

IN RE: PETITION FOR SPECIAL HEARING
NE/S Bucks School House Rd at Jacob
FIELD ROAD, E of Belair Road
(Fiedler Property)
14th Election District
6th Council District

Bucks School House Road, LLC
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
*

* Case No. 02-482-SPH
*

* * * * *

* * * * *

ORDER ON THE SECOND MOTION FOR RECONSIDERATION

This matter comes again before the Zoning Commissioner on a Motion for Reconsideration of the relief granted in the above-captioned matter, pursuant to the Order on the Motion for Reconsideration issued by me on October 1, 2002. The Motion was filed by letter dated October 16, 2002 from Ms. Monica Rovecamp.

Ms. Rovecamp, who attended the hearing regarding the First Motion for Reconsideration on July 8, 2002, was dissatisfied with my Order on the Motion for Reconsideration. The focus of her dissatisfaction was with the paving of portions of a trail system which are immediately adjacent to her property. Ms. Rovecamp resides at 8124 Rose Haven Road.

The original Development Plan was approved on August 8, 1996 pursuant to relief granted by Deputy Zoning Commissioner Timothy M. Kotroco in Case No. XIV-359. In an effort to resolve close out differences with the Department of Recreation and Parks, the Petitioner, Bucks School House Road, LLC, filed a Petition for Special Hearing. The first issue arising out of this Petition for Special Hearing related to the gazebo and/or pavilion suggested for the local open space. It is abundantly clear from

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Date 11/27/12
By [Signature]

the testimony and evidence in the record that none of the parties are suggesting that I change my ruling with regard to the gazebo. Simply stated, there will be no gazebo or pavilion at this development. The second, and remaining issue, concerns the trail leading from Rose Haven Road to the local open space and around and adjacent to the stormwater management pond.

In my Order on the Motion for Reconsideration, I indicated that the trail would be improved in accordance with the letter of agreement dated August 27, 2002 and the description of work dated July 9, 2002 signed by Mr. Charles Palmer, both of which are incorporated into said Order. Mr. Palmer recommended that the first 170 feet of the trail be improved with asphalt after regrading and compacting within the existing stone base. The remaining 1,080 feet was recommended to be cleared of all vegetation, regraded and rolled into place. Ms. Rovecamp's concern related to the paving of the first 170 feet. This area is immediately adjacent to her property and very visible from her home.

During the hearing on Ms. Rovecamp's Motion for Reconsideration which occurred on November 1, 2002, Mr. Klatsky appeared, along with his attorney, G. Scott Barhight. Mr. Klatsky also brought with him David Martin, a landscape architect with G.W. Stephens and Mr. Charles Palmer, a paving contractor. Also in attendance was Ms. Jean Tansey, representing the Baltimore County Department of Recreation and Parks, and Mr. John Roeder, who resides at 8117 Rose Haven Road. After much conversation and discussion, including testimony from Ms. Rovecamp, Mr. Palmer and

Mr. Martin, a clear consensus was reached as to the best course of action relative to the trail.

As was originally suggested by Mr. Palmer, the bulk of the trail, being 1,080 feet, should be repaired in accordance with the specifications attached hereto as **Exhibit A**. Instead of paving the first 170 feet, concrete pavers will be placed in a single file from Rose Haven Road a distance of 170 feet until it connects with the existing trail. This work will be done in accordance with the specification attached hereto as **Exhibit B**. This result should provide a sufficient trail for proper utilization by the citizens in gaining access to the local open space.

Additionally, it was pointed out during the hearing, that the Final Development Plan and the Development Plan need to be made consistent relative to the width of the trail. By my Order, I am amending these documents to reflect that the trail shall be three (3) feet wide in the location shown on the Development Plan and Final Development Plan.

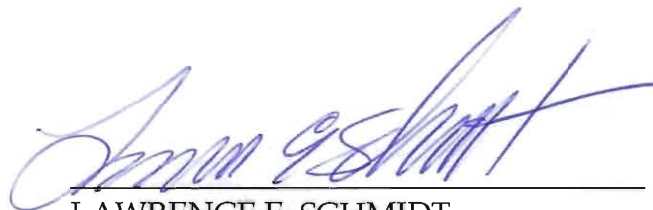
NOW, THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 27th day of November, 2002, that the Motion for Reconsideration filed by Ms. Rovecamp in the above-captioned matter be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Order issued August 22, 2002 and the Order on the Motion for Reconsideration issued October 1, 2002 are hereby AMENDED to incorporate the specifications stipulated to by all of the parties, as set forth in Exhibits A and B, copies of which are attached hereto and made a part hereof. The Developer shall

be required to repair and improve the trail in accordance with specifications Exhibits A and B; and

IT IS FURTHER ORDERED that the Development Plan and the Final Development Plan are amended to show that the trail shall be three (3) feet wide; and

IT IS FURTHER ORDERED that any appeal of this decision must be made within thirty (30) days of the date of this Order.



LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore
County

266318

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Date 11/27/02
By LPp

The trail, being 1,080 feet, should be cleared of all
vegetation, regraded and rolled into place.

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Date

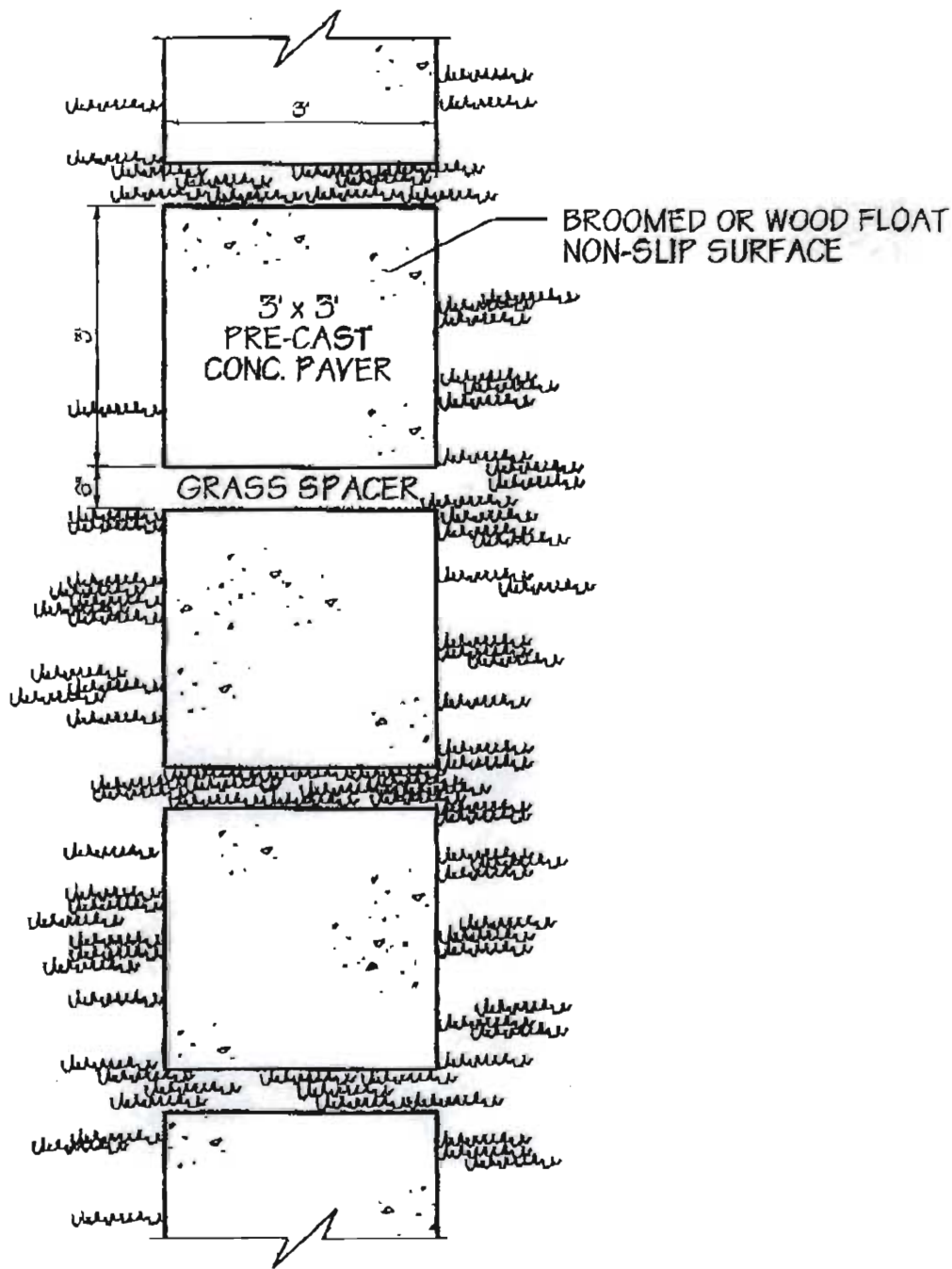
11/27/12

By

gsp

EXHIBIT

A



PRE-CAST PAVER

PLAN VIEW

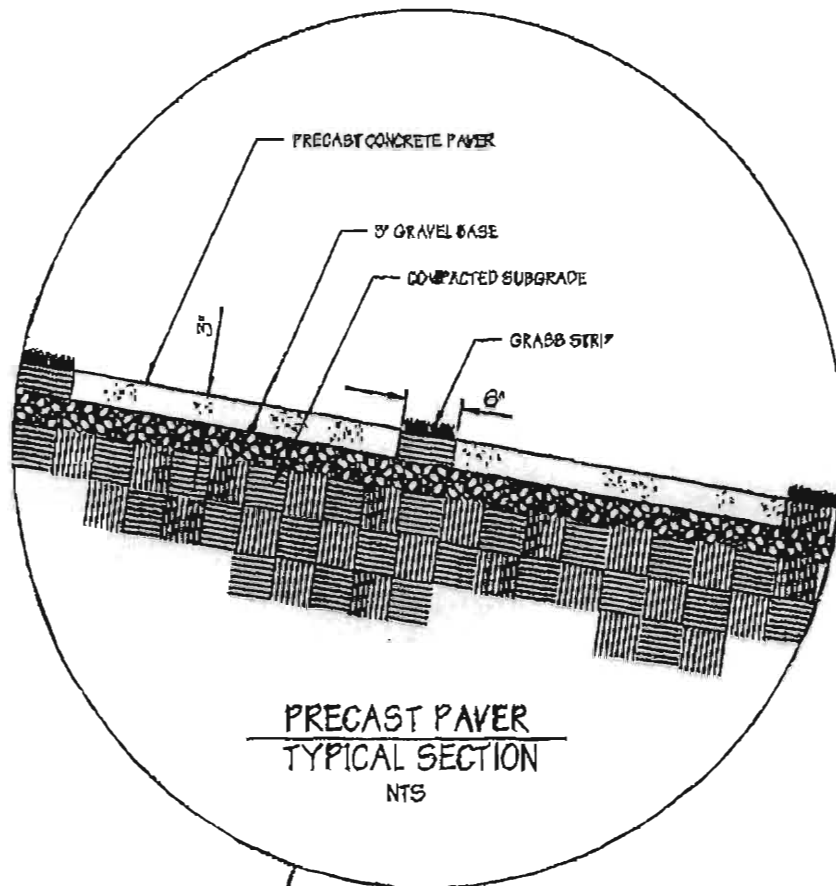
SCALE: 1/2" = 1'-0"

PAGE 1 OF 2

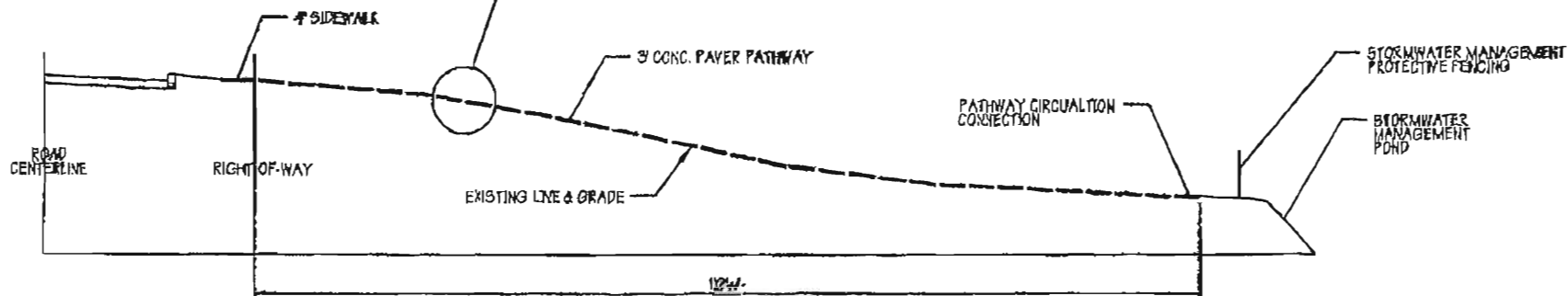
ORDER RECEIVED FOR FILING

Date By

11/27/02
BGP



PRECAST PAVER
TYPICAL SECTION
NTS



PATHWAY PROFILE
SCALE: H. & V. 1" = 20'

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Date 11/27/09
By [Signature]



Baltimore County
Zoning Commissioner

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

November 27, 2002

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Suite 400
Towson, Maryland 21204-4515

RE: SECOND MOTION FOR RECONSIDERATION
PETITION FOR SPECIAL HEARING
(Fiedler Property, a/k/a Glen Arbor)
Bucks School House Road, LLC - Petitioners
Case No. 02-482-SPH

Dear Mr. Barhight:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Second Motion for Reconsideration has been granted, in accordance with the attached Order.

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

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Alan Klatsky, Prestige Development, Inc.
5 Spring Forest Court, Owings Mills, Md. 21117
John Beverungen, Esquire, Baltimore County Office of Law
Mr. Jan Cook & Ms. Jean Tansey, Baltimore County Department Recreation & Parks
Ms. Monica Rovecamp, 8124 Rose Haven Road, Baltimore, Md. 21237
Mr. & Mrs. Frank Rappa, 8126 Rose Haven Road, Baltimore, Md. 21237
Mr. Jonathan Wiggins, 8108 Rose Haven Road, Baltimore, Md. 21237
Ms. Jackie Ewell, 8110 Rose Haven Road, Baltimore, Md. 21237
Ms. Katherine Gnardellis, 8106 Rose Haven Road, Baltimore, Md. 21237
Mr. Jason Bablak, 4702 Bucks Schoolhouse Road, Baltimore, Md. 21237
Mr. John Roeder, Jr., 8117 Rose Haven Road, Baltimore, Md. 21237
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
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October 18, 2002

Ms. Monica Rovecamp
8124 Rose Haven Road
Baltimore, Md. 21237

RE: MOTION FOR RECONSIDERATION
PETITION FOR SPECIAL HEARING
(Fiedler Property, a/k/a Glen Arbor)
Bucks School House Road, LLC - Petitioners
Case No. 02-482-SPH

Dear Ms. Rovecamp:

Your letter of October 16, 2002 concerning the above-captioned matter has been accepted as a Motion for Reconsideration. In response to your requested amendment of the Order dated October 1, 2002, please be advised that I have decided to reschedule the matter for another hearing to address the concerns raised in your letter and afford all parties an opportunity to participate. It is suggested that you bring with you a representative from Whiting Turner to explain their proposal and provide cost estimates for same.

