



MANDATE

Court of Special Appeals

03-331-A 9
CBA-03-117

Maryland Relay Service
1-800-735-2258
TDD/VOICE

No. 00811, September Term, 2004

Iron Horse Properties, LLC

vs.

Board of Appeals

JUDGMENT: -October 19, 2004: Notice of Dismissal of
Appeal filed by counsel for the appellant.
Appeal dismissed.

October 20, 2004: Mandate issued.

From the Circuit Court: for BALTIMORE COUNTY
00003C039833

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BALTIMORE COUNTY
BOARD OF APPEALS

FILED OCT 22 2004

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **twentieth** day of **October** **2004**

Leslie D. Shadet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

PETITION OF IRON HORSE
PROPERTIES, LLC
FOR JUDICIAL REVIEW OF
THE DECISION OF THE COUNTY
BOARD OF APPEALS FOR
BALTIMORE COUNTY

IN THE MATTER OF THE
APPLICATION OF JOHN W. TASTET, JR.,
AND IRON HORSE PROPERTIES, LLC
FOR VARIANCES AND DEVELOPMENT
PLAN APPROVAL ON PROPERTY
LOCATED ON N/W CORNER OF IRON
HORSE LANE AND MT. WILSON LANE
(WOODHOLME RESERVE PDM #III-377)
Board of Appeals Case Nos.
O3-331-A and CBA-03-117

* IN THE
* CIRCUIT COURT
*
* FOR
* BALTIMORE COUNTY
*
*
* Case No. 03-C-03-9833
*

* * * * *

OPINION AND ORDER OF COURT

After a combined hearing before the Zoning Commissioner/Hearing Officer of Baltimore County on March 13, 2003, in which the Commissioner considered both the requests of Petitioner for certain variances to the Baltimore County Zoning Regulations ("BCZR") and the Comprehensive Manual of Development Policies ("CMDP"), and the Petitioner's Development Plan ("Plan"), the Commissioner issued his opinion on March 27, 2003, approving both the Plan and the requested variances, with restrictions.

Milo Heckler, Respondent, who protested the Petitioner's proposal, filed an appeal to the County Board of Appeals ("CBA") on April 21, 2003. The CBA held hearings on May 15 and June 12, 2003, a public deliberation on July 23, 2003 and issued its Opinion of August 7, 2003, denying the requested variances and thereby also

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denying the Plan. Petitioner filed for this Judicial Review on September 8, 2003.

SCOPE OF REVIEW

The scope of judicial review is narrow. The Court must affirm the zoning board decision where it is fairly debatable with respect to the agency's findings of facts and inferences drawn therefrom. See Board of Physicians Quality Assurance v. Banks, 354 Md. 59, 67-69 (1999); Board of County Comm'rs. v. Holbrook, 314 Md. 210, 218 (1988); Eger v. Stone, 253 Md. 533, 542 (1969); Snowden v. City of Baltimore, 224 Md. 443, 448 (1961).

The scope of review is likewise narrow with respect to the application of law to the facts and/or to mixed questions of law and fact. Stover v. Prince George's County, 132 Md. App. 373, 380-82 (2000); Caucus Distributors v. Maryland Sec. Comm'r., 105 Md. App. 25, 32-35 (1995); Maryland State Police v. Lindsey, 318 Md. 325, 333-35 (1990); Baltimore Lutheran H.S. v. Employment Sec. Admin., 302 Md. 649, 663 (1985); Ramsay, Scarlett & Co. v. Comptroller, 302 Md. 825, 837 (1985). Even with regard to matters of legal interpretation, the scope of review remains narrow. In Banks, *supra*, the Court focused on matters of legal interpretation. Judge Eldridge wrote:

"Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts. . . Furthermore, the expertise of the agency in its own field

should be respected. . . (legislative delegations of authority to administrative agencies will often include the authority to make 'significant discretionary policy determinations.') . . .” 354 Md. at 69. (Citations omitted).

Accordingly, where there is room for interpretation, the courts “ordinarily give some weight” to agency construction of the statute. Magan v. Medical Mutual Liab. Ins. Co., 331 Md. 535, 546 (1993). In Magan, Judge McAuliffe wrote:

“The degree of weight to be given an administrative interpretation varies according to a number of factors, including whether the interpretation has resulted in a contested adversary proceeding or rule-making process, whether the interpretation has been publicly established, and the consistency and length of the administrative interpretation or practice. *Comptroller v. John C. Louis Co.*, 285 Md. 527, 544-45 (1979).”

In administrative proceedings in Maryland concerning the grant of a variance or special exception, the “substantial evidence” and “fairly debatable” standard is applicable. E.g., Schultz v. Pritts, 291 Md. 1 (1981); Turner v. Hammond, 270 Md. 41 (1973). The “fairly debatable” standard was defined in Eger v. Stone, 253, Md. 533, 538 (1969):

“If the issue before an administrative body is ‘fairly debatable,’ that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the Court will not substitute its judgment for that of the administrative body, even if the administrative body came to a conclusion which the Court would not have reached on the evidence.”

See also Germenko v. County Bd. of Appeals of Baltimore County, 257 Md. 706, 711 (1970). Accord Ginn v. Farley, 43 Md. App. 229 (1979); Board of County Comm’rs

for Prince George's County v. Meltzer, 239 Md. 144 (1965).

In Prince George's County v. Meininger, 264 Md. 148, 152 (1972), it is held that the "substantial evidence" requirement in a case of denial was satisfied by little more than a "scintilla of evidence" because the burden of proof is on the appellant. The zoning agency's decision should be affirmed unless there is "no evidence at all" to support the decision. Rockville Fuel & Feed Co. v. Board of Appeals, 257 Md. 183, 193 (1970). These and other cases indicate that an administrative appellant has a very heavy burden to demonstrate as arbitrary an agency finding that the applicant did, or did not sufficiently prove his case.

The Court, in reviewing this case, will, of course, be mindful of its limited role in the zoning process. In Maryland, a court will not overturn zoning decisions which are "fairly debatable." Cox v. Prince George's County, 86 Md. App. 179 (1991); Montgomery County v. National Capital Realty Corporation, 267 Md. 364 (1972); County Council v. Prestwick, 263 Md. 217 (1971). The fairly debatable rule and its corollary, the substantial evidence rule, mean that the court will not substitute its judgment for the zoning agency's but will sustain any decision which has a reasonable basis in the record. Kirkham v. County Council, 251 Md. 273 (1968), accord, Southland Corp., 7-Eleven Stores v. Mayor & City Council of Laurel, 75 Md. App. 375 (1988).

An agency's decision must be reviewed in the light most favorable to the agency.

Coscan Washington, Inc. v. Maryland National Capital Park and Planning Comm'n., 87 Md. App. 602 (1991); Courtney v. Board of Trustees, 285 Md. 356, 362 (1979). A decision of an agency is *prima facie* correct and carries with it the presumption of validity. Cox, *supra* at 187. A court cannot reject the conclusion of an administrative agency if "a reasoning mind reasonably could have reached the factual conclusion the agency reached." Bullock v. Pelham Wood Apartments, 283 Md. 505 (1978), quoting Dickinson-Tidewater v. Supervisor, 273 Md. 245, 256 (1974).

The Court of Appeals has also made very clear that an administrative agency must be afforded great deference.

"The heart of the fact finding process often is the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. 'The Court may not substitute its judgment on the question of whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.'"

People's Counsel for Baltimore County v. Mangione, 85 Md. App. 738, 751 (1991), quoting Snowden v. Mayor and C.C. of Balto., 224 Md. 443, 448 (1961).

Therefore, this Court must give due deference to the right of an administrative agency, such as the CBA, to draw reasonable inferences from the facts and circumstances presented before it. Eg., Board of County Comm'rs v. Holbrook, 314 Md. 210, 218 (1988); Mangione, *supra*. The appellate court must also assume the truth of all of the evidence and all of the favorable inferences to support the factual

conclusions of the trier of fact. Mercedes-Benz of N.Am., Inc. v. Garten, 94 Md. App. 547 (1993).

DISCUSSION

The Court has had the opportunity to review and consider the transcripts of the CBA hearings of May 15 and June 12, 2003, the earlier of which was a non-evidentiary hearing in which the parties largely urged the CBA to determine whether previous decisions of the Zoning Commissioner were relevant to or admissible in the proceedings of these cases. The later hearing was predominantly one devoted to the testimony of the various witnesses for the Petitioner and Respondent. The CBA's Opinion accurately summarizes the evidence before it, and the Court will not reiterate it here.

The Respondent placed before the CBA the issue of whether the Hearing Officer had acted in an arbitrary or capricious manner in approving the Plan, emphasizing that he had previously rejected a development scheme for this same property primarily because of inadequate storm water outfall capacity. That inquiry was relevant in that the CBA was required by Baltimore County Code Sec 26-209 to review *that* portion of the decision below in a manner analogous to the appellate review conducted by this Court, based upon the record before the Hearing Officer. In considering the *variance* requests, however, the CBA was called upon to conduct, as it did, a *de novo* review of the Zoning Commissioner's findings and conclusions.

The CBA determined, on the Plan issue, that there was substantial evidence before the Hearing Officer to support his decision in favor of the Plan, and further determined that “there is nothing substantive offered that would permit this Board to substitute its judgment for that of the Hearing Officer.” On this issue, the CBA held that as a result of its findings, “the Protestant’s Petition on appeal as to this development plan, exclusive of the variances, is denied.” The CBA was satisfied that the Hearing Officer explained sufficiently why he was satisfied that the Plan overcame his previous misgivings concerning storm water management, and that his position was supported by substantial evidence. The CBA was also satisfied that the Hearing Officer did not exceed his authority, proceed unlawfully or commit legal error. This Court, having reviewed and considered the record, concurs with the CBA on the issue of the Plan, “exclusive of the variances.” The Hearing Officer and the CBA addressed the avowed concerns of the Protestant regarding storm water, and found them to be without serious merit, based upon substantial evidence.

The CBA next considered the issues concerning the variance requests, noting that there were two types of variances being sought. It described the first type as consisting of those sought due to a “zoning anomaly”, and the second as “design oriented.” It concluded that it was required to analyze three questions:

1. Is the subject property unique and are there special circumstances or conditions that exist which are peculiar to the land?

2. Will strict compliance with the regulations result in practical difficulty or unreasonable hardship?
3. If the variance(s) were granted, would it be detrimental to the surrounding area?

The CBA considered the evidence before it, and concluded that the property was unique owing to the presence of the historically significant Balmuckety mansion and its accompanying gardens erected upon it, although not unique in other respects, thus answering the first question in the affirmative.

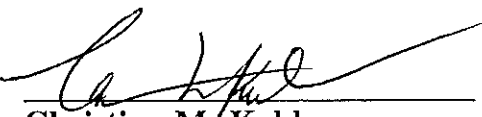
As to the second question, the CBA found that the variance requests were “economically driven,” but were not necessary to avoid practical difficulty or unreasonable hardship, thus answering the second question in the negative. As to this question, the members of the CBA were not persuaded from the evidence before them, of such difficulty or hardship. Accordingly, the CBA denied the variance requests in their entirety, necessitating rejection of the otherwise acceptable Plan. The answer to the third question, in the negative, did not affect the outcome in view of the negative answer to the second one.

Petitioner urges this Court to find that the CBA erred in reaching the legal conclusion it did regarding the absence of practical difficulty or unreasonable hardship, in that it applied an improper standard to the facts in this case. Moreover, Petitioner argues that the CBA did not complete its analysis because it failed to consider whether granting the variance(s) would fall within the spirit and intent of the regulations, or

cause injury to public health, safety and general welfare, the third and fourth prongs of the variance standard set forth in the BCZR, Section 307. The short answer to the latter is that the CBA did not complete its analysis because it did not need to do so, having answered the second question in its analysis in the negative. As to the former, a determination of whether practical difficulty or unreasonable hardship exist entails mixed findings of fact and conclusions of law, and as the Court previously observed in setting forth the standard of review it is applying to this case, even as to such matters, a degree of deference must be accorded to the administrative agency. Banks, *supra*.

In conclusion, this Court finds that the decision of the CBA, concluding that the variances should be denied, is supported by substantial evidence in the record, and is not the product of fatal legal error. Indeed, a contrary decision by the CBA would likely have withstood the scrutiny of these same tests. The August 7, 2003 decision of the CBA in this case will be, and it is hereby,

AFFIRMED.


Christian M. Kahl

May 26, 2004
Date

cc: C. William Clark, Esquire
J. Carroll Holzer, Esquire
Jennifer R. Busse, Esquire
G. Scott Barhight, Esquire
Baltimore County Board of Appeals

Please
docket
Copies have
been sent.

