TO WCR

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

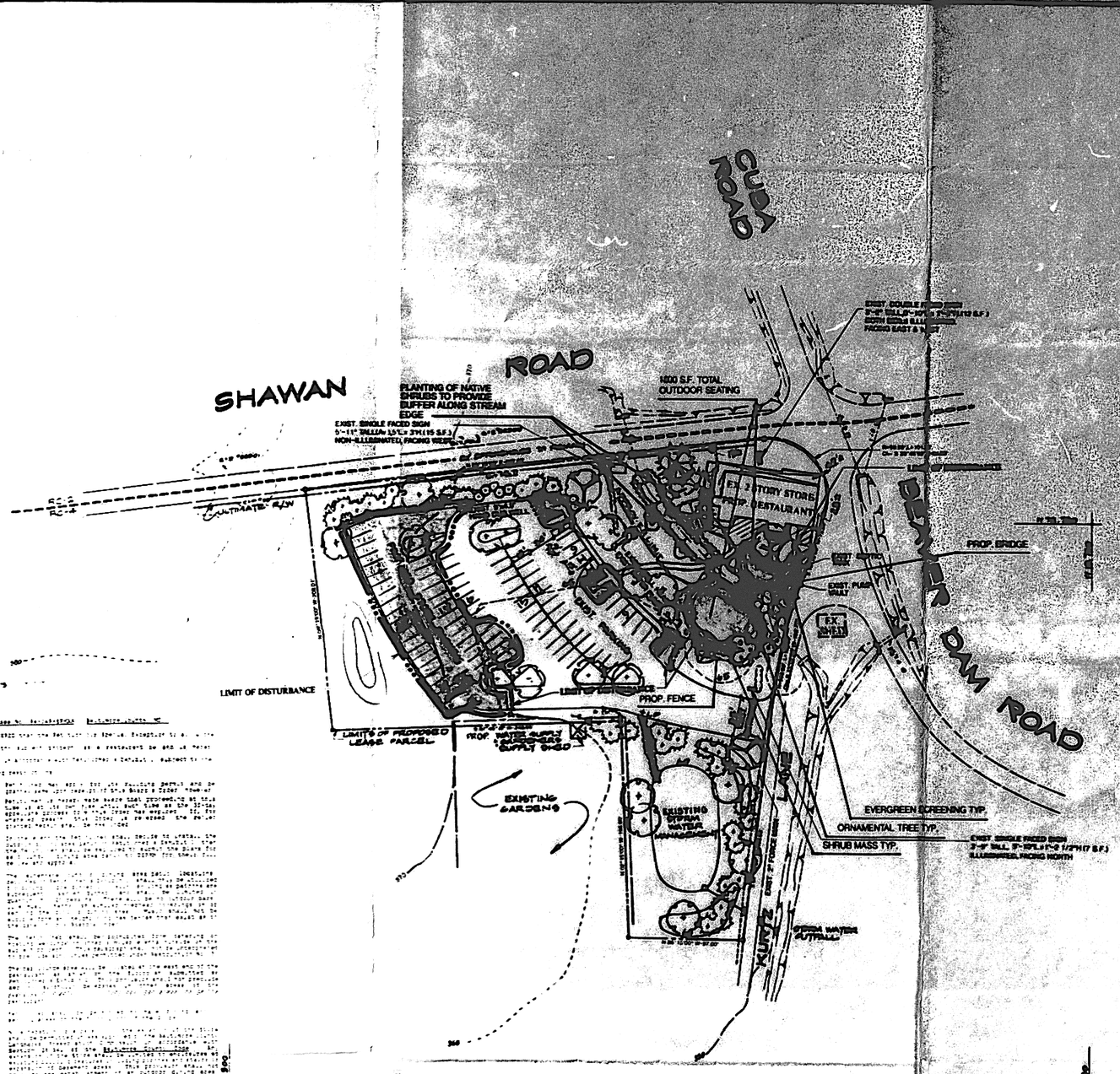
4/16/12

I advised Dave Gulle that it could place a trellis over an outside patio area, no permit req'd. A trellis is not a building as that term is defined.

CJ

Director's Office | County Office Building
111 West Chesapeake Avenue, Room 105 | Towson, Maryland 21204 | Phone 410-887-3353 | Fax 410-887-5708
www.baltimorecountymd.gov

2002-0461



Construction Notes

Existing utilities shown on this plan are from field investigation of visible surface features and previous construction drawings. Contractor to verify location of all existing utilities before beginning work.

Contractor shall notify Miss Utility (1-800-257-7777) at least five days prior to construction.

All construction shall follow the latest Baltimore County Department of Public Works Standard Specifications and Details of Construction and Baltimore County Plumbing Code or as detailed on the drawings.

Existing utilities not designated to be removed shall remain operational at all times.

Contractor will obtain all necessary permits.

Electric, telephone, gas, and water design by others.

Contractor to extend all house connections to within 5 feet of the building.

8. Election districts 8; Councilmanic District 3; Census tract 4033.
9. Sanitary: (1) Subsewershed 15.
4. Current zoning: RC-4
Estimated acreage of [illegible]:
2.05 A.±
Proposed Use: Tea Room / Restaurant
Basement: 1,240 s.f. (storage only)
First Floor: 5,000 s.f.
Second Floor: 1,710 s.f.
Mezzanine: 500 s.f.
Covered Seating: 1,000 s.f.
Total: 9,452 s.f.
Parking:
Required: 9,442 s.f. @ 15 / 1000 = 151 spaces
-51 spaces from variance
100 spaces
Provided: 100 spaces
Landscape Requirements:
6. There are no public utilities serving the site. The development will be served by a well; sewage to be treated [illegible] and a septic area to be in conformance with Baltimore County Health Department standards.
8. Soils:
Limitations

Series & Symbol	Soils Classification	High Moisture	Bedrock	Erosion & Parking
Hagerstown (HbA)	B	slight	slight	slight
(HbB)	B	slight	slight	moderate slope;

7. There are no slopes in excess of 25%.
8. This existing building is listed on the Oregon Furnace Store (Dever House) on the Baltimore County Final Landmarks List.
9. The proposed lease hold parcel lies within the Oregon Ridge Park which is owned by Baltimore County; deed reference 3936/638. Property number 08-01-010031.
10. Floor area ratio calculations, N.A.
11. Amenity Open Space, N.A.
12. Height determination, less than 40 feet.
13. Stormwater will be managed by a dry pond located south of the entrance drive, along Kunz Lane, as shown on the plan.
14. There are no known wetlands (hydric areas), critical areas, endangered species habitats or hazardous materials on the site.
15. Soil Conservation Service Map:
CrB Cd D - Sand & Blue Stone and Rocky Alluvial land MrD
CrC-CrD Running Lot
CrE-CrF-CrG Mountainside
CrB-CrD Steep
16. Special Hearing, Special Exception and Zoning Variance Case No. 94-348-SPHXA
17. Site to be stabilized at the end of each working day.

LOCATION PLAN
SCALE: 1" = 2000'

PLAN TO ACCOMPANY BUILDING PERMIT APPLICATION

PRINTED
NOV 2 0 1996
DAFT-McCUNE-WALKER, INC

LIMIT OF DISTURBANCE = 18,459 S.F.

DAFT · McCUNE · WALKER, INC.
LAND PLANNERS, ENGINEERS
LANDSCAPE ARCHITECTS
SURVEYORS
200 EAST PENNSYLVANIA AVE.
TOWSON, MD. 21286

THE OREGON GRILLE
1201 SHAWAN RD.
8TH ELECTION DISTRICT BALTIMORE COUNTY, MD.

DATE	REVISIONS
11-18-96	Added Vicinity Map, Zoning Notes, Parking Tabulation

SCALE: 1" = 30'
JOB ORDER NO. 95040.B
ISSUE DATE FEB. 21, 1996

2002-0461

Balto Cnty Rec & Parks 02-461-SPHXA
1201 Shawan Road, Hunt Valley 21030

02-461-SPHXA

~~6/05/03 @ 10^00 a.m.~~ PP'd
~~7/22/03 @ 10 a.m.~~ PP'd
11/04/03 @ 10 am #1
3/24/04 @ 10 a.m. - #2
3/25/04 @ 10 a.m. - #3
3/31/04 @ 10 am - #4
4/13/04 @ 10 a.m. #5
6/09/04 @ 9^00 a.m. Deliberation

ORDERS

July 2, 2004

02-461-SPHXA

(20020461)

Case No. 02-461-SPHXA

IN THE MATTER OF:
OREGON LLC /OREGON GRILL

1

[redacted] of 2
(Case file)

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

M.S.
1105

DATE: December 20, 2004

TO: Timothy Kotroco, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **OREGON LLC**
CBA No.: 02-461-SPHXA
PDM File No.: 02-461-SPHXA
Circuit Court Case No.: 03-C-04-7944

On November 5, 2004 an Joint Stipulation of Dismissal was entered in the docket of the Ciorcuit Court on the above captioned matter.

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

11/5/04

RECEIVED
NOV - 8 2004
PEOPLE'S COUNSEL

CAO PMZ

PETITION OF OREGON, LLC FOR JUDICIAL REVIEW	*	IN THE
	*	CIRCUIT COURT
IN THE MATTER OF THE APPLICATION OF OREGON, LLC FOR PETITION FOR SPECIAL HEARING, SPECIAL EXCEPTION, AND VARIANCE FOR PROPERTY LOCATED ON THE SW/S OF KURTZ LANE AND BEAVER DAM ROAD (1201 SHAWAN ROAD)	*	FOR
	*	BALTIMORE COUNTY
	*	
	*	Case No. 03-C-04-7944
CBA No. 02-461-SPHXA	*	
	*	

* * * * * * *

JOINT STIPULATION OF DISMISSAL

Petitioner and Respondents, by and through their respective undersigned counsel, in accordance with Maryland Rule 2-506(a), hereby stipulate to the dismissal of this action.

John H. Zink, III
Patricia A. Malone
Venable LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6200
Attorneys for Petitioner

CIVIL DEPT. NOV 05 2004

Michael R. McCann : with authority

Michael R. McCann
Funk & Bolton, P.A.
Twelfth Floor
36 South Charles Street
Baltimore, Maryland 21201-3111
(410) 6659-7700
Attorney for Respondents

(see attached)

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166
Attorney for Respondents

(see attached)

Peter Max Zimmerman
Carole S. Demilio
People's Counsel/Deputy People's
Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204
(410) 887-2188

Michael R. McCann
Funk & Bolton, P.A.
Twelfth Floor
36 South Charles Street
Baltimore, Maryland 21201-3111
(410) 6659-7700
Attorney for Respondents

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Suite 803
401 Washington Avenue
Towson, Maryland 21204
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401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166
Attorney for Respondents

Peter Max Zimmerman
Carole S. Demilio
People's Counsel/Deputy People's
Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of November, 2004, a copy of the foregoing JOINT STIPULATION OF DISMISSAL was mailed to Michael R. McCann, Esquire, Funk & Bolton, P.A., Twelfth Floor, 36 South Charles Street, Baltimore, Maryland 21201-3111; G. Macy Nelson, Esquire, Suite 803, 401 Washington Avenue, Towson, Maryland 21204; Peter Max Zimmerman, Esquire, and Carole S. Demilio, Esquire, People's Counsel/Deputy People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

PATRICIA A. MALONE

TO1DOCS1/196157 v1

9/9/04

CD/pm2

RECEIVED
SEP - 9 2004
PEOPLE'S COUNSEL

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
PETITION OF: OREGON, LLC Contract Purchasers 1201 Shawan Road Hunt Valley, MD 21030	*	
FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204	*	CIVIL ACTION No. **3-C-04-7944**
IN THE MATTER OF OREGON LLC / OREGON GRILL 1201 Shawan Road Hunt Valley, MD 21030	*	
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	
BD OF APPEALS CASE NO.: 02-461-SPHXA	*	

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

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

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

02-461-SPHXA

April 19, 2002	Petition for Special Hearing filed by Robert A. Hoffman, Esquire, on behalf of Oregon, LLC, contract purchaser, to approve an amendment to the site plan previously approved in case no. 94-348-SPHXA and to amend Restrictions Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan. Petition for Special Exception filed by Robert A. Hoffman, Esquire, on behalf of Oregon, LLC, contract purchaser to expand the area supporting the restaurant to include additional parking and to include the existing outbuilding barn for storage. Petition for Variance filed by Robert A. Hoffman, Esquire, on behalf of Oregon, LLC, contract purchaser, to permit a stone parking lot ilo dust-free surface.
May 22	Entry of Appearance filed by People's Counsel for Baltimore County
July 28	Certificate of Posting
July 30	Publication in newspaper
August 9	ZAC Summary of Comments
August 13	Notice of Zoning Hearing
August 13	Hearing Held before the Zoning Commissioner
September 24	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Special Exception – GRANTED; Petition for Special Hearing - GRANTED; and Petition for Variance is GRANTED, subject to restrictions.
October 23	Notice of Appeal received by Michael R. McCann, Esquire, on behalf of: Dennis Sutton; Greencroft Community Association; Falls Road Community Association; and The Valleys Planning Council, Inc.

November 1	Notice of Appeal filed by Robert A. Hoffman on behalf of Oregon, LLC. The appeal is on the Zoning Commissioner's Order of September 24, 2002 and the ruling of the Zoning Commissioner that the Motion for Reconsideration filed by Oregon LLC is MOOT, due to lack of jurisdiction by the ZC.
November 4, 2003	Hearing by Board of Appeals /Day #1
March 24, 2004	Hearing by Board of Appeals /Day #2
March 25	Hearing by Board of Appeals /Day #3
March 31	Hearing by Board of Appeals /Day #4
April 13	Hearing by Board of Appeals /Day #5/Hearing concluded

Petitioner's Exhibits

1	Site Plan
2A-2J	Photographs
3	Photograph
4	Article from The Sun dated Sunday, September 30, 2001 – 1 page
5A-5E	Photographs
6	Letters of support from 29 Individuals
7A – 7D	Photographs
8	Folder – Shawan Downs
9A	The Daily Record – September 2003 - Shawan Downs
9B	2001 Racing Booklet - Shawan Downs
10	Eventfully Yours, LLC – 3 pages
11A	The Milton Inn – 4 pages

11B	The Manor Tavern – 2 pages
11C	Greenspring Valley Hut Club – 1 page
11D	Greenspring Valley Country Club – 1 page
11E	Hayfields County Club – 11 pages
11F	Oregon Ridge Park – 11 pages
11G	Shawan Downs – 11 pages
11H	The Harryman House – 1 page
11I	Gibby's – 1 page
11J	An Pointin Stil – 1 page
11K	Liberatore's Ristorante – 1 page
11L	Linwood's Due – 1 page
11M	Michael's Café & Raw Bar & Grill
11N	Padonia Park Club – 6 pages
11O	The Valley Inn – 1 page
11P	Grand Lodge of Maryland Masonic Temple – 1 page
11Q	Worthington Valley Swim Club – 5 pages
11R	Boordy Vineyards – 5 pages
11S	Basignani Winery – 14 pages
11T	Meadowood Regional Park – 4 pages
11U	Gramercy Mansion – 7 pages
11V	Pierces Plantation – 1 page
11W	Courtney's of Towson – 3 pages
12	Richard J. Peppin, P.E. – 11 pages

13	Memo from Richard J. Peppin, President, Scantek, Inc. to David Karceski, Venable, dated March 23, 2004 re: Oregon Grille Sound Study
14	Code of Maryland Regulations – Title 26 – Department of the Environment
15	Mickey A. Cornelius, P.E., P.T.O.E. – 1 page
16	Charles V. Main, II – 1 page
17	Stormwater Management Plan
18	Eric C. Hadaway, PWS – 1 page
19	Aerial view of Oregon Grill from Baltimore County OIT
20A and 20B	Photographs
21	Landscape Plan by Eric Hadaway
22	Mitchell J. Kellman – 1 page
23	Land Preservation Trust, Inc. – Resolution – 1 page
24	Letter dated March 29, 2004 from Charles C. Fenwick, Jr. to Mr. Robert Hoffman re: contribution from Oregon Grille
25	Robert W. Sheesley – 2 pages
26	Photograph

Protestant's Exhibits

1	The Milton Inn – 16 pages
2	Peerce's Plantation – 15 pages
3	Aerial Photograph
4	Photograph

5	Western Run and Belfast Valleys Historic District – 6 pages
6	Oregon & Company, Store – Description – 3 pages
7	Zoning Map and Historical Sites Map
8	The Falls Road Community Association, Inc. Resolution – 1 page
9	The Falls Road Community Association, Inc. Resolution – 1 page
10	Photograph
11	Photograph
12	Photograph
13	Photograph
14	Affidavit – The Valleys Planning Council, Inc. – 1 page
15	Resolution – The Valleys Planning Council, Inc. – 1 page
16	Resolution – The Valleys Planning Council, Inc. – 1 page
17	Jack Dillon, APA - 3 pages
18	Black Binder
19	B.C.Z.R. Zoning Chart Restaurants, Catering, Conversions, Clubs
20	Aerial Photograph
21	Aerial Photograph 1995
22	Aerial Photograph – present
23	Well Completion Report dated 3/2/99 – 2 pages
24	Tax Map 15
25	Tax Map 43

	26	Reduction of Tax Map 15
	27	Reduction of Tax Map 43
	28	Tables of Characteristics of Parcels – 4 pages
	29	Protestant Sign In Sheets – 3 pages
	30	Lease Agreement dated June, 1984 by and between Baltimore County, Maryland and Oregon General Store Limited Partnership – 47 pages
	31	Supplemental Agreement No. 1 to Lease Agreement dated June, 1984 by and between Baltimore County, Maryland and Oregon General Store Limited Partnership – 6 pages
May 24		Petitioner's Post-Hearing Memorandum filed by Robert a. Hoffman, Esquire and David H. Karceski, Esquire, on behalf of Oregon, LLC; Protestants' Post-Hearing Memorandum filed by G. Macy Nelson, Esquire and Michael R. McCann, Esquire, on behalf of Protestants. Proffer of Testimony filed by G. Macy Nelson, Esquire.
June 9		Board convened for Public Deliberation
July 2		Opinion and Order issued by the Board of Appeals that the Petitioner's requested special hearing, special exception and variance relief, as detailed in the Opinion, is DENIED.
July 29		Petition for Judicial Review filed by John H. Zink III, Esquire and Patricia A. Malone, Esquire, Venable LLP, on behalf of Oregon LLC. Civil Action No.: C-04-7944
August 3		Petition for Judicial Review received at the Board of Appeals.
August 4		Certificate of Notice sent to interested parties.
September 8		Transcript of Proceedings filed.
September 8		Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered before the Board.

Respectfully submitted,

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204 (410) 887-3180

c: Peter Max Zimmerman
People's Counsel For Baltimore County
John H. Zink III, Esquire
Patricia A. Malone, Esquire
G. Macy Nelson, Esquire
Nancy C. West, Esquire
Michael R. McCann, Esquire
for The Valleys Planning Council
and Greencroft Community Association

8/27/04

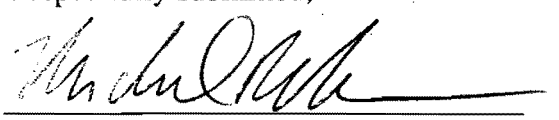
PETITION OF OREGON, LLC FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
	*	FOR
IN THE CASE OF **OREGON, LLC** LEGAL OWNERS FOR A PETITION FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SW/S OF KURTZ LANE AND BEAVER DAM RD (1201 SHAWAN ROAD)	*	BALTIMORE COUNTY
	*	Case No. 03-C-04-7944
	*	
8th Election District, 3rd Councilmanic District	*	
Case No. 02-461-SPHXA Before the County Board of Appeals	*	
	*	

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

RESPONSE TO PETITION FOR JUDICIAL REVIEW

The Valleys Planning Council, Inc. and Greencroft Community Association, pursuant to Maryland Rule 7-204, hereby respond to the petition for judicial review filed by Oregon, LLC and state their intention to participate in this action for judicial review.

Respectfully submitted,



Michael R. McCann

Funk & Bolton, P.A.
Twelfth Floor
36 South Charles Street
Baltimore, Maryland 21201-3111
(410) 659-7700

Attorneys for Aetna Health Inc.

RECEIVED
AUG 30 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Dated: August 27, 2004
85000.001:75482

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 27th day of August, 2004, a copy of the foregoing Response to Petition for Judicial Review was mailed first class, postage prepaid, to:

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

John H. Zink, III, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

G. Macy Nelson, Esquire
Anderson Coe and King
401 Washington Avenue, Suite 803
Towson, MD 21204
Attorney for the Falls Road Community Association and Dennis Sutton

County of Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Michael R. McCann

85000.001:75482

8/24/04

PETITION OF OREGON, LLC FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	**IN THE CIRCUIT COURT FOR BALTIMORE COUNTY**
IN THE CASE OF OREGON, LLC LEGAL OWNERS FOR A PETITION FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SW/S OF KURTZ LANE AND BEAVER DAM ROAD (1201 SHAWAN RD)	*	**Case No. 03-C-04-7944**
8th Election District, 3rd Councilmanic District	*	
Case No. 02-461-SPHXA Before the County Board of Appeals	*	

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

RESPONSE TO PETITION FOR JUDICIAL REVIEW

The Falls Road Community Association and Dennis Sutton, pursuant to Maryland Rule 7-204, file this Response to the Petition for Judicial Review filed by Oregon, LLC, and state that they intend to participate in this action for Judicial Review. Both the Falls Road Community Association and Dennis Sutton participated in the proceeding before the Baltimore County Board of Appeals.

Respectfully submitted,

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 2004, a copy of the foregoing Response to Petition for Judicial Review was mailed first-class, postage prepaid, to:

John H. Zink, III, Esq.
Patricia A. Malone, Esq.
Venable LLP
210 Allegheny Avenue
P.o. Box 5517
Towson, Maryland 21285-5517

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

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

G. Macy Nelson

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

August 24, 2004

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

Re: *Petition of OREGON, LLC for Judicial Review of the Decision of the County Board of Appeals of Baltimore County*
Case No. 03-C-04-7944

Dear Clerk:

I have enclosed for filing in the above-referenced case a Response to Petition for Judicial Review.

Thank you for your assistance in this matter.

Very truly yours,

G. Macy Nelson /pc

G. Macy Nelson

GMN:pwc
Enclosure
cc: John H. Zink, III, Esq. and
Patricia Malone, Esq. (w/enc.)
Peter Maz Zimmerman, Esq. and
Carole S. DeMilio (w/enc.)
Kathleen C. Bianco, Administrator,
County Board of Appeals of Balto. Co. (w/enc.)

RECEIVED
AUG 26 2004
BALTIMORE COUNTY
BOARD OF APPEALS

8/4/04

PETITION OF **OREGON, LLC** FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
IN THE CASE OF **OREGON, LLC** LEGAL OWNERS FOR A PETITION FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SW/S OF KURTZ LANE AND BEAVER DAM RD (1201 SHAWAN RD)	*	FOR
8th Election District, 3rd Councilmanic District	*	BALTIMORE COUNTY
Case No. 02-461-SPHXA Before the County Board of Appeals	*	Case No. 03-C-04-7944

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

RESPONSE TO PETITION FOR JUDICIAL REVIEW

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

Peter Max Zimmerman/cw

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. DeMilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August, 2004, a copy of the foregoing Response to Petition for Judicial Review was mailed John H. Zink, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland 21204, Michael R. McCann, Esquire, Funk & Bolton, P.A. 36 S. Charles Street, 12th Floor, Baltimore, Maryland 21201 and County Board of Appeals, 400 Washington Avenue, Room 49, Towson, Maryland 21204.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

8/4/04

Baltimore County, Maryland

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

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

August 4, 2004

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

Hand-delivered

RECEIVED
AUG 0 4 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Re: Petition for Judicial Review of the Decision
of the County Board of Appeals
In the Matter of Oregon, LLC
Case Number: 03-C-04-7944

Dear Sir or Madam:

Please file the enclosed please find the Response to Petition for Judicial Review. If you have any questions or concerns, please contact my office.

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman/RMW

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw
Enclosures

cc: John H. Zink, Esquire
Michael R. McCann, Esquire
G. Macy Nelson, Esquire
County Board of Appeals

7/29/04

PETITION OF OREGON, LLC 1201 Shawan Road Hunt Valley, Maryland 21030	*	IN THE CIRCUIT COURT FOR
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse, Room 49 400 Washington Avenue Towson, Maryland 21204	*	BALTIMORE COUNTY Civil Action No. _____
IN THE MATTER OF THE APPLICATION OF OREGON, LLC FOR PETITION FOR SPECIAL HEARING, SPECIAL EXCEPTION, AND VARIANCE FOR PROPERTY LOCATED ON THE SW/S OF KURTZ LANE AND BEAVER DAM ROAD (1201 SHAWAN ROAD)	*	
8th Election District 3rd Councilmanic District	*	
CBA No. 02-461-SPHXA	*	

* * * * * * *

PETITION FOR JUDICIAL REVIEW

Oregon, LLC, Petitioner, by John H. Zink, III and Patricia A. Malone with Venable LLP, its attorneys, in accordance with Maryland Rules 7-202, files this Petition for Judicial Review and requests judicial review of the County Board of Appeals of Baltimore County's decision, dated July 2, 2004, in Case No. 02-461-SPHXA. Oregon, LLC was a party to the proceedings before the County Board of Appeals.

Respectfully submitted,

JOHN H. ZINK, III
PATRICIA A. MALONE
Venable LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6200
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of July, 2004, a copy of the foregoing PETITION FOR JUDICIAL REVIEW was mailed to Michael R. McCann, Esquire, Funk & Bolton, P.A., 36 S. Charles Street, 12th Floor, Baltimore, Maryland 21201, and G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland, 21204, Attorneys for Protestants; and to Kathleen C. Bianco, Administrator, County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

PATRICIA A. MALONE

7/2/04

IN THE MATTER OF THE APPLICATION OF	*	BEFORE THE
OREGON, LLC –C.P.; BALTIMORE COUNTY RECREATION & PARKS – LEGAL OWNER	*	COUNTY BOARD OF APPEALS
FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED	*	OF
ON THE SW/S KURTZ LANE AND BEAVER DAM ROAD (1201 SHAWAN ROAD)	*	BALTIMORE COUNTY
	*	Case No.: 02-461-SPHXA
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	

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OPINION

This case comes to the Board of Appeals based on a timely appeal from the Zoning Commissioner of Baltimore County.

The Petitioner, Oregon, LLC ("Oregon") was represented by Robert A. Hoffman, Esquire, and David H. Karceski, Esquire, and VENABLE, LLP. The Protestants were represented by G. Macy Nelson, Esquire, and Michael McCann, Esquire. The Board conducted public hearings over a 5-day period on November 4, 2003, March 24, 2004, March 25, 2004, March 31, 2004 and April 13, 2004. At the conclusion of the evidentiary proceedings on April 13, 2004, counsel was directed to file simultaneous written briefs in lieu of oral argument. These were submitted on May 24, 2004. The Petitioner made available a complete copy of the Transcript along with their Brief. A public deliberation was conducted by the Board on June 9, 2004.

At the initial onset of the case on November 4, 2003, the Protestants attempted to enlarge the scope of the proceedings by requesting the Board "to revisit the entire special exception because it's a change of the prior use." [T 11/04/03, p 4] To accomplish that request would require the Board to treat the present special exception as if it were a fresh application. The Petitioner objected indicating that they were not prepared to "retry the 1995 case" [p 5] because "there is an existing

restaurant there, operating under the current Board of Appeals Opinion and in order to prove our case....that the changes on top of what is currently existing, and given the nature of the surrounding neighborhood, would not create the adverse impact. So that's how I would characterize what our proposed case would be." [p 5, 6] To agree with Mr. Nelson's argument would have had the net effect of shutting down the restaurant as being in violation of the previous Board's decision, more specifically, condition 11. "That's the relief we seek in this case (Nelson)" [p 7]. The Board heard oral argument from both sides.

The Chairman ruled, after discussion with the other panel members, that the Board was "not going to rule as to whether or not the special exception that was granted in 1995 continues to be valid or not...we are simply going to proceed on the basis that the Petitioner has filed for relief as stated in our file for a special hearing, special exception, and variance, which was granted by the Zoning Commissioner." [pp 16-17] The Board concurred that if the restaurant was operating illegally, it more appropriately was the subject of a "Code Enforcement" action – subject to investigation and determination by the Department of Permits and Development Management.

Mr. Theodore W. Bauer was the first witness for the Petitioner. He is the owner of the restaurant. He used Petitioner's Exhibit #1 to discuss generally the restaurant and its location. There is no disagreement that the Oregon Grille is a Mobile Four Star Restaurant. Two of the Board members were familiar with it and its general excellent reputation in the area.

Mr. Bauer described the operations of the restaurant during various days of the week. He also described the current site conditions, along with photographs he had taken (Petitioner's Exhibits 2A-2J). He opined concerning his present request to use the existing outdoor patios, with no enlargement, for special events, such as weddings, with a covered tent – limited to 15 events a year, ten of which would go until 10 o'clock at night and five of which would go until 11 o'clock at

night, along with music, if requested, during the same time periods. [p 57] The request was essentially for "a small amount of events…to try to accent the business, and to provide a service which we have been questioned by many to be able to help them with." [p 58] At the present time, 120 people could be accommodated for a sit-down wedding. That same number would apply if the request were granted. The restaurant would continue to serve its regular meals to the restaurant patrons. The menus for the special events would be "set up ahead of time" as opposed to "a la carte" service offered to the regular restaurant customers. [p 60] Under no circumstances would the restaurant be compromised for any special events, as requested. [p 61] He acknowledged that 225 people could be accommodated utilizing the two patios and, if requested, meals would be offered "buffet style." [p 62] Any tents created would be removed within 24 hours and music would be restricted as previously indicated. A sound engineering specialist would be employed by the Petitioner to provide recommendations and guidelines to assure minimal intrusiveness of the music." [p 65]

Mr. Bauer opined that he would like for the Board to consider each of the different portions of his request as independent matters, and not as a total package. [p 69]

Mr. Bauer also recited other events in the general area that were not present when the original Board issued its order that constituted a change in the character of the neighborhood; i.e., Hayfields Country Club and also the many tented affairs at the nearby Oregon Ridge Park owned by Baltimore County, along with the more recent use by Shawan Downs attended by 10,000-12,000 people.

Mr. Bauer also opined about the parking situation and the variance requested. He acknowledged that it was sufficient but "stressed at busiest times." [p 92-93] If an event held 225 people in both patios, attendants would be available to make better use of the parking facilities. He

acknowledged no complaints about current parking by any customers or neighbors. [p 95]

Counsel went through the requirements of § 502.1, with Mr. Bauer expressing his opinion as operator of the restaurant and a layperson. He did not believe there were any factors present that would be detrimental to the health, safety, or general welfare of the locality involved. [pp 101-106]

During cross-examination, Mr. Bauer was questioned concerning his personal knowledge of events at Hayfields, Oregon Ridge, Shawan Downs, and the Greenspring Upper Hounds Club. He indicated that he had attended some of the events and was familiar with the events themselves. [p 109] He opined that some of the outdoor events proposed would be "some sit down and some what we refer to as cocktail buffet." [p 114] There would be cocktails served at an outside bar, with hors d'oeuvres or a buffet at a separate table, where customers or people attending the event could go and get the food." [p 114-115] If the person requesting the special event did not desire a full multi-course meal for those attending, the restaurant would comply with the request. [p 116]

The witness further opined that there would be no "mixing" of dinner guests and people attending the special events, but there might be a sharing of employee staff. He opined "that there would be no difference in food service – no difference in the menus (we) already have [p 123]...no difference from a kitchen standpoint, nor bussing standpoint...from a server standpoint, there would be people that may be doing both, or may be scheduled in one area versus the other." [p 124] Mr. Bauer acknowledged that his present lease with Baltimore County did not cover the property on which he sought parking expansion [p 136], but that he had had conversations with the County. He indicated that "we have had discussions with Baltimore County in terms of, if we are granted these things, is there going to be additional remuneration for the additional grounds." [p 141]

Mr. Nelson cross-examined Mr. Bauer concerning the site plan, and certain bridges contained on the property, the stormwater management pond and the surface water flow from the

property to the pond. Questions were also posed concerning the acreage leased by the Petitioner from the County and various percentages of the property acreage; the historical nature of the building occupied by the restaurant, and the original footprint of the building.

On re-direct by Mr. McCann, the question of what constituted a "meal" came up. Mr. Bauer indicated that for his tented events, the 15 events would be the larger variety, either a sit-down or cocktail buffet, where it would be a meal. If a company would call and ask to do a cocktail party, the menu would be cocktails and hors d'oeuvres. [p 181]

If that is what was requested, the witness opined that he would not be providing his customers with the normal dinner menu, but that there are certain minimum levels, minimum standards that would apply. [pp 182-183] The witness also agreed that he had not "proposed any restrictions that would prevent him from having a 'Happy Hour' both in terms of the number of events and the time which he could have them." [p 183]

Again, Mr. Bauer indicated that "for our tented events, we would for the majority of them that we are talking about, 15 events, would be the larger variety, either a sit-down or cocktail buffet, where it would be a meal." [p 181] He also agreed, although it was not his intent, that under his proposal he could have "365 outside events between 12 noon and 8:30 p.m., one each day for the entire year, with 225 people; and that would be consistent with his proposal, literally speaking." [p 185]

On day two of the public hearing, the Board heard the testimony of Mr. Charles Fenwick, a Board member of the Land Preservation Trust and a member of The Valleys Planning Council. He described himself as "General Manager" of the Shawan Downs Race Course, and described the 250 acres of Shawan Downs at the corner of Falls Road and Shawan Road – about ½ mile from the location of the Oregon Grille. The witness was allowed to testify as representing the Land

Preservation Trust, subject to the minutes of the authority and meeting of the Land Preservation Trust being made available to this Board at the next public hearing of the case. That organization did not object to the requested relief sought by Mr. Bauer [T 3/24/04, p 14].

Shawan Downs utilizes land owned by the Land Preservation Trust for equestrian activities on a limited basis throughout the year. The materials used for the "Legacy Chase" were admitted as Petitioner's Exhibit #8. This is a steeplechase race meeting on the last Saturday in September and has been conducted for 3 years with eight races each day, attended by about 7,500 people, and for the benefit of The Greater Baltimore Medical Center. [p 15] About 35 to 40 tents are on site, purchased by various corporate sponsors. [p 15] Another smaller steeplechase event is held on the last Saturday in March with five to six races, attended by 1,500 to 2,000 people with fewer tents on site. There were perhaps two other much smaller events (horse track), one held in May and another in the summer over a weekend.

The Downs at Shawan were purchased by the Land Preservation Trust in 1997. The Downs had not received any complaints about their activities from any neighbors. [p 17] He saw no adverse impact on the current uses of the Downs at Shawan. [p 18]

On cross-examination by Mr. Nelson, the witness acknowledged Shawan Downs had leased a portion of land from Mr. Bauer, about 1/3 acre at the southeast corner of the Shawan Downs property for no monetary consideration, but "we gave Mr. Bauer a benefit of $10,000, and then actually gave him a check for $2,500. [p 21] That transaction was before the meeting approving Mr. Bauer's request before this Board. [p 22]

Mr. Michael Hankin also testified in support of the requested relief. He was also a member and president of the Board of the Land Preservation Trust and a Board member of The Valleys Planning Council. [p 29] He was familiar with Petitioner's request. As an area resident, he was in

favor of the Petitioner's request. [p 30]

On cross-examination, the witness indicated that he lived about 8 miles away from Oregon Grille and could not "see or hear anything happening at this restaurant." [p 31]

Mr. Ned Halle testified. He is also a member of the Land Preservation Trust Board of Directors, and opined that the Land Preservation Trust Board was not opposed to Mr. Bauer's requests. He believed that Mr. Bauer "ran a great restaurant there; and I do not think the proposed expansion of the use of the restaurant would be detrimental to the community." [p 36]

On cross-examination, the witness acknowledged that he was secretary of the Land Preservation Trust and also on the Board of The Valleys Planning Council. He was also involved with "The Hunt" – a club that keeps horses and hounds for the purpose of fox hunting. He acknowledged that Mr. Bauer owned property near the Western Run, about 30 acres, on which "The Hunt" had occasion to use." [p 39]

On re-direct, the witness indicated that Mr. Bauer had never threatened to shut down "The Hunt" or refuse the use of any part of his property for that activity.

Mr. Andre Brewster testified as an area resident, and Board member of the Land Preservation Trust. He was also supportive of Mr. Bauer's request as a resident about 4 to 5 miles from the Grille and frequent patron of same. He was aware of the presence of streams on the property. [p 50]

Mr. Gregory Barnhill also testified. He was a founding member of the Downs at Shawan and on The Valleys Planning Council Board. He opined that the proposed use was compatible with the neighborhood. [p 54]

Mr. Courtney Jenkins testified as one who grew up in the "Valley" and as a "land preservationist." He commented on Mr. Bauer's efforts to restore the historic building, the changes

that have occurred at Hayfields and Shawan Downs, and that the Grille was "consistent with the entertainment that we are providing in the valley." [pp 57-58]

Mr. James McDonald testified. He had been present for all the hearings to date. He also agreed that the area had changed, citing the construction of Hayfields and two new churches, and the activities at Oregon Ridge Park.

Ms. Susan McDonald also testified. She is the wife of James McDonald and agreed with her husband's statements. She lives about 3 miles away. Ms. McDonald did not appear to be in concert with Baltimore County's zoning regulations. She opined that "I would agree with what Ted Bauer, with what they want to do on the restaurant." Questioned by Mr. McCann: "Regardless of what the Baltimore County Zoning Regulations say?": Answer by Ms. McDonald: "Regardless, I think that's a way of life." [pp 70-71]

Mr. Jeffrey H. Brent testified. He lives about 2 miles from the Oregon Grille and works in proximity at Hunt Valley. He was familiar with the Grille and its restaurant facilities. He opined that the requests would be "an added benefit to the community...and, from a business standpoint, it's a nice place to go and take clients and employees...and the improvements he wants to make...I think are good. I don't have any objection and am in support of it." [p 72]

Ms. Norma Killebrew testified. She is one of the members of the Downs at Shawan and was formerly on The Valleys Planning Council. She "agreed with everything that had been said up to now." [pp 79-84]

Mr. Charles Herget, Jr., testified. He is a member of The Valleys Planning Council. He opined that approval of the requests "would add to the experience of the Oregon Grille because there are more options to use. I think it's very reasonable in the limited number of events they are talking about." [p 81]

Ms. Helene Miller also testified. She is an "events and activity coordinator." Her promotional materials were admitted as Petitioner's Exhibit #10.

Her testimony dealt with "a number of different facilities, a number of different restaurants in a variety of different zoning classifications." [p 85] Ms. Miller had been requested by Mr. Bauer to do research on certain facilities in Baltimore County that have events similar to the type of events that Mr. Bauer was proposing at Oregon Grille. [p 91] She acknowledged that "each of the restaurants are not in an R.C. 4 zone (Milton Inn was not; Manor Tavern was not; the Greenspring Valley Hunt Club is not; Shawan Downs is not; The Harryman House is not)." [pp 92-93] Hayfields, she stated, was split zoned R.C. 2 and R.C. 4. This exhibit was marked in alphabetical order A – V.

Ms. Miller proceeded to review each restaurant she felt was comparable to the Oregon Grille and related some highlights on each. [pp 94-106]

The witness was cross-examined extensively by Mr. McCann. She did not believe that any of the identified restaurants were engaged in "catering activities" because they are on site. They are turning over their restaurant to accommodate an affair." [p 107] Mr. McCann questioned her concerning "menus" that he had searched from the internet relative to some of the restaurants identified by Ms. Miller. The witness indicated that she did not "do catering." [p 188] When asked by the Chairman if he were planning a wedding and wanted food served—who prepares the food. She responded that "it could be the restaurant when I'm doing that or...there can be a venue like Martin's West and that is prepared there – but that is actually a catering facility...One is the restaurant that makes the food on site, or a place like a catering hall like Martin's West, they are only open for certain events, business events, weddings, whatever; and they make the food for only that event for that one day. That is not what the restaurant does. The restaurant is open every single

day." [p 117]

"A restaurant is when you sit down at a table and eat what you've been served...and presume that payment after the meal is eaten." [p 125]

"A full service restaurant includes the order is taken while the patron is seated"? – a question posed by Mr. McCann; "yes," answered by Ms. Miller. [p 126]

Mr. Richard Peppin was accepted as an expert in acoustical engineering by the Board and his C.V. admitted into evidence (Petitioner's Exhibit #12). Mr. Peppin opined concerning his tests relative to an acoustical study of the effects that sound might have with regard to the outside events. [p 137] These procedures are described on pages 137 - 145 of the transcript. Essentially, the witness used Petitioner's Exhibit #1 to describe how his impact was developed. A memo was prepared outlining what he had done. (Petitioner's Exhibit #13)

Essentially, he had determined that "no matter where you are, the nearest residence or the farthest residence, the sound level will not exceed the Code of Maryland, Chapter 3 requirements. [p 141]

On cross-examination by Mr. Nelson, the witness opined as to the presence of data that went into the computer model. [pp 148-151] The primary source of cross-examination dealt with the process of using nearby residences rather than property boundary lines. The witness indicated that there were cases where they have measured the noise level at the property line, citing Montgomery County. [p 165]

Mr. Peppin did not believe that, if someone owned real property without a residence on it, there would be any right to go to the State and ask them to enforce the COMAR regulations. He opined that in his experience, "that would be a trivial complaint and they would not have time to deal with it. The state does not have the time to deal with cases like that. That's what I believe."

[pp 167-168]

Mr. Mickey Cornelius, a licensed professional engineer in Maryland and several other states, was accepted as an expert traffic engineer. He was retained by the Petitioner to perform an analysis of the traffic, background traffic and effects of the proposed Oregon Grille expansion. He visited the site, examined the existing layout, and the existing surrounding road system. In addition, he examined the proposed plan and the proposed use to ascertain how much additional traffic would be generated by the request.

He described the intersection of Shawan Road and Beaver Dam Road, controlled by signalization, as a level "D" service determined by Baltimore County as to morning peak hour traffic conditions. During the weekday peak hours, the level of service was a "C." The actual access to the Grille was off Kurtz Lane, that came off of Beaver Dam Road, just south of the Shawan Road intersection. He described the traffic volumes along the roadway system [pp 173-174] and his on-site visits to the Grille [pp 175-184]. He did not see any significant impact relative to any traffic safety issues or parking concerns if the Petitioner's requests were granted by the Board.

On March 25, 2004, the third day of public hearing, Mr. Charles Main II was accepted as a licensed professional civil engineer. He is a vice president of Daft McCune & Walker responsible for giving guidelines to other civil engineers in all types of engineering projects – including stormwater management. He was responsible for the stormwater management for the purposes of the additional impervious area proposed for the Grille. He explained the process employed in that procedure. A copy of the stormwater design was accepted as Petitioner's Exhibit #17. He also described the new 2000 stormwater management regulations developed by the Maryland Department of the Environment. The new regulations cover recharge, water quality, channel

protection, over-bank flood, and extreme flood. He opined that only recharge water quality and channel protection needed to be investigated on this site. He explained the differences. The witness opined that, based on his observations, the proposed facility complied with the intentions of the new regulations "at the present level of design, as a schematic design, and not a final construction drawing." [p 16]

On cross-examination by Mr. Nelson, questions were posed concerning the stormwater management discharge in 24 hours and that the Class III/IV stream running beneath the restaurant was not taken into consideration in his analysis.

Mr. Eric Hadaway also testified. He is the Director of Environmental Services for Daft, McCune and Walker and was accepted as an expert in environmental services. [C.V. – Petitioner's Exhibit #18] He described his investigation of the environmental and natural resources on the site and immediate vicinity. An aerial photograph obtained from the Baltimore County Office of Information Technology was accepted as Petitioner's Exhibit #19. He described the tributaries on site and general area of the Grille. Based on his analysis and review, the environment would not suffer due to the proposed additional parking area. [p 56] He further described his reasoning; and efforts to mitigate any diminimous amount of thermal changes in the water specified in a landscape plan submitted as Petitioner's Exhibit #21.

On cross-examination by Mr. Nelson, the witness acknowledged that he had never gauged the temperatures of the stream that flowed under the property but indicated that there are significant amounts of runoff created by Shawan Road, Cuba Road, and Beaver Dam Road. He also acknowledged that, "I suppose that there…might be other places in the R.C. 4 zone where you could place a parking lot of that proposed dimensions, with an impervious surface, where it would be further away, further than 260 feet from a tributary to a Use III stream. [p 76]

Mr. Mitchell Kellman was accepted as an expert in zoning and planning. He participated in the preparation of the site plan and was quite familiar with the site. He described his experience relative to numerous establishments that held events similar to that proposed by the Oregon Grille. He outlined his opinion concerning the differences between a restaurant and a catering hall. He opined:

> I think the definition, really, the difference between a restaurant, a restaurant is a commercial establishment which is primarily used to serve people beverages and food where they can just walk in, sit down at a table and be served, and they pay, where a catering establishment is a commercial establishment that is actually reserved ahead of time which is principally used for the reservation of a use where they have functions and gatherings." [p 89]

In his opinion it (the Grille) was 100 percent a restaurant. He also opined concerning Sec 402.3 indicating that the restaurant did not serve people in cars." He also believed that "vagueness" existed as to what constituted a "mealtime" and opined that the proposed activity was an "accessory" use to the principal use of the restaurant. He also reviewed the list of restaurants provided by Ms. Miller and the various zones in which the restaurants were situated.

Mr. Hoffman also proposed the usual questions relative to § 502.1 and the variance request and the witness could not find any reason why the Petitioner's requests could not be granted by this Board.

On March 31, 2004, the Protestants began their case. Ms. Martha Popst testified as a nearby resident, being about 1/10 mile from the Grille, a resident of 21 years. Her concerns were in the area of small children playing in a field running parallel to Shawan Road and Beaver Dam Road and an additional buffer in the area.

David Swarz-Murias testified. He had environmental concerns.

Mr. Harry Jenkins also testified expressing dismay at the use of public parkland for Mr.

Bauer's benefit.

Mr. James Wollen, an architect, testified relative to historical concerns and the impact of the requests, if granted, would have on the Western Run Historical District. He described the area of the Western Run Historical district and introduced Protestants' Exhibits 5 and 6 and acknowledged that the Oregon Grille was within the historical district and also described the historical features of the building on the property. [T 3/31/04, pp 40-41] His report had been submitted to the Maryland Historical Trust who ultimately approved the Western Run Historical District and the inclusion of the Oregon Store in the district. He submitted Protestants' Exhibit 7 reflecting historic districts, north of Baltimore City, except Lutherville. [p 45] He was quite familiar with the Petitioner's proposal and did not believe that the proposed new use was consistent with the spirit and intent of the Western Run Historic District. [p 49]

He opined that "the visibility of the tents and additional parking lot would be non-contributing structures in the district, and this high visibility making them obvious non-contributing structures. The parking addition would also be very negative on the historic site. [p 51]

Mr. Dennis Sutton, a resident who lived 1,500 feet from the restaurant expressed concerns on behalf of the Falls Road Community Association. These included traffic issues, a commercial use not allowable in an R.C. 4 zone or historic district, the visual activity, among others.

Ms. Kathleen Ponton testified as a concerned citizen citing traffic concerns, catering as a non-permitted use, excessive music and noise if granted, and the historical nature of the area.

Mr. John J. Dillon, Jr., testified as Executive Director of The Valleys Planning Council. He described his experience with Baltimore County in Planning and the resource conservation zones, and was accepted by the Board as an expert in planning and zoning. [T 3/31/04, p 146] He described § 402.3 and its implication in this case. In his opinion, § 402.3A "means a restaurant or

tea room may only have…that are serving meals – meals may only be served at tables indoors or outdoors." [p 153]

"Buffet tables are not included in this definition. This is a very tightly written section of the Code. It is meals may be served only at tables. And I think the 'only' indicates that they are people seated at tables." [p 155] He did not believe hors d'oeuvres are necessarily meals. "Hors d'oeuvres are preliminary to having a meal…It is not a meal." [p 156]

Mr. Dillon had prepared a chart with 23 to 25 different zoning classifications along with uses permitted, not permitted, special exception and those permitted in use in combination with another use (Protestants' Exhibit #18). Mr. Dillon opined concerning the details reflected on the chart [p 161-174].

Protestants' Exhibit #20 was admitted as a 2002 aerial photo depicting the impermeable surfaces at the Oregon Grille. The question of what percentages constituted the impervious area was raised, along with other area uses. It was the opinion of Mr. Dillon that "this is an historic building in an historic district, a County-owned park land, [and] that the expansion that's anticipated here does affect the health, safety and general welfare, particularly in the area of some of the conflicts that were brought up by other people in testimony, by the neighbors, and other witnesses." [pp 189] He also opined that "this is an R.C. 4 zone. It allows a very limited type of use by special exception, under certain conditions. The expansion which is being requested here is beyond the scope of what I understand that section would allow …also it is inconsistent with § 402.3. [p 191]

Additional questioning followed relative to certain historic districts in Baltimore County. [pp 194-209] He also opined that there are large areas that are within that area zoned R.C. 4 that are not under water or in water that are not impacted by an historic district or historic structure. [p

201]

April 13, 2004 marked the final day of public hearings with extensive cross-examination of Mr. Dillon. He again stated that in his opinion "hors d'oeuvres would not include meals." [T 4/13/04, p 12]...but that "meals were not defined in the BCZR." [p 13]

It was Mr. Dillon's opinion that he saw the Grille, "as being set upon a catering facility for a series of special events on a scheduled basis of 30 or more a year, if you want to use 30 as a number." [p 24] "The standard use of the restaurant is to have people come in on a daily basis, have meals...when you have an occasional party, that's an occasional event; it's not a standard event. Where he (Mr. Bauer) is planning to have a regular scheduled opportunity to have events on a regular basis, that is when I think the distinction falls." [p 19]

Mr. Dillon opined that his interpretation of § 402.3 was that it was a very restrictive type of use to be allowed in basically residential zones, that they really didn't want a full-fledged type operation to go on all day long. It would be just held at meal times. The question of neighboring Oregon Dinner Theatre came up and the fact that it was within the zone that prohibited catering. However, a dinner theatre is not defined in the BCZR.

Mr. Richard Klein also testified. He works for Community and Environmental Defense Services. He was queried concerning a well on the site and streams on the property. He introduced Protestants' Exhibit #23, the well compilation report mentioned in his testimony. He also analyzed certain lots and distances from the existing structures to the nearest stream. In comparing the lots to the Oregon Grille property, the range was 100 feet to 1800 feet.

"The Oregon Grille parcel is 120 feet from the center to the property boundary, which makes it the second closest of the 65 parcels to the boundary." [p 82] (Protestants' Exhibit 25 and 26)

Mr. Robert Sheesley was the next rebuttal witness called by the Petitioner. His C.V. was admitted as Petitioner's Exhibit #25. He was offered as an environmental scientist and licensed sanitarian in areas of wetlands, stream protection, groundwater and solid waste disposal issues. His testimony centered around the condition of the stream and its potential impact, along with the well issue. His testimony is reflected on pages 109-116. It was his opinion that the stormwater management facility was well vegetated, and that the outfall structure was in good condition with no evidence of any erosion.

Petitioner's Exhibit #26 was a photograph he had taken depicting the natural and physical condition of the banks, stream channel and the adjacent property. He was cross-examined relative to the need for a variance of the prohibition of putting a stormwater closer than 100 feet to a well.

He opined that a variance might be needed in the future if Oregon found they would not have infiltration, and that would be the time to seek a variance from DEPRM. He was also questioned about the R.C. 4, 10% maximum impervious surface rule, and he agreed that if 55 parking spaces were added, the percentage went up. Mr. Sheesley's rebuttal testimony concluded the evidentiary portion of the public hearing.

The Board sincerely appreciates the excellent briefs submitted by counsel for the Petitioner and for the Protestants. The panel members have reviewed their notes, examined the evidence and read the briefs.

Essentially, this case involves the renovations by Mr. Bauer of an old store, formerly known as the "Kurtz Store." It lies on public park property at the intersection of Shawan Road and Beaver Dam Road in the north county area of Baltimore County. Mr. Bauer saw considerable value in the property and leased a portion of the property from Baltimore County for use as a restaurant. The County was agreeable to the lease since the building was in poor and deteriorating condition with

no financial ability on the part of the County to restore it.

To that end, Mr. Bauer expended considerable funds to renovate the building after obtaining special exception relief in 1995. After public hearings, the Baltimore County Board of Appeals issued its "Opinion and Order" under date of February 8, 1995. In that document, the Board approved the use of the subject property as a restaurant subject to the following restrictions:

1. Petitioner may apply for its building permit and be granted same upon receipt of this Board's Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
2. In the event the Petitioner shall decide to install the outdoor dining area/patio on Petitioner's Exhibit 1, then the Petitioner shall be required to submit the plans for said outdoor dining area/patio to DEPRM for their full review and approval.
3. The alternate outdoor dining area/patio locations, depicted on Petitioner's Exhibit 1, shall only be utilized for dining or pre-dinner cocktails, so long as patrons are subsequently served dinner, and shall be limited in quantity to 125 persons. There will be no outdoor bars, live music, tents, or similar overhead coverings on or serving the outdoor dining area. Music shall not be audible from any neighboring residences that exist as of the date of this Board's Order.
4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property. This paragraph shall not be interpreted to preclude activities permitted under Restriction No. 3.
5. The bar/lounge area will be located at the east end of the restaurant as shown n the floor plan submitted as Petitioner's Exhibit 2. This provision shall not preclude serving alcoholic beverages in other areas of the restaurant or establishing temporary bar areas inside the restaurant.
6. Petitioner shall be permitted to have dining and/or seating areas on the front porch of the Store.
7. No alteration or expansion of the exterior of the Store shall be permitted unless approved by the Baltimore County Landmarks Preservation Commission in accordance with Section 56-541 of the Baltimore County Code. Any expansion of the Store shall be limited to enclosures of existing building features including porches and stairs or expansion of basement areas. This provision shall not preclude the establishment of an outdoor dining area, additional parking or relocation of the mini-barn as shown on Petitioner's Exhibit 1. There will be no additional buildings constructed on the property.
8. The existing signs for the Store may be replaced with signs of the same or smaller size.
9. The parking area shall consist of a non-paved surface such as stone or a similar permeable surface unless otherwise required by law. All parking will be

contained within the leased area.

10. Any new exterior lighting shall be of the same height, general design and intensity as that which exists on site as of the date of this Board's Order.
11. The special exception shall remain valid only so long as Petitioner, and its successors and assigns, utilize the property as a standard restaurant, as defined in Section 101 of the Baltimore County Zoning Regulations, and only in accordance with the restrictions hereinabove set forth.
12. When applying for any permits, the Site Plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Board's Order.

IT IS FURTHER ORDERED that the Petition for Variance to allow 94 parking spaces in lieu of the required 145 be and is hereby GRANTED.

Since the restaurant opened in 1995, it has been extremely successful and has been recognized as a quality Mobile Four-Star Restaurant – the only such restaurant to be so recognized in Baltimore County and only one of three in the State of Maryland.

Because of its success, and what the Petitioner considers to be a change in the character of the neighborhood of the restaurant, the Petitioner desires to have outdoor tented daytime events and a limited number of outdoor tented evening events.

The Petitioner seeks, more specifically, to remove Restrictions 3, 4 and 5 of the 1995 "Order," and, in place thereof, substitute the following restrictions on the proposed outdoor events:

1. The number of evening events would be limited to 15 per calendar year.
2. The events would be held on the terraces on the south side of the restaurant. Tents would be permitted but would have to be removed within 24 hours following all events for which they were erected.
3. Music would be permitted but at a level of minimum intrusiveness to the nearby neighbors and other patrons of the restaurant; all music would have to cease by 10:00 p.m. at such events and by 11:00 p.m. on no more than 5 such events.
4. A sound engineer or specialist would be engaged by the Oregon Grille to provide recommendations and guidelines to assure minimal intrusiveness of the music.
5. Events during the daytime and early evening (i.e., ending no later than 9:00 p.m.) would be subject to the foregoing music standards and tent removal requirements but not included within the limitations as to the number of events.
6. A canopy or similar cover to provide shade on a seasonal basis to the dining portion of the patios would not be considered a tent and would be permitted.

The other restrictions reflected in the Board's 1995 Order would remain unchanged.

The Board has considered the case from several different points as reflected in the briefs submitted by the parties to this case. The first issue is one raised by the Protestants and initially noticed by the Board at the commencement of the case.

In the 1995 case, the property is noted in the Board's opinion as being owned by "Baltimore County, the Petitioner herein," noting that "the property is subject to a long-term lease to Oregon, LLC, which proposes to renovate the existing improvements on site into a restaurant." Clearly there was the owner of the property (Baltimore County) and Oregon, LLC as the lessee as legitimate parties in interest to the property.

In the instant case, however, as to the proposed parking lot expansion, there is no actual lease agreement between Baltimore County, the owner, and Oregon, LLC. There was testimony to the effect that, if the Board granted the variance request, Baltimore County would consider a lease...but at the time of the present hearings, no lease on the .47 acre property on which the variance was being requested was in effect between the parties.

This Board is authorized under the Maryland Code, Annotated, Article 25A, Sec 5(U) to render decisions "on petitions by any interested person." Because there is no actual lease, or contract lessee present, this Board does not consider the Petitioner to be "an interested party."

This Board agrees with Protestants that the relief requested by the Petitioner, Oregon, LLC, is not ripe for consideration by this Board. Under *Hawkins Point Partnership v. Anne Arundel County*, 316 Md. 188 (1989), an action is ripe when "there are interested parties asserting adverse claims upon a state of facts which must have occurred wherein a legal decision is sought or demanded." Courts, or administrative bodies, should not be placed in the position of rendering

advisory opinions, a long forbidden practice in this State.

In addition, lacking an agreement between the County and the Petitioner creates that fact that Oregon has no personal or property interest that will be adversely affected by the zoning decision, and further must show that the harm to that interest from the zoning decision is distinct from the harm to the general public from the zoning decision. The Board has determined that the Petitioner has no personal or property interest in the land which is the subject of its request in the absence of a written agreement between the parties..

As to the second point raised by the Protestants involving the doctrine of *res judicata*, the Board also finds merit in Protestants' arguments. This long-established principle applies not only to Courts of law but also to administrative boards, such as the Board of Appeals. The doctrine of *res judicata* "applies not only to the issues expressly described in the prior case between the same parties, but to every matter that might have been presented in that prior case." [*Garrett Park v. Montgomery County Council*, 257 Md. 250, 257 (1970)]

Baltimore County and Oregon Grille were both parties to the Board's 1994 hearing. That Board heard testimony and took evidence in that case and came to the conclusion that the outdoor dining area/patio locations could be utilized for dining or pre-dinner cocktails, as long as patrons were served dinner and limited to 125 persons. There was to be no outdoor bars, live music, tents, or similar overhead coverings and/or serving the outdoor dining area and the Petitioner would be prohibited from catering or hosting weddings or similar events outdoors on the subject property.

While the Petitioner is certainly entitled to file his requested changes to the original 1995 Board's Order, in the form of a special hearing, special exception, or variance request, it is the responsibility of this Board not to disturb the original Board's Order simply to accommodate the desires of the Petitioner in response to the increased popularity and prestige of his establishment.

The original Board heard testimony and received testimony on Mr. Bauer's desire to rehabilitate and renovate the old building, in an historic district, in a highly protected R.C. 4 zone. He was aware of the limitations imposed on the reconstructed building and its use under the BCZR, Sec 402.3 which specifies the requirements for the conversion of buildings to tearooms and restaurants.

> To be converted for tearoom and restaurant use…as a special exception, the following requirements must be met:
>
> A. Meals may be served only at tables, indoors or in an outdoor terrace, and not to persons remaining in cars…
>
> * * * * *
>
> D. Service shall be provided only at mealtimes.

In reading the original 1995 Board Order, that Board recognized the limitations imposed upon Mr. Bauer and accepted by him relative to those limits imposed on the use of the building and grounds, along with the variance request. There was no appeal from the decision of that Board.

It strikes the Board that what the Petitioner now seeks is a "second bite of the apple," to do exactly what he agreed not to do in 1995. This Board, having heard considerable testimony and receiving evidence has not determined that any significant changes have occurred in the R.C. 4 zone that would call for this Board to disturb the original 1995 decision. The many witnesses called by the Petitioner in support of the proposed changes did not offer sufficient or compelling testimony or evidence to convince this Board that their support was but self-serving to serve the interests of the Petitioner.

The Board concurs with the Protestants that the same issues addressed here could have easily been addressed on appeal. The decision rendered by the earlier Board applies "not only to the issues expressly decided in the prior case between the same parties, but to every matter which might have been presented in that prior case," recalling that in that case Baltimore County and Oregon Grille were both the Petitioners. This Board agrees with the position of the Protestants that

nothing has changed significantly since the original Board's decision was made and that decision was not "the product of fraud, surprise, mistake, or inadvertence." *Racine*, 24 Md.App at 449; *Woodlawn*, 241 Md. at 197.

Another question raised by the Protestants is that the outdoor events proposed by the Petitioner are permitted in an R.C. 4 zone as a "principle use" or an "accessory use." The Board has carefully reviewed the varying testimony of witnesses in the proceedings. A "catering hall" is defined in the zoning regulations as follows:

> A facility or part of a facility used regularly for serving beverages and food to groups that reserve the facility for banquets or gatherings before the day of the event. A catering hall is not a standard restaurant.

When one examines each part of the definition, the Board has no difficulty in determining that what the Petitioner proposes constitutes a "catering hall" distinctly different from the standard restaurant now functioning on the site and open during normal business hours to the general public. Any efforts at "catering" or in the guises of catering is precisely what the original Board did not want to occur.

This Board was not swayed by the testimony of Ms. Helene Miller and her restaurant comparisons and activities carried on the premises of same. The Board was likewise not convinced by the testimony of Mr. Kellman, who readily agreed that he was not aware of any restaurant in the restrictive R.C. 4 zone that hosted weddings, banquets, and other events as proposed by the Petitioner. While referencing the nearby Hayfield property, it was noted that the relevant part of Hayfields in question was that the clubhouse was located in an R.C. 2 zone. Mr. Kellman opined that, while the outdoor events may constitute catering, they did not satisfy the definition of "catering hall" because the Petitioner would not host the events on a regular basis. This Board disagrees and concurs that such events, even limited to 15 "evening" events, would constitute a "regular basis"

and compounded by the Petitioner's request to have "events" during the daytime and early evening (i.e. ending no later than 9:00 p.m.).

This Board was far more impressed by the testimony of Mr. Jack Dillon whose expertise has been given considerable consideration by this Board in numerous cases and situations involving the R.C. zones. It is to be recalled that Mr. Dillon was heavily involved in the creation of the R.C. zone during his tenure with Baltimore County. He has always been accepted as an expert by this Board in the areas of planning and zoning. His analysis of the BCZR and special exceptions for converting a dwelling to a restaurant in the various R.C. and D.R. zones was impressive where in those zones, approval can be obtained only by special exception and through the conversion process. In the R.C. and D.R. zones, a converted restaurant must comply with § 402.3 of the BCZR. He opined that § 402.3 was a "very narrow" and "tightly written section of the Code" and "if the use proposed by the Petitioner did not comply with that section, the use could not be permitted." His rationale that food served at buffet tables, as proposed by the Petitioner, would not be in compliance with the § 402.3 requirement that meals must be served at tables. As Mr. Dillon opined, the definition of "standard restaurant" also requires the "serving of meals and beverages to persons seated at tables. Similarly, the Board concurs with Mr. Dillon's analysis that "mealtimes" generally reference the commonly accepted "standard" times most individuals and families follow to partake of breakfast, lunch and dinner, that is 7:00 to 9:00 a.m.; 11:00 a.m. to 2:00 p.m.; and 5:00 to 9:00 p.m. It was his opinion that the legislative body (the County Council) intended general usage of the term "mealtime" as to a particular time of day – or they would not have put the work in "mealtime." The County Council did not want a "full fledged" type of operation going on all day long. It would be just held at mealtimes.

The Board concurs that the type of facility proposed was being sought as a catering facility

for a series of special events on a scheduled basis of 30 or more times a year – as opposed to those permitted at a restaurant on occasions or periodically – but not a common event. The Board also concurs with Mr. Dillon that the proposed use is not an "accessory use" because the use is not one customarily incident to a converted restaurant in an R.C. 4 zone. The use may be customarily incident to a restaurant in a B.M. or B.R. zone – but not in an R.C. 4 restaurant zone. Of particular concern to this Board was that Mr. Dillon was not aware – nor was the Petitioner able to establish – any restaurant that hosts banquets, wedding and other catered events in an R.C. 4 zone. Of particular note also is the fact that no other restaurant in Baltimore County was located in an R.C. 4 zone located on public park property, in an historical district, in a converted dwelling. The facts of the case simply do not support the type of request petitioned by the Oregon Grille.

The Board has also carefully considered the special exception request made by the Petitioner pursuant to Section 502.1 of the BCZR. This type of request is also governed by the requirements established by the Maryland Court of Appeals in *Schultz v. Pritts*, 291 Md. 1, 11-12; 22-23 (1981). Under § 502.1, all nine factors must be in compliance with the legislation. Under *Schultz*, there must be no facts, conditions, or circumstances about the proposed use at the specified location that would lead to "adverse effects, above and beyond those inherently associated with such a special exception use – irrespective of its location within the zone." That burden rests exclusively on the Petitioner to prove. In that respect, the Board finds several deficiencies.

1. The Board agrees with the position of the Protestants that the current existing and proposed parking lots considerably exceed the 10% permeability limit set forth in BCZR § 1A03.4.B.3. That Baltimore County provision requires that "no more than 10% of any lot in an R.C. 4 zone may be covered by impermeable surfaces...."

The testimony of Mr. Charles Main, a professional engineer in the State of Maryland,

agreed that the surface of the existing lot was "bituminous concrete and that the proposed parking lot would be a concrete surface." [T 3/25/04, p 17] and that "a concrete parking lot is an impervious surface."

Mr. Hoffman indicated that the present parking lot was a "tar and chip" which has a stone base and some sort of macadam covering it – which is considered impervious by Baltimore County for purposes of stormwater management [p 28].

There is a matter of concern to this Board if the Petitioner is in compliance with the original Board's Order relative to the parking lot surface; however, taking into consideration the various positions taken by the parties, this Board concurs with the position of the Protestants in determining that 10% maximum impervious surface" requirement one must look to the actual area leased from Baltimore County amounting to approximately 2.63 acres and not the 430 acres that encompass the entire Oregon Ridge public property. This Board agrees. The sole function of § 1A03.4B.3 is to protect the watershed from any detrimental use. To that end, the Board takes the conservative view that it is the amount of impervious surface leased by the Petitioner (2.63 acres) that must be considered in ascertaining the amount of impervious surface and not the 430 acres of the entire Oregon Ridge Park. In so doing, the 10% factor is considerably exceeded and violates § "H" of 502.1.

In an examination of the totality of the evidence, the Board, as previously expressed, concurs that the intent of the R.C. 4 zone is to limit the intensity of commercial activity at converted teahouses or restaurants. The proposed amendment to the original Board's Order would seriously cause an intensity of commercial activity at such converted restaurants, and the Board concludes that any approval of Petitioner's request would be totally inconsistent with the purposes, spirit and intent of the R.C. 4 zone and as such fails to meet the standard of § 502.1g.

The Board has also considered the factors of "noise" and "historic district" designation. The Protestants have raised meritorious points in which similar factors were considered to be relevant factors [*Lucas v. People's Counsel for Baltimore County*, 145 Md.App. 721 (2002)].

The Maryland Court of Appeals agreed with the Board's conclusion that "the impact upon the National Historical District would be greater in the Greenspring Valley than if located in other northern areas of the R.C. 2 zone. The property lies in the Western Run Historic District and in the R.C. 4 zone, uniquely situated at the gateway to the historic district. Mr. Wollen's testimony [T 3/31/04, p 31-76] and architectural research and reports were a compelling analysis examined most carefully by the Board. The Board concurs that the impact cited by Mr. Wollen could have a negative effect on the appearance of the site as an entry into the district that would not have the same effect where there is not present an historic district or historic site.

The Board was also not convinced by the testimony of Mr. Richard Pippen, the Petitioner's sound expert. In the *Lucas* case, the application was denied, in part, because "a similar operation could be conducted where the problem of noise pollution does not contaminate a neighbor's property line." Mr. Pippen's testimony and reports focused on nearby residences and not the property line. This Board believes that the *Lucas* has applicability here and that the use would generate noise that violates the COMAR noise regulations.

As to the variance request, this Board also concurs that the request should be denied. Mr. Bauer opined that he had "enough parking for the current use...stressed, but it's adequate." [T 11/04/03, p 92-93] With the denial of the special exception, there is no need for the additional parking. In addition, in a recent Board case that involved a requested variance, one reason for which was the increase popularity of a restaurant, the Board likewise rejected the variance request (Case No. 02-165-A /*In the Matter of Bad Dog Corp. t/a An Poitin Stil*).

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 2nd day of July, 2004, that the Petitioner's requested special hearing, special exception and variance relief, as detailed in the foregoing Opinion, be and is hereby **DENIED.**

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman

Charles L. Marks

Edward W. Crizer, Jr.

County Board of Appeals of Baltimore County

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

July 2, 2004

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: *In the Matter of: Oregon, LLC – C.P.; Baltimore County Recreation and Parks – Legal Owner (Oregon Grille)* – Petitioners /Case.No. 02-461-SPHXA

Dear Mr. Hoffman:

Enclosed please find a copy of the final Opinion and Order 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*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all subsequent Petitions for Judicial Review filed from this decision should be noted under the same civil action number as the first Petition.** 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 /tjs

Kathleen C. Bianco
Administrator

Enclosure

c : Theodore W. Bauer /Oregon LLC
G. Macy Nelson, Esquire
Dennis Sutton
Falls Rd Community Assn.
Michael R. McCann, Esquire
Greencroft Community Assn.
The Valleys Planning Council
Office of People's Counsel
Lawrence E. Schmidt, Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Edward J. Gilliss, County Attorney

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5/24/04

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MAY 24 2004
BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE - SW/CORNER SHAWAN ROAD AND BEAVER DAM ROAD (1201 SHAWAN ROAD) 8TH ELECTION DISTRICT 3RD COUNCIL DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND, & DEP'T OF RECREATION & PARKS, OWNERS; OREGON, LLC, CONTRACT LESSEE	*	CASE NO. 02-461-SPHXA

...oooOooo...

PROFFER OF TESTIMONY

The Falls Road Community Association ("FRCA") hereby proffers that, if permitted to do so, it would call Harold H. Burns, Jr., a member of its Board of Directors, to testify in opposition to the Petitions and that Mr. Burns would testify as follows:

1. On April 14, 1994 Mr. Burns was a member of the Board of Directors of the FRCA and, on that date, he attended its regular monthly meeting at which there was a presentation by Theodore W. Bauer regarding his "Proposal for the use of the Oregon Grille." The *Minutes* for that meeting, a copy of which is attached hereto as Exhibit 1, read in pertinent part:

> The consensus of the Board was that this is an excellent use for this property but felt that in the interest of simplifying the negotiations with Bauer it would be sufficient protection for the community for VPC to negotiate and execute the covenants. FRCA will maintain contact close with VPC through Margie Counselman. A motion was made by Harold Burns, seconded by Charlie Schmenner to "not oppose this project provided that they execute acceptable covenants with VPC and to authorize Doug to testify to this effect in the Hearing for Special Exception and, if necessary, at any proceedings of the Liquor Board." The motion carried unanimously with one

abstention.

2. At the meeting of the FRCA Board of Directors on May 12, 1994 the Board received a report of the progress of the negotiations between Mr. Bauer and the Valleys Planning Council ("VPC"). A copy of the *Minutes* of that meeting is attached hereto as Exhibit 2.

3. At the meeting of the FRCA Board of Directors on June 9, 1994 the Board received a report by Douglas R. McComas, the Executive Director of the FRCA, regarding his testimony at the Special Exception hearing before the Deputy Zoning Commissioner for Baltimore County in this matter. The *Minutes* of that meeting, a copy of which is attached hereto as Exhibit 3, read in pertinent part:

> Doug reported on the hearing for the Special Exception. At the eleventh hour VPC objected to the outside activities and opposed the Special Exception. Doug testified that FRCA would prefer the elimination of the tented activities but felt that limited outside dining at a location as far from Shawan Road as possible would not present a problem to the community. Ted Bauer said elimination of all outside activity was not an acceptable limitation however the matter is being negotiated. No ruling has been made. Sense of Board appeared to be that Doug is approaching in right way and VPC will follow.

4. At the meeting of the FRCA Board of Directors on September 15, 1994 the Board received a further report of the progress of the negotiations between Mr. Bauer and the Valleys Planning Council ("VPC"). The *Minutes* of that meeting, a copy of which is attached hereto as Exhibit 4, read in pertinent part:

The appeal scheduled for December 14th has been cancelled and the issue has been settled. There will be a restaurant there.

5. At the meeting of the FRCA Board of Directors on October 13, 1994 copies of the "Final Covenant agreement" between Mr. Bauer and the VPC were made available to Board members for their review. A copy of the *Minutes* of that meeting is attached hereto as Exhibit 5.

6. In reliance upon Mr. Bauer's personal assurances that the uses he sought at the Oregon Grille were limited and that he was willing to negotiate in good faith toward a binding agreement with the community, and specifically with the VPC, and in further reliance upon the terms and conditions of the October 1994 Restrictive Covenant Agreement between Oregon, LLC and the VPC—which document was introduced at the hearing before the County Board of Appeals in Case No. 94-348-SPHXA—, the FRCA waived its right to appear before the Baltimore County Board of Appeals in Case No. 94-348-SPHXA in opposition to the Petitions there presented for the Board's approval.

7. The Board of Directors of the FRCA decided not to oppose the Petitions before the County Board of Appeals in Case No. 94-348-SPHXA because it was assured that the October 1994 Restrictive Covenant Agreement between Oregon, LLC and the VPC was valid and binding and that its terms would forever limit the uses permitted at the site of the Oregon Grille.

8. Mr. Burns obtained the copies of the Minutes of the meetings of the Board of Directors of the FRCA that are attached hereto as Exhibits from his personal files. He has personal recollection of these events and a clear memory of Mr. Bauer's initial presentation to the FRCA Board and of the Board's ensuing discussion.

9. Mr. Burns is prepared to declare and affirm under penalties of perjury that the matters and facts set forth herein are true and correct based upon his personal knowledge.

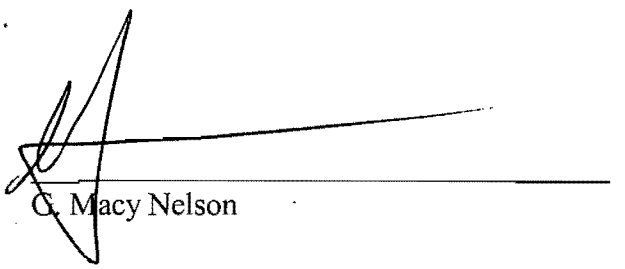
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 24th day of May, 2004, a copy of the foregoing of Proffer of Testimony was sent, *via* first class mail, postage prepaid, to:

Robert Hoffman, Esquire
Venable, Baejter & Howard
210 Allegheny Avenue
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
Carole Demilio, Esquire
People's Counsel for Baltimore County
400 Washington Avenue
Towson, Maryland 21204

Michael R. McCann, Esquire
Funk & Bolton, P.A.
36 S. Charles Street, Twelfth Floor
Baltimore, Maryland 21201.



G. Macy Nelson

Exhibit #1

Minutes

FRCA Board of Directors Meeting April 14, 1994

Attending:	Owen Brady	Moira Frost	Marvin Tenberg	Dick Allchin
Chuck Powell	Doug McComas	George Meredith	Dona Danz	Charles Schmenner
Harold Burns	Steve Siperko	Martha Lessner	Rodgers Brooks	
Absent:	Frank Kelly	Penny Noval	Barbara Bauman	Bee Peck
Bob Hunter	Greg French	Dasha Bindler	Bill Brent	Margie Counselman
Bill Lessig	Howard Schulman			

Guests: State Senator Paula Hollinger, Ruth Nasdor, aide to Senator Hollinger, Henry Danz, Claire Miller, Director of Local Affairs and Don Sandruck, Engineer both from BG&E and Theodore W. Bauer, Restaurateur

At 7:30 PM the BG&E representatives discussed plans for upgrading the Ivy Hill Substation on Ridge Road. The company has acquired the neighboring property and will expand the facility to the west. This upgrade will double the power capacity of this facility and the transmission line voltage will also be doubled. The Board suggested that BG&E consider planting additional trees along the eastern edge of the property to further conceal the equipment. An open house will be held by BG&E at the Grace Methodist Church on Ridge Road on April 25 from 4 to 6 PM and 7 to 9 PM to answer any questions that the community may have about their plans.

At 8:00 PM Ted Bauer discussed his plans for establishing an upscale restaurant at the Oregon Store at Shawan and Beaver Dam Roads and answered questions from the Board.

Following these presentations Acting President H. George Meredith chaired the meeting and opened it at 8:30PM

1. Minutes of the March 1994 Board meeting were approved without change.

2. Oregon Store the Board discussed Bauer's plans and found no problem with them. Bauer's attorney, Rob Hoffman had provided draft covenants for the community to consider. The Board discussed these provisions and concurred with the following suggested changes:

A: Paragraph 2 should also address the parking of commercial vehicles on the site and provide some limits.
B: Paragraph 3 should include a numerical limitation on the size of the bar area (either in square feet or in percentage of the total building, or first floor area.)
C: Paragraph 7 should be changed to read "The community will ~~support~~ **not oppose** the establishment ..etc."

The consensus of the Board was that this is an excellent use for this property but felt that in the interest of simplifying the negotiations with Bauer it would be sufficient protection for the community for VPC to negotiate and execute the covenants. FRCA will maintain contact close with VPC through Margie Counselman. A motion was made by Harold Burns, seconded by Charlie Schmenner to "not oppose this project provided that they execute acceptable covenants with VPC and to authorize Doug to testify to this effect in the Hearing for Special Exception and, if necessary, at any proceedings of the Liquor Board." The motion carried unanimously with one abstention.

3. Hunt Valley Presbyterian Church: Harold Burns brought the Board up to date on the status of the appeal. The request to file the Amicus Curiae brief will be filed shortly by Bob Sellers. Doug reported that $2,480 has been collected to date from the pledges that were made to support the appeal process.

4. St. Mary's Orthodox Church Doug reported on the first day of hearings on the Church's request for a modification to their Special Exception. In the course of the hearing Zoning Commissioner Schmidt observed that there was no evidence that construction had begun within the period of validity of the Special Exception. He stated that it appeared that the building that is there now is illegal and he may be forced to issue an order to demolish the building unless evidence is provided showing when construction began. Schmidt cited regulations and case law relative to this question. While this was the most significant event, other issues covered included the failure of the church to follow the limitations in the Special Exception (e.g. to construct a church of 7,500 square feet and not an 8,500 square foot multi-function building), use of off-site septic, absence of

Exhibit #2 FRCA

Minutes

FRCA Board of Directors Meeting May 12, 1994

Attending:	Moira Frost	Bill Brent	Owen Brady	Dona Danz
Bob Hunter	Marvin Tenberg	Barbara Bauman	Rodgers Brooks	
Doug McComas	Greg French	Penny Noval	Howard Schulman	
Bee Peck	Dasha Bindler	George Meredith		

Absent:	Dick Allchin	Harold Burns	Margie Counselman	Steve Siperko
Frank Kelly	Charles Schmenner	Martha Lessner	Bill Lessig	Charles Powell

Guests: John Sewell and Ruth Nasdor of Senator Hollinger's office

1. Minutes of the April 1994 Board meeting were approved without change.

2. Oregon Store: Another meeting was held with Ted Bauer to try to sort out any problems in preparation for the Special Exception hearing on May 18th. It is not anticipated that the agreements will have been executed by that time.

3. Hayfields: This property which is owned by the Mangione family is located on the Northwest corner of Shawan road and I-83. It's total of 475 acres is zoned 175 acres RC4 and 300 acres RC2. This issue has been active for over 20 years and Dutch Ruppersberger has suggested that he would like to see it concluded during his tenure in the County Council. The VPC Executive Committee formed an ad hoc panel to examine the possibilities of an agreement with the Mangiones. Phil Worrell and this committee VPC have been talking with the owners about possible land use ideas based on a quid pro quo agreement. Under existing zoning they could get 40 lots and needless to say this is below the Mangiones' expectations. Worrall feels that if this property were to be placed in a permanent environmental trust with provisions that would bar the extension of metropolitan service this would lock up the valley to the west and would be worth considering. In return for this Mangione would be permitted 50 to 60 lots and a golf course. The homes would be located on the north end (RC4 zoned) portion of the property and the valley property to the south would become a golf course. The VPC Board has not yet discussed this possibility and Phil Worrall has recommended first that some community reaction be obtained, hence the meeting that Doug had with the Mangiones and their counsel. Doug recommended that the matter be addressed at the broadest possible policy level before plunging into details about the golf course and possible covenants.

The FRCA Board declined to take a position at this time and directed Doug to see if he could get VPC and/or the Mangiones to discuss the matter at its next meeting. *(NOTE: Mangione and counsel Rob Hoffman are expected at the June meeting.)*

4) Hunt Valley Presbyterian Church: Harold Burns was not present to give us an update, however John Sewell told us that the Amicus Curea Brief will be filed by May 31st. Doug informed us that so far $2,930 of the pledges has been collected, against a total of $3,890 pledged.

5) Hunting Safety Committee: Marvin and Dasha have been working on tax maps, trying to identify larger tracts of land and possible problem areas. They've finished two of the six maps, identifying safe, questionable, and problem areas and will begin contacting property owners or neighbors to get some feedback on the areas.

Marvin also reported that there will be a muzzle loader season held in October for deer, the days of October 20th, 21st, and 22nd.

6) Treasurer's Report: Moira gave us the following figures -
Wyman Park $8,069.75
T. Rowe Price $12,636.99 as of 4/30/94

7) Membership status report: Doug reported that we now have 386 members and he does not plan to do no

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Minutes

FRCA Board of Directors Meeting June 9, 1994

Exhibit #3

Attending:	Moira Frost	Dona Danz	Owen Brady
Doug McComas	Marvin Tenberg	Greg French	Barbara Bauman
George Meredith	Harold Burns	Penny Noval	Rodgers Brooks
Dick Allchin	Steve Siperko	Margie Counselman	Bill Lessig
Absent:	Bob Hunter	Dasha Bindler	Bill Brent
Howard Schulman	Bee Peck	Charlie Schmenner	Martha Lessner
Chuck Powell			

Guests: Ruth Nasdor of Senator Hollinger's office, John Howard and John Mangione

1. Acting President George Meredith called the meeting to order at 7:30 PM. Minutes from the May Board meeting were approved without change.

2. Oregon Store: Doug reported on the hearing for the Special Exception. At the eleventh hour VPC objected to the outside activities and opposed the Special Exception. Doug testified that FRCA would prefer the elimination of the tented activities but felt that limited outside dining at a location as far from Shawan Road as possible would not present a problem to the community. Ted Bauer said elimination of all outside activity was not an acceptable limitation however the matter is being negotiated. No ruling has been made.

Sense of Board appeared to be that Doug is approaching in right way and VPC will follow.

3. Hayfields: At the May Board meeting Doug reported on a meeting he had with Mangione and Phil Worrall of VPC and the Board requested some direct input from VPC. Subsequently Doug determined that the VPC Executive Committee has not yet taken a position on this matter and Margaret Worrall suggested that we talk directly with Mangione, hence their invitation to this meeting.

The Mangiones are seeking a zoning change to make development of Hayfields feasible. John Mangione accompanied by his counsel John Howard, presented the FRCA Board with a concept which in their view has the potential to settle this long time problem once and for all.

Hayfields lies in the northwest quadrant of the I-83 and Shawan Road interchange. After the Hunt Valley Mall was created Hayfields was acquired by the Hammerman organization with the intention of developing its 475 acres into high density housing. It has changed hands several times and the battle to up zone it has continued in every Comprehensive Zoning Cycle since. In the 1988 cycle Mangione asked to have it rezoned completely to RC5 (producing 317 lots) and in 1992 they requested that 171 acres be rezoned to RC5. Both were denied. Apparently the Mangiones' recently suggested to Dutch Ruppersberger that prior to his departure from the County Council, he make one last attempt to resolve the continuing problem of Hayfields based on some concessions they are willing to make and Dutch agreed. The Mangiones then worked out a conceptual plan with a small ad hoc group from VPC headed by Phil Worrall. This plan provides that the entire 475 acre tract would be permanently protected by placing it in an environmental trust (under the Maryland Environmental Trust) which will insure that no further changes in zoning or use can occur once the trust goes into effect. Phil Worrall feels that this step virtually insures that water and sewer services would not be extended westward into the valley.

In return for this permanent easement the community would agree not to oppose the relocation of the RC2 - RC4 line that divides the property thereby providing an increase in the RC4 zone and some additional residential lots. At present some 300 acres comprising the southern portion of the property, lying basically on the valley floor along Shawan Road, is zoned for agriculture (RC2) and this portion can now be subdivided into 6 building lots. The northern segment, comprising about 175 acres, located on the valley walls and hills is zoned for watershed protection (RC4) and could be subdivided into 34 residential lots. Thus a total yield of 40 lots is now available to the Mangiones under current zoning. This total would be increased to about 60 lots total if the RC2 - RC4

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FRCA Corr

Minutes

FRCA Board of Directors Meeting September 15, 1994

Attending:	Dona Danz	Moira Frost	Bee Peck	Bob Hunter
Bill Brent	Dasha Bindler	Barbara Bauman	Doug McComas	Owen Brady
Harold Burns	Martha Lessner	Marvin Tenberg	George Meredith	Charlie Schmenner
Absent:	Howard Schulman	Greg French	Bill Lessig	Steve Siperko
Margie Counselman	Penny Noval	Dick Allchin		

Exhibit #4

Guests:
John Sewell, who has been nominated as a 1994-95 Board member
Tom Seybold, a member and also President of Shawan Valley Association
Jolie McShane, a member and also representing Hunt Cup Hill Association
Claire Miller, Director of Local Affairs for BG&E
Monica McGrady, Project Engineer BG&E
Bonnie Johansen, EMF expert BG&E
Guive Nabet, Project Manager, BG&E

2. BG&E Power Substation: Because of the number of interested guests attending Chairman George Meredith began with this issue. Since we had two different sides represented, the matter is in litigation and each side wanted to speak privately, BG&E was asked to wait outside while the homeowners presented their views, and the homeowners did likewise while BG&E presented their information.

Background: *The BG&E first met with the Board in April 1994 and their presentation dealt primarily with the physical characteristics of the proposed project, few technical details were provided. The Board was generally satisfied at the time with the explanation that this facility needed upgrading due to its age and the steadily rising demand for power that the community was imposing. A question by the Board requested justification for the size of the proposed facility. The response was that the people present were not prepared to answer this at the time but that such details would be made available. They announced a community meeting they planned to hold at the Grace United Methodist Church on April 25, 1994 and said they planned to communicate with the immediate neighbors to the facility. They were advised by the Board that they should also attempt some sort of notification to the general area. Since there appeared to be no specific concern with the BG&E plan the Board took no action at this meeting and did not testify at the subsequent hearing for Special Exception before the Zoning Commissioner. Subsequently, some of the newly arrived residents on Joel Court, near the existing facility, became alarmed about this project and organized themselves under the title, "Friends of the Ridge", retained counsel (Carroll Holzer) and filed an appeal to the Zoning Commissioner's ruling approving the BG&E request. The hearing date before the Board of Appeals is scheduled for Oct. 4 and 6, 1994. They are supported by Shawan Valley Association representing 76 homes, and Hunt Cup Hill representing 65 homes. Friends of the Ridge feel this is a major substation and not in keeping with the residential nature of the neighborhood. They feel that this project could be accomplished by another smaller substation in another more remote area, such as further west on Ridge Road where there are no homes presently. They are concerned about cutting down trees, additional EMF exposure, the looks of such a large substation, the constant humming noise, and the additional power lines they say would be built to carry the power in and power out. From the Zoning Commissioners ruling (case 94-452-XA) it is determined that for the 2.9 acres there are 3 tracts involved which technically requires a variance on setbacks which he granted. The zoning is RC5 and under the Baltimore County Zoning regulations a power substation is a permitted use with a Special Exception and hearing (section 1A4.2.B.11.) These regulations permit a 50 foot setback from the exterior property lines. The service area is approximately 6 square miles. There is presently a 100 foot high antenna which will be removed. The maximum height of any of the equipment will be 14 feet. The equipment area will be fenced by a 7 foot steel fence topped by 1 foot of barbed wire. The original facility dates back to 1956. There are 2 driveways at present, one will be paved the other removed and planted. Several residents of Joel Court in Foxridge Estates protested the request. In addition Ms. Hanley who lives across the road protested but later withdrew her complaint upon reaching a settlement involving some changes to her property by BG&E.*

Minutes

FRCA Board of Directors Meeting October 13, 1994

Exhibit #5

Attending:	Bill Brent	Rodgers Brooks	Owen Brady	Barbara Bauman
Bob Hunter	Doug McComas	Dona Danz	George Meredith	Lee Schmidt
Bill Lessig	Greg French	Marvin Tenberg	Dick Allchin	Dasha Bindler
Margie Counselman				
Absent:	Harold Burns	Penny Noval	Howard Schulman	Steve Siperko
Bee Peck	Charlie Schmenner	Martha Lessner		

Guests: Ruth Nasdor of Senator Hollinger's office
Bob Rytter, Mike Glynn, and Rosemary Hanley all representing Friends of the Ridge (FOR)

1. BGE Substation: Acting President Geo. Meredith opened the meeting at 7:30 PM and in deference to the representatives of Friends of the Ridge took up this matter first. Doug briefed the Board and the guests on the first two scheduled days of BGE Board of Appeals hearing saying that following one day of testimony by BGE expert witnesses the hearing was continued to five scheduled days in January, beginning on the 5th. At the September Board meeting BGE and FOR each discussed their positions on the Ivy Hill substation expansion and that meeting became somewhat contentious. The Board has had difficulty getting useful information from BGE and so, based on the available information, the Board voted to not oppose Phase I of the BGE project provided BGE reduced the facility (e.g. the fenced area and any other provisions related to Phase II) but to oppose Phase II in its entirety. Doug was instructed to so testify at the hearing which he did during the first day when called as a Friend of the Court. Doug was able to obtain a map of the service area and distributed reduced copies to the Board and discussed it in some detail. The FOR came to this meeting to talk about FRCA's position. Prior to the meeting FOR had been asked to confine their discussions to the Phase I part of the BGE plan since FRCA has already agreed to oppose Phase II, and to provide the Board any new facts, information or arguments that may have come to light at the hearings, which might influence FRCA's position relative to Phase I.

Bob Rytter spoke first, saying that Friends of the Ridge were supported by Hunt Cup Hill, Shawan Valley Association, Springhill Association, Fox Ridge Association, Ivy Brook Farm and Heather Hill. They showed a layout of the facility as proposed by BGE and with adhesive cutouts to show just exactly what equipment this project would accommodate how much area each item would cover, etc. According to BGE testimony at the first day of the hearing and their own calculations, Phase I of the project would cover about 85% of the proposed project area. This is in direct contrast to what BGE told FRCA Phase I meant.

NOTE: It became evident that FOR's use of the term "Phase I" included the facility preparation for both phases while to the FRCA Board "Phase I" means a doubling of the power handling capacity with only that facility preparation necessary for that power handling increase (e.g. the facility preparation to be reduced by at least 50% from that proposed by BGE.) Thus when FRCA says it supports Phase I, FOR representatives interpret this to mean the large facility preparation for both phases. In spite of repeated efforts to get the FOR representatives to understand that the FRCA position is basically the same as theirs, this confusion pervaded all of the discussions that followed.

Friends of Ridge said they had two main objectives in talking to the Board: to ask FRCA to support FOR, and to say that they wanted to see some other alternatives to this project. They said that they had been willing to talk to BG&E and were never given any other alternatives. Their specific objections to this project include a decrease of property values of the 15 surrounding homes, increase in EMF emissions, the safety of children especially around the SWM pond, and the size of the facility. Doug said he was unaware of any regulatory requirement for BGE to develop design alternatives or to provide for public participation in the selection of system or station design alternatives. He feels that such a process was well beyond the capabilities of community organizations and frought with difficulties as well as liabilities. Also Doug said that BGE attorneys had stated to him their willingness, even their desire to negotiate with FOR. After considerable discussion George Meredith proposed that FOR and BGE meet to see if some settlement was possible, with FRCA acting as intermediary. He suggested the following guidelines:

5/24/04

IN THE MATTER OF OREGON, LLC	*	BEFORE THE COUNTY
	*	BOARD OF APPEALS
PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION, AND VARIANCE	*	OF BALTIMORE COUNTY
	*	
1201 Shawan Road		Case No.: 02-461-SPHXA
	*	
8th Election District 3rd Councilmanic District	*	

* * * * * * * * *

PETITIONER'S POST-HEARING MEMORANDUM

Petitioner Oregon, LLC ("Oregon"), by Robert A. Hoffman and David H. Karceski with Venable LLP, its attorneys, respectfully submits this Post-Hearing Memorandum in support of approval of its requested zoning relief, as follows:

INTRODUCTION

Oregon is the owner of The Oregon Grille, a restaurant located on the southwest corner of Shawan Road and Beaver Dam Road in Hunt Valley. Oregon leases the 3± acres, zoned RC-4, on which The Oregon Grille is located from Baltimore County, Maryland. At issue before the Board of Appeals are Petitions for Special Hearing, Special Exception, and Variance filed by Oregon relating to its restaurant use on the property. In 1995, the Board of Appeals granted Oregon a special exception to allow the property to be used as a "standard restaurant," subject to certain restrictions. *See* Board of Appeals' Order in Case No. 94-348-SPHXA, dated February 8, 1995, ("1995 Order"), attached as Memorandum No. Exhibit 1.

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BOARD OF APPEALS

By way of a Petition for Special Exception, Oregon is proposing to expand the area of the previously-granted special exception to include an additional 55 parking spaces and an existing outbuilding/barn to be used for storage and office space. Oregon has also filed a Petition for Variance to allow the expanded parking area to be "tar and chip," instead of a paved surface, to match the existing parking on site.

Lastly, Oregon has filed a Petition for Special Hearing, requesting the Board to modify the restrictions imposed in its prior 1995 Order, which would have the result of permitting, in addition to the already permitted indoor events, outdoor tented, daytime events and a limited number of outdoor tented, evening events. In particular, Oregon seeks to remove Restriction Nos. 3, 4, and 5:

> 3. The alternate outdoor dining area/patio locations, depicted on Petitioner's Exhibit 1, shall only be utilized for dining or pre-dinner cocktails, so long as patrons are subsequently served dinner, and shall be limited in quantity to 125 persons. There will be no outdoor bars, live music, tents, or similar overhead coverings on or serving the outdoor dining area. Music shall not be audible from any neighboring residences that exist as of the date of this Board's Order.
>
> 4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property. This paragraph shall not be interpreted to preclude activities permitted under Restriction No. 3.
>
> 5. The bar/lounge area will be located at the east end of the restaurant as shown on the floor plan submitted as Petitioner's Exhibit 2. This provision shall not preclude serving alcoholic beverages in other areas of the restaurant or establishing temporary bar areas inside the restaurant.

See Board's 1995 Order, p. 6. In place of these restrictions, Oregon proposes to substitute the following restrictions on the proposed outdoor events:

> 1. The number of evening outdoor events would be limited to 15 per calendar year.

