IN RE: PETITION FOR SPECIAL HEARING

N/S Western Run Road, 950' E of the c/l

Cuba Road

(1900 Western Run Road)

8th Election District

3rd Council District

Douglas W. Hamilton, Jr., et ux Petitioners * BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 03-192-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, Douglas W. Hamilton, Jr., and his wife, Tsognie W. Hamilton, through their attorney, Robert A. Hoffman, Esquire. The Petitioners request a special hearing to approve a waiver, pursuant to Sections 26-171 and 26-172(b) of the Baltimore County Zoning Regulations (B.C.Z.R.), of the requirements of Sections 26-203(c)(8) and 26-278 of the Baltimore County Code (B.C.C.) to permit renovations and construction of an addition to a historic structure, identified on the Maryland Historic Trust Inventory as #BA-188. In addition, relief is requested to approve an existing accessory structure as a caretaker's house, guesthouse or tenant house. The subject property and requested relief are more particularly described on the site plan submitted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Douglas Hamilton, property owner; James R. Grieves, a noted Architect who specializes in the preservation and restoration of historic structures; Brian Dicara, a representative of McKee and Associates, Inc., the consultants who prepared the site plan for this property; and Robert A. Hoffman, Esquire, attorney for the Petitioners. Kenneth Bosley, a nearby resident, appeared in opposition.

Testimony and evidence offered revealed that the subject property is a rectangular shaped parcel containing 34.846 acres, more or less, zoned R.C.2, located on the north side of Western Run Road, just east of Cuba Road in Monkton. The property is improved with a 2.5 story

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dwelling, which is a historic structure, known as Bellefield, and is listed on the Maryland Historic Trust Inventory as MHT #BA-188. In addition to that structure, there is also a one-story dwelling and a one-story shed located on the property. All of the improvements are situated towards the rear of the parcel. Mr. & Mrs. Hamilton purchased the property in 1998 out of bankruptcy proceedings with the intention of restoring the main house and residing therein. However, after acquiring the property, it was determined that due to its age and condition, substantial repairs and renovations would be necessary. Ultimately, the Petitioners filed the instant Petition and propose renovations and additions as shown on the plan submitted.

Mr. Grieves offered substantial testimony as to the history of the property. Apparently, the original house was constructed sometime between 1815 and 1825. The house was built of stone in an "L" shape and featured a cedar shingle roof and a kitchen area to the rear. In approximately 1842, a two-story addition was constructed to the rear of the house and a further addition years later. Presently, the house is not occupied and is in need of substantial repair. In this regard, Mr. Grieves indicated that sub-surface conditions under the house are poor and that portions of the building have settled to a significant degree. He explained in detail the work that would be required in order to restore and save the house and indicated that a portion of the existing structure need be razed for the house to be saved. Specifically, the rear wing of the building will be removed so that work can be done to replace and re-establish the building's foundation. He described a lengthy process by which cement will be piped under the house to provide an acceptable foundation to the building and appropriate support. In Mr. Grieves' expert opinion, the removal of a portion of the structure to save the main structure is the only approach possible. He noted that such renovation would be expensive; however, the Petitioners are committed to saving and restoring as much of the building as possible.

Mr. Grieves also described the proposed addition and submitted building elevation drawings of the proposal at the hearing. To contrast the historic structure, the addition will be more contemporary in character. Mr. Grieves discussed the internal layout and floor plan that is designed to accommodate the property owners' circumstances. Specifically, Mr. Hamilton

ORDER FESSOR FILING
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apparently owns a substantial eastern art collection that will be displayed within the addition. Moreover, Mrs. Hamilton is of a religious faith that requires the highest room in the house to be utilized for meditation purposes. These factors were taken into account in the design of the proposed addition.

Testimony and evidence was also presented regarding the smaller one-story frame dwelling that exists on the site. Originally, a tenant who helped maintain the property occupied this building. Presently, the site does not have active agricultural operations, per se. However, Mr. & Mrs. Hamilton are ardent amateur gardeners and anticipate pursuing that hobby on the property. They propose to preserve the one-story frame house and may use it for a variety of purposes. These could include to provide accommodations for family members, i.e. children or elderly relatives, or to serve as a guesthouse for visitors. Additionally, the house could ultimately be used to accommodate someone who might assist with the maintenance of the property as Mr. & Mrs. Hamilton age.

The Petitioners' presentation was thorough and addressed all of the concerns and issues presented within the Petition for Special Hearing. Mr. Bosley appeared in opposition and is no doubt familiar with the area and property, having been a long-time resident of this locale. Although appreciative of his concerns, he lacks the technical expertise and familiarity with conditions of the property to credibly contradict Mr. Grieves' testimony about what work need be done to save the house. Mr. Bosley indicated he would prefer that the entire dwelling be restored. Although I appreciate that position, I accept Mr. Grieves' contention that a portion of the structure must be lost to save the primary component of the building.

Based upon the testimony and evidence offered, I am persuaded to grant the Petition for Special Hearing. In my judgment, the overwhelming testimony and evidence offered were persuasive that the Petitioners' plans are well thought out and appropriate for this site and will allow continued utilization of this property for a permitted purpose. Thus, the Petition shall be granted.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this ______ day of December, 2002 that the Petition for Special Hearing to approve a waiver, pursuant to Sections 26-171 and 26-172(b) of the Baltimore County Zoning Regulations (B.C.Z.R.) of Sections 26-203(c)(8) and 26-278 of the Baltimore County Code (B.C.C.) to permit renovations to and construction of an addition to a historic structure, identified on the Maryland Historic Trust inventory as #BA-188, and to approve an existing accessory structure as a caretaker's house, guest house or tenant house, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

AWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

LES:bjs

IN THE MATTER OF
THE APPLICATION OF
DOUGLAS & TSOGNIE HAMILTON LEGAL OWNERS /PETITIONERS FOR A
SPECIAL HEARING ON PROPERTY
LOCATED ON THE N/SIDE OF WESTERN
RUN ROAD, 950' E OF CUBA ROAD
(1900 WESTERN RUN ROAD)

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BEFORE THE

* COUNTY BOARD OF APPEALS

k OF

BALTIMORE COUNTY

Case No. 03-192-SPH

OPINION

This case represents an appeal to the Baltimore County Board of Appeals from a decision of the Zoning Commissioner dated December 16, 2002 in which the "Opinion and Order" of the Zoning Commissioner granted a request for special hearing. A timely appeal was filed by the Appellant on January 14, 2003. A public hearing was scheduled before the Board on February 26, 2003 at 10:00 a.m., due notice having been provided to all interested parties.

The day of the hearing, the Board's legal secretary, Ms. Theresa Shelton, received a telephone call that morning from Mr. Kenneth Bosley, the Appellant, requesting a postponement of the hearing due to inclement weather. Snow had begun falling at daybreak, and Mr. Bosley cited that, because of his age and road conditions, he would request an oral postponement. The Board's legal secretary indicated that she would pass along his request to the panel chairman.

The Board had scheduled a public deliberation on another case for that date at 9:00 a.m. with two Board members also remaining to sit for this case and one other Board member coming in especially for that public deliberation. Because of the weather, that deliberation commenced at 9:45 a.m., and was concluded at 10:30 a.m.

At 11:00 a.m., the chairman convened this hearing. Robert A. Hoffman, Esquire, representing the Petitioner, was present, along with several witnesses prepared to go forward with the hearing. While Mr. Hoffman was understanding of the Appellant's oral request for a

postponement, he requested that the Board proceed since his witnesses were present, and his initial Motion would be an oral "Motion to Dismiss" based on the Appellant's lack of standing before the Board. The Rules of Practice and Procedure of the County Board of Appeals provides, under Rule 2, *Notice*:

- b. Postponements and continuances will be granted at the discretion of the board only upon request in writing by an attorney of record, addressed to the board and with a copy to every other attorney of record, or party of record (if not represented by counsel) entitled to receive notice, in accordance with section 500.11 of the Baltimore County Zoning Regulations, setting forth good and sufficient reasons for the requested postponement.
- c. No postponement shall be granted within fifteen (15) days prior to the hearing date except in extraordinary circumstances and for a reason satisfactory to the board, given by the party requesting such postponement indicating that the circumstances requiring the postponement are of an unusual and extraordinary nature.

The Board is cognizant that weather can be a valid reason for requesting a postponement, and such requests are to be carefully considered by the Board in granting or denying such a request. In the instant case, four members of the Board were able to satisfy their administrative responsibilities in spite of the weather — all coming from various areas of the County, the chairman also being a senior citizen in excess of the age of 65. The public schools of Baltimore County were not closed and, more importantly, the Circuit Court for Baltimore County was open. This Board follows the practice that, if the Circuit Court is closed, the Board also will not hold scheduled public hearings. The Board also takes note of road conditions that were not exceptionally in such poor condition that an effort on the part of the Appellant to appear at the hearing was not unreasonable. Further, if a private road was involved, sufficient time had passed since the significant snowfall of February 15-17 to clear such private driveways. In addition,

Petitioner had a substantial number of witnesses who were present and prepared to go forward with the hearing.

The Board, in light of the total circumstances, did not believe that "extraordinary circumstances were present," and that the circumstances offered by the Appellant were "of an unusual and extraordinary nature." The Board, accordingly, did not grant the Appellant's oral request for a postponement.

Mr. Hoffman offered a "Motion to Dismiss" on the basis that Mr. Bosley had no standing to bring this appeal. A number of exhibits were accepted into evidence:

Petitioner's Exhibit #1, a two-page ADC map reflecting the location of Appellant's home and the subject site.

Petitioner's Exhibit #2, a Maryland Department of Planning map reflecting parcel #179, the subject site east of Western Run Road and Cuba Road, and west of the intersection of Western Run and Gerber's Lane.

Petitioner's Exhibit #3, a Maryland Department of Assessment and Taxation Real Property Data Search Analysis.

Petitioner's Exhibit #4, a recent decision of the Board of Appeals (DIA-Aylesbury Limited Partnership /Case No. 02-434-A).

Petitioner's Exhibits #5 and #6, Court decisions submitted for the Board's review.

Petitioner's Exhibit #7, copies from the Baltimore County Code relative to planning, zoning, and subdivision control.

Petitioner's Exhibit #8, "Standards and Guidelines for Architectural and Historical Investigations in Maryland."

Petitioner's Exhibit #9, certain applications and permits issued on 2007 Greenspring Valley relative to conversion of an existing garage to a great room and a side addition for a mud room, storage area, and three-car garage.

The case itself involves certain renovations of an historic structure identified as #BA-188 of the Maryland Historic Trust and construction of an addition to the same facility. The special hearing requested a waiver to historic sections of the *Baltimore County Code* to renovate and

construct an addition to an historic structure and to approve an existing accessory structure as a caretaker's house, guest home, or tenant house.

The property is located in an R.C. 2 zone and improved with a 2 ½ story dwelling that is listed as MHT BA-188 on the Maryland Historic Trust inventory. The subject property consists of 34,846 acres +/- situated on the north side of Western Run Road, east of Cuba Road in Monkton. Mr. Hoffman argued that Mr. Bosley did not have standing to bring this *de novo* appeal to the Board. Mr. Bosley's mailing address is Post Office Box 334, Cockeysville, MD 21030. The property in question is to the west of I-83, to the intersection of Western Run and Gerber's Lane, and slightly to the east of Cuba Road and Western Run Road.

Referencing Petitioner's Exhibits #1 and #2, Mr. Hoffman offered 17 pages from the Department of Assessment and Taxation covering Tax Map 33 of the Department of Assessment and Taxation relative to parcel ownership, which the Board members have examined. There is only one Bosley reflected on that document (Donald W. Bosley, No. 08-0802059121, Gerber's Lane, N, 78; Donald Wet. Bosley, No. 08-0802059174, Gerber's Lane, N, 000, 81; Donald Matt Bosley, No. 08-0802059110, 1222 Gerber's Lane, D, 000, 159; Donald W. Bosley, 08-0802059120, 1324 Gerber's Lane, N, 000, 160.

Mr. Hoffman cited recent cases decided by the Board relative to citizen standing, according to the "sight and sound" rationale, in addition to case law that applied and also application of generalized citizen participation.

Mr. Hoffman made a proffer as to the testimony that his witnesses were prepared to make before the Board, and also questioned from a legal standpoint whether or not any development as contemplated by the *Baltimore County Code* was really involved in this matter, citing various sections of the Development Regulations under BCC § 26-168 through § 26-278. It was his

conclusion that the current process is not a proper one and amounted to a taking of one's property without due process of law.

The Board members recessed to examine their notes, the evidence submitted by Mr. Hoffman, and to review the case law that applied. As to the question of standing, the Board has considered the general statutory authority which conveys jurisdiction to the County Board of Appeals. That authority resides in Article 25A, § 5(U) of the *Annotated Code of Maryland*. It provides for "petition by any interested party...as shall be specified from time to time by such local laws enacted under this section."

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

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

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

Previous decisions of the Maryland Court of Appeals indicate that a person aggrieved by the decision of a board of zoning appeals is one whose personal and property rights are adversely affected by the decision of that board. The decision must not only affect the matter in which the protestant has a specific interest or property right, but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally. (*Brynirski*, 247 Md. 144, 230 A.2d 289; see also *Sugarloaf Citizens Assn*, 344 Md. 288, 686 A 2d 605; and *Du Bay v. Crane*, 240 Md. 180, 185; 213 A.2d 487 [1965]) While noting that standing

is to be decided on a case-by-case basis, the Maryland Court of Appeals has provided some factors to consider when making that determination:

- a) It is sufficient that the facts constituting aggrievement appear in the petition for appeal either by express allegation or by necessary implication. (Town of Somerset v Montgomery County Board of Appeals, 245 Md. 52; 225 A.2d 294 [1966]
- b) An adjoining, confronting, or nearby property owner is deemed, prima facie, to be specially damaged and therefore a person aggrieved. A person challenging the fact of aggrievement has the burden of denying such damage in his answer to the petition for appeal and of coming forward with evidence to establish that the Petitioner is not, in fact, aggrieved....
- c) The person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved. (Wilkinson v. Atkinson, 242 Md. 231; 218 A2.d 503 [1966])

In the instant case, the Board notes that:

- (a) In his Petition for Appeal, no specific reasons are provided for the appeal;
- (b) Based on familiarity with the area in question and the ADC maps and tax parcel maps, that the Appellant is not "an adjoining, confronting, or nearby property owner" to the subject site. The Board members themselves are familiar with the general locale of the subject site, and the location of Mr. Bosley' residence to the west of York Road. One member of the Board is a former residence of the Butler area of Baltimore County; another works in the Hunt Valley area; and the third member is familiar by way of real estate activities. Based on this experience, Mr. Bosley's property is not and "adjoining, confronting or nearby property" to the subject site; and
- (c) Factually, as a property owner far removed from the subject site...ordinarily...considered a person aggrieved.

Additionally, the Board considered the many cases decided by the higher Maryland Courts that, generally, to be considered an aggrieved party, the complaining property owner must be in "sight or sound" range of the property that is the subject of this complaint. (Maryland-National Cap P.N.P. v. Rockville, 269 Md. 240, 248; 305 A.2d 122 [1975])

The Board members are familiar with the general locale of the subject site. One member of the Board is an attorney familiar with the area; another works in the Hunt Valley area; and the third member is familiar by way of real estate activities. Based on that experience and the factual analysis of the ADC and tax parcel maps, it is obvious to the Board members that Mr. Bosley is not "within sight or sound of the subject site," that is, to the west of I-83. Mr. Bosley's residence is considerably to the east of I-83 in proximity to York Road. It is not reasonable to conclude that he is within "sight or sound" of the subject dwelling.

The Board notes that Mr. Bosley is the only Appellant in this matter and that no official representatives of the Baltimore County Historical Society or the Maryland Historic Trust ever participated in same. Mr. Bosley appears to be an individual citizen opposed to the project expressed in the Petition for Special Hearing. The Board considers his appeal to be a generalized one. However, to permit generalized appeals from any decisions of the Zoning Commissioner would create a multiplicity of appeals by anyone, at anytime, anywhere who disagreed with those decisions. In the situation as presented by this case, that premise is solidified by the other numerous cases that require that a complaining property owner must be in "sight or sound" range of the property that is the subject of his complaint.

For the reasons cited, the Board will grant the Petitioner's "Motion to Dismiss." Having so ruled, the Board does not deem it necessary or proper to consider other reasons raised by Mr. Hoffman.

ORDER

THEREFORE, IT IS THIS <u>34th</u> day of <u>Morell</u>, 2003 by the County Board of Appeals of Baltimore County

ORDERED that, for the reasons as stated in the foregoing Opinion, Petitioner's Motion to Dismiss be and the same is hereby GRANTED; and it is further

ORDERED that the appeal filed in Case No. 03-192-SPH be and the same is hereby DISMISSED, and the decision of the Zoning Commissioner remains as issued on December 16, 2002.

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

> COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Charles L. Marks, Panel Chairman

Melissa Moyer Adams



County Board of Appeals of Baltimore County

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

March 24, 2003

Mr. Kenneth Bosley P.O. Box 334 Cockeysville, MD 21030

> RE: In the Matter of: Douglas and Tsognie Hamilton - Legal Owners / Petitioners / Case No. 03-192-SPH

Dear Mr. Bosley:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Burico/tts

Administrator

Enclosure

Kenneth Bosley /PO Box 334 c: Robert A. Hoffman, Esquire Mr. and Mrs. Douglas Hamilton Brian DiCara /McKee & Associates Office of People's Counsel Pat Keller, Planning Director Lawrence E. Schmidt, Zoning Commissioner Arnold Jablon, Director /PDM





to the Zoning Commissioner of Baltimore County

fan tha nyanantu lagatad at	1900 Western Run Road
for the property located at _ which is	presently zoned RG-2

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

SEE ATTACHED

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

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

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

	is the subject of this Petition.
Contract Purchaser/Lessee:	Legal Owner(s):
	Douglas We Hamidton, Jr.
Name - Type or Print	Name - Type or Print
Signature	Signakure Signakure
·	Teognie W. Hamilton
Address Telephone No.	Name - Type or Print
City State Zip Code	Signature Coserpus Commendes
Attorney For Petitioner:	1435 Corbett Road (410) 771-4301
	Address Telephone No.
Robert A. Hoffman, Attorney	Monkton, Maryland 21111
	City State Zip Code
Robert A. Hillum / Jull	Representative to be Contacted:
Signature	Brian A. Dicara
Venable, Baetjer & Howard	c/o McKee & Associates, Inc.
Company	Name
210 Allegheny Avenue (410) 494-6262	5 Shawan Road, Suite 1 (410) 527-1555
Address Telephone No. Towson, Mary Land 21204	Address Cockeysville, Maryland 21030
City State Zip Code	
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600-03-192-SPH	UNAVAILABLE FOR HEARING
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PETITION FOR SPECIAL HEARING 1900 Western Run Road

- 1. Special Hearing to approve a waiver pursuant to Sections 26-171, 26-172(b), 26-203(c)(8), and 26-278 of the Baltimore County Code to renovate and construct an addition to a historic structure (MHT #BA-188).
- 2. Special Hearing to approve an existing accessory structure as a caretaker's house, guest house or tenant house.

TO1DOCS1/DHK01/#147197 v1

September 6, 2002

ZONING DESCRIPTION OF 1900 WESTERN RUN ROAD 34.846 ACRES +/-BALTIMORE COUNTY, MARYLAND

BEGINNING at a point in the centerline at Western Run Road, which is 60 feet wide, said point being 950 feet easterly of the centerline of Cuba Road, which is 60 feet wide; thence running along the centerline of Western Run Road,

- 1) North 89 degrees 53 minutes 50 seconds East, 900.44 feet; thence leaving said road and running the following seven (7) courses and distances:
- 2) North 20 degrees 30 minutes 03 seconds East, 1,958.78 feet,
- 3) South 74 degrees 27 minutes 44 seconds West, 1,042.32 feet,
- 4) South 20 degrees 30 minutes 03 seconds West, 340.80 feet,
- 5) South 02 degrees 25 minutes 01 seconds East, 119.84 feet,
- 6) South 27 degrees 43 minutes 01 seconds West, 153.04 feet,
- 7) North 61 degrees 50 minutes 57 seconds West, 27.69 feet, and
- 8) South 20 degrees 30 minutes 03 seconds East 1,063.10 feet to the point of beginning.

CONTAINING 34.846 acres of land, more or less. Said property recorded in the Land Records of Baltimore County, Maryland in Liber 12879, folio 687.

Shawan Place • Suite 1 • 5 Shawan Road • Cockeysville, MD 21030 Tel: 410-527-1555 • Fax: 410-527-1563 • E-Mail: @mckeeinc.com

03-192-5PH

APPEAL SIGN POSTING REQUEST

CASE NO.: 03-192-SPH

Douglas and Tsognie Hamilton - LEGAL OWNERS

1900 Western Run Road, Monkton

8th ELECTION DISTRICT

APPEALED: 1/14/2003

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

****	****COMPLETE AND RETURN BELOW INFORMATION*****
	CERTIFICATE OF POSTING
ГО:	Baltimore County Board of Appeals 400 Washington Avenue, Room 49 Towson, Maryland 21204
Atten	tion: Kathleen Bianco Administrator
RE:	Case No.: 03-192-5PH
	Petitioner/Developer:
	s to certify that the necessary appeal sign was posted conspicuously on the property ed at: 1900 Western Run Rd
The s	ign was posted on $1/24$, 2002/3
Ву:	Bus Heur
	(Signature of Sign Poster) GARY FREUND (Drive of Name)
	(Printed Name)

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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: #03-192-SPH

1900 Western Run Road

N/side of Western Run Road

N/side of Western Run Road

Sth Election District - 3rd Councilmanic District

Legal Owner(s): Douglas and Tsognie Hamilton

Special Hearing: to approve a waiver to historic sections of the Baltimore County Code to renovate and construct an addition to a historic structure. And to approve an existing accessory structure as a caretaker's house, guest house or tenant house.

tenant house. 1

Hearing: Monday, December 9, 2002 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT

Zoning Commissioner for Baitimore 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.

11/245 Nov. 21

11/245 Nov. 21

CERTIFICATE OF PUBLICATION

11/22,2002	
THIS IS TO CERTIFY, that the annexed advertisement was pub	lished
in the following weekly newspaper published in Baltimore County,	Mđ.,
once in each ofsuccessive weeks, the first publication appe	aring
on 1121,20 <u>02</u>	
The Jeffersonian	
☐ Arbutus Times	
☐ Catonsville Times	
☐ Towson Times	
Owings Mills Times	
□ NE Booster/Reporter	
North County News	
2 Wilkings	

LEGAL ADVERTISING

APPEAL STONE OSTING REQUEST

CASE NO. 03-192-SPH

Douglas and Tsognie Hamilton - LEGAL OWNERS

1900 Western Run Road, Monkton

8th ELECTION DISTRICT

APPEALED: 1/14/2003

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

******COMPLETE AND RETURN BELOW INFORMATION****

CERTIFICATEDE POSTING

	RE: Case No.: 03-192-5PH
•	Petitioner/Developer: Douglas ANI
	TSOGINE HAMILTON
	Date of Hearing/Closing: 12/9/02
Paltimore County Department of Permits and Development Management County Office Building, Room 111 11 West Chesapeake Avenue Towson, MD 21204	
Attention: Ms. Gwendolyn Stephens	
Ladies and Gentlemen:	
This lesser is to certify under the nenalties :	of perjury that the necessary sign(s) required by law
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were posted conspicuously on the property The sign(s) were posted on	y located at 1900 NESTERN RUN RUL (Month, Day, Year) Sincerely, (Signature of Sign Poster and Date) SSG ROBERT BLACK (Printed Name) 1508 Leslie Rd (Address) Dundalk, Maryland 21222



AJ:ggs

Baltimore County
Department of Persits and
Development Management



(Revised 09/24/96)

Development Processing
County Office Building
III West Chesapeake Av
Towson. Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations 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 which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR
FOT mewedanar approximately and the second s
For newspaper advertising:
Tremino 1907 2 1911 (PH
Petitioner: Douglas Teans Hamilt
Location: 1900 Western Dun Road
TOCATION: TOCATION HOW KOOK
PLEASE FORWARD ADVERTISING BILL TO:
AND THE BILL TO:
NAME: Douglas & Tougnie/ Hamilton
ADDRESS: 4435 Corbett Rd
Monkton, Na 21111
PHONE NUMBER: (40) 711-4301

TO: PATUXENT PUBLISHING COMPANY

Thursday, November 21, 2002 Issue - Jeffersonian

Please forward billing to:

Douglas and Tsognie Hamilton 1435 Corbett Road Monkton, MD 21111 410-771-4301

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baitimore 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: 03-192-SPH

1900 Western Run Road

N/side of Western Run Road, 950 feet east of Cuba Road

8th Election District – 3rd Councilmanic District Legal Owner: Douglas and Tsognie Hamilton

Special Hearing to approve a waiver to historic sections of the Baltimore County Code to renovate and construct an addition to a historic structure. And to approve an existing accessory structure as a caretaker's house, guest house or tenant house.

HEARING: Monday, December 9, 2002 at 2:00 p.m. in Room 407, County Courts

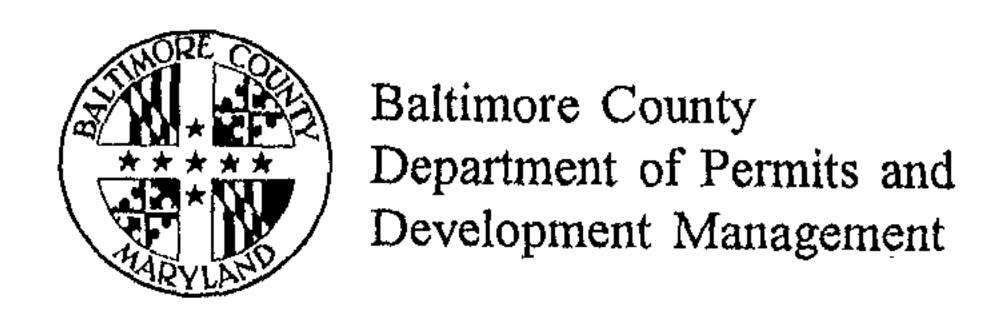
Building, 401 Bosley Avenue

rantelica p. Scimmer

LAWRENCE E. SCHMIDT ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

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



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

November 1, 2002

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Arnold Jablon Director

AJ:rih

C: Robert A. Hoffman, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson 21204

Douglas and Tsognie W. Hamilton, 1435 Corbett Road, Monkton, MD 21111 Brian Dicara, McKee & Associates, Inc., 5 Shawan Rd, Suite 1, Cockeysville 21030

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

2 pg ADC Map Mu Mus atell Standards Kundeline for Orcheletural & Nextracal Shouling 11/10) IN THE MATTER OF: * BEFORE THE

THE APPLICATION OF * COUNTY BOARD OF APPEALS

DOUGLAS AND TSOGNIE HAMILTON * OF

LEGAL OWNERS/PETITIONERS FOR * BALTIMORE COUNTY

SPECIAL HEARING ON PROPERTY * Case No. 03-192-SPH

LOCATED ON THE N/SIDE OF * February 26, 2003

WESTERN RUN ROAD, 950' E OF *

CUBA ROAD

(1900 WESTERN RUN ROAD)

8th ELECTION DISTRICT

3rd COUNCILMANIC DISTRICT

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthoue, 400 Washington Avenue, Towson, Maryland, at 10:50 a.m., February 26, 2003.

ORIGINAL

Reported by:

C.E. Peatt

Multi-Page TM

	Page 2		Page	, 4
1	BOARD MEMBERS:	1	the Board members were either on their way, or were here,	
2		2	and Mr. Hoffman intended to appear and, therefore,	•
3	CHARLES L. MARKS, Chairman	3	preliminarily, we would not grant a postponement on the	
4	MELISSA MOYER ADAMS	4	record.	
5	RICHARD K. IRISH	5	Mr. Bosley indicated that he could not come	
6		6	because of his age which I think is about seventty	
7		7	years of age and also he couldn't get out of his	
8		8	driveway. So having stated that, Mr. Hoffman, are there	-
9	APPEARANCES:	9	any other comments?	
	ROBERT A. HOFFMAN, Esquire	10	MR. HOFFMAN: Well, we are prepared to go forward	
[10	On behalf of Petitioner	11	if the Board's ruling is that we are to go forward. We're	
11		1	ready to go. I have some preliminary	
12		13	THE CHAIRMAN: Do you have any preliminary	
13		14	motion?	
14		15	MR. HOFFMAN: motions that I would make, and	
15		ļ	maybe I need some guidance from the Board. I see this	
16		ι	case as being split into two parts.	
17		18	One part, the petition for special hearing, was	
18		19	filed on two issues. One concerned the existing house on	
19		1	Mr. Hamilton's property at 1900 Western Run Road, has an	1.
20		ł	MHT number BA188, and Mr. Hamilton applied for a permit	
21		}		•
	Page 3	<u>} </u>	Page	
1	PROCEEDINGS	l	demolish a portion of one of the additions to the main	
2	* * * *	1	house and was informed that he could not have his permit	
3	THE CHAIRMAN: Good morning. Let the record show	1	and was told he must file a petition for a waiver from	
4	the County Board of Appeals for Baltimore County is in its	ſ	certain sections of the Baltimore County Code, which he	
5	regularly scheduled session for today, Wednesday, February	ļ	did, and we had the hearing before the Hearing Officer	
6	26, 2003, delayed until ten minutes to eleven because of		below.	٠
,	the weather, relative to Case Number 03-192-spH, in the	7	The second part of the case concerns a second	
8	matter of Douglas and Tsognie Hamilton, legal owners, 1900	8	dwelling that is on the property. It's been there for	
9	Western Run Road, concerning an appeal from a decision of	1	quite sometime. It was there and built during the tenure	
ł	the Zoning Commissioner under date of December 16, 2002,	ſ	of the previous owners, the Bouche's even prior to the	
11	in which a petition for special hearing was granted.	J	Bouche's and it had been used as a tenant house, and	
12	Will counsel please state his appearance and	12	the zoning office basically said if you're filing this	
13	representation, please.	13	other form, we would like you to confirm that the existing	
14	MR. HOFFMAN: Yes. Rob Hoffman and Patsy Malone,	14	house can remain on the property as a tenant house.	
15	representing the petitioner and property owner.	15	We filed it in the alternative. Mr. Hamilton's	
16	THE CHAIRMAN: Thank you. For the record, Mr.	16	intentions are to keep it as, really, a guesthouse. A	
17	Bosley called the administrator of the Board's office this	17	family member might live there, but not for purposes of	
18	morning and indicated that he would not be able to make	18	renting it out as a second dwelling.	
19	the hearing because of the weather.	19	So it seems clear to me under the R.C. 2 zone	ļ
20	For the record, it did start to snow in the late	20	that a tenant house is permitted by right. I'm not sure	i
21	hours of the morning, and the administrator told him that	21	why we had to have a hearing on that, either, but we filed	;

Multi-Page TM Page 6 Page 8 1 for that, so that's how I see the case split into two 1 property is, I would appreciate it. 2 parts. MR. HOFFMAN: Hopefully, I've gotten it right, The first issue that I would like to discuss in 3 I'll put a big circle around it because, in this case, if 4 the form of a motion with the Board would be a motion to 4 he's anywhere near the intersection of York Road and just 5 dismiss the appeal based on standing. 5 about any other road, I don't care where on York Road, Now, Mr. Bosley is not here. Mr. Bosley 6 he's not within sight or sound of this location. 7 indicated to the Board in the phone call that he lives off THE CHAIRMAN: The Chairman is familiar with this 8 York Road near Thornton Mill Road, and I believe that's 8 location, but for the record, if you would supply those. 9 the case. MR. HOFFMAN: What I did was, taking the tax map I pulled the tax records information that would 10 number 33, I ran a search to see if Mr. Ken Bosley owned 11 indicate that his property is located on York Road just any property on map 33, and this is what I produced, and I 12 below where Thornton Mill and York Road come together. 1 12 could not find Ken Bosley listed anywhere. 13 brought a copy of the ADC map just so the Board could see There are Bosleys that own property on map 33. 14 where it is. I will make extra copies. 14 There's a Donald Bosley, et al, owns two small parcels in But if you turn to map twelve, you will see York 15 15 the vicinity of Gerber Lane and Western Run Road, but that 16 Road and Thornton Mill Road come together at this 16 also is substantially removed from the site. 17 particular location. (Indicating.) I believe that is Mr. It certainly is closer and essentially in the 17 18 Bosley's driveway. He's located between a water tower at 18 same geographic area, but I can find no evidence that Mr. 19 Loveton Farms and Thornton Mill Road on the east side of 19 Ken Bosley has any interest in the property. 20 York Road. THE CHAIRMAN: We'll take this in as Petitioner's The property in question today is located to the 21 21 No. 3.