IN THE MATTER OF	* BEFORE THE
THE APPLICATION OF	
<u>JOHN W. TASTET, JR.,</u> LEGAL OWNER	* BOARD OF APPEALS
FOR VARIANCES ON PROPERTY LOCATED	
ON THE NW/COR IRON HORSE LANE AND	* OF
MT. WILSON LANE; <u>IRON HORSE PROPERTIES</u>	
<u>LLC – C.P. AND DEVELOPER AND</u>	* BALTIMORE COUNTY
DEVELOPMENT PLAN APPROVAL	
(<u>WOODHOLME RESERVE /PDM III-377</u>)	* CASE NO. 03-331-A AND
	CASE NO. CBA-03-117
3 rd ELECTION DISTRICT	*
2 nd COUNCILMANIC DISTRICT	

* * * * *

FINAL OPINION AND ORDER

This case was appealed to the Baltimore County Board of Appeals based upon an appeal of the final “Opinion and Order” of the Hearing Officer in which a Development Plan was approved, accompanied by variance relief that was granted with restrictions. The case was heard over two days in public session on May 15, 2003 beginning at 2:00 p.m.; and on June 12, 2003, at 10:00 a.m. G. Scott Barhight, Esquire, and Jennifer R. Busse, Esquire, appeared on behalf of the Petitioner /Developer, Iron Horse Properties, LLC. Appellants /Protestants were represented by J. Carroll Holzer, Esquire. C. William Clark, Esquire, appeared on behalf of the Cobblestone Homeowners Association.

The first day of the hearing was essentially confined to outstanding issues and the extent to which a prior case involving the subject property had been heard and decided. The essence of the oral arguments offered was whether or not those cases would be admitted as exhibits; and also a proffer made by Mr. Clark and the standard of review in a development case.

On day two, the evidentiary portion of the hearing began. A copy of the transcript of the Hearing Officer’s hearing held on March 13, 2003 (Case No. III-377; Case No. 03-331-A) was

made available to the Board by the Petitioner, as well as a copy of the Board's hearing on June 12, 2003. The Petitioner has sought, by way of a Development Plan, approval of development of a project known as **Woodholme Reserve**, located on the west side of Iron Horse Lane at the northeast corner of Mt. Wilson Lane. The property is approximately 10.34 acres in area and is zoned D.R. 3.5, R.O.A., and also D.R. 1. The proposed development plan called for 22 single-family dwellings on the property. The file reflects that the project went through the normal development processes with a concept plan meeting on July 8, 2002; a community input meeting on July 30, 2002; and a development plan submitted reflecting the 22 single-family dwellings culminating in a development plan conference on February 19, 2003. On January 16, 2003, the Developer filed a Petition for Variance accompanied by a combined development proposal and zoning plan which sought approval to obtain variances from the *Baltimore County Zoning Regulations* (BCZR) and Comprehensive Manual of Development Policy (CMDP), which would allow reduced setbacks for the principal dwellings, fence and decks or one -story porches facing front, side and rear yards. The Petitioner also sought variances to allow panhandle lots and variances that specifically related to a proposed garage for lot #10 (the lot encompassing the existing Balmuckety Mansion facility /#03-331-A). Since the Balmuckety Mansion is identified on both the Maryland Historical Trust, Inc., inventory (#BA-682) and the Baltimore County Final Landmarks List, by *Baltimore County Code* (BCC) § 26-207(a)(3), the Development Plan was required to be referred to the Landmarks Preservation Commission for their review. That body met on February 13, 2003 and voted to support the project, since it would essentially preserve the gardens and historical setting of the Balmuckety Mansion.

Subsequently on February 20, 2003, the Petitioner made a formal presentation to the Planning Board who voted on March 6, 2003 to support the project, provided that the Petitioner construct the property dwellings with brick on all facades. In accordance with BCC § 26-208(b)(2), the Planning Board filed its written decision with the development Hearing Officer. Thereafter, on March 7, 2003, comments from the Zoning Advisory Committee (ZAC) as to the development plan and zoning plan were released as required under BCC § 26-206.1; a combined hearing was requested and subsequently held on March 13, 2003.

The Hearing Officer heard the case on March 13, 2003 and issued his Opinion on March 27, 2003. The provisions referenced by the Planning Board were added as a part of the Hearing Officer's approval of the Plan as required by the Code. This Board has reviewed the transcript of the Hearing Officer's hearing held on March 13, 2003 consisting of 136 pages. The Board notes the extensive negotiations that occurred between the Cobblestone Homeowners Association and the Petitioner, incorporated in the Hearing Officer's opinion, and the decision of the Planning Board. The agreement with the Cobblestone Homeowners Association required the formal recordation of covenants that reflected the mutual agreement between the parties. These included such elements as landscaping, screening, stormwater management, setbacks, and building design concerns. As required by the BCC, the Hearing Officer heard from County officials relative to any unresolved issues on the red line plan (Petitioner's Exhibit #1).

Waivers were required by the Development Plan concerning the Department of Public Works, some of which were withdrawn by the Developer, some modified, and some mutually agreed to by the Developer and the Department of Public Works. These issues were

satisfactorily resolved between the parties. One of the major issues involved a zoning case (#96-284-SPHX). The Protestant /Appellant, Milo Heckler, is owner of the property reflected on Petitioner's Exhibit #1. Unfortunately, Mr. Heckler, while present at the Hearing Officer's hearing held on March 13, 2003, was not represented by Counsel. It was only after March 27, 2003 and the approval of the Plan by the Hearing Officer that Mr. Heckler obtained the services of Mr. Holzer, who filed the appeal to this Board on April 21, 2003 accompanied by the required Petition setting forth the reasons for the appeal. Following the appeal, the Protestant alleged error on the part of the Hearing Officer in that, in Case No. 111-377 and 96-284-SPHX, orders of December 5, 1996, faced with the same conditions, circumstances and factors present in this case, that the Hearing Officer determined that the outfall was unsuitable.

It was alleged that the factors considered by the Hearing Officer in this development case did not justify a change in conditions or circumstances that would permit approval of the development plan submitted. To that extent, the Protestant alleged that the Hearing Officer had committed a "error" in approving the development plan. The Board was requested to review the development case on its merits; neither side presented any new facts as to that issue.

Development cases are reviewed by the Board on an appellate level (BCC § 26-209). It is rare that the Board accepts any new testimony or evidence relative to such cases on review.

The entire record was available to the Board members and in this case, a complete copy of the Hearing Officer's transcript (much more desirable than the customary poor quality of the hearing tapes). The Chairman did not believe that the prior cases (III-377 and 96-284-SPHX) had any relevance to the pending case. The majority of the Board, however, agreed to accept

those cases as exhibits and, as such, reviewable in this development case. The Board members have accordingly reviewed those cases which essentially involved a development plan by Village Care, Inc., to develop the Tastet property. In that case, there were several dates of hearings before the same Hearing Officer as in the instant case. In the final analysis, the Hearing Officer rejected the development plan issue because it lacked a "suitable outfall." (Reference Petitioner's Exhibit 1 and 2) It was the contention of the Protestant that Petitioner's Exhibits 1 and 2, the Development Order and Site Plans from 1996, reflected the same basic scheme as being proposed in the instant case. In the former case, there was a proposed stormwater management facility located at the southeast corner of the site, emptying into the stream flowing across the Protestant's property.

In his brief to the Board, the panel members have been directed to review carefully the 1996 case and the similarity to the currently proposed development, page 13 of the proposed stormwater management scheme; the determination that the vicinity was prone to flooding; and the stream across the Protestant's property. Questions were raised relative to a suitable place for the stormwater to be directed and discharged.

In 1996, it was determined that the existing 24-inch culvert under Mt. Wilson Lane was not sufficient for existing conditions, and that the new Cobblestone development had aggravated the situation. Protestant has contended all alternatives proposed in 1996 caused more water to flow into the Protestant's property and that "none of the recent changes and proposals alter the fact that the current problems of too much water flowing through the stream on Protestant's property will now be impacted by additional water irrespective of the methodologies of how it

gets into the stream.

Protestant asserted that the Hearing Officer in 1996 on page 13 stated that, “the Developer must pay particular attention to insure that an already difficult situation is not aggravated.” And that, “once the stormwater is collected within the stormwater management pond, same must be dispersed to a suitable outfall.” In essence, the Board is being requested through this Protestant on appeal to determine whether or not the Hearing Officer acted in an “arbitrary or capricious” manner in that the testimony and evidence in the development case did not warrant the approval of the development plan.

The Board has reviewed the testimony of Mr. Bruce Seeley, Department of Environmental Protection and Resource Management, beginning on page 30, March 13, 2003 of the Hearing Officer’s hearing relative to comments from Mr. Robert T. Wood dated February 19, 2003 (Development Plan conference comments). Mr. Wood is the stormwater management expert in DEPRM. Mr. Seeley’s comments about Cases No. III-377 and 96-284-SPHX references the testimony of D.S. Thaler and Associates that supported the unsuitability of the stormwater management proposed in the prior cases. Mr. Seeley indicated that “I talked to Mr. Wood yesterday at length and again this morning, and we believe those comments have not been addressed.” [p 33] It was indicated that “Mr. Thaler apparently is going to testify today and I assume that will be how the Developer will address that issue.” [p 33] The transcript reflects that Mr. Heckler, the Protestant, was given the opportunity to express his concerns beginning on page 42 of the transcript which continues through page 45. The most important part of the transcript and proceeding involves the testimony of Mr. D.S. Thaler, President of D.S. Thaler &

Associates, who both the Hearing Officer and this Board has recognized as an expert in civil engineering, land development, and zoning [page 68]. Mr. Thaler acknowledged his involvement with the Woodholme Reserve property (the Tastet property as “others might know it”). [p 9] He indicated that he had been on the site at least “25 times in the past 10 years or so, as recently as the day before yesterday.” [3/11/03] He acknowledged that a problem existed in 1996 and that the outfall was still “unsuitable.” However, in his opinion, there was a “different” outfall and “we believe that we have solved the problem.” [p 71]

The testimony reflects that the old case indicated the old 24-inch corrugated pipe under Mt. Wilson Lane was about 50 to 75 years old. Mr. Thaler acknowledged the inadequacy of that pipe to carry 100-year storm, more likely a 2-year storm. The old outfall was in essence to come down Mt. Wilson Lane and tie into that pipe. Mr. Thaler related the four optional proposals under the 1996 plan – and that “the only outfall that was available at that time was to come down the middle of the road and tie into the 24-inch storm drain.” [p 72] He opined concerning easements that were required relative to “right of way issues.” The predecessor of Cobblestone (Mr. Greenebaum) or one of his companies would not grant any rights of way. Neither would the Developer of Pikesville Farms nor “would Mr. Heckler, who lived on the south side, giving any right-if-way.” [p 73]

The Hearing Officer characterized the testimony at that time as a “trust me” situation and apparently did not trust the solution that one of these – “that the sufficient right of way was going to be and that Mr. Greenebaum was not going to give it. Nobody knew where the Pikesville Farm person was. Mr. Heckler wasn’t going to give it and the County might condemn it in the

future.” [pp 73-74] Mr. Thaler felt then that the 24-inch pipe was not sufficient to do the job and “haven’t changed that opinion.” [p 74] Mr. Thaler described the changes that had occurred since 1996.

The right of way issue had been resolved by way of a tax sale in which Baltimore County acquired 30 feet of land on the south side of the road owned by Pikesville Farms. [Deed 13441, Folio 550] [Developer’s Exhibit #3 before the Hearing Officer]

Mr. Thaler also described the area where the “outfall” would be, “the area described, a pipe to run down Mt. Wilson Lane; and...going to discharge into a Gabion velocity break...in this area now owned by the County and go into the stream, completely different than what was proposed the last time, which was to go into the culvert that you see on the picture. It will come down the road, go through that little bank and has that whole area in here upon which it would discharge into that stream.” [p 81] “A 24-inch pipe would not be used at all in connection with the development of the proposed property.” [page 81] That was the essential difference between the old outfall and the proposed outfall.

