6/12/03

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| IN RE: PETITION FOR SPECIAL HEARING<br>NE/Cor. Wiseburg Road & Peters Avenue<br>**(1130 - 1132 Wiseburg Road)**<br>7th Election District<br>3rd Council District | *<br><br>*<br><br>* | BEFORE THE<br><br>ZONING COMMISSIONER<br><br>OF BALTIMORE COUNTY |
| Christopher Walters and<br>Susan Gossling Walters<br>Petitioners | *<br><br>* | Case No. 03-448-SPH |

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, Christopher Walters and Susan E. Gossling, through their attorney, Howard L. Alderman, Jr., Esquire. The Petitioners request special hearing relief as follows: 1) to approve the reconfiguration of Parcels 90 & 99 (1130 & 1132 Wiseburg Road, respectively) by transferring 1.29 acres from Parcel 90 to adjoining Parcel 99 as a lot line adjustment and accumulation of density between like zoned parcels, both having been lots of record prior to 1975; and 2), to approve such other and further relief as the nature of this case may required, within the spirit and intent of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and requested relief are more particularly shown on the site plan submitted, which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Christopher and Susan (Gossling) Walters, property owners, and their attorney, Howard L. Alderman, Jr., Esquire. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject properties are adjacent parcels located at the northeast corner of Wiseburg Road and Peters Avenue in northern Baltimore County. The two parcels are known and recorded in the Land Records of Baltimore County as Parcels 90 and 99. Parcel 99 has direct frontage on Wiseburg Road and contains 5.268 acres in area, zoned R.C.4. That property is improved with a single family dwelling, known as 1132 Wiseburg Road. Parcel 90 abuts the rear of Parcel 99 and contains 6.29 acres, also zoned R.C.4. Parcel 90 is also

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improved with a single family dwelling, known as 1130 Wiseburg Road. The Petitioners reside in the dwelling on Parcel 99 and lease the dwelling on Parcel 90. Vehicular access to both parcels is by way of a common driveway that enters Parcel 99 from Wiseburg Road and continues through that property into Parcel 90.

As noted above, both properties are zoned R.C.4. Section 1A03.4.B.1.a of the B.C.Z.R. governs the lot density for properties zoned R.C.4. That Section provides that any parcel between 6 and 10 acres in area may be subdivided so as to create two lots. Thus, Parcel 90 can be subdivided to create an additional building lot, while Parcel 99 cannot. That is, collectively the two parcels can yield only three lots total. The Petitioners are desirous of subdividing their property to create one additional lot as permitted for a proposed new dwelling. They wish to site the new house to the rear of Parcel 99, closer to Wiseburg Road. In order to accomplish this objective, the Petitioners propose to convey 1.29 acres from Parcel 90 to Parcel 99. Upon completion of this transfer, Parcel 99 will contain more than 6 acres in area, and the additional building lot can be created where preferred. Parcel 90 will then contain less than 6 acres and cannot be subdivided further.

The Petitioners indicated at the hearing that they recognize that only three lots may be created from their total holdings. They believe that a more appropriate development of the overall tract would result if the relief requested were granted. Moreover, there will be fewer disturbances to the property in general if the dwelling is located closer to Wiseburg Road as proposed.

As noted above, no one appeared in opposition to the request; however, a comment was received subsequent to the hearing from Wally Lippincott, Jr. on behalf of the Department of Environmental Protection and Resource Management (DEPRM). He expressed certain concerns relative to the transferring of density in the R.C.4 zone. Although I am appreciative of his comments, the fact that the parcels abut one another and are under common ownership are compelling factors. Moreover, no additional rights of density are being created. As noted above, the Petitioners understand that the overall tract can yield but three dwelling lots and no more than three dwellings will result. A ZAC comment was also received from the Office of Planning. That

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comment addressed access to the existing house on Parcel 90. At the hearing, the Petitioners indicated that the existing driveway serves both existing dwellings. Moreover, the existing driveway is located within a recorded easement area providing access to the rear parcel (Parcel 90). This seems to be an appropriate arrangement particularly given that there will be no additional development to the rear of the tract.

For all of these reasons I am persuaded that the Petition for Special Hearing should be granted. I do not believe that the proposed additional dwelling lot will detrimentally impact the health, safety and general welfare of the surrounding locale and is consistent with the spirit and intent of the R.C.4 regulations.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 18th day of June 2003 that the Petition for Special Hearing to: 1) approve the reconfiguration of Parcels 90 & 99 (1130 & 1132 Wiseburg Road, respectively) by transferring 1.29 acres from Parcel 90 to adjoining Parcel 99 as a lot line adjustment and accumulation of density between like zoned parcels, both having been lots of record prior to 1975; and 2), to approve such other and further relief as the nature of this case may required, within the spirit and intent of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit the creation of a third dwelling lot, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

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

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 6/18/03
By

LES:bjs

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 15, 2004

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

RE: Circuit Case #03-C-04-0688 /*In the Matter of*
*Christopher Walters & Susan Gossling* /Case No. 03-448-SPH
On Remand from the Circuit Court for Baltimore County

Dear Mr. Zimmerman:

Enclosed please find a copy of the Board's Order issued this date in response to the Remand Order The Honorable Lawrence R. Daniels, Judge, Circuit Court for Baltimore County.

Very truly yours,

Kathleen C. Bianco /tks

Kathleen C. Bianco
**Administrator**

Enclosure

c: Howard L. Alderman, Jr., Esquire
Christopher Walters and Susan Gossling
E. F. Raphel, Inc. /Eugene Raphel
The Honorable Lawrence R. Daniels, Judge
Circuit Court for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

6/17/04

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| **PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY**, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204 | * | IN THE |
| | * | CIRCUIT COURT |
| FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204 | * | FOR |
| IN THE MATTER OF THE APPLICATION OF **Christopher Walters and Susan Gossling** FOR A SPECIAL HEARING for property located on the N/E corner of Wiseburg Road and Peters Avenue (1130-1132 Wiseburg Road) 7th Election District, 3rd Councilmanic District | * | BALTIMORE COUNTY |
| | | Civil No. 03-C-04-0688 |
| Case No. 03-448-SPH before the County Board of Appeals of Baltimore County | * | |

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

## ORDER

This case came before the Court for hearing on June 18, 2004. Upon consideration of the matter, including the facts and law recited in People's Counsel for Baltimore County's Memorandum, and having heard no response or opposition from any other party, this Court rules, for reasons stated in the aforesaid Memorandum, that the County Board of Appeals for Baltimore County's January 7, 2004 Order of Dismissal of Petition without prejudice was arbitrary, capricious, and contrary to law. Accordingly, it is, this 23rd day of June, 2004, ORDERED, by the Circuit Court for Baltimore County:

1. That the January 7, 2004 Order of Dismissal entered by the County Board of Appeals of Baltimore County be, and hereby is, reversed.

FILED JUN 28 2004



cc: Demilio, BOA, Walters, Gossling

2. That the case is remanded to the County Board of Appeals for Baltimore County for the purpose of an entry by said Board of Appeals of an Order of Dismissal with Prejudice of the Petition for Special Hearing filed by Christopher Walters and Susan Gossling on property located at 1130-32 Wiseburg Road, Case No. 03-448-SPH at the Board of Appeals.

LAWRENCE R. DANIELS, Judge
Circuit Court for Baltimore County

3/8/04

| | | |
|---|---|---|
| **PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY**, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204 | * | IN THE |
| | * | CIRCUIT COURT |
| FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204 | * | FOR |
| IN THE MATTER OF THE APPLICATION OF **Christopher Walters and Susan Gossling** FOR A SPECIAL HEARING for property located on the N/E corner of Wiseburg Road and Peters Avenue (1130-1132 Wiseburg Road) 7th Election District, 3rd Councilmanic District | * | BALTIMORE COUNTY |
| | * | Civil No. 03-C-04-0688 |
| Case No. 03-448-SPH before the County Board of Appeals of Baltimore County | * | |

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

## PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MEMORANDUM

### Statement of the Case

Petitioners filed a Petition for Special Hearing to transfer 1.29 acres between two parcels [99 and 90] they own at 1130 and 1132 Wiseburg Road. They described the request as a "lot line adjustment and accumulation of density between like zoned parcels…." The Zoning Commissioner approved the Petition on June 18, 2003.

People's Counsel appealed to the County Board of Appeals (CBA). The *de novo* evidentiary hearing on December 23, 2003, began with opening statements. Petitioners then called an expert surveyor, Eugene Raphel. People's Counsel challenged his zoning expertise. Upon cross-examination, People's Counsel exposed his lack of knowledge or

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reasoning to support his opinions. Ultimately, Mr. Raphel conceded and even asserted with emphasis that he is not an expert on the zoning regulations.

Petitioners' counsel thereupon requested a recess. Upon resumption of the hearing, Petitioners stated they were dismissing their petition without prejudice. People's Counsel objected. Having proven the inadequacy of Mr. Raphel's evidence, People's Counsel was also prepared to proceed affirmatively with Wallace Lippincott, a planner and expert on Resource Conservation zones from the Department of Environmental Protection and Resource Management (DEPRM), and Dr. Richard McQuaid, a community leader, President of the North County Coalition, and interested party.

After argument, the CBA nevertheless decided it had no choice but to allow a dismissal without prejudice. Its written Opinion and Order followed on January 7, 2004. People's Counsel petitioned for judicial review.

This procedural irregularity led to our court action. Terms of dismissal are ordinarily within the discretion of the agency, subject to the standard of reasonableness. An administrative decision-maker must not act arbitrarily and capriciously. People's Counsel submits that after a trial-type hearing begins, it is arbitrary and capricious for the agency to allow a Petitioner, in effect, to test the waters with its expert witness and then dismiss without prejudice. It is especially improper where, as here, a Petitioner gives no reasons. The obvious implication is that Petitioner understands the case is not going well and has decided on a tactical retreat. The effect of such a dismissal is to allow Petitioners to go back to the starting gate, file their petition anew, and retry their case in a different way. This is contrary to basic rules of fair play and justice.

## The Substantive Context

A procedural maneuver triggered the appeal, but there are also important substantive legal issues which are likely to recur. The Court should consider them both to understand the context of the dismissal and provide guidance and prevent future litigation.

The contiguous parcels are zoned R.C. 4, a Resource Conservation Zone enacted for Watershed Protection. Petitioners acquired Parcel 99 in 1992 and used it as their residence. It has 5.29 acres with frontage on Wiseburg Road. They live there. In 2002, they acquired Parcel 90, to the rear. It has a rented residence on 6.26 acres. The latter parcel has very steep slopes and substantial woods. It drops sharply in elevation back to the stream called Little Falls. Parcel 90 has access to Wiseburg Road via a driveway.

Petitioners advanced, first of all, the theory that Parcel 90 has available to it the right to develop two lots and Parcel 99 on lot, because under BCZR 1A03.4.B.1.a:

> A tract to be developed in an R.C. 4 zone with a gross area of less than six acres may be not subdivided, and a tract to be developed with a gross area of at least six acres but not more than 10 acres may not be subdivided into more than two lots, each of which must be at least three acres, ... [subject to certain exceptions not applicable here]."

Having asserted a claim to lay out two lots on Parcel 90 and one on Parcel 99, Petitioners recognized nevertheless that Parcel 90's topography and field conditions preclude development of a second lot as a practical matter. Their solution was to merge the two Parcels together, claim the right to develop a total of three lots, and then "transfer" 1.29 acres from Parcel 90 to 99. With the new configuration, Parcel 99(plus*)

being over six (6.58) and less than ten acres, and Parcel 90(minus*) being less than six acres (4.97), Petitioners proposed to subdivide the modified Parcel 90.

The zoning office, having concerns about the propriety of the scheme, required Petitioners to file the Petition for Special Hearing. People's Counsel appealed the approval because it is not legally sustainable on the merits.

People's Counsel disagrees with the premise that Petitioners have available to them the right to develop two lots on Parcel 99, and/or three lots total. They ignored BCZR 1A03.4B1.b, which states:

> The maximum gross density of a tract to be developed with a gross area of more than 10 acres is 0.2 lot per acre. Any lots created hereafter, [subject to an exception not applicable here] shall be in accordance with the following standards for rural cluster development:
>
> [Subsubsections (1) – (3) provide detailed standards].
> Emphasis supplied.

Having assembled two parcels with a total of 11.55 acres, Petitioners have a combined "tract" with a gross area of more than 10 acres. The maximum gross density of 0.2 leaves them, at most, with two lots, the number of lots already there. In this connection, Webster's Third International Dictionary Definition states, at page 2421:

> Tract *n* … **2:** an area either large or small: as **a** (1) a region or stretch (as of land) that is usu. Indefinitely described or without precise boundaries (a few large – *s* for settlement) (the wooded –*s* between two rivers) (a grat – of unexplored sea (2): a precisely defined or definable area of land (an 80 acre --) (an urban census --) ….

See Leiser v. City of Eureka 59 S.W. 3d 597 (Mo. App. 2001); Smith v. Clackamas County 797 P.2d 1058 (Ore. App. 1990), aff'd 836 P.2d 716 (Ore. 1992); Holt v. Wichita County Water Imp. Dist. 48 S.W. 2d 527 (Tex. App. 1932); Young v. Shriver 206 P. 99

(Cal. App. 1922), hearing denied by Supreme Court. These cases provide helpful discussions of this matter in the context of other statutes which refer to "tracts." They support our position, as shown in Section III of the Argument below.

The 11.55 acre area assembled by Petitioners plainly meets the above definition and is, therefore, a single tract. The distinction between "tract" rather and "lot of record" or "parcel" is also reinforced by the use of the latter terms elsewhere in the BCZR. For example, the BCZR 101 definition of "Lot of Record" refers to "a parcel of land with boundaries as recorded in the land records...."

Even if Petitioners could show that Parcels 99 and 90 each were separate "tracts" to begin with, their Petition would fall with the attempt to "transfer," or as they put it so pleasantly: "reconfigure" or "adjust." The problem is that this manipulation necessarily eliminates the original parcel boundaries. Once those are eliminated, there is a merger of both parcels into one tract. That merger must logically precede any reconfiguration, adjustment, or transfer. Parcels 99 and 90 no longer exist. Cf. Friends of the Ridge v. BGE 352 Md. 645 (1999).

From another perspective, as the thrust of the Petition is to transfer density from Parcel 99 to Parcel 90, this runs into the objection that there is no authority in the Baltimore County Zoning Regulations to transfer density. In the absence of explicit statutory authority, it cannot be done. See West Montgomery Citizens v. MNP&P Comm'n 309 Md. 183 (1987).

Finally, given the legislative purpose to control development in watershed areas, Petitioners' attempt to manipulate and add density subverts the statutory goal. See

Security Management v. Baltimore County 104 Md. App. 234 (1995). For all these reasons, People's Counsel challenged the Petition on the merits.

## Questions Presented

**1. Are administrative decisions on voluntary dismissals in quasi-judicial zoning cases subject to review for arbitrariness, capriciousness, and/or illegality?**

**2. Was it arbitrary, capricious, or illegal for the CBA to approve Petitioners' voluntary dismissal without prejudice after the trial testimony of Petitioner's expert witness, particularly where the dismissal was a transparent tactic to erase an inadequate presentation and where People's Counsel was prepared to complete a case of great public interest involving legal interpretation of density issues?**

**3. Is the R.C. 4 (Watershed Protection) Zone density of 0.2 applicable to a tract of two contiguous assembled parcels amounting to over 10 acres in area?**

**4. In the absence of statutory enabling authority, do the Baltimore County Zoning Regulations allow the administrative transfer of density between tracts in R.C. 4 zones?**

## County Board of Appeals Rules and Zoning Legislation

**The Board Rules are attached as Exhibit 2. These are excerpts.**

**CBA Rule 4b. The Chairman shall regulate the course of the hearing and shall rule upon procedural matters, applications, modifications and objections made during the course of the hearing, subject to the concurrence of a majority of the board conducting the hearing.**

**CBA Rule 3b. An appeal may be withdrawn or dismissed at any time prior to the conclusion of the hearing on said appeal.**

**CBA Rule 7d. Except as may otherwise be provided by statute or regulations, the proponent of action to be taken by the board shall have the burden of proof.**

**Baltimore County Zoning Regulations**
**BCZR1A03.1. Findings and legislative Policy**

**The County Council finds that major, high-quality sources of water supply for the entire Baltimore Metropolitan Area and for other neighboring jurisdictions lie within Baltimore County and that continuing development in the critical watersheds of those water supply courses is causing increased pollution and sedimentation in the impoundments, resulting in increasing water treatment costs and decreasing water storage capacity. The R.C. 4 zoning classification and its regulations are established to provide for the protection of the water supplies of metropolitan Baltimore and neighboring jurisdictions by preventing the contamination through unsuitable types or levels of development in their watersheds.**

**BCZR 1A03.4B. Area Regulations:**

**1. Lot Density**

**a. A tract to be developed in an R.C. 4 zone with a gross area of less than six acres may not be subdivided, and a tract to be developed with a gross area of at least six acres but not more than 10 acres may not be subdivided into more than two lots, each of which must be at least three acres, except as otherwise provided in Section 103.3 or in Paragraph 4 below.**

**b. The maximum gross density of a tract to be developed with a gross area of more than 10 acres is 0.2 lot per acre. Any lots created hereafter, [subject to an exception not applicable here] shall be in accordance with the following standards for rural cluster development:**

[Subsubsections (1) – (3) provide detailed standards].

**Statement of Facts**

In discussing substantive context, we described the property, its zoning classification, and the nature of the zoning petition. As noted, Petitioners called Eugene Raphel to support the proposal and discuss how it satisfies zoning law.

Early on, People's Counsel challenged Mr. Raphel's zoning expertise. T. 10-23. Mr. Raphel had attended two years of college and then gone into the army before becoming a surveyor. He stated that R.C. stands for "Rural Conservation" rather than the correct "Resource Conservation." He could not name all the resource conservation zones. T. 11-14. He gave a wrong answer as to the allowed density in the R.C. 5 zone (one acre per lot rather than the correct .667 density (BCZR 1A04.3B1). T. 12-13, 18. He could not recall the allowable density in the R.C. 4 zone. T. 15-16, 19. Upon argument, the Chairman expressed concerns about Mr. Raphel's expertise:

> Well, he is here as an expert. From what I'm hearing, I'm a little suspect of it. T. 15.
>
> I consulted with the other Board members, and we are going to permit Mr. Raphel to speak as an expert in -- he is a registered land surveyor and also he prepared the plat.
>
> And with the caveat, however, that the Court of Appeals has said in many cases that even expert has to have a reasonable basis for expressing an opinion [on] any facts in which he's talking about.
>
> So, we're going to listen very attentively .... T. 23.

Mr. Raphel gave his opinions that Parcel 90 could be subdivided, that a total of three dwellings were possible on the two parcels, and that, in order to transfer 1.29 acres and "put the other lot over there", he was told by the DRC (Development Review Committee) to go to zoning. T. 29-33. He did admit the steep slope constraints were such that Parcel 90 could not actually be improved with an additional home under the present lot configuration. T. 36-37. In other words, a "transfer" would be necessary to make room available on the relatively flat lot 99, as enlarged. Mr. Raphel ended with a series of

affirmative answers to leading boilerplate questions as to the appropriateness and beneficial impact of the proposal. T. 38-40.

The ensuing cross-examination exposed the lack of any foundation for Mr. Raphel's opinions with respect to subdivision lot density and transfer. We attach in full the relevant pages T. 41-54 as Exhibit 1. In brief, Mr. Raphel was unable to identify any section of the law to support his opinion that Parcel 90 could be subdivided; had no independent knowledge of the density limits; and refused an offer to look at the zoning regulations to find the R.C. 4 zone regulations. At one point, he volunteered:

> I'm saying I'm not an expert in the zoning regulations, period. T. 43.

He was also unable to point to any reference given him by anyone else. T. 44. As to transfer of density, he claimed there is a provision in the zoning law to allow it, but could not support the opinion. T. 47-48. Rather, he produced a Policy Manual provision which dealt with properties divided by zone boundaries. T. 48-49. Similarly, he could not explain the meaning of "conservancy", a key concept in the R.C. 4 zone. T. 50-51.

He acknowledged that the total acreage involved is 11.55 acres, and that the two parcels are contiguous. T. 45; that Petitioners acquired Parcel 99 in 1992 and Parcel 90 in 2002; that they live on 99 and rent 90; that there is a right of way to the house on 90 but it is not shown on the site plan. T. 44-47. He also described in more detail the steep slopes, "probably 40%", behind the house on Parcel 90, the presence of "a lot of trees" and the closeness to Little Falls. T. 52-53.

The record reflects that Mr. Raphel was able to give the property description one would expect from a surveyor, but had no basis, foundation, knowledge, or reasoning to

support his zoning opinions. It was at this point that Petitioner's counsel asked for a recess and then came back to dismiss without prejudice. T. 53-54.

People's Counsel objected. Argument followed, in which People's Counsel raised, among other things, the issues of fair play, the time and resources spent in preparing and going to trial, and Petitioner's attempt to get out of a case that was not going well. The Board decided to allow the dismissal without prejudice. T. 54-67. Its January 7, 2004 Order of Dismissal of Petition came two weeks later. After an outline of the course of proceedings and argument, the Board justified its decision with this conclusion on Page 2 of the Order:

> Having heard oral argument on both sides of the issue, the Board determined that Mr. Alderman [Petitioners' counsel] under the current rules of the Board, could request withdrawal of the case, without prejudice, and the Petition for Special Hearing was withdrawn and the appeal accordingly dismissed.

## ARGUMENT

### The Nature of Judicial Review of Administrative Action

This petition for judicial review is authorized by statute under the Express Powers Act, Md. Ann. Code Art. 25A, Sec. 5(U), Baltimore County Charter Sec. 604, and Maryland Rules 7-201, et seq. But it also partakes of the original jurisdiction of the court to review administrative actions.

The Court exercises a form of original jurisdiction and inherent right to review the action of an administrative agency. Bucktail v. Talbot County 352 Md. 530, 542 (1999). Judge Rodowsky there cited Criminal Injuries Compensation Board v. Gould 273 Md. 486 (1975). This includes a comprehensive discussion of the function of judicial review:

....this Court, in a long line of cases, has consistently held that the Legislature cannot divest the courts of the inherent power they possess to review and correct actions by an administrative agency which are arbitrary, illegal, capricious, or unreasonable. [citations omitted]

Chief Judge Hammond, who delivered the majority opinion in Insurance Comm'r v. National Bureau of Casualty, *supra*, stated:

> The courts have been alert to exercise their residual power to restrain improper exercises of administrative powers whether judicial or legislative in nature. If the legislature has not expressly provided for judicial review, a court will ordinarily utilize its inherent powers to prevent illegal, unreasonable, arbitrary, or capricious administrative action. .... 273 Md. At 501-02.

**Procedural Due Process and Irregularities**

This petition does not raise the usual kind of question presented to the court upon review of a zoning decision. Ordinarily, the Court must review the facts to determine whether there is substantial evidence to support the agency's mixed factual and legal judgment or, less frequently, to determine if there has been a clear error of law on the merits.

The present case is different because it is, as a practical matter, a case interrupted. A trial began, and then ended, abruptly. There is, therefore, added to the issue of "arbitrary and capricious" action the overlay that agencies must provide procedural due process of law to parties who appear before them. In Maryland Aggregates v. State 337 Md. 658, 686 (1995), Judge Eldridge quoted from Maryland State Police v. Ziegler 330 Md. 540 (1993):

> Procedural due process, guaranteed to persons in this State by Article 24 of the Maryland Declaration of Rights, requires that administrative agencies performing adjudicatory or quasi-judicial functions observe the basic principles of fairness to parties appearing before them.

## The Function of People's Counsel for Baltimore County: Defense of the Comprehensive Maps; Density Issues

### The Charter

Under Baltimore County Charter Sec. 524.1(b), People's Counsel is responsible to defend the comprehensive zoning maps and master plan in land use cases on behalf of the public interest. This section states, *inter alia*:

> ***Powers and Duties*: The people's counsel shall have the following powers and duties:**
>
> **A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general, <u>to defend any duly enacted</u> master plan and/or <u>comprehensive zoning maps</u> <u>as adopted by the county council,</u> and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. ... He shall have in such appearance, all the rights of counsel for a party in interest, ...." (Emphasis supplied).**

The Courts have applied the broad language underlined above to approve the participation of People's Counsel in all sorts of land use cases, including reclassifications, special exceptions, variances, special hearings and cases involving the master plan. <u>People's Counsel v. A.V. Williams</u> 45 Md. App. 617 (1980); <u>People's Counsel v. Webster</u> 65 Md. App. 694 (1986); <u>People's Counsel v. Mockard</u> 73 Md. App. 340 (1987); <u>People's Counsel v. Maryland Marine Mfg. Co.</u> 316 Md. 491 (1989); <u>Board of Child Care v. Harker</u> 316 Md. 683 (1989); <u>People's Counsel v. Mangione</u> 85 Md. App. 738 (1991); <u>Red Roof Inns v. People's Counsel</u> 96 Md. App. 219 (1993); <u>United Parcel Service v. People's Counsel</u> 336 Md. 569 (1994); <u>Security Management Co. v. Baltimore</u>

County 104 Md. App. 234 (1995), cert. denied; People's Counsel v. Beachwood 107 Md. App. 627 (1995), cert. denied; Umerley v. People's Counsel 108 Md. App. 496 (1996), cert. denied; People's Counsel v. Prosser 119 Md. App. 150 (1998); Riffin v. People's Counsel 137 Md. App. 90 (2001), cert. denied; Marzullo v. Kahl 366 Md. 158 (2001); People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002); and Lucas v. People's Counsel 147 Md. App. 209 (2002). These have included reclassifications (Williams, Mockard, Beachwood, Prosser), special exceptions (Webster, Mangione, Umerley, Country Ridge, Lucas), variances (Red Roof Inns, Riffin), and the master plan or historic district identified in the plan (Webster and Lucas).

The Court of Appeals cases has often found that special hearing cases involving legal interpretation of the applicable zoning regulations and maps are of great public interest. (Maryland Marine, Harker, United Parcel Service, Marzullo) The present case involves a special hearing which raises density transfer issues. As A somewhat similar issue arose in People's Counsel v. Crown Development Corp. 328 Md. 303 (1992).

There, a single question of density transfer arose in a development case. People's Counsel learned of the case when it reached the circuit court level and sought to intervene. Judge John McAuliffe wrote, at 328 Md. 317:

> **In any event, the circuit did not err in permitting intervention. People's Counsel has been given a broad charge to protect the public interest in zoning and related matters. See Baltimore County Charter Sec. 524.1. Density regulation is an important part of the zoning process.**

## I. The County Board of Appeals Decision to Approve a Voluntary Dismissal Without Prejudice Is Subject to Review for Arbitrariness, Capricious, and Illegality

Clearly, the CBA decision is subject to the inherent right of the courts to review administrative action for arbitrariness, capriciousness, and illegality. It is not immune. Because it involves a procedural issue, the court must also consider the fairness of the proceedings.

Ordinarily, the Rules of the forum provide guidance on procedural fairness. Therefore, we begin with an examination of the CBA Rules. There is no specific rule concerning voluntary dismissal of petitions. Rules 3b, 4b and 7d, however, provide helpful clues to the solution of this problem.

Rule 3b states that an appeal may be withdrawn or dismissed at any time prior to the conclusion of the hearing. It does not, however, refer to petitions. There is good reason for the distinction. The withdrawal of an appeal leaves intact the decision appealed. It leaves the prevailing party conclusively with the benefit of the earlier decision, ends the case, and thus does not cause prejudice, other than the effort to oppose the appeal. On the other hand, the withdrawal of the petition leaves open the potential to file the same petition another day, correct perceived omissions, change strategy and tactics, and cause the opposing party much more aggravation and effort. This cycle can be repeated again and again. It is also significant that Rule 3b is silent as to the terms of the withdrawal or dismissal. This reinforces the idea that it applies to appeals but not petitions. If it applied to petitions, the fundamental principles of administrative law would require the Board to exercise reasonable discretion to decide whether should be with or

without prejudice. We submit, therefore, based on plain language and the consequences for fairness, that Rule 3b does not allow a petition to be withdrawn without prejudice at any time prior to the conclusion of the hearing.

Rule 4b delegates to the Board chairman the responsibility to regulate the course of the hearing and rule upon procedural matters, subject to the concurrence of the Board majority. This responsibility is necessarily subject to the aforesaid principles that administrative action be reasonable, not arbitrary or capricious, and consistent with procedural due process of law.

Rule 7d also comes into play. It imposes the burden of proof on the proponent of any action. Once the trial begins, the Petitioner must meet its burden to prove a *prima facie* case on the merits. Petitioners' dismissal in midstream also presents the issue of failure to meet the burden of proof. This act of abandonment should be considered final.

It is only fair and logical to conclude that voluntary dismissals, like other administrative actions, are subject to these fundamental principles of administrative law. The County Board of Appeals erred, therefore, in deciding that Petitioners were entitled, as a matter of law, to dismiss without prejudice in the middle of the trial. The CBA failed to recognize that it must exercise discretion and consider the justification, if any, for the dismissal and the potential prejudice to the opposing party.

## II. The CBA Abused Its Discretion in Granting a Dismissal Without Prejudice in the Middle of the Trial

To gain insight, we examined how the Maryland and Federal Courts handle voluntary dismissals. Maryland Rule 2-506(b) provides that after a defendant files an

answer or motion for summary judgment, "... a plaintiff may dismiss an action only by order of court and upon such terms and conditions as the court deems proper." The Rule dates from 1984. Its Source note cites its derivation as prior Rule 541b and the 1968 version of Federal Civil Rule 41(a)(2). The contemporary 1984 Maryland Rules Commentary states, at page 269:

> Under former Rule 541, the plaintiff to a law action could dismiss an action voluntarily at any time before the introduction of evidence at trial. This often resulted in abuse, giving the plaintiff control over the court's trial docket and over the judge and jury before whom he was submitting the case. If the plaintiff was dissatisfied with the appearance of the jury panel or with the judge to whom the case was assigned, he simply filed a notice of dismissal without prejudice. The lawsuit would be filed again shortly thereafter, commencing the case once again from the beginning. This obviously operated to the prejudice of the parties and the court.

The Commentary also observes that "... the decisional law under F.R. Civ. P. 41 serves as a guide to the circumstances under which dismissal will not be allowed." Page 270. See, e.g. Owens-Corning Fiberglas Corp v. Fibreboard Corp. 95 Md. App. 345, 348-51 (1993)

Even under former Rule 541, a plaintiff could not unilaterally dismiss an action after the introduction of evidence. Under new Maryland Rule 2-506(b), Scheve v. Schudder 328 Md. 363, 376-78 (1992) and Owens-Corning, *supra*, are particularly helpful. In Scheve, a tax sale purchaser with a change of heart sought voluntary dismissal of orders of redemption which had been entered in their favor in two cases. The Circuit Court first struck the orders at their request, but then reentered them as a matter of law upon motions for judgment by defendants. Upon appeal, the Court of Appeals held that Rule 2-506(b) gave the Circuit Court discretion with respect to the dismissal and ordered

limited remand for that purpose. In Owens-Corning, a complex asbestos case, two of the cross-claimants requested dismissal without prejudice after jury selection, pretrial and evidentiary rulings, and opening statements by plaintiffs and non-settling defendants, (but before opening statements on the cross-claims). The Circuit Court rather dismissed with prejudice, and the Court of Special Appeals affirmed. Judge Rosalyn B. Bell wrote:

> In the instant case, the trial judge was ready to proceed with the trial, the jury had been empanelled and sworn, and some of the parties had given their opening statements. The judge, wanting to move the case forward, offered Owings-Corning and Keene a choice of dismissing their cross-claims with prejudice or going forward with their cross-claims at trial. This was not the choice they wanted, but the trial judge made it clear that this was what was available to them. When they continued to balk, the trial judge merely did what he told them he would do, namely, grant their motion to dismiss, but with the condition of prejudice. We cannot say that he abused the discretion given to him by the rules. 95 Md. App. at 364.

The federal courts have developed standards to govern the exercise of discretion in handling pretrial voluntary dismissals. In Zagano v. Fordham University 900 F.2d 12 (2d Cir. 1990), plaintiff Zagano moved for voluntary dismissal less than ten days before trial and then refused to proceed with trial after denial of her motion. The trial judge dismissed with prejudice, and the appellate court affirmed. The Second Circuit articulated the following criteria to govern the exercise of discretion at 900 F.2d, at 14:

> Factors relevant to the consideration of a motion to dismiss without prejudice include the plaintiff's diligence in bringing the motion; any 'undue vexatiousness' on plaintiff's part; the extent to which the suit has progressed, including the defendant's effort and expense in preparation for trial; the duplicative expense of relitigation; and the adequacy of plaintiff's explanation for the need to dismiss.

Minnesota Mining v. Barr Laboratories 289 F.3d 775 (8th Cir. 2002) dealt with plaintiff 3M's motion to dismiss without prejudice, which was filed after information disclosed in

discovery cast doubt on the main claim. The Court identified these "... factors to consider in exercising this discretion ... : whether the party has presented a proper explanation for its desire to dismiss; whether a dismissal would prejudice the defendant; whether a dismissal would result in a waste of judicial time and effort; whether a dismissal would prejudice the defendant; and whether the dismissal was designed to avoid an adverse judgment." In affirming a dismissal with prejudice, the Court wrote:

> The district court here considered appellant's claimed entitlement to a dismissal without prejudice under Rule 41(a)(2), but found no legitimate justification for the appellants to dismiss the action without prejudice. The district court concluded that the appellants were seeking to avoid a judgment that would be adverse to their interest ... and that this was not a legitimate justification for their desire to dismiss without prejudice. ... Because the district court properly found that 3M had not offered a sufficient justification for a dismissal without prejudice, we hold that the district court did not abuse its discretion in denying 3M's motion. Indeed, under the circumstances, a dismissal without prejudice might well have constituted an abuse of discretion since 3M was plainly seeking to avoid an adverse judgment.

Similarly, Phillips USA v. Allflex USA 77 F.3d 354, 358 (7th Cir. 1996), affirmed the lower court's denial of a motion to dismiss without prejudice which was made after the opposing party filed a motion for summary judgment. The appellate court reinforced its adoption of the following factors: "the opposing party's effort and expense in preparing for trial ...; excessive delay and lack of diligence on the part of the movant ...; and insufficient explanation of the need for dismissal ..." The court may also "... consider the present stage of litigation." Ibid. Ultimately, the opinion concluded:

> We agree with the district court that a party should not be permitted to avoid an adverse decision on a dispositive motion by dismissing a claim without prejudice.

