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OPINIONS
MEMORANDA

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02-462-SFH

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

DATE: January 29, 2008

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Linda B. Fliegel
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE**

The following cases have been finalized and closed in the Board of Appeal, therefore, I am returning your files to your office.

<u>CASE NUMBER</u>	<u>NAME</u>	<u>DISPOSITION</u>
02-462-SPH	Terry Gerahty, et al	An appeal was filed, on December 21, 2004, in the Circuit Court for Baltimore County of the December 2, 2004 decision rendered by of the Board of Appeals. (Copy of the Board's Opinion and Order in the file). On September 27, 2005 the Circuit Court for Baltimore County <i>AFFIRMED</i> the decision of the Board of Appeals. Once again, on October 24, 2005, an appeal was taken on the decision of the Circuit Court and the file was forwarded to the Court of Special Appeals. On June 27, 2007, the Court of Special Appeals issued a mandate <i>AFFIRMING</i> the Circuit Court's decision, who in turn affirmed the Board of Appeals.

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<u>CASE NUMBER</u>	<u>NAME</u>	<u>DISPOSITION</u>
CBA-00-141	DALE KIRK STAMMER LUCAS	CIRCUIT COURT AFFIRMED BOA CASE NO.: 03-C-04-4802.
97-87-SPH	EXECUTIVE AUTO PAINT & REPAIR, INC.	CIRCUIT COURT AND THE COURT OF SPECIAL APPEALS AFFIRMED THE BOA CASE NO.: 03-C-98-104.
98-191-SPH	MICHALE ZULLO, ET AL	CIRCUIT COURT GRANTED A VOLUNTARILY DISMISSAL 03-C-98-10326.
02-462-SPH	TERRY GERAHTY, ET AL	CIRCUIT COURT AND COURT OF SPECIAL APPEAL AFFIRMED THE BOARD. 03-C-04-13235.

9/28/05

PETITION OF:
TERRY GERAHTY, et al (13235)
and POOR BOYS, INC. (00275)

* IN THE

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

* CIRCUIT COURT

*

* FOR

*

IN THE MATTER OF:

TERRY GERAHTY, et al

* BALTIMORE COUNTY

RE: DECISION OF THE COUNTY
BOARD OF APPEALS OF BALTIMORE
COUNTY ORDERING THE PREVIOUS
RESTRICTIONS IMPOSED UPON POOR
BOYS, INC., PURSUANT TO THE
RESTRICTIVE COVENANT AGREEMENT
DATED OCTOBER 8, 1996 AND AS SET
FORTH IN AVERY HARDEN'S LETTER
OF DECEMBER 24, 1996 SHALL REMAIN
IN FULL FORCE AND EFFECT.

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IN THE MATTER OF:

POOR BOYS, INC.

*

RE: DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY
GRANTING POOR BOY'S, INC.'S MOTION TO
DISMISS ERNIE & RUTH BAISDEN'S APPEAL
REGARDING THE APPROVAL OF A
LANDSCAPE & LIGHTING PLAN BY THE
DEPT.OF PERMITS AND DEVELOPMENT
MANAGEMENT.

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02-462-SPH

CASE NO.: 03-C-04-13235
03-C-03-00275

* * * * *

MEMORANDUM OPINION AND ORDER

On June 2, 2005, the above-mentioned, cases were consolidated by the Baltimore County Circuit Court and subsequently came before this court for oral argument on June 10, 2005. For the purpose of judicial convenience, this court shall address both matters set forth herein.

RECEIVED

SEP 27 2005

BALTIMORE COUNTY
BOARD OF APPEALS

In the Matter of: Terry Gerahty:(case no. 03-C-04-13235):

This matter originated from a decision by the former Zoning Commissioner, Lawrence E. Schmidt, dated November 4, 2002 Case No. 02-462-SPH. The case was before the Zoning Commissioner for consideration of a Petition for Special Hearing for the property known as 2711 Taylor Avenue, owned by Terry J. Gerahty. The Petition for Special Hearing was filed by the former Director for Baltimore County's Department of Permits and Development Management (DPDM), Arnold Jablon. The purpose of the Petition for Special Hearing was to seek clarity and to finalize whether the decisions of the Deputy Zoning Commissioner (Case No. 97-295-SPHA, amended in Case No. 98-267-SPH), the Board of Appeals and the Circuit Court of Baltimore County in Case No. 03-C-00-6650 and 03-C-00-6687, dated April 25, 2001, were applicable. The Zoning Commissioner rendered his decision whereby he determined that the orders issued by the Deputy Zoning Commissioner (Case No. 97-295-SPHA, amended in Case No. 98-267-SPH), the Board of Appeals and the Circuit Court, were "moot".

Subsequent to the Zoning Commissioner's decision, Ernie and Ruth Baisden filed an appeal to the Baltimore County Board of Appeals on December 3, 2002. Evidence was presented before the County Board of Appeals, on June 17, 2004. The Board of Appeals ordered that the previous restrictions imposed upon Mr. Gerahty regarding the fencing of the subject property and 70-foot total buffer, pursuant to the restrictive covenant agreement dated October 8, 1996 and as set forth in Avery Harden's letter of December 24, 1996 shall remain in full force and effect. Pursuant to Maryland Rules 7-201, et seq., Mr. Gerahty filed this Petition for Judicial Review.

In the Matter of Poor Boys, et al.: (case no.03-C-03-00275):

This case was before the Baltimore County Board of Appeals on a Motion to Dismiss filed by Poor Boys, Inc. The Baltimore County Board of Appeals granted Poor Boys' Motion to Dismiss and subsequently, a Petition for Judicial Review was filed in the Baltimore County Circuit Court by J. Carroll Holzer, Esquire, on behalf of Ernie and Ruth Baisden. This court remanded the case back to the County Board of Appeals by Order of the Honorable John Fader, II, for the purposes of "clarification and statements of reasons for the Board's opinion and determination."

STATEMENT OF FACTS

The facts in this case have previously articulated however, given the complex history of this case, this court shall again restate the history of these proceedings.

This dispute between Poor Boy's, Inc., (herein "Poor Boys") and Ernie and Ruth Baisden, (herein "Baisdens") originated during the Baltimore County comprehensive re-zoning cycle in 1996. Terry Gerahty, (herein "Mr. Gerahty") is the property owner of Poor Boys, a garden and plant center located at 2711 Taylor Avenue; the Baisdens, reside as husband and wife, to the rear of the garden shop. The subject property was re-zoned to Business-Local (B.L.), subject to the express conditions set forth in the restrictive covenant agreement (herein "Agreement") entered into between Mr. Gerahty and the Villa Cresta Community Association, dated October 8, 1996. Contained within the restrictive covenant agreement, it states:

"...[T]here shall be a 10-foot interior landscape easement established and maintained inside the B.L. line in a manner consistent with the requirements of said B.L. zone and with Baltimore County Landscape Manual. The 60-foot landscape buffer plus the 10-foot interior landscape easement, will provide a total of 70 feet open space from Oak Avenue..."

It further states in the "Condition Precedent" section that:

"The obligation of Gerahty and Poor Boy's shall not become effective and binding upon Poor Boy's and the land unless and until the land has been re-classified to B.L., as shown on the attached drawing marked " Amended Request", on the 1996 Comprehensive Zoning Map for Baltimore County..."

The subject property was re-zoned to B.L. use and the restrictive covenant agreement was recorded in the Department of Land Records for Baltimore County. On or about December 24, 1996, E. Avery Harden, (herein "Mr. Harden"), the Baltimore County Landscape Architect, sent a letter to all interested parties, that described the specifications for the total 70-foot buffer called for in the Agreement, dated October 8, 1996. The buffer area was described by Mr. Harden as follows:

"The 60-foot transition buffer area and 10-foot landscape strip must be laid out in accordance with an approval property survey. The fence must be located on the inside edge of the 70-foot space. See Plan.

As delineated on the attached site plan, the 6-foot high fence shall have an additional 2-feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At this point, the 2-foot lattice top shall cease and the 6-foot fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

Thirty-five evergreen trees a minimum of 5-6 feet in height shall be installed where delineated on the attached plan. The actual placement of the evergreen trees may vary in order to accommodate the existing trees. Installed trees that die or fail to thrive within two years must be replaced. Steven's Hollies are recommended where excessive moisture is an issue. Hollies must be placed closer together to achieve the desire effect. See plan. The other evergreen selections are half Norway Space and half White Place."

In February of 1997, Terry Gerahty filed a Petition for a Special Hearing for a Variance (Case No. 97-295-SPHA) concerning subject property's parking lot. The petition requested an interpretation as to whether the parking lot met the "durable and dustless" requirement contained in the parking regulations of the Baltimore County Zoning Regulations (herein "BCZR"). In addition, Mr. Gerahty filed a Petition for Variance seeking the existing lot to be a "Number 2" stone crush material. On March 6, 1997, Deputy Zoning Commissioner, Timothy Kotroco, (herein "Mr. Kotroco") denied the special hearing request, but granted the sought-for variance with numerous restrictions; one of which included a fence in accordance with the diagram provided by Avery Harden. Mr. Kotroco required, within 60 days, an easement agreement containing all the conditions and restrictions imposed by the variance order.

Mr. Gerahty filed an appeal of that decision to the County Board of Appeals. Two months following Mr. Kotroco's decision, Mr. Gerahty met with representatives of the Baltimore County Executive's Office and agreed to construct a fence 6 feet high and 60 feet from the property line, contrary to the 8 feet high and 70 feet from the property line requirement. Neither the Baisdens nor residents in the community were aware of the meeting between Mr. Gerahty and representatives of the County Executive.

Subsequently, the fence was installed pursuant to the specifications agreed upon by the informal meeting between Mr. Gerahty and County Executive representatives and not in accordance with either Mr. Kotroco's decision (Case No. 97-295-SPHA) or with the specific conditions pursuant to the Agreement, dated October 8, 1996, that granted the B.L. zoning. As a result of the new agreement made between Mr. Gerahty and the Baltimore County's Executive Office, Mr. Gerahty withdrew his appeal to the County

Board of Appeals.

Mr. Gerahty, filed a second Petition for Special Hearing (Case No. 98 267-SPH), seeking to amend the prior Order issued in Case No. 97-295-SPHA, regarding the installation of fence and light conditions. On July 8, 1999, Mr. Kotroco, without mentioning the informal agreement between Mr. Gerahty and County Executive representatives, made the following decision with regards to the fence:

“Pursuant to my original Order, Mr. Gerahty installed a board-on-board fence running parallel to the Baisden property and Oak Avenue. Said fence is situated 60 ft. from and running parallel with Baisden property line and the Oak Avenue property line. The purpose of this 60 ft. setback was to establish a buffer area between this commercial business and the adjacent residential properties. The buffer area was to be maintained on a regular basis and kept as if it were a residential yard. As to the location of the fence itself, after my site inspections of the property, I find that the fence was properly installed and located in compliance with the dictates of my previous Order. Therefore, the fence, as it exists on the property today, shall be permitted to remain and need to be relocated. In addition, the height of the fence is appropriate.

The photographs submitted and my site visit revealed that certain sections of the fencing are currently leaning; that is the fence does not presently exist in a straight linear fashion. Mr. Gerahty shall be required to maintain the fence in a neat and orderly manner and also insure that the fencing itself remains in a vertical position. Mr. Gerahty shall be required to provide additional supports for the fence to insure that the fence remains straight and vertical.”

With regard to the lighting issue, Mr. Kotroco found that the lighting that was installed on Poor Boys' was “in contradiction to the restriction imposed by my previous decision.” Mr. Gerahty was required to submit a lighting plan to be approved by Mr. Harden. The Baisdens appealed to the County Board of Appeals on the issue of the fence and Mr. Gerahty appealed on the issue of the lighting plan. The latter appeal was dismissed before the County Board of Appeals at the time of the hearing. The County

Board of Appeals, in a *de novo* hearing, found that the fence could be at the existing location of the current fence rather than the location recommended by Mr. Harden.

Dissatisfied with the County Board of Appeals' decision, the Baisdens appealed the matter to the Circuit Court for Baltimore County. By the Order of this court, dated April 25, 2001, the findings of the County Board of Appeals were reversed. This court remanded the case to the County Board of Appeals "with instructions to pass an Order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996." Mr. Gerahty filed an appeal to the Court of Special Appeals; however, that appeal was ultimately dismissed.

Pursuant to the remand an appropriate Order was issued by the County Board of Appeals on February 8, 2002. During that interval period (between this Court's Order dated April 25, 2001 and the Baltimore Court of Appeals' Order dated February 8, 2002), Mr. Gerahty initiated action to pave Poor Boys' parking lot pursuant to the parking requirements set forth in the B.C.Z.R., Section 409.8. Subsequent to the completion of the paving of Poor Boys' parking lot, the Baisdens then filed a formal complaint with the D.P.D.M. As a result of the Baisdens' complaint Arnold Jablon, former Director for Baltimore County's Department of Permits and Development Management (DPDM), filed a Petition for Special Hearing. The purpose of the Petition for Special Hearing was to clarify and finalize several issues of: (1) determining the proper location for the fence to be placed on of Mr. Gerahty's property; and (2) whether the fence must be in the location as mandated by the Baltimore County Circuit Court, dated April 25, 2001 and the County Board of Appeals, dated February 8, 2002, were no longer applicable because the original variance request was moot.

The matter came before the former Zoning Commissioner, Lawrence E. Schmidt, who rendered a decision on November 4, 2002. In his written opinion, the Zoning Commissioner determined that the Petition for Special Hearing filed by D.P.D.M. was not precluded by res judicata or estoppel by judgement. In addition, he ruled that the restrictions originally imposed on Case No. 97-295-SPH, which was later amended in Case No. 98-267-SPH, and ultimately changed by Order of this court were null and void.

Following the decision by the Zoning Commissioner, the Baisdens filed a Notice of Appeal on December 3, 2002. The record of the case before the County Board of Appeals was based upon testimony and a series of documents that were submitted at the hearing on June 17, 2004. On December 2, 2004, the County Board of Appeals ordered that the "the previous restrictions imposed upon the Petitioner regarding the fencing of the subject property and the 70-foot total buffer, pursuant to the restrictive covenant agreement dated October 8, 1996 and as set forth in Avery Harden's letter of December 24, 1996 shall remain in full force and effect." Shortly thereafter, Mr. Gerahty filed a Petition for Judicial Review on December 22, 2004; the Baisdens filed a Notice of Intent to Participate in Judicial Review on December 28, 2004.

QUESTIONS PRESENTED

- I. WHETHER THE BALTIMORE COUNTY BOARD OF APPEALS' DECISION ENFORCING THE PREVIOUS RESTRICTIONS UPON POOR BOYS, INC. PURSUANT TO THE RESTRICTIVE COVENANT AGREEMENT DATED OCTOBER 8, 1996, AND AS SET FORTH IN AVERY HARDEN'S LETTER DATED DECEMBER 24, 1996, ON THE SUBJECT PROPERTY AND THE 70-FOOT TOTAL BUFFER, WAS ERRONEOUS.
- II. WHETHER THE BALTIMORE COUNTY BOARD OF APPEALS ERRED IN RENDERING THE DECISION THAT AS PART OF THE PERMIT PROCESS, THE APPROVAL OF A LANDSCAPE AND

LIGHTING PLAN, BY A BALTIMORE COUNTY LANDSCAPE
ARCHITECT, DOES NOT CONSTITUTE AN EVENT APPEALABLE
TO THE COUNTY BOARD OF APPEALS.

STANDARD OF REVIEW

The standard of review of the action of an administrative agency is whether a reasoning mind could have determined the conclusion which the administrative agency reached. *Nnoli v. Nnoli*, 101 Md. App. 243, 646 A.2d 1021 (1994). An order of an administrative agency must be upheld on judicial review if it is not based upon an erroneous determination of law, and if the agency's conclusions reasonably may be based upon the facts proven; however, a reviewing court is under no constraints in reversing an administrative decision that is premised solely upon an erroneous conclusion of law.

Montgomery County v. Buckman, 333 Md. 516, 636 A.2d 448 (1994).

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact. *Comm'r, Baltimore City Police Dep't v. Cason*, 34 Md. App. 487, 368 A.2d 1067 (1977), cert. denied, 280 Md. 728 (1977). A reviewing court may, and should, examine any inference, drawn by an agency, of the existence of a fact not shown by direct proof, to see if that inference reasonably follows from other facts which are shown by direct proof. If it does, even though the agency might reasonably have been drawn a different inference, the court had no power to disagree with the facts so inferred. Id. at 508, 368 A.2d 1067. A reviewing court may, and should, examine any conclusion reached by an agency, to see

whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion. Id. at 508, 368 A.2d 1067.

LEGAL ANALYSIS

In the Matter of: Terry Garahty (case no. 03-C-04-13235)

I. WHETHER THE BALTIMORE COUNTY BOARD OF APPEALS' DECISION ENFORCING THE PREVIOUS RESTRICTIONS UPON POOR BOYS, INC. PURSUANT TO THE RESTRICTIVE COVENANT AGREEMENT DATED OCTOBER 8, 1996, AND AS SET FORTH IN AVERY HARDEN'S LETTER DATED DECEMBER 24, 1996, ON THE SUBJECT PROPERTY AND THE 70-FOOT TOTAL BUFFER, WAS ERRONEOUS.

The basis for which the Petitioner, Mr. Garahty, contends the County Board of Appeals erred are the following:

- A. THE PRESENT PETITION FOR SPECIAL HEARING RELIEF IS NOT PRECLUDED BY THE DOCTRINES OF RES JUDICATA, DIRECT ESTOPPEL BY JUDGMENT, COLLATERAL ESTOPPEL BY JUDGMENT, OR "LAW OF THE CASE." THE BOARD OF APPEALS FAILED TO RECOGNIZE AND APPLY THE CORRECT PRINCIPLES OF LAW GOVERNING THE CASE.
- B. THE RESTRICTIONS IMPOSED IN CASE NO. 97-295-SPHA, MODIFIED AND REVERSED IN CASE NO. 98-267-SPH, AND ULTIMATELY CHANGED BY JUDGE DUGAN'S ORDER, ARE NULL AND VOID SINCE THE VARIANCE UPON WHICH THEY ARE IMPOSED IN NO LONGER IN EFFECT.
- C. THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT, IS ESTOPPED FROM IMPOSING THESE CONDITIONS UPON PETITIONER AS IT ADVISED HIM TO ACT IN THE MANNER HE DID AND APPROVED PERMITS UPON PLANS EXPRESSLY REMOVING THE CONDITIONS, ALLOWING THE FENCE AT ITS EXISTING LOCATION AND HE ACTED IN RELIANCE THEREON.
- D. THE DECISION OF THE BOARD IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE NOR CAN A REASONING MIND REASONABLY HAVE

REACHED THE CONCLUSION THE BOARD DID, CONSISTENT WITH A APPLICATION OF THE APPLICABLE LAW.

This court will address each issue, individually.

- A. THE PRESENT PETITION FOR SPECIAL HEARING RELIEF IS NOT PRECLUDED BY THE DOCTRINES OF RES JUDICATA, DIRECT ESTOPPEL BY JUDGMENT, COLLATERAL ESTOPPEL BY JUDGMENT, OR "LAW OF THE CASE." THE BOARD OF APPEALS FAILED TO RECOGNIZE AND APPLY THE CORRECT PRINCIPLES OF LAW GOVERNING THE CASE.

Mr. Gerahty avers that this case arises from a Petition for Special Hearing filed by the petitioners, Baltimore County Department of Permits and Development Management, (DPDM) through the County Office of Law. Further, that prior decisions rendered by the Deputy Zoning Commissioner Timothy Kotroco, Baltimore County Board of Appeals, and this court provide that DPDM was never a party in any of those matters; Mr. Gerahty and the Baisdens have always been identified as the litigants. Therefore, the present Petition for Special Hearing relief is not precluded by the doctrines of *res judicata* and *collateral estoppel by judgment* which the Board of Appeals failed to recognize and apply.

The Court of Appeals has recognized three main elements of the traditional principles of *res judicata*:

- (1) the parties in the present litigation should be the same or in privity with the earlier case;
- (2) the second suit must present the same cause of action or claim as the first; and
- (3) in the first suit, there must have been a valid final judgment on the merits by a court of competent jurisdiction.

De Leon v. Slear, 328 Md. 569, 580, 616, A.2d 380 (1992).

Contrary to Mr. Gerahty's argument, Baltimore County has been deeply involved in this case and in some instance, more involved than they should have been. The record

reflects examples that exemplifies Baltimore County's aggressive participation in this case, for example: (1) Representatives from the Baltimore County Executive Office meeting/ and negotiating with Mr. Gerahty subsequent to Deputy Zoning Commissioner's Decision on March 6, 1997, and (2) Baltimore County Department of Permits and Develop Management-Code Violation dated March 11, 2002 wherein it stated, "fence must be relocated and rebuilt to comply fully and exactly with the B.O.A. order dated 2/8/02 and the letter from Avery Harden dated 12/24/96."

Assuming this court entertained Mr. Gerahty's argument that this matter involves two entirely different parties, this court cannot overlook the fact that subsequent to Baltimore County's Petition for Special Hearing, Baltimore County did not formally participate in the hearing before the Zoning Commissioner and County Board of Appeals. The records states:

"Good Morning, Mr. Chairman. C. Robert Loskot, Assistant County Attorney, for Baltimore County, Maryland.

Because of the peculiar nature of how this case came to the Board from the Zoning Commissioner, and how the issue is framed by Mr. Jablon, the petition for special hearing, the county is entering its appearance only for the purpose of being an advocacy on all certificates of service being sent to the county as a participant as far as being kept in the loop and being kept informed.

However, because of the nature of the question raised by Mr. Jablon for determination, the county is going to stand in moot in this matter, and is going to rely upon Mr. Holzer and Mr. Clark and their respective clients to present the necessary evidence to the Board for the Board's decision."¹

(emphasis added)

¹ The transcript from the June 17, 2004 hearing, held before the Baltimore County Board of Appeals. The transcript consists of, four (4) condensed pages on each page of the Transcript. The quoted language is contained on condensed pages 4 and 5.

The County remained on the sidelines, resulting in the original litigants having to present their arguments before the County Board of Appeals.

The County has never been a party in any legal pleadings this litigation until a Petition for Special Hearing was filed by the Office of Law. This court is not persuaded by Mr. Gerahty's argument that this case concerns different parties, and therefore, fails the first prong of *res judicata*.

Mr. Gerahty contends that although the "current issue before the Board were related to the other decisions in the matter of Poor Boys, and their zoning rights, the specific facts of the issue in this case have not been litigated before and did not even exist at the time any previous decisions in this case were made."² Mr. Gerahty argues that the instant issue deals directly with the effect of construction of the Poor Boys' parking lot will have on the original variance. He avers that this is not the previously litigated case, which involved the issue of whether Poor Boys' parking lot could be of a non-durable/non-dustless surface and what restrictions should be imposed if such a variance were granted. The language contained within Baltimore County's the Petition of Special Hearing filed by DPDM, dated 4/19/02 contradicts this assertion:

"The Department of Permits & Development Management files this petition in order to clarify and finalize where in the property owner's property a disputed fence must be located. Further, to clarify and finalize whether the decisions of the Zoning commissioner, Board of Appeals and of the Circuit Court of Baltimore County, in case No. 03-C-00-6650 and 03-C-00-6687, dated April 25, 2001, is applicable or now moot. The Department requests guidance on the issue whether the fence must be in the location as mandated by the Circuit Court and the Board or whether these decisions are no longer germane because the original variance is now moot."

² The quoted language derives on page 13 of Mr. Gerahty's Memorandum in Support of Petition for Judicial Review, dated March 17, 2005.

(emphasis added)

The above underlined question was same issue addressed before this court and was rule upon on April 25, 2001. The language contained in this court's order clearly illustrated the court's intentions as to the location of where the fence must be placed. The Order states, "[T]his case is remanded to the Board of Appeals with instructions to pass an Order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996." (emphasis added) The Order of this court was later finalized by the County Board of Appeals on February 8, 2002. The Baltimore County Department of Permits and Develop Management apparently knew the answer to their own question, wherein on March 26, 2002, they cited Mr. Gerahty for his failure to comply with the County Board of Appeals Order, one month prior to their summation of the Petition for a Special Hearing. The citation, which was issued from the very same Department that filed the Petition for a Special Hearing, cites Mr. Gerahty for not complying with Board's order, dated February 8, 2002. The citation specifically states, that the "[F]ence must be relocated and rebuilt to comply fully and exactly with the B.O.A. order dated 2/8/02 and the letter from Avery Harden dated 12/24/1996."³ Notwithstanding this course of action Baltimore County filed the Special Petition for clarification.

It appears that Baltimore County's right hand does not know what its left hand is doing. It is unfortunate for the litigants that the actions of Baltimore County officials have prolonged and unnecessarily complicated these proceedings. Not satisfied with improperly denying the Baisdens due process of law by reaching an illegal agreement

³ The quoted language derives from a Baltimore County Uniform Code Violation Notice issued by Baltimore County Department of Permits and Development Management, dated March 26, 2002.

with Mr. Gerahty, the County now attempts to ignore this court's decision. Regrettably, the court must proceed to untangle a procedural mess.

Mr. Gerahty alleges that the overall error of the Board of Appeals was the result of its failure to recognize the significance of the change in circumstances between the time of the rezoning and the hearing before the Board.

It is undisputed that on September 7, 2000, Mr. Gerahty submitted a landscape plan to Baltimore County that was approved by the DPDM, bearing the signature of Mr. Harden. The landscape plans show the location of the fence on the zone line contrary to the original specifications from Mr. Harden's letter of December 24, 1996. Mr. Gerahty, in his testimony, alleged that this was an "amendment to the restrictive covenant agreement"⁴. The Baisdens obviously did not agree as evidenced by their letter to Arnold Jablon, Director of Department of Permits and Development Management complaining about the location of the fence.⁵ The approval of the landscape plan occurred prior this court's ruling in April 2001; however, Baltimore County has no authority to supercede this court's order, whereby the placement fence was to be in accordance with Mr. Harden's specifications contained in his December 24, 1996 letter. Baltimore County should have followed the existing court Order and not have issued any permits in July 2001.

The court is sympathetic to Mr. Gerahty and the expenditures made on his property, but that does not excuse his failure to obey court ordered obligations that

⁴ The transcript from the June 17, 2004 hearing, held before the Baltimore County Board of Appeals. The quoted language is contained on condensed page 34.

⁵ The transcript from the June 17, 2004 hearing, held before the Baltimore County Board of Appeals. The language is contained on condense pages 38-39.

existed prior to paving Poor Boys' parking lot. Mr. Gerahty took a financial risk to pave his lot despite his knowledge that this court had ordered that the case be remanded back to the County Board of Appeals with the "instruction to pass an Order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996."⁶

This court finds that the second element of *res judicata* has been satisfied and herein now addresses the final requirement – "whether in the first suit, there must have been a valid final judgment on the merits by a court of competent jurisdiction."

The Order dated April 25, 2001, wherein this court remanded the case back to the County Board of Appeals with the instructions to pass an order "regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996" was later finalized by the County Board of Appeals, on February 8, 2002. The language of the Board's Order states, "[t]hat consistent with the Remand Order of the Honorable Robert N. Dugan, Judge, Circuit Court for Baltimore County, filed April 25, 2001, the fencing of the subject property shall be accomplished "as set forth in Avery Harden's correspondence of December 24, 1996," a copy of which is attached to and made a part of this Order." The December 24, 1996 letter written by Mr. Harden, which this court referred to in its Order, addresses the issue of where the fence must be located. The letter states, "[T]he 60 foot transition buffer area and 10 foot landscape strip must be laid out in accordance with an approved property survey. The fence must be located on the inside edge of the 70 foot space." (*emphasis added*)

The record clearly reflects that the final element of *res judicata* has been satisfied;

⁶ The quoted language derives from the Baltimore County Board of Appeals' Order, dated February 8, 2005.

therefore the court holds that the doctrine of *res judicata* is applicable to this case.

In Maryland, the doctrine of *res judicata* has been divided further into two other segments – direct estoppel by judgment and collateral estoppel by judgment. See Davis v. Fredrick County Board of County Commissioners, 25 Md. App. 69 (1975). The Court of Appeals explained that if a second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case on the merits is an absolute bar, not only as to all matters that were litigated in the earlier case, but all matters that could have been so litigated. Similar to the *res judicata*, the doctrine of direct estoppel is applicable only when the parties are the same. (see Davis, *infra*). Mr. Gerahty makes the same argument as he did for *res judicata* and how that doctrine is not applicable to this case – “the parties in the instant case are different than the parties in any previous related case. As such, the doctrine of direct estoppel does not act as a bar in the instant matter.”⁷ This court disagrees with Mr. Gerahty’s argument regarding this issue and adopts and incorporates herein its prior analysis.

- B. THE RESTRICTIONS IMPOSED IN CASE NO. 97-295-SPHA, MODIFIED - AND REVERSED IN CASE NO. 98-267-SPH, AND ULTIMATELY CHANGED BY JUDGE DUGAN’S ORDER, ARE NULL AND VOID SINCE THE VARIANCE UPON WHICH THEY ARE IMPOSED IS NO LONGER IN EFFECT.

Mr. Gerahty’s argument is that the restrictions imposed in case no. 97-295-SPHA, modified and reversed in case no. 98-267-SPH, and ultimately changed by this court’s order, are null and void since the variance upon which they are imposed are no longer in effect. In 1997, Deputy Zoning Commissioner Kotroco granted a variance, whereby Mr. Gerahty was permitted to allow the existing “Number 2.” stone crush material Poor Boys’

⁷ The quoted language derives on page 13 of Mr. Gerahty’s Memorandum in Support of Petition for Judicial Review, dated March 17, 2005.

parking lot; however, several conditions were imposed. Assuming arguendo that this court adopted the argument that the imposed conditions are considered “null and void” or “moot” as a result of Mr. Gerahty’s compliance with the non-durable/ non-dustless surface specifications, set forth in B.C.Z.R. Section 409.8 (a) (2); Mr. Gerahty overlooked the significant fact that 70-foot total buffer area (restrictive covenant, dated October 8, 1996) and the location of the fence (Mr. Avery’s letter, dated December 24, 1996) was an adoption a pre-existing legal obligation that Mr. Gerahty was to comply and abide with regardless of whether the conditions set forth in above-mentioned rulings were considered moot or not. In the written opinion by the Zoning Commissioner (case no. 02-462-SPH), dated November 4, 2002, he states the following:

“The record of this case also shows that there was a restrictive covenant agreement entered into by and between Mr. Gerahty and the Villa Cresta Civic Association. Obviously, the Zoning Commissioner has no authority to enforce private covenants or contracts between private parties. Again, the authority of the Zoning Commissioner arises from the County Charter, Code and B.C.Z.R. Nonetheless, it is a statement of the obvious that the Villa Cresta Civic Association may demand enforcement of the terms and conditions of the restrictive covenant between those parties. Whether that covenant is applicable and enforceable under the present circumstances is a question properly served for the Circuit Court of Maryland for Baltimore County.”

Upon entering into the restrictive covenant between Mr. Gerahthy and the Villa Cresta Community Association, dated October 8, 1996, Mr. Gerahty made an agreement that, “[t]here shall be a 10 foot interior landscape easement established and maintained inside the B.L. line a manner consistent with the requirements of said B.L. zone and with the Baltimore County Landscape Manual. The 60-foot landscape buffer plus the 10-foot interior landscape easement, will provide a total of 70 foot open space from Oak

Avenue...”⁸ The restrictive covenant further states in section, “condition precedent” that, “[T]he obligation of Gerathy and Poor Boy’s shall not become effective and binding upon Poor Boys and the land unless and until the land has been reclassified to B.L., as shown on the attached drawing marked “Amended Request”, on the 1996 Comprehensive Zoning Map for Baltimore County...” Following that agreement, a letter by Mr. Avery, dated December 24, 1996, sets forth the conditions of the landscape buffer area. The subject property was re-zoned to B.L., thereby satisfying the condition precedent, making Mr. Gerahty’s obligation effective and binding.

Mr. Gerahty elected to ignore his obligation under the restrictive covenant as well as this court’s order with the “instruction to pass an Order regarding the fencing of the subject property as set forth in Avery Harden’s correspondence of December 24, 1996”, which predated the paving of the parking lot. Mr. Gerahty decided to take a financial risk to pave his lot despite his knowledge that this court had ordered a remand to the County Board of Appeals ordering the specifications to be complied with under the Mr. Harden’s December 24, 1997 letter.

The conditions imposed on Mr. Gerahty by Deputy Zoning Commissioner Kotroco’s Order are separate and distinct from Mr. Gerahty’s pre-existing legal obligations entered into in the restrictive covenant, dated October 8, 1996 and the letter by Mr. Harden. Such obligation became effective on Mr. Gerahty once Poor Boys was re-zoned to B.L. and should therefore be enforced regardless of the said property’s current physical condition.

⁸ The quoted language is derived on page from the Restrictive Covenant entered into between Mr. Gerahty and the Villa Cresta Community Association, dated October 8, 1996.

C. THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT, IS ESTOPPED FROM IMPOSING THESE CONDITIONS UPON PETITIONER AS IT ADVISED HIM TO ACT IN THE MANNER HE DID AND APPROVED PERMITS UPON PLANS EXPRESSLY REMOVING THE CONDITIONS, ALLOWING THE FENCE AT ITS EXISTING LOCATION AND HE ACTED IN RELIANCE THEREON.

The issue is whether equitable estoppel is applicable to the Department of Permits and Development Management. Despite their legal authority to consider the issue of equitable estoppel, see *Relay v. Sycamore*, 105 Md. App. 701, this court finds no evidence that the County Board of Appeals examined this issue in their decision.

As explained in *Fitch v. Double "U" Sales Corporation*, 212 Md. 324, at 338,

Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which may have otherwise existed, either of property, of contract or of remedy against another person who has in good faith relied upon such conduct and has been led thereby to change his corresponding right, either of property, of contract or of remedy. Whatever may be the real intention of the parties making the representation, it is absolutely essential that this representation, whether consisting of words, acts or silence, should be believed and relied upon as the inducement or action by the party who claims the benefit of the estoppel and that, so relying upon it and induced by it, he should have taken some action. The cases all agree that there can be no estoppel unless the party who alleges it relied upon the induced took some action on that representation... Unless the party against whom the doctrine has been invoked has been guilty of some unconscientious, inequitable or fraudulent act of commission or omission upon which another has relied, and has been misled to his injury, the doctrine will not be applied.

Mr. Gerahty argues, that "the Department of Permits and Development Management, a department of the Executive Branch of Baltimore County government, is estopped from changing its position that the elimination of the variance constitutes an

elimination of the conditions, and further, placing the fence on the zone line in the plans attached to the building and grading permits may be rescinded.”

“Accordingly, for the purposes of the doctrine of equitable estoppel, the chartered counties of Maryland are treated as municipal corporations.” Anne Arundel County v. Muir, 149 Md. App. at 636, 817 A.2d 938 (citing Permanent Financial Corp., supra, 308 Md. At 247, 518 A.2d 123).

The Court of Special Appeals held that the Doctrine of Equitable Estoppel is available against a municipal corporation. See Permanent Finance Corporation v. Montgomery County, 308 Md. 239, which quoted from Lipsitz v. Parr, 164 Md. 222 at 227, “a municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law.”

In Permanent Finance Corporation v. Montgomery County, supra, a developer was constructing an office building pursuant to a building permit that was issued by Montgomery County. After expending \$2,000,000.00 in construction costs and a period of eight and one-half months later, the County issued a Stop Work Order on the grounds that the building violated statutory height limitations, thereby suspending all construction. One of the height limitation issues pertained to the interpretation of “habitable space”. Despite the Court of Appeals affirming the Board of Appeals’ determination of the definition of “habitable space”, (which resulted in the construction being in violation of the height restrictions), the Court of Appeals reversed the Board of Appeals and ruled that the Montgomery County was estopped from contending that the fourth floor of the building was in violation of the height limitations of the Montgomery County Code.

To support the Court's decision, the Court of Appeals observed that the definition section was not clear within the meaning of Montgomery County Code and therefore resulted in "reasonable and debatable" interpretations. The Court of Appeals further opined that the Montgomery County "shared the interpretation given this section by Permanent at the time of the issuance of the building permit, and the County had consistently applied that interpretation for a significant period of time thereto."

Permanent Financial Corporation, supra, at p. 251. The Court of Appeals observed that upon Montgomery County issuing the Stop Work Order against Permanent, the County never alleged that the building violated any height restrictions, even after the County was asked by Permanent for the specific violations alleged by the County.

The Court of Appeals found that Permanent relied upon the interpretation that Montgomery County had given to the height limitation in its design of the building and that Permanent designed and built its building in reliance upon the long-standing interpretation of the County.

Unlike Permanent Financial Corporation, the issue, here, did not relate to any interpretations by Baltimore County, nor was the matter determined by any long-standing policies; rather, this case pertains to the location of a fence that was to be constructed according to the December 24, 1996 letter by Baltimore County landscape architect, Avery Harden. The controversy herein involves the location of a fence. It is undisputed that once Mr. Gerahty submitted his grading plan to Baltimore County, the plan showed that the existing location of the fence was directly on the zone line, contrary to the specifications stated in Mr. Harden's December 24, 1996 letter. The grading plan was approved by Baltimore County on September 7, 2000. Mr. Gerahty relied on the

approval by Baltimore County and commenced paving on his parking lot upon receiving the permits by the Department of Permits and Development Management in July 2001.

Mr. Gerahty refers to his letter to Arnold Jablon, dated March 12, 1998, wherein it was requested that "the burdensome conditions of variance case # 97-295 removed from our property located at 2711 Taylor Avenue." On March 18, 1998, Mr. Jablon responded to Mr. Gerahty's inquiry by stating that variance and conditions were in "full force and effect" at that time. Mr. Jablon further stated, that variance and its conditions would become moot upon approval of the grading plan and paving the parking lot. Based on that determination by Mr. Jablon, Mr. Gerahty went forward with the process on securing final approval of his parking lot. In securing approval, Mr. Gerahty included in his application his grading plan that showed the existing location of the fence directly on the zone line. His plans were later approved by Baltimore County Department of Permits and Development Management without exception. Mr. Gerahty contends that he relied on the Baltimore County's decision of final approval which eliminated the conditions implemented by the variance. As a result of his reliance, Mr. Gerahty spent over \$250,000.00 to have his parking lot paved and striped.

Mr. Gerahty overlooks the language contained within the final paragraph of Mr. Jablon's letter that advises Mr. Gerahty that the original fence regulations, described in Avery Harden's letter, is a requirement for permit approval. Mr. Jablon states:

"As I explained to you, should you disagree with Mr. Harden's interpretation of the Landscape Manual and concomitant its impact on the easement issue, the remedy to express your disagreement is before the zoning commissioner. *You need to file a petition for special hearing to amend the variance and ask the zoning commissioner to amend or disapprove Mr. Harden's requirements. However, your grading plan will not be approved if you do not either carry out Mr. Harden's requirements or have*

the zoning commissioner issue an appropriate order.”

(emphasis added)

If Mr. Gerahty was to receive the necessary approval by the Baltimore County for his grading plan, thereby eliminating the variance conditions, he was to adhere “Mr. Harden’s requirements”- those requirements referred by Mr. Jablon pertained to those described in Mr. Harden’s letter, dated December 24, 1996. Those requirements, as discussed earlier, provided that the “fence must be located on the inside edge of the 70-foot space”, not on the zone line where Mr. Gerahty indicated it on his grading plan. Mr. Gerahty should have understood that approval by Baltimore County to permit the paving of his parking lot required his strict compliance with Mr. Harden’s requirements.

As a result, Mr. Gerahty petitioned for relief of the condition to the Zoning Commissioner then later it was appealed to the Circuit Court where it was determined and ordered that the fencing of the subject property was to be comply with requirements forth in Avery Harden’s correspondence of December 24, 1996. Despite the approval by Baltimore County, Mr. Gerahty did not commence paving until July 2001- four (4) months after Mr. Gerahty was ordered by the court to locate the fence inside the zone line. Mr. Gerahty’s reliance on Baltimore County’s approval for his grading plan is inappropriate; nine (9) months followed before Mr. Gerahty finally began construction of the improvements which were contrary to the already existing court order enforcing him to comply with Mr. Harden’s letter.

Assuming arguendo, that the court agrees with Mr. Gerahty’s position that his reliance upon Mr. Jablon and Department of Permits and Development Management’s approval of his grading plan, Baltimore County is estopped under the

doctrine of collateral estoppel; the Court of Appeals has established that equitable estoppel does not arise, if decision of the Officer or Agent of the County is in violation of the law. In Lipsitz v. Parr, 164 Md. 222 (1933), the Court of Appeals stated, “ [A] municipality may be estoppel by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law.” (*emphasis added*)

This concept has been followed in Town of Berwyn Heights v. Rogers, 179 A.2d 712 (1962); Cromwell v. Ward, 102 Md. App. 691 (1995) and in Mary Pat Marzullo v. Peter Ray Kahl, 366 Md. 158 (2001).

It can be seen from the language in the Court of Appeals’ decision that the principle of equitable estoppel does not arise should the act of the County be in violation of law. Here, the act of issuing the permits by Baltimore County, Department of Permits and Development Management was in violation of this Court’s Order dated April 25, 2001 and the remand by the Baltimore County Board of Appeals, dated February 8, 2002; therefore, a permit illegally issued as in this case cannot be the subject matter of equitable estoppel.

For these reasons aforementioned the court is not persuaded that the doctrine of equitable estoppel applies against Baltimore County.

D. THE DECISION OF THE BOARD IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE NOR CAN A REASONING MIND REASONABLY HAVE REACHED THE CONCLUSION THE BOARD DID, CONSISTENT WITH A APPLICATION OF THE APPLICABLE LAW.

The final argument that Mr. Gerahty presents to this court is the issue of “whether the Board of Appeals’ actual findings are supported by substantial evidence, that is, by such relevant evidence as a reasonable mind might accept as adequate to support a

conclusion and whether a reasoning mind could reasonably have reached the conclusion reached by the Board consistent with the proper application of the controlling legal principles.”⁹

Upon thorough review of the record and evidence presented, this court is persuaded that there was substantial evidence to support the Board of Appeals’ findings.

This court accepts the Board’s findings has adopted the following, herein:

“[t]hat the size and confirmation of the open space and fence on the site in question was clearly determined pursuant to the October 8, 1996 agreement entered into between the Petitioner and the Villa Cresta Community Association, as part of the reclassification of the subject property from D.R. to B.L. The agreement, calling for a total of 70 feet of open space and a particular fence configuration, is an irrefutable fact, notwithstanding the incorrect mention of a 60-foot buffer and alternative fence configuration that apparently was adopted in the March 1997 decree of the Zoning Commissioner and referred incorrectly subsequently in later writings related to the property. The various special hearing and variance requests and opinions do not in any way alter the underlying responsibility of the Petitioner to comply with the original 1996 agreement and the December 24, 1996 letter of Avery Harden issued subsequently, which *predated* and of the parking or other variance or special hearing requests. In fact, as noted, we can see as far back as the March 1997 decision of the Deputy Zoning Commissioner, that the December 24, 1996 Harden letter and attachments is recognized as the standard to be applied for the open space and fence related to the subject site. The subsequent paving of the parking lot may have vitiated the need for the variance (and its attendant conditions), but left intact and did not in any way alter the previously mandated open space and fence configuration of the October 19, 1996 agreement.”

(emphasis added)

Mr. Gerahty further argues that the original agreement, upon which the Board based its decision, “does not mention the fence whatsoever. Therefore, the record does not contain substantial evidence to support the Board’s finding that the fence results from

⁹ The quoted language derives on page 26 of Mr. Gerahty’s Memorandum in Support of Petition for Judicial Review, dated March 17, 2005.

the Restrictive Agreement between Gerahty and Villa Cresta prior to the rezoning of the property.”¹⁰ No specific language is contained in the agreement that specifies that existence of the fence; however, the Board opined that “Judge Dugan was correct in his evaluation and determination of the facts, circumstances, and ultimate resolution of this extended matter.” The opinion by this court, dated April 25, 2001, states:

“The record, specifically Protestor’s Exhibit #5, an inter-office correspondence dated November 29, 1996 to Avery Harden from James H. Thompson, Code Enforcement, indicates that as a condition of rezoning, Poor Boys was to create a landscape buffer for the benefit of the adjacent community surrounding a proposed parking lot. Mr. Harden’s letter of December 24, 1996 set forth a description of the buffer area. Inter-office Correspondence from Arnold Keller, III, Director, Office of Planning to Arnold Jablon, Director, Department of Permits and Development Management, dated February 20, 1997, also included in Protestor’s Exhibits #5, states in part, “Should the applicant’s request be granted, full compliance with Mr. Harden’s recommendations would be necessary in order to buffer the proposed parking lot area and the proposed outside sales/storage areas from the adjoining residential community.” County Councilman Joseph Bartenfelder’s letter to Mr. Baisden, dated September 18, 1997 also contained in Protestor’s Exhibit #5, clearly indicates that the granting of the rezoning to Poor Boys was conditioned on the creation of the landscape Buffer area as directed by Mr. Harden.”

The Board of Appeals correctly found, based on the record, that the fence location by the Restrictive Agreement between Gerahty and Villa Cresta existed prior to the rezoning of the property despite the lack of express language pertaining to the fence contained within the restrictive covenant agreement, dated October 8, 1996.

THEREFORE, pursuant to Maryland Rule 7-209, the decision of the County Board of Appeals of Baltimore County ordering that the previous restrictions imposed

¹⁰ The quoted language derives on page 27 of Mr. Gerahty’s Memorandum in Support of Petition for Judicial Review, dated March 17, 2005.

upon the Petitioner regarding the fencing of the subject property and the 70-foot total buffer, pursuant to the restrictive covenant agreement dated October 8, 1996, and as set forth in Avery Harden's letter of December 24, 1996 shall remain in full force and effect is hereby AFFIRMED.

In the Matter of Poor Boys, et al.: (case no.03-C-03-00275):

II. WHETHER THE BALTIMORE COUNTY BOARD OF APPEALS ERRED IN RENDERING THE DECISION THAT AS PART OF THE PERMIT PROCESS, THE APPROVAL OF A LANDSCAPE AND LIGHTING PLAN, BY A BALTIMORE COUNTY LANDSCAPE ARCHITECT, DOES NOT CONSTITUTE AN EVENT APPEALABLE TO THE COUNTY BOARD OF APPEALS.

The basis for which the Petitioners, the Baisdens, contends the County Board of Appeals erred are the following:

- A. THE BALTIMORE COUNTY CODE §26-132 SPECIFICALLY AUTHORIZES THIS APPEAL.
- B. THE BALTIMORE COUNTY BOARD OF APPEALS HAS AUTHORITY TO HEAR THIS APPEAL EVEN IN THE ABSENCE OF STATUTORY AUTHORITY.
- C. UNDER ANY CIRCUMSTANCES, THE CURRENT STATUS OF THIS CASE REQUIRES A DETERMINATION THAT THE LANDSCAPE AND LIGHTING PLAN WHICH IS THE SUBJECT OF THIS HEARING IS VOID AND ILLEGAL.

For the purposes of addressing the Baisden's arguments, "A" and "B", this court has consolidated the matters into the analysis set forth herein.

- A. THE BALTIMORE COUNTY CODE §26-132 SPECIFICALLY AUTHORIZES THIS APPEAL.
- B. THE BALTIMORE COUNTY BOARD OF APPEALS HAS AUTHORITY TO HEAR THIS APPEAL EVEN IN THE ABSENCE OF STATUTORY AUTHORITY.

In their memorandum in support of judicial review, the Baisdens cite § 26-132 (a)

of the Baltimore County Code wherein it states, “ any person or persons, jointly, or severely, or any taxpayer aggrieved or feeling aggrieved by any decision or order of the Zoning Commissioner or the Director of Zoning Administration and Development Management shall have the right to appeal therefrom to the County Board of Appeals.” They contend that the broad language, specifically the words “*any decision*”, clearly encompasses the grounds for appeal of the Director of Zoning Administration and Development Management.

Since the date of the Baisden’s Petition for Judicial Review, filed on January 9, 2003, the *Baltimore County Code* was revised, including § 26-132 (a). The language contained in the original code (1998 Code Citation), which the Baisdens cite, has been amended and now states the following:

§ 32-3-401. Appeals to the Board of Appeals.

- (a) *In general.* A person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner or the Director of Permits and Development Management may appeal the decision or order to the Board of Appeals.¹¹

(emphasis added)

Accordingly the current *Baltimore County Code*, § 32-3-401 has altered the original version, slightly, providing for a more limited and narrow scope; but regardless of the amended *Baltimore County Code*, this court is not persuaded by the Baisden’s argument and herein adopts the rationale by the Board of Appeals.

“ Section 602 of the Baltimore County Charter only authorizes the County Board of Appeals to hear appeals from certain enumerated matters: zoning § 602 (a), licenses § 602 (b), orders relating to building § 602 (c), and appeals from executive administrative and adjudicatory orders § 602 (d).

¹¹ Section 32-3-401. Appeals to the Board of Appeals. – Article 32. Planning, Zoning and Subdivision Control of the *Baltimore County Code*, 2003.

Neither the County Code nor the Charter expressly authorizes an appeal from a decision of the Landscape Architect, or the approval of landscape and lighting plans to accompany an application for a grading permit. Nor does it expressly authorize appeals from the approval of grading permits."

"The approval of the Landscape Architect as to the proposed landscape and lighting plans does not constitute an "administrative and adjudicatory order." The only conceivable category is that it fits under an order relating to building. However, the express language of the statutes regulating grading found in Title 14 of the Baltimore County Code militate against such a construction when the County Council has spent enumerable paragraphs defining grading, and under any reasonable reading of those definitions, it excluded the construction or erection of any building or structure of any kind.

In the case at Bar, the Protestant's Notice of Appeal states that this appeal is from the Decision of the Director of the Department of Permits and Development Management and attaches various exhibits, none of which demonstrate that the director made any decision. The Landscape Architect did approve and sign the lighting and landscape in connection with an application for a grading permit to construct a new parking lot at the subject site. This was not a final act issuing a permit. The decision of the Landscape Architect is only one step in the process of obtaining a permit.

Once an application for a grading permit for a parking lot is filed, it is referred to the Landscape Architect, who then conducts a review of the application and makes a determination that, from his point of view, there are no concerns and/or issues under the applicable lighting and landscaping regulations. If there are none, it would Therefore, be appropriate from that department's point of view to have a permit issued. The findings of the Landscape Architect, if final review and approval, and, it all is in order, the building, or grading permit in this case, is granted. To allow appeals from the interlocutory statements from administrative agencies would be to allow myriad appeals in the same case."

THEREFORE, pursuant to Maryland Rule 7-209, the decision of the County Board of Appeals of Baltimore County ordering that Appellee's Motion to Dismiss is hereby AFFIRMED.

C. UNDER ANY CIRCUMSTANCES, THE CURRENT STATUS OF THIS CASE REQUIRES A DETERMINATION THAT THE LANDSCAPE AND LIGHTING PLAN WHICH IS THE SUBJECT OF THIS HEARING IS VOID AND ILLEGAL.

The Baisdens contend that regardless of "any circumstances", the law in case requires the Board of Appeals to "reject and deny" the approval by Baltimore County Department of Permits and Development Management of the landscape and lighting plans that show the fence in a location other than in Avery Harden's letter dated December 24, 1996. They argue that the "law" applicable in this case is the order passed by this court on April 25, 2001, requiring the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996. The grading plan was approved by Baltimore County on September 7, 2000 and were issued in July of 2001. This matter is "moot".

However, this does not in any way alter this court's original decision held on April 24, 2001, nor does it change the court's ruling set forth in this opinion. It and is hereby ORDERED that the Order of April 25, 2001 and the Remand Order, by the Board of Appeals, dated February 8, 2002, imposing upon Mr. Gerahty the restrictions regarding the fencing of the subject property and the 70-foot total buffer, pursuant to the restrictive covenant agreement dated October 8, 1996 and as set forth in Avery Harden's letter of December 24, 1996 shall remain in full and effect is hereby AFFIRMED.

DATE

9/26/05

ROBERT N. DUGAN, JUDGE
BALTIMORE COUNTY CIRCUIT
COURT

cc: Board of Appeals of Baltimore County

Department of Permits and Development Management
J. Carrol Holzer, Esquire
C. William Clark, Esquire

2/18/05

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
TERRY GERAHTY
2711 Taylor Avenue
Baltimore, MD 21234

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

IN THE MATTER OF:
TERRY GERAHTY
2711 Taylor Avenue
Baltimore, MD 21234

CIVIL ACTION
NO.: 03-C-04-13235

BOARD OF APPEALS CASE NO: 02-462-SPH

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

FILED
BALTIMORE COUNTY
CLERK OF THE CIRCUIT COURT
2005 FEB 18 PM 4:00
10000 WASHINGTON AVENUE
TOWSON, MD 21204

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

02-462-SPH

April 19, 2002	Petition for Special Hearing Request filed by The Department of Permits & Development Management in order to 1) Clarify and finalize where on the property owner's property a disputed fence must be located. 2) Clarify and finalize whether the decisions of the Zoning Commissioner, Board of Appeals and Circuit Court of Baltimore County in cases 03-C-00-6650 and 03-C-00-6687, dated April 25, 2001 is applicable or moot 3) Guidance on the issue whether the fence must be in the location as mandated by the Circuit Court and the Board or whether these decisions are no longer germane because the original variance request is not moot
May 8	Notice of Zoning Hearing
May 22	Entry of Appearance filed by People's Counsel for Baltimore County
May 23	Publication in newspaper
May 31	ZAC Summary of Comments
June 6	Hearing Held before the Zoning Commissioner
November 4	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. The following Orders are now MOOT: 97-295-SPHA, and amended 98-267-SPHA; Board of Appeal Orders and Circuit Court Orders in 03-C-00-6650 and 03-C-00-6687.
December 3	Notice of Appeal from J. Carroll Holzer, Esquire, on behalf of Ruth and Ernest Baisden
June 17, 2004	Hearing by Board of Appeals.

**Protestant's
Exhibits**

- 1 Board of Appeals Order dated May 31, 2000 – Case No.: 98-267-SPH
- 2 Memorandum and Order, dated April 25, 2001, signed by Judge Dugan in Circuit Court Case No.: 03-C-00-6650 and 03-C-00-6687
- 3 Memorandum and Order, dated April 25, 2001, signed by Judge Dugan in Circuit Court Case No.: 03-C-00-6650 and 03-C-00-6687
- 4 Motion to Dismiss Appeal filed by Terry Gerahty, by and through his attorney, C. William Clark before the Court of Special Appeals of Maryland Case No.: 00588, September Term, 2001
- 5 Motion to Extend Time filed by Terry Gerahty, by and through his attorney, C. William Clark before the Court of Special Appeals of Maryland Case No.: 00588, September Term, 2001
- 6 Answer to Motion to Dismiss filed by Ruth Baisden, by her attorney J. Carroll Holzer, Esquire, before the Court of Special Appeals of Maryland Case No.: 00588, September Term, 2001
- 7 Order by the Court of Special Appeals of Maryland Case No.: 00588, September Term, 2001 – Motion to Dismiss – MMOT – Motion to Extend Time GRANTED
- 8 Mandate issued by the Court of Special Appeals – Notice of Dismissal filed by counsel for appellant - Appeal dismissed
- 9 Letter to Arnold Jablon, Director, PDM from Ruth Baisden, dated January 31, 2002 – 2 pages
- 10 Baltimore County Uniform Code Violation Notice No.: 121106
- 11 Baltimore County Uniform Code Enforcement Citation No.: 02-1188

- 12 Letter to Mr. Gary Freund, Code Inspection from C. William Clark, dated March 20, 2002 – 2 pages
- 13 Letter with attachments to Arnold Jablon, Director, PDM from J. Carroll Holzer, Esquire, dated April 10, 2002 – 41 pages
- 14 Affidavit of Personal Knowledge signed by Ruth Baisden, dated May 20, 2002, in Civil Action No.: 03-C-001085
- 15 Letter to J. Carroll Holzer, Esquire from Arnold Jablon, Director, PDM, dated April 18, 2002 – 2 pages
- 16 Motion For An Injunction, Mandamus, Enforcement of Court Order and Contempt of Court filed by Ruth and Ernie Baisden, by their attorney in Civil Action case number 03-C-00-6650 and 03-C-00-6687
- 17a Motion to Dismiss Petition for Special Hearing On The Basis Of The Doctrine Of Res Judicata And The Doctrine Of Direct Estoppel By Judgment filed by Ruth and Ernie Baisden, by their attorney in Zoning Case No.: 02-462-SPH
- 17b Memorandum of Law filed by Ruth and Ernie Baisden, by their attorney in Zoning Case No.: 02-462-SPH
- 18 Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. The following Orders are now MOOT: 97-295-SPHA, and amended 98-267-SPHA; Board of Appeal Orders and Circuit Court Orders in 03-C-00-6650 and 03-C-00-6687.
- 19A – 19F Photographs

**Petitioner's
Exhibits**

- 1 Restrictive Covenant Agreement dated October 8, 1996 by and between Terry Gerahty and the Villa Cresta Civic Association, Inc., recorded sat Liber 11868, folio 303 – 8 pages
- 2 Letter (with attachment) dated December 17, 1996 from Arnold Jablon, Director, PDM to David Miller – 6 pages
- 3 Letter dated December 18, 1996 from James H. Thompson, Code Inspections to Mr. And Mrs. Ernie Baisden – 2 pages

- 4 Notice of Hearing dated January 24, 1997 – DPM
- 5 Findings of Fact and Conclusions of Law issued by the
Zoning Commissioner; hand written date of 3/6/1997 in
Zoning Case No.: 97-295-SPHA – 8 pages
- 6 Order of Dismissal of Appeal, dated September 19, 1997
- 7 Letter to Douglas L. Burgess, Esquire from Kathleen C.
Bianco, Legal Administrator, Baltimore County Board of
Appeals, dated September 24, 1997 enclosing a copy of the
final Order of Dismissal in case number 97-295-SPHA – 3
pages
- 8 Letter dated March 12, 1998 from Terry Gerahty, President,
Poor Boy's Inc. to Arnold Jablon, Director, PDM – 1 page
- 9 Letter dated March 18, 1998 from Arnold Jablon, Director,
PDM to Mr. Terry Gerahty, President, Poor Boy's Inc. – 2
pages
- 10 Letter (with Findings of Fact and Conclusion of Law) to C.
William Clark, Esquire from Timothy M. Kotroco, Deputy
Zoning Commissioner, dated July 8, 1999 RE: Case No.: 98-
267-SPH
- 11 Letter (Enclosing executed Deed or Easement for Open
Space) dated June 9, 1999 from Douglas N. Silber, Assistant
County Attorney to C. William Clark, Esquire – 12 pages
- 12 Landscape Plan subject property
- 13 Outdoor Sales Area Lighting Upgrade Plan
- 14 Confirmatory Restrictive Covenant Agreement dated
December 15, 2000, 1996 by and between Terry Gerahty and
the Villa Cresta Civic Association, Inc., recorded at Liber
14889, folio 713 – 6 pages
- 15 Baltimore County Building Permit Number B431416, issued
7/6/2001
- 16 Baltimore County Building Permit Number B329149, issued
7/17/2001

17	Baltimore County Building Permit Number B456511, issued 7/17/2001
18A – 18 F	Photographs
July 23	Protestant's Memorandum in Lieu of Final Argument and Appendix filed by J. Carroll Holzer, Esquire.
	Respondent's Memorandum of Law filed by C. William Clark, Esquire
September 2	Board convened for public deliberation
December 2	Opinion Issued By The Board Of Appeals / that the previous restrictions imposed upon the Petitioner regarding the fencing of the subject property and the 70-foot total buffer, pursuant to the restrictive covenant agreement dated October 8, 1996 and as set forth in Avery Harden's letter of December 24, 1996 shall remain in full force and effect
December 21	Petition for Judicial Review filed in the Circuit Court for Baltimore County by C. William Clark, Esquire, on behalf of Terry Gerahty and Poor Boy's, Inc.
December 27	Petition for Judicial Review received by the Board of Appeals.
December 28	Certificate of Notice sent to interested parties.
February 16, 2005	Transcript of Proceedings filed.
February 18, 2005	Record of Proceedings filed in the Circuit Court for Baltimore County.

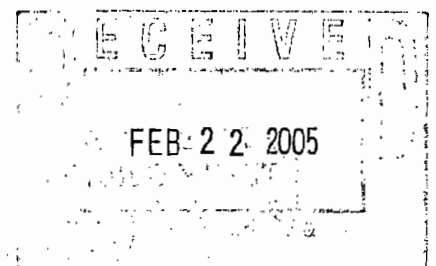
Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered before the Board.

Respectfully submitted,



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

c: J. Carroll Holzer, Esquire
C. William Clark, Esquire
Office of People's Counsel
C. Robert Loskot, Assistant County Attorney



02-462-SPH

2711 Taylor Avenue
Baltimore, MD 21234

Terry J. Gerahty
(Poor Boys)

4/19/02

Petition for Special Hearing filed by C. Robert Losckott, Assistant County Attorney on behalf of the Department of Permits and Development Management to clarify and finalize where on the property owner's property a disputed fence must be located. Further to clarify and finalize whether the decisions of the Zoning Commissioner, Board of Appeals and Circuit Court in case no.: 6650 and 6687 are applicable or now moot.

11/4/02

Zoning Commissioner's Order issues now moot.

12/3/02

Notice of Appeal filed by J. Carroll Holzer on behalf of Ruth and Ernest Baisden.

12/5/02

Received at Board of Appeal.

December 2, 2004

Opinion Issued By The Board Of Appeals / that the previous restrictions imposed upon the Petitioner regarding the fencing of the subject property and the 70-foot total buffer, pursuant to the restrictive covenant agreement dated October 8, 1996 and as set forth in Avery Harden's letter of December 24, 1996 shall remain in full force and effect

December 21, 2004 Petition for Judicial Review filed by C. William Clark on behalf of Terry Gerahty.
Civil Action No.: 03-C-04-13235

December 28, 2004 Certificate of Notices filed.

2/18/05- record filed

1/7/05
PETITION OF:
TERRY GERAHTY
2711 Taylor Avenue
Baltimore, MD 21234

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS
400 Washington Ave., Room 49
Towson, MD 21204

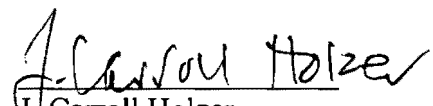
IN THE MATTER OF
TERRY GERAHTY
2711 Taylor Avenue
BALTIMORE, MD 21234
9th Election District, 6th Councilmanic District
Case No. 02-462-SPH

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
*
* Case No. 3-C-04-13235
*
*
*
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*
*

* * * * *

NOTICE OF INTENT TO PARTICIPATE
IN JUDICIAL REVIEW

Pursuant to the Provisions of Rule 7-204 (a) of the *Maryland Rules*, the undersigned attorney, on behalf of individuals Ruth and Ernest Baisden, gives notice of his intention to participate in this action for Judicial Review. Respondents were parties below and fully participated in the proceedings.

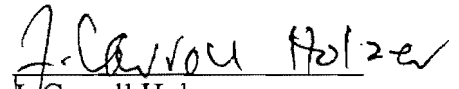

Carroll Holzer
508 Fairmount Avenue
Towson, MD 21286
(410) 825-6961
Attorney for Respondents

RECEIVED
JAN 11 2005
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 2005, a copy of the foregoing Notice of Intention to Participate in Judicial Review was mailed first class, postage pre-paid to the following:

1. County Board of Appeals for Baltimore County
Room 49—Old Courthouse
400 Washington Avenue
Towson, MD 21204
2. Peter Max Zimmerman
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
3. C. William Clark
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, MD 21204


J. Carroll Holzer

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-04-013235

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Room 49
400 Washington Avenue
Baltimore, MD 21204

12/28/04

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
TERRY GERAHTY
2711 Taylor Avenue
Baltimore, MD 21234

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

IN THE MATTER OF:
TERRY GERAHTY
2711 Taylor Avenue
Baltimore, MD 21234

BOARD OF APPEALS CASE NO: 02-462-SPH

* * * * *

CIVIL ACTION
NO.: 03-C-04-13235

RECEIVED AND FILED
2004 DEC 28 A 9:59
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:

J. Carroll Holzer
508 Fairmount Avenue, Towson, MD 21286

Earnest and Ruth Baisden
7706 Oak Avenue, Baltimore, MD 21234

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, Suite 700, Nottingham
Centre, 502 Washington Avenue, Towson, MD 21204

Terry Gerahty

c/o, Poor Boy's, Inc., 7721 Old Harford Road,
Baltimore, MD 21234

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

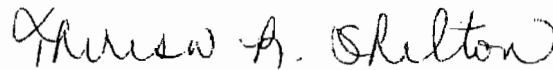
Jay A. Liner, County Attorney

400 Washington Avenue, Room 219, Towson, MD 21204

C. Robert Loskot, Assistant County Attorney

400 Washington Avenue, Room 219, Towson, MD 21204

A copy of said Notice is attached hereto and prayed that it may be made a part
hereof.



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: J. Carroll Holzer, 508 Fairmount Avenue, Towson, MD 21286; Earnest and Ruth
Baisden, 7706 Oak Avenue, Baltimore, MD 21234; C. William Clark, Esquire, NOLAN,
PLUMHOFF & WILLIAMS, Suite 700, Nottingham Centre, 502 Washington Avenue,
Towson, MD 21204; and Poor Boy's, Inc., c/o Terry Gerahty, 7721 Old Harford Road,
Baltimore, MD 21234, 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; Jay A. Liner, County Attorney, 400
Washington Avenue, Room 219, Towson, MD 21204; C. Robert Loskot, Assistant County
Attorney, 400 Washington Avenue, Room 219, Towson, MD 21204, this 28th day of
December, 2004.



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

December 28, 2004

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

RE: Circuit Court Civil Action No. 3-C-04-13235
Petition for Judicial Review
Terry Gerahty (Poor Boys)
Board of Appeals Case No.: 02-462-SPH

Dear Mr. Clark:

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 and must be paid in time to transmit the same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410- 486-8209
HEARING DATE: June 17, 2004

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by February 22, 2005, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, which enables her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs

Enclosure

c: Carolyn Peatt, Court Reporter
J. Carroll Holzer, Esquire
C. Robert Loskot, Assistant County Attorney





County Board of Appeals of Baltimore County

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

December 28, 2004

C. Robert Loskot
Assistant County Attorney
Office of Law
Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-04-13235
Petition for Judicial Review
Terry Gerahty (Poor Boys)
Board of Appeals Case No.: 02-462-SPH

Dear Mr. Loskot:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on December 21, 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-04-13235.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: C. William Clark, Esquire
Terry Gerahty / Poor Boy's, Inc.
J. Carroll Holzer, Esquire
Ernie and Ruth Baisden
Avery Harden, Landscape Architect / PDM
John R. Reisinger, Buildings Engineer / PDM
Jay L. Liner, County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Zoning Commissioner
Timothy Kotroco, Director/PDM

12/21/64

PETITION OF:

TERRY GERAHTY
2711 Taylor Avenue
Baltimore, MD 21234

JUDICIAL REVIEW OF

THE DECISION OF:
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204
410-887-3180

IN THE CASE OF:

IN THE MATTER OF:

TERRY GERAHTY, Property Owner
(2711 Taylor Avenue)
9th Election District
6th Councilmanic District
Case No. 02-462-SPH

* IN THE

* CIRCUIT COURT

* FOR

* BALTIMORE COUNTY

* CIVIL ACTION NO. 03C-04-13235

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RECEIVED

DEC 27 2004

BALTIMORE COUNTY
BOARD OF APPEALS

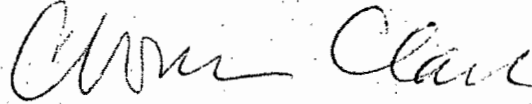
* * * * *

PETITION FOR JUDICIAL REVIEW

Terry Gerahty and Poor Boy's, Inc., Petitioners, who participated in the proceedings before the County Board of Appeals of Baltimore County, by C. William Clark, Esquire and Nolan, Plumhoff & Williams, Chartered, his legal counsel, in accordance with Maryland Rules 7-201 through 7-210, hereby

requests judicial review of the December 2, 2004 Decision of the County Board of Appeals of Baltimore County in the above-captioned matter. A copy of that decision is attached hereto.

Respectfully submitted,



C. William Clark, Esquire
Nolan, Plumhoff & Williams Chartered
502 Washington Avenue, Suite 700
Towson, Maryland 21204
410-823-7800

Attorney for the Petitioner

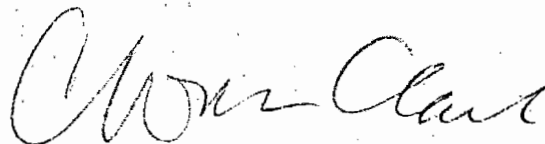
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 21st day of December, 2004, a copy of the foregoing Petition for Judicial Review was mailed, postage prepaid, to the following:

County Attorney's Office
400 Washington Avenue, Suite 219
Towson, Maryland 21204

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

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



C. William Clark, Esquire

12/2/04

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF	*	COUNTY BOARD OF APPEALS
<u>TERRY J. GERAHTY -PETITIONER</u>	*	OF
FOR A SPECIAL HEARING ON PROPERTY	*	BALTIMORE COUNTY
LOCATED ON THE SW/S OF TAYLOR AVE.	*	Case No. 02-462-SPH
110' SE OF C/L OF OLD HARFORD ROAD		
(2711 TAYLOR AVENUE)		
9 TH ELECTION DISTRICT		
6 TH COUNCILMANIC DISTRICT		

* * * * *

OPINION

The above-noted matter comes to the Board as an appeal taken from the special hearing finding of the Zoning Commissioner of Baltimore County in which an earlier granted variance with conditions was determined to be moot and was not subject to a finding of *res judicata* or estoppel.

The history of the development and use of this site is convoluted at best and has been stated and restated in the several opinions and memoranda that have been written previously in the case. In relevant part, for purposes of the instant matter, the history reveals that the subject property was rezoned from residential use to a business, light (B.L.) designation as part of the quadrennial rezoning of 1996. In what was clearly a part of the rezoning efforts of the Petitioner, he negotiated and entered into a restrictive covenant agreement with the Villa Cresta Civic Association dated October 8, 1996. Page 4 of that agreement under "Landscape Buffer" states, in part:

In addition, there shall be a ten-foot (10') interior landscape easement established and maintained inside the B.L. line in a manner consistent with the requirements of said B.L. zone and with the Baltimore County Landscape Manual. The sixty-foot (60') landscape buffer, plus the ten-foot (10') interior landscape easement, will provide a total of seventy feet (70') of open space from Oak Avenue as shown on the attached drawing.