By copy of this letter to all parties to this case, I have scheduled the matter for Friday, November 1, 2002 at 2:00 PM in Room 407 of the Circuit Courts Building. There will be no reposting or advertising, so please accept this letter as formal notice of the hearing.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: G. Scott Barhight, Esquire, Whiteford, Taylor & Preston
210 W. Pennsylvania Ave., Suite 400, Towson, Md. 21204-4515
Mr. Alan Klatsky, Prestige Development, Inc.
5 Spring Forest Court, Owings Mills, Md. 21117
John Beverungen, Esquire, Baltimore County Office of Law
Mr. Jan Cook & Ms. Jean Tansey, Baltimore County Department Recreation & Parks
Mr. & Mrs. Frank Rappa, 8126 Rose Haven Road, Baltimore, Md. 21237
Mr. Jonathan Wiggins, 8108 Rose Haven Road, Baltimore, Md. 21237
Ms. Jackie Ewell, 8110 Rose Haven Road, Baltimore, Md. 21237
Ms. Katherine Gnardellis, 8106 Rose Haven Road, Baltimore, Md. 21237
Mr. Jason Bablak, 4702 Bucks Schoolhouse Road, Baltimore, Md. 21237
Mr. John Roeder, Jr., 8117 Rose Haven Road, Baltimore, Md. 21237
People's Counsel, Case File County's Website at www.co.ba.md.us



Monica Rovecamp
8124 Rose Haven Road
Baltimore, MD 21237

410-415-7645

October 16, 2002

VIA TELEFAX: 410-887-3468 and U. S. MAIL
Total Number of Pages: 3

The Honorable Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
401 Bosley Avenue, 4th Floor
Towson, Maryland 21202

Re: MOTION FOR RECONSIDERATION
PETITION FOR SPECIAL HEARING
(Fiedler Property, a/k/a/ Glen Arbor)
Bucks School House Road, LLC - Petitioners
Case No. 02-482-SPH

Dear Mr. Schmidt:

As you may recall, I am a homeowner in the Glen Arbor Community and my residence abuts the "trail" which is at issue. In my case, the trail runs along both the side and entire back of my home. The quality and aesthetics of the trail impact my property as much as, or more than, any other residence in the community. In addition, my concern is truly long term, and unlike the petitioner in this case, I will have to live with this trail for many years to come -- and if it again deteriorates - it will materially impact the aesthetics of my home and will most likely detrimentally impact the value of my home upon resale.

In your Findings of Fact and Conclusions of Law dated August 22, 2002, you stated:

"In my judgment, the Petitioner should improve the trail so that same will permanently remain. The crushed stone base presently in place is simply not durable. The trail (**not a portion of the trail**) should be paved, either with asphalt, concrete or other durable material * * *." (Bold language added)

However, without any notice to me, the Petitioner filed a Motion for Reconsideration stating the Petitioner had reached an agreement with the Department of Recreation and Parks wherein the first 170 feet of the path will be paved and the balance of the stone dust path will be repaired in accordance with the original specifications.

Based on that agreement, you changed your prior Order to my detriment and the detriment of other homeowners in the Glen Arbor Community.

Your amended Order dated October 1, 2002, at the top of page 2 states that the "citizens who appeared at the hearing (held July 8, 2002) from the Glen Arbor community had no objections to the Petitioners' request." That statement is true as it relates to the construction of the pavilion. I do believe, however, there were some differences of opinion as to the trail.

It is my home and the other homes that abut the trail that will be most harmed by the current agreement because we will have to live with the trail well into the future. If the agreement, and your revised Order stand, as currently in place, the community will suffer and the Petitioner will walk away having actually made the situation worse than it is today.

I respectfully request that you again consider amending your Order for the following reasons:

1. The 170 foot portion of the trail which Petitioner's expert proposes to cover with asphalt is not the only section of the trail that is eroding or being taken over by nature. The runoff at the end of the asphalt section where it will connect to the path constructed under the original specifications of stone dust will cause further erosion of the path and the surrounding landscape.

2. If only this section is covered with asphalt, within two years we will have a 170 foot asphalt trail that goes nowhere, because the asphalt portion of the trail will be all that remains as the balance will inevitably erode and decay to its current condition again.

3. Installation of asphalt on this slope will most likely encourage kids and teenagers to utilize the paved "hill" as a bike and skateboard ramp with dangerous consequences at the abrupt curve and end of the asphalt.

4. The homeowners in a development of this caliber and character deserve a trail that is uniform in construction and complementary to the development. An asphalt trail that abruptly stops after 170 feet and turns into an eroded stone dust trail does not accomplish this.

5. I have requested The Whiting-Turner Contracting Company, a well known and respected engineering and construction company, to evaluate the trail and suggest a feasible long-term recommendation for the uniform repair of the trail. I will forward any report received to you immediately upon my receipt.

I respectfully request that you consider amending your Order to direct that the entire path be constructed in a uniform fashion which complements the natural background of the area.

Very truly yours,



Monica Rovecamp

cc: Mr. Alan Klatsky
G. Scott Barhight, Esquire
John Beverungen, Esquire
Baltimore County Department of Recreation & Parks
Mr. and Mrs. Frank Rappa
Mr. Jonathan Wiggins
Mr. Jackie Ewell
Ms. Katherine Gnardellis
Mr. Jason Bablak
Mr. John Roeder, Jr.

IN RE: PETITION FOR SPECIAL HEARING
NE/S Bucks School House Road at Jacob
Field Road, E of Belair Road
(Fiedler Property)
14th Election District
6th Council District

Bucks School House Road, LLC
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 02-482-SPH
*

* * * * *

ORDER ON THE MOTION FOR RECONSIDERATION

This matter comes before the Zoning Commissioner on a Motion for Reconsideration of the relief granted in the above-captioned matter, pursuant to the Findings of Facts and Conclusions of Law and Order issued by me on August 22, 2002. The Motion was filed by the owners of the subject property, Alan Klatsky and Bucks School House Road, LLC, through their attorneys, G. Scott Barhight, Esquire and Jennifer R. Busse, Esquire.

By way of background, the Petitioners obtained approval on August 8, 1996 for the residential development of the subject property with 73 single family dwellings, to be known as Glen Arbor, pursuant to the relief granted by Deputy Commissioner Timothy M. Kotroco in prior Case No. XIV-359. Apparently, as part of the approval process, the Developer agreed to provide a recreational/play area within the local open space, including some sort of pavilion or gazebo structure. Additionally, access to the local open space area was to be provided by way of a trail leading from an interior road, known as Rose Haven Court, around and adjacent to the storm water management pond that terminates at the active open space area. The Developer ultimately provided a path and installed a small gazebo in the active open space area; however, a dispute arose between it and the Department of Recreation and Parks as to whether the gazebo structure satisfied the Developer's obligations. Thus, the instant Petition for Special Hearing was filed, seeking approval of an amendment to the site plan/development plan approved in prior Case No. XIV-359 to permit removal of the gazebo and walkway from the Local Open Space area, and the note related thereto from the plan. Although a dispute existed between the Developer and the

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Date 10/1/02

By [Signature]

Department of Recreation and Parks, the citizens who appeared at the hearing (held July 8, 2002) from the Glen Arbor community had no objections to the Petitioners' request.

By my Findings of Facts and Conclusions of Law and Order dated August 22, 2002, I granted the Petitioners' request; however, required that certain improvements be made to the existing trail, which had originally been constructed of crushed stone and had since deteriorated. Subsequent to the hearing and coincident with the issuance of that Opinion and Order, the Petitioners and the Department of Recreation and Parks have apparently resolved their differences. Thus, the Petitioners now come before me seeking approval of an amendment to the relief granted in my prior Order to incorporate the agreement reached between the parties.

By their letter dated August 27, 2002, and affirmed by Baltimore County's Office of Law on behalf of the Department of Recreation and Parks, on September 16, 2002, it was agreed that the gazebo shall be removed from the site, at Petitioner's sole expense. Further, the parties agree that the stone dust path (trail) shall be improved in accordance with the recommendations/specifications made on behalf of the Developer by Charles Palmer, of the Charles Palmer Asphalt Paving Company, by his letter dated July 9, 2002.

NOW, THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 10th day of October, 2002, that the Motion for Reconsideration filed in the above-captioned matter be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Order issued August 22, 2002 be and is hereby AMENDED to incorporate the Agreement stipulated to by Counsel for the Petitioners, as set forth in their letter, dated August 27, 2002, a copy of which is attached hereto and made a part hereof.

IT IS FURTHER ORDERED that any appeal of this decision must be made within thirty (30) days of the date of this Order.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs



Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
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October 1, 2002

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Suite 400
Towson, Maryland 21204-4515

RE: MOTION FOR RECONSIDERATION
PETITION FOR SPECIAL HEARING
(Fiedler Property, a/k/a Glen Arbor)
Bucks School House Road, LLC - Petitioners
Case No. 02-482-SPH

Dear Mr. Barhight:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Motion for Reconsideration has been granted, in accordance with the attached Order.

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

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Alan Klatsky, Prestige Development, Inc.
5 Spring Forest Court, Owings Mills, Md. 21117
John Beverungen, Esquire, Baltimore County Office of Law
Mr. Jan Cook & Ms. Jean Tansey, Baltimore County Department Recreation & Parks
Ms. Monica Rovecamp, 8124 Rose Haven Road, Baltimore, Md. 21237
Mr. & Mrs. Frank Rappa, 8126 Rose Haven Road, Baltimore, Md. 21237
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Mr. Jason Bablak, 4702 Bucks Schoolhouse Road, Baltimore, Md. 21237
Mr. John Roeder, Jr., 8117 Rose Haven Road, Baltimore, Md. 21237
People's Counsel; Case File

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G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

August 27, 2002

DELIVERY BY HAND

The Honorable Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

**Re: Petition for Special Hearing
NE/S Bucks School House Road at Jacob Field Road, E of Belair Rd
Fiedler Property, a/k/a Glen Arbor)
14th Election District - 5th Council District
Bucks School House Road, LLC - Petitioners
Zoning Case #02-482-SPH
Request for Reconsideration**

AUG 28 2002

Dear Mr. Schmidt:

This office is in receipt of your Order dated August 22, 2002 regarding the above-referenced matter.

Pursuant to your instructions in open hearing, representatives of the Developer and the Department of Recreation and Parks did negotiate a resolution of their differences regarding this case. Unfortunately, your Order was published prior to the parties being able to communicate our agreement to you. Please amend your Order to incorporate the agreement of the parties.

This letter will confirm that the parties agree that the note regarding the gazebo/play area should be removed from the Development Plan and that the existing gazebo should be removed from the site, at Petitioner's sole expense. Further, the parties agree with the requirement that the stone dust path be improved in accordance with Mr. Palmer's recommendation. A copy of Mr. Palmer's recommendation is attached for your reference. Mr. Palmer recommended that the first 170 ft. of the path

ORDER RECEIVED FOR FILIN

Date

By

The Honorable Lawrence E. Schmidt
August 27, 2002
Page 2

be paved and that the balance of the stone dust path be repaired in accordance with the original specifications.

Pursuant to the agreement between the Petitioner and Department of Recreation and Parks, please amend your Order in accordance with this agreement. Should you have any questions or comments, please feel free to contact me.

Sincerely,



G. Scott Barhight

GSB:sll

Enclosure

cc: John E. Beverungen, Deputy County Attorney
Mr. Alan Klatsky

260975

ORDER RECEIVED FOR FILING

Date

10/1/02

By



IN RE: PETITION FOR SPECIAL HEARING
NE/S Bucks School House Road at Jacob
Field Road, E of Belair Road
(Fiedler Property)
14th Election District
6th Council District

Bucks School House Road, LLC
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 02-482-SPH
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, Alan Klatsky and Bucks School House Road, LLC, through their attorneys, G. Scott Barhight, Esquire and Jennifer R. Busse, Esquire. The Petitioners request a special hearing to approve an amendment to the previously approved site plan/development plan in Case No. XIV-359 to remove a proposed gazebo and walkway in the Local Open Space area therefrom, and the note thereon which states "Gazebo/Play Area/Exercise Area to be built by Developer to Standards of Department of Recreation and Parks." The subject property and requested relief are more particularly described on the amended site plan/development plan submitted and marked into evidence as Petitioner's Exhibit 2.

Appearing at the requisite public hearing in support of the request were Alan Klatsky, a representative of Prestige Development, Inc., a member of the Bucks School House Road, LLC, property owners; James Markle, Professional Engineer with George W. Stephens, Jr. and Associates, Inc., who prepared the site plan/development plan for this property; and G. Scott Barhight, Esquire, attorney for the Petitioners. Appearing as Protestants in the matter were Jan Cook and Jean Tansey, on behalf of the Baltimore County Department of Recreation and Parks, and John Beverungen, Assistant County Attorney with the Baltimore County Office of Law. Appearing as interested citizens were numerous residents of the Glen Arbor community, including

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Date 8/22/02
By [Signature]

Frank and Rosemary Rappa, Monica Rovecamp, Jonathan Wiggins, Jackie Ewell, Katherine Gnardellis, Jason Bablak, and John Roeder, Jr.

The subject property consists of a gross area of 27.27 acres, more or less, zoned D.R.3.5 and is located on the northeast side of Bucks School House Road, not far from Belair Road in Perry Hall. Previously, the property was owned by Dorothy and Otto Fiedler and was used as a greenhouse operation. In 1996, the property was sold to Prestige Development, Inc. for development purposes. Pursuant to the development review process codified in Title 26 of the Baltimore County Code, the property was approved for residential development with 73 single family dwellings, by Timothy M. Kotroco, Deputy Zoning Commissioner/Hearing Officer for Baltimore County, on August 8, 1996 (Case No. XIV-359). The property has in fact been developed and many of the citizens who appeared at the hearing reside in the subdivision.

At issue in the instant case is a "close-out item" which is under the jurisdiction of the Department of Recreation and Parks. At the hearing, it was indicated that 5.9 acres of open space were provided as part of the development of this property. This is significantly more than the 1.13 acres that would be required. Additionally, a small parcel within the subject property, approximately .56 acres in area, has been identified as active open space. This area of open space is located adjacent to the storm water management facility on the subject site and behind residences that front on Rose Haven Road. It is the future use of this small tract that is under consideration in the instant case.

In this regard, the Petitioners request special hearing relief to approve an amendment to the previously approved development plan in Case No. XIV-359. Specifically, the Petitioners seek approval to remove a note on the development plan that states "Gazebo/play area/exercise area to be built by Developer to Standards of Department of Recreation and Parks." Testimony indicated that as part of the approval process, the Developer agreed to provide a recreational/play area within the local open space, including some sort of pavilion or gazebo structure. Additionally, access to the parcel was to be provided by way of a trail that leads from Rose Haven Court around and adjacent to the storm water management pond that terminates at the active open space area. The

Developer ultimately provided a path and installed a small gazebo in the active open space area. However, a dispute arose between the Developer and the Department of Recreation and Parks as to whether the gazebo satisfies their "standards." Thus, the instant Petition was filed to resolve the matter.

Testimony was also received from the residents of the community who appeared at the hearing. Generally, they indicated that the existing gazebo would serve no real purpose due to its size, and that the lot is too small to accommodate a larger structure. They prefer that the parcel remain open for community use as a recreational amenity. Numerous photographs depicting the path and gazebo were submitted at the hearing. Additionally, following the hearing, I visited the site and inspected the area.

Based upon the testimony, evidence and record in this case, the following conclusions are made. First, it is inappropriate for the gazebo to remain in the local open space area or for any similar buildings or structures to be constructed thereon. Thus, the Petitioner shall remove the gazebo and there shall be no buildings, structures or other improvements on this particular parcel. In my judgment, it would be more beneficial for the residents of this community if the ½ acre parcel were to remain open. The property could then be used for playing ball, community picnics, and similar uses. The retention of the gazebo serves no real purpose and the construction of a pavilion is inappropriate. These conclusions are based upon the size of the property, its location within the community and ease of access thereto, and the fact that it is situated next to the storm water management pond.

As the undersigned noted at the hearing, access to the parcel is of paramount consideration. It need be emphasized that a local open space area is a community amenity and not just intended for use by those residents who immediately abut the property. The use of the parcel by all the residents of Glen Arbor should be encouraged and not just those fortunate few whose lots abut the open land. The approved development plan and final development plan available to buyers of lots in the community depicted this area as recreational open space available to all residents. It should be used in that fashion.

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Date 8/22/12
By [Signature]

However, as noted above, I believe the primary issue relates to access. Presently, there is a trail (path) that begins at the right-of-way on Rose Haven Road. This trail was shown in the photographs submitted at the hearing and apparently is in excess of 1250 linear feet. The trail leads from its access point on Rose Haven Court to the rear of the houses on that street, then in a parallel fashion to the street, adjacent to the storm water management pond. It actually encircles the storm water management pond and terminates at the area of open space. During my site visit and as clearly shown in photographs, the trail is in a deteriorated condition. It apparently was originally constructed with a crushed stone type material that has since become overgrown with grass and weeds.

In my judgment, the Petitioner should improve the trail so that same will permanently remain. The crushed stone base presently in place is simply not durable. The trail should be paved, either with asphalt, concrete or other durable material. Though I will not require the Developer/Petitioner to regrade the site, I will require that the trail be improved with a durable and dustless surface to insure that it remains for the foreseeable future. I will leave the specifics of the construction of the trail, including the materials used, to the judgment of the Petitioner/Developer. In this regard, a plan depicting the reconstruction of this trail and the materials used thereon shall be submitted to the undersigned for final approval.

