Seminary Galleria
04-052-SPHA Bernardel
BOA
4/26/05

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

01/17/08

Case Number: 03-C-04-011000 AE
Date Filed: 10/21/2004
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :
CTS Start : Target :

In The Matter of: Seminary Galleria L L C

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	04 052 SPHA
Case Folder ID	C04011000V01

INVOLVED PARTIES

Type	Num	Name(Last,First ,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
PET	001	Seminary Galleria L L C Party ID: 0710044		BT DO 04/26/05	10/21/04
		Capacity : Appellant			
	Mail:	C O Hill Management Services Inc 9640 Deereco Road Timonium, MD 21093	10/21/04	10/21/04 TLS	10/21/04 TLS
	Attorney:	0013912 Alderman, Howard L Levin & Gann, P.A. 8th Floor,nottingham Ctr 502 Washington Avenue Towson, MD 21204 (410)321-0600	Appear: 10/21/2004		10/21/04

Type	Num	Name(Last,First ,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
ITP	001	County Board Of Appeals For Baltimore County Party ID: 0710040		BT DO 04/26/05	10/21/04
Mail:		Old Courthouse Room 49 400 Washington Avenue Towson, MD 21204	10/21/04	10/21/04 TLS	10/21/04 TLS
Attorney:		0029075 Zimmerman, Peter M People's Counsel For Baltimore County Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188	Appear: 10/22/2004		10/26/04
		0804268 Demilio, Carole S Deputy Peoples Counsel Old Courthouse Room 47 400 Washington Ave Towson, MD 21204 (410)887-2188	Appear: 10/22/2004		10/26/04
ITP	002	Dulaney Valley Improvement Association Inc Party ID: 0712971		BT DO 04/26/05	11/01/04
Attorney:		0012544 Tanczyn, Michael P Michael P. Tanczyn, P.A. 606 Baltimore Avenue Suite 106 Baltimore, MD 21204 (410)296-8823	Appear: 11/04/2004		11/04/04

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result		ResultDt	By Result Judge	Rec			
04/04/05	09:30A	CR04	Civil Non-Jury Trial	Y	PC	01 /01	KLS
Held/Concluded		04/04/05	E P.Cavanaugh	Y			
Stenographer(s): Marina Coyle							

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	Activity User	Activity Date
04/26/05	DO	Decree or Order	BT	BEFORE TRIAL/HEARING	JBJ	04/26/05

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned,	J	10/21/04		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User	ID
0001000	Petition for Judicial Review	10/20/04	10/21/04	PET001	TBA		04/26/05	TLS	JBJ
0001001	Answer	10/22/04	10/26/04	ITP001	TBA		04/26/05	PKE	JBJ
0001002	Answer	11/01/04	11/04/04	ITP002	TBA		04/26/05	PH	JBJ
0002000	Certificate of Notice	10/21/04	10/25/04	000	TBA		04/26/05	MRS	JBJ
0003000	*Transcript of Record from Adm Agency	12/13/04	01/06/05	ITP001	TBA		04/26/05	DR	JBJ
0004000	Notice of Transcript of Record Sent	01/06/05	01/06/05	ITP001	TBA		01/06/05	DR	DR
0005000	Notice of Transcript of Record Sent	01/06/05	01/06/05	ITP002	TBA		01/06/05	DR	DR
0006000	Notice of Transcript of Record Sent	01/06/05	01/06/05	PET001	TBA		01/06/05	DR	DR
0007000	Scheduling Order	01/13/05	01/13/05	000	TBA		01/13/05	KLJ	KLJ
0008000	Memorandum	02/07/05	02/10/05	PET001	TBA		02/10/05	MRS	MRS
0009000	Appellee's Memorandum	03/04/05	03/08/05	ITP002	TBA		03/08/05	DR	DR
0010000	Memorandum	03/18/05	03/22/05	ITP001	TBA		03/22/05	DR	DR
0011000	Open Court Proceeding April 4,2005 Hon.Patrick Cavanaugh.Hearin g had.Decision held sub-curia.Opinio n and Order to be filed.	04/04/05	04/04/05	000	PC		04/26/05	BH	JBJ
0012000	Order remanding case to Baltimore County Board of Appeals as specified	04/26/05	04/26/05	000	PC	Granted	04/21/05	JBJ	JBJ
0013000	Docket entries sent to Board of Appeals for Baltimore County	04/28/05	04/28/05	000	TBA			CVM	CVM

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	10/22/04	0	no	no	DANS	D	001	001
1YRT	One Year Tickle (Jud	CLOSED	10/20/05	365	no	no	DAAA	D	001	000
DEXH	Destroy Exhibits	OPEN	08/29/05	33	no	no	U643	F	000	000
EXPU	Exhibit Pickup Notic	CLOSED	06/25/05	30	no	no			000	000
SLTR	Set List For Trial	Done	10/22/04	0	yes	yes	1ANS	T	001	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 County Board Of Appeals For B								
000		B	RETURNED TRANSCRIP					

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 01/13/05 Order Date : 01/13/05
Start Date : 01/13/05 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		01/28/05	04/26/05	CLOSED
All Motions (excluding Motions in Limine		02/23/05	04/26/05	CLOSED
TRIAL DATE is	04/04/05	04/13/05	04/04/05	REACHED

ACCOUNTING SUMMARY

NON-INVOICED OBLIGATIONS AND PAYMENTS

03-C-04-011000 Date: 01/17/08 Time: 12:14 Page: 5

Date	Rcpt/Initials	Acct	Desc	Debit	Credit	Method	Balance
10/20/04	2004J0020556/LM	C 1102	CP-Civil Fil	.00	80.00	CK	-80.00
10/20/04	2004J0020556/LM	C 1265	MLSC	.00	25.00	CK	-105.00
10/20/04	2004J0020556/LM	C 1500	Appearance F	.00	10.00	CK	-115.00

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 19, 2005

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

RE: Circuit Case #03-C-04-11000 *In the Matter of*
Seminary Galleria, LLC /Case No. 04-052-SPHA
On Remand from the Circuit Court for Baltimore County

Dear Mr. Alderman:

Enclosed please find a copy of the Board's Opinion and Order issued this date in response to the Remand Order of the Circuit Court for Baltimore County.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Teresa Rosier /Seminary Galleria
c/o Hill Management
Bruce Doak /Gerhold, Cross & Etzel
Larry Townsend /GTCC and Dulaney Valley
Improvement Association
Richard Hurd
Richard Parsons
Eric Flesher
Don Gerding
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM
The Honorable Patrick Cavanaugh
Circuit Court for Baltimore County
Clerk of the Court /Civil Action #03-C-04-011000

Printed with Soybean Ink
on Recycled Paper

9/19/05

IN THE MATTER OF THE APPLICATION OF SEMINARY GALLERIA, LLC – LEGAL OWNER/PETITIONER FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NE/S OF YORK ROAD, CORNER SE/S OF SEMINARY AVENUE (1447 YORK ROAD)	*	ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY Civil Action No. 03-C-04-11000
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT (Case No. 04-052-SPHA)	*	

* * * * * * * * * * *

SUPPLEMENTAL OPINION OF THE BOARD OF APPEALS ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY

This matter has been remanded to the Board by the Circuit Court for Baltimore County. In its decision, the Court stated that "the case is hereby Remanded to the Baltimore County Board of Appeals for a more definite analysis, to include complete Findings of Fact and Conclusions of Law, as to the sole issue of denying Petitioners/Appellants requests for Petition for Special Hearing regarding the issuance of a use permit for the additionally constructed parking spaces."

A short summary of the facts in this matter is warranted and was fairly set forth by the Court in its decision. The Petitioner, Seminary Galleria, owns a business park at 1447 York Road in Baltimore County. The property is a split-zoned parcel of land, with a majority of the area in a business local (B.L.) and the northeastern tract in density residential (D.R.). Currently, the Petitioner uses portions in the B.L. and D.R. zones for business parking.

The current structure of the complex was approved by the County Review Group (CRG) development process in 1983, and parking requirements were met. According to *Baltimore*

County Zoning Regulations (BCZR) § 409.6, 728 spaces are required based on the size of the tract, and the site has met that requirement by providing 734. The current scheme depicts the area of commercial parking in a residential zone approved by the existing use permit.

In 2003, the Petitioner leveled 4 existing parking spaces in the D.R. zone and added 14 newly positioned spaces without obtaining zoning approval for modification of the CRG Plan. Construction resulted in the net addition of 10 new parking spaces in the residential zone. After the new parking was installed, a complaint was filed with Baltimore County Code Enforcement alleging that the 14 spaces were added without the benefit of modifying the present approved CRG Plan. Among the Protestants at the hearing before the Board were the People's Counsel for Baltimore County, the Dulaney Valley Improvement Association, the Greater Towson Council of Community Associations, and two neighbors who reside on Seminary Avenue across from the proposed parking modification. Petitioner filed a zoning petition seeking approval of the 14 spaces as well as 16 additional parking spaces pursuant to a modified parking plan.

The Petitioner originally filed a petition before the Zoning Commissioner on October 2, 2003 for a variance and for a special hearing for the property. Special relief was requested under the *Baltimore County Zoning Regulation* (BCZR) § 409.8A to allow for 16 additional commercial parking spaces on an adjacent landscaped area that also falls within a residential zone. Petitioner also sought relief under BCZR § 409.8B to obtain a use permit for a modified parking and landscaping plan, which had been constructed prior to obtaining County approval. The issuance of the use permit would require an amendment to the previously approved parking plan.

The Zoning Commissioner denied all of the Appellant's requests, as did this Board on appeal in a decision issued on September 21, 2004. Petitioners now seek only approval of the 14 spaces which were already constructed and elected not to appeal the Board's decision to deny the request for variance to allow the additional 16 spaces.

DECISION

The Special Hearing relief was requested in accordance with BCZR § 409.8B to allow commercial parking adjacent to existing commercial parking on the same lot in a residential zone. Petitioners also requested approval of a modified parking and landscape plan in addition to Petitioner's requested variance relief from § 409.A of the BCZR to permit parking spaces to be located within 10 feet of the right-of-way of a public street. Section 409.8B states:

> Upon application, the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking facilities to meet the requirements of § 409.6....

Two of the witnesses for the Petitioner, Bruce Doak the surveyor, and Theresa Rosier, the asset manager, admitted that the site currently provides 734 spaces exclusive of the 30 spaces requested in the case and that 728 spaces were required by the BCZR Doak testified that the relief requested was not due to a shortage of parking spaces but he was told that it was for the convenience of tenants. This testimony was confirmed by Ms. Rosier.

BCZR § 409.6 sets forth general requirements for the required number of parking spaces for various uses in the County including the office retail use here. The BCZR will permit commercial parking in residential zones only in those cases where the Petitioner cannot meet the required minimum number of parking spaces in the commercial zone. Here, since the Petitioner satisfies § 409.6 requirements, it cannot seek a special hearing for commercial parking in the

residential zone. Therefore, the Board finds that, based upon the testimony of the Petitioner's own witnesses, the special hearing for commercial parking in a residential zone must be denied.

In addition, Petitioner is not qualified for a Special Hearing relief for the modified parking plan for the same reason. BCZR § 409.12B provides for a modified parking plan if the parking requirements in § 409 (General Requirements for Minimum Parking Spaces for Each Use) creates an undue hardship. Petitioner's witness admitted that it satisfies the zoning regulations regarding parking on the site. Thus, there is no "undue hardship" and the modified parking plan is not available.

The permit cannot be granted if it adversely affects any of the nine factors in the special exception law under BCZR § 502.1. In describing special exception uses, the BCZR states that "certain types of uses…might cause unsatisfactory results of one kind or another…and under certain conditions they could be detrimental to the health, safety or general welfare of the public…." The citizens testifying before the Board explained the detrimental effects of the Petitioner's request under the criteria set forth in § 502.1. It is basically offensive to the neighbors because (1) they are located in the D.R. 5.5 zone; (2) they extend the commercial use into the buffer area, closing in on a settled residential neighborhood; and (3) they interferer with a designated fire lane. Mr. Flesher, a neighbor living across the street, stated that the Petitioner dumps plowed snow onto his property when it runs out of space on its site. He felt that this situation would be exacerbated if the present open spaces were converted to parking spaces. He also experienced car alarms, noise and trash from parked vehicles on the site and such disturbing activity will actually be closer to his home if the 14 additional spaces are allowed. In addition, he stated that tenants from the site have picnicked on his yard and that the hours of operation for

these tenants have been extended over the years, some of them open 24 hours a day, such as the subway operation and health club. The HMO is open Saturdays and Sundays broadening the commercial aspect of the residential uses. Richard Hurd, another neighbor across the street, also testified that the illegal parking spaces are occupied at 7:30 a.m. by tenants even when the rest of the lot is empty. Mr. Hurd disputes the need for additional parking since he has never seen all of the parking spaces occupied. Mr. Hurd explained that the Petitioner also dumped snow on his side of the street and on his property when there was no room in the open spaces. He fears that the problem will be exacerbated if the open spaces are further lost to parking spaces.

While it is true that the Fire Marshall's Office had no comment with respect to the additional 14 parking spaces which were constructed in the fire lane, the Board is of the opinion that the use of the fire lane for additional parking is detrimental to the health, safety and welfare of the general public. The 14 spaces displace the original grass and planting area in the D.R. 5.5 zone. The neighbors have testified as to the adverse effects of the unauthorized parking spaces. The Board finds that the construction of these spaces without the proper authorization is detrimental to the health, safety and welfare of the neighborhood. Therefore, it does not satisfy the requirements of § 502.1 of the BCZR and the plan should be denied.

ORDER

THEREFORE, IT IS this 19th day of September, 2005, by the County Board of Appeal of Baltimore County

ORDERED that the Petition for Special Hearing to allow commercial parking adjacent to existing commercial parking on the same lot in a residential zone and, in lieu of the Variance

relief requested, approval of a modified parking plan and modified parking and landscape requirements for the proposed parking area be and is same hereby **DENIED;** and it is further

ORDERED that the Petition for Variance to permit parking spaces to be located within 10 feet of the right-of-way of a public street utilizing existing landscaping in the event the requested modified parking plan is not approved be and the same is hereby **DENIED.**

Any petition for judicial review of this decision must be made in accordance with Rule 7.201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY[1]

Lawrence S. Wescott, Chairman

John P. Quinn

[1] The Board panel in this matter consisted of Lawrence S. Wescott, John P. Quinn, and Donald I. Mohler III. Mr. Mohler has subsequently left the Board. Since the decision was unanimous, this Supplemental Opinion is issued by the two remaining original Board members.

4/24/05

RECEIVED
MAY 02 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF SEMINARY GALLERIA, LLC 1447 York Road	*	IN THE
	*	CIRCUIT COURT
SEMINARY GALLERIA, LLC Owner/Petitioner/Appellant	*	FOR
	*	BALTIMORE COUNTY
DULANEY VALLEY IMPROVEMENT ASSOCIATION, Protestant/Appellee	*	
	*	
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY Protestant/Appellee	*	CASE NO.: 03-C-04-11000
	*	

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

04-052-SPHA

-OPINION-
APPEAL FROM THE
BALTIMORE COUNTY BOARD OF APPEALS

Questions Presented for Appeal

Did the Baltimore County Board of Appeals commit error when it denied Petitioner's requests for approval of a modified commercial parking plan in a split residential/business zone? Specifically, did the Board of Appeals adequately set forth its conclusions and findings of fact in the decision to affirm the findings of the Deputy Zoning Commissioner, and did the Board of Appeals properly consider the weight of the evidence regarding the issuance of a use permit?

Summary

The record contains substantial evidence to support the findings of the Board of Appeals, and the decisions drawn from the facts and inferences in the record could be

FILED APR 26 2005

JJ w: Alderman, Taneczyn, Zimmerman, Demilio

reached by a reasonable mind. However, the Board's analysis is devoid of any fact-finding or legal conclusions to support its decision.

Procedural History

This case comes to the Court on appeal by Seminary Galleria, LLC ("Appellant" or "Petitioner") from the decision of the Baltimore County Board of Appeals ("the Board") of September 21, 2004, affirming the decision of the Deputy Zoning Commissioner of Baltimore County ("the Commissioner"). The action originally came before the Commissioner on October 2, 2003, by Appellant's Petition for Variance and Petition for Special Hearing for the property.

Special relief was requested under the Baltimore County Zoning Regulations ("BCZR") § 409.8.A to allow for 16 additional commercial parking spaces on an adjacent landscaped area that also falls within a residential zone. Appellant also sought relief under BCZR § 409.8.B to obtain a use permit for a modified parking and landscaping plan, which had been constructed prior to obtaining county approval. The issuance of a use permit would require an amendment to the previously approved parking plan.

The Commissioner denied all of Appellant's requests, and the Board subsequently affirmed that decision. Appellant now seeks review of the Board's findings only as to the issue of the denial of a use permit under BCZR § 409.8.B. Appellant has abandoned its variance petition for the additional 16 spaces in the landscaped, residential zone.

Statement of Facts

Appellant is the property owner of a business park located at 1447 York Road in Baltimore County. This property lies on a split-zoned parcel of land, with a majority of the area in a Business Local (BL) zone and the northeastern tract in Density Residential (DR). Currently, Appellant uses portions in both DR and BL zones for business parking.

The current structure of this complex was approved under the County Review Group (CRG) Development process in 1983, and parking requirements were met according to BCZR § 409.6; 728 spaces are required based on the size of the tract, and the site has met that requirement by providing 734. The current scheme depicts the area of commercial parking in a residential zone approved by the existing use permit.

In 2003, Appellant leveled four existing parking spaces in the DR zone and added 14 newly positioned spaces without obtaining zoning approval for modification of the CRG plan.[1] The construction resulted in the net addition of 10 new parking spaces in the residential zone. After the new parking was installed, a complaint was filed with Baltimore County Code Enforcement alleging that the 14 spaces were added without the benefit of modifying the presently approved CRG plan. Among the Protestants at the Board's hearing were the People's Counsel for Baltimore County, the Dulaney Valley Improvement Association, the Greater Towson Council of Community Associations, and two neighbors who reside on Seminary Avenue across from the proposed parking modification.

Subsequently, Appellant filed its zoning petition with the Commissioner seeking approval of the 14 spaces as well as 16 additional parking spaces pursuant to a modified

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[1] Appellant hired a contractor to complete the installation of the new spaces and relied on the contractor to obtain any approvals necessary for the construction.

parking plan. As stated above, Appellant at this stage is only seeking approval from this Court of the already constructed 14 spaces and has elected not to appeal the Board's decision to deny the requested variance for the additional 16 spaces.

Standard of Review

The standard of review of the action of an administrative agency is whether a reasoning mind could have determined the same conclusion that the administrative agency reached. Nnoli v. Nnoli, 101 Md. App. 243, 646 A.2d 1021 (1994); State Ins. Commissioner v. Nat'l Bureau of Casualty Underwriters, 248 Md. 292, 236 A.2d 282 (1967). The agency decision is presumptively correct, and the correctness of an agency's findings of fact must be reviewed under the substantial evidence test. Dept. of Human Resources v. Thompson, 103 Md. App. 175, 652 A.2d 1183 (1995); State Election Board v. Billhimer, 314 Md. 46, 548 A.2d 819 (1988). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Supervisor of Assessments v. Group Health Ass'n, Inc., 308 Md. 151, 159, 517 A.2d 1076 (1986) quoting Bulluck v. Pelham Wood Apts., 283 Md. 505, 512, 390 A.2d 1119 (1978). Accordingly, this Court must affirm the findings of the Baltimore County Board of Appeals if substantial evidence exists to conclude that its determinations were reasonable.

A reviewing court may, and should, examine facts found by an agency to see if there is evidence to support each fact found. If evidence exists in the record to support an agency's fact-finding, the reviewing court cannot substitute its assessment of credibility of the evidence for that of the agency, no matter how questionable or conflicting the

source of evidence may be. Commissioner, Baltimore City Police Dept. v. Cason, 34 Md. App. 487, 368 A.2d 1067 (1977), *cert. denied*, 280 Md. 728 (1977). It is well-settled that the reviewing court should not substitute its judgment for the expertise of the agency, as the agency has a superior ability to understand its own rules and regulations. Board of Education v. Paynter, 303 Md. 22, 35, 491 A.2d 1186 (1985); Bulluck, 283 Md. 505, 512, 390 A.2d 1119. When an agency infers the existence of a fact that is not supported by direct proof from the record, the reviewing court should examine such an inference to determine if it reasonably flows from other facts that are supported by direct proof. Even though an agency may have been reasonable in drawing a different inference, the court has no power to disagree with the facts so inferred. Id. at 508.

The court should review the agency's conclusion to determine whether "reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. *If the conclusion could so be reached, then* it is based upon substantial evidence, and the court has no power to reject that conclusion." Id.

Discussion

Appellant makes two arguments for this Court to consider in its appeal: 1) that the Board of Appeals failed to set forth an adequate conclusion supported by clear findings of fact; and 2) that the Board failed to consider the conclusive and uncontradicted evidence in support of the use permit for the fourteen installed spaces. Since Appellant has chosen not to challenge the Board's denial of its variance request to construct the additional parking spaces in the landscaped area adjacent to the public right-of-way, this Court is

left to consider only the adequacy of the Board's ruling as to the denial of the use permit. Accordingly, Appellant's first argument can only succeed if the Board's opinion is missing any factual support or explanation for its ruling. Before that question is addressed, this Court must first determine whether a reasoning mind could reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. That is, did the Board have substantial evidence to render a decision?

Substantial Evidence

Appellant is requesting approval for additional parking in a residential zone, and the applicable statute for the Board to consider is BCZR § 409.8.B, which states:

> Following the public hearing, the Zoning Commissioner may either deny or grant a use permit conditioned upon: (1) His findings following the public hearing; (2) The character of the surrounding community and the anticipated impact of the proposed use on the community; (3) The manner in which requirements of Section 409.8.B.2 and other applicable requirements are met; and (4) Any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations. BCZR § 409.8.B.1.e.

These requirements are the parameters for the Board to keep in mind when it is considering the evidence. In addition, BCZR § 409.8.B.2.g states that the Commissioner may consider any conditions not specifically enumerated in the statute "which are necessary to ensure that the parking facility will not be detrimental to adjacent properties."

Appellant cites no error of law committed by the Board other than its failure to consider the weight of the evidence. Appellant maintains that the Board failed to consider the "conclusive and uncontradicted" testimony of its expert witness, Bruce Doak; however, the Board is not bound by such testimony, no matter how persuasive the

Appellant might consider it to be. The Board need only consider the testimony in light of all the evidence produced. The Board is also not required, as Appellant asserts, to *condition its approval* of a use permit to ensure that the 14 spaces are not detrimental to the health, safety or general welfare of the surrounding community. The Board *may either grant or deny* a use permit conditioned upon the factors set out in BCZR § 409.8.B.1.e, but it is certainly not obligated impose conditions for an owner to meet as a retroactive means to satisfy the BCZR requirements.

Appellant relies on Mayor and Council of Rockville v. Cotler, 230 Md. 335 (1963) to support its argument. In Cotler, property owners applied to the Mayor and City Council to have a 12-acre tract of land rezoned for industrial use. The property, which was originally under County jurisdiction and abutted existing industrial development, had been annexed by the City against the wishes of the property owners. The Mayor and Council denied the owner's request, and subsequently rezoned parcels of the tract for residential use. On appeal to the Circuit Court for Montgomery County, these zoning actions by the City were held invalid. In affirming the findings of the Circuit Court, the Court of Appeals noted that the action of the Mayor and Council was taken in the face of the recommendations of the Maryland-National Capital Park and Planning Commission, the City Planning Commission, and various expert witnesses who testified that this area was best suited for industrial use. Id., at 339. The court went on:

> "There was no expert testimony in contradiction of these views. Individually, some of these considerations would not be controlling; taken together, their cumulative effect is very strong to show the absence of any sound basis for the City's action." Id.

This is not the case here. Appellant argues that its expert's testimony is conclusive and uncontraverted, and any conclusion by the Board to the contrary would

fly in the face of the evidence presented. The facts in Cotler, however, are distinguishable from the case at hand. There, the Court concluded that the City Council based its decision "upon a plebiscite of neighbors" and was "not based upon the evidence." Id. at 340. Although the Board's opinion does not comply with the recommendations of Mr. Doak, this does not mean that the Board failed to consider the full weight of the evidence (even if the Board may have found the neighbors' testimony more persuasive than the expert's). Appellant further relies on Cotler to suggest that a buffer is impermissible in the instant case by quoting the following: "an effort to create a no man's land or buffer zone in the property of the appellees for the benefit of others by preventing the appellees from using their property for any of the purposes for which it is peculiarly suitable…is impermissible." Id. It is not unreasonable, however, to infer that the split-zoning structure in this case is indicative of an intent by the County to create a buffer zone between the business park and the residents, an act which is "peculiarly suitable" under the circumstances and geographical layout of the region. When asked if he was aware of any other properties in this area of the county having a similar size, shape, and configuration with comparable zoning lines, or anything close to it, Mr. Doak testified that he was not. (T. 36). This suggests more than a just an arbitrary demarcation by the Zoning Commissioner.

The record, in addition to the opinions in favor of issuing a use permit, contains ample evidence and testimony submitted from various sources that support a denial of the Petitioner's original requests as well.[2] Unlike Cotler, the Board's decision here did not

[2] In addition to Appellant's two witnesses, Mr. Doak and Ms. Rosier, an affiliate of Seminary Galleria, LLC, the Board heard from protestants, Richard Hurd and Eric Flesher, the president of the Dulaney Valley Improvement Association, a representative

"[fly] in the face of the facts developed at the hearing." Id. A careful review of the record indicates that the Board considered a varied amount of evidence and properly based its decision on such.

Clearly, conflicting evidence exists in this case, or at least different opinions as to the need for additional parking. Judging the weight of the evidence and the credibility of witnesses is not for this Court to decide. If evidence exists in the record to support an agency's fact-finding, the reviewing court cannot substitute its assessment of credibility of the evidence for that of the agency, no matter how questionable or conflicting the source of evidence may be. Commissioner, Baltimore City Police Dept. v. Cason, 34 Md. App. 487, 368 A.2d 1067 (1977). The Board was well within its authority to consider the Appellant's expert testimony in conjunction with the other evidence presented and make its ruling, even though it did not correspond with the expert's recommendation.

Adequacy of the Board's Opinion

A review of the transcript, the Minutes of Deliberation by the Board, and the Opinion issued indicates that the Board had substantial evidence to render a decision. It is also clear that the Board did consider the statutory requirements that a property owner must meet when seeking a variance from a parking scheme or when requesting a use permit. Special circumstances or undue hardships may in fact impede the minimum

---

from the Greater Towson Council Community Association, and memoranda submitted by all parties. The record also contains correspondence from the Office of Planning recommending that such a request be denied because a modified parking plan would eliminate landscaped area, as well as a recommendation from the Department of Public Works that the new parking spaces along the access lane be eliminated for safety reasons.

parking requirements as set forth in BCZR § 409.6, but the Code lays out the standard for the Zoning Commissioner and the Board of Appeals to consider in their deliberations.

The Opinion highlights the evidence that the Board considered, but the ruling is devoid of any findings of fact and conclusions of law. The record is clear as to the evidence presented to the Board, as well as the sections of the BCZR that were applied to the reasoning,[3] but the opinion is narrative in form and simply repeats the statutory criteria necessary to formulate a finding. Other than a rehash of the testimony and argument submitted by counsel, as well as a list of bullet points in the Minutes of Deliberation, the Board fails to adequately address each one of the Petitioner's requests. Unfortunately, the evidence was there to consider, but the Board seems to have skipped an analytical step between identifying the evidence and denying Petitioner's request. While this Court can infer what the Board's analysis may have been in reaching its conclusion, such an action would be improper.

Conclusion

As discussed above, the Board had substantial evidence before it to render its decision, however, the analysis is not clear as to why Petitioner's requests were denied. For example, in the closing paragraph the opinion states, "the Board did not feel the Petitioners met the standard of 'undue hardship'" and that "[t]he Board was concerned that the additional parking in this case might be 'detrimental to the health, safety, or general welfare of the public.'" What is lacking, specifically, is how the Petitioner failed to meet its burden and in what way any additional parking would be

[3] See "Board of Appeals of Baltimore County Minutes of Deliberation."

detrimental. The relevant evidence has been highlighted and a decision has been made, but the Board glosses over the analysis that is necessary to link the chain.

The findings of the Board of Appeals are supported by evidence that is competent, material, and substantial in view of the entire record, and a reasoning mind in light of the evidence could conclude the same. Although this Court agrees with the ultimate effect of the Board's ruling, the decision fails to incorporate complete findings of fact and conclusions of law. Accordingly, this matter is hereby REMANDED to the Baltimore County Board of Appeals for a more definite analysis, to include complete findings of fact and conclusions of law, as to the sole issue of denying Petitioner/Appellant's Request for Special Hearing regarding the issuance of a use permit for the additionally constructed parking spaces.

Patrick Cavanaugh

Judge Patrick Cavanaugh

4/21/05

Date

CLERK TO NOTIFY

PETITION OF:

SEMINARY GALLERIA LLC

CIVIL ACTION NO.: 3-C-04-11000

MATTER OF: SEMINARY GALLERIA LLC

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

CLERK'S OFFICE

DATE: December 13, 2004

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
SEMINARY GALLERIA LLC *
c/o Hill Management Services Inc
9640 Deerco Road *
Timonium, MD 21093

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. **3-C-04-11000**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF
SEMINARY GALLERIA LLC *
c/o Hill Management Services Inc
9640 Deerco Road *
Timonium, MD 21093

8th ELECTION DISTRICT *
3rd COUNCILMANIC DISTRICT
*
BOARD OF APPEALS CASE NO.: 04-052-SPHA

RECEIVED AND FILED
2004 DEC 1 A 11: 06
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

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 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

04-052-SPHA

July 31, 2003	Petition for Variance filed by Seminary Galleria, LLC, Teresa Rosier, Authorized Member, through their attorney Howard L. Alderman, requesting to permit parking spaces to be located within 10 feet of the right of way of a public street utilizing existing landscaping. Petition for Special Hearing filed by Seminary Galleria, LLC, Teresa Rosier, Authorized Member, through their attorney Howard L. Alderman, requesting to permit commercial parking adjacent to existing commercial parking on the same lot in a residential zone; approval of a modified parking plan.
August 18	Notice of Zoning Hearing
August 19	Entry of Appearance filed by People's Counsel for Baltimore County
September 11	Publication in newspaper
September 11	Certificate of Posting
September 26	ZAC Summary of Comments
September 29	Hearing Held before the Zoning Commissioner
January 4, 2000	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner. Petition for Special Hearing Request and Variance DENIED.
October 30	Notice of Appeal filed by Seminary Galleria, LLC, Teresa Rosier, Authorized Member, through their attorney Howard L. Alderman, Esquire.
July 1, 2004	Hearing by Board of Appeals.