Further, on the same page under "Condition Precedent," the agreement states:

The obligations of Gerahty and Poor Boy's shall not become effective and binding upon Poor Boy's and the land unless and until the land has been reclassified to B.L., as shown on the attached drawing marked "Amended Request," on the 1996 Comprehensive Zoning Map for Baltimore County, as that map is finally adopted.

The agreement clearly links the commitment to provide the 70-foot total open space to the reclassification of the site to B.L. use. The property was in fact reclassified and the said agreement was recorded among the Land Records of Baltimore County. As part of the subsequent process, a letter dated December 24, 1996 was sent to all interested parties by County Landscape Architect, E. Avery Harden, setting forth, by description and attached drawings, the specifics of the 60-foot and 10-foot spaces which made up the 70 feet of open space called for in the October 8th agreement.

In February of 1997, Petitioner requested a special hearing regarding the approval of the existing parking lot on the premises or, in the alternative, a variance permitting the existing lot to remain in the form then existing. In a decision dated March 6, 1997, the Zoning Commissioner denied the special hearing request but granted the sought-for variance with a number of accompanying restrictions, among them the setting aside and maintaining of a buffer area and fence. It is here that a pivotal change occurs. In his Findings of Fact and Conclusions of Law, the Zoning Commissioner refers to the history of the site and its continuing controversies. He notes a **60-foot** [emphasis added] buffer area which is set out on the subject property. He refers to 60 feet in a number of places in that opinion, including as part of the variance restrictions therein set out by him. The additional 10 feet (for a total of 70 feet) required by the October 1996 agreement and clearly described and set out in the Avery Harden letter of December 24, 1996, is lost completely. [Emphasis added.] It is even more interesting to note that the Zoning Commissioner's opinion includes and actually adopts Mr. Harden's December 24, 1996 letter as the standard to be followed in the size and configuration of the fence to be constructed. However, mention of the portion of that letter relating to the 70-foot total open space is completely missing.

An appeal was taken by Petitioner of the Zoning Commissioner's aforesaid March 6, 1997 Order. Concurrently, Petitioner met and entered into a so-called "agreement" with

representative of the County Executive's Office as to the location and installation of the ordered fence and buffer. Although none of the Protestants or affected residents were included in any of these negotiations or discussion of the issues (let alone the ultimate agreement), Petitioner apparently dismissed his appeal to the Board as a result and recorded the new "agreement" in the Land Records.

A further special hearing request was filed by Petitioner regarding confirmation of the location of the subject fence and related lighting issues, and the Deputy Zoning Commissioner ruled in the matter on July 8, 1999, finding that the fence was appropriate as it existed and that a lighting plan should be approved by Mr. Harden. Ms. Baisden appealed to the Board on the issue of the fence, and Mr. Gerahty (Petitioner) appealed as to the lighting (Mr. Gerahty later dismissed his appeal before the Board at the time of hearing). The Board affirmed the Deputy Zoning Commissioner's decision with the exception that the fence had to be of a more permanent nature. The Board's ruling was then appealed to the Circuit Court for Baltimore County. Judge Robert Dugan, writing for the Court, ruled that the Deputy Zoning Commissioner and the Board had improperly relied on the recorded easement reflecting the "agreement" between the Petitioner and the County Executive's Office (which he referred to as "an inappropriate political intervention into the zoning process") and remanded the matter back to the Board to pass an Order in conformance with the restrictive covenant agreement with the Villa Cresta Association dated October 8, 1996, and Mr. Harden's December 24, 1996 letter and attached drawings (which showed the fencing necessary and a total of 70 feet of open space). Said Order was issued by this Board dated February 8, 2002.

In the meantime, Petitioner had taken steps to pave the subject site's parking lot and requested thereafter a special hearing, as a result of which the Zoning Commissioner ruled that, having paved the parking lot, the previously granted variance was no longer necessary, rendered

"moot," and the attendant conditions set forth in the previous variance approval were no longer necessary. An appeal to the Board of that decision has brought us to the present time.

This Board finds that the size and configuration of the open space and fence on the site in question was clearly determined pursuant to the October 8, 1996 agreement entered into between the Petitioner and the Villa Cresta Community Association, as part of the reclassification of the subject property from D.R. to B.L. The agreement, calling for a total of 70 feet of open space and a particular fence configuration, is an irrefutable fact, notwithstanding the incorrect mention of a 60-foot buffer and alternative fence configuration that apparently was adopted in the March 1997 decree of the Zoning Commissioner and referenced incorrectly subsequently in later writings related to this property. The various special hearing and variance requests and opinions do not in any way alter the underlying responsibility of the Petitioner to comply with the original 1996 agreement and the December 24, 1996 letter of Avery Harden issued subsequently, which **predated** [emphasis added] any of the parking or other variance or special hearing requests. In fact, as noted, we can see as far back as the March 1997 decision of the Deputy Zoning Commissioner, that the December 24, 1996 Harden letter and attachments is recognized as the standard to be applied for the open space and fence related to the subject site. The subsequent paving of the parking lot may have vitiated the need for the variance (and its attendant conditions), but left intact and did not in any way alter the previously mandated open space and fence configuration of the October 19, 1996 agreement.

Judge Dugan was correct in his evaluation and determination of the facts, circumstances, and ultimate resolution of this extended matter. His remand to the Board was appropriate as was the Order issued by the Board as the result of the mandate of the Judge's decision.

This Board therefore unanimously finds that, while the variance from the required durable /dustless surface may be moot as the result of Petitioner's paving of the parking lot, the

restrictions imposed as to the location of the fence and the 70-foot buffer remain as agreed to in the above-noted restrictive covenant agreement.

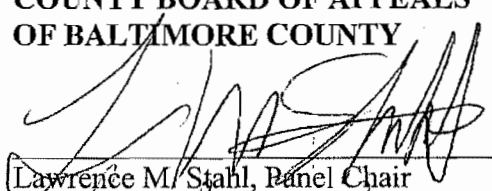
ORDER

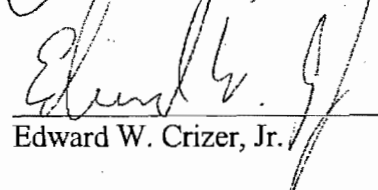
THEREFORE, IT IS THIS 2nd day of December, 2004 by the
County Board of Appeals of Baltimore County

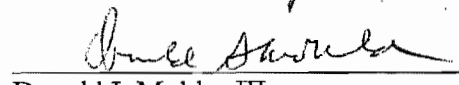
ORDERED that the previous restrictions imposed upon the Petitioner regarding the fencing of the subject property and the 70-foot total buffer, pursuant to the restrictive covenant agreement dated October 8, 1996 and as set forth in Avery Harden's letter of December 24, 1996 shall remain in full force and effect.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence M. Stahl, Panel Chair


Edward W. Crizer, Jr.


Donald I. Mohler III



County Board of Appeals of Baltimore County

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

December 2, 2004

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

RE: In the Matter of Terry J. Gerahty - Petitioner
Case No. 02-462-SPH

Dear Mr. Holzer:

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 of Procedure*, **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
Administrator

Enclosure

c: Ruth and Ernest Baisden
C. William Clark, Esquire
Terry Gerahty
Office of People's Counsel
Pat Keller, Planning Director
William J. Wiseman III, Zoning Commissioner
Timothy M. Kotroco, Director /PDM
C. Robert Loskot, Assistant County Attorney
Jay L. Liner, County Attorney



APPEAL

Petition for Special Hearing
2711 Taylor Avenue
SW/side of Taylor Avenue, 110' SE of centerline of Old Harford Road
Election District - Councilmanic District
Terry J. Gerahty - Legal Owner
Case No.: 02-462-SPH

Petition for Special Hearing (April 19, 2002)

Zoning Description of Property

Notice of Zoning Hearing (May 8, 2002)

Certification of Publication (The Jeffersonian issue May 23, 2002)

Certificate of Posting (No copy in file)

Entry of Appearance by People's Counsel (May 22, 2002)

Petitioner(s) Sign-In Sheet
One Sheet

Protestant(s) Sign-In Sheet
One Sheet

Citizen(s) Sign-In Sheet
One Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibits:

- 1-17 Packet of Property Owner's copies of legal proceedings
- 18a-18f Property Owner Photos

Protestants' Exhibits:

- a. Booklet of materials containing copies of hearings, etc.
- b. Memorandum of Law from Ruth and Ernest Baisden

Miscellaneous (Not Marked as Exhibits):

- a. Plat to accompany a Zoning Petition for a Special Hearing
- b. Miscellaneous photos of Protestants and Petitioner

Zoning Commissioner's Order (November 4, 2002 – ORDERED by the Zoning Commissioner for Baltimore County this 4th day of November, 2002 that the Orders issued by Deputy Zoning Commissioner (in Case No. 97-295-SPHA, and amended in Case NO. 98-267-SPH), AND THE Orders issued by the Board of Appeals and the Circuit Court of Baltimore County in Case Nos. 03-C-00-6650 and 03-C-00-6687, dated April 25, 2001 are now moot.

Notice of Appeal received on December 3, 2002 from J. Carroll Holzer on behalf of Ruth and Ernest Baisden.

c: People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM
C. William Clark, Nolan, Plumhoff & Williams
J. Carroll Holzer, Holzer & Lee

date sent 12/4/02 rh

APPEAL

Petition for Special Hearing
2711 Taylor Avenue
SW/side of Taylor Avenue, 110' SE of centerline of Old Harford Road
9 Election District - Councilmanic District → 6
Terry J. Gerahty - Legal Owner
Case No.: 02-462-SPH

- ✓ Petition for Special Hearing (April 19, 2002)
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (May 8, 2002)
- ✓ Certification of Publication (The Jeffersonian issue May 23, 2002)

Certificate of Posting (No copy in file)

- ✓ Entry of Appearance by People's Counsel (May 22, 2002)

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

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

- ✓ Citizen(s) Sign-In Sheet
One Sheet

- ✓ Zoning Advisory Committee Comments

- ✓ Petitioners' Exhibits: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17
 - ✓ 17 Packet of Property Owner's copies of legal proceedings
 - ✓ 18a-18f Property Owner Photos

- ✓ Protestants' Exhibits:
 - ✓ a. Booklet of materials containing copies of hearings, etc.
 - ✓ b. Memorandum of Law from Ruth and Ernest Baisden

- ✓ Miscellaneous (Not Marked as Exhibits):
 - ✓ a. Plat to accompany a Zoning Petition for a Special Hearing
 - ✓ b. Miscellaneous photos of Protestants and Petitioner

- ✓ Zoning Commissioner's Order (November 4, 2002 – ORDERED by the Zoning Commissioner for Baltimore County this 4th day of November, 2002 that the Orders issued by Deputy Zoning Commissioner (in Case No. 97-295-SPHA, and amended in Case NO. 98-267-SPH), AND THE Orders issued by the Board of Appeals and the Circuit Court of Baltimore County in Case Nos. 03-C-00-6650 and 03-C-00-6687, dated April 25, 2001 are now moot.

- * ✓ Notice of Appeal received on December 3, 2002 from J. Carroll Holzer on behalf of Ruth and Ernest Baisden.

c: People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM
C. William Clark, Nolan, Plumhoff & Williams
J. Carroll Holzer, Holzer & Lee

C. Robert Elascott, on behalf of RDM
date sent 12/4/02 rlh

✓ E

11/04/2002 – Order issued by the ZC – that Orders of DZC in 97-295-SPHA amended in 98-267-SPH; Orders of CBA and the Circuit Court in 03-C-00-6650 and 03-C-00-6687 are now MOOT.

4/15/03 – Notice of Assignments sent to following parties; case assigned for hearing on Wednesday, June 18, 2003 at 10:00 a.m.:

J. Carroll Holzer, Esquire
Ruth and Ernest Baisden
C. William Clark, Esquire
Terry Gerahty
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
C. Robert Loskot, Assistant County Attorney
Edward J. Gilliss, County Attorney

6/06/03 – Mutual Request for Postponement filed by C. William Clark, Esquire, and J. Carroll Holzer, Esquire, on behalf of the parties to this matter.

6/10/03 – Notice of PP and Reassignment sent to the parties; case reassigned to Wednesday, October 1, 2003 at 10:00 a.m. (the next available date on the Board's schedule).

6/17/03 – Request for postponement filed by J. Carroll Holzer, Esquire – he will be out of town 9/29/03 through 10/03/03; reassigned to next open date on Board's schedule.
-- Second Notice of PP and Reassignment sent to parties; case reassigned to Thursday, November 18, 2003 at 10:00 a.m.

11/10/03 – Letter received via FAX (date /time – Nov 7-03 04:50 p) from C. Holzer – requesting postponement of 11/13/03 hearing - will be at development plan hearing before Hearing Officer for two-day hearing on 11/13 and 11/14.
- T/C to Bud Clark this a.m. (left voice mail message); also copy of C. Holzer's letter to B. Clark via FAX this a.m. T/C from B. Clark – no objection to postponement; left voice mail message for C. Holzer – 11/13/03 will be postponed and reassigned.
-- Third Notice of PP and Reassignment sent to parties; reassigned to Wednesday, April 7, 2004 at 10 a.m.

4/05/04 – Letter from C. William Clark, Esquire – requesting postponement of 4/07/04 hearing – Mr. Gerahty's sister, for whom he is primary caregiver, has had heart valve replacement surgery. She is scheduled to be released from hospital 5/06 or 5/07; he will need to transport her and care for her. Conversation with Mr. Holzer; asks that consideration be given to scheduling as soon as possible on the Board's docket.

4/06/04 – Fourth Notice of PP and Reassignment sent to parties; case reassigned to Thursday, June 17, 2004 at 10:00 a.m. Copy of notice to counsel this date via FAX. Also sent USPS.

6/17/04 – Board convened for hearing (Stahl, Crizer, Mohler); concluded this date; memos due 7/23/04; deliberation on 9/02/04; Notice of Deliberation sent to parties. FYI copy to 2-1-7.

7/23/04 – Protestants' Memorandum in Lieu of Final Argument and Appendix filed by J. Carroll Holzer, Esquire. Respondent's Memorandum of Law filed by C. William Clark, Esquire. Copies to be sent to 2-1-7 for review prior to 9/02/04 public deliberation.

7/26/04 – Copies of Memos filed by Messrs. Holzer and Clark sent to Stahl, Mohler and Crizer this date.

9/02/04 – Board convened for deliberation (2-1-7); unanimous decision that fence is to be constructed in accordance with Avery Harden's letter; special hearing relief is denied.

7/27/04

IN THE MATTER OF:

POOR BOY'S INC. (Terry Gerahty)

Legal Owner

S/E Corner Old Harford Road and

Taylor Avenue

2711 Taylor Avenue

9th Election District

6th Councilmanic District

* THE BOARD OF APPEALS

* OF BALTIMORE COUNTY

* FOR

* BALTIMORE COUNTY

*

* CASE NO. 02-462-SPH

* * * * *

MEMORANDUM OF LAW

Terry Gerahty, T/A Poor Boy's, Inc. Respondent, by and through his attorneys, C. William Clark and Nolan, Plumhoff & Williams, Chartered, files this Memorandum Of Law, and for reasons says:

STATEMENT OF FACTS

Terry Gerahty owns Poor Boy's Inc., a garden center and country gifts store which moved to its current location at Old Harford Road and Taylor Avenue in June 1993. Two years later, he purchased a residential property known as 2711 Taylor Avenue behind the building and filed for rezoning of the property from DR 5.5 to BL. In early December 1996, Poor Boy's was officially granted the rezoning. Along with the rezoning, Poor Boy's agreed to place a sixty foot buffer zone imposed between its property and the adjoining residential areas with an additional ten foot buffer inside the BL zone line along the Oak Avenue side.

Currently, the property covers approximately 1.332 acres in area split zoned B.L. and D.R.5.5. Much of the B.L. zoned property sits along Taylor Avenue. However, an L-shaped portion of the site

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

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BOARD OF APPEALS

along Oak Avenue and the rear of the property is zoned D.R.5.5. It is the L-shaped portion which serves as a buffer between the business activities of Poor Boy's and the residential community that sits adjacent. The property contains an indoor sales building, an outdoor sales area, and a 5400 sq. ft. parking area accessible from Taylor Avenue into the site. It is this parking area that was the subject of a 1997 zoning case.

In February 1997, Mr. Gerahty filed a Petition for Special Hearing and Variance regarding the construction of a parking lot on the subject property. Such a lot is necessary for this type of business in accordance with Baltimore County Zoning Regulations (hereafter "B.C.Z.R."). The purpose of that Special Hearing was to determine if the stone material, then in place on the parking lot, met the "durable and dustless" requirements of the B.C.Z.R. in Section 409.8(A)(2). If the Zoning Commissioner found that it did not meet those requirements, Mr. Gerahty requested a variance from the requirement to permit a stone paved parking lot in lieu of the required asphalt paving and striping so that his property could be in full compliance with the B.C.Z.R. Appearing at the Special Hearing in opposition were Mr. & Mrs. Ernest Baisden, adjoining property owners.

A month later, in March 1997, Deputy Zoning Commissioner Timothy M. Kotroco delivered his Findings of Fact and Law and explained that "the special hearing and variance requests deal specifically with the 5,400 sq. ft. parking area and not necessarily the remaining uses on the property." (Exhibit 5, p. 2: Copy of decision in Case No. 97-295-SPHA dated 3/6/97). He went on to note that "[t]he Baisdens are opposed to the general use of the subject property; however, given its predominant B.L. zoning, the garden center is permitted as of right." (Exhibit 5, pp. 4-5: Copy of decision in Case No. 97-295-SPHA dated 3/6/97).

Deputy Commissioner Kotroco specifically found that the stone then on the lot did not meet the "durable and dustless" requirements, but that "the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this parcel." (*Id.*) As such, a variance from Section 409.8 of the B.C.Z.R. was granted to permit a stone paved parking lot in lieu of asphalt paving. (*Id.*) However, the variance was granted subject to no fewer than ten restrictions; many of which were unrelated to the parking lot's stone material. One condition Mr. Kotroco required involved the installation of an eight foot high, pre-assembled, sectional fence along the edge of the B.L./D.R.5.5 zoning line. (Exhibit 7, pp. 3-4: Order of Dismissal Case No. 97-295-SPHA dated 09/24/1997).

Mr. Gerahty appealed Deputy Zoning Commissioner Kotroco's conditions to the Baltimore County Board of Appeals. Around the same time period that the appeal was filed as a result of a complaint made to the County, Mr. Gerahty met with representatives of the County Executive's Office, Michael Davis and Bob Barrett. They reached an agreement with Mr. Gerahty which allowed the modification of one of the restrictions contained in Deputy Commissioner Kotroco's Order regarding installation of a stockade fence. As requested by the County Executive's Office, Mr. Gerahty installed the fence within twenty-four hours. The fence was inspected and approved and Mr. Gerahty subsequently dropped his appeal to the Board of Appeals.

With regards to the parking lot, Mr. Gerahty contacted Arnold Jablon, Director of the Department of Permits and Development Management (hereafter "PADM"), to determine whether the order and conditions on the original variance become moot upon paving the lot. (Exhibit 8: Spirit & Intent letter from Mr. Gerahty to Mr. Jablon dated 3/12/98). Mr. Jablon responded in a letter in March 1998, explaining that at the time, Mr. Gerahty must comply with the original Order and its

conditions. He went on to explain, however, that if a grading plan for the parking lot was accepted, "then the variance [he] received in the aforementioned case would no longer be of application." (Exhibit 9: Letter from Mr. Jablon to Mr. Gerahty dated 3/18/98). He went on to explain that upon approval of the grading plan and upon actual paving of the parking lot, "the variance order and the conditions contained therein become moot." (*Id.*)

Further issues regarding fencing and lighting had arisen since Mr. Gerahty's agreement with the County Executive's Office, so Mr. Gerahty filed a Petition for Special Hearing to amend some of Deputy Commissioner Kotroco's previous conditions, which was assigned Case No. 98-267-SPH. In his Findings of Fact and Conclusions of Law dated July 7, 1999, Mr. Kotroco found that "the fence was properly installed and located in compliance with the dictates of my previous Order." (Exhibit 10, p. 2: Copy of decision in Case No. 98-267-SPH by Deputy Commissioner Kotroco dated 7/8/99.) He went on to state that the location, height, and materials of the fence are appropriate and that it need not be relocated, but that the fence must always be maintained in a neat and orderly fashion. (*Id.*) Deputy Zoning Commissioner Kotroco did not, however, revise certain of the lighting conditions imposed on Mr. Gerahty's property. Mr. Gerahty and the Baisdens each took appeals from that decision.

Based on that decision regarding the fence, the Baisdens appealed to the Board of Appeals which held a hearing and reached a decision similar to Deputy Commissioner Kotroco's. The Baisdens then appealed to the Circuit Court of Baltimore County and Judge Robert N. Dugan eventually heard the matter. Judge Dugan remanded the matter back to the Board of Appeals with instructions to pass an Order providing that the fence be as originally approved, pursuant to Deputy

Commissioner Kotroco's Order in Case No. 97-295-SPHA. An appeal was filed by Mr. Gerahty to the Court of Special Appeals, but that appeal was ultimately dismissed by Mr. Gerahty.

In the meantime, based upon the drawn out litigation process and assurances from Mr. Jablon, Mr. Gerahty had been working to process an application to construct a paved parking lot that met the county's requirements and did not require a variance. The landscape plan, prepared by Civil Engineer Alonzo Childress, contained Note 24, which stated "Zoning case 97-295-SPHA, which permitted a stone paved parking lot on the property will not apply after the parking lot is paved in accordance with this drawing." (Exhibit 12: Landscape Plan for Poor Boy's Inc. dated 2/10/98 (last revision 10/27/99) including Note 24). In addition to Note 24, the landscape plan also clearly showed that the existing fence was located on the zone line. (*Id.*) Mr. Gerahty submitted that site plan with his asphalt paving and striping permit application. On September 7, 2000, the landscape plan was approved without exception by Avery Harden, Landscape Architect of Baltimore County. Mr. Harden reviewed and approved the landscape plan bearing Note 24 on behalf of PADM. In July of 2001, permits were issued. (Exhibits 15, 16, & 17). The construction of Mr. Gerahty's paved parking facilities was completed on September 27, 2001 according to and in compliance with the permits issued for the Site & Sediment Control Plan for grading, paving and storm water management by Baltimore County. Mr. Gerahty spend \$250,000 constructing that lot.

After the lot was paved, the Baisdens wrote to Arnold Jablon, Director of PADM, complaining about the location of the fence. Mr. Jablon filed a Petition for Special Hearing, assigned Case No. 02-462-SPH, before the Zoning Commissioner of Baltimore County in order to clarify the issues. The Baisdens contended that the doctrines of *res judicata* as well as direct estoppel by Judgment prevent this matter from being further adjudicated. As such, the Baisdens believe Mr. Gerahty is still bound

by the original 1997 and 1999 decisions by Deputy Commissioner Kotroco and that, as such, the current location of his fence should be moved back ten feet.

Zoning Commissioner Lawrence E. Schmidt delivered his Findings of Fact and Conclusions of Law on November 4, 2002. He specifically found that neither *res judicata* nor the doctrine of estoppel by judgment apply to the instant matter as PADM is a party in this matter and they have not been a party to any other matter litigated. Ultimately, he held that the prior decisions in this matter, which had originally granted a variance from the durable/dustless surface requirements and imposed restrictions thereon, were now moot.

The parties again find themselves before the Board of Appeals after an appeal of Zoning Commissioner Schmidt's findings by the Baisdens.

ARGUMENT

Issue No. 1 - The present Petition for Special Hearing relief is not precluded by the doctrines of *res judicata*, direct estoppel by judgment, collateral estoppel by judgment, or "law of the case."

As set forth by the Court of Appeals in 1961, Maryland's *res judicata* doctrine states:

a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action, and is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters with which propriety could have been litigated in the first suit.

Alvey v. Alvey, 225 Md. 386, 390, 171 A.2d 92 (1961).

Petitioner recognizes that *res judicata* may apply to zoning matters considered by administrative bodies. See *Rockville v. Stone*, 271 Md. 655, 660-661, 319 A.2d 536 (1974) (citing *Alvey v. Hedin*, 243 Md. 334, 221 A. 2d 62 (1966)). In those situations, *res judicata* exists to prevent

“the relitigation of a zoning issue based on facts which existed at the time of the first decision in the case.” *Rockville*, 271 Md. at 660-61, 319 A.2d 536.

Specifically, the court has recognized three main elements of the traditional principles of *res judicata*:

- (1) the parties in the present litigation should be the same or in privity with the parties to the earlier case; (2) the second suit must present the same cause of action or claim as the first; and (3) in the first suit, there must have been a valid final judgment on the merits by a court of competent jurisdiction.

DeLeon v. Slear, 328 Md. 569, 580, 616 A.2d 380 (1992).

The first factor analyzed is whether the parties in the present litigation are the same parties as to the earlier case. *DeLeon v. Slear*, 328 Md. 569, 580, 616 A.2d 380 (1992). The case now before the Board of Appeals arises from a Petition for Special Hearing filed by Petitioners, Baltimore County's Department of Permits and Development Management through the County's Office of Law. Prior decisions in this general matter by Deputy Zoning Commissioner Kotroco, the Board of Appeals, and Judge Dugan of the Circuit Court for Baltimore County show that PADM was never a party in any of those matters. Mr. Gerahty, doing business as Poor Boy's, and Mr. & Mrs. Baisden have always been identified as the litigants. In fact, Baltimore County, through PADM, has never participated as a party in any of those cases.

Secondly, the subsequent suit must present the same cause of action or claim as the first, *DeLeon*, 328 Md. at 580, 616 A.2d 380, with the purpose of preventing relitigation of a zoning issue whose facts existed at the original decision of the case. *Rockville*, 271 Md. at 660-61, 319 A.2d 536. While it is undisputed that the current issue before the Board is related to the other decisions in the matter of Poor Boy's, Inc. and their zoning rights, the specific facts of this issue have not been litigated before and did not even exist at the time any previous decisions in this case were made.

Prior to Commissioner Schmidt's findings in this case, the latest judicial decision came in the form of an Order from the Board of Appeals on remand from Judge Dugan's Order from the Circuit Court. That Order was dated February 8, 2002. However, five months prior to the Board of Appeals Order, Mr. Gerahty completed his paved and striped parking lot constructed pursuant to plans and permits, submitted by Mr. Gerahty's civil engineer, issued and approved by Baltimore County, and in compliance with all B.C.Z.R. requirements for a parking lot. The instant issue deals directly with the effect construction of that parking lot, pursuant to those plans and permits, will have on the original variance. That is not the issue litigated before the Board nor the subject of any appeal from those decisions. In fact, Judge Dugan's decision, which instructed the Board of Appeals to pass an Order, never mentioned the possibility of paving the lot and the effect such action would have on the variance or conditions. Indeed, Judge Dugan's decision could not have mentioned that possibility since it was not part of the record of the case decided by the Board and appealed to the Circuit Court.

The original case, and its progeny, arose from the issue of whether Poor Boy's parking lot could be of a non-durable/non-dustless surface and what restrictions should be imposed if such a variance were granted. Before the Board today is an entirely different matter. Namely, whether the grading, paving, and striping of Poor Boy's Parking Lot, pursuant to permits issued for a parking lot which complies with the B.C.Z.R. without the need of any variances, makes moot the prior conditions imposed on the lot upon issuance of the original variance. To be sure, this subsequent case does not present the same cause of action or claim as the first case. *See DeLeon*, 328 Md. at 580, 616 A.2d 380

Because the parties in the instant case are not the same parties as have been in any other related case, and because the issues litigated in the instant case are different and based on new facts, the principles of *res judicata* do not bar this case.

In Maryland, *res judicata* is divided further into two branches, direct estoppel by judgment and collateral estoppel by judgement. *Davis v. Frederick County Board of County Commissioners*, 25 Md. App. 68, 74, 334 A.2d 165 (1975). The Court of Appeals has defined direct estoppel more rigidly than *res judicata* explaining that “if the second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case on the merits is an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which could have been litigated.” *Sterling v. Local 438*, 207 Md. 132, 140, 113 A.2d 389, cert denied, 350 U.S. 875 (1955).

Significantly, direct estoppel by judgment has the same party requirements as *res judicata*. It is only applicable when the parties are the same. As discussed above, the parties in the instant case are different than the parties in any previous related case. As such, the doctrine of direct estoppel does not act as a bar to the instant matter.

As to collateral estoppel, or issue preclusion, “when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.” *Murray International v. Graham*, 315 Md. 543, 547, 555 A.2d 502 (1989) (quoting from Restatement (Second) of Judgements § 27 (1982)).

Just as direct estoppel requires an identity of subject matter and identity of parties in prior litigation, collateral estoppel also does not arise unless the prior litigation has concluded on its merits with the same parties and same subject matter. *DeMaio v. Lumbermen's Mutual*, 247 Md. 30, 34, 230

A. 2d 279, 281 (1967). The doctrine should not be used unless the issues raised in the subsequent suit are identical in all respects with the issues that were decided in the first proceeding. *See Weaver v. Prince George's County*, 34 Md. App. 189, 198-199, 366 A.2d 1048 (1976). But where the controlling facts and applicable rules have changed since prior judgement was made, collateral estoppel will have no bearing on the situation. *See Id.*

For almost the identical reasons that neither *res judicata* nor direct estoppel were applicable above, collateral estoppel also fails as a bar to this case. First, the parties to this Case No. 02-462-SPH are different than the parties to any previous case. Furthermore, PADM, the party that brought this case to the Zoning Commissioner to begin with, never participated as a party in previous litigation here. Second, not only is this subsequent suit different, with regards to the issues that were decided in previous proceedings, but the facts underlying this entire litany of litigation have substantially changed. The lot for which a variance was originally requested has now been paved and striped in compliance with plans and permits issued pursuant to B.C.Z.R. and approved by the County. To be sure, the parties, issues, and facts before this Board are significantly different than they have been for any previous hearing and so no valid and final judgment regarding these questions could have been passed down. As such, collateral estoppel has no bearing on this situation.

Based on previous exchanges between the parties, Mr. Gerahty believes the Baisdens will also rely on the doctrine of the "law of the case" to argue that the Orders by Judge Dugan and the Court of Special Appeals control the outcome in this case.

The Court of Appeals has explained that the "law of the case" doctrine stops just short of *res judicata*, but extends just beyond *stare decisis*. *Tu v. State*, 336 Md. 406, 416, 648 A.2d 993, 997 (1994). *Scott v. State*, 379 Md. 170, 183 840 A.2d 715 (2004). It acts as a "practice of the courts

generally to refuse to reopen what has been decided, not a limit to their power.” *Hawes v. Liberty Homes*, 100 Md. App. 222, 232, 640 A.2d 743 (1994) (McAuliffe, J. dissenting) (quoting *Messenger v. Anderson*, 225 U.S. 436, 444 (1912) (Holmes, J.)). It states that “once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case.” *Scott v. State*, 379 Md. 170, 183, 840 A.2d 715 (2004). However, it is only considered to be the law of that case.

The essence of the doctrine is in its use by appellate courts as a tenet of appellate procedure. *Id.* It is irrelevant to County Board of Appeals hearings. The County Board of Appeals is a *de novo* review Board, not an appellate court. Its role is to hear a case anew, with any new relevant facts, and determine the outcome based on its own record. It is not the Board’s role to engage in the practice of appellate court procedure.

Still, Petitioners anticipate Respondents’ argument that the Court of Special Appeals Order denying Petitioner’s Motion to Dismiss Appeal as moot is the “law of the case” and is dispositive of the mootness issue currently before this Board. Such is not the case. Logically, the “law of the case” doctrine can only be applicable if an appellate court has previously ruled upon the question presented on appeal. *Scott*, 379 Md. at 183, 840 A.2d 715.

The questions presented on this appeal did not exist when relevant parties were before Judge Dugan or the Court of Special Appeals. Judge Dugan’s Findings were based upon facts as they occurred in his record, on review from the record of the Board of Appeals. That record contained different facts and presented different issues than exist here. Between the time his Order was handed down and the case was appealed to the Court of Special Appeals, a number of significant changes took place.

Mr. Gerahty, after working for a number of years towards this goal, was granted a building permit by the County on July 17, 2001 to grade and pave his parking lot. (Exhibit 16: Grading & Paving Permit dated 7/17/01). On September 27, 2001, Mr. Gerahty had his lot graded, paved and striped in compliance with the permits and plans issued and approved by the County based upon application of all relevant zoning regulations. Only then, after these actions had taken place, did the Court of Special Appeals receive motions on the matter.

Mr. Gerahty filed a Motion to Dismiss his own appeal as moot. He reasoned that because the lot was paved in compliance with zoning regulations which required such paving and pursuant to plans and permits already approved and issued, the variance was no longer needed. And because the variance was no longer needed, the issue before the Court of Special Appeals was moot. In a one line decision, the Court of Special Appeals denied the motion as to mootness.

In Maryland, a question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that the court cannot provide an effective remedy. *Hammen v. Baltimore Police*, 373 Md. 440, 449-50, 818 A.2d 1125 (2003). Conversely, "a case is justiciable '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.'" *Creveling v. Geico*, 376 Md. 72, 84, 828 A.2d 229 (2003) (citing *Reyes v. Prince George's County*, 281 Md. 279, 288, 380 A.2d 12 (1977)). In the instant case, there are certainly interested parties asserting adverse claims. However, the state of facts upon which they are being asserted, and the issues they present, had not accrued in the record created in Case No. 98-267-SPH which was reviewed by Judge Dugan. Likewise, these facts were not the basis of the decision to be reviewed by the Court of Special Appeals when it decided the Motion to Dismiss.

When Judge Dugan rendered his decision, Mr. Gerahty's parking lot was still the crushed stone lot for which he originally requested a variance. It was not until months after Judge Dugan handed down his order that the permits were approved by the County and the lot was paved. The record upon which the Court of Special Appeals was to make their ruling was that same Judge Dugan record of April 2001. It is a longstanding principle of law in Maryland that an appellate court's "power is limited to an examination of the record and a decision upon the question as to whether the Court below committed any injurious error of law in any of its rulings." *Susquehanna Transmission Co. of Maryland v. Murphy*, 131 Md. 340, 343, 101 A.791 (1917). They are not to hear new facts that may or may not have changed since the original record was created. According to the record supporting Judge Dugan's opinion that the Court of Special Appeals would have to examine, no permits had yet been issued and no paving had been completed. The Court of Special Appeals must have determined that, as far as the record supporting Judge Dugan's decision before them, the variance issues were still ripe. Indeed, the Court of Special Appeals could affirm, reverse, or modify Judge Dugan's decision. Thus, the case before Judge Dugan—the one the Court of Special Appeals was reviewing—was not moot.

However, the Board today finds a much different landscape. The permits have been approved by the County and the parking lot has been graded, paved, and striped pursuant to permits and plans showing the existing fence at the zone line, issued in compliance with the relevant zoning regulations. Therefore, the one-line decision handed down by the Court of Special Appeals, ordering that the Motion to Dismiss as moot is denied, is neither "the law of the case," nor controlling of the issues currently before this Board. Instead, this Board is to take into consideration the current issues and any new facts, and present a *de novo* ruling based upon them. This case, brought by Baltimore County

through PADM, specifically presents the issue as to the effect granting permits to construct a paved and striped parking facility based on plans submitted, in accordance with and required by the B.C.Z.R., has upon a previously approved variance, with conditions, from those same parking regulations and requirements.

Issue No. 2 - The restrictions imposed in Case No. 97-295-SPHA, modified and reversed in Case No. 98-267-SPH, and ultimately changed by Judge Dugan's Order, are null and void as the variance upon which they were imposed is no longer in effect.

Section 26-127 of the Baltimore County Code and Section 307 of the B.C.Z.R. empower the Zoning Commissioner and the County Board of Appeals to "grant variances...in cases 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." B.C.Z.R. § 307.1. As a matter of right, those variances "may be issued with such conditions or restrictions as determined appropriate by the zoning commissioner for the purpose of protecting the health, safety, or general welfare of the surrounding community." Baltimore County Code § 26-127(c).

When Deputy Commissioner Kotroco, in Case Nos. 97-295-SPHA and 98-267-SPH, granted Mr. Gerahty a variance, he did so with the authority granted him by the Baltimore County Code and the B.C.Z.R. When he imposed conditions on that variance, he did so pursuant to those Sections and he did so only because the variance was granted. If Deputy Commissioner Kotroco had denied the variance, or if Mr. Gerahty had never asked for a variance, no one could have placed any conditions on Mr. Gerahty's property. The grant of a variance is a condition precedent to the attachment of restrictions. If there is no variance relief granted, there can be no restrictions.

That axiom is perfectly squared with Maryland's variance rules. In *Montgomery County v. Mossburg*, 228 Md. 555, 180 A.2d 851 (1962), Mossburg operated a restaurant with a light wine and beer license as a non-conforming use in a residential area. He wanted to open an additional kitchen and dining room facility adjoining, so he applied for a special exception. The Montgomery County Board of Appeals granted his special exception, on a number of conditions, one of which was that alcohol cease being served after eleven p.m. every night. Mossburg appealed the condition arguing that it was unreasonable and unduly burdensome. The Court of Appeals upheld the conditions stating,

[Mossburg] has the option of expanding, with the shortened hours which would make his use of his land compatible with the residential neighborhood in which it is, or he can continue operation under the present lawful non-conforming use in the original facilities.

Id. at 560. The Court effectively held that should Mossburg choose not to expand and, thus, not accept the special exception, then he would not be bound by the conditions imposed upon it.

That precise logic can be applied to the instant case. Upon grant of a variance in 1997, Mr. Gerahty had two options. On one hand, he could accept the variance which allowed him to use the crushed stone parking lot. If he did this, he could use his parking lot, but would be required to comply with the conditions imposed on that variance. On the other hand, he could reject the variance and continue operation of his business, but without the advantage of using the crushed stone lot. If he chose this option, his lot would be useless, but he would not be burdened by complying with any of the conditions imposed upon that variance. He could continue operation under the lawful use of his original facilities. Mr. Gerahty chose to accept the variance and its conditions. Logically, had he chosen not to accept that variance, the conditions would not apply either. Having now paved his lot pursuant to plans and permits issued in compliance with zoning regulations for parking lots, he no

longer needs the variance. With the variance now eliminated, the conditions originally imposed upon it are also eliminated.

If Mr. Gerahty had made certain changes to his property, but still needed a variance, the Zoning Commissioner would be fully within his rights to grant that variance based on the same or modified conditions. *See Skipjack Cove Marina, Inc. v. County Commissioners for Cecil County*, 252 Md. 440, 454, 250 A.2d 260 (1969). However, where no variance is needed because Mr. Gerahty fully complies with the B.C.Z.R., there can be no authority to support imposing conditions on him.

It is significant to note that Mr. Gerahty did not make these changes to his parking lot in a discreet fashion. In order to lawfully grade, pave and stripe his lot, Mr. Gerahty was required to submit a landscape plan for approval to the County. He did that in 2000. The landscape plan explicitly stated in Note 24 that "zoning case 97-295-SPHA, which permitted a stone paved parking lot on the property will not apply after the parking lot is paved in accordance with this drawing." (Exhibit 12: Landscape Plan for Poor Boy's Inc. dated 2/10/98 (last revision 10/27/99) including Note 24). In addition, the plan noted that the existing fence was located directly on the zone line along Oak Avenue. (*Id.*) The County approved the landscape plan without exception. (Exhibits 15, 16, & 17).

For all these reasons, the restrictions and conditions originally imposed in Case No. 97-295-SPHA, modified in Case No. 98-267-SPH, and ultimately changed by Order of Judge Dugan are, null and void. Where the variance is no longer necessary, and the landscape plan including notes about the fence and the variance was approved without exception by the County, the conditions cannot exist alone.

Issue No. 3 -The Department of Permits and Development Management, is estopped from imposing these conditions upon Petitioner as it advised him to act in the manner he did and approved permits upon plans expressly removing the conditions, and he acted in reliance thereof.

The Department of Permits and Development Management, a wing of the executive branch of the Baltimore County government, is equitably estopped from changing its position that elimination of the variance constitutes elimination of the conditions. Mr. Gerahty relied on that original position and spent upwards of \$250,000 in reliance thereof. A holding by this Board that the conditions still exist would allow PADM to inequitably change its official administrative determination.

The Court of Appeals of Maryland applies the definition of equitable estoppel set forth at 3 J. Pomeroy, *Equity Jurisprudence*, § 804 (5th ed., 1941), as follows:

Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have otherwise existed, either of property, or contract or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.

Permanent Financial Corp. v. Montgomery County, *supra*, 308 Md. 239, 247, 518 A.2d 123 (1986).

The doctrine of estoppel does not ordinarily apply against the state. *Anne Arundel v. Muir*, 149 Md. App. 617, 635, 817 A.2d 938 (2003); *ARA Health Services, Inc. v. Dep't of Public Safety*, 344 Md. 85, 96, 685 A.2d 435 (1996); *Marriott v. Cole*, 115 Md. App. 493, 508, 694 A.2d 123 (1997). However, the courts have held that equitable estoppel can apply against municipal corporations. *Permanent Financial Corp.*, *supra*, 308 Md. At 247, 518 A.2d 123.

“Accordingly, for purposes of the doctrine of equitable estoppel, the chartered counties of Maryland are treated as municipal corporations.” *Muir*, 149 Md. App. at 636, 817 A.2d 938 (citing *Permanent Financial Corp.*, *supra*, 308 Md. At 247, 518 A.2d 123 (addressing application of doctrine

of equitable estoppel against Montgomery County); *Schaefer v. Anne Arundel County*, 17 F.3d 711, 714 (4th Cir. 1994) (Niemeyer, J.) (Addressing application of the doctrine of equitable estoppel against Anne Arundel County and describing that county as “a municipal corporation”).

Baltimore County, like Anne Arundel and Montgomery Counties is a charter county pursuant to MD. CODE ANN., CONST. Art. XI-A, § 1 (2003 Repl. Vol.). Charter counties, in the capacity of estoppel arguments, are classified as municipal corporations pursuant to the Code of Maryland. MD. CODE ANN. of 1957, Art. 25, § 1 (2001 Repl. Vol.); MD. CODE ANN. of 1957, Art. 24A, § 1 (2001 Repl. Vol.). See also *Hope v. Baltimore County*, 44 Md. App. 481, 486, 409 S.2d 753 (1980).

Equitable estoppel has generally been utilized in narrow application when it comes to municipal corporations. *Muir*, 149 Md. App. At 636, 817 A.2d 938; *Permanent Financial Corp.*, *supra*, 308 Md. at 249, 518 A.2d 123. However, it is properly applied when affirmative acts, made by county officials, induce action on behalf of the party asserting the doctrine. *Id.* at 249, 518 A.2d 123. “A municipality may be estopped to deny the actions of its officers” when a county official has acted “within the scope and course of their actual authority.” *Muir*, 149 Md. App. at 636, 817 A.2d 938 (citing *Lipsitz v. Parr*, 164 Md. 222, 227, 164 A. 743 (1933)).

The Court of Appeals thoroughly explored the doctrine of equitable estoppel in *Permanent Financial Corp.*, *Id.* at 250. There, they used the doctrine to deal with a “situation in which the administrative official in good faith and within the ambit of his duty [made] an erroneous and debatable interpretation of the ordinance and the [person affected] in like good faith [relied] thereon.” 308 Md. at 250, 518 A.2d 123 (quoting *Jantausch v. Borough of Verona*, 41 N.J. Super. 89, 124 A.2d 14, 16-17 (1956)). There, the court found that a county ordinance regarding the lawful height of a building was open to multiple reasonable and debatable interpretations. *Id.* at 251. They also found

that the County had consistently adopted and applied one of those interpretations for a significant period of time before eventually being convinced that a contrary interpretation was more valid. *Id.* The plaintiff in that case designed and built its building to a certain height “in reliance upon the long standing interpretation of the County...” *Id.* at 252. After the County changed their interpretation of the height requirement, they sought to impose the new position on the builder. Ultimately, the Court found that since the plaintiff had “expended substantial funds in reliance upon the permit, it would be inequitable to now permit the County” to change their interpretation. *Id.* at 252-53.

The Court found that the county cannot induce certain actions based on one interpretation, and then later change it after the party asserting estoppel had already relied on it. *Id.* Here, PADM is attempting to do just that.

Mr. Gerahty contacted Mr. Jablon as Director of PADM in March 1998 for the Department’s “opinion as to the status of the variance approved in Case # 97-295” and the “removal of variance conditions.” (Exhibit 9: Letter from Mr. Jablon to Mr. Gerahty dated 3/18/98). Mr. Jablon replied, explicitly informing Mr. Gerahty that while the variance and conditions were in “full force and effect” at the time, the variance and its conditions would become moot upon approval of the grading plan and paving of the parking lot. (*Id.*) He made his determination that once the variance is removed, the conditions no longer applied. Mr. Jablon was acting within the scope and course of his actual authority as Director the Baltimore County Department of Permits and Development Management when he sent that letter. The letter was on PADM letterhead with a return address from the Director’s Office. (Exhibit 9: Letter from Mr. Jablon to Mr. Gerahty dated 3/18/98).

Based on that determination by Mr. Jablon, while acting within his scope and authority as PADM director, Mr. Gerahty went forward with the process of securing final approval of his parking

lot plan. That grading plan was included within Mr. Gerahty's application and explicitly stated, in Note 24, that the variance obtained in Case No. 97-295-SPHA "will not apply after the parking lot is paved in accordance with this drawing." (Exhibit 12: Landscape Plan for Poor Boy's Inc. dated 2/10/98 (last revision 10/27/99) including Note 24). In addition, the plan showed the existing location of the fence directly on the zone line. (*Id.*). Mr. Jablon's Department approved Mr. Gerahty's grading plan without exception. (Exhibit 16: Grading & Paving Permit dated 7/17/01). In reliance of Mr. Jablon's original position that paving the lot eliminates the conditions, and his Department's decision of final approval, without exception, of the grading plan containing Note 24, Mr. Gerahty spent more than \$250,000 to have his parking lot paved and striped.

Like the plaintiff in *Permanent Financial Corp.*, Mr. Gerahty has expended substantial funds in reliance upon Mr. Jablon's opinion and the final approval of his grading plan. As such, PADM should be estopped from doing anything other than standing by its previous determination that removal of the variance means removal of the conditions. Doing any differently would result in substantial and inequitable expense to Mr. Gerahty and Poor Boy's, Inc.

This Board need not rely only on comparable case law. The fact that Mr. Jablon and PADM expressed their opinion previously carries actual legal weight. PADM was not expressly interpreting a specific statute here. However, inasmuch as Section 26-127 of the Baltimore County Code empowers the Zoning Commissioner to impose conditions on approval of a variance, the rules regarding administrative construction of statutes is relevant.

Where a statute is open to multiple constructions, "a long continued and unvarying construction applied by administrative officials is a persuasive influence in determining the judicial construction, and it should not be disregarded except for the strongest and most urgent reasons."

Department of Tidewater Fisheries v. Sollers, 201 Md. 603, 615, 95 A.2d 306 (1953). The same principle is in effect here. The County, through PADM, has consistently applied a specific and unambiguous interpretation of zoning policy. Not only have they explicitly stated that paving of the lot in compliance with zoning regulations eliminates the need for a variance, but they have also approved plans and permits which clearly state that the conditions of Case No. 97-295-SPHA no longer apply.

As a Department of the County government specializing in these matters, PADM is in the best position to make decisions like this and should be granted deference when certain policy constructions are made. The Court of Appeals has held,

Despite some unfortunate language that has crept into a few of our opinions, a 'court's task in review is *not* to substitute its judgment for the expertise of those persons who constitute the administrative agency.' . . . Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute [sic] which the agency administers should ordinarily be given considerable weight by reviewing courts. . . . Furthermore, the expertise of the agency in its own field should be respected.

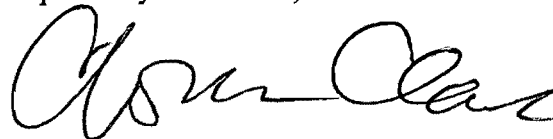
Board of Physician Quality Assur. v. Banks, 354 Md. 59, 68-69, 729 A.2d 376 (1999).

Mr. Jablon's opinion as to the effect of the variance and its conditions was not an isolated reflection. It was the calculated decision of the Director of an administrative agency in the best position to make decisions regarding their specific area of expertise. The opinion of PADM is entitled to "a degree of deference" and "considerable weight by reviewing courts." As such, they should now be estopped from altering their former position which induced Mr. Gerahty to expend substantial funds in paving his parking lot.

CONCLUSION

Because the variance originally requested by Poor Boy's Inc. for exemption from the "durable and dustless" parking lot requirement is no longer necessary or in effect, the conditions attached to that Variance are moot. Furthermore, based on the previous administrative opinion of the Department of Permits and Development Management, as well as their explicit approval of a grading plan containing language of their previous opinion, Terry Gerahty expended substantial funds to complete work on his parking lot. As of the date of this filing, Mr. Gerahty's property is not in violation of the Baltimore County Zoning Regulations in any way and the decision of Zoning Commissioner Lawrence E. Schmidt should be affirmed

Respectfully Submitted,



C. William Clark
Nolan, Plumhoff & Williams, Chartered
502 Washington Avenue, Suite 700
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(410) 823-7800
Attorney for Respondent
Terry Gerahty

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2 day of July, 2004, a copy of the foregoing

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

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508 Fairmount Avenue
Towson, MD 21286
Attorney for Appellants
Mr. & Mrs. Ernie Baisden

Jay L. Liner, County Attorney for Baltimore County
C. Robert Loskot, Assistant County Attorney for Baltimore County
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C. William Clark

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ROBERT S. GLUSHAKOW
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July 23, 2004

Baltimore County Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Poor Boy's, Inc. (Terry Gerahty)
Case No. 02-462-SPH

Dear Sir/Madam:

Enclosed please find Respondent's Memorandum of Law in referenced to the above-captioned matter.

Thank you.

Very truly yours,



C. William Clark

CWC/vrk

Enclosure

cc: Mr. Terry Gerahty
J. Carroll Holzer, Esquire
Jay L. Liner, Esquire
C. Robert Loskot, Esquire

RECEIVED
JUL 23 2004

BALTIMORE COUNTY
BOARD OF APPEALS

7/23/04
IN THE MATTER OF:

TERRY J. GERAHTY, Legal Owner
2711 TAYLOR AVENUE
POOR BOYS

9TH ELECTION DISTRICT

5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD

* OF APPEALS
* OF JUL 23 2004

* BALTIMORE COUNTY
* BALTIMORE COUNTY
* BOARD OF APPEALS

* Case No.: 02-462-SPHA

* * * * *

**PROTESTANTS MEMORANDUM IN LIEU
OF FINAL ARGUMENT AND APPENDIX**

Ruth Baisden, Protestant, through her attorney, *J. Carroll Holzer*, and
Holzer & Lee, hereby submits this Memorandum as requested by the Board of
Appeals in Lieu of Final Argument and says:

STATEMENT OF THE CASE

This case comes before the Board of Appeals of Baltimore County as a
result of an appeal filed by Ruth Baisden to the Board in Case No. 02-462-SPHA,
from the Opinion and Order rendered by the Baltimore County Zoning
Commissioner on November 4, 2002. (Protestant's Exhibit #18).

STATEMENT OF THE FACTS

Background

This is the case that Ruth and Ernest Baisden won – but did not win. The
problem between Poor Boys, Inc., a garden center located at 2711 Taylor Avenue
in Baltimore County, owned by Terry Gerahty, and its neighbors, especially Ruth

and Ernest Baisden, and the Parkville Park Community Association commenced during the rezoning cycle for Baltimore County in 1996. In 1996, as part of the Comprehensive Zoning Map Process (CZMP), a portion of Poor Boys' property was rezoned from residential to Business Local (BL) with a designated residential buffer of 70 feet to remain on the side of the subject property between neighboring residential areas (the Baisden's property). As a result of the rezoning of the subject property, Avery Harden, from the Department of Permits and Development Management (PDM), the agency responsible for approving site plans for the fence and buffer area that are described in a letter and diagram to Mr. Gerahty, dated December 24, 1996 (See, Appendix A). The Order from Harden on December 24, 1996 satisfied the Baisdens and the Community Association. From that point in 1996 to the present, the Baisdens have been attempting to have the plan implanted, as approved by Avery Harden December 24, 1996.

Poor Boys ignored Mr. Harden's Order to erect the fence. Subsequently, after Poor Boys filed a Petition for Variance to legitimize its operation, the Deputy Zoning Commissioner added the fence requirements as a condition to a variance approval on March 6 1997 (See Petitioner's Exhibit #5). Instead of complying with both these Orders, Poor Boys inappropriately negotiated a different fence location with County Executives aides outside of the proper approval process before the Zoning Commissioner and the Board of Appeals. After years of hearings and overcoming interference from the Executive's office, Circuit Court Judge Dugan in his "Memorandum Opinion and Order," dated April 25, 2001,

(Appendix B), remanded the case to the Board of Appeals with instructions to pass an Order regarding the fencing as set forth in Harden's correspondence of December 24, 1996. (Appendix C). That correspondence required Poor Boys to erect a permanent fence in the location as specified in Harden's December, 1996 letter (Appendix A). Judge Dugan's order was the final Court proceeding in this case with no appeals having been taken.

To date, Poor Boys has not complied with the Board of Appeals' Remand nor Judge Dugan's Order. A Baltimore County Code Enforcement citation was issued to Poor Boys (Protestants' Exhibit #11) in March, 2002. However, Arnold Jablon, Director of Permits and Development Management, interfered in the Code Enforcement process by filing the instant Petition for Special Hearing, which is the subject of this case. Mr. Jablon's Petition requested the Zoning Commissioner to further clarify and finalize the decisions of the Zoning Commissioner, Board of Appeals, and Circuit Court in Case No. 03-C-00-6650 and 03-C-00-6687.

Ruth and Ernest Baisden objected to the need for this Special Hearing and request that the Board enforce its previous Remand Order and Judge Dugan's unappealed and final decision. The Circuit Court's Order, and the Board's Revised Order are entitled to deference and this Petition for Special Hearing cannot vitiate or reverse those previous Orders.

These issues of this case are simple:

1) That Arnold Jablon caused a second interference in the enforcement of the fence requirements by inappropriately filing this Special Hearing for the purpose of rearguing a case previously decided by the Circuit Court. There was no need to confirm what the Circuit Court had decided or related to the “mootness” of the variance; in fact, Jablon’s action amounts to an unlawful and improper collateral attack upon Judge Dugan’s Order.

2) Therefore, this Special Hearing should be determined by this Board to be a nullity and the principles of Res judicata and Estoppel by judgment should apply because this issue has already been argued and addressed by Judge Dugan in his “Memorandum Opinion and Order”, dated April 25, 2001 (Appendix B).

Protestants, Ruth and Ernest Baisden do not believe that the matter resolved by Judge Dugan, needs to be re-litigated for any contrary interpretation as to the need or location or conditions of the fence and its permanent nature. In fact, this Board has also already determined this issue based upon its own Remand Order.

3) Ruth and Ernest Baisden further object to the additional expense and time of administrative procedures and hearings to re-litigate and re-determine issues put to rest and fully adjudicated without appeal in this matter. Poor Boys appealed Judge Dugan’s Order to the Court of Special Appeals, which was later dismissed by that Court after a voluntary withdrawal by Poor Boys, Inc. Poor Boys had the opportunity to challenge Judge Dugan’s Order but did not. They also had the ability to challenge the Board’s Remand Order but did not.

Summary of Facts

- Avery Harden's fence/buffer requirements are still applicable and are not moot since they pre-date the variance hearing and "is essentially what the Baltimore County Landscape Manual will require when a permit for the parking lot is sought." (Appendix A).
- Judge Dugan clearly established that the fence and buffer requirements are conditional to the 1996 rezoning of property (from residential to Business Local, BL) and not the variance. Therefore, the fence requirements are still applicable and are not "moot."

"The record, specifically Protestant's Exhibit #5, an inter-office correspondence dated November 29, 1996 to Avery Harden from James H. Thompson, Code Enforcement, indicated that as a condition to rezoning, Poor Boys was to create a landscape buffer for the benefit of the adjacent community surrounding a proposed parking lot. Mr. Harden's letter of December 24, 1996 set forth a description of the buffer area. Interoffice Correspondence from Arnold Keller, III, Director of Office of Planning to Arnold Jablon, Director, Department of Permits and Development Management dated February 20, 1997, also included in Protestant's CBA Hearing which stated in part, "should the applicant request be granted, full compliance with Mr. Harden's recommendations would be necessary in order to buffer the proposed parking lot area and the

proposed outside sales/storage areas from the adjoining residential community.”

County Councilman Joseph Bartenfelder’s letter to Mr. Baisden, dated September 18, 1997 also indicated in Protestant’s Exhibit that the granting of the rezoning for Poor Boys was conditioned on the creation of the landscape buffer as directed by Harden.....” (See Appendix B page 2 and 3 for text and written description of fence requirements).

“...The record is clear that Poor Boys was granted a change in zoning from residential to Business Local (BL) on the express condition that Mr. Harden’s proposal and site plan be implemented.” (Appendix B page 2 and 3).

- Judge Dugan recognized that the existing fence was inappropriately negotiated with County Executive and is not consistent with the specific conditions of the (1996) rezoning Poor Boys property to B.L. This confirms that the fence requirements are not limited to the variance but existed prior to the variance as part of the 1996 rezoning of property. Therefore, since Poor Boys still operates under the B.L. zone, the fence requirements also still in effect.

“Two months following the Deputy Zoning Commissioner decision, Mr. Gerahty met with some representatives of the County Executive and agreed to a fence not consistent with the variance order. Subsequently, this fence was installed and the easement agreement was filed pursuant to this informal agreement and not in accord with either Mr. Kotroco’s decision or with the

specific condition that granted the B.L. Zoning. The Baisden's and the Community Association were unaware of the arrangement between Mr. Gerahty and representatives of the County Executives office that the fence would be 6 feet high and 60 feet from the property line rather than 8 feet high and 70 feet from the property line..." (Appendix B page 4).

"...The improper intervention by the County Executive's Office as to a location of the fence other than the one determined by Mr. Harden was beyond the scope of its authority." *Appendix B page 8).

- After hearing all arguments, Judge Dugan reversed the Board of Appeals decision to allow the existing fence to remain at the 60 ft. buffer rather than the 70ft buffer required by Mr. Harden.

The Court wrote at page 10 of its decision, "This Court is convinced that the Board of Appeals improperly relied on the Easement Agreement by accepting the 60 ft. buffer zone rather than the 70 ft. buffer zone recommended by Mr. Harden. In approving this improper, non-binding and extrajudicial agreement, the board rubber-stamped an inappropriate political intervention into the zoning process and therefore erred in recognizing, interpreting and applying the law. *Evans v. Shore Communications*, 112 Md. 284 (1996)." (Appendix B Page 10).

- Judge Dugan instructs the Board of Appeals to pass the Remand Order.

"That this case is remanded to the Board of Appeals with instructions to pass an Order regarding the fencing of the subject property as set forth in Avery Hardin's correspondence of December 24, 1996. (Appendix B page 10).

- Arnold Jablon erred by Petitioning this Special Hearing to clarify and finalize decisions, which were already clear and final. Furthermore, Poor Boys had the opportunity for “due process” and to further advance its argument on the “moot” issue at the Special Court of Appeals but elected not to proceed.

Therefore, Poor Boys abandoned its argument and failed to timely pursue its remedy, and Judge Dugan’s order of April 25, 2001 (Appendix B) stands as the final order.

- The Board of Appeals issues a Remand Order, dated February 8, 2002, as instructed by Judge Dugan only after Poor Boys withdrew its appeal to the Court of Special Appeals and determined that Judge Dugan’s Order was final.

This Board wrote in its Remand Order, “Notice of Dismissal having been filed in the Court of Special Appeals by Counsel for Appellant Terry Gerahty, and subsequent Mandate of the Court of special Appeals having been issued on December, 2001, this matter comes before the Board on remand by Order of Judge Dugan... ...[T]he fencing of the subject property shall be accomplished ‘as set forth in Avery Harden’s correspondence of December 24, 1996’ a copy of which is attached to and made a part of this Order.” (Appendix C).

For the Board’s benefit, these events and their exhibits are listed in chronological order below:

History of Events Since Judge Dugan's Order

April 25, 2001 – Circuit Court Case No. 03-C-00-6650 and 03-C-006687, “Memorandum Opinion and Order”, dated April 25, 2001, (Appendix B).

Judge Dugan, orders a permanent fence to be erected according to Avery Harden's letter and diagram dated December 24, 1996.

William Clark, Esquire, attorney for Poor Boys, files an appeal to the Maryland Court of Special Appeals, Case No. 005588.

October 5, 2001 – Mr. Clark files a Motion to Dismiss the Appeal and Motion to Extend time for filing of Briefs. (Protestants' Exhibit #5).

In the Motion to Dismiss, Mr. Clark states that Avery Harden's fence requirements were a condition for a variance and therefore “moot” since Poor Boys had renovated the parking lot and no longer needed a variance.

October 15, 2001 – Mr. Carroll Holzer, attorney for the Baisdens filed an Answer to Motion to Dismiss Appeal. (Protestants' Exhibit #6).

This Answer states that the Avery Harden's fence requirements pre-dated the application for variance and is what will be required when a permit for renovations are sought.

November 13, 2001 – Court of Special Appeals denies the Motion to Dismiss the Appeal as “moot” and granted an extension to file briefs.

December 20, 2001 – Mr. Clark voluntarily dismisses appeal; making the Circuit Court Order final (Protestants' Exhibit #7). Poor Boys' therefore abandoned their argument and chose not to pursue the issue of "mootness" before the Court of Special Appeals.

December 31, 2001 – Court of Special Appeals issues a Mandate (Protestants' Exhibit #8).

February 8, 2002 – Baltimore County Board of Appeals Issues Remand (Appendix C).

This order requires Poor Boys to rebuild an existing fence at the location as specified in letter and diagram by Avery Harden, dated December 24, 1996.

March 11, 2002 – Baltimore County Code Enforcement issues correction notice # 121106 (Protestants' Exhibit #10) for failure to erect a permanent fence according to the Board of Appeals Remand.

March 20, 2002 – Letter from Mr. Clark to Code Enforcement Officer (Protestants' Exhibit #12).

Mr. Clark sought to reargue the issue of "mootness" with Code Enforcement. This is a stale argument already entertained and decided by the Circuit Court.

Code Enforcement Citation issued with Hearing date scheduled for May 14, 2002. (Protestants's Exhibit #11).

April 10, 2002 – Letter from Carroll Holzer to Arnold Jablon, Director of Permits and Development Management. (Protestants' Exhibit #13).

Letter explains that the issue is not moot and requests the Board of Appeals Remand be upheld and enforced.

Affidavit, Ruth Baisden's conversation with Arnold Jablon (Protestants' Exhibit #14).

April 18, 2002 – Letter from Arnold Jablon to Carroll Holzer (Exhibit ____).

Jablon's letter states that issues need to be reargued before the Zoning Commissioner, then appealed to the Board of Appeals for a final decision. The previously scheduled code enforcement hearing would be postponed until the Board of Appeals reissues an opinion. Then Code Enforcement Hearing Officer will resume and/or final enforcement of remand. It should be noted that if the Baisden's chose to go through County enforcement process (without going to the special hearing before the Zoning Commissioner), they would not have had a right to be a party in the case before the Board of Appeals from any appeal.

After learning of Arnold Jablon's, interference in the enforcement of the Board's Remand and request for Petition for Special Hearing to reargue the case, Ruth and Ernest Baisden requested that the Circuit Court enforce its Order and the Board's Remand Order. The Circuit's reply was to appeal the special hearing to the Circuit Court where it would be combined and reviewed with a pending case related to the misplacement of the fence on Poor Boys final development plans.

QUESTIONS PRESENTED

1. Arnold Jablon was wrong in petitioning for the instant Special Hearing by alleging confusion and requesting Poor Boys to reargue its case already decided by the Circuit Court. Jablon's action was an improper collateral attack on the Circuit Court's Order as well as this Board's Remand Order. Further, it is a violation of the Doctrine of Res judicata and Direct Estoppel by Judgment.
2. Did Arnold Jablon cause a second interference in the enforcement of the Board of Appeals Remand causing lost time and requiring Ruth and Ernest Baisden financial hardship of additional court cases and proceedings?

LEGAL ARGUMENT

1. Arnold Jablon was wrong in petitioning for the instant Special Hearing by alleging confusion and requesting Poor Boys to reargue its case already decided by the Circuit Court. Jablon's action was an improper collateral attack on the Circuit Court's Order as well as this Board's Remand Order. Further, it is a violation of the Doctrine of Res judicata and Direct Estoppel by Judgment.

1.) Poor Boys voluntarily withdrew their appeal and chose not to further argue the issue of "mootness" before the Court of Special Appeal. Therefore, this proceeding is illegal and improper and is prevented by the application of the principles of *Res judicata*.

A.) Doctrine of *Res judicata*

An un-reversed decision of the Court, 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. In the instant matter, the parties are the same; the facts presented in the Petition for Special Hearing are the same which

have been previously litigated and determine by the Honorable Robert Dugan's order of April 25, 2001. See Board of County Commissioners of Cecil County v. Racine, 24 Md. App.435 (1976); A.B. Veirs, Inc. v. Whalen, 256 Md. 162 (1969); Davis v. Frederick County Board of County Commissioners, 25 Md.App.68 (1975).

B.) Doctrine of Direct Estoppel by Judgment

Res judicata applies not only to the issues expressly decided in a prior case between the same parties, but to every matter which might have been presented in that prior case.

Direct Estoppel by Judgment involves the same parties, same cause of action, and Judgment in prior case is an absolute bar to all matters litigated or which could have been litigated. Davis v. Fredrick County Board of County Commissioners, 25 Md. App.68 (1975).

Doctrine of *Res judicata* is applicable where a Court of Record enters a judgment affirming, or reversing an administrative, or quasi-judicial decision. Fertita v. Brown, 252 Md. 594 (1969).

Here, Estoppel by Judgment applies to bar this proceeding as requested by Baltimore County in its Petition for Special Hearing.

2) The "mootness" argument advanced by Poor Boys occurred before the Circuit Court's decision of April 25, 2001 and was rejected by the Circuit Court (See Appendix B).

The “mootness” argument was advanced again by Poor Boys at the Court of Special Appeal through their Motion to Dismiss. The Court of Special Appeals Ordered “that the Motion to Dismiss Appeal as moot is denied.” (Exhibit #7).

The Circuit Court recognized that the Harden letter and diagram of December 24, 1996 was required by the Comprehensive Rezoning of 1996 and was not related to the variance. (Appendix A). Harden’s letter was written and existed well before the variance request was presented before the Deputy Zoning Commissioner.

A.) Harden’s letter of December 24, 1996 specially required this Plan ‘when a permit for the parking lot is sought.’ (Appendix A).

B.) The Current Planning Office specifically recognized the difference between Harden’s December 24, 1996 letter for completion of the Agreement related to the Comprehensive Rezoning of 1996 and the “mootness” argued by counsel due to the abandonment of Poor Boys variance request (Appendix B).

3.) By his action, the Director has failed to comply with the Board of Appeals Remand Order in requiring the location and the placing and the nature of the fence as ordered by this court the Circuit Court. Pursuant to the Baltimore County Code, the Director of the Department of Permits and development Management is required to enforce violations of zoning ordinances and regulations Baltimore County. See Sec. 26-116 through 121.

SUMMARY

WHEREFORE, for all the reasons contained in this Memorandum and its appendix's as well as the exhibits of the previous Board of Appeals case, this proceeding is illegal and improper and is prevented by the application of the principles of the Doctrine of *Res judicata* and Direct Esoppel by Judgment. Judge Dugan clearly addressed the issue of "mootness" in his order dated February 25, 2001 (Appendix B) and establishes that the fence/buffer requirements as described in Avery Hardens letter and diagram, dated December 24, 1996 to be binding.

The Protestants, Ruth and Ernest Baisden request that the Board of Appeals grant their Motion to Dismiss Baltimore County's Petition for Special Hearing and require enforcement of the Board's prior remand order, dated February 25, 2001 (Appendix A).

Respectfully submitted,



J. CARROLL HOLZER, Esquire
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July, 2004 a copy of the foregoing Protestant's Memorandum in Lieu of Final Argument and Appendix was mailed first class, postage pre-paid, to: Bud Clark, Esquire, Nolan, Pumhoff & Williams, 502 Washington Avenue, Suite 700, Towson, Maryland 21204.



J. CARROLL HOLZER, Esquire



Baltimore County
Department of Permits and
Development Management

Appendix A

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

98-267-SPH

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisten
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerchity, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Esq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.



Appendix B

IN THE MATTER OF : RUTH BAISDEN

IN THE MATTER OF: TERRY GERAHTY

98-267-SPH

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

CIVIL ACTION

CASE NO: 03-C-00-6650
03-C-00-6687

MEMORANDUM OPINION AND ORDER

These two consolidated cases come before this Court as a record appeal from the Board of Appeals of Baltimore County. Ruth Baisden contends that the Board of Appeals erred by not adopting a letter, dated December 24, 1996, from Avery Harden of the Department of Permits and Development Management regarding the location of a fence. Terry Gerahty, owner of Poor Boys, a garden and plant center located at 2711 Taylor Avenue, argues the Board of Appeals erred in requiring that the fence in question be made "permanent", and that it replace the current fence with one having concrete footings, as ordered by Harden in the aforementioned letter.

The dispute between Poor Boys and Ernie and Ruth Baisden, his wife, who reside to the rear of the garden shop, arose in 1996 during the comprehensive rezoning cycle for Baltimore County. Poor Boys' property was rezoned to Business Local (BL) with a total buffer zone of 70 ft. between Poor Boys and the Baisden property. Subsequently, Mr. Gerahty entered into a restrictive covenant agreement with the Villa Cresta Association, dated October 8, 1996, regarding this buffer zone.