Page 7

- 1 west of York Road, to the west of I-83, off of map 12,
- 2 onto map 11. It's essentially at the intersection of
- 3 Western Run Road and where Cuba Road comes in. It's about
- 4 in this location here (indicating), I would say.
- THE CHAIRMAN: Would you mark that? So he's to
- 6 the west of I-83?
- MR. HOFFMAN: Yes. As the crow flies, it's
- 8 probably five miles.
- THE CHAIRMAN: Is he within sight or sound of the
- 10 property in question?
- 11 MR. HOFFMAN: No, not unless they're going to
- 12 make a movie about him. I also did some research, and I'd
- 13 like to submit this as an exhibit. This is a copy of the
- 14 tax map, and it shows the location of the property, parcel
- 15 179. I have extra copies for everybody.
- 16 THE CHAIRMAN: You will make us a copy of the ADC
- 17 map?
- 18 MR. HOFFMAN: Yes, sir.
- 19 THE CHAIRMAN: We'll take those in as
- 20 Petitioner's No. 1, and this will be Petitioner's No. 2.
- 21 If you would identify on those maps exactly where his

- MR. HOFFMAN: Please. I've also made copies --
- 2 and I know the Board is aware of it -- but I will give you
- 3 a copy of the Board's ruling in the DIA Aylesbury Limited
- 4 Partnership case where the Board granted a motion for
- 5 dismissal based on standing.
- THE CHAIRMAN: I believe I was the Chair of that
- 7 particular case.
- MR. HOFFMAN: Yes, you were the Chairman in that
- 9 case, and you relied on two cases, and I have copies of
- 10 those cases if the rest of the Board would like them, and
- 11 I'd be happy to provide them.
- THE CHAIRMAN: Why don't you provide them? I'm
- 13 familiar with the cases, but I think the other two Board
- 14 members would appreciate that.
- 15 MR. HOFFMAN: If you look at page five of your
- 16 decision, Mr. Chairman, the last paragraph, I think it
- 17 sums up where I think we are in this case.
- It says, To prevent generalized appeals from any 18
- 19 decisions of the Zoning Commissioner would create a
- 20 multiplicity of appeals by anyone at any time and anywhere
- 21 who disagreed with those decisions. That premise is

10

1 solidified by other numerous cases that require that a

2 complaining property owner must be in sight or sound range

3 of the property that is the subject of this complaint.

4 And Ms. Malone just provided you with a copy of the two

5 cases that are cited for that particular principle.

THE CHAIRMAN: We'll take those in as your next

7 exhibits which will be No. 5 and 6.

8 MR. HOFFMAN: Mr. Chairman, that would be our

9 argument on the standing issue, that we can find no

10 evidence that any property, really, any property that's

11 associated with the name "Bosley" is within sight or sound

12 of this particular location where we believe Mr. Kenneth

13 Bosley's property is, and where he resides is clearly well

14 well beyond the imagination that he's within sight or

15 sound of this particular property.

16 So on that basis, that would be our motion to

17 dismiss for lack of standing

I do have other arguments on the underlying

19 issues of the substance of the special hearing, and I'd be

20 happy to just state what those are for the Board, and I

21 would like to at least put on the record what those

Page 10 Page 12
1 opportunity to order a transcript and respond by way of a

2 brief, not another hearing, and then the Board will

3 determine what course of action to take.

4 MR. HOFFMAN: Let me propose something else. My

5 thought is that Mr. Bosley, if he chooses to take an

6 appeal, will likely take the appeal on the basis that he

7 was not granted the postponement, and it won't matter what

8 we say today.

9 He's going to go to the Circuit Court, if he

10 chooses to go there, and he's going to argue that we have

11 to come back, that he needed to have an opportunity to

12 cross examine witnesses, and he was denied his due process

13 right.

21

So I think, in that regard, it would be a waste

15 of time for us to put on the evidentiary part of our case.

16 I would be happy to proffer what our witnesses would say

17 so that you all can hear it, if you would like to know

18 what the substance of our case is, but I don't see how Mr.

19 Bosley's position would change one iota if we were to take

THE CHAIRMAN: Basically, it's your call, Mr.

20 the time to put on our evidentiary part of the case.

Page 11

1 arguments are in case they become ---

THE CHAIRMAN: You don't want to put on a full

3 evidentiary hearing so the record is complete?

4 MR. HOFFMAN: 1 do.

5 THE CHAIRMAN: You do?

6 MR. HOFFMAN: It depends on how the Board wants

7 to rule. I would be happy to take some direction from the

8 Board on this.

THE CHAIRMAN: My suggestion would be, that since

10 all your people are here, as I understand it, and you're

11 ready to go forward -- how long will it take to present

12 your case, do you think?

MR. HOFFMAN: It probably would take no more than

14 an hour. However, if there's an appeal, let's say you

15 granted our Motion to Dismiss --

THE CHAIRMAN: Normally, in these cases, we'll

7 take the motion under advisement and move into the

18 evidentiary portion so the record is complete.

9 And if Mr. Bosley wants to have a transcript,

20 depending on the way the Board goes after you're finished

21 with your case, what I would like to do is to give him the

1 Hoffman, whichever way you want to do it. But I will say

Plage 13

2 whatever we do today is going to be followed up with a

3 letter to Mr. Bosley indicating what transpired today,

4 giving him an opportunity to respond by a brief, not a

5 public hearing, but just a brief, to counter what you're

6 saying.

7 And then the Board, after receiving his response,

8 will meet and determine what course of action we are going

9 to take.

MR. HOFFMAN: Well, if that's the case, that

11 seems like to run counter to raising a Motion to Dismiss.

12 What I would like the Board to do -- I can't obviously

13 make the Board do anything -- but I would like the Board

14 to rule on the Motion to Dismiss after I finished

15 describing what my other motion would be for dismissal.

You may like the second one better, I don't know.

17 And then Mr. Bosley will have his chance to respond at the

The their term bostof will have instituted to respect the

18 Circuit Court. I don't believe his response to you would

19 be any different than it would be to the Circuit Court

THE CHAIRMAN: You're probably right. I see the

21 other panel members seem to agree with you. Why don't you

Page 14

1 make your proffer, and we'll continue.

- MR. HOFFMAN: Thank you very much. The substance
- 3 of the waiver case -- and has the Board had these cases.
- 4 before?

17

- THE CHAIRMAN: I think the Chairman has had a
- 6 number of cases. The Landmark's Preservation case.
- MR. HOFFMAN: Okay. Let me get my bearings here.
- 8 If I could approach?
- THE CHAIRMAN: Certainly.
- MR. HOFFMAN: When you look at the Baltimore 10
- 11 County Code, you look under Section 26-278, it talks about
- 12 preservation of natural or historic features. It reads,
- 13 Natural features including watercourses, waterfalls,
- 14 beaches and significant vegetation, and historic
- 15 structures or sites identified on any of the lists
- 16 referred to in Section 26-203(c)(8) must be preserved.
 - THE CHAIRMAN: Is that going to be an exhibit?
- 18 MR. HOFFMAN: Yes. I want to go back and see
- 19 how Section 26-278 is triggered. It says -- it's part of
- 20 division three --- it says in division three that all
- 21 development -- and you look at Section 26-261 -- it says

- 1 addition isn't what triggered the hearing today. It was
 - 2 the proposed, quote, demolition, of a portion of a
 - 3 structure with an MHT number.
 - Well, I looked at the definition of development,
 - 5 which is also contained in the Code under 26-168, for the

Page 16

- 6 definition of development. It's in alphabetical order.
- It says development means -- and the only one
- 8 that -- well, I will read it all -- it's the improvement
- 9 of property for any purpose involving buildings. Two is a
- 10 subdivision. Three is a combination of any two or more
- 11 lots, tracts or parcels of property for any purpose. Four
- 12 is subjecting the property to the provisions of the
- 13 Maryand Condominium Act. And five is preparation of land
- 14 for any of the purposes listed in subsections one through
- 15 four.
- Well, the razing of a structure or a portion of 16
- 17 the structure doesn't fall under any of those particular
- 18 categories.
- Nor has Baltimore County ever, to my knowledge, 19
- 20 required going through the development regulations, going
- 21 to the Development Review Committee for some sort of an

- 1 the general design standards and requirements set forth in
- 2 this division are intended to provide criteria for the
- 3 preparation and review of proposed development, subject to
- 4 the provisions -- (b) -- subject to the provisions of
- 5 26-170 and 172 -- 170 is the general exception for
- 6 agriculture, 172 are the waiver provisions -- and all
- 7 development shall meet the standards and requirements
- 8 contained in this division and shall conform to the
- 9 policies and intent of these regulations.
- Okay. So 26-261 says if you have development, 10
- 11 you have got to meet the following standards and
- 12 guidelines. I don't think I included a copy of that.
- 13 THE CHAIRMAN: It's in the code?
- 14 MR. HOFFMAN: 26-261. It's right here. So the
- 15 first question to be answered is, is what's being proposed
- 16 here development?
- 17 What has triggered the requirement for a hearing
- 18 in this case was the request to remove some additions that
- 19 were made to this particular structure, and then we want
- 20 to build, later, build an addition on the property.
- 21 Now, those are two different things. The

- Page 17 1 exemption if one comes in and asks for a permit to raze a
- 2 structure.
- So my first argument would be that this process
- 4 which has recently been invented, or concocted, and maybe
- 5 in response to some very good reasons -- I really don't
- 6 want to get into the reasons why this particular process
- 7 was devised -- but it doesn't seem to hold water to me
- 8 when you read the county code.
- One should be able to go ahead and demolish, raze
- 10 a structure without having it being considered development
- 11 and triggering the process we have been told we must go
- 12 through.
- So that, in essence, is sort of the first step. 13
- 14 Is it development? And that's really only Part A.
- Part B is, okay, if the razing of the structure 15
- 16 and the proposed addition somehow get merged together, in
- 17 your minds, that you really can't separate the two out,
- 18 Baltimore County -- again, this is in my experience, and I
- 19 think this would hold true, hopefully, for the experience
- 20 you have had in hearing other cases -- where someone comes
- 21 in and applies for an addition to a building or to

Page 18

- 1 construct a house on an existing lot of record, it also
- 2 has never been considered development under the
- 3 regulations, and the rationale for that, although it would
- 4 seem to meet the definition of development under number
- 5 one, the improvement of property for any purpose involving
- 6 building, if you look back at the scope provisions, or
- 7 look forward to the scope provisions of the regulations,
- 8 these regulations shall apply to all development except --
- 9 and read number subsection two -- it says, such
- 10 development has received a CRG approval, reclamation plan
- 11 approval, or any other project vested by law or such
- 12 development for which a CRG plan has been accepted for
- 13 filing, and it goes on.
- This property, and I would say any other property
- 15 in Baltimore County, has always been, in terms of people
- 16 applying to put an addition on their house, a deck on
- 17 their house, has never been considered development.
- 18 It's always been considered, quote, a project
- 19 that's been vested by law. And so even if you were to
- 20 say, well, somehow, what you're talking about may be
- 21 development, our argument would be that these regulations

- 1 should read 26-203(c)(8) and 26-278 together, and read
- 2 them pretty literally.
- 3 208(c)(3) -- I'm reading this upside down --
- 4 203(c)(8) says -- this is the list of what has to be
- 5 included on a site development plan -- identification of
- 6 any building, property or site within or contiguous to the
- 7 proposed development included on the Maryland Historical
- 8 Trust Inventory of Historic Property, the county's
- 9 Preliminary or Final Landmarks List, the National Register
- 10 of Historic Places, The Maryland Archological Survey, or
- 11 identification of any county or Historic District or
- 12 National Register District covering the proposed
- 13 development.
- Now, I only see two lists identified in Section
- 15 203(c)(8). Those are the Preliminary or Final Landmarks
- 16 List. And that, to me, makes sense.
- 17 And it sort of flows into the next part of the
- 18 argument, and that is the Preliminary and Final Landmarks
- 19 List in Baltimore County are codified in this book and
- 20 contain certain notification provisions, and there's a
- 21 process set out in here for things that are on the

Page 19

1 in total don't even apply to the situation.

- The next argument that I have, and again it goes
- 3 further, if you dismiss the first two motions as not
- 4 really carrying enough weight to make the decision, when
- 5 you go back to 26-268, you see that it says what has to be
- 6 preserved, and it says historic structures or sites
- 7 identified on any of the lists referred to in Section
- 8 26-203(c)(8).
- Now, I had the opportunity to read a recent case
- 10 the Board had on whether or not the Zoning Commissioner/
- 1 Hearing Officer's rules were still effective in a
- 12 development plan case, and I noticed the Board made a
- 13 pretty -- even in the concurring slash dissenting
- 14 opinion -- took a pretty strict view of what the code
- 15 says, or said in that case, citing that the sections
- 16 really hadn't been changed.
- 17 And the way I read the case, it was saying that
- 18 the Hearing Officer's rules really were no longer
- 19 codified, given certain changes that had taken place over
- 20 the last couple of years.
 - So I read that case and took from that that I

1 Preliminary or Final Landmarks List.

- This structure is neither on the Preliminary or
- 3 Final Landmarks List. And if the Code says it has to be
- 4 on a list, I go back and read (c)(8). Those are the only
- 5 two lists that we have identified.
- The inventory is not a list. It is not a
- 7 protected list. When you look at the Maryland Historical
- 8 Trust Inventory, their own standards and guidelines, and I
- 9 would like to submit this as an exhibit -- I know you
- 10 don't need to read the whole thing, but I did, I went
- 11 through it -- and I think I will just summarize it by
- 12 saying throughout this document, you will find statements
- 13 to the effect that this is an information gathering
- 14 entity, that the things that are on the Maryland
- 15 Historical Trust Inventory are not necessarily historical
- 16 There is no protection for these particular
- 17 structures at the state level, and that it's not intended
- 18 for that purpose.
- As a matter of fact, when you apply -- if you
- 20 read the application provisions, you will see that the
- 21 initial application -- I could find out where the Chairman

Page 20

Page 22

- 1 lives, and I want to get your house to have a number on
- 2 the Maryland Historic Trust Inventory, I could submit an
- 3 application.
- Well, the application is not accepted until they
- 5 give you a number. So, really, all you have to do is call
- 6 up the Maryland Historic Trust Inventory folks, say, I
- 7 want to make application, you tell them where the property
- 8 is, they give you a number, because unless you put that
- 9 number on the application itself, they won't accept the
- 10 application.
- What they use it for is they use it for
- 12 informational purposes, they use it as a natural first
- 13 step to identify properties that may have some historic
- 14 value.
- 15 There are state lists that are protected. There
- 16 are Federal lists that are protected. There are county
- 17 lists that are protected. And it is only to be used for
- 18 that purpose.
- In a case that may eventually get here -- it's
- 20 not mine, so I will go ahead and read a quote from the Sun
- 21 paper article, Friday January 31, 2003 --

- 1 the quote from the director.
 - I think he was absolutely right, and the written
 - 3 documentation support what he said in the Sunpapers. I
 - 4 also -- well, let me finish that argument.
 - 5 The argument would concude by saying that even if
 - 6 you say that the Maryland Historic Trust Inventory of
 - 7 Historic properties is a list, you read into that that it
 - 8 should be considered a list, it says "historic
 - 9 properties." Historic properties that are contained on
 - 10 any one of the lists must be preserved.
 - Now, the Maryland Historic Trust Inventory says
 - 12 just having that number doesn't make it historic. It just
 - 13 means that there's information on it, and it could become
 - 14 historic in some way.
 - 15 And we are not aware of any information on this
 - 16 particular piece of property that would make the Hamilton
 - 17 house historic.
 - There's also been a selective enforcement of the
 - 19 provisions of Section 26-278. It says any site or
 - 20 structure that appears on any one of the lists must be
 - 21 preserved, but Baltimore County has not -- and I made a

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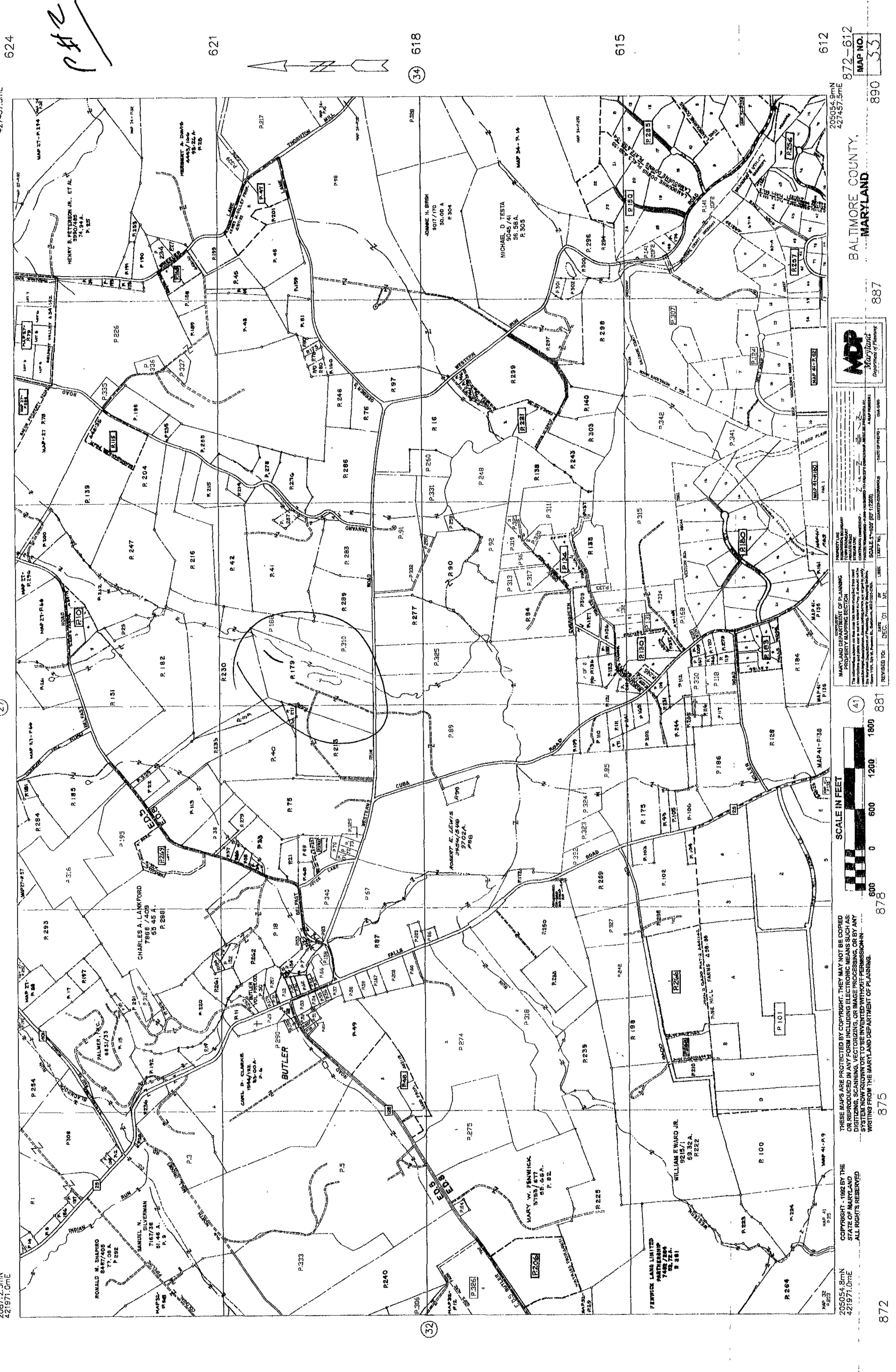
- 1 THE CHAIRMAN: Do you want to put these standards
- 2 and guidelines in?
- 3 MR. HOFFMAN: Yes, please. I thought I already
- 4 said that, Mr. Chairman. The quote, from J. Rodney
- 5 Little, the Trust Director of the Maryland Historic Trust,
- 6 this portion of the article, says, But the Maryland
- 7 Historical Trust never intended its inventory to have any
- 8 regulatory impact, said J. Rodney Little, the Trust
- 9 Director.
- Properties on the inventory do not go through a
- 11 rigorous examination and property owners are not given due
- 12 process or opportunity to challenge listings, because
- 13 those listings by definition have no effect on property
- 14 rights.
- Baltimore County has taken that list that at the
- 16 state level has no legal consequences and has turned it
- 17 into something at the local level that does have legal
- 18 consequences, Little said. That's something our office
- 19 does not favor.
- So there is consistency between the printed
- 21 materials from the Maryland History Trust Inventory and

- 1 copy of a number of permits -- has not required
- 2 hearings -- and I just picked one thing -- hearings for
- 3 properties that are within the National Register Historic
- 4 District to go through this same process.
- So I pulled copies of permits which have been
- 6 recently issued within the Greens Spring Valley National
- 7 Register Historic District, and in which there's no
- 8 indication that they would have to go through any process,
- 9 that they were required to participate in the process that
- 10 we have now, and I don't need to submit all of these.
- 11 Maybe I should just submit one as an example. Why don't
- 12 we take the first one?
- 13 THE CHAIRMAN: That will be No. 9. One question,
- 14 Mr. Hoffman. The Baltimore County Historic Trust has not
- 15 gotten involved in this case in any way, have they?
- 16 MR. HOFFMAN; No.
- 17 THE CHAIRMAN: Has the Maryland Historic Trust?
- 18 MR. HOFFMAN: No, not to our knowledge. And
- 19 those are our arguments as to why this case shouldn't go
- 20 forward, notwithstanding the lack of standing argument,
- 21 that even if there was an appellant in this case that had

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TATUTC	rage
Page 26	Page 28
1 standing, we believe and we feel strongly about it	1 the Board wants to hear more, I'd be happy to provide you
2 that this process is unfair to the property owners. It's	2 with any information that you would like.
3 a taking, in essence, a taking of someone's property	THE CHAIRMAN: Okay. I think what the Board
4 without due process.	4 would like to do is take about a half hour break and then
Now, getting to essentially the facts of the	5 come back.
6 case, and I will be brief on a proffer of the facts, we	6 It's been my experience on these types cases, we
7 have here today with Mr. Brian Decaro with McKey and	7 do have a public delberation. So just to exercise
8 Associates. He prepared the site plan that was submitted	8 caution, we'll take about a half hour break, review the
9 below that was part of the case.	9 law, look at our notes, and come back and have a
I also have Mr. Hamilton here as the property	10 deliberation and move forward. Let's come back about 12
11 opener and Mr. Grieves, Mr. Jim Grieves, who's an	11 o'clock.
12 architect and an expert in historical properties and	12 MR. HOFFMAN: Thank you very much.
13 historic renovations.	13 (Hearing concluded.)
And since it's in the way of a proffer, I'm not	14 * * * *
15 going to submit any exhibits, but this is a copy of an	15
16 exhibit that Mr. Grieves had prepared. It shows the	16
17 subject house, which is in red. It shows the proposed	17
18 addition. It shows photographs of the property and of the	18
19 house from the road.	19
20 And what Mr. Grieves did, in consultation with	20
21 Mr. Hamilton, he came up with a way in which this	21
	<u> </u>
Page 27	
1 structure, that most of the structure could be saved.	
The house itself is in very poor shape, the walls	
3 are crumbling, the floors are sagging, and in order to	
4 save the majority of the house, the main part of the	
5 house, which you can see after you get off of Western Run	
6 Road and drive up the driveway, we need to remove two	
7 additions, smaller additions that were made to the back of	
8 the house to allow concrete to be injected underneath.	
9 There's no foundation, really, in the building.	
10 In order to support the walls, in essence, create a	
11 foundation underneath, which is being eaten away, the	
12 walls are being caten away by subsurface and surface	
13 runoff on the property, so we can get around the outside	
14 of the building in the front and to some extent on the two	
15 sides, but to save the rear wall of the main structure, we	
16 need to remove two small additions, do the subsurface work	
17 at a very, very high cost, and that will allow the main	
18 part of the building to remain, and will allow Mr.	
19 Hamilton to put the addition on the house.	
So I think that's really as far as I need to go	
21 with an explanation on the substance of the page. And if	

21 with an explanation on the substance of the case. And if



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BALTIMORE COUNTY
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Name	Account	Street	OWN OCC	Town	Parcel	Lot
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BUTLER ARTCRAFT ST	05 0502085100	FALLS RD	N	000	3	
NOTZON HARRIET HEB	05 2300008208	2526 BUTLER RD	Ď	000	5	
FONT HILL PROPERTI	05 0503037025	2324 BUTLER RD	N	000	6	
WILLIAMS MARIE	05 0510000025	2232 BELFAST RD	Н	000	7	
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RAMBERG WALTER DOD	08 1700005120	1717 BELFAST RD	N	000	10	2
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HORENKAMP JOHN K	08 1700005123	1805 BELFAST RD	H	000	10	5
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NEWTON AND WIBERFO	05 1900002887	15001 FALLS RD	N	000	12	
GOODALL ROBERT D	08 1900004705	WESTERN RUN RD	N	000	13	
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PALMER INC	05 0507058430	FALLS RD	N	000	15	
BROWN JAMES DORSEY	08 1700006872	WESTERN RUN RD	Ν	000	16	
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RAMBERG WALTER D	08 1700011945	BELFAST RD	Ν	000	23	
MANTEGNA CARL J	08 0810046940	15216 WHEELER LN	 -	000	24	

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PETERSON HENRY BAR	08 0808067680	15315 WHEELER LA	D	000	25	
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BUTLER VOLUNTEER F	05 0502085551	FALLS RD	N	000	30	
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BEVERUNGEN JOHN E	08 0819053232	BELFAST RD	Н	000	35	
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AYRES NORMAN LSR	08 0823004430	2311 BUTLER RD	H	000	50	
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GILLISPIE HOWARD B	08 0807029051	WESTERN RUN RD	N	000	70		
GILLISPIE HOWARD B	08 0807029060	WESTERN RUN RD	Ν	000	71		
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HEMMES ROBERT AJR	08 0812025340	2018 WESTERN RUN RD	Н	000	73		
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BOSLEY DONALD, W.	08 0802059121	GERBERS LA	N	000	78		
ADAMS SAMUEL SJR	05 0501013055	FALLS RD	Ν	000	79		
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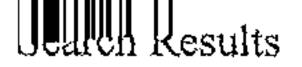
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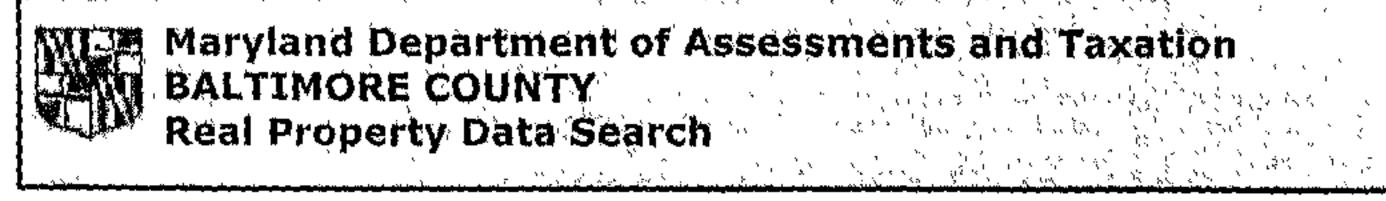
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LYONS JOSEPH S	08 2000001315	EVERGREEN DR	N	000	92
LYONS JOSEPH S	08 2100007567	EVERGREEN DR	N	000	92
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RIEPE JAMES S	08 0806020377	WESTERN RUN RD	Ν	000	97
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GRISWOLD JACK S	08 0801002025	2409 GADD RD	N	000	100
PETERSON FREDERICK	08 2100004954	GADD RD	N	000	101 A
KILLEBREW ROBERT S	08 2100004955	GADD RD	N	000	101 B
WEBER HARRY J	08 2100004956	GADD RD	N	000	101 C
GRISWOLD JACK S	08 2100004957	GADD RD	N	000	101 D
HOFFBERG ANILKUMAR	08 2100004958	FALLS RD	Ν	000	101 E
2208 PHF LLC	08 2100004947	2208 PINE HILL FARM	N	000	101 1
STEEPLECHASE FARMS	08 2100004948	2200 PINE HILL FARM	N	000	101 2
MCGONIGLE MICHAEL	08 2100004949	2204 PINE HILL FARM	D	000	101 3

