, fair inferences, and common sense --- and what Mr. Anderson says they do or will do. The USA website and brochure clearly show a commercial retail business, with minimum inventory, as with many modern businesses. They say that customers can visit the site to see merchandise and pick up orders. Mr. Anderson tried to downplay this and stated or implied that it would happen differently at the new site. Yet, what is the purpose of an expanded showroom or model house with rehabilitation products, if not to promote display to customers and afford the opportunity for local customers to pick up products?

4) There is a conflict between what Petitioner told the Zoning Commissioner he intends and what he told the CBA. Mr. Anderson's description is summarized at pages 2-3 of the April 22, 2002 ZC opinion:

> Mr. Anderson owns and operates a business known as USA Rehab. The nature of the business is to provide products to the physically disabled. These products include such items as wheelchairs, stair lifts, etc. Mr. Anderson proposes operating his business at the subject location. He will have a small showroom where items will be displayed. Most of his business is by referral. Typically, he anticipates individuals will visit the site to discuss with him their needs and view the products he has to offer. He will thereafter order any requested item directly from the manufacturer. There will be no storage of goods, per se; however, there will be a small workshop for the repair of items. The business will operate from 8:30 A.M. to 4:30 P.M., Monday through Friday, with an occasional appointment in the evening or on Saturday. Mr. Anderson employs 5 individuals.

Questions Presented

1. Does USA Rehab Operate in Actuality a Sales Business, Not an Office?
2. Do the Proposed Landscape Buffer Variances Lack Justification?
3. Is There a Conflict with the Limitation to One Principal Building?
4. Does the Special Exception Fail to Satisfy Essential Standards?

I. Petitioner Operates a Sales Business, Not an Office

a. Statutory Interpretation

The discernment of legislative intent is a multi-faceted process. It involves language, history, and all relevant context. Marzullo v. Kahl 366 Md. 158 (2001); Lucas v. People's Counsel for Baltimore County 147 Md. App. 209 (2002).

The BCZR structure involves enumeration of permissible uses. Any use not listed as permitted by right or special exception is prohibited. Kowalski v. Lamar 25 Md. App. 493 (1975). Zoning sets land use boundaries. The Court of Appeals has been careful to guard against the blurring of use boundaries and the erosion of the integrity of zoning classifications. St. Clair v. Colonial Pipeline Co. 235 Md. 578 (1964); Smith v. Miller 249 Md. 390 (1968); Arundel Supply Corp. v. Cason 265 Md. 371 (1972). Here, the inquiry goes to several levels of analysis:

1) **Language**: Does the proposed use fit the definition of "office" allowed in the R.O. zone, or is it better described as a retail, showroom, or other use permitted in the Business zones? For example, does display of products for sale in a home-like setting and for the purpose of household use amount to a "household appliance store" enumerated among the B.L. zone uses by right?

Mr. Anderson did not contradict this description when the opinion was issued, or any time up to the CBA hearing. Yet, when we identified the description of the proposed business by the Zoning Commissioner, counsel for Petitioner objected on the ground that the CBA hearing is *de novo*. This objection is unfounded. While the hearing is *de novo*, the CBA exercises appellate jurisdiction. UPS v. People's Counsel. 336 Md. 569 (1994). A petitioner cannot present one proposal to the Zoning Commissioner, and then change it on appeal. That is deceiving to the parties and to the reviewing agencies. If a petition is to be changed, there must be a formal amendment. See, e.g. People's Counsel v. Mangione. 85 Md. App. 738 (1991). Mr. Anderson's statements to the Zoning Commissioner are also relevant because they are prior inconsistent statements to the extent they differ with his current description of the use. Petitioner is now acutely aware that to be legal, his use must be an office and not a business use. He has attempted belatedly to highlight office or service aspects of his business, and to de-emphasize product sales and onsite customer interactions. This strains credulity. All retail businesses have offices and provide services. That does not make them any less commercial. What Petitioner told the Zoning Commissioner about his use is highly relevant. His effort to suppress this evidence is part of a tangled web woven to distract the CBA from the reality of the enterprise.

2) **Purpose; Structure; History.** Is the proposed use consistent with the purpose of the R.O. zone, or is it more realistically suited to Business zones?

3) **Practical Construction and Functional Compatibility:** Would classification of the proposed use as "office" blur or erode the distinction between office and retail uses as to threaten the integrity of the R.O. zone? What other catalog, internet, and off-site inventory sales operations could claim to be office uses? Does the proposed use belong in locations associated with Business zones rather than R.O. zones where compatibility with residential use is important?

b. Language

BCZR 204.3B2 permits Class B office buildings by special exception. Under the definitional section, BCZR 101, a Class B office building, in essence, is a new building rather than a converted residence. BCZR 101 defines "**Office**" as:

> A building or portion of a building used for conducting the affairs of a business, profession, service, industry or government, including a medical office. The term 'office' does not include a bank, post office, veterinarian's office <u>or an establishment where merchandise is stored on or sold from the premises</u>. Emphasis supplied.

The word "or" is disjunctive, and "...serves to establish a relationship of contrast or opposition." <u>In re John R.</u> 41 Md. App. 22 (1978). Whether or not inventory is stored offsite, a use cannot qualify as an office if it is essentially a sales operation.

In a like setting, to differentiate "sales" from "service" under the Uniform Commercial Code, the Court held that a contract between a construction contractor and nurseryman for the sale and installation of trees and the sale and placement of sod is a sales contract or a service contract. <u>Burton v. Avery Company</u> 279 Md. 94

(1977). In finding that the contract was a contract for the sale of goods, the Court discussed, in detail, the characterization of contracts involving a mix of products and services. It held that the Court must look to the essence of the agreement, and to which element predominates. Judge Smith gave some examples where courts found sales contracts to involve predominantly goods despite arguments that they dealt with services: contracts to furnish, fabricate, and deliver certain steel piping systems for a construction project; birth-control advice and dispensation of birth-control pills; transfusion and sale of blood; installation and sale of electric wiring; installation and sale of gas fitting in home; installation and sale of boiler conversion system; installation and sale of large water tank; photographic services and sales of photographs. 279 Md. at 109-13. He underlined:

> Our predecessors in May Oil Burner Corp. v. Munger ... had before them a contract for the sale and installation of an oil burner. They took occasion ... to refer to the Uniform Sales Act then in force in Maryland notwithstanding the fact that there was an element of service involved. Engineering & Machine Co. v. Swindell ... concerned a contract for a custom-made bottle making machine. In determining that this was a contract for a sale, and not one for materials and labor only, Judge Offutt observed for the Court:
>
> > The purpose of that act was to bring about greater uniformity and certainty in the law of sales throughout the United States by reducing its principles to clear, precise, and comprehensive rules, and that purpose should not be thwarted by any narrow quibbling or falsely technical construction of language.
>
> That philosophy is in line with our understanding of the way in which the UCC is to be applied. 279 Md. at 114.

Consistent with Burton, USA Rehab is definitely a sales operation. Mr. Anderson admitted to over $500,000 in sales of goods last year. His catalog and website

promote and show goods for sale. The use of therapists to aid sales is incidental. They are like sales representatives or associates. Reimbursement from Medicare is for sales of rehabilitation products.

It is immaterial that the main inventory is off-site. BCZR 101 does not require on-premises storage. All it requires is sales of goods from the premises. That is what USA Rehab does. It sells goods from its place of business. Use of catalogs, internet, telephones, and onsite installations, fittings, or deliveries does not make it any less a business which sells goods from the premises. To deny this is to engage in "narrow quibbling or falsely technical construction of language."

All retail businesses involve some degree of service. They usually have administrative offices. Many involve delivery and installation. Some have onsite inventory, but the modern trend is to keep inventory offsite, in the area or at distant locations. Furniture stores and mattress stores are examples. There was testimony about "The Back Store." Stuart Kitchens, which operates showrooms in commercial locations, published the attached recent advertisement. If Petitioner here were not so anxious to avoid being called a "sales" operation, he would likely promote his business as "one-stop shopping" for rehabilitation products.

His proposed home-like facility amounts to a "showroom." It consists of rooms "...where merchandise is exposed for sale or where samples are displayed." Webster's Third New International Dictionary, P. 2106, attached. Despite Mr. Anderson's claim that he discourages customers from visiting, the only logical purpose of his show-house is to display and promote sales of products to

customers. It is revealing that the items advertised in his brochure --- such as special faucets, grab-bars, door bells --- can generally be purchased at medical supply stores, hardware stores, or even Home Depot stores. Fitting or trying out a wheelchair or scooter at USA Rehab is comparable to sitting in or testing a car at a new car showroom.

Meanwhile, Mr. Patton said the existing building would be a workshop. This is not a permitted office use. It is an industrial use added to the retail use.

Petitioner mounted a charade to avoid the reality that his operation is a sales operation with a repair building. He tried hard not to use the word "sale." He did not produce sales records. He did not want anyone to mention that he desired a large commercial freestanding sign. He downplayed his request for a driveway 24 feet wide for the convenience of business customers. Is there a shred of doubt in anyone's mind that if the zone allowed sales operations, Petitioner would gladly and openly announce and promote his business for what it is?

The "rebuttal", where Mr. Anderson attempted to portray himself as a potential consultant for Universal Home Design, was absurd, speculative, and misleading. In chameleon-like fashion, he attempted to change colors and adopt a new persona as a consultant. Even were he to represent UHD (which he has yet to do), it again involves sale of products available from any number of stores. He admitted that his current substantial revenue is from the sale of products.

In this context, Business Zones allow a wide array of business uses. BCZR 229, 230, 233, and 236. The B.L. (Business-Local), B.M. (Business-Major), and

B.R. (Business-Roadside) zones established in 1955 have now been joined by the C.B. (Community Business) and B.L.R. (Business-Local-Restricted) zones. For example, a "household appliance store" is among permitted B.L. zone uses under BCZR 230. Rehabilitation products are types of household appliances. An "appliance" is, among other things, a "a tool, instrument, or device specially designed for a particular use." Webster's, *op. cit.*, P. 104-05. In Wilmers v. Gateway Transportation Co. 575 N.W. 2d 796 (1998), the Court found a specially equipped van for an injured worker is a reasonably necessary "appliance." The proposed new building here will function as a showroom for display of appliances used by disabled persons in their homes. It is a specialized kind of household appliance store. However described, it cannot properly be named an office use.

c. Purpose; Structure; History; Zoning; Community Plans

1. Zoning

Presently, BCZR 204 contains the regulations for the R.O. zones. The R.O. zone is traceable to Bill 13-80. PC Exh. 9. The Statement of Legislative Policy in then BCZR 203.2 [now BCZR 204.2] announced that the zone was established

> ...to accommodate houses converted to office buildings and some small office buildings in predominantly residential areas on sites that, because of adjacent commercial activity, heavy commercial traffic, or other, similar factors, can no longer reasonably be restricted solely to uses allowable in moderate-density residential zones. It is intended that building and uses in R-O zones shall be highly compatible with the present or prospective uses of nearby residential property. It is not the R-O classification's purpose to accommodate a substantial part of the demand for office space, it being the intent of these Zoning Regulations that office-space demand should be met primarily in C.T. districts, C.C.C. districts and, to a lesser extent, in other commercial areas.

When enacted, the R-O zone was the most restrictive of the office zones. Subsequently, the Council has created the R.O.A. zone; a variation of the R.O. zone that limits office uses to converted homes. The R.O. zone remains the most heavily controlled of the office zones that allow new buildings.

In 1987, the Council found existing restrictions on Class B office buildings insufficient to achieve the compatibility purposes of the zone. It passed Resolution 7-87, and the Planning Board issued a report May 19, 1988. PC Exh. 12. It said:

> An analysis of the R.O. zone as currently written identified a basic conflict between the stated intent of the zone regarding 'compatibility' and the actual regulations that permit development at a size and scale which is in conflict with adjoining residential uses.

This Report, and its recommendations, led to Bill 151-88. P.C. Exh. 13. It modified the legislative policy to provide that R-O zone buildings and uses "... not intrude upon or disturb ..." nearby residential areas. It enacted a new set of bulk regulations, including landscape requirements which USA Rehab now seeks to avoid and vary. See current BCZR 204.4C9.

On July 21, 1994, in considering further revisions to the office zones, the Planning Board wrote, PC Exh. 14:

> Major changes to the R-O zones were adopted by the Council in 1988. The proposed changes were designed to assure that new office buildings would be compatible with the surrounding residential uses. The maximum permitted FAR (floor area ratio) was reduced, improved landscape and setback standards were established and a maximum lot size was set as two acres.

This Report led to Bill 186-94, PC Exh. 15, which identified anew the purpose of the R.O. zone in new BCZR 203.2B as:

> A transition or buffer between residential and the more intense office, retail or industrial use or property by permitting office development highly compatible with residential uses (R-O, S-E).

This Bill also enacted the new restriction on the number of principal buildings, found in current BCZR 204.4.C8:

> The office building shall be the only principal building on the lot on which it is situated and shall not be attached to another building.

Bill 186-94 also gives structure to the office zone framework and for the uses permitted in other office zones, but not in the R-O zone It is noteworthy that in other office zones (OR-1, OR-2, and O-3), the Council provided for a variety of accessory commercial uses, some light and some substantial, all of which provide services. See BCZR 205.3, 206.3, 207.3. These include in some or all of these other zones photocopying establishments, secretarial-service establishments, personal-care establishments (including hair-care, facial-treatment, manicuring or shoe-shining establishments), stationery or office-supply shops, opticians' or optometrists' establishments, and research institutes or laboratories.

The history of the office zones spans almost 25 years. The evolution of the R-O zone shows a trend to more restrictive use and bulk regulations. The evolution of other, less restrictive office zones shows a careful intent to limit commercial uses to accessory status. Some of these uses are analogous to the USA

Rehab use. Indeed, Mr. Anderson admitted that he considered his use to some extent comparable to that of an optician's. Clearly, that is a commercial use.

The proposed USA Rehab use does not even qualify as an accessory commercial use listed in the other office zones. In this context, the Council surely never intended to open the R.O. zone to commercial uses such as the sale or showroom use for rehabilitation products. It would intrude upon or disturb nearby residential areas, and the citizen concern in this case is evidence of that.

Rather, the Council has since 1955 provided a variety of Business Zones to afford the opportunity for a great many business uses. There are many Business zones on Reisterstown Road and on other roads in Pikesville and Owings Mills. Petitioner attempted to portray this area of Sudbrook Lane as an area of intense uses, such as office buildings, churches, and convalescent homes. In fact, it is a low to moderate density transition area between part of downtown Pikesville on Reisterstown Road and the single-family home residential areas of Sudbrook Park, Ralston, and Pikesville Township. The area suits the purpose of the R.O. zone and should not be turned insidiously into a business zone.

2. Community Plans

Sudbrook Park

Sudbrook Park, the adjacent community to the west, is a few blocks away. Melanie Anson produced the Sudbrook Park Community Plan, which she helped author. The Council adopted it on April 5, 1999. P.C. Exh. 2. It deals with Land Use and Zoning at pages 25-28. Goal 3, on page 27, emphasizes:

For Sudbrook Park, Inc. to participate in discussions and remain informed about proposed development and zoning changes in the communities and areas surrounding Sudbrook Park, as well as revitalization plans, town center plans, highway and conduit plans, air rights plans, zoning cycles, and the 2010 Master Plan and to study their potential impact on our community. In furtherance of this goal, the community association will:

* * *

Action 3b: Work to prevent a spread of commercial use, or commercial/business zoning classification, of properties on Sudbrook Lane, and south and west of Glenback Avenue.

* * *

Action 3e: Maintain contact persons in other Baltimore County neighborhoods and actively solicit their input and cooperation on issues where united action would be advantageous in maintaining our goals.

The County Council thus recognizes the obvious interest of Sudbrook Park in land use activities in nearby areas. Petitioner's attempt to silence Sudbrook Park is under any circumstance outrageous, but particularly here.

Ms. Anson described well the community's concern about the creeping commercialization associated with the USA Rehab project. She described the area in detail, and commented on the showroom, advertising, driveway and potential truck traffic as incompatible with and adverse to the single-family communities. Elizabeth Stellman produced Rule 8 papers to express the official opposition of the community group to the "...inappropriate retail/commercial use in an R.O. zone." The group also opposed the landscape buffer variances.

Ralston

This area of Sudbrook Lane is in Ralston, shown on boundary maps attached to the Community Plan. P.C. Exh. 16. The evidence on Ralston is the

Plan adopted by the Planning Board in May, 1998. On page 7, the Plan identifies Issue 7:

> The existing zoning classifications discourage the spread of nonresidential uses into the residential neighborhoods.
>
> * * *
>
> Do not support zoning requests which threaten the residential character of the neighborhood.

The proposed USA Rehab use is a nonresidential use, which threatens the residential character of the neighborhood.

Pikesville Township

While Pikesville Township did not appear as a community, citizens from the community appeared individually. Arlene Rosenberg testified to her concerns about the commercial impact of the proposed facility.

* * *

The relevant communities recognize the problems posed by this petition. The testimony and community plans reinforce each other on this point.

d. Practical Construction and Functional Compatibility

The division of a polity into land use boundaries is fundamental to zoning in America. The legislature sets up the zoning classifications and enacts maps. In the process, it makes judgments and draw lines. It excludes some uses that some property owners want included. It draws lines which some property owners oppose. As a result, it happens that uses are prohibited which property owners believe are inoffensive and desirable.

The Council has established office zones to draw lines between legitimate office and business uses. The R-O zone is a particularly protective and restrictive zone. Other office zones permit a limited number of accessory commercial uses.

Commercial uses are not ordinarily offensive in themselves. But they may be offensive in certain locations, or may not fit the legislative zoning plan. Here, USA Rehab has attempted to present itself in the most benign, sympathetic, and inoffensive light. On the other hand, many citizens find it offensive as a commercial intrusion in proximity to residential areas. They also understand, implicitly, the old fable about the camel getting its nose under the tent.

The issue, however, is not whether USA Rehab is an offensive use or a nuisance. It does not have to be equivalent to a junkyard or a snake pit to be prohibited. It simply has to be a commercial use, which is what it is.

In Village of Belle Terre v. Boraas 416 U.S. 1, (1974), Mr. Justice Douglas found valid a town law which restricted land use to single-family dwellings and had a very restrictive definition of "family" which effectively excluded college students and fraternity houses. He wrote that "Every line drawn by a legislature leaves out some that might well have been included." He quoted from the landmark case of Village of Euclid v. Ambler Realty Co. 272 U.S. 365 (1926), where the Court validated a zone prohibiting apartment houses:

> The inclusion of a reasonable margin to insure effective enforcement, will not put upon a law, otherwise valid, the stamp of invalidity. Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the

> two are not capable of being readily distinguished and separated in terms of legislation.

He also quoted Mr. Justice Holmes:

> When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually pricked out by successive decisions, to mark where the change takes place. Looked at by itself, without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one site or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.

The lesson is that in judging zoning cases and interpreting legislation, a key factor is point of view. It is important that the CBA see this case in perspective, and not in isolation. The zoning law sets boundaries. There will always be some use which arguably might cross the line. There will always be an argument that the line itself should be moved to accommodate some use or other.

In the present case, the Council has drawn the line and decided to prohibit business uses in this area of Sudbrook Lane. It is a decision which all the communities in the neighborhood have supported, and which has been reinforced with the Sudbrook Park and Ralston community plans.

Once those legislative judgments and lines have been drawn, they have to be respected. If the line is breached for USA Rehab, there is no principled way of holding it against other business uses, especially of the showroom type.

It should not distract the CBA if the proposed use is in a home-like setting. Many businesses operate out of buildings which once were homes or look like

homes. They are none the less businesses. In Maurer v. Snyder. 199 Md. 551 (1952), the Court held a fishing and crabbing business operated out of a home is not permitted as a "home occupation," even though the owner lived in the house:

> If an owner wishes to use her residence as a beauty parlor ... or a funeral parlor, the properties so used are none the less a beauty parlor or a funeral parlor ..., because also used as a residence, and within express prohibition of such uses in a residential district. ...It has been held that a dancing school, operated on a large scale, after structural changes in the building ... or a restaurant, which apparently has a cook of some local reputation in the vicinity, who was a sister of the owner and lived in the house. ... or a real estate brokerage office ... was not a 'home occupation.' In construing 'home occupation' we see no difference, in principle, between a general prohibition of commercial use and a specific prohibition of a beauty parlor, a funeral parlor or a 'public garage.'

It is also immaterial that there are offices, a church, a cemetery, and a convalescent center on Sudbrook Lane. These are not business uses. They are office or residential uses permitted in the nearby office or residential zones. The R.O. zone has been mapped to restrict uses and help protect Sudbrook Park, Ralston, and Pikesville Township.

There is a legitimate procedure available to USA Rehab. It may request the County Council to rezone this area of Sudbrook Lane to Business-Local in the 2004 comprehensive zoning map process. That is a policy decision within the legislative prerogative, after all parties have an opportunity to appear.

It is not within the CBA's prerogative to approve this use and thereby effectively rezone the property. The proposed use is not functionally compatible with nearby residential areas. Moreover, there are many properties around Baltimore County zoned Residential-Office. This case affects all those zones. If

the decision is to allow this use, it would break down and erode zoning boundaries, emasculate the R.O. zone, undermine its purpose, and open it to encroachment by business interests. This is a countywide Pandora's box, which the CBA should not open.

II. The Proposed Landscape Buffer Variances Lack Justification

The landscape buffer variances from BCZR 204.4C9 are for Petitioner's business convenience. Nothing about the property warrants variances.

Petitioner does not meet the threshold test under Section 307.1. There is zero evidence that the property is peculiar or unique, as defined in Cromwell v. Ward. 102 Md. App. 691 (1995) and its progeny. To the contrary, the property is one of four similarly situated rectangular lots with R.O. zoning on the south side of Sudbrook Lane. The State Department of Assessments tax map shows this graphically. P.C. Exh. 5. The other lots are or have been used for residential or office use. In a similar situation, of a special exception and variances to expand use of property on Greenspring Drive in Timonium, this CBA found failure to meet the unique test. The Court of Special Appeals affirmed. Riffin v. People's Counsel for Baltimore County.137 Md. App. 90 (2001), cert. denied. The CBA and Court cited the tax map which, as here, showed the property is one of several rectangular properties similarly zoned.

In Riffin, the property owner argued similarly that the nature of the existing building made the property unique or caused a difficulty. But it is well settled that

uniqueness may not be attributed to ordinary existing buildings which lack historical or other wonderful values. Cromwell, *supra.*

Because the property is not unique, the inquiry ends at that threshold. See Umerley v. People's Counsel for Baltimore County. 108 Md. App. 497 (1996). There also, petitioner made a bid that the proposed use (a trucking facility) should be approved because of public need, and the CBA agreed. But the Court rejected that argument, reversed this Board's approval, and found the property was one of several similarly sized and shaped lots on Philadelphia Road.

If the CBA here extends its inquiry beyond uniqueness, it must, in any event, find no hardship or practical difficulty under McLean v. Soley. 270 Md. 208, 213-14 (1973). The property can be used for residential or office use without the extensive customer parking and wide 2-way driveway in the variances here. None of the other properties on Sudbrook Lane have variances. It is Petitioner's business convenience and decision to embark on a new building project which drives the variance requests, not any actual hardship or practical difficulty.

The proposal more than doubles the size and scale of on-site use. It overcrowds the site and encroaches on the landscape buffer area. The Planning Board recommended and the Council enacted the landscape buffer requirements in Bill 151-88 to protect the integrity of the R.O. zone. The proposal here directly contradicts the stated spirit and intent of the zoning law.

If this were not enough, the proposal involves a self-created difficulty. It is Petitioner's personal business choice which drives the site plan. The property has

been and can be easily used for permitted uses with adequate and substantial landscape buffers. Consistent with the purpose of the R-O zone, the property could be used less intensely, with less paving, a smaller parking lot, and a single-lane driveway. A true residential-office use could take advantage of the existing building or replace it with a single office building located in such a way to provide ample room for the required landscape buffers.

Melanie Anson described how the variances connote business use of the site. They are symptoms of incompatibility and excessiveness of the use in the R.O. zone, both in character and scale. In sum, the evidence is legally insufficient to support the variance requests. The R.O. zone bulk regulations are there to force property owners to adjust and comply. It stands the law on its head to subordinate the statute to Petitioner's business desires or needs.

III. The Proposal Conflicts with the Limitation to One Principal Building

Bill 186-94, in part a comprehensive revision of the office zones, added one particular subsection to the bulk regulations of the R-O zone. That is the restriction to one principal building on a lot. BCZR 204.4C8.