Subsequently, in Jones v. Simek 193 F.3d 485 (7th Cir. 1999) the Seventh Circuit affirmed a refusal to dismiss without prejudice where a motion was filed thirteen days prior to trial. The Court wrote:

> Similarly, there was no abuse of discretion in the court's refusal to dismiss without prejudice. ... The case was well advanced, the defendants had invested considerable time and resources in trial preparation, as had the court, and Jones' reason for the request (a scheduling conflict) was weak.

* * *

Let us apply the relevant criteria. The zoning proceeding here was more than "well advanced." It was in the middle of a *de novo* CBA trial upon appeal of a zoning commissioner decision. The Petitioner gave no reason or justification for the voluntary dismissal. The record demonstrates, however, that the motion came after an inadequate presentation by Petitioner's expert witness. Clearly, the motion was made to avoid an adverse judgment (the inevitability of which we discuss below). People's Counsel had prepared the case. DEPRM staff expert Wallace Lippincott was ready to testify. Dr. McQuaid had come in from the north county. The CBA had expended its time and resources, as had the Zoning Commissioner and various county agencies who submitted comments. Moreover, CBA Rule 7d places the burden of proof on the Petitioners. In walking away from the case, Petitioners failed to make a *prima facie* on the merits.

It is unjust to allow Petitioner to walk away without consequences and without accountability. Petitioner could then start the case anew and even repeat the tactic. Petitioner could also try to find some avenue to slip a similar proposal through the county bureaucracy and obtain approval without public notice or hearing. For example,

according to Mr. Raphel, a county official told him that Parcel 90 had two lots available to it. If that is true, then but for the transfer request, a county staff member might have approved further subdivision of Parcel 90 without a public hearing. This, in our view, would clearly be contrary to the law. The present case would have resolved the issue if taken to its conclusion on the merits. But with the dismissal without prejudice, the Petitioners may go back to county staff and try to subdivide Lot 90 without a public hearing.

The entry of a dismissal without prejudice here, therefore, is not just a tactic to avoid an adverse judgment. It may facilitate indirectly the circumvention of the zoning density limits in another way.

All the relevant factors, singly and in combination, negate any justification for dismissal without prejudice. It was arbitrary and capricious for the CBA to enter such an Order.

We also submit the dismissal without prejudice violates procedural due process of law. It subvertes basic principles of fair play in administrative proceedings. These are integral to ordered liberty in the American system of justice.

**The R.C. 4 Zone Density of 0.2 Is Applicable to an Assembled Tract of Contiguous Parcels in Excess of Ten Acres**

We set forth the Webster's Third New International Dictionary definition of "tract" earlier. It is broad. It identifies both undefined and defined areas of land. The assembly of two contiguous parcels clearly forms a single tract. A tract of ten acres or

more is subject to a maximum density of 0.2 under BCZR 1A03.4.1.b. The Petitioners' tract of 11.55 acres, consisting of Parcels 99 and 90, has a maximum density of two lots. Moreover, the legislative purpose of the Watershed Protection Zone to protect the water supply militates against the manipulation of density standards to increase development in these sensitive areas.

We also noted the use of "tract" for the purpose of density calculation is the more meaningful because it is broader than the "lot of record" baseline used in the R.C.2 (Agricultural) Zone. The legislative history confirms the importance of this distinction. In 1992, the County Council enacted Bill 113 to amend the R.C. 4 standards. This Bill, attached as Exhibit 3, amended BCZR 1A03.4 to repeal "lot of record" and replace it with "tract" as the benchmark for calculation of zoning density. It provided for the first time the 0.2 density for lots over 10 acres.

The case law is also in accord.

Leiser v. City of Eureka 59 S.W. 2d 597 (2001) involved a statute which allowed the owner of a tract of land located within two or more municipalities to elect to belong entirely, with the assent of the receiving municipality, in one of the municipalities. The property at issue, located in Eureka and Wildwood, consisted of four separate parcels. This led to a fight between the two cities over whether Eureka could have jurisdiction over parcels located in Wildwood. The question became whether the contiguous parcels amounted to a single "tract." The Court answered in the affirmative. After examining the Webster's Dictionary definition and various prior legislative and judicial meanings given to "tract," the Court wrote:

> From these definitions we conclude that the unity created by the ownership, control, or use of contiguous pieces of land may establish it as a 'tract' as that term is used in the statute. Plaintiff's real estate .... , which consists of four adjacent parcels, is a 'tract' of land within the purview of 72.424 RSMo (2000).

Smith v. Clackamas County 797 P.2d 1061 (Ore. App. 1990) dealt with an application to build a non-farm dwelling on part of a 54-acre parcel in an Exclusive Farm Use (EFU) zone. One of the statutory standards required a determination whether the proposed dwelling is "... situated upon generally unsuitable land for the production of livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract;". The property owner suggested that the relevant "tract" would be the part on which the proposed dwelling would be located. The Court disagreed, at 797 P.2d 1060-61:

> The agricultural lands statutes were meant to be interrelated in their objectives and applications. ... We agree with LUBA [Land Use Board of Appeals] that the ORS 215.243 policy of preserving 'large blocks' of agricultural land is possibly the strongest single reason for requiring general unsuitability to be measured against an entire commonly-owned tract rather than only the part on which the proposed dwelling would be located. Petitioner's reading ... would promote the kind of balkanization that ORS 215.243 precludes.
>
> We recognize that, if the entire tract must be generally unsuitable for any part of it to qualify as the location of a non-farm dwelling, the sites that can qualify in EFU zones will probably be few and far between. However, ORS 215.283(3) was not intended to facilitate non-farm dwellings on agricultural land. It creates 'rigorous criteria' for allowing them. Emphasis supplied.

The Oregon Supreme Court affirmed. 836 P.2d 716 (Ore. 1992). It pointed out that the various related statutory criteria all "look to the surrounding land, not just the smaller area designated by its owner for a proposed change in use. 836 P.2d, at 721. In conclusion, the Court stated:

> ZDO 402.05.A.4 permissibly conditions county approval of any proposed dwelling in part on a finding that the proposed dwelling site itself, considered in relation to and as part of the larger tract of commonly owned property, is 'generally unsuitable for the production of farm crops and livestock.' Ibid. Emphasis supplied.

Holt v. Wichita County Water Improvement Dist. 48 S.W. 2d 527 (Tex. App. 1932) addressed a law which authorized the imposition of delinquent tax liens on tracts of land. The case held that a "tract" included, among other things, all contiguous lots in single ownership or control, so there was no requirement to impose a lien on a lot-by-lot basis. The court reviewed various legislative and judicial sources and dictionary definitions. They confirmed the broad definition of "tract" as any contiguous quantity of land under single ownership or, in one case, in the same subdivision. Young v. Shriver 206 P. 99 (Cal. App. 1922) gave a similar analysis of "tract" in the context of a statutory lien for mechanics and materialmen who grade, fill in, or otherwise improve property.

In the present case, the Petitioner has a single tract of 11.55 acres which consists of the contiguous Parcels 99 and 90. The maximum density of 0.2 translates to an allowance of two lots for this tract. Petitioner has proceeded on the faulty premise that the property has three lots available, and that Parcel 90 may be subdivided to add a third lot to the existing two lots.

Moreover, the proposed additional development undermines the purpose of the Watershed Protection Zone. Judge Alan Wilner described the purpose of the R.C. 4 zone in Security Management Corp. v. Baltimore County 104 Md. App. 234, 238 (1995):

> The specific purpose of that zone, as set forth in the Baltimore County Zoning Regulations (BCZR Sec. 1A03.1) is to provide for the protection of water supplies of metropolitan Baltimore and neighboring jurisdictions by preventing

contamination through unsuitable types or levels of development in their watersheds.

In this context, we also note the statement of purpose in Bill 113-92 to, among other things, "... provide standards that conserve valuable and limited natural resources, provide open space and protect the character of rural-residential development in certain Resource Conservation Areas."

The County Board of Appeals would have had to deny the Petition because it exceeded the maximum density and undermined the statutory purpose. The withdrawal of the Petition, therefore, avoided this adverse judgment. It also prejudiced People's Counsel's defense of the comprehensive zoning maps and law. The issue is of public importance and will recur in other situations. It is ripe, therefore, for review now and should not be short-circuited.

## III. There Is No Legal Authority to Reconfigure or Adjust Lot Lines to Effectuate a Transfer of Density

The Petition described the proposal in various ways: as a reconfiguration of lots, a transfer of acreage, and accumulation of density between like zoned parcels. As we have shown, it proceeded upon the false premise that there exist two "tracts" for the purpose of R.C. 4 zone density calculation. But even if Parcels 99 and 90 could properly be called separate tracts, the Petition would still fail for several reasons.

In attempting to change the parcel or lot boundaries, the Petition necessarily eliminates the existing Parcel boundaries in order to create new boundaries. The erasure of the current Parcel 99/90 boundary line effectively merges the two parcels into one area

or "tract" with 11.55 acres. This further destroys Petitioners' theory that they have two tracts of land for the purpose of density calculation.

In other words, one cannot create two new parcels without first wiping out the old parcel boundaries. Even if the 11.55 acre area were not already a tract, it would become one by virtue of manipulation of boundary lines.

* * *

There is a deeper problem. No matter what names the Petitioners give to their scheme, it seeks to accomplish a transfer of density from Parcel 90 to Parcel 99. Even if Parcel 90 had available the subdivision lot density for two lots, the Baltimore County Zoning Regulation do not delegate or provide any authority to transfer density. There is no such authority in the absence of legislation.

In West Montgomery Ass'n v. MNCP & P Comm'n 309 Md. 183 (1987), Judge John McAulifffe explained that specific legislation is a prerequisite for a charter county to provide for transfer of density under zoning law. He underlined, moreover, that there must be precise standards to govern density transfer. Among other things, the Court wrote, at 309 Md. 200:

> Applying the established criteria to the facts of this case, we find the delegation of authority impermissible. No legislative determination was made to limit or define the optional densities that could or should be assigned to any property in the vast area involved.

Here, there is no legislative authority, much less standards, to allow the Zoning Commissioner, or the County Board of Appeals, to transfer density in the vast areas zoned for Watershed Protection or for other Resource Conservation purposes. In a case

involving the R.C.2 (Agricultural) Zone, Judge Barbara Howe wrote this in the Matter of Gudeman case, 89 CG 911 (1990), attached as Exhibit 4:

> There is no dispute that, ordinarily, and by statute, property of this size may only be allowed two development lots. Nothing in the statute permits roads to be used as density multipliers; there is also nothing in the statutes to allows transfers of density from one parcel to another. Despite this fact, for a number of years the Zoning Commissioner, pursuant to a 'policy' has apparently been doing these things. The transfer of density is a **zoning** function which cannot even be accomplished by amendments to the master plan duly approved by a Planning Commissioner or Planning Board let alone by unilateral action by a zoning commissioner under the guise of 'policy.' West Montgomery Association v. MNCP & P Comm'n 309 Md. 183 (1987).

The Court of Special Appeals affirmed Judge Howe's decision in Gudeman v. People's Counsel for Baltimore County No. 396, (Sept. Term, 1990), Unreported. The appellate court did not discuss the transfer issue, having found sufficient other grounds to affirm. Judge Howe's decision remains as a key Baltimore County Circuit Court judicial decision on the issue of transfer of density in the Resource Conservation Zones.

**Conclusion: Final Comment on the County Board of Appeals Opinion**

In light of the law, if one returns again to the County Board of Appeals opinion, one finds a lack of understanding of the law and the principles of fair play which govern voluntary dismissals. The CBA evidently felt obligated to allow the Petitioner to control the proceedings, manipulate events to its advantage, avoid an adverse judgment, and cause the other parties, witnesses, staff, and the Board itself to endure a colossal waste of time and resources.

The CBA's decision was short-sighted, unfair, intolerable, and unacceptable. To say that it was arbitrary, capricious, and unreasonable is to put it mildly. This case

provides, however, an excellent opportunity for the Circuit Court to explain and apply the law which governs voluntary dismissals in the agency setting. The fundamental principles of administrative law and justice require the agency to act reasonably and to enforce fair play. That did not happen in this case.

The Court should reverse the Board's Order. It should require that the dismissal be with prejudice, and explain the law applicable to density and density transfer on tracts in the Watershed Protection Zones.

/S/

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

/S/

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 8th day of March, 2004, a copy of the foregoing People's Counsel for Baltimore County's Memorandum was mailed to Lawrence S. Wescott, Chairman, Baltimore County Board of Appeals, 400 Washington Avenue, Room 49, Towson, MD 21204 and to Christopher Walters and Susan Gossling, 1132 Wiseburg Road, White Hall, MD 21161, Legal Owners and Zoing Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

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

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

March 8, 2004

RECEIVED
MAR 0 8 2004
BALTIMORE COUNTY
BOARD OF APPEALS

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

Hand-delivered

Re: Petition for Judicial Review of the Decision
of the County Board of Appeals
In the Matter of Christopher Walters & Susan Gossling
**Case Number: 03-C-04-0688**

Dear Sir or Madam:

Enclosed please find the People's Counsel for Baltimore County's Memorandum to be filed with regard to this case. If you have any questions or concerns, please contact my office.

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw
Enclosures

cc: Lawrence S. Wescott, Chairman, County Board of Appeals
Christopher Walters & Susan Gossling, Petitioners

2/10/04

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY *
Old Courthouse, Room 47
400 Washington Avenue *
Towson, MD 21204

* CIVIL ACTION
NO.: 03-C-04-0688

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

IN THE MATTER OF: *
CHRISTOPHER WALTERS AND
SUSAN GOSSLING – LEGAL OWNERS *
1130-1132 WISEBURG ROAD
WHILE HALL, MD 21161 *

7TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT

*

CBA CASE NO: 03-448-SPH

* * * * * * * * * * *

RECEIVED FILED
2004 FEB -6 A 9:43
CLERK OF CIRCUIT COURT

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

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

**03-448-SPH**

| | |
|---|---|
| March 27, 2003 | Petition for Special Hearing Request filed by Howard L. Alderman,Jr., Esquire, on behalf of Christopher L. Walters and Susan E. Gossling, requesting the reconfiguration of Parcels 90 & 99. |
| April 10 | Notice of Zoning Hearing |
| April 10 | Entry of Appearance filed by People's Counsel for Baltimore County |
| May 20 | Publication in newspaper |
| May 20 | Certificate of Posting |
| May 30 | ZAC Summary of Comments |
| June 4 | Hearing Held before the Zoning Commissioner |
| June 18 | Findings of Fact and Conclusions of Law issued by the Zoning Commission. Petition for Special Hearing Request GRANTED. |
| July 15 | Notice of Appeal from Office of People's Counsel, Baltimore County, Maryland |
| December 23 | Hearing by Board of Appeals. |
| January 7, 2004 | Opinion issued by the Board of Appeals – Petition for Special Hearing is WITHDRAWN AND DISMISSED. Appeal filed in this matter is therefore moot. |
| January 21 | Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County, Maryland. (Civil Action No.: 03-C-04-0688) |
| January 27 | Certificate of Notice sent to interested parties. |

| | |
|---|---|
| February 3 | Transcript of Proceedings filed |
| February 6 | Record of Proceedings filed in the Circuit Court for Baltimore County. |

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

Respectfully submitted,

Theresa R. Shelton

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

c. People's Counsel for Baltimore County
Howard L. Alderman, Jr. Esquire
Eugene Raphel

PETITION OF: PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

CIVIL ACTION NO.: 3-C-04-0688

MATTER OF: CHRISTOPHER WALTERS AND SUSAN GOSSLING

RECEIVED FROM THE COUNTY BOARD OF APPEALS / BOARD'S RECORD EXTRACT AND TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE AND EXHIBITS.

CLERK'S OFFICE

DATE: February 6, 2004

1/21/04

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY *
Old Courthouse, Room 47
400 Washington Avenue *
Towson, MD 21204
* CIVIL ACTION
FOR JUDICIAL REVIEW OF THE NO.: 03-C-04-0688
OPINION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

IN THE MATTER OF: *
CHRISTOPHER WALTERS AND
SUSAN GOSSLING – LEGAL OWNERS *
1130-1132 WISEBURG ROAD
WHILE HALL, MD 21161 *

7TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT
*
CBA CASE NO: 03-448-SPH
* * * * * * * * * * * *

**CERTIFICATE OF NOTICE**

Madam Clerk:

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

Peter Max Zimmerman
People's Counsel for Baltimore County, Office of People's Counsel,
400 Washington Ave., Towson, MD 21204

RECEIVED AND FILED
2004 JAN 27 1 P 12: 27
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Carole S. DeMilio
Deputy People's Counsel for Baltimore County, Office of People's Counsel, 400 Washington Ave., Towson, MD 21204

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204

Christopher Walters
Susan Gossling
1132 Wiseburg Road, White Hall, MD 21161

Eugene Raphel
E F Raphel, Inc., 205 Courtland, Towson, MD 21204

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

Theresa R. Shelton

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

**I HEREBY CERTIFY** that a copy of the foregoing Certificate of Notice has been mailed to Howard L. Alderman, Jr., Esquire, Levin & Gann, P.A., 8th Floor, Nottingham Centre, 502 Washington Avenue, Towson, MD 21204; Christopher Walters and Susan Gossling, 1132 Wiseburg Road, White Hall, MD 21161; Eugene Raphel, E F Raphel, Inc., 205 Courtland, Towson, MD 21204, and HAND DELIVERED to Peter Max Zimmerman and Carole S. DeMilio, Office of People's Counsel, 400 Washington Ave., Towson, MD 21204, this 27th day of Janaury, 2004.

Theresa R. Shelton

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

County Board of Appeals of Baltimore County

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

January 27, 2004

HAND DELIVERED

Peter Max Zimmerman
People's Counsel for Baltimore County
Office of People's Counsel
400 Washington Ave.
Towson, MD 21204

**RE: Circuit Court Civil Action No. 3-C-04-0688**
**Petition for Judicial Review**
*Christopher Walters and Susan Gossling*
*1130-1132 Wiseburg Road, White Hall, MD*
Case No.: 03-448-SPH

Dear Mr. Zimmerman:

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

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

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Legal Secretary

/trs
Enclosure
c: Howard L. Alderman, Jr. Esquire
Eugene Raphel

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

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

January 27, 2004

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
502 Washington Avenue
8th Floor
Towson, MD 21204

**RE: Circuit Court Civil Action No. 3-C-04-0688**
**Petition for Judicial Review**
*Christopher Walters and Susan Gossling*
*1130-1132 Wiseburg Road, White Hall, MD*
Case No.: 03-448-SPH

Dear Mr. Alderman, Jr.:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on January 21, 2004, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. **3-C-04-0688.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: Peter Max Zimmerman / People's Counsel for Baltimore County
Eugene Raphel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director / PDM

Printed with Soybean Ink
on Recycled Paper

1/21/04

| | | |
|---|---|---|
| **PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY**, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204 | * | IN THE |
| | * | |
| | * | CIRCUIT COURT |
| FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204 | * | |
| | * | RECEIVED JAN 26 2004 |
| IN THE MATTER OF THE APPLICATION OF **Christopher Walters and Susan Gossling** FOR A SPECIAL HEARING for property located on the N/E corner ofWiseburg Road and Peters Avenue (1130-1132 Wiseburg Road) 7th Election District, 3rd Councilmanic District | * | BALTIMORE COUNTY BOARD OF APPEALS |
| | * | |
| | * | Civil No. |
| Case No. 03-448-SPH before the County Board of Appeals of Baltimore County | * | C-04-0688 |

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

## PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial review of the Order of Dismissal of Petition by the County Board of Appeals dated January 7, 2004 in the above case. PEOPLE'S COUNSEL was a party to the proceeding before the County Board of Appeals of Baltimore County in this matter.

This Petition is filed pursuant to Rule 7-202 of the Maryland Rules of Procedure.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County
2004 JAN 21 P 2:57

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 21st day of January, 2004, a copy of the foregoing Petition for Judicial Review was mailed to Howard L Alderman, Jr., Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204, Attorney for Petitioners, and to Charles L. Marks, Panel Chairman, County Board of Appeals, Old Courthouse, 400 Washington Avenue, Towson, MD 21204,.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

# *Baltimore County, Maryland*

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

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel


January 21, 2004

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

Hand-delivered

Re: Petition for Judicial Review of the Decision
of the County Board of Appeals
In the Matter of Christopher Walters & Susan Gossling

Dear Sir or Madam:

Please file the enclosed please find the Petition for Judicial Review for be filed with regard to the above-captioned matter. If you have any questions or concerns, please contact my office.

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman/rmw

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw
Enclosures

cc: Howard L. Alderman, Esquire
Charles L. Marks, Chairman


RECEIVED AND FILED
2004 JAN 21 P 2:57
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

1/7/04

| | | |
|---|---|---|
| IN THE MATTER OF<br>THE APPLICATION OF<br>CHRISTOPHER WALTERS AND<br>SUSAN GOSSLING -LEGAL OWNERS<br>/PETITIONER FOR SPECIAL HEARING ON<br>PROPERTY LOCATED ON THE NE/COR<br>OF WISEBURG RD AND PETERS AVENUE<br>(1130-1132 WISEBURG ROAD)<br>7TH ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | *<br>*<br>*<br>*<br>*<br>* | BEFORE THE<br>COUNTY BOARD OF APPEALS<br>OF<br>BALTIMORE COUNTY<br>Case No. 03-448-SPH |

* * * * * * * * *

## ORDER OF DISMISSAL OF PETITION

This case was appealed to the Board based on a decision rendered by the Zoning Commissioner in which a Special Hearing request was approved by the Zoning Commissioner under date of June 18, 2003. A timely appeal was filed by the Office of People's Counsel for Baltimore County on July 15, 2003.

The Board held a public hearing on December 23, 2003. Howard L. Alderman, Jr., Esquire represented the Petitioners. Peter Max Zimmerman, People's Counsel for Baltimore County, appeared on behalf of that office. Additional attendees at the hearing included Christopher Walters, Susan Gossling, and E. F. Raphel for Petitioners; and Wally Lippincott, Jr., from the Department of Permits & Development Management, and Dr. Richard McQuaid, Protestant.

After opening statements, Mr. Alderman offered Eugene Raphel as his first witness. Mr. Raphel is a Maryland licensed land surveyor with 50 years of experience in land surveying and land development in Baltimore County. He prepared the plat in question (Petitioner's Exhibit #1). Mr. Alderman questioned the witness extensively on his qualifications relative to his knowledge and expertise in the R.C. zones and subdivision thereof. Likewise, Mr. Zimmerman questioned him under his *voire dire*.

The entire process consumed over one hour. The Board recognized the witness in his profession as a licensed land surveyor in Maryland and agreed to accept Mr. Raphel as an expert in the fields of R.C. zoning and land development but only to the extent the Board members determined credibility as to facts and conditions that supported his findings. Those determinations would be left to each Board member to evaluate at the time of public deliberation.

The Board noted the continuing objection of Mr. Zimmerman as to the expertise of Mr. Raphel as it pertained to knowledge of the R.C. zones and general land development. The record will speak for itself relative to the testimony of Mr. Raphel and cross-examination by Mr. Zimmerman.

At the conclusion of Mr. Zimmerman's cross, Mr. Alderman requested a brief recess, which was granted. The Board reconvened, and Mr. Alderman requested that the Petitioner be permitted to withdraw his Petition without prejudice. Mr. Zimmerman objected, indicating that he was prepared to go forward with his case. He cited the Board Rules, specifically Rule 4 which gives the Chairperson the right to regulate the course of the hearing and rule upon procedural matters, subject to the concurrence of a majority of the Board conducting the hearing. It was Mr. Zimmerman's argument that the Board had the right to dismiss the case with prejudice. Mr. Alderman argued Rule 3, "Appeals" indicates that an appeal may be withdrawn or dismissed at any time prior to the conclusion of the hearing on appeal.

Having heard oral argument on both sides of the issue, the Board determined that Mr. Alderman, under the current rules of the Board, could request withdrawal of the case, without prejudice, and the Petition for Special Hearing was withdrawn and the appeal accordingly dismissed.

**IT IS THEREFORE**. this 7th day of January, 2004 by the County Board of Appeals of Baltimore County

**ORDERED** that said Petition for Special Hearing filed in Case No. 03-448-SPH is **WITHDRAWN AND DISMISSED**; that the appeal filed in this matter is therefore moot; and that the Deputy Zoning Commissioner's Order of June 18, 2003, including any and all relief granted therein, is rendered **null and void.**

**COUNTY BOARD OF APPEALS**
**OF BALTIMORE COUNTY**

Charles L. Marks, Chair

Lawrence S. Wescott

Edward W. Crizer, Jr.

County Board of Appeals of Baltimore County

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

January 7, 2004

Howard L. Alderman, Jr., Esquire
LEVIN & GANN, P.A.
Nottingham Centre, 8th Floor
502 Washington Avenue
Towson, MD 21204-4525

RE: *In the Matter of: Christopher Walters & Susan Gossling*
- Petitioners Case No. 03-448-SPH /Withdrawal of Petition

Dear Mr. Alderman:

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

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
**Administrator**

Enclosure

c: Christopher Walters and Susan Gossling
Peter M. Zimmerman, People's Counsel
for Baltimore County
E. F. Raphel, Inc. /Eugene Raphel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

| | | |
|---|---|---|
| PETITION FOR SPECIAL HEARING<br>NE/Corner Wiseburg Road & Peters Avenue<br>(1130-1132 Wiseburg Road)<br>7th Election District & 3rd Councilmanic District<br>Legal Owner(s): Christopher Walters &<br>Susan Gossling Walters<br>Petitioner(s) | *<br>*<br>*<br>*<br>*<br>*<br>* | BEFORE THE<br>COUNTY BOARD OF APPEALS<br>OF<br>BALTIMORE COUNTY<br>CASE NO.: 03-448-SPH |

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

## AFFIDAVIT OF SERVICE

I, the undersigned, certify that on December 18, 2003, I effected service of process by personally serving a Subpoena upon Wallace S Lippincott at The Department of Environmental Protection and Resource Management, 401 Bosley Avenue, 4th Floor, Towson, MD 21204, to appear before the County Board of Appeals for Baltimore County.

I further certify that I am over the age of 18 and am not a party to this action.

I solemnly affirm under penalty of perjury that the contents of this Affidavit are true and correct to my knowledge.

RECEIVED
DEC 18 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Rebecca M. Wheatley
(signature)

**Name:** Rebecca M. Wheatley
**Firm:** People's Counsel for Baltimore County
**Address:** 400 Washington Avenue
Old Courthouse, Room 47
Towson, Maryland 21204

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

Case Number: 03-C-04-000688

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse
Room 47 400 Washington Ave
Baltimore, MD 21204

RECEIVED
JAN 26 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Baltimore County
Zoning Commissioner

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

June 18, 2003

Howard L. Alderman, Jr., Esquire
Levin & Gann
502 Washington Avenue, 8th Floor
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
NE/Corner Wiseburg Road & Peters Avenue
**(1130 – 1132 Wiseburg Road)**
7th Election District – 3rd Council District
Christopher Walters & Susan Gossling Walters - Petitioners
Case No. 03-448-SPH

Dear Mr. Alderman:

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

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

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Christopher L. Walters
1132 Wiseburg Road, White Hall, Md. 21161
DEPRM; Office of Planning; People's Counsel; Case File

# Petition for Special Hearing

**to the Zoning Commissioner of Baltimore County**

**for the property located at** 1130-1132 Wiseburg Road
**which is presently zoned** RC-4

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

SEE ATTACHED

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

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

***Contract Purchaser/Lessee:***

NONE
Name - Type or Print

Signature

Address — Telephone No.

City — State — Zip Code

***Legal Owner(s):***

Christopher L. Walters
Name - Type or Print

x Christopher L. Walters
Signature

Susan E. Gossling
Name - Type or Print

x Susan E. Gossling
Signature

1132 Wiseburg Road — 410-329-6772
Address — Telephone No.

White Hall — MD — 21161
City — State — Zip Code

***Attorney For Petitioner:***

Howard L. Alderman, Jr., Esquire
Name - Type or Print

Howard L. Alderman, Jr.
Signature

Levin & Gann, PA
Company

502 Washington Avenue, Suite 800 — 410-321-0600
Address — Telephone No.

Towson — Maryland — 21204
City — State — Zip Code

***Representative to be Contacted:***

E.F. Raphel & Associates, Inc. / Eugene Raphel, RPLS
Name

205 Courtland Avenue — 410-825-3908
Address — Telephone No.

Towson — Maryland — 21204
City — State — Zip Code

**OFFICE USE ONLY**

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By JNP Date 3/27/03

**Case No.** 03-448-SPH

*REV 9/15/98*

**Attachment 1**

# PETITION FOR SPECIAL HEARING

**CASE NO: 03– –SPH**

Address: 1130-1132 Wiseburg Road

Legal Owners: Christopher L. Walters & Susan E. Gossling

Present Zoning: RC 4

**REQUESTED RELIEF:**

"*why the Zoning Commissioner should*" [1] approve the reconfiguration of Parcels 90 & 99 by transferring 1.29 acres from Parcel 90 (1130 Wiseburg Road) to adjoining Parcel 99 (1132 Wiseburg) as a lot line adjustment and accumulation of density between like zoned parcels, both parcels being lots of record prior to 1975; and [2] approve such additional relief as the nature of this case as presented at the time of the hearing on this Petition may require, within the spirit and intent of the BCZR.

**FOR ADDITIONAL INFORMATION ON THIS PETITION, PLEASE CONTACT:**


Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204

(410) 321-0600
Fax: (410) 296-2801
halderman@LevinGann.com



ORDER RECEIVED FOR FILING
Date 6/19/03
By


03-448-SPH

E. F. Raphel & Associates
*Registered Professional Land Surveyors*
*205 Courtland Avenue*
*Towson, Maryland 21204*

*Phone (410) 825-3908* *Fax (410) 825-1331*

**ZONING DESCRIPTION FOR** 1132 Wiseburg Road, Seventh Election District, Baltimore County, Maryland.

**BEGINNING** at a point located Northwesterly 1200 feet along the center of Wiseburg Road from the intersection formed by the centerline of Wiseburg Road and the centerline of Graystone Road, and North 53° 19' East 654.5 feet, said point of beginning being the intersection of parcel 90 and parcel 99 of tax map 17, running thence the ten following courses and distances through parcel 99, 1) North 46° 35' 34" East 203.77 feet 2) North 66° 28' 00" East 35.00 feet, 3) South 81° 11' 00" East 61.30 feet, 4) South 6° 06' 00" West 64.00 feet, 5) South 32° 24' 00" West 75.00 feet, 6) South 28° 00' 00" West 150.00 feet, 7) South 35° 33' 00" West 229.00 feet, 8) North 20° 10' 00" East 55.00 feet, 9) North 0° 07' 00" East 150.00 feet, and 10) North 7° 32' 00" West 140.00 feet to the place of beginning.
**CONTAINING** 1.29 acres of land, more or less.

03-448-SPH

**BALTIMORE COUNTY, MARYLAND**
**OFFICE OF BUDGET & FINANCE**
**MISCELLANEOUS RECEIPT**

No. 21936

DATE 3/27/03

ACCOUNT R 001-006-6150

AMOUNT $ 130.00

RECEIVED FROM: Christopher Weller/Susan Gosberg

FOR: 1130-1132 Weisbury Road - Spec. Hearing
03-448-SPH

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

| BUSINESS | ACTUAL | TIME | DRW |
|---|---|---|---|
| 3/28/2003 | 3/28/2003 | 09:21:39 | 2 |

REF 0804 WALKIN DIGL DND
>RECEIPT # 021165 3/28/2003 DFLN
Dep 5 528 ZONING VERIFICATION
CR.ID. 021936
Recpt Tot $130.00
130.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

**NOTICE OF ZONING HEARING**

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

Case: #03-448-SPH
1130-1132 Wiseburg Road
Northeast side of Wiseburg Road corner northwest side of Peter Avenue
7th Election District – 3rd Councilmanic District
Legal Owner(s): Christopher Walters and Susan Gossling

**Special Hearing:** 1) to approve the reconfiguration of Parcels by transferring 1.29 acres as a lot line adjustment and accumulation of density and 2) to approve such additional relief as the nature of this case as presented at the time of the hearing on this petition may require.

**Hearing: Wednesday, June 4, 2003 at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue.**

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 5/754 May 20 C605095

# CERTIFICATE OF PUBLICATION

5/23/, 2003

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 5/20/, 2003.

- [x] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

# CERTIFICATE OF POSTING

RE: Case No.: 03-448-SPH

Petitioner/Developer: CHRISTOPHER WALTERS & SUSAN GOSSLING

Date of Hearing/Closing: 6/4/03

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

Attention: MS. BECKY HART

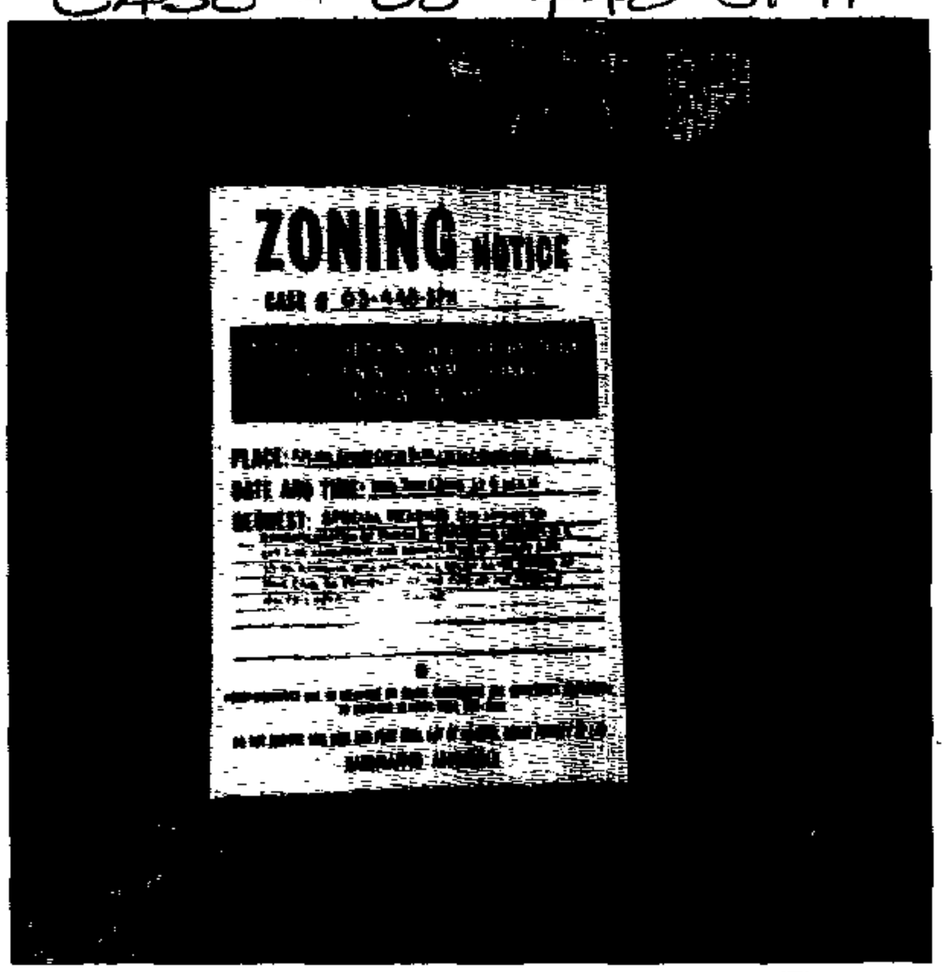
Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at

1130-1132 WISEBURG ROAD

The sign(s) were posted on 5/20/03
(Month, Day, Year)

CASE # 03-448-SPH




1130-1132 WISEBURG ROAD
POSTED 5/20/03
5/20/03

Sincerely,

5/20/03
(Signature of Sign Poster and Date)

RICHARD E. HOFFMAN
(Printed Name)

904 DELLWOOD DR.
(Address)

FALLSTON, MD 21047
(City, State, Zip Code)

(410) 879-3122
(Telephone Number)

# APPEAL SIGN POSTING REQUEST

CASE NO.: 03-448-SPH

Christopher Walters and Susan Gossling - LEGAL OWNERS

1130-1132 Wisebury Road, White Hall

7th ELECTION DISTRICT

APPEALED: 7/15/2003

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

7H5

# APPEAL SIGN POSTING REQUEST

CASE NO.: 03-448-SPH

Christopher Walters and Susan Gossling - LEGAL OWNERS

1130-1132 Wiseburg Road, White Hall

7th ELECTION DISTRICT APPEALED: 7/15/2003

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

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

# CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Kathleen Bianco
Administrator

RE: Case No.: 03-448-SPH

Petitioner/Developer:

_____

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:
1130-1132 Wiseburg Rd.