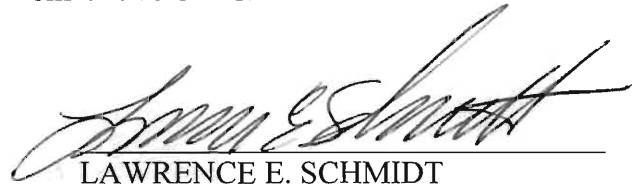
A final issue was raised relative to signage. Apparently, the Department of Recreation and Parks has requested that a sign be erected to direct residents to the trail. In my judgment, a sign is inappropriate. The residents of this community clearly understand the purpose of the trail. The trail and open space area is not envisioned to be a regional type facility that would draw individuals other than those who live in the community. The removal of the gazebo and improvements to the trail as set forth above are all that is required in this case.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 22nd day of August, 2002 that the previously approved site plan/development plan in Case

No. XIV-359 shall be amended to remove the gazebo from the Local Open Space area and the note thereon which states "Gazebo/Play Area/Exercise Area to be built by Developer to Standards of Department of Recreation and Parks," and as such, the Petition for Special Hearing be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The Petitioner/Developer shall improve the existing trail with a durable and dustless surface, the design and composition of which shall be submitted to the undersigned Zoning Commissioner for review and approval prior to the issuance of any permits.
- 3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 8/27/02
By [Signature]



Baltimore County
Zoning Commissioner

August 23, 2002

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

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Suite 400
Towson, Maryland 21204-4515

RE: PETITION FOR SPECIAL HEARING
NE/S Bucks School House Road at Jacob Field Road, E of Belair Road
(Fiedler Property, a/k/a Glen Arbor)
14th Election District - 5th Council District
Bucks School House Road, LLC - Petitioners
Case No. 02-482-SPH

Dear Mr. Barhight:

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

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

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Alan Klatsky, Prestige Development, Inc.
5 Spring Forest Court, Owings Mills, Md. 21117
John Beverungen, Esquire, Baltimore County Office of Law
Mr. Jan Cook & Ms. Jean Tansey, Baltimore County Department Recreation & Parks
Ms. Monica Rovecamp, 8124 Rose Haven Road, Baltimore, Md. 21237
Mr. & Mrs. Frank Rappa, 8126 Rose Haven Road, Baltimore, Md. 21237
Mr. Jonathan Wiggins, 8108 Rose Haven Road, Baltimore, Md. 21237
Ms. Jackie Ewell, 8110 Rose Haven Road, Baltimore, Md. 21237
Ms. Katherine Gnardellis, 8106 Rose Haven Road, Baltimore, Md. 21237
Mr. Jason Bablak, 4702 Bucks Schoolhouse Road, Baltimore, Md. 21237
Mr. John Roeder, Jr., 8117 Rose Haven Road, Baltimore, Md. 21237
People's Counsel; Case File

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





Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

North side Bucks School House
for the property located at Rd., E of Belair Rd.

which is presently zoned DR 3.5

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

PLEASE SEE ATTACHED

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

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

Contract Purchaser/Lessee:

N/A

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

G. Scott Barhight, Esquire/
Jennifer R. Busse, Esquire

Name - Type or Print

Signature

Whiteford, Taylor & Preston L.L.P.

Company

210 W. Pennsylvania Ave., Suite 400

Address

Telephone No.

Towson

MD

21204-4515

City

State

Zip Code

Legal Owner(s):

Alan Klatsky, owner

Name - Type or Print

Bucks School House Rd., LLC

Signature

N/A

Name - Type or Print

Signature

5 Spring Forest Ct.

410.832.20

Address

Telephone No.

Owings Mills

MD

21117

City

State

Zip Code

Representative to be Contacted:

Jennifer R. Busse, Esquire

Name

410-

210 W. Pennsylvania Ave.

832-2077

Address

Telephone No.

Towson

MD

21204-4515

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Reviewed By JRF

Date 5-1-02

Case No. 02-482-SPH

220 915198

Date

By

ORDER RECEIVED FOR FILING

PETITION FOR SPECIAL HEARING

Feidler Property (N/S Bucks School House Road, E. of Belair Road.)
Continuation Sheet

Relief Requested:

Amendment of the approved site plan in Case No. XIV-359.

Purpose of the Amendment:

To remove the proposed gazebo and walkway located in the Local Open Space area from the approved development plan.

To remove from the approved development plan the note which states: "Gazebo / Play Area / Exercise Area to be built by Developer to St'd of Department of Recreation and Parks."

251787

ORDER RECEIVED FOR FILING

Date

By

8/22/12
Hpp

FROM THE OFFICE OF

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CONSULTING ENGINEERS • LAND PLANNERS • LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD • TOWSON, MARYLAND 21286-3396

Zoning Description to Accompany Special Hearing Request "FIEDLER PROPERTY"

Baltimore County, Maryland
Election District 14.

Beginning for the same at the centerline intersection of Bucks Schoolhouse Road, 50' wide, and Jacob Field Road, 50' wide, thence N 33° W, 674' to a Point of Beginning, thence the following courses:

1. N 07° 08' 24" E, 331.86'
 2. N 50° 08' 24" E, 934.70'
 3. S 51° 36' 36" E, 477.28'
 4. S 17° 37' 56" W, 591.16'
 5. S 54° 24' 14" E, 26.80'
 6. S 36° 52' 45" E, 27.24'
 7. S 26° 12' 45" E, 30.49'
 8. S 12° 01' 59" E, 42.70'
 9. S 25° 52' 44" E, 57.86'
 10. S 32° 25' 10" E, 42.11'
 11. N 45° 56' 26" W, 36.55'
 12. S 35° 07' 52" E, 29.98'
 13. N 66° 12' 28" E, 61.27'
 14. N 69° 28' 02" E, 44.37'
 15. S 48° 40' 44" E, 115.25'
 16. N 67° 27' 56" E, 319.59'
 17. S 22° 27' 56" W, 9.90'
 18. N 22° 32' 04" W, 93.00'
 19. N 67° 27' 56" E, 15.00'
 20. N 22° 32' 04" W, 92.90'
 21. N 67° 56' 45" W, 9.97'
 22. N 66° 38' 34" E, 61.97'
 23. N 61° 09' 16" E, 73.27'
 24. N 54° 48' 24" E, 73.27'
 25. N 48° 27' 32" E, 73.27'
 26. N 42° 10' 07" E, 84.35' back to the Point of Beginning
- Containing 11.82 acres of land more or less.



Being part of a Plat entitled "Plat 2 of 2 FIEDLER PROPERTY", dated December 20, 1996 recorded among the Land Records of Baltimore County, Maryland in Plat Book S.M. 69 folio 85.

NOTE: The above description is for zoning purposes only and is not intended to be used for conveyances or agreements.

482

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 13330

DATE 5-1-02 ACCOUNT 001-006-6150
AMOUNT \$ 250.00

RECEIVED FROM: Whiteford, Taylor & Preston
N side Bucks School House, E of Belair Rd.
FOR: SP4 ITEM # 482
TAKEN BY: JRF

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS ACTUAL TIME
5/01/2002 5/01/2002 10:16:05
REG 1602 MAIL JENA JEE DRAWER 2
>> RECEIPT # 199087 5/01/2002 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 013330
Receipt Tot \$250.00
250.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

**NOTICE OF ZONING
HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:
Case: #02-482-SPH

North Side Bucks School House Road
N/S Bucks School House Road,
2200' SE White Marsh Road
14th Election District

6th Councilmanic District
Legal Owner(s): Bucks School House Road LLC, Alan Klatsky
Special Hearing: amendment of the approved site plan in case no. XIV-50, to remove the proposed gazebo and walkway located in the Local Open Space area from the approved development plan.

Hearing: Monday, July 8, 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.

6/180 June 20 C545786

CERTIFICATE OF PUBLICATION

6/20/, 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 6/20/, 2002.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No. **02-482-SPH**
Petitioner/Developer:
**Bucks School House Rd LLC. Alan
Klatsky**
Hearing Date: **07/08/02**

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

Attention: Mr. George Zahner

Ladies and Gentlemen:

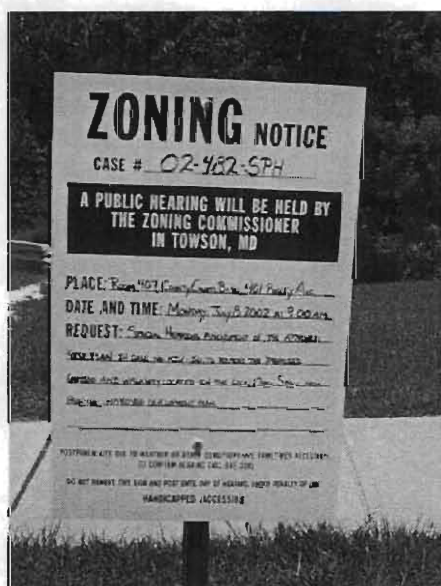
This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at **N/S Bucks School House Rd.(Rose Haven).**

The sign(s) were posted on **06/22/02.**

Sincerely,



Thomas J. Hoff
Thomas J. Hoff, Inc.
406 West Pennsylvania Avenue
Towson, MD. 21204
410-296-3668



DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 02-482-SPH
~~02-482-SPH~~
Petitioner: Alan Klatsky
Address or Location: N/S Bucks School House Rd, E of Belair Rd

PLEASE FORWARD ADVERTISING BILL TO:

Name: Jennifer Busse, Esquire
Address: 210 W. Pennsylvania Ave, 4th Floor
Towson, MD 21204
Telephone Number: 410-832-2000

Revised 2/20/98 - SCJ

TO: PATUXENT PUBLISHING COMPANY
Thursday, June 20, 2002 Issue – Jeffersonian

Please forward billing to:

Jennifer Busse Esquire
Whiteford Taylor & Preston
210 W Pennsylvania Avenue
Suite 400
Towson MD 21204-4515

410 832-2000

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: 02-482-SPH

North Side Bucks School House Road

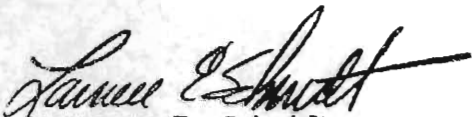
N/S Bucks School House Road, 2200' SE White Marsh Road

14th Election District – 6th Councilmanic District

Legal Owner: Bucks School House Road LLC, Alan Klatsky

Special Hearing amendment of the approved site plan in case no. XIV-50, to remove the proposed gazebo and walkway located in the Local Open Space area from the approved development plan.

HEARING: Monday, July 8, 2002 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue



Lawrence E. Schmidt

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

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



Baltimore County
Department of Permits and
Development Management

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

May 23, 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: 02-482-SPH
North Side Bucks School House Road
N/S Bucks School House Road, 2200' SE White Marsh Road
14th Election District – 6th Councilmanic District
Legal Owner: Bucks School House Road LLC, Alan Klatsky

Special Hearing amendment of the approved site plan in case no. XIV-50, to remove the proposed gazebo and walkway located in the Local Open Space area from the approved development plan.

HEARING: Monday, July 8, 2002 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue

Arnold Jablon G D Z
Director

C: G. Scott Barhight Esquire Whiteford Taylor & Preston, 210 W Pennsylvania Avenue,
Suite 400, Towson 21204
Bucks School House Road LLC, Alan Klatsky, 5 Spring Forest Court,
Owings Mills 21117

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



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

July 5, 2002

Mr. G. Scot Barhight, Esquire
Whiteford, Taylor & Preston L.L.P.
210 W. Pennsylvania Avenue Suite 400
Towson, MD 21204

Dear Mr. Barhight:

RE: Case Number:02-482-SPH, North side Bucks School House Road, east of Belair Rd.

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 1, 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,

A handwritten signature in cursive script that reads "W. Carl Richards, Jr." followed by a stylized flourish.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:rjc

Enclosures

c: Alan Klatsky, 5 Spring Forest Court, Owings Mills, MD 21117
People's Counsel

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





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 9, 2002

ATTENTION: George Zahner

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF May 13, 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:

472, 475-479, (482) 487

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:  Robert W. Bowling
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for May 13, 2002
Item No. 473, 475, 476, 477, 478, 479, 481, (482) 483, 484,
485, 486 and 487

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

RWB:CEN
Cc: file

hs
7/18

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 22, 2002

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

MAY 23 2002

SUBJECT: Buck School House Road

INFORMATION:

Item Number: 02-482

Petitioner: Alan Klatsky

Zoning: DR 3.5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Office of Planning **strongly opposes** the petitioner's request to remove the proposed gazebo and walkway located in the local open space area from the approved development plan (PDM# 14-359).

It is the opinion of this office that the subject gazebo and path are integral parts of the overall open space system for the development and should not be eliminated. Removal of the path would reduce the accessibility of lots to the open space and reduce its usability. Furthermore, these amenities should be built to the standards of the Department of Recreation and Parks.

Prepared by:

Mark A. Cunniff

Section Chief:

Stephen L. Laska

AFK/LL:MAC:



Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 5-10-02

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

RE: Baltimore County
Item No. 482 JRF

Dear Mr. Zahner:

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

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

Very truly yours,

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
Bucks Schoolhouse Road, N/S Bucks Schoolhouse Rd,
2200' SE of White Marsh Rd
14th Election District, 6th Councilmanic

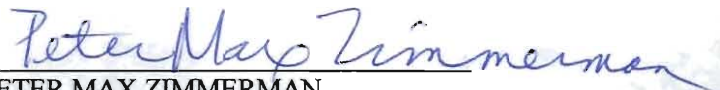
Legal Owner: Bucks Schoolhouse Road, LLC
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 02-482-SPH

* * * * *

ENTRY OF APPEARANCE

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


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


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

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 Jennifer R. Busse, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner(s).


PETER MAX ZIMMERMAN



**Baltimore County
Office of Law**

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

July 22, 2002

VIA TELEFAX (410) 832-2015
AND REGULAR MAIL

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
Court Towers, Suite 400
210 West Pennsylvania Avenue
Towson, Maryland 21204

Re: Zoning Case #02-482-SPH
Fiedler Property
Petition for Special Hearing to Amend Development Plan

Dear Mr. Barhight:

I am in receipt of your July 15, 2002 correspondence concerning the above-captioned matter. Unfortunately, after reviewing with my clients the proposal articulated therein, I regret to inform you that we cannot agree to the amendment of the development plan as proposed.

Although the County certainly agrees with your suggestion for removing the note regarding the gazebo/play area, the disagreement arises in connection with your proposal for the stone dust path. Specifically, Mr. Schmidt's comments at the close of the July 8, 2002 hearing indicated his strong preference for the parties to reach agreement on a path which would be of a "permanent nature," and one that was well delineated such that area residents would know that it was to be accessible and enjoyed by all, rather than a special benefit or open space to be used by only the adjoining homeowners.

To that end, Recreation and Parks officials would require the submission of a grading and/or schematic plan detailing exactly what improvements were to be made to the existing path. In addition, Recreation and Parks officials, in keeping with the Zoning Commissioner's comments, seek to have the entire 1,250 linear feet of the path paved with bituminous concrete and re-graded, especially at its genesis on Rose Haven Road where the path has a steep slope. Finally, the plan should detail or indicate the placement of appropriate signage, which will alert all area residents to this open space amenity.

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

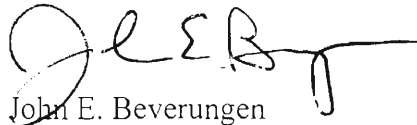


Printed with Soybean Ink
on Recycled Paper

G. Scott Barhight, Esquire
July 22, 2002
Page 2

Should you have any questions or comments concerning this proposal, please feel free to contact me. In the event we are unable to reach an amicable resolution of this matter, I trust that we will need to notify the Zoning Commissioner and request his ruling on the matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'JEB', with a long horizontal flourish extending to the right.

John E. Beverungen
Deputy County Attorney

JEB:dlf

cc: John F. Weber, III, Director, Department of Recreation and Parks
Jean Tansey, Chief, Planning and Development
Lawrence E. Schmidt, Zoning Commissioner (via facsimile and first class mail)

From: John Beverungen
To: Schmidt, Larry
Date: 9/16/02 3:15PM
Subject: Zoning Case # 02-482-SPH (Fiedler property)

Larry...I have checked with Rec. and Parks officials, and can confirm that Mr. Barhight's 8-27-02 letter accurately sets forth the agreement of the parties, which is that the path is to be improved in accordance with Mr. Palmer's 7-9-02 proposal, included as an attachment to Mr. Barhight's letter seeking reconsideration.

