4/20/02

IN RE: PETITION FOR VARIANCE
W/S Aylesbury Road, 20' N of the c/l
Connector Road
(11 & 15 West Aylesbury Road)
8th Election District
4th Council District

DIA Aylesbury L.P., by
DIA Aylesbury, Inc., Owners; and,
Padonia, LLC, Lessees

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 02-434-A

* * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, DIA Aylesbury, L.P., through DIA-Aylesbury, Inc., Partner, and the Contract Lessee, Padonia, LLC, through their attorney, C. William Clark, Esquire. The Petitioners seek relief from Sections 255.1 and 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 5 feet for an open air deck/porch in lieu of the required 22.5', pursuant to Section 301.1.b of the B.C.Z.R.; and, from Section 409.6.A.2 of the B.C.Z.R. to permit 404 parking spaces in lieu of the required 419 spaces. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Due to the unavailability of a witness, the matter was heard over two hearing dates; May 30, 2002 and June 18, 2002. Appearing at one or both hearings in support of the request were Daniel J. McCarthy, of Padonia LLC, Contract Lessees; David Taylor and William P. Monk, of Morris & Ritchie Associates, Inc., the consultants who prepared the site plan for this property; and C. William Clark, Esquire, attorney for the Petitioners. In addition, Larry Townsend appeared on behalf of the Greater Timonium Community Council in support of the request. John W. Nowicki, Esquire, appeared on behalf of other business owners in the general locale who are opposed to the request.

ORDER REGEIVED FOR FILING Date WING The property under consideration is an irregularly shaped parcel located between Aylesbury Road and the MTA Light Rail, adjacent to a connector road, which connects Aylesbury Road and Greenspring Drive in Timonium. The property contains a gross area of 11.46 acres, more or less, zoned M.L.-I.M. and is improved with a one-story masonry building which features a combination of office, warehouse and manufacturing enterprises, including a Gold's Gym, and a 1½ story building containing the restaurant known as the "Bluestone". The property also features a large parking field containing 404 parking spaces, which is situated between the restaurant building and the office/warehouse. The nature of the instant request relates to a proposed open air/deck addition to the existing restaurant.

Mr. McCarthy, the Proprietor of the Bluestone, testified about the operation of the business and noted that the restaurant opened at this location in September 2001. In order to meet customer demand and remain competitive with other restaurants in the area, Mr. McCarthy proposes the construction of a 45' x 25' open air/deck/porch on the south side of the building facing the connector road to provide an outdoor seating area. Mr. McCarthy indicated that outdoor seating is also necessary to provide a dining area for smokers, since smoking is prohibited within the restaurant, except in the bar area. Mr. McCarthy testified that there will not be a bar on the outdoor deck, or live entertainment outside, although there may be speakers with background music piped to the outside. Due to the location of existing improvements on the site, the requested relief is necessary in order to proceed with the proposed improvements.

Testimony was also received from Messrs. Taylor and Monk. They described the subject property and environs as set forth above. Mr. Monk in particular testified that the property is unique for several reasons. First, the rear or west end of the site is in a flood plain and limits the developable area of the property. Moreover, Mr. Monk noted the fact that the office/warehouse building was constructed prior to the Bluestone restaurant, which limited the development area for the restaurant building. Due to the location of existing improvements on the site, as well as the floodplain to the rear, a deck cannot be added to the building on any side other than as proposed.

ORDER RECHIVED FOR FILING Date Web 1000 FOR FILING By 2000 FOR FILING In addition to testifying as to the uniqueness of the site and improvements thereon, Mr. Monk also opined that the Petitioner would suffer a practical difficulty if relief were denied. In this regard, the relevant provisions of the B.C.Z.R. were noted. As noted above, the property is zoned M.L.-I.M. and pursuant to Section 255.1 of the B.C.Z.R., the area regulations governing the B.R. zone control. Those regulations are set out in Section 238 of the B.C.Z.R. Additionally, open projections such as decks, may only extend into the yard area of a property by not more than 25% of the minimum required side yard width.

Mr. Monk noted that most restaurants located in the B.L. zone are not subject to these requirements. It is also to be noted that a deck would be permitted here with a width of 7.5 feet (i.e., 25% of the side yard area required). That deck could run the entire length of the building on that side, or 98 feet. However, it was argued that strict adherence to the regulation would be unduly burdensome and such a deck would be impractical. A width of 7.5 feet would not provide sufficient area for tables and pedestrian traffic and might also not comply with the relevant provisions of the American's with Disabilities Act. Lastly, given the exclusive commercial manufacturing character of the locale, the Petitioner argued that there would be no adverse impact on adjacent or surrounding properties.

Mr. Nowicki's clients were not present at the hearing and it could be surmised that their reasons of opposition are largely of a competitive nature. Nonetheless, they requested a denial of the variance and argued that the Petitioners do not comply with the requirements of Cromwell v. Ward, 102 Md. App. 691 (1995). Indeed, it is true that the Petitioner might have considered adding the deck when the building was constructed so as to avoid the necessity of the instant Petition. Taking Cromwell to the extreme, one could argue that a small restaurant and deck could be constructed on this site without the need for any variance. However, such a conclusion ignores the realities and practicalities of the situation.

Based upon the testimony and evidence presented, I am persuaded to grant the Petition for Variance. I do find that sufficient testimony and evidence was offered to meet the three-pronged standards set forth in <u>Cromwell v. Ward</u>, and the requirements of Section 307 of the

B.C.Z.R. That is, I find that the property is unique, that a practical difficulty would result if strict adherence were required, and that relief can be granted without detrimental impact to adjacent properties.

The testimony concerning the parking variance also justifies the grant of same. The compelling factor in this regard is that the uses on the property are varied and will not utilize the existing parking lot at the same time. That is, the off-peak hours for the restaurant use coincide with the heaviest demands on the warehouse/office building and vice versa. Mr. Townsend's testimony was also persuasive that the lot is not overcrowded and traffic does not spill onto adjacent public roads or communities. For all of these reasons, I find that the Petitioners have met the requirements of Section 307 of the B.C.Z.R.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this day of June, 2002 that the Petition for Variance seeking relief from Sections 255.1 and 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 5 feet for an open air deck/porch in lieu of the required 22.5', pursuant to Section 301.1.b of the B.C.Z.R.; and, from Section 409.6.A.2 of the B.C.Z.R. to permit 404 parking spaces in lieu of the required 419 spaces, 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.

LAWRENCE E. SCHMIDT

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Zoning Commissioner for Baltimore County

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1/22/03

IN THE MATTER OF

THE APPLICATION OF

DIA-AYLESBURY LTD PARTNERSHIP - *

LEGAL OWNER; PADONIA LLC - C.P.

FOR A VARIANCE ON PROPERTY *

LOCATED ON THE NW/CORNER OF

AYLESBURY ROAD & CONNECTOR ROAD*

(15 W AYLESBURY ROAD)

8TH ELECTION DISTRICT *

4TH COUNCILMANIC DISTRICT

BEFORE THE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

Case No. 02-434-A

OPINION /RULING ON MOTION TO DENY OR DISMISS APPEAL

A Motion to Deny or Dismiss Appeal; Opposition to Same; and subsequent Response to Opposition were filed by respective counsel relative to this case assigned for public hearing on February 12, 2003.

A public hearing was held on Thursday, January 9, 2003 at 9:00 a.m. to hear oral argument on the Motion to Deny or Dismiss Appeal. The Protestants /Appellants were represented by John W. Nowicki, Esquire; the Petitioner /Appellee was represented by C. William Clark, Esquire.

The facts of the case are relatively straightforward. On July 15, 2002, Counsel for the Appellant, Emanuel DiPaola and J.R. Brothers, Inc., filed an appeal from a decision of the Zoning Commissioner issued under date of June 20, 2002 in which the Zoning Commissioner granted a variance to Padonia Bluestone, LLC to build an open air deck on the exterior of the restaurant known as "The Bluestone." The Appellants /Protestants are the owners of a restaurant, "The Turf Inn," which also has an open-air deck.

The essential question preliminarily before the Board at this time is whether or not the Appellants have standing to entertain the appeal before this Board.

Factually, The Turf Inn is located at 2306 York Road, Timonium, MD 21093. The Turf Inn holds an Alcoholic Beverage License listing Emanuel Anthony DiPaola as licensee for

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"Experienced Dining, Inc., T/A The Turf Inn, 2306 York Road, Timonium, MD 21093" via

application dated January 18, 2002. That application reflects the owner of the premises as J.R. Brothers, Inc., 10 Hemlock Court, Hunt Valley, MD 21030, with a part of the building to be used for "restaurant, bar, lounge, and deck."

The affidavit of Daniel J. McCarthy, Managing Partner of Padonia, LLC, T/A Bluestone, reflects that The Turf Inn has a deck, attached to the building and located outside of the interior of the building that functions as a restaurant, bar and lounge. The affidavit recites that The Turf Inn is in excess of 1 mile from the Bluestone. Mr. McCarthy states that one cannot see The Turf Inn or Bluestone when standing on either property. Mr. DiPaola, the licensee for The Turf Inn, resides at 308 Ringold Valley, 21030. That location is north of The Turf Inn. Exhibit "C" provided by the Appellee reflects the various locations identified above. The Board takes judicial notice of the variety of enterprises along this strip of York Road that includes numerous business centers, retail outlets, the Maryland State Fairgrounds, medical facilities, and food shopping centers. It is a very diverse area that includes residential communities.

It is the contention of the Appellee that the Appellants have filed an appeal from the decision of the Zoning Commissioner solely to prevent competition between the two restaurants.

The Appellant argues that they "suffer some special damage in character and kind from that suffered by the general public as a result of the decision of the zoning commissioner."

The Board having received Briefs and heard oral argument concludes that the Appellants /Protestants do not have standing to bring the decision of the Zoning Commissioner on appeal to this Board. The general statutory authority relative to jurisdiction of the County Board of Appeals resides in Article 25A, § (U) of the Annotated Code of Maryland. It provides for

"petition by any interested party...as shall be specified from time to time by such local laws enacted under this section."

Article 66B, § 4.07(e) of the same Code establishes the guidelines as to who may properly bring an appeal before the Board of Appeals. It recites:

An appeal to the board of appeals may be filed by (i) any person aggrieved by any decision of the administrative officer; or (ii) any officer, department, board, or bureau of the jurisdiction affected by any decision of the administrative officer.

The Baltimore County Code from which this Board essentially is provided its more specific authority provides the right to appeal from a decision of the Zoning Commissioner to "any person or persons...aggrieved or feeling aggrieved" by the decision of the Zoning Commissioner. Baltimore County Code § 26-132(a)

The only question to be answered at this time is whether or not the Appellants qualify as "aggrieved or feeling aggrieved." Unfortunately, § 26-132 does not specifically define the term "aggrieved or feeling aggrieved" - except as to guidelines relative to civic /community associations who satisfy the criteria provided therein. Webster's Ninth New Collegiate Dictionary defines aggrieved as:

(1) troubled or distressed in spirit; (2)(a) showing or expressing grief, injury or offense; (2)(b) suffering from an infringement or denial of legal rights.

Maryland case law provides guidance to this Board:

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...the format for proceedings before administrative agencies is intentionally designed to be informal so as to encourage citizen participation, we think...Anyone clearly identifying himself to the agency for the record as having an interest in the outcome of a matter being considered by the agency, thereby becomes a party to the proceedings. Medical Waste v. Maryland Waste, 327 Md. 596, 612 A.2d 241 (1991)

Is there a bona fide interest in the issuance of the variance granted by the Zoning Commissioner? If there is a bona fide interest, then there would appear to be standing:

١,

Where there exists a party having standing to bring an action...we shall not ordinarily inquire as to whether another party on the same side also has standing... Sugarloaf v. Waste Disposal, 323 Md. 641, 594 A.2d 1115 (1991); People's Counsel v. Crown Development, 328 Md. 303, 614 A.2d 553 (1992)

Fundamentally, to have standing one must have property rights that are adversely and specially affected by the decision in a manner different from that suffered by the public generally.

- a) Two conditions precedent must be met before a person has standing..." He must have been a party to the proceeding and he must be aggrieved by the decision of the administrative body. Generally speaking... a person aggrieved... is one whose personal or property rights are adversely affected by the...decision. The decision must not only affect a matter in which [he] has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally. Bryniarski v. Montgomery Co., 247 Md. 137, 230 A.2d 289 (1967)
- b) At the administrative level appellees were "aggrieved"...because their businesses are directly affected by the issuance of an additional towing license in the area...A party is aggrieved and there is standing if the party suffers some "special damage...differing in character and kind from that suffered by the general public. Jordan Towing, Inc. v. Hebbville Auto Repair, Inc., 369 Md. 439 (2002); Weinberg v. Kracke, 189 Md. 275, 55 A.2d 797 (1947)

In the instant case, Mr. Nowicki appeared on behalf of other business owners in the general locale who were opposed to the variance request. None of the owners were present for the hearing. Based on the testimony and evidence, the Zoning Commissioner approved the variance. The Protestants had requested a denial based on the premise that the requirement of Cromwell v. Ward, 102 Md.App. 691 (1995) had not been satisfied. Mr. Nowicki appealed to this Board on the basis that "I do not agree with Mr. Schmidt's decision and therefore wish to request an appeal."

In the instant case, competition as the sole ingredient for standing on the part of the Appellant would not be sufficient to enable this Board to entertain an appeal. This Board has

relied upon numerous cases already decided by Maryland Courts: Eastern Service Center, Inc. v. Cloverland Farms Dairy, Inc., et al, 130 Md.App. 1, 2000, 744 A.2d 63:

In Maryland, a person whose sole reason for appealing a decision from the Zoning Board is to prevent competition with his established business does not have standing. Bryniarski v. Montgomery Co., 247 Md. 137, 230 A.2d 289 (1967); Kreatchman v. Ramsburg, et al, 224 Md. 209, 219; 167 A.2d 345 (1961).

A review by the Board of these cases and others reflects a clear intent that competition is desirable in a free society; and the purpose and intent of zoning ordinances is not to protect enterprises from competition but that competition is encouraged to keep businesses fair and honest in their public affairs.

The only other interest the Appellant might assert is one which challenges the Zoning Commissioner's decision in his application of the facts of the case to both statutory and case law, in particular to the leading case of Cromwell v. Ward.

While Mr. Nowicki's client was a party to the Zoning Commissioner's hearing, the Board has determined that the Appellant has not suffered some "special damage" as required by Jordan Towing v. Hebbville Auto Repairs, Inc. 369 Md. 439 (2002); Weinberg v. Kracke, 189 Md. 275, 55 A.2d 797 (1947); nor has the Appellant been "personally and specially affected in a way different from that suffered by the public generally." Bryniarski v. Montgomery Co., 247 Md. 137, 230 A.2d 289 (1967)

To permit generalized appeals from any decisions of the Zoning Commissioner would create a multiplicity of appeals by anyone at any time and anywhere who disagreed with those decisions. That premise is solidified by other numerous cases that require that a complaining property owner must be "in sight or sound range" of the property that is the subject of his complaint." 25th St. v. Baltimore, 137 Md.App. 60, 86; 767 A.2d 906 (2001); National Capital P & P v. Rockville, 269 Md. 240, 248; 385 A.2d 122, 127 (1973)

Based on the Board's knowledge and familiarity of the area and location of the two properties, the Board again takes judicial notice that neither are within "sight or sound" of each other, and it is evident to this Board that this fact is a critical issue in the case.

ORDER

THEREFORE, IT IS THIS AND day of Mully County Board of Appeals of Baltimore County

ORDERED that Petitioner's Motion to Dismiss be and the same is hereby GRANTED; and it is further

ORDERED that the appeal filed by the Appellants /Protestants in Case No. 02-434-A be and the same is DISMISSED.

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

> COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Charles L. Marks, Chairman

Margaret Worrall

Lawrence S. Wescott



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County Board of Appeals of Baltimore County

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

January 22, 2003

John W. Nowicki, Esquire NOWICKI & TIRABASSI PA Edgemere Office 6916 North Point Road Baltimore, MD 21219-1216

RE: In the Matter of: DIA-Aylesbury Ltd Partnership

-Legal Owner; Padonia LLC - Contract Purchaser

Case No. 02-434-A /Ruling on Motion

Dear Mr. Nowicki:

Enclosed please find a copy of the final Opinion and Ruling on Motion to Deny or Dismiss Appeal issued this date by the County Board of Appeals of Baltimore County in the subject matter.

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, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco C. Storico Kathleen C. Bianco

Administrator

Enclosure

c: Emanuel DiPaola
J.R. Brothers, Inc.
C. William Clark, Esquire
DIA-Aylesbury Ltd. Partnership
Padonia LLC
William P. Monk/Morris & Ritchie Associates
Larry Townsend/Greater Timonium Community Council
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director/PDM

12/2/1920

IN RE: * COUNTY BOARD OF APPEALS

IN THE MATTER OF: * OF BALTIMORE COUNTY

Padonia, LLC * Case No.: 02-434-A

11 W. Aylesbury Road
Timonium, MD 21093
*

RESPONSE TO APPELLANTS' OPPOSITION TO MOTION TO DENY OR DISMISS APPEAL

Padonia LLC., T/A Bluestone, Petitioner and Appellee, by and through its attorneys, C. William Clark and Nolan, Plumhoff & Williams, Chartered, respectfully submits this response to Appellant's Opposition to the motion to deny or dismiss their appeal.

As has been identified in the previously filed Motion, the standing of a party to bring an appeal for judicial review of a zoning board decision is determined by the statutory requirement that the party be "aggrieved". Appellants rely on <u>Jordan v. Hebbville</u>, 369 Md. 439, 800 A.2d 768 (2002), to support their assertion that their position as the owners of the allegedly only other local restaurant with an open-air deck is sufficient basis to comply with this requirement. However, potential damage to economic interests based on competition is not pertinent to a determination of standing in the present case. The Court of Appeals has stressed that the determination of aggrievement is a judicial function that must be determined on a case by case basis. <u>Bryniarski v. Montgomery Co.</u> 247 Md. 137, 144-145, 230 A.2d 289, 294-295 (1967). <u>Jordan</u> is distinguishable from the case at hand, and indeed the Court has never overruled the established principle that a party whose sole interest in objecting to

¹ Padonia LLC disputes that assertion in as much as at least two other nearby restaurants, namely, "A Poutin' Still" and "Michaels" have outdoor dining, in an open air facility.

a Zoning Board decision is to prevent competition is not a person "aggrieved".

Jordan does not overrule the current body of case law that disallows competition as a basis for standing, but rather addresses a separate factual scenario in which "need" is part of the criteria considered in making the administrative law decision.² The interests and the law involved in a towing license are completely different from those of the restaurant business. Title 24 of the Baltimore County Code regulates the issuance of towing permits. § 24-226 requires a license to engage in towing. § 24-229 establishes a procedure for approval of new license towers including a requirement that the Department of Permits and Licenses shall approve them... "based upon the need for additional service." In <u>Jordan</u> at p.446, the Court wrote about the determination of "need" including criteria such as proximity of other licensed towers in terms of miles and minutes that service the area, and The application for a also an analysis of the response times during the previous year. towing permit at issue in that case operates on a geographical basis, where the presence of other licensed operators within a locality is evidence of a lack of need which results in a denial of the license application. In that case, the Court held that competitors of a motor vehicle towing business were aggrieved for the purposes of standing because their businesses are "directly affected by the issuance of an additional towing license in the geographical area

The Court of Appeals briefly addressed this distinction in Lucky Stores, Inc. v. Board of Appeals of Montgomery County, 270 Md. 513, 528, 312 A.2d 758, 766 (1973) in which it specifically stated that it was not departing from the Kreatcham principle of disallowing competition as a basis for aggrievement. Rather, when dealing with the application of need requirements, the question is not whether the competition is prevented (or in this case-increased), although it incidentally may affect competition, but whether the Board's decision is based on a desire to prevent competition, which is prohibited. The distinction, although subtle is critical to synthesizing these cases. Competition is not a protected interest of zoning, and therefore to have standing to appeal a zoning decision, one's injury or interest must be more than sole fear of competition.

where they alone hold licenses." *Id.* at 442. Under the system discussed in <u>Jordan</u>, generally only one towing company within an area is granted a license, so that the aggrievement felt by the protestant in that case results from a direct reduction of its territory, not merely an increase in competition. *See generally Id.* at 444-449. This license approval based on a need requirement does not pertain to zoning variances for projections into side yards such as an open air deck, and therefore <u>Jordan</u> is not applicable to the case at hand.

The question of standing concerns "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." Sugarloaf Citizens' Association v. Department of Environment, 344 Md. 271, 295, 686 A.2d 605 (1996) (citations omitted). Standing requires a "legal interest" which has been defined b the Supreme Court as "one of property, one arising out of a contract, one protected against tortious invasion, or one founded on a statute which conveys a privilege." Baltimore Steam Co. v. Baltimore Gas & Electric Co., 123 Md. App. 1, 716 A.2d 1042 (1998) vacated as moot, citing Tennessee Elec. Power Co. v. Tennessee Valley Auth., 306 U.S. 118, 137-138, 59 S.Ct. 366, 369, (1939). The Appellants' sole interest in this case is freedom from competition from the Bluestone restaurant's new open-air deck. Freedom from competition is ordinarily not a legally cognizable interest and thus cannot confer standing to bring this appeal. This principle was established in Cook v. Normac Corp., 176 Md. 394, 397-98, 4 a.2d 747, 749 (1939) and has been routinely applied by our courts. See <u>Eastern Service Centers v. Cloverland Farms Diary</u>, Inc., 130 Md. App. 1, 744 A.2d 63 (2000)(finding competitor had no standing to challenge zoning boards decision to grant permit to construct a gas station with an accessory convenience store); <u>Kreatcham v. Ramsburg, et al.</u> 224 Md. 209, 219, 167 A.2d 345 (1961)

(holding that an intervening liquor store owner whose sole concern was preventing competition with his own store lacked standing); Bryniarski v. Montgomery Co. 247 Md. 137, 230 A.2d 289 (1967)(citing Kreatcham with approval for the idea that competition alone does not constitute "aggrieved" for the purposes of establishing standing); Baltimore Steam Co. V. Baltimore Gas & Electric Co. 123 Md. App. at 16-18, 716 A.2d at 1049 (1998) (economic consequences of competition are "damnum absque injuria" or damage without legally cognizable injury).

Appellants have failed to demonstrate any legally cognizable interest in the present matter. Even if being in "sight and sound" range of the subject property is not an absolute requirement to establish standing, Appellants have introduced no reason that they are "aggrieved" other than interference with their economic interests through competition. Maryland case law has established that this is an insufficient basis to bring an appeal. Therefore, the Motion to Dismiss or Deny Appeal should be granted.

Respectfully Submitted,

C. William Clark

Nolan, Plumhoff & Williams, Chartered 502 Washington Avenue, Suite 700

Towson, MD 21204

(410) 823-7800

Attorney for Petitioner/Appellee.

Padonia, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2 day of 2002, a copy of the

foregoing Response to Appellants' Opposition to Motion to Dismiss or Deny Appeal was

mailed first class, postage pre-paid to the following attorneys of record:

Peter Max Zimmerman, Esquire People's Counsel for Baltimore County Old Courthouse Room 48 400 Washington Avenue Towson, MD 21204

John W. Nowicki, Esquire Nowicki & Tirabassi, P.A. 6916 North Point Road Baltimore, MD 21219

C. William Clark

1/8/05

IN RE:

IN THE MATTER OF:

Padonia, LLC 11 W. Aylesbury Road Timonium, MD 21093 * COUNTY BOARD OF APPEALS

* FOR

* BALTIMORE COUNTY

* CASE NO.: 02-434-A

OPPOSITION TO MOTION TO DENY OR DISMISS APPEAL

Protestants/Appellants, Emanuel DiPaola and J.R. Brothers, Inc., by and through John W. Nowicki, Esquire and Nowicki & Tirabassi, P.A., their attorneys, herein oppose the Motion to Deny or Dismiss Appeal, and state:

- 1. They are proper parties to the referenced matter.
- 2. They have standing as aggrieved parties sufficient to permit them to take an appeal from the decision of the Zoning Commissioner.
- 3. There exists no requirement, either in case law, statute or regulation, that in order to have standing to appeal from an agency determination, the appellant must be within "sight or sound" range of the subject property.

WHEREFORE, for the reasons stated herein and those contained in the accompanying Statement of Grounds and Authorities, the Protestants/Appellants respectfully request that the Motion to Deny or Dismiss Appeal be denied.

Respectfully submitted,

RECEIVED
NOV 1 8 2002

BALTIMORE COUNTY BOARD OF APPEALS JOHN W. NOWICKI, ESQUIRE NOWICKI & TIRABASSI, P.A.

6916 North Point Road

Baltimore Marriand 2121

Baltimore, Maryland 21219

(410) 477-0026

Attorney for Protestants/Appellants

NOWICKI & TIRABASSI, P.A.
ATTORNEYS AT LAW
6916 NORTH POINT ROAD
BALT. CO., MD 21219-1216
(410) 477-8400

727 NORTH HICKORY AVENUE BEL AIR, MD 21014-3026 (410) 879-0026

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this Appeal was mailed first class, postage prepaid to C. William Clark, Esq., Nolan, Plumhoff & Williams, Chartered, 502 Washington Avenue, Suite 700, Towson, MD 21204, Attorney for Appellee, Padonia, LLC.

JOHN W. NOWICKI, ESQUIRE

STATEMENT OF GROUNDS AND AUTHORITIES

Protestants/Appellants, Emanuel DiPaola and J.R. Brothers, Inc., by and through John W. Nowicki, Esquire and Nowicki & Tirabassi, P.A., their attorneys, herein submit this Statement of Grounds and Authorities in opposition to the Motion to Deny or Dismiss their appeal.

FACTS

This appeal results from the decision by the Zoning Commissioner of Baltimore County to grant a variance to the Padonia Bluestone, LLC to build an open-air deck on the exterior of the restaurant known as the Bluestone. The Protestants are the owners of the only other local restaurant to have an open-air deck, the Turf Inn.

ARGUMENT

I. The Protestants have standing to appeal the decision, as they suffer some special damage differing in character and kind from that suffered by the general public as a result of the decision of the Zoning Commissioner.

The standard for establishing whether or not a party has standing as an "aggrieved party" and is thereby entitled to appeal an adverse agency decision is fairly straightforward. A party is aggrieved and there is standing if the party suffers some "special damage...differing in character and

Nowicki & Tirabassi, P.A.
ATTORNEYS AT LAW
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BALT, CO., MD 21219-1216
(410) 477-8400

727 NORTH HICKORY AVENUE BEL AIR, MD 21014-3026 (410) 879-0026 kind from that suffered by the general public." Jordan Towing, Inc. v. Hebbville Auto Repair, Inc., Varsity Auto Repair, Inc., Windsor Service, Inc., 369 Md. 439, 800 A.2d 768 (2002), citing Weinberg v. Kracke, 189 Md. 275, 280, 55 A.2d 797, 799 (1947). This standard was confirmed in Sugarloaf Citizens' Assn. V. MDE, 344 Md. 271, 285-6, 686 A.2d 605, 613-614 (1996), when the court ruled that, "...in order to be 'aggrieved' for purposes of judicial review, a person [must be]...personally and specifically affected in a way different from...the public generally."

In the Motion to Deny Appeal, the appellee relies heavily on Kreatchman v. Ramsburg, 224 Md. 209, 167 A.2d 345 (1961), in support of its position that a competitive business should not be permitted to appeal from an adverse decision if the sole effect on the aggrieved party was an increase in competition. 1 Unfortunately, to the extent that any language in the Kreatchman case supports that position, it is completely dicta and non-binding. The court in Kreatchman specifically declined to address exactly the issue for which the case is being cited, stating, "(w)hether or not [Mr. Kreatchman's] stated interests would warrant his intervention if this case were an appeal from a decision of the Board of Zoning Appeals of Howard County...is not the question before us, for this is not such a case...(t) his is an equity suit directed against allegedly illegal and unconstitutional action of the Board in refusing to grant the appellee's petition for rezoning, and the rules of equity as to interest therefore apply." Id. 224 Md. 209 at 214-215. It also involved a rezoning classification dispute, rather than a variance. Although the court did discuss the favored nature of competition, what was actually held was that "the true rule is that a proprietor in a less restricted zone is not a person aggrieved' within the meaning of the statute by the introduction into a more restricted zone of any use permitted in the zone in which the proprietor's property is located." Id. 224 Md. 209 at 221. As the limiting language in the rule is self-evident, it should not be applied to the present case.

NOWICKI & TIRABASSI, P.A.
ATTORNEYS AT LAW
6916 NORTH POINT ROAD
BALT, CO., MD,21219-1216
(410) 477-8400

727 NORTH HICKORY AVENUE BEL AIR, MD 21014-8026 (410) 879-0026

¹ This is, admittedly, an attempt to paraphrase the argument made by appellee in its motion and does not purport to be a verbatim quote from the appellee's motion.

In further support of the position that damage to economic interest is a valid basis for establishing standing, the Maryland Court of Appeals recently decided Jordan Towing, Inc. v. Hebbville Auto Repair, Inc., Varsity Auto Repair, Inc., Windsor Service, Inc., 369 Md. 439, 800 A.2d 768 (200), in which competing financial interests were sufficient to establish standing to appeal from an adverse agency decision. In Jordan, other local businesses appealed from the issuance of additional towing licenses in their geographic vicinity. Clearly, an economic interest based upon competition. When discussing whether or not there was standing on the part of the local businesses, the court applied the definition of "aggrieved party" set forth above, and found that:

At the administrative level appellees were 'aggrieved' under the relevant Baltimore County Code section because their businesses are directly affected by the issuance of an additional towing license in the geographical area where they alone hold licenses. A party is aggrieved and there is standing if the party suffers some "special damage...differing in character and kind from that suffered by the general public." *Id.*, 369 Md. 439 at 442, citing *Weinberg v. Kracke*, 189 Md. 275, 280, 55 A.2d 797, 799 (1947).

The *Jordan* court clearly found the interest of a competing business interest to be different in character and kind from the interest of an adjacent property owner, and also found that interest to be sufficient to establish standing to appeal from an adverse decision. As a very recent indication of the manner in which the Court of Appeals currently views this issue, the *Jordan* decision should be considered persuasive authority by this Court.

II. There is no requirement that a protestant be within "sight or sound" range of a subject property in order to maintain standing for an appeal.

Although there is much discussion in the Motion to Deny Appeal concerning the requirement that a non-adjacent property owner must have property within "sight and sound" range of the subject property before standing will be conferred, that is not the appropriate test to be applied to this case. In all of the case cited by the appellee, the distance between the respective properties was considered because the protestants were unable to establish any damage differing in

NOWICKI & TIRABASSI, P.A.

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727 NORTH HICKORY AVENUE

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727 NORTH HICKORY AVENUE BEL AIR, MD 21014-3026 (410) 878-0026 kind and character from the potential damage to the general public. As that is the appropriate issue before this Court, the "sight and sound" argument is not applicable.

CONCLUSION

For the reasons contained herein, as the Protestants had standing as parties to the agency determination, and were aggrieved by the adverse agency decision, they maintain standing to appeal from the decision of the Zoning Commissioner. Consequently, the Motion to Deny of Dismiss Appeal should be **DENIED**.

Respectfully submitted,

JOHN W. NOWICKI, ESQUIRE

Hmw Woulkiths

NOWICKI & TIRABASSI, P.A.

6916 North Point Road Baltimore, Maryland 21219

(410) 477-0026

Attorney for Protestants/Appellants

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ATTORNEYS AT LAW
6916 NORTH POINT ROAD
BALT. CO., MD 21218-1216
(410) 477-8400

727 NORTH HICKORY AVENUE BEL AIR, MD 21014-3026 (410) 679-0026 $\frac{1}{10}/u/02$

IN RE:

IN THE MATTER OF: * COUNTY BOARD OF APPEALS

Padonia, LLC 11 W. Aylesbury Road

Timonium, MD 21093

* OF BALTIMORE COUNTY

* Case No.: 02-434-A

MOTION TO DISMISS OR DENY APPEAL

Padonia, LLC., T/A Bluestone by and through its attorneys, C. William Clark and Nolan, Plumhoff & Williams, Chartered, respectfully represents unto this Board:

A copy of the Protestants' Notice of Appeal is attached hereto and marked Exhibit A. No Petition in Support of the Notice of Appeal has been filed, and there have been no reasons stated by the Protestants for their appeal, other than their attorney's statement in his letter noting that he does not agree with the Zoning Commissioner's decision.

Article 25A, §5(U) of the Annotated Code of Maryland provides that "Maryland charter counties have the authority to..., enact local laws providing for (1) the establishment of a County Board of Appeals whose members shall be appointed by the County Council; ... and (4) for the Decision by the Board, on petition by any <u>interested</u> person and after notice and opportunity for hearing and on the basis of the record... as shall be specified from time-to time by such local laws enacted under this subsection; ... the issuance, renewal, denial, revocation, suspension, annulment or modification, of any ... approval ..., or other form of permission or of any adjudicatory order." (emphasis added). Article 66B §4.07 (e) of the Maryland Annotated Code sets forth the applicable guidelines for who may properly bring

an appeal before the Board of Zoning Appeals: "An appeal to the board of appeals may be filed by (i) any person aggrieved by any decision of the administrative officer; or (ii) any officer, department, board, or bureau of the jurisdiction affected by any decision of the administrative officer".

The Baltimore County Code reserves the right to appeal from a decision of the Zoning Commission to "any person or persons... aggrieved or feeling aggrieved" by the decision of the Zoning Commission. Baltimore County Code §26-132(a). Protestants in this case cannot qualify as "aggrieved or feeling aggrieved" due to their lack of valid interest in the decision of the Zoning Board on this matter. The Protestants are not proper parties to the proceeding and therefore they lack the standing to bring this appeal.

Article §26-132 does not define "aggrieved or feeling aggrieved" except to establish requirements to include within that group civic associations who meet the criteria stated therein. However, the principles used to determine whether a party is aggrieved in order to bring a zoning appeal to the Board of Appeals essentially mirror the standards used by courts in cases outlined below to determine whether a party has standing to seek judicial review of a Board of Appeals decision. In Bryniarski v. Montgomery Co. Bd. of Appeals, 247 Md. 137, 230 A. 2d 289 (1967), the Court of Appeals notes that interpretation of the phrase "persons aggrieved" should not differ whether the statute is one governing appeals to the board or appeals from the board. Generally speaking, the court decisions indicate that a person aggrieved is one whose personal or property rights are adversely affected by the Decision of the Board. In Holland v. Woodhaven Bldg. 113 Md. App. 274, 279 (1996) the Court wrote:

The principles governing the determination of whether a party is sufficiently aggrieved to possess standing to appeal to a board of zoning appeals were discussed by the Court of Appeals in <u>Bryniarski v. Montgomery Co. Bd. of Appeals</u>, 247 Md. 137, 230 A.2d 289 (1967).

Specifically, a person aggrieved is one whose personal or property rights are adversely affected by the decision of the [zoning commission]... The decision must not only affect a matter in which the protestant has a specific interest or property right, but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally.

<u>Id</u>. at 244, 230 A.2d 289.

Although the Court of Appeals in <u>Sugarloaf v. Department of Environment</u>, 344 Md. 271, 286, 686 A.2d 605, 613 (1996), observed that the requirements for administrative standing under Maryland law are not very strict, the Court also quoted from <u>Morris v. Howard Residential and Development Corporation</u>, 278 Md. 417-423, 365 A.2d 34, 37 (1976):

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

In <u>Sugarloaf</u>, the Court of Special Appeals explained at length the difference between the requirements for administrative standing and standing to maintain an action under the Administrative Procedure Act for judicial review. Following the decision in <u>Sugarloaf</u>, the Appeals in the <u>Holland</u> case filed a Motion for Reconsideration with the Court of Special Appeals based on the then recent Court of Appeals decision in <u>Sugarloaf</u>. The Court of Special Appeals denied that Motion, holding <u>Sugarloaf</u> to be inapposite since the case before

the <u>Holland</u> Court involved standing to appeal to a board of zoning appeals and not standing to seek judicial review of an administrative decision. <u>Holland</u> at 289-290. The result of the <u>Holland</u> decision, based on a statute¹ which only permitted appeals to the Board ... "by any person aggrieved...", requires the stricter scrutiny like that applied to persons seeking standing for judicial review than the more permissive standard consisting of "an interest in the outcome of the proceedings" which allows one to become a party before the zoning commissioner.

Appellees submit that Art 26 § 132 (a) provides"...a more formal method of becoming a party..." to an appeal as opposed to being a party at a hearing before the Zoning Commissioner. It requires that the person "be aggrieved". Although, one may become a party before the Zoning Commissioner by identifying himself as having an interest in the outcome, the interest in the outcome of the matter being considered by the agency ought not be wholly an improper interest. The Court of Appeals in Kreatchman v. Ramsburg, 224 Md. 209, 167 A.2d 345 (1961) clearly stated that with respect to an appeal to the Circuit Court from the decision of an administrative agency on a zoning matter, where the only expressed opposition to the application was fear of competition, such an interest gave the Appellant no standing to appeal. The Court observed that neither the design nor the purpose of Zoning Regulations is to protect business from competition. Id. at 220-222. Generally, the law in the State of Maryland favors competition and the Maryland Legislature has enacted Antitrust

The text of the Statute reads as follows:

An appeal to the Board may be taken by any person aggrieved or by any officer, department, board, commission, or bureau of the town affected by any decision of the Zoning Administrator.

Laws in order to protect the public and foster fair and honest intrastate competition. See Commercial Law Article §11-201 et seq of the Annotated Code of Maryland.

The appellees are the operators of a restaurant located over one mile away from the Respondant's restaurant and located on a different street. The restaurant utilizes a deck, as shown by the Affidavit of Daniel J. McCarthy, Managing Partner of the appellee, which is attached hereto and incorporated by reference. As the Zoning Commissioner points out, "it can be surmised that the [Protestants'] reasons of opposition are largely of a competitive nature". (Zoning Commission Findings of Fact and Conclusions of Law, pg. 3). Protestants have no valid interest in the outcome of the matter other than that of a competitive nature and therefore cannot be considered parties having standing to bring this appeal.

Another aspect of being "aggrieved" in order to have standing to invoke the jurisdiction of the Circuit Court is the requirement that a person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved unless he meets the burden of alleging and proving, by competent evidence, either before the Board or in Court on appeal that his personal or property rights are specially and adversely affected by the Board's action. 25th Street v. Baltimore, 137 Md. App.60, 86, 767 A.2d 906 (2001). Ordinarily, to be considered an aggrieved party, the complaining property owner must be in "sight or sound" range of the property that is the subject of his complaint. Md. Nat'l. Cap. P. & P. v. Rockville, 269 Md. 240, 248 385 A. 2d 122, 127 (1973).

In the case of White v. Major Realty. Inc., 251 Md. 63, 246 A.2d 249 (1968), the Court held that the protestants had failed to establish the necessary special damage to their property to qualify them as "aggrieved" where the subject track was one-half mile away and

no evidence was presented that the property of the protestants would be depreciated in value by the proposed re-zoning or that the protestants could even see the subject track from their property. The Court held that mere fear of increased traffic or doubting the capacity of the water or school system to handle the development did not establish special damage to the Protestant's property and the mere statements that the protestants are taxpayers in the city is insufficient to demonstrate standing to appeal as aggrieved persons.

In the case of <u>DuBay v. Crane</u>, 240 Md. 180, 213 A.2d 487 (1965) the Court held that where an Appellant's property was located more than four-tenths of a mile from the subject property and the re-zoned area could not be seen from their property, the Appellant had failed to establish itself as an aggrieved party, specially affected in a way different from that suffered by the public generally. The Court of Special Appeals observed in another case that although the Appellant in that case frequently passed the subject site, so do many other members of the general public. That was not enough to secure his standing to bring a petition for judicial review. <u>25th Street</u> at 87.

In <u>Holland v. Woodhaven Bldg.</u>, supra the Court of Special Appeals upheld a Zoning Board of Appeals finding that the appellants were "no more aggrieved than anyone else in the town" and therefore lacked standing to bring an appeal of a zoning decision approving a residential subdivision. <u>Holland</u> at 279. The Court found that the appellants had failed to show that they were "owners of property immediately contiguous or in close proximity" to the subject property or that they were in any way "specially aggrieved". <u>Id.</u> at 280.

It is evident from Maryland case law that the concept of within "sight or sound" ought to be considered by the County Board of Appeals in deciding whether a person has

"standing" to appear before it. The Appellants cannot demonstrate that either of them have property which is adjoining, fronting or nearby, and, in fact, all of their property is far removed from the subject property. Appellants cannot demonstrate that they are within "sight or sound" range of the property or that grant of the variance will cause special damage to their property. See the Affidavit of Dan McCarthy. Protestants cannot demonstrate any facts which indicate that their personal or property rights have been adversely affected in a way different from that suffered by the public generally. For the foregoing reasons, the Protestants have no standing to appeal in this matter. They have no valid interest in this matter which would justify feeling aggrieved and cannot claim to be aggrieved. The Protestants are improper parties to this matter and this appeal should therefore be dismissed or denied.

Respectfully Submitted,

C. William Clark

Nolan, Plumhoff & Williams, Chartered 502 Washington Avenue, Suite 700

Towson, MD 21204

(410) 823-7800

Attorney for Appellee,

Padonia, LLC

IN RE:

IN THE MATTER OF:

COUNTY BOARD OF APPEALS ¥

Padonia, LLC

11 W. Aylesbury Road

Timonium, MD 21093

OF BALTIMORE COUNTY *

Case No.: 02-434-A

REQUEST FOR HEARING

*

Dear Clerk:

Please schedule a Hearing on the Motion to Dismiss or Deny Appeal in the abovecaptioned matter.

> Respectfully Submitted, Morce Cean

C. William Clark

Nolan, Plumhoff & Williams, Chartered 502 Washington Avenue, Suite 700

Towson, MD 21204

(410) 823-7800

Attorney for Appellee,

Padonia, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of 2002, a copy of the foregoing Motion to Dismiss or Deny Appeal and Request for Hearing was mailed first class, postage pre-paid to the following attorneys of record:

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

John W. Nowicki, Esquire Nowicki & Tirabassi, P.A. 6916 North Point Road Baltimore, MD 21219

C. William Clark

10/2/01

IN RE:

IN THE MATTER OF:

COUNTY BOARD OF APPEALS

Padonia, LLC * OF BALTIMORE COUNTY

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11 W. Aylesbury Road
Timonium, MD 21093
* Case No.: 02-434-A

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS OR DENY APPEAL

I, Daniel J. McCarthy, am over eighteen years of age, and am competent to testify regarding the following matters:

- 1. I am the Managing Partner of Padonia, LLC., T/A Bluestone, which operates a full service restaurant at 11 W. Aylesbury Road in Timonium, Baltimore County, Maryland.
- 2. Padonia LLC., is the Petitioner in the above-captioned case having filed a Petition for Variance for certain side yard distances in order to permit outside dining on an open-air deck/porch and to permit 404 parking spaces in lieu of the required 419 spaces.
- 3. I have reviewed certain records kept and maintained by the Baltimore County Liquor Board including the Alcoholic Beverages License Application filed by Emanuel Anthony DiPaola and the Alcoholic Beverages License listing him as a licensee for Experienced Dinning, Inc. T/A the Turf Inn, 2306 York Road, Timonium, MD 21093, copies of which are attached hereto and incorporated herein, marked Exhibits A& B.
- 4. On the application for the Alcoholic Beverages License for 2306 York Road, Timonium, Maryland, the stated name of the owner of the premises is J. R. Brothers, Inc., address, 10 Hemlock Court, Hunt Valley, Maryland, 21030.
- 5. The application lists as part of the building to be used for "restaurant, bar, lounge, and deck".
- 6. I am familiar with the Turf Inn located at 2306 York Road, Timonium, Maryland and I know that it has a deck, attached to the building and located outside of the interior space of the building, which is used by the restaurant, bar and lounge.
- 7. The location of the Turf Inn at 2306 York Road, Timonium, Maryland is in excess of one mile away from the 11 W. Aylesbury Road location of Bluestone. When standing on either property, one cannot see the Turf Inn from Bluestone or vice versa. Due to the surrounding noises in the vicinity of either restaurant one cannot hear any noise

generated from within the site of Bluestone while on the property site of the Turf Inn, or vice versa.

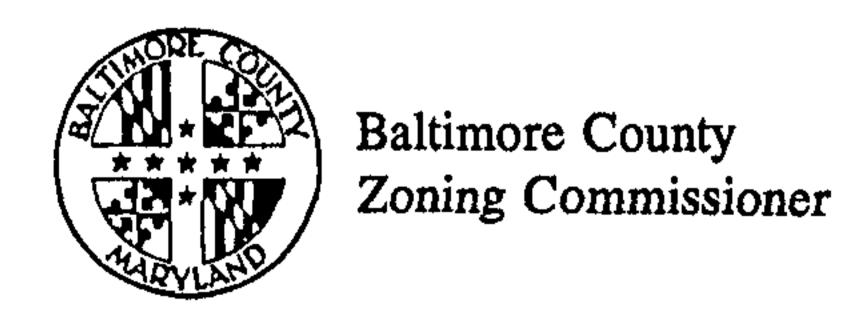
- 8. Mr. DiPaola lists as his home address, 308 Ringold Valley, 21030, which presumably is Cockeysville, Maryland. A copy of the ADC Map of Baltimore County, Map 18 is attached hereto marked as Exhibit C.
- 9. As demonstrated on the copy of the ADC Map 18 Ringold Valley is in excess of two miles from the location of Bluestone Restaurant.
- 10. Between the Turf Inn at 2306 York Road and 11 W. Aylesbury Road, the site of Bluestone Restaurant, there are numerous changes in topography, and the existence of many, several story buildings, including the Grandstand of the Maryland State Fairgrounds, as well as the Timonium Crossings Shopping Center and the Timonium Business Park.
- 11. Based on my knowledge of the restaurant industry, I believe, and therefore aver, that the only reason that the Appellants have filed an appeal from the approval by the Zoning Commissioner of the Variance, granted which would allow us to construct an open-air deck/porch, is to prevent competition between the two restaurants for customers.

I solemnly affirm under penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Mr. Daniel J. McCarthy, M.

McCarthy, Manager Partner

Date



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

June 20, 2002

Fax: 410-887-3468

C. William Clark, Esquire Nolan, Plumhoff & Williams 502 Washington Avenue Towson, Maryland 21204

RE: PETITION FOR VARIANCE W/S Aylesbury Road, 20' N of the c/l Connector Road (11 & 15 Aylesbury Road) 8th Election District – 4th Council District DIA-Aylesbury LP and Padonia, LLC - Petitioners Case No. 02-434-A

Dear Mr. Clark:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance has 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:bis

Mr. Richard H. Kress, President, DIA-Aylesbury L.P. cc:

15 West Aylesbury Road, Lutherville, Md. 21093

Mr. Daniel J. McCarthy, Padonia, LLC

32 Inverin Circle, Lutherville, Md. 21093

Messrs. William P. Monk & David Taylor, Morris & Ritchie Assoc., Inc.

110 West Road, Suite 245, Towson, Md. 21204

Mr. Larry Townsend, 1111/Longbrook Road, Lutherville, Md. 21093

John W. Nowicki, Esquire, 6916 North Point Road, Baltimore, Md. 21219

People's Counsel; Case File



8 th ELECTION DIST. 4TH COUNCILMANIC DIST. to the Zoning Commissioner of Baltimore County

for the property located at 15 West Aylesbury Road

which is presently zoned ML-IM

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) 255.1 & 238.2 to permit a side yard distance of 5' for an open air deck/porch in lieu of the required 22.5' pursuant to Section 301.1 b and from Section 409.6 A.2. to permit 404 parking paces in lieu of the required 419 spaces.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty) Special circumstances and conditions exist due to site constraints peculiar to this land and building which make strict compliance with the above listed regulations practically difficult.

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.

Name 110

Address

City

TOWSON,

WEST ROAD

Contract Purchaser/Les	ssee:	
PADONIA, LLC		
By: DANIEL J MC C	ABTHY MA	AN. PART.
Name - Type or Print // / t	77 /)	
t AAAAA	fer 1	
Signature	(
32 INVERIN CIRCLE	/410	
Address	7	Telephone No.
LUTHERVILLE,	MĎ	21093
City	State	Zip Code
Attorney For Petitioner	•	
MICOTIEY TOT LEGISLOTTER	<u>.</u>	
C. WILLIAM CLARK,	ESQUIRE	
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an Signature a	Coort	,,,, <u>, , , , , , , , , , , , , , , , ,</u>
Charles Dr. Tarres	1.7 T T T T T T T T T T T T T T T T T T T	atimn
Company PLUMHOFF &	MITTIAMS	CHTD.
	ינדי ל	410)823-7800
502 WASHINGTON AV	E . / 2	Telephone No.
	MD	21204
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# Sise No. 02-434	/ ~ X	·
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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.

Legal Owner(s):		
DIA-Aylesbury Limite By: DIA-Aylesbury I	d Partne nc., Gen	rship eral Partner
Name - Type of Print BY:	res	
Signature		
By: Richard H. Kres Name - Type or Print	s, Presi	dent
Signature		1 4
15 WEST AYLESBURY	ROAD	(410)580-140
Address		Telephone No
LUTHERVILLE, '	MD	21093
City	State	Zip Ccce
Representative to be Common Morris & RITCHIE		<u>!:</u>
WILLIAM P. MONK		

		l eleptione No.
	MD	21204
	State	Zip Code
OFFICE US	SE ONLY	

SUITE 245 (410) 821-1690

7.

ESTIMATED	LENGTH OF	HEARING	

UNAVAILABLE FOR HEARING Date 4/5/02 Reviewed By JRF

MORRIS & RITCHIE ASSOCIATES, INC.

ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS, AND LANDSCAPE ARCHITECTS



Zoning Description

Beginning at a point located on the westerly side of Aylesbury Road which is an 80 foot wide road at the distance of 20 feet north of the centerline of the nearest improved intersecting street, Connector Road which is a variable width road. Thence the following courses and distances:

South 73 degrees 10 minutes 04 seconds West, 235.58 feet; Southwesterly by a tangential curve to the right having a radius of 1126.00 feet, an arc length of 98.99 feet, the chord of said arc bearing South 75 degrees 41 minutes 10 seconds West, 98.95 feet; North 11 degrees 47 minutes 43 seconds West, 5.00 feet; Southwesterly by a non-tangential curve to the right having a radius of 1121.00 feet, an arc length of 51.19 feet, the chord of said are bearing South 79 degrees 30 minutes 46 seconds West, 51.19 feet; South 80 degrees 49 minutes 15 seconds West, 49.89 feet; North 09 degrees 22 minutes 32 seconds West, 996.22 feet; North 88 degrees 57 minutes 17 seconds East, 551.95 feet; Southeasterly by a non-tangential curve to the right having a radius of 2960.00 feet, an arc length of 211.62 feet, the chord of said arc bearing South 02 degrees 02 minutes 52 seconds East, 211.57 feet; South 00 degrees 00 minutes 00 seconds West, 550.88 feet; Southeasterly by a tangential curve to the left having a radius of 330.00 feet, an arc length of 128.86 feet, the chord of said arc bearing South 11 degrees 11 minutes 12 seconds East, 128.04 feet to the place of beginning, and being a portion of the lands recorded in Deed Liber E.H.K. Jr. 6874, folio 041.

Containing 10.490 acres and being located in the Eighth Election District of Baltimore County, Maryland.

434

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 #02-434-A.

15 W Aylesbury Road

NW/corner of Aylesbury Road & connector Road

8th Election District - 4th Councilmanic District

Legal Owner(s): Richard H. Kress

Contract Purchaser: Danlel J. McCarthy

Variance: to permit a side yard distance of 5 feet for an open-air deck/porch in lieu of the required 22.5 feet, to permit 404 parking spaces in lieu of the required 419 spaces.

Spaces
Hearing: Thursday, May 30, 2002 at 2:00 p.m. in Room
106, Baltimore County Office Building, 111 W. ChesaPeake Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For Information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

5/213 May 16

CERTIFICATE OF PUBLICATION

<u>5/16</u> , 20 <u>02</u>
THIS IS TO CERTIFY, that the annexed advertisement was published
n the following weekly newspaper published in Baltimore County, Md.,
once in each ofsuccessive weeks, the first publication appearing on $\frac{5/6}{16}$, $\frac{2002}{1}$.
$\frac{516}{2}$, $\frac{2002}{2}$
The Jeffersonian
☐ Arbutus Times
☐ Catonsville Times
☐ Towson Times
Owings Mills Times
□ NE Booster/Reporter
☐ North County News
Dillem San

LEGAL ADVERTISING

CERTIFICATE OF POSTING

», , , _p	RE: Case No.: 02-434-A
•	Petitioner/Developer: DANIEL J.
•	MCCARTHY
	Date of Hearing/Closing: 5/30/02
Saltimore County Department of Sermits and Development Management County Office Building, Room 111 11 West Chesapeake Avenue Cowson, MD 21204	
ttention: Ms. Gwendolyn Stephens	
adies and Gentlemen:	
	perjury that the necessary sign(s) required by law
vere posted conspicuously on the property i	ocated at 15 W. AYLESBURY RD
he sign(s) were posted on	5 / 15 / 02 (Month, Day, Year)
	· · · · · · · · · · · · · · · · · · ·
	Sincerely,
The transmitted of the state of	5/25/00
	(Signature of Sign Poster and Date)
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IBL to the	SSG NOBERT BLACK
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	(Printed Name) 1508 Lealie Ed
· · · · · · · · · · · · · · · · · · ·	(Printed Name) 1508 Leslie Ed (Address)
· · · · · · · · · · · · · · · · · · ·	(Printed Name) 1508 Lealie Ed
TOWN ON AND AND ADDRESS OF THE RESIDENCE	(Printed Name) 1508 Leslie Ed (Address) Dendalk, Haryland 21222

BALTIMORE COUNTY, MARYLA OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT

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CASHIER'S VALIDATION

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BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 12611

RECEIVED BLUESTONE

15 Wash Ayles bury Rd. ITEM # 434

FOR: VARIATUCE

ACCOUNT 001-006-6150

AMOUNT \$ 250.00

TAKELO BY: JRE

4/05/2002

5 520 ZINING VERIFTCATION

Recet Tot \$250.00

Baltimore County, Maryland

250.00 CK : .00 CA

Dept

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<u>DISTRIBUTION</u>
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

CASHIER'S VALIDATION

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (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.

Item Number or	Case Number:	02-434-4			
	PADON, A			<u> </u>	
	ation: 11 W	NESZINA.	27 RAN 210	<u>193</u>	
	ARD ADVERTIS	ING BILL TO:	. (C 1	
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Revised 2/20/98 - SCJ

REVIEW AGENCIES:

Prior to preparing the required plat, the petitioner or his engineer should contact the following agencies for pertinent data that may be required by that particular agency.

1.	Assessments	410-512-4906
2.	Bureau of Capital Projects (traffic issues)	410-887-3751
3.	Fire Department	410-887-3998
4.	State Highway Administration	410-545-5600
5 .	County Roads	410-887-3739
6.	Planning (design, screening, landscaping	410-887-3211
7 .	Building Engineer (plans)	410-887-3987
8.	Department of Environmental Protection	
	and Resource Management (DEPRM)	410-887-3980
9.	If floodplain, Dept. of Natural Resources	410-631-3902
10.	If critical area, Maryland Office of Planning	410-767-4485

NOTE:

The petitioner has the responsibility to verify the location of the subject site in regards to the Chesapeake Bay Critical Area (CBCA). A critical area map is available for reference in PDM. Should the site be located in this area, the petitioner is required to meet DEPRM critical area requirements regarding the site. PDM must have the DEPRM comments on the petitioner's request prior to the public hearing.

Also, floodplains and historic buildings should be identified. (See pages 16 and 17.)

APPEAL SIGN POSTING REQUEST

CASE NO.: 02-434-A

DIA-Aylesbury Limited Partnership - LEGAL OWNERS

15 W Aylesbury Road, Timonium, MD 21093

8th ELECTION DISTRICE

APPEALED: July 19, 2002

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

APPEAL SIGN POSTING REQUEST

CASE NO.: 02-434-A

DIA-Aylesbury Limited Partnership - LEGAL OWNERS

15 W Aylesbury Road, Timonium, MD 21093

8th ELECTION DISTRICT

APPEALED: July 19, 2002

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

*******COMPLETE AND RETURN BELOW INFORMATION*****			
CERTIFICATE OF POSTING			
TO: Baltimore County Board of Appeals 400 Washington Avenue, Room 49 Towson, Maryland 21204			
Attention: Kathleen Bianco Administrator			
RE: Case No.: 02-434-A			
Petitioner/Developer: Ayles buy Limited Portnership This is to certify that the necessary appeal sign was posted conspicuously on the property located at:			
The sign was posted on $8/2/$, 2002			
By: Key Heer (Signature of Sign Poster) GARY FREUND			
(Printed Name)			

TO: PATUXENT PUBLISHING COMPANY

Thursday, May 16, 2002 Issue - Jeffersonian

Please forward billing to:

Bluestone Restaurant Dan McCarthy

11 W Aylesbury Road Lutherville MD 21093 410 561-1100

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: 02-434-A

15 W Aylesbury Road

NW/corner of Aylesbury Road & connector Road 8th Election District – 4th Councilmanic District

Legal Owner: Richard H Kress

Contract Purchaser: Daniel J McCarthy

Variance to permit a side yard distance of 5 feet for an open-air deck/porch in lieu of the required 22.5 feet, to permit 404 parking spaces in lieu of the required 419 spaces.

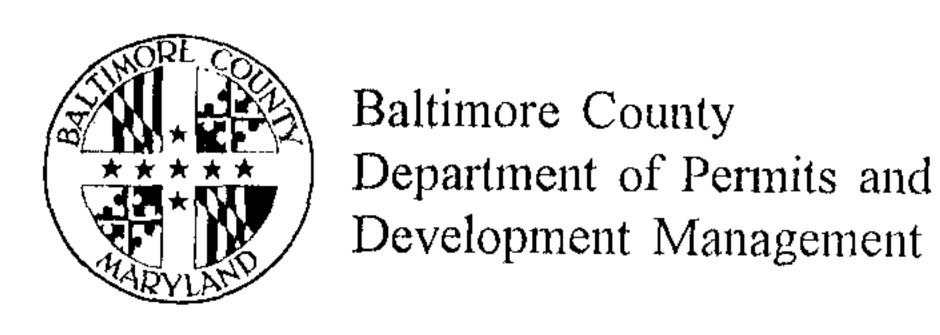
HEARING: Thursday, May 30, 2002 at 2:00 p.m. in Room 106, Baltimore County

Office Building, 111 W Chesapeake Avenue

LAWRENCE E. SCHMIDT GOZ ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



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

Fax: 410-887-5708

April 30, 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: 02-434-A
15 W Aylesbury Road
NW/corner of Aylesbury Road & connector Road
8th Election District — 4th Councilmanic District
Legal Owner: Richard H Kress

Contract Purchaser: Daniel J McCarthy

Variance to permit a side yard distance of 5 feet for an open-air deck/porch in lieu of the required 22.5 feet, to permit 404 parking spaces in lieu of the required 419 spaces.

HEARING:

Thursday, May 30, 2002 at 2:00 p.m. in Room 106, Baltimore County Office Building, 111

W Chesapeake Avenue

Arnold Jablon 602

Director

C: C. William Clark, Esquire, Nolan Plumhoff & Williams, 502 Washington Avenue, Towson 21204

DIA Aylesbury Inc, Richard H Kress, President, 15 W Aylesbury Road, Lutherville 21093

Padonia LLC, Daniel J McCarthy, 32 Inverin Circle, Lutherville 21093

Morris & Ritchie Assoc., William P Monk, 110 West Road, Suite 245,

Towson 21204

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, MAY 15, 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.



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

May 24, 2002

C. William Clark, Esquire Nolan, Plumhoff & Williams, CHTD 502 Washington Avenue Towson, MD 21204

Dear Mr. Clark:

RE: Case Number: 02-434-A, 15 Aylesbury Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on 4/5/02.

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.

Supervisor, Zoning Review

WCR:

Enclosures

DIA Aylesbury Inc. Richard H. Kress, President, 15 W. Aylesbury Road Lutherville, MD 21093

Padonia LLC Daniel J. McCarthy, 32 Inverin Circle, Lutherville MD 21093 Morris & Ritchie Assoc., William P. Monk, 110 West Road, Suite 245, Towson, MD 21204

People's Counsel

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County Interoffice Correspondence

DATE:

June 29, 2004

TO:

Timothy Kotroco, Director

Permits & Development Management

Attn.: David Duvall

FROM:

Theresa R. Shelton
Board of Appeals

SUBJECT:

DIA Aylesbury Road

CBA No.: 02-434-A

PDM File No.: 02-434-A

Circuit Court Case No.: 03-C-03-1885

On April 7, 2004, JudgeSouder of the Circuit Court of Baltimore County issued an Memorandum Opinion and Order AFFIRMING the Board of Appeals.

No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file/exhibits that are attached herewith.

Attachment: SUBJECT FILE ATTACHED AND EXHIBITS



Maryland Department of Transportation State Highway Administration

Parris N. Glendening Governor

John D. Porcari Secretary

Parker F. Williams Administrator

Date: 4.18.02

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

RE:

Baltimore County

Item No. 434

JRF

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,

1. McDonald Jr., Chief Engineering Access Permits Division



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

April 18,2002

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

ATTENTIQN: George Zahner

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF April 8, 2002

Item No.: See Below

Dear Mr. Zahner:

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, IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

426-435, 437-439

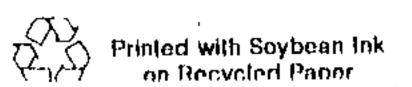


REVIEWER: LIEUTENANT JIM MEZICK, Fire Marshal's Office PHONE 887-4881, MS-1102F

cc: File

COUNTY REVIEW GROUP MEETING{PRIVATE }

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



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

Arnold Jablon, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

DATE: April 30, 2002

APR 3 0 2.10

SUBJECT:

Zoning Advisory Petition(s): Case(s) 02-360, 02-380, 02-410, 02-427, 02-431,

02-434, and, 02-442

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

Section Chief:

BALTIMORE COUNTY, MARYLAND DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO:

Arnold Jablon

FROM:

R. Bruce Seeley pres TUT

DATE:

May 10, 2002

Zoning Reclass/Redistricting Petitions

SUBJECT: NO COMMENTS FOR THE FOLLOWING ZONING ITEMS:

CASES 454-457

Zoning Advisory Committee Meeting of April 22, 2002

SUBJECT: NO COMMENTS FOR THE FOLLOWING ZONING ITEMS:

424, 428, 429, 431, 433, 434, 435, 437, 438, 439, 440, 442

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Arnold Jablon, Director

DATE: May 21, 2002

Department of Permits & Development

Management

FROM:

Robert W. Bowling, Supervisor PWB/DAK Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

for April 22, 2002

Item Nos. 424, 427, 428, 429, 430, 431, 433, 434, 435, 436, 437, 438, 439, 440, 441 and 442

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

RWB:CEN:cab

cc: File

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director

Department of Permits and Development Management

FROM:

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

MAY 2 3

DATE: May 23, 2002

SUBJECT:

11-15 W. Aylesbury Road

INFORMATION:

Item Number: 434

Petitioner: Padonia, LLC

ML-IM Zoning:

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:

The applicant requests a Petition for Variance to permit a side yard distance of five feet for an open air deck/porch in lieu of the required 22.5 feet pursuant to Section301.1 b of the Baltimore County Zoning Regulations (BCZR) and from Section 409.6 A.2. of the BCZR to permit 404 parking spaces in lieu of the required 419 spaces.

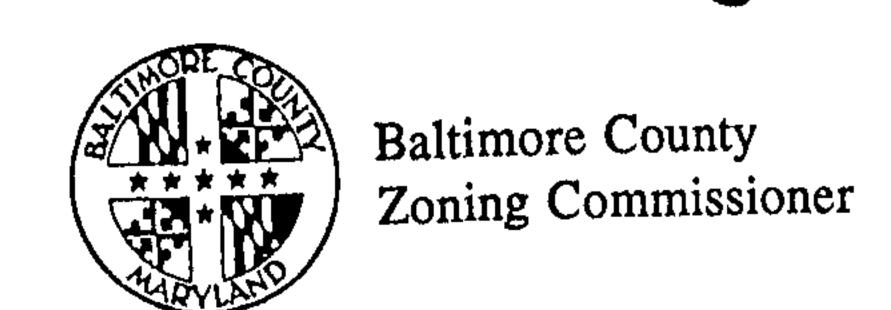
On the property subject to this Petition, the applicant operates the Bluestone Restaurant, which was approved by way of a limited exemption on May 11,2000. The restaurant is located within the area of the Hunt Valley/Timonium Master Plan, which was adopted by the County Council on October 19, 1998. The goal of the plan for Hunt Valley/Timonuim (HVT) is to protect and enhance the HV/T area without producing adverse impacts on neighboring residential communities. To that end, it is important that goals such as establishing a balance between residential, retail, office and residential uses be maintained. In addition to the above, design and amenity guidelines for development must be strictly adhered to in cases involving new development and redevelopment. What is more, it is also important to target uses that encourage utilization of light rail.

The applicant has constructed a building and designed a site that exceeds the standards outlined in the Hunt Valley/Timonium Master Plan. The requested variance will have no negative impacts and appears to be a reasonable addition to the Bluestone Restaurant. A restaurant at this particular location with respect to its proximity to the Baltimore Business Park Light Rail stop, also serves to encourage the use of light rail by employees and by customers who may be using that method of transportation to attend a sports event or a concert in Baltimore City.

For the reasons stated above, the Office of Planning supports the applicant's request.

Division Chief:

AFK:JL



June 10, 2002

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

Fax: 410-887-3468

C. William Clark, Esquire Nolan, Plumhoff & Williams 502 Washington Avenue Towson, Maryland 21204

RE: PETITION FOR VARIANCE 15 West Aylesbury Road Case No. 02-434-A

Dear Mr. Clark:

This letter is to confirm that the above-captioned matter, which was continued in open proceedings on May 30, 2002, has been scheduled to reconvene on Tuesday, June 18, 2002, at 9:00 AM in Room 407 of the County Courts Building. By copy of this letter, all parties have been notified of the continued hearing date, time and location.

Very truly_yours,

LÁWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

LES:bjs

Mr. Richard H. Kress, President, DIA-Aylesbury L.P. cc:

15 West Aylesbury Road, Lutherville, Md. 21093

Mr. Dan McCarthy, Padonia, LLC, 11 W. Aylesbury Road, Cockeysville, Md. 21030

Messrs. Dave Taylor and William P. Monk, Morris & Ritchie Assoc.,

111 West Road, Towson, Md. 21204

John Nowicki, Esquire, 6916 North Point Road, Baltimore, Md. 21219

Mr. Larry Townsend, 1/11 Longbrook Road, Lutherville, Md. 21093

People's Counsel; Case File

RE: PETITION FOR VARIANCE
11-15 W. Aylesbury Road, NWC Aylesbury Rd
& Connector Rd
8th Election District, 4th Councilmanic

Legal Owner: DIA-Aylesbury L.P. Contract Purchaser: Padonia, LLC Petitioner(s)

* BEFORE THE

* ZONING COMMISSIONER

* FOR

* BALTIMORE COUNTY

* Case No. 02-434-A

* * * * * * * * *

ENTRY OF APPEARANCE

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

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Peter Maso Timmeiman

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 2nd day of May, 2002 a copy of the foregoing Entry of Appearance was mailed to C. William Clark, Esq., Nolan, Plumhoff & Williams, 502 Washington Avenue, Suite 700, Towson, MD 21204, attorney for Petitioner(s).

PETER MAX ZIMMERMAN

Reter Marc Un

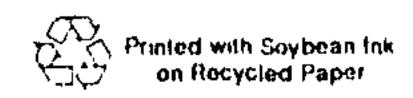
PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	<u>ADDRESS</u>
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# PETITIONER

Case Number Oz - 434A

## PLEASE <u>PRINT</u> LEGIBLY

## SIGN-IN SHEET

Name	Address	City, State	Zip Code
C. William CLARK	582 WASHINGTON ANE	TONBON, MD	21204
DAVID THYLAR	111 WEST FOND	Janson MD	21204
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		Revised 4/	17/00

Case Number OZ-434A

## PLEASE <u>PRINT</u> LEGIBLY

## PROTESTANT'S

## SIGN-IN SHEET

Name	Address	City, State	Zip Code
COMMUNETY COUNCEL	1111 LONGBROOK RUM	LUTHORVILLE, MD	21093
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Case Number O'Z-434A

(CONTINID)

## PLEASE <u>PRINT</u> LEGIBLY

## PROTESTANT'S SIGN-IN SHEET

Name	Address	City, State	Zip Code
THANKIN COMMUNETY COUNCER	1111 LONGBROOK ROMS	LUTHORUEUE MD	21093
John W. Nowick, Erg	6916 North Point RA Tatte	Talte and	21219
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		Revised 4	147100

### NOWICKI & TIRABASSI, P.A.

ATTORNEYS AT LAW
EDGEMERE OFFICE
6916 NORTH POINT ROAD
BALTIMORE CO., MD 21219-1216
(410) 477-8400
FAX (410) 477-4359

TOWSON OFFICE 609 BOSLEY AVENUE TOWSON, MD 21204-4038

BEL AIR OFFICE
727 NORTH HICKORY AVENUE
BEL AIR, MD 21014-3026
(410) 879-0026
FAX (410) 893-8199

July 15, 2002

Mr. Arnold Jablon Baltimore County Zoning Office County Courts Building Suite 405 Towson, Maryland 21204

Re:

Petition for Variance

W/S Aylesbury Road, 20 N of the c/l Connector Road

(11 & 15 Aylesbury Road)

8th Election District – 4th Council District

DIA-Aylesbury LP and Padonia, LLC – Petitioners

Case No.: 02-434-A

Dear Mr. Jablon:

JOHN W. NOWICKI

BAMBI CLENN

PHILIP N. TIRABASSI

I am writing to you on behalf of my client, Emanuel DiPaola and J.R. Brothers, Inc. with respect to Lawrence E. Schmidt's decision dated June 20, 2002 regarding the above-referenced matter. Please be advised that I do not agree with Mr. Schmidt's decision and therefore wish to request an appeal. I am enclosing herein my client's check made payable to Baltimore County in the amount of Two Hundred Ten Dollars (\$210.00) to cover the costs of same.

Thank you for your cooperation in this matter. Should you have any questions, please do not hesitate to contact me.

Sincergly,

John W. Nowicki

JWN/ls

Enc.

cc: C. William Clark, Esquire

DECEIVED

DECEIVED

By GDZ

LAW OFFICES

NOLAN, PLUMHOFF & WILLIAMS

CHARTERED

SUITE 700, NOTTINGHAM CENTRE **502 WASHINGTON AVENUE** TOWSON, MARYLAND 21204-4528 (410) 823-7800 TELEFAX: (410) 296-2765

email: npw@nolanplumhoff.com Web: www.nolanplumhoff.com

JAMES D NOLAN (RETIRED 1980)

J. EARLE PLUMHOFF (1940 - 1988)

RALPH E. DEITZ (1918-1990)

WRITER'S DIRECT DIAL (410) 823-7850

**ALGO ADMITTED IN NEW JERSEY

THOMAS J. RENNER

STEPHEN J. NOLAN*

ROBERT L. HANLEY, JR.

ROBERT S. GLUSHAKOW

DOUGLAS L. BURGESS

ROBERT E. CAHILL, JR.

CATHERINE A. POTTHAST

C. WILLIAM CLARK

E. BRUCE JONES**

CORNELIA KOETTER*

* ALSO ADMITTED IN D.C.

WILLIAM P. ENGLEHART, JR.

October 4, 2002

Clerk's Office County Board Of Appeals Old Courthouse Room 49 400 Washington Ave. Towson, MD, 21204

> Padonia Bluestone Re: Case No.: 02-434-A

Dear Clerk:

Enclosed for filing please find the following Motion to Deny or Dismiss Appeal in reference to the above captioned case.

Thank you for your anticipated cooperation.

grille Chullish Very truly yours,

Jennifer K. Chmielewski

Legal Assistant to C. William Clark

CWC:jkc

cc: Peter Max Zimmerman, People's Counsel

John Nowicki, Esquire

Dan McCarthy, Padonia Bluestone

DECEIVED OCT 0 7 2002 BALTIMORE COUNTY

BOARD OF APPEALS

### NOWICKI & TIRABASSI, P.A.

ATTORNEYS AT LAW
EDGEMERE OFFICE
6916 NORTH POINT ROAD
BALTIMORE CO., MD 21219-1216
(410) 477-8400
FAX (410) 477-4359

TOWSON OFFICE 609 BOSLEY AVENUE TOWSON, MD 21204-4038

BEL AIR OFFICE
727 NORTH HICKORY AVENUE
BEL AIR, MD 21014-3026
(410) 879-0026
FAX (410) 893-8199

October 14, 2002

C. William Clark, Esquire Nolan, Plumhoff & Williams 502 Washington Avenue Suite 700 Towson, Maryland 21204

Re: Padonia LLC/Bluestone

Case No.: 02-434-A

Dear Mr. Clark:

JOHN W. NOWICKI

BAMBI GLENN

PHILIP N. TIRABASSI

I am writing to confirm our telephone conversation of today's date regarding the above-referenced case. Again, you have granted me an extension to file an Answer to your Motion to Dismiss or Deny Appeal through November 8, 2002.

Thank you for your courtesy.

Sincerely,

John W. Nowicki

· JWN/Is

cc: Peter Max Zimmerman, People's Counsel Clerk's Office, County Board of Appeals

DECEIVED
OCT 1 6 2002

BALTIMORE COUNTY BOARD OF APPEALS LAW OFFICES

NOLAN, PLUMHOFF & WILLIAMS

CHARTERED

SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX (410) 296-2765
email: npw@nolanplumhoff.com

Web: www.nolanplumhoff.com

JAMES D NOLAN (RETIRED 1980)

J. EARLE PLUMHOFF (1940-1988)

(1918-1990)

* ALSO ADMITTED IN D.C.
**ALSO ADMITTED IN NEW JERSEY

THOMAS J. RENNER

STEPHEN J. NOLAN*

ROBERT L. HANLEY, JR.

ROBERT S. GLUSHAKOW

DOUGLAS L. BURGESS

ROBERT E. CAHILL, JR.

CATHERINE A. POTTHAST

C, WILLIAM CLARK

E. BRUCE JONES**

CORNELIA KOETTER*

WILLIAM P. ENGLEHART, JR.

November 14, 2002

The Honorable Charles L. Marks, Chairman County Board of Appeals Old Courthouse Room 49 400 Washington Ave. Towson, MD, 21204

Re: Padonia, LLC t/a Bluestone <u>Case No.:02-434-A</u>

Dear Chairman Marks:

The file for the above-captioned case should reveal that I filed a Motion to Deny or Dismiss Appeal on or about October 4, 2002. By letter dated October 14, 2002, the Board was informed by Mr. Nowicki, Counsel for the Appellant, that we had agreed that his client would file an Answer on or before November 8, 2002. That time has passed, and no Response to the Motion has been filed.

Accordingly, on my client's behalf, I request that the Board of Appeals rule upon the Motion filed on behalf of Padonia, LLC trading as Bluestone.

Thank you for your anticipated cooperation.

Very truly yours,

(Mycc. Can

C. William Clark

CWC:jkc

cc: Peter Max Zimmerman, People's Counsel John Nowicki, Esquire Dan McCarthy, Padonia Bluestone LAW OFFICES

Nolan, Plumhoff & Williams

CHARTERED

SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800

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JAMES D NOLAN (RETIRED 1980)

J. EARLE PLUMHOFF

RALPH E DETTZ (1918-1990)

JAN 0 2 2003

BALTIMORE COUNTY

BOARD OF APPEALS

WRITER'S DIRECT DIAL (410) 823-7850

MCGD ADMITTED IN ITEM DENG

* ALSO ADMITTED IN D.C **ALBO ADMITTED IN NEW JERSEY

THOMAS J. RENNER

STEPHEN J. NOLAN*

ROBERT L. HANLEY, JR.

ROBERT S. GLUSHAKOW

DOUGLAS L. BURGESS

ROBERT E. CAHILL, JR.

CATHERINE A. POTTHAST

C. WILLIAM CLARK

E. BRUCE JONES**

CORNELIA KOETTER*

WILLIAM P. ENGLEHART, JR.

December 31, 2002

County Board Of Appeals Old Courthouse Room 49 400 Washington Ave. Towson, MD, 21204

> Re: <u>Padonia Bluestone</u> Case No.:02-434-A

Dear Clerk:

Enclosed for filing please find the following Motion to Deny or Dismiss Appeal in reference to the above captioned case.

Thank you for your anticipated cooperation.

Very truly yours,

Jennifer K. Chmielewski

Legal Assistant to C. William Clark

CWC:jkc

cc: Peter Max Zimmerman, People's Counsel John Nowicki, Esquire

Dan McCarthy, Padonia Bluestone

# BALTIMORE COUNTY, MARYLAND Board of Appeals of Baltimore County MOTION ONLY HEARING

**DATE:** January 3, 2003

TO:

C. Marks M. Worrall

L. Wescott

FROM:

Kathi

SUBJECT:

Case No. 02-434-A /Padonia LLC.

Motion to Deny or Dismiss Appeal; Opposition to Same; and

Response to Opposition

A Motion Only Hearing has been scheduled in the subject matter on Thursday, January 9, 2003 at 9:00 a.m.

This motion hearing was postponed from a December date to the January date. In the course of postponement, there was a change in the composition of the sitting panel, meaning that you may or may not have received the Motion and responses filed which had been sent to the December panel.

Therefore, in order to assure that everyone has a copy of all documents for the argument scheduled for January 9th, I am distributing copies of the following to the entire January 9th panel.

Attached for your review prior to that Motion Only Hearing are copies of the following:

- 1) Motion to Dismiss or Deny Appeal filed by C. William Clark, Esquire, on behalf of Padonia, LLC, Petitioner;
- 2) Opposition to Motion to Deny or Dismiss Appeal filed by John W. Nowicki, Esquire, on behalf of Emanuel DiPaola and J.R. Brothers, Inc., Appellants /Protestants; and
- 3) Response to Opposition to Motion filed by C. William Clark, Esquire, on behalf of Petitioner.

On January 9, 2003, you will be receiving argument only on Bud Clark's Motion; there will be no evidence or testimony as to the merits of the case. This matter had already been assigned a February 2003 hearing date on the merits of the appeal, which will stay on the docket pending the outcome of the 1/09/03 motion hearing.

Please note that this is an early (9:00 a.m.) start on 1/09/03; you also have a 10:00 a.m. retirement case scheduled.

Should you have any questions, please call me.

Kathi

Attachments (3)

To C, Marks and M. Worrall 1/07/03

To S. Wescott on 1/08/03



# BALTIMORE COUNTY, MARYLAND Board of Appeals of Baltimore County MOTION ONLY HEARING

**DATE:** November 29, 2002

TO:

C. Marks

R. Irish

L. Barranger

FROM:

Kathi

SUBJECT:

Case No. 02-434-A /Padonia LLC.

Motion to Deny or Dismiss Appeal and Opposition to Same

A Motion Only Hearing has been scheduled in the subject matter on Tuesday, December 17, 2002 at 9:00 a.m.

Attached for your review prior to that Motion Only Hearing are copies of the following:

- 1) Motion to Dismiss or Deny Appeal filed by C. William Clark, Esquire, on behalf of Padonia, LLC, Petitioner; and
- 2) Opposition to Motion to Deny or Dismiss Appeal filed by John W. Nowicki, Esquire, on behalf of Emanuel DiPaola and J.R. Brothers, Inc., Appellants /Protestants.

I've also included a copy of the Notice of Assignment FYI. On December 17, 2002, you will be receiving argument only on Bud Clark's Motion; there will be no evidence or testimony as to the merits of the case. This matter had already been assigned a February 2003 hearing date on the merits of the appeal, which will stay on the docket pending the outcome of the 12/17/02 motion hearing.

Please note that this is an early (9:00 a.m.) start on 12/17/02; you also have a 10:00 a.m. reclassification scheduled (day #2 of Schwartz, which began on 12/10/02), as needed.

Should you have any questions, please call me.

Kathi

Attachments (2)

ENGINEERS, ARC	204 🖷 410-821-1690	FAX 410-821-1748	DATE 3/27/02 ATTENTION  RE: 11-15 W. AYL  NACE TO APPLICATION	MSMITTAL  JOBNO: 382  ESTE JEST  LESTE JEST
NAISM: CNSC	BICHAISOS	<u></u>		······································
WE ARE SENDING YOU  Shop drawings  Copy of letter	Attached   L APrints   Plans   Change order	Jnder separate cover v	/iaSpecifications	the following items:
COPIES DATE NO.	FONING MA	\$ 2	ON VNZINNCE NAM 50 = SMENTS	uchtan
□ FOR BIDS DUE	□ Approved as submitted □ Approved as noted □ Returned for corrections □			ER LOAN TO US
REMARKS				

If enclosures are not as noted, kindly notify us at once.

COPY TO _____

## MORRIS & RITCHIE ASSOCIATES, INC.

ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS, AND LANDSCAPE ARCHITECTS



March 26, 2002

Arnold Jablon Department of Permits and Development Management 111 Chesapeake Avenue Room 123 Towson, Maryland 21204

Subject:

Bluestone Restaurant

Drop off variance petition

Dear Arnold:

Per your office's policy regarding drop off filing petitions, please be advised that there are no outstanding zoning violations for the property, nor have I met with anyone from your staff regarding this petition.

The application is to add an open air deck/patio for the restaurant. Two variances are required (parking and street corner side yard setback for the deck.)

Cordially,

William P. Monk

Buc Make

Principal

#12382

WPM:lem\s\12382\bluestonerestaurantdropoffvariancepetition\032602



ATTORNEYS AT LAW
EDGEMERE OFFICE
6916 NORTH POINT ROAD
BALTIMORE CO, MD 21219-1216
(410) 477-8400
FAX (410) 477-4359

TOWSON OFFICE 609 BOSLEY AVENUE TOWSON, MD 21204-4038

BEL AIR OFFICE
727 NORTH HICKORY AVENUE
BEL AIR, MD 21014-3026
(410) 879-0026
FAX (410) 893-8199

July 15, 2002

Mr. Arnold Jablon Baltimore County Zoning Office County Courts Building Suite 405 Towson, Maryland 21204

Re:

Petition for Variance

W/S Aylesbury Road, 20 N of the c/I Connector Road

(11 & 15 Aylesbury Road)

8th Election District – 4th Council District

DIA-Aylesbury LP and Padonia, LLC - Petitioners

Case No.: 02-434-A

Dear Mr. Jablon:

300

JOHN W. NOWICKI

BAMBI CLENN

PHILIP N. TIRABASSI

I am writing to you on behalf of my client, Emanuel DiPaola and J.R. Brothers, Inc. with respect to Lawrence E. Schmidt's decision dated June 20, 2002 regarding the above-referenced matter. Please be advised that I do not agree with Mr. Schmidt's decision and therefore wish to request an appeal. I am enclosing herein my client's check made payable to Baltimore County in the amount of Two Hundred Ten Dollars (\$210.00) to cover the costs of same.

Thank you for your cooperation in this matter. Should you have any questions, please do not hesitate to contact me.

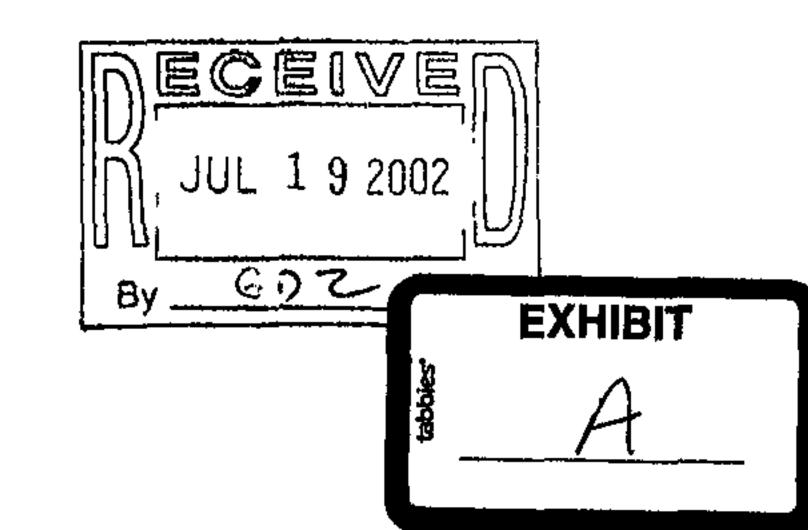
Sincerely,

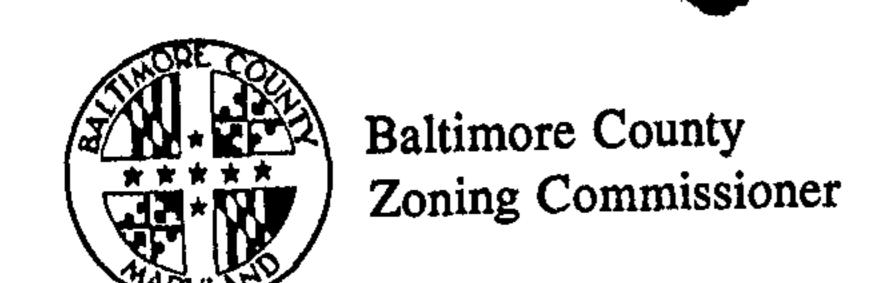
John W. Nowicki

JWN/is

Enc.

cc: C. William Clark, Esquire





June 10, 2002

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

Fax: 410-887-3468

C. William Clark, Esquire Nolan, Plumhoff & Williams 502 Washington Avenue Towson, Maryland 21204

RE: PETITION FOR VARIANCE 15 West Aylesbury Road Case No. 02-434-A

Dear Mr. Clark:

This letter is to confirm that the above-captioned matter, which was continued in open proceedings on May 30, 2002, has been scheduled to reconvene on Tuesday, June 18, 2002, at 9:00 AM in Room 407 of the County Courts Building. By copy of this letter, all parties have been notified of the continued hearing date, time and location.

Very truly_yours,

LAWRENCE E. SCHMIDT Zoning Commissioner for Baltimore County

LES:bjs

Mr. Richard H. Kress, President, DIA-Aylesbury L.P. cc:

15 West Aylesbury Road, Lutherville, Md. 21093

Mr. Dan McCarthy, Padonia, LLC, 11 W. Aylesbury Road, Cockeysville, Md. 21030

Messrs. Dave Taylor and William P. Monk, Morris & Ritchie Assoc.,

111 West Road, Towson, Md. 21204

John Nowicki, Esquire, 6916 North Point Road, Baltimore, Md. 21219

Mr. Larry Townsend, 1/11 Longbrook Road, Lutherville, Md. 21093

People's Counsel; Case File



## County Board of Appeals of Baltimore County

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

#### Hearing Room - Room 48

Old Courthouse, 400 Washington Avenue

December 10, 2002

## NOTICE OF POSTPONEMENT & REASSIGNMENT /MOTION ONLY HEARING

CASE #: 02-434-A

IN THE MATTER OF: DIA-Aylesbury Limited Partnership -Legal Owner;

Padonia LLC - C.P. 15 W Aylesbury Road

8th Election District; 4th Councilmanic District

6/20/02 – Z.C.'s Order in which Petition for Variance was GRANTED.

The Motion Only Hearing which had been assigned for 12/17/02 has been POSTPONED at the request of Counsel for Appellant due to Circuit Court schedule conflict; and has been:

#### REASSIGNED FOR: THURSDAY, JANUARY 9, 2003 at 9:00 a.m.

NOTE: No evidence or testimony as to the merits of this case will be received by the Board on the above date; argument only on Motion to Dismiss.

NOTICE:

Assigned for argument on Motion to Dismiss only. No testimony or evidence as to the merits of this appeal will be received at this Motion Only Hearing.

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

IMPORTANT: No postponements will be granted without sufficient reasons and in compliance with Board's Rules.

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: Counsel for Appellants /Protestants

: John W. Nowicki, Esquire

Appellants /Protestants

: Emanuel DiPaola J.R. Brothers, Inc.

Counsel for Petitioner

: C. William Clark, Esquire

Petitioner /Legal Owner

: DIA-Aylesbury Ltd. Partnership

Petitioner /C.P.

: Padonia LLC

William P. Monk / Morris & Ritchie Associates

Larry Townsend /Greater Timonium Community Council
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM



RE: Dia Aylesbury LP; Padonia LLC

VAR – To permit side yard setback of 5' for open air deck/porch ilo req'd 22.5'; to permit 404 parking spaces ilo req'd 419 spaces.

6/20/02 -Z.C.'s decision in which variance relief was GRANTED.

9/18/02 - Notice of Assignment sent to following; assigned for hearing on Wednesday, February 12, 2003 at 10:00 a.m.:

John W. Nowicki, Esquire
Emanuel DiPaola
J.R. Brothers, Inc.
C. William Clark, Esquire
DIA-Aylesbury Ltd. Partnership
Padonia LLC
William P. Monk / Morris & Ritchie Associates
Larry Townsend / Greater Timonium Community Council
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director / PDM

- 10/07/02 Motion to Dismiss or Deny Appeal filed by C. William Clark, Esquire, counsel for Petitioners. Awaiting response from counsel for Appellants /Protestants.
- 10/16/02 Copy of letter from John W. Nowicki, Esqui e, to C. William Clark, Esquire requesting extension for filing of Answer to Motion to Dismiss; to be filed no later than 11/08/02.
- 11/08/02 Opposition to Motion to Deny or Dismiss Appeal filed by John W. Nowicki, Esquire via FAX this date.

  To be scheduled for Motion hearing.
- 11/14/02 Letter from B. Clark did not receive Answer from Mr. Nowicki; requesting Board's ruling on Motion. T/C to Mr. Clark advised him that Answer had been filed via FAX; original copy not yet received; however, certificate shows copy mailed to him on 11/08/02.
- 11/18/02 Original Opposition to Motion to Deny or Dismiss Appeal received by CBA.
- 11/29/02 Notice of Assignment /Motion only hearing sent to the parties; assigned for Tuesday, December 17, 2002 at 9:00 a.m /for purpose of receiving argument on motion to dismiss only; no evidence or testimony as to merits of case. Copy of Motion and Response sent to panel members for this hearing with transmittal memo and copy of Notice.
- 12/10/02 Letter via FAX from John Nowicki, Esquire is beginning three-day trial on same date as Board hearing; confirmed by telephone availability of counsel on 1/09/03; notice to be sent for reassigned hearing.

  -- Notice of PP and Reassignment /Motion Hearing sent to parties; reassigned to Thursday, January 9, 2003 at 9:00 a.m.
- 1/02/2003 Response to Appellants' Opposition to Motion to Deny or Dismiss Appeal filed by C.William Clark, Esquire. Copies of Motion, Opposition to same, and Response to Opposition sent to C.S.W. for review prior to 1/09/03 Motion hearing. (Copies of two earlier documents had been sent to C.B.R.; motion hearing postponed and reassigned; copies sent to all panel members this date.

#### BOARD OF APPEALS OF BALTIMORE COUNTY

#### MINUTES OF DELIBERATION

IN THE MATTER OF:

Padonia LLC /DIA-Aylesbury Ltd Partnership

Case No.: 02-434-A

DATE:

January 9, 2003

**BOARD/PANEL:** 

Charles L. Marks

CLM

Lawrence S. Wescott

LSW

Margaret Worrall

MW

**RECORDED BY:** 

Theresa R. Shelton / Legal Secretary

**PURPOSE:** To deliberate Petitioner's Motion to Dismiss

#### PANEL MEMBERS DISCUSSED THE FOLLOWING:

- Reason for an appeal has to be based on a specific reason; not a general interpretation
- Competition is not a basis for an appeal
- The party aggrieved must have an special interest in the outcome of the matter
- There has to be a special interest for standing before th4e Board
- The only evidence given by the Appellant is competition/not an aggrieved party
- Jordan Towing does not apply different standard involved
- Limitation on standing cases, i.e. Holland; Sugarloaf
- 247 Md 144
- Appellant had no special damage

#### UNANIMOUS DECISIONS BY BOARD MEMBERS: Motion to Dismiss - GRANTED

FINAL DECISION: Petitioner's Motion to Dismiss Appeal - GRANTED

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

Respectfully submitted,

Theresa R. Shelton

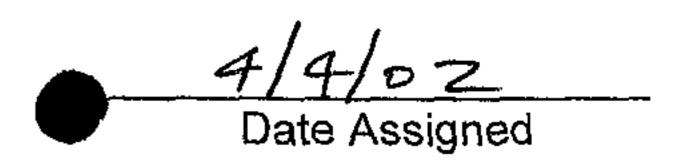
County Board of Appeals

1/22/03 2/22/03 DIA-Aylesbury Road 02-434-A

Motion to Dismiss – GRANTED – Appeal DISMISSED

APPEALED
TO CCT
Closed
5/6/2004
File to be
sent directly
to PDM
when
received
from Court

J	R	二	
In	take	Planne	ər



### DROP-OFF PETITIONS PROCESSING CHECK-OFF

Two Questions Answered on Cover Sheet:
Any previous reviews in the zoning office?
Any current building or zoning violations on site?
Petition Form Matches Plat in these areas:
Address
Zoning
Legal Owner(s)
Contract Purchaser(s)
Request (if listed on plat)
Petition Form (must be current PDM form) is Complete:  Request:
Section Numbers
Correct Wording (must relate to the code, especially floodplain and historical standard
wording. Variances must include the request in lieu of the required code quantities.
Hardship/Practical Difficulty Reasons
Legal Owner/Contract Purchaser:
Signatures (originals)
Printed/Typed Name and Title (if company)
Attorney (if incorporated)
Signature/Address/Telephone Number of Attorney
orginataron taarooon totopriorite transcor or morning
Correct Number of Petition Forms, Descriptions and Plats
200 Scale Zoning Map
Check: Amount Correct? Signed?
ZAC Plat Information:  Location (by Carl) NW/COR Aylosbury Rd and Connector Rd
Location (by Can) // Core / // // / A // A // A / A // A // A /
Zoning: ML-1M Acreage: 10.490 Ac Previous Hearing Listed With Decision
Check to See if the Subject Site or Request is:
CBCA Eta a de la in
Floodplain
E)derly
Historical Davide Char
Pawn Shop
Helicopter
*If Yes, Print Special Handling Category Here NO
*If No, Print No
434
Item Number Assigned Date Accepted for Filing

### CIRCUIT COURT FOR BALTIMORE COUNTY Suzanne Mensh

Clerk of the Circuit Court County Courts Building 401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258 Maryland Toll Free Number (800) 938-5802

06/25/04

Case Number: 03-C-03-001885 AE

Date Filed: 02/21/2003 Status: Closed/Active

Judge Assigned: To Be Assigned,

Location :

In The Matter Of: D I A Aylesbury Ltd, Et Al

CASE HISTORY

#### OTHER REFERENCE NUMBERS

Description Number

Administrative Agency 02434A

Case Folder ID C03001885V01

#### INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PET 001	DiPaola, Emanuel	Party ID: 0562919	BT D0 04/07/04	02/24/03
Mail:	308 Ringold Valley Circle Cockeysville Hunt Valley, MD 21030	02/24/03	02/24/03 CMS	02/24/03 CMS
Attor	ney: 0801496 Nowicki, John W Nowicki & Tirabassi, P.A. 6916 North Point Road Baltimore, MD 21219 (410)477-0026	Appear: 02/24/2003		02/24/03
PET 002	J R Brothers Inc	Party ID: 0562924	BT DO 04/07/04	02/24/03
Mail;	308 Ringold Valley Circle	02/24/03	02/24/03 CMS	02/24/03 CMS

03-C-03-001885

Date:

06/25/04

Time: 10:25

Page:

2

Cockeysville Hunt Valley, MD 21030

Attorney: 0801496 Nowicki, John W

Nowicki & Tirabassi, P.A. 6916 North Point Road Baltimore, MD 21219

(410)477-0026

Appear: 02/24/2003

02/24/03

Type Num Name(Last.First.Mid.Title)

Addr Str/End

Pty. Disp.

Entered

Addr Update

RES 001 D I A Aylesbury Ltd Partnership

BT DO 04/07/04

02/24/03

Party ID 0562928

Capacity : Legal Owner

RES 002 Padonia L L C

BT DO 04/07/04

02/24/03

Party ID: 0562930

Capacity : Contract Purchaser

Attorney: 0020817 Clark, C William

Appear. 03/10/2003

03/10/03

Nolan, Plumhoff & Williams, Chartered

502 Washington Avenue Nottingham Center Ste 700 Towson, MD 21204-4528

(410)823-7800

ITP 001 Board Of Appeals Of Baltimore County

BT DO 04/07/04

02/24/03 CMS

02/24/03

Party ID: 0562926

02/24/03

Mail: Old Courthouse Room 49

400 Washington Avenue

Towson, MD 21204

02/24/03 CMS

Attorney: 0029075 Zimmerman, Peter M

People's Counsel For Baltimore County

Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188 Appear 03/05/2003

03/05/03

#### CALENDAR EVENTS

Date Time

Dur Event Description

Text SA Jdg Day Of Notice User ID

Result

ResultDt By Result Judge

07/09/03 C S.Souder

Rec

_____

07/09/03 09:30A 02Q Motion Hearing (Civil)

,

SS 01 /01 06/16/03 RC

Conclude Stangaraphon(s)

Stenographer(s): Linda K. Lindsey

03-C-03-001885 Da	te: 06/25/04	Time: 10:25	Page: 3
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Dur Event Description Text SA Jdg Day Of Notice User ID Time Date ResultDt By Result Judge Rec Result KLS LLH TBA 01 /01 08/04/03 09:30A 01H Civil Non-Jury Trial Y 08/07/03 A J.Turnbull, II Postpone TBA 02 /01 LLH LLH 08/05/03 09:30A 04Q Civil Non-Jury Trial 08/07/03 C Vacate LLH LLH TBA 03 /01 08/06/03 09:30A 04Q Civil Non-Jury Trial 08/07/03 C Vacate LLH LLH Υ TBA 04 /01 08/07/03 09:30A 01H Civil Non-Jury Trial 08/07/03 C Vacate KGR TJB 01 /01 12/17/03 09:30A 01H Civil Non-Jury Trial 12/17/03 E T.Bollinger Conclude

### DISPOSITION HISTORY

Stenographer(s): Court Smart

Disp	Disp		Stage		
Date	Code	Description	Code	Description	User
04/07/04	DO	Decree or Order	BT	BEFORE TRIAL/HEARING	PH

#### JUDGE HISTORY

JUDGE	ASSIGNED	Туре	Assign Date	Removal RSN
TBA	To Be Assigned,	J	02/24/03	

#### DOCUMENT TRACKING

Num/Seq Description	Filed		•	Jdg Ruling	Closed	User	^ ID
0001000 Petition for Judicial Review		02/24/03			04/07/04	CMS	PH
0001001 *Answer	03/07/03	03/10/03	RES002	TBA	04/07/04	C\$	PH
0001002 Memorandum in Opposition to Motion	07/24/03	<b>07/2</b> 5/03	RES002	TBA	04/07/04	PH	РН
0002000 *Certificate of notice	02/28/03	03/05/03	000	TBA	04/07/04	PH	PH
0003000 *Transcript of Record from Adm Agency	04/23/03	04/28/03	000	TBA	04/07/04	AR	PH
0004000 Notice of Transcript of Record Sent	04/28/03	04/28/03	ITP001	TBA	04/28/03	AR	AR
0005000 Notice of Transcript of Record Sent	04/28/03	04/28/03	PET001	TBA	04/28/03	AR	AR

03-C-03-001885 Date: 06/25/04 Time: 10:25 Page: 4

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User	r ID
0006000	Notice of Transcript of Record Sent	04/28/03	04/28/03	PET002	ТВА		04/28/03	AR	AR
0007000	Notice of Transcript of Record Sent	04/28/03	04/28/03	RES001	TBA		04/28/03	AR	AR
0008000	Notice of Transcript of Record Sent	04/28/03	04/28/03	RES002	TBA		04/28/03	AR	AR
0009000	Scheduling Order	05/09/03	05/09/03	000	ТВА		05/09/03	KLS	KLS
0010000	Motion to Dismiss	05/23/03	05/27/03	RES002	SS	Denied	07/15/03	PKE	MI
0010001	*Opposition to Motion Filed by PET001-Dipaola, Emanuel, PET002-		07/07/03 ners Inc,	PET001	TBA		04/07/04	DR	PH
0011000	Memorandum in Support of Motion to Dismiss	05/23/03	05/27/03	RES002	TBA		05/27/03	PKE	PKE
0012000	Hearing Notice	06/16/03	06/16/03	000	TBA		06/16/03	RC	RC
0013000	Request for Hearing/dismiss	05/23/03	06/17/03	RES002	ТВА		04/07/04	РН	PH
	Open Court Proceeding July 9,2003 Hon.Susan Souder Hearing had (pap#10000)-Denied. Order to be filed.		07/09/03 otions	000	SS		04/07/04	KD	PH
0015000	Hearing Notice	10/27/03	10/27/03	ITP001	ТВА		10/27/03	KGR	KGR
0016000	Memorandum, Ruling and Order affirming decision	04/07/04	04/07/04	000	TJB	Granted	04/07/04	РН	PH
0017000	Invoice #13867 sent to John W Nowicki	04/09/04	04/09/04	000	TBA			PKE	PKE
0018000	Docket entries sent to Board of Appeals for Baltimore County	04/12/04	04/12/04	000	TBA			CVM	CVM

#### TICKLE

Code Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Туре	Num	Seq
1ANS 1st Answer Tickl	le CLOSED	03/07/03	0	no	no	DANS	D	001	001
1YRT One Year Tickle	(Jud CLOSED	02/21/04	365	no	no	DAAA	D	001	000
EXPU Exhibit Pickup	Notic CLOSED	06/06/04	30	no	no			000	000
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03-C-03-001885 Date: 06/25/04 Time: 10:25 Page: 5

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#### EXHIBITS

Line # Marked Code Description SpH Sloc NoticeDt Disp Dt Dis By

Offered By: ITP 001 Board Of Appeals Of Baltimore

8 BOX 363/CBA 00363 B

#### DIFFERENTIATED CASE MANAGEMENT

#### TRACKS AND MILESTONES

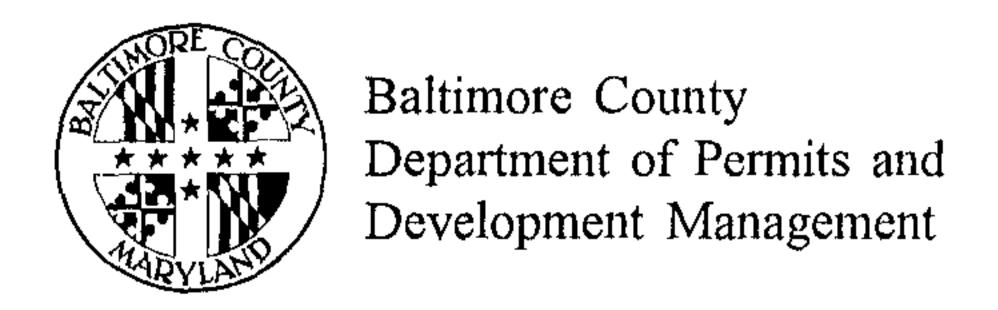
Track: R1 Description: EXPEDITED APPEAL TRACK Custom: Yes

Assign Date: 05/09/03 Order Date: 05/09/03

Start Date: 05/09/03 Remove Date:

Milestone Scheduled Target Actual Status

Motions to Dismiss under MD. Rule 2-322( 05/24/03 04/07/04 CLOSED All Motions (excluding Motions in Limine 11/07/03 04/07/04 CLOSED TRIAL DATE is 12/17/03 08/07/03 12/17/03 REACHED



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

Fax: 410-887-5708

July 23, 2002

C. William Clark Esquire Nolan Plumhoff & Williams 502 Washington Avenue Towson MD 21204

Dear Mr. Clark:

RE: Case No. 02-434-A, 15 W Aylesbury Road

Please be advised that an appeal of the above-referenced case was filed in this office on July 19, 2002 by John W Nowicki, Attorneys at Law on behalf of Emanuel DiPaola and J.R. Brothers Inc. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Arnold Jablon GDZ

Director

Sincerely,

AJ: gdz

c: DIA-Aylesbury Limited Partnership, Richard H Kress, President, 15 W Aylesbury Road, Lutherville 21093 Padonia LLC, Daniel J McCarthy, 32 Inverin Circle, Lutherville 21093 People's Counsel

#### APPEAL

Petition For Variance 15 W Aylesbury Road NW/corner of Aylesbury Road & Connector Road 8th Election District – 4th Councilmanic District DIA-Aylesbury Limited Partnership - Legal Owner Padonia LLC - Contract Purchaser

Case No.: 02-434-A

Petition for Variance (dated 04/05/02) ✓ Zoning Description of Property V Notice of Zoning Hearing (dated 04/30/02) √ Certification of Publication (The Jeffersonian issue dated 05/16/02) Certificate of Posting (dated 05/15/02 posted SSG Robert Black) √Entry of Appearance by People's Counsel (dated 05/02/02) V Petitioner(s) Sign-In Sheet (2 sheets) Protestant(s) Sign-In Sheet (2 sheets) Citizen(s) Sign-In Sheet (None) Zoning Advisory Committee Comments Petitioners' Exhibits: Plan To Accompany Variance Application (dated 03/15/02) 2. Plan To Accompany Variance Application (dated 03/15/02) ✓ 3. Zone and District Regulations page 2-91 √4. Zone and District Regulations page 2-67 ✓5. Baltimore County Zoning Regulations page 3-2. V6. Composite Parking Plan ✓Protestants' Exhibits: (none) Miscellaneous (Not Marked as Exhibits): Letter to C. William Clark, Esquire from Lawrence Schmidt Zoning Commissioner dated 06/10/02 Zoning Commissioner's Order (dated 06/20/02 – GRANTED subject to restrictions) Notice of Appeal received on July 19, 2002 from John W Nowicki, Attorney on behalf of Emanuel DiPaola and J.R. Brothers Inc. C. William Clark, Esquire, Nolan Plumhoff & Williams, C: 502 Washington Avenue, Towson 21204

People's Counsel of Baltimore County, MS #2010 Lawrence Schmidt, Zoning Commissioner Arnold Jablon, Director of PDM

William P. Monk Morris & Ritchie Assoc. 110 West Road, Suite 245 Towson, MD 21204

* EMANUEL DIPAOLAS *J. R. BROTHERS John W. Nowicki, Esquire 1977 Nowicki & Tirabassi, P.A. Edgemere Office 6916 North Point Road

Daniel J. McCarthy Padonia, LLC 32 Inverin Circle Lutherville, MD 21093

C. William Clerk, Esquire

502 Washington Avenue

Towson, MD 21204

Nolan, Plumhoff & Williams, Chto.

Larry Townsend Greater Timonium Community Cour 1111 Longbrook Road Lutherville, MD 21093

Baltimore, MD 21219-1216 Richard H Kress, President DIA-Aylesbury Limited Partnership

15 W Aylesbury Road

County Code, 1988 Edition, as revised. Notwithstanding the foregoing, no trucking facility or part of a trucking facility may be established within 100 feet of such a right-of-way. [Bill Nos. 176-1981; 31-1984]

253.5 Conflicts with Section 270. Wherever any provision of this section may conflict with a provision of Section 270, the provision in this section shall control.

# Section 254 M.L. Zone Height Regulations [BCZR 1955; Bill No. 56-1961⁶⁷]

Height unlimited, except that no building hereafter erected on a lot which abuts a residence or business zone shall exceed a height of 40 feet or three stories if any part of said building is within 100 feet of the boundary line of said residence or business zone (see Section 300).

#### Section 255 M.L. Zone Area Regulations [BCZR 1955; Bill Nos. 56-1961; 85-1967]

- The area regulations in the M.L. Zone shall be the same as those in B.R. Zone unless such B.R. Zone regulations conflict with the provisions of Section 255.2.⁶⁸
- Within 100 feet of any residential zone boundary or the right-of-way of any street abutting such a boundary, or within 100 feet of the right-of-way of an existing or proposed interstate highway, other freeway or expressway, which motorway is officially so designated by the State Highway Administration, Maryland Department of Transportation, and/or the county, the front, side and rear yards shall be as required in M.R. Zone (see Sections 243.1, 243.2 and 243.3).



Editor's Note: A literal reading of Section 3 of Bill No. 56-1961 would indicate that Section 254 of the Zoning Regulations was changed to read, in its entirety, as follows: "(See Section 255.1 and 300)." It has been assumed, however, that it was not the intent of the bill to repeal the language set out here as preceding that parenthetical reference.

Editor's Note: Part of former Subsection 255.1, added by Bill No. 56-1961 was revised by Bill No. 85-1967 and redesignated as Subsection 255.2.

Wireless telecommunications towers, subject to Section 426 [Bill Nos. 61-1967; 85-1967; 64-1986; 30-1998]

## Section 237 B.R. Zone Height Regulations [BCZR 1955]

Same as in B.L. Zones.

# Section 238 B.R. Zone Area Regulations [BCZR 1955]

Minimum requirements, except as provided in Article 3, shall be as follows:

- Front yard for residences, as in Sections 302 and 303.1; for commercial buildings the front building line shall be not less than 50 feet from the front property line if on a dual highway; and not less than 25 feet from the front property line and not less than 50 feet from the center line of any other street, except as specified in Section 303.2.
- Side and rear yards for residences, as in Section 302; for other buildings, 30 feet.
- 238.3 Parking areas and loading space in accordance with the provisions of Section 409.
- Storage and display of materials, vehicles and equipment are permitted in the front yard, but not more than 15 feet in front of the required front building line.
- Floor area ratio. The maximum permitted floor area ratio for any site in a B.R. Zone, except in C.C.C. and C.T. Districts, shall be 2.0. [Bill Nos. 7-1962; 111-1968; 100-1970]

# Section 238A Special Regulations for C.C.C. Districts [Bill Nos. 111-1968; 100-1970; 26-1988; 36-1988]

Contrary provisions of these zoning regulations notwithstanding, the regulations of this section shall apply in C.C.C. Districts superimposed upon B.R. Zones. (All aspects of matters not governed by the following provisions of this section shall be governed by all other applicable provisions of these zoning regulations.)

- 238A.1 Apartments shall be permitted, but only above the first story of a building. Elderly housing facilities shall be permitted in any story of a building.
- 238A.2 No apartment window facing a property line other than a street line shall be closer than 25 feet thereto. The minimum distance between the centers of facing windows of different apartments on the same lot shall be 50 feet.

2-67 1 - 25 - 99

⁵ Editor's Note: This bill redesignated former Section 238A as Section 238B.

# Section 301 Projections Into Yards [BCZR 1955]

- 301.1 Carports or open porches.
  - A. If attached to the main building, a carport or a one-story open porch, with or without a roof, may extend into any required yard not more than 25% of the minimum required depth of a front or rear yard or of the minimum required width of a side yard. Any carport or open porch so extended must be open on three sides. [Bill Nos. 150-1983; 2-1992]
  - B. Notwithstanding the provisions of Subsection A, open projections in the side yard are permitted in residential large tract subdivisions only in accordance with Section 504 and the standards as set forth in the Comprehensive Manual of Development Policies. [Bill No. 2-1992]
- Projections such as bay windows, chimneys, entrances, vestibules, balconies, eaves and leaders may extend into any required yard not more than 4 feet, provided that such projections (excepting eaves) are not over 10 feet in length.
- No side and/or rear yard is required for a business or manufacturing use in that portion of any property located in a B.R., M.R., M.L.R., M.L. or M.H. Zone if such side and/or rear line abuts on a railroad right-of-way or siding, to either of which it uses rail access. [Bill No. 56-1961]

# Section 302 Height and Area Regulations for New Residences in Business and Manufacturing Zones [BCZR 1955; Resolution, November 21, 1956]

Residences hereafter erected in business and manufacturing zones shall be governed by all height and area regulations for the predominant residence zone which immediately adjoins, or by D.R.5.5 Zone² regulations if no residence zone immediately adjoins.

# Section 303 Front Yard Depths in Residence and Business Zones [BCZR 1955]

In D.R.2, D.R.3.5 and D.R.5.5 Zones,³ the front yard depth of any building hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side, provided such adjoining lots are improved with principal buildings situate within 200 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of

Editor's Note: In this section, the R.6 Zone was redesignated as the D.R.5.5 Zone pursuant to Section 100.3A.

Editor's Note: In this section, the R.20, R.10 and R. 6 Zones have been redesignated as D.R.2, D.R.3.5 and D.R.5.5, respectively, pursuant to Section 100.3A.

# State of Maryland 2002

### READ CAREFULLY ALL QUESTIONS ON BOTH SIDES MUST BE FULLY ANSWERED.

This application must be filed on or before March 31, 2002 at the Office of the Board or you may be fined an amount not to exceed \$50 for each day the application is late, up to a maximum cumulative amount of \$500 for an application filed during the month of April. If the application for renewal is not received by April 30, 2002, your license will be VOIDED. This will necessitate the filing of a new application and the advertisement of same at a cost of \$250.00. Any such application will only be considered if there are new licenses available in the Election District where the license is sought. (See Article 2B of the Public General Laws, 1994 Replacement Volume, and Rule 19 of the Rules and Regulations of the Liquor Board.)

Extract from Section 16-501 of Article 2B of the Law: If any signed statement, affidavit or oath required under the provision of this Act shall contain any false statement, the offender shall be deemed guilty of perjury, and upon indictment and conviction thereof, shall be subject to the penalties provided by law for that crime

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		Trade	Name	······································	Busine	- Y7//		
	Licensee I	ANTHONY	JOSEPH DIPAOLS		NG CT. MD		(410) 69261	77
	Licensee 2	EMAHUE	EL ANThous	DIPADIA 30	18 RINGOLO	VAVEI 21	10me Phone 2000 410-40	•
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ANSWER		Name (Print)	<del></del>	Home Address (P	rint)	Zip	Home Phone	
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• '					Notary F	Public	15 10 10 10	1/+

### ALCOHOLIC BEVERAGES LICENSE APPLICATION State of Maryland

*

APPLICATION FOR CLASS B (BWL) LICENSE TO THE BOARD OF LIQUOR LICENSE COMMISSIONERS FOR BALTIMORE COUNTY:

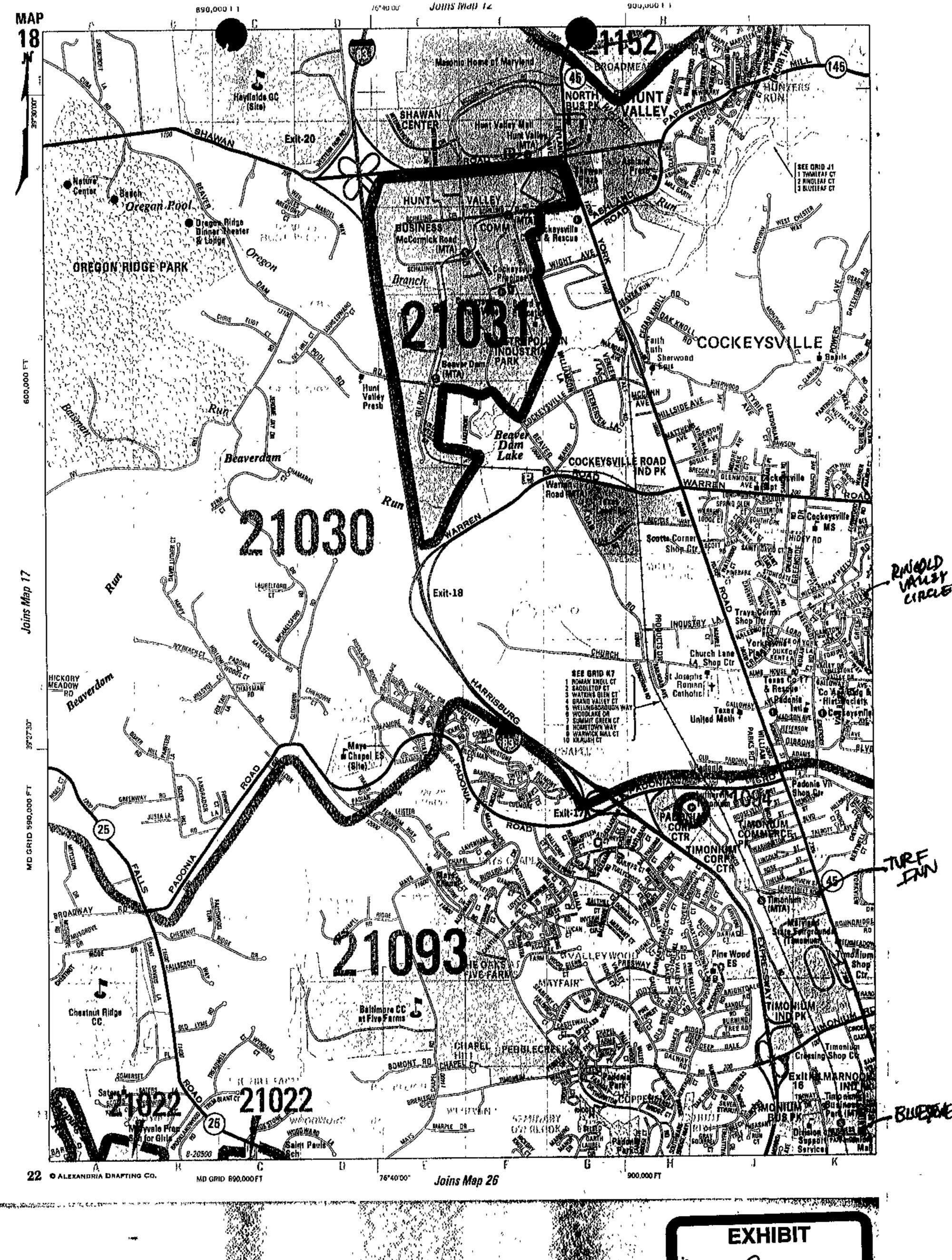
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1 A.	Noneter	PLEASE ANSWER F	ULLY		
I. A)	pplicants: Anthony Joseph I	)iPaola			(410) 600 61
Λ,	Name: Anthony Joseph I 1730 Trotting Co	urt Jarrettavill	e	Tel. N	o. (410) 692-61 f residency: 9 year
	County: Harford			Period o	fresidency: year
	Age: 37 Sex: M	Color: W Block Date:	10/22/63 State:	Maryland	Zip: 21084
	Have you been a resident of Baltimor			this annihost-0-	No
	Are you a registered voter?:	Yes		District 2	
	Transcent Augustian		, , , , , , , , , , , , , , , , , , ,		
B.	Name: Emanuel Anthony	<del></del>		Tel. No	_{o.} (410) 666-51
	Address: 308 Ringold Val	lley Circle Cockey	sville	Period of	residency: 8 year 21030
	Age: 34 Sex: M		0/27/66 State:	maryland 7	Zip:
	Have you been a resident of Baltimore	olor: Birth Date:	0/2//00		Vaa
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	Are you a registered voter?:	Evnerience	If so, state:	District	Precinct
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•••	other than corporation, state trade nat	he to be asea:		Tel. No	0. 710 dod 49
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۸.	Nearest intersecting street Highy	_			O feet.
В.	Election District where located:	08	Is this an app	lication for a new lice	nse? No
C.	Describe part of building to be used:	restaurant, bar,	lounge, and	deck	
D.	Is this building within 300 feet of any	school, church or other place of w	orship? No		
B.	If this is a new building or a building	not previously licensed, is this bu	ilding completed for o	peration and final in	spection by the Health
	Dept., Fire Dept., Building and Plun	abing Depts.? N/A		,,	operation by the Health
F.	If this is a new building or a building r	not previously licensed, a copy of	he bona fide plans mi	ist he filed with this a	polication or everaged
	at the time of the hearing.	Ton	2 Date 26	an or med with tills 4	bbucation of bresented
G	Are you represented by an attorney? _	Yes Whom: Covahe	y & Boozer,	₽•A.	
	Are you represented by an attorney?  Address: 606 Baltimore Address:	lve., Suite #302, T	owson, Md.	21204 Tel No	(410) 828-552
<b>H.</b>	is this a transfer from a present license	e? Yes From: (state Corpor	ation and/or Trade Nan	FAX No	( <u>410) 296-</u> 213
	Ribs in Baltimore, I	LC t/a Damon's			
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	e Name of Owner of Premises: $J_{+}$	R. Brothers, Inc.			
State	Address of Owner of Premises:	Hemlock Court, Hu	int valley, M	d. 21030	
A. I	Is Property being leased; Yes Lease Dates: Begins 3/1/01	Term of Lease:	years 2	2/28/06	Years
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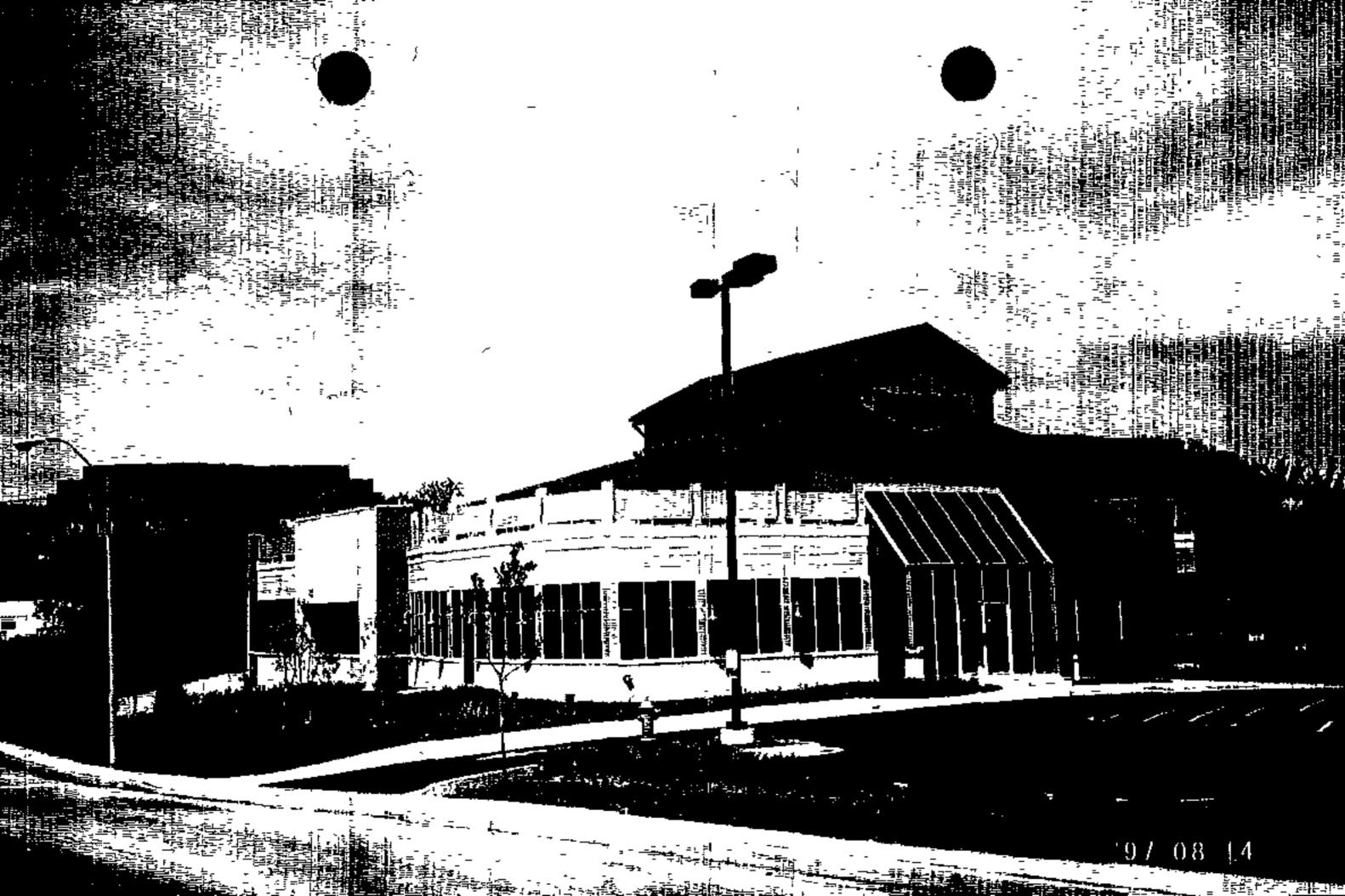
D. adjudged guilty of any offense against the laws of the State or of the United States? A No

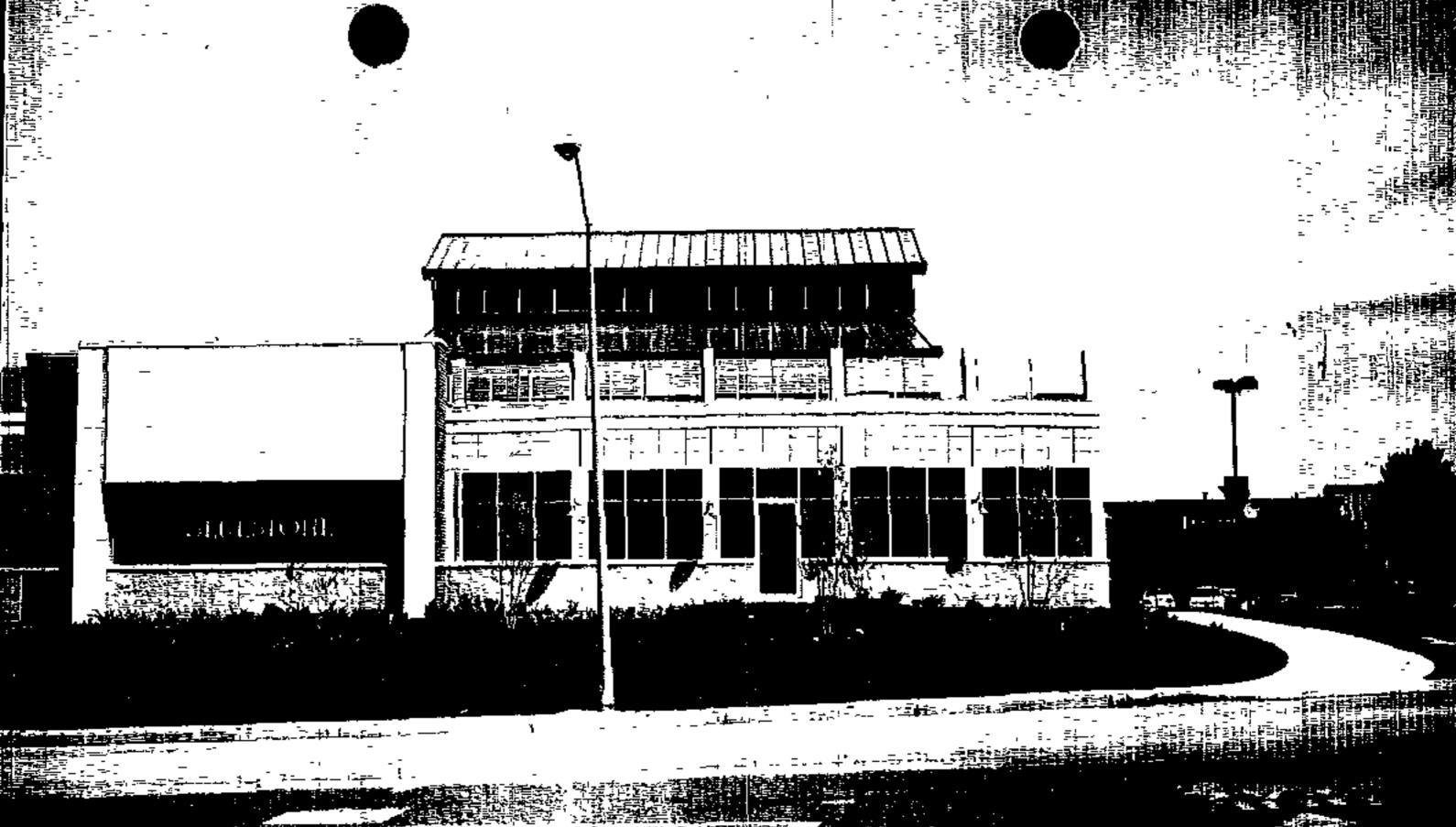
If so, state when and where:

**EXHIBIT** 

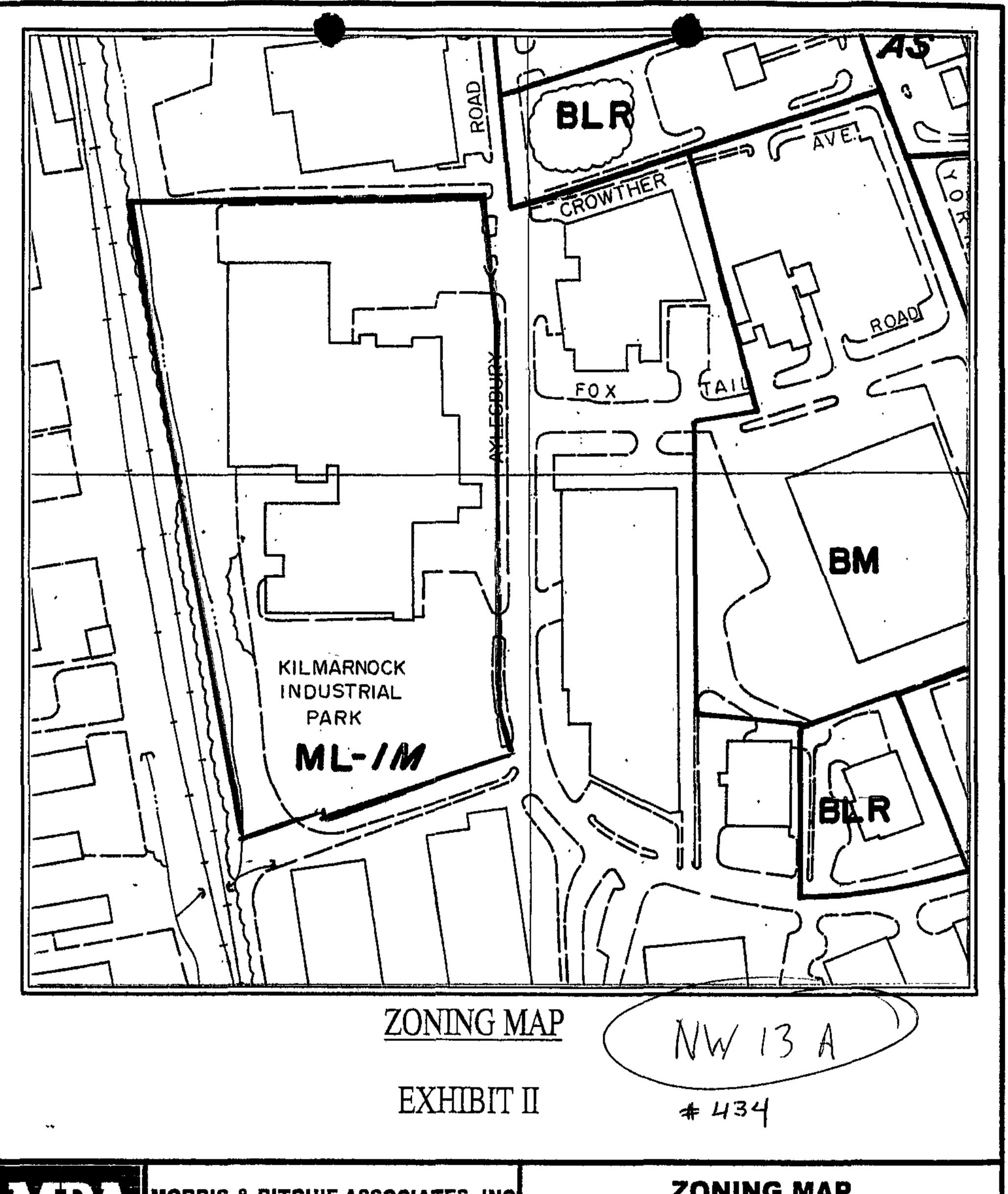


EXHIBIT











### MORRIS & RITCHIE ASSOCIATES, INC

ENGINEERS, PLANNERS, SURVEYORS, AND LANDSCAPE ARCHITECTS

110 WEST ROAD, SUITE 245 TOWSON, MARYLAND 21204 (410) 821-1690 FAX: (410) 821-1748

### ZONING MAP 11-15 W. AYLESBURY ROAD

BALTIMORE COUNTY, MARYLAND

SCALE: 1'=200'

DATE: 02/20/02

ZIINING MAP 1 NV13A

DEZIGN BYI VM

ME VIEW BY WM

JOB NO. + 12382

IN THE MATTER OF:

* BEFORE THE

DIA-AYLESBURY LTD. PARTNERSHIP - * COUNTY BOARD OF APPEALS

Legal Owner, Padonia LLC - CP - * OF

15 W. Aylesbury Road * BALTIMORE COUNTY

8th Election District * Case No. 02-434-A

4th Councilmanic District * January 9, 2003

The above-entitled matter came on for hearing before the County Board of Appeals for Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 9 a.m., January 9, 2003.

### ORIGINAL

Reported by:

C.E. Peatt

### Multi-Page TM

IVIUIL.	i-Page '**
Page 2	
1 BOARD MEMBERS: 2 3 CHARLES L. MARKS, Chairman 4 LAWRENCE S. WESCOTT 5 MARGARET WORRALL 6 7 8 APPEARANCES: 9 C. WILLIAM CLARK, Esquire On behalf of Petitioner/Appellee 10 JOHN W. NOWICKI, Esquire 11 On behalf of Protestants/Appellants 12 13 14 15 16 17 18 19 20 21	MR. CLARK: Mr. Chairman, members of the Board, my client the Bluestone Restaurant is an existing restaurant and has applied for a petition for variance to allow a variance in the distance of the side yard setback so it can construct an open area dining facility, whether it be a deck or patio, whatever it may be, and the second part of the variance, they are requesting to vary the number of parking spaces, both of which the Zoning Commissioner approved.  The protestants in this case J.R. Brothers and In Mr. DiPaola operate the Turf Inn Restaurant, which is located up the road on York Road in Baltimore County. And once they filed their Notice Of appeal, I prepared a Motion to Dismiss that appeal, and that's why we're here today.  Mr. Chairman should have in its file the Motion, with the legal memorandum included in the Motion, an affidavit which is filed by Mr. McCarthy, who's here present who's one of the owners and general managers of the restaurant. I have three copies of Mr. McCarthy's affidavit.
Page 3  PROCEEDINGS  ******  THE CHAIRMAN: Good morning, everybody. Let the  record show that the County Board of Appeals for Baltimore  County is in its regularly scheduled session for today,  Thursday, January 9, 2003, at 9 a.m relative to Case No.  O2-434-A in the matter of DIA Aylesbury Limited  Partnership/legal owner, Padonia LLC-CP, in which an  appeal has been taken to this Board from a Zoning  Commissioner's order dated June 20, 2002, in which a  petition for variance was granted.  So the record is complete, will counsel please  state their names and representation.  MR. CLARK: C. William Clark, Nolan, Plumhoff and  Williams, on behalf of the petitioner and appellee Padonia  LLC, which trades as Bluestone Restaurant.  MR. NOWICKI: John W. Nowicki, on behalf of the  appellant.  THE CHAIRMAN: Anything preliminarily, gentlemen?	Page 5  1 THE CHAIRMAN: We have those in the file already.  2 MR. CLARK: I didn't know how many copies the  3 Board was making of things these days, but let me spend a  4 couple of minutes on the facts.  5 As you will see in Mr. McCarthy's affidavit, the  6 Turf Inn is located a mile away, over a mile away on York  7 Road, not on Aylesbury Road, as it points out in his  8 affidavit in paragraph number seven. When standing on  9 either property, you cannot see the Turf Inn from the  10 Bluestone. You can't see Bluestone from the Turf Inn.  11 This is a busy commercial area of Baltimore  12 County. The surrounding noise in the vicinity drowns out  13 any noise that eminates from either restaurant being that  14 distance away.  15 You also see in the affidavit we have obtained  16 records from the election board. There's a copy of the  17 ADC map that shows Mr. DiPaola lives further away in  18 Cockeysville, and if you look at Exhibit C on the  19 affidavit, you can see the relative distance and locations

21

20

MR. CLARK: No. This is my motion.

THE CHAIRMAN: Move right into it. Okay.

20 of Bluestone Turf Inn and Mr. DiPaola's home.

As the affidavit also points out, there are

Page 6

- 1 topographic changes between these two restaurants.
- 2 There's many several-story buildings, including the
- 3 grandstand of the Timonium Fairgrounds, the Timonium
- 4 Shopping Center, the Timonium Business Park.
- 5 And one last think that's clear from the
- 6 affidavit and the documents attached, the Turf Inn
- 7 operates a restaurant, bar, a lounge and a deck, and
- 8 therein lies the problem.
- The issue is whether or not the protestants have
- 10 standing to appeal the decision of the Zoning
- 11 Commissioner, and our Motion is based on the premise that
- 12 it's not being rebutted, challenged. In fact, it's being
- 13 embraced by the protestants.
- 14 The sole motivation for the protestants filing
- 15 this appeal is to lessen competition amongst restaurants.
- 16 There's case law that's goes back quite sometime in
- 17 Maryland, which is cited in the Motion and in our Response
- 18 Motion that that is not a sufficient basis and is not a
- 19 legal cognisable basis for standing to appeal a zoning
- 20 decision.
- One of the cases that we have sited in the memo

1 based on Section 26-132 of the Baltimore County Code

Page 8

Page 9

- 2 which says that persons have to be aggrieved or feel
- 3 aggrieved.
- 4 And what the Bryniarski case says is the
- 5 definition of a person aggrieved is interpreted the same
- 6 whether a person is appealing to a Board of Appeals or
- 7 appealing from the Board of Appeals.
- 8 So it's the same standard here as it would be if
- 9 we were in Circuit Court on a petition for judicial
- 10 review.
- 11 Aggrievement as defined by Bryniarski, as defined
- 12 in the other cases, and as, again, discussed in the case
- 13 of Holland versus Woodhaven -- somehow I only ended up
- 14 with three -- aggrievement means there has to be an effect
- 15 on his personal or property rights different from that
- 16 suffered by the public generally.
- 17 And in the 25th Street versus Baltimore case, on
- 18 page 86, it goes through the principle examples of effect
- 19 on personal property rights.
- 20 First, it says it is sufficient if the facts
- 21 constituting aggrievement appear in the petition for

#### Page 7

- 1 is Eastern Service v. Cloverland. This case is an appeal
- 2 from Baltimore City where they granted a permit to
- 3 construct a C-Mart, a convenience mart, and it was
- 4 challenged by a full service gasoline station that was in
- 5 the vicinity.
- On page eight, the Court of Special Appeals had
- 7 said, We now address whether appellant has standing to
- 8 raise this appeal, and as clear and concise a statement of
- 9 the law as you can find, the court said, in Maryland, a
- 10 person whose sole reason for appealing a decision of the
- 11 zoning board is to prevent competition with his
- 12 established business does not have standing. Period.
- It sites the Bryniarski case from Montgomery
- 14 County, copies of which I have, because I know there isn't
- 15 really a law library back there behind your doors.
- It also sites the Kreatchman v. Ramsburg case,
- 17 which is really the beginning of this line of cases that
- 18 competition does not form the basis for or standing for
- 19 appeal once you get past appearing and showing up at the
- 20 Zoning Commissioner's hearing.
- Our appeal to this Board on a zoning matter is

- 1 appeal either by expressed allegation or necessary
- 2 implication, and in the facts here, there are no facts
- 3 alleged other than Mr. Nowicki saying he disagrees with
- 4 the decision.
- 5 It says if an adjoining, confronting or nearby
- 6 property owner is deemed, prima facia, to be specifically
- 7 damaged, therefore, a person aggrieved. And, clearly, the
- 8 facts here demonstrate that the Turf Inn property, JR
- 9 Brother's, or Mr. DiPaola's property, are not adjoining,
- 10 confronting or nearby.
- 1 It also states a person whose property is far
- 12 removed from the subject property will not be considered a
- 13 person aggrieved. It goes on to say, also on page 86, to
- 14 be considered an aggrieved party, the complaining
- 15 party/owner must be in sight or sound range of the
- 16 property.
- Again, the affidavit of Mr. McCarthy, you can't
- 18 hear him from one to the other, and that's unchallenged.
- 19 Now, the 25th Street case is interesting also because the
- 20 challenger in this case, Mr. Armstrong, lives two blocks
- 21 west and three blocks north of the property in Baltimore

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- 1 City. He cannot see it or hear activity taking place on
- 2 it from his house, although he frequently passes it. So
- 3 do many other members of the general public. And he was
- 4 held not to have standing.
- So I think the status of this case is and it's
- 6 clear from the facts before you that neither JR Brothers,
- 7 Inc., trading as the Turf Inn, nor Mr. DiPaola, are within
- 8 sight and sound range, and they haven't alleged any other
- 9 special damage or any other effect on their personal
- 10 property rights other than, clearly, they have an interest
- 11 in lessening competition.
- And the amazing thing about this case is that
- 13 they embraced that concept and say competition is good
- 14 enough and, clearly, the status of the law from the
- 15 Eastern case and all up and down is that that is an
- 16 improper basis for the appeal to be given standing, so we
- 17 believe the Motion to Dismiss ought to be granted. Thank
- 18 you.
- 19 THE CHAIRMAN: Thank you. Counsel?
- MR. NOWICKI: Mr. Chairman, members of the
- 21 Board, I am prepared to submit on my brief, but in their

- 1 they want to do.
- 2 The case I think that is controlling is cited in
- 3 my brief, Jordan Towing versus Hebbville. They found a
- 4 competing interest is sufficient to establish standing.
- 5 That's probably the latest case on this situation.
- So for that reason, we do site it, because it
- 7 says that we are entitled to standing issue here.
- 8 Obviously, they disagree. Strangely enough, they even
- 9 sued my client for an anti-trust violation. That's a
- 10 different case, but they have a tough burden under
- 11 Cromwell v. Ward to show it. With that, I'd respectfully
- suggest that the motion to dismiss should be denied, that this case proceed to hearing, and take testimony and
- 14 determine with the Ma Ma Continue of the language of the
- 14 determine whether Mr. McCarthy's plan is properly able to
- 15 be granted or not.
- 16 THE CHAIRMAN: Thank you, Mr. Clark?
- 17 MR. CLARK: Just briefly. Mr. Nowicki can cite
- 18 the Sugarloaf case. It's an oft-quoted statement about
- 19 how widespread standing can be under administrative law
- 20 principles.
- The Holland case that I gave you earlier was

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- original brief, as Mr. Clark indicated, they don't define
- 2 aggrieved or feeling aggrieved. But, generally, aggrieved
- 3 is if your personal rights are adversely affected by the
- 4 decision of the Board and also defined as special and
- 5 differing in character and kind than that suffered by the
- 6 general public.
- They cite plenty of cases, but some of the cases
- 8 I cite, Sugarloaf, for example, it notes the requirements
- 9 for administrative standing under Maryland law are not
- 10 very strict at all,
- 11 They also acknowledge in the brief that
- 12 permissive standards consisting of an interest in the
- 13 outcome of the proceedings which allows one to become a
- 14 party before the Zoning Commissioner.
- Here, they are trying to argue we have an
- 16 improper interest. That's pure speculation. Even Mr.
- 17 McCarthy's affidavit is pure speculation.
- There's been no testimony whatsoever of an
- 19 improper motive, but as a business owner, my client is
- 20 entitled to argue about whether the zoning laws have been
- 21 properly followed and whether applied properly to what

- 1 decided after Sugarload was decided. Then Holland was
- 2 re-argued, and you will see at the end of that case on the
- 3 Motion for Reconsideration, the opinion of the court that,
- 4 Sugarloaf notwithstanding, Holland still stands as the
- 5 law, that in these situations where competition and
- 6 feeling aggrieved, it's not as liberal a standard as what
- 7 the language in Sugarloaf might indicate in some
- 8 circumstances.
- 9 The second thing is the Jordan case, and we filed
- 10 a Reply Memo, Jordan versus Hebbville, and I don't know
- 11 whether you all have a copy of that but, amazingly enough,
- 12 I do.
- 13 THE CHAIRMAN: Mr. Wescott is quite familiar with
- 14 that case.
- MR. CLARK: Mr. McCarthy said his regret is so
- 16 many trees have died in the process of this case, but
- 17 that's a professional hazard in our line of work.
- But you will see in Jordan -- that's a towing
- 19 case for a license -- one of the factors that the police
- 20 department uses in determining whether or not a tower
- 21 should be granted a license is the need in a geographic

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1 territory.

- And that being the case, it is necessary to
- 3 consider whether or not there is competition, whether
- 4 there is enough work to support another tower in a
- 5 particular area, and that is vastly different from a
- 6 situation where variances are neutral and not dependent
- 7 upon he need of a deck in an area or a side yard
- 8 projection, or whatever else it may be.
- So that while competition can be considered in a
- 10 towing license case where need is one of the elements, it
- 11 ought not be considered here. And, actually, there's a
- 12 footnote in our reply memo, Lucky Stores versus Board of
- 13 Appeals, where looking into the future, the Court of
- 14 Appeals said they were not departing from the Kreatcham
- 15 principle of disallowing competition as the basis for
- 16 aggrievement. Rather, when dealing with the application
- of need requirements, the question is not whether the
- 18 competition is prevented, but whether the Board's decision,
- 19 is based on a desire to prevent competition, which is
- 20 prohibited.

21

So I think the Jordan case, while it might grant

addition to the new ones which Mr. Clark has presented to

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- 2 us, and I'd like to propound this question to Mr. Clark.
- The question is, basically, there was a hearing
- 4 before the Zoning Commissioner in which the question of
- 5 whether a variance should or should not be granted was
- 6 decided.
- And Mr. Nowicki was present, I believe,
- 8 representing several parties, as I read the decision. Of
- 9 course, after hearing the testimony and evidence, the
- 10 Zoning Commissioner held that the variance should be
- 11 granted.
- What's being attempted here is an appeal to this
- 13 Board, and the major thrust has been that competition is
- 14 the major issue.
- Suppose the issue is something other than 15
- 16 competition? That is, was the ruling made by the Zoning
- Commissioner as to the granting of the variance proper in
- 18 accordance with Maryland law which could only be
- 19 determined, since it would be a de novo hearing when it
- 20 comes to this Board?
- So the issue may not be one of competeition, but 21

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- 1 standing to competitors in cases where licenses are being
- 2 granted, and one of the elements is need, it doesn't wash
- 3 over and eliminate or overrule the line of cases that say
- 4 competition is not a basis for standing for appeal on
- 5 zoning matters. Thank you.
- THE CHAIRMAN: Mr. Nowicki?
- MR. NOWICKI: Obviously, he has to try to
- 8 distinguish that case, because if you find it applies at
- 9 the end, that's the end of his arguement.
- For being aggrieved, I respectfully suggest when
- 11 you read the case in depth, it's pretty clear we are
- 12 entitled to be an aggrieved party, because we are a
- 13 competing inn around the corner.
- Even if that's not the basis for our protest, it 14
- 15 still gets us past the hurdle at this point in time, so
- 16 with that, I will submit.
- THE CHAIRMAN: I want to thank counsel for the
- 18 preliminary Motion in Opposition, so forth. It was
- 19 supplied to us before the hearings, and also case law.
- I do have one question, because I did some 20
- 21 research on most of these cases presented to us today in

- 1 one of questioning the judgment given by the Zoning
- 2 Commissioner in applying many statutes and case law
- 3 relative to the granting of a variance. Would that not
- 4 give rise to a party being aggrieved who was a party to
- 5 the initial proceeding?
- MR. CLARK: It could, if they came before this
- 7 Board and said, That is our reason. And they haven't down
- 8 done that.
- That's why I filed the Motion. That's why I
- 10 filed the affidavit. That's why we have laid out the fact
- 11 that the only basis that's out there is competition, and
- 12 we said so.
- They haven't denied it. In fact, they come to
- 14 you and say competition is good enough.
- So to take your question, I still think that even
- 16 if this is unlike one of the cases cited -- I'll come to
- 17 it in a minute -- but even if they had a pure motive,
- 18 let's say in addition to competition, they have to still
- 19 be within sight or sound or have some other aggrievement
- 20 that especially damages them.
- This is not like -- I'm trying to think which one 21

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- 1 of the cases it is -- Holland. In Holland, the governing
- 2 body there -- and I'm trying to remember whether it was
- 3 Montgomery County or not -- but one of the other
- 4 jurisdictions passed an ordinance that said any taxpayer,
- 5 any taxpayer, can file an appeal from the decision of the
- 6 Board of Zoning hearing, whatever, the Zoning
- 7 Commissioner, whatever, and the developer got approval of
- 8 the project.
- The taxpayer appealed. The developer then
- 10 challenged the statute. Ultimately, they passed a new
- 11 statute which didn't have retroactive application, but the
- 12 court said that even in those circumstances, a taxpayer
- 13 who didn't have a special connection to the property or
- 14 the project would not have standing to appeal.
- So that you still have to be within sight or 15
- 16 sound or, as it says in Holland, either an adjoining,
- 17 fronting, neighboring property, whatever else it may be,
- 18 even where there's a statute that says any taxpayer can
- 19 file an appeal.
- So I think that in this circumstances we allege, 20
- 21 and they don't deny, that competition is the only basis.

- But be that as it may, the Jordan case allows me
  - 2 standing. I am aggrieved because I am a competitor. Now,

Page 20

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- 3 is it going to cost anybody any business? I don't know
- 4 how anybody is ever going to prove that.
- But for purposes of the standing, that gets me
- 6 over the hurdle, but that's exactly what I argued. I
- 7 argued we have a proper motive because we wanted to
- 8 determine whether the zoning laws were properly applied to
- 9 Bluestone. And I am well versed about property being
- 10 unique and variances resulting in practical difficulty or
- 11 unreasonable hardship. So with that, thank you.
- 12 MR. WESCOTT: My question is whether or not that
- 13 was argued as the basis for the appeal?
- 14 MR. NOWICKI: Well, when you look at my appeal,
- 15 it doesn't say that, but it says I disagree with the
- 16 Hearing Examiner's decision, which is incorporated
- 17 therein, and that's the decision. He says Cromwell versus
- 18 Ward, he felt, was complied with, and I believe that's
- 19 enough.
- 20 MR. CLARK: Can I make a two-minute response? I
- 21 think the second aspect of your question -- if I'm hearing

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- 1 it right -- anybody can show up at the Zoning
  - 2 Commissioner's hearing and say whatever they want to say
  - 3 about it, and the Zoning Commissioner sometimes is formal
  - 4 about who's a party and who's not. Sometimes, they are.
  - When you get to this level, the way you get to
  - 6 this level is Section 26-132, which says an appeal to the
  - 7 Board of Appeals from the decision of the Zoning
  - 8 Commissioner shall be by a person aggrieved.
  - And that's where the legal test comes in. So
  - 10 even though somebody might show up at the Board and say,
  - 11 you know, this doesn't comply with Cromwell v. Ward, or
  - 12 whatever else, and the Zoning Commissioner entertains what
  - 13 they have to say, and gives them an opportunity to state
  - 14 their concern, when you go from that level to this level,
  - 15 you have to meet the test of 26-132 which says you have to
  - 16 be aggrieved, and that's why these other concepts come
  - 17 into play. Thank you.
  - THE CHAIRMAN: Thank you, gentlemen. I'd really
  - 19 like to deliberate this today within about a half hour's
  - 20 time.
  - 21 Why don't we reconvene at five after ten for the

2 before you that they are not within sight or sound range,


and that, therefore, even if they had a pure motive, they


We have further gone on to move on the fact

- 4 would still have to be within sight or sound range.
- Otherwise, their interest is the same as any
- 6 other person of the public generally, which I would put in
- 7 the category of being a taxpayer.
- So I think that's where we are, and I think they
- 9 don't have a basis for standing that can be recognized by 10 the Board.
- MR. NOWICKI: Mr. Marks, I alluded to that in my
- 12 quick pitch, but we weren't arguing competition at all
- 13 before the zoning hearing.
- We were arguing Cromwell versus Ward, which is 14
- 15 they were not properly allowed to have a variance because
- 16 they couldn't prove the property was unique and they
- 17 couldn't prove that the denial of the variance would
- 18 result in practical difficulty or unreasonable hardship.
- So that's exactly what we did argue, and 19
- 20 "competition" never came up, other than maybe us
- 21 discussing it on the side.

Multi-Page TM

Page 22  1 public deliberation of the case. 2 (Hearing concluded.) 3 * * * * * *  4  5  6  7  8  9  10	
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Office of the Fire Marshal 700 East Joppa Road Towson, Maryland 21286-5500 410-887-4880

April 22,2002

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

RE: 12020 Brooknoll Dr.

ATTENTION: George Zahner

Location: DISTRIBUTION MEETING OF April 22, 2002

Item No.: 436

Dear Mr. Zahner:

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 site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

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

cc: File

COUNTY REVIEW GROUP MEETING{PRIVATE }