Mr. Harden then became involved in the process. Mr. Gerahty contends that he asked Mr. Harden to design a landscape buffer in accordance with an easement agreement with

IN THE MATTER OF
THE APPLICATION OF
TERRY J. GERAHTY -PETITIONER
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTHEAST CORNER
OLD HARFORD ROAD AND TAYLOR
AVENUE (2711 TAYLOR AVENUE)
9TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT
(Case No. 98-267-SPH)

- * ON REMAND
- * FROM THE
- * CIRCUIT COURT FOR
- * BALTIMORE COUNTY
- * Civil Action
No.: 03-C-00-6650
- * 03-C-00-6687

* * * * *

**ORDER OF THE BOARD ON REMAND
FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY**

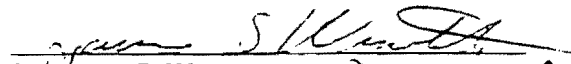
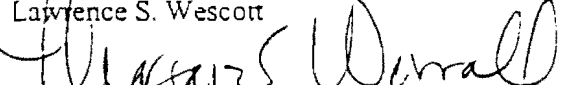
Notice of Dismissal having been filed in the Court of Special Appeals by Counsel for Appellant Terry J. Gerahty, and subsequent Mandate of the Court of Special Appeals having been issued on December 31, 2001, this matter comes before the Board on remand by Order of Judge Robert N. Dugan, Circuit Court for Baltimore County, filed April 25, 2001, in which Judge Dugan orders as follows:

This case is remanded to the Board of Appeals with instructions to pass an Order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996.

IT IS THEREFORE this 8th day of February, 2002, by the County Board of Appeals of Baltimore County

ORDERED that, consistent with the Remand Order of the Honorable Robert N. Dugan, Judge, Circuit Court for Baltimore County, filed April 25, 2001, the fencing of the subject property shall be accomplished "as set forth in Avery Harden's correspondence of December 24, 1996," a copy of which is attached to and made a part of this Order.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott

Margaret Worrall

C. Lynn Barranger



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

December 4, 2002

C. William Clark
Nolan, Plumhoff & Williams
502 Washington Ave., Suite 700
Towson, MD 21204

Dear Mr. Clark:

RE: Case No. 02-462-SPH, 2711 Taylor Avenue

RECEIVED

DEC 05 2002

**BALTIMORE COUNTY
BOARD OF APPEALS**

Please be advised that an appeal of the above-referenced case was filed in this office on December 3, 2002 by J. Carroll Holzer on behalf of Ruth E. and Ernest M. Baisden. 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
Robert Loskot, Assistant County Attorney, Law Office
Terry J. Gerahty, 8309 Dalesford Road, Baltimore 21234





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

December 4, 2002

C. William Clark
Nolan, Plumhoff & Williams
502 Washington Ave., Suite 700
Towson, MD 21204

Dear Mr. Clark:

RE: Case No. 02-462-SPH, 2711 Taylor Avenue

Please be advised that an appeal of the above-referenced case was filed in this office on December 3, 2002 by J. Carroll Holzer on behalf of Ruth E. and Ernest M. Baisden. 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,

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

Arnold Jablon
Director

AJ:rlh

c: Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM
People's Counsel
Robert Loskot, Assistant County Attorney, Law Office
Terry J. Gerahty, 8309 Dalesford Road, Baltimore 21234



12/2/02
IN RE: PETITION FOR SPECIAL HEARING
SW/S Taylor Avenue, 110 SE of the c/l
Old Harford Road
(2711 Taylor Avenue)
9th Election District
6th Council District

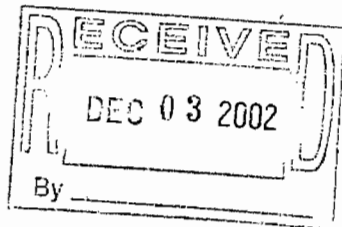
Baltimore County Depart of Permits and
Development Management—Petitioners;
Terry J. Gerahty, Legal Owner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 02-462-SPH
*
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*
*
*

NOTICE OF APPEAL

Appellants, Ernest M. and Ruth E. Baisden, by and through their attorney, J. Carroll Holzer and Holzer and Lee, feeling aggrieved by the decision of the Zoning Commissioner in the above captioned case as to the decision in the above captioned matter, hereby appeal to the County Board of Appeals from the Findings of Fact and Conclusions of Law of the Zoning Commissioner of Baltimore County dated November 4, 2002, attached hereto, and incorporated herein as **Exhibit #1**.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal.



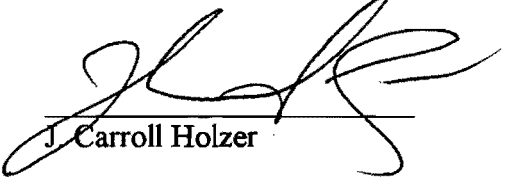
Respectfully submitted,

A handwritten signature in black ink, appearing to be "J. Carroll Holzer", written over a horizontal line.

J. Carroll Holzer
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of December, 2002, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to C. William Clark, Esq., Nolan, Plumhoff & Williams, 502 Washington Ave., Towson MD 21204; and the County Board of Appeals, Basement Old Courthouse, 400 Washington Ave., Towson, MD 21204, and People's Counsel for Baltimore County, Basement Old Courthouse, 400 Washington Ave., Towson, MD 21204.


J. Carroll Holzer

11/4/02

IN RE: PETITION FOR SPECIAL HEARING
SW/S Taylor Avenue, 110' SE of the c/l
Old Harford Road
(2711 Taylor Avenue)
9th Election District
6th Council District

Baltimore County Department of Permits and
Development Management – Petitioners;
Terry J. Gerahty, Legal Owner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 02-462-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing for the property known as 2711 Taylor Avenue, owned by Terry J. Gerahty. The Petition was filed by Arnold Jablon, Director, Baltimore County's Department of Permits and Development Management (DPDM), through Robert C. Loskot, Esquire, Baltimore County's Office of Law, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.). That Section provides the Zoning Commissioner with broad discretion to interpret and implement the zoning regulations, and "...the power to conduct such other hearings and pass such Orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations..." The Petition for Special Hearing filed in the instant case seeks to clarify and finalize whether the decisions of the Deputy Zoning Commissioner (in prior Case No. 97-295-SPHA, and as amended in Case No. 98-267-SPH), the Board of Appeals and the Circuit Court of Baltimore County in Case Nos. 03-C-00-6650 and 03-C-00-6687, dated April 25, 2001, are applicable or are now moot.

Appearing at the requisite public hearing on behalf of the Petition was Robert C. Loskot, Esquire, Assistant County Attorney on behalf of Baltimore County, Maryland. Also present was Terry L. Gerahty, legal owner of the subject property, and his attorney, C. William Clark, Esquire. In addition, Ernest M. and Ruth E. Baisden, owners of the adjacent property known as 7706 Oak

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11/4/02

[Signature]

Avenue, appeared, along with their attorney, J. Carroll Holzer, Esquire. There were no other Protestants or interested persons present.

There was no live witness testimony offered in this case, per se. The record of the case before this Zoning Commissioner is based upon a series of documents that were submitted at the hearing. These documents describe the subject property and outline the zoning history of the site through various administrative and judicial hearings before the Zoning Commissioner, Board of Appeals and the Circuit Court for Baltimore County. From these documents, the following information can be gleaned.

The subject property is the site of an outdoor garden sales center known as Poor Boys. The property contains approximately 1.332 acres in area, split zoned B.L. and D.R.5.5, and is located near the major intersection of Taylor Avenue and Old Harford Road in Parkville. A significant portion of the site along Taylor Avenue is zoned B.L. and it is within that area that the Poor Boys business is located and operated. However, an L-shaped portion of the site along Oak Avenue and to the rear of the property when viewed from Taylor Avenue is zoned D.R.5.5. The property was rezoned to its present zoning classification as part of the County's comprehensive zoning process in 1996. Apparently the L-shaped portion of the property was zoned D.R.5.5 to serve as a buffer for the business activities that occur on the B.L. zoned portion of the site. On the other side of that buffer is a residential community in which Mr. & Mrs. Baisden reside.

The property is improved with a 1705 sq.ft. indoor sales building with office and storage space, and a 385 sq.ft. outdoor sales area in the front portion of the site. There is also an outdoor sales area which totals 3320 sq.ft. and provides storage/display areas for flowers, trees, shrubs, mulch, and other miscellaneous garden supplies, etc. There is also a 5400 sq.ft. parking area to the rear of the site. It is this parking area that was the subject of the original zoning case. The subject property and improvements thereon are more particularly described on the site plan that was submitted into evidence and marked as Property Owner's Exhibit 12.

The history of litigation surrounding the Poor Boys operation and use of this property bears significant weight on the question presented in the instant case. There has been extensive

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litigation and dispute between Baltimore County's version of the Hatfields (Terry Gerahty, doing business as Poor Boys) and the McCoys (Ernest M. and Ruth E. Baisden). As noted above, Mr. Gerahty owns and operates the business on the subject property and Mr. & Mrs. Baisden are his adjacent neighbors.

The first piece of the litigation history were Petitions for Special Hearing and Variance filed in early 1997 under Case No. 97-295-SPHA. As in the current case, the Petition for Special Hearing was filed pursuant to Section 500.7 of the B.C.Z.R. Again, that Section provides jurisdiction to the Zoning Commissioner/Deputy Zoning Commissioner to interpret the provisions of the B.C.Z.R. In that case, Mr. Gerahty filed a Petition for Special Hearing seeking an interpretation as to whether the parking lot as it then existed on the subject site met the "durable and dustless" requirement contained in the parking regulations (Section 409.8) of the B.C.Z.R. Those regulations require that commercial parking be of a durable and dustless character. In addition, Mr. Gerahty filed a Petition for Variance seeking alternative relief. Specifically, if the parking lot was determined not to be of a durable and dustless character, Mr. Gerahty sought a variance from that requirement to allow the parking lot to be of a No. 2 stone crushed material.

Deputy Zoning Commissioner Timothy M. Kotroco heard that matter and issued an opinion and Order on March 6, 1997. He denied relief under the Petition for Special Hearing, holding that the parking lot was not a durable and dustless surface. However, he granted the alternative relief sought in the Petition for Variance allowing the No. 2 crushed stone to remain, and imposed certain conditions/restrictions thereon. Arguably, it might be contended that some of these restrictions did not bear a reasonable nexus to the nature of the relief granted, i.e., a variance from the durable and dustless requirement. That is, many of the restrictions related to the hours of operation of the business, the use of gasoline powered chain saws, landscaping and lighting, etc.

Mr. Gerahty filed an appeal of that decision to the County Board of Appeals; however, in the interim period between the filing of the appeal and the hearing thereon, Mr. Gerahty had on-site meetings with employees of the executive branch of the Baltimore County Government. In retrospect, it is clear that these meetings and discussions that occurred thereat were inappropriate.

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Both the County Board of Appeals and the Zoning Commissioner's Office are independent quasi-judicial County agencies. Hearings before those administrative bodies should not be tainted by outside influence, including interference from other branches and/or agencies of County Government. That employees of the executive branch intervened in a case that was then pending was unwise. Although apparently well meaning and intending to resolve the neighborhood dispute, the subsequent agreement reached between those employees and Mr. Gerahty only served to further muddy the waters. Specifically, an agreement was reached which allowed the modification of one of the restrictions contained in Deputy Commissioner Kotroco's Order. That restriction related to lighting, landscaping and a fence that was to be constructed to buffer the use on the subject property from Mr. & Mrs. Baisden's property. The agreement by and between the executive branch employees and Mr. Gerahty allowed the relocation of that fence and altered its character and height. In view of those discussions and the ensuing agreement, Mr. Gerahty withdrew his appeal to the County Board of Appeals. With the dismissal of the appeal, the decision rendered by Deputy Commissioner Kotroco in Case No. 97-295-SPHA became final and the law of the case.

Mr. & Mrs. Baisden were obviously unhappy that the independent agreement had been reached. They correctly contended that the agreement was without effect and that Deputy Commissioner Kotroco's Order stood as the law of the case, in that the appeal to the Board had been dismissed. Thus, Mr. Gerahty filed a second Petition for Special Hearing under Case No. 98-267-SPH, seeking to amend the prior Order issued in Case No. 97-295-SPHA regarding the installation of a fence and lighting conditions. Obviously, the purpose of this Petition was to obtain a formal Order from the Zoning Commissioner's Office permitting an amendment to the prior restrictions so as to bring same in line with the agreement reached between Mr. Gerahty and the executive branch employees. Deputy Commissioner Kotroco likewise presided at the hearing in Case No. 98-267-SPH and issued an opinion thereon on July 7, 1999. Within his Order, he granted the relief requested to allow the fence on the subject property to remain.¹ He also required that the

¹ Mr. Gerahty had constructed a fence consistent with the details of the agreement reached with the executive branch employees.

fence be maintained in a neat and orderly fashion and that it remain in an absolute vertical position, and that an outdoor lighting plan be submitted to Avery Harden, the County's Landscape Architect.

Unhappy with this result, Mr. & Mrs. Baisden filed an appeal to the County Board of Appeals, which, following a de novo hearing, reached a similar decision. The Baisden's then appealed the matter to the Circuit Court for Baltimore County and Judge Robert N. Dugan eventually heard the matter. By his Order dated April 25, 2001, the findings of the Board of Appeals were reversed. Within his written opinion, Judge Dugan commented on the impropriety of the intervention of the executive branch, the nature of the Board of Appeals' hearing and the standard of law to be applied. He remanded the matter to the Board of Appeals with instructions to pass an Order providing that the fence be as originally approved, pursuant to Deputy Commissioner Kotroco's Order in Case No. 97-295-SPHA, which had adopted a letter from Avery Harden, the County's landscape architect, dated December 24, 1996. Mr. Gerahty then filed an appeal of this decision to the Court of Special Appeals; however, that appeal was ultimately dismissed.

At that point in time, Judge Dugan's Order was the law of the case. Unhappy with that disposition, Mr. Gerahty determined that paving the lot with a durable and dustless material would eliminate the need for the variance that had been granted and the restrictions imposed thereon. Thus, he paved the lot in accordance with the parking requirements set forth in Section 409.8 of the B.C.Z.R. Therefore, the variance granted in Case No. 96-295-SPHA, and modified in Case No. 98-267-SPH, is no longer necessary. Following the paving of the lot, the Baisdens then filed a formal complaint with the Department of Permits and Development Management, after which Mr. Jablon filed the instant Petition to clarify the matter.

There are a number of issues which need be addressed in the instant matter.

ISSUE NO.1: Is the instant Petition for Special Hearing precluded by res judicata and/or estoppel by judgment?

At the hearing before the undersigned Zoning Commissioner, Counsel for Mr. & Mrs. Baisden submitted a Memorandum in Opposition to the Petition for Special Hearing. That Memorandum argues that the instant Petition is barred for consideration by res judicata and/or the

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doctrine of direct estoppel by judgment. It is clear that res judicata may apply to zoning cases considered by an administrative body. (See e.g., Board of County Commissioners of Cecil County v. Racine, 24 Md. App. 435 (1975). However, those principles do not bar this case.

The doctrine of res judicata applies to bar subsequent proceedings when the parties are the same and identical issues were expressly decided in a prior case. (See Davis v. Frederick County Board of County Commissioners, 25 Md. App. 68 (1975). In this case, res judicata is not applicable in that the parties are not the same. The instant Petition for Special Hearing is filed by Baltimore County's Department of Permits and Development Management through the County's Office of Law. A review of the decisions of Deputy Commissioner Kotroco, the County Board of Appeals and Judge Dugan show that Baltimore County has never been a party in the litigation to date. Mr. Gerahty doing business as Poor Boys and Mr. & Mrs. Baisden have always been identified as the litigants. Thus, res judicata does not bar the instant Petition in that the parties are not the same.

The doctrine of estoppel is somewhat more rigidly defined wherein if the second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case on the merits is an absolute bar, not only as to all matters which were litigated in the earlier case, but all matters which could have been so litigated. However, like res judicata, the doctrine of direct estoppel is applicable only when the parties are the same. (See Davis, *infra*). As noted above, the parties here are different.

Finally, it should be observed that the question presented herein is actually different from the earlier issues considered. There has been a significant change of facts since the prior cases were litigated. The parking lot that was at issue in the original petitions is now paved. The paving of this lot and the implications therefrom give rise to the instant Petition. The prior cases arose from questions as to whether the lot could be of a non-durable/dustless surface and what restrictions should be imposed thereon if variance relief were granted. For all of these reasons, this Petition is not barred from consideration.

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ISSUE NO. 2: Are the restrictions imposed in Case No. 97-295-SPHA, and as modified and reversed in Case No. 98-267-SPH, still binding?

The Zoning Commissioner is empowered to grant variances pursuant to the authority contained in Section 26-127 of the Baltimore County Code and Section 307 of the B.C.Z.R. Section 26-127(c) of the B.C.Z.R. provides that "Variances may be issued with such conditions or restrictions determined appropriate by the Zoning Commissioner for the purpose of protecting the health, safety or general welfare of the surrounding community." The restrictions entered by Deputy Commissioner Kotroco in Case No. 97-295-SPHA, and as modified by his Order in Case No. 98-267-SPH, were expressly entered pursuant to that Section, and because the variance was granted. Had not the Petition for Variance been granted, the restrictions would not have been entered. It is axiomatic that the grant of a variance is a condition precedent to the attachment of restrictions on a given property. If there is no variance relief granted, there can be no restrictions.

In the instant case, it is undisputed that the basis of the original variance no longer exists. Mr. Gerahty has paved the parking lot with a durable and dustless surface. Since that paving has been installed, the variance originally obtained is no longer necessary and is therefore, moot. Thus, since the variance is no longer needed and is now null and void, the restrictions that were attached thereto are moot.

For all of these reasons, it is the judgment of the undersigned Zoning Commissioner that the restrictions originally imposed in Case No. 97-295-SPH, and as amended in Case No. 98-267-SPH, and ultimately changed by Order of Judge Dugan, are, at this point, null and void. This is so because the variance is no longer necessary.

ISSUE NO. 3: With what requirements must the Petitioner comply?

As noted immediately above, the variance relief previously granted is now moot and the restrictions attached thereto are without effect. That being the case, the final question for determination is with what requirements, if any, must the Petitioner comply in using his property. The Petitioner now finds himself in a situation as if a variance had never been requested and obtained. Although variance relief is now not necessary, the Petitioner's property must still comply

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Date 11/1/12

By [Signature]

with certain requirements. Quite obviously, all Baltimore County building and construction codes and requirements must be met. Most development and use of property in Baltimore County is undertaken without the necessity of obtaining variance relief. Most business, commercial and retail centers are operated without the need for variance approval from the undersigned Zoning Commissioner. Nonetheless, those businesses must be in compliance with the County building and use codes. Similarly, the Petitioners' property must be operated and maintained accordingly.

As noted above, the Zoning Commissioner issues this ruling in furtherance of the authority granted under Section 500.7 of the B.C.Z.R. That Section authorizes the Zoning Commissioner to conduct hearings to interpret and implement the zoning regulations. Baltimore County's building codes are not part of the zoning regulations and the Office of the Zoning Commissioner does not enforce or administer those Codes. Thus, I decline to enter any ruling as to whether the Petitioner's fence, landscaping, lighting, etc., complies with any such Code. That is a determination for the Director of DPDM; however, it is clear that the Petitioners' business must operate consistent with those requirements.

The record of this case also shows that there was a restrictive covenant agreement entered into by and between Mr. Gerahty and the Villa Cresta Civic Association. Obviously, the Zoning Commissioner has no authority to enforce private covenants or contracts between private parties. Again, the authority of the Zoning Commissioner arises from the County Charter, Code and B.C.Z.R. Nonetheless, it is a statement of the obvious that the Villa Cresta Civic Association may demand enforcement of the terms and conditions of the restrictive covenant between those parties. Whether that covenant is applicable and enforceable under the present circumstances is a question properly reserved for the Circuit Court of Maryland for Baltimore County.

Finally, in addition to Baltimore County's Codes and the restrictive covenant agreement with the Villa Cresta Civic Association, Poor Boys has no doubt submitted site plans, permit applications and the like to Baltimore County. Those site plans and applications describe the uses and improvements on the property. Obviously, the actual in-field conditions must match those representations made to Baltimore County. The issuance of permits by Baltimore County was

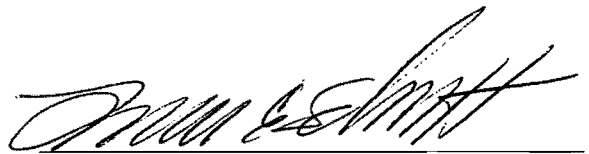
based upon the depictions of actual site conditions on the site plan and therefore the property must be used in compliance with what was represented on the plans based on which permits were issued by Baltimore County.

In conclusion, in answer to the question presented in the instant Petition for Special Hearing, it is my judgment that the prior decisions, which granted a variance from the required durable/dustless surface, and restrictions imposed thereon, are now moot. Whether the location/condition of the disputed fence is appropriate is an issue that ultimately cannot be decided by the undersigned. However, the framework under which that decision must be evaluated (i.e., compliance with codes, etc.) is set forth above.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein,

IT IS ORDERED by the Zoning Commissioner for Baltimore County this 4th day of November, 2002 that the Orders issued by the Deputy Zoning Commissioner (in Case No. 97-295-SPHA, and amended in Case No. 98-267-SPH), and the Orders issued by the Board of Appeals and the Circuit Court of Baltimore County in Case Nos. 03-C-00-6650 and 03-C-00-6687, dated April 25, 2001, are now moot.

Any appeal of this decision must be filed within thirty (30) days of the date of this Order.


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 11/4/02
By Bjs



Baltimore County
Zoning Commissioner

November 4, 2002

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

Robert C. Loskot, Esquire
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
SW/S Taylor Avenue, 110' SE of the c/l Old Harford Road
(2711 Taylor Avenue)
9th Election District – 6th Council District
Baltimore County Department of Permits & Development Management - Petitioners
Case No. 02-462-SPH

Dear Mr. Loskot:

Enclosed please find a copy of the Findings of Facts and Conclusions of Law and Order issued in the above-captioned matter.

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. Terry Gerahty, 7221 Old Harford Road, Baltimore, Md. 21234
C. William Clark, Esquire, Nolan, Plumhoff & Williams
502 Washington Ave., Towson, Md. 21204
Mr. & Mrs. Ernie J. Baisden, 7706 Oak Avenue, Baltimore, Md. 21234
Carroll Holzer, Esquire, Holzer & Lee,
508 Fairmount Avenue, Towson, Md. 21286
Mr. Arnold Jablon, Director, DPDM; People's Counsel; Case File

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



Baltimore County
Zoning Commissioner

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

November 4, 2002

Robert C. Loskot, Esquire
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
SW/S Taylor Avenue, 110' SE of the c/l Old Harford Road
(2711 Taylor Avenue)
9th Election District - 6th Council District
Baltimore County Department of Permits & Development Management - Petitioners
Case No. 02-462-SPH

Dear Mr. Loskot:

Enclosed please find a copy of the Findings of Facts and Conclusions of Law and Order issued in the above-captioned matter.

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,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Terry Gerahty, 7221 Old Harford Road, Baltimore, Md. 21234
C. William Clark, Esquire, Nolan, Plunhoffs & Williams
502 Washington Ave., Towson, Md. 21204
Mr. & Mrs. Ernie J. Baisden, 7706 Oak Avenue, Baltimore, Md. 21234
Carroll Holzer, Esquire, Holzer & Lee,
508 Fairmount Avenue, Towson, Md. 21286
Mr. Arnold Jablon, Director, DPDM; People's Counsel; Case File

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

6/6/02

IN THE MATTER OF:

* BEFORE THE ZONING COMMISSIONER

2711 TAYLOR AVENUE

*

OF

SW/S of Taylor Avenue
110' SE of Centerline of Old
Harford Road

*

BALTIMORE COUNTY

*

9th Election District
6th Councilmanic District

*

CASE NO. 02-462-SPH

*

Legal Owner: Terry Gerahty

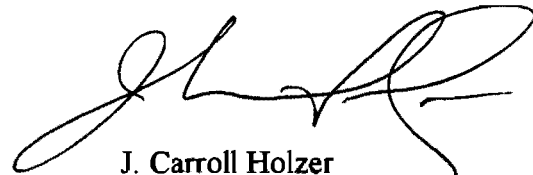
* * * * *

**MOTION TO DISMISS PETITION FOR SPECIAL HEARING ON THE BASIS
OF THE DOCTRINE OF RES JUDICATA AND THE DOCTRINE OF DIRECT
ESTOPPEL BY JUDGMENT**

Ruth and Ernie Baisden, by their attorney J. Carroll Holzer, Holzer and Lee, hereby submit this Motion to Dismiss the Petition for Special Hearing filed by Baltimore County on the bases that the instant issue has been litigated and determined by Judge Robert N. Dugan's Order of April 25th, 2001 in Case No. 03-C-00-6650 and 03-C-00-6687, and says:

1. That the substance and merits of this Motion is contained in the attached "Motion for Injunction, Mandamus, Enforcement of Court Order, and Contempt of Court" filed in Case No. 03-C-00-6650 and 03-C-00-6687, attached hereto and incorporated herein as Exhibit A.
2. That this proceeding is illegal and improper and is prevented by the application of the principles of Res judicata and Direct Estoppel by judgment and should not take place. (See undersigned counsel's Memorandum attached, adopted and incorporated herein as Exhibit B).
3. That the Baisden's request that the Zoning Commissioner Dismiss the Petition for Special Hearing and require enforcement of Judge Dugan's Order of April 25, 2001.

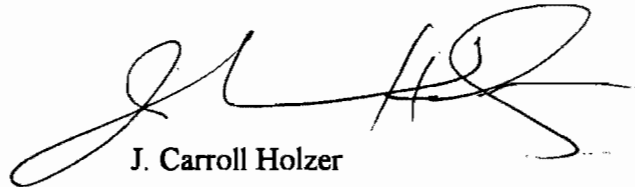
Respectfully Submitted,



J. Carroll Holzer
508 Fairmount Avenue
Towson MD 21286
410-825-6961

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of June, 2002 a copy of the foregoing Motion was mailed first class, postage pre-paid, to Bud Clark, Esq., Nolan, Plumhoff & Williams, 502 Washington Avenue, Suite 700, Towson, Maryland 21204; and Robert Loskot, Office of Law, 400 Washington Ave., Towson, MD 21204.

A handwritten signature in black ink, appearing to read 'J. Carroll Holzer', is written over the printed name. The signature is stylized with a large initial 'J' and a long horizontal stroke.

J. Carroll Holzer

6/6/02

IN THE MATTER OF:

* BEFORE THE ZONING COMMISSIONER

2711 TAYLOR AVENUE

*

OF

SW/S of Taylor Avenue
110' SE of Centerline of Old
Harford Road

*

BALTIMORE COUNTY

*

9th Election District
6th Councilmanic District

*

CASE NO. 02-462-SPH

*

Legal Owner: Terry Gerahty

*

*

*

*

*

*

*

*

*

MEMORANDUM OF LAW

Ruth and Ernie Baisden, by and through their attorney J. Carroll Holzer and Holzer and Lee, hereby submit the following memorandum of law as authority in support of their Motion to Dismiss the Petition for Special Hearing and say:

1. Doctrine of Res judicata

An un-reversed final decision of the Court, passed in the exercise of its discretion upon issues of fact or upon mixed issues of law and fact as fully binding upon the parties to the cause. In the instant matter, the parties are the same; the facts are the same which have been previously litigated and determined by the Honorable Robert Dugan's Order of April 25, 2001. See *Board of County Commissioners of Cecil County v. Racine*, 24 Md. App. 435 (1976); *A.B. Veirs, Inc. v. Whalen*, 256 Md. 162 (1969); *Davis v. Frederick County Board of County Commissioners*, 25 Md. App. 68 (1975)

2. Doctrine of Direct Estoppel by Judgment

Res judicata applies not only to the issues expressly decided in a prior case between the same parties, but to every matter which might have been presented in that prior case.

Direct Estoppel by Judgment involves the same parties, same cause of action, and Judgment in prior case is absolute bar to all matters litigated and which could have been litigated. *Davis v. Frederick County Board of County Commissioners*, 25 Md. App. 68 (1975)

Doctrine of Res judicata is applicable where a Court of Record enters a judgment affirming, or reversing an administrative, or quasi-judicial decision. *Fertita v. Brown*, 252 Md. 594 (1969).

Here, Estoppel by Judgment applies to bar this proceeding as requested by Baltimore County in its Petition for Special Hearing.

3. That Poor Boys' Contends that County Landscape Architect, Avery Hardin, had a right to change his mind from December, 1996 until when he signed off on the Landscape and Lighting Plan and the permit for construction at Poor Boys.

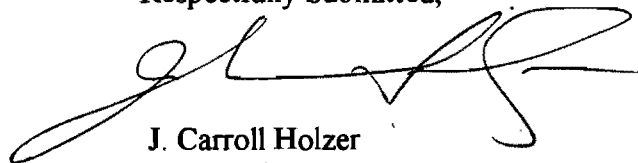
This is erroneous for the following reasons:

- A. The Circuit Court recognized that the Hardin letter of December 24, 1996 was required by the Comprehensive Rezoning of 1996 and not related to the variance. (See Appendix A) Hardin's letter was written and existed well before the variance request was presented before the Deputy Zoning Commissioner.

- B. Hardin's letter of December 24, 1996 specifically required this Plan
"when a permit for the parking lot is sought." (See Appendix B)
- C. The Current Planning Office specifically recognized the difference
between Hardin's December 24, 1996 letter for completion of the
Agreement related to the Comprehensive Rezoning of 1996 and the
"mootness" argued by counsel due to the abandonment of Poor Boys'
variance request. (See Planning Comment, Appendix I)
4. The "mootness" argument advanced by Poor Boys occurred before the Circuit
Court's decision of April 25, 2001 and was rejected by the Circuit Court.
(Appendix A)
5. The "mootness" argument was advanced again by Poor Boys at the Court of
Special Appeals through their Motion to Dismiss. The Court of Special
Appeals Ordered "that the Motion to Dismiss Appeal as moot is **denied**." (See
Appendix C3)

WHEREFORE, for all the reasons contained in Exhibit A and its Appendices, as
well as this Memorandum of Law, Exhibit B, the Zoning Commissioner should dismiss
the instant Petition for Special Hearing as a matter of law.

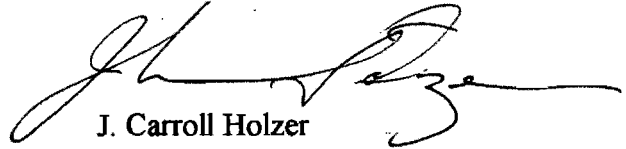
Respectfully Submitted,



J. Carroll Holzer
508 Fairmount Avenue
Towson MD 21286
410-825-6961

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of June, 2002 a copy of the foregoing Memorandum of Law was mailed first class, postage pre-paid, to Bud Clark, Esq., Nolan, Plumhoff & Williams, 502 Washington Avenue, Suite 700, Towson, Maryland 21204; and Robert Loskot, Office of Law, 400 Washington Ave., Towson, MD 21204.


J. Carroll Holzer



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2711 Taylor Avenue
which is presently zoned BL/DR 5.5

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

The Department of Permits & Development Management files this petition in order to clarify and finalize where on the property owner's property a disputed fence must be located. Further, to clarify and finalize whether the decisions of the Zoning Commissioner, Board of Appeals and of the Circuit Court of Baltimore County, in case No. 03-C-00-6650 and 03-C-00-6687, dated April 25, 2001, is applicable or now moot. The Department requests guidance on the issue whether the fence must be in the location as mandated by the Circuit Court and the Board or whether these decisions are no longer germane because the original variance request is now moot.

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~~ Petitioner
Baltimore County Dept. of Permits
and Development Management by
Name - Type or Print

Signature Arnold Jablon, Director
111 W. Chesapeake Ave. 887-3353
Address Telephone No.
Towson Md 21204
City State Zip Code

Attorney For Petitioner:

Robert C. Loskot
Name - Type or Print

Signature
Baltimore County Law Office
Company MS 2209
400 Washington Ave. 887-4420
Address Telephone No.
Towson MD 21204
City State Zip Code

Legal Owner(s):

Terry J. Gerahty
Name - Type or Print

Signature
Name - Type or Print
Signature
8309 Dalesford Rd. 410-668-7599
Address Telephone No.
Baltimore MD 21234
City State Zip Code

Representative to be Contacted:

Carl Richards
Name
111 W. Chesapeake Ave. 887-3391
Address Telephone No.
Towson MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By UCR Date 4/19/02

ORDER RECEIVED FOR FILING
11/4/02
Case No. 02-462-SPH
Date 11/15/98

Paper ad - bitous - we post some - Carl

George,

Notify All

Location

Suit Taylor Ave
between Old Hartford and
Oak Ave. #2711

Ferry J. Gerahty

Name - Type or Print

Signature

Name - Type or Print

Signature

8309 Dalesford Rd. 410-668-7599

Address

Telephone No.

Baltimore

MD

21234

City

State

Zip Code

Robert C. Loskot

Name - Type or Print

Signature

Baltimore County Law Office

Company

MS 2209

400 Washington Ave. 887-4420

Address

Towson MD

Telephone

21204

Douglas L. Burgess, Nolan, Plumhoff
(Type or Print Name) Williams, Chtd.

Signature

502 Washington Avenue

Suite 700

410 823-7800

Address

Phone No.

Towson

MD.

21204

City

State

Zipcode

Check dates +
time with

Mr. J. Carroll Holzer
The 508 Building
508 Fairmount Avenue
Towson, MD 21286

410 825-6961

02-462-SPH

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: #02-462-SPH

2711 Taylor Avenue

SW/S of Taylor Avenue, 110' SE of centerline of Old Harford Road

9th Election District - 6th Councilmanic District

Legal Owner(s): Terry J. Gerahty

Special Hearing: to clarify and finalize where on the property owner's property a disputed fence must be located; to clarify and finalize whether the decisions of the Zoning Commissions, Board of Appeals and of the Circuit Court of Baltimore County, in Case No. 03-C-00-6650 an 03-C-00-6687, dated April 25, 2001 is applicable or now moot.

Hearing: Thursday, June 6, 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.

5/314 May 23

C540424

CERTIFICATE OF PUBLICATION

5/23/, 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 5/23/, 2002.

☒ The Jeffersonian

☐ Arbutus Times

☐ Catonsville Times

☐ Towson Times

☐ Owings Mills Times

☐ NE Booster/Reporter

☐ North County News

S. Wilkinson

LEGAL ADVERTISING

ZONING DESCRIPTION

2711 TAYLOR AVE.

ALL That property in Parkville, Baltimore County, Maryland, owned by George C. Peverley, III, as sole tenant, as described herein. For description, refer to Deed dated September 19, 1990 from Gene F. Rahll and recorded among the Land Records of Baltimore County in Liber 8701, Folio 730, and as also described in Deed dated September 29, 1988 and recorded among the Land Records of Baltimore County in Liber 7993, Folio 66.

BEGINNING At a point where the Southwest line of Taylor Avenue intersects the Northwest line of Oak Avenue and running thence along the Northwest line of Oak Avenue South 39 1/4 degrees West 240 feet to a point, thence North 51 degrees West 180 feet to a point, thence North 39 1/4 degrees East 90.0 feet, thence along the boundary line between Lots 126 and 127, 100 feet to a point, thence North 39 1/4 degrees East 150 feet (erroneously described as 100 feet in a previously recorded Deed dated April 16, 1979 and recorded among the Land Records of Baltimore County at Liber E.H.K. 6014, Folio 516) to the Southwest line of Taylor Avenue, thence along the Southwest line of Taylor Avenue South 51 degrees East 280 feet to the place of beginning.

BEING Lots 92, 93, 94 and 95 and part of Lots 91, 124, 125 and 126 on a Plat entitled "Map of Parkville", which Plat was filed among the Plat Records of Baltimore County in plat Book J.W.S. No. 1, Folio 34.

SAVING AND EXCEPTING 177 square feet as described in an Inquisition in Case No. 13/256/82C-8, Baltimore County Circuit Court, recorded among the Land Records of Baltimore County at Liber 6794, Folio 411.

BEING Part of the land conveyed in a Deed dated April 27, 1979 from Ellen J. Hargreaves to Mellor A. Hargreaves and Ellen J. Hargreaves, as recorded among the Land Records of Baltimore County, Maryland at Liber 6138, Folio 159.

BEING Those same lots of ground which by Deed dated September 29, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7993, Folio 066, was granted and conveyed by Mellor A. Hargreaves and Ellen J. Hargreaves, his wife, unto George C. Peverley, III and Gene F. Rahll, a one-half interest each, as tenants in common, in fee simple.

BEING Those same lots of ground which by Deed dated September 19, 1990 and recorded among the Land Records of Baltimore County in Liber 8701, Folio 730 was granted and conveyed by Gene F. Rahll, his one-half interest in said property, unto George C. Peverley, III, in fee simple.

02-462-SPH

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 19097

PAID RECEIPT

DATE 12/3/02 ACCOUNT 001-006-6150

AMOUNT \$ 210.00

RECEIVED FROM: J. Carroll Holzer

FOR: Appeal

Appeal 02-462-SPH

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

BUSINESS ACTUAL TIME
12/04/2002 12/03/2002 14:33:14
REG 4301 WALKIN JRIC JHR DRAHER
RECEIPT # 116779 12/03/2002 OFLN
Dep 5 528 ZONING VERIFICATION
CR # 019097

Recpt Tot \$210.00
210.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION



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 8, 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: 02-462-SPH

2711 Taylor Avenue

SW/S of Taylor Avenue, 110' SE of centerline of Old Harford Road

9th Election District – 6th Councilmanic District

Legal Owner: Terry J Gerahty

Special Hearing to clarify and finalize where on the property owner's property a disputed fence must be located; to clarify and finalize whether the decisions of the Zoning Commissions, Board of Appeals and of the Circuit Court of Baltimore County, in Case No. 03-C-00-6650 and 03-C-00-6687, dated April 25, 2001 is applicable or now moot.

HEARING: Thursday, June 6, 2002 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

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

Arnold Jablon G D Z
Director

C: Terry J Gerahty, 8309 Dalesford Road, Baltimore 21234
Robert C Loskot, Baltimore County Law Office, 400 Washington Avenue,
Towson 21204

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, MAY 22, 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
Thursday, May 23, 2002 Issue – Jeffersonian

Please forward billing to:

Baltimore County Office Building
W. Carl Richards, Jr.
111 W Chesapeake Avenue
Towson MD 21204

410 887-3391

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: 02-462-SPH

2711 Taylor Avenue

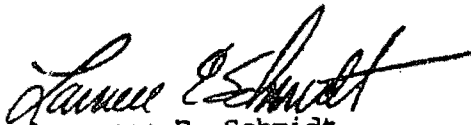
SW/S of Taylor Avenue, 110' SE of centerline of Old Harford Road

9th Election District – 6th Councilmanic District

Legal Owner: Terry J Gerahty

Special Hearing to clarify and finalize where on the property owner's property a disputed fence must be located; to clarify and finalize whether the decisions of the Zoning Commissions, Board of Appeals and of the Circuit Court of Baltimore County, in Case No. 03-C-00-6650 and 03-C-00-6687, dated April 25, 2001 is applicable or now moot.

HEARING: Thursday, June 6, 2002 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue



Lawrence E. Schmidt

LAWRENCE E. SCHMIDT G22
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.

APPEAL SIGN POSTING REQUEST

CASE NO.: 02-462-SPH

Terry Gerahty – Poor Boys - LEGAL OWNERS

2711 Taylor Avenue, Baltimore, MD 21234

9th ELECTION DISTRICT

APPEALED: 12/3/2002

LANDSCAPE
ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. *12*)

*******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.: *02-462-SPH*

Petitioner/Developer:

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

The sign was posted on *1/2*, 200*2* *3*

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

Hearing Room – Room 48

Old Courthouse, 400 Washington Avenue

April 15, 2003

NOTICE OF ASSIGNMENT

CASE #: 02-462-SPH

IN THE MATTER OF: **TERRY J. GERAHTY** – Legal Owner
2711 Taylor Avenue 9th E; 6th C

11/04/2002 – Order issued by the ZC – that Orders of DZC in 97-295-SPHA amended in 98-267-SPH; Orders of CBA and the Circuit Court in 03-C-00-6650 and 03-C-00-6687 are now MOOT.

ASSIGNED FOR:

WEDNESDAY, JUNE 18, 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 : J. Carroll Holzer, Esquire
Appellants /Protestants : Ruth and Ernest Baisden

Counsel for Legal Owner /Petitioner : C. William Clark, Esquire
Legal Owner /Petitioner : Terry Gerahty

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
C. Robert Loskot, Assistant County Attorney
Edward J. Gilliss, County Attorney

6/10/03
PP'd to 10/01/03
joint reg. for PP
6/06/03





LAW OFFICES

THE 508 BUILDING

J. CARROLL HOLZER, PA.

508 FAIRMOUNT AVE.

J. HOWARD HOLZER

TOWSON, MD. 21286

1907-1989

(410) 825-6961

THOMAS J. LEE

FAX: (410) 825-4923

OF COUNSEL

E-MAIL: JCHOLZER@BCPL.NET

June 5, 2003

#7024

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

Re: Case No. 02-462-SPH
IN THE MATTER OF TERRY GERAHTY-legal Owner

Dear Ms. Bianco:

Please be advised that by mutual agreement of the parties, the below named attorneys respectfully request a postponement of the above captioned matter scheduled for Wednesday, June 18, 2003 at 10:00 a.m. Both counsel will be pleased to work with the Board to reschedule this matter at a mutually convenient date and time. We apologize for any inconvenience to the Board of Appeals.

We appreciate your cooperation and understanding.

Very truly yours,

C. William Clark, Esq.

Very truly yours,

J. Carroll Holzer, Esq.

JCH:clh

cc: Terry Gerahty
Ruth Baisden

RECEIVED

JUN 06 2003

BALTIMORE COUNTY
BOARD OF APPEALS

10/01/03



County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

June 10, 2003

*pp'd to 11/13/03
neg. of Counsel
for Protestants*

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 02-462-SPH

IN THE MATTER OF: TERRY J. GERAHTY –Legal Owner
2711 Taylor Avenue 9th E; 6th C

11/04/2002 – Order issued by the ZC – that Orders of DZC in 97-295-SPHA amended in 98-267-SPH; Orders of CBA and the Circuit Court in 03-C-00-6650 and 03-C-00-6687 are now MOOT.

which was assigned to be heard on 6/18/03 has been **POSTPONED** by mutual agreement of the parties; and has been rescheduled to the next available date on the Board's schedule; and has been

REASSIGNED FOR: **WEDNESDAY, OCTOBER 1, 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.

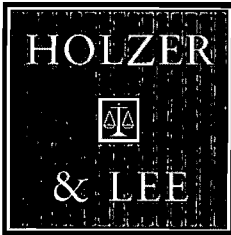
Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Ruth and Ernest Baisden

Counsel for Legal Owner /Petitioner : C. William Clark, Esquire
Legal Owner /Petitioner : Terry Gerahty

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
C. Robert Loskot, Assistant County Attorney
Edward J. Gilliss, County Attorney





LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

E-MAIL: JCHOLZER@BCPL.NET

June 16, 2003

7024

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

Re: Case No. 02-462-SPH
In the matter of Terry Gerahty

Dear Ms. Bianco:

Thank you for postponing the above captioned case, previously scheduled for June 18, 2003. Unfortunately, it was reassigned for Wednesday, October 1 and I will not be in town from Monday, September 29 through Friday, October 3. I would, therefore, appreciate if you could, without difficulty, assign the case for a Hearing earlier in September or the following week of October 6. Thank you for your consideration.

Very truly yours,

J. Carroll Holzer

cc: C. William Clark, Esq.
cc: Ruth Baisden

JCH: bdm

RECEIVED

JUN 17 2003

BALTIMORE COUNTY
BOARD OF APPEALS



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 17, 2003

*pp'd to
4/07/03 -
reg. of Counsel
for Appellants*

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 02-462-SPH

IN THE MATTER OF: **TERRY J. GERAHTY** – Legal Owner
2711 Taylor Avenue 9th E; 6th C

11/04/2002 – Order issued by the ZC – that Orders of DZC in 97-295-SPHA
amended in 98-267-SPH; Orders of CBA and the Circuit Court in 03-C-00-6650
and 03-C-00-6687 are now MOOT.

which was reassigned to be heard on 10/01/03 has been **POSTPONED** at the request of Counsel for Appellants
/Protestants due to schedule conflict (out of town 9/29 through 10/03/03); and has been

REASSIGNED FOR:

THURSDAY, NOVEMBER 13, 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 : J. Carroll Holzer, Esquire
Appellants /Protestants : Ruth and Ernest Baisden
Counsel for Legal Owner /Petitioner : C. William Clark, Esquire
Legal Owner /Petitioner : Terry Gerahty

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
C. Robert Loskot, Assistant County Attorney
Edward J. Gilliss, County Attorney



BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
FAX COVER SHEET

DATE: November 10, 2003

TO: Bud Clark **FAX** : 410-296-2765
TELEPHONE : 410-825-7850

FROM: Kathi Bianco **TELEPHONE:** 410-887-3180
FAX : 410-887-3182

RE: Case No. 02-462-SPH /*In the Matter of: Terry Gerahty*

Bud –

Per my voice mail message to you this morning, attached is a copy of the FAX from Carroll Holzer which I found on the machine when I got in this morning.

Please call me some time this morning to discuss this request.

Thanks.

Kathi

Number of pages including this page: Two (2)

Original copy to follow : Yes _____ No X



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 10, 2003

PP to 6/17/04 -
reg. of death -
medical - family -
Gerahty

THIRD NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 02-462-SPH

IN THE MATTER OF: **TERRY J. GERAHTY** – Legal Owner
2711 Taylor Avenue 9th E; 6th C

11/04/2002 – Order issued by the ZC – that Orders of DZC in 97-295-SPHA amended in 98-267-SPH; Orders of CBA and the Circuit Court in 03-C-00-6650 and 03-C-00-6687 are now MOOT.

which was reassigned to be heard on 11/13/03 has been **POSTPONED** at the request of Counsel for Appellants /Protestants due to schedule conflict (Hearing Officer's hearing); and has been

REASSIGNED FOR:

WEDNESDAY, APRIL 7, 2004 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 : J. Carroll Holzer, Esquire
Appellants /Protestants : Ruth and Ernest Baisden

Counsel for Legal Owner /Petitioner : C. William Clark, Esquire
Legal Owner /Petitioner : Terry Gerahty

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM
C. Robert Loskot, Assistant County Attorney
Edward J. Gilliss, County Attorney



Thomas J. Renner
William P. Englehart, Jr.
Robert L. Hanley, Jr.
Robert S. Glushakow
Douglas L. Burgess
C. William Clark
Catherine A. Potthast
E. Bruce Jones**
Cornelia M. Koetter*

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

J. EARLE PLUMHOFF
(1940-1988)

Newton A. Williams
(Retired 2000)

RALPH E. DEITZ
(1918-1990)

* Also admitted in D.C.
** Also admitted in New Jersey

April 5, 2004

VIA HAND DELIVERY

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

RECEIVED
APR 05 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of Terry J. Gerahty;
2711 Taylor Avenue
Case No. CBA-02-462-SPH

Dear Ms. Bianco:

I am writing to you in connection with the above captioned matter currently scheduled for a Hearing on Wednesday, April 7, 2004. My client, Terry Gerahty called my office this morning to advise that his sister, Sharon Gerahty, was admitted to John Hopkins hospital on March 24, 2004 where she underwent heart valve replacement surgery. Mr. Gerahty is her primary care giver at this time and throughout her recovery. Ms. Gerahty has custody of her 12 year old nephew, who lives with her, and it is also necessary for my client to care for him as well while Ms. Gerahty is recovering. Ms. Gerahty is currently scheduled to be released from the hospital between now and Wednesday, April 7, 2004, and Mr. Gerahty will need to be with her to transport her home and care for her.

Due to these extenuating circumstances, Mr. Gerahty requests a postponement of the hearing scheduled for April 7, 2004. I spoke to J. Carroll Holzer, attorney for the Appellants, this morning, and he indicated that while he has no objection to a postponement of this hearing, he wanted to check with his clients regarding their position. I note that the last two postponement requests

Kathleen C. Bianco

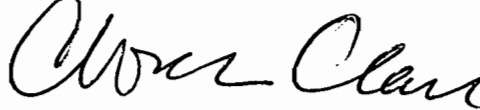
April 5, 2004

Page: 2

came for Mr. Holzer, due to conflicts with his appearance at various hearings.

Thank you for your anticipated cooperation. Please contact me with the Board's decision.

Very truly yours,

A handwritten signature in cursive script, appearing to read "C. William Clark".

C. William Clark

CWC/jkc

cc: J. Carroll Holzer, Esquire

Terry Gerahty

Z:\Data\JENNIFERDATA\WPDOCS\BUD\CWC\Clients\PoorBoy's\BdAppealsltr7.wpd



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

April 6, 2004

FOURTH NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 02-462-SPH

IN THE MATTER OF: *TERRY J. GERAHTY –Legal Owner*
2711 Taylor Avenue 9th E; 6th C

11/04/2002 – Order issued by the ZC – that Orders of DZC in 97-295-SPHA amended in 98-267-SPH; Orders of CBA and the Circuit Court in 03-C-00-6650 and 03-C-00-6687 are now MOOT.

which was reassigned to be heard on 4/07/04 has been **POSTPONED** at the request of Counsel for Petitioner due to unavailability of the Petitioner /family medical; and has been

REASSIGNED FOR:

THURSDAY, JUNE 17, 2004 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 : J. Carroll Holzer, Esquire
Appellants /Protestants : Ruth and Ernest Baisden

Counsel for Legal Owner /Petitioner : C. William Clark, Esquire
Legal Owner /Petitioner : Terry Gerahty

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM
C. Robert Loskot, Assistant County Attorney
Edward J. Gilliss, County Attorney



BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
FAX COVER SHEET

DATE: April 6, 2004

TO: Bud Clark **FAX** : 410-296-2765
TELEPHONE : 410-825-7850

Carroll Holzer **FAX** : 410-825-4923
TELEPHONE : 410-825-6961

FROM: Kathi Bianco **TELEPHONE:** 410-887-3180
FAX : 410-887-3182

RE: Case No. 02-462-SPH /In the Matter of: Terry Gerahty
Postponement of 4/07/04 hearing date

Attached is a copy of the Notice issued this date in which the subject hearing has been postponed and reassigned to Thursday, June 17, 2004 at 10 a.m.

I apologize if the quality of this FAX is not good. We have had recurring problems with outgoing fax transmittals and are awaiting a replacement machine.

If you have any questions, please call me.

Thanks.

Kathi

Number of pages including this page: Two (2)

Original copy to follow : Yes X No



County Board of Appeals of Baltimore County

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

417
①

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

May 17, 2004

NOTICE OF ASSIGNMENT

CASE #: 04-169-A

IN THE MATTER OF: *DAVID AND ROSLYN GOLDEN* - Legal Owners
/ Petitioners 7112 Pheasant Cross Drive
3rd Election District; 2nd Councilmanic District

1/07/04 – Order of Z.C. in which requested variance relief (fence height)
was GRANTED subject to restriction.

ASSIGNED FOR:

THURSDAY, JULY 29, 2004 at 10:00 a.m.

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

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

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

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

Kathleen C. Bianco
Administrator

c: Appellants /Protestants

: Dorothy S. Chung, MD, PhD
and Allen S. Mandir MD, PhD

Petitioners
Deborah C. Dopkin, Esquire
Brian Kish /Abbey Fence Company

: Roslyn Golden and David Golden MD

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
James H. Thompson, Code Enforcement [Enforcement Case #03-4981]
Timothy M. Kotroco, Director /PDM



County Board of Appeals of Baltimore County

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

June 17, 2004

NOTICE OF DELIBERATION

IN THE MATTER OF:

TERRY J. GERAHTY – Legal Owner
Case No. 02-462-SPH

Having heard this matter on 6/17/04, public deliberation has been scheduled for the following date /time:

DATE AND TIME : **THURSDAY, SEPTEMBER 2, 2004 at 9:30 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: Closing briefs are due on Friday, July 23, 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 : J. Carroll Holzer, Esquire
Appellants /Protestants : Ruth and Ernest Baisden
Counsel for Legal Owner /Petitioner : C. William Clark, Esquire
Legal Owner /Petitioner : Terry Gerahty

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM
C. Robert Loskot, Assistant County Attorney
Edward J. Gilliss, County Attorney

FYI: 2-1-7





County Board of Appeals of Baltimore County

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

255
1

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

August 10, 2004

NOTICE OF ASSIGNMENT

CASE #: 04-255-A

IN THE MATTER OF: ALLEN ASHWELL -
Legal Owner /Petitioner 7840 Denton Avenue
15th Election District; 7th Councilmanic District

3/01/2004 – Z.C.'s Order in which requested variance relief was GRANTED.

ASSIGNED FOR:

WEDNESDAY, NOVEMBER 10, 2004 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 B, Baltimore County Code.

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

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

Kathleen C. Bianco
Administrator

c: Appellants /Protestants : Grover M. and Loretta H. Hutchins
Petitioner : Allen Ashwell

Chesapeake Bay Critical Areas Commission

Office of People's Counsel
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Added 9/15/04: J. Neil Larzi Esquire
Council for M/M Hutchins



CORRESPONDENCE

motion
only
mg. #112113
station

forward
1/13/2002

CBA-00-159

on demand from C.C.

forward
12/12/02

(2)



Baltimore County
Department of Permits and
Development Management

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

May 31, 2002

Robert C. Loskot
Baltimore County Law Office
400 Washington Avenue
Towson, MD 21204

Dear Mr. Loskot:

RE: Case Number: 02-462-SPH, 2711 Taylor Avenue

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.
Supervisor, Zoning Review

WCR:
Enclosures

c: Arnold Jablon, Director 111 W. Chesapeake Avenue Towson, MD 21204
Terry J. Gerahty 8309 Dalesford Road Baltimore, MD 21234
Carl Richards 111 W. Chesapeake Avenue Towson, MD 21204
People's Counsel

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



Jes 6/6

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley *RBS / TGT*

JUN - 7 2002

DATE: June 6, 2002

Zoning Petitions

Zoning Advisory Committee Meeting of May 6, 2002

SUBJECT: NO COMMENTS FOR THE FOLLOWING ZONING ITEMS:

460,462,465-469,471

hs
6/6

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 20, 2002

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

MAY 20 2002

SUBJECT: 2711 Taylor Avenue

INFORMATION:

Item Number: 02-462

Petitioner: PDM

Zoning: BL, & DR 5.5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The property in question was rezoned as part of the 1996 Comprehensive Zoning Map process, Issue 6-041. A covenant agreement between the Villa Cresta Civic Association and Terrence Gerahty was recorded on October 6, 1996. As per the covenant agreement, a 60 foot wide DR 5.5 zoned area was retained along the Oak Avenue frontage. An additional 10 foot landscape easement was to be established within the DR/BL zone line resulting in a 70' wide open space buffer from Oak Avenue.

In conjunction with a subsequent zoning hearing, the Office of Planning in a memo to Arnold Jablon requested that Avery Harden, County Landscape Architect's specific recommendations should be incorporated in the plan. The fence was to be 8 feet in height and 70 feet from the property line. The actual fence that was installed was 6 feet in height and 60 feet from the property line pursuant to an informal agreement negotiated in conjunction with the Office of Law. For further history, see a copy of the Circuit Court order Case No 03-C-00-6650 and 03-C-00-6687.

The issue at hand is whether the fence location, height and type has become a moot issue since the parking lot has now been paved and the fence/buffer details were a condition of Deputy Commissioner Kotroco's order and the subsequent Board of Appeals order.

However, it should not be forgotten that the buffer itself was part and parcel of the rezoning and generally described in the restrictive covenant. The intent was to provide a clearly established effective buffer between the outdoor sales area/storage areas and parking lot and Oak Avenue.

Considering the aforementioned, the Office of Planning defers to the judgment of Avery Harden on the effectiveness of the buffer/fence as installed and the appropriate location of the fence and planting.

Prepared by:

Mae A. Cunniff

Section Chief:

Lynne Larkham

AFK/LL:MAC:



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:

460-462, 464-468, 470 & 471

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

cc: File

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: May 29, 2002

FROM: *pub* 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



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. 462 CR

Dear Mr. Zahner:

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

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

Very truly yours,

1- Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

My telephone number is _____

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

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

RE: PETITION FOR SPECIAL HEARING
2711 Taylor Avenue, SW side Taylor Ave,
110' SE of c/l Old Harford Rd
9th Election District, 6th Councilmanic

Legal Owner: Terry J. Gerahty
Petitioner: Balto. Co. Dept. of Permits &
Development Mgmt.
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 02-462-SPH

* * * * *

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

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 C. Loskot, Esq., Baltimore County Office of Law, 400 Washington Avenue, 2nd Floor, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court

County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258

Maryland Toll Free Number (800) 938-5802

N O T I C E O F R E C O R D

Case Number: 03-C-04-013235 AE

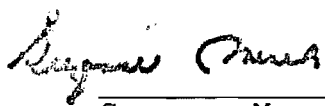
Administrative Agency : 02 462 SPH

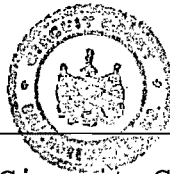
C I V I L

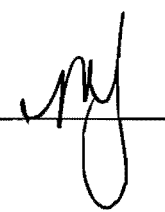
In The Matter of: Terry Gerahty, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 18th day of February, 2005.


Suzanne Mensh



Clerk of the Circuit Court, per 

Date issued: 03/07/05

TO: C CLARK

Nolan, Plumhoff & Williams, Chartered

502 Washington Avenue

Nottingham Center Ste 700

Towson, MD 21204

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F R E C O R D

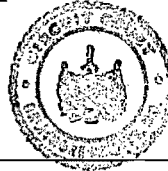
Case Number: 03-C-04-013235 AE
Administrative Agency : 02 462 SPH
C I V I L

In The Matter of: Terry Gerahty, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 18th day of February, 2005.

Suzanne Mensh



Suzanne Mensh
Clerk of the Circuit Court, per *[Signature]*

Date issued: 03/07/05

TO: J HOLZER
Holzer And Lee
The 508 Building
508 Fairmount Avenue
Towson, MD 21286

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F R E C O R D

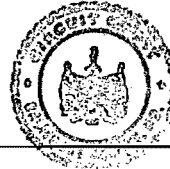
Case Number: 03-C-04-013235 AE
Administrative Agency : 02 462 SPH
C I V I L

In The Matter of: Terry Gerahty, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 18th day of February, 2005.

Suzanne Mensh



Suzanne Mensh
Clerk of the Circuit Court, per *[Signature]*

Date issued: 03/07/05

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Room 49
400 Washington Avenue
Baltimore, MD 21204

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

County Board Of Appeals Of Baltimore County
Old Courthouse Room 49
400 Washington Avenue
Baltimore MD 21204

Assignment Date: 03/21/05

Case Title: In The Matter of: Terry Gerahty, et al
Case No: 03-C-04-013235 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..... 04/05/05
2. All Motions (excluding Motions in Limine) are due by..... 04/23/05
3. TRIAL DATE is..... 06/02/05

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: J Carroll Holzer Esq

RECEIVED

MAR 23 2005

BALTIMORE COUNTY
BOARD OF APPEALS

cc: C William Clark Esq
Issue Date 03/21/05

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
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Court Costs: All court costs **MUST** be paid on the date of the settlement conference or trial.

cc: J Carroll Holzer Esq

RECEIVED

APR 21 2005

BALTIMORE COUNTY
BOARD OF APPEALS

cc: C William Clark Esq
Reissue Date 04/20/05

98-267-SPH

SE/c Old Harford Road and Taylor Avenue (2711 Taylor Ave /Poor Boys) 9th District

TERRY J. GERAHTY

August 18, 1998 Petition for Special Hearing filed by C. William Clark, Esquire, on behalf of Terry Gerahty; to remove the variance or in the alternative amend 97-295 re: the fence and light installation.

July 7, 1999 Opinion and Order issued by the DZC (Kotroco); Petition for Special Hearing is DENIED with order that all other conditions and restrictions previously imposed shall remain in full force and effect.

August 5 Notice of Appeal filed by Ruth Baisden, Protestant.

August 5 2nd Notice of Appeal filed by C. William Clark, Esquire, on behalf of Terry J. Gerahty.

March 9, 2000 Hearing held before the Board of Appeals (S.W.B.).

March 30 Public Deliberation conducted by the Board (S.W.B.).

May 31 Opinion and Order issued by the Board (Stahl, Wescott, Barranger); Ordered that the previous restrictions imposed upon the Petitioner in Case No. 97-295-SPHA regarding the fencing shall remain in full force and effect, pursuant to 4 conditions --
1) replace fence with a permanent construction; 2) replacement fence shall be placed at the existing location; 3) no parking or storage allowed within the 10-foot interior easement; and, 4) 10' interior landscape easement shall be established and maintained inside the B.L. line consistent with the requirements of said B.L. zone and the Baltimore County Landscape Manual.

June 30, 2000 Petition for Judicial Review filed in the CCT by Ruth Baisden (Protestant)
2nd Petition for Judicial Review filed in the CCT by Kathleen Lance, Legal Assistant to C. William Clark, Esquire, on behalf of Terry Gerahty.

April 25, 2001 Memorandum Opinion and Order issued by the Circuit Court for Baltimore County; case is REMANDED to the Board of Appeals with instructions to pass an Order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996 (Judge Dugan).

-----See reverse side for status of Gerahty case-----

98-235-A

SE/c South Lane and Pittsburgh Avenue (One South Lane) 12th District

EVELYN SIMS - Petitioner

December 18, 1997 Petition for Variance filed by Charles E. Brooks, Esquire, on behalf of Evelyn Sims; lot size; setbacks; buffer; drop-off area; impervious area; fence; & modified parking plan.

February 23, 1998 Opinion and Order issued by the Zoning Commissioner (Schmidt); Petition for Variance is GRANTED.

March 18 Notice of Appeal filed by People's Counsel for Baltimore County.

April 8, 1999 Prior to hearing scheduled for this date before the Board (C.W.B.), the Board met with Petitioner and Dep. People's Counsel regarding postponement; Board convened for hearing: postponement granted on the record: Ms. Sims to withdraw petition on

5/23/01

Notice of Appeal filed in the Court of Special Appeals by C. William Clark, Esquire,
On behalf of Terry Gerahty.

12/31/2002

Notice of Dismissal filed in the Court of Special Appeals and Mandate issued December 31, 2001

2/8/2002

CBA Order on Remand from the Circuit Court in which Judge Dugan orders as follows:

This case is remanded to the Board of Appeals with instructions to pass an Order regarding
the fencing of the subject property as set forth in Avery Harden's correspondence of
December 24, 1996.

Sep. 7, 2000	Approval of Landscape Plan by the Baltimore County Dept. of Permits & Dev. Management - for the Poor Boy's garden center.
Sep. 8, 2000	Approval of the Lighting Plan by the Baltimore County Dept. of Permits & Dev. Management – for the Poor Boy's garden center. (agreement of Owner to attach the lighting plan to the grading permit).
Oct 5	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of Ruth and Ernie Baisden, Appellants/Protestants.
1/3/2002	Order signed and distributed – Dismissed on Motion filed by Appellee
1/31	Petition for Judicial Review filed by J. Carroll Holzer on behalf of Ruth and Ernie Baisden.
9/20/02	Order dated 9/24/2002 by Judge Fader in Circuit Court Case No.: 03 C 02 1085 REMANDING the case back to the Board of Appeals for clarification
12/12/02	Opinion Issued By The Board Of Appeals /Appellee's Motion to Dimiss is hereby GRANTED and the appeal filed in this case is DISMISSED
1/09/2003	Petition for Judicial Review filed by J. Carroll Holzer on behalf of Ruth and Ernie Baisden.

COUNTY BOARD OF APPEALS

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

FACSIMILE TRANSMITTAL SHEET

TO AND FAX NUMBER:

NANCY C. WEST, ESQUIRE
410-296-0931

FROM:

KATHLEEN BIANCO
FAX: 410-887-3182

TELEPHONE: 410-887-3180

DATE:

DECEMBER 20, 2005

TOTAL NO. OF PAGES INCLUDING
COVER:

EIGHT (8)

RE: Information – Gerahty cases

URGENT FOR REVIEW FOR YOUR RECORDS PLEASE REPLY PLEASE RECYCLE

PERSONAL AND CONFIDENTIAL

Nancy –

Attached as discussed (copies of orders sent to you via e-mail this afternoon).

kathi

Attachment

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-04-013235

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Room 49
400 Washington Avenue
Baltimore, MD 21204

RECEIVED

MAR - 8 2005

BALTIMORE COUNTY
BOARD OF APPEALS

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F R E C O R D

Case Number: 03-C-04-013235 AE
Administrative Agency : 02 462 SPH
C I V I L

In The Matter of: Terry Gerahty, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 18th day of February, 2005.

Suzanne Mensh



Suzanne Mensh
Clerk of the Circuit Court, per *Cny*

Date issued: 03/07/05

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Room 49
400 Washington Avenue
Baltimore, MD 21204

RECEIVED

MAR - 8 2005

BALTIMORE COUNTY
BOARD OF APPEALS

BOARD OF APPEALS OF BALTIMORE COUNTY
POST-HEARING BRIEFS
IN THE MATTER OF: THOMAS PEARSE

DATE: July 26, 2004

TO: L. Stahl
D. Mohler
E. Crizer

FROM: Kathi

SUBJECT: Case No. 02-462-SPH / *In the Matter of: Terry Gerahty (Poor Boy's)*

Attached are the following documents filed in the subject matter:

- ✓ Protestants' Memorandum in Lieu of Final Argument and Appendix filed by J. Carroll Holzer, Esquire; and
- ✓ Respondent's Memorandum of Law filed by C. William Clark, Esquire, on behalf of Petitioner.

Public deliberation is scheduled in this matter on **Thursday, September 2, 2004 at 9:30 a.m.** Notice of that deliberation was sent out on June 17, 2004, the day of actual hearing.

Any questions, please call me. (Please note that there is an earlier deliberation in an unrelated zoning matter scheduled for 9 a.m. this same day; memos sent to you on 7/23/04.)

kathi

Attachments (2)



BOARD OF APPEALS OF BALTIMORE COUNTY
POST-HEARING BRIEFS
IN THE MATTER OF: THOMAS PEARSE

DATE: July 26, 2004

TO: L. Stahl
D. Mohler
E. Crizer

FROM: Kathi

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Any questions, please call me. (Please note that there is an earlier deliberation in an unrelated zoning matter scheduled for 9 a.m. this same day; memos sent to you on 7/23/04.)

kathi

Attachments (2)



PETITION OF:

TERRY GERAHTY

CIVIL ACTION NO.: 3-C-04-13235

MATTER OF: TERRY GERAHTY

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.


CLERK'S OFFICE

DATE: February 18, 2005

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Terry J. Gerahty
Case No.: 02-462-SPH

DATE: September 2, 2004

BOARD/PANEL:	Lawrence M. Stahl	LMS
	Donald L. Mohler III	DLM
	Edward W. Crizer, Jr.	EWC

RECORDED BY: Theresa R. Shelton / Legal Secretary

PURPOSE: To deliberate the following Orders by the Zoning Commissioner: 97-295-SPHA Amended in 98-267-SPH; Board of Appeal Orders in those matters and the Circuit Court Orders in cases 03-C-00-6650 and 03-C-00-6687 as MOOT.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

HISTORY/TIME LINE OF CASE ESTABLISHED AND DISCUSSED

- 1996 CZM changed to BL – Buffer to 70 feet
- 12/1996 Avery Harden's letter stating height of fence and buffer
- 3/1997 Petition for Variance – variance related to parking lot with fence / the fence became incorporated with the variance at this point
 - no connection between Harden's letter and the variance
 - Variance mentions fence as statement of fact
 - first mention of fence is in 1996
 - Avery Harden's letter pre-dates the request for variance

Date Unknown but shortly after 3/6/1997

- Meeting with Bob Barrett and Owner to reduce fence height – Fence immediately thereafter erected, inspected and approved.
- 3/1998 Communication between Mr. Gerahty and Arnold Jablon with regards to the variance becoming moot with a paved parking lot
- 7/8/1999 Decision by the Deputy Zoning Commissioner to accept the fence (as erected) as part of the variance – the Variance was GRANTED with restrictions
- Decision appealed to the Board

- Board upholds decision of the Deputy Zoning Commissioner
- Petition for Judicial Review filed in Circuit Court
- 4/25/2001 Judge Dugan passes an Order to REMAND to the Board of Appeals to issue an Order that the fencing of the subject property be set forth as stated in the Avery Harden letter of December 24, 1996
- 4/2001 Appeal filed to Court of Special Appeals
- 12/2001 Court of Special Appeals issues Mandate Dismissing the appeal filed April, 2001, by the attorney for Poor Boys, thus re-affirming the Circuit Court Order by Judge Dugan.
- 2/8/2002 Order of the Board on Remand from the Circuit Court – the Order requires that the Avery Harden letter be in compliance, per Judge Dugan's Order to the Board
- 3/11/2002 Baltimore County Code Enforcement issues a correction notice
- 3/20/2002 Letter to Code Enforcement re: Moot – Fence is part of variance
- 4/10/2002 Letter to Arnold Jablon re: not Moot - Fence to be erected according to Avery letter.
- 4/19/2002 Special Hearing requested by Terry J. Gerahty to clarify the fence issue; is it moot or not?
A Special Hearing can resolve confusion / a Special Hearing can be used to get official clarification
- 11/4/2002 Order by the Zoning Commissioner: 97-295-SPHA Amended in 98-267-SPH; Board of Appeal Orders in those matters and the Circuit Court Orders in cases 03-C-00-6650 and 03-C-00-6687 as MOOT.
- 12/3/2002 Notice of Appeal filed by Protestant
- 6/17/2004 Board convened for hearing
- 7/23/2004 Protestant's and Respondent's Memorandums received at Board of Appeals
- 9/2/2004 Public Deliberation

THE BOARD DISCUSSED THE FOLLOWING

- ✓ Fence was not originally part of the Variance request
- ✓ The Hearing Officer is drawing the connection and made the fence a statement of fact
- ✓ The fence is a separate issue and grew out of the zoning change and Hayden's letter addresses that issue
- ✓ The fence got mixed in with the Hearing Officer's Order and the Hearing Officer erred on that issue

- ✓ Petitioner must comply with the requirements as if a variance was never requested
- ✓ The Board agrees that the variance is moot with regards to the paving; due to the fact that the lot is paved; however the fence issue is not moot because the issue was prior to the variance ever being requested
- ✓ The County Executive's involvement was discussed with regards to an arrangement being made; but no negotiated settlement took place; there was no settlement at all between the parties
- ✓ Poor Boy's was told if you do this than everything will be okay and it wasn't okay.
- ✓ The Protestant was not a part of the meeting agreeing to the fence height with County officials. Baisden was not a party to that decision.
- ✓ Courts of Law and equity; relationships; fairness
- ✓ Board is not a Court of Equity
- ✓ Board is a narrowly defined Administrative Body

QUESTIONS PRESENTED

1. Arnold Jablon was wrong in petitioning for the instant Special Hearing by alleging confusion and requesting Poor Boys to reargue its case already decided by the Circuit Court. Jablon's action was an improper collateral attack on the Circuit Court's Order as well as this Board's Remand Order. Further, it is a violation of the Doctrine of *Res judicata* and Direct Estoppel by Judgment.
2. Did Arnold Jablon cause a second interference in the enforcement of the Board of Appeals Remand causing lost time and requiring Ruth and Ernest Baisden financial hardship of additional court cases and proceeding?