There followed considerable discussion relative to the context of stormwater management and the existing stream. Mr. Thaler acknowledged that water off the site was going across the intersection of Mt. Wilson Lane, Orchard Road, and Iron Horse Lane, and it’s running across the front yards of the two Bowler properties, across Mr. Heckler’s front yard and then finding its way to the stream. [p 15]

Mr. Thaler then described the proposal beginning on page 85 of the transcript. Mr. Thaler explained the “180” turnabout solution to the 1996 Opinion:

1. Replacement of the culvert on Mt. Wilson Lane to replace the existing 24-inch culvert.
2. A different stormwater regulations different from those present in 1996. These are described in detail by Mr. Thaler beginning on page 87 of the transcript, and the five functions to be performed. [T pp 87-93] Mr. Thaler described at length Developer's Exhibit 1B identified as "a suitable outfall statement." Essentially his testimony indicated that "Well, I basically drafted that, and that's the shorter version of what I just testified to. I personally have gone out here as late as Tuesday. I have personally verified this. It is my professional opinion that this is a stable, well-defined outfall..., and there's no real County regulation on it, but on sort of the understanding or the customary regulations – they haven't been legally adopted – this is the textbook definition of a suitable outfall." [pp 92-93]

Mr. Thaler also indicated on page 93 of the transcript that, "the last thing to address, which I'm sure Mr. Heckler is going to have concerns about, is we have an existing condition in the field that relates to the flooding that occurs at the stream banks today...We're going to – its going to be better after this construction." [T p 93]

The Board has also reviewed the testimony of Mr. Bruce Seeley beginning on page 95 relative to the "Gabion velocity dissipater" and a Phase II design issue. Mr. Seeley also discussed the traditional stormwater management system; and the new regulations which also addressed volume of water "really for the first time." [page 98] It was his testimony that the new addition to the law is that now "you have two additional volume controls." [p 92] One is water

quality which is a volume that you have to sort of suck out of the mass of the storm; and the other is ground water recharge. And, these are established by County law. How much volume you have to manage is established by County law and by state law.” [T page 98-99]

The Hearing Officer, in order to simplify Mr. Thaler’s position, stated: “the amount of water, because of the stormwater management facility, as I understand your testimony, notwithstanding the addition of the impervious surface, the new road on this property, the houses, the sidewalks, the driveways, but this facility is going to collect the water, essentially hold it, and manage its quality as well, and release it at a rate that is less than what actually is having out there today.” [T pp 99-100] Mr. Thaler indicated that that was basically correct in that it would obviously be released at a slower rate so that typically now water may come at a very heavy volume and at a very hard rate immediately after the storm and this will be a controlled release...both of volume and of rate. The transcript further reflects that Mr. Wood of DEPRM was satisfied relative to Mr. Thaler’s and Mr. Seeley’s position. [p104]

Mr. Seeley indicated that Mr. Wood was aware of what Mr. Thaler had testified to at the hearing and that Mr. Wood had seen what was presented to the Hearing Officer and that he had checked the technical data. In essence, on page 112, the Hearing Officer indicates that “so the County is satisfied with it, Mr. Thaler is satisfied with it. Certainly you are free to get another engineer to take a look at it if you would like” (that is to Mr. Heckler). [p 112]

Review of the Hearing Officer’s Decision by the Board of Appeals

The Board of Appeals’ role in reviewing the Hearing Officer’s approval of a development plan is defined in B.C.C. § 26-209. With respect to the development plan issues, the record is

established before the Hearing Officer, and it is within his province to judge witnesses' credibility and to make factual determinations based on that record. *Monkton Preservation Ass'n. v. Gaylord Brooks Realty Corp.*, 107 Md.App. 573, 580-81, 669 A.2d 195 (1996). In reviewing the factual basis for the Hearing Officer's decision, therefore, this Board does not perform an independent evaluation of the evidence, but, rather, looks to whether there is substantial evidence in the record to support the Hearing Officer's findings. *Id.* Substantial evidence requires only a finding that there is "a little more than a 'scintilla of evidence.'" *Anne Arundal County v. A-PAC, Ltd.*, 67 Md.App. 122, 126, 506 A.2d 671 (1986) (quoting *Floyd v. County Council*, 55 Md.App. 246, 258, 461 A.2d 76 (1983)). (See also *Lucas v. People's Counsel for Baltimore County*, 147 Md. 209, 225, 807 A.2d 1176 (2002). If there is substantial evidence in the record to support the Hearing Officer's factual findings, the Board must affirm. The Board, however, does make an "independent evaluation as to whether the decision of the hearing officer exceeded his authority, resulted from unlawful procedure, or was affected by any other error of law." *Monkton*, 107 Md.App. at 581.

Having reviewed the entire transcript of the Hearing Officer's hearing of March 13, 2003, this Board has determined that there was sufficient testimony and evidence presented to the Hearing Officer by the Petitioner to support the conclusions reached in his "Opinion and Order" under date of March 27, 2003.

Other than for the objections raised by the Protestant, there was nothing substantive offered that would permit this Board to substitute its judgement for that of the Hearing Officer. Deference must be afforded to the decision of the Hearing Officer if there is "substantial

evidence” in the record to support the Hearing Officer’s findings.

Our review indicates that the Hearing Officer did not act in an “arbitrary or capricious” manner in approving the development, and the Protestant’s Petition on Appeal as to this development plan, exclusive of the variances, is denied.

Petition for Variances

Turning to the Petitioner’s requested variance relief, the first issue that the Board is required to address is one of standing raised by Mr. Barhight in the variance (de novo) case on page 81 of the transcript and followed up on pages 91 and 92. The question posed was one of the sole Protestant’s standing “because he is a competitor and would like to stop the development to be able to put himself in a different position relative to the property is clearly an issue under these cases (*Eastern Service v Cloverland and Bzyniakski v. Montgomery County*) ([page 91-92].”

Section 26-132 of the *Baltimore County Code* recites as follows: “Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decision or order of zoning administration and development management shall have the right to appeal therefrom to the county board of appeals.” Those appeals shall be heard and disposed of by the County Board of Appeals as may be provided in the Charter and in the Board’s own Rule of Procedure. Under (B), the term, “persons aggrieved or feeling aggrieved” includes a duly constituted civic, improvement or community association provided the property or issue which is the subject of the final order being appealed is located within the geographical limits of the association, said limits to be defined and determined by the first of the following criteria found applicable (1-3). Section (B) is general in nature, and was crafted in that manner by the County

Council deliberately to enable any such aggrieved person to have his or her day in court. This Board has traditionally taken a very liberal view of what constitutes a “person aggrieved” or “feeling aggrieved.” In *Morris v. Residential and Development Corporation*, 278 Md. 417, 365 A.2d 34 (1976), the Court of Appeals held that under Maryland common law anyone clearly identifying himself for the record as having an interest in the outcome of a matter being considered by an administrative agency becomes a party to the proceeding absent a reasonable agency or other regulation providing for a more formal method of becoming a party. In that case, the Court noted that the format before an administrative agency is intentionally designed to be informal so as to encourage citizen participation. Again, citing *Morris*, the Court of Appeals held that the appellant clearly established himself as a party before the administrative agency merely by being present and providing testimony at the agency’s administrative hearing. Such a determination clearly follows the Court’s long-standing tradition of allowing standing to one who expresses an interest in the case before an administrative agency. In *Baxter v. Montgomery County*, 248 Md. 111-113, 235 A.2d 536 (1967), the Court also held that merely submitting a name in writing as a protestant is sufficient, and in *Bzyniarski v. Montgomery County*, 247 Md. 137, 143, 230 A.2d 289, 293-294 (1967) merely appearing and testifying before the agency was sufficient, and in *Dubay v. Crane*, 240 Md. 180, 184, 213 A.2d 487-489 (1995), simply identifying oneself on the record as a party was sufficient.

Therefore, it is clear that, in administrative actions, standing is established through merely expressing an interest on a matter before an agency considering the proceedings, inquiry or investigation. Additionally, this Board has had cases of recent vintage whereby “the sight and

sound” rule has been applied to individuals who have property within “sight and sound” of a nearby property to constitute being “aggrieved.” Reference *Padonia LLC* (Case No. 02-484-A); *Holland v. Woodhaven Bldg* (113 Md.App. 274, 279 [1996]).

The transcript reflects the Protestant, Mr. Heckler, as being at the Community Input Meeting, the Hearing Officer’s hearing, and having property within “sight and sound” of the proposed development. He also was heavily involved in the prior 1996 cases. Whether or not he is a “competitor,” as alleged by the Petitioner, is subject to argument. However, far more compelling is his genuine concern relative to the water and flooding conditions which he considered as a threat to his property enjoyment. It is the conclusion of this Board, therefore, that the Protestant is a proper party to appeal the matter in question within the broad liberal interpretations of being a “person feeling aggrieved,” and Petitioner’s “Motion to Dismiss” is denied.

Subsequent to the development plan appeal, which was appellate by statute, the Board heard testimony and received evidence relative to the requested variances heard on a “de novo” basis.

The Board was provided with a transcript of that proceeding by the Developer /Petitioner. The Petitioner’s first witness was Mr. Allen Scroll, vice president in charge of land planning and landscaping architectural services for D.S. Thaler, Inc. Mr. Scroll was accepted as an expert in land planning and landscape design. [p 3, Board’s hearing, June 12, 2003] He proceeded to describe the subject property using Petitioner’s #1 and #3 (the redline plan from the Hearing Officer’s hearing, being Petitioner’s No. 1). The property was about 10 acres in size and

described as “sort of a hole in the donut.” [p 8 CBA hearing] Significantly, the historic Balmuckety Mansion lies on the property set back about 400 feet from the principal north /south road that was created as part of the Cobblestone development. Mr. Scroll described what he considered the historic garden on the property because of the original design by Mr. Thomas Sears of Pennsylvania, considered as an early landscape architect. Mr. Scroll opined concerning the present poor condition of the remaining gardens. Some significant physical pieces were still intact, including a reflecting pool. Some original plans did exist; however, those could be used to “recreate what he [Sears] had done there.” [page 9] The witness described the split zoning on the property as ROA and DR 3.5, with the ROA portion as an “oddly-configured shape” cut out of the western portion of the property. [pp 9-10] The remaining portion of the property was DR 3.5 to the east, to the south, a little bit north, and a very narrow strip of DR 3.5 in between the ROA and the western most property line. [p 10] Considering the present zoning and calculations available for each, the total housing units available for the site would be 36 in number. Actually 21 new homes were being proposed in the development plan, plus the Balmuckety Mansion which would total 22 on site.

The witness described a number of plans that would involve site development that would be “economically feasible” to allow the mansion to stay [page 10-11]. He opined concerning the placement of the mansion on the Final Landmarks List. The gardens were not included due to a lack of the majority on the landmark panel. There was a general consensus from the community and Baltimore County Office of Planning that the gardens should remain in any development proposal submitted. To that end, meetings were held with the Baltimore County Office of

Planning to preserve the gardens (Parcel E) that would be placed in an HOA common area. In addition, the plan called for creating a one-half acre parcel for the mansion and another one-half acre in front of the house, with the mansion visible as you entered. The variances being requested were of two types due to what Mr. Scroll described as a “zoning anomaly.” [page 13] The regulations controlling the ROA zone and the DR 3.5 zone are related. These are very adequately described on pages 13 through 17 of the transcript.

The practical result of the zoning anomaly is described by Mr. Scroll on pages 17-18 of the transcript:

What we end up with are, are pieces of lots that are in one zone, other pieces of the same lots being in the other zone. Almost every lot that we could create on this project, a very large number of the lots are in the vicinity of the ROA zone line ended up having some portion of that lot in both zones, so we end up with a lot that’s – half of the front of the lot is subject to one setback and the other half of the front is subject to a different setback or part of the lot is subject to side yard setbacks, part of the yard is not. A piece of the lot may be subject to a minimum ten thousand square foot requirement and of course when we take a ten or twelve thousand square foot lot and we just take a third of it and it ends up being in the ROA zone, then we only have three thousand or four thousand square feet of that lot within the ROA zone and that needs a variance. In order, and since the ROA piece is so oddly configured we end up with quite a few lots that fall into that category.

Mr. Scroll also described the other variances of a “non-zoning” type and were more “designed-oriented.” [pages 18-20] Also, the request from the Department of Public Works concerning the effect of a gated community with a bifurcated entryway and appropriate design.

Mr. Scroll described the reasons he believed the site was unique and unusual, different from surrounding properties: [pp 25-26]

1. It is surrounded by development.

2. The development of the school board property used for ball fields, ultimately to be developed as a school in the near future.
3. The Cobblestone community to the north and east.
4. The older Pikesville Farm community to the south.
5. The mansion area, gardens, landscaping and its uniqueness and setting.
6. The ROA zoning configuration created a certain uniqueness.