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DONOHUE WILLIAM J	08 2100004952	2203 PINE HILL FARM	D	000 10	1 6
SURHOFF WILLIAM J	08 2100004953	2205 PINE HILL FARM	N	000 10	1. 7
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SHWAN LIMITED PART	08 2200020801	23 BRETT MANOR CT	N	000 12	4 2
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CAMACHO CHRISTOPHE	08 2200020803	29 BRETT MANOR CT	Н	000 12	4 4
BARROWS KEVIN J	08 2200020804	31 BRETT MANOR CT	Н	000 12	4 5
SEGO CAROL	08 2200020805	33 BRETT MANOR CT	Н	000 12	4 6
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GIPSON SARA E	08 2200020807	39 BRETT MANOR CT	N	000 12	4 8
FARZADEGAN HOMAYOO	08 2200020808	40 BRETT MANOR CT	N	000 12	4 9
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CHEN CECILIA	08 2200020811	34 BRETT MANOR CT	H	000 12	4 12
JACKSON BROOKS	08 2200020812	32 BRETT MANOR CT	H	000 12	4 13
JACKSON JAY BROOKS	08 2200020813	30 BRETT MANOR CT	N	000 12	4 14

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DERITO CARL A	08 2200020815	26 BRETT MANOR CT	H	000	124	16
RAWTANI AJIT HASSA	08 2200020816	24 BRETT MANOR CT	H	000	124	17
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TENNEY FRED EJR	08 0820020240	1718 WORTHINGTON HE	Н	000	126	
ROBINSON LESTER N	08 0818051620	1700 WORTHINGTON HE	Н	000	127	
EASTER JOHN HAMILT	08 2100004252	FALLS RD	N	000	128	
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BANDELIN JAMES E	08 1700006246	14325 CUBA RD	Н	000	131	3
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REULING MARY A	08 1700009163	1626 WORTHINGTON HE	N	000	134	i

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Name	Account	Street	OWN OCC	Town	Parcel	Lot
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HOKE FRANCIS H	08 1700009165	1634 WORTHINGTON HE	N	000	134	3
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BELZNER KRISTIN	08 1700009167	1620 WORTHINGTON HE	Ν	000	134	5
SIMMERS KATHLEEN W	08 1800000202	WORTHINGTON HEIGHTS	N	000	135	
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WILSON JOHN SJR	08 0823058010	EVERGREEN DR	N	000	138	
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SMYTH JEANETTE	08 1700010834	BELFAST RD	N	000	139	
BERGE MELISSA L	08 1600007928	1311 WESTERN RUN RD	N	000	140	
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LEE ALICE	08 0812020750	1347 WESTERN RUN RD	H	000	145	
PARKS CHRISTIAN	08 0812020500	1345 WESTERN RUN RD	H	000	146	
BALLARD JOHN	08 0819051125	1132 WESTERN RUN RD	H	000	149	
ANTONIK LAURIE J	08 2100004305	1116 WESTERN RUN RD	N	000	150	19
FORBES RICHARD R	08 2100004306	1118 WESTERN RUN RD	H	000	150	20
MCGUIRK HUGH D	08 2100004307	1120 WESTERN RUN RD	Н	000	150	21
SMALKIN FREDERIC N	08 2100004308	1122 WESTERN RUN RD	H	000	150	22
DE LA REGUERA DEBO	08 2100004309	1124 WESTERN RUN RD	Н	000	150	23
MISERA MICHAEL F	08 2100004310	1126 WESTERN RUN RD	Н	000	150	24
ODĻUM MICHAEL	08 2100004311	1128 WESTERN RUN RD	H	000	150	25
COHEN EDWARD R	08 0819069780	1901 BELFAST RD	D	000	151	
PARKS JOHN RIDGELY	05 0501013053	2150 BELFAST RD	H	000	152	
MCLERNON SYLVIA S	05 0520000125	2226 BELFAST RD	Н	000	153	
WILLIAMS GARRETT D	05 0523050920	2230 BELFAST RD	Н	000	154	
DOWNEY WILLIAM M	05 0503047900	2306 BUTLER RD	H	000	155	



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FALLS ROAD METHODI	05	0506000188	FALLS RD	N	000	156	
FALLS ROAD METHODI	05	0506000185	FALLS RD	N	000	157	
FALLS ROAD METHODI	05	0506000186	FALLS RD	N	000	157	
FALLS ROAD METHODI	05	0506000187	FALLS RD	N	000	157	
MICHEL MARY C	05	2200022217	2300 WESTERN RUN RO) H	000	158	
BOSLEY DANIEL MATT	08	0802059110	1222 GERBERS LA	D	000	159	
BOSLEY DONALD W	08	0802059120	1324 GERBERS LA	N	000	160	
MADDEN DARRYL J	08	0808003960	14121 CUBA RD	H	000	161	
BAKER EDWARD L	80	0802003630	14500 CUBA RD	H	000	163	
PARKS ANN ADAMS	05	1800005232	FALLS RD	N	000	164	
WESTERLUND RACHEL	08	1800003534	15132 WHEELER LA	Н	000	165	1
DRIVER JAMES H	80	1800003535	15134 WHEELER LN	H	000	165	2
MERRYMAN ANN	08	0812020628	15128 WHEELER LA	H	000	166	
WELDEN BEATRICE P	08	0823016040	14830 FALLS RD	H	000	167	
LAHM JOHN P	08	0813020550	14323 CUBA RD	Н	000	168	
BEARD EDWARDSEUGEN	08	0802020125	14319 CUBA RD	Н	000	169	
HOWARD DONALD S	08	0808070110	14317 CUBA RD	Ð	000	170	
KELLER TODD G	08	0811017532	CUBA RD	N	000	171	
WATRISS MARY W	80	0806010571	FALLS RD	N	000	172	
SMITH MARTIN A	80	0802004910	GERBERS LA	N	000	173	
SALSBURY ROCHELLE	80	0808034130	1130 WESTERN RUN RE) H	000	174	
POOLE DOUGLAS W	08	0806058670	14431 FALLS RD	D	000	175	
BUTLER VOLUNTEER F	05	0502085552	FALLS RD	N	000	176	
BELLHICKEN DONALD	08	0813026360	15200 WHEELER LA	Н	000	178	
BELLHICKEN DONALD	08	1600002013	WHEELER LA	N	000	178	
HAMILTON DOUGLAS W	80	0802059650	1900 WESTERN RUN RE	D	000	179	
BALTIMORE COUNTY M	80	1900005185	BROOK FARM CT	N	000	180	
LIN JOSEPH CHENGCH	80	1900005171	2 BROOK FARM CT	Н	000	180	1
KANG JIN WOOK	80	1900005172	4 BROOK FARM CT	H	000	180	2
CONNER LARRY W	80	1900005173	6 BROOK FARM CT	H	000	180	3
SODY CATHY F	08	1900005174	8 BROOK FARM CT	N	000	180	4
DEFELICE NICHOLAS	08	1900005175	10 BROOK FARM CT	Н	000	180	5
JACKSON PAUL N	08	1900005176	12 BROOK FARM CT	Н	000	180	6
OLAUGHLIN KATHLEEN	80	1900005177	14 BROOK FARM CT	H	000	180	7
LEE DUCK KI	08	1900005178	16 BROOK FARM CT	H	000	180	8
ERDLY DALE KELLER	80	1900005179	18 BROOK FARM CT	Н	000	180	9
SCHENNING JOHN J	08	1900005180	20 BROOK FARM CT	Н	000	180	10
MAHONEY BRIAN T	08	1900005181	22 BROOK FARM CT	D	000	180	11
TAYLOR DAVID G	80	1900005182	19 BROOK FARM CT	H	000	180	12
MORTON JOHN S3RD	08	1900005183	17 BROOK FARM CT	H	000	180	13
GREENE JANET HUBLE	08	1900005184	15 BROOK FARM CT	Н	000	180	14



GREENE PETER	08 1900011871	13 BROOK FARM CT	Н	000	180	15	
CEJKA GARY W	08 1900005186	11 BROOK FARM CT	Н	000	180	16	
WILLIAMSON EUGEN	08 1900005187	9 BROOK FARM CT	Н	000	180	17	
COOMBS GRANT MJR	08 1900005188	7 BROOK FARM CT	Н	000	180	18	
VEILLEUX EDWARD J	08 1900005189	5 BROOK FARM CT	H	000	180	19	
BUSCEMA JOSEPH	08 1900005190	3 BROOK FARM CT	H	000	180	20	
KANG JIN KUK KANG	08 1900005191	1 BROOK FARM CT	Н	000	180	21	
WIGHT PETERJR	05 0506010140	15400 DUNCAN HILL R	Н	000	181		
COHEN PATRICIA M	08 1800003104	BELFAST RD	N	000	182		
SCHAFFNER JOHN R	08 0819007701	1811 MILLER RD	Н	000	183	1	
KELLOGG PAUL T	08 0808006380	1809 MILLER RD	H	000	183	2	
PAYNE GREGORY F	08 0819011590	1803 MILLER RD	H	000	183	3	
ZINK CARROLL M	08 0802087710	1801 MILLER RD	Н	000	183	4	
TRACEY DOROTHY MAR	08 0811018490	14244 CUBA RD	N	000	183	5	
RANDALL WILLIAM	08 0820032400	14242 CUBA RD	Н	000	183	6	
LEUBA PAUL E	08 0804051117	14240 CUBA RD	Н	000	183	7	
BULL JOHN F	08 2000006819	1807 MILLER RD	Н	000	183	8	
EASTER JOHN HAMILT	08 0808068940	14230 CUBA RD	N	000	184		
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Maryland Department of Assessments and Taxation BALTIMORE COUNTY

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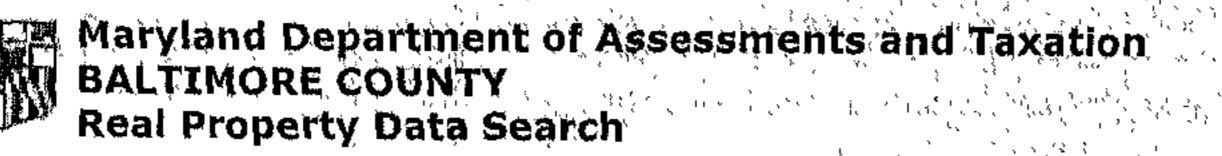
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Name	Account	Street	OWN OCC	Town	Parcel	Lot
HACKNEY H HAMILTON	05 0505061226	1916 BELFAST RD	D	000	185	
EASTER JOHN HAMILT	08 2100004253	FALLS RD	N	000	186	
SALDITCH IAN E	08 0813026330	1808 WESTERN RUN RD	D	000	188	2
HUDSON BARBARA PEA	08 0808081090	15217 TANYARD RD	Н	000	189	
MULLAN VICTOR J	08 0818072660	15201 WHEELER LA	Н	000	190	
MURPHY RHETTTRUSTE	08 0819078420	15207 WHEELER LA	Н	000	191	
PALMER INC	05 0507058255	FALLS RD	N	000	192	
GREER JESSE E	08 0807061940	15206 WHEELER LA	H	000	193	
PARKS ANN ADAMS	05 0501013056	FALLS RD	Ν	000	194	
LITZ DONALD P JR	05 0502057025	BELFAST RD	N	000	195	
ODONNELL EDWARD MI	08 0819078600	15215 TANYARD RD	D	000	196	
PALMER INC	05 0507058431	STRINGTOWN RD	N	000	197	
MACKENZIE CLARK F	08 1700014660	2310 GADD RD	D	000	198	
ALEVIZATOS ARISTID	08 0801099026	WHEELER LA	N	000	199	
RAMBERG WALTER DOD	08 0818001680	1651 BELFAST RD	D	000	200	
MEIER WILLIAM J	08 0802004640	1120 GERBERS LA	H	000	201	
SCHRANK HELMUT E	08 0819010690	14414 CUBA RD	Н	000	202	
BROOKMAN EDWIN R	08 0811015076	14805 FALLS RD	H	000	203	
SMYTH JEANETTE	08 0819053760	15120 TANYARD RD	N	000	204	
FOWLER PATRICIA RA	08 0802060370	14328 CUBA RD	H	000	205	
WATRISS MARY W	08 1900007236	2707 BUTLER RD	N	000	206	1
BUTLER VOLUNTEER F	05 0502085554	FALLS RD	N	000	207	
KESSLER VIRGINIA L	08 0811015077	14828 FALLS RD	N	000	208	
MROZINSKI STEVEN J	08 0803069350	14324 CUBA RD	Н	000	209	
MROZINSKI STEVEN J	08 1600007560	CUBA RD	N	000	209	
WATERS JEFFREY W	08 0802060380	2403 GADD RD	Н	000	210	
AYRES NORMAN LSR	08 0823004431	BUTLER RD	Н	000	211	
RAMBERG WALTER DOD	08 0818001760	1711 BELFAST RD	N	000	212	
GOODALL ROBERT D	08 0823004600	1930 WESTERN RUN RD	D	000	213	
BECHTEL ROGER	08 0803053110	15014 TANYARD RD	Н	000	214	
RIEGEL DAVID W	08 0812025740	15018 TANYARD RD	H	000	215	

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SMYTH JEANETTE	08 1700009523	TANYARD RD	N	000	216	
RIEPE JAMES S	08 2300012544	THORNTON MILL RD	N	000	217	
KIRSCH NOEL M	08 0811068170	CUBA RD	Ν	000	219	
PARKS ANN ADAMS	05 0516000620	15025 FALLS RD	D	000	220	
FICK CHARLES E	08 1700009726	1315 WESTERN RUN RD	Н	000	221	1
HOPKINS WALLACE AJ	08 1700009727	1317 WESTERN RUN RD	H	000	221	2
WARD WILLIAM FJR	08 1600002111	2404 GADD RD	N	000	222	
WARD WILLIAM FJR	08 1600002157	GADD RD	N	000	223	
GRISWOLD JACK S	08 1600002286	2409 GADD RD	D	000	224	
FENWICK M GILLIAN	08 1600002340	2605 BUTLER RD	N	000	225	
DELIGHT FARMS INC	08 1800000370	TANYARD RD	N	000	226	
MATANOSKI DENNIS F	08 0823056210	2309 BUTLER RD	Н	000	227	
RANDALL HARRY G	08 1600004003	BELFAST RD	N	000	229	
RANDALL HARRY G	08 1600004074	2003 BELFAST RD	D	000	230	
SCHLITZ PAUL R	08 0819008677	CUBA RD	N	000	231	
RANDALL HARRY G	08 1800012350	BELFAST RD	N	000	233	
FIX JOHN T	08 1700014310	15131 WHEELER LA	H	000	234	
WODARCZYK KENNETH	08 0803069450	15123 TANYARD RD	H	000	235	
GRIST MILL CORPORA	05 1600004491	15212 FALLS RD	N	000	236	
CLARK ROBERT A	08 1600004751	14401 CUBA RD	Н	000	237	
WILLIAMS J HARLANJ	08 1600007035	14640 FALLS RD	N	000	238	
MACKENZIE CLARK F	08 1600007036	GADD RD	N	000	239	
HEBB DONALD BJR	05 1600007220	2616 BUTLER RD	D	000	240	
VAN NOSTRAND MICHA	08 1600007267	14504 CUBA RD	H	000	241	
MACKENZIE CLARK F	08 1700014661	2200 GADD RD	N	000	242	
BERGE MELISSA L	08 1600007926	1313 WESTERN RUN RD	D	000	243	
AEBI KURT J	08 1600008057	CUBA RD	N	000	244	
AEBI KURT J	08 1700010597	CUBA RD	N	000	244	
FLORIE PHILLIP L	08 1600008603	14411 CUBA RD	H	000	245	
BRYAN CEDRICK W	08 1600011865	1410 GERBERS LA	Н	000	246	
SMYTH JEANETTE	08 1600012766	TANYARD RD	N	000	247	
BROWN J DORSEY3RD	08 2300008227	WESTERN RUN RD	N	000	248	
WADSWORTH CHARLES	08 1600013451	1812 WORTHINGTON HE	H	000	249	
WESTERN RUN CORP	08 1600014513	FALLS RD	Ν	000	250	
GRAY & SON INC	05 1600014634	STRINGTOWN RD	N	000	251	
MURPHY RHETT TRUST	08 1700001668	WHEELER LA	Ν	000	253	
PALMER GEORGE V.	05 1700004708	15321 FALLS RD	D	000	254	
ELLER JEFFREY M	08 1700004877	15015 TANYARD RD	Н	000	255	
GREENCROFT COMMUNI	08 1600014943	SHEEPFOLD LA	N	000	256	
GREENCROFT COMMUNI	08 1600014944	GREENCROFT LA	N	000	256	
GREENCROFT COMMUNI	08 1600014945	GREENCROFT LA	N	000	256	

GREENCROFT COMMUNI	08 1600014946	SHEEPFOLD LA	N	000 256	
ZAWMON GLENN	08 1600014933	14108 GREENCROFT LA	H	000 256	50
HUSSEY DAVID L	08 1600014934	14110 GREENCROFT LA	H	000 256	51
MEIER SIDNEY K	08 1600014935	2 SHEEPFOLD LA	Н	000 256	68
VOHRER RICHARD W	08 1600014936	4 SHEEPFOLD LA	Н	000 256	69
MITKE JOHN I	08 1600014937	6 SHEEPFOLD LA	 	000 256	70
PEARSON FREDERICK	08 1600014938	8 SHEEPFOLD LA	Н	000 256	71
SEARSON ROBERT M	08 1600014939	7 SHEEPFOLD LA	Н	000 256	72
SCORNAVACÇA RONALD	08 1600014940	5 SHEEPFOLD LA	Н	000 256	73
PAGE DANIEL R	08 1600014941	3 SHEEPFOLD LA	H	000 256	74
FOREMAN JEFFREY L	08 1600014942	1 SHEEPFOLD LA	H	000 256	75
GREENCROFT COMMUNI	08 1700000103	GREENCROFT LA	Ν	000 257	
GREENCROFT COMMUNI	08 1700000105	GREENCROFT LA	N	000 257	
GREENCROFT_COMMUNI	08 1800002678	GREENCROFT LA	N	000 257	
TOMPKINS JOHN C	08 1700000082	14112 GREENCROFT LA	Н	000 257	52
BOPST DAVID BSR	08 1700000083	14227 GREENCROFT LA	Н	000 257	53
CALDWELL VERNON G	08 1700000084	14225 GREENCROFT LA	Н	000 257	54
GOLDSTEIN RICHARD	08 1700000085	14223 GREENCROFT LA	Н	000 257	55
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Name	Account	Street	OWN OCC			Lot
KEELTY STEPHEN M	08 1700000086	14221 GREENCROFT LN	Н	000	257	56
POWELL JOHN W	08 1700000088	14217 GREENCROFT LA	Н	000	257	58
SITTON ROBERT WIR	08 1700000089	14215 GREENCROFT LA	Н	000	257	59
KOZAK THEODORE J	08 1700000090	14213 GREENCROFT LA	H	000	257	60
GENDRON ANDREW	08 1700000091	14211 GREENCROFT LA	Н	000	257	61
IGUSA JUNICHI	08 1700000092	14209 GREENCROFT LA	Н	000	257	62
APIBUNYOPAS KRITA	08 1700000093	14207 GREENCROFT LA	Н	000	257	63
HOFMEISTER C LARRY	08 1700000094	14205 GREENCROFT LN	Н	000	257	64
SEYBOLD DAVID J	08 1700000095	14203 GREENCROFT LA	Н	000	257	65
JENKINS PETER P	08 1700000096	14201 GREENCROFT LA	Н	000	257	66
PENAFIEL MARIO L	08 1700000097	14111 GREENCROFT LA	Н	000	257	67
PHILLIPS ALAN R	08 1700000098	14224 GREENCROFT LA	Н	000	257	76
KING ALGIN B	08 1700000099	14210 GREENCROFT LA	Н	000	257	77
CURRY BRIAN P	08 1700000100	14202 GREENCROFT LA	Н	000	257	78
CORBIN RALPH D	08 1700000101	14200 GREENCROFT LA	Н	000	257	79
HANDLEY HAROLD J	08 1800002676	14205B GREENCROFT L	Н	000	257	67A
ROSEBRUGH SEAN R	08 1800002677	14205A GREENCROFT L	H	000	257	67B
MACCOLL JOHN A	08 1700005437	WESTERN RUN RD	N	000	258	
HEACOCK DONALD R	08 1700014662	2212 GADD RD	D	000	259	
BROWN JAMES DORSEY	08 1800007322	1601 WESTERN RUN RD	D	000	260	
PARKS ANN ADAMS	05 18000.09688	FALLS RD	N	000	261	
ADAMS SAMUEL SJR	05 1800009690	BELFAST RD	N	000	262	
PARKS ANN ADAMS	05 1800009689	FALLS RD	Ν	000	263	
KILLEBREW ROBERT S	08 1800008958	2323 GADD RD	D	000	265	1
PETERSON FREDERICK	08 1800011431	2307 GADD RD	D	000	266	1
MROZINSKI STEVEN J	08 1800012026	CUBA RD	Ν	000	267	
THOMPSON ELIZABETH	08 1800012027	1806 MILLER RD	N	000	268	
LITZ DONALD PJR	05 1800013461	2030 BELFAST RD	N	000	269	1
GOODALL ROBERT D	08 1800013183	WESTERN RUN RD	Н	000	270	
GOODALL ROBERT D	08 1800013290	WESTERN RUN RD	Н	000	271	
GOODALL ROBERT D	08 1800013291	WESTERN RUN RD	Н	000	271	

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WATERS STEPHEN C	08 1800014928	1800 MILLER RD	Н	000	273	
FENWICK CHARLES CJ	08 2200027604	2509 BUTLER RD	N	000	274	3
FENWICK CHARLES CJ	08 2200027602	2509 BUTLER RD	D	000	275	1
EDELEN WILLIAM B2N	08 1900009030	14935 TANYARD RD	H	000	276	
BLUE HENRY M	08 1900010907	1753 WESTERN RUN RD	D	000	277	
LASLETT BASIL G FJ	08 2000001181	15005 TANYARD RD	Н	000	278	
DAVIS BARBARA T	08 2000001180	2121 BELFAST RD	H	000	279	
HEATH MELVILLE FRE	08 1600014896	WESTERN RUN RD	N	000	280	
FENWICK LAND LIMIT	08 2000013444	BUTLER RD	N	000	281	
ALVAREZ MANUEL EJR	08 2100000430	14909 JOYCE LA	Н	000	282	1
ZAMARIA SAMIR A	08 2100002472	14910 TANYARD RD	D	000	283	
WILLIAMS RICHARD F	05 2100003026	15404 DUNCAN HILL R	D	000	284	
KOMAN BERNARD	08 2100004295	1 WESTCROFT CT	Н	000	285	9
PĄSZKIEWICZ DANIEL	08 2100004296	3 WESTCROFT CT	Н	000	285	10
THACKER STEPHEN L	08 2100004297	5 WESTCROFT CT	Н	000	285	11
CUCINA RICHARD VJR	08 2100004298	7 WESTCROFT CT	N	000	285	12
CLASS WILLIAM D 3R	08 2100004299	9 WESTCROFT CT	Н	000	285	13
BRUMFITT STEVEN	08 2100004300	11 WESTCROFT CT	N	000	285	14
KANE DAVID F	08 2100004301	8 WESTCROFT CT	N	000	285	15
RUBINO ROBERT M	08 2100004302	6 WESTCROFT CT	Н	000	285	16
LEE HAN C	08 2100004303	4 WESTCROFT CT	Н	000	285	17
HURKO OREST	08 2100004304	2 WESTCROFT CT	H	000	285	18
ROUGEOT JEANANDRE	08 2100004021	14921 TANYARD RD	D	000	286	
ENSOR WILBUR EJR	08 2100004051	14936 TANYARD RD	N	000	287	
BELFAST LLC	05 2100005071	2122 BELFAST RD	D	000	288	
PALMER MARGARET G	08 2100007489	1730 WESTERN RUN RD	D	000	289	
AMERICAN UNION OF	05 2100014804	BUTLER RD	N	000	290	
BUTLER STONE QUARR	05 2200002414	15027 FALLS RD	N	000	291	
SHAPIRO RONALD M	05 2200002634	15324 FALLS RD	N	000	292	
BOYCE JOHN C G JR	05 2000014004	15408 DUNCAN HILL R	D	000	293	
GORMAN BETSY F	08 2200006005	WESTERN RUN RD	N	000	294	
PETERSON FREDERICK	08 2200006293	2201 GADD RD	N	000	295	
MILEY JOHN W	08 2200006720	1238 WESTERN RUN RD	D	000	296	
TESTA MICHAEL DAVI	08 2200007594	1301 WESTERN RUN RD	D	000	297	
TESTA MICHAEL DAVI	08 2200007595	WESTERN RUN RD	Ν	000	298	
BERGE MELISSA L	08 2200008261	WESTERN RUN RD	N -	000	299	
COVER THOMAS H	08 2200008518	1245 WESTERN RUN RD	Н	000	300	
BOSLEY SARA RUTH	08 2200008519	1249 WESTERN RUN RD	Ν	000	301	
BOSLEY SARA RUTH	08 2200008520	WESTERN RUN RD	Ν	000	302	
BERGE MELISSA L	08 1600007927	WESTERN RUN RD	N	000	303	
BIRSH JOANNE HOPE	08 2200010262	1310 WESTERN RUN RD	D	000	304	2

TESTA MICHAEL DAVI	08 2200011152	1250 WESTERN RUN RD	N	000 305	1
ISAACS_LOUISE_H	05 2200013291	2618 BUTLER RD	H	000 306	1
BALTIMORE COUNTY M	08 2200014853	BRETT MANOR CT	N	000 307	
BALTIMORE COUNTY M	08 2200014854	BRETT MANOR CT	N	000 307	
DOERING JOHN P	08 2200022193	1201 WESTERN RUN RD	D	000 307	1
DOERING JOHN P	08 2200022194	33 BRETT MANOR CT	N	000 307	2
PALMER GEORGE V	05 2200014848	FALLS RD	N	000 308	
MOSSER LUCINDA J	08 2200013283	1650 WORTHINGTON HE	H	000 309	2
PATTERSON KATHARIN	08 2200020739	1800 WESTERN RUN RD	D	000 310	1
KOOGLE WARREN R	08 2200027617	WORTHINGTON HEIGHTS	Ν	000 311	
BUTLER STONE QUARR	05 2200020961	FALLS RD	Ν	000 312	
KROHE TIMOTHY L	08 2200025904	1644 WORTHINGTON HE	Н	000 313	2
CARROLL DOUGLAS	08 2200024489	WORTHINGTON HEIGHTS	N	000 315	
MARTY BEATRICE H	05 2200024721	2020 BELFAST RD	D	000 316	
BOWIE JOHN WESLEY	08 2200025903	1642 WORTHINGTON HE	Н	000 317	1
FENWICK CHARLES CJ	08 2200027603	BUTLER RD	N	000 318	2
POLACK FERNANDO P	08 2200027614	1510 WORTHINGTON HE	Н	000 319	1
HSU KENNETH H	08 2200027615	1506 WORTHINGTON HE	Н	000 320	2
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Name	Account	Street	OWN OCC	Town Parcel L	ot
KOOGLE WARREN R	08 2200027616	1508 WORTHINGTON HE	Н	000 321 3	
BLUE HENRY M	08 2200028581	WESTERN RUN RD	N	000 325	
BISBEE STEPHEN F	05 2200026001	BUTLER RD	N	000 326	
HUGHES F MACKEY	08 2300003560	2200 GADD RD	D	000 327	
RIEPE JAMES S	08 2300003887	THORNTON MILL RD	N	000 328	
HEMMES ROBERT AJR	08 2300004429	2016 WESTERN RUN RD	N	000 329	
NAYLOR GUTY T	08 2300007176	14324A CUBA RD	Н	000 330 2	·
MACCOLL JOHN A	08 2300008228	1727 WESTERN RUN RD	D	000 331	
MACCOLL JOHN A	08 1600013435	WESTERN RUN RD	N	000 332	
HEBB DONALD BJR	05 2300008209	OLD NORTH MILL RD	N	000 333	
OBRIEN JOHN	08 2300010071	1703 WORTHINGTON HE	Н	000 334 2	ı
HUDSON BRUCE S	08 2300010191	15301 TANYARD RD	Н	000 335	
HUDSON DANIELS	08 2300010192	15225 TANYARD RD	Н	000 336	
HUDSON WAYNE T	08 2300010193	15219 TANYARD RD	Н	000 337	
CUMBERLAND WILLIAM	08 2300012546	WHEELER LN	N	000 338	
GOELET CHRISTOPHER	08 2300012545	WHEELER LN	N	000 339	
LEWIS TIMOTHY TRUS	08 2300012612	14910 JOYCE LN	N	000 340 2	
MATUSKY FREDERICK	08 2400000133	25 BRETT MANOR CT	Ν	000 341 1	
GORMAN BETSY F FI	08 2400000134	BRETT MANOR CT	N	000 342 A	i
HORTON JENNIFER B	08 2400001803	DUNCAN HILL RD	N	000 344 3	,
WINDY MEADOWS FARM	08 1800008418	14301 GREEN RD	D	000 764	

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Berg and Services

STATE OF THE PARTY OF THE PARTY

IN THE MATTER OF

THE APPLICATION OF

DIA-AYLESBURY LTD PARTNERSHIP - *

LEGAL OWNER; PADONIA LLC - C.P.

FOR A VARIANCE ON PROPERTY *

LOCATED ON THE NW/CORNER OF

AYLESBURY ROAD & CONNECTOR ROAD *

(15 W AYLESBURY ROAD)

8TH ELECTION DISTRICT *

4TH COUNCILMANIC DISTRICT

BEFORE THE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

Case No. 02-434-A

OPINION/RULING ON MOTION TO DENY OR DISMISS APPEAL

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

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

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

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

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

Commente Walter Committee Committee

"Experienced Dining, Inc., T/A The Turf Inn, 2306 York Road, Timonium, MD 21093" via application dated January 18, 2002. That application reflects the owner of the premises as J.R. Brothers, Inc., 10 Hemlock Court, Hunt Valley, MD 21030, with a part of the building to be used for "restaurant, bar, lounge, and deck."