Petitioners Exhibits

1	3rd Amendment and Parking Addition to The Galleria Tower / Plan to Accompany Photographs – marked in 'red'
2	Aerial view marked in 'red'
3	Thirteen photographs which accompany Exhibit 1

Protestants Exhibits

1	Copy of Opinion and Order by the Board of Appeals in case No.: 85-256-XA – 4 pages
2	Division of Code Inspections and Enforcement Active Violation Case Documents
3	GIS Aerila Photograph dated June 24, 2004
4	Photograph – not dated or labeled
5	Photographs marked 'taken 6/19/2004 Saturday'
6	Photographs – not dated or labeled – 3 photos on 1 page
7	Photographs marked 'taken 6/19/2004 Saturday'
8	Photographs marked 'taken 6/19/2004 Saturday'
9	Photographs marked 'taken 6/19/2004 Saturday'
10A	Resolution dated 20th day of February, 2004 / Dulaney Valley Improvement Association – 1 page
10B	Resolution dated 15th of January 2004 / The Greater Towson Council of Community Assoc., Inc. – 1 page
10C	Certification dated June 28, 2004 / Dulaney Valley Improvement Association, Inc. – 1 page

	11A	Maryland Department of Assessment and Taxation Baltimore County Real Property Data Search District 09 Account Number 1900014868
	11B	Maryland Department of Assessment and Taxation Baltimore County Real Property Data Search District 09 Account Number 2000003391
	11C	Maryland Department of Assessment and Taxation Baltimore County Real Property Data Search District 09 Account Number 1900014867
	12	Rule 8 papers The Greater Towson Council of Community Assoc., Inc. – 4 pages
August 31		Public Deliberation held before the Board of Appeals.
September 21		Opinion issued by the Board of Appeals DENYING Petition for Special Exception and the Petition for Variance.
October 20		Petition for Judicial Review filed in the Circuit Court for Baltimore County by Seminary Galleria, LLC, , through their attorney Howard L. Alderman, Esquire. Civil Action No.: 03-C-04-11000.
October 21		Certificate of Notice sent to interested parties.
December 13		Transcript of Proceedings filed.
December 13		Record of Proceedings filed in the Circuit Court for Baltimore County.

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

Respectfully submitted,

Theresa R. Shelton

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

cc: Howard L. Alderman, Jr., Esquire
Michael P. Tanczyn, P.A.
Larry Townsend
Don Gerding
Office of People's Counsel

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824
Fax: (410) 296-8827

October 29, 2004

RECEIVED
NOV 0 1 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, MD 21204

Re: Answer to Petition For Judicial Review
Case No.: 3-C-04-11000

Dear Clerk:

I am enclosing for filing the response of Dulaney Valley Improvement Association, Inc. to the Petition for Judicial Review of the Seminary Galleria, LLC

Thank you in advance for your cooperation with this request. I will be happy to answer any questions you may have.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.
cc: Dulaney Valley Improvement Association
Carole S. Demilio, Esquire
Howard L. Alderman, Jr., Esquire
Board of Appeals of Baltimore County

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
SEMINARY GALLERIA LLC *
c/o Hill Management Services, Inc.
9640 Deerco Road *
Timonium, MD 21093

*

FOR JUDICIAL REVIEW OF THE OPINION OF CIVIL ACTION
THE COUNTY BOARD OF APPEALS * No. **3-C-04-11000**
OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

IN THE MATTER OF *
SEMINARY GALLERIA LLC
c/o Hill Management Services, Inc. *
9840 Deerco Road
Timonium, MD 21093 *

8th ELECTION DISTRICT *
3rd COUNCIL MANIC DISTRICT

*

BOARD OF APPEALS CASE NO.: 04-052-SPHA *

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

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Respondent, Dulaney Valley Improvement Association, Inc., Protestant, by its counsel, Michael P. Tanczyn, and for answer to the Petition For Judicial Review filed by Seminary Galleria LLC, responds by saying that they intend to participate in this proceeding. The Respondent was a party to the Board of Appeals hearing.

Michael P. Tanczyn
606 Baltimore Avenue
Suite 106
Towson, Maryland 21204
410-296-8823
Attorney for the Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 29th day of October, 2004 that a copy of the foregoing was mailed to: Howard L. Alderman, Jr., Levin & Gann, P.A., 8th Floor, Nottingham Centre, 502 Washington Avenue, Towson, Maryland 21204 and to Carole S. Demilio, Deputy People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

Michael P. Tanczyn
606 Baltimore Avenue
Suite 106
Towson, Maryland 21204
410-296-8823
Attorney for the Respondent

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

October 22, 2004

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

RECEIVED
OCT 2 2 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 Seminary Galleria, LLC
Case Number: 03-C-04-11000

Dear Sir or Madam:

Please file the enclosed please find the Response to Petition for Judicial Review. 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: Howard L. Alderman, Jr. Esquire
County Board of Appeals

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF: **Seminary Galleria, LLC** **c/o Hill Management Services, Inc.** **9640 Deereco Road** **Timonium, MD 21093**	**CIVIL**
FOR JUDICIAL REVIEW OF THE DECISION OF THE: **County Board of Appeals of Baltimore County** **Old Courthouse, Room 49** **400 Washington Avenue** **Towson, Maryland 21204** **(410) 887-3180**	**ACTION** **NO.** C04-11000
IN THE CASE OF: **IN THE MATTER OF: THE APPLICATION OF SEMINARY GALLERIA, LLC - LEGAL OWNER/PETITIONER - PETITION FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NE/S OF YORK ROAD, CORNER SE/S OF SEMINARY AVENUE (1447 YORK ROAD)** **Case No. 04-052-SPHA**	RECEIVED OCT 22 2004 BALTIMORE COUNTY BOARD OF APPEALS

PETITION FOR JUDICIAL REVIEW

SEMINARY GALLERIA, LLC, a Maryland limited liability company, Appellant and one of the parties before the County Board of Appeals for Baltimore County in the above-referenced case, by Howard L. Alderman, Jr. and Levin & Gann, PA, its legal counsel, in accordance with Maryland Rule 7-202 hereby requests judicial review of the September 21, 2004 Opinion of the County Board of Appeals of Baltimore County in the above-captioned matter.

Howard L. Alderman, Jr.
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
410.321.0600 [voice]
410.296.2801 [fax]
Attorneys for Seminary Galleria, LLC

RECEIVED AND FILED
2004 OCT 20 P 2:55
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

TS cc-County Board of Appeals
Howard L. Alderman, Esq.

County Board of Appeals of Baltimore County

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

October 21, 2004

Howard L Alderman Jr, Esquire
Leven & Gann
502 Washington Avenue
8th Floor
Towson, Md 21204

RE: Circuit Court Civil Action No. 3-C-04-11000
Petition for Judicial Review
Seminary Galleria LLC .
Board of Appeals Case No.: 04-052-SPHA

Dear Mr. Alderman:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit the same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

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

CAROLYN PEATT
TELEPHONE: 410- 486-8209
Date of Hearing: July 1, 2004

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by December 13, 2004, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, which enables her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure
c: Carolyn Peatt, Court Reporter
Seminary Galleria

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

October 21, 2004

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

RE: Circuit Court Civil Action No. 3-C-04-11000
Petition for Judicial Review
Seminary Galleria LLC
Board of Appeals Case No.: 04-052-SPHA

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on October 20, 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-04-11000.**

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
Teresa Rosier / Seminary Galleria,

Printed with Soybean Ink on Recycled Paper

(continued)

c: Bruce Doak
Larry Townsend
Richard Hurd
Richard Parsons
Eric Flesher
Don Gerding
Pat Keller, Director/Planning
Zoning Commissioner
Timothy Kotroco, Director/PDM

IN THE PETITION OF **SEMINARY GALLERIA, LLC** FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
IN THE CASE OF **SEMINARY GALLERIA, LLC,** LEGAL OWNERS/PETITIONERS FOR VARIANCE ON PROPERTY LOCATED ON THE NE/S of York Road, Corner SE/S of Seminary Avenue, (1447 YORK ROAD)	*	FOR
8th Election District, 3rd Councilmanic District	*	BALTIMORE COUNTY
Case No. 04-052-SPHA Before the County Board of Appeals	*	Case No.: 03-C-04-11000

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

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed SEMINARY GALLERIA, LLC and states that it intends to participate in this action for Judicial Review. The undersigned was a party to the proceeding before the County Board of Appeals.

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 25 day of October, 2004, a copy of the foregoing Response to Petition for Judicial Review was mailed to Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204 and to Kathleen Bianco, Administrator, County Board of Appeals, 400 Washington Avenue, Towson, MD 21204.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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 21, 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: Seminary Galleria LLC*
Petitioner / Case No. 04-052-SPHA

Dear Mr. Alderman:

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

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

Very truly yours,

Kathleen C. Bianco/CS

Kathleen C. Bianco
Administrator

Enclosure

c: Teresa Rosier /Seminary Galleria
c/o Hill Management
Bruce Doak /Gerhold, Cross & Etzel
Larry Townsend /GTCC and Dulaney Valley
Improvement Association
Richard Hurd
Richard Parsons
Eric Flesher
Don Gerding
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink

9/21/04

IN THE MATTER OF THE APPLICATION OF SEMINARY GALLERIA, LLC - LEGAL OWNER /PETITIONER FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NE/S OF YORK ROAD, CORBER SE/S OF SEMINARY AVENUE (1447 YORK ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 04-052-SPHA

* * * * * * * * *

OPINION

This case comes to the Board based upon an appeal from a decision of the Deputy Zoning Commissioner of Baltimore County issued on October 2, 2003. The case came to the Deputy Zoning Commissioner as Petition for Variance and Petition for Special Hearing for the property located at 1447 York Road in the Lutherville area of Baltimore County. Special hearing relief was requested in accordance with the *Baltimore County Zoning Regulations* (BCZR) §409.8B, to allow commercial parking adjacent to existing commercial parking on the same lot in a residential zone. The Petitioners also requested approval of a modified parking and landscape plan. In addition, the Petitioners requested variance relief from §409.8.A of the BCZR to permit parking spaces to be located within 10 feet of the right-of-way of a public street.

The Board held a public hearing on this matter on July 1, 2004 which was subsequently followed by a public deliberation on August 31, 2004. Present at the public hearing was Howard L. Alderman, Jr., Esquire, representing Theresa Rosier /Seminary Galleria c/o Hill Management (hereinafter "Petitioners"). Also present was Michael P. Tanczyn, Esquire, representing the Dulaney Valley Improvement Association (hereinafter "Protestants"). Appearing for the People's Counsel for Baltimore County was Deputy People's Counsel, Carole S. Demilio (hereinafter "People's Counsel").

In his opening statement, Mr. Alderman indicated that the Deputy Zoning Commissioner applied the law incorrectly and generated his own facts and assumptions. In his opening statement, Mr. Tanzyn reminded the Board that in 1985 it had denied a similar request, and he remarked that the Petitioners had

moved forward with parking plans hoping to obtain forgiveness rather than permission. He opined that the Petitioners had illegally constructed parking spaces in a main drive aisle and that the county recommends that these spaces be removed. People's Counsel reminded the Board that in the past it has taken a dim view of extending parking spaces into a residential area.

The Petitioner's first witness was Mr. Bruce Doak who was accepted as an expert witness in the area of land surveying. Mr. Doak reviewed the red-line site plan displaying both the existing and proposed parking areas. Mr. Doak indicated that the primary uses of the property were retail space and medical offices. He pointed out that some portions of the property were zoned B.L. and other portions were zoned D.R. 5.5. He testified that the east-west line and the southern border are zoned B.L. while the northern border is zoned D.R. 5.5. Mr. Doak referred to the site plan and identified 14 spaces that had been constructed without a permit, and he also showed where the proposed additional 16 spaces adjacent to Seminary Avenue would be located. Mr. Doak indicated that the Petitioners had received a correction notice from Baltimore County regarding the 14 spaces that had been constructed. He indicated that a variance would be needed for the additional 16 spaces. Upon review of the GIS map of the property, Mr. Doak testified that there were grassy areas where the 14 parking spaces were now located.

Under cross -examination by Mr. Tanzyn, Mr. Doak identified a correction notice that the Petitioners had received from Baltimore County. He also acknowledged that Pat Keller, Director of Baltimore County's Office of Planning, recommended denial of the additional parking spaces on the lot. Mr. Doak also testified that on the CRG Plan a fire lane existed where 10 of the 14 parking spaces have been constructed.

As the hearing continued, Ms. Theresa Rosier, representative of Hill Management, testified on behalf of the Petitioner. Ms. Rozier testified that she has received numerous requests for additional parking spaces from the tenants, and that she visits the site on an average of once a week. She did testify that, to the best of her knowledge, at no time are all of the parking spaces on the property utilized. In her testimony, she stated that more parking would make the center more customer-friendly, and that her

company is committed to a landscaping plan along Seminary Avenue. She denied that the management company unloads snow on the private property of the residents on Seminary Avenue.

Under cross-examination, Ms. Rosier testified that the addition of medical offices has necessitated the need for additional parking spaces.

The Protestant's first witness was Mr. Richard Hurd who resides at 16 E. Seminary Avenue. Mr. Hurd testified that he has lived at his current address since 1986. Mr. Hurd testified that in the past he spoke to Mr. Anthony Julio about Hill Management placing snow on the private properties along Seminary Avenue. He also observed that the 14 parking spaces were being utilized by tenants and not by customers visiting the center. Mr. Hurd also testified that a large portion of the southeast corner of the Petitioners' property always has parking spaces available. He also indicated that he contacted Ms. Rosier as soon as he saw work beginning on the 14 spaces to inform her that the Petitioners were in violation of the law because he had called the County and determined that Hill Management did not have a permit for the additional spaces. Responding to a question from People's Counsel, Mr. Hurd also indicated that there was a parking deck on the southeast corner of the property with additional parking spaces available underneath.

Under cross-examination, Mr. Hurd testified that the snow that had been removed from the site was actually placed on County property and not private property. He also acknowledged that a dumpster that had been placed on the parking lot was there temporarily during a renovation project.

The Protestant's second witness was Mr. Eric Flesher who resides at 10 E. Seminary Avenue. He testified that he has resided at that address since 1993. Mr. Flesher testified that the addition of the 14 parking spaces had created a disruption to the neighborhood. He indicated that there is more noise and trash in the area as a result of these additional spaces. Mr. Flesher confirmed earlier testimony that there are always parking spaces available on the southeast corner of the property. He also rejected earlier testimony that the snow was only dumped on County property. Mr. Flesher stated that the snow had been dumped on his property.

Under cross-examination, Mr. Flesher acknowledged that he had applied for commercial zoning of his property.

The Protestants then presented Mr. Larry Townsend, Vice President of the Dulaney Valley Improvement Association, and Mr. Donald Gregory, representing the Greater Towson Council of Community Associations. Both witnesses presented Rule 8 Papers authorizing them to speak on behalf of their organizations. Both witnesses opposed the additional parking, indicating that their groups are dedicated to preserving green areas in the community and to maintaining the residential character of the surrounding neighborhood.

In a memorandum received by the Board of Appeals on July 30, 2004, Mr. Tanczyn stated that the Petitioners' variance request should be rejected because the Petitioners' parking spaces exceed the number required by the *Baltimore County Zoning Regulations* and also because the property is not unique. Mr. Tanczyn also indicated that the Petitioners' hardship was "self-inflicted," and that there is no practical difficulty or unreasonable hardship present in this case. Mr. Tanczyn cited the Court of Special Appeals on the issue of convenience to justify a variance:

> Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant a variance, the Board must find from the evidence, more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owners. The Board must find there was proof of 'urgent necessity, hardship peculiar to the particular property…'…Specific reason, specific bases to support the finding must be revealed by the evidence before the Board." *Cromwell v. Ward,* 102 Md.App. 691, 651 A.2d 424 (1995)

In his brief, Mr. Tanzyn also wrote that the Petitioners had not produced proof to warrant special hearing relief and that the Protestants had presented substantial evidence in opposition to such a hearing. Mr. Tanczyn cited §409.8B.1 which states: "Upon application, the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking facilities to meet the requirements of §409.6." The memorandum states that provisions of that section are to be used only when it is impossible to meet the parking requirements under §409.6.

Also regarding the special hearing request, Mr. Tanczyn wrote:

> On the other hand, Protestants' witnesses testified that the approval of the special hearing relief would be zoning by forgiveness, as to the 14 spaces built previously. Further, the County Planning Office recommended denial of the special hearing relief because the blacktopping of the entire DR 5.5 zoned green area would remove the only green area on this very large commercial site.... The petitioner already has all of the required spaces that it needs. It is an extreme suggestion by the Petitioners, that it should be granted a modified parking plan, when it already provides, not counting the 14 spaces illegally created, 734 parking spaces, where zoning regulations only require 728 spaces.

In a memorandum from People's Counsel received by the Board of Appeals on July 30, 2004, Counsel writes that the site in question meets current parking requirements under BCZR which requires 728 spaces. Excluding the 30 spaces being requested, 734 spaces exist on the site. In its Memorandum, People's Counsel writes:

> In other words, if certain conditions are satisfied, BCZR will permit commercial parking in residential zones only in those cases where the Petitioner cannot provide the required minimum number of parking spaces in the commercial zone. Here, since Petitioner satisfies Section 409.6 requirements, it cannot seek a special hearing for commercial parking in the residential zone.
>
> Furthermore, Petitioner is not qualified for special hearing relief for a modified parking plan for the same reason. BCZR 409.12 B provides for a modified parking plan if the parking requirements in Section 409 (general requirements for minimum parking spaces for each use) creates an undue hardship. But Petitioner's witnesses admitted it satisfies the zoning regulations regarding parking on the site. Thus there is no "undue hardship" and a modified parking plan is not available. In addition, 409.12 B follows the procedure for business parking requirements under BCZR 409.

People's Counsel also wrote that the parking permit cannot be granted if it "adversely affects any of the nine factors in the special exception law under BCZR 502.1." In emphasizing this point, People's Counsel referenced Judge Moylan's decision in *Furoryan v. Baltimore*, 150 Md. App. 157, 171 (2003). In that opinion, Judge Moylan cited the criteria for special exception written by Judge Davidson in *Anderson v. Sawyer*, 23 Md. App. 612 (1974) in which he wrote: "The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan"

Summarizing its case, People's Counsel wrote:

> Petitioner constructed 14 spaces perpendicular to Seminary Avenue in the DR 5.5 zone without zoning approval. These spaces are offensive to the neighbors because (i.) they are located in the DR 5.5 zone, (ii.) they extend the commercial use into the buffer area, closing in on a settled residential neighborhood, (iii.) they interfere with the designated fire lane. The standards are not relaxed because the spaces exist before approval. Petitioner ignored the zoning regulations and engaged in an unlawful act when it constructed the 14 spaces. See Cromwell, supra @ 722.
>
> Petitioner proposes 16 additional parking spaces along the property line parallel to Seminary Avenue. The neighbors oppose these spaces because: (i.) they will be constructed in the remaining green space integral to the spirit and intent of the buffer area in the original development plan; (ii.) they extend the commercial use into the buffer area, closing in on a settled residential neighborhood in conflict with the spirit and intent; (iii.) they fail to maintain the 10 foot buffer area from a public right of way.

People's Counsel concluded by stating that the Petitioner failed to satisfy its burden of proof by not satisfying the special exception standards established in BCZR § 502.1.

Mr. Alderman also supplied a brief to the Board of Appeals on behalf of the Petitioners in the case. In his brief, Mr. Alderman referred to Ms. Rosier, manager of the property, who stated that the additional parking was needed "to provide existing tenants and their customers/invitees adequate, convenient parking within a reasonable distance of the offices and stores." In his brief, Mr. Alderman also indicated that Ms. Rosier felt that the parking in the southeast area of the subject property was "significantly downhill from the public entrances to the offices and shops on the subject property."

In taking issue with the decision of the Deputy Zoning Commissioner, Mr. Alderman wrote:

> A fair reading of the decision of the Deputy Zoning Commissioner in this case reveals that he clearly did not understand the alternative concept of modified parking plan versus variance from the setback from right of way. He, essentially, found that because the Owner had not demonstrated some non-codified need test relative to the proposed 16 new spaces, there was no undue hardship as that term is used in BCZR §409.12B. Perhaps had the Commissioner had the considered testimony of long-time resident Mr. Gerding, he would understand that the "grassy buffer area" referenced on page 6 of his Order is ineffective given the extensive traffic on Seminary Avenue separating the two uses.

In his summary and conclusions, Mr. Alderman reiterated that "parking can be approved in residential zoned portions of the same property or even across the street or alley in residential zones upon the showing required by BCZR 409.8B.2." He also wrote that "the 14 spaces that had been added without a permit exist without any objection from the Fire Marshal's Office."

In its public deliberation that was held on August 31, 2004, the Board reviewed all of the testimony as well as the entire record in the case. In its discussion, the Board focused on the issue of "undue hardship" required for a modified parking plan in BCZR 409.12B. Since the subject property has more than the number of required parking spaces, the Board did not feel the Petitioners met the standard of "undue hardship." In carefully considering all of the testimony, the Board was moved by numerous testimonies indicating that there were numerous parking spaces in the southeast portion on the property that often go unutilized. The Board also concluded that the additional parking was being sought for the sake of "tenant convenience" which the Board did not feel was supported by statute. The Board also discussed the fact that a special exception may not be granted if it adversely affects any of the nine factors outlined in BCZR § 502.1. The Board was concerned that the additional parking in this case might be "detrimental to the health, safety, or general welfare of the public."

For the reasons cited, the Board will deny the special hearing request to permit additional parking spaces on the subject property. This Board will also deny the variance relief requested from § 409.8A of the BCZR.

ORDER

THEREFORE, IT IS THIS 21st day of September, 2004 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to allow commercial parking adjacent to existing commercial parking on the same lot in a residential and, in lieu of the variance relief requested, approval of a modified parking plan and modified parking and landscape requirements for the proposed parking areas be and the same is hereby **DENIED**; And it is further

ORDERED that the Petition for Variance to permit parking spaces to be located within 10 feet of the right-of-way of a public street utilizing existing landscaping in the event the requested modified parking plan is not approved be and the same is **DENIED.**

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman

Donald I. Mohler III

John P. Quinn

7/30/04

RE: PETITION FOR SPECIAL HEARING AND VARIANCE NE/S of York Road corner; SE/S of Seminary Ave (1447 York Road) 8th Election District, 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS FOR
Legal Owner(s): Seminary Galleria, LLC by Theresa Rosier, Authorized Member Petitioners	*	BALTIMORE COUNTY Case No. 04-052-SPHA

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

This is an appeal to approve commercial parking in a residential zone denied by the Deputy Zoning Commissioner (DZC). The subject site consists of three parcels totaling 387,465 square feet (see Protestants' Exhibit #11), located on the southeast corner of York Road at its intersection with Seminary Avenue. The improvements consist of office, business and retail tenants. The complex, known as Seminary Galleria, was approved under the CRG Development process in 1983. Two amendments to the Plan preceded this current request. The site is split-zoned B.L./D.R. 5.5. Petitioner requests 30 parking spaces in the northern D.R. 5.5 portion running south of Seminary Avenue. The residential subdivision known as Brindlewood is located across Seminary Avenue. The southern part of the site is zoned B.L.

The improvements are located in the B.L. zone and consist of two multi-storied office buildings, and two one-story retail buildings.

The site meets the current parking requirements under BCZR: **728 spaces are required and the site has 734, exclusive of the 30 requested.**

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In 2003 Petitioner constructed 14 spaces in the D.R. 5.5 zone buffering the residential neighborhood in violation of the CRG Plan and BCZR. Petitioner failed to obtain zoning approval. Petitioner now seeks approval of the illegal 14 spaces, plus approval for 16 additional spaces, also located in the residential zone.

The Deputy Zoning Commissioner denied the relief and Petitioner appealed.

Petitioner's Case is Flawed and Defective At the Onset

Petitioner seeks relief for commercial parking in a residential zone, under BCZR 409.8 B. or a modified parking plan under BCZR 409.12, which also follows BCZR 409.8 B. Both witnesses for Petitioner agree the site meets the minimum zoning requirements for parking. **Mr. Bruce Doak**, the surveyor, testified the site currently provides 734 spaces, exclusive of the 30 spaces requested in this case, and that 728 are required by BCZR. He emphasized the relief requested is not due to a shortage of parking spaces under BCZR, but was told it was for convenience of the tenants. He also admitted he has no personal knowledge of the parking situation at the site, other than a comparison of required spaces and available spaces. **Ms. Theresa Rosier**, the asset manager, admitted ample parking exists and the additional parking is for convenience, not to meet the zoning requirements. In fact, the site has been operating for decades with the existing parking spaces. **The testimony from Petitioner's two witnesses and the facts of the case disqualify Petitioner from seeking the relief requested.**

The zoning regulations permit a permit for business or industrial parking in a residential zone **"to meet the requirements of Section 409.6 . . ."** (See BCZR 409.8 B.) Section 409.6 sets forth the general requirements for the required number of parking

spaces for various uses in the County, including the office/retail use here. In other words, if certain conditions are satisfied, BCZR will permit commercial parking in residential zones **only in those cases where the Petitioner cannot provide the required minimum number of parking spaces in the commercial zone. Here, since Petitioner satisfies Section 409.6 requirements, it cannot seek a special hearing for commercial parking in the residential zone.**

Furthermore, Petitioner is not qualified for special hearing relief for a modified parking plan for the same reason. BCZR 409.12 B. provides for a modified parking plan if the parking requirements in Section 409 (general requirements for minimum parking spaces for each use) creates an undue hardship. But Petitioner's witnesses admitted it satisfies the zoning regulations regarding parking on the site. Thus there is no "undue hardship" and **a modified parking plan is not available**. In addition, 409.12 B. follows the procedure for business parking in a residential zone, which allows relief only to meet the minimum parking requirements under BCZR 409.

The statute is clear and unambiguous. Commercial parking in a residential zone should only be considered in rare circumstances where the commercial site has insufficient parking spaces or other deficiencies. It is the first criteria before the parking use permit under the special exception standards can even be considered. The underlying standard for a use permit involves weighing the commercial needs and the residential uses. In other words, the use permit must be balanced against the spirit and intent of the residential zones and the health, safety and welfare of the residents. The permit cannot be granted if it adversely affects any of the nine factors in the special exception law under

BCZR 502.1. In describing special exception uses, BCZR states that **"Certain types of uses . . . might cause unsatisfactory results of one kind or another. . . [and] under certain conditions they could be detrimental to the health, safety or general welfare of the public . . ." BCZR 502 "Note".**

The citizens here explained the detrimental effects of the Petitioner's request under the criteria in 502.1. On the other hand, there is no compelling reason to grant the permit. Petitioner's sole basis for relief is "convenience." Petitioner urges the Board to misinterpret and misapply the law, and detrimentally impact the residents on Seminary Avenue, rather than properly utilize and allocate its approved parking spaces. Judge Moylan, in Futoryan v. Baltimore, 150 Md. App. 157, 171 (2003) reiterated the criteria for a special exception stated by Judge Davidson in Anderson v. Sawyer, 23 Md. App. 612 (1974):

"The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan."

Judge Moylan emphasized the "weighing process" incumbent on the agency and cited language in Cromwell v. Ward, 102 Md. App. 691, 702 (1995):

"A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met." "A special exception [or conditional use] involves a use which is permitted . . .once certain statutory criteria have been satisfied." Futoryan, 174.

There is no commercial need to balance if adequate parking exists. It is a "condition precedent" before the special exception factors are considered. In other words, BCZR does not recognize commercial parking in a residential zone as a "desirable use" if the additional parking is not needed to meet the general parking requirements in Section 409. That is precisely why the "use permit" is in lockstep with a special exception and will not be granted under more relaxed standards, nor permitted by right.

For these reasons, the special hearing relief is not available to petitioner and both Petitions for Special Hearing should be denied. In addition, the variance relief to permit parking spaces to be located within 10 feet of the right of way of a public street must be denied or dismissed as moot since the subject parking spaces are not permitted in the residential zone in the first place, regardless of the distance from the right of way.

Facts, Testimony, and Overview

If the Petitions are not denied for the reasons stated above, they must be denied on the merits. In the alternative, the Board could rule on both the merits and procedure in the interest of judicial efficiency.

Petitioner's justification for the requested relief pales in comparison to the adverse effect on the neighborhood. The relief is not driven by parking requirements in BCZR, but the convenience of the Petitioner's tenants and business invitees. There is ample parking on all sides of the buildings, including a two-tier parking deck adjacent to the tower office building. There are several entrances to the office tower from the parking areas. The witnesses pointed out the parking facilities on the aerial map (Protestant's #3), noting the constant parking vacancies, particularly in the side and rear lots. Even

Petitioner's witnesses admit there is no parking shortage, but that tenants and customers prefer to park on the northern portion of the property.

Petitioner constructed 14 spaces perpendicular to Seminary Avenue in the D.R. 5.5 zone, with out zoning approval. These spaces are offensive to the neighbors because (i) they are located in the D.R. 5.5 zone, (ii) they extend the commercial use into the buffer area, closing in on a settled residential neighborhood, (iii) they interfere with the designated fire lane. The standards are not relaxed because the spaces exist before approval. Petitioner ignored the zoning regulations and engaged in an unlawful act when it constructed the 14 spaces. See Cromwell, supra at 722.

Petitioner proposes 16 additional parking spaces along the property line parallel to Seminary Avenue. The neighbors oppose these spaces because: (i) they will be constructed in the remaining green space integral to the spirit and intent of the buffer area in the original development plan; (ii) they extend the commercial use into the buffer area, closing in on a settled residential neighborhood in conflict with the spirit and intent; (iii) they fail to maintain the 10 foot buffer area from a public right of way.

The Protestants' Case

The neighbors and community groups presented ample testimony to support their opposition:

- **Eric Flesher at 10 E. Seminary Avenue** testified Petitioner dumps plowed snow onto his property when it runs out of space on the site; this situation will be exacerbated if the present open space is converted to parking spaces. He has experienced car alarms, noise and trash from parked vehicles on the

site and such disturbing activity will actually be even closer to his home. He reported tenants from the site have picnicked on his yard. The hours of operation for the Center's tenants have been extended over the years – the health club is open 24 hours, the Subway until midnight, the HMO is open Saturday and Sunday – broadening the commercial impact on the residential uses.

- **Richard Hurd at 16 E. Seminary Avenue** testified the area between the proposed additional parking and the sidewalk would not support trees and vegetation to buffer the commercial use from his home. The 2-foot area would not support a root system for trees needed for a meaningful buffer. It is unfair to compare the residences on the eastside of the center. The houses along Seminary require a dense screening because they are at a higher elevation than the homes on Tenbury, along the eastern boundary of the site. Commercial intrusion, including headlights and rows of parked vehicles, would be at Hurd's doorstep. He observed the illegal 14 spaces are occupied at 7:30 a.m. by tenants, even when the rest of the lots is empty, and presumably the same would apply to the 16 proposed spaces. Mr. Hurd disputes the need for additional parking since he has never seen all the parking spaces occupied. Herd explained the Petitioner dumped snow on his side of the street and on his property when there was no room in the open spaces – he fears the problem will be exacerbated if the open space is further lost to parking spaces.

- **Larry Townsend of Dulaney Valley Improvement Association** testified on its behalf and as a nearly 40 year resident of the area. The Association is

opposed to the loss of green space and open space, both crucial to preventing commercial intrusion into the residential neighborhoods in the mixed zoned areas of the County. Mr. Townsend is a patron of Seminary Galleria and has always been able to park on the site. He states the lot is under utilized, particularly in the rear and on the parking deck.

- **Don Gerding of Greater Towson Community Council,** the umbrella group for this area of the County, testified to the Council's opposition to commercial intrusion in the residential zones. His experience at the Center is that parking is always available, and that if there are complaints about parking availability it is due to poor management, or the tenants selected by Petitioner. He pointed out that green space and open space is provided for new development, and that such space adds to the value of residential life and should not be lost in the older neighborhoods.

Petitioner Fails To Satisfy Its Burden of Proof

Petitioner is required to satisfy the special exception standards under BCZR 502.1for commercial parking in a residential zone or to approve a modified parking plan. As alternative relief to the modified parking plan, Petitioner requested a variance. BCZR recognizes a special exception use (commercial parking in the residential zone) "might cause unsatisfactory results". The Board must weigh the evidence of the proponents and protestants, using the standards in BCZR 502.1.