Thanks, and let me know if you need for me to do anything further with regard to this case.

John E. Beverungen
Deputy County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204
(410) 410-887-4420

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

CC: Gilliss, Ed

*Bette -
In view of
this, we
can grant
Barhight's
Motion for
reconsideration.*

PDM Zoning - Case No. 02-482-SPH

From: "Rappa, Rosemary C" <rrappa@bcps.org>
To: <pdmzoning@co.ba.md.us>
Date: 10/29/2002 12:37 PM
Subject: Case No. 02-482-SPH

8126 Rose Haven Road
Baltimore, MD 21237
October 29, 2002

Case No. 02-482-SPH

Lawrence E. Schmidt
Zoning Commissioner for
Baltimore County
Suite 405 County Courts Building
Towson, MD 21204

Dear Mr. Schmidt,

Because of my schedule I will not be able to attend the Reconsideration meeting on November 1, 2002. I request only that all of the homeowners in our community be considered in any matter related to the open space. The improvement of the path into and around the open space area should be done in such a way to allow strollers, bikes, and walkers to access the path. The path also need to be durable to allow the Dept. of Recreation to provide easy maintenance.

I direct your attention to the previous homeowners who signed the petitions for the initial hearing. Many of these individuals cannot attend the meeting because of the short notice, but all that I contacted are concerned that access to the open space area will be limited by any removal of the path.

We look forward to the improvement of the path to allow the land to pass to Baltimore County as open space for the Glen Arbor development.

by email
Sincerely,

Rosemary Connelly Rappa
Rosemary Rappa, Supervisor
Office of Nonpublic Placements
410-887-5549
fax 410-583-7856



WHITEFORD, TAYLOR & PRESTON
L.L.P.

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BALTIMORE, MARYLAND 21202-1626
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FAX 410 752-7092

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515

410 832-2000
FAX 410 832-2015
www.wtplaw.com

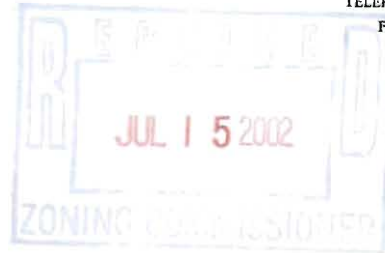
1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

July 15, 2002



VIA HAND DELIVERY

John E. Beverungen, Esquire
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204

**Re: Zoning Case #02-482-SPH
Fiedler Property
Petition for Special Hearing to Amend Development Plan**

Dear Mr. Beverungen:

Pursuant to Mr. Schmidt's instructions at the close of the July 8, 2002 hearing, please accept this letter as a proposed resolution of the matters arising out of the above referenced case. We recommend that the development plan be amended as follows:

- Remove the following note from the plan: "Gazebo/Play Area/Exercise Area to be built by Developer to standards of the Department of Recreation and Parks."
- The following note should be added to the development plan: "The existing stone dust path totals 1,250 linear feet. The first 170 feet encompasses the area starting at Rose Haven Road and goes gently down the hill between two houses until it reaches the rear property line of the houses and bends to the left where it levels out. This path shall be improved by toping the first 170 feet of the pathway with asphalt after regrading and compacting the existing stone base. The remaining 1,080 feet should be cleared of all vegetation, regraded and rolled into place."

John E. Beverungen, Esquire
July 15, 2002
Page 2

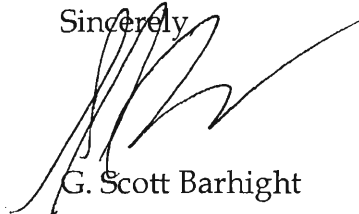
At its sole cost and expense, the Developer shall remove the existing gazebo. Baltimore County, consistent with the wishes of the citizens in the community, shall withdraw its request for the placement of any additional structures on the open space, including gazebos and pavilions.

Subsequent to the July 8, 2002 hearing, Prestige contacted Charles Palmer Asphalt Paving to inspect the existing pathway and recommend action that would improve the path and prevent further erosion or deterioration. Attached is Mr. Palmer's report dated July 9, 2002. Our recommendation for amending the notes to the development plan are based upon Mr. Palmer's site inspection and recommendation.

If this recommendation meets with the approval of the Department of Recreation and Parks, then our expectation is that Prestige will complete the improvements to the pathway in accordance with this new development plan note as soon as possible. After that work is completed, it is our expectation that the Department of Recreation and Parks will release the funds and approve the closeout of the job. If this expectation is inconsistent with your understanding, please inform me immediately.

Should you have any questions or comments, please feel free to contact me. Please respond to this recommendation as soon as possible.

Sincerely,



G. Scott Barhight

GSB/kml
Enclosure

cc: The Honorable Lawrence E. Schmidt (Via Hand Delivery w/encl.)
Mr. Alan Klatsky (Prestige Development, Inc.) (w/encl.)

257535

FROM : Palmer Paving

FAX NO. : 4105232484

Jul. 10 2002 09:27AM P2

CHARLES PALMER ASPHALT PAVING*Asphalt paving & repairs*

July 9, 2002

To whom it may concern:

I am the owner of Charles Palmer Asphalt Paving and have been in the paving business for 26 years. I was asked by Alan Klatsky to examine the condition of the stone dust path at the Fiedler property today.

The path totals 1,250 linear feet. The first 170 feet encompasses the area starting at Rose Haven Rd. and goes gently down the hill between two houses until it reaches the rear property line of the houses and bends to the left where it levels out. It then follows the rear lot line of several homes until it reaches the storm water management pond, encircling the rest of the pond.

My recommendation for the improvement of this path would be to top the first 170 feet of the pathway with asphalt after regrading and compacting the existing stone base. This would certainly prevent further erosion or deterioration. The remaining 1080 feet should be cleared of all vegetation, regraded and rolled into place.

Should you require any additional information regarding this matter, please do not hesitate to contact me at my office or cell numbers listed below.

Thank you,

Charles Palmer

Office: 410-523-9119 Cell: 410-967-4044 fax: 410-523-2484

ORDER RECEIVED FOR FILING

Date

By

AS
7/8

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515

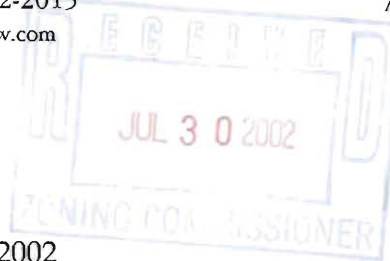
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ALEXANDRIA, VIRGINIA 22314-2928
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FAX 703 836-0265



July 29, 2002

John E. Beverungen, Deputy County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204

Re: Zoning Case #02-482-SPH
Fiedler Property
Petition for Special Hearing to Amend Development Plan

Dear Mr. Beverungen:

Thank you for your letter dated July 22, 2002 in response to my July 15th proposal letter. Unfortunately, there are significant issues which remain in dispute between our clients. Given this situation, I agree with you that we need to notify the Zoning Commissioner and request his ruling on the matter.

Fortunately, we do agree that the note regarding the gazebo/play area should be removed from the development plan. It was clear at the hearing that the community prefers that no improvements be made to this area.

Additionally, we do agree that the stone dust path should be improved to insure that it is accessible and enjoyed by all. To that end, we contacted an expert, Mr. Charles Palmer, who has reported to us the necessary improvements as identified in his Memorandum attached to my July 15th correspondence.

There are several provisions in your July 22 letter which my client finds unacceptable. In order to avoid some of the difficulties of the past, we respectfully suggest that submitting a grading and/or schematic plan detailing the improvements for review and comment by Recreation and Parks is unnecessary. The current stone dust path was constructed in accordance with the specifications provided by Recreation and Parks. The Memorandum from Mr. Palmer clearly delineates the improvements which he, in his expert

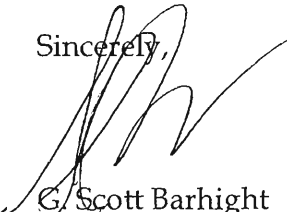
opinion, suggest should be made to the stone dust path. We assert that the improvements suggested will be more than adequate to achieve the goals stated by Mr. Schmidt.

Further, we respectfully suggest that paving the entire 1,250 linear feet of the path with bituminous concrete is unnecessary. Not only is this completely inconsistent with the original specifications provided by the Department of Recreation of Parks, but it will be an unnecessary burden financially to my client. Such a specification for the path could cost my client tens of thousands of dollars.

Finally, you are suggesting that the grading and/or schematic plan also detail the placement of appropriate signage. Since the Department of Recreation and Parks is the most expert at the design and installation of park signs, it is respectfully suggested that this recommendation be performed by the Department. The Department of Recreation and Parks is most able to design these signs in a fashion which is appropriate. Additionally, since the Department places many signs throughout the recreation areas of Baltimore County, economies of scale would suggest that the Department also be responsible for installation. If this can not be done at a nominal expense by the Department, please let me know.

Should you have any questions or comments regarding this response, please feel free to contact me. Unless your client is able to agree to the original proposal, then we should notify the Zoning Commissioner immediately and request his ruling in this matter.

Sincerely,



G. Scott Barhight

GSB:sl

cc: Mr. Alan Klatsky (via fax - (410) 356-9218)
The Honorable Lawrence E. Schmidt

WHITEFORD, TAYLOR & PRESTON
L.L.P.

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November 12, 2002

Mr. Alan Klatsky
Prestige Development, Inc.
5 Spring Forest Court
Owings Mills, Maryland 21117

Ms. Monica Rovecamp
8124 Rose Haven Road
Baltimore, Maryland 21237

Ms. Jean M.S. Tansey
Department of Recreation and Parks
301 Washington Ave
Towson, Maryland 21204

Mr. John Roeder, Jr.
8117 Rose Haven Road
Baltimore, Maryland 21237

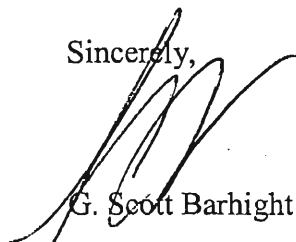
**Re: Order on the Second Motion for Reconsideration
NE/S Bucks School House Road at Jacob Field Road, E of Belair Rd
Fiedler Property, a/k/a Glen Arbor)
14th Election District – 5th Council District
Bucks School House Road, LLC – Petitioners
Zoning Case #02-482-SPH**

Dear Ladies and Gentlemen:

Enclosed is a draft of the Order on the Second Motion for Reconsideration for your review and comment. Please provide me with your comments by no later than Monday, November 18, 2002. Hopefully, I will then forward the draft Order to Mr. Schmidt for his review, acceptance and execution.

Please provide me with your comments in writing or by email. Thank you for your kind attention to this matter.

Sincerely,



G. Scott Barhight

GSB:sll
Enclosure

SEVEN SAINT PAUL STREET
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FAX 410 752-7092

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TELEPHONE 703 836-5742
FAX 703 836-0265

November 21, 2002

DELIVERY BY HAND

The Honorable Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

**Re: Motion for Request for Reconsideration
Petition for Special Hearing
Bucks School House Road, LLC - Petitioners
Zoning Case #02-482-SPH
Suggested Order on the Second Motion for Reconsideration**

Dear Mr. Schmidt:

Enclosed is a draft Order on the Second Motion for Reconsideration for your review and consideration in the above-referenced matter. This draft Order was sent to Mr. Klatsky, Ms. Tansey, Ms. Rovecamp and Mr. Roeder by letter dated November 12, 2002, a copy of which is attached. In my November 12, 2002, I requested that these individuals make comment by no later than Monday, November 18, 2002. As of this date, I have received comments from Mr. Klatsky, Ms. Tansey and Ms. Rovecamp. Each of them have indicated to me that the Order as drafted is acceptable. I have not heard a response from Mr. Roeder.

Please review the draft Order, and if acceptable to you, execute it and provide each of us with a copy. Thank you for your kind attention to this matter.

Sincerely,



G. Scott Barhight

GSB:sll
Enclosure

The Honorable Lawrence E. Schmidt
November 21, 2002
Page 2

cc: Ms. Monica Rovecamp (*w/encl*)
Mr. John Roeder, Jr. (*w/encl*)
Ms. Jean M.S. Tansey (*w/encl*)
Mr. Alan Klatsky (*w/encl*)

260975v2

My name is Monica Rovecamp. I reside at 8124 Rose Haven Road.

Commissioner Schmidt, first I would like to thank you for reconsidering this matter.

I would like to reiterate all the points set forth in my letter to you of October 16, 2002 and make some additional comments:

Of the 1,250 lineal feet of the trail, 243 feet closely surround my property. This is approximately 20% of the entire trail. In addition although a 20 foot open space area is available for the exit of this trail to Rose Haven Road, the trail unfortunately is constructed only 2 feet from my property line. I have the most at stake in this situation.

The developer is proposing to asphalt the first 170 feet of the trail, which runs parallel to my family room, and then reconstruct the remaining 1,080 feet by clearing vegetation, regrading and rolling into place according to original specifications. I would like to submit some pictures showing the current condition of the trail constructed according to the original specifications.

Picture No. 1 shows the proposed asphalt section as more than a gentle slope. If this section is paved with asphalt, it will no longer be a walking trail but a racecourse where children may get injured speeding down the "hill" on skates, bikes, skateboards or whatever. Also consider the noise factor this type of situation would create. I am also concerned about additional erosion from the runoff from the asphalt.

Picture No. 2 is a view from my deck showing where the 170 foot section of asphalt will end. Picture No. 3 shows the trail continuing on from where the asphalt ends. If it looks like this after 2 years and is reconstructed according to original specifications, why won't it look like this again 2 years from now? Anyone would be able to surmise that within two years, the remaining 1,080 feet of trail will again look like the pictures or worse while the asphalt section stands out like a sore thumb. Pictures Nos. 4 and 5 show the amount of unused open space and the relation of the trail to my home.

The fact that Recreation and Parks agreed to this type of resolution indicates to me that since they can't have their pavilion, they don't care what happens. We do not have a

community association so funds are not available to refurbish this trail in future years. No one has responsibility to provide the ongoing maintenance needed to keep the vegetation under control or pick up debris. A very few residents of the community should not be expected to continue to do this indefinitely. This is our only chance to have this done right. Whatever you decide today, when completed, will release the developer from all future responsibilities. The community and specifically the residents whose property abuts the trail will be left with the aftermath.

If the trail is not uniformly repaired so that natural deterioration is uniform, I will be forced to plant a buffer of trees to protect the value of my property and to provide a visually pleasing sight from the side and rear of my home. This will make ongoing maintenance of the trail on my part unnecessary and approximately 20% of the trail would become not only uninviting but possibly inaccessible.

I submitted to you an opinion proposed by The Whiting Turner Contracting Company. You requested that I have someone from that Company present today. Mr. Wells of Whiting Turner has been assisting me in this matter but due to prior travel obligations, he was not able to attend. I would like to point out that I had out-of-pocket expenses in connection with the pavilion matter and now this and would hope you would accept a more complete report in writing from Whiting Turner rather than cause me to incur even more additional expense for an engineer to be present today. I have provided you, along with the pictures, a written estimate from The Whiting-Turner Contracting Company setting forth two options for repair of the entire trail. You will see that due to safety concerns with the grade, they have recommended Option A, which is to border each side of the trail with 2x6s at a cost of \$28,800. They have also estimated the cost of installing asphalt to the entire trail at a cost of \$31,200. I have taken the liberty of highlighting the comment "Periodic maintenance of path will be required and is not included."

In conclusion, I would hope you will grant the following relief:

1. Allow the trail to return to its natural condition or, in the alternative, if the trail is to be reconstructed, the entire trail must be done uniformly.
2. If the trail is to be reconstructed, asphalt not be used.
3. If the trail is to be reconstructed, it be bordered with 2x6s per Whiting-Turner's recommendation or delineated by a natural buffer of trees so that any deterioration by nature will be uniform and complementary to the area; and
4. The section of trail exiting to Rose Haven Road be re-routed to the center of the open space area.