Practical difficulty or unreasonable hardship was also described, if the Petitioner were required to comply with the bulk regulations of the DR 3.5 and ROA zones: [pp 27-34]

1. To retain the settings of the mansion and garden, certain lots had to be created with less depth than required.
2. The Office of Planning requirement to orient the houses so that the garden setting was fully preserved (orient the houses so that the fronts would face the gardens with a kind of enclave around the garden area) – “orienting the houses as they relate to the mansion is very important.” [page 29]

The witness also believed the variances met the spirit and intent of the zoning regulations:

1. No impact to the surrounding community.
2. Variances relative to the ROA anomaly
3. A high quality development – brick on all sides
4. The total schematic design “to compliment the gardens and to complete the setting of the gardens.” [page 30]
5. The pattern book (compilation of architectural concepts) and discussion of the

acceptability with the Planning Office, Planning Board, and Landmarks

Commission

6. The conditions required by the Planning Board were incorporated into the Hearing Officer's Order.

Mr. Holzer conducted an extensive cross-examination of Mr. Scroll [p 37]. The witness acknowledged that the Developer would be investing many funds into the garden restoration with the homeowners' association ultimately maintaining it with ownership. Thereafter, the two types of variances were explored in depth; (1) the group involving the ROA anomaly and (2) the variances needed for the design elements. These are fully described in the transcript, page 35-42. The witness acknowledged that the mansion was placed on the Landmarks List around 1996, at the time of the 1996 project (nursing home). The gardens had been proposed but were left off the Landmarks List and the County Council also did not include them. The property has been split-zoned since, at least, 1988 into B.L and DR 3.5, when it changed to R.O. "The line that separated the BL from the DR 3.5 is almost pictorially identical to the line that is in the plan now separating the ROA and the DR 3.5." [page 43-44] It was changed to ROA two cycles later, around 1996, the same time as the other nursing home case. "The BL versus the ROA is almost identical." [page 44] The witness acknowledged that there were no other homes on the subject site other than the Balmuckety Mansion and remnants of the garden and a large white oak." The witness agreed it was "relatively square in configuration – yes." [page 46] He also agreed that there were "no steep slopes that would prevent for some environmental reasons development on the site. [page 47] "...also, no environmental limitations on the site, such as streams or

wetlands.” [page 47] The witness was questioned concerning the number of houses that could be placed on the site without any variances [page 49 to page 52].

The ultimate line of questioning was whether or not the variance requests were driven by the need to make this project economically feasible in terms of dollars and cents. “That’s always correct,” responded Mr. Scroll. [page 53] Mr. Scroll acknowledged that the concept plan had a plan that satisfied the Developer’s needs that could have gotten the same number of lots and would not have involved any variances. [p 57] As to the decks being requested, that request was, along with the garage requested for lot 10, anticipated to the extent that “lifestyles have changed, the emphasis on patios, decks, that sort of thing has also evolved...and homeowners will be eventually coming back and asking for more variances....” [pp 63-64]

Mrs. Lanaham testified on behalf of the Baltimore County Department of Permits and Development Management. She is Supervisor of the Development Review Section. She described the history of the Plan which began with the concept plan in July 2002. That plan contemplated preservation of the Balmuckety Mansion plus 21 units without preservation of the gardens adjacent to the mansion. Her office wanted the plan to “preserve the gardens.” [page 68]

The Developer presented a plan that would preserve the historical setting and gardens. There was a community input meeting, a Landmark Preservation Commission meeting, and two Planning Board meetings that ultimately resulted in support of the plan conditioned upon “some revisions to the pattern book and to the orientation of certain lots along the school property facing the gardens.” [page 70] The Planning Board also required the houses to be brick and the Planning Board recommendations were binding as to the Hearing Officer.

The reasons why the gardens were to be included in the plan, even though not on the Final Landmarks Preservation List were:

1. The gardens were considered to be an integral part of the historical nature of the site.
2. The visual look from the community's perspective.
3. Plans were available to reflect what the gardens had originally looked like.
4. Some remnants of the garden were still in existence.
5. A significant piece of open space where the preservation was available.

The witness acknowledged that the mansion was owned by private interests (Mr. Tastet) along with the gardens, and that there was no evidence or regulations that actually permitted the Planning Office to preserve the gardens if not on the final landmarks list.

Mr. Barhight called the Protestant, Mr. Milo Heckler, to testify. He resides at 25 Mt. Wilson Lane and marked his house located on the Development Plan. Mr. Barhight questioned the witness extensively relative to his standing in the case. Mr. Heckler indicated objection to the variances being granted due to what he considered to be constant water problem on his property flowing from the site. He acknowledged that he did build houses (Romart Building and Development Company), and had attempted to purchase the property from Mr. Tastet, discussed it, and had a proposal submitted by Mr. Thaler's office. Mr. Barhight contended that "Mr. Heckler...is here because he is a competitor and would like to stop the development to be able to put himself in a different position relative to the property is clearly an issue here." [page 92]

Appellant's Exhibit #4

Mr. Heckler was cross-examined by Mr. Holzer. He stated his lot on Mt. Wilson Lane

was approximately 161 – 170 feet fronting, with the stream running under Mt. Wilson Lane and across the back of his property. He resided on the property for 10 to 11 years with his wife and children. He opined that he had attended the 1996 nursing home hearing and testified at it. His water problems were aggravated by the Cobblestone development consisting of 115 homes. After the nursing home project was denied, he had conversations with Mr. Thaler and Mr. Thaler submitted to him Petitioner's Exhibit #5 and that Mr. Thaler was willing to work for him in a professional capacity (page 102).

Mr. Tastet did not agree to the proposal submitted. Mr. Heckler stated that his intention to purchase the property "was to solve the problem with my flooding in my yard, my property because every time...I have...flooding." [page 103] – Although he acknowledged he was "planning to do some units, residential units...with no variances." [page 104]

It was Mr. Heckler's opinion that the granting of the variances would have a detrimental impact on his property with the 22 lots being developed. [page 105] On cross-examination by Mr. Barhight, he acknowledged that he had not attended the community input meeting (page 119). Later, on page 185, it was acknowledged that Mr. Heckler had attended the Community Input Meeting by Mr. Scroll. He was questioned concerning paragraph 4 of his proposal to purchase the property which contained a section relative to obtaining a variance, if needed. He acknowledged the changes to the property in the area now owned by the County and the portion owned by him, or that Romart had acquired by the State. He acknowledged his presence at the recent Hearing Officer's hearing without counsel.

Mr. Charles Roy Crocken testified on behalf of the Protestant. He is self-employed and

owns a small engineering firm, C.R. Crocken and Associates. He has been a licensed professional engineer since 1971 and was qualified as an expert before the Zoning Commissioner. After voir dire, he was accepted as an expert civil engineer. His testimony was restricted to the variances being requested.

He opined concerning the variances being requested:

1. He saw nothing unique about the shape of the site that would result in the numerous variances being requested. [p 145]
2. His analysis of the topography of the site was not unlike the topography of the adjoining property in Cobblestone or other areas around Cobblestone. [p 146]
3. There were no unusual or unique environmental features apart from any other property. [p 146]
4. His review of the site did not disclose any impairment for development of the site related to the Balmuckety Mansion. [p 146]
5. The mansion occupied 2.6 acres (ROA) and the DR 3.5 (7.6 acres).
6. Split zoning was not unusual or unique. "It's not unusual to have more than one zoning district on the property and you have to comply with the regulations in the particular zoning district that you're working with so having split zones is not at all that unusual." [page 148]

Mr. Crocken proceeded to relate to the Board other methods of developing the property which would not require any variances, employing an underlay of the plan prepared by Mr. Thaler [pp 152-158]. It was Mr. Crocken's opinion that there was a potential for developmental

impact by granting the variances because of the 21 lots, plus the development would permit water onto Mt. Wilson Lane, down Mt. Wilson Lane and on to the Heckler property and downstream. Questions arose relative to an intertwining of development issues and variance issues with the Board Chairman commenting that “the totality of the testimony of Mr. Crocken would be considered by the Board members at the time of public deliberation” as to the development and variance issues, recognizing only the variance issues in this case. [p 169] Mr. Crocken proceeded to opine concerning the mansion’s driveway, panhandle lot (lot #1), Planning Board requirements, the lesser impact of runoff if less than 22 units were permitted.

Mr. Barhight, in cross-examination, questioned Mr. Crocken on his previous experience with split zoning, ROA setbacks and the ROA and DR 3.5 zones. His disagreement with Mr. Scroll relative to the property being unique, and Mr. Crocken did opine that you could not get 20 units in without variances. “In order to have 21 lots, you’ve got to have a lot of variances.” [p 183]

The Board has carefully reviewed the testimony offered at the public hearings, with benefit of transcript as to the variance issues and the evidence submitted by the parties. The Petitioners are seeking variance relief for a number of residential lots within the subject site that would involve different areas. As referenced in the Developer’s site plan, and incorporated into Petitioner’s Brief, the variances are as follows:

Front Setbacks

§ 1B02.3.C.1 and § 202.4.A – A variance to allow a minimum front setback of 10’ in lieu of the required 30’ for lots zoned ROA, lots 6 – 14, and lots 21 and 22.

§ 1B01.2.C.1.b, § 1B92.3.C.1 and § 202.4.A – A variance to allow a minimum front setback of 10' in lieu of the required 27.5' for lots split zoned ROA and D.R. 3.5, lots 6 – 9, 11 – 14, and lots 21 and 22.

§ 1B91.2.C.1.b and § 504.2 (CMDP Part III, Section II, A, pp. 5 and 30) – A variance to allow a minimum 10' front setback in lieu of the required 25' to a public street right-of-way or property line for lots 1 – 22.

Private Road Setbacks

§ 1B01.2.C.1.b and § 504.2 (CMDP Part III, Section II, A, pp. 5 and 30) – A variance to allow a minimum 10' side building face and/or front setback in lieu of the required 25' to the edge of paving of a private road for lots 1 – 22.

Side Setbacks

§ 1B02.3.C.1 and § 202.4.A – A variance to allow a 3' minimum individual side yard width in lieu of the required 10' for lots zoned ROA, lots 6 – 14 and lots 21 and 22.

§ 1B02.3.C.1 and § 202.4A – A variance to allow a minimum sum of side yard widths of 6' in lieu of the required 25' for lots zoned ROA, lots 6 – 14 and lots 21 and 22.

§ 1B01.2.C.1.b, § 504.2, and CMDP Part III, Section II, A, p. 30 – A variance to allow a minimum 10' side building face to public street right-of-ways and/or tract boundary setback in lieu of the required 15' for lots that are zoned D.R. 3.5, lots 1 and 14 and lots 20 – 22.

Rear Setbacks

§ 1B01.2.C.1.b, § 1B02.3.C.1, § 202.4.A, § 504.2, and CMDP Part III, Section II, A, pp. 5 and 30 – A variance to allow a minimum 15' rear setback in lieu of the required 30' to rear property lines and/or public street right-of-ways for lots zoned ROA, lots zoned D.R. 3.5, and lots split zoned ROA and D.R. 3.5, lots 1 – 3, 10, 14, 21 and 22.

Lot Size and Width

§ 1B02.3.C.1 – A variance to allow less than the required 10,000 sq. ft. for lots either entirely zoned ROA or split zoned ROA and D.R. 3.5, lots 6 – 9, 11 – 14, and lots 21 and 22.

§ 1B02.3.C.1 – A variance to allow less than the required lot width of 70' for lots either entirely zoned ROA or split zoned ROA and D.R. 3.5, lots 6 – 14, and lots 21 and 22.

Fence

§ 504.2 – A variance from CMDP Part III, Section II, A, pp. 8 and 14 to allow a fence 5' from the public street right-of-way in lieu of the required 10', lots 1, 14 – 18, and 20.

Deck or One-Story Open Porch

§ 301.1.A – A variance to allow a 10' minimum setback from the rear property line for a deck or one-story open porch in lieu of the requirement that any such deck or porch extend into the rear yard not more than 25% of the minimum required depth of the rear yard for lots 1 – 22.

Accessory Structure for Lot 10

§ 400.1 – A variance to allow an accessory structure (a garage) on Lot 10 to be located in an area other than the rear yard and in an area other than the third of the lot farthest removed from any street, and to allow the accessory structure to occupy more than 50% of a third of the lot.

§ 400.3 – A variance to allow the height of an accessory structure (a garage) on Lot 10 to exceed 15'.

Panhandle Lots – CMDP Variance

§ 504.2 – A variance from CMDP, Part III, Section II, A, pp. 7-8 to allow panhandle lots, lots 3 and 8 and lots 11 – 13.

The Board is well aware of its responsibilities and the requirements established for the granting of variances under § 307.1 of the BCZR which provides, in relevant part, that variances may be granted:

...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance...would result in practical difficulty or unreasonable hardship.

The Court of Special Appeals, in *Cromwell v. Ward*, 102 Md.App. 691 (1995), has construed this regulation to mean that obtaining a variance is basically a two-step process: The first step requires a finding that the subject property is unique and unusual in a manner different

from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. The second step requires a finding that denial of the requested variance would result in practical difficulty or unreasonable hardship. The question, therefore, which must be addressed by the Board and responded to is relative to the evidence and testimony presented at the hearing; basically (1) is the subject property unique and are there special circumstances or conditions that exist which are peculiar to the land; (2) will strict compliance with the regulations result in practical difficulty or unreasonable hardship; and (3) if the variance were granted, would it be detrimental to the surrounding area. The Board's conclusion with regard to each of these issues must be supported by detailed factual findings, and the party seeking the variance bears the burden of showing that each requirement is satisfied.