The sign was posted on 8/27, 2003

By: Gary C Freund
(Signature of Sign Poster)

GARY C FREUND
(Printed Name)

# DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
# ZONING REVIEW

## ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

---

**For Newspaper Advertising:**

Item Number or Case Number: 03-448-SPH

Petitioner: WALTERS / GOSLING

Address or Location: 1130-1132 WEISBURG ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: CHRISTOPHER WALTERS

Address: 1132 WEISBURG RD WHITEHALL, MD 21161

Telephone Number: 410-329-6772

Revised 2/20/98 - SCJ

Baltimore County
Department of Permits and
Development Management

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

April 10, 2003

# NOTICE OF ZONING HEARING

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

**CASE NUMBER: 03-448-SPH**
1130-1132 Wiseburg Road
Northeast side of Wiseburg Road corner northwest side of Peter Avenue
7th Election District – 3rd Councilmanic District
Legal Owners: Christopher Walters and Susan Gossling

Special Hearing 1) to approve the reconfiguration of Parcels by transferring 1.29 acres as a lot line adjustment and accumulation of density and 2) to approve such additional relief as the nature of this case as presented at the time of the hearing on this petition may require.

Hearings: Wednesday, June 4, 2003 at 9:00 a.m. in Room 106, Co. Office Building, 111 W. Chesapeake Avenue

Arnold Jablon
Director

AJ:rlh

C: Howard L. Alderman, Jr., Levin & Gann, 502 Washington Avenue, Suite 800, Towson 21204
Christopher L. Walters and Susan E. Gossling, 1132 Wiseburg Road, White Hall 21161
E. F. Raphel & Associates, Inc., Eugene Raphel, 205 Courtland Avenue, Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, MAY 20, 2003.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed with Soybean Ink
on Recycled Paper

TO: PATUXENT PUBLISHING COMPANY
Tuesday, May 20, 2003 Issue - Jeffersonian

Please forward billing to:
Christopher Walters
1132 Wiseburg Road
Whitehall, MD 21161

410-329-6772

---

## NOTICE OF ZONING HEARING

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

**CASE NUMBER: 03-448-SPH**
1130-1132 Wiseburg Road
Northeast side of Wiseburg Road corner northwest side of Peter Avenue
7th Election District – 3rd Councilmanic District
Legal Owners: Christopher Walters and Susan Gossling

Special Hearing 1) to approve the reconfiguration of Parcels by transferring 1.29 acres as a lot line adjustment and accumulation of density and 2) to approve such additional relief as the nature of this case as presented at the time of the hearing on this petition may require.

Hearings: Wednesday, June 4, 2003 at 9:00 a.m. in Room 106, Co. Office Building, 111 W. Chesapeake Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

County Board of Appeals of Baltimore County

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

**Hearing Room – Room 48**
**Old Courthouse, 400 Washington Avenue**

August 26, 2003

**NOTICE OF ASSIGNMENT**

**CASE #: 03-448-SPH**

**IN THE MATTER OF:** ***Christopher Walters & Susan Gossling*** -
Legal Owners 1130-1132 Wiseburg Road
7th Election District; 3rd Councilmanic District

6/18/03 – Order of D.Z.C. in which requested special hearing relief was GRANTED.

**ASSIGNED FOR:** **TUESDAY, DECEMBER 23, 2003 at 10:00 a.m.**

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

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

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

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

**Kathleen C. Bianco**
**Administrator**

c: Appellant : Office of People's Counsel

Counsel for Petitioners : Howard L. Alderman, Jr., Esquire
Petitioners : Christopher Walters and Susan Gossling
E. F. Raphel, Inc. /Eugene Raphel

Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

Baltimore County
Department of Permits and
Development Management

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

May 30, 2003

Howard L. Alderman, Jr., Esq.
Levin & Gann, PA
502 Washington Avenue, Ste. 800
Towson, MD 21204

Dear Mr. Alderman:

RE: Case Number: 03-448-SPH, 1130-1132 Wiseburg Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 27, 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
Christopher Walters, Susan Gossling, 1132 Wiseburg Road, White Hall 21161
E. F. Raphel & Associates, Inc., Eugene Raphel, 205 Courtland Ave., Towson 21204



Printed with Soybean Ink
on Recycled Paper

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

April 08, 2002

ATTENTION: Rebecca Hart

Distribution Meeting of: April 7, 2003

Item No.: 445-455 448

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.*

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

cc: File

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

State Highway Administration
Driven to Excel

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Acting Administrator*

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 4.8.03

Ms. Rebecca Hart
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 448 JNP

Dear. Ms. Hart:

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

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

Very truly yours,

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

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

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

**DATE:** April 25, 2003

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

**SUBJECT:** 1130-1132 Wieburg Road

**INFORMATION:**

**Item Number:** 03-448

**Petitioner:** Christopher L. Walters

**Zoning:** RC 4

**Requested Action:** Special Hearing

**SUMMARY OF RECOMMENDATIONS:**

The Office of Planning does not oppose the petitioner's request provided a 20-foot in-fee access is given to Parcel 90.

**Prepared by:** Marlene Cunningham

**Section Chief:** Lyn Lanham
AFK/LL:MAC:

RECEIVED
APR 28 2003

**BALTIMORE COUNTY, MARYLAND**

**INTEROFFICE CORRESPONDENCE**

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

**DATE:** April 28, 2003

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

**SUBJECT:** Zoning Advisory Committee Meeting
For April 14, 2003
Item Nos. 399, 446, 448, 450, 452,
453, 454, and 455

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

ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

**Inter-Office Correspondence**

TO: Zoning Commissioner DATE: June 5, 2003

FROM: Wally Lippincott, Jr.

SUBJECT: 1130 –1132 Wiseburg Rd – Sph 448.

I apologize for the lateness of these comments, but I have just received the plan. If it is too late please include these comments in the file. If it is not too late, please consider the comments.

Comment:
I have concerns about the legality of the accumulation/transfering of density in the RC 4 zone. We are seeing more what appears to be transfer requests and the Zoning Code does not appear to prior for transfers in the RC zones.

If project is approved, the parcels should be required to meet the RC 4 Cluster regulations excepting the density issue that is addressed by the hearing.

RECEIVED
JUN 5 2003
ZONING COMMISSIONER

BALTIMORE COUNTY, MARYLAND

ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

**Inter-Office Correspondence**

TO: Tim Kotroco Jr. DATE: May 20, 2004

FROM: David Carroll

SUBJECT: #1130 Wiseburg Road
Walters Property

This is a request to rescind the DRC approval for Item No 040504G for this property. This issue was heard before the Board of Appeals and the landowner withdrew and the case dismissed. The petitioner subsequently came to the DRC with a request for a "lot line adjustment" in order to obtain the approval that was lost when the case was withdrawn.

According to your office the DRC was not made aware that the "issue" had been withdrawn from the Board of Appeals. Furthermore, Wally Lippincott of my staff indicated he advised Howard Alderman who is representing the petitioner that he did not think it was appropriate to go to the DRC committee for this relief given it had previously gone through a Special Hearing and that lot line adjustments typically apply to relief for access, septic or small boundary adjustments.

The consequence of this approval is that the lot line adjustment will result in the petitioner locating a density unit in the area that has been transferred. In doing so he has adjusted the "tract" for the purposes of building an additional home thus involving the issue of density or use of density.

c. Howard Alderman
Wally Lippincott

Kitty –
Set Mtg w/ Howard Alderman on this
Have Carl + Don attend.
T

RECEIVED
MAY 21 2004
04-1374
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

| | | | |
|---|---|---|---|
| RE: | PETITION FOR SPECIAL HEARING<br>1130-1132 Wiseburg Road; NE/side<br>Wiseburg Road corner NW/Side Peters Ave<br>7th Election & 3rd Councilmanic Districts<br>Legal Owner(s): Christopher L Walters &<br>Susan E Gossling<br>Petitioner(s) | *<br><br>*<br><br>*<br><br>*<br><br>*<br><br>* | BEFORE THE<br><br>ZONING COMMISSIONER<br><br>FOR<br><br>BALTIMORE COUNTY<br><br>03-448-SPH |

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

## ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/ 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 10th day of April, 2003, a copy of the foregoing Entry of Appearance was mailed to Howard L Alderman, Esquire, Levin & Gann, PA, 501 Washington Avenue, Suite 800, Towson, MD 21204, Attorney for Petitioner(s).

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

Baltimore County
Department of Permits and
Development Management

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

July 15, 2003

Christopher Walters
Susan Gossling
1132 Wiseburg Road
White Hall, MD 21161

Dear Mr. Walters and Ms. Gossling:

RE: Case No. 03-448-SPH, 1130-1132 Wiseburg Road

Please be advised that an appeal of the above-referenced case was filed in this office on July 15, 2003, by Peter Zimmerman, of Baltimore County People's Counsel. 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,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Howard Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Ave., Ste. 800, Towson 21204
E. F. Raphel & Associates, Inc., Eugene Raphel, 205 Courtland Ave., Towson 21204

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on Recycled Paper

# *Baltimore County, Maryland*

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

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel


July 15, 2003

Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re: PETITION FOR SPECIAL HEARING
NE/Corner Wiseburg Road & Peters Avenue
(1130-1132 Wiseburg Road)
7th Election District; 3rd Council District
Christopher Walters & Susan Gossling Walters- Petitioner(s)
**Case No.: 03-448-SPH**

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated June 18, 2003 by the Baltimore County Zoning Commissioner in the above-entitled case

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Howard L. Alderman, Esquire

RECEIVED
JUL 15 2003
Per

## APPEAL

Petition for Special Hearing
1130-1132 Wiseburg Road
N/east corner of Wiseburg Road and Peters Avenue
7th Election District – 3rd Councilmanic District
Christopher Walters & Susan Gossling – Legal Owners

Case No.: 03-448-SPH

✓ Petition for Special Hearing (March 27, 2003)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (April 10, 2003)

✓ Certification of Publication (May 20, 2003)

✓ Certificate of Posting (May 20, 2003) by Richard Hoffman

✓ Entry of Appearance by People's Counsel (April 10, 2003)

✓ Petitioner(s) Sign-In Sheet
One Sheet

✓ Protestant(s) Sign-In Sheet
None

✓ Citizen(s) Sign-In Sheet
None

✓ Zoning Advisory Committee Comments

✓ Petitioners' Exhibit
✓ 1. Plat to accompany Special Hearing

✓ Protestants' Exhibits:
None

✓ Miscellaneous (Not Marked as Exhibit)
None

✓ Deputy Zoning Commissioner's/Zoning Commissioner's Order (June 18, 2003 - Granted)

✓ * Notice of Appeal received on July 15, 2003 from Peter M. Zimmerman, People's Counsel of Baltimore County

RECEIVED
JUL 22 2003
BALTIMORE COUNTY
BOARD OF APPEALS

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Howard Alderman, Jr., Levin & Gann, 502 Washington Ave., Ste. 800, Towson 21204
Christopher Walters & Susan Gossling, 1132 Wiseburg Rd., White Hall 21161
E. F. Raphel, Inc., Eugene Raphel, 205 Courtland Ave., Towson 21204
E F RAPHEL INC
EUGENE RAPHEL
205 COURTLAND
TOWSON MD 21204

CHRISTOPHER WALTERS
SUSAN GOSSLING
1132 WISEBURG ROAD
WHITE HALL MD 21161
*Petitioners*

HOWARD ALDERMAN, JR.
502 WASHINGTON AVENUE
NOTTINGHAM CENTER, 8TH FLOOR
TOWSON, MD 21204
*Attorney for Petitioners*

Case No. 03-448-SPH

In the matter of: Christopher Walters and Susan Gossling – Legal Owners

SPH – To approve reconfiguration of Parcels 90 and 99 (1130 and 1132 Wiseburg Road) by transferring 1.29 acres from Parcel 90 to adjoining Parcel 99 as lot line adjustment and accumulation of density between like zoned parcels, both having been lots of record prior to 1975.

4/11/03 –D.Z.C.'s decision in which requested special hearing relief was DENIED.

---

7/30/03 – Entry of appearance filed by Howard L. Alderman, Jr., Esquire on behalf of Petitioners; also requests consideration of early hearing date as available; client has spoken with PMZ, who has no objection to earlier scheduling, provided the hearing is scheduled with counsel of record. Pending docket so noted for early consideration.

---

8/26/03 – Notice of Assignment sent to following; case assigned for Tuesday, December 23, 2003 at 10:00 a.m.

Office of People's Counsel
Howard L. Alderman, Jr., Esquire
Christopher Walters and Susan Gossling
E. F. Raphel, Inc. /Eugene Raphel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

---

12/23/03 – Board convened for hearing (Marks, Wescott, Crizer). At conclusion of Petitioner's first witness, and after brief recess requested by Counsel for Petitioner, Counsel for Petitioner moved to withdraw Petition for Special Hearing without prejudice; objection made by Mr. Zimmerman. Upon conclusion of argument from counsel regarding Petitioner's requested withdrawal, Board granted request; petition withdrawn and dismissed without prejudice. *Order of Dismissal of Petition to be issued by Board. Appellate period to run* from date of written Order.

---

Case No. 03-448-SPH

In the matter of: Christopher Walters and Susan Gossling – Legal Owners

SPH – To approve reconfiguration of Parcels 90 and 99 (1130 and 1132 Wiseburg Road) by transferring 1.29 acres from Parcel 90 to adjoining Parcel 99 as lot line adjustment and accumulation of density between like zoned parcels, both having been lots of record prior to 1975.

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Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

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---

6/28/04 – Order of the Circuit Court dated 6/23/04 filed this date; Board reversed; remanded to Board with Order to issue Order of Dismissal of Petition for Special Hearing with prejudice. Holding for 30-day appellate period; Order of Dismissal of Petition with Prejudice on Remand from Circuit Court for Baltimore County will then be issued if no appeal taken to CSA.

---

| | | |
|---|---|---|
| 03-448-SPH | 1130-1132 Wiseburg Road<br>White Hall, MD 21161 | Christopher Walters<br>Susan Gossling |

| | |
|---|---|
| 3/27/2003 | Petition for Special Hearing filed by Christopher Waltera and Susan Gossling through their attorney Howard Alderman, Esquire to approve the reconfiguration of Parcels 90 and 99 by transferring 1.29 acres from Parcel 90 (1130 Wiseburg Road) to adjoining Parcel 99 (1132 Wiseburg Road) as a lot line adjustment and accumulation of density between liked zoned parcels. |
| June 18 | Deputy Zoning Commissioner's Order - GRANTED |
| July 15 | Notice of Appeal filed by People's Counsel. |
| July 22 | Appeal received BOA |
| 1/7/2004 | Opinion Issued By The Board Of Appeals / Withdrawn and Dismissed |
| January 21, 2004 | Petition or Judicial Review filed by Office of People's Counsel |
| June 23, 2004 | Order issued by Judge Daniels REMANDING ,the case to the Board of Appeals for further proceeding to issue an Order of Dismissal with prejudice. |
| September 7 | File received from Circuit Court and forwarded to Administrator to prepare Order of Dismissal for signatures. |
| September 15, 2004 | Opinion Issued By The Board Of Appeals / That the Petiton for Special Hearing filed by the Petitioners is DISMISSED WITH PREJUDICE. |

# BALTIMORE COUNTY
# DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

## DEVELOPMENT REVIEW COMMITTEE (DRC) APPLICATION

**DRC#** 040504G
**County Use Only**

**Filing Date:** _____
**Stamp in w/PDM date stamp here**

This application must be accompanied by the following:

1. **One copy of the completed DRC application form checklist.**
2. **Three copies of this DRC application, completed in full.**
3. **Three copies of a letter of request (attach one to each DRC application).**
4. **Nine copies of the plan folded to 8 ½ x 11 inches.**
5. **$50 fee (check made payable to Baltimore County and non-refundable; do not staple check to request form)**

Project Name: 1130 WISEBURG ROAD PDM File #: N/A

Project Address: 1130 WISEBURG ROAD Zip Code: 21161 ADC Map #: 7J4

Councilmanic District: 3 Election District: 7 Project Acreage: 6.29 AC

Tax Account No(s): 07-03-000650 Zoning: RC-4

Engineer: McKee + Assoc. Inc. Engineer's Phone No.: _____

Applicant: Geoffrey C. Schultz Applicant's Phone No.: 410- 527-1555

Address: 5 SHAWAN ROAD
HUNT VALLEY, MD - Zip 21030 Email: _____

Is this an antenna? ___ Yes X No If "Yes" check one of the following: Cellular ___ (CAC) Water Tower ___ (WTC) MonoPole ___ (CFC)

**REQUESTED ACTION (TO BE COMPLETED BY THE APPLICANT)**

(✓) Limited Exemption under Section 26-171 ( A ) ( 9 )
( ) Material Amendment to the plan
( ) Plan Refinement
( ) Waiver of public works standards
( ) Requires a Zoning ( ) Special Hearing; ( ) Special Exception; ( ) Variance
( ) Other _____

Tables to Rob Powell 4-12-04
A-9 per DTR

This application must be accompanied by a written request. That request must be in the form of a letter, legibly printed or typed, and signed by the applicant. The letter must contain the name, address and telephone number of the applicant and must provide details of the request.

Please note that a DRC application form checklist is available in room 123 of the Baltimore County Office Building and on the Baltimore County web site at www.co.ba.md.us. A copy of that checklist must be completed and included along with this DRC application.

Please see the DRC application form checklist for complete submittal requirements.

c: Council, Planning, DEPRM

1/02/2003

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

07/12/04

Case Number: 03-C-04-000688 AE
Date Filed: 01/21/2004
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :

In The Matter of: Peoples Counsel For Baltimore County

# C A S E  H I S T O R Y

BOA
Balt City

## OTHER REFERENCE NUMBERS

| Description | Number |
|---|---|
| Administrative Agency | 03-448-SPH |
| Case Folder ID | C04000688V01 |

## INVOLVED PARTIES

| Type | Num | Name(Last,First,Mid,Title) | Addr Str/End | Pty. Disp. / Addr Update | Entered |
|---|---|---|---|---|---|
| PET | 001 | Peoples Counsel For Baltimore County | Party ID: 0644148 | BT DO 06/28/04 | 01/22/04 |
| | | Mail: Old Courthouse<br>400 Washington Ave Room 47<br>Baltimore, MD 21204 | 01/22/04 | 01/22/04 CMS | 01/22/04 CMS |
| | | Attorney: 0804268 Demilio, Carole S<br>Deputy Peoples Counsel<br>Old Courthouse Room 47<br>400 Washington Ave<br>Towson, MD 21204<br>(410)887-2188 | Appear: 01/22/2004 | | 01/22/04 |
| RES | 001 | Walters, Christopher | Party ID: 0644151 | BT DO 06/28/04 | 01/22/04 |

| | | | | |
|---|---|---|---|---|
| Mail | Susan Cossling-legal Owners<br>1130-1132 Wiseburg Road<br>White Hall, MD 21161 | 02/10/04 | 02/10/04 MDJ | 02/10/04 MDJ |

| Type | Num | Name(Last,First,Mid,Title) | Addr Str/End | Pty. Disp.<br>Addr Update | Entered |
|---|---|---|---|---|---|
| RES | 002 | Gossling, Susan | Party ID: 0644152 | BT DO 06/28/04 | 01/22/04 |
| ITP | 001 | County Board Of Appeals Of Baltimore County | Party ID: 0644150 | BT DO 06/28/04 | 01/22/04 |
| Mail. | | Old Courthouse<br>Room 47 400 Washington Ave<br>Baltimore, MD 21204 | 01/22/04 | 01/22/04 CMS | 01/22/04 CMS |

## CALENDAR EVENTS

| Date | Time | Dur | Event Description | Text SA | Jdg Day | Of Notice | User ID |
|---|---|---|---|---|---|---|---|
| Result | | | ResultDt By Result Judge | Rec | | | |
| 06/18/04 | 09:30A | 02Q | Civil Non-Jury Trial | Y | LRD 01 /01 | | KLS NLR |
| Conclude | | | 06/18/04 E L.Daniels | Y | | | |

Stenographer(s): Edward Mintzer

## DISPOSITION HISTORY

| Disp Date | Disp Code | Description | Stage Code | Description | User |
|---|---|---|---|---|---|
| 06/28/04 | DO | Decree or Order | BT | BEFORE TRIAL/HEARING | LG |

## JUDGE HISTORY

| JUDGE ASSIGNED | Type | Assign Date | Removal RSN |
|---|---|---|---|
| TBA To Be Assigned, | J | 01/22/04 | |

## DOCUMENT TRACKING

| Num/Seq | Description | Filed | Entered | Party | Jdg Ruling | Closed | User ID |
|---|---|---|---|---|---|---|---|
| 0001000 | Petition for Judicial Review | 01/21/04 | 01/22/04 | PET001 | TBA | 06/28/04 | CMS LG |
| 0002000 | Notice of Service of Discovery | 01/27/04 | 01/30/04 | 000 | TBA | 06/28/04 | CMS LG |

| Num/Seq | Description | Filed | Entered | Party | Jdg | Ruling | Closed | User ID |
|---|---|---|---|---|---|---|---|---|
| 0003000 | *Transcript of Record from Adm Agency | 02/10/04 | 02/10/04 | 000 | TBA | | 06/28/04 | MDJ LG |
| 0004000 | Notice of Transcript of Record Sent | 02/10/04 | 02/10/04 | ITP001 | TBA | | 02/10/04 | MDJ MDJ |
| 0005000 | Notice of Transcript of Record Sent | 02/10/04 | 02/10/04 | PET001 | TBA | | 02/10/04 | MDJ MDJ |
| 0006000 | Notice of Transcript of Record Sent | 02/10/04 | 02/10/04 | RES001 | TBA | | 02/10/04 | MDJ MDJ |
| 0007000 | Memorandum | 03/08/04 | 03/12/04 | PET001 | TBA | | 03/12/04 | PH PH |
| 0008000 | Scheduling Order | 03/16/04 | 03/16/04 | 000 | TBA | | 03/16/04 | KLS KLS |
| 0009000 | Open Court Proceeding<br>June 18, 2004. Hon. Lawrence R. Daniels. Hearing had in re: Order to be filed | 06/18/04 | 06/18/04 | 000 | LRD | | 06/28/04 | NLR LG |
| 0010000 | Order reversing the decision and remanding case to BOA | 06/28/04 | 06/28/04 | 000 | TBA | | 06/28/04 | LG LG |
| 0011000 | DOCKET ENTRIES TRANSFERRED TO BOA BALTIMORE COUNTY | 07/09/04 | 07/09/04 | 000 | TBA | | | JD JD |

## TICKLE

| Code | Tickle Name | Status | Expires | #Days | AutoExpire | GoAhead | From | Type | Num | Seq |
|---|---|---|---|---|---|---|---|---|---|---|
| 1YRT | One Year Tickle (Jud | CLOSED | 01/20/05 | 365 | no | no | DAAA | D | 001 | 000 |
| EXPU | Exhibit Pickup Notic | CLOSED | 08/27/04 | 30 | no | no | | | 000 | 000 |
| SLTR | Set List For Trial | Done | 02/10/04 | 0 | yes | yes | DTRA | D | 003 | 000 |

## EXHIBITS

| Line # | Marked | Code | Description | SpH | Sloc | NoticeDt | Disp Dt | Dis By |
|---|---|---|---|---|---|---|---|---|
| Offered By: ITP 001 County Board Of Appeals Of Ba | | | | | | | | |
| 000 | | B | BOX 398/CBA TRANSC | | B | | | |

## DIFFERENTIATED CASE MANAGEMENT

## TRACKS AND MILESTONES

Track R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date 03/16/04 Order Date : 03/16/04
Start Date : 03/16/04 Remove Date:

| Milestone | Scheduled | Target | Actual | Status |
|---|---|---|---|---|
| Motions to Dismiss under MD. Rule 2-322( | | 03/31/04 | 06/28/04 | CLOSED |
| All Motions (excluding Motions in Limine | | 05/09/04 | 06/28/04 | CLOSED |
| TRIAL DATE is | 06/18/04 | 06/14/04 | 06/18/04 | REACHED |

# NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

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

RECEIVED
MAR 18 2004
BALTIMORE COUNTY
BOARD OF APPEALS

County Board Of Appeals Of Baltimore County
Old Courthouse
Room 47 400 Washington Av
Baltimore MD 21204

Assignment Date: 03/16/04

Case Title: In The Matter of: Peoples Counsel For Baltimore County
Case No: 03-C-04-000688 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.
**You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:**

## SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 03/31/04
2. All Motions (excluding Motions in Limine) are due by..... 05/09/04
3. TRIAL DATE is..... 06/18/04
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned; 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

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

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

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

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

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

cc: Christopher Walters

cc: Susan Gossling
cc: Carole S Demilio Esq
Issue Date 03/16/04

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

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

Case Number: 03-C-04-000688
Administrative Agency : 03-448-SPH
C I V I L

In The Matter of: Peoples Counsel For Baltimore County

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 10th day of February, 2004.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 02/10/04

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse
Room 47 400 Washington Ave
Baltimore, MD 21204

RECEIVED
FEB 12 2004
BALTIMORE COUNTY
BOARD OF APPEALS

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
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Case Number: 03-C-04-000688

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse
Room 47 400 Washington Ave
Baltimore, MD 21204

| | | |
|---|---|---|
| PETITION FOR SPECIAL HEARING<br>NE/Corner Wiseburg Road & Peters Avenue<br>(1130-1132 Wiseburg Road)<br>7th Election District & 3rd Councilmanic District<br>Legal Owner(s): Christopher Walters &<br>Susan Gossling Walters<br>Petitioner(s) | *<br>*<br>*<br>*<br>* | BEFORE THE<br>COUNTY BOARD OF APPEALS<br>OF<br>BALTIMORE COUNTY<br>CASE NO.: 03-448-SPH |

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

**SUBPOENA**

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on December 23, 2003, at 10 a.m. in Room 48, Basement, Old courthouse, located at 400 Washington Avenue, Towson, MD 21204, and continuing thereafter as necessary for such witness testimony and as scheduled by the Board.

**WITNESS:** Wallace S. Lippincott
**ADDRESS::** Department of Environmental Protection and Resource Management
401 Bosley Avenue, 4th Floor
Towson, MD 21204

RECEIVED
DEC 18 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Requested by:

**NAME:** Peter Max Zimmerman, Esquire
**FIRM:** People's Counsel for Baltimore County

**ADDRESS:** 400 Washington Avenue
Old Courthouse, Room 47
Towson, Maryland 21204

**The witness named above is hereby ORDERED to so appear before the County Board of Appeals. The Board requests (___) the Sheriff, (___) Private Process Server, to issue the summons set forth herein.**

Kathleen C. Bianco
**County Board of Appeals for Baltimore County**

# Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel


May 21, 2004

MAY 21 2004

Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re: **REQUEST FOR APPROVAL OF A LIMITED EXEMPTION BY THE DEVELOPMENT REVIEW COMMITTEE AND THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT**
1130 Wiseburg Road
7th Election District, 3rd Councilmanic District
DRC No.: 040504G

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals for Baltimore County from the attached approval dated April 29, 2004 by the Director of Permits and Development Management of an Application for Limited Exemption recommended by the Development Review Committee.

The assembled R.C.4 zoned tract of land is 11.55 acres. This raises issues under the Baltimore County Zoning Regulations and the 2000 comprehensive zoning map. There are concerns that the application exceeds the maximum density allowed in the R.C. 4 zone on the entire tract; that a conservancy area is required; that, in the alternative, the application involves an impermissible transfer of density from one parcel to another; and that the application involves the use of Parcel 99, a 5.26 acre parcel, to provide lot density for two houses. In general, the request appears to be contrary to the spirit and intent of the R.C. 4 zone.

There are also procedural concerns because the issues raised by the proposed "lot line adjustment" are functionally equivalent to the issues presented in the "lot line adjustment" requested in the withdrawn Case No. 03-448, which Petitioners, the property owners, withdrew subsequent to this office's appeal of the Zoning Commissioner approval.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio/RMW

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Geoffrey C. Schultz, Applicant
Donald Rascoe, DRC Director
Wallace Lippincott, DEPRM
Howard L. Alderman, Jr. Esquire

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

April 29, 2004

McKee & Associates, Inc.
Geoffrey C. Schultz
Five Shawan Road
Hunt Valley, MD 21030

RE: Wiseburg Road
1130 Wiseburg Road
DRC Number 040504G; Dist. 7C3

Dear Mr. Schultz:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 26-171 and Section 26-211 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 12, 2004, and made the following recommendations:

The DRC has determined that your project meets the requirements of a limited exemption under Section 26-171 (A) (9). Please provide copies of the newly recorded deeds to the Land Acquisition Office so our Geographical Information System (CIS) database files can be brought up-to-date.

I have reviewed the recommendations carefully, and I have determined to adopt the recommendations set forth above. It is this 29th day of April 2004, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Timothy Kotroco
Director

TK:DTR:dak

c: File

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

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

January 22, 2004

SENT VIA FAX TO 410-837-6379

Paula Eliopoulos
Gore Brothers Court Reporting
115 W Mulberry Street
Baltimore, Maryland 21201

Re: Christopher Walters and Susan Gossling, Case No 03-448-SPH
County Board of Appeals Hearing Date: 12/23/03

Dear Ms. Eliopoulos:

Per my office's conversation with Wendy this morning, this letter is to confirm that we are ordering the official transcript with regard to the above-mentioned case. My office took the appeal to the Circuit Court for Baltimore County on January 21, 2004. Therefore, upon completion of the transcript, please forward it to the County Board of Appeals within the 60 days timeframe allotted by the Maryland Rules, and make a copy available to us.

Thank you for your anticipated cooperation.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw

cc: Howard L. Alderman, Esquire
Kathleen Bianco, Administrator,
County Board of Appeals

RECEIVED
JAN 2 2 2004
BALTIMORE COUNTY
BOARD OF APPEALS

# TRANSCRIPT REQUEST

Filed: January 21, 2004

RECEIVED: January 26, 2004

Case: *Christopher Walters and Susan Gossling*

*03-448-SPH*

Hearing date(s): Testimony Heard on:

12-23-2003

# Due Date: MARCH 22, 2004

File Date: 3/25

**See letter ion file requesting transcript from People's Counsel to Gore dated Janaury 22, 2004.**

January 26, 2004

FILE COPY

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

DATE: November 30, 2004

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

FROM: Theresa R. Shelton TRS
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILES**

The following case(s) have been finalized and the Board of Appeals is closing the copy of the appeal case file(s) and returning the file(s) and exhibits (if applicable) attached herewith.

| BOARD OF APPEALS CASE NUMBER | *PDM FILE NUMBER* | NAME | LOCATION |
|---|---|---|---|
| NO NUMBER | *O/C RECLASS* | RIVERWATCH LLC | 118 MOUNT CARMEL ROAD |
| 03-448-SPH | *03-448-SPH* | WALTERS AND GOSSLING | 1130-1132 WISEBURG ROAD |
| 02-365-A | *02-365-A* | PAULA RUSH | 5850 HWAZELWOOD AVENUE |
| 04-144-A | *04-144-A* | *GERALD AND CHERYL WELSH* | 11311 BEACH ROAD |

Attachment: SUBJECT FILE(S) / EXHIBIT(S) ATTACHED;

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

DIRECT DIAL
410-321-4640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
FACSIMILE 410-296-2801

ELLIS LEVIN (1893-1960)

July 29, 2003

Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
Old Courthouse, Suite 49
400 Washington Avenue
Towson, Maryland 21204

RE: Christopher Walters/Susan Gossling
1130-1132 Wiseburg Road
Case No.03-448-SPH
*Request for Early Hearing*

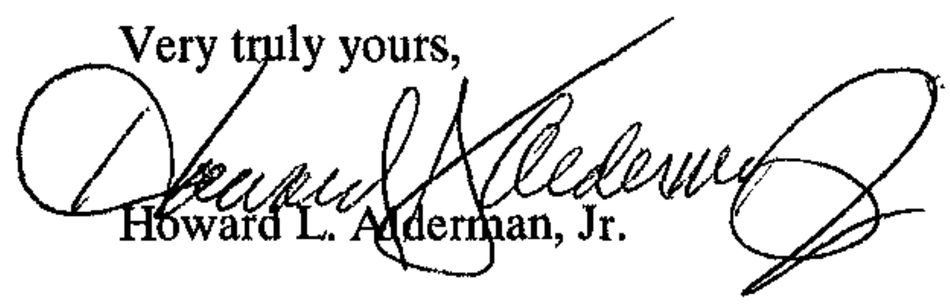
Dear Ms. Bianco:

I have the pleasure of representing Mr. Christopher Walters and Ms. Susan Gossling, owners of the above-referenced property. We have received notice of an appeal filed by the Office of People's Counsel of the favorable decision in the above-referenced case.