105 Sudbrook Lane has an existing substantial principal building, 30'X24', a residence. USA proposes to convert this building to a workshop. Whatever its use, it is not an accessory building, such as a shed or a garage. At the same time, USA Rehab proposes a new detached two-story building, 38' X 28', for showroom and other associated uses. That is a second principal building.

In filing its various petitions, Petitioner avoided the principal building restriction. But no amount of spin can turn the existing building into an "accessory" use. Petitioner's site plan purports to provide a "functional connection" between the two buildings. But this cannot help Petitioner. Once again, the law states:

> The office building shall be the only principal building on the lot on which it is situated and shall not be attached to another building.

The office building is not the only principal building on the lot. It is connected to another building. There are two principal buildings shown on the site plan. There is no variance requested. There is an absolute conflict.

Were a variance requested, it would fail for the same reasons which bar grant of the landscape buffer variances. It would also be in direct contradiction with the single bulk regulation enacted in the past decade.

IV. The Proposed Special Exception Fails to Satisfy Essential Standards

The CBA must deny a special exception for an impermissible use. If the CBA concludes the proposed use is primarily a business and not an office use, the inquiry ends there. That was the case in Riffin v. People's Counsel 137 Md. App.90 (2001), where the Court of Special Appeals affirmed, among other things, this Board's denial of a special exception because the proposed bungee-jumping operation was not a permitted commercial recreation use.

In addition, a special exception is a "... use permitted only under certain conditions (conditional or special exception use). Schultz v. Pritts 291 Md. 1, 21 (1981). As Judge Rita Davidson there wrote:

> In determining which uses should be designated as permitted or conditional in a given use district, a legislative body considers the variety of possible uses available, examines the impact of the uses upon the various purposes of the zoning ordinance determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide for coordinated, adjusted, and harmonious development of the district.

BCZR 502.1 encapsulates this in the requirements that there be no adverse effect on the public safety, health, and welfare of the locality, and that there be consistency with the spirit and intent of the zoning law. While a special exception comes with an initial favorable presumption, it is rebuttable by a showing of adverse effects above and beyond those normally associated with the use in the zone.

Here, the commercial nature of the use most obviously contradicts the purpose of the Residential-Office zone. The plan for a new, second principal building further undermines the purpose of the zone to place explicit limits on size and scale of a development. Judge Dale Cathell noted in People's Counsel v. Mangione. 85 Md.App. 738, 747 n.6 (1991) that, even in the absence of specific performance standards, the comprehensive special exception standards of BCZR 502.1 dictate that, "The size and scope of the project are thus relevant considerations. To contend otherwise, as appellee does, is to engage in specious and sophistic reasoning."

Lastly, the landscape buffer setback variances detract from the R.O. zone purpose to provide a residential setting. This applies to driveways, parking areas, and landscaping in general --- not just to the design of the building. In Chester Haven L.P. v. County Board of Appeals 103 Md. App. 324 (1995), and then in Umerley v. People's Counsel for Baltimore County 108 Md. App. 497 (1996), the Court of Special Appeals asked, without deciding, if a request for a special exception may be approved where there is a deviation from specific area standards. The Court of Appeals addressed this in Alviani v. Dixon 365 Md. 95 (2001). It depends on the circumstances. The Court concluded, at 365 Md. 121:

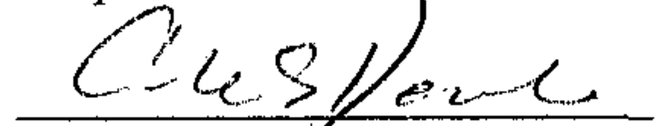
> ... the granting of the variances may not so substantially alter the criteria for the granting of the special exception so that the criteria of the special exception would be swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme in respect to any particular special exception.

Here, the landscape buffer setback variances are contrary to the essential nature of the highly compatible residential type of office use envisioned for the R.O. zone. They also compound the impact of the impermissible commercial nature of the use and the second principal building. In sum, the special exception is for a commercial use with two principal buildings, a commercial driveway and parking area, and inadequate landscaping. It is inconsistent with, and not contemplated in, the comprehensive zoning scheme.

Conclusion

For the foregoing reasons, as a matter of law, the County Board of Appeals should deny the special hearing, special exception, and variances. The proposed use is in actuality a business use. The record, moreover, is insufficient to support the grant of a special exception and variances. Indeed, it compels their denial.

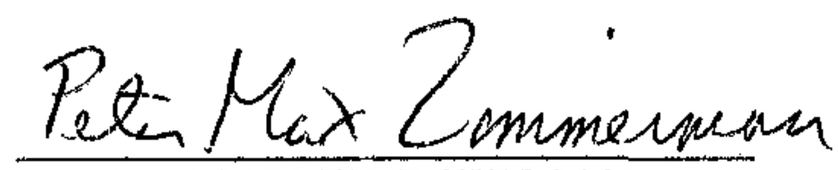
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16 day of December, 2002 a copy of the foregoing People's Counsel's Memorandum was sent via first-class mail, postage pre-paid to J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Maryland 21286; Melaine Anson, 1007 Windsor Road, Baltimore, MD 21208 and Alan P. Zukerberg, Esquire, 7919 Long Meadow Road, Baltimore, MD 21208.



PETER MAX ZIMMERMAN

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

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 16, 2002

Charles Marks, Chairman
Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: Fabian-Kolker Foundation, Inc
Case No.: 02-328-SPHXA

Dear Sir/Madam:

Enclosed please find the People's Counsel Memorandum to be filed with regard to the above-captioned case. If you have any questions, please contact my office.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel

PMZ/rmw

Enclosures

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

Melaine Anson
1007 Windsor Road
Baltimore, MD 21208

Alan P. Zukerberg, Esquire
7919 Long Meadow Road
Baltimore, MD 21208

RECEIVED
DEC 16 2002
BALTIMORE COUNTY
BOARD OF APPEALS

12/16/02

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE COUNTY
S/S Sudbrook Lane, 765' W of the c/l Reisterstown Road	*	BOARD OF APPEALS
(105 Sudbrook Lane)	*	OF BALTIMORE COUNTY
3rd Election District		
2nd Council District	*	Case No. 02-328-SPHXA
The Fabian-Kolker Foundation, Inc., Owners; Eric Anderson, Contract Purchaser	*	

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

PEITIONERS' MEMORANDUM IN LIEU OF FINAL ARGUMENT

The Petitioners, Fabian-Kolker Foundation, Inc., Owners (owners at the time of the Petition, but have subsequently sold the property to the Contract Purchaser), Eric Anderson, Contract Purchaser/Owner by J. Carroll Holzer and Holzer and Lee submit this Memorandum in lieu of final oral argument.. This matter comes before the County Board of Appeals as a result of a an appeal filed by People's Counsel of Baltimore County from a decision of the Zoning Commissioner, dated April 22nd, 2002, granting the Petition for Special Exception, the Petitions for Variance, and the Petition for Special Hearing. The matter was heard before the Baltimore County Board of Appeals on two days, July 17th, 2002 and November 12th, 2002.

STATEMENT OF FACTS

The Petitioner, Eric Anderson, trading as USA Rehab, filed a Petition for Special Exception to approve the use of the subject site to allow rehabilitation and utilization of an existing dwelling functionally connected with the proposed addition for a Class-B office building, pursuant to Section 204.3.B of the Baltimore County Zoning Regulation. A Petition for Special Hearing was filed "to incorporate models for construction in the design of the office building, which models such as doorways and toilet fixtures,

RECEIVED
DEC 16 2002
BALTIMORE COUNTY
BOARD OF APPEALS

cabinetry, access ways would all be demonstrative of functions to assist physically disabled persons to function in their residence. Petitions for Variance were also filed for relief from Section 204.4.C.9.c(1)(2) to provide a landscape buffer of 10' along the front property line in lieu of the required 20', and a zero foot landscape buffer along the east side of the property in lieu of the required 10'; and from Section 450.4 to permit an illuminated free-standing double faced sign of 24 square feet per space. This variance sign request was subsequently abandoned before the Board by the Petitioner.

The Petitioners also request relief from Section 204.4.C.3 of the BCR to permit a front yard set back of 60' in lieu of the minimum required 25', or the average of the setbacks of adjacent structures, whichever is less. At the Hearing, before both the Zoning Commissioner and the Board of Appeals, it appeared that while this Variance was filed at the request of the Zoning Office, neither the Zoning Commissioner nor the Board of Appeals felt it made any sense to request this Variance.)

The subject property is a rectangular shaped parcel located on the south side of Sudbrook Lane, not far from Reisterstown Road in Pikesville. It contains a gross area of 0.361 acres, more or less, and is zoned R-O. It is improved with a small dwelling, which is proposed to be rehabilitated and fully integrated as part of the proposed new Class-B office building use. The "new" part of the Class-B office is a two-story, 38' by 28' dwelling, which will be functionally connected to the existing small dwelling. In addition to the buildings, a ten-space parking lot is proposed; six spaces will be provided in the rear of the property and four in the front. Mr. Anderson owns and operates the business known as USA Rehab, which will utilize the Class B building.

Doctor Barry Lever, the owner of the property adjacent to the subject site, testified that he supported Mr. Anderson's request and that the subject site has been in poor repair and needs to be improved. He testified it had remained empty for 25 years and has been blight upon the neighborhood, by being vandalized, and contains an overgrowth of bushes and trees and lawn. He testified in support of the Petitioner's proposal. Anderson testified that the proposed building, as a Class-B office building, will be utilized for offices for the operation of USA Rehab, which provides offsite services to individuals who are physically disabled. These services could include consultation, evaluation, and providing equipment such as: wheelchairs, stair lifts, etc. Anderson testified that there will be "no inventory" contained on the site, and in fact produced storage records which indicated that he has off-site storage area for items such as wheelchairs, etc. that would be delivered from the manufacturer to the storage facility and then directly to the clients. He indicated that there would be no cash and carry sales or "selling" over the counter. That his current catalog on the website was introduced by the Petitioner himself in evidence reflects his current operation at his current location and would be amended to comply with the new location at the proposed site.

His testimony concerning his operation indicated a situation similar to a "manufacturer's sales representative" who operates from an office, who accepts orders and checks for manufacturers items but has them delivered directly to the clients from elsewhere. He further testified that very few, if any, of his clients, because of their physical disabilities, actually come to his office. Anderson testified that he designed the office building to look exactly like an individual residential home, similar and compatible

to the design of houses in the neighborhood. This design was the subject of Petitioner's Exhibit Number 2.

Anderson further described the neighborhood of the proposed site and indicated that this particular block of Sudbrook Lane contained an adjacent dental office, adjacent nursing home, and even further into the neighborhood, an extremely large developed office complex. (Petitioners Exhibit #4 A-D, #5 A-G).

In support of the proposal was the Planning office, with Jeff Long, testifying. He indicated that the intended use was consistent with the R-O office zone in that there was "no inventory" on site, "no cash and carry sales", and that building a model home for a kitchen, bathroom and appliances was consistent with the R-O zone. Long further testified that the use of a catalog for sales and ordering was consistent with other R-O zoned uses. Finally, Long testified that the proposed Class-B office building had the "feel" of a house, both exterior and interior.

Further in support of the project was Sherry Becker who testified on behalf of the Pikesville Chamber of Commerce. Also, Mike Morgan, Peggy Hall, and Ginger Palmer all testified in regard to the manner of the USA Rehab operation in which, as clients, they did not visit the office of USA Rehab, but in fact certain special medical appliances were delivered to their homes, where they were fitted. Finally, Jim Patton testified in support of the Petition for Special Hearing and Special Exception and Variances and related compliance with the requirements of the Baltimore County Zoning Regulations.

"Model"

Anderson testified that it was his intention, while building the Class-B office building (which would have all of the appearances of a residential home including

bathrooms, kitchens, and other rooms similar to bedrooms, dining rooms and living rooms) to install certain types of improvements, which could be viewed or utilized or examined by a potential client to determine whether or not such physical improvements to the interior of the client's home could benefit them in dealing with their disability. Specifically, Anderson testified both in direct examination and rebuttal that the installation of handicapped ramps on the exterior of the house, that the installation of kitchen appliances at a lower level than normal to serve a wheelchair occupant, and certain bathroom appliances such as disability accessed showers and tubs would provide a model or an example to a client who might retrofit their own home. Stairway appliances such as lifts would also be built into the proposed office building to provide examples of what can be done. Nevertheless, the kitchen would be a kitchen, the bathrooms would still be bathrooms, and the stairways and the elevator systems would still service the office building just as it would a residential home. Anderson further testified in response to Mr. Wescott's questions concerning Petitioner's Exhibit Number 15, incorporating various features into the new office such as 36" wide doors, door lever handles, light switches and receptacles at lower heights to show the benefits for handicapped individuals. He testified again that there could be variable counter-tops, lever faucets, and pull out shelves which could serve as a model for similar improvements in clients' homes.

QUESTIONS PRESENTED

The Board has in its direction suggested that the parties provide a legal discussion as to the nature of these proposed improvements to the existing dwelling (now Class-A

office building since the filing of the Subject Petitions) and proposed Class-B office building.

ARGUMENT

The nature of the improvements to the Class-B office building described as extra wide doors, stair lifts, lower kitchen cabinets, lower bath facilities, etc. is not inconsistent with nor in violation of the R-O zoning and a Class-B office building proposed for this subject site.

First, the Zoning Commissioner clearly understood that the Petitioner's request in the Special Hearing was "to incorporate models for construction in the design of the office building." He found that the proposed office building was consistent with uses in the locale in that abutting properties had been converted to office uses, such as a realtors office and dentist office, and that office uses were predominate in this vicinity. The Special Hearing relief, which was essentially to approve the design of the building was acknowledged by the Zoning Commissioner and the Zoning Advisory Committee comments received from the Office of Planning, which discussed the design of the roof, exterior facade, and landscaping. All were approved by the Office of Planning. He found that the new building had a "dwelling-like" appearance. It is clear that the Zoning Commissioner considered these modifications to a "normal" residence or office building, which were consistent with the R-O zone.

Secondly, the Office of Planning, in its report, which is contained in the file as Petitioner's Exhibit 10, as well as the testimony of Jeff Long that the features constructed in the proposed Class-B office building were consistent with what would be found in normal residences. Long further testified that these different appliances in the kitchen

and bathroom and extra wide doors and ramps were consistent with "models" or a "model home", which is recognized as being acceptable in R-O zones as well as other residential zones.

Third, in reviewing the Baltimore County Zoning Regulations, Section 101, neither the word "showroom" nor the word "model" is defined. A review of Webster's indicates the word "showroom" is a "room where merchandise is exhibited for sale". Here, the improvements to the Class-B office building are not items or merchandise for sale. Cabinets, doors, faucets, handles, shower facilities are not items of merchandise to be sold from the subject site as evidence by the testimony of Mr. Anderson.

The word "model" is defined in Webster's as "a pattern of something to be made, an example for imitation or emulation, something as worthy as imitation; serving as or capable of serving as a pattern."

Both the Zoning Commissioner, Jeff Long from Planning, and the Petitioner defined the improvements constructed in the proposed Class-B office building as "models." For instance, there are model homes constructed on residential sites for purposes of illustrating what the homes would look like. Here, the "model stairways", the "model kitchens and bathrooms" serve and fit the definition of Webster's as a model—that is something to be copied, emulated by the client. A "model" is distinguishable from a display room or showroom in that a showroom is considered a retail operation in which members of the public can spontaneously drop in during store hours to the furniture showroom, to the car dealer showroom, to review the cars or furniture items on display and to purchase them. But in this instance, if all the "model doors, fixtures, and improvements" were removed, the residence/office could no longer

function as a residence or office. Whereas, if the cars or furniture were removed from their showroom, the showroom would still be a showroom. In this case, the operation of Mr. Anderson is not a retail operation in which customer's are encouraged to visit the subject site to purchase these examples of home improvements. The public in general is not invited to the subject site, it is by appointment only, or if you are already a client that one could be shown the nature of these improvements. It is clear then that the Anderson operation is not a "display room" or a "showroom" within the retail sense of those terms.

As stated before, "model homes" are permitted in residential zones, "model houses" such as the BG&E environmentally friendly houses are appropriate for the R-O zone.

In reviewing Baltimore County Zoning Regulations, Section 204-R-O (Residential – Office), it is found that in Section 204.2 the legislative purpose of the zone is met by the USA Rehab proposal in this case. It is intended that buildings and uses in R-O zones shall not intrude upon or disturb present or prospective uses by nearby residential property. The relative activity of the USA Rehab proposal versus the dentist and realtor next door, as well as the large office complex closer to the community establishes the compliance by the Petitioner with the legislative policy.

As an alternate way of viewing the Petitioners request for these improvements, Section 204.3B(2)(a) Class-B office buildings may contain offices and or medical offices up to 25% are permitted. Petitioners proposed improvements related to the kitchen, bathroom, stairway, ramps, extra wide doors could be considered as improvements, which could accommodate a medical analysis of the needs of the patients of USA Rehab to the point that it demonstrates that these types of improvements are consistent with a

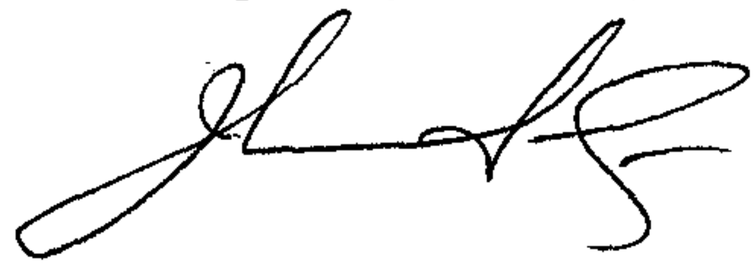
Class-B office building and what is permitted therein. Testimony of Anderson indicated that the physical therapist who utilize the offices within the building must determine the suitability of these types of improvements for their clients and thus the "model" improvements are utilized in the Medical sense permitted by Section 204.3 B (2) (a).

Finally, one of the reasons that showroom may not be defined in the zoning regulations is that it is ancillary to the principle use. For instance, under the B-L zone we have clothing and accessory stores, department stores, furniture and upholstery stores, garden centers, hardware stores, hobby shops, jewelry stores, television shops. In each of these examples we are familiar with showrooms. We are certainly familiar with furniture store showrooms, we are familiar with jewelry store showrooms, etc.; in other words, the showroom operation is related to or accessory to the commercial use that is being provided. In this case, there is no commercial use being provided because the testimony of Eric Anderson clearly reflects that the whole building will be utilized for purposes of office space; therefore, the prime or principle use of this subject site is a Class-B office building. The model portions of the building do not make it a showroom but it continues to carry the principle use as a Class-B office building. In the testimony of Eric Anderson, he testified that all of the rooms of the existing as well as the new proposed building would be utilized in office capacities such as for desks, for private offices, for employees, for billing, photocopying, catalog, work in terms of processing orders and bills and the like; that is the predominate and principle use of this building. The fact that portions of the building may be constructed in ways that can illustrate for prospective clients new types of bathroom, kitchen, stairway facilities for the handicapped does not convert or change the principle use from offices to something that it is not—a showroom.

Again, the showroom connotation is connected with retail sales operations versus this operation, which is office use. The showroom operation implies attachment to a business use such as a furniture store, auto showroom, jewelry showroom, etc.; in this case these model appliances do not convert the use from that of a Class-B office. Finally, model improvements are consistent with a Class-B office operation such as the type that a manufacturers representative would be utilizing. The key difference is that the merchandise is for sale in a showroom and is not for sale in the model room. The actual merchandise in a showroom can be bought off the showroom floor such as an automobile or furniture. In the Anderson situation, the actual merchandise will not be on the floor and will not be purchased off of the floor in this office building and that is the primary and paramount difference between the two terms. This interpretation is reinforced by a review of Baltimore County Zoning Regulations, Section 101, definition of "warehouse". There, by reverse definition, the Regulations define a "retail establishment". It states "The term 'warehouse' does not include a retail establishment whose primary purpose is for the sale of goods or chattels stored on the premises". In this case, Jeff Long on behalf of the Planning Office and the Petitioner both testified that no goods were on the premises for sale and the goods were not stored on site. Therefore, by definition, Petitioners use of the site for USA Rehab is not a retail establishment and therefore permitted within the R-O zone.

Wherefore, all of the above indicates that the Petition for Special Exception should be granted. The Petition for Special Hearing should be granted and the Variances, as testified to before the Board should be granted.

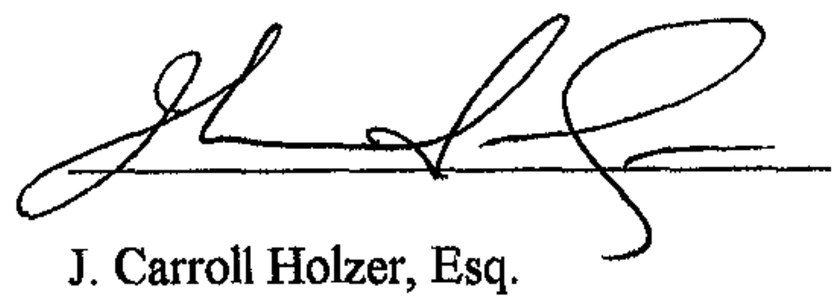
Respectfully Submitted,



J. Carroll Holzer
Holzer and Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of December, 2002 a copy of the foregoing Petitioners Memorandum in Lieu of Final Argument was mailed first class, postage pre-paid to Peter Max Zimmerman, 606 Baltimore Avenue, Suite 204, Towson MD, 21204



J. Carroll Holzer, Esq.

1/9/02

IN RE:	*	BALTIMORE COUNTY
PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION PETTION FOR VARIANCE	*	BOARD OF APPEALS
105 Sudbrook Lane 3rd Election District 2nd Councilmanic District	*	Case No. 02-328-SPHXA

Legal Owner: The Fabian-Kolker Foundation, Inc.
Contract Purchaser: Eric Anderson (Petitioner) *

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

ENTRY OF APPEARANCE

Please enter the appearance of J. Carroll Holzer on behalf of Contract Purchaser, Eric Anderson in the above captioned matter. Notice should be sent of any hearings, motions and other proceedings in this matter, and of the passage of any preliminary or final Order to undersigned counsel's address contained herein. All parties should copy J. Carroll Holzer on all correspondence and documents sent in the instant matter.

Respectfully submitted,

J. Carroll Holzer
508 Fairmount Ave.
Towson, MD 21286
(410) 825-6961
Attorney for Contract Purchaser

02 JUL -5 PM 12:45

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of July, 2002, a copy of the foregoing Entry of Appearance was mailed first class, postage pre-paid to Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room47, 400 Washington Avenue, Towson, Maryland 21204; Alan Zukerberg, Esq., 7919 Longmeadow Road, Pikesville, MD 21208, and Melanie Anson, 1007Windsor Road, Pikesville, MD 21208.

J. Carroll Holzer

Baltimore County
Zoning Commissioner

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

April 19, 2002

Ms. Patricia F. MacDonald
The Fabian-Kolker Foundation, Inc.
5718 Uffington Road
Baltimore, Maryland 21209

RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE
S/S Sudbrook Lane, 765' W of the c/l Reisterstown Road
(105 Sudbrook Lane)
3rd Election District – 2nd Council District
The Fabian-Kolker Foundation, Inc., Owners; Eric Anderson, Contract Purchaser/Petitioners
Case No. 02-328-SPHXA

Dear Ms. MacDonald:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing, Special Exception and Variance have been granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the 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. Eric Anderson, 7 Church Lane, Suite 13, Baltimore, Md. 21208
Mr. Gabe Rosenbush, Jr., P.O. Box 32122 Pikesville, Md. 21208
Mr. James Patton, 305 W. Chesapeake Avenue, Towson, Md. 21204
Ms. Shara Simon, 135 Clarendon Avenue, Baltimore, Md. 21208
Ms. Melanie Anson, Sudbrook Park, Inc., 1007 Windsor Road, Baltimore, Md. 21208
Office of Planning; People's Counsel; Case File

Printed with Soybean Ink
on Recycled Paper

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 105 SUDBROOK LANE (21208)
which is presently zoned RO

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

SEE ATTACHED

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

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

Contract Purchaser/Lessee:

ERIC ANDERSON
Name - Type or Print

Signature

7 CHURCH LANE 410-653-3903
Address Telephone No.

PIKESVILLE MD 21208
City State Zip Code

Attorney For Petitioner:

N/A (INDIVIDUAL)
Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

THE FABIAN-KOLKER FOUNDATION, INC.
Name - Type or Print

Signature
Patricia F. MACDONALD, PRESIDENT

Name - Type or Print

Signature

5718 Uffington Rd 410/664-3537
Address Telephone No.

BALTIMORE, MD. 21209
City State Zip Code

Representative to be Contacted:

JAMES S. PATTON, P.E.
Name

305 W. CHESAPEAKE AVE. 410-296-2140
Address Telephone No.

BALTIMORE MD. 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BK Date 2/7/02

ORDER RECEIVED FOR FILING
Date 4/22/02
By

Case No. 02-328-SPHXA

REV 9/15/98

105 SUDBROOK LANE (21208)

ATTACHMENT TO SPECIAL HEARING PETITION

TO INCORPORATE MODELS FOR CONSTRUCTION INTO THE DESIGN OF THE OFFICE BUILDING.