A "peculiar" condition is one that is "uncommon," "unusual," or "distinguished" in character or nature from others (*Random House Dictionary of the English Language*, 1967); and, as the court of Appeals stated in the *Easter* case, 195 Md. 400, the existence of special circumstances must be tested against "other property in the neighborhood," and in the *North* case, 99 Md.App. 514, "...the property must have an inherent characteristic not shared by other properties in the area." There must be special circumstances that can be tested against other properties in the area or neighborhood that are subject to the same zoning restrictions. The reason is quite obvious. For a variance to be granted without such a showing, the exceptions to a particular restriction will ultimately swallow up the rule.

There was conflicting testimony from both sides based on expert testimony concerning

the “uniqueness” issue. In such cases, it is the responsibility of the Board, as a finder of fact, to determine the issue. Essentially, based upon the testimony and evidence, the Board has concluded that uniqueness in the form of shape, size or configuration of the site does not exist other than for a slightly irregular boundary on one side. It is, contrary to the opinion of the Zoning Commissioner and Mr. Scroll, neither “irregular” nor “a unique configuration.” Based upon the evidence, the site is more appropriately described by Mr. Crocken:

...Basically you can see the site which is 10.3 acres is, is a large rectangle, seven hundred feet by perhaps seven hundred fifty to seven hundred and eighty feet deep. There is – to my way of thinking I don’t – I don’t see anything unique in the shape of the site which would result in the numerous variances that, that have been requested. [T p 145]

Similarly, the Board has determined that the topography of the site is not dissimilar to the topography of the adjoining Cobblestone property or other areas surrounding Cobblestone. There is no uniqueness as to any environmental constraints or wetland problems. Nevertheless, the Board is cognizant of *Cromwell* wherein the Court of Special Appeals analysis its previous decision in *North v. St. Mary’s County*, 99 Md. App. at 512:

In *North v. St. Mary’s County*, 99 Md.App. At 512, we held that the ordinance there required a finding that ‘special conditions or circumstances upon the property, or upon neighboring property. ‘Uniqueness’ of property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing of party walls. [Emphasis added.]

When considering the instant case, it is unquestioned but that the Balmuckety Mansion is

of historical significance. The expert, Mr. Crocken, did not believe it was “unique as a house on the site” [pp 146-147]. Mr. Scroll on the other hand believed “the mansion is quite unique...There is nothing even close to the house in the area, that I’m aware of.” [p 26]

The Board in its review of the testimony of both experts concludes that, due to the limited number of such “mansions” on the Final Landmarks List, coupled with the gardens, does constitute “uniqueness” as specified in the *North* case. While the gardens, under a split LC vote, were not included along with the mansion on the final list, as approved by the County Council, the Board recognizes the special position of the gardens as described by Mr. Scroll in his testimony:

There is an historic mansion called the Balmuckety Mansion that lies on the property set back, oh, I guess about four hundred feet or so from the principal north south road that was created as part of Cobblestone design to the plan. Attached to the south of that house was an historic, an historic garden. We’ll call it historic since it has some significance to many people. It was designed by a guy named Thomas Sears from Pennsylvania. He’s of the early leaders and one of the early lane landscape architects and it’s, it’s not in very good condition, but there is still some significant physical pieces of it that are still there. There is a reflecting pool. A lot of the masonry work is still there. There is some fencing that is still there. Most of the plants are either gone or overgrown, but there are very good plants that, you know, are still available, the original plants that Thomas Sears grew from which we can recreate what he had done there. [pp 8 and 9]

While the mansion and gardens are under private ownership and the mansion presently operates as a bed and breakfast facility, according to preservation rules, the exterior cannot be changed without permission of the Landmarks Commission. There appears to be a general consensus between the Baltimore County Planning Office and Planning Board that efforts certainly should be taken to preserve the gardens and enhance them to their original status since

the original garden plans are available. The mansion and gardens are significantly “historical” enough to fall within the *North* decision that creates a “uniqueness” sufficient to satisfy the first prong of the *Cromwell* test. Indeed, the Board finds that the Petitioners’ willingness to invest money into the restoration of the gardens...and then turning them over to the homeowners’ association is highly commendable. However, the second prong of *Cromwell* is more difficult for the Board in light of the Office of Planning and the Planning Board’s recommendation concerning the restoration of the gardens and restrictions imposed by the Planning Board as to the Hearing Officer.

The Board is aware of the zoning issues that exist in this case. Mr. Scroll acknowledged that there had been a concept plan that would have gotten the same number of lots and would not have needed any variances [page 57].

This plan was before the Planning Board required a re-orientation of lots 11, 12, and 13 to face Parcel “E”, the Board of Education notation; that the houses must be faced with brick on all facades; and Parcels “C” and “D” positioning to retain certain features of the mansion.

The Board is also aware that, with present zoning, 36 units would be permitted. The Petitioner is requesting 21, plus the Mansion. Nevertheless, it was obvious to the Board that a lesser number of units could be placed on the site without the necessity of any variances, and that the variances were necessary to economically drive the project (reference Mr. Holzer’s cross-examination of Mr. Scroll beginning at pages 48-53).

Q. The reality is that these variance requests are driven by the need to make this project more economical in terms of dollars and cents?

A. That's always correct.

The Board has also reviewed the testimony of Mr. Charles Crocken who offered a "potential layout of development of this site which would not include requesting of any variances." [p 151] This underlay was reviewed in depth by Mr. Crocken. [pp 157-170] Based upon Mr. Crocken's analysis, he could configure "nine lots without trying too hard." [p 172]

The Board in reviewing the testimony of Mr. Scroll and Mr. Crocken concludes that a significant number of lesser lots could be placed on-site without the need for variances that could comply with the Planning Board's requirements, and that the proposed plan is more significantly driven by economics rather than necessity.

The Board has also considered the "anomaly" aspect of the split zoning as described by Mr. Scroll in his testimony. [pp 17-18] However, several factors must be considered:

1. The Petitioner was not totally unaware of the site and its zoning, being actively involved in the 1996 case. They were fully aware of the Mansion placement on the Final Landmarks List when a contract was submitted for the site, and aware of any constraints that placement on the list might have as to any development prospects.

2. The split zoning factor was done long before the Petitioner acquired the property.

Recognizing these factors leads the Board to certain conclusions.

Any problems or difficulties relative to any "anomaly" was clearly known to the Petitioner at the time of contract purchase, and it is clear to this Board, under case law, that practical difficulty cannot be alleged on an "after the fact" basis.

The Board also finds, and agrees with Mr. Crocken's observations, that:

A. That's – in my experience it's not unusual to find properties that have more than one zoning district on the property and you have to comply with the regulations in the particular zoning district that you're working with, so having split zoning is, is not all that unusual. [p 148]

Split zoning is not unusual in Baltimore County, and the Board concurs that, if split zoning is a hardship, the remedy lies in a revision of the zoning ordinance by way of legislative action, and not by the granting of a variance to a single property owner by a non-elected Board of Appeals. It was also acknowledged that, relative to the variances to permit open porches in the rear yards exceeding 25 percent of the minimum required were sought, "to avoid the homeowners from having to come back in and ask for a variance if he or she decided to have a deck."

In response to cross-examination by Mr. Holzer relative to the blanket request under § 307.1 for variances to permit open porches, etc., Mr. Scroll responded:

A. Well, that's an *[sic]* good question and as lifestyles have evolved over the years of course naturally the regulations do not always evolve along with them and that particular request actually was put in there at the request of the Office of Zoning and their reasoning is that as lifestyles have changed the emphasis on patios, decks, that sort of thing has also evolved and apparently they find and this is apparently that no matter what we build homeowners will eventually be coming back and asking for more variances and they wanted to avoid that situation, accommodate what they would build probably going in. That being said it" one of the directives, one of the conditions that was put on the plan through the Planning Board process was that these houses would not have elevated decks and, in fact, would not have a walk out basement which is typically the most objectionable type of deck situation where the decks are at the second story level and protruding through the back yard. These houses will be limited to at grade decks or, or patios.

Q. But, it establishes that on twenty-two lots out of twenty-two that the rear yards are not of sufficient size to accommodate a deck and have the normal county requirement apply, is that right?

A. That's in interpretation, I think.

Q. Well, I mean, so in effect what you're doing is you're creating on all lots a substandard, require a substandard area at least as it relates to the deck issue, is that aright?

A. We're creating a condition that allows for decks to get closer to the rear lot line than they would otherwise, yes.

Q. Yes. I accept that.

A. Okay

[pp 63-65]

Here again, the Board encounters difficulty with the open-ended variances requested. Variances requested simply because of what the Petitioner deems to be a compliance with "lifestyle changes" [63] are matters that need to be explored via the regular Planning process with recommendations to the elected County Council to amend the zoning laws, and not by this Board. To do so is an intrusion into the legislative field by a non-elected body.

The Board, in totality of the testimony and evidence, clearly concludes that the number of variances being requested are "too many, too intense, and not appropriate for the subject site." Mr. Crocken's plan is illustrative of what would be a more appropriate development for the site and would not require any of the requested variances. [Protestant's Exhibit #3]

Finally, there is the question of the impact of the granting of the variances on the property of the Protestant, Mr. Heckler. His objection to the granting of the variances is contained in the transcript beginning on page 86 – essentially "ten years I have the same problem with water" and the "existing stream that runs under Mt. Wilson Lane and across the back of [his] property." [p 97] The problems began with "a hundred and fifteen, 115 houses and all the water coming in

[his] property.” [p 100] It was his contention that the granting of the variances as to the 22 being proposed would increase his water problem, and that under § 307 of the BCZR, the Board was required to determine if there would be a detrimental impact on surrounding properties if the variances were granted. The only major rebuttal to the expert testimony of Mr. Scroll and Mr. Thaler offered by the Protestant was that of Mr. Crocker, who agreed that there would be “increased runoff...and a potential detrimental impact.” [p 179]

The Board accepts the more convincing testimony of Mr. Scroll and Mr. Thaler relative to the water issue (see Thaler’s testimony, pages 189-191):

...there will be less water leaving this site after this development than there is today...and when it’s all said and done, there will be less getting down to Mr. Heckler and eventually downstream than there is today.” [p 191]

Nevertheless, because the Petitioner has failed to establish any practical difficulty or unreasonable hardship, the Board denies the requested variances and notes that nothing precludes the development of the property without the requested variances being granted.

ORDER

IT IS THEREFORE this 7th day of August, 2003 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Variance to allow reduced setbacks from those required for front, side and rear yards, private roads, and decks or one-story open porches and to allow panhandle lots and variances that specifically related to a proposed garage for lot #10 (the lot encompassing the existing Balmuckety Mansion facility) as requested by Petitioner be and the same is hereby **DENIED**; and it is further

ORDERED that, with regard to the decision of the Hearing Officer dated March 27, 2003 in which the subject Development Plan was approved, while this Board finds that the Development Plan meets all other zoning and development plan requirements, the Plan, as submitted, must fail with this Board's denial of the requested variance relief.

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 Chair



Richard K. Irish

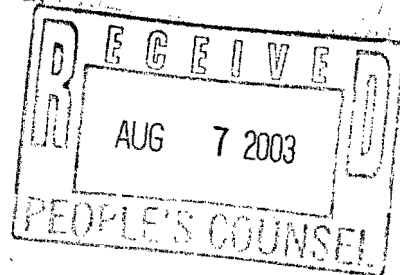


Lawrence S. Wescott



County Board of Appeals of Baltimore County

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



August 7, 2003

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

RE: *In the Matter of: Iron Horse Properties /Woodholme Reserve*
PDM III-377 / Case No. CBA-03-117; Case No. 03-331-A

Dear Mr. Holzer:

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

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

Very truly yours,

Kathleen C. Bianco
Kathleen C. Bianco
Administrator

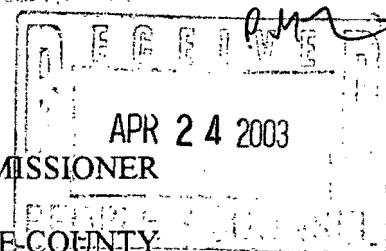
Enclosures

c: Milo Heckler
G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
John W. Tastet, Jr. - Legal Owner
Douglas F. Eshelman
Iron Horse Properties
D.S. Thaler & Associates
C. William Clark, Esquire / Counsel for Cobblestone HOA
Rhonda Fisher / Cobblestone Homeowners Association
Nadine Weinstein / Cobblestone Homeowners Assn.
Betsy Reamer
Mart Boastfield
Jerome Kadden
Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /ZC
Donald Rascoe, Development Mgr /PDM
Timothy M. Kotroco, Director /PDM

IN RE: DEVELOPMENT PLAN HEARING
AND PETITION FOR VARIANCE
NW/Corner Iron Horse Lane & Mt. Wilson
Lane (Woodholme Reserve)
3rd Election District
2nd Councilmanic District

John W. Tastet, Jr., Owner
Iron Horse Properties, LLC, *Developer*

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
*
* Case No. III-377 & 03-331-A
*



* * * * *

NOTICE OF APPEAL

Protestant, Milo Heckler who resides at 25 Mt. Wilson Lane, Pikesville, MD 21208, Appellant in the above captioned case, by and through his attorney, J. Carroll Holzer and Holzer and Lee, feeling aggrieved by the decision of the Hearing Officer/Zoning Commissioner in the above captioned matter hereby note an appeal to the County Board of Appeals from the Decision dated March 27, 2003 granting Development Plan approval and granting Petition for Variances, attached hereto, and incorporated herein as **Exhibit #1**.