My clients hereby request that their case be assigned as early a hearing date as possible. It is my understanding that Ms. Gossling has spoken directly (without objection from me) with Mr. Zimmerman and the Office of People's Counsel has no opposition at this time to the request for early hearing, provided that the hearing is scheduled with counsel of record. Should you or any member of the Board require any additional information in this regard please let me know.

Thank you for your attention to this matter.

Very truly yours,



Howard L. Alderman, Jr.

HLA/gk
Enclosures
c (w/encl.): Mr. Christopher Walters; Ms. Susan Gossling
Peter Max Zimmerman, Esquire
Carole S. Dimilio, Esquire

RECEIVED
JUL 30 2003
BALTIMORE COUNTY
BOARD OF APPEALS

PLEASE PRINT CLEARLY

CASE NAME WALTERS PROPERTY
CASE NUMBER 03-448-SPH
DATE 04 JUNE 03

# PETITIONER'S SIGN-IN SHEET

ZONING ONLY

| NAME | ADDRESS | CITY, STATE, ZIP | E-MAIL |
|---|---|---|---|
| Howard L. Alderman, Jr. | LEVIN & GANN, PA, Nottingham Centre 8th Floor, 502 Washington Avenue | TOWSON, MD 21204 | halderman@LevinGann.com |
| Susan Walters | 1132 Wiseburg Rd. | White Hall MD 21161 | sgosslin@goucher.edu |
| Chris Walters | 1132 Wiseburg Rd | White Hall MD 21161 | [illegible] |
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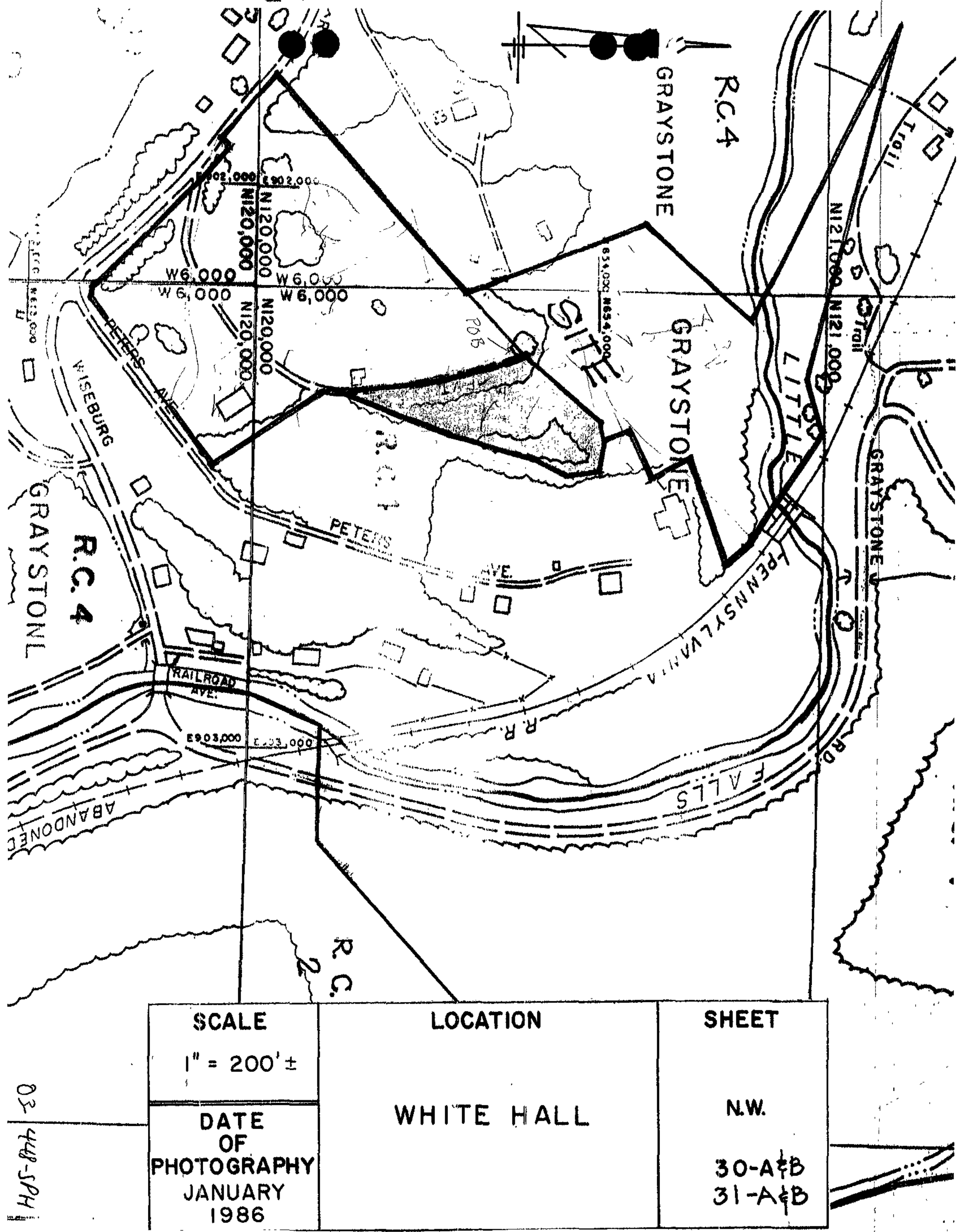
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FALLS
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WHITE HALL
SHEET
N.W.
30-A&B
31-A&B
DATE
OF
PHOTOGRAPHY
JANUARY
1986

03

448-SPH

1 IN THE MATTER OF:

2 CHRISTOPHER WALTERS and
SUSAN GOSSLING -
3 LEGAL OWNERS 1130-1132 Wiseburg Rd. #03-448-SPH
7th Election District
4 3rd Councilmanic District

5

6 _____/

7 The hearing in the above-entitled matter
8 was held on Tuesday, December 23, 2003, commencing at
9 10:00 a.m., at the Baltimore County Board of Appeals,
10 400 Washington Avenue, Room 49, Towson, Maryland,
11 21204, before Paula J. Eliopoulos, Notary Public.
12 APPEARANCES:
13 CHARLES L. MARKS, Chairman
14 EDWARD W. CRIZER, JR.
15 LAWRENCE S. WESCOTT
16 HOWARD ALDERMAN
17 PETER ZIMMERMAN
18
19
20
21 REPORTED BY: PAULA J. ELIOPOULOS

2

1 PROCEEDINGS
2 CHAIRMAN: Let's go on the record.
3 Let the record show that the County Board
4 of Appeals for Baltimore County is in its regularly
5 scheduled session for today, Tuesday, December 23rd,
6 at 10:00 a.m., relative to Case Number 03-448-SPH, the
7 matter of Christopher Walters and Susan Gossling,
8 legal owners 1130-1132 Wiseburg Road, relative to a
9 June 18th, 2003 order of Deputy Zoning Commissioner in
10 which a request for special hearing relief was
11 granted.
12 Will counsel present please state their
13 names and representation?
14 MR. ALDERMAN: Yes. Thank you. Good
15 morning, Mr. Chairman and members of the board.
16 Howard Alderman, Jr. with Levinigan (phonetic), P.A.,
17 having an office address of 502 Washington Avenue here
18 in Towson.
19 With me today is Mr. Christopher Walters
20 and Ms. Susan Gossling Walters, owners of the
21 property, as well as Eugene F. Raphel president of

3

1 E. F. Raphel & Associates, Incorporated
2 CHAIRMAN: Thank you.
3 MR. ZIMMERMAN: Peter Max Zimmerman,
4 people's counsel for Baltimore County, offices in the
5 courthouse
6 Today also Mr. Wallace Lippincott from the
7 Department of the Environment, Environmental
8 Protection and Resources Management is here.
9 Mr. Richard McQuade, president of the
10 Maryland Line Area Association is also here
11 CHAIRMAN: Okay. Thank you.
12 Any preliminaries, gentlemen?
13 MR. ALDERMAN: I don't believe so,
14 unless --
15 CHAIRMAN: Mr. Zimmerman, I suppose there
16 will be opening statements.
17 MR. ALDERMAN: Yes. Good morning.
18 The subject property, which is located in
19 the 3rd Councilmanic District adjacent to Wiseburg
20 Road and Peters Road, are -- is comprised of two lots
21 of record, both zoned RC4.

4

1 Parcel 90 further to the northeast is
2 comprised of just over six acres and is improved with
3 a single family dwelling.
4 Parcel 99, which fronts on Wiseburg and
5 has a corner on Peters, is a lot of record improved
6 with a single family dwelling and which is comprised
7 of 5.26 acres.
8 The proposal here is a lot line
9 adjustment. And the attendant accumulation of density
10 to permit the existing home, or not the existing home,
11 the existing right to build a home which exists on
12 parcel 90 to be moved further to the southwest so as
13 to move it back away from the resource, being the
14 Little Falls, and to also accommodate the desires of
15 the adjoining neighbors.
16 We do have a petition of the adjoining
17 neighbors in support of this request. They would much
18 rather have the house located closer to Wiseburg Road
19 than back on Little Falls Road
20 The request is certainly in compliance
21 with the -- we believe with the rules and regulations

5

1 of Baltimore County.
2 The Office of Planning's comment at the
3 Zoning Commissioner level, which is in the file, they
4 had no opposition, provided that there was a 20-foot
5 drive provided for access.
6 Again, we'll be presenting Mr. Raphel, who
7 prepared the plat, and also Ms. Susan Walters
8 Gossling, one of the two property owners.
9 At the end of the day, there's no increase
10 in density. Right now you have two single family
11 dwellings existing with the right to construct a
12 third.
13 If the requested lot line adjustment is
14 approved, you will have two single family dwellings
15 with the right to construct a third, albeit in a
16 slightly different location.
17 Thank you.
18 CHAIRMAN: Thank you.
19 MR. ZIMMERMAN: Yes Mr Chairman,
20 members of the board, our office appealed the
21 commissioner's decision in this case

6

1 I think this is a case which presents some
2 significant legal issues of first impression at the
3 board level with respect to the RC4 zone, the water
4 shed protection zone, the allowable density in the
5 zone and possibly questions of transfer of density.
6 Upon our review of the site plan, we see
7 that the Petitioners own approximately eleven and a
8 half acres of the property zoned RC4, which involves
9 the assembled lots of record or the contiguous lots of
10 record.
11 The allowable density in the RC4 zone is
12 4.2. So, we think that the allowable density for the
13 entire site is two lots, which they already have two
14 houses, two residences. They already have two.
15 So, we disagree with the premise that
16 there's any additional density on this property.
17 Assuming for the sake of argument that the
18 property could be said at the beginning to be split in
19 such a way that two lots are allowed on the rear
20 parcel, we don't agree that there is any provision to
21 transfer density from one parcel or lot to another.

7

1 So, there's that second issue.
2 And we don't agree that the proposal is,
3 in any event, consistent with the spirit of the RC4
4 zone.
5 We expect to ask the board to have the
6 opportunity to brief the issue in addition to present
7 evidence.
8 Mr. Wallace Lippincott of the Department
9 of Environmental Protection had some concerns about
10 the proposal. There's a comment in the file from him.
11 He will elaborate on some of those concerns.
12 And, again, Dr. McQuade is also here as an
13 interested citizen.
14 CHAIRMAN: Thank you.
15 Call your first witness, Mr. Alderman.
16 MR. ALDERMAN: Thank you. I'd call
17 Eugene F. Raphel.
18 Whereupon,
19 EUGENE F. RAPHEL,
20 called as a witness, having been first duly sworn to
21 tell the truth, the whole truth, and nothing but the

8

1 truth, was examined and testified as follows:
2 DIRECT EXAMINATION BY MR. ALDERMAN
3 Q Mr. Raphel, if you will, keep your voice
4 up and state your name and business address for the
5 record.
6 A E. F. Raphel, 201 Courtland Avenue --
7 205 Courtland Avenue. Registered professional land
8 surveyor.
9 Q And you're registered in the State of
10 Maryland; correct, Mr. Raphel?
11 A Yes, sir.
12 Q And are you familiar with Baltimore County
13 Zoning regulations, especially those provisions
14 pertaining to land classified as RC4?
15 A Yes.
16 Q And how long have you been practicing in
17 Baltimore County?
18 A About 50 years, something like that.
19 Q And in the course of those 50 years, have
20 you ever had the opportunity to appear and testify as
21 an expert witness on matters involving resource

9

1 conservation zoning before the Zoning Commissioner,
2 this Board of Appeals, the Circuit Court or any other
3 form?
4 A Before this board and the commissioner.
5 I've never been before the Circuit Court in zoning.
6 Q And approximately how many times have you
7 testified as an expert witness, Mr Raphel?
8 A Many times. Many times. I couldn't
9 elaborate.
10 Q And have you had experience in Baltimore
11 County on behalf of land owners in subdividing land in
12 the resource conservation zones?
13 A Yes. We've done many, many plats and gone
14 to record with them in resource zones.
15 Q And how about in the RC4 zone in
16 particular, have you had experience in subdividing
17 land zoned RC4?
18 A Yes.
19 Q And, Mr. Raphel, have you ever failed to
20 qualify as an expert surveyor with an emphasis in
21 zoning either before the commissioner or this board?

10

A No.

MR. ALDERMAN: I would offer Mr. Raphel as a registered surveyor with expertise in land development and subdivision in Baltimore County and zoning

MR. ZIMMERMAN: I have no objection to Mr. Raphel being qualified as a surveyor. We don't agree that he's an expert on the interpretation of zoning law or analysis of zoning.

I'd be glad to ask some questions on that.

CHAIRMAN: That's fine.

CROSS EXAMINATION BY MR. ZIMMERMAN

Q Mr. Raphel, what is your educational background?

A I attended St. Stephen's High School in Bradshaw, Maryland.

Q What year did you graduate?

A 1937, I think.

Q Did you attend college?

A I had two years in Hopkins, and I never finished. I joined the Army from there.

11

Q Have you taken any supplementary or graduate courses in planning and zoning?

A No.

Q Can you name all of the -- do you know what RC stands for?

A Rural conservation.

Q Excuse me?

A Rural conservation.

Q You think it stands for rural conservation?

A Yes.

Q Rural conservation?

A Yes.

Q Would it surprise you if it was something else?

A Pardon?

Q Would it surprise you if it actually stood for something else?

A No. No.

Q Can you name all of the what you call rural conservation zones?

12

A Present ones?

Q Yes.

A Yeah, I guess I could.

Q What are they?

A RC5.

Q What does that relate to?

A That's for zoning for -- you're allowed more lots.

Q Excuse me? I'm sorry.

A You're allowed more lots.

Q What's the density in the RC5 zone?

A The RC5 zone is one acre lots.

Q What about -- is that the allowable density, one lot per acre?

A Yes.

Q Would it surprise you if it was something different?

A Oh, yeah. It is different from -- RC5 is allowed --

Q You think it's one lot per acre, though?

A No. No. You're allowed a minimum of one

13

lot. Minimum is one lot per acre.

Q Per acre. Okay. All right.

If it turned out the density is actually at a fraction, would that surprise you?

A Yeah. It's so many per acre, yes.

Q How many per acre?

A No. No. So many per tract. I'm sorry.

Q Per tract?

A Yes.

Q What do you mean by that?

A Well, if you have a hundred acres, you're allowed so many lots. If you have 50 acres, you're allowed so many lots.

Q What other RC zones are there?

A RC4. This is what this one is in, RC4.

Q What is the -- type of zone is an RC4 zone? What's the purpose of the RC4 zone?

A Protection, water shed protection.

Q Any other RC zones?

A No, I don't think so. They're the ones we deal with.

14

Q Excuse me?
A That's the ones we deal in mostly.
Q Just RC4 and RC5?
A RC4 and RC5 and RC2.
Q Are there any other RC zones?
A I said the only ones we deal in are those three.
Q What's the allowable density generally in the RC4 zone?
MR. ALDERMAN: Do you want to show Mr. Raphel the regulations?
MR. ZIMMERMAN: No, I don't. He's supposed to be an expert.
MR. ALDERMAN: Well, even experts consult documents, Mr. Zimmerman.
MR. ZIMMERMAN: Excuse me. He's supposed to be prepared as an expert. I'm asking him a straightforward question.
MR. ALDERMAN: I'm going to object, Mr. Chairman. Even experts rely on the codified laws and regulations. He's not here as an attorney. He's

15

not here as the council person who adopted them.
CHAIRMAN: Well, he is here as an expert. From what I'm hearing, I'm a little suspect of it. So, I'll let Mr. Zimmerman continue.
MR. ALDERMAN: I'm going to object.
CHAIRMAN: Noted.
MR. ALDERMAN: Thank you.
*THE WITNESS: The question?*
Q What is the allowable density on the RC4 zone?
A *I think -- I can't recall.*
MR. ZIMMERMAN: Mr. Chairman, again, I have no objection to Mr. Raphel to be here as a surveyor. And my comments are not directed in particular to Mr. Raphel.
But I think simply because one is a surveyor doesn't make one an expert in zoning interpretation. Just because I know how to drive on the road, I know the difference between a red light and a green light, doesn't make me a traffic engineer.
MR. ALDERMAN: We will concede to that

16

fact.
MR. ZIMMERMAN: And we think that Mr. Raphel's expertise and comments should be limited to as being a surveyor.
To the extent that the petitioner's counsel has in mind some sort of zoning interpretation or statements or understanding, we would object to that.
MR. ALDERMAN: Let me respond to that.
Mr. Raphel has been practicing in this county for over 50 years. Over 50 years.
Like any engineer, surveyor or the like who practices, they don't commit these Baltimore County zoning regulations to memory, much like you as a member of the board don't, nor do I.
If somebody comes to me with a question, I would be remiss if I relied on my memory. I pick up the book and look at it to make sure that I'm correct, just like I suspect Mr. Raphel does and I suspect that others in this room may as well, saving excepting perhaps opposing counsel.

17

The fact that Mr. Raphel may not recall certain specifics doesn't mean that he has not had 50 years of experience of applying the Baltimore County zoning regulations, as he has testified.
*Just because one can't recall a particular* minute fact doesn't mean that you don't know where to go to look and how to apply them.
*Mr. Raphel is being offered here this* morning as the preparer of the plat which accompanied this petition, as one who has examined the lot lines, who has examined the deeds to this property and who has, as he does in his normal course of business, applied the Baltimore County zoning regulations applicable to each lot of record and its potential for subdivision. As he said, he's done this for many years.
For all those reasons, the fact that he may not be able to remember a density factor without looking at the book, I'm sure that if he stated an incorrect density factor, opposing counsel would have capitalized on that.

18

1 But instead of making it up or guessing,
2 Mr. Raphel said I don't recall. But he certainly
3 knows where to go to look. And he has done that for
4 many years.
5 For all those reasons, I believe his
6 expertise in the application of the Baltimore County
7 zoning regulations over the past 50 years, as he has
8 testified, certainly qualifies him as an expert in
9 that regard.
10 MR. ZIMMERMAN: Very briefly. This is a
11 case involving the RC4 zone where an expert who comes
12 here should be prepared and should have knowledge of
13 the matters that are relevant to the case if he has
14 expertise.
15 In fact, Mr. Raphel was wrong about the
16 density on the RC5 zone. It's actually a .667
17 density. It's not a one lot per acre density.
18 He doesn't know the density. He doesn't
19 recall it on the RC4 zone.
20 Sure, many of us have to consult things at
21 certain times when we're confronted with a new

19

1 question. But this case has been prepared.
2 So, if the witness is an expert, he should
3 have some basic understanding of the RC4 zone and the
4 density, which is an issue in the case.
5 So, merely because one has been practicing
6 for 50 years as a surveyor in preparing site plans and
7 can do title searches or do surveys, that doesn't mean
8 a person is an expert in interpretation and
9 application of the zoning laws.
10 And certainly Mr. Raphel does not profess
11 to have a planning and zoning educational background.
12 He has not worked as a planner. There's no indication
13 that he was a draftsperson on the resource
14 conservation zone. He doesn't seem to know whether
15 other RC zones exist aside from the ones for which he
16 prepares plats.
17 So, I think his expertise is narrow and
18 more focused than Mr. Alderman would suggest. And
19 that's not as -- that's not meant as a criticism of
20 Mr. Raphel.
21 I simply think that surveying has an

20

1 important excellent function, but I don't think it
2 extends to make him an expert in the application of
3 zoning laws.
4 MR ALDERMAN: The people's counsel has
5 mischaracterized Mr. Raphel's testimony.
6 First of all, with respect to the RC5, I
7 wasn't involved -- I mean, I wasn't aware that there
8 was any portion of this property zoned RC5. Perhaps
9 I'll be enlightened later today. I'm not sure.
10 But what Mr. Raphel did say was the
11 minimum lot size was one acre. When Mr. Zimmerman
12 asked him if that was -- if you had a hundred acres,
13 do you get a hundred lots, Mr. Raphel said, no, it was
14 something less than that. But the minimum lot size is
15 one acre.
16 So, to suggest that that is the density is
17 a mischaracterization of the testimony.
18 To say that Mr. Raphel is not aware --
19 could not testify about other RC zones, was not aware
20 of them, that's not what he said.
21 What he said was he practics primarily in

21

1 the RC5 and RC4 zones. He acknowledged there are
2 other RC zones, resource conservation zones. But he
3 said I don't practice in those. He was very candid
4 about that.
5 That is certainly not a besmirchment or
6 black mark against Mr. Raphel or his extensive
7 practice.
8 Bottom line, you've got a gentleman
9 sitting here with 50 years of experience of surveying
10 and application of the zoning laws of this county, and
11 I don't believe that you can merely wipe that under
12 the rug by saying, well, he didn't know a specific
13 provision of some section in the zoning regulations.
14 I suspect that if each one of us were
15 questioned, even those of us who believe themselves to
16 have specialties in certain areas of the law, we
17 wouldn't be able to quote verbatim either.
18 Mr. Raphel is certainly well-qualified to
19 testify with respect to the RC4 zone. He's not being
20 offered about -- I'm not going to have him testify to
21 anything about the RC -- application of zoning

22

1 densities in RC5. I don't believe any portion of the
2 property is zoned RC5.
3 But in any event, given his expertise, I
4 do believe that he should be accepted as an expert.
5 The fact that he doesn't have formal degrees after his
6 name, there's something known, at least when I came
7 up, as on-the-job training. And the courts have long
8 recognized that you don't need the academic
9 credentials.
10 I mean, we'll hear from somebody later
11 today probably that has a Ph.D., but it has nothing
12 whatsoever to do with zoning, planning or otherwise.
13 Nothing. Yet his opinions will be offered.
14 So, the fact that one doesn't have degrees
15 after his or her name has no bearing. The fact the
16 man has been applying these regulations and their
17 predecessors for over a half century I think speaks
18 volumes.
19 (A discussion was held off the record.)
20 CHAIRMAN: I consulted with the other
21 board members, and we are going to permit Mr. Raphel

23

1 to speak as an expert in -- he is a registered land
2 surveyor and also he prepared the plat.
3 And with the caveat, however, that the
4 Court of Appeals has said in many cases that even an
5 expert has to have a reasonable basis for expressing
6 an opinion any facts in which he's talking about.
7 So, we're going to listen very attentively
8 to what Mr. -- questions Mr. Alderman poses and also
9 the cross examination on the part of Mr. Zimmerman,
10 and we'll weigh very heavily on that.
11 That will be a factor that we will take
12 into consideration at the time of public deliberation.
13 So, we can move on.
14 MR. ALDERMAN: Thank you.
15 REDIRECT EXAMINATION BY MR. ALDERMAN
16 Q Mr. Raphel, you're familiar with the
17 subject property?
18 A Certainly, yes.
19 Q Mr. Raphel, were the petitions which
20 accompanied the request for this hearing and the plat
21 to accompany this petition prepared at the request of

24

1 the owners, Christopher and Susan Walters?
2 A Yes.
3 Q Did you prepare the plat which is -- a
4 copy of which is on the board and the original of
5 which is in the file?
6 A Yes.
7 Q Is the copy of the plat labeled plat to
8 accompany special hearing, 1130 and 1132 Wiseburg Road
9 bearing a date of June 7, 2002 which is hanging on the
10 board to my right, is that the same plat which
11 accompanied the petitions for hearing?
12 A Yes.
13 Q And that was prepared by you or under your
14 direction and control?
15 A Under my direction.
16 Q And does that plat reflect accurately the
17 property which is the subject of this hearing?
18 A Right.
19 Q And are the boundary lines of the two
20 properties which are owned by the Petitioners, are
21 they reflected accurately based on the deeds that are

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1 of record?
2 A Right.
3 Q And did you review the land records of
4 Baltimore County to determine the deed limits as
5 depicted on this plat to accompany special hearing?
6 A We surveyed that property, both parcels,
7 in 1967 for the former owners.
8 MR. WESCOTT: Sir, you're going to have to
9 keep your hand down and keep your voice up, because
10 the reporter has got to hear what you have to say.
11 Q And have the property lines changed since
12 you surveyed it in 1967?
13 A No.
14 Q And the area which is identified on this
15 plat to accompany special hearing as 1.29 acres to be
16 transferred, is that the area proposed for lot line
17 adjustment?
18 A Yes.
19 MR. ALDERMAN: I would offer the plat to
20 accompany the special hearing dated June 7, 2002 as
21 Petitioner's 1.

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1 MR. ZIMMERMAN: Mr. Chairman, we have no
2 objection to it to the extent that it surveys the
3 land, shows property outlines.
4 We do object to the legal premise with
5 respect to so-called transfer of density, lot line
6 adjustment.
7 MR. ALDERMAN: I don't believe it bears
8 any legal premise. It's a plat of the property and a
9 proposal.
10 CHAIRMAN: We'll take it in as
11 Petitioner's 1.
12 MR. ALDERMAN: I've marked it so.
13 Q Mr. Raphel, based on your research and
14 your knowledge of the subject property, how is the
15 property zoned today?
16 A The entire -- there are two tracts in that
17 property. Two parcels in the property.
18 Q And how are they zoned, sir?
19 A RC4.
20 Q Now, up front, I believe, there's
21 parcel 99 in front and parcel 90 in the back; correct?

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1 A Right.
2 Q Parcel 99 bears an address of
3 1132 Wiseburg Road; is that correct?
4 A Right. That's the residence of Mr. and
5 Mrs. Gossling.
6 CHAIRMAN: Excuse me. I'm sorry. I'm
7 having -- you have to keep your hand down so the
8 reporter can get your answers.
9 Q That's known as 1132 Wiseburg Road;
10 correct?
11 A Right.
12 Q And what is the size of parcel 99 as it is
13 of record today?
14 A 99 was 5.26 acres.
15 Q Now, parcel 90 further to the north is
16 also depicted on Petitioner's Exhibit 1; correct?
17 A Right.
18 Q And what's the size of parcel 90?
19 A 6.2 acres.
20 Q Now, is either -- does either property
21 have improvements on it, Mr. Raphel?

28

1 A Yes. Both have improvements on them.
2 Those improvements were built in 1937, one of them
3 was. One was built in 1943, I think.
4 Q Now, referring you to parcel 99, which you
5 have identified as being 5.26 acres, do you know if
6 that parcel under the current applicable zoning
7 regulations can be further subdivided?
8 MR. ZIMMERMAN: Objection.
9 CHAIRMAN: Overruled. I'll let him
10 answer.
11 A No, that one can't.
12 Q And why is that, Mr. Raphel?
13 A Because it has enough acreage to support
14 another house --
15 Q Now --
16 A -- under the density, RC4 density.
17 Q In the rear is parcel 90, and I believe
18 you testified that is comprised of 6.29 acres as shown
19 on Petitioner's 1; correct?
20 A Yes.
21 Q And that has an existing single family

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1 dwelling, according to your testimony; correct?
2 A Correct.
3 Q Do you know based on your practice and
4 application of the zoning regulations if a 6.29 acre
5 parcel zoned RC4 with one house can be further
6 subdivided?
7 MR. ZIMMERMAN: Objection.
8 CHAIRMAN: Overruled. He can answer.
9 A Yes.
10 Q Now, Mr. Raphel, what's the purpose of the
11 hearing here today?
12 A I went before the DRC to do this, you
13 know.
14 Q To do what, Mr. Raphel? You need to
15 explain to the board.
16 A To transfer the 1.29 acres to the 5.26
17 acre tract on that parcel 99. And they reviewed it
18 and they said, well, you'll probably have to go to
19 zoning.
20 So, I went to see zoning, and that's the
21 result of this is to put the other lot over there.

30

Q So, was this originally proposed as a lot line adjustment?
A Yes.
Q Now, under the current regulations as you apply them, you've testified that parcel 99 has one dwelling unit and parcel 90 has one but can have one more; correct?
A Correct.
Q That's a total of three dwellings possible then; correct?
A Correct.
Q Now, if the relief requested here is granted, that is, the transfer of this 1.29 acres, that will be combined with parcel 99; correct?
A Right.
Q After that combination, will parcel 99 then be able to be subdivided, as you understand the regulations?
MR. ZIMMERMAN: Objection. Calls for a legal conclusion.
CHAIRMAN: I'll let him answer.

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A Yes.
Q How many additional homes can be put on parcel 99 if the transfer is approved?
A One. One additional.
Q And if the transfer is approved, parcel 90 would be reduced in size from its present 6.29 acres; correct?
A Yes.
Q If --
A It will be five acres.
Q So, it would be reduced to five acres?
A Yes.
Q If that transfer is approved and if parcel 90 is reduced in size, could it be further subdivided under the zoning regulations, as you understand them?
MR. ZIMMERMAN: Objection.
CHAIRMAN: Overruled.
A No.
Q You've subdivided other RC4 land in Baltimore County?
A Oh, yes.

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Q And is the area of the Little Falls depicted accurately on what's been marked as Petitioner's Exhibit 1?
A Yes. The Little Gunpowder, yes.
Q Now, Mr. Raphel, if the requested approval or the requested lot line adjustment or transfer is not approved, any additional dwelling would have to be constructed on parcel 90; correct?
MR. ZIMMERMAN: Objection. Again --
CHAIRMAN: It's a continuing objection. I'll note that.
MR. ZIMMERMAN: Thank you.
A Yes.
Q And conversely, if the transfer is approved, where would the house be located, the new home, the new dwelling be located on parcel 99, if you know?
A I'd have to show you.
Q You can come up to the map or come up to Petitioner's Exhibit 1.
CHAIRMAN: Mr. Alderman, perhaps he can

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color code it on the Exhibit.
MR. ALDERMAN: Okay. Thank you.
Q If you would mark on Petitioner's Exhibit 1 -- if Mr. Zimmerman has no objection, on Petitioner's Exhibit 1 in red where the proposed dwelling would be if the transfer is approved.
A The new dwelling would have to be in here.
(A discussion was held off the record.)
Q Mr. Raphel, you've drawn on Petitioner's Exhibit 1 a red box; correct?
A Right.
Q And that would be the proposed location of the new dwelling; correct?
A Right.
Q In that 1.29 acre area?
A Yes.
Q And that would have to meet all applicable setbacks of the RC4 zone; correct?
A You could do it.
Q But it would have to meet all the setbacks? No variance is being sought for setbacks?

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1 A No
2 Q And in addition to that, to meeting the
3 setbacks, a septic reserve area meeting all
4 requirements, including setbacks and percolation,
5 would have to be approved; correct?
6 A Correct.
7 Q And a water well, a potable water well
8 meeting all application regulations and setbacks would
9 have to be approved; correct?
10 MR. ZIMMERMAN: Objection to all these
11 leading questions.
12 MR. ALDERMAN: I was trying --
13 CHAIRMAN: I think what he's saying is all
14 the Baltimore County regulations have to be met if
15 they go ahead and build the house.
16 MR. ALDERMAN: Given Mr Raphel's
17 difficulty with his voice, I was just trying to speed
18 things along, Mr. Zimmerman. That's all. I apologize
19 if it offends you.
20 CHAIRMAN: The board understands.
21 Q So, Mr. Raphel, if the requested transfer

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1 is approved, the proposed new dwelling would be moved
2 further away from the falls; correct?
3 MR. ZIMMERMAN: Objection --
4 A Yes.
5 MR. ZIMMERMAN: -- to the continual
6 leading questions.
7 CHAIRMAN: Well, it is kind of leading,
8 but go ahead.
9 Q Mr. Raphel, in your opinion, if the relief
10 is granted, would the location of the dwelling be
11 closer to or further away from the environmental
12 resource that you've identified on Petitioner's
13 Exhibit 1?
14 MR. ZIMMERMAN: Objection. I have another
15 reason for this.
16 There's no basis to believe at this point
17 that even as a practical matter that the dwelling
18 would be built anywhere on the -- what's identified as
19 parcel 90, that is to say, another dwelling given the
20 slopes and the closeness to the water.
21 They've assumed that you can have another

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1 dwelling even as a practical matter. There's no
2 foundation for that
3 CHAIRMAN: The board is interested in is
4 the new house going to be further away from the falls
5 basically.
6 Q Is it going to be further away or closer
7 to the falls, Mr. Raphel?
8 A It's going -- the new house will be
9 further away.
10 Q If the requested relief is not approved,
11 based on your knowledge of the subject property, do
12 you believe that parcel 90 could be improved and
13 subdivided -- or subdivided and improved with an
14 additional home?
15 A Only in that location.
16 Q Now --
17 MR. ZIMMERMAN: Can the witness indicate
18 what location he's talking about?
19 THE WITNESS: Sure. The one where I drew
20 the --
21 CHAIRMAN: In other words, where the

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1 proposed house could be constructed.
2 THE WITNESS: The slopes on this would
3 prohibit any further development.
4 Q But the existence of the slopes do not
5 destroy density, correct, as you understand it?
6 MR. ZIMMERMAN: Objection
7 A No. No. No.
8 MR. WESCOTT: Was that last question
9 whether or not a house could be built on parcel 90 or
10 99?
11 MR. ALDERMAN: The question focused on
12 parcel 90, which was the rear parcel. And
13 Mr. Raphel's comment was that the slopes would
14 prohibit a house from being constructed there. It
15 would have to be constructed up here, but that the
16 slopes did not destroy density.
17 That was the sum of his testimony.
18 CHAIRMAN: Right.
19 Q Mr. Raphel, being someone experienced in
20 the subdivision of RC4 zoned land in Baltimore County,
21 if the requested relief is granted, would there be an

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1 adverse effect on the water resources of the county,
2 in your opinion?
3 A No.
4 Q Mr. Raphel, in your opinion, if the
5 relief -- requested relief is granted, would that
6 relief be detrimental to the health, safety or general
7 welfare?
8 MR. ZIMMERMAN: Objection.
9 CHAIRMAN: I'll let him answer.
10 A No.
11 Q If the requested relief is granted, in
12 your opinion, would that relief tend to create
13 congestion in roads, streets or alleys in the area of
14 Wiseburg Road in this area of the county?
15 MR. ZIMMERMAN: Objection.
16 CHAIRMAN: Noted. Overruled.
17 A No.
18 Q In your professional opinion, if the
19 requested relief is granted, would that relief create
20 a potential hazard from fire, panic or other dangers?
21 MR. ZIMMERMAN: Objection.