ORDER RECEIVED FOR FILING
Date 1/22/02
By

#328

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 105 SUDBROOK LN (21208)

which is presently zoned RO

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 CLASS B OFFICE BUILDING AS PER SECTION 204.3 B BCZR.

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:

ERIC ANDERSON
Name - Type or Print

Eric Anderson
Signature

7 CHURCH LANE 410-653-3903
Address Telephone No.

PIKESVILLE MD 21208
City State Zip Code

Attorney For Petitioner:

N/A (INDIVIDUAL)
Name - Type or Print

City

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

THE FABIAN - KOLKER FOUNDATION INC.
Name - Type or Print

Patricia F. MacDonald
Signature

Patricia F. MACDONALD, PRESIDENT
Name - Type or Print

Patricia F. MacDonald President
Signature

5718 Uffington Rd 410/664-7537
Address Telephone No.

BALTIMORE MD 21209
City State Zip Code

Representative to be Contacted:

JAMES S. PATTON, P.E.
Name

305 W. CHESAPEAKE AVE 410-296-2140
Address Telephone No.

BALTIMORE MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BK Date 2/7/02

ORDER RECEIVED FOR FILING
Date 1/29/02
By Rec

Case No. 02-328-SPHXA

REV 09/05/08

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 105 SUDBROOK LANE (21208)

which is presently zoned RO

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

SEE ATTACHED

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

1. DUE TO LOCATION OF THE EXISTING & PROPOSED EXPANSION OF CLASS "B" OFFICES WITH NEED TO PROVIDE HANDICAPPED PARKING FOR THE PROPOSED SPECIAL USE.
2. TO PERMIT DRIVEWAY BETWEEN THE FRONT & REAR WHERE THE PRESENT DRIVEWAY ALREADY EXISTS.
3. TO IDENTIFY THE USE SIMILAR TO THE ADJOINING PROPERTIES, A HARDSHIP IF NOT PERMITTED
4. WITH SUCH OTHER REASONS WHICH MAY BE PRESENTED AT THE HEARING, & AS ATTACHED.

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

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

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

Contract Purchaser/Lessee:

ERIC ANDERSON
Name - Type or Print

Signature

7 CHURCH LANE — 410-653-3903
Address — Telephone No.

ARESVILLE — MD — 21208
City — State — Zip Code

Attorney For Petitioner:

Name - Type or Print — City

Signature

Company

Address — Telephone No.

City — State — Zip Code

Legal Owner(s):

THE FABIAN-KOLKER FOUNDATION, INC.
Name - Type or Print

Patricia MacDonald, President
Signature PATRICIA F. MACDONALD, PRESIDENT

Name - Type or Print

Signature

5718 UFFINGTON ROAD — 410-664-7537
Address — Telephone No.

BALTIMORE, MD. — 21209
City — State — Zip Code

Representative to be Contacted:

JAMES S. PATTON, P.E.
Name

305 W. CHESAPEAKE AVE. — 410-296-2140
Address — Telephone No.

BALTIMORE — MD — 21204
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By RJ Date 2/7/02

Case No. 02-328-SPHXA

REV 9/15/98

ORDER RECEIVED FOR FILING
Date 1/22/02
By

Variances for 105 Sudbrook Lane

1. Section 204.4.C.9.c. (1) to provide a ten-foot (10') landscape buffer for the front property line in lieu of the required twenty-foot (20') landscape buffer.
2. Section 204.4.C.9.c. (2) to provide a zero foot (0') landscape buffer along the eastern side of the property in lieu of the required ten-foot (10') landscape buffer.
3. Section 450.4 to permit an illuminated freestanding double-faced sign of twenty-four square feet (24 sq. ft.) each side in lieu of the required eight square foot (8 sq. ft.) non-illuminated wall mounted sign.
4. Section 204.4.C.3 to permit a front yard setback of sixty feet (60') in lieu of the minimum front yard setback of 25 feet or the average of the setbacks of the adjacent structures, whichever is less.

ORDER RECEIVED FOR FILING
Date 7/22/02
By

#328

PATTON

Patton Consultants Ltd. Engineering & Site Planning

ZONING DESCRIPTION

Beginning at a point on the southeast side of Sudbrook Lane (21208) which is sixty (60) feet wide at the distance of 765 feet more or less southwest of the centerline of the nearest improved intersecting street, Reisterstown Road, which is 50 feet wide. Thence the following courses and distance.

1.	North 26°	10'	00"	West	- 214.94'
2.	North 63°	55'	00"	East	- 68.00'
3.	South 26°	10'	00"	East	- 214.94'
4.	North 63°	55'	00"	West	- 68.00'

To the place of beginning as recorded in deed liber 8362, folio 257. Also known as 105 Sudbrook Lane, Baltimore, MD , 21208 and located in the 3rd Election District.

STATE OF MARYLAND
JAMES STEPHEN PATTON
No. 9493
REGISTERED PROFESSIONAL ENGINEER

305 West Chesapeake Avenue, Suite 206, Towson, Maryland 21204
410-296-2140 Fax 410-296-0419

#328

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 09952

DATE 2/7/02 ACCOUNT R001-006-6150

AMOUNT $ 650.00

RECEIVED FROM: USA Rehab LLC

FOR: Special Hearing, Special Exception, and Variance

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Item # 328

PAID RECEIPT
PAYMENT ACTUAL TIME
2/07/2002 2/07/2002 10:40:49
REC WS04 CASHIER DOOL DWD DRAWER
>>RECEIPT # 174933
Dept 5 528 ZONING VERIFICATION
CR NO. 009952
Recpt Tot 650.0
650.00 CK .00
Baltimore County, Maryland

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

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

Case: #02-328-SPHXA
105 Sudbrook Lane
SE/S Sudbrook Lane, 765' SW centerline of Reisterstown Road
3rd Election District – 2nd Councilmanic District
Legal Owner(s): The Fablan-Kolker Foundation, Inc.
Patricia F. MacDonald
Contract Purchaser: Eric Anderson

Variance: to permit a front yard setback of 60 feet in lieu of the minimum front yard setback of 25 feet; also to provide a ten-foot (10') landscape buffer for the front property line in lieu of the required twenty-foot (20'); a zero-foot (0') landscape buffer along the eastern side of the property in lieu of the required ten-foot (10'); to permit an illuminated freestanding double-faced sign of twenty-four square feet (24 sq.ft) in lieu of the required eight square feet (8 sq.ft) non-illuminated wall mounted sign. **Special Hearing:** to incorporate models for construction into the design of the office building. **Special Exception:** A class B office building.

Hearing: Tuesday, March 26, 2002 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

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

JT 3/652 March 12 C525406

CERTIFICATE OF PUBLICATION

3/14/, 2002

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 3/12/, 2002.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE Case No: 02-328-SPHXA

Petitioner/Developer: Patterson, ETAL
PATTON

Date of Hearing/Closing: 4/15/02
continued

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

Attention: P.D.M. / ZONING / 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 #105 - SUDBROOK LA

The sign(s) were posted on 3/30/02
(Month, Day, Year)

Sincerely,

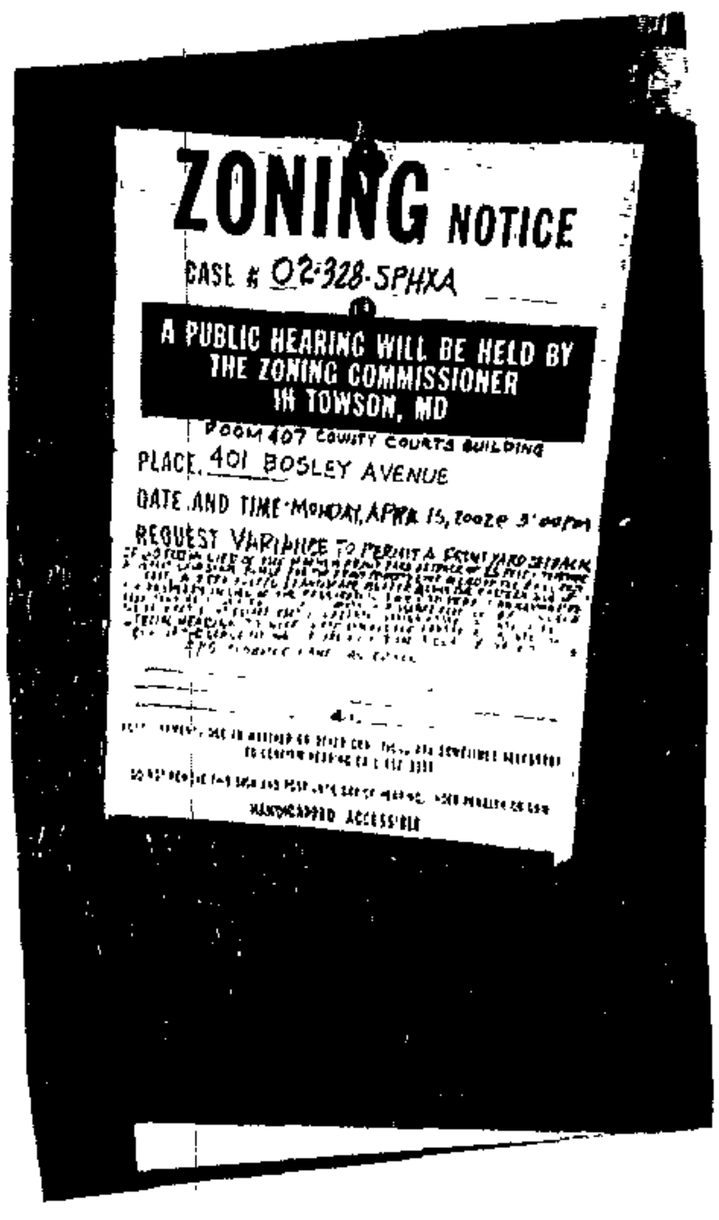
3/30/02
(Signature of Sign Poster and Date)

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)



APPEAL SIGN POSTING REQUEST

CASE NO. 02-328-SPHXA

PATRICIA F. MACDONALD, PRESIDENT
Legal Owner

105 SUDBROOK LANE
S/east side of Sudbrook Lane, 765 SW centerline of Reisterstown Road

3rd Election District

Appealed: 05/17/02

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

APPEAL SIGN POSTING REQUEST

CASE NO. 02-328-SPHXA

PATRICIA F. MACDONALD, PRESIDENT
Legal Owner

105 SUDBROOK LANE
S/east side of Sudbrook Lane, 765 SW centerline of Reisterstown Road

3rd Election District

Appealed: 05/17/02

Attachment – (Plat 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: Kathleen Bianco
Administrator

RE: Case No. 02-328-SPHXA
Petitioner/Developer:
PATRICIA F. MACDONALD

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

property located at 105 SUDBROOK LA.

The sign(s) was posted on 6/7, 2002.

By Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 02-328-SPHXA

Petitioner: ERIC ANDERSON

Address or Location: 105 SUDBROOK LANE (21208)

PLEASE FORWARD ADVERTISING BILL TO:

Name: ERIC ANDERSON - USA REHAB

Address: 7 CHURCH LANE
PIKESVILLE, MD 21208

Telephone Number: 410-653-3903

Revised 2/20/98 - SCJ

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

February 26, 2002

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: 02-328-SPHXA
105 Sudbrook Lane
SE/S Sudbrook Lane, 765' SW centerline of Reisterstown Road
3rd Election District – 2nd Councilmanic District
Legal Owner: The Fabian-Kolker Foundation Inc, Patricia F MacDonald
Contract Purchaser: Eric Anderson

Variance to permit a front yard setback of 60 feet in lieu of the minimum front yard setback of 25 feet; also to provide a ten-foot (10') landscape buffer for the front property line in lieu of the required twenty-foot (20'), a zero foot (0') landscape buffer along the eastern side of the property in lieu of the required ten-foot (10'), to permit an illuminated freestanding double-faced sign of twenty-four square feet (24 sq ft) in lieu of the required eight square feet (8 sq ft) non-illuminated wall mounted sign. Special Hearing to incorporate models for construction into the design of the office building. Special Exception A class B office building.

HEARING: Tuesday, March 26, 2002 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

C: The Fabian-Kolker Foundation Inc, Patricia F MacDonald, 5718 Uffington Road, Baltimore 21209
Eric Anderson, 7 Church Lane, Pikesville 21208
James S Patton, 305 W Chesapeake Avenue, Baltimore 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, MARCH 11, 2002.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed with Soybean Ink
on Recycled Paper

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

May 30, 2002

NOTICE OF POSTPONEMENT

CASE #: 02-328-SPHXA **IN THE MATTER OF: PATRICIA F. MACDONALD**
(President, The Fabian-Kolker Foundation) –Legal Owner
105 Sudbrook Lane
3rd Election District; 2nd Councilmanic District

4/22/02 – Z.C.'s Order in which requested relief was GRANTED with restrictions.

which was assigned to be heard on 6/05/02 has been **POSTPONED** at the request of Office of People's Counsel (Appellant) for reasons as stated; **TO BE REASSIGNED A HEARING DATE AS SOON AS POSSIBLE, the purpose of this Notice to allow parties to remove the date of 6/05/02 from their respective calendars.**

ASSIGNED FOR: TO BE REASSIGNED FOR HEARING

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: Appellant : Office of People's Counsel

Legal Owner /Petitioner : Patricia MacDonald, President
The Fabian-Kolker Foundation, Inc.

Contract Purchaser : Eric Anderson
Representatiave to be contacted : James S. Patton, P.E.

Darragh Brady
Melanie Anson, Zoning Committee /Sudbrook Park, Inc.

Lawrence E. Schmidt, Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM

Rescheduled to 7/17/02 @ 10 am by agmt.

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

July 18, 2002

NOTICE OF ASSIGNMENT /Day #2

CASE #: 02-328-SPHXA

IN THE MATTER OF: PATRICIA F. MACDONALD
(President, The Fabian-Kolker Foundation) –Legal Owner
105 Sudbrook Lane
3rd Election District; 2nd Councilmanic District

Day #2 from 7/17/02

4/22/02 – Z.C.'s Order in which requested relief was GRANTED with restrictions.

ASSIGNED FOR: TUESDAY, NOVEMBER 12, 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: Appellant : Office of People's Counsel

Legal Owner /Petitioner : Patricia MacDonald, President
The Fabian-Kolker Foundation, Inc.

Counsel for Contract Purchaser : J. Carroll Holzer, Esquire
Contract Purchaser : Eric Anderson
Representatiave to be contacted : James S. Patton, P.E.

Darragh Brady
Melanie Anson, Zoning Committee /Sudbrook Park, Inc.
Alan Zukerberg

Lawrence E. Schmidt, Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, 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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

June 26, 2002

NOTICE OF REASSIGNMENT

CASE #: 02-328-SPHXA **IN THE MATTER OF: PATRICIA F. MACDONALD**
(President, The Fabian-Kolker Foundation) –Legal Owner
105 Sudbrook Lane
3rd Election District; 2nd Councilmanic District

4/22/02 – Z.C.'s Order in which requested relief was GRANTED with restrictions.

upon telephone confirmation this date of the availability of all parties to this case, this matter has been reassigned for hearing; and has been.

ASSIGNED FOR: **WEDNESDAY, JULY 17, 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: Appellant : Office of People's Counsel

Legal Owner /Petitioner : Patricia MacDonald, President
The Fabian-Kolker Foundation, Inc.

Contract Purchaser : Eric Anderson
Representatiave to be contacted : James S. Patton, P.E.

Darragh Brady
Melanie Anson, Zoning Committee /Sudbrook Park, Inc.
Alan Zukerberg

Lawrence E. Schmidt, Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM

To 11/12/02 for Day 2

Printed with Soybean Ink on Recycled Paper

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

March 22, 2002

The Fabian-Kolker Foundation Inc,
Ms. Patricia F. MacDonald, President
5718 Uffington Road
Baltimore MD 21209

Dear Ms. MacDonald:

RE: Case Number: 02-328-SPHXA, 105 Sudbrook Lane

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 07, 2002.

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: Eric Anderson, 7 Church Lane, Pikesville 21208
James S Patton, 305 W Chesapeake Avenue, Baltimore 21204
People's Counsel

Printed with Soybean Ink
on Recycled Paper

Baltimore County
Fire Department

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

February 28, 2002

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

ATTENTION: George Zahner

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF February 25, 2002

Item No.:

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.

The Fire Marshal's Office has no comments at this time regarding the following items.

314, 315, 316, 319, 321, 323, 325, 326, 328

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

cc: File

Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: March 21, 2002

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

SUBJECT: Zoning Advisory Committee Meeting
for March 4, 2002
Item Nos. 314, 315, 316, 319, 320, 321, 322, 323, 324, 327, 328 and 329

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

RWB:HJO:cab

cc: File

ZAC-3-4-2002-NO COMMENT ITEMS-03212002.doc

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 2.22.02

Mr. George Zahner
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 328 BR

Dear. Mr. Zahner:

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

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

Very truly yours,

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

My telephone number is _____

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

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

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley RBS/TOT

DATE: March 25, 2002

Zoning Advisory Committee Meeting of February 25, 2002

SUBJECT: NO COMMENTS FOR THE FOLLOWING ZONING ITEMS:

328

285, 314-325, 327-329

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 13, 2002

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

SUBJECT: 105 Sudbrook Lane

MAR 2 6 2002

INFORMATION:

Item Number: 02-328-SPHA
Petitioner: Eric Anderson
Property Size: .361 acres
Zoning: RO
Requested Action: Variance, Special Exception, Special Hearing
Hearing Date: 3/26/02

REQUEST:

The request in this case is for the following: 1) a special exception for a Class B office building as per Section 204.3 BCZR in an RO zone, 2) a special hearing to incorporate models for construction into the design of the building, and 3) to waive the following requirements: Section 204.4.C.9.c.(1) to provide a ten-foot landscape buffer for the front property line in lieu of the required twenty foot landscape buffer, Section 204.4.C.9 (2) to provide a zero foot landscape buffer along the eastern side of the property in lieu of the required ten foot landscape buffer, Section 450.4 to permit an illuminated freestanding double-faced sign of twenty four square feet each side in lieu of the required eight square foot non illuminated wall mounted sign, and section 204.4.c.3 to permit a front yard setback of sixty feet in lieu of the minimum front yard setback of 25 feet or the average of the setbacks of the adjacent structures, whichever is less.

The subject property is .361 acres and is currently improved with a one story brick structure that appears to be unoccupied. It is zoned RO and located within the boundaries of both the Pikesville Revitalization Plan, adopted by the County Council in 1991 and the Ralston Community Plan adopted by the County Council in 1998. The surrounding land use is residential office and institutional. The applicant proposes to renovate the existing dwelling and construct a

ORDER RECEIVED FOR FILING
Date 4/22/02
By

W:\COMPLAN\LAURIE\zac-105 Sudbrook Lane.doc

major addition to the front of the building to use the space as office use for a company that provides adaptive resources and equipment to make properties accessible for individuals with physical disabilities. The site plan indicates that a twenty-foot wide driveway is proposed to be installed on the east side of the property. A total of ten parking spaces are provided, four of which are located in the front of the property, with the remaining six located in the rear of the current structure. An eighteen-foot landscape buffer is proposed with a 32 square foot illuminated free standing identification sign.

SUMMARY OF RECOMMENDATIONS:

The Office of Planning recommends approval of the subject requests, provided the following conditions are contained in the hearing officer's order:

1. The new addition shall be residential in character, incorporating the following elements: height of building shall be two stories with a pitched roof, exterior facade shall be vinyl siding, front facade shall be articulated with residential scale windows and door, and a front porch. (See attachment – 84 Lumber Company – Design 8503B)

2. The color palate for exterior finishes shall be compatible with the surrounding structures using a light gray or taupe for the main structure, with a darker contrasting color for shutters, trim and door. Similarly, the roof color shall be in the range of a green/gray.

3. The applicant shall submit final architectural elevations indicating materials and color choices to the Office of Planning for review and approval prior to the issuance of building permits. Elevations should also indicate any modifications to the exterior of the structure that are incorporated for demonstration purposes (i.e. wheelchair lift, ramp etc.)

4. The applicant shall submit a final landscape plan indicating plant material and design to the Office of Planning for review and approval prior to the issuance of permits.

5. The size of the sign shall be no larger than 16 square feet and shall <u>not</u> be internally illuminated. Ground mounted uplighting is recommended and more in keeping with the residential character of the building.

Section Chief _____

Attachment

ORDER RECEIVED FOR FILING
Date 7/22/12
By

W:\COMPLAN\LAURIE\zac-105 Sudbrook Lane.doc

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION PETITION FOR VARIANCE 105 Sudbrook Lane, SE/S Sudbrook Ln, 765' SW center 3rd Election District, 2nd Councilmanic	* * *	BEFORE THE ZONING COMMISSIONER FOR
Legal Owner: The Fabian-Kolker Foundation, Inc. Contract Purchaser: Eric Anderson Petitioner(s)	* *	BALTIMORE COUNTY Case No. 02-328-SPHXA

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

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 25th day of February, 2002 a copy of the foregoing Entry of Appearance was mailed to James S. Patton, 305 W. Chesapeake Ave., Suite 206, Towson, MD 21204, representative for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

APPEAL

Petition for Variance
105 Sudbrook Lane
S/east side of Sudbrook Lane, 765 SW centerline of Reisterstown Road
3rd Election District – 2nd Councilmanic District
Patricia F. MacDonald, President Legal Owner
Case No.: 02-328-SPHXA

✓ Petition for Variance (02/07/02)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (02/26/02)

✓ Certification of Publication (The Jeffersonian issue 3/12/02)

✓ Certificate of Posting (3/30/02 posted Patrick O'Keefe)

✓ Entry of Appearance by People's Counsel 2/25/02)

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

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

✓ Citizen(s) Sign-In Sheet (1 Sheet)

✓ Zoning Advisory Committee Comments ([redacted]

✓ Petitioners' Exhibits:
  ✓ 1. (Plan to accompany Petition for Variance 01/22/02)
  ✓ 2. (Front, Rear and Left and Right Elevations 10/3/02)

✓ Protestants' Exhibits: (None)

✓ Miscellaneous (Not Marked as Exhibits): NONE

✓ Zoning Commissioner (dated 4/22/02 – Granted with Restrictions)

✓ Notice of Appeal received on 5/17/02 from Peter Max Zimmerman, People's Counsel for Baltimore County

c:
✱ People's Counsel of Baltimore County, MS #2010 APPELLANT
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

02 MAY 22 AM 11:21

PETITIONER
PATRICIA F MACDONALD, PRESIDENT
THE FABIAN – KOLKER FOUNDATION, INC.
5718 UFFINGTON ROAD
BALTIMORE MD 21209

Counsel for Eric Anderson, CP:
J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

REPRESENTATIVE TO BE CONTACTED
JAMES S PATTON PE
305 WEST CHESAPEAKE AVE
TOWSON MD 21204

ADD TO FILE:

Darragh Brady, 500 Sudbrook Lane, Baltimore MD 21208
Melanie Anson, Zoning Committee, Sudbrook Park, Inc., 1007 Windsor Road, 21208

CONTRACT PURCHASER
ERIC ANDERSON
7 CHURCH LANE
PIKESVILLE MD 21208

√E

2/7/02

Alan Zuckerberg, Esq
7919 Long Meadow Rd
21208-3028

02-328-SPHXA

send copy of

Case No. 02-328-SPHXA

In the Matter of: Patricia F. MacDonald – Legal Owner
President, The Fabian-Kolker Foundation, Inc.
Eric Anderson – C.P.

SPH – To allow rehab and utilization of existing dwelling w/proposed building /redevelopment with Class B Office Building
SE –For Class B Office Building

VAR – Landscape buffers; sign; setback

4/22/02 - Z.C.'s decision in which requested relief was GRANTED subject to restrictions.