Mr. Bruce Doak, the surveyor, admitted he had no knowledge of the parking situation at the site, other than the current parking spaces satisfy and exceed the minimum

spaces required by BCZR. Lacking the basis to form an opinion on need, he is not qualified to testify to practical difficulty under BCZR 307, and the standards in McLean v. Soley, 270 Md. 208 (1973). Mr. Doak's testimony on the special exception criteria is inadequate. He offered "yes" and "no" answers to the standards in BCZR 502. This testimony was rejected by the Court in People's Counsel v. Beachwood, 107 Md.App. 627,650 (1995): **"A self-evident reason for rejecting as an effective catalyst an expert opinion . . . is the fact that the opinion is merely conclusory or is, at best, quasi-conclusory."** Judge Moylan noted that an expert opinion is of "little or no weight in the absence of strong supporting facts." Doak provided no counter to the citizens' concerns, previously expressed to the Deputy Zoning Commissioner. For instance, he did not explain how the proposed 14 spaces' interference with the designated fire lane would not "cause a potential hazard from fire, panic, or other danger." BCZR 502.1C.

Ms. Theresa Rosier, the asset manager, admitted ample parking exists and the additional parking is for convenience, not to meet the zoning requirements. In fact, the site has been operating for decades with the existing parking spaces. Ms. Rosier's office is not at the site and she visits infrequently. She offered not a single fact to satisfy the standards in 502.1. One had the impression her appearance at the hearing was a rote and perfunctory duty. She did not elaborate on the alleged complaints about parking spaces, nor was her testimony exact or precise. She had no log of complaints. She was not specific about Petitioner's attempts to address the parking needs of its tenants. There was no meaningful attempt by Petitioner to utilize the facilities available. Instead the perceived inconvenience was met by illegally "bulldozing" the buffer area without any

concern for the zoning regulations, development plan, or impact on the Seminary Avenue neighbors. The reaction of the Petitioner to the neighbors concerns and the fact that the 14 spaces were illegally constructed was a big ho-hum. Petitioner bears the responsibility to properly manage the Center, rather than knee-jerk a response to sporadic complaints, at the expense of the surrounding community, and in direct contradiction with the zoning statute. The Petitions for Special Hearing and Variance must be denied.

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

Carole S. DeMilio
CAROLE S. DEMILIO
Deputy People's Counsel
400 Washington Avenue
Towson, MD 21204
410-887-2188

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July, 2004, a copy of the People's Counsel for Baltimore County's Memorandum was mailed, postage prepaid, to Michael Tancyzn, Esquire, 606 Baltimore Avenue, St. 106, Towson, MD 21204 and Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204, Attorney for Petitioners.

Carole S. DeMilio
CAROLE S DEMILIO
Deputy People's Counsel

7/30/01

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE NE/S OF York Road corner SE side of Seminary Avenue 8th Election District 3rd Councilmanic District (1447 York Road)	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY
Seminary Galleria, LLC, By: Teresa Rosier, Authorized Member	*	
Petitioners	*	CASE NO. 04-052-SPHA

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BOARD OF APPEALS

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MEMORANDUM OF DVIA, PROTESTANT

Now comes Dulaney Valley Improvement Association, Inc., Protestant, by its counsel, Michael P. Tanczyn, and submits the within Memorandum, as requested by the Board of Appeals, to assist the Board in its resolution of this appeal.

STATEMENT OF THE CASE

The Petitioners are the legal owners of improved real property located on the southeast corner of York Road and Seminary Avenue. Petitioner sought special hearing relief; First, per BCZR §409.8B, to allow commercial parking, adjacent to existing commercial parking on the same lot, in a residential zone, as shown and laid out on the Petitioners' redlined plan; Second, in the alternative, approval of a modified parking plan and modified parking and landscape requirements for the proposed parking area, as shown on the plan; Third, that the plan filed with the Petition be approved as the third amendment to the CRG Plan for the Galleria Tower and the Galleria; and Fourth, for such additional relief as the nature of the parking shown may require. In the alternative, in the variance petition filed at the same time, the Petitioners requested variance relief under BCZR 409.8A, to permit parking spaces to be located within 10 feet of the right of way of a public street,

utilizing existing landscaping and two, for such additional relief as the nature of their request and the parking lay-out may require.

This matter was heard by the Deputy Zoning Commissioner for Baltimore County, who after hearing, in his Opinion and Order, October 2, 2003, denied the special hearing relief and denied the variance relief. A timely appeal was filed by Petitioners from these adverse decisions on October 30, 2003, and the matter was scheduled and heard before the Board of Appeals on the *de novo* appeal of both petitions on Thursday, July 1, 2004.

STATEMENT OF FACTS

Petitioners' expert witness, by stipulation, Bruce Doak, was admitted as a property line surveyor since 1989, had prepared the redline changes as shown on Petitioners' plans, admitted as Petitioners' Exhibit 1. He testified that the existing uses at this retail commercial property were medical offices, general offices, and retail uses. He testified that the property was split-zoned, BL and DR 5.5 and he identified the zoning demarcation line on the plan. He testified that the required parking spaces were 728, per Baltimore County zoning regulations, and that 734 parking spaces had been approved by the second amended CRG plan. The Petitioners' total request, under these combined petitions, was for an additional 30 spaces, all of which were proposed to be located in the DR 5.5 zoned portion of the property, shown in red on the proposed third amended Plan, and parking addition to the CRG plan. If approved, the additional parking would then provide 764 parking spaces on the property, which was otherwise improved by two high-rise office buildings and a strip commercial center. Mr. Doak opined, based on his review of 200 scale zoning maps, NW11A and NW12A, that he found no other split-zoned shopping center property within those maps, as was shown on the Petitioners' site. He described Petitioners' property as generally a large rectangle with

bump outs towards the rear southern side, as was described on Petitioners' Exhibit 1 aforesaid, as well as Petitioners' Exhibit 2, the GIS map, photographed six or seven years ago. Mr. Doak also identified a series of pictures marked and admitted into evidence as Petitioners' Exhibits 3.1 through 3.14, which bore a date of photography of September 26, 2003. Those pictures indicated the vistas from various points on Petitioners' property into the community and within Petitioners' property. Specifically, Petitioners' Exhibits 3.7 and 3.8 showed the 14 existing parking spaces, which were part of the Petitioners' request, 10 of which were in the upper parking lot and backed out into the access aisle on the drive lane to leave Petitioners' property by Seminary Avenue. Petitioners' Exhibit 3.7 showed the area still in grass, which Petitioner proposed to excavate and blacktop, to bring the parking lot within 10 feet of the north property line, to build an additional 16 spaces, which would be accessed from the lower parking lot or the eastern most access on Seminary to the Petitioners' property. Petitioners' Exhibits 3.9 and 3.10 showed the lower parking lot and 3.11 showed the lower parking lot and the upper parking lot and driveway, while 3.14 showed, by an aerial photograph, the existing new parking area and driveway.

Mr. Doak acknowledged that the 14 spaces added displaced the original grass and planting area in the DR 5.5 zone. Mr. Doak opined that while there would be less green space if Petitioners' requests were approved, that he believed that could be cured by providing additional landscaping on Seminary Avenue. He had no personal observations of any volumes of snow being taken from the Petitioners' site and dumped on neighboring properties across Seminary Avenue by Petitioner. His response to why the Petitioner required additional parking through variance relief was that he understood they needed it on many occasions. He believed that this request would be in keeping with the plans previously approved, and that Petitioners had to find additional parking spaces

wherever they could. He believed that the Petitioners' requests were the minimum relief necessary to afford them reasonable use of their property. On cross-examination, Mr. Doak acknowledged that the area between the proposed additional parking and the Petitioners' property line was so small in width, that the plantings proposed by Petitioner would have to be located off Petitioners' site, within the State right of way for the area adjacent to Seminary Avenue, in contrast to the existing landscaping from York Road to the first entrance to the Petitioners' property east on Seminary Avenue.

The Petitioners' second witness was Theresa Rozier, who described herself as a member of the Petitioner and employed as an asset manager for the Galleria, for 4 years by the Petitioner. Her office was located at 9640 Deereco Road, some distance from the Petitioners' site. As to the Petitioners' reasons for requested the additional spaces, she testified that she had received many requests from tenants for additional parking spaces. She further testified that there had been a change over in the type of tenants at the center. Although she visited the site one time a week, she was unaware of any time that all the present spaces provided were utilized, prior to the construction of the 14 spaces aforesaid. She testified that the Petitioners' previous parking plan reserved most parking spaces for retail tenants in front of the stores for their visitors, and all employee parking was designated to be in spaces with yellow stripes, while visitors would be allowed to park in the spaces with white stripes. She testified that the system didn't seem to work. She testified that in 2003, without getting any County permits or approval, she ordered the work to have the additional 14 spaces created, which were shown on Protestants' Exhibits 5, 6, and 7. She stated that she did not inquire about getting a permit on behalf of the Petitioner before the parking spaces were created, because she hired a contractor, and she relied on the contractor to get permits. She acknowledged

that piles of snow had been stored in the Petitioners' green DR 5.5 area. She further acknowledged, on cross, that the contractor was an affiliated company to the Petitioner, and when asked on cross and by one Board member, if efforts had been put forth to order employees of the commercial tenants to park in a designated parking area, which was underutilized, she stated that that had not been done, and she also acknowledged that there were generally areas where spaces were underutilized at other locations on Petitioners' site.

Protestants called several neighboring residents as witnesses. Mr. Richard Hurd testified he had resided with his family at 16 E. Seminary Avenue for more than a decade. He testified that, because he is self-employed, he was familiar with the utilization of the Petitioners' parking lot early in the morning, as well as late at night, when he would return after work. He testified that the parking spaces which Petitioners' witness, Ms. Rozier had said were restricted for visitors in the front lot, including the newly created spaces, were routinely utilized and filled by their tenants or their employees by 7:30 - 8:00 a.m., or fully more than one hour before the retail shops would open at 9:00 a.m., on a daily basis. He testified that there were always areas of the site for which parking spaces were available, generally on the south and east side of the Petitioners' property in the parking lot, to the east of the building improvements, as well as in the two-story parking garage to the rear of Petitioners' property. He identified the Protestants' Exhibit 4, which showed his house, in relationship to the Petitioners' property, as well as Protestants' Exhibits 5 and 6, showing the newly created parking in the DR 5.5 portion, which was part of the Petitioner's request. He testified that the lights from cars at night shown over towards his property and his fear was that if the Petitioners were allowed to build without a permit, as they had done on this occasion, that they would or could do the same in the future, if further parking were to be approved. He testified that when the

construction began, he had called over to the Petitioner to question the parking lot, and had spoken to Theresa Rozier, who had promised to get back to him concerning that, but did not. He also testified that he had approached the supervisor of the construction company, who had threatened him when he asked if they had permission to build the parking spaces. He also testified to the problem with the shopping center taking large amounts of snow from Petitioners' site and dumping it across the street on his, as well as neighboring property, as a trespass which affected the sight lines for traffic leaving his house and his neighbors' houses. He also identified the pictures showing the vacant parking lot spaces, as well as the retaining wall, which were Protestants' Exhibits 7 through 9. Protestants' Exhibit 9 was the picture of the parking area where he said there was usually available parking for visitors to the center. He testified that he had called in the complaint to Baltimore County about the construction of the parking spaces without a permit by Petitioners' contractor. He characterized Petitioners' representatives as uncaring and unresponsive to the complaints that he and his neighbors had brought to their attention, not only about the parking spaces, but also about the snow removal for the snow that had been dumped on his and his neighbors' property.

Another neighbor, Eric Flesher, who had resided at 10 E. Seminary Avenue, across from Petitioners' site, on the north side of Seminary Avenue, since 1993, corroborated Mr. Hurd's testimony concerning the Petitioners' practice of removing snow from its property and dumping it on his property and his neighbors' property. He protested the zoning relief requested by Petitioners, because he felt it was an improper intensity of use to take residentially DR 5.5 zoned property to support the commercial project. He considered the Petitioners' use of its property for people who would come over from the shopping center onto his property, eat lunch, and leave their trash, to be

a nuisance use, with a lot of loud noise from people coming and going on the Petitioners' property. He believed that the loss of green space in the DR 5.5 parcel, if the zoning relief was approved, would have a negative effect on his property values. He corroborated Mr. Hurd's testimony, that in the southeast corner of the Petitioners' site, there were at least 25 to 30 parking spaces or more usually available, not even considering available spaces in the two-story parking garage to the rear of Petitioners' property, which is part of Petitioners' property.

Dulaney Valley Improvement Association, Inc's next witness was Larry Townsend, who was Vice-President of DVIA. He submitted Rule 8 papers to establish his ability to testify on behalf of DVIA, under the Board of Appeals rules, which were accepted as Protestants' Exhibits 10A though 10C. He testified that DVIA's position, as stated in its Rule 8 papers, was to oppose the variance relief as a self-created hardship, caused by the Petitioners' own actions in going ahead and building a parking lot in the residential portion without first requesting any of the zoning relief in the instant petitions. He stated that DVIA believed the request did not meet the test required of any variance request because of the available underutilized parking spaces. He testified that he frequently visited the center, made purchases, and that there was, in his experience, always parking spaces available in the areas which he described as the southeast side of the Petitioners' property and in the parking garage to the rear of the Petitioners' buildings, on the Petitioners' land. He stated that there were usually at least 30 to 50 parking spaces available in those two areas, and generally there were spaces available in other parts of the Petitioners' parking lot, at any time that he was there. He stated that DVIA was opposed to taking the original green space zoned DR 5.5, only as a matter of convenience to the Petitioner, to create more parking spaces. He further testified that the provision of the upper parking lot spaces which back out into the drive aisle was a dangerous situation, which

could cause more accidents, and could impede fire trucks or ambulances trying to get into the site, if the parking spaces were allowed to remain. He further corroborated the Protestants pictorial exhibits.

J. Donald Gerding testified on behalf of the Greater Towson Council of Community Associations. He furnished Rule 8 documentation, accepted as Protestants' Exhibit 12. He testified that the Greater Town Council of Community Associations opposed the Petitioners' request because it would remove DR 5.5 zoned green space and provide more blacktop and parking spaces, as a negative impact on the residential neighbors across the street. He further testified that he was aware of general availability of numerous parking spaces on the southeast portion of the Petitioners' property, as well as in the rear double-deck parking garage, which he utilized when he went to visit one of the commercial tenants, a healthcare organization located in the east tower of the Galleria. He testified that they were open on the weekends until late at night, seven days a week, and that he had gone there for medical care on several weekends.

The Board also received, as Protestants' Exhibit 2, the zoning violation case documents, including citation 03-2247, issued May 8, 2003, claiming Petitioners violated the law by increasing the size of the parking lot, with a retaining wall, without amending the previously approved site plan. That matter was heard on June 24, 2003 and resulted in a finding adverse to the Petitioners. The Board also received, as Protestants' Exhibit 1, a 1985 Board of Appeals ruling in case 85-256 XA, concerning the same property and a request for parking variance in that case, which had been turned down by the Board of Appeals, for the reasons stated in its Opinion.

ARGUMENT ONE - PETITIONERS' VARIANCE REQUEST SHOULD BE REJECTED, BECAUSE THE PETITIONERS' PARKING SPACES EXCEED THE NUMBER REQUIRED BY BALTIMORE COUNTY ZONING REGULATIONS; PETITIONERS'

PROPERTY IS NOT UNIQUE; PETITIONERS CLAIMED HARDSHIP IS SELF-CREATED THROUGH POOR MANAGEMENT OF ITS EXISTING PARKING RESOURCES; AND PETITIONERS' REQUEST FOR VARIANCE IS NOT BASED ON EITHER PRACTICAL DIFFICULTY OR UNREASONABLE HARDSHIP, BUT RATHER ON THE REQUESTED CONVENIENCE OF THE PETITIONERS' TENANTS, THEIR EMPLOYEES, AND RETAIL CUSTOMERS.

At the outset, it should be noted that the ZAC comments from Baltimore County, included comments from the Department of Planning, dated August 26, 2003, which recommended that all zoning relief requested be denied, because the proposed expansion of the parking area would eliminate the only landscaped area on the subject site, opposite the residential development on Seminary Avenue. Further, the comment from the Department of Public Works, from Robert Bowling, dated September 25, 2003 recommended that the 10 proposed parking spaces along the main travel lane shall be eliminated which accessed aisle ways. That comment referred to 10 of the 14 spaces constructed in 2003 without zoning approval or permits by the Petitioners, which bordered the main travel aisle to Seminary Avenue from the Petitioners' site, in patent violation of BCZR 409.4, which expressly prohibits locating parking spaces in direct access to aisles. Petitioners, who had built these spaces on the aisleways were apparently aware of that prohibition if the Board reviews the Protestants pictures, which show for the parking spaces on the west side of the aisle, that those are restricted spaces and are frequently roped off, as was testified to by many witnesses, during rush hour periods, but Petitioners chose to build out these spaces without benefit of first requesting or receiving any approvals from Baltimore County. Petitioners' unauthorized construction turned what had been a green landscaped DR 5.5 buffer portion of the property into a parking lot and retaining wall, providing 14 additional parking spaces. Petitioners' present request, if approved would eradicate the remaining green space and replace it with blacktop parking spaces.

Petitioners' requests for retroactive approval of that, plus the other 16 spaces they seek, for a total of 30 spaces are bereft of any proof or evidence sufficient to meet the legal requirements to obtain the zoning relief sought.

As was held in Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995), the Court construed the Baltimore County Zoning Ordinance §307 variances and found:

> "The Baltimore County Ordinance requires 'conditions...peculiar to the land...and...practical difficulty....' Both must exist...it is only when that uniqueness is first established that we then concern ourselves with the practical difficulties or unnecessary hardships in use variance cases." Cromwell supra @ 698 - 699.

In construing the statutory requirement for uniqueness, the Court said:

> "In was incumbent upon the Marinos to have shown...(ii) that the difficulties or hardships were peculiar to the property in question in contrast with those of other property owners in the same district and (iii) that the hardship was not the result of the applicants' own actions." Quoting Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218, 137 A.2d 198 (1957). Cromwell supra @ 706.

In distinguishing between true unique circumstances and self created hardship, the Court further instructed:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use and conformity with the restrictions...hardship arises....The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship....The hardship, arising as the result of the act of the owner...will be regarded as having been self-created, barring relief....
> "The instant case fits squarely within the above general rule....If the appellees had used proper diligence and then made accurate measurements...the resulted hardship could have been avoided. The hardship...was entirely self created" Cromwell supra @ 706.

In the case of the Galleria Petitioner, its creation of the 14 parking spaces without seeking approval, was a voluntary intentional act. Further, since the parking already provided exceeded the number of spaces required, under BCZR §409, the addition of the 14 spaces created was not to meet a Baltimore County parking requirement, but was solely for the convenience of the Petitioners. Petitioners representative expressly stated she wanted more spaces in a particular portion of the lot, all the while acknowledging that there were other underutilized areas of the existing parking lot, which if used, would obviate the claimed need of additional parking. The Court of Special Appeals has found the mere convenience of an owner insufficient as a ground to justify grant of a variance.

The Cromwell Court said, on that point:

> "Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant a variance, the Board must find from the evidence, more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owners. The Board must find there was proof of 'urgent necessity, hardship peculiar to the particular property....'...Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board." Cromwell supra @ 707.

In the instant case, the evidence from both Petitioners' and Protestants' witnesses was that there were available underutilized parking spaces on the Petitioners' lot. Petitioners' asset manager, Theresa Rozier, had testified she was unable to get the tenants or their employees to utilize those spaces. Her solution to that conundrum was to order a contractor affiliated with the Petitioner to dig up the green area and put in 14 parking spaces, so that Petitioner would have more convenient parking.

On the issue of uniqueness, factors cited by the Court to be considered included size of yards, irregularity of shape of land or buildings, topography, grade or accessibility. Cromwell supra @ 707.

Petitioners, for a variance, were also required to show that the hardship affected Petitioners' particular property and wasn't common to other property in the neighborhood. Cromwell supra @ 707. There was nothing in the testimony of Mr. Doak or any of the Petitioners' witnesses that would indicate that the size or shape of the Petitioners' property was unique to that standard, but rather all of the testimony indicated that the requested parking would be in an area that the Petitioner considered more convenient for its shopping center patrons, tenants, and their employees. Therefore, there is no showing of either uniqueness, practical difficulty, or unreasonable hardship in compliance with the regulations, where as here the Petitioners' site already provides more than the required number of parking spaces. There is literally no basis on which to find that the factors required, under BCZR §307 are met.

If the Board further considers the prior Board of Appeals' Opinion, which was Protestants' Exhibit 1, in Case 85-256XA, the Board will find a great irony. In that case, for the same center, the owner, Seminary Limited Partnership, sought a variance to permit 600 spaces, in lieu of the required 643. The Board of Appeals in a well reasoned Opinion, denied the petition for variance, and relied on amended CRG plan of the Petitioners, dated August 28, 1985, which showed a parking deck, and indicated that 672 could be provided on the land. Then, as now, the Petitioner was seeking a variance based on convenience, rather than necessity. The Board properly turned down the Petitioner in that case, and should do so as to the variance relief in this case as well.

Beyond that, the Petitioners' request for variance is a self-created hardship. Had the Petitioners requested zoning approval before going ahead and building 14 spaces, they would have received the same comments from the County that it has received to this Petition, by way of the planning recommendation that it be denied and the public works' suggestion that the spaces be

eliminated along the aisleways. To aid further insult to the injury already created to the loss of DR 5.5 green buffer, the Petitioners now request variance approval to take what little green land is left and pave it over and create 16 more spaces, so that the vista for the neighbors would be all blacktopped area on that side, except for a very thin, narrow screen, proposed for Seminary Avenue.

ARGUMENT TWO - THE PETITIONERS PRODUCED NO PROOF TO WARRANT THE SPECIAL HEARING RELIEF REQUESTED WHILE THE PROTESTANTS BROUGHT NUMEROUS VALID CONCERNS AND SUBSTANTIAL EVIDENCE AGAINST THE GRANT OF THE SPECIAL HEARING RELIEF REQUESTED.

There is another provision in the BCZR §409.8, which deals with design standards for business or industrial parking and residential zones in BCZR §409.8B. However, Section 1 provides no support for Petitioners' request for special hearing on that issue, re: modified parking plan. That section says:

> "Business or industrial parking in a residential zone, under §409.8B:
> 1. Upon application, the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking facilities to meet the requirements of §409.6, (emphasis supplied)..."

The provisions of that section are to be invoked only where there is no ability to meet the parking requirements, under §409.6, on the business zone. In this case, all of the required parking spaces are provided, under prior approved site plans without making use of any of this land zoned DR 5.5. The provisions of §409.8 relied on by the Petitioner are inapplicable to this factual situation.

The special hearing relief of the Petitioners amounts to a request to bless, after the fact, the unauthorized illegal acts of the Petitioners, to provide what they termed "more convenient parking" for their tenants, employees, and patrons of this highly profitable center. There is no evidence or even claim by the Petitioners that they are denied a reasonable use of the property, under the prior

approved site plan or that they are having trouble attracting tenants because of site-specific circumstances, in order to justify special hearing relief of the type requested.

On the other hand, Protestants' witnesses testified that the approval of the special hearing relief would be zoning by forgiveness, as to the 14 spaces built previously. Further, the County Planning Office recommended denial of the special hearing relief because the blacktopping of the entire DR 5.5 zoned green area would remove the only green area on this very large commercial site, which, according to the testimony of all the witnesses, has served as a partial buffer to the residential neighbors who live on the north side of Seminary Avenue. The complaints of the residential neighbors supported their characterization of the Petitioners as a bad neighbor, based on the unauthorized dumping of large volumes of snow on their properties by the center, again for its convenience; as well as the effect on the residential quality of life that would be created by bringing the headlights, car engine noise, and parking lot, up to the edge of the Petitioners' property line on Seminary Avenue. When the Board weighs the requests of the Petitioners against the objections of the Protestants, the Board will consider the fact that there are, beyond dispute, unused parking spaces on Petitioners' existing parking lot, which if utilized through better management by Petitioner, would obviate their request for this additional parking.

Next, the parking expansion requested is not needed. The Petitioner already has all of the required spaces that it needs. It is an extreme suggestion by the Petitioners, that it should be granted a modified parking plan, when it already provides, not counting the 14 existing spaces illegally created, 734 parking spaces, where the zoning regulations only require 728 parking spaces. Not one witness in this case testified that the lot was full, or that at least 25 to 50 spaces were available in the southeast portion of the Petitioners' parking lot at all times. There is manifestly neither necessity

nor reason to support the Petitioners' request to invade the only DR 5.5 green land remaining on its site, merely because it wants to do so. Here, as in Ad+Soil, the only hardships, are of its own making. Ad+Soil, Inc. v. County Commissioners, 307 Md. 307, 513 A.2d 893 (1986). Cromwell supra @ 709.

In deciding this case, the Board's action will be reviewed, if at all, under the standards set forth in Red Roof Inns, Inc. v. Peoples' Counsel, 96 Md. App. 219, 224, 624 A.2d 1281 (1993), wherein the Court said:

> "In reviewing the zoning authorities decision, the Court must consider all of the evidence in the administrative record. The reviewing Court's role, however, is confined to determining the legality of the procedure employed, and whether the decision was fairly debatable, in light of the evidence adduced before the zoning authority." Cromwell supra @ 709.

CONCLUSION

The Board of Appeals is respectfully urged to deny the petitions for special hearing and variance relief for the reasons and authority aforesaid, and after considering the evidence adduced in this case.

Respectfully submitted,

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(410) 296-8823
Attorney for the Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 30th day of July, 2004, a copy of the foregoing Memorandum was mailed first-class, postage prepaid to Howard L. Alderman, Jr., Esquire, 8th Floor, Nottingham Centre, 502 Washington Avenue, Towson, Maryland 21204-4525, Attorney for the Petitioners and to Carol S. Demilio, Esquire, Assistant Deputy, Peoples' Counsel for Baltimore County, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

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(410) 296-8823
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7/26/04

BEFORE THE

COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

Case No. 04-052-SPHA

Seminary Galleria, LLC/Owner

1447 York Road
NE/S of York Road
SE side of Seminary Avenue
8th Election District
3rd Councilmanic District

OWNER'S POST-HEARING MEMORANDUM

Seminary Galleria, LLC, a Maryland limited liability company ("Seminary" or "Owner"), by and through its undersigned legal counsel, hereby submits this Post-Hearing Memorandum in accordance with the direction of the County Board of Appeals for Baltimore County ("Board") at the conclusion of the hearing held on the above-referenced appeal, in lieu of closing argument.

STATEMENT OF THE CASE

This case involves the use of residentially zoned, but not used, land which is part of a commercial center for additional parking for tenants, guests and invitees. The property owned by Seminary is located at the corner of York Road and Seminary Avenue which is

presently improved with two, multi-story office buildings and a commercial complex (the "subject property"). The subject property is irregularly shaped and is presently split-zoned with the majority of land zoned Business Local (BL) and the balance zoned Density Residential (DR). There is existing parking on the subject property, located both in the BL zone and, pursuant to a previously issued "use permit" within a portion of the DR zone.

To meet the increasing demand for parking on the subject property, the Owner expanded the parking existing in the DR zone with 14 additional spaces and associated landscape improvements (collectively the "14 spaces"). A complaint was filed with Baltimore County Code enforcement alleging that the 14 spaces were added without benefit of modifying the presently approved County Review Group plan depicting the area of commercial parking in a residential zone approved by the existing use permit. In response to the complaint, the Owner filed a Zoning Petition for Special Hearing, seeking approval of the 14 spaces and proposing an additional 16 parking spaces (the "16 new spaces"). The three areas of relief by Special Hearing are described as:

- in accordance with *Baltimore County Zoning Regulations* ("BCZR") § 409.8B, commercial parking adjacent to existing commercial parking on the same lot in a residential zone;

- in lieu of the companion variance requested herewith, approval of a modified parking plan and modified parking and landscape requirements for the proposed parking areas; and

- approval of the Plan accompanying the Petition as the 3rd Amendment to the CRG for *The Galleria Tower & The Galleria*

In the event the modified parking plan was not approved, the Owner sought

alternative relief by way of a Petition for Variance for the 16 new spaces requesting a variance from: BCZR §§ 409.8.A to permit parking spaces to be located within 10 feet of the right of way of Seminary Avenue. In either event, the Owner sought to increase the parking located on the subject property to a total of 764 spaces.[1] The Deputy Zoning Commissioner for Baltimore County denied the principal and alternative relief requested (the alternative relief applied, if necessary, to the 16 new spaces) and the appeal to this Board was timely filed by the Owner.

THE EVIDENCE

This is not the first time the Board has been called upon to rule on an issue of parking regarding the subject property. A prior owner of the subject property sought a variance from the required 643 spaces to permit a total of 600 spaces. That variance request, in Case No. 85-256-XA (the "Prior Case"), was denied by the Board on December 20, 1985.[2] Since that case a new owner has purchased the subject property and improved not only the tenant mix but (as acknowledged by several of the witnesses in opposition to the presently requested relief) also the physical appearance and maintenance of the subject property.

Much of the evidence in opposition to the present relief was that, in the opinion of

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[1] This consists of 734 spaces shown on the presently approved plan, the 14 spaces and the 16 new spaces.

[2] *See* Protestants Exhibit No. 1; IN RE: *Seminary Limited Partnership (Fitness Unlimited, Inc.*

those testifying, there was no need for additional parking. However, the testimony of Ms. Teresa Rosier, testifying as a member of the Owner and the leasing manager for the subject property, the additional parking is required to provide existing tenants and their customers/invitees, adequate, convenient parking within a reasonable distance of the offices and stores. Much of the testimony in opposition suggested that there were ample spaces located in the southeast portion of the subject property that, based on observation of the witnesses, were not often filled.

The testimony of Ms. Rosier was that the spaces on the southeast area of the subject property were significantly downhill from the public entrances to the offices and shops on the subject property. Her testimony also indicated that with the installation of the 14 spaces many of the complaints from tenants had subsided. Her testimony also indicated that the proposed 16 new spaces would go even further in making additional parking available.

Bruce Doak, a professional land surveyor, testified that the 14 spaces were located in an area of the subject property where parked vehicles would be able to back safely into a travel aisle when leaving. As noted on the plan to accompany the Petitions, this travel aisle is also designated as a fire lane – it provides ingress/egress to Seminary Avenue. Mr. Doak noted that 14 other spaces – including two handicap reserved spaces – were located

and previously approved in the same manner.[3] While the Department of Public Works may not like this proposed configuration, it is clear from the record of this case that the Baltimore County Fire Department does not object. The written comments of Lieutenant Jim Mezick, of the Baltimore County Fire Marshal's Office, submitted the official position of that office relative to the relief requested, by letter/memorandum dated August 13, 2003 included as part of the Zoning Advisory Comments which states:

> Pursuant to your request, the referenced properties have been surveyed by this Bureau and the comments below are applicable and required to be corrected into the final plans for this property.
>
> **6. The Fire Marshal's Office has no comments at this time.**

[Bold and enlarged font in original]
(Underline emphasis added.)

The main thrust of the testimony in opposition to the requested relief is three-fold: i) the parking is not needed; ii) there will be no place for the Owner to pile excess snow during extraordinary weather events; and iii) there will be a loss of buffer between the homes on the north side of Seminary Avenue and the parking on the subject property. The need or lack thereof was addressed by Ms. Rosier as noted above.