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1 CHAIRMAN: I'll note a continuing
2 objection, Mr. Zimmerman.
3 A No.
4 Q Mr. Zimmerman -- Mr. Raphel, I keep
5 wanting to call you Mr. Zimmerman, and I apologize for
6 that.
7 Mr. Raphel, in your professional opinion,
8 given the densities which you have explained that are
9 applicable to each parcel by today's configuration, if
10 the requested relief is granted, would it result in an
11 undue concentration of population in this area?
12 A No.
13 Q Would it overcrowd the land in this area?
14 A No.
15 Q If the requested relief is granted, would
16 it interfere, in your opinion, with adequate light and
17 air in this area?
18 A No.
19 Q In your professional opinion, would the
20 requested relief, if granted, be detrimental to the
21 environmental and natural resources of the site,

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1 including forests, streams, wetlands and flood plains?
2 A No.
3 Q In your professional opinion, if the
4 requested relief is granted, would that relief or is
5 the requested relief inconsistent with the property
6 zoning classification?
7 A No.
8 MR. ZIMMERMAN: Mr. Chairman, I understand
9 I have a continuing objection.
10 CHAIRMAN: It's noted in the file.
11 MR. ALDERMAN: I think we all understood
12 that.
13 Q Does the requested relief have any benefit
14 to the subject property that you can describe for the
15 board?
16 A Well, in view of planning this, a house
17 site on this tract, where you would put it would be
18 another house on parcel -- you would put it -- another
19 house on parcel 99.
20 And relief, if this was one tract, that's
21 where it belongs. It really belongs there.

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1 MR ALDERMAN: Thank you. Nothing
2 further, Mr. Raphel.
3 Reserve the right to redirect and
4 certainly recall.
5 RECROSS EXAMINATION BY MR. ZIMMERMAN
6 Q Mr. Raphel, what part of the zoning law,
7 if any, do you think supports your statement that
8 parcel 90 can be subdivided and can have a further, an
9 additional home?
10 A I'd say it couldn't be subdivided. 99 --
11 Q Parcel 90. I don't want to -- that's the
12 6.29 acre parcel that's identified on Petitioner's
13 Exhibit 1.
14 A Because in the zoning regulations, it has
15 enough area for two density units.
16 Q What section of the law?
17 A I don't know.
18 Q Can you describe what that section says?
19 A No, I cannot.
20 Q Do you know what the relevant word with
21 reference to an area of land is used in the

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1 regulations to describe how many lots can be placed on
2 different size tracts, different size areas of land?
3 A Well, they're density units.
4 Q But is it --
5 A In various sizes.
6 Q In the RC4 zone, is the density based on
7 how many houses per lot, how many houses per parcel?
8 What's the defining area?
9 A I checked the zoning with the zoning
10 office.
11 Q I'm asking you if you know.
12 A This is how I find out. I ask people with
13 authority how many can you put on there, and they said
14 two. And that's your own zoning department.
15 Q I'm going to try to be helpful to you,
16 Mr. Raphel.
17 Here's the copy of the zoning regulations.
18 Now let's see if Mr. Raphel is the expert.
19 Can you find where the RC4 zones are?
20 A No. I'm not going to look either.
21 Q Do you have any idea where in the zoning

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1 regulations or regulations for the RC4 zones are?
2 A When I'm subdividing land, I find out from
3 the expert, so-called experts better than mine, what
4 density units can be put on a particular piece of
5 ground.
6 I certainly am not going to put lots on
7 that can't be developed.
8 Q Because you're not an expert.
9 So you talk to other people, is that your
10 point?
11 A Well --
12 Q Excuse me?
13 MR. ZIMMERMAN: I didn't hear the answer,
14 Mr. Chairman.
15 A I'm saying I am not an expert in the
16 zoning regulations, period.
17 Q Can you even point to any reference that
18 was given to you by anybody else?
19 A About what?
20 Q In the zoning regulations that applies to
21 this case.

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1 Did anyone else show you, open up the
2 regulations and say here's the regulation that we're
3 talking about?
4 A No
5 MR. ZIMMERMAN: At this point, I'd move to
6 strike his testimony about how much density there is
7 on any particular parcel here, because I don't think
8 he has any basis and he's virtually admitted he's not
9 an expert in --
10 CHAIRMAN: I'm not going to strike it,
11 Mr. Zimmerman. The board heard the testimony. We'll
12 take it into consideration at the time of public
13 deliberation.
14 Q Mr. Raphel, in any event, what is the
15 total property owned by the Petitioners that's shown
16 on your site plan?
17 A What's the total --
18 Q The total, the combination, the total.
19 A It's a total of 6.29 and 5.26.
20 Q What's the sum of those, 11.55?
21 A Pardon? You say it's 11.55.

45

1 Q No. Go ahead. I don't want to -- I want
2 you to tell me what you think the answer is.
3 A I think I'm going to add it. That's what
4 I'm going to do.
5 Q Well, go ahead and add it.
6 A 11.55. Isn't that a coincidence?
7 Q Is parcel 90 contiguous to parcel 99?
8 A Pardon?
9 Q Is parcel 90 contiguous to parcel 99?
10 A Yes.
11 Q They have common borders?
12 A Yes.
13 Q Are they in the same ownership?
14 A Now they are, yes.
15 Q Right. Now.
16 A Present.
17 Q At present.
18 Do you know when the Petitioners acquired
19 the different parcels?
20 A Yeah. They acquired 90 -- it was created
21 prior to 1949, and they acquired it in 1992.

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1 Q Which parcel?
2 A The parcel 99.
3 Q Parcel 99?
4 A Yes.
5 Q And when did they acquire parcel 90?
6 A 90 was in June 28th of 2002.
7 Q And do you know who lives in the homes
8 that are on those two parcels?
9 A Who did what?
10 Q Who lives there now, do you know?
11 A Mr. Christopher and Gossling.
12 Q On which one, or both?
13 A On 90. 99. They live on 99.
14 Q The one closest to Wiseburg Road?
15 A Yes.
16 Q And who lives in the single family
17 dwelling on parcel 90, do you know?
18 A I don't know. It's rented.
19 Q Does anyone?
20 A It's rented.
21 Q It's rented?

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1 A I guess it's rented.
2 Q Is there -- where is the access to parcel
3 90?
4 A It shows on the plat.
5 Q Can you tell us?
6 A Wiseburg Road.
7 Q Does your plat show any driveway to the
8 house on parcel 90?
9 A No. This is a right of way.
10 Q Does your plat show the right of way to
11 the house on parcel 90?
12 A No. Here, no. It shows it here. That's
13 where the right of way is.
14 Q Are you saying there's a -- there's some
15 kind of driveway or road up to the house?
16 A There's a driveway, yes.
17 Q Does it show on your plat?
18 A No.
19 Q Do you know of any provision in the zoning
20 regulations which discusses transfer of density from
21 one parcel to another?

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1 A There is a provision you can transfer from
2 one parcel to another.
3 Q Can you show me that provision in the
4 regulations?
5 A I had a copy of that somewhere.
6 Q In the zoning regulations.
7 A Don't worry about the zoning regulations.
8 I'll find mine.
9 Q You have a piece of paper in your hand,
10 Mr. Raphel.
11 A Yes.
12 Q Do you know if this is from the zoning
13 regulations?
14 A Yes.
15 Q In fact, it's from the Zoning Commission's
16 policy manual; isn't it?
17 A Right.
18 Q It relates to tracts divided by zoning
19 boundaries; does it not? The piece of paper that --
20 the copy which Mr. Alderman has given to me and you
21 have in your hand?

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1 A Also it says by zoning, right.
2 Q Tracts divided by zone boundaries?
3 A Yes. Because if it's not divided by
4 tract.
5 Q Lots divided by zone lines. There's
6 another section on this piece of paper.
7 This is -- so there's no confusion, this
8 page says 1A-3.1; is that --
9 A Yeah. 1A-3.1.
10 Q From the Zoning Commission's policy
11 manual.
12 It deals with tracts divided by zone
13 boundaries and lots divided by zone lines; correct?
14 A Yes.
15 Q So, it has nothing to do with this case;
16 wouldn't you agree?
17 All right. Let me go on to another
18 question.
19 Has any plan been submitted to develop
20 parcel 90 as is without any what you call lot line
21 adjustment?

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1 A No.
2 Q Would I be correct --
3 A Did I submit anything for approval for
4 subdivision of lots?
5 Q No. For development -- for further
6 development, yes, of parcel 90 as it is now, has any
7 plan been submitted to try to do that?
8 A No.
9 Q Do you have any familiarity with anything
10 in the resource conservation -- well, strike that.
11 You called it rural conservation, is that
12 what you called it earlier?
13 A That's right. Resource.
14 Q They're actually resource conservation --
15 A All right.
16 Q -- zones.
17 Are you familiar whether any of the
18 resource conservation zones have a concept called
19 conservancy?
20 A The ones we subdivide, which we didn't
21 have any.

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1 Q Do you know -- didn't have any, you said?
2 Do you know what conservancy is? Is it a relevant
3 term?
4 A Yes. But on the Ensor farm, which was
5 contested by Deprum (phonetic) and everything else,
6 the Court of Appeals, it didn't have any conservancy
7 on it.
8 Q What does conservancy mean?
9 MR. ALDERMAN: Mr. Chairman, I'm going to
10 object to this line of questioning. Conservancy is
11 not an issue in this case.
12 MR. ZIMMERMAN: I think it is. But the
13 question is does this witness know anything about it.
14 CHAIRMAN: I think as far as the witness
15 is concerned, the board members will agree that we've
16 heard a significant amount of testimony.
17 Really at issue here is a legal issue.
18 And so, we've heard the testimony, and I don't want to
19 cut you off, Mr. Zimmerman, but I think it's a legal
20 issue that you're going to identify in your brief, as
21 I recall.

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1 MR. ZIMMERMAN: I have to respect the
2 board's thinking on this situation.
3 Q Just to clarify a couple of things, does
4 the Little Falls run through the parcel --
5 A Yes.
6 Q -- 90?
7 A Yes.
8 Q And does your site plan show these contour
9 lines?
10 A Yes.
11 Q On both parcel 90 and parcel 99?
12 A Right.
13 Q And it appears to show to the rear, to the
14 north, northeast of the existing single family
15 dwelling on parcel 90, the land slopes steeply towards
16 Little Falls?
17 A Yes.
18 Q And you have the contour numbers there.
19 Did you calculate the percentage of the
20 slope?
21 A On that portion?

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1 Q Yes. Where it slopes down to the stream.
2 A From where the residence is on parcel 90?
3 Q Right.
4 A That is exceedingly 25 percent. Probably
5 40 percent.
6 Q Is that a forested area?
7 A It's a lot of trees.
8 Q There are trees there?
9 A That's some tracts. It's not exactly what
10 you'd call a forest.
11 Q Do you know -- strike that.
12 MR. ZIMMERMAN: Mr. Chairman, I think
13 that's all I have.
14 MR. ALDERMAN: Mr. Chairman, before I
15 start cross, might I have two minutes, not to confer
16 with Mr. Raphel, but to confer with my clients?
17 CHAIRMAN: Let's take five.
18 (Pause in the proceedings.)
19 CHAIRMAN: Okay. Are you ready,
20 Mr. Alderman?
21 MR. ALDERMAN: Yes. Thank you,

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1 Mr. Chairman.
2 CHAIRMAN: Okay.
3 MR. ALDERMAN: Thank you for the brief
4 interlude.
5 After consulting with my clients and
6 receiving their concurrence, the Petitioners,
7 Christopher Walters and Susan Gossling Walters, hereby
8 withdraw without prejudice the petition pending before
9 the board.
10 MR. ZIMMERMAN: Mr. Chairman, I object to
11 that. Once a case starts, the Petitioner is not at
12 liberty to withdraw without prejudice for a lot of
13 reasons.
14 MR. ALDERMAN: That's not correct, Mr.
15 Chairman, as this board well knows.
16 MR. ZIMMERMAN: Excuse me, Mr. Chairman.
17 This case may well go into the court
18 system. It's contrary to basic justice and to the
19 administrative process to have a petitioner come in to
20 the Board of Appeals, begin its case, in effect, see
21 how the case is going, and then if a petitioner

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1 doesn't like the way the case is going, to seek to
2 withdraw without prejudice.
3 Our office doesn't have the same
4 prerogative at any time, whether during the case or
5 after the case. As recently happened in another case,
6 a withdrawal without prejudice was submitted after the
7 board had deliberated on the case.
8 And I know that the board did very shortly
9 after that petition allow the withdrawal without
10 prejudice, and that case will be taken into the court
11 system.
12 I believe that the board has discretion to
13 review the conditions upon which withdrawals can be
14 made.
15 I don't think there's anything in the law
16 or the rules which requires the board to allow a
17 petitioner to withdraw without prejudice.
18 I happen to think that to the extent there
19 are rules that there is a rule that the board has
20 currently on dismissing an appeal.
21 I happen to believe that the word appeal

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1 is generic, it's used generically and applied to all
2 parties, not just the party who appeals.
3 I can find that ruling in a moment if I
4 need to in the rules, but I think the board is
5 generally familiar with this situation.
6 But it's absolutely contrary to all
7 principles of justice to allow the petition to be
8 dismissed without prejudice by the petitioner in the
9 middle of the case.
10 I think once the case starts, it should
11 not be dismissed without prejudice unless there's
12 consent or it's consistent with the principles of
13 justice.
14 And this is an important case relating to
15 interpretation and analysis of the RC4 zones. Our
16 office would like a ruling on the merits of the case,
17 understanding that there's no guarantee, you know, how
18 the board will rule on the merits.
19 And I think it repeats what amounts to a
20 precedent that every time a petitioner, whether or not
21 represented by this counsel or another counsel, comes

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1 into a hearing, finds at some point that it looks like
2 there's a risk of losing it that it doesn't want to
3 take, after all the parties have prepared for the
4 case, the board has come in, effort has been made with
5 Mr. Lippincott here from the Department of
6 Environment, and then the Petitioners say, all right,
7 I've had enough, we're withdrawing without prejudice.
8 That's totally contrary to all basic
9 principles of administrative law, and I don't think
10 the board should tolerate that.
11 We're prepared to continue with the case.
12 And I don't believe that the Petitioner is at liberty
13 to dismiss without prejudice.
14 MR. ALDERMAN: Perhaps Mr. Zimmerman, who
15 I believe -- strike that -- people's counsel, I don't
16 mean to personalize it -- who holds himself out to be
17 an expert in many cases in the law, perhaps they
18 should have consulted the book rather than relying on
19 memory.
20 An appeal may be withdrawn or dismissed at
21 any time prior to the conclusion of the hearing on

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said appeal.

Now, if people's counsel is correct that that appeal is generic, it can be dismissed at any time.

What I have not heard out of the comments of people's counsel is any statutory reference. In fact, the longstanding practice of both the Zoning Commissioner of this county and this Board of Appeals is that a petitioner may withdraw a petition at any time with or without prejudice, at any time prior to the final opinion being written.

That is the longstanding practice. There is no rule to the contrary. People's counsel can site no authority. The board's rule speaks to appeals.

But even then, were Mr. -- were the office of people's counsel, who I might note did not appear below as required by statute, merely entered a written appearance, but if people's counsel dismissed their -- they can withdraw or dismiss their appeal at any time prior to the conclusion, and the petitioner would have no say over that.

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What's good for the goose is good for the gander as well. What the Petitioner is seeking to -- the issue lives on for another day.

There's no decision that this board is going to render. It's not binding on people's counsel, it's not binding on Mr. Lippincott's department, it's not binding on anybody, because this board is not being asked to make a decision.

The parties that will be prejudiced certainly are the Petitioners, but they made a conscious decision, and if they choose to seek the relief at some time in the future, they have the right to do that under Section 500.7 of the Baltimore County Zoning Regulations.

MR. ZIMMERMAN: I just need to respond.

I think our basic point has to do with essentially fundamentals of justice and administrative law.

As far as Rule 3-B goes, which states that an appeal may be withdrawn or dismissed at any time prior to the conclusion of the hearing on said appeal,

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I guess the first question is, yes, does that apply to any party.

Assuming it applies to any party, I think it still gives the board discretion to determine what the conditions of the dismissal are.

If one takes it literally, of course, it applies only to the appellant, which would be our office.

But I don't want to get caught up too much in the linguistic technicality of Rule 3-B. I don't think that Rule 3-B undermines or contradicts the basic principles of justice.

I think it is a subversion of principles of justice basically to have the Petitioner try part of his case, obviously come to the conclusion that there are problems with the case. I think that's a reasonable inference, and then --

MR. ALDERMAN: I object to that inference.

MR. ZIMMERMAN: Well, I think it's a reasonable inference.

MR. ALDERMAN: From your perspective.

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MR. ZIMMERMAN: Mr. Chairman, I wish counsel wouldn't interrupt me. I tried not to interrupt counsel for the Petitioner.

I think it's a terrible process if this is an illustration of how the administrative process works.

And undoubtedly if it's allowed here, it's going to happen a lot. It already happened recently in a case where our office basically prevailed in a case, and then the petition was dismissed without prejudice. And I will say that that case will go into the court system.

But I think it -- I realize what the board did in the other case, which is we notice the Penwood Mobile Home case, but I really hope the board would give this further thought and reconsider the situation, because it's a terrible situation if petitioners can come in here, try part or, for that matter, all of their cases, and then decide that things aren't proceeding so smoothly and, again, a reasonable inference, whether in terms of the evidence

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1 presented, whether in terms of their legal position,
2 and then withdraw without prejudice.
3 It's like giving petitioners a free shot.
4 And if things are going well, they'll stick with the
5 case. If things aren't going so well, they'll drop
6 it.
7 And maybe they think they can go to some
8 other county agency, get done what they want without
9 coming to the Board of Appeals. I don't know.
10 But I think it's -- I think that if the
11 board really thinks deeply about it, it will see that
12 this is no way to run a railroad.
13 So, I think the board understands the
14 point, and I would ask the board to give it some real
15 thought.
16 (Board consulting.)
17 MR. WESCOTT: We're going to take five
18 minutes.
19 (Pause in the proceedings.)
20 CHAIRMAN: Okay. We have to get Theresa
21 for this.

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1 (Pause in the proceedings.)
2 CHAIRMAN: We'll go back on the record.
3 The record should note that the board had
4 a brief recess in which it had the opportunity to
5 review the board's rules of practice and procedure of
6 our particular board, and we're ready to rule on
7 Mr. Alderman's motion to dismiss the case without
8 prejudice.
9 Let me just say initially that the board
10 is -- recognizes the difficulties that are involved in
11 this case and it's not the first time it's come up.
12 About two years ago, the board recognized
13 the fact that the board's rules needed to be revised,
14 and we sent quite an extensive list to the Baltimore
15 County Office of Law requesting that they review the
16 changes that the board desired and send them back to
17 us with any notations that they might want to make,
18 and then accordingly send it to the Baltimore County
19 Counsel.
20 And as of this date, the Baltimore County
21 Office of Law has not responded to that request, which

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1 was made two years ago.
2 One of the requests concerned the fact
3 that the board's rules are very vague relative to the
4 dismissal of a case such as this.
5 And in the absence of any guidance, I
6 think the board is constrained to follow the literal
7 interpretation of the rules and regulations which
8 indicates that basically an appeal can be dismissed
9 any time prior to, and I think the key words are the
10 conclusion of the hearing.
11 What really is brought to bear in this
12 particular case is what constitutes, quote, the
13 conclusion of the hearing on said appeal.
14 Obviously the Petitioner has not had the
15 opportunity to present his full case. So that it
16 would appear to me based on the current rules, which I
17 may or may not agree with, that the Petitioner does
18 have the right to withdraw the case without prejudice
19 prior to what is, quote, the conclusion of the hearing
20 on said appeal.
21 Just for the record, there was another

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1 case very recently that was brought before the board
2 and, again, that same question as to what constitutes
3 the conclusion of the hearing on said appeal is left
4 in doubt, and I assume that it will be decided by the
5 folks across the street, and ultimately somebody on
6 Rowe Boulevard.
7 But as far as this hearing is concerned,
8 the Petitioner has made a request to withdraw the
9 petition without prejudice, and I can't find any
10 precedent in our rules that would prevent him from
11 doing so, although, again, for the record, I agree
12 with many of the comments that Mr. Zimmerman has made.
13 I think there's merit to them.
14 But my opinion would be that Petitioner
15 does have the right to withdraw the appeal without
16 prejudice.
17 MR. WESCOTT: I concur with the Chairman.
18 The Rule Number 3 states that an appeal may be
19 withdrawn and dismissed at any time prior to the
20 conclusion of the hearing on said appeal.
21 And pointed out by people's counsel, it

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1 refers to an appeal. It does not refer to a petition.
2 However, we have customarily allowed withdrawals of
3 petitions under that particular rule.
4 And until such time as the new -- a new
5 rule is proposed and published and is codified by the
6 county counsel, it's my opinion that regardless of my
7 personal feelings on the matter, we will have to allow
8 the withdrawal without prejudice.
9 MR. CRIZER. After reviewing the rules, I
10 also concur with my colleagues.
11 CHAIRMAN: Having said that, the hearing
12 is adjourned. The board will make the appropriate --
13 MR. ZIMMERMAN: One brief observation in
14 the event we may request reconsideration.
15 Very briefly, Rule 3-B does refer only to
16 an appeal, now that I look at it, and I think there
17 are reasons for that. It doesn't refer to petitions.
18 And Rule 4-B does give the, I would
19 suggest, the board broad discretion. It says the
20 chairman shall regulate the course of the hearing and
21 shall rule upon procedural matters, applications,

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1 modifications and objections made during the course of
2 the hearing, subject to the concurrence of a majority
3 of the board conducting the hearing.
4 And I may decide to request a
5 reconsideration of this. It came up so quickly that I
6 didn't have more than a second or two to consult the
7 regulations.
8 And I think the board may find that it has
9 more discretion in its rules than it preliminarily
10 believes
11 So, I wanted to put that on the record.
12 CHAIRMAN: I have a suspicion,
13 Mr. Zimmerman, that one part of the rules deals with
14 very substantive issues, which are really dealing with
15 the appeal itself as opposed to procedural matters,
16 which are more discretionary on the part of the board.
17 I think that's the difference this case would get.
18 You're free to do whatever you wish on
19 that.
20 So, having said that, the hearing is
21 adjourned. Have a nice holiday season.

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1 MR. ALDERMAN: Thank you. Have a nice
2 holiday.
3 (Hearing concluded at 11:35 a.m.)
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1 STATE OF MARYLAND
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4
5 I, PAULA J. ELIOPOULOS, do hereby certify
6 that the foregoing is a true and accurate transcript
7 of the proceedings indicated.
8
9
10 Paula J. Eliopoulos.
11 Notary Public
12
13
14
15
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17
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20 My Commission Expires:
21 June 1, 2004

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1 IN THE MATTER OF:

2 CHRISTOPHER WALTERS and
SUSAN GOSSLING -
3 LEGAL OWNERS 1130-1132 Wiseburg Rd. #03-448-SPH
7th Election District
4 3rd Councilmanic District

5

6 _____/

7 The hearing in the above-entitled matter

8 was held on Tuesday, December 23, 2003, commencing at

9 10:00 a.m., at the Baltimore County Board of Appeals,

10 400 Washington Avenue, Room 49, Towson, Maryland,

11 21204, before Paula J. Eliopoulos, Notary Public.

12 APPEARANCES:

13 CHARLES L. MARKS, Chairman

14 EDWARD W. CRIZER, JR.

15 LAWRENCE S. WESCOTT

16 HOWARD ALDERMAN

17 PETER ZIMMERMAN

18

19

20

21 REPORTED BY: PAULA J. ELIOPOULOS

P R O C E E D I N G S

CHAIRMAN: Let's go on the record.

Let the record show that the County Board of Appeals for Baltimore County is in its regularly scheduled session for today, Tuesday, December 23rd, at 10:00 a.m., relative to Case Number 03-448-SPH, the matter of Christopher Walters and Susan Gossling, legal owners 1130-1132 Wiseburg Road, relative to a June 18th, 2003 order of Deputy Zoning Commissioner in which a request for special hearing relief was granted.

Will counsel present please state their names and representation?

MR. ALDERMAN: Yes. Thank you. Good morning, Mr. Chairman and members of the board. Howard Alderman, Jr. with Levinigan (phonetic), P.A., having an office address of 502 Washington Avenue here in Towson.

With me today is Mr. Christopher Walters and Ms. Susan Gossling Walters, owners of the property, as well as Eugene F. Raphel president of

E. F. Raphel & Associates, Incorporated.

CHAIRMAN: Thank you.

MR. ZIMMERMAN: Peter Max Zimmerman, people's counsel for Baltimore County, offices in the courthouse.

Today also Mr. Wallace Lippincott from the Department of the Environment, Environmental Protection and Resources Management is here.

Mr. Richard McQuade, president of the Maryland Line Area Association is also here.

CHAIRMAN: Okay. Thank you.

Any preliminaries, gentlemen?

MR. ALDERMAN: I don't believe so, unless --

CHAIRMAN: Mr. Zimmerman, I suppose there will be opening statements.

MR. ALDERMAN: Yes. Good morning.

The subject property, which is located in the 3rd Councilmanic District adjacent to Wiseburg Road and Peters Road, are -- is comprised of two lots of record, both zoned RC4.

1 Parcel 90 further to the northeast is
2 comprised of just over six acres and is improved with
3 a single family dwelling.
4 Parcel 99, which fronts on Wiseburg and
5 has a corner on Peters, is a lot of record improved
6 with a single family dwelling and which is comprised
7 of 5.26 acres.
8 The proposal here is a lot line
9 adjustment. And the attendant accumulation of density
10 to permit the existing home, or not the existing home,
11 the existing right to build a home which exists on
12 parcel 90 to be moved further to the southwest so as
13 to move it back away from the resource, being the
14 Little Falls, and to also accommodate the desires of
15 the adjoining neighbors.
16 We do have a petition of the adjoining
17 neighbors in support of this request. They would much
18 rather have the house located closer to Wiseburg Road
19 than back on Little Falls Road.
20 The request is certainly in compliance
21 with the -- we believe with the rules and regulations

1 of Baltimore County.

2 The Office of Planning's comment at the

3 Zoning Commissioner level, which is in the file, they

4 had no opposition, provided that there was a 20-foot

5 drive provided for access.

6 Again, we'll be presenting Mr. Raphel, who

7 prepared the plat, and also Ms. Susan Walters

8 Gossling, one of the two property owners.

9 At the end of the day, there's no increase

10 in density. Right now you have two single family

11 dwellings existing with the right to construct a

12 third.

13 If the requested lot line adjustment is

14 approved, you will have two single family dwellings

15 with the right to construct a third, albeit in a

16 slightly different location.

17 Thank you.

18 CHAIRMAN: Thank you.

19 MR. ZIMMERMAN: Yes. Mr. Chairman,

20 members of the board, our office appealed the

21 commissioner's decision in this case.

1 I think this is a case which presents some
2 significant legal issues of first impression at the
3 board level with respect to the RC4 zone, the water
4 shed protection zone, the allowable density in the
5 zone and possibly questions of transfer of density.
6 Upon our review of the site plan, we see
7 that the Petitioners own approximately eleven and a
8 half acres of the property zoned RC4, which involves
9 the assembled lots of record or the contiguous lots of
10 record.
11 The allowable density in the RC4 zone is
12 4.2. So, we think that the allowable density for the
13 entire site is two lots, which they already have two
14 houses, two residences. They already have two.
15 So, we disagree with the premise that
16 there's any additional density on this property.
17 Assuming for the sake of argument that the
18 property could be said at the beginning to be split in
19 such a way that two lots are allowed on the rear
20 parcel, we don't agree that there is any provision to
21 transfer density from one parcel or lot to another.

1 So, there's that second issue.

2 And we don't agree that the proposal is,

3 in any event, consistent with the spirit of the RC4

4 zone.

5 We expect to ask the board to have the

6 opportunity to brief the issue in addition to present

7 evidence.

8 Mr. Wallace Lippincott of the Department

9 of Environmental Protection had some concerns about

10 the proposal. There's a comment in the file from him.

11 He will elaborate on some of those concerns.

12 And, again, Dr. McQuade is also here as an

13 interested citizen.

14 CHAIRMAN: Thank you.

15 Call your first witness, Mr. Alderman.

16 MR. ALDERMAN: Thank you. I'd call

17 Eugene F. Raphel.

18 Whereupon,

19 EUGENE F. RAPHEL,

20 called as a witness, having been first duly sworn to

21 tell the truth, the whole truth, and nothing but the

1 truth, was examined and testified as follows:

2 DIRECT EXAMINATION BY MR. ALDERMAN

3 Q Mr. Raphel, if you will, keep your voice

4 up and state your name and business address for the

5 record.

6 A E. F. Raphel, 201 Courtland Avenue --

7 205 Courtland Avenue. Registered professional land

8 surveyor.

9 Q And you're registered in the State of

10 Maryland; correct, Mr. Raphel?

11 A Yes, sir.

12 Q And are you familiar with Baltimore County

13 Zoning regulations, especially those provisions

14 pertaining to land classified as RC4?

15 A Yes.

16 Q And how long have you been practicing in

17 Baltimore County?

18 A About 50 years, something like that.

19 Q And in the course of those 50 years, have

20 you ever had the opportunity to appear and testify as

21 an expert witness on matters involving resource

1 conservation zoning before the Zoning Commissioner,
2 this Board of Appeals, the Circuit Court or any other
3 form?
4 A Before this board and the commissioner.
5 I've never been before the Circuit Court in zoning.
6 Q And approximately how many times have you
7 testified as an expert witness, Mr. Raphel?
8 A Many times. Many times. I couldn't
9 elaborate.
10 Q And have you had experience in Baltimore
11 County on behalf of land owners in subdividing land in
12 the resource conservation zones?
13 A Yes. We've done many, many plats and gone
14 to record with them in resource zones.
15 Q And how about in the RC4 zone in
16 particular, have you had experience in subdividing
17 land zoned RC4?
18 A Yes.
19 Q And, Mr. Raphel, have you ever failed to
20 qualify as an expert surveyor with an emphasis in
21 zoning either before the commissioner or this board?

1 A No.

2 MR. ALDERMAN: I would offer Mr. Raphel as

3 a registered surveyor with expertise in land

4 development and subdivision in Baltimore County and

5 zoning.

6 MR. ZIMMERMAN: I have no objection to

7 Mr. Raphel being qualified as a surveyor. We don't

8 agree that he's an expert on the interpretation of

9 zoning law or analysis of zoning.

10 I'd be glad to ask some questions on that.

11 CHAIRMAN: That's fine.

12 CROSS EXAMINATION BY MR. ZIMMERMAN

13 Q Mr. Raphel, what is your educational

14 background?

15 A I attended St. Stephen's High School in

16 Bradshaw, Maryland.

17 Q What year did you graduate?

18 A 1937, I think.

19 Q Did you attend college?

20 A I had two years in Hopkins, and I never

21 finished. I joined the Army from there.

1 Q Have you taken any supplementary or
2 graduate courses in planning and zoning?
3 A No.
4 Q Can you name all of the -- do you know
5 what RC stands for?
6 A Rural conservation.
7 Q Excuse me?
8 A Rural conservation.
9 Q You think it stands for rural
10 conservation?
11 A Yes.
12 Q Rural conservation?
13 A Yes.
14 Q Would it surprise you if it was something
15 else?
16 A Pardon?
17 Q Would it surprise you if it actually stood
18 for something else?
19 A No. No.
20 Q Can you name all of the what you call
21 rural conservation zones?

A Present ones?

Q Yes.

A Yeah, I guess I could.

Q What are they?

A RC5.

Q What does that relate to?

A That's for zoning for -- you're allowed more lots.

Q Excuse me? I'm sorry.

A You're allowed more lots.

Q What's the density in the RC5 zone?

A The RC5 zone is one acre lots.

Q What about -- is that the allowable density, one lot per acre?

A Yes.

Q Would it surprise you if it was something different?

A Oh, yeah. It is different from -- RC5 is allowed --

Q You think it's one lot per acre, though?

A No. No. You're allowed a minimum of one

1 lot. Minimum is one lot per acre.

2 Q Per acre. Okay. All right.

3 If it turned out the density is actually

4 at a fraction, would that surprise you?

5 A Yeah. It's so many per acre, yes.

6 Q How many per acre?

7 A No. No. So many per tract. I'm sorry.

8 Q Per tract?

9 A Yes.

10 Q What do you mean by that?

11 A Well, if you have a hundred acres, you're

12 allowed so many lots. If you have 50 acres, you're

13 allowed so many lots.

14 Q What other RC zones are there?

15 A RC4. This is what this one is in, RC4.

16 Q What is the -- type of zone is an RC4

17 zone? What's the purpose of the RC4 zone?

18 A Protection, water shed protection.

19 Q Any other RC zones?

20 A No, I don't think so. They're the ones we

21 deal with.

1 Q Excuse me?

2 A That's the ones we deal in mostly.

3 Q Just RC4 and RC5?

4 A RC4 and RC5 and RC2.

5 Q Are there any other RC zones?

6 A I said the only ones we deal in are those

7 three.

8 Q What's the allowable density generally in

9 the RC4 zone?

10 MR. ALDERMAN: Do you want to show

11 Mr. Raphel the regulations?

12 MR. ZIMMERMAN: No, I don't. He's

13 supposed to be an expert.

14 MR. ALDERMAN: Well, even experts consult

15 documents, Mr. Zimmerman.

16 MR. ZIMMERMAN: Excuse me. He's supposed

17 to be prepared as an expert. I'm asking him a

18 straightforward question.

19 MR. ALDERMAN: I'm going to object,

20 Mr. Chairman. Even experts rely on the codified laws

21 and regulations. He's not here as an attorney. He's

1 not here as the council person who adopted them.

2 CHAIRMAN: Well, he is here as an expert.

3 From what I'm hearing, I'm a little suspect of it.

4 So, I'll let Mr. Zimmerman continue.

5 MR. ALDERMAN: I'm going to object.

6 CHAIRMAN: Noted.

7 MR. ALDERMAN: Thank you.

8 THE WITNESS: The question?

9 Q What is the allowable density on the RC4

10 zone?