5/23/02 – Conversation with James Patton – per discussions with P. Zimmerman – requesting early a.m. hearing within next 2 weeks – can be resolved and put on the record. To be assigned to 6/05/02 /confirmed w/CF. -- Notice of Assignment sent to following; scheduled for hearing on Wednesday, June 5, 2002 at 9 a.m.:

Office of People's Counsel
Patricia MacDonald, President
The Fabian-Kolker Foundation, Inc.
Eric Anderson
James S. Patton, P.E.
Lawrence E. Schmidt, Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM

5/29/02 – T/C from P. Zimmerman – problem with 6/05/02 hearing date; insufficient time to prepare; also citizens interested in attending public hearing. To follow up with letter.

5/30/02 – Notice of PP sent to parties this date; hearing postponed from 6/05/02; to be reassigned a hearing date as soon as possible (this Notice of PP being sent due to short notice of hearing and fact that hearing is assigned within the next week; to allow parties sufficient time to remove this date from calendars pending reassignment). Added to file: Darragh Brady and Melanie Anson.

6/20/02 – Proposed dates for reassignment as provided J. Patton – 7/17/02; 10/01/02; or 10/09/02; will contact People's Counsel with these dates and get back to me for reassignment of this case for hearing.
--- Per PC, M. Anson, A. Zukerberg, and P. McCusker – Protestants were advised of dates; Mr. McCusker is unavailable on 7/17/02 (long-standing out of town commitment); will assign to 10/01/02 and send notice upon confirmation that M. Anson is available on 10/01/02.

6/25/02 – Hand delivered letter from P. McCusker; he is withdrawing from case; that would permit this case to go forward on the 7/17/02 date, assuming all remaining parties are still available.

6/26/02 – Confirmed availability of all parties for 7/17/02; Notice of Assignment sent for hearing on Wednesday, July 17, 2002 at 10:00 a.m. (added A. Zukerberg to notice).

7/09/02 – Entry of Appearance filed by J. Carroll Holzer, Esquire – entered appearance on behalf of Eric Anderson, Contract Purchaser; file noted.

7/17/02 – Board convened for hearing (Marks, Barranger, Wescott); scheduled for 11/12/02 for day #2; notice to be sent.

7/18/02 – Notice of Assignment /Day #2 sent to parties; case assigned to Tuesday, November 12, 2002 at 10 a.m.

11/12/02 – Concluded hearing in this matter (C.B.S.); memos due from parties 12/16/02; deliberation assigned for 1/16/03; notice to be sent.

11/15/02 – Notice of Deliberation sent to parties; assigned for Thursday, January 16, 2003 at 9:00 a.m.

12/16/02 – Petitioners' Memorandum in Lieu of Final Argument filed by J. Carroll Holzer, Esquire; People's Counsel's Memorandum filed by Office of People's Counsel.

12/18/02 – Copies to Marks, Barranger, Wescott; deliberated assigned for 1/16/03.

1/16/03 – Board deliberated (C.B.W.); SE – DENIED; variance request – DENIED. Order to be issued by Board; appellate period to run from date of written Opinion and Order.

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:	Patricia F. MacDonald Case No.: 02-328-SPHXA	
DATE:	January 16, 2003	
BOARD/PANEL:	Charles L. Marks Lawrence S. Wescott C. Lynn Barranger	CLM LSW CLB
RECORDED BY:	Theresa R. Shelton / Legal Secretary	

PURPOSE: To deliberate a special exception for a Class B office building; a special hearing to incorporate models for construction into the design of the building; to provide a 10 ft. landscape buffer for the front property line ilo the req'd 20 ' buffer; to provide zero ft. landscape buffer along the eastern side of the property ilo the req'd 10 ft. buffer; to permit an illuminated freestanding double-faced sign of 24 sq. ft. ilo the req'd 8 sq. ft. non-illuminated sign; to permit a front yard setback of 60 ft. ilo the req'd 25 ft.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- Is this a Class B office use – not RO status
- do we have a building that reaches the status of a RO
- there is not a lot of testimony regarding the building
- sympathy does not play a part in the Board's decisions
- Section 204.4c(a) – only principal building – not attached
- two separate buildings that are connected
- testimony re: workshop "Connecting" size of building discussed
- true office use/one building Class A to Class B/second Class B
- conflicting testimony with regards to clients
- office facility or showroom
- purchasing a product/signing a contract
- medical Class B performs medical service
- major thrust is office
- it's more a model – sale is consummated on premises
- this type of activity is a business
- small showroom with items displayed
- website shows house as a sales office
- what we have is a business and not an office
- enough testimony to find that this is a retail operation

SPECIAL EXCEPTION

- no problem with traffic
- spirit and intent of the law – this operation not appropriate for this location
- should be in business zone
- zoning laws set boundaries

VARIANCE

- No testimony presented that the property was uniquw

FINAL DECISION: Unanimous decision by the board of appeals that the Petition for Variance filed by The Fabian-Kolker Foundation, Inc., Patricia F. MacDonald, is DENIED and that the Special Exception is DENIED

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

Theresa R. Shelton
County Board of Appeals

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

DATE: December 18, 2002

TO: C. Marks
S. Wescott
L. Barranger

FROM: Kathi

SUBJECT: Case No. 02-328-SPHXA */In the Matter of: Fabian Kolker Foundation, Inc.; Eric Anderson - CP*

Attached for your review are the following:

1. Petitioners' Memorandum in Lieu of Final Argument filed by J. Carroll Holzer, Esquire, on behalf of Fabian-Kolker Foundation, Inc.; Eric Anderson, CP /Legal Owner; and

2. People's Counsel's Memorandum filed by Peter M. Zimmerman.

Should you have any questions, please call me. Public deliberation is scheduled for Thursday, January 16, 2003 at 9:00 a.m.

Attachments (2)

Kathi

FILE

IN THE MATTER OF	*	BEFORE THE
PATRICIA MCDONALD, PRESIDENT	*	COUNTY BOARD OF APPEALS
THE FABIAN-KOLKER FOUNDATION	*	BALTIMORE COUNTY
105 SUDBROOK LANE	*	CASE NO. 02-328-SPHXA

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

SUBPOENA

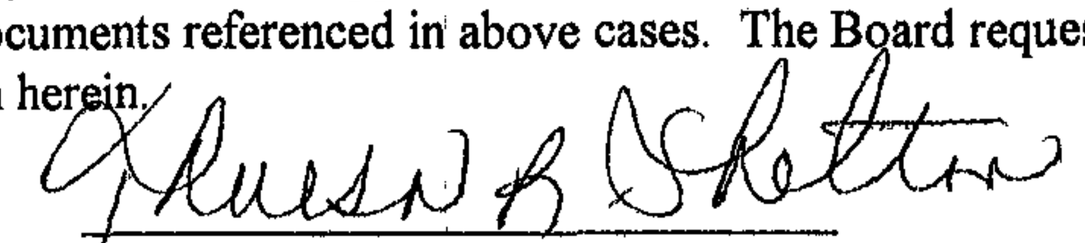
Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday, July 17 2002 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Jeff Long
Planning

Address: County Courts Bldg.
Planning, 4th Floor
Towson, MD

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Washington Ave. Towson, 21286
410-825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.



County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County
C:\Subpoenas\cba.sub

02 JUL -5 AM 11:12

IN THE MATTER OF	*	BEFORE THE
PATRICIA MCDONALD, PRESIDENT	*	COUNTY BOARD OF APPEALS
THE FABIAN-KOLKER FOUNDATION	*	BALTIMORE COUNTY
105 SUDBROOK LANE	*	CASE NO. 02-328-SPHXA

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

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday, July 17 2002 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Peggy Hall

Address: 226 Sudbrook Lane
Pikesville, MD 21208

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Washington Ave. Towson, 21286
410-825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.

Theresa R. Shelton
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County
C:\Subpoenas\cba.sub

02 JUL -5 PM 12:13

IN THE MATTER OF	*	BEFORE THE
PATRICIA MCDONALD, PRESIDENT	*	COUNTY BOARD OF APPEALS
THE FABIAN-KOLKER FOUNDATION	*	BALTIMORE COUNTY
105 SUDBROOK LANE	*	CASE NO. 02-328-SPHXA

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

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday, July 17 2002 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Michael Morgan

Address: 7311 Morrison Lane
Baltimore, MD 21219

02 JUL -9 AM 11:11

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Washington Ave. Towson, 21286
410-825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.

Theresa R. Shelton

County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County
C:\Subpoenas\cba.sub

IN THE MATTER OF	*	BEFORE THE
PATRICIA MCDONALD, PRESIDENT	*	COUNTY BOARD OF APPEALS
THE FABIAN-KOLKER FOUNDATION	*	BALTIMORE COUNTY
105 SUDBROOK LANE	*	CASE NO. 02-328-SPHXA

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

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday, July 17 2002 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Ginger Palmer

Address: 3905 Westshore Drive
Baltimore, MD 21037

02 JUL -9 AM 11:11

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Washington Ave. Towson, 21286
410-825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.

Theresa R. Shelton
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County
C:\Subpoenas\cba.sub

Pikesville
CHAMBER OF COMMERCE
7 Church Lane
Pikesville, MD 21208
484-2337

MAR 1 8 2002

March 14, 2002

Baltimore County Zoning Department
Baltimore County Office Building
111 Chesapeake Avenue
Towson, MD 21204

RE: Special Exception Case # 02-328-SPHXA
105 Sudbrook Lane
Pikesville, MD 21208

Gentlemen:

The Zoning Committee of the Pikesville Chamber of Commerce has reviewed the information in the above -mentioned Special Exception file.

Based on the plans and information presented, it is our desire to go on record supporting the request which will allow the premises to be developed in the R/O zone. We feel that this use will conform to the use and character of the neighborhood and meets the Chambers overall plan for smart growth and development.

Please enter our support into the record of this hearing.

Very truly yours,
PIKESVILLE CHAMBER OF COMMERCE

David Uhlfelder, Chair
Zoning Committee

Sudbrook Park Inc.

1007 Windsor Road
Pikesville, MD 21208
April 15, 2002

By Facsimile to 410-887-3468
Commissioner Lawrence E. Schmidt
Baltimore County Zoning Commissioner
401 Bosley Ave., Room 405
Towson, MD 21204

APR 15 2002

Re: Case No. 02-328-SPHXA – 105 Sudbrook Lane

Dear Commissioner Schmidt:

I understand that for posting reasons, there is a second hearing on the above-referenced matter scheduled for today at 3:00 p.m. Darragh Brady, A.I.A., spoke on behalf of Sudbrook Park at the March 26 hearing, and we were in accord with the Planning Office's recommendations to you. We felt that the proposal to construct a two-story, shuttered -window home with a full-front and one-side wrap porch (84 Lumber, Design #8503B, 3 of 3) would be an appropriate blend with the surrounding older residential homes with porches that have been converted into offices. We also requested that the proposed 24 sq. ft. sign be reduced in size and not be self-illuminated in this RO zone.

Mr. Gabe Rosenbush, on behalf of the applicant Eric Anderson/USA Rehab, met with Mr. Phil McCusker of Pikesville Township Community Association last week to review the applicant's proposal. It is our understanding that the house design will be as submitted and that the sign will be reduced to six (6) sq. ft. Additionally, the sign will be lit only by an upward directed ground light, timer-set to turn off at 11 p.m.

On behalf of Sudbrook Park, Inc. and Pikesville Township community associations, we do not object to a freestanding 6 sq. ft. sign with a timer-controlled ground light, as Mr. Rosebush indicated. Because of the nature of the business being proposed and the existing site limitations, we have not raised objections to the requested front parking site or the landscaping variances. We note, however, that our comments are limited to this specific site, these issues and this project; our acquiescence here does not constitute, and is not intended to be taken as a precedent for further exceptions to be granted on this or other projects. Thank you for your consideration of our comments.

Sincerely,

Melanie Anson

Melanie Anson, Zoning Committee

cc: Ms. Laurie Hay, Area Planner
Mr. Gabe Rosenbush
Philip T. McCusker, Esq., Pikesville Township Association
Elizabeth Stellmann, Chair, Sudbrook Zoning Committee
Darragh Brady, AIA

March 25, 2002

I being the adjacent property owner on the Eastern boundary of 105 Sudbrook Lane have reviewed the plat submitted in the up coming Special Exception hearing.

I hereby support this request for the construction of a two story house.

To my knowledge this property has been vacant for at least 22 years.

Larry Hoffman, resident agent

Sudbrook Lane Properties, LLC

STATE OF MARYLAND COUNTY OF BALTIMORE TO WIT:

I HEREBY CERTIFY THAT ON THIS 25 DAY OF MARCH 2002, before me, the subscriber, a Notary Public of the State of MARYLAND IN AND FOR BALTIMORE County, personally Appeared who acknowledged himself to be the owner of 103 SUDBROOK LANE, AN AS such executed the aforegoing instrument for the purpose contained therein.

IN TESTIMONY WHEREOF I hereby set my hand and affix my Notarial SEAL.

Gabriel W. Rosenbosh Jr.

Gabriel W. Rosenbosh Jr.

My Commission Exp. 7-1-03

GABRIEL W. ROSENBOSH JR. NOTARY PUBLIC BALTO. COUNTY, MD.

MARCH 25, 2002

I being the adjacent property owner on the Western boundary of 105 Sudbrooke Lane have reviewed the plat submitted in the up coming special exception hearing.

I hereby support this request for the construction of the two story house.

To my knowledge this property has been vacant for at least 20 years.

David O. Feldmann

DAVID O. FELDMANN

STATE OF MARYLAND COUNTY OF BALTIMORE TO WIT:

I HEREBY CERTIFY THAT ON THIS 25th DAY OF MARCH 2002, before me, the subscriber, a Notary Public of the State of Maryland in and for Baltimore County personally appeared DAVID O. FELDMANN, who acknowledged himself to be the owner of 107 SUDBROOKE LANE and as such executed the aforegoing instrument for the purpose contained therein.

IN TESTIMONY WHEREOF I hereby set my hand and affix my notarial SEAL

Gabriel W. Rosenbusch Jr.

Gabriel W. Rosenbusch Jr.

My Commission Expires:
7-1-03

NOTARY PUBLIC

Dev. 7-17-02
Verified 11/12/02

PEOPLE'S COUNSEL

02-328-SPHXA PATRICIA F. MACDONALD JULY 17, '02
& 11-12-02

(1D) PC 1 SIGN-IN LIST
PC 2 TITLE PAGE PG. 25-28 - SUDBROOK PARK COMMUNITY PLAN.
PC 3 1" - 200" NUE 7F PIKESVILLE ZONING MAP
~~PC 3~~ 3A ~~EXCERPT~~ EXCERPT OF EX 3.
PC 4 ADC ROAD MAP
PC 5 MD DEPT ASSESSMENT & TAXATION 2 PGS
PC 6A-D PHOTOS
6A 105 SUDBROOK LANE
6B " " - LOOKING EAST
6C PROPERTIES TO LEFT OF 105 SUDBROOK
6D LOOKING WEST FROM 105 SUDBROOK
PC 7 GIS AERIAL MAP OF AREA
PC 8 RULE 8 PAPERS 3 PAGES
PC 9 BILL 13-80
PC 10 PROPOSED AMENDMENTS TO BCZR APR 17 '80
PC 11 BILL 167-80 AUG 4 '80
PC 12 FINAL REPORT OF BCPB RO ZONES MAY 19 '88
PC 13 BILL NO 151-88 OCT 3 '88
PC 14 PROPOSED AMENDMENTS FINAL REPORT JULY 21, '94
PC 15 BILL 186-94 NOV 7 '94
PC 16 RALSTON COMP PLAN MAY '98

RALSTON
COMMUNITY ASSOCIATION

August 27, 2002

Sheri Becker, Director
Pikesville, Chamber of Commerce
7 Church Lane
Pikesville, MD 21208

Reference: Ralston Community Opposition to 105 Sudbrook Lane Business

Dear Ms Becker:

Please be advised that during the hearings for this establishment, the business has satisfied our concerns regarding the limitations of their proposed sign.

Therefore, we have no other protests regarding their business. We welcome their enthusiasm and pursuit of improving the property, and wish them much success!

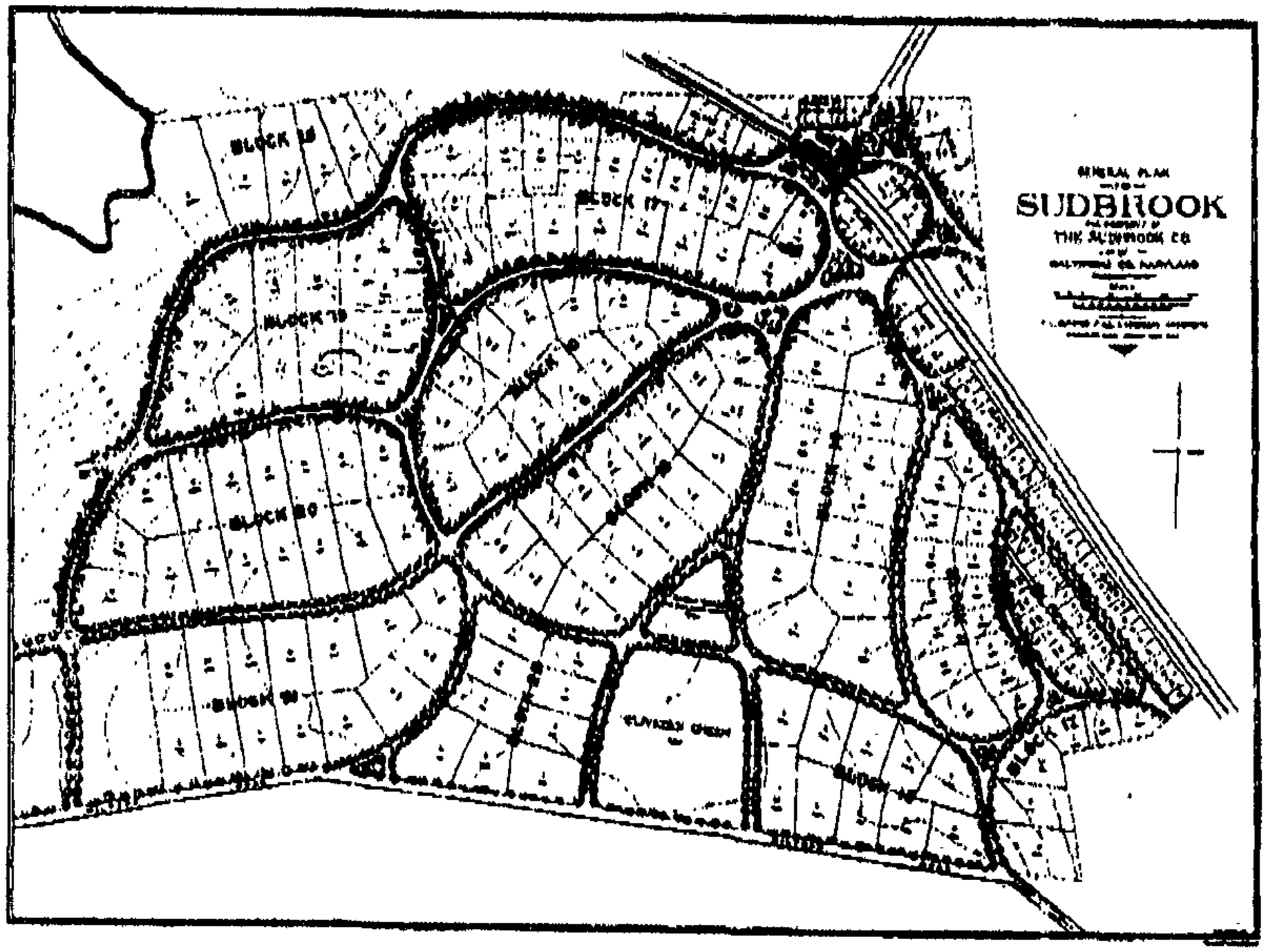
Sincerely,

Reva A. Bounan
President – Ralston Community Association

cc: People's Counsel

DSTIT
1D

SUDBROOK PARK COMMUNITY PLAN



As adopted by the Baltimore County Council
April 5, 1999

P.C. 2

E. Land Use and Zoning

Purpose: Land use and zoning are two of the most important aspects of a community plan. Unless planned with consideration to the conservation of historic and established communities, development is likely to occur haphazardly and to the detriment of existing neighborhoods. Proper land use promotes the stability and conservation of older communities. Residents of Sudbrook Park value their unique community and want to preserve its original design characteristics and residential nature in keeping with Olmsted's intent and in light of challenges from commercial encroachment, developmental pressures from areas surrounding Sudbrook, zoning violations within the community, and transportation or other proposals which threaten the historic integrity and stability of the community.

Background: Sudbrook Park was a pioneer nineteenth-century residential suburb that prohibited commercial uses from its inception and has had a long and consistent history of fighting commercial encroachments. Sudbrook Park was the first community in Maryland (beginning in 1889) to have comprehensive land-use restrictions; among other things, these restrictions prohibited any trade, manufacture or business use of property in Sudbrook Park.

Olmsted himself fashioned Sudbrook's sixteen restrictions, which he deemed vitally important to the establishment of a pleasant suburban village. Not only were businesses prohibited, but only one house was allowed per acre; it had to cost a minimum amount, be in a "rural" style, and comply with certain set-backs and height limitations. Fences and hedges could not be over four feet high and lots could not be subdivided. The restrictions also applied to the construction of stables and outbuildings in Sudbrook Park; even stables had to be architecturally appropriate.

In contrast, zoning regulations for Baltimore County were not adopted until 1945. A 1940 article by Clark S. Hobbs in the *Baltimore Evening Sun* described the haphazard situation resulting from the failure to establish effective land-use controls:

> [The Baltimore County Metropolitan District] sprawls helter-skelter without benefit of plan, without effective control of land use -- [a] casual, impromptu, unorganized and undirected sort of thing . . . .[Y]ou can build a cow stable or a mansion pretty much where you choose, dump your garbage and trash in the nearest gully, establish an automobile graveyard where it suits your convenience . . . .
>
> (From *Master Plan History* by John McGrain, pp. 7-8).

Sudbrook Park has always been the antithesis of such development.

The major portions of Sudbrook Park are zoned D.R. 1 (density residential, one house per acre), D.R. 2 (density residential, two houses per acre) and D.R. 5.5 (density residential, 5.5 houses per acre). [See Appendix M].

For the most part, Sudbrook Park is fully developed, but there is the potential for future in-fill development on several lots large enough to permit subdivision and in undeveloped wooded areas. While there already are legislated reviews and protections for those areas of Sudbrook Park designated as a Baltimore County Historic District, it would be desirable to have design review guidelines for any future in-fill development outside and buffering the Historic District, to insure compatibility with the existing community. Action also should be taken to insure that the community's entranceway triangles and green spaces, designed as permanent open space by Olmsted, are preserved and never developed.

Just outside the boundaries of Sudbrook Park are various residential areas zoned D.R. 3.5 and D.R. 5.5; there is also an ML (manufacturing light) area adjacent to the community on its southeastern edge off Milford Mill Road, and an MLR (manufacturing light restricted) area to the northwest, along Greenwood Road. Restricting the expansion of high density and manufacturing or commercial zones around Sudbrook Park is necessary to preserve as much of a buffer as possible and to protect the community from the unsightliness, traffic, litter, noise, pollution and other pressures exerted by such development.

Based on responses to the Spring 1997 survey, residents overwhelmingly desire the community to remain residential. Over 99% of respondents support a continuation of the community association's efforts to oppose zoning violations within the community; 98.7% of respondents want to protect the residential character of Sudbrook from retail or other commercial encroachments and uses. These responses, together with Sudbrook Park's history, provide ample support for the goals and actions set forth below.

GOAL 1a: To preserve Sudbrook Park's traditional, single-family residential community character, with the retention of its green spaces; and

GOAL 1b: To permanently protect Sudbrook Park's existing wooded areas and open spaces/triangles.

Sudbrook Park, Inc. will maintain a standing zoning committee that will actively work to carry out the above Goals through the following actions:

Action 1a: Work to retain as wholly residential the zoning and character of the Sudbrook Park community.

Action 1b: Sudbrook Park, Inc., as part of its effort to preserve the historic fabric of the community's older homes and to prevent the introduction of commercial uses, opposes the introduction of assisted living facilities (either conversions of existing houses or new construction) in Sudbrook Park, which is a National Register and Baltimore County Historic District. Baltimore County will continue to evaluate assisted living facility projects on a case-by-case basis.

Action 1c: Work to prevent any higher density zoning changes within Sudbrook Park, or in the Park's buffer areas.