Thank you for your time today.

lip
111

Monica Rovecamp
8124 Rose Haven Road
Baltimore, MD 21237

410-415-7045

October 21, 2002

VIA TELEFAX: 410-887-3468
Total Number of Pages: 2

The Honorable Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
401 Bosley Avenue, 4th Floor
Towson, Maryland 21202

Re: MOTION FOR RECONSIDERATION
PETITION FOR SPECIAL HEARING
(Fiedler Property, a/k/a/ Glen Arbor)
Bucks School House Road, LLC - Petitioners
Case No. 02-482-SPH

Dear Mr. Schmidt:

With reference to my Motion for Reconsideration dated October 16, 2002, attached is a letter I received from The Whiting-Turner Contracting Company stating that the entire path needs to be reworked and setting forth two possible solutions.

If it is any assistance to you, of the two solutions recommended by Whiting-Turner, I would prefer to add a permanent border (such as treated lumber) to each side of the entire path to contain and identify the walking surface. This would complement the natural background of the area and keep the path as a "walking trail" to be enjoyed by all residents of the community.

Thank you for your consideration of this matter.

Very truly yours,



Monica Rovecamp

10/21/2002 13:11 FAX 4103378

Whiting-Turner

002

G.W.C. WHITING
(1953-1974)WILLARD HACKERMAN
PRESIDENT AND CEO

FOUNDED 1909

THE WHITING-TURNER CONTRACTING COMPANY

(INCORPORATED)

ENGINEERS AND CONTRACTORSHAMPTON PLAZA, 800 EAST JOPPA ROAD, TOWSON
BALTIMORE, MARYLAND 21286-3048
410-821-1100
FAX 410-337-5770
www.whiting-turner.comCONSTRUCTION MANAGEMENT
GENERAL CONTRACTING
DESIGN-BUILD
SPECIALTY CONTRACTING
OFFICE/HEADQUARTERS
RETAIL/SHOPPING CENTERS
HEALTH CARE
BIO-TECH/PHARMACEUTICAL
HIGH-TECH/CLEANROOMINSTITUTIONAL
DATA CENTERS
SPORTS AND ENTERTAINMENT
INDUSTRIAL
WAREHOUSE/DISTRIBUTION
MULTI-FAMILY RESIDENTIAL
ENVIRONMENTAL
BRIDGES, CONCRETE

WRITER'S DIRECT NUMBER IS

410-337-5703

October 18, 2002

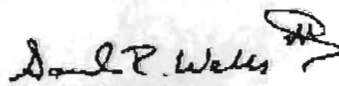
Ms. Monica Rovecamp
8124 Rose Haven Road
Baltimore, MDRE: 8124 Rose Haven Road
Path

Dear Ms. Rovecamp:

As you have requested, we have examined the pedestrian path adjacent to and behind your home. It is evident that the current construction of the entire path is insufficient and quickly deteriorating. Repairing the path as it is currently constructed will not provide a good, long-term solution.

The obvious way to achieve a durable lasting surface is to pave the entire path with a minimum of 2" of asphalt over a stone base. If asphalt is not desired, a second option could be to add a permanent border (such as treated lumber) to each side of the path to contain and identify the walking surface. In either case, the entire path needs to be reworked. We would caution that if the path is paved, it could become an inviting location for skateboarders and other nuisances.

Please contact me if I can be of assistance.

Very truly yours,
THE WHITING-TURNER CONTRACTING COMPANY
Samuel R. Wells
Project Manager

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

02-422-LPH

NAME

ADDRESS

G. Scott Barkight

~~James Markle~~ ~~Alan Klatsky~~ ~~James Markle~~

210 W. Penn Ave

Towson, MD 21204

ALAN KLATSKY / Prestige Dev. Inc.

5 Spring Forest Ct.; Owings Mills 21117

JAMES MARKLE

GILBERT STEPHENS JR. & ASSOC.
1020 CROMWELL BRIDGE ROAD



PLEASE PRINT CLEARLY

BALTIMORE COUNTY REPRESENTATIVES
SIGN-IN SHEET

NAME

ADDRESS

JOHN BEVERUNGEN

400 Washington Ave. LAW
OFF.

JAN COOK

RECREATION & PARKS

JEAN TANSEY

"

"



PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

NAME

ADDRESS

Monica ROVEcamp

Rosemary Rappa

Frank Rappa

Jonathan Wiggins

Jackie Luell

Katherine Gwardellin

JASON BABIATK

JOHN ROEDER JR.

8124 ROSE HAVEN RD.

8126 ROSE HAVEN RD.

8126 ROSE HAVEN RD.

8108 ROSE HAVEN Rd

8110 ROSE HAVEN Rd

8106 ROSE HAVEN Rd

4702 Bucks Schuylkill Rd

8117 ROSE HAVEN RD

21237

CASE NAME _____
CASE NUMBER _____
DATE _____

NAME _____

CITY, STATE, ZIP

[illegible]

CASE NAME _____
CASE NUMBER _____
DATE _____

NAME _____

CITY, STATE, ZIP

E-MAIL

JEAN TANSEY

301 WASHINGTON AV.

TOWSON, MD 21204

JTANSEY@CO.BA.MD.US

PLEASE PRINT CLEARLY

CASE NAME

CASE NUMBER 02-482-SPH

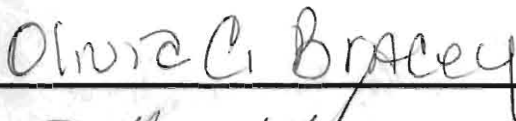
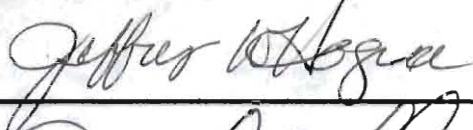
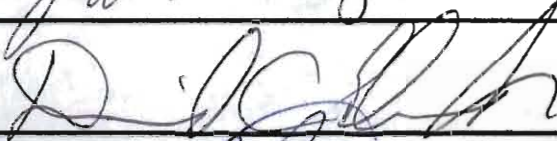
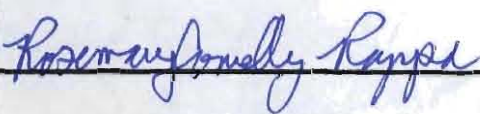
DATE 11-1-02

CITIZEN'S SIGN-IN SHEET

[illegible]

Petition

In the case number 02-482-SPH, the residents of the Glen Arbor Community, listed below, strongly oppose the removal of the Open Space paths and Gazebo. These amenities were promised to the residents during the course of the buying process. They were included in the development plans on display at the sales office and we expect the developer to deliver what was promised.

Printed Name	Signature	Address	Date
WAYNE TEUBNER		8128 Rose Haven Rd	7-2-02
Susan Teubner		8128 Rose Haven Rd.	7-2-02
Olivia C. Bracey		8132 Rose Haven Rd	7-2-02
Jeffrey W. Hogue		8147 Rose Haven Road	7/2/02
David C. Plank		8140 Rose Haven Rd.	7-2-02
Stanley Potrzebki		8125 Rose Haven Rd	7-2-02
Rosemary Rapps		8126 Rose Haven Rd	7-2-02

Petition

In the case number 02-482-SPH, the residents of the Glen Arbor Community, listed below, strongly oppose the removal of the Open Space paths and Gazebo. These amenities were promised to the residents during the course of the buying process. They were included in the development plans on display at the sales office and we expect the developer to deliver what was promised.

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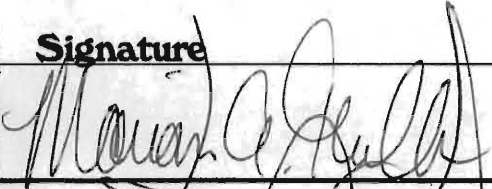
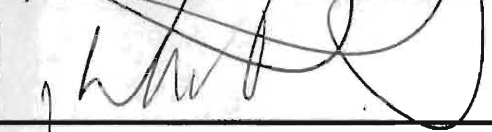
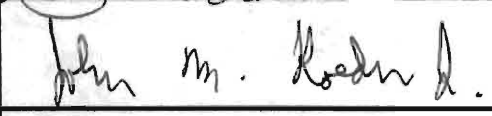
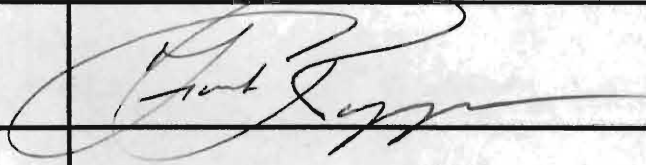
Petition

In the case number 02-482-SPH, the residents of the Glen Arbor Community, listed below, strongly oppose the removal of the Open Space paths and Gazebo. These amenities were promised to the residents during the course of the buying process. They were included in the development plans on display at the sales office and we expect the developer to deliver what was promised.

<u>Printed Name</u>	<u>Signature</u>	<u>Address</u>	<u>Date</u>
Howard Dietz	Howard Dietz	8127 Rose Haven Rd	6/25/02
LINDA DIETZ	Linda S. Dietz	8127 ROSE HAVEN RD	6/25/02
Daniele Morales	Daniele Morales	8109 Jacob Field Rd	6/25/02
Sandy Libby	Sandy Libby	8114 Alan Tree Rd	6/25/02
AnnMarie Hogue	annamarie Hogue	8142 Rose Haven Rd	6-25-02
Heidi Corriero	Heidi Corriero	8123 Rose Haven Rd	6-26-02
Frank Corriero	Frank Corriero	8123 Rose Haven Rd	6/26/02
Mary Potzinski	Mary E Potzinski	8125 Rose Haven Rd 21237	6/26/02

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Printed Name	Signature	Address	Date
Marian Höller		4708 BUCKS SCHOOLHOUSE Rd ROSEDALE MD 21237	6/27/02
WAYNE HULLER JR		4708 BUCKS SCHOOLHOUSE Rd. ROSEDALE, Md 21237	6/27/02
Marion Collett		8100 Alan Tree Rd Balt. Md 21237	6/27/02
Bruce Whisman		8100 Rose Haven Balt Md 21237	6-27-02
JOHN ROEDER		8117 ROSE HAVEN RD BALTIMORE MD. 21237	6-27-02
Georgeann S. Roeder		8117 Rose Haven Rd. Baltimore, Md 21237	6/27/02
Frank Rappe		8124 Rose Haven Rd Balt. Md. 21237	6/27/02

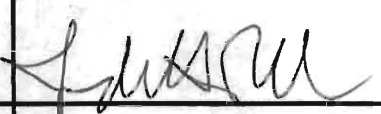
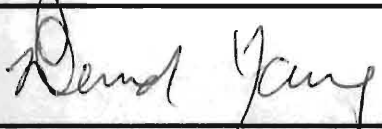
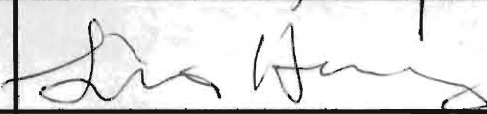
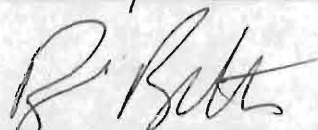
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Printed Name	Signature	Address	Date
Jane Bablak	Jane Heeper Bablak	4702 Bucks Schoolhouse Rd	6-27
Monica Zittle	Mu Zittle	8118 Rose Haven Rd.	06/27
Dennis Zittle	Dennis Zittle	8118 Rose Haven Rd.	06/27
Kathy Kowalski	Kathy Kowalski	8100 Jacob Field Rd	6/27
Richard Kowalski	Richard Kowalski	"	6/27
Kathleen Whisman	Kathleen Whisman	8100 Rose Haven Rd	6/27
Barlene Robbins	Barlene Robbins	8115 ALAN Tree	7/2
Russell & Johnson	Russell Robbins	" "	" "

Petition

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<u>Printed Name</u>	<u>Signature</u>	<u>Address</u>	<u>Date</u>
Judi FREE		8120 ALAN TREE	6/26/02
Joni FREE		8120 ALAN TREE 21237	6/26/02
David Young		8118 Alan Tree Rd	6/26/02
Li ming Huang		8110 Alan tree Rd	6/26/02
Brian P. Zimmermann	BRIAN P ZIMMERMANN	8104 ALAN TREE RD	6/26/02
Amber Bethra	Amber Bethra	8106 Alan Tree Rd	6/26/02
Judy Graves	JUDY GRAVES	8103 ALAN TREE RD	6/26/02
8104 ALAN TREE RD		8104 Alan Tree Rd	7/2/02

July 01, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Case No. 02 482 SPH

 I hereby vote in support of the petition to amend the development plan.

✓ I hereby vote against the petition to amend the development plan.

NANCY L. BOSCH
Printed Name

Nancy L. Bosch
Signature

JOHN A. BOSCH
Printed Name

John A. Bosch
Signature

8104 Base Haven Rd
Address

July _____, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Case No. 02 482 SPH

✓

I hereby vote in support of the petition to amend the development plan.

I hereby vote against the petition to amend the development plan.

MICHAEL W CAMPBELL
Printed Name

Michael W. Campbell
Signature

TERESA M CAMPBELL
Printed Name

Teresa M Campbell
Signature

8107 ROSE HAVEN
Address

H

Court of Appeals of Maryland.

EXXON COMPANY, U.S.A.

v.

STATE HIGHWAY ADMINISTRATION of the
MARYLAND DEPARTMENT OF
TRANSPORTATION.

No. 142, Sept. Term, 1998.

June 16, 1999.

Operator of gasoline service station petitioned for review of decision of State Highway Administration (SHA) denying operator's claim for relocation assistance in connection with SHA's condemnation of property for widening of road. The Circuit Court, Prince George's County, E. Allen Shepherd, J., upheld SHA's decision. Operator appealed. After issuance of writ of certiorari, the Court of Appeals, Rodowsky, J., held that operator could not collaterally attack condition, in special exception and building permit, that it pay relocation expenses.

Affirmed.

West Headnotes

[1] Eminent Domain  266
148k266 Most Cited Cases

[1] Zoning and Planning  21
414k21 Most Cited Cases

Aggrieved property owner ordinarily must directly challenge an alleged constitutionally invalid zoning ordinance by seeking judicial review at time the ordinance is enacted, if there is opportunity to do so, and not by collateral attack in subsequent condemnation proceeding.

[2] Zoning and Planning  546
414k546 Most Cited Cases

Gasoline service station operator that sought relocation costs following taking of portion of its property by State Highway Administration (SHA) could not collaterally attack condition that it pay relocation expenses, which condition was inserted in special exception for remodeling of station and permit to construct facilities within planned right-of-way, where operator could have directly challenged

validity of condition when condition was made, and operator acquiesced in condition. Code. Real Property, § 12-205(a).

****948 *531** Marta D. Harting and Kurt J. Fischer (Piper & Marbury, L.L.P., on brief), Baltimore, for Appellant.

Andrew H. Baida, Asst. Atty. Gen. (J. Joseph Curran, Jr., Atty. Gen. of MD, on brief), Baltimore, for Appellee.

Argued before BELL, C.J., and ELDRIDGE, RODOWSKY, CHASANOW, RAKER, WILNER and CATHELL, JJ.

***532** RODOWSKY, Judge.

This case presents a constitutional challenge to a condition included in a special exception for the remodeling of a gasoline filling station and in a permit to construct facilities within a planned right-of-way. We do not reach the constitutional issue, however, because the challenge should have been made when the allegedly unconstitutional condition was imposed and because the challenger acquiesced in the condition of which it now complains.

I

In 1962 the predecessor of the appellant, Exxon Company, U.S.A. (Exxon), leased for twenty years approximately 21,971 square feet of land located on the northwest corner of Allentown Road and Old Branch Avenue, Camp Springs, Prince George's County, Maryland (the Property) on which to construct and operate a gasoline service station. [FN1] The lease provided that all "structures, tanks, machinery, equipment and all other property ... placed upon the premises, whether annexed ****949** to the freehold or not, shall remain the personal property of Lessee[.]" A special exception (No. 751) for the operation of a service station on the Property was granted in March 1962 by the County Council for Prince George's County, sitting as the District Council. [FN2] It was apparently as part of the initial construction that underground gasoline storage tanks were placed along the Allentown Road side of the Property, near the intersection.

FN1. Throughout the record Allentown Road is treated as running east and west and Old Branch Avenue as running north and

south.

FN2. No part of the 1962 special exception proceedings has been included in the record.

In April 1977 the appellee, the State Highway Administration of the Maryland Department of Transportation (SHA), purchased eight to ten feet of the Allentown Road frontage of the Property from the lessors, with Exxon's consent, for a widening of that road. Allentown Road was shown in the *533 master plan as ultimately being widened to a 120 foot right-of-way which would then require taking twenty-two feet of the Property's frontage on that road.