Mr. Richard Hurd, who lives on the north side of Seminary, testified that during

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[3] Counsel for certain of the Protestants attempted to assert that a comment from Robert W. Bowling of the Department of Permits and Development Management was somehow controlling in this matter. As noted by Mr. Doak, Mr. Bowling's comment was not in the package of Zoning Advisory Comments received from W. Carl Richards, Jr., Supervisor in the Zoning Review Section of the County.

heavy snowstorms, the contractor that clears the snow from the subject property often pushes some of it across Seminary Avenue onto Mr. Hurd's property. Mr. Hurd did acknowledge on cross-examination that most of the snow referred to was pushed into the County/public right of way. Additionally, Mr. Hurd expressed concern that if the 16 new spaces were permitted, there would be no place for the Owner's contractor to pile snow. Again, on cross-examination, Mr. Hurd acknowledged that there was nothing that prevented snow from being piled on the proposed 16 new macadam parking spaces. Mr. Hurd did validate the testimony of Ms. Rosier that she directed tenants to have their employees park near Seminary Avenue, including in the 14 spaces. Mr. Hurd's observation is that the 14 spaces are filled each work day between 7:30 and 7:45 a.m. Although Mr. Hurd initially expressed concern over a dumpster being placed on parking spots in the southeast portion of the subject property, he had to acknowledge that it did appear to be used in association with temporary, renovations underway on a portion of the interior of the existing office buildings.

Mr. Hurd testified as to what he characterized as the loss of significant trees providing a buffer between parking on the subject property and his home to the north. A small scale aerial photograph and several still photographs were introduced through Mr. Hurd which show, clearly, that there are a <u>few</u> street trees adjacent to Seminary Avenue. The photographs also show clearly that which Mr. Hurd had to admit on cross-examination — most of those existing trees are deciduous and lose their leaves in the fall. Mr. Hurd

had requested, had not been provided nor had he reviewed any landscape proposal of the Owner if the requested relief is approved.

Mr. Eric Fleischer, who resides at 10 E. Seminary Avenue, north of the parking area on the subject property that was approved previously by use permit, testified that he observed that the parking lot is full during business hours and that there is adequate parking after hours for the existing health club and the various restaurant uses located in the Seminary Galleria. Mr Fleischer testified about a prior problem that he had with trespassers sitting on his property to eat lunch and with snow being piled in the right of way for a short period of time. Mr. Fleischer did acknowledge that existing parking on the on the far eastern end of the subject property, both in the DR and the BL zones, was much closer to existing residences than any parking space was to his own property. That far east parking is separated from those residences, according to Mr. Fleischer, by existing landscaping.

Mr. Larry Townsend, testifying on behalf of the Dulaney Valley Improvement Association indicated that his organization "wishes to maintain all residential property" and that "we want to keep our green area." Mr. Townsend acknowledged that there was no request pending before the Board to change the zoning classification of any portion of the subject property to any commercial zone, thus there is no basis for his organization's stated concern of loss of "residential property". The expansion areas in question cannot be used for residential purposes in any event. Rather, commercial parking in the residential

zone was being requested by use permit. After taking an affirmative position that there was no "need" for the requested parking, Mr. Townsend (being familiar with the *Baltimore County Zoning Regulations*) testified candidly that there was no burden on the Petitioner/Owner to establish that any such need exists. Finally, Mr. Townsend affirmed that the position of his organization was that of the Board and not all of the general membership of the Dulaney Valley Improvement Association.

The Greater Towson Council of Community Associations presented the testimony of its Zoning Committee Chair, Mr. Donald Gerding in opposition to the requested relief. The chief reason for the position of opposition was that Mr. Gerding's association felt that there was sufficient parking — i.e. no "need" for additional parking. Mr. Gerding also testified about the traffic on Seminary Avenue between the residences to the north and the subject property to the south. When asked by counsel for the Owner to confirm that "Seminary Avenue is no York Road" Mr. Gerding steadfastly disagreed. In his opinion as a long time resident of the area and frequent visitor to the subject property, the current traffic volume on Seminary Avenue nearly replicates that of York Road. In Mr. Gerding's observation, Seminary Avenue has become a principal east-west thoroughfare. In his final answer on cross-examination, Mr. Gerding had to acknowledge that it was Seminary Avenue and its high volume of traffic that buffered the homes on the north side of Seminary Avenue from the subject property and not the existing grass and street trees that would be modified if the requested relief is granted.

The expert evidence offered by the Owner through Mr. Doak showed the following:

- there is no change in use of the subject property other than the proposed 16 new spaces (a portion of the unused grassy area is to become macadam parking spaces and landscaped area)

- a violation was issued to the Owner by the Office of Code Enforcement (based on a complaint by Mr. Hurd) for the failure to revise the approved site plan prior to creating the 14 spaces and new landscaping and enlarging the area of the existing parking lot

- the Correction Notice issued required the the Owner to file a revised site plan for approval and the Owner complied

- as to the 14 spaces, no variance relief is necessary

- as to the proposed 16 new spaces, either a modified parking plan must be approved or a variance for those spaces to be located within 10 feet of the existing souther right of way of Seminary Avenue must be obtained

- there are 734 parking spaces required on the subject property per the previously approved plans and a total of 764 spaces are proposed (the 14 spaces and the 16 new spaces)

- photographic evidence (Petitioner's Exhibits 3.1 through and including 3.14) depict the subject property, the 14 spaces and the area in which the 16 new spaces are proposed

- the Owner agrees to install new landscaping and street trees adjacent to Seminary Avenue if the requested relief is granted

As discussed below, Mr. Doak testified without contradiction regarding the legal tests and evidence necessary to support the relief requested.

ARGUMENT

The Petitioner Has Met Its Burden With Respect to the Relief Requested

Commercial parking in a residential zone is expressly permitted by way of use

permit pursuant to BCZR § 409.8B.2. In Mr. Doak's professional opinion, the requested use permit will:

- adjoin the land on which the business they are designed to support is located
- be restricted to use by passenger vehicles, excluding buses
- have lighting regulated relative to location, direction, hours of illumination, glare and intensity that complies with all Baltimore County requirements
- provide for safe and efficient parking arrangement and vehicular access; and
- be maintained in the same manner as the balance of the previously approved parking and in accordance with all applicable laws and restrictions

According to Mr. Doak, the 14 spaces and the proposed 16 new spaces will duplicate the existing safe and efficient parking arrangement currently approved for the subject property. After surveying the subject property relative to the proposed relief, the Fire Marshal's Office agrees. No testimony or evidence was offered in opposition to the testimony on these required factors other than with respect to concerns over parking adjacent to aisles designated as fire lanes. Therefore and without question the use permit for the 14 spaces added since the last amended development plan should be approved and the 3rd Amended CRG Plan approved accordingly.

The proposed 16 new spaces can only be approved if the modified parking plan is approved or if the alternative variance relief is approved. In either case, Mr. Doak testified without contradiction as to the factors required for either approval. Certainly the subject

property is unique to all other properties in the district based on its shape, size and configuration. The relief requested is the minimum necessary and can be granted within the spirit and intent of the BCZR. Likewise, as testified to by Mr. Doak, the Owner would be subjected to undue hardship under the BCZR if not able to use its land immediately adjacent to the Seminary Avenue thoroughfare for additional parking – the principal requirement for approval of the modified parking plan pursuant to BCZR § 409.12B.

To ensure that comments of the neighbors are addressed, the Board should consider adding a condition to its approval that the Owner submit a landscape/streetscape plan to the Office of Planning or the County Landscape Architect with respect to the landscaping proposed parallel to Seminary Avenue. There is no negative impact on the surrounding community. The existing, sparse landscaping will be partially removed and the balance supplemented with additional, new landscape material closer to the southern edge of paving of Seminary Avenue. Neither the grant nor the denial of the requested relief will have any impact whatsoever on the true buffering feature identified by Mr. Gerding – the heavy traffic volume on Seminary Avenue.

The Misunderstandings and Unsupported Conclusions of the Deputy Zoning Commissioner Should Not be Repeated by this Board

A fair reading of the decision of the Deputy Zoning Commissioner in this case reveals that he clearly did not understand the alternative concept of modified parking plan versus variance from the setback from right of way. He, essentially, found that because the Owner had not demonstrated some non-codified need test relative to the proposed 16

new spaces, there was no undue hardship as that term is used in BCZR § 409.12B. Perhaps had the Commissioner had the considered testimony of long-time resident Mr. Gerding, he would understand that the "grassy buffer area" referenced on page 6 of his Order is ineffective given the extensive traffic on Seminary Avenue separating the two uses. He did acknowledge that "landscaping can minimize this loss . . . ." (Zoning Order at 6.)

With respect to the 14 spaces already constructed, again the Commissioner attempted to apply a needs test and evaluate them based on undue hardship. Neither are applicable as described above. The Commissioner's findings of "promised protection" for residents on the north side of Seminary Avenue can not be sustained by the evidence any more than his findings that there was some "pledge" of parking expansion. (Zoning Order at 7.) Nor is there any evidence or testimony before this Board to support any such conclusions or findings.

Commercial parking in residential zones in Baltimore County is not a new concept. On two prior occasions, the appellate courts have reviewed the practice – including an associated challenge to the authority of the Zoning Commissioner to even grant such use permits. *See Hofmeister v. Frank Realty Co.*, 35 Md. App. 691 (1977); *Jacobs v. County Board of Appeals*, 234 Md. 242 (1964). Each of these cases involved an unusual challenge to the commercial parking use permit. In *Hofmeister*, the appellants challenged the very authority of the Commissioner to grant such permits. In *Jacobs*, the opponents challenged the issuance of a use permit for commercial parking associated with a shopping center that

was not yet constructed. In both cases, the use permits were authorized.

The unusual aspect of this case is that two property owners who live on the north side of Seminary Avenue [not including the two corporate associations] are opposing additional, on-site parking at an existing, thriving commercial/office property. On-site parking is far superior than having spill-over parking on the adjoining streets. The credibility of the opposition in this case must be evaluated in light of the fact that the adjoining residential uses to the east of the subject property exist without complaint or objection even in light of there much closer proximity to existing, commercial parking. How can the removal of a grassed, partially landscaped area approximately 40 feet in width be seriously questioned or opposed by persons living in excess of 150 feet away, on the opposite side of the Seminary Avenue thoroughfare? This distance between Mr. Hurd's home and the grade differential between it and the subject property should not go unnoticed by the Board. However, in order to address the view purportedly enjoyed by Mr. Hurd, the Owner has pledged to install landscape/streetscape materials on its side of Seminary Avenue.

SUMMARY and CONCLUSION

The legislature recognized that certain properties could be improved with commercial uses and have inadequate parking. To alleviate that inadequacy, parking can be approved in residential zoned portions of the same property or **even across the street or alley in residential zones** upon the showing required by BCZR 409.8B.2. In this case,

all of the requested parking is on the property now owned by Seminary Galleria, LLC. The legislature did not establish a "need" test in approving commercial parking in a residential zone. Clearly, as shown on Petitioner's Ex. 1, commercial parking can exist (both in BL and DR zoned portions of the subject property) within fifty feet of residential lots in the Garden Ridge Garden community to the east without detriment or complaint. The parking proposed in the requested relief is significantly further and down grade from the homes on the north side of Seminary Avenue.

The 14 spaces exist and they exist without objection by the Fire Marshal's Office. They can remain with the approval of the requested Use Permit and amendment to the CRG Plan to permit a continuation of prior approved parking configuration. The 16 new spaces can be created given the testimony and proof in support of the modified parking plan and, in the alternative, the variance request. The Owner has committed to the installation of landscaping to beautify the streetscape of Seminary Avenue.

The evidence offered in opposition to the requested relief failed to address the relevant factors. Those who oppose merely do not want to see a reduction of an existing, grassed area. The testimony about stock piling of snow and existing trees providing screening to the residence(s) to the north, when evaluated critically, must fail.

For all of the foregoing reasons, the requested Use Permit and amendment to prior approved CRG Plan should be approved and the modified parking plan or the variance should be approved to permit the addition of the 16 new spaces, with appropriate

conditions on required landscaping.

Respectfully submitted,

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Attorneys for Developer/Owner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 2004, a copy of the foregoing Owner's Post-Hearing Memorandum, was mailed, postage prepaid, First Class United States Mail to the following:

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204

and to

Carole S. Demilio, Attorney at Law
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

Howard L. Alderman, Jr.

10/31/03

IN RE: PETITION FOR SPECIAL HEARING and VARIANCE (in the Alternative) 1447 York Road 8th Election District 3rd Councilmanic District ***Seminary Galleria, LLC,*** **Petitioner/Owner**	**BEFORE THE** **DEPUTY ZONING** **COMMISSIONER OF** **BALTIMORE COUNTY** **Case No.: 04-052-SPHA**

NOTICE OF APPEAL TO COUNTY BOARD OF APPEALS

Seminary Galleria, LLC, Petitioner and Owner of the above referenced property and a participant to the proceeding before the Deputy Zoning Commissioner, pursuant to Baltimore County Code §§ 26-132 and 26-117 and Section 500.10 of the Baltimore County Zoning Regulations, being aggrieved by the decision of said Deputy Zoning Commissioner, hereby notes an appeal to the County Board of Appeals for Baltimore County of the *Findings of Fact and Conclusions of Law* of the Deputy Zoning Commissioner for Baltimore County, rendered on October 2, 2003, denying the Special Hearing relief requested and denying the Variance relief requested in the alternative.

Howard L. Alderman, Jr.
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
410.321.0600 [voice]
410.296.2801 [fax]
halderman@LevinGann.com [e-mail]

Attorneys for Seminary Galleria, LLC

DATED: October 30, 2003

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
TELEFAX 410-296-2801

ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

October 30, 2003

HAND DELIVERED
Timothy M. Kotroco, Director
Department of Permits and Development Management
111 West Chesapeake Avenue
Room 109
Towson, Maryland 21204

RE: Notice of Appeal
Case No. 04-052-SPHA

Dear Mr. Kotroco:

Enclosed, please find an original Notice of Appeal to the County Board of Appeals relative to the above-referenced case. Based upon information obtained from Ms. Charlotte Radcliffe of the County Board of Appeals for Baltimore County, I am also enclosing checks totaling $525.00, representing the costs of filing this appeal and the required sign. Should there be any additional charges, please do not hesitate to contact me immediately.

I would appreciate it if you would transmit promptly to the County Board of Appeals the entire case file in the above-referenced matter.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosures
c (w/encl.): Seminary Galleria, LLC

RECEIVED
OCT 30 2003
Per...

PET. X

04 - 052 - SPHA

1. Site map of property - Red Line Parking
2. GIS map 6-7 years Ago

~~3 A) pix~~

~~B) pix~~

3.1 pix
3.2 pix
3.3 pix
3.4 pix
3.5 pix
3.6 pix
3.7 pix
3.8 pix
3.9 pix
3.10 pix
3.11 pix
3.12 pix
3.13 pix
3.14 pix

Verified 9/26-04

04-052-SPHA

Prof. X

Seminary Galleria

1. 1955 BOA Appeals Ruling.
2. Violation Case documents
3. GIS map w Names superimposed
4. pic of R. Hurd's Home
5. Pix of previous fuel tank - now parking
6. ~~Pix~~ 2 Pics of parking spaces
7. Pix of vacant parking spaces
8. Pix of retaining wall
9. Pix of fence
10. A, B, C > Rule 8 Papers
11. A. Real Prop 4868
    B. " 3391
    C. " 4867
12. Rule 8 for Greater Timon Coun. of C.A.

County Board of Appeals of Baltimore County

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

July 6, 2004

NOTICE OF DELIBERATION

IN THE MATTER OF:
SEMINARY GALLERIA, LLC – Legal Owner
Case No-04-052-SPHA

Having heard this matter on 7/01/04, public deliberation has been scheduled for the following date /time:

DATE AND TIME : TUESDAY, AUGUST 31, 2004 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on Friday, July 30, 2004
(Original and three [3] copies)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

c: Counsel for Appellant /Petitioner : Howard L. Alderman, Jr., Esquire
Appellant /Petitioner : Teresa Rosier /Seminary Galleria
c/o Hill Management

Bruce Doak /Gerhold, Cross & Etzel
Michael P. Tanczyn Esq.
Larry Townsend /GTCC and Dulaney Valley
Improvement Association
Richard Hurd
Richard Parsons
Eric Flesher
Don Gerding

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

Copy to: 4-1-6

Printed with Soybean Ink
on Recycled Paper

IN THE MATTER OF:	* BEFORE THE
THE APPLICATION OF	* BOARD OF APPEALS
SEMINARY GALLERIA - LEGAL	* OF
OWNER/PETITIONER FOR SPECIAL	* BALTIMORE COUNTY
HEARING AND VARIANCE ON	* Case No. 04-052-SPHA
PROPERTY LOCATED ON THE NE/S	*
YORK ROAD, CORNER SE/S OF	* July 1, 2004
SEMINARY ROAD	*
(1447 YORK ROAD)	*
8th ELECTION DISTRICT	*
3rd COUNCILMANIC DISTRICT	*

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., July 1, 2004.

ORIGINAL

Reported by:

C.E. Peatt

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

May 6, 2004

NOTICE OF ASSIGNMENT

CASE #: 04-052-SPHA

IN THE MATTER OF: SEMINARY GALLERIA, LLC –Petitioner/ Legal Owner (1447 York Road)
8th Election District; 3rd Councilmanic District

10/02/03 – DZC's Order in which requested special hearing and variance relief was **DENIED.**

ASSIGNED FOR: **THURSDAY, JULY 1, 2004 at 10:00 a.m.**

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

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

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

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellant /Petitioner : Howard L. Alderman, Jr., Esquire
Appellant /Petitioner : Teresa Rosier /Seminary Galleria c/o Hill Management

Bruce Doak /Gerhold, Cross & Etzel

Larry Townsend /GTCC and Dulaney Valley Improvement Association
Richard Hurd
Richard Parsons
Eric Flesher
Don Gerding

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

Printed with Soybean Ink on Recycled Paper

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
SEMINARY GALLERIA LLC *
c/o Hill Management Services Inc
9640 Deerco Road *
Timonium, MD 21093

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. **3-C-04-11000**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF
SEMINARY GALLERIA LLC *
c/o Hill Management Services Inc
9640 Deerco Road *
Timonium, MD 21093

8th ELECTION DISTRICT *
3rd COUNCILMANIC DISTRICT

*

BOARD OF APPEALS CASE NO.: 04-052-SPHA

RECEIVED AND FILED
2004 OCT 21 A 10:50
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

CERTIFICATE OF NOTICE

Madam Clerk:

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

Howard L Alderman Jr, Esquire
Leven & Gann, 502 Washington Avenue, 8th Floor
Towson, Md 21204

Teresa Rosier
Seminary Galleria, C/O Hill Management, 9640 Deereco Road
Timonium Md 21093

Bruce Doak
Gerhold, Cross & Etzel, 320 E. Towsontown Blvd., Ste 100
Towson Md 21286

Larry Townsend
GTCC & DVIA, 1111 Longbrook Road, Lutherville Md 21093

Richard Hurd
16 E Seminary Ave., Lutherville, Md 21093

Richard Parsons
412 Woodbine Avenue, Towson Md 21204

Eric Flesher
10 E Seminary Ave., Lutherville Md 21093

Don Gerding
335 Old Trail, Baltimore, Md 21212

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

Carole S. Demilio
Deputy People's Counsel for Baltimore County, Old Courthouse, Room
47, 400 Washington Avenue, Towson, Maryland 21204

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, Leven & Gann, 502 Washington Avenue, 8th Floor, Teresa Rosier, Seminary Galleria, C/O Hill Management, 9640 Deereco Road, Timonium Md 21093; Bruce Doak, Gerhold, Cross & Etzel, 320 E. Towsontown Blvd., Ste 100, Towson Md 21286; Larry Townsend, GTCC & DVIA, 1111 Longbrook Road, Lutherville Md 21093;

Richard Hurd, 16 E Seminary Ave., Lutherville, Md 21093; Richard Parsons, 412 Woodbine Avenue, Towson Md 21204; Eric Flesher; 10 E Seminary Ave., Lutherville Md 21093; Towson, Md 21204; Don Gerding, 335 Old Trail, Baltimore, Md 21212; ; Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204; Carole S. Demilio, Deputy People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, this 21st day of April, 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)

27B3

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-052-SPHA

SEMINARY GALLERIA, LLC

1447 YORK ROAD LUTHERVILLE

8TH ELECTION DISTRICT APPEALED: 10/30/2003

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 2)

**********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.: 04-052-SPHA

Petitioner/Developer:

SEMINARY GALLERIA, LLC

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

1447 YORK ROAD, LUTHERVILLE

The sign was posted on 12/12, 2003

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-052-SPHA

SEMINARY GALLERIA, LLC

1447 YORK ROAD LUTHERVILLE

8TH ELECTION DISTRICT

APPEALED: 10/30/2003

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 2)

Department of Permits and Development Management

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

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

November 25, 2003

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

RECEIVED
DEC 01 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Mr. Alderman:

RE: Case :04-052-SPHA, 1447 York Road

Please be advised that an appeal of the above-referenced case was filed in this office on October 30, 2003 by Howard Alderman. 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
Director

TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Seminary Galleria, Teresa Rosier, Hill Mgmt., 9640 Deereco Rd., Timonium 21093
Bruce Doak, Gerhold, Cross & Etzel, 320 E. Towsontown Blvd., Ste. 100, Towson 21286

Copies to:

Teresa Rosier
9640 Deereco Road
Timonium, MD 21093

Bruce E. Doak
Gerhold, Cross & Etzel
320 E. Towsontown Boulevard
Towson, MD 21286

Larry Townsend
GTCC & DVIA
111 Longbrook Road
Lutherville, MD 21093

Richard Hurd
16 E. Seminary Avenue
Lutherville, MD 21093

Richard Parsons
412 Woodbine Avenue
Towson, MD 21204

Eric Flesher
10 E. Seminary Avenue
Lutherville, MD 21093

Zoning Commissioner

Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
Tel: 410-887-3868 • Fax: 410-887-3468

Baltimore County

James T. Smith, Jr., County Executive
Lawrence E. Schmidt, Zoning Commissioner

October 2, 2003

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

Re: Petitions for Special Hearing &Variance
Case No. 04-052-SPHA
Property: 1447 York Road

Dear Mr. Alderman:

Enclosed please find the decision rendered in the above-captioned case. The Petition for Variance has been denied in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

John V. Murphy
Deputy Zoning Commissioner

JVM:raj
Enclosure

10/2/03

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE NE/S of York Road corner SE side of Seminary Avenue 8th Election District 3rd Councilmanic District **(1447 York Road)**	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 04-052-SPHA
Seminary Galleria, LLC, By: Teresa Rosier, Authorized Member *Petitioner*	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Variance and Petition for Special Hearing for the property located at 1447 York Road in the Lutherville area of Baltimore County. The Petition was filed by Seminary Galleria, LLC, by Teresa Rosier, Authorized Member, legal owner of the property. Special Hearing relief is requested in accordance with the Baltimore County Zoning Regulations (B.C.Z.R.), §409.8B, (1) to allow commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the plan filed herewith, (2) in lieu of the companion variance requested herewith, approval of a modified parking plan and modified parking and landscape requirements for the proposed parking areas in accordance with the specific detail shown on the plan filed herewith; (3) the plan filed herewith as the 3rd Amendment to the CRG for *The Galleria Tower & The Galleria*; and (4) such additional relief as the nature of the parking shown on the accompanying plan may require.

In the event the requested modified parking plan is not approved, Petitioners are requesting variance relief from Section 409.8.A of the B.C.Z.R., to permit parking spaces to be located within 10 ft. of the right-of-way of a public street utilizing existing landscaping; and (2)

Order Date 10/2/03
By [illegible]

for such additional relief as the nature of this request and the parking layout on the plan filed herewith may require.

The property was posted with Notice of Hearing on September 16, 2003, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on September 11, 2003 to notify any interested persons of the scheduled hearing date.

Notice is taken that the property, which is the subject of these special hearing and variance requests, consists of 8.42 acres, more or less, and is zoned BL and DR 5.5.

Applicable Law

Section 500.7 of the B.C.Z.R. *Special Hearings*

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Section 307 of the B.C.Z.R. – ***Variances***.

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to the public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Zoning Advisory Committee Comments

The Zoning Advisory Committee Comments are made part of the record of this case and contain the following highlights. ZAC comments were received from the Office of Planning dated August 26, 2003 recommending denial of the petitions, a copy of which is attached hereto and made a part hereof. Development Plans Review recommends eliminating the ten proposed parking spaces along the main travel lane.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing and variance relief were Teresa Rosier, Member of the Limited Liability Company which owns the site, Bruce Doak, licensed property line surveyor, and Howard L. Alderman, Jr., Esquire, their attorney. Protestants were Larry Townsend, representing the Greater Timonium Community Council and Dulaney Valley Improvement Association, Richard Parsons, Richard Hurd and Eric Flesher, nearby property owners. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

This case arises from the fact that the Code Enforcement section of the Department of Permits and Development Management cited the owner of the property for constructing 14 new parking spaces on the property alleging the owner did not have proper zoning authorization to do so. Subsequent to the citation, the Petitioner filed a request for variance for the 14 spaces and 16 additional parking spaces (30 spaces total) to be located in the DR 5.5 zoned portion of the property as shown in red on the Third Amendment & Parking Addition to the CRG Plan, Petitioner's Exhibit No. 1. The additional parking would make 764 parking spaces on the property, which is improved, by a two high rise office buildings and a strip commercial center.

The Petitioner proposes alternate means to achieve the 30 additional parking spaces. The first is to approve a parking plan under Section 409.12 of the B.C.Z.R. and would involve a use permit for commercial parking in a residential zone under Section 409.8.B. The second is to approve a variance allowing parking spaces within 10 feet of a right of way of a public street. The Petitioner proposes landscaping in either situation to screen the residential properties across Seminary Avenue.

Mr. Doak, the Petitioner's expert witness, testified that the 30 spaces were proposed in the DR 5.5 portion of the property, that the proposal would not violate any of the criteria listed in Section 409.8.B.2 and 502.1, and that proper landscaping would effectively screen the residences across Seminary Avenue. In regard to the alternate variance relief, he testified regarding the lot's irregular shape, the odd location of the DR/BL zoning line, and that there was no other place on the property to locate additional parking as it was fully built out except for this area. Ms. Rosier, although called as an adverse witness by the Protestants, testified that as property manager, she received complaints about the lack of parking on the site from visitors and tenants and wanted to relieve the situation by constructing the 30 additional spaces. She said she was not aware of the DR/BL zoning line that divides the property and did not know the County would have any problem with providing more parking on site. She testified as to the centers' difficulty reserving parking for visitors to the office buildings, as spaces convenient to these building were being used by other tenants or their customers. She admitted that there were parking spaces available on the south parking lot and at times in the parking deck but that these spaces were inconvenient locations for many tenants and visitors.

The Protestants focused their opposition on the fact that the 14 spaces were constructed without a permit, and were in their opinion in violation of the zoning regulations. Mr. Townsend

stated that he did not want the Petitioner's relief granted as this would be zoning by forgiveness. He was particularly concerned about the proposal to build the 16 spaces on the grassy buffer area, which separates the parking on this lot from the residences across Seminary Avenue. He was concerned about safety in that vehicles parked in the new 10-space area back out of their parking spaces and into a main travel aisle, which is a fire lane. He felt that there was no hardship on the owners, but rather a matter of convenience for the tenants and visitors. Mr. Hurd and Mr. Flesher, two residents that live across Seminary Avenue from the proposed additional parking, testified that such new parking would destroy the buffer area protecting their properties from the parking lot on site, would adversely affect the enjoyment of their properties, and violate the understanding that the DR zones strip would protect them from such commercial uses. Mr. Flesher also testified as the spokesperson for the Bridalwood Community Association that there had been a noticeable change in usage of the property over the last few years. He stated that traffic on the property had increased substantially and that there is now a different mix of tenants, many of whom are now medical providers. Both residents testified that the lot was so built out that the only place the owner can pile snow after cleaning the parking lot is on the grassy buffer area which is proposed to be eliminated. He was greatly concerned that if the grassy area were to be removed, that snow would be placed on their property, as happened this past winter. Finally, they felt the owner's hardship was self-created and could be solved by better management of the parking on the site.

Findings of Fact and Conclusions of Law

There are several remarkable occurrences in this case. The first is the location of the DR/ BL zoning line which places residential zoning on this highly commercial property in a swath across approximately 140 ft. wide along Seminary Avenue. This violates the usual rule for

10/23/03 BZ Minutes

comprehensive zoning, which says that zoning lines follow property lines and surely major streets such as Seminary Avenue. Anyone familiar with the zoning process would be alerted to the clear intent of the County Council to separate the commercial uses on the property from the residences along Seminary Avenue. The second remarkable matter is that ordinarily community associations cheer for a proposal to provide more parking on site than was required by the Zoning Regulations. Here, however, the associations are opposed.

The proposed additional parking on site, which ordinarily would be welcome, comes at a price of the loss of the grassy buffer area which protects the residents along Seminary Avenue from the ever more intense commercial uses on the site. The community associations think this price is too high and I must agree with them. By far, the most egregious is the proposal to add 16 spaces in the grassy area, essentially eliminating this feature. I realize landscaping can minimize this loss, but it cannot replace the distance created or the mature trees now in place. All witnesses testified that the commercial center is fully built out and fully utilized. This gives great credibility to the residents concerns about where snow from the lot would be placed once the grassy area is lost.

More difficult is the issue of the 14 spaces already built (perhaps in error) in the DR zone. Here, it is important to note that the cost of removal of these spaces cannot constitute a hardship since it is self-imposed by the owner. Conversely, the existence of these space is not to be held against the owner in a zoning hearing. So the issue is, whether the Petitioner has demonstrated undue hardship under the revised parking plan allowed under Section 409.12.B? Testimony of all parties indicated that there were parking spaces, albeit inconvenient spaces, generally available on the property. I am sympathetic to the frustration of the property manager trying to free more spaces for tenants and visitors. However, it seems to me that the owner has control of

12/12/03

much of this problem by inserting lease provisions that tenant employees use the less convenient spaces on the property. Also, the owner must know that when they invited medical providers to occupy space in the complex, trips per day and parking utilization would increase substantially. The B.C.Z.R. indicates the number of required spaces increases from 3.3 spaces per 1000 sq. ft. to 4.3 spaces per 1000 sq. ft. in changing uses from general offices to medical offices. Management needs to make a plan for utilizing the existing spaces as difficult as it may be to enforce the plan on employees, tenants and visitors alike. I find no undue hardship in this matter, but rather find that this is a matter of convenience for the owner. Therefore, I will deny the request for a modified parking plan.

For the reasons given above, I will also deny the request for variance as the standard for this relief is more stringent than simple undue hardship. I am convinced that somehow, sometime in the past, the residents of Seminary Avenue were promised protection from the commercial uses on the property as shown by the DR zoning along Seminary Avenue. I am unaware of any negotiations or details of this zoning decision. However, just the location of the DR swath along Seminary Avenue tells me that the owner (or likely a prior owner) received a very great benefit of commercial zoning at that location in exchange for a pledge not to do just what the present owner now proposes. I assume this was done by the present owner out of lack of knowledge and with no ill intent. However, I think the record of this case does not support invading the DR area with additional parking.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 2nd day of October, 2003, that the Petitioner's request for Special Hearing relief in accordance with the Baltimore County Zoning Regulations (B.C.Z.R.), §409.8B, (1) to allow commercial parking adjacent to existing commercial parking on the same lot in a residential

10/2/03 R. Jameson

zone, as shown and laid out on the plan filed herewith, (2) in lieu of the companion variance requested herewith, approval of a modified parking plan and modified parking and landscape requirements for the proposed parking areas in accordance with the specific detail shown on the plan filed herewith; (3) the plan filed herewith as the 3rd Amendment to the CRG for *The Galleria Tower & The Galleria*; and (4) such additional relief as the nature of the parking shown on the accompanying plan may require, be and is hereby DENIED.