LEGAL ARGUMENT

1. Arnold Jablon was wrong in petitioning for the instant Special Hearing by alleging confusion and requesting Poor Boys to reargue its case already decided by the Circuit Court. Jablon's action was an improper collateral attack on the Circuit Court's Order as well as this Board's Remand Order. Further, it is a violation of the Doctrine of *Res judicata* and Direct Estoppel by Judgment.

- ✓ Board can not arbitrate outside the law
- ✓ Mr. Gerahty relied on information that the Executive Office said was okay
- ✓ The Board can not get into the issue of the information given to Gerahty as being okay – only a Court of Law/Court of Equity
- ✓ Parties are not the same as original parties
- ✓ Baltimore County asked for clarification
- ✓ Parties are the same – no new issue – the issue has been the fence throughout – Requirement of fence is at issue

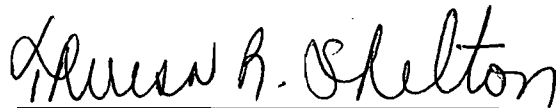
- ✓ Baltimore County is another party and could bring in an entire new issue
- ✓ Same issue/same party
- ✓ Reliance on the information given by County officials is for argument before Circuit Court – not the Board
- ✓ The fence is part of the zoning change in 1996, regardless of how it got into the Zoning Commissioner's Order

DECISIONS BY BOARD MEMBERS: Unanimous decision that the Variance is MOOT, as to the parking and restrictions; that the fence issue is part of the zoning change and was prior to the Petition for Variance and that the Order of Judge Dugan with regards to enforcement of the Avery Harden letter is Affirmed and that the Special Hearing is DENIED.

FINAL DECISION: That the following Orders by the Zoning Commissioner are moot: 97-295-SPHA Amended in 98-267-SPH; that the Circuit Court Order in cases 03-C-00-6650 and 03-C-00-6687 are AFFIRMED and that the Order of the Board of Appeals on Remand from the Circuit Court is AFFIRMED and that the fence must be constructed in accordance with the December 24, 1996 Avery Harden letter.

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



Baltimore County
Department of Permits and
Development Management

Code Inspections and
Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

December 18, 1996

Mr. David Miller
2801 Taylor Avenue
Baltimore, Maryland 21234

RE: Case No. C-96-6307
7721 Old Harford Road
9th Election District

Dear Mr. Miller:

In response to the various concerns of the Parkville Park Community Association, this division initially had been in contact with the supervisor of Sediment Control, Mike Moorefield, on December 11, 1996. At that time, we were informed that his staff had investigated the subject property relative to a water run-off complaint. The conditions noted at the site did not violate the sediment control regulations. When questions were raised as to whether the recently installed approximately 5,400 square foot, number two stone parking area would require a grading permit, the answer was no. Per Mr. Moorefield, if the surface area of the lot would prevent water from penetrating it, one would now have an impervious surface and a permit would be necessary for this installation. Since that is not the case, again, no grading permit is required.

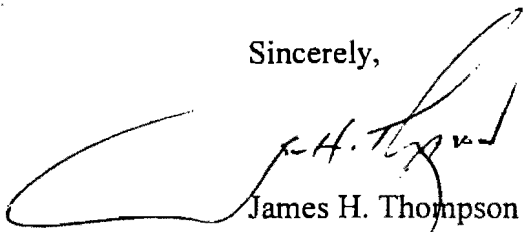
A review of 7721 Old Harford Road, from a zoning stand point, does reveal that Poor Boy's Inc. has both a temporary trailer (No. 77) and tent (B291070) permit. The tent must be disassembled by December 25, 1996 and the trailer removed from the site by December 31, 1996. On December 16, 1996, a Use Permit (No. 029777) had been approved and issued for the existing operation. In conjunction with obtaining this approval, which is issued when no building permit is required, a site plan must be submitted. Enclosed you will find a copy of that plan. In each of the three permits just mentioned, community input via the county review process is not required. However, further examination of the site plan by Zoning Review does reveal that Section 409.8.A.2 of the zoning regulations is being violated, in that a stone surface area cannot in itself be considered durable and dustless. Per Director Arnold Jablon, if a parking variance petition is not filed with Zoning Review within 30 days from the date of this letter or this stone lot is not physically removed in the same time frame, code enforcement is to proceed with the issuance of a citation. Now, should Poor Boy's Inc. elect to remove the stone lot, their site plan would have to be revised and this would effect the oversize of their outdoor display area. If a petition is filed anyone can attend the public hearing and voice their opinion to the zoning commissioner.

Mr. David Miller
December 18, 1996
Page 2

As to the matter of screening, on December 2, 1996, Avery Harden of this department did approve a landscape plan which has been forwarded to your association. To date, all trees have not in fact been planted, because weather conditions would more than likely destroy both the flowering and deciduous trees. While your association does desire an entirely different landscape plan, what is on record is all that this division can enforce. If the owner/tenant elects to pursue the parking variance, screening can be addressed during the public hearing. Further, if an addition to the existing building or an entirely new building is proposed screening would come into play during the review process with Development Manager Donald T. Rascoe.

It is trusted that this correspondence has addressed the principal concerns of the Parkville Park Community Association. Inspector Hunter Rowe will make a reinspection of this site both after December 25, 1996 and December 31, 1996 to verify compliance with the tent/trailer issues. As to the paving matter, we must wait the required 30 days and in the Spring of 1997, screening will be subject to review provided the variance petition is not pursued.

Sincerely,



James H. Thompson
Code Inspections and
Enforcement Supervisor
887-3352

JHT/hek

c: Officer Hunter Rowe

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 20, 2002

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

SUBJECT: 2711 Taylor Avenue

INFORMATION:

Item Number: 02-462

Petitioner: PDM

Zoning: BL, & DR 5.5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The property in question was rezoned as part of the 1996 Comprehensive Zoning Map process, Issue 6-041. A covenant agreement between the Villa Cresta Civic Association and Terrence Gerahty was recorded on October 6, 1996. As per the covenant agreement, a 60 foot wide DR 5.5 zoned area was retained along the Oak Avenue frontage. An additional 10 foot landscape easement was to be established within the DR/BL zone line resulting in a 70' wide open space buffer from Oak Avenue.

In conjunction with a subsequent zoning hearing, the Office of Planning in a memo to Arnold Jablon requested that Avery Harden, County Landscape Architect's specific recommendations should be incorporated in the plan. The fence was to be 8 feet in height and 70 feet from the property line. The actual fence that was installed was 6 feet in height and 60 feet from the property line pursuant to an informal agreement negotiated in conjunction with the Office of Law. For further history, see a copy of the Circuit Court order Case No 03-C-00-6650 and 03-C-00-6687.

The issue at hand is whether the fence location, height and type has become a moot issue since the parking lot has now been paved and the fence/buffer details were a condition of Deputy Commissioner Kotroco's order and the subsequent Board of Appeals order.

However, it should not be forgotten that the buffer itself was part and parcel of the rezoning and generally described in the restrictive covenant. The intent was to provide a clearly established effective buffer between the outdoor sales area/storage areas and parking lot and Oak Avenue.

Considering the aforementioned, the Office of Planning defers to the judgment of Avery Harden on the effectiveness of the buffer/fence as installed and the appropriate location of the fence and planting.

Prepared by: Mae A. Cump

Section Chief: Lynn Larkham

AFK/LL:MAC:

IN RE:

PETITION FOR SPECIAL HEARING * BEFORE THE
* ZONING COMMISSIONER
2711 TAYLOR AVENUE *
9TH ELECTION DISTRICT * OF BALTIMORE COUNTY
6TH COUNCILMANIC DISTRICT *
* CASE NO. 02-462 SPH
Legal Owner: Terry Gerahty *
* * * * *

SUBPOENA

TO: Arnold Jablon
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

You are hereby summoned and commanded to be and appear personally
before the Zoning Commissioner/Deputy Zoning Commissioner of Baltimore
County in Room 407 of the County Courts Building, 401 Bosley Avenue
and to bring _____ on the 6th day of June,
2002, regarding the above captioned case, for the purpose of testifying
at the request of:

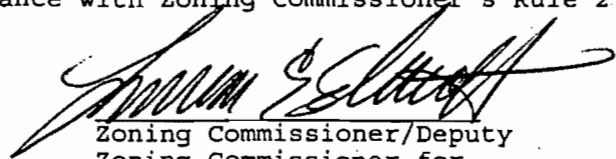
C. William Clark
Nolan, Plumhoff, & Williams, Chartered
502 Washington Avenue, Suite 700
Towson, MD 21204
(410) 823-7800
Attorney For Respondent



C. William Clark

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule 2(C).



Zoning Commissioner/Deputy
Zoning Commissioner for
Baltimore County

Issued: _____

F:\Data\KATIEDATA\data\CWC\Clients\PoorBoy's\JablonSubpoena.wpd



Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
410-887-4420
Fax: 410-296-0931

5/21/02
to
WHL
file

To: George 5/22

May 16, 2002

VIA FACSIMILE 410-296-2765

VIA FACSIMILE 410-825-4923

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204-4528

J. Carroll Holzer, Esquire
HOLZER AND LEE
825 Fairmont Avenue
Towson, Maryland 21285

Re: CASE NO: 02-462-SPH
2711 Taylor Avenue
SW/S of Taylor Avenue, 110' SE of centerline of Old Harford Road
9th Election District – 6th Councilmanic District
Legal Owner: Terry Gerahty

Gentlemen:

Since I sent you my letter of May 14, 2002, requesting your cooperation in scheduling a new hearing date for the captioned matter, the last remaining property owner in the case of *Baltimore County v. Wright*, Case No. 03-C-01-005967, the last of the condemnation actions for acquisition of the condominiums at The Villages of Tall Trees, accepted the County's offer to compromise and settle. Accordingly, my request is moot and we should be able to proceed on Thursday, June 6, 2002, at 9:00 AM as scheduled.

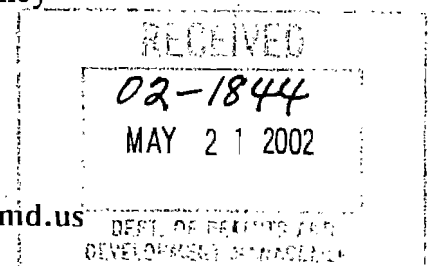
Thank you both for your kindness and consideration in this regard.

Very truly yours,

C. Robert Loskot
Assistant County Attorney

cc: Arnold Jablon

C:\CODE ENFORCEMENT\LETTERS\GERAHTY-POOR BOYS-CLARK & HOLZER-NO NEW HEARING.WPD



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





Baltimore County
Office of Law

5/15/02
TO [signature]
file
400 Washington Avenue
Towson, Maryland 21204
410-887-4420
Fax: 410-296-0931

May 14, 2002

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204-4528

J. Carroll Holzer, Esquire
HOLZER AND LEE
825 Fairmont Avenue
Towson, Maryland 21285

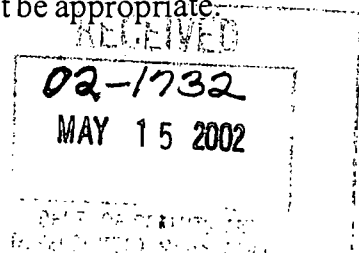
Re: CASE NO: 02-462-SPH
2711 Taylor Avenue
SW/S of Taylor Avenue, 110' SE of centerline of Old Harford Road
9th Election District – 6th Councilmanic District
Legal Owner: Terry Gerahty

Gentlemen:

I received a copy of the Notice of Hearing regarding the captioned property, which presently is scheduled for Thursday, June 6, 2002, at 9:00 AM. Unfortunately, I must inform you both that I have a scheduled trial in the Circuit Court for Baltimore County that same day. Judge Kahl has scheduled *Baltimore County v. Wright*, Case No. 03-C-01-005967, the last of the condemnation actions for acquisition of the condominiums at The Villages of Tall Trees, to begin on Tuesday, June 4. It presently is anticipated that the case will require three to four days to try to verdict.

I contacted Mr. Jablon, who suggested that I contact both of you to ascertain whether we might agree upon a mutually convenient date and time at which this hearing might be rescheduled. Accordingly, I would appreciate your both contacting me upon receipt of this letter so we might discuss the matter further. Perhaps a conference call might be appropriate.

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



Printed with Soybean Ink
on Recycled Paper

C. William Clark, Esquire
J. Carroll Holzer, Esquire
May 14, 2002
Page 2

Thank you both for your kindness and consideration in this regard.

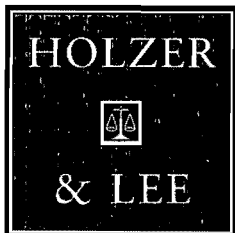
Very truly yours,

A handwritten signature in black ink, appearing to read "C. Robert Loskot", with a long horizontal flourish extending to the right.

C. Robert Loskot
Assistant County Attorney

cc: Arnold Jablon

C:\CODE ENFORCEMENT\LETTERS\GERAHTY-POOR BOYS-CLARK & HOLZER-DATES NEW HEARING.WPD



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

E-MAIL: JCHOLZER@BCPL.NET

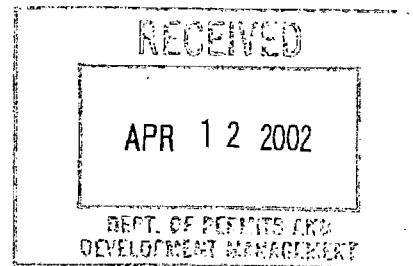
April 10, 2002

7024

Hand Delivered

Mr. Arnold Jablon, Director
Department of Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

RE: Poor Boys, Inc.
Correction Notice # 121106 & 121107...
Case # 02-1188



Dear Mr. Jablon:

I am writing as a result of a letter my client received from William Clark, attorney for Poor Boys, concerning the referenced correction notice, (attachment #1. Letter from Bud Clark dated March 20, 2002 and correction Notice # 121106 & 121107). Citation # 121106 was issued as a result of Board of Appeal's remand requiring Poor Boys to provide a permanent fence as detailed in Avery Harden's letter, dated December 24, 1996 (See attachment #2 - Board of Appeals Remand dated February 8, 2002). This order requires Poor Boys to rebuild an existing fence at a different location. To date this has not been done. In addition, the correct fence location, type of fence, and landscape needs to be amended on Poor Boys current site plan to conform to the Board of Appeals remand Order

Mr. Clark argues in his letter that the fence requirements are a condition of a variance, under which Poor Boys no longer operates, and is, therefore, a moot point. This is a stale argument already entertained by the Circuit Court Order in Case No.03-C-00-6650 - 03-C-006687 (attachment #3) which states that a permanent fence is to be installed as set forth by Avery Harden's, letter dated December 24, 1996. Mr. Clark, on behalf of Poor Boys filed an appeal to the Court of Special Appeals of Maryland. On October 5, 2001, Poor Boys filed a Motion to Dismiss the Appeal stating that Avery Harden's fence requirements were a condition to a variance and, therefore, "moot" since Poor Boys had renovated the parking lot and was no longer in need of a variance. The Court of Special Appeals denied the Motion to Dismiss the appeal as "moot" but allowed an extension for Poor Boys to file its brief. As a result, Poor Boys elected not to continue the appeal. Therefore, the Circuit Court Order is final. A Mandate from the Court of Special Appeals, and other

documents confirming this information, is enclosed (See attachment # 4 – Court Proceedings).

According to the Circuit Court Order, the existing fence needs to be replaced by an 8 ft. fence (6ft. fence with 2 ft. lattice on top) of a more permanent quality at a location 10 ft. within the BL zoning line as shown on Avery Harden's letter. Photos enclosed show that the existing fence is not of permanent quality and is currently being propped up with 2 x 4's. In addition, proper landscaping needs to be planted. The relocation of the fence, type of fence, and proper landscape is important since its purpose is to limit impacts from this business on the surrounding residential properties.

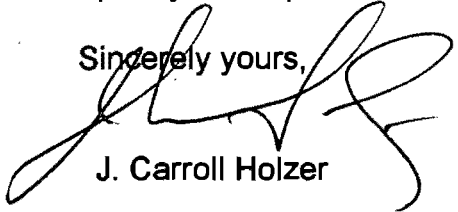
Secondly, Poor Boys argues site plans approved by Baltimore County on 10/10/2000 prevail. These plans show the existing fence, which is not a permanent fence, is in the wrong location. Last summer, Poor Boys obtained a grading permit, #B329149, and went forward with these plans to build a parking lot and outdoor display area. However, this was done "at his own risk" since, Poor Boys was aware at the time that an appeal was pending. Now that there are no further appeals, the present fence location, type of fence, and landscape all need to be amended on Poor Boys' current site plan to conform to Board of Appeals' remand.

In addition, Poor Boys have been cited for failure to comply with his current approved plan. Citation # 121107, was given along with the fence citation requiring outside sales, display and storage area to decrease and not exceed 10,895 Sq. Ft. All sales, display and storage area must be confined to the area shown on the site plan approved. To date, Poor Boys has not complied with his regulation or the fence regulation.

My client has patiently participated in the enforcement process for 6 years while enduring impacts from this business' violation of code regulations. Obviously, profits from being in violation far outweigh the cost of the county's current enforcement mechanism. It was only after fines for violations were significantly increased did we see any results in compliance with code regulations. Therefore, we respectfully request that your office enforce both citation # 121106 & 121107 administering a high fine or lien on the property until Poor Boys comes into compliance.

Your prompt attention to this matter is appreciated. If you would like to discuss this issue further, I may be reached at 410 825-6961. I anticipate your response.

Sincerely yours,


J. Carroll Holzer

cc: Bud Clark
Gary Freund
Ruth Baisden



Baltimore County
Department of Permits and
Development Management

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

April 18, 2002

Mr. J. Carroll Holzer
The 508 Building
508 Fairmount Avenue
Towson, MD 21286

Dear Mr. Holzer:

I am in receipt of your letter, dated April 10, 2002, with its attachments. I also read Mr. Clark's letter. I have reviewed all of the decisions issued by the zoning commissioner, the Board of Appeals, and by the Circuit Court.

I believe I understand the issue surrounding the location of the fence. As you know, the Division of Code Inspections and Enforcement did issue a citation to Poor Boys, Inc. that concluded the fence was not in the location required by Mr. Harden, of the Bureau of Development Plans Review, and enforced by the Circuit Court in its decision of April 25, 2001. In response to the citation, Mr. Clark argued in his letter that the fence location issue is now moot because the variance that was the source of the fence is now moot. You conversely argue that Mr. Clark is wrong.

I believe that this issue does not belong before the Code Enforcement Hearing Officer. This issue belongs before the County Board of Appeals, not in Code Enforcement. In my opinion, the best way to get this before the Board is to have a hearing before the Zoning Commissioner, from whom any interested party may take an appeal. This is not the case, as you know, from a decision of the Code Enforcement Hearing Officer. Your client would be able to take part and be a party before the Zoning Commissioner and Board. Your client would not be a party before the Hearing Officer; your client could be a witness, but could not be a party, and could not take an appeal from an adverse decision.

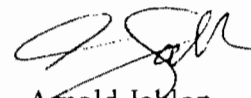
The Department of Permits and Development Management will file the petition, post and advertise at its expense. We will schedule the hearing within thirty (30) days, and at the hearing, you and your clients and Mr. Clark and his client will make the appropriate arguments as to the location of the fence which is at issue here.

Mr. Holzer
Page 2
April 18, 2002

The presently scheduled hearing before the Code Enforcement Hearing Officer will not be dismissed, but it will be postponed, pending the decision of the Zoning Commissioner and the Board of Appeals. Thus, if Mr. Clark is wrong in his legal conclusions, the code enforcement hearing will be re-scheduled.

This, I am convinced, provides the most and fairest due process for all parties involved.

Sincerely,



Arnold Jablon
Director

c: C. William Clark, Esq.

Thomas J. Renner
William P. Englehart, Jr.
Robert L. Hanley, Jr.
Robert S. Glushakow
Douglas L. Burgess
C. William Clark
Catherine A. Potthast
E. Bruce Jones**
Cornelia M. Koetter*

Law Offices
NOLAN, PLUMHOFF & WILLIAMS

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

J. EARLE PLUMHOFF
(1940-1988)

Newton A. Williams
(Retired 2000)

RALPH E. DEITZ
(1918-1990)

* Also admitted in D.C.
** Also admitted in New Jersey

January 10, 2005

Theresa Shelton, Legal Secretary
Baltimore County Board of Appeals
Old Courthouse Room 49
400 Washington Avenue
Towson, MD 21204

RECEIVED
JAN 11 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of Terry J. Gerahty
2711 Taylor Avenue
Case No. CBA-02-462-SPH

Dear Ms. Shelton:

Pursuant to your letter dated December 28, 2004, please be advised that on January 7, 2005, I spoke with Ms. Peatt, the Court Reporter assigned to transcribe the hearing in the above captioned matter which took place on June 17, 2004. As a result of that conversation, Ms. Peatt will prepare the Transcript and bill my firm for the same.

If you have any questions or concerns, please do not hesitate to contact me.

Thank you for your assistance in this matter.

Very truly yours,



C. William Clark

CWC/jkc

cc: J. Carroll Holzer, Esquire
Terry Gerahty

Y:\JENNIFERDATA\WPDOCS\BUD\CWC\Clients\PoorBoy's\BdAppealsltr8.wpd

Attachment #1.

LAW OFFICES

NOLAN, PLUMHOFF & WILLIAMS

CHARTERED

SUITE 700, NOTTINGHAM CENTRE

502 WASHINGTON AVENUE

TOWSON, MARYLAND 21204-4528

(410) 823-7800

TELEFAX: (410) 296-2765

email: npw@nolanplumhoff.com

Web: www.nolanplumhoff.com

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

NEWTON A. WILLIAMS
(RETIRED 2000)

RALPH E. DEITZ
(1918-1990)

C. WILLIAM CLARK

(410) 823-7800

EMAIL

cwclark@nolanplumhoff.com

March 20, 2002

HAND DELIVERY

Mr. Gary Freund
Division of Code Inspections & Enforcement
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Poor Boys, Inc.
Correction Notice 121106
Case No. 02-1188

Dear Mr. Freund:

My client, Terry Gerahty, who operates Poor Boys, Inc. at 7721 Old Harford Road has asked me to respond to the issue concerning the fence referenced in the above correction notice. A short history of the prior cases demonstrates that the fence can remain where it's located.

In February of 1997, Mr. Gerahty filed a Petition for Special Hearing and Variance regarding the construction of a parking lot on the subject property. In March of 1997, Deputy Zoning Commissioner Kotroco issued an Opinion and Order in Case No. 97-295-SPHA approving the construction of the parking lot, denying the requested determination that the crush and run materials constitute a "durable and dustless" surface, but granting a Variance from that requirement upon numerous conditions. Two of the conditions involved the use of certain types of lights on the lot and the location, type and style of a fence to be placed on the lot. Mr. Gerahty filed an appeal from that decision. On or about the same time period he began receiving calls and visits from various county agencies officials concerning the subject property. In May of 1997, Mr. Gerahty met with Doug Silber, Michael Davis and Bob Barrett at which time an agreement was reached between the Petitioner and the County Executives Office regarding the installation of a stockade fence. As requested, Mr. Gerahty installed the fence within 24 hours, which was subsequently inspected and approved. Subsequently, Mr. Gerahty dropped his appeal to the Board of Appeals.

March 20, 2002
Page Two

In 1998, as a result of certain other questions that had arisen, Mr. Gerahty filed a Petition to have certain conditions contained in Mr. Kotroco's March 1997 Order revised for which a Petition for Special Hearing was filed, under Case No. 98-267-SPH. In that Opinion, the Deputy Zoning Commissioner accepted the location and style of the fence. But declined to revise certain of the lighting conditions. Both Mr. Gerahty and the Baisden's took appeals from that decision.

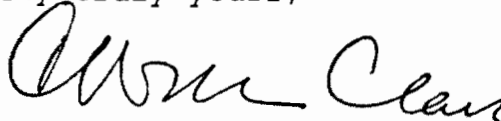
In the mean time, Mr. Gerahty had been processing an application to construct a paved parking lot which would meet the county's requirements and not require a Variance. That plan prepared by Alonso Childress has always contained Note 24 which says as follows, "Zoning case 97-295-SPHA, which permitted a stone paved parking lot on the property will not apply after the parking lot is paved in accordance with this drawing." On September 7, 2000, Avery Harden approved the landscape plan, hearing note 24 on behalf of the Department of Permits and Development Management, which was part of the site plan to accompany to the permit application B 329149 and on or about the same date approved the lighting plan in connection with that application. Subsequently, permits were issued, and the parking lot was constructed in July and August of the year 2001.

Accordingly, the Variance which was approved in 97-295-SPHA and its conditions, as well as the revisions to the conditions which were contained in 98-267-SPH no longer apply to the property. The crush and run parking lot for which the Variances had been approved, has been replaced with an asphalt parking lot pursuant to the site plan and the building permit applications under B 329149. Accordingly, the ultimate dismissal of the appeal of the Circuit Court's Opinion regarding Case No. 98-267-SPH, which was contained in Circuit Court Case No. 03-C-006650 and which was contained in the Court of Special Appeals Case No. 588, September Term, 2001, have no further application to the property and do not require relocation and reconstruction of the fence.

Should you need any further information, please contact me.

Until then, I remain.

Very truly yours,



C. William Clark

CWC/vrk

cc: Mr. Terry Gerahty ✓
Mr. & Mrs. Ernest Baisden



Baltimore County
Department of Permits and
Development Management

Attachment 1.

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Code Enforcement: 410-887-3351 Extension 7285
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

1 OF 2

BALTIMORE COUNTY UNIFORM CODE VIOLATION NOTICE

VIOLATION(S) OF TITLE 3, 7, 18, 24, OR 26 OF THE
BALTIMORE COUNTY CODE, ZONING, OR OTHER
CODES, REGULATIONS, AND POLICIES AS
INDICATED BELOW:

Violation Notice No.

121106

Case No.:

02-1188

Election District 9 Permit No. _____

Name (s) TERRY J. GERAHTY

Address 7721 OLD HARFORD RD.

Location of Violation (if different than address) 7721 OLD HARFORD RD
2711 TAYLOR AVE

Vehicle License No.: _____ Vehicle ID: _____

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

County Code:

§§ _____
§§ _____

Zoning Regulations:

§§ 501.7
§§ _____

Building Code (BOCA):

§§ 26-121
§§ _____

Livability Code (18-66):

§§ _____
§§ _____

Investment Property Act (7-66):

§§ _____

Electrical Code (NEC):

§§ _____

Plumbing Code (NSPC):

§§ _____

Dwelling (CABO):

§§ _____

Other: §§ _____

COMMENTS OR OTHER VIOLATIONS:

FENCE MUST BE RELOCATED AND REBUILT TO COMPLY
FULLY AND EXACTLY WITH THE B.O.A. ORDER DATED
2/8/02 AND THE LETTER FROM AVERY HARDEN DATED
12/24/1996.

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE
3/26/02 FAILURE TO COMPLY WILL RESULT IN THE PENALTIES DESCRIBED ON
THE REVERSE SIDE OF THIS VIOLATION NOTICE.

DATE ISSUED: 3/11/02 INSPECTOR: G. FREUND

STOP WORK NOTICE

PURSUANT TO INSPECTION AND IDENTIFICATION OF THE FOREGOING VIOLATIONS,
YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER
PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE
INSPECTIONS AND ENFORCEMENT.

THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN: _____

DATE ISSUED: _____ INSPECTOR: _____

IMPORTANT INFORMATION ON FINES AND PENALTIES PRINTED ON REVERSE SIDE.
PLEASE READ CAREFULLY.

AGENCY

IN THE MATTER OF : RUTH BAISDEN

IN THE CIRCUIT COURT

IN THE MATTER OF: TERRY GERAHTY

FOR BALTIMORE COUNTY

CIVIL ACTION

98-267-SPH

CASE NO: 03-C-00-6650

03-C-00-6687

* * * * *

MEMORANDUM OPINION AND ORDER

These two consolidated cases come before this Court as a record appeal from the Board of Appeals of Baltimore County. Ruth Baisden contends that the Board of Appeals erred by not adopting a letter, dated December 24, 1996, from Avery Harden of the Department of Permits and Development Management regarding the location of a fence. Terry Gerahty, owner of Poor Boys, a garden and plant center located at 2711 Taylor Avenue, argues the Board of Appeals erred in requiring that the fence in question be made "permanent", and that it replace the current fence with one having concrete footings, as ordered by Harden in the aforementioned letter.

The dispute between Poor Boys and Ernie and Ruth Baisden, his wife, who reside to the rear of the garden shop, arose in 1996 during the comprehensive rezoning cycle for Baltimore County. Poor Boys' property was rezoned to Business Local (BL) with a total buffer zone of 70 ft. between Poor Boys and the Baisden property. Subsequently, Mr. Gerahty entered into a restrictive covenant agreement with the Villa Cresta Association, dated October 8, 1996, regarding this buffer zone.

Mr. Harden then became involved in the process. Mr. Gerahty contends that he asked Mr. Harden to design a landscape buffer in accordance with an easement agreement with

Terry J. Gerahty

* In the

Appellant

* COURT OF SPECIAL APPEALS

vs.

* No. 588

Ruth Baisden

* September Term, 2001

Appellee

*

ORDER

This Court having considered Appellant's Motion to Dismiss Appeal and Motion to Extend Time for Filing of Briefs, and Appellee's Answer to Motion to Dismiss Appeal, it is this 13th day of November, 2001, by the Court of Special Appeals,

ORDERED that the Motion to Dismiss Appeal as moot is denied. It is further

ORDERED that the Motion to Extend Time for Filing Briefs is granted. Appellant's brief is due December 28, 2001. Appellee's brief is due January 28, 2002. The case is rescheduled to March 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, or 15, 2002.

CHIEF JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

CHIEF JUDGE



Per. #4

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Ernest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Esq.
Nolan, Plunhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

BALTIMORE COUNTY, MD
/o C. ROBERT LOSKOT
ASST. COUNTY ATTORNEY

ADDRESS

400 WASHINGTON AVE
Room 219
TODDSON, MD 21204-4606



PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

NAME

ADDRESS

TERRY GERAGHTY
C William Clark

7721 OLD Hartford RD 21234
502 WASHINGTON AVE 21204





1960 200 SCALE
ZONING MAP
N.E.8D

1966 COMPREHENSIVE ZONING MAP
ADOPTED BY
THE BALTIMORE CITY COUNCIL
OCTOBER 1996
Bill Nos. 129-96, 130-96, 131-96, 132-96, 133-96, 134-96, 135-96

"POOR BOYS"
#267

OFFICE

OFFICE

Kevin K...
Chairman, County Council

AREAS.
TRIC METHODS
1210

PETITIONERS'

EXHIBITS

3

(20020462)

Unfiled
6-17-04

Gerahy

02-462-544

Petitioners Exhibits

- ✓ 1. Restrictive Covenant Agreement
- ✓ 2. Letter to Miller from Jablon (6 pages)
- ✓ 3. Letter to Baisden's from Thompson
- ✓ 4. Notice of Hearing
- ✓ 5. Order from Dept. Zoning Comm. (T. Kotroco)
- ✓ 6. Order of Dismissal
- ✓ 7. Board of Appeals, order of Dismissal
- ✓ 8. Letter to Jablon from Gerahy dated 3-12-98
- ✓ 9. Letter to Gerahy from Jablon dated 3-18-98
- ✓ 10. Petition for Special Hearing + Order from Comm.
- ✓ 11. Deed of Easement
- ✓ 12. Plat of subject prop.
- ✓ 13. Lighting plan
- ✓ 14. Confirmatory Restrictive Covenant Agreement
- ✓ 15. Building Permit # B431416
- ✓ 16. Building Permit # B329149
- ✓ 17. Building Permit # B456511
- ✓ 18. Photos of Subject Prop. A-F

Ret. Ex. #1

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is entered into, as of the 2th day of October, 1996, by and between TERRY GERAHTY ("Gerahty") Owner, POOR BOYS, INC. ("Poor Boys") Lessee, and the VILLA CRESTA CIVIC ASSOCIATION, INC. ("Villa Cresta").

RECITALS:

A. Poor Boys is the lessee of 7721 Old Harford Road, and Terry Gerahty is the owner of a lot of land (the "Land"), containing in the aggregate approximately 1.34 acres, located in the Sixth Councilmanic District of Baltimore County, Maryland, on the southwestern side of Taylor Avenue and Oak Avenue. The Land is more particularly described in a deed recorded among the Land Records of Baltimore County at Liber 8701, Folio 730.

B. At the present time, most of the Land is zoned D.R.5.5 (1.17 acres) and RO (0.17 acres).

C. The Land is currently not developed.

D. Poor Boys has submitted a request for change in zoning for the Land as a part of the 1996 Baltimore County Comprehensive Zoning Map process. The request seeks to have all of the Land classified BL. If this Agreement is executed, Gerahty and Poor Boys intends to amend its BL request to the area as shown on the attached Drawing marked "Amended Request". This requested zoning would enable Poor Boys to upgrade and expand its garden center and farm market now on the Land and at 7721 Old Harford Road with a more attractive, modern, garden center, farm market and country store with sufficient parking. The new site would include a significantly larger number of square feet than the present site.

E. If its request for BL zoning is granted, Poor Boys desires to develop on the Land sales, storage and parking areas for the upgraded garden center with such ancillary/accessory office and retail uses as are permitted as a matter of right in

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE HK DATE 10/28/96

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County

HK 10/28/96
By

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

December 17, 1996

Pet. Ex. #2

Mr. David Miller
2801 Taylor Avenue
Parkville, MD 21234

*1 cop
given to
2*

RE: Poor Boy's
Taylor and Oak Avenues
9th Election District

Dear Mr. Miller:

Your letter to County Executive C.A. Dutch Ruppertsberger, dated December 8, 1996, was referred to me for response.

We can appreciate the concern and issues you raise. Your primary complaint centers around the new zoning which is now in place on this particular property. Under county law, the zoning of property is within the total province of the county council. The county executive has no role in this process. Zoning and re-zoning of property in Baltimore County is totally within the domain of the council. The county executive and I are not familiar with any of the reasons for the new zoning of this property.

Recent complaints, however, have been made about the site in question, both relating to zoning and to sediment control. It is my understanding that James H. Thompson, Chief of the Bureau of Code Enforcement, will be responding to you in greater detail within the next few days about these issues.

There is no new construction being undertaken on this property at this time. I do know that a new parking area has been created, but it was small enough that this did not require a grading permit. It will require a variance, however, to the zoning regulations, which require a parking area to be "durable and dustless," or its removal. The mere change in zoning designation does not in and of itself mandate submittal to the county development plan approval process. I do understand that the parking area is in place, with crusher run material, and Mr. Thompson will

Pet. Ex #3



Baltimore County
Department of Permits and
Development Management

Code Inspections and
Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

December 18, 1996

Mr. and Mrs. Ernie Baisden
7706 Oak Avenue
Baltimore, Maryland 21234

Handwritten:
Hoffman
No
3

RE: Case No. C-96-6307
7721 Old Harford Road
9th Election District

Dear Mrs. and Mrs. Baisden:

In response to the various concerns of the Parkville Park Community Association, this division initially had been in contact with the supervisor of Sediment Control, Mike Moorefield, on December 11, 1996. At that time, we were informed that his staff had investigated the subject property relative to a water run-off complaint. The conditions noted at the site did not violate the sediment control regulations. When questions were raised as to whether the recently installed approximately 5,400 square foot, number two stone parking area would require a grading permit, the answer was no. Per Mr. Moorefield, if the surface area of the lot would prevent water from penetrating it, one would now have an impervious surface and a permit would be necessary for this installation. Since that is not the case, again, no grading permit is required.

A review of 7721 Old Harford Road, from a zoning stand point, does reveal that Poor Boy's Inc. has both a temporary trailer (No. 77) and tent (B291070) permit. The tent must be disassembled by December 25, 1996 and the trailer removed from the site by December 31, 1996. On December 16, 1996, a Use Permit (No. 029777) had been approved and issued for the existing operation. In conjunction with obtaining this approval, which is issued when no building permit is required, a site plan must be submitted. Enclosed you will find a copy of that plan. In each of the three permits just mentioned, community input via the county review process is not required. However, further examination of the site plan by Zoning Review does reveal that Section 409.8.A.2 of the zoning regulations is being violated, in that a stone surface area cannot in itself be considered durable and dustless. Per Director Arnold Jablon, if a parking variance petition is not filed with Zoning Review within 30 days from the date of this letter or this stone lot is not physically removed in the same time frame, code enforcement is to proceed with the issuance of a citation. Now, should Poor Boy's Inc. elect to remove the stone lot, their site plan would have to be revised and this would effect the oversize of their outdoor display area. If a petition is filed anyone can attend the public hearing and voice their opinion to the zoning commissioner.



Baltimore County
Department of Permits and
Development Management

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

January 24, 1997

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 97-295-SPHA (Item 295)
7721 Old Harford Road - Poor Boys
SW/S Taylor Avenue, 145' NW of c/l Oak Avenue
9th Election District - 6th Councilmanic
Legal Owner(s): Terry Gerahty

Special Hearing to approve the proposed, interim parking lot.
Variance to permit parking lot paving stone in lieu of the asphalt (if special hearing disallows proposed surface) and striping, and to approve the plan as shown.

HEARING: FRIDAY, FEBRUARY 21, 1997 at 10:00 a.m. in Room 106, County Office Building.

A handwritten signature in cursive script, reading "Arnold Jablon".

Arnold Jablon
Director

A handwritten note in cursive script, reading "Proposed 1/29/97".

cc: Terry Gerahty
Newton A. Williams, Esq.

NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY FEB. 6, 1997.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

3/6/1997

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND VARIANCE - SE/Corner *
Old Harford Road & Taylor Avenue * DEPUTY ZONING COMMISSIONER
(7721 Old Harford Road) *
9th Election District * OF BALTIMORE COUNTY
6th Councilmanic District *
* Case No. 97-295-SPHA
Terry Gerahty
Petitioner * * * * *

Pet. Ex. #5

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Special Hearing and a Petition for Variance for that property known as 7721 Old Harford Road, located at its intersection with Taylor Avenue in Parkville. The Petitions were filed by the owner of the property, Terry Gerahty, through his attorney, Newton A. Williams, Esquire. The Petitioner seeks approval that a proposed interim parking lot meets the requirements of the Baltimore County Zoning Regulations (B.C.Z.R.) and, if such use is disallowed, a variance from Section 409.8 of the B.C.Z.R. to permit a stone paved parking lot in lieu of the required asphalt paving and striping. The subject property and relief sought are more particularly described on the site plan submitted, which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Terry Gerahty, legal owner of the property, James Kline, Land Planning Consultant with George W. Stephens, Jr. and Associates, who prepared the site plan for this property, and Douglas L. Burgess, Esquire, who provided Legal Counsel to the Petitioner. Appearing in opposition to the Petitioner's request were several residents from the surrounding community, including Mr. & Mrs. Ernest Baisden and Mr. James Reed, adjoining property owners.

Testimony and evidence offered revealed that the subject property is the site of an outdoor garden center known as Poor Boys. The property

Pet. Ex. 5

Pet. Ex. #6

IN RE: PETITIONS FOR SPECIAL
HEARING AND VARIANCE
S/E Corner Old Harford and
Taylor Avenue
(7721 Old Harford Road)
9th Election District
6th Councilmanic District

* BEFORE THE
* COUNTY BOARD
* OF APPEALS
* OF BALTIMORE COUNTY
* Case No. 97-295-SPHA

Handwritten signature and initials

* * * * *

ORDER OF DISMISSAL

Terry Gerahty, Petitioner by Douglas L. Burgess and Nolan, Plumhoff & Williams,
Chartered, his attorneys, hereby dismisses his appeal from the Findings of Fact and Conclusions of
Law of the Deputy Zoning Commissioner of March 6, 1997.

Handwritten signature of Douglas L. Burgess

Douglas L. Burgess
Nolan, Plumhoff & Williams, Chtd.
Suite 700 - Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(410) 823-7800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 15 day of September, 1997, that a copy of the foregoing
Order of Dismissal was mailed, postage prepaid, to Peter M. Zimmerman, People's Counsel for
Baltimore County, Court House, 400 Washington Avenue, Towson, Maryland 21204, Mr. and Mrs.
Ernest Baisden, 7706 Oak Avenue, Baltimore, Maryland 21234 and to Mr. David Miller, 2801
Taylor Avenue, Baltimore, Maryland 21234.

Handwritten signature of Douglas L. Burgess

Douglas L. Burgess

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED



County Board of Appeals of Baltimore County

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

September 24, 1997

Pet. Ex. #7

hop [unclear]

Douglas L. Burgess, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Case No. 97-295-SPHA
Terry Gerahty - Petitioner

Dear Mr. Burgess:

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

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Legal Administrator

encl.

cc: Terry Gerahty
Mr. and Mrs. Ernest Baisden
James Reed
Avery Harden
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Re T. E. #8

Poor Boy's Country Market

7721 Old Harford Road
Baltimore, Maryland 21234
(410) 668-7599

March 12, 1998

Arnold Jablon
Baltimore County Department of
Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

[Handwritten signature]

Re: Removal of Variance Conditions

Dear Mr. Jablon,

The purpose of this Spirit and Intent letter is to have the burdensome conditions of variance case # 97-295 removed from our property located at 2711 Taylor Avenue.

It's is our hope that you agree with our position that our newly installed, durable and dustless (blacktop), parking lot satisfies the surface requirements of section 409.8 in the Baltimore County Zoning Regulations. Hunter Rowe came to visit our store today before we finished the striping on our parking lot, but the enclosed pictures show the completed work. Further argument could be made that since this parking lot only contains 5 parking spaces we are exempt from section 409.8 entirely.

Thank you for your time and quick response in advance.

Best regards,

Terry Gerahty, President
Poor Boy's, Inc.

Per. Ex. #9



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

18 March, 1998

*Prop Check
No 9*

Mr. Terry Gerahty, President
Poor Boy's, Inc.
7721 Old Harford Road
Baltimore, Maryland 21234

Re: removal of variance conditions

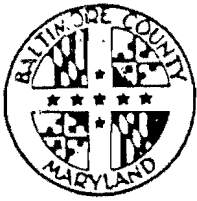
Dear Mr. Gerahty:

I am herewith returning your check, which you forwarded to this office along with your request for our opinion as to the status of the variance approved in Case # 97-295.

In response, please be advised that should your grading plan, which is currently before the county for review and approval, be accepted, then the variance you received in the aforementioned case would no longer be of application. Inasmuch as the variance was to permit you to use an alternative surface for your parking area, crusher run, to that which is required by law, it would no longer be applicable because you would be in compliance with the law, i.e., durable and dustless. The grading plan you submitted has not received final approval.

It is my understanding, however, that parking is occurring on that area which was the subject of the variance. In fact, you are utilizing the variance you were granted; thus, all of the conditions delineated by the deputy zoning commissioner are in full force and effect. You must comply with all of its conditions, and any deviation constitutes a violation. Any mootness would not occur until the grading plan were to be approved, permits issued, and the parking lot paved. At that time, and not before, would the variance order and the conditions contained therein become moot.

Whether the order and its conditions becomes moot, however, is not the issue. As we discussed, you are required to conform to all zoning requirements, landscape requirements and environmental regulations, as well as with the agreement you executed with the county. Of course, the lighting issue is still unresolved. While you have been cited for certain violations, about which a code enforcement hearing was held today, it is important that you understand the potential continuing violation involving the use of the existing lighting which shines impermissibly into the adjoining residential properties.



Baltimore County
Zoning Commissioner

RULING

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

Pet. Ex. #10

July 8, 1999

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

Re: Petition for Special Hearing
Case No. 98-267-SPH
Property: 2711 Taylor Avenue

*Proposed
No 10*

Dear Ms. Murphy:

Enclosed please find the decision rendered in the above-captioned case. The Request for Special Hearing has been denied in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

Timothy M. Kotroco

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure

c: Mr. Terry J. Gerahty
Mr. & Mrs. Ernest Baisden
✓ Mr. & Mrs. John Baker
Mr. James Reed, Jr.
Mr. Joseph Kreis

Ex. 10

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



Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
410-887-4420
Fax: 410-296-0931

June 9, 1999

Ret. Ex. # 11

C. William Clark, Esquire
Nolan, Plumhoff & Williams
Suite 700
Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204-4528

Handwritten signature: J. Clark

RE: Poor Boys/Open Space Easement

Dear Bud:

Enclosed please find a fully-executed copy of the Deed of Easement for Open Space that was executed by Mr. Gerahty and recently accepted by Baltimore County.

Very truly yours,

DOUGLAS N. SILBER
Assistant County Attorney

DNS:sjc

Enclosure

C: Robert J. Barrett
(w/enclosure)

Honorable Joseph Bartenfelder
(w/enclosure)

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

Prop. Order No 14 0014889 713 Pet-Ex. #14

CONFIRMATORY RESTRICTIVE COVENANT AGREEMENT

Made this 15 day of December, 2000, by and between TERRY GERHATY, POOR BOYS, INC., and VILLA CRESTA CIVIC ASSOCIATION, INC.

WHEREAS, on October 8, 1996, TERRY GERAHTY, POOR BOYS, INC. and VILLA CRESTA CIVIC ASSOCIATION, INC., entered into a Restrictive Covenant Agreement, which Agreement is recorded in the Land Records of Baltimore County at Liber 11868, Folio 303; and

WHEREAS, On February 25, 1998, TERRY GERAHTY and BALTIMORE COUNTY, MARYLAND, entered into an EASEMENT covering the area marked "Landscaped Conservation Easement" as shown on the Drawing attached to the Restrictive Covenant Agreement between TERRY GERAHTY, POOR BOYS, INC. and VILLA CRESTA CIVIC ASSOCIATION, INC., dated October 8, 1996; and

WHEREAS, the parties wish to enter into this Confirmatory Agreement to clarify the original Agreement between these parties;

THEREFORE, in consideration of One Dollar (\$1.00) and the mutual promises contained herein, the parties agree as follows:

1. A) **STRIKE:**

2. Landscape Buffer. It is further agreed that the area marked "Landscape Conservation Easement," as shown on the attached Drawing marked "Amended Request," shall:"

REPLACE WITH:

2. Landscape Buffer. It is further agreed that the area marked "Landscape Conservation Easement," as shown on the attached Drawing marked "Exhibit C," shall:"

1. B) **STRIKE:**

Paragraph 2(a), (b) and (c) in their entirety.

REPLACE WITH:

2(a) be offered for dedication to Baltimore County as an easement, and

2(b) the form of the Easement Agreement with Baltimore County shall be the same as marked "Exhibit B" hereto.

2(c) shall require Gerahty, Poor Boys, and its successors and assigns to establish and maintain a landscaped conservation buffer, as further

Per. Ex. #15



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

[Signature]
DIRECTOR

BUILDING PERMIT

[Signature]
BUILDINGS ENGINEER

PERMIT #: B431416 CONTROL #: SWMC- DIST: 09 PREC: 01
DATE ISSUED: 07/06/2001 TAX ACCOUNT #: 1800009926 CLASS: 06

PLANS: CONST 00 PLOT 8 R. PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 2711 TAYLOR AVE
SUBDIVISION: PARKVILLE

OWNERS INFORMATION

NAME: GERAHTY, TERRY J
ADDR: 7721 OLD HARFORD RD 21234

TENANT:

CONTR: OWNER

ENGNR:

SELLR:

WORK: CONST STORM WATER MGMT FOR 0.75AC OF DRAINAGE
AREA. SEE GRADING PERMIT B329149
PERMIT EXPIRES TWO YEARS FROM DATE OF ISSUE.

[Handwritten: Ref No 15]

BLDG. CODE: BOCA CODE
RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

25,000.00 PROPOSED USE: RETAIL + SWM
EXISTING USE: RETAIL

TYPE OF IMPRV: OTHER
USE: OTHER - NON-RESIDENTIAL

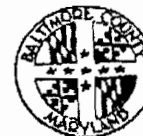
FOUNDATION: BASEMENT:
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 49.919AC
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: NC
SIDE STR SETB:
REAR SETB: NC

Kevin Sharhonda
Sediment Control Inspector II - Inspection and Enforcement

Baltimore County
Department of Environmental Protection
& Resource Management
401 Bosley Avenue, Room 416
Towson, Maryland 21204



410-887-3226 Fax: 410-887-4804



Per. Ex. #16



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

[Signature]
DIRECTOR

BUILDING PERMIT

[Signature]
BUILDINGS ENGINEER

PERMIT #: B329149 CONTROL #: CRC- DIST: 09 PREC: 21
DATE ISSUED: 07/17/2001 TAX ACCOUNT #: 1800009926 CLASS: 06

PLANO: CONST 0 PLOT 8 R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 2711 TAYLOR AVE
SUBDIVISION: PARKVILLE

OWNERS INFORMATION

NAME: GERAHTY, TERRY J
ADDR: 7721 GLD HARFORD RD 21334

TENANT:

CONTR: TBD

ENGINE:

SELLR:

WORK: GRADING & PAVING FOR PARKING LOT EXPANSION.
42,680SF DISTURBED AREA. PERMIT EXPIRES
TWO YEARS FROM DATE OF ISSUE.

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: RETAIL & GRADING
45,000.00 EXISTING USE: RETAIL

TYPE OF IMPRV: OTHER

USE: OTHER - RESIDENTIAL

FOUNDATION:

BASEMENT:

SEWAGE: PUBLIC EXIST

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 4991700'

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: NC/NC

SIDE STR SETB:

REAR SETB: NC

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

[Signature]
DIRECTOR

BUILDING PERMIT

[Signature]
BUILDINGS ENGINEER

PERMIT #: B456511 CONTROL #: RRC- DIST: 09 PREC: 21
DATE ISSUED: 07/17/2001 TAX ACCOUNT #: 1800009926 CLASS: 06

PLANS: CONST 2 PLOT 7 R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 2711 TAYLOR AVE
SUBDIVISION: PARKVILLE

OWNERS INFORMATION

NAME: GERAHTY, TERRY
ADDR: 2711 TAYLOR AVE 21234-4312

TENANT:

CONTR: BOSLEY CONSTRUCTION

ENGNR:

SELLR:

WORK: ERECT 4 QTY 6'X6' TREATED WOOD RETAINING WALLS
HT: 0'-3'. WALL A: 99LF. ON SIDE; WALL B: 51LF;
WALL C: 49LF; WALL D: 137LF ON REAR. WALL C & D
IN MIDDLE OF PROPERTY. WAIVE DATA SHEETS PER
ALB. TOTAL= 336LF

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: MERCANTILE BLDG & RETAINING WALLS
150,000.00 EXISTING USE: MERCANTILE BLDG

TYPE OF IMPRV: NEW BUILDING CONTRUCTION

USE: OTHER - NON-RESIDENTIAL

FOUNDATION:

BASEMENT:

SEWAGE: PUBLIC EXIST

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 49919SF
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: 63' / NC
SIDE STR SETB:
REAR SETB: 65'

THIS PERMIT EXPIRES
ONE YEAR FROM
DATE OF ISSUE

Prop No
No. 17



18A



18B



18C



18D



1812



18F

IN THE MATTER OF: * BEFORE THE

TERRY J. GERAHTY * COUNTY BOARD OF APPEALS

Legal Owner * OF

 * BALTIMORE COUNTY

 * Case No. 02-462-SPH

 * June 17, 2004

* * * * *

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,

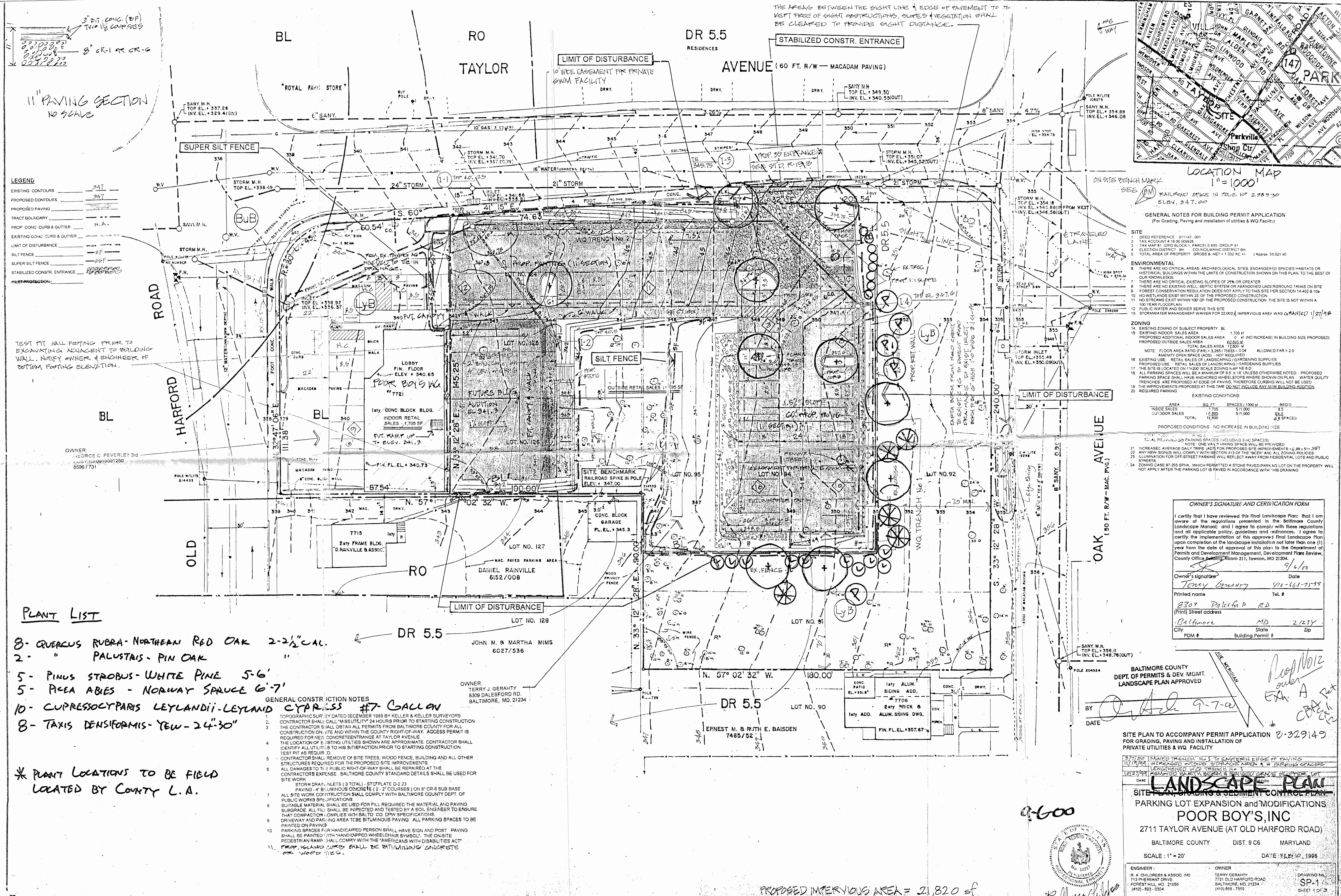
Maryland 21204, at 10 o'clock a.m., June 17, 2004.

* * * * *

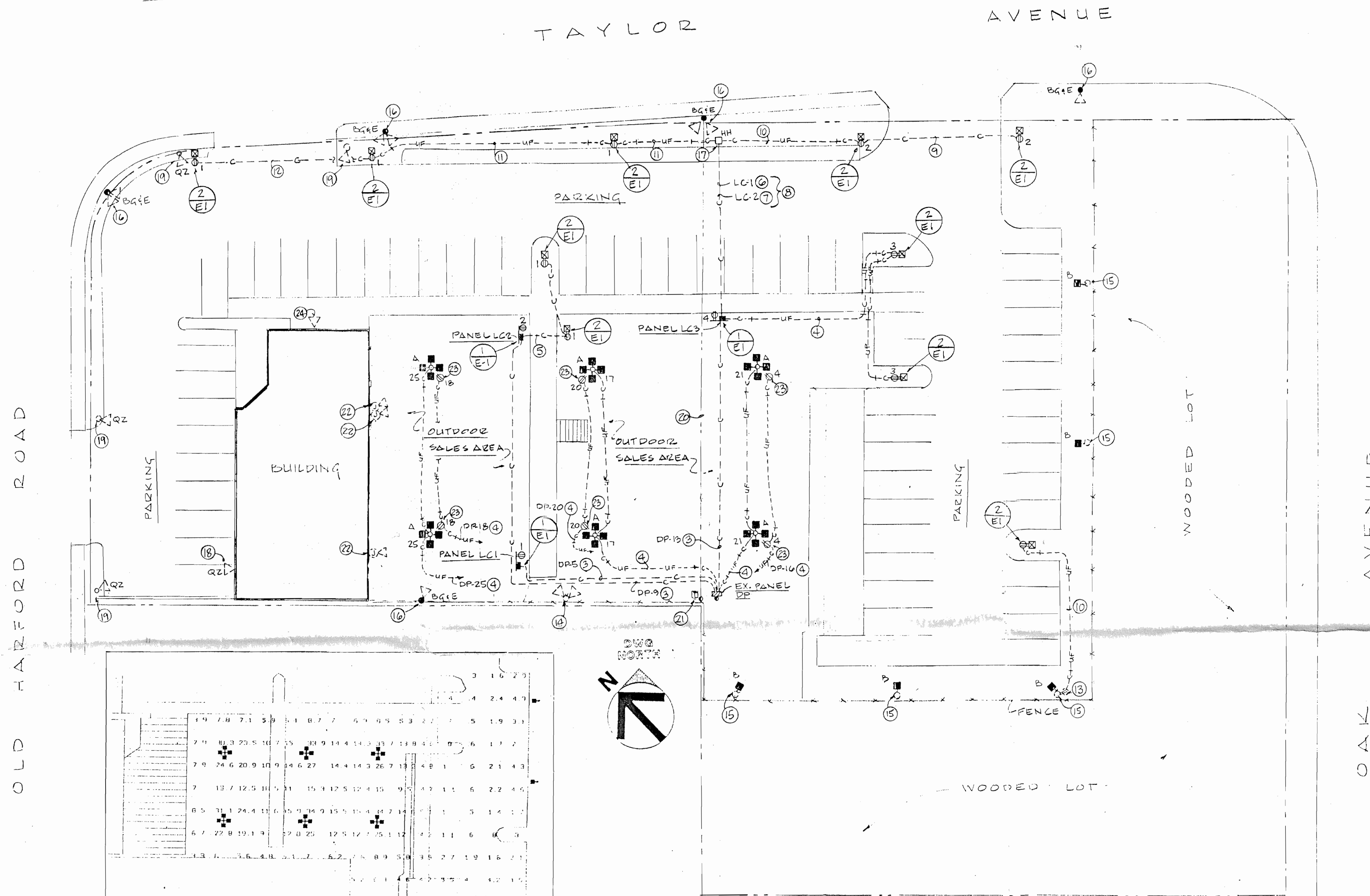
ORIGINAL

Reported by:

C.E. Peatt



PROPOSED IMPERVIOUS AREA = 21,820 sf

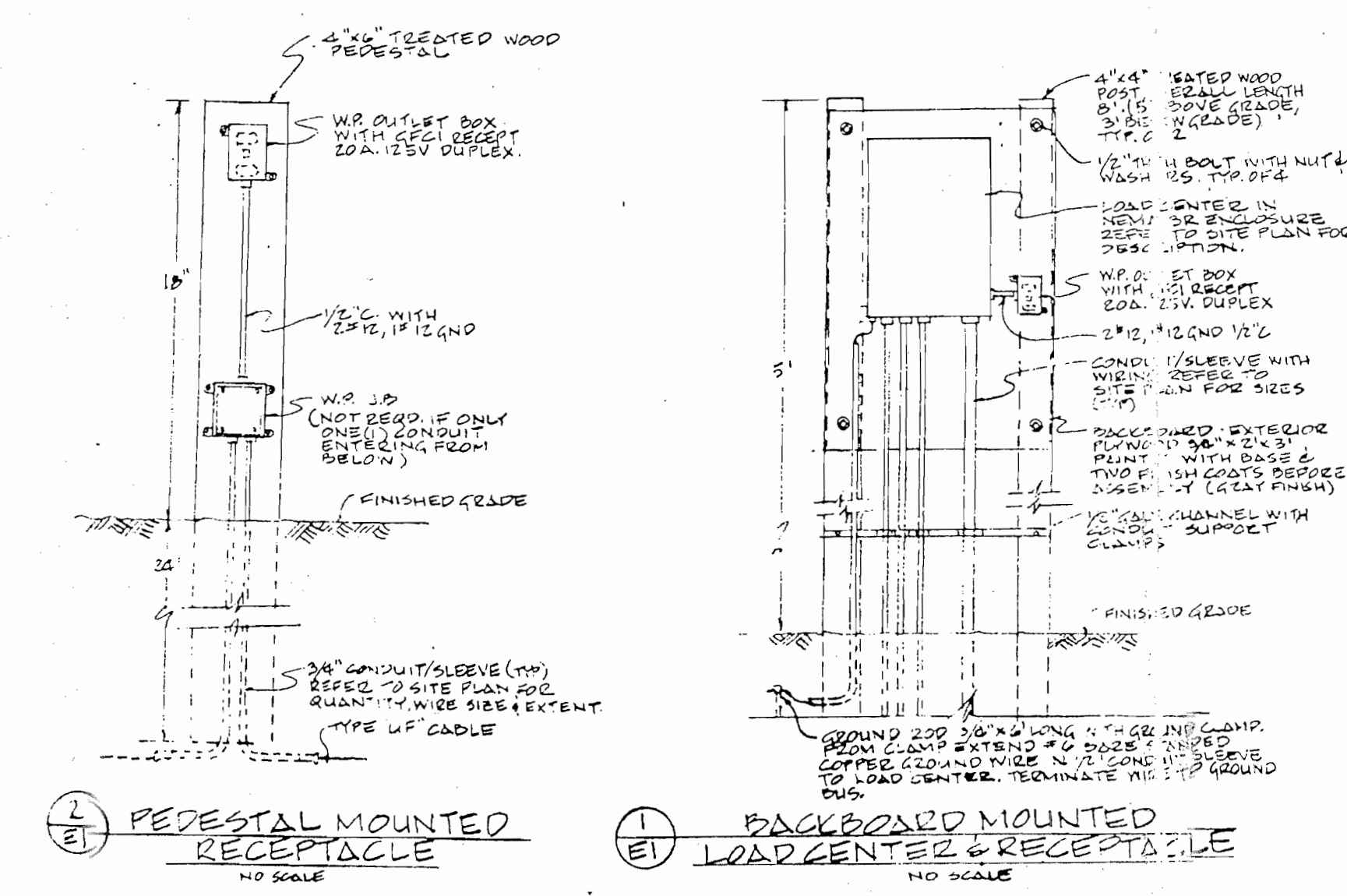


MAINTAINED FOOTCANDLES AT GRADE

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30

LIGHTING SCHEDULE (2)

TYPE	DESCRIPTION	QTY, CAT. NO.
A	FOUR (4) 250W. METAL HALIDE AREA CUTOFF (SHOE BOX STYLE) WITH 240V BALLAST. MOUNTED ON TREATED WOOD POLE. ACCESSORIES SHALL INCLUDE THE FOLLOWING: - TRI-VOLT BALLAST SUITABLE FOR 240V OPERATION - YOKE MOUNT - WOOD POLE MOUNTING BRACKET POLE SHALL BE MIN. 12" DIA. 20' LONG, INSTALL MIN. 4'-0" BELOW FIN. GRADE SECURE EA. TWO (2) BRACKETS 18" W/ 6" X 1/2" TREATED 2" HARDWARE SHALL INCLUDE NUTS AND LOCKWASHERS. CUT OFF AT EACH END EXCESS 20' 1/4" FROM NUT	2400 LIGHTING (TEL. 800-236-7050) FOUR (4) LIGHTS EA. CAT. NO. AC-4-425-M-T-RVY-1
B	SAME AS TYPE "A" EXCEPT SINGLE UNIT MOUNTED ON EX. WOOD POLE AND FURNISHED WITH BACKLIGHT SHIELD	2400 LIGHTING CAT. NO. AC-4-425-M-T-RVY-1



- GENERAL ELECTRICAL CONSTRUCTION NOTES
- PROVIDE ALL LABOR, MATERIALS AND EQUIPMENT NECESSARY FOR THE INSTALLATION OF ALL ELECTRICAL WORK SHOWN ON THIS DWG. AND IN CONFORMANCE WITH THE NATIONAL ELECTRIC CODE (NEC) AND ALL APPLICABLE BALTO. CO. AND STATE OF MARYLAND BUILDING CODES.
 - THE CONTRACTOR SHALL EXAMINE THE SITE AND OBSERVE THE CONDITIONS UNDER WHICH THE WORK WILL BE DONE OR OTHER CIRCUMSTANCES WHICH WILL AFFECT THE CONTEMPLATED WORK. CONTRACTOR SHALL APPLY AND PAY FOR ALL NECESSARY PERMITS AND CERTIFICATES OF INSPECTION REQUIRED BY THE AUTHORITY.
 - PERFORM TESTS ON ALL NEW WORK TO ASSURE THE ABSENCE OF SHORTS AND GROUND.
 - ALL EXCAVATION WORK NECESSARY FOR THE INSTALLATION OF ELECTRICAL WORK SHALL BE INCLUDED UNDER THIS CONTRACT.
 - CONDUIT INSTALLED UNDERGROUND SHALL BE PVC, CONDUIT INSTALLED ON PLOT SHALL BE EMT. ALL OUTLET AND JUNCTION BOXES SHALL BE WEATHERPROOF. ALL PANELBOARD FEEDERS SHALL BE INSTALLED IN CONDUIT.
 - DIRECT BURIAL CABLE SHALL BE TYPE UF. ALL WIRE SHALL BE COVERED.
 - PANELBOARDS SHALL BE "LOAD CENTER" TYPE. PROVIDE CIRCUIT DIRECTORY, UPDATE EX. PANEL "DP" DIRECTORY.
 - IT SHALL BE NOTED THAT A REASONABLE SHIFTING IN ELECTRICAL WORK BEFORE THE COMPLETION OF THE WORK SHALL BE EXPECTED IN ORDER TO MEET FIELD CONDITIONS AND THIS WORK SHALL BE DONE AT NO INCREASED COST TO OWNER.
 - AS-BUILT DWGS. AT COMPLETION OF WORK PROVIDE OWNER WITH AS-BUILT DWGS. SHOWING ANY REROUTING OF FEEDERS, BRANCH CIRCUITS ETC. AND/OR ANY CHANGE WHATSOEVER.
 - THE CONTRACTOR SHALL BE HELD RESPONSIBLE FOR ANY DAMAGE TO WORK ALREADY IN PLACE DUE TO EITHER HIS WORK OR THE NEGLIGENCE OF HIS WORKMEN. CORRECTION OF ALL DAMAGE WORK SHALL BE DONE BY THE TRADES WHO ORIGINALLY INSTALLED THE WORK AT THE EXPENSE OF THE CONTRACTOR UNDER THIS CONTRACT.

SCHEDULE OF PANELBOARD DP (EXISTING)											
SERVICE 120/240VOLT, 1 PHASE, 3 WIRES, +GND BUS WITH 200A MAIN C.B.											
CKT	SERVES	BREAKER		NOTES	CKT	SERVES	BREAKER		NOTES		
		TRIP P	VOLT				TRIP P	VOLT			
1	EX. LTG. / RECEPT	20	1	120	1.2	2	EX. LTG. / RECEPT	15	1	120	1.2
3		20	1	120	1.2	4		15	1	120	1.2
5	PANEL L.C.1	40	2	240	8.0	6		15	1	120	1.2
7		40	2	240	8.0	8		15	1	120	1.2
9	PANEL L.C.2	40	2	240	8.0	10		15	1	120	1.2
11		40	2	240	8.0	12		15	1	120	1.2
13	PANEL L.C.3	40	2	240	8.0	14		15	1	120	1.2
15		40	2	240	8.0	16	RECEPT. ON LIGHT POLE	20	1	120	1.2
17	PANEL M.D LIGHTS	20	2	240	2.4	18	RECEPT. ON LIGHT POLE	20	1	120	1.2
19		20	2	240	2.4	20	RECEPT. ON LIGHT POLE	20	1	120	1.2
21	PANEL M.D LIGHTS	20	2	240	2.4	22	EX SPACE				
23		20	2	240	2.4	24					
25	PANEL M.D LIGHTS	20	2	240	2.4	26					
27		20	2	240	2.4	28					
29	EX SPACE	20	2	240	2.4	30					

PANEL DP

CONN. LOAD: 141 AMPS
 DEMAND LOAD: 89 AMPS.

SCHEDULE OF PANELBOARD LCI (NEMA 3R ENCLOSURE)

SERVICE: 120/240 VOLT, 1 "PHASE", 3 WIRES, +GND BUS 100A MAINS

CKT	SERVICES	BREAKER TRIP P. VOLT	KVA	NOTES	CKT	SERVICES	BREAKER TRIP P. VOLT	KVA
1	RECEPT	20	1	120	1.2	2	SPACE	
3	SPACE	20	1	120	1.2	4	SPACE	
5	SPACE	20	1	120	1.2	6	SPACE	
7	SPACE	20	1	120	1.2	8	SPACE	

SCHEDULE OF PANELBOARD L.C.2 (NEMA 3R ENCLOSURE)

SERVICE 120/240VOLT, 1 PHASE, 3 WIRES, +GND BUS 100A MAINS.