2. The events would be held on the terraces on the south side of the restaurant. Tents would be permitted but would have to be removed within 24 hours following all events for which they were erected.

3. Music would be permitted but at a level of minimum intrusiveness to the nearby neighbors and other patrons of the restaurant; all music would have to cease by 10:00 p.m. at such events and by 11:00 p.m. on no more than 5 such events.

4. A sound engineer or specialist would be engaged by the Oregon Grille to provide recommendations and guidelines to assure minimal intrusiveness of the music.

5. Events during the daytime and early evening (i.e., ending no later than 9:00 p.m.) would be subject to the foregoing music standards and tent removal requirements but not included within the limitations as to the number of events.

6. A canopy or similar cover to provide shade on a seasonal basis to the dining portion of the patios would not be considered a tent and would be permitted.

All other restrictions contained in the Board's 1995 Order are proposed to remain in effect.

STATEMENT OF FACTS

In 1995, Oregon obtained special exception relief to convert the Oregon General Store, formerly known as the "Kurtz Store," to what is now The Oregon Grille Restaurant. (T. 11/04/03, p. 57) After significant renovations, the restaurant opened in 1997, and it has recently received its fifth Mobil Four-Star Restaurant designation, the only restaurant with such a designation in Baltimore County and one of only three in the State of Maryland. (T. 11/04/03, pp. 47-48, 71) Since opening, Oregon has received no complaints relative to the restaurant's operation, including its hosting of indoor events, or with regard to its current parking conditions. (T. 11/04/03, pp. 95, 100-101)

Over the years, as permitted by the 1995 Order, The Oregon Grille terraces have been used for a reception and waiting area and for outside dining on a seasonal basis. (T. 11/04/03, pp. 53-54) *See also* Petitioner's Exhibit Nos. 1, 2d, 2e, 2f, 2g. Generally, the terrace located closest to the restaurant serves as a pre-dinner waiting area, and the other terrace, located in close proximity to the parking lot, is used primarily for dining. (T. 11/04/03, pp. 53-54) On occasion, the terrace located closer to the restaurant is also used for dining. (T. 11/04/03, p. 53)

Oregon now has an interest in utilizing the outside terraces to host events, such as weddings, receptions, and other gatherings. (T. 11/04/03, pp. 57-58) The Oregon Grille's clientele believes that the setting provides an outstanding opportunity for such events. (T. 11/04/03, p. 58) In order to host these outdoor events, Theodore Bauer, owner and operator of The Oregon Grille Restaurant, testified that Oregon would not expand the existing terraces, the seating capacity of which is limited to 120-125 people. (T. 11/04/03, pp. 57, 59-60)[1] For a sit-down event, the outside terraces could accommodate approximately 120-125 people and, for a stand-up, cocktail/buffet-type event, up to 225 people. (T. 11/04/03, pp. 60-63)

Oregon anticipates that, for the proposed outdoor events, food would be served and tables arranged on the far terrace, and terrace located closest to the restaurant would function as a "greeting" and/or "common area." (T. 11/04/03, p. 59) The Oregon Grille would serve limited versions of its full menu for events, consistent with the manner in which it presently serves groups inside the restaurant. (T. 11/04/03, p. 60-61, 121) Any

[1] In addition to operating The Oregon Grille for the past 6 years, Mr. Bauer has owned and operated the Mount Washington Tavern located at 5700 Newbury Street in Baltimore City for 24 years. (T., p. 201)

of Mr. Bauer's restaurant customers desirous of hosting an event at The Oregon Grille would make a reservation, in advance, much like they would make a reservation for dinner on Saturday night at a busy time of the year. (T. 11/04/03, pp. 111-113)

Oregon also desires to expand the parking area in a westerly direction along Shawan Road. *See* Petitioner's Exhibit No. 1. While the existing parking area is adequate, Oregon desires 55 additional parking spaces for the comfort and convenience of its restaurant patrons and event guests on nights when the indoor dining area would be filled to capacity and when a large outdoor event is scheduled. (T. 11/04/03, pp. 91, 93-94) On such nights, a parking attendant would be made available to make better use of available parking. (T. 11/04/03, p. 94)

Oregon proposes to surface the expanded parking area consistent with the existing parking area surface and would utilize the same low-level lighting that is currently used on the existing parking area. (T. 11/04/03, p. 92) Additionally, Oregon desires to use an existing barn on the property for additional restaurant storage and office space. (T. 11/04/03, p. 89) Mr. Bauer testified that the barn is in a "deplorable" condition and will be renovated. (T. 11/04/03, pp. 89-90)

ARGUMENT

I. HOSTING OUTDOOR EVENTS DOES NOT CHANGE THE OREGON GRILLE'S STATUS AS A "RESTAURANT."

A. The Outdoor Events are Permitted as Part of a "Standard Restaurant's" Primary Business.

The Valley Planning Council ("V.P.C."), Falls Road Community Association, Greencroft Community Association, and Dennis Sutton (collectively referred to as

"Protestants") argued that, if permitted to host outdoor events, The Oregon Grille would no longer be a "restaurant." Instead, Protestants argued, it would be a "catering hall," a use not permitted in the RC-4 zone. As outlined below, Protestants have misread the definitions of "standard restaurant" and "catering hall."

Further, the Board's grant of the special exception in 1995 necessarily resolved any dispute relating to this issue. The Board clearly permitted Oregon to host gatherings and events as part of The Oregon Grille's restaurant operations, but restricted these events to inside the restaurant building. *See* 1995 Order, Restriction Nos. 4 and 11. At the hearing before the Board of Appeals in 1995, Protestants, who appeared in opposition, had ample opportunity to make any of these arguments and may, in fact, have done so. For all intents and purposes, it does not matter whether Protestants failed to make these arguments or whether the arguments were made and the Board simply was not persuaded by them. In either event, the Board clearly decided that Oregon is permitted to host these types of events as part of a "standard restaurant as defined in Section 101 of the Baltimore County Zoning Regulations...." *See* 1995 Order, Restriction No. 11. During the first day of hearing, this Board confirmed that it was not retrying that determination, nor was The Oregon Grille's current operation at risk. (T. 11/04/03, pp. 162-163, 167) The only question before the Board of Appeals now is whether those events should be permitted *outdoors* under the special exception standard outlined in BCZR Section 502.1. However, in the event the Board of Appeals decides to consider Protestants' arguments with regard to the outdoor events, Oregon addresses the flaws in Protestants' reasoning below.

BCZR Section 1A03.B.5 permits, by special exception, "[d]wellings or other buildings converted to tearooms or restaurants, as provided in Section 402.3." BCZR Section 402.3, likewise, refers to "tearooms or restaurant use." The Board of Appeals, in 1995, determined that the term "restaurant," used in BCZR Sections 1A03.3.B.5 and 402.3 is synonymous with "standard restaurant." *See* 1995 Order, Restriction No. 11, wherein the Board grants approval for the operation of a "standard restaurant."

BCZR Section 101 defines "standard restaurant" as a full-service, sit-down restaurant category that specifically includes "cafes, cafeterias, *tearooms*, and outdoor cafes:"

> **RESTAURANT, STANDARD** - A facility or part of a facility used *primarily* for serving meals and beverages to persons seated at tables on the premises of the establishment. The term includes cafes, cafeterias, tearooms and outdoor cafes. The term does not include a catering hall.

BCZR § 101 (emphasis added). The plain language of "standard restaurant" makes it clear that the hosting of events, such as weddings and the like, is considered to be part of a restaurant's primary business, provided the majority of its patrons, whether visiting the restaurant for lunch or dinner or for an event, are served meals and beverages at tables. The undisputed evidence presented by Oregon was that The Oregon Grille has operated as a "standard restaurant" for more than 6 years, including the hosting of indoor events. Expert and other testimony presented on behalf of Oregon demonstrates that, if the proposed outdoor events were approved, The Oregon Grille would still operate as a "standard restaurant."

Contrast the definition of a "standard restaurant" with that of a "catering hall," which is defined as follows:

> **CATERING HALL** - A facility or part of a facility used *regularly* for serving beverages and food to groups which reserve the facility for banquets or gatherings before the day of the event. A catering hall is not a standard restaurant.

BZCR § 101 (emphasis added).

To define the use of the property, both current and proposed, Oregon presented the testimony of Mr. Bauer. Mr. Bauer testified regarding his future plans for the restaurant. As a restauranteur with 24 years of experience, Mr. Bauer confirmed that it is common practice for "standard restaurants" in Baltimore County to host outdoor events, and, if such events are permitted, The Oregon Grille's primary focus would continue to be serving its regular restaurant patrons. (T. 11/04/03, pp. 58, 60-62, 96-99) The restaurant business is his number one priority, and the last thing he would do is "compromise the restaurant." (T. 11/04/03, pp. 61-62)

Mr. Bauer confirmed that an unlimited number of events would not be "within the style and scope" of his business and that he would refuse to close the restaurant for or permit any of the events to disrupt the functioning of the restaurant. (T. 11/04/03, pp. 71, 176) Oregon has also requested that the Board allow it to install a seasonal shading canopy over the dining portions of the terraces for the comfort of its restaurant patrons. (T. 11/04.03, p. 67) *See also* Petitioner's Exhibit No. 1, Proposed Restriction No. 6.

Mitchell J. Kellman of Daft-McCune-Walker, Inc., an expert in the areas zoning and land planning, provided convincing testimony as to whether The Oregon Grille would meet the definition of a "standard restaurant" under BCZR Section 101. (T. 3/25/04, pp. 89-90) Mr. Kellman opined that The Oregon Grille's hosting of events

on the outside terraces would, in fact, meet the definition of "standard restaurant." (T. 3/25/04, p. 90) In addition to relying on the definitions of "standard restaurant" and "catering hall" contained in the Zoning Regulations to formulate his opinion, Mr. Kellman explained that he has attended numerous functions, including weddings and fundraising events, similar to those proposed by Oregon, at a number of restaurants in Baltimore County, including Linwood's Restaurant in Owings Mills and Courtney's of Timonium Restaurant (formerly Courtney's Café and Rothwell's Grille).[2] (T. 3/25/04, pp. 86-87) As Mr. Kellman testified, none of these restaurants is considered a "catering hall," as that term is defined in the Zoning Regulations, but, rather all are considered "standard restaurants." (T. 3/25/04, pp. 86-87)

To supplement Mr. Kellman's testimony, Oregon also produced Helene M. Miller, owner of Eventfully Yours, LLC, an event company. (T. 3/24/04, p. 83) Ms. Miller has coordinated numerous affairs in the State of Maryland, including weddings, private concerts, and business-related outings. *See* Petitioner's Exhibit No. 10. Consistent with Mr. Bauer and Mr. Kellman's testimony, Ms. Miller concluded, based on her research and investigation, that it is a common practice for well-known restaurants in Baltimore County to host both indoor and outdoor events and gatherings without those restaurants being considered "catering halls." (T. 3/24/04, pp. 91-106).

Specifically, Ms. Miller reported that The Milton Inn Restaurant in Sparks will

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[2] In May of 2002, Courtney's of Timonium Restaurant hosted a Baltimore County State and Local Government Committee Dinner Meeting, the topic of which was "A View from the Board of Appeals Bench." The State and Local Government Committee invited members of The Board of Appeals to speak at that event. *See* Petitioner's Exhibit No. 11w.

rent the entire restaurant for an event. *See* Petitioner's Exhibit No. 11a. It hosted 32 outside events in 2002, including 14 weddings in the month of August, and many similar events in 2003.[3] (T. 3/24/04, pp. 94-95) *See also* Petitioner's Exhibit No. 11a. Additionally, The Milton Inn has a tented terrace that seats 90 people for use during events. *See* Petitioner's Exhibit No. 11a. For the convenience of its patrons, The Milton Inn offers attendant parking and an on-site wedding coordinator. *See* Petitioner's Exhibit No. 11a.

The Manor Tavern Restaurant in Monkton also hosts inside and outside weddings and other receptions. (T. 3/24/04, p. 95) *See also* Petitioner's Exhibit No. 11b. For inside events, The Manor Tavern offers two private dining rooms with seating for 90 people. *See* Petitioner's Exhibit No. 11b. It also offers two terraces for its outdoor events, one of which can accommodate a seated dinner for up to 250 people and the other 144 people or 120 people with a dance floor. *See* Petitioner's Exhibit No. 11b. Linwood's Restaurant in Owings Mills will host an event in either of its two dining rooms that seat up to 150 people each and install a tent upon request. (T. 3/24/04, pp. 98-99) *See also* Petitioner's Exhibit No. 11l. Michael's Café in Timonium Restaurant hosts rehearsal dinners once a week; the main dining area accommodates 60 people and the patio another 30 people. (T., p. 99) *See also* Petitioner's Exhibit No. 11m. Liberatore's

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[3] Protestants argue that "standard restaurants" that host weddings and other events not located in the RAE1, RAE2, SE, BM or BR zones are Catering Halls and, therefore, illegal uses. (T. 4/13/04, pp. 28-29). If Protestants are correct, The Milton Inn Restaurant (zoned BL-CR), The Manor Tavern Restaurant (zoned BL-CR), Liberatore's Restaurante (zoned ML-IM), Linwood's Restaurant (zoned OR2), The Valley Inn Restaurant (zoned BLR and DR1), The Harryman House Restaurant (zoned BL), and Peerce's Plantation (zoned BL and BL-CR) would all be operating illegally by virtue of hosting events on site. T. 3/25/04, p. 99.

Ristorante in Eldersburg hosts events for up to 125 people, and its lobby area and an outside tented-area are available for any event. (T. 3/24/04, p. 98) *See also* Petitioner's Exhibit No. 11k.

Gibby's Seafood Restaurant in Timonium will convert its indoor dining areas for a party and offers a year-round, heated tent for wedding receptions and business group parties for up to 100 people. (T. 3/24/04, p. 98) *See also* Petitioner's Exhibit No. 11i. The Harryman House Restaurant in Reisterstown hosts wedding receptions and can seat up to 55 people. (T. 3/24/04, p. 98) *See also* Petitioner's Exhibit No. 11h. Courtney's of Timonium Restaurant hosts bridal showers, rehearsal dinners, engagement parties, reunions, and other similar events with seating for 100 people. (T. 3/24/04, pp. 100-101) *See also* Petitioner's Exhibit No. 11w. The Valley Inn Restaurant hosts cocktail parties for up to 200 people and sit-down dinners for as many as 100 people. (T., 3/24/04, p. 100) *See also* Petitioner's Exhibit No. 11o. Peerce's Plantation Restaurant hosts weddings and receptions for up to 125 people and will do an outside tented event for as many as 500 people. (T. 3/24/04, p. 101) *See also* Petitioner's Exhibit No. 11v. Peerce's also offers valet parking for the convenience of its patrons. *See* Petitioner's Exhibit No. 11v.

In addition to these standard restaurants, Ms. Miller testified that a number of private clubs and other facilities also host indoor and outdoor events.[4] Oregon Ridge

[4] Mr. Kellman testified that the Greenspring Valley Hunt Club, Greenspring Valley Country Club, Shawan Downs, Meadowood Regional Park, and Gramercy Mansion are zoned RC2, Hayfields Country Club RC2 and RC4, Oregon Ridge Park RC4, Padonia Park and Worthington Valley Swim Club RC5, and The Grand Lodge of Maryland RC4, DR10.5, and OT. (T. 3/25/04, p. 99) None of these facilities are zoned a category that, according to Protestants, permits the very events hosted. *See* Protestants' Exhibit No. 19.

Park's facilities are used frequently for private events, including weddings and company picnics, as well as public events, such as the summer concert series and the Maryland Public Television "Barnyard Bash." *See* Petitioner's Exhibit No. 11f. The Park hosts company picnics for up to 5,000 people, and its concerts have entertained as many as 6,000. *See* Petitioner's Exhibit No. 11f. In the past, as many as 25,000 people have attended the "Barnyard Bash." (T., pp. 96-97) *See* Petitioner's Exhibit No. 11f.

The Shawan Downs is home to The Legacy Cup, a 40-tent event enjoyed by as many as 10,000 spectators. (T. 3/24/04, pp. 97-98) *See also* Petitioner's Exhibit Nos. 3, 4, 9a, 9b, 11g. Each corporate tent provides breakfast, lunch, and dinner. *See* Petitioner's Exhibit No. 11g. The Greenspring Valley Hunt Club hosts weddings and receptions for up to 300 people. (T. 3/24/04, p. 95) *See also* Petitioner's Exhibit No. 11c. In the spring and summer months, a tent is used for such events. *See* Petitioner's Exhibit No. 11c. The Greenspring Valley Country Club also hosts outdoor weddings and receptions under a terrace tent and/or a tent erected on the lawn. (T. 3/24/04, pp. 95-96) *See also* Petitioner's Exhibit No. 11d. The ballroom is available for events as well. *See* Petitioner's Exhibit No. 11d.

The Padonia Park Club has multiple outdoor venues that can accommodate up to 2,500 people. (T. 3/24/04, p. 99.) *See also* Petitioner's Exhibit No. 11n. The Club hosts tented wedding ceremonies and receptions. (T. 3/24/04., p. 99.) *See also* Petitioner's Exhibit No. 11n. The Grand Lodge of Maryland Masonic Temple hosts wedding and banquets and has a ballroom available for seated dinners with dancing for up to 320 people. *See* Petitioner's Exhibit No. 11p. For the past four years, The Grand Lodge has

made a tented courtyard available for rent. (T. 3/24/04, p. 100) *See also* Petitioner's Exhibit No. 11p. Baltimore County businesses, including Black & Decker and T. Rowe Price, have used The Worthington Valley Swim Club's pavilion and 2 tents for their corporate events. (T. 3/24/04, p. 100) *See also* Petitioner's Exhibit No. 11q. These Club facilities accommodate up to 400 people. *See* Petitioner's Exhibit No. 11q. Meadowood Regional Park has also hosted corporate parties in its 3 pavilions, each with an 80-person capacity. (T. 3/24/04, p. 101) *See also* Petitioner's Exhibit No. 11t. The Gramercy Mansion is available for weddings, parties and seminars. (T. 3/24/04, p. 101) *See also* Petitioner's Exhibit No. 11u. The Mansion is able to host a cocktail party for up to 450 guests and tents are available. (T. 3/24/04, p. 101). *See also* Petitioner's Exhibit No. 11u. Hayfields Country Club offers a 200-person banquet room and/or tented area for events to members and their guests. (T. 3/24/04, p. 96)

As evidenced by the testimony of Mr. Bauer, Mr. Kellman, and Ms. Miller, numerous establishments in Baltimore County serve or "cater" to their patrons by hosting indoor and outdoor events without being labeled as "catering halls." From these examples, it is clear that a restaurant in Baltimore County is permitted, regardless of its zoning classification, to hold outdoor events as part of its principal use while continuing to operate *primarily* as a standard restaurant for the "serving of food and beverages" to its restaurant patrons.

B. Outdoor Events are also Permitted under the Dictionary Definition of "Restaurant."

If, for some reason, the Board ignores its prior ruling and questions whether a dwelling converted to a full-service "restaurant," under BCZR Section 402.3, is a "standard restaurant," the term "restaurant," therefore, would be an undefined term. In that event, the Zoning Regulations dictate the resource to consult. BZCR Section 101 reads, in pertinent part, as follows:

> [a]ny word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged.

B.C.Z.R. § 101. The word "restaurant" is defined in Webster's Third New International Dictionary as "an establishment where refreshments or meals may be procured by the public." *See* Memorandum Exhibit No. 2. Surely, this definition is more broad than that of "standard restaurant" and would, therefore, allow the proposed outdoor events.[5]

C. The Outdoor Events would also be Permitted as an Accessory Use.

Oregon also contends that the proposed outdoor events, if not considered part of the primary restaurant business, would be approvable as an "accessory use" to the principal business of running a restaurant. BCZR Section 1A03.3.A.9 permits "accessory uses or structures," as defined by BCZR Section 101:

> **ACCESSORY USE OR STRUCTURE** – A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure

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[5] Protestants resorted to a definition for "restaurant" used by the National Association of Restaurants in an attempt to argue that The Oregon Grille would be a "catering hall" if permitted to host outdoor events. This approach is incorrect and unsupported. (T. 3/24/04, p. 124)

> served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served . . ..

The testimony of Mr. Bauer, Mr. Kellman, and Ms. Miller, outlined in Section I.A above, demonstrates that the outdoor events Oregon proposes, if not part of the principal use, would, at least, be "accessory" to the usual course of business of a restaurant establishment. (T. 11/4/03, pp. 96-98, T. 3/25/04, pp. 95-96, T. 3/24/04, p. 104) Pursuant to the definition of "accessory use," the proposed events would be located on the same lot as and be subordinate to Oregon's restaurant business in terms of extent and purpose. (T. 3/25/04, pp. 95-96) *See also* Petitioner's Exhibit No. 1. As Mr. Bauer confirmed, any outdoor events would be limited to only a portion of the restaurant's total seating area and be of secondary importance. (T. 11/04/03, pp. 61-62, 71, 176)

Additionally, the type of events proposed would be similar to events customarily offered by and associated with standard restaurants throughout Baltimore County. (T. 11/04/03, p. 58-59, 97-98, T. 3/25/04, p. 86, T. 3/24/04, p. 104) As Mr. Kellman and Ms. Miller testified, the proposed events are very similar to events hosted by a number of other restaurants, and it is a common practice for a standard restaurant to temporarily convert a portion of its dining area for an event. (T. 3/25/04, p. 86, T. 3/24/04, p. 104) Finally, being able to host the proposed events would also contribute to the comfort and convenience of the Grille's restaurant patrons and is necessary for the Grille to offer full service to its customers. (T. 11/04/03, p. 58) Again, as Mr. Bauer testified, his restaurant patrons have made requests to use The Oregon Grille terraces for such events. (T. 11/04/03, p. 58)

Protestants argued, however, that the only accessory uses permitted in the RC-4 zone are those specifically listed in BCZR Section 1A03.3.A.9, and, because, "outdoor events" is not a listed use category, they are not permitted. This argument is absurd. By the very words of the regulation, "including, but not limited to," the "list" contained in BCZR Section 1A03.3.A.9 is not intended to be exhaustive. Therefore, there is more than adequate evidence for the Board to find, if it reaches this issue, that the proposed outdoor events are appropriate "accessory uses."

D. *Manor Tavern* is not Controlling in the Instant Case.

Protestants argued that the Board of Appeals' decision in Case No. 91-115, captioned *In The Matter of the Application of Mark Greene (Manor Tavern)*, is directly on point and precludes The Oregon Grille from hosting outdoor events on its restaurant terraces. *See* Memorandum Exhibit No. 3. Protestants have mischaracterized the Board's decision in that case.

In *Manor Tavern*, the owner of an existing restaurant proposed a new formal 56,000 square foot "reception garden," "in a totally separate area" from the restaurant, which would be equipped with an open air gazebo, event changing rooms, and restrooms. *Id.* at 3, 4, 11. This new reception area would have been accessed by its own circular gravel driveway. *Id.* at 3. The owner proposed to use the reception garden exclusively for weddings and other receptions and not for purposes of his "a la carte" restaurant trade. *Id.* at 4-5.

Before the Board, there was testimony from Carl Richards, Supervisor of the Zoning Review Office, that the proposed reception garden was similar to Overlea Hall, Eastwind Hall, Martin's West, and Martin's Eudowood, which were examples of catering halls that "did not provide *any* a la carte service, but were *strictly* 100% set menu contract facilities." *Id.* at 6.

Having heard all of the testimony, the Board ruled that the proposed use was an "outdoor catering hall." *Id.* at 11. In making this determination, the Board found that the owner was proposing "a new outdoor operation in a *totally separate area*" from the restaurant. *Id.* at 11. The area of the new use well exceeded that of the existing restaurant use (56,000 square feet v. 8,000 square feet). *Id.* at 11. Rejecting the idea that this use was "accessory" to the restaurant, the Board found, instead, that the reception garden was "a large, new principal use on a previously unutilized...area of the property." *Id.* at 11.

In contrast, Mr. Bauer clearly does not propose to redefine the use of the two small existing restaurant terraces, nor does he intend to utilize them for events only, as did the applicant in *Manor Tavern*. (T., 11/04/03, pp. 47, 53-54, 57-58) To the contrary, the terraces would continue to serve primarily the restaurant patrons lunch and dinner, as they currently do. (T., 11/04/03, pp. 60-62) For an event, the terraces would be set up to accommodate that event temporarily and, at the event's end, be returned to the primary a la carte restaurant use. (T., 11.04/3, p. 58) The Oregon Grille's intention to offer limited opportunities for outdoor events clearly does not amount to a "catering hall." The *Manor Tavern* case is simply not applicable.

II. HOLDING OUTDOOR EVENTS DOES NOT VIOLATE SECTION 402.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS.[6]

A. The Oregon Grille's Method of Food Service would be in Compliance with the "Table Requirement."

Protestants further argued that a restaurant located in the RC-4 zone may only serve meals at tables, which would prohibit serving meals to outdoor event guests who are not seated. (T. 3/31/04, p. 155) Protestants view this "table requirement" to mean that outdoor events, during which cocktails, hors d'oeuvres, or buffets are served, are prohibited in the RC-4 zone.

BCZR Section 402.3 lists certain requirements for the conversion of dwellings to tearoom and restaurant use:

> To be converted for tea room or restaurant use . . . as a special exception, the following requirements must be met:
>
> A. Meals may be served only at tables, indoors or on an outdoor terrace, and *not to persons remaining in cars.*
>
> . . .
>
> D. Service shall be provided only at mealtimes.

BCZR § 402.3. Protestants have based their entire argument on the phrase "at tables" and have ignored the phrase "not to persons remaining in cars."

To refute Protestants' argument, Oregon presented the testimony of Mr. Kellman, who explained that the purpose of the "table requirement" was to prohibit the serving of customers in their cars. (T. 3/25/04, pp. 92-93) Mr. Kellman noted that Section 402.3 was adopted by the Baltimore County Council in 1955 and has not been revised since that

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[6] As with Argument I, Oregon contends that the Board's grant of the special exception in 1995, allowing it to host indoor events, necessarily resolved any dispute relating to these issues.

time. (T. 3/25/04, p. 94) As Mr. Kellman explained, in 1955, the Zoning Regulations did not define or recognize different categories of restaurants, such as "Drive-In Restaurant." (T. 3/25/04, p. 93) These definitions and other categories of restaurants were adopted subsequent to the enactment of Section 402.3.[7] Therefore, Section 402.3.A provided the only prohibition at the time against serving meals to customers in cars, and Oregon submits that its sole purpose was to prevent that type of restaurant service, not to require that persons actually be seated at a table while they enjoy a meal. (T. 3/25/04, pp. 92-93) Oregon does not currently, nor does it propose, to serve customers in their cars.

What it does propose, in addition to serving its regular restaurant clientele meals at tables, is to serve, depending upon the event customer's choices, either a sit-down meal, a buffet meal, or cocktails and hors d'oeuvres to persons at a scheduled outdoor event, who may or may not choose to be seated at a table. (T., 11/04/03, pp. 57-60) Surely this type of service at a four-star, full-service, gourmet restaurant fits within the intended purpose of Section 402.3.A.

B. The Oregon Grille's Method of Food Service would be in Compliance with the "Meal" and "Mealtime" Requirements.

Protestants also argued that meals served at the proposed outdoor events would violate the requirement that meals be served during "mealtimes." Oregon produced factual and other convincing testimony that restaurant mealtimes may extend throughout the course of any given day and evening. Mr. Bauer testified that a restaurant's business

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[7] The definition of Drive-In Restaurant was adopted in 1967 by Bill No. 40-1967. The definitions of Carry-Out Restaurant, Fast-Food Restaurant, Fast-Food, Drive-Through Only Restaurant, and Standard Restaurant were adopted later in 1993 by Bill No. 110-1993.

hours dictate "mealtimes" at that establishment. (T., 11/4/03, pp. 177-178) Currently, The Oregon Grille serves its restaurant customers and is, therefore, "open for business" for lunch from 11:30 a.m. until 4:00 p.m. and dinner from 5:00 p.m. until 11:00 p.m., Monday through Saturday. On Sunday, lunch is served from 11:00 a.m. until 3:00 p.m. and dinner from 4:00 p.m. until 10:00 p.m. (T. 11/04/03, pp. 48-49, 118-119) During what Mr. Bauer termed "change over" periods, between lunch and dinner service, The Grille is still open, and customers may be eating lunch, although no new customers will be seated. (T. 11/04/03, pp. 48-49, 118-119)

Consistent with the understanding that there are no universally set mealtimes, Mr. Kellman's expert opinion is that there is "some vagueness" as to when mealtimes occur and an individual's lifestyle determines when he or she is able to eat a meal. (T. 3/25/04, pp. 93-94)

Protestants also opined that hors d'oeuvres and cocktails do not constitute "meals" and are, therefore, not permitted to be served at a restaurant in the RC-4 zone. Protestants' reading of BCZR Section 402.3 is not only ridiculous, but it is also wrong. Section 402.3 only restricts the manner in which "meals" may be served. If this type of food is not going to be considered a "meal," then there is no restriction on how it may be served or consumed.

III. BASED ON THE EVIDENCE PRESENTED, OREGON IS ENTITLED TO THE REQUESTED SPECIAL EXCEPTION AND SPECIAL HEARING RELIEF.

As discussed above, Oregon is entitled to seek the requested special exception and special hearing relief for the proposed outdoor events, either as part of the principal use

or as an accessory use to The Oregon Grille Restaurant. The requested special exception relief and the special hearing relief, because Oregon proposes to amend the prior special exception, is permitted upon proof of compliance with BCZR Section 502.1.

According to the well-developed law of Maryland, a special exception use is a "valid zoning mechanism" whereby a particular use is presumed to be valid and is presumed to be consistent with the general welfare, absent facts or circumstances sufficient to negate that presumption. *Schultz v. Pritts*, 291 Md. 1, 11, 432 A.2d 1319 (1981). Although *Schultz v. Pritts* is the seminal case on special exceptions, in several recent decisions, the Court of Appeals and Court of Special Appeals have reiterated the standard relating to the grant or denial of a special exception. *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 541-543, 814 A.2d 469 (2002); *Lucas v. People's Counsel for Baltimore County*, 147 Md. App. 209, 237-239, 807 A.2d 1176 (2002); *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md. App 616, 640-641, 716 A.2d 311 (1998).

Recent appellate decisions have served to emphasize that, once a petitioner demonstrates that the proposed use satisfies the specific requirements of the applicable ordinance, the special exception must be granted unless "there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Rylyns Enterprises, Inc.*, 372 Md. at 542 (*quoting Schultz*, 291 Md. at 11) (emphasis added).

To defeat a special exception, therefore, a protestant must do more than show that the use may have adverse effects that are common to the use generally. *Rylyns Enterprises*, 372 Md. at 542; *Schultz*, 291 Md. at 14, 22-23; *Lucas*, 147 Md. App. at 238-239. "Classifying such uses as special exceptions or conditional uses (as opposed to permitted uses) assumes that those uses will include some adverse impacts." *Rylyns Enterprises*, 372 Md. at 542 (emphasis added) A disqualifying adverse impact, therefore, must be something more than what is ordinarily expected. *Id.* at 542.

As outlined below, Oregon produced strong and substantial evidence at the hearing before the Board of Appeals to prove that the proposed outdoor events and expansion of the special exception area would have little or no impact on the surrounding community, thus entitling it to the requested special exception and special hearing relief. Protestant offered no credible evidence otherwise.

The Evidence Confirms that the Proposed Plan Complies with BCZR Section 502.1.

In order to prove its entitlement to the requested changes to the special exception relief granted in Case No. 94-348-SPHXA, Oregon had to demonstrate that the requested relief complies with Section 502.1:

Health, Safety, and General Welfare of the Locality

Mitchell J. Kellman, Oregon's zoning specialist and expert land planner, testified with regard to the existing restaurant and proposed changes to the current use of the restaurant as well as the expansion of the special exception area. Mr. Kellman confirmed generally that the proposed additional parking area, the conversion of the barn for restaurant office and storage use, and use of the outdoor terraces for events would not be

a detriment to the community or the adjacent area. (T. 3/25/04, pp. 100-102) *See also* Petitioner's Exhibit No. 22.

Noise Study

To supplement Mr. Kellman's testimony, Oregon produced Richard Peppin to testify with regard to any impacts from the proposed event music. Mr. Peppin is Board Certified in Noise Control Engineering, a member of the Maryland Noise Advisory Council, and was accepted by the Board of Appeals as an expert acoustical engineer. (T. 3/24/04, pp. 137, 146) *See also* Petitioner's Exhibit No. 12. Mr. Peppin rendered an opinion, based on his research and investigation of the property and the surrounding area, that amplified music played at the intended volume levels would not exceed the levels permitted by the Code of Maryland Regulations ("COMAR") and, therefore, would have no adverse impact on the surrounding area. (T. 3/24/04, p. 143) *See also* Petitioner's Exhibit No. 13.

In order to render an opinion, Mr. Peppin performed an acoustical study and applied the noise standards set forth in COMAR. (T. 3/24/04, p. 137) *See also* Petitioner's Exhibit Nos. 13, 14. Sixty-five (65) decibels ("dBAs") is acceptable during the daytime, and fifty-five 55 dBAs is an acceptable nighttime level of sound on residentially zoned land. (T. 3/24/04, p. 142) *See also* Petitioner's Exhibit No. 13. (T. 3/24/04, p. 137) Using a sound-estimating computer program accepted as the international standard in his industry, Mr. Peppin determined that the closest façades of surrounding residential dwellings would never receive amplified music at levels in excess

of 50 dBAs during the day or at night.[8] (T. 3/24/04, pp. 140-141) *See also* Petitioner's Exhibit No. 13. As an added precautionary measure, Mr. Peppin suggested that pointing event speakers in a southerly direction (that is, toward Oregon Ridge Park) would further ensure no adverse impact on any residences in the surrounding area. (T. 3/24/04, p. 144)

Community Support

To supplement the expert testimony provided, numerous interested citizens, including neighborhood and area residents as well as individuals that do business in the area, submitted letters of support and/or testified in support of the requested zoning relief, including Oregon's request to host outdoor events.[9] (T. 3/24/04, pp. 5-82) *See also*

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[8] Mr. Peppin testified that the computer program he uses takes into account surrounding buildings and roads and the topography of the surrounding area. (T. 3/24/04, pp. 148-149) *See also* Petitioner's Exhibit No. 13. To be conservative, existing foliage and attenuation due to ground effects and traffic noise were not considered and downwind propagation was assumed in all directions. (T. 3/24/04, pp. 148-150) In Mr. Peppin's expert opinion, humidity and temperature were not variables worthy of consideration. (T. 3/24/04, p. 149)

Additionally, Mr. Peppin explained that it is accepted industry practice to measure sound levels at the location of the nearest façades of existing residences rather than property boundary lines or, in the instant case, The Oregon Grille lease lines. (T. 3/24/04, pp. 158-165) As a basis for that explanation, Mr. Peppin stated that COMAR allows measurements to be taken at points within the property line of the receiving property and that, in response to a violation or complaint, the Maryland Department of Environment would measure sound levels near the affected residence, rather than the property line of that residence. (T. 3/24/04, pp. 162, 167) *See also* Petitioner's Exhibit No. 14, p. 44.

[9] Frank A. Bonsal, Jr. (14014 Mantua Mill Road, Glyndon), Geoffrey H. Brent (2014 Geist Road, Glyndon), Andre W. Brewster (3321 Butler Road, Glyndon), Daniel and Judy Brewster (14301 Green Road, Glyndon), Peyton S. Cochran, Jr. (3542 Butler Road, Glyndon), Charles W. Cummings, M.D. (13940 Mantua Mill Road, Glyndon), Charles C. Fenwick, Jr. (Shawan Downs, Director), Sherlock S. Gillet (14300 Green Road, Glyndon), Thomas A. Graul (929 Western Road, Sparks), Jack S. Griswold (2409 Gadd Road, Cockeysville), Edward A. Halle (11350 McCormick Road, Hunt Valley), Michael D. Hankin (3355 Black Rock Road, Glyndon/Valleys Planning Council, Board Member), Charles E. "Ted" Herget, Jr. (Gadd Road, Cockeysville), Pedie Killebrew, Francis X. Knott (2801 Houcks Mill Road, Monkton), Michael J. McCarthy (2200 Geist Road, Glyndon), James R. McDonald (17625 Falls Road, Upperco), Harvey L. Miller (13737 Cuba Road, Cockeysville), Thomas F. Mullan, III (1620 Cold Bottom Road, Sparks), Susan G. Russell (3741 Butler Road, Glyndon), Paul Mark Sandler (3223 Mount Zion Road, Upperco), John K. Shaw, III (3737 Butler Road, Glyndon), Carolyn Smith (1343 Ivy Hill Road, Cockeysville), Thomas W. Sutton (2070 Geist Road, Glyndon), Irvin C. Tillman (1114 Shawan Road, Cockeysville), Patricia D. Ward (3500 Belmont Road, Glyndon), Thomas C. Whedbee (13626 Falls Road, Cockeysville), and Peter and Jacqueline Wight (13808 Cuba Road, Cockeysville) submitted letters of support.

Petitioner's Exhibit No. 6. Each individual indicated in writing or, by way of testimony before the Board, that they were familiar with the requested zoning relief and restrictions volunteered by Mr. Bauer in conjunction with the proposed outdoor events. (T. 3/24/04, pp. 5-82) *See also* Petitioner's Exhibit No. 6. Those that testified before the Board in the instant case included, Charles Fenwick, a Land Preservation Trust ("L.P.T."), Board member, V.P.C., dues-paying member and General Manager of Shawan Downs; Ned Halle, Secretary of the L.P.T. and a V.P.C. Board member; Andre W. Brewster, a L.P.T. Board member; Charles E. Herget, Jr., a V.P.C. dues-paying member; Gregory H. Barnhill, a Shawan Downs founding member and V.P.C. Board member; Michael Hankin, a Shawan Downs and V.P.C. Board member; T. Courtney Jenkins, III; James and Susan McDonald; Jeffrey H. Brent; and Norma Killebrew. (T. 3/24/04, pp. 5-82. Each testified in favor of the requested relief. (T. 3/24/04, pp. 5-82)

Congestion in Roads, Streets, or Alleys

Oregon produced the testimony of Mickey A. Cornelius, expert traffic engineer, to address the issue of congestion in the roadways around The Oregon Grille lease area. Mr. Cornelius rendered an opinion, based on his research and investigation of the property and the surrounding area, that the intersection of Shawan Road and Beaver Dam Road and Kurtz Lane's connection to Beaver Dam Road function adequately.[10] (T. 3/24/04, pp. 170-179) He concluded that the proposed outdoor events would have only a minimal impact on the surrounding road system. (T. 3/24/04, pp. 178-179)

[10] Kurtz Lane is a "dead-end road" with no accident history and is only used significantly by The Oregon Grille. (T. 3/24/04, pp. 184-185, 202)

To reach his conclusion, Mr. Cornelius considered Mr. Bauer's testimony regarding The Grille's current outdoor dining area capacity (120 to 125 people) and its maximum sit-down outdoor event capacity (125 people) and maximum stand-up outdoor event capacity (225 people). (T. 3/24/04, p. 178) There would be no change in how many people are actually at the site for a sit-down event and, for a stand-up event, there would be a maximum 100-person increase, provided the indoor dining area of the restaurant was full. (T. 3/24/04, p. 178) Additionally, any large outdoor events would be evening events and, therefore, the additional trips would not effect morning and evening peak hour traffic conditions. (T. 3/24/04, p. 179)

Mr. Cornelius also considered traffic from events taking place at Oregon Ridge Park, Hayfields Country Club, and Shawan Downs and the adequacy of customer parking. (T. 3/24/04, pp. 180-183) He opined that, when these establishments host a major function attracting thousands of people, that event will control traffic flow on the surrounding road network. (T. 3/24/04, pp. 183-184) *See also* Petitioner's Exhibit Nos. 8, 9, 11e, 11f, 11g. In other words, considering the relative numbers, a 225-person outdoor event on the restaurant property would have no significant impact on the traffic conditions on those event days. (T. 3/24/04, p. 184) Additionally, the proposed expansion of the parking area and presence of a valet or parking attendant would improve the parking situation. (T. 3/24/04, pp. 180-181)

Mr. Dillon, Protestants' expert in the areas of planning and zoning, testified he has <u>never</u> witnessed any congestion "problems" on the roads, streets, and alleys that

surround The Oregon Grille. (T. 3/31/04, pp. 18, 61) Protestant's lay witnesses voiced only general concerns regarding proposed outdoor event traffic.

Potential Hazard from Fire, Panic, or Other Dangers

Mr. Kellman testified, based on his experience, that the proposed expansion of the restaurant area and the hosting of outdoor events on the property, will not present a potential problem in terms of fire, panic, or other dangers. (T. 3/25/04, p. 103) In doing so, Mr. Kellman noted that all structures on site must meet applicable building codes and fire standards. (T. 3/25/05, p. 103) Protestant did not dispute Mr. Kellman's conclusion.

Overcrowding of Land or Undue Concentration of Population

Mr. Kellman confirmed that the proposed expansion of the special exception area and outdoor events would not overcrowd the land or cause an undue concentration of population. (T. 3/25/04, p. 104) Oregon does not propose to expand the two small existing terraces and proposes no new structures in connection with the requested zoning relief. *See* Petitioner's Exhibit No. 1. Additionally, any increase in the number of people on the property will be temporary. (T. 3/25/04, p. 104)

Adequate Provisions for Schools, Parks, Water, Sewerage, Transportation or Other Public Requirements, Conveniences or Improvements.

Because Oregon is not a consumer of these public services, Mr. Kellman testified that the proposed changes would not interfere with the provision of any of these services. (T 3/25/04., pp. 104-105)

Interference with Adequate Light and Air

Similar to the testimony regarding temporary increases in the number of people on the site having no impact, tents erected temporarily on the property would not

interfere with the provision of adequate light and air. (T. 11/3/04, p. 63) *See also* Petitioner's Exhibit No. 1, Proposed Restriction No. 2. Additionally, The Oregon Grille lease area is located within Oregon Ridge Park, which is, as Mr. Kellman testified, "very open land." (T. 3/25/04, p. 105)

Inconsistency with Zoning Classification/Zoning Regulations

Mr. Kellman confirmed that the requested zoning relief is not inconsistent with the property's RC-4 classification or the spirit and intent of the Zoning Regulations as a whole. (T. 3/25/04, pp. 105-106) In stating his opinion, Mr. Kellman took into account that the RC-4 zone permits the existing use and that the Board has already granted a special exception for this standard restaurant. (T. 3/25/04, p. 106) Because the proposed relief would in no way tend to create "sprawl" on the property, Mr. Kellman noted that the proposed changes are consistent with and satisfy the RC zone regulations. (T. 3/25/04, p. 106)

Inconsistency with Impermeable Surface/Vegetative Retention Provisions

Mr. Kellman concluded that the plan for The Oregon Grille lease area meets the standards with regard to applicable impermeable surface and vegetative retention provisions. (T. 3/25/04, pp. 106-107) BCZR Section 1A03.4.B.3 requires:

> no more than 10% of any lot in an R.C.4 Zone may be covered by impermeable surfaces (such as structures or pavement). No more than 25% of the natural vegetation may be removed from any lot in an R.C.4 Zone.

As Mr. Kellman testified, the "lot" on which The Oregon Grille lease area is located is actually the Oregon Ridge Park property, which is comprised of 430± acres of land. (T. 3/25/04, p. 107) Mr. Kellman estimated that, of the Park's 430 acres, only 2%

(or 9 acres) of the entire Park is impervious. Mr. Kellman, therefore, concluded that the proposed 55 additional parking spaces would result in only a "minimal" change to the Park's overall impervious area and a minimal reduction of its naturally vegetated areas. (T. 3/25/04, pp. 106-108) This evidence was unrebutted by the Protestants.

Environmental and Natural Resources of the Site and Vicinity

With regard to environmental issues, Oregon produced Eric C. Hadaway, a professional wetlands scientist, accepted by the Board as an expert in environmental sciences. (T. 3/25/04, p. 45) *See also* Petitioner's Exhibit No. 18. Based on his investigation of the natural and environmental resources within the lease area and in the vicinity of the lease area, Mr. Hadaway concluded that the additional parking area would not "thermally impact the receiving waters" within The Oregon Grille lease area or in the vicinity of the lease area and, therefore, would not be detrimental to the environmental or natural resources of the site and vicinity, including forests, streams, wetlands, aquifers, and floodplains. (T. 3/25/04, pp. 51-54, 59, 64)

In reaching his conclusion, Mr. Hadaway examined a tributary that originates off-site and runs through The Oregon Grille lease area and noted that the proposed additional parking would generate only a *de minimus* amount of stormwater runoff, that his firm's preliminary stormwater management design for the new parking area complies with the current stormwater regulations, and that additional plantings proposed within and adjacent to the existing storm water management facility would improve the condition of that facility. (T. 3/25/04, pp. 52, 56, 59-63) *See also* Petitioner's Exhibit No. 21.

To supplement Mr. Hadaway's testimony and, further, to confirm that there would be no adverse impact on the environmental and natural resources on site and in the vicinity, Oregon produced Robert W. Sheesley, an environmental scientist and a licensed sanitarian, who testified regarding the good condition of the existing streams and stream channels. (T. 4/13/04, pp. 115-116) *See* Petitioner's Exhibit No. 25.

On the issue of stormwater management, Oregon produced Charles Main, II, a professional civil engineer. (T. 3/25/04, p. 9) *See also* Petitioner's Exhibit No. 16. Baltimore County's Stormwater Management Regulations require that "stormwater management measures be constructed in accordance with a plan approved by [the Department of Environmental Protection and Resource Management]" prior to the issuance of a grading permit. *See* B.C.C., §§ 14-155(a), 14-156(a), 14-157(a). The Department of Environmental Protection and Resource Management ("DEPRM"), as well as the County Soil Conservation District, "shall review the plan to determine compliance" with all applicable Stormwater Management Regulations. B.C.C. § 14-156(a).

Mr. Main testified that he performed a stormwater management analysis for the proposed additional parking and prepared a preliminary stormwater management plan designed to accommodate it. (T. 3/25/04, p. 9) *See also* Petitioner's Exhibit No. 17. Mr. Main testified that the plan is not a final construction plan but that, "at this level of detail," it does comply with the current stormwater management regulations. (T. 3/25/04, p. 16) While an issue was raised regarding the location of the proposed stormwater management pond and an existing well, ultimately, DEPRM will review final

construction plans and will determined whether any adjustments in location or design are necessary.

Mr. Sheesley also testified regarding the proposed stormwater management location and acknowledged that there is a setback requirement from The Oregon Grille's existing well. (T. 4/13/03, p. 110) Mr. Sheesley suggested that there are a number of ways to satisfy the requirement, including obtaining a setback variance, relocating the existing well, or designing an underground stormwater management facility for the new parking area. (T. 4/13/03, pp. 118, 120, 122-123) As stated above, final stormwater management facility design is approved by DEPRM and not required until issuance of a grading permit. *See* Memorandum Exhibit No. 4. Contrary to Protestants' assertions, this issue does not prevent approval of the requested zoning relief by the Board.

Protestants' Witnesses

In rebuttal of Oregon's case, Protestants failed to produce any credible or convincing expert testimony that the proposed outdoor events and expansion of the special exception area would have *any* adverse impact on the area that surrounds the existing restaurant and its lease area.[11] In an attempt to show an impact, a number of lay witnesses expressed concerns relative to the general welfare of the surrounding community, many of whom admitted The Oregon Grille is, today, a very fine establishment. (T. 3/31/04, pp. 24, 124, 147) Through testimony, it became clear that

[11] While the Board accepted John J. Dillon, Jr., Executive Director of V.P.C., as Protestants' zoning expert, the Board noted a certain amount of bias on the part of Mr. Dillon as an officer of the community organization for which he was providing expert testimony. (T. 3/31/04, pp.12-13)

some of Protestants' witnesses were not familiar with the proposed changes to The Oregon Grille and/or the current conditions of The Grille lease area itself. (T. 3/31/04, 6, 26-29, 60, 65-66) It is also important to note that Protestants' witness acknowledged the presence of tents and outdoor activities at other establishments in the area, including Shawan Downs, Greenspring Valley Country Club, Greenspring Valley Hunt Club, Hayfields Country Club, and Padonia Park Swim Club. (T. 3/31/04, pp. 105-106, 127-131)

One witness, in particular, James T. Wollon, Jr., testified that the requested changes would be inconsistent with the spirit and intent of the Western Run Historic District. (T. 3/31/04, p. 49) Mr. Wollon then admitted, however, on cross-examination, that the National Register of Historic District designation imposes *no* restrictions on altering a historic structure, adding parking to it, or modifying the site conditions of a historic structure. (T. 3/31/04, pp. 58-59) At any rate, "impact on a historic district" is not a factor properly before the Board in a special exception case. BCZR Section 502.1 lists all of the factors that the Board should consider in determining whether or not to grant a Petition for Special Exception. Whether or not a special exception request is consistent with a historic district is not a listed factor and, therefore, should not be considered by the Board.

Protestant's witnesses were unable to present any credible evidence to demonstrate that the proposed outdoor events and expansion of the special exception area for this existing restaurant would have an adverse impact above and beyond that generally associated with this type of use. Protestant's generalized and unsupported

concerns are not a legitimate reason to deny the requested special exception and special hearing relief.

IV. BASED ON THE EVIDENCE PRESENTED, OREGON IS ENTITLED TO THE REQUESTED VARIANCE.

Lastly, Oregon also filed a Petition for Variance, requesting permission to surface the expanded parking area in a material similar to the existing parking lot and to have that surface be non-striped in lieu of the requirement to provide a striped, durable and dustless surface pursuant to BCZR Sections 409.8.A.2 and 409.8.A.6. Oregon produced substantial evidence that this relief is warranted under BCZR Section 307.1.

In Baltimore County, the Board of Appeals may grant a request for a variance "where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship." BCZR § 307.1. The proper application of Section 307.1 requires the Board to determine first that the property where a use is proposed is unique and that such "uniqueness" causes a disproportionate impact in terms of the application of the Zoning Regulations. *Cromwell v. Ward*, 102 Md. App. 691, 694, 651 A.2d 424 (1995). Second, the Board must determine whether those unique circumstances make it practically difficult for the owner to utilize the property for a permitted use without coming into conflict with the Zoning Regulations. *Id.* at 694-695.

Proving practical difficulty is *not* intended to be a particularly stringent test, and, despite Protestants' suggestions to the contrary, a petitioner is *not* required to show that

no reasonable use of the property may be made without the variances. Simply put, practical difficulty means that, given the balance of interests of the property owner, neighboring property owners, and the public in general, requiring strict compliance with the zoning regulations would unnecessarily burden the property owner when the owner attempts to use the property for a permitted use. *McLean v. Solely*, 270 Md. 208, 214-215, 310 A.2d 783 (1973). In determining whether a practical difficulty exists, deserving of a variance, the Board of Appeals should, therefore, consider: whether requiring conformity with the applicable zoning regulations would be unnecessarily burdensome; whether granting the variance would do substantial justice; and whether the requested variance would be consistent with the spirit of the ordinance and the interests of public safety and welfare. *Id.*

Mr. Kellman confirmed that the property is "unique." (T. 3/25/04, pp. 112-113) Its unique features – the existing historic structure and its location within the boundaries of Oregon Ridge Park – would result in a practical difficulty for Oregon in complying with the strict requirements of the Zoning Regulations. (T. 3/25/04, pp. 112-113) On the issue of practical difficulty, the Board should also consider Restriction No. 9 of the 1995 Order, which reads as follows:

> The parking area shall consist of a non-paved surface such as stone or a similar permeable surface unless otherwise required by law. All parking will be contained within the leased area.

See Petitioner's Exhibit No. 1. From the 1995 Order, it is clear that the Board included this requirement due to the unique features of the site. If Oregon is to comply with this restriction for the expanded parking area, the requested relief is required.

Mr. Kellman also testified that the requested departures from the design standards listed in Sections 409.8.A.2. (durable and dustless surface) and 409.8.A.6 (striped parking spaces) would not have any adverse impact on the health, safety, and general welfare of the surrounding area or be inconsistent with the off-street parking regulations as a whole. (T. 3/25/04, p. 113)

Protestants were unable to provide any convincing expert testimony that The Oregon Grille lease area is not unique or that a granting of the variance would have any adverse impact on the surrounding area. Because Oregon met its burden of proof on the variance, the Board should grant the requested relief.

V. SUBSTANTIAL CHANGES TO THE AREA SUPPORT A DECISION APPROVING THE PROPOSED OUTDOOR EVENTS.

Oregon anticipates that Protestants will argue in their Memorandum that Oregon is precluded from seeking revisions of the restrictions imposed in the Board's 1995 Order by the doctrine of *res judicata.* Oregon asserts that, even if the doctrine is applicable, substantial changes have occurred in the area surrounding The Grille.

Maryland law on the application of doctrine of *res judicata* to decisions of administrative agency has changed over the years. *White v. Prince George's County*, 282 Md. 641, 658, 387 A.2d 260, 270 (1978); *Klein v. Colonial Pipeline Co.*, 55 Md. App. 324, 339, 462 A.2d 546, 555 (1983). As the law is currently applied, it is clear that at least some principles of the doctrine are "applicable to some administrative agencies performing quasi-judicial functions." *White*, 282 Md. at 658. As the Court of Appeals explained in *Whittle v. Board of Zoning Appeals of Baltimore County*, the application of

the principles are rooted in the proposition that "it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law." 211 Md. 36, 45, 125 A.2d 41 (1956). Therefore, the Court articulated the following rule:

> where facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been *substantial changes in the facts and circumstances* between the first and second, the doctrine of *res judicata* would not prevent the granting of a special exception . . ..

Id. (emphasis added).

While it is unclear to what extent the issue of outdoor events might have been litigated in the prior case, in the event the Board gave any credence to Protestants' argument as to *res judicata*, Oregon produced strong and substantial evidence that, subsequent to the Board's approval of The Oregon Grille special exception in 1995, there have been "substantial changes" to the surrounding area. This evidence would certainly support the Board arriving at an opposite decision on the instant requests for outdoor events.

Mr. Bauer and Mr. Kellman testified as to the recent establishment of other facilities in the area of The Oregon Grille that now host outside, tented events – the very events that Oregon desires on a smaller scale. (T. 11/04/03, pp. 74-79, T. 3/25/04, p. 109) Hayfields County Club, located in the immediate vicinity of and directly east of The Grille, obtained approval following The Grille's special exception approval and now hosts outdoor events, including professional golf tournaments equipped with revenue, entertainment and hospitality tents. (T. 11/04/03. pp. 74-75, T. 3/25/04, p. 109) *See also* Petitioner's Exhibit Nos. 11e,19. Music is played at Hayfields events. (T. 11/04/03, p. 74. Additionally, Mr. Bauer testified that Shawan Downs, "another more recent use"

constructs tents on its property for a three week period for an event in the Fall and does so at other Springtime events. (T. 11/04/03, p. 77) (T. 3/25/04, p. 109) Ms. Miller's research indicates that over 10,000 spectators attended the Fall event equipped with 40 tents that served breakfast, lunch, and dinner. *See* Petitioner's Exhibit No. 11g. On cross-examination, Mr. Bauer indicated to the Board that, subsequent to the opening of The Oregon Grille, he attended events at these facilities. (T. 11/04/03, pp. 107-109) Additionally, Oregon Ridge Park schedules a summer concert series each year with tents that attract a large crowd of people. (T. 11/04/03, p. 76)

Additionally, a number of individuals familiar with The Oregon Grille and the proposed changes, as well as the surrounding area, testified that the character of the area has changed dramatically since the Board's 1995 Order. Mr. Barnhill testified as to his familiarity with the area and stated "there's a lot of changes that have happened." (T. 3/24/04, p. 54) Mr. Jenkins explained that he "grew up in the Valley" and "has seen changes occur at Hayfields and Shawan Downs, and it's logical that The Oregon Grille would be allowed to do what they are proposing to do, because [he finds] it , even as a resident in the Valley, to be *very consistent with the entertainment that we are now providing in the Valley*." (T. 3/24/04, pp. 57-58) Mr. McDonald testified that "the entire area has changed so dramatically, that this is certainly reasonable and in line with these changes." (T. 3/24/04, p. 62) Mrs. McDonald concurred with Mr. McDonald's testimony. (T. 3/24/04, pp. 63-64)

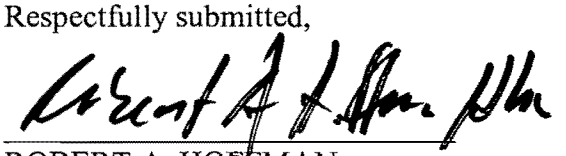
If the above-described changes to the area around The Oregon Grille existed in 1995, the Board may have decided to permit the outdoor events proposed in the instant

case. Protestants were unable to refute that the establishment of these land uses are responsible for substantially and significantly changing the area that surrounds The Oregon Grille lease area.

CONCLUSION

As outlined above, Oregon produced strong and substantial evidence of its entitlement to the requested zoning relief. Therefore, Oregon respectfully requests that the Board of Appeals grant approval of its Petitions for Special Hearing, Special Exception, and Variance in accordance with the site plan submitted in this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 2004, a copy of the foregoing PETITIONER'S POST-HEARING MEMORANDUM was mailed to Michael R. McCann, Esquire, 100 Light Street, Suite 1000, Baltimore, Maryland 21202-1036, and G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland, 21204,. Attorneys for Protestants.

ROBERT A. HOFFMAN

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County Board of Appeals of Baltimore County
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February 8, 1995

Robert A. Hoffman, Esquire
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210 Allegheny Avenue
Towson, MD 21204

RE: Case No. 94-348-SPHXA
Baltimore County, MD -Petitioner
(Oregon General /Kurtz Store)

Dear Mr. Hoffman:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

Charlotte E. Radcliffe for
Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Mr. Theodore W. Bauer
J. Carroll Holzer, Esquire
Ms. Margaret Worrall /Valleys Planning Council
Ed Haile /Daft-McCune-Walker
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Michael J. Moran, Assistant County Attorney

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Memorandum Exhibit No. 1

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OF THE ENGLISH LANGUAGE UNABRIDGED

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Memorandum Exhibit No. 2

IN THE MATTER OF THE THE APPLICATION OF MARK GREENE (MANOR TAVERN) FOR A ZONING RECLASSIFICATION FROM R.C. 2 TO R.C.C. ON PROPERTY LOCATED ON THE NORTHWEST SIDE OLD YORK RD., OPPOSITE MONKTON ROAD (15819 OLD YORK ROAD)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
10TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	CASE NO. R-91-115 Item #9, CYCLE IV 1990-1991 (Documented Site Plan)

* * * * * * * * *

O P I N I O N

Petitioner, Manor Tavern, Inc., contends that the Baltimore County Council in 1988 erred in imposing R.C. 2 zoning on at least 1.316 acres of the Petitioner's property instead of rezoning the property to the newly created Rural Conservation Commercial (R.C.C.) zone. Second, the Petitioner seeks two variances pursuant to Section 2-58.1(p) Baltimore County Code to permit 168 parking spaces in lieu of the required 224 parking spaces and that a number of these parking spaces be located off of the proposed R.C.C. zone which would otherwise be required to be located within the R.C.C. zone pursuant to Section 1A06.2.C.4 Baltimore County Zoning Regulations (hereinafter "BCZR"). Finally, the Petitioner filed a request for a Special Hearing to determine if the R.C.C. zoning classification permits the proposed use of a seasonal reception garden.

The Manor Tavern property consists of 5.64 acres located on the northeast side of Manor Road, at Manor Road's intersection with Old York Road and Monkton Road, in the Tenth Election District and Third Councilmanic District of Baltimore County. As shown on Petitioner's Exhibit 1, the Monk Site Plan, revised April 3, 1991, the subject property is zoned B.L.-C.R. as to 2.12 acres along the

5/24/04

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	COUNTY BOARD OF APPEALS
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C., Petitioner.	*	

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

PROTESTANTS' POST-HEARING MEMORANDUM

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BOARD OF APPEALS

Dated: May 24, 2004

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Protestants, the Valleys Planning Council, Falls Road Community Association, Dennis Sutton, and Greencroft Community Association, submit this post-hearing memorandum in support of their opposition to the petitions for special exception, special hearing and variance filed by Petitioner Oregon Grille, L.L.C.

I. PRELIMINARY STATEMENT

In 1995, the Board granted Petitioner's request for a special exception, allowing it to convert an historic building on public parkland to a restaurant. In doing so, however, the Board expressly prohibited Petitioner from hosting weddings, banquets, and similar events on the outdoor patio area at the restaurant.

Seven years later, Petitioner filed the instant petitions for special exception, special hearing, and for a variance. Petitioner seeks (i) to remove the Board's prohibition against outdoor events; (ii) to expand the parking lot to accommodate the proposed new use; and (iii) a variance to have the expanded parking lot made of stone in lieu of a durable and dustless surface as required by the zoning regulations.

Simply put, Petitioner proposes what heretofore has never been done in Baltimore County. No other restaurant in an R.C.4 zone hosts the events that Petitioner proposes. Indeed, there is no restaurant in Baltimore County that is housed in an historic building, built on top of the tributaries of a Use III waterway, located in an historic district, on public park property, and in an R.C.4 zone.

Protestants oppose the relief requested by Petitioner for the following specific reasons. First, well-established principles of *res judicata* preclude the Board from revisiting its February 1995 Order which expressly prohibited Petitioner from hosting the very same outdoor events now proposed. Second, the Board lacks authority to grant Petitioner's request for a special exception and variance because Petitioner neither owns nor leases the .47-acre parcel which is the subject of those requests. Third, the outdoor events proposed by Petitioner constitute a "catering hall" which is not a permitted use in an R.C.4 zone. Fourth, even if not a "catering hall," the proposed use is not an "accessory use." Fifth, the proposed use fails to

meet the requirements of Section 402.3 of the zoning regulations, which govern the conversion of buildings to restaurants. Sixth, Petitioner has failed to meet its burden of proving the factors in Section 502.1. Specifically, (a) the proposed use is inconsistent with the permeability provisions of the R.C.4 zone; (b) the well on the property violates applicable environmental regulations, and (c) the proposed use is inconsistent with the purposes, spirit, and intent of the R.C.4 zone. And finally, Petitioner has failed to meet its burden under the test set forth in *Schultz v. Pritz*, 291 Md. 1 (1981). For these reasons, and those stated below, Protestants respectfully requests that the Board deny the relief requested by Petitioner.

II. PROCEDURAL BACKGROUND

In 1994, Petitioner filed a petition for special hearing, special exception, and variance with the Zoning Commissioner with respect to the subject property (Case No. 94-348-SPHXA). The petition for special exception sought approval of a conversion of the existing building at 1201 Shawan Road to a restaurant under sections 1A03.3.B.4 and 402.3 of the Baltimore County Zoning Regulations (BCZR).

At the hearing in 1994, Theodore Bauer testified that, if the conversion was approved, he proposed having an outdoor seating area for dinner guests. In addition, Mr. Bauer proposed having weddings and other special events outside on the patio area. Mr. Bauer asked that he be allowed to have up to 12 such events per year. He anticipated having entertainment, such as live bands or DJ's, for the events, and envisioned erecting tents on the patio to provide shade and protection from inclement weather. Mr. Bauer "propose[d] to add certain restrictions on these special events/weddings in order to attempt to mitigate any adverse effect they may have on the surrounding community." (*See* Decision of Deputy Zoning Comm'r dated June 28, 1994, attached as ex. 1, pp. 2-3, 9-10.)

Deputy Zoning Commissioner Timothy M. Kotroco found that Mr. Bauer's proposal to convert the existing building at 1202 Shawan Road to a restaurant met the requirements of section 502.1 and granted

the special exception for a converted restaurant. (*Id.*, pp. 7-8.) The Deputy Zoning Commissioner, however, denied Mr. Bauer's proposal to host outdoor events concluding that, although outdoor dinner seating was a permissible accessory use to a restaurant, "catered affairs taking place outside on the patio area" were not permitted. (*Id.*, pp. 10-11.)

The decision of the Deputy Zoning Commissioner was appealed to the Board of Appeals by both Mr. Bauer and the Valleys Planning Council. On February 8, 1995, the Board issued its Opinion and Order. (Ex. 2.) The Board of Appeals concluded that Mr. Bauer met his burden under section 502.1 and granted the special exception for a converted restaurant. (*Id.*, pp. 4-5.) Specifically, the Board of Appeals approved Mr. Bauer's request to have an outdoor seating area for dinner guests. (*Id.*, p. 2, 4-5.) The Board, however, imposed the following restrictions:

> 3. The alternative outdoor dining areas/patio locations... shall only be utilized for dining or pre-dinner cocktail, so long as patrons are subsequently served dinner, and shall be limited in quantity to 125 persons. There will be no outdoor bars, live music, tents or similar overhead coverings on or serving the outdoor dining area....
>
> 4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property.

(*Id.*, p. 6 at ¶¶ 3, 4.)

On or about April 19, 2002, Mr. Bauer, on behalf of Oregon, L.L.C., filed petitions for special exception, a variance, and for a special hearing. The petition for special exception seeks to expand the area supporting the Oregon Grille originally approved in Case No. 94-348 SPHXA to include additional parking and to include an existing outbuilding barn on the property. The petition for variance seeks permission to have a stone parking lot in lieu of a durable and dustless surface, as required by section 409.8.A.2 of the zoning regulations. The petition for special hearing seeks approval of "an amendment to the site plan

previously approved in Case No. 94-348 SPHXA and to amend Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan." The Petitioner proposes the following restrictions to supersede Restrictions 3, 4, and 5 imposed by the Board:

1. The number of evening events would be limited to 15 per calendar year.

2. The events would be held on the terraces located on the south side of the restaurant. Tents would be permitted but would have to be removed within 24 hours following all events for which they were erected.

3. Music would be permitted but at a level of minimum intrusiveness to the nearby neighbors and other patrons of the restaurant; all music would have to cease by 10:00 p.m. at such events and by 11:00 p.m. on no more than 5 such events.

4. A sound engineer or specialist would be engaged by the Oregon Grille to provide recommendations and guidelines to assure minimal intrusiveness of the music.

5. Events during the daytime and early evening (i.e., ending no later than 9:00 p.m.) would be subject to the foregoing music standards and tent removal requirements but not included within the limitations as to the number of events.

6. A canopy or similar cover to provide shade on a seasonal basis to the dining portion of the patios would not be considered a tent and would be permitted.

(*See* Site Plan, Pet.'s Ex. 1.)

III. SUMMARY OF EVIDENCE AT HEARING

A. The Site

The Oregon Grille is situated on approximately 2.63 acres on the southwest corner of Shawan and Beaver Dam Roads. The name of Beaver Dam Road changes to Cuba Road on the north side of Shawan Road. One enters the Oregon Grille from Kurtz Lane, which is south of Shawan Road and branches off from the west side Beaver Dam Road.

Petitioner leases the property from Baltimore County. A parcel of land comprising approximately .47-acres to the west of the property is the subject of Petitioner's request to amend the previously granted special exception to expand the existing parking lot. This .47-acre parcel is not under lease with Baltimore County. (*See* Transcr. of T. Bauer attached as ex. 3, p. 136; *see also* Petitioner's Request for Special Exception).

The Oregon Grille is a historic building and is located in the Western Run Historic District. The section of Shawan Road where the restaurant is located is a scenic route. (*See* ex. 11, p. 173.) The land surrounding the Oregon Grille slopes from west to east and north to south. All surface water flows to the Oregon Branch and then to Beaver Dam Run. Petitioner has constructed bridges over the tributaries that flow through the property. (*See* Petitioner's Exs. 2b, 2d, 2e and 2f).

B. Testimony of Petitioner's Witnesses

1. Theodore Bauer

The Oregon Grille is a fine dining establishment that has been in business for six years. (*See* ex. 3, p. 47.) The restaurant is opened for lunch from 11:30 a.m. to 4:00 p.m., Monday through Saturday, and for brunch from 11:00 a.m. to 3:00 p.m. on Sunday. (*Id.*, pp. 48-49.) Dinner service begins at 5:00 p.m. on Monday through Saturday, and at 4:00 p.m. on Sunday. (*Id.*) Between lunch and dinner service, the restaurant changes over, meaning that different chefs and waiters come in, different menus are used, and the kitchen switches from lunch to dinner service. (*Id.*, pp. 49, 118.)

The Oregon Grille has two outside terraces. The terrace closest to the building is presently used as a waiting area for customers before they are seated. (*Id.*, pp. 50, 53.) The second terrace, which is farthest from the building and closest to the parking lot, is used for seating dinner guests. (*Id.*, p. 54.) The terraces

are used seasonally, from late April to September. (*Id.*, pp. 54-55.) Mr. Bauer presently seats roughly 120-125 people outside for dinner and 200 people inside. (*Id.*, pp. 60, 132.)

Mr. Bauer testified regarding the weddings, cocktail parties, and similar events he proposes hosting outside at the Oregon Grille. (*Id.*, pp. 57-58.) For weddings and other larger events, Mr. Bauer proposes to erect tents over the two terraces. (*Id.*, pp. 59-60.) The terrace farthest from the restaurant would have tables and the near terrace would be used as a greeting or common area. (*Id.*) Mr. Bauer intends to have an outside bar. (*Id.*, p. 113.) At sit-down dinner events, Mr. Bauer believes he could accommodate 120-125 guests outside. (*Id.*)

A cocktail party or buffet-style event would be set up differently. Mr. Bauer would tent both terraces and believes he could accommodate 225 people. (*Id.*, pp. 62-63, 93.) With buffet-style events, "there is more mingling and less table seating so that's why would facilitate more people." (*Id.*, p. 63.) Mr. Bauer may have events where only cocktails and hors d'oeuvres are served, and not full course meals. (*Id.*, p. 116.)

The menu for the proposed outdoor events would be limited and set up ahead of time so that food preparation work would be done in advance of the party. (*Id.*, pp. 60-61.) Mr. Bauer would require reservations. (*Id.*, pp. 111-12.) Mr. Bauer may have waiter or waitress staff dedicated to the outdoor event and separate from the waiting staff serving customers inside. (*Id.*, pp. 124-25.)

Mr. Bauer does not intend to mix his dinner guests with the guests at the outdoor events and, if requested, will have a separate dress code for the event guests. (*Id.*, p. 119.) When an outdoor event is ongoing, Mr. Bauer proposes to continue serving restaurant customers inside. (*Id.*, p. 60.) The outdoor events may take place while the restaurant is not serving lunch or dinner and is changing over. (*Id.*, p. 119.)

Mr. Bauer proposes having 15 "evening" events per calendar year. (*Id.*, pp. 66-67.) Mr. Bauer,

however, proposes to have an unlimited number of daytime or early evening events. (*Id.*, pp. 67, 126.) A daytime or early evening event, under Mr. Bauer's proposal, would end by 9:00 p.m. (*Id.*, pp. 66-67.) Mr. Bauer's interpretation of when an event ends, for purposes of whether it counts as an evening event, is when service stops. (*Id.*, pp. 130-31.) Guests, in other words, may stay past 9 p.m., but that would not be an evening event.

Mr. Bauer proposes having both live and recorded music. (*Id.*, p. 177.) For 10 of the 15 evening events, the music would end by 10:00 p.m.; for the remaining five nighttime events, the music would end by 11:00 p.m. (*Id.*, p. 65.) Mr. Bauer proposes to hire a sound engineering specialist to provide recommendations and guidelines to ensure minimal intrusiveness of the music. (*Id.*) Mr. Bauer intends to advertise the outdoor events. (*Id.*, p. 113.)

Mr. Bauer also proposes to have a canopy or similar cover over the terraces, which would not be considered a tent. Mr. Bauer described the canopy as "a low profile screening that would allow for good air flow, but also provide shade to customers during dining hours." (*Id.*, p. 68.) The canopy would be erected between the trees on the terraces. (*Id.*, p. 69.) The canopy would be removed if a tent was used for an event. (*Id.*, p. 70.) The canopy would be used seasonally, but Mr. Bauer does not intend to remove the canopy and may keep it up for weeks or months at a time. (*Id.*, p. 128.)

Mr. Bauer also seeks approval to expand the parking lot at the Oregon Grille to accommodate 55 more spaces, and add additional lighting. There are presently approximately 100 parking spaces. (*Id.*, pp. 91-92.) Mr. Bauer requests that the Board rule independently on each requested relief, rather than collectively as one package. (*Id.*, p. 69.)

2. Hellene Miller

Ms. Miller is an "events and wedding coordinator" who was called by Petitioner to testify about "a number of different restaurants in a variety of different zoning classifications." (*See* Transcr. of Ms. Miller's testimony attached as ex. 4, pp. 83, 85.) According to Ms. Miller, the following establishments host events similar to those proposed by Petitioner: the Milton Inn; the Manor Tavern; Greenspring Valley Hunt Club; Greenspring Valley Country Club; Oregon Ridge; Hayfields Country Club; Shawan Downs; Harryman House; Gibby's; Liberatores; Linwoods; Michael's Café; Padonia Park; Valley Inn; Grand Lodge; Worthington Valley Swim Club; Boordy Vineyards; Basignani Winery; Meadowood Regional Park; Pearce's Plantation. (*Id.*, pp. 94-102.)

Ms. Miller does not know the zoning of any of these establishments. (*Id.*, p. 127.) Ms. Miller denied that these establishments, when they host weddings and similar events, are engaged in catering. (*Id.*, p. 107.) Ms. Miller stated, in fact, that even if these establishments themselves call what they do "catering", this would not change her opinion.[1] (*Id.*)

Ironically, in many of the brochures and website pages from these establishments, which were part of Ms. Miller's "report" (Petitioner's Ex. 11), the establishments themselves characterized their hosting of weddings and other events as "catering." The brochure from Shawan Downs, for example, describes the provision of food at its events as "catering." (*See* Petitioner's Ex. 11G, pp. 7-12 ("Special Considerations").) The brochure from Padonia Park Club describes its "catering" services and states that, "Padonia Park Club's full service catering staff provides custom menus for breakfast, lunch or dinner options." (Petitioner's Ex. 11N, p. 4; see other references to "catering" at pp. 2, 3, 6.) The literature from

[1] Ms. Miller, herself, is not engaged in the restaurant or catering business and did not have personal knowledge of the activities of the establishments she spoke about. (*Id.*, p. 116.) She based her testimony on "tremendous research." (*Id.*, p. 91.)

the Worthington Valley Swim Club states the club offers "catering service." (Petitioner's Exhibit 11Q, p. 2 ("Facilities Available".) The Manor Tavern, according to its literature, also provides "catering." (Petitioner's Ex. 11B, p. 2.)[2]

On its website, Peerce's Plantation characterizes rehearsal dinners, christening, anniversaries, birthday parties, business meetings, and weddings as catered events. (*See* Protestants' Ex. 2, p. 3 (entitled "Charming Catered Events"), and p. 11 (referring to "our catering staff".)[3] At these events, Peerce's provides canopies for events of 60-135 people on its porch and patio, and provides tents on its manicured lawns for larger events of 200-750 people. Peerce's has different menus for weddings than for its dinner business. (*Compare id.*, pp. 4-10 (fine dining menu) *with* pp. 12-15 ("special menus" for weddings).)

The Milton Inn similarly characterizes the hosting of private parties and meetings as catering. The Milton Inn has a "catering menu" that is separate from its lunch and dinner menus. (Protestants' Ex. 1, p. 5.) The "catering menu" includes different open bar options depending on the length of the event and the

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[2] Although she denied the Manor Tavern was performing catering, Ms. Miller met with the "Director of Catering" when she visited that establishment. (*Id.*, p. 126.)

[3] Ms. Miller initially agreed that the events at Peerce's Plantation are the same as or similar to what Petitioner proposes. (*Id.*, p. 108.) Yet, when shown the printout from the website of Peerce's Plantation, which called its events "catering", Ms. Miller attempted to testify that the events at Peerce's Plantation were different:

Q. [T]he catered events that Pearce's Plantation is talking about, that I clicked on and found after clicking ["]catering["], are those the same events that you've already testified about that are being done at Pearce's Plantation?

A. No.

Q. Completely different?

A. This is – right. I'm not talking about catered events. I'm talking about events that take place in a restaurant. Pearce's also is a restaurant.

Q. On what basis do you say that the events they are talking about in this website are different than the ones you've already talked about with respect to Pearce's?

A. I think sometimes it's in the form of a menu. There's a selected menu as opposed to some ordering, a la carte. I don't know specifically on that.

Q. You don't know?

A. I just know it's a restaurant.

Q. .... You don't know whether or not the catered events that Pearce's Plantation is advertising on its website is any different than the ones you've talked about? They very well could be the same events?

type of liquor; different lists of entrees and dessert selections, which must be "pre-ordered one week in advance"; prices for butlered hors d'oevres; and prices for buffet stations "available to groups of 25 and more." (*Id.*, pp. 5-16.) The Milton Inn brochure included in Ms. Miller's report similarly calls what the Inn does "catering" and is signed by "Kate Hopkins, Catering Manager." ("Petitioner's Ex. 11A, pp. 3-4.)

In Ms. Miller's opinion, the reason all these establishments are not engaged in "catering" is because the events are being held "on site." (Ex. 4, p. 107.) Ms. Miller explained, "[t]hey are turning over their restaurant to accommodate an affair." (*Id.*) When the Board asked Ms. Miller what Condition Four in the Board's 1995 decision means ("petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property"), Ms. Miller similarly testified:

> To me, it means that the food would be leaving the location. It sort of sounds like to me. It goes to their locations.
>
> MR. MARKS: The caterer would prepare it somewhere else and then take it to the restaurant?
>
> [MS. MILLER]: Or take it to a home.
>
> MR. MARKS: He wouldn't be using the restaurant facility for cooking?
>
> [MS. MILLER]: No.
>
> MR. MARKS: All that kind of stuff?
>
> [MS. MILLER]: Correct.
>
> Q. So it's your testimony, Ms. Miller, that if a restaurant cooks the food on site and has guests at an affair that is not what you call catering, or on-site catering? You wouldn't call that catering?
>
> A. It's a restaurant.

A. I don't know. Because I'd have to research it and read....
(*Id.*, pp. 120-21.)

(*Id.*, pp. 118-19.)

Throughout her testimony, Ms. Miller recognized a restaurant and catering as separate and distinct uses. (*Id.*, pp. 94-102 (describing Gramercy Mansion as having "multiple uses", Pearce's Plantation has "both uses"; Manor Tavern is a "restaurant also" and is comparable in "uses"; Padonia Park "has multiple uses"; Hayfields serves "both uses"; Oregon Ridge has "multiple uses").

3. Mitchell Kellman

Mr. Kellman is employed as a zoning specialist with Daft McCune & Walker. In Mr. Kellman's opinion, the use of the Oregon Grille as proposed by Petitioner is "a hundred percent a restaurant." (*See* Transcr. of Mr. Kellman's Testimony attached as ex. 5, p. 89.)

Mr. Kellman acknowledged that the Oregon Grille, because it is in an R.C.4 zone, is subject to the restrictions set forth in Section 402.3 of the BCZR. (*Id.*, p. 91.) Mr. Kellman believes the outdoor events proposed by Petitioner meet the requirements of Section 402.3**A** because "meals may be served at tables. They are served at tables, indoor or out, and not to persons remaining in cars. They do not serve any meals to people remaining in cars. That would be a drive-in restaurant if they were serving meals in cars." (*Id.*, p. 92.)

Mr. Kellman interprets the restriction "meals may be served only at tables" as permitting someone to serve himself at a buffet table. (*Id.*, p. 125.) Mr. Kellman believes eating at a buffet table would constitute eating a meal that's been served at a table. (*Id.*) In other words, according to Mr. Kellman, the only thing Section 402.3**A** prohibits is serving persons in cars. (*Id.*)

Mr. Kellman testified that Subsection **D** of 402.3 is met because the Oregon Grille proposes to serve meals at mealtimes. Mealtimes, according to Mr. Kellman, "can be really anytime" a person eats food, but would not include the period from 2:00 to 6:00 a.m. (*Id.*, pp. 93-94.)

Mr. Kellman identified the zoning classification for each of the establishments identified by Ms. Miller in her testimony.

Milton Inn – BL/CR
Hayfields – RC2 and R.C.4[4]
Manor Taven - BL/CR & RCC
Greenspring Valley Hunt Club – RC2 and R.C.4[5]
Shawan Downs – RC2
Harryman House – BL
Gibby's - BM/CCC
Au Pointon Still – BL/MLR
Liberatore's – ML/IM
Linwood's – OR2
Michaels Café – BM
Padonia Park – RC5
Valley Inn – DR1
Grand Lodge of Maryland – DR 10.5/R.C.4/OT
Worthington Valley Swim Club – RC5
Boordy Vineyards – RC2
Basignani Winery – RC2
Meadowood Regional Park – RC2
Gramercy Mansion – RC2
Peerce's Plantation – BL & BL/CR
The Cloisters – RC5

(*Id.*, p. 99.)

Mr. Kellman agreed that many of these establishments are in commercial zones. (*Id.*, p. 127.) Mr. Kellman is unaware of any restaurant in an R.C.4 zone that hosts outdoor weddings, banquets and other events as Petitioner proposes. (*Id.*, pp. 128-29.) Indeed, Mr. Kellman is unaware of any converted restaurant in an R.C.4 zone in Baltimore County. (*Id.*, pp. 128-29.)

Mr. Kellman agreed that Petitioner's proposed outdoor events may constitute catering, but disagreed they would meet the definition of "catering hall" because Petitioner will not host the events

[4] Mr. Kellman is correct that a portion of the Hayfields property has R.C.4 zoning. The relevant part of Hayfields is the clubhouse, however, which is zoned RC2.

"regularly." (*Id.*, pp. 127, 133.) Mr. Kellman acknowledged, however, that the remaining elements of the definition of "catering hall" are met, namely that Petitioner proposes using "part of a facility" for "serving beverages and food to groups which reserve the facility for banquets or gatherings before the day of the event." (*Id.*, p. 133.)

Mr. Kellman agreed that the definition of "standard restaurant" – which requires serving food to persons "seated at tables" – is not met if the patron "is standing up, if someone hands him a plate of hors d'oeuvres, technically, it's not being served at a table." (*Id.*, p. 136.)

Mr. Kellman believes the outdoor events proposed by the Oregon Grille are not a separate principle use, but rather constitute an "accessory use" under Section 101 of the BCZR. Mr. Kellman believes the outdoor events are an accessory use because "this is a convenience for Mr. Bauer's customers." (*Id.*, p. 96.) According to Mr. Kellman, the principle use at the Oregon Grille - to which the outdoor events is accessory – is a restaurant use. (*Id.*, p. 94.)

Mr. Kellman believes the area around the Oregon Grille has changed in the last 8 years. (*Id.*, pp. 108-09.) When asked how the area has changed, however, Mr. Kellman identified only the development of Shawan Downs and Hayfields. (*Id.*)

Mr. Kellman testified that a variance is necessary for the proposed parking lot because tar and chip is not a durable and dustless surface, as required by the BCZR. (*Id.*, pp. 112, 149.) On cross-examination, Mr. Kellman acknowledged there is nothing unique about the soil underneath the proposed parking lot area or other site conditions that warrant the variance. The variance is not requested for feasibility reasons, but merely "to keep the character rural and historic." (*Id.*, p. 150.)

[5] The Greenspring Valley Hunt Club is a country club, not a restaurant, which is not permitted in an R.C.4 zone.

4. Richard Peppin

The Board accepted Richard Peppin as an acoustical expert. Mr. Pepping explained that Table 2 of COMAR 26.02.03.03 provides that the maximum noise level is 55 dB for nighttime and 65 dB for daytime. (*See* Transcr. of Mr. Peppin's Testimony attached as ex. 6, p. 142).

Mr. Peppin performed a study to determine the noise levels at various distances from the source of the Petitioner's music. He first played "relatively loud" music at a point near the center of the "upper patio" behind the restaurant and "measured the sound exactly sixty feet away from the loudspeaker." (*Id.*, pp. 138-40). He then "used a sophisticated computer program to determine the promulgation of sound from the restaurant to the environment." (*Id.*, pp. 137). The chart below summarizes his opinions about the dB levels at various distances from the source of the music:

Distance from source-feet	Decibels (dB)	Transcript page
60	80	147
75-80	75	155-6
120	74	157
240	68	157
300	65	158
600	55	156
1200	45	145

Mr. Peppin conceded that no regulation states that the measurement should be taken at the nearest residence rather than the nearest property line. When asked what should be done if adjoining property owner built a sundeck 20 feet from the property line, he responded, "That's a good question" and "I don't know. I don't know." (*Id.*, p. 165).

Here, Mr. Peppin acknowledged that a boundary of land leased by the Petitioner was 75-80 feet from the source of the music. The noise level there would 75 dB (*id.*, pp. 154-56), which exceeds both

the daytime and nighttime standard for that receiving land use category. The noise level at the nearest residence about 1200 feet away would be about 45 dB, less than both the daytime and nighttime standards.

5. Eric Hadaway

Petitioner's environmental consultant, Eric Haddaway, described the Oregon Branch stream system beneath and around the Petitioner's facility. The Oregon Branch and its tributaries are Use III, or natural trout waters. (*See* Transcr. of Mr. Hadaway's Testimony attached as ex. 7, p. 65). Mr. Hadaway explained:

> [The] Oregon Branch originates some distance west of the Oregon Grille, runs through essentially an agricultural area, comes underneath Kurtz Lane several hundred feet south of the Oregon Grille, continues in an easterly direction where it meets up with Beaver Dam Run further down the drainage. There are numerous tributaries to Oregon Branch, [] [C]ertain of these tributaries originate off site and flow through the Oregon Grill Property
>
> ***
>
> The other tributaries begin at a small groundwater discharge point just north of Shawan Road, There's also a spring house on the Oregon Grille property that contributes to that stream channel. That stream channel then runs through the Oregon Grille property, underneath Kurtz Lane, joining the previously mentioned tributary, flowing in a southerly direction for several hundred feet before going into the main stem of the Oregon Branch.

(*Id.*, pp. 53-54).

The distance from the discharge of the stormwater pond to the nearest tributary is approximately 70 to 75 feet. (*Id.* at 73). The distance from the newest parking lot to the nearest tributary is 260 feet. (*Id.* at 72). The groundwater that supplies the stream and tributaries is no warmer than 60 degrees F. (*Id.* at 66).

Mr. Hadaway acknowledged that there are other places in the R.C. 4 zone where one could place a parking lot more than 260 feet from a tributary to a Use III stream. (*Id.* at 76). He admitted that an impervious surface will have less of an impact on the receiving water, if it's further away. (*Id.* at 77).

Although Mr. Hadaway testified that the proposed Special Exception would cause no harm to the environment, he lacked basic information about the tributaries and the land draining to those tributaries. For example, he did not know the temperature of the stream or its tributaries (*id.* at 69); the low flow conditions of the Oregon Branch (*id.* at 78); or the amount of additional storm water that will enter the tributaries after a 1, 2, 3, 4, or 5 year storm. (*Id.*).

6. Robert Sheesley

The Petitioner's environmental expert, Robert Sheesley, explained that the governing regulations require that there be a least 100 feet between any well and any stormwater device. (*See* Transcr. of Mr. Sheesley's Testimony attached as ex. 8, p. 117). The well on the Petitioner's property is two or three feet away from the proposed storm water spillway. (*Id.* at 56). Mr. Sheesley explained that the Petitioner failed to seek a variance from that requirement. (*Id.* at 118). When asked if the Board had any legal basis to ignore the 100 foot requirement, Mr. Sheesley responded, "There is not a legal basis within the regulations." (*Id.* at 120).

7. Charles Main

Charles Main, III, a civil engineer with Daft McCune & Walker, testified that the existing parking lot at the Oregon Grille is made of a bituminous concrete surface (commonly known as tar and chip) and is approximately 190 feet by 120 feet. (*See* Transcr. of Mr. Main's Testimony attached as ex. 9, pp. 17, 23.) The proposed new parking area, which is approximately 120 feet by 180 feet, also will be bituminous concrete. (*Id.*, pp. 9, 17-19.) Mr. Main agreed that a bituminous concrete surface is

impervious. (*Id.*, 17-19.) Mr. Main estimated that approximately 50-60% of the total area covered by Petitioner's special exception request (i.e., the proposed parking lot area) would be impervious. (*Id.*, pp. 31-33.)[6]

8. Mickey Cornelius

Petitioner's traffic expert, Mickey Cornelius, testified regarding, *inter alia*, the traffic pattern at the site. Mr. Cornelius stated that patrons leaving the Oregon Grille exit onto Kurtz Lane and drive to Beaver Dam Road. At that point, the patrons could turn left on Beaver Dam and go to the intersection with Shawan Road or, alternatively, turn right on Beaver Dam Road. (*See* Transcr. of Testimony of M. Cornelius attached as ex. 10, p. 186). Mr. Cornelius did not measure the site distance looking north from the facility's exit. (*Id.*, p. 193). When shown an aerial photograph, he explained that a driver exiting onto Kurtz Lane could not "necessarily" see "out into Shawan Road, but you would be able to see this motorist sitting right here at the stop bar on Beaver Dam Road...." (*Id.*, p. 197). Mr. Cornelius agreed "that there are many other locations in the R.C.4 zone that don't have the road system and access scenario that exist at this location." (*Id.*, p. 204). In an effort to move the case along, the Chairman advised Mr. Nelson that the exit of the Petitioner's facility is less safe than an exit onto a road that leads to a perfectly aligned intersection. (*Id.*, pp. 205-06).

9. Other Lay Witnesses

Petitioner offered the testimony of several lay witnesses – Charles Fenwick, Michael Hankin, Ned Halle, Andrew Brewster, Gregory Barnhill, Courtney Jenkins, James McDonald, Susan McDonald,

[6] Counsel for Petitioner acknowledged that the existing parking is a tar and chip surface which is impervious and would be considered such by Baltimore County. (*Id.*, p. 28.)

Jeffrey Brent, Norma Killibrew, and Charles Herget, Jr. – whose testimony was largely duplicative. These individuals support, or do not oppose, the proposed expanded use.

C. Testimony of Protestants' Witnesses

1. Jack Dillon

Jack Dillon has been the executive director of the Valleys Planning Council since 1997. Mr. Dillon previously was employed by Baltimore County for 33 years, from 1962 to 1995. (*See* Transcr. of Mr. Dillon's March 31, 2004 Testimony attached as ex. 11, pp. 142-43.) During his tenure with the County, Mr. Dillon held various positions in the zoning office and then later in the Department of Planning, including the positions of zoning technician, chair of the zoning advisory committee, environmental planner, community planner, assistant division chief of the community planning division, and administrator of the agricultural land preservation program. (*Id.*, pp. 143-45.) Mr. Dillon was involved in the creation of the resource conservation (RC) zones, and drafted the legislation for those zones. (*Id.*, p. 146.) Mr. Dillon was accepted by the Board as an expert in zoning and planning. (*Id.*)

Mr. Dillon testified that the BCZR provide a special exception for converting a dwelling to a restaurant only in the RC2, R.C.4, RC5 and DR1 and DR2 zones. Various commercial zones allow restaurants as a matter of right, but a restaurant is permitted in these RC and DR zones only by special exception and only through this conversion process. (*Id.*, pp. 149-150.) In these RC and DR zones, a converted restaurant must comply with Section 402.3 of the BCZR. (*Id.*, p. 152.) As Mr. Dillon explained, if any use proposed by the Oregon Grille does not comply with Section 402.3, then that use would not be allowed. (*Id.*) Section 402.3 is a "very narrow" and "tightly written section of the code." (*Id.*, p. 155; *see also* Transcr. of Mr. Dillon's April 13, 2004 Testimony attached as ex. 12, p. 9.)

Mr. Dillon testified that food served at a buffet table, as Petitioner proposes, would not comply with Section 402.3**A's** requirement that "meals may be served only *at tables*." (Ex. 12, p. 9.) Mr. Dillon stated that the words "may ... only" indicate that meals *must* be served at tables. (*Id.*, p. 10.) Mr. Dillon noted that the definition of "standard restaurant" similarly requires "serving meals and beverages to *persons seated at tables*." (*Id.*, p. 9.)

Mr. Dillon testified that Section 402.3**A** also does not permit the service of hors d'oeuvres only, as Petitioner proposes, because they are not being served to persons at tables. (Ex. 11, pp. 155-56.) Further, hors d'oeuvres are not "meals." (*Id.*)

Mr. Dillon testified that the term "mealtimes" in Section 402.3**D** (which requires that "service shall be provided only at mealtimes") refers to standard times when people eat lunch, dinner, and breakfast. Eleven to two o'clock would be a standard lunch mealtime, and five o'clock to nine o'clock, liberally interpreted, would be standard dinnertime. (*Id.*, pp. 156-57.) Seven a.m. to nine a.m. is standard breakfast time. (*Id.*, p. 157.) When asked on cross-examination whether it was true people eat meals at different times, Mr. Dillon explained, "Some people do, yes, but that doesn't mean that when this --- in the spirit and intent of this regulation, [the County Council] must have meant a particular period of time ... or they wouldn't have put the word in, mealtimes. [The Council] must have had something in mind of in terms of what are standard mealtimes." (Ex. 12, p. 14.) On re-direct, Mr. Dillon explained that allowing food service only during mealtimes at a converted restaurant "was a very restrictive type of use to be allowed in basically residential zones, that [the County Council] really didn't want a full-fledged type operation to go on all day long. It would be just held at mealtimes." (*Id.*, p. 37.)

Mr. Dillon testified that Petitioner's proposed outdoor use meets the definition of "catering hall" in Section 101 of the BCZR because Petitioner intends to serve beverages and food to groups which

would reserve the facility in advance by reservation. (Ex. 11, pp. 158-59.) Mr. Dillon further stated that the number of events proposed by Petitioner would satisfy that part of the definition of catering hall requiring the facility be used "regularly" for this purpose. (*Id.*)

Mr. Dillon prepared a Zoning Chart (Protestants' Ex. 19) identifying the zoning classifications that allow restaurants, catering/catering halls, converted restaurants, and country clubs. Mr. Dillon highlighted in yellow the zoning classifications that allow restaurants either as of right or by special exception; and highlighted in green the zones that permit catering halls by right or special exception. (*Id.*, pp. 162-63.) As depicted by the symbol "P*" in the chart, the BCZR contemplate a combination catering hall/restaurant, but only in the BM and BR commercial zones and the RA1 and RA2 elevator apartment zones. (*Id.*, pp. 164-65.) A combined restaurant/catering use is not permitted in some commercial zones, such as the BL zone. (Ex. 12, p. 18.)

On cross-examination, Mr. Dillon was asked whether it was his opinion that the BCZR prohibits birthday parties, luncheons, and similar events at a restaurant. Mr. Dillon responded that was *not* his opinion, and that these types of events are permitted at a restaurant occasionally or periodically, but not when they are a common event. (*Id.*, p. 23.) Petitioner's proposal, in contrast, is "being set up as a catering facility for a series of special events on a scheduled basis of thirty or more times a year...." (*Id.*, 23-24.)

Mr. Dillon distinguished Petitioner's proposal from buffet or cafeteria-style restaurants such as Horn & Horn and Rustler Steak Houses. To his knowledge, there are no such restaurants in an R.C.4 zone in Baltimore County. (*Id.*, p. 43.) Further, the definition of "restaurant, standard" specifically mentions "cafeterias." (*Id.*, pp. 40-41.) Neither Section 402.3, nor Section 1A03B5 (which allows for

conversions from a dwelling to a restaurant), mentions cafeterias. A converted restaurant is more restrictive than the definition of "restaurant, standard." (*Id.*, p. 41.)