The lease was extended to December 31, 1991, and Exxon was given the option of extending the lease an additional six years to December 31, 1997.

On October 14, 1981, Exxon applied to the District Council for a special exception (No. 3308). The purpose of the request was to modernize the existing gasoline station. Included in the planned remodeling were replacing the existing underground tanks, adding a third pump island, and adding a canopy over all of the pump islands. The new pump island and part of the new canopy, as well as the replacement underground tanks, would be within the planned right-of-way of the future widening of Allentown Road. The Technical Staff recommended approval in a report that contained the following in its "Comments" section:

"There are no immediate plans to widen the roads abutting the subject property. The Transportation Planning Division staff ... indicated that the pump island within the right-of-way would not have any adverse effect on the circulation system within the area. If the District Council approves the request to build within the right-of-way it is recommended that the approval be conditioned to the removal of any structures or equipment be solely [*sic*] the economic responsibility of the owners when the road is widened."

At the public hearing before the Prince George's County Zoning Hearing Examiner, counsel for Exxon stated:

"With regard to the Technical Staff Report and the staff's recommendation, with the exception of condition number one [regarding landscaping between the street and parking areas], which we will get into later, we concur and adopt what the staff has recommended."

At that hearing John Warren (Warren), the marketing representative for Exxon in Prince George's County, testified as follows:

*534 "Q. Mr. Warren, were you in the room when Mr. [Derro, FN3] Chief of the Transportation Division of the Prince George's County Planning Board] testified earlier as to the status of the widening of Allentown Road?

FN3. This person's name is spelled both "Darrow" and "Derro" in the hearing transcript. We use the spelling employed in the transcript of the individual's testimony.

"A. Yes.

"Q. Were the comments that Mr. [Derro] gave in accordance with what your understanding was as to the ... proposed widening of Allentown Road?

"A. Yes.

"Q. If the building permit were granted by virtue of the County Council permitting us to build within half of this widening aspect of Allentown Road, are you able to represent that the removal of the pump island that is located within that proposed widening area as well as the portion of the canopy that extends **950 over would be removed by Exxon at its expense?

"A. By Exxon at Exxon's expense, yes."

Warren summed up by testifying:

"Q. If I understood the answer to your last question, Mr. Warren, essentially what you are saying is that Exxon is doing this because, A, it wants to modernize the station and, B, it really doesn't have any expectation that Allentown Road is going to be relocated in the near future to affect the modernization, isn't that right?

"A. Yes, sir.

"Q. That's what I thought. Okay."

The Zoning Hearing Examiner recommended approval of the special exception, subject to certain conditions, including:

"3. The applicant shall remove at its own expense, all structures and fixtures that are located on or in any part of the subject property taken or acquired by a public body, corporation or agency for the improvement or widening of Allentown Road."

*535 Related to this condition, the Zoning Hearing Examiner's sixth finding of fact, after referring to the future taking of twenty-two feet, stated:

"The proposed outside pump island is approximately 12 feet, on center, from the existing

(Cite as: 354 Md. 530, 731 A.2d 948)

property line and the proposed canopy extends to the existing property line along Allentown Road. The underground tanks are also located in the proposed right-of-way, in the south corner of the lot, near the intersection. There are presently no funds in any budget, nor any plans, except for the Master Plan, to widen Allentown Road. In the opinion of the Transportation Division of [the] Maryland-National Capital Park and Planning Commission, it will probably be longer than 10 years before anything is done to accomplish the widening. The applicant has agreed to remove, at its own expense, all structures, fixtures, etc., located in the right-of-way on this property, upon the widening of Allentown Road. (T.24)"

On May 10, 1982, the District Council enacted Zoning Ordinance No. 24- 1982, which granted the special exception and granted Exxon's request for permission to construct facilities for its filling station within the planned right-of-way for the widening of Allentown Road, subject to the condition recommended by the Zoning Hearing Examiner, namely,

"3. The applicant shall remove, at its expense, all structures and fixtures that are located on or in any part of the subject property which is taken or acquired by a public body, corporation, or agency for the improvement or widening of Allentown Road."

Thereafter, until the proceedings that are now before this Court, Exxon did not challenge this zoning ordinance or the quoted condition.

In October 1994, by a "quick take" condemnation, the SHA acquired in fee simple approximately 5,382 square feet of the Property across the frontage on Allentown Road and along Old Branch Avenue, for the widening of Allentown Road and of Old Branch Avenue. As a result, Exxon was required to remove all of its fixtures, equipment, and improvements from *536 the area of acquisition. In doing so Exxon incurred \$166,300 in relocation costs, consisting of \$15,900 for the removal of the underground tanks, \$14,600 for the removal of and resulting repairs to Exxon's canopy and gasoline pumps, \$38,600 for the purchase of replacement tanks, and \$97,200 for the installation of replacement tanks in the remaining area of the station.

Exxon submitted to the SHA a claim for \$166,300 in relocation assistance pursuant to Maryland Code (1974, 1996 Repl.Vol.), § 12-205(a) of the Real Property Article (RP). [FN4] In October 1996 the Relocation **951 Assistance Division of the SHA

denied Exxon's claim on the ground that "there is no eligibility for relocation assistance payments due to the zoning ordinance No. 24-1982 of [the] Prince George's County Council dated May 10, 1982."

FN4. Section 12-205(a), in relevant part, reads:

"(a) *Generally.*--Whenever a program or project undertaken by a displacing agency will result in the displacement of any person, the displacing agency shall make a payment to the displaced person, on proper application as approved by the displacing agency for:

"(1) Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

"(2) Actual direct loss of tangible personal property as a result of moving or discontinuing a business or farm operation, but not exceeding an amount equal to the reasonable expenses that would have been required to relocate the personal property, as determined by the agency[.]"

II

Exxon appealed the Relocation Assistance Division's denial of its claim to the SHA's Office of Real Estate. In its appeal, Exxon argued that "the requirement in the Ordinance which purports to prohibit Exxon from recovering compensation for its relocation expenses is unconstitutional," stating that "[t]he sole purpose and effect of [the] requirement in the Ordinance ... is to diminish or freeze the amount of compensation to which Exxon would be entitled as a result of the taking of its property to widen Allentown Road."

At the hearing Exxon apparently also claimed that it would not have agreed to the condition in 1982 had it known that the *537 SHA would be acquiring property fronting both Allentown Road and Old Branch Avenue. [FN5] Based on the earlier quoted provision in the lease, Exxon further claimed that the expenses were eligible for payment under RP § 12-205 because the relocation involved personal property.

FN5. The transcript, if any, of the hearing before the Office of Real Estate has not been included in the record.

The SHA's Office of Real Estate affirmed the Relocation Assistance Division's denial of Exxon's claim on the rationale set forth below:

"In point of fact, Exxon in 1982 agreed to take the risk of locating its property within the known future right-of-way of Allentown Road in exchange for being allowed to expand the Gas Station. That right-of-way expansion has, in fact, occurred. Exxon also could have conditioned its agreement upon the magnitude or extent of any future acquisition, but it did not.... Accordingly, Exxon cannot now renege on its agreement because the acquisition that now has occurred is larger than the one it claims it foresaw in 1982."

As an additional ground of decision the SHA concluded that "the property for which Exxon argues it is entitled to relocation payment comprises fixtures, not personal property." The SHA stated that, despite the language in the lease defining the property owned by Exxon as personal property, such property "cannot be removed from the land without causing material damage to either the real estate or themselves," and the property was fixtures. As realty, and not personalty, such property did not meet "the criteria for personal property pursuant to the Relocation Assistance Program."

Exxon petitioned the Circuit Court for Prince George's County for judicial review of the SHA's final decision. That court upheld the SHA's decision, concluding that the ordinance was not unconstitutional and that Exxon failed to challenge the ordinance when it was enacted. On the latter aspect the circuit court said:

*538 "The Zoning Hearing Examiner determined that the appellant agreed to the conditions of this Special Exception. There were no appeals from the Zoning Hearing Examiner's findings. Those findings cannot now, in the first instance, be the basis for a challenge to the validity of the Special Exception."

**952 The court further held that there was substantial evidence to support the SHA's alternative determination, namely, that the property within the area of acquisition was realty and not personalty.

Exxon appealed to the Court of Special Appeals. Prior to the consideration of the appeal by the Court of Special Appeals, this Court issued a writ of certiorari on its own motion.

The following questions are presented for review:

"1. Is Exxon barred from recovering relocation assistance for its relocation costs resulting from a

taking of its property by the SHA under a special exception which purports to prohibit Exxon from recovering relocation assistance for items within a planned right of way as a condition to granting the special exception?

"2. Did the SHA err as a matter of law in concluding that Exxon's relocation assistance claim related to non-compensable real property rather than personal property?"

III

This Court has stated that "[i]t has long been held and is firmly established that it is not only proper but desirable to attach to the grant of a special exception conditions which do not violate or go beyond the law and are appropriate and reasonable." Montgomery County v. Mossburg, 228 Md. 555, 558, 180 A.2d 851, 852 (1962). But, this Court has also stated that local zoning bodies "cannot use zoning to depress land values so as to reduce the damages paid by the sovereign when it otherwise validly invokes its power to condemn." Mayor of Baltimore v. Kelso Corp., 281 Md. 514, 520, 380 A.2d 216, 220 (1977). Accord Hoyert v. Board of County Comm'rs, 262 Md. 667, 674, 278 A.2d 588, 591 (1971); *539 Carl M. Freeman Assocs. v. State Roads Comm'n, 252 Md. 319, 329-30, 250 A.2d 250, 255 (1969).

Congressional School of Aeronautics, Inc. v. State Roads Comm'n, 218 Md. 236, 146 A.2d 558 (1958), summarizes that

"[t]here seems to be general agreement among the authorities which have considered the question that zoning cannot be used as a substitute for eminent domain proceedings so as to defeat the constitutional requirement for the payment of just compensation in the case of a taking of private property for public use by depressing values and so reducing the amount of damages to be paid."

Id. at 241, 146 A.2d at 560-61. See also 4 E.H. Ziegler, Jr., Rathkopf's The Law of Zoning and Planning § 52.02[1], at 52-11 to 52-13 (4th ed. Mar.1999 release) ("In regard to eminent domain proceedings, courts long have recognized that a zoning restriction goes 'too far' and constitutes a regulatory taking for which compensation must be paid when the restriction is enacted primarily for the purpose of depressing the market value of the land prior to the land's condemnation or for the purpose of subjecting property to a public use without the necessity of condemnation. Similarly, courts have held that it is constitutionally impermissible to deny a rezoning which is otherwise warranted merely because the property might eventually be condemned

for a public use or to deny other zoning approvals on that ground.") (footnotes omitted).

[1] The aggrieved property owner, however, ordinarily must directly challenge an alleged constitutionally invalid zoning ordinance by seeking judicial review at the time the ordinance is enacted, if there is an opportunity to do so, and not by collateral attack in a subsequent condemnation proceeding. This was the conclusion that this Court reached in *Congressional School of Aeronautics*, 218 Md. 236, 146 A.2d 558. That case involved property located within a proposed highway widening. The property had been zoned residential and was adjacent to property zoned commercial and light industrial; consequently, the value of the property zoned **953 residential was half that of the adjacent areas. *540/Id. at 239-40, 146 A.2d at 559-60. During the condemnation proceedings in the circuit court, the owner attempted to attack the validity of the ordinance zoning the property as residential by requesting an instruction that

"if the jury should find that the 'zoning authority' restricted the zoning of the land taken to residential use in order that it might be acquired for highway use at a lower price, the jury should disregard this 'restrictive zoning.' The [owner] also sought a binding instruction to like effect."

Id. at 243-44, 146 A.2d at 562. The circuit court refused both instructions.

On appeal to this Court two of the issues raised were: "First, was the zoning of the strip in question as residential invalid as amounting to a taking of property without payment of just compensation? Second, if so, was the zoning of that property open to attack in this proceeding?" *Id.* at 240, 146 A.2d at 560. The Court stated that the first question was "not so presented as to require its determination," *id.* at 242, 146 A.2d at 561, but the Court addressed the second issue. A review of cases in which courts considered the validity of zoning ordinances revealed that they "were all cases of direct attack," *id.* at 247, 146 A.2d at 564, and that "[n]o authority in this country has been brought or has come to our attention which sanctions a collateral attack in a condemnation suit on the validity of a zoning ordinance as applied to the property sought to be condemned." *Id.* at 248, 146 A.2d at 564-65.

The Court stated that although there was no statutory provision for judicial review of the zoning ordinance, the owner could have sought a "bill in equity to enjoin enforcement of the action alleged to be unconstitutional or (in the case of administrative

action) arbitrary or otherwise illegal." *Id.* at 243, 146 A.2d at 562 (quoting *Bogley v. Barber*, 194 Md. 632, 640, 72 A.2d 17, 20 (1950)). "No explanation is offered for the [owner's] not having sought such a remedy." *Id.* Accordingly, the Court said that

"a collateral attack is not permissible, at least where, as in the instant case, a direct proceeding to challenge the validity *541 of the classification, with the zoning authority as a party, was readily available. Both of the [owner's] prayers based upon the alleged invalidity of the ordinance as applied to its property were properly rejected."

Id. at 248, 146 A.2d at 565.

A decade later, this Court permitted a collateral attack in a condemnation proceeding on a previously enacted zoning ordinance but only after carefully distinguishing the facts in that case from those in *Congressional School of Aeronautics*. *Carl M. Freeman Assocs.*, 252 Md. 319, 250 A.2d 250. In *Freeman* a district council, on application of a prior owner for upzoning of the subject property and the land surrounding it, had rezoned the surrounding land from residential-agricultural to commercial-apartment, but, pursuant to a local ordinance, the council had refused to rezone the subject property because it had been proposed for highway use on a master plan. *Id.* at 321, 250 A.2d at 250-51. The owner objected to evidence offered by the condemnor, arguing that valuing the property under the residential-agricultural zoning constituted a taking without just compensation. *Id.* at 324, 250 A.2d at 252.

The Court recognized that permitting a challenge to the zoning classification during the condemnation proceeding "leads into the question of whether there can be a collateral attack upon the ordinance which may appear contrary to the view expressed by this Court in *Congressional School v. State Roads Commission*." *Freeman*, 252 Md. at 324, 250 A.2d at 252. *Congressional School of Aeronautics* was distinguished. In *Freeman* the zoning authority was a party to the proceeding. More important, the condemnee did not own the property "at the time it was impressed **954 with" the residential-agricultural zoning and, therefore, "did not have at that time the requisite standing to mount a direct legal attack on the validity of the ordinance." 252 Md. at 326, 250 A.2d at 254. The Court found that these differences, "although slight, are none the less significant." *Id.*

In the instant matter Exxon not only required a special exception because it sought to enlarge a

gasoline filling station, *542 see Prince George's County Zoning Ordinance § § 27-322(a), 27-323 (1995), but it also required a permit to build in the proposed right-of-way. *Id.* § 27-259(a)(1). [FN6] With respect to the latter restraint the Court in *Freeman* said:

FN6. Prince George's County Zoning Ordinance § 27-259(a)(1) reads in relevant part that

"no building or sign permit ... may generally be issued for any structure on land located within the right-of-way or acquisition lines of a ... proposed relocation or widening of an existing street ... as shown on a Master Plan[.]"

"[W]e think it significant that Article 66B (1967 Repl.Vol.) of the Maryland Code entitled 'Zoning and Planning,' which while providing in sections 31 and 32 for the reservation of the land for proposed streets and highways for future public acquisition, seeks to implement this objective by controlling the issuance of building permits in the bed of the dedicated street or highway and makes no mention of reserving a proposed street bed through the expedient of zoning.... One may see the reason for controlling the issuance of building permits in the area to be used in the reasonably foreseeable future for street or highway purposes, so that additional costs, not affecting the value of the land itself, will not be incurred. However, the control of the issuance of building permits does not have the effect of denying to the property owner the right to introduce into evidence testimony as to the value of the land based on its highest and best use within the framework of the zoning classification of the property of which the street bed is a part."