IT IS FURTHER ORDERED, that the variance requested for relief from Section 409.8.A of the B.C.Z.R., to permit parking spaces to be located within 10 ft. of the right-of-way of a public street utilizing existing landscaping in the event the requested modified parking plan is not approved and for such additional relief as the nature of this request and the parking layout on the plan filed herewith, be and is hereby DENIED.

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

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

6/12/03 Petitioner

Prot # 1

County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

December 20, 1985

Glenn L. Wilson, President
Dulaney Valley Improvement Assoc.
P. O. Box 102
Lutherville, Md. 21093

Re: Case No. 85-256-XA
Seminary Limited Partnership

Dear Mr. Wilson:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

June Holmen, Secretary

Encl.
cc: G. Scott Barhight, Esq.
Jasper M. Buck
Seminary Ltd. Partnership
Fitness Unlimited, Inc.
Michael P. Tanczyn, Esq.
Thomas J. Bollinger, Esq.
Phyllis C. Friedman
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean Jung
James E. Dyer

IN THE MATTER OF SEMINARY LIMITED PARTNERSHIP (FITNESS UNLIMITED, INC.) RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCES ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OF SEMINARY AVENUE AND YORK ROAD 9th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. 85-256-XA

: : : : : : : : : : : :

O P I N I O N

This case comes before the Board on two requests by the Petitioner, Seminary Limited Parthership; namely, a request for Special Exception for a community building for a health club/fitness center and a request for a variance to permit 600 parking spaces instead of the required 643. The Zoning Commissioner granted both petitions, subject to certain restrictions.

Addressing first the Petition for Special Exception, there exists, already in operation, the requested community building which houses a health club/fitness center. This facility, known as Fitness Unlimited, Inc. and trading as Gold's Gym, is located within the site and offers the public aerobics and body building programs. Without repeating all of the testimony produced before the Board, we believe that the proposed use complies with the Standards set forth in Section 502.1 of the Baltimore County Zoning Regulations (BCZR). It is also interesting to note that the Protestants offered no witnesses in opposition to the Special Exception petition, and, in light of the evidence before the Board, we will grant that petition.

Turning to the second petition, that for a zoning variance from parking requirements, the Board notes heated opposition to this request. The variance sought is for the entire on project site, that retail/office complex known as the Galleria. Pursuant to the applicable parking regulations, 643 spaces are required, however, the Petitioner asks for a variance reducing this to 600.

In support of the requested variance, the Petitioner produced a number of witnesses, including Melvin Herzburger, the manager for Seminary Limited Partnership, Jay S. Smith, a professional engineer and land surveyor, and John Erdman, a traffic engineer. All testified in support of the variance. The crux of their arguments was that in view of the mixed uses on site, i.e. office and retail, the number of spaces required under the parking regulations was excessive. Additionally, Mr. Herzburger testified that although 643 spaces were required, only 600 spaces could possibly be provided on site.

Notwithstanding this testimony, the Board notes Protestants' Exhibit No. 1, the Amended CRG Plan, dated Aug. 28, 1985. This site plan provides for a parking deck, and indicates that 672 spaces can be provided.

Section 307 of the BCZR provides the standards under which a variance can be granted. It is specifically required that a variance may be granted "only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship". Applying this standard to the petition before us, our conclusion is clear; the variance must be denied. The Petitioner, during the approval process with the CRG in August 1985, indicated that 672 spaces could be provided. Based upon this promise, there cannot be any claim that practical difficulty or unreasonable hardship results from the County parking regulations. We must therefore deny the petition for variance and will so order.

O R D E R

For the reasons set forth in the aforegoing Opinion, it is this 20th day of December , 1985 , by the County Board of Appeals, ORDERED that the Petition for Special Exception for a community building for a health club/fitness center is hereby GRANTED and that the Petition for Variance from Section 409.2b (1) (3) (4) (5) (6), to permit 600 spaces in lieu of the required 643 spaces is hereby DENIED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett, Chairman

Lawrence E. Schmidt

Keith S. Franz

DIVISION OF CODE INSPECTIONS AND ENFORCEMENT

ACTIVE VIOLATION CASE DOCUMENTS

Prot 2

BALTIMORE COUNTY MARYLAND
INTER-OFFICE CORRESPONDENCE

DATE: September 16, 2003

TO: W. Carl Richards, Jr.
Zoning Review Supervisor

FROM: Rick Wisnom, Chief
Division of Code Inspections & Enforcement

SUBJECT:	Item No.:	052
	Legal Owner/Petitioner	Seminary Galleria LLC /Teresa Rosier
	Contract Purchaser:	n/a
	Property Address:	1447 York Rd
	Location Description:	N/E side York Rd. corner S/E side Seminary

VIIOLATION INFORMATION: Case No. 03-2247
Defendants: Seminary Galleria LLC/Teresa Rosier

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following person(s) regarding the hearing date:

NAME ADDRESS

In addition, please find attached a duplicate copy of the following pertinent documents relative to the violation case, for review by the Zoning Commissioner's Office:

X	1.	Complaint letter/memo/email/fax (if applicable)
X	2.	Complaint Intake Form/Code Enforcement Officer's report and notes
X	3.	State Tax Assessment printout
☐	4.	State Tax Parcel Map (if applicable)
☐	5.	MVA Registration printout (if applicable)
☐	6.	Deed (if applicable)
☐	7.	Lease-Residential or Commercial (if applicable)
☐	8.	Photographs including dates taken
X	9.	Correction Notice/Code Violation Notice
X	10.	Citation and Proof of Service (if applicable)
X	11.	Certified Mail Receipt (if applicable)
☐	12.	Final Order of the Code Official/Hearing Officer (if applicable)
☐	13.	Office of Budget & Finance Billing Notice/Property Lien Sheet (if applicable)
☐	14.	Complete Chronology of Events, beginning with the first complaint through the Billing Notice/Property Lien Sheet (if applicable).

After the public hearing is held, please send a copy of the Zoning Commissioner's order to Helene Kehring in Room 113 in order that the appropriate action may be taken relative to the violation case.

RSW/ph
C: Code Enforcement Officer

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

ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

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

DIRECT DIAL
410-321-4640

May 20, 2003

VIA TELEFAX & REGULAR MAIL
Stanley Schapiro, Code Enforcement Officer
Baltimore County Department of Permits
and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Seminary Galleria, LLC
1447 York Road
Citation/Case No. 03-2247

Dear Mr. Schapiro:

I have been retained to represent Seminary Galleria LLC, owner of the property at 1447 York Road. Recently, there has been a complaint filed with the County regarding additional commercial parking in a DR zone that has resulted in the issuance of the above-referenced citation.

I have advised my client of the need to move forward with a Petition for Special Hearing regarding the commercial parking complaint and any required amendment to previously approved plans. I expect my client to select a surveying/engineering firm within the next 48 hours. The required site plans and zoning Petition will be prepared promptly thereafter. As soon as the signed Petitions are returned to me and I receive the requisite number of zoning plats, I will schedule promptly a filing appointment with the Office of Zoning. ~~In the meantime~~, I hereby request that the hearing on the alleged violation, presently scheduled for **June 24, 2003**, be taken off of your docket and held pending the outcome of the Special Hearing. ~~In order to keep~~ your office informed, as soon as I have a filing appointment date I will advise you. Likewise, I will advise you when the Petitions are filed and the date of the hearing, once it is scheduled.

Should you need additional information in support of this request, please do not hesitate to contact me. Thank you for your consideration in this regard.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
c: Seminary Galleria LLC
Paul C. Hohne, Code Enforcement Inspector (via telefax only)
Thomas M. Wood, IV, Esquire (via telefax only)

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

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

DIRECT DIAL
410-321-4640

ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

May 20, 2003

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME	TELEFAX NO.
Stanley Schapiro, Code Enforcement Officer	410-296-0931
c: Seminary Galleria LLC	410-628-2700
Paul Hohne, Code Enforcement Inspector	410-887-2824
Thomas M. Wood, IV, Esquire	410-332-8564

FROM: HOWARD L. ALDERMAN, JR., ESQUIRE

NUMBER OF PAGES [INCLUDING THIS COVER PAGE]: 2

CLIENT/MATTER: 1447 York Road, Seminary Galleria LLC; Case No. 03-2247

COMMENTS: **Please accept the following request for postponement of Code Enforcement Hearing to permit the Owner to pursue its administrative remedies.**

[x] ORIGINAL TO FOLLOW VIA MAIL AS INDICATED

If you do not receive all of the pages indicated above, please call 321-0600 as soon as possible. My return FAX Number is (410) 296-2801.

WARNING: UNAUTHORIZED INTERCEPTION OF THIS TELEFAX COMMUNICATION COULD BE A VIOLATION OF FEDERAL AND MARYLAND LAW.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for expenses. Thank You.

LAW OFFICES

NEUBERGER, QUINN, GIELEN, RUBIN & GIBBER, P.A.

27TH FLOOR
ONE SOUTH STREET
BALTIMORE, MARYLAND 21202-3282
(410) 332-8550

THOMAS M. WOOD, IV
(410) 332-8523

FAX NO.
(410) 332-8564
E-MAIL ADDRESS:
TMW@NQGRG.COM

May 14, 2003

Director of Permits and Development Management
County Office Building
Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County Uniform Code Enforcement Correction Notice
Citation No. 03-2247
Property No. 1900014868
Seminary Galleria LLC
10 Parks Avenue
Violation Location: 1447 York Road
Issue Date: 5/8/03

Dear Sir/Madam:

Please be advised that I represent Seminary Galleria LLC in connection with the enclosed Baltimore County Uniform Code Enforcement Correction Notice. This letter will serve as notice that Seminary Galleria LLC intends to contest this correction notice and the proposed civil penalty at the hearing currently scheduled for June 24, 2003 at 9 a.m.

Of course, if you have any questions, please do not hesitate to call.

Very truly yours,

Thomas M. Wood, IV

TMW:lmd
Enclosure

183753; 167.7

RECEIVED
MAY 15 2003

LAW OFFICES

NEUBERGER, QUINN, GIELEN, RUBIN & GIBBER, P.A.

27TH FLOOR

ONE SOUTH STREET

BALTIMORE, MARYLAND 21202-3282

(410) 332-8550

THOMAS M. WOOD, IV
(410) 332-8523

FAX NO.
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E-MAIL ADDRESS:
TMW@NQGRG.COM

May 14, 2003

Director of Permits and Development Management
County Office Building
Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Citation No. 03-2247
Property No. 1900014868
Seminary Galleria LLC
10 Parks Avenue
Violation Location: 1447 York Road
Issue Date: 5/5/03

Dear Sir/Madam:

Please be advised that I represent Seminary Galleria LLC in connection with the enclosed Baltimore County Uniform Code Enforcement Correction Notice. This letter will serve as notice that Seminary Galleria LLC intends to contest this citation and the proposed civil penalty at the hearing currently scheduled for June 24, 2003 at 9 a.m.

Of course, if you have any questions, please do not hesitate to call.

Very truly yours,

Thomas M. Wood, IV

TMW:lmd
Enclosure

MAY 15 2003
03-1531

183752; 167.7

LAW OFFICES
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ONE SOUTH STREET
BALTIMORE, MARYLAND 21202-3282
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May 14, 2003

Director of Permits and Development Management
County Office Building
Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

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Property No. 1900014868
Seminary Galleria LLC
10 Parks Avenue
Violation Location: 1447 York Road

Dear Sir/Madam:

Please be advised that I represent Seminary Galleria LLC in connection with the enclosed Baltimore County Uniform Code Enforcement Citation. This letter will serve as notice that Seminary Galleria LLC intends to contest this citation and the proposed civil penalty at the hearing currently scheduled for June 24, 2003 at 9 a.m.

Enclosed is the Notice of Intention to Defend.

Of course, if you have any questions, please do not hesitate to call.

Very truly yours,

Thomas M. Wood, IV

TMW:lmd
Enclosure

183751; 167.7

MAY 15 2003

TO THE PERSON(S) CHARGED:

1. It is important that you read this document carefully, as it charges you with a commission of a crime.

2. If you fail to correct the violations noted by the date dictated, you could be penalized by a fine, or imprisonment, or both.

3. A lawyer can give important assistance to you: (a) on how to correct the violation(s) in order to avoid trial; or (b) at trial, if you failed to correct the violation(s) noted. Assistance can be provided to determine whether there are any defenses to the charges against you or any circumstances helpful to you that should be brought to the trial. A lawyer can help you by developing and presenting information which could affect how you correct the violation(s) cited.

4. You have been ordered to correct the violation(s) cited on the front of this notice by a certain date. Failure to comply with the deadline stated is a misdemeanor. A conviction for each violation subjects you to potential fines of $200, $500, or $1000 per day per violation, depending on the violation, or 90 days in jail, or both.

5. It is your responsibility to obtain any required permit(s) to correct the cited violation(s). All repairs must be in accordance with applicable laws, Code of Baltimore County Regulations, and standards.

6. Upon correction of these violations, contact the inspector for a reinspection. If you have any questions contact the inspector promptly.

FOLLOW UP INSTRUCTIONS (include date and time of each):

DATE CLOSED: _____

CODE ENFORCEMENT REPORT

DATE: 4/30/03 INTAKE BY: D. Riouy CASE #: 03-2247 INSPEC: 15

COMPLAINT LOCATION: 1447 York Rd

ZIP CODE: 21093 DIST:

COMPLAINANT NAME: RICHARD Hurd PHONE #: (H) (W) 303 4163

ADDRESS: 16 E Seminary ave ZIP CODE: 21093

PROBLEM: site plan violation increased size of parking lot with ret wall.

IS THIS A RENTAL UNIT? YES ____ NO ____

IF YES, IS THIS SECTION 8? YES ____ NO ____

OWNER/TENANT INFORMATION:

permit # B 517026

TAX ACCOUNT #: 19-00-014868 ZONING:

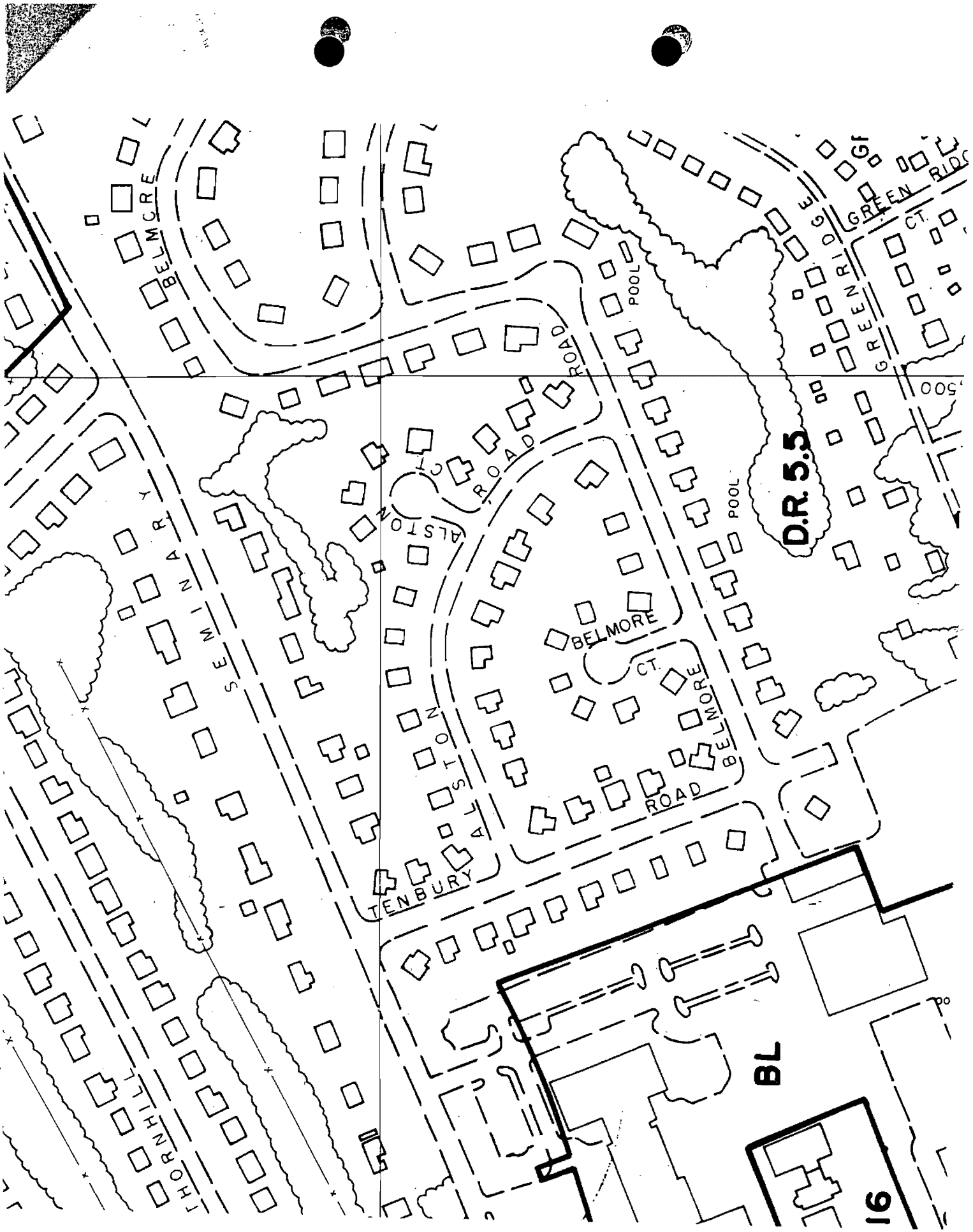
INSPECTION: ~~T/S~~ P Hohne

open

REINSPECTION:

REINSPECTION: SCH - RE-CK 5-5

REINSPECTION:


BELMORE
CT.
BELMORE
ROAD
POOL
GREENRIDGE
CT.
GREENRIDGE
ROAD
POOL
D.R. 5.5
ALSTON
CT.
ALSTON
ROAD
SEMINARY
TENBURY
HORNHILL
BL
16

Baltin County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Buil
111 West Chesapeake Avenue
Towson, MD 21204

Code Enforcement: 410-887-3351
Building Inspection: 410-887-3953
Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation/Case No.	Property No.	Zoning:
03-2247	1900014868	

Name(s): Seminary Galleria LLC

Address: 10 Parks Ave Cockeysville Md 21030

Violation Location: 1447 York Rd

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

IBC Sec 105.1 - Constructing retaining wall without permits - Obtain Building Permit for wall

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

On or Before:	Date Issued:
5/5/03	4/21/03

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF $200, $500, OR $1000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

Print Name: Paul Hohne

INSPECTOR: _____

STOP WORK NOTICE

PURSUANT TO INSPECTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN:

Not Later Than:	Date Issued:
5/5/03	4/21/03

INSPECTOR: Paul Hohne

AGENCY

03-2247

Building
RSE

4/16/03
4/17/03
JT
8

To: Code Enforcement
Baltimore County Government (410) 887-2824

Re: 1447 York Road Zip Code 21093

Presently the parking lot at 1447 York road is undergoing significant alterations. The parking lot is zoned and recorded as DR 5.5. As a neighbor who has had numerous problems with this property pushing the zoning limits in the past, the construction in progress has no permits pulled, site plan changes from the current zoning map (DR 5.5 to help eliminate this type of problem) or sediment Control in place. I believe this to be a violation of current zoning and request an investigati I will follow up this fax with a phone call. Thank ya.

An affected neighbor

Co. Md. VA

CODE ENFORCEMENT REPORT

DATE: 4/19/03 INTAKE BY: GB CASE #: 03-2247 INSPEC:

COMPLAINT LOCATION: 14447 YORK Rd

ZIP CODE: DIST: 8

COMPLAINANT NAME: RICHARD HURD PHONE #: (H) CELL 410-303-4163 (W)

ADDRESS: RET WALL WITH OUT ZIP CODE:

PROBLEM: PERMITS

OWNER/TENANT INFORMATION: 10 parks Ave cockeysville

TAX ACCOUNT #: 1900014868 ZONING:

INSPECTION: 4-18-03. STopped AT. SITE to See. CONSTRUCTION. STARTED, EXTENDING PARKING SPACES WITH RETAINING WALL. being built NO ONE ON SITE Rainy conditions). STopped AT. owners ADDRESS 10 parks

REINSPECTION: & 216 Schilling cir both places were closed will STop out. 4.21.03. and give. STop work. called and inform complainant.

4/21/03 - no one on site. Posted Stop work order and

REINSPECTION: notice to obtain permit recheck Recheck 5/15

Complainant Called

REINSPECTION:

4/18/2003 STANDARD ASSESSMENT INQUIRY (I)
11:40:08

ERTY NO.	DIST	GROUP	ASS	OCC.	HISTORIC	DEL	LOAD DATE
00 014868	09	2-2	15-00	N	NO		03/19/03

EMINARY GALLERIA LLC
DESC-1.. IMPS4.346 AC PARCEL B
DESC-2.. GALLERIA

0 PARKS AVE
PREMISE. 01447 YORK RD
00000-0000

OCKEYSVILLE MD 21030-4922 FORMER OWNER: SEMINARY LIMITED PARTNERSH

--------- FCV ----------			---------- PHASED IN ----------		
PRIOR	PROPOSED		CURR FCV	CURR ASSESS	PRIOR ASSESS
AND: 1946,500	1946,500				
MPV: 10649,700	11015,800	TOTAL..	12840,266	12840,266	12718,233
OTL: 12596,200	12962,300	PREF...	0	0	0
REF: 0	0	CURT...	0	0	0
URT: 0	0	EXEMPT.		0	0
ATE: 10/98	08/01				

--- TAXABLE BASIS ----	FM DATE
3/04 ASSESS: 12840,266	03/17/03
2/03 ASSESS: 12718,233	05/30/02
1/02 ASSESS: 12596,200	06/01/01

ENTER-INQUIRY2 PA1-PRINT PF4-MENU PF5-QUIT PF7-CROSS REF

Baltimore County
Department of Permits and
Development Management

624

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

Code Enforcement:	410-887-3351	Plumbing Inspection:	410-887-3620
Building Inspection:	410-887-3953	Electrical Inspection:	410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CITATION

SERVE ON RESIDENT AGENT, CORPORATE OFFICER, OWNER, TENANT, AS APPLICABLE

Citation/Case No.	Property No.	Zoning:
03-2247	19000148 68	

Name(s): Seminary Gallery LLC

Address: 10 Parks Ave

Violation Location: 1447 York Rd

Violation Dates: 5/5/03 thru 6/24/03

BALTIMORE COUNTY FORMALLY CHARGES THAT THE ABOVE-NAMED PERSON(S) DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS OR REGULATIONS:

BCZR 101 1021, 409.2 and BCC 26-121 A
Failure to revise approved site plan prior to creating additional parking spaces and enlarging paved area of parking lot

Pursuant to Section 1-8, Baltimore County Code, a civil penalty has been assessed, as a result of the violation cited herein, in the amount indicated: $ 9,400.00

A quasi-judicial hearing has been pre-scheduled in Room 116, 111 West Chesapeake Avenue, Towson, Maryland, for: Date: 6/24/03 Time: 9:00 AM

Citation must be served by: Date: 5/23/03

I do solemnly declare and affirm, under the penalty of perjury, that the contents stated above are true and correct to the best of my knowledge, information, and belief.

Print Name: Paul E Hahne

5/8/03 Date

Inspector's Signature

SEE REVERSE SIDE FOR ADDITIONAL DETAILS AND INFORMATION

NOTICE OF INTENTION TO DEFEND

Print Name:	Citation/Case No.:

Address:

Date

Defendant's Signature

VIOLATION SITE

Baltimore County
Department of Permits and
Development Management

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

Code Enforcement:	410-887-3351	Plumbing Inspection:	410-887-3620
Building Inspection:	410-887-3953	Electrical Inspection:	410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CITATION

SERVE ON RESIDENT AGENT, CORPORATE OFFICER, OWNER, TENANT, AS APPLICABLE

Citation/Case No.	Property No.	Zoning:
03-2247	19000/4868	

Name(s): Seminary Galleria LLC

Address: 10 Parks Ave

Violation Location: 1447 York Rd.

Violation Dates: 5/5/03 thru 6/24/03

BALTIMORE COUNTY FORMALLY CHARGES THAT THE ABOVE-NAMED PERSON(S) DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS OR REGULATIONS:

BCZR 101, 102.1, 409.2 and BCC 26-121 A. Failure to revise approved site plan prior to creating additional parking spaces and enlarging paved area of parking lot

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Citation must be served by: Date: 5/23/03

I do solemnly declare and affirm, under the penalty of perjury, that the contents stated above are true and correct to the best of my knowledge, information, and belief.

Print Name: Paul C Hohne

5/8/03 (Date) Paul C Hohne (Inspector's Signature)

SEE REVERSE SIDE FOR ADDITIONAL DETAILS AND INFORMATION

NOTICE OF INTENTION TO DEFEND

Print Name:	Citation/Case No.:

Address:

Date Defendant's Signature

AGENCY

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

County Office Building, Room 119
111 West Chesapeake Avenue
Towson, Maryland 21204

BALTIMORE COUNTY, Plaintiff, vs. Seminary Galleria LLC, Defendant

Case # 03-2247 Violation Address 1447 York Rd Zip _____

Hearing Date / / Issued Date / / Expiration Date / /

Author of Citation Paul Hohne

REQUEST FOR SERVICE

Please serve the attached process on the person shown.

ORDER FOR SERVICE

You are hereby commanded to serve the attached process and to make your return promptly on this Order if served, and if you are unable to serve, you are to make your return on this Order and return the original process no later than the last day following the termination of the validity of the process.

PROOF OF SERVICE

I hereby CERTIFY that:

A Citation and all other papers filed with it were served by restricted delivery mail, return card attached.

__ A Citation and all other papers filed with it were served by personal delivery to _____
Individual or agent served

_____ Zip _____ on _____ _____ a.m. p.m.
At this address Date Time

Description of Person Served: Race _____ Sex: M F Height: ___ ft. ___ in Wt. _____ lbs.
Age: _____ yrs. Other: _____

Telephone verification of citation acknowledgment from _____ on _____

I was unable to serve:

1st Attempt _____ _____ a.m. p.m. because _____ _____ initials

2nd Attempt _____ _____ a.m. p.m. because _____ _____ initials

3rd Attempt _____ _____ a.m. p.m. because _____ _____ initials

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief, and do further affirm that I am a competent person over 18 years of age and not a party to the case.

W. Chesapeake Ave. Towson, MD 21204
Server's Address

410-887-3351
Telephone

Paul Hohne 5.14.03

PLEASE *PRINT* LEGIBLY

SIGN-IN SHEET

Name	Address	City, State	Zip Code
*President of Bridlewood Community Assoc. Liza DeBolt	48 Thornhill Rd	Lutherville, MD	21093
Tom DeBolt	48 THORNHILL RD	LUTHERVILLE, MD	21093
Katy Thomsen	1523 Pickett Rd	Lutherville, MD	21093
LARRY TOWNSEND DUL. VAL IMP. ASSOC GEN. TIM COMM COUNCIL	1111 LOMBARDY RD	LUTHERVILLE MD	21093
Stephanie McDonald	28 E Seminary Ave	Lutherville MD	21093
RICHARD HURD	16 E. Seminary Ave	Lutherville	21093

Revised 4/17/00

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael L. Quinn, ESQ
1 South 27th Floor
Baltimore, MD 21202

#03-2247

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X D. SMITH ☐ Agent ☐ Addressee

B. Received by (Printed Name) D. SMITH C. Date of Delivery 5/9

D. Is delivery address different from item 1? ☑ Yes
If YES, enter delivery address below: ☐ No

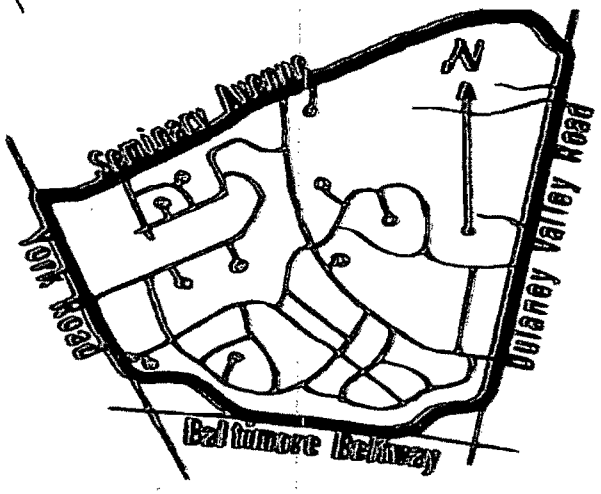
3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7002 1000 0005 2083 7623

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

Post 10A



Dulaney Valley Improvement Association

p.o. box 102
lutherville, md. 21093

RESOLVED: That the Dulaney Valley Improvement Association shall, from January 1, 2004 to January 31, 2005 assign official responsibility for review, representation, and action on all zoning, development, and code enforcement matters to the Executive Zoning Committee which consists of the following officers:

CONRAD PONIATOWSKI, PRESIDENT

LAWRENCE TOWNSEND, VICE PRESIDENT

MAXWELL COLLINS, TREASURER

As witness our hands and seal this 20th day of February, 2004.

ATTEST: DULANEY VALLEY IMPROVEMENT ASSOCIATION

Recording Secretary

President

Pt #4

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 09 **Account Number** - 1900014868

Owner Information

Owner Name:	SEMINARY GALLERIA LLC	**Use:**	COMMERCIAL
		Principal Residence:	NO
Mailing Address:	10 PARKS AVE COCKEYSVILLE MD 21030-4922	**Deed Reference:**	1) /13148/ 443 2)

Location & Structure Information

Premises Address
1447 YORK RD

Legal Description
4.346 AC PARCEL B
HSE #1431-47
GALLERIA

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
61	19	74					B	81	Plat Ref: 53/ 78

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1985	144,328 SF	189,311.00 SF	15

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	1,946,500	1,946,500		
Improvements:	10,649,700	11,015,700		
Total:	12,596,200	12,962,200	12,840,200	12,962,200
Preferential Land:	0	0	0	0

Transfer Information

Seller:	SEMINARY LIMITED PARTNERSHIP	**Date:**	09/14/1998	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/13148/ 443	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Part II B

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District -** 09 **Account Number -** 2000003391

Owner Information

Owner Name:	SEMINARY GALLERIA LLC	**Use:**	COMMERCIAL
		Principal Residence:	NO
Mailing Address:	SUITE 300 216 SCHILLING CIR HUNT VALLEY MD 21031-8632	**Deed Reference:**	1) /13148/ 443 2)

Location & Structure Information

Premises Address
YORK RD

Legal Description
.475 AC ESR YORK RD
RER 340 FT
300 N GREENRIDGE RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
61	19	454						81	Plat Ref:

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		20,691.00 SF	06

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	103,400	103,400		
Improvements:	20,900	20,300		
Total:	124,300	123,700	123,700	123,700
Preferential Land:	0	0	0	0

Transfer Information

Seller:	1317 YORK ROAD ASSOCIATES	**Date:**	09/14/1998	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/13148/ 443	**Deed2:**	
Seller:	BAPTIST CONVENTI ON OF MD DEL INC	**Date:**	05/23/1985	**Price:**	$50,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 6929/ 385	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Pet
Ex
12

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the ~~(Board of Directors)~~ (Zoning Committee) of the Greater Towson Council of Community Assoc., Inc ~~Association~~.