Action 1d: Work to obtain lower density zoning within and around Sudbrook Park.

Action 1e: Stay apprised of Baltimore County zoning ordinances and proposed changes.

Action 1f: Raise community awareness of applicable zoning ordinances through the community association's newsletter.

Action 1g: Continue to accept inquiries and complaints from Sudbrook Park residents who wish to remain anonymous and act as the primary contact or complainant to the County regarding zoning complaints and code enforcement issues/cases.

Action 1h: Monitor potential and reported zoning violations within or around the community.

Action 1i: Implement a written procedure to address zoning violations by residents (such as untagged vehicles, parking of prohibited commercial vehicles, and prohibited business uses).

Action 1j: Monitor the condition of any vacant or poorly maintained houses; involve appropriate County agencies if necessary.

Action 1k: Work with community architects and the Sudbrook Park Landmarks Committee to develop guidelines for in-fill development both within and outside the neighborhood, with attention to the preservation of existing landscape features and, where instructive, to Olmsted's original restrictions.

Action 1l: Explore and propose ways to protect and preserve public and privately owned wooded areas and open spaces/triangles in Sudbrook Park, as well as residential lots large enough to permit subdivision.

Action 1m: Identify the locations of undeveloped parcels in the community for possible addition to the community's permanent open space system and encourage the cooperation of property owners in protecting these important natural areas.

Action 1n: Investigate the advantages and disadvantages of historic easements and share this information with property owners.

Action 1o: Address whether the MTA might wish to sell to Sudbrook Park, Inc., or protect with a permanent easement, the vacant land that it owns within and adjoining the Park in order to ensure preservation of the land as permanent open space.

GOAL 2: For Sudbrook Park, Inc. to maintain regular contact with the zoning office, and attend county and statewide meetings that concern zoning uses "as a matter of right" and zoning changes that might impact the community. In conjunction with this, the community association will:

Action 2a: Ascertain the potential effect of any proposed actions on the goal of retaining Sudbrook Park's single-family, residential character.

Action 2b: Propose guidelines and/or policy statements on these uses.

Action 2c: Encourage community activism through letters to County officials and agencies and/or seek changes in existing legislation if needed to further community goals.

GOAL 3: For Sudbrook Park, Inc. to participate in discussions and remain informed about proposed development and zoning changes in the communities and areas <u>surrounding</u> Sudbrook Park, as well as revitalization plans, town center plans, highway and conduit plans, air rights plans, zoning cycles, and the 2010 Master Plan and to study their potential impact on our community. In furtherance of this Goal, the community association will:

Action 3a: Oppose any new commercial development or business zoning along Greenwood Road (between Old Court Road and Sudbrook Lane).

Action 3b: Work to prevent a spread of commercial use, or commercial/business zoning reclassification, of properties on Sudbrook Lane, and south and west of Glenback Avenue.

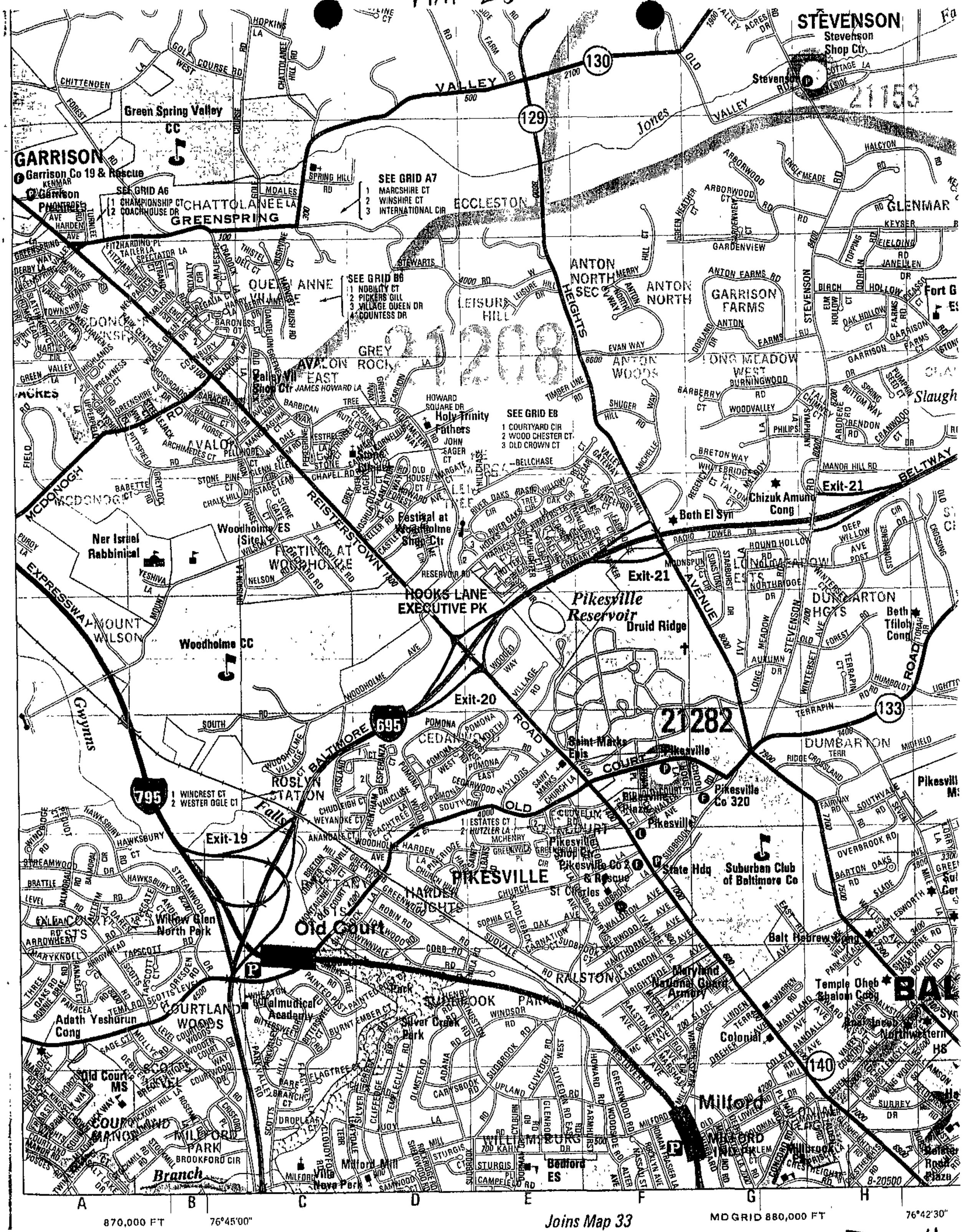
Action 3c: Oppose additional commercial uses, or commercial/business zoning reclassification, of properties on Milford Mill Road, west of the Milford Mill Industrial Park (4400 Block of Milford Mill Road) through to Liberty Road and monitor development in buffer areas, such as Milford Mill Industrial Park.

Action 3d: Sudbrook Park, Inc., as part of its effort to preserve an appropriate non-intrusive buffer around the historic residential community of Sudbrook Park, opposes the construction or addition of cellular towers (or other similar such towers) within one mile of the community's borders. Baltimore County will continue to evaluate cellular tower projects on a case-by-case basis.

Action 3e: Maintain contact persons in other Baltimore County neighborhoods, and actively solicit their input and cooperation on issues where united action would be advantageous in maintaining our goals.

Action 3f: Monitor attempts by the MTA to sell and/or develop the air-rights at the Milford Mill and Old Court metro stations; oppose development deemed detrimental to the community.

MAP 25


STEVENSON
Stevenson Shop Ctr
Stevenson
GARRISON
Garrison Co 19 & Rescue
Garrison
Green Spring Valley CC
SEE GRID A6
1 CHAMPIONSHIP CT
2 COACHHOUSE DR
SEE GRID A7
1 MARCSHIRE CT
2 WINSHIRE CT
3 INTERNATIONAL CIR
SEE GRID B6
1 NOBILITY CT
2 PICKERS GILL
3 VILLAGE QUEEN DR
4 COUNTESS DR
SEE GRID E8
1 COURTYARD CIR
2 WOOD CHESTER CT
3 OLD CROWN CT
1 WINCREST CT
2 WESTER OGLE CT
1 ESTATES CT
2 HUTZLER LA
VALLEY
Jones
ECCLESTON
GLENMAR
ANTON NORTH
GARRISON FARMS
LONG MEADOW WEST
AVALON
AVALON EAST
GREY ROCK
Holy Trinity Fathers
Valley Vil Shop Ctr
Stone Chapel
Chizuk Amuno Cong
Beth El Syn
Exit-21
BELTWAY
Ner Israel Rabbinical
Woodholme ES (Site)
Festival at Woodholme Shop Ctr
REISTERSTOWN
HOOKS LANE EXECUTIVE PK
Pikesville Reservoir
Druid Ridge
Beth Tfiloh Cong
Woodholme CC
Exit-20
Exit-19
BALTIMORE
695
795
133
140
Saint Marks Episc
Pikesville
Pikesville Co 320
Pikesville Co 2 & Rescue
PIKESVILLE
Old Court
State Hdq
Suburban Club of Baltimore Co
Willow Glen North Park
Talmudical Academy
Silver Creek Park
Adath Yeshurun Cong
Maryland National Guard Armory
Temple Oheb Shalom Cong
Colonial
Northwestern HS
Milford Mill
Bedford ES
Vila Nova Park
Branch
Joins Map 33
870,000 FT
76°45'00"
MD GRID 880,000 FT
76°42'30"
A
B
C
D
E
F
G
H
21153
21208
21282
8-20500

PC 4

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

Account Identifier: **District** - 03 **Account Number** - 0316055720

Owner Information

Owner Name:	FABIAN H KOLKER FOUNDATION INC	**Use:**	COMMERCIAL
		Principal Residence:	NO
Mailing Address:	3520 BARTON OAKS RD BALTIMORE MD 21208	**Deed Reference:**	1) / 8362/ 257 2)

Location & Structure Information

Premises Address	Zoning	Legal Description
105 SUDBROOK LA	RO	LT SES SUDBROOK LA 710 SW REISTERSTOWN RD

Map	Grid	Parcel	Subdivision	Section	Block	Lot	Group	Plat No:
78	8	95					80	Plat Ref:

Special Tax Areas	**Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1967	736 SF	14,338.00 SF	15

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2001	Phase-in Assessments As Of 07/01/2001	As Of 07/01/2002
Land:	84,330	84,300		
Improvements:	42,220	39,900		
Total:	126,550	124,200	124,200	124,200
Preferential Land:	0	0	0	0

Transfer Information

Seller: SUDBROOK LANE RE ALTY CO		**Date:** 12/29/1989	**Price:** $100,000
Type: IMPROVED ARMS-LENGTH		**Deed1:** / 8362/ 257	**Deed2:**
Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**
Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**

Exemption Information

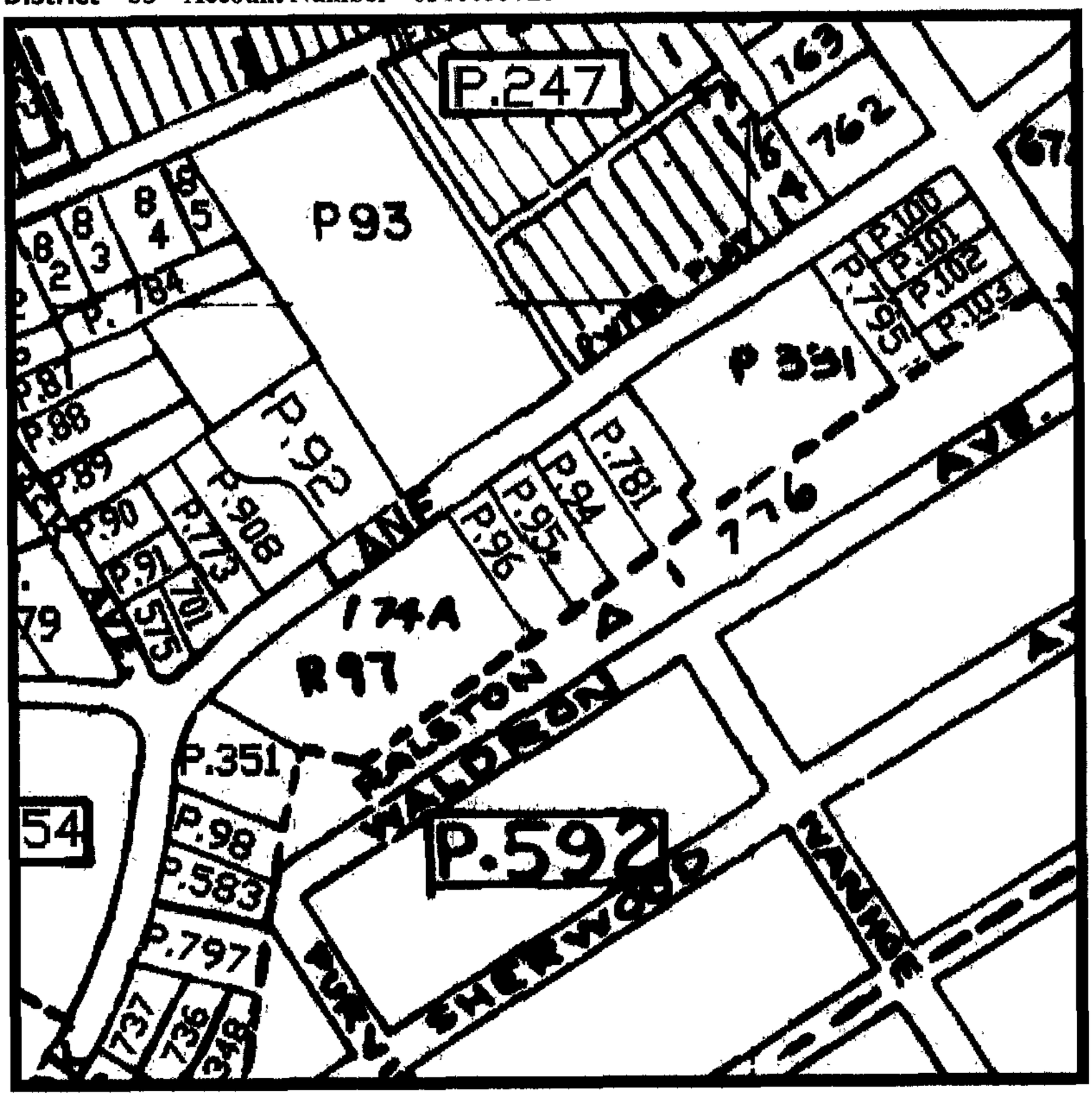
Partial Exempt Assessments	Class	07/01/2001	07/01/2002
County	000	0	0
State	000	0	0
Municipal	000	0	0

PC 5

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

District - 03 **Account Number** - 0316055720



Property maps provided courtesy of the Maryland Department of Planning ©2001.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us

PC5

6/28/02 4:39 PM

2 OF 2

PHILIP T. McCUSKER
ATTORNEY AT LAW
226 CHURCH LANE
PIKESVILLE, MD 21208
TEL:410-486-3668

K. Beamer

June 24, 2002

The Baltimore County Board of Appeals
Baltimore County Court House
400 Washington Avenue, Room 49
Towson, Maryland21204

RE: Case No. 02-328 SPHXA

Dear Members of The Board:

By my letter to you of June 21, 2002, I asked that my appearance be entered as attorney for The Pikesville Township Association, Inc., a community association in whose area of concern this property lies.

I was advised by your office that July 17 was available for a hearing of the appeal. I responded by stating that I had a long standing engagement in Georgetown, Delaware, scheduled for July 17. I was then later advised that October 1 was available and that the case would be set on that date. I have since heard that several interested parties are distressed at the long delay (from July 17 to October 1).

In view of the fact that The Pikesville Township Association is not the actual appellant, and that it was I who caused the postponement of the hearing to October 1, I hereby withdraw my appearance for Pikesville Township Association, with my suggestion, respectfully made that, if possible, the hearing be rescheduled to July 17.

Respectfully,

Philip T. McCusker

Philip T. McCusker

cc: Peter M. Zimmerman, Esq.
People's Counsel
400 Washington Avenue, Room 47
Towson, Maryland 21204

cc: Alan P. Zukerberg, Esq.
7919 Longmeadow Road
Pikesville, Maryland 21208

cc: Mrs. Arlene Rosenberg, President
Pikesville Township Association, Inc.
218 Church Lane
Pikesville, Maryland21208

cc: Mrs. Melanie Anson
Sudbrook Park, Inc.
1007 Windsor Road
Pikesville, Maryland 21208

02 JUN 25 AM 11:28
COUNTY BOARD OF APPEALS

The Baltimore County Board of Appeals June 24, 2002
Case No. 02-328 SPHXA

cc: Mr. Eric Anderson
7 Church Lane
Pikesville, Maryland21208

cc: Mr. Gabe Rosenbush, Jr.
P.O. Box 32122
Pikesville, Maryland 21208

cc: Mr. James Patton
305 W. Chesapeake Avenue
Towson, Maryland 21204

cc: Ms. Patricia F. MacDonald
The Fabian-Kolker Foundation, Inc.
5718 Uffington Road
Baltimore, Maryland 21209

RESOLUTION

SUDBROOK PARK, INC.

RESOLVED: That at the monthly Board of Director's meeting of Sudbrook Park, Inc. held on September 19, 2002, it was decided by the Association that responsibility for review and action on all zoning matters for the period from September 19, 2002 until the next annual meeting of the Association, be placed in the Zoning Committee and the Board of Directors of Sudbrook Park, Inc., consisting of the following members:

Zoning Committee:
Elizabeth Stellmann, Chair
Melanie Anson
Carolyn Black-Sotir
Richard Ottenheimer

Board of Directors:
Elinor Kotzen Spokes
George Bowers
Larry Schuster
Melody Nadolny
Jennifer Bethea
Karen Welsh
Darragh Brady
Brian Kuebler
JoAnne Bauman
Laura Carter

AS WITNESS our hands and seal this 19th day of September 2002.

ATTEST:

George Bowers, SECRETARY

Elinor K. Spokes, PRESIDENT

PC 8A
1 OF 3

AFFIDAVIT

STATE OF MARYLAND:
BALTIMORE COUNTY, SS:

TO WIT:

We hereby swear under penalty of perjury that the following are currently duly elected members of the Board of Directors or Zoning Committee members of Sudbrook, Park Inc. and are authorized to testify:

Ellen Spokes, President

George Bowers, Secretary

Darragh Brady, Director and Immediate Past President

Elizabeth Stellmann, Chair, Zoning Committee

Melanie Anson, Zoning Committee member

ATTEST: **SUDBROOK PARK, INC.**

G M Bowers
SECRETARY

Eleanor Kotzen Spokes
PRESIDENT

DATE: September 19, 2002

PC 8
2 OF 3

RESOLUTION

RESOLVED: That the position of Sudbrook Park, Inc. as adopted on September 19, 2002, by the Board of Directors on the zoning matter known as:

Case #02-328-SPHXA
Appeal before the Baltimore County Board of Appeals

In the Matter of: The Fabian-Kolker Foundation, Inc., Owners;
Eric Anderson, Contract Purchaser/Petioners
105 Sudbrook Lane, 3rd Election District; 2nd Council District
(Petitions for Special Hearing, Special Exception & Variances GRANTED subject to conditions in Commissioner Schmidt's Order dated 4/22/02)

is that:

The proposed use, as described in Commissioner Schmidt's 4/22/02 decision and by the Petitioner on appeal, appears to be an inappropriate retail/commercial use in an RO zone.

The Petition for Variance #1 (requesting 10' landscape buffer in lieu of 20' along front) BE DENIED or modified to require 18' along parking area and 20' beyond front parking.

The Petition for Variance #2 (requesting zero landscape buffer on east border) BE DENIED as Petitioner claims traffic would be minimal and granting the variance would promote excessive asphalt surfacing (20' driveway) at the expense of retaining needed greenspace and landscaping.

AS WITNESS our hands and seal this 19th day of September, 2002.

ATTEST:

SUDBROOK PARK, INC.

Elinor Kotzen Spokes (SEAL)
PRESIDENT

C M Bowers (SEAL)
SECRETARY

PC 8
3 OF 3

DATE: 7/02

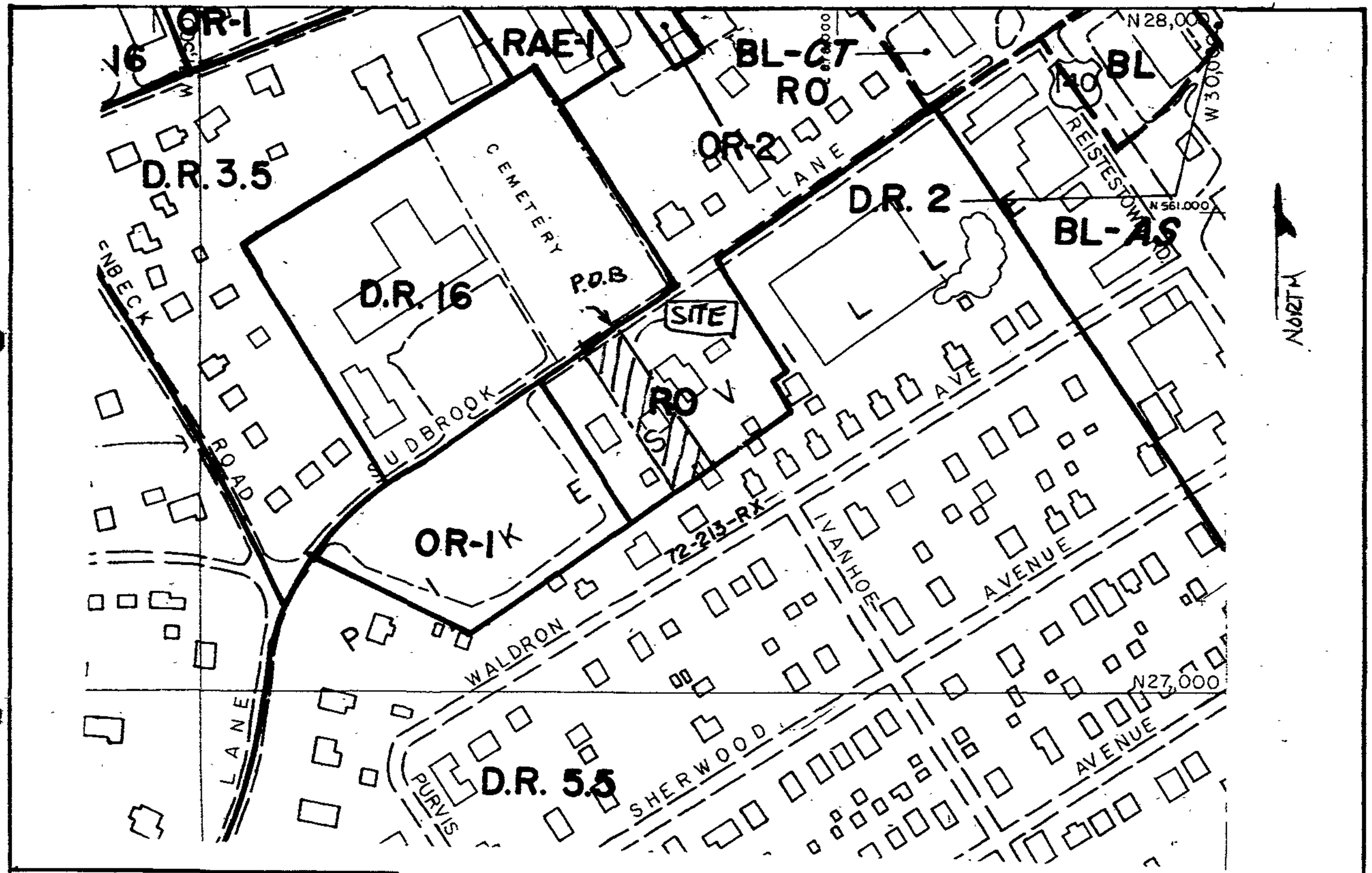
PEOPLE'S COUNSEL'S SIGN-IN SHEET

CASE NAME: FABIAN-KOLKER FOUNDATION

CASE NO.: 02-328-SPHXA

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
✓	Arlene Rosenberg 218 Church Lane	
✓	ALAN P. ZULKERBERG 7919 LONG MEADOW RD 21208	
✓	Ellen Spokes 1017 Windsor Rd	Self & Sudbrook Park, Inc.
✓	Melanie Anson 1007 Windsor Rd	Self & Sudbrook Park, Inc.
✓	Mike BOWMAN 15 Sherwood Ave 580-1210	Ralston Comm.