Mr. Dillon further explained that country clubs, which are not permitted in an R.C.4 zone, are a completely different use than what Petitioner proposes. (*Id.*, pp. 38-39.) "[W]e are talking about an apple and orange here." (*Id.*) The BCZR allows country clubs, such as Hayfields and Greenspring Valley Hunt Club, to host weddings and have tents because the definition of country club includes "other appropriate facilities which may include other recreational facilities"; moreover, such events have historically been considered part of the use of a country club. (*Id.*, pp. 24-25.) Country clubs are not subject to the requirements of Section 402.3. (*Id.*, p. 38.) Also, Section 1A-7 of the BCZR allows equestrian centers to have "temporary structures such as removable tents...provided they are removed within a reasonable time following the event or events to which they serve." (*Id.*, p. 34.)

Mr. Dillon testified that Petitioner's proposed use is not an "accessory use" within the definition of that term in Section 101 of the BCZR. First, the proposed use is not customarily incident to a converted restaurant in an R.C.4 zone. (Ex. 11, pp. 166-67.) The proposed use may be customarily incident to a restaurant in a BM or BR zone, but not a converted restaurant in an R.C.4 zone. (*Id.*, p. 167.) Mr. Dillon explained that, in determining whether a use constitutes an accessory use, you have to look at what is customarily incident to uses in an R.C.4 zone and *not* what is customarily incident to uses in other zones. (*Id.*, pp. 167-68.) Mr. Dillon explained:

> Q. Why do you have to look in the same zoning, Mr. Dillon?
>
> A. Because uses change from zone to zone. Some zones may be similar in types of uses, but there are different zones. You can't look at the R.C.4 zone and say, Well, because the use is listed as permitted in an RC2 zone or RC5 zone, it should be allowed in an R.C.4 zone. They are set up for different purposes.

(*Id.*, pp. 168-69.)

Mr. Dillon testified that Petitioner's proposal does not meet the second factor in the definition of "accessory use" because the square footage of the outside area where the events would be held is not subordinate in area to the restaurant, which is approximately 5,300 square feet. (*Id.*, pp. 169-70.) Mr. Dillon estimated the outdoor terraces to be 1800 square feet, but testified that the other outdoor areas, such as the gardens, should be included in applying this factor. (*Id.*, pp. 170-71.)

Mr. Dillon testified the proposed outdoor use does not meet the fourth factor in the definition of "accessory use." The proposed use does not contribute to the comfort, convenience, or necessity of the restaurant patrons. Mr. Dillon noted, in fact, the proposed use may be an inconvenience or source of aggravation for the patrons. (*Id.*, pp. 171-72.)

Mr. Dillon is unaware of any restaurant in Baltimore County that is located in an R.C.4 zone that hosts banquets, weddings, and other catered events. Mr. Dillon is unaware of any restaurant in Baltimore County that is located in an R.C.4 zone on public park property, or any restaurant in an historic district, housed in an historic building, located in an R.C.4 zone in Baltimore County. (*Id.*, pp. 167, 172-73.)

The section of Shawan Road where the Oregon Grille is located is a scenic route. (*Id.*, p. 173.) The Oregon Grille is on the Baltimore County landmarks list. (*Id.*)

Mr. Dillon testified regarding the amount of impervious surface area at the Oregon Grille. He stated that, in addition to the existing parking lot, which Petitioner concedes will be impermeable, there are other areas that should be considered in determining the impervious surface area, including the building area itself, the outside terraces and stone walkways. (*Id.*, pp. 174-78.) Mr. Dillon calculated

that 80% of the property Petitioner leases from Baltimore County is impervious surface. (*Id.*, p. 178.) If the proposed parking lot were included, this percentage would increase. (*Id.*)

Mr. Dillon testified regarding what, if any, changes have occurred to the area surrounding the Oregon Grille since the Board approved Petitioner's special exception in 1995. Mr. Dillon stated that some land along the stream systems to the south of Oregon Ridge Park was down-zoned from RC5 to R.C.4, but there have been no other zoning changes in the area surrounding the Oregon Grille since 1995. (*Id.*, pp. 179-83.)

Mr. Dillon also demonstrated, by using the 1995 and 2000 GIS maps (Protestants' Exs. 21 and 22), that the only changes in the development of the area surrounding the Oregon Grille have been the development of Hayfield's County Club to the north and Shawan Downs to the west. (*Id.*, pp. 181-88.) As Mr. Dillon explained, however, the existing RC2 zoning at the Hayfields and Shawan Downs properties allowed those developments. (*Id.*, pp. 187-88.) There have been no other changes in the area surrounding the Oregon Grill since 1995. (*Id.*, p. 188.)

Mr. Dillon addressed the special exception factors in Section 502.1 of the BCZR. Mr. Dillon stated that the proposed use and expanded parking lot would be detrimental to the health, safety, and general welfare of the locality (Section 502.1**A**) because of the historic nature of the building, its location in a historic district and on county-owned park land, and for the other reasons expressed by witnesses during the hearing, including Mr. Wollon. (*Id.*, pp. 188-89.)

Mr. Dillon further stated that the proposed use and expanded parking lot would be inconsistent with the purposes of the R.C.4 zoning classification and the BCZR (Section 502.1**G**). (*Id.*, pp. 190-91.) The R.C.4 zoning classification, Mr. Dillon explained, allows very limited uses by special exception and only under certain conditions. In particular, catering is not permitted in the R.C.4. (*Id.*, p. 191.) In

addition, the proposed use and expanded parking lot would be inconsistent with Section 402.3's conversion requirements and the impermeability provisions in the BCZR, for the reasons he previously expressed in this testimony. (*Id.*, pp. 191-92.)

Mr. Dillon confirmed there are many parcels of R.C.4 land in Baltimore County that are larger than the subject property. (*Id.*, pp. 209-10.) He testified there are R.C.4 zoned parcels in the County where the impact on a historic district would be less than the impact at the subject site. (*Id.*, pp. 195-96.) In fact, Mr. Dillon identified large areas of R.C.4 zoned property in the County that are not located in a historic district (depicted in pink shading in the GIS map introduced as Protestants' Exhibit 7), including large areas around the Liberty, Pretty Boy, and Loch Raven Reservoirs. (*Id.*, pp. 197, 201-02.) Mr. Dillon estimated that 85% of the R.C.4 land in Baltimore County is not located in an historic district. (*Id.*, pp. 199-200.) If Petitioner's proposed use and expanding parking lot were placed in these areas, the impact would be less than it would be at the subject site. (*Id.*, p. 198.)

With respect to historic structures, Mr. Dillon testified that there are large tracts of R.C.4 land in Baltimore County that are not close to a historic structure, including areas around Liberty Reservoir, Loch Raven Reservoir, and the Gunpowder River. (*Id.*, pp. 203-04.) Mr. Dillon confirmed there would be less of an impact at these other areas than there would be at the subject site. (*Id.*)

2. <u>James Wollon</u>

James Wollon is an architect specializing in historic preservation and the restoration of historic structures. He has been in that line of work since 1972, and is licensed as an architect in Maryland, Pennsylvania, Delaware, Virginia, North Carolina, and Washington D.C. (*See* Transcr. of J. Wollon attached as ex. 13, pp. 33-34.) Mr. Wollon was accepted by the Board as an expert in architecture, historical districts, and the preservation of historic buildings. (*Id.*, p. 36.)

In the 1970's, Mr. Wollon was involved, as the architectural historian, in the creation of the Western Run Historic District. (*Id.*, p. 37.) The boundaries of the Western Run Historic District are Interstate 83 to the east, Falls Road to the west, the ridge line north of Belfast Road to the north, and the ridge line south of Shawan Road to the south. (*Id.*, p. 38.) The Oregon Grille is located within the Western Run Historical District. (*Id.*, pp. 39-40.)[7]

Mr. Wollon performed research and prepared the reports that were submitted in support of the designation of the Western Run Historic District. (*Id.*, pp. 35-36, 41.) Mr. Wollon included in the District the structure that is now the Oregon Grille because it is a very old structure associated with a very important industry of the 19th century, the iron ore business. (*Id.*, pp. 43-44.) The building was first constructed in the 1840's or 1850's. (*Id.*, p. 40; Protestants' Ex. 5, p. 2.) In his 1976 report, Mr. Wollon stated that the building "is one of the most interesting buildings in the region, primarily because of its many special uses and its almost total lack of alteration. It probably served as a tavern, post office, store, office and possibly a dwelling in its heyday." (Protestants' Ex. 6.)

Mr. Wollon testified that Petitioner's proposed outdoor events and proposed expanded parking lot are inconsistent with the spirit and intent of the Western Run Historic District. (*Id.*, pp. 49-50.) Mr. Wollon explained that the Oregon Grille is a landmark structure located at the entrance of gateway to the historic district. The tents that Petitioner proposes to erect will be highly visible and very obvious to the public as they enter the District. (*Id.*, p. 50.) In Mr. Wollon's opinion, the proposed outdoor use and parking lot will have a "very, very negative" impact on this historic site. (*Id.*, p. 51.)

During direct examination of Mr. Wollon, Protestants introduced a GIS map showing, in green shading, all of the historic districts in Baltimore County and showing, by red dots, all of the individual

[7] Mr. Kellman did not know whether the Oregon Grille is located in a historic district. (Ex. 5, p. 151.)

historic sites in the County. (*See* Protestants' Ex. 7; ex. 13, p. 45.) The GIS map also depicts, in pink shading, all of the R.C.4 zoned property in the County. (Ex. 13, p. 46.) Any areas having R.C.4 zoning, and which are located in a historic district, are shown in blue shading. (*Id.*) As Mr. Wollon explained, other than the area in which the Oregon Grille is located, there are no other blue shaded areas in the Western Run Historic District shown on the GIS map; in other words, there are no other R.C.4 zoned properties located in the District. (*Id.*, pp. 47-48.)

Mr. Wollon testified that this same negative impact would not result if the proposed outdoor use and parking lot were located in other R.C.4-zoned (pink shaded) areas in the County. Further, the same negative impact would not occur in other R.C.4-zoned properties that are not in a historic district and where there is no historical building. (*Id.*, pp. 51-52.) Moreover, the impact of the proposed use and expanded parking would be greater at the Oregon Grille than it would be in other areas zoned R.C.4 which are in a historic district but do not contain an historic structure. (*Id.*, pp. 55-56.) Indeed, due to the high visibility of the Oregon Grille at a major entrance to the District, the negative impact would even be greater at this site than in other areas of the County which contain historic buildings and are in a historic district. (*Id.*, p. 53.)

Mr. Wollon identified the historic residence of the late Mr. and Mrs. Fisher on Western Run Road as one example of a property in a R.C.4 zone where the impact of the proposed expanded use and expanded parking lot would be less than it would be at the subject site. (*Id.*, pp. 53-54.) Mr. Wollon explained that the impact would be less because the Fisher property is not located at such a traveled intersection and is not so visible to the public. (*Id.*, p. 54.)

On cross-examination, Mr. Wollon confirmed that the negative impact of the tents and proposed additional parking would not be removed if the tents were erected and taken down periodically. (*Id.*, pp. 67-68.)

3. Richard Klein

The Petitioner's Special Exception is located on a 2.63 acres of R.C.4 land in Baltimore County. Richard Klein reviewed certain tax maps and a G.I.S. map of R.C. 4 land in Baltimore County in order to compare the size of the lot that the Petitioner is leasing from Baltimore County with the size of other R.C. 4 lots in the R.C. 4 zone. Protestants' Exhibit 24 is Tax Map 15 of land in the vicinity of Petty Boy Reservoir. Protestants' Exhibit 25 is Tax Map 43 depicting the Jacksonville area just north of Loch Raven reservoir. These two tax maps contain 65 R.C.4 parcels greater than 4 acres. (*See* Transcr. of Mr. Klein's Testimony attached as ex. 14, p. 63). Thirty-eight (38) of the 65 parcels have road frontage. (*Id.* at 64). Forty-two (42) of the 65 parcels had structures. (*Id.*, p. 67).

Mr. Klein testified that according to the Maryland Department of Assessments and Taxation, the Petitioner's land totals 2.63 acres. (*Id.*, p. 60). In contrast, the sixty-five lots had an average size of 28 acres. The center of the Petitioner's property is 120 feet from its border. (*Id.*, p. 62). Only one of the sixty-five parcels has a distance of less than 120 feet from its center to its border. (*Id.*, p. 82). Protestants' Exhibit 28 is a chart summarizing Mr. Klein's testimony on these points.

4. Martha Popst and Dennis Sutton

Martha Popst, a resident of the neighboring Greencroft community, testified that very small children play on a field near the intersection of Shawan and Beaver Dam Roads. (*See* Transcr. of Ms. Popst's Testimony attached as ex. 15, p. 6). She also explained that cars traveling westbound on Shawan Road encounter a "total blind spot" as they approach the intersection. (*Id.*). Cars traveling

southbound on Cuba Road travel through the green light at Shawan Road at "at least thirty to forty miles [per hour]." (*Id.*, pp. 14-15). There is also "congestion" at the intersection. (*Id.*, p. 7)

Dennis Sutton, the representative of the Falls Road Association, testified that, "more traffic at the intersection will exacerbate an existing problem that's not being remedied...." (*See* Transcr. of Mr. Sutton's Testimony attached as ex.16, p. 83). Patrons leaving the parking lot of the facility cannot see the vehicles that turn south off of Shawan Road onto Beaver Dam Road. (*Id.*, p. 86). "Sitting at the entrance to or exit to Kurtz Lane, if the light is green and there is traffic flows coming across Cuba Road, you do not see[] any car until it actually hits about to the center line of Shawan Road, In other words, if you're at this exit ... on Kurtz Lane, and you're looking towards Shawan Road, you cannot see cars stopped on the other side of the intersection at the stop bar." (*Id.*, pp. 86-7). Protestants' Exhibit 10 illustrates that a driver of a vehicle at the facility's exit cannot see a car stopped on Shawan Road. (*Id.*, pp. 88-90).

5. <u>Other Lay Witnesses</u>

In addition to Ms. Popst and Mr. Sutton, other lay witnesses testified in opposition to Petitioner's proposal, namely David Suarez-Murias, Henry Jenkins, and Kathleen Pontone. Julia Calhoun and Marsha Goldberg were present at the hearing and counsel for Protestants was permitted to proffer their testimony would be duplicative of the other lay witnesses. In addition, other lay persons opposing the requested relief were present during the hearing. Their names appear on the sign-in sheet.

IV. ARGUMENT

A. Under Principles Of *Res Judicata*, The Board's Decision In 1995 Precludes Petitioner From Seeking The Relief Requested

Principles of *res judicata* apply to decisions by administrative agencies that are empowered to act in an adjudicatory capacity, including agencies that hear zoning matters. *See Woodlawn Area Citizens Ass'n v. Board of County Commr's of Prince George's County*, 241 Md. 187, 193-95 (1966); *Board of County Commr's of Cecil County v. Racine*, 24 Md. App. 435, 447 (1975).[8] The fact the agency's decision was not ultimately approved or disapproved by a court of law does not prevent application of *res judicata*. *Racine*, 24 Md. App. at 444. Thus, "[a]n unreversed final decision by a zoning board, passed in the exercise of its discretion upon issues of fact or upon mixed issues of law and fact are fully binding upon the parties to the cause and their privies as to all issues determined thereby." S. Abrams, *Guide to Maryland Zoning Decisions*, p. 122 (1992) (*citing Racine*).[9] The doctrine of *res judicata* "applies not only to the issues expressly decided in the prior case between the same parties, but to every matter which might have been presented in that prior case." *Garrett Park v. Montgomery County Council*, 257 Md. 250, 257 (1970).

In its February 8, 1995 Order, the Board expressly held that Petitioner was prohibited from using the outdoor area at the Oregon Grille for anything other than serving dinner or pre-dinner cocktails. Specifically, the Board held:

> 3. The alternative outdoor dining areas/patio locations... shall only be utilized for dining or pre-dinner cocktail, so long as patrons are subsequently served dinner, and shall be limited in quantity to 125

[8] De novo hearings before the Board are clearly adjudicatory in nature. *See* BCZR section 501.6 (providing that appeals to the Board are *de novo* and all parties shall have the right to be represented by counsel, produce witnesses, and submit oral and written evidence); *see also* BCZR, app. H at Rules 4, 7 (describing conduct of hearings and rules of evidence); BCZR, app. G at Rule L (hearings before the Zoning Commissioner are "quasi-judicial in nature").

[9] Maryland rejects "any distinction between determinations of questions of fact and errors of law in the application of the doctrine of res judicata to judgments of courts of competent jurisdiction." *Racine*, 24 Md. App. at 449.

persons. There will be no outdoor bars, live music, tents or similar overhead coverings on or serving the outdoor dining area....

4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property.

(Ex. 2, p. 6 at ¶¶ 3, 4.)

These prohibitions were not imposed lightly or by mistake. Before the Deputy Zoning Commissioner, Petitioner specifically requested approval for this additional use of the outdoor terraces. (Ex. 1, pp. 3, 9-10.) The Valleys Planning Council and others opposed the request on the ground, *inter alia*, that the proposed use constituted "catering" which was not permitted in a R.C.4 zone. The Deputy Commissioner expressly agreed with the protestants' position and held that "catering private parties, special events or weddings outside should not be permitted." (*Id.*)[10]

Petitioner did not appeal the Board's decision, yet now seeks to conduct these very same activities. Petitioner proposes hosting weddings and similar events, having up to 225 guests at these functions, and having an outdoor bar, live music, and tents. Simply put, the Board's prior decision precludes it from revisiting this issue and granting the requested relief.

Petitioner may attempt to argue that things have changed since the Board's decision in 1995. Under principles of *res judicata*, the Board may reverse a prior decision only when it was "the product of fraud, surprise, mistake or inadvertence" or when there has been a "significant and substantial change" of conditions. *Racine*, 24 Md. App. at 449; *Woodlawn*, 241 Md. At 197 (same). No evidence supports any fraud, surprise, mistake or inadvertence by the Board.

[10] As explained in part IV.C. *infra*, the Deputy Commissioner further held that the outdoor dinner seating proposed by Mr. Bauer was a permissible accessory use to a restaurant. By implication then, the Deputy Commissioner found that the proposed catering use was *not* an accessory use.

Moreover, little, if any, evidence was presented at the hearing to support a change, much less a significant and substantial change, in the area surrounding the Oregon Grille. Indeed, the only evidence produced by Petitioner that remotely pertains to this issues was the testimony of Mr. Kellman, who was specifically asked what changes have occurred in the area of the Oregon Grille. (Ex. 5, pp. 108-09.) Mr. Kellman's response was that Hayfields Country Club and Shawan Downs have been developed since the Board's decision in 1995. His response, in its entirety, was as follows:

> Q. Mr. Kellman, are you familiar with whether or not this area around Oregon Grille has changed in the last eight years?
>
> A. Yes, I am.
>
> Q. Can you tell us, do you have an opinion as to whether or not it has changed? And then I will ask you how.
>
> A. It has changed. I mean, I know with Shawan Downs coming into the area, that's one of the items that has caused some change.
>
> Hayfields itself has changed the area. Hayfields, in addition to being a country club and golf course, does have residential dwellings, so there has been an increase in some – I would say commercial uses – and also residences out in the area.

(*Id.*)

Although Mr. Kellman identified an increase in "some" residential and commercial uses, he failed to provide any detail whatsoever. Mr. Kellman, for example, did not state how much increase in commercial or residential uses has taken place since 1995, or how many such uses have been developed. More importantly, Mr. Kellman failed to provide any information regarding *how* the putative increase has changed or otherwise affected the area surrounding the Oregon Grille. Clearly, Mr. Kellman's cursory testimony on this important issue does not suffice.

Further, the two "changes" cited by Mr. Kellman are legally irrelevant. As Mr. Dillon testified, the development of Hayfields and Shawan Downs was permitted by the RC2 zoning classification on those properties. (Ex. 11, 187-88.) Development of a surrounding area in conformity with its zoning regulations is not a significant and substantial change in circumstances warranting rejection of *res judicata* principles. *See Heller v. Segner*, 260 Md. 393 (1971) (rejecting argument that there was a significant and substantial change in conditions where the changes constituted a permitted intensification of use under existing ordinances); *Agnesland, Inc. v. Lucas*, 247 Md. 612 ("It is well recognized that the location in a residential zone of improvements of a character permitted by the ordinance, even although not necessarily compatible with a residential development, is not the type of change of character of a neighborhood which will justify reclassification")

Moreover, by using the 1995 and 2000 GIS maps (Protestants' Exs. 21 and 22), Mr. Dillon demonstrated that there have been no other changes in the area surrounding the Oregon Grille since 1995. (Ex. 11, pp. 181-88.) Mr. Dillon also confirmed that, other than the *down*-zoning of some property along the stream systems south of Oregon Ridge Park, there have no changes in zoning in the area surrounding the Oregon Grill. (*Id.*, pp. 179-81.)

In sum, the Board's 1995 Order must stand. If the Order is disregarded, and Petitioner's second bite at the same apple is successful, then any petitioner could avoid the *res judicata* effect of this Board's decisions by simply re-filing the same petition with the Commissioner and seeking the very same relief in the context of a new proceeding. In the present case, where there has been no substantial change in conditions, this is precisely what Petitioner is attempting to do.

Petitioner seeks to avoid the Board's 1995 Order and its *res judicata* effect by cleverly requested that the Board "amend" restrictions 3 and 4 in the Order, which prohibit him from hosting these outdoor

events. In doing so, Petitioner is asking the Board to make the false assumption that the restrictions were imposed as limitations on a *permitted* use rather than restrictions against an *impermissible* use. The distinction is subtle, but critical. If the former were true (that is, the Board held catering was permitted in an R.C.4 zone, but imposed the restrictions to limit the intensity of the use), then a change in the circumstances might warrant Petitioner asking the Board to "amend" the limitations. But that, of course, is not what happened. The restrictions were imposed, initially by the Deputy Zoning Commissioner, "in order to insure that the proposed outdoor seating area is *properly* utilized...." (Ex. 1, p. 11) (emphasis added.) The Board's Order is not a special exception ruling that can be changed by "amendment" of restrictions 3 and 4, but rather is an order that has full *res judicata* effect.[11]

B. The Board Lacks Authority To Grant The Special Exception Relief And Variance Requested Because Petitioner Does Not Own Or Lease The Land

The petition for special exception filed by Petitioner seeks to expand the area supporting the Oregon Grille to include an additional parking lot on a .47 acre parcel to the west of the property. Petitioner also seeks a variance from Section 409.8.A.2 of the BCZR, which would require that the proposed parking lot have a durable and dustless surface.

The .47 acre parcel which is the subject of Petitioner's special exception and variance relief is not part of the property Petitioner leases from Baltimore County. (*See* ex. 3, p. 136; *see also* Protestants' exs. 30, 31.) Petitioner has no legal, leasehold, or other interest in the parcel and, therefore, is not an "interested person" such that the Board has authority to adjudicate the Petitioner's requested relied. *See* Md. Code

[11] Protestants recognize the authority of the Zoning Commissioner and the Board of Appeals, in granting a special exception, to impose conditions or restrictions. *See* BCZR, art. 5, section 502.2. This is not, however, what the Deputy Commissioner

Ann., Art. 25A, section 5(U) (empowering county to enact laws to create a board of appeals and to give board the authority to render decisions "on petition by any interested person"). Stated differently, the special exception and variance relief requested by Petitioner is not ripe. *See Hickory Point Partnership v. Anne Arundel County*, 316 Md. 118, (1989) (action is ripe when "'there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded.'") (citations omitted); *see also Hatt v. Anderson*, 297 Md. 42, 26 (1983) (to address issues which are non-justiciable because they are not ripe "would place courts in the position of rendering purely advisory opinions, a long forbidden practice in this State").

Petitioner also is not an "aggrieved person" so as to grant it standing to file this appeal. *See Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 497 (2003) ("the 'aggrieved person' standard is a two-part test in which the plaintiff first must show that he has a *personal or property interest* that will be adversely affected by the zoning decision and then must show that the harm to that interest from the zoning decision is distinct from the harm to the general public from the zoning decision") (emphasis added). Petitioner has no personal or property interest in the land which is the subject of its appeal. For these reasons alone, Petitioner's special exception and variance should be denied.

C. The Outdoor Events Proposed By Petitioner Are Not Permitted In A R.C.4 Zone Either As A Principle Use Or An Accessory Use

1. The proposed use is a "catering hall" which is not permitted in a R.C.4 zone

A "catering hall" is defined in the zoning regulations as follows:

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did in his 1994 decision, nor what this Board did in its 1995 Order.

> A facility or part of a facility used regularly for serving beverages and food to groups which reserve the facility for banquets or gatherings before the day of the event. A catering hall is not a standard restaurant.

BCZR, section 101. "Catering halls" are permitted only in a few commercial zones, namely the BM, BR, RAE1 and RAE2 zones. *See* section 233.2; *see also* section 233.1, .2A and 230.4.

The outdoor events proposed by Mr. Bauer meet every part of this definition: Mr. Bauer proposes using "part of" his facility for the outdoor events; he proposes serving "beverages and food to groups"; he proposes doing so regularly; he intends on having "banquets" and "gatherings"; and, finally, his guests must "reserve the facility ... before the day of the event." Clearly, the proposed use falls squarely within the definition of "catering hall."'

This reading of "catering hall" is consistent with the ruling of the Board in the nearly identical case of *In re: Mark Greene (Manor Tavern)*, Case No. R-91-115. In that case, the owner of the Manor Tavern filed a petition for special hearing to determine whether the RCC zoning classification would permit him to have banquet and wedding receptions at an outside garden area. (*See* Bd. of App. decision attached as ex. 17.) Carl Richards, the Zoning Coordinator for Baltimore County, testified that the "long-established administrative practice by the Zoning Commissioner's office classifies catering as a 'commercial recreation enterprise,' and requires that it be placed in the B.M. or B.R. zone, which permits such use as a matter of right...." (*Id.*, p. 10.) Mr. Richards added that he took the matter before the Zoning Commissioner who determined that the proposed use constituted "catering" and would require BM zoning. (*Id.*, p. 6.)

The Board denied the petition for reclassification, holding that "no persuasive argument exists for allowing an R.C.C. zone for the purpose of permitting a new, outdoor wedding reception use." (*Id.*, pp. 9-10.) The Board stated that the evidence was "very clear that catering is not allowed in the B.L. or the R.C.C." (*Id.*, p. 10.) The Board explained as follows:

> *Consideration shows that catering does properly belong only in the heavier commercial zones, namely, B.M. and B.R.* Wedding receptions, large parties, catered affairs, by their very nature, attract a large number of persons who primarily arrive at a party and leave a party at approximately the same time. Also, such wedding receptions and parties even when held indoors, usually involve music, and loud talk.... It would be inappropriate to allow the [Manor Tavern to use its] outdoors for catering to its already large indoor restaurant use, thus, in effect, having an *outdoor catering hall* and a large restaurant, with a large parking area in between. The R.C.C. zone was never meant to be so used, and we believe it would be wrong to so use it, and contrary to its legislative intent.

(*Id.*, p. 11) (emphasis added.)[12]

The *Manor Tavern* case is instructive in three respects. First, the Board of Appeals found that a similar use to the use proposed by Mr. Bauer was "catering" – indeed, the Board stated that such a use would constitute a "catering hall."[13] Second, the Board found that catering was a "commercial recreation enterprise" that belonged only in "heavier commercial zones." Third, the Board held that catering was not a permissible use in a RCC zone, which is a more intense zoning classification than the R.C.4 zone in the present case. *Compare* BCZR section 1A03 (governing R.C.4 (watershed protection) zone) *with* BCZR section 1A06 (governing RCC (commercial) zone).

Significantly, Petitioner's own zoning expert, Mr. Kellman, agrees that the events Mr. Bauer proposes constitute "catering." (Ex. 5, p. 127.) Mr. Kellman also concedes that the proposed outdoor events meet all elements of the definition of "catering hall", with one exception; he does not believe Mr. Bauer proposes to do host these events "regularly." (*Id.*, p. 133.) Mr. Bauer, however, proposes to not only have 15 evening events per year (*i.e.*, more than one a month), but also an unlimited number of daytime or

[12] As discussed further below, the Board of Appeals in the *Manor Tavern* case also held that the proposed outdoor use was not an accessory use. (*Id.*, p. 11.)

[13] At the time of the *Manor Tavern* case, the definition of "catering hall" was not yet enacted in the zoning regulations. The timing of the *Manor Tavern* decision, however, suggests that the County Council's enactment in 1993 may have been influenced by that decision.

early evening events. Conceivably, Mr. Bauer could host an event three or four times a week, or more. Clearly, this would constitute "regular" catering.

According to Petitioner's "catering" expert, Ms. Miller, the proposed outdoor events would not constitute catering because the food is prepared "on site" and the Oregon Grille would simply be "turning over [the] restaurant to accommodate an affair." When pressed by the Board on this issue, Mr. Miller stated that one engages in "catering" when the food is prepared elsewhere and brought to the place of the event. This definition of "catering" is nonsensical.

First, Ms. Miller's definition does not take into consideration such establishments as Martin's West, which prepare food on-site and serve guests there as well. And second, it would make no sense for a "catering hall", under Ms. Miller's definition, to be excluded from non-commercial zones such as R.C.4, yet those same zones permit the preparation of large amounts of food, and the service of large numbers of people, on-site. This level of intense commercial activity, in one location, is precisely what distinguishes a catering hall from a restaurant. Third, Ms. Miller's definition ignores the fact that the very establishments she so thoroughly researched, themselves, characterize their hosting of such events as catering. None of these establishments, however, is in an R.C.4 zone.

In sum, the use proposed by Mr. Bauer meets precisely the definition of "catering hall." Although the use of the term "hall" in "catering hall" arguably suggests a separately housed facility dedicated to that purpose, the definition itself clarifies that only "part" of a facility need be used for catering to meet the definition. Further, Protestants' position does not ignore the restaurant use at the Oregon Grille. As Mr. Dillon testified, the zoning regulations contemplate a combined restaurant/catering hall in certain commercial zones, namely the BM, BL, RAE1 and RAE2 zoning classifications. The proposed events must be limited to those zones.

2. Even if not a "catering hall," the proposed use is not an "accessory use"

An "accessory use or structure" is defined in the zoning regulations as follows:

> A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principle use or structure served....

BCZR, section 101.[14]

Mr. Bauer's own description of the outdoor events he intends on hosting, and the other evidence at the hearing, amply support that the proposed use fails parts (a), (b) and (d) of this definition.

First, the hosting of weddings, banquets, and other large gatherings is not "customarily incident" to a restaurant in an R.C.4 zone. Although other restaurants in commercial zones in Baltimore County may host such events, legally or illegally, none of these restaurants are converted restaurants in an R.C.4 zone. Indeed, as both Mr. Kellman and Mr. Dillon confirmed, there are no converted restaurants in any R.C.4 zone in Baltimore County. (Ex. 5, pp. 128-29; ex. 11, pp. 167, 172-73.)

As Mr. Dillon explained, when determining whether a use constitutes an accessory use, you have to look at what is customarily incident to uses in that particular zone and *not* what is customarily incident to uses in other zones. (Ex. 11, pp. 167-69.) Each zoning classification was created for a different purpose and has its own use and bulk regulations, and whether a use in that zone is "incident" to a permitted principal use in that zone has little, if any, relevance to other zones.[15]

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[14] The proposed use is not among the enumerated accessory uses permitted in a R.C.4 zone. *See* BCZR sec. 1A03.3.A.9.

[15] Notably, the definition of "Standard Restaurant" identifies only two specific accessory uses – a brewery and carry-out service – and not catering. *See* BCZR, section 101.

Second, the proposed outdoor events would not be subordinate in purpose to the principle use. Mr. Bauer testified that when there is an outdoor event, he does not intend to have his dinner guests outside. There will be separate menus for the outdoor events and a separate service staff may be dedicated to the events. There will be a separate outside bar and the dress code may be different. The outdoor events may even take place during hours when the restaurant is not open. Thus, the outdoor events, in nearly all respects, will be separate functions serving separate guests and, thus, serve a separate purpose.

The outdoor events will not be subordinate in either extent or area. Mr. Bauer intends to have events with 225 guests, which is greater than the capacity of the entire restaurant. Moreover, Mr. Kellman estimated that the area that would be used for the outside events (including the terraces, gardens other accessible areas) is approximately 4000 square feet. In comparison to the 5,300 square feet comprising the first and second floors of the restaurant, the area that would be used for the outdoor events is clearly not subordinate.

Third, the outdoor events would not contribute to "the comfort, convenience or necessity" of the principal use. The purpose of the events would be to serve guests at those events, not to serve the customers having lunch or dinner inside the restaurant. Indeed, as Mr. Dillon testified, and as common experience tells us, the proposed events might even be an inconvenience or nuisance for the guests inside the restaurant.

Mr. Kellman maintains, however, that the outdoor events are an accessory use because "this is a convenience for Mr. Bauer's customers." (Ex. 5, p. 96.) Mr. Kellman misinterprets subsection (c). The proper analysis is *not* whether Mr. Bauer's customers at-large, or some hypothetical customer pool, might enjoy having a wedding at the Oregon Grille. Rather, the question is whether an outdoor event will contribute to the comfort, convenience or necessity of the guests who will actually be having lunch

or dinner at that time inside the Oregon Grille. Surely, the inside guests would not benefit in any way by the large number of people outside and the increased level of noise that would emanate from outside.

The *Manor Tavern* case is instructive. There, the Board held that the proposed outdoor reception area was not an accessory use to the restaurant. (Ex. 17, p. 11.) The Board noted that the outdoor reception area is not among the specified accessory uses in the RCC zone. The Board further stated that the outdoor reception area was not "customarily incident" to restaurants in Baltimore County. The Board noted that the new outdoor operation "can hardly be considered accessory to the restaurant business, particularly when done on a regular basis, advertised as a wedding and party catering business." (*Id.*)

Smith v. Miller, 249 Md. 390 (1968), also is instructive. In that case, the applicant sought to construct sawmill in an agricultural district (which only permitted, *inter alia*, the processing of dairy products and farm products). Sawmills were permitted only in general industrial district). The Board of Appeals allowed the sawmill use on the ground it was similar to the special exception uses permitted in agricultural district (*e.g.*, timber is a farm product). *Id.* at 901. The Court of Appeals, however, held that, to allow sawmill in agricultural district would open that district to any industrial development *remotely connected* with the processing of farm products and would *make meaningless* those provisions which attempt to confine sawmills to general industrial district. *Id.* at 902. The zoning ordinance, the Court held, must be considered as a whole; the Board cannot rely upon a special exception provision to permit in an agricultural district a use which the ordinance manifestly intended to confine to a general industrial district. *Id.* at 902-03.

In the present case, catering is permitted only in the BM, BL, and RAE commercial zones. The Board should not ignore this fact and allow, by special exception, a use that is clearly confined to other zones.[16] For all these reasons, Petitioner's proposed use is not an accessory use.

D. The Proposed Use Fails To Meet The Factors In Section 402.3 Governing Buildings Converted To Restaurants

Restaurants are permitted in a R.C.4 zone only by special exception and only as "provided in Section 402.3." *See* BCZR, sec. 1A03.3.B.5. Section 402.3 requires converted restaurants to meet the following requirements:

> A. Meals may only be served at tables, indoors or on an outdoor terrace, and not to persons remaining in cars.
>
> * * *
>
> D. Service shall be provided only at mealtimes.

Section 402.3 is a "very narrow" and "tightly written section of the code." (Ex. 11, p. 155; ex. 12, p. 9.) It is set forth in the "Special Regulations" article of the BCZR, the purpose of which is as follows:

> Certain uses, whether permitted as or right or by special exception, have singular, individual characteristics which make it necessary, in the public interest, to specify regulations in greater detail than would be feasible in the individual use regulations for each or any of the zones or districts. This article, therefore, provides, such regulations.

BCZR, section A400.

Petitioner proposes to host events where the food would be served buffet-style or where only hors d'oeuvres would be served butler-style. Such events would violate subsection A of 402.3 because this would not constitute service "*at* tables." Moreover, hors d'oeuvres would not constitute a "meal."

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[16] Indeed, to allow catering as an accessory use in an R.C.4 zone would authorize a use not permitted in even more intense zones. *See e.g.* BCZR, sec. 205.3A3c, 206.3A3(5) (permitting restaurants in OR zones, but without dancing or live

According to Mr. Kellman, subsection A of 402.3 does not require the service of meals of tables; the only thing subsection A prohibits is the serving of meals to people in cars. This is an unreasonable interpretation that renders the remaining language in that section ("meals may be served only at tables, indoors or on an outdoor terrace") entirely superfluous. It is a fundamental principle of statutory construction that the legislature meant the words it used and intended that they have meaning. If the County Council intended only to prohibit service to people in their cars, then that is all the regulation would provide. "Absent a clear indication to the contrary, a statute, if reasonably possible, is to be read so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless, or nugatory." *Management Personnel Servs., Inc. v. Sandefur*, 300 Md. 332, 341 (1984); *see also Bridges v Nicely*, 304 Md. 1, 10-11 (1985) ("where the language of a statute is clear, courts may not insert or omit words to make the statute express an intention not evident in its original form."). Indeed, if Mr. Kellman's interpretation were correct, then the uses permitted at a standard restaurant (whose definition requires "serving meals and beverages to *persons seated at tables*") would be more restrictive than those at a converted restaurant. Petitioner's reading of section 402.3A should be rejected.

Petitioner's interpretation of subsection D of 402.3 is equally strained. Mr. Kellman testified that "mealtimes" are "really anytime" a person eats food. Mr. Bauer similarly testified that a "mealtime" is "whenever someone is ready to eat." (Ex. 3, p. 180.) Yet again, Petitioner's interpretation renders the regulation's language superfluous. If the County Council intended "mealtimes" to mean any time people may eat (i.e., during all waking hours or 24 hours a day), then why include subsection D at all? Mr. Dillon's interpretation is eminently reasonable – subsection D limits food service at converted restaurants to standard mealtimes, or when people commonly understand mealtimes to be.

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entertainment).

Thus, even if Petitioner's proposed use does not constitute a "catering hall," it still should not be permitted in this R.C.4 zone because it would violate the strictures of Section 402.3. For this additional reason, the special exception relief requested by Petitioner should be denied.

E. The Special Exception Relief Requested By Petitioner Should Be Denied Because All 502.1 Factors Are Not Met

Section 502.1 of the BCZR requires the Board to find that all nine of its factors are met. Protestants submit that Petitioner has failed to meet its burden of proof on all factors, but particularly factor A, G, H and I.

1. The existing and proposed parking lots far exceed the 10% permeability limit in section 1A03.4.B.3

Subsection H requires that Petitioner's demonstrate the proposed use is not inconsistent with the permeable surface provisions of the zoning regulations. Section 1A03.4.B.3 of the BCZR provides that "no more than 10% of any lot in an R.C.4 Zone may be covered by impermeable surfaces...." Petitioner cannot meet its burden with respect to this factor. Petitioner's own expert, Mr. Main, conceded that the existing parking lot at the Oregon Grille is an impervious surface and that proposed parking lot will be impervious as well. Mr. Main further conceded that, including the proposed parking, roughly 50-60% of the entire property at the Oregon Grille would be impervious. Mr. Dillon calculated the impermeable surface area to be as much as 80%, taking into consideration the building area itself, the outside terraces and stone walkways. Regardless of which figure the Board applies, it is a matter of undisputed fact that Petitioner's proposed use violates Section 1A03.4.B.3 and, therefore, fails factor H in Section 502.1. Moreover, the proposed use violates factor G because the purposes, spirit, and intent of the R.C.4 zone – as expressed in its unique permeability requirement – have been violated.

Mr. Kellman testified that, in calculating whether the 10% maximum impermeable surface requirement is met, he would look to the entire 430 acres of the Oregon Ridge Park, rather than the 2.63 acres where the Oregon Grille is located. (Ex. 5, p. 107.) Mr. Kellman determined that 9 acres of the 430 acres comprising the entire Oregon Ridge Park, or 2%, has impermeable surface. According to Mr. Kellman, the Oregon Grille is a "minimal" part of that percentage. (*Id.*, p. 108.) Stated differently, it is Mr. Kellman's contention the proposed parking lot would have to be 43 acres in area in order for it to exceed the 10% impermeability maximum. (*Id.*, pp. 146-47.) Mr. Kellman does not believe Petitioner's proposal is inconsistent with the permeability requirements in Section 1A03.4.B.3. (*Id.*, pp. 106-07.)

Mr. Kellman's interpretation of Section 1A03.4.B.3 is strained and unreasonable. Applying the 10% maximum to an entire 430-acre parcel, particularly one owned by the County and leased to various persons, would lead to inconsistent and arbitrary results. For example, a person whose leased premises contained little or no impervious surface would be subject to the uses other lessees might put to their property. Moreover, the obvious purpose of Section 1A03.4.B.3 is to protect the watershed from any one particular use. This purpose is evidenced by the requirement in 502.1H that the proposed "use" be consistent with the permeability provisions. In determining whether the 10% maximum is exceeded, the Board should look to the amount of impervious surface at the property leased by Petitioner and the effect on the watershed there.

2. *The well on the subject property violates applicable environmental regulations*

Petitioner's environmental expert, Mr. Sheesley, explained that the governing regulations require that there be a least 100 feet between any well and any stormwater device. (Ex. 8, p. 117). Mr. Sheesley conceded that the well on Petitioner's property is only two or three feet away from the proposed storm

water spillway, and acknowledged that a variance has not been sought. (*Id.*, pp. 56, 118). Indeed, Mr. Sheesely admitted there was no legal basis for the Board to ignore the 100-foot requirement. (*Id.*, p. 120). Petitioner's proposed use violates factor I in Section 502.1 because violation of the applicable environmental regulations is *a fortiori* detrimental to the environmental and nature resources of the site.

3. The proposed use is inconsistent with the purposes, spirit, and intent of the R.C.4 zone

Section 402.3 advances the purposes, spirit and intent of the R.C.4 zone by limiting the intensity of commercial activity at converted restaurants. By violating section 402.3 (*see supra*), the proposed use is inconsistent with the purposes, spirit and intent of the R.C.4 zone and, therefore, fails factor G in Section 502.1.

4. The noise generated by the proposed use will be detrimental to the general welfare of the locality involved

Petitioner's sound expert, Mr. Peppin, acknowledged that the noise level at the property line will be 75db, which exceeds both the daytime and nighttime standards set forth in COMAR 26.02.03.03D(2). Ex. 6, pp. 154-56.) As a matter of law, the noise level will be detrimental to the general welfare of the locality involved and, therefore, factor A in Section 502.1 is not met.

F. The Special Exception Should Be Denied Because Petitioner Did Not Meet Its Burden Of Proving The *Schultz v. Pritz* Test

As the applicant for a special exception, Petitioner had the burden of proving not only that the proposed use would meet the "prescribed standards and requirements," but also that there are no facts and circumstances about the particular use proposed at the particular location that would lead to "adverse effects, above and beyond those inherently associated with such a Special Exception used irrespective of its location with the zone." *Schultz v. Pritz*, 291 Md. 1, 11-12, 22-23 (1981). *See also, Moseman v.*

Prince George's County Council, 99 Md. App. 258, 266 (1994) (stating, "appellant must address the adverse effect this proposed rubblefill might have on this particular area as opposed to elsewhere in the zone"). In *Sharp v. Howard County*, 98 Md. App. 57, 83 (1993), the Court of Special Appeals distilled the Special Exception inquiry into a simple question: Whether there are "sufficient localized circumstances that render[] the adverse [impact] also inherent in this particular use, uniquely adverse." (*citing Board of County Commissioners v. Holbrook*, 314 Md. 210 (1988)).

The categories of "localized circumstances" addressed by courts in Special Exception cases have included noise, traffic safety, runoff, and historic district impacts. Courts have considered the characteristics of the site and of the public roads and properties off-site. In *Holbrook*, for instance, the applicant sought a Special Exception for a trailer. The Holbrook trailer was sited in the open, in view of the neighbors. The Holbrook property lacked vegetation to screen the use as sited, and a level topography also did not obscure it. The Court of Appeals found these facts sufficient to support the Board's denial of the Exception. *Sharp*, 98 Md. App. at 883 (summarizing case).

In *People's Council v. Mangione*, 85 Md. App. 738, 753 (1991), the applicant sought to build a nursing home in a residential neighborhood. The evidence was that the additional traffic, run-off and smells would burden the neighborhood, which lacked adequate arterial streets and which would receive run-off from that uphill use. The Court of Special Appeals, affirming the Board's action, found that the proposed nursing home would have a "particular adverse impact" on the neighborhood.

The Baltimore County Board of Appeals (Marks, Stahl, and Melvin) recognized these principles in *In the Matter of Edgar Lucas*, Case No. 98-294-SPHA. That case involved, among other things, noise and historic district impacts. That applicant sought a Special Exception to operate an airport on R.C. 2 land in Green Spring Valley. John McGrain testified that the land in question was within the 4,800 acre

Historic District. (Opinion at 13). Paul Solomon testified that there were 129,000 acres of R.C. 2 land in all of Baltimore County. The R.C. 2 land in the Greenspring Valley was a small portion of all the R.C. 2 land in Baltimore County. (Opinion at 20).

The *Lucas* Board found as fact that the impact of the proposed use would be greater at the proposed site than elsewhere in the R.C. 2 zone for several reasons, including two that are relevant here. (Opinion at 45). First, the Board concluded "that the impact upon the National Historical District would be greater in the Greenspring Valley than if located in other northern areas of the R.C. 2 zone." (Opinion at 56). In doing so, the Board noted that the Greenspring Valley constituted a small percentage of all the R.C.2 land in the County. (Opinion at 47-8). The Board also credited and summarized the admission of the applicant's expert:

> a similar operation could be conducted where the problem of noise pollution does not contaminate a neighbor's property line ... and could be placed in other areas of Baltimore County where the land was zoned R.C. 2. He also opined that the plume of noise pollution, even if only 15 feet, is greater on the [adjacent] property than the effect on the neighboring properties where the plume of noise pollution does not cross the property line.

(Opinion at 8-9). The Court of Special Appeals affirmed the Board's decision. *Lucas v. People's Counsel for Baltimore* County, 145 Md. App. 721 (2002).

This case contains four categories of impacts; they are sufficient both separately and cumulatively. The historic district, noise, runoff, and traffic safety impacts of this proposed use will have a particularly adverse affect on the health, safety, and welfare of the residents of this rural area. Furthermore, as to several, there is no evidence that the impacts that would occur here are inherent in the expansion and event use sought by the Applicant.

1. Historic District Impacts: Petitioner's site lies in the Western Run Historic District and in the RC 4 zone. Furthermore, this site is uniquely located at the gateway to the historic district. Mr. Wollen testified that the erection of large tents and the construction of a large parking lot would have a severe impact on the appearance of the site as an entry to the District. These impacts would not occur elsewhere in the zone, where there is not a historic district or where there is not a historic site.

2. Noise: Petitioner had the burden with regard to noise. First, under *Schultz*, it had to prove the legality of the use. Then, secondly, it had to prove either that the noise inherent in the use would have no impact or that its adverse impacts would be no greater at the proposed site than they would be elsewhere in the same zone. Petitioner proved neither: This operation would generate an illegal level of noise and, because of the small size of the lot, it would have unusually severe impacts on adjacent properties.

Petitioner has not proven the legality of its operation with respect to noise. Under COMAR 26.02.03.03D(2), "The measurement of noise levels shall be conducted at points on or within the property line of the receiving property...." Here, the noise at the property line will be 75 dB, over the COMAR 65/55dB day/night limits. Under COMAR, compliance is to be measured at or within the property line, not at a place over a thousand feet inside the property line, as Petitioner urged. This Board should deny the Special Exception because the use would generate noise that violates the COMAR noise regulations. Petitioner did not meet the threshold *Schultz* requirement of compliance with the prescribed standards and regulations.

Furthermore, the Board should deny the Special Exception because the impact of this operation at this small site will be greater than it would be elsewhere in the R.C.4 zone where the music could be played more than 600 feet from the property line. In *Lucas*, the application was denied in part because

"a similar operation could be conducted where the problem of noise pollution does not contaminate a neighbor's property line..." (Board's Opinion at pp. 8-9). Here, too, a similar operation could be sited elsewhere in the zone where it would not have this impact on the neighbors' property rights. Petitioner's own evidence establishes an illegal level of noise at the property line, and the undisputed evidence is that this operation would not have that impact elsewhere in the zone, where the parcels are much larger.

3. Environmental Impacts: Petitioner had the burden of proving either that the proposed use would have no greater adverse environmental impact at the proposed site than elsewhere in the R.C. 4 zone or that those impacts are inherent in the use. Petitioner admitted that its operation was constructed *on top of* tributaries to a natural trout stream, that its new parking lot was located within 260 feet of a tributary and close to the main stem of a protected trout stream, and that it proposed to construct a stormwater device within two or three feet of its well, instead of the required 100 feet. Protestants proved that many R.C. 4 parcels existed where a facility could be constructed away from a stream and its tributaries. No one testified that siting stormwater devices next to wells and parking lots near protected streams is inherent in the restaurant/bar use. The Board should deny the Special Exception because the Petitioner failed to prove either that stormwater device is legal or that the environmental impacts would be no greater at the proposed site than elsewhere in the R.C. 4 zone.

4. Traffic safety impacts: The evidence was that the entrance to the site lacks adequate site distance for cars exiting the operation. This impact on the safety of drivers in the neighborhood is not inherent in the use. It would not occur at the many R.C. 4 parcels which could have safe entrances. The grant of a special exception to conduct large events at a facility which serves liquor and lacks safe egress is particularly detrimental to the safety of the neighborhood residents and others using this intersection.

As in *Mangione*, the neighborhood roads were not designed for this use and are particularly ill-suited to it.

In sum, the high visibility of this site in the historic district; the small size and proximity of this site to adjacent properties; the crowding-together of the well, stormwater device, parking lots, and streams; and the unsafe road configuration make it particularly ill-suited for the installation of extensive paving and the operation of party events for large numbers of people.

V. CONCLUSION

For the reasons stated, the Board should deny the special exception and variance relief requested by Petitioner.

Respectfully submitted,

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Dated: May 24, 2004

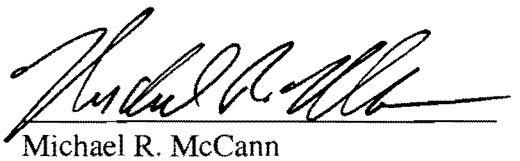
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 24th day of May 2004, a copy of Protestants' Post-Hearing Memorandum was mailed, first class, postage prepaid to:

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3/22/04

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DAY ONE

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	COUNTY BOARD OF APPEALS
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C., Petitioner.	*	

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MAR 2 2 2004
BALTIMORE COUNTY
BOARD OF APPEALS

* * * * * * * * * *

PROTESTANTS' PROFFER OF EVIDENCE REGARDING AGREEMENT SUBMITTED TO, AND ADOPTED BY, BOARD OF APPEALS IN ITS FEBRUARY 1995 ORDER

Protestants, the Valleys Planning Council, Inc. ("VPC"), Greencroft Community Association, Falls Road Community Association, and Dennis Sutton (collectively, the "Protestants"), submit the following proffer of evidence regarding the agreement between VPC and Petitioner Oregon Grille, LLC submitted to, and adopted by, the Board of Appeals in its February 8, 1995 Order.

I. INTRODUCTION

At outset of the November 4, 2003 hearing, counsel for Petitioner requested that the Board address whether Protestants should be permitted to call Margaret Worrall as a witness and introduce evidence of a restrictive covenant agreement between VPC and Petitioner. Counsel for Petitioner denied there was any such agreement. (*See* Excerpt of Transcr. from Nov. 4, 2003 hearing attached as ex. 1, at p. 29.)[1] The Board agreed to address the issue and heard argument from counsel.

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The Board held that Protestants would not be permitted to call Ms. Worrall or introduce any evidence regarding the restrictive covenant agreement. The Board found, based on its

[1] Notably, counsel for Petitioner's actual words were "there is no agreement *outside of the Board's restrictions*...", implying there was an agreement embodied *in* the Board's restrictions. (*Id.*)

reading of *Blakehurst Life Care Community v. Baltimore County*, 146 Md. App. 509 (2002), that it did not have authority to enforce the restrictive covenant agreement because its February 8, 1995 Order does not expressly state that the agreement was incorporated therein. The Board permitted Protestants to file a written proffer of Ms. Worrall's testimony and other evidence they would have introduced on this issue.

If permitted, Petitioners would have introduced the following documentary and testimonial evidence:

Documentary Evidence:

- June 28, 1994 Order of Deputy Commissioner Timothy M. Kotroco
- Restrictive Covenant Agreement between VPC and Petitioner
- February 8, 1995 Opinion and Order of Board of Appeals
- Proposed Restrictions
- Docket Sheet Entry from December 14, 1994
- Supplemental Lease Agreement between Petitioner and Baltimore County
- *Baltimore Sun* Article, December 21, 1994

Testimonial Evidence:

- Margaret Worrall
- Kathleen Pontone
- Richard Buck

If admitted, this evidence would have proven: (i) that VPC and Petitioner entered into a restrictive covenant agreement prohibiting, *inter alia*, weddings, banquets, and other catered events at the Oregon Grille; (ii) the agreement was submitted to the Board of Appeals at the December 14, 1994 hearing for the purpose of having the restrictions therein govern the future use of the Oregon Grille, for the purpose of having those restrictions incorporated in the Board's order, and for the purpose of ensuring that the Board could enforce the restrictions, if necessary; (iii) the parties understood and intended that the negotiated terms of the agreement were part and parcel of the Board of Appeals' February 8, 1995 Order and enforceable by the Board; (iii) Petitioner's agreement to the terms of the restrictive covenant agreement, and to have it adopted

and enforceable by the Board of Appeals, was the reason VPC supported the special exception relief; and (vi) had the restrictive covenant agreement not been entered into and adopted by the Board, VPC would have opposed the relief.[2]

II. PROFFER OF DOCUMENTARY EVIDENCE

The June 28, 1994 Order of Deputy Commissioner Kotroco

In 1994, Petitioner filed a petition for special exception with the Zoning Commissioner to approve the conversion to a restaurant of the existing building on the subject properties. As part of the special exception relief requested, Petitioner sought approval to "allow special events, or weddings to take place outside on th[e] patio area" of the restaurant and asked to "be able to conduct up to 12 of these types of events per year." (*See* Findings of Fact and Conclusions of Law of Deputy Zoning Comm'r dated June 28, 1994, attached hereto as Exhibit 2, pp. 3, 9.) Petitioner "envision[ed] tents being placed on the patio area to provide shade and/or protection from inclement weather, as well as food and beverage service taking place outside" and "envisioned that entertainment, such as live bands, or a DJ service, would also take place during these special events/weddings." (*Id.*, pp. 9-10.)

At the hearing before Deputy Zoning Commissioner Timothy Kotroco, representatives of the community, including Margaret Worrall, who was then Executive Director of VPC, objected to the proposed use of the outdoor area on the ground, *inter alia*, that "the property's zoning classification of R.C. 4 does not permit the use of the patio as proposed." (*Id.*, p. 5.)[3] Deputy Commissioner Kotroco agreed with Ms. Worrall and the other protestants, holding that "this type

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[2] In this proffer, Protestants do not advance any legal argument, the Board having already rejected same. Accordingly, contrary to the suggestion of Petitioner's counsel at the November 4, 2003 hearing, Petitioner should not be permitted to submit a response to this proffer. If Petitioner submits such a response, which improperly advances any legal argument or seeks to identify evidence it would introduce in rebuttal, then the Board should strike that response or permit Protestants the opportunity to reply.

of use borders on a catering facility, which is not permitted in an R.C. 4 zone... I do not believe that catering private parties, special events or weddings outside should be permitted... Therefore, there shall be no catered affairs taking place outside on the patio area." (*Id.*, p. 10.)

In his June 28, 1994 Order, Deputy Commissioner Kotroco imposed specific restrictions "in order to insure that the proposed outdoor seating area is properly utilized...." (*Id.*, p. 11.) These restrictions included:

> 4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property.

(*Id.*, p. 12.)[4]

The Restrictive Covenant Agreement

Petitioner and VPC each appealed Deputy Commissioner Kotroco's decision to the Baltimore County Board of Appeals. A hearing was scheduled for December 14, 1994.

For several months prior to the hearing, VPC and Petitioner engaged in negotiations regarding the use of the outdoor area at the proposed restaurant. Shortly before the hearing, VPC and Petitioner agreed that Petitioner would be prohibited from hosting weddings, banquets or other catered events on the outdoor seating area, or using that area for anything other than serving dinner or pre-dinner cocktails. (*See* Affidavit of Margaret Worrall attached as Ex. 3, ¶ 5.) The terms and conditions of the agreement were memorialized in a Restrictive Covenant Agreement, which the parties introduced into evidence at the December 14th hearing as joint exhibit 2. (*See* Restrictive Covenant Agreement attached as Ex. 4.) The Restrictive Covenant Agreement stated, in pertinent part:

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[3] Also appearing as protestants at the June 28, 1994 hearing were A. Douglas McComas on behalf of the Falls Road Community Association, Polly Wirth on behalf of the Oregon Ridge Nature Center Council, and nearby residents Harvey Miller and Patrick Tranter.

> The alternative outdoor dining areas... shall only be utilized for dining or pre-dinner cocktail, so long as patrons are subsequently served dinner, and shall be limited in quantity to 125 persons. There will be no outdoor bars, live music, tents or similar overhead coverings on or serving the outdoor dining area.

(*Id.*, ¶ 1.i.)

At the December 14, 1994 hearing, Mr. Bauer acknowledged, on the record, that "a restrictive covenant agreement had been reached between Oregon, LLC, and the Valley's Planning Council...." (*See* Opinion and Order of Board of Appeals dated Feb. 8, 1995, attached as Ex. 5, pp. 2-3.)

"Proposed Restrictions"

VPC's and Petitioner's agreement regarding the use of the outdoor area also was memorialized in a document entitled "Proposed Restrictions," which the parties introduced into evidence at the December 14th hearing as "Joint Ex. 1." (Proposed Restrictions attached as Ex. 6; *see also* Affidavit of M. Worrall, Ex. 3, ¶ 6.) This document set forth the parties' agreement regarding various aspects of the project, such as the exterior lighting, signage, and the use of the front porch. The document also repeated *verbatim* the restrictions set forth in the Restrictive Covenant Agreement and in the Deputy Commissioner's June 28, 1994 order, namely:

> 3. The alternative outdoor dining areas/patio locations... shall only be utilized for dining or pre-dinner cocktail, so long as patrons are subsequently served dinner, and shall be limited in quantity to 125 persons. There will be no outdoor bars, live music, tents or similar overhead coverings on or serving the outdoor dining area....
>
> 4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property.

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[4] Consistent with Restriction 4, Deputy Commissioner Kotroco also imposed the restriction that "the use of said patio shall be limited to sit-down dining, only. There shall be no tests, canopies, or other similar overhead covering permitted on the patio or elsewhere on the site...." (*Id.*, p. 12.)

(Ex. 6, ¶¶ 3, 4.)

In exchange for Petitioner's agreement not to host weddings or similar events, or use the outdoor seating area for anything but dining and pre-dinner cocktails, VPC supported the special exception relief requested by Petitioner. (*See* Restrictive Covenant Agreement, Ex. 4, ¶ 1.g. (providing that VPC agrees "not to oppose the establishment of the restaurant by [Petitioner], so long as it is consistent with the terms of this Agreement"); *see also* Aff. of M. Worrall attached as ex. 3, ¶ 5.)

February 8, 1995 Opinion and Order of Board of Appeals

On February 8, 1995, the Board issued its Opinion and Order. (Ex. 5.) In the Order, the Board imposed the following restrictions, adopted *verbatim* from the Restrictive Covenant Agreement and the Proposed Restrictions:

> 3. The alternative outdoor dining areas/patio locations... shall only be utilized for dining or pre-dinner cocktail, so long as patrons are subsequently served dinner, and shall be limited in quantity to 125 persons. There will be no outdoor bars, live music, tents or similar overhead coverings on or serving the outdoor dining area....
>
> 4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property.

(Ex. 4, ¶¶ 3, 4.)

The Docket Entry From December 14, 1994

The docket entry for the December 14, 1994 hearing before the Board also reflects that an agreement was, in fact, reached by the parties and that the agreement was "on record." The docket states:

> 12/14/94 - Agreement reached by the parties as to facts, use, etc. on record.

(*See* Docket attached as Ex. 7.)

The Supplemental Lease Agreement

Still further evidence of the Restrictive Covenant Agreement between VPC and Petitioner is a Supplemental Lease Agreement between Petitioner and Baltimore County.[5] (*See* Supp'l Lease Agreement attached as Ex. 8.) In the Supplemental Lease Agreement, which Mr. Bauer signed on November 17, 1994, Petitioner agreed "to be bound by and comply with" the restrictions that were agreed upon with VPC and set forth in the Deputy Commissioner's order, including:

> "The outdoor dining area shall only be utilized for dining or pre-dinner cocktails, so long as patrons are subsequently served dinner."
>
> "The Petitioner shall be prohibited from catering or hosting weddings or similar events outside on the subject property"

(*Id.*, ¶ 6 and ex. A attached thereto, ¶ 4.) The Supplemental Lease Agreement states that these restriction and the others "shall bind and run with the land." (*Id.*, ¶ 6.h.)

***Baltimore Sun* Article, December 21, 1994**

In a December 21, 1994 article, the *Baltimore Sun*, reporting on the December 14, 1994 hearing, stated that "[t]he appeals board agreed *to encompass a restrictive covenant* between the Valleys Planning Council, a private nonprofit land preservation group, and Ted Bauer...." (*See* Article attached as ex. 9.) VPC's counsel, J. Carroll Holzer, told the *Sun* that "the parties agreed in principle with [Zoning Commissioner] Mr. Kotroco's decision but felt it should be taken to the Board of Appeals *to get the restrictive covenant incorporated into the approval.*" (*Id.*) Mr. Holzer stated, "[t]he county could not legally be a party to a restrictive covenant. By *having it included in the appeals board decision*, we essentially hold all three parties to it." (*Id.*) Mr.

[5] Petitioner leases the subject property from the County.

Bauer told the *Sun*, "I was very pleased with the negotiations. I think we came out with a project that everyone can support." (*Id.*)

III. PROFFER OF TESTIMONIAL EVIDENCE

The Testimony Of Margaret Worrall

If she had been permitted, Ms. Worrall would have testified regarding (i) the events and circumstances surrounding and leading to the hearings in 1994 before the Deputy Zoning Commissioner and the Board of Appeals; (ii) the terms of the restrictive covenant agreement entered into between VPC and Petitioner; (iii) the parties' purpose in introducing the agreement at the December 14, 1994 hearing before the Board of Appeals; and (iv) the parties' understanding that the negotiated terms of the agreement were to be part and parcel of the Board's Order and enforceable by the Board.

Specifically, Ms. Worrall would have testified that, following Deputy Commissioner Kotroco's June 28, 1994 decision, VPC and Petitioner engaged in substantial negotiations regarding the use of the outdoor patio area at the Oregon Grille. She would have testified that these negotiations resulted in an agreement entered into shortly before the December 14, 1994 Board of Appeals hearing, pursuant to which Petitioner was prohibited from hosting weddings, banquets or catered events on the outdoor seating area, or using that area for anything other than serving dinner or pre-dinner cocktails. In exchange for Petitioner's promise not use the outdoor area in this manner, VPC agreed not to oppose the special exception relief requested by Petitioner, i.e., the conversion of the building to a restaurant. (Ex. 3, ¶¶ 4, 5.)

Ms. Worrall also would have testified that, at the December 14, 1994 hearing, VPC and Petitioner informed the Board of Appeals of their agreement and jointly introduced into evidence the Restrictive Covenant Agreement (ex. 3) and the Proposed Restrictions (ex. 5). She would have testified that the parties introduced these documents as joint exhibits for the purpose of

having the restrictions therein govern the future use of the Oregon Grille, for the purpose of having those restrictions become part of the Board's order, and for the purpose of ensuring that the Board could enforce the restrictions, if necessary. All parties understood that their agreement was not intended to merely be a private contract, but rather was intended to be part and parcel of the Board's order and enforceable by the Board. (Ex. 3, ¶¶ 6, 7.)

Further, Ms. Worrall would have testified that she understood, and believed all parties understood, that the Board accepted the documents into evidence as Joint Exhibits 1 and 2 with the intention of adopting the terms of the agreement in its final order and with the intention that the terms be enforceable by the Board. (Ex. 3, ¶ 8.)

Ms. Worrall would have testified that Petitioner's agreement to the terms of the restrictive covenant agreement, and to have it adopted and enforceable by the Board of Appeals, was the reason she and VPC supported the Oregon Grille's special exception relief. Had the restrictive covenant agreement not been entered into and adopted by the Board, Ms. Worrall and VPC would have opposed the relief. (Ex. 3, ¶ 9.)

Finally, Ms. Worrall would have testified that, on several occasions since Petitioner filed the present petition with the Zoning Commissioner, Mr. Bauer has contacted her to discuss the case. In those conversations, Mr. Bauer always acknowledged, expressly and implicitly, the agreement between VPC and Petitioner. Mr. Bauer never denied there was an agreement. (Ex. 3, ¶ 10.)

The Testimony Of Richard Buck

Richard Buck, Chairman of the Board of Directors of VPC, if permitted to testify, would confirm that (i) there was an agreement between VPC and Petitioner, (ii) the agreement was submitted to the Board of Appeals at the December 14, 1994 hearing for the purpose of having the restrictions therein govern the future use of the Oregon Grille, for the purpose of having those

restrictions become part of the Board's order, and for the purpose of ensuring that the Board could enforce the restrictions, if necessary; (iii) all parties understood, that the Board accepted the parties' agreement into evidence with the intention of adopting the terms of the agreement in its final order and with the intention that the terms be enforceable by the Board; (v) Oregon Grille's agreement to the terms of the restrictive covenant agreement, and to have it adopted and enforceable by the Board of Appeals, was the reason VPC supported the special exception relief; and (vi) had the restrictive covenant agreement not been entered into and adopted by the Board, VPC would have opposed the relief. (*See* Affidavit of R. Buck attached as ex. 10.)

The Testimony of Kathleen Pontone

Kathleen Pontone, Secretary of the Board of Directors of VPC, would testify regarding a meeting with Ted Bauer in November 20, 2001, during which Mr. Bauer acknowledged the agreement between Petitioner and VPC. (*See* Affidavit of K. Pontone attached as Ex. 11.)

Michael R. McCann
Funk & Bolton, P.A.
36 S. Charles, Twelfth Floor
Baltimore, Maryland 21201
(410) 659-7700

Attorneys for The Valleys Planning Council, Inc.

Dated: March 22, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 22nd day of March, 2004, a copy of the foregoing of Proffer of Evidence Regarding Agreement Submitted To, and Adopted By, the Board in its February 8, 1995 Order was sent, *via* first class mail and facsimile, to:

Robert Hoffman, Esquire
Venable, Baejter & Howard
210 Allegheny Avenue
Towson, Maryland 21204

Via first class mail to:

Peter Max Zimmerman
Carole Demilio
People's Counsel for Baltimore County
400 Washington Avenue
Towson, Maryland 21204

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, Maryland 21204



Michael R. McCann

85000.001:68549

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Page 27

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Page 29

1 agreement -- I agree with you, possibly, you know, maybe a
2 signature requirement may be relevant to a Circuit Court
3 proceeding, if there was one. Maybe the statute of fraud
4 is relevant in some way.
5 But the agreement itself doesn't need to be
6 recorded nor signed in order for its terms to be enforced
7 by this Board.
8 Mr. Bauer said on the record -- speaking of what
9 Mr. Hoffman said -- in the Board's opinion, Mr. Bauer also
10 testified that a restrictive covenant had been reached, a
11 copy of which was submitted as Joint Exhibit 2.
12 Joint Exhibit No. 1, again, verbatim restrictions
13 imposed by the Board. I'm not asking for anything outside
14 the Board's restrictions, contrary to what Mr. Hoffman is
15 saying. The Board's restrictions are a part of this
16 agreement, and that's what Ms. Worrall will testify to.
17 MR. HOFFMAN: Mr. Marks, if I might, before you
18 deliberate, my client's position is there is no agreement
19 outside of the Board's restrictions. There is no executed
20 agreement.
21 We are talking about something that would be

Exhibit #1

IN RE:	PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE - SW/Corner Shawan Road and Beaver Dam Road (1201 Shawan Road) 8th Election District 3rd Councilmanic District	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 94-348-SPHXA
	Baltimore County, Maryland Petitioners	*	

* * * * * * * * * * *

Exhibit #2

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as Petitions for Special Hearing, Special Exception and Variance for that property known as 1201 Shawan Road in the Cockeysville area of northern Baltimore County. The Petitions were filed by the owner of the property, Baltimore County, Maryland, through the Department of Recreation and Parks, by Wayne R. Harman, Director. The Petitioner seeks a special hearing to approve or confirm that the subject property and improvements thereon are exempt from the Baltimore County Zoning Regulations (B.C.Z.R.), and alternatively, to approve an existing restored commercial store building and its conversion to a tea room/restaurant as being consistent with its preservation; a special exception to approve the conversion of the existing building to a restaurant as being consistent with the preserved general store building, subject to Section 1A03.3.B.4 (Section 402.3) of the B.C.Z.R.; and variance relief from Section 409.6.A.2 of the B.C.Z.R., if required, to permit 44 parking spaces in lieu of the required 92 spaces. The subject property and relief sought are more particularly described on the plan submitted into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Ted Bauer, Restaurateur, Ed Haile with Daft-McCune-Walker, Inc., Mickey Cornelius with The Traffic Group, Frederick Baukhauer with Chesapeake Design

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	COUNTY BOARD OF APPEALS
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C., Petitioner.	*	

Exhibit #3

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

AFFIDAVIT OF MARGARET WORRALL

I, Margaret Worrall, hereby make oath in due form of law as follows:

1. I am over eighteen (18) years of age and am competent to testify and have personal knowledge of the matters set forth herein.

2. In 1994, I was the Executive Director of the Valleys Planning Council, Inc. ("VPC").

3. In 1994, I attended and participated, on behalf of VPC, in the proceedings before the Deputy Zoning Commissioner and the Board of Appeals in case number 94-348-SPHXA.

4. For several months prior to the December 14, 1994 hearing before the Board of Appeals, I and other representatives of VPC engaged in substantial negotiations with the Oregon Grille regarding the use of the outdoor area at the proposed restaurant.

5. Shortly before the December 14, 1994 hearing, VPC and the Oregon Grille entered into an agreement regarding the use of the outdoor area. Among other things, the Oregon Grille agreed that it would be prohibited from hosting weddings, banquets or other catered events, or using that area for anything other than serving dinner or pre-dinner cocktails. In exchange for the Oregon Grille's promise not use the outdoor area in this manner, VPC agreed not to oppose the special exception relief requested by the Oregon Grille.

Joint Ex. 2

Exhibit #4

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT has been entered into on this ____ day of December, 1994, by and among OREGON, LLC (the "Declarant") and THE VALLEYS PLANNING COUNCIL, INC. (the "Community").

RECITALS:

A. Baltimore County, Maryland ("Baltimore County") is the owner of approximately 2.63 acres of land currently zoned R.C. 4 and situated at the southwest intersection of Shawan Road and Beaver Dam Road in Baltimore County, Maryland (the "Property"), as more fully shown on the site plan attached hereto as Exhibit 1. The Property is currently improved by the buildings known as the Oregon General Store (the "Leased Buildings").

B. Baltimore County entered into an Agreement of Lease of the Property with Oregon General Store Limited Partnership (the "Lessee") in June, 1985 and a Memorandum and Amendment of Agreement of Lease, dated September 7, 1985, and recorded among the Land Records of Baltimore County, Maryland in Liber 7031, folio 004 (collectively, the "Lease").

C. Declarant and Lessee, with Baltimore County's written consent as landlord, have entered into an Assignment of Lease (the "Assignment"), dated _____, 1994, as part of the sale and transfer of Lessee's assets to Declarant, pursuant to an Asset Purchase Agreement between Lessee and Theodore W. Bauer (which Bauer has assigned to Declarant), dated March 31, 1994 (the "Purchase Agreement").

D. Declarant intends to convert the Property and improvements thereon to a full service restaurant and lounge.

E. The Community is willing to support the use of the Property as a restaurant and lounge, but requests that the Property be limited to use as a restaurant and lounge, as hereinafter set forth.

WITNESSETH:

NOW, THEREFORE, IN CONSIDERATION of the premises described in the foregoing recitals, which recitals are fully incorporated as part of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Restrictive Covenant. Declarant hereby agrees, on behalf of itself, and its successors and assigns, that, during the term of this Agreement, the Property will be used as a standard restaurant, as defined in Section 101 of the Baltimore County Zoning Regulations, and lounge, and only in accordance with the terms, conditions, and restrictions hereinafter set forth:

IN THE MATTER OF THE THE APPLICATION OF BALTIMORE COUNTY, MARYLAND FOR A SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST CORNER SHAWAN ROAD AND BEAVER DAM ROAD (1201 SHAWAN ROAD) (Oregon General /Kurtz Store) 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 94-348-SPHXA

* * * * * * * * *

OPINION AND ORDER

Exhibit #5

This case comes before the Board on appeal from a decision of the Deputy Zoning Commissioner regarding Petitions for Special Hearing, Special Exception and Variance. The subject property, known alternatively as the Oregon General Store or the Kurtz Store, consists of 2.63 acres, is zoned R.C. 4 and is owned by Baltimore County, the Petitioner herein. The property is subject to a long-term lease to Oregon, LLC, which proposed to renovate the existing improvements on site into a restaurant, all as more particularly shown on the Plat to Accompany the Petition which was submitted as Petitioner's Exhibit No. 1.

Appearing at the public hearing on behalf of the Petitioner were Theodore W. Bauer, a member of the Oregon, LLC, and tenant of the Oregon Store, and Ronald Schaeffer, Superintendent of the Department of Recreation and Parks for Baltimore County. Also appearing on behalf of the Petitioner was Edmond F. Haile, with the engineering firm Daft-McCune-Walker, Inc., that prepared the Site Plan. Mr. Bauer was represented by Robert A. Hoffman, Esquire, and the County, the Petitioner in the case, by County Attorney Stanley J. Schapiro. The Valley's Planning Council by its Executive

Joint Ex. 1

Exhibit #6

PROPOSED RESTRICTIONS
CASE NO. 94-348-SPHXA

1. Petitioner may apply for its building permit and be granted same upon receipt of this Board's Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2. In the event the Petitioner shall decide to install the outdoor dining area/patio on Petitioner's Exhibit 1, then the Petitioner shall be required to submit the plans for said outdoor dining area/patio to DEPRM for their full review and approval.

3. The alternate outdoor dining area/patio locations, depicted on Petitioner's Exhibit 1, shall only be utilized for dining or pre-dinner cocktails, so long as patrons are subsequently served dinner, and shall be limited in quantity to 125 persons. There will be no outdoor bars, live music, tents, or similar overhead coverings on or serving the outdoor dining area. Music shall not be audible from any neighboring residences that exist as of the date of this Board's Order.

4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property. This paragraph shall not be interpreted to preclude activities permitted under Restriction No. 3.

5. The bar/lounge area will be located at the east end of the restaurant as shown on the floorplan submitted as Petitioner's Exhibit 2. This provision shall not preclude serving alcoholic beverages in other areas of the restaurant or establishing temporary bar areas inside the restaurant.

6. Petitioner shall be permitted to have dining and/or seating areas on the front porch of the Store.

7. No alteration or expansion of the exterior of the Store shall be permitted unless approved by the Baltimore County Landmarks Preservation Commission in accordance with Section 26-541 of the Baltimore County Code. Any expansion of the Store shall be limited to enclosures of existing building features including porches and stairs or expansion of basement areas. This provision shall not preclude the establishment of an outdoor dining area, additional parking or relocation of the mini-barn as shown on Petitioner's Exhibit 1. There will be no additional buildings constructed on the property.

8. The existing sign for the Store may be replaced with a sign of the same or smaller size.

MICROFILMED

BALTIMORE COUNTY, MARYLAND
SUPPLEMENTAL LEASE AGREEMENT Exhibit #8

SUPPLEMENTAL AGREEMENT NO. 1 DATE: November __, 1994
TO LEASE DATED: June, 1985

ADDRESS OF PREMISES: Oregon General Store
Shawan Road and Beaver Dam Road
Hunt Valley, Maryland

THIS AGREEMENT is made and entered into this date by and between BALTIMORE COUNTY, MARYLAND, a body corporate and politic, hereinafter called the "Lessor", and OREGON, LLC, hereinafter called the "Lessee".

WHEREAS, Lessor and Oregon General Store Limited Partnership, as tenant, executed a certain Agreement of Lease dated June, 1985 and a Memorandum and Amendment of Agreement of Lease dated September 7, 1985 and recorded among the Land Records of Baltimore County, Maryland at Liber 7031, Folio 004 (collectively, the "Lease Agreement"), for certain premises located at the southwest corner of the intersection of Shawan Road and Beaver Dam Road (the "Property"). The Property is currently improved by the building known as the Oregon General Store (the "Building").

WHEREAS, Oregon General Store Limited Partnership has agreed to assign all of its right, title and interest in and to the Lease Agreement to Lessee pursuant to a certain Assignment of Lease.

WHEREAS, the Lessor and Lessee now wish to amend the Lease Agreement upon the terms and conditions hereinafter described.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, effective as of MAY 15, 1996 as follows:

1. Oregon, LLC shall be deemed to be the "Tenant" or "Lessee" for all purposes under the Lease Agreement. All notices to the Lessee shall be sent to c/o Mt. Washington Tavern, 5700 Newbury Street, Baltimore, Maryland 21209, Attn: Theodore W. Bauer.

2. In addition to the 5-year extension period contained in Section 2.2 of the Lease Agreement (the "Original Extension Period"), the Lessor hereby agrees that the Lessee shall have four additional extension periods of five (5) years each (the "Additional Extension Periods") following the expiration of the Original Extension Period.

3. Section 3.1 of the Lease is hereby modified to provide that the Annual Rent during each of the Additional Extension Periods shall be adjusted based on the increase in the Consumer Price Index (as defined below). To determine the new Annual Rent for the first Additional Extension Period, the Annual Rent for the Original

Oregon Ridge store gets yet another lease on life

Renovation as restaurant approved

Exhibit #9

By Patrick Gilbert
Sun Staff Writer

The historic Oregon Ridge Store in Hunt Valley, a structure that has had its share of dereliction and salvation over the years, is about to be saved once again.

The Baltimore County Board of Appeals has cleared the way for renovation of the 145-year-old vacant store into an upscale restaurant operated by the owner of Mount Washington Tavern restaurant.

The appeals board agreed to encompass a restrictive covenant between the Valleys Planning Council, a private nonprofit land preservation group, and Ted Bauer, owner of Mount Washington Tavern and lessee of the building.

The building, at Shawan and Beaver Dam roads west of Interstate 83, is owned by the county, which purchased it along with 557 acres of the old Ashland ironworks in 1969. The property became Oregon Ridge Park.

In June, the county Department of Recreation and Parks received a special zoning exception to use Oregon Store as a general restaurant in a rural conservation zone.

At the time of decision by Deputy Zoning Commissioner Timothy M. Kotroco, Mr. Bauer and the Valleys Planning Council had not completed a restrictive covenant agreement. Mr. Kotroco prohibited catered receptions in the building and restricted the outdoor patio to dining, points that would have been part of the agreement.

J. Carroll Holzer, attorney for the Valleys Planning Council, said the parties agreed in principle with Mr. Kotroco's decision but felt it should be taken to the Board of Appeals to get the restrictive covenant incorporated into the approval.

"The county could not legally be a party to a restrictive covenant," said Mr. Holzer. "By having it included in the appeals board decision, we essentially hold all three parties to it."

Margaret Worrell, executive director of the planning council, said she was delighted with the board's decision and Mr. Bauer's work with the community.

"Mr. Bauer came to us even before he presented anything to the county," said Mrs. Worrell. "He really wanted the community to be comfortable with his proposal which made our discussions with him very positive."

"I was very pleased with the negotiations," said Mr. Bauer. "I think we came out with a project that everyone can support."

He declined to discuss any details of his proposed restaurant. But in testimony before the deputy zoning commissioner and the appeals board, he said he planned on a 150-seat restaurant, mainly featuring standard American cuisine.

The building dates back to 1849, when it was built as part of the Oregon Furnace Works, later known as the Ashland Iron Co. The building became the company store, selling goods to the workers.

County historian John W. McGrain said Thomas Kurtz, the last foreman to work for Ashland Iron before it went out of business, bought the store in 1892. The Kurtz family operated the store at least until the late 1920s, said Mr. McGrain.

Records don't show how the building was used after the Kurtz store went out of business, said Mr. McGrain, but it was dilapidated when the county purchased it in 1969.

In 1986, the building was reopened after Martin P. Azola Jr., a well-known Baltimore area restoration developer, renovated it at a cost of about $700,000, said Charles L. Fisher Jr., deputy recreation and parks director. The building housed a frame shop, a gift boutique and a small hair salon. The frame shop left first and the boutique and hair salon moved out in the spring of 1993. The building has been empty since then.

"It would have cost us about $35,000 a year to maintain the building," said Mr. Fisher. "We got permission from the bank that holds the lease to put out a bid on the property to find a new lessee."

Sun 12/21/94

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	COUNTY BOARD OF APPEALS
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C., Petitioner.	*	

Exhibit #10

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

AFFIDAVIT OF RICHARD BUCK

I, Richard Buck, hereby make oath in due form of law as follows:

1. I am over eighteen (18) years of age and am competent to testify and have personal knowledge of the matters set forth herein.

2. In 1994 and early 1995, I was the President of the Valleys Planning Council, Inc. ("VPC"). I presently serve as Chairman of the Board of Directors.

3. Shortly before the December 14, 1994 hearing before the Board of Appeals in Case No. 94-348-SPHXA, VPC and the Oregon Grille entered into an agreement regarding the use of the outdoor area. Among other things, the Oregon Grille agreed that it would be prohibited from hosting weddings, banquets or other catered events, or using that area for anything other than serving dinner or pre-dinner cocktails. In exchange for the Oregon Grille's promise not use the outdoor area in this manner, VPC agreed not to oppose the special exception relief requested by the Oregon Grille.

4. The terms of the parties' agreement were submitted to the Board of Appeals at the December 14, 1994 hearing for the purpose of having the restrictions therein govern the future use of the Oregon Grille, for the purpose of having those restrictions become part of the Board's order, and for the purpose of ensuring that the Board could enforce the restrictions, if necessary.

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	COUNTY BOARD OF APPEALS
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C., Petitioner.	*	

Exhibit # 11

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

AFFIDAVIT OF KATHLEEN PONTONE

I, Kathleen Pontone, hereby make oath in due form of law as follows:

1. I am over eighteen (18) years of age and am competent to testify and have personal knowledge of the matters set forth herein.

2. I am the Secretary of the Board of Directors of the Valleys Planning Council, Inc. ("VPC").

3. On November 20, 2001, I attended a meeting between Theodore Bauer and members of the Executive Committee of Board of Directors of VPC, which Mr. Bauer had requested the opportunity to attend.

4. During the meeting, Mr. Bauer acknowledged, expressly and implicitly, there was an agreement between VPC and the Oregon Grille that prohibited the use of the outdoor area at the restaurant for weddings, banquets, and other catered events. Mr. Bauer never denied there was such an agreement.

I solemnly affirm, under the penalties of perjury and based upon personal knowledge, that the information set forth above is true and correct.

1/6/03

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	ZONING COMMISSIONER
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,	*	
Petitioner.	*	

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

LINE REGARDING CHANGE OF ADDRESS OF COUNSEL FOR THE VALLEYS PLANNING COUNCIL, INC.

Please note the following change of address of counsel for The Valleys Planning Council, Inc.:

Michael R. McCann
Funk & Bolton, P.A.
Twelfth Floor
36 South Charles Street
Baltimore, Maryland 21201-3111

The telephone and facsimile numbers are unchanged.

Respectfully submitted,

Michael R. McCann

Funk & Bolton, P.A.
Twelfth Floor
36 South Charles Street
Baltimore, Maryland 21201-3111
(410) 659-7700

Attorneys for The Valleys Planning Council, Inc.

Dated: January 6, 2003
85000.001:60584

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 6th day of January 2003, a copy of the foregoing Notice of Change of Address of Counsel for The Valleys Planning Council, Inc. was mailed, first class, postage prepaid to:

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204-5517

Attorneys for Petitioner

Michael R. McCann

85000.01:60584

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A PROFESSIONAL ASSOCIATION
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DEREK B. YARMIS
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JEFFERSON L. BLOMQUIST
LINDSEY A. RADER

*ADMITTED IN NE AND DC ONLY
** ADMITTED IN VA ONLY

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JAMES F. TAYLOR
PETER C. ISMAY**
CYNTHIA L. MCCANN
CHERYL A. C. BROWN
HISHAM M. AMIN

OF COUNSEL
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MICHAEL R. MCCANN
J. FRANK NAYDEN
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

Writer's Direct Dial: (410) 659-7764
mmccann@fblaw.com

January 6, 2003

Kristine Anne Howanski, Chairperson
Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

RECEIVED
JAN 0 7 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Re: The Oregon Grille
Before the Zoning Commissioner for Baltimore County
Case No. 02-461-SPHXZA

Dear Ms. Howanski:

Enclosed please find a Line Regarding Change of Address of Counsel for The Valleys Planning Council, Inc. for filing.

Please date stamp the extra copy and return it to me in the enclosed self-addressed, stamped envelope. If you have any questions, please contact me.

Sincerely,

Michael R. McCann

Enclosure
MRM:kjg
85000.001:60583

cc: Arnold Jablon, Director, Baltimore County Department of Permits and Development Management
Lawrence E. Schmidt, Zoning Commissioner
Robert A. Hoffman, Esquire
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Carole Demilio, Esquire, People's Counsel for Baltimore County

11/18/02

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	ZONING COMMISSIONER
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,	*	
Petitioner.	*	

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

NOTICE OF APPEAL

The Valleys Planning Council, Inc., the Greencroft Community Association, the Falls Road Community Association, Inc., and Dennis Sutton (collectively "Appellants"), pursuant to section 500.10 of the Baltimore County Zoning Regulations and section 26-132 of the Baltimore County Code, hereby notice an appeal of the Zoning Commissioner's decision in the above-captioned matter. Appellants appeal the Zoning Commissioner's granting of the petition for special hearing, petition for special exception, and petition for variance.

Pursuant to Rule 3 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals, the names and addresses of Appellants are as follows:

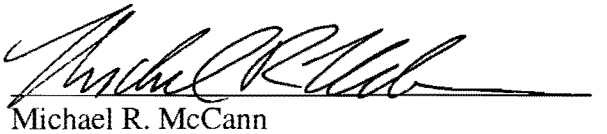
The Valleys Planning Council, Inc.
c/o Jack Dillon, Executive Director
P.O. Box 5402
Towson, Maryland 21285

Greencroft Community Association
c/o Mary Alane Downs, President
Morgan Shelsby Carlo Downs & Everton, P.A.
4 North Park Drive
Hunt Valley, Maryland 21030-1876

Falls Road Community Association, Inc.
c/o Robert D. Sellers, Esquire
Robert D. Sellers & Associates
401 Washington Avenue, Suite 303
Towson, Maryland 21204

Dennis Sutton
13500 Beaver Dam Road
Cockeysville, Maryland 21030

Respectfully submitted,



Michael R. McCann

Funk & Bolton, P.A.
100 Light Street, Suite 1000
Baltimore, Maryland 21202
(410) 659-7700

Attorneys for The Valleys Planning Council, Inc.

Dated: November 18th, 2002

85000.001:59304

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 18th day of November 2002, a copy of the foregoing Notice of Appeal was mailed, first class, postage prepaid to:

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204-5517

Attorneys for Petitioner

Michael R. McCann

85000.01.59304

11/20/02
8
no attachments

FUNK & BOLTON
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
100 LIGHT STREET, SUITE 1000
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DEREK B. YARMIS
CHARLES D. MACLEOD
JEFFERSON L. BLOMQUIST
LINDSAY A. RADER

*ADMITTED IN NE AND DC ONLY
** ADMITTED IN VA ONLY

JEROME D. BRESLIN*
HUGH M. BERNSTEIN
JAMES F. TAYLOR
PETER C. ISMAY**
CYNTHIA L. MCCANN
CHERYL A. C. BROWN
HISHAM M. AMIN

OF COUNSEL
JOHN A. ANDRYSZAK
GARY C. HARRIGER
MICHAEL R. MCCANN
J. FRANK NAYDEN
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

Writer's Direct Dial: (410) 659-7764
mmccann@fblaw.com

November 18, 2002

Arnold Jablon, Director
Baltimore County Department of
Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland, 21204

Hand Delivery

Re: The Oregon Grille
Before the Zoning Commissioner for Baltimore County
Case No. 02-461-SPHXZA

Dear Mr. Jablon:

Enclosed please find The Valleys Planning Council, Inc.'s, Falls Road Community Association, Inc.'s, Greencroft Community Association's, and Dennis Sutton's Notice of Appeal for filing in the above-referenced matter.

Please be advised that Appellants previously filed a notice of appeal on October 23, 2002. This second Notice of Appeal is being filed in the event it is determined the original notice of appeal did not divest the Zoning Commissioner of jurisdiction and/or the original notice was premature or otherwise ineffectual.

Please note that the enclosed Notice of Appeal is not accompanied by a new filing fee. If you will not accept this Notice of Appeal for filing without an additional fee, then please let me know immediately.

RECEIVED
NOV 21 2002
BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED
NOV 19 2002
By bh

FUNK & BOLTON
A PROFESSIONAL ASSOCIATION

Thank you for your attention to this matter.

Sincerely,

Michael R. McCann

Enclosure
MRM:kjg

cc: Lawrence E. Schmidt, Zoning Commissioner
Robert A. Hoffman, Esq.
Kristen Howanski, Chairperson, Baltimore County Board of Appeals
Peter Max Zimmerman, Esq., People's Counsel for Baltimore County
Carole Demilio, Esq., People's Counsel for Baltimore County

85000.001.59303

Kathy,
Per our conversation today. Thanks!
Becky

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NOV 19 2002
By bh

cd 1

Baltimore County
Zoning Commissioner

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

October 28, 2002

RECEIVED
NOV - 4 2002

Robert A. Hoffman, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, Maryland 21204

RE: MOTION FOR RECONSIDERATION (1201 Shawan Road, The Oregon Grille)
Petitions for Special Hearing, Special Exception & Variance
Case No. 02-461-SPHXA

Dear Mr. Hoffman:

Reference is made to the Motion for Reconsideration you filed on behalf of the Petitioners in the above-captioned matter, received in this office on October 17, 2002. I am also in receipt of a copy of a joint Notice of Appeal filed by Michael R. McCann, Esquire, on behalf of The Valleys Planning Council, Inc., Falls Road Community Association, Inc., Greencroft Community Association, and Dennis Sutton.

It is my judgment that the filing of this appeal by the Appellants immediately vests jurisdiction of this matter with the County Board of Appeals. Notwithstanding the fact that the Zoning Commissioners' Rules of Policy and Procedure would stay the appeal time while the Motion for Reconsideration was pending, the Appellants' appeal essentially eliminates my jurisdiction and authority over this matter. Thus, a ruling on the Motion for Reconsideration is now moot.

For your information, only, I am informally advising you that it was my intention that the outbuilding/barn could be used for storage or other office purposes in connection with the restaurant use. Moreover, it was my intent to prohibit the seating or serving of patrons within that building or the preparation of food therein. However, storage, office space, and other accessory uses incidental to the restaurant would have been permitted therein. Secondly, the restriction on music related to music, either live or pre-recorded, played in conjunction with special events hosted by the restaurant. Background music at low volume levels would have been allowed. Again, I offer these comments solely for informational purposes and not as an amendment to the Order previously rendered.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Michael R. McCann, Esquire, Funk & Bolton, PA
100 Light Street, Suite 1000, Baltimore, Md. 21202-1036
People's Counsel; Case File

Printed with Soybean Ink on Recycled Paper

10/23/02

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	ZONING COMMISSIONER
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,	*	
Petitioner.	*	

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

NOTICE OF APPEAL

The Valleys Planning Council, Inc., the Greencroft Community Association, the Falls Road Community Association, Inc., and Dennis Sutton (collectively "Appellants"), pursuant to section 500.10 of the Baltimore County Zoning Regulations and section 26-132 of the Baltimore County Code, hereby notice an appeal of the Zoning Commissioner's September 24, 2002 decision in the above-captioned matter. Appellants appeal the Zoning Commissioner's granting of the petition for special hearing, petition for special exception, and petition for variance.

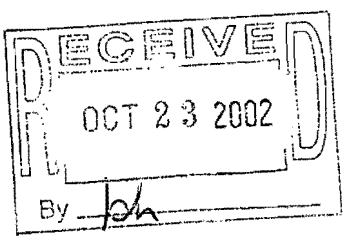
Pursuant to Rule 3 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals, the names and addresses of Appellants are as follows:

The Valleys Planning Council, Inc.
c/o Jack Dillon, Executive Director
P.O. Box 5402
Towson, Maryland 21285

Greencroft Community Association
c/o Mary Alane Downs, President
Morgan Shelsby Carlo Downs & Everton, P.A.
4 North Park Drive
Hunt Valley, Maryland 21030-1876

Falls Road Community Association, Inc.
c/o Robert D. Sellers, Esquire
Robert D. Sellers & Associates
401 Washington Avenue, Suite 303
Towson, Maryland 21204

Dennis Sutton
13500 Beaver Dam Road
Cockeysville, Maryland 21030



Respectfully submitted,



Michael R. McCann

Funk & Bolton, P.A.
100 Light Street, Suite 1000
Baltimore, Maryland 21202
(410) 659-7700

Attorneys for The Valleys Planning Council, Inc.

Dated: October 23, 2002

85000.001:58683

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 23rd day of October 2002, a copy of the foregoing Notice of Appeal was mailed, first class, postage prepaid, to:

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204-5517

Attorneys for Petitioner

Michael R. McCann

85000.01.58683

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CHERYL A. C. BROWN
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OF COUNSEL
JOHN A. ANDRYSZAK
GARY C. HARRIGER
MICHAEL R. MCCANN
J. FRANK NAYDEN
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

Writer's Direct Dial: (410) 659-7764
mmccann@fblaw.com

November 13, 2002

Arnold Jablon, Director
Baltimore County Department of
Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland, 21204

Via Facsimile
& U.S. Mail

Re: The Oregon Grille
Appeal to the Baltimore County Board of Appeals
Case No. 02-461-SPHXZA

Dear Mr. Jablon:

In your October 25, 2002 letter concerning the above-referenced matter, you indicated that The Valleys Planning Council filed its appeal with your office on October 25, 2002. Please note that the Notice of Appeal was filed on October 23rd, not October 25th, 2002. For your reference, attached are a date-stamped copy of the Notice of Appeal and a copy of the list of materials forwarded by your office to the Board of Appeals, which also reflects receipt of the Notice of Appeal by your office on October 23, 2002.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,

Michael R. McCann

Enclosures
MRM:kjg
cc: Robert A. Hoffman, Esq. (*via* facsimile & U.S. Mail)
Kristen Howanski, Chairperson, Baltimore County Board of Appeals
Peter Max Zimmerman, Esq., People's Counsel for Baltimore County
Carole Demilio, Esq., People's Counsel for Baltimore Coun
85000.001.59292

RECEIVED
NOV 14 2002
BALTIMORE COUNTY
BOARD OF APPEALS

10/23/02

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	ZONING COMMISSIONER
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,	*	
Petitioner.	*	

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

NOTICE OF APPEAL

The Valleys Planning Council, Inc., the Greencroft Community Association, the Falls Road Community Association, Inc., and Dennis Sutton (collectively "Appellants"), pursuant to section 500.10 of the Baltimore County Zoning Regulations and section 26-132 of the Baltimore County Code, hereby notice an appeal of the Zoning Commissioner's September 24, 2002 decision in the above-captioned matter. Appellants appeal the Zoning Commissioner's granting of the petition for special hearing, petition for special exception, and petition for variance.