252 Md. at 330, 250 A.2d at 256.

Courts in other jurisdictions generally have not permitted a collateral attack on a zoning ordinance during a condemnation proceeding when there had been an opportunity directly to attack the zoning ordinance. See, e.g., *Robinson v. Commonwealth*, 335 Mass. 630, 631-32, 141 N.E.2d 727, 728 (1957) (overruling a property owner's exceptions to the exclusion of evidence that his property had a greater value but for allegedly invalid zoning ordinances; "The petitioner had ample opportunity to attack directly the ordinance if he had desired to *543 do so. He could have filed a petition in the Land Court, or he could have filed a suit for declaratory relief in the

Superior Court to determine the validity of the ordinances; but in our opinion he could not at the trial of the petition for land damages against the Commonwealth attack the zoning ordinances") (citations omitted); see also 4 *Nichols on Eminent Domain* § 12C.03[1], at 12C-73 (rev.3d ed. June 1998 release) ("It has been held that the owner cannot, in the condemnation proceeding, attack the validity of a zoning ordinance where ample opportunity for direct attack existed prior thereto."); 4 *Ziegler, supra*, § 52.02[2][a], at 52-15 to 52-16 ("Where the zoning restriction in question, however, has not already been adjudicated invalid at the time of the taking by condemnation, courts in a number of cases have disallowed actual adjudication of the restriction's validity by collateral attack in an eminent domain proceeding. While the case law on point is not entirely clear, courts that have expressly addressed this question have typically ruled that actual adjudication of the validity of a zoning restriction by collateral attack will not be permitted in an eminent domain proceeding at least where the owner had ample opportunity earlier to directly challenge the validity of the restriction.") (footnote omitted); cf. *955 *United States v. 319.88 Acres of Land*, 498 F.Supp. 763, 767 (D.Nev. 1980) (allowing a collateral attack on a federal zoning regulation during a condemnation action on the ground that the property owner and also the government itself were unaware of the regulation; "Therefore, it can hardly be argued that the property owner had ample prior opportunity to challenge the regulation directly"); *State ex rel. Missouri Highway & Transp. Comm'n v. Sturfels Farm Ltd. Partnership*, 795 S.W.2d 581, 587 (Mo.Ct.App.1990) (allowing a collateral attack on contract rezoning requirements in zoning ordinances during a condemnation proceeding because the ordinances were enacted after the property was condemned and, therefore, there was no prior opportunity for a direct attack).

Some courts have permitted a collateral attack in cases where the condemnor is also the zoning authority. See, e.g., *544 *People by Dep't of Pub. Works v. Southern Pac. Transp. Co.*, 33 Cal.App.3d 960, 966, 109 Cal.Rptr. 525, 529 (1973) ("It is practical and logical to require that such invalid zoning be disregarded [in valuation] where the zoning authority is also the condemnor. Permitting recovery in eminent domain disregarding the zoning restriction combines in one action the right to recover compensation for both the inverse condemnation resulting from the disguised taking in the form of zoning and for the actual taking of the property.... Moreover, the condemning authority is also the zoning government so that much of the vice of a

collateral attack on zoning in the usual eminent domain proceeding is not present."); *Department of Pub. Works & Bldgs. v. Exchange Nat'l Bank*, 31 Ill.App.3d 88, 98, 334 N.E.2d 810, 818 (1975) ("Although in most situations a collateral attack upon zoning is not permitted in an eminent domain proceeding, that principle is inapplicable to the situation where the condemnor purporting to exercise its police power by enacting a zoning ordinance has in reality discriminated against a particular parcel or parcels of land in order to depress their value with a view to future takings in eminent domain. In such a situation such action has been vigorously condemned as confiscatory and the condemnee may attack the validity of the zoning ordinance in the eminent domain action and if successful require that his property be valued free of its restrictions.") (citations omitted); see also 4 *Nichols on Eminent Domain*, *supra*, § 12C.03[1], at 12C-73 ("It has been held, however, that the prohibition of collateral attack does not apply in a situation where the condemnor and the zoning authority are identical."); 4 *Ziegler*, *supra*, § 52.02[2][a], at 52-16 (same).

In this case, Exxon could have challenged directly the validity of the condition inserted in the special exception and building permit under the review permitted by then Article 66D of the Maryland Code (1957, 1978 Repl.Vol., 1982 Cum.Supp.) (now codified in Article 28 of the Maryland Code (1957, 1997 Repl.Vol., 1998 Cum.Supp.)). This Exxon did not do.

In addition Exxon has acquiesced in the condition that it pay the relocation expenses. This issue is similar to that in *545 *Board of Liquor License Comm'rs v. Fells Point Cafe, Inc.*, 344 Md. 120, 685 A.2d 772 (1996). In that case, prospective liquor licensees sought to have ownership of a liquor license transferred to them. During the license transfer proceedings, the licensees entered into an agreement with a community association opposing the transfer, in which the licensees agreed to certain conditions related to the operation of a restaurant. During the license transfer hearing before the Board of Liquor License Commissioners for Baltimore City, the licensees requested the board to incorporate the agreement into the license as a restriction on the license. *Id.* at 123, 685 A.2d at 773.

Later, during a hearing to determine whether the licensees violated the terms of the incorporated agreement, the licensees argued that the board could not enforce the agreement against them because it had no power to place restrictions on an individual **956 license. *Id.* at 124, 685 A.2d at 774. The

board concluded that it did have such authority and found that violations had occurred.

This Court held that, although the board had no authority unilaterally to impose the restrictions in the agreement on the license, the board could impose restrictions to which the licensees freely consented. *Id.* at 137, 685 A.2d at 780. It was the licensees' suggestion that the board incorporate the agreement into the license as a display of good faith to operate a restaurant and not a bar or nightclub. Upholding the voluntary restrictions, the Court emphasized that the licensees failed to seek judicial review of the restrictions and instead accepted the benefits of the license. *Id.* at 137-38, 685 A.2d at 780.

After reviewing several cases explaining "that it would be inequitable to allow a party who has accepted and retained the advantages of an agreement to attack the validity or propriety of the conditions to which the agreement was subject," *id.* at 138, 685 A.2d at 781, we held that "when a licensee agrees to reasonable restrictions in order to obtain a license that clearly would not otherwise be granted, the licensee will be estopped *546 from later arguing that the Board had no power to place such a restriction on the license." *Id.* at 141, 685 A.2d at 782. As the Court explained:

"The Licensees proposed that the agreement be incorporated into the license as a restriction at its hearing before the Board. The Licensees' promise to conduct business in accordance with the agreement was a significant factor in favor of the Board's decision to transfer the license. The Licensees sought no review of the Board's decision. Rather, the Licensees have been operating a business and enjoying the benefits of the license for over two years. We cannot allow the Licensees to whipsaw the Board by claiming that the Board may not enforce the very agreement that the Licensees proposed and that the Board relied on because the Board had no power to accept the Licensees' offer in the first instance."

Id. at 140-41, 685 A.2d at 782.

See also *Skipjack Cove Marina, Inc. v. County Comm'rs*, 252 Md. 440, 250 A.2d 260 (1969) (current property owners could not attack in a collateral proceeding the conditions that their predecessors in title accepted with a special exception and did not challenge in a judicial review of the board's decision). Accord *In re Rosedale Avenue*, 40 Misc.2d 1076, 1079, 243 N.Y.S.2d 814, 817-18 (1963); *Marvin E. Nieberg Real Estate Co. v. St. Louis County*, 488

S.W.2d 626, 630-31 (Mo.1973).

In this case, as stated in the findings of the Zoning Hearing Examiner, Exxon agreed to the condition contained in the ordinance. As pointed out by the SHA, "[a]s a result of its agreement to that condition, the County permitted Exxon to do what Exxon was originally told it could not do, *i.e.*, modernize and expand its filling station, thus enabling Exxon to service more cars, sell more gasoline, and otherwise increase its revenues and business opportunities."

[2] For all of the foregoing reasons Exxon may not now attack the validity of the condition, and, under the presumption of constitutionality, the ordinance stands. Inasmuch as *547 we sustain the decision of the SHA on the first ground assigned by that agency, it is unnecessary to consider Exxon's arguments directed against the second ground given by the SHA to support its decision.

**JUDGMENT OF THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY AFFIRMED.
COSTS TO BE PAID BY THE APPELLANT.**

END OF DOCUMENT

Re: Case No. 02-482 SPH

My name is Monica Rovecamp. I reside at 8124 Rose Haven Road. I wish to express my support in favor of amending the development plan for the following reasons:

1. Size - Recreation and Parks is now proposing a pavilion not a gazebo that everyone was told would be there. The area is not large enough for a pavilion.
2. There is no parking available. Any possible users will not want to walk long distances with the coolers and picnic items. The only place they can park is on Rose Haven Road where parking is limited due to driveways and mailboxes.
3. Who will remove the trash left behind. Will Baltimore County provide regular trash pick-up from the pavilion?
4. The walkway itself is mostly used by children for access to the protected woodlands or people walking their dogs, some of whom do not pick up what their dogs leave behind.
5. How often will Recreation and Parks cut the weeds? The area is bug infested and some families who have walked the path have not returned because of having to remove ticks from their children.
6. A pavilion of this type is a perfect spot for teenage parties and gatherings and I don't mean during daylight hours. Having resided next to Double Rock Park for 30 years, I can attest to the fact that this secluded area is a perfect spot for late night get-togethers.
7. With Baltimore County's manpower and resources, how can anyone believe that it will maintain or be concerned about an open space of this size with all the parks and baseball fields it currently maintains. I feel within a short period of time this area, as proposed by Recreation and Parks, will become an eye-sore to the community rather than an amenity.

To reiterate, my serious concerns are:

Size
Parking,
Trash Removal,
Maintenance, and
An influx of strangers to our community after dark.

I would like to give you some additional letters, both against and in support of the proposed new development plan, from residents who were not able to attend this hearing.

Thank you for the opportunity to speak to you today.

Monica Rovecamp
8124 Rose Haven Road
410-415-7645

Refutation
Community
EX NO 1

July 6, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Case No. 02 482 SPH

✓

I hereby vote in support of the petition to amend the development plan.

I hereby vote against the petition to amend the development plan.

Christopher N. Chamberlis
Printed Name

Chitt N. Chamberlis
Signature

Eugenia Chamberlis
Printed Name

Eugenia Chamberlis
Signature

8114 Rose Haven
Address

*Relieved
2A
NO*

July 7, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Case No. 02 482 SPH

✓ ^{WE} I hereby vote in support of the petition to amend the development plan.

 I hereby vote against the petition to amend the development plan.

MONICA ROVEAMP
Printed Name

Monica Rovecamp
Signature

Robert Rovecamp
Printed Name

Robert Rovecamp
Signature

8124 ROSE HAVEN RD. #21237
Address

213

July 7, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Case No. 02 482 SPH



I hereby vote in support of the petition to amend the development plan.

I hereby vote against the petition to amend the development plan.

PATRICIA MCCLEAN

Printed Name

Patricia McLean

Signature

RODNEY MCLEAN

Printed Name

Signature

Signature

8/22 Rose Haven Rd

Address

 2^c

July 02, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Case No. 02 482 SPH

✓

I hereby vote in support of the petition to amend the development plan.

I hereby vote against the petition to amend the development plan.

WILLIAM HASE
Printed Name

William Hase
Signature

POLINA T HASE
Printed Name

Polina T Hase
Signature

8120 Rose Haven Rd
Address

2D

July 6, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Case No. 02 482 SPH



I hereby vote in support of the petition to amend the development plan.

I hereby vote against the petition to amend the development plan.

Brenda J. Brown

Printed Name

Brenda J. Brown
Signature

Signature _____

Printed Name _____

Printed Name

Signature

Signature

8103 Rose Haven Road
Baltimore, MD 21237

Address

 $2E$

July 1, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Casc No. 02 482 SPH

 I hereby vote in support of the petition to amend the development plan.

✓

I hereby vote against the petition to amend the development plan.

VICTORIA ALI

Printed Name

Victoria A. Ali

Signature

SHAHID ALI

Printed Name

SHAHID ALI
Signature

8124 ALAN TREE RD

Address

2f

July 1, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Case No. 02 482 SPH

 I hereby vote in support of the petition to amend the development plan.

✓ I hereby vote against the petition to amend the development plan.

JENNIFER ELLIS

Printed Name

MARK C. ELLIS

Printed Name


Signature


Signature

8136 ROSE HAVEN ROAD

Address

26

July 2, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Case No. 02 482 SPH

_____ I hereby vote in support of the petition to amend the development plan.

X _____ I hereby vote against the petition to amend the development plan.

Richard V. Rosenthal
Printed Name

Richard V. Rosenthal
Signature

Amy S. Rosenthal
Printed Name

Amy Rosenthal
Signature

8106 Jacob Field Rd
Address 21237

24

July 9, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Case No. 02 482 SPH

 I hereby vote in support of the petition to amend the development plan.

 I hereby vote against the petition to amend the development plan.

GEORGE C. MBAGWU
Printed Name


Signature

Printed Name _____

Signature

8116 Alan Ave Rd 21237
Address

 $2 \pm$

8124
July 7, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Case No. 02 482 SPH

I hereby vote in support of the petition to amend the development plan.

✓

I hereby vote against the petition to amend the development plan.

Robert J. Gehrige
Printed Name

Lynda M. Gehrig
Printed Name

[Signature]
Signature

[Signature]
Signature

8105 Rose Haven Road
Address
Balto. MD 21237

25

July 2, 2002

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Court House
Towson, MD 21204

Re: Case No. 02 482 SPH

 I hereby vote in support of the petition to amend the development plan.

✓ I hereby vote against the petition to amend the development plan.

Russell J. Poe

Printed Name

Belinda A. Poe

Printed Name

Russell J. Poe

Signature

Belinda A. Poe

Signature

8116 Rose Haven Rd.

Address

2K

FOUNDED 1909

THE WHITING-TURNER CONTRACTING COMPANY

(INCORPORATED)
ENGINEERS AND CONTRACTORS

CONSTRUCTION MANAGEMENT
GENERAL CONTRACTING
DESIGN-BUILD
SPECIALTY CONTRACTING
OFFICE/HEADQUARTERS
RETAIL/SHOPPING CENTERS
HEALTH CARE
BIO-TECH/PHARMACEUTICAL
HIGH-TECH/CLEANROOM

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410-821-1100
FAX 410-337-5770
www.whiting-turner.com

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MULTI-FAMILY RESIDENTIAL
ENVIRONMENTAL
BRIDGES, CONCRETE

WRITER'S DIRECT NUMBER IS
(410) 337-5703

October 29, 2002

Ms, Monica Rovecamp
8124 Rose Haven Road
Baltimore, Maryland

RE: 8124 Rose Haven Road- Path

Dear Ms. Rovecamp:

As you have requested, The Whiting-Turner Contracting Company is pleased to propose the following options for the work associated with the ± 1200 L.F. pedestrian path adjacent and behind your house. Due to the safety concerns with the grade, Option A is the recommended choice.