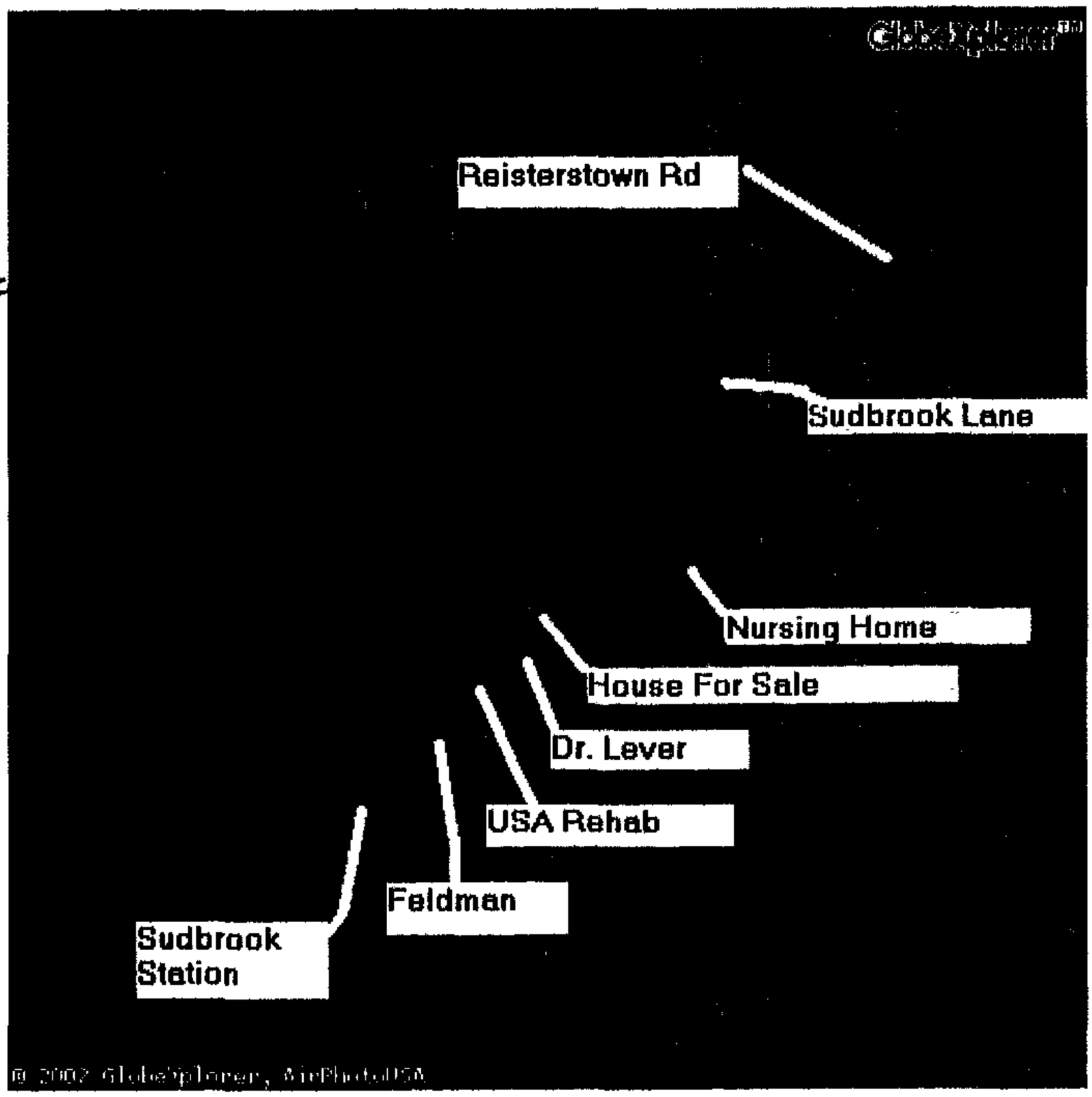
PATTON

Patton Consultants, Ltd., Engineering & Site Planning
305 West Chesapeake Avenue, Suite 206
Towson, Maryland 21204
410-296-2140 Fax: 410-296-0419

ZONING MAP
NW-7F

DRAWN:	CHECKED:	JOB#	SCALE: 1"=200	SHT. 1/1

DATE:


Reisterstown Rd
Sudbrook Lane
Nursing Home
House For Sale
Dr. Lever
USA Rehab
Feldman
Sudbrook Station
© 2002 Globexplorer, AirPhotoUSA

PGT 5A

ezStorage

RENTAL AGREEMENT
8514 Liberty Road
Randallstown, Maryland 21133
410-922-8788

3903

Date 7/26/02

www.ezstorage.com

THIS RENTAL AGREEMENT (**"Agreement"**) is made between Liberty Crossing Land LLLP, 8514 Liberty Road, Randallstown, MD 21133 (**"Owner"**) and USA Rehab by Eric Anderson (**"Occupant"**) who agree to the following terms and conditions:

1. **UNIT.** Owner hereby rents to Occupant unit number (**"Unit"**) 2910 in the self storage facility located at the above address. The Unit size is 10 x 30 (approximate outside dimensions). Occupant has inspected the Unit and acknowledges that the Unit and surrounding public access areas are satisfactory for all purposes for which Occupant intends to use the self storage facility, including the safety and security thereof.

2. **TERM.** The term of this Agreement shall begin as of the above date, shall continue from the first day of the month immediately following, and shall be automatically renewed, on the same terms, on a month-to-month basis, unless, at least 15 days before the end of a month, written notice is given by either party to the other of its intention to terminate. If Occupant vacates before the expiration of this Agreement, or any extension hereof, Owner shall retain that part of the Rent paid in advance as liquidated damages. **There will be no refund of Rent whether or not the Unit has been occupied.** If there is no lock on the Unit on the last day for which Occupant has paid Rent, Owner may, at its sole option and in its sole discretion and without prior notice to Occupant, terminate this Agreement as of such day and any property of Occupant remaining in the Unit thereafter will be considered abandoned property pursuant to Paragraph 16.

3. **RENT.** The rent shall be $ 193.00 per month (**"Rent"**), except that such Rent shall be subject to change on 30 days prior written notice to Occupant sent by regular U.S. mail to Occupant's last known address. **Rent shall be paid monthly prior to the first day of each month, without deduction, prior notice or demand.** The failure of Occupant to pay Rent when due shall constitute a Default on the part of Occupant as provided in Paragraph 6. The first payment of Rent shall be for a full month, plus any prorated portion of a month remaining so as to make succeeding Rent payments due on the first day of each month. It is expressly agreed that Owner shall not be required to give notice of Rent due dates or send Occupant any reminder statements. **If Occupant does not vacate the Unit and remove Occupant's lock specified in Paragraph 17 on the last day for which Occupant has paid Rent, Occupant shall be required to pay Rent for the entire succeeding month.**

4. **FEES AND DEPOSITS.**
(a) Concurrently with the execution of this Agreement, Occupant will pay $ 10.00 to Owner as a nonrefundable new account administration fee.
(b) Concurrently with the execution of this Agreement, Occupant will deposit $ 0 with Owner as a performance deposit to secure Occupant's performance pursuant to this Agreement. Owner may commingle the deposit with funds in its general accounts, and may, at Owner's election, apply the deposit to any amounts due and unpaid by Occupant under this Agreement. The balance, if any, will be returned to Occupant by regular U.S. mail, without interest, within 30 days after termination of this Agreement, providing the Unit is left broom-clean and undamaged and Occupant is not in default under this Agreement.

(c) If Rent is not paid within 15 days after the due date, a LATE FEE equaling six percent (6%) per annum of the amount due but unpaid will be paid by Occupant to Owner, in addition to any other amounts due. Such fee shall be assessed for Occupant's failure to pay Rent when due. Beginning January 1, 2001 such LATE FEE shall increase to equal the greater of $5.00 per month or ten percent (10%) of the amount due unpaid.

(d) If Occupant's check is returned unpaid, a DISHONORED CHECK FEE OF **$25.00** will be paid by Occupant to Owner, in addition to any other amounts due. Such fee is intended to compensate Owner for the additional bookkeeping costs and bank charges incurred by Owner on account of such dishonored check. In such event, Owner reserves the right thereafter to refuse payment of Occupant's Rent by check.

By initialing here EA, Occupant acknowledges that he or she has read, understands and agrees to the terms of this Paragraph 4.

5. **LIEN. OWNER HAS A LIEN ON ALL PERSONAL PROPERTY STORED IN THE UNIT FOR RENT, LABOR OR OTHER CHARGES (INCLUDING ALL COSTS OF ENFORCING THE LIEN). UPON ANY DEFAULT BY OCCUPANT, OWNER MAY ENFORCE ITS LIEN BY SELLING THE PROPERTY WHICH IS STORED IN THE UNIT. OWNER WILL SELL THE STORED PROPERTY IF RENT BECOMES 60 DAYS DELINQUENT. OCCUPANT SHALL PAY THE CHARGES SPECIFIED IN PARAGRAPH 6 TO REIMBURSE OWNER FOR ITS EXPENSES IN PREPARING TO ENFORCE AND/OR IN ENFORCING OWNER'S LIEN.**

By initialing here EA, Occupant acknowledges that he or she has read, understands and agrees to the terms of this Paragraph 5.

6. **DEFAULT.**
(a) Occupant shall be in default if Occupant breaches any term of this Agreement. At any time Occupant is in default, Owner shall be entitled to deny Occupant access to the Unit by: (i) overlocking; (ii) removing Occupant's lock and replacing it with an Owner lock; (iii) removing Occupant's property to another Unit; (iv) removing Occupant's property from the self storage facility; and/or (v) denying gate access to the facility.
(b) In addition to any other rights or remedies of Owner under this Agreement or applicable law, Owner shall have the following rights:
(i) If Occupant is in default for more than 5 days, an OVERLOCK CHARGE of **$10.00** will be paid by Occupant to Owner, in addition to any other amounts due. Such charge is intended to compensate Owner for part of the cost incurred by Owner in order to protect Owner's lien rights under the Maryland Self-Storage Act, including but not limited to installing Owner's own lock on the Unit.
(ii) If Occupant is in default for more than 30 days, a DEFAULT CHARGE of **$50.00** will be paid by Occupant to Owner, in addition to any other amounts due. Such charge is intended to compensate Owner for part of the cost incurred by Owner in preparing to enforce, and/or in enforcing, Owner's lien rights under the Maryland Self-Storage Act, including but not limited to preparing and mailing notices to Occupant.
(iii) If Occupant is in default for more than 40 days, a LIEN SALE CHARGE of **$25.00** will be paid by Occupant to Owner, in addition to any other amounts due. Such charge is intended to compensate Owner for part of the cost incurred by Owner in preparing to enforce, and/or in enforcing, Owner's lien rights under the Maryland Self-Storage Act, including but not limited to preparing and mailing notices to Occupant and expenses incurred in advertising and conducting the sale.

By initialing here EA, Occupant acknowledges that he or she has read, understands and agrees to the terms of this Paragraph 6.

7. **INSURANCE.** Occupant understands that this self-storage facility:
(a) Is an owner/operator renting space, is not a warehouseman, and does not take custody of Occupant's property.
(b) Is not responsible for loss or damage to Occupant's property.
(c) Does not provide insurance on Occupant's property for Occupant.
(d) Requires that Occupant provide Occupant's own insurance coverage or be "self-insured" (personally assume risk of loss or damage).

OCCUPANT'S CHOICE OF INSURANCE OPTIONS. Occupant acknowledges that Occupant has read the above information and has been explained the Customer Storage Insurance Program available at this self storage facility under a master policy. Occupant elects to (please initial only one):

_____ (Initial) **ACCEPT** the Customer Storage Insurance Program available here (please complete appropriate premium section below)

EA (Initial) **DECLINE** the Customer Storage Insurance Program available here. Occupant will obtain Occupant's own insurance or be "self-insured."

APPLICANT TO BE ADDED AS AN ADDITIONAL NAME INSURED UNDER MASTER POLICY (please initial only one):

_____ (Initial) $5,000 coverage _____ (Initial) $7,500 coverage _____ (Initial)

DGT 16

By initialing here EX, Occupant acknowledges that he or she has read, understands and agrees to the terms of this Paragraph 5.

6. **DEFAULT.** (a) Occupant shall be in default if Occupant breaches any term of this Agreement. At any time Occupant is in default, Owner shall be entitled to deny Occupant access to the Unit by: (i) overlocking; (ii) removing Occupant's lock and replacing it with an Owner lock; (iii) removing Occupant's property to another Unit; (iv) removing Occupant's property from the self storage facility; and/or (v) denying gate access to the facility.

(b) In addition to any other rights or remedies of Owner under this Agreement or applicable law, Owner shall have the following rights:

(i) If Occupant is in default for more than 5 days, an OVERLOCK CHARGE of **$10.00** will be paid by Occupant to Owner, in addition to any other amounts due. Such charge is intended to compensate Owner for part of the cost incurred by Owner in order to protect Owner's lien rights under the Maryland Self-Storage Act, including but not limited to installing Owner's own lock on the Unit.

(ii) If Occupant is in default for more than 30 days, a DEFAULT CHARGE of **$50.00** will be paid by Occupant to Owner, in addition to any other amounts due. Such charge is intended to compensate Owner for part of the cost incurred by Owner in preparing to enforce, and/or in enforcing, Owner's lien rights under the Maryland Self-Storage Act, including but not limited to preparing and mailing notices to Occupant.

(iii) If Occupant is in default for more than 40 days, a LIEN SALE CHARGE of **$25.00** will be paid by Occupant to Owner, in addition to any other amounts due. Such charge is intended to compensate Owner for part of the cost incurred by Owner in preparing to enforce, and/or in enforcing, Owner's lien rights under the Maryland Self-Storage Act, including but not limited to preparing and mailing notices to Occupant and expenses incurred in advertising and conducting the sale.

By initialing here EX, Occupant acknowledges that he or she has read, understands and agrees to the terms of this Paragraph 6.

7. **INSURANCE.** Occupant understands that this self-storage facility:
   (a) Is an owner/operator renting space, is not a warehouseman, and does not take custody of Occupant's property.
   (b) Is not responsible for loss or damage to Occupant's property.
   (c) Does not provide insurance on Occupant's property for Occupant.
   (d) Requires that Occupant provide Occupant's own insurance coverage or be "self-insured" (personally assume risk of loss or damage).

OCCUPANT'S CHOICE OF INSURANCE OPTIONS. Occupant acknowledges that Occupant has read the above information and has been explained the Customer Storage Insurance Program available at this self storage facility under a master policy. Occupant elects to (please initial only one):

_____ **ACCEPT** (*Initial*) the Customer Storage Insurance Program available here (please complete appropriate premium section below)

EX **DECLINE** (*Initial*) the Customer Storage Insurance Program available here Occupant will obtain Occupant's own Insurance or be "self-insured."

APPLICANT TO BE ADDED AS AN ADDITIONAL NAME INSURED UNDER MASTER POLICY (please initial only one):

$2,500 coverage _____ (*initial*) $5,000 coverage _____ (*initial*) $7,500 coverage _____ (*initial*)

$_____ monthly premium $_____ monthly premium $_____ monthly premium

PREMIUM RATE - Changes in the premium rate shall be effective as of the due date of the premium for the month following the month in which notice of such change given to Occupant. Occupant has received Occupant's certificate and will pay the monthly premium as shown above.

8. **INCORPORATION OF TERMS ON REVERSE SIDE. By initialing here EX,** Occupant acknowledges that he or she has read, is familiar with, and agrees to all terms printed on the reverse side of this Agreement, and Owner and Occupant agree that all such terms are a material part of this Agreement and are hereby incorporated by reference.

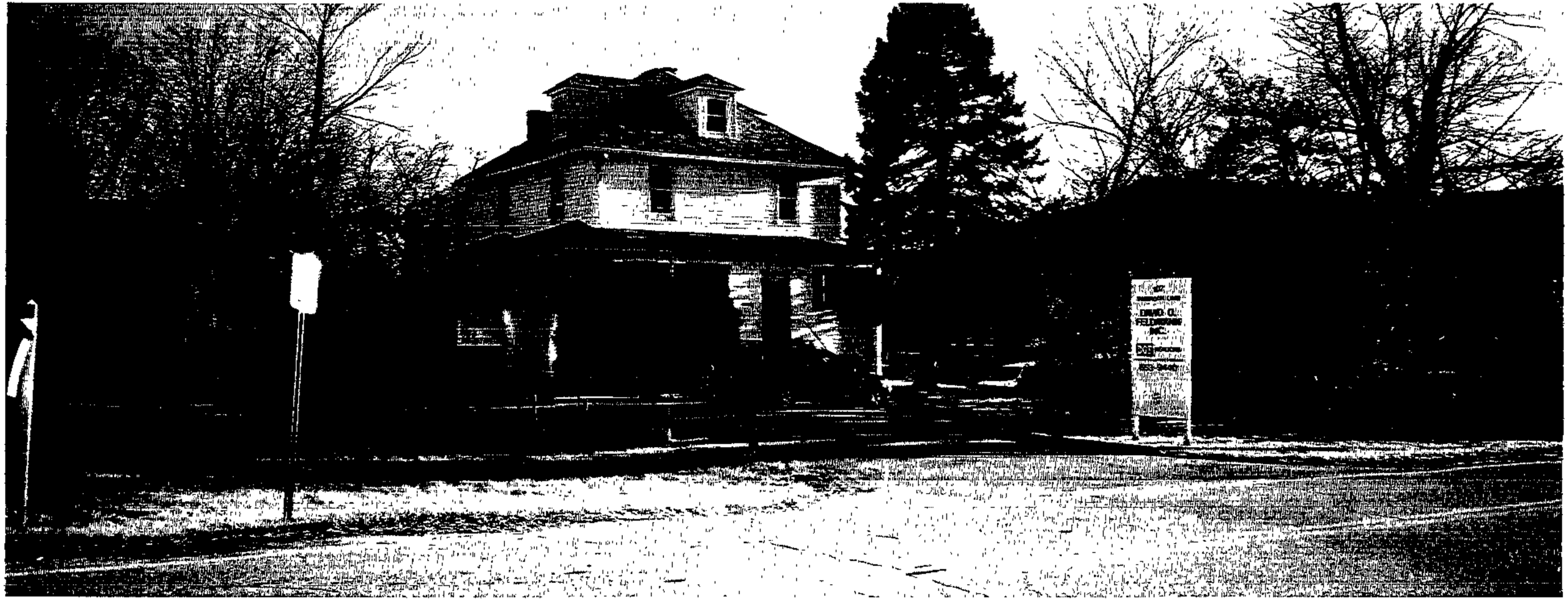
OCCUPANT'S SIGNATURE

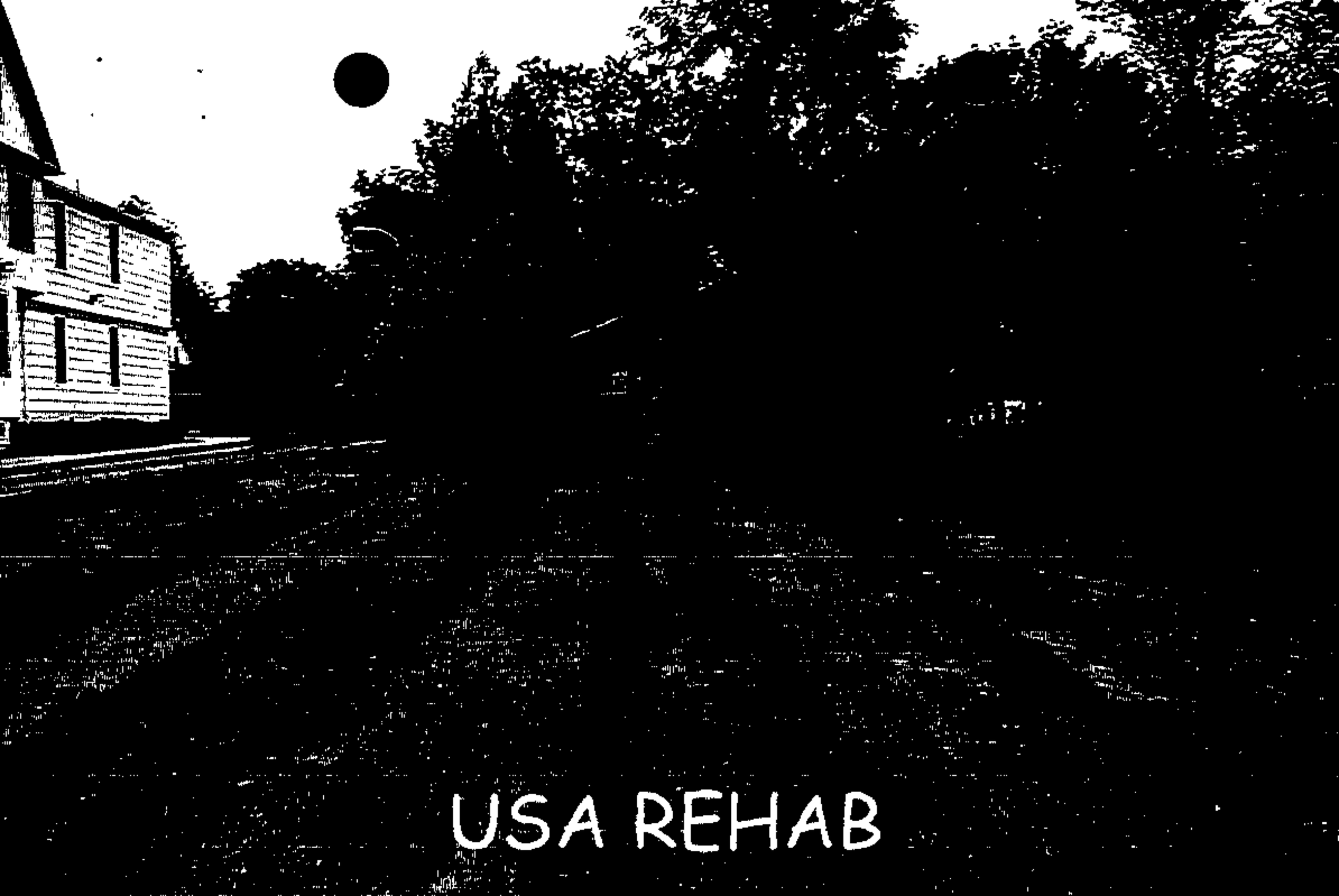
PLEASE REMOVE LOCK WHEN VACATING OR CHARGES WILL CONTINUE