Pursuant to Rule 3 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals, the names and addresses of Appellants are as follows:

The Valleys Planning Council, Inc.
c/o Jack Dillon, Executive Director
P.O. Box 5402
Towson, Maryland 21285

Greencroft Community Association
c/o Mary Alane Downs, President
Morgan Shelsby Carlo Downs & Everton, P.A.
4 North Park Drive
Hunt Valley, Maryland 21030-1876

Falls Road Community Association, Inc.
c/o Robert D. Sellers, Esquire
Robert D. Sellers & Associates
401 Washington Avenue, Suite 303
Towson, Maryland 21204

Dennis Sutton
13500 Beaver Dam Road
Cockeysville, Maryland 21030

Respectfully submitted,



Michael R. McCann

Funk & Bolton, P.A.
100 Light Street, Suite 1000
Baltimore, Maryland 21202
(410) 659-7700

Attorneys for The Valleys Planning Council, Inc.

Dated: October 23, 2002

85000.001:58683

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 23rd day of October 2002, a copy of the foregoing Notice of Appeal was mailed, first class, postage prepaid, to:

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204-5517

Attorneys for Petitioner

Michael R. McCann

85000.01.58683

Baltimore County
Zoning Commissioner

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

October 28, 2002

Robert A. Hoffman, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, Maryland 21204

RE: MOTION FOR RECONSIDERATION (1201 Shawan Road, The Oregon Grille)
Petitions for Special Hearing, Special Exception & Variance
Case No. 02-461-SPHXA

Dear Mr. Hoffman:

Reference is made to the Motion for Reconsideration you filed on behalf of the Petitioners in the above-captioned matter, received in this office on October 17, 2002. I am also in receipt of a copy of a joint Notice of Appeal filed by Michael R. McCann, Esquire, on behalf of The Valleys Planning Council, Inc., Falls Road Community Association, Inc., Greencroft Community Association, and Dennis Sutton.

It is my judgment that the filing of this appeal by the Appellants immediately vests jurisdiction of this matter with the County Board of Appeals. Notwithstanding the fact that the Zoning Commissioners' Rules of Policy and Procedure would stay the appeal time while the Motion for Reconsideration was pending, the Appellants' appeal essentially eliminates my jurisdiction and authority over this matter. Thus, a ruling on the Motion for Reconsideration is now moot.

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Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Michael R. McCann, Esquire, Funk & Bolton, PA
100 Light Street, Suite 1000, Baltimore, Md. 21202-1036
People's Counsel; Case File

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File

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†ADMITTED IN NE AND DC ONLY
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PETER C. ISMAY††
CYNTHIA L. MCCANN
CHERYL A. C. BROWN
HISHAM M. AMIN

OF COUNSEL:
JOHN A. ANDRYSZAK
GARY C. HARRIGER
MICHAEL R. MCCANN
J. FRANK NAYDEN
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

October 23, 2002

Hand Delivered

Arnold Jablon, Director
Baltimore County Department of
Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

26

Re: The Oregon Grille
Before the Zoning Commissioner for Baltimore County
Case No. 02-461-SPHXZA

Dear Mr. Jablon:

Enclosed please find The Valleys Planning Council, Inc.'s, Falls Road Community Association, Inc.'s, Greencroft Community Association's, and Dennis Sutton's Notice of Appeal of the Zoning Commissioner's September 24, 2002 decision in the above-referenced matter, along with the filing fee of $650.00. Please date-stamp one copy of the Notice of Appeal and return the date-stamped copy to the messenger.

Thank you for your attention to this matter.

Sincerely,

Michael R. McCann

Enclosures
MRM:kjg
cc: Lawrence E. Schmidt, Zoning Commissioner (*via* facsimile & U.S. Mail)
Robert A. Hoffman, Esquire (*via* facsimile & U.S. Mail)
Kristen Howanski, Chairperson, Baltimore County Board of Appeals
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Carole Demilio, Esquire, People's Counsel for Baltimore County
85000.001.58682

10/11/02

IN THE MATTER OF OREGON, LLC	*	BEFORE THE
	*	ZONING COMMISSIONER
PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION, AND VARIANCE	*	OF BALTIMORE COUNTY
	*	
1201 Shawan Road		Case No.: 02-461-SPHXA
	*	
8th Election District 3rd Councilmanic District	*	

OCT 17 2002

* * * * * * * * *

PETITIONER'S MOTION FOR RECONSIDERATION

Petitioner Oregon, LLC, by Robert A. Hoffman with Venable, Baetjer and Howard, LLP, its attorney, in accordance with Rule 2K of the Zoning Commissioner's Rules of Practice and Procedure, files this Motion for Reconsideration, as follows:

1. On February 8, 1995, the County Board of Appeals of Baltimore County ("Board of Appeals") approved a special exception allowing the property to be used as a restaurant in Case No. 94-348-XA.

2. In Case No. 02-461-SPHXA, Petitioner filed various zoning petitions relating to its requests to expand the restaurant special exception area and host outdoor events on the property. One element of the relief requested through its Petition for Special Exception was to expand the special exception area approved in the 1994 case to permit an existing outbuilding/barn to be used for restaurant storage and office space. As part of its Petition for Special Hearing, Petitioner also requested permission to play music, live or recorded, in association with outdoor events until 10:00 or 11:00 p.m. on the evening of an event.

3. Following a public hearing on the matter, on August 13, 2002, the Zoning Commissioner entered his Findings of Fact and Conclusions of Law granting the requested Petitions. The Zoning Commissioner's Order contained the following restrictions relevant to this Motion for Reconsideration:

> 8. No music will be played after 9:00 PM, Sunday through Thursday, and 10:00 PM on Friday and Saturday.
>
> 9. The outbuilding/barn shall be used solely for storage purposes and will not be used to serve patrons.

By way of this Motion for Reconsideration, Petitioner is requesting that the Zoning Commissioner clarify or amend Restriction Nos. 8 and 9 of the Order. Petitioner requests that Restriction No. 9 be clarified or amended to allow the outbuilding/barn to be used for office space to support the restaurant's operation as well as for storage space. Petitioner also requests the Zoning Commissioner to clarify that, with regard to music played outside, Restriction No. 8 applies to event music only, not recorded "background" music played on the terraces for restaurant dining.

4. With regard to Restriction No. 9 and the outbuilding/barn, the Zoning Commissioner may recall that Theodore W. Bauer testified at the hearing that there is a shortage of office and storage space within the main restaurant building. (Transcript, pp. 42-44) Mr. Bauer specifically indicated that he wished to use the outbuilding/barn, once renovated, as space for the management of the restaurant's affairs and storage. (T., pp. 42-44)

5. From the body of the opinion and the restrictions imposed, it appears that the Zoning Commissioner clearly intended to prohibit the Petitioner from using the outbuilding/barn as an additional restaurant seating area and/or another area to

accommodate event guests. The Zoning Commissioner indicated, though, that he understood Petitioner's request to be for use of the outbuilding/barn for storage and other purposes "in conjunction with the restaurant use," and he seemed to indicate these were acceptable uses. (Zoning Commissioner's Order, p. 1) However, as stated, Restriction No. 9 seems to permit storage only, rather than the combination storage/office use requested by Petitioner. Petitioner believes this might have been an oversight by the Zoning Commissioner rather than an intentional limitation on the permitted use of the structure. Petitioner, therefore, requests that the Zoning Commissioner amend his Order to clarify that the outbuilding/barn would be permitted to be used for restaurant office space as well as for storage purposes.

6. The Zoning Commissioner may also recall that the Board of Appeals in the 1995 case imposed a restriction (Restriction No. 2) concerning the playing of music outside on the restaurant terraces. Restriction No. 2 provided, in pertinent part, as follows:

> Music shall not be audible from any neighboring residences that exist as of the date of this Board's Order.

Outdoor events were not permitted as part of the Board of Appeals' Order in the 1995 case, and, therefore, Restriction No. 2 related only to background music played on the outside terraces for restaurant patrons. The Board of Appeals did not restrict the hours during which such music could be played for that purpose, and Petitioner has, since opening The Oregon Grille, received no complaints regarding music.

7. Petitioner again assumes, from language contained in the body of the opinion, that the Zoning Commissioner intended only to limit the hours during which event music could be played on the terraces, not background music for lunch and dinner

restaurant patrons. Petitioner, therefore, also requests the Zoning Commissioner to clarify that the purpose of Restriction No. 8 is to establish the appropriate evening hours for playing music in association with outdoor events, rather than to restrict the hours when background music may be played on the terraces for restaurant dining.

WHEREFORE, Petitioner respectfully requests that the Zoning Commissioner clarify his decision in this matter with regard to the request for an expansion of the special exception area and confirm that the outbuilding/barn will be permitted to be used for storage purposes and as an office to support the operation of the restaurant;

AND, Petitioner also respectfully requests that the Zoning Commissioner clarify his decision and confirm that the limitation provided in Restriction No. 8 regarding music applies to live or recorded music played in association with outdoor events only and not recorded background music played for restaurant guests seated on the terraces.

Respectfully submitted,

ROBERT A. HOFFMAN
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6200
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of October, 2002, a copy of the foregoing MOTION FOR RECONSIDERATION was mailed to Michael R. McCann, Esquire, 100 Light Street, Suite 1000, Baltimore, Maryland 21202-1036.

ROBERT A. HOFFMAN

TO1DOCS1/DHK01/#145960 v1

9/24/02

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE - SW/Corner Shawan Road and Beaver Dam Road (1201 Shawan Road) 8th Election District 3rd Council District * BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 02-461-SPHXA

Baltimore County, Maryland, Department of Recreation & Parks, Owners; Oregon, LLC, Contract Lessee *

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by the Contract Lessees, Oregon, LLC, through Theodore W. Bauer, Member, through their attorney, Robert A. Hoffman, Esquire. The Petitioners request a special exception, pursuant to Section 1A03.3.B.5 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an expansion of the area supporting a restaurant use originally approved in Case No. 94-348-SPHXA. Said expansion shall include an area for additional parking to serve the restaurant, and the inclusion of an existing outbuilding/barn located outside the entrance to the property, to be used for storage and other permitted purposes, in conjunction with the restaurant use. In addition, special hearing relief is requested to amend the site plan previously approved in Case No. 94-348-SPHXA, and Restrictions 3, 4, and 5 of the Order issued by the Board of Appeals, dated February 8, 1995, in accordance with the modified site plan submitted herein. Lastly, variance relief is requested from Section 409.8.A.2 of the B.C.Z.R. to permit a stone parking lot in lieu of the required durable and dustless surface, which is consistent with Restriction 9 of the Order issued in the prior case. 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.

ORDER RECEIVED FOR FILING
Date 9/24/02
By

Appearing at the requisite public hearing in support of the request were Theodore Bauer, Restaurateur and Member of Oregon, LLC, Contract Lessees of the subject property; Mitchell Kellman and Eric C. Haddaway, representatives of Daft-McCune-Walker, Inc., the land use consultants who prepared the site plan for this property; and Robert A. Hoffman, Esquire, and David Karceski, Esquire, attorneys for the Petitioners. Also appearing on behalf of the Petitioners were Mickey Cornelius, traffic engineering consultant, and Helene Miller, the proprietor of an event company and public relations firm. In addition to these expert witnesses, a number of individuals from the general locale testified and/or appeared at the hearing in support of the request. Interestingly, many of these individuals are members and/or traditional supporters of the Valleys Planning Council (VPC), an organization which appeared in opposition to the request. Appearing on behalf of that organization was Jack Dillon, Executive Director, and their attorney, Michael R. McCann, Esquire. Also appearing as Protestants in the matter were Dennis Sutton, John Galbreath, Odd Pedersen, Randle and Nancy Goetz, and Geoffrey Griffith, nearby residents.

The testimony and evidence presented is summarized in the excellent Post Hearing Memoranda submitted by both sides, and the legal arguments presented therein will be addressed hereinafter. Generally, it is to be noted that the subject property consists of approximately 2.63 acres, zoned R.C.4 and is improved with a 1½-story building which houses the restaurant known as the Oregon Grille. The property is located on the southwest corner of the intersection of Shawan Road and Beaver Dam Road near the entrance to the Oregon Ridge Park property. The subject property is owned by Baltimore County and maintained by the Department of Recreation and Parks in conjunction with Oregon Ridge Park; however, the subject site is leased by Oregon, LLC, which operates the restaurant.

In this regard, the case file contains inter-office correspondence, dated August 19, 2002, from the Department of Recreation and Parks to Arnold Jablon, Director of the Department of Permits and Development Management. Within its memorandum, the Department of Recreation and Parks indicated that it does not object to the filing of the Petition and/or the granting of the relief. However, the Department requests that no permits be issued for the proposed expansion

ORDER RECEIVED FOR FILING
Date 9/24/02
By Rye

without written approval from that agency since part of the proposed expansion area is not within the area presently leased by Oregon, LLC. In any event, this is an issue of interpretation and negotiation of the existing lease between Baltimore County and Oregon, LLC. However, it is clear that the County, as property owner, is aware of the instant Petitions and consents to the filing and consideration of same by the undersigned Zoning Commissioner. Therefore, I find the Petitions properly filed and the case before me appropriate. The private agreement between the County and Oregon, LLC will be revised, as necessary, by the parties thereto.

The building that houses the Oregon Grille Restaurant was formerly known as either the Kurtz House or the Oregon Ridge General Store. The building has existed at this location for many years and by the early 1990s, had deteriorated and become rundown. At that time, Mr. Bauer, who also owns the Mt. Washington Tavern in Baltimore City, negotiated the lease agreement with Baltimore County to operate a full-service restaurant on the subject site. Mr. Bauer filed the requisite zoning Petitions in prior Case No. 94-348-SPHXA to obtain approval of his plans. By Order dated June 28, 1994, Deputy Zoning Commissioner Timothy M. Kotroco granted a special exception to allow the conversion of the existing building to a restaurant and special hearing relief that such conversion was consistent with the historic preservation of the building. However, the Petitioners' special hearing request to exempt the restaurant operation from the requirements of the B.C.Z.R. because the County owns the property was denied. As is well settled, activities on County-owned land are generally exempt from the B.C.Z.R. (See, e.g. Board of Child Care of Baltimore Annual Conference of the Methodist Church v. Harker, 316 Md. 783 (1989). However, Deputy Commissioner Kotroco correctly found that the exemption does not apply to this matter, where a private business is operating under a lease with the County as landlord. Finally, variance relief was granted from the parking requirements contained in Section 409.6.A.2 of the B.C.Z.R. Although much of the relief requested was granted, Deputy Commissioner Kotroco imposed nine restrictions on the use of the restaurant facility.

The case heard by Deputy Commissioner Kotroco was contested. The Valleys Planning Council (VPC) appeared in opposition to the request, as did representatives of the Falls

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Road Community Association and Oregon Ridge Nature Center Council. Nearby residents also appeared in opposition. Deputy Commissioner Kotroco's decision was subject to cross appeals by Oregon, LLC, and the VPC. Although the hearing before the Board of Appeals was de novo, a reading of the Board's opinion dated February 8, 1995 shows that they reached similar conclusions as Mr. Kotroco. That is, special exception and variance relief was granted for the proposed restaurant use, and similar restrictions were imposed.

Mr. Bauer now comes before me seeking relief to allow an expansion of the area of the existing business for more parking and to utilize an existing shed/barn in connection with the business. He also seeks a modification of Restrictions 3, 4 and 5 of the Board of Appeals' Order. The language of those restrictions demonstrates that they were implemented to restrict the nature of outdoor activities on the property. Restriction No. 3 limited an outdoor dining area/patio to only dining or pre-dinner cocktails and limited the maximum number of patrons who may be seated in those areas to 125. It was also indicated that there would be no outdoor bars, live music, tents or similar overhead coverings, with the exception of umbrellas. The restriction also prohibited music from being audible from nearby residences. Restriction No. 4 prohibited catering, or the hosting of weddings or other events **outside** the building. Restriction No. 5 required that the bar/lounge area be located on the east end of the restaurant as shown, and also prohibited the applicant from establishing temporary bars outside the restaurant.

Mr. Bauer seeks to modify those restrictions to allow an expansion of his outdoor activities. However, if relief is granted, he consents to the following limitations: 1) That the number of evening events be limited to 15 per calendar year; 2) that the events be held on terraces on the south side of the restaurant and that any tents used to accommodate such events would be removed within 24 hours following all events for which they were erected; 3) that music be permitted at a minimum level of obtrusiveness to nearby neighbors and other patrons of the restaurant; and, all music would cease by 10PM, except for five evening events per year at which music would cease by 11PM; 4) that a sound specialist will be engaged by the applicant to provide recommendations and guidelines to assure minimal intrusiveness of the music and that those

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recommendations would be adopted; 5) that events during the daytime and early evening (i.e. ending no later than 9PM) would be subject to the foregoing music standards and tent removal requirements, but would not be included with the limitations as to the number of those events; and 6) that a canopy or similar cover to provide shade on a seasonal basis to the dining portions of the patios would not be considered a tent and would therefore be permitted.

As noted above, there was significant expert and lay testimony during the course of the hearing regarding the applicant's proposal. That testimony was expertly summarized in the Post-Hearing Memoranda submitted by each party. Additionally, a Court Reporter was present at the hearing and a transcript of the testimony offered was submitted as an exhibit to each party's respective memorandum. The undersigned will not recite herein all of the testimony and evidence offered, but will let the record of the case speak for itself. However, particularly relevant testimony will be highlighted below as appropriate. There were a number of legal issues presented and each will be addressed separately as follows:

ISSUE NO. 1: Nature of Proposed Use (i.e. Catering Hall v. Standard Restaurant):

The threshold issue in deciding this case is to determine the nature of the land use. It is well settled that the B.C.Z.R. are written in the inclusive (See Kowalski v. Lamar, 25 Md. App. 493 (1975) and Section 102.1 of the B.C.Z.R.). That is, only uses permitted by right or by special exception in a given zone are allowed. Section 101 of the B.C.Z.R. sets out definitions used in the regulations. Therein, both catering hall and standard restaurant are defined.

The B.C.Z.R. defines catering hall as: **"A facility or part of a facility used regularly for serving beverages to groups which reserve the facility for banquets or gatherings before the day of the event. A catering hall is not a standard restaurant."**

A restaurant, standard is defined as: **"A facility or part of facility used primarily for serving meals and beverages to persons seated at tables on the premises of the establishment. The term includes cafes, cafeterias, tearooms and outdoor cafes. The term does not include a catering hall. A standard restaurant may offer a carryout service, provided such service is**

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accessory to the principal restaurant operation. A standard restaurant may include a Class VI Brewery as an accessory use."

It is to be noted that the County Council adopted these definitions in 1993 through the passage of Bill No. 110-93. This is particularly relevant in view of the Protestants reliance upon the decision rendered by the Board of Appeals relating to a proposed catering activity at the Manor Tavern. The Manor Tavern is a dining establishment located in the northeastern rural/agricultural area of Baltimore County. I find it significant that the Manor Tavern case was decided by the County Board of Appeals on July 31, 1991, prior to the adoption of the definitions cited above in 1993. The Protestants' reliance upon the Manor Tavern case is misplaced, given significant changes in the statute enacted by the Council since that time.

In any event, the positions of the parties regarding the nature of the use on the subject property are clear. The Petitioner avers that the Oregon Grille is a restaurant operation. This includes components of both a traditional restaurant business where guests who dine at the facility are seated, as well as the hosting of banquets, functions, receptions and similar affairs with large groups, which reserve the facility in advance for private parties. To the contrary, the Valleys Planning Council contends that Mr. Bauer's proposed activity constitutes a catering hall. The Protestants correctly note that a catering hall is not permitted in the R.C.4 zone. Thus, they contend that Mr. Bauer's proposed outdoor activities are not permitted.

There are a number of factors that are contained within the record of this case that are persuasive to a finding that the operations of the Oregon Grill, both existing and proposed, are those of a restaurant and not a catering hall. First, testimony offered by the Petitioners about the business characteristics of restaurants in Baltimore County was particularly instructive. This testimony was received from both Helene Miller and Mitchell Kellman. Ms. Miller identified numerous other restaurant facilities throughout Baltimore County that host outside private functions. These include, for example, The Milton Inn, The Stihl, Liberatori's, Michael's Café and others. Similarly, Mr. Kellman testified that he has attended a number of "catered" functions,

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including political fundraisers, retirement dinners, wedding receptions, etc., at restaurants in Baltimore County.

From this testimony and the personal experience of any person who consumes meals outside the home, it is easily understood that there are many restaurants in Baltimore County which "cater" private functions. From a business standpoint, the traditional distinction between a catering hall such as Martin's West and a restaurant that serves meals only to individual diners has become blurred. It is clear that many restaurants throughout Baltimore County may accommodate both individual diners and large groups. Many restaurants host wedding receptions, retirement dinners, professional association meetings, etc. Does the fact that these facilities sometimes host private functions for pre-reserved groups convert the identity of their business from a restaurant to a catering hall? The obvious answer is "no." It is clear from the testimony and evidence offered, that part and parcel of a restaurant business is to "cater" to large pre-reserved groups.

The second factor that supports this conclusion is the actual definitions contained in Section 101 as referenced above. As stated, the definition of a standard restaurant is a business that "primarily" serves meals and beverages to persons seated at tables on the premises. Obviously, "primarily" does not equate to "exclusively." Additionally, the language specifically excludes a catering hall. By use of the word "primarily," and the specific exclusion of catering hall from the definition, it is clear that the legislative intent of the County Council was to recognize that while the main focus of restaurants is to serve individual diners seated at tables, the accommodation of private, pre-reserved groups as part of the overall restaurant use does not make a restaurant a catering hall.

The catering hall definition found in Section 101 is also instructive. Therein, the County Council saw fit to specifically state that a catering hall is not a standard restaurant. Moreover, a catering hall facility must be used "regularly" by groups that reserve the facility for banquets or gatherings before the day of the event. It is clear that the Council recognized that catering halls and standard restaurants were of similar character. The distinction, however, is if catering services were not the primary focus of the business, the legal identify of the use would not

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change from a restaurant to a catering hall. Only if such uses became the primary focus of the business would the use be considered a catering hall.

A third factor to be considered is the prior decisions of both Deputy Commissioner Kotroco and the County Board of Appeals. The Protestants apparently do not contend that the Oregon Grill is not now a standard restaurant. That is, the Board of Appeals and Deputy Commissioner Kotroco found that the Oregon Grille is, by definition, a restaurant. Yet, the testimony and evidence offered was that the Oregon Grille presently offers catering services within the interior of the building. That is, the Oregon Grill presently accepts reservations for wedding receptions, retirement dinners, etc., which occur in the building. The prior case shows that Deputy Commissioner Kotroco and the Board of Appeals did not then consider the conducting of these activities in the interior of the building to change the nature of the use from a restaurant to a catering hall. That being the case, there is clearly no difference between what was approved and what is actually carried out and what is proposed other than the fact that in the future, some events will be conducted out of doors. The definitions contained in Section 101 of the B.C.Z.R. offer no distinction between a catering hall and a standard restaurant based upon whether the business operates inside or outside a building.

In sum, the hosting of private parties at an outdoor location does not make an established restaurant a catering hall. The focus rather must be on the primary nature and scope of the business presented. I am persuaded, based on the testimony of Mr. Bauer, that the nature of the business of the Oregon Grill will continue to primarily be to entertain individual diners who will be seated at tables both inside the building and outside. However, as part and parcel of the restaurant business, private groups will reserve the site in advance for banquets and functions. Based upon the testimony and evidence presented, this is an integral, yet subordinate, part of the overall business. Thus, whether inside or outside, I find that the existing and proposed operation is of the character of a standard restaurant and not a catering hall. Thus, Mr. Bauer's use, both existing and proposed, is permitted by special exception in the R.C.4 zone.

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ISSUE NO. 2: Is the proposed outdoor use permitted as an accessory?:

Having determined that catered events are an integral part of a standard restaurant operation, this issue becomes moot. Periodic catering functions at a restaurant are a principal part of a restaurant business. They are not accessory.

ISSUE NO. 3: Petitioner's Compliance with Section 402.3:

The Protestants also contend that the Oregon Grille's proposal violates the requirements of Section 402.3 of the B.C.Z.R. and is therefore not permitted. Section 402.3 governs restaurant uses. This Section states, "To be converted for tearoom or restaurant use in an D.R.1 or D.R.2 zone as a special exception, the following requirements must be met: a) Meals may be served only at tables, indoors or on an outdoor terrace, and not to persons remaining in cars; b) the minimum lot size shall be 1.0 acre; c) Signs are permitted subject to Section 450; d) service shall be provided only at meal times." The above language is footnoted to state that conversions to tearoom or restaurant use are also permitted in the R.C. zones. Indeed, Section 1A03.B.5 provides that restaurants are permitted by special exception in the R.C.4 zone, and Section 402.3 is applicable to restaurants in that zone.

There was significant testimony and argument offered regarding the application of Section 402.3 on the Oregon Grille operation. As stated in Protestants' Memorandum, it is the duty of the Hearing Officer to determine legislative intent in construing any statute or regulation. (Dregen v. State, 352, Md. 400 (1997). It is the fundamental principle of statutory construction to apply the clear meanings of the words used within the statute or regulation in determining statutory intent. (London v. State, 332, Md. 481 (1991). Determining legislative intent is made difficult in this case, given the evolution of the B.C.Z.R. As noted in Petitioners' memorandum, Baltimore County's original zoning regulations identified all businesses that served meals as simply restaurants. Only that general definition was in place when the County Council enacted Section 402.3. At that time, catering halls and various categories of restaurants were not specifically delineated. It was only later that the Council clarified and broadened the restaurant definition. Subsequent to the adoption of Section 402.3 in the B.C.Z.R., the County inserted the catering hall

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definition (Bill No. 110-93). Additionally, within that Bill, restaurant uses were categorized (i.e., fast food, drive-through, carryout, etc.).

It is Section 402.3, subparagraph 'a' that is contested. As noted above, that Section states, "Meals may be served only at tables, indoors or on an outdoor terrace, and not to persons remaining in cars." The Petitioners aver that the intent of that Section, particularly given the fact that only the broad "restaurant use" was in place at the time the Bill was enacted, demonstrates the intent by the County Council to prohibit outdoor dining in automobiles in the D.R. and R.C. zones. As to the Protestants, they seek a strict application of the language. Specifically, they contend that Section 402.3.a requires patrons of a restaurant to consume their meals at tables. Since guests at private parties may be served buffet style or by roaming servers, the Protestants contend that the Petitioners' proposed use violates the requirements of Section 402.3a.

I conclude that the Protestants' interpretation is incorrect. As noted above, the nature of restaurants has evolved over the years. As observed above, restaurants now offer catering-type services, and the manner of restaurant service has likewise changed and broadened. Many standard restaurants offer buffet meals and salad bars. Can it realistically be contended that Section 402.3 prohibits a standard restaurant from providing a salad bar because patrons are not seated at tables? The answer to this inquiry is obvious.

Likewise, the language of Section 402.3 can be broadly construed in interpreting what it means to dine at tables. The Protestants' interpretation requires that diners be served only while seated at tables; however, the language is not that precise. Might not the tables identified in Section 402.A include buffet tables, tables without seats, etc.?

The Protestants also contend that Section 402.3, subparagraph 'D' prohibits the Oregon Grille's proposed operation. That Section requires that service be provided only at mealtime. Particularly, given today's hectic society, the concept of mealtime has been drastically altered. Rarely do today's families dine three times a day at the same appointed hour. "Mealtime" is a concept now so vague and personal that it cannot be applied precisely.

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In conclusion, I do not find that Mr. Bauer's proposal violates the requirements of Section 402.3A. That regulation must be read in conjunction with other regulations throughout the B.C.Z.R. When considering the regulation in a manner consistent with the multi-restaurant definitions set out in Section 402.3, I find that a broad reading is appropriate. Simply stated, I decline to impose the stringent requirements that would result if Protestants' interpretation were adopted.

ISSUE NO. 5: Is Petitioners' request precluded by res judicata?:

The Protestants contend that the prior decisions by Deputy Commissioner Kotroco and the County's Board of Appeals preclude consideration of the instant request. Indeed, principles of res judicata may apply to administrative agencies. (See, Board of County Commissioners of Cecil County v. Racine, 24 Md. App. 435 (1975). Though such principles may apply, res judicata does not preclude consideration of the instant Petition. The circumstances surrounding this issue have changed. In 1994, when the prior decisions were rendered, the proposed Oregon Grille operation did not exist. In considering whether special exception approval should be granted and whether the requirements of Section 502.1 would be satisfied, the administrative bodies which considered the request were called to speculate upon the impacts of the proposed operation. At the present time, the Oregon Grille operation is up and running. The undersigned has the benefit of considering the impacts of the present operation and how those impacts may be altered by the Petitioners' proposal. The fact that the restaurant is existing is significant.

Moreover, the requirements of Section 502.1 of the B.C.Z.R. mandate that in considering any specific exception, the Zoning Commissioner evaluate potential impacts on the health, safety and general welfare of the surrounding locale. In this regard, the face of this area of Baltimore County has changed since the earlier case. The development of the Hayfields Farm tract nearby with a golf course and country club has changed the character of the neighborhood. Moreover, the nearby parcel, which is used by Shawan Downs for horseracing, is a new element not present in 1994. Land use and zoning law reflects ongoing changes in the pattern of land development in a particular area. To strictly apply res judicata would not enable the Zoning

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Commissioner to consider ongoing land use changes. The principles of res judicata are to be applied sparingly in an administrative setting. I do not find that those principles prohibit consideration of the instant Petition.

ISSUE No. 6: Application of Sections 502.1 & 307:

In my judgment, the ultimate issue in this case is whether, on the merits, the relief sought in the Petitions for Special Hearing, Special Exception and Variance should be granted. In considering the Petitions for Special Hearing and Special Exception, the standards set out in Section 502.1 of the B.C.Z.R. need be applied. The question presented is simply whether the proposed expansion would adversely impact the health, safety and general welfare of the locale.

The Petitioners offer a compelling argument that the requested relief will not cause detrimental impacts on the neighborhood. Although this use is located within one of the County's revered "Valleys," the Petitioners observed the neighboring land uses at the Hayfields' Country Club, the Shawan Downs parcel, and the Oregon Ridge Park. Each of these land uses attracts large groups of individuals for social functions and to enjoy the outdoor views and vistas. Comparatively speaking, it is argued that the occasional outdoor activities at Oregon Grille are dwarfed by these neighboring uses (e.g., a proposed wedding reception for 200 guests at the Oregon Grille versus the multi-thousand patrons who might attend an Oregon Ridge Summer Concern Series event).

To the contrary, the Protestants fear that the Oregon Grille commercial enterprise will adversely affect its neighbors. Although recognizing neighboring land uses, the Protestants contend that the Oregon Grille is not part of a public park and that it's activities will be more frequent and therefore more disruptive.

In my judgment, the resolution of this issue is one of scope and degree. Would occasional and controlled outdoor functions detrimentally impact the locale; absolutely not. Would frequent and uncontrolled functions detrimentally impact neighboring properties? Quite possibly so. In my judgment, the Petitioner has satisfied the requirements of Section 502.1 of the B.C.Z.R. and thus, the special hearing and special exception relief can be granted. However, in

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order to assure that surrounding and neighboring properties are protected, I will impose certain conditions pursuant to the authority set out in Section 502.2 of the B.C.Z.R. These restrictions should be recognized as part of a single integrated decision in this case. Although I defer to the authority of the County Board of Appeals on what might be appealed to it, it is the intent of the undersigned that the granting of the Petitions and the imposition of the restrictions set forth hereinafter are co-dependent upon one another. The parties should not be permitted to pick and choose what it is they wish to appeal. With that being said, the following restrictions will be imposed upon the grant of this relief.[1]

1) All outdoor events will be held on the terraces on the south side of the restaurant, and any tents used to accommodate such events shall be removed within 24 hours following all events for which they are erected.

2) A sound specialist will be engaged by the applicant to provide recommendations and guidelines to insure minimal intrusiveness of music and outdoor functions and that those recommendations will be adopted and followed. A written copy of those recommendations shall be submitted to DPDM for inclusion in the case file and supplied to VPC.

3) A canopy or other similar cover to provide shade on a seasonal basis to the dining portions of the patio will not be considered as tents and will therefore be permitted.

4) The maximum number of outdoor guests at any given time will not exceed 250.

5) Evening functions shall be defined as those functions for which any part thereof is carried out after sundown. For example, if the sun sets on a given day at 7:55 PM and the event continues to 8:00 PM, it shall be counted as an evening event.

6) There will be no limitation on the number of outdoor events during the day, but outdoor events during the evening shall be limited to 25 per year. The Petitioner shall submit, on a monthly basis, the number of evening outdoor events to DPDM with a copy to VPC.

7) No music will be played after 9:00 PM, Sunday through Thursday, and 10:00 PM on Friday and Saturday.

[1] For reasons set out herein, I adopt some of the Petitioners' proposed restrictions and decline to adopt others.

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8) The outbuilding/barn shall be used solely for storage purposes and will not be used to serve patrons.

Turning to the other relief requested, the Petitioner seeks an expansion of the area supporting the restaurant use for additional parking and to include the existing outbuilding/barn for storage purposes. The proposed expansion is appropriate and shall be approved. The outbuilding/ barn shall be used solely for storage purposes and will not be used to serve patrons. The parking area shall also be expanded as proposed, subject to approval by the Department of Recreation and Parks and DEPRM. Finally, variance relief shall also be granted. The requested relief is consistent with the prior Order. Recognizing the environmental constraints associated with this site, the existing parking lot is not of a durable and dustless surface so as to decrease runoff. Any proposed expansion area of the lot shall be of similar construction.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 24th day of September, 2002 that the Petition for Special Exception seeking approval of an expansion of the area supporting a restaurant use, including an area for additional parking to serve the restaurant, and an existing outbuilding/barn located outside the entrance to the property, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking approval of an amendment to the site plan approved in prior Case No. 94-348-SPHXA, and Restrictions 3, 4, and 5 of the Order issued by the Board of Appeals, dated February 8, 1995, to incorporate the proposed modifications as set forth in Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 409.8.A.2 of the B.C.Z.R. to permit a stone parking lot in lieu of the required durable and dustless surface, which is consistent with Restriction 9 of the Order issued in the prior case, and in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

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1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) All outdoor events will be held on the terraces on the south side of the restaurant, and any tents used to accommodate such events shall be removed within 24 hours following all events for which they are erected.

3) A sound specialist will be engaged by the applicant to provide recommendations and guidelines to insure minimal intrusiveness of music and outdoor functions and that those recommendations will be adopted and followed. A written copy of those recommendations shall be submitted to DPDM for inclusion in the case file and supplied to VPC.

4) A canopy or other similar cover to provide shade on a seasonal basis to the dining portions of the patio will not be considered as tents and will therefore be permitted.

5) The maximum number of outdoor guests at any given time will not exceed 250.

6) Evening functions shall be defined as those functions for which any part thereof is carried out after sundown. For example, if the sun sets on a given day at 7:55 PM and the event continues to 8:00 PM, it shall be counted as an evening event.

7) There will be no limitation on the number of outdoor events during the day, but evening outdoor events shall be limited to 25 per year. The Petitioner shall submit, on a monthly basis, the number of evening outdoor events to DPDM with a copy to VPC.

8) No music will be played after 9:00 PM, Sunday through Thursday, and 10:00 PM on Friday and Saturday.

9) The outbuilding/barn shall be used solely for storage purposes and will not be used to serve patrons.

10) The Petitioners shall submit a plan of the expanded parking area to DEPRM for review and approval as to the location, size and materials used for same.

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11) When applying for any permits, the site plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

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Date 9/24/02
By BJS

Baltimore County
Zoning Commissioner

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

September 24, 2002

Robert A. Hoffman, Esquire
David Karceski, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE
SW/Corner Shawan Road and Beaver Dam Road
(1201 Shawan Road)
8th Election District – 3rd Council District
Baltimore County, Maryland, Department of Recreation & Parks, Owners;
Oregon, LLC, Contract Lessee - Petitioners
Case No. 02-461-SPHXA

Dear Messrs. Hoffman & Karceski:

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

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

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Theodore Bauer, 14123 Mantua Mill Road, Glyndon, Md. 21071
Mitchell Kellman & Eric Haddaway, DMW, Inc., 200 E. Pennsylvania Ave., Towson, 21286
Mickey Cornelius, The Traffic Group, 9900 Franklin Sq.Dr., #H, Baltimore, Md. 21236
Michael R. McCann, Esquire, Funk & Bolton, 100 Light Street, #1000, Baltimore, 21202
Mr. Jack Dillon, Valleys Planning Council, P.O. Box 5402, Towson, Md. 21204
Mr. & Mrs. Randle Goetz, 13941 Cuba Road, Hunt Valley, Md. 21030
Mr. Dennis Sutton, 13500 Beaver Dam Road, Cockeysville, Md. 21030
Mr. John Galbreath, 2516 Chestnut Woods Court, Reisterstown, Md. 21136
Mr. Odd Pedersen, 2 Clipping Tree Lane, Cockeysville, Md. 21030
Mr. Geoffrey Griffith, 845 Ivy Hill Road, Cockeysville, Md. 21030
Mr. & Mrs. David B. Bopst, 14227 Greencroft Lane, Hunt Valley, Md. 21030
Mr. Richard B. Buck, 11219 Greenspring Avenue, Lutherville, Md. 21093
Department of Recreation & Parks; People's Counsel; Case File

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9/6/02

IN THE MATTER OF OREGON, LLC	*	BEFORE THE
	*	ZONING COMMISSIONER
PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION, AND VARIANCE	*	OF BALTIMORE COUNTY
	*	
1201 Shawan Road		Case No.: 02-461-SPHXA
	*	
8th Election District 3rd Councilmanic District	*	

* * * * * * * * * *

SEP – 6

PETITIONER'S POST-HEARING MEMORANDUM

Petitioner, Oregon, LLC ("Oregon"), by Robert A. Hoffman with Venable, Baetjer and Howard, LLP, its attorney, respectfully submits this Post-Hearing Memorandum in support of approval of its requested zoning relief, as follows:

INTRODUCTION

This case involves Petitions for Special Hearing, Special Exception, and Variance filed by Oregon, the owner of The Oregon Grille, a restaurant located at 1201 Shawan Road on the southwest corner of Shawan Road and Beaver Dam Road in Hunt Valley. Oregon leases the subject property, 3.18 acres of land zoned R.C.4, from Baltimore County, Maryland.

On February 8, 1995, the County Board of Appeals of Baltimore County ("Board of Appeals" or "Board") approved a special exception allowing the property to be used as a restaurant in Case No. 94-348-SPHXA ("Board of Appeals' Order" or "Board's

Order"), subject to certain restrictions, three of which are particularly relevant to this request:

3. The alternate outdoor dining area/patio locations, depicted on Petitioner's Exhibit 1, shall only be utilized for dining or pre-dinner cocktails, so long as patrons are subsequently served dinner, and shall be limited in quantity to 125 persons. There will be no outdoor bars, live music, tents, or similar overhead coverings on or serving the outdoor dining area. Music shall not be audible from any neighboring residences that exist as of the date of this Board's Order.

4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property. This paragraph shall not be interpreted to preclude activities permitted under Restriction No. 3.

5. The bar/lounge area will be located at the east end of the restaurant as shown on the floorplan submitted as Petitioner's Exhibit 2. This provision shall not preclude serving alcoholic beverages in other areas of the restaurant or establishing temporary bar areas inside the restaurant.

Under Restriction No. 4, indoor weddings and other similar events were permitted as part of the original special exception.

Oregon now proposes, in requesting the instant special exception, to expand the area of the previously granted special exception to allow for additional parking and to permit an existing outbuilding/barn to be used for restaurant storage and office space. *See* Petitioner's Exhibit No. 1. With regard to the requested variance, Restriction No. 9 of the Board's Order required the existing parking area to be of stone rather than a paved surface. In order to surface the new parking area with stone in compliance with Restriction No. 9, Oregon is required to obtain a variance from the requirement of the Zoning Regulations that parking spaces be of a "durable and dustless surface." Additionally, Oregon has requested a special hearing asking the Zoning Commissioner to

substitute the following restrictions in place of Restriction Nos. 3, 4, and 5; all other restrictions contained in the Board's Order will remain in effect:

1. The number of evening events would be limited to 15 per calender year.

2. The events would be held on the terraces on the south side of the restaurant. Tents would be permitted but would have to be removed within 24 hours following all events for which they were erected.

3. Music would be permitted but at a level of minimum intrusiveness to the nearby neighbors and other patrons of the restaurant; all music would have to cease by 10:00 p.m. at such events and by 11:00 p.m. on no more than 5 such events.

4. A sound engineer or specialist would be engaged by the Oregon Grille to provide recommendations and guidelines to assure minimal intrusiveness of the music.

5. Events during the daytime and early evening (i.e., ending no later than 9:00 p.m.) would be subject to the foregoing music standards and tent removal requirements but not included within the limitations as to the number of events.

6. A canopy or similar cover to provide shade on a seasonal basis to the dining portion of the patios would not be considered a tent and would be permitted.

Proposed Restriction Nos. 1 through 5 would permit outdoor tented, daytime events and would permit a limited number (15 per year) of outdoor tented, evening events, in addition to the already permitted indoor daytime and evening events. Any tent associated with an event would be removed within 24 hours of the event's end. The new restrictions would also allow live or recorded music of minimal intrusiveness on the restaurant terraces for all outdoor events. With regard to the proposed evening events, music would stop by 10:00 p.m. for 10 of the 15 events and by 11:00 p.m. for the remaining 5 events. Additionally, proposed Restriction No. 6 would allow Oregon to provide a seasonal covering, *i.e.*, a canopy or retractable awnings, over the outdoor dining

portions of the 2 restaurant terraces, not subject to the tent removal restrictions proposed in new Restriction No. 2.

As discussed in detail below, Oregon produced strong and substantial evidence before the Zoning Commissioner that the requested zoning relief (Petitions for Special Hearing, Special Exception, and Variance) should be granted.

STATEMENT OF FACTS

On February 8, 1995, Oregon obtained a special exception to convert the Oregon General Store, formerly known as the "Kurtz Store," to what is now The Oregon Grille Restaurant. (T., pp. 29-30) After significant renovations, the restaurant opened in September of 1997 and is now considered the only four-star, full-service gourmet restaurant in Baltimore County. (T., pp. 28-29, 41) *See also* Petitioner's Exhibit No. 2. Since opening, Oregon has received no complaints relative to the restaurant's operation, including its hosting of indoor events. (T., p. 41)

The Oregon Grille terraces, connected by a footbridge, have been used for pre-dinner cocktails and outside dining on a seasonal basis over the years. (T., p. 32) *See also* Petitioner's Exhibit No. 1. Generally, the terrace located closest to the restaurant serves as a waiting area where pre-dining cocktails are available, and the other terrace, located in close proximity to the parking lot, is used primarily for dining. (T., p. 34) On occasion, the terrace located closer to the restaurant is also used for dining when weather conditions are not ideal or a customer requires special assistance. (T., p. 64) As Theodore W. Bauer, Member of Oregon and operator of The Oregon Grille, testified, the

outdoor dining area has been well received by the restaurant's dining clientele. (T., p. 32)

Oregon now has an interest in utilizing the outside terraces to host events, such as weddings, receptions, and other gatherings. (T., pp. 32-33) Mr. Bauer believes that the setting provides an outstanding opportunity for such events. (T., p. 32) In order to host these outdoor events, Mr. Bauer testified that Oregon has no intention of expanding the existing terraces, the seating capacity of which is limited to 125 people. (T., pp. 32-33) *See also* Board's Order, Restriction No. 3. For a sit-down event, the outside terraces could accommodate up to 125 people consistent with the permitted capacity, and, for a stand-up, cocktail/buffet-type event, up to 225 people. (T., pp. 35-36)

Oregon also desires to expand the parking area in a westerly direction along Shawan Road. *See* Petitioner's Exhibit No. 1. While the existing parking area is adequate, Oregon desires additional parking for the comfort and convenience of its restaurant patrons and event guests on nights when the indoor dining area would be filled to capacity and a large outdoor event is scheduled. (T., pp. 39, 99-100) The parking area is surfaced in stone pursuant to Restriction No. 9 of the Board of Appeals' Order. (T., p. 55) Oregon proposes to surface the expanded parking area in stone consistent with this restriction. (T., p. 55) In doing so, Oregon would utilize the same low-level lighting that is currently used on the existing parking area. (T., p. 55) Additionally, Oregon desires to use an existing barn on the property for additional restaurant storage and office space. (T., p. 42) Mr. Bauer expects that the barn, once renovated, would accent the restaurant building. (T., p. 42)

ARGUMENT

I. Even with Oregon's Proposed Outdoor Events, the Restaurant would Still Comply with the Zoning Regulations.

Valleys Planning Council ("Protestant") argued that, if permitted to host outdoor events, The Oregon Grille would no longer be a "Standard Restaurant" as that term is defined in the Baltimore County Zoning Regulations ("B.C.Z.R." or "Zoning Regulations"). Instead, Protestant argues, it would be a "Catering Hall," a use prohibited in the R.C.4 zone. Additionally, Protestant argued that the R.C.4 classification requires that any meal served outside be served at a table. There is absolutely no support for either of Protestant's arguments. In fact, Oregon contends the grant of the special exception by the Board of Appeals in 1995, which was contested by Protestant, necessarily resolved any dispute relating to either of these issues.

The Board clearly permitted Oregon to host gatherings and events as part of The Oregon Grille's Standard Restaurant operations, but included a restriction that these events be held inside the restaurant building. *See* Board's Order, Restriction Nos. 4 and 11. At the hearing before the Board of Appeals in 1995, Protestant, who appeared in opposition, had ample opportunity to make both of these arguments and may, in fact, have done so. For all intents and purposes, it does not matter whether Protestant failed to make these arguments or whether the arguments were made and the Board simply was not persuaded by them. In either event, the Board clearly decided that Oregon is permitted to host the type of events proposed as part of a Standard Restaurant operation in the R.C.4 zone. The only appropriate question before the Zoning Commissioner, therefore, is whether those events should be permitted outdoors under the special

exception standard outlined in B.C.Z.R. Section 502.1. In the event the Zoning Commissioner, though, decides to consider Protestant's arguments with regard to the outdoor events, Oregon has addressed the flaws in Protestant's reasoning below.

A. The Oregon Grille would Continue to be a Standard Restaurant.

Protestant has argued that the proposed outdoor events would disqualify The Oregon Grille from being considered a Standard Restaurant. Protestant has obviously misread the definitions of Standard Restaurant and Catering Hall. Outdoor events, such as those proposed by Oregon, are permitted as part of a Standard Restaurant's operations or as an accessory use.

1. The Oregon Grille's Primary Use would Continue to be its Restaurant Business.

A Standard Restaurant is defined, in pertinent part, as follows:

> **RESTAURANT, STANDARD** - A facility or part of a facility used *primarily* for serving meals and beverages to persons seated at tables on the premises of the establishment. The term includes cafes, cafeterias, tearooms and outdoor cafes. The term does not include a catering hall.

B.C.Z.R. Section 101. A Catering Hall is defined as follows:

> **CATERING HALL** - A facility or part of a facility used *regularly* for serving beverages and food to groups which reserve the facility for banquets or gatherings before the day of the event. A catering hall is not a standard restaurant.

B.Z.C.R Section 101. The plain language of the above definition of Standard Restaurant makes clear that related activities, such as outdoor events, are permitted on the premises of a restaurant establishment as part of that restaurant's principal use, provided the restaurant is *primarily* devoted to "serving meals and beverages to persons seated at tables." The Oregon Grille has operated as a Standard Restaurant for the past 5 years,

including the hosting of indoor events. Expert and other testimony presented on behalf of Oregon demonstrates that The Oregon Grille would still operate *primarily* as a Standard Restaurant, if the proposed outdoor events were approved.

Oregon produced Mr. Bauer with regard to future plans for the restaurant. Mr. Bauer testified that currently he devotes 35 to 40 hours per week to managing The Oregon Grille's restaurant business. (T., p. 42) If the proposed outdoor events were approved, the restaurant's primary business would continue to be serving its regular restaurant patrons. (T., pp. 37-38, 40) He explained that "[t]he à la carte business is truly the heart and soul of a restaurant." (T., p. 38) Mr. Bauer confirmed that outdoor events are of secondary importance, and he would not close the restaurant for or permit any events to disrupt the primary business. (T., pp. 37-38, 40, 65) As a restaurateur with 23 of years experience, Mr. Bauer stated that it is a common restaurant practice to host outdoor events at Standard Restaurants in Baltimore County. (T., p. 49)[1]

Mitchell J. Kellman of Daft-McCune-Walker, Inc., an expert in the areas zoning and planning, provided credible testimony as to whether The Oregon Grille would meet the definition of a Standard Restaurant. (T., pp. 198-203) Mr. Kellman opined The Oregon Grille's hosting of outdoor events would, in fact, meet the definition of Standard Restaurant. (T., p. 203) In addition to relying on the definitions of Standard Restaurant and Catering Hall contained in the Zoning Regulations to formulate his opinion, Mr. Kellman explained that he has attended political fundraiser events, similar to the events Oregon proposes, at a number of restaurants in Baltimore County, including Linwood's

Restaurant in Owings Mills, Courtney's Café (formerly Rothwell's Grille) in Timonium, and The Coliseum in Cockeysville. (T., pp. 199-202) As Mr. Kellman testified, none of these restaurants is considered a Catering Hall, as that term is defined in the Zoning Regulations, but, rather all are considered Standard Restaurants. (T., pp. 199-203)

To supplement Mr. Kellman's testimony, Oregon also produced Helene M. Miller, owner of Eventfully Yours, LLC, an event company. (T., pp. 166-183) Ms. Miller has coordinated numerous affairs in the State of Maryland, including dedications, business grand openings, black tie galas, anniversary parties, and company picnics. (T., pp. 166-167) Consistent with Mr. Bauer and Mr. Kellman's testimony, Ms. Miller concluded, based on her research and investigation, that it is a common practice for well-known restaurants in Baltimore County to host both indoor and outdoor events and gatherings. (T., pp. 171-179) No one would seriously contend that these restaurants should, thus, be considered Catering Halls. Specifically, Ms. Miller reported that The Milton Inn Restaurant in Sparks will rent the entire restaurant for an event and has hosted 32 outside events this year and scheduled 14 weddings for the month of August. (T., pp. 171-172) Additionally, The Milton Inn has a tent that seats 35 people for use during such events. (T., pp. 171-172) The Manor Tavern Restaurant in Monkton hosts weddings and other receptions on its 2 terraces, one tent seats 100 people and another 240 people. (T., p. 172) Linwood's Restaurant in Owings Mills will interrupt its restaurant operation to host an event for up to 150 people. (T., p. 176) Michael's Café in Timonium hosts

[1] In addition to operating The Oregon Grille for the past 5 years, Mr. Bauer has owned and operated the

rehearsal dinners once a week; the main dining area accommodates 60 people and the patio another 30 people. (T., p. 176) Liberatore's Ristorante in Eldersburg hosts events for up to 125 people, and an outside tented-area is available for any event. (T., pp. 175-176) Gibby's Seafood Restaurant in Timonium will convert its indoor dining area for a party and offers a year-round, heated tent for wedding receptions and business group parties. (T., p. 175) The Harryman House Restaurant in Reisterstown hosts wedding receptions and can seat up to 50 people for any gathering. (T., pp. 174-175)

In addition to these Standard Restaurants, Ms. Miller testified that a number of private clubs and other facilities also host indoor and outdoor events. Oregon Ridge Park's facilities are used frequently for private events, including weddings and company picnics, and public events for up to 10,000 people from May to October. (T., p. 173) *See also* Petitioner's Exhibit Nos. 6, 7A, and 7B. The Baltimore Symphony Orchestra concert series and various music festivals and charity events are among the public events hosted on the Oregon Ridge Park grounds. *See* Petitioner's Exhibit Nos. 7A and 7B. The Shawan Downs is home to The Legacy Cup, a 40 tent event enjoyed by 10,000 spectators. (T., p. 174) *See also* Petitioner's Exhibit No. 8. Each corporate tent provides breakfast, lunch, and dinner. (T., p. 174) The Greenspring Valley Hunt Club hosts weddings and receptions for up to 300 people. (T., p. 172) In the spring and summer months, a tent is used for such events. (T., p. 172) The Greenspring Valley Country Club also hosts outdoor weddings and receptions under a terrace tent and/or a tent erected on the lawn. (T., p. 172) The ballroom is available for events as well. (T., p. 172)

Mount Washington Tavern located at 5700 Newbury Street in Baltimore City for 23 years. (T., p. 201)

As evidence by the testimony of Mr. Bauer, Mr. Kellman, and Ms. Miller, numerous establishments in Baltimore County host indoor and outdoor events without being labeled as a Catering Hall. From these examples, it is clear that a restaurant may hold outdoor events as part of its principal use while continuing to operate *primarily* as a Standard Restaurant for the "serving of food and beverages" to its restaurant patrons. This evidence was not contradicted by the Protestant.

2. The Proposed Outdoor Events would be a Permitted Accessory Use.

The proposed outdoor events would also be permitted as an accessory use to The Oregon Grille's restaurant business. Accessory uses are permitted by right in the R.C.4 zone pursuant to B.C.Z.R. Section 1A03.3.A.9. Therefore, provided the proposed outdoor events meet the definition of Accessory Use, those events should be permitted in conjunction with The Oregon Grille's restaurant business.

An Accessory Use is defined, in pertinent part, as follows:

> **ACCESSORY USE OR STRUCTURE** – A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served . . ..

B.C.Z.R. Section 101. The testimony of Mr. Bauer, Mr. Kellman, and Ms. Miller, outlined in Section I.A above, demonstrates that the outdoor events Oregon proposes, if not part of the principal use, would, at the very least, be accessory to the usual course of business of a restaurant establishment. (T., pp. 40-41, 171-179, 202-203) Pursuant to the definition of Accessory Use, the proposed events would be located on the same lot as and

be subordinate to Oregon's restaurant business in terms of extent and purpose. (T., pp. 38, 40-41, 64-65, 202-203) *See also* Petitioner's Exhibit No. 1. Again, as Mr. Bauer testified, any outdoor events would be limited to only a portion of the restaurant's total seating area and be of secondary importance. (T., pp. 35-36, 40-41) Additionally, the type of events proposed would be similar to events customarily offered by and associated with Standard Restaurants throughout Baltimore County. (T., pp. 49, 171-179, 199-202) Again, Mr. Kellman based on his research, testified that the proposed events are very similar to events hosted by a number of other restaurants, and Ms. Miller, based on her research, testified that it is a common practice for a Standard Restaurant to temporarily convert a portion of its dining area for an event. (T., 179, 202)

Protestant offered no testimony to dispute the accessory nature of the proposed events.

B. The Oregon Grille would Continue to Comply with B.C.Z.R. Section 402.3.A.

Protestant also argues that a restaurant located in the R.C.4 zone may only serve meals at tables, which would prohibit serving meals to outdoor event guests who are not seated. Protestant views this "table requirement" to mean that outdoor events, during which cocktails/hors d'oeuvres and/or buffets are served, are prohibited in the R.C.4 zone. Again, Protestant's argument must fail.

B.C.Z.R. Section 402, entitled "Conversion of Dwellings," lists certain requirements for conversion to residential and tearoom and restaurant uses. Section 402.3 provides, in pertinent part, as follows:

402.3 To be converted for tea room or restaurant use . . . as a special exception, the following requirements must be met:

A. Meals may be served only at tables, indoors or on an outdoor terrace, and *not to persons remaining in cars.*

Protestant has based its entire argument on the phrase "at tables" and ignored the phrase "to persons remaining in cars." Mr. Kellman opined that the purpose of the "table requirement" was to prohibit the serving of customers in their cars. (T., pp. 222, 238-239) Mr. Kellman noted that Section 402.3 was adopted by the Baltimore County Council in 1955 and has not been revised since that time. (T., p. 240) As Mr. Kellman explained, in 1955, the Zoning Regulations did not define the term "restaurant" or recognize different categories of restaurants, such as "Drive-In Restaurant" and "Fast-Food, Drive-Through Only Restaurant." (T., pp. 240-241) These definitions and other categories of restaurants were adopted subsequent to the enactment of Section 402.3.[2] Therefore, Section 402.3.A provided the only prohibition that existed at the time against serving meals to customers in cars, and Oregon submits that its sole purpose was to prevent that type of restaurant service, not to require that persons be seated at a table to enjoy a meal. (T., pp. 242-243) Oregon does not currently, nor does it propose to serve customers in their cars. What it does propose is, in addition to serving its regular restaurant clientele meals at tables, to serve either a buffet meal or cocktails and hors d'oeuvres to persons at a scheduled outside event who may or may not be seated at a table. Surely this type of service at a four-star, full-service gourmet restaurant fits within

[2] The definition of Drive-In Restaurant was adopted in 1967 by Bill No. 40-1967. The definitions of Carry-Out Restaurant, Fast-Food Restaurant, Fast-Food, Drive-Through Only Restaurant, and Standard Restaurant were adopted later in 1993 by Bill No. 110-1993.

the intended purpose of Section 402.3.A. If the requested relief were approved, The Oregon Grille's operations would remain in compliance with the intended purpose of Section 402.3.A.

II. Based on the Evidence Presented, Oregon is Entitled to the Requested Special Hearing and Special Exception Relief.

As discussed above, The Oregon Grille restaurant and the proposed expansion and outdoor events are permitted in the R.C.4 zone by special exception, pursuant to B.C.Z.R. Sections 1A03.3.B.5.

Special exception and special hearing relief is approved in accordance with B.C.Z.R. Section 502.1. According to the well-developed law of Maryland, a special exception use is presumed to be valid and is presumed to be consistent with the general welfare. *Schultz v. Pritts*, 291 Md. 1, 11, 432 A.2d 1319 (1981). Therefore, once a petitioner demonstrates that the proposed use satisfies the requirements of the applicable ordinances, *i.e.*, B.C.Z.R. Section 502.1, the special exception must be granted unless a protestant produces strong and substantial evidence that placement at this particular location will have adverse effects above and beyond those inherently associated with such a special exception use, regardless of where it may be located in the zone. *Schultz*, 291 Md. at 14, 22-23. In other words, a protestant must do more than show that the use may have adverse effects that are common to the use generally. *Id. See also Sharp v. Howard County Board of Appeals*, 98 Md. App. 57, 632 A.2d 248 (1993).

As outlined below, Oregon produced strong and substantial evidence at the hearing before the Zoning Commissioner to prove that the requirements of Section 502.1 had, in fact, been met. Protestant was unable to produce any credible evidence otherwise.

The Evidence Confirms that the Proposed Plan Complies with B.C.Z.R. Section 502.1.

In order to prove its entitlement to the requested changes to the special exception granted in Case No. 94-318-X, Oregon had to demonstrate that the requested relief complies with Section 502.1.

Health, Safety, and General Welfare of the Locality

Mitchell J. Kellman, Oregon's expert zoning specialist and land planner, confirmed generally that the proposed additional stone parking area, conversion of the barn for restaurant office and storage use, and the changes to the outdoor dining area would not be a detriment to the community or the adjacent area. (T., p. 204)

To supplement Mr. Kellman's testimony, a number of interested citizens submitted letters of support and/or testified in support of the requested zoning relief, including Oregon's request to host outdoor events.[3] (T., pp. 109-125, 164-166, 244-246)

[3] Frank A. Bonsal, Jr. (14014 Mantua Mill Road, Glyndon), Geoffrey H. Brent (2014 Geist Road, Glyndon), Andre W. Brewster (3321 Butler Road, Glyndon), Daniel and Judy Brewster (14301 Green Road, Glyndon), Walter Brewster (13401 Longnecker Road, Glyndon), Peyton S. Cochran, Jr. (3542 Butler Road, Glyndon), Charles W. Cummings, M.D. (13940 Mantua Mill Road, Glyndon), Charles C. Fenwick, Jr. (Shawan Downs, Director), Sherlock S. Gillet (14300 Green Road, Glyndon), Jack S. Griswold (2409 Gadd Road, Cockeysville), Edward A. Halle (11350 McCormick Road, Hunt Valley), Michael D. Hankin (3355 Black Rock Road, Glyndon/Valleys Planning Council, Board Member), Charles E. "Ted" Herget, Jr. (Gadd Road, Cockeysville), Pedie Killebrew, Francis X. Knott (2801 Houcks Mill Road, Monkton), Michael J. McCarthy (2200 Geist Road, Glyndon), James R. McDonald (17625 Falls Road, Upperco), Harvey L. Miller (13737 Cuba Road, Cockeysville), Thomas F. Mullan, III (1620 Cold Bottom Road, Sparks), Susan G. Russell (3741 Butler Road, Glyndon), Paul Mark Sandler (3223 Mount Zion Road, Upperco), John K. Shaw, III (3737 Butler Road, Glyndon), Carolyn Smith (1343 Ivy Hill Road, Cockeysville), Thomas W. Sutton (2070 Geist Road, Glyndon), Irvin C. Tillman (1114 Shawan Road,

See also Petitioner's Exhibit No. 3. Each supporter was familiar with the restrictions volunteered by Mr. Bauer in conjunction with the proposed outdoor events. (T., p. 50) *See also* Petitioner's Exhibit No. 3. Andre W. Brewster, a resident of Butler Road, testified both as an area resident and as a Board Member of the Land Preservation Trust ("L.P.T"). As a nearby resident, Mr. Brewster considered The Oregon Grille a "good neighbor" that "conducts a responsible operation." (T., pp. 111-112) In his capacity as an L.P.T. Board Member, Mr. Brewster stated that the L.P.T. "supports Mr. Bauer's request." (T., pp. 111-112) Peter Wight, a resident of Cuba Road, indicated he lives within 1 mile of The Oregon Grille. (T., p. 113) Mr. Wight characterized the restaurant as a well-maintained, "quality establishment" and added that he would experience no adverse impact as a result of the proposed outdoor events. (T., pp. 114-115)

David Warfield, a Hunt Valley area business owner, and Charles E. Herget, Jr. testified that the requested modifications are a "reasonable request." (T., pp. 116-117, 246) Thomas W. Sutton, a resident of Geist Road, testified that the community owes Mr. Bauer "a debt of gratitude" for his investment in The Oregon Grille and should not be opposing the requested relief. (T., pp. 118-119) James R. McDonald testified that Oregon is a "good corporate citizen" and it "certainly doesn't make sense" that other establishments in the area have tented events and The Oregon Grille cannot. (T., pp. 120-121) Susan G. Russell, a resident of Butler Road, stated "I can't believe that he's asking for anything that is out of place with other areas such as Hayfields, Shawan Downs and

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Cockeysville), Thomas C. Whedbee (13626 Falls Road, Cockeysville), and Peter and Jacqueline Wight (13808 Cuba Road, Cockeysville) submitted letters of support.

other churches . . .." (T., pp. 122-123) Thomas F. Mullan, III testified that the proposed outdoor events would be a "wonderful thing . . . for the neighborhood." (T., p. 165)

Protestant's witnesses expressed concerns relative to the general welfare of the surrounding community. (T., pp. 126-156) Dennis Sutton, owner of the second closest residence to The Oregon Grille, conveyed his concern for noise associated with the proposed outdoor events. (T., pp. 142-143) Mr. Sutton thought, mistakenly, that all music played now is kept inside the restaurant and offered that "works wonderfully" for him. (T., p. 143) Mr. Sutton then testified that music played outside during the day or at night would be a "nuisance." (T., p. 146) On cross-examination, Mr. Sutton admitted he was unaware that music is currently permitted and played on the terraces, and confessed that any music played by Oregon has not posed a problem. (T., p. 144) Mr. Sutton also testified that outdoor events would not be "compatible with the area." (T., p. 138) However, Mr. Sutton later agreed, consistent with Ms. Miller's research and testimony, that the community is "saturated" with such events. (T., p. 140)

Randle Goetze, a resident of Cuba Road, testified that the proposed events would cause "commotion" and disturb the community, as Peerce's Plantation did to its surrounding area. (T., p. 151) On cross-examination, Mr. Goetze admitted, as Mr. Bauer, Mr. Kellman, and Ms. Miller testified, that other establishments in the area such as Hayfields Country Club, The Shawan Downs, and Oregon Ridge Park already have outdoor events, some of which are large-scale. (T., pp. 153-154) *See also* Petitioner's Exhibit Nos. 6, 7A, 7B, and 8.

Protestant's witnesses produced no credible evidence to demonstrate that the proposed outdoor events at this location would have an adverse impact above and beyond that generally associated with this type of use. Protestant's generalized and unsupported concerns are not a legitimate reason to deny the requested special exception and special hearing relief.

Congestion in Roads, Streets, or Alleys

To testify on traffic issues, Oregon produced the testimony of Mickey A. Cornelius, an expert in the area of traffic engineering. Mr. Cornelius rendered an opinion, based on his research and investigation of the property and the surrounding area, that the intersection of Shawan Road and Beaver Dam Road and Kurtz Lane's connection to Beaver Dam Road function adequately. (T., pp. 190-191) Additionally, he concluded that the proposed outdoor events would have only a "minimal impact on daily traffic operations and traffic conditions" of the surrounding road system. (T., pp. 187)

To reach his conclusion, Mr. Cornelius considered Mr. Bauer's testimony regarding the maximum anticipated sizes of the proposed outdoor events. (T., p. 186) Mr. Cornelius referenced Mr. Bauer's statements that the outdoor dining area seats 125 people. (T., p. 186) Additionally, the maximum sit-down event capacity would be 125 people and the maximum stand-up event capacity would be 225 people. (T., p. 186) Based on these figures, Mr. Cornelius reasoned that "there is virtually no change in how many people are actually at the site" for a sit-down event and, for a stand-up event, there would be a maximum 100-person increase, provided the indoor dining area of the restaurant was full. (T., p. 186) Consistent with current traffic to and from the

restaurant, Mr. Cornelius explained that the majority of any large outdoor events would be evening events and, therefore, the additional trips would not effect morning and evening peak hour traffic conditions. (T., pp. 186-187) With regard to any event, daytime or evening, any traffic congestion would occur only in the restaurant parking area and inconvenience only event and restaurant guests waiting to exist onto Shawan Road. (T., pp. 193-194)

In reaching this conclusion, Mr. Cornelius also considered traffic from Oregon Ridge Park events. (T., pp. 188-190, 194-196) He opined that, if Oregon Ridge hosts a major function that attracts from 5,000 to 10,000 people, that event "will control traffic flow" on the surrounding road network. (T., pp. 194-196) *See also* Petitioner's Exhibit No. 6, 7A, and 7B. In other words, considering the relative numbers, a 225-person outdoor event on the restaurant property would have no significant impact on the traffic conditions on those event days. (T., p. 194)

With regard to parking, Mr. Cornelius concluded that the proposed expansion of the parking area and presence of a valet or parking attendant would actually improve the parking situation. (T., pp. 188, 193-194) As stated above, a maximum of 100 additional people could be on the property when the restaurant hosts a 225 person stand-up event on the outside terraces and the indoor dining area is full. (T., p. 186) On such a night, the additional parking would be more than adequate. (T., pp.187-188)

Again, Protestant's witnesses produced no credible evidence to demonstrate that the proposed outdoor events at this location would have an adverse impact on the

surrounding road network above and beyond that generally associated with this type of use.

Potential Hazard from Fire, Panic, or Other Dangers

Mr. Kellman's testified, based on his experience, that the proposed expansion of the restaurant area and the hosting of outdoor events on the property, will not present a potential for fire, panic, or other dangers. (T., p. 206) Protestant did not dispute Mr. Kellman's conclusion.

With regard to creating unsafe conditions on the property, Mr. Bauer testified that The Oregon Grille would not host an outdoor gathering larger than his staff could not "maintain or control." (T., p .99)

Overcrowding of Land or Undue Concentration of Population

Mr. Kellman confirmed that the proposed expansion of the special exception area and outdoor events would not overcrowd the land or cause an undue concentration of population. (T., pp. 206-207) Oregon does not propose any new structures in connection with the requested zoning relief. *See* Petitioner's Exhibit No. 1. Additionally, any increase in the number of people on the property will be "temporary." (T., p. 207)

Adequate Provisions for Schools, Parks, Water, Sewerage, Transportation or Other Public Requirements, Conveniences or Improvements.

Because Oregon is not a consumer of these services, the proposed changes would not interfere with the provision of any of these services. (T., p. 207) Protestant offered no testimony on this issue.

Interference with Adequate Light and Air

Similar to the testimony regarding a temporary increase in the number of people on the site having no impact on population, a tent erected temporarily on the property would not interfere with the provision of adequate light and air. (T., pp. 206-207) Protestant also offered no testimony on this issue.

Inconsistency with Zoning Classification/Zoning Regulations

Mr. Kellman confirmed that the requested zoning relief is not inconsistent with the property's R.C.4 classification or the spirit and intent of the Zoning Regulations as a whole. (T., p. 208) In stating his opinion, Mr. Kellman took into account that the R.C.4 zone permits the existing use, and the proposed changes thereto, by special exception. (T., p. 208) Therefore, the use is presumed to be a valid one. (T., p. 208) Because the proposed relief would in no way tend to create "sprawl" on the property, Mr. Kellman noted that the proposed changes are consistent with and satisfy the R.C. zone regulations. (T., p. 208)

Inconsistency with Impermeable Surface/Vegetative Retention Provisions

Mr. Kellman testified that the plan is adequate with regard to applicable impermeable surface and vegetative retention provisions. To compliment the existing landscaping, Oregon has designed landscape islands and an additional landscape area along the extended parking area between it and property line. (T., pp. 208-209) *See also* Petitioner's Exhibit No. 1. Mr. Kellman testified that this new landscaped area would satisfy the Baltimore County Landscape Manual. (T., p. 209) Additionally, the parking area will be stone rather than a paved, impermeable surface, consistent with the existing

parking surface. (T., p. 209) *See also* Petitioner's Exhibit No. 1. Based on this information, Mr. Kellman concluded that the requested zoning relief is consistent with the property's existing conditions and with all applicable impermeable surface and vegetative retention provisions. (T., p. 209)

Protestant did not dispute that the additional parking area and proposed landscaping are in compliance with the applicable regulations.

Environmental and Natural Resources of the Site and Vicinity

Mr. Kellman likewise concluded that the requested zoning relief would not be detrimental to the environmental or natural resources of the site and vicinity, including forests, streams, wetlands, aquifers, and floodplains. (T., p. 209) Protestant offered no evidence to the contrary.

III. Based on the Evidence Presented before the Zoning Commissioner, Oregon is Entitled to the Requested Variance.

Oregon has also requested a variance to allow a non-striped, stone surface for the expanded parking area in lieu of a striped, durable and dustless surface pursuant to B.C.Z.R. Sections 409.8.A.2 and 6. Oregon produced substantial evidence that this relief is warranted under Section 307.1.

With regard to parking area surface, Restriction No. 9 of the previously granted Board's Order reads as follows:

> The parking area shall consist of a non-paved surface such as stone or a similar permeable surface unless otherwise required by law. All parking will be contained within the leased area.

See Petitioner's Exhibit No. 1. This restriction necessitates the requested relief.

(T., pp. 209-210)

Mr. Kellman confirmed that the property is "unique." (T., pp. 209-210) Its unique features -- the existing historic structure, its location within the boundaries of Oregon Ridge Park, and its R.C.4 zoning classification -- would result in a practical difficulty in complying with the strict requirements of the Zoning Regulations. (T., pp. 209-210) Mr. Kellman also testified that the requested departures from the design standards listed in Sections 409.8.A.2. (durable and dustless surface) and A.6 (striped parking spaces) would not have any adverse impact on the health, safety, and general welfare of the surrounding area or be inconsistent with the off-street parking regulations as a whole. (T., p. 210) The purpose of these regulations is to provide an adequate amount of parking for any use. (T., p. 210) Because the additional parking area would negate the need for a parking space variance, the requested relief conforms to the general purpose of the parking regulations. (T., p. 210)

The testimony presented on the parking variance was uncontradicted by the Protestant, and the Zoning Commissioner should grant the relief as requested.

CONCLUSION

As outlined above, Oregon produced strong and substantial evidence of its entitlement to the requested zoning relief. Therefore, Oregon respectfully requests that the Zoning Commissioner grant approval of its Petitions for Special Hearing, Special Exception, and Variance in accordance with the site plan submitted in this case.

Respectfully submitted,

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(410) 494-6200
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of September, 2002, a copy of the foregoing PETITIONER'S POST-HEARING MEMORANDUM was mailed to Michael R. McCann, Esquire, 100 Light Street, Suite 1000, Baltimore, Maryland 21202-1036, Attorney for Protestant.

ROBERT A. HOFFMAN

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September 6, 2002

Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204-3401

Hand Delivered

SEP - 6 2002

Re: Petitions for Special Hearing, Special Exception and Variance
SW/Corner Shawan Road and Beaver Dam Road
(1201 Shawan Road)
Case No. 02-461-SPHXA
Hearing Date: August 13, 2002

Dear Mr. Schmidt:

Enclosed please find Protestant's Post-Hearing Memorandum for filing in the above referenced matter. Please contact me if you have any questions.

Thank you for your consideration.

Sincerely,

Michael R. McCann

Enclosure
cc: Robert A. Hoffman, Esquire

85000.001:57377

9/6/02

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	ZONING COMMISSIONER
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,	*	
Petitioner.	*	

SEP – 6 2002

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

PROTESTANT'S POST-HEARING MEMORANDUM

Protestant, the Valleys Planning Council, submits this post-hearing memorandum in support of its opposition to the petitions for special exception, special hearing and variance in the above-captioned matter.

I. PRELIMINARY STATEMENT

Petitioner, Oregon, L.L.C., has filed petitions for special exception, a special hearing, and for a variance with respect to 1202 Shawan Road, known as the Oregon Grille. The petition for special hearing seeks the removal of certain restrictions imposed by the Board of Appeal in February 1995. Specifically, Petitioner asks the Zoning Commissioner to approve the use of the outdoor patio area at the Oregon Grille for weddings, banquets, and similar events on property zoned RC4 (watershed protection).

Protestant, the Valleys Planning Council, opposes the relief requested by special hearing for several reasons. First, the outdoor events proposed by Petitioner constitute a "catering hall" which is not a permitted use in a RC4 zone, either as a principle use or as an accessory use. Second, the proposed use fails to meet the requirements of section 402.3 of the zoning regulations, which govern the conversion of buildings to restaurants. Third, under principles of *res judicata*, the decision of the Deputy Zoning

Commissioner in 1994 precludes the Commissioner from revisiting this issue and granting the requested relief. And finally, Petitioner's request is based on a faulty interpretation of the Board of Appeals' decision in 1995 and the restrictions imposed by the Board. For these reasons, and those stated below, the Valleys Planning Council respectfully requests that the Zoning Commissioner (i) deny the relief requested by Petitioner in its petition for special hearing, and (ii) deny the petition for special exception to the extent such relief is sought to accommodate the relief requested in the petition for special hearing.

II. PROCEDURAL BACKGROUND

In 1994, a petition for special hearing, special exception, and variance were filed with the Zoning Commissioner with respect to the subject property (case no. 94-348-SPHXA). The petition for special exception sought approval of a conversion of the existing building at 1201 Shawan Road to a restaurant under sections 1A03.3.B.4 and 402.3 of the Baltimore County Zoning Regulations.

At the hearing in 1994,[1] Theodore Bauer testified that, if the conversion was approved, he proposed having an outdoor seating area for dinner guests. In addition, Mr. Bauer proposed having weddings and other special events outside on the patio area. Mr. Bauer asked that he be allowed to have up to 12 such events per year. He anticipated having entertainment, such as live bands or DJ's, for the events, and envisioned erecting tents on the patio to provide shade and protection from inclement weather. Mr. Bauer "propose[d] to add certain restrictions on these special events/weddings in order to attempt to mitigate any adverse effect they may have on the surrounding community." (*See* Decision of Deputy Zoning Comm'r dated June 28, 1994, attached as ex. A, pp. 2-3, 9-10.)

[1] Appearing at the hearing on behalf of the petitioner were, *inter alia*, Theodore Bauer, a representative of Daft McCune Walker, Mickey Cornelius of The Traffic Group, all of whom testified at the hearing in the present case.

The protestants who testified at the hearing were "very much opposed" to the use of the outdoor patio for special events. They argued, *inter alia*, that the special events constituted catering which was not permitted in a RC4 zone. (*Id.*, pp. 6, 10.)

Deputy Zoning Commissioner Timothy M. Kotroco found that Mr. Bauer's proposal to convert the existing building at 1202 Shawan Road to a restaurant met the requirements of section 502.1 and granted the special exception for a converted restaurant. (*Id.*, pp. 7-8.) The Commissioner noted, however, that the "real issue to be addressed concerns what activity, if any, can take place outside the structure." (*Id.*, p. 8.) The Commissioner held that Mr. Bauer should be permitted to have outdoor seating for his dinner quests as an accessory use to the restaurant business. (*Id.*, p. 10.) With respect to Mr. Bauer's proposal to host outdoor events, however, the Commissioner stated as follows:

> The Protestants ... *argued that this type of use borders on a catering facility, which is not permitted in an R.C.4 zone. I agree with the Protestants. I do not believe that catering private parties, special events or weddings outside should be permitted in the fashion proposed by Mr. Bauer*....Therefore, there shall be no catered affairs taking place outside on the patio area.

(*Id.*, p. 10) (emphasis added.)

The Commissioner concluded that, although outdoor dinner seating was a permissible accessory use to a restaurant, "catered affairs taking place outside on the patio area" were not permitted. (*Id.*, pp. 10-11.) The Commissioner added that, "*to insure that the proposed outdoor seating area is properly utilized*, specific restrictions and conditions shall be placed upon this use and will be delineated at the end of this Order." (*Id.*., p. 11) (emphasis added.) These restrictions included the following:

> 3) [t]he use of said patio shall be limited to sit-down dining, only. This dining shall be accessory to the principal restaurant use. There shall be no tents, canopies, or other similar overhead covering permitted on the patio or elsewhere on the site. However, the Petitioner shall be

permitted to have table umbrellas on the subject patio, which shall be provided for the convenience of those dining outside.

4) The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property.

(*Id.*, p. 12.)

The decision of the Commissioner was appealed to the Board of Appeals by both Mr. Bauer and the Valleys Planning Council. At the hearing, Mr. Bauer again requested approval to use the outdoor area for dinner seating, but, significantly, did not request of the Board of Appeals, as he did of the Deputy Commissioner, permission to host weddings, banquets, and other outdoor events at the restaurant. (*See* Opinion and Order dated Feb. 8, 1995, attached as ex. B, p. 2.)

The Board of Appeals concluded that Mr. Bauer met his burden under section 502.1 and granted the special exception for a converted restaurant. (*Id.*, pp. 4-5.) Specifically, the Board of Appeals approved Mr. Bauer's request to have an outdoor seating area for dinner guests. (*Id.*, p. 2, 4-5.) The Board, however, held, at least implicitly, that Mr. Bauer was not permitted to host weddings, banquets, and other outdoor events at the restaurant. The Board adopted *verbatim* restriction number 4 imposed by the Deputy Zoning Commissioner:

4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property.

(*Id.*, p. 6.)

On or about April 19, 2002, Mr. Bauer, on behalf of Oregon, L.L.C., filed petitions for special exception, a variance, and for a special hearing. The petition for special exception seeks to expand the area supporting the Oregon Grille originally approved in Case No. 94-348 SPHXA to include additional parking

and to include an existing outbuilding barn on the property.[2] The petition for variance seeks permission to have a stone parking lot in lieu of a durable and dustless surface, as required by section 409.8.A.2 of the zoning regulations.

The petition for special hearing seeks approval of "an amendment to the site plan previously approved in Case No. 94-348 SPHXA and to amend Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan." The Petitioner proposes the following restrictions to supersede Restrictions 3, 4, and 5 imposed by the Board of Appeals:

1. The number of evening events would be limited to 15 per calendar year.

2. The events would be held on the terraces located on the south side of the restaurant. Tents would be permitted but would have to be removed within 24 hours following all events for which they were erected.

3. Music would be permitted but at a level of minimum intrusiveness to the nearby neighbors and other patrons of the restaurant; all music would have to cease by 10:00 p.m. at such events and by 11:00 p.m. on no more than 5 such events.

4. A sound engineer or specialist would be engaged by the Oregon Grille to provide recommendations and guidelines to assure minimal intrusiveness of the music.

5. Events during the daytime and early evening (i.e., ending no later than 9:00 p.m.) would be subject to the foregoing music standards and tent removal requirements but not included within the limitations as to the number of events.

6. A canopy or similar cover to provide shade on a seasonal basis to the dining portion of the patios would not be considered a tent and would be permitted.

(*See* Site Plan, Pet.'s Ex. 1.)

[2] Notably, Petitioner does not argue the requested relief is necessary to sustain the profitability of the restaurant.

III. SUMMARY OF EVIDENCE AT HEARING

A. Testimony of Theodore W. Bauer

Theodore Bauer ("Mr. Bauer") is the owner of the Oregon Grille, a full service gourmet restaurant that has been in business for five years. (*See* Transcr. of Hearing attached as ex. C, pp. 28-29.) Mr. Bauer leases the subject property from Baltimore County with the exception of a .47-acre area, which is not under lease with the County but is the subject of Petitioner's request for special exception. (*Id.*, pp. 60-61, 92-94.)[3]

The Oregon Grille is opened for lunch from 11:30 a.m. to 4:00 p.m., Monday through Saturday, and for brunch from 11:00 a.m. to 3:00 p.m. on Sunday. (*Id.*, p. 61.) Dinner service begins at 5:00 p.m. on Monday through Saturday, and at 4:00 p.m. on Sunday. (*Id.*) Typically, the restaurant stops taking dinner reservations after 11:00 p.m. on Monday through Saturday, and at 10:00 p.m. on Sundays. (*Id.*, p. 62.)

The Oregon Grille has two outside terraces. The terrace closest to the building is presently used as "a waiting area and cocktail area for those that might like to have a cocktail before or after dinner." (*Id.*, p. 34.) The second terrace, which is farthest from the building and closest to the parking lot, is used for seating dinner guests. (*Id.*) The Oregon Grill is presently permitted to seat 125 people on the second terrace, but has seating for roughly 100 people. (*Id.*, pp. 34-35.)

Mr. Bauer testified, at length, concerning his proposed use of the outside terraces. He intends on having daytime and evening weddings, banquets and other events on the terraces. (*Id.*, p. 72.) The events will have to be reserved in advance. (*Id.*, p. 76.) The events will vary in length, but will probably last from

[3] The Valleys Planning Council reserves the right to contest Petitioner's standing to seek special exception relief concerning property in which it has no property interest.

three to four hours. (*Id.*, p. 71.) He proposes having cocktail parties, cocktail buffets, and other events that are not sit-down meals where only cocktails and/or hors d'oeuvres are served. (*Id.*, pp. 70-71, 78-79.)

Mr. Bauer's intention is to have the dinner seating and outdoor events separate as much as humanly possible. (*Id.*, p. 68.) When there is an outdoor event, there will not be outdoor dinner seating on the terrace. (*Id.*, p. 63.) Dinner seating will limited to inside the restaurant and will be separate from the outdoor event. People seated for dinner inside will not be able to go outside to have a drink or mingle with the guests at the event. (*Id.*, p. 63, 66-67.) There is a dividing wall at the entry of the first terrace to keep dinner guests separate from the event guests. (*Id.*, pp. 67-68.) Outdoor events will have a separate bar for its guests. (*Id.*, p. 67.) There will typically be separate service staff working the outdoor event. (*Id.*, pp. 69-70.) The outdoor events will have separate menus from the restaurant. (*Id.*, p. 70.) Unlike dinner seating, black-tie attire will be required of guests attending the proposed outdoor events. (*Id.*, p. 67.) Mr. Bauer anticipates having events during hours when the restaurant is not open for business. (*Id.*, p. 73.)

The number of people who would attend the proposed outdoor events depends upon what type of function it is to be. (*Id.*, p. 34.) Mr. Bauer estimates that, if the event were a "sit-down type" of event, then he would like to sit 125 people at one time. (*Id.*, pp. 33-35.) If the event were a "cocktail buffet type of reception," then the two terraces could probably accommodate 200 to 225 people, but would be more if you include those patrons having cocktails. (*Id.*, p. 34-35, 37, 99.) Mr. Bauer proposes having an outdoor bar for the events. (*Id.*, p. 38.)

Mr. Bauer proposes installing a permanent canopy on the second outside terrace, which he described as a low profile, stretch-type thing, probably green in color. The canopy would be removed after the spring and summer months. (*Id.*, pp. 74-75, 85.) For special events, there could be a marquis tent from

the canopy to the front door. (*Id.*, p. 75.) Mr. Bauer also may use a retractable awning on rollable frames. (*Id.*, p. 85.)

Mr. Bauer proposes having 15 evening events per calendar year, but an unlimited number of daytime and "early evening events" which he defined as ending no later than 9:00 p.m. (*Id.*, pp. 77, 80.) The unlimited number of daytime and early evening events may have live or recorded music, but the music will end by 9:00 p.m. (*Id.*, p. 81.)

Mr. Bauer feels the Oregon Grille is the only restaurant in Baltimore County that cannot have a tent for private parties and is "singled out in that regard." (*Id.*, p. 33.) Mr. Bauer referenced Hayfields, Shawan Downs, Greenspring Valley Hunt Club, Milton Inn, Oregon Ridge as other businesses that have large events. (*Id.*, pp. 45-49.)

B. Testimony of Hellene Miller

Ms. Miller is the proprietor of Eventually Yours, an event company and public relations firm. (*Id.*, p. 167.) Ms. Miller provided information concerning facilities in Baltimore County that have outside, tented functions: the Milton Inn, Manor Tavern, Greenspring Valley Hunt Club, Hayfields Country Club, Oregon Ridge Park, Shawan Downs, Harryman House, The Still, Liberatore's, Linwoods Due, Michael's Café. (*Id.*, pp. 171-76.) Ms. Miller does not know the zoning classification of the facilities she identified. (*Id.*, p. 182.)

C. Testimony of Mickey Cornelius

Mr. Cornelius is a traffic engineer with The Traffic Group. He testified that the proposed outdoor events will have a minimal impact on daily traffic patterns and conditions, and believes the proposed addition of 55 parking spaces will improve the parking situation at the Oregon Grille. (*Id.*, pp. 187-88.) Mr. Cornelius also believes the events at Oregon Ridge, in conjunction with the proposed

events at the Oregon Grille, will not have a negative impact on traffic conditions. (*Id.*, pp. 188-91.) Mr. Cornelius, however, did not perform traffic counts of any particular event at Oregon Ridge to determine the impact of those events and the outdoor events proposed by Mr. Bauer. (*Id.*, pp. 195-96.) Mr. Cornelius agreed that the number of outdoor events hosted at the Oregon Grille will have some impact on the traffic situation. (*Id.*, p. 195.)

D. Testimony of Mitchell Kellman

Mr. Kellman is a consultant with Daft McCune Walker. Mr. Kellman testified that he recently attended several political fundraising events at restaurants in Baltimore County, specifically Linwood/Due's, Rockwell's, Pivik's, Bay Café, and the Coliseum. (*Id.*, pp. 199-202.) Mr. Kellman does not consider these establishments to be catering facilities, but rather restaurants or combination bar/restaurants. (*Id.*, p. 202.) He considers the Oregon Grille a restaurant and Mr. Bauer's proposed use to be very similar to the events held by the restaurants he mentioned. (*Id.*, p. 203.)

Mr. Kellman believes Petitioner's requests meet the requirements of section 502.1 of the BCZR. (*Id.*, pp. 203-10.) In particular, Mr. Kellman believes Petitioner's requests are consistent with the RC4 zoning classification and the spirit and intent of the zoning regulations. (*Id.*, p. 208.) Mr. Kellman indicated that the relief requested by the special hearing, in and of itself, need not comply with the section 502.1 factors, but believes the 502.1 factors apply because of the accompanying request for a special exception to the add parking spaces. (*Id.*, pp. 212-13.) Mr. Kellman acknowledged that the Board of Appeals, in its February 1995 decision, did not expressly consider the 502.1 factors in imposing Restrictions 3, 4, and 5. (*Id.*, pp. 216, 218.)

Mr. Kellman agreed that there are greater restrictions on a converted restaurant in a RC4 zone than a standard restaurant in a commercial zone. (*Id.*, p. 228.) He is unaware of any restaurants in RC4

zones in Baltimore County that have outdoor weddings or banquets. (*Id.*) Further, Mr. Kellman acknowledged that the restaurants he mentioned visiting recently (Linwood/Due's, Rockwell's, Pivik's, Bay Café, and the Coliseum) are either in commercial or office zones. (*Id.*, p. 232.) With respect to the facilities identified by Ms. Miller in her testimony, Mr. Kellman believes the Milton Inn and Harryman House are zoned BL; the Greenspring Valley Hunt Club is zoned RC2; and Hayfields is a combination of RC2 and RC4. (*Id.*, pp. 229-31.)[4]

Mr. Kellman testified that section 402.3 of the BCZR imposes additional restrictions on a converted restaurant in an RC4 zone. (*Id.*, p. 220.) With respect to section 402.3A (which requires that "[m]eals may be served only at tables, indoors or on an outdoor terrace, and not to persons remaining in cars"), Mr. Kellman agreed that it would be inconsistent with the zoning regulations if a converted restaurant in an RC4 zone did not serve meals at tables. (*Id.*, pp. 222-23.) Mr. Kellman, however, testified that the serving of cocktails or hors d'oeuvres, in his opinion, may not constitute a "meal" in which case section 402.3A would not apply. (*Id.*, p. 223-24.) Mr. Kellman also believes that the serving of hors d'oeuvres may be considered "serv[ice] at tables," and thus would comply with 402.3A, as long as the hors d'oeuvres are taken to tables and eaten. (*Id.*, p. 242.) Mr. Kellman concluded that the only thing section 402.3A prohibits is serving people in cars and does not prohibit serving food in any other manner, whether it be by buffet, conventional waiter, or hors d'oeuvres. (*Id.*, p. 239.)

Mr. Kellman further testified that section 402.3A, which was enacted in 1955, was intended to define what the zoning regulations today call "standard restaurants." (*Id.*, pp. 240-41.) Alternatively,

[4] Mr. Kellman is correct that Hayfields has a combination of RC4 and RC2 zoning. The relevant part of Hayfields is the clubhouse, however, which is zoned RC2. Mr. Kellman did not mention Manor Tavern, Gibby's, The Still, or Liberatore's, all of which are zoned BL.

Mr. Kellman opined that a converted restaurant in a RC4 zone actually may be broader than the definition of standard restaurant. (*Id.*, p. 242.) A converted restaurant in a RC 4 zone could be "any restaurant as defined today except a drive-in." (*Id.*, p. 243.)

E. Testimony from Members of the Community

Three members of the community testified against the proposal: Dennis Sutton, who lives one quarter mile east of the Oregon Grille (p. 126); Randle Goetze, who lives less than three-quarters of a mile away (p. 149)[5]; and Odd Pedersen, who lives one and one-quarter miles due north of the restaurant (p. 156).

Several testified in favor of Mr. Bauer's proposal. These witnesses were: Andre Brewster, who lives 6 ½ miles from the Oregon Grille (*id.*, p. 109)[6]; Peter White, who lives three-quarters of a mile north (p. 113); David Warfield, who does not live near the restaurant but works in Hunt Valley (p. 115); Thomas Sutton, who lives 2 ½ miles away (p. 118); James R. McDonald, who lives 10 miles north (*Id.*, p. 120); Susan G. Russell, who lives 8 miles away (pp. 121-22); Gary T. Gill, who lives 9.9 miles away (p. 124); Thomas Mullan, who lives 7.7 miles away (p. 164); and Charles Herget, who lives 5 miles away (p. 244.)

IV. ARGUMENT

A. The Outdoor Events Proposed By Petitioner Are Not Permitted In A RC4 Zone Either As A Principle Use Or An Accessory Use

1. The proposed use is a "catering hall" which is not permitted in a RC4 zone

A "catering hall" is defined in the zoning regulations as follows:

> A facility or part of a facility used regularly for serving beverages and food to groups which reserve the facility for banquets or gatherings before the day of the event. A catering hall is not a standard restaurant.

[5] Mr. Sutton testified on his own behalf and own behalf of the Falls Road Community Association. (*Id.*, p. 127.)
[6] Mr. Brewster testified he lives maybe three or four miles from the restaurant.

BCZR, section 101. "Catering halls" are permitted only in BM zones. *See* section 233.2; *see also* section 233.1, .2A and 230.4.

The outdoor events proposed by Mr. Bauer meet every part of this definition: Mr. Bauer proposes using "part of" his facility for the outdoor events; he proposes serving "beverages and food to groups"; he proposes doing so on a "regular basis"; he intends on having "banquets" and "gatherings"; and, finally, his guests must "reserve the facility ... before the day of the event." Clearly, the use proposed by Mr. Bauer falls squarely within the definition of "catering hall."'

This reading of "catering hall" is supported by the ruling of the Deputy Commissioner in 1994. (*See* ex. A.) The Commissioner found that Mr. Bauer's proposed outdoor events constitute catering. For the reasons stated below, *see infra* part IV.D, the ruling of the Deputy Commissioner in 1994 must control.

Further, this reading is consistent with the ruling of the Board of Appeals in the nearly identical case of *In re: Mark Greene (Manor Tavern)*, Case No. R-91-115. In that case, the owner of the Manor Tavern filed a petition for special hearing to determine whether the RCC zoning classification would permit him to have banquet and wedding receptions at an outside garden area. (*See* Bd. of App. decision attached as ex. D.) Carl Richards, the Zoning Coordinator for Baltimore County, testified that the "long-established administrative practice by the Zoning Commissioner's office classifies catering as a 'commercial recreation enterprise,' and requires that it be placed in the B.M. or B.R. zone, which permits such use as a matter of right...." (*Id.*, p. 10.) Mr. Richards added that he took the matter before the Zoning Commissioner who determined that the proposed use constituted "catering" and would require BM zoning. (*Id.*, p. 6.)

The Board of Appeals denied the petition for reclassification, holding that "no persuasive argument exists for allowing an R.C.C. zone for the purpose of permitting a new, outdoor wedding reception use."

(*Id.*, pp. 9-10.) The Board stated that the evidence was "very clear that catering is not allowed in the B.L. or the R.C.C." (*Id.*, p. 10.) Significantly, the Board explained:

> *Consideration shows that catering does properly belong only in the heavier commercial zones, namely, B.M. and B.R.* Wedding receptions, large parties, catered affairs, by their very nature, attract a large number of persons who primarily arrive at a party and leave a party at approximately the same time. Also, such wedding receptions and parties even when held indoors, usually involve music, and loud talk.... It would be inappropriate to allow the [Manor Tavern to use its] outdoors for catering to its already large indoor restaurant use, thus, in effect, having an *outdoor catering hall* and a large restaurant, with a large parking area in between. The R.C.C. zone was never meant to be so used, and we believe it would be wrong to so use it, and contrary to its legislative intent.

(*Id.*, p. 11) (emphasis added.)[7]

The *Manor Tavern* case is instructive in three respects. First, the Board of Appeals found that a similar use to the use proposed by Mr. Bauer was "catering" – indeed, the Board stated that such a use would constitute a "catering hall."[8] Second, the Board found that catering was a "commercial recreation enterprise" that belonged only in "heavier commercial zones." Third, the Board held that catering was not a permissible use in a RCC zone, which is a more intense zoning classification than the RC4 zone in the present case. *Compare* BCZR section 1A03 (governing RC4 (watershed protection) zone) *with* BCZR section 1A06 (governing RCC (commercial) zone).