CKT	SERVICES	BREAKER	KVA	NOTES	CKT	SERVICES	BREAKER	KVA
		TRIP P. VOLT					TRIP P. VOLT	
1	RECEPT	20	1	120	1.2	2	RECEPT	1.2
3	SPACE	20	1	120	1.2	4	SPACE	1.2
5	SPACE	20	1	120	1.2	6		
7	SPACE	20	1	120	1.2	8		

SCHEDULE OF PANELBOARD LC3 (NEMA 3R ENCLOSURE)									
SERVICE 120/240 VOLT 1 PHASE 3 WIRES + GND BUS 100A MAINS									
CKT	SERVICES	TRIP P. VOLT	BREAKER KVA	CKT	SERVICES	TRIP P. VOLT	BREAKER KVA		
1	120 VOLT 3R, 4T	20	1	2	RECEPT	20	1		
3	120 VOLT 3R, 4T			4	RECEPT				
5	120 VOLT 3R, 4T			6	SPACE				
				8	SPACE				

- DRAWING NOTES
- NEW CIRCUIT BREAKER SHALL BE COMPATIBLE WITH EX. OUTLET-HAMMER PANELBOARD.
 - CIRCUIT BREAKER SHALL BE 2ND RATED
 - 3#8, 1/2" GND, 1" C.
 - 2#12, 1/2" GND, FROM PANEL TO LAST OUTLET ON C.T. CONDUIT SLEEVES SHALL BE 3/4"
 - 2#12, 1/2" GND, FROM PANEL TO LAST OUTLET ON C.T. CONDUIT SLEEVES SHALL BE 3/4"
 - 2#10, 1/2" GND.
 - 2#12, 1/2" GND.
 - 1" 1/2" CONDUIT
 - 2#12, 1/2" GND IN 3/4" CONDUIT
 - 2#12, 1/2" GND WITH 3/4" CONDUIT SLEEVES
 - 2#10, 1/2" GND WITH 3/4" CONDUIT SLEEVES
 - 2#10, 1/2" GND IN 3/4" CONDUIT
 - EXTEND EX. RECEPTABLE BRANCH C.T. WIRING.
 - DISCONNECT EX. LTG. BRANCH C.T. WIRING TO EX. FLOODLIGHT AND CAP OFF. REMOVE EX. FLOODLIGHT AND TURN OVER TO OWNER.
 - REMOVE EX. FLOODLIGHT AND PROVIDE NEW TYPE "B", M.H. 12" A.F.G. MODIFY EX. BRANCH C.T. WIRING AS REQ'D. TO ACCOMMODATE NEW WORK.
 - 2#12, 1/2" GND TO REMAIN WITH EX. FLOODLIGHT
 - HANDHOLE W.P. NOMINAL 8" X 8" X 12" O.D. PVC CONSTRUCTION WITH 5" HOODWAZE, MOUNT FLUSH WITH FINISHED GRADE
 - EX. WALL MOUNTED INCANDESCENT QUARTZ FLOODLIGHT TO REMAIN
 - EX. POLE MOUNTED INCANDESCENT QUARTZ FLOODLIGHT TO REMAIN
 - EX. BQ. E.O. OVERHEAD INCOMING SERVICE CONDUCTORS
 - EX. BQ. E.O. POLE MTD INCOMING 120/240V, 1P, 3W SECONDARY SERVICE TRANSFORMER
 - DISCONNECT EX. LIGHTING BRANCH C.T. WIRING TO EX. FLOODLIGHT AND CAP OFF. REMOVE EX. FLOODLIGHT AND TURN OVER TO OWNER
 - RECEPTABLE 20A, 125V, DUPLEX GFI TYPE, WEATHERPROOF, MOUNT ON WOOD LIGHT POLE 18" A.F.G.
 - EX. HID WALL FLOODLIGHT TO REMAIN
 - LIGHTS MOUNTING ORIENTATION SHALL BE AS SHOWN ON THE SITE PLAN.

BALTIMORE COUNTY
DEPT. OF PERMITS & DEV. MGMT.
LANDSCAPE PLAN APPROVED

BY *Overly Hark*
DATE 9-8-00

SOOTS CONSULTANTS
19907 York Rd., P.O. Box 415
Patterson, Maryland 21120-0415
Phone: (410) 343-0266
Fax: (410) 343-0364

OUTDOOR SALES AREA
LIGHTING UPGRADE

Boor Boys
COUNTRY MARKET
7721 OLD HARFORD ROAD BALTIMORE, MD 21234

DATE: 10/25/99

DWG. NO. SE-1

SHEET: 1 OF 1

PROTESTANTS

EXHIBITS

4

(10020462)

Unfiled
6-17-04

Gerahy
02-462-SPH

Protestants Exhibits

- ✓ 1. Order from Board case # 98-267-SPH
- ✓ 2. Order from Dugan
- ✓ 3. Order from Dugan dated 4-25-01
- ✓ 4. Order from Court of Sp. Appeals
- ✓ 5. Order from Court of Sp. Appeals 10-5-01
- ✓ 6. Answer to Motion to Dismiss Appeal 10-15-01
- ✓ 7. Order from Court of Special Appeals
- ✓ 8. Mandate from Court of Special Appeals 12-26-01
- ✓ 9. Letter to Mr. Jablon from Ruth Baisden 1-31-02
- ✓ 10. 3-11-02 code violation
- ✓ 11. 3-29-02 citation
- ✓ 12. Letter to Freund from Clark 3-20-02
- ✓ 13. Letter to Jablon from Holzer (large packet)
- ✓ 14. Affidavit dated 5-20-02
- ✓ 15. Letter to Holzer from Jablon 4-18-02
- ✓ 16. Motion for an Injunction 5-31-02
- ✓ 17. a Motion to Dismiss 6-6-02
b Memorandum of Law 6-6-02
- ✓ 18. Order from Zoning Commission case # 02-462-SPH
- ✓ 19. Photos from below from both sides (6 photos)
- ~~A-F~~ A-F



County Board of Appeals of Baltimore County

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

Protestants Ex. #1

May 31, 2000

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: In the Matter of Terry J. Gerahty
/ Petitioner /Case No. 98-267-SPH

Dear Mr. Clark:

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

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: ~~Terry Gerahty~~
Mr. and Mrs. Ernie Baisden
James Reed, Jr.
Joseph Kreis
Barry Ashbury
Ellen Otto
Alice & John Baker, Jr.
Pat Keller /Planning Director
Lawrence E. Schmidt /Z.C.
Avery Harden /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

1.
Pro. Ex. # 2

IN THE MATTER OF : RUTH BAISDEN

IN THE CIRCUIT COURT

IN THE MATTER OF: TERRY GERAHTY

FOR BALTIMORE COUNTY

CIVIL ACTION

CASE NO: 03-C-00-6650

03-C-00-6687

* * * * *

MEMORANDUM OPINION AND ORDER

These two consolidated cases come before this Court as a record appeal from the Board of Appeals of Baltimore County. Ruth Baisden contends that the Board of Appeals erred by not adopting a letter, dated December 24, 1996, from Avery Harden of the Department of Permits and Development Management regarding the location of a fence. Terry Gerahty, owner of Poor Boys, a garden and plant center located at 2711 Taylor Avenue, argues the Board of Appeals erred in requiring that the fence in question be made "permanent", and that it replace the current fence with one having concrete footings, as ordered by Harden in the aforementioned letter.

The dispute between Poor Boys and Ernie and Ruth Baisden, his wife, who reside to the rear of the garden shop, arose in 1996 during the comprehensive rezoning cycle for Baltimore County. Poor Boys' property was rezoned to Business Local (BL) with a total buffer zone of 70 ft. between Poor Boys and the Baisden property. Subsequently, Mr. Gerahty entered into a restrictive covenant agreement with the Villa Cresta Association, dated October 8, 1996, regarding this buffer zone.

Mr. Harden then became involved in the process. Mr. Gerahty contends that he asked Mr. Harden to design a landscape buffer in accordance with an easement agreement with

Appendix A

①

Pro. Ex. # 3

IN THE MATTER OF: RUTH BAISDEN

IN THE CIRCUIT COURT

IN THE MATTER OF: TERRY GERAHTY

FOR BALTIMORE COUNTY

CIVIL ACTION

CASE NO: 03-C-00-6650
03-C-00-6687

* * * * *

MEMORANDUM OPINION AND ORDER

These two consolidated cases come before this Court as a record appeal from the Board of Appeals of Baltimore County. Ruth Baisden contends that the Board of Appeals erred by not adopting a letter, dated December 24, 1996, from Avery Harden of the Department of Permits and Development Management regarding the location of a fence. Terry Gerahty, owner of Poor Boys, a garden and plant center located at 2711 Taylor Avenue, argues the Board of Appeals erred in requiring that the fence in question be made "permanent", and that it replace the current fence with one having concrete footings, as ordered by Harden in the aforementioned letter.

The dispute between Poor Boys and Ernie and Ruth Baisden, his wife, who reside to the rear of the garden shop, arose in 1996 during the comprehensive rezoning cycle for Baltimore County. Poor Boys' property was rezoned to Business Local (BL) with a total buffer zone of 70 ft. between Poor Boys and the Baisden property. Subsequently, Mr. Gerahty entered into a restrictive covenant agreement with the Villa Cresta Association, dated October 8, 1996, regarding this buffer zone.

Mr. Harden then became involved in the process. Mr. Gerahty contends that he asked Mr. Harden to design a landscape buffer in accordance with an easement agreement with

Appendix A

Pls. Ex. # 45

ERRY GERAHTY	*	IN THE
Appellant	*	COURT OF SPECIAL APPEALS
v.	*	OF MARYLAND
RUTH BAISDEN	*	NO. 00588
Appellee	*	SEPTEMBER TERM, 2001

MOTION TO DISMISS APPEAL

Terry Gerahry, Appellant, by and through his attorneys, C. William Clark and Nolan, Plumhoff & Williams, Chtd., pursuant to Maryland Rule 8-601(a), hereby moves this Honorable Court to dismiss his appeal, and states unto this Honorable Court:

1. Appellant filed an appeal from the April 25, 2001 Memorandum Opinion and Order issued by the Honorable Robert N. Dugan of the Circuit Court for Baltimore County in Case No. 03-C-00-6650 and 03-C-00-6687 which were consolidated below and on appeal in Case No. 00588, September 2001.
2. The Circuit Court cases consisted of Petitions for Judicial Review of Case No.: 98-267-SPHA heard and decided by the Baltimore County Board of Appeals.
3. The Board of Appeals granted in part, and denied in part, a Petition for Special Hearing, filed by Appellant, seeking amendments to conditions placed on the granting of a variance in Case No.: 97-295-SPHA permitting the existence of a gravel parking lot in lieu of the construction of a parking lot, for Appellant's business, of a durable and dustless composition.
4. In the year 2001, Grading, Paving, and Storm Water Management Permits were issued for parking lot construction on Appellant's property. (Exhibit 1: Grading &

Law Offices
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

Appendix C7

Mo. Ex. # 5

TERRY GERAHTY

Appellant

v.

RUTH BAISDEN

Appellee

* IN THE
* COURT OF SPECIAL APPEALS
* OF MARYLAND
* NO. 00588
* SEPTEMBER TERM, 2001

* * * * *

MOTION TO EXTEND TIME FOR FILING OF BRIEFS

Terry Gerahty, Appellant, by and through his attorneys, C. William Clark and Nolan, Plumhoff & Williams, Chtd., pursuant to Maryland Rules 1-204 and 8-502(b), hereby moves this Honorable Court to extend the time for filing briefs, and states unto this Honorable Court:

1. The brief of the Appellant is to be filed with the Office of the Clerk on or before October 13, 2001.
2. The brief for the Appellee is to be filed with the Office of the Clerk on or before November 19, 2001.
3. Any reply brief of the Appellant shall be filed on or before December 13, 2001.
4. This appeal has been set for argument before this Court on the following days: January 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 2002.
5. The Appellant has filed a Motion to Dismiss Appeal, based on mootness, simultaneously with his Motion for Extending the Time for Filing Briefs.
6. In all likelihood, Appellant's Motion to Dismiss Appeal will be granted,

Law Offices
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

Appendix C 10

TERRY GERAHTY

FILE COPY

IN THE

Appellant

COURT OF

v.

SPECIAL APPEALS

RUTH BAISDEN

NO. 00588

Appellee

SEPTEMBER TERM, 2001

* * * * *

ANSWER TO MOTION TO DISMISS APPEAL

Ruth Baisden, Appellee, by her attorney J. Carroll Holzer, Holzer & Lee, hereby responds to the Appellant's Motion to Dismiss his Appeal and states:

1. Appellee Ruth Baisden acknowledges that the Circuit Court of Baltimore County in Case Nos. 03C006650 and 03C006687 which were consolidated below and on appeal in Case No. 00588, September Term, 2001 reversed in part the decision of the Baltimore County Board of Appeals in Case No. 97-295SPHA.
2. That contrary to the Appellant's Motion, Appellee states that the decision of Judge Robert N. Dugan is relevant and applicable to the property and the subject matter contained in Judge Dugan's decision. (Exhibit B)
3. The Circuit Court decision in this case required compliance with the letter of Baltimore County Department of Permits and Development Management authorized by Avery Harden dated December 24, 1996 (Exhibit A) in regard to the location and permanence of the disputed fence on the subject property. These issues pre-dated any alleged variance request for permitting processes filed by the Appellant Terry Gerahty, and in fact, were required by Baltimore County.

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
38 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

TEL: 410/925-6961
FAX: 410/925-4923

Appendix C4

Terry J. Gerahty

* In the

Appellant

* COURT OF SPECIAL APPEALS

vs.

* No. 588

Ruth Baisden

* September Term, 2001

Appellee

*

ORDER

This Court having considered Appellant's Motion to Dismiss Appeal and Motion to Extend Time for Filing of Briefs, and Appellee's Answer to Motion to Dismiss Appeal, it is this 13th day of November, 2001, by the Court of Special Appeals,

ORDERED that the Motion to Dismiss Appeal as moot is denied. It is further

ORDERED that the Motion to Extend Time for Filing Briefs is granted.

Appellant's brief is due December 28, 2001. Appellee's brief is due January 28, 2002.

The case is rescheduled to March 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, or 15, 2002.

CHIEF JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

CHIEF JUDGE



MANDATE

Court of Special Appeals

Maryland Relay Service
1-800-735-2258
T.V.O.I.C.E.

Pro. Ex. #8

No. 00588, September Term, 2001

Terry J. Gerahty
vs.
Ruth Baisden

JUDGMENT: December 26, 2001: Notice of Dismissal filed
by counsel for appellant. Appeal dismissed.

December 31, 2001: Mandate issued.

From the Circuit Court: for BALTIMORE COUNTY
00003C006650
03C006687

STATEMENT OF COSTS:

Appellant(s):

Lower Court Costs-	120.00
Steno Costs of Appellant-	266.25
Filing Fee of Appellant-	100.00

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **thirty-first** day of **December** **2001**

Leslie D. Chadet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

APP. C 1

Via Hand Delivered

January 31, 2002

Mr. Arnold Jablon, Director
Department of Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

Pro. Ex. #9

RE: Development Review Committee

Scheduled Meeting Date: February 4, 2002

Project No. 020402k

Project: Poor Boys Inc., 2711 Old Harford Road, Owner Mr. Gerahty

Request: Limited Exception to construct a shed.

Dear Mr. Jablon:

I am writing to request that the Department of Permits and Development Management **deny** Poor Boys permission to construct a shed on the subject property. I also request that Baltimore County **not grant any approvals** until Poor Boys operates its business according to its approved site plan and install the permanent fence (in its proper location) and landscaping according to specifications described in Circuit Court Order Case No.03-C-00-6650 – 03-C-006687 (See attachment no. 1 - Circuit Court Case, dated April 25, 2001).

Compatibility of Proposed Shed

I am an adjacent homeowner and share a 180ft. property line with Poor Boys. The proposed shed is a large building that would be seen over the existing fence from my yard and house. My concern is compatibility in materials, color, and use. There is little information given regarding this concern on the drawings. This business owner has stated (prior to receiving rezoning of the residential property to commercial BL) his business would be compatible to the character of the surrounding residential community.

Violation of Circuit Court Order

Circuit Court Order Case No.03-C-00-6650 – 03-C-006687 states that a permanent fence is to be installed as set forth by Avery Harden, Baltimore County Landscape Architect in his letter dated December 24, 1996 (See attachment no. 2 – Avery Harden's letter). Mr. Bud Clark, Esquire, on behalf of Poor Boys filed an appeal to the Court of Special Appeal of Maryland. Then on October 5, 2001 filed a Motion to Dismiss the Appeal stating that Avery Harden's fence requirements were a condition to a variance and therefore "moot" since Poor Boys had renovated the parking lot and no longer in need of a variance. The Court of Special Appeal denied the Motion to Dismiss the appeal as "moot" but allowed an extension for Mr. Clark to file his brief. As a result Mr. Clark elected not to continue the appeal. Therefore, the Circuit Court Order is final. A Mandate from the Court of Special Appeal and other documents confirming this information is enclosed (See attachment no. 3 – Court Proceedings).

According the Circuit Court Order the existing fence needs to be replaced by an 8 ft. fence (6ft. fence with 2 ft. lattice on top) of a more permanent quality in a location 10 ft. within the BL zoning line as shown on Avery Harden's letter. Photos enclosed show that the existing fence is not of a permanent quality and is currently being propped up with



Baltimore County
Department of Permits and
Development Management

Attachment 7.

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Code Enforcement: 410-887-3351 Extension 7285
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

1 OF 2

No. Ex. 10

BALTIMORE COUNTY UNIFORM CODE VIOLATION NOTICE

VIOLATION(S) OF TITLE 3, 7, 18, 24, OR 26 OF THE
BALTIMORE COUNTY CODE, ZONING, OR OTHER
CODES, REGULATIONS, AND POLICIES AS
INDICATED BELOW:

Violation Notice No.

121106

Case No.:

02-1188

Election District 9 Permit No. _____

Name (s) TERRY J. GERAHTY

Address 7721 OLD HARFORD RD.

Location of Violation (if different than address) 7721 OLD HARFORD RD
2711 TAYLOR AVE

Vehicle License No.: _____ Vehicle ID: _____

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

County Code:

§§ _____
§§ _____

Zoning Regulations:

§§ 501.7
§§ _____

Building Code (BOCA):

§§ 26-121
§§ _____

Livability Code (18-66):

§§ _____
§§ _____

Investment Property Act (7-66):

§§ _____

Electrical Code (NEC):

§§ _____

Plumbing Code (NSPC):

§§ _____

Dwelling (CABO):

§§ _____

Other: §§ _____

COMMENTS OR OTHER VIOLATIONS:

FENCE MUST BE RELOCATED AND REBUILT TO COMPLY
FULLY AND EXACTLY WITH THE B.O.A. ORDER DATED
2/8/02 AND THE LETTER FROM AVERY HARDEN DATED
12/24/1996.

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE
3/26/02 FAILURE TO COMPLY WILL RESULT IN THE PENALTIES DESCRIBED ON
THE REVERSE SIDE OF THIS VIOLATION NOTICE.

DATE ISSUED: 3/11/02 INSPECTOR: G. FREUND

STOP WORK NOTICE

PURSUANT TO INSPECTION AND IDENTIFICATION OF THE FOREGOING VIOLATIONS,
YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER
PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE
INSPECTIONS AND ENFORCEMENT.

THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN: _____

DATE ISSUED: _____ INSPECTOR: _____

IMPORTANT INFORMATION ON FINES AND PENALTIES PRINTED ON REVERSE SIDE.
PLEASE READ CAREFULLY.

AGENCY

P10. Ex #11



Baltimore County
Department of Permits and
Development Management

Code Inspections & Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Code Enforcement: 410-887-3351
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CITATION
SERVE ON RESIDENT AGENT, CORPORATE OFFICER, OWNER, TENANT, AS APPLICABLE

Citation/Case No. 02-1188	Property No. 09-19-391250 18-00-009926	Zoning: BL
-------------------------------------	---	-------------------

Name(s): **TERRY J. GERAHTY**

Address: **7721 OLD HARFORD RD.**

Violation Location: **7721 OLD HARFORD RD / 2711 TAYLOR AVE.**

Violation Dates: **3/11/02 THRU 3/28/02**

BALTIMORE COUNTY FORMALLY CHARGES THAT THE ABOVE-NAMED PERSON(S) DID
UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS OR REGULATIONS:

**FENCE NOT RELOCATED TO COMPLY WITH B.O.A.
ORDER DATED 2/8/02, AND LETTER FROM
AVERY HARDIN DATED 12/24/96.**

Pursuant to Section 1-8, Baltimore County Code, a civil penalty
has been assessed, as a result of the violation cited herein, in
the amount indicated:

\$ **3600.00**

A quasi-judicial hearing has been pre-scheduled in Room 116,
111 West Chesapeake Avenue, Towson, Maryland, for:

Date: **5/14/02**

Time: **9:00 AM**

Citation must be served by:

Date: **4/12/02**

I do solemnly declare and affirm, under the penalty of perjury, that the contents stated above are true
and correct to the best of my knowledge, information, and belief.

Print Name: **GARY C. FREUND**

Date: **3/29/02** Inspector's Signature: *Gary C. Freund*

SEE REVERSE SIDE FOR ADDITIONAL DETAILS AND INFORMATION

NOTICE OF INTENTION TO DEFEND

Print Name:	Citation/Case No.:
-------------	--------------------

Address:

Date: Defendant's Signature

AGENCY

LAW OFFICES

NOLAN, PLUMHOFF & WILLIAMS

CHARTERED

SUITE 700, NOTTINGHAM CENTRE

502 WASHINGTON AVENUE

TOWSON, MARYLAND 21204-4528

(410) 823-7800

TELEFAX: (410) 296-2765

email: npw@nolanplumhoff.com

Web: www.nolanplumhoff.com

JAMES D. NOLAN
(RETIRED 1980)J. EARLE PLUMHOFF
(1940-1988)NEWTON A. WILLIAMS
(RETIRED 2000)RALPH E. DEITZ
(1918-1990)

Pro. Ex. #12

C. WILLIAM CLARK

(410) 823-7800

EMAIL

cwclark@nolanplumhoff.com

March 20, 2002

HAND DELIVERY

Mr. Gary Freund
 Division of Code Inspections & Enforcement
 111 W. Chesapeake Avenue
 Towson, Maryland 21204

RE: Poor Boys, Inc.
 Correction Notice 121106
Case No. 02-1188

Dear Mr. Freund:

My client, Terry Gerahty, who operates Poor Boys, Inc. at 7721 Old Harford Road has asked me to respond to the issue concerning the fence referenced in the above correction notice. A short history of the prior cases demonstrates that the fence can remain where it's located.

In February of 1997, Mr. Gerahty filed a Petition for Special Hearing and Variance regarding the construction of a parking lot on the subject property. In March of 1997, Deputy Zoning Commissioner Kotroco issued an Opinion and Order in Case No. 97-295-SPHA approving the construction of the parking lot, denying the requested determination that the crush and run materials constitute a "durable and dustless" surface, but granting a Variance from that requirement upon numerous conditions. Two of the conditions involved the use of certain types of lights on the lot and the location, type and style of a fence to be placed on the lot. Mr. Gerahty filed an appeal from that decision. On or about the same time period he began receiving calls and visits from various county agencies officials concerning the subject property. In May of 1997, Mr. Gerahty met with Doug Silber, Michael Davis and Bob Barrett at which time an agreement was reached between the Petitioner and the County Executives Office regarding the installation of a stockade fence. As requested, Mr. Gerahty installed the fence within 24 hours, which was subsequently inspected and approved. Subsequently, Mr. Gerahty dropped his appeal to the Board of Appeals.



Baltimore County
Department of Permits and
Development Management

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

April 18, 2002

Pro. Ex. #15

Mr. J. Carroll Holzer
The 508 Building
508 Fairmount Avenue
Towson, MD 21286

Dear Mr. Holzer:

I am in receipt of your letter, dated April 10, 2002, with its attachments. I also read Mr. Clark's letter. I have reviewed all of the decisions issued by the zoning commissioner, the Board of Appeals, and by the Circuit Court.

I believe I understand the issue surrounding the location of the fence. As you know, the Division of Code Inspections and Enforcement did issue a citation to Poor Boys, Inc. that concluded the fence was not in the location required by Mr. Harden, of the Bureau of Development Plans Review, and enforced by the Circuit Court in its decision of April 25, 2001. In response to the citation, Mr. Clark argued in his letter that the fence location issue is now moot because the variance that was the source of the fence is now moot. You conversely argue that Mr. Clark is wrong.

I believe that this issue does not belong before the Code Enforcement Hearing Officer. This issue belongs before the County Board of Appeals, not in Code Enforcement. In my opinion, the best way to get this before the Board is to have a hearing before the Zoning Commissioner, from whom any interested party may take an appeal. This is not the case, as you know, from a decision of the Code Enforcement Hearing Officer. Your client would be able to take part and be a party before the Zoning Commissioner and Board. Your client would not be a party before the Hearing Officer; your client could be a witness, but could not be a party, and could not take an appeal from an adverse decision.

The Department of Permits and Development Management will file the petition, post and advertise at its expense. We will schedule the hearing within thirty (30) days, and at the hearing, you and your clients and Mr. Clark and his client will make the appropriate arguments as to the location of the fence which is at issue here.



IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

IN THE MATTER OF: RUTH BAISDEN

IN THE MATTER OF: TERRY GERAHTY

* CIVIL ACTION

* CASE NO. 03-C-00-6650
03-C-00-6687

* Pro. Ex. #16

*

*

* * * * *

**MOTION FOR AN INJUNCTION, MANDAMUS,
ENFORCEMENT OF COURT ORDER, AND CONTEMPT OF COURT**

Ruth and Ernie Baisden, by their attorney J. Carroll Holzer, Holzer and Lee, hereby request this Circuit Court of Baltimore County for an injunction against Poor Boys, Inc. and Terry Gerahty, Owner to require compliance with this Court's Order of the Honorable Robert N. Dugan, Judge, dated April 25th, 2001, requiring the construction of a permanent fence and the location thereof as determined by the Court in its "Memorandum and Opinion Order" of that date; a mandamus against Baltimore County requiring the county to enforce the zoning regulations of Baltimore County as interpreted by this Court in its order of April 25th, 2001; and enforcement of this Court's order without any further need of hearings or other procedures as required by this Court's Order and the Order of the Baltimore County Board of Appeals dated February 8th, 2002 in which the Board of Appeals required the subject property be accomplished "as set forth in Avery Harden's correspondence of December 24th, 1996, a copy of which is attached hereto and made a part of this order," and further says in support:

1. Ruth and Ernie Baisden appealed a Board of Appeals decision to this Court, which resulted in a "Memorandum Opinion and Order" of this Court by the Honorable Robert N. Dugan, Judge on April 25th, 2001. The Court reversed the

IN THE MATTER OF:

* BEFORE THE ZONING COMMISSIONER

2711 TAYLOR AVENUE

* OF

SW/S of Taylor Avenue
110' SE of Centerline of Old
Harford Road

* BALTIMORE COUNTY

Pro. Ex. #12a

9th Election District
6th Councilmanic District

* CASE NO. 02-462-SPH

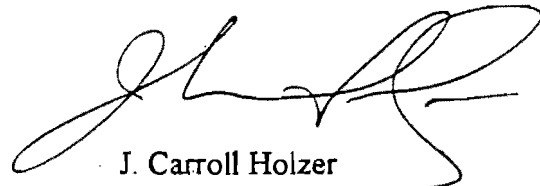
Legal Owner: Terry Gerahty

**MOTION TO DISMISS PETITION FOR SPECIAL HEARING ON THE BASIS
OF THE DOCTRINE OF RES JUDICATA AND THE DOCTRINE OF DIRECT
ESTOPPEL BY JUDGMENT**

Ruth and Ernie Baisden, by their attorney J. Carroll Holzer, Holzer and Lee, hereby submit this Motion to Dismiss the Petition for Special Hearing filed by Baltimore County on the bases that the instant issue has been litigated and determined by Judge Robert N. Dugan's Order of April 25th, 2001 in Case No. 03-C-00-6650 and 03-C-00-6687, and says:

1. That the substance and merits of this Motion is contained in the attached "Motion for Injunction, Mandamus, Enforcement of Court Order, and Contempt of Court" filed in Case No. 03-C-00-6650 and 03-C-00-6687, attached hereto and incorporated herein as Exhibit A.
2. That this proceeding is illegal and improper and is prevented by the application of the principles of Res judicata and Direct Estoppel by judgment and should not take place. (See undersigned counsel's Memorandum attached, adopted and incorporated herein as Exhibit B).
3. That the Baisden's request that the Zoning Commissioner Dismiss the Petition for Special Hearing and require enforcement of Judge Dugan's Order of April 25, 2001.

Respectfully Submitted,



J. Carroll Holzer
508 Fairmount Avenue
Towson MD 21286
410-825-6961

IN THE MATTER OF:

* BEFORE THE ZONING COMMISSIONER

2711 TAYLOR AVENUE

* OF

SW/S of Taylor Avenue
110' SE of Centerline of Old
Harford Road

* BALTIMORE COUNTY

9th Election District
6th Councilmanic District

*
* CASE NO. 02-462-SPH

Legal Owner: Terry Gerahty

* * * * *

MEMORANDUM OF LAW

Ruth and Ernie Baisden, by and through their attorney J. Carroll Holzer and Holzer and Lee, hereby submit the following memorandum of law as authority in support of their Motion to Dismiss the Petition for Special Hearing and say:

1. Doctrine of Res judicata

An un-reversed final decision of the Court, passed in the exercise of its discretion upon issues of fact or upon mixed issues of law and fact as fully binding upon the parties to the cause. In the instant matter, the parties are the same; the facts are the same which have been previously litigated and determined by the Honorable Robert Dugan's Order of April 25, 2001. See *Board of County Commissioners of Cecil County v. Racine*, 24 Md. App. 435 (1976); *A.B. Veirs, Inc. v. Whalen*, 256 Md. 162 (1969); *Davis v. Frederick County Board of County Commissioners*, 25 Md. App. 68 (1975)

2. Doctrine of Direct Estoppel by Judgment

Pro. Ex. # 18

IN RE: PETITION FOR SPECIAL HEARING
SW/S Taylor Avenue, 110' SE of the c/l
Old Harford Road
(2711 Taylor Avenue)
9th Election District
6th Council District

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 02-462-SPH

Baltimore County Department of Permits and
Development Management – Petitioners;
Terry J. Gerahty, Legal Owner

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing for the property known as 2711 Taylor Avenue, owned by Terry J. Gerahty. The Petition was filed by Arnold Jablon, Director, Baltimore County's Department of Permits and Development Management (DPDM), through Robert C. Loskot, Esquire, Baltimore County's Office of Law, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.). That Section provides the Zoning Commissioner with broad discretion to interpret and implement the zoning regulations, and "...the power to conduct such other hearings and pass such Orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations..." The Petition for Special Hearing filed in the instant case seeks to clarify and finalize whether the decisions of the Deputy Zoning Commissioner (in prior Case No. 97-295-SPHA, and as amended in Case No. 98-267-SPH), the Board of Appeals and the Circuit Court of Baltimore County in Case Nos. 03-C-00-6650 and 03-C-00-6687, dated April 25, 2001, are applicable or are now moot.

Appearing at the requisite public hearing on behalf of the Petition was Robert C. Loskot, Esquire, Assistant County Attorney on behalf of Baltimore County, Maryland. Also present was Terry L. Gerahty, legal owner of the subject property, and his attorney, C. William Clark, Esquire. In addition, Ernest M. and Ruth E. Baisden, owners of the adjacent property known as 7706 Oak

Part 18



F2. Oak Ave

2/3 of way towards Basidens

19 A



Fr. Next to Baisden's Driveway

198

195



Fr. Biden's Back Patio

19C



R. Corner of Raisen's Driveway
+ Oak Ave

RD



Far Next to Baiston's Driveway
Looking towards Rainville's Garage

195



19 F

Re. Census of Oak + Taylor Ave

PROPERTY OWNER'S

EXHIBITS

(5)

(20020462)

(5)

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is entered into, as of the 24th day of October, 1996, by and between TERRY GERAHTY ("Gerahty") Owner, POOR BOYS, INC. ("Poor Boys") Lessee, and the VILLA CRESTA CIVIC ASSOCIATION, INC. ("Villa Cresta").

RECITALS:

A. Poor Boys is the lessee of 7721 Old Harford Road, and Terry Gerahty is the owner of a lot of land (the "Land"), containing in the aggregate approximately 1.34 acres, located in the Sixth Councilmanic District of Baltimore County, Maryland, on the southwestern side of Taylor Avenue and Oak Avenue. The Land is more particularly described in a deed recorded among the Land Records of Baltimore County at Liber 8701, Folio 730.

B. At the present time, most of the Land is zoned D.R.5.5 (1.17 acres) and RO (0.17 acres).

C. The Land is currently not developed.

D. Poor Boys has submitted a request for change in zoning for the Land as a part of the 1996 Baltimore County Comprehensive Zoning Map process. The request seeks to have all of the Land classified BL. If this Agreement is executed, Gerahty and Poor Boys intends to amend its BL request to the area as shown on the attached Drawing marked "Amended Request". This requested zoning would enable Poor Boys to upgrade and expand its garden center and farm market now on the Land and at 7721 Old Harford Road with a more attractive, modern, garden center, farm market and country store with sufficient parking. The new site would include a significantly larger number of square feet than the present site.

E. If its request for BL zoning is granted, Poor Boys desires to develop on the Land sales, storage and parking areas for the upgraded garden center with such ancillary/accessory office and retail uses as are permitted as a matter of right in

Prop. No 1
 AGRICULTURAL TRANSFER TAX
 NOT APPLICABLE

SIGNATURE HK DATE 10/28/96

RECEIVED FOR TRANSFER
 State Department of
 Assessments & Taxation
 for Baltimore County

HK 10/28/96
 By Date

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

December 17, 1996

Mr. David Miller
2801 Taylor Avenue
Parkville, MD 21234

Rec'd No 2

RE: Poor Boy's
Taylor and Oak Avenues
9th Election District

Dear Mr. Miller:

Your letter to County Executive C.A. Dutch Ruppertsberger, dated December 8, 1996, was referred to me for response.

We can appreciate the concern and issues you raise. Your primary complaint centers around the new zoning which is now in place on this particular property. Under county law, the zoning of property is within the total province of the county council. The county executive has no role in this process. Zoning and re-zoning of property in Baltimore County is totally within the domain of the council. The county executive and I are not familiar with any of the reasons for the new zoning of this property.

Recent complaints, however, have been made about the site in question, both relating to zoning and to sediment control. It is my understanding that James H. Thompson, Chief of the Bureau of Code Enforcement, will be responding to you in greater detail within the next few days about these issues.

There is no new construction being undertaken on this property at this time. I do know that a new parking area has been created, but it was small enough that this did not require a grading permit. It will require a variance, however, to the zoning regulations, which require a parking area to be "durable and dustless," or its removal. The mere change in zoning designation does not in and of itself mandate submittal to the county development plan approval process. I do understand that the parking area is in place, with crusher run material, and Mr. Thompson will



Baltimore County
Department of Permits and
Development Management

Code Inspections and
Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

December 18, 1996

Mr. and Mrs. Ernie Baisden
7706 Oak Avenue
Baltimore, Maryland 21234

RE: Case No. C-96-6307
7721 Old Harford Road
9th Election District

Ref Jones
No
3

Dear Mrs. and Mrs. Baisden:

In response to the various concerns of the Parkville Park Community Association, this division initially had been in contact with the supervisor of Sediment Control, Mike Moorefield, on December 11, 1996. At that time, we were informed that his staff had investigated the subject property relative to a water run-off complaint. The conditions noted at the site did not violate the sediment control regulations. When questions were raised as to whether the recently installed approximately 5,400 square foot, number two stone parking area would require a grading permit, the answer was no. Per Mr. Moorefield, if the surface area of the lot would prevent water from penetrating it, one would now have an impervious surface and a permit would be necessary for this installation. Since that is not the case, again, no grading permit is required.

A review of 7721 Old Harford Road, from a zoning stand point, does reveal that Poor Boy's Inc. has both a temporary trailer (No. 77) and tent (B291070) permit. The tent must be disassembled by December 25, 1996 and the trailer removed from the site by December 31, 1996. On December 16, 1996, a Use Permit (No. 029777) had been approved and issued for the existing operation. In conjunction with obtaining this approval, which is issued when no building permit is required, a site plan must be submitted. Enclosed you will find a copy of that plan. In each of the three permits just mentioned, community input via the county review process is not required. However, further examination of the site plan by Zoning Review does reveal that Section 409.8.A.2 of the zoning regulations is being violated, in that a stone surface area cannot in itself be considered durable and dustless. Per Director Arnold Jablon, if a parking variance petition is not filed with Zoning Review within 30 days from the date of this letter or this stone lot is not physically removed in the same time frame, code enforcement is to proceed with the issuance of a citation. Now, should Poor Boy's Inc. elect to remove the stone lot, their site plan would have to be revised and this would effect the oversize of their outdoor display area. If a petition is filed anyone can attend the public hearing and voice their opinion to the zoning commissioner.



Baltimore County
Department of Permits and
Development Management

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

January 24, 1997

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 97-295-SPHA (Item 295)
7721 Old Harford Road - Poor Boys
SW/S Taylor Avenue, 145' NW of c/l Oak Avenue
9th Election District - 6th Councilmanic
Legal Owner(s): Terry Gerahty

Special Hearing to approve the proposed, interim parking lot.
Variance to permit parking lot paving stone in lieu of the asphalt (if special hearing disallows proposed surface) and striping, and to approve the plan as shown.

HEARING: FRIDAY, FEBRUARY 21, 1997 at 10:00 a.m. in Room 106, County Office Building.

Arnold Jablon
Director

cc: Terry Gerahty
Newton A. Williams, Esq.

- NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY FEB. 6, 1997.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.





Baltimore County
Zoning Commissioner
Office of Planning and Zoning

Suite 112, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4386

March 6, 1997

Newton A. Williams, Esquire
Douglas L. Burgess, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING and VARIANCE
SE/Corner Old Harford Road & Taylor Avenue
(7721 Old Harford Road)
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 97-295-SPHA

*Rec'd
No 5*

Dear Messrs. Williams & Burgess:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing 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 Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in cursive script, reading "Timothy Kotroco".

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Terry Gerahty
7721 Harford Road, Baltimore, Md. 21234

✓ Mr. & Mrs. Ernest Baisden
7706 Oak Avenue, Baltimore, Md. 21234

Mr. James Reed
7705 Oak Avenue, Baltimore, Md. 21234

Mr. Avery Harden, DPDP; People's Counsel; Case File

Exh. D

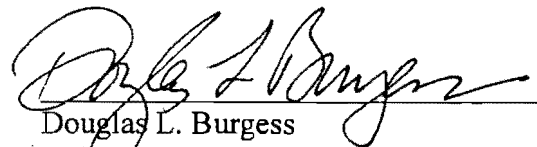
IN RE: PETITIONS FOR SPECIAL
HEARING AND VARIANCE
S/E Corner Old Harford and
Taylor Avenue
(7721 Old Harford Road)
9th Election District
6th Councilmanic District

* BEFORE THE
* COUNTY BOARD
* OF APPEALS
* OF BALTIMORE COUNTY
* Case No. 97-295-SPHA

* * * * *

ORDER OF DISMISSAL

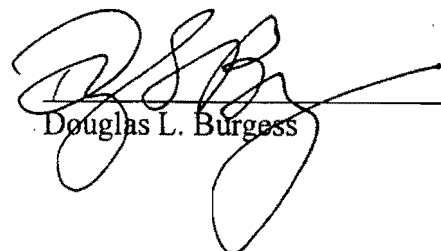
Terry Gerahty, Petitioner by Douglas L. Burgess and Nolan, Plumhoff & Williams,
Chartered, his attorneys, hereby dismisses his appeal from the Findings of Fact and Conclusions of
Law of the Deputy Zoning Commissioner of March 6, 1997.


Douglas L. Burgess
Nolan, Plumhoff & Williams, Chtd.
Suite 700 - Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(410) 823-7800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 17 day of September, 1997, that a copy of the foregoing
Order of Dismissal was mailed, postage prepaid, to Peter M. Zimmerman, People's Counsel for
Baltimore County, Court House, 400 Washington Avenue, Towson, Maryland 21204, Mr. and Mrs.
Ernest Baisden, 7706 Oak Avenue, Baltimore, Maryland 21234 and to Mr. David Miller, 2801
Taylor Avenue, Baltimore, Maryland 21234.

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED


Douglas L. Burgess



County Board of Appeals of Baltimore County

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

September 24, 1997

hop over

Douglas L. Burgess, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Case No. 97-295-SPHA
Terry Gerahty - Petitioner

Dear Mr. Burgess:

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

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Legal Administrator

encl.

cc: Terry Gerahty
Mr. and Mrs. Ernest Baisden
James Reed
Avery Harden
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

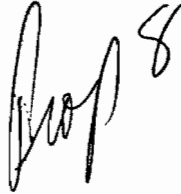


Poor Boy's Country Market

7721 Old Harford Road
Baltimore, Maryland 21234
(410) 668-7399

March 12, 1998

Arnold Jablon
Baltimore County Department of
Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204



Re: Removal of Variance Conditions

Dear Mr. Jablon,

The purpose of this Spirit and Intent letter is to have the burdensome conditions of variance case # 97-295 removed from our property located at 2711 Taylor Avenue.

It's is our hope that you agree with our position that our newly installed, durable and dustless (blacktop), parking lot satisfies the surface requirements of section 409.8 in the Baltimore County Zoning Regulations. Hunter Rowe came to visit our store today before we finished the striping on our parking lot, but the enclosed pictures show the completed work. Further argument could be made that since this parking lot only contains 5 parking spaces we are exempt from section 409.8 entirely.

Thank you for your time and quick response in advance.

Best regards,

Terry Gerahty, President
Poor Boy's, Inc.



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

18 March, 1998

*Prop Amended
No 9*

Mr. Terry Gerahty, President
Poor Boy's, Inc.
7721 Old Harford Road
Baltimore, Maryland 21234

Re: removal of variance conditions

Dear Mr. Gerahty:

I am herewith returning your check, which you forwarded to this office along with your request for our opinion as to the status of the variance approved in Case # 97-295.

In response, please be advised that should your grading plan, which is currently before the county for review and approval, be accepted, then the variance you received in the aforementioned case would no longer be of application. Inasmuch as the variance was to permit you to use an alternative surface for your parking area, crusher run, to that which is required by law, it would no longer be applicable because you would be in compliance with the law, i.e., durable and dustless. The grading plan you submitted has not received final approval.

It is my understanding, however, that parking is occurring on that area which was the subject of the variance. In fact, you are utilizing the variance you were granted; thus, all of the conditions delineated by the deputy zoning commissioner are in full force and effect. You must comply with all of its conditions, and any deviation constitutes a violation. Any mootness would not occur until the grading plan were to be approved, permits issued, and the parking lot paved. At that time, and not before, would the variance order and the conditions contained therein become moot.

Whether the order and its conditions becomes moot, however, is not the issue. As we discussed, you are required to conform to all zoning requirements, landscape requirements and environmental regulations, as well as with the agreement you executed with the county. Of course, the lighting issue is still unresolved. While you have been cited for certain violations, about which a code enforcement hearing was held today, it is important that you understand the potential continuing violation involving the use of the existing lighting which shines impermissibly into the adjoining residential properties.



Baltimore County
Zoning Commissioner

RULING

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

July 8, 1999

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

Re: Petition for Special Hearing
Case No. 98-267-SPH
Property: 2711 Taylor Avenue

*Proposed
No 10*

Dear Ms. Murphy:

Enclosed please find the decision rendered in the above-captioned case. The Request for Special Hearing has been denied in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

Timothy M. Kotroco

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure

c: Mr. Terry J. Gerahty
Mr. & Mrs. Ernest Baisden
✓ Mr. & Mrs. John Baker
Mr. James Reed, Jr.
Mr. Joseph Kreis

~~EXH E~~

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

for Exh 9



Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
410-887-4420
Fax: 410-296-0931

June 9, 1999

*Prop
Owner 11*

C. William Clark, Esquire
Nolan, Plumhoff & Williams
Suite 700
Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204-4528

RE: Poor Boys/Open Space Easement

Dear Bud:

Enclosed please find a fully-executed copy of the Deed of Easement for Open Space that was executed by Mr. Gerahty and recently accepted by Baltimore County.

Very truly yours,

A handwritten signature in black ink, appearing to read "Douglas N. Silber".

DOUGLAS N. SILBER
Assistant County Attorney

DNS:sjc

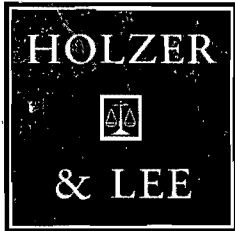
Enclosure

C: Robert J. Barrett
(w/enclosure)

Honorable Joseph Bartenfelder
(w/enclosure)



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



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

E-MAIL: JCHOLZER@BCPL.NET

April 10, 2002
7024

Pro. Ex. # 13

Hand Delivered

Mr. Arnold Jablon, Director
Department of Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

RE: Poor Boys, Inc.
Correction Notice # 121106 & 121107
Case # 02-1188

Dear Mr. Jablon:

I am writing as a result of a letter my client received from William Clark, attorney for Poor Boys, concerning the referenced correction notice, (attachment #1. Letter from Bud Clark dated March 20, 2002 and correction Notice # 121106 & 121107). Citation # 121106 was issued as a result of Board of Appeal's remand requiring Poor Boys to provide a permanent fence as detailed in Avery Harden's letter, dated December 24, 1996 (See attachment #2 - Board of Appeals Remand dated February 8, 2002). This order requires Poor Boys to rebuild an existing fence at a different location. To date this has not been done. In addition, the correct fence location, type of fence, and landscape needs to be amended on Poor Boys current site plan to conform to the Board of Appeals remand Order

Mr. Clark argues in his letter that the fence requirements are a condition of a variance, under which Poor Boys no longer operates, and is, therefore, a moot point. This is a stale argument already entertained by the Circuit Court Order in Case No.03-C-00-6650 - 03-C-006687 (attachment #3) which states that a permanent fence is to be installed as set forth by Avery Harden's, letter dated December 24, 1996. Mr. Clark, on behalf of Poor Boys filed an appeal to the Court of Special Appeals of Maryland. On October 5, 2001, Poor Boys filed a Motion to Dismiss the Appeal stating that Avery Harden's fence requirements were a condition to a variance and, therefore, "moot" since Poor Boys had renovated the parking lot and was no longer in need of a variance. The Court of Special Appeals denied the Motion to Dismiss the appeal as "moot" but allowed an extension for Poor Boys to file its brief. As a result, Poor Boys elected not to continue the appeal. Therefore, the Circuit Court Order is final. A Mandate from the Court of Special Appeals, and other

Prop Owner
0014889 713
No 14

CONFIRMATORY RESTRICTIVE COVENANT AGREEMENT

Made this 15 day of December, 2000, by and between TERRY GERHATY, POOR BOYS, INC., and VILLA CRESTA CIVIC ASSOCIATION, INC.

WHEREAS, on October 8, 1996, TERRY GERAHTY, POOR BOYS, INC. and VILLA CRESTA CIVIC ASSOCIATION, INC., entered into a Restrictive Covenant Agreement, which Agreement is recorded in the Land Records of Baltimore County at Liber 11868, Folio 303; and

WHEREAS, On February 25, 1998, TERRY GERAHTY and BALTIMORE COUNTY, MARYLAND, entered into an EASEMENT covering the area marked "Landscaped Conservation Easement" as shown on the Drawing attached to the Restrictive Covenant Agreement between TERRY GERAHTY, POOR BOYS, INC. and VILLA CRESTA CIVIC ASSOCIATION, INC., dated October 8, 1996; and

WHEREAS, the parties wish to enter into this Confirmatory Agreement to clarify the original Agreement between these parties;

THEREFORE, in consideration of One Dollar (\$1.00) and the mutual promises contained herein, the parties agree as follows:

1. A) **STRIKE:**

2. Landscape Buffer. It is further agreed that the area marked "Landscape Conservation Easement," as shown on the attached Drawing marked "Amended Request," shall:"

REPLACE WITH:

2. Landscape Buffer. It is further agreed that the area marked "Landscape Conservation Easement," as shown on the attached Drawing marked "Exhibit C," shall:"

1. B) **STRIKE:**

Paragraph 2(a), (b) and (c) in their entirety.

REPLACE WITH:

2(a) be offered for dedication to Baltimore County as an easement, and

2(b) the form of the Easement Agreement with Baltimore County shall be the same as marked "Exhibit B" hereto.

2(c) shall require Gerahty, Poor Boys, and its successors and assigns to establish and maintain a landscaped conservation buffer, as further



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

TOWSON, MARYLAND 21204

[Signature]
DIRECTOR

BUILDING PERMIT

[Signature]
BUILDINGS ENGINEER

PERMIT #: B431416 CONTROL #: SWMC- DIST: 09 PREC: 01
DATE ISSUED: 07/05/2001 TAX ACCOUNT #: 1800009926 CLASS: 06

PLANS: CONST 00 PLOT 8 R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 2711 TAYLOR AVE
SUBDIVISION: PARKVILLE

OWNERS INFORMATION

NAME: GERAHTY, TERRY J
ADDR: 7721 OLD HARFORD RD 21234

Prop Only No 15

TENANT:

CONTR: OWNER

ENGR:

SELLR:

WORK: CONST STORM WATER MGMT FOR 0.79AC OF DRAINAGE
AREA. SEE GRADING PERMIT B329149
PERMIT EXPIRES TWO YEARS FROM DATE OF ISSUE:

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

25,000.00 PROPOSED USE: RETAIL + SWM
EXISTING USE: RETAIL

TYPE OF IMPRV: OTHER

USE: OTHER - NON-RESIDENTIAL

FOUNDATION:

BASEMENT:

SEWAGE: PUBLIC EXIST

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 49.919AC

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: NC

SIDE SIX SETB:

REAR SETB: NC

Kevin Sharbonda
Sediment Control Inspector II - Inspection and Enforcement

Baltimore County
Department of Environmental Protection
& Resource Management
401 Bosley Avenue, Room 416
Towson, Maryland 21204

410-887-3226 Fax: 410-887-4804



PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

TOWSON, MARYLAND 21204

[Signature]
DIRECTOR

BUILDING PERMIT

[Signature]
BUILDINGS ENGINEER

PERMIT #: B329149 CONTROL #: CRC- DIST: 09 PREC: 21
DATE ISSUED: 07/17/2001 TAX ACCOUNT #: 1800009926 CLASS: 06

PLANS: CONST 0 PLOT 0 R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 2711 TAYLOR AVE
SUBDIVISION: PARKVILLE

OWNERS INFORMATION

NAME: GERAHTY, TERRY J
ADDR: 7721 OLD HARFORD RD 21234

Prop Owner
No 16

TENANT:

CONTR: TBD

ENGR:

SELLR:

WORK: GRADING & PAVING FOR PARKING LOT EXPANSION.
42.6809SF DISTURBED AREA. PERMIT EXPIRES
TWO YEARS FROM DATE OF ISSUE.

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: RETAIL & GRADING
45.000.00 EXISTING USE: RETAIL

TYPE OF IMPRV: OTHER

USE: OTHER - RESIDENTIAL

FOUNDATION:

BASEMENT:

SEWAGE: PUBLIC EXIST

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 49910SF

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: NC/NC

RIDE STR SETB:

REAR SETB: NC

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

TOWSON, MARYLAND 21204

[Signature]
DIRECTOR

BUILDING PERMIT

[Signature]
BUILDINGS ENGINEER

PERMIT #: B456511 CONTROL #: RRC- DIST: 09 PREC: 21
DATE ISSUED: 07/17/2001 TAX ACCOUNT #: 1800009926 CLASS: 06

PLANS: CONST 2 PLOT 7 R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 2711 TAYLOR AVE
SUBDIVISION: PARKVILLE

OWNERS INFORMATION

NAME: GERANTY, TERRY
ADDR: 2711 TAYLOR AVE 21234-6312

TENANT:

CONTR: BOSLEY CONSTRUCTION

ENGR:

SELLR:

WORK: ERECT 4 QTY 6'X6' TREATED WOOD RETAINING WALLS
HT: 0'-3'. WALL A: 99LF, CN SIDE; WALL B: 51LF;
WALL C: 49LF; WALL D: 137LF ON REAR. WALL C & D
IN MIDDLE OF PROPERTY. WAIVE DATA SHEETS PER
ALB. TOTAL= 336LF

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: MERCANTILE BLDG & RETAINING WALLS
150,000.00 EXISTING USE: MERCANTILE BLDG

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION

USE: OTHER - NON-RESIDENTIAL

FOUNDATION:

BASEMENT:

SEWAGE: PUBLIC EXIST

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 49919SF

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: 63' / NC

SIDE STR SETB:

REAR SETB: 65'

**THIS PERMIT EXPIRES
ONE YEAR FROM
DATE OF ISSUE**

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.

#02-462-SPH

Prop. Cloper's
Exhibits
18A-18F



PeT. Ex #18
A-F

~~SECRET~~



Fr. Baishden's Back Pat.



Fr. Oak Ave.

$\frac{1}{3}$ of way down Oak towards
Bosiden!



Mr. Baizer's Back patio



18D



18B



18E



18C



18F

4 02-462-5PH

Prop. Moxer's
Exhibits

18A-18F





18F

02-462-5PH

Prop. Olozeris
Exhibits
18A-18F



IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

IN THE MATTER OF: RUTH BAISDEN

IN THE MATTER OF: TERRY GERAHTY

* CIVIL ACTION
* CASE NO.03-C-00-6650
* 03-C-00-6687
*
*
*

* * * * *
**MOTION FOR AN INJUNCTION, MANDAMUS,
ENFORCEMENT OF COURT ORDER, AND CONTEMPT OF COURT**

Ruth and Ernie Baisden, by their attorney J. Carroll Holzer, Holzer and Lee, hereby request this Circuit Court of Baltimore County for an injunction against Poor Boys, Inc. and Terry Gerahty, Owner to require compliance with this Court's Order of the Honorable Robert N. Dugan, Judge, dated April 25th, 2001, requiring the construction of a permanent fence and the location thereof as determined by the Court in its "Memorandum and Opinion Order" of that date; a mandamus against Baltimore County requiring the county to enforce the zoning regulations of Baltimore County as interpreted by this Court in its order of April 25th, 2001; and enforcement of this Court's order without any further need of hearings or other procedures as required by this Court's Order and the Order of the Baltimore County Board of Appeals dated February 8th, 2002 in which the Board of Appeals required the subject property be accomplished "as set forth in Avery Harden's correspondence of December 24th, 1996, a copy of which is attached hereto and made a part of this order," and further says in support:

1. Ruth and Ernie Baisden appealed a Board of Appeals decision to this Court, which resulted in a "Memorandum Opinion and Order" of this Court by the Honorable Robert N. Dugan, Judge on April 25th, 2001. The Court reversed the

IN THE MATTER OF:

* BEFORE THE ZONING COMMISSIONER

2711 TAYLOR AVENUE

* OF

SW/S of Taylor Avenue
110' SE of Centerline of Old
Harford Road

* BALTIMORE COUNTY

9th Election District
6th Councilmanic District

* CASE NO. 02-462-SPH
*

Legal Owner: Terry Gerahty

* * * * *

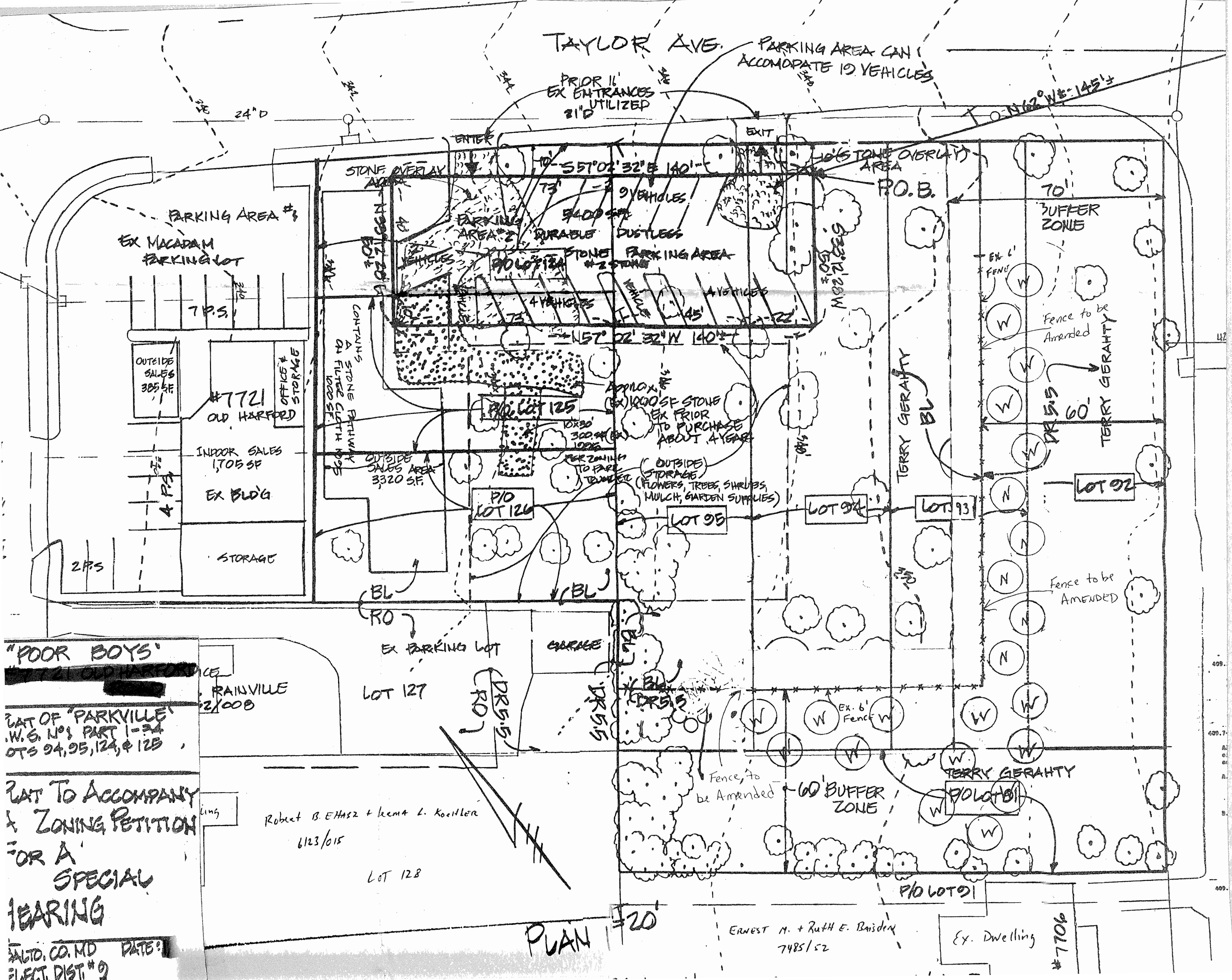
MEMORANDUM OF LAW

Ruth and Ernie Baisden, by and through their attorney J. Carroll Holzer and Holzer and Lee, hereby submit the following memorandum of law as authority in support of their Motion to Dismiss the Petition for Special Hearing and say:

1. Doctrine of Res judicata

An un-reversed final decision of the Court, passed in the exercise of its discretion upon issues of fact or upon mixed issues of law and fact as fully binding upon the parties to the cause. In the instant matter, the parties are the same; the facts are the same which have been previously litigated and determined by the Honorable Robert Dugan's Order of April 25, 2001. See *Board of County Commissioners of Cecil County v. Racine*, 24 Md. App. 435 (1976); *A.B. Veirs, Inc. v. Whalen*, 256 Md. 162 (1969); *Davis v. Frederick County Board of County Commissioners*, 25 Md. App. 68 (1975)

2. Doctrine of Direct Estoppel by Judgment



TAYLOR AVE.

PARKING AREA CAN ACCOMMODATE 19 VEHICLES

PRIOR 11' EX ENTRANCES 21' D UTILIZED

PARKING AREA #3

EX MACADAM PARKING LOT

#7721 OLD HARFORD

INDOOR SALES 1,705 SF

EX BLD'G

STORAGE

OUTSIDE SALES 385 SF

OFFICE & STORAGE

CONTAINS A STONE PATHWAY A FILTER CLOTH 1000 SF

P/O LOT 125

P/O LOT 126

LOT 95

LOT 94

LOT 93

LOT 92

LOT 127

EX PARKING LOT

GARAGE

LOT 128

P/O LOT 91

EX DWELLING

#7706

PLAN

ERNEST M. + RUTH E. Baisden 7/48/52

Robert B. Ehasz + Lema L. Koelliker 6/23/05

"POOR BOYS"

LAT OF "PARKVILLE" W.S. NO. 1 PART 1-34 OTS 94, 95, 124, & 125

LAT TO ACCOMPANY ZONING PETITION FOR A SPECIAL HEARING

ALTO, CO. MD DATE: 11/23/05 DIST. #9

ATTORNEYS' NOTES

(20020462)

(6)

April 6, 2004

(1)

02-462-SPH

TERRY J. FERRANTY

Lawyer

Pet - C. Wm. Clark

Check Address

of bones

J. Carroll Holzer - App Lawyer

C. Root Foster - Pres ST ATTY - DC -

county enters appearance to be
on "???" on all correspondence -
county stands moot - ~~also~~
rules on Holzer + Clark to
present evidence

Clark - O.P. Statement

✓ Parks & Garden Bureau

2711 Taylor Ave

✓ numerous cases before

✓ relevant to case - many documents
for background

✓ simple factual

✓ 1985 - st. lands bureau

✓ 1993 - moved to present

location - acq. adjoining

prop - applied for rezoning -

1996 - split zone - fronted

Bk zoning - there is on L

steep buffer between residents to

south & east - buffer reg -

fence erected - disputes about

fence - 1997 - Bonet

+ Davis to mediate dispute -

put up fence on zone line -

after this mtg Shontz dismissed

his appeal - 1998 S. app

for app hearing - DC Foster

issued opinion - more appeals

- to Jolson - if I build park lot that meets 3 sep. mill conditions go away - Jolson said yes - site plan, land plan, lighting plan - ~~the~~ 3c will not only after plan - July 2001 - 210,000 to build & light park lot in parking other conditions are met - it has been county's parking board's balance fine should ~~be~~ be 10 feet closer in - Jolson ~~but~~ ~~spec~~ ~~the~~ worked spec terms to all of cond. are met - parking lot makes various conditions met

→ First
P1

JCH - reviews op. statement

Pet W 1 - TERRY J. GCHAMITY

1. 1993 - acquired former gas st. + rental center

1995 - acq. neigh. property

2. 1996 -
Covenant Agreement w V. Creek Co's
Creek Assoc - ag. landscape
buffer 60 ft + interior 10 ft.

3. 1996 - complex became aware of complaints to B. Co.

4. 1997 - someone for stand park lot

5. May 1997 - M. Davis / B. Bonett

told to build fence on zone line
within 24 hours - we built
wood - bd on bd fence in 24 hrs -
about \$3,000

6. you decided to discuss appeal ^{because} ~~to~~
I thought issue was resolved.

- pet 6

7. 1997 - mail complaints about
camp house

8. Spring 1998 - letter to Jotlor -
spirit & intent letter - durable
& dustless surface - seeking
relief from conditions of approval
code - set check for spirit
& int. letter - if good plan is
accepted - approval cond. no longer
in effect

- pet. 8 & 9

9. note 24 of county plan - reg. will
not apply after approval of good plan

10. 1999 - Kothroa - fence may remain
on zone line

11. Jondae plan - 9/7/2000 - approved

- pet 12

12. Amend. to rest. covenant on V. Costa -
permits buffer - plot, lighting,
landscaping - \$250,000

- Pet 19

13. 2001 - all court took place -
plot in use Sept 2001 -
no appeals from permits

14. DIX 1FA-F

64

15. If fence is 10 feet closer in -
would put posts in stone water
management trench - it will affect
roads & lightning wires - need
to be dug up

CROSS X

1. met w/ Davis & Barnett - they ^{said} ~~said~~
build fence on zone line - they
were from court & office

2. his site & light pole been app to
Circ. Ct

4/25/2001

3. Judge Doepke's order reversing Bd -
A - I do remember not agreeing

Impt

4. permits - dated 7/25/2001 -
after J. Doepke's order?
A - yes

Break

11/15

Protest Op. 5+

- Holzer

1. it's a case we won, but lost - we
were sure in our Bd App. on loc of
fence
2. 1996 - Camp spring - agreed that fence
would be located by Arly Hardin who
worked for B county - in his letter
12/24/1996 - he locates fence

10 feet inside its present location

3. May ^{31, 2000} ~~1999~~ - got to Bd Appeals - we believe that we shouldn't be here - we believe Bd's decision accepting Dyer ended case

4. Borden's - no knowledge of Board/Doris agreement

5. former B of App - write - reject - involvement of Co. G. - Bd accepted location - we app to C. Ct - Judge Dyer heard case - 4/25/2001 - opinion - Bd of App ~~was~~ unlike Kottow comment on Co. Ep. app - concl - Borden's denied due process - further said - app beyond legal auth - Ct came B App improperly app agreement - ~~was~~ error - Error v. State Comm - remanded to Bd - Dec 24, 1996 - A Horden's location

Try I

6. App to Ct of Spec App - not filed to dismiss - Doris that said various not involved - its proof - 11/13/2001 - ~~denied~~ denied motion - vol. dismissed by Pres Bop - Ct 12/31/2001 - Ct issued mandate - Pres Dyer's ~~order~~ order stood

7. 2/8/2002 - Bd ~~App~~ Appeals - cite J. Dyer - fence should be across as in Horden's order - Bd attached Horden's letter & site plan

8. letter from Barber to Jobson
9. Jobson filed for pet on spec basis -
let 3 commis decide to decide
moot or not
10. 3 items before J. Schmidt -
I went back to Dyson for context
of it basis
11. Dyson - told Harris - wanted to
present others papers to court -
denied mandamus - let
dispute take place
12. asked ~~And~~ I & 2 commis say for
op basis - Schmidt thought could
moot because of no variance -
conditions did not hold so he complied
with
13. too fast that someone no longer nec
is not relevant - Harris location
of fence prevented var. Request
14. legal matter more than factual -

V. My
Fry -
PT
Bortanfelder

Prot w 1 Ruth Brandon

1. showed home on OAF. but
2. owned home 1986 - 18 years
3. 1990 - zoning issues - found out
about going by accident

Com. Assoc?
are you in one

4. Sec of Park Park Comm Assoc

Did they make a position??

5. fence moved - lesser impact on my property

6. my fighting over 10 feet
 ✓ impact on my fence
 ✓ I look into property -
 who's shopping more

- will that change?

7. Differ in moving fence
~~✓ a day notice of~~
 ✓ fence can be moved
 ✓ lights don't have to be moved
 ✓ dumpster under my B.R window

8. In w Brett / Davis?

- ✓ no
- ✓ heard about it at B-7 Bop
- ✓ Prot ~~x~~ -
- Bd App ord - met 1
- Dagun ord - 2
- CT Appeals - 3
- Clark Brief ^{not Expend} 4
- Holcom - 5
- CT Appeals - 6
- CT App Mandate - 7
- CT App Denial - 8

→ put in background
 → make object clear

→ more exhibits 9 - 19

19 agreement
 by Both sides

CROSS K

1. sp 1997 - did you call Co E office
to complain about Poor Boys
✓ asked them to take care of
buffer order - asked for
buffer to be, work

2. sp 1997 - continued complaints about
P. Boys

3. Should be resolved by Co E in
1997
- no

Final

02-46254

GEORGETOWN

6/17/04

J. Carroll Hylton ~~Real~~

C. WILLIAM Clark Real

C Robert ~~LOST~~ BG

LOST

Co. Mule - wants on east of
railway

Clark - Opening Stolen
2711 Ayala Ave. - Caribou.

1985 - landscaping here. All Harbor Taylor
1993 - Acquired adjoining
property in 1996 Split BL house with
a buffer L - Shopped to south of east
and entered into agreement with AS
and granted Co. the easement

2

~~Barrett~~
Barrett
6/17/04

✓ Co. and fight to move
Co. told him to put up a fence on
yoned portion

- Bett obtained variance (1000 sq ft)
cush & his parking lot
he dismissed his appeal but it
didn't settle it.

Bett writes Tiplan - If I do a
parking area that's OK as is under
B C Z R' conditions will go away -

✓ all permits are issued and he
builds @ 250 ft the lot - T H E
P D N plus to end of conditions

✓ ex of problems - he puts fence on
10 ft further back - Barrett wants

ISSUE

AND 10 CONDITIONS
of parking lot most after
construction & is fence at

(3)

Gaughy
11/17/01

Terry Gaughy D.P. Clark

Bought property and in 1995

1993 bought corner piece

1995 bought 2nd piece (Main)

1996 going process for split zoning

Petition #1

Concurrent

Entered into concurrent with

Common Ass reg, 60 ft buffer + 10 ft
inside zone line

Some what urgent. system is

on 10 ft but it OK in @gmt-

Petition #2

Letter 12-17-96

#3 Letter 12-17-96

#4 Reg. for paved parking 3-6-97

#5 ZC finding - appeared to BOA

5-97 Bob Stewart/mike Davis - Co exec. off.
put up a fence in 2nd lot
right onto BC zone line 60' from
Oak Ave

He did it - Board on Board \$15,500
as a result he dismissed his appeal.

#6 denied notice

(4)

~~Realtor~~
~~#8~~

Suit & intent letter ^{Realtor} per for it ^{Gusally} 6/17/04

3-12-98 S & I

#9 JABLON 3-18-98 letter - probably spoke to Jablon also about...

X filed Plan & Plat for a fully paved parking lot, including lighting, ST. W. Right & etc.

X ~~had~~ he filed with ZC to do away with 10 conditions

~~Realtor~~ ZC Opinion 7/2/99

~~Realtor~~ GASMA 6/6/99

~~Realtor~~ #12 Lsapee Plan approved 9-7-2000 with note as to 10 conditions

#13 lighting Plan approved 9-8-2000 ^{Set B}

- needed to amend covenant with Community (pg 3) allowing you to maintain easment called for to approve paving.

#14 Amendment \$50K to do it -

5

Gerahty
6/12/01

He applied for and received permit

permit

"

"

July 2001 - Grading, stormwater work,
mud lighting, paving - all
work done end of Sept. 2001

NO appeal from permits

You can't appeal grading

Permit #
15
16
17

A-F photos

10 ft. w. would put fence posts
into stormwater area - and all
underground wiring & piping lot
would have to change

THAT'S HER OBJECTIVE

Relocation of dumpsters -

Gerahty - cross holder

- G. exec. group talk him to put on your
list - NOT 2001/06

- 4-25-01 - Judge Dogram - Put fence 10 ft
w

(6)

Carroll
6/17/04

- All permits - dated July 2001 - after
date of Dugan Order

OPENING - Holger

We won - but lost!!??