J. Donald Gerding, Chair, Zoning Committee

ATTEST: The Greater Towson Council of Community Assoc. Inc ~~Association~~

Secretary

Donald L. Wright
President

DATE: 17th June, 2004

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 1447 York Road

which is presently zoned _____

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

Attorney For Petitioner:

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

Signature

Levin & Gann, PA
Company

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

Towson Maryland 21204
City State Zip Code

Legal Owner(s):

Seminary Galleria, LLC
Name - Type or Print

By: Teresa Rosier
Signature Teresa Rosier, Authorized Member

Name - Type or Print

Signature

c/o Hill Managment 9640 Deereco Road 410-561-1300
Address Telephone No.

Timonium MD 21093
City State Zip Code

Representative to be Contacted:

Bruce E. Doak, PLS Gerhold, Cross & Etzel, Chtd.
Name

320 E. Towsontown Blvd., Suite 100 410-823-4470
Address Telephone No.

Towson MD 21286
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By D. THOMPSON Date 7/31/03

10/2/03

Case No. 04-052-SPHA

REV 9/15/98

Attachment 1

PETITION FOR SPECIAL HEARING

CASE NO: 04-052-SPHA

Address: 1447 York Road

Legal Owners: Seminary Galleria, LLC

Present Zoning:

REQUESTED RELIEF:

"*why the Zoning Commissioner should approve*": [1] in accordance with BCZR § 409.8B, commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the plan filed herewith; [2] in lieu of the companion variance requested herewith, approval of a modified parking plan and modified parking and landscape requirements for the proposed parking areas in accordance with the specific detail shown on the Plan filed herewith; [3] the Plan filed herewith as the 3rd Amendment to the CRG for *The Galleria Tower & The Galleria*; and [4] such additional relief as the nature of the parking shown on the accompanying plan may require.

04-052-SPHA

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 1447 York Road

which is presently zoned _____

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

SEE ATTACHED

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

SEE ATTACHED

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

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

Contract Purchaser/Lessee:

NONE
Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

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

Signature

Levin & Gann, PA Nottingham Centre, 8th Floor
Company

502 Washington Avenue 410-321-0600
Address Telephone No.

Towson, MD 21204
City State Zip Code

Legal Owner(s):

Seminary Galleria, LLC
Name - Type or Print

By. Teresa Rosier
Signature Teresa Rosier, Authorized Member

Name - Type or Print

Signature

c/o Hill Management 9640 Deereco Road 410-561-1300
Address Telephone No.

Timonium MD 21093
State Zip Code

Representative to be Contacted:

Bruce E. Doak, PLS Gerhold, Cross & Etzel, Chtd.
Name

320 E. Towsontown Blvd., Suite 100 410-823-4470
Address Telephone No.

Towson MD 21286
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 04-052-SPHA

Reviewed By D.THOMPSON Date 7/3/03

10/2/03 D Ofrecer

REV 9/15/98

Attachment 1

PETITION FOR VARIANCE
[Alternate Relief]

CASE NO: 04-052-SPHA

Address: 1447 York Road

Legal Owners: Seminary Galleria, LLC

Present Zoning:

REQUESTED RELIEF:

In the event that the requested modified parking plan is not approved: [1] a variance from: BCZR §§ 409.8.A to permit parking spaces to be located within 10 feet of the right of way of a public street utilizing existing landscaping; and [2] for such additional relief as the nature of this request and the parking layout on the Plan filed herewith may require.

JUSTIFICATION:

1. Parking adjoins additional commercial parking on the same lot;

2. Existing topographic constraints; and

3. For such further reasons that will be presented at the hearing on this Petition.

04-052-SPHA

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906
Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

July 22, 2003

SEMINARY/GALLERIA
1447 YORK ROAD
BALTIMORE COUNTY, MARYLAND

All that piece or parcel of land situate, lying and being in the Fifteenth Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at a point at the intersection on the southeast side of the intersection of York Road and Seminary Avenue, thence, running and binding on the south side of Seminary Avenue, the following two courses and distances, viz: (1) North 80 degrees 33 minutes 50 seconds East 144.10 feet, (2) A curve bearing to the left with a radius of 1,361.41feet and arc length of 311.68 feet (chord of North 74 degrees 00 minutes 20 seconds East 311.00 feet, and (3) North 67 degrees 26 minutes 50 seconds East 241.28 feet, thence leaving the side of Seminary Avenue and running and binding on the following fifteen courses and distances, viz: (4) South 21 degrees 42 minutes 10 seconds East 609.60 feet, (5) South 68 degrees 17 minutes 50 seconds West 240.00 feet, (6) South 21 degrees 48 minutes 10 seconds East 182.60 feet, (7) South 68 degrees 17 minutes 50 seconds West 69.89 feet, (8) South 21 degrees 42 minutes 10 seconds East 15.00 feet, (9) South 68 degrees 17 minutes 50 seconds West 50.36 feet, (10) North 21 degrees 48 minutes 10 seconds East 102.22 feet, (11) North 68 degrees 57 minutes 00 seconds East 20.00 feet, (12) North 21 degrees 48 minutes 10 seconds West 95.6 feet, (13) North 21 degrees 48 minutes 10 seconds West 190.00 feet, (14) South 68 degrees 08 minutes 00 seconds West 353.23 feet, (15) North 12 degrees 31 minutes 35 seconds West 6.71 feet, (16) South 68 degrees 23 minutes 00 seconds West 9.00 feet , (17) North 21 degrees 37 minutes 00 seconds West 467.34 feet, and (18) A line curving to the right of a radius 30.00 feet an arc length of 10.73 feet (chord North 36 degrees 45 minutes 39 seconds East 10.65 feet) to the zoning point of beginning.

Containing 8.42 Acres of land, more or less.

Note: This description only satisfies the requirements of the Office of Zoning and is not to be used for the purposes of conveyance.

STATE OF MARYLAND
BRUCE EDWIN DOAK
No. 531
REGISTERED
PROPERTY LINE SURVEYOR
7/23/03

X:\Seminary\seminarygalldescrip..doc

04-052-SPHA

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 27412

DATE 7/31/03 ACCOUNT 001006b150

AMOUNT $ 650.00

RECEIVED FROM: BRUCE DOAK

FOR: ITEM # 052 CH-052-SPHA

1447 YORK RD.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
7/31/2003	7/31/2003	10:37:02	3

REG WS03 WALKIN LPET LMP
>>RECEIPT # 264054 7/31/2003 OFLN
Dept 5 526 ZONING VERIFICATION
CR NO. 027412
Recpt Tot $650.00
650.00 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: #04-052-SPHA
1447 York Road
N/east side of York Road; corner s/east side of Seminary Avenue
8th Election District - 3rd Councilmanic District
Legal Owner(s): Seminary Galleria, LLC

Special Hearing: to permit commercial parking in a residential zone, approval of a modified parking plan and landscape requirements. To approve as the 3rd Amendment to the CRG for the Galleria Tower & the Galleria, and such additional relief as the accompanying plan may require. **Variance:** to permit parking spaces to be located within 10 feet of the right of way of a public street utilizing existing landscaping; and for such additional relief as the nature of this request and the parking layout on the Plan filed herewith may require.

Hearing: Monday, September 29, 2003 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

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

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

9/234 Sept. 11 C625628

CERTIFICATE OF PUBLICATION

9/11, 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 9/11, 2003.

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

S. Wilkinson

LEGAL ADVERTISING

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906
Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

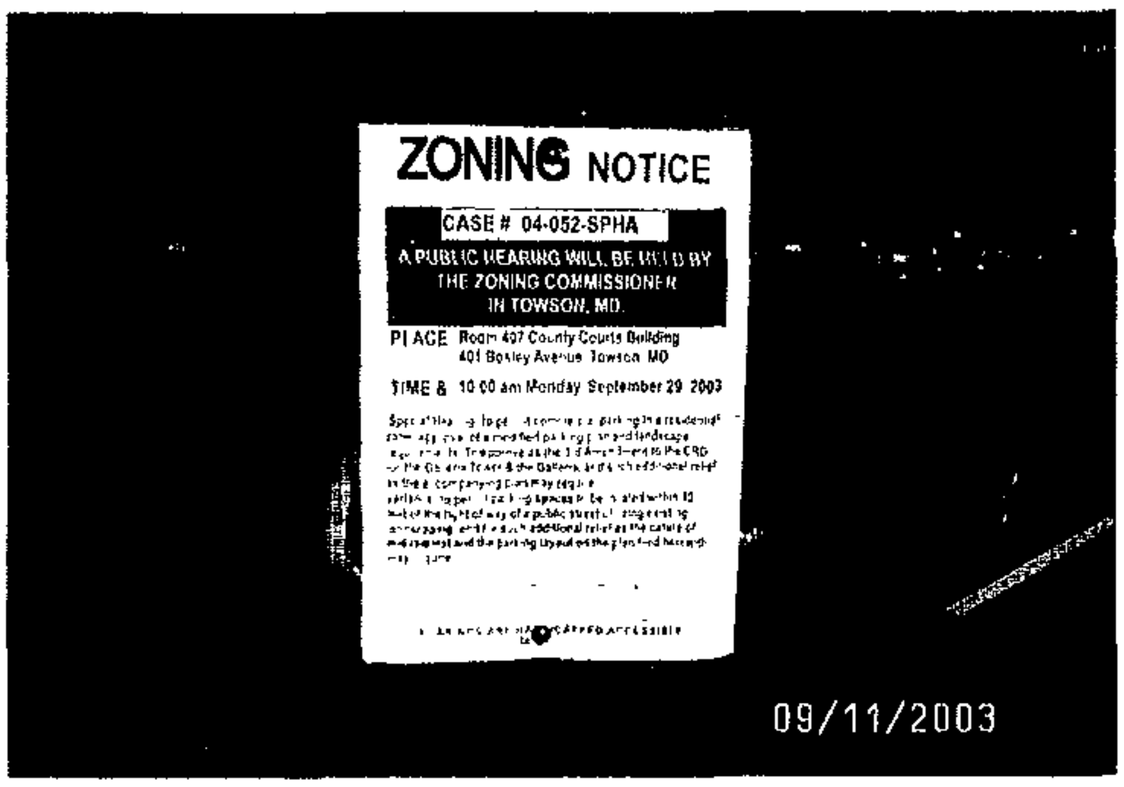
RE: CASE # 04-052-SPHA
PETITIONER/DEVELOPER:
Seminary Galleria, LLC
DATE OF HEARING:
September 29 , 2003

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: REBECCA 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



POSTED ON : September 11, 2003

LOCATION:
1447 York Road
N/east side of York Road,
S/east side of Seminary Avenue

DATE:
September 16, 2003

Bruce E. Doak

SIGNATURE OF SIGN POSTER

BRUCE DOAK

GERHOLD, CROSS & ETZEL, LTD
SUITE 100
320EAST TOWSONTOWN BLVD
TOWSON, MARYLAND 21286
410-823-4470 PHONE
410-823-4473 FAX

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

August 18, 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: 04-052-SPHA
1447 York Road
N/east side of York Road, corner s/east side of Seminary Avenue
8th Election District – 3rd Councilmanic District
Legal Owner: Seminary Galleria, LLC

Special Hearing to permit commercial parking in a residential zone, approval of a modified parking plan and landscape requirements. To approve as the 3rd Amendment to the CRG for the Galleria Tower & the Galleria, and such additional relief as the accompanying plan may require. Variance to permit parking spaces to be located within 10 feet of the right of way of a public street utilizing existing landscaping; and for such additional relief as the nature of this request and the parking layout on the Plan filed herewith may require.

Hearings: Monday, September 29, 2003, at 10:00 a.m., in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco
Director

TK:klm

C: Howard Alderman, Jr., Levin & Gann, 502 Washington Ave., 8th Floor, Towson 21204
Seminary Galleria, Teresa Rosier, Hill Mgmt., 9640 Deereco Rd., Timonium 21093
Bruce Doak, Gerhold, Cross, Etzel, 320 E. Towsontown Blvd., Ste. 100, Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, SEPTEMBER 13, 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
Thursday, September 11, 2003 Issue - Jeffersonian

Please forward billing to:
Seminary Galleria, LLC
Hill Management
9640 Deereco Road
Timonium, MD 21093

410-561-1300

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: 04-052-SPHA
1447 York Road
N/east side of York Road, corner s/east side of Seminary Avenue
8th Election District – 3rd Councilmanic District
Legal Owner: Seminary Galleria, LLC

Special Hearing to permit commercial parking in a residential zone, approval of a modified parking plan and landscape requirements. To approve as the 3rd Amendment to the CRG for the Galleria Tower & the Galleria, and such additional relief as the accompanying plan may require. Variance to permit parking spaces to be located within 10 feet of the right of way of a public street utilizing existing landscaping; and for such additional relief as the nature of this request and the parking layout on the Plan filed herewith may require.

Hearings: Monday, September 29, 2003, at 10:00 a.m., in Room 407, County Courts Building, 401 Bosley 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.

Baltimore County
Department of Permits and
Development Management

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

September 26, 2003

Howard Alderman
Levin & Gann, P.A.
Nottingham Centre, 8th Floor
502 Washington Avenue
Towson, MD 21204

Dear Mr. Alderman:

RE: Case Number: 04-052-SPHA, 1447 York Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on July 31, 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
Seminary Galleria, LLC, Teresa Rosier, 9640 Deereco Road, Timonium 21093
Bruce Doak, Gerhold, Cross & Etzel, 320 E. Towsontown Blvd., Ste. 100, Towson 21286

Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: August 26, 2003

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

SUBJECT: 1447 York Road

INFORMATION:

Item Number: 04-052

Petitioner: Seminary Galleria, LLC

Zoning:

Requested Action: Variance/Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Office of Planning recommends that the petitioner's request be **DENIED**. The proposed expansion of the parking area would eliminate the only landscaped area on the subject site opposite the residential development on Seminary Avenue.

Prepared by: Martha Cumpl

Section Chief: Lynn Lanham

AFK/LL:MAC:

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

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

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 8.13.03

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

RE: Baltimore County
Item No. 052 DT

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

County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

August 13, 2003

ATTENTION: Rebecca Hart

Distribution Meeting of: August 11, 2003

Item No.: 4-48-SPHA 4-49-SPH 4-50-A 4-51-A 4-52-SPHA 4-53-SPHA 4-54-A 4-55-A 4-56-A 4-57-A 4-58-A 4-59-A 4-60-A 4-61-A 4-62-a 04-43-SPH 03-0545-X

Dear Ms. Hart:

Pursuant to your request, the referenced properties 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.

6. 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

9/29

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: August 26, 2003

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

SUBJECT: 1447 York Road

INFORMATION:

Item Number: 04-052

Petitioner: Seminary Galleria, LLC

Zoning:

Requested Action: Variance/Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Office of Planning recommends that the petitioner's request be **DENIED.** The proposed expansion of the parking area would eliminate the only landscaped area on the subject site opposite the residential development on Seminary Avenue.

Prepared by: Martha Cumpton

Section Chief: Lynn Lanham

AFK/LL:MAC:

RECEIVED
AUG 29 2003
ZONING COMMISSIONER

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: September 25, 2003

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

SUBJECT: Zoning Advisory Committee Meeting
For August 18, 2003
Item No. 052

The Bureau of Development Plans Review has reviewed the subject-zoning item.

The ten proposed parking spaces along the main travel lane shall be eliminated and be off the aisle ways.

RWB:CEN:jrb

cc: File

ZAC-08-18-2003-ITEM NO 052-09252003

BALTIMORE COUNTY, MARYLAND
Interoffice Memorandum

DATE: July 31, 2003

TO: Zoning Commissioner & File

FROM: Donna Thompson, Planner II, Zoning Review

SUBJECT: Item #052, 04-052-SPHA
1447 York Road

Applicant, Bruce E. Doak with engineering firm Gerhold, Cross & Etzel submitted plan for Special Hearing and Variance for the above referenced address. Advised Mr. Doak that this plan is illegible in regards to parking calculations, etc. Mr. Doak insisted on filing this plan as is and would improve plan if necessary.

DT

2004 APPEALS

10/10/03	03-456-SPH	Petition for Special Hearing 111 Mellor Avenue NE/s of Mellor Ave., 1,383' s/of c/l of Frederick Road 1st ED – 1st CD D.A. Drenner Concrete –Owners, Linda Amos & Suzanne Gigliotti – Petitioners	Benjamin Bronstein	11/04/03
10/16/03	04-072-A	Petition for Administrative Variance 1128 Maple Road W/side of Maple Road, 430' n/of Holly Neck Road 15th ED – 6th CD Janet and Edward Palasik – Petitioners	People's Counsel	11/12/03
10/28/03	04-021-SPHXA	Petition for Special Hearing, Exception and Variance Rosewood Lane & Garrison Forest Lane (Rosewood State Hospital Prop.) W/s of Garrison Forest Rd., 343.6' s/of c/l of Rosewood Lane 3rd ED – 3rd CD Dept. of Health & Mental Hygiene – Legal Owners	J. Carroll Holzer	11/13/03
10/28/03	04-010-SPHX	Petition for Special Hearing and Special Exception 15027 Falls Road E/side of Falls Road, 550 feet +/- northwest of Butler Road 5th ED - 3rd CD Butler Stone Quarry, Inc. Lynda Steuart - Legal Owner	K. Donald Proctor	11/13/03
10/28/03	04-011-SPHX	Petition for Special Hearing and Special Exception 15027 Falls Road E/side of Falls Road, 550 feet +/- northwest of Butler Road 5th ED - 3rd CD Butler Stone Quarry, Inc. Lynda Steuart - Legal Owner	K. Donald Proctor	11/13/03
10/30/03	04-052-SPHA	Petition for Special & Variance 1447 York Road NE/s York Road, c SE/s Seminary Ave. 8th ED – 3rd CD Seminary Galleria - LLC	Howard Alderman	12/1/03
11/12/03	03-609-A	Petition for Variance S/s Elizabeth Avenue, 26" E of the c/l Washington Avenue 13th ED – 1st CD James and Joellen Trader	Lansdowne Imp. Association	11/24/03

(3)

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
UPPER COURT DECISIONS

DATE: July 27, 2005

TO: Board Members

FROM: Kathi

SUBJECT: Case No. 04-052-SPHA / *In the Matter of: Seminary Galleria, LLC*
Civil Action No. 03-C-04-11000

Attached FYI is a copy of the Circuit Court decision in *Seminary Galleria.*

4/26/05 - While agreeing with the Board's decision to deny Petitioner's request for approval of modified commercial parking in split residential/business zone; HOWEVER, REMANDED to the Board for a more definite analysis to include "complete findings...as to the sole issue of denying...issuance of use permit for additionally constructed parking spaces.

Panel - Wescott, D. Mohler, Quinn

Should anyone wish to read this Order and/or obtain a copy, please let me know.

kathi

Lauy -
Copy attached
I have the complete
file - let me know
what you need out of it.
Kathi

Department of Permits and Development Management

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

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

November 25, 2003

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

Dear Mr. Alderman:

RE: Case :04-052-SPHA, 1447 York Road

Please be advised that an appeal of the above-referenced case was filed in this office on October 30, 2003 by Howard Alderman. 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
Director

TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Seminary Galleria, Teresa Rosier, Hill Mgmt., 9640 Deereco Rd., Timonium 21093
Bruce Doak, Gerhold, Cross & Etzel, 320 E. Towsontown Blvd., Ste. 100, Towson 21286

APPEAL

Petition for Special Hearing and Variance
1447 York Road
NE/S of York Rd., corner SE side of Seminary Ave.
8th Election District – 3rd Councilmanic District
Seminary Galleria, LLC – Legal Owner

Case No.: 04-052-SPHA

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DEC 0 1 2003
BALTIMORE COUNTY
BOARD OF APPEALS

✓ Petition for Special Hearing and Variance (July 31, 2003)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (August 18, 2003)

✓ Certification of Publication (September 11, 2003)

✓ Certificate of Posting (September 11, 2003) by Bruce Doak

✓ Entry of Appearance by People's Counsel (August 19, 2003)

✓ Petitioner(s) Sign-In Sheet
One Sheet

✓ Protestant(s) Sign-In Sheet
One Sheet

✓ Citizen(s) Sign-In Sheet
One Sheet

✓ Zoning Advisory Committee Comments

✓ Petitioners' Exhibit
1. Not in file (11/25/03)
✓ 2. CRG Plan to accompany photographs
✓ 3. 14 Photos

✓ Protestants' Exhibits:
✓ None

Miscellaneous (Not Marked as Exhibit)
✓ 1. Active Violation Case Document from Code Enforcement
✓ 2. Special Regulations (page 4-43)
✓ 3. BCZR (page 4-44)
✓ 4. BCZR (page 4-46)

✓ Deputy Zoning Commissioner's Order (DENIED – October 2, 2003)

✱ ✓ Notice of Appeal received on October 30, 2003 from Howard Alderman

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Howard Alderman, Levin & Gann, 502 Washington Ave., 8th Fl., Towson 21204
Seminary Galleria, LLC, 9640 Deereco Rd., Timonium 21093
Bruce Doak, Gerhold, Cross & Etzel, 320 E. Towsontown Blvd., Ste. 100, Towson 21286

HOWARD L ALDERMAN JR
LEVEN & GANN
502 WASHINGTON AVENUE
8TH FLOOR
TOWSON, MD 21204
Attorney for Petitioner/Appellant

TERESA ROSIER
SEMINARY GALLERIA
C/O HILL MANAGEMENT
9640 DEERECO ROAD
TIMONIUM MD 21093
Petitioner/Appellant

BRUCE DOAK
GERHOLD, CROSS & ETZEL
320 E. TOWSONTOWN BLVD
STE 100
TOWSON MD 21286
Representative to be contacted
Petitioner/Appellant

LARRY TOWNSEND
GTCC & DVIA
1111 LONGBROOK ROAD
LUTHERVILLE MD 21093

RICHARD HURD
16 E SEMINARY AVE
LUTHERVILLE, MD 21093

RICHARD PARSONS
412 WOODBINE AVENUE
TOWSON MD 21204

ERIC FLESHER
10 E SEMINARY AVE
LUTHERVILLE MD 21093

DON GERDING
335 OLD TRAIL
BALTIMORE MD 21212
410-825-0894

Case No. 04-052-SPHA

In the Matter of: Seminary Galleria, LLC – Legal Owner /Petitioner

SPH – To allow commercial parking on same lot as residential zone; ilo companion VAR request, approval of modified parking plan and landscape requirements; 3rd amendment to CRG Plan; additional relief as parking may require
VAR – If modified parking plan is not approved – variance relief is requested to permit parking spaces to be within 10' of r/w of public street utilizing existing landscaping; additional relief as parking plan may require.

10/02/03 – D.Z.C.'s decision in which Petitions for Special Hearing and Variance were DENIED.

2/02/04 – Request to be included in subject file (Seminary Galleria 04-052-SPHA):
Add to file for notices, etc.:

DON GERDING
335 OLD TRAIL
BALTIMORE MD 21212
410-825-0894

2/12/04 – Letter from Larry Townsend to Tim Kotroco regarding this appeal and lack of notice to protestants, etc.

5/06/04 – Notice of Assignment sent to following; scheduled for hearing on Thursday, July 1, 2004 at 10:00 a.m.:

Howard L. Alderman, Jr., Esquire
Teresa Rosier /Seminary Galleria
c/o Hill Management
Bruce Doak /Gerhold, Cross & Etzel
Larry Townsend /GTCC and Dulaney Valley
Improvement Association
Richard Hurd
Richard Parsons
Eric Flesher
Don Gerding
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

5/11/04 -- Requested copy of Notice of Assignment sent 5/11/04 to ERNIE ESCOLA; 43 THORNHILL ROAD LUTHERVILLE MD 21093

7/01/04 – Board convened for hearing (Wescott, Mohler, Quinn); completed this date; memos due from parties on 7/30/04; deliberation assigned for 8/31/04; notice to be sent.

7/06/04 – Notice of Deliberation sent to parties; assigned for Tuesday, August 31, 2004 at 9:00 a.m.; FYI copy to 4-1-6.

7/15/04 – T/C from Larry Townsend – should read GTCCA; also Mr. Tanczyn's name was omitted from Notice of Deliberation (had entered appearance at hearing). Copy sent this date to Mr. Tanczyn via FAX.

7/30/04 – Memorandum of People's Counsel filed this date; Memorandum of Dulaney Valley Improvement Association filed by Michael P. Tanczyn, Esquire; Owner's Post-Hearing Memorandum filed by Howard L. Alderman, Jr., Esquire. Copies to 4-1-6 (delib assigned for 8/31/04).

8/31/04 – Board convened for deliberation (Wescott, Mohler, Quinn); denied special hearing; denied variance request. Written decision to be issued; appellate period to run from date of written order. (1)

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE NE/S OF York Road corner SE side of Seminary Avenue 8th Election District 3rd Councilmanic District (1447 York Road)	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY
Seminary Galleria, LLC, By: Teresa Rosier, Authorized Member Petitioner	*	CASE NO. 04-052-SPHA

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

ENTRY OF APPEARANCE

PLEASE enter the appearance of the undersigned for Dulaney Valley Improvement Association, Protestants in the above captioned case.

Respectfully submitted,

MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823
Attorney for the Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 1st day of July, 2004, a copy of the foregoing Entry of Appearance was hand-delivered to Howard L. Alderman, Jr., Esquire, 8th Floor, Nottingham Centre, 502 Washington Avenue, Towson, Maryland 21204-4525, Attorney for the Petitioner.

MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823
Attorney for the Protestants

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
	1447 York Road; NE/side York Road corner SE/side Seminary Avenue	*	ZONING COMMISSIONER
	8th Election & 3rd Councilmanic Districts	*	FOR
	Legal Owner(s): Seminary Galleria, LLC Teresa Rosier, Authorized Member Petitioner(s)	*	BALTIMORE COUNTY
		*	04-052-SPHA

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

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

RECEIVED
AUG 19 2003
Per.....

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 19th day of August, 2003, a copy of the foregoing Entry of Appearance was mailed to Bruce Doak, PLS, Gerhold, Cross & Etzel, Chtd, 320 E Towsontowne Boulevard, Suite 100, Towson, MD 21286 & Howard L Alderman, Jr, Esquire, Levin & Gann PA, 502 Washington Avenue, Towson, MD 21204, Attorney for Petitioner(s).

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

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:	Seminary Galleria, LLC Case No.: 04-052-SPHA	
DATE:	August 31, 2004	
BOARD/PANEL:	Lawrence S. Wescott Donald L. Mohler III John P. Quinn	LSW DLM JPQ
RECORDED BY:	Theresa R. Shelton / Legal Secretary	

PURPOSE: To deliberate the Petition for Variance filed by Seminary Galleria, LLC, Teresa Rosier, Authorized Member, through their attorney Howard L. Alderman, requesting to permit parking spaces to be located within 10 feet of the right of way of a public street utilizing existing landscaping and the Petition for Special Hearing requesting to permit commercial parking adjacent to existing commercial parking on the same lot in a residential zone; approval of a modified parking plan.

PANEL MEMBERS DISCUSSED THE FOLLOWING:
SPECIAL HEARING

- 409.8 Design standards. Requirements for parking facilities in all zones.
- 409.8B. Business or industrial parking in residential zones.
- 1. Upon application, the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking facilities to meet the requirements of Section 409.6, under the following procedure:
- c. If a formal request for a public hearing is not filed, the Zoning Commissioner, without a public hearing, may grant a use permit for parking in a residential zone if the proposed use meets all the requirements of Section 409.8.B.2. The use permit may be issued with such conditions or restrictions as determined appropriate by the Zoning Commissioner to satisfy the provisions of Section 409.8.B.2 below and to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community.
- 409.12 Other requirements.
- A. The off-street parking requirements in Section 409 shall supersede any off-street parking requirements adopted pursuant to the authority of Section 504.
- B. If the requirements for parking space or loading space in Section 409 would create an undue hardship, the Zoning Commissioner may approve a modified plan upon petition and after a public hearing, the procedure for which is set forth in Section 409.8.B.1 above.

- Plan reviewed by panel – the additional 16 spaces requested would have to go on County right-of-way and screen would have to be placed – not enough room for any plantings, etc.
- Detrimental to neighbors – spaces would be 2 feet of roght-of-way
- Tree would have to be taken down
- Witnesses admit that there are spaces not being used
- No evidence was presented to show a need for the additional spaces; i.e. handicapped spaces

VARIANCE

- Only unique aspect is split zoning
- No cases cited to the uniquesness of the property
- The request was for thconvenience and convenience doesn't meet the standard of law
- Undue hardship not proven
- Management oversight issue – Signs could be placed for 'tenants' etc.; designated parking
- Memorandum indicates that there are already 734 spaces available and zoning requirements are 728.

DECISIONS BY BOARD MEMBERS: Unanimous decision to deny both the Special Hearing and Variance requests.

FINAL DECISION: That the Finding of Fact and Conclusion of Law by the Deputy Zoning Commissioner dated June 2, 2004, in which the DZC denied both the Special Hearing and Variance is AFFIRMED.

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

Respectfully submitted,

Theresa R. Shelton
County Board of Appeals

Baltimore County, 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 30, 2004

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

Re: In the Matter of: Seminary Galleria, LLC
Case No.: 04-52-SPHA

Dear Ms. Bianco:

Enclosed please find the original Memorandum of People's Counsel for Baltimore County along with three copies of such for filing with regard the above-referenced case.

Thank you for your consideration.

Sincerely,

Carole S. Demilio/rmw

Carole S. Demilio
Deputy People's Counsel for Baltimore County

CSD\rmw

cc: Howard L. Alderman, Jr. Esquire
Michael Tancyzn, Esquire,

RECEIVED
JUL 30 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Department of Permits and Development Management

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

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

February 23, 2004

Mr. Larry Townsend, V.P. of DVIA
1111 Longbrook Road
Lutherville, Maryland 21093-6307

Dear Mr. Townsend:

Re: Zoning Case 04-052-SPHA, The Galleria
Appealed to Board of Appeals 10/30/03

Reference is made to your letter to Timothy Kotroco, dated February 9, 2004, which I will respond to. You have stated that the appeal filed in the above reference case appears to not have been properly filed, due to the fact that there was no attorney's affidavit in the file. You have also stated that when you first visited this office on 11/3/03, Mrs. Hart who at that time, shared the docket duties with Mrs. Matthews, couldn't locate the file. You returned the next day and the file was located on Mrs. Matthews' desk with the appeal documented. Finally, you also questioned that since the protestants were not "properly" informed that the appeal could be negated? You were also "alarmed" and that the handling of the matter is "suspect."

I would first apologize for any perceived "suspect" actions by the County that would cause you to be alarmed. Contrary to the tone of your letter, this office is not your enemy. Obviously, if you have a conspiracy theory, the Board of Appeals and Courts would be the proper place to test the theory. Your perception regarding a requirement for an affidavit to place an appeal is also an issue that could be answered by the Board, and if this is determined to be required, I'm sure they will notify us.

You asked, "What happed that caused this case to be so poorly handled?" The answer is "nothing." That is nothing has convinced this office that it was poorly handled. Typically, the docket clerk is not the only person that processes appeals. Notification of appeal letters are sent to the parties of record on the petition form and parties the original order was sent to by the Zoning Commissioner. Also, any special requests within reason are always honored to send additional copies to interested or affected persons.

Your issue concerning a lack of immediate notification of an appeal to the protestants could be addressed before the Board of Appeals should you feel that it may as you say "negate the filing." However, whatever the outcome, I am certain that you were aware of the appeal on November 4th and you will be notified by the Board of any scheduled hearings.