Mr. Bauer testified that he does not believe his proposed use constitutes "catering." (*Id.*, p. 59.) Mr. Bauer defines catering as a "specific catering hall [] dedicated strictly for those events. They don't do an ongoing restaurant business, day-to-day Monday through Sunday where people could knock on the door

[7] As discussed further below, the Board of Appeals in the *Manor Tavern* case also held that the proposed outdoor use was not an accessory use. (*Id.*, p. 11.)

[8] At the time of the *Manor Tavern* case, the definition of "catering hall" was not yet enacted in the zoning regulations. The timing of the *Manor Tavern* decision, however, suggests that the County Council's enactment in 1993 may have been influenced by that decision.

and come in and have either dinner or they could call ahead and make a reservation whether it be a group of four or a group of fifty." (*Id.*, p. 91.)

Mr. Bauer's interpretation of "catering hall" as a stand-alone facility that does not include a restaurant is inconsistent with the definition of that term in the zoning regulations. A "catering hall" is "a facility or *part* of a facility" that serves beverages and food to groups who reserve it in advance. Thus, the definition covers both stand-alone facilities as well as facilities where only part of the facility is being used for a catering hall (the remaining part being used, for example, as a restaurant). Indeed, the use regulations governing BM zones contemplate a restaurant/catering hall. Section 233.2A allows "combinations" of permitted uses in a BM zone. Among the permitted uses in a BM zone are catering halls (section 233.2) and "uses permitted in BL zone" (section 233.1.) The uses permitted in BL zones include restaurants. *See* section 230.4. Thus, the only permissible zone for a combination catering hall/restaurant is the BM zone.

Mr. Bauer also defines catering as an event "to which food is brought to the site by someone other than Oregon Grille." (*Id.*, p. 87.) This interpretation is extremely strained and nonsensical. Mr. Bauer's describes a "catered event" rather than the business activity of "catering." If "catering" were limited to "catered events," then the focus of the Commissioner's inquiry would be where the food was brought rather than the business activity involved. Further, Mr. Bauer's interpretation would exclude even the stand-alone catering facilities (for example, Martin's West) because food is typically not brought to such facilities but rather is prepared on site.

In sum, the use proposed by Mr. Bauer meets precisely the definition of "catering hall." Although the use of the term "hall" in "catering hall" arguably suggests a separately housed facility dedicated to that purpose, the definition itself clarifies that only part of a facility need be used for catering to meet the

definition. The only appropriate zone for the catering hall/restaurant proposed by Mr. Bauer is the BM zone.

2. *Even if not a "catering hall," the proposed use is not an accessory use*

At the hearing, Mr. Kellman testified that Mr. Bauer's proposed use of the outdoor terraces was an accessory use. (Ex. C, p. 202.)[9] An "accessory use or structure" is defined in the zoning regulations as follows:

> A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principle use or structure served....

BCZR, section 101.[10]

Mr. Bauer's description of the outdoor events he intends on hosting, and the other evidence at the hearing, amply support that the proposed use fails parts (a), (b) and (d) of this definition. Mr. Bauer testified that the outdoor events and his restaurant business will be kept separate "as much as humanly possible." When there is an outdoor event, there will be no dinner guests outside. There will be a dividing wall separating the two uses. There will be separate menus and a separate service staff dedicated to the outdoor events. There will be a separate outside bar, the dress code will be different, and guests will not be able to mingle between the two uses. The outdoor events may even take place during hours when the restaurant is not open.

[9] Mr. Bauer, likewise, characterized the proposed use as an accessory use. (*See id.*, pp. pp. 49, 69, 87.)
[10] The proposed use is not among the enumerated accessory uses permitted in a RC4 zone. *See* BCZR sec. 1A03.3.A.9.

Clearly, the proposed outdoor events will not be "subordinate in ...purpose" to the restaurant business or "serve" the principle use. The outdoor events, in nearly all respects, will be separate functions serving separate guests and, thus, serve a separate purpose – the purpose of the outdoor events will not be to serve the principle use. Similarly, the outdoor events will not contribute to "the comfort, convenience or necessity" of the principal use. The purpose of the events is to serve guests at those events, not to serve the customers having lunch or dinner inside the restaurant. The evidence supports that the proposed use will actually detract from the principal restaurant use.

Moreover, the hosting of weddings, banquets, and other large gatherings is not "customarily incident" to a restaurant. Although other restaurants in Baltimore County may be hosting such events, legally or illegally, there is no evidence that any of those restaurants are converted restaurants, permitted by special exception in a RC4 zone. When determining whether a use is "customarily incident" to a principle use, the applicable zoning must be considered. Each zone has its own use and bulk regulations, and whether a use in that zone is "incident" to a permitted principal use in that zone has little, if any, relevance to other zones.

The *Manor Tavern* case, again, is instructive. There, the Board of Appeals held that the proposed outdoor reception area was not an accessory use to the restaurant. (Ex. D, p. 11.) The Board noted that the outdoor reception area is not among the specified accessory uses in the RCC zone. The Board further stated that the outdoor reception area was not "customarily incident" to restaurants in Baltimore County. The Board noted that the new outdoor operation "can hardly be considered accessory to the restaurant business, particularly when done on a regular basis, advertised as a wedding and party catering business." (*Id.*) For these additional reasons, the relief requested by special hearing should be denied.

B. The Proposed Use Fails To Meet The Factors In Section 402.3 Governing Buildings Converted To Restaurants

Restaurants are permitted in a RC4 zone only by special exception and only as "provided in Section 402.3." *See* BCZR, sec. 1A03.3.B.5. Section 402.3 requires converted restaurants to meet the following requirements:

> A. Meals may only be served at tables, indoors or on an outdoor terrace, and not to persons remaining in cars.
>
> * * *
>
> D. Service shall be provided only at mealtimes.

Significantly, section 402.3 is set forth in the "Special Regulations" article of the BCZR. Section A400 explains the purpose of these special regulations as follows:

> Certain uses, whether permitted as or right or by special exception, have singular, individual characteristics which make it necessary, in the public interest, to specify regulations in greater detail than would be feasible in the individual use regulations for each or any of the zones or districts. This article, therefore, provides, such regulations.

At the hearing, Mr. Kellman agreed that there are greater restrictions on a converted restaurant in a RC4 zone than a standard restaurant in a commercial zone. (Ex. C, p. 228.) Mr. Kellman, in fact, is unaware of any restaurants in RC4 zones in Baltimore County that have outdoor weddings and banquets. (*Id.*) Mr. Kellman also acknowledged that none of the restaurants he identified or that Ms. Miller identified are located in a RC4 zone. (*Id.*, pp. 229-32.) Mr. Kellman, however, disagreed that Mr. Bauer's proposed use fails to meet the requirements of the zoning regulations, in particular subsections A and D of section 402.3.

With respect to subsection A of section 402.3 (which requires that "meals may be served only at tables, indoors or on an outdoor terrace, and not to persons remaining in cars"), Mr. Kellman acknowledged it would be inconsistent with the zoning regulations if a converted restaurant were to

serve meals other than at tables. (*Id.*, p. 222-23.) Mr. Kellman, however, testified that, if Mr. Bauer served cocktails or hors d'oeuvres at an outdoor event (as opposed to a sit-down dinner), this would not constitute a "meal" and 402.3A would not apply. (*Id.*, p. 223-24.)[11] Mr. Kellman also believes that the serving of hors d'oeuvres may be considered "serv[ice] at tables," and thus would comply with 402.3A, as long as the hors d'oeuvres are taken to tables and eaten. (*Id.*, p. 242.) Mr. Kellman concluded that the only thing section 402.3A actually prohibits is serving people in cars and does not prohibit serving food in any other manner, whether it be by buffet, conventional waiter, or hors d'oeuvres. (*Id.*, p. 239.) Mr. Kellman suggested that a converted restaurant may actually be broader than a standard restaurant and stated that 402.3 simply means a converted restaurant in a RC 4 zone cannot be a "drive-in." (*Id.*, p. 243.)

Petitioner's interpretation of section 402.3A is, at best, strained. If Petitioner is correct – and 402.3A merely prohibits serving people in cars – then this would render the remaining language in that section ("meals may be served only at tables, indoors or on an outdoor terrace") entirely superfluous. It is a fundamental principle of statutory construction that the legislature meant the words it used and intended that they have meaning. If the County Council intended only to prohibit service to people in their cars, then that is all the regulation would provide. "Absent a clear indication to the contrary, a statute, if reasonably possible, is to be read so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless, or nugatory." *Management Personnel Servs., Inc. v. Sandefur*, 300 Md. 332, 341 (1984); *see also Bridges v Nicely*, 304 Md. 1, 10-11 (1985) ("where the language of a

[11] Mr. Bauer proposes serving having cocktail service with hors d'oeuvres as well as cocktail buffets at the proposed outdoor events.

statute is clear, courts may not insert or omit words to make the statute express an intention not evident in its original form."). Petitioner's reading of section 402.3A should be rejected.

Further, any interpretation of 402.3 that limits the meaning of "meals" to sit-down dinners is far-fetched. The purpose of the "special regulations" in section 402.3 is to provide additional restrictions to protect the "public interest"; indeed, Petitioner agrees that greater restrictions are imposed on converted restaurants than standard restaurants. No reason, consistent with this purpose, exists for making the distinction, when defining "meals," between sit-down dinners and events where there is buffet style service or hors d'oeuvres. The number of people, the intensity of the use, and the disruption of the public interest are the same regardless of the size of the meal served. Moreover, these concerns are particularly serious in a watershed protection zone.

For similar reasons, Petitioner's interpretation of the term "served only at tables" is arbitrary and inconsistent with the purpose of section 402.3. Petitioner contends that regardless of how the food is served to the guests (by cocktail waiter, buffet-style, or conventional waiter), the proposed outdoor events will meet the requirements of 402.3A as long as tables are available to sit down. Petitioner's interpretation ignores the language "served *at*" in 402.3. Clearly, this language contemplates the service of guests by waiters "at" their tables. Again, if the County Council intended to allow the service of meals at a buffet table or by cocktail server, then it would not have used the words "meals may only be served at tables." The County Council would have simply stated that "meals may not be served in cars."

Finally, with respect to section 402.3D ("[s]ervice shall be provided only at mealtimes"), Petitioner suggests that "mealtimes" could be any part of the day or evening since people eat at different times throughout the day. Yet again, Petitioner's interpretation renders the regulation's language superfluous. If the County Council intended "mealtimes" to mean any time people may eat (i.e., during all waking hours or

24 hours a day), then why include subsection D at all? That section would not be necessary if that is what the County Council intended. If you asked the average person when "mealtimes" are, he or she would say, with some variation, breakfast time, lunch time, and dinner time.

Here, Mr. Bauer proposes to have events during times other than these periods. Indeed, Mr. Bauer indicated he may have functions when the restaurant is not open. This should not be permitted because the restaurant's hours *a fortiori* establish the relevant "mealtimes."

C. Under Principles Of *Res Judicata*, The 1994 Decision Of The Deputy Zoning Commissioner Precludes Petitioner From Seeking The Relief Requested

Principles of *res judicata* apply to decisions by administrative agencies that are empowered to act in an adjudicatory capacity, including agencies that hear zoning matters. *See Woodlawn Area Citizens Ass'n v. Board of County Commr's of Prince George's County*, 241 Md. 187, 193-95 (1966); *Board of County Commr's of Cecil County v. Racine*, 24 Md. App. 435, 447 (1975).[12] The fact the agency's decision was not ultimately approved or disapproved by a court of law does not prevent application of *res judicata*. *Racine*, 24 Md. App. at 444. An administrative agency may reverse its prior decision "only when there has been a "substantial change of conditions" or "the decision was the product of fraud, surprise, mistake or inadvertence...." *Id.*, at 449; *Woodlawn*, 241 Md. At 197 (same).

In 1994, the Deputy Zoning Commissioner, in case number 94-386 SPHXA, decided the precise issue that is presently before the Commissioner. In that proceeding, Mr. Bauer proposed using the outdoor patio area for weddings and special events, conducting up to 12 such events per year, having tents erected

[12] The Rules of Practice and Procedure Before the Zoning Commissioner provide that hearings before the Commissioner are "quasi-judicial in nature." *See* BCZR, app. G at Rule L. The Commissioner has authority to hear testimony from witnesses and consider evidence at the hearing, which are guided by the Administrative Procedures Act. *Id.*; *see also id.* sec. 500; Baltimore County Code, 26-127, -128.

to provide shade and protection, and having live entertainment by bands or DJ's. (Ex. 1, pp. 3, 9-10.) The Valleys Planning Council and other protestants opposed Mr. Bauer's request on the ground, *inter alia*, that the proposed use constituted "catering" which was not permitted in a RC4 zone. The Deputy Commissioner expressly agreed with the protestants' position and held that "catering private parties, special events or weddings outside should not be permitted." (*Id.*)[13] The Deputy Commissioner's decision precludes the Commissioner from revisiting the issue and granting the relief requested in petitioner's request for special hearing.

Further, no evidence was presented at the hearing to support any "substantial change in conditions" warranting reconsideration of Petitioner's request. Indeed, the only evidence produced remotely pertaining to this point was the testimony of Mr. Bauer, who stated that other restaurants in Baltimore County have outdoor, tented, weddings and banquets. Mr. Bauer believes these other facilities have passed him by. The fact other restaurants (particularly restaurants in other zones) may have such events is not a substantial change in conditions affecting the subject property and, moreover, is simply irrelevant.[14]

During the hearing in this case, the Commissioner suggested that the 1994 decision has no bearing on this proceeding because that ruling was superseded by the Board of Appeals' decision in February 1995. (Ex. 3, pp. 133-34, 136.) The Valleys Planning Council agrees that, if the Board of Appeals had addressed and ruled upon Mr. Bauer's proposal for outdoor events, then the ruling of the Deputy Zoning Commissioner would be irrelevant and have no preclusive effect in this case. That, however, is not what

[13] As explained in part IV.A. *infra*, the Deputy Commissioner further held that the outdoor dinner seating proposed by Mr. Bauer was a permissible accessory use to a restaurant. By implication then, the Deputy Commissioner found that the proposed catering use was *not* an accessory use.

[14] Even if the activities of other restaurants in Baltimore County were a "change in conditions", the ruling of the Deputy Commissioner in 1994 that catering is not permitted in a RC4 zone, was a legal ruling that is not affected by the alleged change in conditions. Of course, the only "change in condition" that could affect the Deputy Commissioner's legal ruling would be a reversal of that ruling or an amendment of the zoning regulations by the County Council.

occurred. The Board of Appeals did not address Mr. Bauer's proposal for catering outdoor events because Mr. Bauer did not advance that proposal before the Board. (Ex. 2.) The ruling of the Deputy Zoning Commissioner, therefore, stands as a final adjudication of this issue.

Moreover, if the ruling of the Deputy Zoning Commissioner could be disregarded, then any petitioner could avoid the *res judicata* effect of the Commissioner's decision by simply re-filing the same petition with the Commissioner and seeking the very same relief in the context of a new proceeding. In the present case, where there has been no substantial change in conditions, this is precisely what Petitioner is attempting to do.

D. Petitioner Misinterprets The Board Of Appeals' Decision In 1995 And The Restrictions Imposed By The Board Of Appeals

In the petition for special hearing, Mr. Bauer asks the Commissioner to amend restrictions 3, 4, and 5 of the Board of Appeals' decision in February 1995. Restriction 4 prohibits Mr. Bauer from "catering or hosting weddings or other similar events outside on the subject property."

Mr. Bauer's request to amend restriction 4 is based on the faulty assumption that the Board of Appeals decided the issue of whether hosting outdoor events was a permitted use in a RC4 zone. A review of the decisions of the Deputy Commissioner and the Board of Appeals unequivocally refutes this assumption. First, in the Deputy Commissioner's decision, he found that the outdoor events proposed by Mr. Bauer are *not* permitted in a RC4 zone. The Deputy Commissioner, apparently concerned that the outdoor patio would be put to a permissible use, then stated that "*in order to insure that the proposed outdoor seating area is properly utilized*, specific restrictions and conditions shall be placed upon this use and will be delineated at the end of this Order." (Ex. 1, p. 11) (emphasis added.) Specifically, the Deputy Commissioner imposed the restriction that:

4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property.

(*Id.*, p. 12.)

Thus, restriction 4 was not imposed as a limitation on a *permitted* use, but rather to ensure that the property is not used impermissibly.[15] The Deputy Commissioner, in other words, did *not* find that outdoor events were permitted in a RC4 zone and impose restriction 4 to limit the intensity of that permitted use; rather, the Deputy Commissioner found that the outdoor events constituted catering which he found was not permitted in a RC4 zone, and then imposed restriction 4 to "insure that the proposed outdoor seating area is properly utilized." (*Id.*)

This distinction, although somewhat subtle, is important because the Board of Appeals decision did nothing to change the Deputy Commissioner's ruling on this issue. In fact, the Board of Appeals (having heard no testimony concerning, and not even addressing, the appropriateness of the outdoor events) simply imposed the same restriction *verbatim* in its February 1995 decision. Thus, the Board of Appeals decision, as it stands today, is not a special exception ruling that can be changed by "amendment" of restriction 4. Indeed, an amendment of restriction 4 would arguably constitute an overruling of not only the Deputy Commissioner's decision but the Board of Appeals' decision as well.

It also should be noted that, as Mr. Kellman acknowledged, the Board of Appeals did not consider the factors in BCZR section 502.1 in imposing Restrictions 3, 4, and 5. (Ex. C, pp. 216, 218.) This is further evidence that those restrictions are not *part* of the special exception and, thus, are not subject to amendment.

[15] VPC recognizes the authority of the Commissioner, as well as the Board of Appeals, in granting a special exception, to impose conditions or restrictions. *See* BCZR, art. 5, section 502.2. This is not, however, what the Deputy Commissioner did in his 1994 decision.

In sum, the necessary predicate for Petitioner's request to amend restriction 4 by way of a special hearing (as opposed to seeking a special exception) is that the Board of Appeals previously found Mr. Bauer's proposed use to be permitted in a RC4 zone. That clearly was not the opinion of the Board of Appeals and, more clearly, was not the ruling of the Deputy Commissioner. The Commissioner, therefore, should deny the relief sought in the petition for special hearing.

V. CONCLUSION

For the reasons stated, the Zoning Commissioner should (i) deny the relief requested by Petitioner in its petition for special hearing, and (ii) deny the petition for special exception to the extent such relief is sought to accommodate the relief requested in the petition for special hearing.

Respectfully submitted,



Michael R. McCann

Funk & Bolton, P.A.
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Baltimore, Maryland 21202
(410) 659-7700

Attorneys for The Valleys Planning Council

Dated: September 6, 2002

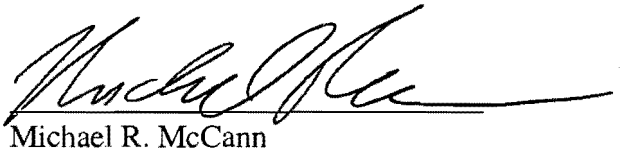
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 6th day of September 2002, a copy of Protestant's Post-Hearing Memorandum was mailed, first class, postage prepaid to:

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204-5517

Attorneys for Petitioner



Michael R. McCann

85000.01.57219

APPEAL

HEARING ~~TUES 6-11-02 9AM RM 106~~

~~FRI 6-11-02 9AM RM 407~~ PP

~~THURS 6-20-02 9AM RM #106~~ P.P.

~~WED 7~~

~~TUES 7-23 & WED 7-24 9AM RM 407~~ PP

TUES 8-13 -WED 8-14 9AM RM 407

Ltr 02-461 . 461

SPHXA

Memos due - 9/6/02

CERTIFICATE OF POSTING

1) Posted 5-28 Hearing Date ____

2) Posted 7-28 Hearing Date ____

JEFF

ADS

1) Paper/Date 5-28 Enc ____

Paper/Date ____ Enc ____

2) Paper/Date 7-30 Enc ____

Paper/Date ____ Enc ____

P&A FEES

1) ____

2) ____

COMMENTS

Planning ✓ Fire ✓ Traffic ✓

Critical Area ____ SHA ✓ EPA ✓

Health: ____ OTHER ✓

Associate JRA

Zoning Violation # ____

Prior Hearing(s) 94-348-SPHXA

MAP NW 19A

S. D. 8th

DATE ____

200 RLD

1000 ____

ZIP ____

ORDERS

PETITION

(1940201)

02-461-SPHXA

2

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 1201 Shawan Road

which is presently zoned R.C.4

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

Special Hearing to approve an amendment to the site plan previously approved in Case No. 94-348-SPHXA and to amend Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan.

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

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

Contract Purchaser/Lessee:

Oregon, L.L.C.
Name - Type or Print

Signature Theodore W. Bauer, Member

5700 Newberry Street (410) 367-6903
Address Telephone No.

Baltimore, Maryland 21209
City State Zip Code

Attorney For Petitioner:

Robert A. Hoffman
Name - Type or Print

Signature

Venable, Baetjer and Howard, LLP
Company

210 Allegheny Avenue (410) 494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Legal Owner(s):

Name - Type or Print

Signature

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Representative to be Contacted:

Robert A. Hoffman, Esquire
Name

210 Allegheny Avenue (410) 494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By SAT Date 04-19-02

Case No. 02-461-SPHXA

ORDER RECEIVED FOR FILING
Date 4/23/02
By REV 9/15/98

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 1201 Shawan Road

which is presently zoned R.C.4

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, leg owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto a made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use t herein described property for

Special Exception pursuant to Section 1A03.3.B.5 of the Baltimore County Zoning Regulations to expand the area supporting the restaurant originally approved in Case No. 94-348-SPHXA to include area for additional parking to serve the property and to include the existing outbuilding barn located opposite the entrance to the property to be used for storage and other permitted uses.

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

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

Contract Purchaser/Lessee:

Oregon, L.L.C.
Name - Type or Print

Signature Theodore W. Bauer, Member

5700 Newberry Street (410) 367-6903
Address Telephone No.

Baltimore, Maryland 21209
City State Zip Code

Attorney For Petitioner:

Robert A. Hoffman
Name - Type or Print

Signature

Venable, Baetjer and Howard, LLP
Company

210 Allegheny Avenue (410) 494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Legal Owner(s):

BALTIMORE COUNTY MARYLAND
Name - Type or Print

REC & PARKS
Signature

Name - Type or Print

Signature

301 WASHINGTON AVE
Address Telephone No.

TOWSON 21204
City State Zip Code

Representative to be Contacted:

Robert A. Hoffman, Esquire
Name

210 Allegheny Avenue (410) 494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By SJA Date 04/9/02

ORDER RECEIVED FOR FILING
Date 4/23/02
By

Case No. 02-461-SPHXA

REV 09/15/98

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 1201 Shawan Road

which is presently zoned R.C.4

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)

Variance from Section 409.8.A.2 of the Baltimore County Zoning Regulations to permit a stone parking lot in lieu of a durable and dustless surface consistent with existing Restriction No. 9.

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

To be determined at Hearing.

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

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

Contract Purchaser/Lessee:

Oregon, L.L.C.
Name - Type or Print

Signature Theodore W. Bauer, Member

5700 Newberry Street (410) 367-6903
Address Telephone No.

Baltimore, Maryland 21209
City State Zip Code

Attorney For Petitioner:

Robert A. Hoffman
Name - Type or Print

Signature

Venable, Baetjer and Howard, LLP
Company

210 Allegheny Avenue (410) 494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Legal Owner(s):

Name - Type or Print

Signature

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Representative to be Contacted:

Robert A. Hoffman, Esquire
Name

210 Allegheny Avenue (410) 494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____
Reviewed By SDT Date 04-19-02

ORDER RECEIVED FOR FILING
Date 9/24/02
By RZV 9/15/98

Case No. 02-461-SPHXA

Description to Accompany

Petition for Special Exception

0.08 Acre Parcel

Northwest side of Kurtz Lane

Southeast of Shawan Road

Eighth Election District, Baltimore County, Maryland

DMW

Daft•McCune•Walker, Inc.

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

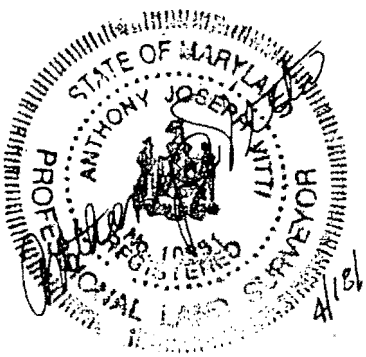
A Team of Land Planners,
Landscape Architects,
Golf Course Architects,
Engineers, Surveyors &
Environmental Professionals

Beginning for the same on the northwest side of Kurtz Lane at the end of the following course and distance as measured from the intersection of the centerline of Shawan Road with the centerline of Kurtz Lane (1) Southwesterly 155 feet, more or less, to the point of beginning, thence leaving said point of beginning and running for the three following courses and distances, viz: (1) South 89 degrees 45 minutes 00 seconds East 65.00 feet, thence (2) South 00 degrees 15 minutes 00 seconds West 50.00 feet, and thence (3) North 89 degrees 45 minutes 00 seconds West 79.35 feet to a point of non-tangency on the northwest side of Kurtz Lane, thence running with said lane (4) Northeasterly by a line curving to the right having a radius of 500.00 for a distance of 52.04 feet (the arc of said curve being subtended by a chord bearing North 16 degrees 16 minutes 06 seconds East 52.02 feet) to the point of beginning; containing 0.08 acres of land, more or less.

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

April 18, 2002

Project No. 85040 (L85040-3)



Description to Accompany

Petition for Special Exception and Variance

0.47 Acre Parcel

South side of Shawan Road

West of Cuba Road

Eighth Election District, Baltimore County, Maryland

DMW

Daft•McCune•Walker, Inc.

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

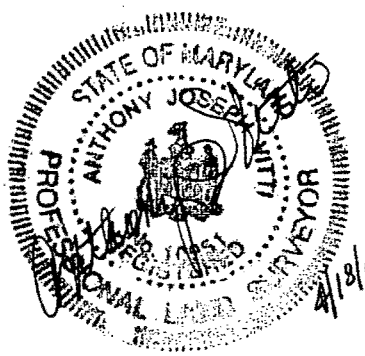
A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

Beginning for the same on the south side of Shawan Road at the end of the second of the two following courses and distances as measured from the intersection of the centerline of Cuba Road with the centerline of Shawan Road, (1) Southwesterly 445 feet, more or less, and thence (2) Southeasterly 10 feet, more or less, to the point of beginning, thence leaving said point of beginning and running for the three following courses and distances, viz: (1) South 06 degrees 15 minutes 00 seconds East 208.01 feet, thence (2) South 87 degrees 45 minutes 00 seconds West 100.24 feet, and thence (3) North 06 degrees 15 minutes 00 seconds West 200.14 feet to the south side of Shawan Road, thence running with said road, (4) North 83 degrees 15 minutes 00 seconds East 100.00 feet to the point of beginning; containing 0.47 acres of land, more or less.

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

April 18, 2002

Project No. 85040 (L85040-2)



02-461-SPH&A

Description

To Accompany Petition for Special Hearing and Variance

2.63 Acre Parcel

Southeast side of Shawan Road

Northwest side of Kurtz Lane

Eighth Election District, Baltimore County, Maryland

DMW

Daft•McCune•Walker, Inc.

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

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

Beginning for the same on the south side of Shawan Road at the end of the second of the two following courses and distances as measured from the intersection of the centerline of Cuba Road with the centerline of Shawan Road, (1) Southwesterly 445 feet, more or less, and thence (2) Southeasterly 10 feet, more or less, to the point of beginning, thence leaving said point of beginning and running with the southeast side of Shawan Road and the northwest side of Kurtz Lane, the five following courses and distances, viz: (1) North 83 degrees 15 minutes 00 seconds East 397.00 feet to a point of curvature, thence (2) Southeasterly by a line curving to the right having a radius of 50.00 feet for a distance of 101.23 feet (the arc of said curve being subtended by a chord bearing South 38 degrees 45 minutes 00 seconds East 84.80 feet), thence (3) South 19 degrees 15 minutes 00 seconds West 73.34 feet to a point of curvature, thence (4) Southwesterly by a line curving to the left having a radius of 500.00 feet, for a distance of 106.90 feet (the arc of said curve being subtended by a chord bearing South 13 degrees 07 minutes 30 seconds West 106.70 feet), and thence (5) South 07 degrees 00 minutes 00 seconds West 193.65 feet, thence running for the four following courses and distances, viz: (6) North 88

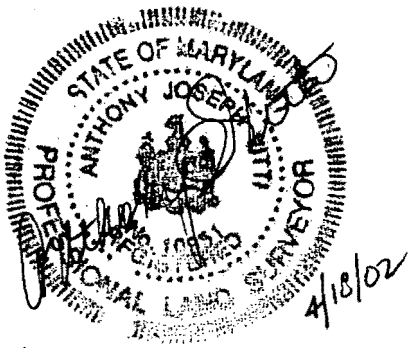
02-461SPHRA

degrees 15 minutes 00 seconds West 97.00 feet, thence (7) North 02 degrees 15 minutes 00 seconds West 185.00 feet, thence (8) South 87 degrees 45 minutes 00 seconds West 248.65 feet, and thence (9) North 06 degrees 15 minutes 00 seconds West 208.01 feet to the point of beginning containing 2.63 acres of land, more or less.

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

April 18, 2002

Project No. 85040 (L85040-1)



02-461-SPHX

CERTIFICATE OF POSTING

RE: Case No.: 02-461-SPHXA

Petitioner/Developer: THEODORE W. BAUER

Date of Hearing/Closing: 6/14/02

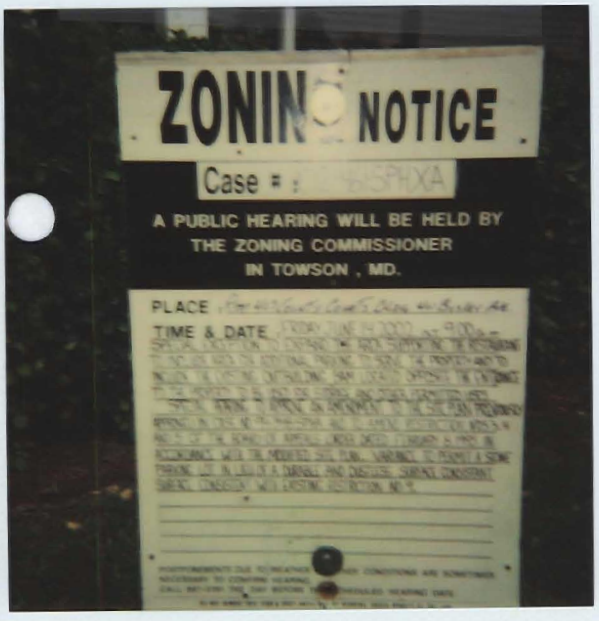
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 1201 SHAWAN RD

The sign(s) were posted on 5/28/02
(Month, Day, Year)



Sincerely,

5/28/02
(Signature of Sign Poster and Date)

SSG ROBERT BLACK
(Printed Name)

1508 Leslie Rd
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)

CERTIFICATE OF POSTING

RE: Case No.: 02-461-SPHXA

Petitioner/Developer: THEODORE W. BAUER

Date of Hearing/Closing: 8/13+14/02

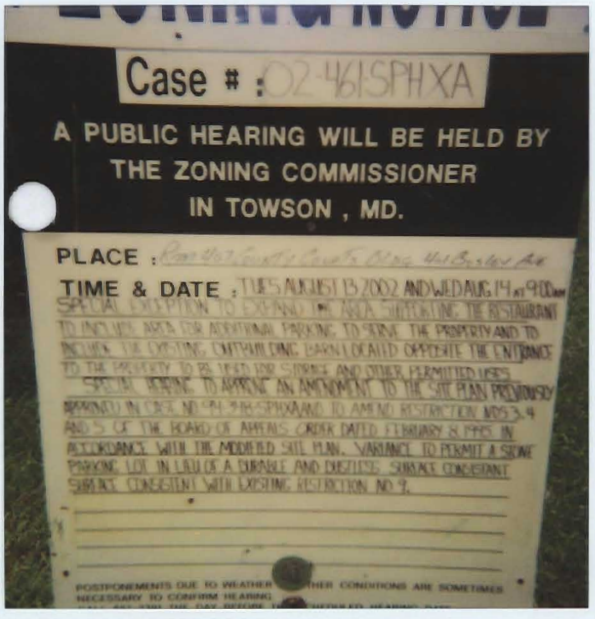
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 1201 SHAWAN RD

The sign(s) were posted on 7/28/02
(Month, Day, Year)



Sincerely,

7/28/02
(Signature of Sign Poster and Date)

SSG ROBERT BLACK
(Printed Name)

1508 Leslie Rd
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)

NOTICE OF ZONING HEARING

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

Case: #02-461-SPHXA
1201 Shawan Road
SW/corner of Shawan Road & Beaver Dam Road
8th Election District - 3rd Councilmanic District
Legal Owner(s): Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue, Towson 21204
Contract Purchaser: Theodore W. Bauer

Special Exception: to expand the area supporting the restaurant to include area for additional parking to serve the property and to include the existing outbuilding barn located opposite the entrance to the property to be used for storage and other permitted uses. **Special Hearing:** to approve an amendment to the site plan previously approved in Case No. 94-348-SPHXA and to amend Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan. **Variance:** to permit a stone parking lot in lieu of a durable and dustless surface consistent with existing Restriction No. 9.

Hearing: Friday, June 14, 2002 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.
JT5/822 May28 C541559

CERTIFICATE OF PUBLICATION

5/30/, 2002

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 5/28/, 2002.

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

S. Wilkinson

LEGAL ADVERTISING

NOTICE OF ZONING HEARING

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

Case: #02-461-SPHXA
1201 Shawan Road
SW/corner of Shawan Road & Beaver Dam Road
8th Election District - 3rd Councilmanic District
Legal Owner(s): Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue, Towson 21204
Contract Purchaser: Theodore W. Bauer

Special Exception: to expand the area supporting the restaurant to include area for additional parking to serve the property and to include the existing outbuilding barn located opposite the entrance to the property to be used for storage and other permitted uses. **Special Hearing:** to approve an amendment to the site plan previously approved in Case No. 94-348-SPHXA and to amend Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan. **Variance:** to permit a stone parking lot in lieu of a durable and dustless surface consistent with existing Restriction No. 9.

Hearing: Tuesday, August 13, 2002 and Wednesday, August 14, 2002 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

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

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

JT/7/862 July 30 C553222

CERTIFICATE OF PUBLICATION

8/1, 2002

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 7/30/2002.

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

S. Wilkinson

LEGAL ADVERTISING

5001

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 13307

DATE 04-19-02 ACCOUNT R-001-6150

AMOUNT $ 650.00

RECEIVED FROM: ~~OR~~ TBST INC TR OREGON LLC

FOR: COMMERCIAL SPACE, SPEC. USE VAR. E.C.

TOTAL $650.00

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CR 461 SPHEA

PAID RECEIPT

BUSINESS	ACTUAL	TIME
4/19/2002	4/19/2002	11:29:51

REG 4805 WALKIN DIGL DNB DRAWER 2
>>RECEIPT N 240392 4/19/2002 OFLN
Dep # 5 528 ZONING VERIFICATION
CR NO. 013307
Recpt Tot $650.00
650.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 19335

DATE 10/25/02 ACCOUNT 001-006-6150

AMOUNT $ 650.00

RECEIVED FROM: The Oregon Grille

FOR: appeal

02-461-SPHXA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PMIU RECEIPT
BUSINESS ACTUAL TIME
10/25/2002 10/25/2002 10:17:57
REG WS04 WALKIN DMOL DMO DRAWER 2
RECEIPT # 200466 10/25/2002 OFLN
Dep 5 520 ZONING VERIFICATION
CR NO. 019335
Recpt Tot $650.00
$650.00 CK .00 CA
Baltimore County, Maryland

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 19307

DATE 11/12/02 ACCOUNT 001-006-6150

AMOUNT $ 495.00

RECEIVED FROM: Robert A. Hoffman

FOR: Appeal

02-461-SPHXA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
BUSINESS ACTUAL TIME
11/12/2002 11/12/2002 09:57:48
REG WORK WALKIN KMOH KXH DRAWER 4
>>RECEIPT # 112826 11/12/2002 OFLN
Dep 5 528 ZONING VERIFICATION
CR NO. 019307
Recpt Tot $495.00
495.00 CK .00 CA
Baltimore County, Maryland

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 02-461-SPHXA

Petitioner: OREGON, LLC

Address or Location: 1201 SHAWAN ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: ~~DAVID KARLSEN~~ AMY DONTELL

Address: 210 ALLEGHENY AVENUE

TOWSON MARYLAND 21204

Telephone Number: (410) 494-6244

Revised 2/20/98 - SCJ

02-461-SPHXA

TO: PATUXENT PUBLISHING COMPANY
Tuesday, May 28, 2002 Issue – Jeffersonian

Please forward billing to:
Amy Dontell 410 494-6244
Venable Baetjer & Howard
210 Allegheny Avenue
Towson MD 21204

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: 02-461-SPHXA
1201 Shawan Road
SW/corner of Shawan Road & Beaver Dam Road
8th Election District – 3rd Councilmanic District
Legal Owner: Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue, Towson 21204
Contract Purchaser: Theodore W Bauer

Special Exception to expand the area supporting the restaurant to include area for additional parking to serve the property and to include the existing outbuilding barn located opposite the entrance to the property to be used for storage and other permitted uses. Special Hearing to approve an amendment to the site plan previously approved in Case No. 94-348-SPHXA and to amend Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan. Variance to permit a stone parking lot in lieu of a durable and dustless surface consistent surface consistent with existing Restriction No. 9.

HEARING: Tuesday, June 11, 2002 at 9:00 a.m. in Room 106, Baltimore County Office Building, 111 W Chesapeake Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT GDZ
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

Baltimore County
Department of Permits and
Development Management

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

May 16, 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: 02-461-SPHXA
1201 Shawan Road
SW/corner of Shawan Road & Beaver Dam Road
8th Election District – 3rd Councilmanic District
Legal Owner: Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue, Towson 21204
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HEARING: Tuesday, June 11, 2002 at 9:00 a.m. in Room 106, Baltimore County Office Building, 111 W Chesapeake Avenue

Arnold Jablon GDZ
Director

C: Robert A Hoffman Esquire, Venable Baetjer & Howard LLP, 210 Allegheny Avenue, Towson 21204
Amy Dontell Venable Baetjer & Howard LLP, 201 Allegheny Avenue, Towson 21204
Oregon LLC, Theodore W Bauer, 5700 Newberry Street, Baltimore 21209
Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, MAY 27, 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.

Tuesday, May 28, 2002 Issue – Jeffersonian

Please forward billing to:
Amy Dontell 410 494-6244
Venable Baetjer & Howard
210 Allegheny Avenue
Towson MD 21204

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: 02-461-SPHXA
1201 Shawan Road
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HEARING: Friday, June 14, 2002 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT GDZ
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

Baltimore County
Department of Permits and
Development Management

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

May 22, 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: 02-461-SPHXA
1201 Shawan Road
SW/corner of Shawan Road & Beaver Dam Road
8th Election District – 3rd Councilmanic District
Legal Owner: Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue, Towson 21204
Contract Purchaser: Theodore W Bauer

Special Exception to expand the area supporting the restaurant to include area for additional parking to serve the property and to include the existing outbuilding barn located opposite the entrance to the property to be used for storage and other permitted uses. Special Hearing to approve an amendment to the site plan previously approved in Case No. 94-348-SPHXA and to amend Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan. Variance to permit a stone parking lot in lieu of a durable and dustless surface consistent surface consistent with existing Restriction No. 9.

HEARING: Friday, June 14, 2002 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon GDZ
Director

C: Robert A Hoffman Esquire, Venable Baetjer & Howard LLP, 210 Allegheny Avenue, Towson 21204
Amy Dontell Venable Baetjer & Howard LLP, 201 Allegheny Avenue, Towson 21204
Oregon LLC, Theodore W Bauer, 5700 Newberry Street, Baltimore 21209
Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, MAY 27, 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.

TO: PATUXENT PUBLISHING COMPANY

Printed with Soybean Ink
on Recycled Paper

Baltimore County
Department of Permits and
Development Management

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

June 13, 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: 02-461-SPHXA
1201 Shawan Road
SW/corner of Shawan Road & Beaver Dam Road
8th Election District – 3rd Councilmanic District
Legal Owner: Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue, Towson 21204
Contract Purchaser: Theodore W Bauer

Special Exception to expand the area supporting the restaurant to include area for additional parking to serve the property and to include the existing outbuilding barn located opposite the entrance to the property to be used for storage and other permitted uses. Special Hearing to approve an amendment to the site plan previously approved in Case No. 94-348-SPHXA and to amend Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan. Variance to permit a stone parking lot in lieu of a durable and dustless surface consistent surface consistent with existing Restriction No. 9.

HEARING: Tuesday, July 23, 2002 and Wednesday, July 24, 2002 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

C: Robert A Hoffman Esquire, Venable Baetjer & Howard LLP, 210 Allegheny Avenue, Towson 21204
Amy Dontell Venable Baetjer & Howard LLP, 201 Allegheny Avenue, Towson 21204
Oregon LLC, Theodore W Bauer, 5700 Newberry Street, Baltimore 21209
Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, JULY 8, 2002.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed with Soybean Ink

Baltimore County
Department of Permits and
Development Management

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

June 13, 2002

NOTICE OF ZONING HEARING

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SW/corner of Shawan Road & Beaver Dam Road
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Legal Owner: Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue, Towson 21204
Contract Purchaser: Theodore W Bauer

#2
Special Exception to expand the area supporting the restaurant to include area for additional parking to serve the property and to include the existing outbuilding barn located opposite the entrance to the property to be used for storage and other permitted uses. #1 Special Hearing to approve an amendment to the site plan previously approved in Case No. 94-348-SPHXA and to amend Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan. Variance to permit a stone parking lot in lieu of a durable and dustless surface consistent ~~surface consistent~~ with existing Restriction No. 9.
#3 post by 7/8/02

HEARING: Tuesday, July 23, 2002 and Wednesday, July 24, 2002 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

C: Robert A Hoffman Esquire, Venable Baetjer & Howard LLP, 210 Allegheny Avenue, Towson 21204
Amy Dontell Venable Baetjer & Howard LLP, 201 Allegheny Avenue, Towson 21204
Oregon LLC, Theodore W Bauer, 5700 Newberry Street, Baltimore 21209
Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, JULY 8, 2002.**
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(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed with Soybean Ink

VENABLE, BAETJER AND HOWARD, LLP
Including professional corporations

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517
(410) 494-6200, Fax (410) 821-0147
www.venable.com

VENABLE
ATTORNEYS AT LAW

OFFICES IN
MARYLAND
WASHINGTON, D.C.
VIRGINIA

Robert A. Hoffman
410-494-6262

rahoffman@venable.com

6/19/02
as
Mail - OK
D

June 18, 2002

Via Hand Delivery

Arnold Jablon, Director
Department of Permits and Development
Management
County Office Building – Room 111
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Zoning Case No.: 02-461-SPHXA
Petitioner: Theodore W. Bauer

Dear Mr. Jablon:

I represent Theodore W. Bauer in the above captioned matter. After this hearing was rescheduled for Tuesday, July 23, 2002 and Wednesday, July 24, 2002 at 9:00 a.m., I received an e-mail from Mr. Harold H. Burns, Jr., Esquire, letting me know that he would like to participate in this hearing but will be away during the month of July. George Zahner has suggested Tuesday, August 13, 2002 and Wednesday, August 14, 2002 as alternate dates, and I would ask that the hearing be set in on those dates.

Thank you for your consideration.

Very truly yours,

Robert A. Hoffman

RAH/ald
cc: Lawrence Schmidt, Zoning Commissioner
Harold H. Burns, Jr., Esquire

TO1DOCS1/ald99/#139350 v1

RECEIVED
JUN 19 2002
02-1822
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

7/23

Baltimore County
Department of Permits and
Development Management

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

June 20, 2002

Robert A Hoffman, Esquire
Venable Baetjer & Howard
210 Allegheny Avenue
Towson MD 21204

JUN 2 0 2002

Dear Mr. Hoffman:

RE: Case Number 02-461-SPHXA, 1201 Shawan Road

The above matter, previously scheduled for Wednesday July 23, Thursday, July 24, 2002 and, has been postponed at your request. Once the hearing has been rescheduled you will be notified by mail.

Please be advised that, as the individual requesting and receiving the postponement, the responsibility and costs associated with the appropriate posting of the property now lies with you. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so. If the property has been posted with notice of the original hearing date, as quickly as possible a notice of the new hearing date should be affixed to the sign(s).

Very truly yours,

Arnold Jablon GDZ
Director

AJ: gdz

C: Amy Dontell, Venable Baetjer & Howard, 210 Allegheny Avenue, Towson 21204
Oregon LLC, Theodore W Bauer, 5700 Newberry Street, Baltimore 21209
Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue, Towson 21204

Printed with Soybean Ink

TO: PATUXENT PUBLISHING COMPANY
Tuesday, July 30, 2002 Issue – Jeffersonian

Please forward billing to:
Amy Dontell 410 494-6244
Venable Baetjer & Howard
210 Allegheny Avenue
Towson MD 21204

NOTICE OF ZONING HEARING

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SW/corner of Shawan Road & Beaver Dam Road
8th Election District – 3rd Councilmanic District
Legal Owner: Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue, Towson 21204
Contract Purchaser: Theodore W Bauer

Special Exception to expand the area supporting the restaurant to include area for additional parking to serve the property and to include the existing outbuilding barn located opposite the entrance to the property to be used for storage and other permitted uses. Special Hearing to approve an amendment to the site plan previously approved in Case No. 94-348-SPHXA and to amend Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan. Variance to permit a stone parking lot in lieu of a durable and dustless surface consistent surface consistent with existing Restriction No. 9.

HEARING: Tuesday, August 13, 2002 and Wednesday, August 14, 2002 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

Baltimore County
Department of Permits and
Development Management

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

June 24, 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: 02-461-SPHXA
1201 Shawan Road
SW/corner of Shawan Road & Beaver Dam Road
8th Election District – 3rd Councilmanic District
Legal Owner: Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue, Towson 21204
Contract Purchaser: Theodore W Bauer

Special Exception to expand the area supporting the restaurant to include area for additional parking to serve the property and to include the existing outbuilding barn located opposite the entrance to the property to be used for storage and other permitted uses. Special Hearing to approve an amendment to the site plan previously approved in Case No. 94-348-SPHXA and to amend Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan. Variance to permit a stone parking lot in lieu of a durable and dustless surface consistent surface consistent with existing Restriction No. 9.

HEARING: Tuesday, August 13, 2002 and Wednesday, August 14, 2002 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

C: Robert A Hoffman Esquire, Venable Baetjer & Howard LLP, 210 Allegheny Avenue, Towson 21204
Amy Dontell Venable Baetjer & Howard LLP, 201 Allegheny Avenue, Towson 21204
Oregon LLC, Theodore W Bauer, 5700 Newberry Street, Baltimore 21209
Baltimore County, Maryland, Recreation & Parks, 301 Washington Avenue Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, JULY 29, 2002.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed with Soybean Ink

APPEAL SIGN POSTING REQUEST

CASE NO.: 02-461-SPHXA

BALTIMORE COUNTY REC & PARKS - LEGAL OWNERS

1201 SHAWAN ROAD

8TH ELECTION DISTRICT APPEALED: 10/23/02

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.: 02-461-SPHXA

Petitioner/Developer:

_____

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

_____

The sign was posted on 11/14/02, 2002

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

County Board of Appeals of Baltimore County

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

pr'd to 7/22/03 - reg. of Counsel for Petitioner

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

March 18, 2003

NOTICE OF ASSIGNMENT

CASE #: 02-461-SPHXA

IN THE MATTER OF: OREGON LLC – Contract Lessee;
Baltimore County Recreation & Parks – Legal Owner
(Oregon Grill) 1201 Shawan Road
8th Election District; 3rd Councilmanic District

9/24/02 – Order of Z.C. in which Petitions for Special Hearing, Special Exception and Variance were GRANTED with restrictions.
10/28/02 – Ruling of Z.C. – Appeal of Protestants eliminated ZC's jurisdiction and took away his authority to rule on Petitioner's Motion for Reconsideration filed 10/17/02.

ASSIGNED FOR: **THURSDAY, JUNE 5, 2003 at 10:00 a.m.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Protestants : Michael R. McCann, Esquire
Appellants /Protestants : Dennis Sutton
Greencroft Community Assn.
Falls Rd Community Assn.
The Valleys Planning Council

Counsel for Appellant /Petitioner : Robert A. Hoffman, Esquire
Appellant /Petitioner : Theodore W. Bauer /Oregon LLC

Office of People's Counsel
Lawrence E. Schmidt, Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
Edward J. Gilliss, County Attorney

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VENABLE, BAETJER AND HOWARD, LLP
Including professional corporations

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517
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www.venable.com

OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

VENABLE
ATTORNEYS AT LAW

Writer's Direct Number:
(410) 494-6285

dhkarceski@venable.com

April 3, 2003

HAND-DELIVERED

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

Re: Case No.: 02-461-SPHXA
Location: 1201 Shawan Road
Owner: Oregon, LLC

Dear Mrs. Bianco:

I am writing on behalf of Robert Hoffman to request a postponement of the above-captioned hearing scheduled for Thursday, June 5, 2003. Theodore W. Bauer, Member of Oregon, LLC and operator of The Oregon Grille will be unable to testify on that date. Therefore, it is respectfully requested that the hearing be postponed and a new date be reserved for this matter.

Thank you for your consideration of this request.

Very truly yours,

David H. Karceski

DHK/bl
cc: Michael R. McCann, Esquire
TO1DOCS1/DHK01/#157970 v1

RECEIVED
APR 0 3 2003
BALTIMORE COUNTY
BOARD OF APPEALS

pp to 7-22-03

County Board of Appeals of Baltimore County

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

PP'd to 11/04/03 - req of new counsel for Appellants / Protestants

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

April 4, 2003

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 02-461-SPHXA

IN THE MATTER OF: OREGON LLC – Contract Lessee;
Baltimore County Recreation & Parks – Legal Owner
(Oregon Grill) 1201 Shawan Road
8th Election District; 3rd Councilmanic District

9/24/02 – Order of Z.C. in which Petitions for Special Hearing, Special Exception and Variance were GRANTED with restrictions.
10/28/02 – Ruling of Z.C. – Appeal of Protestants eliminated ZC's jurisdiction and took away his authority to rule on Petitioner's Motion for Reconsideration filed 10/17/02.

which had been assigned to be heard on 6/05/03 has been **POSTPONED** at the request of Counsel for Petitioner due to schedule conflict on part of Petitioner /witness; and has been

REASSIGNED FOR: **TUESDAY, JULY 22, 2003 at 10:00 a.m.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Protestants : Michael R. McCann, Esquire
Appellants /Protestants : Dennis Sutton
Greencroft Community Assn.
Falls Rd Community Assn.
The Valleys Planning Council

Counsel for Appellant /Petitioner : Robert A. Hoffman, Esquire
Appellant /Petitioner : Theodore W. Bauer /Oregon LLC

Office of People's Counsel
Lawrence E. Schmidt, Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
Edward J. Gilliss, County Attorney

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G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

June 13, 2003

VIA FACSIMILE & FIRST CLASS MAIL
(410) 887-3182

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

RECEIVED
JUN 16 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Re: **In the Matter of Oregon, LLC – Contract Lessee; Baltimore County Recreation & Parks – Legal Owner** (Oregon Ridge Grill)
1201 Shawan Road, 8th Election District; 3rd Councilmanic District
Case No. 02-461-SPHXA

Dear Ms. Bianca:

The Falls Road Community Association and Dennis Sutton, 13500 Beaver Dam Road, Cockeysville, Maryland 21030, have engaged me to represent them in the above-captioned case, currently scheduled for July 22, 2003. Previously, Mr. McMann had represented these individuals and other Protestants.

I also wish to inform the Board that I have a conflict for July 22nd because I will be out of the country. Therefore, I must request a change of the hearing date. Since I am the one seeking a change, I would be happy to coordinate calendars between you and any other attorneys.

Very truly yours,

G. Macy Nelson

GMN:pwc
cc: Michael R. McCann, Esq.
Robert A. Hoffman, Esq.

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48

Old Courthouse, 400 Washington Avenue June 24, 2003

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 02-461-SPHXA

IN THE MATTER OF: OREGON LLC – Contract Lessee; Baltimore County Recreation & Parks – Legal Owner
(Oregon Grill) 1201 Shawan Road
8th Election District; 3rd Councilmanic District

9/24/02 – Order of Z.C. in which Petitions for Special Hearing, Special Exception and Variance were GRANTED with restrictions.
10/28/02 – Ruling of Z.C. – Appeal of Protestants eliminated ZC's jurisdiction and took away his authority to rule on Petitioner's Motion for Reconsideration filed 10/17/02.

which had been reassigned to be heard on 7/22/03 has been **POSTPONED** at the request of G. Macy Nelson, Counsel for Appellants /Protestants, due to schedule conflict; and has been

REASSIGNED FOR: **TUESDAY, NOVEMBER 4, 2003 at 10:00 a.m.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Protestants : G. Macy Nelson, Esquire
Appellants /Protestants : Dennis Sutton
Falls Rd Community Assn.

Counsel for Appellants /Protestants : Michael R. McCann, Esquire
Appellants /Protestants : Greencroft Community Assn.
The Valleys Planning Council

Counsel for Appellant /Petitioner : Robert A. Hoffman, Esquire
Appellant /Petitioner : Theodore W. Bauer /Oregon LLC

Office of People's Counsel
Lawrence E. Schmidt, Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Edward J. Gilliss, County Attorney

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

November 5, 2003

NOTICE OF ASSIGNMENT /Days 2, 3 and 4

CASE #: 02-461-SPHXA

IN THE MATTER OF: OREGON LLC – Contract Lessee;
Baltimore County Recreation & Parks – Legal Owner
(Oregon Grill) 1201 Shawan Road
8th Election District; 3rd Councilmanic District

Day #2 from 11/04/03

9/24/02 – Order of Z.C. in which Petitions for Special Hearing, Special Exception and Variance were GRANTED with restrictions.
10/28/02 – Ruling of Z.C. – Appeal of Protestants eliminated ZC's jurisdiction and took away his authority to rule on Petitioner's Motion for Reconsideration filed 10/17/02.

Having concluded day #1 on 11/04/03, the following dates, as agreed at the conclusion of day #1, have been assigned for days 2, 3 and 4 in the subject matter; and this matter has been

ASSIGNED FOR:

WEDNESDAY, MARCH 24, 2004 at 10:00 a.m. /Day #2;
THURSDAY, MARCH 25, 2004 at 10:00 a.m. / Day #3; and
WEDNESDAY, MARCH 31, 2004 at 10:00 a.m. /Day #4

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

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

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

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

Kathleen C. Bianco, Administrator

---

c: Counsel for Appellants /Protestants : G. Macy Nelson, Esquire
Appellants /Protestants : Dennis Sutton
Falls Rd Community Assn.

Counsel for Appellants /Protestants : Michael R. McCann, Esquire
Appellants /Protestants : Greencroft Community Assn.
The Valleys Planning Council

Counsel for Appellant /Petitioner : Robert A. Hoffman, Esquire
Appellant /Petitioner : Theodore W. Bauer /Oregon LLC
Office of People's Counsel
Lawrence E. Schmidt, Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Edward J. Gilliss, County Attorney

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County Board of Appeals of Baltimore County

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

April 14, 2004

NOTICE OF DELIBERATION

IN THE MATTER OF:

OREGON LLC – C.P.; Baltimore County
Recreation & Parks –Legal Owner (Oregon Grill)
Case No-02-461-SPHXA

Having heard this matter on 11/04/03; 3/24, 3/25, 3/31 and 4/13/04 (5 days), public deliberation has been scheduled for the following date /time:

DATE AND TIME : **WEDNESDAY, JUNE 9, 2004 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: Closing briefs are due on Monday, May 24, 2004
(Original and three [3] copies)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : G. Macy Nelson, Esquire
Appellants /Protestants : Dennis Sutton
Falls Rd Community Assn.

Counsel for Appellants /Protestants : Michael R. McCann, Esquire
Appellants /Protestants : Greencroft Community Assn.
The Valleys Planning Council

Counsel for Appellant /Petitioner : Robert A. Hoffman, Esquire
Appellant /Petitioner : Theodore W. Bauer /Oregon LLC
Office of People's Counsel
Lawrence E. Schmidt, Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Edward J. Gilliss, County Attorney

Copy to: 4-5-7

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County Board of Appeals of Baltimore County

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

April 22, 2004

Michael R. McCann Esquire
FUNK & BOLTON
100 Light Street
Baltimore, MD 21202

RE: Case No. 02-461-SPHXA /Oregon Grille, LLC
Request for Postponement of Deliberation

Dear Mr. McCann:

This office is in receipt of your letter dated April 20, 2004 in which you request a postponement of the public deliberation assigned for Wednesday, June 9, 2004.

Although conducted in a public setting, deliberations are work sessions of the Board during which those in attendance as observers are allowed no input or comment. Therefore, deliberation dates are assigned primarily to accommodate the individual schedules of the Board members. It should also be noted that Mr. Marks is scheduled to leave the Board effective June 30, 2004, making it imperative that this matter be deliberated and the written Opinion and Order signed and issued no later than June 30th.

Therefore, in light of the above, your request for a postponement is denied at this time, and the public deliberation will proceed as assigned on Wednesday, June 9, 2004 at 9:00 a.m. Should you have any further questions, please do not hesitate to contact me at 410-887-3180.

Very truly yours,

Kathleen C. Bianco
Administrator

c: G. Macy Nelson, Esquire
Robert Hoffman, Esquire

FILE

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FUNK & BOLTON
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
TWELFTH FLOOR
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND
21201-3111
PHONE: 410.659.7700
FAX: 410.659.7773
www.fblaw.com

Writer's Direct Dial: (410) 659-7764
mmccann@fblaw.com

DAVID M. FUNK
BRYAN D. BOLTON
BRYSON F. POPHAM
REN L. TUNDERMANN
CHARLES D. MACLEOD
DEREK B. YARMIS
JEFFERSON L. BLOMQUIST
LINDSEY A. RADER
JAMES F. TAYLOR
MICHAEL R. MCCANN

ASSOCIATES
HUGH M. BERNSTEIN
PETER C. ISMAY
MICHAEL P. CUNNINGHAM
CHERYL A. C. BROWN
HISHAM M. AMIN
TAMAL A. BANTON

OF COUNSEL
JOHN A. ANDRYSZAK
GARY C. HARRIGER
DONNA B. IMHOFF
STEPHEN Z. MEEHAN
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

April 20, 2004

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

Re: Oregon Grille, LLC
Pending before the Baltimore County Board of Appeals
Case No. 02-461-SPHXA

Dear Ms. Bianco:

I received today the Board's notice of deliberation in this matter. Unfortunately, I have long-standing family vacation plans the week of June 7, 2004. I am available any day the following week, as well as June 15, 17, and 18, 2004.

Thank you for your cooperation. If you have any questions, please do not hesitate to contact me.

Sincerely,

Michael R. McCann

cc: G. Macy Nelson, Esq.
Robert Hoffman, Esq.

85000.001.72202

RECEIVED
APR 21 2004
BALTIMORE COUNTY
BOARD OF APPEALS

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

June 7, 2002

Robert A Hoffman Esquire
Venable Baetjer & Howard
210 Allegheny Avenue
Towson MD 21204

Dear Mr. Hoffman:

RE: Case Number: 02-461-SPHXA, 1201 Shawan Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on April 19, 2002

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr. GDZ
Supervisor, Zoning Review

WCR: gdz

Enclosures

c Mr. Theodore W Bauer, Member, Oregon LLC, 5700 Newberry Street,
Baltimore 21209
People's Counsel

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Baltimore County
Department of Permits and
Development Management

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

August 9, 2002

Robert A Hoffman
Venable Baetjer & Howard
210 Allegheny Avenue
Towson MD 21204

Dear Mr. Hoffman:

RE: Case Number: 02-461-SPHXA, 1201 Shawan Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on April 19, 2002.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr. GDZ
Supervisor, Zoning Review

WCR: gdz

Enclosures

c: Oregon LLC, Theodore W Bauer, 5700 Newberry, Baltimore 21209
Baltimore County Maryland, Recreations & Parks
Dennis Sutton, 13500 Beaver Dam Road, Cockeysville MD 21030
People's Counsel

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Baltimore County
Fire Department

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

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

May 7,2002

ATTENTION: George Zahner

RE: Property Owner: SEE BELOW

Location: DistrIBUTION MEETING OF May 6, 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:

(461)

460-462, 464-468, 470 & 471

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

cc: File

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BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley RBS/TGT

DATE: June 6, 2002

SUBJECT: Zoning Item 461
Address 1201 Shawan Road (Oregon Grille)

Zoning Advisory Committee Meeting of May 6, 2002

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

See the attached Ground Water Management Comments.

Reviewer: Kevin Koepenick Date: May 6, 2002

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 5.2.01

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

RE: Baltimore County
Item No. 461 JRA

Dear. Mr. Zahner:

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

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

Very truly yours,

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

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: May 29, 2002

FROM: Robert W. Bowling
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for May 6, 2002
Item No. *460, 461, 462, 463, 464, 465, 466, 467, 468, 469 and 471*

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

RWB:CEN
Cc: file

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 17, 2002

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

MAY 20 2002

SUBJECT: Zoning Advisory Petition(s): **Case(s) 02-461**

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.

Prepared by: Mark A Cunningham

Section Chief: Lynn Lanham

AFK/LL:MAC

BALTIMORE COUNTY, MARYLAND

Inter-Office Memorandum

DATE: June 21, 2002

TO: Bruce Seeley, Supervisor, Development Coodination
Department of Environmental Protection & Resource Management

FROM: Kevin W. Koepenick, R.S., Supervisor, Ground Water Management
Department of Environmental Protection & Resource Management

SUBJECT: Oregon Grille, ZAC Item #02-461

Since the proposed changes to the zoning restrictions have the potential for increasing wastewater flows to the existing on-site sewage disposal system (OSDS), the Department requests that the owner/operator provide a revised water usage letter that details current and proposed activities at the facility as they pertain to the generation of wastewater. The Department has concerns that the existing OSDS may not be functioning at an optimal level based upon a previous on-site inspection (see attached February 12, 2001 memo). Therefore, subsequent to the submittal of a revised water usage letter, we request a meeting at the facility with the owner/operator and septic contractor to assess the current conditions of the system and discuss alternatives for maintenance and/or system modifications to accommodate the wastewater flows.

J:\Individual Folders\Rob Powell\SDS Inspection Reports\Oregon Grille, Zoning Comments, 6-21-02.doc

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF RECREATION AND PARKS

AUG 27 2002

Inter-Office Memorandum

To: Arnold Jablon, Director
Permits and Development Management

Date: August 19, 2002

From: John F. Weber, III
Director

Subject: Oregon Grille Special Exception Case # 02-461-SPHXA

I was recently informed that the Oregon Grille has submitted plans for the above referenced special exception on property owned by Baltimore County Department of Recreation and Parks. While this department has no objection to the granting of the special exception, I am requesting that no permits be issued for this project without written approval from Recreation and Parks since the areas proposed for development are not currently within the Oregon Grille lease area.

Please inform your staff to hold any permit applications for this property for Recreation and Parks review and approval.

JFW/js

c: Doug Swam
Bruce Seeley

W:\L O S\M-Oregon Grille.doc

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Bruce Seeley, Development Coordination

AUG 15 2002

FROM: J. Robert Powell, R.S., Ground Water Management

DATE: August 8, 2002

SUBJECT: Project Name: Oregon Grille, Located 1201 Shawan Road, District 8
Plan Type: Petition for Zoning Variance and Special Exception
Item #461
Plan Date: March 29, 2002

Ground Water Management has the following comments on the above referenced plan:

Comments	Date Resolved	Reviewer
1. In order for this Department to conduct a comprehensive review of the proposal, the owner/applicant must submit a written proposal of the intended use. This proposal must detail the maximum number of outside functions to be held during any given year and the maximum number of people expected to attend the events.		
2. The existing sewage disposal system was designed to accommodate a specific maximum flow. In order to properly evaluate the effect of the proposal on the long-term functioning of the existing septic system, the owner is advised to install a water meter on the incoming water supply line and take daily readings, at the same time each day, for a minimum period of at least two weeks. Upon completion of those readings, the data should be submitted to this office for review.		
3. The existing sewage disposal system was last inspected on February 12, 2001. The results of that inspection revealed that the existing system appears to be functioning hydraulically. However, the presence of grease waste was observed in the distribution boxes, indicating that the grease interceptors installed with the renovation of the restaurant are not functioning adequately. This issue must also be addressed prior to approval of any permit to expand the operation.		
4. The applicant is advised to have a licensed sewage disposal contractor conduct an inspection of the entire sewage disposal system, paying particular attention to the amount		

of greases in the grease interceptors and distribution boxes. The observation pipes at the end of the field absorption trenches must also be checked and the sewage level (if any), recorded and included in the report. The frequency of cleaning should also be included in the report and said report should be submitted to this office for review.		

Note: Please include a revision date on all revised plans submitted.

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

October 31, 2003

RECEIVED
OCT 31 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Lawrence Stahl, Chairman
Board of Appeals for Baltimore County
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: Baltimore County, MD - Legal Owners
Oregon, LLC – Contract Purchasers
Case No.: 02-461-SPHXA

Dear Chairman Stahl:

Our office is interested in this case (i) as a matter of public interest in the interpretation of the Baltimore County Zoning Regulations, (ii) to uphold the prior Board decision for this site, and (iii) to maintain the integrity of the Restricted Covenant Agreement recognized in the Board's February 8, 1995 decision.

We believe our review of the pleadings and the Board file provides adequate information for our preliminary comments. We respectfully reserve the opportunity to file a Memorandum at the appropriate time in the proceedings should our position require further explanation.

The site, known as the Oregon Grille, is a 2.6 acre R.C. 4 property at the intersection of Shawan and Cuba Roads near Oregon Ridge Park. It is improved with a historic building. The Memorandum filed by Valleys Planning Council in the Board's file provides a detailed procedural history and factual background that we will not repeat in this letter. We state a brief summary here in order to clarify our comments.

In mid-1990's Oregon L.L.C. purchased the site from Baltimore County to operate a restaurant in the historic building. The purchaser sought zoning relief in 1994, including a special exception and variance, to approve the conversion of the building. Valleys Planning Council opposed the use at the Zoning Commissioner hearing. The case proceeded on appeal to the CBA. Prior to the Board hearing, the owner and Valleys Planning Council entered into a Restrictive Covenant Agreement. As a result, Valleys Planning supported the zoning relief at the CBA hearing, on the understanding that if the special exception and variance were granted, the use would be restricted in accordance with the terms of the Agreement, and any restrictions the Board may impose in its Order.

RECEIVED
POST-APPEAL

The Board approved the Special Exception and Variance, subject to 12 restrictions in a written Order dated February 8, 1995, Case No.: 94-348-SPHXA. It also incorporated restrictions based on the Restrictive Covenant Agreement by reference.

The Petitioner now seeks to unilaterally and materially alter the use agreed on and approved by adding an on site banquet facility, in contradiction to the CBA Order, the Covenants, and the zoning regulations.

This case concerns the interpretation of "standard restaurant" and "catering hall". BCZR 101 defines the terms:

> **CATERING HALL** - A facility or part of a facility used regularly for serving beverages and food to groups which reserve the facility for banquets or gatherings before the day of the event. A catering hall is not a standard restaurant. **[Bill No. 110-1993]**
>
> **RESTAURANT, STANDARD** – A facility or part of a facility used primarily for serving meals and beverages to persons seated at tables on the premises of the establishment. The term includes cafes, cafeterias, tearooms and outdoor cafes. The term does not include a catering hall. A standard restaurant may offer a carry-out service, provided that such service is accessory to the principal restaurant operations. A standard restaurant may include a Class 6 brewery as an accessory use. **[Bill No. 110-1993; 185-1988]**

Clearly the uses are distinguishable, are not interchangeable and can impact a neighborhood in different ways.

A conversion into standard restaurant was approved on this site by special exception. See BCZR 1A03.3B5 and 402.3. It is also permitted by right (sometimes with restrictions) in certain commercial, manufacturing and office zones. On the other hand, a catering hall is a separate listed use permitted by right in the B.M. and B.R. zones. A catering hall is not permitted in most zones that permit a standard restaurant, and is restricted to the more intense business zones. It is even not permitted in the office zones. It is not listed as a use permitted by right or by special exception in the R.C. 4 zone, or in a converted dwelling.

It is well-established under the often cited Kowalski v. Lomar. 25 Md.App. 493, that if a use is not listed in the Regulations, it is prohibited. Additionally, a use cannot be also approved as "accessory" to a legal use if the "accessory" use is permitted in a separate zone. See Smith v. Miller 249 Md. 390 (1968), which is attached.

The CBA Order dated February 8, 1995 approves a standard restaurant, but does not approve a catering hall or banquet facility. The spirit of the Order is to limit the intensity of the use here. It is not incumbent on the Board or the citizens to list every prohibited use in an Order granting a specific use, to safeguard against developers and property owners who would frustrate the citizens' intent and the administrative hearing process. The zoning regulations and the rule of law must be respected.

The proposed use violates, at the very least, the spirit and intent of the Restricted Covenant Agreement. It would be insidious to allow property owners and developers to negotiate an agreement with opposing citizens and community groups to garner their support at a zoning hearing, then inveigle the Board to approve an opposed use under a different name or format at a later date. Moreover, it would have been illegal for Valleys Planning Council and the Owner to agree in 1995 to a catering hall use prohibited under BCZR 1A03.3B5 and 402.3.

For these reasons, and additional arguments made in the course of the hearing, the Petition should be denied.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio/rmw

Carole S Demilio, Esquire
Deputy People's Counsel for Baltimore County

CSD/rmw
Enclosure

cc: Robert Hoffman, Esquire
Michael McCann, Esquire
G. Macy Nelson, Esquire

Yes 6/20/02

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

Hearing Date: 6/11/02
Time: 9:00 AM
Place: Room 106 - County office Building

TO: Wally Lippincott

DATE: 6/6/02

FROM: Todd G. Taylor

SUBJECT: 1201 Strawan Road

Please review the attached Zoning petition # 461, and provide comments by ASAP. Thank you.

NO COMMENTS: WSL DATE: 6-7-02

COMMENTS:

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION PETITION FOR VARIANCE 1201 Shawan Road SWC Shawan Rd and Beaver Dam Rd 8th Election District, 3rd Councilmanic Legal Owner: Baltimore County, MD Contract Lessee: Oregon, LLC Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY Case No. 02-461-SPHXA

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of May, 2002 a copy of the foregoing Entry of Appearance was mailed to Robert A. Hoffman, Esq., Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

File

Baltimore County
Department of Permits and
Development Management

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

October 25, 2002

Michael R. McCann
Funk & Bolton
100 Light Street
Baltimore, MD 21202-1036

Dear Mr. McCann:

RE: Case No. 02-461-SPHXA, 1201 Shawan Road

Please be advised that an appeal of the above-referenced case was filed in this office on October 25, 2002 by Michael R. McCann on behalf of The Valleys Planning Council. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Arnold Jablon
Director

AJ:rlh

c: Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM
People's Counsel
Baltimore County Recreation and Parks, 301 Washington Avenue, Towson 21204
Robert Hoffman, Venable, Baetjer and Howard, 210 Allegheny Avenue, Towson 21204
Oregon, LLC, 5700 Newberry Street, Baltimore 21209

Printed with Soybean Ink on Recycled Paper

APPEAL

Petition Special Hearing, Special Exception, and Variance
1201 Shawan Road
Southwest side of Kurtz Lane and Beaver Dam Road
8th Election District – 3rd Councilmanic District
Legal Owner - Baltimore County Recreation and Parks
Oregon, LLC- Contract Purchaser
Case No.: 02-461-SPHXA

✓ Petition for Special Hearing, Special Exception, and Variance (April 19,2002)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (August 13, 2002)

✓ Certification of Publication (The Jeffersonian issue - July 30, 2002)

✓ Certificate of Posting (July 28, 2002 posted by Ssg. Robert Black)

✓ Entry of Appearance by People's Counsel (May 22, 2002)

✓ Petitioner(s) Sign-In Sheet (Two sheets)

✓ Protestant(s) Sign-In Sheet (One sheet)

✓ Citizen(s) Sign-In Sheet (None)

✓ Zoning Advisory Committee Comments

Petitioners' Exhibits:
✓ 1. Plan to accompany Petition for Special Exception, Special Hearing, and Varian
✓ 2.a-t A series of Pictures of Oregon Grill
✓ 3. Two letters in support of variance by the Oregon Grille

✓ Protestants' Exhibits:
None

✓ Miscellaneous (Not Marked as Exhibits):
Plat for the Oregon Grill

✓ ~~Deputy~~ Zoning Commissioner's/Zoning Commissioner's Order (September 24, 2002 – APPROVED subject to the following restrictions)

✱ Notice of Appeal received on October 23, 2002 from Michael R. McCann

c:
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM
Robert Hoffman, Venable Baetjer & Howard, 210 Allegheny Ave., Towson 2120
Michael McCann, Funk & Bolton, ~~100 Light Street~~, Baltimore 21202-1036
36 S. Charles Street 21201-17
12th floor

date sent 10/25/02 rlh

RECEIVED
OCT 28 2002
BALTIMORE COUNTY
BOARD OF APPEALS

VE

* DENNIS SUTTON
13500 BEAVER DAM ROAD
COCKEYSVILLE, MD 21030
APPELLANT

* GREENCROFT COMMUNITY ASSOCIATION
C/O MARY ALANE DOWNS, PRESIDENT
MORGAN SHELSBY CARLO DOWNS &
EVERTON PA
4 NORTH PARK DRIVE
HUNT VALLEY MD 21030-1876
APPELLANT

* FALLS ROAD COMMUNITY ASSOCIATION,
C/O ROBERT D SELLERS, ESQUIRE
ROBERT D SELLER & ASSOCIATES
401 WASHINGTON AVENUE, SUITE 303
TOWSON, MD 21204
APPELLANT

c/o Michael McCann
(? - Sellers deceased 4/03/03)

* THE VALLEYS PLANNING COUNCIL, INC
C/O JACK DILLON, EXECUTIVE DIRECTOR
PO BOX 5402
TOWSON MD 21285
APPELLANT

* MICHAEL R MCCANN
FUNK & BOLTON PA
100 LIGHT STREET, SUITE 1000
BALTIMORE MD 21202
ATTORNEY FOR APPELLANTS

→ new address 1/7/03

MICHAEL R MCCANN
FUNK & BOLTON PA
36 SOUTH CHARLES STREET
BALTIMORE MD 21201-3111

** THEODORE W. BAUER, MEMBER
OREGON LLC
5700 NEWBERRY STREET
BALTIMORE MD 21209
CONTRACT PURCHASER

** ROBERT A. HOFFMAN, ESQUIRE
VENABLE, BAETJER & HOWARD, LLP
210 ALLEGHENY AVENUE
TOWSON, MD 21204
ATTORNEY FOR PETITIONER/
CONTRACT PURCHASER

* 1st Appeal 10-23-02
** 2nd Appeal 11-6-02 (on Order & Motion)

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

November 12, 2002

Robert A. Hoffman
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, MD 21204

RECEIVED
NOV 13 2002
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Mr. Hoffman:

RE: Case No. 02-461-SPHXA, 1201 Shawan Road

Please be advised that an appeal of the above-referenced case was filed in this office on November 1, 2002 by Robert A. Hoffman on behalf of Oregon, LLC. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Arnold Jablon
Director

AJ:rlh

c: Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM
People's Counsel
Baltimore County Recreation and Parks, 301 Washington Avenue, Towson 21204
Oregon, LLC, 5700 Newberry Street, Baltimore 21209

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Recycled Paper

APPEAL
(REVISED)
Petition Special Hearing, Special Exception, and Variance
1201 Shawan Road
Southwest side of Kurtz Lane and Beaver Dam Road
8th Election District – 3rd Councilmanic District
Legal Owner - Baltimore County Recreation and Parks
Oregon, LLC- Contract Purchaser
Case No.: 02-461-SPHXA

RECEIVED
NOV 13 2002
BALTIMORE COUNTY
BOARD OF APPEALS

Petition for Special Hearing, Special Exception, and Variance (April 19,2002)

Zoning Description of Property

Notice of Zoning Hearing (August 13, 2002)

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Entry of Appearance by People's Counsel (May 22, 2002)

Petitioner(s) Sign-In Sheet (Two sheets)

Protestant(s) Sign-In Sheet (One sheet)

Citizen(s) Sign-In Sheet (None)

Zoning Advisory Committee Comments

Petitioners' Exhibits:
1. Plan to accompany Petition for Special Exception, Special Hearing, and Variance
2.a-t A series of Pictures of Oregon Grill
3. Two letters in support of variance by the Oregon Grille

Protestants' Exhibits:
None

Miscellaneous (Not Marked as Exhibits):
Plat for the Oregon Grill

~~Deputy~~ Zoning Commissioner's/Zoning Commissioner's Order (September 24, 2002 – APPROVED subject to the following restrictions)

Notice of Appeal received on October 23, 2002 from Michael R. McCann
" " " " " 11/01/02 from Robert A. Hoffman

c:
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM
Robert Hoffman, Venable Baetjer & Howard, 210 Allegheny Ave., Towson 21204
Michael McCann, Funk & Bolton, 100 Light Street, Baltimore 21202-1036

date sent 10/25/02 rlh
date sent 11/12/02 rlh revision

Case No. 02-461-SPHXA

In the Matter of: Oregon LLC – CP; Baltimore County
Department of Rec. & Parks – Legal Owner

SPH – To amend site plan approved in 94-348-SPHXA and Restrictions 3, 4 and 5 of Order issued by Board of Appeals 2/08/95
SE – To allow expansion of area supporting a restaurant use originally approved in 94-348-SPHXA
VAR – To permit stone parking lot ilo required durable and dustless surface, consistent with restriction 9 of Order issued in prior case

9/24/02 - Z.C.'s decision in which requested relief was GRANTED subject to restrictions.
10/28/02 - Ruling of Z.C. – Appeal filed by Protestants eliminated the ZC's jurisdiction and took away his authority to rule on Petitioner's Motion for Reconsideration.

3/18/03 – Notice of Assignment sent to following; scheduled for hearing on Thursday, June 5, 2003 at 10 a.m.:

Michael R. McCann, Esquire
Dennis Sutton
Greencroft Community Assn.
Falls Rd Community Assn.
The Valleys Planning Council
Robert A. Hoffman, Esquire
Theodore W. Bauer /Oregon LLC
Office of People's Counsel
Lawrence E. Schmidt, Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
Edward J. Gilliss, County Attorney

4/03/03 – Letter from David H. Karceski, Esquire, on behalf of Petitioner – requesting postponement of 6/05/03 hearing; Mr. Bauer, Petitioner /Operator of Oregon Grille will be out of town and unable to testify on 6/05/03.

4/04/03 – Notice of PP and Reassignment sent to parties; case reassigned to Tuesday, July 22, 2003 at 10:00 a.m.

NOTE: Notified this date that Robert Sellers passed away; notice for Falls Road Comm Assn was previously sent c/o Mr. Sellers (only address in file). This PP notice was sent c/o Mr. McCann, pending further instructions from Mr. McCann or Falls Road Comm Assn.

6/13/03 – Letter from G. Macy Nelson, Esquire, via FAX – retained by Falls Road Community Assn and Dennis Sutton to represent them in this matter (previously McCann, Esquire); requesting postponement due to schedule conflict on assigned 7/22/03 hearing date.

6/24/03 – Second Notice of PP and Reassignment sent to parties; case reassigned to Tuesday, November 4, 2003 at 10:00 a.m. FYI copy to Michael McCann Esquire. Mr. Nelson added to file on behalf of Appellants /Protestants,

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6/25/03 – T/C from David Karceski, Esquire, on behalf of Petitioner – noting his client's objection to this postponement request and also requesting that consideration be given to an earlier hearing date, should one become available on the Board's schedule.

10/31/03 – Letter from People's Counsel – preliminary comments based on review of pleadings and Board file. Also reserve the right to file Memo at appropriate time should "position require further explanation." COPY TO FILE.

11/03/03 – Letter from G. Macy Nelson, on behalf of Falls Road Comm Assn and Dennis Sutton – regarding "preliminary legal issue" – conditions on grant of previous special exception.

FYI NOTE TO FILE: T/C to Becky Hart in PDM – Zoning Commissioner references Memos with attached transcript filed by the parties to this matter in his September 24, 2002 hearing; the Memos referenced by the Zoning Commissioner were not included with the file transmitted to the Board on 11/13/02; nor are such Memos noted on the file cover sheet prepared in PDM for transmittal; requested that these Memos be transmitted to this office for 11/04/03 hearing; Becky was unable to locate PDM file;

11/04/03 – Board convened for hearing (Marks, Wescott, Crizer); concluded day #1; assigned days 2, 3 and 4 with agreement of the parties to this matter. Notice to be sent.

11/05/03 – Notice of Assignment /Days 2, 3 and 4 sent to parties this date; assigned for Wednesday, March 24, 2004 at 10:00 a.m. /Day #2; Thursday, March 25, 2004 at 10:00 a.m. /Day #3; and Wednesday, March 31, 2004 at 10:00 a.m. /Day #4. FYI copy sent to 5-4-7.

3/22/04 – Protestants' Proffer of Evidence Regarding Agreement Submitted To, and Adopted By, Board of Appeals in its February 1995 Order filed by Michael McCann, Esquire, on behalf of Protestants. FYI copy provided to 5-4-7 prior to hearing on 3/24/04.

3/24/04 – Board convened for day #2 (begun in 2003) (Wescott, Marks, Crizer /Wescott chairing); concluded day #2; to 3/25/04 for day #3.

3/25/04 – Board convened for day #3 (4-5-7); will convene on 3/31/04 for day #4.

3/31/04 – Board convened for day #4 (4-5-7); concluded day #4; agreed to reconvene on 4/13/04 for day #5 and conclusion of this matter. Notice to be sent.

- Notice of Assignment /Day #5 issued this date; assigned, as agreed at the conclusion of day #4, to Tuesday, April 13, 2004 at 10:00 a.m. for day #5. FYI copy to 4-5-7.

4/13/04 – Board convened for day #5 (4-5-7); case concluded this date. Memos due from parties on 5/24/04; deliberation assigned for 6/09/04; notice to be sent.

4/14/04 – Notice of Deliberation sent to parties; assigned for Wednesday, June 9, 2004 at 9:00 a.m. FYI copy to Wescott, Marks, Crizer.

4/21/04 – Letter dated 4/20/04 received from Michael McCann, Esquire, (with copies sent to Messrs. Hoffman and Nelson) requesting postponement of deliberation assigned for 6/09/04 (he will be away on long-planned family vacation).

4/22/04 – Letter to Mr. McCann with copies to Messrs. Nelson and Hoffman denying his request for postponement; deliberations are assigned to accommodate the Board members' schedules since they are public work sessions with no one else allowed to participate in any way; also, Mr. Marks leaves the Board on June 30th and this decision must be issued no later than June 30th .

4/29/04 – Letter to Michael McCann returned -- sent to old address on Light Street; corrected and sent to current address – South Charles Street (forwarding order had expired).

5/03/04 – Letter from Michael McCann – with enclosed redacted versions of Protestants' Exhibit 30 (Lease Agreement) and Exhibit 31 (Supplemental Lease) as agreed by parties and required by Board at hearing. Protestants' Exhibits 30 and 31 added to exhibit folder.

5/24/04 – Petitioner's Post-Hearing Memorandum filed by Robert A. Hoffman and David H. Karceski on behalf of Oregon, LLC; Protestatns' Post-Hearing Memorandum filed by G. Macy Nelson and Michael R. McCann on behalf of Protestants (VPC, Falls Rd CA; Dennis Sutton; and Greencroft C.A.).
Proffer of Testimony filed by G. Macy Nelson, Esquire.
-- Copies of above documents to be distributed to 4-5-7 prior to June 9th deliberation. (7 on 5/26/04 [copy of Proffer to Ed on 6/01); 5 on 5/27/04; and 4 on 6/02/04)

NOTE: Copy of complete transcript as provided by D. Karceski given to 4-5-7 with copies as indicated above.

5/28/04 - T/C from David Karceski regarding his closing Memo - Oregon LLC; on page 31, middle of page, Petitioner's Memorandum - reference is made to Memorandum Exhibit #4. There is no "Memorandum Exhibit #4 attached - these relates to the Baltimore County code sections referenced on the previous page. **Note to panel regarding this t/c.**

6/07/04 – Letter from D. Karceski – regarding references made in Protestants' Memorandum to prior DZC decision.

6/09/04 – Board convened for deliberation (Wescott, Crizer, Marks); concluded this date. Denied special hearing, special exception and variance requests. C (5) **TO BE ISSUED NO LATER THAN 6/30/04**

6/16/04 – Response to letter from D. Karceski – regarding 1994 Deputy Zoning Commissioner's decision.

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Oregon LLC - Contract Purchaser
Baltimore County Recreation and Parks – Legal Owner

Case No.: 02-461-SPHXA

DATE: June 9, 2004

BOARD/PANEL:

Charles L. Marks	CLM
Lawrence S. Wescott	LSW
Edward W. Crizer, Jr.	EWC

RECORDED BY: Theresa R. Shelton / Legal Secretary

PURPOSE: To deliberate the following:

Petition for Special Hearing filed by Oregon, LLC, contract purchaser, to approve an amendment to the site plan previously approved in case no. 94-348-SPHXA and to amend Restrictions Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accorance with them odificaed site plan.

Petition for Special Exception filed by Oregon, LLC, contract purchaser to expand the area supporting the restaurant to include additional parking and to include the existing outbuilding barn for storage.

Petition for Variance filed by Oregon, LLC, contract purchaser, to permit a stone parking lot ilo dust free surface.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- The Zoning decision by Kotroco dated 1994 will be ignored in its entirety
- The Board does not like to disturb previous orders from the Board
- The request is like trying to get a second bite of the apple
- Nothing has really changed since the prior Board's Order.
- Shawan Downs I RC 2 zone
- Hayfield presents a Country Club atmosphere
- Very reluctant to overturn prior Board's decision
- No difference in situation now then it was back then
- Unless a major change occurs, Board will accept prior Board's decision

- Does the Petitioner have the right to ask for the request
- The only Petitioner is Oregon Grill – are they an interested party or aggrieved
- Baltimore County did not join in the Petition
- Baltimore County is the legal owner
- No real authority given to the Petitioner
- In the first case, both were Petitioners (Baltimore County and Oregon Grill)
- Parking was originally 48 spaces; then revised to94
- Why weren't more spaces requested at tht tie
- Need to envision what needs will be and incorporate
- Rollover special exceptions – year after year after year
- The property is not leased at this time
- Parking was ordered to be stone – it is now tar and chip
- Catering Hall and Restaurant
- Definitions discussed
- The facility is used regularly as a restaurant and catering
- A buffet table is considered sated at tables on the premises; cafes; cafeteria
- What has been proposed is catering
- Board does not want catering
- Accessory Use – is not accessory use – that is something that enhances principal use
- Customers do not need to have catering
- Does not contribute to the comfort of occupants.
- If defined as accessory use, it would become the principal use in a short matter of time
- Mealtimes usually do not go beyond 8 pm
- Has to be interpreted very strictly
- Section 402.3 – conversion
- Section 502.1

502.1 Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air; [Bill No. 45-1982]

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]

- Petitioners have failed to meet the nine factors – unreasonable of them to think of using the entire park

DECISIONS BY BOARD MEMBERS: Unanimous Decision to DENY Petitioner's requests.

FINAL DECISION: That the Petitioner's requests listed below are DENIED:

Petition for Special Hearing filed by Oregon, LLC, contract purchaser, to approve an amendment to the site plan previously approved in case no. 94-348-SPHXA and to amend Restrictions Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accorance with them odificaed site plan. - DENIED

Petition for Special Exception filed by Oregon, LLC, contract purchaser to expand the area supporting the restaurant to include additional parking and to include the existing outbuilding barn for storage. - DENIED

Petition for Variance filed by Oregon, LLC, contract purchaser, to permit a stone parking lot ilo dust free surface. DENIED

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

Respectfully submitted,

Theresa R. Shelton
County Board of Appeals

PETITION OF:

OREGON LLC

CIVIL ACTION NO.: 3-C-04-7944

MATTER OF: OREGON LLC

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

Susan M. Gilmore

CLERK'S OFFICE

DATE: September 8, 2004

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
OREGON, LLC *
Contract Purchasers
1201 Shawan Road *
Hunt Valley, MD 21030

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. **3-C-04-7944**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF
OREGON LLC / OREGON GRILL *
1201 Shawan Road
Hunt Valley, MD 21030 *

8TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT
*
BD OF APPEALS CASE NO.: 02-461-SPHXA

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

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

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

FILED SEP 0 8 2004

02-461-SPHXA

April 19, 2002	Petition for Special Hearing filed by Robert A. Hoffman, Esquire, on behalf of Oregon, LLC, contract purchaser, to approve an amendment to the site plan previously approved in case no. 94-348-SPHXA and to amend Restrictions Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995, in accordance with the modified site plan. Petition for Special Exception filed by Robert A. Hoffman, Esquire, on behalf of Oregon, LLC, contract purchaser to expand the area supporting the restaurant to include additional parking and to include the existing outbuilding barn for storage. Petition for Variance filed by Robert A. Hoffman, Esquire, on behalf of Oregon, LLC, contract purchaser, to permit a stone parking lot ilo dust-free surface.
May 22	Entry of Appearance filed by People's Counsel for Baltimore County
July 28	Certificate of Posting
July 30	Publication in newspaper
August 9	ZAC Summary of Comments
August 13	Notice of Zoning Hearing
August 13	Hearing Held before the Zoning Commissioner
September 24	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Special Exception – GRANTED; Petition for Special Hearing - GRANTED; and Petition for Variance is GRANTED, subject to restrictions.
October 23	Notice of Appeal received by Michael R. McCann, Esquire, on behalf of: Dennis Sutton; Greencroft Community Association; Falls Road Community Association; and The Valleys Planning Council, Inc.

November 1	Notice of Appeal filed by Robert A. Hoffman on behalf of Oregon, LLC. The appeal is on the Zoning Commissioner's Order of September 24, 2002 and the ruling of the Zoning Commissioner that the Motion for Reconsideration filed by Oregon LLC is MOOT, due to lack of jurisdiction by the ZC.
November 4, 2003	Hearing by Board of Appeals /Day #1
March 24, 2004	Hearing by Board of Appeals /Day #2
March 25	Hearing by Board of Appeals /Day #3
March 31	Hearing by Board of Appeals /Day #4
April 13	Hearing by Board of Appeals /Day #5/Hearing concluded

Petitioner's Exhibits

1	Site Plan
2A-2J	Photographs
3	Photograph
4	Article from The Sun dated Sunday, September 30, 2001 – 1 page
5A-5E	Photographs
6	Letters of support from 29 Individuals
7A – 7D	Photographs
8	Folder – Shawan Downs
9A	The Daily Record – September 2003 - Shawan Downs
9B	2001 Racing Booklet - Shawan Downs
10	Eventfully Yours, LLC – 3 pages
11A	The Milton Inn – 4 pages

11B	The Manor Tavern – 2 pages
11C	Greenspring Valley Hut Club – 1 page
11D	Greenspring Valley Country Club – 1 page
11E	Hayfields County Club – 11 pages
11F	Oregon Ridge Park – 11 pages
11G	Shawan Downs – 11 pages
11H	The Harryman House – 1 page
11I	Gibby's – 1 page
11J	An Pointin Stil – 1 page
11K	Liberatore's Ristorante – 1 page
11L	Linwood's Due – 1 page
11M	Michael's Café & Raw Bar & Grill
11N	Padonia Park Club – 6 pages
11O	The Valley Inn – 1 page
11P	Grand Lodge of Maryland Masonic Temple – 1 page
11Q	Worthington Valley Swim Club – 5 pages
11R	Boordy Vineyards – 5 pages
11S	Basignani Winery – 14 pages
11T	Meadowood Regional Park – 4 pages
11U	Gramercy Mansion – 7 pages
11V	Pierces Plantation – 1 page
11W	Courtney's of Towson – 3 pages
12	Richard J. Peppin, P.E. – 11 pages

13	Memo from Richard J. Peppin, President, Scantek, Inc. to David Karceski, Venable, dated March 23, 2004 re: Oregon Grille Sound Study
14	Code of Maryland Regulations – Title 26 – Department of the Environment
15	Mickey A. Cornelius, P.E., P.T.O.E. – 1 page
16	Charles V. Main, II – 1 page
17	Stormwater Management Plan
18	Eric C. Hadaway, PWS – 1 page
19	Aerial view of Oregon Grill from Baltimore County OIT
20A and 20B	Photographs
21	Landscape Plan by Eric Hadaway
22	Mitchell J. Kellman – 1 page
23	Land Preservation Trust, Inc. – Resolution – 1 page
24	Letter dated March 29, 2004 from Charles C. Fenwick, Jr. to Mr. Robert Hoffman re: contribution from Oregon Grille
25	Robert W. Sheesley – 2 pages
26	Photograph

Protestant's Exhibits

1	The Milton Inn – 16 pages
2	Peerce's Plantation – 15 pages
3	Aerial Photograph
4	Photograph

5	Western Run and Belfast Valleys Historic District – 6 pages
6	Oregon & Company, Store – Description – 3 pages
7	Zoning Map and Historical Sites Map
8	The Falls Road Community Association, Inc. Resolution – 1 page
9	The Falls Road Community Association, Inc. Resolution – 1 page
10	Photograph
11	Photograph
12	Photograph
13	Photograph
14	Affidavit – The Valleys Planning Council, Inc. – 1 page
15	Resolution – The Valleys Planning Council, Inc. – 1 page
16	Resolution – The Valleys Planning Council, Inc. – 1 page
17	Jack Dillon, APA - 3 pages
18	Black Binder
19	B.C.Z.R. Zoning Chart Restaurants, Catering, Conversions, Clubs
20	Aerial Photograph
21	Aerial Photograph 1995
22	Aerial Photograph – present
23	Well Completion Report dated 3/2/99 – 2 pages
24	Tax Map 15
25	Tax Map 43

	26	Reduction of Tax Map 15
	27	Reduction of Tax Map 43
	28	Tables of Characteristics of Parcels – 4 pages
	29	Protestant Sign In Sheets – 3 pages
	30	Lease Agreement dated June, 1984 by and between Baltimore County, Maryland and Oregon General Store Limited Partnership – 47 pages
	31	Supplemental Agreement No. 1 to Lease Agreement dated June, 1984 by and between Baltimore County, Maryland and Oregon General Store Limited Partnership – 6 pages
May 24		Petitioner's Post-Hearing Memorandum filed by Robert a. Hoffman, Esquire and David H. Karceski, Esquire, on behalf of Oregon, LLC; Protestants' Post-Hearing Memorandum filed by G. Macy Nelson, Esquire and Michael R. McCann, Esquire, on behalf of Protestants. Proffer of Testimony filed by G. Macy Nelson, Esquire.
June 9		Board convened for Public Deliberation
July 2		Opinion and Order issued by the Board of Appeals that the Petitioner's requested special hearing, special exception and variance relief, as detailed in the Opinion, is DENIED.
July 29		Petition for Judicial Review filed by John H. Zink III, Esquire and Patricia A. Malone, Esquire, Venable LLP, on behalf of Oregon LLC. Civil Action No.: C-04-7944
August 3		Petition for Judicial Review received at the Board of Appeals.
August 4		Certificate of Notice sent to interested parties.
September 8		Transcript of Proceedings filed.
September 8		Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered before the Board.