Option A:

- Re-grade existing path and add approximately two (2) inches of compacted CR6 over barrier cloth
- Furnish and Install a 2x6 CCA border on each side of the length of the path
- Install mulch or stone as the walking surface of the path
- Seed and straw disturbed areas

Cost of work - \$28,800.00

Option B:

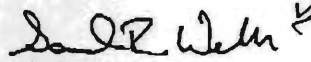
- Re-grade existing path and add approximately two (2) inches of compacted CR6 over barrier cloth
- Install approximately two (2) inches of compacted asphalt as the walking surface of the path
- Seed and straw disturbed areas

Cost of work - \$31,200.00

Qualifications for this work include:

- Final design of path should be reviewed with the Civil Engineer of record for the project and Baltimore County
- Permits and bonds are not included
- No additional sediment and erosion control is included
- Work is to be completed in one mobilization
- Work is not to be completed on a frozen sub-base
- Periodic maintenance of path will be required and is not included
- This proposal is valid for 60 days

Very truly yours,
THE WHITING-TURNER CONTRACTING COMPANY


Samuel R. Wells
Project Manager

IRVINE, CA
BETHESDA, MD

PLEASANTON, CA
CHARLOTTE, NC

NEW HAVEN, CT
SOMERSET, NJ

NEWARK, DE
LAS VEGAS, NV

WT

FT LAUDERDALE, FL
CLEVELAND, OH

ORLANDO, FL
ALLENTOWN, PA

ATLANTA, GA
DALLAS, TX

BOSTON, MA
CHANTILLY, VA
RICHMOND, VA

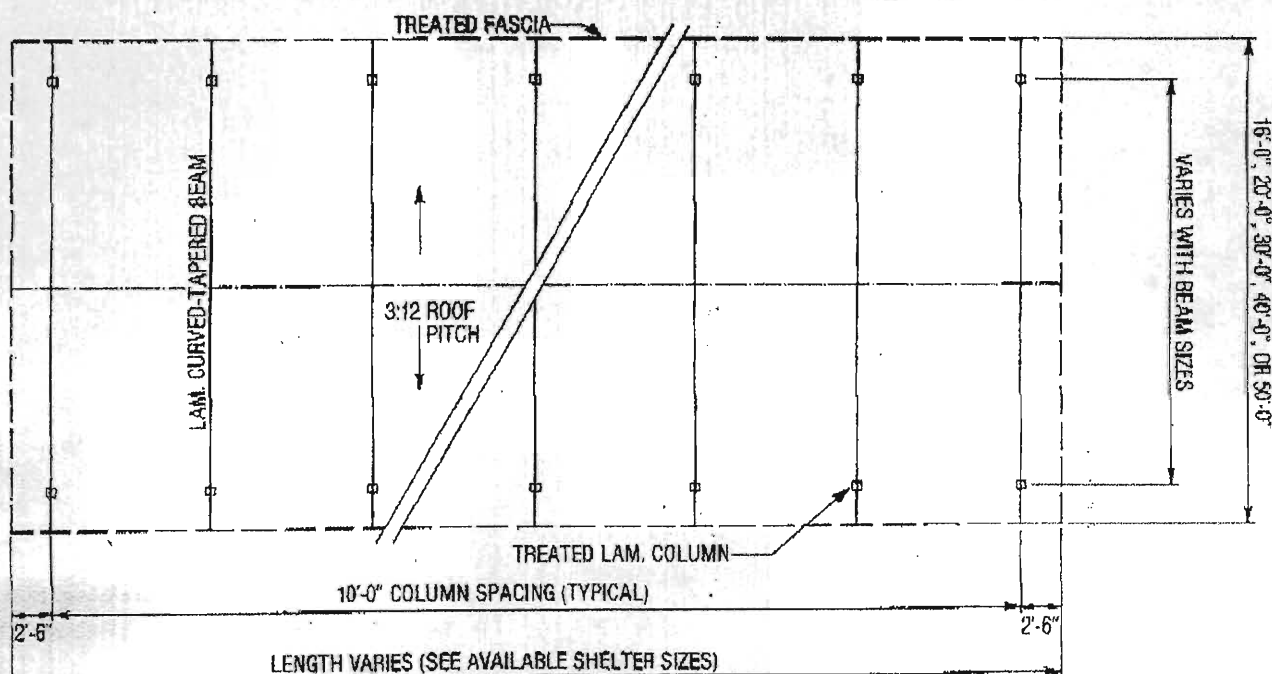
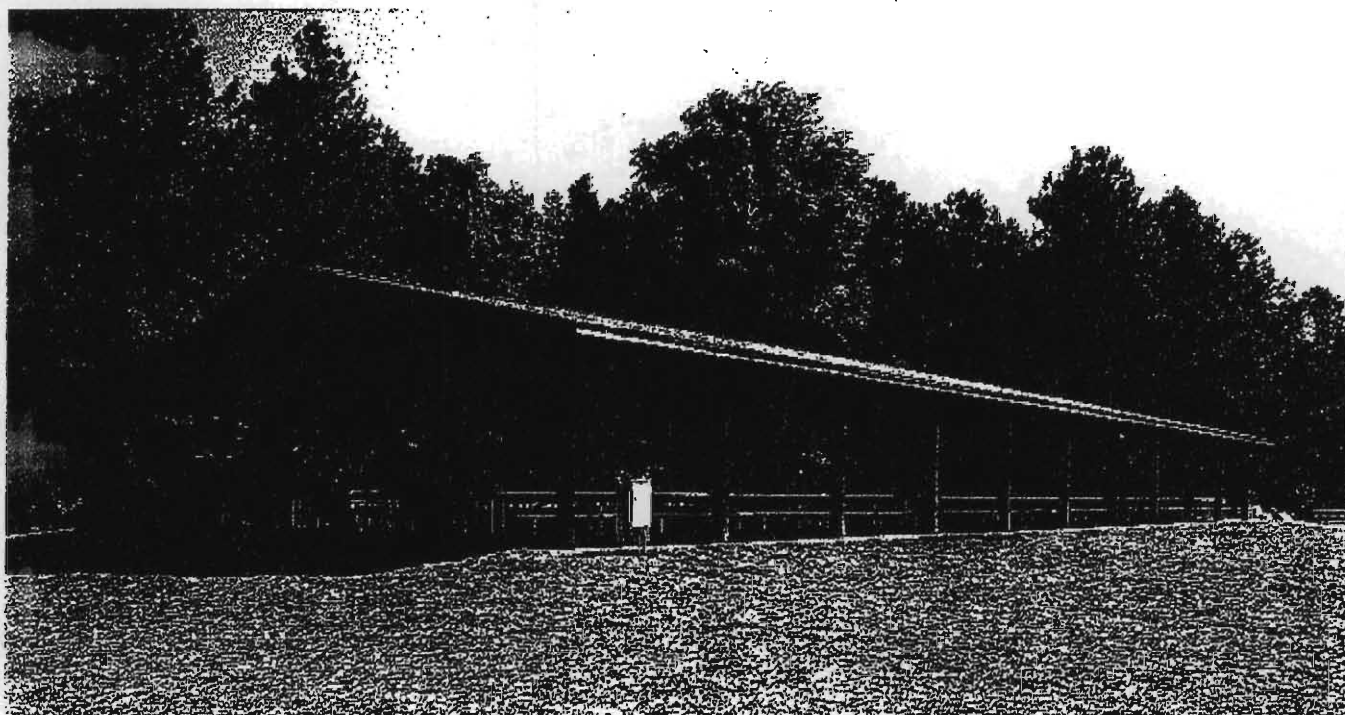
LAMINATED WOOD SHELTERS



**ENWOOD
STRUCTURES**
MANUFACTURER OF ENGINEERED WOOD PRODUCTS

Ref. No 7

The RALEIGH II



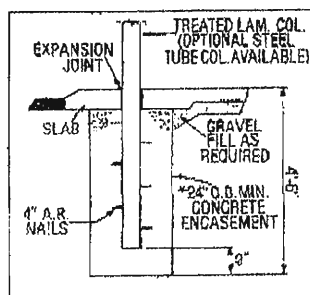
Roof Framing — Raleigh II

The Raleigh II utilizes EnWood Structures' *MultiSpan Deck* System to increase spacing of structural laminated members without affecting the beauty and durability of the standard Raleigh design. By spanning three or four supports, *MultiSpan* economically increases load carrying capacities by as much as 60% over random length decking. With greater span capability, fewer support members are required thus lowering cost and decreasing the time needed for installation.

Standard Shelter Sizes:

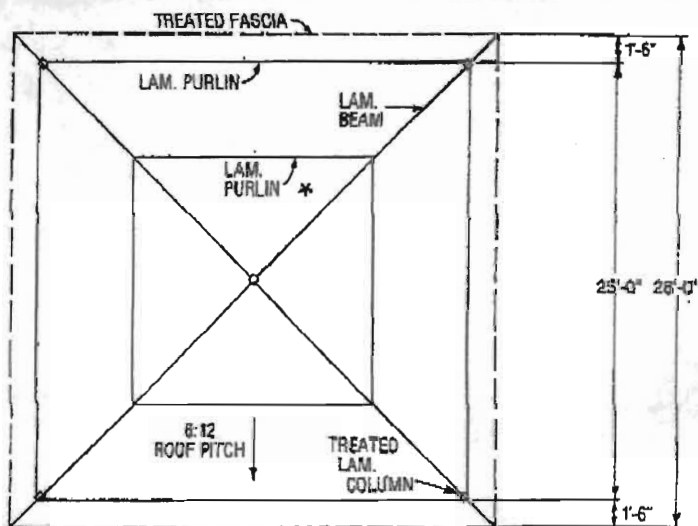
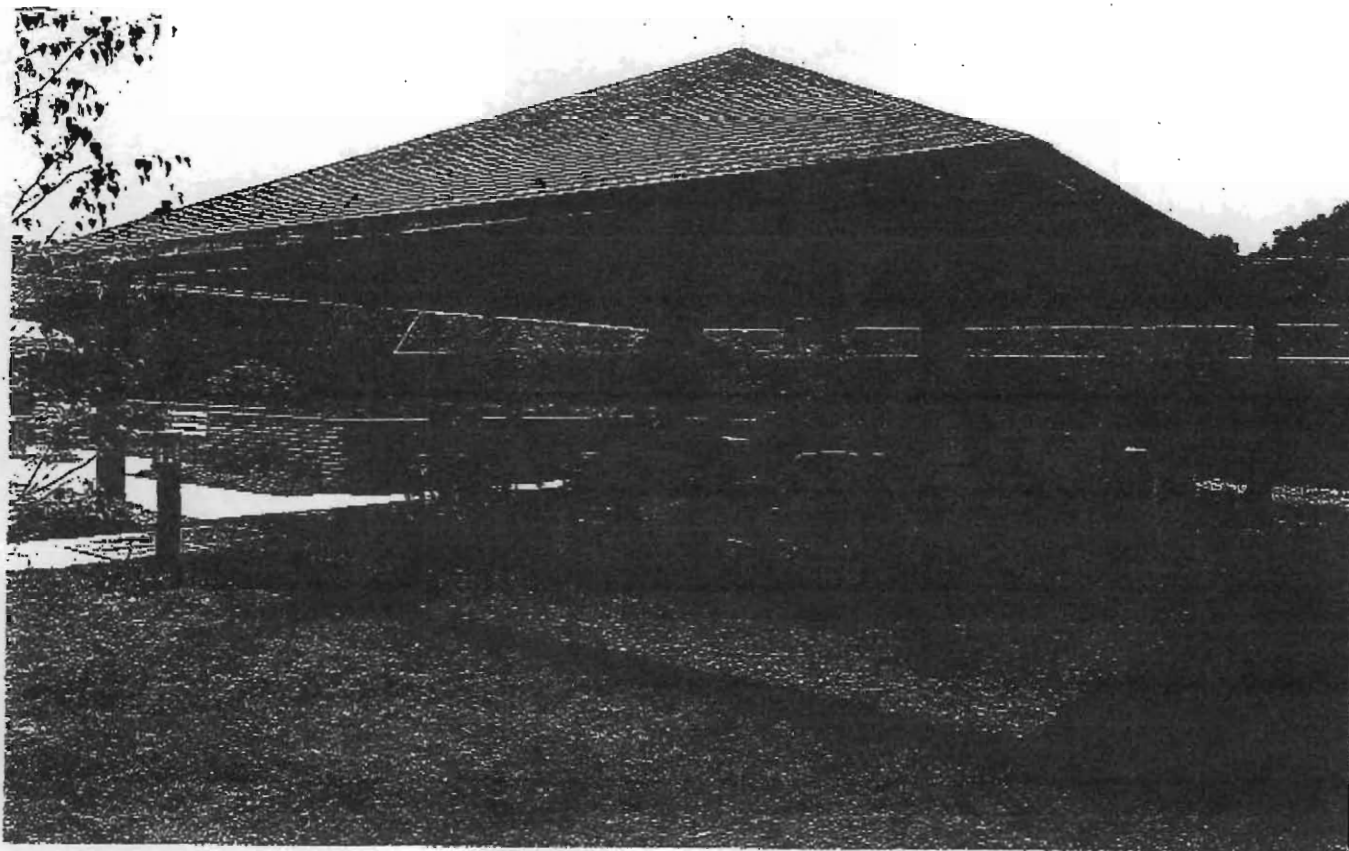
16' x 25'	30' x 35'	30' x 65'	40' x 65'	50' x 65'
20' x 25'	30' x 45'	40' x 45'	50' x 65'	50' x 95'
<u>20' x 35'</u>	30' x 55'	40' x 55'	50' x 75'	50' x 105'
30' x 45'				

Custom Sizes & Designs Available

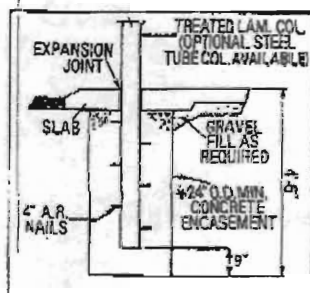
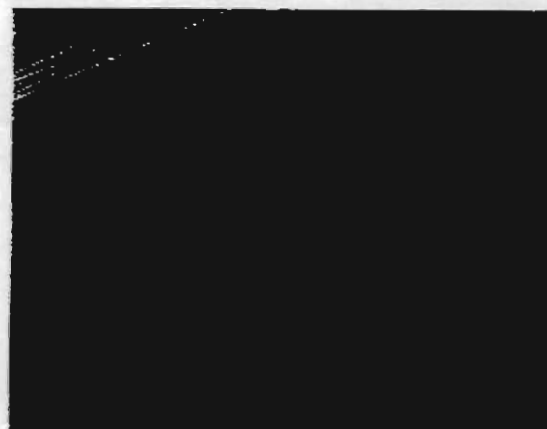


*24" O.D. CONCRETE
FOR 16', 20' AND 30'.
30" O.D. CONCRETE
FOR 40' AND 50'.

Suggested Column Embedment

The **TIMBERLAND**

Roof Framing — 28' Timberland



- * 24" O.D. CONCRETE
FOR 12', 15' AND 20'.
30" O.D. CONCRETE
FOR 28' AND 36'.

**Suggested
Column
Embedment**

The simplicity of the Timberland Shelter Cube makes it economical as well as attractive. The roof covers a square area and is available in five sizes.

*Laminated purlins not required on the 12'x12' and 15'x15' sizes

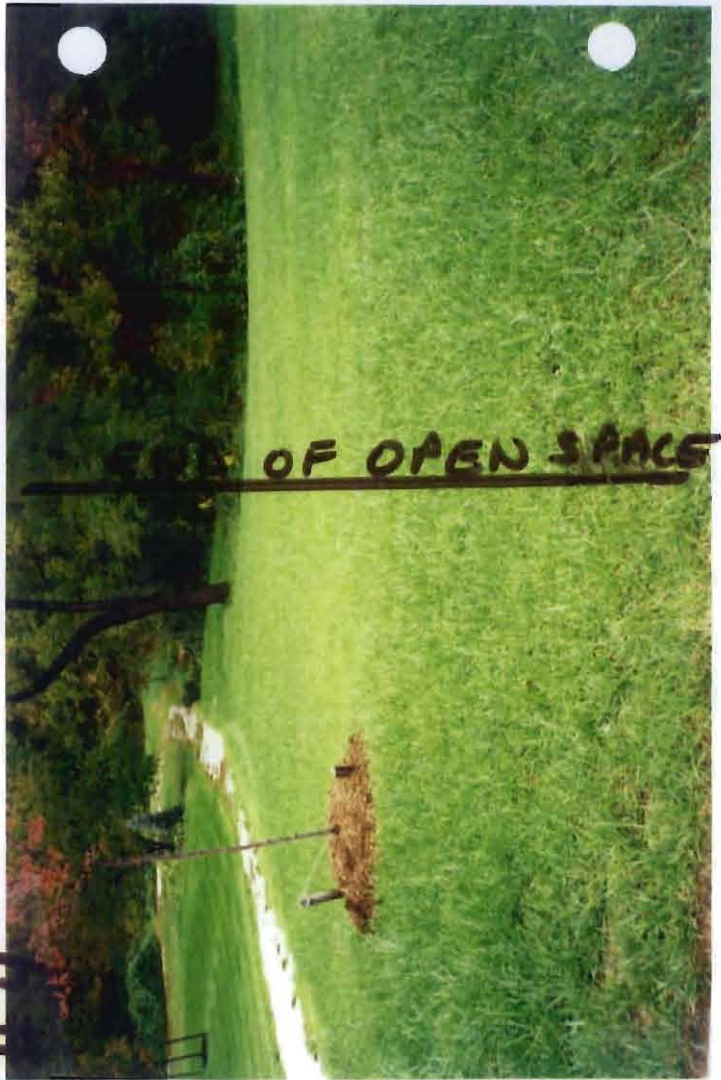
Standard Shelter Sizes Available

~~12' x 12'~~
~~15' x 15'~~
~~20' x 20'~~

28' x 28'
~~36' x 36'~~

Custom Sizes & Designs Available







Plot No 3



Let No 5



100 No 4



Plot No 6