* - fence location is crux of case
12-24-96 - Hardin letter set it off further

of Carroll's
opinion - 5-31-00 Bd of Appeals decision

We believe that Bd decision incl
Ct. Dugan opinion - should be
the crux

- Bandino, had no knowledge of G. Ct.
office suggestion

last H - knock on Co. Ex. intervention
Bd accepted location - Appeal -
Judge Dugan decision

Bandino - no due process
[H's not A SUBS. ARGUMENT?]

- 11-13-01 Ct. of App. decided to
hear case - but moot -
But Clarke later promised
That!! So DUGAN'S ORDER STOOD

7

Quality
6/17/04

X

2-8-02 BOA Order on
remand

" So far as according to
Hardin letter (10 ft further back)

- Banden / Mason letter follow

so THIS CASE WAS FILED
to decide - IS MOOT
OR NOT?

He filed writ of habeas corpus & injunction
Duggan wants adjoin repeal
just - don't repeal DOIT

Hardin letter is center to change in
zoning

X

MOTION TO DISMISS
MEMO

Ruth Banden - DIR. Holzer

20 Yrs - 7706 Opt Canyon
site - she's just part of expanded
she bought it. next door when
- 1986 moved in

(8)

Groffly
6/17/04

1996 rezoning process - didn't include
then notice to neighbors of a
requested change in zoning
NOW it is

was active in rezoning and
is Parkville Past Comm. Ass. secretary
her opinion - Fence should be
moved

Why fighting over 10 feet?

[RIGHT]

- impact on my home
- > oak trees gone - could have been saved
- saw oak trees - now sees a business

- No harm to his business -
she has pictures
[But just an opinion]

- She wasn't involved in anyway
with C. Dec. intervention

Pat B.

1-5-31-00 Bo/As.

9

Breathy
6/17/04

- * 2 Judge Dugan opinion
- 3 memo to PIS leads to be says by counsel
- 4 " to EXT. - Amend it
- 5 APSUP. in to PIS 10-15-01 (Moot)
- 6 Ct. of App. says hear.
- 7 Mandate for dismissed
- 8 Bd Remand Order
- 9 1-31-02 letter to Toblan.
- 10 3-11-02 Notice
- 11 3-29-02 Notice
- 12 Letter B.G. 3-20-02
- 13 4-10-02 letter to Toblan
- 14 affid.

= This is the same case over and over again

- 15
- 16 in for injunction - Judge Dugan
- 17 AM to dismiss Rep. Jud. - Z.C. + memo
- 18 B memo in support
- 19 Dismiss - below - This case
- 20 - photo - had said below

10

Gearty
6/12/04

Somebody principle - want it
resolved

19 A from the west to old field
B B said toward site
(Buffy - in the area)

show photos
5 by
D - comments

What exactly is the
mandate
OR NOT

E.

F

60 ft is fine now
→ 70 ft is marked

98 267 SPA

added

Bauden - ~~last~~ X Clarke
made no complaint, just a request
that Co. take over the area as a
pressure point
Spring 1997 - complaint to DPDM

(11)

Beatty
6/17/04

about Red Bay Operation violations

~~*~~

Our issues weren't addressed

-didn't know about executives

(13)

12/26/96 Prop was signed ^{from NREL} BL,
grant of Rezone conditions
upon doing a buffer for
benefit of adjacent community
surrounding a parking lot.

12-26-96 Hardin letter sets
out a description of buffer

Early '97 Prop petitioned for
special paving for a narrow
parking lot GRANTED (COFFCO)

[Under center of right INBL
lane - they want it paved &
stormwater mgmt. done.

OK for loose stone 1/2" durable
& dustless surface]

He granted + restriction:
- fence per Hardin letter

NO
F
Smo later Pet met w/ city officials
and agreed it would be OK - agreed on
a fence inconsistent with Van-Hardin
fence - so built a 6 ft high - 60 ft from
prop line instead of 8 ft + 70 ft.

(2)

7-99 Petition req for Sp-1 to amend order in regard to fence. ~~height~~ height & height of - also - needs add supports

But lighting was in contradiction to his order & req Pet to submit lighting plan to Harden.

Barber asked fence ruling. ~~Barber~~ "lighting but later dismissed it. SO

Bd of Appeals : Fence "temporary" needs concealed footings & permanent construction OK at existing location (not per Harden letter).

BB Decision - ~~Does~~ involvement of G. Exec office
JUDGE DUGAN

Fence installed is not typical nature required by Austin.

So

— We agree — Not reg'd
MOOT

— that the final offer
names were determined prior
to the not reg'd and
Sp. by reg. and that the Order
of V. Dugan with regards to
the intent of the earlier
Agreement is ~~as~~ delineated
my Am. H. letter of 12/26/96 is
apparent

Final

the use of 60
by DZC in a m
42 - case about all
fact that underlying 70
is still in effect
his ~~signature~~ of 69 <sup>(photo
release)</sup>
has not after the ing 70

~~lost of cash~~
fence was part of 2
gmt

(Fence got mixed into
party case w/w court
(Altha Hardin letter #) (which
shows paper # 70 ft) is
influenced.

(3)

Exclusion of Barden from a
2 party deal on location of
fence was wrong - They were
denied due process.

Co. Co intervention to change
location from Barden letter
was beyond scope of authority
AS WAS ~~EXEMPT~~ AGMT

Presumably
within

in exchange he built fence and
dismissed his appeal Off Work!!

Dugan [Improper, non binding govt
BoL is wrong

So, he to remove
~~salvage~~ ~~extended~~
& denied

96 He entered into govt w/
COMM of Co & Co agent in 98

Hardy
Outh
Clear

Pg 4

Hardy

Outh
12/24/96

only

as

~~to~~ ~~stop~~

OPINION

its not rock
to the tobacco
nation of for parks
lat decies —
its the better
agent of garden mg

Letter

97-295-SHA Mine hall as a W

pg 3 of # 295 - refers to an existing
boat house - that was - it
was always 70 feet from the
on all side was of the
boat!! Pg 6 - the assessment

Dec 24 1996 AU. H. letter
at. since it's better
condition as to any ch m 96
March 97 asks for services

FMQ (circle) garden letter is about
change to BG
(Attached to letter)
predicts any bar req
March 97

Bob Baunell & Milda
DAVIS

get into it. red line
to 6 ft of 60 ft 110-70 ft
+ 8 ft force

Kalisco opinion March 6, 1997
about park lot - D/SC.
Goes to various net

2
since my of having
letter involved with

Aug - paying change,

Bx 5 → add since
(but it didn't get started
then pay change

(Pg 4 of Clark)

On 97

Gearty does appeal
of #5 because he
thinks it

50

Don't know if 1996 taxes is
still in effect but 25-200/
at Yorkins Feb 8, 2002

BA ordered for an fence
3-11-02 corr notice city
of Auburn to erect fence
(note 12106)

3-20-02

NOV 4, 2005

~~Issue #2 its not from
any - its the mortgage
from the~~

One young change
#3 Nor not needed
& wood just fence
and part of it

1. Eugene is good
as if man who
hasn't but Jim is
still there per day
of army change

Instructions to Co
EXEC.
Pg. 7 - Helzer name
Dugan opinion

Pg 12 Helzer name
not want meet

Feb 12, 1997
J. J. [unclear]
[unclear]

may attribute the underlying
responsibility of the Action to
comply with the cry 1996 Agent
which pre-dated any of the
parking or other movement or so for
regiments. In fact, as ^{noted} far back as
the ^{new} 1997 version of the DZC,
the 12-24-96 Hardin letter of attachment
~~is~~ is recognized as the standard
to be applied for the ~~the~~ buffer zone.
The subsequent parking of the
parking lot may have indicated the
need for a movement (and its
attendant conditions), but left
intact ~~the buffer zone~~ and did not
~~in~~ in any way alter the
previously mandated buffer zone
conflict of the Act 96/
Hardin letter.

Calvin [unclear]
600 [unclear]
9/70

~~The Bd~~

subject

The pleaded matter
comes to the Bd ~~from~~ an
order taken from the sides
~~of the~~ of the ZC ~~company~~
~~of~~ of the Co. in which

an order granted someone
with condition was ~~ordered~~
to be ~~not~~ and was not
subject to a judge of the
judicial or stopped.

who shall

The history of the development
and use of the site is
convoluted and has been stated
and stated in several opinions
and memoranda that have been
written previously. In almost
part for ~~the~~ the instant matter
the history reveals that

(2)

the subject

~~the property~~ was removed from
voluntary use to a BL
designation ~~as part of~~ as part of the
quadrilateral rezone of 1996.

clearly

as part of the rezoning efforts of
the Petitioners, they negotiated
and entered into a restrictive
Covenant Agreement with the
Petit of the Villa Auto Civic
Association dated Oct. 8, 1996.

The Agreement ~~reads among the~~
~~and reads~~, ~~as it relates to~~
set forth that "there shall be... (x) pg 4.
(of Commit)

The Agreement clearly links the
commitment to ~~construct~~ ^{rezone} the
70 ~~off~~ ^{lot} ~~happen~~ ^{spec} ~~are~~ to
the reclassification of the site to
BL by statute.

(3)

John
12/24/26

The property was reworked
and the ~~said~~ Agreement was recorded.
As part of ~~the~~ process, a letter was
sent to all interested parties by
County Landscape Architect E. Green
Hayden whose forth, by ~~accepting~~
of attached drawings, the specifics
of the 10 ft buffer area ~~agreed~~ ^{called for}
in the Oct. 24 Agreement.

In Feb of 1997, Petition requested a
Special Hearing ~~to~~ regarding the
appeal of the ~~existing~~ policy later
with ~~alternatives~~ a variance permits. The hearing
lot to remain. In a decision
dated 3.6.97, the ZC denied the
Special Hearing Request but granted the
~~2003~~ ²⁰⁰³ ~~request~~ variance with a number
of accompanying restrictions, among
them the ~~exclusion~~ of maintenance
of a buffer and fence. ~~It is~~ It
is here that a ~~substantial~~ ^{change}

(4)

across. In his Findings of Fact and
Conclusions of Law the ZC refers
to the history of the site and
contingency. He notes a 60 ft
(hyphens) buffer area exists adjacent
to the subject property. He refers
to 60 ft later in ~~the~~ opinion
in a number of places, including
as part of the various restrictions
~~set out~~ ^{therein} set out. He adds 10 ft
~~added for~~ ~~compensation~~ ~~added for~~ a
total of 70 ft agreed by the
Oct. 96 Grant is lost completely.
It is even more interesting to note
that ZC's opinion includes a
cited Mr. Parsons 12/24/96 letter
as the standard to be followed
in the size and configuration of
the fence to be constructed.
However, ^{mention of} the portion of that letter relating
to the 70 ft ~~total~~ ^{depth of} buffer is completely
missing.

not clearly
discussed
property
in letter

An appeal ~~is~~ was taken by Plaintiff
of the ZC's 3-6-97 Order. Apparently,
Plaintiff met in attempt into a
~~so~~ called "agreement" with representatives
of the Co. Ex. Office as to the
creation and installation of the road
service. ~~Apparently~~, Attorney ~~was~~
of the Plaintiffs or affected residents
were included in letting these
negotiations of ^{unrequi-} agreement, Plaintiff
apparently dismissed his appeal to the
Bd. (I appended the new agreement with the Bd. Re.)

A further Ex. Hg Request was filed
~~regarding~~ by Plaintiff regarding the
subject fence and lighting issues up
to the DZC held on 7-8-99.

An Appeal was then taken to the
Bd of Hqs which appeared, ^{indecisive} it was then
appealed to the C Ct for Baltimore Co.
Judge R Sugan, ruled that the
DZC of the Bd had improperly
relied on the verbal agreement of Plaintiff
the agreement between the Plaintiff and

(6)

and the Co Es Office (which he
referred to as "an ^{un}appropriate political
intervention into the zoning process")
and remanded the matter back to
the Board to pass an Order in
Conformance with Mr. Harding

12/24/86 letter of drawings (which
showed the fence necessary and a total
of 70 ft. of bulk). Said Order was
signed by the Bd dated

In the meantime, petitioner had
taken steps to pave his parking lot
and ~~as a result~~ requested a P. by,
as a result of which the ZC
ruled that the conditions set forth
in the ^{petition} variance approval for
the parking lot were ~~thereupon~~
waived, as there was no need for
the variance. ~~as a result of~~
An appeal to the Bd was then taken

the appeal
is being
made

This Bd finds that the size and
configuration of the buffer and fences
on the site in question was clearly
determined ~~as~~ pursuant to the
Oct 8 1996 Agreement entered into
between the Petitioner and the

Can AGS as part of the ~~negotiations~~
reclassification of the ^{subject} property
from DR to B-L. The agreement

is an undisputed fact, notwithstanding
the ~~fact of~~ ^{market} number of a \$60
H. before and after fence
configuration that apparently

was adopted in the March 1997
Decision of the ZC ^{at 1229} ~~in 1997~~
in later decisions relating to
the property. ~~There is a~~ The
matters ~~at~~ ~~the~~ SPT is however
separate and primary do not in any

as a result of
the fence
configuration

and
reference

Judge Dugan was correct, as
was the order issued by the
Ad ~~on~~ part of the Mandate
issued by his decision.
This ~~ad~~ so rules
unanimously.

02-462-SPH

Delis

9/2/01

<u>Appellant / Prot</u>	<u>Owner / Per.</u>
① John - unroofed & exposed collateral on Dym's order	① John - unroofed
② Spec H - nullity - principles of Res judicata & Estoppel by judgment	1. the public lot variance - 1997 - why - pg. 2
Dym & BOA are ruled	2. Kotoro app variance - condition of 8 ft fence
③ P. BOA didn't challenge Dym's order	3. John & variance - pg 3 & 4
④ Dym not reg - cond to zoning of props & not variance - not not - pg 5	4. Kotoro's letter July 7, 1999 - <u>why??</u> - pg 4
⑤ ABC - zoning change	5. One back to BOA & to C.C.F.
⑥ Conty X - 6 ft 11 in 60 ft proposed not 8 ft high & 20 ft	6. Schmidt's ruling - pg 6
⑦ C.F.T. - pg. 7 - ↳ <u>Impt</u>	7. the argument on pg 7 doesn't fly - similar reasons
⑧ pp 8 - BOA removal order ↳ <u>Impt</u>	
⑨ moot - denied - pg 14	

Timeline

- ① 1996 - Comp zoning map - BL with wind buffer
of 70 ft
- ② Dec 4, 1996 - Amy Harden letter
- ③ March 6, 1997 - added fence req. as a cond of variance
- ④ ? → after this - mtg w B. Bonet & M. Davis
→ c
- ⑤ April 25, 2001 - C.C. - Judge Dupre - remanded to BOA -
pass order regarding fence - corresp. req fence in
line w Harden's letter
↳ find at proceeding
- ⑥ BOA Remand Order - Feb 8 - 2002
- ⑦ March 2002 - Code Enforcement Citation -
But filed for let for Spec H. - in follow up.
3C drops due to 2C, BOA & C.C.

GERALTY

Delib Notes

9/2/04

Schmidt Bros

① Das Indentation
Entered

② what reg must get on copy — he's back on volume

③ Ge sent in 97 case still body? — ^{HO} more

vs if no more reg + obtained — ^{HO} ~~that~~

04-255-A

11/10/04

Ashwell

①

Neil Lanzi (Cousin) - For ~~the~~ part.

Allen Ashwell - for ~~the~~ pet.

Ashworth moved entire file into envelope

AA op st.

1. no one exceeds height rest.
2. lost a 12 x 41 garage to Ashwell
- also 44 x 24 house lost to Ashwell
3. need garage to store stuff that was in
old house - protect items from flood
damage
4. garage 26 x 34
5. house was 21 ft high
6. support of adjacent neighbors
7. 7 garages above 15 feet

Nik. op st.

1. neighbors impacted by garage
26-167 - impact in neighborhood/
soon impact
2. garage is out of character - poles away
near of water
3. garage in front yard
4. 104.2 - dist. not conf. structures
5. nothing unique about prop. it's like
other lots - Council - can't go
to proc. difficulty
6. please deny variance

Impact

pet w #1 Allen Ashwell

pet x
2A-2C

1. entered met. of flood damage - Feb 19, 2003

2A - grandmother's house & tree
was under shed

2B - waves coming down street

2C - more flood damage

pet x 3 ^{Am 4}

2. pet of my gorge - Feb 19, 2003

shows remains of my gorge -

it's never why I want extra storage
space above flood zone - think
that this has happened

pet x 4 A-H

more pet. - Feb 2004 -

4B - neighbor's 2 story gorge -
well above 15 feet

4C - gorge above 15 feet

4E - quarry bldg - 4-5 gts -
at least 22 feet high

4F - gorge - above 15 feet

4G - 2 story quarry bldg

4H - 2 story gorge w attic

pet x 5

2. presented letter - stipulates
part of house for street

pet x 6

3. presented motion case -

Hooper Case

✓ for 20 ft gorge - D'm
askin for 19

✓ Crowned - it poses
the test for uniqueness -
subject to stone survey

Part X
7-AB

4

map of Hufsch's home - I
couldn't block them ~~view~~

CROSS X

1. owned since 1986 - family owned
before that

2. replace grandmother's house in
garage

3. 3 car garage - no new driveway

4. does site plan show new driveway -
yes it does

Part X / 5

map

6. I have tree full tree -
I have joint custody of children

7. garage located on water side

Part X 2 / 8. land on real prop records is less
than on site plan - Dept of
Assess.

Expt

9. pole stout was 10-12 ft high -
new one is 19 ft high

10. addition to home? - yes -
size? - 18 x 24 - I
have a permit

11. ft. - lost 60 dy
12. house - addition - deck
13. showed copy of bldg permit for addition -
24 X 18 X 14
14. why ~~to~~ build or addition on ground
level? - in above flood
area trail
15. no driveway to orig. garage
16. map is similar to others in area -
~~the~~ may or all 50 ft. lots
17. I will reside here with or without
garage

Not with GROVER M. HUTCHINS

1. lived here - grad 2000 - daughter
owned it for 10 years prior
2. there is one house between us
3. spent 350,000 to improve property
4. 6A - view of house from water side
6B - view looking left
6C - view toward back yard

↳ he described other pictures

Prot
X7 5

plot

lunch

Prot X 9^{A-B} 6

photos of flood

7. looked at pet X4 - please comment -

8. most gorges are attached - ~~many~~
ground level under the house -
no recent gorges on water side

9. import on your bond? -
yes - demonstrate the new from
one house

CROSS X

1. Did you apply for someone for
your home? - yes

2. will my gorge be where other
house was - not as tall

A - taller than house that
was there

Thrift

Pet W # 2 FORETTA HUTCHINS

1. real estate agent - 24 years
- Hilber Realty

6

2. sold hundreds of homes

3. impact of addition + garage to your property -

~~2.11~~ Cross X

1. how tall is your house - 38 ft
4 stories

2. what level do you live -

A - not sure - living room
is on 3rd floor

Redirect

1. impact on view

~~2.11~~

- 1st level is garage
- 2nd level BR + office
- ~~3rd~~ - 3rd - great + kitchen
- top - big room / office

~~2.11~~

Pet w #3 Bruce Doak
Prof. Land Surveyor

1. since 1978 - prof land surveyor -
exp. in land use

2. map is not unique - 50 feet -
and dwell by on each - houses
pushed toward street side

3. ca 50 x 170-190 deep
4. all lots on Denton are subj to critical area recommendations
5. not subject to 2nd test of Gravel & Work
6. if it goes to 2nd test, there is no prac. difficulty - there are alternatives - move garage to house & attach it - garage below & addition above
7. 400.3 BC2R - height limit of access - 15 ft. - he's req. 12 ft

400.1 - location of access bldg

Det X
13

8. intro plot w red marking
- Dock went to bd. to explain follows:
- 43% of lot would be impervious - 10% allowed
9. got into nonconforming use - can build back what was there
10. Depth - req 100 ft - new water main gauge is 57 ft
11. pond use - detrimental to neighborhood - based on topography - runoff - it has to run off somewhere - it's difficult due to flat ground
12. In Accord wouldn't be denied use of his prop

Cross X

5

1. improvement surface - based on 100% improvement

2. most houses front street

Redirect

1. some houses the front faces water

Redstart

1. K. Kelly said at 50% improvement - not 100%

Closing Arguments

Prot.

- my send up regarding cases cited

1. Crowell v. Wood

pg. 699 - "unique"

2. NORTH v. St. Mary's City

unique aspect - my subject property has unique character diff from others in area

3. McLean v. Syly

reasonable - more affor
measurable hardships

4. my testimony to uniqueness -
pet. actually said prop was like
others in area - Dook
agreed
5. unique has nothing to do w/
structures on property
6. we think water side is front
yard
7. non conforming use issue
8. imperious surface reg is not met -
beyond what is allowed under
DERM
9. exp. testimony - Dook - import
reg. on Hatcher's property
10. not dep. of reasonable use of property
11. attach garage to house

Ashwell

1. 19 ft. for good reason
2. look at mp of my building -
it does make my prop. diff
3. addition is underway - garage
not option
4. I'm not trying to build anything
5. my grandmother's house is larger
taller than 19 ft.

CONTRADICTS
earlier
testimony

6. shed will come down & ~~not~~ concrete
~~not~~ pad when garage is built

7. 3x15 - my garage & ~~storage~~ storage
space destroyed

7/29/04

(1)

OU-169-A

David + Roslyn Golger

Deborah Laphin - egg - w/ petting

with pygmy

6-17-04

Case # 02-462-SPH

Generality

Holzer opening statement

- Fence location is the crux of the situation
- Dec. 1996 letter from Avery Hardin Board, adapted Dugan's decision
- Baisdon's were not party to Ex. Office decision (last paragraph)
- Dugan decision orders board to
- Feb 8, 2002 remand from board
- This case was filed by Jablon for special hearing
- Holzer filed with Dugan, Dugan had meeting w/ Clark + Holzer

Ruth Baisdon by Holzer

- lives in first house on Oak Ave bordering the subject property.
- Dumpster is under bedroom window lights on not next to fence
- Was not party to decision by Ex. Office
- Dugan told Jablon she does not want to argue case because she won.

Crossed by Clark

Ask County Ex to make the buffer a park

said she was not aware of any issues to be resolved by Ex. Office after a complaint

6-17-04

case# 02-462-SPH

Gerahty

C. William Clark rep. Terry Gerahty
J. Carroll Holzer rep Mr & Mrs Baisden

C. Robert Loskof county will be left out
& rely on decision of Board

purchased old gas station had to give
priority to county as buffer
250,000 in parking lot

put up fence in 24 hours on zone line
after parking lot was paved all variances
are met

William Clark Terry J. Gerahty

first piece bought in 93 second piece
in 95

- In 96 went for zoning to BC
- 60 ft buffer with 10 ft in made storm
- Built fence were Berrett told him to
- filed for all permits & were obtained
with no appeal
- spent

- if The fence was moved all the lighting
would have to be moved The post would be
in the Trench & the fence would be
up against the lot & would be knocked down

Gerahy

— Not a court of equity

1996 Avery Harden height of
fence condition for change
in zoning

March 1997

Variance on fence but mainly
on parking lot

1996 Harden letter precludes
all variances

Bob Barrett + Mike Davis
reduce fence to 6 feet + 60
feet Buffer
after March 6, 1997

Kotroco Ruling Ex #5
March 6 1997

Move to parking lot from fence

April 25 2001 Dugan Remarks
ordered back to the board
Board calls for fence at Avery Harden letter

Schmidt's decision

issues 1, 2, 3,

② Schmidt says Dugan is wrong that variance is moot w/ fence (we don't agree)

③ Variance is not necessary because parking lot is fixed, like variance never happened

6602555 MK

(20020462) "A"
supplemental

①

1/27/03
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
INDIVIDUALS ERNIE AND
RUTH BAISDEN

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.: 03-C-03-0275

IN THE MATTER OF:
POOR BOY'S INC.
(TERRY GERAHTY, LEGAL OWNER)
2711 TAYLOR AVENUE

98-267-SPH
CASE NO: CBA-00-159

* * * * *

**CERTIFIED COPIES OF PROCEEDINGS BEFORE THE
BALTIMORE COUNTY DEPARTMENT OF PERMITS & LICENSES
AND THE BOARD APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

**ENTRIES FROM THE DOCKET OF THE
BOARD OF APPEALS AND THE DEPARTMENT
OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY:**

RECEIVED AND FILED

2003 JAN 27 A 10:27

HONORABLE
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

9/20/2002

Order of The Honorable John F. Fader II, Circuit Court for Baltimore County, Case number 03 C 02 1085 - Remanding to the Board of Appeals. Without knowing specifically why the Agency did what it did, and upon what its decision is based, a remand is all that can occur in this case. The January 3, 2002 Board of Appeals decision is remanded without being either affirmed or denied. (Transcript and Record previously filed by the Board is returned herewith to the Circuit Court) (See Record Extract Case Number: 03 C 02-1085 attached as Exhibit A)

FILE BEING RETURNED HEREWITH

CBA-00-159

12/12/2002

Order of the Board on Remand From the Circuit Court for Baltimore County

1/09/2003

Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Ruth and Ernie Baisden.

1/16

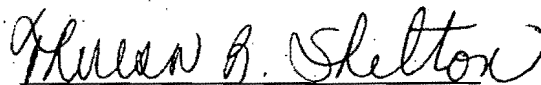
Certificate of Notice sent to interested parties.

1/27

Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Board acted are permanent records of the originating agency in Baltimore County. Certified copies of these records in the Board's file are hereby forwarded to the Court, together with the transcript and Record of Proceeding previously filed in Civil Action No.: 3-C-02-01085.

Respectfully submitted,



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

c: C. William Clark, Esquire
Terry Gerahty / Poor Boy's, Inc.
J. Carroll Holzer, Esquire
Ernie and Ruth Baisden
Avery Harden, Landscape Architect / PDM
John R. Reisinger, Buildings Engineer / PDM
Edward J. Gilliss, County Attorney
Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney

1/16/03
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
INDIVIDUALS ERNIE AND
RUTH BAISDEN

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

IN THE MATTER OF:
POOR BOY'S INC.
(TERRY GERAHTY, LEGAL OWNER)
2711 TAYLOR AVENUE

CASE NO: CBA-00-159

CIVIL ACTION
NO.: 03-C-03-0275

RECEIVED AND FILED

2003 JAN 16 A 9:54

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:

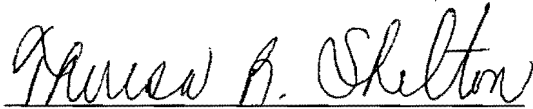
J. Carroll Holzer
508 Fairmount Avenue, Towson, MD 21286

Earnest and Ruth Baisden
7706 Oak Avenue, Baltimore, MD 21234

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, Suite 700, Nottingham
Centre, 502 Washington Avenue, Towson, MD 21204

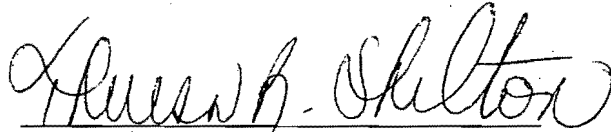
Poor Boy's, Inc.
c/o Terry Gerahty, 7721 Old Harford Road,
Baltimore, MD 21234

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.



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: J. Carroll Holzer, 508 Fairmount Avenue, Towson, MD 21286; Earnest and Ruth Baisden, 7706 Oak Avenue, Baltimore, MD 21234; C. William Clark, Esquire, NOLAN, PLUMHOFF & WILLIAMS, Suite 700, Nottingham Centre, 502 Washington Avenue, Towson, MD 21204; and Poor Boy's, Inc., c/o Terry Gerahty, 7721 Old Harford Road, Baltimore, MD 21234, this 16TH day of January, 2002.



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

January 16, 2003

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

RE: Circuit Court Civil Action No. 3-C-03-0275
Petition for Judicial Review
Ernie and Ruth Baisden
-- Poor Boy's, Inc. (Terry Gerahty, Legal Owner)
Case No.: CBA-00-159 on REMAND

Dear Mr. Holzer:

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.

All costs incurred for certified copies for the completion of the record must be at your expense. There is no transcript for the record being filed under the above referenced Circuit Court Civil Action number.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Theresa R. Shelton".

Theresa R. Shelton

Legal Secretary

/trs

Enclosure

c: C. William Clark, Esquire
Terry Gerahty / Poor Boy's, Inc.



County Board of Appeals of Baltimore County

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

January 16, 2002

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-03-0275
Petition for Judicial Review
Ernie and Ruth Baisden
-- Poor Boy's, Inc. (Terry Gerahty, Legal Owner)
Case No.: CBA-00-159 on REMAND

Dear Mr. Clark:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on January 9, 2003, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter on REMAND from the Circuit Court under Civil Action number 03-C-02-1085. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-03-0275.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: J. Carroll Holzer, Esquire
Ernie and Ruth Baisden
Terry Gerahty / Poor Boy's, Inc.
Avery Harden, Landscape Architect / PDM
John R. Reisinger, Buildings Engineer / PDM
Edward J. Gilliss, County Attorney
Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney

1/9/03

PETITION OF
INDIVIDUALS ERNIE AND
RUTH BAISDEN

IN THE MATTER OF:
POOR BOYS', INC.
2711 TAYLOR AVENUE

BEFORE THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
400 WASHINGTON AVE.
TOWSON, MARYLAND 21204

9th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
RE: APPROVAL OF LANDSCAPE PLAN
AND LIGHTING PLAN BY PDM
CASE NO: CBA-00-159

* IN THE CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

Case No.

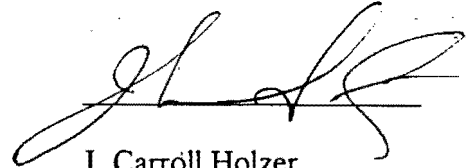
03-C-03-275

* * * * *
* 98-267-SP4 * * * * *
PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioners, individuals, Ruth and Ernie Baisden, by and through their attorney, J. Carroll Holzer and Holzer and Lee, request Judicial Review of the Opinion of the County Board of Appeals of Baltimore County in the above referenced matter rendered on December 12, 2002 and attached hereto.

Petitioners were parties before the County Board of Appeals and fully participated in the proceedings.

Respectfully Submitted,



J. Carroll Holzer
508 Fairmount Avenue
Towson, MD 21286
410-825-6961
Attorney for Petitioners

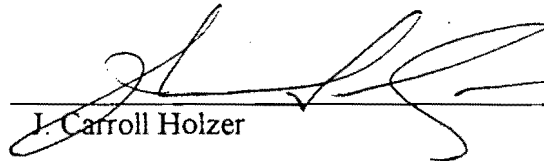
LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

(410) 825-6961
FAX: (410) 825-4923

FILED JAN 9 2003

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 9th day of January, 2003, a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid, to C. William Clark, Esquire, 502 Washington Ave., Suite 700 Towson, MD 21204; and the Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.


J. Carroll Holzer

1/9/03

PETITION OF
INDIVIDUALS ERNIE AND
RUTH BAISDEN

IN THE MATTER OF:
POOR BOYS', INC.
2711 TAYLOR AVENUE

BEFORE THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
400 WASHINGTON AVE.
TOWSON, MARYLAND 21204

9th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
RE: APPROVAL OF LANDSCAPE PLAN
AND LIGHTING PLAN BY PDM
CASE NO: CBA-00-159

* IN THE CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

Case No.

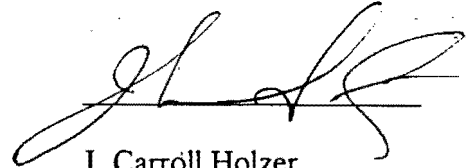
03-C-03-275

* * * * *
* 98-267-SP4 * * * * *
PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioners, individuals, Ruth and Ernie Baisden, by and through their attorney, J. Carroll Holzer and Holzer and Lee, request Judicial Review of the Opinion of the County Board of Appeals of Baltimore County in the above referenced matter rendered on December 12, 2002 and attached hereto.

Petitioners were parties before the County Board of Appeals and fully participated in the proceedings.

Respectfully Submitted,



J. Carroll Holzer
508 Fairmount Avenue
Towson, MD 21286
410-825-6961
Attorney for Petitioners

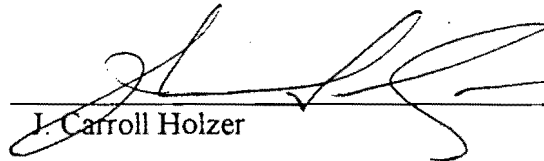
LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

(410) 825-6961
FAX: (410) 825-4923

FILED JAN 9 2003

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 9th day of January, 2003, a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid, to C. William Clark, Esquire, 502 Washington Ave., Suite 700 Towson, MD 21204; and the Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.


J. Carroll Holzer

12/12/02
IN THE MATTER OF
POOR BOY'S, INC. (Terry Gerahty /Legal Owner)
2711 TAYLOR AVENUE

9TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

RE: APPROVAL OF LANDSCAPE PLAN AND
LIGHTING PLAN BY PDM
(Case No. CBA-00-159)

* ON REMAND
* FROM THE
* CIRCUIT COURT FOR
* BALTIMORE COUNTY
* Civil Action
No.: 03-C-02-001085
* * * * *

ORDER OF THE BOARD ON REMAND
FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY

This matter originally was before the Board on a Motion to Dismiss filed on behalf of Appellee, Poor Boy's, Inc., to the appeal noted by the Appellants, Ernie and Ruth Baisden, to the approval of a landscaping plan and a lighting plan by the Department of Permits and Development Management (PDM). Memorandums were filed on behalf of both parties, and argument presented by counsel on August 1, 2001. This Board issued its Ruling on Motion to Dismiss on January 3, 2002. Subsequently, a Petition for Judicial Review was filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Ernie and Ruth Baisden. On September 24, 2002, this matter was remanded to the Board of Appeals by order of the Honorable John F. Fader II, Judge, "for clarification and statement of reasons for the Board's opinion and determination."

The facts relating to this Motion are clear. In furtherance of an application for a grading permit related to the expansion of an existing parking lot, approved landscaping and lighting plans are required by Baltimore County. Such plans were prepared, presented and stamped as approved by E. Avery Harden, Landscape Architect, Development Plans Review of the Baltimore County Department of Permits and Development Management on September 7, 2000 (Landscape Plan) and September 8, 2000 (Lighting Plan). An appeal to this Board of those approved plans was taken by the Appellants on October 5, 2000.

The narrow question presented in this Motion is whether or not the approval of the landscape and lighting plans by Mr. Harden as part of the permit process constituted an event which was appealable to this Board.

Article 25-A, § 5(U), of the *Annotated Code of Maryland* authorized Baltimore County to establish and provide for a County Board of Appeals; and noted its power:

...to enact local laws providing... (4) for the decision by the Board on petition by any interested person and after the notice and opportunity for a hearing and on the basis of the record before the Board of such of the following matters arising (...on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of... the County Council, as specified from time to time by such local laws enacted under this subsection... the issuance... or modification of a license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order.

The Board adopts the argument of the Appellee as follows:

Section 602 of the Baltimore County Charter only authorizes the County Board of Appeals to hear appeals from certain enumerated matters: zoning § 602(a), licenses § 602(b), orders relating to building § 602(c), and appeals from executive administrative and adjudicatory orders § 602(d). Neither the County Code nor the Charter expressly authorizes an appeal from a decision of the Landscape Architect, or the approval of landscape and lighting plans to accompany an application for a grading permit. Nor does it expressly authorize appeals from the approval of grading permits. Nothing in any of the sections of the Code which regulate and relate to grading authorizes any such appeal to the County Board of Appeals. The approval of the Landscape Architect as to the proposed landscape and lighting plans does not constitute an "administrative and adjudicatory order." The only conceivable category is that it fits under an order relating to building. However, the express language of the statutes regulating grading found in Title 14 of the *Baltimore County Code* militate against such a construction when the County Council has spent enumerable paragraphs defining grading, and under any reasonable

reading of those definitions, it excluded the construction or erection of any building or structure of any kind.

In the case at Bar, the Protestant's Notice of Appeal states that this appeal is from the Decision of the Director of the Department of Permits and Development Management and attaches various exhibits, none of which demonstrate that the Director made any decision. The Landscape Architect did approve and sign lighting and landscape plans in connection with an application for a grading permit to construct a new parking lot at the subject site. This was not a final act issuing a permit. The appealable act might be the final granting of the grading permit itself by the Department of Permits and Development Management, if the Appellants have standing and are permitted by law to take such an appeal. The decision of the Landscape Architect is only one step in the process of obtaining a permit.

Once an application for a grading permit for a parking lot is filed, it is referred to the Landscape Architect, who then conducts a review of the application and makes a determination that, from his point of view, there are no concerns and/or issues under the applicable lighting and landscaping regulations. If there are none, it would, therefore, be appropriate from that department's point of view to have a permit issued. The findings of the Landscape Architect, if he approves, are then forwarded to the Department of Permits and Development Management for final review and approval, and, if all is in order, the building, or grading permit in this case, is granted. To allow appeals from interlocutory statements from administrative agencies (in this case, the Landscape Architect) would be to allow myriad appeals in the same case. A separate appeal could be taken from each department reviewing the application, which might occur on a series of different days, and the period within which to note an appeal could vary accordingly.

For the Board of Appeals to have subject matter jurisdiction, two elements must be met. First, there must be a statutory grant of authority, which is discussed above. Secondly, there

must be an operative event that determined the rights of the parties. In *Meadows v. Foxleigh*, 133 Md. at 510, the Court of Special Appeals commented upon the Court of Appeals' decision in *United Parcel Service v. People's Counsel*, 336 Md. 569, 650 A.2d 226 (1994). In *United Parcel Service* (UPS), the Court of Appeals held that a letter from the Zoning Commissioner written in response to a citizen complaint dated more than two months after a building permit was issued to UPS was not an appealable decision. The Court held that the "approval" or "other form of permission" occurred when the Zoning Commissioner and other officials approved UPS's application for a building permit, and the building engineer issued a building permit. The appealable event occurred then, when the application for the permit was approved and issued. *Id.* at 583-584. In *Meadows v. Foxleigh*, they found that the letter from the Director of the Department of Permits and Development Management was not an "operative event" that determined whether Foxleigh's proposed plan would be granted a license or permit, rather it merely informed Foxleigh that the proposed plan must be reviewed by the CRG. *Meadows v. Foxleigh*, 133 Md. at pg 516. The *Meadows* Court went on to comment upon *Art Wood v. Wiseburg*, 88 Md. at 723, 596 A.2d 712 (1991) Cert Denied 25 Md. 397, 601 A.2d 130 (1992). In *Art Wood*, the Court held that the CRG's action was an appealable final action; because the CRG "was not waiting for or seeking any additional information before approving a plan." In contrast to the *Art Wood* situation, in the instant case, at the time the Landscape Architect approved the plans to accompany the application for a permit, there was not yet a final action that could be appealed, because the Director of the Department of Permits and Development Management needed additional information from other departments to complete the approval process, so that a permit could be issued.

The Board has reviewed the Briefs of the parties and considered the arguments presented at the hearing. We find unanimously that the approvals by the Landscape Architect dated

September 7, 2000 and September 8, 2000 were not final appealable events. The obtaining of a permit is a process containing many constituent parts, any one of which could prove fatal to the application. Although appealable under the Code, a denial could conceivably be issued by the Director even if no specific objections were raised during the process. Mr. Harden inherently acknowledged this authority when he stated in his letter of December 24, 1996 to the parties that "the proposal above is essentially what the Baltimore County Landscaping Manual will require when a permit for the parking lot is sought." [Emphasis added.] The approval by Mr. Harden was only one of the many steps leading to an ultimate approval or denial of the requested permit. His action does not in and of itself allow the actual project to go forward and work to proceed on the ground; only the issuance of a proper grading permit would enable Appellees to do so. It is therefore from that final determination to grant the permit that all rights of appeal should emanate.

The Board is not unmindful and recognizes the frustration of the Appellants with regard to their inability under § 7-36 of the Code to appeal the granting of a permit. Unfortunately, their attempt to render appealable one particular internal part of the permit decision-making process is neither supported by statute or by case law. There is no specific authority in § 5(U) or § 602 for Appellants' position nor is there a right of appeal under the statutes regulating grading found in Title 14 of the Code, and in fact only limited appeals under § 7-36 of the Code. We are similarly unconvinced by Appellants' argument that a basis for their appeal lies in § 26-32 of the Code, which we find is clearly related to zoning decisions and not to the issuance or denial of grading permits. Finally, we find the UPS decision still clear and controlling. To hold otherwise would open the way for a myriad of appeals, each on its own schedule, of every positive or negative departmental comment, objection, question, or approval made or sought as part of a request for a permit, application, or development plan. This Board does not believe that such a result is the

intent or letter of the present statutory or case law, and we accordingly grant Appellee's Motion to Dismiss.

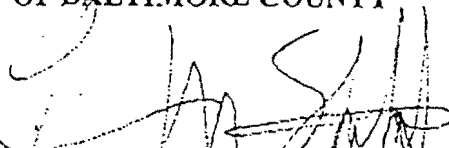
ORDER

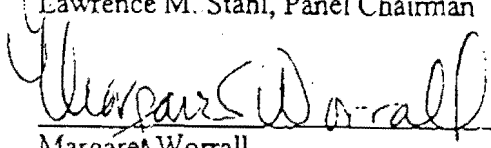
IT IS, THEREFORE, THIS 12th day of December, 2002, by the
County Board of Appeals of Baltimore County, on remand from the Circuit Court for Baltimore
County

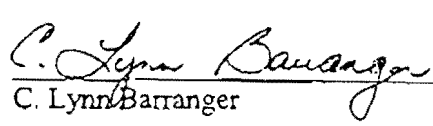
ORDERED that Appellee's Motion to Dismiss be and the same is hereby GRANTED;
and it is further

ORDERED that the appeal filed in Case No. CBA-00-159 be and the same is hereby
DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence M. Stahl, Panel Chairman


Margaret Worrall


C. Lynn Barranger

IN THE MATTER OF
ERNIE BAISDEN, et al.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
CASE NO. 03 C 02 1085

ORDER OF COURT REMANDING
CASE TO BOARD OF APPEALS

CBA-00-159
98-267-SPH

As a result of a hearing before this court on September 13, 2002, it is
ORDERED by the Circuit Court for Baltimore County this 20th day of September
2002 that this case is remanded to the Board of Appeals (Board) for clarification
and statement of the reasons for the Board's opinion and determination.

Specifically, this court has no information before it, whereby it can determine
whether the Board's granting of the motion by Poor Boy's, Inc. to dismiss the
appeal has a foundation in law.

A.

Terry Gerahty t/a Poor Boy's Inc. made application to Baltimore County,
Maryland regarding the construction of a parking lot on property located at 2711
Taylor Avenue, Baltimore County, Maryland, where a garden and plant center is
located and operated. Both parties agreed, that as part of the process of
application, a landscape and lighting plan for the site must be obtained and
approved. A landscape and lighting plan was approved, and when an appeal was
taken, opposing that approval, by protestants to the Board of Appeals, the appeal
was dismissed by the Board, because the Board found the approval to be a non
final determination, and therefore a non appealable event.

When the Board gave a written ruling January 3, 2002 dismissing the protestant's appeal, it said:

... In furtherance of an application for a grading permit related to the expansion of an existing parking lot, approved landscaping and lighting plans are required by Baltimore County. Such plans were prepared, presented and stamped as approved by E. Avery Harden, Landscape Architect, Development Plans Review of the Baltimore County Department of Permits and Development Management on September 7, 2000 (Landscape Plan) and September 8, 2000 (Lighting Plan). An appeal to this Board of those approved plans was taken by the Appellants on October 5, 2000.

... The Board notes that, as part of the application process for a grading permit, various prerequisite approvals, comments, and concerns, if any, are elicited from relevant County departments and agencies. The responses obtained, as well as other relevant input, are provided to the Director of the Department of Permits and Development Management for his review and ultimate granting or denial of the requested permit. Under § 7-36 of the *Baltimore County Code*, a denial by PDM would then constitute an appealable event. [Emphasis added.]

... The obtaining of a permit is a process containing many constituent parts, any one of which could prove fatal to the application ...

... The approval by Mr. Harden was only one of the many steps leading to an ultimate approval or denial of the requested permit. His action does not in and of itself allow the actual project to go forward and work to proceed on the ground; only the issuance of a proper grading permit would enable Appellees to do so. It is therefore from that final determination to grant the permit that all rights of appeal should emanate.

The undersigned judge has no idea whether the statements by the Board are legally correct in the permit process, or where I would look to determine the legal correctness. No one has told me the basis of these statements by the Board -

what code sections, regulations, etc. are determinative. Therefore, I am not able to tell whether the Board is correct.

B.

Trial courts must review the decision by an Agency on the record of the Agency and on the basis stated by the Agency.

The scope of judicial review of an administrative agency has been explained by the Court of Appeals in the case *MVA v. Karwacki*, 340 Md. 271, 666 A.2d 511 (1995):

The scope of judicial review of an agency's factual determinations is extremely narrow. *Liberty Nursing Center v. Department of Health and Mental Hygiene*, 330 Md. 433, 442, 624 A.2d 941, 945 (1993). A reviewing court must defer to the agency's factual findings and inferences that are supported by substantial evidence. *United Parcel v. People's Counsel*, 336 Md. 569, 577, 650 A.2d 226, 230 (1994); *Caucus*, 320 Md. at 324, 577 A.2d at 788; *Lindsey*, 318 Md. at 334, 568 A.2d at 33. In other words, a reviewing court evaluates the administrative agency's fact finding results; it does not make an independent, *de novo* assessment of the evidence. *Zeitschel v. Board of Education*, 274 Md. 69, 82, 332 A.2d 906, 913 (1975). If there is any substantial evidence in the record to support an agency's factual determinations, the reviewing court must affirm the agency's decision, which on its face is correct, and presumed to be valid. *Liberty Nursing Ctr., supra*, 330 Md. at 442, 624 A.2d at 945; *Anderson v. Department of Public Safety*, 330 Md. 187, 212, 623 A.2d 198, 210 (1993); *Department of Health and Mental Hygiene v. Shrieves*, 100 Md. App. 283, 302, 641 A.2d 899, 908 (1994). For purposes of determining whether an administrative agency's decision is supported by substantial evidence in the record, substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Caucus*, 320 Md. at 324, 577 A.2d at 788. See also *Liberty Nursing, supra*, 330 Md. at 442, 624 A.2d at 945; *State Election Board v. Billhimer*, 314 Md. 46, 58, 548 A.2d 819, 825 (1988), *cert. denied*, 490 U.S. 1007, 109 S. Ct. 1644, 104 L. Ed. 2d 159 (1989); *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512, 390 A.2d 1119, 1123

(1978); *Supervisor of Assessments v. Peter & John Radio Fellowship, Inc.*, 274 Md. 353, 355-56, 335 A.2d 93, 94 (1975); *Dickinson-Tidewater Inc. v. Supervisor of Assessments*, 273 Md. 245, 256, 329 A.2d 18, 25 (1974); *Snowden v. Mayor & City Council of Baltimore*, 224 Md. 443, 448, 168 A.2d 390, 392 (1961). *Id.* at 280-81.

In *United Steelworkers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corporation*, 298 Md. 665, 472 A.2d 62 (1983), the Court of Appeals stated that it is necessary that administrative agencies "resolve all significant conflicts in the evidence and then chronicle, in the record, full, complete and detailed findings of fact and conclusions of law." *Id.* at 678. In the judicial review of an agency, "the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency." *Id.* at 679.

More recently, the Court of Special Appeals has held:

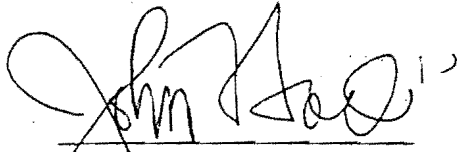
A reviewing court may not make its own findings of fact, *Board of County Comm'rs v. Holbrook*, 314 Md. 210, 218, 550 A.2d 664 (1988), or supply factual findings that were not made by the agency. *Ocean Hideaway Condo. v. Boardwalk Plaza*, 68 Md.App. 650, 662, 515 A.2d 485 (1986). Findings of fact are essential in order for the reviewing court to review meaningfully the agency's decision. See *Gray v. Anne Arundel Co.*, 73 Md.App. 301, 307-09, 533 A.2d 1325 (1987). Moreover, it is the agency's function to determine the inferences to be drawn from the facts. On review, neither the circuit court nor this Court may substitute its judgment for that of the agency. *Eberle v. Baltimore County*, 103 Md.App. 160, 165, 652 A.2d 1175 (1995).

Maryland Securities Commissioner v. U.S. Securities Corporation, et al., 122 Md.App. 574, 586, 716 A.2d 290 (1998).

Without knowing specifically why the Agency did what it did, and upon what its decision is based, a remand is all that can occur in this case.

C.

At the hearing in this case, the attorneys brought to my attention some matters concerning changes to the applicable law, etc. that may or may not affect the end decision in this case. All of that is something for the agency to consider on remand, to the extent it deems advisable.


John F. Fader II
Judge

JFF:am

cc: J. Carroll Holzer, Esq.
Holzer and Lee
The 508 Building
508 Fairmount Avenue
Towson, MD 21286-5448

C. William Clark, Esq.
Nolan, Plumhoff & Williams
502 Washington Avenue
Nottingham Center Ste 700
Towson, MD 21204-4528

mailed 9/23/02
sw



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

[Signature]
DIRECTOR

BUILDING PERMIT

[Signature]
BUILDINGS ENGINEER

PERMIT #: B329149 CONTROL #: CRC- DIST: 09 PREC: 21
DATE ISSUED: 07/17/2001 TAX ACCOUNT #: 1800007926 CLASS: 06

PLANS: CONST 0 PLOT 0 R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 2711 TAYLOR AVE
SUBDIVISION: PARKVILLE

OWNERS INFORMATION

NAME: GERANTY, TERRY J
ADDR: 7721 OLD HARFORD RD 21234

TENANT:

CONTR: TBD

ENGINE:

SELLER:

WORK: GRADING & PAVING FOR PARKING LOT EXPANSION.
42,000SF DISTURBED AREA. PERMIT EXPIRES
TWO YEARS FROM DATE OF ISSUE.

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: RETAIL & GRADING

45,000.00 EXISTING USE: RETAIL

TYPE OF IMPRV: OTHER

USE: OTHER - RESIDENTIAL

FOUNDATION:

SEWAGE: PUBLIC EXIST

BASEMENT:

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 499190F

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: NC/NC

RIOF STR SETB:

REAR SETB: NC

EXHIBIT

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

TOWSON, MARYLAND 21204

[Signature]
DIRECTOR

BUILDING PERMIT

[Signature]
BUILDINGS ENGINEER

PERMIT #: B431416 CONTROL #: SWMC- DIST: 09 PREC: 01
DATE ISSUED: 07/06/2001 TAX ACCOUNT #: 1999907926 CLASS: 06

PLANS: CONST 00 PLOT B, R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 2711 TAYLOR AVE
SUBDIVISION: PARKVILLE

OWNERS INFORMATION

NAME: GERAHTY, TERRY J
ADDR: 7721 OLD HARFORD RD 21234

TENANT:

CONTR: OWNER

ENGR:

SELLR:

WORK: CONST STORM WATER MGMT FOR 0.75AC OF DRAINAGE
AREA. SEE GRADING PERMIT B329149
PERMIT EXPIRES TWO YEARS FROM DATE OF ISSUE.

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

25,000.00 PROPOSED USE: RETAIL + SUM
EXISTING USE: RETAIL

TYPE OF IMPRV: OTHER

USE: OTHER - NON-RESIDENTIAL

FOUNDATION:

BASEMENT:

SEWAGE: PUBLIC EXIST

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 49.919AC

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: NC

SIDE SIX SETB:

REAR SETB: NC

Kevin Sharbonda
Sediment Control Inspector II - Inspection and Enforcement

Baltimore County
Department of Environmental Protection
& Resource Management
401 Basley Avenue, Room 416
Towson, Maryland 21204

410-887-3226 Fax 410-887-4804



PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.

EXHIBIT

2

OAK

(50 FT. R/W - MA

OWNER'S SIGNATURE AND CERTIFICATION FORM

I certify that I have reviewed this Final Landscape Plan; that I am aware of the regulations presented in the Baltimore County Landscape Manual; and I agree to comply with these regulations and all applicable policy, guidelines and ordinances. I agree to certify the implementation of this approved Final Landscape Plan upon completion of the landscape installation not later than one (1) year from the date of approval of this plan to the Department of Permits and Development Management, Development Plans Review, County Office Building, Room 211, Towson, MD 21204.

Owner's signature

Date

TERRY GERAHTY

9/6/00 910-668-7599

Printed name

Tel. #

8309 Palesford RD

(Print) Street address

Baltimore

MD

21234

City

State

Zip

PDM #

Building Permit #

SANY. M.H.
TOP EL. = 356.11
INV. EL. = 348.76(OUT)

POLE 204524

BALTIMORE COUNTY
DEPT. OF PERMITS & DEV. MGMT.
LANDSCAPE PLAN APPROVED

BY

DATE

[Signature] 9-7-00

EXH. A

SITE PLAN TO ACCOMPANY PERMIT APPLICATION B-329149
FOR GRADING, PAVING AND INSTALLATION OF
PRIVATE UTILITIES & WQ FACILITY

EXHIBIT

5

3/7/00	MOVED TRENCH NO. 1 TO EASTERN EDGE OF PAVING
11/19/99	INCREASED OUTSIDE STORAGE AREA & # PARKING SPACES
	LENGTHENED WQ TRENCH NO. 1
10/27/99	REMOVED EARTH BERM & REVISED GRADE OF UPPER LOT
DATE	REVISION DESCRIPTION

LANDSCAPE PLAN

SITE PLAN, GRADING & SEDIMENT CONTROL PLAN

PARKING LOT EXPANSION and MODIFICATIONS

POOR BOY'S, INC

2711 TAYLOR AVENUE (AT OLD HARFORD ROAD)

BALTIMORE COUNTY

DIST. 9 C6

MARYLAND

SCALE: 1" = 20'

DATE: FEB. 10, 1998

ENGINEER:

R. A. CHILDRESS & ASSOC. INC.
713 PHEASANT DRIVE
FOREST HILL, MD. 21050
(410) - 803 - 0304

OWNER

TERRY GERAHTY
7721 OLD HARFORD ROAD
BALTIMORE, MD. 21234
(410) 888 - 7599

DRAWING No.

SP-1

SHEET 1 OF 2



[Handwritten signature]

5/31/02

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

IN THE MATTER OF: RUTH BAISDEN

IN THE MATTER OF: TERRY GERAHTY

* CIVIL ACTION
* CASE NO. 03-C-00-6650
* 03-C-00-6687

* 98-267-SPH
*
*

* * * * *
**MOTION FOR AN INJUNCTION, MANDAMUS,
ENFORCEMENT OF COURT ORDER, AND CONTEMPT OF COURT**

Ruth and Ernie Baisden, by their attorney J. Carroll Holzer, Holzer and Lee, hereby request this Circuit Court of Baltimore County for an injunction against Poor Boys, Inc. and Terry Gerahty, Owner to require compliance with this Court's Order of the Honorable Robert N. Dugan, Judge, dated April 25th, 2001, requiring the construction of a permanent fence and the location thereof as determined by the Court in its "Memorandum and Opinion Order" of that date; a mandamus against Baltimore County requiring the county to enforce the zoning regulations of Baltimore County as interpreted by this Court in its order of April 25th, 2001; and enforcement of this Court's order without any further need of hearings or other procedures as required by this Court's Order and the Order of the Baltimore County Board of Appeals dated February 8th, 2002 in which the Board of Appeals required the subject property be accomplished "as set forth in Avery Harden's correspondence of December 24th, 1996, a copy of which is attached hereto and made a part of this order," and further says in support:

1. Ruth and Ernie Baisden appealed a Board of Appeals decision to this Court, which resulted in a "Memorandum Opinion and Order" of this Court by the Honorable Robert N. Dugan, Judge on April 25th, 2001. The Court reversed the

- Board and remanded the matter to the Board with instructions to pass an order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24th, 1996 (See Appendix #A – Circuit Ct. Order).
2. The Avery Harden letter and plat referred to by the Court is attached hereto (See Appendix B - Harden December 24th, 1996 letter and plat).
 3. That Poor Boys filed an appeal from the Circuit Court to the Court of Special Appeals. That Poor Boys on October 5, 2001 filed a Motion to Dismiss its Appeal on the basis that Harden's fence requirements were a condition variance, and therefore, "moot" since Poor Boys had renovated the parking lot and no longer needed a variance. The Court of Special Appeals denied the Motion to Dismiss but allowed an extension of the time to file a brief. Poor Boys however, elected not to continue the appeal and voluntarily withdrew its appeal. Therefore, Poor Boys abandoned its argument and failed to timely pursue its remedy, if any. Poor Boys had the opportunity for "due process" and elected not to proceed. (See App C attached hereto).
 4. Subsequently, the Board of Appeals passed such an order on February 8th, 2002, requiring the fencing, as remanded by the Circuit Court (See Appendix D – CBA order, February 8th, 2002).
 5. That the matter still has not been resolved by Baltimore County and now the County has filed a special hearing request to re-examine and re-litigate the issue of the location of the fence of which hearing is scheduled for Thursday, June 6th, 2002 (See Appendix E - Jablon letter of April 18th, 2002). The Baisdens through Counsel on April 10, 2002 have requested the County to enforce the Court's

Order without the need for the additional administrative hearing scheduled for June 6, 2002 in that that proceeding is precluded by res judicate as set forth in Judge Dugan's Order of April 25, 2001. (See Appendix F-1).

6. That the events following the Circuit Court Order are set forth in an outline attached hereto (See Appendix G).
7. That Ruth and Ernie Baisden do not believe that the matter resolved by the Circuit Court in Judge Dugan's order, needs to be re-litigated and in fact is res judicata for any other contrary interpretation as to the need or location or conditions of the location of the fence and its permanent nature.
8. Ruth and Ernie Baisden further object to the additional expense and time of procedures before administrative zoning enforcement officers or Hearing Officers to re-litigate and re-determine issues put to rest and finally adjudicated without appeal in this matter. Judge Dugan's order, while at first being appealed to the Court of Special appeals, was later dismissed by that Court by the voluntary withdrawal by Poor Boys, Inc. Thus, the Baisdens submit that the Circuit Court order is final and must be complied with.

INJUNCTION

9. Pursuant to Baltimore County Code Sec. 26-120, abutting and adjacent property owners may bring a request for an injunction to enforce a zoning violation (See Sec. 26-120 Baltimore County Code attached as Appendix H).
10. In light of the findings of the Circuit Court for Baltimore County, the Baisdens request that this Court grant an order requiring no further action by the county, other than to enforce this Court's order of April 25th, 2001.

11. Wherefore, the Baisdens specifically request that the Court Order the Special Hearing set for June 6, 2002 be postponed pending a decision on this Motion.

MANDAMUS

12. Pursuant to the Baltimore County Code, the Director of the Department of Permits and Development Management is required to enforce violations of zoning ordinances and regulations of Baltimore County. See Sec. 26-116 through 121.
13. By his action, the Director has failed to comply with the Order of this Circuit Court in requiring the location and the placing and the nature of the fence as ordered by this court and by the Baltimore County Board of Appeals.
14. Ruth and Ernie Baisden respectfully request this Honorable Court to enforce its order and to order the Director of the Department of Permits and Development Management to enforce the Zoning Regulations of Baltimore County as interpreted by this Court.

ENFORCEMENT OF COURT'S ORDER

15. Ruth and Ernie Baisden respectfully request that this Court enforce its own Order of April 25th, 2001 and require permanent fencing to be installed according to Avery Harden's letter of December 24th, 1996 by the respondent Poor Boys, Inc. and Terry Gerahty.

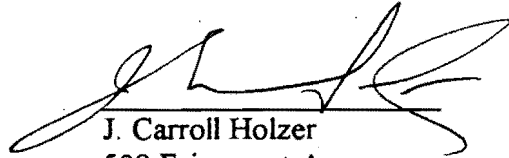
CONTEMPT OF COURT

16. Ruth and Ernie Baisden respectfully request this Court to find an intention on the part of the respondent Poor Boys, Inc. and Terry Gerahty to violate this Court's order, in continuing to violate this Court's order in respect to the nature, location,

and permanence required by this Court's order.

17. Wherefore Ruth and Ernie Baisden respectfully request this Court to immediately enforce the Circuit Court order of April 25th, 2001 as previously discussed in this motion.

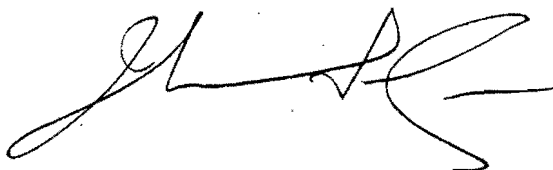
Respectfully submitted,



J. Carroll Holzer
508 Fairmount Ave.
Towson, MD 21286
410-825-6961
Attorney for Ruth and Ernie
Baisden

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 2002 a copy of the foregoing Motion for Injunction, Mandamus, and Contempt of Court was mailed first class, postage pre-paid to William Clark, Esq., Nottingham Centre, 502 Washington Ave., Ste 700, Towson, MD 21204; Edward Gillis, County Attorney for Baltimore County, 400 Washington Ave., Towson, MD 21204; Arnold Jablon, Director of Permits & Development Management, County Office Building, Towson, MD 21204.

A handwritten signature in black ink, appearing to be 'J. Clark', written in a cursive style.

IN THE MATTER OF : RUTH BAISDEN

IN THE CIRCUIT COURT

IN THE MATTER OF: TERRY GERAHTY

FOR BALTIMORE COUNTY

CIVIL ACTION

CASE NO: 03-C-00-6650

03-C-00-6687

* * * * *

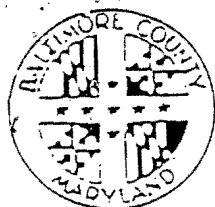
MEMORANDUM OPINION AND ORDER

These two consolidated cases come before this Court as a record appeal from the Board of Appeals of Baltimore County. Ruth Baisden contends that the Board of Appeals erred by not adopting a letter, dated December 24, 1996, from Avery Harden of the Department of Permits and Development Management regarding the location of a fence. Terry Gerahty, owner of Poor Boys, a garden and plant center located at 2711 Taylor Avenue, argues the Board of Appeals erred in requiring that the fence in question be made "permanent", and that it replace the current fence with one having concrete footings, as ordered by Harden in the aforementioned letter.

The dispute between Poor Boys and Ernie and Ruth Baisden, his wife, who reside to the rear of the garden shop, arose in 1996 during the comprehensive rezoning cycle for Baltimore County. Poor Boys' property was rezoned to Business Local (BL) with a total buffer zone of 70 ft. between Poor Boys and the Baisden property. Subsequently, Mr. Gerahty entered into a restrictive covenant agreement with the Villa Cresta Association, dated October 8, 1996, regarding this buffer zone.

Mr. Harden then became involved in the process. Mr. Gerahty contends that he asked Mr. Harden to design a landscape buffer in accordance with an easement agreement with

Appendix A



Per. # 4

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Ernest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Esq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

Appendix B



MANDATE

Court of Special Appeals

Maryland Relay Service
1-800-735-2258
TDD/VOICE

No. 00588, September Term, 2001

Terry J. Gerahty

vs.

Ruth Baisden

JUDGMENT: December 26, 2001: Notice of Dismissal filed
by counsel for appellant. Appeal dismissed.

December 31, 2001: Mandate issued.

From the Circuit Court: for BALTIMORE COUNTY

00003C006650

03C006687

STATEMENT OF COSTS:

Appellant(s):

Lower Court Costs-	120.00
Steno Costs of Appellant-	266.25
Filing Fee of Appellant-	100.00

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony
whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this thirty-first day
of December 2001

Leslie D. Gradet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

APP. C 1



motion hearing
County Board of Appeals of Baltimore County

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

Attachment # *5*

February 8, 2002

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Circuit Case #03-C-00-6650; 03-C-00-6687
In the Matter of Terry Gerahty / Case No. 98-267-SPH
On Remand from the Circuit Court for Baltimore County

Dear Mr. Holzer:

Enclosed please find a copy of the Board's Order issued this date in response to the Remand Order of the Circuit Court for Baltimore County.

Very truly yours,

Kathleen C. Bianco / trs

Kathleen C. Bianco
Administrator

Enclosure

c: Terry Gerahty
J. Carroll Holzer, Esquire
Mr. and Mrs. Ernie Baisden
James Reed, Jr.
Joseph Kreis
Barry Ashbury
Ellen Otto
Alice & John Baker, Jr.
Pat Keller / Planning Director
Lawrence E. Schmidt / Z.C.
Avery Harden / PDM
Arnold Jablon, Director / PDM
Edward J. Gilliss, County Attorney

Appendix D 1



Baltimore County
Department of Permits and
Development Management

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

April 18, 2002

Mr. J. Carroll Holzer
The 508 Building
508 Fairmount Avenue
Towson, MD 21286

Dear Mr. Holzer:

I am in receipt of your letter, dated April 10, 2002, with its attachments. I also read Mr. Clark's letter. I have reviewed all of the decisions issued by the zoning commissioner, the Board of Appeals, and by the Circuit Court.

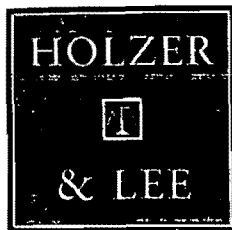
I believe I understand the issue surrounding the location of the fence. As you know, the Division of Code Inspections and Enforcement did issue a citation to Poor Boys, Inc. that concluded the fence was not in the location required by Mr. Harden, of the Bureau of Development Plans Review, and enforced by the Circuit Court in its decision of April 25, 2001. In response to the citation, Mr. Clark argued in his letter that the fence location issue is now moot because the variance that was the source of the fence is now moot. You conversely argue that Mr. Clark is wrong.

I believe that this issue does not belong before the Code Enforcement Hearing Officer. This issue belongs before the County Board of Appeals, not in Code Enforcement. In my opinion, the best way to get this before the Board is to have a hearing before the Zoning Commissioner, from whom any interested party may take an appeal. This is not the case, as you know, from a decision of the Code Enforcement Hearing Officer. Your client would be able to take part and be a party before the Zoning Commissioner and Board. Your client would not be a party before the Hearing Officer; your client could be a witness, but could not be a party, and could not take an appeal from an adverse decision.

The Department of Permits and Development Management will file the petition, post and advertise at its expense. We will schedule the hearing within thirty (30) days, and at the hearing, you and your clients and Mr. Clark and his client will make the appropriate arguments as to the location of the fence which is at issue here.

Appendix E-1





LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

E-MAIL: JCHOLZER@BCPL.NET

April 10, 2002
7024

Hand Delivered

Mr. Arnold Jablon, Director
Department of Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

RE: Poor Boys, Inc.
Correction Notice # 121106 & 121107
Case # 02-1188

Dear Mr. Jablon:

I am writing as a result of a letter my client received from William Clark, attorney for Poor Boys, concerning the referenced correction notice, (attachment #1. Letter from Bud Clark dated March 20, 2002 and correction Notice # 121106 & 121107). Citation # 121106 was issued as a result of Board of Appeal's remand requiring Poor Boys to provide a permanent fence as detailed in Avery Harden's letter, dated December 24, 1996 (See attachment #2 - Board of Appeals Remand dated February 8, 2002). This order requires Poor Boys to rebuild an existing fence at a different location. To date this has not been done. In addition, the correct fence location, type of fence, and landscape needs to be amended on Poor Boys current site plan to conform to the Board of Appeals remand Order

Mr. Clark argues in his letter that the fence requirements are a condition of a variance, under which Poor Boys no longer operates, and is, therefore, a moot point. This is a stale argument already entertained by the Circuit Court Order in Case No.03-C-00-6650 - 03-C-006687 (attachment #3) which states that a permanent fence is to be installed as set forth by Avery Harden's, letter dated December 24, 1996. Mr. Clark, on behalf of Poor Boys filed an appeal to the Court of Special Appeals of Maryland. On October 5, 2001, Poor Boys filed a Motion to Dismiss the Appeal stating that Avery Harden's fence requirements were a condition to a variance and, therefore, "moot" since Poor Boys had renovated the parking lot and was no longer in need of a variance. The Court of Special Appeals denied the Motion to Dismiss the appeal as "moot" but allowed an extension for Poor Boys to file its brief. As a result, Poor Boys elected not to continue the appeal. Therefore, the Circuit Court Order is final. A Mandate from the Court of Special Appeals, and other

Appendix F I

Outline To Judge Dugan, Circuit Court

RE: **Circuit Court Order Case No.03-C-00-6650 – 03-C-006687**
Matter of Ruth Baisden & Matter of Terry Gerahty, April 25, 2001

1. Events Following Circuit Court Order (Requiring the Installation Of A Permanent Fence)

- **April 25, 2001 - Circuit Court Order Case No.03-C-00-6650 – 03-C-006687** orders a permanent fencing to be installed according to Avery Harden's, Baltimore County Landscape Architect, letter dated December 24, 1996. *Appendix A attached hereto*
- **Mr. Bud Clark, Esquire, on behalf of Poor Boys** filed an appeal to the Court of Special Appeal of Maryland Case No. 00588
- **October 5, 2001 - Mr. Clark** filed a **Motion to Dismiss the Appeal and Motion to Extend Time for Filing of Briefs**. In the Motion to Dismiss, Mr. Clark states that Avery Harden's fence requirements were a condition to a variance and therefore "moot" since Poor Boys had renovated the parking lot and no longer in need of a variance. *Appendix C 7*
- **October 15, 2001 – Mr. Carroll Holzer, Esquire, on behalf of the Baisden's** filed an **Answer to Motion to Dismiss Appeal**. This document states the fence issue pre-dated alleged variance request and permit process filed by Poor Boys, and is required by Baltimore County. It is also noted: "...there is suspicion that granting the Motion to Dismiss based on alleged mootness would allow Poor Boys to improperly circumvent Circuit Court Order." *Appendix C 4*
- **November 13, 2001 - Court of Special Appeal** ~~denied the Motion to Dismiss the Appeal as "moot" and granted an extension to file briefs.~~ *Appendix C 3*
- **December 20, 2001 - Mr. Clark** voluntarily dismiss appeal, therefore, the Circuit Court Order is final. *Appendix F 26*
- **December 31, 2001 – Court of Special Appeals** issued A Mandate. *Appendix C attached hereto*
- **January 31, 2002 – Baisdens** send letter to Arnold Jablon requesting that no additional permits be granted until Circuit Court Order concerning fence is enforced *Attached to Outline*
- **February 8, 2002 - Baltimore County Board of Appeals** Issued Remand. This order requires Poor Boys to rebuild an existing fence at the location according to Avery Harden, Landscape Architect Baltimore County, letter dated December 24, 1996. *Appendix F 8*

According the Circuit Court Order the existing fence needs to be replaced by an 8 ft. fence (6ft. fence with 2 ft. lattice on top) of a more permanent quality in a location 10 ft. within the BL zoning line as shown on Avery Harden's letter. In addition, the required landscaping needs to be planted. The relocation of the fence, type of fence, and proper landscape is important since its purpose is to limit impacts from this business to the surrounding residential properties.