As an aside, you refer to "Zoning Code Rule 8" in your letter, and I'm sure the Board has accepted your letter of representation, even though Zoning Code Rule 8 does not exist. (See C-Chart Article VI Section 603, Appendix "H")

Should you wish to re-review the documents in this office, Mrs. Matthews or myself would be available to help you at your convenience.

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor
Zoning Review

WCR/klm

C: Board of Appeals
File

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

July 30, 2004

RECEIVED
JUL 30 2004
BALTIMORE COUNTY
BOARD OF APPEALS

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

Re: Case No. 04-052-SPHA, 1447 York Road

Dear Clerk:

Enclosed herewith for filing, please find four (4) copies of the Memorandum of Dulaney Valley Improvement Association, regarding the above-captioned matter.

Please feel free to contact me should you have any questions.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.
cc: Dulaney Valley Improvement Association
Howard L. Alderman, Jr., Esquire
Carol S. Demilio, Esquire

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
TELEFAX 410-296-2801

ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

July 30, 2004

HAND DELIVERED
Ms. Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
400 Washington Avenue, Suite 49
Towson, Maryland 21204

RECEIVED
JUL 30 2004
BALTIMORE COUNTY
BOARD OF APPEALS

RE: *IN RE: Seminary Galleria, LLC*
1447 York Road
Case No. 04-052-SPHA
Owner's Post-Hearing Memorandum

Dear Ms. Bianco:

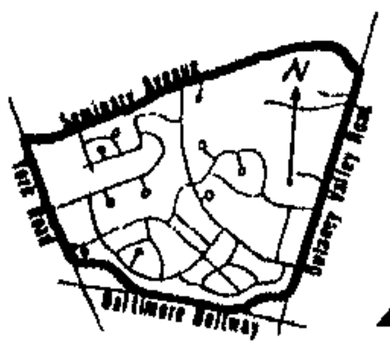
In accordance with the direction received from the Board at the conclusion of the hearing on the above-referenced matter, I am pleased to provide to the Board an original and three (3) copies of the *Owner's Post-Hearing Memorandum*. Should you or any member of the Board desire additional information or additional copies, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosures (4)
c (w/one encl.): Michael P. Tanczyn, Esquire
Carole S. Demilio, Attorney at Law

I Counter
See Card



Dulaney Valley Improvement Association, Inc.

P.O. Box 102 · Lutherville, MD · 21094-0102

Kindly reply to:
1111 Longbrook Road
Lutherville, Maryland 21093-6307

February 9, 2004

Mr. Timothy Kotroco
Director, Permits and Development Management
111 W. Chesapeake Avenue
Baltimore, Maryland 21204

Dear Mr. Kotroco:

This is in reference to Zoning Commissioner's Case 04-52, The Galleria, 1447 York Road.

A hearing was held in this matter before Deputy Zoning Commissioner John Murphy on September 29, 2003. On October 2, 2003, Deputy Commissioner ruled against the petitioners and a copy of his ruling was sent to all that participated in the hearing. The petitioners had thirty (30) days, November 1, 2003, to file an appeal. I was in your office on November 3, 2003, and Miss Hart and I could not locate the file for case 04-52. The next day, I was again in your office and Miss Hart found the file on Miss Matthews' desk with a single page appeal request in the file.

Subsequent to that date I have either spoken to Miss Matthews in person or on the telephone and asked if the protestants have been notified of an appeal. AS OF TODAY, NO PROTESTANT HAS BEEN SO NOTIFED. I checked with Theresa Shelton at the Appeals Board and she confirmed that the file contained the request but noted that the Attorney's Affidavit seemed to be missing. The file does not make any record of the protestants being notified – only the petitioners. She made a note in the file to be sure that the protestants were notified when the Appeal Board set a date for the appeal.

RECEIVED
FEB 12 2004
04-331
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

First – I am not convinced that the appeal was filed before the 30 day deadline. Where was the file on November 3rd?

Second – If the appeal was filed on time it appears that it was not properly filed as the attorney's affidavit is not in the file.

Third – The protestants have yet to be properly notified that an appeal was filed. That seems to violate the spirit if not the intent of the appeal procedure. Thus, has the appeal been improperly handled negating the filing?

I find the handling of this entire matter to be very alarming and I must also say "suspect". By copy of this letter, I am advising the Appeals Board that I will represent the Dulaney Valley Improvement Association under provision of Zoning Code Rule 8 and along with any legal counsel that we might engage in any and all appeals regarding this case, and hereby request the right to appear in this matter.

Please advise what happened that has caused this case to be so poorly handled.

Rules of Practice & Procedure Bd of A.

Thank you.

Very truly yours,

Larry Townsend
Vice President

CC: Appeals Board, Kathleen Bianco
Peoples' Counsel, Pete Zimmerman

Case #04-052-SPHA

The Greater Towson Council of Community Assoc., Inc

GTCCA

P.O. Box 5421, Towson, MD 21295-5421

www.gtcca.org

RESOLVED: That the GREATER TOWSON COUNCIL OF COMMUNITY ASSOCIATIONS, Inc. shall, from January 15, 2004 to January 31, 2005, assign official responsibility for review, representation, and action on all zoning and development matters to the EXECUTIVE BOARD and the Chair and Deputy Chairs of the Zoning Committee, which consist of the following members:

Donald R. Wright, President
Judy Gregory, Vice President
Stacy Weiss, Treasurer
J. Donald Gerding, Zoning Committee Chair .... 335 OLD TRAIL
Richard Parsons, Zoning Committee Deputy Chair BALTIMORE, MD. 21212
Larry Townsend, Zoning Committee Deputy Chair PHONE 410-825-0894

AS WITNESS: Our hands and seal this 15th day of January 2004.

ATTEST: GREATER TOWSON COUNCIL OF COMMUNITY ASSOCIATIONS, Inc.

Donald R. Wright
President

Judith A. Gregory
Vice President

RECEIVED
FEB 0 2 2004
BALTIMORE COUNTY
BOARD OF APPEALS

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 04-052-SPHA
DATE 9/29/03

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Bruce E. Doak	320 E. Towsontown Blvd.	Towson, Mo 21286	
Gerhold Cross & Etzel	Towson Mo 21286		
Howard L Alderman Jr	Levin & Gann PA		
	502 Washington Ave Suite 600	Towson MD 21204	
Teresa Rosier	9640 Deereco Rd (Hill)	Timonium Md 21093	

Case Number 04-052 SPHA

9/23/03

PLEASE ***PRINT*** LEGIBLY

PROTESTANT'S SIGN-IN SHEET

Name	Address	City, State	Zip Code
LARRY TOWNSEND	1111 CONSBROOK ROAD (GTCC AND DVIA)	LUTHERVILLE MD	21093
RICHARD HURD	16 E. SEMINARY AVE	LUTHERVILLE MD	21093
Richard Parsons	412 woodbine Ave	Towson, MD	21204
Eli S. Fisher	10 E Seminary Ave	Lutherville	21093

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 02-052-SPHA
DATE ~~Sept~~ 29, 03

Galleria

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
LONI INGRAHAM	TOWSON TIMES 409 WASHINGTON AVE	2C 21204	~~lingraham~~ lingraham@patuxent.com
	P/S e-mail me decision		

Case Number 04-052 SPHA

9/23/03

PLEASE *PRINT* LEGIBLY

PROTESTANT'S SIGN-IN SHEET

Name	Address	City, State	Zip Code
LARRY TOWNSEND	1111 LONGBROOK ROAD (GTCC AND DVIA)	LUTHERVILLE MD	21093
RICHARD HURD	16 E. SEMINARY AVE	LUTHERVILLE MD	21093
Richard Parsons	412 woodbine Ave	Towson, MD	21204
Eli Fleisher	10 E Seminary Ave	Lutherville	21093

restriction, a restrictive covenant or a binding contractual agreement, including a lease. Any plans approved are conditioned upon and subject to periodic review by the Director to ensure that adequate parking arrangements continue to exist. **[Bill No. 144-1997]**

409.8 Design standards.

A. Requirements for parking facilities in all zones. All off-street parking facilities shall be subject to the following requirements:

1. Design, screening and landscaping. Design, screening and landscaping shall be provided in accordance with the Landscape Manual and all other manuals adopted pursuant to Section 26-283 of the Baltimore County Code, 1988 Edition, as revised.

2. Surface. A durable and dustless surface shall be provided and shall be properly drained so as not to create any undesirable conditions.

3. Lighting. Any fixture used to illuminate any parking facility shall be so arranged as to reflect the light away from residential lots and public streets. Light standards shall be protected from vehicular traffic by curbing or landscaping.

4. Distance to street line. No parking space in a surface parking facility for a nonresidential use shall be closer than 10 feet to the right-of-way line of a public street, excluding vehicle overhang, except that in the C.T. District of Towson such setback is not required if the parking facility is screened from the street in accordance with the Landscape Manual.

5. Dead ends. All dead-end aisles shall be designed to provide sufficient backup area for the end parking spaces.

6. All parking spaces must be striped. Striping shall be maintained so as to remain visible.

B. Business or industrial parking in residential zones.

1. Upon application, the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking facilities to meet the requirements of Section 409.6, under the following procedure:

a. On the property in question, notice of the application for the use permit shall be conspicuously posted for a period of 15 days following the filing of the application.

b. Within the fifteen-day posting period, any interested person may file a formal request for a public hearing with the Zoning Commissioner in accordance with Section 500.7.

c. If a formal request for a public hearing is not filed, the Zoning Commissioner, without a public hearing, may grant a use permit for parking in a residential zone if the proposed use meets all the requirements of Section 409.8.B.2. The use permit may be issued with

such conditions or restrictions as determined appropriate by the Zoning Commissioner to satisfy the provisions of Section 409.8.B.2 below and to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community.

d. If a formal request for a public hearing is filed, the Zoning Commissioner shall schedule a date for the public hearing, such hearing to be held not less than 30 days and not more than 90 days from the date of filing of the request for public hearing.

e. Following the public hearing, the Zoning Commissioner may either deny or grant a use permit conditioned upon:

(1) His findings following the public hearing;

(2) The character of the surrounding community and the anticipated impact of the proposed use on that community;

(3) The manner in which the requirements of Section 409.8.B.2 and other applicable requirements are met; and

(4) Any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations.

2. In addition to all other applicable requirements, such parking facilities shall be subject to the following conditions:

a. The land so used must adjoin or be across an alley or street from the business or industry involved.

b. Only passenger vehicles, excluding buses, may use the parking facility.

c. No loading, service or any use other than parking shall be permitted.

d. Lighting shall be regulated as to location, direction, hours of illumination, glare and intensity, as required.

e. A satisfactory plan showing parking arrangement and vehicular access must be provided.

f. Method and area of operation, provision for maintenance and permitted hours of use shall be specified and regulated as required.

g. Any conditions not listed above which, in the judgment of the Zoning Commissioner, are necessary to ensure that the parking facility will not be detrimental to adjacent properties.

C. Requirements for parking bays on a street. Parking bays on a street are subject to the following requirements and all applicable requirements of the Department of Public Works:

Use	Required Stacking Spaces
Restaurant, fast food	7 per station, 5 of which must be behind the order board **[Bill No. 110-1993]**
Restaurant, fast food, drive-through only	Single drive-through lane: 10 if walkup window is provided; 12 if there is no walkup window **[Bill No. 110-1993]** Double drive-through lane: 16 with no less than 5 stacking spaces per lane if walkup window is provided; 20 with no less than 5 per lane if there is no walkup window. **[Bill No. 110-1993]**
Other uses	As determined by the Zoning Commissioner

B. The drive-through lane shall be distinctly marked by special striping or pavement markings and shall not block entry to or exit from off-street parking spaces otherwise required on the site. The drive-through lane may not cross the principal pedestrian access to the facility, except that, in the case of a drive-through only restaurant with two drive-through lanes, the drive-through lanes are permitted to cross the pedestrian access if a painted crosswalk in association with warning signs for pedestrians and motorists is provided. The crosswalk may not be located between vehicle stacking spaces. **[Bill No. 110-1993]**

409.11 Off-street loading. For any building used for commercial or industrial purposes, adequate space for off-street parking to accommodate the loading and unloading of materials shall be provided, consistent with the size and proposed use of the building. Such space, whether inside or outside a building, shall be in addition to the parking spaces required by Subsection 409.6 and shall be located and designed so as not to impede normal vehicular circulation.

409.12 Other requirements.

A. The off-street parking requirements in Section 409 shall supersede any off-street parking requirements adopted pursuant to the authority of Section 504.

B. If the requirements for parking space or loading space in Section 409 would create an undue hardship, the Zoning Commissioner may approve a modified plan upon petition and after a public hearing, the procedure for which is set forth in Section 409.8.B.1 above.

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

07/27/05

Case Number: 03-C-04-011000 AE
Date Filed: 10/21/2004
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :
CTS Start : Target :

In The Matter of: Seminary Galleria L L C

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	04 052 SPHA
Case Folder ID	C04011000V01

INVOLVED PARTIES

Type	Num	Name(Last.First.Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
PET	001	Seminary Galleria L L C		BT DO 04/26/05	10/21/04
			Party ID: 0710044		
		Capacity : Appellant			
		Mail: C O Hill Management Services Inc 9640 Deereco Road Timonium, MD 21093	10/21/04	10/21/04 TLS	10/21/04 TLS
		Attorney: 0013912 Alderman, Howard L Levin & Gann, P.A. 8th Floor,nottingham Ctr 502 Washington Avenue Towson, MD 21204 (410)321-0600	Appear. 10/21/2004		10/21/04

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
ITP	001	County Board Of Appeals For Baltimore County Party ID: 0710040		BT DO 04/26/05	10/21/04
Mail:		Old Courthouse Room 49 400 Washington Avenue Towson, MD 21204	10/21/04	10/21/04 TLS	10/21/04 TLS
Attorney		0029075 Zimmerman, Peter M People's Counsel For Baltimore County Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188	Appear. 10/22/2004		10/26/04
		0804268 Demilio, Carole S Deputy Peoples Counsel Old Courthouse Room 47 400 Washington Ave Towson, MD 21204 (410)887-2188	Appear. 10/22/2004		10/26/04
ITP	002	Dulaney Valley Improvement Association Inc Party ID: 0712971		BT DO 04/26/05	11/01/04
Attorney		0012544 Tanczyn, Michael P Michael P. Tanczyn, P.A 606 Baltimore Avenue Suite 106 Baltimore, MD 21204 (410)296-8823	Appear 11/04/2004		11/04/04

CALENDAR EVENTS

Date	Time	Dur	Event Description	Text	SA	Jdg	Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec					
04/04/05	09.30A	02Q	Civil Non-Jury Trial	Y		PC	01	/01	KLS
Held/Concluded			04/04/05 E P.Cavanaugh	Y					
Stenographer(s) Marina Coyle									

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	User	Activity Date
04/26/05	DO	Decree or Order	BT	BEFORE TRIAL/HEARING	JBJ	04/26/05

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	10/21/04	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review	10/20/04	10/21/04	PET001	TBA		04/26/05	TLS JBJ
0001001	Answer	10/22/04	10/26/04	ITP001	TBA		04/26/05	PKE JBJ
0001002	Answer	11/01/04	11/04/04	ITP002	TBA		04/26/05	PH JBJ
0002000	Certificate of Notice	10/21/04	10/25/04	000	TBA		04/26/05	MJ JBJ
0003000	*Transcript of Record from Adm Agency	12/13/04	01/06/05	ITP001	TBA		04/26/05	DR JBJ
0004000	Notice of Transcript of Record Sent	01/06/05	01/06/05	ITP001	TBA		01/06/05	DR DR
0005000	Notice of Transcript of Record Sent	01/06/05	01/06/05	ITP002	TBA		01/06/05	DR DR
0006000	Notice of Transcript of Record Sent	01/06/05	01/06/05	PET001	TBA		01/06/05	DR DR
0007000	Scheduling Order	01/13/05	01/13/05	000	TBA		01/13/05	KLS KLS
0008000	Memorandum	02/07/05	02/10/05	PET001	TBA		02/10/05	MJ MJ
0009000	Appellee's Memorandum	03/04/05	03/08/05	ITP002	TBA		03/08/05	DR DR
0010000	Memorandum	03/18/05	03/22/05	ITP001	TBA		03/22/05	DR DR
0011000	Open Court Proceeding April 4,2005 Hon Patrick Cavanaugh.Hearing had.Decision held sub-curia Opinion and Order to be filed.	04/04/05	04/04/05	000	PC		04/26/05	BH JBJ
0012000	Order remanding case to Baltimore County Board of Appeals as specified	04/26/05	04/26/05	000	PC	Granted	04/21/05	JBJ JBJ
0013000	Docket entries sent to Board of Appeals for Baltimore County	04/28/05	04/28/05	000	TBA			CVM CVM

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	10/22/04	0	no	no	DANS	D	001	001
1YRT	One Year Tickle (Jud	CLOSED	10/20/05	365	no	no	DAAA	D	001	000
EXPU	Exhibit Pickup Notic	CLOSED	06/25/05	30	no	no			000	000
SLTR	Set List For Trial	Done	10/22/04	0	yes	yes	1ANS	T	001	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 County Board Of Appeals For B								
000		B	BOX 440/CBA TRANSC		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track R1 Description. EXPEDITED APPEAL TRACK Custom: Yes
Assign Date 01/13/05 Order Date : 01/13/05
Start Date 01/13/05 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD Rule 2-322(		01/28/05	04/26/05	CLOSED
All Motions (excluding Motions in Limine		02/23/05	04/26/05	CLOSED
TRIAL DATE is	04/04/05	04/13/05	04/04/05	REACHED