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

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

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

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

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

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

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

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

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

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

Maryland case law provides guidance to this Board:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

THEREFORE, IT IS THIS And day of Mully, 2003 by the County Board of Appeals of Baltimore County

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

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

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

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Charles L. Marks, Chairman

Margaret Worrall

* 1.1

Lawrence S. Wescott

(Cite as: 137 Md.App. 60, 767 A.2d 906)

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Court of Special Appeals of Maryland.

COMMITTEE FOR RESPONSIBLE DEVELOPMENT ON 25TH STREET et al.,

MAYOR AND CITY COUNCIL OF BALTIMORE et al.

No. 2927, Sept. Term, 1999.

March 1, 2001.

Challenger to pharmacy construction sought judicial review of board of municipal and zoning appeals' decision that upheld the grant of the construction permit. The Circuit Court, Baltimore City, Alfred Nance, J., dismissed. Challenger appealed. The Court of Special Appeals, Kenney, J., held that challenger did not have standing to seek judicial review of board's decision.

Affirmed.

West Headnotes

[1] Action 5 6 13k6

A case is most when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy.

Moot cases are generally dismissed without a decision on the merits.

[3] Appeal and Error \$\sim 781(1)\$ 30k781(1)

In rare instances an appellate court can address a most case if it presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct, or the issue presented is capable of repetition, yet evading review.

[4] Administrative Law and Procedure \$\sim 665.1 \\ 15Ak665.1

The requirements for administrative standing are such that one may have administrative standing, but lack

standing to seek judicial review.

Standing to bring a declaratory judgment action is the same as for other cases; there must be a legal interest, such as one of property, one arising out of a contract, one protected against tortious invasion, or one founded on a statute which confers a privilege.

[6] Action 🖘 13 13k13

Ordinarily, only the public authorities have standing to seek redress for violations of the public laws, and a private individual has standing to do so only when he can show that he has suffered some special damage from such wrong differing in character and kind from that suffered by the general public.

[7] Declaratory Judgment © 300 118Ak300

Challenger to a permit for the construction of a pharmacy did not suffer special damages, as required for him to have standing to bring a declaratory judgment action regarding the interpretation or constitutionality of the ordinance under which the permit was issued.

[8] Zoning and Planning ⋘745.1 414k745.1

In action that contested a permit being issued for the construction of a pharmacy, order that dismissed action due to challenger's lack of standing would be treated, for review purposes, as a grant of a motion for summary judgment, though ruling was on crossmotions to dismiss, where parties supplemented their motions with various materials, including copies of plats, an affidavit, tax documents, and applications to raze buildings, and trial court did not exclude that information during the hearing on the motion. Md.Rule 2-322(c).

[9] Zoning and Planning 571 414k571

Challenger's status as a taxpayer of Baltimore City was insufficient to confer standing to seek judicial review of board of municipal and zoning appeals' decision that upheld the grant of a permit to construct

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a pharmacy; in addition, challenger was required to show that he was aggrieved by the decision. Code 1957, Art. 66B, § 2.09(a) (1999).

[10] Statutes 206 361k206

Under rules of statutory construction, courts should avoid rendering a clause, sentence, or phrase as surplusage, superfluous, meaningless, or nugatory.

[11] Statutes 🖘 181(1) 361k181(1)

Every quest to discover and give effect to the objectives of the legislature begins with the text of the statute.

[12] Statutes 🗫 188 361k188

If the legislature's intentions are evident from the text of the statute, a court's inquiry normally will cease and the plain meaning of the statute will govern.

[13] Zoning and Planning \$\sim 571 \\ 414k571

In regard to parties seeking judicial review of a decision by the board of municipal and zoning appeals, the mayor of Baltimore City or its city council is not authorized to expand standing beyond that conferred by the state legislature. Code 1957, Art. 66B, § 2.09(f) (1999).

[14] Zoning and Planning \$\sim 571 \\ 414k571

Taxpayers of Baltimore City must be aggrieved in order to seek judicial review of a decision by the board of municipal and zoning appeals. Code 1957, Art. 66B, § 2.09(a) (1999).

[15] Constitutional Law 228.2 92k228.2

[15] Zoning and Planning \$\sim 8\$ 414k8

Statute providing that taxpayers of Baltimore City must be aggrieved in order to seek judicial review of a decision by the board of municipal and zoning appeals was valid, under rational basis test, as against challenge that it violated equal protection of the law;

no disparate treatment existed, as all taxpayers were required to be aggrieved, and though standing to appeal was more broadly conferred to residents of other municipalities, that variance was not irrational. Code 1957, Art. 66B, § 2.09(a) (1999).

[16] Constitutional Law © 213.1(2) 92k213.1(2)

Equal protection claims will be reviewed under the rational basis standard unless the classification burdens a suspect class or impinges upon a fundamental right; suspect classes include gender, race, illegitimacy, and alienage, and not place of residence.

[17] Constitutional Law \$\sim 213.1(2)\$
92k213.1(2)

The rational basis test, as applied to a claim that a zoning ordinance violates equal protection, requires a plaintiff to prove that he was treated differently than others similarly situated, and that the disparate treatment did not bear a rational relationship to a legitimate governmental interest.

[18] Constitutional Law 213.1(2) 92k213.1(2)

In looking at the rational relationship between the law and the state interest, as required by rational basis test applied to equal protection challenges, a court will not overturn the classification unless the varying treatment is so unrelated to the achievement of any combination of legitimate purposes that the court can only conclude that the governmental actions were irrational.

[19] Zoning and Planning \$\sim 571 \\ 414k571

To be considered an aggrieved party, as required to have standing to seek judicial review of a board of municipal and zoning appeals' decision, the complaining property owner must be in sight or sound range of the property that is the subject of his complaint. Code 1957, Art. 66B, § 2.09(a) (1999).

[20] Zoning and Planning 571 414k571

Challenger was not aggrieved by board of municipal and zoning appeals' decision that upheld the grant of a permit to construct a pharmacy, as required for him 767 A.2d 906 (Cite as: 137 Md.App. 60, 767 A.2d 906)

to have standing to seek judicial review of the board's decision; since he lived two blocks west and three blocks north of the construction site, challenger was not so close to the site as to be per se aggrieved, and challenger did not show that the pharmacy and its parking lot would cause his property to devaluate. Code 1957, Art. 66B, § 2.09(a) (1999).

[21] Zoning and Planning 571 414k571

Fact that challenger lived in zoning district where pharmacy was to be constructed did not make him "aggrieved" by board of municipal and zoning appeals' decision that upheld the grant of the construction permit, as required for him to have standing to seek judicial review of the board's decision, where challenger lived two blocks west and three blocks north of the construction site. Code 1957, Art. 66B, § 2.09(a) (1999).

**908 *64 J. Carroll Holzer (Holzer & Lee, on the brief), Towson, for appellants.

*65 Sandra R. Gutman, Chief Solicitor (Frank C. Derr, Deputy City Solicitor, on the brief), Baltimore, for Mayor & City Council.

Stephen H. Kaufman (Howard Alderman, Jr., and Levin & Gann, P.A., on the brief), Towson, for CVS, Inc.

Stanley Fine (Rosenberg, Proutt, Funk & Greenberg, on the brief), Baltimore, for Wexler.

Argued before KENNEY, ADKINS and WILLIAM W. WENNER (Ret'd, specially assigned), JJ.

KENNEY, Judge.

This case arises out of a judgment of the Circuit Court for Baltimore City ("the City.") dismissing a request for judicial review made by appellant, Douglas M. Armstrong ("Armstrong"), and the Committee for Responsible Development on 25th Street (the "Committee"), based on lack of standing. [FN1] Armstrong and the Committee had petitioned for judicial review of a decision of the Board of Municipal and Zoning Appeals (the "Board") denying their appeal of the issuance of a permit to appellees Robert Wexler ("Wexler") and Charles Street Baltimore CVS, Inc. ("CVS").

FN1. The Committee for Responsible Development conceded that it had no standing, and it is not a party

to this appeal. Although Armstrong consistently referred to "appellants" in his brief, we shall refer only to Armstrong or appellant when discussing his arguments.

Appellant presents three questions on appeal, which we have reworded and reordered as follows:

- 1. Is the interpretation of Council Ordinance Number 967, creating a Parking Lot District, as it relates to accessory parking lots, a matter of great public importance and likely to reoccur and therefore not moot?
- 2. Does an unaggrieved taxpayer in Baltimore City have standing to petition for judicial review of a decision of the Board of Municipal and Zoning Appeals?
- *66 3. Is the appellant aggrieved and thus has standing to petition for judicial review of a decision of the Board of Municipal and Zoning Appeals? Finding no error, we affirm.

FACTS AND PROCEEDINGS

On July 9, 1999, the City issued a permit to Wexler and his lessee, CVS, that allowed **909 them to consolidate lots and erect a drugstore/pharmacy on property located at 2500-2506 North Charles Street (the "Property"). The permit contemplated the demolition of ten vacant buildings in order to accommodate the pharmacy and the adjacent parking lot containing sixteen parking spaces.

The Property is zoned B-2-3 business; a pharmacy is a permitted use within that zoning area. The Property is also within the Charles Village parking lot district. Section 9.0-1 of the Baltimore City Zoning Ordinance ("BCZO") requires accessory off-street parking to support the permitted use. [FN2]

FN2. The ordinance provisions set out in this opinion are those in effect in 1999 when the Board decided the case.

Armstrong resides at 2828 North Howard Street, which is approximately two blocks west and three blocks north of the Property. Armstrong, along with the Committee, [FN3] appealed the grant of the permit. Both argued that the BCZO required plans for a parking lot like the sixteen space lot contemplated by CVS "to be reviewed by the Civic Design Commission and ultimately authorized by an ordinance approved by the Mayor and City Council of Baltimore.'"

FN3. Douglas M. Armstrong was Chairman of the

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Committee at the time of the appeal.

The Board held a hearing on August 31, 1999. At the hearing, Armstrong argued, on behalf of himself and the Committee, that the capacity of the CVS parking lot was more than double what was needed in a B-2-3 district. He also expressed concern about the need to raze ten row houses to make way for a retail structure that did not blend in with the *67 historical character of the neighborhood. He also argued that the exterior design of the CVS did not meet the requirements under the zoning ordinances. Armstrong and other citizens appearing at the hearing argued that CVS needed to obtain an ordinance to build the sixteen space parking lot because of its location in a parking lot district.

At the hearing, the attorney for the Mayor and City Council of Baltimore (the "City") argued as follows:

I can say that the standard practice and procedure of the zoning office has been to approve accessory parking for all uses in the parking lot districts without requiring an ordinance. The language, and I do agree that the language isn't the best wherein they talked about parking lots versus as a permitted use without saying anything about accessory. It's silent on the accessory aspect of it. The--I mean that, I think, is something that's poorly written in the ordinance. However, the standard practice and procedure ever since 1971 when the ordinance was implemented has been to allow accessory parking without applying the requirements of parking lots.

The City acknowledged that if the parking lot were the principal use of the property, an ordinance would be necessary. A parking lot is defined by the BCZO as "the land used for the off-street parking of three or more motor vehicles together with the adjoining and perimeter areas required under this section or elsewhere under the laws and ordinances of Baltimore City." BCZO § 9.0-3(b). The City noted that the principal use of the property in this case was for a pharmacy and that, consequently, the proposed parking lot was an accessory use. The City, moreover, contended that the zoning ordinance does not prohibit developers from providing more parking spaces than required in an accessory lot, even when the development is in a parking lot district.

The City, CVS, and Wexler all adduced evidence that other retail establishments in the neighborhood, specifically Hollywood Video and a Safeway supermarket, had accessory parking with spaces in excess of the minimum requirements. *68 These

businesses had not been required to receive ordinance approval because the City **910 believed an ordinance was unnecessary for accessory use parking lots.

The Board handed down its decision sustaining the grant of the permit on September 9, 1999. Appellants filed a request for judicial review to the Circuit Court for Baltimore City. Appellees Wexler and the City moved to dismiss the appeal, arguing that both Armstrong and the Committee lacked standing. In their response to the motion to dismiss, "Appellants concede[d] that the Committee lacks standing, [but argued that] it is without question that Douglas Armstrong possesses such standing to bring this appeal." Along with his response to the motion to dismiss, Armstrong filed an affidavit stating that all of the information in the motion was true and correct and attaching documents concerning both his own property as well as affected property on Charles Street.

The circuit court held a hearing on January 7, 2000, and granted the motion to dismiss, stating:

In this particular case, the Court has been reaching for that which needs to be done. The question before this Court, and this Court's finding is whether or not it's a showing of Mr. Armstrong being an aggrieved party. The Court does not have before it that which is clearly a contact to him. Arguably, that his house from his steps, the front or back, he cannot see the location.

Someone would argue, well he doesn't have to walk past it, but that's why he's there. He would like to walk down the street and see and feel Charles Village as being what it was when he decided to move there and that his kids will know what Charles Village is, and his grandkids will know why he moved there. And hopefully he sticks around.

In this particular case before the Court, the Court does not have what it needs to have in accordance to that which has been found and decided not only by *Brynaiarski*, but several other cases, reported, I might add, that deals with the issue. The *McCormick Spice* case dealt with the issue *69 raised here, specifically as to what it looks like in its impact and why we feel that it should not be torn down....

What is very clear to this Court is that you have to be more specific in the battle to be able to make your argument....

They stand that which is before me in applicable law, the Court grants the motion to dismiss. As to the Committee, the Court further finds, based on the

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applicable law and the cases and its interpretation, the Court is required to grant the motion to dismiss as to Mr. Armstrong, with its apologies.

Armstrong's motion to reconsider was denied by the court on February 25, 2000. This appeal followed.

DISCUSSION I. Mootness

Appellant argues that this case is not moot even though appellees had already razed the buildings in order to commence construction of the pharmacy and parking lot. He asks us to decide how the particular provisions of the zoning ordinances should be applied in this case.

[1][2][3] "A case is moot when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy." Coburn v. Coburn, 342 Md. 244, 250, 674 A.2d 951 (1996). Moot cases are generally dismissed without a decision on the merits. Coburn, 342 Md. at 250, 674 A.2d 951. In rare instances, however, we can address a moot case if it "presents 'unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct,' or the issue presented is 'capable of repetition, yet evading review.' "Stevenson v. Lanham, 127 Md.App. 597, 612, 736 A.2d 363 (1999) (citations omitted).

In the instant case, Armstrong was attempting to prevent the destruction of designed **911 buildings along Charles Street. These buildings have been destroyed, so we cannot provide an *70 effective remedy, as the buildings cannot be put back. [FN4] Armstrong argues that this Court could still provide him with an effective remedy by requiring aesthetic changes or a reduction in the number of parking spaces. Armstrong appears to us to be requesting that we order appellees to abide by the requirements of BCZO § 9.0-3, but any failure by the appellees to abide by the requirements of the ordinance is not at issue in this case. [FN5]

FN4. We note that the buildings could not have been destroyed if Armstrong had filed a bond in this matter.

FN5. h. Design and Maintenance

1. Surfacing. Parking spaces shall be surfaced and maintained with a dustless all-weather material in accordance with the Building Code of Baltimore City....

- 2. Screening and landscaping. Where a parking facility with five or more parking spaces either adjoins or is within 100 feet of a lot in a Residence or Office-Residence District and is visible from ground level of a Residence or Office-Residence District, such parking facility shall be effectively screened from such lot in the Residence or Office-Residence District. Screening shall consist of a masonry wall or durable fence, or combination thereof, not less than four feet, nor more than eight feet in height, together with a planting strip on the outside of such wall or fence. In lieu of such wall or fence, a compact evergreen hedge of not less than four feet in height at time of original planting may be used. New screening shall not be required in the event the parking facility is already effectively screened by a terrain or landscaping feature, or by a railroad right-of-way or siding track. Screening and landscaping shall be maintained in good condition and shall be so designed and placed so as not to obstruct vehicle sight distances at entrances and exits.
- 3. Lighting. Illumination, if provided, of parking facilities shall be arranged so as not to reflect direct rays of light into any adjacent Residence or Office-Residence District. In no case shall direct and indirect illumination from the source of light exceed an illumination level maximum of one-half foot candle when measured at the nearest point of the lot line in a Residence or Office-Residence District.
- 4. Signs. Accessory signs shall be permitted with parking facilities in accordance with the provisions set forth in Chapter 10 of this ordinance.
- 5. Repair and service. No motor vehicle repair work or service of any kind shall be permitted in parking spaces, except emergency repair service. BCZO 9.0-2(h).

Rather, we must decide whether our interpretation of the ordinance would fall into one of the two categories that would *71 allow us to address the substance of appellant's arguments despite the fact that his case is moot. Appellant advises that he "has reason to believe additional development requiring parking lots within the district will occur in the imminent future," and we do not doubt that development will continue to occur.

[4] We must examine the likelihood of someone else being in Armstrong's position, that is, a party before the Board but not a person aggrieved for the purposes of judicial review before the circuit court. According to the statute, "[a]ppeals to the Board of Zoning Appeals may be taken by any person aggrieved ... by any decision of the administrative officer." Maryland Code (1957, 1998 Repl.Vol.), Art. 66B, § 2.08(d). We note that Armstrong's standing before the Board was never at issue. In any event, the

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requirements for administrative standing are such that one may have administrative standing, but lack standing to seek judicial review. Sugarloaf Citizens' Ass'n v. Dep't of Environment, 344 Md. 271, 285-86, 686 A.2d 605 (1996). Thus, it is conceivable that a concerned citizen or group of citizens may be allowed to argue against a zoning decision before the Board but not be sufficiently aggrieved to seek judicial review of the Board's decision.

In addition, Armstrong's ability to bring a declaratory judgment action in this case is uncertain. The Board has primary jurisdiction over zoning issues. [FN6] If Armstrong **912 filed a declaratory *72 judgment action regarding the interpretation or constitutionality of the ordinance, he would first have to exhaust his administrative remedies. Josephson v. City of Annapolis, 353 Md. 667, 675-76, 728 A.2d 690 (1998); Respess v. City of Frederick, 82 Md.App. 253, 259-60, 571 A.2d 252 (1990). This scenario would lead to the same problem with standing that exists in the present case, as we will discuss infra. Even assuming that he could meet the requirements of showing a "justiciable controversy" pursuant to Md.Code (1974, 1998 Repl.Vol.), § 3-409(a) of the Courts and Judicial Proceedings Article, he would lack standing.

FN6. BCZO § 11.0-3(b) sets out the jurisdiction of the Board:

- b. Jurisdiction. The Board shall have the following jurisdiction and authority:
- 1. to hear and decide applications for conditional uses in the manner prescribed by and subject to the standards established herein;
- 2. to hear and decide applications for special exceptions from the terms provided in this ordinance in the manner prescribed by and subject to the standards established herein;
- 3. to hear and decide applications for variances from the terms provided in this ordinance in the manner prescribed by and subject to the standards established herein;
- 4. to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator under this ordinance;
- 5. to hear and decide all matter referred to it or upon which it is required to act under this ordinance;
- 6. to receive all proposed amendments to this ordinance referred to it by the City Council and report its findings and recommendations;
- 7. to promulgate rules and regulations applicable to Additional Industrial Uses in the M-2 Industrial District pursuant to Section 7.2-1d of this ordinance; 8. to adopt and establish general rules for the

conduct of its proceedings; and

9. in furtherance of this authority, the Board shall forward to the Zoning Administrator copies of all matters acted upon by the Board--including orders, requirements, decisions, determinations, rules, regulations, and all other data and information necessary for the proper administration and enforcement of this ordinance.

[5][6][7] Standing to bring a declaratory judgment is the same as for other cases; there must be a "legal interest" such as "one of property, one arising out of a contract, one protected against tortious invasion, or one founded on a statute which confers a privilege." Baltimore Steam Co. v. Baltimore Gas & Elec. Co., 123 Md.App. 1, 15, 716 A.2d 1042 (1998) (quoting Tennessee Elec. Power Co. v. Tennessee Valley Auth., 306 U.S. 118, 137-38, 59 S.Ct. 366, 369, 83 L.Ed. 543 (1939)). We recognize that Baltimore Steam Co. has since been vacated by the Court of Appeals because the case had become moot during the appellate process. Baltimore Gas & Elec. Co. v. Baltimore Steam Co., 353 Md. 142, 725 A.2d 549 Nevertheless, we believe that our (1999). explanation of standing in the administrative context is helpful:

*73 Ordinarily, only the public authorities have standing to seek redress for violations of the public laws, and a private individual has standing to do so only when she can show that she has "'suffered some special damage [read "injury"] from such wrong differing in character and kind from that suffered by the general public.' " Becker v. Litty, 318 Md. 76, 92-93, 566 A.2d 1101, 1109 (1989) (quoting Weinberg v. Kracke, 189 Md. 275, 280, 55 A.2d 797, 799 (1947)).

Baltimore Steam Co., 123 Md.App. at 18, 716 A.2d 1042. Armstrong has not suffered, nor will he conceivably suffer, "special damages" such that he will have standing to bring a declaratory judgment action.

We believe that the circumstances present an issue of public concern that is "capable of repetition yet evading review." Thus, we would be prepared to address the substance of appellant's argument if he indeed has standing.

II. Standard of Review

Appellant appeals an order of the trial court that granted appellees' separate cross-motions to dismiss based on appellant's lack of standing. Both parties' **913 pleadings, however, contained supplemental information that the judge did not exclude during the

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hearing, including the entire record below as well as documents attached to the parties' motions. Thus, because the standard for reviewing a motion to dismiss is different from the standard for reviewing a motion for summary judgment, we must first resolve what motion the court actually granted even though it stated that it granted the motion to dismiss.

The record indicates that the parties in this case supplemented their motions with various materials, including copies of plats, an affidavit, tax documents, and applications to raze different buildings along North Charles Street. As this Court stated in *Boyd v. Hickman*, 114 Md.App. 108, 689 A.2d 106, *cert. denied*, 346 Md. 26, 694 A.2d 949 (1997):

When the circuit court considers matters outside the pleadings, the court treats the matter as a motion for summary *74 judgment, and the legal effect of the ruling in favor of the moving party is to grant a motion for summary judgment notwithstanding the court's designation of the ruling as a motion to dismiss.

Id. at 117-18, 689 A.2d 106 (citations omitted); see Md. Rule 2- 322(c).

[8] Because the circuit court considered materials outside the pleadings, [FN7] the order in this case was a grant of a motion for summary judgment and we will treat it as such. "When reviewing the trial court's grant of a motion for summary judgment, we must consider whether a dispute of material fact existed and whether the trial judge was legally correct." Taylor v. Feissner, 103 Md.App. 356, 366, 653 A.2d 947, cert. denied, 339 Md. 355, 663 A.2d 73 (1995).

FN7. The trial court indicated that it had looked "over every page, of every bit of paper submitted by each one" of the appellants. Thus, we conclude that it looked outside the four corners of the pleadings.

III. Standing of Appellant as a Taxpayer

Armstrong's first argument is that, as a taxpayer, he had standing to petition for judicial review of the Board's decision to uphold the grant of the permit. As support for this argument, he points to Section 11.0-3(l)(1) of the BCZO, which states:

Any person or persons jointly or severally aggrieved by any decision of the Board, or any taxpayer, or any officer, department, board, or bureau of the municipality, may appeal such decision to the Baltimore City Court setting forth that such decision is unlawful, in whole or in part,

and specifying the unlawful grounds thereof. This language dates back to at least 1950.

The Maryland Code, on the other hand, states:

Any person or persons, or any taxpayer, or any officer, department, board, bureau of the jurisdiction, jointly or severally aggrieved by any decision of the board of appeals, *75 or by a zoning action by the local legislative body, may appeal the same to the Circuit Court for Baltimore City.

Art. 66B, § 2.09(a). This language went into effect with the 1970 amendment to the statute.

Despite appellant's arguments to the contrary, a conflict exists between the local zoning ordinance and the foregoing Code provision, as the local ordinance allows a taxpayer, whether aggrieved or not, to appeal a decision by the Board. See Boulden v. Mayor & Comm'rs of Town of Elkton, 311 Md. 411, 414, 535 A.2d 477 (1988) (interpreting a State statute with almost identical language as allowing non-aggrieved taxpayers to appeal a zoning decision). The Code, however, requires the taxpayer to have been aggrieved by the Board's decision. See Boulden, 311 Md. at 417, 535 A.2d 477 (stating that a municipal ordinance with language substantially **914 identical to that of Art. 66B, § 2.09 required aggrievement). In situations like this, where there is a conflict between a Baltimore City ordinance and a public general law of the State, the public general law controls:

All such local laws enacted by the Mayor of Baltimore and City Council of the City of Baltimore or the Council of the Counties as hereinbefore provided, shall be subject to the same rules of interpretation as those now applicable to the Public Local Laws of this State, except that in case of any conflict between said local law and any Public General Law now or hereafter enacted the Public General Law shall control.

Md. Const., art. XI-A, § 3. See also Boulden, 311 Md. at 415, 535 A.2d 477.

[9] Armstrong attempts to circumvent the plain language of the statute by citing a number of cases allowing taxpayers standing in Baltimore City by virtue of their status as taxpayers. See, e.g., City of Baltimore v. Byrd, 191 Md. 632, 62 A.2d 588 (1948); Norwood Heights Improvement Ass'n., Inc. v. Mayor & City Council of Baltimore, et al., 195 Md. 368, 73 A.2d 529 (1950); Windsor Hills Improvement Ass'n., Inc. v. Mayor & City Council of Baltimore, 195 Md. 383, 73 A.2d 531 *76 (1950); and Kennerly, et al. v. Mayor & City Council of Baltimore, 247 Md. 601,

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233 A.2d 800 (1967). As appellant conceded at oral argument, each of these cases concerns an earlier version of Art. 66B, § 2.09 and are not instructive.

Appellant relies heavily on Sipes v. Board of Municipal and Zoning Appeals, 99 Md.App. 78, 635 A.2d 86 (1994), in arguing that he had standing by virtue of his status as a taxpayer. He cites to the following dicta for support: "there is no question that Sipes, as a taxpayer, was entitled to appeal the decision of the Board." Sipes, 99 Md.App. at 90, 635 A.2d 86. This is not a holding of the case, however, as Sipes' standing as both a taxpayer and as an aggrieved party was not contested. Sipes, 99 Md.App. at 89, 635 A.2d 86. As noted by the Court, the "only question the parties ask us to decide is whether Sipes could intervene in an appeal after the running of the thirty day appeal period, where that appeal was originally filed by parties without standing." Sipes, 99 Md.App. at 90, 635 A.2d 86. The issue of conflict between Art. 66B, § 2.09 and subsection 11.0-3(l)(1) of BCZO was not raised in Sipes.

[10] Appellant seeks to bolster his argument by stating that the words "or other taxpayer" in Article 66B, § 2.09 are superfluous because if aggrievement is required of any party seeking an appeal "any person or persons aggrieved" would be sufficient. Under longstanding rules of statutory construction, we should avoid rendering a clause, sentence, or phrase "surplusage, superfluous, meaningless, or nugatory." State v. Pagano, 341 Md. 129, 134, 669 A.2d 1339 (1996) (quoting Montgomery County v. Buckman, 333 Md. 516, 524, 636 A.2d 448 (1994)). If we accepted appellant's arguments, we could be rendering a good portion of the statute---"or any taxpayer, or any officer, department, board, bureau of the jurisdiction"--meaningless.

Appellant next argues that, by enacting Art. 66B, § 2.09(f), the legislature gave the Mayor and City Council of Baltimore City the power to broaden standing to request judicial review of Board decisions. BCZO § 11.0-3(l)(1). Section 2.09(f) states:

*77 In addition to the appeal provided in this section, the Mayor and the City Council may provide for appeal to the Circuit Court for Baltimore City of any matter arising under the planning and zoning laws of the City of Baltimore. The decision of the Circuit Court for Baltimore City may be appealed to the Court of Special Appeals. This subsection does not restrict any charter or

other power of the city.

Art. 66B, § 2.09(f) (emphasis supplied).

[11][12][13][14] Of course, "[e]very quest to discover and give effect to the objectives **915 of the legislature begins with the text of the statute." Huffman v. State, 356 Md. 622, 628, 741 A.2d 1088, 1091 (1999). If the legislature's intentions are evident from the text of the statute, our inquiry normally will cease and the plain meaning of the statute will govern. Adamson v. Correctional Medical Services, Inc., 359 Md. 238, 251, 753 A.2d 501 (2000) (citations omitted). The plain language of § 2.09(f) concerns the appeal of "matters" arising under the planning and zoning laws of Baltimore City, and not standing. We do not interpret the language of this statutory provision as allowing the Mayor or City Council to expand standing beyond that conferred by the State legislature. We hold that taxpayers must be aggrieved in order to seek judicial review of the decision of the Board.

[15][16] If we find that the BCZO § 11.0-3(l)(1) is in conflict with and preempted by Art. 66B, § 2.09(a), as we have done, appellant then argues that State statute is unconstitutional, because it "arbitrarily discriminates against residents and taxpayers of Baltimore City as opposed to taxpayers located in the counties." Armstrong did not raise this issue before the trial court, so it is unpreserved for appeal, Moreover, this argument is without merit. We view Armstrong's claim as resting on equal protection grounds. See Gooslin v. State, 132 Md.App. 290, 297, 752 A.2d 642, cert. denied, 359 Md. 334, 753 A.2d 1031 (2000). Equal protection claims will be reviewed under the rational basis standard unless the classification burdens a "suspect class" or impinges upon a "fundamental right." Gooslin, 132 Md.App. at 297-98, 752 ***78** A.2d 642. Suspect classes include gender, race, illegitimacy, and alienage, and not place of residence. Murphy v. Edmonds, 325 Md. 342, 357, 601 A.2d 102 (1992). As appellant conceded at oral argument, there is no "suspect class" involved here.

Our next inquiry, therefore, is whether the right at issue here is a "fundamental right." The right at issue is the right to have a decision of the zoning Board reviewed by the circuit court.