11 A I think -- I can't recall.

12 MR. ZIMMERMAN: Mr. Chairman, again, I

13 have no objection to Mr. Raphel to be here as a

14 surveyor. And my comments are not directed in

15 particular to Mr. Raphel.

16 But I think simply because one is a

17 surveyor doesn't make one an expert in zoning

18 interpretation. Just because I know how to drive on

19 the road, I know the difference between a red light

20 and a green light, doesn't make me a traffic engineer.

21 MR. ALDERMAN: We will concede to that

1 fact.

2 MR. ZIMMERMAN: And we think that

3 Mr. Raphel's expertise and comments should be limited

4 to as being a surveyor.

5 To the extent that the petitioner's

6 counsel has in mind some sort of zoning interpretation

7 or statements or understanding, we would object to

8 that.

9 MR. ALDERMAN: Let me respond to that.

10 Mr. Raphel has been practicing in this

11 county for over 50 years. Over 50 years.

12 Like any engineer, surveyor or the like

13 who practices, they don't commit these Baltimore

14 County zoning regulations to memory, much like you as

15 a member of the board don't, nor do I.

16 If somebody comes to me with a question, I

17 would be remiss if I relied on my memory. I pick up

18 the book and look at it to make sure that I'm correct,

19 just like I suspect Mr. Raphel does and I suspect that

20 others in this room may as well, saving excepting

21 perhaps opposing counsel.

1 The fact that Mr. Raphel may not recall
2 certain specifics doesn't mean that he has not had
3 50 years of experience of applying the Baltimore
4 County zoning regulations, as he has testified.
5 Just because one can't recall a particular
6 minute fact doesn't mean that you don't know where to
7 go to look and how to apply them.
8 Mr. Raphel is being offered here this
9 morning as the preparer of the plat which accompanied
10 this petition, as one who has examined the lot lines,
11 who has examined the deeds to this property and who
12 has, as he does in his normal course of business,
13 applied the Baltimore County zoning regulations
14 applicable to each lot of record and its potential for
15 subdivision. As he said, he's done this for many
16 years.
17 For all those reasons, the fact that he
18 may not be able to remember a density factor without
19 looking at the book, I'm sure that if he stated an
20 incorrect density factor, opposing counsel would have
21 capitalized on that.

1 But instead of making it up or guessing,
2 Mr. Raphel said I don't recall. But he certainly
3 knows where to go to look. And he has done that for
4 many years.
5 For all those reasons, I believe his
6 expertise in the application of the Baltimore County
7 zoning regulations over the past 50 years, as he has
8 testified, certainly qualifies him as an expert in
9 that regard.
10 MR. ZIMMERMAN: Very briefly. This is a
11 case involving the RC4 zone where an expert who comes
12 here should be prepared and should have knowledge of
13 the matters that are relevant to the case if he has
14 expertise.
15 In fact, Mr. Raphel was wrong about the
16 density on the RC5 zone. It's actually a .667
17 density. It's not a one lot per acre density.
18 He doesn't know the density. He doesn't
19 recall it on the RC4 zone.
20 Sure, many of us have to consult things at
21 certain times when we're confronted with a new

1 question. But this case has been prepared.

2 So, if the witness is an expert, he should

3 have some basic understanding of the RC4 zone and the

4 density, which is an issue in the case.

5 So, merely because one has been practicing

6 for 50 years as a surveyor in preparing site plans and

7 can do title searches or do surveys, that doesn't mean

8 a person is an expert in interpretation and

9 application of the zoning laws.

10 And certainly Mr. Raphel does not profess

11 to have a planning and zoning educational background.

12 He has not worked as a planner. There's no indication

13 that he was a draftsperson on the resource

14 conservation zone. He doesn't seem to know whether

15 other RC zones exist aside from the ones for which he

16 prepares plats.

17 So, I think his expertise is narrow and

18 more focused than Mr. Alderman would suggest. And

19 that's not as -- that's not meant as a criticism of

20 Mr. Raphel.

21 I simply think that surveying has an

1 important excellent function, but I don't think it
2 extends to make him an expert in the application of
3 zoning laws.
4 MR. ALDERMAN: The people's counsel has
5 mischaracterized Mr. Raphel's testimony.
6 First of all, with respect to the RC5, I
7 wasn't involved -- I mean, I wasn't aware that there
8 was any portion of this property zoned RC5. Perhaps
9 I'll be enlightened later today. I'm not sure.
10 But what Mr. Raphel did say was the
11 minimum lot size was one acre. When Mr. Zimmerman
12 asked him if that was -- if you had a hundred acres,
13 do you get a hundred lots, Mr. Raphel said, no, it was
14 something less than that. But the minimum lot size is
15 one acre.
16 So, to suggest that that is the density is
17 a mischaracterization of the testimony.
18 To say that Mr. Raphel is not aware --
19 could not testify about other RC zones, was not aware
20 of them, that's not what he said.
21 What he said was he practics primarily in

1 the RC5 and RC4 zones. He acknowledged there are
2 other RC zones, resource conservation zones. But he
3 said I don't practice in those. He was very candid
4 about that.
5 That is certainly not a besmirchment or
6 black mark against Mr. Raphel or his extensive
7 practice.
8 Bottom line, you've got a gentleman
9 sitting here with 50 years of experience of surveying
10 and application of the zoning laws of this county, and
11 I don't believe that you can merely wipe that under
12 the rug by saying, well, he didn't know a specific
13 provision of some section in the zoning regulations.
14 I suspect that if each one of us were
15 questioned, even those of us who believe themselves to
16 have specialties in certain areas of the law, we
17 wouldn't be able to quote verbatim either.
18 Mr. Raphel is certainly well-qualified to
19 testify with respect to the RC4 zone. He's not being
20 offered about -- I'm not going to have him testify to
21 anything about the RC -- application of zoning

1 densities in RC5. I don't believe any portion of the
2 property is zoned RC5.
3 But in any event, given his expertise, I
4 do believe that he should be accepted as an expert.
5 The fact that he doesn't have formal degrees after his
6 name, there's something known, at least when I came
7 up, as on-the-job training. And the courts have long
8 recognized that you don't need the academic
9 credentials.
10 I mean, we'll hear from somebody later
11 today probably that has a Ph.D., but it has nothing
12 whatsoever to do with zoning, planning or otherwise.
13 Nothing. Yet his opinions will be offered.
14 So, the fact that one doesn't have degrees
15 after his or her name has no bearing. The fact the
16 man has been applying these regulations and their
17 predecessors for over a half century I think speaks
18 volumes.
19 (A discussion was held off the record.)
20 CHAIRMAN: I consulted with the other
21 board members, and we are going to permit Mr. Raphel

1 to speak as an expert in -- he is a registered land
2 surveyor and also he prepared the plat.
3 And with the caveat, however, that the
4 Court of Appeals has said in many cases that even an
5 expert has to have a reasonable basis for expressing
6 an opinion any facts in which he's talking about.
7 So, we're going to listen very attentively
8 to what Mr. -- questions Mr. Alderman poses and also
9 the cross examination on the part of Mr. Zimmerman,
10 and we'll weigh very heavily on that.
11 That will be a factor that we will take
12 into consideration at the time of public deliberation.
13 So, we can move on.
14 MR. ALDERMAN: Thank you.
15 REDIRECT EXAMINATION BY MR. ALDERMAN
16 Q Mr. Raphel, you're familiar with the
17 subject property?
18 A Certainly, yes.
19 Q Mr. Raphel, were the petitions which
20 accompanied the request for this hearing and the plat
21 to accompany this petition prepared at the request of

the owners, Christopher and Susan Walters?

A Yes.

Q Did you prepare the plat which is -- a copy of which is on the board and the original of which is in the file?

A Yes.

Q Is the copy of the plat labeled plat to accompany special hearing, 1130 and 1132 Wiseburg Road bearing a date of June 7, 2002 which is hanging on the board to my right, is that the same plat which accompanied the petitions for hearing?

A Yes.

Q And that was prepared by you or under your direction and control?

A Under my direction.

Q And does that plat reflect accurately the property which is the subject of this hearing?

A Right.

Q And are the boundary lines of the two properties which are owned by the Petitioners, are they reflected accurately based on the deeds that are

1 of record?

2 A Right.

3 Q And did you review the land records of

4 Baltimore County to determine the deed limits as

5 depicted on this plat to accompany special hearing?

6 A We surveyed that property, both parcels,

7 in 1967 for the former owners.

8 MR. WESCOTT: Sir, you're going to have to

9 keep your hand down and keep your voice up, because

10 the reporter has got to hear what you have to say.

11 Q And have the property lines changed since

12 you surveyed it in 1967?

13 A No.

14 Q And the area which is identified on this

15 plat to accompany special hearing as 1.29 acres to be

16 transferred, is that the area proposed for lot line

17 adjustment?

18 A Yes.

19 MR. ALDERMAN: I would offer the plat to

20 accompany the special hearing dated June 7, 2002 as

21 Petitioner's 1.

1 MR. ZIMMERMAN: Mr. Chairman, we have no
2 objection to it to the extent that it surveys the
3 land, shows property outlines.
4 We do object to the legal premise with
5 respect to so-called transfer of density, lot line
6 adjustment.
7 MR. ALDERMAN: I don't believe it bears
8 any legal premise. It's a plat of the property and a
9 proposal.
10 CHAIRMAN: We'll take it in as
11 Petitioner's 1.
12 MR. ALDERMAN: I've marked it so.
13 Q Mr. Raphel, based on your research and
14 your knowledge of the subject property, how is the
15 property zoned today?
16 A The entire -- there are two tracts in that
17 property. Two parcels in the property.
18 Q And how are they zoned, sir?
19 A RC4.
20 Q Now, up front, I believe, there's
21 parcel 99 in front and parcel 90 in the back; correct?

1 A Right.

2 Q Parcel 99 bears an address of

3 1132 Wiseburg Road; is that correct?

4 A Right. That's the residence of Mr. and

5 Mrs. Gossling.

6 CHAIRMAN: Excuse me. I'm sorry. I'm

7 having -- you have to keep your hand down so the

8 reporter can get your answers.

9 Q That's known as 1132 Wiseburg Road;

10 correct?

11 A Right.

12 Q And what is the size of parcel 99 as it is

13 of record today?

14 A 99 was 5.26 acres.

15 Q Now, parcel 90 further to the north is

16 also depicted on Petitioner's Exhibit 1; correct?

17 A Right.

18 Q And what's the size of parcel 90?

19 A 6.2 acres.

20 Q Now, is either -- does either property

21 have improvements on it, Mr. Raphel?

A Yes. Both have improvements on them. Those improvements were built in 1937, one of them was. One was built in 1943, I think.

Q Now, referring you to parcel 99, which you have identified as being 5.26 acres, do you know if that parcel under the current applicable zoning regulations can be further subdivided?

MR. ZIMMERMAN: Objection.

CHAIRMAN: Overruled. I'll let him answer.

A No, that one can't.

Q And why is that, Mr. Raphel?

A Because it has enough acreage to support another house --

Q Now --

A -- under the density, RC4 density.

Q In the rear is parcel 90, and I believe you testified that is comprised of 6.29 acres as shown on Petitioner's 1; correct?

A Yes.

Q And that has an existing single family

1 dwelling, according to your testimony; correct?

2 A Correct.

3 Q Do you know based on your practice and

4 application of the zoning regulations if a 6.29 acre

5 parcel zoned RC4 with one house can be further

6 subdivided?

7 MR. ZIMMERMAN: Objection.

8 CHAIRMAN: Overruled. He can answer.

9 A Yes.

10 Q Now, Mr. Raphel, what's the purpose of the

11 hearing here today?

12 A I went before the DRC to do this, you

13 know.

14 Q To do what, Mr. Raphel? You need to

15 explain to the board.

16 A To transfer the 1.29 acres to the 5.26

17 acre tract on that parcel 99. And they reviewed it

18 and they said, well, you'll probably have to go to

19 zoning.

20 So, I went to see zoning, and that's the

21 result of this is to put the other lot over there.

1 Q So, was this originally proposed as a lot
2 line adjustment?
3 A Yes.
4 Q Now, under the current regulations as you
5 apply them, you've testified that parcel 99 has one
6 dwelling unit and parcel 90 has one but can have one
7 more; correct?
8 A Correct.
9 Q That's a total of three dwellings possible
10 then; correct?
11 A Correct.
12 Q Now, if the relief requested here is
13 granted, that is, the transfer of this 1.29 acres,
14 that will be combined with parcel 99; correct?
15 A Right.
16 Q After that combination, will parcel 99
17 then be able to be subdivided, as you understand the
18 regulations?
19 MR. ZIMMERMAN: Objection. Calls for a
20 legal conclusion.
21 CHAIRMAN: I'll let him answer.

1 A Yes.

2 Q How many additional homes can be put on

3 parcel 99 if the transfer is approved?

4 A One. One additional.

5 Q And if the transfer is approved, parcel 90

6 would be reduced in size from its present 6.29 acres;

7 correct?

8 A Yes.

9 Q If --

10 A It will be five acres.

11 Q So, it would be reduced to five acres?

12 A Yes.

13 Q If that transfer is approved and if parcel

14 90 is reduced in size, could it be further subdivided

15 under the zoning regulations, as you understand them?

16 MR. ZIMMERMAN: Objection.

17 CHAIRMAN: Overruled.

18 A No.

19 Q You've subdivided other RC4 land in

20 Baltimore County?

21 A Oh, yes.

1 Q And is the area of the Little Falls
2 depicted accurately on what's been marked as
3 Petitioner's Exhibit 1?
4 A Yes. The Little Gunpowder, yes.
5 Q Now, Mr. Raphel, if the requested approval
6 or the requested lot line adjustment or transfer is
7 not approved, any additional dwelling would have to be
8 constructed on parcel 90; correct?
9 MR. ZIMMERMAN: Objection. Again --
10 CHAIRMAN: It's a continuing objection.
11 I'll note that.
12 MR. ZIMMERMAN: Thank you.
13 A Yes.
14 Q And conversely, if the transfer is
15 approved, where would the house be located, the new
16 home, the new dwelling be located on parcel 99, if you
17 know?
18 A I'd have to show you.
19 Q You can come up to the map or come up to
20 Petitioner's Exhibit 1.
21 CHAIRMAN: Mr. Alderman, perhaps he can

1 color code it on the Exhibit.

2 MR. ALDERMAN: Okay. Thank you.

3 Q If you would mark on Petitioner's

4 Exhibit 1 -- if Mr. Zimmerman has no objection, on

5 Petitioner's Exhibit 1 in red where the proposed

6 dwelling would be if the transfer is approved.

7 A The new dwelling would have to be in here.

8 (A discussion was held off the record.)

9 Q Mr. Raphel, you've drawn on Petitioner's

10 Exhibit 1 a red box; correct?

11 A Right.

12 Q And that would be the proposed location of

13 the new dwelling; correct?

14 A Right.

15 Q In that 1.29 acre area?

16 A Yes.

17 Q And that would have to meet all applicable

18 setbacks of the RC4 zone; correct?

19 A You could do it.

20 Q But it would have to meet all the

21 setbacks? No variance is being sought for setbacks?

1 A No.

2 Q And in addition to that, to meeting the

3 setbacks, a septic reserve area meeting all

4 requirements, including setbacks and percolation,

5 would have to be approved; correct?

6 A Correct.

7 Q And a water well, a potable water well

8 meeting all application regulations and setbacks would

9 have to be approved; correct?

10 MR. ZIMMERMAN: Objection to all these

11 leading questions.

12 MR. ALDERMAN: I was trying --

13 CHAIRMAN: I think what he's saying is all

14 the Baltimore County regulations have to be met if

15 they go ahead and build the house.

16 MR. ALDERMAN: Given Mr. Raphel's

17 difficulty with his voice, I was just trying to speed

18 things along, Mr. Zimmerman. That's all. I apologize

19 if it offends you.

20 CHAIRMAN: The board understands.

21 Q So, Mr. Raphel, if the requested transfer

1 is approved, the proposed new dwelling would be moved
2 further away from the falls; correct?
3 MR. ZIMMERMAN: Objection --
4 A Yes.
5 MR. ZIMMERMAN: -- to the continual
6 leading questions.
7 CHAIRMAN: Well, it is kind of leading,
8 but go ahead.
9 Q Mr. Raphel, in your opinion, if the relief
10 is granted, would the location of the dwelling be
11 closer to or further away from the environmental
12 resource that you've identified on Petitioner's
13 Exhibit 1?
14 MR. ZIMMERMAN: Objection. I have another
15 reason for this.
16 There's no basis to believe at this point
17 that even as a practical matter that the dwelling
18 would be built anywhere on the -- what's identified as
19 parcel 90, that is to say, another dwelling given the
20 slopes and the closeness to the water.
21 They've assumed that you can have another

1 dwelling even as a practical matter. There's no
2 foundation for that.
3 CHAIRMAN: The board is interested in is
4 the new house going to be further away from the falls
5 basically.
6 Q Is it going to be further away or closer
7 to the falls, Mr. Raphel?
8 A It's going -- the new house will be
9 further away.
10 Q If the requested relief is not approved,
11 based on your knowledge of the subject property, do
12 you believe that parcel 90 could be improved and
13 subdivided -- or subdivided and improved with an
14 additional home?
15 A Only in that location.
16 Q Now --
17 MR. ZIMMERMAN: Can the witness indicate
18 what location he's talking about?
19 THE WITNESS: Sure. The one where I drew
20 the --
21 CHAIRMAN: In other words, where the

1 proposed house could be constructed.

2 THE WITNESS: The slopes on this would

3 prohibit any further development.

4 Q But the existence of the slopes do not

5 destroy density, correct, as you understand it?

6 MR. ZIMMERMAN: Objection.

7 A No. No. No.

8 MR. WESCOTT: Was that last question

9 whether or not a house could be built on parcel 90 or

10 99?

11 MR. ALDERMAN: The question focused on

12 parcel 90, which was the rear parcel. And

13 Mr. Raphel's comment was that the slopes would

14 prohibit a house from being constructed there. It

15 would have to be constructed up here, but that the

16 slopes did not destroy density.

17 That was the sum of his testimony.

18 CHAIRMAN: Right.

19 Q Mr. Raphel, being someone experienced in

20 the subdivision of RC4 zoned land in Baltimore County,

21 if the requested relief is granted, would there be an

1 adverse effect on the water resources of the county,
2 in your opinion?
3 A No.
4 Q Mr. Raphel, in your opinion, if the
5 relief -- requested relief is granted, would that
6 relief be detrimental to the health, safety or general
7 welfare?
8 MR. ZIMMERMAN: Objection.
9 CHAIRMAN: I'll let him answer.
10 A No.
11 Q If the requested relief is granted, in
12 your opinion, would that relief tend to create
13 congestion in roads, streets or alleys in the area of
14 Wiseburg Road in this area of the county?
15 MR. ZIMMERMAN: Objection.
16 CHAIRMAN: Noted. Overruled.
17 A No.
18 Q In your professional opinion, if the
19 requested relief is granted, would that relief create
20 a potential hazard from fire, panic or other dangers?
21 MR. ZIMMERMAN: Objection.

CHAIRMAN: I'll note a continuing objection, Mr. Zimmerman.

A No.

Q Mr. Zimmerman -- Mr. Raphel, I keep wanting to call you Mr. Zimmerman, and I apologize for that.

Mr. Raphel, in your professional opinion, given the densities which you have explained that are applicable to each parcel by today's configuration, if the requested relief is granted, would it result in an undue concentration of population in this area?

A No.

Q Would it overcrowd the land in this area?

A No.

Q If the requested relief is granted, would it interfere, in your opinion, with adequate light and air in this area?

A No.

Q In your professional opinion, would the requested relief, if granted, be detrimental to the environmental and natural resources of the site,

1 including forests, streams, wetlands and flood plains?

2 A No.

3 Q In your professional opinion, if the

4 requested relief is granted, would that relief or is

5 the requested relief inconsistent with the property

6 zoning classification?

7 A No.

8 MR. ZIMMERMAN: Mr. Chairman, I understand

9 I have a continuing objection.

10 CHAIRMAN: It's noted in the file.

11 MR. ALDERMAN: I think we all understood

12 that.

13 Q Does the requested relief have any benefit

14 to the subject property that you can describe for the

15 board?

16 A Well, in view of planning this, a house

17 site on this tract, where you would put it would be

18 another house on parcel -- you would put it -- another

19 house on parcel 99.

20 And relief, if this was one tract, that's

21 where it belongs. It really belongs there.

MR. ALDERMAN: Thank you. Nothing further, Mr. Raphel.

Reserve the right to redirect and certainly recall.

RECROSS EXAMINATION BY MR. ZIMMERMAN

Q Mr. Raphel, what part of the zoning law, if any, do you think supports your statement that parcel 90 can be subdivided and can have a further, an additional home?

A I'd say it couldn't be subdivided. 99 --

Q Parcel 90. I don't want to -- that's the 6.29 acre parcel that's identified on Petitioner's Exhibit 1.

A Because in the zoning regulations, it has enough area for two density units.

Q What section of the law?

A I don't know.

Q Can you describe what that section says?

A No, I cannot.

Q Do you know what the relevant word with reference to an area of land is used in the

1 regulations to describe how many lots can be placed on
2 different size tracts, different size areas of land?
3 A Well, they're density units.
4 Q But is it --
5 A In various sizes.
6 Q In the RC4 zone, is the density based on
7 how many houses per lot, how many houses per parcel?
8 What's the defining area?
9 A I checked the zoning with the zoning
10 office.
11 Q I'm asking you if you know.
12 A This is how I find out. I ask people with
13 authority how many can you put on there, and they said
14 two. And that's your own zoning department.
15 Q I'm going to try to be helpful to you,
16 Mr. Raphel.
17 Here's the copy of the zoning regulations.
18 Now let's see if Mr. Raphel is the expert.
19 Can you find where the RC4 zones are?
20 A No. I'm not going to look either.
21 Q Do you have any idea where in the zoning

1 regulations or regulations for the RC4 zones are?

2 A When I'm subdividing land, I find out from

3 the expert, so-called experts better than mine, what

4 density units can be put on a particular piece of

5 ground.

6 I certainly am not going to put lots on

7 that can't be developed.

8 Q Because you're not an expert.

9 So you talk to other people; is that your

10 point?

11 A Well --

12 Q Excuse me?

13 MR. ZIMMERMAN: I didn't hear the answer,

14 Mr. Chairman.

15 A I'm saying I am not an expert in the

16 zoning regulations, period.

17 Q Can you even point to any reference that

18 was given to you by anybody else?

19 A About what?

20 Q In the zoning regulations that applies to

21 this case.

1 Did anyone else show you, open up the
2 regulations and say here's the regulation that we're
3 talking about?
4 A No.
5 MR. ZIMMERMAN: At this point, I'd move to
6 strike his testimony about how much density there is
7 on any particular parcel here, because I don't think
8 he has any basis and he's virtually admitted he's not
9 an expert in --
10 CHAIRMAN: I'm not going to strike it,
11 Mr. Zimmerman. The board heard the testimony. We'll
12 take it into consideration at the time of public
13 deliberation.
14 Q Mr. Raphel, in any event, what is the
15 total property owned by the Petitioners that's shown
16 on your site plan?
17 A What's the total --
18 Q The total, the combination, the total.
19 A It's a total of 6.29 and 5.26.
20 Q What's the sum of those, 11.55?
21 A Pardon? You say it's 11.55.

1 Q No. Go ahead. I don't want to -- I want
2 you to tell me what you think the answer is.
3 A I think I'm going to add it. That's what
4 I'm going to do.
5 Q Well, go ahead and add it.
6 A 11.55. Isn't that a coincidence?
7 Q Is parcel 90 contiguous to parcel 99?
8 A Pardon?
9 Q Is parcel 90 contiguous to parcel 99?
10 A Yes.
11 Q They have common borders?
12 A Yes.
13 Q Are they in the same ownership?
14 A Now they are, yes.
15 Q Right. Now.
16 A Present.
17 Q At present.
18 Do you know when the Petitioners acquired
19 the different parcels?
20 A Yeah. They acquired 90 -- it was created
21 prior to 1949, and they acquired it in 1992.

1 Q Which parcel?
2 A The parcel 99.
3 Q Parcel 99?
4 A Yes.
5 Q And when did they acquire parcel 90?
6 A 90 was in June 28th of 2002.
7 Q And do you know who lives in the homes
8 that are on those two parcels?
9 A Who did what?
10 Q Who lives there now, do you know?
11 A Mr. Christopher and Gossling.
12 Q On which one, or both?
13 A On 90. 99. They live on 99.
14 Q The one closest to Wiseburg Road?
15 A Yes.
16 Q And who lives in the single family
17 dwelling on parcel 90, do you know?
18 A I don't know. It's rented.
19 Q Does anyone?
20 A It's rented.
21 Q It's rented?

A I guess it's rented.

Q Is there -- where is the access to parcel 90?

A It shows on the plat.

Q Can you tell us?

A Wiseburg Road.

Q Does your plat show any driveway to the house on parcel 90?

A No. This is a right of way.

Q Does your plat show the right of way to the house on parcel 90?

A No. Here, no. It shows it here. That's where the right of way is.

Q Are you saying there's a -- there's some kind of driveway or road up to the house?

A There's a driveway, yes.

Q Does it show on your plat?

A No.

Q Do you know of any provision in the zoning regulations which discusses transfer of density from one parcel to another?

1 A There is a provision you can transfer from
2 one parcel to another.
3 Q Can you show me that provision in the
4 regulations?
5 A I had a copy of that somewhere.
6 Q In the zoning regulations.
7 A Don't worry about the zoning regulations.
8 I'll find mine.
9 Q You have a piece of paper in your hand,
10 Mr. Raphel.
11 A Yes.
12 Q Do you know if this is from the zoning
13 regulations?
14 A Yes.
15 Q In fact, it's from the Zoning Commission's
16 policy manual; isn't it?
17 A Right.
18 Q It relates to tracts divided by zoning
19 boundaries; does it not? The piece of paper that --
20 the copy which Mr. Alderman has given to me and you
21 have in your hand?

A Also it says by zoning, right.

Q Tracts divided by zone boundaries?

A Yes. Because if it's not divided by tract.

Q Lots divided by zone lines. There's another section on this piece of paper.

This is -- so there's no confusion, this page says 1A-3.1; is that --

A Yeah. 1A-3.1.

Q From the Zoning Commission's policy manual.

It deals with tracts divided by zone boundaries and lots divided by zone lines; correct?

A Yes.

Q So, it has nothing to do with this case; wouldn't you agree?

All right. Let me go on to another question.

Has any plan been submitted to develop parcel 90 as is without any what you call lot line adjustment?

A No.

Q Would I be correct --

A Did I submit anything for approval for subdivision of lots?

Q No. For development -- for further development, yes, of parcel 90 as it is now, has any plan been submitted to try to do that?

A No.

Q Do you have any familiarity with anything in the resource conservation -- well, strike that.

You called it rural conservation, is that what you called it earlier?

A That's right. Resource.

Q They're actually resource conservation --

A All right.

Q -- zones.

Are you familiar whether any of the resource conservation zones have a concept called conservancy?

A The ones we subdivide, which we didn't have any.

1 Q Do you know -- didn't have any, you said?
2 Do you know what conservancy is? Is it a relevant
3 term?
4 A Yes. But on the Ensor farm, which was
5 contested by Deprum (phonetic) and everything else,
6 the Court of Appeals, it didn't have any conservancy
7 on it.
8 Q What does conservancy mean?
9 MR. ALDERMAN: Mr. Chairman, I'm going to
10 object to this line of questioning. Conservancy is
11 not an issue in this case.
12 MR. ZIMMERMAN: I think it is. But the
13 question is does this witness know anything about it.
14 CHAIRMAN: I think as far as the witness
15 is concerned, the board members will agree that we've
16 heard a significant amount of testimony.
17 Really at issue here is a legal issue.
18 And so, we've heard the testimony, and I don't want to
19 cut you off, Mr. Zimmerman, but I think it's a legal
20 issue that you're going to identify in your brief, as
21 I recall.

MR. ZIMMERMAN: I have to respect the board's thinking on this situation.

Q Just to clarify a couple of things, does the Little Falls run through the parcel --

A Yes.

Q -- 90?

A Yes.

Q And does your site plan show these contour lines?

A Yes.

Q On both parcel 90 and parcel 99?

A Right.

Q And it appears to show to the rear, to the north, northeast of the existing single family dwelling on parcel 90, the land slopes steeply towards Little Falls?

A Yes.

Q And you have the contour numbers there.

Did you calculate the percentage of the slope?

A On that portion?

Q Yes. Where it slopes down to the stream.

A From where the residence is on parcel 90?

Q Right.

A That is exceedingly 25 percent. Probably 40 percent.

Q Is that a forested area?

A It's a lot of trees.

Q There are trees there?

A That's some tracts. It's not exactly what you'd call a forest.

Q Do you know -- strike that.

MR. ZIMMERMAN: Mr. Chairman, I think that's all I have.

MR. ALDERMAN: Mr. Chairman, before I start cross, might I have two minutes, not to confer with Mr. Raphel, but to confer with my clients?

CHAIRMAN: Let's take five.

(Pause in the proceedings.)

CHAIRMAN: Okay. Are you ready, Mr. Alderman?

MR. ALDERMAN: Yes. Thank you,

1 Mr. Chairman.

2 CHAIRMAN: Okay.

3 MR. ALDERMAN: Thank you for the brief

4 interlude.

5 After consulting with my clients and

6 receiving their concurrence, the Petitioners,

7 Christopher Walters and Susan Gossling Walters, hereby

8 withdraw without prejudice the petition pending before

9 the board.

10 MR. ZIMMERMAN: Mr. Chairman, I object to

11 that. Once a case starts, the Petitioner is not at

12 liberty to withdraw without prejudice for a lot of

13 reasons.

14 MR. ALDERMAN: That's not correct, Mr.

15 Chairman, as this board well knows.

16 MR. ZIMMERMAN: Excuse me, Mr. Chairman.

17 This case may well go into the court

18 system. It's contrary to basic justice and to the

19 administrative process to have a petitioner come in to

20 the Board of Appeals, begin its case, in effect, see

21 how the case is going, and then if a petitioner

1 doesn't like the way the case is going, to seek to
2 withdraw without prejudice.
3 Our office doesn't have the same
4 prerogative at any time, whether during the case or
5 after the case. As recently happened in another case,
6 a withdrawal without prejudice was submitted after the
7 board had deliberated on the case.
8 And I know that the board did very shortly
9 after that petition allow the withdrawal without
10 prejudice, and that case will be taken into the court
11 system.
12 I believe that the board has discretion to
13 review the conditions upon which withdrawals can be
14 made.
15 I don't think there's anything in the law
16 or the rules which requires the board to allow a
17 petitioner to withdraw without prejudice.
18 I happen to think that to the extent there
19 are rules that there is a rule that the board has
20 currently on dismissing an appeal.
21 I happen to believe that the word appeal

1 is generic, it's used generically and applied to all
2 parties, not just the party who appeals.
3 I can find that ruling in a moment if I
4 need to in the rules, but I think the board is
5 generally familiar with this situation.
6 But it's absolutely contrary to all
7 principles of justice to allow the petition to be
8 dismissed without prejudice by the petitioner in the
9 middle of the case.
10 I think once the case starts, it should
11 not be dismissed without prejudice unless there's
12 consent or it's consistent with the principles of
13 justice.
14 And this is an important case relating to
15 interpretation and analysis of the RC4 zones. Our
16 office would like a ruling on the merits of the case,
17 understanding that there's no guarantee, you know, how
18 the board will rule on the merits.
19 And I think it repeats what amounts to a
20 precedent that every time a petitioner, whether or not
21 represented by this counsel or another counsel, comes

1 into a hearing, finds at some point that it looks like
2 there's a risk of losing it that it doesn't want to
3 take, after all the parties have prepared for the
4 case, the board has come in, effort has been made with
5 Mr. Lippincott here from the Department of
6 Environment, and then the Petitioners say, all right,
7 I've had enough, we're withdrawing without prejudice.
8 That's totally contrary to all basic
9 principles of administrative law, and I don't think
10 the board should tolerate that.
11 We're prepared to continue with the case.
12 And I don't believe that the Petitioner is at liberty
13 to dismiss without prejudice.
14 MR. ALDERMAN: Perhaps Mr. Zimmerman, who
15 I believe -- strike that -- people's counsel, I don't
16 mean to personalize it -- who holds himself out to be
17 an expert in many cases in the law, perhaps they
18 should have consulted the book rather than relying on
19 memory.
20 An appeal may be withdrawn or dismissed at
21 any time prior to the conclusion of the hearing on

1 said appeal.

2 Now, if people's counsel is correct that

3 that appeal is generic, it can be dismissed at any

4 time.

5 What I have not heard out of the comments

6 of people's counsel is any statutory reference. In

7 fact, the longstanding practice of both the Zoning

8 Commissioner of this county and this Board of Appeals

9 is that a petitioner may withdraw a petition at any

10 time with or without prejudice, at any time prior to

11 the final opinion being written.

12 That is the longstanding practice. There

13 is no rule to the contrary. People's counsel can site

14 no authority. The board's rule speaks to appeals.

15 But even then, were Mr. -- were the office

16 of people's counsel, who I might note did not appear

17 below as required by statute, merely entered a written

18 appearance, but if people's counsel dismissed their --

19 they can withdraw or dismiss their appeal at any time

20 prior to the conclusion, and the petitioner would have

21 no say over that.

1 What's good for the goose is good for the
2 gander as well. What the Petitioner is seeking to --
3 the issue lives on for another day.
4 There's no decision that this board is
5 going to render. It's not binding on people's
6 counsel, it's not binding on Mr. Lippincott's
7 department, it's not binding on anybody, because this
8 board is not being asked to make a decision.
9 The parties that will be prejudiced
10 certainly are the Petitioners, but they made a
11 conscious decision, and if they choose to seek the
12 relief at some time in the future, they have the right
13 to do that under Section 500.7 of the Baltimore County
14 Zoning Regulations.
15 MR. ZIMMERMAN: I just need to respond.
16 I think our basic point has to do with
17 essentially fundamentals of justice and administrative
18 law.
19 As far as Rule 3-B goes, which states that
20 an appeal may be withdrawn or dismissed at any time
21 prior to the conclusion of the hearing on said appeal,

1 I guess the first question is, yes, does that apply to
2 any party.
3 Assuming it applies to any party, I think
4 it still gives the board discretion to determine what
5 the conditions of the dismissal are.
6 If one takes it literally, of course, it
7 applies only to the appellant, which would be our
8 office.
9 But I don't want to get caught up too much
10 in the linguistic technicality of Rule 3-B. I don't
11 think that Rule 3-B undermines or contradicts the
12 basic principles of justice.
13 I think it is a subversion of principles
14 of justice basically to have the Petitioner try part
15 of his case, obviously come to the conclusion that
16 there are problems with the case. I think that's a
17 reasonable inference, and then --
18 MR. ALDERMAN: I object to that inference.
19 MR. ZIMMERMAN: Well, I think it's a
20 reasonable inference.
21 MR. ALDERMAN: From your perspective.