Quest
Friendly's
YAKIMA
09/26/2003


09/26/2003


LEASE
Galleria
Galleria
Towers
Hill
410
666-1000
Shell
09/26/2003


09/26/2003


09/26/2003


09/26/2003


09/26/2003


09/26/2003


09/26/2003


09/26/2003


09/26/2003


PSA Financial Center
09/26/2003


Quest Fitness
09/26/2003



Pet 3





Prot Ex 5
Taken 6/19/2004
Saturday

Part Ex G





Protestants Ex 7
Taken 6/19/2004
Saturday





Protestants Ex 8
Taken 6/19/2004
Saturday



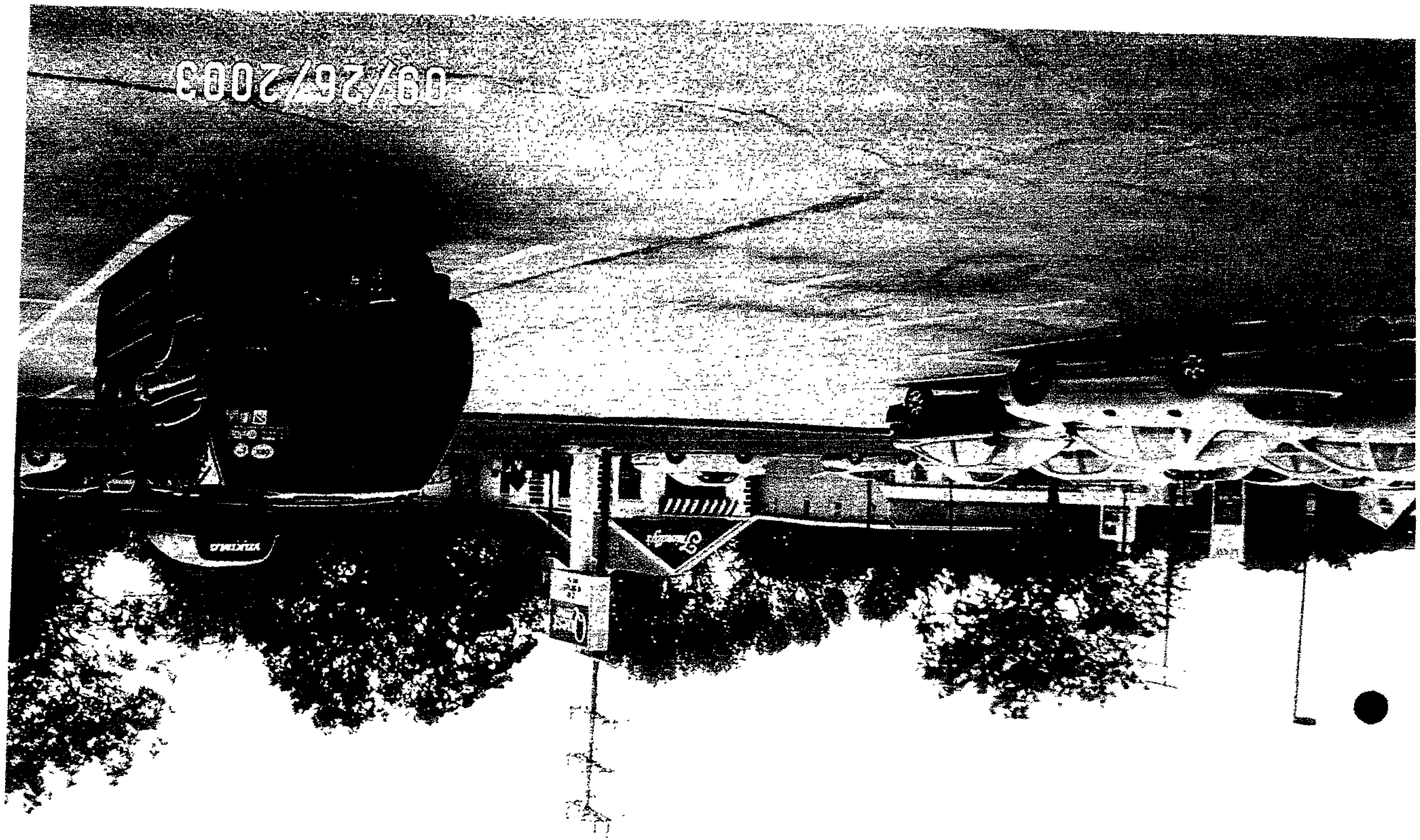
Protestants Ex 9

Taken 6/19/2004

Saturday

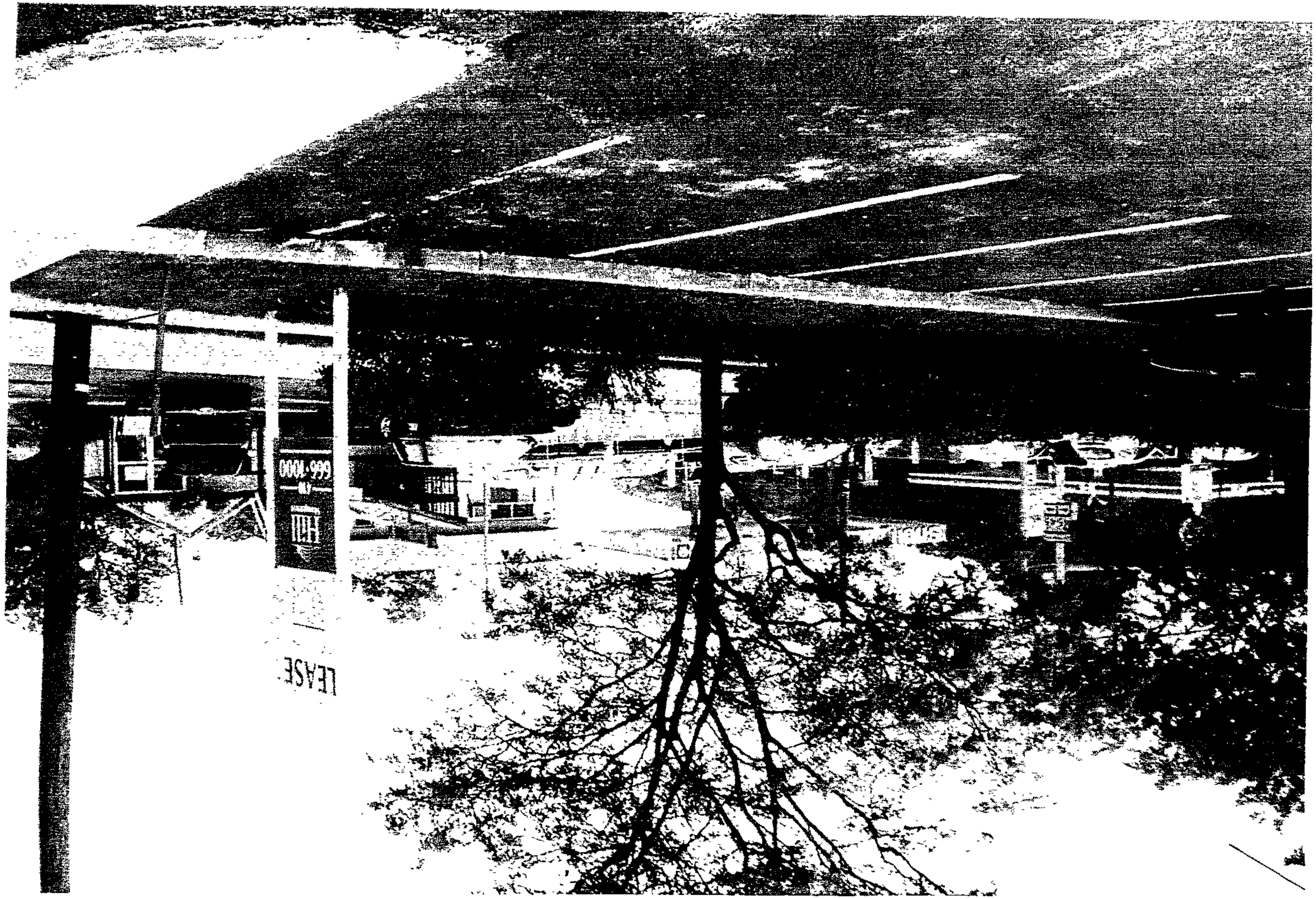


09/26/2003

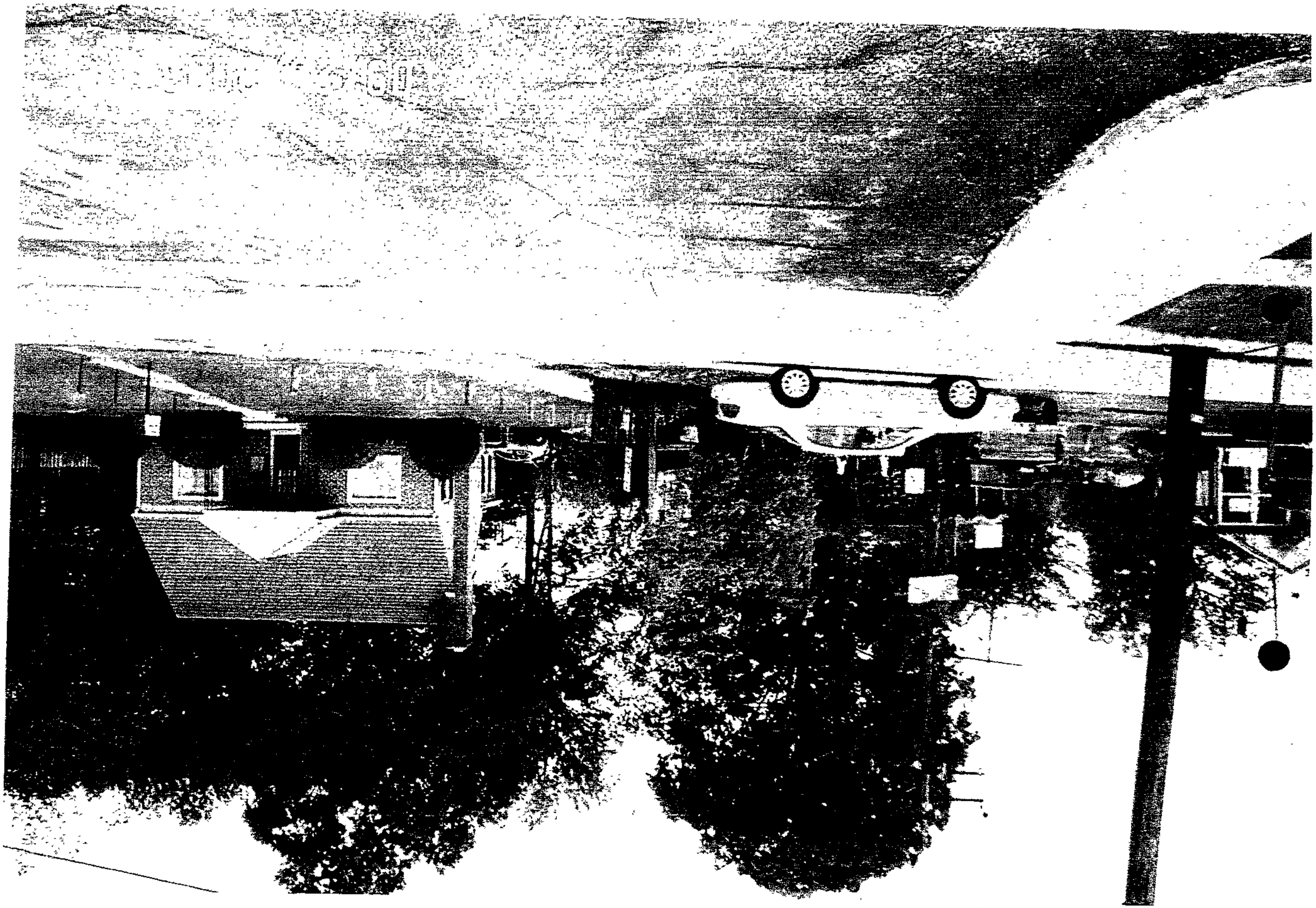


2003/07/28

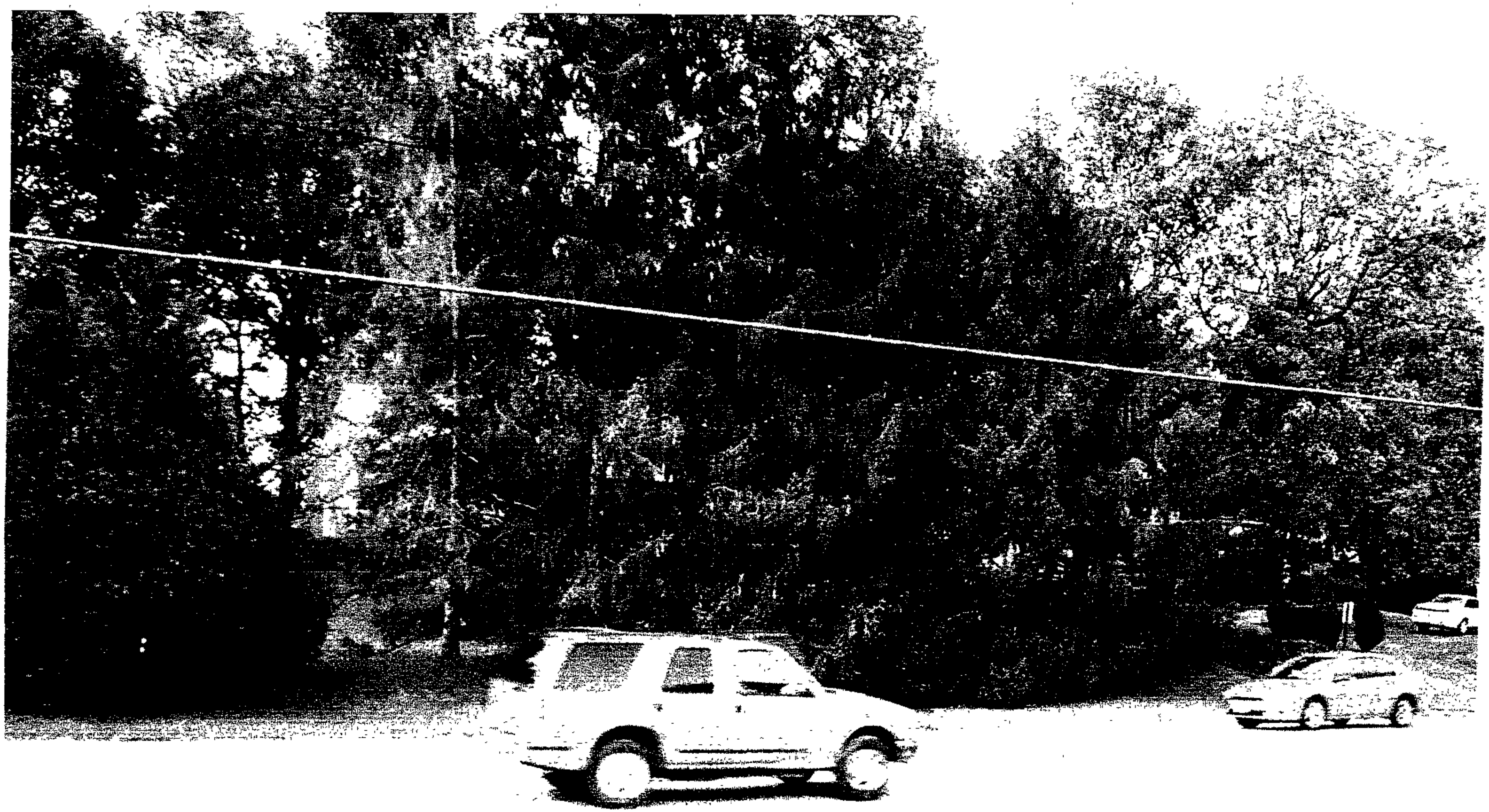


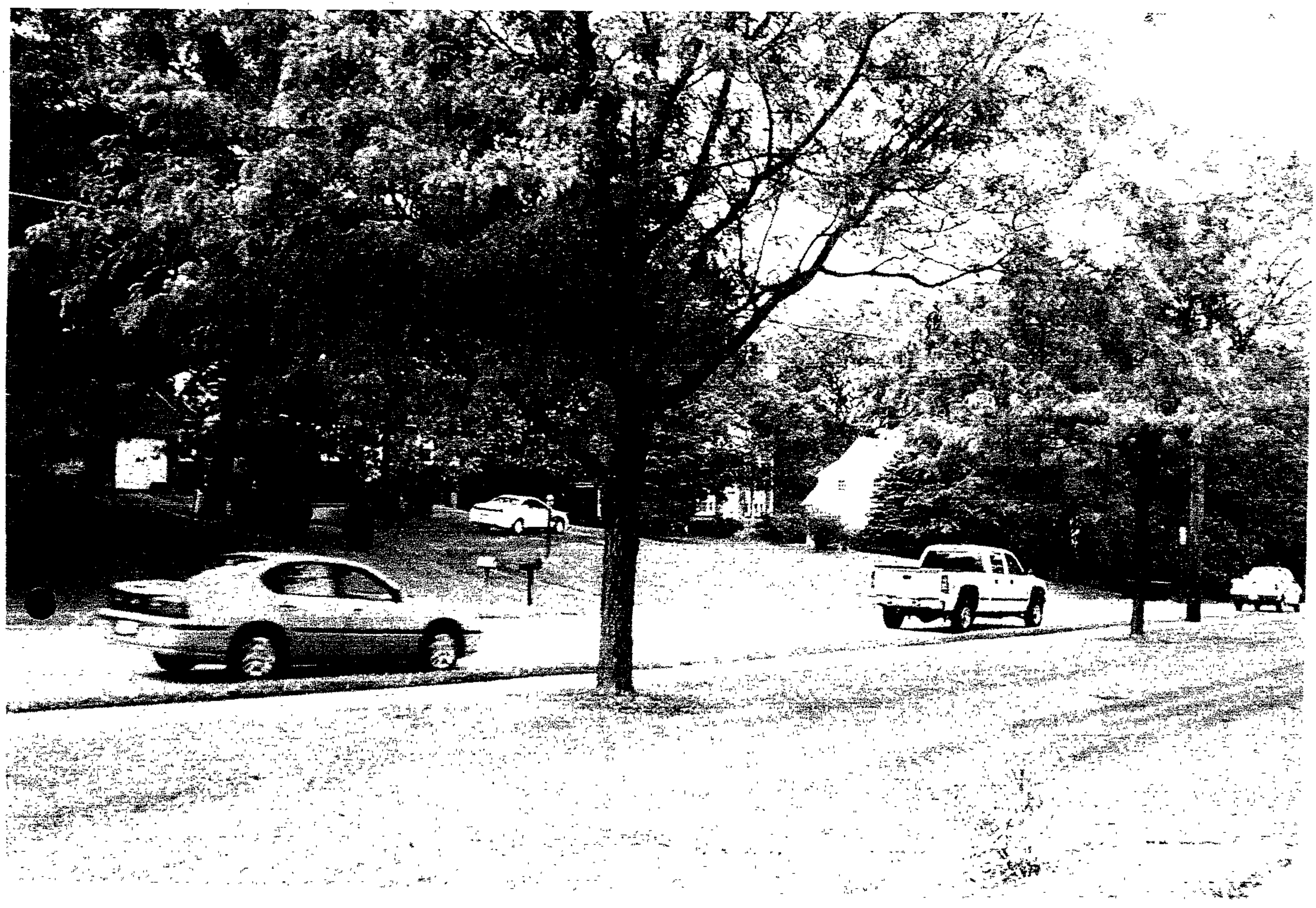


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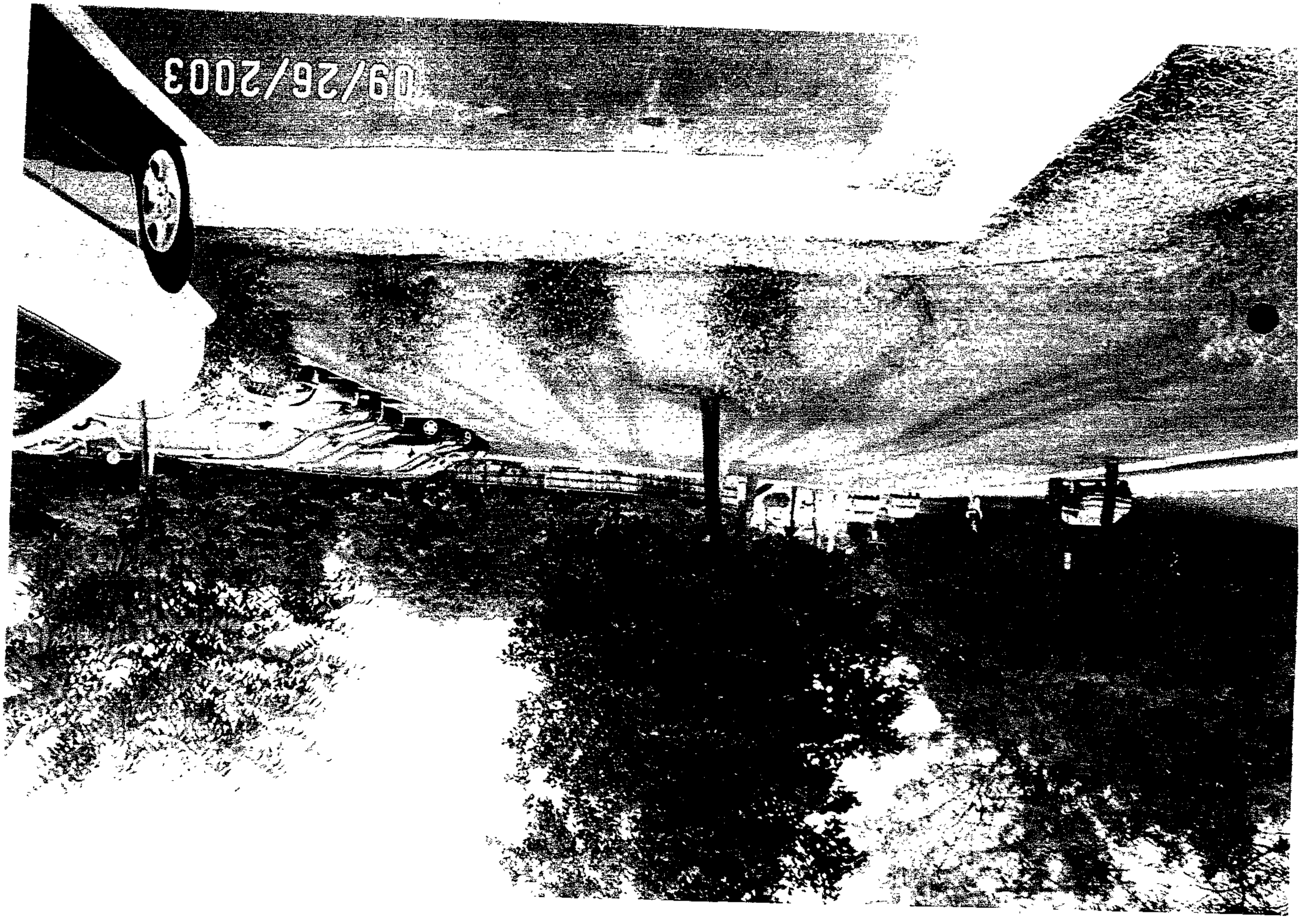


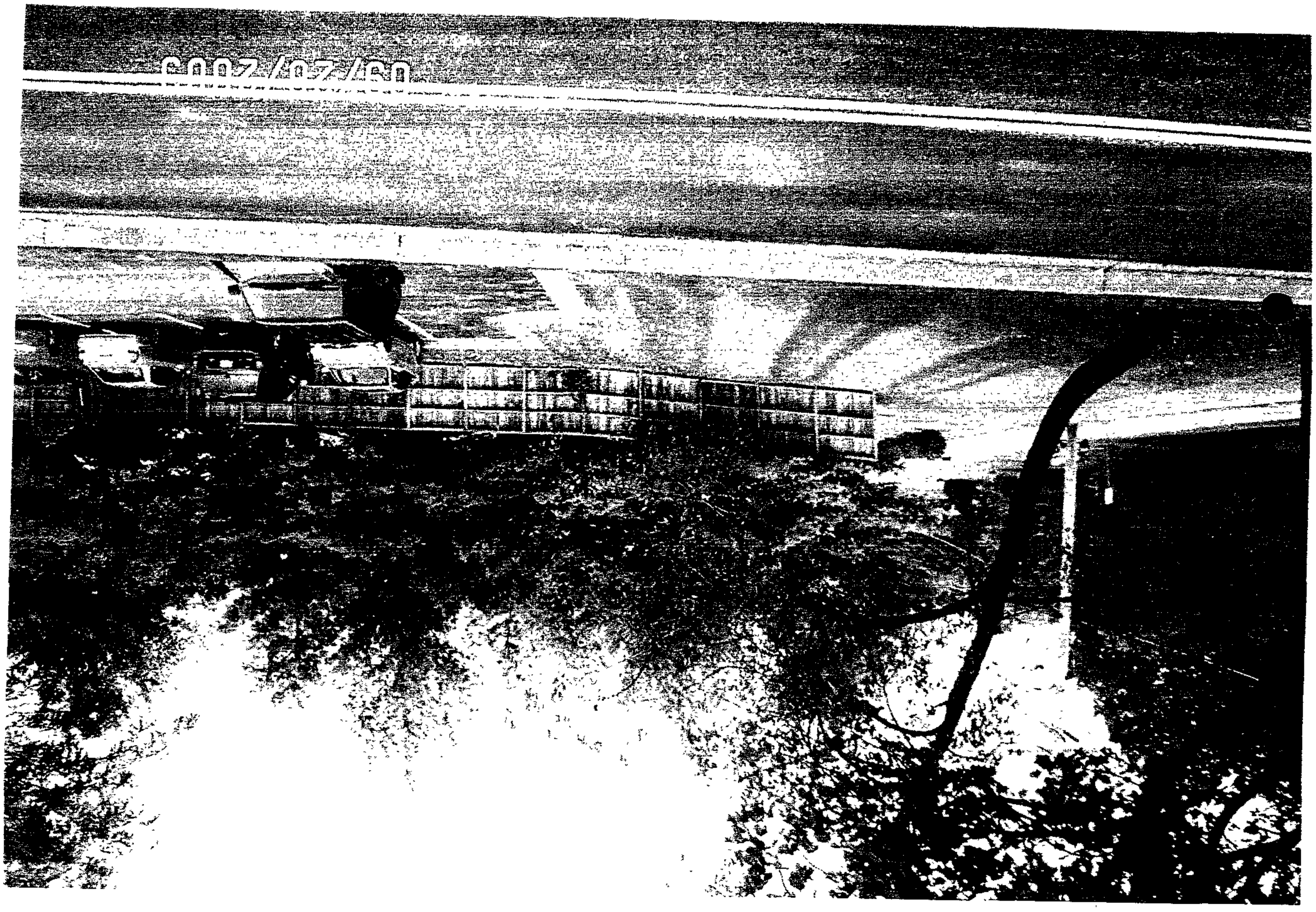
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09/26/2003





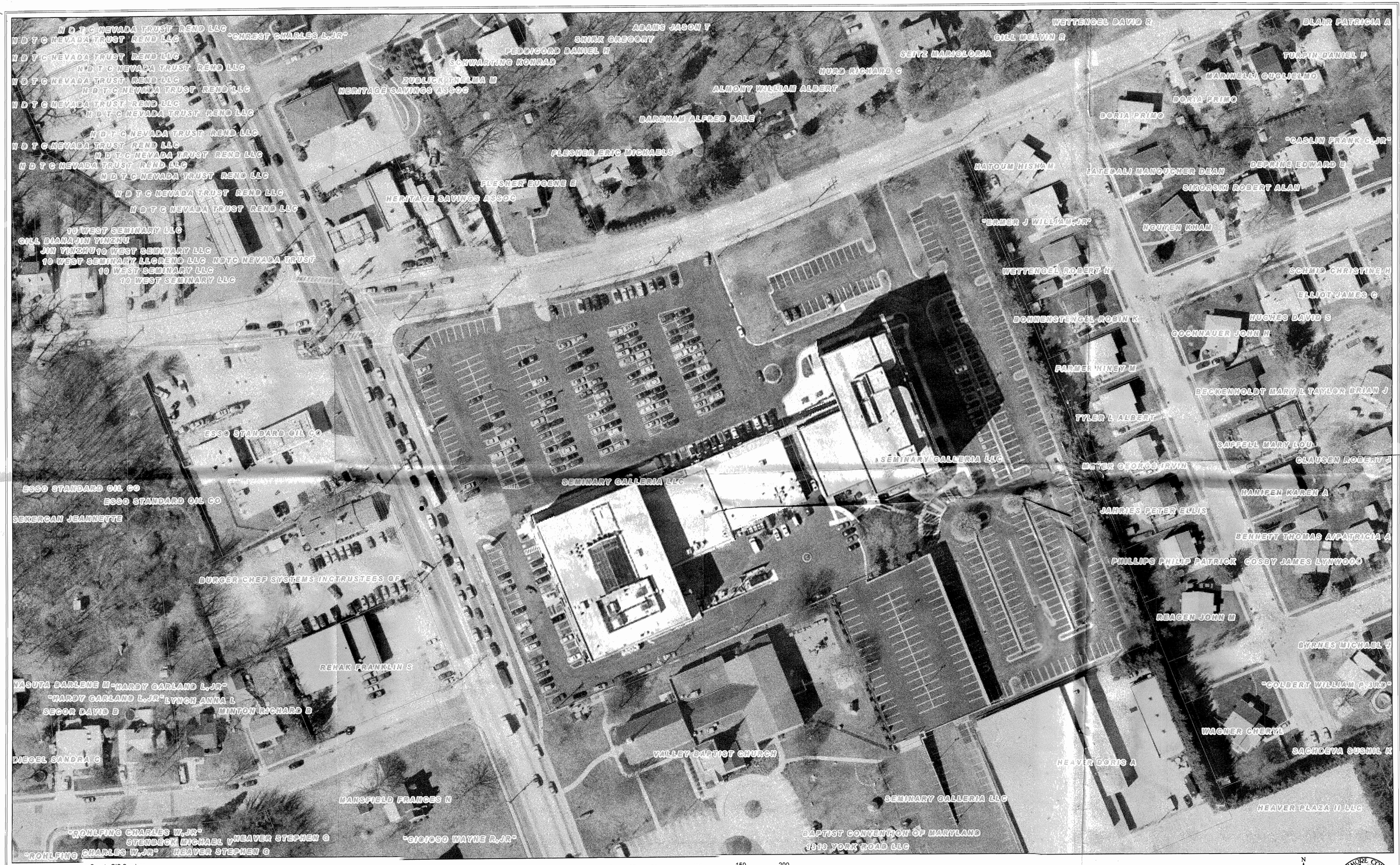


10/25/2005


09/26/2003


Ford
09/26/2003


09/26/2003



Map Produced By Baltimore County GIS Services
Production Date: June 24, 2004
Aerial Photography From April 2002

0 25 50 100 150 200 Feet

04-52-SPHA

PETITIONER'S EXHIBIT
CBA
2

ALL RIGHTS RESERVED

SEMINARY AVENUE

FIRE LANE

EXISTING GALLERIA COMPLEX

EXISTING BUILDING

NO VANS OR TRUCKS TO BE PARKED ON PARKING ADDITION

STEPHEN HEINER ET UX
5000/616
EXISTING ZONING - BL
PRESENT USE - FIRE MUSEUM

AGREEMENT EXISTS BETWEEN CONVENTION & I317 TO PERMIT CONVENTION TO PARK ON THE 73 SPACE ADDITION ON WEDNESDAY EVENINGS.

AGREEMENT EXISTS BETWEEN CHURCH & I317 TO PERMIT CHURCH TO PARK ON THE 73 SPACE ADDITION ON SUNDAY MORNINGS.

0.478 ACRE PARCEL
1317 YORK RD. ASSOCIATES
EXISTING ZONING - BL
PRESENT USE - VACANT & PARKING LOT
PROPOSED USE - PARKING LOT

NEW SUBMISSION

EXISTING BUILDING

BAPTIST CENTER PARKING THIS

BAPTIST CONVENTION & CHURCH
EXISTING ZONING - BL

EXISTING PARKING

PROPOSED ISLAND

EXISTING TREE LINE

EXISTING TOWSON BAPTIST CHURCH
2242/000
(CHURCH/CHURCH SCHOOL)
EXISTING ZONING - BR-CS & BL

CHURCH AND DAY CARE FACILITY
CHURCH @ 320 SEATS @ 1 SPACE/4 SEATS = 80 SPS
DAY CARE FACILITY: 5 SPACES PROVIDED FOR EMPLOYEES
EX. PARKING SPACES - 18
PROP. PARKING - 82

EXISTING PARKING FOR BAPTIST CHURCH

EXISTING SHOWN TO BE REMOVED

EXISTING BUILDING

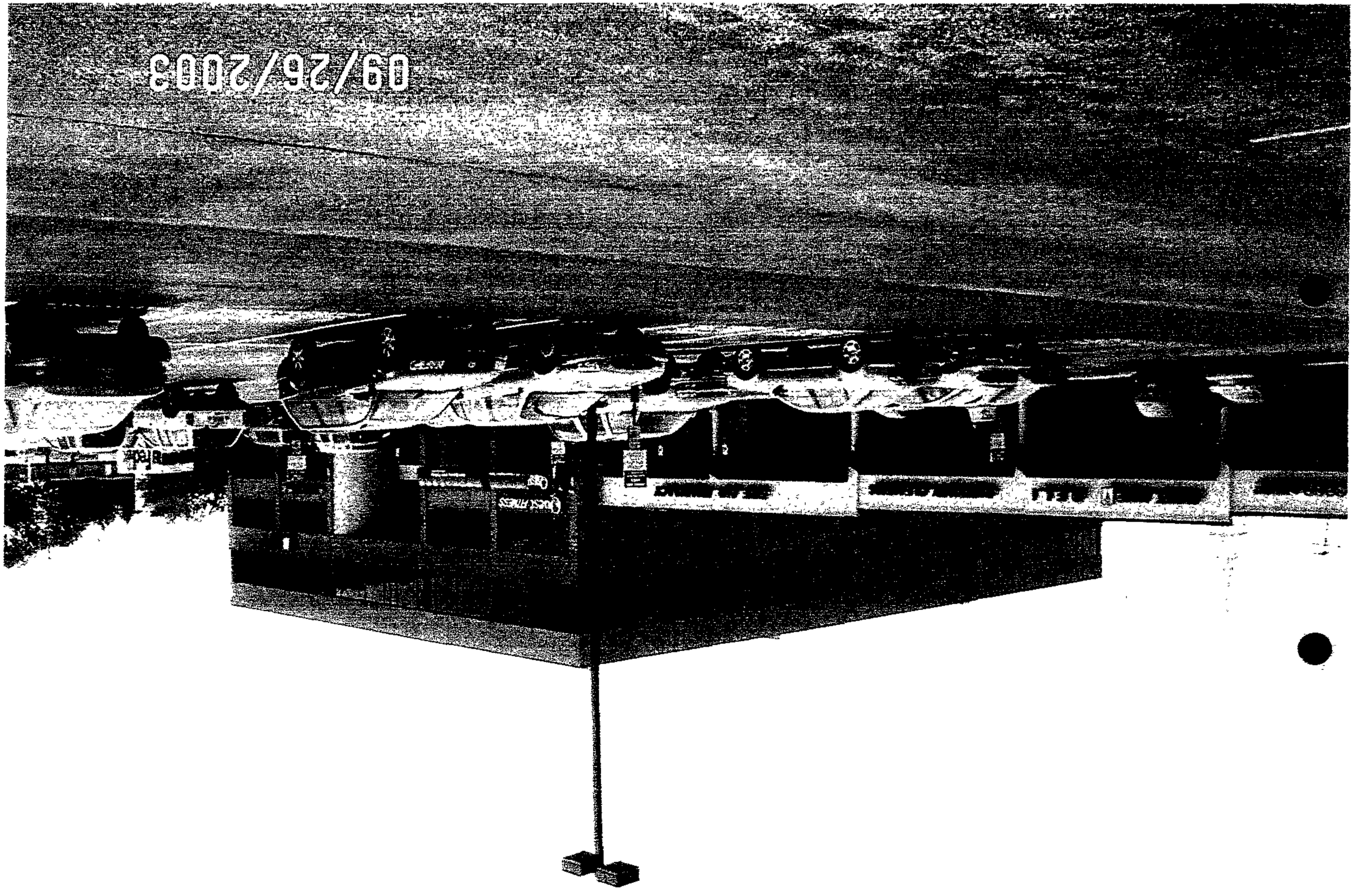
EXISTING PARKING AREA

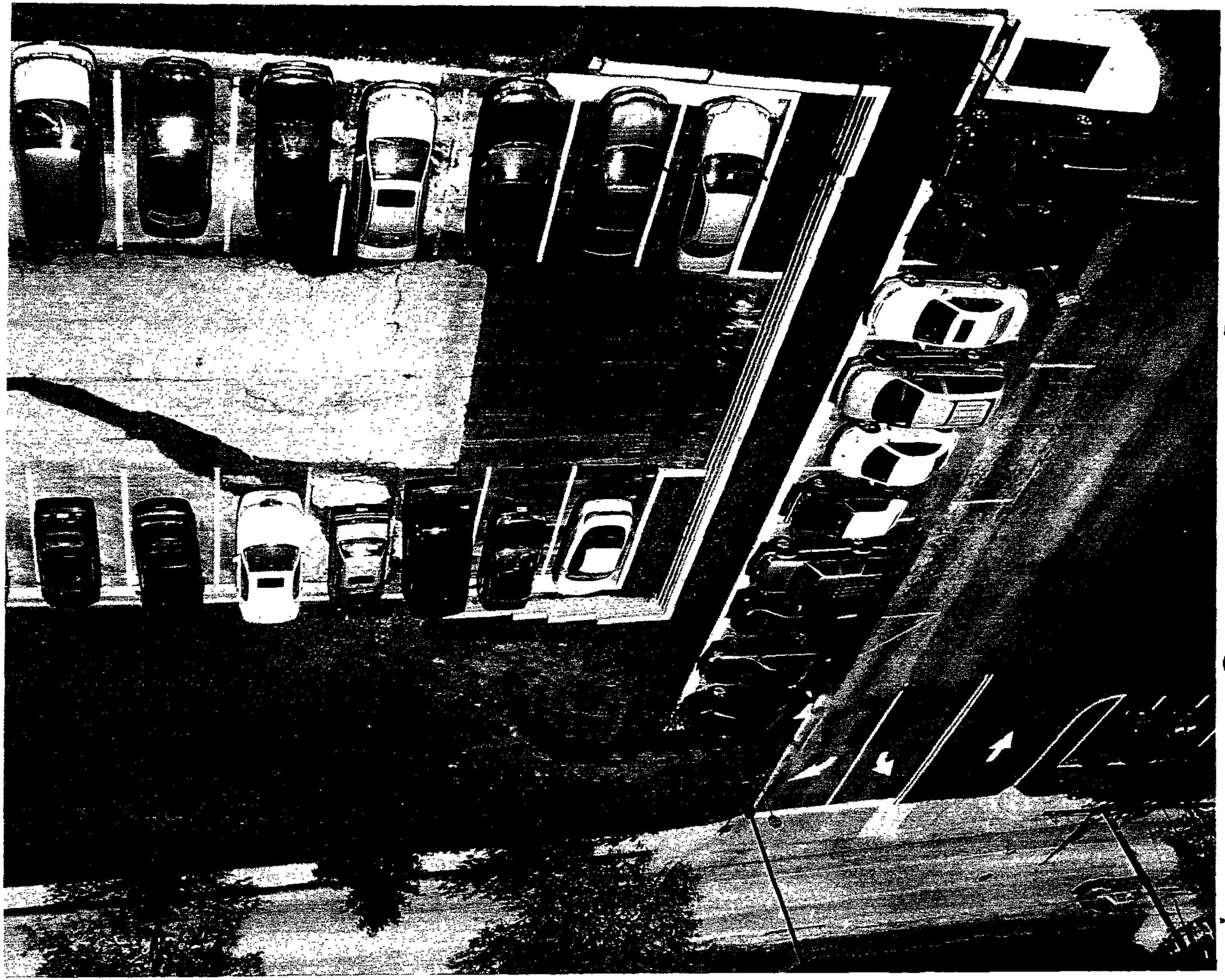
EXISTING TREE LINE

EXISTING TREE LINE

EXISTING TREE LINE

09/26/2003





SEMINARY AVENUE

EXISTING GALLERIA COMPLEX

FIRE LANE

EDWIN KIM BYEONG
6221/621

WILLIAM J. BRUCK
6661/116

ROBERT H. METTENBERG
6661/496

RAWLD BRUCK
6118/640

HINDY FARMER
5161/429

FRANK KELLY
6422/208

GERALD MEYER
6147/147

LAWRENCE DAU
5160/490

PHILIP PHILLIPS
6267/201

JOHN KOZLEN
6010/150

EXISTING BUILDING
NO VARIANCE FOR TRUCKS TO BE GARAGED ON PARKING ADDITION

STEPHEN HOAGER ET. UX.
5006/616
EXISTING ZONING - BL
PRESENT USE - FIRE MUSEUM

AGREEMENT EXISTS BETWEEN CONVENTION & 1317 TO PERMIT CONVENTION TO PARK ON THE 73 SPACE ADDITION ON WEDNESDAY EVENINGS.

AGREEMENT EXISTS BETWEEN CHURCH & 1317 TO PERMIT CHURCH TO PARK ON THE 73 SPACE ADDITION ON SUNDAY MORNINGS.

2.476 ACRE PARCEL
1317 YORK RD. ASSOCIATES
EXISTING ZONING - BL
PRESENT USE - VACANT & PARKING LOT
PROPOSED USE - PARKING LOT

NEW SUBMISSION

LANDSCAPING AROUND ENTRANCE ROAD FRONTAGE OF
1 TREE/12 SPACES - 73 SP. = 6 TREES

EX. PARKING LOT

EXISTING BAPTIST CHURCH
5216/606
(CHURCH/SUNDAY SCHOOL)
DAY CARE
EXISTING BRICK - DRIVE & BL

CHURCH AND DAY CARE FACILITY
CHURCH SEATING @ 1 PER/4 SEATS = 75 SPS.
DAY CARE FACILITY: 5 SPACES PROVIDED FOR EMPLOYEES
EX. PARKING SPACES - 18
PROP. PARKING - 62

EXISTING BAPTIST CHURCH

EXISTING BAPTIST CONVENTION CENTER

PROPOSED PARKING ADDITION

EX. BLDG
1ST FLOOR 16,000 SF/RETAIL
2ND FLOOR 6227 SF/OFFICE
3RD FLOOR 6227 SF/OFFICE

BAPTIST CONVENTION CENTER
MAXIMUM # OF EMPLOYEES ON A SHIFT = 45
@ 2 SPACES/EMP. = 90 SPACES
EXISTING ZONING - BL

PARKING REQUIRED = 60 SPS.
PARKING PROVIDED = 90 SPS.

PROPOSED PARKING

EXISTING PARKING

PROPOSED ISLAND

JOINT ACCESS DRIVE TO CONVENTION CENTER

24'

12 SPACES

14 SPACES

73 SPACES

EX. PARKING

EX. PARKING

EX. PARKING

NW 12 A

NE 11 A

NE 12 A

NW 11 A

LUTHERVILLE
N.R.H.D.
B.C.H.D.

LUTHERVILLE HEIGHTS

RIDGEFIELD

GREENRIDGE

WATERFORD

KENILWORTH BAZAAR

D.R. 2
D.R. 3.5
D.R. 5.5
D.R. 10.5
D.R. 16
D.R.16
BL
BL-AS
BR-AS
BR
RO
OR-1
MLR
BM
73-4-RXA

SEMINARY AVENUE
SEMINARY ROAD
LINCOLN AVENUE
BELLONA AVENUE
CLARK AVENUE
FRANCKE AVENUE
NORMAN AVENUE
GENT AVENUE
MORRIS AVENUE
KURTZ AVENUE
WESTBURY CT.
WESTBURY ROAD
BURLEIGH ROAD
WARWICK DRIVE
MALBAY DRIVE
SANDSBURY RD.
HEDGEWOOD RD.
OTHORIDGE ROAD
OTHORIDGE DRIVE
McPHERSON CT.
PURDY CT.
LYN CT.
CAVAN DRIVE
DUBLIN DRIVE
DORIGRIDGE ROAD
CONE FLUME
FLUME
WARWICK DRIVE
BELTWAY
HARLEIGH ROAD
KENILWORTH CIRCLE
DONINGTON WAY
CHARLESVIEW DR.
CROSLEY ROAD
WENDOVER ROAD
WENDOVER PLACE
THORNHILL RD.
THORNHILL ROAD
ALSTON ROAD
BELMORE ROAD
GREENRIDGE ROAD
GREENRIDGE COURT
HERNWOOD COURT
RIDGEFIELD ROAD
HERMITAGE ROAD
EMBURY ROAD
FELTON ROAD
LONGBROOK ROAD
WESTON COURT
STRATHDEN ROAD
MEADOWVALE ROAD
CHARMUTH ROAD
DORAGEN ROAD
WEWORT PL.
VALLEY COURT
ANNBROOKE CT.
WILFRED COURT
DULANEY MANOR ROAD
BALTIMORE ROAD
WEST ROAD
I 695
131
N 46,000
N 45,000
N 44,000
N 43,000
N 42,000
N 578,000
N 577,000
E 1,500
E 3,000
W 1,500
W 3,000
POOL
R.W.