Filed concurrently with this Notice of Appeal is a Petition and check made payable to Baltimore County to cover the costs of the appeal. Appellant was a party below and fully participated in the proceedings.

Respectfully submitted,

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

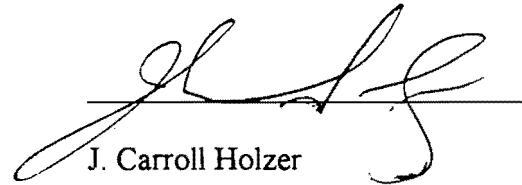
RECEIVED

APR 24 2003

Per... *bh*.....

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of April, 2003, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to G. Scott Barhight Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD, 21204; County Board of Appeals, Basement Old Court House, 400 Washington Avenue, Towson, MD 21204; and People's Counsel for Baltimore County, Basement Old Courthouse, 400 Washington Avenue, Towson, MD 21204.



J. Carroll Holzer

IN RE: DEVELOPMENT PLAN HEARING
AND PETITION FOR VARIANCE
NW/Corner Iron Horse Lane & Mt. Wilson
Lane (Woodholme Reserve)
3rd Election District
2nd Councilmanic District

John W. Tastet, Jr., Owner
Iron Horse Properties, LLC, *Developer*

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. III-377 & 03-331-A

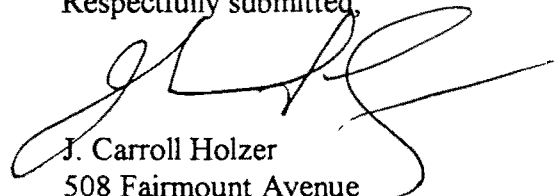
* * * * *

PETITION

Protestant and Appellant to the CBA, Milo Heckler, hereby submits pursuant to the Baltimore County Code, Sec. 26-209, the following issues and reasons for appeal from the Hearing Officer's Decision of March 27, 2003 and says:

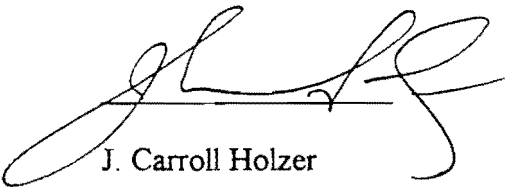
1. The Hearing Officer erred in finding that a suitable outfall existed for this project when the outfall subject to the same conditions, circumstances, and facts was previously found unsuitable in Case No. III-377 and 96-284SPHX (Opinions and Order December 5, 1996) and the facts do not justify a change in conditions or circumstances which would permit approval of the instant Development Plan.
2. Further, the Variances should not have been granted from the Baltimore County Zoning Regulations and Comprehensive Manual of Development Policy by the Zoning Commissioner which issues will be heard de novo by the County Board of Appeals.

Respectfully submitted,


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of April, 2003, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to G. Scott Barhight Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD, 21204; County Board of Appeals, Basement Old Court House, 400 Washington Avenue, Towson, MD 21204; and People's Counsel for Baltimore County, Basement Old Courthouse, 400 Washington Avenue, Towson, MD 21204.


J. Carroll Holzer

IN RE: DEVELOPMENT PLAN HEARING and * BEFORE THE
PETITION FOR VARIANCE – NW/Corner
Iron Horse Lane and Mt. Wilson Lane * ZONING COMMISSIONER
(*Woodholme Reserve*)
3rd Election District * OF BALTIMORE COUNTY
2nd Council District * Cases Nos. III-377 & 03-331-A

John W. Tastet, Jr., Owner;
Iron Horse Properties, LLC, Developers *

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Zoning Commissioner for a combined public hearing, pursuant to Section 26-206.1 of the Baltimore County Code (B.C.C.). Pursuant to the development review regulations codified in Title 26 thereof, the Owner, John W. Tastet, Jr., and the Contract Purchaser/Developer, Iron Horse Properties, LLC, Contract Purchasers/Developers, seek approval of a development plan prepared by D. S. Thaler & Associates, Inc. for the proposed development of the subject property with 22 single family dwellings. In addition, the Owner/Developers request a series of variances from the Baltimore County Zoning Regulations (B.C.Z.R.) and the Comprehensive Manual of Development Policies (C.M.D.P.) to allow reduced setbacks from those required for front, side and rear yards, private roads, and decks or one-story open porches, pursuant to the Attachment to the Petition for Variance filed in companion Case No. 03-331-A. The subject proposal and requested relief are more particularly described on the red-lined development plan submitted into evidence and marked as Developer's Exhibit 1A.

As to the history of this project through the development review process codified in Title 26 of the Baltimore County Code, a concept plan of the proposed development was prepared and a conference held between the Developer and County agency representatives at a Concept Plan Conference (CPC) held on July 8, 2002. As the name suggests, a concept plan is a schematic representation of the proposed development. Thereafter, as required, a Community Input Meeting (CIM) is held during evening hours at a location near the property to allow residents and property owners in the vicinity to review the plan and offer questions and comment.

The CIM in this case was held on July 30, 2002 at the Pikesville Library. Subsequently, a development plan is prepared, based upon the comments received at the CPC and CIM, and submitted for further review at a Development Plan Conference (DPC), which is again between the Developer's consultants and reviewing County agency representatives. In this case, the DPC was held on February 19, 2003. Following the DPC, comments are submitted by the appropriate County reviewing agencies and a revised development plan incorporating these comments is submitted at the Hearing Officer's Hearing, which in this case was held on March 13, 2003.

Appearing at the public hearing required for this project were Jim Joyce, Ray Giudice and Judd Maslack, representatives of Iron Horse Properties, LLC, Contract Purchasers/Developers, and their attorneys, G. Scott Barhight Esquire and Jennifer R. Busse, Esquire. Also present were David S. Thaler, Alan Scoll, Mark S. Vaszil and Mariceleste Miller, on behalf of D. S. Thaler & Associates, Inc., the consultants who prepared the plan. Numerous representatives of the various Baltimore County agencies who reviewed the plan attended the hearing, including the following individuals from the Department of Permits and Development Management (DPDM): Donald Rascoe, Project Manager; Bob Bowling, Development Plans Review; William A. Miner, Land Acquisition; and, Jun Fernando, Zoning Review. Also appearing on behalf of the County were Mark Cunningham, Office of Planning (OP); R. Bruce Seeley, Department of Environmental Protection and Resource Management (DEPRM); and Jan Cook, Department of Recreation and Parks (R&P). Mark Camponeschi appeared on behalf of the Baltimore County Board of Education. Nadine Weinstein and Rhona Fisher appeared on behalf of the Cobblestone Homeowners' Association and were represented by C. William Clark, Esquire. Also appearing as interested citizens from the surrounding community were Betsy Harmon Reamer, Milo Hekler, Mark Boastfield, and Jerome Kadden.

The subject property under consideration is an irregular-shaped parcel located on the northwest corner of the intersection of Iron Horse Lane and Mt. Wilson Lane, just west of Reisterstown Road in Pikesville. The property contains a gross area of 10.34 acres in area, split zoned D.R.3.5 (7.67 acres), D.R.2 (.03 acres), and ROA (2.64 acres). Presently, the property is

improved with a historic structure known as Balmuckety Mansion, which is listed on the Maryland Historic Trust Inventory as Item #BA 682, and is also on the Baltimore County Final Landmarks List. In addition, there is a reflecting pool and significant gardens that surround the mansion.

The undersigned is familiar with the subject property by virtue of a prior development proposal for this site, which came in for consideration under Case Nos. III-377 and 96-284-SPHX. In that case, the property owner and a different developer proposed a 150-bed nursing home and 12 single-family dwellings on the subject site in 1996. Following a lengthy public hearing the undersigned denied approval of the development plan and Petitions for Special Hearing and Special Exception on December 5, 1996.

The current proposal is brought by Iron Horse Properties, LLC, which seeks to develop the site with 22 single-family dwellings. Open space of approximately .510 acres is proposed and the historic mansion, gardens and some other accessory buildings will be retained. As more particularly shown on the development plan, a new public road will be constructed leading into the interior of the site from Iron Horse Lane. That road will terminate within the property as a series of cul-de-sacs and private drives.

Pursuant to Section 26-206 of the Baltimore County Code which regulates the conduct at the Hearing Officer's Hearing, I am required to first identify any unresolved agency comments or issues. In this regard, it was indicated that the property was the subject of extensive review and negotiations between the Developer and County representatives. Additionally, there were substantial negotiations and discussions between the Developer and the adjacent residential community of Cobblestone. The negotiations by and between the Cobblestone Homeowner's Association and this Developer led to an agreement, which was entered into evidence as Developer's Exhibit 2. That agreement requires the recording of covenants to further memorialize the understanding between the parties. The agreement governs the storm water management facility, setbacks, building design, and similar issues. The parties requested that this agreement be incorporated as part of any approval and I will do so.

As to County issues, Mr. Fernando from the Zoning Review Division of DPDM indicated that there were no issues, as did Mr. Cunningham from the Office of Planning, Mr. Cook from the Department of Recreation and Parks, and Mr. Miner from Land Acquisition. Mr. Seeley, on behalf of the Department of Environmental Protection and Resource Management (DEPRM), indicated that there were some minor housekeeping issues, which could be resolved by the insertion of further redlined changes and notes to the plan. Specifically, the existing well and septic system on the site will be back-filled. Public water and sewer will serve the proposed residential subdivision. Mr. Seeley also indicated that his Department has reviewed and approved the Developer's storm water management plan. He further indicated that the outfall proposed is suitable, as required by Code. Further discussion regarding that issue will be provided later herein.

Mr. Bowling on behalf of the Department of Public Works (DPW) discussed a series of waiver requests made by the Developer from that agency's requirements. These were identified on the redlined plan as Items W-1 through W-6. In this regard, Counsel for the Developer indicated that Waivers 1 and 2 relative to the requirements for private roads and the gated entry, have been withdrawn and are no longer requested. Waivers 4 (as amended) and 6 have been agreed to by and between the Developer and DPW. Waiver 4 was amended to allow a 24-foot paving section on a 40-foot right-of-way for the new public road in lieu of the required 30-foot paving on a 50-foot right-of-way. The road at issue is approximately 922 linear feet in length. Mr. Bowling and the Developer's representatives indicated agreement on this issue, as well as on Waiver 6, which is to permit the use of mountable curb and gutter throughout the community in lieu of the standard curb and gutter. Thus, Waivers 4 and 6 shall be granted.

An issue arose, however, between the Department of Public Works and the Office of Planning regarding Waiver 5, which is from the required sidewalks on all interior roads. DPW, primarily in consideration of the Americans with Disabilities Act (ADA), wants sidewalks along all interior roads, particularly in front of houses. The Office of Planning (OP) would prefer that sidewalks be eliminated in some areas to preserve open space. Upon due consideration of this

issue, I believe that sidewalks should be provided along all areas of lot frontage to provide community access in those areas; however, sidewalks will not be necessary adjacent to areas of open space, the historic mansion or the gardens.

Another issue was raised relative to Waiver 3, which is a waiver from the required sidewalks for Iron Horse Lane. As shown on the plan, the east side of the subject property abuts Iron Horse Lane. Following discussion on this issue, it was agreed that there would be no sidewalks constructed along Iron Horse Lane from the northeast corner of the property to the intersection of new Public Road A. However, sidewalks will be constructed from that intersection south along Iron Horse Lane to its intersection with Mt. Wilson Lane.

Mr. Camponeschi identified certain outstanding issues on behalf of the Board of Education. He testified that immediately west of the subject site is an undeveloped lot that is owned by the Board of Education and may ultimately be developed as an elementary or middle school. In this regard, the Board of Education, by their development plan comment of March 7, 2003, made four requests. The first requests the extension of drainage and utility easements to the property line, and the second, that an 8" sewer line be constructed to the property line and capped. This will allow for utilities to ultimately be extended into the Board of Education's property when construction of a school commences. The Developer has agreed to these two requests. The third item requests that sidewalk, curb and gutter be built along the interior roads and that consideration be given to extending the sidewalk through the subject property to the property line. Since the subject property is going to be fenced along its entire perimeter, there can be no interior sidewalk extension to the Board of Education property line; however, there will be sidewalks along Mt. Wilson Lane and lot frontages so that school children have a paved walkway to the school property. The fourth condition relates to the construction of improvements on Mt. Wilson Lane and is resolved by the disposition of the Public Works' waivers discussed above.