1 MR. ZIMMERMAN: Mr. Chairman, I wish
2 counsel wouldn't interrupt me. I tried not to
3 interrupt counsel for the Petitioner.
4 I think it's a terrible process if this is
5 an illustration of how the administrative process
6 works.
7 And undoubtedly if it's allowed here, it's
8 going to happen a lot. It already happened recently
9 in a case where our office basically prevailed in a
10 case, and then the petition was dismissed without
11 prejudice. And I will say that that case will go into
12 the court system.
13 But I think it -- I realize what the board
14 did in the other case, which is we notice the Penwood
15 Mobile Home case, but I really hope the board would
16 give this further thought and reconsider the
17 situation, because it's a terrible situation if
18 petitioners can come in here, try part or, for that
19 matter, all of their cases, and then decide that
20 things aren't proceeding so smoothly and, again, a
21 reasonable inference, whether in terms of the evidence

1 presented, whether in terms of their legal position,
2 and then withdraw without prejudice.
3 It's like giving petitioners a free shot.
4 And if things are going well, they'll stick with the
5 case. If things aren't going so well, they'll drop
6 it.
7 And maybe they think they can go to some
8 other county agency, get done what they want without
9 coming to the Board of Appeals. I don't know.
10 But I think it's -- I think that if the
11 board really thinks deeply about it, it will see that
12 this is no way to run a railroad.
13 So, I think the board understands the
14 point, and I would ask the board to give it some real
15 thought.
16 (Board consulting.)
17 MR. WESCOTT: We're going to take five
18 minutes.
19 (Pause in the proceedings.)
20 CHAIRMAN: Okay. We have to get Theresa
21 for this.

1 (Pause in the proceedings.)

2 CHAIRMAN: We'll go back on the record.

3 The record should note that the board had

4 a brief recess in which it had the opportunity to

5 review the board's rules of practice and procedure of

6 our particular board, and we're ready to rule on

7 Mr. Alderman's motion to dismiss the case without

8 prejudice.

9 Let me just say initially that the board

10 is -- recognizes the difficulties that are involved in

11 this case and it's not the first time it's come up.

12 About two years ago, the board recognized

13 the fact that the board's rules needed to be revised,

14 and we sent quite an extensive list to the Baltimore

15 County Office of Law requesting that they review the

16 changes that the board desired and send them back to

17 us with any notations that they might want to make,

18 and then accordingly send it to the Baltimore County

19 Counsel.

20 And as of this date, the Baltimore County

21 Office of Law has not responded to that request, which

1 was made two years ago.

2 One of the requests concerned the fact

3 that the board's rules are very vague relative to the

4 dismissal of a case such as this.

5 And in the absence of any guidance, I

6 think the board is constrained to follow the literal

7 interpretation of the rules and regulations which

8 indicates that basically an appeal can be dismissed

9 any time prior to, and I think the key words are the

10 conclusion of the hearing.

11 What really is brought to bear in this

12 particular case is what constitutes, quote, the

13 conclusion of the hearing on said appeal.

14 Obviously the Petitioner has not had the

15 opportunity to present his full case. So that it

16 would appear to me based on the current rules, which I

17 may or may not agree with, that the Petitioner does

18 have the right to withdraw the case without prejudice

19 prior to what is, quote, the conclusion of the hearing

20 on said appeal.

21 Just for the record, there was another

1 case very recently that was brought before the board
2 and, again, that same question as to what constitutes
3 the conclusion of the hearing on said appeal is left
4 in doubt, and I assume that it will be decided by the
5 folks across the street, and ultimately somebody on
6 Rowe Boulevard.
7 But as far as this hearing is concerned,
8 the Petitioner has made a request to withdraw the
9 petition without prejudice, and I can't find any
10 precedent in our rules that would prevent him from
11 doing so, although, again, for the record, I agree
12 with many of the comments that Mr. Zimmerman has made.
13 I think there's merit to them.
14 But my opinion would be that Petitioner
15 does have the right to withdraw the appeal without
16 prejudice.
17 MR. WESCOTT: I concur with the Chairman.
18 The Rule Number 3 states that an appeal may be
19 withdrawn and dismissed at any time prior to the
20 conclusion of the hearing on said appeal.
21 And pointed out by people's counsel, it

1 refers to an appeal. It does not refer to a petition.
2 However, we have customarily allowed withdrawals of
3 petitions under that particular rule.
4 And until such time as the new -- a new
5 rule is proposed and published and is codified by the
6 county counsel, it's my opinion that regardless of my
7 personal feelings on the matter, we will have to allow
8 the withdrawal without prejudice.
9 MR. CRIZER: After reviewing the rules, I
10 also concur with my colleagues.
11 CHAIRMAN: Having said that, the hearing
12 is adjourned. The board will make the appropriate --
13 MR. ZIMMERMAN: One brief observation in
14 the event we may request reconsideration.
15 Very briefly, Rule 3-B does refer only to
16 an appeal, now that I look at it, and I think there
17 are reasons for that. It doesn't refer to petitions.
18 And Rule 4-B does give the, I would
19 suggest, the board broad discretion. It says the
20 chairman shall regulate the course of the hearing and
21 shall rule upon procedural matters, applications,

1 modifications and objections made during the course of
2 the hearing, subject to the concurrence of a majority
3 of the board conducting the hearing.
4 And I may decide to request a
5 reconsideration of this. It came up so quickly that I
6 didn't have more than a second or two to consult the
7 regulations.
8 And I think the board may find that it has
9 more discretion in its rules than it preliminarily
10 believes.
11 So, I wanted to put that on the record.
12 CHAIRMAN: I have a suspicion,
13 Mr. Zimmerman, that one part of the rules deals with
14 very substantive issues, which are really dealing with
15 the appeal itself as opposed to procedural matters,
16 which are more discretionary on the part of the board.
17 I think that's the difference this case would get.
18 You're free to do whatever you wish on
19 that.
20 So, having said that, the hearing is
21 adjourned. Have a nice holiday season.

1 MR. ALDERMAN: Thank you. Have a nice
2 holiday.
3 (Hearing concluded at 11:35 a.m.)
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1 STATE OF MARYLAND

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5 I, PAULA J. ELIOPOULOS, do hereby certify

6 that the foregoing is a true and accurate transcript

7 of the proceedings indicated.

8

9 _____

10 Paula J. Eliopoulos.

11 Notary Public

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20 My Commission Expires:

21 June 1, 2004

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IN THE MATTER OF:

CHRISTOPHER WALTERS and
SUSAN GOSSLING -
LEGAL OWNERS 1130-1132 Wiseburg Rd. #03-448-SPH
7th Election District
3rd Councilmanic District

_____/

The hearing in the above-entitled matter was held on Tuesday, December 23, 2003, commencing at 10:00 a.m., at the Baltimore County Board of Appeals, 400 Washington Avenue, Room 49, Towson, Maryland, 21204, before Paula J. Eliopoulos, Notary Public.

APPEARANCES:

CHARLES L. MARKS, Chairman

EDWARD W. CRIZER, JR.

LAWRENCE S. WESCOTT

HOWARD ALDERMAN

PETER ZIMMERMAN

REPORTED BY: PAULA J. ELIOPOULOS



Exhibit 1

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1 adverse effect on the water resources of the county,
2 in your opinion?
3 A No.
4 Q Mr. Raphel, in your opinion, if the
5 relief -- requested relief is granted, would that
6 relief be detrimental to the health, safety or general
7 welfare?
8 MR. ZIMMERMAN: Objection.
9 CHAIRMAN: I'll let him answer.
10 A No.
11 Q If the requested relief is granted, in
12 your opinion, would that relief tend to create
13 congestion in roads, streets or alleys in the area of
14 Wiseburg Road in this area of the county?
15 MR. ZIMMERMAN: Objection.
16 CHAIRMAN: Noted. Overruled.
17 A No.
18 Q In your professional opinion, if the
19 requested relief is granted, would that relief create
20 a potential hazard from fire, panic or other dangers?
21 MR. ZIMMERMAN: Objection.

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1 CHAIRMAN: I'll note a continuing
2 objection, Mr. Zimmerman.
3 A No.
4 Q Mr. Zimmerman -- Mr. Raphel, I keep
5 wanting to call you Mr. Zimmerman, and I apologize for
6 that.
7 Mr. Raphel, in your professional opinion,
8 given the densities which you have explained that are
9 applicable to each parcel by today's configuration, if
10 the requested relief is granted, would it result in an
11 undue concentration of population in this area?
12 A No.
13 Q Would it overcrowd the land in this area?
14 A No.
15 Q If the requested relief is granted, would
16 it interfere, in your opinion, with adequate light and
17 air in this area?
18 A No.
19 Q In your professional opinion, would the
20 requested relief, if granted, be detrimental to the
21 environmental and natural resources of the site,

40

1 including forests, streams, wetlands and flood plains?
2 A No.
3 Q In your professional opinion, if the
4 requested relief is granted, would that relief or is
5 the requested relief inconsistent with the property
6 zoning classification?
7 A No.
8 MR. ZIMMERMAN: Mr. Chairman, I understand
9 I have a continuing objection.
10 CHAIRMAN: It's noted in the file.
11 MR. ALDERMAN: I think we all understood
12 that.
13 Q Does the requested relief have any benefit
14 to the subject property that you can describe for the
15 board?
16 A Well, in view of planning this, a house
17 site on this tract, where you would put it would be
18 another house on parcel -- you would put it -- another
19 house on parcel 99.
20 And relief, if this was one tract, that's
21 where it belongs. It really belongs there.

41

1 MR. ALDERMAN: Thank you. Nothing
2 further, Mr. Raphel.
3 Reserve the right to redirect and
4 certainly recall.
5 RECROSS EXAMINATION BY MR. ZIMMERMAN
6 Q Mr. Raphel, what part of the zoning law,
7 if any, do you think supports your statement that
8 parcel 90 can be subdivided and can have a further, an
9 additional home?
10 A I'd say it couldn't be subdivided. 99 --
11 Q Parcel 90. I don't want to -- that's the
12 6.29 acre parcel that's identified on Petitioner's
13 Exhibit 1.
14 A Because in the zoning regulations, it has
15 enough area for two density units.
16 Q What section of the law?
17 A I don't know.
18 Q Can you describe what that section says?
19 A No, I cannot.
20 Q Do you know what the relevant word with
21 reference to an area of land is used in the

38

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19 A No, I cannot.
20 Q Do you know what the relevant word with
21 reference to an area of land is used in the

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1 Q Which parcel?
2 A The parcel 99.
3 Q Parcel 99?
4 A Yes.
5 Q And when did they acquire parcel 90?
6 A 90 was in June 28th of 2002.
7 Q And do you know who lives in the homes
8 that are on those two parcels?
9 A Who did what?
10 Q Who lives there now, do you know?
11 A Mr. Christopher and Gossling.
12 Q On which one, or both?
13 A On 90. 99. They live on 99.
14 Q The one closest to Wiseburg Road?
15 A Yes.
16 Q And who lives in the single family
17 dwelling on parcel 90, do you know?
18 A I don't know. It's rented.
19 Q Does anyone?
20 A It's rented.
21 Q It's rented?

47

1 A I guess it's rented.
2 Q Is there -- where is the access to parcel
3 90?
4 A It shows on the plat.
5 Q Can you tell us?
6 A Wiseburg Road.
7 Q Does your plat show any driveway to the
8 house on parcel 90?
9 A No. This is a right of way.
10 Q Does your plat show the right of way to
11 the house on parcel 90?
12 A No. Here, no. It shows it here. That's
13 where the right of way is.
14 Q Are you saying there's a -- there's some
15 kind of driveway or road up to the house?
16 A There's a driveway, yes.
17 Q Does it show on your plat?
18 A No.
19 Q Do you know of any provision in the zoning
20 regulations which discusses transfer of density from
21 one parcel to another?

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1 A There is a provision you can transfer from
2 one parcel to another.
3 Q Can you show me that provision in the
4 regulations?
5 A I had a copy of that somewhere.
6 Q In the zoning regulations.
7 A Don't worry about the zoning regulations.
8 I'll find mine.
9 Q You have a piece of paper in your hand,
10 Mr. Raphel.
11 A Yes.
12 Q Do you know if this is from the zoning
13 regulations?
14 A Yes.
15 Q In fact, it's from the Zoning Commission's
16 policy manual; isn't it?
17 A Right.
18 Q It relates to tracts divided by zoning
19 boundaries; does it not? The piece of paper that --
20 the copy which Mr. Alderman has given to me and you
21 have in your hand?

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1 A Also it says by zoning, right.
2 Q Tracts divided by zone boundaries?
3 A Yes. Because if it's not divided by
4 tract.
5 Q Lots divided by zone lines. There's
6 another section on this piece of paper.
7 This is -- so there's no confusion, this
8 page says 1A-3.1; is that --
9 A Yeah. 1A-3.1.
10 Q From the Zoning Commission's policy
11 manual.
12 It deals with tracts divided by zone
13 boundaries and lots divided by zone lines; correct?
14 A Yes.
15 Q So, it has nothing to do with this case;
16 wouldn't you agree?
17 All right. Let me go on to another
18 question.
19 Has any plan been submitted to develop
20 parcel 90 as is without any what you call lot line
21 adjustment?

50

A No.
Q Would I be correct --
A Did I submit anything for approval for subdivision of lots?
Q No. For development -- for further development, yes, of parcel 90 as it is now, has any plan been submitted to try to do that?
A No.
Q Do you have any familiarity with anything in the resource conservation -- well, strike that.
You called it rural conservation, is that what you called it earlier?
A That's right. Resource.
Q They're actually resource conservation --
A All right.
Q -- zones.
Are you familiar whether any of the resource conservation zones have a concept called conservancy?
A The ones we subdivide, which we didn't have any.

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Q Do you know -- didn't have any, you said? Do you know what conservancy is? Is it a relevant term?
A Yes. But on the Ensor farm, which was contested by Deprum (phonetic) and everything else, the Court of Appeals, it didn't have any conservancy on it.
Q What does conservancy mean?
MR. ALDERMAN: Mr. Chairman, I'm going to object to this line of questioning. Conservancy is not an issue in this case.
MR. ZIMMERMAN: I think it is. But the question is does this witness know anything about it.
CHAIRMAN: I think as far as the witness is concerned, the board members will agree that we've heard a significant amount of testimony.
Really at issue here is a legal issue. And so, we've heard the testimony, and I don't want to cut you off, Mr. Zimmerman, but I think it's a legal issue that you're going to identify in your brief, as I recall.

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MR. ZIMMERMAN: I have to respect the board's thinking on this situation.
Q Just to clarify a couple of things, does the Little Falls run through the parcel --
A Yes.
Q -- 90?
A Yes.
Q And does your site plan show these contour lines?
A Yes.
Q On both parcel 90 and parcel 99?
A Right.
Q And it appears to show to the rear, to the north, northeast of the existing single family dwelling on parcel 90, the land slopes steeply towards Little Falls?
A Yes.
Q And you have the contour numbers there.
Did you calculate the percentage of the slope?
A On that portion?

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Q Yes. Where it slopes down to the stream.
A From where the residence is on parcel 90?
Q Right.
A That is exceedingly 25 percent. Probably 40 percent.
Q Is that a forested area?
A It's a lot of trees.
Q There are trees there?
A That's some tracts. It's not exactly what you'd call a forest.
Q Do you know -- strike that.
MR. ZIMMERMAN: Mr. Chairman, I think that's all I have.
MR. ALDERMAN: Mr. Chairman, before I start cross, might I have two minutes, not to confer with Mr. Raphel, but to confer with my clients?
CHAIRMAN: Let's take five.
(Pause in the proceedings.)
CHAIRMAN: Okay. Are you ready, Mr. Alderman?
MR. ALDERMAN: Yes. Thank you,

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1 Mr. Chairman.
2 CHAIRMAN: Okay.
3 MR. ALDERMAN: Thank you for the brief
4 interlude.
5 After consulting with my clients and
6 receiving their concurrence, the Petitioners,
7 Christopher Walters and Susan Gossling Walters, hereby
8 withdraw without prejudice the petition pending before
9 the board.
10 MR. ZIMMERMAN: Mr. Chairman, I object to
11 that. Once a case starts, the Petitioner is not at
12 liberty to withdraw without prejudice for a lot of
13 reasons.
14 MR. ALDERMAN: That's not correct, Mr.
15 Chairman, as this board well knows.
16 MR. ZIMMERMAN: Excuse me, Mr. Chairman.
17 This case may well go into the court
18 system. It's contrary to basic justice and to the
19 administrative process to have a petitioner come in to
20 the Board of Appeals, begin its case, in effect, see
21 how the case is going, and then if a petitioner

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1 doesn't like the way the case is going, to seek to
2 withdraw without prejudice.
3 Our office doesn't have the same
4 prerogative at any time, whether during the case or
5 after the case. As recently happened in another case,
6 a withdrawal without prejudice was submitted after the
7 board had deliberated on the case.
8 And I know that the board did very shortly
9 after that petition allow the withdrawal without
10 prejudice, and that case will be taken into the court
11 system.
12 I believe that the board has discretion to
13 review the conditions upon which withdrawals can be
14 made.
15 I don't think there's anything in the law
16 or the rules which requires the board to allow a
17 petitioner to withdraw without prejudice.
18 I happen to think that to the extent there
19 are rules that there is a rule that the board has
20 currently on dismissing an appeal.
21 I happen to believe that the word appeal

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1 is generic, it's used generically and applied to all
2 parties, not just the party who appeals.
3 I can find that ruling in a moment if I
4 need to in the rules, but I think the board is
5 generally familiar with this situation.
6 But it's absolutely contrary to all
7 principles of justice to allow the petition to be
8 dismissed without prejudice by the petitioner in the
9 middle of the case.
10 I think once the case starts, it should
11 not be dismissed without prejudice unless there's
12 consent or it's consistent with the principles of
13 justice.
14 And this is an important case relating to
15 interpretation and analysis of the RC4 zones. Our
16 office would like a ruling on the merits of the case,
17 understanding that there's no guarantee, you know, how
18 the board will rule on the merits.
19 And I think it repeats what amounts to a
20 precedent that every time a petitioner, whether or not
21 represented by this counsel or another counsel, comes

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1 into a hearing, finds at some point that it looks like
2 there's a risk of losing it that it doesn't want to
3 take, after all the parties have prepared for the
4 case, the board has come in, effort has been made with
5 Mr. Lippincott here from the Department of
6 Environment, and then the Petitioners say, all right,
7 I've had enough, we're withdrawing without prejudice.
8 That's totally contrary to all basic
9 principles of administrative law, and I don't think
10 the board should tolerate that.
11 We're prepared to continue with the case.
12 And I don't believe that the Petitioner is at liberty
13 to dismiss without prejudice.
14 MR. ALDERMAN: Perhaps Mr. Zimmerman, who
15 I believe -- strike that -- people's counsel, I don't
16 mean to personalize it -- who holds himself out to be
17 an expert in many cases in the law, perhaps they
18 should have consulted the book rather than relying on
19 memory.
20 An appeal may be withdrawn or dismissed at
21 any time prior to the conclusion of the hearing on

# APPENDIX H
# RULES OF PRACTICE AND PROCEDURE
# OF THE BALTIMORE COUNTY BOARD OF APPEALS[1]

Rule 1. General

a. The county board of appeals shall select one of its members to be the chairman of the board, and he shall serve as chairman at the pleasure of the board. The chairman shall preside at all meetings of the county board of appeals, and in his absence he shall designate another member of the board to sit in his place as acting chairman.

b. Meetings of the county board of appeals shall be held as determined by the chairman, but never less than weekly; and the board shall meet at such other times as the board may determine.

c. Three (3) members of the board of appeals, as designated by the chairman, shall sit for the purpose of conducting the business of the board; and a majority vote of two (2) members shall be necessary to render a decision, except that, in the event of illness or death of a sitting member, upon agreement of counsel of record or parties or record, two (2) members may continue to sit for purposes of concluding any matter before the board of appeals.

d. All appeals to the board from decisions of the zoning commissioner or deputy zoning commissioner shall be in conformance with the rules of the zoning commissioner of Baltimore County with respect to the form of appeal, and the filing fees shall be as established either by said rules of the zoning commissioner or by the Zoning Regulations of Baltimore County.

Rule 2. Notice.

a. No hearing shall be conducted without at least ten (10) days' notice to all parties of record or their counsel of record, unless otherwise agreed to by all such parties or their counsel of record.

b. Postponements and continuances will be granted at the discretion of the board only upon request in writing by an attorney of record, addressed to the board and with a copy to every other attorney of record, or party of record (if not represented by counsel) entitled to receive notice, in accordance with section 500.11 of the Baltimore County Zoning Regulations, setting forth good and sufficient reasons for the requested postponement.

c. No postponement shall be granted within fifteen (15) days prior to the hearing date except in extraordinary circumstances and for a reason satisfactory to the board, given by the party requesting such postponement indicating that the circumstances requiring the postponement are of an unusual and ordinary nature.

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[1] **Editor's Note: These rules are included here as they appeared in Appendix G of the 1987 Edition of the Baltimore County Zoning Regulations, as amended.**



Exhibit 2

d. All records and dockets of the board shall be open to the public during normal business hours.

e. In appeals from decisions of the zoning commissioner, formal notice of hearings, continuances and decisions of the board will be provided only to those persons entitled to receive same in accordance with section 500.11 of the Baltimore County Zoning Regulations.

Rule 3. Appeals.

a. No appeal shall be entertained by the board of appeals unless the notice of appeal shall state the names and addresses of the persons taking such appeal.

b. An appeal may be withdrawn or dismissed at any time prior to the conclusion of the hearing on said appeal.

c. Unless otherwise provided for by statute, all appeals to the board of appeals, subject to and limited by statutory authority to hear appeals, shall be made within thirty (30) days from the date of the final action appealed. [Bill No. 141-1989]

Rule 4. Conduct of hearings.

a. All hearings held by the county board of appeals shall be open to the public. No hearing shall be private even though all parties agree. The county board of appeals shall have the power to administer oaths, and all witnesses shall testify under oath.

b. The chairman shall regulate the course of the hearing and shall rule upon procedural matters, applications, modifications and objections made during the course of the hearing, subject to the concurrence of a majority of the board conducting the hearing.

c. A hearing may be adjourned from time to time for good cause shown and if the time and place of reconvening the hearing is announced at adjournment, no further notice of reconvening shall be required. If the time and place of reconvening is not announced at adjournment, notice of time and place of reconvening shall be given as required in rule 2a.

d. Depositions shall not be allowed unless by agreement of all parties or their counsel of record.

Rule 5. Subpoenas

a. The county board of appeals shall have the power to compel the attendance of witnesses and to require the production of records and documentary or other tangible evidence.

b. The board may cause subpoenas and subpoenas duces tecum to be issued upon its own motion, or upon the application of any party to any hearing; but subpoenas will not be issued upon application unless such application is in writing and sets forth the persons, records, books, papers or other documents to be produced and a general statement as to the purpose.

Rule 6. Appearances and practice before the board of appeals.

a. Any individual who is a party to a proceeding before the board may appear in his own behalf; any member of a partnership may appear as representing said partnership if it is a party; a duly authorized officer of a corporation, trust or an association may appear as representing said body if it is a party to the proceedings; and a duly authorized officer or an employee of any political subdivision or body or department may represent the same in any proceeding before the board.

b. Any party may be represented in any proceeding by an attorney-at-law admitted to practice before the Court of Appeals of Maryland.

c. No person shall appear before the board in a representative capacity, engage in practice, examine witnesses or otherwise act in a representative capacity except as provided in sections a. and b. above.

d. When an attorney wishes to appear in any proceeding in a representative capacity which involves a hearing before the county board of appeals, he shall file with the board a written notice of such appearance, which shall state his name, address, telephone number, and the names and addresses of the persons on whose behalf he has entered his appearance.

Rule 7. Evidence.

a. Any evidence which would be admissible under the general rules of evidence applicable in judicial proceedings in the State of Maryland shall be admissible in hearings before the county board of appeals. Proceedings before the board being administrative in nature, the board will not be bound by the technical rules of evidence but will apply such rules to the end that needful and proper evidence shall be most conveniently, inexpensively and speedily produced while preserving the substantial rights of the parties. Any oral or documentary evidence may be received; but the board reserves the right as a matter of policy to provide for the exclusion of immaterial or unduly repetitious evidence, and the number of witnesses may be limited if it appears that their testimony may be merely cumulative.

b. All evidence, including records and documents in the possession of the agency, of which it desires to avail itself, shall be offered and made part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

c. Prepared statements may be read by participants in the hearing if they include factual material and do not include argument, provided copies of said statements have been delivered to the board and opposing counsel at least five (5) days prior to hearing, and their admissibility ruled upon, the same as if the factual content were presented in the usual manner. "Prepared statements" within the meaning of this section shall not include factual reports, written summations, letters, expert opinions of professional expert witnesses and other such similar documents.

d. Except as may otherwise be provided by statute or regulation, the proponent of action to be taken by the board shall have the burden of proof.

e. Any official record or entries therein when admissible for any purpose may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, and the appearance of the officer will not be required unless demanded by a party to the case for good cause shown to the board. This rule does not prevent any party from summoning any proper witness to attend any hearing before the board.

f. Records of other proceedings before the board may be offered in evidence by the production of the files containing said records of such other proceedings.

g. In such cases as the board may determine, it may by order require that the direct testimony of all "expert" witnesses be submitted in writing, accompanied by copies of all exhibits to which reference is therein made, unless such are of a voluminous nature or within the files of, or readily available to, the board of appeals, in which case adequate reference shall be made thereto, which testimony shall be submitted by the parties required so to do and under the time and service provisions as contained in said order. Thereafter, said "expert" witnesses shall be personally present at the hearing for affirmation of their written statement and exhibits previously submitted and for cross-examination..

Rule 8. Special rule pertaining to persons appearing before the board as representatives of civic or improvement associations.

a. Before any person shall testify on behalf of any civic or improvement association, it shall be shown that he has accurate knowledge of the number of members in the association and the geographical limits of the association.

b. Before any such person shall testify it shall also be shown that he is authorized to speak for and present the views of the civic or improvement association.

c. Such authorization shall consist of presenting at the hearing or prior thereto a resolution in duplicate duly adopted by the association at its annual meeting or first meeting of each year, signed by the president and attested by the secretary, providing that the responsibility for review and action on all zoning matters be placed on its board of directors or a duly elected zoning committee.

d. Before any such authorized person shall testify, it shall be shown by written affidavit in duplicate, signed by the president of the association and attested by the secretary, that he is currently a duly elected member of the board of directors or zoning committee of that association, or is an attorney appointed to represent the board of directors or zoning committee.

e. Before any such authorized person shall testify, a resolution stating the position of the association as adopted by the board of directors or zoning committee, signed by the president and attested by the secretary, shall also be produced in duplicate at the hearing.

Rule 9. Special rule pertaining to original petitions for reclassification, special exception and/or variance.

a. Application of Rule. This rule shall apply only to petitions for reclassification, special exception and/or variance filed with the board pursuant to Section 2-58.1 of Article V, "Boards and Commissions," Division 4, "Board of Appeals," Title 2, "Administration," of the Baltimore County Code, as now in force and effect or as hereafter amended. It applies to the filing, processing, advertising and scheduling of hearings on such petitions and is supplemental to such other rules of the board and section 2-58.1 of the Baltimore County Code as now in force and effect or as are hereafter amended or adopted. Once filed and scheduled for hearing under the provisions of this special rule, such petitions shall be heard and decided in accordance with all other rules of the board.

b. Definition of Petition. As used herein the term "petition" shall mean:

1. Request for reclassifications of property including all material filed with said request.

2. Request for special exceptions and/or variances, the granting of which are dependent upon a reclassification of the property, including all material filed therewith.

c. Filing.

1. Petitions may be filed in the office of the board of appeals throughout the year, except during the period from April 16, 1979, through October, 1980, and all like periods beginning on April 16, 1983, and every fourth year thereafter.

2. Petitions accepted for filing, no later than 45 days prior to April 16 will be processed during the April – October cycle, and petitions accepted for filing no later than 45 days prior to October 16 will be processed during the October – April cycle. [Bill No. 141-1989]

3. Notwithstanding paragraphs 1. and 2. above, petitions exempted from the regular cyclical procedure due to public interest or because of emergency may be filed and processed at any time.

d. Processing and File Maintenance Procedure.

1. Upon receipt of a petition, the board shall establish a file and promptly transmit it to the zoning commissioner's office for processing and preparation of a written report. Said report shall be prepared by the zoning staff; shall reflect the comments of the zoning plans advisory committee; and shall indicate the petition's compliance, or degree of compliance, with regard to the zoning laws and regulations, and each reviewing agency's adopted standards or policies.

2. Petitions may be amended prior to the hearing only if said amendment takes place prior to the first public advertisement of the petition.

3. The zoning staff shall maintain possession of said file throughout the zoning review and report processing procedure.

4. Upon completion of the zoning review and report process, including distribution of copies of pertinent material to the planning staff, and the necessary advertising and posting, the file, complete with the zoning report and planning board recommendations, shall be returned to the board for the hearing.

5. The board shall maintain possession of the file until such time as the case has been completed with all pending appeals satisfied. Thereafter, said file shall be returned to the zoning office for microfilming and retention on behalf of the board.

e. Scheduling, Posting and Advertising for Public Hearings.

1. The zoning staff shall schedule and otherwise prepare the necessary newspaper advertisements and arrange for the posting of property in accordance with section 2-58.1 of the Baltimore County Code. However, all hearing dates and times shall be established by the board.

2. All postponed hearings shall be readvertised and the properties posted in accordance with the requirements for final advertising and posting pursuant to section 2.58.1(g) of the Baltimore County Code. The cost of such advertising and posting shall be borne by the party requesting the postponement.

f. Guide for Preparation of Reclassification Petitions. Each petition request shall be filed on forms provided by the county board of appeals. As a matter of convenience, the board will make available a guide containing information for use in the preparation of petitions for reclassification.

Rule 10. Revisory power of the board.

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

Rule 11. Amendment rules.

These rules may be amended from time to time in accordance with section 603 of the Baltimore County Charter.

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1992, LEGISLATIVE DAY NO. 13

BILL NO. 113-92

---

MR. C. A. DUTCH RUPPERSBERGER, III, COUNCILMAN

---

BY THE COUNTY COUNCIL, JUNE 1, 1992

---

A BILL ENTITLED

AN ACT concerning

Development Regulations - Agricultural Preservation

FOR the purpose of amending the Baltimore County Zoning Regulations and the Baltimore County Code in order to provide standards that conserve valuable and limited natural resources, provide open space and protect the character of rural-residential development in certain Resource Conservation areas, define terms, amend height and area regulations, provide standards for Rural Cluster Development and require that contracts for sale of real estate disclose possible inconveniences arising from agricultural operations, restricting development on prime and productive soils in the RC 2 zones, and generally providing performance standards for rural cluster development in R.C. 4 zones.

BY adding

Section 101 - Definitions, the definitions, alphabetically, of "Conservancy Area", "Prime and Productive Soils", and "Rural Cluster Development" and Sections 1A03.5, 1A03.6 and 1A03.7

Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments

Section 1A03.4

Baltimore County Zoning Regulations, as amended

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

Exhibit 3

BY adding

Section 3-4(b)

Title 3 - Advertising and Signs

Baltimore County Code, 1988

BY renumbering

Section 3-4(b) to be Section 3-4(c)

Title 3 - Advertising and Signs

Baltimore County Code, 1988

BY repealing and re-enacting, with amendments,

Section 26-277(c)

Title 26 - Planning, Zoning and Subdivision Control

Baltimore County Code, 1988

WHEREAS, the Baltimore County Council has received a final report dated February 20, 1992, from the Planning Board concerning the subject legislation and held a public hearing thereon on April 28, 1992, now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND that Section 101 - Definitions, the definitions, alphabetically, of "Conservancy Area", "Prime and Productive Soils", and "Rural Cluster Development" and Sections 1A03.5, 1A03.6 and 1A03.7 be and they are hereby added to the Baltimore County Zoning Regulations, as amended, to read as follows:

Section 101 - Definitions

<u>CONSERVANCY AREA</u>: THE PORTION OF A RURAL CLUSTER DEVELOPMENT WHICH CONTAINS SIGNIFICANT NATURAL OR HISTORIC FEATURES AND WHICH HAS BEEN DEDICATED THROUGH DEED RESTRICTION AND EASEMENTS FOR CONTINUED FARMING, FORESTRY OR OPEN SPACE USE IN ORDER TO REMAIN LARGELY UNDISTURBED.

PRIME AND PRODUCTIVE SOILS: SOIL TYPES DEFINED IN THE U.S.D.A. SOIL SURVEY OF BALTIMORE COUNTY ISSUED MARCH, 1976, AND AS UPDATED, AS AGRICULTURAL CAPABILITY CLASSES I, II OR III.

RURAL CLUSTER DEVELOPMENT: A FORM OF RESIDENTIAL SUBDIVISION FOR USE IN AN R.C.4 ZONE IN WHICH THE PERMITTED DENSITY FOR AN ENTIRE TRACT IS LOCATED ONLY ON A DESIGNATED PORTION OF THE TRACT IN ORDER TO PRESERVE SIGNIFICANT NATURAL, SCENIC OR HISTORIC FEATURES.

Section 1A03 - R.C. 4 ZONES

1A03.5 PERFORMANCE STANDARDS FOR RURAL CLUSTER DEVELOPMENT

~~IN-AN-R.C.-4-ZONE,-ONLY-A-RURAL-CLUSTER-DEVELOPMENT-IS-PERMITTED-ON-A TRACT-WITH-A-GROSS-AREA-OF-MORE-THAN-10-ACRES.--SEVENTY-PERCENT-(70%)-OF-THE TRACT-ACREAGE-SHALL-BE-DESIGNATED-A-CONSERVANCY-AREA.~~

~~A.1.--THE-CONSERVANCY-AREA-SHALL-BE-CONTIGUOUS-AND-SHALL-INCLUDE-WITHIN IT-THE-FOLLOWING-FEATURES-OF-THE-TRACT-TO-BE-DEVELOPED-IF-THESE-FEATURES-ARE PRESENT-ON-THE-TRACT:~~

IN AN R.C. 4 ZONE, ONLY A RURAL CLUSTER DEVELOPMENT IS PERMITTED ON A TRACT TO BE DEVELOPED WITH A GROSS AREA OF MORE THAN 10 ACRES. A MINIMUM OF SEVENTY PERCENT (70%) OF THE TRACT ACREAGE SHALL BE DESIGNATED A CONSERVANCY AREA. THE BALANCE OF THE TRACT IS THE BUILDING AREA.