LIBERTY CROSSING LAND LLLP
8514 Liberty Road
Randallstown, Maryland 21133

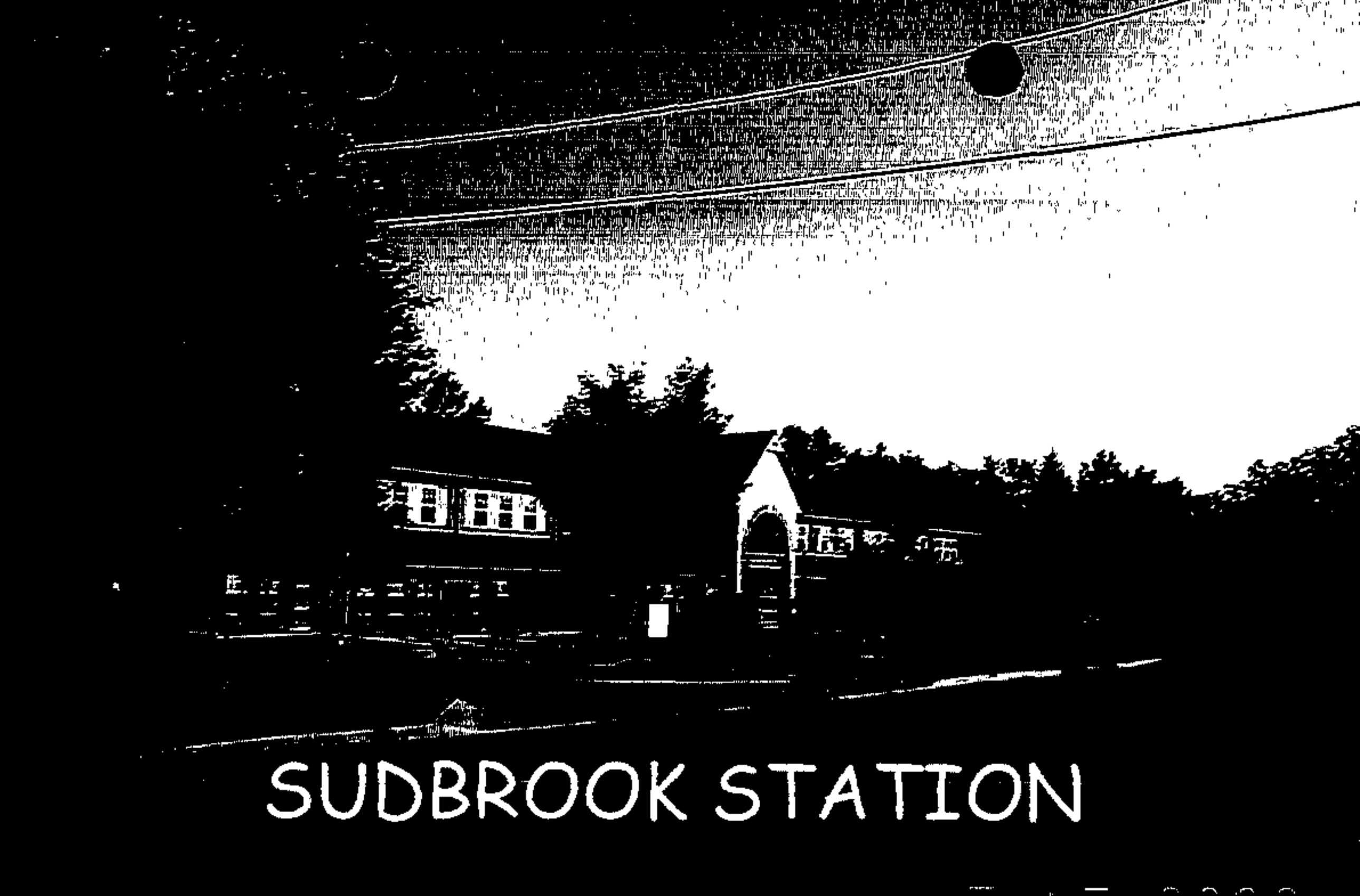
By _____
(Agent)

photograph
#02-328-SPHXA




USA REHAB

FELDMAN

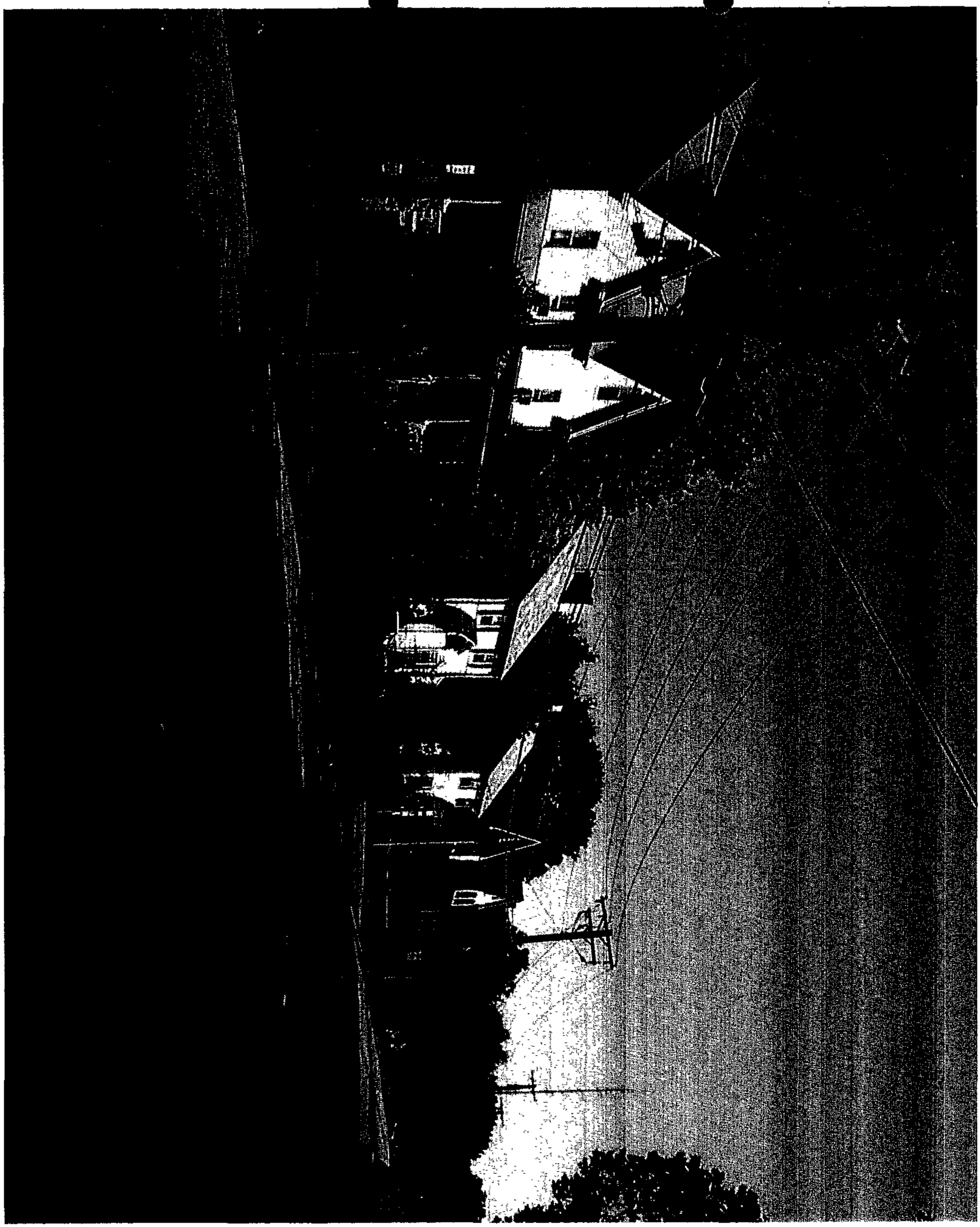


SUDBROOK STATION

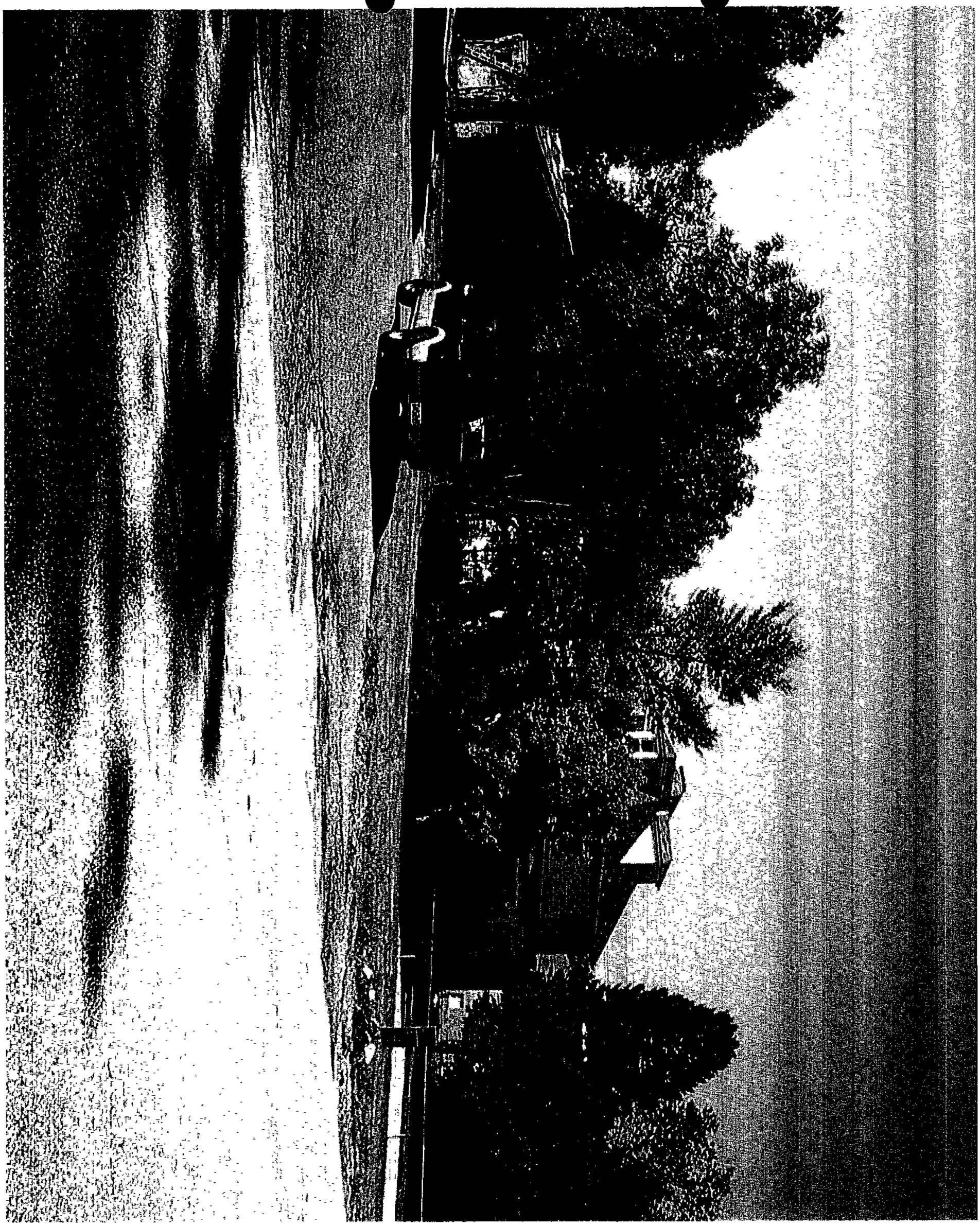
NURSING HOME

HOUSE FOR-SALE

DR. LEVER

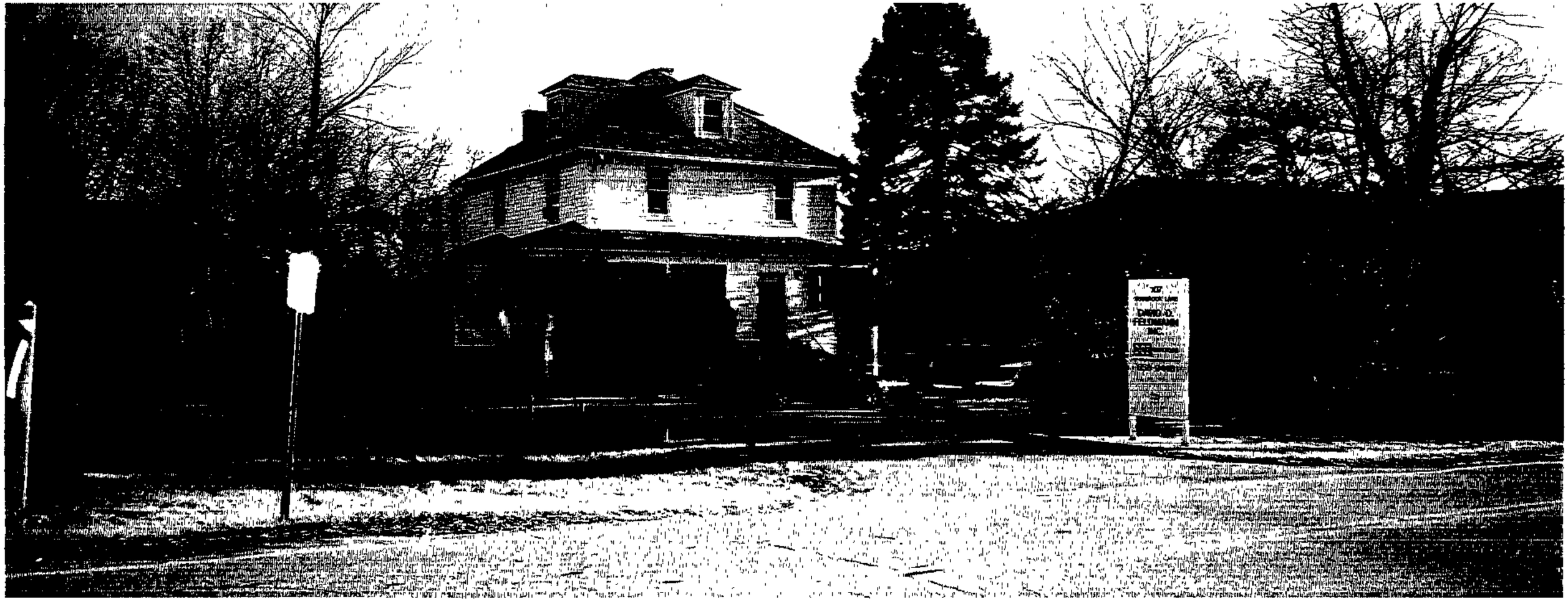


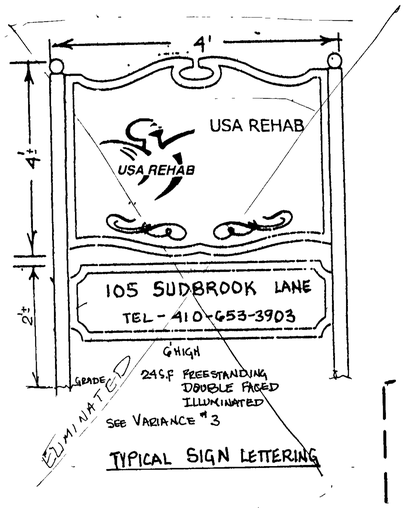
105 Sudbrook Lane looking East - towards Reisterstown Road

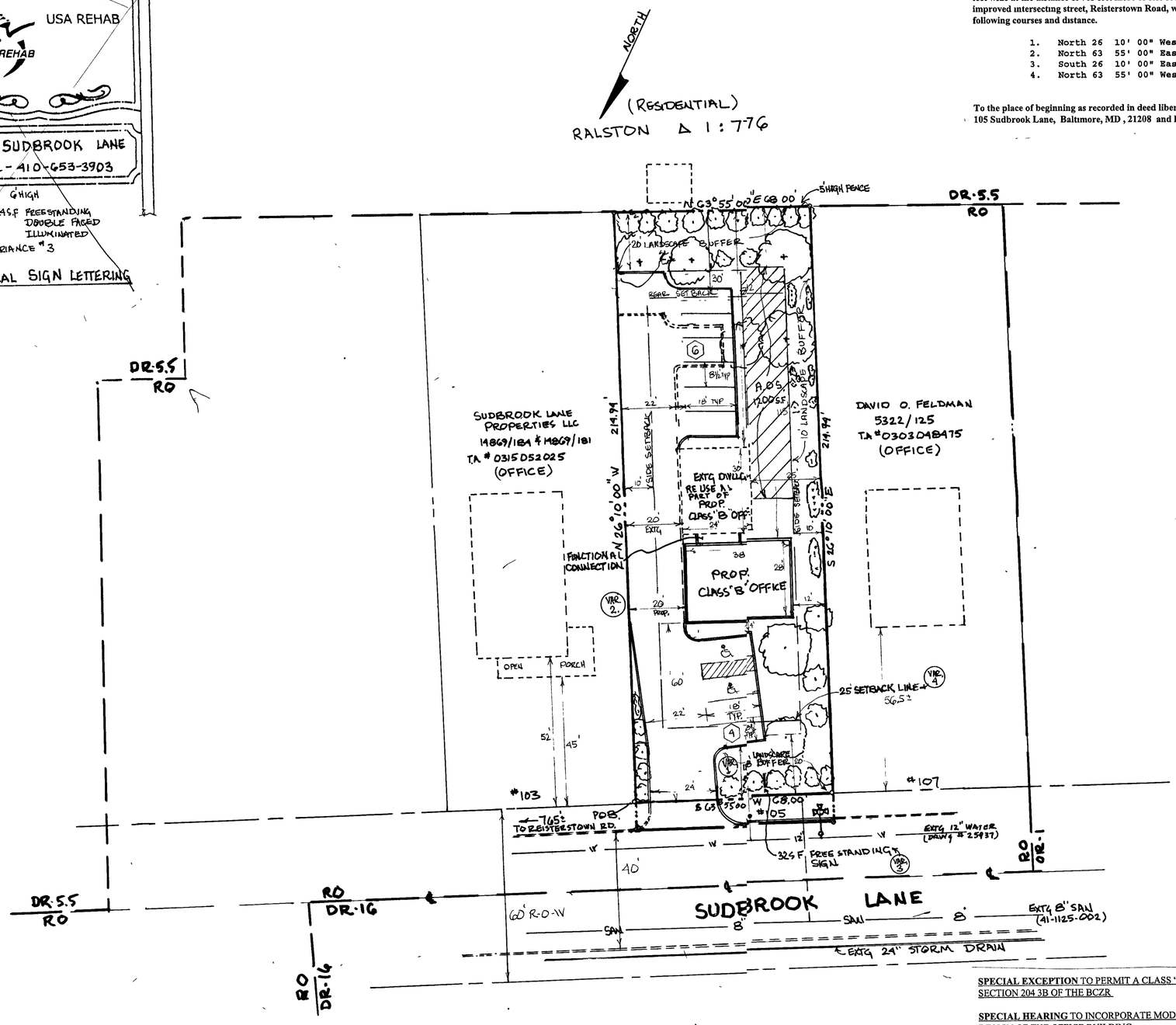


105 Sudbrook Lane and property to its immediate right

6A





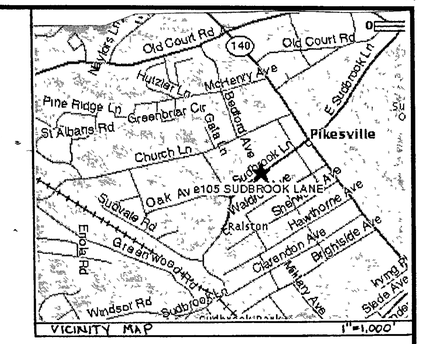


ZONING DESCRIPTION

Beginning at a point on the southeast side of Sudbrook Lane (21208) which is sixty (60) feet wide at the distance of 765 feet more or less southwest of the centerline of the nearest improved intersecting street, Reisterstown Road, which is 50 feet wide. Thence the following courses and distance.

1. North 26 10' 00" West - 214.94'
2. North 63 55' 00" East - 68.00'
3. South 26 10' 00" East - 214.94'
4. North 63 55' 00" West - 68.00'

To the place of beginning as recorded in deed liber 8362, folio 257. Also known as 105 Sudbrook Lane, Baltimore, MD , 21208 and located in the 3rd Election District.



GENERAL NOTES

1	OWNERSHIP	FABIAN H KOLKER FOUNDATION, INC 3520 Barton Oaks Road Baltimore, MD 21208
2	CONTRACT PURCHASER	ERIC ANDERSON 7 Church Lane - Suite 13 Baltimore, MD 21208
3	PROPERTY ADDRESS	105 SUDBROOK LANE Baltimore, MD 21208
4	CENSUS TRACT	4034 02
5	COUNCIL DISTRICT 2nd	ELECTION DISTRICT 3 rd
6	WATERSHED 27	SUBSEWERSHED 65
7	DEED Liber 8362 Folio 257,	TAX ACCOUNT 0316055720
8	EXISTING ZONING	RO - Map N W 7-F
9	EXISTING USE	Residential / Vacant
10	PROPOSED USE	ADAPTIVE RE-USE to CLASS "B" OFFICES
11	SITE ANALYSIS	GROSS AREA 15,704 00 SQ FT +/- = 0 361 AC +/- NET AREA 14,004 00 SQ FT +/- = 0 321 AC +/- FRONT SETBACK 60' (Min Of 25' or average of adjacent parcels - 52' +/-, whichever is less) VARIANCE REQUEST SIDE YARD 12' (Minimum sideyard - 10') REAR YARD 82' (Minimum rearyard - 30') MAXIMUM HEIGHT 35' (Will not be exceeded.)
12	COMMERCIAL PERMIT	NONE OF RECORD
13	ZONING HISTORY	NONE OF RECORD
14	SITE IS SERVED BY PUBLIC WATER AND SANITARY SEWER.	
15	THE SITE IS NOT IN THE CHESAPEAKE BAY CRITICAL AREA	
16	NO STREAMS, 100 YEAR FLOOD PLAINS, STORM WATER MANAGEMENT SYSTEMS, OR STORM DRAINAGE SYSTEMS EXIST ON OR WITHIN 50 I EET OF THE PROPERTY	
17	A O S IS APPLICABLE	7% minimum (Reqd. - 1,099 s f , Provided - 1,200 s f , as shown)
18	PARKING REQUIRED	AS REQUIRED BY BCZR SECTION 409 FOR USES PROPOSED
	PARKING PROPOSED	AS REQUIRED FOR GENERALOFFICES (3 3 SPACES/ 1000 SQ FT) 2,848 SQ FT OF GENERALOFFICE = TEN (10) spaces TEN (10) SPACES PROVIDED
19	F A R. - MAX OF 0 33 (5,182 s f = 0 119 acres)	F A R. PROPOSED 0 18 (2,848 s f)
20	HOURS OF OPERATION 7 AM - 10 PM , MAXIMUM # OF EMPLOYEES 15, MAXIMUM LEVEL OF EMANATIONS NORMAL OFFICE LEVELS	
21	SCREENING AND LANDSCAPING SHALL BE PLANTED IN COMPLIANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL AS NEEDED TO SUPPLEMENT THE CURRENT LANDSCAPING OF THE SITE	
22	THERE ARE NO MAJOR CHANGES IN GRADE PROPOSED	
23	EXISTING AND PROPOSED BUILDINGS SHALL MEET APPLICABLE BUILDING CODES AND FIRE CODES	
24	THE USE AND DEVELOPMENT OF THE PROPERTY SHALL BE IN COMPLIANCE WITH SECTION 204 5 OF THE B C Z R.	
25.	All SIGNAGE WILL comply WITH APPLICABLE REQUIREMENTS OF THE BCZR SECTION 450.	

VARIANCES FOR THE FOLLOWING

1. TO PROVIDE A MINIMUM TEN FOOT (10') LANDSCAPE BUFFER FOR THE FRONT PROPERTY LINE WHICH ABUTS ANY PROPERTY WHICH IS PREDOMINANTLY RESIDENTIALLY ZONED IN LIEU OF THE REQUIRED TWENTY FOOT (20') LANDSCAPE BUFFER AS PER B C Z R. SECTION 204 4 C 9 c 1
2. TO NOT PROVIDE A LANDSCAPE BUFFER ALONG THE EASTERLY SIDE OF THE PROPERTY IN LIEU OF THE REQUIRED TEN FOOT (10') LANDSCAPE BUFFER AS REQUIRED BY B C Z R SECTION 204 4 C 9 c 2.
3. ~~TO PERMIT AN ILLUMINATED FREE-STANDING DOUBLE FACED SIGN OF TWENTY FOUR SQUARE FEET (24 S F) EACH SIDE IN ACCORDANCE WITH ARTICLE 450 4 OF THE B C Z R.~~ ELIMINATED
4. TO PERMIT A FRONT YARD SETBACK OF SIXTY (60') FEET IN LIEU OF THE "MINIMUM" FRONT YARD SETBACK OF "25FEET OR THE AVERAGE OF THE SETBACKS OF THE ADJACENT STRUCTURES, WHICHEVER IS LESS" AS PER SECTION 204 4 C 3 OF THE B C Z R.