The right to an appeal is not a right required by due process of law, nor is it an inherent or inalienable right. Lindsey v. Normet, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972); Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956);

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Brown v. State, 237 Md. 492, 498-499, 207 A.2d 103, 108 (1965); Winkler v. State, 194 Md. 1, 16-17, 69 A.2d 674, 679-680 (1949), and cases therein cited. See also 16 Am.Jur.2d Constitutional Law § 584 (1964); 2 Am.Jur.2d Administrative Law § 557 (1962); 4 Am.Jur.2d Appeal and Error § 1 (1962). An appellate right is entirely statutory in origin and no person or agency may prosecute such an appeal unless the right is conferred by statute. See Lohss v. State, 272 Md. 113, 116, 321 A.2d 534, 536-537 (1974); Mace Produce Co. v. State's Attorney, 251 Md. 503, 508, 248 A.2d 346, 350 (1968); Subsequent Injury Fund v. Pack, 250 Md. 306, 309, 242 A.2d 506, 509 (1968); Switkes v. John McShain, Inc., 202 Md. 340, 343, 96 A.2d 617, 619 (1953). See also Ex parte Abdu, 247 U.S. 27, 38 S.Ct. 447, 62 L.Ed. 966 (1917[1918]); 2 J. Poe, Pleading and Practice § 826 (Tiffany If appellate review is not permitted ed.1925). unless expressly granted by statute, as was held in Urbana Civic Ass'n, Inc. v. Urbana Mobile Village, Inc., 260 Md. 458, 460-461, 272 A.2d 628, 630 (1971), a fortiori, there is equally no right of appeal if that right is expressly excluded by statute.

Criminal Injuries Comp. Board v. Gould, 273 Md. 486, 500, 331 A.2d 55 (1975); see also Holmes v. Robinson, 84 Md.App. 144, 151, 578 A.2d 294 (1990), cert. denied, 321 Md. 501, 583 A.2d 275 (1991). Here, the right to appeal the Board's *79 decision is limited by the statute such that not everyone can appeal. Thus, we review this law under the rational basis test.

[17] "The rational basis test requires appellant to prove that (1) the County **916 treated [him] differently than it treated others similarly situated, and (2) the disparate treatment did not bear a rational relationship to a legitimate interest." Security Management Corp. v. Baltimore County, 104 Md.App. 234, 243-44, 655 A.2d 1326, cert. denied, 339 Md. 643, 664 A.2d 886 (1995). The sum total of appellant's argument is:

Taxpayers in the county have a right to appeal based upon Article 66B, Section 4.08. Wexler acknowledges that Article 66B, Section 4.08 permits taxpayers in the county to appeal zoning decisions to the Circuit Court in the exact same fashion as the Baltimore City Ordinance and the earlier provisions of Article 66B. There is no rationale or justification in the legislation to suggest that the Maryland General Assembly has any basis to discriminate against taxpayers of Baltimore City, as compared with taxpayers in the counties in denying them the same ability to appeal. The

Appellants have found no language which would support and justify the distinctions between rights of taxpayers to appeal in the City as opposed to the counties authorized under Article 66B. If a law is applied and administered by public authority "with an evil eye and an unequal hand" so as to make unjust discriminations between persons in similar circumstances, material to their rights, such denial of equal justice is within the prohibition of the Constitution. See Bruce v. Director of Common Dept. of Chesapeake Bay Affairs[Director, Dept. of Chesapeake Bay Affairs], 261 Md. 585, at 600 [276 A.2d 200] (1971).

As to an appeal within Baltimore City there is, of course, no discrimination. Anyone, including taxpayers from outside Baltimore City, wishing to appeal a Board decision to the Circuit Court for Baltimore City must show aggrievement. The alleged discrimination arises from the differences in standing vis-a-vis appeals of zoning decisions in Baltimore City and the appeal of zoning decisions in other jurisdictions. Thus, we *80 look at whether this different treatment of Baltimore City bears a rational relationship to a State interest.

We first look at the differences in the statutes governing standing to appeal zoning decisions. We begin first with the provisions relating to chartered counties:

To enact local laws providing (1) for the establishment of a county board of appeals whose members shall be appointed by the county council; (2) for the number, qualifications, terms, and compensation of the members; (3) for the adoption by the board of rules of practice governing its proceedings; and (4) for the decision by the board on petition by any interested person and after notice and opportunity for hearing and on the basis of the record before the board, of such of the following matters arising (either originally or on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, or subject to amendment or repeal by, the county council, as shall be specified from time to time by such local laws enacted under this subsection: An application for a zoning variation or exception or amendment of a zoning ordinance map; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and the assessment of any special benefit tax: Provided, that upon any decision by a county board

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of appeals it shall file an opinion which shall include a statement of the facts found and the grounds for its decision. Any person aggrieved by the decision of the board and a party to the proceeding before it may appeal to the circuit court for the county which shall have power to affirm the decision of the board, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice **917 may require. Any party to the proceeding in the circuit court aggrieved by the decision of the court may appeal from the decision to the Court of Special Appeals in the same manner as provided for in civil cases.

*81 Md.Code (1957, 1998 Repl.Vol.1999 Suppl.), Art. 25A, § 5(U) (emphasis supplied).

The statute governing standing in Baltimore City is similar:

Any person or persons, or any taxpayer, or any officer, department, board, bureau of the jurisdiction, jointly or severally aggrieved by any decision of the board of appeals, or by a zoning action by the local legislative body, may appeal the same to the Circuit Court for Baltimore City.

Art. 66B, § 2.09(a). [FN8]

FN8. We note that, despite the conflict between BCZO § 11.0-3(l)(1), the new version of the Baltimore City Code, which was completely revised and renumbered in the year 2000, maintains this conflict. In fact, the revised ordinance makes it even more clear that a taxpayer purportedly has standing:

§ 17-302. Who may appeal.

A final administrative decision of the Board may be appealed to the Circuit Court for Baltimore City by:

- (1) any person aggrieved by the decision;
- (2) any officer, department, board, or bureau of the City; or
- (3) any taxpayer.

A search of the legislative history revealed no notes concerning the amendments to and enactment of this ordinance.

Standing to appeal zoning decisions from code counties, county commissioners counties, and municipalities other than Baltimore City to the circuit court is broader:

Any person or persons, jointly or severally, aggrieved by any decision of the board of appeals, or by a zoning action by the local legislative body, or any taxpayer, or any officer, department, board, bureau of the jurisdiction, may appeal the same to the circuit court of the county.

Art. 66B, § 4.08(a). This language more closely tracks the language of Art. 66B, § 2.09 in effect prior to the 1970 amendment. [FN9]

FN9. The statutory language of this provision in effect in 1963, for example, stated: "Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may appeal to a court of record on the ground that such decision is illegal in whole or in part." Md.Code (1957, 1963 Cum.Supp.), Art. 66B, § 7(j).

*82 [18] Thus, Baltimore City is treated like a charter county, and the difference in treatment is not limited to it alone. Moreover, in looking at the rational relationship between the law and the State interest, we " 'will not overturn' the classification 'unless the varying treatment ... is so unrelated to the achievement of any combination of legitimate purposes that [the court] can only conclude that the [governmental] actions were irrational.' " Murphy, 325 Md. at 355, 601 A.2d 102 (citations omitted). Appellant has pointed us to nothing that would show that the government's actions in treating appeals of zoning decisions differently in Baltimore City from those in other counties is irrational.

The Court of Appeals has held in the past that Baltimore City may be treated differently than the counties in the State. See Davidson v. Miller, 276 Md. 54, 81, 344 A.2d 422 (1975) (upholding Md. Const. art. IV, § 8 allowing county litigants to remove their cases to another county, while limiting a City litigant's right to do so). Another case, in which the Court of Appeals upheld Md. Const. art. IV, § 22 giving county but not City citizens the right to an en banc appeal before their circuit courts, merits special attention. Washabaugh v. Washabaugh, 285 Md. 393, 404, 404 A.2d 1027 (1979); see also Maryland Aggregates Ass'n v. State, 337 Md. 658, 672 n. 9, 655 A.2d 886 (1995). Washabaugh cited to an 1880 Supreme Court case in recognizing the continuing constitutionality of a state legislature treating different **918 territories within its jurisdiction differently:

As respects the administration of justice, [a state] may establish one system of courts for cities and another for rural districts, one system for one portion of its territory and another system for another portion. Convenience, if not necessity, often requires this to be done, and it would seriously interfere with the power of a State to regulate its internal affairs to deny to it this right.

We think it is not denied or taken away by anything

in the Constitution of the United States, including the amendments thereto.

We might go still further, and say, with undoubted truth, that there is nothing in the Constitution to prevent any *83 State from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example, should see fit to adopt the civil law and its method of procedure for New York City and the surrounding counties, and the common law and its method of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the Fourteenth Amendment, be a denial to any person of the equal protection of the laws. If every person residing or being in either portion of the State should be accorded the equal protection of the laws prevailing there, he could not justly complain of a violation of the clause referred to. For, as before said, it has respect to persons and classes of persons. It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.

The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there may be a right of trial by jury, [FN10] and on the other side no such right. Each State prescribes its own modes of judicial proceeding. If diversities of laws and judicial proceedings may exist in the several States without violating the equality clause in the Fourteenth Amendment, there is no solid reason why there may not be such diversities in different parts of the same A uniformity which is not essential as State. regards different States cannot be essential as regards different parts of a State, provided that in each and all there is no infraction of *84 the constitutional provision. Diversities which are allowable in different States are allowable in different parts of the same State. Where part of a State is thickly settled, and another part has but few inhabitants, it may be desirable to have different systems of judicature for the two portions--trial by jury in one, for example, and not in the other. Large cities may require a multiplication of courts and a peculiar arrangement of jurisdictions. It would be an unfortunate restriction of the powers of the State Government if it could not, in its discretion, provide

for these various exigencies.

FN10. This reference to jury trials is merely an example of diversity of treatment that may exist. The Supreme Court in Missouri v. Lewis upheld a law requiring litigants in five counties to appeal to an intermediate Court of Appeals rather than directly to the Missouri Supreme Court. Direct appellate review in the Missouri Supreme Court was available to litigants in those five counties only in certain, specified circumstances. 101 U.S. at 29.

Washabaugh, 285 Md. at 405-07, 404 A.2d 1027 (quoting Missouri v. Lewis, 101 U.S. 22, 30-32, 25 L.Ed. 989 (1879)). See also Howlett v. Rose, 496 U.S. 356, 372, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990) (affirming the proposition in Missouri v. Lewis that "States thus have great latitude to establish the structure and jurisdiction of **919 their own courts"); and North v. Russell, 427 U.S. 328, 338, 96 S.Ct. 2709, 49 L.Ed.2d 534 (1976) (upholding "Kentucky's constitutional provisions classifying cities by population and its statutory provisions permitting lay judges to preside in some cities while requiring lawtrained judges in others" in light of Missouri v. Lewis

The Washabaugh Court referred to "Baltimore City's heavily burdened judicial machinery," 285 Md. at 409, 404 A.2d 1027, as one reason to uphold the law in that case. The court system in Baltimore City is no less burdened today, and this in itself would be a rational basis to restrict appeals in zoning matters only to those parties actually aggrieved by the decision. Editorial, Prosecutors Seek Bottom Line, Baltimore Sun, Oct. 21, 2000, at 12A; Michael Janofsky, Baltimore's Push on Crime Creates Backlog of Cases, N.Y. Times, Jan. 17, 1999, at A14.

IV. Whether Appellant was Aggrieved by the Board's Decision

Appellant's next argument is that he was, in fact, aggrieved by the Board's decision for the following reasons:

*85 his contacts and close proximity to the subject site which makes [sic] him an aggrieved party. Secondly, he resides within the same parking lot district as the subject site and is therefore has an interest [sic] over and above that of the other members of the public in Baltimore City. Finally, since the parking lot district legislation contains aspects of historical preservation, that Appellant residing within the district has sufficient contact to enforce the nature and purposes of the district as it

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relates to the preservation of important structures as well as the aesthetics applicable to the pharmacy and parking lot.

In Bryniarski v. Montgomery County Bd. of Appeals, 247 Md. 137, 143, 230 A.2d 289 (1967), cited by the trial court in dismissing the case for lack of standing, the Court of Appeals stated that, in order to have standing to appeal a decision of an administrative agency to the circuit court, an individual (1) must have been a party to the proceeding before the Board, and (2) must be aggrieved by the decision of the Board. There is no argument that Armstrong was a party to the proceeding before the Board, so we must determine whether he was aggrieved by the Board's decision.

Previous decisions of the Court of Appeals

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

Bryniarski, 247 Md. at 144, 230 A.2d 289; see also Sugarloaf Citizens' Ass'n, 344 Md. at 288, 686 A.2d 605; and DuBay v. Crane, 240 Md. 180, 185, 213 A.2d 487 (1965).

- [19] While noting that standing was to be decided on a case by case basis, the Court of Appeals did provide some factors to consider when making that determination:
- *86 (a) It is sufficient if the facts constituting aggrievement appear in the petition for appeal either by express allegation or by necessary implication. Town of Somerset v. Montgomery County Board of Appeals, 245 Md. 52, 225 A.2d 294 (1966).
- (b) An adjoining, confronting or nearby property owner is deemed, prima facie, to be specially damaged and, therefore, a person aggrieved. The person challenging the fact of aggrievement has the burden of denying such damage in his answer to the petition for appeal and of coming forward with evidence to establish that the petitioner is not, in fact, aggrieved....
- **920 (c) A person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved. Wilkinson v. Atkinson, 242 Md. 231, 218 A.2d 503 (1966);

DuBay v. Crane, supra; City of Greenbelt v. Jaeger, 237 Md. 456, 206 A.2d 694 (1965); Marcus v. Montgomery County Council, 235 Md. 535, 201 A.2d 777 (1964); Pattison v. Corby, 226 Md. 97, 172 A.2d 490 (1961). But he will be considered a person aggrieved if he meets the burden of alleging and proving by competent evidence- either before the board or in the court on appeal if his standing is challenged-the fact that his personal or property rights are specially and adversely affected by the board's action.

Bryniarski, 247 Md. at 144-45, 230 A.2d 289. Generally, to be considered an aggrieved party, the complaining property owner must be in "sight or sound" range of the property that is the subject of his complaint. Md.-Nat'l Cap. P. & P. v. Rockville, 269 Md. 240, 248, 305 A.2d 122 (1973); Wier v. Witney Land Co., 257 Md. 600, 612-13, 263 A.2d 833 (1970).

[20] With these principles in mind, we shall evaluate Armstrong's standing to challenge the City's action in this case. Armstrong does not live so close to the Property that he is "per se" aggrieved. Armstrong lives two blocks west and three blocks north of the Property, and he cannot see it or hear activity taking place on it from his house. Although he *87 frequently passes it, so do many other members of the general public. He presented no evidence that the pharmacy and its parking lot would cause his property to devaluate.

Appellant cites a number of cases to bolster his arguments that, by virtue of his proximity to the pharmacy site, he is aggrieved. None of these cases, however, apply, because they either concern complainants who were within sight of the property at issue, Wier, 257 Md. at 613, 263 A.2d 833; Chatham Corp. v. Beltram, 252 Md. 578, 580, 251 A.2d 1 (1969); complainants who were very close (100 feet) to the property at issue, Cassel v. City of Baltimore, 195 Md. 348, 353, 73 A.2d 486 (1950); the complainants provided proof that their property values would depreciate, Toomey v. Gomeringer, 235 Md. 456, 460, 201 A.2d 842 (1964); complainants lived in a rural area such that, even though they were fairly far physically from the site, the less dense population gave them standing by virtue of their fears of depreciation in property values and school overcrowding. Board of Zoning Appeals v. Bailey, 216 Md. 536, 539, 141 A.2d 502 (1958). [FN11]

FN11. The Court of Appeals has long recognized

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that the impact of zoning decision in rural and semirural areas can be different than in urban and suburban areas. That is, neighborhoods in rural areas may extend farther, because the damage from a particular decision may be much wider reaching, than in an urban or suburban setting. *Pattey v. Bd.* of County Comm'rs for Worcester County, 271 Md. 352, 363, 317 A.2d 142 (1974).

[21] Armstrong next argues that because he lives within the same parking lot district as the pharmacy, and, because a prior ordinance "contained historical preservation aspects of preserving and preventing destruction of historical and irreplaceable properties within the parking lot use district," this provides him with a "special interest or property right" to everything within the district. Armstrong cites Faulkner v. Town of Chestertown, 290 Md. 214, 428 A.2d 879 (1981), in support of this contention.

We find Faulkner to be inapposite. The issue of standing was not raised in Faulkner. Faulkner concerned the actions of two building owners within a designated historic district in *88 the town of Chesterton. The purpose behind a designated historic district is quite different than the purpose behind the creation of parking lot districts in Baltimore City. As the Court of Appeals noted in Faulkner, the stated purposes of the State statute governing historic preservation is:

**921 (1) to safeguard the heritage of the county or municipal corporation by preserving the district therein which reflects elements of its cultural, social, economic, political, or architectural history; (2) to stabilize and improve property values in such a district; (3) to foster civic beauty; (4) to strengthen the local economy; and (5) to promote the use and preservation of historic districts for the education, welfare, and pleasure of the residents of the county or municipal corporation.

Faulkner, 290 Md. at 221, 428 A.2d 879 (quoting Maryland Code (1957, 1978 Repl.Vol.), Art. 66B, § 8.01(b)).

In general, the concept of designating certain areas as "historic" is described by a commentator as follows:

In brief, the zoning of historic areas requires that whenever an application is made for a permit for the erection of any new building or for the alteration of or additions to any existing building within the historic district, the plans therefor so far as they relate to appearance, color, texture or materials, and architectural design of the exterior thereof must be submitted to a commission for review and approval, and in this manner to prevent the intrusion of any

building which would be destructive of the nature of the district.

Faulkner, 290 Md. at 224, 428 A.2d 879 (quoting 1 A. Rathkopf, The Law of Zoning and Planning § 15-2 (4th ed.1975)).

Although the City Council clearly expressed concern over historic preservation issues in enacting its ordinance establishing parking lot districts, the stated purpose behind the creation of parking lot districts was "to protect the public against traffic, fire, or health hazards which may be created or *89 associated with parking lots or the operation thereof." Baltimore City, Md., Ordinance 967 (1967). [FN12] Baltimore City parking lot districts are not the same as historic districts.

FN12. The introductory portion of the Ordinance states:

WHEREAS, One of the most serious problems affecting the downtown area of Baltimore City is the indiscriminate construction and presence of parking lots throughout this area.

Some of these lots are well planned and attractive and are an asset to the community. Unfortunately, many of them are eyesores, and a detriment to the entire downtown area. Also it is unfortunate that many of them have been created through the destruction of historical and irreplaceable properties. Under existing laws and ordinances of Baltimore City, parking lots may be constructed in any commercial area by the simple method of obtaining a permit from the Bureau of Building Inspection, and these permits are easily available. Although large portions of the downtown area are zoned for commercial use, many of the buildings on the fringes of the downtown area are residential in appearance and character. Some of these are of the valuable and historic townhouse type which can never be replaced. The recent destruction of the valuable townhouse in the 100 block West Franklin Street and the planned destruction of three such buildings in the 1000 block of North Charles Street are examples of the removal of townhouse type of buildings which can never be replaced.

Frequently in the construction of parking facilities it has been the practice to tear down two or three buildings in a block, thus destroying the aesthetic beauty of the entire block. Considerable portions of Charles Street provide prime examples of this type of misuse of parking facilities.

The City Council finds that such an ordinance is needed to protect the public against traffic, fire, or health hazards which may be created or associated with parking lots or the operation thereof.

It is necessary and highly desirable for the preservation of valuable and historic properties adjacent to the downtown area of Baltimore City and

(Cite as: 137 Md.App. 60, *89, 767 A.2d 906, **921)

also for promoting and assuring the attractiveness of the City of Baltimore that a new zoning area be created in order to provide restrictions and requirements upon the establishment and operation of parking lots; now, therefore ...

While we sympathize with appellant's wish to preserve the historic character and aesthetics of his neighborhood, we do not find that his interests in the matter are any different than the interests of a member of the general public. Although he lives within the

parking lot district, his interests are still too attenuated to make **922 him personally aggrieved by the Board's decision in this case.

*90 JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

767 A.2d 906, 137 Md.App. 60

END OF DOCUMENT

KeyCite

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Date of Printing: FEB 25,2003

KEYCITE

CITATION: Committee for Responsible Development on 25th Street v. Mayor and City Council of Baltimore, 137 Md.App. 60, 767 A.2d 906 (Md.App., Mar 01, 2001) (NO. 2927 SEPT.TERM 1999)

History

Direct History

Committee for Responsible Development on 25th Street v. Mayor and City Council of Baltimore, 137 Md.App. 60, 767 A.2d 906 (Md.App. Mar 01, 2001) (NO. 2927 SEPT.TERM 1999)

Related References (U.S.A.)

. 25th Street v. Baltimore, 136 Md.App. 720, 136 Md.App. 730 (Md.App. Jan 09, 2001) (NO. 2927SEPT.TERM2000) (TEXT NOT AVAILABLE ON WESTLAW)

(Cite as: 269 Md. 240, 305 A.2d 122)

C

Court of Appeals of Maryland.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION et al.

v.
CITY OF ROCKVILLE et al.

No. 310.

June 5, 1973.

Area park and planning commission and county brought suit for declaratory relief with respect to authority of municipality to rezone certain annexed land to a classification substantially different from that of master plan of county, and for injunctive and other relief. The Circuit Court for Montgomery County, Ralph G. Shure, C. J., sustained demurrers of owners of subject property and mayor and council of the municipality, and the commission and county appealed. The Court of Appeals, Barnes, J., held that where statute prohibiting municipality from annexing and placing land in a zoning classification permitting a land use substantially different from that of master plan of county did not provide for review by courts and where county or area planning commission could not qualify as parties aggrieved by decision of municipality to annex and rezone land because commission and county did not own property within sight or sound of the annexed land, neither commission nor county had any remedy under statute or rule, and commission and county were therefore not barred from seeking equitable relief of declaratory judgment.

Order reversed and case remanded.

West Headnotes

[1] Declaratory Judgment 229

[1] Declaratory Judgment 209 118Ak209

Where statute prohibiting municipality from annexing and placing land in a zoning classification permitting a land use substantially different from that of master plan of county did not provide for review by courts and where county or area planning commission could not qualify as parties aggrieved by decision of municipality to annex and rezone land, neither commission nor county had any remedy under statute

or rule, and commission and county were therefore not barred from seeking equitable relief of declaratory judgment by availability of adequate legal remedy by way of appeal. Maryland Rules, Rule B 1 A; Acts 1959, c. 780; Code 1957, art. 23A, § 9(c); art. 31A, §§ 1-16, 2; art. 66B, §§ 4.04, 4.08; Const. art. 11-A, § 1 et seq.; art. 11-E, § 1 et seq.

[2] Zoning and Planning 571 414k571

Where neither area planning commission nor county owned any property located within sight or sound of property which was annexed by municipality and rezoned for use allegedly substantially different than uses provided for in master plan adopted by county, neither county nor commission was an "aggrieved party" within statute allowing appeal to be taken to county circuit court by any party aggrieved by zoning decision of board of appeals or local legislative body. Code 1957, art. 66B, § 4.08.

[3] Declaratory Judgment 255 118Ak255

Where suit by area planning commission and county for declaratory judgment as to annexation of certain property by municipality and rezoning of property for use allegedly substantially different than use provided for in master plan adopted by county was filed on April 4, 1972, and annexation of January 25, 1972, had become final on March 10, 1972, when it was no longer subject to referendum, and where no prejudice was shown to city officials or to owner of annexed property by any "delay" in filing suit, county and commission were not barred by laches from instituting the suit. Code 1957, art. 66B, § 4.08.

*240 **123 Sanford E. Wool, Deputy Gen. Counsel, Silver Spring (Robert H. Levan, Gen. Counsel and James W. Tavel, Asst. Gen. Counsel, Silver Spring, on the brief), for Maryland-National Capital Park and Planning Commission.

*241 Stephen P. Johnson, Asst. County Atty. (Richard S. McKernon, County Atty., Alfred H. Carter, Deputy County Atty. and Stephen J. Orens, Asst. County Atty., Rockville, on the brief), for Montgomery County and County Council for Montgomery County.

Roger W. Titus, City Atty., Rockville, for Mayor and Council.

Paro

305 A.2d 122

(Cite as: 269 Md. 240, *241, 305 A.2d 122, **123)

David E. Betts, Rockville, for HMC Enterprises, Inc., et al.

*240 Argued before BARNES, McWILLIAMS, SINGLEY, SMITH and LEVINE, JJ.

*241 BARNES, Judge.

This appeal comes to us from the order of the Circuit Court for Montgomery County, in Equity (Shure, C. J.), sustaining the demurrers of the appellees and defendants below, Mayor and Council of Rockville, Maryland (Rockville) and HMC Enterprises, Inc. and Ronald Creamer and David M. Blum, Trustees (collectively, HMC), to the bill of complaint filed by the appellants and plaintiffs below, The Maryland-National Capital Park and Planning Commission (the Commission) and Montgomery County, Maryland (the County). **124 The appellants sought declaratory relief pursuant to the Uniform Declaratory Judgments Act in regard to the construction of Chapter 116 of the Laws of 1971, as amended, with respect to the authority of Rockville to rezone certain annexed land, or any part of it, to a zoning classification substantially different from that of the Master Plan of the County. The appellants also prayed for injunctive and other relief.

We have concluded that the lower court erred in sustaining the demurrers so that its order will be reversed and the case remanded for the filing of answers and further proceedings in regular course.

The allegations of the bill of complaint identify the parties as follows: The County is a municipal corporation with a charter form of government under the provisions of Article XI-A of the Maryland Constitution; the Commission is a corporation, public and politic, which by Chapter 780 of the Laws of 1959, as amended (Chapter 780), has planning jurisdiction over that part of the Regional District located in *242 both the County and Prince George's County; Rockville is a municipal corporation organized and existing under the provisions of Article XI-E of the Maryland Constitution; HMC is the owner of a tract of land containing 174.8176 acres which was annexed and rezoned by Rockville on January 25, 1972 (Creamer and Blum are Trustees under a purchase money mortgage upon the land in question).

The petition, with its accompanying exhibits, alleges that Rockville adopted a series of resolutions on January 25, 1972, which infringe on the appellants'

planning and zoning jurisdiction. Exhibit A is a copy of Resolution No. 5-72 of Rockville, which provides for the annexation of the 174.8176 acre tract. The tract is generally described as being located west of Great Falls Road, south of proposed Ritchie Parkway and generally west and south of existing corporate boundaries and formerly known as the Scott Farm (the subject property). The amendment of the Charter of Rockville to provide for the annexation of the subject property gives an elaborate metes and bounds description of that property, subject to certain easements, and to all other easements, rights-of-way or covenants of record. Section II of the Resolution is, in relevant part, as follows:

That all of the territory hereby annexed to the City of Rockville and the persons residing thereon, shall, after the effective date of this resolution be subject to all the laws, ordinances and regulations of said City and annexation of the territory shall be subject to the following conditions:

- '(a) The tract be developed only as a planned residential unit and that no other type of development be permitted; and
- '(b) That the total number of dwelling units in the development not exceed five hundred eighty-three (583). For the purposes of this subsection, the term 'dwelling unit' shall be defined on the date of the passage of this Resolution by Section 6-2.04(35) of the Laws of Rockville.'

The bill of complaint further alleges that by Resolution No. 4-72 (Exhibit B), the Mayor of Rockville was authorized *243 to execute a contract on behalf of Rockville with the owners of the subject property concerning the manner of development and the number of units to be developed within the subject property. An agreement, dated January 21, 1972, between HMC Enterprises, Inc. and Rockville that the subject property would be developed in accordance with the Planned Unit provisions of the Rockville Zoning Ordinance was filed as Exhibit C. Ordinance No. 2-72 of Rockville, also passed, placed the subject property in a zone classification under the Rockville Zoning Ordinance with an appropriate map (Exhibits D and E). Resolution No. 6-72 (Exhibit F) approved a Planned Residential Unit Development in **125 the nature of a special exception for the subject property in accordance with 'Plan A.' Plan A proposed 'the construction of 583 dwelling units in a subdivision consisting of 140 sale townhouse units, 64 rental townhouse units, 130 rental apartment units, and 249 single family units, and such recreational and other amenities as are in keeping with the planned residential unit concept ' A copy of the minutes

(Cite as: 269 Md. 240, *243, 305 A.2d 122, **125)

of the City Council of Rockville of January 25, 1972, authorizing these various actions was filed as Exhibit G.

The bill of complaint then alleges that immediately prior to the annexation of the subject property within the Regional District of the County, that property 'was subject to the planning jurisdiction of the Commission and the District Council and subject to the zoning jurisdiction of the District Council.'

Paragraph 16 is as follows:

'That on January 25, 1972, there was in effect a Master Plan for the Vicinity of Rockville, Part 1, duly adopted by the Commission on April 26, 1961 and a Master Plan for Potomac-Travilah and Vicinity duly approved by the District Council for Montgomery County, Maryland and duly adopted by the Commission on January 25, 1967; that such plans recommended the zoning classifications of R-R, Rural Residential and R-150, Density Control Development, one-family, detached, restricted residential for all the subject property, part of which is within the Potomac-Travilah Planning *244 Area, as shown on Exhibit H attached hereto and made a part hereof, and part of which is within the Rockville Planning Area as shown on Exhibit I attached hereto and made a part hereof.'

Copies of the Regulations for the R-R zone and for the R-150 zone are attached as Exhibits J and K.

It is alleged in Paragraph 19:

'That the General Assembly of Maryland, by Chapter 116, Laws of Maryland 1971, amended Article 23A, Annotated Code of Maryland, Section 9(c) effective April 23, 1971 as an emergency measure; XI-E of the Maryland Constitution annexing municipality subject to the provisions of XI-E of the Maryland Constitution annexing land 'may for a period of five years following its annexation, place such land in a zoning classification which permits a land use substantially different from the use for such land specified in the current and duly adopted Master Plan or plan of the County or agency having planning and zoning jurisdiction over such land prior to its annexation.' Exhibit L.'

It is then alleged that the subject property was given zoning classifications resulting in 'land use substantially different from that permitted in either the R-R of R-150 zoning classification recommended' in the Master Plans, making the action of the City of

Rockville 'contrary to law and therefore invalid.'

This violation of law is alleged to result in 'immediate, substantial and irreparable injury to the Plaintiffs, in the performance of their governmental responsibilities.'