A.1. IT IS THE INTENTION OF THESE REGULATIONS THAT THE ACREAGE OF THE CONSERVANCY AREA, WHENEVER POSSIBLE, BE CONTIGUOUS AND THAT IT INCLUDE THE FOLLOWING FEATURES OF THE TRACT TO BE DEVELOPED AS DETERMINED BY THE STANDARDS CONTAINED IN THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES:

I. PRIME AND PRODUCTIVE SOILS;

II. STEEP SLOPES, AS DEFINED IN TITLE 26 OF THE BALTIMORE COUNTY CODE;

III. WETLANDS;

IV. STREAM BUFFERS, AS DEFINED IN TITLE 14 OF THE BALTIMORE COUNTY CODE;

V. FORESTS, AS DEFINED IN TITLE 14 OF THE BALTIMORE COUNTY CODE;

VI. ~~LOCAL~~ OPEN SPACE; AND

VII. SIGNIFICANT VIEWS AND OTHER NATURAL OR HISTORIC FEATURES TO ~~BE PROTECTED AS DETERMINED BY THE STANDARDS CONTAINED IN THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES.~~ PROTECTED.

2. THE CONSERVANCY AREA MAY NOT INCLUDE WITHIN IT ANY AREA WITH A DIAMETER OF LESS THAN 100 FEET UNLESS THE DIRECTORS OF PLANNING AND ZONING AND ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT DETERMINE THAT SUCH AN AREA WILL BEST PROTECT THE NATURAL RESOURCES OF THE TRACT TO BE DEVELOPED AS A RURAL CLUSTER DEVELOPMENT.

3. THE CONSERVANCY AREA MAY INCLUDE BUILDINGS EXISTING AT THE TIME OF THE APPROVAL OF THE RURAL CLUSTER DEVELOPMENT.

~~4. THE REQUIREMENTS OF THIS PARAGRAPH ARE SUBJECT TO THE REVIEW AND APPROVAL OF THE DIRECTORS OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT AND PLANNING AND ZONING.~~

4. THE DIRECTORS OF PLANNING AND ZONING AND ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT SHALL DETERMINE WHETHER THE CONSERVANCY AREA MEETS THE REQUIREMENTS OF THIS PARAGRAPH AND THE STANDARDS OF THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES.

B. EACH LOT IN A RURAL CLUSTER DEVELOPMENT SHALL CONTAIN ITS OWN PRIVATE SEWAGE SYSTEM AND WATER SYSTEM, AND EACH SUCH SYSTEM SHALL BE LOCATED WITHIN THE LOT. IF THE DIRECTOR OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT FINDS THAT A LOT CANNOT SUPPORT A PROPOSED DWELLING UNIT WITHOUT ENDANGERING THE POTABLE WATER SUPPLY, ENDANGERING THE METROPOLITAN DISTRICT RESERVOIRS, OR CREATING A HEALTH OR ENVIRONMENTAL NUISANCE FOR NEIGHBORING PROPERTIES, A DWELLING UNIT IS NOT PERMITTED ON SUCH LOT.

C.1. SUBJECT TO APPROVAL BY BALTIMORE COUNTY AS TO LEGAL FORM AND SUFFICIENCY, THE CONSERVANCY AREA SHALL BE HELD IN UNIFIED OWNERSHIP AND CONTROL WHICH MAY TAKE THE FORM OF A HOMEOWNERS' ASSOCIATION, CONDOMINIUM ASSOCIATION, PUBLIC OR PRIVATE ORGANIZATION, LAND TRUST, CORPORATION OR INDIVIDUAL. THE OWNER SHALL ASSUME ALL RESPONSIBILITY FOR THE MAINTENANCE AND CONTINUED PROTECTION OF THE CONSERVANCY AREA, INCLUDING ANY RECREATIONAL AMENITIES. ~~THE CONSERVANCY AREA SHALL BE HELD IN SINGLE OWNERSHIP EXCEPT IN CASES WHERE THE STANDARDS FOR MULTIPLE OWNERSHIP ESTABLISHED IN THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES---RURAL AREAS SECTION ARE MET.--THIS DETERMINATION SHALL BE MADE BY THE DIRECTORS OF PLANNING AND ZONING, ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT, AND RECREATION AND PARKS.~~

2. THE CONSERVANCY AREA SHALL BE HELD IN SINGLE OWNERSHIP UNLESS A DWELLING LOT, AS PERMITTED BY SECTION 1A03.4.B.1.B.(1), IS LOCATED IN THE CONSERVANCY AREA.

D. EASEMENT FOR CONSERVANCY AREA. PRIOR TO FINAL APPROVAL OF ANY RECORD PLAT, OR, IN THE CASE OF A TRACT LESS THAN 20 ACRES IN SIZE WHICH IS TO BE SUBDIVIDED INTO THREE OR FEWER LOTS, PRIOR TO FINAL APPROVAL OF A PLAN, A PERMANENT PRESERVATION EASEMENT ON THE CONSERVANCY AREA SHALL BE RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY TO RUN WITH THE LAND AND CONTINUE IN PERPETUITY.

1. THE EASEMENT SHALL BE GRANTED TO THE COUNTY OR SUCH OTHER AGENCY OR ENTITY WHICH THE COUNTY APPROVES, AND SHALL PERMANENTLY RESTRICT FURTHER SUBDIVISION OF THE CONSERVANCY AREA.

2. THE EASEMENT SHALL ALLOW FOR THE CONTINUED AGRICULTURAL, FOREST OR SIMILAR OPEN SPACE USE AS PROVIDED IN SUBSECTION 1A03.5.G.

3. IF ANY PORTION OF A CONSERVANCY AREA IS ALSO REQUIRED TO BE RECORDED AS A FOREST BUFFER EASEMENT, PURSUANT TO SECTION 14-340 OF THE BALTIMORE COUNTY CODE, THE TERMS OF SECTION 14-340 SHALL PREVAIL.

4. THE CONSERVANCY AREA AGREEMENT SHALL BE IN A FORM APPROVED BY THE COUNTY ATTORNEY WHO SHALL CONSULT WITH THE DIRECTOR OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.

E. IN THE CASE OF A TRACT MORE THAN 20 ACRES IN SIZE WHICH IS TO BE SUBDIVIDED INTO THREE OR FEWER LOTS, A CONSERVANCY AREA SHALL BE SHOWN ON THE MINOR SUBDIVISION PLAN AND RECORDED IN THE LAND RECORDS OF BALTIMORE COUNTY. A PERMANENT PRESERVATION EASEMENT AS DESCRIBED IN SECTION 1A03.5.D SHALL BE GRANTED IF FURTHER SUBDIVISION SUBJECTS THE TRACT TO THE DEVELOPMENT PLAN REVIEW PROCESS OF TITLE 26 OF THE BALTIMORE COUNTY CODE.

F. THE MAXIMUM AREA FOR CLEARING AND GRADING FOR EACH RESIDENTIAL LOT IS 20,000 SQUARE FEET. THIS AREA SHALL BE SHOWN ON THE PLAN AT THE TIME OF PERMIT APPLICATION.

~~G. OUTSIDE OF THE BUILDING ENVELOPE FOR ANY PERMITTED DWELLING, THE REMAINDER OF THE SITE IN A~~

G. THE CONSERVANCY AREA SHALL REMAIN UNDISTURBED, EXCEPT AS UTILIZED FOR:

1. AGRICULTURAL USES, INCLUDING A FARM, FARMETTE, OR LIMITED ACREAGE FLOWER FARM;

2. FORESTRY;

3. ~~LOCAL~~ OPEN SPACE, WHICH MAY INCLUDE HIKING OR EQUESTRIAN TRAILS OR PASSIVE RECREATIONAL AREAS WHICH DO NOT REQUIRE PAVING;

4. ISOLATED ~~LOCAL~~ OPEN SPACE POCKETS IN THE BUILDING AREA THAT ARE EITHER SURROUNDED BY HOUSING UNITS OR RUN ALONG RIGHTS-OF-WAY AS APPROVED BY THE DIRECTORS OF PLANNING AND ZONING AND ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT. SUCH AREAS SHALL BE MANAGED BY A HOMEOWNERS' ASSOCIATION OR SIMILAR ENTITY AS OPEN SPACE AND ARE NOT TO BE INCLUDED IN THE CONSERVANCY AREA EASEMENT DELINEATION.

5. A SINGLE-FAMILY DWELLING AS PERMITTED BY SECTION

1A03.4.B.1.B.(1).

H. EXCEPT AS NEEDED AS ACCESS TO EXISTING BUILDINGS OR TO THE LOT PERMITTED UNDER SECTION 1A03.4.B.1.B.(1), ROADS ARE NOT PERMITTED IN A CONSERVANCY AREA, UNLESS THE PROVISION THEREOF WILL RESULT IN BETTER PROTECTION OF NATURAL RESOURCES. THE DIRECTORS OF PLANNING AND ZONING, PUBLIC WORKS, AND ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT SHALL MAKE THIS DETERMINATION.

I. STORMWATER MANAGEMENT FACILITIES AND STORM DRAINS ARE NOT PERMITTED IN THE CONSERVANCY AREA EXCEPT IN CASES WHERE THEIR PROVISION WILL RESULT IN IMPROVED WATER QUALITY OR REDUCED IMPACT ON WATER QUANTITY AND WILL NOT RESULT IN THE LOSS OF PRIME AND PRODUCTIVE SOILS, AS APPROVED BY THE DIRECTORS OF PLANNING AND ZONING AND ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT. ~~HOWEVER, SUCH APPROVAL MAY NOT BE GRANTED IN VIOLATION OF THE PROVISIONS OF TITLE 5, SUBTITLE 16 OF THE NATURAL RESOURCES ARTICLE OF THE ANNOTATED CODE OF MARYLAND.~~

1A03.6 ADDITIONAL STANDARDS

UNDER PROVISIONS ADOPTED PURSUANT TO THE AUTHORITY OF THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES, DEVELOPMENT IN R.C. 4 ZONES MAY BE MADE SUBJECT TO ADDITIONAL STANDARDS OF LOT AREA, YARD SPACE, OPEN SPACE, BUILDING DISTRIBUTION, OR OTHER ASPECTS OR CHARACTERISTICS OF SITE PLANNING OR PROJECT DESIGN. SUCH STANDARDS SHALL BE BASED UPON SPECIFIED EXISTING, PROSPECTIVE, OR STIPULATED CONDITIONS OR CIRCUMSTANCES OF DEVELOPMENT, AND SHALL BE DESIGNED TO FURTHER THE SPECIFIC PURPOSES OF THIS ARTICLE AND THE PURPOSES OF THESE ZONING REGULATIONS IN GENERAL.

1A03.7 INCONVENIENCES ARISING FROM AGRICULTURAL OPERATIONS

ANY DWELLING IN AN R.C. 4 ZONE MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATIONS, INCLUDING BUT NOT LIMITED TO, NOISE, ODORS, FUMES, DUST, THE OPERATIONS OF MACHINERY OF ANY KIND DURING ANY 24-HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF MANURE, AND THE

APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. THE COUNTY SHALL NOT CONSIDER AN AGRICULTURAL OPERATION TO BE A PUBLIC OR PRIVATE NUISANCE, IF THE OPERATION COMPLIES WITH THESE REGULATIONS AND ALL FEDERAL, STATE OR COUNTY HEALTH OR ENVIRONMENTAL REQUIREMENTS.

SECTION 2. AND BE IT FURTHER ENACTED, that Section 1A03.4 of the Baltimore County Zoning Regulations, as amended, be and, it is hereby repealed and re-enacted with amendments, to read as follows:

1A03.4--Height and area regulations.

A. Height. No structure hereafter erected in an R.C. 4 zone shall exceed a height of 35 feet, except as otherwise provided under Section 300.

B. Area regulations.

{1. No lot less than three acres in area may be hereafter created from a larger tract in an R.C. 4 zones, and no detached single-family dwelling may be hereafter erected on any lot of smaller area except as otherwise provided in Subsection 103.3 or in Paragraph 6, below.}

{2.} 1. Lot Density

A. A {lot of record} TRACT TO BE DEVELOPED in an R.C. 4 zone with a gross area of less than 6 acres may not be subdivided, and a ~~lot of-record~~ TRACT TO BE DEVELOPED with a gross area of at least 6 acres but not more than 10 acres may not be subdivided into more than 2 lots (total){. The maximum gross density of a {lot of record}~~-TRACT-TO-BE-DEVELOPED~~ with a gross area of more than 10 acres is 0.2 lot per acre.} , EACH OF WHICH MUST BE AT LEAST 3 ACRES EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION ~~103.2~~ 103.3 OR IN PARAGRAPH 4 BELOW.

B. THE MAXIMUM GROSS DENSITY OF A TRACT TO BE DEVELOPED WITH A GROSS AREA OF MORE THAN 10 ACRES IS 0.2 LOT PER ACRE. ANY LOTS

CREATED HEREAFTER, EXCEPT AS PROVIDED IN PARAGRAPH 4 BELOW, SHALL BE IN ACCORDANCE WITH THE FOLLOWING STANDARDS FOR RURAL CLUSTER DEVELOPMENT:

(1) A MINIMUM OF 70% OF THE GROSS AREA OF THE TRACT TO BE DEVELOPED SHALL BE DESIGNATED AS THE CONSERVANCY AREA. ONLY ONE OF THE PERMITTED DWELLING UNITS, INCLUDING ANY EXISTING DWELLINGS, MAY BE LOCATED IN THE CONSERVANCY AREA. THE CONSERVANCY AREA IS SUBJECT TO THE STANDARDS CONTAINED IN 1A03.5.

(2) ALL OF THE REMAINING PERMITTED DENSITY SHALL BE LOCATED ~~ON THE 30% OF THE TRACT OUTSIDE OF THE CONSERVANCY~~ IN THE BUILDING AREA ON LOTS WITH A MINIMUM LOT SIZE OF ONE ACRE. ~~IN NO CASE SHALL ANY PORTION OF THESE LOTS BE INCLUDED IN THE MINIMUM ACREAGE REQUIREMENT FOR THE CONSERVANCY AREA.~~

(3) SUBJECT TO THE CONDITIONS OF THE PERFORMANCE STANDARDS OF SECTION 1A03.5.G., ANY BUILDING OR STRUCTURE OFFICIALLY INCLUDED ON THE PRELIMINARY OR FINAL LIST OF THE LANDMARKS PRESERVATION COMMISSION, OR THE NATIONAL REGISTER OF HISTORIC AREAS, AND INCLUDED IN THE CONSERVANCY AREA, NEED NOT BE INCLUDED IN THE CALCULATION OF THE TOTAL PERMITTED DENSITY, SUBJECT TO THE FOLLOWING REQUIREMENTS:

A. THERE IS AN AREA OF SUFFICIENT SIZE SURROUNDING THE BUILDING, STRUCTURE OR LANDMARK TO PRESERVE THE INTEGRITY OF ITS HISTORIC SETTING;

B. AN OVERALL PHOTOGRAPHIC AND WRITTEN DESCRIPTION OF THE BUILDING, STRUCTURE OR LANDMARK IDENTIFIED FOR PRESERVATION HAS BEEN SUBMITTED; AND

C. DOCUMENTATION OF THE PRESERVATION, RESTORATION AND PROTECTION FOR THE BUILDING, STRUCTURE OR LANDMARK HAS BEEN SUBMITTED AND APPROVED BY THE DIRECTOR OF PLANNING PRIOR TO ISSUANCE OF ANY BUILDING PERMIT FOR THE DEVELOPMENT.

{3. Minimum diametral dimension. The minimum diametral dimension of any lot hereafter created in an R.C. 4 zone shall be 300 feet except as otherwise provided in Paragraph 6 below.}

{4.} 2. Building setbacks. {Any} EXCEPT FOR AGRICULTURAL BUILDINGS, ANY NONRESIDENTIAL principal building hereafter constructed in an R.C. 4 zone shall be situated at least 100 feet from the center line of any street and at least 50 feet from any lot line other than a street line, except as otherwise provided in Paragraph {6} 4, below. ANY RESIDENTIAL PRINCIPAL BUILDING SHALL BE SET BACK ACCORDING TO THE FOLLOWING MINIMUM SETBACK REQUIREMENTS:

A. TWENTY FIVE FEET FROM ANY BUILDING FACE TO A PUBLIC STREET RIGHT-OF-WAY OR PROPERTY LINE;

B. THIRTY FIVE FEET FROM A FRONT BUILDING FACE TO THE EDGE OF PAVING OF A PRIVATE ROAD;

C. SETBACKS FOR BUILDINGS LOCATED ADJACENT TO ARTERIAL ROADWAYS SHALL BE INCREASED BY 20 FEET;

D. ONE HUNDRED FEET BETWEEN A BUILDING FACE AND AN ADJACENT R.C. 2 ZONE LINE;

E. ONE HUNDRED FEET BETWEEN A BUILDING FACE AND A RESERVOIR PROPERTY LINE;

F. FIFTY FEET BETWEEN A BUILDING FACE AND AN ADJACENT CONSERVANCY AREA WHICH WILL BE USED FOR AGRICULTURAL PURPOSES.

{5.} 3. Coverage. EXCEPT FOR A RURAL CLUSTER DEVELOPMENT, WHICH IS SUBJECT TO THE PERFORMANCE STANDARDS CONTAINED IN 1A03.5, no more than 10 percent of any lot in an R.C. 4 zone may be covered by impermeable surfaces (such as structures or pavement.) No more than 25 percent of the natural vegetation may be removed from any lot in an R.C. 4 zone.}

{6.} 4. Exceptions for certain record lots.

Any existing lot or parcel of land with boundaries duly recorded among the Land Records of Baltimore County with the approval of the Baltimore County Office of Planning and Zoning on or before {the effective date of these zoning regulations} DECEMBER 22, 1975 and not part of an approved subdivision that cannot meet the minimum standards as provided within the zone, may be approved for residential development in accordance with the standards prescribed and in force at the time of the lot recordation.

{7. Dwellings per lot. No more than one dwelling is permitted on any lot in an R.C. 4 zone, but not excluding additional dwellings for bona fide tenant farmers.}

5. DWELLING UNITS PER LOT. NO MORE THAN ONE DWELLING UNIT SHALL BE LOCATED ON ANY LOT IN AN R.C. 4 ZONE, EXCEPT THAT TENANT DWELLINGS MAY BE APPROVED IF THE LAND PRESERVATION ADVISORY BOARD CERTIFIES THAT: 1) ANY SUCH PROPOSED DWELLING IS REQUIRED FOR THE OPERATION OF THE FARM FOR THE USE OF BONA FIDE TENANT FARMERS; AND 2) THAT ANY SUCH DWELLING, IN THE LOCATION PROPOSED, WILL NOT INTERFERE WITH THE OPERATION OF THE FARM.

SECTION 3. AND BE IT FURTHER ENACTED, that Section 3-4(b) be and it is hereby added to Title 3 - Advertising and Signs, of the Baltimore County Code, 1988, to read as follows:

Section 3-4. Advertising and contracts for sale of real estate to disclose sewer service, water supply {and}, panhandle lots {.} AND AGRICULTURAL OPERATIONS.

(B) ANY CONTRACT IN THE COUNTY FOR THE SALE OF REAL ESTATE IN OR WITHIN 500 FEET OF ANY R.C. 4 ZONE SHALL CONTAIN A NOTICE (1) THAT THE PROPERTY MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATIONS, INCLUDING, BUT NOT LIMITED TO: OPERATION OF MACHINERY OF ANY KIND

(INCLUDING AIRCRAFT) DURING ANY 24-HOUR PERIOD, THE STORAGE AND DISPOSAL OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES, AND THAT (2) THE COUNTY SHALL NOT CONSIDER AN AGRICULTURAL OPERATION TO BE A PUBLIC OR PRIVATE NUISANCE, IF THE OPERATION COMPLIES WITH ALL FEDERAL, STATE OR COUNTY HEALTH AND ZONING REQUIREMENTS AND IS NOT BEING CONDUCTED IN A NEGLIGENT MANNER.

SECTION 4. AND BE IT FURTHER ENACTED, that Section 3-4(b) of Title 3 - Advertising and Signs, of the Baltimore County Code, 1988, be and it is hereby renumbered to be Section 3-4(c).

SECTION 5. AND BE IT FURTHER ENACTED, that Section 26-277(c) of Title 26, Planning, Zoning and Subdivision Control, Baltimore County Code, 1988, be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Sec. 26-277. Slope protection and soils.

(c) On prime and productive soils within the RC {zones, except within the RC-5 zone,} 2 ZONE, no plan or plat may be approved unless the county finds that construction, excavations, buildings, structures, pavements, grading, clearing, or other disturbances of the soils will be limited or restricted in accordance with policies established by the department of environmental protection and resource management to promote agricultural uses and protect the county's soil resources. {This regulation shall apply to all development except such development which has been accepted for filing under section 26-204 by the department of public works prior to October 1, 1989.}

SECTION 6. AND BE IT FURTHER ENACTED, that any development which has received CRG approval, concept plan approval, reclamation plan approval, or any other project vested by law, or any development for which a concept plan has been

accepted for filing by the department of public works prior to the effective date of this Act shall be governed by the regulations in effect at the time of such approval, vesting, or acceptance for filing, as the case may be.

SECTION 7. And be it further enacted, that this Act having been passed by the affirmative vote of five members shall take effect July 1, 1992.

B11392/BILLS92

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|---|---|---|
| IN THE MATTER OF THE APPLICATION | * | |
| OF STEVEN H. GUDEMAN, ET UX | * | IN THE |
| FOR A PETITION FOR SPECIAL HEARING | * | |
| ON PROPERTY LOCATED ON THE SOUTH | * | CIRCUIT COURT |
| OF STOCKTON ROAD | * | |
| STEVEN H. GUDEMAN | * | FOR |
| AND | * | |
| BETTY J. GUDEMAN | * | BALTIMORE COUNTY |
| APPELLANTS | * | |
| AND | * | 89 CG 911 |
| THE PEOPLE'S COUNSEL FOR BALTIMORE | * | |
| COUNTY | * | |
| | * | |

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

OPINION AND ORDER

This matter came before the court from a decision of the Board of Appeals of Baltimore County dated February 16, 1989 which reversed the Deputy Zoning Commissioner and found that the existence of a public road did not create two parcels on the land in question and that these land areas must be considered as one R.C. 2 parcel.

Exhibit 4

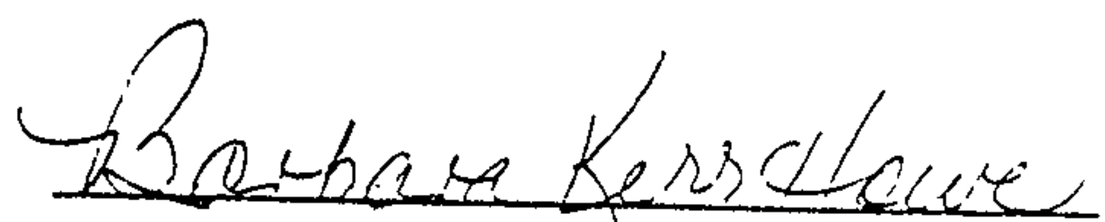
Two questions were presented on appeal: 1) Did the public road create two parcels of land, which can now be considered separate parcels for purpose of density and subdivision? and 2) Was the decision of the County Board of Appeals supported by substantial evidence on the record taken as a whole? The answer to the first question is No, and to the second question is Yes.

The standard for judicial review is to uphold the decision of the Board of Appeals unless it is based on an error of law or if the conclusions are not reasonably based upon the facts proven. The question of law presented here is the legal effect of the separation of a property bisected by a public road. The Board of Appeals stated as a conclusion that the existence of Stockton Road did not in fact create two parcels on this site. This property had always been deeded as an entirety and in fact the appellants acquired it in that fashion. There is no dispute that, ordinarily, and by statute, property of this size may only be allowed two development lots. Nothing in the statute permits roads to be used as density multipliers; there is also nothing in the statutes to allow transfers of density from one parcel to another. Despite this fact, for a number of years the Zoning Commissioner, pursuant to a "policy" has apparently been doing these things. The transfer of density is a zoning function which cannot even be accomplished by amendments to the master plan duly approved by a Planning Commission or Planning Board let alone by unilateral action by a zoning commissioner under the guise of "policy". West Montgomery Association v. MNCP&P Commission, 309 Md.183, 522 A.2d 1328 (1987). The court can find no error of law.

The Board of Appeals has made its own determination on all of the facts of this case and its decision is amply supported by substantial evidence on the record taken as a whole.

This court will not substitute its judgment for that of the Board where the issue is fairly debatable and the record contains substantial evidence supporting the Board decision.

The decision of the Board of Appeals is AFFIRMED this sixth day of February, 1990.



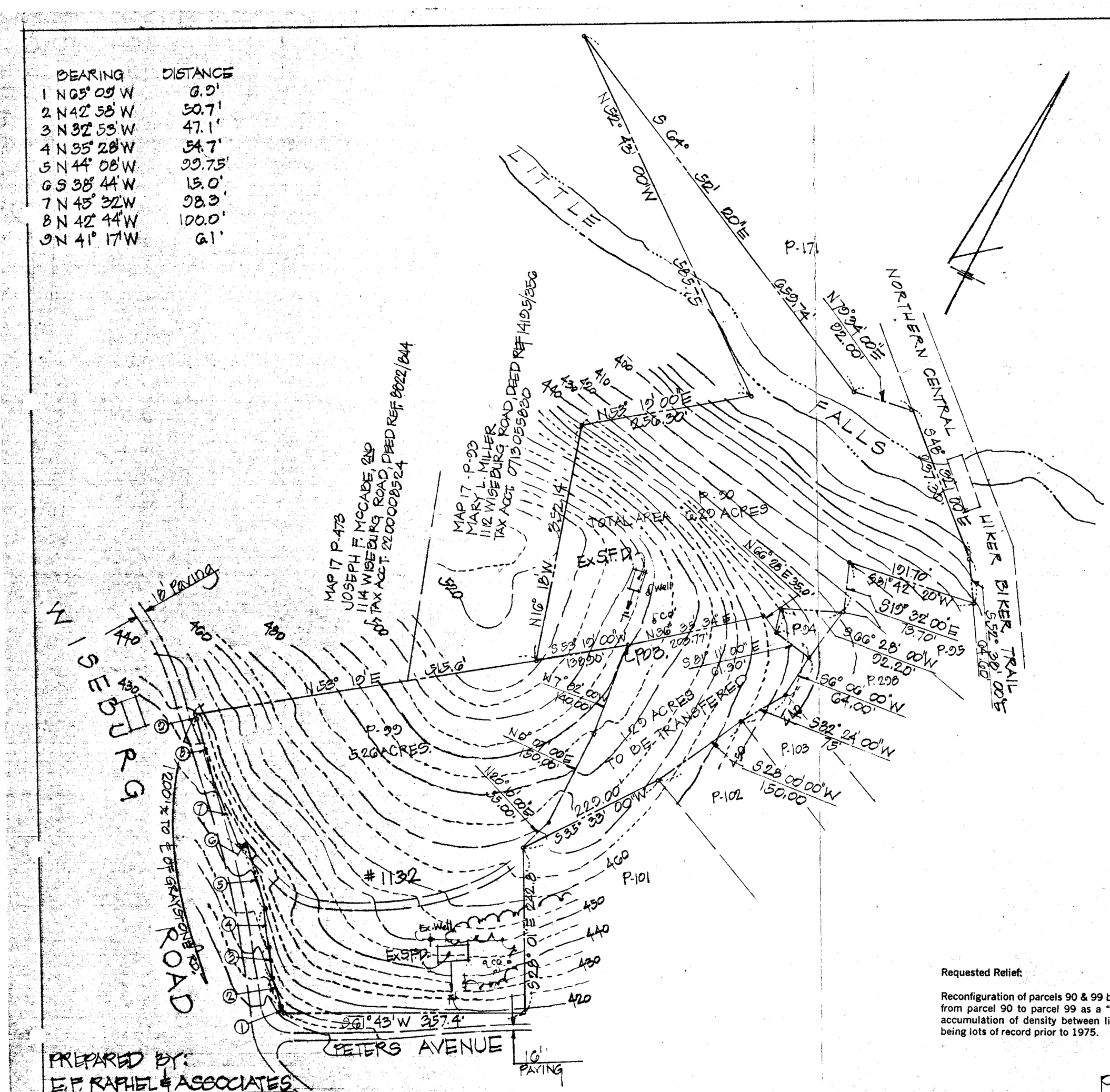
Barbara Kerr Howe

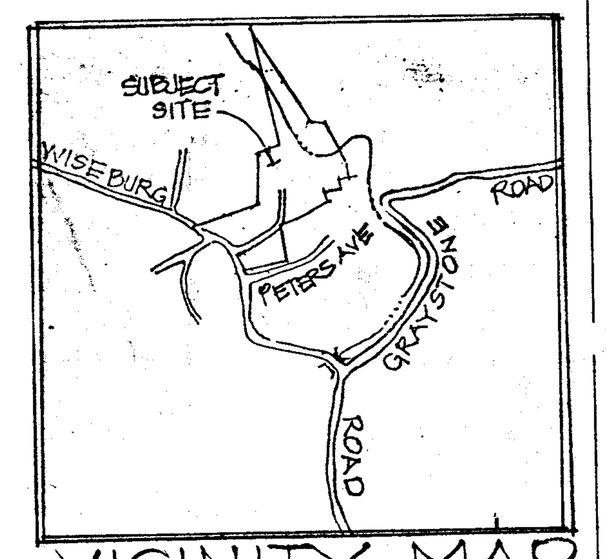
CC:

Stephen J. Nolan, Esquire

Peter Max Zimmerman, Esquire

| BEARING | DISTANCE |
|---|---|
| 1 N 65° 09' W | 6.0' |
| 2 N 42° 58' W | 50.7' |
| 3 N 32° 53' W | 47.1' |
| 4 N 35° 28' W | 54.7' |
| 5 N 44° 08' W | 99.75' |
| 6 S 38° 44' W | 15.0' |
| 7 N 45° 32' W | 98.3' |
| 8 N 42° 44' W | 100.0' |
| 9 N 41° 17' W | 6.1' |




VICINITY MAP
SCALE 1" = 1000'
200 SCALE ZONING MAP - NW 30A

GENERAL NOTES

Owners Name: Christopher Walters & Susan Gossling Walters
1132 Wiseburg Road
White Hall, Maryland 21161-9402
Phone: 410-329-6772

Third Councilmanic District
There are no prior zoning hearings on this project.
Not CBCA
Not 100year flood plain
Not Historic
Existing Zoning RC-4
Private water and private sewer serve this project.
Lot size Parcel 90: 6.29 acres +/-
Lot size Parcel 99: 5.26 acres +/-

ADJACENT PARCELS:

Map 17 P-101 Antonino Passaniti
18315 Peters Avenue
Deed Ref.:
Tax Account 0712059050

Map 17 P-102 Nancy Lee Brown
18327 Peters Avenue
Deed Ref.:
Tax Account 0720000100

Map 17 P-103 Emory Sturgill
18329 Peters Avenue
Deed Ref.: S.M. 13801/110
Tax Account 0719071970

Map 17 P-298 Mary Susan Bolgiano
18335 Peters Avenue
Deed Ref.: S.M. 14554/70
Tax Account 0719088230

Map 17 P-94 & P-95 Rex Matthews
18340 Peters Avenue
Deed Ref.: S.M. 14111/673
Tax Account 0701074175 / 0701074176

Requested Relief:

Reconfiguration of parcels 90 & 99 by transferring 1.29 Acres from parcel 90 to parcel 99 as a "lot line adjustment" and accumulation of density between like parcels, both parcels being lots of record prior to 1975.

Pet No 1

PREPARED BY:
E.F. RAPHEL & ASSOCIATES
REGISTERED PROFESSIONAL LAND SURVEYOR
205 COURTLAND AVE.
TOWSON, MD 21204
PHONE: 410-825-3980

PLAT TO ACCOMPANY SPECIAL HEARING
#1130 & #1132 WISEBURG ROAD
SEVENTH ELECT., BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 100'
DATE: JUNE 07, 2002

03-448-SPH

9/ /04

| | | |
|---|---|---|
| IN THE MATTER OF<br>THE APPLICATION OF<br>CHRISTOPHER WALTERS AND SUSAN GOSSLING – LEGAL OWNERS FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE NE/COR OF WISEBURG ROAD AND PETERS AVENUE<br>(1130-1132 WISEBURG ROAD)<br>7TH ELECTION DIDSTRICT<br>3RD COUNCILMANIC DISTRICT | *<br>*<br>*<br>*<br>*<br>*<br>* | ON REMAND<br>FROM THE<br>CIRCUIT COURT FOR<br>BALTIMORE COUNTY<br>Civil Action<br>No.: 03-C-04-0688 |

* * * * * * * * * * *

**ORDER OF DISMISSAL OF PETITION WITH PREJUDICE**
**ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY**

This matter comes before the Board on remand by Order of Judge Lawrence R. Daniels, Circuit Court for Baltimore County, filed June 28, 2004, in which Judge Daniels orders as follows:

1. That the January 7, 2004 Order of Dismissal entered by the County Board of Appeals of Baltimore County be, and hereby is, reversed.

2. That the case is remanded to the County Board of Appeals for Baltimore County for the purpose of an entry by said Board of Appeals of an Order of Dismissal with Prejudice of the Petition for Special Hearing filed by Christopher Walters and Susan Gossling on property located at 1130-32 Wiseburg Road, Case No. 03-448-SPH at the Board of Appeals.

**IT IS THEREFORE** this 15th day of September, 2004 by the County Board of Appeals of Baltimore County

**ORDERED** that, consistent with the Remand Order of the Honorable Lawrence R. Daniels, Judge, Circuit Court for Baltimore County, filed June 28, 2004, the **Petition for Special Hearing** filed by Christopher Walters and Susan Gossling on property located at 1130-32 Wiseburg Road, Case No. 03-448-SPH at the Board of Appeals, be, and the same is hereby, **DISMISSED with prejudice**.

**COUNTY BOARD OF APPEALS[1]**
**OF BALTIMORE COUNTY**

Lawrence S. Wescott

Edward W. Crizer, Jr.

[1] Charles L. Marks, the third Board of Appeals member comprising the panel when this matter was heard by the Board, is no longer a member of the Board of Appeals.