Appendix F-1

zoning maps and appropriate regulations shall be prepared in the manner hereinafter provided to regulate and restrict, within the county, the height, number of stories, and size of buildings and other structures; the percentage of a lot that may be occupied; the size of yards or courts; the setback or distance of any buildings or structures from front or side lot, road, street, or alley line and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purpose. Such zoning maps and regulations shall be made in accordance with a comprehensive plan. They shall be designed to reduce congestion in the roads, streets, and alleys; to promote safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land to avoid undue concentration of population; to facilitate adequate provision for schools, parks, water,

regional shopping center and cottages. Trustees of McDonogh v. Baltimore County, 221 Md. 550, 158 A.2d 637 (1969).

Construed in Oursler v. Board of Zoning Appeals, 204 Md. 399, 104 A.2d, 568 (1954); Offutt v. Board of Zoning Appeals, 204 Md. 551, 105 A.2d 219 (1954); Daniels v. Board of Zoning Appeals, 205 Md. 36, 106 A.2d 57 (1954); Temmink v. Board of Zoning Appeals, 205 Md. 469, 109 A.2d 85 (1954).

Applied in Zinn v. Board of Zoning Appeals, 207 Md. 355, 114 A.2d 614 (1955).

Price v. Cohen et al., 213 Md. 457, 132 A.2d 125 (1957), denial of rezoning of a certain tract of land on the grounds that it would materially increase the traffic hazard at that particular location, was upheld pursuant to this section.

An order rezoning certain property from residential to commercial to permit erection of a shopping center was reversed in Hardesty v. Zoning Board, 211 Md. 172, 126 A.2d 621 (1956), on the grounds that such rezoning would clearly increase the traffic hazard in the vicinity. Such a reclassification would be a plain violation of the statutory requirement against congestion in the streets pursuant to this section.

Applied as to a rezoning from residential to manufacturing restricted. Huff v. Board of Zoning Appeals of Baltimore County, 214 Md. 48, 133 A.2d 84 (1957).

Cited in Nelson v. Montgomery County, 214 Md. 596, 136 A.2d 377 (1957).

Applied in Tyrie v. Baltimore County, 215 Md. 135, 137 A.2d 156 (1957).

Applied and appellant required to pay cost, Missouri Realty Co. v. Reamer, 216 Md. 442, 140 A.2d 656 (1958).

Charter references—Zoning maps, § 523; county board of appeals functions and powers relating to zoning, § 602(a).

Cross references—Parking commercial vehicles in residential zones, § 21-110; parking nonmotorized vehicles on residential streets, § 21-112; residential permit parking areas, § 21-186 et seq.

sewerage, transportation, and other public requirements, conveniences, and improvements, including gas and electric structures and facilities.
(Code 1978, § 22-19)

Sec. 26-117. Validation of existing zoning regulations.

The zoning regulations adopted by the county on March 30, 1955 and as thereafter and whenever adopted and amended are hereby declared to be in full force and effect provided, however, that in the case of any conflict between such regulations and the provisions of this title, these provisions shall control.

(Code 1978, § 22-31; Bill No. 18, 1990, § 2)

Sec. 26-118. Record and copies of rules, regulations, etc.; certified copies of rules, etc., as evidence.

The office of planning and zoning shall keep in a separate book all rules, regulations, and restrictions adopted by the county council from time to time under the authority of this title, and any amendments or supplements thereto, and the office of law shall cause copies thereof to be printed and made available for general distribution.

(Code 1978, § 22-34; Bill No. 18, 1990, § 2)

Sec. 26-119. Penalty for violation of regulations, etc.

Any violation of the zoning regulations or policies, rules, or regulations interpreting the zoning regulations or of any final written order made or adopted pursuant to this title shall be a misdemeanor.

(Code 1978, § 22-35; Bill No. 18, 1990, § 2; Bill No. 38, 1990, § 1)

Sec. 26-120. Injunctive proceedings.

In addition to all other remedies provided by law, the director of zoning administration and development management or any person whose property is affected by any violation, including abutting and adjacent property owners, whether specially damaged or not, may maintain an action in any appropriate court for an injunction enjoining the erection, construction, reconstruction, alteration, repair, or use of buildings, structures,

3/29/02
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
INDIVIDUALS ERNIE AND
RUTH BAISDEN

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.: 03-C-02-001085

IN THE MATTER OF:
POOR BOY'S INC.
(TERRY GERAHTY, LEGAL OWNER)
2711 TAYLOR AVENUE

9B-267-SPH

CASE NO: CBA-00-159

* * * * *

**CERTIFIED COPIES OF PROCEEDINGS BEFORE THE
BALTIMORE COUNTY DEPARTMENT OF PERMITS & LICENSES
AND THE BOARD APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

**ENTRIES FROM THE DOCKET OF THE
BOARD OF APPEALS AND THE DEPARTMENT
OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY:**

CBA-00-159

9/7/2000

Approval of Landscape Plan by PDM

RECEIVED AND FILED

9/8

Approval of Lighting Plan by PDM

02 MAR 29 AM 11:12

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

10/5 Notice of Appeal filed by J. Carroll Holzer, Esquire on behalf of Ruth and Ernie Baisden, Appellants.

6/14/01 Motion to Dismiss and Request for Hearing filed by C. William Clark, counsel for Terry Gerahty, Property Owner.

7/19 Appellant's Response to Motion to Dismiss filed by J. Carroll Holzer, Esquire, on behalf of Mr. and Mrs. Baisden.

7/30 Reply to Appellant's Answer to Motion to Dismiss filed by C. William Clark, counsel for Terry Gerahty, Property Owner.

8/1 Motion hearing on Motion to Dismiss

**County's
Exhibit List**

A. Landscape Plan for Poor Boy's Inc.
 B. Lighting Plan for Poor Boy's Inc.
 C. Letter to the Honorable Joseph Bartenfelder, etc., dated December 24, 1996
 D. Letter to Newton A. Williams, Esq., dated March 6, 1997
 E. Letter to C. William Clark, Esquire, dated July 8, 1999
 F. Letter to C. William Clark, Esquire, dated May 31, 2000

1/3/2002 Ruling on Motion to Dismiss issued by Board of Appeals GRANTING Appellee's Motion to Dismiss and that the appeal filed in Case No. CBA-00-159 is DISMISSED.

1/31 Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Ruth and Ernie Baisden.

2/13 Certificate of Notice sent to interested parties.

3/27 Transcript of Proceedings filed.

3/29 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Board acted are permanent records of the originating agency in Baltimore County. Certified copies of these records in the Board's file 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: C. William Clark, Esquire
Terry Gerahty / Poor Boy's, Inc.
J. Carroll Holzer, Esquire
Ernie and Ruth Baisden
Avery Harden, Landscape Architect / PDM
John R. Reisinger, Buildings Engineer / PDM
Edward J. Gilliss, County Attorney
Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney

2/13/02
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
INDIVIDUALS ERNIE AND
RUTH BAISDEN

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.: 03-C-02-001085

IN THE MATTER OF:
POOR BOY'S INC.
(TERRY GERAHTY, LEGAL OWNER)
2711 TAYLOR AVENUE

CASE NO: CBA-00-159

* * * * *
98-267-SPH

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:

J. Carroll Holzer
508 Fairmount Avenue, Towson, MD 21286

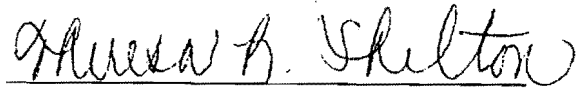
Earnest and Ruth Baisden
7706 Oak Avenue, Baltimore, MD 21234

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, Suite 700, Nottingham
Centre, 502 Washington Avenue, Towson, MD 21204

Poor Boy's, Inc.
c/o Terry Gerahty, 7721 Old Harford Road,
Baltimore, MD 21234

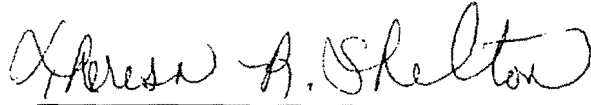
RECEIVED AND FILED
02 FEB 13 AM 11:12
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.



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: J. Carroll Holzer, 508 Fairmount Avenue, Towson, MD 21286; Earnest and Ruth Baisden, 7706 Oak Avenue, Baltimore, MD 21234; C. William Clark, Esquire, NOLAN, PLUMHOFF & WILLIAMS, Suite 700, Nottingham Centre, 502 Washington Avenue, Towson, MD 21204; and Poor Boy's, Inc., c/o Terry Gerahty, 7721 Old Harford Road, Baltimore, MD 21234, this 13th day of February, 2002.



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

February 13, 2002

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-02-001085
Petition for Judicial Review
Ernie and Ruth Baisden
-- Poor Boy's, Inc. (Terry Gerahty, Legal Owner)
Case No.: CBA-00-159

Dear Mr. Clerk:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on January 31, 2002, 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-02-001085.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: J. Carroll Holzer, Esquire
Ernie and Ruth Baisden
Terry Gerahty / Poor Boy's, Inc.
Avery Harden, Landscape Architect / PDM
John R. Reisinger, Buildings Engineer / PDM
Edward J. Gilliss, County Attorney
Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney



County Board of Appeals of Baltimore County

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

February 13, 2002

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

RE: Circuit Court Civil Action No. 3-C-02-001085
Petition for Judicial Review
Ernie and Ruth Baisden
-- Poor Boy's, Inc. (Terry Gerahty, Legal Owner)
Case No.: CBA-00-159

Dear Mr. Holzer:

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,

A handwritten signature in cursive script, appearing to read "Theresa R. Shelton".

Theresa R. Shelton
Legal Secretary

/trs

Enclosure

c: C. William Clark, Esquire
Terry Gerahty / Poor Boy's, Inc.



1/31/02

PETITION OF
INDIVIDUALS ERNIE AND
RUTH BAISDEN

7706 OAK AVENUE
BALTIMORE, MD 21234

IN THE MATTER OF:
POOR BOY'S, INC. (Terry Gerahty, Legal Owner)
2711 TAYLOR AVENUE

9th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
RE: APPROVAL OF LANDSCAPE PLAN
AND LIGHTING PLAN BY PDM
CASE NO: CBA-00-159

* IN THE CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
*

Case No.

03-C-02-
001085

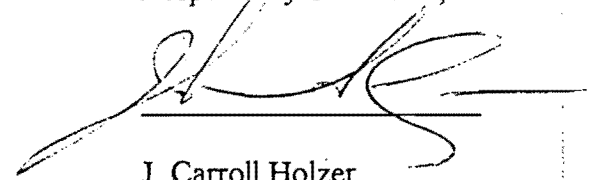
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* * * * *
98-267-SP4 PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioners, individuals, Ruth and Ernie Baisden, by and through their attorney, J. Carroll Holzer and Holzer and Lee, request Judicial Review of the Opinion of the County Board of Appeals of Baltimore County in the above referenced matter rendered on January 3, 2002 and attached hereto.

Petitioners were parties before the County Board of Appeals and fully participated in the proceedings.

Respectfully Submitted,



J. Carroll Holzer
508 Fairmount Avenue
Towson, MD 21286
410-825-6961
Attorney for Petitioners

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

(410) 825-6961
FAX: (410) 825-4923

RECEIVED AND FILED

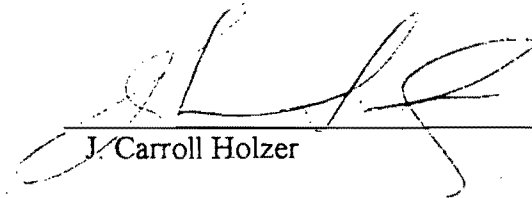
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CLERK OF THE COURT
BALTIMORE COUNTY

RECEIVED
COUNTY BOARD OF APPEALS
02 FEB -6 PM 12:11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 31st day of January, 2002, a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid, to C. William Clark, Esquire, 502 Washington Ave., Suite 700 Towson, MD 21204; and the Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.



J. Carroll Holzer

IN THE MATTER OF
POOR BOY'S, INC. (Terry Gerahty /Legal Owner)
2711 TAYLOR AVENUE

9TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

RE: APPROVAL OF LANDSCAPE PLAN AND
LIGHTING PLAN BY PDM

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-00-159

* * * * *

= = RULING ON MOTION TO DISMISS

This matter is before the Board on a Motion to Dismiss filed on behalf of Appellee, Poor Boy's, Inc., to the appeal noted by the Appellants, Ernie and Ruth Baisden, to the approval of a landscaping plan and a lighting plan by the Department of Permits and Development Management (PDM). Memorandums were filed on behalf of both parties, and argument presented by counsel on August 1, 2001.

The facts relating to this Motion are clear. In furtherance of an application for a grading permit related to the expansion of an existing parking lot, approved landscaping and lighting plans are required by Baltimore County. Such plans were prepared, presented and stamped as approved by E. Avery Harden, Landscape Architect, Development Plans Review of the Baltimore County Department of Permits and Development Management on September 7, 2000 (Landscape Plan) and September 8, 2000 (Lighting Plan). An appeal to this Board of those approved plans was taken by the Appellants on October 5, 2000.

The narrow question presented in this Motion is whether or not the approval of the landscape and lighting plans by Mr. Harden as part of the permit process constituted an event which was appealable to this Board.

Article 25-A, § 5(U), of the *Annotated Code of Maryland* authorized Baltimore County to establish and provide for a County Board of Appeals; and noted its power:

DANIEL HOPE, JR. ET AL. v. BALTIMORE
COUNTY, MARYLAND ET AL.

[No. 9, September Term, 1980.]

Decided October 27, 1980.

STATUTES — *Presumption Of Validity — Presumption Does Not Prevent Court Declaring Invalidity Of Statute, Notwithstanding Passage Of Time.*
pp. 661-662

CHARTERED COUNTIES — *Baltimore County — County Board Of Appeals Established By Charter, Pursuant To Maryland Constitution, Art. XI-A And Express Powers Act — Code (1957) Art. 25A, § 5 (U) — Appeal To Circuit Court From Action Of Board Of Appeals Is Authorized By Statute.*
pp. 662-663

CHARTERED COUNTIES — *Baltimore County — Board Of Appeals — By Charter, Board Of Appeals Is Exclusive Body To Consider Appeals From All Executive, Administrative And Adjudicatory Orders To The Extent Provided By Express Powers Act — Baltimore County Charter, § 602; Code (1957) Art. 25A, § 5 (U) — Appeal From Approval Or Disapproval Of Subdivision Plat Must Be Taken To Board Of Appeals.*
pp. 663-664

CHARTERED COUNTIES — *ADMINISTRATIVE LAW — County Ordinance Authorizing Direct Appeal To Court Of Administrative Decision Held Invalid Where Inconsistent With Charter Provision Requiring Appeal To Board Of Appeals.* Where Baltimore County, acting in accordance with the Express Powers Act, provided in its Charter for a Board of Appeals, intending that the Board of Appeals have the powers set forth in Code (1957) Art. 25A, § 5 (U), and where that section (5 (U)) of the Express Powers Act authorized appeals to a Board of Appeals as the exclusive method of review of an approval or other form of permission or of any adjudicatory order, the Court held: 1) that the intent of the Baltimore County Charter was to vest its Board of Appeals with full powers as set forth in Code (1957) Art. 25A, § 5 (U); 2) that the scope of the Board of Appeals' appellate authority extended to appeals from the approval or disapproval of a subdivision plat; and 3) that § 22-38 of the Baltimore County Code (1968) authorizing an appeal to the circuit court by "any person . . . aggrieved by the action of the planning board on final plats of subdivisions," was invalid as inconsistent with the exclusive right of appeal to the Board of Appeals, as provided by the Baltimore County Charter.
pp. 663-664

CHARTERED COUNTIES — *Board Of Appeals — Exclusive Right Of Review — Where Chartered County Establishes Board Of Appeals, As Authorized*

RALPH L. KLEIN ET AL. v. COLONIAL
PIPELINE COMPANY

[No. 52, September Term, 1978.]

Decided April 26, 1979.

ZONING — CHARTERED COUNTIES — APPEAL — *Express Powers Act Requires Appeal From Action On Application For Zoning Variance Or Exception Be Made To Board Of Appeals — Decision By Board Of Appeals Is Prerequisite To Appeal To Circuit Court — Code (1957, 1973 Repl. Vol., 1978 Cum. Supp.) Art. 25A, §§ 5 (U), 5 (X).* pp. 81-83

ZONING — Harford County — Ordinance Authorizing Direct Appeal To Circuit Court From Decision Of Hearing Examiner Held Contrary To State Enabling Act With Respect To Decisions On Zoning Variance Or Exception. Where Harford County Zoning Hearing Examiner denied pipeline company's application for conditional use permit for above-ground petroleum storage tanks, and pipeline company took direct appeal from that decision to the circuit court, the Court *held* that Harford County Bill 75-94 purporting to create such a right of direct appeal was *ultra vires* and in conflict with Code (1957, 1973 Repl. Vol., 1978 Cum. Supp.) Art. 25A, § 5 (U), which requires appeals from decisions on zoning variances or exceptions to be made to the Board of Appeals. pp. 81-83

STATUTES — *Conflicts — Public General Law Takes Precedence Over Conflicting Local Law On Same Subject Enacted By Charter County.* p. 83

J. A. A.

Appeal from the Circuit Court for Harford County (CLOSE, J.), pursuant to certiorari to the Court of Special Appeals.

Colonial Pipeline Company (Colonial) appealed to the Circuit Court for Harford County from a decision of the Zoning Hearing Examiner, denying an application for a conditional use permit for above-ground petroleum storage tanks. The Circuit Court reversed the decision and remanded the case to the Hearing Examiner with directions to issue the permit upon reasonable conditions. Ralph L. Klein, Shirley S. Klein, James C. Thompson, Ida F. Thompson, William G. Thompson and Leona G. Thompson, protestants and parties in the Circuit Court, filed an appeal to the Court of Special

1/2/02
IN THE MATTER OF
POOR BOY'S, INC. (Terry Gerahty /Legal Owner)
2711 TAYLOR AVENUE

9TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

RE: APPROVAL OF LANDSCAPE PLAN AND
LIGHTING PLAN BY PDM

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-00-159

* * * * *
98-267-SPH

RULING ON MOTION TO DISMISS

This matter is before the Board on a Motion to Dismiss filed on behalf of Appellee, Poor Boy's, Inc., to the appeal noted by the Appellants, Ernie and Ruth Baisden, to the approval of a landscaping plan and a lighting plan by the Department of Permits and Development Management (PDM). Memorandums were filed on behalf of both parties, and argument presented by counsel on August 1, 2001.

The facts relating to this Motion are clear. In furtherance of an application for a grading permit related to the expansion of an existing parking lot, approved landscaping and lighting plans are required by Baltimore County. Such plans were prepared, presented and stamped as approved by E. Avery Harden, Landscape Architect, Development Plans Review of the Baltimore County Department of Permits and Development Management on September 7, 2000 (Landscape Plan) and September 8, 2000 (Lighting Plan). An appeal to this Board of those approved plans was taken by the Appellants on October 5, 2000.

The narrow question presented in this Motion is whether or not the approval of the landscape and lighting plans by Mr. Harden as part of the permit process constituted an event which was appealable to this Board.

Article 25-A, § 5(U), of the *Annotated Code of Maryland* authorized Baltimore County to establish and provide for a County Board of Appeals; and noted its power:

...to enact local laws providing...(4) for the decision by the Board on petition by any interested person and after the notice and opportunity for a hearing and on the basis of the record before the Board of such of the following matters arising (...on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of...the County Council, as specified from time to time by such local laws enacted under this subsection...the issuance...or modification of a license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order.

Section 602 of the *Baltimore County Charter* authorizes the County Board of Appeals to hear appeals of certain particular areas including zoning, licenses, orders relating to buildings, and appeals from executive, administrative and adjudicatory orders.

The Board notes that, as part of the application process for a grading permit, various prerequisite approvals, comments, and concerns, if any, are elicited from relevant County departments and agencies. The responses obtained, as well as other relevant input, are provided to the Director of the Department of Permits and Development Management for his review and ultimate granting or denial of the requested permit. Under § 7-36 of the *Baltimore County Code*, a denial by PDM would then constitute an appealable event. [Emphasis added.]

The Court of Appeals has addressed the underlying issue of finality and appealability in *United Parcel Service v. People's Counsel*, 336 Md. 569, 602 A.2d 226 (1994). The Court, rejecting arguments to the contrary, held that "approval" or "other form of permission" occurred when an application for a permit is finally approved and actually issued.

The Board has reviewed the Briefs of the parties and considered the arguments presented at the hearing. We find unanimously that the approvals by the Landscape Architect dated September 7, 2000 and September 8, 2000 were not final appealable events. The obtaining of a permit is a process containing many constituent parts, any one of which could prove fatal to the application. Although appealable under the Code, a denial could conceivably be issued by the Director even if no specific objections were raised during the process. Mr. Harden inherently

acknowledged this authority when he stated in his letter of December 24, 1996 to the parties that "the proposal above is essentially what the Baltimore County Landscaping Manual will require when a permit for the parking lot is sought. [Emphasis added.] The approval by Mr. Harden was only one of the many steps leading to an ultimate approval or denial of the requested permit. His action does not in and of itself allow the actual project to go forward and work to proceed on the ground; only the issuance of a proper grading permit would enable Appellees to do so. It is therefore from that final determination to grant the permit that all rights of appeal should emanate.

The Board is not unmindful and recognizes the frustration of the Appellants with regard to their inability under § 7-36 of the Code to appeal the granting of a permit. Unfortunately, their attempt to render appealable one particular internal part of the permit decision-making process is neither supported by statute or by case law. There is no specific authority in § 5(U) or § 602 for Appellants' position nor is there a right of appeal under the statutes regulating grading found in Title 14 of the Code, and in fact only limited appeals under § 7-36 of the Code. We are similarly unconvinced by Appellants' argument that a basis for their appeal lies in § 26-32 of the Code, which we find is clearly related to zoning decisions and not to the issuance or denial of grading permits. Finally, we find the UPS decision still clear and controlling. To hold otherwise would open the way for a myriad of appeals, each on its own schedule, of every positive or negative departmental comment, objection, question, or approval made or sought as part of a request for a permit, application, or development plan. This Board does not believe that such a result is the intent or letter of the present statutory or case law, and we accordingly grant Appellee's Motion to Dismiss.

ORDER

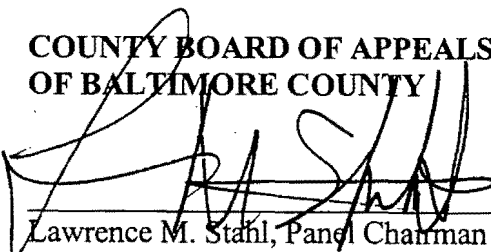
IT IS, THEREFORE, THIS 3rd day of January, 2002, 2001 by the
County Board of Appeals of Baltimore County

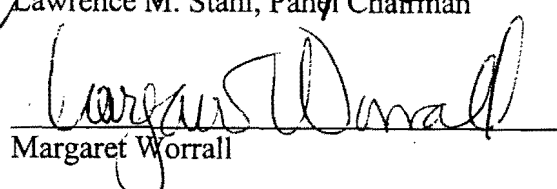
ORDERED that Appellee's Motion to Dismiss be and the same is hereby **GRANTED**;
and it is further

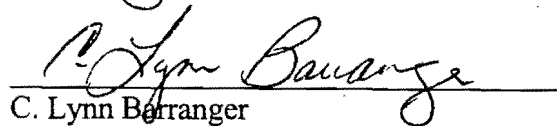
ORDERED that the appeal filed in Case No. CBA-00-159 be and the same is hereby
DISMISSED.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence M. Stahl, Panel Chairman


Margaret Worrall


C. Lynn Barranger



County Board of Appeals of Baltimore County

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

January 3, 2002

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

RE: *In the Matter of: Poor Boy's Inc.* (Terry Gerahty -Legal Owner)
Case No. CBA-00-159 /Ruling on Motion to Dismiss

Dear Mr. Holzer:

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

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

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Ernie and Ruth Baisden
C. William Clark, Esquire
Terry Gerahty /Poor Boy's, Inc.
Avery Harden, Landscape Architect /PDM
John R. Reisinger, Buildings Engineer /PDM
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney
Edward J. Gilliss, County Attorney



7/30/01

IN THE MATTER OF:	*	THE BOARD OF APPEALS
POOR BOY'S INC. (Terry Gerahty)	*	OF BALTIMORE COUNTY
Legal Owner		
S/E Corner Old Harford Road and	*	FOR
Taylor Avenue		
2711 Taylor Avenue	*	BALTIMORE COUNTY
9 th Election District		
6 th Councilmanic District	*	CASE NO. CBA-00-159

98-267-SPH

* * * * *

REPLY TO APPELLANTS' ANSWER TO MOTION TO DISMISS

Terry Gerahty, T/A Poor Boy's, Appellee, by and through his attorneys, C. William Clark and Nolan, Plumhoff & Williams, Chartered, respectfully reply to the Appellants' Answer to Motion to Dismiss, and state as follows:

I. § 26-132 Of The Baltimore County Code Does Not Authorize This Appeal.

Appellants cite § 26-132(a) as authority for their appeal of the approval of a Landscape Plan and a Lighting Plan by the County's Landscape Architect in connection with the issuance of a grading permit based on the wording found in that section of the statute stating that any decision of the Director of Zoning Administration and Development Management can be appealed to the County Board of Appeals. The argument made by the Appellants grossly overstates the plain intent of that section of the code. § 26-132(a) is found in Article IV entitled "Zoning". All of the provisions of Article IV deal with zoning, including granting authority to the Director of

Law Offices
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

Zoning Administration and Development Management to interpret and enforce the County's Zoning Regulations in § 26-121, and granting authority to the Director of Zoning Administration and Development Management to make, adopt, promulgate and amend from time-to-time such policy rules and regulations relating to or in connection with zoning regulations as may be deemed necessary or proper to carry out and enforce the provisions of that title in § 26-135. The argument that the language in § 26-132(a) permits an appeal from "any decision" of the Director of Zoning Administration and Development Management clearly takes those words out of context, and ignores the surrounding provisions in that Article of the Code. The Lighting and Landscaping Plans approved by the Landscape Architect are not a decision on any zoning matter, nor is the issuance of a grading permit, based in part upon those plans, a zoning matter. § 26-132(a) only permits appeals from any decision of the Director of Zoning Administration and Development Management emanating from the Director's decision of zoning matters.

Appellants argue that the Board has recognized that an appeal can flow from the signing of an actual document by the Department of Permits and Development Management, citing In The Matter Of Blakehurst Life Care Community, Case No. CBA-99-152 and CBA-99-159. That case, still pending in the Circuit Court for Baltimore County on a Petition for Judicial Review,

does not decide, as Appellants imply, that this Board ruled that § 26-132 authorizes an appeal from a decision of the Director of Zoning Administration and Development Management (now the Departments of Permits and Development Management). The Blakehurst case involved an appeal under development regulations in effect prior to 1992, pursuant to § 26-169 of the Baltimore County Code. That approval process involved a review by the CRG. The Baltimore County Code in effect for development prior to January 6, 1992, permitted appeals to the Board of Appeals from final action on a plan. It also provided that any material amendment to an approved plan shall be reviewed and approved in the same manner as the original plan. The heart of the Blakehurst case involved the determination by this Board as to whether or not the proposed plan was a "material amendment" to the original CRG plan. In Blakehurst the DRC met to fulfill the function previously performed by the CRG. This Board in Blakehurst did not render any decision based upon the wording of § 26-132(a), and it did not determine that an appeal can flow from the determination by the Department of Permits and Development Management approving a Landscape Plan and a Lighting Plan in connection with a grading permit. Thus, the Blakehurst case offers no persuasive authority to guide the Board on the issue before it in this case.

The County Board of Appeals has previously considered whether or not an appeal lies from the issuance of a Grading Permit, and has determined that no such right of appeal exists. Attached hereto and incorporated herein by reference is a copy of Opinion in Case No. CBA-96-171, In The Matter Of 2300 Old Frederick Road. That case was taken on appeal to the Circuit Court for Baltimore County, in Case No. C-97-5189, In The Matter Of Henry Winters, et al. The Honorable Alfred L. Brennan, Sr. affirmed the decision of the Board to dismiss the appeal from the issuance of a Grading Permit, since the Baltimore County Code did not specifically provide for a jurisdiction to hear such appeals. Attached hereto and incorporated herein by reference is a copy of that Opinion.

II. The County Board Of Appeals Does Not Have Authority To Hear This Appeal In The Absence Of Statutory Authority.

In addition to the argument made in its Motion To Dismiss, Appellee relies upon the Decision made by this Board In The Matter Of 2300 Old Frederick Road, Case No. CBA-96-171, which addresses and rejects the argument made by the Appellants based on the case of Hope, et al. v. Baltimore County, et al., 288 Md. 656, in which the Board determined that § 602 of the Baltimore County Code did not provide any subject matter jurisdiction where the appeal is from the issuance of a Grading Permit.

Appellants offer the case of Beth Tfiloh Congregation of Baltimore City v. Old Court-Greenspring Improvement Association, an unreported Decision of the Court of Special Appeal in support of its argument based on Article 25 A, § 5(u) of the Annotated Code of Maryland and Baltimore County Charter § 602. The Maryland Rules of Procedure specifically state that an unreported Opinion of Court of Appeals or Court of Special Appeals is neither precedent within the Rule of Stare Decisis, nor persuasive authority. Furthermore, the Rules of Procedure provide that in any other Court than the Appellate Court, an unreported Opinion of either Court may only be cited in three instances, none of which apply here. Attached hereto and incorporated herein by reference is a copy of Maryland Rule 8-114. Thus, the Beth Tfiloh should not be considered by this Board.

III. The Landscaping And Lighting Plan, Which Is The Subject Of This Hearing Is Not Void And Illegal.

The Opinion issued by the Circuit Court in Case No. 03-C-00-6650 has been appealed to the Court of Special Appeals. Attached hereto and incorporated herein by reference is a copy of the Notice of the Appeal. Thus, that Decision is not final.

The Decision in that case does not have any bearing upon the application for and approval by the Landscape Architect of a Lighting and Landscape Plan in connection with an

application to grade the Appellee's property and to construct a new parking facility that meets the County law and requirements in all respect. The prior decisions of the Zoning Commissioner and of the County Board of Appeals, which passed upon the location, and type and style of a fence on Appellee's property all stemmed from the Petition for Special Hearing and the Petition for Variance in Case No. 97-295-SPHA. As a condition of granting the relief requested in that case by the Deputy Zoning Commissioner, the Appellee agreed to install and provide a pre-assembled sectional fence on the property. The Deputy Zoning Commissioner in his Opinion in Case No. 97-295-SPHA, determined that the Appellee should extend the fencing in a fashion and manner depicted on Mr. Harden's diagram, and, therefore, decided that as a condition of approval the subject fencing shall be required. That case became a final Decision.

Subsequently, in 1999, Appellee filed a second Petition for Special Hearing, requesting an amendment of the 1997 Order with regard to the fence and lighting conditions. The Deputy Zoning Commissioner made a determination in that case, which Case No. was 98-267-SPH. From that decision, both the Appellants and the Appellee appealed to the County Board of Appeals, which issued its Decision on the fence, since Appellee dismissed his appeal with respect to the lighting.

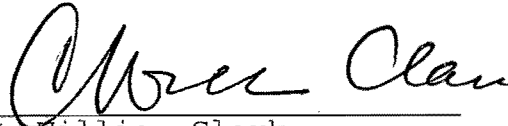
That case was appealed to the Circuit Court for Baltimore County, and was given Case No. 3-C-00-6650.

The authority of the Zoning Commissioner to require the fence was all as a condition to a requested variance, which had been approved. The present Plan in this case, for which the Landscape Plan and the Lighting Plan were approved by the Landscape Architect in connection with a Grading Permit, does not require, nor does it depend upon any variance. The variance sought originally was to allow a parking lot made of gravel and to determine that the proposed parking lot constituted a "durable and dustless" surface, and thus allow a stone-paved parking lot in lieu of the required asphalt paving and stripping. The Special Hearing relief to determine that the parking lot proposed was a durable and dustless surface was denied. However, the variance from § 409.8 to permit a stone-paved parking lot in lieu of the required durable and dustless surface was granted upon conditions. It was clearly noted in the Deputy Zoning Commissioner's Opinion in Case No. 97-295-SPHA, the Deputy Zoning Commissioner stated in his Opinion that the Petitioner sought approval of a proposed "interim" parking lot. Now, the Appellee is seeking to remove the interim parking lot and construct a parking lot that meets all of the County's requirement. Thus, the Grading Permit approved and issued by the County on the Lighting and Landscaping Plans, which had been approved, from which the

Appellants have appealed, does not require a variance. The prior Decisions based on the authority granted the Zoning Commissioner in ruling on variance do not control the present Grading Permit.

WHEREFORE, Terry Gerahty, Appellee, requests that the County Board of Appeals grant his Motion to Dismiss the Appeal in the above-captioned case.

Respectfully Submitted,



C. William Clark
Nolan, Plumhoff & Williams, Chartered
502 Washington Avenue, Suite 700
Towson, MD 21204
(410) 823-7800
Attorney for Protestant
Terry Gerahty

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 2001, a copy of the foregoing Reply to Appellants' Answer to Motion to Dismiss was mailed first class, postage pre-paid to the following attorney of record:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286
Attorney for Appellants
Mr. & Mrs. Ernie Baisden

Virginia W. Barnhart, County Attorney
for Baltimore County
Courthouse, Second Floor
401 Bosley Avenue
Towson, MD 21204

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


C. William Clark

IN THE MATTER OF
2300 OLD FREDERICK ROAD /
(SOUTHWEST ELEMENTARY SCHOOL
SITE) CATONSVILLE, MD

RE: ISSUANCE OF GRADING
PERMIT NO. B286118

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CBA-96-171

* * * * *

O P I N I O N

This case comes as an appeal of the issuance of Grading Permit #B286118 for grading of the site for a new public school to be located at 2300 Old Frederick Road in the First Election District, First Councilmanic District, Baltimore County, Maryland. The Baltimore County Board of Education, by its attorneys, Virginia Barnhart, County Attorney, and J. Robert Haines, Assistant County Attorney, moved to dismiss the appeals of said grading permit. The Motion to Dismiss and accompanying Memorandum in Support of Motion to Dismiss was brought prior to the opening of the hearing. At the hearing, Protestants /Appellants Henry G. and Iris L. Winters and Lyn C. Middleton, appearing pro se, brought Response to the Motion to Dismiss. Appellants Marita and Paul Cush and Nancy Anne Null failed to appear before the Board. Following submission on the record of the Response to Motion to Dismiss, the Board recessed to read the materials, reconvening to hear oral argument from both sides on any unresolved matters relative to the Motion.

Baltimore County argues there is no statutory right of appeal to the Board of Appeals of Baltimore County regarding the issuance of a grading permit. The County argues that Title 14, Article VI, Division 2 of the Baltimore County Code is devoid of language which confers a right of appeal to the County Board of Appeals. In the absence of statutory provision creating the right of appeal

EXHIBIT

1

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COUNTY BOARD OF

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IN THE
MATTER OF
HENRY WINTERS
ET AL

* IN THE
* CIRCUIT COURT
* FOR BALTIMORE COUNTY
* C97-5189

* * * * *

MEMORANDUM OPINION

This is an appeal from the Board of Appeals of Baltimore County when it passed an Order on April 25, 1997, as follows:

1. ORDERED that the Motion to Dismiss brought by Baltimore County, Maryland be and the same is hereby GRANTED; and it is further
2. ORDERED that the Appeal filed in Case No. CBA-96-171 be and the same is hereby DISMISSED; and
3. ORDERED that Motions for Protective Order and Motion to Quash brought by the U. S. Department of the Army and the State of Maryland be and the same are MOOT.

In dismissing the Appeal, the County Board of Appeals found that it lacked subject matter jurisdiction.

This case involves the issuance of a "grading permit." Such issuances are governed under Title 14 of the Baltimore County Code beginning at Article VI, Division 1, section 14-191 through section 14-225. The entire section is devoid of any language which provides for a method of appeal, which includes Division 2, sections 14-221 through 14-225 which contains language pertaining only to grading permits.

The Board is a body with authority granted by legislative act of the County Council. The Board does not by itself have the authority to confer to itself "subject matter jurisdiction" w

EXHIBIT

2

Rule 8-114

MARYLAND RULES

For note discussing the standard of proof in a juvenile waiver hearing and the problem of

unreported opinions, see 41 Md. L. Rev. 169 (1981).

Rule 8-114. Unreported opinions.

(a) **Not authority.** An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority.

(b) **Citation.** An unreported opinion of either Court may be cited in either Court for any purpose other than as precedent within the rule of stare decisis or as persuasive authority. In any other court, an unreported opinion of either Court may be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported opinion shall attach a copy of it to the pleading, brief, or paper in which it is cited.

Source. — This Rule is derived from former Rules 1092 c and 891 a 2.

Maryland Law Review. — For article, "The Court of Appeals of Maryland: Roles, Work and Performance," see 37 Md. L. Rev. 1 (1977).

For article, "Of Men and Laws: Murphy, Cornford, Arnold, Potter, Parkinson, Peter, Maccoby, and Gall," see 38 Md. L. Rev. 37 (1978).

For note discussing the standard of proof in a juvenile waiver hearing and the problem of unreported opinions, see 41 Md. L. Rev. 169 (1981).

Opinions of the lower courts are not binding on the Court of Appeals or Court of Special Appeals. Department of Health & Mental Hygiene v. Dillman, 116 Md. App. 27, 695 A.2d 211 (1997).

Published opinions. — This Rule clearly bars the use of unreported opinions of this court and may not be circumvented merely because a commercial publisher decides to publish the opinion. If the court files an opinion as unreported and, as a result, it does not appear in the official Maryland Appellate Reports, it is subject to the rule. Nicholson v. Yamaha Motor Co., 80 Md. App. 695, 566 A.2d 135 (1989), cert. denied, 318 Md. 683, 569 A.2d 1242 (1990).

Citation of unreported opinion harmless error. — Citation of an unreported opinion to rebut appellant's assertion that the cases relied upon by appellee were rather old cases was error; however, error was harmless under the circumstances of the case. Smith v. Warbasse, 71 Md. App. 625, 526 A.2d 991 (1987).

Administrative interpretations of law. — Administrative interpretation contrary to the clear and unambiguous meaning of a statute is entitled to no deference by a reviewing court. Montgomery County v. Buckman, 333 Md. 516, 636 A.2d 448 (1994).

Quoted in Director of Fin. v. Charles Towers Partnership, 104 Md. App. 710, 657 A.2d 809 (1995), aff'd sub nom. C & P Tel. Co. v. Director of Fin., 343 Md. 567, 683 A.2d 512 (1996); Mayberry v. Board of Educ., 131 Md. App. 686, 750 A.2d 677 (2000).

Stated in Major v. First Va. Bank, 97 Md. App. 520, 631 A.2d 127, cert. denied, 331 Md. 480, 628 A.2d 1067 (1993), 334 Md. 18, 637 A.2d 1191 (1994); Goldman, Skeen & Wadler v. Cooper, Beckman & Tuerk, 122 Md. App. 29, 712 A.2d 1 (1998).

Rule 8-121. Appeals from courts exercising juvenile jurisdiction — Confidentiality.

(a) **Scope.** This Rule applies to an appeal from an order relating to a child entered by a court exercising juvenile jurisdiction.

(b) **Caption.** Unless the court orders otherwise, the proceedings shall be styled "In re (first name and initial of last name of child)." 712 Md.

IN THE MATTER OF: TERRY GERAHTY

Petitioner

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

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

CASE NO. 03-C-00-6687

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF TERRY J. GERAHTY
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTHEAST CORNER OLD
HARFORD ROAD AND TAYLOR AVENUE

9th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
CASE NO. 98-267-SPH

* * * * *

NOTICE OF APPEAL

Madam Clerk:

Pleased enter an appeal on behalf of the Petitioner, Terry Gerahty to the Court of Special Appeals of Maryland, from the judgment entered in favor of the Respondent, Ruth Baisden in the above-captioned case.

Respectfully submitted,

C. William Clark

C. William Clark
NOLAN, PLUMHOFF & WILLIAMS, CHARTERED
502 Washington Avenue, Suite 700
Towson, MD 21204
(410) 823-7800
Attorneys for Petitioner
Terry Gerahty

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

EXHIBIT

4

7/19/01
IN THE MATTER OF:

Poor Boy's Inc. (Terry Gerahty)
Legal owner
S/E corner Old Harford Road and
Taylor Avenue
2711 Taylor Avenue
9th Election District
6th Councilman District

THE BOARD OF APPEALS
OF BALTIMORE COUNTY
CASE NO. CBA-00-159

* * * * *
98-267-SPH

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APPELLANTS ANSWER TO MOTION TO DISMISS

Ruth and Ernie Baisden, Appellants, by and through their attorney, J.
Carroll Holzer, Holzer and Lee, respectfully respond to the Motion to Dismiss
filed in this matter by Poor Boy's, Inc and state:

STATEMENT OF THE CASE AND FACTS

Pursuant to the previous zoning history and applicable development
regulations of this case, Poor Boy's Inc. a garden and plant center located at 2711
Taylor Avenue in Baltimore County owned by Terry H. Gerahty was required to
obtain approval from the Department of Permits and Development Management
("PDM"), whose representative, Avery Harden is the employee responsible for
tentatively approving landscape and lighting plans subject to the ultimate approval
of the Director. (Attached and incorporated as part of this Memorandum is a
Memorandum of Ruth Baisden submitted in Board of Appeal Case No. 98-267-
SPH (Circuit Court Case No. 3-C00-6650)). (APP A)The Statement of Facts in

that Memorandum sets forth the factual history for the origin of the need for approval by the Department of Permits and Development Management of a properly designed landscape and lighting plan. It can be seen from that history that such a plan was required under previous decisions of the Deputy Zoning Commissioner and this board in prior cases related to this issue.

The landscape plan also accompanied or was part of the Site Plan to Accompany Permit Application for grading, paving and installation of private utilities submitted and reviewed by the "Baltimore County Department of Permits and Development Management landscape approved by Avery Harden, September 7, 2000" (See Exhibit A and B attached to the Notice of Appeal). It is clear from the stamp on Exhibit A that the landscape and lighting plans were approved by the Baltimore County Department of Permits and Development Management. A timely Notice of Appeal was filed to this Board and received on October 6, 2000. Attached to the Notice of Appeal were Exhibits A and B, the landscape and lighting plans which reflect the stamp of approval by the DPM. Attached as Exhibit C to the Notice of Appeal is the original December 24, 1996 letter of Avery Harden requiring and locating the fence and the proposed landscape. Attached as Exhibit D is a copy of the Deputy Zoning Commissioner's decision dated March 6, 1997 requiring said landscape plans. Also attached are the subsequent decision of the Deputy Zoning Commissioner and the Board of Appeals on May 31, 2000.

Not attached at the time of the appeal was the decision of the Circuit Court of Baltimore County reviewing this Board's action in the CBA Case No. 98-267-SPH found under the Circuit Court No. 03-C-00-6650. The Circuit Court remanded the matter on April 25, 2001 to this Board of Appeals requiring you to pass an Order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996. (While an appeal has been taken by Poor Boy's to the Court of Special Appeals, the law of the case as it currently exists requires a relocation of the fence as approved by this Board and would require a redrafting of the approved landscape and lighting plans attached as Exhibit A and B, which are the subject of this appeal. (The Memorandum Opinion and Order of the Circuit Court is attached hereto as an Appendix B.)

QUESTIONS PRESENTED

The narrow issue presented by the Motion to Dismiss is whether or not the Appellants have a right to appeal the approval of the landscape and lighting plans by the Baltimore County Department of Permits and Development Management signed by Avery Harden on September 7, 2000.

LEGAL ARGUMENT

The Appellants submit that it is clear and beyond dispute that the Appellants, Ruth and Ernie Baisden, are permitted by law to appeal the final

approval by PDM of a landscape and lighting plan to this Board for the reasons set forth below:

I. The Baltimore County Code §26-132 specifically authorizes this appeal.

~~Section 26-132(a) permits "any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decision or order of the Zoning Commissioner or the Director of Zoning Administration and Development Management shall have the right to appeal therefrom to the County Board of Appeals."~~ (emphasis supplied) Appellants submit that this section of the Baltimore County Code clearly authorizes an appeal by the Baisden's who are adjacent and adjoining property owners to the subject site and who have participated in numerous zoning matters related to this issue. The Baisdens have a right to file an appeal to this Board from "any decision" of the Director of Zoning Administration and Development Management. That broad language clearly encompasses the appeal in this case. The Appellees to suggestion that the action of approving the landscape and lighting plan was not that of the Director is belied by the fact that on the actual approved landscape plan attached to the Notice of Appeal as Exhibit A and B, the stamp of approval is from the "Baltimore County Department of Permits and Development Management landscape plan approved." While Avery Harden signed the document and was the reviewer, it is clear that he is acting on behalf of the Director of the Department in such approval

particularly based on the language as shown on Exhibit A and B. Clearly, under the language contained on the actual document itself, marked as Exhibit A and B, and also pursuant to the Deputy Zoning Commissioner's and this Board's previous orders, it cannot be argued that the approval of this landscape and lighting plan was not an official act of the department and required by the law of the case.

This is not the first case that the Board has recognized that an appeal can flow from the signing of an actual document by the DPM. In Case No. CBA 99-152 and CBA 99-159 in the Matter of Blakehurst Life Care Community, an appeal was filed not only from a decision of the DRC on November 8, 1999, but also from the approval of the Fourth Amended CRG plan signed by the two department heads pursuant to the authorization of the DRC. It is clear that this Board recognizes the authority to appeal the signing of a plan approval by Permits and Development Management, pursuant to the Baltimore County Code §26-132.

Therefore, Appellants respectfully request this Board to deny the Motion to Dismiss.

II. The Baltimore County Board of Appeals has authority to hear this appeal even in the absence of statutory authority.

In Article 25-A, § 5(u), the State of Maryland authorized Charter Counties to establish and provide for County Boards of Appeals. In Article 25-A, § 5 (u), the statute provides for:

“decisions by the Board on Petition by any interested person and after notice and opportunity for hearing and on the basis of the record before the Board, of such of the following matters arising under any law, ordinance or regulation of, or subject to the amendment of appeal by the County Council, as shall be specified from time to time by such local laws and enacted on under the Subsection: an application for zoning variation or exception on an amendment of a zoning ordinance map; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory matter,”

It is clear that the State provided for “other forms of permission” to be reviewed by the County Board of Appeals. Baltimore County adopted a Charter pursuant to the Annotated Code, and adopted and included all of the powers and authority set forth in § 5(u) as powers of this Board of Appeals.

By Baltimore County adopting the Charter form of government and a Board of Appeals, Baltimore County has already adopted the powers and authorities designated in Article 25-A, § 5(u).

Appellants position is well expressed in the case of Hope vs. Baltimore County 288 Md 656 (1980). There the Court of Appeals held that the Baltimore County Board of Appeals had Charter authority to review a sub-division plat despite a code provision in which by passed the County Board of Appeals and purported to allow a direct appeal to Circuit Court. After reviewing in detail the County Charter, Judge Marvin Smith found:

“The plain meaning of the Charter provision is to embrace all of the authority granted under § 5(u). This provides for a right of appeal in the matter of any ‘approval...or other form of permission or of any adjudicator order, language sufficiently broad to grant a right of

appeal from the approval or disapproval of the sub-division plat.” at 663-664. (emphasis supplied)

Further, the Court of Appeals stated:

“Here, Baltimore County in its creation of its Board of Appeals has indicated an intent that the Board’s powers are to be set forth in Article 25-A, §5(u). Once having availed itself of its power than it files that § 5(u)’s provisions must be applicable. The concluding sentence of the section is, ‘the review proceedings provided in this section shall be exclusive.’ At 664.

In other words, the CBA has the exclusive Charter authority to review an administrative approval, despite the absence of a code provision setting forth the appeal right. The Hope decision followed the Court’s similar but more precise analysis in Klein vs. Colonial Pipe Line Co. 285 Md 76, 181-83 (1979). This case invalidated Harford County’s Zoning law, which allowed a by pass of the CBA. In Klein, the Court found that “1972 adoption of a Charter for Harford County, however, made the Express Powers Act, Article 25-A, the basis of Harford County’s power to zone.” Klein found that § 5(u) of Article 25-A provided the County Council with the power to establish a Board of Appeals that would resolve issues (Zoning). It further found that the section required that the “review proceedings provided by the Subsection shall be exclusive” and grants the right of appeal to persons aggrieved by the “decision by the Board of Appeals” at 182. The Court found that the language of § 5(u) expressly provided that a decision by the Board is a prerequisite to an appeal to the Circuit Court and there is no

authority in § 5(u) for the creation of a new right of appeal directly from a decision of the Hearing Examiner to the Circuit Court.

The language and decision in the Hope case has been reiterated and amplified in a recent Court of Special Appeals decision arising from a case before this Board (unreported) dated April 20, 1998. Attached as Appendix C is the Court of Special Appeals decision in the case of Beth Tfiloh Congregation of Baltimore City vs. Old Court-Greenspring Improvement Association which concerned an issue of the right of appeal by Beth Tfiloh from a decision of the Baltimore County Planning Board, denying a PUD. The Board found that it had no jurisdiction to hear an appeal from a denial of a PUD concept plan because there was no specific statutory provision therefore. The Court of Special Appeals on pages 17 through 21 of its decision address this point. Even though Beth Tfiloh lost the case for other reasons, the Court of Special Appeals address this issue of the Administrative Review process. It found that "because the County is silent on the issue of whether an appeal lies in the Board following the denial of a concept plan, we must look elsewhere for guidance" the Court of Special Appeals then reviewed Baltimore County's adoption of the Charter in 1956, citing Hope vs. Baltimore County 44 Md app 481 (1980). The Court that also addressed Article 25-A, § 5(u). The Court then further discussed Article 25-A, § 5(u) and Baltimore County Charter 602 and 602(d). The Court again cited the Hope case for the same authority as previously cited herein. At page 20, the Court agreed with the argument of Beth Tfiloh there was a right to appeal. The Court said "the silence

of §26-202 and §26-208 regarding an appeal from a denial of a concept plan did not persuade us otherwise.” It stated “this Court does not understand...silence as prohibiting the exercise of appellate jurisdiction by the Board of Appeals in this case.” It accordingly found that an appeal would lie from the denial of a PUD concept plan to the Baltimore County Board of Appeals.

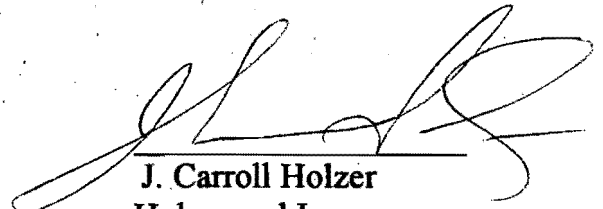
Wherefore, the Appellants have a right to appeal to this Board and the Board has jurisdiction to hear this case.”

III. Under any circumstances, the current status of this case requires a determination that the landscape and lighting plan which is the subject of this hearing is void and illegal.

The Circuit Court, by the Honorable Judge Robert Dugan, in Case No. 03-C-00-6650, ordered this Board to pass an Order regarding the fencing of the subject property as set forth in the Avery Harden’s correspondence of December 24, 1996. That requirement, until reversed, is the law of this case. The law of this case at this point requires this Board to reject and deny the approval of the Baltimore County Department of Permits and Development Management approving the landscape and lighting plans marked as Exhibits A and B in that this plan shows the fence in a location other than in Avery Harden’s letter of December 24, 1996. It is therefore in violation of the current law of the case and must be determined to be illegal and void.

Wherefore, for all the reasons advanced in this Memorandum, the
Appellants respectfully request this Board to deny the Motion to Dismiss.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'J. Carroll Holzer', written over a horizontal line.

J. Carroll Holzer
Holzer and Lee
The 508 Building
508 Fairmount Avenue
Towson, MD 21204
(410) 825-6961
Attorney for Appellants
Ruth and Ernie Baisden

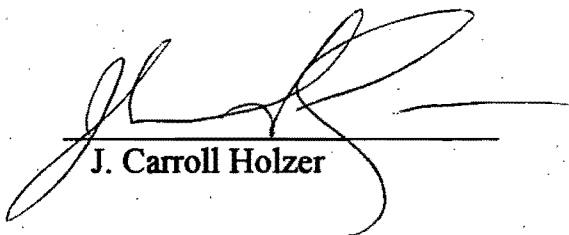
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of July, 2001, a copy of the foregoing Answer to the Memorandum of the Motion to Dismiss was mailed first class, postage pre-paid to the following attorney of record:

C. William Clark
Nolan, Plumhoff & Williams, Chartered
502 Washington Avenue, Suite 700
Towson, MD 21204
(410) 823-7800
Attorney for Protestant
Terry Gerahty

County Attorney
for Baltimore County
Court House, Second Floor
Towson, MD 21204

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


J. Carroll Holzer

IN THE MATTER OF:	*	THE BOARD OF APPEALS
POOR BOY'S INC. (Terry Gerahty)	*	OF BALTIMORE COUNTY
Legal Owner		
S/E Corner Old Harford Road and	*	FOR
Taylor Avenue		
2711 Taylor Avenue	*	BALTIMORE COUNTY
9 th Election District		
6 th Councilmanic District	*	CASE NO. CBA-00-159

* * * * *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Terry Gerahty, T/A Poor Boy's, Appellee, by and through his attorneys, C. William Clark and Nolan, Plumhoff & Williams, Chartered, files this Memorandum in Support of Motion to Dismiss, and for reasons says:

"The jurisdiction of the County Board of Appeals is conferred by the Charter and Code of the County pursuant to legislative authority.." Smuck v. Anne Arundel County, 55 Md. at 163. 166 (1983), and "derived from §5(U) of Article 25 A and from the County Charter". Id. These statutes must be read together as a whole, so that all the statutory provisions are considered together, and, to the extent possible, reconciled and harmonized. Blitz v. Beth Isaac Adas Israel Congregation, 352 Md. 31, 40 (1998). When the Court construes one part of a statutory scheme, it must consider and give effect to every other part of the statutes or ordinances, Brzowski v. Maryland Home Improvement Commissioner, 114 Md. at 615, 627, Cert. Denied, 346 Md. 238 (1997), so that no "word,

clause, sentence or phrase is rendered superfluous or nugatory." Chesapeake and Potomac Telephone Company v. Director of Finance, 342 Md. 567, 579 (1996).

§5(U) provides, in pertinent part, that the following enumerated express powers have been granted to and conferred upon the County under the provisions of Article XI-A of the Constitution of Maryland:

To enact local laws providing...(4) for the decision by the Board on petition by any interested person and after notice and opportunity for a hearing and on the basis of the record before the Board, of such of the following matters arising (...on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, ... the County Council, as specified from time-to-time by such local laws enacted under this subsection... the issuance... or modification of a license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order;

§602 of the Baltimore County Charter only authorizes the County Board of Appeals to hear appeals from certain enumerated matters: zoning (§602(a)), licenses §602(b), orders relating to building §602(c), and appeals from executive administrative and adjudicatory orders §602(d). Neither the County Code nor the Charter expressly authorize an appeal from a decision of the Landscape Architect, or the approval of landscape and lighting plans to accompany an application for a grading permit. Nor does it expressly authorize appeals from the approval of grading permits. Nothing in any of the

Sections of the Code which regulate and relate to grading authorizes any such appeal to the County Board of Appeals. The approval of the Landscape Architect as to the proposed landscape and lighting plans does not constitute an "administrative and adjudicatory order." The only conceivable category is that it fits under an order relating to building. However, the express language of the statutes regulating grading found in Title 14 of the Baltimore County Code militate against such a construction when the County Council has spent enumerable paragraphs defining grading, and under any reasonable reading of those definitions, it excluded the construction or erection of any building or structure of any kind.

In the case at Bar, the Protestant's Notice of Appeal states that this appeal is from the Decision of the Director of the Department of Permits and Development Management and attaches various exhibits, none of which demonstrate that the Director made any decision. The Landscape Architect did approve and sign lighting and landscape plans in connection with an application for a grading permit to construct a new parking lot at the subject site. This was not a final act issuing a permit. The appealable act might be the final granting of the grading permit itself by the Department of Permits and Development Management, if the Appellants have standing and are permitted by law to take such an appeal. The

decision of the Landscape Architect is only one step in the process of obtaining a permit.

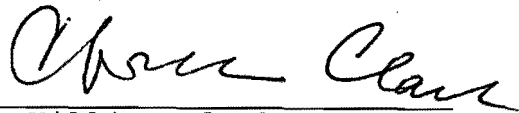
Once an application for a grading permit for a parking lot is filed, it is referred to the Landscape Architect, who then conducts a review of the application and makes a determination that from his point of view, there are no concerns, and/or issues under the applicable lighting and landscaping regulations. If there are none, it would, therefore, be appropriate from that department's point of view to have a permit issued. The findings of the Landscape Architect, if he approves, are then forwarded to the Department of Permits and Development Management for final review and approval and if all is in order, the building, or grading permit, in this case, is granted. To allow appeals from interlocutory statements from administrative agencies (in this case, the Landscape Architect) would be to allow myriad appeals in the same case. A separate appeal could be taken from each department reviewing the application, which might occur on a series of different days, and the period within which to note an appeal could vary accordingly.

For the Board of Appeals to have subject matter jurisdiction, two elements must be met. First, there must be a statutory grant of authority, which is discussed above. Secondly, there must be an operative event that determined the rights of the parties. In Meadows v. Foxleigh, 133 Md. at

510, the Court of Special Appeals commented upon the Court of Appeals' Decision in United Parcel v. Peoples Council, 336, Md. 569, 650 A.2d 226 (1994). In United Parcel, the Court of Appeals held that a letter from the Zoning Commissioner written in response to a citizen complaint dated more than two months after a building permit was issued to UPS, was not an appealable decision. The Court held that the "approval" or "other form of permission" occurred when the Zoning Commissioner and other Officials approved UPS's application for a building permit, and the building engineer issued a building permit. The appealable event occurred then, when the application for the permit was approved and issued. *Id.* at 583-584. In Meadows v. Foxleigh, they found that the letter from the Director of the Department of Permits and Development Management was not an "operative event" that determined whether Foxleigh's proposed plan would be granted a license or permit, rather it merely informed Foxleigh that the proposed plan must be reviewed by the CRG. Meadows v. Foxleigh, 133 Md. at pg. 516. The Meadows Court went on to comment upon Art Wood v. Wiseburg, 88 Md. at 723, 596 A. 2d 712 (1991) Cert Denied 325 Md. 397, 601 A. 2d 130 (1992). In Art Wood, the Court held that the CRG's action was an appealable final action, because the CRG "was not waiting for or seeking any additional information before approving a plan. In contrast to the Art Wood situation, in the instant case, at the time the

Landscape Architect approved the plans to accompany the application for a permit, there was not yet a final action that could be appealed, because the Director of the Department of Permits and Development Management needed additional information from other departments to complete the approval process, so that a permit could be issued.

Respectfully Submitted,



C. William Clark
Nolan, Plumhoff & Williams, Chartered
502 Washington Avenue, Suite 700
Towson, MD 21204
(410) 823-7800
Attorney for Protestant
Terry Gerahty

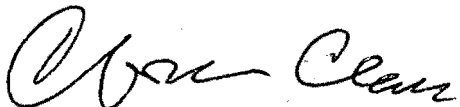
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14 day of June, 2001, a copy of the foregoing Memorandum in Support of the Motion to Dismiss was mailed first class, postage pre-paid to the following attorney of record:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286
Attorney for Appellants
Mr. & Mrs. Ernie Baisden

Virginia W. Barnhart, County Attorney
for Baltimore County
Court House, Second Floor
Towson, MD 21204

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


C. William Clark

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6/14/01

IN THE MATTER OF:

POOR BOY'S INC. (Terry Gerahty)
Legal Owner

S/E Corner Old Harford Road and
Taylor Avenue
2711 Taylor Avenue
9th Election District
6th Councilmanic District

* THE BOARD OF APPEALS
* OF BALTIMORE COUNTY
* FOR
* BALTIMORE COUNTY
* CASE NO. CBA-00-159

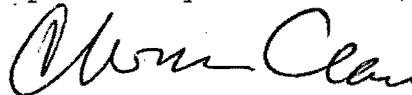
* * * * *
98-267-SPH

MOTION TO DISMISS

Terry Gerahty, T/A Poor Boy's, Appellee, by and through his attorneys, C. William Clark and Nolan, Plumhoff & Williams, Chartered, respectfully represents unto this Board:

1. The Board does not have jurisdiction to hear the appeal filed;
2. Appellants do not have a right to the appeal filed by them; and
3. The reasons supporting this Motion are more fully explained in a Memorandum in Support of Motion to Dismiss filed contemporaneously with this Motion.

Respectfully Submitted,



C. William Clark
Nolan, Plumhoff & Williams, Chartered
502 Washington Avenue, Suite 700
Towson, MD 21204
(410) 823-7800
Attorney for Appellee
Terry Gerahty, T/A Poor Boy's

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS;
CHARTERED

01 JUN 14 PM 3:52

RECEIVED
COUNTY BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14 day of June, 2001, a copy of the foregoing Motion to Dismiss with Request for Hearing was mailed first class, postage pre-paid to the following attorney of record:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286
Attorney for Appellants
Mr. & Mrs. Ernie Baisden

Virginia W. Barnhart, County Attorney
for Baltimore County
Court House, Second Floor
Towson, MD 21204

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



C. William Clark

6/14/01

IN THE MATTER OF:

POOR BOY'S INC. (Terry Gerahty)
Legal Owner
S/E Corner Old Harford Road and
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2711 Taylor Avenue
9th Election District
6th Councilmanic District

* THE BOARD OF APPEALS
* OF BALTIMORE COUNTY
* FOR
* BALTIMORE COUNTY
* CASE NO. CBA-00-159

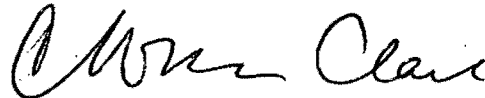
* * * * *
98-267-SPH

REQUEST FOR HEARING

Mr. Clerk:

Please schedule a hearing on this Motion to Dismiss in the
above-captioned matter.

Respectfully submitted,



C. William Clark
NOLAN, PLUMHOFF & WILLIAMS, CHARTERED
502 Washington Avenue, Suite 700
Towson, MD 21204
(410) 823-7800

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DOUGLAS L. BURGESS
C. WILLIAM CLARK
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E. BRUCE JONES**
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* ALSO ADMITTED IN D.C.
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(RETIRED 2000)

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(1918-1990)

WRITER'S DIRECT DIAL
(410) 823-7850

June 14, 2001

VIA HAND DELIVERY

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

Re: Appellee, Terry J. Gerahty Motion to Dismiss and Memorandum in Support
Case No. CBA-00-159

Dear Clerk:

Enclosed herein for immediate filing is Appellee, Terry Gerahty's Motion to Dismiss with a Request for Hearing, along with his Memorandum in Support in connection with the above-captioned case.

Please date stamp the file copy and return.

Thank you for your attention to this matter.

Very truly yours,



Kathleen A. Lance
Legal Assistant to C. William Clark

KAL

Enclosure

cc: J. Carroll Holzer, Esquire
Virginia W. Barnhart, County Attorney
Terry Gerahty

F:\Data\KATIEDATA\data\CWC\Clients\PoorBoy's\BdAppealsltr2.wpd

RECEIVED
COUNTY BOARD OF APPEALS
01 JUN 14 PM 3:52

2050 7/12/01

10/100

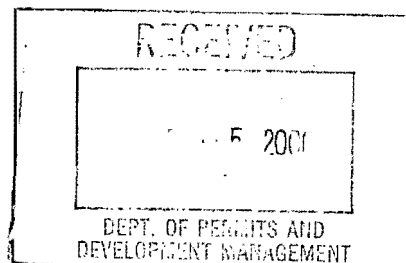
IN RE: POOR BOY'S, INC. * BEFORE THE
Parking Lot Expansion & * BALTIMORE COUNTY
Modification *
2711 ~~77-21~~ Taylor Ave. *
District 9 C6 * DEPARTMENT OF
PDM Approval 9/7/00 * PERMITS AND DEVELOPMENT
Permit # B-329149 * MANAGEMENT

* * * * *

NOTICE OF APPEAL

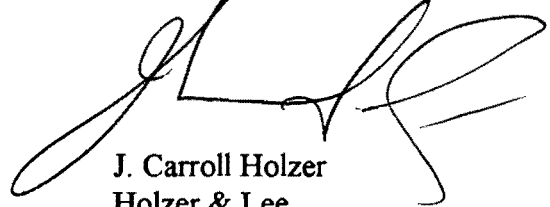
Ruth and Ernie Baisden, herein Appellants in the above captioned case, by and through their attorney, J. Carroll Holzer and Holzer and Lee, hereby note an appeal to the County Board of Appeals from the decision of the Director of the Department of Permits and Development Management approving the Landscape Plan and Lighting Plan attached hereto and incorporated herein as **Exhibits A and B**.

Also attached hereto and incorporated herein as **Exhibit C** is a letter from E. Avery Hardin, Landscape Architect for Baltimore County, dated December 24, 1996 to Appellants and others. Attached hereto and incorporated herein as **Exhibit D** is the Findings of Fact and Conclusion of Law of the Deputy Zoning Commissioner dated March 6, 1997 in Poor Boy's Petitions for Special Hearing and Variance. Attached hereto and incorporated herein as **Exhibit E** is the Findings of Fact and Conclusions of Law of the Deputy Zoning Commissioner in Poor Boy's Petition for Special Hearing. And finally, the Board of Appeals' Opinion in the Appeal of Terry Gerahty in the Special Hearing Case for the property located at 2711 Taylor Ave. dated May 31, 2000, attached hereto and incorporated herein as **Exhibit F**.



Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal. Appellants were parties below and fully participated in the proceedings.

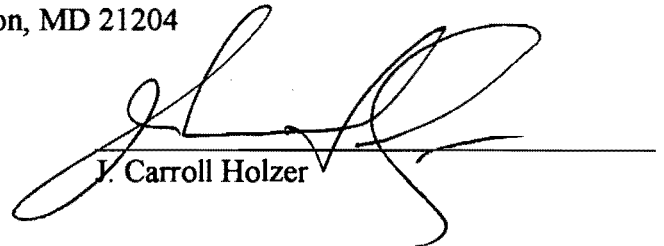
Respectfully submitted,



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Notice of Appeal was mailed first class, postage prepaid, to C. William Clark; Esquire, Nolan, Plumhoff & Williams, Suite 700, Nottingham Centre, 502 Washington Avenue, Towson, MD 21204; and the County Board of Appeals, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204



J. Carroll Holzer



Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Exq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

Exh. C





Baltimore County
Zoning Commissioner
Office of Planning and Zoning

Suite 112, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4386

March 6, 1997

Newton A. Williams, Esquire
Douglas L. Burgess, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING and VARIANCE
SE/Corner Old Harford Road & Taylor Avenue
(7721 Old Harford Road)
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 97-295-SPHA

Dear Messrs. Williams & Burgess:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing 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 Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in cursive script, reading "Timothy Kotroco".

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Terry Gerahty
7721 Harford Road, Baltimore, Md. 21234

✓ Mr. & Mrs. Ernest Baisden
7706 Oak Avenue, Baltimore, Md. 21234

Mr. James Reed
7705 Oak Avenue, Baltimore, Md. 21234

Mr. Avery Harden, DPDP; People's Counsel; Case File

Exh. D



Baltimore County
Zoning Commissioner

RULING

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

July 8, 1999

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

Re: Petition for Special Hearing
Case No. 98-267-SPH
Property: 2711 Taylor Avenue

Dear Ms. Murphy:

Enclosed please find the decision rendered in the above-captioned case. The Request for Special Hearing has been denied in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure

c: Mr. Terry J. Gerahty
Mr. & Mrs. Ernest Baisden
✓ Mr. & Mrs. John Baker
Mr. James Reed, Jr.
Mr. Joseph Kreis

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

EXH. E



County Board of Appeals of Baltimore County

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

May 31, 2000

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: In the Matter of Terry J. Gerahty
/ Petitioner /Case No. 98-267-SPH

Dear Mr. Clark:

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

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: ~~Terry Gerahty~~
Mr. and Mrs. Ernie Baisden
James Reed, Jr.
Joseph Kreis
Barry Ashbury
Ellen Otto
Alice & John Baker, Jr.
Pat Keller /Planning Director
Lawrence E. Schmidt /Z.C.
Avery Harden /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Exh. F

APPEAL

HEARING THUR 6-6-07 9AM Rm 407

02-462 → 462
SPH

CERTIFICATE OF POSTING

1) Posted _____ Hearing Date _____
2) Posted _____ Hearing Date _____

ADG
1) Paper/Date 5-23-02 Enc _____
Paper/Date _____ Enc _____

2) Paper/Date _____ Enc _____
Paper/Date _____ Enc _____

P&A FEES

1) _____
2) _____

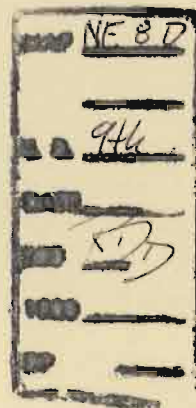
COMMENTS

Planning _____ Fire ☒ Traffic ☒
Critical Area _____ SHA ☒ EPA _____
Health: _____

Associate CR

Zoning Violation # _____

Other Hearing(s) 90-35-SPHA
98-267-SPH



FOR
DAVE
TO
STRIPPED

(2)

02-462-SPH
supplemental
(20020462) "A"



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 13, 2000

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmont Avenue
Towson, MD 21286

Re: In the Matter of Poor Boy's, Inc., 2711 Taylor Avenue, Baltimore, MD 21234

Dear Mr. Holzer:

Please be advised that the appeal of the above-referenced matter was filed in this office on October 5, 2000, on behalf of Ruth and Ernie Baisden, appellants. All relative materials will be forwarded to the Baltimore County Board of Appeals.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Jablon".