PETITIONERS EXH. 3

SPECIAL EXCEPTION TO PERMIT A CLASS "B" OFFICE BUILDING AS PER SECTION 204 3B OF THE BCZR

SPECIAL HEARING TO INCORPORATE MODELS FOR CONSTRUCTION INTO THE DESIGN OF THE OFFICE BUILDING

PATTON
Professional Consultants Land Engineers & Site Planners
305 West Chesapeake Avenue, Suite 118 Towson Maryland 21204 410-296-2140 Fax 410-296-0419

SEAL: STATE OF MARYLAND — JAMES STEPHEN PATTON — No. 9802 — REGISTERED PROFESSIONAL ENGINEER

PROJECT/DEVELOPMENT: 105 SUDBROOK LANE (21208)

DRAWING TITLE: PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION, VARIANCES, AND SPECIAL HEARING

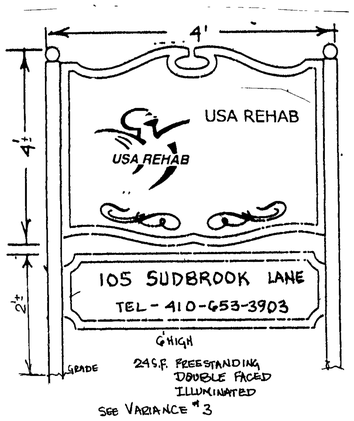
DATE: 1/22/02

SHEET: 1 OF 1

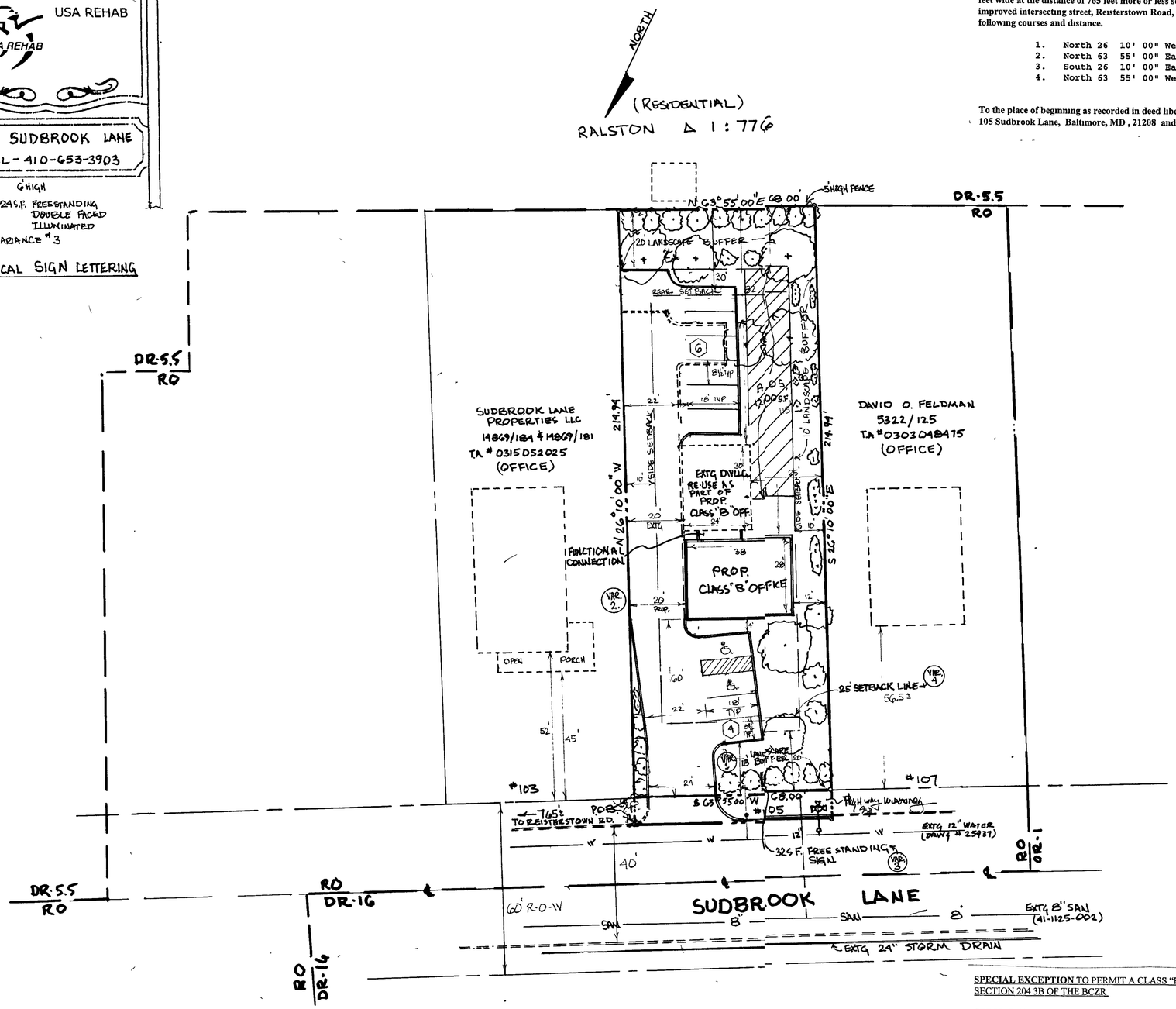
COUNTY: BALTIMORE | ELECTION DIST: 3RD 2ND | PROJECT #: 20125 | SCALE: 1" = 20'

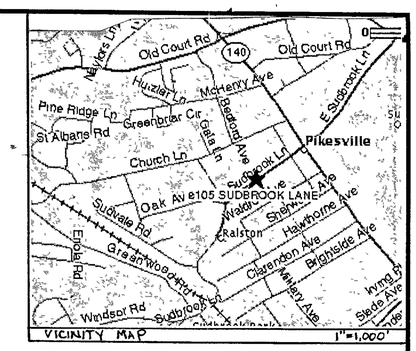
DRAWN BY	DATE	REVISIONS	BY
DESIGN BY			
CHECKED BY			

DST3 . .



TYPICAL SIGN LETTERING





ZONING DESCRIPTION

Beginning at a point on the southeast side of Sudbrook Lane (21208) which is sixty (60) feet wide at the distance of 765 feet more or less southwest of the centerline of the nearest improved intersecting street, Reisterstown Road, which is 50 feet wide. Thence the following courses and distance.

1. North 26 10' 00" West - 214.94'
2. North 63 55' 00" East - 68.00'
3. South 26 10' 00" East - 214.94'
4. North 63 55' 00" West - 68.00'

To the place of beginning as recorded in deed liber 8362, folio 257. Also known as 105 Sudbrook Lane, Baltimore, MD , 21208 and located in the 3rd Election District.

GENERAL NOTES

1	OWNERSHIP	FABIAN H KOLKER FOUNDATION, INC 3520 Barton Oaks Road Baltimore, MD 21208
2	CONTRACT PURCHASER	ERIC ANDERSON 7 Church Lane - Suite 13 Baltimore, MD 21208
3	PROPERTY ADDRESS	105 SUDBROOK LANE Baltimore, MD 21208
4	CENSUS TRACT	4034 02
5	COUNCIL DISTRICT 2nd	ELECTION DISTRICT 3 rd
6	WATERSHED 27	SUBSEWERSHED 65
7	DEED Liber 8362 Folio 257,	TAX ACCOUNT 0316055720
8	EXISTING ZONING	RO - Map N W 7-F
9	EXISTING USE	Residential / Vacant
10	PROPOSED USE	ADAPTIVE RE-USE to CLASS "B" OFFICES
11	SITE ANALYSIS	GROSS AREA 15,704 00 SQ FT +/- = 0 361 AC +/- NET AREA 14,004 00 SQ FT +/- = 0 321 AC +/- FRONT SETBACK 60' (Min Of 25' or average of adjacent parcels - 52' +/-, whichever is less) VARIANCE REQUEST SIDE YARD 12' (Minimum sideyard - 10') REAR YARD 82' (Minimum rearyard - 30') MAXIMUM HEIGHT 35' (Will not be exceeded)
12	COMMERCIAL PERMIT	NONE OF RECORD
13	ZONING HISTORY	NONE OF RECORD
14	SITE IS SERVED BY PUBLIC WATER AND SANITARY SEWER.	
15	THE SITE IS NOT IN THE CHESAPEAKE BAY CRITICAL AREA	
16	NO STREAMS, 100 YEAR FLOOD PLAINS, STORM WATER MANAGEMENT SYSTEMS, OR STORM DRAINAGE SYSTEMS EXIST ON OF WITHIN 50 FEET OF THE PROPERTY	
17	A O S IS APPLICABLE	7% minimum (Reqd. - 1,099 s f , Provided - 1,200 s.f., as shown)
18	PARKING REQUIRED	AS REQUIRED BY BCZR SECTION 409 FOR USES PROPOSED
	PARKING PROPOSED	AS REQUIRED FOR GENERALOFFICES (3 3 SPACES/ 1000 SQ FT) 2,848 SQ FT OF GENERALOFFICE = TEN (10) spaces TEN (10) SPACES PROVIDED
19	F A R. - MAX. OF 0 33 (5,182 s f = 0 119 acres)	F A R. PROPOSED 0 18 (2,848 s f)
20	HOURS OF OPERATION 7 AM - 10 PM , MAXIMUM # OF EMPLOYEES 15, MAXIMUM LEVEL OF EMANATIONS NORMAL OFFICE LEVELS	
21	SCREENING AND LANDSCAPING SHALL BE PLANTED IN COMPLIANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL AS NEEDED TO SUPPLEMENT THE CURRENT LANDSCAPING OF THE SITE	
22	THERE ARE NO MAJOR CHANGES IN GRADE PROPOSED	
23	EXISTING AND PROPOSED BUILDINGS SHALL MEET APPLICABLE BUILDING CODES AND FIRE CODES	
24	THE USE AND DEVELOPMENT OF THE PROPERTY SHALL BE IN COMPLIANCE WITH SECTION 204 5 OF THE B C Z R.	

VARIANCES FOR THE FOLLOWING

1. Section 204 4 C 9 c (1) to provide a ten-foot (10') landscape buffer for the front property line in lieu of the required twenty-foot (20') landscape buffer
2. Section 204 4 C 9 c (2) to provide a zero foot (0') landscape buffer along the eastern side of the property in lieu of the required ten-foot (10') landscape buffer
3. Section 450 4 to permit an illuminated freestanding double-faced sign of twenty-four square feet (24 sq ft) each side in lieu of the required eight square foot (8 sq ft) non-illuminated wall mounted sign
4. Section 204 4 C 3 to permit a front yard setback of sixty feet (60') in lieu of the minimum front yard setback of 25 feet or the average of the setbacks of the adjacent structures, whichever is less

SPECIAL EXCEPTION TO PERMIT A CLASS "B" OFFICE BUILDING AS PER SECTION 204 3B OF THE BCZR

SPECIAL HEARING TO INCORPORATE MODELS FOR CONSTRUCTION INTO THE DESIGN OF THE OFFICE BUILDING

PATTON
Patton Consultants Land Engineering & Site Planning
305 West Chesapeake Avenue Suite 118, Towson Maryland 21204 410-296-2140 Fax 410-296-0419

SEAL: STATE OF MARYLAND — JAMES STEPHEN PATTON — REG. NO. 20025

PROJECT/DEVELOPMENT: 105 SUDBROOK LANE (21208)

DRAWING TITLE: PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION, VARIANCES, AND SPECIAL HEARING

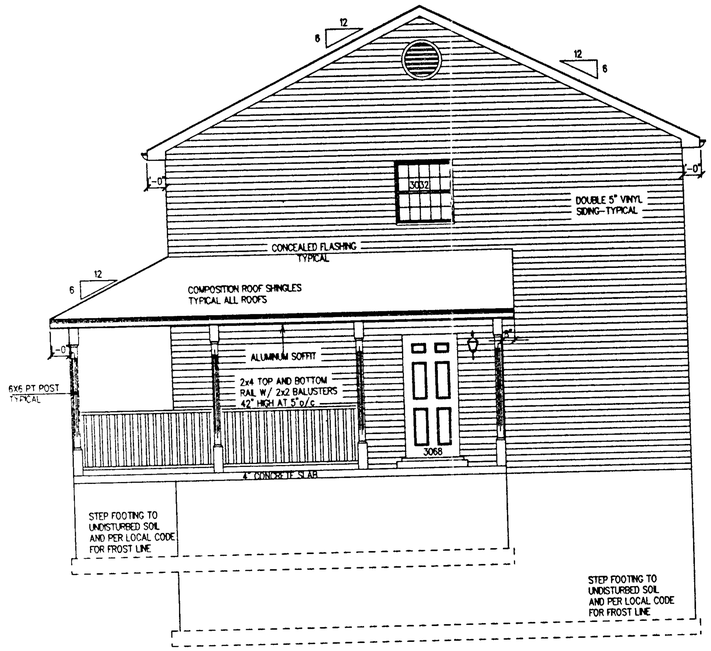
DATE: 1/22/02

SHEET: 1 OF 1

COUNTY BALTIMORE | ELECTION DIST 3RD 2ND | PROJECT # 20125 | SCALE 1"=20'

DRAWN BY	DATE	REVISIONS	BY
DESIGN BY			
CHECKED BY			

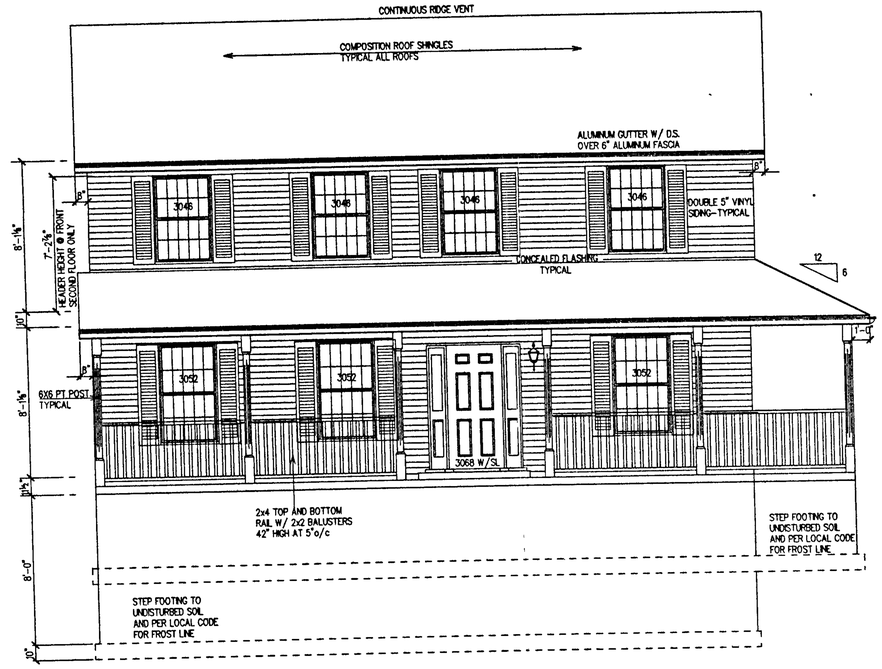
DET 1
#328



STANDARD BASEMENT CONDITION

RIGHT ELEVATION

SCALE 1/4" = 1'-0"



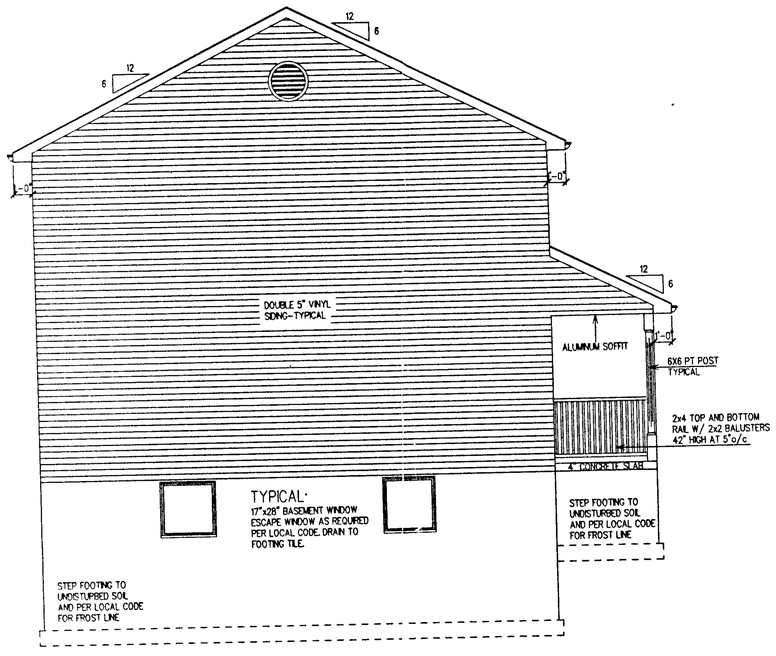
STANDARD BASEMENT CONDITION

FRONT ELEVATION

SCALE 1/4" = 1'-0"

NOTE
VERIFY ALL WINDOW AND DOOR ROUGH OPENINGS WITH MFG'S SPECIFICATIONS. WINDOW SIZES SHOWN ARE "ANDERSON WINDOWS" STANDARD DOUBLE-HUNG UNITS

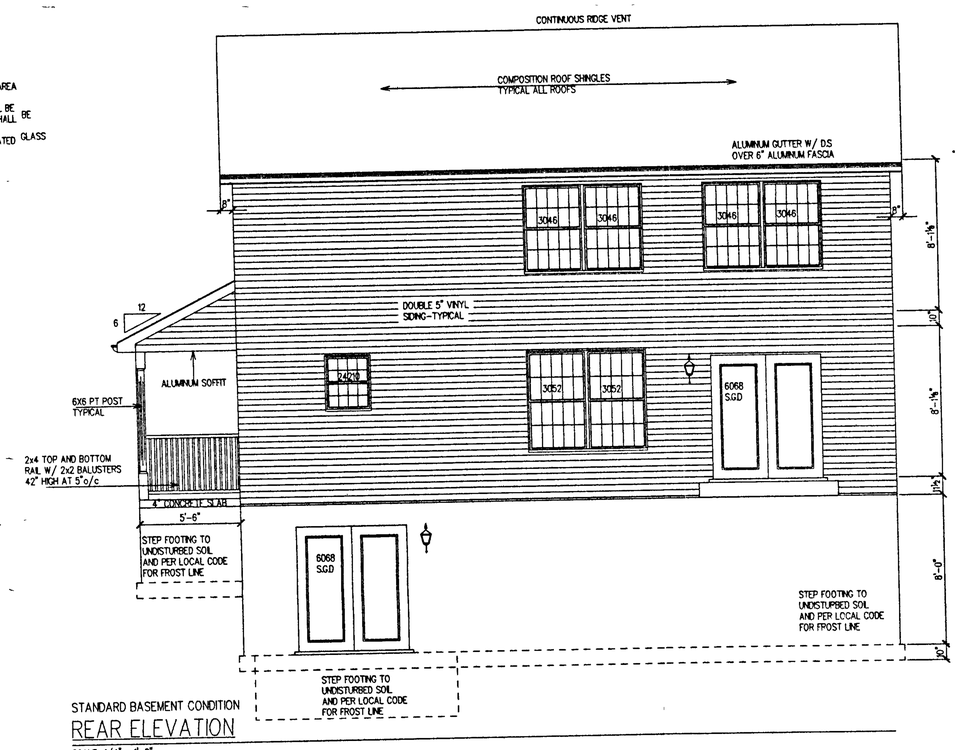
NOTE ALL EGRESS OR RESCUE WINDOWS FROM SLEEPING AREA MUST HAVE A MINIMUM NET CLEAR OPENING OF 5.7 SQ FT THE MINIMUM NET CLEAR OPENING HEIGHT DIMENSION SHALL BE 24" THE MINIMUM NET CLEAR OPENING WIDTH DIMENSION SHALL BE 20" MAXIMUM SILL HEIGHT ABOVE FLOOR SHALL BE 48" ALL WINDOWS AND DOORS TO HAVE DOUBLE PANE INSULATED GLASS



STANDARD BASEMENT CONDITION

LEFT ELEVATION

SCALE 1/4" = 1'-0"



STANDARD BASEMENT CONDITION

REAR ELEVATION

SCALE 1/4" = 1'-0"

STATE OF MARYLAND FRANK J. AVELLA JR. No. 14430 REGISTERED PROFESSIONAL ENGINEER

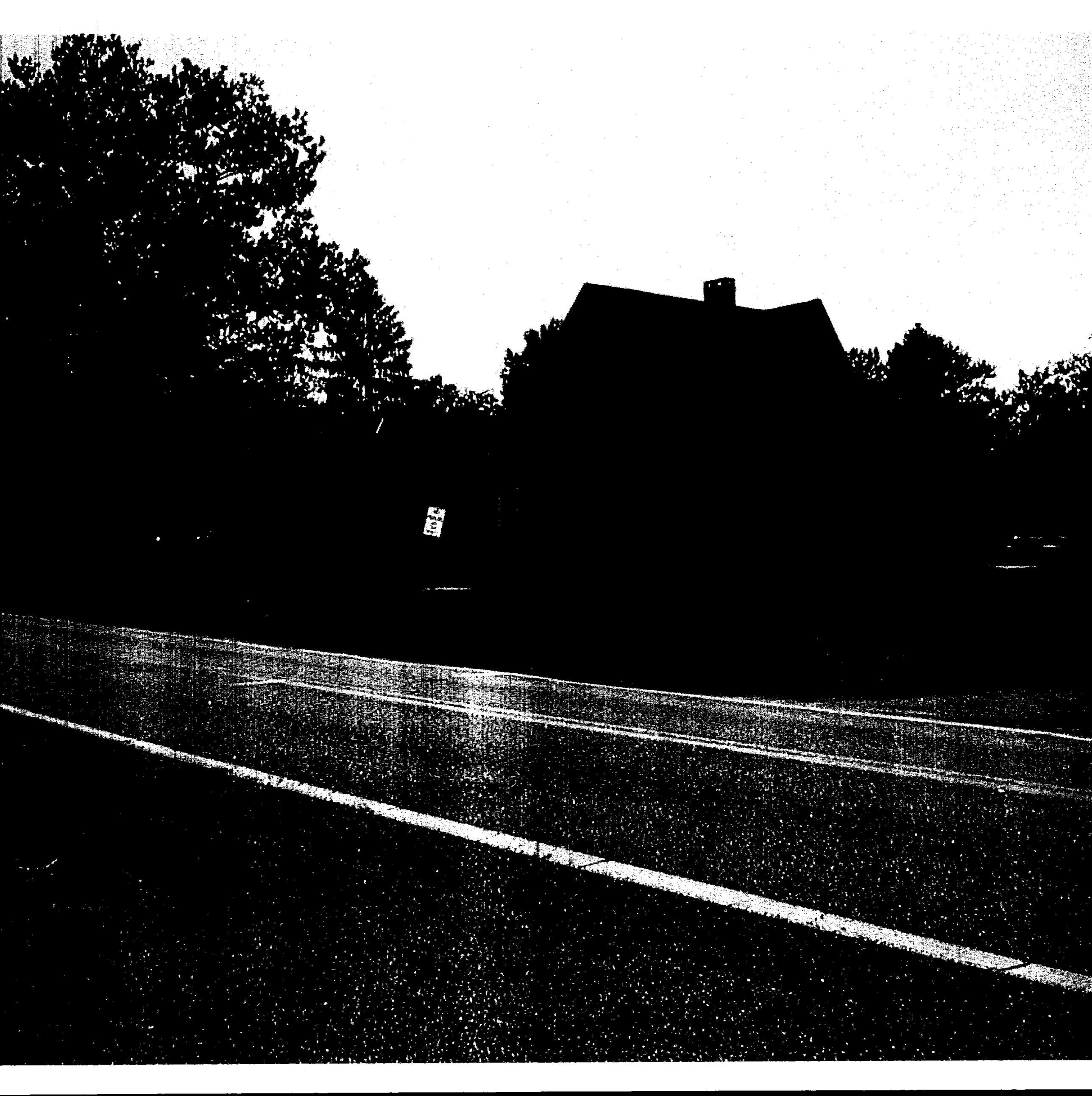
OCT 3 2001

NOTE BECAUSE OF THE IMPOSSIBILITY OF PROVIDING ANY PERSONAL OR ON SITE CONSULTATION, SUPERVISION AND CONTROL OVER ACTUAL CONSTRUCTION, AND BECAUSE OF THE GREAT VARIANCE IN LOCAL BUILDING REQUIREMENTS, BUILDING PRACTICES AND SOIL, SEISMIC, WEATHER AND OTHER CONDITIONS, WE ASSUMES NO RESPONSIBILTY FOR ANY DAMAGE INCLUDING STRUCTURAL FAILURE, DUE TO ANY DEFICIENCES, OMISSIONS OR ERRORS IN THESE DRAWINGS. WE MAKES NO WARRANTY EXPRESS OR IMPLIES WITH RESPECT TO THE CONTENT OR USE OF THESE DRAWINGS, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PARTICULAR PURPOSE WE STRONGLY ADVISE THAT YOU CONSULT A LOCAL ARCHITECT OR ENGINEER, AND CHECK WITH YOUR LOCAL BUILDING OFFICIAL PRIOR TO APPLYING FOR ANY BUILDING PERMIT AND BEFORE BEGINNING ACTUAL CONSTRUCTION

84 LUMBER COMPANY
ROUTE 519
EIGHTY FOUR, PA 15384

NOTE CONTRACTOR AND BUILDING OFFICIAL SHALL VERIFY THAT THESE DRAWINGS COMPLY WITH ALL STATE AND LOCAL CODES PRIOR TO START OF ACTUAL CONSTRUCTION

DESIGN # 8503B

3 OF 3

DET 2