The major issue raised in this case relates to storm water management. This was also the primary issue in the prior case. In fact, that plan was denied because the undersigned was not persuaded that storm water management was appropriate and met the standards of the Code at

that time. Extensive and detailed testimony was offered in this regard by Mr. Thaler. He noted significant differences between the storm water management plan proposed for the subject development and what was proposed in the prior plan. He also noted that circumstances had changed since the prior plan. In this regard, he indicated that an easement is now available for the property adjacent to Mt. Wilson Lane for the installation of storm drains and pipes. The prior opinion indicated that it was unclear whether that developer had proper access to an off-site stream that was proposed to serve as the outfall for storm water management. Access to that stream is now available. Mr. Thaler indicated that in the instant proposal, storm water would be captured in a facility located on the southeast corner of the subject site. He described in detail the method by which that storm water management system will operate, including the water quality and quantity management that will be provided. The water will be collected, stored and filtered and released at a controlled rate through a pipe under and adjacent to Mt. Wilson Lane. Ultimately, it will be discharged into an off-site stream that runs through the rear of Mr. Hekler's property. It is also to be noted that there is an existing culvert by which water enters that stream under Mt. Wilson Lane. A pipe in that culvert is but 24 inches wide and testimony in both the present and prior case was that the opening is insufficiently sized. Mr. Thaler indicated that since the prior hearing, the County has made affirmative plans to enlarge the opening. More importantly, the outfall for management of the storm water generated by the subject proposal will not utilize that pipe. That is, a new connection will be made through the headwall of the existing culvert to release water from the proposed storm water management facility directly into the stream.

Mr. Hekler testified and is understandably concerned about this issue. He asked that the undersigned deny the plan as was done in the past. He fears erosion along his property and expressed concern about the suitability of discharging storm water from the subject site into the stream.

Upon due consideration of the testimony and evidence offered, I am persuaded that the storm water management plan proposed in this case is appropriate and feasible. Mr. Thaler's

detailed testimony was persuasive to a finding that this project meets the storm water management requirements set forth in Section 26-203(10) of the Code. I find that his testimony is credible and satisfies the concerns raised both in the prior case and in open hearing in this matter.

Testimony and evidence was also offered about the proposed residential subdivision and the Residential Performance Standards set out in Section 260 of the B.C.Z.R. Those standards were adopted to ensure a high quality of residential development in Baltimore County. This plan has been reviewed and approved by the Office of Planning and the proposed layout and design is the subject of the Covenants between the Developer and the Cobblestone Homeowners' Association. Based upon the record of this case, I am persuaded that the plan satisfies the legislative intent and requirements of the Residential Performance Standards in Section 260 and should be approved.

Turning to the variance relief, a series of variances are requested as set forth in the Attachment to the Petition for Variance. Testimony and evidence was offered in support of the request that this property is unique. The uniqueness is derived from several factors. These factors include the configuration and shape of the parcel, and the existence of the Balmuckety Mansion and the requirement that same be preserved. Further, uniqueness results from the desire of the Developer, which is shared by the County and surrounding community, that the garden areas be preserved. Finally, the unique split zoning of the property is of note. In this regard, the area in which the mansion is located and the surrounding garden areas are zoned ROA. The County Council rezoned this portion of the property to allow the potential use of the mansion for commercial purposes, i.e., a bed and breakfast operation. As a result, an unusual zoning pattern exists for the site and many of the lots are now split zoned. At the advice of the Zoning Review Division of DPDM, the Developer requested variances from both the ROA and D.R.3.5 standards for the same lots. That is, in some instances, the setback requirements are different under the ROA regulations than they are in the D.R.3.5 regulations and because some lots feature both zones, the Developer has requested relief from both regulations. The result of this is that on its

face, it appears that the amount of variance relief sought is excessive; however, many of the requests are duplicative and reference the same lot.

Insofar as the practical difficulty standard, it is to be noted that the project is under-density. There are 22 single-family dwellings proposed, which is significantly less than the number allowed (36), given the overall size of the property. Strict adherence to the regulations would frustrate the intent of all parties in this case to develop the property in a reasonable and consistent manner with the neighborhood while preserving the Balmuckety Mansion and the gardens. Finally, no testimony and evidence was presented that the grant of the variances would cause any detrimental impact to surrounding properties. In this regard, the agreement between the Cobblestone Homeowners' Association and the Developer contains provisions that will insure that the proposed development will not adversely impact those homes. For all of these reasons, the Petition for Variance shall be granted.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the advertising of the property and public hearing held thereon, the development plan shall be approved consistent with the comments contained herein and the Petition for Variance granted, subject to the restrictions set forth hereinafter.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 27th day of March 2003 that the development plan for Woodholme Preserve, identified herein as Developer's Exhibit 1, be and is hereby APPROVED; and,

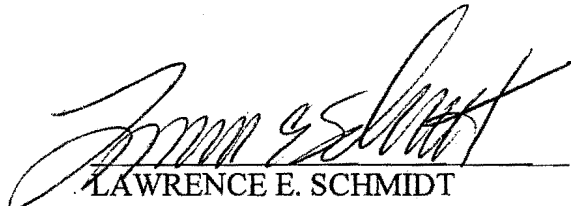
IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (B.C.Z.R.) and the Comprehensive Manual of Development Policies (C.M.D.P.) to allow reduced setbacks from those required for front, side and rear property lines, private roads, and decks or one-story open porches, in accordance with the Attachment thereto and Developer's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) Compliance with the terms of the Agreement entered into by and between the Developer and the Cobblestone community, submitted into evidence and marked as Developer's Exhibit 2.

IT IS FURTHER ORDERED that Waivers 1 and 2 are hereby Dismissed as withdrawn, and Waivers 3, 4, 5 and 6 from Department of Public Works Standards are granted as follows:

- a) The new public road will be a 24-foot paving on a 40-foot right-of-way;
- b) Mountable curb and gutter in lieu of standard curb and gutter will be allowed;
- c) Sidewalks shall be provided along the frontage of all lots;
- d) No sidewalks will be required along Iron Horse Lane from the northeast corner of the subject property to the new public road; however, sidewalks will be required south of that intersection to Mt. Wilson Lane.

Any appeal of this decision must be taken in accordance with Section 26-209 of the Baltimore County Code.


LAWRENCE E. SCHMIDT
Zoning Commissioner/Hearing Officer
for Baltimore County

LES:bjs

IN RE: DEVELOPMENT PLAN HEARING and * BEFORE THE
PETITION FOR VARIANCE – NW/Corner
Iron Horse Lane and Mt. Wilson Lane * ZONING COMMISSIONER
(*Woodholme Reserve*)
3rd Election District * OF BALTIMORE COUNTY
2nd Council District
* Cases Nos. III-377 & 03-331-A
John W. Tastet, Jr., Owner;
Iron Horse Properties, LLC, Developers *

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Zoning Commissioner for a combined public hearing, pursuant to Section 26-206.1 of the Baltimore County Code (B.C.C.). Pursuant to the development review regulations codified in Title 26 thereof, the Owner, John W. Tastet, Jr., and the Contract Purchaser/Developer, Iron Horse Properties, LLC, Contract Purchasers/Developers, seek approval of a development plan prepared by D. S. Thaler & Associates, Inc. for the proposed development of the subject property with 22 single family dwellings. In addition, the Owner/Developers request a series of variances from the Baltimore County Zoning Regulations (B.C.Z.R.) and the Comprehensive Manual of Development Policies (C.M.D.P.) to allow reduced setbacks from those required for front, side and rear yards, private roads, and decks or one-story open porches, pursuant to the Attachment to the Petition for Variance filed in companion Case No. 03-331-A. The subject proposal and requested relief are more particularly described on the red-lined development plan submitted into evidence and marked as Developer's Exhibit 1A.

As to the history of this project through the development review process codified in Title 26 of the Baltimore County Code, a concept plan of the proposed development was prepared and a conference held between the Developer and County agency representatives at a Concept Plan Conference (CPC) held on July 8, 2002. As the name suggests, a concept plan is a schematic representation of the proposed development. Thereafter, as required, a Community Input Meeting (CIM) is held during evening hours at a location near the property to allow residents and property owners in the vicinity to review the plan and offer questions and comment.

3/27



Baltimore County
Zoning Commissioner

March 27, 2003

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

G. Scott Barhight, Esquire
Jennifer Busse, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: DEVELOPMENT PLAN HEARING & PETITION FOR VARIANCE
NW/Corner Iron Horse Lane & Mt. Wilson Lane
(Woodholme Reserve)
3rd Election District - 2nd Council District
John W. Tastet, Jr., Owner; Iron Horse Properties, LLC, Developer
Cases Nos. III-377 & 03-331-A

Dear Mr. Barhight & Ms. Busse:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The development plan has been approved and the Petition for Variance 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. John W. Tastet, Jr., 15 Iron Horse Lane, Baltimore, Md. 21208
Mr. Douglas F. Eshelman, Iron Horse Properties, LLC
5635 Vantage Point Road, Columbia, Md. 21044
D. S. Thaler & Associates, Inc., 7115 Ambassador Road, Baltimore, Md. 21244
C. William Clark, Nolan, Plumbhoff & Williams
502 Washington Avenue, #700, Towson, Md. 21204
Ms. Nadine Weinstein, 33 Stone Pine Court, Pikesville, Md. 21208
Ms. Rhona Fisher, 319 Chalkhill Drive, Baltimore, Md. 21208
Ms. Betsy Reamer, 109 Mt. Wilson Lane, Pikesville, Md. 21208
Mr. Milo Hekler, 25 Mt. Wilson Lane, Pikesville, Md. 21208
Mr. Mark Boastfield, 6200 Old Dobbin Road, Suite 190, Columbia, Md. 21045
Mr. Jerome Kadden, 400 Mt. Wilson Lane, Baltimore, Md. 21209
Don Rascoe, DPDM; DEPRM; DPW; OP; R&P; People's Counsel; Case File

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





Petition for Variance

to the Zoning Commissioner of Baltimore County ^{W side of Iron}
for the property located at Horse Ln, N of Mt. Wilson Ln
which is presently zoned D.R. 3.5 & ROA

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

PLEASE SEE ATTACHED

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(indicate hardship or practical difficulty)

To be presented at the hearing

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

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

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

Contract Purchaser/Lessee:

Iron Horse Properties, LLC

Name - Type or Print

Signature Douglas F. Eshelman, Member

5635 Vantage Point Rd 410-832-2077

Address Telephone No.

Columbia, MD 21044

City State Zip Code

Attorney For Petitioner:

Jennifer R. Busse

Name - Type or Print

Signature

Whiteford, Taylor & Preston

Company

210 W. Pennsylvania Ave 410-832-2077

Address Telephone No.

Towson, MD 21204

City State Zip Code

Legal Owner(s):

John W. Tastet, Jr.

Name - Type or Print

Signature

Name - Type or Print

Signature

15 Iron Horse Lane 410-832-2077

Address Telephone No.

Baltimore, MD 21208

City State Zip Code

Representative to Be Contacted:

Jennifer R. Busse

Name

210 W. Pennsylvania Ave 410-832-2077

Address Telephone No.

Towson, MD 21204

City State Zip Code

OFFICE USE ONLY

Case No. 03-331-A

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING
Reviewed By JRF

Date 1/16/03

ATTACHMENT TO PETITION FOR VARIANCE
For Property : W Side of Iron Horse Ln., N of Mt. Wilson Ln.
Item # 03-331-A

Variance Relief Needed

Front Setbacks

§ 1B02.3.C.1 and § 202.4.A – A variance to allow a minimum front setback of 10' in lieu of the required 30' for lots zoned ROA, lots 6 – 14 and 21 & 22.

§ 1B01.2.C.1.b, § 1B02.3.C.1 and § 202.4.A – A Variance to allow a minimum front setback of 10' in lieu of the required 27.5' for lots split zoned ROA and D.R. 3.5, lots 6 – 9, 11 – 14 and 21 & 22.

§ 1B01.2.C.1.b and § 504.2 (CMDP Part III, Section II, A, pp. 5 and 30) – A Variance to allow a minimum 10' front setback in lieu of the required 25' to a public street right-of-way or property line for lots 1 – 22.

Private Road Setbacks

§ 1B01.2.C.1.b and § 504.2 (CMDP Part III, Section II, A, pp. 5 and 30) – A Variance to allow a minimum 10' side building face and/or front setback in lieu of the required 25' to the edge of paving of a private road for lots 1 – 22.

Side Setbacks

§ 1B02.3.C.1 and § 202.4.A – A variance to allow a 3' minimum individual side yard width in lieu of the required 10' for lots zoned ROA, lots 6 – 14 and 21 & 22.

§ 1B02.3.C.1 and § 202.4.A – A Variance to allow a minimum sum of side yard widths of 6' in lieu of the required 25' for lots zoned ROA, lots 6 – 14 and 21 & 22.