It is then alleged that the suit is filed pursuant to the Uniform Declaratory Judgments Act for the construction of Chapter 116 of the Laws of 1971, as amended; and six prayers for relief are set forth:

- 1. That the rezoning of the subject property by Ordinance No. 2-72 and Resolution No. 6-72 by Rockville 'are each null and void as contrary to law';
- 2. That Rockville may not exercise zoning jurisdiction contrary to Chapter 116 and contrary to Art. 23A, s 9(c);
- *245 3. That a preliminary injunction be issued restraining Rockville and its employees from issuing building permits or permitting development of the subject property in the R-90 zone or pursuant to the Planned Residential Unit Development;
- **126 4. That a preliminary injunction be issued restraining HMC from obtaining permits or proceeding with work for any use other than as permitted by R-150 zoning under the County Regional District Zoning Ordinance;
- 5. That a permanent injunction be issued restraining HMC from obtaining permits or developing the subject property for land use in the R-90 zone and to prohibit any land use for five years on the subject property except as permitted in the R-150 zoning classification under the County Regional District Zoning Ordinance;
- 6. That the plaintiffs have other and further relief.

The demurrers of both Rockville and HMC are quite similar and state as principal grounds the following:

- 1. No cause of action in equity is stated.
- 2. The plaintiffs have an adequate remedy at law by way of administrative appeal provided in Chapter 1100, Subtitle B of the Maryland Rules and Art. 66B, s 4.04 of the Maryland Code.
- 3. None of the plaintiffs allege or have sufficient interest in the actions of Rockville under the

(Cite as: 269 Md. 240, *245, 305 A.2d 122, **126)

challenge to bring the action for declaratory judgment under Art. 31A, s 2.

4. No declaratory judgment under Art. 31A, ss 1-16, the Uniform Declaratory Judgments Act, may be obtained by the plaintiffs inasmuch as neither the Commission nor the District Council 'has any governmental responsibility or authority as to land located within the corporate limits' of Rockville.

5. The plaintiffs are guilty of laches.

The chancellor on November 30, 1972, filed a written opinion and an order that the demurrers be sustained without leave to amend, being of the opinion that the plaintiffs had an adequate remedy at law by way of the administrative procedures in Rule B1 a of the Maryland Rules and Art. 66B, s 4.08 of the Code, the case being a *246 zoning matter; that the plaintiffs had no standing to sue and that the plaintiffs, having 'slept on their rights,' are guilty of laches.

[1] We will first discuss the question of the alleged adequacy of the legal remedy by way of an appeal under Art. 66B, s 4.08 and the Subtitle B Rules.

As we have indicated, the chancellor viewed the case as a 'zoning case' and concluded that the established administrative procedures for the decision of zoning cases were applicable. He concluded that, inasmuch as the plaintiffs did not avail themselves of those procedures, they could not, after the statutory period of 30 days for notice of an administrative review of a zoning case had expired, proceed in equity for a declaratory judgment. The chancellor's error here was in concluding that the case was a 'zoning case' rather than a case to vindicate and sustain the mandatory provisions of Art. 23A, s 9(c). This law prohibits Rockville, as a municipality subject to Article XI-E of the Maryland Constitution, from annexing and placing land (for a period of five years following the annexation) in a zoning classification which permits a land use substantially different from that of the Master Plan of the County or agency having jurisdiction over the land prior to annexation. This presents an issue for judicial determination by declaratory judgment or other relief, rather than for administrative determination. The case presents issues in regard to the interpretation of Chapter 116 of the Laws of 1971 and the validity, vel non, of various ordinances and resolutions of Rockville as being in conflict with the mandatory provisions of Chapter 116. These are classic issues for resolution

by declaratory judgment when an actual controversy **127 exists, as in the present case. Article 31A, s 6 provides in relevant part:

'Relief by declaratory judgment or decree may be granted in all civil cases in which an actual controversy exists between contending parties, or in which the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or when in any such case the court is satisfied that *247 a party asserts a legal relation, status, right, or privilege in which he has a concrete interest and that there is a challenge or denial of such asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment or decree shall serve to terminate the uncertainty or controversy giving rise to the proceedings."

Neither the Commission nor the County would have any remedy under Art. 66B, s 4.08 or Rule B1 a. It is clear that Rule B1 a is applicable only when an appeal is provided by statute. Article 23A, s 9(c), as amended, does not provide for a statutory appeal for a review by the courts of a violation of that section. Hence, Chapter 1100, Subtitle B of the Maryland Rules does not apply to Art. 23A, s 9(c)-see Urbana Civic Association v. Urbana Mobile Village, Inc., 260 Md. 458, 272 A.2d 628 (1971)-and the Commission and the County were required to seek relief in equity as they did in the instant case. See England v. Mayor & Council of Rockville, 230 Md. 43, 185 A.2d 378 (1962); Congressional School of Aeronautics v. State Roads Commission, 218 Md. 236, 146 A.2d 558 (1958). We did state in Prince George's County v. Laurel, 262 Md. 171, 183-184, 277 A.2d 262, 268-269 (1971) that when considering the rezoning of newly annexed land, Articles 66B and 23A should be read together. This did not mean, however, that these two Articles are merged and that provisions for administrative determinations of zoning cases in Art. 66B become available for determinations under Art. 23A. We observed in Urbana that, although Art. 66B provides for an administrative appeal in its zoning provisions, there is no provision in Art. 66B for an appeal in its planning and subdivision sections. We concluded in Urbana that, inasmuch as there was no provision for an appeal authorized by statute, the plaintiffs in that case could seek appropriate relief in equity in an original suit in order to resolve the status of the subdivision plat approval involved in that case.

(Cite as: 269 Md. 240, *247, 305 A.2d 122, **127)

[2] Nor would either the Commission or the County be an 'aggrieved party' for the purposes of administrative review. *248 In Bryniarski v. Montgomery County Board of Appeals, 247 Md. 137, 144, 230 A.2d 289, 294 (1967), we defined a 'person aggrieved' as:

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

See also White v. Major Realty, Inc., 251 Md. 63, 64, 246 A.2d 249, 251 (1968), citing Bryniarski with approval and following it.

Neither the Commission nor the County owns any property located within sight or sound of the subject property and have no special interest or damage to give either of them the status of an 'aggrieved party,' necessary to present an appeal from any action by Rockville, even if otherwise available.

We are of the opinion that the Commission and the County have standing to sue in the present case in order to insulate the Master Plan from impairment by the action of Rockville, contrary to the provisions of Art. 23A, s 9(c), as amended, as we stated in Maryland-National Capital Park & **128 Planning Commission v McCaw, 246 Md. 662, 670, 229 A.2d 584, 588 (1967):

Under explicit statutory provisions, the Commission is a representative of the public in matters such as are here involved. It is empowered to make general plans for the physical development of the District and in doing so, is expressly made a representative of the State.'

We deem our decision in Prince George's County v. Laurel, supra, to be controlling on this issue. In Laurel, the parties were Prince George's County (including its County Council), the Commission and

the City of Laurel. It too was a suit in equity for declaratory relief under the Uniform Declaratory *249 Judgments Act filed by Laurel to determine the respective rights and jurisdictions of each of the governing agencies. Although Chapter 116 of the Laws of 1971 was adopted subsequent to our decision in Laurel, the test for standing to sue is the same. In the Laurel case, we held that the Commission had sufficient interest and standing to sue. This holding applies, a fortiori, to the County.

[3] Finally, in regard to 'laches,' it is clear that there was no substantial delay in filing the suit in the present case, which, indeed, was filed quite promptly, i. e., on April 4, 1972, the annexation having become final on March 10, 1972, when the annexation action of January 25, 1972, was no longer subject to referendum. Nor did the bill of complaint show any prejudice to the defendants by any 'delay,' so that there were no laches, in the usual equity sense, appearing on the fact of the bill of complaint. See Niner v. Hanson, 217 Md. 298, 309, 142 A.2d 798, 803 (1958); Boehm v. Boehm, 182 Md. 254, 269-270, 34 A.2d 447, 454 (1943); Kaliopulus v. Lumm, 155 Md. 30, 141 A. 440 (1928).

If the chancellor meant by 'laches' the failure of the Commission and the County to avail themselves of administrative review within 30 days under Art. 66B, s 4.08 and Chapter 1100, Subtitle B of the Maryland Rules, we have already disposed of this issue, supra.

Order of November 30, 1972, sustaining the demurrers to the bill of complaint without leave to amend, reversed and the case is remanded to the Circuit Court for Montgomery County for further proceedings in regular course, one-half the costs to be paid by the Mayor and Council of Rockville, Maryland, one of the appellees, the remaining one-half of the costs to be paid by HMC Enterprises, Inc., another appellee.

END OF DOCUMENT

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Date of Printing: FEB 25,2003

KEYCITE

CITATION: Maryland-National Capital Park and Planning Commission v. City of Rockville, 269 Md. 240, 305 A.2d 122 (Md., Jun 05, 1973) (NO. 310)

History

1 Maryland-National Capital Park and Planning Commission v. City of Rockville, 269 Md. 240, 305 A.2d 122 (Md. Jun 05, 1973) (NO. 310)

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Sec. 26-171. Limited exemptions.

- (a) The following development is exempt from division 2 of this article, except that all development in an R.C. 6 zone is subject to section 26-202(c)(3). Compliance with divisions 3, 4 and 5 is required as is compliance with all applicable zoning regulations.
 - (1) The building or preparation of land for building for a dwelling for one (1) or two (2) families (i) on a single lot or tract which is not part of a recorded plat, or (ii) on a lot or lots exempt from the lapse provisions of section 26-216.
 - (2) The building or preparation of land for building on a lot of record lawfully in effect at the time of the building or preparation of the land for building if the lot of record did not result from a subdivision of land exempt under section 26-170.
 - (3) The construction of one (1) tenant house or the location of one (1) trailer on a farm tract.
 - (4) The subdivision of property pursuant to court order, a will or the laws of interstate succession.
 - (5) The resubdivision or lot line adjustment of industrially zoned or commercially zoned parcels of land which have been the subject of a previously approved plan and recorded plat.
 - (6) The subdivision of land into three (3) or fewer lots for residential single-family dwellings, provided that they are not served by a panhandle driveway. If the lots are served by a panhandle driveway, the development is exempt from the requirements of sections 26-202 and 26-205 only.
 - (7) The construction of residential accessory structures or minor commercial structures.
 - (8) The construction of a building owned and operated by a county volunteer fire, ambulance or rescue company which is used primarily for storage or training pur-

- poses, fund-raising activities, or other purposes related to rescue or fire-suppression activities.
- (9) Lot line adjustments in residential zones which are not part of an approved final development plan or zoning plan.
- (10) A subdivision of land into three (3) or fewer lots recorded prior to January 26, 1990.
- (b) The following development is exempt from the community input meeting and hearing officer's hearing pursuant to sections 26-202 and 26-206, except that all development in an R.C. 6 zone is subject to section 26-202(c)(3):
 - (1) Lot line adjustments, including the combination of lots or parcels.
 - (2) The subdivision of property pursuant to court order, a will or the laws of intestate succession.
 - (3) Amendments to an approved plan or plat which do not materially alter the proposed development.
 - The subdivision of land in an approved state agricultural land preservation district or county agricultural easement for the purpose of the conveyance of lot(s) to the owner or his children pursuant to title 2, subtitle 5 of the agricultural article of the Annotated Code of Maryland and article XI of the Baltimore County Code. The use or development of land in a county agricultural easement established in accordance with section 14-457 of article XI of the Baltimore County Code, shall be governed by agricultural land preservation provisions enacted by the county council pursuant to section 14-461 of that article in the case of any conflict between those provisions and the Baltimore County zoning regulations.
 - (5) The subdivision of a farm tract into two (2) lots.
 - (6) The subdivision of land into three (3) or fewer lots for residential single-family dwellings.
 - (7) The construction of accessary structures.

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- (8) The subdivision of land or buildings in a planned office or industrial park for which a development plan has been approved in accordance with these regulations.
- (9) A minor development, as defined in section 26-168, not to exceed a total of three
 (3) lots.

(Code 1978, § 22-42; Bill No. 172, 1989, § 2; Bill No. 18, 1990, §§ 2, 3; Bill No. 106, 1990, §§ 1, 2; Bill No. 1, 1992, § 2; Bill No. 50-93, 1993, § 3; Bill No. 73-00, § 3, 9-15-00)

Sec. 26-172. Waivers.

- (a) At the request of a department director, the hearing officer may grant a waiver of any or all requirements of division 3, 4 and 5 of these regulations if the hearing officer finds that:
 - (1) a. The size, scope and nature of a proposed development does not justify strict compliance with these regulations;
 - b. A waiver would be within the scope, purpose and intent of these regulations; and
 - c. All other county laws, ordinances and regulations have been complied with; or
 - (2) Compliance with these regulations would cause unnecessary hardship.
 - (3) A waiver shall be in accordance with the floodplain management regulations.
- (b) A waiver from the requirements of section 26-203 of this Code and from the hearing officer's hearing may be granted under the following conditions:
 - (1) After consultation with appropriate county agencies the director finds:
 - a. That the size, scope, and nature of a proposed development does not justify strict compliance with these regulations; and
 - b. That a waiver would be within the scope, purpose, and intent of these regulations; and

- c. That the proposed development complies with all other county laws, ordinances, and regulations.
- (2) Before proposing to grant a waiver for development within the critical area, the director of planning shall obtain recommended findings from the director of the department of environmental protection and resource management which shall be based on the standards specified in section 26-205(b)(2)d.

(Code 1978, § 22-43; Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 173-93, § 3, 11-17-93; Bill No. 8-96, § 3, 3-23-96)

Sec. 26-173. Transfer of land in unapproved or expired subdivision.

- (a) A person may not convey any lot, parcel, or tract of a subdivision unless a plat, if required, has been recorded in accordance with these regulations and the plat is effective at the time of said conveyance.
- (b) The transferee of any lot, parcel or tract conveyed in violation of this section may bring an action in the circuit court for recision of the conveyance and return of any deposit or purchase money paid, as well as reimbursement for reasonable expenses, including attorney's fees, incurred in connection with the conveyance. (Code 1978, § 22-44)

Sec. 26-174. Recording unapproved plat.

A person may not offer and the clerk of the circuit court may not accept any plat for recording in the plat records of the county unless the same has been approved for recording as required by these regulations. If such plat is recorded, it shall be considered a nullity.

(Code 1978, § 22-45; Bill No. 18, 1990, § 2)

Sec. 26-175. Enforcement and remedies.

(a) The county may bring an action for specific performance of these regulations or may move to set aside a conveyance made in violation of these regulations at the cost and expense of the transferor.

- (i) A representative of the office of zoning administration and development management or a representative of the office of planning and zoning shall attend the CIM. The CIM shall be conducted by a representative of the county. At this meeting the applicant shall present the concept plan for comment and discussion by any party. Minutes of the meeting shall be made by a representative of the county and placed in the development plan file. The county representative shall also prepare a list of comments or conditions raised by any party at the meeting and shall sign the list and place it in the development plan file. The director of zoning administration and development management may require that representatives of any county reviewing agency attend the meeting in order to respond to comments which may be raised or conditions which may be proposed or requested by a party.
- (j) At the meeting, a party may raise any comment relevant to the plan or propose any condition to be imposed by the hearing officer on the granting of the plan. If any comments or conditions are unresolved, the director of zoning administration and development management may require an additional meeting to be held and may require representatives of any county reviewing agency to attend the meeting in order to address such comments or conditions.
- (k) Comments or proposed or requested conditions which are not resolved through the CIM shall be addressed by appropriate county agencies as part of the development plan review and submitted to the hearing officer pursuant to section 26-205(b).
- (l) No development plan may be filed for review without the applicant having participated in a community input meeting.
- (m) For a planned unit development, the office of planning and zoning, on behalf of the county, shall provide written comments in the form of a report to the planning board and the applicant within thirty (30) working days from the date of the CIM. Copies of the comments shall be made available to the public, residents and community associations in attendance at the CIM. The director of the office of planning and zoning may recommend changes in the site layout, types,

intensity of uses, signage, landscaping requirements or other aspects of the plan which the director deems necessary for the plan to meet the intent and purposes of these regulations and the zoning regulations. The planning board shall grant final approval or denial of the director's report and concept plan. Applications denied by the planning board may not be forwarded for development plan review. The planning board may amend or modify the concept plan. Following approval of the concept plan, the plan may be filed for review in accordance with section 26-203. (Bill No. 1, 1992, § 2; Bill No. 12-93, 1993, § 2, 4-5-93; Bill No. 29-95, §§ 1, 3, 5-21-95; Bill No. 69-95, § 10, 7-1-95; Bill No. 89-97, § 2, 10-19-97; Bill No. 73-00, §§ 3, 4, 9-15-00)

Sec. 26-203. The development plan.

- (a) The plan shall be filed within twelve (12) months after the final community input meeting is concluded. It shall be drawn to an appropriate scale in a clear and legible manner and shall be filed with the department of public works. Copies shall be transmitted to the known parties.
- (b) The plan shall contain the following background information:
 - (1) Vicinity map showing site location and a note identifying election and councilmanic districts;
 - (2) Census tract, watershed and subsewershed;
 - (3) Subdivision name and applicant's name and address;
 - (4) Name and address of person who prepared the plan;
 - (5) Current zoning of the subject property and surrounding properties, including the location of any residential transition areas;
 - (6) Ownership of the subject property and adjacent properties, including deed references and tax account number, as shown on the most recent tax maps as published by the department of assessments and taxation, on the basis of more current information if the same is available to the applicant;

- (7) Existing buildings and access points on property adjacent to the subject property;
- (8) Petitions for variances, special exceptions, special hearings, Chesapeake Bay critical area variations, or requests for waivers from county regulations or standards;
- (9) Limitations established by the courts, county board of appeals, planning board

- and zoning commissioner or restrictive covenants recorded with individuals or groups which would limit proposed development on the site;
- (10) The plan shall contain a certification under oath that there are no delinquent accounts for any other development with respect to any of the following: the applicant, a person with a financial interest in the proposed development, or a person who will perform contractual services on behalf of the proposed development;
- (11) The plan shall be signed and sealed by the surveyor, engineer, architect, or land-scape architect as appropriate indicating that the plan is accurate and has been prepared in compliance with these regulations.
- (c) The plan shall identify the following information concerning existing site conditions:
 - Existing topography, and existing topography for adjacent properties as shown on the county photogrammetric plats or more recent information where available;
 - (2) Existing streams, springs, seeps, bodies of water and forest buffers;
 - (3) Soil types in accordance with the soil survey, Baltimore County, Maryland, including identification of prime and productive soils;
 - (4) Existing wooded areas;
 - (5) Existing buildings on the property;
 - (6) One-hundred-year floodplains or flood areas;
 - (7) Wetlands;
 - (8) Identification of any building, property or site within or contiguous to the proposed development included on the Maryland Historical Trust Inventory of Historic Properties, the county preliminary or final landmarks list, the National Register of Historic Places, the Maryland Archeological Survey or identification of any county historic district, or national register district covering the proposed development;

- (9) Designated areas of critical state concern identified as such under the procedures of section 5-611 of the state finance and procurement article of the Annotated Code of Maryland, as from time to time amended, and as mapped and available for inspection in the office of planning and zoning;
- (10) As known to the applicant, location and description of hazardous material as defined by section 7-101 of the environmental article of the Annotated Code of Maryland, as from time to time amended.
- (11) Any additional information as may be required by the department of environmental protection and resource management to determine compliance with the critical area local protection program, pursuant to section 26-442(a).
- (d) The plan shall contain the following development proposal information:
 - (1) Proposed lot or building layout with parking and loading area;
 - (2) Proposed street layout with existing and future paving and right-of-way widths indicated including pedestrian walkways;
 - (3) Location of existing and proposed easements or rights-of-way, public and private;
 - (4) Existing and proposed county, state and private streets, along with estimated proposed average daily trips attributable to the development in the plan;
 - (5) Transit services when appropriate as per the Maryland Mass Transit Administration's access by design publication;
 - (6) Proposed and existing water and sewer lines;
 - (7) Proposed and existing underground fuel storage tanks, well and septic areas;
 - (8) Proposed and existing utility systems and fire hydrants;
 - (9) General schematic proposals for grading and retaining walls, including the antici-

- pated alteration or removal of vegetation or other natural features or a designated limit of disturbance line;
- (10) Stormwater management areas supported by preliminary hydrology computations, and proposed and existing storm drainage systems and verification of suitable outfall;
- (11) A hydrogeological study and an environmental effects report if required by the department of environmental protection and resource management;
- (12) A preliminary forest conservation plan in accordance with section 14-408;
- (13) For developments with lots to be served by individual water supplies, evidence of compliance with article II of title 35 of this Code;
- (14) Proposed location and use of open space and acreage in accordance with the open space manual;
- (15) A chart indicating required and proposed area of open space and parking spaces and indicating the number of units permitted and proposed;
- (16) In the case of a plan involving a use in a residential transition area, the following:
 - a. The residential transition area and existing and proposed uses therein;
 - b. The proposed buildings;
 - c. Proposed building setbacks and the distance between principal buildings;
 - d. Existing and proposed vegetation and buffer areas:
 - e. Existing and proposed lighting.
- (17) When required by the zoning regulations, the plan shall indicate the expected levels of potential emanations, including, but not limited to, smoke, noise, dust, odors, vibrations, glare and heat, and the means to continuously control such emanations;
- (18) A schematic landscape plan showing existing vegetation and proposed planting.

- including street trees (location and quantity) shall be submitted for all development;
- (19) The plan may show the location of a precise building envelope in lieu of the precise location of a building; may show precise maximums and minimums in lieu of fixed values; may set forth reasonable lists of precisely described possible uses of a given space, in lieu of specifying a single use; and may otherwise reasonably allow for flexibility or alternatives, provided that appropriate precise limits are set forth;
- (20) All additional information required for critical area review, pursuant to section 26-442(a);
- (21) Design and placement of signage, lighting and fencing.
- (22) a. When required by the zoning regulations or the comprehensive manual of zoning policies, the director of planning may require the following additional items:
 - 1. Layout of the site as it relates to the surrounding roads, and public transit systems, buildings, open space and environmental features;
 - 2. Architectural features such as scale, height, bulk and general massing of buildings, major facade divisions, size and placement of openings, roof treatment, stylistic features and themes and materials; and
 - 3. Safety, convenience and amenity features for the neighborhood, including public safety aspects of site design for retail commercial developments and hours of operation for nonresidential development adjacent to residential areas.
 - b. Specific design information shall be in the form of building elevations, perspective drawings, building and site cross-sections and large scale

drawings of specific site development details as required by the director of planning.

- (e) The plan shall clearly identify any comment raised or condition requested or proposed to the concept plan by a party if such comment or condition is unresolved at the time of filing the development plan.
- (f) At the time of filing the plan, the applicant shall file any request for combined hearings under section 26-206.1. The plan shall contain a notation that such a request has been filed. (Code 1978, § 22-55; Bill No. 18, 1990, §§ 2, 3; Bill No. 1, 1992, § 3; Bill No. 29-95, § 1, 5-21-95; Bill No. 8-96, § 2, 3-23-96; Bill No. 89-97, § 2, 10-19-97)

Sec. 26-204. Preliminary review.

(a) Within fifteen (15) days of the receipt of the development plan and the necessary review fee,

tions, buildings, structures, pavements, grading, clearing or other disturbances of the soils will be limited or restricted in accordance with policies established by the department of environmental protection and resource management to promote agricultural uses and protect the county's soil resources.

(Code 1978, § 22-99; Bill No. 18, 1990, § 2; Bill No. 113, 1992, § 5)

Sec. 26-278. Preservation of natural or historic features.

Natural features (including watercourses, waterfalls, beaches and significant vegetation) and historic structures or sites identified on any of the lists referred to in section 26-203(c)(8) must be preserved. In particular, the county must find that an adequate method of protecting any known habitat of an endangered species has been proposed.

(Code 1978, § 22-100; Bill No. 29-95, § 1, 5-21-95)

Sec. 26-279. Street layout generally.

The proposed street layout must adequately separate dwelling units from adjacent arterial streets. In addition, the approval authority may require curvilinear, cul-de-sac or U-shaped streets where necessary to meet the purposes of these regulations. Any cul-de-sac or dead-end street (including any permitted temporary dead-end street) must have adequate paved turning space, and the county may limit the length of such a street.

(Code 1978, § 22-101)

Cross reference-Roads, bridges and sidewalks, tit. 31.

Sec. 26-280. Names of development and streets.

The county may require a change in the proposed name of any streets or of a proposed development.

(Code 1978, § 22-102)

Cross reference-Roads, bridges and sidewalks, tit. 31.

Sec. 26-281. Designated areas.

(a) For those improvements described in sections 26-263, 26-264 and 26-265, the county may require specifications for materials and design that further the objectives of revitalization areas, growth areas and rural agricultural areas.

(b) A design review panel shall provide the county with analysis and comments on site design review and architectural design review in accordance with the provisions of section 26-219 and the comprehensive manual of development policies.

(Code 1978, § 22-103; Bill No. 12, 1993, § 2)

Sec. 26-282. Compatibility.

- (a) The director of planning shall make compatibility recommendations to the hearing officer for:
 - (1) Cluster subdivisions;
 - (2) Development in the RCC, R-0, OR-1, OR-2, O-3, SE or OT zones or the CR districts or a PUD development; or
 - (3) Alternative site design dwellings as provided in the comprehensive manual of development policies.
- (b) Development of property, subject to section 26-282(a) shall be designed to achieve the following compatibility objectives in accordance with the guidelines in the comprehensive manual of development policies:
 - (1) The arrangement and orientation of the proposed buildings and site improvements are patterned in a similar manner to those in the neighborhood;
 - (2) The building and parking lot layouts reinforce existing building and streetscape patterns and assure that the placement of buildings and parking lots have no adverse impact on the neighborhood;
 - (3) The proposed streets are connected with the existing neighborhood road network where ever possible and the proposed sidewalks are located to support the functional patterns of the neighborhood;
 - (4) The open spaces of the proposed development reinforce the open space patterns of the neighborhood in form and siting and complement existing open space systems.
 - (5) Locally significant features of the site such as distinctive buildings or vistas are integrated into the site design;

Standards and Guidelines for Architectural and Historical Investigations in Maryland

MARYLAND HISTORICAL TRUST
DIVISION OF HISTORICAL AND CULTURAL PROGRAMS
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

PANEL BP1003M

TIME: 13:31:46 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 03/05/2002

DATE: 02/25/2003 GENERAL PERMIT APPLICATION DATA PLC 10:30:26

PERMIT #: B477495 PROPERTY ADDRESS

RECEIPT #: A446229 2007 GREENSPRING VALLEY RD

CONTROL #: CO SUBDIV: VALLEY ACRES

XREF #: B477495 TAX ACCOUNT #: 0309075175 DISTRICT/PRECINCT 03 13

OWNERS INFORMATION (LAST, FIRST)

FEE: 95.00 NAME: SCHEFTEL, RON AND KAREN

PAID: 95.00 ADDR: 2007 GREENSPRING VALLEY RD

PAID BY: APPL

DATES APPLICANT INFORMATION

APPLIED: 03/05/2002 NAME: MIKE EAGAN

ISSUED: 03/26/2002 COMPANY: EAGAN ENTERPRISES

OCCPNCY:

ADDR1: P.O. BOX 438

ADDR2: MONKTON, MD 21111

INSPECTOR: 03R PHONE #: 410-343-0042 LICENSE #: 22865

NOTES: KRA/VLC

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DATE: 02/25/2003 BUILDING DETAIL 1 PLC 10:38:29

DRC#

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TENANT

BUILDING CODE: CONTR: EAGAN ENTERPRISES

IMPRV 7 ENGNR: USE 01 SELLR:

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CENTRAL AIR 1 57'9"X25'X14.5'=1250SF (IRREG) 1690SF

ESTIMATED COST PER CASE #02-030-A.

130,000.00 PROPOSED USE: SFD AND ADDITION

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RESIDENTIAL CAT:

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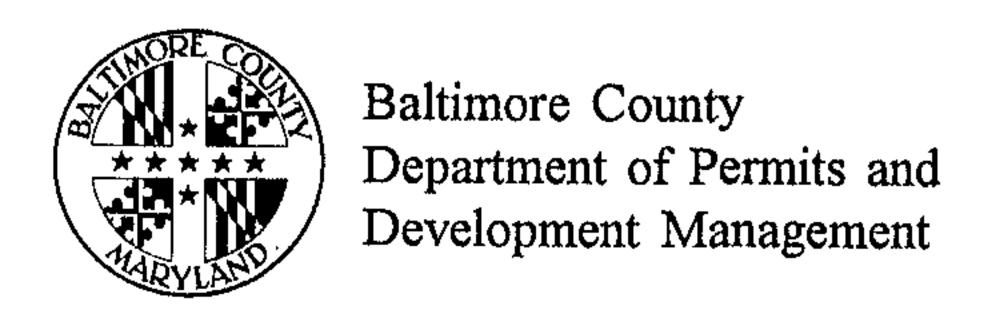
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ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU



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

December 6, 2002

Robert A. Hoffman Venable, Baetjer & Howard 210 Allegheny Avenue Towson, MD 21204

Dear Mr. Hoffman:

RE: Case Number: 03-192-SPH, 1900 Western Run Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on October 18, 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,

u. Callibal D

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR:rlh

Enclosures

c: People's Counsel
Douglas W. Hamilton, Jr. and Tsognie W. Hamilton, 1435 Corbett Road, Monkton 21111
Brian A. Dicara, McKee & Associates, 5 Shawan Road, Suite 1, Cockeysville 21030

BALTIMORE COUNTY, MARYLAND MEMORANDUM

TO:

Arnold Jablon, Director

DATE: December 9, 2002

Dept. of Permits & Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT:

1900 Western Run Road

INFORMATION

Item Number:

03-192

Petitioner:

Brian Dicara (Engineer)

Zoning:

RC-2

Requested Action:

Special Hearing

RECOMMENDATIONS ON THE PROPOSAL

The property at No. 1900 Western Run Road is listed on the Maryland Historical Trust Inventory as MHT # BA 188 (also known a Bellefield). This structure is a contributing structure in the Western Run Belfast National Register Historic District.

The Office of Planning has no comment on this proposal.

Section Chief

KA:kra



Parris N. Glendening
Governor

Kathleen Kennedy Townsend
Lt. Governor

Roy W. Kienitz
Secretary
Mary Abrams
Deputy Secretary

October 29, 2002

Mr. George Zahner
Baltimore County Department of Permits and Development Management
111 West Chesapeake Avenue
Room 111, Mail Stop # 1105
Towson MD 21204

Re: Zoning Advisory Committee Agenda, November 4, 2002

Re: case numbers 03-182-A, 03-183-A, 03-184-A, 03-185-SPH, 03-186-A, 03-187-

SPHA, 03-188-SPHXA, 03-190-A, 03-191-XA, 03/192-SPH/

Dear Mr. Zahner:

The Maryland Department of Planning has received the above-referenced information on 10/29/02. The information has been submitted to Mr, Mike Nortrup.