Respectfully submitted,

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204 (410) 887-3180

c: Peter Max Zimmerman
People's Counsel For Baltimore County
John H. Zink III, Esquire
Patricia A. Malone, Esquire
G. Macy Nelson, Esquire
Nancy C. West, Esquire
Michael R. McCann, Esquire
for The Valleys Planning Council
and Greencroft Community Association

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
OREGON, LLC *
Contract Purchasers
1201 Shawan Road *
Hunt Valley, MD 21030

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. **3-C-04-7944**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF
OREGON LLC / OREGON GRILL *
1201 Shawan Road
Hunt Valley, MD 21030 *

8TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT

*

BD OF APPEALS CASE NO.: 02-461-SPHXA

* * * * * * * * * *

RECEIVED AND FILED
2004 AUG -4 A 9:48
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

John H. Zink III Esquire
Venable,LLP, 210 Allegheny Avenue, Towson, Md 21204

Patricia A. Malone, Esquire
Venable,LLP, 210 Allegheny Avenue, Towson, Md 21204

Theodore W. Bauer
Oregon, LLC, 5700 Newberry Street, Baltimore, Md 21209

G Macy Nelson Esquire
Anderson Coe And King, 201 North Charles Street, Suite 2000,
Baltimore Md 21201

Dennis Sutton
13500 Beaver Dam Road, Cockeysville, Md 21030

Michael Mccann, Esquire
Funk & Bolton, P.A., 36 S. Charles Street, 12th Floor, Baltimore, Md 21201

Falls Road Community Association
C/O Michael Mccann, Esquire, Funk & Bolton, P.A., 36 S. Charles Street, 12th Floor, Baltimore, Md 21201

Mary Alane Downs, President
Greencroft Community Association, 4 North Park Drive,
Hunt Valley, Md 21030-1876

Jack Dillon
The Valleys Planning Council, P.O. Box 5402, Towson Md 21204

Jay A. Liner, County Attorney
400 Washigton Avenue, Room 219, Towson, MD 21204

Nancy C. West, Assistant County Attorney
400 Washigton Avenue, Room 219, Towson, MD 21204

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

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

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to John H. Zink III Esquire, Venable,LLP, 210 Allegheny Avenue, Towson, Md 21204; Patricia A. Malone, Esquire, Venable,LLP, 210 Allegheny Avenue, Towson, Md 21204; Theodore W. Bauer, Oregon, LLC, 5700 Newberry Street, Baltimore, Md 21209; G Macy Nelson Esquire, Anderson Coe And King, 201 North Charles Street, Suite 2000, Baltimore Md 21201; Dennis Sutton, 13500 Beaver Dam Road, Cockeysville, Md 21030; Michael Mccann, Esquire, Funk & Bolton, P.A., 36 S. Charles Street, 12th Floor, Baltimore, Md 21201; Falls Road Community Association, C/O Michael Mccann, Esquire, Funk & Bolton, P.A., 36 S. Charles Street, 12th Floor, Baltimore, Md 21201; Mary Alane Downs, President, Greencroft Community Association, 4 North Park Drive, Hunt Valley, Md 21030-1876; Jack Dillon, The Valleys Planning Council, P.O. Box 5402, Towson Md 21204; Jay A. Liner, County Attorney, 400 Washigton Avenue, Room 219, Towson, MD 21204; Nancy C. West, Assistant County Attorney400 Washigton Avenue, Room 219, Towson, MD 21204; Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204; and Carole S. Demilio, Deputy People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, this 4th day of August, 2004.

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

County Board of Appeals of Baltimore County

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

August 3, 2004

John H. Zink III Esquire
Patricia A. Malone, Esquire
Venable,LLP
210 Allegheny Avenue
Towson, Md 21204

RE: Circuit Court Civil Action No. 3-C-04-7944
Petition for Judicial Review
Oregon LLC
1201 Shawan Road
Board of Appeals Case No.: 02-461-SPHXA

Dear Mr. Zink and Ms. Malone:

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

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

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure
c: Theodore W. Bauer, Oregon LLC
Jay A. Liner, County Attorney
Nancy C. West, Assistant County Attorney
Michael R. McCann, Esquire
G. Macy Nelson, Esquire
Peter Max Zimmerman / People's Counsel for Baltimore County

Printed with Soybean Ink on Recycled Paper

County Board of Appeals of Baltimore County

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

August 3, 2004

Jay A. Liner, County Attorney
400 Washigton Avenue
Room 219
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-04-7944
Petition for Judicial Review
Oregon LLC
1201 Shawan Road
Board of Appeals Case No.: 02-461-SPHXA

Dear Mr. Liner:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on July 29, 2004, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, **must be filed under Civil Action No. 3-C-04-7944.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: Nancy C. West, Assistance County Attorney
John H. Zink, Esquire
Patricia A. Malone, Esquire

Printed with Soybean Ink
on Recycled Paper

Theodore W. Bauer, Oregon LLC
Michael R. McCann, Esquire
G. Macy Nelson, Esquire
Dennis Sutton
Falls Road Community Association
Greencroft Community Association
The Valleys Planning Council
Office of Peoples Counsel for Baltimore County
Pat Keller, Director/Planning
Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director/PDM

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

County Board Of Appeals Of Baltimore County
Old Courthouse Room 49
400 Washington Avenue
Baltimore MD 21204

Assignment Date: 09/16/04

RECEIVED
SEP 17 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Case Title: In The Matter of: Oregon L L C
Case No: 03-C-04-007944 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 10/01/04
2. All Motions (excluding Motions in Limine) are due by..... 10/23/04
3. TRIAL DATE is..... 12/02/04
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

cc: Michael R McCann Esq

cc: John H Zink III
cc: G Macy Nelson Esq
cc: Peter M Zimmerman Esq
Issue Date 09/16/04

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-04-007944

RECEIVED
SEP 16 2004
BALTIMORE COUNTY
BOARD OF APPEALS

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Room 49
400 Washington Avenue
Baltimore, MD 21204

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
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Maryland Toll Free Number (800) 938-5802

N O T I C E O F R E C O R D

Case Number: 03-C-04-007944 AE
Administrative Agency : CBA 02461SPHXA
C I V I L

In The Matter of: Oregon L L C

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 8th day of September, 2004.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 09/14/04

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Room 49
400 Washington Avenue
Baltimore, MD 21204

TRANSCRIPT REQUEST

Filed: 7/29/2004

Received 8/3/2004

Case: *Oregon LLC*

02-461-SPHXA

Hearing date(s): Testimony Heard on:

11/4/03	CAROLYN PEATT
3/24/04	CP
3/25/04	CP
3/31/04	CP
4/13/04	CP

APPEALED BY: John Zink & Patricia Malone of Venable
410-494-6200

Due Date **SEPTEMBER 28, 2004**

THANK YOU

FILE COPY
BULLETIN BOARD COPY
CAROLYN'S TAKE HOME COPY

August 3, 2004

ATTORNEY'S CORRESPONDENCE

#3

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E. ELIZABETH STABER
CHERYL A. C. BROWN
TALI RAPHAELY

OF COUNSEL
MICHAEL R. McCANN
J. FRANK NAYDEN
KAY DOUGHTY PHILLIPS†††
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

SEP 25 2002

September 23, 2002

Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
401 Bosley Avenue, Room 405
Towson, Maryland 21204-3401

Via Facsimile
& U.S. Mail

Re: Petitions for Special Hearing, Special Exception and Variance
SW/Corner Shawan Road and Beaver Dam Road
(1201 Shawan Road)
Case No. 02-461-SPHXA

Dear Mr. Schmidt:

I received yesterday, *via* regular mail, a copy of Mr. Hoffman's September 20, 2002 letter, which was hand-delivered to your Honor on that date. I disagree with Mr. Hoffman's characterization of the hearing and the arguments advanced in Protestant's post-hearing memorandum.

Mr. Hoffman first contends it was inappropriate for Protestant to argue, in part IV.C of its post-hearing memorandum, that the Deputy Commissioner's 1994 decision bars the relief sought by Petitioner. According to Mr. Hoffman, Protestant "sought to introduce this Order at that hearing" and your Honor sustained his objection. This is not what happened.

During cross-examination, I asked Mr. Bauer whether the restrictions imposed by the Board of Appeals in February 1995 were the result of negotiations with the Valleys Planning Council. (Protestant's Post-Hearing Mem., ex. C at p. 100.) Your Honor sustained Mr. Hoffman's objection to this question because you did not believe the "historical development or the resolution of the restrictions which were attached to the [Board of Appeals'] Order" was relevant in this *de novo* proceeding. (*Id.*, p. 107.) Later in the hearing, Mr. Hoffman objected during the testimony of Dennis Sutton when Mr. Sutton mentioned the restrictive covenant agreement between Mr. Bauer and the Valleys Planning Council. (*Id.*, p. 128.) Your Honor also sustained this objection. (*Id.*, p. 134.) During the colloquy that ensued, you commented that the Deputy Commissioner's ruling in 1994 "amounts to nothing" because the appeal to the Board of Appeals was *de novo*. (*Id.*, p. 134.)

Construed most liberally, your Honor's rulings at the hearing were simply that Protestant could not introduce evidence concerning either (i) the restrictive covenant agreement, or (ii) the context in which the Board of Appeals imposed the restrictions it did.[1] You clearly did not rule that the Deputy Commissioner's 1994 written decision *itself* could not be admitted into evidence; indeed, Protestant never sought to admit that document. More importantly, you did not rule that Protestant could not advance any *legal* arguments (at the hearing, in closing, or in post-hearing memoranda) concerning the *res judicata* effect of the Deputy Commissioner's or the Board of Appeals' order.

Mr. Hoffman essentially is asking your Honor to preclude Protestant from relying upon legal precedent. The decisions of the Deputy Commissioner and the Board of Appeals are no different than any other pertinent decision of the Commissioner, the Board, or the appellate courts of this State, all of which your Honor may and should properly consider. There simply is nothing "inappropriate" about Protestant referring to, and attaching to its post-hearing memorandum, copies of the Deputy Commissioner's and the Board's orders.

Further, Protestant's argument in part IV.C does not disregard your Honor's evidentiary rulings at the hearing. In fact, Protestant expressly recognized and addressed those rulings, in particular, the conclusion that the 1994 decision "amounts to nothing" because it was superseded by the Board of Appeals' 1995 decision. (*See* Post-Hearing Mem., p. 21.) As Protestant pointed out, the Board of Appeals' decision could not have superseded the Deputy Commissioner's order for the simple reason that Mr. Bauer's proposal for hosting outdoor events was not advanced before the Board. (*Id.*)

With respect to part IV.D of the post-hearing memorandum, Mr. Hoffman accuses Protestant of attempting to mischaracterize the events and testimony before the Board of Appeals. I have read and re-read part IV.D of the memorandum and fail to see where Protestant has even remotely attempted any such characterization. Protestant's argument in part IV.D is based entirely on the plain and simple language of the Board's decision itself. That decision, in conjunction with the Deputy Commissioner's decision, make abundantly clear that restriction 4 was not imposed as a limitation on a *permitted* use, but rather to ensure that the property is not used *impermissibly*.

---

[1] Under the Court of Special Appeals' recent ruling in *Blackhurst Life Care Community v. Baltimore County*, No. 1591, 2002 WL 32011272 (Md. Ct. Sp. App. Sept. 10, 2002), the refusal to admit evidence of the restrictive covenant agreement may have been in error. (*See* copy attached.) That decision supports the conclusion that a zoning agency, such as the Board of Appeals, may enforce a private restrictive covenant agreement when negotiated terms of that agreement are part of the agency's order.

In sum, Protestant respectfully submits that your Honor may and properly should consider the Deputy Commissioner's and the Board's prior decisions to determine (i) whether *res judicata* principles preclude the relief sought by Mr. Bauer (*see* part IV.C of Protestant's Post-Hearing Mem), and (ii) whether restriction 4 was imposed as a limitation on a *permitted* use or to ensure the property is not used *impermissibly* (*see* part IV.D). In contrast, Petitioner's argument – that the Board of Appeals held the proposed outdoor events are permitted in a RC4 zone but did not allow them in this particular case – asks your Honor to completely disregard the plain words of the Board's and the Deputy Commissioner's orders. Worse still, Petitioner asks you to ignore the unique placement of this converted restaurant in a RC4 zone and allow a use that no other converted restaurant in Baltimore County enjoys.

Thank you for your consideration.

Respectfully submitted,

Michael R. McCann

Enclosure
cc: Robert A. Hoffman, Esquire (*via* facsimile and U.S. Mail)

85000.001:57923v.2

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Court of Special Appeals of Maryland.

BLAKEHURST LIFE CARE COMMUNITY/THE CHESTNUT REAL ESTATE PARTNERSHIP,
v.
BALTIMORE COUNTY, Maryland, et al.

No. 1591, Sept. Term, 2001.

Sept. 10, 2002.

Real estate developer that constructed continuing care facility appealed county zoning board's decision that denied request to add 63 parking spaces to facility's premises. The Circuit Court, Baltimore County, affirmed. Developer appealed. The Court of Special Appeals, Sharer, J., held that: (1) board had authority to interpret and enforce restrictive covenant agreement between developer and challengers to facility's construction, and (2) board properly interpreted agreement as precluding additional parking spaces without challengers' approval.

Affirmed.

[1] Administrative Law and Procedure 513

15Ak513 Most Cited Cases

Court of Special Appeals gives deference to the expertise of the agency whose ruling is being reviewed.

[2] Zoning and Planning 353.1
414k353.1 Most Cited Cases

An administrative agency, such as county zoning board, is a creature of statute, which has no inherent powers and its authority thus does not reach beyond the warrant provided it by statute. Code 1957, Art. 25A, § 5(U).

[3] Covenants 1
108k1 Most Cited Cases

Restrictive covenant agreement, executed between real estate developer and challengers to construction of continuing care facility, became a public document, as contrasted with a private agreement, when it was incorporated into a consent order entered by county zoning board for purposes of ending administrative litigation between the parties, and thus board had authority to interpret and enforce the agreement to preclude developer from adding 63 parking spaces to facility's premises. Code 1957, Art. 25A, § 5(U).

[3] Zoning and Planning 418
414k418 Most Cited Cases

Restrictive covenant agreement, executed between real estate developer and challengers to construction of continuing care facility, became a public document, as contrasted with a private agreement, when it was incorporated into a consent order entered by county zoning board for purposes of ending administrative litigation between the parties, and thus board had authority to interpret and enforce the agreement to preclude developer from adding 63 parking spaces to facility's premises. Code 1957, Art. 25A, § 5(U).

[4] Statutes 219(1)
361k219(1) Most Cited Cases

An agency's interpretation of its organic statute is entitled to deference.

[5] Administrative Law and Procedure 413
15Ak413 Most Cited Cases

A great deal of deference is owed to an administrative agency's interpretation of its own regulation.

[6] Administrative Law and Procedure 491
15Ak491 Most Cited Cases

Deference should be accorded to an administrative agency in the interpretation of its own previously adopted orders.

[7] Contracts 147(2)
95k147(2) Most Cited Cases

The clear and unambiguous language of an

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

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Writer's Direct Dial: (410) 659-7764

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JEFFERSON L. BLOMQUIST
REN L. TUNDERMANN
CHARLES D. MACLEOD

†ADMITTED IN NE AND DC ONLY
††ADMITTED IN VA ONLY
†††ADMITTED IN TX ONLY

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JAMES F. TAYLOR
PETER C. ISMAY††
CYNTHIA L. MCCANN
E. ELIZABETH STABER
CHERYL A. C. BROWN
TALI RAPHAELY

OF COUNSEL
MICHAEL R. MCCANN
J. FRANK NAYDEN
KAY DOUGHTY PHILLIPS†††
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

August 8, 2002

AUG 12 2002

Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
Baltimore County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204-3401

Re: Petitions for Special Hearing, Special Exception and Variance
SW/Corner Shawan Road and Beaver Dam Road
(1201 Shawan Road)
Case No. 02-461-SPHXA

Dear Mr. Schmidt:

Enclosed please find an entry of appearance for filing in the above-referenced matter. Thank you for your attention to this matter.

Please contact me if you have any questions.

Sincerely,

Michael R. McCann

Enclosure
cc: Robert A. Hoffman, Esquire (with enclosure)

85000.001.56580

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	ZONING COMMISSIONER
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,	*	
Petitioner.	*	

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

ENTRY OF APPEARANCE

Please enter the appearance of Michael R. McCann as counsel for The Valleys Planning Council in the above-captioned case.

Michael R. McCann

Funk & Bolton, P.A.
100 Light Street, Suite 1000
Baltimore, Maryland 21202
(410) 659-7700

Attorneys for The Valleys Planning Council

Dated: August 8, 2002

85000.01.56546

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 8th day of August 2002, a copy of the foregoing Entry of Appearance was mailed, first class, postage prepaid to:

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204-5517

Attorneys for Petitioner

Michael R. McCann

85000.01.56546

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A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
100 LIGHT STREET, SUITE 1000
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FACSIMILE (410) 659-7773

Writer's Direct Dial: (410) 659-7764

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LINDSEY A. RADER
GARY C. HARRIGER
DEREK B. YARMIS
JEFFERSON L. BLOMQUIST
REN L. TUNDERMANN
CHARLES D. MACLEOD

†ADMITTED IN NE AND DC ONLY
††ADMITTED IN VA ONLY
†††ADMITTED IN TX ONLY

JEROME D. BRESLIN†
JAMES P. TAYLOR
PETER C. ISMAY††
CYNTHIA L. MCCANN
E. ELIZABETH STABER
CHERYL A. C. BROWN
TALI RAPHAELY

OF COUNSEL
MICHAEL R. MCCANN
J. FRANK NAYDEN
KAY DOUGHTY PHILLIPS†††
DEBORAH R. RIVKIN
JOHN B. STIERHOFF

August 12, 2002

Via Facsimile

Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
Baltimore County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204-3401

Re: Petitions for Special Hearing, Special Exception and Variance
SW/Corner Shawan Road and Beaver Dam Road
(1201 Shawan Road)
Case No. 02-461-SPHXA
Hearing Date: August 13 and 14, 2002

Dear Mr. Schmidt:

Pursuant to Rule 2J of the Rules of Practice and Procedure, the Valleys Planning Council respectfully requests permission to have the proceedings in the above-referenced matter recorded by a stenographer, at the Council's cost. I believe all parties would benefit from an accurate transcript of the hearing, and the Council will certainly make a copy available to both you and the Petitioner.

Thank you for your consideration.

Sincerely,

Michael R. McCann

cc: Robert A. Hoffman, Esquire (*via* facsimile)

B5000.001.56662

10/23/02
To CH

FUNK & BOLTON
A PROFESSIONAL ASSOCIATION
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†ADMITTED IN NE AND DC ONLY
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PETER C. ISMAY††
CYNTHIA L. McCANN
CHERYL A. C. BROWN
HISHAM M. AMIN

OF COUNSEL:
JOHN A. ANDRYSZAK
GARY C. HARRIGER
MICHAEL R. MCCANN
J. FRANK NAYDEN
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

October 23, 2002

Hand Delivered

Arnold Jablon, Director
Baltimore County Department of
Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: The Oregon Grille
Before the Zoning Commissioner for Baltimore County
Case No. 02-461-SPHXZA

Dear Mr. Jablon:

Enclosed please find The Valleys Planning Council, Inc.'s, Falls Road Community Association, Inc.'s, Greencroft Community Association's, and Dennis Sutton's Notice of Appeal of the Zoning Commissioner's September 24, 2002 decision in the above-referenced matter, along with the filing fee of $650.00. Please date-stamp one copy of the Notice of Appeal and return the date-stamped copy to the messenger.

Thank you for your attention to this matter.

RECEIVED
OCT 23 2002
By: bh

Sincerely,

Michael R. McCann

Enclosures
MRM:kjg
cc: Lawrence E. Schmidt, Zoning Commissioner (*via* facsimile & U.S. Mail)
Robert A. Hoffman, Esquire (*via* facsimile & U.S. Mail)
Kristen Howanski, Chairperson, Baltimore County Board of Appeals
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Carole Demilio, Esquire, People's Counsel for Baltimore County
85000.001.58682

RECEIVED
OCT 23 2002
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

Same as 02-4 BH

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*ADMITTED IN NE AND DC ONLY
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OF COUNSEL
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GARY C. HARRIGER
MICHAEL R. MCCANN
J. FRANK NAYDEN
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

Writer's Direct Dial: (410) 659-7764
mmccann@fblaw.com

November 13, 2002

Arnold Jablon, Director
Baltimore County Department of
Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland, 21204

Via Facsimile
& U.S. Mail

Re: The Oregon Grille
Appeal to the Baltimore County Board of Appeals
Case No. 02-461-SPHXZA

Dear Mr. Jablon:

In your October 25, 2002 letter concerning the above-referenced matter, you indicated that The Valleys Planning Council filed its appeal with your office on October 25, 2002. Please note that the Notice of Appeal was filed on October 23rd, not October 25th, 2002. For your reference, attached are a date-stamped copy of the Notice of Appeal and a copy of the list of materials forwarded by your office to the Board of Appeals, which also reflects receipt of the Notice of Appeal by your office on October 23, 2002.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,

Michael R. McCann

Enclosures
MRM:kjg
cc: Robert A. Hoffman, Esq. (*via* facsimile & U.S. Mail)
Kristen Howanski, Chairperson, Baltimore County Board of Appeals
Peter Max Zimmerman, Esq., People's Counsel for Baltimore County
Carole Demilio, Esq., People's Counsel for Baltimore County
85000.001.59292

RECEIVED
NOV 14 2002
02-4543
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	ZONING COMMISSIONER
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,	*	
Petitioner.	*	

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

NOTICE OF APPEAL

The Valleys Planning Council, Inc., the Greencroft Community Association, the Falls Road Community Association, Inc., and Dennis Sutton (collectively "Appellants"), pursuant to section 500.10 of the Baltimore County Zoning Regulations and section 26-132 of the Baltimore County Code, hereby notice an appeal of the Zoning Commissioner's September 24, 2002 decision in the above-captioned matter. Appellants appeal the Zoning Commissioner's granting of the petition for special hearing, petition for special exception, and petition for variance.

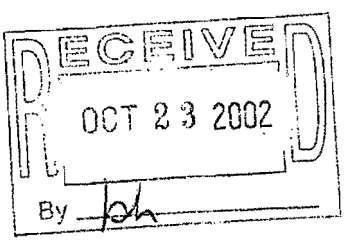
Pursuant to Rule 3 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals, the names and addresses of Appellants are as follows:

The Valleys Planning Council, Inc.
c/o Jack Dillon, Executive Director
P.O. Box 5402
Towson, Maryland 21285

Greencroft Community Association
c/o Mary Alane Downs, President
Morgan Shelsby Carlo Downs & Everton, P.A.
4 North Park Drive
Hunt Valley, Maryland 21030-1876

Falls Road Community Association, Inc.
c/o Robert D. Sellers, Esquire
Robert D. Sellers & Associates
401 Washington Avenue, Suite 303
Towson, Maryland 21204

Dennis Sutton
13500 Beaver Dam Road
Cockeysville, Maryland 21030



Respectfully submitted,



Michael R. McCann

Funk & Bolton, P.A.
100 Light Street, Suite 1000
Baltimore, Maryland 21202
(410) 659-7700

Attorneys for The Valleys Planning Council, Inc.

Dated: October 23, 2002

85000.001:58683

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 23rd day of October 2002, a copy of the foregoing Notice of Appeal was mailed, first class, postage prepaid, to:

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204-5517

Attorneys for Petitioner

Michael R. McCann

85000.01.58683

File

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CHERYL A. C. BROWN
HISHAM M. AMIN

OF COUNSEL
JOHN A. ANDRYSZAK
GARY C. HARRIGER
MICHAEL R. MCCANN
J. FRANK NAYDEN
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JOHN R. STIERHOFF

Writer's Direct Dial: (410) 659-7764
mmccann@fblaw.com

November 18, 2002

Hand Delivery

Arnold Jablon, Director
Baltimore County Department of
Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland, 21204

19 2002

Re: The Oregon Grille
Before the Zoning Commissioner for Baltimore County
Case No. 02-461-SPHXZA

Dear Mr. Jablon:

Enclosed please find The Valleys Planning Council, Inc.'s, Falls Road Community Association, Inc.'s, Greencroft Community Association's, and Dennis Sutton's Notice of Appeal for filing in the above-referenced matter.

Please be advised that Appellants previously filed a notice of appeal on October 23, 2002. This second Notice of Appeal is being filed in the event it is determined the original notice of appeal did not divest the Zoning Commissioner of jurisdiction and/or the original notice was premature or otherwise ineffectual.

Please note that the enclosed Notice of Appeal is not accompanied by a new filing fee. If you will not accept this Notice of Appeal for filing without an additional fee, then please let me know immediately.

Thank you for your attention to this matter.

Sincerely,

Michael R. McCann

Enclosure
MRM:kjg

cc: Lawrence E. Schmidt, Zoning Commissioner
Robert A. Hoffman, Esq.
Kristen Howanski, Chairperson, Baltimore County Board of Appeals
Peter Max Zimmerman, Esq., People's Counsel for Baltimore County
Carole Demilio, Esq., People's Counsel for Baltimore County

85000.001.59303

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	ZONING COMMISSIONER
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,	*	
Petitioner.	*	

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

NOTICE OF APPEAL

The Valleys Planning Council, Inc., the Greencroft Community Association, the Falls Road Community Association, Inc., and Dennis Sutton (collectively "Appellants"), pursuant to section 500.10 of the Baltimore County Zoning Regulations and section 26-132 of the Baltimore County Code, hereby notice an appeal of the Zoning Commissioner's decision in the above-captioned matter. Appellants appeal the Zoning Commissioner's granting of the petition for special hearing, petition for special exception, and petition for variance.

Pursuant to Rule 3 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals, the names and addresses of Appellants are as follows:

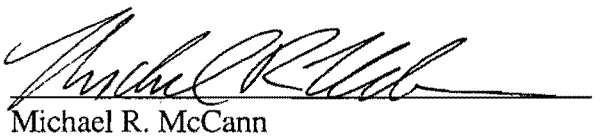
The Valleys Planning Council, Inc.
c/o Jack Dillon, Executive Director
P.O. Box 5402
Towson, Maryland 21285

Greencroft Community Association
c/o Mary Alane Downs, President
Morgan Shelsby Carlo Downs & Everton, P.A.
4 North Park Drive
Hunt Valley, Maryland 21030-1876

Falls Road Community Association, Inc.
c/o Robert D. Sellers, Esquire
Robert D. Sellers & Associates
401 Washington Avenue, Suite 303
Towson, Maryland 21204

Dennis Sutton
13500 Beaver Dam Road
Cockeysville, Maryland 21030

Respectfully submitted,



Michael R. McCann

Funk & Bolton, P.A.
100 Light Street, Suite 1000
Baltimore, Maryland 21202
(410) 659-7700

Attorneys for The Valleys Planning Council, Inc.

Dated: November 18th, 2002

85000.001:59304

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 18th day of November 2002, a copy of the foregoing Notice of Appeal was mailed, first class, postage prepaid to:

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204-5517

Attorneys for Petitioner

Michael R. McCann

85000.01.59304

File

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A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
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GARY C. HARRIGER
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J. FRANK NAYDEN
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JOHN R. STIERHOFF

Writer's Direct Dial: (410) 659-7764
mmccann@fblaw.com

January 6, 2003

Kristine Anne Howanski, Chairperson
Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

JAN - 8 '03

Re: The Oregon Grille
Before the Zoning Commissioner for Baltimore County
Case No. 02-461-SPHXZA

Dear Ms. Howanski:

Enclosed please find a Line Regarding Change of Address of Counsel for The Valleys Planning Council, Inc. for filing.

Please date stamp the extra copy and return it to me in the enclosed self-addressed, stamped envelope. If you have any questions, please contact me.

Sincerely,

Michael R. McCann

Enclosure
MRM:kjg
85000.001:60583

cc: Arnold Jablon, Director, Baltimore County Department of Permits and Development Management
Lawrence E. Schmidt, Zoning Commissioner
Robert A. Hoffman, Esquire
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Carole Demilio, Esquire, People's Counsel for Baltimore County

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	ZONING COMMISSIONER
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,	*	
Petitioner.	*	

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

LINE REGARDING CHANGE OF ADDRESS OF COUNSEL FOR THE VALLEYS PLANNING COUNCIL, INC.

Please note the following change of address of counsel for The Valleys Planning Council, Inc.:

Michael R. McCann
Funk & Bolton, P.A.
Twelfth Floor
36 South Charles Street
Baltimore, Maryland 21201-3111

The telephone and facsimile numbers are unchanged.

Respectfully submitted,

Michael R. McCann

Funk & Bolton, P.A.
Twelfth Floor
36 South Charles Street
Baltimore, Maryland 21201-3111
(410) 659-7700

Attorneys for The Valleys Planning Council, Inc.

Dated: January 6, 2003
85000.001:60584

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 6th day of January 2003, a copy of the foregoing Notice of Change of Address of Counsel for The Valleys Planning Council, Inc. was mailed, first class, postage prepaid to:

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204-5517

Attorneys for Petitioner

Michael R. McCann

85000.01:60584

FUNK & BOLTON
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
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Writer's Direct Dial: (410) 659-7764
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DAVID M. FUNK
BRYAN D. BOLTON
BRYSON F. POPHAM
REN L. TUNDERMANN
CHARLES D. MACLEOD
DEREK B. YARMIS
JEFFERSON L. BLOMQUIST
LINDSEY A. RADER
JAMES F. TAYLOR
MICHAEL R. MCCANN

ASSOCIATES
HUGH M. BERNSTEIN
PETER C. ISMAY
CHERYL A. C. BROWN
HISHAM M. AMIN
COLIN BELL

OF COUNSEL
JOHN A. ANDRYSZAK
GARY C. HARRIGER
DONNA B. IMHOFF
STEPHEN Z. MEEHAN
J. FRANK NAYDEN
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

October 31, 2003

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

Hand Delivered

RECEIVED
OCT 31 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Re: Oregon Grille, LLC
Pending before the Baltimore County Board of Appeals
Case No. 02-461-SPHXA

Dear Ms. Bianco:

Enclosed for filing in the above-referenced matter please find the original and one copy of an Application for Issuance of Subpoenas. Please date stamp the extra copy of this paper and return it to the messenger. Also enclosed are the original and two copies of a subpoena to Margaret Worrall, and an original and two copies of a subpoena to Carl Richards. Please issue these subpoenas and return them to the messenger so that we may arrange for private process service.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Michael R. McCann

Enclosures
cc: Robert Hoffman, Esquire (with enclosures)

85000.001.68205

COPY

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road (1201 Shawan Road)	*	COUNTY BOARD
8th Election District	*	APPEALS OF
3rd Councilmanic District	*	OF BALTIMORE COUNTY
	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,	*	
Petitioner.		

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

APPLICATION FOR ISSUANCE OF SUBPOENAS

The Valleys Planning Council ("VPC"), pursuant to Rule 5 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals, requests the issuance of subpoenas to:

Margaret Worrall
P.O. Box 213
Butler, Maryland 21023

Carl Richards
Department of Permits and Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

The purpose of this application is to have the above-mentioned individuals provide brief testimony at the November 4, 2003 hearing that VPC believes supports its opposition to the relief requested by Petitioner. VPC does not intend to question Ms. Worrall in her capacity as a member of the Board of Appeals, but rather in her individual capacity as the former Executive Director of VPC.

RECEIVED
OCT 31 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Michael R. McCann
Funk & Bolton, P.A.
36 S. Charles, Twelfth Floor
Baltimore, Maryland 21201
(410) 659-7700
Attorneys for The Valleys Planning Council, Inc.

Dated: October 31, 2003

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	COUNTY BOARD OF APPEALS
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,	*	
Petitioner.	*	

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

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County)

Carl Richards
Department of Permits & Dev. Mgt.
111 W. Chesapeake Avenue
Towson, Maryland 21204

YOU ARE HEREBY COMMANDED TO: (x) Personally appear; ( ) Produce documents and/or objects only; () Personally appear and produce documents or objects; **in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on November 4, 2003 at 10:00 a.m.**

SUBPOENA REQUESTED BY:

Michael R. McCann, Funk & Bolton, P.A.,
(Name of Party / Attorney)
36 S. Charles Street, Twelfth Floor
(Address / Telephone #)
Baltimore, Maryland 21201, (410) 659-7764

The witness named above is hereby ORDERED to so appear before the County Board of Appeals.

RECEIVED
OCT 31 2003
BALTIMORE COUNTY
BOARD OF APPEALS

County Board of Appeals of Baltimore County

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and Beaver Dam Road	*	COUNTY BOARD OF APPEALS
(1201 Shawan Road)	*	OF BALTIMORE COUNTY
8th Election District		
3rd Councilmanic District	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,	*	
Petitioner.	*	

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

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County) Margaret Worrall
P.O. Box 213
Butler, Maryland 21023

YOU ARE HEREBY COMMANDED TO: (x) Personally appear; ( ) Produce documents and/or objects only; () Personally appear and produce documents or objects; **in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on November 4, 2003 at 10:00 a.m.**

SUBPOENA REQUESTED BY:

Michael R. McCann, Funk & Bolton, P.A.,
(Name of Party / Attorney)
36 S. Charles Street, Twelfth Floor
(Address / Telephone #)
Baltimore, Maryland 21201, (410) 659-7764

The witness named above is hereby ORDERED to so appear before the County Board of Appeals.

Theresa R. Shelton
County Board of Appeals of Baltimore County

RECEIVED
OCT 31 2003
BALTIMORE COUNTY
BOARD OF APPEALS

FUNK & BOLTON
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
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CHARLES D. MACLEOD
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OF COUNSEL
JOHN A. ANDRYSZAK
GARY C. HARRIGER
DONNA B. IMHOFF
STEPHEN Z. MEEHAN
J. FRANK NAYDEN
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

November 6, 2003

Writer's Direct Dial: (410) 659-7764
mmccann@fblaw.com

RECEIVED
NOV - 7 2003
BALTIMORE COUNTY
BOARD OF APPEALS

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

Re: Oregon Grille, LLC
Pending before the Baltimore County Board of Appeals
Case No. 02-461-SPHXA

Dear Ms. Bianco:

Enclosed for filing in the above-referenced matter please find the original and one copy of Certificate of Service with respect to a Subpoena of Margaret Worrall. Please date stamp the extra copy and return it to me in the self-addressed, stamped envelope provided for that purpose.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Michael R. McCann

Michael R. McCann

Enclosures

85000.001.68205.2

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SW/Corner Shawan Road and	*	COUNTY BOARD OF APPEALS
Beaver Dam Road	*	APPEALS OF
(1201 Shawan Road)		
8th Election District	*	OF BALTIMORE COUNTY
3rd Councilmanic District		
	*	Case No. 02-461-SPHXA
Oregon, L.L.C.,		
	*	
Petitioner.		

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 31st day of October, 2003, a copy of the foregoing of Subpoenas of Margaret Worrall was sent, *via* first class mail, to:

Robert Hoffman, Esquire
Venable, Baejter & Howard
210 Allegheny Avenue
Towson, Maryland 21204

Michael R. McCann

85000.001:68202

RECEIVED
NOV - 7 2003
BALTIMORE COUNTY
BOARD OF APPEALS

FUNK & BOLTON
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
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OF COUNSEL
JOHN A. ANDRYSZAK
GARY C. HARRIGER
DONNA B. IMHOFF
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DEBORAH R. RIVKIN
JOHN R. STIERHOFF

March 22, 2004

RECEIVED
MAR 2 2 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Lawrence M. Stahl, Chairman
Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: In the matter of: Oregon, LLC
1201 Shawan Road, 8th Election District, 3rd Councilmanic District
Case No. 02-461-SPHXZA

Dear Mr. Stahl:

Enclosed please find an original for filing, and three (3) courtesy copies for each board member, of Protestants' Proffer of Evidence Regarding Agreement Submitted To, And Adopted By, Board In Its February 1995 Order, in the above-referenced matter.

Thank you for your consideration.

Sincerely,

Michael R. McCann

MRM:DD
Enclosure

RECEIVED
POST - HEARING
DAY ONE

cc: G. Macy Nelson, Esquire
Robert A. Hoffman, Esquire (*via* facsimile and U.S. Mail)
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Carole Demilio, Esquire, People's Counsel for Baltimore County

85000.001:71457

FUNK & BOLTON
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JOHN A. ANDRYSZAK
GARY C. HARRIGER
DONNA B. IMHOFF
STEPHEN Z. MEEHAN
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JOHN R. STIERHOFF

April 30, 2004

RECEIVED
MAY 03 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Lawrence Wescott, Chairman
Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: In the matter of: Oregon, LLC
1201 Shawan Road, 8th Election District, 3rd Councilmanic District
Case No. 02-461-SPHXZA

Dear Mr. Wescott:

If you recall, the Board admitted into evidence the Petitioner's lease agreement with Baltimore County, with the qualification that the parties agree on which portions should be redacted. Petitioner's counsel and I came to an agreement and enclosed are redacted versions of Protestants' Exhibit 30 (Lease Agreement) and Exhibit 31 (Supplemental Lease).

Thank you for your consideration.

Sincerely,

Michael R. McCann

MRM:DD
Enclosure

cc: G. Macy Nelson, Esquire (w/o enclosure)
Robert A. Hoffman, Esquire (with enclosure)

85000.001:72497

FUNK & BOLTON
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JOHN A. ANDRYSZAK
GARY C. HARRIGER
DONNA B. IMHOFF
STEPHEN Z. MEEHAN
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

May 24, 2004

Lawrence Wescott, Chairman
Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: In the matter of: Oregon, LLC
1201 Shawan Road, 8th Election District, 3rd Councilmanic District
Case No. 02-461-SPHXZA

Dear Mr. Wescott:

Enclosed please find an original and three (3) bound copies of Protestants' Post-Hearing Memorandum in the above-referenced matter.

Thank you for your consideration.

Sincerely,

Michael R. McCann

MRM:DD
Enclosure

cc: G. Macy Nelson, Esquire (w/ enclosure)
Robert A. Hoffman, Esquire (w/ enclosure)
People's Counsel (w/ enclosure)

85000.001:72497

RECEIVED
MAY 24 2004
BALTIMORE COUNTY
BOARD OF APPEALS

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Writer's Direct Dial: (410) 659-4980
hamin@fblaw.com

June 11, 2004

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

Via Facsimile
and U.S. Mail

Re: Petitions for Special Hearing, Special Exceptions and Variance
Petitioner: Oregon, LLC
Location: 1201 Shawan Road
Case No.: 02-461-SPHXA

Dear Mr. Wescott:

We are in receipt of Mr. Hoffman's letter dated June 7, 2004. Michael McCann is out of town this week on family vacation but asked that I inform you that he will respond to Mr. Hoffman's letter immediately upon his return on Monday June 14, 2004.

Thank you for your consideration.

Best regards,

Hisham M. Amin

Hisham M. Amin

HMA:kjg
85000.001:73508

RECEIVED
JUN 14 2004
BALTIMORE COUNTY
BOARD OF APPEALS

FUNK & BOLTON
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
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TAMAL A. BANTON

OF COUNSEL
JOHN A. ANDRYSZAK
GARY C. HARRIGER
DONNA B. IMHOFF
STEPHEN Z. MEEHAN
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

ADMITTED IN MARYLAND EXCEPT AS OTHERWISE NOTED
* ALSO ADMITTED IN DISTRICT OF COLUMBIA
• ALSO ADMITTED IN VIRGINIA
* ADMITTED IN PENNSYLVANIA AND NEW JERSEY ONLY

June 16, 2004

RECEIVED
JUN 17 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Via Facsimile
and U.S. Mail

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

Re: Petitions for Special Hearing, Special Exceptions and Variance
Petitioner: Oregon, LLC
Location: 1201 Shawan Road
Case No.: 02-461-SPHXA

Dear Mr. Wescott:

We are in receipt of Mr. Hoffman's letter dated June 7, 2004 and appreciate the opportunity to respond.

I believe Petitioner overstates Protestants' reliance on the Deputy Zoning Commissioner's 1994 Order (the "1994 Order"). In their post-hearing memorandum, Protestants made reference to the 1994 Order merely to provide procedural background to their *res judicata* argument; specifically, to describe the nature of the relief requested by Petitioner below and provide some context to the Board's subsequent ruling in February 1995. (*See* Post-Hearing Mem., pp. 2-3.) Protestants do not contend that the Board should retry the case before the Deputy Zoning Commissioner or that the 1994 Order, itself, has *res judicata* effect.

Moreover, contrary to Petitioner's contention, Protestants did *not* "attempt to introduce the 1994 Order", and the objection that the Board sustained was *not* to "the introduction of or any reference to the 1994 Order." (*See* Petitioner's June 7, 2004 letter, p. 1.) Rather, as the transcript bears out, Petitioner's objection (at pp. 162-163) was to Protestants' attempt to introduce evidence supporting the argument – rejected by the Board earlier that day – that the original special exception granted by the Board in February 1995 should be "in play." (*See also* Excerpts of Nov. 4, 2003 hearing attached hereto, pp. 4-17.) The Board had sustained Petitioner's objection on this point, ruling as follows:

> We are not going to rule [on] any opinion or order issued by the Board relative to whether or not the special exception that was granted by Mr. Hackett's [1995] order is still valid or not.

(*Id.*, p. 17.) The Board, in other words, never ruled that the 1994 Order was inadmissible or that no reference could be made to it.

Indeed, immediately after the Board's ruling above, Protestants made specific reference to the 1994 Order during argument on the unrelated issue of the admissibility of Margaret Worrall's testimony. (*Id.*, pp. 18-19.) Petitioner objected on the grounds that "now we're getting into a wholly separate issue. I mean, there is now reference to the Deputy Zoning Commissioner's order, things that may or may not have happened at the Zoning Commissioner's level in 1994." (*Id.*, pp. 19-20.) The Board did *not* sustain Petitioner's objection on this point, and allowed Protestants to provide information regarding the 1994 Order as background to their argument on Ms. Worrall's testimony. (*Id.*, pp. 20-22.) In their post-hearing memorandum, Protestants' reference to the 1994 Order was intended to do the same thing, that is, provide the Board with procedural background.

Thank you for your consideration.

Sincerely,

Michael R. McCann

MRM/DD

cc: Robert Hoffman, Esq. (*via* facsimile)
G. Macy Nelson, Esq.

85000.001:73558

VENABLE, BAETJER AND HOWARD, LLP
Including professional corporations

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OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

VENABLE
ATTORNEYS AT LAW

Robert A. Hoffman
(410) 494-6262

rahoffman@venable.com

August 29, 2002

HAND-DELIVERED

Lawrence E. Schmidt, Esquire
Zoning Commissioner for
Baltimore County
County Courts Building
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

RECEIVED
AUG 30 2002

Re: The Oregon Grille
1201 Shawan Road
Case No.: 02-461-SPHXA

Dear Mr. Schmidt:

I have received the Ground Water Management Division Memorandum from J. Robert Powell to Bruce Seeley, dated August 15, 2002, regarding The Oregon Grille's sewage disposal system. These comments were apparently issued after the last hearing date in this matter. In his comments, Mr. Powell requests certain information and data relative to the capacity and maintenance of the system and the intended use of The Oregon Grille for outside events.

We believe that the sewage disposal system is functioning adequately and will continue to do so even if the requested relief is granted. At any rate, we believe that, as a result of a restriction imposed in Case No. 94-348-SPHXA, the Department of Environmental Protection and Resource Management already has the right to review and approve the proposed changes to the outdoor dining area. The Board of Appeals granted The Oregon Grille its special exception for the restaurant, subject to the following restriction:

2. In the event the Petitioner shall decide to install the outdoor dining area/patio on Petitioner's Exhibit 1, then the Petitioner shall be required to submit the plans for said outdoor dining area/patio to DEPRM for their full review and approval. (Board of Appeals Order, p. 6)

However, if you do not agree, we certainly would not object to your including a new restriction in your Findings of Fact and Conclusions of Law requiring compliance with all of Mr. Powell's comments. In the alternative, if you would prefer, we would be prepared to present testimony regarding the adequacy of the septic system at your earliest convenience.

Very truly yours,

Robert A Hoffman /pkm

Robert A. Hoffman

RAH/dhk

cc: Michael R. McCann, Esquire

TO1DOCS1/DHK01/#143578 v1

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VIRGINIA

VENABLE
ATTORNEYS AT LAW

Robert A. Hoffman
(410) 494-6262

rahoffman@venable.com

September 20, 2002

SEP 20 2002

HAND-DELIVERED

Lawrence E. Schmidt, Zoning
Commissioner for Baltimore County
County Courts Building
401 Bosley Avenue, 4th Floor
Towson, Maryland 21024

Re: Petitions for Special Hearing, Special Exception, and Variance
Petitioner: Oregon, LLC
Location: 1201 Shawan Road
Case No.: 02-461-SPHXA

Dear Mr. Schmidt:

I have reviewed Protestant's Post-Hearing Memorandum filed in the above-referenced case, and I am writing to object to the arguments asserted in Sections IV.C and D of the Memorandum relative to the Orders of the Deputy Zoning Commissioner and the County Board of Appeals in Case No. 94-348-SPHXA. As you are aware, in 1994, the Board of Appeals approved a special exception allowing the property to be used as a restaurant.

In Section IV.C of Protestant's Memorandum, Protestant's attorney Michael R. McCann argues that the Deputy Zoning Commissioner's Order in Case No. 94-348 precludes my client, Oregon, LLC, from seeking approval of outdoor events on the property. Mr. McCann sought to introduce this Order at the hearing before you in an attempt to demonstrate that such events should not be permitted on the Oregon Grille property. As you will recall, I objected to Mr. McCann's reference to the Deputy Zoning Commissioner's Order and the restrictions contained therein, and you sustained those objections. T., pp. 103-107, 128-137 (copies enclosed). In fact, you suggested that the Deputy Zoning Commissioner's Order is "null and void or meaningless by virtue of the fact that there was a subsequent Board of Appeals decision." T., p. 133. Given that my objections were sustained, I respectfully submit that Mr. McCann's attempt, in

VENABLE
ATTORNEYS AT LAW

Protestant's Memorandum, to again have you consider this Order despite your prior ruling to the contrary is inappropriate. I would renew my objection and ask that you not give the Deputy Zoning Commissioner's prior Order any consideration.

Additionally, I am writing to renew my objection to Mr. McCann's attempts to characterize events and/or testimony before the Board of Appeals without the benefit of a transcript of the proceedings or any support for his assertions. Mr. McCann did not attend the prior hearing before the Board and, in fact, was not even aware that such a hearing took place until I told him about it. T., pp. 134-137. With this in mind, you sustained my objection at the hearing. T., p. 135. In his Memorandum, Mr. McCann ignores your prior ruling and again recounts "testimony" provided in the 1995 Board of Appeals hearing. See Section IV.D. How is this possible given that Mr. McCann did not attend the hearing and has not, to my knowledge, reviewed any transcript? I renew my objection and ask that you give no consideration to this portion of the Memorandum.

Thank you for your consideration.

Very truly yours,

Robert A. Hoffman

RAH/dhk

Enclosures

cc: Michael R. McCann, Esquire

TO1DOCS1/DHK01/#145083 v2

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WASHINGTON, D.C.
VIRGINIA

VENABLE
ATTORNEYS AT LAW

Robert A. Hoffman
(410) 494-6262

rahoffman@venable.com

November 6, 2002

HAND-DELIVERED

RECEIVED
NOV 06 2002
BALTIMORE COUNTY
BOARD OF APPEALS

Mr. Arnold Jablon, Director
Department of Permits and
Development Management
County Office Building – Room 111
111 W. Chesapeake Avenue
Towson, Maryland 21204

Charles L. Marks, Chairman
County Board of Appeals for
Baltimore County
Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: 1201 Shawan Road
8th Election District – 3rd Councilmanic District
Case No.: 02-461-SPHXA

Dear Mr. Jablon and Mr. Marks:

On behalf of the lessee of the above-referenced property, Oregon, LLC ("Oregon"), we note an appeal from the Order of the Zoning Commissioner for Baltimore County, dated September 24, 2002, and, in specific, the decision on the relief requested by way of the Petitions for Special Hearing and Special Exception. Oregon filed a Motion for Reconsideration on October 17, 2002. On October 28, 2002, the Zoning Commissioner informed Oregon that, because Protestant had filed a notice of appeal, he no longer had jurisdiction over the matter and the Motion was "moot." Oregon disagrees with the Zoning Commissioner's analysis of jurisdiction. At any rate, because the filing of the Motion stayed the 30-day time period within which an appeal must be filed, Oregon's Notice of Appeal is timely. See THE RULES OF PRACTICE AND

VENABLE
ATTORNEYS AT LAW

PROCEDURE BEFORE THE ZONING COMMISSIONER/HEARING OFFICER OF BALTIMORE COUNTY, Rule K.

In addition to noting an appeal to the Order of September 24, 2002, Oregon also notes an appeal from the Zoning Commissioner's ruling of October 28, 2002, that a notice of appeal (filed on behalf of The Valley's Planning Council, Inc., Falls Road Community Association, Inc., Greencroft Community Association, and Dennis Sutton) eliminated the Zoning Commissioner's jurisdiction and took away his authority to rule on the Motion.

The name and address of the appealing party is:

Oregon, LLC
Mr. Theodore W. Bauer, Member
5700 Newberry Street
Baltimore, Maryland 21209

We have enclosed a check in the amount of $495.00 to cover the filing fee for the appeal and the costs associated with posting. If you have any questions regarding this appeal, please feel free to give me a call.

Very truly yours,

Robert A. Hoffman

RAH/dhk
Enclosure
cc: Michael R. McCann, Esquire
Peter Max Zimmerman, Esquire, People's Counsel
Carole S. DeMilio, Esquire, Deputy People's Counsel
TO1DOCS1/DHK01/#148462 v1

VENABLE LLP

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Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

Robert A. Hoffman (410) 494-6262 rahoffman@venable.com

June 7, 2004

RECEIVED
JUN 07 2004
BALTIMORE COUNTY
BOARD OF APPEALS

HAND-DELIVERED

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

Re: Petitions for Special Hearing, Special Exception, and Variance
Petitioner: Oregon, LLC
Location: 1201 Shawan Road
Case No.: 02-461-SPHXA

Dear Mr. Wescott:

I have reviewed Protestants' Post-Hearing Memorandum filed in the above-referenced case, and I am writing to object to references in that Memorandum to the Deputy Zoning Commissioner's Findings of Fact and Conclusions of Law in Case No. 94-348-SPHXA ("1994 Order"). These references are contained in Sections II and IV.A of Protestants' Memorandum.

In 1995, the Board of Appeals heard The Oregon Grille case (Case No. 94-348-SPHXA) and issued an order approving a special exception for the restaurant. The proceeding before the Board was *de novo*, and the Board's decision, at that time, superceded and nullified the Deputy Zoning Commissioner's 1994 Order. For this reason, therefore, I respectfully submit that this Board should refuse to give any consideration to the 1994 Order.

As the Board may recall, at the hearing on November 4, 2003, Protestants first attempted to introduce the 1994 Order. I objected to the introduction of or any reference to the 1994 Order, and the Chairman sustained my objection. (T. 11/04/03, pp. 162-163, 165-167, 172-173) (copies enclosed). In fact, the Board ruled:

> "[t]his is a *de novo* hearing. We don't have to read the Zoning Commissioner's decision. We make the decision, or *the Board at that time, made the decision de novo.*"

(T. 11/04/03, p. 167) (emphasis added). Shortly thereafter, the Board, referring to the Deputy Zoning Commissioner's Order, reiterated that "if it pertains to the old 1995 decision, I have to sustain Mr. Hoffman's objection." (T. 11/04/03, p. 173).

Given that my objection was sustained multiple times, I respectfully submit that Protestants' additional attempts, in their Memorandum, to subvert this Board's prior rulings and *again* put the Deputy Zoning Commissioner's 1994 Order before the Board are wholly inappropriate. I would, therefore, renew my objection and ask that the Board refuse to consider this prior order.

Thank you for your consideration.

Very truly yours,

Robert A. Hoffman

RAH/dhk
Enclosures

cc: Michael R. McCann, Esquire
G. Macy Nelson, Esquire

TO1DOCS1/DHK01/#186029

Department of Permits and Development Management

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

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

March 22, 2004

G. Macy Nelson, Esquire
Suite 803
401 Washington Avenue
Towson, Maryland 21204

Re: Oregon Ridge Grill, Case No. 02-461-SPHXA

Dear Mr. Nelson:

You had previously written to me regarding what you believed to be violations of an Order of the Board of Appeals of Baltimore County involving the property located at 1201 Shawan Road and operating as the Oregon Grill. You specifically asked in your letter whether the property owner was violating restriction number 9 of that Order dated February 8, 1995.

I have read and reviewed the entire file regarding this matter including the case that I heard as Deputy Zoning Commissioner. I have also personally visited the site for the purpose of performing an inspection based on the allegations contained in your letter. After carefully considering the contents of your letter and the files relating to this matter, I find that there is no violation of the provisions of the Order issued by the Board of Appeals at this time.

The basis of my determination is that restriction number 9 of the Board's Order granted permission to the property owner to leave the parking area in a stone base, as opposed to paving. Generally, the law mandates that the parking surface be durable and dustless (macadam). The Board imposed this restriction as a benefit to the property owner, so as to not require paving to be installed. This restriction cannot be construed to forever prohibit the paving of this parking area in the future. Consequently, my office will not proceed with any violation case against this property owner.

I trust that this letter serves to address your inquiry. If you wish to discuss this matter in more detail, feel free to contact me.

Very truly yours,

Timothy Kotroco

Timothy M. Kotroco, Director
Permits and Development Management

cc. Rob Hoffman, Esquire
Mr. Theodore Bauer

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

TO: **Catherine Popelarski**	FAX NUMBER: **410-887-5708**	PHONE NUMBER: **(410) 367-6903**
SENDER: David H. Karceski	SENDER'S FAX NUMBER: (410) 821-0147	SENDER'S PHONE NUMBER: (410) 494-6285
	SENDER'S ASSISTANT: Beth Lineweaver	ASSISTANT'S PHONE NUMBER: (410) 494-6225
DATE: 09/20/2004	CLIENT/MATTER NUMBER: 16549-099762	PAGES, EXCLUDING COVER: 1

MESSAGE:

Re: The Oregon Grille

If you require assistance with this transmission, please contact the sender.
This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. postal service. Thank you.

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

January 5, 2004

Timothy R. Kotroco, Director
Department of Permits and Development
Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: *Oregon Ridge Grill*
Case No. 02-461-SPHXA

Dear Mr. Kotroco:

I represent the Falls Road Association in the *Oregon Grill* case.

I believe that the Oregon Grill is violating a condition of the Special Exception Opinion and Order that govern its operation.

Please let me back up and give you the background to my opinion. The matter originally came before you when you were serving as the Deputy Zoning Commissioner. I have enclosed for your review a copy of your Findings of Facts and Conclusions of Law, dated June 28, 1994. I believe you issued an Amended Order dated July 27, 1994.

After an appeal to the Board of Appeals, the Board issued an Opinion and Order dated February 8, 1995. The Order contained twelve restrictions. Two are of interest here.

Restriction No. 9 provides:

> The parking area shall consist of a non-paved surface such as stone or other similar permeable surface, unless otherwise required by law. All parking will be contained within the leased area.

The evidence reveals that the restaurant is violating Restriction No. 9 because the parking area is paved and is impermeable. We request that your office investigate this violation by sending an inspector to the site to confirm my understanding of the facts.

My client views this violation of Restriction No. 9 as a serious matter. Restriction No. 11 provides:

> The Special Exception shall remain valid only so long as the Petitioner, and its successors and assigns, utilize the property as a standard restaurant, as defined in Section 101 of the Baltimore County Zoning Regulations, and only in accordance with the restrictions hereinabove set forth.

My client appreciates your office's prompt attention to this complaint. My client views the violation as a very serious matter which jeopardizes the legitimacy of the Petitioner's Special Exception.

Very truly yours,

G. Macy Nelson

GMN:pwc
Enclosures
cc: Dennis Sutton (w/o enc.)

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

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(410) 296-8166

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(410) 825-0670

October 31, 2003

RECEIVED
NOV - 3 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Lawrence M. Stahl, Chairman
County Board of Appeals of
Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: *In the Matter of: OREGON LLC – Contract Lessee; Baltimore County Recreation & Parks – Legal Owner* **(Oregon Grill)** 1201 Shawan Road, 8th Election District; 3rd Councilmanic District – **Case No. 02-461-SPHXA**

Dear Mr. Stahl:

I represent the Falls Road Community Association and Dennis Sutton in the above-referenced case, which is scheduled to begin on November 4, 2003.

I write now to alert the Board to a preliminary legal issue.

The Board's prior opinion in this case, dated February 8, 1995, conditions the *grant of a Special Exception to allow* the use of the subject property as a restaurant, on twelve restrictions. Restriction number 11 provides:

> The special exception shall remain valid only so long as the Petitioner, and its successors and assigns, utilize the property as a standard restaurant, as defined in Section 101 of the Baltimore County Zoning Regulations, and only in accordance with the restrictions hereinabove set forth.

Since the Applicant seeks to utilize the property as more than a standard restaurant, the prior approved Special Exception is no longer valid. Therefore, the issue for the case beginning November 4, 2003, should be whether a Special Exception should be granted for the proposed use.

RECEIVED
POST-APPEAL

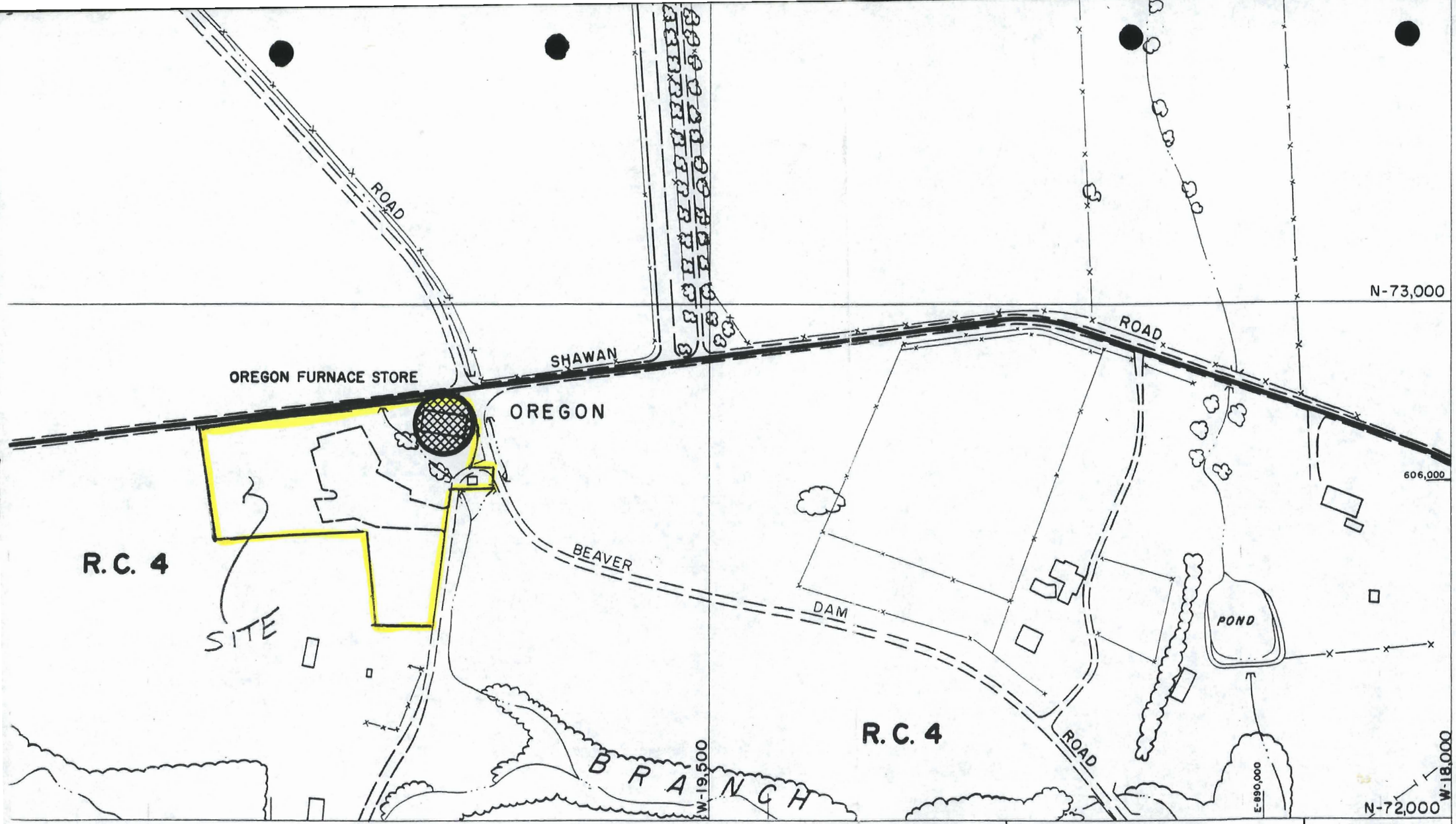
Similarly, Applicant filed a petition for *special hearing* "to amend Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995 in accordance with the modified site plan." Restriction number 4 in the Board's February 8, 1995 order (which prohibits "catering or hosting weddings or other similar events outside ....") is the same restriction, *verbatim*, imposed by the Deputy Zoning Commissioner in his earlier decision. The Deputy Zoning Commissioner had expressly found that such uses were not permitted in an RC4 zone and imposed restriction number 4 "in order to insure that the proposed outdoor seating area is properly utilized." (*See* Findings of Fact and Conclusions of Law of Dep. Zoning Comm'r.). The Deputy Zoning Commissioner, in other words, did *not* impose restriction number 4 as a limitation on a permitted use, either as of right or by special exception. Thus, the Board's restriction number 4 is not a special exception ruling that can be changed by "amendment" of restriction 4 or by means of a special hearing, as Applicant has requested. If Applicant seeks to remove or "amend" restriction 4 so as to now permit "catering or hosting weddings or other similar events outside ...", it must do so by Special Exception.

I respectfully suggest that the Board consider these legal issues at the outset of the hearing. The Board's ruling on this issue will control how we try the case. Counsel for the Valleys' Planning Council concurs in this letter.

Very truly yours,

G. Macy Nelson

GMN:pwc
cc: Dennis Sutton



COUNTY
NG AND ZONING
NING MAP

SCALE	LOCATION	SHEET
1" = 200' ±	COCKEYSVILLE AREA OREGON	N. W. 19-D
DATE OF PHOTOGRAPHY JANUARY 1986		

02-461-SPHA

NW 19 D

√ = for
+ = against

Case Number 02-462-SPHXA

PLEASE ***PRINT*** LEGIBLY

PETITIONER'S SIGN-IN SHEET

	Name	Address	City, State	Zip Code
√	Mitchell Kellman	200 E. Pennsylvania Ave. Towson 21286	MD	21286
√	Robert A Hoffman	210 Allegheny Ave Towson MD 21204	MD	21204
√	David Karasik			
√	Mickey Cornelius	9900 Franklin Sq Dr. Ste H Baltimore MD 21236	Balto., MD	21236
√	Eric C. Hadaway	200 E. Pennsylvania Ave. Towson - 21286	Balto. MD	21286
√	Helene Miller	4 Warko Ct.	Balto. Md.	21221
√	Ted Bauer	14123 Manor Mill Rd	Glyndon Md	21071
√	Andrew Brewster	3321 Butler Road	Glyndon Md.	21071
√	Richard Cobert	Balt. City Economic Development	Towson, MD	21204
√	David Warfield	11031 McCormick Rd	Hunt Valley Md	21031
+	Randle Goetze	13941 Cuba Rd	Hunt Valley Md.	21030
	Geoffrey Griffith	845 Ivy Hill R	Cockeysville	21030
+	Odd Pedersen	2 Clipping Tree Ln	Cockeysville	21030
√	Thomas Sutton	2020 Beist Rd	Glyndon	21071
+	David B Bopst	14227 Greencroft Lane	Hunt Valley, MD	21030
+	Martha L. Bopst	14227 Greencroft Lane	Hunt Valley, MD	21030
√	Susan Grunell	3741 Butler Rd	Glyndon	21071
√	James R. McDonald	17625 Falls Rd	Hunt Valley MD	21155
+	Randy Goetze	13941 Cuba Rd	Hunt Valley	21030

Revised 4/17/00

Case Number _____

PLEASE ***PRINT*** LEGIBLY

PETITIONER'S SIGN-IN SHEET

Name	Address	City, State	Zip Code
+ Richard B. Buck	11219 Greenspring Ln. Lutherville, 21093	Md	21093
✓ Peter Wight	13858 Cuba Rd	Cockeysville Md	21030
✓ Gary T. Gill			
Thomas F. Mullan III			

Case Number _____

PLEASE *PRINT* LEGIBLY

PROTESTANT'S SIGN-IN SHEET

Name	Address	City, State	Zip Code
Jack Dillon	PO Box 5402	Towson	21285
Dennis Sutton	13500 Beaver Dam Rd	Cockeysville	21030
John Galbreath	2516 Chestnut Cedar Ct.	Reisterstown	21136
Odd Pedersen	2 Clipping Tree Lane	Cockeysville	21030
Randle Goetze	13941 Cuba Rd.	Hunt Valley	21030
Attorney for Goetze	13941 Cuba Rd.	Hunt Valley	21030
~~[illegible]~~	~~1765 [illegible]~~	~~[illegible]~~	~~21152~~
~~[illegible]~~	~~3744 Bustle~~	~~[illegible]~~	21071
Geoffrey Griffith	845 Ivy Hill Rd	Cockeysville	21030

Revised 4/17/00

Letters of Opposition

#4

July 23, 2002

Baltimore County Zoning Commission
c/o The Valleys Planning Council
P.O. Box 5402
Towson, MD 21286

Due to professional obligations, it is doubtful that either of us will be able to attend the hearings on the Oregon Grille zoning change request scheduled for August 13th & 14th. However, we feel strongly about this matter and would like to have our views included.

We reside at 13811 Cuba Road, 7/10ths of a mile north of the Shawan Road and Cuba Road intersection where The Oregon Grille is located. We are opposed to amending the restrictions put on this establishment prior to its opening in 1994, in particular, changes that would permit tents to be erected for outside events, live and recorded music for these events, and the increased parking that would be necessary to accommodate the vehicles that these larger venues would attract.

The areas adjacent to the Oregon Grill and Oregon Ridge Park are residential. Cuba Road, Beaver Dam Road and Shawan Road are all two-lane roads, and the intersection noted above has a single traffic light, with no turn lanes available or arrow lights possible. The traffic along these roads and at this intersection has increased exponentially in recent years and the larger crowds that would be attending functions at The Oregon Grille would only exacerbate the situation. When there are major concerts at Oregon Ridge Park, there are policemen on duty at this intersection to control traffic to some degree.

Even more uninviting than the increased traffic and accompanying cars and parking needs is the idea that there would be live and recorded music outside that would go through the evening hours. Even living .7 miles away, we can frequently hear music and sounds from the playing fields next to the Oregon Grill. While this generally does not create a big problem during the day, it would be very unwelcome during the late afternoon and evening hours. We object strongly to the proposal that private gatherings, such as wedding receptions or other parties, be allowed to take place at The Oregon Grille that would incorporate live and recorded music in the proposed tented area over the patio. This is a clear and unwarranted intrusion in a residential community.

We respectfully request that the Baltimore County Zoning Commissioner consider fully the concerns of the residents in the area adjacent to this establishment.

Sincerely,

Stephen N. Collier

Judy G. Collier

August 13, 2002

Fax 410 296 5409

Lawrence Schmidt
Zoning Commissioner
Valley's Planning Council

Dear Mr. Schmidt,

We are writing to you to express our strong opposition to the proposed expansion of the Oregon Grille. We moved to the area 23 years ago to escape the glaring lights, traffic, noise and commercial feel of suburban / urban life. We, like many other residents of this beautiful area, enjoy the quiet, bucolic nature of our neighborhood.

The last thing that we need is a noisy restaurant set in the middle of serene surroundings that will be forever spoiled by this venture. A quiet, elegant restaurant is acceptable, but expanding with catered events with loud music that intrudes into the outdoors inviting more drunk drivers onto our roads is not.

We feel betrayed by the owners of the Oregon Grille. This venture clearly is unfriendly, unneighborly, and not in keeping with the culture of this beautiful area. There is no need for this type of venture in our neighborhood. There are plenty of places already in existence in hotels and restaurants to accomodate entertaining needs (Marriott, etc...)

Please enter our letter into the record as voices of opposition.

Very truly yours,

Lewis F. Leister, Jr and Donna Lee Leister
1800 Shawan Valley Lane
Reisterstown, Maryland 21136

cc Martha Lessner, President, Shawan Valley Association, Inc

August 13, 2002

AUG 1 9 2002

Mr. Lawrence Schmidt
County Zoning Commissioner
County Court Building
401 Bosley Avenue
Towson, MD 21204

Commissioner Schmidt:

We were at the zoning hearing this morning regarding expanding facilities for the Oreagon Grille but could only stay for one hour. After we left we found out that the list we signed was the wrong list.

We are AGAINST any expansion of the Oregon Grille.

-In order to construct the Oregon Grille Resturant, the present owner agreed to build, make changes, and adhere to the standards put in place by the County. Give an inch - take a mile!!!

-The traffic on Shawan Road as well as Beaver Dam Road is already way too much.

-Noise level will increase dramatically with the addition of music every summer weekend. Sound carries in this neighborhood.

-In trying to preserve the beauty of this area, the farm property just west of Shawan and Beaver Dam Roads was purchased to prevent any further intrusions.

Sincerely,

David B. Bopst
14227 Greencroft Lane
Hunt Valley, Maryland 21030

Martha Bopst
14227 Greencroft Lane
Hunt Valley, MD 21030

cc: Valley Planning Council

LAW OFFICES
H. ROBERT SIMON

TELEPHONE: (410) 584-8181
FAX: (410) 584-7053

P.O. BOX 1425
HUNT VALLEY, MARYLAND 21030-7425

August 14, 2002

RECEIVED
AUG 15 2002

Lawrence E. Schmidt
Baltimore County Zoning Commissioner
Baltimore County Courts Building
Suite 405
401 Bosley Avenue
Towson, Maryland 21204

Re: **The Oregon Grille**

Dear Mr. Schmidt:

The undersigned is a close resident of the Oregon Grille and wish to voice my objections to any changes in the use of the property.

I enclose herewith an article from a local newspaper which recites that the residents of this area entered into an agreement with the County which specifically prohibits the current proposed changes.

To now amend the permitted use of the property in contravention of the previous agreement is, in my opinion, outrageous.

As an aside, I strongly disagree with the petitioner's claim of changes in the area necessitating his ability to make more money. The only change I have noted over the years is an immense increase in traffic during rush hours (try going from the Hunt Valley Inn to Greenspring Avenue between 5:00 and 6:00 p.m.).

Thank you for your consideration of my opinion.

Very truly yours,

H. Robert Simon

H. Robert Simon

HRS/je
Enclosure
cc: C. A. Dutch Ruppersberger

News

Battle Brews Over Oregon Grille Changes

by Nancy Jones

For more than 150 years, the old Oregon Store building has changed to keep up with the times, going from iron ore to hors d'oeuvres.

The historic structure at the intersection of Shawan and Cuba roads has been a mining company general store, a gift shop and now an up-scale restaurant.

The area is still changing, says Oregon Grille restaurant owner Ted Bauer, which is why he wants to provide outdoor catering and banquet services for weddings and other events at the prestigious dining facility.

It's simply a matter of keeping up with the area's changing needs and these changing times, he says.

But some community leaders are battling any proposed changes to the landmark's use. And they accuse Bauer of trying to turn back the hands of time and changing an agreement worked out more than seven years ago.

In 1994, neighborhood groups signed a pact with Bauer agreeing not to oppose his conversion of the general store into a restaurant, in exchange for certain land use restrictions he accepted, including no outdoor weddings or other events with tents, music or bars.

So they resent having to fight Bauer's recent request before Baltimore County zoning officials to change the original order which permitted the restaurant use.

"There was an agreement that this would be the amount of traffic and the use of the place," said Dennis Sutton, a Falls Road Community Association board member, "and now they want to go back on that agreement and expand. It's unfair to the community to have to go through this hassle."

Limited scope

On August 13 and 14, Bauer and his legal representatives will go before the Baltimore County zoning commissioner seeking to amend the original ruling which allowed the restaurant use on the rurally-zoned property. In that order, the Oregon Grille also was prohibited from catering, hosting weddings or similar events.

In the original agreement, any outdoor services offered to patrons of the Oregon Grille was restricted to an outside dining and cocktail area. The Oregon Grille was prohibited from catering, hosting weddings or similar events.

"Specifically, the 1995 Board of Appeals order which OK'd the restaurant states, "there will be no outdoor bars, live music, tents, or similar overhead coverings on or serving the outdoor dining area. Music shall not be audible from any neighboring residences that exist as of the Board's order."

But, according to county records, Bauer now is asking for a limited number — only 15 a year — of outdoor events plus permission to have tents, music and a canopy in dining portions of the existing patios. He also is asking to expand parking and use an existing outbuilding barn for storage and other permitted uses.

> **"It's unfair to the community to have to go through this hassle."**
>
> *— Dennis Sutton*

"What's being proposed now is pretty limited in scope," said attorney Rob Hoffman, who represents Bauer. "We're taking part of the terrace area and, on occasion, using it for a wedding or cocktail party.

"There are proposed limits on music, limits on time and the tents must come down the next day."

'Going too far'

Those community groups which participated in the original agreement say a good compromise was worked out in 1995 and to go back and change that is unreasonable. So the outdoor events should stay banned.

"It's plainly not permitted in the zoning regulations for that to happen and it's in violation of the original order," said Jack Dillon, head of the Valleys Planning Council. "The



agreement allowed just a standard restaurant internal to the building. Now they want to come back and amend that to allow for weddings and special events. It's just going too far."

Likewise, the leadership for the Falls Road Community Association (FRCA) is against any changes to the agreement.

"It's what the community at the time thought was fair, said FRCA board member Sutton. "Not everyone did, some people didn't want (a restaurant) there at all.

"So this was an issue that extended them the ability to have something they may not have gotten at all These issues were on the table back at that time."

'Things have changed'

But Bauer says in the nearly four years since the restaurant has been open, he has proven himself a good neighbor and that the limited use of outdoor events are only a needed service for the restaurant.

Bauer says he has received support for the proposed changes from nearby community members, even those who would be most impacted by the outdoor events such as Irvin Tillman, of Rolling Mill Farm, the nearest property to the restaurant.

Bauer's attorney Hoffman said many changes have occurred in the area since the agreement between the community and restaurant was made. The Hayfields Golf Club is now open and Oregon Ridge Park has been the site for some large events.

"I think some things have changed there that would warrant what we think is a very reasonable, limited ability to provide that service to the customers," said Hoffman. "We think what we are offering is reasonable."

Proposed limits

Some of the limits being proposed by Oregon Grille officials for any future outdoor events include:

- Evening events limited to 15 per year;
- Events would be held on the south side of the property with tents permitted but would be removed within 24 hours following all events;
- Music would be permitted but at a level of minimal intrusiveness and would cease by 11 p.m. on no more than five such events per year;
- The restaurant would engage a sound engineer or specialist to provide guidelines to assure minimal intrusiveness;
- Events allowed during the daytime and early evening (ending no later than 9 p.m.);
- A canopy to cover the dining portions of the patios would not be considered a tent.

Kurtz Store

As part of the National Register of Historic Places, the Oregon Grille

continued on page 13

Oregon Grille

continued from page 7

building is referred to as the Oregon Furnace House. Locally, the structure is often called the "Kurtz Store" for the last private owners and storekeepers on the property.

When the structure was identified on the survey for the Western Run and Belfast Valleys Historic District in 1976, architect James T. Wollon, Jr., described a "complex" building of stone, brick and frame constructed between 1850 and 1875. The center section is two stories of regional stone with brick chimneys.

Since that write up, Oregon Ridge archaeologist George Brauer has uncovered information that Abraham Price, son of the property's original owner, had a house up and running by 1809 and others were living in the structure by 1830.

Public-private partnership

The structure sat vacant for years, even after Baltimore County took it over in the 1970s. The county then decided to lease the structure to private entities for adaptive reuse. They received a half-dozen proposals in 1985 and entered into the first public-private partnership for historic preservation with well-known developer Martin P. Azola, Jr.

In January 1986, after making renovations estimated at $800,000, Azola opened "Shawan Shoppes" with a framing shop, a specialty gift shop and a beauty salon as tenants. But the premise was vacant again by 1993.

Many in the area suggested that the county use the building for museum space or for additional facilities for the Oregon Ridge Nature Center. However, the county estimated that it would cost taxpayers approximately $35,000 per year simply to maintain the building and the grounds surrounding it.

So county recreation officials accepted an offer from Bauer to convert the site into the restaurant for a $5,000 annual rental fee.

DANIEL BAUGH BREWSTER
14301 GREEN ROAD
GLYNDON, MARYLAND 21071

6/10/02

Laurence Schmidt
Zoning Commissioner
County Courts Bldg
401 Bosley Ave
Towson Md 21204

Re: Oregon Grille

Dear Mr Schmidt

We are friends and neighbors of Sally & Ted Bauer. We often dine at the Oregon Grille. We have lived in this community for several decades.

We understand that you will rule on Oregon Grille's request for zoning relief. This request seems reasonable and, in our opinion, will certainly not be detrimental to this community.

Occasional events will not only not be harmful but will give us an attractive setting for family and social affairs.

The limitations that the Bauers propose will protect our community and we, therefore, suggest that they be incorporated in your decision.

Thanking you for such consideration that you give this letter.

Sincerely,

Daniel Brewster

Judy Lynn Brewster

Letters of Support

#5

Partners
REALTY TRUST, INC.

Corporate Office
105 W. Chesapeake Avenue, Suite 307
Towson, MD 21204-4712
410-821-0500 Fax 410-821-0924

6/20

June 6, 2002

JUN - 7 2002

Mr. Lawrence E. Schmidt,
Zoning Commissioner for Baltimore City
County Courts Building
401 Bosley Avenue, 4th Floor
Towson, MD 21204

RE: Petition for Special Exception, Special Hearing and Variance
Zoning Case No. 02-461-SPHXA
Oregon Grille – 1201 Shawan Road

Dear Mr. Schmidt:

Recently my company purchased land in The Highlands on York Road in Loveton. Our intention is to develop a Class "A" office park for corporations seeking to stay or relocate Corporate Headquarters in Baltimore County.

There are two Class "A" restaurants in the northern sector of Baltimore County and clearly, The Oregon Grille is one of them.

It is my understanding that the Oregon Grille has requested zoning relief, which if granted, would allow the restaurant to host outdoor gatherings, such as weddings, corporate parties and other similar events, on the terraces located on the south side of the restaurant. I have talked to Mr. Ted Bauer, the owner of the restaurant, and he has informed me that he proposes to restrict the number of evening events to 15 per calendar year, that any tent erected would be removed within 24 hours following any event, and that he would take steps to ensure that music from such gatherings would not be intrusive, including having the music stopped by 10:00 p.m. with the exception of five events during which the music would be permitted to continue as late as 11:00 p.m.

I also understand that, as part of this case, the Oregon Grille has requested that the restaurant area be expanded to provide for additional parking and allow an existing barn to be used for storage for the restaurant.

I support Mr. Bauer's efforts to expand, in this very limited way, the use of the restaurant, and I am writing to ask you to grant the requested relief. I think that the Oregon Grille should be permitted to host such outdoor gatherings, as do others in that immediate area. The restrictions proposed by Mr. Bauer are certainly reasonable, and with those restrictions in place, I believe there will not be any adverse impact on the neighboring property owners or the community.

As we entertain prospective clients, we frequently use the Oregon Grille. As a result of numerous conversations, I can state that large meeting or banquet facilities seem to be in short supply in the Hunt Valley/Loveton park areas.

Our prospective clients and Corporations currently located in the Hunt Valley/Loveton area may be forced to use private Club facilities unless Oregon Grille's request is approved.

I encourage you to approve Mr. Bauer's request. We should all want our neighbors to be successful. It's good for business.

Sincerely,

Francis X. Knott
Chairman

FREISHTAT & SANDLER
ATTORNEYS AT LAW
201 EAST BALTIMORE STREET
SUITE 1500
BALTIMORE, MARYLAND 21202

TEL: (410) 727-7740
FAX: (410) 727-7356

DAVID FREISHTAT
PAUL MARK SANDLER
RAYMOND F. ALTMAN
RAYMOND DANIEL BURKE
WILLIAM MICHAEL MULLEN
STACIE F. DUBNOW
ROBERT B. LEVIN

JAMES R. HOFFMANN, JR.
ERIC R. HARLAN
OF COUNSEL
LYNN WEINBERG

6/20

JUN 11 2002

June 6, 2002

Lawrence E. Schmidt, Zoning Commissioner
for Baltimore County
County Courts Building
401 Bosley Avenue, 4th Floor
Towson, MD 21204

Re: Petition for Special Exception,
Special Hearing and Variance
Zoning Case No. 02-461-SPHXA
Oregon Grille – 1201 Shawan Road

Dear Mr. Schmidt:

I am a patron of the Oregon Grille, and I often frequent the restaurant with either family, friends or colleagues.

It is my understand that the Oregon Grille has requested zoning relief, which, if granted, would allow the restaurant to host outdoor gatherings, such as weddings and other similar events, on the terraces located on the south side of the restaurant. I have talked to Mr. Ted Bauer, the owner of the restaurant, and he has informed me that he proposes to restrict the number of evening events to 15 per calendar year, that any tent erected would be removed within 24 hours following any event, and that he would take steps to ensure that music from such gatherings would not be intrusive, including having the music stopped by 10:00 p.m. with the exception of 5 events during which the music would be permitted to continue as late as 11:00 p.m.

I also understand that, as part of this case, the Oregon Grille has requested that the restaurant area be expanded to provide for additional parking and to allow an existing barn to be used for storage for the restaurant.

I support Mr. Bauer's efforts to expand, in this very limited way, the use of the restaurant, and I am writing to ask you to grant the requested relief. I think that the Oregon Grille should be permitted to host such outdoor gatherings, as to others in that immediate area. The restrictions proposed by Mr. Bauer are

certainly reasonable, and, with those restrictions in place, I believe there will not be any adverse impact on the neighboring property owners or the community.

It is my strong opinion that the neighboring areas surrounding the Oregon Grille are in need of a facility to hold special events described above, and that these changes would be much appreciated and utilized by the entire community.

Thanking you for your consideration, I remain,

Sincerely yours,

Paul Mark Sandler

PMS:paa

SANDLER\CORRESP\schmidt060602-oregon grill

Thomas W. Sutton
2070 Geist Road
Glyndon, Maryland
21071

June 8, 2002

Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
County Courts Building
401 Bosley Avenue, 4th Floor
Towson, MD 21204

Re: Petition for Special Exception, Special Hearing and Variance
Zoning Case No. 02-461-SPHXA
Oregon Grille -- 1201 Shawan Road

Dear Mr. Schmidt:

My wife and I are the owners of a wonderful home on 20+ acres that is located near the Oregon Grille. We moved here for the quality of life, the beautiful surroundings, horses, and the ease of commuting to work and schools. It is very important that you know that we care tremendously about protecting our community and surroundings from any detrimental uses.

That being said, I believe that Mr. Ted Bauer and the Oregon Grille deserve not only to prevail in the upcoming hearing, but should also be recognized for their strategic planning and delivery of an establishment that has greatly added to the community's value and quality of life. We not only use and enjoy the Grille on a social basis with friends and neighbors, but speaking as a Managing Director of D.B. Alex Brown, the Grille has become important to the area for a large percentage of the business entertainment. It is unquestionably the finest restaurant in a stunning and unique setting, and cannot be matched by any eating establishment in the Baltimore Metropolitan area. The fact that the Grille is uniquely and strategically set in truly a non-residential area with plenty of room for parking makes their requests not only reasonable, but an obvious benefit to the community.

It is my understanding that the zoning relief requested by the Oregon Grille would, if granted, allow the restaurant to host outdoor gatherings, such as weddings and other similar events, on the terraces located on the south side of the restaurant. Mr. Bauer has informed me that he proposes to restrict the number of evening events to 15 per calendar year, that any tent erected would be removed within 24 hours following any event, and that he would take steps to insure that music from such gatherings would not be intrusive, including having the music stopped by 10:00 p.m., with the exception of 5 events during the year which the music would be permitted to continue as late as 11:00 p.m. I also understand that as part of this case, the Oregon Grille has requested that the restaurant area be expanded to provide for additional parking and to allow an existing barn to be used for storage for the restaurant.

Thomas W. Sutton
2070 Geist Road
Glyndon, Maryland
21071

I support Mr. Bauer's efforts to expand, in this very limited way, the use of the restaurant, and ask that you grant the requested relief. I think that the Oregon Grille should be permitted to host such outdoor gatherings. What a uniquely beautiful setting for a special event, especially in comparison with the Hunt Valley Marriott or any other hall or club. I, for one, would be thrilled to have the Oregon Grille as a choice for a special occasion, and I think that many others in the community feel the same way. The restrictions proposed by Mr. Bauer are certainly reasonable, and with those restrictions in place, I believe there will not be any adverse impact on the neighboring property owners or the community.

We have enjoyed seeing the popularity of the Oregon Grille grow, and believe we have an obligation to sing their praises because of their active and positive commitment to the community. I believe that Mr. Bauer has one of the longest track records of being a terrific corporate citizen, and we should bend over backwards for him in any reasonable request, as he has always gone the extra mile and spared no expense in order to please his neighbors.

Thank you for your consideration of this matter.

Sincerely,

Thomas W. Sutton

Michael J. McCarthy
2200 Geist Road
Glyndon, Maryland 21071

August 8, 2002

Lawrence E. Schmidt, Zoning
Commissioner for Baltimore County
County Courts Building
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

Re: Zoning Case No. 02-461
Oregon Grille - 1201 Shawan Road
Petitions for Special Exception, Special Hearing and Variance

Dear Mr. Schmidt:

I live at 2200 Geist Road in close proximity to the Oregon Grille and have had the pleasure of dining at the Grille on a number of occasions.

As I understand it, the Oregon Grille has requested zoning relief, which would allow the restaurant to host outdoor events on the restaurant terraces. Because I know Mr. Ted Bauer personally, I have had the opportunity to discuss with him the manner in which these outdoor gatherings would be conducted. Mr. Bauer informed me that he intends to limit the number of evening events to 15 per calender year, remove any tent within 24 hours following the conclusion of that event, and take steps to ensure that any music played during such events would not be excessive and stop by 10:00 p.m., with the exception of 5 events during which the music would be permitted to continue until 11:00 p.m.

I also understand that the Oregon Grille has requested that the restaurant area be expanded to provide for additional parking and to allow an existing barn to be used for additional restaurant storage.

I have no objection to the Oregon Grille's limited expansion and its hosting of these outdoor gatherings in the manner Mr. Bauer has described to me. I believe that the

restrictions proposed are reasonable and that there will not be an adverse impact on any neighboring properties or the community as a whole.

Thank you in advance for your consideration of my position.

Sincerely,

Michael J. McCarthy

THE FOUR EAST MADISON ORTHOPAEDIC ASSOCIATES, P.A.
PHYSICIAN'S PAVILION*10085 RED RUN BOULEVARD, SUITE 206
OWINGS MILLS, MD 21117
410-581-6799 * FAX 410-581-7872

RICHARD W. LITTLE, M.D.
W. HUGH BAUGHER, M.D.
ALBERT H. DUDLEY, III, M.D.
ROBERT M. PEROUTKA, M.D.
TIMOTHY P. CODD, M.D.
MICHAEL T. SCHEERER, M.D.
ROBERT W. MUELLER, M.D.

WILLIAM S. BAER, M.D. (1873-1931)
FREDERICK H. BAETJER, M.D. (1874-1933)
GEORGE E. BENNETT, M.D. (1886-1962)
ROBERT W. JOHNSON, JR., M.D. (1891-1969)
GEORGE O. EATON, M.D. (1901-1975)

JAMES B. BROOKS, M.D. (RET.)
J.T.H. JOHNSON, M.D. (RET.)
EDMOND J. McDONNELL, M.D. (RET.)
K. L. C. Von KESSLER, M.D. (RET.)
CHARLES E. SILBERSTEIN, M.D. (Emeritus)

7/93

JUN 17 2002

June 07, 2002

Lawrence E. Schmidt
Zoning Commissioner Baltimore County
County Courts Building
401 Bosley Avenue, Fourth Floor
Towson, MD 21204

Regarding: Petition for Special Exception, Special Hearing and Variance
Zoning Case Number: 02-461-SPHZA
Oregon Grille -1201 Shawan Road

Dear Mr. Schmidt:

My name is Albert Dudley and I own property which is close to the Oregon Grill. I am very familiar with the Oregon Grill, the Planned Preservation Foundation which established Shawan Downs, and the Valley Planning Committee. I feel strongly concerning land preservation and have donated money and time to Shawan Downs.

Ted Bower and the Oregon Grill have also been very supportive of this endeavor and I feel they are totally committed to keeping the area in the proper perspective.

It is my understanding that the Oregon Grille has requested zoning relief, which, if granted, would allow the restaurant to host outdoor gatherings, such as weddings and other similar events, on the terraces located on the south side of the restaurant. I have talked to Mr. Ted Bauer, the owner of the restaurant, and he has informed me that he proposes to restrict the number of evening events to 15 per calendar year, that any tent erected would be removed within 24 hours following any event, and that he would take steps to ensure that music from such gatherings would not be intrusive. This includes having the music stopped by 10:00 p.m., with the exception of 5 events, during which the music would be permitted to continue as late as 11:00 p.m.

I also understand that, as part of this case, the Oregon Grille has requested that the restaurant area be expanded to provide for additional parking and to allow an existing barn to be used for storage for the restaurant.

I support Mr. Bauer's efforts to expand, in this very limited way, the use of the restaurant, and I am writing to ask you to grant the requested relief. I think that the Oregon Grille should be permitted to host such outdoor gatherings, as do others in that immediate area. The restrictions proposed by Mr. Bauer are certainly reasonable, and, with those restrictions in place, I believe there will not be any adverse impact on the neighboring property owners or the community.

Thank you,

Albert H. Dudley, III, M.D.
Four East Madison Orthopaedic Associates, P.A.

8/13

Peter and Jacqueline Wight

Tall Oak ♦ Cuba Road ♦ Cockeysville, MD 21202

August 12, 2002

AUG 13 2002

Lawrence E. Schmidt, Zoning
Commissioner for Baltimore County
County Courts Building
401 Bosley Avenue, 4th Floor
Towson, MD 21204

Re: Petition for Special Exception, Special Hearing and Variance
Zoning Case No. 02-461-SPHXA
Oregon Grille – 1201 Shawan Road

Dear Mr. Schmidt:

We have lived at 13808 Cuba Road (three-quarters of a mile north of the Oregon Grille on Cuba Road) for over thirty years and have watched the growth of the area—from the skiing at Oregon Ridge to its use as a park/concert programs/outings; from Greencroft to Nicholson's Manor; from "Hayfields" to our neighboring Catholic "cathedral."

While all have brought greater traffic and many more "bodies"—all have been done with some "taste" and very good maintenance and up-keep.

We feel Mr. Bauer has followed this growth pattern and has made Oregon Grille a first-class operation. We *do not* feel his request for fifteen outdoor evening events per year nor music until 11pm is out of line versus the hundreds of cars/outdoor music/fireworks at Oregon Ridge or the traffic along Cuba Road during Sunday masses.

It is hard to stop growth but if it is done with some "class" and a high degree of maintenance, it should be given some credibility.

We feel that Mr. Bauer merits his requested variances and we hope your commission will so judge.

We also trust that your commission will continue to monitor and be a strong force in allowing the "right" type of growth in our area.

Sincerely,

Peter and Jacqueline Wight

cc: Ted Bauer, Oregon Grille

Peter and Jacqueline Wight

Tall Oak ♦ Cuba Road ♦ Cockeysville, MD 21202

August 12, 2002

Lawrence E. Schmidt, Zoning
Commissioner for Baltimore County
County Courts Building
401 Bosley Avenue, 4th Floor
Towson, MD 21204

Re: Petition for Special Exception, Special Hearing and Variance
Zoning Case No. 02-461-SPHXA
Oregon Grille – 1201 Shawan Road

Dear Mr. Schmidt:

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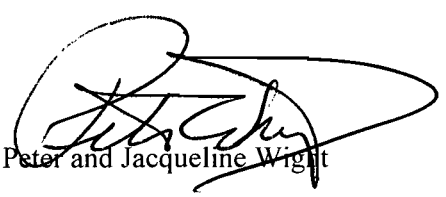
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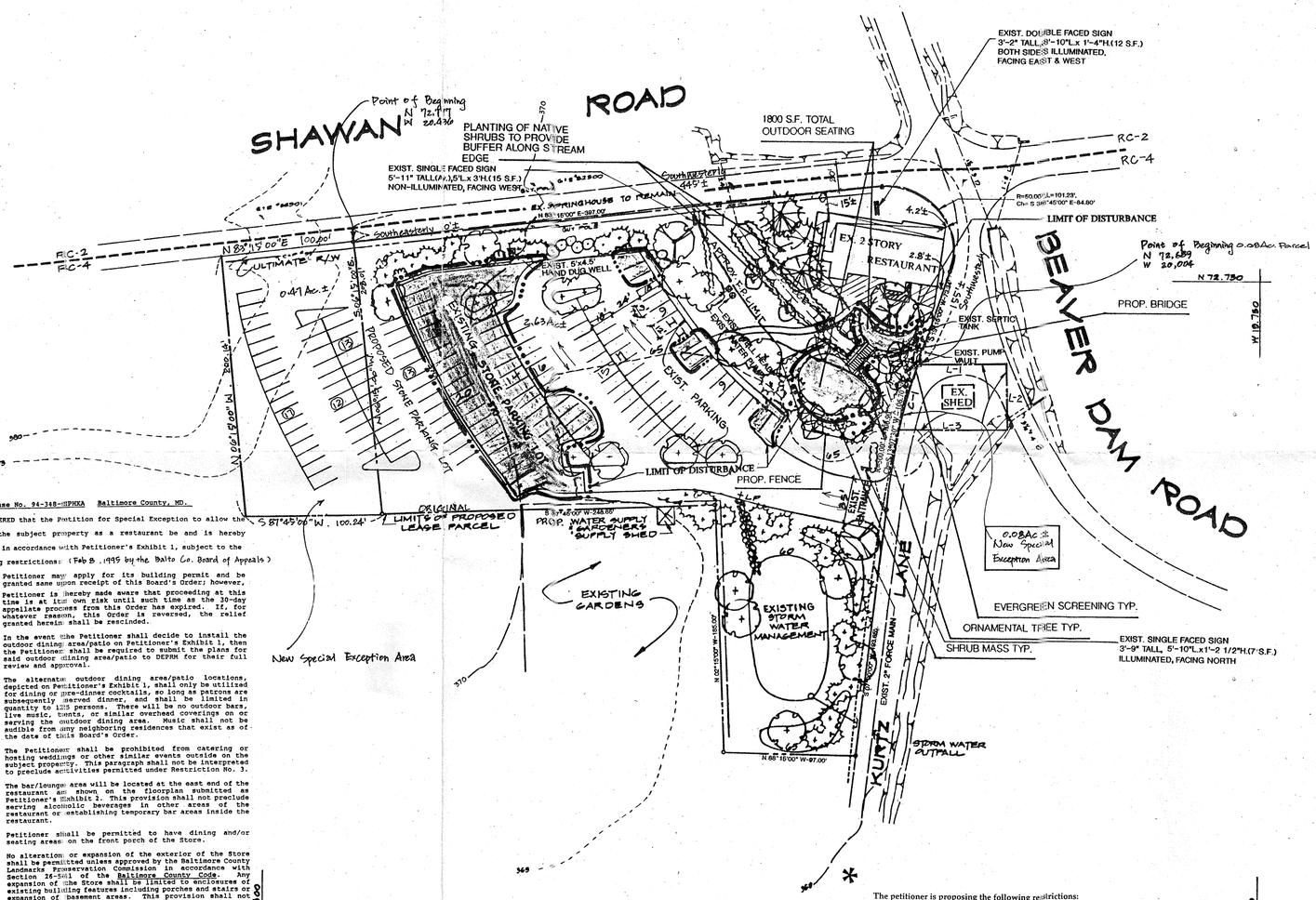


Peter and Jacqueline Wight

cc: Ted Bauer, Oregon Grille

Exhibits

#6



Case No. 94-348-SPHXA Baltimore County, MD.