§ 1B01.2.C.1.b, § 504.2, and CMDP Part III, Section II, A, p. 30 – A Variance to allow a minimum 10' side building face to public street right-of-ways and/or tract boundary setback in lieu of the required 15' for lots that are zoned D.R. 3.5, lots 1, 14 and 20 – 22.

Rear Setbacks

§ 1B01.2.C.1.b, § 1B02.3.C.1, § 202.4.A, § 504.2, and CMDP Part III, Section II, A, pp. 5 and 30 – A variance to allow a minimum 15' rear setback in lieu of the required 30' to rear property lines and/or public street right-of-ways for lots zoned ROA, lots zoned D.R. 3.5, and lots split zoned ROA and D.R. 3.5, lots 1 – 3, 10, 14, 21 & 22.

Lot Size and Width

§ 1B02.3.C.1 – A variance to allow less than the required 10,000 sq. ft. for lots either entirely zoned ROA or split zoned ROA and D.R. 3.5, lots 6 – 9, 11 – 14, and 21 & 22.

§ 1B02.3.C.1 – A variance to allow less than the required lot width of 70' for lots either entirely zoned ROA or split zoned ROA and D.R. 3.5, lots 6 – 14, and 21 & 22.

Fence

§ 504.2 – A Variance from CMDP Part III, Section II, A, pp. 8 and 14 to allow a fence 5' from the public street right-of-way in lieu of the required 10', lots 1, 14 – 18, and 20.

Deck or One-Story Open Porch

§ 301.1.A – A Variance to allow a 10' minimum setback from the rear property line for a deck or one-story open porch in lieu of the requirement that any such deck or porch extend into the rear yard not more than 25% of the minimum required depth of the rear yard for lots 1 – 22.

Accessory Structure for Lot 10

§ 400.1 - A Variance to allow an accessory structure (a garage) on Lot 10 to be located in an area other than the rear yard and in an area other than the third of the lot farthest removed from any street, and to allow the accessory structure to occupy more than 50% of a third of the lot.

§ 400.3 - A Variance to allow the height of an accessory structure (a garage) on Lot 10 to exceed 15 feet.

Panhandle Lots - CMDP Variance

§ 504.2 - A Variance from CMDP, Part III, Section II, A, pp. 7-8 to allow panhandle lots, lots 3, 8 and 11 - 13.



Baltimore County
Department of Permits and
Development Management

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

March 7, 2003

Jennifer R. Busse
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Ms. Busse:

RE: Case Number: 03-331-A, Westside of Iron Horse Lane, North of Mt. Wilson Lane

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on January 16, 2003.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:klm

Enclosures

c: People's Counsel
John W. Tastet, Jr., 15 Iron Horse Lane, Baltimore, MD 21208
Iron Horse Properties, LLC, Douglas F. Eshelman, Member, 5635 Vantage Point Rd.,
Columbia 21044

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



BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

DATE: February 24, 2003

FROM:  Robert W. Bowling, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For February 3, 2003
Item Nos. 298, 326, 327, 328, 329,
330, 331, 332, 334, 335, 336, 337,
and 338

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 RBS | TBT

DATE: February 27, 2003

Zoning Petitions

Zoning Advisory Committee Meeting of January 28, 2003

SUBJECT: NO COMMENTS FOR THE FOLLOWING ZONING ITEMS:

298, 326, 328, 329, 331, 334-338

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

MDP
Maryland Department of Planning

Audrey E. Scott
Secretary

Florence E. Burtan
Deputy Secretary

January 29, 2003

Ms. Rebecca Hart
Baltimore County Department of Permits and Development Management
111 West Chesapeake Avenue, Room 111
Mail Stop # 1105
Towson MD 21204

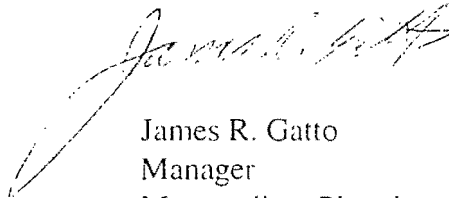
Re: Zoning Advisory Committee Agenda, 2/03/03 re: case numbers 03-298-SPH, 03-326-A, 03-327-X, 03-328-A, 03-329-SPH, 03-330-SPHX, 03-331-A, 03-332-SPH, 03-333-A, 03-334-A, 03-335-A, 03-336-A, 03-337-SPHA, 03-338-A

Dear Ms. Hart:

The Maryland Department of Planning has received the above-referenced information on 01/28/03. The information has been submitted to Mr. Mike Nortrup.

Thank you for your cooperation in this review 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

cc: Mike Nortrup



Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

January 29, 2002

ATTENTION: Rebecca Hart

Distribution Meeting of: January 28, 2003

Item No.: 326-329, 331-338

Dear Ms. Hart:

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.

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

cc: File

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



MARYLAND DEPARTMENT OF TRANSPORTATION

Robert L. Ehrlich, Jr., *Governor* • Michael S. Steele, *Lt. Governor* • Trent M. Kittleman, *Acting Secretary*

Date: 1.28.03

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

RE: Baltimore County
Item No. 331 JRF

Dear Mr. Zahner:

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

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

Very truly yours,

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

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.marylandroads.com

COPY

RE: PETITION FOR VARIANCE * BEFORE THE
Corner Wside Iron Horse Ln; N Mt. Wilson Ln;
Wside Iron Horse Ln N side Mt. Wilson Ln * ZONING COMMISSIONER
3rd Election District
2nd Councilmanic District * FOR
Legal Owner(s): John W. Tastet, Jr.
Contract Purchaser(s): Iron Horse Properties,* BALTIMORE COUNTY
LLC; Douglas F. Eshelman, Member
Petitioner(s) * 03-331-A

* * * * *

ENTRY OF APPEARANCE

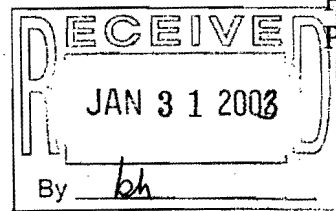
Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/ documentation filed in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

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County
Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 2003, a copy of the foregoing Entry of Appearance was mailed to, Jennifer Busse, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



APPEAL

Petition for Variance
NW/corner Iron Horse Lane and Mt. Wilson Lane
3rd ED – 2nd CD

Legal Owner: John W. Tastet, Jr.
Contract Purchaser: Iron Horse Properties, LLC

Case No.: 03-331-A

Petition for Variance (January 16, 2003)

Zoning Description of Property

Notice of Zoning Hearing (January 28, 2003)

Certification of Publication (February 27, 2003)

Certificate of Posting (by Stacy Gardner) on February 12, 2003

Entry of Appearance by People's Counsel (January 31, 2003)

Petitioner(s) Sign-In Sheet
None

Protestant(s) Sign-In Sheet
None

Citizen(s) Sign-In Sheet
None

Zoning Advisory Committee Comments

Petitioners' Exhibits:
None

Protestants' Exhibits:
None

Miscellaneous (Not Marked as Exhibit)
1. Plat to accompany zoning Petition for Variance

Zoning Commissioner's Order (March 27, 2003 – GRANTED subject to the following restrictions)

Notice of Appeal received on April 21, 2003 from of J. Carroll Holzer on behalf of Milo Heckler

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Arnold Jablon, Director of PDM
J. Carroll Holzer, Holzer & Lee, 508 Fairmount Avenue, Towson 21204

date sent April 23, 2003 rlh



Baltimore County
Department of Permits and
Development Management

Director's Office *GP*
County Office Building *PM 2*
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

April 23, 2003

John W. Tastet, Jr.
15 Iron Horse Lane
Baltimore, MD 21208

Dear Mr. Tastet:

RE: Case No. 03-331-A, West side of Iron Horse Lane, N of Mt. Wilson Lane

Please be advised that an appeal of the above-referenced case was filed in this office on April 21, 2003 by Carroll Holzer on behalf of Milo Heckler. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Arnold Jablon
Director

AJ:rlh

c: Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM
People's Counsel
Iron Horse Properties, LLC, Douglas Eshelman, Member, 7013 Meandering Stream
Way, Fulton, MD 20759-2303
J. Carroll Holzer, Holzer & Lee, 508 Fairmount Avenue, Towson 21286

*PC not involved in appeal. No public
interest. Previous agreement called for
homes rather than assisted living facility.
pwr 4/28/03*



IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:

Iron Horse Properties, LLC
7013 Meandering Stream Way
Fulton, Maryland 20759

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

CIVIL ACTION
No. 3-C-03-9833

IN THE MATTER OF
JOHN W. TASTET, JR. – LEGAL OWNER
IRON HORSE PROPERTIES – DEVELOPER/CP
(WOODHOLME RESERVE)
DEVELOPMENT PLAN APPROVAL
- PDM III-377

PETITION FOR VARIANCE
3RD ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

CASE NOS.: 03-331-A AND CBA-03-117

* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

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

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

Milo Heckler
25 Mt. Wilson Lane, Pikesville, MD 21208

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

Nadine Weinstein, Cobblestone Homeowners Association
33 Stone Pine Court, Pikesville, MD 21208

Rhonda Fisher, Cobblestone Homeowners Association
33 Stone Pine Court, Pikesville, MD 21208

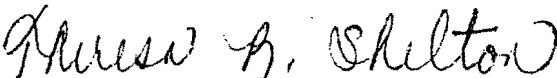
G. Scott Barhight, Esquire
Whiteford, Taylor & Preston LLP, 210 West Pennsylvania Avenue,
Towson, MD 21204

Jennifer R. Busse, Esquire,
Whiteford, Taylor & Preston LLP, 210 West Pennsylvania Avenue,
Towson, MD 21204

John W. Tastet, Jr.
15 Iron Horse Lane, Baltimore, Maryland 21208

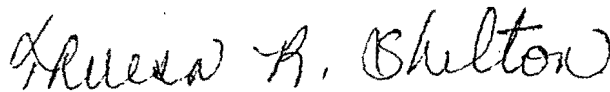
Peter Max Zimmerman
People's Counsel for Baltimore County, Old Courthouse, Room 47,
400 Washington Avenue, Towson, Maryland 21204

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


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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to:
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, MD 21286; Milo Heckler, 25 Mt.
Wilson Lane, Pikesville, MD 21208; C. William Clark, Esquire, Nolan, Plumbhoff & Williams,
502 Washington Avenue, Suite 700, Towson, MD 21204; Nadine Weinstein, Cobblestone
Homeowners Association, 33 Stone Pine Court, Pikesville, MD 21208;

Rhonda Fisher, Cobblestone Homeowners Association, 33 Stone Pine Court, Pikesville, MD 21208; G. Scott Barhight, Esquire, Whiteford, Taylor & Preston LLP, 210 West Pennsylvania Avenue, Towson, MD 21204; Jennifer R. Busse, Esquire, Whiteford, Taylor & Preston LLP, 210 West Pennsylvania Avenue, Towson, MD 21204; John W. Tastet, Jr., 15 Iron Horse Lane, Baltimore, Maryland 21208; and Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, this 17th day of September, 2003.



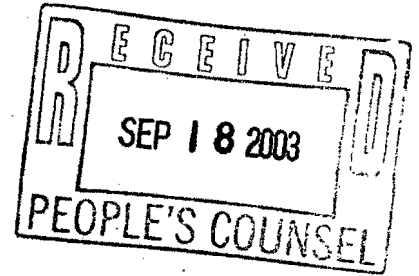
Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)



County Board of Appeals of Baltimore County

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

September 17, 2003



J. Carroll Holzer, Esquire
Holzer and Lee
508 Fairmount Avenue
Towson, Md 21286

RE: **Circuit Court Civil Action No. 3-C-03-9833**
Petition for Judicial Review
Iron Horse Properties / Woodholme Reserve / PDM III-377
Case Nos.: 03-331-A and CBA-03-117

Dear Mr. Holzer:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on September 8, 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-03-9833.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: Milo Heckler
C. William Clark, Esquire
Nadine Weinstein
Rhonda Fisher
G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
John W. Tastet, Jr.
Office of People's Counsel
Pat Keller, Director / Planning
Lawrence E. Schmidt / ZC
Donald Rascoe, Development Mgr / PDM
Timothy M. Kotroco, Director / PDM



County Board of Appeals of Baltimore County

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

September 17, 2003

G. Scott Barhight Esquire
Jennifer R. Busse, Esquire
Whiteford Taylor And Preston
210 W. Pennsylvania Avenue
Towson Md 21204

RE: Circuit Court Civil Action No. 3-C-03-9833
Petition for Judicial Review
Iron Horse Properties / Woodholme Reserve / PDM III-377
Case Nos.: 03-331-A and CBA-03-117

Dear Mr. Barhight and Ms. Busse:

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

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

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Theresa R. Shelton".

Theresa R. Shelton
Legal Secretary

/trs

Enclosure

c: John W. Tastet, Jr.
J. Carroll Holzer, Esquire
Milo Heckler