Thank you for your cooperation in this process. Please contact me at 410.767.4550 or the above noted reviewer if you have any questions.

Sincerely,

James R. Gatto

Manager

Metropolitan Planning

Local Planning Assistance Unit

Lemel 1. Gutte

cc: Mike Nortrup

Baltimore County

Fire Department

Servicement of Permits and

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
Octobel 9-887-488002

Development Management (PDM)

<u>County Office Building, Room 111</u>

Mail Stop #1105

111 West Chesapeake Avenue

111 West Chesapeake Avenue Towson, Maryland 21204

ATTENTION: George Zahner

Property Owner:

Location:

Item No.:

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.

7. The Fire Marshal's Office has no comments at this time, in reference to the following items: 182-187, 190, 192

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

cc: File

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

DATE: November 21, 2002

TO:

Arnold Jablon, Director

Department of Permits & Development Management

FROM:

Robert W. Bowling, Supervisor Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For November 4, 2002

Item Nos. 182, 183, 184, 187, 188,

190, 191, and 192

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

RWB:CEN:jrb

cc: File

BALTIMORE COUNTY, MARYLAND DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO:

Arnold Jablon

FROM:

R. Bruce Seeley & BS TET

DATE:

November 27, 2002

SUBJECT:

Zoning Item <u>192</u>

Address

1900 Western Run Road

Zoning Advisory Committee Meeting of 10/28/02

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

It is recommended that this petition be approved based on the condition that in the event a subdivision is created, the caretakers building will either be removed or utilized as a dwelling that can use any available density.

Reviewer:

Wally Lippincott

Date: 11/26/02

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County Interoffice Correspondence

DATE:

June 29, 2004

TO:

Timothy Kotroco, Director

Permits & Development Management

Attn.: David Duvall

FROM:

Theresa R. Shelton (1)
Board of Appeals

SUBJECT:

Douglas and Tsognie Hamilton

CBA No.: 03-192-SPH PDM File No.: 03-192-SPH

Circuit Court Case No.: 03-C-03-4994

On October, 2003 a Dismissal was entered on the docket of the Circuit Court of Baltimore County.

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

Attachment: SUBJECT FILE ATTACHED AND EXHIBITS

APPEAL

Petition for Special Hearing
1900 Western Run Road
Western Run Road, 950 feet east of Cuba Road

Strict — 3rd Councilmanic District

Bouglas and Tsognie Hamilton- Legal Owner

Case No.: 03-192-SPH

Case No.: 03-192-SPH

Petition for Special Hearing (October 18, 2002)

V Zoning Description of Property

(S002, traedmevol) garing (November 1, 2002)

(V Certification of Publication (The Jeffersonian issue November 21, 2002)

V Certificate of Posting (November 23, 2002 posted SSG Robert Black)

Entry of Appearance by People's Counsel (October 31, 2002)

Petitioner(s) Sign-In Sheet One Sheet

Protestant(s) Sign-In Sheet None

Citizen(s) Sign-In Sheet One

V Zoning Advisory Committee Comments

Petitioners' Exhibits:

Plat to accompany Petition for Special Hearing

Application for Permit

√3a. Fact sheet on James R. Grieves √3b. Second Flyer on James R. Grieves

Profestants' Exhibits:

auoN

Miscellaneous (Not Marked as Exhibits):

Zoning Commissioner's Order (December 16, 2002 - GRANTED)

Notice of Appeal received on January 14, 2003 from Kenneth Bosley

c: People's Counsel of Baltimore County, MS #2010 Lawrence Schmidt, Zoning Commissioner Arnold Jablon, Director of PDM Robert Hoffman, Venable Baetjer & Howard, 210 Allegheny Ave., Towson 21204

Mr. and Mrs. Douglas Hamilton, 1435 Corbett Road, Monkton

MOUKTON MD 21111 1435 CORBETT ROAD 1435 CORBETT ROAD

COCKEASAILLE MD 21030 POST OFFICE BOX 334 KENNETH BOSLEY

ROBERT A. HOFFMAN, ESQUIRE TOWSON, MD 21204
VENABLE, BAETJER & HOWARD, LLP
TOWSON, MD 21204

TOWSON, MD 21204

BOARD OF APPEALS

BALTIMORE COUNTY

1AN 1 6 2003

COCKEYSVILLE MD 21030 5 SHAWAN ROAD SUITE 1 MCKEE & ASSOCIATES BRIAN DICARA



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

410-887-4386

Fax: 410-887-3468

December 16, 2002

Robert A. Hoffman, Esquire Venable, Baetjer & Howard 210 Allegheny Avenue Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
N/S Western Run Road, 950' E of the c/l Cuba Road
(1900 Western Run Road)
8th Election District — 3rd Council District
Douglas W. Hamilton, Jr., et ux - Petitioners
Case No. 03-192-SPH

Dear Mr. & Mrs. Hamilton:

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. & Mrs. Douglas W. Hamilton, Jr.

1435 Corbett Road, Monkton, Md. 21111

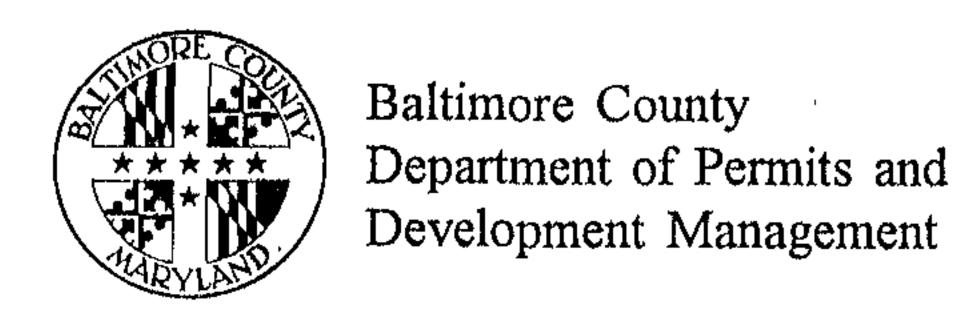
Mr. Brian Dicara, McKee & Associates, Inc.

5 Shawan Road, Suite 1, Cockeysville, Md. 21030

Mr. James R. Grieves, 3704 N. Charles Street, Baltimore, Md. 21218

Mr. Kenneth Bosley, P.O. Box 334, Cockeysville, Md. 21030

Office of Planning; People's Counsel; Case File



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

December 6, 2002

Robert A. Hoffman Venable, Baetjer & Howard 210 Allegheny Avenue Towson, MD 21204

Dear Mr. Hoffman:

RE: Case Number: 03-192-SPH, 1900 Western Run Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on October 18, 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,

u. Cal Rihal S

W. Carl Richards, Jr. Supervisor, Zoning Review

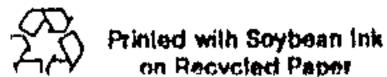
WCR:rlh

Enclosures

c: People's Counsel

Douglas W. Hamilton, Jr. and Tsognie W. Hamilton, 1435 Corbett Road, Monkton 21111 Brian A. Dicara, McKee & Associates, 5 Shawan Road, Suite 1, Cockeysville 21030

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





Baltimore County Zoning Commissioner

Suite 405, County Courts Bldg.

401 Bosley Avenue

Towson, Maryland 21204

410-887-4386

Fax: 410-887-3468

Robert A. Hoffman, Esquire Venable, Baetjer & Howard 210 Allegheny Avenue

Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING

N/S Western Run Road, 950' E of the c/l Cuba Road

(1900 Western Run Road)

8th Election District – 3rd Council District Douglas W. Hamilton, Jr., et ux - Petitioners

Case No. 03-192-SPH

Dear Mr. & Mrs. Hamilton:

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.

December 16, 2002

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. & Mrs. Douglas W. Hamilton, Jr.

1435 Corbett Road, Monkton, Md. 21111

Mr. Brian Dicara, McKee & Associates, Inc.

5 Shawan Road, Suite 1, Cockeysville, Md. 21030

Mr. James R. Grieves, 3704 N. Charles Street, Baltimore, Md. 21218

Mr. Kenneth Bosley, P.O. Box 334, Cockeysville, Md. 21030

Office of Planning; People's Counsel; Case File

Zoning Commissioner of Baltimore County Suite 405 County Courts Building 401 Bosley Ave. Towson, MD 21204

Re: Petition For Special Hearing 1900 Western Run Road 8th Election District Douglas W. Hamilton, Jr., et ux - Petitioner Case No. 03 – 192 SPH

NOTICE OF APPEAL

Dear Sir,

Please enter an appeal of the above-cited case to the County Board of Appeals of Baltimore County.

Yours truly,

Kenneth Bosley

PO Box 334

Cockeysville, MD 210301

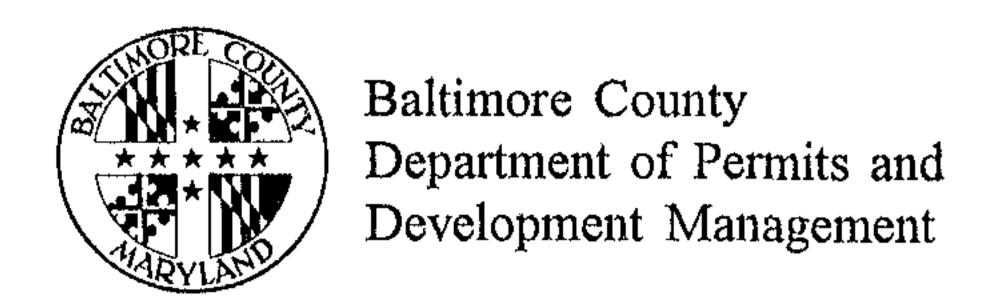
1 - 800 497-0880

JAN 1 4 2003

CETIFICATE OF SERVICE

I hereby certify, that on this /3 day of January, 2003, this Notice of Appeal was sent by first class mail, postage prepaid to: Robert A. Hoffman, V.B. & H., 210 Allegheny Ave., Towson, MD 21204.

cc.: County Board of Appeals of Baltimore County



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

Fax: 410-887-5708

January 16, 2003

Robert A. Hoffman Venable, Baetjer & Howard 210 Allegheny Avenue Towson, MD 21204

Dear Mr. Hoffman:

RE: Case No. 03-192-SPH, 1900 Western Run Road

Please be advised that an appeal of the above-referenced case was filed in this office on January 14, 2003 by Kenneth Bosley. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Arnold Jabion Director

AJ:rlh

c: Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM
People's Counsel
Kenneth Bosley, PO Box 334, Cockeysville 21030
Mr. and Mrs. Douglas Hamilton, 1435 Corbett Road, Monkton 21111
Brian Dicara, McKee & Associates, 5 Shawan Rd., Suite 1, Cockeysville 21030



County Board of Appeals of Baltimore County

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

Hearing Room - Room 48

Old Courthouse, 400 Washington Avenue

February 5, 2003

NOTICE OF ASSIGNMENT

CASE #: 03-192-SPH

IN THE MATTER OF: Douglas and Tsognie Hamilton -Legal Owners

1900 Western Run Road

8th Election District; 3rd Councilmanic District

12/16/02 -2C-G-SPH

5/15/2002 Petition for Administrative Variance GRANTED as b setback of open deck; DENIED as to location of recreational vehicle.

ASSIGNED FOR:

WEDNESDAY, FEBRUARY 26, 2003 at 10:00 a.m.

NOTICE:

This appeal is an evidentiary hearing; therefore, parties should consider the

advisability of retaining an attornex.

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

Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests

must be in writing and in compliance with Rule 2(b) of the Board's Rules. No

postponements will be granted within 15 days of scheduled hearing date unless in full

compliance with Rule 2(c).

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

Kathleen C. Bianco Administrator

c:

Appellant /Protestant

: Kenneth Bosley /RO Box 334

Counsel for Petitioners

: Robert A. Hoffman, Esquire

Petitioners

: Mr. and Mrs. Douglas Hamilton

Brian DiCara /McKee & Associates

Office of People's Counsel Pat Keller, Planning Director

Lawrence E. Schmidt, Zoning Commissioner

Arnold Jablon, Director /PDM



County Board of Appeals of Baltimore County

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

Hearing Room - Room 48

Old Courthouse, 400 Washington Avenue

February 11, 2003

** AMENDED NOTICE OF ASSIGNMENT (Amended as to subject of Petition only – see ** below)

CASE #: 03-192-SPH

IN THE MATTER OF: Douglas and Tsognie Hamilton –Legal Owners
1900 Western Run Road
8th Election District; 3rd Councilmanic District

** 12/16/2002 – Decision of Zoning Commissioner in which Petition for Special Hearing was GRANTED.

No other changes have been made to this Notice other than that reflected above; and the hearing will proceed as scheduled on the following date.

ASSIGNED FOR:

WEDNESDAY, FEBRUARY 26, 2003 at 10:00 a.m.

NOTICE:

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

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

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

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

Kathleen C. Bianco Administrator

c:

Appellant /Protestant

: Kenneth Bosley /PO Box 334

Counsel for Petitioners

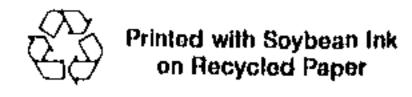
: Robert A. Hoffman, Esquire

Petitioners

: Mr. and Mrs. Douglas Hamilton

Brian DiCara /McKee & Associates

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM



BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:

Douglas and Tsognie Hamilton

03-192-SPH

DATE:

February 26, 2003

BOARD/PANEL:

Charles L. Marks

CLM

Richard K. Irish

RKI

Melissa Moyer Adams

MMA

RECORDED BY:

Theresa R. Shelton / Legal Secretary

PURPOSE:

To deliberate the Petition for Special Hearing to approve a waiver the

renovate and construct an addition to a historic structure

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- The panel addressed the issue of postponing the matter and the Rules of Practice and Procedure were read unless the Circuit Court is closed, the Board's cases will convene. The reason of snow and age were not sufficient enough to postpone the case.
- The Appellant is not within site or sound of the structure and has only a general interest
- The Appellant has no standing and was not aggrieved
- The development aspect will be researched

DECISIONS BY BOARD MEMBERS: Unanimous decision by the Board: Motion to Dismiss the Appeal is GRANTED.

FINAL DECISION:

Motion to Dismiss Appeal is GRANTED. The Zoning Commissioner's Order

dated 12/16/2002 remains, GRANTING the request for the Petition for

Special Hearing.

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

Respectfully submitted,

Theresa R. Shelton

County Board of Appeals

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF: KENNETH BOSLEY P O BOX 334 COCKEYSVILLE, MD 21030

FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204

CIVIL ACTION NO.: 03-C-03-4994

IN THE MATTER OF:
DOUGLAS AND TSOGINE HAMILTON
FOR SPECIAL HEARING
FOR THE PROPERTY KNOWN AS
1900 WESTERN RUN ROAD

CASE NO: 03-192-SPH

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE BALTIMORE COUNTY DEPARTMENT OF PERMITS & LICENSES AND THE BOARD APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND OFFICE OF ZONING ADMINISTRATION AND THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY:

03-192-SPH

October 18, 2002

Petition for Special Hearing filed by Douglas W. Hamilton, Jr. and Tsognie W. Hamilton to approve a waiver pursuant to Sections 26-171, 26-172(b), 26-203(c)(8), and 26-278 of the Baltimore County

FILED

JUN 27 2003

Code to renovate and construct an addition to a historic structure (MHT #BA-188); and to approve an existing accessory structure as a caretaker's house, guest house or tenant house.

October 31, 2002

Notice of Appearance by People's Counsel

November 1, 2002

Notice of Zoning Hearing

November 21, 2002

Certificate of Publication/The Jeffersonian

December 16, 2002

HEARING OFFICER'S OPINION AND DEVELOPMENT

PLAN ORDER by Lawrence E. Schmidt, Zoning

Commissioner/Hearing Officer that the Petition for Special Hearing filed by Douglas W. Hamilton, Jr. and Tsognie W. Hamilton to approve a waiver pursuant to Sections 26-171, 26-172(b), #6-

203(c)(8), and 26-278 of the Baltimore County Code to removate and construct an addition to a historic structure (MHT #BA-18#); and to approve an existing accessory structure as a caretaker's hollse, guest

house or tenant house is GRANTED.

January 14, 2003

Notice of Appeal filed by Kenneth Bosley, PO Box 334,

Cockeysville, MD 21030

February 26, 2003

Board convened for hearing. Mr. Bosley did not appear. Counsel for Petitioner appeared and argued several issues.

PETITIONER'S EXHIBITS

1. ADC Map – 2 pages

2. Tax Map No. 33

3. Maryland Department of Assessments and Taxation -Real Property Data Search (17 pages)

4. File copy of Board of Appeal's Opinion/Ruling on Mation To Deny or Dismiss Appeal, dated January 22, 2003

5. Case Law – Development on 25th Street – (15 pages)

6. Case Law - Capital Park - (pages 16 - 21)

7: § 26-171 Limited exemptions (pages 1763 – 1786.1)

8. Standards and Guidelines for Architectural and Historical Investigations in Maryland (63 pages)

9. General Permit Application Data Permit # B477495

February 26, 2003

Board deliberated.

March 24, 2003

Opinion and Order issued by the Board of Appeals - Petilioner's Motion to Dismiss is GRANTED; appeal in Case No.: 03-192-SPH is DISMISSED.

April 2, 2003

Motion for Re-Hearing filed by Kenneth Bosley.

Kenneth Bosley/Civil Action No.: 03-C-03-4994 Douglas and Tsogine Hamilton/00-184-X

April 8, 2003	Response to Motion for Re-Hearing from Pan Chair; Beard has authority to re-open the matter, as set forth in Board Rule 10 - Revisory Power. Request for re-hearing DENIED.	as no -
May 6, 2003	Petition for Judicial Review filed in the Circuit Court for Baltin County by Kenneth Bosley. Case No.: 03-C-03-4994.	iore
May 7, 2003	Copy of Petition for Judicial Review received by the County Boof Appeals from the Circuit Court for Baltimore County.	oard
May 14, 2003	Certificate of Notice sent to interested parties.	
June 26, 2003.	Transcript of proceeding filed.	
June 27, 2003	Record of Proceedings filed in the Circuit Court for Baltimore County.	

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

Respectfully submitted,

Theresa R. Shelton, Legal Secretary

County Board of Appeals of Baltimore County

400 Washington Avenue, Room 49 Towson, MD 21204 (410) 887-3180

c: Kenneth Bosley Robert A. Hoffman, Esquire Case No. 03-192-SPH

SPH- Douglas and Tsognie Hamilton -Legal Owner

To approve waiver and permit renovation/
construction of addition to historic structure; to approve existing
structure as caretaker's house, guesthouse or tenant house

12/16/2002 –Z.C.'s decision in which variance relief was GRANTED.

2/05/03 –Notice of Assignment sent to following; assigned for hearing on Wednesday, February 26, 2003 at 10:00 a.m.:

Kenneth Bosley /PO Box 334
Robert A. Hoffman, Esquire
Mr. and Mrs. Douglas Hamilton
Brian DiCara /McKee & Associates
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

- 2/11/03 Amended Notice of Assignment to reflect correct subject matter of Petition for Special Hearing shown on Amended Notice as ** / special hearing relief was granted by ZC. Hearing to proceed as scheduled on 2/26/03.
- 2/26/03 T/C to CBA office prior to start of hearing K. Bosley unable to get in for hearing due to roads not being plowed and additional snow this date. Advised Mr. Bosley that the Board would convene for hearing; that appeal could possibly be dismissed if he did not appear; that all Board members and other litigants were ready to go.
 - -- Board convened for hearing (Marks, Adams, Irish); Mr. Bosley did not appear. Counsel for Petitioner appeared and argued several issues relative to this case. Board deliberated after brief recess. Dismissed appeal for reasons as stated in deliberation. Order to be issued.
- 4/02/03 Motion for Re-Hearing filed by Kenneth Bosley. Copies distributed to C.M.R. for review. (NOTE: Board's decision was issued 3/24/03; appellate period runs through 4/23/03.)
- 4/08/03 Letter to Mr. Bosley from Panel Chair Marks; Board has no authority to re-open this matter except in the absence of "fraud, mistake or irregularity" in its Opinion and Order as set forth in Board Rule 10 Revisory Power. Request for re-hearing is denied. Copy to R. Hoffman.

IN THE PETITION OF
KENNETH BOSLEY
FOR JUDICIAL REVIEW
OF THE OPINION OF THE
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Case No. 03-192-SPH

THE MATTER OF THE APPLICATION OF DOUGLAS & TSOGINE HAMILTON - LEGAL OWNERS /PETITIONERS FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE N/SIDE OF WESTERN RUN ROAD, 950' E OF CUBA ROAD (1900 WESTERN RUN ROAD) 8TH ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

IN THE

* CIRCUIT COURT

FOR

* BALTIMORE COUNTY

CASE NO.: 03-C-43-4994

00-184-X ?

NOTICE AND PETITION FOR JUDICIAL REVIEW

The Appellant, Kenneth Bosley, herein Petitions the Court for review of the above entitled case and therefore says:

- 1. That the Board of Appeals was in error by not granting a postponement of the matter since the Appellant was snow-bound in the northern part of the rural county during the record snowfall of the century.
- 2. That the Board of Appeals was unfair, arbitrary and in error by finding as a matter of law that your appellant had no standing in this case when in fact, any citizen has standing to protect the destruction of a historic structure located in a Federal and State historical district.

RECEIVED AND FILED
2003 MAY -6 A 10: 26
CLERK OF THE COURT

MAY 11 7 2003

BALTIMORE COUNTY
BOARD OF APPEALS

WHEREFORE, Appellant respectfully requests a hearing and a review of the opinion of the board of Appeals by the Circuit Court.

Kenneth Bosley
P O Box 334

Cockeysville, Maryland 21030

1 800 497-0880

Appellant

CERTIFICATE OF MAILING

I hereby certify, that on this 5th day of May, a copy of NOTICE AND PETITION FOR JUDICIAL REVIEW, was mailed, postage prepaid, to Robert A. Hoffman, Venable Baetjer & Howard, 210 Allegheny Ave., Towson, Maryland 21204, and hand delivered to the County Board of Appeals of Baltimore County, Old Courthouse, Towson, MD 21204.

Kenneth Bosley

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court

County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

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

Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-03-004994

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse Baltimore, MD 21204

IN THE MATTER OF
THE APPLICATION OF
DOUGLAS & TSOGINE HAMILTON LEGAL OWNERS /PETITIONERS FOR A
SPECIAL HEARING ON PROPERTY
LOCATED ON THE N/SIDE OF WESTERN
RUN ROAD, 950' E OF CUBA ROAD
(1900 WESTERN RUN ROAD)
8TH ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

- * BEFORE THE
- * COUNTY BOARD OF APPEALS
- OF
- * BALTIMORE COUNTY
- * Case No. 03-192-SPH

MOTION REQUESTING A RE-HEARING (HISTORICAL SMOKE-HOUSE AND SUMMER KITCHEN)

Appellant, Kenneth Bosley, herein requests a re-hearing for the above entitled matter and therefore states the reasons as follows:

- 1. Your Appellant was snowed in during the century record-breaking about 36-inch depth of snow. Appellant resides in the Hereford zone of Baltimore County school weather district.
- 2. Appellant lives on a private farm road that is more than one-half a mile in length that includes a creek crossing and two hills.
- 3. On the date of this hearing (February 26, 2003) at 10:00 the Appellant was waiting to be dug out by a snowplow that would work on the farm road in the afternoon. The operator of the private snowplow was Harry Ensor of Whitehall whom Appellant has had under contract for over 20 years for snow removal. Mr. Ensor was former garage operator of the Ensor Gas Station almost across from the Milton Inn in Sparks. He is also a retired Baltimore County police traffic officer. His snowplow got stuck in this farm road during the beginning of the 10-day snow period. Appellant also employed a snow blower, which could not remove the ice formation and open the road way from the dwelling. The owner and operator of the snow blower was Victor Frankel of Parkton.

APR 11 2 2003

BALTIMORE COUNTY BOARD OF APPEALS

The Appellant could not get out of the snow bound condition until the 4. next day, February 27, 2003. The morning of February 26, 2003 (Wednesday) was snowing in blizkard 5. blowing weather pattern condition that even prevented Appellant from walking out to the main highway in a three-foot depth icy area. Appellant is over the age of seventy and fully remembers the two hour 6. struggle to reach the cleared highway during the 1966 period that had a deep snow. The electric power was cut off which resulted the four members of his family that had to evacuate their home assisted by others. At or about 8:30 A. M. on the day of the hearing on February 26, 2003, 7. Appellant called this Board's office and the Appellee's attorney, Hoffman, stating that the falling snow, the blizzard conditions at that hour, the fact of the driveway road being impassable and the appellant's age, together made the presence at the hearing impossible and therefore a postponement was eminently requested. Attached hereto is a copy of the severe weather report documented in SunSpot.net. 8. Page 3 of the Board's opinion stated that the Appellee contends that Appellant Bosley has no standing to make this appeal. The Appellant's appeal was based on the fact that the destruction of this historical Summer Kitchen and Smoke House was illegal since the structure, M.H.T. BA - 188, is located in the Federal District known as the Western Run & Belfast Valley Historical District. Appellee on page 4 fails to document that the Appellant, Kenneth Bolley 9. does own a 10-acre sewage and utility easement located on Conclusion Farm at 1219 Gerber Lane that is recorded in the land records of this County. This property interest is located only about a mile from subject property of Appellee's 1900 Western Run Road tract.

- 10. Appellant is aggrieved by this Board's decision different than the majority of the public in general since the structure here is a 1700 century—agricultural one. Further, the Western-Run Valley Historical District is slowly being destroyed by re-development. (This stone Smoke-House Summer Kitchen is the only one remaining.)
- 11. Page 4 of the opinion states that the subject property of 1900 Western Run Road (1st par. Line 3) is located in Monkton. This error was brought forth from the Appellee's Attorney's alleged false statement. The property is actually located about a mile from the village of Butler.
- 12. The Board's opinion does not address the historical aspects of the destruction of the building nor did it address the administrative implication of the landmark Preservation Commission being by passed.

WHEREFORE, Appellant respectfully requests a rehearing since the hearing of February 26, 2003, permitting the demolition of this historic field stone smoke-House and Summer Kitchen located in the Federal Historic District was a mistake, an irregularity and unfair to your Appellant.

Kenneth Bosley

P O Box 334

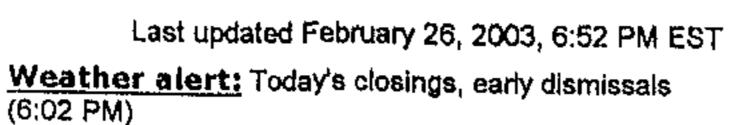
Cockeysville, Maryland 21030

1 800 497-0880

CERTIVATE OF MAILING

I hereby certify, that on this 157 day of April, a copy of MOTION REQUESTING A RE-HEARING, was mailed, postage prepaid, to Robert A. Hoffman, Venable Baetjer & Howard, 210 Allegheny Ave., Towson, Maryland 21204.

Kenneth Bosley



More snow blankets region

6 to 12 inches possible by Friday; Winter storm warning issued; Numerous accidents reported; Greatest accumulations to come with second, stronger system (6:38 PM)

- Weather-related deaths mount across U.S.
- Drivers shake, rattle and roll over holey streets of Baltimore

Photo gallery Talk about it

Full coverage



➡ Traffic on the Jones Falls Expressway south of Ruxton Road backs up behind one of numerous weather-related accidents this morning as a driver waits for assistance after spinning out in the northbound lanes. (Sun photo by Jerry Jackson)
The Day in Pictures



County Board of Appeals of Baltimore County

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

April 8, 2003

Mr. Kenneth Bosley P.O. Box 334 Cockeysville, MD 21030

RE: In the Matter of: Douglas & Tsognie Hamilton
Case No. 03-192-SPH
Motion Requesting a Re-Hearing

Dear Mr. Bosley:

The Board is in receipt of your Motion Requesting a Re-Hearing (Historical Smoke-House and Summer Kitchen) relative to an "Opinion and Order" issued by the Board on March 24, 2003 (Case No. 03-192-SPH; In the Matter of the Application of Douglas & Tsognie Hamilton – Legal Owners /Petitioners for a Special Hearing on Property Located on the N/side of Western Run Road, 950 E of Cuba Road (1900 Western Run Road); 8th Election District; 3rd Councilmanic District.

The Board has accordingly reviewed the Motion and has determined the following:

Unlike the "Rules of Practice and Procedure Before the Zoning Commissioner /Hearing Officer of Baltimore County," which contain a provision for "Motion for Reconsideration" (Rule 2, Section K), the Rules of Practice and Procedure of the Baltimore County Board of Appeals" do not contain provision for a "Motion for Reconsideration" or a "Motion for a Re-Hearing."

The Rules of the Board do provide, under rule 10, "Revisory power of the Board that:

Within thirty (30) days after the entry of an order, the board shall have revisory power and control over the order in the event of fraud, mistake, or irregularity."

The Rules of the Board have been specifically approved by the Baltimore County Countil and may be amended from time to time in accordance with § 6-3 of the <u>Baltimore County Charter</u>.

The County Council has, by legislative authority, given to the Zoning Commissioner /Hearing Officer much broader authority in matters concerning "Reconsideration," and in the same vein, restricted such matter as to this Board. The rules limit such authority solely to elements of mistake, fraud, and irregularity. Further reference is made to cases decided by the Maryland Court of Appeals, Miles, et al v. McKinney, 199 A.2d 540; and Kay Construction Co. v. County Council for Montgomery County et al, 177 A.2d 694.

In this matter, you are requesting that this Board consider a change in its original ruling based on your Motion filed on April 2, 2003. In order to accomplish that, the Board must be convinced that there

was present in the Opinion and Order an element, or elements, of "fraud, misrepresentation, or irregularity."

In Miles et al v McKinney, 199 A.2d 540, the Maryland Court of Appeals has held that a quasi-judicial tribunal may not reopen and rehear a proceeding which has been terminated at least in the absence of mistake in prior proceedings. The Court held that the Board had the right to correct errors in its decision caused by fraud, surprise, mistake or inadvertence, which any agency exercising judicial functions must have to adequately perform its duties. Whether or not it has the right to reconsider its decision in a case it has heard where there is no fraud, mistake, surprise, or inadvertence is another question.