Arnold Jablon
Director

AJ/jm

c: C. William Clark, Esquire; Nolan, Plunhoffs & Williams, Suite 700, Nottingham Centre,
502 Washington Avenue, Towson, MD 21204
Douglas N. Silber, Esquire, Baltimore County Office of Law
John R. Reisinger, P.E., Baltimore County Buildings Engineer
Avery Harden, Landscape Architect, Baltimore County Bureau of Development Plans
Review



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 067698

DATE 10/12/00 ACCOUNT R-001-6150

AMOUNT \$75.00

RECEIVED FROM: J. Carroll Holzer, Holzer + Lee

FOR: Parr Roy's appeal - Ruth +
Ernie Paisden, 7721 Taylor Ave.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

PAYMENT	ACTUAL	TIME
10/13/2000	10/12/2000	13:50:16
REG 4806	CASHIER JPTC JAR	DRIVER 1
Dept 5	528 ZONING VERIFICATION	
Receipt #	019862	UPLD
CR #0.	067698	
	Receipt Tot	75.00
	75.00 CR	.00 CR
Baltimore County, Maryland		

CASHIER'S VALIDATION

Appeal

Decision of the Director of the Department of Permits and Development Management Approving
the Landscape Plan and the Lighting Plan

Poor Boy's, Inc., 2711 Taylor Avenue
9th Election District, 6th Councilmanic District

Ruth and Ernie Baisden – Appellants

Pending Building Permit B-329149

✓ Application for building permit

✓ Approvals detail screen

✓ Notice of Appeal from J. Carroll Holzer, Esquire, date of receipt by the Baltimore County
Department of Permits and Development Management – October 5, 2000

✓ Exhibit A – Landscape plan for Poor Boy's, Inc., dated September 7, 2000

Exhibit B – Lighting plan for Poor Boy's, Inc., dated September 8, 2000

✓ Exhibit C – Letter to the Honorable Joseph Bartenfelder, Baltimore County Councilman, Sixth
District; John F. Weber, III, Baltimore County Director of the Department of
Recreation and Parks; Ernest and Ruth Baisden, residents adjacent to Poor Boy's,
Inc.; James Thompson, Supervisor, Baltimore County Bureau of Code Enforcement;
Terry Gerahty, owner of Poor Boy's, Inc.; and Douglas L. Burgess, Esquire,
RE: Poor Boy's Buffer from Community from Avery Harden, Landscape Architect,
Baltimore County Bureau of Development Plans Review, dated December 24, 1996

✓ Exhibit D – Letter to Newton A. Williams, Esquire, and Douglas L. Burgess, Esquire, RE:
Petitions for Special Hearing and Variance, from Timothy M. Kotroco, Baltimore
County Deputy Zoning Commissioner, dated March 6, 1997

✓ Exhibit E Letter to C. William Clark, Esquire, RE: Petition for Special Hearing, Case No.
98-267-SPH, from Timothy M. Kotroco, dated July 8, 1999

✓ Exhibit F Letter to C. William Clark, Esquire, Final Opinion and Order in the Matter of
Terry J. Gerahty/Petitioner/Case No. 98-267-SPH, from Kathleen C. Bianco,
Administrator, County Board of Appeals of Baltimore County, dated May 31, 2000

✓ Letter to J. Carroll Holzer, Esquire, from Arnold Jablon, Director, Department of Permits and
Development Management, dated October 12, 2000

✓ Receipt for \$75 appeal fee

RECEIVED
COUNTY BOARD OF APPEALS
00 OCT 11 11 AM 11:25
*cc: J. Carroll Holzer, Holzer & Lee, 508 Fairmont Avenue, Towson, MD 21286
C. William Clark, Esquire; Nolan, Plumhoff & Williams, Suite 700, Nottingham Centre,
502 Washington Avenue, Towson, MD 21204
Arnold Jablon, Director, Baltimore County Department of Permits and Development
Management
Douglas N. Silber, Esquire, Baltimore County Office of Law
John R. Reisinger, P.E., Baltimore County Buildings Engineer
Avery Harden, Landscape Architect, Baltimore County Bureau of Development Plans
Review

RUTH & ERNIE BAISDEN
7706 OAK AVENUE
BALTIMORE MD 21234

APPELLANTS / PROTESTANTS

POOR BOY'S INC
C/O TERRY GERAHTY
7721 OLD HARFORD ROAD
BALTIMORE MD 21234

OWNER / APPLICANT

CBA-00-159

9/07/2000 – Approval of Landscape Plan by PDM

9/08/2000 – Approval of Lighting Plan by PDM (agreement of Owner to attach the lighting plan to the grading permit)

4/27/2001 – Notice of Assignment sent to following parties; case assigned for hearing on Wednesday, August 1, 2001 at 10:00 a.m.:

J. Carroll Holzer, Esquire
Ernie and Ruth Baisden
C. William Clark, Esquire
Terry Gerahty /Poor Boy's, Inc.
Avery Harden, Landscape Architect
John R. Reisinger, P.E. /Buildings Engineer
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
Virginia W. Barnhart, County Attorney

6/14/01 – Motion to Dismiss and Request for Hearing filed by C. William Clark, counsel for Terry Gerahty, Property Owner. To schedule motion hearing and notice to be sent (prior to scheduled hearing date of 8/01/01)

6/19/01 – Notice of Assignment /MOTION ONLY HEARING sent to parties; argument to be received on Mr. Clark's Motion to Dismiss on Wednesday, July 18, 2001 at 10:00 a.m. Should motion be denied, hearing will take place on assigned date of 8/01/01; if granted, then 8/01/01 will be pulled.

6/25/01 – Letter from C. Holzer requesting postponement of 7/18/01 motion hearing (citing vacation, additional time to prepare response, and also continued Development Plan hearing before ZC scheduled for 9 a.m. that date.

6/26/01 – Letter from B. Clark in response to above letter; his client will be out of town 7/30 through 8/02/01; consents to extension of time and rescheduling. Suggests utilization of 8/01/01 as motion date. Notice of PP and Reassignment to be sent.

6/28/01 – Notice of PP and Reassignment /Motion Only Hearing sent to parties; scheduled for Wednesday, August 1, 2001 at 10:00 a.m. (hearing on merits previously scheduled for this date to be postponed; no evidence or testimony to be received at 8/01/01 motion hearing). FYI copy to LWB. Response due from Mr. Holzer no later than Thursday, July 19, 2001.

7/19/01 – Appellants' Response to Motion to Dismiss filed by J. Carroll Holzer, Esquire, on behalf of Mr. and Mrs. Baisden. Copy to be given to L. and B. on 7/24/01; to W on 7/25/01.

7/30/01 – Reply to Appellants' Answer to Motion to Dismiss filed by C. William Clark, Esquire. Copies to W and B 7/31/01; copy to L on 8/01/01.

8/01/01 – Motion hearing completed before CBA (Stahl, Worrall, Barranger). Deliberation to be scheduled and notice sent.

8/10/01 – Notice of Deliberation /Motion to Dismiss issued; scheduled for Wednesday, October 17, 2001 at 9:00 a.m. T/C to L. (lm) W and B. Copy to LWB; copy of original Motion to L.

10/17/01 – Deliberation conducted and concluded (L.W.B.); Property Owner's Motion to Dismiss GRANTED; Order to be issued by the Board; appellate period to run from date of written Order.

9/07/2000 – Approval of Landscape Plan by PDM

9/08/2000 – Approval of Lighting Plan by PDM (agreement of Owner to attach the lighting plan to the grading permit)

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Ernie and Ruth Baisden
C. William Clark, Esquire
Terry Gerahty /Poor Boy's, Inc.
Avery Harden, Landscape Architect
John R. Reisinger, P.E. /Buildings Engineer
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
Virginia W. Barnhart, County Attorney

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8/01/01 – Motion hearing completed before CBA (Stahl, Worrall, Barranger). Deliberation to be scheduled and notice sent.

8/10/01 – Notice of Deliberation /Motion to Dismiss issued; scheduled for Wednesday, October 17, 2001 at 9:00 a.m. T/C to L. (lm) W and B. Copy to LWB; copy of original Motion to L.

10/17/01 – Deliberation conducted and concluded (L.W.B.); Property Owner's Motion to Dismiss GRANTED; Order to be issued by the Board; appellate period to run from date of written Order.

PETITION FOR JUDICIAL REVIEW FILED IN CIRCUIT COURT; REMANDED TO CBA

11/13/02 – On remand from Circuit Court, draft opinion sent to LWB for review /comment.

7/24/01

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

DATE: July 19, 2001

TO: L. Stahl
M. Worrall
L. Barranger

FROM: Kathi

SUBJECT: Case No. CBA-00-159 /Poor Boy's, Inc. (Terry Gerahty)
Motion to Dismiss (Motion Hearing scheduled for 8/01/01)

A Motion to Dismiss the appeal taken by Ruth and Ernie Baisden in the subject matter was filed by C. William Clark, Esquire, counsel for Mr. Gerahty, on June 14, 2001. A copy of this Motion was sent on June 19th to C, W, and L for a July motion hearing.

Since that time, the motion hearing has been reassigned to August 1, 2001, with the panel of L, W, and B. In addition to Mr. Clark's Motion, a response to same has been filed this date by Mr. Holzer on behalf of the Baisdens.

Accordingly, attached for your review is a copy of Appellant's Answer to Motion to Dismiss filed by Mr. Holzer.

Also attached for Lynn is a copy of the original Motion filed by Mr. Clark (since she was not on the original July panel).

Depending upon the outcome of the motion hearing, a date for hearing on the merits will be assigned if needed. Please note that the same Board is not required for both hearings since neither testimony nor evidence as to the merits will be received on August 1st.

Please call me if you have any questions.

Kathi

Attachments (1 each for Larry and Margaret; 2 for Lynn)

[Handwritten signature: Kathi]

[Handwritten: Mr 25A]

[Handwritten: 50]

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

DATE: October 30, 2002

TO: L. Stahl
L. Barranger
M. Worrall

FROM: Kathi

SUBJECT: Case No. CBA-00-159 /Poor Boy's /Appeal from lighting/landscaping plan
On Remand from Circuit Court

Attached is a copy of Judge Fader's Order in the subject matter. He has remanded the case back to the Board as "this court has no information before it, whereby it can determine whether the Board's granting of the motion by Poor Boy's, Inc. to dismiss the appeal has a foundation in law."

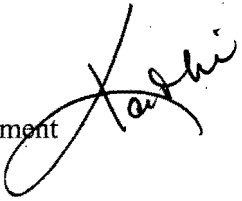
It would appear that additional hearing should not be necessary, although you may have to reconvene for further discussion /deliberation prior to issuing a supplemental order, per Judge Fader's remand, for "further clarification and statement of the reasons for the Board's opinion and determination."

After you've reviewed the attached, we'll need a determination as to public deliberation /discussion and an Order on Remand in response to the Circuit Court's Order.

Please call me if you have any questions.

Kathi

Attachment



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

DATE: July 31, 2001

TO: L. Stahl

FROM: Kathi

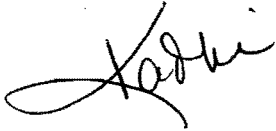
SUBJECT: Case No. CBA-00-159 /Poor Boy's, Inc. (Terry Gerahty)
Motion to Dismiss (Motion Hearing scheduled for 8/01/01)

Larry:

Attached FYI and review is a copy of Reply to Appellants' Answer to Motion to Dismiss filed by Bud Clark on 7/30/01.

A copy of this Reply brief was given to Margaret and Lynn on 7/30/01.

Kathi

A handwritten signature in cursive script, appearing to read "Kathi", written in black ink.

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F R E C O R D

Case Number: 03-C-03-000275
Administrative Agency : CBA-00-159
C I V I L

In The Matter Of: Poor Boys Inc

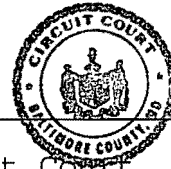
Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 27th day of January, 2003.

Suzanne Mensh

Suzanne Mensh

Clerk of the Circuit Court, per DR



Date issued: 01/29/03

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
400 Washington Ave
Baltimore, MD 21204

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

County Board Of Appeals Of Baltimore County The Assignment Date: 03/26/03
400 Washington Ave
Baltimore MD 21204

Case Title: In The Matter Of: Poor Boys Inc
Case No: 03-C-03-000275 AE

The above case has been assigned to the CIVIL STANDARD TRACK. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under Md. Rule 2-322(b) are due by 04/10/03
2. Plaintiff's Expert Reports or Md. Rule 2-402(e) (1) Disclosures 08/18/03
3. Defendant's Expert Reports or Md. Rule 2-402(e) (1) Disclosures 09/17/03
4. Joinder of Additional Parties Deadline is 09/17/03
5. Dismissal Notice for unserved defendants (Md. Rule 2-507(B)) 07/24/03
6. Discovery must be completed by 11/01/03
7. All Motions (excluding Motions in Limine) are due by 11/16/03
8. ADR Deadline Date is 11/16/03
9. Settlement Conference is 12/16/03
Settlement Conference: Start Time: 10:30AM; Hon. Frank E. Cicone;
10. Deadline/Exchange list of all exhib. and copies of paper exhib. 01/05/04
11. Deadline for Motions in Limine incl. objections to exhibits is 01/15/04
(Note: Documents will be deemed authentic if objection is not filed)
12. TRIAL DATE is 01/20/04
Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: 1 DAY MERITS

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.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

cc: J Carroll Holzer Esq

cc: C William Clark Esq

Issue Date 03/26/03

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-03-000275

RECEIVED
JAN 31 2003

**BALTIMORE COUNTY
BOARD OF APPEALS**

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
400 Washington Ave
Baltimore, MD 21204

TIME: 10:08:04
DATE: 10/12/2000

AUTOMATED PERMIT TRACKING SYSTEM
APPROVALS DETAIL SCREEN

PANEL BP1018M
LAST UPDATE 07/09/1999
ERP 13:46:01

PERMIT #: B329149

PASSWORD :

AGENCY	DATE	CODE	COMMENTS
-----	-----	-----	-----
SEDI CTL	01/30/1998	12	SECUR-X3733////////SWM-X3768////////DEPRM-NO///SCD-NO
ZONING	01/26/1998	01	JRA/JMC
PUB SERV	02/13/1998	12	JRA/JMC NEED LS. PLAN PER AVERY.
ENVRMNT	01/27/1998	01	TT
PERMITS			

01 THRU 09 INDICATES AN "APPROVAL" ** 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - NEXT APPROVAL

PF4 - ISSUE PERMIT

PF9 - SAVE

CLEAR - MENU

APPLICATION FOR BUILDING PERMIT

PERMIT #: B329149 CONTROL #: GRC- DIST: 09 PREC: 21

LOCATION: 2711 TAYLOR AVE
SUBDIVISION: PARKVILLE
TAX ASSESSMENT #: 1800009926

OWNERS INFORMATION

NAME: GERAHTY, TERRY J
ADDR: 7721 OLD HARFORD RD 21234

APPLICANT INFORMATION

NAME: R. ALONSO CHILDRESS
COMPANY: R. A. CHILDRESS & ASSOC. INC
ADDR1: 713 PHEASANT DR
ADDR2: FOREST HILL, MD 21050
PHONE #: 410-803-0304 LICENSE #:

NOTES

JMC/JMC

DRC#

PLANS: CONST 0 PLOT 8 R FLAT 0 DATA 0 ELEC NO PLUM NO
TENANT:
CONTR: TBD
ENGR:
SELLR:
WORK: GRADING & PAVING FOR PARKING LOT EXPANSION.
42,680SF DISTURBED AREA.

PROPOSED USE: RETAIL & GRADING
EXISTING USE: RETAIL

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY: OWNERSHIP: PRIVATELY OWNED
ESTIMATED COST OF MATERIAL AND LABOR: 45,000.00

TYPE OF IMPRV: OTHER

USE: OTHER - RESIDENTIAL

FOUNDATION:

SEWAGE: PUBLIC EXIST

CONSTRUCTION:

CENTRAL AIR:

BASEMENT:

WATER: PUBLIC EXIST

FUEL:

SINGLE FAMILY UNITS

TOTAL 1 FAMILY BEDROOMS

MULTI FAMILY UNITS

EFFICIENCY (NO SEPARATE BEDROOMS): NO. OF 1 BEDROOM:

NO. OF 2 BEDROOMS: NO. OF 3 BEDROOMS OR MORE:

TOTAL NO. OF BEDROOMS: TOTAL NO. OF APARTMENTS:

PERMIT #: B329149

DIMENSIONS - INSTALL FIXTURES

	BUILDING SIZE
GARBAGE DISP:	FLOOR: 42,680
POWDER ROOMS:	WIDTH:
BATHROOMS:	DEPTH:
KITCHENS:	HEIGHT:
	STORIES:

LOT NOS:
CORNER LOT:

LOT SIZE AND SETBACKS
SIZE: 49919SF
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: NC/NC
SIDE STR SETB:
REAR SETB: NC

ZONING INFORMATION

	BLOCK:
DISTRICT:	SECTION:
PETITION:	LIBER: 000
DATE:	FOLIO: 034
MAP:	CLASS: 06

ASSESSMENTS

LAND: 0156950.00
IMPROVEMENTS: 0000000.00
TOTAL ASS.:

PLANNING INFORMATION

MASTER PLAN AREA: SUBSEWERSHED: CRITICAL AREA:

DATE APPLIED: 01/26/1998 INSPECTOR INITIALS: 09C
FEE: \$85.00 PAID: \$85.00 RECEIPT #: A344420
PAID BY: APPLICANT

(I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE. AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS)

COMPANY OR OWNER

DATE

ADDRESS

AGENT ____
OWNER ____

SIGNATURE OF APPLICANT

PHONE



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

*Motion Hearing
ppg to 8/10/01*

June 19, 2001

NOTICE OF ASSIGNMENT – MOTION ONLY HEARING

CASE #: CBA-00-159

IN THE MATTER OF: Poor Boy's, Inc. (Terry Gerahty -Legal Owner)
2711 Taylor Avenue 9th Election District; 6th Councilmanic

9/07/2000 –Approval of Landscape Plan by PDM

9/08/2000 – Approval of Lighting Plan by PDM (agreement of Owner to attach
lighting plan to grading permit) Pending Building Permit B-329149

has been scheduled for a **MOTION ONLY HEARING** for the purpose of receiving argument from counsel on
the Motion to Dismiss filed by Counsel for Property Owner.

August hearing date to remain as scheduled pending outcome of Motion hearing.

ASSIGNED FOR:

WEDNESDAY, JULY 18, 2001 at 10:00 a.m. – MOTION HEARING

NOTICE: **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 : J. Carroll Holzer, Esquire
Appellants /Protestants : Ernie and Ruth Baisden

Counsel for Property Owner : C. William Clark, Esquire
Property Owner : Terry Gerahty /Poor Boy's, Inc.

Avery Harden, Landscape Architect
John R. Reisinger, P.E. /Buildings Engineer
Arnold Jablon, Director /PDM

Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney





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 28, 2001

NOTICE OF POSTPONEMENT & REASSIGNMENT – MOTION ONLY HEARING

CASE #: CBA-00-159

IN THE MATTER OF: Poor Boy's, Inc. (Terry Gerahty -Legal Owner)
2711 Taylor Avenue 9th Election District; 6th Councilmanic

9/07/2000 –Approval of Landscape Plan by PDM

9/08/2000 – Approval of Lighting Plan by PDM (agreement of Owner to attach
lighting plan to grading permit) Pending Building Permit B-329149

which was assigned for argument on 7/18/01 has been POSTPONED at the request of Counsel for Appellants and, at request of Counsel for Property Owner, has been reassigned to 8/01/01 (NO EVIDENCE OR TESTIMONY TO BE RECEIVED AT THIS HEARING); and has been

(A hearing date on the merits will be scheduled if required pending outcome of Motion hearing.)

NOTE: Response to Motion to Dismiss shall be filed no later than Thursday, July 19, 2001.

REASSIGNED FOR:

WEDNESDAY, AUGUST 1, 2001 at 10:00 a.m. – MOTION HEARING

NOTICE: **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	: J. Carroll Holzer, Esquire
	Appellants /Protestants	: Ernie and Ruth Baisden
	Counsel for Property Owner	: C. William Clark, Esquire
	Property Owner	: Terry Gerahty /Poor Boy's, Inc.
	Avery Harden, Landscape Architect	
	John R. Reisinger, P.E. /Buildings Engineer	
	Arnold Jablon, Director /PDM	
	Nancy C. West, Assistant County Attorney	
	C. Robert Loskot, Assistant County Attorney	





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 10, 2001

NOTICE OF DELIBERATION (Appellee's Motion to Dismiss)

IN THE MATTER OF:

Poor Boy's, Inc. (Terry Gerahty - Owner) (#B0329149)
Case No. CBA-00-159

Having heard oral argument on 8/01/01, deliberation has been scheduled for the following date and time:

DATE AND TIME : **WEDNESDAY, OCTOBER 17, 2001 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Ernie and Ruth Baisden

Counsel for Property Owner : C. William Clark, Esquire
Property Owner : Terry Gerahty /Poor Boy's, Inc.

Avery Harden, Landscape Architect
John R. Reisinger, P.E. /Buildings Engineer
Arnold Jablon, Director /PDM

Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney

FYI copy to L.W.B.





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

April 27, 2001

NOTICE OF ASSIGNMENT

CASE #: CBA-00-159

IN THE MATTER OF: Poor Boy's, Inc. (Terry Gerahty -Legal Owner)
2711 Taylor Avenue 9th Election District; 6th Councilmanic

9/07/2000 – Approval of Landscape Plan by PDM

9/08/2000 – Approval of Lighting Plan by PDM (agreement of Owner to attach lighting plan to grading permit) Pending Building Permit B-329149

ASSIGNED FOR:

WEDNESDAY, AUGUST 1, 2001 at 10:00 a.m.

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

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

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

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Ernie and Ruth Baisden

Counsel for Property Owner : C. William Clark, Esquire
Property Owner : Terry Gerahty /Poor Boy's, Inc.

Avery Harden, Landscape Architect
John R. Reisinger, P.E. /Buildings Engineer
Arnold Jablon, Director /PDM

Nancy C. West, Assistant County Attorney
Virginia W. Barnhart, County Attorney

pp'd; to be assigned pending outcome of motion 8/10/01 meeting



**BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION /Motion to Dismiss**

IN THE MATTER OF: Poor Boy's, Inc. (Terry Gerahty –Owner)
Case No. CBA-00-159 /Motion to Dismiss

DATE : Wednesday, October 17, 2001

BOARD /PANEL : Lawrence M. Stahl (LMS)
Margaret Worrall (MW)
C. Lynn Barranger (LB)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Case No. CBA-00-159 /appeal from signatures on Landscaping and Lighting Plan /ruling on Property Owner's Motion to Dismiss. Argument on Motion received August 1, 2001.

Preliminary Issues:

- Whether or not Appellants have right to appeal signature approval of Landscaping and Lighting Plan
- Clark's Motion to Dismiss

Discussion:

- Appellants noted appeal – believe it to be appealable
- Question raised by Clark – Do we have jurisdiction
- Both sides quoted 5U of Annotated Code; Board reviewed 5U as quoted in Motion and Response
- Decision to be appealed must be “final” – what allows someone to go forward or not
- Discussed what is or is not appealable event
- Ultimate issuance of grading permit
- Quoted from Harden's letter – “what will be required when permit is sought.”
- Reviewed § 7-36 of Code as to issuance of permit – only appeal is by Applicant
- Counsel for Appellant is attempting to find appeal along the way
- Would allow to appeal constituent part of something – leading to permit
- Example – if department says “no issues to development plan” – can the community then say – “We, the community, disagree” – and then appeal every review of every step of the process? Does not go to legislative intent
- Other elements along the way could affect this signature approval of plan – only one step
- As to issue – no one but applicant to permit can appeal – this is current law – can only be changed by CC; the law is the law

Decision:

LB – would grant Motion to Dismiss; concern with the way the law is written – appeal allowed by Applicant only; but the signature on the plan is not the final event; only one of many steps – does not permit applicant to go forward with building – Motion to Dismiss is **GRANTED**

MW – Motion should be **GRANTED** and appeal dismissed – also has great concern about the process – and the related matter in the Court of Special Appeals regarding this property – but there are avenues in the Circuit Court after final decision is made in the CSA; as to this appeal – the signature on the plan is not a final decision allowing someone to proceed with building – only a review

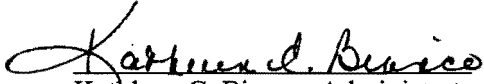
LMS – Would grant Motion – injunction can be sought in the Circuit Court to stop work and owner would be required to put it back and to follow the order of the upper courts. **Motion is granted.**

FINAL DECISION:

Property Owner's Motion to Dismiss is GRANTED; Ruling to be issued by the Board.

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

Respectfully submitted


Kathleen C. Bianco, Administrator
County Board of Appeals

THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
DOUGLAS L. BURGESS
C. WILLIAM CLARK
CATHERINE A. POTTHAST
E. BRUCE JONES**
CORNELIA M. KOETTER*

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

LAW OFFICES
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502 WASHINGTON AVENUE
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JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

NEWTON A. WILLIAMS
(RETIRED 2000)

RALPH E. DEITZ
(1918-1990)

WRITER'S DIRECT DIAL
(410) 823-7850

June 26, 2001

VIA HAND DELIVERY

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

Re: In the Matter of Poor Boy's, Inc.;
Case No. CBA-00-159

Dear Ms. Bianco:

Please be advised that I have received a copy of the letter from J. Carroll Holzer, Esquire, requesting a rescheduling of certain matters in the above-captioned case. After discussing the matter with my client, I was reminded by him that he will be out of town attending a convention in Atlanta from July 30 through and including August 2, 2001. After discussing Mr. Holzer's request with him, I believe it would be appropriate, and, therefore, my client consents to an extension of time and the rescheduling of the matter as it appears below.

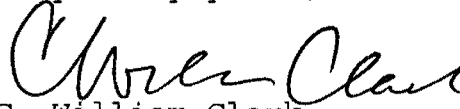
I would suggest that we keep the date of August 1, 2001, which is scheduled for a Hearing on the merits, but only have on that day a Hearing on the Motion to Dismiss. In the event that that Motion is not granted, we could reset the matter at the next available date on the Board's calendar. That way, no one will be inconvenienced by having to prepare witnesses or subpoena witnesses, which may turn out to be unnecessary. I would suggest a date of Friday, July 20, 2001, as a due date for Mr. Holzer's response to my client's Motion to Dismiss. That way, I would have approximately 10 days to prepare a response if we determine one is necessary.

RECEIVED
COUNTY BOARD OF APPEALS
01 JUN 26 PM 3:37

Kathleen C. Bianco
June 26, 2001
Page: 2

Thank you for your anticipated cooperation.

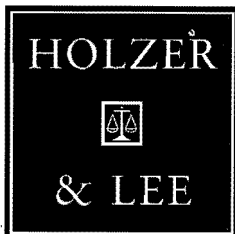
Very truly yours,


C. William Clark

CWC:kal

cc: J. Carroll Holzer, Esquire/via facsimile
Terry Gerahty

F:\Data\KATIEDATA\data\CWC\Clients\PoorBoy's\BdAppealsltr3.wpd



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

E-MAIL: JCHOLZER@BCPL.NET

June 22, 2001

#7024

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

Re: Case No. CBA-00-159
IN THE MATTER OF POOR BOY'S

Dear Mrs. Bianco:

Please be advised that I just this morning received a Notice of Hearings scheduling argument on the motions, motion in the above captioned case for Wednesday, July 18, 2001 at 10 a.m. I would request additional opportunity to file a response on behalf of Ruth Baisden on the above captioned matter in that Motion was filed on June 14, 2001 and I have an inordinant amount of briefs in the Court of Special Appeals due also I will be away from the office from Friday June 29 until Monday July 9.

In addition, I must request a postponement of the hearing based upon the fact that on Wednesday, July 18th at 9 a.m. I have a continued Development Plan case previously scheduled concerning "Blakley Springs." This matter has been previously set before the Zoning Commissioner for 9 o'clock and I would expect that the case would go that day. I would therefore respectfully request a postponement of the above captioned matter and time to file a written response to this Motion after I returned from vacation.

Very truly yours,

J. Carroll Holzer

cc: C. William Clark, Esquire
Ruth Baisden

01 JUN 25 PM 1:22
RECEIVED
COUNTY BOARD OF APPEALS

FILE BEING RETURNED TO CIRCUIT COURT
ON REMAND TO BOARD OF APPEALS

CASE NO.: 3-C-02-01085

BOARD OF APPEALS
CASE NUMBER: CBA-00-159 (98-267-SPH)

DATE: JANUARY 27, 2003

Christensen
Clerk of the Court

CASE NO. 3-C-02-01085

DATE: JANUARY 27, 2003

RECEIVED AND FILED

2003 JAN 27 A 10: 26

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Delib. - Poore Bay's

Issues: Motion to dismiss before us?

1. Does CBA have jurisdiction to hear appeal from "Dis. of PDM approving landscape/lighting plan"?
2. Why do App. want to appeal l & l?
case before Ct. of Sp. Appeals
- Ct. Ct. remanded to make 1996 letter dominant
- what happens if CBA hears & Ct. Sp. Appeals differs?

Clark argument

- No statute authorizing appeal from grading perm.
- land/light. only one part
 - not final decision
 - App. didn't appeal grading permit bc.
upper ct. says NOT appealable

Director can send back for changes or deny

- if denied, applicant can appeal

Holzer argument

Sec 26-132(a)

- anyone aggrieved or jointly aggrieved by any decision
- says decision

Bill 123 1992

- combined zoning & permits
- Director PDM ultimate authority
- made final decision on l & l

Chairman grants power to hear appeals
from "other forms of permission granted"
L + L could be installed once approved - immed.
- not tied to grading permit
- grading can't be done, however,
unless L + L approved

Aug. 1, 2001

Carroll Holzer - Appell / Prot.

Bud Clark - Petitioner / owner

Clark Argument

Asked CBA to consider

Exh. A Site plan in file & attached to Holzer memo

Exh. B lighting plan

Above part of application for grading permit

Harden approved

Sept. 7, 2000 - landscape

Sept. 8, 2000 - lighting

Sect. 14-221 thru 14-225

14-222(a)(b)

- * - Harden approvals are only one piece of application for grading permit
- Other parts (sub) must be approved before permit issued

Motion to dismiss

- CBA does not have jurisdiction to hear "appeal from Dir. of PDM approving landscape/lighting plan"

CBA authority

Art 55A(u) Md. Code

- local law providing for an appeal

1st argument

- * - no statute authorizing appeal from grading permit
- 2300 Old Fred. Rd.
- affirmed CBA - no jurisdiction
- Appell. want to appeal one of steps of app. for grading permit
- appealable must be "final final"
- no further decision to be taken
- here only part of grading permit process

— have NOT appealed the grading permit
didn't bc. upper ct. says

NOT appealable
No ^{appeal} appeal from decision of landscape authority

App. cite

Ariz. 26-132 as authority to appeal

— all deal w/ zoning
— limited to zoning

Meadows v. Foxleigh - Aug 31, 2000

★ Harden's approval NOT the operative event
that determined issuance of grading permit
— only 2 legs of 3 legged stool
— no final decision (602 d)

Final action will be Director after he gets all parts together

— could then deny or pick back to make changes

— if denied, applicant could appeal

Holzer

Clark's attach m1) "clear language"

Sec. 26-132

2) UPS theory

— Meadows doesn't apply

— Does CBA have rt. to hear decision of Director

— UPS been ^{mis}represented

u: special language

Sec. 26-132(a)

★ — Anyone aggrieved or substantially aggrieved by any decision

— intended to be broadly construed

— doesn't mean only order, but any decision

Not only apply to zoning

Bill 1-2-3 1992

- Combined zoning & permits
- Director P.D.M. the ultimate authority
- includes development process such as DEC

★★ Then Harden, Director approved landscape/lighting

- nothing further required
- did not appeal grading permit
- l & l did not have anything to do w/ other permits required for grading permit

★ l & l signed off as approved

★ final act

- not appealing permit

- appealing instead the final decision of Director re: l & l

Memo - Appendix A

CBA 98-267-SPH

- summary for Ct. Ct.

- contrary to what Harden intended
Sept. 1996

- Bnd. reversed - Appendix to brief

- fence should be 70' from prop. line

- appealed beyond Ct. Ct.

★★ Appealing a final decision, not a permit

- appealed w/in 30 days of Sept. approval
Motion should not be granted

- appeal should be heard

Hope case -

- RAISE? what was enacted

★ - plain meaning to embrace all auth.

granted

- any approval or other permission

- as set forth 25A(5)u
- when Charter enacted & sets up CBA
- adopts all powers
- since KSDS decisions of dept. heads were appealable

Then UPS

- should have done SPH
- but took appeal instead
- Ct. of Appeals said
- letter not appealable
- But has no relation to this case
- NOT approval stamped on plan
- CBA then looked @ UPS
- took tack that unless specifically says RT to appeal
- none exists

Ct. Sp. Appeals said otherwise (unreported)

- BEST TRIUMPH
- silence does not mean denial of RT to appeal
- looked @ Hope
- adopted all the powers

I Clark objects to unreported - Stahl denies I UPS - arguments

- 1) Trt. for CBA to hear appeal from letter
- 2) CBA itself had original jurisdiction to hear case
- under 25A(5)u
- novel idea

Holding was letter appeal of reaffirmation was not appealable

- would run time to appeal forever

Original jurisdiction issue - CBA did not deal w/ this issue

- Ct. said no original as to statute - only reclaim.

UPS doesn't apply here
Addressed Hope

- did NOT reverse
- furnished no support for original jurisdiction

- * Do NOT need specific code distinction as to what can be appealed
 - Charter grants power to hear appeals from "other forms of permission granted"

14-222 - Clark's argument

- did not take appeal from grading permit
- * * - appealed from "any decision of Director"
- grading permit issue & Brennan's decision NOT relevant

Standing of L&L can't be approved bc. of Ct. Ct's reversal of board

Where code is clear where appeal is taken, that process takes precedence.

This is separate case

- silent

- we would have arbitrary & capricious hearing on landscape plan alone

Clark Rebuttal

Ct. Sp. Appeals has given way to resolve Meadows v. Foxleigh

- Stat. 602(d) approval, other form of permission
- p. 516 refer to "operative event"
- determine whether person gets permit
- becomes appealable w/ operative event
- when Harder approved, could he install L&L

- no, he needn't grading permit
- but 1st has to have approval of sed. control before permit
- * But problem is grading permit

isn't ~~appealable~~ appealable
Contrary to DRC

— once Jablon orders, developer can
"operate"

— can go ahead
here is drawn a "operative work"

* ? is can person do anything, go forward,
before doing something else
Here developer cannot go forward until he
gets a grading permit approval or
denial

— no one leg leading up to Director's
opinion is appealable

Hope & Klein cases

— Holz overrules both

— legis. passed law saying CBA could be
skipped & go directly to Ct. Ct.

— Ct. said, "Oh, no, you can't."

— has nothing to do w/ 602(d)

98-267-SPH

— on appeal to Ct. Sp. Appeals

— has no bearing on grading permit case

— variance case

— to allow gravel lot

— ZC imposed conditions to do w/ L & L

— L & L got appealed

— has no bearing on grading permit
application

— now will put in paved pkg. lot

— will render case on variance moot

Both TFILOH

— may only be cited in case before it

— improper for CBA to consider

Holzer

Location of fence is relevant

- part of rezoning agreement

B9 + E light fixtures to be installed before
(9-8-2000) grading permit

- not tied to grading permit

- could be implemented in time.

- note from Poor Boys attached to
this plan

"grading for new phy. area must be ~~com~~ begin
^{prior to} before July 1, 2001, and ^{must be} completed by
Sept. 2001."

Established 1985



Poor Boy's

COUNTRY MARKET

"A Touch of Country ... in the Heart of Parkville"

7721 OLD HARFORD ROAD BALTIMORE, MD 21234
PHONE 410-668-7599 FAX 410-382-2006

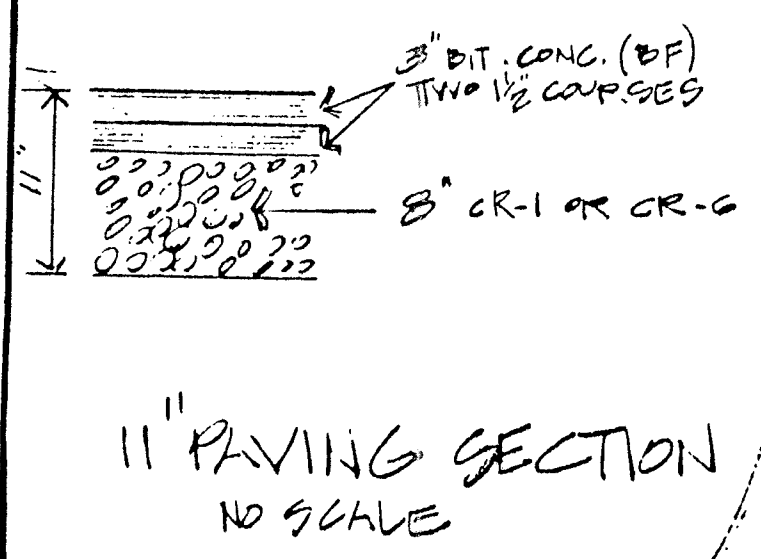
Poor Boy's agrees to attach this lighting plan to our grading permit with the following understandings.

1. New BGE light fixtures will be installed prior to the beginning of any grading. *Grading is the new parking area must begin Prior to July 1, 2001 and must be completed prior to Sept 2001*
2. Display, seasonal, and temporary lighting is allowed until our lighting plan is installed.
3. Once the lighting portion of our lighting plan is installed, as shown on the plan, the lighting plan is moot and no longer enforceable.
4. We further agree to use only lighting that is ~~allowed~~ by Baltimore County ~~code~~ after the installation of our lighting plan.

A stylized handwritten signature in black ink.

Terry Green

OK FAH 9-8-00



- LEGEND**
- EXISTING CONTOURS 347
 - PROPOSED CONTOURS 347
 - PROPOSED PAVING
 - TRACT BOUNDARY
 - PROP CONC CURB & GUTTER
 - EXISTING CONC CURB & GUTTER
 - LIMIT OF DISTURBANCE
 - SILT FENCE
 - SUPER SILT FENCE
 - STABILIZED CONSTR. ENTRANCE
 - INLET PROTECTION

TEST FIT WALL FOOTING PRIOR TO EXCAVATING ADJACENT TO BUILDING WALL. NOTIFY OWNER & ENGINEER OF BOTTOM FOOTING ELEVATION.

PLANT LIST

- 8- QUERCUS RUBRA - NORTHEAST RED OAK 2-2 1/2" CAL.
- 2- " PALUSTRAIS - PIN OAK
- 5- PINUS STROBUS - WHITE PINE 5-6'
- 5- PICEA ABIES - NORWAY SPRUCE 6-7'
- 10- CUPRESSOCYPARIS LEYLANDII - LEYLAND CYPRESS #7 GALLON
- 8- TAXIS DENISFORMIS - YEW - 2 1/4" - 30"

* PLANT LOCATIONS TO BE FIELD LOCATED BY COUNTY L.A.

- GENERAL CONSTRUCTION NOTES**
1. TOPOGRAPHIC SURVEY DATED DECEMBER 1988 BY KELLER & KELLER SURVEYORS
 2. CONTRACTOR SHALL CALL MISS UTILITY 24 HOURS PRIOR TO STARTING CONSTRUCTION
 3. THE CONTRACTOR SHALL OBTAIN ALL PERMITS FROM BALTIMORE COUNTY FOR ALL CONSTRUCTION ON SITE AND WITHIN THE COUNTY RIGHT-OF-WAY. ACCESS PERMIT IS REQUIRED FOR NEW CONCRETE ENTRANCE AT TAYLOR AVENUE.
 4. THE LOCATION OF EXISTING UTILITIES SHOWN ARE APPROXIMATE. CONTRACTOR SHALL IDENTIFY ALL UTILITIES TO HIS SATISFACTION PRIOR TO STARTING CONSTRUCTION.
 5. TEST PIT AS REQUIRED.
 6. CONTRACTOR SHALL REMOVE ON SITE TREES, WOOD FENCE, BUILDING AND ALL OTHER STRUCTURES REQUIRED FOR THE PROPOSED SITE IMPROVEMENTS.
 7. ALL DAMAGES TO THE PUBLIC RIGHT-OF-WAY SHALL BE REPAIRED AT THE CONTRACTOR'S EXPENSE. BALTIMORE COUNTY STANDARD DETAILS SHALL BE USED FOR SITE WORK.
 8. STORM DRAIN INLETS (3 TOTAL) - STURPLATE D-223
 9. PAVING - 4" BITUMINOUS CONCRETE (2" 2" COURSES) ON 8" CR-6 SUB BASE
 10. ALL SITE WORK CONSTRUCTION SHALL COMPLY WITH BALTIMORE COUNTY DEPT. OF PUBLIC WORKS SPECIFICATIONS
 11. SUITABLE MATERIAL SHALL BE USED FOR FILL REQUIRED FOR THE MATERIAL AND PAVING SUBGRADE. ALL FILL SHALL BE INSPECTED AND TESTED BY A SOIL ENGINEER TO ENSURE THAT COMPARISON COMPLIES WITH BALTO. CO. DRAIN SPECIFICATIONS
 12. DRIVEWAY AND PARKING AREA TO BE BITUMINOUS PAVING. ALL PARKING SPACES TO BE PAINTED ON PAVING.
 13. PARKING SPACES FOR HANDICAPPED PERSONS SHALL BE PAINTED WITH "HANDICAPPED WHEELCHAIR" HAVE SIGN AND POST. PAVING PEDESTRIAN RAMP SHALL COMPLY WITH THE "AM-BAIR SYMBOL". THE ON-SITE PROP. ISLAND CURB SHALL BE EXTERIORS WITH DISABILITIES ACT OR WOOD TIES.
 14. TUNNELING CONCRETE

OWNER: TERRY J. GERAHY
8309 DALESFORD RD.
BALTIMORE, MD. 21234

JOHN M. & MARTHA MIMS
6027/536

DANIEL RAINVILLE
6152/008

2nd FLOOR BLDG.
INDOOR RETAIL SALES - 1705 SF

LOBBY FIN. FLOOR
ELEV. 340.65

POOR BOY'S INC. #721

MACADAM PAVING

CONC. CURB

STORM M.H.
TOP EL. 338.45

8" SANY.

BL

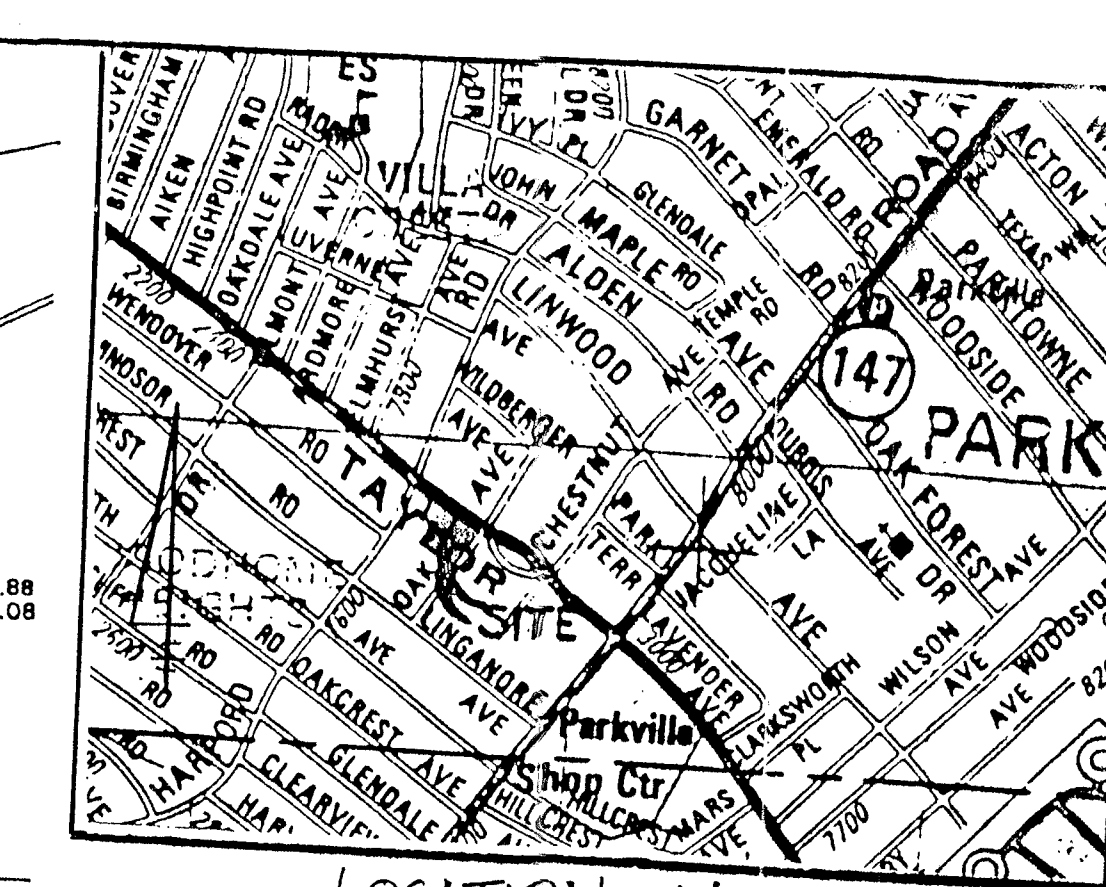
LIMIT OF DISTURBANCE
10' WIDE EASEMENT FOR PRIVATE SWM FACILITY.

DR 5.5
RESIDENCES

AVENUE (60 FT. R/W - MACADAM PAVING)

STABILIZED CONSTR. ENTRANCE

THE AREAS BETWEEN THE SIGHT LINE & EDGE OF PAVEMENT TO BE KEPT FREE OF SIGHT OBSTRUCTIONS. SLOPED VEGETATION SHALL BE CLEARED TO PROVIDE SIGHT DISTANCE.



GENERAL NOTES FOR BUILDING PERMIT APPLICATION
(For Grading, Paving and Installation of Utilities & WQ Facility)

- SITE**
1. DEED REFERENCE: 01142-001
 2. TAX MAP #1: 18-00000
 3. TAX MAP #1: GRID BLOCK 1, PARCELS 885, GROUP 81
 4. ELECTION DISTRICT: 8th
 5. TOTAL AREA OF PROPERTY: GROSS & NET = 1.332 AC +/- (Approx. 59,021 sq ft)
- ENVIRONMENTAL**
6. THERE ARE NO CRITICAL AREAS, ARCHAEOLOGICAL SITES, ENDANGERED SPECIES HABITATS OR HISTORICAL BUILDINGS WITHIN THE LIMITS OF CONSTRUCTION SHOWN ON THIS PLAN. TO THE BEST OF OUR KNOWLEDGE.
 7. THERE ARE NO CRITICAL EXISTING SLOPES OF 20% OR GREATER.
 8. THERE ARE NO EXISTING WELL SEPTIC SYSTEM OR ABANDONED UNDERGROUND TANKS ON SITE.
 9. FOREST CONSERVATION REGULATION DOES NOT APPLY TO THIS SITE PER SECTION 14.402.8.10a
 10. NO WETLANDS EXIST WITHIN 25' OF THE PROPOSED CONSTRUCTION.
 11. NO STREAMS EXIST WITHIN 100' OF THE PROPOSED CONSTRUCTION. THE SITE IS NOT WITHIN A 100' YEAR FLOODPLAIN.
 12. PUBLIC WATER AND WASTEWATER SERVE THIS SITE.
 13. STORMWATER MANAGEMENT WAIVER FOR 22,000 SQ. FT. IMPERVIOUS AREA WAS GRANTED 1/27/96
- ZONING**
14. EXISTING ZONING OF SUBJECT PROPERTY: BL
 15. EXISTING INDOOR SALES AREA: 1,705 SF (NO INCREASE IN BUILDING SIZE PROPOSED)
 16. PROPOSED ADDITIONAL INDOOR SALES AREA: 12,850 SF
 17. TOTAL SALES AREA: 14,555 SF
 18. NOTE: FLOOR AREA RATIO (FAR) = 3.255 / 7885.9 = 0.04 ALLOWED FAR = 2.0
 19. AMENITY OPEN SPACE (AOS) - NOT REQUIRED
 20. EXISTING USE: RETAIL SALES OF LANDSCAPING / GARDENING SUPPLIES
 21. PROPOSED USE: RETAIL SALES OF LANDSCAPING / GARDENING SUPPLIES
 22. THE SITE IS LOCATED ON 17200' SCALE ZONING MAP NE 8.D
 23. ALL PARKING SPACES WILL BE A MINIMUM OF 8' X 18' UNLESS OTHERWISE NOTED. PROPOSED TREES ARE PROPOSED AT EDGE OF PAVING. THEREFORE CURBING WILL NOT BE USED.
 24. THE IMPROVEMENTS PROPOSED AT THIS TIME DO NOT INCLUDE ANY NEW BUILDING ADDITION
 25. REQUIRED PARKING

EXISTING CONDITIONS			
AREA	SQ. FT.	SPACES / 1,000 SQ. FT.	REQ'D
INDOOR SALES	1,705	8.5	15
OUTDOOR SALES	12,850	51.000	653
TOTAL	14,555		668

PROPOSED CONDITIONS: NO INCREASE IN BUILDING SIZE

TOTAL REQUIRED 69 PARKING SPACES
TOTAL PROVIDED 69 PARKING SPACES (INCLUDING 3 ICE SPACES)

21. INCREASED AVERAGE DAILY TRIP (ADT) FOR PROPOSED SITE IMPROVEMENTS = 6,900 + 511 = 7,411
22. ANY NEW SIGN(S) WILL COMPLY WITH SECTION 413 OF THE "B&E" AND ALL ZONING POLICIES

23. ILLUMINATION FOR OFF-STREET PARKING WILL REFLECT AWAY FROM RESIDENTIAL LOTS AND PUBLIC STREETS

24. ZONING CASE 97-26-SHA, WHICH PERMITTED A STONE PAVED PARK LOT ON THE PROPERTY, WILL NOT APPLY AFTER THE PARKING LOT IS PAVED IN ACCORDANCE WITH THIS DRAWING

OWNER'S SIGNATURE AND CERTIFICATION FORM

I certify that I have reviewed this final Landscape Plan; that I am owner of the regulations presented in the Baltimore County Landscape Manual; and I agree to comply with these regulations and all applicable policy, guidelines and ordinances. I agree to certify the implementation of this approved final Landscape Plan upon completion of the landscape installation not later than one (1) year from the date of approval of this plan to the Department of Permits and Development Management, Development Plans Review, County Office Building, Room 211, Towson, MD 21204.

Owner's signature: Terry Gerahy Date: 9/6/99
Printed name: Terry Gerahy Tel. #: 410-668-7199
(Print) Street address: 8309 Dalesford Rd
City: Baltimore MD 21234
PDM #: _____ State: _____ Zip: _____
Building Permit #: _____

BALTIMORE COUNTY
DEPT. OF PERMITS & DEV. MGMT.
LANDSCAPE PLAN APPROVED

BY: [Signature] DATE: 9-7-99 EXH. A

SITE PLAN TO ACCOMPANY PERMIT APPLICATION 0-329149
FOR GRADING, PAVING AND INSTALLATION OF PRIVATE UTILITIES & WQ FACILITY

3/7/99 NAMED TRENCH N-1 TO EXTENDED EDGE OF PAVING
11/19/99 INCREASED AVERAGE DAILY TRIP (ADT) FOR PROPOSED SITE IMPROVEMENTS = 6,900 + 511 = 7,411
10/27/99 LENGTHENED WQ TRENCH N-1 TO 4" PARKING SPACES
10/27/99 REMOVED EXISTING 24" DRAINAGE DRAINAGE DRAINAGE LOT

LANDSCAPE PLAN

PARKING LOT EXPANSION AND MODIFICATIONS
POOR BOY'S, INC

2711 TAYLOR AVENUE (AT OLD HARFORD ROAD)

BALTIMORE COUNTY DIST. 9 C6 MARYLAND

SCALE: 1" = 20' DATE: FEB 10, 1998

ENGINEER: R. A. CHILDRESS & ASSOC. INC. OWNER: TERRY GERAHY
7713 PHEASANT DRIVE 7721 OLD HARFORD ROAD
FOREST HILL, MD. 21050 BALTIMORE, MD. 21234
(410) 803-0304 (410) 808-7399



PROPOSED IMPERVIOUS AREA = 21,820 sq

SCHEDULE OF PANELBOARD DP (EXISTING)									
SERVICE: 120/240 VOLT, 1 PHASE, 3 WIRES, +GND. BUS WITH 200A MAIN C.B.									
CKT	SERVICES	BREAKER	KVA	NOTES	CKT	SERVICES	BREAKER	KVA	NOTES
1	EX. LTG. RECEPT	20	1	1.2	2	EX. LTG. RECEPT	15	1	1.2
3	PANEL LC1	40	2	8.0	4		15	1	1.2
7	PANEL LC2	40	2	8.0	8		15	1	1.2
9	PANEL LC3	40	2	8.0	10		15	1	1.2
11		40	2	8.0	12		15	1	1.2
13		40	2	8.0	14		15	1	1.2
15		40	2	8.0	16	RECEPT ON LIGHT POLE	20	1	1.2
17	POLE MTD LIGHTS	20	2	2.4	18	RECEPT ON LIGHT POLE	20	1	1.2
19		20	2	2.4	20	RECEPT ON LIGHT POLE	20	1	1.2
21	POLE MTD LIGHTS	20	2	2.4	22	EX SPACE			
23		20	2	2.4	24				
25	POLE MTD LIGHTS	20	2	2.4	26				
27		20	2	2.4	28				
29	EX SPACE				30				

PANEL DP } CONN. LOAD: 141 AMPS
DEMAND LOAD: 87 AMPS

SCHEDULE OF PANELBOARD LC1 (NEMA 3R ENCLOSURE)									
SERVICE: 120/240 VOLT, 1 PHASE, 3 WIRES, +GND. BUS 100A MAINS									
CKT	SERVICES	BREAKER	KVA	NOTES	CKT	SERVICES	BREAKER	KVA	NOTES
1	RECEPT	20	1	1.2	2	SPACE			
3	SPACE	20	1	1.2	4				
5	SPACE	20	1	1.2	6				
7	SPACE	20	1	1.2	8				

SCHEDULE OF PANELBOARD LC2 (NEMA 3R ENCLOSURE)									
SERVICE: 120/240 VOLT, 1 PHASE, 3 WIRES, +GND. BUS 100A MAINS									
CKT	SERVICES	BREAKER	KVA	NOTES	CKT	SERVICES	BREAKER	KVA	NOTES
1	RECEPT	20	1	1.2	2	RECEPT	20	1	1.2
3	SPACE	20	1	1.2	4	SPACE			
5	SPACE	20	1	1.2	6				
7	SPACE	20	1	1.2	8				

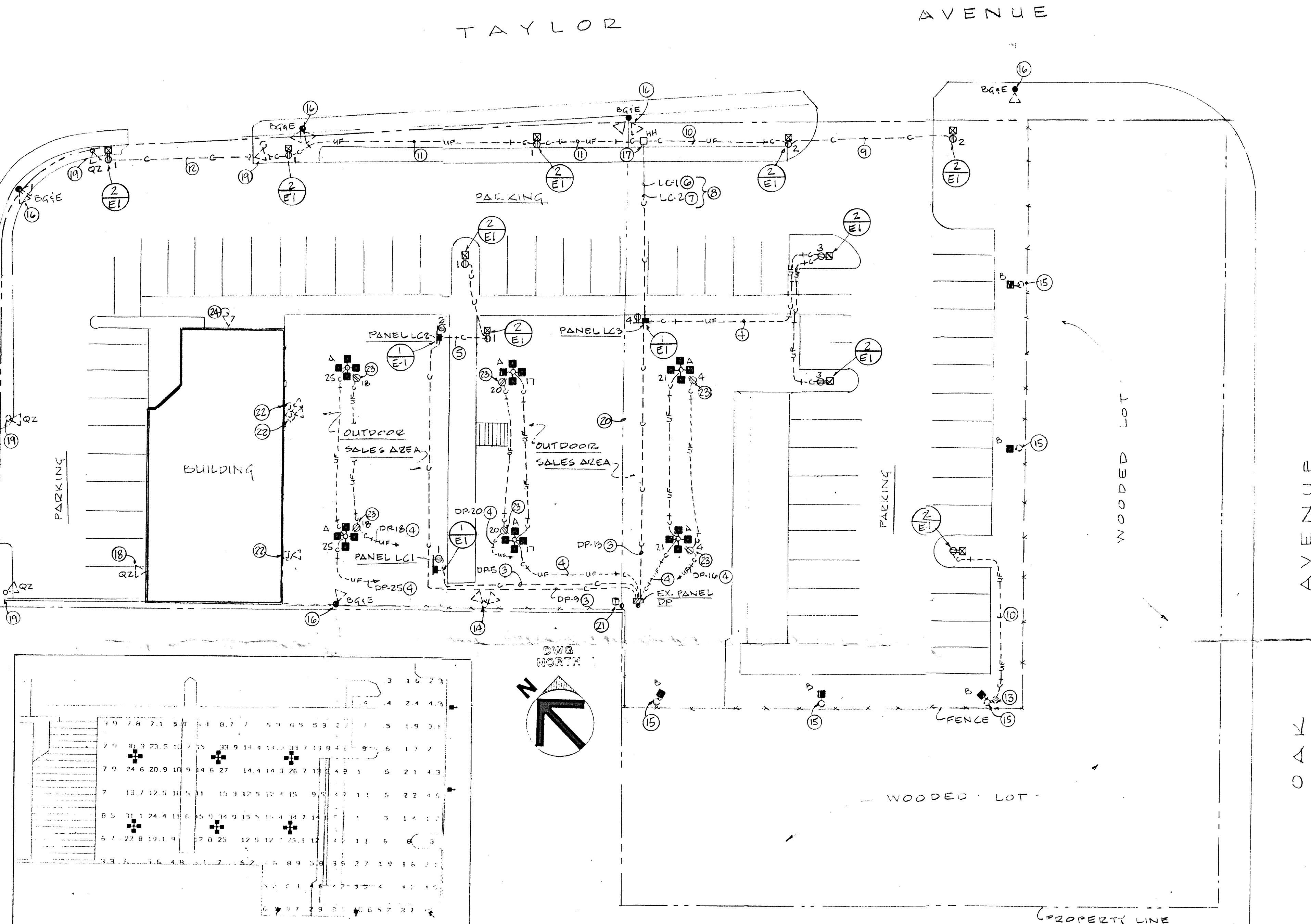
SCHEDULE OF PANELBOARD LC3 (NEMA 3R ENCLOSURE)									
SERVICE: 120/240 VOLT, 1 PHASE, 3 WIRES, +GND. BUS 100A MAINS									
CKT	SERVICES	BREAKER	KVA	NOTES	CKT	SERVICES	BREAKER	KVA	NOTES
1	RECEPT	20	1	1.2	2	RECEPT	20	1	1.2
3	SPACE	20	1	1.2	4	RECEPT	20	1	1.2
5	SPACE	20	1	1.2	6	SPACE			
7	SPACE	20	1	1.2	8	SPACE			

DRAWING NOTES

- NEW CIRCUIT BREAKER SHALL BE COMPATIBLE WITH EX. CUTLER-HAMMER PANELBOARD.
- CIRCUIT BREAKER SHALL BE SWD RATED
- 3" 8, 1" 10 AND 1" 12.
- 2" 12, 1" 12 GND. FROM PANEL TO LAST OUTLET ON CKT. CONDUIT SLEEVES SHALL BE 3/4"
- 2" 12, 1" 12 GND. FROM PANEL TO LAST OUTLET ON CKT. CONDUIT SHALL BE 3/4"
- 2" 10, 1" 12 GND.
- 2" 12, 1" 12 GND.
- 1" 1/2" CONDUIT
- 2" 12, 1" 12 GND IN 3/4" CONDUIT
- 2" 12, 1" 12 GND WITH 3/4" CONDUIT SLEEVES
- 2" 10, 1" 12 GND WITH 3/4" CONDUIT SLEEVES
- 2" 10, 1" 12 GND IN 3/4" CONDUIT
- EXTEND EX. RECEPTACLE BRANCH CKT. WIRING.
- DISCONNECT EX. LTG. BRANCH CKT. WIRING TO EX. FLOODLIGHT AND CAP OFF. REMOVE EX. FLOODLIGHT AND TURN OVER TO OWNER.
- REMOVE EX. FLOODLIGHT AND PROVIDE NEW TYPE "B" M.H. 1" 1/2" A.F.C. MODIFY EX. BRANCH CKT. WIRING AS REQD. TO ACCOMMODATE NEW WORK.
- EX. BQ'E CO. MTD HID FLOODLIGHTS TO REMAIN. MAINTAIN EX. HARDWARE.
- HANDHOLE W.P. NOMINAL 2" X 6" X 12" O. PVC CONSTRUCTION WITH EX. HARDWARE. MOUNT FLUSH WITH FINISHED GRADE
- EX. WALL MOUNTED INCANDESCENT QUARTZ FLOODLIGHT TO REMAIN
- EX. POLE MOUNTED INCANDESCENT QUARTZ FLOODLIGHT TO REMAIN
- EX. BQ'E CO. OVERHEAD INCOMING SERVICE CONDUCTORS
- EX. BQ'E CO. POLE MTD INCOMING 120/240V, 1P, 3W SECONDARY SERVICE TRANSFORMER
- DISCONNECT EX. LIGHTING BRANCH CKT. WIRING TO EX. FLOODLIGHT AND CAP OFF. REMOVE EX. FLOODLIGHT AND TURN OVER TO OWNER.
- RECEPTACLE 20A, 125V, DUPLEX GFCI TYPE, WEATHERPROOF, MOUNT ON WOOD LIGHT POLE 15" A.F.C.
- EX. HID WALL PACK LIGHT TO REMAIN
- LIGHTS MOUNTING ORIENTATION SHALL BE AS SHOWN ON THE SITE PLAN.

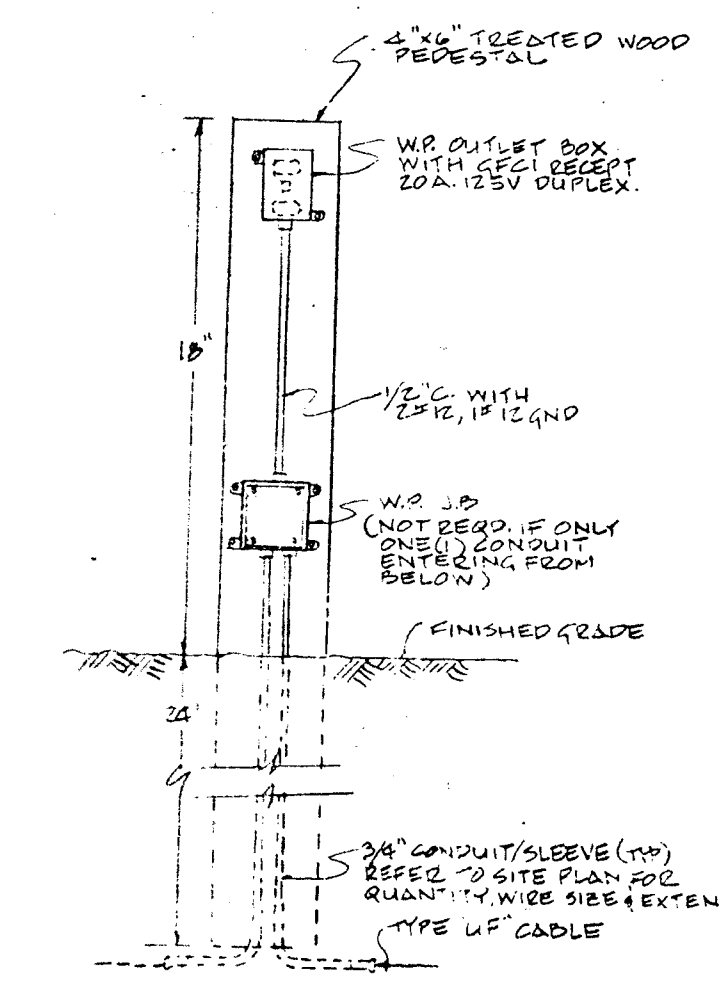
GENERAL ELECTRICAL CONSTRUCTION NOTES

- PROVIDE ALL LABOR, MATERIALS AND EQUIPMENT NECESSARY FOR THE INSTALLATION OF ALL ELECTRICAL WORK SHOWN ON THIS DWG. AND IN CONFORMANCE WITH THE NATIONAL ELECTRIC CODE (NEC) AND ALL APPLICABLE BALTO. CO. AND STATE OF MARYLAND BUILDING CODES.
- THE CONTRACTOR SHALL EXAMINE THE SITE AND OBSERVE THE CONDITIONS UNDER WHICH THE WORK WILL BE DONE OR OTHER CIRCUMSTANCES WHICH WILL AFFECT THE CONTINGENTED WORK. CONTRACTOR SHALL APPLY AND PAY FOR ALL NECESSARY PERMITS AND CERTIFICATES OF INSPECTION REQUIRED BY THE AUTHORITY.
- PERFORM TESTS ON ALL NEW WORK TO ASSURE THE ABSENCE OF SHORTS AND GROUND.
- ALL EXCAVATION WORK NECESSARY FOR THE INSTALLATION OF ELECTRICAL WORK SHALL BE INCLUDED UNDER THIS CONTRACT.
- CONDUIT INSTALLED UNDERGROUND SHALL BE PVC. CONDUIT INSTALLED ON PDLG SHALL BE EMT. ALL OUTLET AND JUNCTION BOXES SHALL BE WEATHERPROOF. ALL PANELBOARD FEEDERS SHALL BE INSTALLED IN CONDUIT.
- DIRECT BURIAL CABLE SHALL BE TYPE UF. ALL WIRE SHALL BE COPPER.
- PANELBOARDS SHALL BE "LOAD CENTER" TYPE. PROVIDE CIRCUIT DIRECTORY, UPDATE EX. PANEL DP DIRECTORY.
- IT SHALL BE NOTED THAT A REASONABLE SHIFTING IN ELECTRICAL WORK BEFORE THE BEGINNING OF THE WORK SHALL BE EXPECTED IN ORDER TO MEET FIELD CONDITIONS AND THIS WORK SHALL BE DONE AT NO INCREASE COST TO OWNER.
- AS-BUILT DWGS. AT COMPLETION OF WORK PROVIDE OWNER WITH AS-BUILT DWG. SHOWING ANY REROUTING OF FEEDERS, BRANCH CIRCUITS ETC. AND/OR ANY CHANGE WHATSOEVER.
- THE CONTRACTOR SHALL BE HELD RESPONSIBLE FOR ANY DAMAGE TO WORK ALREADY IN PLACE DUE TO EITHER HIS WORK OR THE NEGLIGENCE OF HIS WORKMEN. CORRECTION OF ALL DAMAGE WORK SHALL BE DONE BY THE TRADES WHO ORIGINALLY INSTALLED THE WORK AT THE EXPENSE OF THE CONTRACTOR UNDER THIS CONTRACT.

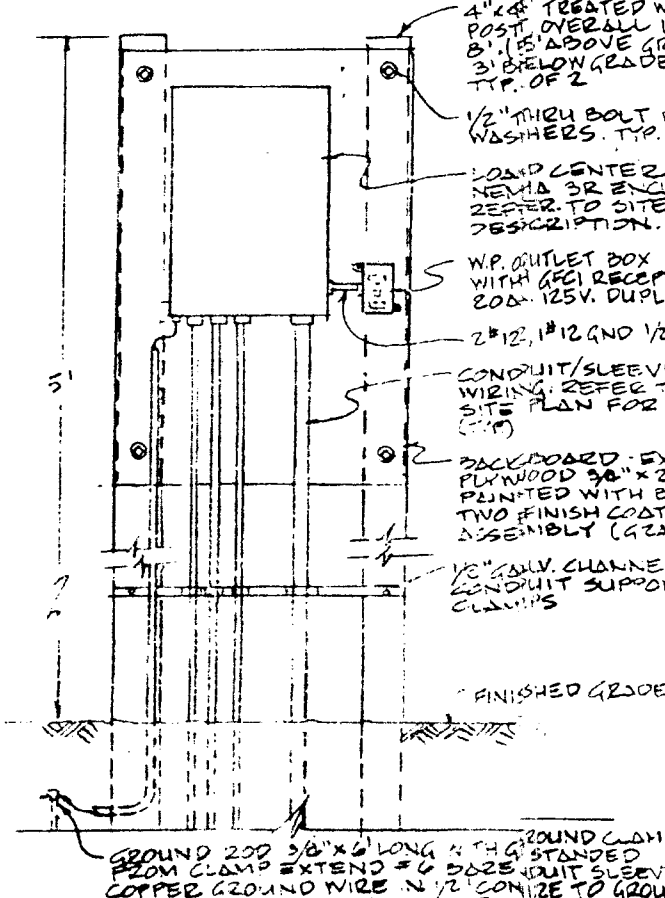


MAINTAINED FOOTCANDLES AT GRADE									
1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50
51	52	53	54	55	56	57	58	59	60
61	62	63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90
91	92	93	94	95	96	97	98	99	100

LIGHTING SCHEDULE (3)		
TYPE	DESCRIPTION	MFG. CAT. NO.
A	FOUR (4) 250W. METAL HALIDE AREA CUTOFF (SHOE BOX STYLE) WITH 240V. BALLAST. MOUNTED ON TREATED WOOD POLE. ACCESSORIES SHALL INCLUDE THE FOLLOWING: - TRI-VOLT BALLAST SUITABLE FOR 240V OPERATION - YOKE MOUNT - WOOD POLE MOUNTING BRACKET POLE SHALL BE MIN. 12" DIA. 20' LONG. INSTALL MIN. 4" 10" BELOW FIN. GRADE SECURE EA. TWO (2) BRACKETS 18" 0" WITH 5/8" THREADED ROD HARDWARE SHALL INCLUDE NUTS AND LOCKWASHERS. CUT OFF AT EACH END EXCESS ROD 1/4" FROM NUT	QUAD LIGHTING (TEL. 800-236-7000) FOUR (4) LIGHTS EA. CAT. NO. AC-4-025-M-T-PVY-1
B	SAME AS TYPE "A" EXCEPT SINGLE WHITE POLE MOUNTED ON EX. WOOD POLE AND FURNISHED WITH BACKLIGHT SHIELD	QUAD LIGHTING CAT. NO. AC-4-425-M-T-PVY-1-SB-V



PEDESTAL MOUNTED RECEPTACLE



LOAD CENTER MOUNTED RECEPTACLE

SITE PLAN
SCALE: 1" = 20'