ORDERED that the Petition for Special Exception to allow the use of the subject property as a restaurant be and is hereby GRANTED, in accordance with Petitioner's Exhibit 1, subject to the following restrictions: (Feb 8, 1995 by the Balto Co. Board of Appeals)

1. Petitioner may apply for its building permit and be granted same upon receipt of this Board's Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
2. In the event the Petitioner shall decide to install the outdoor dining area/patio on Petitioner's Exhibit 1, then the Petitioner shall be required to submit the plans for said outdoor dining area/patio to DEPRM for their full review and approval.
3. The alternate outdoor dining area/patio locations, depicted on Petitioner's Exhibit 1, shall only be utilized for dining or pre-dinner cocktails, so long as patrons are subsequently served dinner, and shall be limited in quantity to 1225 persons. There will be no outdoor bars, live music, tents, or similar overhead coverings on or serving the outdoor dining area. Music shall not be audible from any neighboring residences that exist as of the date of this Board's Order.
4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property. This paragraph shall not be interpreted to preclude activities permitted under Restriction No. 3.
5. The bar/lounge area will be located at the east end of the restaurant as shown on the floorplan submitted as Petitioner's Exhibit 2. This provision shall not preclude serving alcoholic beverages in other areas of the restaurant or establishing temporary bar areas inside the restaurant.
6. Petitioner shall be permitted to have dining and/or seating areas on the front porch of the Store.
7. No alteration or expansion of the exterior of the Store shall be permitted unless approved by the Baltimore County Landmarks Preservation Commission in accordance with Section 26-561 of the Baltimore County Code. Any expansion of the Store shall be limited to enclosures of existing building features including porches and stairs or expansion of basement areas. This provision shall not preclude the establishment of an outdoor dining area, additional parking or relocation of the mini-barn as shown on Petitioner's Exhibit 1. There will be no additional buildings constructed on the property.
8. The existing signs for the Store may be replaced with signs of the same or smaller size.
9. The parking area shall consist of a non-paved surface such as stone or a similar permeable surface unless otherwise required by law. All parking will be contained within the leased area.
10. Any new exterior lighting shall be of the same height, general design and intensity as that which exists on site as of the date of this Board's Order.
11. The special exception shall remain valid only so long as Petitioner, and its successors and assigns, utilize the property as a standard restaurant, as defined in Section 101 of the Baltimore County Zoning Regulations, and only in accordance with the restrictions hereinabove set forth.
12. When applying for any permits, the Site Plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Board's Order.

IT IS FURTHER ORDERED that the Petition for Variance to allow 94 parking spaces in lieu of the required 145 be and is hereby GRANTED.

Note: Original hearing was granted on June 28, 1994 by the Deputy Zoning Commissioner.

Construction Notes

1. Existing utilities shown on this plan are from field investigation of visible surface features and previous construction drawings. Contractor to verify location of all existing utilities before beginning work.
2. Contractor shall notify Miss Utility (1-800-257-7777) at least five days prior to construction.
3. All construction shall follow the latest Baltimore County Department of Public Works Standard Specifications and Details of Construction and Baltimore County Plumbing Code or as detailed on the drawings.
4. Existing utilities not designated to be removed shall remain operational at all times.
5. Contractor will obtain all necessary permits.
6. Electric, telephone, gas, and water design by others.
7. Contractor to extend all house connections to within 5 feet of the building.

Line and Curve Table

L1 S 89°45'00" E 65.00'
L2 S 00°15'00" W 50.00'
L3 N 89°45'00" W 79.35'

C1 R = 500.00' L = 52.04'
Cnd = N16°16'06"E 52.02'
Tan. = 26.04' Delta 05°57'49"

The petitioner is proposing the following restrictions:

1. The number of evening events would be limited to 15 per calendar year.
2. The events would be held on the terraces located on the south side of the restaurant. Tents would be permitted but would have to be removed within 24 hours following all events for which they were erected.
3. Music would be permitted but at a level of minimum intrusiveness to the nearby neighbors and other patrons of the restaurant; all music would have to cease by 10:00 p.m. at such events and by 11:00 p.m. on no more than 5 such events.
4. A sound engineer or specialist would be engaged by the Oregon Grille to provide recommendations and guidelines to assure minimal intrusiveness of the music.
5. Events during the daytime and early evening (i.e., ending no later than 9:00 p.m.) would be subject to the foregoing music standards and tent removal requirements but not included within the limitations as to the number of events.
6. A canopy or similar cover to provide shade on a seasonal basis to the dining portion of the patios would not be considered a tent and would be permitted.

The above-provided restrictions supercede Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995 and any and all other restrictions contrary to these restrictions.

General Notes

1. OWNER: Baltimore County, Md.
Department of Recreation and Parks
301 Washington Avenue
Towson, MD 21204

2. Election district 8; Councilmanic district 3; Census tract 4083.

3. Watershed 11; Subwershed 36.

4. Current Zoning: RC-4 1"=200' zoning map, NW 19D

Estimated acreage of leasehold parcel:
3.48 Ac±

Existing Use: Tea Room / Restaurant

Basement:	1,740 s.f.	(storage only)
First Floor:	3,656 s.f.	
Second Floor:	1,716 s.f.	
Mezzanine:	530 s.f.	
Outdoor Seating:	1,800 s.f.	
Total:	9,442 s.f.	

Parking:

Required: 7,702 s.f. @ 16 / 1000 = 151 spaces
(9,442-1,740) - 51 spaces from variance
124 spaces

Provided: 155 spaces

* The basement is not included for parking as it is used for storage only.

5. There are no public utilities serving the site. The development will be served by a well, proposed to be located near Shawan Road, and a septic area to be in conformance with Baltimore County Health Department standards.

6. Soils:

Series & Symbol	Soils Classification	Limitations With Basements	Without Basements	Streets & Parking
Hagerstown (HaA)	B	slight	slight	slight
(HaB2)	B	slight	slight	moderate slope;

7. There are no slopes in excess of 25%.

8. Ther existing building is listed as The Oregon Furnace Store (Kurtz House) on the Baltimore County Final Landmarks List.

9. The proposed lease hold parcel lies within the Oregon Ridge Park which is owned by Baltimore County; deed reference 5056/650. Property number 08-02-019031.

10. Floor area ratio calculations, N.A. in RC4 zone.

11. Amenity Open Space, N.A. in RC4 zone.

12. Height determination, 35' max. in RC zone. Buildings do or not will not exceed 35'.

13. Stormwater will be managed by a dry pond located south of the entrance drive, along Kurtz Lane, as shown on the plan.

14. There are no known wetlands (hydric areas), critical areas, endangered species habitats or hazardous materials on the site.

15. See Commercial Permit Nos.

97640	C of O - Retail to Hair Salon	B182869
97641 (C-1586-87)	and Interior Alterations Issued 8/6/87	(GRC-1797-93) Grading - Issued 11/19/93
80227 (GRC-1473-85)	Parking Lot	B267354 Change of Occup. Int. Alteration Retail to Restaurant Issued 4/19/96
77246 (C-837-85)	Restoration	
(C-762-86)	SWM	B287445 Addition to Restaurant Issued 10/24/96

16. A Special Hearing, Special Exception and Zoning Variance were granted on the subject property.

17. Site to be stabilized at the end of each working day.

18. The existing shed will be used for storage and other permitted uses.

19. The site is not located within a floodplain.

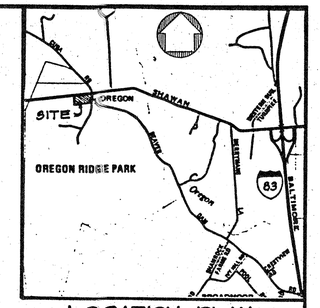
20. The area to be added to the original special exception is 0.55 acres.

21. * The petitioner is requesting:

A. A Special Exception pursuant to Section 1A03.3.B.5 of the Baltimore County Zoning Regulations to expand the area supporting the restaurant originally approved in Case No. 94-348-SPHXA to include area for additional parking to serve the property and to include the existing outbuilding/barn located opposite the entrance to the property to be used for storage and other permitted uses.

B. A Special Hearing to approve an amendment to the site plan previously approved in Case No. 94-348-SPHXA and to amend Restrictions 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995 in accordance with the modified site plan.

C. A Variance from Section 409.8.A.2 of the Baltimore County Zoning Regulations to permit a stone parking lot in lieu of a durable and dustless surface consistent with existing Restriction No. 9.



LOCATION PLAN
SCALE: 1"=2000'

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND VARIANCE

FOR
THE OREGON GRILLE

DATE	REVISIONS
3-29-02	Add Proposed Zoning Relief and Restrictions

DAFT · McCUNE · WALKER INC.
LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS
200 EAST PENNSYLVANIA AVE.
TOWSON, MD. 21204
TELEPHONE: 301-296-3333

THE OREGON GRILLE

1201 SHAWAN RD.

8TH ELECTION DISTRICT BALTIMORE COUNTY, MD.

STATE OF MARYLAND EDMUND F. HALE, JR. No. 3880 REGISTERED PROFESSIONAL ENGINEER

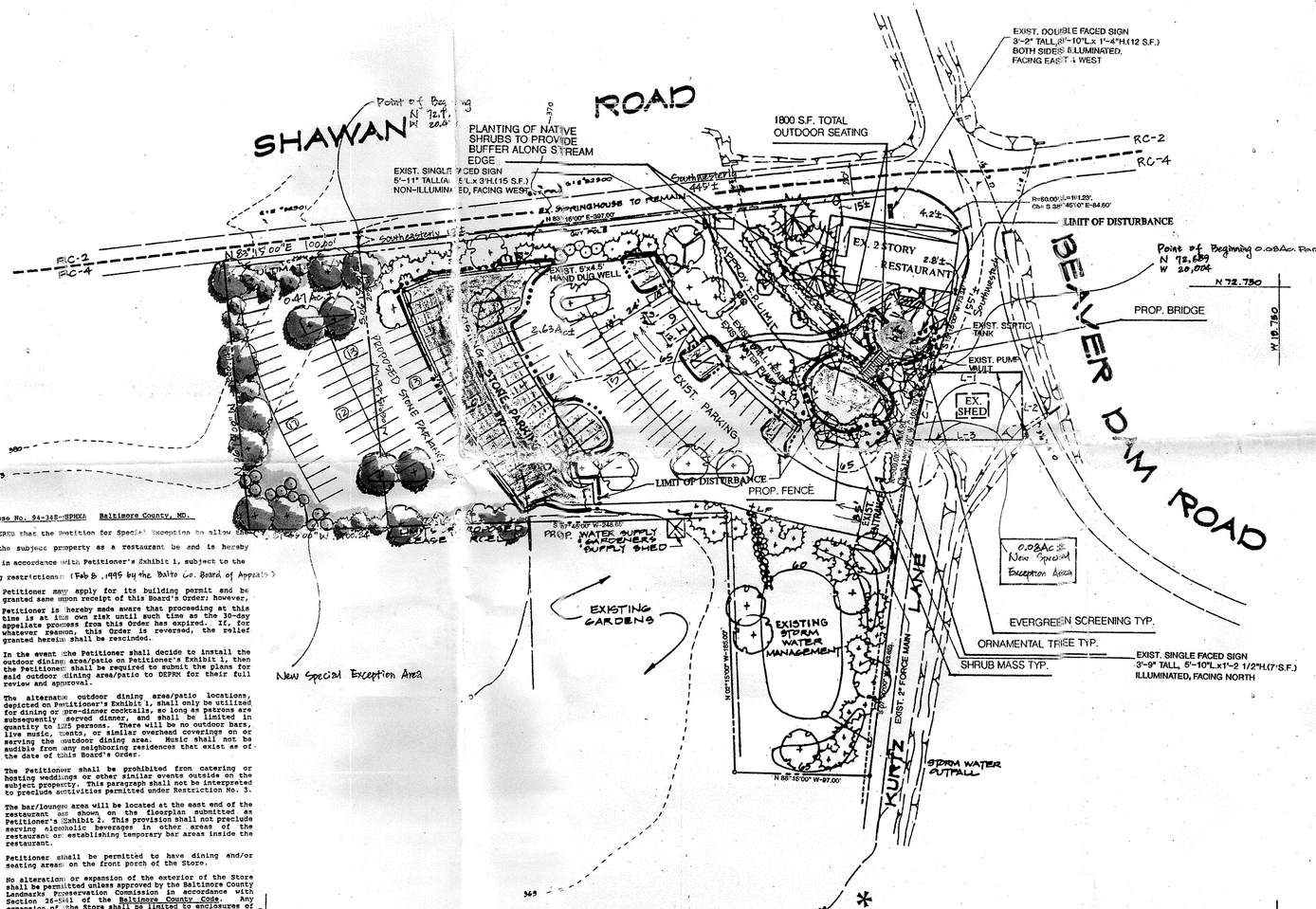
DATE	REVISIONS
11-18-96	Added 6 parking spaces, show building addition, revise parking tabulation
8/31/00	Added New Special Exception and Special Hearing Intenation and revised plan accordingly.

SCALE: 1"=50'

JOB ORDER NO. 85040.E3

ISSUE DATE SEP. 05, 2000

02-466-SPHXA



New Special Exception Area

Line and Curve Table

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L2 S 00°15'00" W 50.00'
L3 N 89°45'00" W 79.35'

C1 R = 500.00' L = 52.04'
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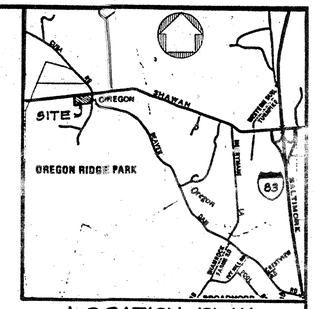
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LOCATION PLAN
SCALE: 1"=2000'

Petitioners EX #1

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND VARIANCE

FOR

THE OREGON GRILLE

Construction Notes

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Case No. 94-348-SPHXA Baltimore County, MD.

ORDERED that the Petition for Special Exception to allow an expansion of the subject property as a restaurant be and is hereby GRANTED, in accordance with Petitioner's Exhibit 1, subject to the following restrictions: (Feb 8, 1995 by the Balto Co. Board of Appeals)

1. Petitioner may apply for its building permit and be granted same upon receipt of this Board's Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
2. In the event the Petitioner shall decide to install the outdoor dining area/patio on Petitioner's Exhibit 1, then the Petitioner shall be required to submit the plans for said outdoor dining area/patio to DEPRM for their full review and approval.
3. The alternate outdoor dining area/patio locations, depicted on Petitioner's Exhibit 1, shall only be utilized for dining or pre-dinner cocktails, so long as patrons are subsequently served dinner, and shall be limited in quantity to 125 persons. There will be no outdoor bars, live music, tents, or similar overhead coverings on or serving the outdoor dining area. Music shall not be audible from any neighboring residences that exist as of the date of this Board's Order.
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5. The bar/lounge area will be located at the east end of the restaurant as shown on the floorplan submitted as Petitioner's Exhibit 2. This provision shall not preclude serving alcoholic beverages in other areas of the restaurant or establishing temporary bar areas inside the restaurant.
6. Petitioner shall be permitted to have dining and/or seating areas on the front porch of the Store.
7. No alterations or expansion of the exterior of the Store shall be permitted unless approved by the Baltimore County Landmarks Preservation Commision in accordance with Section 26-5A41 of the Baltimore County Code. Any expansion of the Store shall be limited to enclosures of existing building features including porches and stairs or expansion of basement areas. This provision shall not preclude the establishment of an outdoor dining area, additional parking or relocation of the mini-barn as shown on Petitioner's Exhibit 1. There will be no additional buildings constructed on the property.
8. The existing signs for the Store may be replaced with signs of the same or smaller size.
9. The parking areas shall consist of a non-paved surface such as stone or a similar permeable surface unless otherwise required by law. All parking will be contained within the leased area.
10. Any new exterior lighting shall be of the same height, general design and intensity as that which exists on site as of the date of this Board's Order.
11. The special exception shall remain valid only so long as Petitioner, and its successors and assigns, utilize the property as a standard restaurant, as defined in Section 101 of the Baltimore County Zoning Regulations, and only in accordance with the restrictions hereinabove set forth.
12. When applying for any permits, the Site Plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Board's Order.

IT IS FURTHER ORDERED that the Petition for Variance to allow 94 parking spaces in lieu of the required 145 be and is hereby GRANTED.

Note: Original hearing was granted on June 28, 1994 by the Deputy Zoning Commissioner.

The petitioner is proposing the following restrictions:

1. The number of evening events would be limited to 15 per calendar year.
2. The events would be held on the terraces located on the south side of the restaurant. Tents would be permitted but would have to be removed within 24 hours following all events for which they were erected.
3. Music would be permitted but at a level of minimum intrusiveness to the nearby neighbors and other patrons of the restaurant; all music would have to cease by 10:00 p.m. at such events and by 11:00 p.m. on no more than 5 such events.
4. A sound engineer or specialist would be engaged by the Oregon Grille to provide recommendations and guidelines to assure minimal intrusiveness of the music.
5. Events during the daytime and early evening (i.e., ending no later than 9:00 p.m.) would be subject to the foregoing music standards and tent removal requirements but not included within the limitations as to the number of events.
6. A canopy or similar cover to provide shade on a seasonal basis to the dining portion of the patios would not be considered a tent and would be permitted.

The above-provided restrictions supercede Restriction Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995 and any and all other restrictions contrary to these restrictions.

DAFT · McCUNE · WALKER INC.
LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS
200 EAST PENNSYLVANIA AVE.
TOWSON, MD. 21286
TELEPHONE: 301-296-3333

THE OREGON GRILLE

1201 SHAWAN RD.

8TH ELECTION DISTRICT BALTIMORE COUNTY, MD.

STATE OF MARYLAND EDMUND F. HALE No. 3896 REGISTERED PROFESSIONAL ENGINEER

DATE	REVISIONS
3-29-02	Add Proposed Zoning Relief and Restrictions
8/31/00	Added New Special Exception and Special Hearing Intenation and revised plan accordingly.

DATE	REVISIONS
11-18-96	Added 6 parking spaces, show building addition, revise parking tabulation

SCALE: 1"=50'

JOB ORDER NO. 89040.E3

ISSUE DATE SEP. 05, 2000

Petitioner's Exhibit

2A - 2T

02-461-SPHXA

Brega Drill



(No. 1846)

12846

Ex 2A


The
OREGON
GRILL





(AS, 15D)

1514



(No. 10A) 13819



No. 1 2 D 1 3 9 3 6





No. 10A

13845



(No. 1 Ed.)

13842



CANADA
2015
BA



(No. 14A)

13841



(6.21)

$$\frac{dy}{dx} = \frac{2}{5}$$







No. 18A

1381



RECEIVED
JUL 2 2018
CLERK, U.S. DISTRICT COURT
(No. 1:17-CV-)

18838





(No. 23A

13832



No. 2220

13823



(No. 18A)




OREGON

No. 12A)

13643



Lib. NAD

27

ISBN

SHAWAN DOWNS
A CELEBRATION OF THE LAND AND THE HORSE

June 5, 2002

Zoning Commissioner of Baltimore County
County Office Building
400 Washington Avenue
Towson, MD 21204

Dear Sir:

Regarding the application for a zoning variance by the Oregon Grille, please understand that this will not be opposed by the Land Preservation Trust, owner of 300 acres just west of the Oregon Grille. Ted Bauer is a good neighbor and a valued member of our community.

Sincerely,

Charles C. Fenwick, Jr.
Director

jk

Pet #03

P.O. BOX 433 LUTHERVILLE-TIMONIUM MARYLAND 21094-0433
TELEPHONE 410.666.3676 FACSIMILE 410.666.9762 EMAIL info@shawandowns.org WEBSITE www.shawandowns.org

SHAWAN DOWNS
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400 Washington Avenue
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jk

Feb 03

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TELEPHONE 410.666.3676 FACSIMILE 410.666.9762 EMAIL info@shawandowns.org WEBSITE www.shawandowns.org

ZONING ALERT

THE VALLEYS PLANNING COUNCIL, Inc. July 2002

OREGON GRILLE REQUESTS ZONING CHANGE

The petition filed on behalf of the lessee of the Oregon Grille to amend the restrictions imposed on this use in 1994 has been rescheduled.

If allowed the following uses would be permitted:

The erection of a tent over the patio area to accommodate catered events, such as weddings, anniversaries, birthdays and special events

Allow live and recorded music to be played outside and into the evening hours

Permit an outside bar to accommodate all the above

Increase parking to accommodate all the above.

NOTE

PUBLIC HEARING NOTICE

DATE: TUESDAY & WEDNESDAY, August 13 & 14, 2002

TIME: 9:00 A.M.

PLACE: The County Courts Building
401 Bosley Avenue

ROOM: 407

The Valleys Planning Council, The Falls Road Association, the Greencroft Community and many nearby neighbors are opposed to this request.

If you are concerned about this issue please make every effort to attend this hearing. If you are unable to attend but wish to have your views made known send a letter addressed to the Baltimore County Zoning Commissioner c/o The VPC and we will enter it into the record.

Should you have any questions call the VPC office @ 410-337-6877

The Valleys Planning Council

PO Box 5402

Towson, MD 21286

07/23/02 11:47 FAX 410 771 9837 OREGON GRILLE 002

Pet No 4

Watershed Potection Zoning around many of the streams in our area, including Beaver Dam Run and Waterspout Run. This protective zoning limits the density of development, and helps ensure that these streams stay in a natural, undisturbed condition. Jarvis' petition was the first attempt to overturn this zoning since it went into place, and the petition's denial is a significant victory for the community and the environment we all enjoy.

JEWELL PROPERTY AND PADONIA ROAD AT FALLS ROAD TO BE DEVELOPED!!

Two of the last beautiful pieces of property on the East Side of Falls road are falling into the hands of developers. It is a sad state of our society when developers feel the need to destroy the beauty that nature has given us. We know from past experience that the developer will try to squeeze every possible lot/house out of the land, increase the traffic on Falls Road therefore creating the need to widen the wonderful wandering road to three or four lanes for passing zones, so that the speeders can go even faster, and cause possibly some effect on the ever dwindling water supply in our well systems. We as residents of Falls Road know that the water and traffic are big issues. The Jewell property just north of Ridge road will possibly be 9 houses and the Farm on the east side of Falls road at Padonia Road possibly five times that amount. Will Padonia Road be widened to a 4 lane road from Mays Chapel to Falls, we already have a turn lane at Falls and Padonia. (Were they preparing us for this onslaught of houses?) We need to be ever mindful of the rural nature of the Falls Road corridor and how important it is to keep it that way. Please attend any and all Community Input Meetings about these properties and let the County know how important this is to you.

OREGON GRILLE

PLEASE NOTE THAT A PUBLIC HEARING ABOUT THE SPECIAL EXCEPTION OF CHANGING THE FACE OF THE OREGON GRILLE'S OPERATION TO THE DETRIMENT OF THE NEIGHBORHOOD WILL BE HELD ON AUGUST 13 AND 14.

THE OWNERS NOW WANT:
1. TENTS OVER THE PATIO
2. ADDITIONAL PARKING
3. CATERED EVENTS
4. LOUD MUSIC AT NIGHT EACH AND EVERY WEEKEND
5. OUTSIDE BAR

ALL OF THESE WILL INCREASE THE DRINKING DRIVERS ON OUR NEIGHBORHOOD ROADS-
CALL THE VALLEY'S PLANNING COUNCIL AT 410-337-6877 TO CHECK WHERE, WHEN AND TO MAKE SURE THE DATE HAS NOT BEEN CHANGED. HOPEFULLY YOU WILL ALL GO AND VOICE YOUR OPINION. JUST SHOWING UP IN LARGE NUMBERS WILL LET THE COUNTY KNOW THAT WE DO NOT WANT THIS IN OUR NEIGHBORHOOD.

FRCA BOARD MEMBERS

Harold Burns - President
410-528-0044
John Galbreath- Vice President
410-666-7273
Dave Suarez-Murias-Treasurer
410-252-9237
Dennis Sutton-Secretary
410-584-2574

Barbara Bauman	410-584-2542
Kathryn Bauman	410-252-7542
Martha Lessner	410-628-6481
George Meredith	410-252-1947
John Meredith	410-667-4183
Paul Miller	410-823-9200
Bob Moore	410-628-4100
Ken Sadofsky	410-825-4860
Howard Schulman	410-560-0554
John Sewell	410-584-2804
Fred Smith	410-252-1654
Marvin Tenberg	410-561-0635

SAFETY COMMITTEE

Barbara Bauman

The Safety and Traffic Committee has received several letters from neighbors complaining about excessive speed and reckless driving along Falls Road between Shawan Road and Seminary Avenue. Some suggestions for the area have included "Caution" signs in the School areas, "Curve" and "Slippery" signs along Falls Road, and changing the timing of the traffic lights during different times of the day and night.

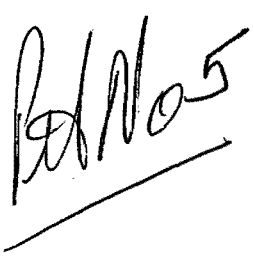
The SHA reported a study that was made on the area that was lacking detail, especially in the area of school traffic and has asked the consultants to take a closer look and to refine their recommendations. If you should experience a Traffic or Safety problem in your neighborhood, please call Barbara at 410-584-2543

COMMITTEES

Committee Members Needed

The following is a list of our working committees. All committees have chairpersons in place. If you would like to work on any of the committees, please contact Harold Burns.

1. Safety and Traffic
2. Wildlife Committee
3. Development Review
4. Legislative
5. Newsletter
6. Membership
7. Annual Dinner



Oregon Ridge

Park, Beach and Conference Center

Oregon Ridge

Park, Beach and Conference Center

13401 Beaver Dam Road ❧ Cockeysville, Maryland 21131
410-887-1818 ❧ Fax 410-527-0214 ❧ E-mail oridge@co.ba.md.us

E mail - oridge@co.ba.md.us
E mail - rpeprise@co.ba.md.us

Pam Salkowitz, Park Director
Sandy Trimble, Office Manager

Baltimore County
Department of Recreation and Parks
Oregon Ridge Park
13401 Beaver Dam Road
Cockeysville, Maryland 21030

(410) 887-1818 Fax: (410) 527-0214
E-mail: oridge@co.ba.md.us

Oregon Ridge
Park, Beach and
Conference Center

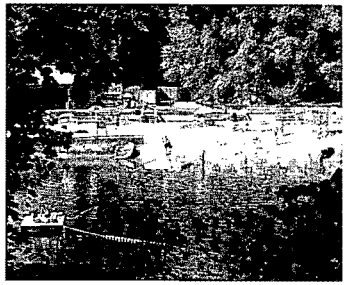
13401 Beaver Dam Road ❧ Cockeysville, Maryland 21131
410-887-1818 ❧ Fax 410-527-0214 ❧ E-mail oridge@co.ba.md.us

Oregon Ridge Beach



Oregon Ridge
Park, Beach and
Conference Center

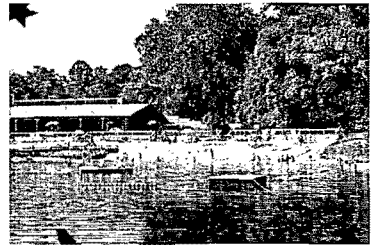
Why spend all day driving to Ocean City when white sands and cool waters are just minutes away?



Voted Baltimore's best swimming hole in 1995, the beach at Oregon Ridge is one of the County's best kept secrets. Originally excavated for iron ore in the 1800's, it has been filled with spring fed water and provides welcome relief from the summer heat.

The beach operates between Memorial Day and Labor Day and is a perfect location for a company picnic or family reunion. The quarry has designated shallow and deep swim areas and is staffed with independently certified lifeguards.

Additional features include a bathhouse, concession stand, picnic tables, grills, playground, sand volleyball court and horseshoe pits. A pavilion accommodating 50 and the Lake Overlook Room, seating 25, are available to rent for that special occasion.



The beach is open to the public for a nominal fee and season passes are offered for individuals or families. Special rates are available for groups of 25 or more with advance reservations.

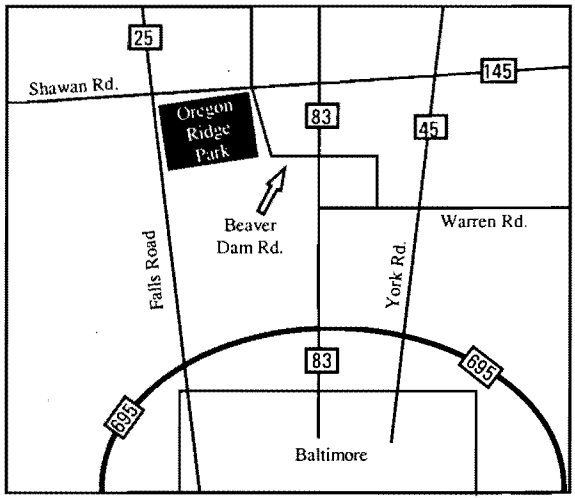
Outings can be arranged before, during and after the swim season by contacting the park office at 410-887-1818 / TDD 410-887-5319. During the summer, you may confirm rates, hours and dates of operation and directions by calling the beach directly at 410-887-1817 / TDD 410-887-5319.

Directions from Interstate 83

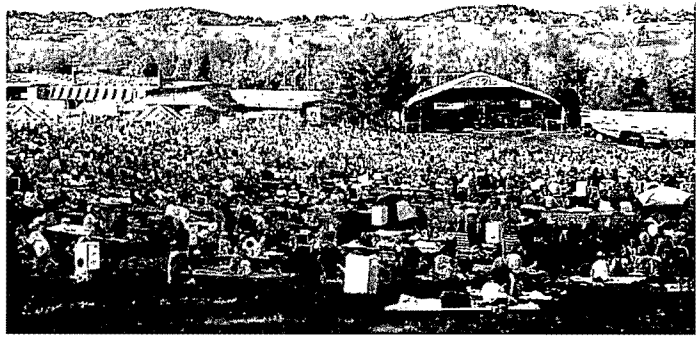
1. Use Exit 20B - Shawan Road West
2. Left at 1st light (approx. 1 mile) - Beaver Dam Road

For Beach and Nature Center
take immediate right (look for a RED BARN)

For Lodge, Concerts, Picnics, Festivals and Dinner Theater
follow Beaver Dam Road for 1/2 mile - entrance is on the right.

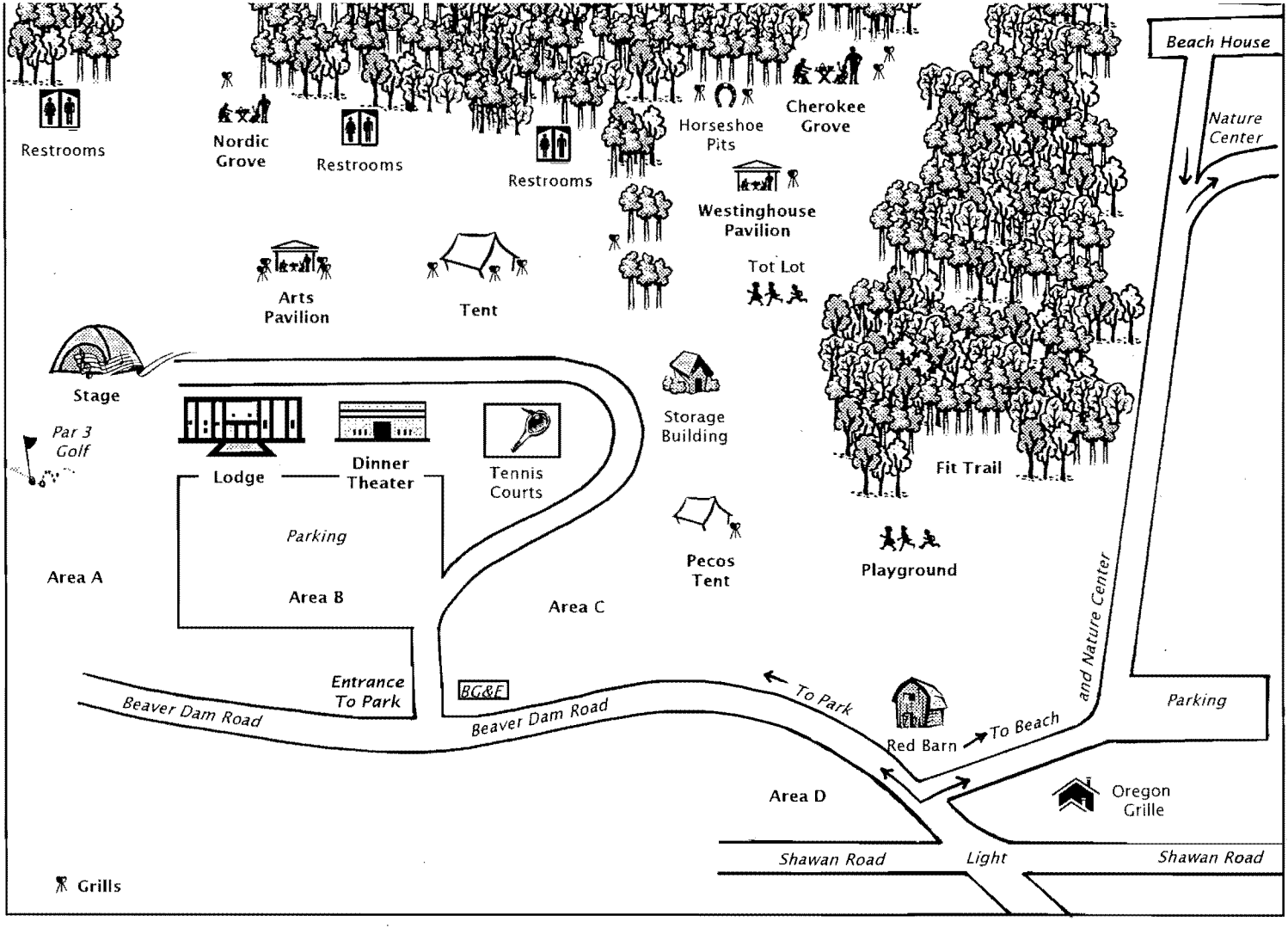


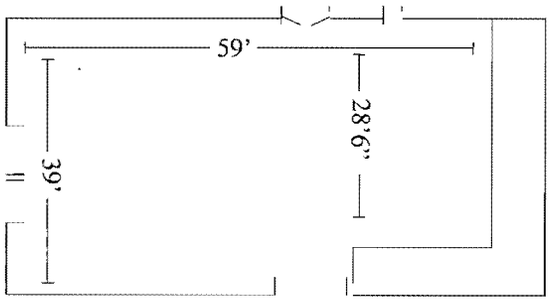
E-mail - oridge@co.ba.md.us



Oregon Ridge

Park, Beach and Conference Center


Restrooms
Nordic Grove
Restrooms
Restrooms
Horseshoe Pits
Cherokee Grove
Beach House
Nature Center
Westinghouse Pavilion
Tot Lot
Arts Pavilion
Tent
Stage
Par 3 Golf
Lodge
Dinner Theater
Tennis Courts
Storage Building
Fit Trail
Parking
Area A
Area B
Area C
Pecos Tent
Playground
Entrance To Park
BG&E
Beaver Dam Road
Beaver Dam Road
To Park
Red Barn
To Beach
and Nature Center
Parking
Area D
Oregon Grille
Shawan Road
Light
Shawan Road
Grills



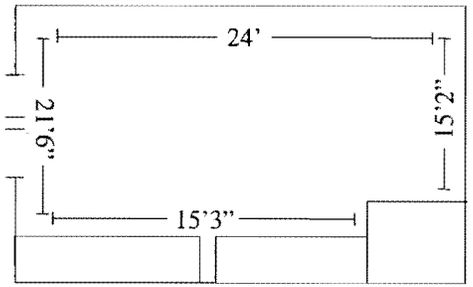
Seating:

80 guests
classroom style

100 guests
auditorium style

Smaller corporate meetings and gatherings fit comfortably into the Seneca Room. With a lovely view of the park's natural beauty, this wood paneled room will accommodate 80 classroom style and 100 auditorium style. This room can be divided using bi-fold doors and /or arranged by our staff into the setting most compatible with your needs.





Seating:

25 guests
auditorium style

20 guests
banquet tables

The Shawan Room, our smallest indoor facility, can seat 25 auditorium style or 20 at banquet tables. The Shawan room is popular for small group getaways, as a breakout room for bigger meetings or as an exhibit space.



Sequoia Room
Seneca Room
Shawan Room



Oregon Ridge

Park, Beach and Conference Center

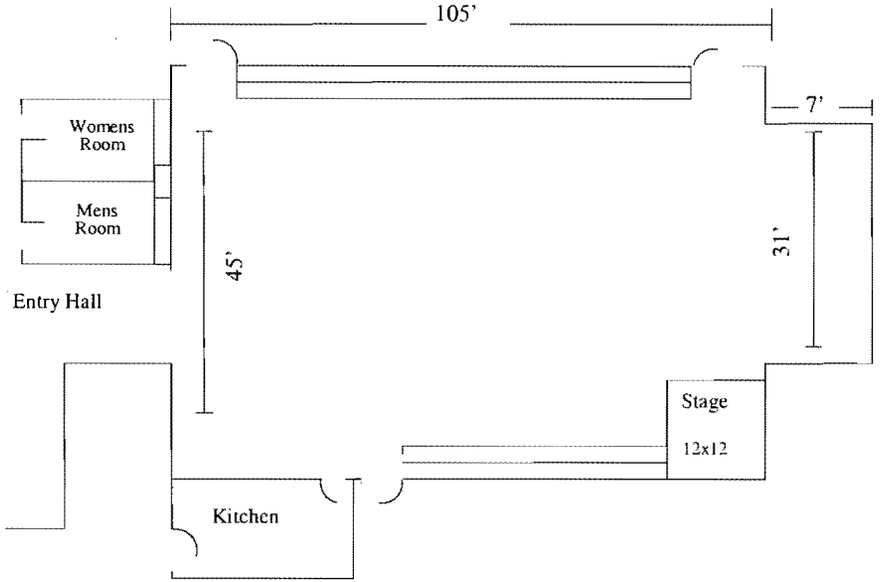
The focal point of Oregon Ridge Park is what we fondly refer to as "The Lodge". Built in 1964, it was originally a ski lodge used for warming up after a hard day on the slopes. The Lodge has three charming rooms which can be rented individually for parties and meetings or together for multifaceted events. All rooms are heated and have ceiling fans for year-round comfort. Frequent clients include: AT&T, Lucent Technologies, PAL, McCormick, and a host of non-profit organizations.

Amenities

The following items are available to assist in making your event a success:

Sequoia Room Sound System
(Hand-held and cordless microphones, CD & cassette players)
Podium w/built-in PA System
TV & VCR
Slide Projector
Overhead Projector
Easels
Coffee & Tea Service

Please contact park office for current fees and availability at 410-887-1818 / TDD 410-887-5319.

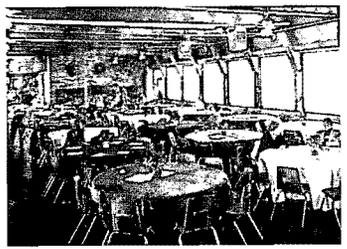


Seating:

260 guests seated affair

300 guests auditorium style

The Sequoia Room is our most impressive rental space. It boasts rustic charm with high ceilings, an enormous working stone fireplace and large picture windows. Capacity is 300 for auditorium style seating or 260 for a seated affair which leaves ample space for a buffet and dance floor. This room includes 72'' round tables, a stage (for D.J., band & speakers, etc...) and a large pull down screen. For use by approved caterers, a partial kitchen equipped with ice machine, refrigerator and sinks adjoins this room.



A quality sound system offering standard and cordless microphones, tape deck and CD player is available. The Sequoia Room can be dressed up for the most formal wedding or easily used for a company meeting. For an unique atmosphere, the Sequoia Room is highly recommended.

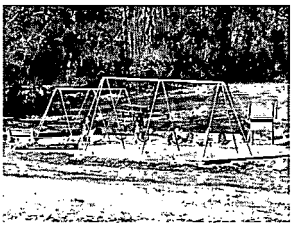
Thank you for inquiring about Oregon Ridge Park. Our facility has been owned and operated by Baltimore County Department of Recreation and Parks since1969 and encompasses 1,034 beautiful acres. Whether conducting a meeting, swimming at the beach or enjoying nature, Oregon Ridge has something for everyone.

Convenient to Baltimore, Washington, Southern Pennsylvania and Delaware, we are able to accommodate indoor and outdoor events ranging from 10 to 10,000. With lodging and restaurants only minutes away, Oregon Ridge is the perfect place for your next affair.

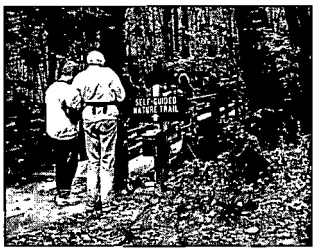


We encourage you to visit us and see for yourself the beauty of the Ridge. Our office is open Monday through Friday from 9:00 a.m. to 3:00 p.m. or by appointment. Our experienced staff will be happy to assist you with all your planning needs.

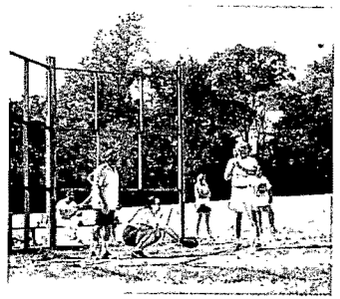
Open to the public year-round, Oregon Ridge offers a variety of recreational activities. The park has 2 playgrounds, fitness trail, 3-hole par-3 golf course, tennis court, horseshoe pits, seasonal swimming and sledding, plus miles of hiking trails.



The park is also home to the Oregon Ridge Nature Center which offers year-round activities for the entire family. The center features environmental displays, archeological artifacts and live animals including snakes, frogs and turtles. Hours are Tuesday thru Sunday, 9:00 a.m. to 5:00 p.m. For more information call 410-887-1815 / TDD 410-887-5319.

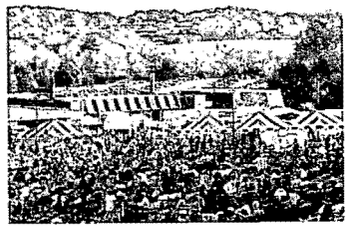


Softball/Sports fields



Located at Shawan and Beaver Dam Roads, just a short drive from the lodge, this 8 acre field has a ball diamond, athletic field and parking lot. Perfect for leagues, tournaments, sports camps or the yearly inter-office game.

The "Big" Event...
Park Rental



Looking for a place to hold your fund-raiser, concert or large company picnic? You can rent any or all of the park. We look foward to meeting with you so we may tailor a program to your specific needs. Call 410-887-1818 / TDD 410-887-5319 to arrange an appointment and visit our facility.

Oregon Ridge
Park, Beach and Conference Center

13401 Beaver Dam Road ❧ Cockeysville, Maryland 21131
410-887-1818 ❧ Fax 410-527-0214 ❧ E-mail oridge@co.ba.md.us

Pavilions & Tents, Stage & Fields, Groves



Oregon Ridge
Park, Beach and Conference Center

All seasons are lovely here at Oregon Ridge Park. Plan to have your function outdoors and enjoy one of our many select areas nestled within our woods and grassy fields, each a short distance to modern restroom facilities. You may rent a single site or combine areas to meet the needs of your event. Our park staff will be delighted to assist you with identifying the site(s) that will best meet your needs.

Ridge Tent

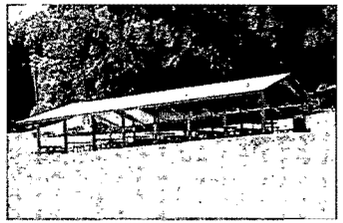


Available from the early May through late October, this 40'x 60' white tent has picnic tables and seating for up to 200. Centrally located between the Arts & Sciences and Westinghouse Pavilions, these areas are easily combined to accomodate larger events.

Pecos Tent

Situated at the front of the park next to the playground, this 20'x 30' white tent holds 50. Please be aware the playground is open to the public at all times, however, the tables and tent may be reserved.

Arts & Sciences Pavilion



Seating 200, the Arts & Sciences Pavilion is adjacent to the Nordic Grove and the stage, providing flexibility for larger events. This pavilion is the perfect place to gather with friends and family or have an office party. Special features include: lights, on-site electrical outlets, picnic tables, 4 family sized grills and volleyball posts.

Westinghouse Pavilion

Nestled between wooded areas, this structure accommodates up to 125 and may be combined with a nearby grove allowing for events up to 400.



Special features include: lights, on-site electrical outlets, picnic tables, 4 family sized grills, horseshoe pits, volleyball posts and nearby playground.



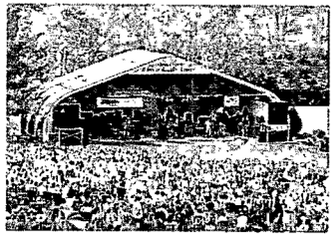
Groves

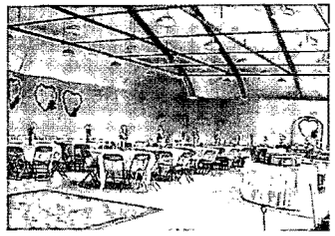
Scattered along the forest edge, these shaded areas contain picnic tables and grills.

The Nortic Grove, located by the ski hill, accommodates up to 75 guests. The Cherokee Grove, our largest with a capacity of 200, is located in a secluded area just beyond the Westinghouse Pavilion.

Concert Shell &Stage

Used throughout the summer for Baltimore Symphony Orchestra concerts and a variety of other events, this is truly a unique feature of our park. The shell opens onto the ski hill and is a great place to have parties, dances and weddings. It can seat 200 at round tables and still have room for dancing.







OREGON RIDGE
Calendar of Events 2002
***Most events charge an entrance fee or sponsorship**

MAY	Event	Time	For More Information
19	Cystic Fibrosis Great Strides Walk	12Noon - 4PM	Call 410-771-9000
19	Greyhound Pets of Maryland Picnic	10AM - 4PM	Call 410-771-6800
JULY			
2	Baltimore County School Bands Concert	6PM - 9PM	Call 410-887-4024
3 & 4	BSO Star Spangled Spectacular (Raindate 7/5)	8PM	**Baltimore Symphony Orchestra Summer Series** All concerts include fireworks and free shuttle bus service. Call 410-783-8000
13	BSO Tchaikovski Fest (No Raindate)	8PM	
20	BSO Musical Wizardry (Raindate 7/21)	8PM	
27	BSO Family Fun (Raindate 7/28)	8PM	
26	Fox 45/WNUV54 Free Friday Flick	6PM-10PM	Call 410-467-4545
AUGUST			
10	3rd Annual Walther Grassroots Music Festival	11AM-10PM	Call 301-834-4100
SEPTEMBER			
15	MPT Backyard Bash	10AM-7PM	Call 410-356-5600
29	Animal Rescue Walk	10AM - 4PM	Call 717-993-3232
29	Special Olympics 5K Race	7AM - 12Noon	Call 410-986-2636

OREGON RIDGE BEACH
Open daily Memorial Day through Labor Day 10 am to 6 pm weekdays and 10 am to 8 pm weekends.

The Lodge	Outdoor Rentals	The Beach
Things to Do	Directions	Contact Us
Oregon Ridge Calendar of Events 2002		

Revised May 2, 2002

Office Hours:
M-F 9AM-3PM
Phone:
(410)887-1818

OREGONRIDGE 2001*

*Most events charge an entrance fee or sponsorship

Fax:
(410) 527-0214
e-mail
oridge@co.ba.md.us

MAY

5	March of Dimes Walk America	7AM – 1PM	Call (410) 752-7999
11	Preakness Balloon Launches	6:30AM & 6PM	Call (410) 837-3030
12	Preakness Balloon Glow & Concert	2PM – 9PM	Call (410) 837-3030
13	Mother's Day Balloon Launch	6:30AM	Call (410) 837-3030
20	Cystic Fibrosis Great Strides Walk	1PM – 4PM	Call (410) 771-9000
20	Greyhound Pets of Maryland Picnic	10AM – 4PM	Call (410) 252-7555

JUNE

24	WPOC Fan Jam	10AM - 7PM	Call (410) 366-3693

JULY

3 & 4	BSO Star Spangled Spectacular (Raindate 7/5)	8PM
7	BSO Night in Paris (Raindate 7/8)	8PM
14	BSO Family Fun (Raindate 7/15)	8PM
21	BSO Theme TBD (Raindate 7/22)	8PM

Baltimore Symphony Orchestra Summer Series
All concerts include fireworks and free shuttle bus service.
Call (410) 783-8000

AUGUST

3	Fox 45/WNUV54 Free Friday Flick "The Road To Eldorado" Animation Film	6PM-10PM	Call (410) 467-4545
11	2nd Annual Walther Grassroots Music Fest.	11AM-10PM	Call (410) 740-1300
18	Earth Music Fest	10AM-10PM	Call (410) 252-3837
25	Maryland Vet Fest 2001	1PM-10PM	Call (410) 817-4889

SEPTEMBER

15	MPT Backyard Bash	TBD	Call (410) 356-5600
22	6th Annual Autumn Equinox Music Festival	11AM -10PM	Call (410) 740-1300
29	Animal Rescue Walk	10AM - 4PM	Call (717) 993-3232

OCTOBER

28	Special Olympics 5K Race	8AM - 12noon	Call (410) 9862636

OREGON RIDGE BEACH

Open daily through Labor Day Weekend 10AM to 8PM.
For Beach Info call 887-1817.
Season Passes, Group Rates, and Private Parties
available by calling the Park Office 9AM to 3PM at 887-1818.



Pet No 8

THE FALLS ROAD COMMUNITY ASSOCIATION, Inc.

The undersigned hereby acknowledge and attest that the Board of Directors of The Falls Road Community Association, Inc., a Maryland corporation (the "Corporation"), upon a Motion, duly made and seconded at its regular meeting on June 13, 2002, **unanimously** decided as follows:

RESOLVED: the FRCA opposes the Petition to expand the uses permitted at the Oregon Store Restaurant because

1. the proposed changes violate the Agreement between the Valleys Planning Council (VPC) and the Petitioner—a copy of which was attached as an Exhibit to the February 8, 1995 Opinion and Order of the Baltimore County Board of Appeals approving but limiting the use of the subject property as a restaurant—under which Agreement the Petitioner promised to limit the uses of the subject property in consideration of the VPC's promise not to oppose the Petitioner's Petition to operate a restaurant thereon and further in consideration of the VPC's performance of its promise; and
2. the FRCA opposed the original Petition to operate a restaurant at the property but did not appear before the Board of Appeals to oppose that Petition in reliance upon the terms of the Agreement between the VPC and Petitioner, and
3. the additional uses now sought by the Petitioner are not compatible with the area where the site is located; and be it further

RESOLVED: Dennis Sutton—who is the duly elected Secretary of the Board of Directors of the FRCA—shall attend the hearing(s) on August 13 and 14, 2002 before the Baltimore County Hearing Officer, and testify in opposition to the current Petition.

AS WITNESS OUR HANDS THIS 10th of August, 2002.

ATTEST:

Dennis K Sutton

Dennis Sutton, Secretary

The Falls Road Community Association, Inc.

By: Harold H Burns J

Harold. H. Burns, Jr., President

AFFIDAVIT

I hereby swear upon penalty of perjury that I am currently the duly elected President of the Board of Directors of the Falls Road Community Association, Inc.

Harold H Burns J

Harold H. Burns Jr., President

Prot
No1

Mr. John A. Galbreath
2516 Chestnut Woods Ct.
Reisterstown, MD 21136

August 12, 2002

Baltimore County Zoning Commissioner
401 Bosley Ave., Room 407
Towson, MD 21204

Subject: Oregon Grille

Dear Zoning Commissioner:

As an area resident, I am writing to express my adamant opposition to the Oregon Grille's attempt to expand its activities to include outdoor events such as wedding receptions and the like.

Any expansion of the currently allowed restaurant business will have a severe negative impact on the surrounding residents and the area in general. Vehicular traffic and noise will increase significantly, ruining the quiet bucolic nature of this area.

In addition, this request for expanded use violates both the spirit and the letter of the long-standing agreement between Oregon Grille and area residents, and the original order permitting only the restaurant. In plain terms, "a deal is a deal", and Oregon Grille must not be permitted to unilaterally change the previous agreement and order.

Sincerely,

John A. Galbreath

10 LIGHT STREET
BALTIMORE, MARYLAND 21202
(410) 385-3757

August 5, 2002

Baltimore County Zoning Commissioner
c/o The Valleys Planning Council, Inc.
P. O. Box 5402
Towson, Maryland 21204

Dear Sir:

I continue to oppose this request, which is an example of creeping sprawl. There is no reason to change the restrictions, which were good then and are proper now.

Very truly yours,

Kathleen Pontone

KP:gs

Prot No 3

Protestant's Exhibits

#7

Verified 3-31-04
Verified 3-25-04

Protestants Exhibits

- ✓ ✓ #1 The Milton Inn
- ✓ ✓ #2 Peerce's Plantation
- ✓ ✓ #3 Arial photo of Oregon Grill
- ✓ ✓ #4 Photo looking north at Rest.
- ✓ ✓ #5 Western Run + Belfast Valleys Historic Dist.
- ✓ ✓ #6 Oregon + Company, Store Description
- ✓ ✓ #7 Zoning + Historical Sites Map
- ✓ ✓ #8 Falls Rd Comm. Assoc. letter to represent
- ✓ ✓ #9 Falls Rd Comm. Assoc. letter to protest + To speak
- ✓ ✓ #10 Photo of fence at Rest.
- ✓ ✓ #11 Photo of overflo parking on Park Property
- ✓ ✓ #12 Photo of parking off paved Road
- ✓ ✓ #13 Photo of Terrace with Umbrellas
- ✓ ✓ #14 AFFadavit that Jack Dillon is Ex. Director
- ✓ ✓ #15 Resolution from VPC opposing the Oregon Grill
- ✓ ✓ #16 Resolution for Mr. Dillon to take action on all zoning issues
- ✓ ✓ #17 Resume' for Jack Dillon
- ✓ ✓ #18 Black Binder
- ✓ ✓ #19 Chart on Zoning made by Mr. Dillon
- ✓ ✓ #20 Blowup of the tile of the Grill from Pet. Ex #19
- ✓ ✓ #21 Arial photo 1995
- ✓ ✓ #22 arial photo current
- #23 Well completion report
- #24 Tax Map 15 of Pretty Boy Res.
- #25 Tax Map 43 of Loch Raven Res.
- #26 reduction of Tax Map #15
- #27 reduction of Tax Map #43
- #28 Summary of Characteristics of Parcels
- #29 Sign In sheets (3 pages)
- #30 Lease Agreement } Redacted versions as agreed submitted 5/03/04
- #31 Supplemental Lease Agreement }

Pro. Ex. #1

The Milton Inn



14833 York Rd.
Sparks, MD 21152
Phone: 410-771-4366
Fax: 410-771-4184

Home
Menu
About Us
Contact Us
Reviews
Links

E-mail:
Join Newsletter



Welcome to The Milton Inn's web site. Please feel free to look through our menus and read about the Inn's history. If you have any questions and would like someone to contact you please fill out our form on the "Contact Us" page or email us at: mail@miltoninn.com. Thank you for visiting.

Hours:

Lunch: Mon-Fri Noon-3 p.m.; Dinner: Mon-Thu 5:30 p.m. to 9:00 p.m., Fri-Sat 5:30 p.m. to 9:30 p.m., Sun: 4 p.m. to 8 p.m.

Call for a reservation today: 410-771-4366

"The reborn Milton Inn is better than ever, thanks to a new chef and a stunning renovation."

Directions

From Downtown Baltimore:

Take I-83 North to I-695 towards Towson. Staying in the right lanes, continue on I-83 North approximately 6 miles to Exit 20A (Shawan Road East). Stay on Shawan Road approximately 1 1/2 miles to the third traffic light (York Road). Turn left on York Road and continue approximately 2.8 miles to our driveway on the right.

From Pennsylvania:

Take I-83 South to Exit 24 (Belfast Road). Turn left on Belfast and continue 1 mile where it ends at York Road. Turn right on York Road and continue approximately 1 mile to our driveway on the left.

From other areas in the Baltimore metro

Pro. Ex. 2



contact us • map • history • news

Sunday Brunch

Spring into Peerce's for Sunday Brunch beginning Sunday, March 21st, serving old ti
like Eggs Benedict and specials such as Creole Fritatta with Tequila and Cilantro Cre
Peerce's Plantation opens for Sunday Brunch / Lunch 10:30am to 2:30 and Dinner fro



Weddings
click here

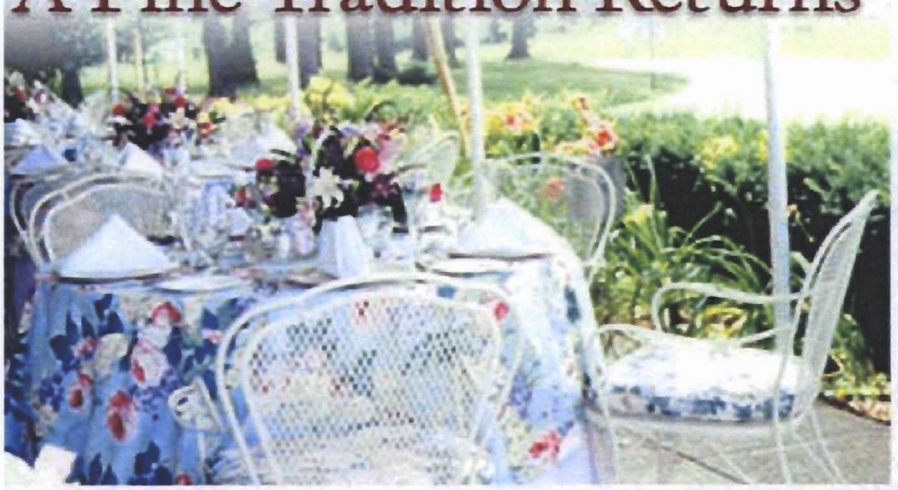


Fine Dining
click here



Catering
click here

A Fine Tradition Returns



Peerce plantatio
Restaurant

The long awaited restoration of Peerce's Plantation is complete at last. We are located at 12460 Du
Valley Road, Phoenix, MD 21131.For reservations please call (410) 252-3100.

Do you remember the beautiful views of Loch Raven and Maryland's valleys from the dining rooms
news! They are still here to be enjoyed by old friends and new guests of this fabulous fine dining la
Where else can you find the great traditions of Maryland Seafood and Prime Rib, enjoyed in a cozy
open hearth fires, decorative wrought iron and awning covered rooms? Amazingly, it has all been r

We have done our very best to embrace the Years of History of this fine dining establishment and t
the very best of the past to share with future patrons. New improvements include a new bar, a mod
kitchen, larger restrooms and improved access for the disabled.

PROTESTANTS' #3



Protestants #5

JAMES THOMAS WOLLON, JR., A.I.A.
Architect
600 Craigs' Corner Road
Havre de Grace, Maryland 21078
Office telephone 820-6748 Residence telephone 734 2000

11 November 1976

W E S T E R N R U N

and

B E L F A S T V A L L E Y S

H I S T O R I C D I S T R I C T

Arrangement of Historic Structures by Date with lists of important historic Outbuildings

18th Century

Conception Valley (or Davis Farm Tenant House), 1794
Kenneth Fisher House
Linfields Log House
"Preservation Hill"
    Ross House (moved from Prince Georges County)
    Yates House (moved from Kent County)
Stone Hall (not examined by me)
Regulation

1800-1820

Belfast Retreat
Conclusion (Webster Bosley)
Cumberland House
Drawbaugh House
Fuller House, 1801
Gerber (Price) House, 1811?
Gray's Rocky Lodge
Hartman House
Hayfields (not examined by me)

Hilltops, 1811
Johns Mill House, 1812?
Kensey Johns Mill, 1800
Master's Care
Oakland
Orebanks
Rosedale, 1806
Smallwood
Spring Garden, 1807
Spring Garden (Ensor)

Protestants #6

OREGON & COMPANY, STORE

7. Description

Condition: Fair, altered, original site

The OREGON & COMPANY STORE (called that on the 1859 map) is a complex stone, brick and frame structure standing close to the southwest corner of Shawan and Beaver Dam Roads. Its principal facade, facing Shawan Road, is to the north. All sections are close in age, dating varriously from ca. 1850 to ca. 1875.

The first part of this structure is the center section, of stone, five bays in length, two storeys in height, with a rectangular single-flue brick chimney rising flush with each gable end. Although its form is traditional, its very simple Greek-revival detailing and its absence of fireplaces indicates a date after the advent of closed stoves, probably in the 1850's or very early 1860's.

The one-storey shed-roofed three bay east wing and the two-storey shed-roofed two bay west wing, the latter with a flat topped parapet across its principal (north) facade were added to the center section, a conjecture based on the absence of structural walls belonging to those two wings adjacent to the center section. The east wing was not accessible for interior inspection. A square single-flue brick chimney rises flush with the southwest corner of the west wing.

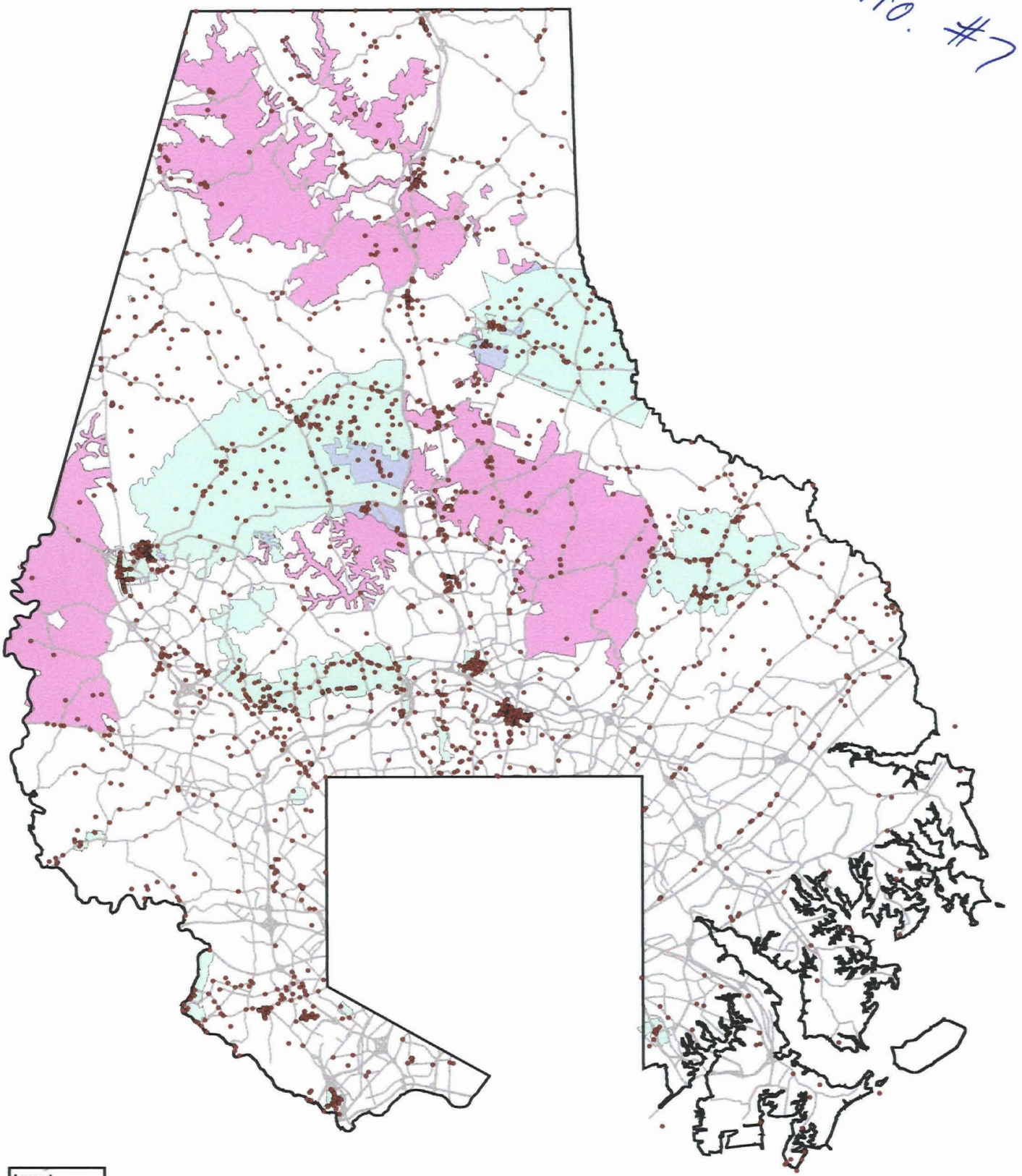
A two-storey shed-roofed frame wing extends south from the brick west wing. A one-storey shed-roofed addition extends south from the easterly bays of the center section; its east wall, facing the side road, extends above the roof in a stepped parapet.

One-storey hipped-roof porches extend across the entire north facade; the porch in front of the east wing is taller than porches to the west; the porch in front of the center section extends continuously in front of and around the west end of the brick west wing, its southerly bay there enclosed with frame walls as a pantry, typical of the region. The square columns with simple moulded capitals are probably original to the porches, as are the square colums with jig-sawn brackets in front of the east wing. A shed-roofed one-storey porch extends across the south facade of the center section, its colums simpler; spanning between them is a wooden railing with an oval rail and plain rectangular balusters.

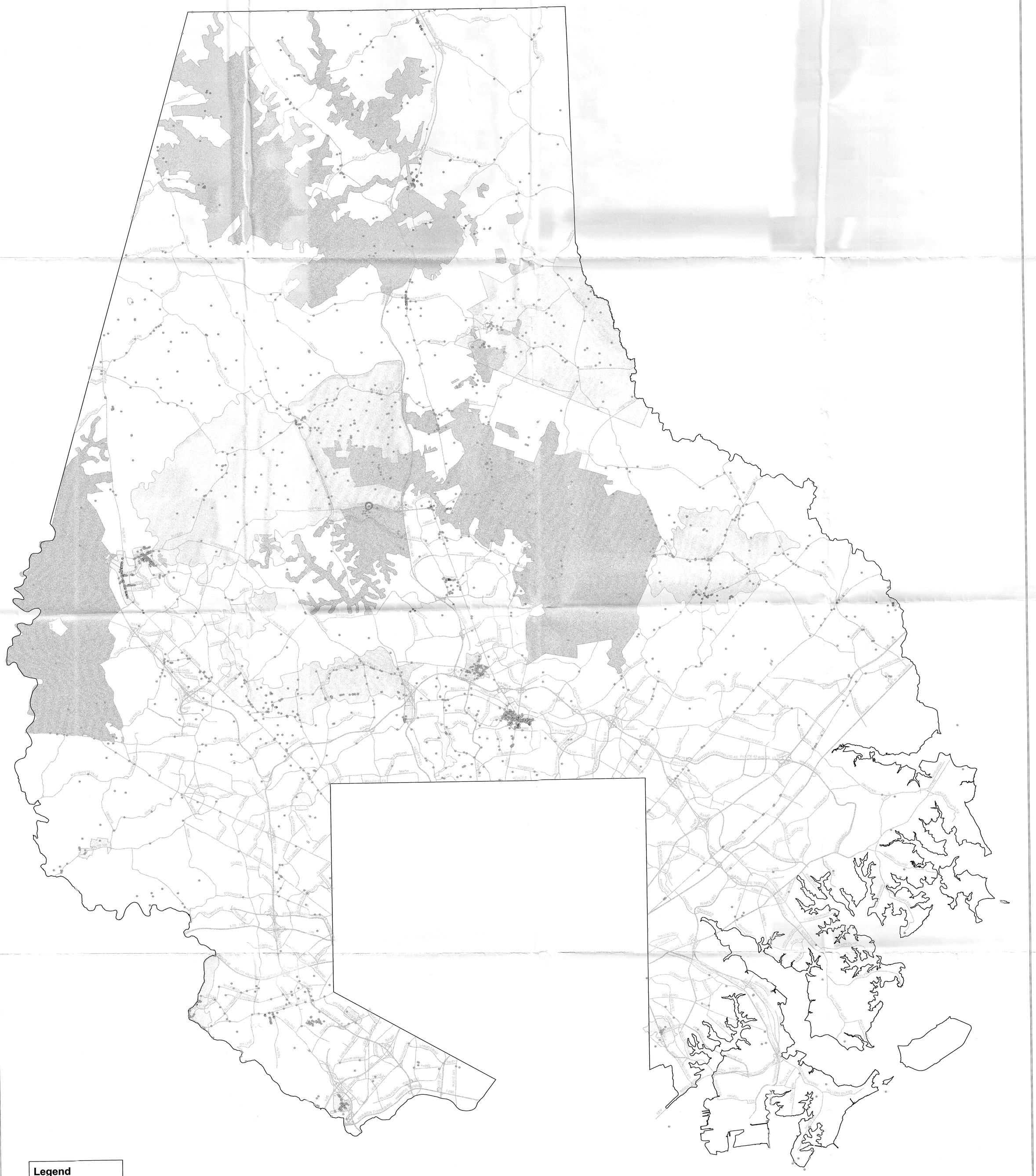
An extra north front door, in the easterly bay of the center section, indicates the special purpose of this structure, probably as a store, tavern, post office and dwelling. It is of two long panels, typical of the Greek-revival style. Most original shutters

Baltimore County Zoning and Historical Sites

Pro. #7



Baltimore County Zoning and Historical Sites



Legend

- Historical Points
- Roads
- Historical Districts
- RC 4 Zoning
- County Boundary

0 0.5 1 2 3 4 Miles

1 inch equals 1 miles

N W E S

BALTIMORE COUNTY MARYLAND

Protestants #8

THE FALLS ROAD COMMUNITY ASSOCIATION, INC.

The undersigned hereby acknowledge and attest that the Falls Road Community Association, Inc., a Maryland corporation (the "Corporation"), upon a Motion, duly made and seconded at its annual meeting on October 3, 2003, unanimously decided as follows:

RESOLVED: Responsibility for review and action on all zoning and development matters shall be placed in the board of directors.

AS WITNESS OUR HANDS THIS 17th day of March 2004.

ATTEST:

By: _____
Dennis Sutton, Secretary

The Falls Road Community Association, Inc.

By: _____
John A. Galbreath, President

Protestant #9

THE FALLS ROAD COMMUNITY ASSOCIATION, INC.

The undersigned hereby acknowledge and attest that the Board of Directors of The Falls Road Community Association, Inc., a Maryland corporation (the "Corporation"), in accordance with Section 2-408 of the Maryland Corporations and Associations Code, do hereby take the actions below set forth, and to evidence their waiver of any right to dissent from such actions, do hereby consent as follows:

RESOLVED: The Falls Road Community Association, Inc. opposes the petition of Oregon, LLC - Contract Lessee (also known as the "Oregon Grille") before the Board of Appeals of Baltimore County in Case No. 02-461-SPHXA.

RESOLVED: Dennis Sutton and Harold Burns, who are duly elected members of the Board of Directors of the Falls Road Community Association, Inc., shall attend the hearing on March 24, 25, and 31, 2004 before the Board of Appeals of Baltimore County in Case No. 02-461-SPHXA and testify in opposition to said petition.

AS WITNESS OUR HANDS THIS 17th day of March, 2004.

ATTEST:

By: _____
Dennis Sutton, Secretary

The Falls Road Community Association, Inc.

By: _____
John A. Galbreath, President

AFFIDAVIT

I hereby swear upon penalty of perjury that Dennis Sutton and Harold Burns are currently duly elected members of the Board of Directors of the Falls Road Community Association, Inc.

ATTEST:

By: _____
Dennis Sutton, Secretary

The Falls Road Community Association, Inc.

By: _____
John A. Galbreath, President



Protestors' #1

taken 12/17/03



Pollutants - HC #12

12/17/03

02-461-SPHXA

Oregon Grill

Protestants' 4, 10, 13 & 3 photos



Protestants #4

Protestants #4



Protestants # 10



[redacted] 13

Protestants #13

Pro. #14

AFFADAVIT

State of Maryland
Batimore County, SS:

TO WIT:

I hereby swear, upon penalty of perjury that I, Jack Dillon, am currently the Executive Director of The Valleys Planning Council, Inc.

The Valleys Planning Council, Inc.

Attest:

Secretary

By
President

Date: 3/2/04, 2004

Pro. #15

The Valleys Planning Council, Inc.

RESOLVED: That the position of The Valleys Planning Council, Inc. as adopted by the Executive Committee of the Board of Directors on the zoning matter known as:

Case #: 02-461 – SPHXA - Oregon Grill, 1201 Shawan Road

Is that:

The VPC is opposed to the proposed special exception
and hereby authorizes Jack Dillon, Executive Director of The Valleys Planning Council, Inc., to testify on this matter.

AS WITNESS OUR HANDS AND SEAL THIS 22nd day of April, 2003.

ATTEST:

Secretary, Valleys Planning Council, Inc.

President, Valleys Planning Council, Inc.

Res. #16

The Valleys Planning Council, Inc.

RESOLVED: That the Executive Committee of the Board of Directors of The Valleys Planning Council, Inc. has decided that responsibility for the review and action on all zoning matters for the period of May 8, 2003 to May 8, 2004, or the next Annual Board Meeting, be placed with the Executive Director, Mr. Jack Dillon.

AS WITNESS OUR HANDS AND SEAL THIS 8th day of May, 2003.

ATTEST:

Secretary, Valleys Planning Council, Inc.

President, Valleys Planning Council, Inc.

Pro. #17

Jack Dillon, APA
543 Park Avenue
Towson, Maryland 21204
(410) 321-0021

PROVIDE PROFESSIONAL PLANNING AND ZONING ASSISTANCE IN THE AREAS OF LAND USE, LAND USE ANALYSIS, SITE EVALUATION AND DESIGN.

EMPLOYMENT HISTORY

THE VALLEYS PLANNING COUNCIL, Inc.
EXECUTIVE DIRECTOR
MAY 1997 - PRESENT

PRIVATE CONSULTANT
MARCH 1996 - PRESENT

BALTIMORE COUNTY, MARYLAND
Office of Planning, Community Planning Division,
Senior Planner and Deputy Division Chief
Rural and served as 2nd,3rd and 5th District Planner
August 1987 - February 1996 (retired)

Office of Planning, Community Planning Division
Planner II – 2nd and 3rd District Area Planner
June 1981 – August 1987
Administrator of Baltimore County Agricultural Land Preservation Program (1979-1981)

Office of Planning, Comprehensive Planning Division, Environmental
Studies Section
Planner II – Environmental Planner
October 1974 - June 1981

Prior to October 1974 was with the Baltimore County Zoning Office
P& Z Tec. II, P& Z Tec. III, Chair of Zoning Advisory Committee (1969-1973), Chief of Zoning Enforcement (1973-1974)
June 1967 - September 1974 and February 1962 - May 1967
I was with the Department of Public Works assigned to special projects at the Johns Hopkins University and The Baltimore City / County Analyzer Office.

EDUCATION:

MORGAN STATE UNIVERSITY
Graduate Program in Landscape Architecture
1992 - 1994 (not complete)

UNIVERSITY OF MARYLAND
Graduated Para Legal
1978

UNIVERSITY OF BALTIMORE
Graduated B.S. Degree in Business Management
Planning Courses at Johns Hopkins University

Baltimore County Board of Appeals
In re: Oregon Grille
(S/W Corner Shawan Road and Beaver Dam Road)
Case No. 02-461-SPHXA

ZONING REGS
REGARDING RESTAURANTS
& CATERING HALLS P10. #18

1
2
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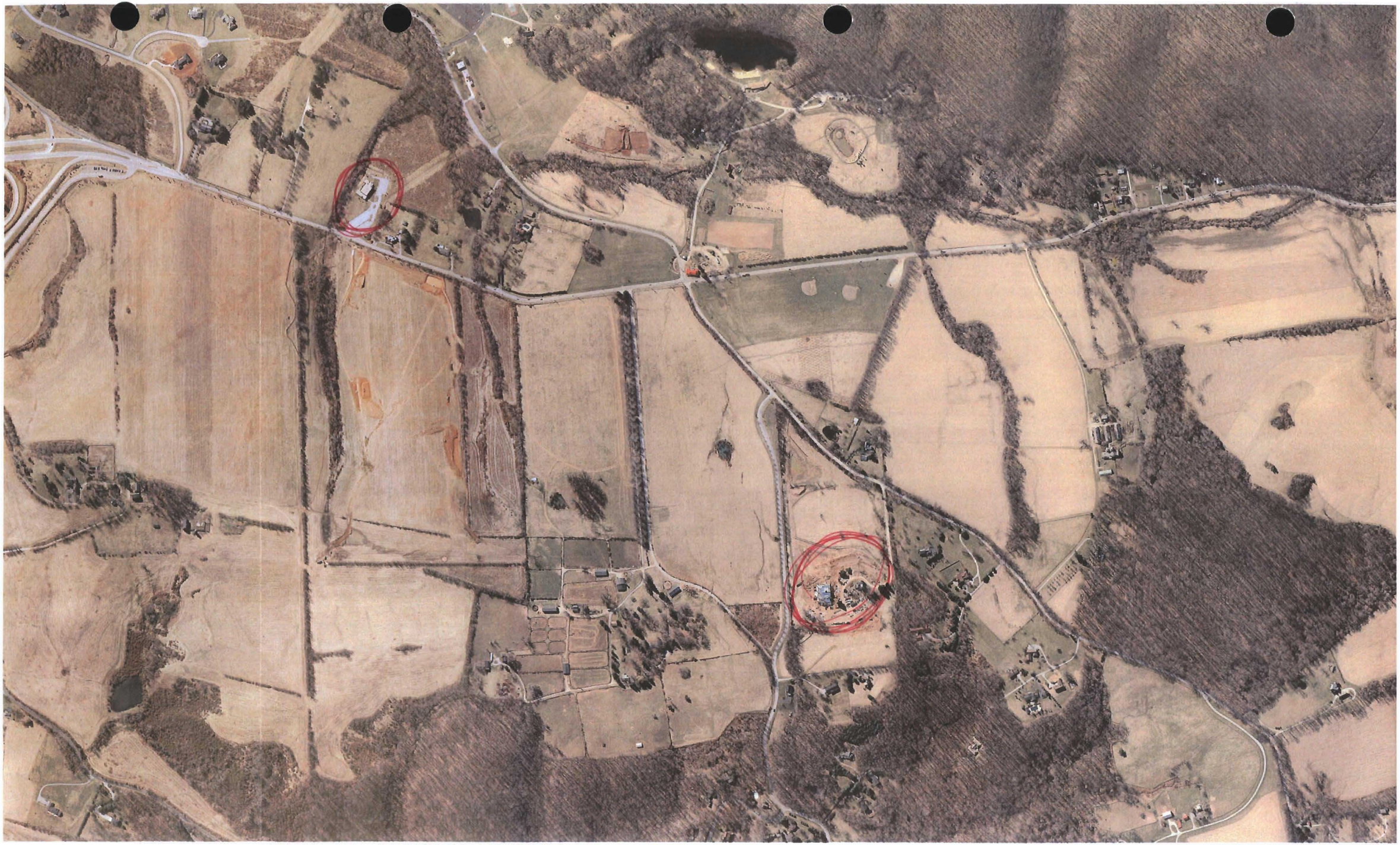
B. C. Z. R. ZONING CHART
RESTAURANTS, CATERING, CONVERSIONS, CLUBS

USE	RC2	RC4	RC5	RCC	RC6	RC7	RC20	RC50	DR1	DR2	DR 3.5	DR 5.5	DR 10.5	DR 16	RAE1	RAE2	RO	OR1	OR2	O3	OT	SE	BMM	BMB	BMYC	CB	BLR	BL	BM	BR
RESTAURANTS	N	N	N	P	N	N	N	N	N	N	N	N	N	N	P*	P*	N	P	SE	SE	N	P	P/SE	P/SE	N	P	P	P	P*	P*
CATERING/ CATERING HALLS	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P*	P*	N	N	N	N	N	SE	N	N	N	N	N	N	P*	P*
CONVERSION DWELLING TO TEA ROOM/ RESTAURANT	SE	SE	SE	N	N	N	N	N	SE	SE	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
YACHT CLUB/ COUNTY CLUB	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	SE	SE	P	N	N	SE	P	P

N = NOT PERMITTED
P = PERMITTED
SE = SPECIAL EXCEPTION
P* = PERMITTED USE IN COMBINATION

Pro. #20





Pro. #21



Pro. #22

Prototype #23

03/29/2004 08:21 4105373163 PAGE 01/02

C 1 1113 SEQUENCE NO. (MDE USE ONLY)

MDE WMA

STATE OF MARYLAND
WELL COMPLETION REPORT
FILL IN THIS FORM COMPLETELY
PLEASE TYPE

THIS REPORT MUST BE ... WELL IS COMPLETED.

COUNTY NUMBER

ST/CO USE ONLY
DATE Received: APR 03 1999

DATE WELL COMPLETED: MM 03 DD 02 YY 99

Depth of Well: 250 (TO NEAREST FOOT)

PERMIT NO. FROM "PERMIT TO DRILL WELL": BA 94 3753

OWNER Oregon Gaill (last name, first name)
STREET OR RFD 1201 Shawan Road TOWN Hunt Valley, MD 21030
SUBDIVISION SECTION LOT

WELL LOG
Not required for driven wells

STATE THE KIND OF FORMATIONS PENETRATED, THEIR COLOR, DEPTH, THICKNESS AND IF WATER BEARING

DESCRIPTION (Use additional sheets if needed)	FEET FROM	FEET TO	check if water bearing
Overburden	0	10	
Clay	10	25	
Mud & Boulders	25	40	
Limestone	40	250	x
water at 85'			
Well #1 50' Mud (backfilled)			

NUMBER OF UNSUCCESSFUL WELLS: 0

WELL HYDROFRACTURED: yes (Y) no (N)

CIRCLE APPROPRIATE LETTER
- A A WELL WAS ABANDONED AND SEALED WHEN THIS WELL WAS COMPLETED
- E ELECTRIC LOG OBTAINED
- P TEST WELL CONVERTED TO PRODUCTION WELL

I HEREBY CERTIFY THAT THIS WELL HAS BEEN CONSTRUCTED IN ACCORDANCE WITH COMAR 26.04.04 "WELL CONSTRUCTION" AND IN CONFORMANCE WITH ALL CONDITIONS STATED IN THE ABOVE CAPTIONED PERMIT, AND THAT THE INFORMATION PRESENTED HEREIN IS ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE

DRILLERS LIC. NO. MWD122
DRILLERS SIGNATURE (MUST MATCH SIGNATURE ON APPLICATION)
LIC. NO. 25D048
SITE SUPERVISOR (sign. of driller or journeyman responsible for site work if different from permittee)

GROUTING RECORD
WELL HAS BEEN GROUTED (Circle Appropriate Box): yes (Y) no (N)
TYPE OF GROUTING MATERIAL (Circle one)
CEMENT (CM) BENTONITE CLAY (BC)
NO. OF BAGS 22 NO. OF POUNDS 2250
GALLONS OF WATER 132
DEPTH OF GROUT SEAL (to nearest foot)
from 0 ft. to 45 ft.
(TOP) (BOTTOM) (enter 0 if from surface)

CASING RECORD
casing types insert appropriate code below: (ST) STEEL (CO) CONCRETE (PL) PLASTIC (OT) OTHER

MAIN CASING TYPE	Nominal diameter top (main) casing (nearest inch)	Total depth of main casing (nearest foot)
ST	6	45

OTHER CASING (if used)

EACH CASING	diameter inch	depth (feet) from	to

SCREEN RECORD
screen type or open hole insert appropriate code below: (ST) STEEL (BR) BRASS BRONZE (HO) OPEN HOLE (PL) PLASTIC (OT) OTHER

DEPTH (nearest ft.)

EACH SCREEN		from	to
1	HO	45	250
2			
3			

SLOT SIZE 1 ____ 2 ____ 3 ____
DIAMETER OF SCREEN ____ (NEAREST INCH)

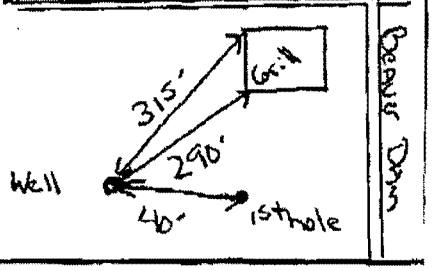
GRAVEL PACK IF WELL DRILLED WAS FLOWING WELL INSERT F IN BOX 58	from	to

MDE USE ONLY (NOT TO BE FILLED IN BY DRILLER)
T (E.R.O.S.) W Q
TELESCOPE CASING | LOG INDICATOR | OTHER DATA

PUMPING TEST
HOURS PUMPED (nearest hour) 3
PUMPING RATE (gal. per min.) 15.0
METHOD USED TO MEASURE PUMPING RATE Submersible
WATER LEVEL (distance from land surface)
BEFORE PUMPING 6 ft.
WHEN PUMPING 12 ft.
TYPE OF PUMP USED (for test)
A air P piston T turbine C centrifugal R rotary O other (describe below) J jet S submersible

PUMP INSTALLED
DRILLER INSTALLED PUMP (CIRCLE) (YES or NO): YES (NO)
IF DRILLER INSTALLS PUMP, THIS SECTION MUST BE COMPLETED FOR ALL WELLS.
TYPE OF PUMP INSTALLED PLACE (A,C,J,P,R,S,T,O) IN BOX 29.
CAPACITY: GALLONS PER MINUTE (to nearest gallon)
PUMP HORSE POWER
PUMP COLUMN LENGTH (nearest ft.)
CASING HEIGHT (circle appropriate box and enter casing height): + above / – below LAND SURFACE 1 (nearest foot)

LOCATION OF WELL ON LOT
SHOW PERMANENT STRUCTURES AND INDICATE NOT LESS THAN TWO DISTANCES (MEASUREMENTS TO WELL)



TIPNV-CRS7 ORIGINAL

Tax Map 15

PROTESTANTS # 24



Map Produced By Baltimore County GIS Services
Production Date: April 8, 2004

The cadastral information on this plot was compiled from existing deed information. This information is not to be considered authorative. This survey information was not field checked and certified by a licensed land surveyor.

Legend

- Parcels
- Pretty Boy
- RC 4 Zoning

0 300 600 1,200 1,800 2,400 Feet

N W E S

BALTIMORE COUNTY MARYLAND

PROTESTANTS' EX #25

Tax Map 43



Map Produced By Baltimore County GIS Services
Production Date: April 8, 2004

The cadastral information on this plot was compiled from existing deed information. This information is not to be considered authorative. This survey information was not field checked and certified by a licensed land surveyor.

Legend

- Parcels
- Loch Raven
- RC 4 Zoning

0 300 600 1,200 1,800 2,400 Feet

N W E S

BALTIMORE COUNTY MARYLAND

PRETTYBOY RESERVOIR

(MAYOR & CITY COUNCIL OF BALTIMORE)

Prettyboy #26

BECKLEYSVILLE

P. JAMES KNITTLE 5144/154 67.58A. P.5

DAVID W. BARRETT 7109/562 83.85A. P.216

ROBERT R. BOUTWELL 5222/478 57.23A. P.87

DONALD E. COLE 5080/693 104.10 A. P.61

WILLIAM P. WARD 5164/350 60.30 A. P.16

HUMPHRY HILL FARM INC. 6705/294 154.01 A. MAP 14 - P.9

EVERARD W. COX 4611/505 84.88 A. P. 24

JOHN P. PASS, ETAL 7046/438 138.17A. P.32

JULIA C. BAKER 5334/195 111.28A. P.185

JAMES R. MCDONALD 8079/492 111.48A. P.230

ROBERT W. TRACEY 7504/505 156.10A P.23

ROBT. L. ALTENBURG 3638-402 67.38A. P.35

ARMACOST FARMS INC. 6063/450 60.00 A. P.76

MAP 20 - P. 2

MAP 20 - P. 12

MAP 20 - P. IV

MAP 14 - P. 19

M20-P.278
M20-P.250
M20-P.32

216027.7mN
418484.7mE

216027.7mN
421971.1mE

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SCALE IN FEET

600 0 600 1200 1800

COMPILED BY MARYLAND DEPARTMENT OF PLANNING PROPERTY MAPPING SECTION

The information shown on this map has been compiled from deed descriptions and plats and is not an actual survey. It should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning, Property Mapping Section, Room 1101, 301 W. Preston St., Baltimore, MD 21201-2305.

PROPERTY LOTS
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE
CONTINUING OWNERSHIP - PARCEL NUMBERING - P.999 (ASSIGNED TO IDENTIFY OWNERSHIP, MUST BE PRECEDED BY A MAP NUMBER.)

SCALE 1"=600' (RP 1:7200)

REVISED TO:	DATE	BY	USER	LAST P. NO.	QUARTER-QUADRANGLES	DATE OF PHOTO	MSA GRID
	MAR '03	RAM					

MDP Maryland Department of Planning

BALTIMORE COUNTY, **MARYLAND**

MAP 15

854 857 860 863 869 872

Parcels #27

MAYOR & CITY COUNCIL

HANS R. WILHELMSEN
7086 / 616
57.91A.
P.111

HILLENDALE COUNTRY CLUB
2289/40
149.56A
P.93

JOYCE V. RICHARDSON
4714/492
40.35A
P.27

HANLEY ASSOCIATES
5111/96
11.40 A.
P.170

ROBERT E. MEYERHOFF
5257/558
249.67A.
P.81

SUNNYBROOK

OVERSHOT PLAT-1 5576

OVERSHOT PLAT-2 5573

OVERSHOT PLAT-3 5672

OVERSHOT PLAT-4 6037

WARREN

LOCH RAVEN RESERVOIR

ED. 10
ED. 8

MAP 52 - P. 115

P/O M. 52 - P. 115

MAP 42 - P. 154
MAP 52 - P. 133

MAP 52 - P. 41

MAP 53 - P. 388

42

44

60

908

911

914

917

923

926

908-60

MAP NO. 43

201397.2mN
432944.0mE

201397.3mN
438430.5mE

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SCALE IN FEET

600 0 600 1200 1800

52

COMPILED BY
MARYLAND DEPARTMENT OF PLANNING
PROPERTY MAPPING SECTION

The information shown on this map has been compiled from deed descriptions and plats and is not an actual survey. It should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning, Property Mapping Section, Room 1101, 301 W. Preston St., Baltimore, MD 21201-2365.

PROPERTY LINE
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE
CONTINUING OWNERSHIP - Z is Z
PARCEL NUMBERS - P.### (ARRANGED TO IDENTIFY OWNERSHIP, MUST BE PRECEDED BY A MAP NUMBER.)

SCALE 1"=600' (RF 1:7200)

REVISED TO:	DATE	BY	USER	LAST P. NO.	QUARTER-QUADRANGLE	DATE OF PHOTO	SHA GRID
	MAR '03	RAM					

MDP Maryland Department of Planning

BALTIMORE COUNTY,
MARYLAND

Exhibit #28

Table 1: Summary of Characteristics of Parcels on Tax Map 15 Zoned RC-4 & At Least 4.0 Acres in Area

Tax Map	Average Parcel Acreage	ROAD FRONTAGE		STRUCTURE PRESENT		AVERAGE FEET FROM STREAM		Average Feet from Parcel Center To Boundary
		Yes	No	Yes	No	Existing Structure	Farthest Point On Parcel	
15	22.62	18	7	16	9	862	1,240	355
43	31.42	20	20	26	14	855	1,391	450
Total Average	**28.04**	38	27	42	23	**858**	**1,333**	**414**

Protestants #19

Protestants Signatures 4/13/04

Case No. 02-461
SPHXA

John Colhoun Upperco, Md

Richard Buck 11219 Greenspring Ave
Lutherville, Md 21093

Dennis Sutton 13600 Beaver Dam Rd 21030



GRG/06-05-85
7826r

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE (hereinafter referred to as "this Lease"), made this _____ day of June, 1985, by and between BALTIMORE COUNTY, MARYLAND, a political subdivision organized and existing under the law of the State of Maryland having an address at c/o Baltimore County Bureau of Land Acquisition, Buildings and Property Manager, Room 327, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 (hereinafter referred to as "the Landlord"), and OREGON GENERAL STORE LIMITED PARTNERSHIP, a limited partnership organized and existing under the law of Maryland having an address at P. O. Box 140, Brooklandville, Maryland 21023 (hereinafter referred to as "the Tenant"),

WITNESSETH, THAT FOR AND IN CONSIDERATION of the mutual entry into this Lease by the parties hereto, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord all of that land (hereinafter referred to as "the Land"), situate and lying in Baltimore County, Maryland, which is described in Exhibit A,

TOGETHER WITH any and all improvements thereon (including, by way of example rather than of limitation, the Building and the Building Service Equipment) and any and all rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging or in any way appertaining (all of which, together with the Land, are hereinafter referred to collectively as "the Premises"),



BALTIMORE COUNTY, MARYLAND
SUPPLEMENTAL LEASE AGREEMENT

SUPPLEMENTAL AGREEMENT NO. 1 DATE: November __, 1994
TO LEASE DATED: June, 1985

ADDRESS OF PREMISES: Oregon General Store
Shawan Road and Beaver Dam Road
Hunt Valley, Maryland

THIS AGREEMENT is made and entered into this date by and between BALTIMORE COUNTY, MARYLAND, a body corporate and politic, hereinafter called the "Lessor", and OREGON, LLC, hereinafter called the "Lessee".

WHEREAS, Lessor and Oregon General Store Limited Partnership, as tenant, executed a certain Agreement of Lease dated June, 1985 and a Memorandum and Amendment of Agreement of Lease dated September 7, 1985 and recorded among the Land Records of Baltimore County, Maryland at Liber 7031, Folio 004 (collectively, the "Lease Agreement"), for certain premises located at the southwest corner of the intersection of Shawan Road and Beaver Dam Road (the "Property"). The Property is currently improved by the building known as the Oregon General Store (the "Building").

WHEREAS, Oregon General Store Limited Partnership has agreed to assign all of its right, title and interest in and to the Lease Agreement to Lessee pursuant to a certain Assignment of Lease.

WHEREAS, the Lessor and Lessee now wish to amend the Lease Agreement upon the terms and conditions hereinafter described.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, effective as of MAY 15, 1996 as follows:

1. Oregon, LLC shall be deemed to be the "Tenant" or "Lessee" for all purposes under the Lease Agreement. All notices to the Lessee shall be sent to c/o Mt. Washington Tavern, 5700 Newbury Street, Baltimore, Maryland 21209, Attn: Theodore W. Bauer.

2. In addition to the 5-year extension period contained in Section 2.2 of the Lease Agreement (the "Original Extension Period"), the Lessor hereby agrees that the Lessee shall have four additional extension periods of five (5) years each (the "Additional Extension Periods") following the expiration of the Original Extension Period.