Rule 2-535 of the Maryland Rules of Procedure dealing with the authority of the Circuit Court grants to that body revisory power and control 30 days after entry of judgement in the event of fraud, mistake or irregularity. The Court is also permitted to grant a new trial in the event of newly discovered evidence if filed within 30 days of the judgement entry. However, the Board of Appeals is not a judicial body. It must derive its sole authority by way of that granted to it by statute and County Courcil authority. Such authority is not present in the Board's rules of procedure, and there may well be ample reason as to why such authority is granted to a purely judicial body and not to a quasi-judicial or administrative body, such as the Board of Appeals. Perhaps the reason for such a lack of authority is that, if granted, there could conceivably be no finality to the proceedings. The result could be charge at the whim of its members or due to the effect of influence exerted upon the body, or other element leading to uncertainty or impermanence. There are cases present where a change in conditions or other circumstances which materially affect the merits intervening since the formal decision and such reconsideration was possible. But the rules of the Board do not take into consideration these matters as a factor in reconsideration.

The Board recited Rule 2 "Notice" in its "Opinion and Order, and rejects your contention that weather conditions precluded your appearance before the Board on the scheduled hearing date. The Board, as stated in the "Opinion," determined that "extraordinary" conditions did not exist that precluded your appearance which prompted the request for postponement on the morning of the hearing, with Petitioner's witnesses in place and ready to proceed. In addition, members of the Board were present for this hearing and another panel present for a public deliberation at 9:00 a.m. Therefore, the Board solely on the basis of Rule 2 appropriately denied your request for postponement. In addition, the Board further found, as recited in its Opinion and Order issued March 24, 2003, that you lacked standing in this matter.

In summary, your request for a re-hearing is denied – in the absence of fraud, mistake (generally construed to be clerical), or irregularity (the "doing or not doing of that, in the conduct of a suit at law, which conformable with the practice of the Court, ought or ought not to be done" *Baltimore v. Hayward*, 257 Md. 538).

Very truly yours,

Charles L. Marks

Panel Chair

Case No. 03-192-SPH

c:

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF: KENNETH BOSLEY P O BOX 334 COCKEYSVILLE, MD 21030

FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204

CIVIL ACTION NO.: 03-C-03-4994

IN THE MATTER OF:
DOUGLAS AND TSOGINE HAMILTON

FOR SPECIAL HEARING
FOR THE PROPERTY KNOWN AS
1900 WESTERN RUN-ROAD

CASE NO: 00-184-X

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

Kenneth Bosley
PO Box 334, Cockeysville, MD 21030

Robert A. Hoffman, Esquire Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson, MD 21204

Mr. and Mrs. Douglas Hamilton 1435 Corbeet Road, Monkton, MD 21111

1

Matter of Douglas and Tsognie Hamilton

Petition of: Kenneth Bosley/Civil Action No.: 03-C-03-4994

Case No.: 03-192-SPH

FRE OF LACTURE COURT

Peter M. Zimmerman
Office of People's Counsel, 400 Washington Ave., Towson, MD
21204

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

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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Kenneth Bosley, PO Box 334, Cockeysville, MD 21030; Robert A. Hoffman, Esquire, Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson, MD 21204; Mr. and Mrs. Douglas Hamilton, 1435 Corbect Road, Monkton, MD 21111; and Peter M. Zimmerman, Office of People's Counsel, 400 Washington Ave., Basement, Old Court House, Towson, MD 21204, this 14th day of May, 2003.

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



County Board of Appeals of Baltimore County

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

May 15, 2003

Kenneth Bosley P O Box 334 Cockeysville, MD 21030

> RE: Circuit Court Civil Action No. 3-C-03-4994 Petition for Judicial Review

> > Douglas and Tsognie Hamilton - Special Hearing

1900 Western Run Road Case No.: 03-192-SPH

Dear Mr. Bosley:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all hosts incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time the transmit the same to the Circuit Court within sixty days, in accordance with the Maryland Rules.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,
All Skilton Legal Secretary

/trs Enclosure

Robert A. Hoffman, Esquire c: Mr. and Mrs. Douglas Hamilton Office of People's Counsel



County Board of Appeals of Baltimore County

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

May 15, 2003

Robert A. Hoffman, Esquire Venable, Baetjer & Howard, LLP 210 Allegheny Avenue Towson, Md 21204

RE: Circuit Court Civil Action No. 3-C-03-4994

Petition for Judicial Review

Douglas and Tsognie Hamilton - Special Hearing

1900 Western Run Road

Case No.: 03-192-SPH

Dear Mr. Hoffman:

Notice is hereby given, in accordance with the Maryland Rules, that a Petit on for Judicial Review was filed on May 6, 2003, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-03-4994.

Enclosed is a copy of the Certificate of Notice.

Verý truly yours,

Theresa R. Shelton Legal Secretary

/trs Enclosure

c: Kenneth Bosley

Mr. and Mrs. Douglas Hamilton Brian DiCara/McKee & Associates

Office of People's Counsel Pat Keller, Planning Director

Lawrence E. Schmidt, Zoning Commissioner

Arnold Jablon, Director/PDM

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh

Clerk of the Circuit Court County Courts Building

401 Bosley Avenue P.O. Box 6754

Towson, MD 21285-6754

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

NOTICE OF MOTIONS HEARING

Case Number: 03-C-03-004 994

CIVIL

In The Matter of: Kenneth Bosley

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

TO: County Board Of Appeals Of Baltimore County

Baltimore, MD 21204

RECEIVED

This case has been assigned a hearing on all openBOARD OF APPEALS

CIRCUIT COURT FOR BALTIMORE COUNTY County Courts Building 401 Bosley Avenue Towson, MD 21285-6754

Court date:
August 25, 2003
At: 10:30 AM
Motion Hearing (Civil)
15 MINUTES MOTIONS

PLEASE NOTE: If you desire to submit prior to this hearing date, please contact the Motion Assignment Clerk. A total of no more that one-half hour is allotted for a hearing on "Motion Days". If motions will take more than one-half hour, please contact the Motion Assignment Clerk for reassignment.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

A court reporter will not be present at the motion hearing unless specifically requested. Requests for reporters should be directed to the Motion Assignment Clerk. All requests for a postponement MUST BE MADE IN WRITING AS SOON AS POSSIBLE. This should be directed to the Motion Assignment Clerk with a copy to all counsel. Claim of not receiving this notice will not constitute reason for postponement.

Please refer to Information Desk for Court Room Desimnation.

Assignment Clerk: Culberts n Rebecca

Assignment Office Phone: (410)-88 -2660

Date Issued: 06/16/03

TRANSCRIPT REQUEST

Appealed:

5/6/03

Received:

5/7/03

Case:

Douglas and Tsognie Hamilton

Case No.: 03-192-SPH

Hearing date(s):

2-26-2003

Petition filed by: Kenneth Bosley

Telephone Number: 1-800-497-0880

Due Date:

JULY 2, 2003

THANK YOU

May 7, 2003

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Room 49
Old Court House
Towson, Maryland 21204

Re: PETITION FOR SPECIAL HEARING
N/S Western Run Road, 950' E of the c/L/Cuba Road
(1900 Western Run Road)
8th Election District - 3rd Council District
Douglas W. Hamilton, Jr., et ux - Petitioners
Case No. 03 192 - SPH

Dear Ms. Bianco:

Please provide me a copy of the deliberation notes, on the above entitled case from February 26, 2003.

Thank you.

Very truly yours,

Kenneth T. Bosley

P O Box 334

Cockeysville, MD 21030

1 - 800 497-0880

RECEIVED
JUL 2 4 2003

BALTIMUHE COUNTY BOARD OF APPEALS > put my

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

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

County Board Of Appeals Of Baltimore County Assignment Datd: 07/14/03

Old Courthouse

Baltimore MD 21204

Case Title: In The Matter of: Kenneth Bosley

Case No: 03-C-03-004994 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contadt: Richard P. Abbott at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of ||this Orde‡ as to any conflicts with the following dates:

SCHEDULING ORDER

1.	Motions to Dismiss under MD. Rule 2-322(b) are due by	. 07/29/03
2.	All Motions (excluding Motions in Limine) are due by	. 08/27/03
3.	TRIAL DATE is	. 10/06/03
	Civil Non-Jury Trial: Start Time: 09:30AM: To Be Assigned: 1 HOUR ADMINISTRATIVE APPEAL	

Honorable John Grason TurnHull II Judge

<u>Postponement Policy:</u> No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All raquests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend to a stlement conference in person. All insurance representatives <u>MUST</u> attend this conference <u>in person</u> as well. Failure to attend ay result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are _ut affected. (Call [410] 887 2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act. please contact the Court Administrator's Office at (\$10) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action : without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the adtion. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

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

cc: Kenneth Bosley

Patricia Ann Malone Esq

JUL 15 2013

BALTIMORE COUNTY BOARD OF APPLEALS

'JIT

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court

County Courts Building

401 Bosley Avenue

P.O. Box 6754

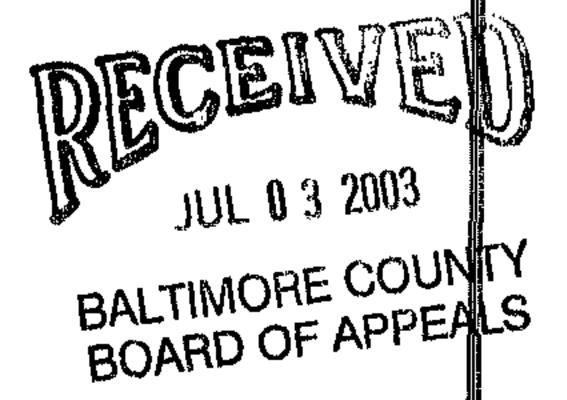
Towson, MD 21285-6754

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

Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-03 004994

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse Baltimore, MD 21204



Case No. 03-192-SPH

SPH- Douglas and Tsognie Hamilton -Legal Owner

To approve waiver and permit renovation/
construction of addition to historic structure; to approve existing structure as caretaker's house, guesthouse or tenant house.

12/16/2002 -Z.C.'s decision in which variance relief was GRANTED.

2/05/03 –Notice of Assignment sent to following; assigned for hearing on Wednesday, February 26, 2003 at 10:00 a.m.:

Kenneth Bosley /PO Box 334
Robert A. Hoffman, Esquire
Mr. and Mrs. Douglas Hamilton
Brian DiCara /McKee & Associates
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

2/11/03 – Amended Notice of Assignment – to reflect correct subject matter of Petition for Special Hearing shown on Amended Notice as ** / special hearing relief was granted by ZC. Hearing to proceed as scheduled on 2/26/03.

2/26/03 – T/C to CBA office prior to start of hearing – K. Bosley unable to get in for hearing due to road not being plowed and additional snow this date. Advised Mr. Bosley that the Board would convene for hearing; that appeal could possibly be dismissed if he did not appear; that all Board members and other litigates were ready to go.

-- Board convened for hearing (Marks, Adams, Irish); Mr. Bosley did not appear. Counsel for Petitioner appeared and argued several issues relative to this case. Board deliberated after brief recess. Dismissed appeal for reasons as stated in deliberation. Order to be issued.

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754

Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

09/24/03

Mail: P 0 Box 334

P 0 Box 5517

Atulopen

Case Number: 03-C-03-004994 AE

Date Filed: 05/06/2003

Status: Open/Active

Judge Assigned: To Be Assigned,

Location :

In The Matter of: Kenneth Bosley

CASE HISTORY

OTHER REFERENCE NUMBERS

Description Number

Case Folder ID C03004994V01

INVOLVED PARTIES

Type Num Name(Last,First,Mid,Title)
Addr Str/End
Addr Str/End

PET 001 Bosley, Kenneth 5/06/03

Party ID: 0581741

05/06/03

Cockeysville Hunt Valley, MD 21030

RES 001 Hamilton, Douglas

Party ID: 0581742

Capacity: Legal Owner
Attorney: 0015510 Malone, Patricia Ann Appear: 05/23/2003

Attorney: 0015510 Malone, Patricia Ann Appear: 05/23/2003 Venable, Baetjer & Howard, LLP

210 Allegheny Avenue

Towson, MD 21285-5517 (410)494-6200

03-C-03-004994 Da

Date: 09/24/03

Time: 12:41

Appear: 08/23/2003

04/29/03

Page:

0015531 Dunbar, James A

Venable, Baetjer And Howard, LLP

210 Allegheny Ave P 0 Box 5517

Towson, MD 21285-5517

(410)494-6200

Disposition

Addr Update

Entered

05/06/03

(\$/27/03

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

Addr Str/End

RES 002 Hamilton, Tsogine

Party ID: 0581743

Capacity : Legal Owner

Attorney: 0015510 Malone, Patricia Ann

Venable, Baetjer & Howard, LLP

210 Allegheny Avenue

P 0 Box 5517

Towson, MD 21285-5517

(410)494-6200

0015531 Dunbar, James A

Venable, Baetjer And Howard, LLP

210 Allegheny Ave P 0 Box 5517

Towson, MD 21285-5517

(410)494-6200

Appear: 08/23/2003

Appear: 05/23/2003

5/06/03

(B/29/03

RES 003 County Board Of Appeals Of Baltimore County

Party ID: 0581745

Mail: Old Courthouse

05/06/03

Baltimore, MD 21204

CALENDAR EVENTS

Date Time Dur Event Description

Text SA Jdg Day Of Notice User ID

Result

ResultDt By Result Judge

Rec

08/25/03 10:30A 01Q Motion Hearing (Civil)

JNB 01 /01 06/16/03 RC

Conclude

08/25/03 E J.Byrnes

γ

Stenographer(s): Rita M. Taggart

10/06/03 09:30A 01H Civil Non-Jury Trial

Y TBA 01 /01

KLS TF

03-C-03-004994 Date: 09/24/03 Time: 12:41

JUDGE HISTORY

Type Assign Date Removal RSN JUDGE ASSIGNED TBA To Be Assigned, J 05/06/03

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User	ID
0001000	Petition for Judicial Review	05/06/03	05/06/03	PET001	TBA			JET	
0001001	Answer Filed by RES001-Hamilton, Douglas, RES00		05/27/03 n. Tsogin		ТВА			PKE	PKE
0002000	Certificate of Notice	05/14/03	05/15/03	RES003	ТВА			CS	CS
0003000	Preliminary Motion to Dismiss Petition for Judicial Review with Memorandum and exhibits. Filed by RES002-Hamilton, Tsogine			,	JNB	Granted	08/25/03	PKE	GΙ
0004000	Request for Hearing Filed by RES001-Hamilton, Douglas, RES00		05/27/03 n. Tsogina		TBA			PKE	PKE
0005000	Request for Hearing/dismiss	06/05/03	06/10/03	PET001	TBA				PΗ
0006000	Hearing Notice	06/16/03	06/16/03	000	ТВА		06/16/03	- 1	
0007000	*Transcript of Record from Adm Agency	06/27/03	07/01/03	000	ТВА			- 1	MJ
0008000	Notice of Transcript of Record Sent	07/01/03	07/01/03	PET001	ТВА		07/01/03	MJ	MJ
0009000	Notice of Transcript of Record Sent	07/01/03	07/01/03	RES002	ТВА		07/01/03	МЈ	MJ
0010000	Notice of Transcript of Record Sent	07/01/03	07/01/03	RES003	ТВА		07/01/03		
0011000	Scheduling Order	07/14/03	07/14/03	000	ТВА		07/14/03	KLS	KLS
0012000	Open Court Proceeding August 25, 2003. Hon. J. Norris Byrnes. Bosley's, Motion for Recusal- denied. H Preliminary Motion to Dismiss Petition f (#3000)- Granted.	Petition earing had	d re:	eth	TBA			GI	GI
0013000	Attorney Appearance Filed *	08/25/03	08/29/03	000	TBA		08/29/03	PKE	PKE
0014000	Scheduling Order	09/03/03	09/03/03	000	TBA		09/03/03	KLS	KLS

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Date: 09/24/03

Time: 12:41

Num/Seq Description	Filed	Entered	Party	Jdg Ruling	Closed	User	ΙD
0015000 Scheduling Order	09/03/03	09/03/03	000	TBA	09/03/03	KLS (LS

TICKLE

Code Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Туре	Num	Seq
1ANS 1st Answer Tickle	OPEN	05/23/03	0	no	no	DANS	D	001	001
1YRT One Year Tickle (Jud	OPEN	05/05/04	365	no	no	DAAA	D	001	000
SLIL Set List - Informati	CANCEL	08/25/03	0	no	no	DAAF	D	013	000
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EXHIBITS

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	003 County Board Of Appea	als Of Ba
000	I BOX 363/CBA TRANSC	В

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes

Assign Date: 07/14/03 Order Date: 07/14/03

Start Date : 07/14/03 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(All Motions (excluding Motions in Limine TRIAL DATE is		07/29/03 08/27/03 10/12/03		OPEN OPEN OPEN

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court

County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

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

Maryland Toll Free Number (800) 938-5802

11/19/03

Case Number: 03-C-03-004994 AE

Date Filed: 05/06/2003 Status: Closed/Active

Judge Assigned: To Be Assigned,

Location :

In The Matter of: Kenneth Bosley

CASE HISTORY

OTHER REFERENCE NUMBERS

Description Number

Case Folder ID C03004994V01

INVOLVED PARTIES

Type Num Name(Last,First,Mid,Title) Addr Str/End	Disposition Addr Update	ntered
PET 001 Bosley, Kenneth	Party ID: 0581741	BT DO 10/06/03	5/06/03
Mail: P O Box 334 Cockeysville Hunt Valley,	05/06/03 MD 21030		
RES 001 Hamilton, Douglas	Party ID: 0581742	BT DO 10/06/03	5/06/03

Capacity : Legal Owner

Attorney: 0015510 Malone, Patricia Ann Appear: 05/23/2003 Venable, Baetjer & Howard, LLP

210 Allegheny Avenue

P 0 Box 5517

Towson, MD 21285-5517

(410)494-6200

03-C-03-004994

Date:

11/19/03

Time: 11:26

Appear: 08/23/2003

04/29/03

Page:

0015531 Dunbar, James A

Venable, Baetjer And Howard, LLP

210 Allegheny Ave.

PO Box 5517

Towson, MD 21285-5517

(410)494-6200

Disposition

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

Addr Update

Elitered

Addr Str/End

RES 002 Hamilton, Tsogine BT DO 10/06/03

05/06/03

0路/27/03

Party ID: 0581743

Capacity : Legal Owner

Attorney: 0015510 Malone, Patricia Ann

Venable, Baetjer & Howard, LLP

210 Allegheny Avenue

P 0 Box 5517

Towson, MD 21285-5517

(410)494-6200

0015531 Dunbar, James A

Venable, Baetjer And Howard, LLP

210 Allegheny Ave.

PO Box 5517

Towson, MD 21285-5517

(410)494-6200

Appear:

Appear: 08/23/2003

05/23/2003

18/29/03

(5/06/03

RES 003 County Board Of Appeals Of Baltimore County BT DO 10/06/03

Party ID: 0581745

Mail: Old Courthouse

05/06/03

Baltimore, MD 21204

CALENDAR EVENTS

Date Time

Dur Event Description Text SA Jdg Day Of Notice User ID

Result

ResultDt By Result Judge

Rec

08/25/03 10:30A 01Q Motion Hearing (Civil)

Stenographer(s): Rita M. Taggart

JNB 01 /01 06/16/03 RC

Conclude

08/25/03 E J.Byrnes

TBA 01 /01

KLS AED

10/06/03 09:30A 01H Civil Non-Jury Trial Vacate

09/29/03 D

Date: 11/19/03 Time: 11:26 03-C-03-004994

JUDGE HISTORY

Type Assign Date Removal RSN JUDGE ASSIGNED TBA To Be Assigned, J 05/06/03

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User	ΊD
0001000	Petition for Judicial Review	05/06/03	05/06/03	PET001	TBA		10/06/03	JET	JBJ
0001001	Answer Filed by RES001-Hamilton, Douglas, RES002	•	05/27/03 n, Tsogine		TBA		10/06/03		
0002000	Certificate of Notice	05/14/03	05/15/03	RES003	ТВА		10/06/03	cs	JBJ
0003000	Preliminary Motion to Dismiss Petition for Judicial Review with Memorandum and exhibits. Filed by I RES002-Hamilton, Tsogine				JNB	Granted	08/25/03	PKE	SI
0004000	Request for Hearing Filed by RES001-Hamilton, Douglas, RES002		05/27/03 n. Tsogin		TBA		10/06/03		
0005000	Request for Hearing/dismiss	06/05/03	06/10/03	PET001	ТВА		10/06/03	i	JBJ
0006000	Hearing Notice	06/16/03	06/16/03	000	TBA		06/16/03	RC	RC
0007000	*Transcript of Record from Adm Agency	06/27/03	07/01/03	000	ТВА		10/06/03	MJ	JBJ
0008000	Notice of Transcript of Record Sent	07/01/03	07/01/03	PET001	ТВА		07/01/03	ĽΜ	MJ
0009000	Notice of Transcript of Record Sent	07/01/03	07/01/03	RES002	ТВА		07/01/03	MJ	MJ
0010000	Notice of Transcript of Record Sent	07/01/03	07/01/03	RES003	TBA		07/01/03	MJ	MJ
0011000	Scheduling Order	07/14/03	07/14/03	000	TBA		07/14/03	KLS	KLS
0012000	Open Court Proceeding August 25, 2003. Hon. J. Norris Byrnes. Bosley's, Motion for Recusal- denied. He Preliminary Motion to Dismiss Petition for (#3000)- Granted.	earing had	ner. Kenno d re:	eth	ТВА		10/06/03	GI	JBJ
0013000	Attorney Appearance Filed *	08/25/03	08/29/03	000	TBA		08/29/03	PKE	PKE
0014000	Scheduling Order	09/03/03	09/03/03	000	TBA		09/03/03	KLS	KLS

03-C-03-004994 Date: 11/19/03 Time: 11:26

Num/Seq Description Filed Entered Party Jdg Ruling Closed User ID
0015000 Scheduling Order 09/03/03 09/03/03 000 TBA 09/03/03 KLS CS
0016000 Order Respondent Motion to Dismiss 10/06/03 10/06/03 000 JNB Granted 10/06/03 JBJ BJ
Petition for Judicial Review

TICKLE

Code Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Туре	Num	Seq
1ANS 1st Answer Tickle	CLOSED	05/23/03	0	no	no	DANS	D	001	001
1YRT One Year Tickle (Jud	CLOSED	05/05/04	365	no	no	DAAA	D	001	000
EXPU Exhibit Pickup Notic	OPEN	12/05/03	30	no	no			000	000
SLIL Set List - Informati	CANCEL	08/25/03	0	no	no	DAAF	D	013	000
SLMM Set List Motions Mar	CLOSED	02/15/06	999	yes	no	DRHR	D	004	000
SLMR Set List For Motions	CANCEL	06/14/03	22	no	no	MDIS	D	003	000
SLTR Set List For Trial	Done	05/23/03	0	yes	yes	1ANS	T	001	001

EXHIBITS

Line # Marked Code Description SpH Sloc NoticeDt Disp Dt Dis By
Offered By: RES 003 County Board Of Appeals Of Ba

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DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track: R1 Description: EXPEDITED APPEAL TRACK Custom: Yes

Assign Date: 07/14/03 Order Date: 07/14/03

Start Date: 07/14/03 Remove Date:

Milestone	Scheduled	Target	Actual	Status	
Motions to Dismiss under MD. Rule 2-322(All Motions (excluding Motions in Limine			10/06/03 10/06/03		•
TRIAL DATE is		10/12/03	10/06/03	CLOSED	

03-C-03-004994 Date: 11/19/03 Time: 11:26

CASE NAME CASE NUMBER

DATE 12-9-02

CITIZEN'S SIGN-IN SHEET

NAME KENNETH BOSLEY B						
ADDRESS 30 x 33 ¥						
CITY, STATE, ZIP RECKEYSVILLE, M.d. 2 1030						
E-MAIL						

CASE NUMBER	CASE NAME

CASE NUMBE DATE

PETITIONER'S SIGN-IN SHEET

								Bran Dicara	1) aution) Homeron	TON HOTEN	MAME
								55 Snamer Rot Surka	1435 Consum RD.	210 Allechan	ADDRESS
								Cockeysyille No 2003	monuta mi. 21111	1003m 21204	CITY, STATE, ZIP
								Dad Brokesing. Gra	Cie Co	America O Vencelos	E-MAIL

RE: PETITION FOR SPECIAL HEARING
1900 Western Run Road N/side Western
Run Road. 950' east of Cuba Road
8th Election District
3rd Councilmanic District
Legal Owner: Douglas W. Jr. & Tsognie

W. Hamilton

Petitioner(s)

- * BEFORE THE
- * ZONING COMMISSIONER
- * FOR
- * BALTIMORE COUNTY
- * 03-192-SPH

ENTRY OF APPEARANCE

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

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 31st day of October, 2002, a copy of the foregoing Entry of Appearance was mailed to Brian A. Dicara, c/o McKee & Associates, Inc., 5 Shawan Road, Suite 1, Cockeysville, MD 21030; and to Robert A. Hoffman, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, Towson, MD 21204 Attorney for Petitioner(s).

DECEIVED ONLY

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Off Royald Waltudomar (Royal

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Jul. 01 2002 03:37PM P3

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Principal



James R. Grieves, F.A.I.A. President

Mr. Grieves serves as President and Principal-in-Charge of Design for the firm of Grieves Worrall Wright & O'Hatnick, Inc. A registered architect since 1960, Mr. Grieves oversees all phases of project planning, administration, design, and implementation. He directs major architectural projects for '-. educational, commercial, and institutional use. He has designed twelve theatres, five museum projects, and twelve school facilities. He served as president of the Baltimore Chapter of the American Institute of Architects and has received numerous national and local design awards. In 1982 he was elected into the College of Fellows of the American Institute of Architects. Mr. Grieves received a B.S. in Architecture from the University of Virginia and a M.F.A. in Architecture from Princeton University. He was -awarded a graduate fellowship from Princeton and the Alpha Rho Chi Medal from the University of Virginia. Mr. Grieves is registered in ten states and holds an NCARB Certificate.

Professional Background

Grieves Worrall Wright & O'Hatnick, Inc.
Baltimore, Maryland
1990—present

Grieves Associates, Inc. Baltimore, Maryland 1969—1990

James R. Grieves, Architect Ocean City, Maryland 1965—1969

Rogèrs, Taliaferro, Kostritsky, Lamb Architects, Planners Baltimore, Maryland 1958—1965

Kenneth Kassler, Architect Princeton, New Jersey 1956—1957

Fisher, Nes, Campbell & Partners
Baltimore, Maryland
1955

Education/Academic Honors

University of Virginia B.S. in Architecture 1956

Princeton University M.F.A. in Architecture 1958

Graduate Fellowship, Princeton University

Alpha Rho Chi medal, University of Virginia

Professional and Service Organizations

Baltimore Downtown Strategy
Management Committee
Advisory Committee
1990—1991

The Johns Hopkins University
Design Advisory Committee
1989—1991

Lacrosse Foundation President 1984—1985

Baltimore School for the Arts Ex officio Advisory Board Member 1979

Baltimore Chapter A.I.A. President, 1978 President-Elect, 1977 Secretary, 1976

Center Stage Board of Directors 1972—1977

Maryland Society of Architects: \(\)
Board of Directors 1974—1976

Baltimore County Architectural Review Board, 1972—1975; Chairman, 1976

Architectural Registration

Maryland, Pennsylvania,
Delaware, New Jersey, North
Carolina, Ohio, Washington
D.C., Massichusetts,
Virginia, Florida, New York,
NCARB Certificate



Grieves Worrall Wright & O'Hatnick, Inc. 5 East Read Street Baltimore, Matyland 21202 410-332-1009

123B

James R. Grieves, FAIA

President

A registered architect since 1960, Jim Grieves has specialized in the preservation, restoration and adaptive reuse of historic structures throughout his career. He has directed all types of major architectural projects for educational, commercial and institutional clients that include Princeton University, Maryland Institute College of Art, Historic Mount Vernon and the National Park Service.

A former president of the Baltimore chapter of the American Institute of Architects, Mr. Grieves has received numerous national and local design awards. In 1982 he was elected into the College of Fellows of the American Institute of Architects.

Education / Academic Honors

University of Virginia Bachelor of Science, Architecture, 1956

Princeton University
Masters of Fine Arts, Architecture, 1958

Graduate Fellowship, Princeton University

Alpha Rho Chi Medal, University of Virginia

Selected Professional Affiliations

Baltimore Downtown Strategy Management Committee & Advisory Committee, 1990 – 1991

The Johns Hopkins University
Design Advisory Committee, 1989 – 1991

Lacrosse Foundation President, 1984 - 1985

Baltimore School for the Arts *Ex officio* Advisory Board Member, 1979

Baltimore Chapter AIA President, 1978; President-Elect, 1977; Secretary, 1976

Selected Project Experience

Brandywine River Museum, Chadds Ford, PA. Design & construction phase services for restoration and adaptive reuse of 1864 grist mill with 3 levels of gallery space and subsequent renovations and additions.

Walters Art Gallery, Baltimore, MD. Renovations to the 1904 Wing, the adaptive reuse of the 1851 Thomas Jenks Gladding Mansion and the upgrading/centralization of the utility and security systems of the 1974 Wing.

Historic Mount Vernon, Mount Vernon, VA. Renovations and additions to the National Register listed Mount Vernon Inn and master planning for a new \$37 million museum, orientation and education complex at George Washington's historic estate.

Center Stage Theatre, Baltimore, MD.

Adaptive reuse of an old school building to accommodate a new 500-seat theatre after the original was destroyed by fire.

Grand Opera House, Wilmington, DE. Complete interior and exterior restoration of this historic 1871 opera house to house the new Wilmington Center for the Performing Arts.

Harpers Ferry National Historic Park,
Harpers Ferry, WV. Complete exterior
restoration and interior adaptive reuse of 7
Naitonal Register listed historic buildings in the

McGraw Block of Harpers Ferry's Lower Town.

Princeton University, Alexander Hall, Princeton, NJ. Restoration and adaptive reuse of the university's original commencement space within a National Register quality building to accommodate musical productions and serve as a lecture hall.