3. Section 3.1 of the Lease is hereby modified to provide that the Annual Rent during each of the Additional Extension Periods shall be adjusted based on the increase in the Consumer Price Index (as defined below). To determine the new Annual Rent for the first Additional Extension Period, the Annual Rent for the Original

Petitioner's Exhibits

#8

Drafted 3-31-04

02-461-SPHXA
Oregon Grill

Verified 11-04-03

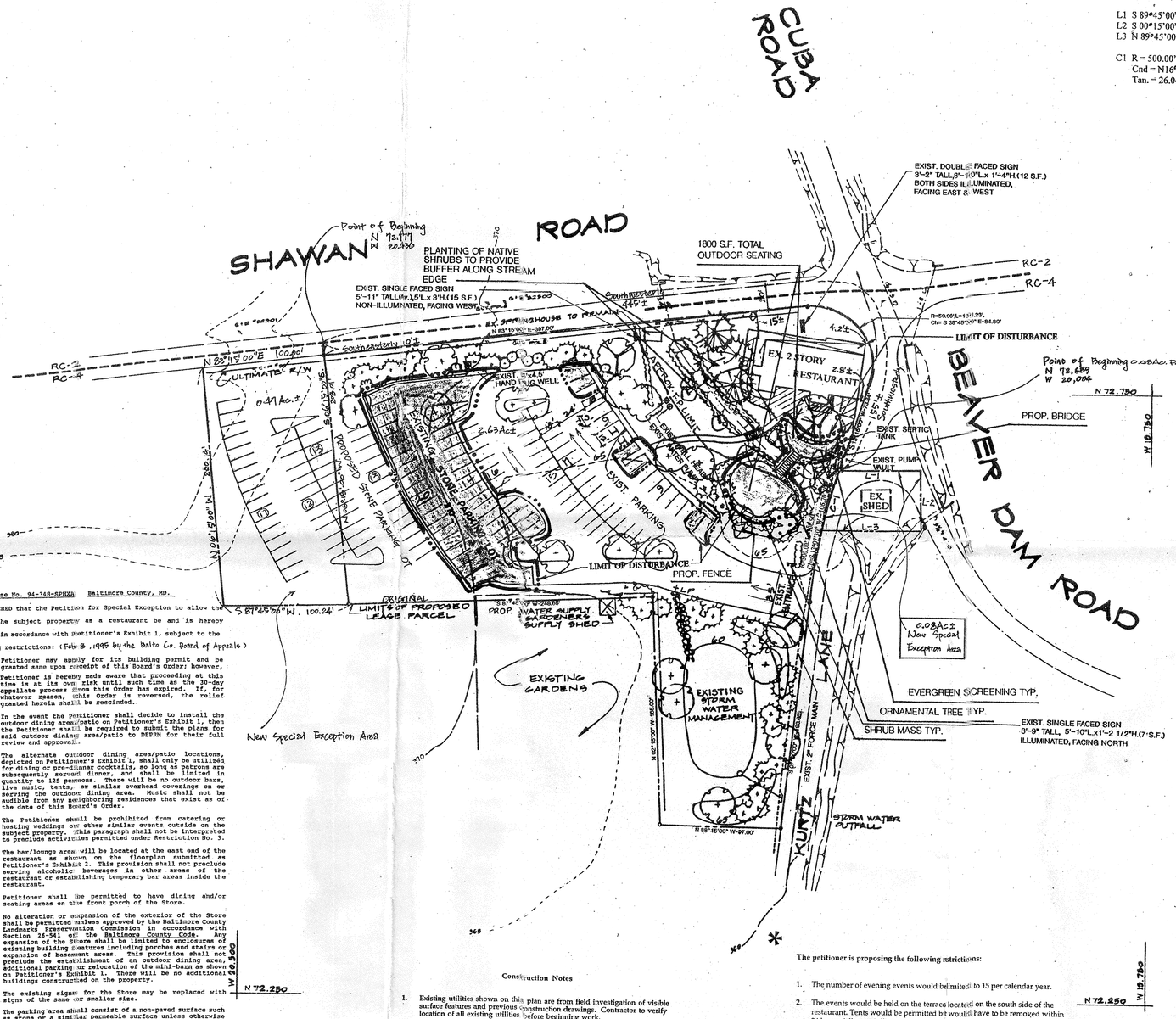
Petitioner's Exhibits

✓ ✓ ✓ Pet Ex 1 - Site plan filed with case.
✓ ✓ ✓ Ex 2A - Photo - Walkway - from Parking Lot To Rest.
✓ 2B - " - Bridge To Rest.
✓ 2C - " Walkway Sign
✓ 2D - " Patio Outside Rest. near Bridge
✓ 2E - " Far side Patio. Next to 13th peter.
✓ 2F - " Patio Area as in ZE.
✓ 2G - " Patio Area in ZEXF
✓ 2H - " Parking Lot
✓ 2I - " Herb-Garden
✓ 2J - " Parking Lot
✓ ✓ ✓ Pet Ex 3 " Shawan Downs.
✓ ✓ ✓ Pet Ex 4 Article Supp Papers Shawan Downs
✓ ✓ Ex 5A - Photo - St Johns Church
✓ 5B - " " " "
✓ 5C - " St Johns Church
✓ 5D - " Tent - Falls & Butler Rd
✓ 5E - " Tent - " " "
✓ ✓ ✓ Pet Ex 6 - Letters of support for Oregon Grill position
✓ ✓ Pet Ex 7A - Photos of inside of O.G.
✓ 7B - " " " " "
✓ 7C - " " " " "
✓ 7D - " " " " "
✓ ✓ ✓ Pet. Ex 8 The Legacy Chase Folder (Shawan Downs)
✓ ✓ ✓ Pet. Ex 9 (a) The Daily Record
✓ ✓ (b) The Legacy Cup (program)
✓ ✓ ✓ Pet. Ex 10 Eventfully Yours, LLC selected accomplishments
✓ ✓ ✓ Pet. Ex 11 (a) The Milton Inn
✓ (b) The Manor Tavern
✓ (c) Greenspring Valley Hunt Club
✓ (d) Greenspring Valley Country Club
✓ (e) Hayfields Country Club
✓ (f) Oregon Ridge Park

Verified 3-25-04

Petitioners Exhibits

- Pet. Ex. 11 con't
  - (g) Shawan Downs
  - (h) The Harryman House
  - (I) Gibby's
  - (J) An Poitin Stil
  - (K) Liberatore's Ristoraute
  - (L) Linwood's Due
  - (M) Michael's Cafe' + Raw Bar + Grill
  - (N) Padonia Park Club
  - (O) The Valley Inn
  - (P) Grand Lodge of Maryland
  - (Q) Worthington Valley Swim Club
  - (R) Boordy Vineyards
  - (S) Basignani Wigery
  - (T) Meadowood Regional Park
  - (U) Gramercy Mansion
  - (V) Pierces Plantation
  - (W) Courtney's of Timonium
- Pet. Ex. #12 Richard J. Peppin, P.E.
- Pet. Ex. #13 Sound + Vibration Instrumentation + Engineering
- Pet. Ex #14 Code of Maryland Regulations
- Pet. Ex #15 Mickey A. Cornelius Resume'
- Pet. Ex #16 Charles V. Main II Resume'
- Pet. Ex #17 Storm water Management plan
- Pet. Ex. #18 Eric C. Hadaway Resume'
- Pet. Ex. #19 Arial from Balto. Co. OIT
- Pet. Ex #20 a. picture of stream from bridge
  - b. picture of run off pond
- Pet. Ex. #21 Landscape plan by Eric Hadaway
- Pet. Ex #22 Mitchell J. Hellman Resome'
- Pet. Ex #23 Land Preservation Trust, Inc. (Resolution)
- Pet. Ex. #24 letter to Mr. Hoffman from Mr. Fenwick
- Pet. Ex #25 Robert W. Sheesley (Resume')
- Pet. Ex #26 Picture of stream



Line and Curve Table

L1 S 89°45'00" E 65.00'
L2 S 00°15'00" W 50.00'
L3 N 89°45'00" W 79.35'

C1 R = 500.00' L = 52.04'
Cnd = N16°16'06"E 52.02'
Tan. = 26.04' Delta 05°57'49"

Case No. 94-348-SPHXA Baltimore County, MD.

ORDERED that the Petition for Special Exception to allow the use of the subject property as a restaurant be and is hereby GRANTED, in accordance with Petitioner's Exhibit 1, subject to the following restrictions: (Feb 8 ,1995 by the Balto Co. Board of Appeals)

1. Petitioner may apply for its building permit and be granted same upon receipt of this Board's Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
2. In the event the Petitioner shall decide to install the outdoor dining area/patio on Petitioner's Exhibit 1, then the Petitioner shall be required to submit the plans for said outdoor dining area/patio to DEPRM for their full review and approval.
3. The alternate outdoor dining area/patio locations, depicted on Petitioner's Exhibit 1, shall only be utilized for dining or pre-dinner cocktails, so long as patrons are subsequently served dinner, and shall be limited in quantity to 125 persons. There will be no outdoor bars, live music, tents, or similar overhead coverings on or serving the outdoor dining area. Music shall not be audible from any neighboring residences that exist as of the date of this Board's Order.
4. The Petitioner shall be prohibited from catering or hosting weddings or other similar events outside on the subject property. This paragraph shall not be interpreted to preclude activities permitted under Restriction No. 3.
5. The bar/lounge area will be located at the east end of the restaurant as shown on the floorplan submitted as Petitioner's Exhibit 2. This provision shall not preclude serving alcoholic beverages in other areas of the restaurant or establishing temporary bar areas inside the restaurant.
6. Petitioner shall be permitted to have dining and/or seating areas on the front porch of the Store.
7. No alteration or expansion of the exterior of the Store shall be permitted unless approved by the Baltimore County Landmarks Preservation Commission in accordance with Section 26-541 of the Baltimore County Code. Any expansion of the Store shall be limited to enclosures of existing building features including porches and stairs or expansion of basement areas. This provision shall not preclude the establishment of an outdoor dining area, additional parking or relocation of the mini-barn as shown on Petitioner's Exhibit 1. There will be no additional buildings constructed on the property.
8. The existing signs for the Store may be replaced with signs of the same or smaller size.
9. The parking area shall consist of a non-paved surface such as stone or a similar permeable surface unless otherwise required by law. All parking will be contained within the leased area.
10. Any new exterior lighting shall be of the same height, general design and intensity as that which exists on site as of the date of this Board's Order.
11. The special exception shall remain valid only so long as Petitioner, and its successors and assigns, utilize the property as a standard restaurant, as defined in Section 101 of the Baltimore County Zoning Regulations, and only in accordance with the restrictions hereinabove set forth.
12. When applying for any permits, the Site Plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Board's Order.

IT IS FURTHER ORDERED that the Petition for Variance to allow 94 parking spaces in lieu of the required 145 be and is hereby GRANTED.

Note: Original hearing was granted on June 28, 1994 by the Deputy Zoning Commissioner.

Construction Notes

1. Existing utilities shown on this plan are from field investigation of visible surface features and previous construction drawings. Contractor to verify location of all existing utilities before beginning work.
2. Contractor shall notify Miss Utility (1-800-257-7777) at least five days prior to construction.
3. All construction shall follow the latest Baltimore County Department of Public Works Standard Specifications and Details of Construction and Baltimore County Plumbing Code or as detailed on the drawings.
4. Existing utilities not designated to be removed shall remain operational at all times.
5. Contractor will obtain all necessary permits.
6. Electric, telephone, gas, and water design by others.
7. Contractor to extend all house connections to within 5 feet of the building.

The petitioner is proposing the following rstrictions:

1. The number of evening events would belimited to 15 per calendar year.
2. The events would be held on the terrace located on the south side of the restaurant. Tents would be permitted bt would have to be removed within 24 hours following all events for which hey were erected.
3. Music would be permitted but at a levelof minimum intrusiveness to the nearby neighbors and other patrons of te restaurant; all music would have to cease by 10:00 p.m. at such events and by 11:00 p.m. on no more than 5 such events.
4. A sound engineer or specialist would beengaged by the Oregon Grille to provide recommendations and guidelins to assure minimal intrusiveness of the music.
5. Events during the daytime and early evening (i.e., ending no later than 9:00 p.m.) would be subject to the foregoing music standards and tent removal requirements but not included within the limitations as to the number of events.
6. A canopy or similar cover to provide shade on a seasonal basis to the dining portion of the patios would not be considered a tent and would be permitted.

The above-provided restrictions supercede Restrictio Nos. 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995 and any and all other restrictions contrary to these restrictions.

General Notes

1. OWNER: Baltimore County, Md.
Department of Recreation and Parks
301 Washington Avenue
Towson, MD 21204

2. Election district 8; Councilmanic district 3; Census tract 4083.

3. Watershed 1; Subsewershed 36.

4. Current zoning: RC-4 1"=200' zoning map. NW 19D

Estimated acreage of leasehold parcel:
3.18 Ac±

Existing Use: Tea Room / Restaurant

Basement:	1,740 s.f.	(storage only)
First Floor:	3,856 s.f.	
Second Floor:	1,716 s.f.	
Mezzanine:	530 s.f.	
Outdoor Seating:	1,800 s.f.	
Total:	9,442 s.f.	

Parking:

Required: 7,702 s.f. @ 16 / 1000 = 151 spaces
(9,442-1,740) - 51 spaces from variance
124 spaces

Provided: 155 spaces

* The basement is not included for parking as it is used for storage only.

5. There are no public utilities serving the site. The development will be served by a well, proposed to be located near Shawan Road, and a septic area to be in conformance with Baltimore County Health Department standards.

6. Soils:

Series & Symbol	Soils Classification	Limitations With Basements	Without Basements	Streets & Parking
Hagerstown (HaA)	B	slight	slight	slight
(HaB2)	B	slight	slight	moderate slope;

7. There are no slopes in excess of 25%.

8. Ther existing building is listed as The Oregon Furnace Store (Kurtz House) on the Baltimore County Final Landmarks List.

9. The proposed lease hold parcel lies within the Oregon Ridge Park which is owned by Baltimore County; deed reference 5056/650. Property number 08-02-019031.

10. Floor area ratio calculations, N.A. in RC4 zone.

11. Amenity Open Space, N.A. in RC4 zone.

12. Height determination, 35' max. in RC zone. Buildings do or not will not exceed 35'.

13. Stormwater will be managed by a dry pond located south of the entrance drive, along Kurtz Lane, as shown on the plan.

14. There are no known wetlands (hydric areas), critical areas, endangered species habitats or hazardous materials on the site.

15. See Commercial Permit Nos.

97640 97641 (C-1586-87)	C of O - Retail to Hair Salon and Interior Alterations issued 8/6/87	B182869 (GRC-1797-93) Grading – Issued 11/19/93
80227 (GRC-1473-85)	Parking Lot	B267354 Change of Occup. Int. Alteration Retail to Restaurant Issued 4/19/96
77246 (C-837-85)	Restoration	B287445 Addition to Restaurant Issued 10/24/96
(C-762-86)	SWM	

16. A Special Hearing, Special Exception and Zoning Variance were granted on the subject property.

17. Site to be stabilized at the end of each working day.

18. The existing shed will be used for storage and other permitted uses.

19. The site is not located within a floodplain.

20. The area to be added to the original special exception is 0.55 acres.

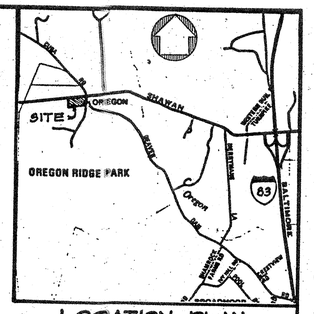
21. * The petitioner is requesting:

A. A Special Exception, pursuant to Section 1A03.3.B.5 of the Baltimore County Zoning Regulations to expand the area supporting the restaurant originally approved in Case No. 94-348-SPHXA to include area for additional parking to serve the property and to include the existing outbuilding/barn located opposite the entrance to the property to be used for storage and other permitted uses.

B. A Special Hearing to approve an amendment to the site plan previously approved in Case No. 94-348-SPHXA and to amend Restrictions 3, 4, and 5 of the Board of Appeals Order dated February 8, 1995 in accordance with the modified site plan.

C. A Variance from Section 409.8.A.2 of the Baltimore County Zoning Regulations to permit a stone parking lot in lieu of a durable and dustless surface consistent with existing Restriction No. 9.

DATE	REVISIONS
9-29-00	Add Proposed Zoning Relief and Restrictions



LOCATION PLAN
SCALE: 1"=2000'

Board Petitioner's #1

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND VARIANCE

FOR
THE OREGON GRILLE

DAFT · McCUNE · WALKER INC.
LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS
200 EAST PENNSYLVANIA AVE.
TOWSON, MD. 21286
TELEPHONE: 301-296-3333

THE OREGON GRILLE
1201 SHAWAN RD.
8TH ELECTION DISTRICT BALTIMORE COUNTY, MD.

STATE OF MARYLAND · EDMUND F. HALE · No. 3869 · REGISTERED PROFESSIONAL ENGINEER

DATE	REVISIONS
11-18-96	Added 6 parking spaces, show building addition, revise parking tabulation
8/31/00	Added New Special Exception and Special Hearing Information and Revised plan accordingly.

SCALE: 1"=50'
JOB ORDER NO. 85040.E3
ISSUE DATE SEP. 05, 2000



Pet Ex 2A



PET EX 2B

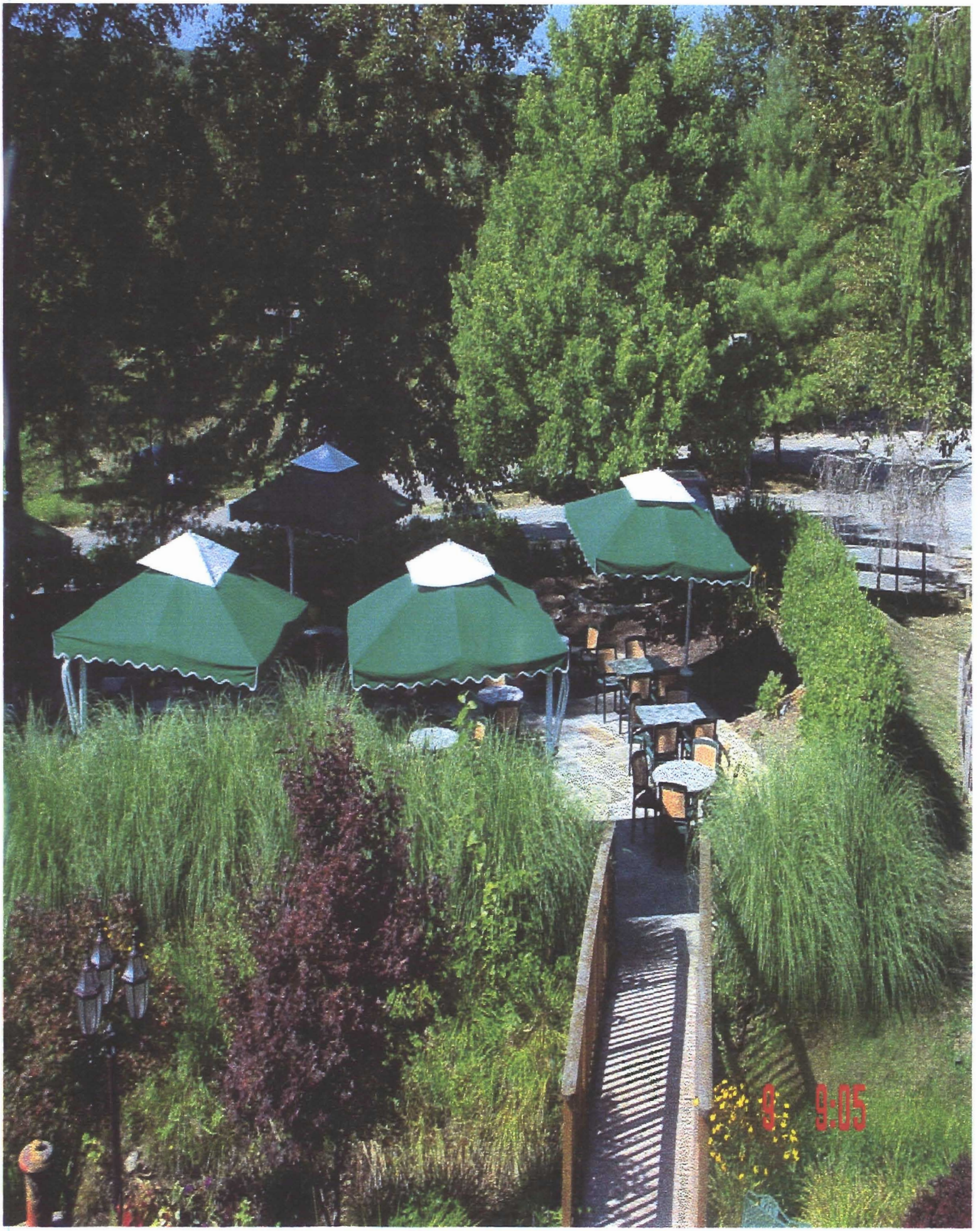


DSC00080.JPG 2002/08/09 09:06:42

PET
2C



PET 20



PET EX
2E

PET 2F



PET 26



Pic 2H


9 9:06


9 9:07



Pet Ex 3

Pet Ex 3

THE SUN
Sunday, September 30, 2001 Baltimore, Maryland Sports Section

Shawan Downs' first card draws 10,000

Fans, competitors praise steeplechase center; Fisher, Voss win 2 each

By KENT BAKER
SUN STAFF

On a crisp autumn afternoon, Shawan Downs was a smash hit.

Baltimore County's newest steeplechasing center was baptized yesterday with a seven-race program that offered interesting and competitive events conducted in the magnificent setting of a natural bowl.

An estimated 10,000 spectators crammed into the scenic vista offered by a hillside and into corporate tents for the first fall jump meeting ever held in Maryland.

Rave reviews were forthcoming from the fans and competitors alike after the program went off with few hitches.

"We are also celebrating the land," said Charles Fenwick Jr., one of the founding fathers of Shawan, which also will house an equestrian center. "We don't want many people on the inner [timber] course because this is a stage on which a play is acted, and the play is the racing."

The creation of the facility saved from development more than 300 acres of prime real estate.

Two of the training titans in Maryland, Jack Fisher and Tom Voss, each conditioned two winners to dominate the card, with Fisher conditioning Darn Tipalarm, upset winner of the $30,000 Legacy Cup, and Voss scoring with Wicomico in the $25,000 Maryland Million Hurdle Handicap.

Fisher said he was surprised by the front-running victory of Wicomico, who beat defending Breeders' Cup champion All Gong by a half-length.

"He shortened up at the second-to-last fence, and I figured that meant he was getting tired," Fisher said. "I was starting to get worried."

Not to worry, said veteran jockey Chip Miller, who pointed out that the move was "me trying to get him to go short. He jumped really well, didn't miss a fence. I expected it to be crowded out front, but I was out there all alone. I couldn't go any slower."

Miller perfectly judged the pace to hold off his sister, Blythe, who was coming on All Gong, the favorite.

"I saw Blythe, and I said to myself, 'Not today.' "

Wicomico was fractious and rearing in the post parade for the Maryland Million, but once the running and jumping began, he was all business.

"He'd been away a long time, and I meant to saddle in the barn, but in all the commotion, I didn't," said Voss, the top winner among steeplechase trainers this year. "He's never been that way before."

Winning jockey Cyril Murphy, who missed the Saratoga meeting after breaking his arm in a fall, said he knew Wicomico was capable because he was second to this year's leading money winner, Praise The Prince, before taking a vacation.

"You can't be completely sure after 12 months off, but I thought he'd hold his own," Murphy said. "Once the edges were taken off him, he was ready. He's a little bit funny. At home he's fine."

There were a few hitches. In the final race, three horses left the course midway through the race. But, all in all, it was a grand opening for a grand facility.

"With the short time they had to prepare this course, it was a fantastic effort," Murphy said. "And it's only going to get better as time goes on. I have no hesitation coming back."

"I think this will always be one of the better hunt meets in the fall," added Chip Miller. "Naturally, there can be improvements. There is too much jumping in the hurdle races. But it's very nice here."

Fisher, who chaired the course design committee, said: "I heard nothing but good things about the hurdles, and there were no fallers in the timber races. There were a few snags, but we'll get them fixed."

Fenwick said strong corporate support contributed significantly to the quick success of the facility and that the tie-in with the beneficiary, the Greater Baltimore Medical Center, added credibility.

"I think the hurdle course has been successful. The riders like it. It rides well and it's safe," he said. "I think maybe we've got something here."

P+B x4

Letters of Support for The Oregon Grille
Case No. 02-461-SPHXA

The following individuals submitted letters of support to the Zoning Commissioner for Baltimore County:

1. John K. Shaw, III (June 6, 2002)
2. Irvin C. Tillman (June 4, 2002)
3. Francis X. Knott (June 6, 2002)
4. Edward A. Halle, Jr. (June 7, 2002)
5. Andre W. Brewster (June 10, 2002)
6. Peyton S. Cochran, Jr. (May 31, 2002)
7. Paul Mark Sandler (June 6, 2002)
8. Michael D. Hankin (June 11, 2002)
9. Charles W. Cummings, M.D. (June 10, 2002)
10. Charles E. "Ted" Herget, Jr. (June 2, 2002)
11. Thomas F. Mullan, III (May 30, 2002)
12. Thomas C. Whedbee (July 22, 2002)
13. Charles C. Fenwick, Jr. (June 5, 2002)
14. Geoffrey H. Brent (June 6, 2002)
15. Daniel and Judy Lynn Brewster (June 10, 2002)
16. James R. McDonald (June 6, 2002)
17. Carolyn Smith (June 10, 2002)
18. Sherlock S. Gillet (June 13, 2002)
19. Thomas W. Sutton (June 8, 2002)
20. Susan G. Russell (August 5, 2002)
21. Pedie Killebrew (June 13 and August 5, 2002)
22. Michael J. McCarthy (August 8, 2002)
23. Frank A. Bonsal, Jr. (August 7, 2002)
24. Harvey L. Miller (August 8, 2002)
25. Jack S. Griswold (August 7, 2002)
26. Benjamin S. Schapiro (August 9, 2002)
27. Peter and Jacqueline Wight (August 12, 2002)
28. Patricia D. Ward (June 12, 2002)
29. Albert H. Dudley, III, M.D. (June 7, 2002)

TO1DOCS1/ald99/#142731 v1

PET EX 6

Michael J. McCarthy
2200 Geist Road
Glyndon, Maryland 21071

October 14, 2003

Mr. Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
County Courts Building
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

Re: Zoning Case No. 02-461
Oregon Grille – 1201 Shawan Road
Petitions for Special Exception, Special Haring and Variance

Dear Mr. Schmidt:

I live at 2200 Geist Road in close proximity to the Oregon Grille and have had the pleasure of dining at the Grille on a number of occasions.

As I understand it, the Oregon Grille has requested zoning relief, which would allow the restaurant to host outdoor events on the restaurant terraces. Because I know Mr. Ted Bauer personally, I have had the opportunity to discuss with him the manner in which these outdoor gatherings would be conducted. Mr. Bauer informed me that he intends to limit the number of evening events to 15 per calendar year, remove any tent within 24 hours following the conclusion of that event, and take steps to ensure that any music played during such events would not be excessive and stop by 10:00 p.m., with the exception of 5 events during which the music would be permitted to continue until 11:00 p.m.

I also understand that the Oregon Grille has requested that the restaurant area be expanded to provide for additional parking and to allow an existing barn to be used for additional restaurant storage.

PETEX 6

Pet. Trial Ex.
5A - 5E
and
7A - 7D
} 9 photos

D2 - 461 - SPHXA
Oregon Grill


EXIT

Pit Ex 7A

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AGFA Optima
AGFA Optima



T Ex 7B

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PET EX 7C

AGFA Prestige

023M NNNN 8A 98/12/02 FotoImage



PET EX 7D

AGFA
Optima
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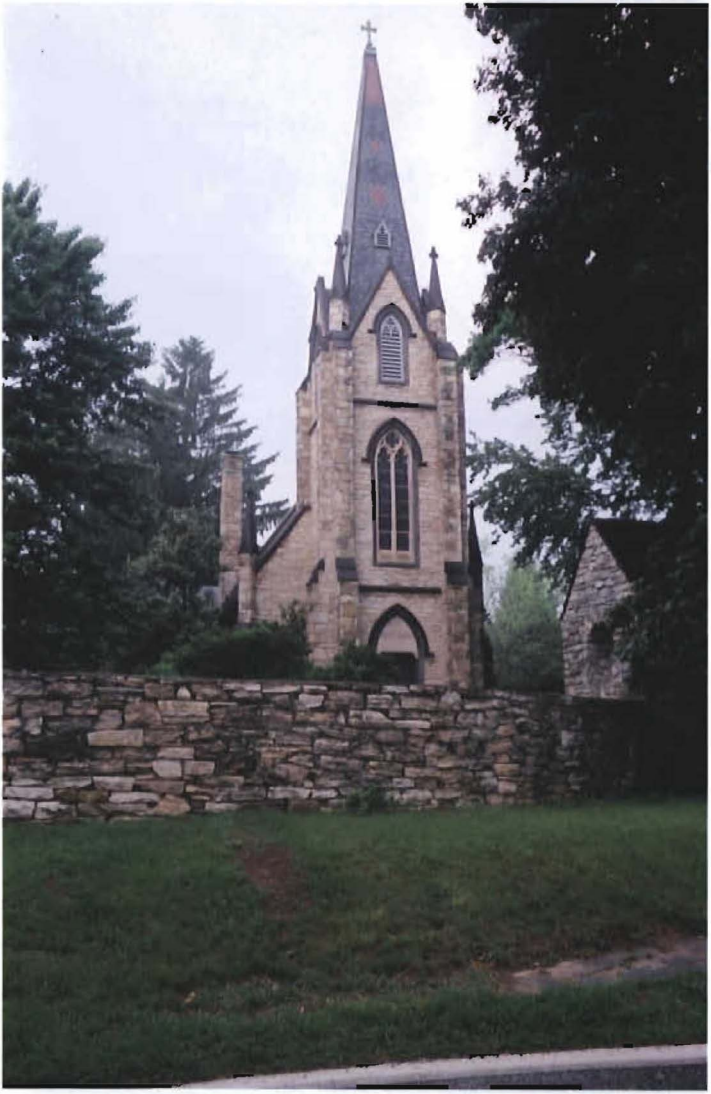
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PETEX SC



PET EXST

(No. SR)

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PETEX-5E

52703

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Pet. Ex. 9a

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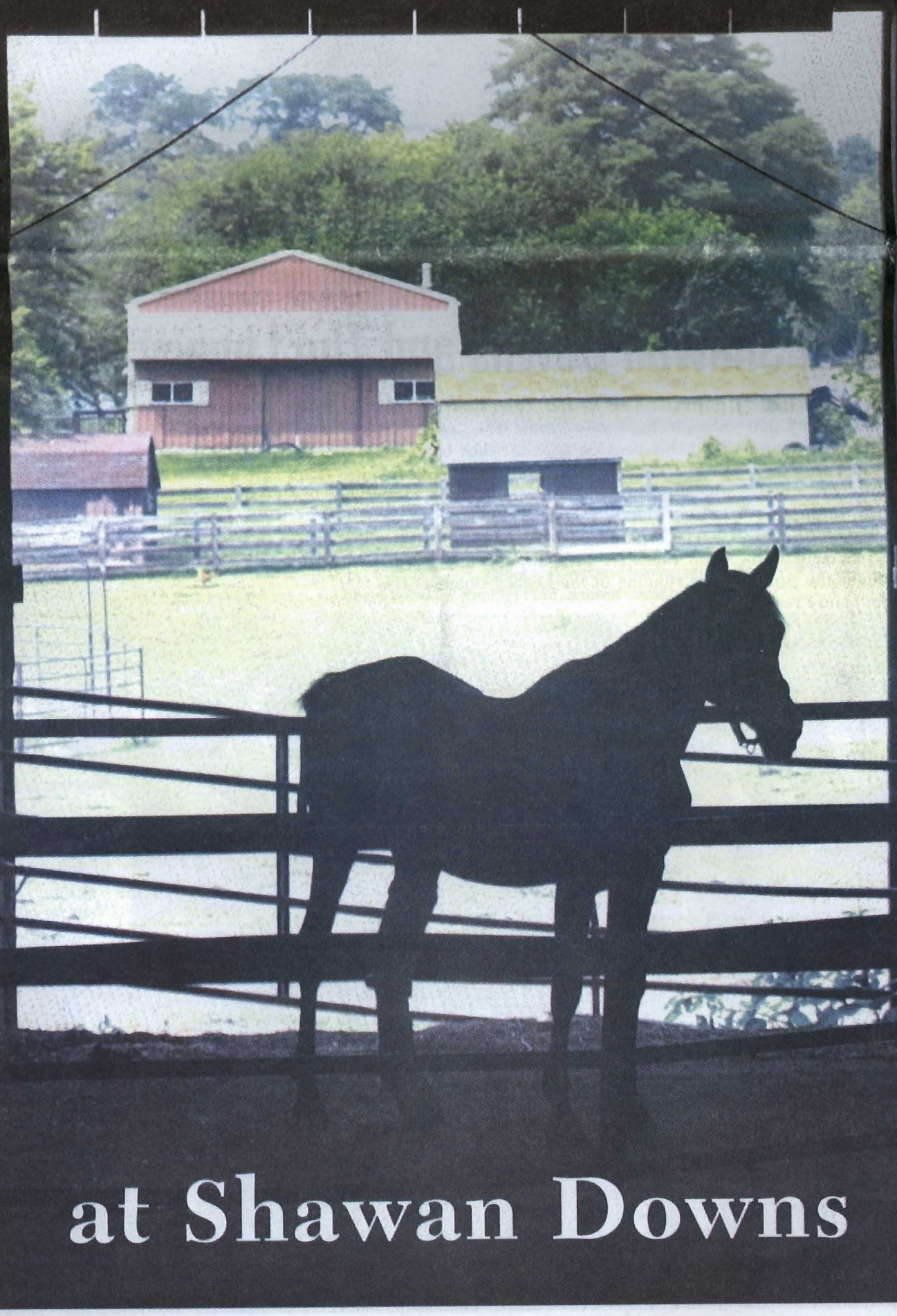
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SHAWAN DOWNS
A CELEBRATION OF THE LAND AND THE HORSE

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DOLAN MEDIA COMPANY

Third running of The Legacy Chase



at Shawan Downs

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THE LEGACY CUP *at* SHAWAN DOWNS



2001 CELEBRATE A NEW TRADITION IN STEEPLECHASE RACING

GATES OPEN 10:00 AM AND CLOSE 6:00 PM

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Proceeds to benefit the
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COVER PHOTOGRAPH BY DOUGLAS H. LEES DESIGN BY DAVID ASHTON AND ASSOCIATES

Pet Ex. #10

Eventfully Yours, LLC

P.O. Box 32686 • Baltimore, MD 21282-2686
P - 410-415-7333 • F - 410-415-7220
eventfully_yours@mindspring.com

SELECTED ACCOMPLISHMENTS:

- Planned Special Welcome to Baltimore for **Diana Ross**, Chinese Cuisine – Chinese Chef – along with a Day at the Farm. Unique request granted.
- Produced evening with **Michael Feinstein**, for The Advocates for Children and Youth organization at the Meyerhoff. Acted as Reception Chair handling coordination of catering, delivery and set-up
- Acquired entertainment for the organization, **100 Black Men**, and organized a sold out **Evening with Peabo Bryson** at Martin's West
- Public relations and advertising consultant for **The Miss Baltimore's Best Beauty Pageant**. Obtained great deal of publicity for the event, resulting in overwhelming successful pageant.
- Vice Chairperson for **In Person**, Travis Magazine International Designer's Show with Master of Ceremonies Kweisi Mfume. Organized event and coordinated all related activities. Acted as fashion show coordinator.
- Arranged a private evening with **Earth, Wind, and Fire,** including scheduling their performance, coordinating the fashion show and dinner for 50 with a private disco party after the affair.
- Designed a Texas style barbecue for **Teddy Pendergras** and his staff including a Wild West Trail Ride.
- Planned a weekend of entertainment for **David Cassidy** and his entourage with a day on the Chesapeake on a houseboat with a speed boat attached and a catered crab and lobster dinner. Organized a day-long Western Trail Ride and Whopping Pit Beef Barbecue.
- Put together a birthday party for **Luther Vandross** including entertainment, decorations and catering.
- Arranged Spa Day for principals of **Martin Lawrence Show** with catered lunch and professional homeopathic massages.
- Director of Sales for **Pro Image Inc**, Entertainment and Event Management Company. Organized and produced special events.
- Special Events Manager for **The Maryland Food Bank** – responsible for winning a national public relations service award and the first ever national food bank award.

Pet. Ex. #11a

Exhibit A

THE MILTON INN
14833 York Road
Sparks, Maryland 21152
Circa 1740

They do weddings and receptions.

- **6 dining rooms seating 180 people**
- **A bar room accommodates 60 standing and can handle additional 40 people standing in adjoining room**
- **Open air garden Terrace with a tent seating 90 people**
- **Tent used from spring until Thanksgiving (heated)**
- **Entire restaurant can be rented for a function holding 125 people**
- **Have inside wedding coordinator**
- **Can use the lawn – will need 2nd tent**
- **Offer attended parking**
- **Had 32 outside events 2002 and many in 2003**
- **Had 14 weddings August 2002 and many in 2003**
- **Have many second weddings**
- **Extensive wine cellar**
- **Fall and spring busiest seasons**
- **Serving customers since 1947**

Pet. Ex. #11b

Exhibit B

THE MANOR TAVERN
15819 Old York Road
Monkton, Maryland 21111

- **Offer weddings and receptions**
- **Have a terrace with a tent with enclosed sides seated diner 250 people – cocktail reception 350 people Tent heated all year round**
- **Offer second terrace with covered tent all year round, My Lady's Terrace 144 seated no dance floor-120 seated with dance floor**
- **Have 2 private dining rooms seating a total of 90 people**

Pet. Ex. #11c

Exhibit C

GREENSPRING VALLEY HUNT CLUB
13920 Mantua Mill Road
Glyndon, Maryland 21071

- **Have a clubhouse, patio, and grounds**
- **Many weddings and receptions from 50 – 300 people**
- **Use a tent on the patio in the spring and summer**

Pet. Ex. #11d

Exhibit D

GREENSPRING VALLEY COUNTRY CLUB
30 Greenspring Valley Road
Owings Mills, Maryland 21117

- **Weddings and receptions**
- **Weddings in the ballroom, receptions on the terrace**
- **Tents are put on the terrace if needed and can also be put on the grass**
- **Must be member of the club**

Pe T. Ex. #11e

Exhibit E

HAYFIELDS COUNTRY CLUB
700 Hayfields Road
Hunt Valley, Maryland

- **Must be golfing member to have an event**
- **One banquet room holding 200 people**
- **Formal dining rooms for lunch and dinner**
- **Rooms for corporate meetings**
- **Can put up your own tent**
- **Can have music**

Pet. Ex. #14

Exhibit F

OREGON RIDGE PARK
13401 Beaver Dam Road
Hunt Valley, Maryland 21030

Facility Includes:

- **1034 acre park with hiking trails**
- **The lodge, perfect for parties and meetings**
- **Seasonal beach open for swimming all summer long**
  Playground area – Concession Stand – Volleyball Court – Bathrooms – Changing Rooms – Showers – Pavilion with grills and picnic tables

    - **Weddings and Receptions September – June**
    - **3 areas for weddings**
      Stage Area
      Cherokee Grove
      Platform area with trees

        - **Receptions inside the lodge in the Sequoia Room**
        - **Capacity 300 for auditorium style seating or 260 for a seated affair**
        - **Band or DJ**
        - **Catering list offered or your choice**
        - **Dressing rooms available**
        - **No air conditioning**

They do dozens of events a year, and the summer is their busiest time. Some companies rent the entire park for anywhere from 400 – 5000 people. Their biggest events are the Preakness Event which brings 5000 – 10,000 people, their concerts, and the symphony. The symphony has been there 20 years and plays the entire month of July. Maryland Public T.V. has held the Barnyard Bash which has brought in up to 25,000 people in the month of September. Tents are put up for all 3 seasons spring, summer and fall. The park can hold picnics for up to 5000 people. Concerts are held for up to 6000 people. Corporate event schedules are being finalized this month for 2004.

Pet. Ex. #11g

Exhibit G

SHAWAN DOWNS
Hunt Valley, Maryland

Composition of the event:

- **Legacy Chase Steeplechasing for 8 race program**
- **Over 10,000 spectators at the event**
- **40 corporate sponsors**
- **40 tents**
- **Every tent had a different menu as per their corporate request**
- **Breakfast, lunch and dinner served all day in the tents**
- **Horse shows**

Pet. Ex. #11h

Exhibit H

THE HARRYMAN HOUSE
340 Main Street
Reisterstown, Maryland 21136

- **Handles wedding receptions seating from 35 - 55 people**
- **No outside seating area**
- **Adding Gourmet Wine Store and Carryout**
- **Many 2nd weddings**

Pet. Ex. #11

Exhibit I

Gibby's
22 W. Padonia Road
Timonium, Maryland 21093

- **Have a tent up all year round**
- **Tent heated in winter**
- **Have many events**
- **Can serve 100 people in the tent**
- **Many wedding receptions and business groups**
- **Always stay busy on the weekends**
- **Can have a party inside by converting rooms**

Pet. Ex. #11j

Exhibit J

An Poitin Stil
2323 York Road
Timonium, Maryland 21093

- **Entire restaurant seats 225 people**
- **Under a tent 200 – 300 more people**
- **New Tack Room added seats 50 people**
- **Many private parties**
- **St. Patrick's Day expect 8,000 people – under a tent – need permit from Baltimore County**
- **St. Patrick's Day 2002 under a tent – needed permit from Baltimore County last year had from 8,000 – 10,000 people**
- **Live music and promotions during the events**
- **Building enclosed patio to seat 40 – 50 people with a bar and heat**

Pet. Ex. #11K

Exhibit K

Liberatore's Ristorante
Timonium Corporate Center
9515 Deerco Road
Timonium, Maryland

- **Main Dining Room maximum 80 for seated dinner**
- **Private room adds 45 seats**
- **Use Lobby of building on weekends for events**
- **Can use a tent**

Pet. Ex. #11

Exhibit L

Linwood's Due
25 Crossroads Drive
Owings Mills, Maryland 21117

- **Two Dining Rooms seating 150 people each**
- **Separate party room for 30 people**
- **Can close main restaurant for a party**
- **Outdoor dining spring and summer**
- **Can install a tent**

Pet. Ex. #11m

Exhibit M

Michael's Café & Raw Bar & Grill
2119 York Road
Timonium, Maryland 21093

- **Main dining room holds 50 – 60 people – can do party there**
- **New Section holds 175 people**
- **Patio holds 30 people**
- **Do rehearsal dinners once a week**
- **Install a tent for Christmas Parties**

Pet. Ex. #11n

EXHIBIT N

PADONIA PARK CLUB
12006 Jenifer Road
Cockeysville, Maryland 21030

- **Indoor and outdoor venues**
- **Rooms for hosting 10 to 250 people**
- **30 acre park with multiple outdoor venues for groups up to 2500**
- **Clubhouse Deck, Platform Pavilion, Multiple Picnic Areas, all areas have tenting options**
- **Wedding ceremonies and Receptions**
- **Outdoor Music allowed**

Pet. Ex. #10

EXHIBIT O

THE VALLEY INN
10501 Falls Road
Brooklandville, Maryland

- **Book Wedding Receptions and Rehearsal Dinners**
- **Stand-up cocktails for 200 people**
- **Sit-down dinner for 100 people**
- **Planning on putting tent outside for summer**

Pet. Ex. #11p

EXHIBIT P

GRAND LODGE OF MARYLAND
MASONIC TEMPLE
304 International Circle
Cockeysville, Md. 21030

- **Located on 247 acres**
- **Ballroom used for seated dinner and dancing holding 320 people**
- **Ballroom standing room only 408 people**
- **Weddings and Banquets**
- **Courtyard can be tented**
- **Open to rent past 4 years**

Pet. Ex. #11q

EXHIBIT Q

WORTHINGTON VALLEY SWIM CLUB
2515 Baublitz Road
Reisterstown, Maryland 21136

- **1958 – 1980 Kiwanis Valley Swim Club**
- **Present owner has owned it 23 years**
- **Largest Pool in Baltimore County – 50 meter pool**
- **4 Tennis Courts – Volleyball Court – 2 Basketball ½ courts, Soccer Field**
- **Operate May thru September**
- **Bath and Shower Rooms**
- **Have a Pavilion and put up two tents in the summer-40'x40'& 30'x 30'**
- **Accommodates 400 people between the Pavilion and the two tents**
- **Many corporate events – ex. Black & Decker, T. Rowe Price**
- **A lot of parking**

Pet. Ex. #11r

EXHIBIT R

BOORDY VINEYARDS
12820 Long Green Pike
Hydes, Maryland 21082-9541

- **Holding events for 22 years – opened in 1945**
- **Holds over 60 events annually**
- **2004 is completed booked on the weekends**
- **In the summer months there is a concert every Saturday night**
- **Hold tours year round**
- **Picnics – have 20 tables seating 4-6 guests**
- **Have a Wine Cellar – capacity 20 seated, 75 standing**
- **Offers on-site catering**
- **The Upper Barn is 4,000 sq. ft. with a capacity of 175 seated guests and 250 standing**
- **Tents may be rented to increase capacity**
- **No amplified instruments are permitted. PA systems for vocalists are allowed**

Pet. Ex. #11S

EXHIBIT S

BASIGNANI WINERY
15722 Falls Road
Sparks, Maryland 21152

- **Operating 15 years**
- **Hold events and can put up 30 x 30 tent**
- **Events – Case Club Events August and February**
- **Holds seasonal calendar of events including" Swing into Spring", "Harvest Weekends", "Tuscan Grill", and "Holiday Open House"**
- **April event is "Pizza and Herbs"**
- **June event is "Flags and Dads"**
- **August event is "The Brewer's Art" – Five Course Wine Dinner**

Pet. Ex. #11t

EXHIBIT T

MEADOWOOD REGIONAL PARK
10650 Falls Road
Lutherville, Maryland 21093

- **Park has 3 Pavilions with a capacity of 75 – 80 people at each Pavilion**
- **Opened Spring 2003**
- **Has 7 Fields**
- **One mile walking path**
- **Venue for corporate picnics**

Pet. Ex. #11u

EXHIBIT U

GRAMERCY MANSION
1400 Greenspring Valley Road
Baltimore, Maryland 21153

- **Mansion on 45 acres in Greenspring Valley**
- **Gramercy Mansion and Carriage House available for weddings, seminars and parties**
- **Operating since 1985**
- **Mansion can serve 150 guests**
- **Carriage House can serve 100 guests**
- **Can serve up to 450 guest for cocktails between the mansion and the carriage house using tents**
- **Can seat 350 guests between the mansion and the courtyard using a tent**
- **Tents can be used**
- **Many corporate clients**

Pe T. Ex #11 ✓

EXHIBIT V

PIERCES PLANTATION
12460 Dulaney Valley Road
Phoenix, Maryland 21131

- **Restaurant with Weddings and Receptions Saturday's daytime to 4:30 p.m.**
- **Weddings and Receptions Sunday afternoons starting at 3:00 p.m.**
- **No Saturday night weddings**
- **Looking to have every weekend with a wedding**
- **Ceremony and Reception in the main part of the restaurant**
- **Two other rooms used for the restaurant**
- **No permanent tent at this time**
- **Normal capacity 125 people for weddings**
- **Can have up to 350 – 500 people outside**
- **Serving lunch and dinners**
- **Will put up a tent if necessary**
- **Offer valet parking**

Pet. Ex #11 w

EXHIBIT w

COURTNEY'S of TIMONIUM
Padonia Park Shopping Center
106 W. Padonia Road
Timonium, Maryland

Full service restaurant Plus
New Banquet Room:

The Avalon Room seats 10 – 100 people
Bridal Showers
Rehearsal Dinners
Engagement Parties
Reunions
Retirement Parties
Corporate Functions
12 ft. screen for PowerPoint, video, internet presentations
Private Entrance, Private Bar, Coat Room, and Restrooms

Richard J. Peppin, P.E.

HOME: 5012 Macon Road, Rockville, MD 20852, 301/984-3375 (ph), -5762 (fx), PeppinR@asme.org
OFFICE: Scantek, Inc. 7060 Oakland Mills Rd, Suite L, Columbia, MD 20910, 410-290-7726 (ph), -9167 (fx) PeppinR@ScantekInc.com

Pet. Ex. #12

ACADEMIC BACKGROUND

City College of New York, B.E. Mechanical Engineering, 1965
W. Va University, M.S. Theoretical & Applied Mechanics, 1966
Rensselaer Polytechnic Inst., M.S. Mechanical Engineering, 1969
McMaster University, Ph.D. Candidate, Mechanical Engineering, 1972

LICENSES AND REGISTRATIONS

Registered Professional Engineer: NY(51519), NJ (20911), MD (12869), Ontario, VA (036156)
Board Certified in Noise Control Engineering: Institute of Noise Control Engineering
Certified Quality Systems Auditor: ISO 9000, Registrar Accreditation Board (1995-2000)
Approved Auditor: Calibration Cooperative, PRI, Society of Automotive Engineers

PROFESSIONAL EXPERIENCE

Business

Scantek Inc. (1985-95, 1998-), President
Institute of Noise Control Engineering (2002-), Manager of Advertising
Larson Davis Laboratories, Inc. (1995-98), Eastern Regional Manager
Industrial Acoustics Co. (1995), Vice President, Market Development
Brüel and Kjær Instruments (1982-85), Head, Acoustics and Environmental Marketing Groups

Associations

Institute of Noise Control Engineering (1997-) Manager, Expositions
Institute of Noise Control Engineering (2002-) Manager, Advertising, "Noise News International"

Government

State of Maryland, MD Department of Environment, (2004-), Member, Environmental Noise Advisory Council
National Park Service (1981-82), Acting Chief, Division of Safety Management
Occupational Safety and Health Administration (1979-80), Sr. Scientist and Safety Engineer
Montgomery County Government (1976-79), County Noise Control Engineer

Education

Pennsylvania State University (1987-99), Instructor
Montgomery College (1989-90), Instructor
McMaster University (1969-72), Instructor

Consulting

Straughan Environmental Services, Principle Acoustical Engineer (2000-1)
Air Conditioning & Refrigeration Institute (1996-97), Consultant in Acoustics
National Institute for Standards and Technology (1982-), Laboratory Assessor
American Association for Laboratory Accreditation, Laboratory Assessor (1992-4), Member, Accreditation Council (1994-6)
Performance Review Institute (1994-), Assessor
Robson Lapina (1985-), Forensic Expert- Acoustics
State of Maryland (1983-), Noise Control Engineer
Richard J. Peppin, P.E. (1975-), Principal Consultant
White Mountain Research (1975-85), Principal Consultant
Jack Faucett Associates (1977-79), Sr. Consultant
Science Applications (1975-76), Manager, Community and Industrial Noise Programs
Kodaras Acoustical Laboratories (1973-75), Sr. Acoustical Consultant
Engineering Science, Inc. (1973), Consultant
Donley Miller & Nowikas (1972-73), Consultant

Industry

Pratt & Whitney Aircraft (1967-69), Sr. Structural Engineer
Bendix Corp. EP Div (1965-66), Engineer

Expert Witness

*1986 March, Montgomery County Zoning Hearing Examiner, Office of Zoning and Administrative Hearings, Boys Citizens Association v. Rockville Crushed Stone, Montgomery County Board of Appeals, Chen-Walsh and Tackler, William Chen, Attorney*1996 May 31 Robert J. Califano v. Montgomery Ward, Schenectady, NY Delawareans, Gordon, Pasquariello, Weiskopf & Harding, Charles. Harding, Attorney, Hearing Conservation *2000 May 31, Buck Hill Falls Co v. Clifford Press and Elizabeth Sawyer, Stroudsburg PA, Judge Worthington, G. Westervelt, attorney, Community Noise qualified in the court of common pleas of Monroe county Pennsylvania, case no 6480 civil 1999*2000 November 14, U.S. District Ct, Wash. DC, Harris v. National Rail Passenger Association (AMTRAK), Judge Emmitt Sullivan, Vincent McKnight, Attorney*2000 September 27 and November 2, Zoning Hearing Examiner for Prince George's County Hearing Examiner Joyce Nichols, Larry Taub, Attorney-

Scantek, Inc. Sound & Vibration Instrumentation and Engineering

Pet. Ex. #13

MEMO

Date: March 23, 2004
From: Richard J. Peppin, President
To: David Karceski, Venable
Subject: Oregon Grille Sound Study

Dear David,

Background

An established restaurant in suburban Baltimore, the Oregon Grille[1] (called "The Grille"), wants to have outdoor activities that use amplified sounds. We were asked to determine the expected sounds in the community if amplified music was part of the Grille's events. The Grille is located on the southern edge of Shawan Road, running east west, and on the western edge of beaver Dam Road, running north south. Beaver Dam Road, north of Shawan Road becomes Cuba Road. See Figure 1 for layout.

Procedure

We modeled the nearby environment with a sophisticated sound-estimating program. The program, "CadnaA," from DataKustik (Munich, Germany), is based on ISO[2] 9613-2: 1996, "Acoustics- Attenuation of sound during propagation outdoors- Part 2: General method of calculation," an internationally recognized community noise-predicting standard. Roads and topography were included, as were all buildings in the immediate vicinity (about 1500-feet around the restaurant.) To be conservative a) no attenuation due to ground effects were included and downwind propagation was assumed in all directions.

The criteria for acceptability are from the "Code of Maryland (CoMar), Title 26 Department of the Environment, Subtitle 02 Occupational, industrial, and residential hazards, Chapter 03 Control of noise pollution." Table 2 of that document gives A-weighted daytime (7:01am to 10:00pm) limits of noise (maximum) to be no more than 65 dB and nighttime (10:01pm to 7:00am) to be no more than 55 dB.

By the use of CadnaA software, we estimated noise levels around the community produced by an electronic loudspeaker placed at the rear of the restaurant. The locations at which estimates were made included all nearby residences. Since noise levels reduce as the distance from the source increases, if nearby residences are below limits, then residences further away will also be below limits.

To estimate the noise produced, we mounted, at about 5-ft above the patio floor, at the perimeter of the upper patio adjacent to the restaurant, an omnidirectional loudspeaker, with an amplifier[3], to

---

1 1201 Shawan Rd, Baltimore, MD
2 ISO is the International Organization for Standardization
3 CESVA FP120 loudspeaker s/n T218255, amplifier s/n T218302

Pet. Ex. # 14

CODE OF MARYLAND REGULATIONS

Title 26

DEPARTMENT OF THE ENVIRONMENT

(Part 1)

P.C. Ex. #15

MICKEY A. CORNELIUS, P.E., P.T.O.E.

Senior Vice President

Mickey Cornelius, proudly one of the first certified Professional Traffic Operations Engineers (P.T.O.E.) in the nation, is Senior Vice President of the firm, responsible for managing various aspects of the firm's traffic engineering and transportation planning studies. He is experienced in many aspects of traffic engineering and transportation planning, including traffic analysis, traffic forecasting and associated modeling, geometric design, traffic signals and signal systems evaluation/design, parking and circulation, traffic calming, and transportation systems management.

As a registered Professional Engineer, Mr. Cornelius has over 15 years experience in the highway transportation and traffic engineering profession. His experience in both the public and private sectors has provided him with a broad range of expertise in his field. Mr. Cornelius has conducted over 1,500 traffic engineering studies and has served as a transportation planner for the development of Master Plans for both private firms and public agencies. His educational and professional background has qualified him as an expert in the field of traffic engineering and transportation planning before numerous County and Municipal Planning and Zoning Boards in Maryland, as well as in Pennsylvania, New Jersey and New York.

Job History

1987 - Present
Traffic Engineering Consultant, The Traffic Group, Inc.

1984 - 1987
Traffic Engineering Consultant

1982 – 1984
Civil Engineer, Highway Construction

Educational Background

- *B.S. in Civil Engineering* with emphasis in Transportation
  Pennsylvania State University
- *Traffic Engineering Courses*
  Northwestern University Traffic Institute
  Polytechnic Institute of New York

Affiliations

- Certified Professional Traffic Operations Engineer (P.T.O.E.)
- Registered Professional Engineer (P.E.)-DE, MD, NJ, PA, VA
- Institute of Transportation Engineers (I.T.E.)
- National Society of Professional Engineers (N.S.P.E.)
- Urban Land Institute (U.L.I.)
- Maryland Association of Engineers (M.A.E.)
- Consulting Engineers Council of Pennsylvania (CEC/PA)
- American Society of Civil Engineers (A.S.C.E.)

Examples of places where Mr. Cornelius has testified as an expert witness

MARYLAND
City of Annapolis - City Council
Anne Arundel County - Board of Appeals; Zoning Hearing Examiner
City of Baltimore - City Council; Planning Commission
Baltimore County - County Review Group, Zoning Commissioner, Board of Appeals; Circuit Court; District Court
Town of Bel Air - Planning Board; Town Commissioners; Zoning Hearing Examiner
Carroll County – Board of Appeals; County Commissioners; Planning Board
City of Bowie - Planning Advisory Board; Mayor and City Council
Cecil County - Technical Advisory Committee
Charles County - Board of Appeals
Dorchester County - Board of Appeals
Frederick County - Planning Board; County Commissioners; Board of Appeals
Harford County – Zoning Hearing Examiner
Howard County - Planning Board; Zoning Board; Board of Appeals
Town of Indian Head - Planning Commission
Montgomery County - Planning Board; Zoning Hearing Examiner; Board of Appeals
Town of North East - Planning Commission
Prince George's County - Planning Board; County Council
Washington County - Board of Appeals
City of Westminster - Mayor and Common Council
Wicomico County - Board of Zoning Appeals

NEW JERSEY
State Court of Administrative Law
Cumberland County - Manchester Township Zoning Hearing Board
City of Millville - Planning Commission

PENNSYLVANIA
York County - Manchester Township Zoning Hearing Board
Shrewsbury Borough – Planning Commission

NEW YORK
Town of East Hampton - Planning Commission

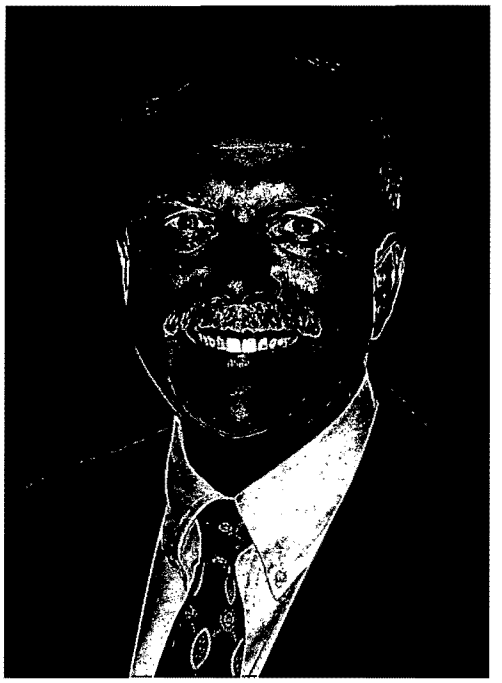
Pet. Ex. #16

Charles V. Main, II
Vice President

DMW
Daft·McCune·Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21204
Phone 410 296 3333
Fax 410 296 4705
cmain@dmw.com

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



Charlie Main is responsible for feasibility studies, economic analysis, production of construction drawings, specifications and construction period services.

Thorough analysis and responsive resolution of design concerns are hallmarks of Charlie's work during both engineering and construction phases. His land development experience extends into many local jurisdictions, as well as state and federal agencies. Projects include small commercial renovations, as well as extensive mall expansions and residential subdivisions.

Significant Projects

Towson Town Center
Mall Expansion
Towson, Maryland

Villages of Wisp
Residential Subdivision
McHenry, Maryland

Al-Ray & Super Concrete
Corporation
Rubble Landfill
Lothian, Maryland

Harbor Place
Pavilion Retail Centers
Baltimore, Maryland

Grey Rock
Residential Subdivision
Pikesville, Maryland

Union Memorial Hospital
Multi-Purpose Buildings
Baltimore, Maryland

Professional Background

Daft-McCune-Walker, Inc.
Towson, Maryland
2001 - Present; 1995 - 2000;
1989 - 1992

Frederick Ward Associates
Columbia, Maryland
2000 - 2001

McKee & Associates, Inc.
Hunt Valley, Maryland
1992 - 1995

Greenhorne & O'Mara
Towson, Maryland
1988 - 1989

G.W. Stephens, Jr. &
Associates, Inc.
Towson, Maryland
1984 - 1988

Whitman, Requardt
and Associates
Baltimore, Maryland
1978 - 1984

Registration

Professional Engineer
Maryland No. 20784

Education

B.A. - Mathematics
Washington College

Associations

National Society of
Professional Engineers

American Society of
Civil Engineers

Ref. Ex. #17

379.1

370.4

368.2

366.8

366.7

397.7

366.2

365.9

362.1

368.4

373.6

0.2

380

374

376

378

372

370

371

375

SWM FACILITY
SURFACE SAND FILTER (F-1)

367.1

364.8

365

364.4

360.5

364.3

360.5

STORMWATER MANAGEMENT
SURFACE SAND FILTER, F-1
CPv: NONE REQUIRED, WAIVER FOR PEAK DISCHARGE
LESS THAN 2 cfs 1 YR. PEAK DISCHARE
WQv REQUIRED: 0.038 AC. FT.
WQv PROVIDED: 0.046 AC. FT.
Rev: WILL BE PROVIDED BY INFILTRATION
UNDER SURFACE SAND FILTER

PARKING SPACES PROVIDED: 55

OREGON GRILL

DATE: 3/11/04 SCALE: 1"=30'
JOB NO. 85040.E4

on 3/23/2004 4:40:36 PM \\ATHENS\STATION\CADNET\NCF\dgy-dgf tslevin c:\hpm\85040e4SIT.hpm

Pet. Ex. #8

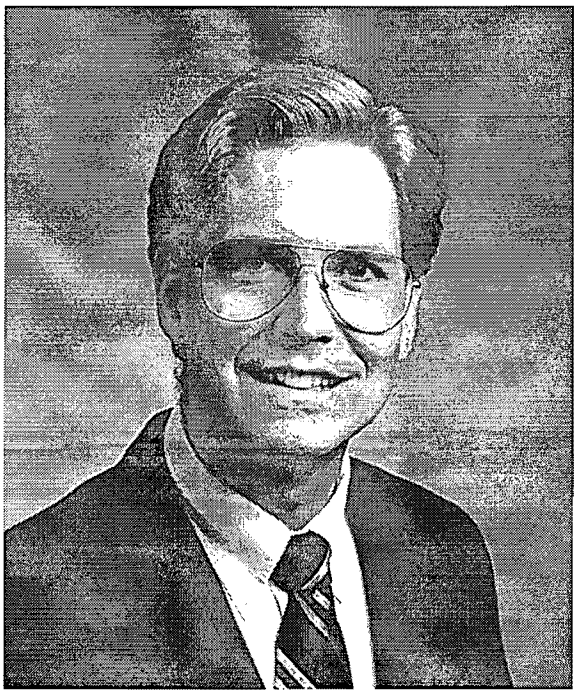
Eric C. Hadaway, PWS

Senior Associate and
Director of Environmental Services

DMW
Daft·McCune·Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21204
Phone 410 296 3333
Fax 410 296 4705
ehadaway@dmw.com

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



Eric Hadaway ensures that DMW projects are planned and developed to address environmental concerns and meet environmental regulatory standards.

A specialist in wetland and forest delineations, forest buffer analysis, environmental assessments and Chesapeake Bay Critical Areas, Eric is a forest conservation expert, Professional Wetland Scientist, and is certified by the Army Corps of Engineers to perform wetland delineations. He has published numerous reports of endangered plant species occurrences in the state.

Significant Projects

Hopewell Pointe
Wetland Delineation, Permitting, Mitigation Design, Critical Areas Compliance
Baltimore County, Maryland

Sparks Corporate Center
Wetland and Stream Delineations, Forest Conservation Planning
Baltimore County, Maryland

Emerson
Wetland Delineation, Permitting, Mitigation Design, Forest Conservation Planning
Howard County, Maryland

Waterview
Wetland Delineation, Permitting, Mitigation, Stream Restoration, Forest Conservation, Critical Areas Compliance
Baltimore County, Maryland

Professional Background

Daft-McCune-Walker, Inc.
Towson, Maryland
1994 - Present

PMT & Associates, Inc.
Timonium, Maryland
1991 - 1994

Education

Graduate Study in Environmental Sciences
Towson University

B.S. - Biology
Towson University

Guest Lecturer

MICPEL Environmental Mini-Course
University of Maryland Law School

Professional Practice in Landscape Architecture
University of Maryland

Associations

Society of Wetland Scientists

Member - Upper Eastern Shore Tributary Strategy Team

Maryland Daffodil Society

Civic Involvement

Pleasant Plains Elementary P.T.A.

Leadership Baltimore County Class of 2003

Chester River Association

DMW
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

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

DMW Project # 85040.E4

Pe T. Ex. #19

Oregon Grille

200 0 200 400 600 800 Feet

DATA SOURCE:
BALTIMORE COUNTY OIT GIS
HORIZONTAL DATUM: NAD 83
VERTICAL DATUM: NAVD 88
DATE OF CAPTURE: MARCH 2000

o:/projects/oregon ridge.apr ko 11-4-03

N

Pet. Ex. 20 a



WELL VEGETATED,
STAGNED STREAM
O. Grill
10.30.03

Pet. Ex. 206



Swm @ O Grill
10.22.07

379.1
370.4
368.2
366.8
397.7
366.7
366.2
365.9
362.1
368.4
373.6
367.1
364.8
364.4
360.5
364.3
360.5
378
376
374
360
372
370
371
SWM FACILITY
SURFACE SAND FILTER (F-1)
372
371
370
374
372
371
370
12
13
12
18
AS (6)
AR
PS
IV (6)
BN (4)

SUGGESTED PLANT LIST

AS = ALNUS SERULATA
IV = ILEX VERTICILATA
BN = BETULA NIGRA
PS = PLATANUS SP.
AR = ACER RUBRUM
= PANICUM VIRGATUM

STORMWATER MANAGEMENT
SURFACE SAND FILTER, F-1
CPv: NONE REQUIRED, WAIVER FOR PEAK DISCHARGE LESS THAN 2 cfs 1 YR. PEAK DISCHARE
WQv REQUIRED: 0.038 AC. FT.
WQv PROVIDED: 0.046 AC. FT.
Rev: WILL BE PROVIDED BY INFILTRATION UNDER SURFACE SAND FILTER

PARKING SPACES PROVIDED: 55

OREGON GRILL

DATE: 3/11/04 SCALE: 1"=30'
JOB NO. 85040.E4

DAFT · McCUNE · WALKER, INC 3/22/04

Plot: 3/23/2004 4:40:36 PM J:\ATHENS\MSTATION\CADNET\NOCF\dsg-qcf tsl:\svn c:\hpm\85040dSIT.hpm

Pet. Ex. #22

Mitchell J. Kellman

Zoning Expert



DMW
Daft-McCune-Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21204
Phone 410 296 3333
Fax 410 296 4705
mkellman@dmw.com

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

Mr. Kellman has over 11 years of experience working in zoning administration and subdivision regulation for the public sector; 9 of those years were with the Baltimore County Office of Planning and Zoning. His responsibilities included review, approval and signatory powers on behalf of the Director of Final Development Plans and Record Plats. He represented the Zoning Office on the County Development Review Committee, a body reviewing the procedural compliance of all development submissions. Review of petitions and site plans filed for zoning hearing approvals were within his authority. Additionally, he supervised county review staff, met with professionals and public on development project matters, and

Significant Projects

Waterview
Baltimore County, Maryland

Hopewell Pointe
Baltimore County, Maryland

GBMC
Baltimore County, Maryland

Sheppard and Enoch Pratt Hospital
Baltimore County, Maryland

Charlestown Retirement Community
Baltimore County, Maryland

Oakcrest Village Retirement Community
Baltimore County, Maryland

Goucher College
Baltimore County, Maryland

Notre Dame Preparatory School
Baltimore County, Maryland

Professional Background

Daft-McCune-Walker, Inc.
Towson, Maryland
2000 - Present

Baltimore County Office of Permits and Development Management - Development Control
1988 - 2000

Education

B.A. Towson University
Geography and Environmental Planning - Urban Planning
1983

Masters Geography and Environmental Planning - Urban Planning
1987

Associations

Gama Theta Epsilon (International Graphic Honor Society)

American Planning Association

Pet. 23

LAND PRESERVATION TRUST, INC.

RESOLUTION

Whereas, the Land Preservation Trust, Inc. (LPT) board of directors held a meeting on March 8, 2001; and

Whereas, one of the matters that came before the board was what, if any, position the LPT wished to take with regard to the request by the Oregon Grille to have parties in a tent on the terrace behind the building and to enlarge the parking lot; and

Whereas, after discussion, a motion to not oppose the Oregon Grille's request was passed unanimously, and

Whereas, the Oregon Grill matter is the subject of an ongoing hearing before the Board of Appeals of Baltimore County, and

Whereas, various LPT board members testified that the LPT did not oppose the Oregon Grille's request for tented events; and

Whereas, one of the parties lawyer's asked for a Resolution confirming the LPT position

It is hereby Resolved that Land Preservation Trust, Inc. does not oppose the request by the Oregon Grille that it be permitted to conduct parties in a tent on the terrace behind the restaurant and to expand its parking lot; and

It is hereby Resolved that any board member is authorized to communicate the LPT position in any hearing before any Baltimore County body empowered to conduct such a hearing.

ATTEST:

Edward A. Halle, Jr., Sec.

Michael D. Hankin, Pres.

fax (410) 821-0147 Pg. 2

SHAWAN DOWNS
A CELEBRATION OF THE LAND AND THE HORSE

March 29, 2004

Mr. Robert A. Hoffman
Venable, Baetjer and Howard, LLP
210 Allegheny Ave
P. O. Box 5517
Towson, MD 21285-5517

Dear Rob,

At the hearing last week, I was asked if Shawan Downs had received any money from Ted Bauer or the Oregon Grille. The records have been reviewed , and they do not reflect any contribution from the Oregon Grille or Mr. Bauer.

If I can be of any further help, please don't hesitate to contact me.

Sincerely yours,

Charles C. Fenwick, Jr.

Original had been Mailed.

P.O. BOX 433 LUTHERVILLE-TIMONIUM MARYLAND 21094-0433
TELEPHONE 410.666.9676 FACSIMILE 410.666.9762 EMAIL info@shawandowns.org WEBSITE www.shawandowns.org

Re/Ex. #25

ROBERT W. SHEESLEY

ECO SENSE, INC.
8354 Chestnut Farm Lane
Ellicott City, Maryland 21043

BACKGROUND

Mr. Sheesley has over twenty nine years of experience in government, regulatory ,and permitting processes with a specialty in environmental matters. During the past eight years Mr. Sheesley has acted as a private consultant to real estate developers, banking institutions, and local and state governments providing assistance on land use issues, government regulation, permitting requirements and negotiation, environmental sanitation, and natural resource identification and characterization.

In most of the positions that Mr Sheesley has held, he was responsible for, or participated in, public forums, community involvement, consensus building, and working with many competing interests. Such involvement includes building a Department, establishing a regional solid waste recycling program, siting solid and hazardous waste facilities, establishing watershed management policy, alternative road and highway alignments, waterway dredging projects, and regional environmental management strategies.

QUALIFICATIONS

- Eight years as a private consultant.
- Over twenty nine years of experience in environmental protection and resource management.
- Proven skills in program planning, personnel supervision, and budget management.
- Demonstrated political interaction skills and consensus building.
- Skilled in legislative and regulatory processes.
- Skilled in effecting public participation, consensus building, addressing competing interests, conflict resolution, problem solving

GOVERNMENT AND REGULATORY EXPERIENCE

- Planned, developed, and administered the Baltimore County, Maryland Department of Environmental Protection and Resource Management.
- Coordinated the development of Baltimore County Programs in the following disciplines:

  Watershed Management
  Wetland Protection
  Coastal Waterway Improvement
  Groundwater Protection
  Forest Management Strategy
  Solid Waste Recycling
  Agricultural Protection
- In Howard County, Maryland, reorganized, staffed, and administered the Bureau of Environmental Health, Maryland Department of Health.
- President of the Maryland Conference of Environmental Health Directors Association (1984 - 1987).
- Coordinated statewide effort to provide consistency and standardization of local environmental health programs in the State of Maryland.
- Member, Governors Task Force:

  Maryland Non Tidal Wetlands Act;
  Forestry Management Regulation;
  Greenways Program.
- Member of the Board of Directors Chesapeake Bay Trust
- Member, Maryland Association of County's Subcommittees:

  Managing Municipal Sewage Sludge
  Maryland Solid Waste Regulation
- Member , Governor's Council on Toxic Substances (assisted the Deputy State Health Officer for Baltimore County.



Pet. Ex. 26

3/16/04

PHOTOGRAPH OF STREAM CHANNEL FLOWING THROUGH OREGON GULCH PROPERTY. STREAM BANKS ARE STABLE, VEGETATION ON STREAM BANKS, VEGETATION IS FOUND IN CHANNEL.

Transcripts

#9

FUNK & BOLTON
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
100 LIGHT STREET, SUITE 1000
BALTIMORE, MARYLAND 21202-1036
(410) 659-7700
FACSIMILE (410) 659-7773

Writer's Direct Dial: (410) 659-7764
mmcann@fblaw.com

DAVID M. FUNK
BRYAN D. BOLTON
BRYSON F. POPHAM
LINDSEY A. RADER
GARY C. HARRIGER
DEREK B. YARMIS
JEFFERSON L. BLOMQUIST
REN L. TUNDERMANN
CHARLES D. MACLEOD

†ADMITTED IN NE AND DC ONLY
††ADMITTED IN VA ONLY
†††ADMITTED IN TX ONLY

JEROME D. BRESLIN†
JAMES F. TAYLOR
PETER C. ISMAY††
CYNTHIA L. McCANN
E. ELIZABETH STABER
CHERYL A. C. BROWN
TALI RAPHAELY

OF COUNSEL
MICHAEL R. McCANN
J. FRANK NAYDEN
KAY DOUGHTY PHILLIPS†††
DEBORAH R. RIVKIN
JOHN R. STIERHOFF

August 29, 2002

Robert A. Hoffman, Esquire
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204

Re: The Oregon Grille
Before the Zoning Commissioner for Baltimore County
Case No. 02-461-SPHXZA

Dear Robert:

Enclosed please find a copy of the transcript from the hearing before the Baltimore County Board of Appeals on August 13, 2002. Please contact me if you have any questions.

Sincerely,

Michael R. McCann

MRM/aml
Enclosure

85000.001:57144

Petitions For Special Hearing, Special Exception and Variance SW/Corner Shawan Road and Beaver Dam Road (1201 Shawn Road) 8th Election District 3rd Councilmanic District	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO: 02-461-SPHXA

Oregon Grille L.L.C.
Petitioner

_____/

The above-entitled matter came on for Hearing before the Honorable Lawrence E. Schmidt, Arbitrator, on Tuesday, August 13, 2002, commencing at 9:00 a.m., at the Baltimore County Courthouse, 401 Bosley Avenue, Suite 407, Towson, Maryland, 21204, before R. Dwayne Harrison, a Notary Public.

APPEARANCES:

ROBERT A. HOFFMAN, ESQUIRE
DAVID KARCESKI, ESQUIRE
On behalf of Petitioner

MICHAEL R. MCCANN, ESQUIRE
On behalf of Protestant

ALSO PRESENT:

JACK DILLON

REPORTED BY: R. Dwayne Harrison

EXHIBITS:

TRANSCRIPTS,

PREVIOUS

CASES

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE - SW/Corner Shawan Road and Beaver Dam Road (1201 Shawan Road) 8th Election District 3rd Councilmanic District

Baltimore County, Maryland
Petitioners

* BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 94-348-SPHXA

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as Petitions for Special Hearing, Special Exception and Variance for that property known as 1201 Shawan Road in the Cockeysville area of northern Baltimore County. The Petitions were filed by the owner of the property, Baltimore County, Maryland, through the Department of Recreation and Parks, by Wayne R. Harman, Director. The Petitioner seeks a special hearing to approve or confirm that the subject property and improvements thereon are exempt from the Baltimore County Zoning Regulations (B.C.Z.R.), and alternatively, to approve an existing restored commercial store building and its conversion to a tea room/restaurant as being consistent with its preservation; a special exception to approve the conversion of the existing building to a restaurant as being consistent with the preserved general store building, subject to Section 1A03.3.B.4 (Section 402.3) of the B.C.Z.R.; and variance relief from Section 409.6.A.2 of the B.C.Z.R., if required, to permit 44 parking spaces in lieu of the required 92 spaces. The subject property and relief sought are more particularly described on the plan submitted into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Ted Bauer, Restaurateur, Ed Haile with Daft-McCune-Walker, Inc., Mickey Cornelius with The Traffic Group, Frederick Baukhauer with Chesapeake Design

EXHIBITS:

TRANSCRIPTS, PREVIOUS CASES

Petitions For Special Hearing, Special Exception and Variance SW/Corner Shawan Road and Beaver Dam Road (1201 Shawn Road) 8th Election District 3rd Councilmanic District	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO: 02-461-SPHXA

Oregon Grille L.L.C.
Petitioner

_____/

The above-entitled matter came on for Hearing before the Honorable Lawrence E. Schmidt, Arbitrator, on Tuesday, August 13, 2001, commencing at 9:00 a.m., at the Baltimore County Courthouse, 401 Bosley Avenue, Suite 407, Towson, Maryland, 21204, before R. Dwayne Harrison, a Notary Public.

APPEARANCES:

ROBERT A. HOFFMAN, ESQUIRE
DAVID KARCESKI, ESQUIRE
On behalf of Petitioner

MICHAEL R. MCCANN, ESQUIRE
On behalf of Protestant

ALSO PRESENT:

JACK DILLON

REPORTED BY: R. Dwayne Harrison

Agreements
Transcripts

#10

ASSIGNMENT OF LEASE (LESSEE'S INTEREST)
WITH LANDLORD'S CONSENT AND WAIVER

THIS AGREEMENT is made this 20th day of August, 1996, by and between THE COLUMBIA BANK ("Lender/Assignee"), a state chartered banking institution with its principal office at 10480 Little Patuxent Parkway, Columbia, Maryland 21044; OREGON L.L.C. ("Borrower/Assignor"), a Maryland limited liability company; and BALTIMORE COUNTY, MARYLAND ("Landlord"), a body corporate and politic.

WHEREAS, Landlord and Borrower/Assignor have entered into a lease (the "Lease") in connection with the Oregon Property (hereafter defined, and as more particularly described in the Lease), pursuant to that certain (i) Agreement of Lease dated June 1985 by and between Landlord, as lessor, and Oregon General Store Limited Partnership, as lessee, and (ii) a Memorandum and Amendment of Agreement of Lease dated September 7, 1985 and recorded among the Land Records of Baltimore County, Maryland at Liber 7031, Folio 4, and (iii) the Supplemental Lease Agreement No. 1 thereto dated November 21, 1994 between Landlord and Borrower/Assignor, as lessee by assignment; and

WHEREAS, Borrower/Assignor has applied to the Lender/Assignee for a loan (the "Loan") in the amount of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS ($1,250,000.00). The Loan is to be evidenced by a Promissory Note (as the same may from time to time be extended, amended, restated, supplemented or otherwise modified, the "Note") in that amount, dated the date hereof; and

WHEREAS, Borrower/Assignor intends to use the proceeds of the Loan from Lender/Assignee for the construction of leasehold improvements for a new restaurant facility to be known as the "Oregon Grille", located at the intersection of Beaver Dam Road and Shawan Road (1201 Shawan Road), Hunt Valley, Baltimore County, Maryland (hereafter, the "Oregon Property", as said property is more particularly described in the Lease), and the funds of the Loan shall be disbursed to Borrower/Assignor in accordance with the terms and conditions of a Building Loan and Security Agreement ("Loan Agreement") of even date herewith between Borrower/Assignor and Lender/Assignee; and

WHEREAS, Lender/Assignee is unwilling to make the Loan to Borrower/Assignor unless, inter alia, Borrower/Assignor assigns its rights in the Lease to Lender/Assignee in order to secure repayment of the Loan; and

WHEREAS, in addition to assignment of the Lease, repayment of the Loan made pursuant to the Loan Agreement and evidenced by the Note is or shall be secured by all of those assets now owned or hereafter acquired by Borrower/Assignor in connection with the Oregon Property (collectively, the "Collateral") and which Collateral may be placed in or around or used in connection with the Oregon Property, including but not limited to:

(a) all inventory, building materials and construction materials now owned or hereafter acquired by Borrower/Assignor, and all equipment and improvements of every kind and description now or hereafter erected or placed in or upon any interest or estate in the Oregon Property, and used or usable in connection with any present or future operation of the Oregon Property, and all fixtures including, but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, steam and hot water boilers, stoves, ranges, elevators, motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, refrigerating plant and refrigerators, or other mechanical or otherwise, kitchen equipment and supplies, cooking apparatus and appurtenances, furniture, shades, awnings,

BALTIMORE COUNTY, MARYLAND
SUPPLEMENTAL LEASE AGREEMENT

SUPPLEMENTAL AGREEMENT NO. 1 DATE: November __, 1994
TO LEASE DATED: June, 1985

ADDRESS OF PREMISES: Oregon General Store
Shawan Road and Beaver Dam Road
Hunt Valley, Maryland

THIS AGREEMENT is made and entered into this date by and between BALTIMORE COUNTY, MARYLAND, a body corporate and politic, hereinafter called the "Lessor", and OREGON, LLC, hereinafter called the "Lessee".

WHEREAS, Lessor and Oregon General Store Limited Partnership, as tenant, executed a certain Agreement of Lease dated June, 1985 and a Memorandum and Amendment of Agreement of Lease dated September 7, 1985 and recorded among the Land Records of Baltimore County, Maryland at Liber 7031, Folio 004 (collectively, the "Lease Agreement"), for certain premises located at the southwest corner of the intersection of Shawan Road and Beaver Dam Road (the "Property"). The Property is currently improved by the building known as the Oregon General Store (the "Building").

WHEREAS, Oregon General Store Limited Partnership has agreed to assign all of its right, title and interest in and to the Lease Agreement to Lessee pursuant to a certain Assignment of Lease.

WHEREAS, the Lessor and Lessee now wish to amend the Lease Agreement upon the terms and conditions hereinafter described.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, effective as of MAY 15 NUNC PRO TUNC 1996 as follows:

1. Oregon, LLC shall be deemed to be the "Tenant" or "Lessee" for all purposes under the Lease Agreement. All notices to the Lessee shall be sent to c/o Mt. Washington Tavern, 5700 Newbury Street, Baltimore, Maryland 21209, Attn: Theodore W. Bauer.

2. In addition to the 5-year extension period contained in Section 2.2 of the Lease Agreement (the "Original Extension Period"), the Lessor hereby agrees that the Lessee shall have four additional extension periods of five (5) years each (the "Additional Extension Periods") following the expiration of the Original Extension Period.

3. Section 3.1 of the Lease is hereby modified to provide that the Annual Rent during each of the Additional Extension Periods shall be adjusted based on the increase in the Consumer Price Index (as defined below). To determine the new Annual Rent for the first Additional Extension Period, the Annual Rent for the Original

Exhibit A

IN RE:	PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE - SW/Corner Shawan Road and Beaver Dam Road (1201 Shawan Road) 8th Election District 3rd Councilmanic District	* BEFORE THE * DEPUTY ZONING COMMISSIONER * OF BALTIMORE COUNTY * Case No. 94-348-SPHXA
	Baltimore County, Maryland Petitioners	*

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as Petitions for Special Hearing, Special Exception and Variance for that property known as 1201 Shawan Road in the Cockeysville area of northern Baltimore County. The Petitions were filed by the owner of the property, Baltimore County, Maryland, through the Department of Recreation and Parks, by Wayne R. Harman, Director. The Petitioner seeks a special hearing to approve or confirm that the subject property and improvements thereon are exempt from the Baltimore County Zoning Regulations (B.C.Z.R.), and alternatively, to approve an existing restored commercial store building and its conversion to a tea room/restaurant as being consistent with its preservation; a special exception to approve the conversion of the existing building to a restaurant as being consistent with the preserved general store building, subject to Section 1A03.3.B.4 (Section 402.3) of the B.C.Z.R.; and variance relief from Section 409.6.A.2 of the B.C.Z.R., if required, to permit 44 parking spaces in lieu of the required 92 spaces. The subject property and relief sought are more particularly described on the plan submitted into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Ted Bauer, Restaurateur, Ed Haile with Daft-McCune-Walker, Inc., Mickey Cornelius with The Traffic Group, Frederick Baukhauer with Chesapeake Design

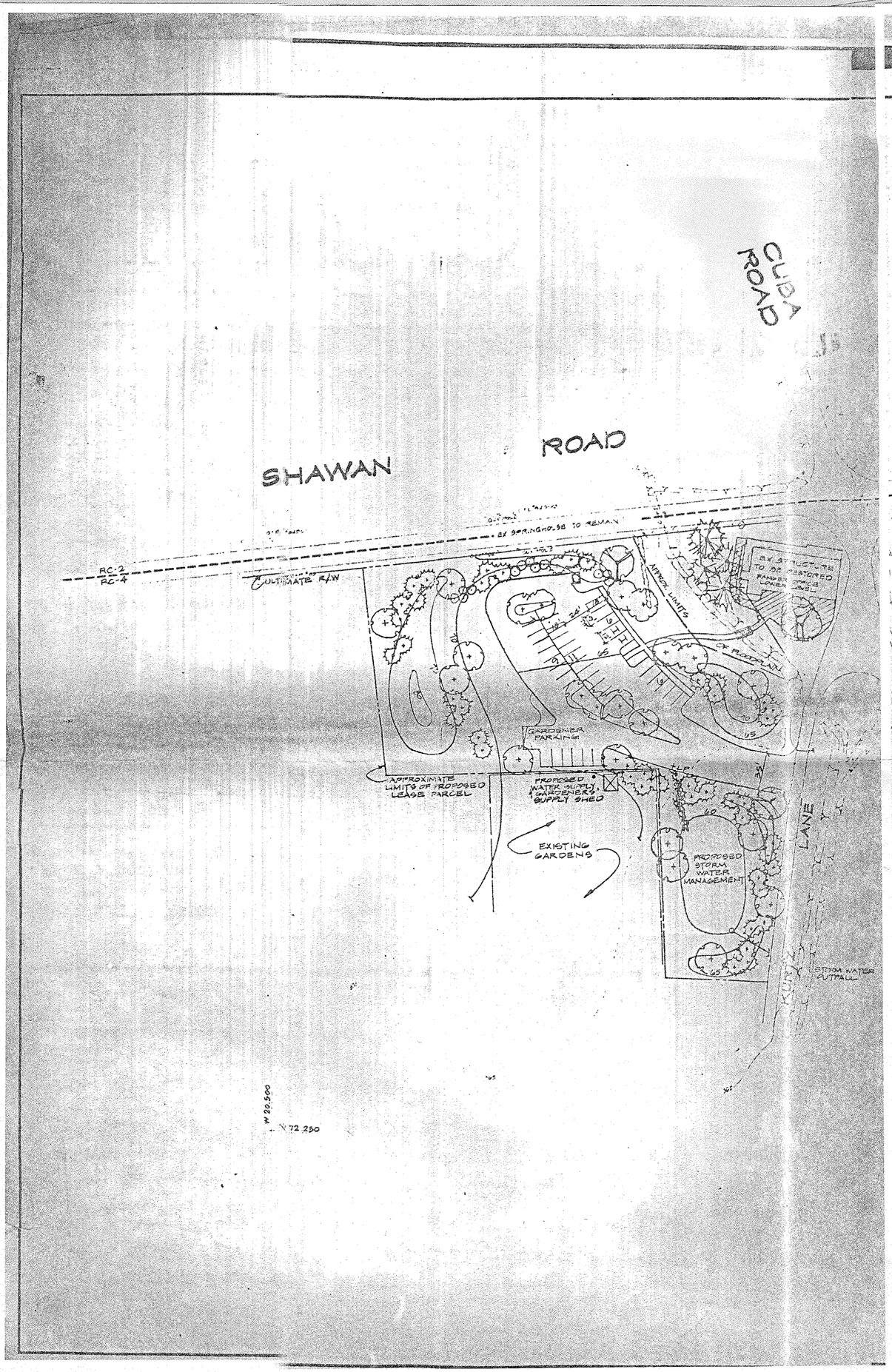
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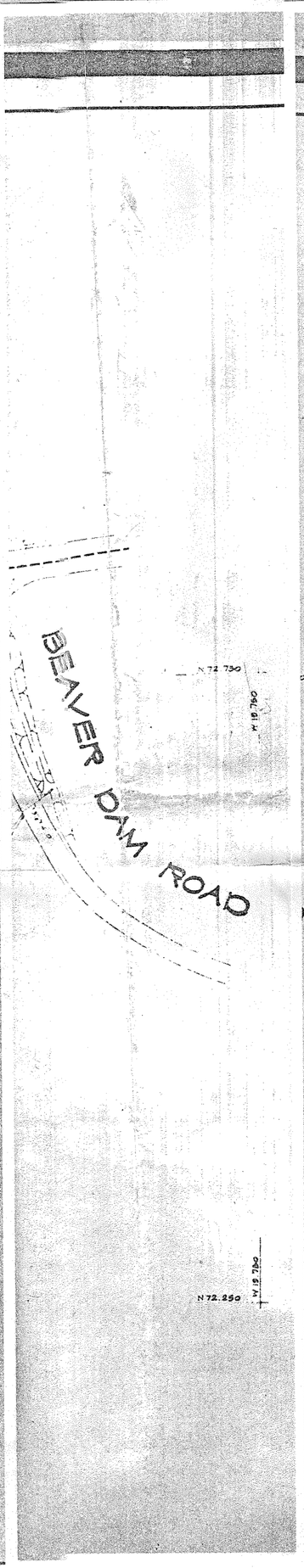
AGREEMENT OF LEASE

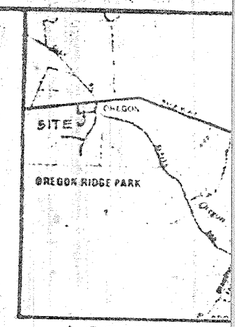
THIS AGREEMENT OF LEASE (hereinafter referred to as "this Lease"), made this _____ day of June, 1985, by and between BALTIMORE COUNTY, MARYLAND, a political subdivision organized and existing under the law of the State of Maryland having an address at c/o Baltimore County Bureau of Land Acquisition, Buildings and Property Manager, Room 327, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 (hereinafter referred to as "the Landlord"), and OREGON GENERAL STORE LIMITED PARTNERSHIP, a limited partnership organized and existing under the law of Maryland having an address at P. O. Box 140, Brooklandville, Maryland 21023 (hereinafter referred to as "the Tenant"),

WITNESSETH, THAT FOR AND IN CONSIDERATION of the mutual entry into this Lease by the parties hereto, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord all of that land (hereinafter referred to as "the Land"), situate and lying in Baltimore County, Maryland, which is described in Exhibit A,

TOGETHER WITH any and all improvements thereon (including, by way of example rather than of limitation, the Building and the Building Service Equipment) and any and all rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging or in any way appertaining (all of which, together with the Land, are hereinafter referred to collectively as "the Premises"),







LOCATION PL
SCALE 1"=2000

General Notes

1. Applicant: P. P. Acola, Inc.
   2201 Old Court Road
   P.O. Box 2926
   Brooklandville, Maryland 21022
   337-0700

2. Election district 8; Councilmanic district 3; Census tract 4083.

3. Watershed 11; Subsewershed 36.

4. Current zoning: RC-4

   Estimated acreage of leasehold parcel:

   Gross = 2.35 Ac. +/-
   Gross = 2.73 Ac. +/-
   Net = 2.5 Ac. +/-

   Proposed use:

Basement:	1,000 S.F. park ranger office
First Floor:	3,456 S.F. retail
Second Floor:	1,716 S.F. general office
Mezzanine:	530 S.F. general office

   Parking:

   Required: 3,456 S.F. retail @ 1/300 = 17.28 - 18
   3,246 S.F. general office @ 1/300 = 6.49 - 7
   TOTAL 25

   Provided: 32

   Landscape Requirements: 325 L.F. frontage @ 1/40 = 20.5
   32 Parking spaces @ 1/12 = 4.0
   TOTAL 24.5

5. There are no public utilities serving the site. The development will be served by a well, proposed to be located near Shawan Road, and a septic area to be in conformance with Baltimore County Health Department standards.

6. Soils:

Series & Symbol	Soils Classification	Limitations With Basements	Limitations Without Basements	Limitations Streets & Parking
Hagerstown (HnA)	B	slight	slight	slight
(HnA2)	B	slight	slight	moderate slope;

7. There are no slopes in excess of 25%.

8. The existing building is listed as The Oregon Furnace Store (Kurtz House) on the Baltimore County Final Landmarks List.

9. The proposed lease hold parcel lies within the Oregon Ridge Park which is owned by Baltimore County; deed reference 5056/630. Property number 08-02-019031.

10. Estimated average daily trips:

    3,456 S.F. Retail @ 115.8/1,000 = 400.20
    3,246 S.F. Office @ 12.3/1,000 = 39.90
    Total = 440.10 ADT'S

11. Stormwater will be managed by a dry pond located south of the entrance drive, along Kurtz Lane, as shown on the plans.

12. There are no known wetlands (hydric areas), critical areas, endangered species habitats or hazardous materials on the site.

DAFT · McCUNE · WA
LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS
330 EAST JOPPA ROAD
TOWSON, MD. 21204
TELEPHONE: 301-296-3333

THE OREGO
GENERAL STO

8TH ELECTION DISTRICT BALTIMORE

DATE	REVISIONS

SCALE: 1"=50'

JOB ORDER NO. 85040

IN THE MATTER OF: OREGON LLC -	*BEFORE THE
Contract Lessee: Baltimore County	*COUNTY BOARD OF APPEALS
Recreation & Parks - Legal Owner	*OF
(Oregon Grille) 1201 Shawan Road	*BALTIMORE COUNTY
8th Election District	*Case No. 02-461-SPHXA
3rd Councilmanic District	*November 4, 2003

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 a.m., November 4, 2003.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF:	*	BEFORE THE
OREGON LLC - Contract Lessee:	*	COUNTY BOARD OF APPEALS
Baltimore County Recreation &	*	OF
Parks - Legal Owner	*	BALTIMORE COUNTY
(Oregon Grille) 1201 Shawan Rd.	*	Case #: 02-461-SPHXA
8th Election District	*	March 24, 2004
3rd Councilmanic District	*	

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., March 24, 2004.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF: * BEFORE THE

OREGON LLC - Contract Lessee: * COUNTY BOARD OF APPEALS

Baltimore County Recreation & * OF

Parks - Legal Owner * BALTIMORE COUNTY

(Oregon Grille) 1201 Shawan Rd.* Case #: 02-461-SPHXA

8th Election District * March 25, 2004

3rd Councilmanic District *

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., March 25, 2004.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF:	*	BEFORE THE
OREGON LLC - Contract Lessee:	*	COUNTY BOARD OF APPEALS
Baltimore County Recreation &	*	OF
Parks - Legal Owner	*	BALTIMORE COUNTY
(Oregon Grille) 1201 Shawan Rd.	*	Case #: 02-461-SPHXA
8th Election District	*	March 31, 2004
3rd Councilmanic District	*	

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., March 31, 2004.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF:	*	BEFORE THE
OREGON LLC - Contract Lessee:	*	COUNTY BOARD OF APPEALS
Baltimore County Recreation &	*	OF
Parks - Legal Owner	*	BALTIMORE COUNTY
(Oregon Grille) 1201 Shawan Rd.	*	Case #: 02-461-SPHXA
8th Election District	*	April 13, 2004
3rd Councilmanic District	*	

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., April 13, 2004.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt