~~@ 10 a.m.~~ PP'd

9 am Day 1 ✓

10 am Day 2 ✓

10 am Day 3 ✓

10 am Day 4 ✓

10 am Day #5 ✓

~~10 am~~ 9 am Day #6 ✓ concluded

~~1 00 pm Day #7~~

@ 9 00 a.m Week.

6/21/05 - Opinion & Order Passed

ORDERS #1

04-337-SPHX

(riding w/ CBA-04-13

20040337 "A"

supplemental

(1)

LEGE 04-337-SPHX

F MARYLAND – DEVELOPER

- ZONING FILE

6/26/09

IN THE MATTER OF:	*	IN THE
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, ET AL	*	CIRCUIT COURT
	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 03-C-05-007730
v.	*	
LOYOLA COLLEGE IN MARYLAND	*	
Respondent	*	

* * * * * * * * * * *

ORDER

Based on the Mandate of the Court of Appeals dated October 9, 2008 which affirmed the decision of the Court of Special Appeals of December 5, 2007, it is this 26th day of June, 2009 ORDERED that the decision of the Baltimore County Board of Appeals issued June 21, 2005 is **AFFIRMED.** Petitioners to divide the costs equally.

Judge Ruth Jakubowski

Clerk to Notify all Parties

P. Zimmerman
A. Jablon Esq
G.M. Nelson
CC: County Board of Appeals
James Dubar Esq

FILED JUL 15 2009

ORDER

December 5, 2007

Based on the Mandate of the Court of Appeals dated October 9, 2008 which affirmed the decision of the Court of Special Appeals of ---------- it is this ___ day of June ,2009 ORDERED that decision of the Baltimore County Board of Appeals issued June 21, 2005 is **AFFIRMED**. Petitioners to divide the costs equally.

Judge

MANDATE

Court of Special Appeals

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

No. 00558, September Term, 2006

Loyola College in Maryland
vs.
People's Counsel for Baltimore County
et al.

JUDGMENT: December 5, 2007: Judgment of the Circuit Court for Baltimore County is vacated. Case remanded to the circuit court with instructions to affirm the decision of the Baltimore County Board of Appeals. Costs to be paid by appellees. Unreported opinion by Meredith, J.

January 04, 2008: Mandate issued.

From the Circuit Court: for **BALTIMORE COUNTY**
03C050007730
CC title-In the Matter of Citizens Against Loyola Multi-Use Center.

STATEMENT OF COSTS:

Appellant(s):

Lower Court Costs-	60.00
Filing Fee of Appellant-	50.00
Brief of Appellant-	532.80
Record Extract-7 COPIES	2,021.04
Reply of Appellant-	360.00

Appellee(s):

Lower Court Costs-CROSS APPEAL	60.00
Lower Court Costs-CROSS APPEAL	60.00
Filing Fee of Appellee-CROSS APPEAL	50.00
Filing Fee of Appellee-CROSS APPEAL	50.00
Brief of Appellee-PEOPLE'S COUNSEL	234.00
Brief of Appellee-CITIZENS	176.40
Reply of Appellee-PEOPLE'S COUNSEL	61.20
Reply of Appellee-CITIZENS	25.20

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **fourth** *day of* **January** **2008**

Leslie D. Gradet
Clerk of the Court of Special Appeals

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

Court of Appeals of Maryland

No. 137, SEPTEMBER TERM, 2007

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

v.

LOYOLA COLLEGE IN MARYLAND

DISPOSITION OF APPEAL IN COURT OF APPEALS:
September 9, 2008 - Judgment of the Court of Special Appeals is affirmed;
Petitioners to divide the costs equally.
Opinion by Harrell, J.
Concurring Opinion by Murphy, J.

TRANSCRIPT

RETURNED TO COURT OF SPECIAL APPEALS

Date 10/9/2008

BY COURIER

Bessie M. Decker

REMARKS:

No. 558 - 2006 T. - CSA

One-Volume Record; One Transcript; Four Brown Accordian Files w/Exhibits
(In Two Boxes)

CC# 03-C-05-007730

Court of Special Appeals

No. 00558, September Term, 2006

Loyola College in Maryland
vs.
People's Counsel for Baltimore County
et al.

RECORD RETURNED TO CLERK OF CIRCUIT COURT FOR:

BALTIMORE COUNTY
401 BOSLEY AVE.
TOWSON, MD 21204

DATE: 10/14/2008

FILED FEB 24 2009

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.	*	IN THE
	*	COURT OF APPEALS
	*	OF MARYLAND
v.	*	No. 137
LOYOLA COLLEGE IN MARYLAND	*	September Term, 2007

M A N D A T E

TO THE HONORABLE THE JUDGES OF THE
COURT OF SPECIAL APPEALS OF MARYLAND:

WHEREAS the case of Loyola College in Maryland v. People's Counsel for Baltimore County, et al. wherein the judgment of the said Court of Special Appeals was duly entered on December 5, 2007, as appears from the transcript of the record of the said Court of Special Appeals which was brought into the Court of Appeals by virtue of a writ of certiorari dated March 12, 2008, and

WHEREAS in the September Term, 2007, the said cause came on to be heard by the Court of Appeals of Maryland;

ON CONSIDERATION WHEREOF, it was ordered and adjudged on September 9, 2008, by the Court of Appeals of Maryland, that the judgment of the Court of Special Appeals is affirmed; Petitioners to divide the costs equally.

NOW, THEREFORE, THIS CAUSE IS REMANDED to you in order that such proceedings may be had in the cause in conformity with the judgment of this Court as accorded with right and justice, and the Constitution and laws of Maryland, the said writ notwithstanding.

FILED FEB 24 2009

KW

WITNESS The Honorable Robert M. Bell, Chief Judge of the Court of Appeals of Maryland, this ninth day of October, 2008.

Bessie M. Decker

Clerk
Court of Appeals of Maryland

Filing Fee - Petition	$ 50.00
Filing Fee - Court of Special Appeals	$ 50.00
Petitioners' brief (People's Counsel)	$ 432.00
Petitioners' brief (Citizen Appellants)	$ 192.00
Petitioners' reply brief (Citizen Appellants)	$ 52.80
Appearance fee - Petitioners	$ 20.00
Respondent's brief	$1080.00
Appearance fee - Respondent	$ 10.00
Additional copies of record extract (Vols. I and II)(20)	$5774.40
	$7661.20

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

People's Counsel for Baltimore County, et al. v. Loyola College in Maryland, No. 137, September Term 2007.

ZONING - SPECIAL EXCEPTIONS - *SCHULTZ V. PRITTS* STANDARD FOR EVALUATING APPLICATIONS FOR SPECIAL EXCEPTIONS DOES NOT REQUIRE AN APPLICANT TO PRESENT, AND THE ZONING BODY TO CONSIDER, A COMPARISON OF THE POTENTIAL ADVERSE EFFECTS OF THE PROPOSED USE AT THE PROPOSED LOCATION TO THE POTENTIAL ADVERSE EFFECTS OF THE PROPOSED USE AT OTHER, LIKE-ZONED LOCATIONS THROUGHOUT THE JURISDICTION.

Circuit Court for Baltimore County
Case No. 03-C-05-007730

IN THE COURT OF APPEALS

OF MARYLAND

No. 137

September Term, 2007

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

v.

LOYOLA COLLEGE IN MARYLAND

Bell, C.J.
Harrell
Battaglia
Greene
Murphy
Eldridge, John C. (Retired, specially assigned)
Raker, Irma S. (Retired, specially assigned)

JJ.

Opinion by Harrell, J.,
Murphy, J., Concurs.

Filed: September 9, 2008

9/9/08

The legacy in Maryland land use law of *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981), has been beneficial and well-applied for the most part over the ensuing years. The synthesis of earlier cases threaded through its reasoning supplies a lucid explanation of the legislative calculus for why some land uses, at the time of original adoption or later amendment of the text of a zoning ordinance, are placed in the blessed category of permitted uses in a zone or zones while other uses in the same zone or zones receive a more measured imprimatur of presumptive compatibility as allowed only with the grant of a special exception or conditional use. *Schultz* also iterated how special exception uses are useful zoning tools for fleshing out the grand design of land use planning, as well as postulated an analytical paradigm for how individual special exception applications are to be evaluated. In carrying-out the latter goal, however, some of the language of Judge Davidson's opinion for the Court in *Schultz* occasionally has been mis-perceived by subsequent appellate courts and frequently misunderstood by some attorneys, planners, governmental authorities; and other citizens. We aim in the present case to greater clarity in explaining the proper evaluative framework for discrete special exception/conditional use applications and dispelling any lingering mis-understandings of what the Court truly intended when it filed the opinion in *Schultz* twenty-seven years ago.

Facts and Procedural History

In October 2001, Loyola College in Maryland ("Loyola") contracted to purchase a fifty-three acre parcel (the Property) in northern Baltimore County for the purpose of constructing several buildings to be used for weekend spiritual retreats. The Property is located in the R.C.2 (Resource Conservation) zone. According to the Baltimore County Zoning Regulations (BCZR) § 1A01.1(B), the purpose of the Resource Conservation zone is "to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses." Among the permitted uses allowed as of right in the R.C.2 zone are "one-family detached" dwellings, "agricultural operations," "open space," and "public schools." BCZR § 1A01.2. BCZR § 1A01.2(C) allows "churches or other buildings for religious worship," "camps, including day camps," and "schools, including but not limited to private preparatory schools, colleges, business and trade schools, conservatories or other fine arts schools" as special exceptions in the R.C.2 zone.

In early 2004, Loyola submitted to Baltimore County a plan to develop the Property into a Retreat Center. The plan proposed development of just over ten of the fifty-three acres of the Property, leaving the balance in an "as is" state. Loyola concurrently filed a petition for special exception for the Retreat Center as a school or college, church, or camp.[1] The Baltimore County Zoning Commissioner/Hearing Officer, in April 2004, conducted a three-day hearing[2] on the development plan and special exception petition. The hearing officer

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[1]Petitioners here concede that the proposed Retreat Center falls within the special exception regulatory scheme as a "college," thus requiring a special exception.

[2]Prior to the hearing, Loyola entered into a set of restrictive covenants with two community organizations operating in northern Baltimore County, Maryland Line Area Association and Parkton Area Preservation, Inc., restricting Loyola's use of the Property. The agreement provided, *inter alia*, that Loyola will not develop the Property beyond the then proposed development plan for a period (continued...)

issued an opinion and order on 10 June 2004 approving the development plan and granting the special exception. A group of citizens acting individually and collectively as Citizens Against Loyola Multi-use Center ("Citizens")[3] appealed to the Baltimore County Board of Appeals (Board of Appeals).[4] The Board of Appeals held a *de novo* hearing[5] regarding the special exception and an appeal on the record regarding the development plan.[6] The combined hearing continued over a total of six days between 15 September 2004 and 4 January 2005.[7]

Both sides presented voluminous evidence regarding the effect that the proposed

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[2](...continued)
of twenty-five years and certain buildings in the development will not be constructed for at least ten years. The covenants also restricted the operation of the Retreat Center. Under the terms of the agreement, Loyola is prohibited from operating the Retreat Center more than 160 days per year, hosting weddings or similar events, permitting storage or consumption of alcoholic beverages other than sacramental wine, or permitting Loyola students to be present on the Property without supervision from Loyola faculty or staff. In exchange for these promises, Maryland Line Area Association and Parkton Area Preservation, Inc. agreed not to oppose Loyola's development plan and petition for a special exception.

[3]There are essentially two parties in the present litigation standing in opposition to Loyola's initiative, People's Counsel for Baltimore County ("People's Counsel") and Citizens Against Loyola Multi-use Center ("Citizens"). Collectively, we shall refer to the opponents as Petitioners.

[4]It appears that People's Counsel for Baltimore County participated in the proceedings before the Board of Appeals in opposition to the development plan. He did not take a position then with regard to Loyola's request for a special exception.

[5]BCZR § 501.6 states that "[a]ppeals from the Zoning Commissioner shall be heard by the board of zoning appeals de novo."

[6]The development plan is not before us.

[7]The evidence presented, or lack thereof, at the hearing regarding the special exception forms the basis of the controversy in this case. It will be summarized in some detail *infra*.

special exception use would have on the surrounding neighborhood. Because Petitioners narrowed the legal issue before this Court in their Petition for Certiorari, we shall summarize only the relevant evidence presented at the hearing. Loyola produced evidence, which the Board of Appeals credited, that the impacts of the proposed use on agriculture would be minimal. Loyola pointed out that the proposed Retreat Center would occupy only 10.18 acres of land, less than twenty percent of the Property. The remainder of the Property would be used for agriculture or open space. Robert Sheelsey, an environmental consultant and licensed sanitarian, testified for Loyola that the Property is located "right on the fringe" of the agricultural zone and within the Interstate 83 corridor. Based on this evidence, the Board of Appeals concluded that the Retreat Center "will not harm agricultural activity in the vicinity." Loyola presented evidence that the outdoor lighting at the Retreat Center would be "dark skies compliant." Two additional experts testified on behalf of Loyola that the Retreat Center would not be detrimental to the neighborhood because "it was a very low intensity use" of the Property.

Substantial testimony at the hearing concerned the onsite septic system and water usage of the Retreat Center. Sheelsey testified that there are proper soils for septic discharge in the proposed septic field. He further explained that the discharge from the septic system would undergo "biological/biochemical pretreatment" prior to discharge, making the discharge "most likely 99% clear and treated." The proposed septic discharge system would contain a "flow equalization" mechanism to account for the nature of the use of the Retreat

Center (heavy use for a few days followed by no use at all for the remainder of the week). Regarding water usage, Thomas Mills, an expert geologist, testified for Loyola that the "supply of groundwater was more than adequate" for the Retreat Center, even under drought scenarios, and that the Retreat Center's water usage would not affect neighboring wells.

There was controversy over the "thermal impacts" from proposed stormwater ponds at the Retreat Center. Citizens argued that discharges from the stormwater detention ponds would warm a tributary to the Fourth Mine Branch, described as a local trout stream, impairing the ability of the trout to reproduce. Professor Edward J. Bouwer of The Johns Hopkins University and Charles Gougeon of the Maryland Department of Natural Resources testified as to their belief that the run-off from the stormwater ponds would warm the tributary. Loyola countered with the testimony of an ecologist, Joseph Berg, Jr. Berg testified that the tributary would not be a sustainable habitat for trout in any event. In addition, he testified that any impact from rain run-off would be minimal. In its written opinion, the Board of Appeals stated that it "was not persuaded by the testimony of Professor Bouwer or Mr. Gougeon . . . ."

The parties also disputed the impact of nitrogen and phosphorous discharges from the septic system. Citizens presented the testimony of Professor Brian Reed of the University of Maryland. He took the position that guidelines from the Maryland Department of the Environment required that septic systems that discharged over 5,000 gallons per day needed further study. Sheesley, in rebuttal testimony, pointed out that, with the proposed flow

equalization mechanism in place, the septic system would discharge only 2,881 gallons per day. He also identified a study that indicated that the Retreat Center's nitrogen discharge is below the threshold deemed safe for drinking water. The Board found that Loyola met its burden regarding the nitrogen and phosphorous impacts.

Petitioners described Stablersville Road, the main ingress/egress public road for the Retreat Center, as being a narrow country road with no shoulder and steep banks on both sides. It was claimed to be impossible for traffic to pass safely around slow-moving farm vehicles that used the road to move from property to property. Terrence Sawyer, Vice President of Administration at Loyola, responded with the various steps Loyola will take to minimize the traffic impact from the Retreat Center. Students will arrive in vans or buses owned by Loyola. Deliveries and pickups would be made between the hours of 7:00 A.M. and 4:00 P.M. Loyola also produced a local Traffic Impact Analysis prepared by Wes Guckert, an expert on traffic engineering. Guckert testified that, assuming a worst case traffic scenario from the Retreat Center use, local critical intersections would continue to operate "at level A service" (the best volume operation level) without any detrimental effect. The Board of Appeals found his testimony to be credible and noted that "Loyola has made a concerted effort to keep traffic to and from the site to a bare minimum."

Citizens also presented certain evidence that the Board of Appeals chose not to consider. Citizens argued that the standard established in *Schultz*[5] for special exception

[5]We will more fully analyze, *infra*, the particular language in *Schultz* that prompts the main (continued...)

applicants required Loyola to show that there are no other locations within the R.C.2 zone in Baltimore County where the proposed use would have less of an adverse effect than on the local neighborhood of the Property.[9] The Board of Appeals dismissed this argument, noting:

> We disagree with [Petitioners'] argument that [the *Schultz*] standard should be interpreted to mean that, as long as there are other locations in the zone in which certain adverse effects would be less adverse, the use should be denied in the subject location. The standard is very clear that only the general vicinity of the subject property is to be taken into account. Therefore, the fact that there are wider roads in other areas of the R.C.2 zone, or other areas of the zone without Class 3 trout streams, are beside the point. The Board must examine each criterion of BCZR Section 502.1[10] and determine whether the impacts in the subject location are above and beyond those inherent to the use--in this case, a college facility--itself.

Accordingly, the Board ignored evidence presented by Petitioners that there were other areas in the R.C.2 zone in Baltimore County that would be less adversely affected by the proposed use than the area surrounding the Property. Paul Solomon[11] testified to that effect on behalf of Petitioners. After explaining his methodology in searching for alternative locations, Solomon identified four other areas within the R.C.2 zone where the proposed use could be located "without the impact on the subject area." Specifically, Solomon identified the "Hanover Pike area in the west, the Granite area to the south, the Shawan Road area in the north central section, and the Bird River area to the southeast."[12] Solomon argued that the proposed use would have the least amount of adverse impact in areas where farms are

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[5](...continued)
issue in the present case:

> We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Schultz, 291 Md. at 22-23, 432 A.2d at 1331.

[6]As Loyola noted in its brief to this Court, the exact formulation of Petitioners' argument has varied somewhat through different stages of this litigation. Before the Board of Appeals and in the Circuit Court, Citizens argued that the special exception applicant must show that there are no other locations within the R.C.2 zone where the proposed use would have less of an adverse impact. In this Court, however, Petitioners contend that the Board must consider the effects of the proposed use as if it were proposed at a reasonable number of other locations within the R.C.2 zone. The evolution (or inconsistency) in Petitioners' argument over time is irrelevant to the resolution of the underlying legal issue. The core of Petitioners' legal argument remains the same. They contend that *some* comparative geographic analysis of impacts of the proposed use at other R.C.2 sites is required under *Schultz*. The Board of Appeals refused, in error Petitioners argue, to require from Loyola or consider from Petitioners *any* comparative geographic analysis evidence. Thus, the various permutations of Petitioners' argument do not detract from the distinct and narrow legal issue before us in the present case. If Loyola is required to present a comparative geographic impact analysis, Loyola failed, as a matter of law, to meet its burden before the Board of Appeals. Thus, if any such comparative analysis is required, the decision of the Board of Appeals must be reversed.

[10]BCZR § 502.1 lists the criteria to be considered by the Board of Appeals in evaluating an application for a special exception. Section 502.1 is discussed *infra* pages 13-14.

[11]Petitioners, particularly People's Counsel, discuss at length in their briefs to this Court the additional testimony of a local resident and expert farmer, Wayne McGinnis. It appears to us, however, that most of McGinnis's testimony focused on the adverse effects, particularly traffic and agriculture-related ones, of the Retreat Center on the area immediately surrounding the Property. He did not compare the adverse effects of the Retreat Center at the Property to adverse effects of the Retreat Center if it were located at other R.C.2 sites--the heart of the legal issue in this appeal. His testimony appears to have been afforded very little weight by the Board of Appeals in this regard. Petitioners, in their Petition for Writ of Certiorari, did not include any question presented that could be described fairly as encompassing a challenge to the weight afforded to McGinnis's testimony or any of the Board's factual findings that were contrary to McGinnis's testimony.

[12]None of these areas could be described fairly as belonging to the same "neighborhood" as the Property. Each alternative site suggested by Solomon appears to be at least nine miles away from the Property.

smaller in size, and therefore less productive, and where there already were existing intrusions or developments within the adjacent farming community. Solomon surveyed 42 tax maps where the properties predominately were in the R.C.2 zone and where farming remained the central activity. He found that the area around the Property had the second highest number of parcels in agricultural use and the eighth largest average size of individual parcels. Therefore, he argued, the adverse effect of the Retreat Center would be particularly dramatic in its proposed location compared with the alternative R.C.2 sites he found and surveyed elsewhere in Baltimore County.

Lynne Jones also testified in opposition to the Retreat Center. She represented that she surveyed 28 roads traversing areas in largely R.C.2-zoned neighborhoods in Baltimore County. She found that the widths of the 28 roads ranged from 20 feet to 24 feet.[13] Some had shoulders extending up to nine feet wide. By comparison, Stablersville Road in the vicinity of the proposed Retreat Center is only 17 to 19 feet wide and lacks shoulders. Loyola did not dispute Jones's testimony.

Richard Klein, an environmental expert, testified regarding other potential sites for the proposed use in the R.C.2 zone elsewhere in the County. He identified vacant sites in the R.C.2 zone that consisted of ten acres or more, were not owned by a government agency, and were not located in a watershed with trout streams. He found four parcels in the Bird River area and 12 in the Granite area. At these locations, he argued, there would be no possible

[13]It appears from the record that Jones was referring to pavement width, rather than right-of-way width.

adverse impact from the proposed use on the (nonexistent) local trout populations.

Loyola, by contrast, presented no evidence regarding how its Retreat Center proposal would operate at other sites in Baltimore County in the R.C.2 zone. Thus, Solomon's, Jones's, and Klein's testimonies largely were uncontradicted by the applicant for the special exception and ignored by the Board.

The Board of Appeals held public deliberations on 24 March 2005. On 21 June 2005, the Board, in a written opinion, affirmed the conclusions of the hearing officer with regard to the development plan and granted Loyola's petition for a special exception as a "college."

Citizens timely filed, in the Circuit Court for Baltimore County, a Petition for Judicial Review of the Board of Appeals's decision. People's Counsel filed a Petition for Judicial Review as well.[14] The Circuit Court remanded the case to the Board of Appeals for further action. Specifically, the Circuit Court held that the "appropriate geographic scope of inquiry is a broad, comprehensive, zone-wide analysis." Thus, the Circuit Court concluded that the Board "did err as a matter of law and misapplied the special exception standards of *Schultz* in restricting its geographic scope of inquiry." Loyola appealed to the Court of Special Appeals. In an unreported opinion, the intermediate appellate court vacated the Circuit Court's judgment and remanded the case with instructions to affirm the decision of the Board of Appeals. We granted the Petition for Writ of Certiorari filed by Citizens and People's

[14]The Circuit Court ultimately noted that the interests and arguments of Citizens and People's Counsel "overlap substantially." The Circuit Court addressed the issues raised in both petitions in a single memorandum opinion and order.

Counsel, 403 Md. 612, 943 A.2d 1244 (2008). Although the Petition presents three questions for our review,[15] all three questions share a common legal theme.[16] Thus, the sole legal issue in this case properly may be distilled into a sole question presented:

> Does *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981), require that, before of a special exception may be granted, an applicant must adduce evidence of, and the zoning body must consider, a comparison of the potential adverse effects of the proposed use at the proposed location to the potential adverse effects of the proposed use at other, similarly-zoned locations throughout the

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[15]Specifically, the three questions presented by the Petition for Writ of Certiorari were:

> 1. Whether the County Board of Appeals erred as a matter of law, misapplied, undermined, and rendered nugatory the special exception standards of *Schultz v. Pritts* and its progeny when it artificially narrowed its geographic scope of inquiry, refused to consider or compare area adverse impacts relative to other locations "anywhere within the zone," or "irrespective of its location within the zone," and disregarded as irrelevant undisputed testimony of the greater adverse area impact of Loyola's use at the Parkton site than at other potential locations in the Agricultural Zone in Baltimore County?
>
> 2. Did Loyola's tactical choice not to do any comparative geographic evaluation of area adverse impacts, insistence on the irrelevance of the comparative analysis by the citizens' planning expert, and demand for approval, regardless, result in a failure to produce evidence legally sufficient to meet the *Schultz* standards? Should the [County Board of Appeals], therefore, have denied the special exception as a matter of law?
>
> 3. Did the Court of Special Appeals depart from reported precedents implementing a reasonable comparative analysis and misstate People's Counsel's position as demanding an impractical "minimum impact" criterion and evaluation of every property in the zone in order to rationalize the [County Board of Appeals's] grant of the special exception?

[16]As Citizens candidly noted in their reply-brief, "[t]his appeal presents a purely legal question concerning the requirements of the *Schultz v. Pritts* test."

> jurisdiction?

We conclude that *Schultz* imposes no such requirement. Thus, we affirm the judgment of the Court of Special Appeals.

Standard of Review

When we review the final decision of an administrative agency, such as the Board of Appeals, we look "through the circuit court's and intermediate appellate court's decisions, although applying the same standards of review, and evaluate[] the decision of the agency." *People's Counsel for Balt. County v. Surina*, 400 Md. 662, 681, 929 A.2d 899, 910 (2007). "Judicial review of administrative agency action is narrow. The court's task on review is not to substitute its judgment for the expertise of those persons who constitute the administrative agency . . . ." *United Parcel Serv., Inc. v. People's Counsel for Balt. County*, 336 Md. 569, 576-77, 650 A.2d 226, 230 (1994) (quotation omitted). In our review, "we inquire whether the zoning body's determination was supported by 'such evidence as a reasonable mind might accept as adequate to support a conclusion . . . .'" *Surina*, 400 Md. at 681, 929 A.2d at 910 (quoting *Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979)). "As we have frequently indicated, the order of an administrative agency, such as a county zoning board, must be upheld on review if it is not premised upon an error of law and if the agency's conclusions reasonably may be based upon the facts proven." *Ad + Soil, Inc. v. County Comm'rs of Queen Anne's County*, 307 Md. 307, 338, 513 A.2d 893,

909 (1986) (internal quotation omitted).[17]

There is some dispute mounted in the present case as to the appropriate standard of review to be afforded the Board of Appeals's legal conclusions. Loyola argues that the Board of Appeals's legal analysis is to be afforded some deference. To support this proposition, Loyola relies on *Marzullo v. Kahl*, 366 Md. 158, 172, 783 A.2d 169, 177 (2001), where we stated that "[e]ven with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." This argument is without merit. By its own terms, the deference "often . . . accorded" an agency's interpretation extends only to the application of the statutes or regulations that the agency administers. The controversy before us concerns the proper application and analysis of caselaw, specifically *Schultz v. Pritts* and its progeny. This is a purely legal issue uniquely within the ken of a reviewing court. "Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law." *Belvoir Farms Homeowners Ass'n, Inc. v. North*, 355 Md. 259, 267-68, 734 A.2d 227, 232 (1999). Thus, the Board of Appeals's legal conclusions, if erroneous, are entitled to no deference.

[17]It is this standard of review that frames the analysis in this case. Petitioners' sole issue raised in the Petition for Writ of Certiorari is that the Board of Appeals erred in applying the *Schultz v. Pritts* standard. Petitioners abandoned their arguments that the Board of Appeals's factual findings were incorrect.

Standards Governing Special Exceptions

As noted earlier, § 502.1 of the BCZR provides:

> Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:
>
> A. Be detrimental to the health, safety or general welfare of the locality involved;
>
> B. Tend to create congestion in roads, streets or alleys therein;
>
> C. Create a potential hazard from fire, panic or other danger;
>
> D. Tend to overcrowd land and cause undue concentration of population;
>
> E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
>
> F. Interfere with adequate light and air;
>
> G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
>
> H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
>
> I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

Within each individual factor, including the general factor in § 502.1(A) of the BCZR,

lurks another test, the *Schultz v. Pritts* standard. *Harford County v. Earl E. Preston, Jr., Inc.*, 322 Md. 493, 500, 588 A.2d 772, 776 (1991) (noting that the *Schultz v. Pritts* test applies "with respect to a given factor" (quoting *Gotach Ctr. for Health v. Bd. of County Comm'rs of Frederick County*, 60 Md. App. 477, 484-85, 483 A.2d 786, 790 (1984))); *Mossburg v. Montgomery County*, 107 Md. App. 1, 21, 666 A.2d 1253, 1263 (1995) (noting that the test announced in *Schultz* essentially adds language to statutory factors to be considered in evaluating proposed special exceptions). In this respect, the *Schultz* analytical paradigm is not a second, separate test (in addition to the statutory requirements) that an applicant must meet in order to qualify for the grant of a special exception. Rather, the *Schultz* explication speaks to two different contexts, one by which a legislative body decides to classify a particular use as requiring the grant of a special exception before it may be established in a given zone, and a second one by which individual applications for special exceptions are to be evaluated by the zoning body delegated with responsibility to consider and act on those applications in accordance with criteria promulgated in the zoning ordinance. *See Earl E. Preston, Jr., Inc.*, 322 Md. at 500, 588 A.2d at 776 (noting that the *Schultz* test is "normally regarded as consistent with general legislative intent" (quoting *Gotach*, 60 Md. App. at 484-85, 483 A.2d at 790)); *see also Earl E. Preston, Jr., Inc.*, 322 Md. at 503, 588 A.2d at 777 ("Reading all of the provisions which pertain to special exceptions together, as we must to ascertain the intention of the County Council, we find no intention on the part of the [Harford] County Council to substitute a *Gowl* [*v. Atlantic Richfield Co.*, 27 Md. App. 410,

341 A.2d 832 (1975)][15] test for the test applicable generally for measuring the adverse impact of a proposed special exception use which we adopted in *Schultz*."). We shall explain how we arrived at this conclusion in some necessary detail.

In The Beginning . . .

In *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S. Ct. 114, 121, 71 L. Ed. 303 (1926), the U.S. Supreme Court upheld Euclid's (a suburb of Cleveland) comprehensive zoning ordinance against a challenge brought by a local landowner. Forever named Euclidean zoning, the type of zoning regulations enacted by Euclid represented a "fairly static and rigid form of zoning." *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 534, 814 A.2d 469, 480 (2002) (*Rylyns*). "Generally, by means of Euclidean zoning, a municipality divides an area geographically into particular use districts, specifying certain uses for each district. 'Each district or zone is dedicated to a particular purpose, either residential, commercial, or industrial,' and the 'zones appear on the municipality's official zoning map.'" *Rouse-Fairwood Dev. Ltd. P'ship v. Supervisor of Assessments for Prince George's County*, 138 Md. App. 589, 623, 773 A.2d 535, 555 (2001) (quoting 5 ZIEGLER, RATHKOPF'S THE LAW OF ZONING AND PLANNING § 63.01 (4th Ed. Rev. 1994)). "Euclidian zoning is designed to achieve stability in land use planning and zoning and to be a comparatively inflexible, self-executing mechanism which, once in place, allows

[15]In *Gowl v. Atlantic Richfield Co.*, 27 Md. App. 410, 417, 341 A.2d 832, 836 (1975), the Court of Special Appeals held that the adverse effects caused by a proposed use in an "application for a special exception ought to be measured against that which could arise under permissible use . . . ." The *Gowl* test was rejected by this Court in *Schultz*.

for little modification beyond self-contained procedures for predetermined exceptions or variances." *Rylyns*, 372 Md. at 534, 814 A.2d at 481.

"Baltimore County is a charter county pursuant to Article XI-A of the Maryland Constitution." *United Parcel Servs., Inc.*, 336 Md. at 581, 650 A.2d at 232. As a charter county, Maryland Code (1957, 2005 Repl. Vol.), Article 25A, § 5(X)(1)(i) authorizes Baltimore County to enact local laws for the protection and promotion of public safety, health, morals, and welfare, relating to zoning and planning. *See also Earl E. Preston, Jr., Inc.*, 322 Md. at 501, 588 A.2d at 776 (noting that a charter county was "authorized to divide the county into use districts and to determine which uses would be permitted within each district as a matter of right (permitted uses) and which uses would only be permitted under certain conditions (special exceptions)"); *Glascock v. Balt. County*, 321 Md. 118, 121, 581 A.2d 822, 824 (1990) (stating that Maryland Code (1957, 2005 Repl. Vol.), Article 25A, § 5(X) "grants Baltimore County its authority to enact a zoning ordinance").

The zoning device at the heart of the present case, the special exception,[19] introduces some flexibility to a "fairly static and rigid" Euclidean zoning scheme. *See Rylyns*, 372 Md.

[19]The terms "special exception" and "conditional use" are essentially interchangeable. *See Md. Overpak Corp. v. Mayor & City Council of Balt.*, 395 Md. 16, 30 n.12, 909 A.2d 235, 243 n.12 (2006) (stating that "a 'conditional use' has an alias by which it is sometimes known elsewhere in Maryland, a 'special exception,' although the two terms are largely synonymous"); *Futoryan v. Balt.*, 150 Md. App. 157, 159, 819 A.2d 1074, 1075 (2003) ("Although we will in this opinion be using the term 'conditional use' some of the case law we cite may use the term 'special exception.' They mean exactly the same thing."); *Lucas v. People's Counsel For Balt. County*, 147 Md. App. 209, 227 n.20, 807 A.2d 1176, 1187 n.20 (2002) ("In Maryland, the terms 'special exception' and 'conditional use' are effectively synonymous.").

at 541, 814 A.2d at 485 (2002) ("Another mechanism allowing some flexibility in the land use process, without abandoning the uniformity principle, is the 'special exception' or 'conditional use.'"). The special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a "middle ground" between permitted uses and prohibited uses in a particular zone. Permitted and prohibited uses serve as binary, polar opposites in a zoning scheme. A permitted use in a given zone is permitted as of right within the zone, without regard to any potential or actual adverse effect that the use will have on neighboring properties. A special exception, by contrast, is merely deemed *prima facie* compatible in a given zone. The special exception requires a case-by-case evaluation by an administrative zoning body or officer according to legislatively-defined standards. That case-by-case evaluation is what enables special exception uses to achieve some flexibility in an otherwise semi-rigid comprehensive legislative zoning scheme.[20]

History of the Special Exception in Maryland

One of our earliest cases to mention and discuss meaningfully the special exception as a zoning tool[21] is *Heath v. Mayor & City Council of Baltimore*, 187 Md. 296, 49 A.2d 799

[20]We should not be thought to understand that special exception uses are only countenanced in Euclidean zones. Similar provisions exist in floating zones. *See, e.g.*, Prince George's County Code § 27-547 (listing permitted uses and special exception uses for floating mixed-use zones).

[21]Several earlier cases mentioned the use of the special exception device, but only in passing, while addressing the constitutional or legal validity of a zoning ordinance. *See, e.g., Jack Lewis, Inc., v. Mayor & City Council of Baltimore*, 164 Md. 146, 164 A. 220 (1933); *Sugar v. N. Balt. Methodist Protestant Church*, 164 Md. 487, 495, 165 A. 703 (1933).

(1946) (*Heath I*), although the case apparently uses the term in a different sense than it is used today. In *Heath I*, nearby landowners challenged the Baltimore City Board of Zoning Appeals's decision to permit their neighbor to erect a two-car garage. At the time, the Baltimore City Zoning Ordinance permitted the Board of Zoning Appeals to grant special exceptions to such garages in residential areas. We noted that an "'exception' within the meaning of a zoning ordinance is a dispensation permissible where the Board of Zoning Appeals finds existing those facts and circumstances specified in the ordinance as sufficient to warrant a deviation from the general rule." *Heath I*, 187 Md. at 303, 49 A.2d at 803. The Baltimore City Zoning Ordinance "empower[ed] the Board of Zoning Appeals to make special exceptions or variances only where the proposed building, alteration, or use 'shall not create hazards from fire or disease or shall not menace the public health, security, or morals.' It then provides that the board, in passing upon applications for special exceptions or variances as to use, height, or area, shall give consideration to the various factors enumerated in [the Zoning Ordinance]." *Heath I*, 187 Md. at 302-03, 49 A.2d at 803. Although we held that the Board of Zoning Appeals had authority to grant the special exception, we reversed its decision because it failed to fairly describe the rationale and supporting facts for its decision. We noted that

> in passing on an application for a special exception in a residential use district, the Board of Zoning Appeals must take into consideration all pertinent factors enumerated in Section 1, such as fire hazards, traffic problems, transportation requirements and facilities, streets and paving, and schools, parks and playgrounds, and its action must be reasonable in the

> light of these and all other pertinent facts. In this case the board announced merely that it had 'made a study of the premises and neighborhood, and there was no supporting evidence upon which to base a rational judgment.

Heath I, 187 Md. at 305, 49 A.2d at 804.

From a modern vantage point, the zoning device at the heart of *Heath I* actually resembles more the notion of a variance. When the case again came to the Court of Appeals after remand, the Court, applying an analysis grounded in hardship consideration, treated the granting of the special exception as if the applicant were seeking a variance.[22] *Heath v. Mayor & City Council of Balt.*, 190 Md. 478, 483-484, 58 A.2d 896, 898 (1948) (*Heath II*). This appears to have been a frequent conflation in cases from that era. The use of the term "special exception" in the *Heath* cases seems to have had a different meaning than the one given to the phrase by more recent Maryland land use jurisprudence. *See, e.g., Easter v. Mayor & City Council of Balt.*, 195 Md. 395, 400, 73 A.2d 491, 492 (1950) ("The burden of showing facts to justify a[] [special] exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood."); *Mayor & City Council of Balt. v. Biermann*, 187 Md. 514, 50 A.2d 804; *Cleland v. Mayor & City Council of Balt.*, 198 Md. 440, 444, 84 A.2d 49, 51 (1951). For example, in *Gleason v. Keswick Imp. Ass'n*, 197 Md. 46, 50, 78 A.2d 164, 165

[22]"'A variance refers to administrative relief which may be granted from the strict application of a particular development limitation in the zoning ordinance (i.e., setback, area and height limitations, etc.).'" *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 537, 814 A.2d 469, 482 (2002) (quoting STANLEY D. ABRAMS, GUIDE TO MARYLAND ZONING DECISIONS, § 11.1 (3d ed., Michie 1992)).

(1951), the Court repeatedly noted that the applicants in that case were seeking a "special exception." Over 50 years later, in analyzing *Gleason*, we deduced that the opinion actually addressed a zoning re-classification, variance, or "alternate classification possibility." *Richard Roeser Prof'l Builder, Inc. v. Anne Arundel County*, 368 Md. 294, 299, 793 A.2d 545, 549 (2002); *see also Zengerle v. Bd. of County Comm'rs for Frederick County*, 262 Md. 1, 21, 276 A.2d 646, 656 (1971) (describing *Gleason* as a variance case). The distinction between a variance and special exception was not clarified definitively in our caselaw until *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 96 A.2d 261 (1953) (*Merlands Club*).

In *Merlands Club.*, we reviewed the refusal by the Board of Appeals of Montgomery County to grant a special exception for a private recreational club. In reversing the Board's decision, we held that the special exception provision in the zoning ordinance "delegate[s] to the Zoning Board a limited authority to permit enumerated uses which the legislative body finds in effect *prima facie* properly residential, absent any fact or circumstance in a particular case which would change this presumptive finding. The duties given the Board are to judge whether the neighboring properties and 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 zoning plan.[23]" *Merlands Club*, 202 Md. at 287-88, 96 A.2d at 264

[23]*Merlands Club* requires that a special exception applicant show that the proposed use is in "general harmony with the zoning plan." *Merlands Club*, 202 Md. at 290, 96 A.2d at 265. The reference to the "zoning plan" in *Merlands Club*, and later zoning opinions of this Court and others, (continued...)

[23](...continued)
appears to have caused some confusion as to with which "plan" a special exception must be in "general harmony." Part of this confusion stems from the less than meticulous differentiation of the variety of treatments of this and similar phrases in zoning ordinances and regulations of different counties and municipalities Maryland Courts have been called upon to interpret. In addition, the language from *Merlands Club* requiring a special exception applicant to show some level of relativity to a "zoning plan" has become part of a boilerplate chant frequently and indiscriminately repeated in later zoning opinions. That unqualified repetition, occasionally lacking in judicial precision, is also responsible for the confusion. We shall endeavor to clarify the point here.

In *Merlands Club*, a Montgomery County zoning ordinance provision explicitly required that decisions of the Board of Appeals regarding special exceptions "be in harmony with the general purpose and intent of the zone plan embodied in these Zoning Regulations and the Zoning Map." *Merlands Club*, 202 Md. at 283, 96 A.2d at 262. Thus, the language in *Merlands Club* requiring "general harmony with the zoning plan" is referring to the zoning ordinance text and the legal document establishing the current zoning of every property in the jurisdiction, the zoning map–not to a land planning document such as a master plan, general plan, or functional master plan. Most subsequent cases utilizing this, or similar, language also refer to the zoning ordinance and/or the zoning map when employing the same or similar term.

For example, *Oursler v. Board of Zoning Appeals of Baltimore County*, 204 Md. 397, 402, 104 A.2d 568, 570 (1954), cites *Merlands Club* as support for the assertion that a special exception applicant "must show only that the exception would be in harmony with the zoning plan." In describing the statutory authorization for special exceptions in Baltimore County, we noted that "[i]n 1943 the Legislature passed an amendment to the Zoning Enabling Act authorizing the County Commissioners to provide that the Zoning Commissioner may make special exceptions to the Zoning Regulations in harmony with their general purposes and intent." *Oursler*, 204 Md. at 400, 104 A.2d at 569. In *Crowther, Inc. v. Johnson*, 225 Md. 379, 385, 170 A.2d 768, 771 (1961), we cited to the language in *Oursler* and *Merlands Club* when considering testimony that a proposed special exception would be "out of step with the comprehensive zoning plan." *See also Crowther*, 225 Md. at 383, 170 A.2d 768, 770 (noting that a zoning body "is given a wide latitude of discretion in passing upon special exceptions so long as the resulting use is in harmony with the general purpose and intent of *the zoning plan* and will not adversely affect the use of neighboring properties and *the general plan of the neighborhood as provided by the zoning ordinance*" (emphasis added)).

In fact, we have characterized a zoning ordinance as a comprehensive plan. In *Huff v. Board of Zoning Appeals of Baltimore County*, 214 Md. 48, 51, 133 A.2d 83, 85 (1957), we held that a comprehensive zoning ordinance constituted a "comprehensive plan." We noted the statutory authority of the county to enact zoning laws, stating that the "statute now found in the Code of Public Local Laws of Baltimore County, 1955, Title 30, Sec. 532, provided, at the times here material, that the County Commissioners were empowered to enact zoning regulations '. . . in accordance with a comprehensive plan.'" Opponents of a zoning reclassification argued that the reclassification was improper because it was not "in accordance with a comprehensive plan" as required by the statute. We held that "the Baltimore County zoning regulations of 1955, including the provisions as to (continued...)

[23](...continued)
Manufacturing, Restricted zones, constitute a comprehensive plan." *Huff*, 214 Md. 48, 59, 133 A.2d 83, 89.

In *Turner v. Hammond*, 270 Md. 41, 55, 310 A.2d 543, 551 (1973), we noted that a proposed use could not be approved as a special exception if it caused "disharmony to the functioning of the comprehensive plan." The comprehensive plan referred to in *Turner* was the zoning ordinance. The *Turner* opinion relied on two cases for this language, *Merlands Club*, discussed *supra*, and *Rockville Fuel & Feed Co. v. Board of Appeals of City of Gaithersburg*, 257 Md. 183, 262 A.2d 499 (1970). *Rockville Fuel*, in turn, relied upon *Merlands Club* and *Oursler* in its discussion of the requirement that a special exception conform to a zoning plan. *See also Rockville Fuel*, 257 Md. at 190, 262 A.2d at 503 ("The legislative body of the City of Gaithersburg has in effect said that if certain standards and requirements enumerated in the ordinance are met in a particular case, the various special exceptions specifically authorized *are a part of the comprehensive zoning plan* and therefore promote the health, safety and general welfare, to the same extent as do the uses permitted as of right in the zone involved." (emphasis added)). Thus, the "comprehensive plan" referred to in *Turner* is the zoning ordinance. *See also Turner*, 270 Md. at 54, 310 A.2d at 550 (noting that "the conditional use or special exception, as it is generally called, *is a part of the comprehensive zoning plan* sharing the presumption that as such it is in the interest of the general welfare and, therefore, valid." (emphasis added)).

In *Anderson v. Sawyer*, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974), Judge Rita Davidson noted that a proposed use must be in harmony with the "comprehensive plan." That reference, as well, was to the county zoning ordinance as a whole. The Court of Special Appeals stated:

> But in the instant case the legislature of Baltimore County has determined that as part of its comprehensive plan funeral homes are to be allowed in residential zones notwithstanding their inherent deleterious effects. By defining a funeral home as an appropriate use by way of special exception, the legislature of Baltimore County has, in essence, declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the community. As part of the comprehensive zoning plan this legislative declaration shares in a presumption of validity and correctness which the courts will honor.

Anderson, 23 Md. App. at 624, 329 A.2d at 724. It is apparent from this passage that *Anderson* is describing the legislative process in enacting or amending a zoning ordinance, where a legislative body divides those uses permitted in a Euclidean zone as of right from those requiring a special exception. In addition, *Anderson* uses the terms "comprehensive plan" and "comprehensive plan of zoning" interchangeably in consecutive sentences. *See Anderson*, 23 Md. App. at 617, 329 A.2d at 720 ("If the evidence makes the question of harm or disturbance or the question of the disruption of (continued...)

We further noted that "where a specific use is permitted by the legislative body in a given area if the general zoning plan is conformed to and there is no adverse effect on the neighborhood, the application can be granted . . . ." *Merlands Club*, 202 Md. at 289, 96 A.2d at 265. Describing the presumption afforded special exception uses, we noted that "private clubs are *prima facie* to be permitted in a residential use area. The applicant for such a use need not show either practical difficulty, unnecessary hardship, or great urgency, but only that the project is a private club and that it would be in general harmony with the zoning plan and would not adversely affect the neighboring properties and the general neighborhood." *Merlands Club*, 202 Md. at 290, 96 A.2d at 265. Thus, in *Merlands Club*, the Court

[23](...continued)
the harmony of the *comprehensive plan of zoning* fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the *comprehensive plan*, a denial of an application for a special exception is arbitrary, capricious and illegal." (emphasis added)).

To be sure, a legislature validly may require that an applicant for a special exception show that a proposed use is in conformance, is consistent, or is in harmony with a land planning document, such as a general plan, master plan, or functional master plan. For example, in *Board of County Commissioners for Prince George's County v. Luria*, 249 Md. 1, 2 n.2, 238 A.2d 108, 109 n.2 (1968), the zoning ordinance then in effect in Prince George's County stated that "[a] special exception may be granted when the Council finds that . . . proposed use is in harmony with the purpose and intent of the General Plan for the physical development of the District as embodied in this Ordinance and in any Master Plan or portion thereof adopted or proposed as part of said General Plan." That language from the Prince George's County zoning ordinance was repeated in *Cason v. Board of County Commissioners for Prince George's County*, 261 Md. 699, 706-07, 276 A.2d 661, 664 (1971). Currently, § 27-317(a)(3) of the Prince George's County Code (zoning ordinance) requires that, in order for a special exception to be approved, the proposed use must "not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Plan, the General Plan." Thus, typically and at least in special exception cases originating in Prince George's County, a judicial reference in an appellate opinion to a requirement that a proposed use conform to a land planning document may not be referring to the zoning ordinance alone or at all.

discarded the consideration generally of hardship as part of the special exception analysis, unless the particular zoning ordinance explicitly injects hardship as a factor.

We later considered the teachings of *Merlands Club* in the context of special exceptions provided for in the zoning ordinance in Baltimore County. In *Oursler v. Board of Zoning Appeals of Baltimore County*, 204 Md. 397, 104 A.2d 568 (1954) (our first substantial opportunity to examine the regulation of special exceptions in Baltimore County), we affirmed an order of the Baltimore County Board of Zoning Appeals granting a special exception (in *Oursler* it was referred to as a "special permit") to operate a restaurant in a residential area. The zoning ordinance section governing special exceptions in effect at that time was identical to the current version of BCZR § 502.1(a) through (f). In applying the zoning ordinance, we noted:

> It is the function of the Zoning Commissioner, and the Board of Zoning Appeals on appeal, to determine whether or not any proposed use for which a special permit is sought would be in harmony with the general purposes and intent of the Zoning Regulations, and whether it could be conducted without being detrimental to the welfare of the neighborhood. Accordingly, in Baltimore County, where restaurants are *prima facie* permissible in residential zones, an applicant for a permit to conduct a restaurant in a residential zone is not required to show that denial of a permit would result in "practical difficulty, or unnecessary or unreasonable hardship," as in the case of a variance, but must show only that the exception would be in harmony with the zoning plan and would not be detrimental to the welfare of the neighborhood.

Oursler, 204 Md. at 401-02, 104 A.2d at 570; *See also Erdman v. Board of Zoning Appeals of Balt. County*, 212 Md. 288, 295-296, 129 A.2d 124, 127 (1957) (applying and quoting

Oursler).

In *Gilmor v. Mayor and City Council of Baltimore*, 205 Md. 557, 109 A.2d 739 (1954), the Baltimore City Board of Municipal and Zoning Appeals granted a permit[24] to erect a billboard in a "first commercial use" district. We affirmed and discussed the legislative presumption afforded special exception "permits":

> The argument of the appellants that the erection of a billboard in a first commercial use district, in which there are residences, would lead to slums and, in this way, in the future affect adversely the public health or safety, is an argument that billboards should not be permitted at all in a district in which there are residences or substantial and attractive businesses, although it is zoned first commercial. Whatever the merits of this argument, it is one which should be addressed to the Legislature or the Baltimore City Council in an effort to have the law changed. As the law now stands, the argument is fanciful. The legislative branch of the government, in allowing billboards to be erected in such areas, has said, in effect, that the likelihood that their presence will bring about the dire consequences foreseen by the appellant, is not great enough to forbid generally the use of property to accommodate them. It has added a safeguard for the instances contrary to the general rule in the procedures required by Sections 37, 38 and 39 of the Ordinance, whereby the Board, as a legislative agent, may determine in any particular instance that the public health, safety, welfare, security and morals will be affected--not in the deterioration of the neighborhood over a period of time because of the presence of the billboards, but because of some immediate fact, circumstance or condition which would bring about the

[24]Although the *Gilmor* opinion refers to the granting of a "permit," the case clearly is directed to what would be considered today a special exception. The Baltimore City Zoning Ordinance in effect at the time required a permit for billboards to be erected in "first commercial, second commercial, and industrial use districts." The Baltimore City Board of Municipal and Zoning Appeals was only permitted to issue such a permit following a public hearing. The permit was to be denied if "such proposed use" "would menace public health, safety, security or morals . . . ."

evils guarded against.

Gilmor, 205 Md. at 565, 109 A.2d at 743.

In 1957, we decided *Huff v. Board of Zoning Appeals of Baltimore County*, 214 Md. 48, 133 A.2d 83 (1957). *Huff* was not a special exception case, but is nonetheless helpful to our analysis here because *Huff* compared the special exception tool to another, similar zoning device. In *Huff*, the local legislature enacted a zoning tool which would be described in modern zoning terminology as a "floating zone."[25] A landowner meeting certain statutory requirements (such as minimum lot size and parking requirements) could petition for his property to be zoned "Manufacturing, Restricted." The decision whether to grant a petition was to be made in the first instance by the Zoning Commissioner with the right of appeal to the Board of Zoning Appeals. The statute further stated that such a rezoning was intended

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[25] In *Rylyns*, we described the "floating zone":

> "This device is the creation of special use districts for these various uses, which at the time are unlocated districts, but which can be located by a petition of a property owner desiring to develop his specific tract for any of these special uses. Such unlocated special zoning districts are popularly referred to as 'floating zones,' in that they float over the entire municipality until by application of a property owner one of these special zones descends upon his land thereby reclassifying it for the special use. The zoning ordinance is carefully drawn so as to impose restrictive use limitation upon the owner in these special use zones in order to protect the adjoining residential areas. Usually there is a minimum lot requirement with large set-back restrictions for the structures, both from the streets and from the adjoining residences."

Rylyns, 372 Md. at 539 n.15, 814 A.2d at 484 n.15 (quoting *Eschinger v. Bus.* 250 Md. 112, 118-19, 242 A.2d 502, 505-06 (1968)).

"to protect the uses in neighboring residential zones" and that "the building and grounds must be continuously maintained so that they will not adversely affect vicinal properties." *Huff*, 214 Md. at 59, 133 A.2d at 89.

In upholding the legislation creating the "Manufacturing, Restricted" floating zone, we noted:

> We read the provisions of the regulations as to the purpose and intent in establishing [Manufacturing, Restricted] Zones and as to the mechanics employed to be sure that the plan approved will continue to "protect the uses in neighboring residential zones" and not adversely affect "vicinal properties," to mean that an area cannot be properly zoned or rezoned Manufacturing, Restricted unless in actual operation and effect it will be a harmonious part of the comprehensive plan and serve the purposes of the enabling act; that is, that the zoning will be not only in the public good but in the interests of nearby property owners. If the regulations be read as we read them, it is clear that the Manufacturing, Restricted classification is analogous to a special exception, and the rules which are applicable to special exceptions would apply, not the general rules of original error or change in conditions or the character of the neighborhood, that control the propriety of rezoning. This is because, as in the case of a special exception, there has been a prior legislative determination, as part of a comprehensive plan, that the use which the administrative body permits, upon application to the particular case of the specified standards, is *prima facie* proper in the environment in which it is permitted. This prior determination and the establishment of sufficient standards effectively refute the claim of improper delegation of legislative power.

Huff, 214 Md. at 62, 133 A.2d at 91.

Merlands Club and *Ourlser* were cited favorably in *Crowther, Inc. v. Johnson*, 225 Md. 379, 383, 170 A.2d 768, 770 (1961), another Baltimore County land use case. In

Crowther, we affirmed the Board of Appeals's denial of a special exception to operate a trailer home park in the "Manufacturing, Light" zone. We began our analysis by noting the appropriate standard to be applied in evaluating an application for a special exception by noting that "conditions upon which a special exception may be granted are set out in the ordinance, and the board is given a wide latitude of discretion in passing upon special exceptions so long as the resulting use is in harmony with the general purpose and intent of the zoning plan and will not adversely affect the use of neighboring properties and the general plan of the neighborhood as provided by the zoning ordinance." We determined that substantial evidence supported the Board's denial of the special exception "(a) because it would be inconsistent with the continued development of a planned and existing, though only partly developed, manufacturing area needed for such purposes in this particular locality for the development of a large area in accordance with a comprehensive plan, and (b) because it would adversely affect property values in the vicinity." *Crowther*, 225 Md. at 385, 170 A.2d at 771.

In *Deen v. Baltimore Gas & Electric Co.*, 240 Md. 317, 330-31, 214 A.2d 146, 153 (1965), we addressed a utility's request for a special exception to place overhead transmission lines in Baltimore County. The Zoning Commissioner granted the special exception for only part of the utility company's five-mile right-of-way. The remainder of the power transmission lines would be required to be buried. BG&E appealed to the County Board of Appeals. The Board of Appeals, after a six-day *de novo* hearing, granted the special

exception in part, requiring still that some of the power transmission lines be buried. The company appealed to the Circuit Court for Baltimore County, which held that the special exception should have been granted for the entire right-of-way. In reversing the judgment of the Circuit Court, resulting in affirmance of the Board of Appeals's decision, the Court of Appeals noted that "[s]ection 502.1 implies that the effect on health, safety or general welfare must be in some sense unique or else a special exception could never be granted in such an area . . . ." *Deen*, 240 Md. at 331, 214 A.2d at 153. *See also Brouillett v. Eudowood Shopping Plaza, Inc.*, 249 Md. 606, 608-609, 241 A.2d 404, 405 (1968) ("A further reason in support of the Board's action in denying the special exception was the appellees' failure to adduce sufficient evidence that the requested use would not 'be detrimental to the health, safety or general welfare of the locality involved.' In a hearing for a special exception where the requested use is permitted under the existing zoning classification the applicant need only show that the use is consistent with the existing classification and that it would not be adverse to the welfare of the neighborhood."); *Bd. of County Comm'rs for Prince George's County v. Luria*, 249 Md. 1, 3, 238 A.2d 108, 109 (1968) ("[T]he requisites for the granting of a special exception are a finding that the proposed use is in harmony with the general plan and a finding that the proposed use will not have an adverse effect on health and safety nor be detrimental to adjacent properties or the general neighborhood."); *Rockville Fuel & Feed Co. v. Board of Appeals of City of Gaithersburg*, 257 Md. 183, 190-91, 262 A.2d 499, 503 (1970) ("If [the applicant] shows to the satisfaction of the Board that the proposed use would

be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, [the applicant] has met his burden." (citing *Merlands* and *Ourisev*)).

In *Turner v. Hammond*, 270 Md. 41, 55, 310 A.2d 543, 551 (1973), a special exception case emanating from Wicomico County, we again had occasion to describe the burden of the applicant seeking a special exception:

> While the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material but if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal.

In *Anderson v. Sawyer*, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974), Judge Rita Davidson (seven years later to become the author of *Schultz*), then writing for the Court of Special Appeals, examined an order of the Baltimore County Board of Appeals denying an application for a special exception to operate a funeral home within a residential zone. Relying on *Turner*, 270 Md. 41, 310 A.2d 543, *Cason v. Board of County Commissioners*, 261 Md. 699, 276 A.2d 665 (1971),[26] *Rockville Fuel*, 257 Md. 183, 262 A.2d 499, and

[26]*Cason*, as noted earlier, is a Prince George's County special exception case. The burden of the applicant in that case was defined with particular reference to the Prince George's County Zoning (continued...)

Merlands Club, 202 Md. 279, 96 A.2d 261, she described the special exception and the evaluative standard attendant to it thusly:

> The conditional use or special exception is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. 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.

Anderson, 23 Md. App. at 617, 329 A.2d at 720.

The intermediate appellate court in *Anderson* held that the Board of Appeals erroneously denied the special exception. The court noted that "in order to deny the right of the property owner to enjoy the requested special exception, the Board needed before it probative evidence that the proposed use would, in fact, create traffic congestion on Sunberry

[26](...continued)
Ordinance.

> "In *Board of County Commissioners for Prince George's County v. Luria*, 249 Md. 1, 238 A.2d 108 (1968), the Court held that in a zoning case involving a special exception in Prince George's County, the applicant has the burden of proof in establishing both requirements of Section 28.2 already set forth, i.e., that (a) the proposed use is in harmony with the general plan and (b) that the proposed use will not have an adverse effect on health and safety nor be detrimental to adjacent properties or to the general neighborhood."

Cason, 261 Md. at 706-707, 276 A.2d at 664 (quoting *Malmer Assocs. v. Bd. of County Comm'rs for Prince George's County*, 260 Md. 292, 303, 272 A.2d 6, 11 (1971)).

Road, and would, in fact, be detrimental otherwise to the general welfare of the locality involved. In this case there was no such probative evidence presented." *Anderson*, 23 Md. App. at 617-18, 329 A.2d at 720. In an often-quoted section, the court concluded:

> There can be no doubt that an undertaking business has an inherent depressing and disturbing psychological effect which may adversely affect persons residing in the immediate neighborhood in the enjoyment of their homes and which may lessen the values thereof. Indeed, it is precisely because of such inherent deleterious effects that the action of a local legislature in prohibiting such uses in a given zone or zones will be regarded as promoting the general welfare and as constitutionally sound. But in the instant case the legislature of Baltimore County has determined that as part of its comprehensive plan funeral homes are to be allowed in residential zones notwithstanding their inherent deleterious effects. By defining a funeral home as an appropriate use by way of special exception, the legislature of Baltimore County has, in essence, declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the community. As part of the comprehensive zoning plan this legislative declaration shares in a presumption of validity and correctness which the courts will honor.
>
> The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses. Consequently, the bald allegation that a funeral home use is inherently psychologically depressing and adversely influences adjoining property values, as well as other evidence which confirms that generally accepted conclusion, is insufficient to overcome the presumption that such a use promotes the general welfare of a local community. Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception

> would adversely affect adjoining and surrounding properties in any way other than would result from the location of any funeral home in any residential zone, the evidence presented by the protestants was, in effect, no evidence at all.
>
> . . . .
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> . . . The protestants have shown nothing more than that they would suffer the same degree of harm as would be suffered by any homeowner if a funeral home were permitted on land adjacent or in close proximity to their residences. If the residents of Baltimore County do not want funeral homes in residential use districts, they should prevail upon the local legislature to change the ordinance. (citations omitted)

Anderson, 23 Md. App. at 624-25, 329 A.2d at 724.

Less than a year after *Anderson*, in *Gowl v. Atlantic Richfield Co.*, 27 Md. App. 410, 341 A.2d 852 (1975), the Court of Special Appeals[27] purported to inject a new twist to the standards for evaluating special exceptions. *Gowl* held that, in deciding whether to grant a special exception, the zoning body should compare the adverse effects of a proposed special exception use to the adverse effects of permitted uses allowed in the zone at the site proposed for the special exception. For example, the potential for adverse effect of a proposed use on traffic congestion at a critical intersection in the neighborhood was to be compared to the effect on traffic congestion of permitted uses within the zone. The Court of Special Appeals noted that

> traffic impact on an application for a special exception ought to

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[27]Although she was still serving on the Court of Special Appeals at the time the opinion in *Gowl* was filed, Judge Davidson was not a member of the panel that decided *Gowl*. Her subsequent elevation to the Court of Appeals placed her in a position to play an important role in euthanizing *Gowl*

> be measured against that which could arise under permissible use, and not merely on existing traffic loads around the undeveloped premises. Where, as here, the potential volume of traffic under the requested use would appear to be no greater than that which would arise from permitted uses, we believe it arbitrary, capricious and illegal to deny the application for special exception on vehicular traffic grounds.

Gowl, 27 Md. App. at 417-18, 341 A.2d at 836.

Schultz v. Pritts

In 1981, we decided *Schultz v. Pritts*, a case all parties to this litigation acknowledge as a bellwether case regarding special exceptions in Maryland. *See Trail v. Terrapin Run, LLC*, 403 Md. 523, 551, 943 A.2d 1192, 1208 (2008) (noting that "some have called [*Schultz*] the seminal case in the Maryland law of special exceptions"); *E. Outdoor Adver. Co. v. Mayor & City Council of Balt.*, 146 Md. App. 283, 307-08, 807 A.2d 49, 63 (2002) (describing *Schultz* as "the seminal case in Maryland concerning conditional uses or special exception uses"); *Mossburg v. Montgomery County*, 107 Md. App. 1, 8, 666 A.2d 1253, 1257 (1995) (describing *Schultz* as the "modern seminal case"); *Lawton T. Sharp Farm, Inc. v. Somerlock*, 52 Md. App. 207, 210, 447 A.2d 500, 502 (1982) (describing *Schultz* as "a landmark interpretation").

In *Schultz*, Robert and Ann Pritts petitioned for a special exception to operate a funeral home in an area zoned for single-family residential homes in Carroll County. The Carroll County Board of Zoning Appeals denied the special exception. On judicial review, the Circuit Court for Carroll County remanded the case to the Board of Zoning Appeals on

due process grounds unrelated to the special exception standard.[28] The Court of Special Appeals dismissed an appeal and cross-appeal as premature. Thus, the proper evaluative standard to be applied in special exception cases was not considered until the case reached us. The Court of Appeals issued a writ of certiorari to consider all issues raised in the case.

Judge Davidson, now writing for the Court of Appeals, first cleared the way to reach the merits, holding that the Circuit Court's order remanding the case was an appealable final judgment and that the Board's actions did not violate the Prittses' due process rights. Judge Davidson then proceeded to the merits of the Prittses' other arguments.

The Prittses argued that the Board of Zoning Appeals erred because it declined to apply the *Gowl* standard in evaluating their application for the special exception. Specifically, they contended that their proposed use, a funeral home, would generate less traffic than several permitted uses allowed in the zone in which the subject property was placed. Thus, they contended, the Board of Zoning Appeals should have approved the special exception to operate a funeral home.

In finding no merit in the Prittses' argument, the Court unequivocally rejected the *Gowl* standard. The Court began its analysis by reviewing the proper standard to be applied by a zoning body in reviewing an application for a special exception.

> This Court has frequently expressed the applicable standards for judicial review of the grant or denial of a special

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[28]The Circuit Court held that, by accepting and considering evidence after the conclusion of the public hearing, the Board of Zoning Appeals violated the Prittses' right to due process of law under the Fourteenth Amendment to the United States Constitution.

exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. 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.

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. *Turner v. Hammond*, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); *Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg*, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287, 96 A.2d 261, 264 (1953); *Anderson v. Sawyer*, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.

Schultz, 291 Md. at 11-12, 432 A.2d at 1325. The Court then surveyed prior caselaw,

focusing on *Deen* and *Anderson*. The Court concluded in an often-quoted paragraph:

> These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Schultz, 291 Md. at 15, 432 A.2d at 1327. After summarizing the facts and analysis in *Gowl*, the Court stated that "[i]n reaching this conclusion, the trial court cited only *Deen*, 240 Md. at 330-31, 214 A.2d at 153, and the Court of Special Appeals cited no authority at all. Indeed, there is no persuasive authority that applies the *Gowl* standard or supports this conclusion." *Schultz*, 291 Md. at 19, 432 A.2d at 1329. We concluded that "the *Gowl* standard is logically inconsistent and in conflict with the standards established in *Turner* as explicated by *Deen* and *Anderson*." *Schultz*, 291 Md. at 19, 432 A.2d 1319, 1329. Finally, the Court articulated the standard to govern special exception cases:

> We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those

> inherently associated with such a special exception use irrespective of its location within the zone. *Turner*, 270 Md. at 54-55, 310 A.2d at 550-51; *Deen*, 240 Md. at 330-31, 214 A.2d at 153; *Anderson*, 23 Md. App. at 617-18, 624-25, 329 A.2d at 720, 724.

Schultz, 291 Md. at 22-23, 432 A.2d at 1331.

Schultz's Progeny

Schultz has been cited in over 100 reported Maryland appellate decisions. Both sides in this litigation have sifted through this vast body of law and highlighted particular applications of parts of the relevant language in *Schultz* that, they contend, support their respective positions. Petitioners, for example, point to *Lucas v. People's Counsel For Baltimore County*, 147 Md. App. 209, 807 A.2d 1176 (2002). In *Lucas*, a horse farm owner in Baltimore County applied for a special exception to operate an "airport" on his property so that a part owner of a thoroughbred business located at the farm could commute to and from the property via airplane. A helicopter pad already was in operation on the property. The Board of Appeals denied the request for special exception, concluding that the proposed use constituted an "airstrip," "heliport," or "helistop," which were not permitted by special exception in the zone. As an alternative holding, the Board of Appeals relied on its interpretation of the *Schultz* standard.

> In reaching that determination, the Board used the following standard: "The question is one of whether or not the adverse effects are greater at the proposed site than they would be elsewhere in the County where they may be established, i.e., the other areas within the R.C. 2 zones." The Board noted that it believed that "the appellant has the burden of establishing that

> the impact factor caused by the proposed use is not greater at the site than the same use elsewhere in the zone (R.C. 2 zone)."

Lucas, 147 Md. App. at 223, 807 A.2d at 1184.

The Board of Appeals thus found that

> the impact upon the National Historic District would be greater in the Greenspring Valley than if located in other northern areas of the R.C. 2 zones. Relying considerably on the expertise of (expert witnesses) Messrs. Dillon, Solomon and Gerber, there are individual areas in the Northern part of the county that would be less impacted than at the present site. The Board concludes that it is not a matter of finding a better site for the proposed use in the R.C. 2 zone, but rather the question is one of total impact; and the Board concludes that the Appellants have not established that fact by the preponderance of the evidence to the Board's satisfaction. Acknowledging that airports and helicopter uses have inherent negative impacts, the detrimental effects upon the smaller Greenspring Valley district would clearly have a greater negative impact than if located elsewhere in the vast acreage constituting the R.C. 2 zone of Baltimore County.

Lucas, 147 Md. App. at 223-24, 807 A.2d at 1184-85. The Circuit Court for Baltimore County affirmed the Board's actions with regard to the scope of the definition of an "airport" and the articulation of the *Schultz* standard.

The Court of Special Appeals affirmed the decision of the Circuit Court with regard to the definition of "airport." The intermediate appellate court acknowledged that, in light of its first holding, there remained issues that the court "need not reach for the purposes of deciding this case." *Lucas*, 147 Md. App. at 235, 807 A.2d at 1192. The court nonetheless

elected to address those issues "for completeness."[29] *Id.*

The Court of Special Appeals proceeded to write approvingly of the Board of Appeals's application of *Schultz*, noting that

> the question is not whether the proposed facility will have some adverse effect on the Greenspring Valley area; it will because there are inherently detrimental effects associated with such facilities. The Board must determine whether the adverse effects of the special exceptions use in the particular location in which it is sought to be located *would be greater or more detrimental than they would be generally at other locations* within the R.C. 2 zone.

Lucas, 147 Md. App. at 238-39, 807 A.2d at 1193-94 (emphasis added). The intermediate appellate court concluded that

> the Board determined that, at Helmore Farm, the adverse effects inherently associated with the proposed facility would be above and beyond the adverse effects associated with an airport elsewhere in the R.C. 2 zone. *The record clearly indicates that there are other parcels within the R.C. 2 zone where an airport would provide a lesser adverse impact than at Helmore Farm*, and the Board recognized that finding a better site was not the issue. We believe that the Board applied the appropriate standard.

Lucas, 147 Md. App. at 240, 807 A.2d at 1194 (emphasis added).

Petitioners also point to *Board of County Commissioners for Cecil County v.*

[29]This alone brands, at best, as considered dicta, the *Lucas* court's consideration of how *Schultz* was applied in that case by the Board and Circuit Court. We note, as we recently had occasion to do, that withholding unnecessary comment on matters not required to be addressed frequently is the better course. *Garner v. Archers Glen Partners, Inc.*, 405 Md. 43, __, 949 A.2d 639, 641 (2008) (noting that "an appellate court should use great caution in exercising its discretion to comment gratuitously on issues beyond those necessary to be decided").

Holbrook, 314 Md. 210, 212, 550 A.2d 664, 665 (1988). In *Holbrook*, a landowner sought a special exception to locate a mobile home in an area zoned for agricultural use. The Cecil County Board of Appeals denied the special exception request. "We granted the Board's petition for a writ of certiorari to consider whether the intermediate appellate court's decision comported with the applicable zoning ordinance and with the standard for judicial review of a special exception set forth in *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981)." *Holbrook*, 314 Md. at 214, 550 A.2d at 667 (1988). The Court there summarized the *Schultz* standard:

> In summary, where the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone, the application should be denied. Furthermore, if the evidence makes the issue of harm fairly debatable, the matter is one for the Board's decision, and should not be second-guessed by an appellate court.

Holbrook, 314 Md. at 217-18, 550 A.2d at 668. Applying that standard to the evidence before the Cecil County Board of Appeals, we concluded that

> [t]he evidence revealed that the Peters built their $147,000 house in a uniquely valuable, heavily forested, low-growth area. Moreover, photographs clearly depicted the direct and proximate view of the mobile home from the Peters's home. The Board found that this evidence "vividly indicate[d] the dehabilitating (sic) effect of the mobile home on the value of [the Peters's] property," inferring thereby that the trailer's continued presence would create "significantly greater adverse effects in this location than were it located in other areas in the zone."

Holbrook, 314 Md. at 219-20, 550 A.2d at 669. In reaching that conclusion, however, the Court appeared to shift the focus from the particular adverse effects on the properties neighboring the proposed use to the availability of other areas where the mobile home would have less of an adverse effect.

> We find no cause to question the Board's conclusion that the mobile home, in this particular location, would impair neighboring property value to a greater extent than it would elsewhere in the zone. Countless locations exist within the zone, and indeed, within Holbrook's own property, where the presence of a mobile home would have no effect whatsoever upon adjoining property values. If, for example, trees or topography hid the mobile home from the view of the neighboring property owners, there would remain, as the Board's counsel conceded, absolutely no grounds for denying a special exception permit. The Court of Special Appeals failed to acknowledge these potential scenarios. Instead, the intermediate appellate court based its holding on the mistaken premise that, regardless of a mobile home's particular location within a zone, its negative impact on adjacent properties would remain the same.
>
> At any rate, in light of the mobile home's high degree of visibility in this particular location, its proximity to the Peters's home, and the markedly disparate values of the Holbrook and Peters residences, we hold that the Board reasonably concluded that the permanent presence of the Holbrook mobile home would create significantly greater adverse effects in this location than were it located elsewhere in the zone.

Holbrook, 314 Md. at 220, 550 A.2d at 669. Petitioners argue that *Holbrook*, particularly the passage previously quoted, supports the proposition that *Schultz* compels a district-wide comparative geographic analysis of effects in each special exception. The most sympathetic statement to that effect in the Court's opinion in *Holbrook* is that "[c]ountless locations exist

within the zone, and indeed, within Holbrook's own property, where the presence of a mobile home would have no effect whatsoever upon adjoining property values." *Holbrook*, however, subsequently has been interpreted in a much different light than Petitioners argue here.

There is not necessarily a comparative analysis requirement imbedded in *Holbrook*. In a bit of rhetorical flourish, the Court actually was dismissing the intermediate appellate court's "mistaken premise that, regardless of a mobile home's particular location within a zone, its negative impact on adjacent properties would remain the same." *Holbrook*, 314 Md. at 220, 550 A.2d at 669. The Court did not compare the location of the proposed use to other locations within the zone, or require such an analysis in every case. Instead, it highlighted characteristics of the particular neighborhood that exacerbated the problems inherent to the placement of a mobile home there. *See E. Outdoor Adver. Co.*, 146 Md. App. at 309, 807 A.2d at 64 (noting that in *Holbrook* "the Court considered the deleterious impact of a mobile home on the value of adjacent properties in the 'neighborhood'"); *Sharp v. Howard County Bd. of Appeals*, 98 Md. App. 57, 83, 632 A.2d 248, 261 (1993) (discussing *Holbrook* and stating that "the Court [in *Holbrook*] construed the relative lack of vegetative screening between the two structures and the apparently level topography as sufficient localized circumstances that rendered the adverse property value impact, arguably always inherent in this particular use, uniquely adverse").

Petitioners also point to the Court of Special Appeals's decision in *Futoryan v. Mayor*

& City Council of Baltimore, 150 Md. App. 157, 819 A.2d 1074 (2003). In *Futoryan*, a landowner appealed the denial of a special exception to operate an automobile service station in the B-3-2 zone. The subject property of the special exception application was the only property within the jurisdiction zoned B-2-3. The intermediate appellate court described the problem this situation presented with the application of its view of the *Schultz* standard.

> The B-3-2 zone in this case is a tiny island, measuring a mere 64' by 122.5' and completely surrounded by residential zoning. Futoryan's property is the entire zone. The conditional use here cannot, by definition, have a greater adverse impact at this location than it would have at some other location within the zone because there is no such thing as "some other location within the zone." There can be no comparative degree, no greater adverse impact and no lesser adverse impact, when there is nothing with which to compare the location in question.

Futoryan, 150 Md. App. at 178, 819 A.2d at 1086.

To solve this perceived quandary, the Court of Special Appeals divided the *Schultz* test into what the court considered to be its elements, noting that "[a]lthough in their articulation the tests are sometimes telescoped together into a single compound test, there are actually two tests inherent in the *Schultz v. Pritts* guidelines." *Futoryan*, 150 Md. App. at 178, 819 A.2d at 1086. The court continued that "[t]he more prominent and high profile of the two is that which assumes an adverse impact from the conditional use and then compares the relative severity of the adverse impact at the location in question with its likely severity at other locations within the zone." *Futoryan*, 150 Md. App. at 178-79, 819 A.2d at 1086. The court, setting the stage for application of its view, concluded its analysis of the *Schultz*

test, stating that "[i]f . . . the adverse effect were weightier than the beneficial purpose [of the proposed use], the assessment of the relative severity [of the adverse effect] at different locations would then be called for." *Futoryan*, 150 Md. App. at 180, 819 A.2d at 1087. It then held that where no other properties assigned to the particular zone are available for a comparative analysis, the zoning body should compare the adverse effect of the proposed use on the neighboring properties with the "likely adverse influences [of the proposed use] at other locations in other similar zones." *Futoryan*, 150 Md. App. at 181, 819 A.2d at 1087.

Petitioners also rely on *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md. App. 616, 716 A.2d 311 (1998). In *Hayfields*, a landowner sought a special exception to build a golf course in the R.C.2 zone in Baltimore County. Opponents of the golf course argued that the geological formation underlying the golf course, known as the Cockeysville Marble formation, would increase the adverse effects of contaminant runoff. The Board of Appeals rejected their concerns, noting that there were other areas in the R.C.2 zone that were part of the Cockeysville Marble formation. Therefore, the Board of Appeals found, there was insufficient evidence to conclude that the effects of the golf course would be greater at the proposed location than other areas within the R.C.2 zone. The Court of Special Appeals held that "this finding does not comport with the test set forth in *Schultz*. Assuming that Cockeysville Marble *is* more susceptible to contamination, the mere fact that *some* of the land elsewhere in the R.C. 2 zone is underlain with Cockeysville Marble does not mean that the effect would be no worse at this locality than elsewhere in the zone." *Hayfields*, 122 Md.

App. at 653-54, 716 A.2d at 330. The Court of Special Appeals remanded the case to the Board of Appeals:

> If all or a substantial portion of the off-site R.C. 2 land is underlain by Cockeysville Marble then it is at least possible that the Board could fairly conclude that the golf course, at its proposed site, would cause no more contamination to the aquifer than if it were located elsewhere in the R.C. 2 zone. Conversely, if the Board finds that only a relatively small portion of the off-site R.C. 2-zoned land is underlain with Cockeysville Marble, and if it also finds that the Cockeysville Marble formation makes the aquifer more susceptible to contamination, then it cannot be said that the golf course at the intended site would pose no greater danger to groundwater than if it were located elsewhere in the R.C. 2 zone.

Hayfields, 122 Md. App. at 654-55, 716 A.2d at 330 (footnote omitted). Petitioners contend that *Hayfields* required a comparison of the geology and hydrology of the site of the proposed special exception to other properties within the R.C.2 zone elsewhere in Baltimore County.

Loyola's attempt to distinguish *Hayfields* is not persuasive. Loyola argues that, in the present case, there are no "truly unique" factors, such as a "Cockeysville Marble" formation, that would affect the Property. According to Loyola, all of the potential adverse effects of the proposed Retreat Center at issue (traffic impact, agricultural impact, and environmental impact) are adverse effects inherent from the operation of any school or college use. The "Cockeysville Marble" formation in *Hayfields*, however, is not an adverse effect. The adverse effect at issue in *Hayfields* was runoff from the operation and maintenance of the golf course, containing groundwater contaminants. Contaminated runoff is a potential adverse effect inherent in the operation of a golf course. The characteristics of the locality

involved, notably the "Cockeysville Marble" geology, arguably increased or amplified those adverse effects or made the locality more sensitive to those adverse effects. This is similar to the evidence adduced by Petitioners in the present case of arguably narrow roads frequently used by automobiles, trucks, and farm equipment and an assertedly environmentally-sensitive trout stream near the Property. Petitioners here contended before the Board of Appeals that those characteristics of the local neighborhood increased the debatable adverse effects attributed to the proposed Retreat Center. Thus, if the reasoning in *Hayfields* is good law, *Hayfields* squarely supports Petitioners' contention here.

Petitioners also point to *Mossburg v. Montgomery County*, 107 Md. App. 1, 8-9, 666 A.2d 1253, 1257 (1995). In *Mossburg*, the Montgomery County Board of Appeals denied a landowner's request for a special exception to operate a solid waste transfer station in "an I-2 Industrial Zone." The Board denied the request for two reasons: "traffic safety" and the "environment." With regard to the environment, the "Board found that there would be adverse impact from runoff from the subject site into a tributary that ultimately drains into Rock Creek, the Potomac River, and the Chesapeake Bay." *Mossburg*, 107 Md. App. at 13, 666 A.2d at 1259. The intermediate appellate court rejected this rationale, noting that "we know of no areas in Montgomery County where storm water runoff does not ultimately drain into the Chesapeake Bay." *Mossburg*, 107 Md. App. at 13, 666 A.2d at 1259.

> But even more important, as we indicated earlier, there is absolutely no evidence, in respect to environmental concerns, that the environmental impact of appellants' use at the subject site would be greater, or above and beyond, that impact

> elsewhere within the I-2 Zone in this industrial corridor or other I-2 Zones in that part of the regional district situated in Montgomery County. In fact, all of the evidence indicates that the impact would be the same anywhere within this I-2 industrial corridor; from the evidence, the entire area appears to be in the Southlawn Creek watershed.

Mossburg, 107 Md. App. at 24-25, 666 A.2d at 1265. The panel of the Court of Special Appeals described its view of the *Schultz* standard thusly:

> Moreover, it is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered by the agency. . . . The question in the case sub judice, therefore, is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at issue here will have adverse effects at this proposed location. Certainly, it will and those adverse effects are contemplated by the statute. The proper question is whether those adverse effects are above and beyond, *i.e.*, greater here than they would generally be elsewhere within the areas of the County where they may be established, *i.e.*, the other few I-2 Industrial Zones. In other words, if it must be shown, as it must be, that the adverse effects at the particular site are greater or "above and beyond," then it must be asked, greater than what? Above and beyond what? Once an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere.

Mossburg, 107 Md. App. at 8-9, 666 A.2d at 1257. Petitioners contend that the environmental analysis discussed in *Mossburg* invites the type of comparative multiple site

analysis demanded here.

Loyola, on the other hand, argues that the holdings of *Lucas*, *Holbrook*, *Futaryan*, *Huyfields*, and *Mossburg*, to the extent that they endorse a comparative, multiple site analysis in special exception cases, are outliers. Loyola notes correctly that the majority of cases discussing *Schultz* do not address, much less imply, such a requirement. *See, e.g.*, *Singley v. County Comm'rs of Frederick County*, 178 Md. App. 658, 679-80, 943 A.2d 636, 648-49 (2008); *Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 646, 827 A.2d 961, 979 (2003); *Evans v. Shore Commc'ns, Inc.*, 112 Md. App. 284, 303-05, 685 A.2d 454, 463-64 (1996), *Moseman v. County Council of Prince George's County*, 99 Md. App. 258, 266, 636 A.2d 499, 503 (1994); *Sharp v. Howard County Bd. of Appeals*, 98 Md. App. 57, 86-89, 632 A.2d 248, 263-64 (1993); *People's Counsel for Baltimore County v. Mangione*, 85 Md. App. 738, 751-52, 584 A.2d 1318, 1324-25 (1991)[30]; *Gotach Ctr. for Health v. Bd. of County Comm'rs*

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[30]People's Counsel points out that, before the Board of Appeals in *People's Counsel for Baltimore County v. Mangione*, 85 Md. App. 738, 751-52, 584 A.2d 1318, 1324-25 (1991), it presented comparative multiple site evidence in a successful opposition to a request for a special exception to build and operate a nursing home. The reported opinion of the Court of Special Appeals omitted any mention of this evidence. The Court of Special Appeals, in reinstating the Board's decision, relied only on the evidence presented regarding the effects on the neighborhood surrounding the proposed location.

> Before the Board were various facts and circumstances which, we believe, satisfy the *Schultz* standard of particular adverse impact. The Board, under the *Schultz* standard, reviewed the evidence for the required particular adverse impact. There was testimony that the proposed convalescent home would sit on the prominent or dominant terrain above the neighborhood, which would block out light from the west; and with prevailing breezes from the west, would generate odors from the central kitchen as well as from the dumpster. There

(continued...)

of Frederick County, 60 Md. App. 477, 486, 483 A.2d 786, 791 (1984).

Analysis

Evaluation of a special exception application is not an equation to be balanced with formulaic precision. *See Sharp*, 98 Md. App. at 73, 632 A.2d at 256 (rejecting "appellants' interpretation of the holding of *Schultz* as if it were the atomic chart of elements from which a formula for divining inherent and peculiar adverse effects could be derived"). That lack of a precise rubric is reflected in the standard of judicial review applied to zoning decisions.

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[30](...continued)

> was testimony concerning the effects of the development along the York Road corridor and the erosion created by the development and storm water runoff. There was testimony concerning the effects of the intrusion of the project into the residential neighborhood presently existing around that location. There was testimony about small arterial streets whose only access to York Road from the community was by way of Green Ridge Road, and that the narrow, winding nature of those streets, with the increased traffic, would jeopardize the safety of the children playing in the streets. Furthermore, there was testimony concerning the overflow of contaminated medical waste and storm water management.
>
> The Board, as finder of fact, said it was "obligated to judge the credibility of each witness and apply each Board member's own knowledge, developed through experience and training, to the evidence presented." In sum, the Board concluded that the proposed project would "overwhelm and dominate the surrounding landscape," and that it would represent "the deepest intrusion into the residential community of Dulaney Valley." The Board found that the project would "clearly exacerbate an already worsening storm water runoff situation" within that community. Further, the Board was unconvinced that the "traffic generated by the home's employees and visitors would not overtax an interior community road system designed to accommodate residential traffic." The Board then held that the appellees failed to meet its burden as provided under B.C.Z.R. Section 502.1.

Mangione, 85 Md. App. at 751-52, 584 A.2d at 1324-25.

Courts are to defer to the conclusions of the zoning body where the "evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning *fairly debatable*." *Schultz*, 291 Md. at 26, 432 A.2d at 1333 (emphasis added); *see also Alviani v. Dixon*, 365 Md. 95, 107-08, 775 A.2d 1234, 1241 (2001); *Holbrook*, 314 Md. at 217-18, 550 A.2d at 668.

It is clear in examining the plain language of *Schultz*, and the cases upon which *Schultz* relies, that the *Schultz* analytical overlay for applications for individual special exceptions is focused entirely on the neighborhood involved in each case. The requirement for such an analysis focused on the local neighborhood is apparent in the often-quoted *Schultz* holding:

> We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Schultz, 291 Md. at 22-23, 432 A.2d at 1331.

The *Schultz* standard requires an analysis of the effects of a proposed use "irrespective of its location within the zone." "Irrespective of" is defined by WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1993) as "regardless of." The same dictionary defines "regardless of" as "without taking into account." Petitioners' argument urges the opposite result. Petitioners contend that *Schultz* requires an applicant for a special exception to compare, and

concomitantly the zoning body to consider, the adverse effects of the proposed use at the proposed location to, at least, a reasonable selection or representative sampling of other sites within the same zone throughout the district or jurisdiction, *taking into account* the particular characteristics of the areas surrounding those other test sites. The *Schultz* standard requires no such evidentiary burden be shouldered by an applicant nor analysis undertaken by the zoning decision-maker.

Schultz speaks pointedly to an individual case analysis focused on the particular locality involved around the proposed site. *See Schultz*, 291 Md. at 15, 432 A.2d at 1327 ("These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in *an adverse effect upon adjoining and surrounding properties* unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone." (emphasis added)); *Schultz*, 291 Md. at 11, 432 A.2d at 1324 ("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." (emphasis added)); *id.* ("If [the applicant] shows to the satisfaction of the Board that the proposed use would be conducted *without real detriment to the neighborhood* and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance *to the neighboring area* and uses is, of course, material." (emphasis

added)); *Schultz*, 291 Md. at 12, 432 A.2d at 1325 ("These standards dictate that if a requested special exception use is properly determined to have an adverse effect *upon neighboring properties in the general area*, it must be denied." (emphasis added)).

Furthermore, the cases on which *Schultz* relies also focus on an analysis of the locality involved in the specific proposal. *Schultz* largely relies on five cases: *Turner*, 270 Md. 41, 310 A.2d 543; *Rockville Fuel*, 257 Md. 183, 262 A.2d 499; *Deen*, 240 Md. 317, 214 A.2d 146; *Merlands Club*, 202 Md. 279, 96 A.2d 261; and *Anderson*, 23 Md. App. 612, 329 A.2d 716. Each case contains language that directs that the special exception impact analysis focus on the properties surrounding the location of the proposed use, in whatever zone they be placed. *See Turner*, 270 Md. at 55, 310 A.2d at 551 ("If [the special exception applicant] shows to the satisfaction of the Board that the proposed use would be conducted *without real detriment to the neighborhood* and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance *to the neighboring area* and uses is, of course, material but if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal." (emphasis added)); *Rockville Fuel*, 257 Md. at 190-91, 262 A.2d at 503 ("If [the applicant] shows to the satisfaction of the Board that the proposed use would be conducted *without real detriment to the neighborhood* and would not actually adversely affect the public interest, [the applicant] has met his burden. (emphasis added)); *Deen*, 240 Md. at 331, 214

A.2d at 153 ("Section 502.1 states that a special exception may be granted if the use requested will not 'be detrimental to the health, safety, or general welfare *of the locality involved.*'"[31] (emphasis added)); *Merlands Club*, 202 Md. at 287-88, 96 A.2d at 264 (1953) ("The duties given the Board are to judge whether *the neighboring properties and 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 zoning plan."(emphasis added); *id.* ("[W]here a specific use is permitted by the legislative body in a given area if the general zoning plan is conformed to and there is *no adverse effect on the neighborhood*, the application can be granted . . . ." (emphasis added)).

The use of the descriptive term "inherent" in *Schultz* comes directly from Judge Davidson's opinion for the Court of Special Appeals in *Anderson*.[32] Thus, *Anderson* is particularly important to a proper understanding of what Judge Davidson and the Court meant in *Schultz* in defining what adverse effects are "inherent" in a proposed use. As discussed above, *Anderson* involved a request for a special exception to operate a funeral home in a residential area. The Court of Special Appeals in *Anderson* discussed at length two particular adverse effects inherent in the operation of a funeral home. First, the Court

[31]BCZR § 502.1 still reads, in pertinent part, "Before any special exception may be granted, it must appear that the use for which the special exception is requested will not . . . [b]e detrimental to the health, safety or general welfare of the locality involved . . . ."

[32]The other cases upon which *Schultz* relies do not employ the term "inherent" in their explication of what factors bear upon a proper analysis of the legislative factors provided in a particular zoning ordinance for a special exception.

rejected the argument that the special exception request should be denied because of the depressing psychological effects deemed inherent to the operation of a funeral home. There was no probative evidence offered that the depressing effect of the funeral home would be any greater at the proposed location than in any other residential area in the same zone where it was allowed by special exception. Second, the Court of Special Appeals discussed the effect of traffic, also inherent to operation of a funeral home. The intermediate appellate court's discussion of the increase in traffic that may be caused by the funeral home focused only on the potential for an adverse effect at the particular location. No comparative, multiple site impact analysis was performed or called for to determine what adverse effects were in excess of those "inherent" in a funeral home establishment. Thus, the *Schultz* standard, as presaged in *Anderson*, requires that the adverse effect "inherent" in a proposed use be determined without recourse to a comparative geographic analysis. Any language to the contrary in *Holbrook*, *Lucas*, *Futoryan*, *Hayfields*, and *Mossburg* is disapproved.

But what sense is to be made of *Schultz's* language referring to consideration of whether "the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone"? Is it to be declared surplusage? Is it to be stricken or disapproved because the 2008 composition of this Court simply has had a change of mind twenty-seven years later? The answer is "no." The language retains vitality and sense as long as the *raison d'etre* for its inclusion in *Schultz* is understood.

As noted previously and frequently, a

> special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, *prima facie*, properly be allowed in a specified use district, absent any factor circumstance in a particular case which would change this presumptive finding.

Merlands Club, 202 Md. at 287, 96 A.2d at 264; *see also Creswell v. Balt. Aviation Serv. Inc.*, 257 Md. 712, 719, 264 A.2d 838, 842 (1970); *Rockville Fuel*, 257 Md. at 188, 262 A.2d at 502.

The local legislature, when it determines to adopt or amend the text of a zoning ordinance with regard to designating various uses as allowed only by special exception in various zones, considers in a generic sense that certain adverse effects, at least in type, potentially associated with (inherent to, if you will) these uses are likely to occur wherever in the particular zone they may be located. In that sense, the local legislature puts on its "Sorting Hat"[33] and separates permitted uses, special exceptions, and all other uses. That is why the uses are designated special exception uses, not permitted uses. The inherent effects notwithstanding, the legislative determination necessarily is that the uses conceptually are compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not

[33]In the HARRY POTTER series of books, the "Sorting Hat" is a magical artifact that is used to determine in which house (Gryffindor, Hufflepuff, Ravenclaw or Slytherin) first-year students at Hogwarts School of Wizardry and Witchcraft are to be assigned. After being placed on a student's head, the Sorting Hat measures the inherent qualities of the student and assigns him or her to the appropriate house. J.K. ROWLING, HARRY POTTER AND THE SORCERER'S STONE (1998).

convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur. With this understanding of the legislative process (the "presumptive finding") in mind, the otherwise problematic language in *Schultz* makes perfect sense. The language is a backwards-looking reference to the legislative "presumptive finding" in the first instance made when the particular use was made a special exception use in the zoning ordinance. It is not a part of the required analysis to be made in the review process for each special exception application. It is a point of reference explication only.

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED; PETITIONERS TO DIVIDE THE COSTS EQUALLY.

Circuit Court for Baltimore County
Case No. 03-C-05-007730

IN THE COURT OF APPEALS

OF MARYLAND

No. 137

September Term, 2007

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

v.

LOYOLA COLLEGE IN MARYLAND

Bell, C.J.
Harrell
Battaglia
Greene
Murphy
Eldridge, John C. (Retired, specially assigned)
Raker, Irma S. (Retired, specially assigned)

JJ.

Concurring Opinion by Murphy, J.

Filed: September 9, 2008

I agree "that the *Schultz* analytical overlay for applications for individual special exceptions is focused entirely on the neighborhood involved in each case," and that "the *Schultz* standard . . . requires that the adverse effect 'inherent' in a proposed use be determined without recourse to a comparative geographic analysis." I write separately, however, to emphasize that (1) the "neighborhood involved" in a particular case may well have a different zoning classification than the property that is the subject of the application, and (2) our disapproval of "language to the contrary in *Holbrook, Lucas, Futoryan, Hayfields,* and *Mossburg*" should not be misinterpreted as a disapproval of the "bottom line" decisions made in each of those cases.

In *Harris v. State*, 81 Md. App. 247, 567 A.2d 476 (1989), *rev'd on other grounds*, 324 Md. 490, 597 A.2d 956 (1991), Judge Moylan stated:

> The Maryland decisional law on the subject that some call "other crimes evidence" . . . gives no occasion for complaint. The language and the framework of analysis used by both appellate courts of this state to describe and to explain that law, however, leave much to be desired in terms of current usage. Our decisions are better than our opinions.

Id. at 254, 576 A.2d at 479. As the majority opinion makes clear, the same may be said about appellate opinions on the subject of special exceptions.

In *Holbrook*, this Court correctly upheld the conclusion of the Cecil County Board of Appeals that the applicant should not be granted a special exception to place a mobile home in a particular location on his property because the presence of the mobile home at that location would have an adverse effect upon adjoining property values.

In *Lucas*, the Court of Special Appeals correctly upheld the conclusion of the Baltimore County Board of Appeals that the applicant should not be granted a special exception to operate an airport on his property because the operation of an airport would have a negative impact on the Greenspring Valley properties located nearby.

In *Futoryan*, the Court of Special Appeals correctly upheld the conclusion of the Baltimore City Board of Zoning Appeals that the applicant should not be granted a "conditional use" permit to operate an auto repair shop on property zoned as a B-3-2 Business District, surrounded on all sides by residential zoning, because the operation of an auto repair shop would be (in the words of the Board) "a detriment to the general welfare of the adjoining residential community."

The decisions in *Holbrook*, *Lucas* and *Futoryan* are consistent with the majority opinion in the case at bar, as well as with this Court's holding in *Brouillett v. Eudowood Shopping Plaza Inc.*, *supra*. In that case, (1) the Baltimore County Board of Appeals denied a petition requesting a special exception for the operation of a self-service carwash on the parking lot of the Eudowood Shopping Plaza, which was zoned Business-Local, (2) the Circuit Court for Baltimore County reversed the Board, and (3) this Court reversed the Circuit Court, noting that "the proposed use would be clearly visible to a residential area [containing dwellings zoned as group houses] with home values [in 1967 and 1968] of $45,000.00 and more." 249 Md. at 609, 241 A.2d at 405.

In *Mossburg*, the Court of Special Appeals correctly held that a special exception to

operate a solid waste transfer station should not have been denied by the Montgomery County Board of Appeals on "speculation" that, at the particular location of the transfer station, there would be adverse impacts from (1) runoff into a tributary that ultimately drains into the Chesapeake Bay, and (2) a serious traffic hazzard created by truck traffic.

As to *Hayfields*, which involved a special exception to operate a golf course, the Court of Special Appeals remanded with directions that the Baltimore County Board of Appeals resolve certain questions relating to whether the particular location of the proposed course would adversely affect ground water in wells on or near the course. I am persuaded that the decision to remand was (1) correct, and (2) not inconsistent with the majority's analysis of *Schultz*.

It may be helpful to restate the rules of engagement in special exception litigation, and review how those rules were applied in the case at bar. Although it is of no real consequence whether we say that an applicant "is entitled to a special exception, *provided that*," or that an applicant "is *not* entitled to a special exception, *unless*," the applicant for a special exception bears both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted. If the zoning authority is presented with evidence that generates a genuine question of fact as to whether the grant of a special exception would violate the applicable legislation and/or the requirements of *Schultz*, the applicant must persuade the zoning authority by a preponderance of the evidence that the special exception will conform to all applicable requirements.

In the case at bar, the petitioners presented evidence that generated a genuine question of fact as to whether (1) an adverse "thermal" impact would result from stormwater ponds draining into a trout stream near the property, and (2) there would be an adverse "traffic impact" on the main public road used by persons traveling to and from the proposed Retreat Center. Respondent was not entitled to a special exception unless it persuaded the Board of Appeals that neither of those adverse impacts would result if the special exception was granted. The Board, applying the correct burden of persuasion, found in favor of respondent on both of these issues. Under the applicable standard of review, this Court must affirm the Board's decision.

12/5/07

DEC - 6 2007

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 558

September Term, 2006

LOYOLA COLLEGE IN MARYLAND

v.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

Adkins,
Barbera,
Meredith,

JJ.

Opinion by Meredith, J.

Filed: December 5, 2007

30050007730

Loyola College in Maryland, appellant, petitioned the Baltimore County Zoning Commissioner for a special exception to build a facility for conducting weekend college retreats in the R.C.2 zone of Baltimore County. The Zoning Commissioner granted the special exception request, and the appellees (People's Counsel for Baltimore County and various citizens) appealed the decision to the county Board of Appeals. The Board conducted a *de novo* hearing on the matter and granted the special exception. Appellees petitioned for judicial review in the Circuit Court for Baltimore County. The circuit court ruled that the Board misapplied the legal standard for granting a special exception and remanded the case back to the Board for further consideration.

Loyola appealed, and the People's Counsel and the citizens cross-appealed. Altogether, the appellant and cross-appellants raise six questions for our review.

Loyola presents a single question on appeal:

> 1. Was the decision of the Board of Appeals approving Loyola's petition for a special exception in accordance with law and supported by substantial evidence?

In the People's Counsel's cross-appeal, the following questions are raised:

> 2. Whether, as a result of the [County Board of Appeals'] error of law, the Circuit Court should have reversed the [Board's] decision and required denial of the special exception for lack of sufficient legally relevant evidence?
>
> 3. Whether the County Board of Appeals erred as a matter of law in misapplying the state water and sewer plan law so as to exempt the Loyola project from the necessity to secure approval of a legislative amendment of the county water and sewer plant?

The citizens raise the following questions on cross-appeal:

4. Did the circuit court err in vacating and remanding the matter where the only evidence mandated that the special exception should be denied?

5. Did the Board act in an arbitrary and capricious manner when it altered its previous interpretation of *Schultz v. Pritts*[, 291 Md. 1 (1981)]?

6. Did the Board err as a matter of law in misapplying the state water and sewer plan law definitions for "multiuse water supply system" and "multiuse sewerage system"?

For the reasons set forth below, we answer the question raised by Loyola "yes," and answer each of the questions raised by the People's Counsel and the citizens "no." Accordingly, we vacate the judgment of the circuit court, and remand the case to that court with directions to affirm the Board of Appeals' decision.

Facts and Procedural History

In October 2001, Loyola contracted to buy property in the R.C.2 (Resource Conservation) zone of northern Baltimore County from the estate of Marion Clark & Eleanor Duvall Spruill. The purpose of an R.C.2 district is "to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses." BCZR 1A01.1B; *see also Lucas v. People's Counsel For Baltimore County*, 147 Md. App. 209, 217 (2002). The property is 107.68 acres located near York Road in Parkton, Maryland. The Clark/Spruill family will retain approximately 54 acres for agricultural use. On the other 53 acres, Loyola proposes to construct several buildings to be used for weekend retreats. The proposed retreat center will consist of a 16,170 sq. ft. main building and five smaller buildings (or cabins). The main

building will include a chapel, meeting rooms, restroom facilities, five faculty rooms with private bathrooms, storage rooms, a warming kitchen, and a dining room. The balance of the site will remain agricultural or open space.

Terrence Sawyer, vice president for administration at Loyola, described in the following testimony before the Board of Appeals the manner in which Loyola conducts retreats:

> Q. Mr. Sawyer, would you please describe, if you would, and give a little bit of history about the college and its mission?
>
> A. Sure. Loyola College in Maryland is our charter name. We have been in existence for slightly over 150 years, 152 years.
>
> We have always been in Baltimore City. Our original location was actually directly across the street from City Hall.
>
> And then years later, we moved up to what we now call our Charles Street, or Evergreen Campus.
>
> Loyola College is a Jesuit Catholic institution, and "Jesuit" means that our mission and our guide is from the Society of Jesus, which is an order of the Catholic Church for which the founding saint, St. Ignatius Loyola, thus our name.
>
> There are twenty-eight other Jesuit institutions in the United States. In the northeast, the notable ones would be Boston College, Fordham, St. Joseph's University, University of Scranton, Holy Cross.
>
> Again, there's twenty-eight in all. And the mission of all those institutions are very similar and, again, they are all constructed from the teachings and philosophy of St. Ignatius Loyola.
>
> Q. How is a retreat program a part of – well, before I get there, Loyola College is also a fully accredited institution of higher learning?
>
> A. That's correct. We are a fully accredited, nationally recognized, liberal arts institution.
>
> Q. How does a retreat program fit in with Loyola College and its mission?

A. Sure. I think it would be appropriate just to state verbatim the college's mission as we set it out to the public, so I'm going to refer to that as – I do not have it memorized – the mission of Loyola College is Loyola College in Maryland is a Jesuit Catholic university committed to the educational and spiritual tradition of the Society of Jesus and to the ideals of liberal education and the development of the whole person.

Accordingly, the college will inspire students to learn, lead and serve in a diverse and changing world.

So that's our mission. We take that mission seriously. We consider that mission when making decisions and we consider that mission in creating strategic plans as we move forward.

And, again, the Society of Jesus, that is the Jesuits, the Jesuits make up the Society of Jesus and, again, the Jesuits were founded by St. Ignatius, and St. Ignatius was the founding patron of retreats.

Retreats are based on what's called the Spiritual Exercises – that's capital S, capital E – Spiritual Exercises, and they are essentially a book that St. Ignatius Loyola created about his own spiritual journey that is the framework for retreats.

So in order for us, and every Jesuit institution, quite frankly, to be true to its mission, retreats are an integral, essential component in order for us to call ourselves a Jesuit institution.

Q. Do all twenty-eight of the other Jesuit institutions that you were referring to, do they all subscribe to the same mission and retreat program?

A. Absolutely. They all have retreat programs.

Q. What department at the university – I don't want to say controls – but provides for the retreat programs?

A. Our retreat program is run out of the Department of Campus Ministry, which is run itself by two people, a Jesuit priest and a sister, a nun, and the director of Campus Ministry reports directly to the president of the college.

Q. Does the Campus Ministry currently have a retreat program?

A. Yes, we do.

Q. Can you describe what the retreat program is, currently? And I guess I should ask you, the current retreat program is obviously not being conducted

at the proposed site, but that is what your intention is, to move the current retreat program to this particular location?

A. That's correct, that is our intention.

Q. Could you describe in more detail what makes up the Campus Ministry's retreat program?

A. Sure. The campus retreat program essentially could be split up into two areas, the primary being retreats for students, or student retreats, which all retreats are voluntarily.

And then the second would be retreats for faculty, administrators, and staff, some in conjunction with students, others not.

The student retreats take place almost always on the weekends. They typically arrive on a Friday evening and leave early or midday on Sunday, usually after brunch.

Each retreat has a theme or a topic that's going to be discussed, some more overtly religious than others.

There could be an Ignatius retreat for students. There could be a theology retreat, or there also could be a men's retreat.

For example, at a men's retreat, obviously, it's just for men. And the purpose is to think about and discern and reflect on issues that would relate to men.

There's a women's retreat which, again, is the same thing, but, again, the issues relate to that which women would face.

There's a diversity retreat which is issues that students face about diversity, about accepting, about tolerance, about living and dealing with people of various cultures, background, et cetera.

So the point I'm getting is that each retreat have a theme, and there's a thread of spirituality and reflection that runs through all of these retreats.

Q. If you could, I'm going to ask you to go into more detail on each one of the types of retreats, but first of all, your proposal for this particular location in terms of the types of retreats that are being proposed --

Mr. Hoffman: And we have another witness, Mr. Chairman, who will be testifying in more detail about the numbers of retreats and retreatants.

Q. But if we could go through each of these, starting with the student retreat, what's its purpose?

A. Right. The purpose of the student retreat is to get college students who typically see the light, see the world as essentially revolving around them – and I say typically – and change that paradigm so, again, they are reflecting on what, again, what we talk about with the Jesuit ideal, which is men and woman for others.

That is Loyola College's motto, if you will, men and women for others.

So the whole point is to get the students' paradigm to shift more outward than inward, and to reflect on issues that will affect them, and to make sure that they are living, making life decisions that are noble and inherently good, and to consider things in a way they [might] not otherwise consider.

So what that means is that there's a lot of structure to the day. There's a lot of sort of reflection and quiet time. There's journaling that's associated with retreats.

Again, this is all based on the Spiritual Exercises that I talked about earlier that will come out of the teachings of St. Ignatius.

In early 2004, Loyola submitted a development plan for the proposed retreat center to the Baltimore County development authorities. Because the retreat center did not fall under one of the uses permitted as of right in an R.C.2 zone, Loyola petitioned for a special exception to use the property as a retreat center pursuant to Baltimore County Zoning Regulations § 1A01.2.C., which permits property in this zone to be used for a school, church, or camp, provided certain conditions are satisfied. Section 1A01.2.C provides, in relevant part:

C. Uses permitted by special exception. The following uses, only, may be permitted by special exception in any R.C.2 Zone, **provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity**, and, in the case of any use permitted under Item 29, further provided that the hearing authority finds that the use would support the primary agricultural use in its vicinity and would not itself be situated on land more appropriately used for primary agricultural uses: [Bill No. 178-1979]

* * *

4. Camps, including day camps.

* * *

6. Churches or other buildings for religious worship.

* * *

23. **Schools, including** schools for agricultural training, private preparatory schools, business or trade schools, conservatories or **colleges.** [Bill 178-1979]

(Emphasis added; footnote omitted.)

In April 2004, the Zoning Commissioner/Hearing Officer of Baltimore County held a three day hearing on Loyola's development plan and zoning request. On June 10, 2004, the Hearing Officer approved Loyola's development plan and the petition for special exception, finding that "the totality of the evidence offered supports a grant of the Petition for Special Exception." Appellees appealed that decision to the County Board of Appeals of Baltimore County.

The Board conducted a *de novo* hearing, which continued over six days (September 14, 15, 29, and 30, December 7, 2004, and January 4, 2005). Testimony was presented by various witnesses from both sides, including experts in agriculture, land planning and zoning, sanitation and environmental science, geology, storm water pond analysis, fishery, biology, ecology, and environmental engineering. On June 21, 2005, the Board issued an opinion and order granting Loyola's petition for special exception, and affirming the Hearing Officer's decision approving Loyola's development plan (thereby finding that the proposed water

system was not a multiuse system). The Board further ordered that its approval was subject to the voluntary restrictions that Loyola had negotiated with two community associations.

The People's Counsel and the citizens filed timely petitions for judicial review in the Circuit Court for Baltimore County. On May 5, 2006, the circuit court issued an opinion and order holding that the Board had not properly applied the law of special exceptions. The circuit court held that the Board should have engaged in a broader "zone-wide" geographic analysis, stating:

> It is clear to this Court that *Schultz* [*v. Pritts*] and *Lucas* [*v. People's Counsel for Baltimore County*] intend for the geographic scope of review in determining whether to grant or deny a special exception to be a zone-wide analysis. While there are some narrower, "local" factors to consider when evaluating the appropriateness of a special exception use, as enumerated in BCZR § 502.1, the primary geographic scope is a broad review. The Board failed to follow the *Schultz* test in considering Loyola's Petition for Special Exception. This Court is remanding this case to the Board to conduct a broader *Schultz* analysis.

The circuit court affirmed the Board on all other issues raised by the protestants, and remanded the case back to the Board for further consideration.

Loyola timely noted this appeal and appellees cross-appealed.

Standard of Review

On an appeal from the circuit court in a case involving judicial review of an administrative ruling, we review the decision of the agency, not the decision of the circuit court. *People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 681 (2007); *Days Cove Reclamation Co. v. Queen Anne's County*, 146 Md. App. 469, 484, *cert. denied*, 372

Md. 431 (2002). The Court of Appeals summarized the standard of review applicable to administrative agency decisions regarding special exceptions in *Purich v. Draper*, 395 Md. 694, 706-07 (2006) (quoting *Alviani v. Dixon*, 365 Md. 95, 107-09 (2001)), as follows:

> "A proceeding on a special exception is subject to a full judicial review. *Mossburg v. Montgomery County*, 329 Md. 494, 506, 620 A. 2d 886, 892 (1993). We examined the correct standard of judicial review in *White v. North*, 356 Md. 31, 44, 736 A. 2d 1072, 1079-80 (1999), when we stated that:
>
> > In judicial review of zoning matters, including special exceptions and variances, 'the correct test to be applied is whether the issue before the administrative body is "fairly debatable," that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions.' *Sembly v. County Bd. of Appeals*, 269 Md. 177, 182, 304 A. 2d 814, 818 (1973). *See also Board of County Comm'rs v. Holbrook*, 314 Md. 210, 216-17, 550 A. 2d 664, 668 (1988); *Prince George's County v. Meininger*, 264 Md. 148, 151, 285 A. 2d 649, 651 (1972); *Zengerle v. Board of County Comm'rs*, 262 Md. 1, 17, 276 A. 2d 646, 654 (1971); *Gerachis v. Montgomery County Bd. of Appeals*, 261 Md. 153, 156, 274 A. 2d 379, 381 (1971). For its conclusion to be fairly debatable, the administrative agency overseeing the variance decision must have 'substantial evidence' on the record supporting its decision. *See Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 395, 396 A. 2d 1080, 1087 (1979); *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 706, 376 A. 2d 483, 495 (1977), *cert. denied sub nom. Funger v. Montgomery County*, 434 U.S. 1067, 98 S.Ct. 1245, 55 L.Ed.2d 769 (1978); *Agneslane, Inc. v. Lucas*, 247 Md. 612, 619, 233 A. 2d 757, 761 (1967).
>
> In *Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 398, 396 A. 2d 1080, 1089 (1979), we defined the substantial evidence test as ' "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached," *Insurance Comm'r v. Nat'l Bureau [of Cas. Underwriters]*, 248 Md. 292, 309, 236 A. 2d 282 (1967), or as ' "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," *Bulluck*

v. Pelham Wood Apts., 283 Md. 505, 390 A. 2d 1119 (1978); *Snowden v. Mayor & C.C. of Balto., supra*, 224 Md. [443] at 448, 168 A. 2d 390.' In applying the substantial evidence test:

> The question for the reviewing court is . . . whether the conclusions 'reasonably may be based upon the facts proven.' The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.

Annapolis Waterfront Co., 284 Md. at 399, 396 A. 2d at 1089, quoting 4 K. Davis, *Administrative Law*, § 29.05, 137, 139 (1958).

"When we review an administrative agency's order, we make sure that it is not premised upon an error in the law. *Ad + Soil, Inc. v. County Commissioners of Queen Anne's County*, 307 Md. 307, 338, 513 A. 2d 893, 909 (1986). 'Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law.' *Belvoir Farms Homeowners Association, Inc. v. North*, 355 Md. 259, 267, 734 A. 2d 227, 232 (1999), citing *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569, 709 A. 2d 749, 753 (1998)."

Nevertheless, in the absence of a clear error of law, "a degree of deference" should always be accorded to the position of administrative agencies, even with regard to some legal issues. *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005). In *Noland*, the Court of Appeals stated that the reviewing court must review the agency's decision in the light most favorable to it and that the agency's decision is prima facie correct and presumed valid. *Id.* at 571; *see also Catonsville Nursing v. Loveman*, 349 Md. 560, 569 (1998); *CBS v. Comptroller*, 319 Md. 687, 698 (1990); *Ramsay, Scarlett & Co. v. Comptroller*, 302 Md. 825, 834-35 (1985);. As the Court of Appeals stated in *Noland*: "a court's task on review is *not* to 'substitute its judgment for the expertise of those persons who constitute the administrative

agency.'" *Noland, supra*, 386 Md. at 572 (quoting *United Parcel v. People's Counsel*, 336 Md. 569, 576-77 (1994)). *Accord Surina, supra,* 400 Md. at 681. Furthermore, the agency's expertise in its own field should be respected. *Noland, supra,* 386 Md. at 572. "When determining the validity of [the] legal conclusions reached by the zoning body, . . . 'a degree of deference should often be accorded the position of the administrative agency' whose task it is to interpret the ordinances and regulations the agency itself promulgated." *Surina, supra,* 400 Md. at 682 (quoting *Marzullo v. Kahl*, 366 Md. 158, 172 (2001)).

Discussion

Because there is an overlap among the six questions raised by the appellant and cross-appellants, we shall address three issues that, we believe, will resolve all of the questions presented. We first examine whether there was substantial evidence to support the Board's conclusion that Loyola satisfied the conditions set forth in BCZR § 1A01.2.C and § 502.1. Next, we consider whether the Board erred in its application of the general standards applicable to the grant of special exceptions under the test set forth in *Schultz v. Pritts*. Finally, we will consider the cross-appellants' challenge to the Board's approval of the water and sewer aspects of Loyola's development plan.

A. Whether the Board erred in applying the requirements of BCZR § 1A01.2.C and § 502.1.

Zoning regulations are a tool the legislature uses to establish general areas or districts devoted to selected uses. *Schultz, supra*, 291 Md. at 20. When a "use district" is established,

"the zoning regulations prescribe that certain uses are permitted as of right (permitted use), while other uses are permitted only under certain conditions (conditional or special exception use)." *Id.* at 20-21. In determining what uses should be designated "permitted" or "special exceptions" in a given use district, the legislative body must engage in a balancing analysis. As the Court of Appeals explained in *Schultz*:

> [A] legislative body considers the variety of possible uses available, examines the impact of the uses upon the various purposes of the zoning ordinance, determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide for coordinated, adjusted, and harmonious development of the district.

Id. at 21. The Court in *Schultz* further noted that special exception uses are part of the comprehensive zoning plan, and are *presumptively valid*:

> The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow **enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption.**

Id. at 11 (emphasis added). Nevertheless, the Court observed that a special exception use does not enjoy the same presumption of overriding public benefit that attaches to specifically permitted uses:

> When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. *See City of Takoma Park v. County Bd. of Appeals for Montgomery County*, 259 Md. 619, 621, 270 A.2d 772, 773 (1970); *Creswell v. Baltimore Aviation Servs. Inc.*, 257 Md. 712, 719, 264 A.2d 838, 842 (1970); Art. 66B, § 1.00. Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses. For example, funeral

> establishments generally are designated as special exception uses. Such uses may not be developed if at the particular location proposed they have an adverse effect upon a factor such as traffic because the legislative body has determined that the beneficial purposes that such establishments serve do not necessarily outweigh their possible adverse effects.

Id. at 21-22.

In the present case, the Baltimore County Zoning Regulations provide in BCZR § 1A01.2 that certain uses are permitted "as of right" and other uses are permitted by "special exception" in the R.C.2 zone (the zone in which the subject property is located). Uses permitted as of right include agricultural operations, one-family detached dwellings, public schools, and transit facilities. BCZR §§ 1A01.2A, 1A01.2B. Uses permitted by special exception include schools, colleges, camps, and churches. BCZR § 1A01.2C.

The Board of Appeals agreed with Loyola that the proposed retreat center would fall within the scope of the special exception for schools and colleges. The Board stated: "Because this facility is an extension of Loyola College's 'mission,' we find that it meets the definition of the special exception use found in BCZR 1A01.2.C.23: 'schools, including. . . . colleges.'" The Board further reasoned that "[t]he Loyola Retreat Center seems clearly to be an extension of the college's academic function, and therefore, it is an extension of the college itself and qualifies as a special exception use." *See Anderson v. Assoc. Prof. of Loyola College*, 39 Md. App. 345, 349-50 (1978) (a college encompasses an array of activities for educational purposes, including faculty residences, chapels, libraries, administrative offices, etc.).

But before granting a petition for one of the delineated special exception uses, the county zoning authorities must ensure that the applicable standards are met. As this Court stated in *Mossburg v. Montgomery County*, 107 Md. App. 1, 7-8 (1995), *cert. denied*, 341 Md. 649 (1996):

> [A] special exception/conditional use in a zoning ordinance recognizes that the legislative body of a representative government has made a policy decision for all of the inhabitants of the particular governmental jurisdiction, and that the exception or use is desirable and necessary in its zoning planning provided certain standards are met.

BCZR §§ 1A01.2C and 502.1 specify the standards that must be met before one of the enumerated special exception uses is approved by the zoning hearing officer. BCZR § 1A01.2C provides that a petition for a special exception may be granted in an R.C.2 zone if "the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity." BCZR § 502.1 lists nine factors that might negate the presumption of validity of a proposed use:

> Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:
>
> A. Be detrimental to the health, safety, or general welfare of the locality involved;
> B. Tend to create congestion in roads, streets or alleys therein;
> C. Create a potential hazard from fire, panic or other dangers;
> D. Tend to overcrowd land and cause undue concentration of population;
> E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
> F. Interfere with adequate light and air; [Bill No. 45-1982]

> G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]
> H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]
> I. Be detrimental to the environment and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone. [Bill No. 74-2000]

The Board concluded that Loyola had met its burden of demonstrating that any negative impact on agricultural uses in the vicinity would be either non-existent or sufficiently minimal to satisfy conditions of BCZR § 502.1. The Board noted that, of the 104 acres, only 10.18 would be "actually built upon." The Board found that "[t]he 54 acres north of Stablersville Road will remain in agricultural use," and "[t]he remaining 40-plus acres of the Loyola property, if not used for agriculture, will remain open space. . . ."

George Gavrelis, former head of the Baltimore County Department of Planning, and Mitchell Kellman, testifying as experts in land planning and zoning for Loyola, opined that the retreat center "would not be detrimental because it was a very low intensity use of the property." David Yates, the lighting expert hired by Loyola to design the lighting on the site, testified that his design was "Dark Skies" compliant, because light from the center would not shine beyond the site.

The protestants argued that the proposed site for the retreat center has "prime and productive soils," and, as a consequence, using the land for anything other than farming would be detrimental to the "primary agricultural uses in its vicinity[.]" BCZR § 1A01.2C.

But Loyola's expert in sanitation and environmental science, Robert Sheesley, testified that because the proposed site for the retreat center is "right on the fringe" of the two major agricultural preservation areas in the County, it will not harm the agricultural activity in the vicinity. The Board stated in its opinion:

> Mr. Robert W. Sheesley, president of Eco Sense, an environmental consultant company, and former Director of Baltimore County's Department of Environmental Protection and Resource Management (DEPRM) testified for the Petitioner as an expert witness in sanitation and environmental science and on the Baltimore County agricultural preservation laws. He stated that the subject site is "right on the fringe" of one of two major agricultural preservation areas in the County. This site falls along the I-83 corridor, along which there are R.C. 5 zones and more residential development. According to Mr. Sheesley, if this proposed use were being planned for a property further into the heart of the agricultural zone, it could be harmful to the local agriculture, but as it is being built on the fringe, and within a mile of a major highway, it will not harm the agricultural activity in the vicinity.
>
> While the Board is sympathetic to the view of the local farming community that it would like to see this land remain in agricultural use, the fact remains that other uses are permitted by law, and we cannot force the owner of this property to continue farming his/her land (see *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md. App. 616 (1998)[)]. In *Hayfields*, the Court of Special Appeals wrote that the only way to satisfy the local community's concern regarding the loss of the farm would be to "require Hayfields to continue farming on the tract or not to permit them to do anything with the property that would preclude farming. But as the Board recognized, Hayfields cannot be forced to continue its farming operation. *To forestall any non-agricultural use, simply to achieve the goal of agricultural preservation, raises the 'takings' spectra." Hayfields* at 659 (emphasis added).
>
> As to whether the [retreat center] will harm local agricultural uses, we find, based on the evidence presented, that this use is, as Mr. Sheesley described, on the fringe of an agricultural area. The property is bordered by York Road to the West and Stablersville Road to the North. It is approximately 1-1/2 miles from an exit off I-83. Petitioner's Exhibit 1B, the vicinity map, indicates there is one existing agricultural use immediately west

> of and adjacent to the 54-acre parcel that will be retained by the Spruill/Clark family for agricultural use north of Stablersville Road. All the other properties immediately adjacent to the [retreat center] site are existing residential, not existing agriculture. West of York Road is an area zoned R.C. 5. Petitioner's Exhibit 9, an aerial view of the vicinity, shows farm fields further east on Stablersville Road, past the existing residential properties, and north of the Spruill/Clarke property along Stablers Church Road. While there is agriculture nearby, the immediate vicinity of the [retreat center] site is residential.
>
> The Board finds, therefore, that the negative impact on the local farming community will be minimal.

With respect to the protestants' vigorously asserted claim that Loyola had not satisfied § 502.1A and I because, among other things, the proposed stormwater ponds would warm the tributary to Fourth Mine Branch and impair the ability of trout to reproduce, the Board resolved conflicting expert testimony in favor of Loyola.

In its opinion, the Board rejected the protestants' arguments about the center harming the tributary and the reproduction of trout, stating: "The Board was not persuaded by the testimony of Professor Bouwer or Mr. Gougeon or their conclusions that trout in the Fourth Mine Branch will be irreparably harmed by the stormwater facility proposed for the [retreat center]." The Board recognized that "[t]he burden of proof in this case rests with the Petitioner to show that this special exception use passes the 502.1 criteria," and concluded that "Loyola has satisfied the 502.1I requirements for protecting the county's natural resources on this point."

Loyola presented evidence regarding the onsite septic system and water usage, and argued that neither would negatively impact the health, safety, and general welfare, or harm

natural resources in the area. Robert Sheesley testified that the site's designated septic field area was approved by the DEPRM and the Maryland Department of the Environment, and that the septic system would undergo biological/biochemical pretreatment prior to discharge. Thomas Mills, an expert geologist, performed a hydrologic investigation and testified that the supply of groundwater was more than adequate for the retreat center.

Similarly, with respect to the protestants' contention that the nitrogen and phosphorus released from the retreat center's septic system would cause environmental harm contrary to the requirement of §§ 502.1A and 502.1I, the Board was persuaded to accept the testimony of Loyola's expert that the discharge would comply with State and county regulations and not damage the environment or natural resources. As a consequence, the Board found that "[Loyola] has met its burden of proof regarding 502.1A and 502.1I."

The protestants contended that the proposed center could not satisfy § 502.1B because the center would tend to create congestion in the roads, most notably Stablersville Road, which the Board recognized is "a narrow country road with steep banks." The Board noted that, based upon the testimony presented by Loyola, "during the usual week, there would be very few cars or vans arriving [at] or leaving the site." Further, "during the usual, student weekend retreat, there would be at most . . . three buses and two to three cars arriving at the location on a Friday and leaving on Saturday." The Board observed that one expert in the field of traffic engineering testified that 'the surrounding major intersections would continue to operate at level A service as they do now — that is, there would be no detrimental effect

on them." The Board concluded that Loyola "has satisfied the requirements of this subsection [*i.e.*, § 502.1B]."

The Board's other conclusions were as follows. The proposed center satisfied § 502.1C based on testimony that Loyola would comply with all applicable building codes, so its use would be unlikely to cause any potential harm from fire. The proposed center satisfied § 502.1D — "will not [t]end to overcrowd land and cause undue concentration of population" — and § 502.1F — "will not [i]nterfere with adequate light and air" — based on testimony that the structure would meet all setbacks, have significant buffers and open space, and be difficult to see from the surrounding roads. The proposed center would satisfy § 502.1E — "will not [i]nterfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements" — because the facility would be self-contained and would not use any local public facilities. Section 502.1G — requiring compatibility with the purposes, spirit and intent of the zoning classification — was satisfied because schools and colleges are permitted uses within the zone, and the center was a type of college use. Finally, the Board concluded that the proposed center would satisfy § 502.1H — requiring consistency with any provisions of the Zoning Regulations regarding impermeable surfaces and vegetative retention — based upon Loyola's representation that impervious surfaces would constitute only 1.5% of the entire 107-acre site.

There was clearly substantial evidence to support the Board's conclusion that Loyola had met its burden of establishing that it satisfied all requirements of § 502.1, as well as the general requirement of § 1A01.2.C that "the use would not be detrimental to the primary agricultural uses in its vicinity." But compliance with the statutory criteria does not end the inquiry because, as this Court stated in *Days Cove*, *supra*, 146 Md. App. at 475, "[t]he conditional use provisions of a county zoning code must be read with the holding of *Schultz* engrafted upon them." Accordingly, we turn our attention to *Schultz v. Pritts*.

B. *Schultz v. Pritts*

The leading case regarding special exceptions in Maryland is *Schultz v. Pritts, supra.* Whether the Board of Appeals properly applied the legal standard enumerated in *Schultz* is the major source of disagreement between the Loyola and the protestants. The parties seeking a special exception in *Schultz* purchased a 2.74 acre tract of land zoned R-20,000 (single-family residential development 20,000 square feet minimum lot size) and filed an application with the Carroll County Board of Appeals requesting a special exception to develop a funeral establishment on the tract. *Schultz, supra,* 291 Md. at 3-4. After a hearing, the Board denied the special exception use. *Id.* The property owners argued that the Board's decision denying the requested special exception was "arbitrary, capricious, and illegal." *Id.* at 10. The circuit court reversed the Board's decision because the Board had considered evidence submitted after the close of the hearing; the court did not address the proper standard for granting a special exception. The Court of Appeals granted a petition for writ of certiorari to consider

whether the proper test was a comparison of the detrimental impact of the proposed use and the detrimental impact that would arise from a permitted use upon the subject property, which was the test set forth in *Gowl v. Atlantic Richfield Co.*, 27 Md. App. 410, 417-18 (1975). Although Judge Marvin H. Smith would have adopted the *Gowl* test, *see Schultz, supra*, 291 Md. at 27, all of the other judges joined in Judge Rita Davidson's landmark opinion which set forth a different standard. The rejection of the *Gowl* standard was noted by the Court of Appeals in *Harford Co. v. Preston*, 322 Md. 493, 499 (1991), where the Court stated: "Under *Schultz*, the possible effects of permitted uses are not considered; the focus, rather, is on whether, with respect to that factor [*i.e.*, the relative adverse impact], the proposed conditional use would have a more adverse effect on the particular location at issue than it would have generally in the zone."

The *Schultz* Court described the burden on an applicant for a special exception use as follows, *id.* at 11:

> If [the applicant] shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide.

See also Hayfields, supra, 122 Md. App. at 660.

The *Schultz* Court quoted with approval the following statement in *Deen v. Baltimore Gas & Electric Co.*, 240 Md. 317, 330-31 (1965), describing the "specific nature of the requisite adverse effect" that would support denial of a requested special exception use:

> ". . . [T]here was no evidence produced at the hearing which would show that the effect of high tension wires on the future health, safety and welfare of this area would be in any respect different than its effect on any other rural area. Section 502.1 implies that the effect on health, safety or general welfare must be in some sense unique or else a special exception could never be granted in such an area for the above ground location of high tension wires. The only evidence as to future conditions was testimony revealing the possibility of future residential development of this land but such a possibility alone does not come close to showing a future deleterious effect upon the public health, safety or general welfare."

Schultz, supra, 291 Md. at 12. (The *Deen* Court had affirmed the grant of a special exception.)

The *Schultz* Court also reviewed at length this Court's analysis in *Anderson v. Sawyer*, 23 Md. App. 612 (1974). As in *Schultz*, the property owner in *Anderson* requested a special exception to construct a funeral home in a residential zone. *Anderson, supra*, 23 Md. App. at 613. Those opposing the funeral home argued, among other things, that the requested special exception use would have a depressing psychological effect that would interfere with the enjoyment of the adjoining properties. *Id.* at 623. The Board of Appeals denied the special exception, but the Circuit Court for Baltimore County reversed. In affirming the circuit court's order requiring the Board to grant the special exception, this Court stated that the legislature knew of the "inherent depressing and disturbing psychological effect," which may adversely affect persons living near funeral homes when it included the special

exception for funeral homes as part of its comprehensive zoning plan. *Id.* at 624. We noted in *Anderson* that "the legislature of Baltimore County has determined that . . . funeral homes are to be allowed [as a special exception use] in residential zones notwithstanding their inherent deleterious effects." *Id.* We observed that, by permitting funeral homes as a special exception use, the county legislature had, "in essence, declared that such uses, . . . promote the health, safety and general welfare of the community," and such a "legislative declaration shares in a presumption of validity and correctness which the courts will honor." *Id.*, *see Schultz, supra*, 291 Md. at 14.

The applicant in *Anderson* was entitled to a special exception because the particular funeral home being proposed did not have detrimental effects "above and beyond" those typical of all funeral homes. The *Anderson* Court's analysis of why the special exception use should have been granted in that case, 23 Md. App. at 624-25, was quoted with approval by the *Schultz* Court as follows, 291 Md. at 14:

> "The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses. Consequently, the bald allegation that a funeral home use is inherently psychologically depressing and adversely influences adjoining property values, as well as other evidence which confirms that generally accepted conclusion, is insufficient to overcome the presumption that such a use promotes the general welfare of a local community. Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in any way other than would result from the location of

any funeral home in any residential zone, the evidence presented by the protestants was, in effect, no evidence at all."

After reviewing *Anderson* and *Deen*, the Court of Appeals in *Schultz* held:

> These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that **the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone**.

Id. at 15 (emphasis added).

Elsewhere in the *Schultz* opinion, the Court noted that, unlike uses permitted as of right, special exception uses "cannot be developed if at the particular location proposed they have an **adverse effect above and beyond that ordinarily associated with such uses**." *Id.* at 22 (emphasis added). The Court reiterated "the appropriate standard" as follows:

> We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is **whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location** within the zone. *Turner* [*v. Hammond*] , 270 Md. [41,] at 54-55, 310 A.2d at 550-51 [(1973)]; *Deen*, 240 Md. at 330-31, 214 A.2d at 153; *Anderson*, 23 Md. App. at 617-18, 624-25, 329 A.2d at 720, 724.

(Emphasis added.)

The *Schultz* standard has been cited many times by the Maryland appellate courts, and, "with but minor modifications, and with but one or two strained deviations," remains the standard by which special exception questions are resolved. *Mossburg, supra*, 107 Md. App. at 8. In *Mossburg*, this Court observed:

> [I]t is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), **it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered by the agency.**

Id. at 8-9 (emphasis added).

In *Board of County Comm'rs v. Holbrook*, 314 Md. 210, 217-18 (1988), the Court of Appeals summarized the *Schultz* standard as follows:

> In summary, where the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone, the application should be denied. Furthermore, if the evidence makes the issue of harm fairly debatable, the matter is one for the Board's decision, and should not be second-guessed by an appellate court.
>
> The *Schultz* test accords with the general standard for judicial review of the ruling of an administrative agency, which we have defined as "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment." *Supervisor of Assess. v. Ely*, 272 Md. 77, 84, 321 A.2d 166 (1974).
>
> Additionally, in *Snowden v. Mayor and C.C. of Balto.*, 224 Md. 443, 448, 168 A.2d 390 (1961), we said:

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

Therefore, due deference must be given to the right of an administrative agency, such as the Cecil County Board of Appeals, to draw reasonable inferences from the facts and circumstances presented before it.

Accord Alviani, supra, 365 Md. at 113-14 (affirming grant of special exception).

In *Holbrook*, the Court of Appeals also provided further guidance on defining the relevant neighborhood for analyzing the adverse impact of a proposed use, stating, 314 Md. at 218-19:

> [W]e must determine whether sufficient evidence was presented to the Board to justify its inference that the proposed special exception use would cause the requisite adverse impact upon the "property values in the neighborhood." Initially, we reject respondent's notion that the rural nature of the area in question requires an expansive interpretation of the word "neighborhood." As we explained in another zoning context, "the neighborhood in any area must be an area which *reasonably* constitutes the immediate environs of the subject property." *Clayman v. Prince George's Co.*, 266 Md. 409, 418, 292 A.2d 689 (1972) (emphasis in original).

The relevant neighborhood was also one of the issues addressed by us in *Hayfields v. Valleys Planning Council, Inc.*, 122 Md. App. 616, 645 (1998). In that case, the owner of a historic farm filed a petition for a special exception to build an 18-hole golf course and country club on the R.C.2 zoned property. *Id.* at 625. The zoning commissioner, as required by *Schultz*, "analyzed the nature of the adverse impact" associated with the proposal and

concluded that "the impact on the **locale surrounding the proposed site** did not warrant the denial of the special exception." *Id.* at 626 (emphasis added). The Valleys Planning Council appealed to the Board of Appeals, which affirmed the grant of the special exception, subject to certain conditions. *Id.* at 627. The opponents of the special exception then appealed to the circuit court, which affirmed the Board's approval of the petition for special exception but struck two of the Board's conditions. *Id.* at 628.

On appeal before this Court, the opponent of the project argued that the Board erred in its application of *Schultz*. The opponent contended that the off-site impact of the proposed use upon the surrounding and neighboring properties must be considered before granting the special exception request, but, in addition, the *on-site* impact of the development upon the subject property itself must also be analyzed. *Id.* at 641. We disagreed with the opponent's contention and found that *Schultz* required only the impact to the surrounding off-site areas need be considered. As the *Schultz* court noted, "[t]he duties given the Board are to judge whether the **neighboring properties in the general neighborhood** would be adversely affected[.]" *Schultz, supra*, 291 Md. at 11 (emphasis added). Furthermore, we cited numerous cases that similarly interpreted *Schultz*:

> For applications of the *Schultz* test, see *Harford County v. Earl E. Preston, Jr., Inc.*, 322 Md. 493, 505, 588 A. 2d 772 (1991) (finding that "[t]he Board . . . made no attempt to reconcile the contradictory findings of fact by its hearing examiner in his two reports as to whether the adverse impacts *upon the neighborhood* of the [applicant's] proposed special exception uses were beyond those inherently associated with such special exception uses irrespective of their location within the AG zone" (emphasis added)); *Board of County Comm'rs v. Holbrook*, 314 Md. 210, 217-18, 550 A. 2d 664 (1988)

("[W]here the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone, the [special exception] application should be denied."); *Evans v. Shore Communications, Inc.*, 112 Md. App. 284, 304, 685 A. 2d 454 (1996) (holding that "[a]ssuming, *arguendo*, that appellant has produced evidence that the [antenna] tower will result in an adverse impact on the surrounding properties, the Board was . . . obliged to make a finding that the adverse effects would be greater in the proposed location than they would generally be elsewhere within the areas of the county where they may be established"); *Mossburg*, 107 Md. App. at 13, 666 A. 2d 1253 (stating that in reviewing the Board's decision, the Court "look[s] for evidence, if any, in the record of the adverse effects and impact that could generally be expected as an inherent adverse impact anywhere in the I-2 Zones in order to determine whether the environmental and traffic safety impact at the subject site is greater"); *Moseman v. County Council*, 99 Md. App. 258, 264, 636 A. 2d 499 (citing *Schultz* for the proposition that the proposed use cannot have "any adverse [e]ffect above and beyond those inherently associated with such a special exception use irrespective of its location in the permitted zone"), *cert. denied*, 335 Md. 229, 643 A. 2d 383 (1994); *Sharp*, 98 Md. App. at 86-87, 632 A. 2d 248 (holding, *inter alia*, that "[t]he Board had before it substantial evidence to support its finding that potential dangers from airplane crashes were such a remote possibility as not to constitute an adverse effect to the owners of *vicinal properties*" (emphasis added)); *Mangione, supra*, 85 Md. App. at 750, 584 A.2d 1318 (stating that the Court "shall review facts and circumstances upon which the Board could have found that the special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone").

Hayfields, 122 Md. App. at 646-47. In holding that the Board in *Hayfields* correctly limited its adverse impact analysis to off-site effects, we stated that, "absent a stricter standard clearly expressed in the County's zoning regulations, or until the relevant case law is modified by the Court of Appeals, the current expression of the *Schultz* test applies." *Id.* at 647.

In the instant case, the Board of Appeals properly applied the *Schultz* standard before granting Loyola's petition for special exception. The Board stated that, under *Schultz*, it was obligated to determine whether the adverse impact of the proposed retreat center in the subject location would be more severe than that generally inherent in the use of any property as a college facility. The Board characterized the *Schultz* analysis as follows:

> In *Schultz v. Pritts* the Court of [] Appeals sets out a very specific standard that must be met, a standard supported by numerous prior cases:
>
> > We now hold that the appropriate standard to be used in determining whether requested special exception use would have an adverse effect and therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *Schultz v. Prit[ts], supra*, at 22.
>
> We disagree with Protestants' argument that this standard should be interpreted to mean that, as long as there are other locations in the zone in which certain adverse effects would be less adverse, the use should be denied in the subject location. The standard is very clear that only the general vicinity of the subject property is to be taken into account. Therefore, the fact that there are wider roads in other areas of the R.C. 2 zone, or other areas of the zone without Class 3 trout streams, are beside the point. The Board must examine each criterion of BCZR Section 502.1 and determine whether the impacts in the subject location are above and beyond those inherent to the use — in this case, a college facility — itself.
>
> This view is supported by a more recent case in which the Court of Special Appeals stated that "A disqualifying adverse impact . . . must be something more than what is ordinarily expected and it must be unique to that particular location." *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514 (2002), at 542.

> In terms of what is required of the Board in reaching a finding, *Schultz* declares: "But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for special exception use is arbitrary, capricious, and illegal." (*Schultz v. Pritts, supra*, at 11).
>
> Therefore, absent a finding according to this strict standard of harm, the Board must approve the special exception use.

But the protestants maintain that the Board did not properly apply the *Schultz* analysis, and support their contention by pointing to this Court's decision in *Lucas v. People's Counsel for Baltimore County*, 147 Md. App. 209 (2001). The protestants in the instant case argue that the *Schultz* standard, as explained in *Lucas*, requires Loyola to demonstrate that there are no other, more suitable, locations for the proposed retreat center anywhere else in the R.C.2 zone. They maintain that as long as there are other locations in the zone where the center's inherent adverse effects would be *less* adverse than they will be at the proposed location, then the special exception must be denied. The Board of Appeals disagreed with the appellees' interpretation of the standard set forth in *Schultz* and *Lucas*, and did not expressly undertake a zone-wide analysis of other parcels of land in the R.C.2 zone. On the contrary, the Board stated that it was "beside the point" that there may be "wider roads in other areas of the R.C.2 zone, or other areas of the zone without Class 3 trout streams."

We agree with the protestants' contention that the Board was obligated to consider whether any adverse impact of the proposed use at the particular location would be greater than those adverse impacts inherently associated with such uses irrespective of the location

in the zone. But we reject the protestants' assertion that such an analysis requires the denial of the proposed special exception unless the proponent can prove that there is no other location in the zone where the proposed use might have less adverse impact than it will have upon the proposed location. Such a minimum-impact standard would be extremely difficult to establish and would have the effect of precluding uses altogether if the proponent of a project was unable to acquire the specific parcels of real property within the zone where the adverse impact would be minimized. We do not understand *Schultz v. Pritts* to impose such an extreme burden on all applicants for special exception uses. Based on our review of the Board's comprehensive opinion, we are satisfied that the Board gave adequate consideration to the inherent impact a retreat center would have if located elsewhere in the zone.

Our position is not at odds with the holding of *Lucas*. *Lucas* involved a petition for a special exception by a Baltimore County property owner who wished to build a helicopter landing pad and a landing strip for fixed-wing aircraft on his farm. The Baltimore County Board of Appeals held, and the circuit court affirmed, that the applicant's proposed use did not meet the definition of an "airport," a BCZR special exception use. 147 Md. App. at 215.

The protestants in the present appeal point to language in *Lucas* that states:

> In other words, the question is not whether the proposed facility will have some adverse effect on the Greenspring Valley area; it will because there are inherently detrimental effects associated with such facilities. The Board must determine whether the adverse effects of the special exceptions use in the particular location in which it is sought to be located would be greater or more detrimental than they would be generally at other locations within the R.C.2 2 zone. Utilizing the standard as set out in Schultz, the Board determined that the "**question is one of whether or not the adverse effects are greater at the**

proposed site than they would be elsewhere in the County where they may be established, i.e., the other areas within the R.C.2 2 zones."

Id. at 238-39 (emphasis added). We noted in *Lucas* that the Baltimore County Board of Appeals ruled that the proponent had the burden of establishing that the "impact factor caused by the proposed use is no greater at the site than the same use elsewhere in the zone (R.C.2 zone)." *Id.* at 239. We observed that the Board applied the appropriate standard. *Id.* at 240.

We note that the above-quoted language was not the holding in *Lucas*. We affirmed the circuit court's judgment on the ground that the proposed use was not an "airport." After setting forth that dispositive ruling, we then stated: "We address the remaining questions in the interest of completeness." *Id.* at 216. But, in any event, the quoted language does not establish what the protestants argue — that Loyola had the burden of negating the existence of other, more suitable areas in the R.C.2 zone for its proposed special exception use. Moreover, the Board in *Lucas* concluded that "**it is not a matter of finding a better site for the proposed use in the R.C.2 zone,** but rather the question is one of total impact[.]" *Id.* at 240 (emphasis added).

As stated above, applying the *Schultz* standard entails determining whether there are facts and circumstances that show that the *particular use* proposed *at the particular location proposed* would have adverse effects above and beyond those inherently associated with the particular use. *Schultz, supra,* 291 Md. at 15. The Board conducted an extensive review and analysis of the proposed facility and did not find that the proposed retreat center, at the

particular location proposed, would have any material adverse effects above and beyond those inherently associated with such a college facility. We are satisfied that the *Schultz* standard was applied, and, because the evidence presented to the Board was "fairly debatable," *see Schultz, supra*, 291 Md. at 12, and *Holbrook, supra*, 314 Md. at 218, the Board's decision "should not be second-guessed by an appellate court." *Holbrook, supra,* 314 Md. at 218.

Accordingly, we hold that the decision of the Board of Appeals approving Loyola's petition for a special exception should have been affirmed by the circuit court.

C. Multiuse Water Supply System

The cross-appellants contend that the Board of Appeals erred in approving Loyola's development plan because Loyola failed to designate its water supply system as a multiuse water supply system, as defined by Maryland Code (1982, 2007 Repl. Vol.), Environment Article, § 9-501(j).[1] In response, Loyola asserts that it is not proposing a multiuse system but, even if its system were a multiuse system, there is no requirement that it be designated as such as a prerequisite to approval of its development plan. The Board credited the testimony of Loyola's expert witnesses, and concluded that the proposed system would not be a multiuse system. Accordingly, the Board rejected the protestants' argument as a basis for withholding approval of the development plan. The circuit court noted that Loyola and

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[1] Although the cross-appellants also seek to raise issues regarding the sewer plans, the Board of Appeals ruled that such issue was not raised before the Hearing Officer and was not properly before the Board. We agree.

the Board relied on the Maryland Department of the Environment with respect to its proposals for the water system, and concluded that it was appropriate for the Board to defer to the Maryland Department of the Environment on this issue. Mindful that the expertise of agency in its own field should be respected, *Noland, supra*, 386 Md. at 572, we agree that it was appropriate for the Board to defer to the State agency with respect to the determination of whether Loyola's water system constitutes a multiuse water supply system.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS VACATED. CASE REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO AFFIRM THE DECISION OF THE BALTIMORE COUNTY BOARD OF APPEALS. COSTS TO BE PAID BY APPELLEES.

5/5/06

IN THE MATTER OF:	*	IN THE
	*	CIRCUIT COURT
CITIZENS AGAINST LOYOLA MULTI USE CENTER, ET AL	*	FOR
	*	BALTIMORE COUNTY
	*	CASE NO: 03-C-05-007730

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

MEMORANDUM OPINION AND ORDER

This matter comes before the Court for judicial review of a decision by the County Board of Appeals of Baltimore County ("Board"). In its June 21, 2005 opinion, the Board granted Respondent Loyola College in Maryland's ("Loyola") Petition for Special Exception to permit a college in the R.C.2 zone of Baltimore County pursuant to Baltimore County Zoning Regulations ("BCZR") §1A01.2.C.23 as well as its Petition for Special Hearing. In that opinion, the Board also affirmed the Hearing Officer's June 10, 2004 decision approving Loyola's development plan and ordered that relief granted by the Board be subject to restrictions within the agreement between Loyola and two community associations, the Maryland Line Area Association, Inc. and the Parkton Area Preservation Association, Inc.

Citizens Against Loyola Multi-Use Center, et al ("Citizens") and People's Counsel for Baltimore County ("People's Counsel") filed Petitions for Judicial Review on July 15, 2005 and July 19, 2005, respectively. Citizens' and People's Counsel's interests and arguments overlap substantially.

Citizens raised the following three issues in its Petition for Judicial Review:

1) Loyola incorrectly states the requirements for compliance with *Schultz v. Pritts* and with BCZR §1A01.2.C.

2) The Board shifted the burden of proof with respect to §502.1.

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3) The proposed use conflicts with the Master Water and Sewer plan law, relevant state legislation and MDE guidelines.

People's Counsel raised the following two issues in its Petition for Judicial Review:

1) Whether the Board erred as a matter of law and misapplied the special exception standards of *Schultz v. Pritts* and its progeny when it restricted its geographic scope of inquiry, disregarding evidence of the relatively greater impact of Loyola's use at this site compared to other locations in the agricultural zone in northern and western Baltimore County.

2) Whether the Board erred as a matter of law in misapplying the state water and sewer plan law definition for "multiuse water supply system" and "multiuse sewerage system," under Md. Code Ann. Environment §9-501, so as to exempt the Loyola's Center from securing approval of a legislative amendment of the county water and sewer plan.

On April 20, 2006 a hearing was held before this Court. James Dunbar and Thomas Lingan, of Venable, L.L.P. represented Loyola, G. Macy Nelson represented Citizens, and Peter Zimmerman represented People's Counsel. For the reasons set forth herein, this matter is REMANDED to the Board for further action consistent with this Court's opinion.

BACKGROUND FACTS[1]

Loyola contracted to buy property in Northern Baltimore County, within the R.C.2 zone, from the estate of Marion Clark & Eleanor Duvall Spruill, W. Duvall Spruill, Personal Representative. The entire property is 107.68 acres, 54 of which are to be retained by the Clark/Spruill family for agricultural use and Loyola seeks to develop a retreat center ("Center") on the remaining 53 acres. The Center would be built on 10.18 of Loyola's 53 acres and consist of a 16,000 square-foot main building with a chapel, meeting rooms, five faculty rooms with private bathrooms, restroom facilities, storage rooms, a warming kitchen, and a dining room.

Construction would be split into two phases. During Phase I, Loyola would build three additional buildings with 60 individual rooms (total), sharing restroom and shower facilities between two rooms. During Phase II, Loyola would build two additional buildings, in which there would be a total of 105 rooms/beds.

Loyola submitted the Center's development plan to Baltimore County for approval. Since the Center's proposed site is located within the R.C.2 zone of Baltimore County, Loyola requested a Special Exception under BCZR §1A01.2.C, to build the Center in the zone. Loyola also filed a Petition for Special Hearing seeking confirmation that the 35 parking spaces allotted in the development plan are sufficient to support the intended use of the property, and requesting a non-density transfer to permit Loyola to use the 107-acre property's one density unit on its 53 acres.

Prior to Loyola's appearance before the Hearing Officer, Loyola entered into an agreement with two community associations, the Maryland Line Area Association, Inc. and the Parkton Area Preservation Association, Inc., that restricted Loyola's use of the property. Those restrictions include provisions that Loyola a) operate the Center for a maximum of 160 days per year, b) not proceed with Phase II of the development plan for at least 10 years, c) not construct any buildings absent from the site plan for a period of 25 years, and d) restrict use of the Center to retreats only.

The Hearing Officer held a three-day hearing in April 2004 on Loyola's development plan and requested zoning relief. On June 10, 2004 the Hearing Officer issued an opinion and order approving Loyola's development plan and granting its Petition for Special Exception. Citizens and People's Counsel appealed that decision to the Board.

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[1] The Court has taken the substance of its background facts from the County Board of Appeals of Baltimore County's June 21, 2005 Opinion.

The Board held a hearing that started on September 14, 2004 and continued on September 15, September 29, September 30, December 7, 2004, and January 4, 2005. The Board's opinion was issued on June 21, 2005. Citizens and People's Counsel filed Petitions for Judicial Review on July 15, 2005 and July 19, 2005, respectively.

Based upon this Court's consideration of the entire record of the proceedings below as well as written memoranda submitted by both sides and arguments of counsel, the Court shall REMAND this matter to the County Board of Appeals for Baltimore County for further action consistent with this Court's opinion.

STANDARD OF REVIEW

A final decision of a county zoning board must be upheld on review if it is not premised upon an error of law and if the agency's conclusions reasonably may be based on the facts proven. In fact, this Court's role in reviewing an administrative agency's decision is narrow. The reviewing court cannot substitute its own judgment for that of the zoning board and must accept the zoning board's factual conclusions, if they are based on substantial evidence and if reasoning minds could reach the same conclusion on the record. *Columbia Road Citizens' Ass'n v. Montgomery County*, 98 Md. App. 695, 698 (1994). This Court also is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel v. People's Counsel*, 336 Md. 569, 577 (1994).

In regard to the Board's legal conclusions, this Court's review is "expansive" and owes "no deference." *Bennett v. Zelinsky*, 163 Md. App. 292, 299 (2005), *cert. granted*, 389 Md. 399 (2005). "'Generally, a decision of an administrative agency, including a local zoning board, is

owed no deference when its conclusions are based upon an error of law.'" *Stansbury v. Jones*, 372 Md. 172, 184 (2002) (quoting *Belvoir Farms Homeowners' Ass'n v. North*, 355 Md. 259, 267 (1999)). However, the agency's interpretation and application of any statute that the agency administers should be given considerable weight by the reviewing court. *Lussier v. MD Racing Commission*, 343 Md. 681, 696-97 (1996).

For purposes of judicial review, substantial evidence means more than a "scintilla of evidence" such that a reasonable person could come to more than one conclusion in such a situation, the issue to be considered is "fairly debatable" and the reviewing court may not substitute its judgment for that of the agency. *Realty Improvement Ass'n v. Sycamore Realty Co., Inc.*, 105 Md. App. 701, 714, 661 A.2d 182 (1995).

DISCUSSION

Citizens' Issues Raised for Judicial Review:

1) Loyola incorrectly states the requirements for compliance with *Schultz v. Pritts* and with BCZR §1A01.2.C.

a) *Schultz v. Pritts*

In *Schultz v. Pritts*, 291 Md. 1 (1981), the Court of Appeals of Maryland established a "test" for determining whether to grant a special exception use within a zoned area. The Court states on pages 22-23,

> We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of the location within the zone.

Citizens argued that *Schultz's* progeny, 25 years of subsequent case law, clarify the test set out by the *Schulz* Court. Specifically, Citizens pointed to *Lucas v. People's Counsel for Baltimore County*, 147 Md. App. 209, 239 (2002), where the Court of Special Appeals of Maryland affirmed the Board's articulated disapproval of a special exception when the Board said that the applicant must show that "the impact factor caused by the proposed use is no greater at the site than the same use elsewhere in the zone (R.C.2 zone)." Using *Lucas*, Citizens contended that the proper analysis regarding the impact of a proposed special exception use is a broad, comprehensive, zone-wide analysis. Further, Citizens argued that Loyola "made the tactical decision" not to present evidence regarding the Center's impact at other locations throughout the R.C.2 zone. *See* Petitioner's [Citizens'] Reply Memorandum at page 2.

Loyola countered that *Schultz* and *Lucas* permit, and even require, a narrow scope of geographic review. Loyola highlighted a passage of *Schultz*, at page 11, that Loyola relies on to support its contention by saying, "if [the applicant] shows...that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden."

The Board also took a narrow view on the geographic scope set out in *Schultz*. The Board said, after quoting page 22 of *Schultz*, "[t]he standard is very clear that only the general vicinity of the subject property is to be taken into account. Therefore, the fact that there are wider roads in other areas of the R.C.2 zone, or other areas of the zone without Class 3 trout streams, are beside the point." *See* Board's Opinion at pages 6-7.

This Court has reviewed the *Schultz* case and its progeny and finds that the Board misinterpreted *Schultz* and made an absolute error of law. It is clear to this Court that *Schultz* and *Lucas* intend for the geographic scope of review in determining whether to grant or deny a

special exception to be a zone-wide analysis. While there are some narrower, "local" factors to consider when evaluating the appropriateness of a special exception use, as enumerated in BCZR §502.1, the primary geographic scope is a broad review. The Board failed to follow the *Schultz* test in considering Loyola's Petition for Special Exception. This Court is remanding this case to the Board to conduct a broader *Schultz* analysis.

b) BCZR §1A01.2.C

BCZR §1A01.2.C states,

> Uses permitted by special exception...may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity....

Citizens asserted that this section requires an applicant to show that the proposed use will not be detrimental, at all, to agriculture within the local farming community and argued that the Board failed to follow that requirement. Citizens quoted the Board's opinion at page 9, which says, "[t]he Board finds, therefore, that the negative impact on the local farming community will be minimal." Citizens argued that "minimal impact" in the wrong standard; no impact is the correct standard.

Additionally, Citizens sought reversal of the Board's decision on the basis that the record lacks substantial evidence that the Center would have no detrimental impact on the local community. As example, Citizens emphasized traffic and agricultural concerns. Citizens argued that school buses and increased car traffic traveling to and from the Center would impede the mobility of agricultural equipment that relies on the narrow, windy roads in the Center's proposed vicinity. Citizens said the Board did not determine that the Center would not disrupt the equipment's use of the narrow roadways. Also, Citizens argued that they had produced

witness Paul Solomon, whom the Board accepted as an expert in agriculture and the effect of certain development on agriculture, to testify as to the specific, negative impact of the Center on the agricultural zone, but that Loyola offered only Robert Sheesely, who testified vaguely that there would be no detrimental impact on the primary agricultural uses because "the subject site is right on the fringe." *See* September 14, 2004 Transcript at page 173.

Loyola disagreed with the standard cited by Citizens, saying that requiring no impact is not the correct standard because any permitted use as a special exception will inevitably have some impact. Thus, Loyola argued, one should evaluate the inherent impact of development compared with the effect of the proposal. Regarding the traffic example, Loyola contended that developing a school often leads to daily school bus routes, carpools, and young drivers driving irresponsibly, but that, with this Center, the impact would be far less severe, as the Center would operate only half the calendar year, that traffic volume would by controlled, and that, even on active retreat weekends, traffic would not be daily.

The Court looks to *Schultz* at pages 22-23 for insight on this standard, where the Court of Appeals states that one must look to see if there are, "facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of the location within the zone." Although the standard appears to be a comparative one, where the hearing authority compares the inherent effects of that type of special exception use with the inherent effects of the proposed use, the Court defers to the Board on issues of witness credibility to perform that local analysis.

This Court finds that the Board's analysis of the local and vicinity factors was appropriate and based on substantial evidence.

2) The Board shifted the burden of proof with respect to BCZR §502.1.

Citizens contended that the Board shifted the burden of proof regarding the special exception use away from Loyola, contrary to the requirement of BCZR §502.1. Loyola asserted that the Board did not shift the burden of proof from Loyola to Citizens. This Court has reviewed the Board's decision and finds that the Board correctly addressed the burden of proof on page 6 when it said, paraphrasing S*chultz*, "the applicant has the burden of proving that his use meets the "prescribed standards and requirements." However, this Court does find that the Board's interpretation of the standard that *Schultz* imposes was erroneous, as previously stated in this opinion.

3) The proposed use conflicts with the Master Water and Sewer plan law, relevant state legislation and MDE guidelines.

In its Petition, Citizens indicated by title its third issue raised for judicial review, but incorporated by reference the argument presented by People's Counsel. This Court will address Citizen's third issue below, in conjunction with People's Counsel's second issued raised for judicial review.

People's Counsel's Issues Raised for Judicial Review:

1) Whether the Board erred as a matter of law and misapplied the special exception standards of *Schultz v. Pritts* and its progeny when it restricted its geographic scope of inquiry, disregarding evidence of the relatively greater impact of Loyola's use at this site compared to other locations in the agricultural zone in northern and western Baltimore County.

As stated above, this Court has reviewed *Schultz*, and its subsequent cases, and finds that the appropriate geographic scope of inquiry is a broad, comprehensive, zone-wide analysis.

People's Counsel included in its memo *Hayfields, Inc. v. Valleys Planning Council*, 122 Md. App. 616 (1998), in which the Court of Special Appeals of Maryland concisely states the scope of inquiry set out in *Schultz*. In *Hayfields*, the Court of Special Appeals says, at page 654,

> *If* all or a substantial portion of the off-site R.C.2 land is underlain by Cockeysville Marble then it is at least possible that the Board could fairly conclude that the golf course, at its proposed site, would cause no more contamination to the aquifer than if it were located elsewhere in the R.C.2 zone.

Thus, this Court finds that the Board misinterpreted the scope of geographic review set out in *Schultz* and should have conducted a broad, zone-wide analysis instead of merely looking to the "vicinity of the subject property." *See* Board's Opinion at page 6. This Court finds that a "zone" analysis is required by the Board and the narrow "vicinity" analysis undertaken by the Board was an error of law.

Loyola contended that a parcel-by-parcel analysis of the entire R.C.2 zone of Baltimore County is onerous and overly burdensome and is not what the *Schultz* analysis requires. This Court disagrees. Although this Court does not believe a proper *Schultz* analysis requires testimony on every acre of land in the R.C.2 zone, a broader analysis is required than the one submitted by the Board.

This Court finds that the Board did err as a matter of law and misapplied the special exceptions standards of *Schultz* in restricting its geographic scope of inquiry. This Court therefore remands this case to the Board for further consideration in applying the *Schultz* standard, as described in this opinion.

2) Whether the Board erred as a matter of law in misapplying the state water and sewer plan law definition for "multiuse water supply system" and "multiuse sewerage system," under Md. Code Ann. Environment §9-501, so as to exempt the Loyola's Center from securing approval of a legislative amendment of the county water and sewer plan.

People's Counsel and Citizens asserted that the Board misinterpreted and misapplied the word "capacity," as used in Md. Code Ann. Environment §9-501 to define "multiuse sewerage system" and "multiuse water supply system." Md. Code Ann. Environment §9-501(i)(3) defines a multiuse sewerage system as one that "has a treatment capacity of more than 5,000 gallons a day." Md. Code Ann. Environment §9-501(j)(1) defines a multiuse water supply system as one that "has the capacity to supply more than 5000 gallons a day."

People's Counsel and Citizens argued that "capacity" means "ability," and the definition of a multiuse water supply/sewerage system should apply to any system that is able to supply or treat more than 5,000 gallons a day, on any given day. People's Counsel and Citizens use Petitioner's (Loyola's) Exhibit #8, which are projected usage charts for Phase 1 as well as after the Center is fully built, to show that on an active retreat day, the Center will use in excess of 5,000 a day. This use in excess of 5,000 gallons on any one active retreat day, People's Counsel and Citizens argued, makes the Center's system multiuse under the Md. Code Ann. section.

People's Counsel and Citizens also contended that Loyola and the Board erred in their calculations of the water use by the Center. Loyola and the Board averaged the usage both monthly and annually, which drastically reduced the usage numbers to under 5,000 a day due to the restriction that the Center may only operate for a maximum of 160 days per year. People's Counsel and Citizens argued that averaging water usage is improper since the word "capacity" means "ability" and any system that treats or supplies in excess of 5,000 a day meets the standard to be multiuse.

Loyola and the Board relied on the Maryland Department of the Environment's ("MDE") Application to Appropriate and Use Waters of the State, marked as Developer's Exhibit #20, which averaged the water use both monthly and annually. The MDE is the agency that governs

this application. The Board deferred to the agency's method of water calculation, saying, "MDE, in its application process, has interpreted "capacity" as an average over a monthly or annual use." *See* Board's Opinion at page 25. The Board went on to say, at page 26, "MDE is the State agency charged with creating regulations to administer the State laws...it is not for the Hearing Officer or the Baltimore County Board of Appeals upon appeal to contradict the State agency."

This Court has reviewed the pleadings and exhibits submitted, and considered oral arguments by counsel. Although this issue causes the Court some concern, this Court finds that the statute is somewhat ambiguous and that it was proper for the Board to defer to the MDE regarding its method devised for determining a multiuse system. This Court finds that the Board did not err as a matter of law in misapplying the state water and sewer plan law definitions for "multiuse water supply system" and "multiuse sewerage system."

CONCLUSION

For the reasons set forth herein, this Court shall REMAND this matter to the Board for further action consistent with this Court's opinion.

, Judge
Ruth A. Jakubowski

5/5/06
Date

Clerk to notify parties

IN THE MATTER OF:	*	IN THE
	*	CIRCUIT COURT
CITIZENS AGAINST LOYOLA MULTI USE CENTER, ET AL	*	FOR
	*	BALTIMORE COUNTY
	*	CASE NO: 03-C-05-007730

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

ORDER

This matter came before the Court as a Petition for Judicial Review of a decision by the County Board of Appeals for Baltimore County. For the reasons stated in its Memorandum Opinion, it is this 5 day of ~~April~~ May, 2006, by the Circuit Court for Baltimore County, Maryland,

ORDERED that this matter shall be **REMANDED** to the County Board of Appeals for Baltimore County for further action consistent with this Court's Memorandum Opinion.

, Judge
Ruth A. Jakubowski

5/5/06
Date

Copies to be mailed by Clerk

[redacted]
9/21/05

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY *

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

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

IN THE MATTER OF THE APPLICATION *
LOYOLA COLLEGE SPIRITUAL
RETREAT CENTER: LOYOLA COLLEGE *
COLLEGE IN MARYLAND DEVELOPER
N & S/S STABLERSVILLE ROAD @ NE/COR *
YORK ROAD

*

BOARD OF APPEALS CASE NO. CBA-04-136/ *
PDM VII-389 AND 04-337-SPHX

*

7th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT *

CIVIL ACTION
No. **3-C-05-7730**

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CLERK OF THE CIRCUIT COURT
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* * * * * * * * * * * *

SUPPLEMENT TO THE RECORD OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER/DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT 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 supplements the record filed September 14, 2005 with the Post-Hearing Briefs, dated February 7, 2005, which were not included with the initial Record of Proceedings.

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Respectfully submitted,

Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204 (410) 887-3180

c: Peter M. Zimmerman, Esq.
People's Counsel for Baltimore County
G. Macy Nelson, Esq.
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2) To approve the transfer of 54 +- acres of RC 2 zoned land as non-density transfer.
3) To permit a building for religious worship/school/camp in the R.C. 2 zone, pursuant to Sections 1A01.2.C.4, 6 and .23 of the B.C.Z.R.

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CBA-04-136 AND 04-337-SPHX

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33. Plat of Loyola Property marked by Mr. Berg
34. Pictures of property and stream
35. Nitrogen balance sheet

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Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals
Room 49 Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

c: People's Counsel for Baltimore County, Maryland
G. Macy Nelson, Esquire
Robert A. Hoffman, Esq.

9/21/05

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY *

PETITION OF: *
CITIZENS AGAINST LOYOLA
MULTI-USE CENTER * CIVIL ACTION
P.O. BOX 373 No. **3-C-05-7730**
PARKTON, MD 21120 *

WEISBURG COMMUNITY ASSOCIATION *
18200 YORK ROAD
PARKTON, MD 21120 *

LYNNE JONES *
815 STABLERS CHURCH ROAD
PARKTON, MD 21120 *

JAMES VOSHELL *
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JULI BUTLER *
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914 MILLER ROAD
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SHARON, THEODORE & MELISA NORTON *
1802 STABLERSVILLE ROAD
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JOSEPH AMOS *
818 MILLER ROAD
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929 STABLERSVILLE ROAD
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THERESA HOUSTON *
1802 STABLERSVILLE ROAD
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HELEN, JAMES, JONI, JODAWN AND *

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JEFFREY AMOS
818 MILLER ROAD
PARKTON, MD 21120

TAL DALEY
19503 CAMERON MILL ROAD
PARKTON, MD 21120

CHRIS CARSKI
SHIRLEY VILLAGARAY
19430 DOWNES ROAD
PARKTON, MD 21120

DORIS THOMPSON
RUTH A. NEEPER
619 MILLER ROAD
PARKTON, MD 21120

ROBERT AND MARY JONES
19217 SPOOKS HILL ROAD
PARKTON, MD 21120

FOR JUDICIAL REVIEW OF THE OPINION
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OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
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IN THE MATTER OF THE APPLICATION
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N & S/S STABLERSVILLE ROAD @ NE/COR

BOARD OF APPEALS CASE NO. CBA-04-136
PDM VII-389 AND 04-337-SPHX

7TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

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

SUPPLEMENT TO THE RECORD OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER/DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

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c: Peter M. Zimmerman, Esq.
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CIVIL ACTION
No. 3-C-05-7730

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EXHIBIT NO. A

LOYOLA COLLEGE

C-03-7730

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CLERK

DATE: 9/21/05

9/14/05

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FOR BALTIMORE COUNTY

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PEOPLE'S COUNSEL FOR
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JULI BUTLER *
815 STABLERS CHURCH ROAD
PARKTON, MD 21120 *

DAVID AND BARBARA ADAMS *
914 MILLER ROAD
PARKTON, MD 21120 *

SHARON, THEODORE & MELISA NORTON *
1802 STABLERSVILLE ROAD
WHITE HALL , MD 21161 *

JOSEPH AMOS *
818 MILLER ROAD
PARKTON, MD 21120 *

EDWARD AND BARBARA UNDERWOOD *
929 STABLERSVILLE ROAD
PARKTON, MD 21120 *

THERESA HOUSTON *
1802 STABLERSVILLE ROAD
WHITE HALL, MD 21161 *

RECEIVED AND FILED
05 SEP 14 PM 12:02
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

HELEN, JAMES, JONI, JODAWN AND JEFFREY AMOS
818 MILLER ROAD
PARKTON, MD 21120

TAL DALEY
19503 CAMERON MILL ROAD
PARKTON, MD 21120

CHRIS CARSKI
SHIRLEY VILLAGARAY
19430 DOWNES ROAD
PARKTON, MD 21120

DORIS THOMPSON
RUTH A. NEEPER
619 MILLER ROAD
PARKTON, MD 21120

ROBERT AND MARY JONES
19217 SPOOKS HILL ROAD
PARKTON, MD 21120

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

IN THE MATTER OF THE APPLICATION
LOYOLA COLLEGE SPIRITUAL
RETREAT CENTER: LOYOLA COLLEGE
COLLEGE IN MARYLAND DEVELOPER
N & S/S STABLERSVILLE ROAD @ NE/COR

BOARD OF APPEALS CASE NO. CBA-04-136
PDM VII-389 AND 04-337-SPHX

7TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

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

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 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 OF APPEALS AND DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

CASE NO.: CBA-04-136/PDM NO. VII-389

July 11, 2003	Concept Plan
Oct. 9	Community Input Meeting/Minutes
Feb. 9	Development Plan – Loyola College of Maryland – Developer 53 acres – 5 retreat buildings with 165 bedrooms
March 24	Development Plan Conference
April 16	Hearing Officer's Hearing
May 26	Developer's Post Hearing Memorandum date stamped 5/26/04
June 10	Hearing Officer's Opinion and Development Plan Order
July 7	Appeal filed by Lynne Jones, James Voshell, Juli Butler, David Adams, Sharon and Theodore Norton, Melissa Norton, Joseph Amos, Edward and Barbara Underwood, Citizens Against Loyola Multi-Use Center (CALM) and Weisburg Community Association, by their attorney G. Macy Nelson.

CASE NO.: 04-337-SPHX

January 26, 2004	Loyola College through their attorney Robert Hoffman, filed a Petition for Special Hearing and Special Exception to request the following: 1) Confirm the parking provided is adequate. 2) To approve the transfer of 54 +- acres of RC 2 zoned land as non-density transfer. 3) To permit a building for religious worship/school/camp in the R.C. 2 zone, pursuant to Sections 1A01.2.C.4, 6 and .23 of the B.C.Z.R.
February 9	Entry of Appearance by People's Counsel
February 23	Notice of Zoning Hearing
April 1	Certification of Publication – Jeffersonian
	Certificate of Posting – Not in File
April 6	Zoning Committee Comments
April 16	Hearing Officer's Hearing
June 10	Zoning Commissioner's Order – *GRANTED* with restriction
July 7	Notice of Appeal filed by G. Macy Nelson, Esq. for Protestants

CBA-04-136 AND 04-337-SPHX

July 16	Petition filed by G. Macy Nelson, Esquire
July 20	Entry of Appearance by People's Council
Aug. 31	Memorandum of People's Counsel on the Master Water & Sewer Plan
Sept. 14	Hearing held before the Board – Day #1
Sept. 15	Hearing held before the Board – Day #2
Sept. 29	Hearing held before the Board – Day #3

Sept. 30	Hearing held before the Board – Day #4
Dec. 5	Hearing held before the Board – Day #5
Jan. 4, 2005	Hearing held before the Board – Day #6

Exhibits for Protestants

1. Building Plan for Main Building
2. Hypothetical Stream
3. CBA Order – 85-132-X
4. CBA Order – 85-245-X
5. Court of Special Appeals Unreported
6. Final Plan for Clarke/Spruill Prop.
7a. ID
7b. ID
8. Letter from Sheesley to Heyman (7 pages)
9. Rule 8 papers for J. Lee Bishop
10. Letter from Farm Bureau
11. Map made by Lynn Jones
12. C.V,. for Dr. Bouwer
13. Storm Water Chart
14. Storm Water Chart – Table 1a
15. Storm Water Chart – Table 1c
16. Storm Water Chart – Table 4
17. ID only DEPRM letter (10 pages)
18. Trout data for Baltimore County
19. Map of Brook Trout Streams
20. Land Use Map – Large Board Exhibit
21. Pictures of Area
22. Arial Photo of Loyola Propety Vicinity – Large Board Exhibit
23. Dr. Brian Reed C.V.
24. Dr. Reed's Summary Report
25. Mr. Kline's Data
26. Mr. Kline's Data
27. Map of Bird River Area # 73
28. Map of Bird River Area # 83
29. Map of Granite Area # 66
30. Map of Granite Area # 75
31. Map of Granite Area # 76
32. Map of Granite Area # 86
33. Map of Shawan Area # 41
34. Part of a Deed I.D. only

35. I.D. only (Deed)
36. Inter-Office Memo
37. A, B, C and D Photo's of Miller's Lane
38. Photo Book by Lynn Jones
39. Pictures of Farm Equipment
40. Letters from farmers
41. I.D. only
42. Panoramic View of Norton farm
43. Packet of letters

Exhibits for Petitioners

1a. Elevation Plat
1b. Site Plat (vicinity map)
1. Restrictive Covenant Agreement
2. Rule 8 papers
3. C.V. for Terrence M. Sawyer
4. A-D pictures of school vehicles
5. Projected Usage Chart
6. C.V. for Robert W. Sheesley
7. Letter from Sheesley to Powell – dated 11/30/04
8. Ariel View
9. C.V. for Thomas Mills
10. Ground-Water Supply Investigation by T. Mills
11. Contour Map
12. C.V. for David S. Yates
13. Site Lighting Plan
14. Site Lighting Plan in Color
15. C.V. for Charles W. Alexander AIA
17a. Panoramic
17b. Close up of site
17c. Proposed site in corn field
18. Main Building Elevation Drawings
19. Retreat House Elevation Drawings
20. Mitchell T. Kellman – C.V.
21. Ariel view with white line around property
22a. Plat layout by DMW
22b. Plat layout by DMW
23a. Definitions of "school"
23b. Definitions of "college"
24. Definition of "camp"
25. Definition of "retreat"
26. Affidavit of W. Duvall Spruill

27. C.V. for Wes Guckert
28. Traffic Impact Analysis for Loyola Retreat Center
29. Conceptual Road Improvements
30. Hayfields, Inc. v. V P C, Inc.
31. C.V. for Gavrelis
32. Joe Berg, Resume
33. Plat of Loyola Property marked by Mr. Berg
34. Pictures of property and stream
35. Nitrogen balance sheet

March 24, 2005	Board convened for Public Deliberation
June 21	Opinion and Order issued by the Board A*ffirming* the Development Plan, G*ranting* the Petition for Special Exception and *Granting* the Petition for Special Hearing subject to restrictions.
July 15	Petition for Judicial Review filed by G. Macy Nelson, Esquire, Attorney for Petitioners
July 19	Petition for Judicial Review filed by People's Counsel for Baltimore County by Peter M. Zimmerman, Esq. and Carole S. Demilio, Deputy.
August 5	Certificate of Notice (Citizens Against Loyola) sent to interested parties
August 5	*Second* Certificate of Notice (People's Council) sent to interested parties
August 9	Response to Petition for Judicial Review filed by Patricia A. Malone, Esq. Attorney for Loyola
Sept. 14	Transcript of testimony filed.
Sept. 14	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which

said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals
Room 49 Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

c: People's Counsel for Baltimore County, Maryland
G. Macy Nelson, Esquire
Robert A. Hoffman, Esq.

PETITION OF: CITIZENS AGAINST LOYOLA, ET AL

CIVIL ACTION NO.: 3-C-05-007730

MATTER OF: LOYOLA SPIRITUAL RETREAT

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.

See attached

CLERK'S OFFICE

DATE: Sept 14, 2005

ACCORDIAN FILE #1 = 2 files
ACCORDIAN FILE #2
ACCORDIAN FILE #3

EXTRACT #1 - CITIZENS AGAINST LOYOLA
EXTRACT #2 - PEOPLE'S COUNCIL

Received & filed for

Loyola 3-C-05-7730

Case 04-337-SPHX
CBA-04-136

2 Extracts - Cntz. Against Loyola
People's Council

M. Julius

9/14/05

8/9/05

PETITIONS OF CITIZENS AGAINST LOYOLA MULTI-USE CENTER, et al., AND PEOPLE'S COUNSEL FOR BALTIMORE COUNTY FOR JUDICIAL REVIEW	*	IN THE
	*	CIRCUIT COURT
	*	FOR
IN THE MATTER OF THE APPLICATION OF LOYOLA COLLEGE SPIRITUAL RETREAT CENTER: LOYOLA COLLEGE IN MARYLAND, DEVELOPER, N & S/S STABLERSVILLE ROAD @ NE/COR YORK ROAD	*	BALTIMORE COUNTY
	*	
	*	
	*	Civil Action No. 3-C-05-7730
CBA No. CBA-04-136/PDM No. VII-389 and 04-337-SPHX	*	
	*	
7th Election District 3rd Councilmanic District	*	
	*	

* * * * * * *

RESPONSE TO PETITIONS FOR JUDICIAL REVIEW

Respondent Loyola College in Maryland, by its undersigned attorneys, in accordance with Maryland Rule 7-204, submits this Response to the Petitions for Judicial Review filed by Citizens Against Loyola Multi-Use Center, et al., and People's Counsel for Baltimore County, and states that it intends to participate in this action for judicial review. Respondent was a party to the above-referenced proceedings before the County Board of Appeals of Baltimore County.

RECEIVED
AUG 11 2005
BALTIMORE COUNTY
BOARD OF APPEALS

One e-cert sent 7/15/05 Cert'd Green Post not issued w/ copy

Respectfully submitted,

James A. Dunbar
Thomas M. Lingan
Arnold Jablon
Patricia A. Malone
Venable LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6200
Attorneys for Loyola College in Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of August, 2005, a copy of the foregoing RESPONSE TO PETITIONS FOR JUDICIAL REVIEW was mailed to G. Macy Nelson, Esquire, Suite 803, 401 Washington Avenue, Towson, Maryland 21204, Attorney for the Petitioners; Peter M. Zimmerman, Esquire, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204; and Kathleen C. Bianco, Administrator, County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

Patricia A. Malone

8/5/05

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

SECOND PETITION *

PETITION OF: *
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY * CIVIL ACTION
Old Courthouse, Room 47 No. **3-C-05-7730**
400 Washington Avenue *
Towson, MD 21204
*

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

IN THE MATTER OF THE APPLICATION *
LOYOLA COLLEGE SPIRITUAL
RETREAT CENTER: LOYOLA COLLEGE *
COLLEGE IN MARYLAND DEVELOPER
N & S/S STABLERSVILLE ROAD @ NE/COR *
YORK ROAD
*

BOARD OF APPEALS CASE NO. CBA-04-136/ *
PDM VII-389 AND 04-337-SPHX
*
7th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT *

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

SECOND 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:

RECEIVED AND FILED
05 AUG -5 PM 12:51
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

Robert A. Hoffman, Esquire *and*
David Karceski, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

G. Macy Nelson, Esquire
401 Washington Avenue, Suite 803
Towson, MD 21204

Linda B. Fliegel

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

I HEREBY CERTIFY that on this 5th day of August, 2005, a copy of the foregoing Certificate of Notice has been mailed to: Robert A. Hoffman, Esquire and David Karceski, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204 and G. Macy Nelson, Esquire, 401 Washington Avenue, Towson, MD 21204

Linda B. Fliegel

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

County Board of Appeals of Baltimore County

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

August 5, 2005

Peter M. Zimmer, People's Counsel
for Baltimore County
Carole Demilio, Deputy People's
Counsel for Baltimore County
Old Courthouse – Room 47
400 Washington Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 03-C-05-007730
Petition for Judicial Review
Loyola College Spiritual Retreat Center
Board of Appeals Case No.: 04-337-SPHX & CBA-04-136

Dear Mr. Zimmerman and Ms. Demilio:

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
HEARING DATES: Case September 14th, 15th, 29th & 30th, December 7, 2004 and was concluded on January 4, 2005.

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by September 23, 2005, 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,

Linda B. Fliegel
Legal Secretary

/lbf
c: Carolyn Peatt, Court Reporter
Robert A. Hoffman, Esq./David Karceski, Esq.
G. Macy Nelson, Esquire
Michael P. Tanczyn, Esq.

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

August 5, 2005

Robert A. Hoffman, Esquire
David Karceski, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-05-007730
Petition for Judicial Review
Loyola College Spiritual Retreat Center
Board of Appeals Case No.: 04-337-SPHX and Case No.: CBA-04-136

Dear Messrs. Hoffman and Karceski:

Notice is hereby given, in accordance with the Maryland Rules, that a ***second*** Petition for Judicial Review was filed on July 19th, 2005, 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-05-007730.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel

Linda B. Fliegel
Legal Secretary

/lbf
Enclosure

c : Michael P. Tanczyn, Esq.
William J. Wiseman/Zon. Comm.
Timothy M. Kotroco, Director/PDM
Peter M. Zimmerman, Esq.
People's Counsel for Baltimore County
Loyola College-T. Sawyer/H. Schneider,Reps.
Wes Guckert/The Traffic Group
Donald Rascoe, Dev. Manager
Robert J. Barrett, Dir./Rec. & Parks
David Carroll, Dir./DEPRM
Edward Adams, Jr., Dir./Dept. Public Works
Arnold F. Keller, III, Dir/Planning
Nedda Evans

Printed with Soybean Ink on Recycled Paper

8/5/05

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

PETITION OF: *
CITIZENS AGAINST LOYOLA
MULTI-USE CENTER * CIVIL ACTION
P.O. BOX 373 No. 3-C-05-7730
PARKTON, MD 21120 *

WEISBURG COMMUNITY ASSOCIATION *
18200 YORK ROAD
PARKTON, MD 21120 *

LYNNE JONES *
815 STABLERS CHURCH ROAD
PARKTON, MD 21120 *

JAMES VOSHELL *
815 STABLERS CHURCH ROAD
PARKTON, MD 21120 *

JULI BUTLER *
815 STABLERS CHURCH ROAD
PARKTON, MD 21120 *

DAVID AND BARBARA ADAMS *
914 MILLER ROAD
PARKTON, MD 21120 *

SHARON, THEODORE & MELISA NORTON *
1802 STABLERSVILLE ROAD
WHITE HALL , MD 21161 *

JOSEPH AMOS *
818 MILLER ROAD
PARKTON, MD 21120 *

EDWARD AND BARBARA UNDERWOOD *
929 STABLERSVILLE ROAD
PARKTON, MD 21120 *

THERESA HOUSTON *
1802 STABLERSVILLE ROAD
WHITE HALL, MD 21161 *

RECEIVED AND FILED
05 AUG -5 PM 12: 51
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

HELEN, JAMES, JONI, JODAWN AND JEFFREY AMOS
818 MILLER ROAD
PARKTON, MD 21120

TAL DALEY
19503 CAMERON MILL ROAD
PARKTON, MD 21120

CHRIS CARSKI
SHIRLEY VILLAGARAY
19430 DOWNES ROAD
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DORIS THOMPSON
RUTH A. NEEPER
619 MILLER ROAD
PARKTON, MD 21120

ROBERT AND MARY JONES
19217 SPOOKS HILL ROAD
PARKTON, MD 21120

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

IN THE MATTER OF THE APPLICATION
LOYOLA COLLEGE SPIRITUAL
RETREAT CENTER: LOYOLA COLLEGE
COLLEGE IN MARYLAND DEVELOPER
N & S/S STABLERSVILLE ROAD @ NE/COR

BOARD OF APPEALS CASE NO. CBA-04-136/
PDM VII-389 AND 04-337-SPHX

7TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

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

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:

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

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

Peter M. Zimmerman, People's
Counsel for Baltimore County
and
Carole S. Demilio, Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204

Citizens Against Loyola Multi-Use Center
P.O. Box 373
Parkton, Md 21120

Weisburg Community Association
18200 York Road
Parkton, Md 21120

Lynne Jones
815 Stablers Church Road
Parkton, Md 21120

James Voshell
815 Stablers Church Road
Parkton, Md 21120

Juli Butler
815 Stablers Church Road
Parkton, Md 21120

David And Barbara Adams
914 Miller Road
Parkton, Md 21120

Sharon, Theodore & Melisa Norton
1802 Stablersville Road
White Hall, Md 21161

Joseph Amos
818 Miller Road
Parkton, Md 21120

Edward And Barbara Underwood
929 Stablersville Road
Parkton, Md 21120

Theresa Houston
1802 Stablersville Road
White Hall, Md 21161

Helen, James, Joni, Jodawn And
Jeffrey Amos
818 Miller Road
Parkton, Md 21120

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19503 Cameron Mill Road
Parkton, Md 21120

Chris Carski and Shirley Villagaray
19430 Downes Road
Parkton, Md 21120

Doris Thompson and Ruth A. Neeper
619 Miller Road
Parkton, Md 21120

Robert and Mary Jones
19217 Spooks Hill Road
Parkton, Md 21120

Linda B. Fliegel

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

I HEREBY CERTIFY that on this 5th day of August, 2005, a copy of the foregoing Certificate of Notice has been mailed to: Robert A. Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue,Towson, MD 21204, Peter M. Zimmerman, People's Counsel for Baltimore County *and* Carole S. Demilio, Deputy People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204, Citizens Against Loyola Multi-Use Center, P.O. Box 373, Parkton, Md 21120, Weisburg Community Association, 18200 York Road, Parkton, Md 21120, Lynne Jones, 815 Stablers Church Road, Parkton, Md 21120, James Voshell, 815 Stablers Church Road, Parkton, Md 21120 , Juli Butler, 815 Stablers Church Road, Parkton, Md 21120, David And Barbara Adams, 914 Miller Road, Parkton, Md 21120, Sharon, Theodore & Melisa Norton, 1802 Stablersville Road, White Hall , Md 21161, Joseph Amos, 818 Miller Road, Parkton, Md 21120, Edward And Barbara Underwood, 929 Stablersville Road, Parkton, Md 21120, Theresa Houston, 1802 Stablersville Road, White Hall, Md 21161, Helen, James, Joni, Jodawn and Jeffrey Amos, 818 Miller Road, Parkton, Md 21120, Tal Daley, 19503 Cameron Mill Road, Parkton, Md 21120, Chris Carski and Shirley Villagaray, 19430 Downes Road, Parkton, Md 21120, Doris Thompson and Ruth A. Neeper, 619 Miller Road, Parkton, Md 21120, Robert and Mary Jones, 19217 Spooks Hill Road, Parkton, Md 21120.

Linda B. Fliegel

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

County Board of Appeals of Baltimore County

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

August 5, 2005

Robert A. Hoffman, Esquire
David Karceski, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-05-007730
Petition for Judicial Review
Loyola College Spiritual Retreat Center
Board of Appeals Case No.: 04-337-SPHX and Case No.: CBA-04-136

Dear Messrs. Hoffman and Karceski:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on July 15th, 2005, 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-05-007730.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel

Linda B. Fliegel
Legal Secretary

/lbf
Enclosure
c: Michael P. Tanczyn, Esq.
William J. Wiseman/Zon. Comm.
Timothy M. Kotroco, Director/PDM
Peter M. Zimmerman, Esq.
People's Counsel for Baltimore County
Loyola College-T. Sawyer/H. Schneider/Reps.
Wes Guckert/The Traffic Group
Donald Rascoe, Dev. Manager
Robert J. Barrett, Dir./Rec. & Parks
David Carroll, Dir./DEPRM
Edward Adams, Jr., Dir./Dept. Public Works
Arnold F. Keller, III, Dir/Planning
Nedda Evans

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County Board of Appeals of Baltimore County

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

August 5, 2005

G. Macy Nelson, Esquire
401 Washington Avenue – Suite 803
Towson, MD 21204

RE: Circuit Court Civil Action No. 03-C-05-007730
Petition for Judicial Review
Loyola College Spiritual Retreat Center
Board of Appeals Case No.: 04-337-SPHX & CBA-04-136

Dear Mr. Nelson:

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
HEARING DATES: Case September 14th, 15th, 29th & 30th, December 7, 2004 and was concluded on January 4, 2005.

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by September 23, 2005, 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,

Linda B. Fliegel

Linda B. Fliegel
Legal Secretary

/lbf
c: Carolyn Peatt, Court Reporter
People's Counsel for Baltimore County
Robert A. Hoffman, Esq/David Karceski, Esq.
Michael P. Tanczyn, Esq.

Printed with Soybean Ink on Recycled Paper

7/19/05

Clerk of Ct. Emma said they didn't send - will put copy in I.O.M. today 7/28/05

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204	*	IN THE
	*	
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204	*	FOR
	*	
IN THE MATTER OF THE APPLICATION OF **LOYOLA COLLEGE SPIRITUAL RETREAT CENTER; LOYOLA COLLEGE OF MARYLAND, DEVELOPER** FOR A DEVELOPMENT PLAN APPROVAL AND PETITIONS FOR SPECIAL HEARING & SPECIAL EXECEPTION for property located on the N and S/S of Stablersville Road @ NE corner York Road 7th Election District, 3rd Councilmanic District	*	BALTIMORE COUNTY
	*	Civil No. 03-C-05-007730
Case No. CBA-04-136./PDM VII-389 and 04-337-SPHX before the County Board of Appeals of Baltimore County	*	

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BALTIMORE COUNTY
BOARD OF APPEALS

PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial review of Opinion and Order of the County Board of Appeals dated June 21, 2005. People's Counsel for Baltimore County was a party to the proceeding before the County Board of Appeals of Baltimore County in this matter.

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

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

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 of July, 2005, a copy of the foregoing Petition for Judicial Review was mailed Kathleen Bianco, Administrator, 400 Washington Avenue, Room 49, Towson, MD 21204, G. Macy Nelson, 401 Washington Avenue, Suite 803, Towson, MD 21204, and Robert A Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204 , Attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

7/15/05

PETITION OF:	*	IN THE
Citizens Against Loyola ~~Multi~~ MuHi-Use Center P.O. Box 373 Parkton, Maryland 21120	*	CIRCUIT COURT FOR C-05-7730
Weisburg Community Association 18200 York Road Parkton, Maryland 21120	*	BALTIMORE COUNTY MARYLAND
Lynne Jones 815 Stablers Church Road Parkton, Maryland 21120	*	
James Voshell 815 Stablers Church Road Parkton, Maryland 21120	*	CASE NO. _____
Juli Butler 815 Stablers Church Road Parkton, Maryland 21120	*	
David and Barbara Adams 914 Miller Road Parkton, Maryland 21120	*	
Sharon, Theodore and Melissa Norton 1802 Stablersville Road White Hall 21161	*	
Joseph Amos 818 Miller Road Parkton, Maryland 21120	*	
Edward and Barbara Underwood 929 Stablersville Road Parkton, Maryland 21120	*	
Theresa Houston 1802 Stablersville Road White Hall 21161	*	
Helen, James, Joni, JoDawn and Jeffrey Amos 818 Miller Road Parkton, Maryland 21120	*	

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JUL 29 2005
BALTIMORE COUNTY
BOARD OF APPEALS

cc: Nelson

Tal Daley
19503 Cameron Mill Road *
Parkton, Maryland 21120

*

Chris Carski
Shirley Villagaray *
19430 Downes Road
Parkton, Maryland 21120 *

Doris Thompson *
Ruth A. Neeper
619 Miller Road *
Parkton, Maryland 21120

*

Robert and Mary Jones
19217 Spooks Hill Road *
Parkton, Maryland 21120

*

FOR THE JUDICIAL REVIEW OF *
THE DECISION OF:

*

County Board of Appeals
of Baltimore County *

IN THE MATTER OF: *

LOYOLA COLLEGE SPIRITUAL *
RETREAT CENTER: LOYOLA
COLLEGE IN MARYLAND- *
DEVELOPER N & S/S
STABLERSVILLE ROAD @ NE/COR *
YORK ROAD
7TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT
CASE NO. CBA-04-136 and *
CASE NO. 04-337-SPHX

*

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

PETITION FOR JUDICIAL REVIEW

Petitioners, by their attorney, G. Macy Nelson, file this Petition for Judicial Review pursuant to Maryland Rule 7-202, and hereby request judicial review of the decision of the Baltimore County Board of Appeals, dated June 21, 2005. The opinion is

attached to this Petition for Judicial Review. The following Petitioners were parties to the agency proceeding:

Citizens Against Loyola Multi-Use Center (CALM)
Weisburg Community Association
Lynne Jones
James Voshell
Juli Butler
David Adams
Sharon, Theodore and Melissa Norton
Joseph Amos
Edward and Barbara Underwood.

The following Petitioners were not parties to the agency proceeding:

Barbara Adams
Theresa Houston
Helen, James, Joni, JoDawn and Jeffrey Amos
Tal Daley
Tom and Mary Reedy
Chris Carski
Shirley Villagaray
Doris Thompson
Ruth A. Neeper
Robert and Mary Jones.

The new Petitioners have standing to seek judicial review because they live in close proximity to, and will be harmed by, the proposed development that is the subject of this appeal.

Respectfully submitted,

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166

Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2005, a copy of the foregoing Petition for Judicial Review was mailed first-class, postage prepaid, to:

Robert Hoffman, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, Maryland 21204

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

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

G. Macy Nelson

6/21/05

IN THE MATTER OF LOYOLA COLLEGE SPIRITUAL RETREAT CENTER.; LOYOLA COLLEGE IN MARYLAND -DEVELOPER N & S/S STABLERSVILLE ROAD @ NE/COR YORK ROAD 7TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY	FILE COPY
RE: DEVELOPMENT PLAN APPROVAL AND PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION	* Case No. CBA-04-136 and * Case No. 04-337-SPHX	

* * * * * * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals on an appeal of the Hearing Officer/Zoning Commissioner's order dated June 10, 2004. That Order granted the approval of a development plan and Special Exception sought by Loyola College in Maryland for the subject property at the north and south sides of Stablersville Road at the northeast corner of York Road.

The *de novo* hearing on the special exception and appeal on the record for the development plan were combined and heard over six days, starting on September 14, 2004 and continuing on September 15, September 29, September 30, and December 7, 2004, and January 4, 2005. A public deliberation on both was held on March 24, 2005.

Petitioner was represented by Robert A. Hoffman, Esquire; Arnold Jablon, Esquire; and Thomas Lingan, Esquire, of Venable, L.L.P. Protestants, Citizens Against Loyola Multi-Use Center, were represented by G. Macy Nelson, Esquire.

The Facts/Background

Loyola College of Baltimore Maryland ("Loyola") contracted to buy property in northern Baltimore County, from the estate of Marion Clark & Eleanor Duvall Spruill, W. Duvall Spruill, Personal Representative. The entire property is 107.68 acres, zoned R.C. 2, of which 54 acres are to be retained by the Spruill/Clark family for agricultural use. Loyola College seeks to build a Retreat Center ("LRC") on the remaining 53 acres.

The retreat center will be built on 10.18 acres of the 53-acre parcel. The LRC will consist of an approximate 16,000 square-foot main retreat building that will include a chapel, meeting rooms, five faculty rooms with private bathrooms, restroom facilities, storage rooms, warming kitchen, and dining room. During the first phase of construction, three additional buildings will be built containing a total of 60 individual rooms with shared toilet and shower facilities between two rooms. During Phase II, two additional buildings will be built for a total of 105 rooms/beds.

Loyola College submitted a development plan for the proposed facility to Baltimore County for review and approval and requested a Special Exception as a camp, church, or "school, including . . . college" to build this facility in an R.C.2 zone. (See Baltimore County Zoning Regulations Sections 1A01.2.C.4, 1A01.2.C.6, and 1A01.2.C.23). Loyola also sought, through a Petition for Special Hearing, confirmation that the 35 parking spaces to be provided in the plan are sufficient to support the intended use of the property, and it requested a non-density transfer to permit Loyola to use the one density unit for the 107-acre property on its 53 acres. The remaining 54 acres located north of Stablersville road, retained by the Spruill/Clark family, would have no density associated with it.

Prior to the hearing before the Hearing Officer, two community organizations, the Maryland Line Area Association and the Parkton Area Preservation, Inc., and Loyola College entered into an agreement that placed restrictions on Loyola's use of the property. Based on this agreement, these two associations did not oppose approval of the development plan and the related zoning relief. This agreement was made part of the Hearing Officer's order. It was also submitted to the Board of Appeals as Petitioner's Exhibit 2 by Dr. Richard McQuaid on behalf of the Maryland Line Area Association. Among the restrictions listed on pages 2, 3, and 4 of the covenant, Loyola is limited in operating its retreat center to a maximum 160 days a year; it

cannot build Phase II of its proposal for at least 10 years; it cannot build any buildings other than those shown on the site plan for a period of 25 years; and the use of the center is restricted to retreats only.

Rather than summarizing the testimony and evidence from six days of hearings, the relevant points will be given below in this Opinion. Because the decision regarding the Special Exception was crucial to whether the Development Plan could be approved, that will be covered first.

I. Petition for Special Exception

The first question the Board addressed was whether the proposed use met one of the special exception uses listed in BCZR 1A01.2.C. The Developer/Petitioner in this case, Loyola College, requests a Special Exception to build a retreat center, arguing that it falls into one of three special exception categories: camp, building for religious worship, or school.

In an area of Baltimore County zoned R.C. 2 (Resource Conservation – Agriculture), certain uses are spelled out by the County Council as preferred and others as special exceptions. The preferred uses are permitted "by right" without seeking any zoning relief. These uses include single-family dwellings, farms, and agricultural uses [BCZR 1A01.1]. Special exception uses (in other counties known as "conditional uses") are permitted in this zone, but require that the property owner/applicant file a Petition for Special Exception and argue their case in a public hearing before the Zoning Commissioner.

Schultz v. Pritts 291 Md.1, 432 A.2d 1319 (1981) is instructive as to the difference between a permitted use and a special exception or conditional use:

> Because the legislative body, in reaching its determination [regarding permitted and special exception uses], is engaged in a balancing process, certain uses may be designated as permitted although they may not foster all of the purposes of the

> zoning regulations and, indeed may have an adverse effect with respect to some of these purposes. . . .
>
> When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. *Schultz supra* at p. 21.

The R.C. 2 zoning classification is the most restrictive in Baltimore County and in general favors low-intensity and agricultural uses.

Witnesses for Petitioner, including Terrence Sawyer, Vice President of Administration at Loyola College, and Helen Schneider, Assistant Vice President for Campus Services at Loyola College, testified as to how the LRC would be used. Loyola College is a fully accredited liberal arts college, which has been in Baltimore City for 152 years. It is a Jesuit Catholic college. As part of their mission, all Jesuit institutions offer retreats for their students. Retreats were first created by St. Ignatius, the founder of the Jesuits, and are therefore an "integral component" of Jesuit institutions, according to Terrence Sawyer's testimony. The retreats are run by the Department of Campus Ministry and offered to students, faculty and staff throughout the year. Loyola holds a number of different types of retreats, men's women's, diversity, freshmen, sophomore, etc. One-week Ignatian retreats are held twice a year for staff and faculty.

Currently Loyola retreats take place in Pennsylvania or West Virginia because it lacks a location closer to the college here in Maryland. Helen Schneider testified that currently Loyola holds 20 student retreats over 40 days, but at the new retreat center, there would be approximately 74 retreats over a maximum of 135 days each year.

Protestants argue that the proposed use is not permitted, first because a "retreat center" is not listed among the permitted uses, and second, because the use resembles a motel or hotel, which is not permitted in the R.C. 2 zone. The Board does not see the resemblance between this

use and a motel or hotel. Motels and hotels are built for transient populations staying in lodging temporarily for vacation, business or other personal reasons. According to the testimony of Terrence Sawyer, Vice President For Administration for Loyola College, the retreats are an activity associated with the college itself. The facility is limited to students, staff, and faculty of the college. It will not be made available for outside activities such as weddings or other events. The retreats are supervised by the college's Department of Campus Ministry.

Because this facility is an extension of Loyola College's "mission," we find that it meets the definition in BCZR 1A01.2.C.23: "schools, including....colleges." This finding is supported by the case *Anderson v. Assoc. Prof. of Loyola College* (39 Md. App. 345, 385 A.2d 1203 (1978)), cited by the Petitioners in their Post-Hearing Memo. In this case the Court of Special Appeals recognized that a college encompasses an array of activities for educational purposes, including faculty residences, chapels, libraries, administrative offices, etc. The Loyola Retreat Center seems clearly to be an extension of the college's academic function, and therefore, it is an extension of the college itself and qualifies as a special exception use.

II. Does this use meet the criteria set forth in Section 502.1 of the BCZR?

A. Standard to Grant or Deny Special Exception Use

Once the Petitioner/Applicant has shown the use qualifies as a special exception, he/she must prove that the use satisfies criteria set out in BCZR Section 502.1. According to BCZR 1A01.2C the applicant is also required to show that "the use would not be detrimental to the primary agricultural uses in its vicinity."

Schultz v Pritts is again clear regarding what is required for granting a special exception. A special exception use is presumed valid unless there are facts or circumstances negating the presumption as required in 502.1.

> The court has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption.* 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 (italics in original). *Schultz v. Pritz, supra,* at 11.

B. Burden of Proof

The Court of Special Appeals goes on in *Schultz* to point out that the applicant bears the burden of proving his use meets the "prescribed standards and requirements," but he does not have to prove his use benefits the community. The applicant only has to show the Board the use "would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest." If the applicant satisfies the Board on these points then "he has met his burden" (*Schultz v. Pritz, supra,* at 11).

C. Standard of Harm Required in Denying a Special Exception Use

In *Schultz v. Pritts* the Court of Special Appeals sets out a very specific standard that must be met, a standard supported by numerous prior cases.

> We now hold that the appropriate standard to be used in determining whether requested special exception use would have an adverse effect and therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *Schultz v. Pritz, supra,* at 22.

We disagree with Protestants' argument that this standard should be interpreted to mean that, as long as there are other locations in the zone in which certain adverse effects would be less adverse, the use should be denied in the subject location. The standard is very clear that only the general vicinity of the subject property is to be taken into account. Therefore, the fact that

there are wider roads in other areas of the R.C. 2 zone, or other areas of the zone without Class 3 trout streams, are beside the point. The Board must examine each criterion of BCZR Section 502.1 and determine whether the impacts in the subject location are above and beyond those inherent to the use—in this case, a college facility—itself.

This view is supported by a more recent case in which the Court of Special Appeals stated that "A disqualifying adverse impact . . . must be something more than what is ordinarily expected and it must be unique to that particular location." *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514 (2002), at 542.

In terms of what is required of the Board in reaching a finding, *Schultz* declares: "But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for special exception use is arbitrary, capricious, and illegal" (*Schultz v. Pritts*, *supra*, at 11).

Therefore, absent a finding according to this strict standard of harm, the Board must approve the special exception use.

D. Would the Proposed Use be Detrimental to the Agricultural Uses in Its Vicinity?

The Protestants argue that the LRC would be harmful because the use will be built on land that has "prime and productive soils." The land has recently been farmed by a local farmer, Wayne McGinnis, who testified at the hearing. A second argument was made that traffic going to and from the proposed use would interfere with farm equipment on the roads. Protestants also argued that taking this land out of agricultural use will reduce a "critical mass" needed for a viable agricultural community.

Petitioner argued that only 10.18 acres of land would actually be built upon. The 54 acres north of Stablersville Road will remain in agricultural use; and in fact that property must remain so since there will no longer be any density allowed on it should the non-density transfer be granted. The remaining 40-plus acres of the Loyola property, if not used for agriculture, will remain open space, as there are no plans to build on them.

Mr. Robert W. Sheesley, president of Eco Sense, an environmental consultant company, and former Director of Baltimore County's Department of Environmental Protection and Resource Management (DEPRM) testified for the Petitioner as an expert witness in sanitation and environmental science and on the Baltimore County agricultural preservation laws. He stated that the subject site is "right on the fringe" of one of two major agricultural preservation areas in the County. This site falls along the I-83 corridor, along which there are R.C. 5 zones and more residential development. According to Mr. Sheesley, if this proposed use were being planned for a property further into the heart of the agricultural zone, it could be harmful to the local agriculture, but as it is being built on the fringe, and within a mile of a major highway, it will not harm the agricultural activity in the vicinity.

While the Board is sympathetic to the view of the local farming community that it would like to see this land remain in agricultural use, the fact remains that other uses are permitted by law, and we cannot force the owner of this property to continue farming his/her land (see *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md.App. 616 (1998). In *Hayfields*, the Court of Special Appeals wrote that the only way to satisfy the local community's concern regarding the loss of the farm would be to "require Hayfields to continue farming on the tract or not to permit them to do anything with the property that would preclude farming. But as the Board recognized, Hayfields cannot be forced to continue its farming operation. *To forestall any*

non-agricultural use, simply to achieve the goal of agricultural preservation, raises the 'takings' spectra." Hayfields at 659 (emphasis added).

As to whether the LRC will harm local agricultural uses, we find, based on the evidence presented, that this use is, as Mr. Sheesley described, on the fringe of an agricultural area. The property is bordered by York Road to the West and Stablersville Road to the North. It is approximately 1-½ miles from an exit off I-83. Petitioner's Exhibit 1B, the vicinity map, indicates there is one existing agricultural use immediately west of and adjacent to the 54-acre parcel that will be retained by the Spruill/Clark family for agricultural use north of Stablersville Road. All the other properties immediately adjacent to the LRC site are existing residential, not existing agriculture. West of York Road is an area zoned R.C. 5. Petitioner's Exhibit 9, an aerial view of the vicinity, shows farm fields further east on Stablersville Road, past the existing residential properties, and north of the Spruill/Clarke property along Stablers Church Road. While there is agriculture nearby, the immediate vicinity of the LRC site is residential.

The Board finds, therefore, that the negative impact on the local farming community will be minimal.

E. The 502.1 Criteria

Under 502.1A, will the LRC "be detrimental to the health safety or general welfare of the locality involved"?

In arguing that the LRC would not be detrimental to the health safety and general welfare of the locality, Loyola College produced a number of experts. Mr. George Gavrelis, a former head of the Baltimore County Department of Planning, and Mitchell Kellman, of Daft, McCune and Walker, Inc., both allowed as experts in land planning and zoning, testified that they believed this use would not be detrimental because it was a very low intensity use of the property.

David Yates, the lighting consultant hired by Loyola to design the lighting on the site testified that his design was "Dark Skies" compliant: light from the site would not shine beyond the site. He said that he planned the "bare minimum" needed so people would not stumble walking from the parking lot to the buildings, or from building to building.

Protestants argued that building the LRC at the subject site would cause harm to a nearby tributary of the Fourth Mine Branch, which would affect local health, safety, and welfare. As their position combines 501.1A with 502.1I, the latter criteria are discussed next.

Under 502.1I, will the LRC "be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains"?

Petitioner presented evidence regarding the onsite septic system and water usage and argued that neither would negatively impact the health, safety, and general welfare of the locality, or present harm to the natural resources in the area.

Mr. Sheesley testified for the Petitioner that the designated septic field area for the LRC was approved by DEPRM. The septic field will be located in an area that has been in agricultural use, so it will not further disturb the subject site. It is also located in an area where there are proper soils for septic discharge. The field is located several hundred feet from the forest buffer. A rebuttal witness for the Petitioner, Mr. Joseph Berg, field measured the distance from the discharge site to the wetlands area and found that it was 140 feet. He also measured the distance to the start of a tributary channel to the Fourth Mine Branch and testified it was 675 feet.

Mr. Sheesley further testified that the LRC septic system would undergo biological/biochemical pretreatment prior to discharge from the holding tank into the septic field. This would make the discharge "most likely 99% clear and treated" when discharged. The sewage disposal system will contain several storage basins and use a "flow equalization" system

in discharging the wastewater. This flow equalization will ensure that there is a consistent flow of the septic discharge—which takes into account the nature of the retreat programs (heavy use over three days, then none over four days during most weeks) during most of the year. Mr. Sheesley testified that this treatment system was approved by both DEPRM and the Maryland Department of the Environment (MDE).

Mr. Sheesley also testified regarding water use. He calculated that when the LRC is completely built, it would use 2,881 gallons per day, averaged over 365 days. He computed this number based on the Maryland Groundwater Appropriation Permit application, required by MDE, which requires an annual average (see Petitioner's Exhibit 8).

Mr. Thomas Mills, President of Hydro-Terra, and accepted as an expert geologist, testified regarding the groundwater supply. Mr. Mills performed a hydrologic investigation assessing the availability of groundwater at the site, the potential for drawing contaminants from the Parkton landfill, the potential impacts of the LRC water use on base flow of the Fourth Mine Branch, and the potential impacts on the water supply of adjacent properties (see Petitioner's Exhibit 11). He concluded that the supply of groundwater was more than adequate for the LRC. Two wells will be used; the primary well has a "safe well yield" of about 50 gallons per minute, compared to the average peak demand use of 3.34 gallons per minute. Mr. Mills testified that the methodology used to estimate groundwater use was consistent with MDE's groundwater appropriation requirements.

Mr. Mills also testified that his investigation determined there would be no impact on available water resources in the area, even under worst case, or drought, scenarios. Pump tests yielded 42,000 gallons over a 24-hour period and had no impact on an adjacent observation well.

A drawdown test also concluded that the LRC, at full capacity and at a peak rate would not affect the 11 neighboring wells.

Finally, Mr. Mills testified that, because the LRC was located approximately 100 feet above the elevation of the Fourth Mine Branch, it was "impossible" for the LRC to draw water from it. He opined that the LRC would not be detrimental to water resources or affect the health, safety, or general welfare of the area.

1. **Thermal Impacts from Stormwater Ponds**

Protestants argued that the planned stormwater ponds would warm the tributary to the Fourth Mine Branch, impairing the ability of trout to reproduce. Protestants supported this argument with testimony from two experts, Johns Hopkins University Professor Edward J. Bouwer and Charles Gougeon of the Maryland Department of Natural Resources.

Professor Bouwer, accepted as an expert in environmentally analyzing water from stormwater ponds, testified regarding the impact of water from the stormwater ponds on the unnamed tributary that flows into the Fourth Mine Branch from the subject site. He testified that he based his analysis of the thermal impact on that tributary on a 1996 Master's Thesis by Raymond Patrick Bahr, which studied the effects of stormwater pond discharge on cold water trout streams; temperatures of the subject site tributary measured by Protestant witness Richard Klein between July 13, 2004, and September 3, 2004; and data from another study done in1990, by J. Galli on thermal impacts and stormwater management. Professor Bouwer's analysis was presented in Protestants' Exhibits 13 through 16. Bahr's study of stormwater pond discharge examined an extended-detention stormwater pond with a 12-hour drawdown, which he said was similar to the one planned for the LRC. Galli's study examined the cooling effect of water traveling over land.

Professor Bouwer concluded from his analysis that water from the stormwater pond would cause the water of the tributary to warm, which could impact trout in the Fourth Mine Branch.

On cross-examination, Professor Bouwer admitted that he had not been to the subject site and had conducted no fieldwork there. He also stated, upon cross-examination, that he did not think the stormwater management regulatory programs in Baltimore County and the State of Maryland were sufficient to protect trout. In addition, he was not familiar with the comprehensive changes to the Baltimore County stormwater design manual issued in 2000, and the data from the Bahr study, on which he relied, were based on an earlier regulatory plan. Finally, he also testified, on re-cross examination, that the stormwater ponds in the Bahr study did not have bioretention ponds, as the LRC plans to have, in addition to a 12-hour detention basin.

Mr. Charles Gougeon, a fishery biologist with the Maryland Department of Natural Resources Fishery Service, also testified for the Protestants regarding whether trout existed in the Fourth Mine Branch. Protestants introduced through Mr. Gougeon Exhibit 18, with DNR data on trout streams, and Exhibit 19, a GIS map of Baltimore County with brook and brown trout streams color-coded. Mr. Gougeon testified that brook trout have been seen in the Fourth Mine Branch, but he could not say with any certainty as to whether trout had ever been found in the tributary. He testified that he had been to the subject site, but did not walk along the tributary. He provided information about the growth and development of trout and their ideal habitat. He stated that trout prefer water temperatures of 68 degrees or less. He noted that trout are very sensitive to sediment, and they need small gravely areas to deposit eggs. He opined that a storm

water detention pond would have an adverse effect on the tributary because it would cause the water to warm above 68 degrees.

Upon cross-examination, Mr. Gougeon testified that he had not done any fieldwork at the subject site, nor was he familiar with the LRC development plan.

Petitioners presented Mr. Joseph Berg, Jr., a senior ecologist with Biohabitat, an environmental assessment, planning, and restoration firm, for rebuttal testimony as an expert in the field of ecology and aquatic resource assessment. Mr. Berg visited the subject site on five occasions, and walked the length of the unnamed tributary, from the wetlands to its end at the Fourth Mine Branch. He testified that he field-measured the distance from the discharge of the proposed stormwater management facility to the "wetland swale" at the head of the tributary and found the distance to be 140 feet. He then measured the distance from the discharge site to the point where there is "actually a surface flow" or channel and the distance measured 675 feet.

Mr. Berg produced Petitioner's Exhibit 34, a series of photos taken along the tributary from its start as a wetlands area on the subject property to where it enters the Fourth Mine Branch. These photographs show the wetlands area and the start of the stream channel, which were silty and muddy. Other photos show trash, rubble, and a bedspring filling the tributary channel. The final photos showed a cattail marsh and drop over a utility pipe before the tributary enters the Fourth Mine Branch. Mr. Berg concluded that, because of the conditions of the tributary, it would not be a suitable habitat for trout.

Mr. Berg also testified regarding Loyola's stormwater management facility and how it would operate. He opined that the LRC would have a minimal impact on the wetland area or the tributary. He explained that 93 percent of storm events would produce less than an inch of rain and would not be discharged from the two bioretention ponds planned for the LRC. The

bioretention ponds are created by digging a trench and filling it with rock, so that when it rained, the water would flow through the rocks and soak into the ground. Mr. Berg noted that the study upon which Professor Bouwer relied for his analysis did not use this form of stormwater management. Mr. Berg also noted that the stormwater management plan for the LRC was based on Maryland Department of the Environment's "best management practices."

The Board was not persuaded by the testimony of Professor Bouwer or Mr. Gougeon or their conclusions that trout in the Fourth Mine Branch will be irreparably harmed by the stormwater facility proposed for the LRC. The stormwater management pond data on which Professor Bouwer relied were based on studies of systems wholly unlike the one planned for the LRC. The Bahr study examined a 12-hour detention pond. The LRC is building two bio-retention ponds. Mr. Bouwer did not take these differences into account in his analysis.

Mr. Bouwer also admitted upon cross-examination that under current conditions, the water in the tributary warms up following rain events. Petitioner's Memorandum Exhibits 5 and 6--a sampling of the temperatures taken by Protestants' in-stream monitoring device at the stream culvert crossing under Stablersville Road--shows that temperatures rose above the trout ideal of 68 degrees between about 4 and 6 pm. on both days, July 23 and August 1, 2004—without a stormwater pond in place.

The burden of proof in this case rests with the Petitioner to show that this special exception use passes the 502.1 criteria. The LRC stormwater management facility must follow the guidelines of, and be approved by, the Baltimore County and State of Maryland environmental departments. These two agencies are charged with protecting the natural resources of the County and of the State. As Petitioners note in their Post-Hearing Memo, the MDE Stormwater Design Manual does provide regulations to protect coldwater trout streams. In

following these guidelines, Loyola has satisfied the 502.1I requirements for protecting the county's natural resources on this point.

2. **Nitrogen and Phosphorous Impact**

Protestants also argued that the nitrogen and phosphorus released from the LRC's septic system would cause environmental harm. Professor Brian Reed of the University of Maryland testified for Protestants as an expert in the field of environmental engineering, concerning the introduction of nitrogen and phosphorous into the subsurface from the LRC's septic system. Mr. Reed calculated that the septic system would discharge 820 pounds of nitrogen per year and 340 pounds of phosphorous per year (Protestant's Exhibit 24). He testified that MDE Guidelines required that systems discharging over 5,000 gallons a day were required to do more study and that Loyola had not done enough study to prove that this septic system would not be harmful to the environment and natural resources on the site. Mr. Reed testified that a "fate study" was required to determine the affects of the nitrogen and phosphorous loading on local waterways and, ultimately, the Loch Raven Reservoir, which is 15 miles from the subject site.

On cross-examination, Mr. Reed stated that he had not done any study of the current agricultural use of the subject site to determine how much nitrogen and phosphorous ran off into the wetlands and tributary. He also admitted that he had not reviewed the DEPRM files relating to the proposed septic system and that both DEPRM and MDE were better qualified to determine whether their guidelines were being met. He also admitted that MDE's Guidelines For Large On Site Sewage Disposal Systems do not specify what type of test is needed.

During rebuttal testimony, Mr. Sheesley again pointed out that, using flow-equalization methods, the septic system would only discharge 2,881 gallons per day, not 5,000. He further testified regarding a nitrogen balance study undertaken by Mr. Mills from Hydro-Terra, using an

MDE standard calculation, based on the maximum discharge from the site. Mr. Sheesley concluded that it would take discharges of over 15,790 gallons per day to exceed the amount of nitrogen deemed safe for drinking water. The LRC, he opined, would discharge well below that amount.

Loyola again bears the burden of showing that it has met the criteria for 502.1I. While Protestants claim that additional study is necessary, the regulatory agencies charged with protecting the environment have already approved these aspects of the development plan. This Board has no basis for determining whether or not an annual discharge of 820 pounds of nitrogen or 340 pounds of phosphorous is harmful. We do not know how these amounts compare to the current agricultural practices on the subject site, for example. One of the Protestants' witnesses, Mr. Wayne McGinnis, who has recently farmed this site, testified that he sprayed "Roundup" to kill off weeds in the field. As with the phosphorus and nitrogen amounts, the Board can only speculate as to how much harm such pesticides might also cause to the local vegetation, streams, and wetlands. The only point of comparison was made by Mr. Sheesley, who calculated that the discharge of nitrogen from the LRC septic system would be well below what is deemed safe for drinking water.

As Loyola has followed the guidelines and requirements of the State and County agencies charged with protecting the environment and natural resources, the Board finds that it has met its burden of proof regarding 502.1A and 502.1I.

Under 502.1B will the LRC "tend to create congestion in roads, streets or alleys therein"?

Protestants presented testimony and evidence that Stablersville Road, between York Road and the proposed entrance to the LRC, is a narrow country road with steep banks. Protestants' Exhibit 39 shows farm equipment on Stablersville Road that take up the entire width

of the road. Witnesses testified as to the impossibility of any vehicle passing the farm equipment because there is no shoulder and the banks going up from the road are very steep and near the edge of the road. One witness, Alicia Barbers, testified regarding her concern for children getting off the school bus, which she said stops at the head of Millers Lane (the entrance to the proposed site) and turns around.

During his testimony on behalf of Loyola, Terrence Sawyer discussed how students would be transported to the LRC. He stated that they would arrive in buses owned by Loyola—either a 22-passenger van or a 44-passenger bus, depending on the size of the retreat. Petitioner's Exhibit 5 A-D were pictures of the two buses and other vans that would be used to deliver necessities such as food or linens to the site. He testified that students would not be allowed to drive their own cars to the site, but would be required to ride in the bus or van—except in extraordinary circumstances. Faculty would be allowed to drive, and except for faculty retreats, at most five might drive to the site.

Mr. Sawyer also testified that Loyola would control when trash and recycling pickups were made at the site, similar to on campus. Deliveries and pickups would not be made before 7 a.m. or after 4 p.m.

Mr. Sawyer described the route the buses would take from Loyola College to the LRC. Leaving from the Baltimore City Campus, the buses would drive North on I-83 to the York Road exit. They would then take York Road to Stablersville Road and Stablersville Road to the private drive off the entrance to the site. Mr. Sawyer estimated the distance between I-83 and the site was less than 2 miles.

Wes Guckert, president of The Traffic Group, Inc., and an expert on traffic engineering, testified for Loyola about the worst-case traffic scenarios. Loyola placed his Traffic Impact

Analysis into evidence as Petitioner's Exhibit 28. According to Mr. Guckert, the worst case would be faculty retreats, if every faculty member were to bring his or her own car. Loyola holds two such retreats during the summer and these retreats last 5 days. Such a retreat might generate 35 cars arriving at the site (based on the maximum number of parking spaces at the site). Mr. Guckert concluded that even with this level of traffic, the surrounding major intersections would continue to operate at level A service as they do now—that is, there would be no detrimental effect on them.

Although that is the worst case scenario, testimony by Loyola's administrators indicated that during the usual, student weekend retreat, there would be at most (when at full capacity in 10 years), three buses and two to three cars arriving at the location on a Friday and leaving on Saturday. During the week, when there would be no retreats, there would be trash collection once, and miscellaneous deliveries such as food and linen service. In other words, during the usual week, there would be very few cars or vans arriving or leaving the site.

Mr. Guckert further testified that over the course of 365 days, "this retreat center will average less than the amount of traffic than a one single-family house would generate, less traffic over the year on average than a one single-family home." (Transcript 9/29/04, page 128, lines 9-12)

Again, we are sympathetic to the concerns of the Protestants on this issue, as any non-agricultural traffic could interfere with their transporting farm equipment. However, it is clear from their own testimony that the problem already exists. Their farm equipment on the road now must cope with any traffic in the area. Even considering other rural roads at alternative sites suggested by Protestants, large agricultural equipment would take up most of those roads. Any

allowed use—by right or special exception—proposed for the subject site will generate additional traffic, even a continued agricultural use.

However, the question we must answer is whether the traffic generated by the LRC will have more of an adverse impact in this location than it would elsewhere. Based on the evidence, we find it will not. The LRC, operating at this site only 135 days a year—and a maximum of 160 days—will not generate any traffic—or very little traffic—on about 230 days of the year. A bus or two and a few cars will arrive on a Friday, stay put on Saturday, and depart on Sunday. They will travel only about one mile on Stablersville Road from York Road. Even taking into account all the possible types of services Loyola might need to operate the LRC, there will never be a steady or constant flow of traffic to and from the site that could interfere with farm equipment from surrounding agricultural uses. By agreeing to a limited use of the site through the covenant and by requiring students to ride in vans or buses to the site, Loyola has made a concerted effort to keep traffic to and from the site to a bare minimum, and therefore, it has satisfied the requirements of this subsection.

Under 502.1C will the LRC cause a "potential for Fire, Panic or other Danger"?

Mitchell Kellman, testifying for Loyola, stated that the LRC would meet all applicable building codes. Loyola has also agreed to build a 10,000-gallon underground fire protection tank for additional fire protection. The Protestants provided no contradictory evidence on this point. The Board concluded that Loyola's use would be unlikely to cause any potential harm from fire, panic or other dangers.

Under 502.1D will the LRC cause overcrowding of the Land/Undue Concentration of Population or interfere with adequate light and air?

Loyola might have one caretaker living at the retreat center, according to Mr. Sawyer's testimony for Petitioners. Loyola's architect, Charles Alexander, testified as to the size and

design of the buildings. Mr. Alexander testified that, because of where the retreat center is located on the site, it would be hard to see it from the surrounding roads. He designed the buildings of natural material, and designed the main, two-story building, to be built into an existing hillside.

Mr. Kellman, in his testimony, stated that required setbacks would be met and, in fact, there would be significant buffers and open space around the LRC.

Protestants provided no contradictory evidence on this point. The Board concluded that the LRC would not cause overcrowding or undue concentration of population or interfere with adequate light and air.

Under 502.1E will the LRC interfere with adequate provisions of public services?

Mr. Mitchell Kellman, in his testimony, stated that the LRC, being self-contained, would not use any local public facilities such as schools, parks, water, or sewers. As the site is zoned R.C. 2, public water and sewer is not available to it. Mr. Wes Guckert's testimony regarding public roads is summarized above.

Protestants provided no contradictory evidence on this point. The Board concluded that the LRC would not interfere with the provisions of public services in the area.

Under 502.1G will the LRC be inconsistent with the RC-2 Zoning Classification?

This issue was addressed when the Board considered the factors for and against the special exception use and whether the use would cause harm to the local agricultural community (see above). Since the LRC meets the special exception use as a college, it is not inconsistent with the R.C. 2 zone.

Under 502.1H will the LRC be inconsistent with the Impermeable Surface/Vegetative Retention Provisions?

Loyola's Post-Hearing Memo points out that the R.C. 2 zone has no limit on impermeable surface, nor any vegetative retention requirements. However, Loyola also points out that, when the site is fully built out in 10years, the impervious surfaces will constitute 1.66 acres of the entire site, or 1.5% of the entire 107-acre site and 3.1 percent of the 53-acre Loyola site. The Protestants provided no contradictory evidence on this point.

We agree with Loyola's argument that there is no inconsistency here.

III. **Non-Density Transfer**

Loyola requests a non-density transfer to permit Loyola to use the one density unit for its 53 acres of the 107-acre parcel. The 54 acres on the North side of Stablersville Road will be retained by the Spruill/Clarke family and will remain in agricultural use.

Mr. Kellman, testifying for Loyola, explained that, as a result of a minor subdivision plan in December 2002, the 107-acre parcel has only one density unit. Loyola wishes to use that unit to build the LRC. Once granted, the 54 acres retained by the Spruill/Clarke family will not be able to be subdivided again. Petitioner's Exhibit 26 is a signed affidavit by Mr. Spruill recognizing that fact.

This issue is part of the development plan and was never appealed from the Hearing Officer's Hearing. As this transfer further guarantees that a large portion of the subject property will remain agricultural or open space, because it will have no density per R.C. 2 requirements, the Board affirms the Hearing Officer's decision and approves the non-density transfer and grants Loyola the one density unit.

IV. **Parking Spaces**

Loyola filed a Petition for Special Hearing to confirm that the 35 spaces provided on the site were sufficient for the proposed use. Testimony by Loyola's officials and Mr. Kellman indicate

that all students, and often faculty, will be transported by bus to the LRC. Mr. Kellman, testifying regarding the traffic on local roads, believed the parking lot would not be at full capacity.

Protestants provided no evidence refuting Loyola's witnesses.

By limiting parking spaces to 35, and utilizing buses to transport retreatants, the Board believes that Loyola has made a significant effort to reduce the amount of traffic on nearby roads—an issue of some concern to the local residents. Because the limited parking spaces will help limit traffic going to and from the LRC, the Board approves the 35 spaces as sufficient for the special exception use and grants the Petition for Special Hearing.

V. Development Plan

The only issue raised in the appeal of the development plan was the question of whether the LRC's water system was a multiuse system. The Hearing Officer below ruled that it was not a multiuse system when he approved the development plan. The Protestants also wanted to raise an objection to the sewer plan, arguing that it, too, was a multiuse system, but as this issue was not raised below before the Hearing Officer, it cannot be raised on appeal to the Board of Appeals.

The facts of this matter seem to be undisputed. The LRC, when completed in 10 years, will use approximately 11,000 gallons of water on an active retreat day. However, the retreat center, according to the covenant restrictions, will be active only 160 days a year, and therefore will not use that amount of water each day of the year. Loyola argues that it followed the Maryland Department of the Environment's procedures in reaching an average annual daily usage of 2,881 gallons. Loyola used the Maryland Department of the Environment Groundwater Appropriation Application (Developer's Exhibit 20), which required an applicant to calculate the

average gallons per day over 365 days. This gave Loyola the figure of annual average of 2,881 gallons per day for its water usage. The permit also asked for an annual average for the highest use month, and Loyola calculated this to be 4,881 gallons per day.

Both the Protestants and People's Counsel, in a Memo, argue that Maryland statute defines a water system with the "capacity" of over 5,000 gallons a day as a "multiuse" system, and based on this definition, the LRC has a multiuse system because on its retreat days, it uses over 5,000 gallons of water.

Both Protestants and People's Counsel further argue that, if Loyola's system is a multiuse system, the Baltimore County Master Water and Sewer Plan needs to be amended by the Baltimore County Council to reflect that use, and until they do so, the development plan must be rejected.

The Maryland statute at issue is from the Md. Ann. Code, Environmental Article, Section 9-501 Definitions.

(j) Multiuse water supply system. – "multiuse water supply system" means an individual water supply system that :

(1) has the capacity to supply more than 5,000 gallons of water a day; and

(2) serves a number of individuals.

People's Counsel further argues that neither DEPRM nor the Maryland Department of the Environment has the right to interpret the statute to mean anything other than "capacity of more than 5,000 gallons a day." People's Counsel and Protestants ask the Board to reject the development plan based on these arguments.

Petitioner argues that the annual average was consistent with MDE guidelines. They argue that the term "capacity to supply" is ambiguous, and in fact, has been interpreted three different ways: by MDE, DEPRM, and the Protestants themselves.

They further argue that a strict application of "capacity to supply" would mean that almost any groundwater well in Baltimore County would have to be listed as a "multiuse system." Mr. Thomas Mills, the expert geologist/hydrologist who testified for Loyola, stated that any groundwater well with a pumping capacity in excess of 3.47 gallons per minute would have the "capacity to supply" 5,000 gallons a day. He further testified that this definition would apply to seven of the nine wells in the immediate vicinity of the LRC, none of which are listed as multiuse wells in the Baltimore County Master Water and Sewer Plan. Mr. Mills and Mr. Robert Sheesley, former Director of DEPRM, both testified that the annual average calculation, for both daily and highest monthly use basis, is the standard called for in MDE regulations.

The Board finds both Mr. Mills' and Mr. Sheesley's testimony to be credible.

The issue in this appeal is over the definition of "capacity." People's Counsel interprets "capacity" to mean that if a system ever uses or generates more than 5,000 gallons of water on any day, it qualifies as a multiuse system. MDE, in its application process, has interpreted "capacity" as an average over a monthly or annual use. Baltimore County's Master Water and Sewer Plan interprets it to mean water "used" on a daily basis: "Properties using in excess of 5000 gallons per day must be added to the list of multi-use facilities" and so designated on the maps." (Baltimore County Master Water and Sewer Plan, page 10). Furthermore, the County Master Plans must also be approved by MDE before going into effect. Since MDE has approved Baltimore County's Master Plan, it has in effect accepted the County's interpretation of a multi-use system as one "using" over 5,000 gallons per day.

MDE is the State agency charged with creating regulations to administer the State laws. It is responsible for putting statutes into practice across all the counties of the State. If it has determined that the most practical interpretation of "capacity" in defining a multiuse water system is to take an annual average and a highest monthly use average, then it is not for the Hearing Officer or the Baltimore County Board of Appeals upon appeal to contradict the State agency.

The jurisdiction of the Board of Appeals over development plans is appellate only. Under § 32-4-281(e) of the *Baltimore County Code*, the Board may remand, affirm, reverse of modify the Hearing Officer's decision. Modification or reversal, however, is warranted only upon the ground that a finding, conclusion, or decision of the Hearing Officer exceeded his statutory authority or jurisdiction, resulted from an unlawful procedure, was affected by any other error of law, was unsupported by competent evidence when considered in toto, or was arbitrary or capricious.

Based on the information presented in the Hearing below, we find that the Hearing Officer was not arbitrary or unlawful in his decision. Loyola's Development Plan does not meet the definition of a multiuse plan as determined by Baltimore County or the Maryland Department of the Environment. The Board therefore affirms the Hearing Officer's decision to approve the Loyola's development plan.

ORDER

IT IS THEREFORE this 21st day of June, 2005 by the County Board of Appeals of Baltimore County

ORDERED that, for reasons stated in the foregoing Opinion, the decision of the Hearing Officer dated June 10, 2004, in which the Development Plan was approved be and the same is hereby **AFFIRMED**; and it is further

ORDERED that the proposed Loyola Retreat Center as described during the *de novo* Special Exception hearing is a "college" under the BCZR and as such, the Petition for Special Exception to permit a college in an R.C. 2 zone, pursuant to BCZR Section 1A01.2.C.23 is hereby **GRANTED**; and it is further

ORDERED that the Petition for Special Hearing to confirm that the proposed parking as shown on the development plan is adequate and to approve the non-density transfer of the one density unit to the 53-acre parcel owned by Loyola, leaving the remaining Spruill/Clarke property north of Stablersville Road with no density units, be and is hereby **GRANTED**; and it is further

ORDERED that the relief granted and approved within this Opinion and Order be and is hereby subject to the following restriction:

> Compliance with the terms and conditions of the agreement reached by and between Loyola College in Maryland and the Maryland Line Area Association, Inc., and the Parkton Area Preservation Association, Inc., a copy of which was entered into evidence as Joint Exhibit 1 and which is attached hereto and made a part hereof.

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, Panel Chairman

Margaret Brassil, Ph.D.

Edward W. Crizer, Jr.

JOINT Ex No 1

P.C.T. Ex. 2

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is entered into, as of the 16th day of April, 2004, by and between LOYOLA COLLEGE IN MARYLAND (hereinafter "Loyola"), a non-profit corporation and private college, and the MARYLAND LINE AREA ASSOCIATION, INC. (hereinafter "MLAA"), a local community association, and the PARKTON AREA PRESERVATION ASSOCIATION, INC. (hereinafter "PAPA"), a local community association.

RECITALS:

A. Loyola is the contract purchaser of approximately fifty-three (53) acres of land (hereinafter the "Land"), in the 3rd Councilmanic District of Baltimore County, Maryland, located on the east side of York Road and north and south sides of Stablersville Road. The Land is a portion of certain land more particularly described in deeds recorded among the Land Records of Baltimore County at Liber 66, folio 466 and Liber 8284, folio 291, and is identified and shaded in gray on the vicinity map of the plans entitled "LOYOLA COLLEGE SPIRITUAL RETREAT CENTER DEVELOPMENT PLAN" (hereinafter the "Development Plan") and PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION & SPECIAL HEARING LOYOLA COLLEGE SPIRITUAL RETREAT CENTER" (hereinafter the "Special Exception & Special Hearing Plan") (collectively referred to as the "Site Plans") and attached hereto as Exhibits 1A and 1B. The Land is proposed to be utilized by Loyola for a retreat center and related purposes.

B. Loyola has submitted for approval the Development Plan, dated February 3, 2004, and Special Exception & Special Hearing Plan, dated January 28, 2004, in Case Nos. VII-389 and 04-337-SPHX.

C. The Land is zoned RC2, and Loyola desires to obtain Development Plan approval and a special exception in order to construct a retreat center for Loyola College on the Land and special hearing approval for a non-density transfer for agricultural purposes.

D. MLAA and PAPA are associations of Baltimore County area residents interested in preserving the existing character and quality of life of the rural and residential areas in the vicinity of the Land and protecting their communities from intrusive and inappropriate types of land uses.

E. MLAA and PAPA have reviewed the submitted Site Plans and desire to place certain restrictions upon the Land and use of the Land in order to ensure that the Land is used and maintained in a manner consistent with the Site Plans as proposed and to assure that future use does not have a deleterious effect on the surrounding area.

F. Loyola, in recognition of the concerns of the MLAA and PAPA, is willing to place certain restrictions on the Land in return for the agreements of MLAA and PAPA not to oppose the aforesaid Site Plans.

G. In order to make the covenants, restrictions, and conditions contained in this Agreement binding, the parties have entered into this Agreement, to the end and with the intent that Loyola, and its successors and assigns, will hold and use the Land subject to the said covenants, restrictions, and conditions, and is submitting these covenants to the Hearing Officer in order to make them enforceable through that Order.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual agreements and understandings contained in this Agreement, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A. Loyola, by its authorized representative as signatory, on behalf of itself, and its successors and assigns, agrees as follows:

1. No buildings other than those as shown on the Site Plans shall be constructed on the Land for a period of twenty-five (25) years from the effective date of this Agreement. This would not prohibit construction of other structures such as fences, utilities, and/or accessory shed(s) necessary for storage of maintenance or operational equipment or supplies, etc. The effective date of this Agreement shall be the date on which approval given by Baltimore County to the aforesaid Site Plans becomes final and unappealable.

2. The two buildings, labeled "Phase 2 BLDG 4" and "Phase 2 BLDG 5" on the Site Plans, shall not be constructed for a period of at least ten (10) years from the effective date of this Agreement.

3. Use of the Land shall be restricted to Loyola-sponsored retreats for the benefit of Loyola students, faculty, or staff. There shall be no academic classes and no alcohol or drug rehabilitation programs offered on the Land. There shall be no use of the Land for any "third party lessee" events such as weddings or fundraisers. There shall be no restriction on any continued agricultural use of any portion of the Land

4. The facility may host Loyola-sponsored retreats for a maximum of one hundred and sixty (160) calendar days per year.

5. No Loyola students shall be present on the Land without the presence of a Loyola administrator, faculty, or staff member.

6. There shall be no commercial laundry facilities on the Land. The facility may be serviced by one residential washer and dryer.

7. An underground fire protection tank with a capacity no less than ten thousand (10,000) gallons shall be installed, prior to initial use of the retreat facility and maintained at that capacity thereafter. Said tank shall be filled initially by a water contractor and only "topped-off" using well water.

8. Provided the necessary permits are issued by Baltimore County, a deer fence at least seven (7) feet in height shall be installed on the north side of the proposed buildings for a length of approximately three hundred and seventy (370) feet for Phase I and an additional approximately one hundred and sixty (160) feet after construction of Phase II, prior to initial use of those buildings.

9. There shall be no storage or consumption of alcoholic beverages on the Land with the exception of sacramental wine.

10. Provided such an agreement is requested, Loyola will enter into a well agreement with any of the residential property owners adjacent to the Land as identified on the attached tax map attached as Exhibit 2 (collectively, the "Adjacent Owners"), consistent with the form well agreement attached as Exhibit 3. The Adjacent Owners shall have ninety (90) days from the effective date of this Agreement to provide written notification to Loyola of their intent to enter into a well agreement. Any such Adjacent Owner is agreed to be a third party beneficiary as to only this Paragraph 10 of this Agreement. The well agreement shall be assignable to future owners of the property of said Adjacent Owners.

11. For a period of ten (10) years from the effective date of this Agreement, the maximum number of people staying overnight on the site shall be sixty-five (65), and no more than one hundred and twenty (120) people may be on site at any time. At such time as Phase II of the retreat facility is completed, the maximum number of people staying overnight on site may increase to one hundred and ten (110) people, and no more than one hundred and fifty (150) people may be on site at any one time.

12. Loyola shall, in its discretion, either make provisions for a caretaker to live on site or hire a security service to monitor the retreat facility.

13. A lighting plan shall be approved by the landscape architect for Baltimore County or his designee, prior to initial use of the retreat facility.

14. Loyola may install one (1) ground-lit, monument sign at the location shown on the Special Exception & Special Hearing Plan not to exceed three (3) feet in height with a sign face area a maximum of twenty-one (21) square feet. Loyola may also install one (1) freestanding directional sign along its

Stablersville Road frontage not to exceed four (4) feet in height with a sign face area a maximum of eight (8) square feet.

15. Loyola will submit this Agreement to the Hearing Officer to be incorporated as a restriction in the Hearing Officer/Zoning Commissioner's Order should the Site Plans be approved.

B. The MLAA and PAPA agree as follows:

They will not oppose the Site Plans or any and all governmental approvals requested by Loyola in Case Nos. VII-389 and 04-337-SPHX, including but not limited to Development Plan approval, zoning relief, and permit applications for development of the Land. The above support shall, in Loyola's discretion, include support, in writing or by appearance of Counsel, at hearings, appeals, and in any other proceedings before the Hearing Officer/Zoning Commissioner (hereinafter the "Hearing Officer"), the Board of Appeals, or any other governmental body or agency having jurisdiction as to any aspect of the proposed development of the Land, so long as such development is consistent with this Agreement and in substantial accord with the aforesaid Site Plans.

CONDITIONS

This Agreement between Loyola and MLAA and PAPA is conditioned upon final, non-appealable approval of the Site Plans and the requested special exception and special hearing relief in Case Nos. VII-389 and 04-337-SPHX.

CONDITIONS PRECEDENT

This Agreement, and particularly the obligations and restrictions set forth above, shall not be effective and binding upon Loyola unless and until Loyola obtains final, non-appealable plan approval in Case Nos. VII-389 and 04-337-SPHX and obtains all government approvals and/or permits as may be necessary to develop the Land and construct the improvements thereon under this Agreement and has completed settlement on the Land. If the conditions precedent as set forth above are not satisfied, this Agreement shall have no further force and effect. However, this Agreement shall become effective and binding on the parties, if Loyola chooses to accept approvals that are not consistent with its requested approvals. In the event that Loyola does not pursue final, non-appealable plan approval in Case Nos. VII-389 and 04-337-SPHX and construct the facility, it shall withdraw its Site Plans and Petition for Special Exception.

BINDING EFFECT

This Agreement shall be recorded at the time of settlement between Loyola and the owner of the Land among the Land Records of Baltimore County, at Loyola's sole expense, and only following satisfaction of the conditions precedent described in the CONDITIONS PRECEDENT above; and the same shall run with and be binding upon Loyola and upon the present and future holders of Loyola's interest in the Land, and shall inure to the benefit of each of the respective parties hereto, their personal representatives, heirs, successors, and assigns. Upon the assignment or sale by Loyola or any of the Adjacent Owners of their respective properties, such selling or assigning party shall be relieved of all liabilities hereunder. If Loyola fails to timely record this Agreement, then the Associations may do so and Loyola shall reimburse them their actual costs within thirty (30) days of Loyola's receipt of the bill for costs.

TERMINATION

Notwithstanding anything to the contrary contained herein, if not sooner terminated, this Agreement and the obligations, covenants, and restrictions contained herein shall cease and be of no further force and effect at the expiration of twenty-five (25) years from the effective date of this Agreement.

MISCELLANEOUS

1. Notwithstanding anything to the contrary contained herein, should any portion of the Land be taken by eminent domain or by a deed in lieu thereof for a public purpose or be acquired in any manner for improvements to an existing road or right-of-way, upon the taking or transfer, such portion shall be deemed removed from this Agreement and neither party shall have further liability hereunder for such area taken or transferred.

2. If any party to this Agreement, or its successors or assigns is required to institute legal action to enforce the terms of this Agreement and is successful (whether by judgment or settlement) in obtaining enforcement of the Agreement, that party or its successors or assigns shall be entitled to recover reasonable attorney's fees and other reasonable costs of action from the person or entity against whom enforcement is obtained. However, as a prerequisite to the recovery of fees and costs under this paragraph, the person or entity seeking enforcement shall serve the alleged violator of the Agreement with written notice of the violation, and only if the alleged violator has failed to remedy or make substantial progress towards remedying the violation within thirty (30) days after the receipt of this notice may legal action be instituted, excluding Code Enforcement action by Baltimore County government.

3. This Agreement may be amended only by written instrument executed by each of the parties hereto as agreed to by the parties.

4. Each of the parties hereto warrants and represents that it has taken all necessary action required to be taken by its charters, bylaws or other organizational documents to authorize the execution of this Agreement.

5. This Agreement, which may be executed in separate counterparts, contains the entire understanding of the parties.

6. Each party warrants that it has carefully read and understands this Agreement, is cognizant of its terms and has had ample time to consult with counsel of its choice regarding its respective rights and obligations in connection herewith.

7. All the notices required by this Agreement shall be hand-delivered or sent by certified mail, postage prepaid, return receipt requested or by nationally recognized overnight delivery service, to the following addresses, or to other such address as any party shall notify the others of in writing:

LOYOLA COLLEGE IN MARYLAND
Attention: John A. Palmucci
4501 North Charles Street
Baltimore, Maryland 21210-2699

and

MARYLAND LINE AREA ASSOCIATION, INC.
Attention: Dr. Richard McQuaid, President
1501 Harris Mill Road
Parkton, Maryland 21120

and

PARKTON AREA PRESERVATION ASSOCIATION, INC.
Attention: Ms. Janice L. Staples, President
P. O. Box 275
Parkton, Maryland 21120

with a copy to

Law Offices of Michael P. Tanczyn, P.A.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204

CONCLUSION

IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year first above written.

ATTEST/WITNESS

LOYOLA COLLEGE IN MARYLAND

BY: _____ (SEAL)
Name: John A. Palmucci
Title: ~~President~~ Vice President

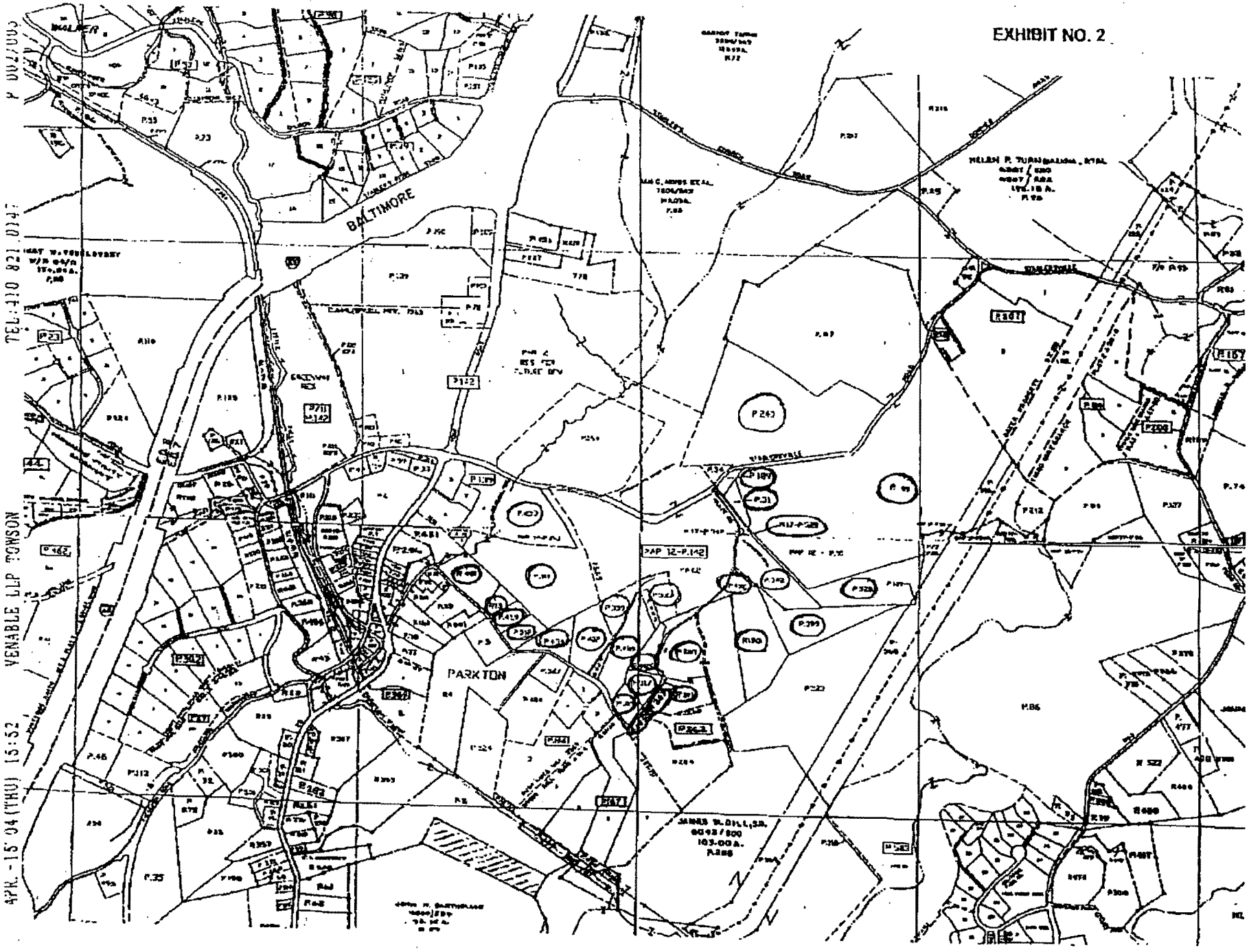
MARYLAND LINE AREA ASSOCIATION, INC.

BY: _____ (SEAL)
Name: Dr. Richard McQuaid
Title: President

PARKTON AREA PRESERVATION ASSOCIATION, INC.

BY _____ (SEAL)
Name: Ms. Janice L. Staples
Title: President

EXHIBIT NO. 2



APR.-15'04(THU) 15:52 VENABLE LLP TOWSON TEL:410 821 0147 P 002/003

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

June 21, 2005

G. Macy Nelson, Esquire
401 Washington Avenue
Suite 803
Towson, MD 21204

RE: *In the Matter of: Loyola College Spiritual Retreat Center Development Plan and Petitions for Special Hearing and Special Exception*
Case No. CBA-04-136 /PDM VII-389 and Case No. 04-337-SPHX

Dear Mr. Nelson:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules of Procedure*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all 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

Kathleen C. Bianco
Administrator

Enclosures

c: Citizens Against Loyola Multi-Use Center
Weisburg Community Assn.
Lynne Jones, James Voshell, and Juli Butler
David Adams
Sharon and Theodore Norton and Melissa Norton
Joseph Amos
Edward and Barbara Underwood
Robert A. Hoffman, Esquire
Loyola College / Terence Sawyer and Helen Schneider /Representatives
Tom Repsher /Daft McCune Walker Inc.
Wes Guckert /The Traffic Group
Michael P. Tanczyn, Esquire on behalf of Maryland Line Assn. and Parkton Area Preservation, Inc.
Nedda Evans /Protestant
Office of People's Counsel
Pat Keller, Director /Planning
David Carroll, Director /DPM
Edward Adams, Jr., Director /DPW
Robert J. Barrett, Director /Rec & Parks
William J. Wiseman III //Zoning Commissioner
Don Rascoe /PDM
Timothy M. Kotroco, Director /PDM

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Supplemental
Amended 4/19/12 C.P.

(2)

5/7/05

DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING & EXCEPTION LOYOLA COLLEGE SPIRITUAL RETREAT CENTER	*	BEFORE THE
N & S/S Stablersville Road @ NE Corner York Road	*	COUNTY BOARD
7th Election District	*	OF
3rd Councilmanic District	*	APPEALS
	*	CASE NO.: 04-337-SPHX
Legal Owner(s) Loyola College in Maryland	*	

RECEIVED
FEB 07 2005
BALTIMORE COUNTY
BOARD OF APPEALS

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

PROTESTANTS' CLOSING MEMORANDUM

Introduction

Loyola seeks Development Plan approval and a Special Exception for a Spiritual Retreat Center ("Proposed Use") on 53 acres ("Subject Property") of R.C. 2 land in northern Baltimore County, just east of York Road on the north and south side of Stablersville Road. It contends that the Proposed Use is a permitted special exception because it is a camp, church or other building for religious worship or school. This Board heard the Development Plan case on the record and conducted a *de novo* hearing on the application for Special Exception.

SPECIAL EXCEPTION

The Proposed Use

The Proposed Use will include a two-story 16,600 square-foot main building housing; a chapel; five faculty bedrooms; a warming kitchen; a dining hall; five cabins, 5,850 square feet each, with a total of 100 rooms; one bathroom for every two rooms; three meditation nodes; a parking lot with 35 spaces; storm water management structures consisting of two bioretention facilities, an extended-detention pond designed for 12-hour drawdown and a storm drain system to convey runoff from proposed impervious surfaces to these structures; and a large septic reserve area.

Members of the Loyola community will use the Proposed Use. Loyola will use 44-passenger buses or 22-passenger vans to transport people to and from the Proposed Use. (Sawyer). Some of the school buses that will provide transportation to the Proposed Use are 35 feet long and 8 feet wide. (Guckert). Loyola's Exhibits 5a-d depict the other buses, trucks and vans that will also serve the proposed use.

Terrance Sawyer explained that members of the Loyola community will pay a fee for the right to attend a retreat. The retreats will vary in length from one to several days. During the retreat, retreatants will stay in a private room and take meals in a public area. Participation in a retreat is not a prerequisite for graduation from Loyola College.

The Master Water and Sewer Plan does not identify any part of the site as an area to be served by either a "multi-use water supply system" or a "multi-use sewerage system."

The Site

The Subject Property contains prime and productive soils and until very recently was farmed by Wayne McGinnes. It is on the western edge of 6,000-7,000 acres of agricultural land in Baltimore and Harford Counties.

A tributary on the Subject Property flows to the Fourth Mine Branch stream. Fourth Mine Branch supports a viable brook and brown trout population. Both the tributary and Fourth Mine Branch are designated Class III-P Natural Trout Waters and Public Water Supply by the Maryland Department of the Environment (MDE). COMAR 26.08.02.08I(4).

The Neighborhood

Varying land uses and roads create the boundaries of the Proposed Use's neighborhood. The neighborhood is roughly triangular and is bounded by Old York Road on the northeast, Harford County on the east, White Hall Road and Wiseburg Road on the south, and York Road and I-83 on the west. Ninety-five percent of the land within the neighborhood is used for agriculture. The farms in the neighborhood produce beef,

grains, grasses, hay and vegetables. Most of the tracts are relatively large, as compared with other areas in the R.C. 2 zone. Residences occupy 3.5% of the neighborhood. Several small businesses, totaling approximately 1% of the neighborhood, are located in the neighborhood. Several are in the town of White Hall. Each serves the local community. Two churches also serve the local community. Protestants' Exhibit, "Photographs of Proposed Loyola College Development Vicinity" depicts the neighborhood.

The neighborhood contains narrow, winding road without shoulders. Stablersville Road is 17 feet wide and has steep banks. Miller Lane is 17 feet wide. Various farmers use Stablersville Road to move farm equipment. Protestants' Exhibit, "Photographs of Agricultural Equipment Transported Year-round on Stablersville Road and Miller Lane With Width Measurements" depict the nature and size of the farm equipment. For example, the Nortons' Combine is 16 feet wide. Their Cultipacker is 19 feet wide. Alicia Barbers described the school bus stop at the end of Miller Lane.

No witness for Loyola attempted to define the neighborhood.

Other R.C. 2 land in Baltimore County

There are about 130,000 acres of R.C. 2 land in Baltimore County. Richard Klein testified that eighty-three parcels in the county meet the following five criteria: (1) zoned R.C. 2 at least 10 acres in area, which is the area needed to develop the retreat center; (3) were vacant and thus potentially available to Loyola College; (4) not located in the watershed of a stream supporting a viable trout population; and (5) not owned by a unit of government.

Protestants also presented evidence about three areas of the R.C. 2- zoned land not dominated by agriculture: Bird River, Granite, and Shawan. The Granite and Shawan areas each contained 12 parcels that met the five criteria. The Bird River area contained seven such parcels.

Protestants also described the roads in seven sections of the R.C. 2-zoned land: Stablersville Road and Miller Lane; Old Court Road Area; Northern Baltimore County,

West of I-83; Worthington Valley; East Central Baltimore County; Bird River Area; and Greenspring Valley Area. Protestants Exhibit, "PHOTOGRAPHS OF BALTIMORE COUNTY RC2 AREA ROADWAYS With Width Dimensions" The roads in these areas are 20-24 feet wide with shoulders.

Issues

1. Whether the Proposed Use is permitted by special exception.
2. If the Proposed Use is permitted by Special Exception,
    a. whether the Proposed Use complies with BCZR § 1A01.2C.
    b. whether the Proposed Use complies with BCZR § 502.1.
3. Whether the Proposed Use meets the requirements of *Schultz v. Pritts*

Summary of Argument

Protestants urge this Board to disapprove the application for special exception for legal and factual reasons. First, the Proposed Use is not a permitted special exception in the R.C. 2 zone. Second, even if it is, it fails to meet the statutory requirements for a special exception. It will be detrimental to the agricultural uses in the area, will have an adverse impact on the natural resources of the area, and will create traffic congestion on the narrow, winding roads in the neighborhood. Third, even if the Proposed Use meets the statutory requirements, it fails to comply with the *Schultz v. Pritts* because the adverse effects of the Proposed Use will be greater at the proposed location than elsewhere in the R.C. 2 zone.

Protestants also request this Board to reverse the Hearing Officer's approval of the Development Plan because it fails to comply with all applicable laws

Argument

I. The BCZR do not allow Loyola's Proposed Use as a special exception in the R.C. 2 zone.

Loyola failed to prove that the Proposed Use meets at least one of the specified special exceptions for the R.C. zone. Unless explicitly stated as permitted by special exception, the use is prohibited. *Kowalski v. Lamar,* 25 Md. App. 493, 498, 334 A.2d 536 (1975).

In *Strienbing, et al. v, Beachmont, Inc.,* No 1686, September Term, 1983 the Court of Special Appeals reversed a decision by the Baltimore County Board of Appeals to approve a special exception in a R.C. 2 zone for a use that closely resembled Loyola's Proposed Use. (Boards' decision attached as Exhibit A; Court of Special Appeals opinion attached as Exhibit B). In 1974, Beachmont obtained a special exception for a Christian camp on R.C. 2 land in Baltimore County. (Board's opinion at 1). Over time, the camp expanded. In 1985, Beachmont sought approval by special exception to expand the camp to include "cabins, overnight lodges, director's house, staff house, activities buildings, swimming pools, pavilions and bath houses, etc." (Court of Special Appeals opinion at 1).The Board of Appeals found

> as fact that the properties in the vicinity to the subject site are used primarily for residential purpose with some agriculture, and therefore, the petitioned use is not detrimental to the surrounding agriculture and may be allowed, subject to compliance with Section 502.1 of the BCZR.

(Board opinion at 2). The Board approved the special exception.

The Court of Special Appeals reversed because the proposed use was "not listed among the permitted uses as a right or by special exception in the R.C. 2 zone." (Opinion at 5).

> Here, Beachmont proposes to construct on the subject property a multipurpose activities building containing a gymnasium and dining facility; three dormitory lodges, each housing sixty people; three primitive-style cabins, each holding twenty to thirty people; a staff house; director's house; and bath housing and various recreational improvements such as a volleyball court and horseshoe pit. We hold that these uses do not fall within the ambit of any of the enumerated special exceptions. Clearly, these buildings are not "churches or other buildings of religious worship." BCZR 1A01.2.C.6.

Opinion at 10-11.

The Court of Special Appeals reasoned that the proposed use more closely resembled "Community buildings ... of a civic, social, recreational or educational nature" which were permitted by special exception in the R.C. 3 and 4 zones, but not R.C. 2 zone.

Loyola's Proposed Use also meets the definition of a Hotel or Motel: "A building or group of buildings containing guest rooms or units, where, for compensation, lodging is provided on a daily, weekly or similar short-term basis." BCZR § 101. Indisputably, visitors to the Propose Use will pay "compensation" for "lodging" on a short-term basis. A hotel or motel is not permitted by right or special exception in the R.C. 2 zone.

This Board should disapprove the application for Special Exception because the Proposed Use more closely resembles "Community buildings ... of a civic, social, recreational or educational nature" or a hotel or motel. None of those uses are permitted by special exception in the R.C. 2 zone.

II. Even if the BCZR allow Loyola's Proposed Use as a special exception, this Board should deny the application because the Proposed Use fails to comply with BCZR § 1A01.2C and BCZR § 502.1.

Special exceptions must comply with any statutory requirements. *Lucas v. People's Counsel for Baltimore County,* 147 Md. App. 209, 227 n. 20, 807 A.2d 1176 (2002).

The legislative findings and purposes pertinent to the R.C.2 zone are necessarily relevant to whether the Proposed Use complies with all statutory requirements. BCZR 1A01.1A and B state as follows:

> A. Legislative statement of findings.
>
> > a. That Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development;

b. That the agricultural industry is an integral part of the Baltimore economy and that continued conversion of agricultural land will continue to undermine this basic industry;

c. That scattered development is occurring in a sporadic fashion in areas of Baltimore County containing productive agricultural land.

d. That continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but incompatible with the agricultural use of the surrounding area;

e. That heretofore Baltimore County has been unable to effectively stem the tide of new residential subdivisions in productive agricultural areas of Baltimore County;

f. That Baltimore County has certain wetlands along Chesapeake Bay and its tributaries which serve as breeding grounds and nursery areas for the bay's biotic life; and

g. That Baltimore County possesses numerous areas which are highly suitable for urban development, including residential subdivisions which are not located in areas of productive agricultural land.

B. Purposes. The R.C.2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

A. The Proposed Use does not comply with BCZR § 1A01.2c.

BCZR § 1A01.2C provides:

> BCZR § 1A01.2C. Uses permitted by special exception. The following uses, only, may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity;...

Wayne McGinnes and Paul Solomon explained how the Proposed Use would be detrimental "to the primary agricultural uses in its vicinity" in various ways. Mr. McGinnes has spent his career farming in northern Baltimore County and has farmed the Subject Property. Mr. Solomon was one of the primary county officials who designed the current zoning in order to preserve agriculture. He has also worked as a farmer.

First, the Subject Property contains prime and productive soils. The conversion of the land to the Proposed Use will remove prime and productive soils from agricultural production. When Mr. Sheesley was Director of DEPRM, he advocated not approving developments in prime and productive soils. Protestants' Exhibit 8.

Second, suburban uses, including the Proposed Use, are incompatible with commercial agriculture. A viable agricultural community requires a critical mass of agricultural uses. Urban or suburban uses erode that critical mass. That erosion creates several problems. The farmers begin to think that the government is not committed to preserving the agricultural community. Conflicts arise between the residents and the farmers. Farmers move their equipment on the neighborhood road year-round. The addition of Loyola's buses, trucks and vans will cause congestion on the narrow shoulderless roads in the neighborhood. Noise, smells, pesticides, animals are also part of the agricultural community and will cause conflicts with the Proposed Use. All of these factors make it more difficult for the agricultural community to remain viable.

Mr. Sheesley and Mr. Kellman were the only Loyola witnesses who addressed this subject. Protestants suggest that Mr. McGinnes' long experience as a farmer in northern Baltimore County gives his testimony more weight than the testimony of Mr. Sheesley or

Mr. Kellman. Neither Mr. Sheesley nor Mr. Kellman has worked as a farmer and both are professional advocates for developers.

There are areas of R.C. 2 land, including the Bird River and Granite areas, which are not dominated by agricultural uses. The placement of the Proposed Use in R.C. 2 area not dominated by agricultural would not be detrimental to the primary agricultural uses. The placement of the proposed use at the proposed location is detrimental to the primary agricultural uses in the area.

Two opinions issued by this Board illustrate these principles. In the *Meadowcliff* case, the Board disapproved a special exception for a church and parsonage in a R.C. 2 zone because the special exception "would be detrimental to the agricultural pursuits currently existing on-site and within the vicinity." (Opinion at p. 3, attached as Exhibit C). In contrast, The Board approved a special exception for a church in the *Criste* case. In approving the special exception, the Board noted Mr. Solomon's testimony that the church building and parking lot would be located on "the least desirable soils." (Opinion at 8, attached as Exhibit D). In these circumstances, the Board found "that the Church use will not be detrimental to the primary agricultural uses in the vicinity." (Opinion at 24). Both the Circuit Court and Court of Special Appeals affirmed the Board.

The evidence and this Board's prior decisions require the disapproval of the application for special exception.

B. The Proposed Use does not comply with § 502.1(A).

§ 502.1 provides, in part:

> Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:
>
> A. Be detrimental to the health, safety or general welfare of the locality involved;
>
> B. Tend to create congestion in roads, streets or alleys therein;
>
> * * *

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

* * *

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

Loyola has the burden of proving compliance with the § 502.1 criteria. It failed to meet that burden in three basic ways. First, Loyola failed to comply with subparts A and I because of the Proposed Use's adverse environmental impacts. Second, Loyola failed to comply with subpart B because the Proposed Use will cause traffic congestion. Third, Loyola failed to comply with subpart G because the Proposed Use is inconsistent with the property's zoning classification.

Subparts A and I. Although the Protestants do not have the burden of proof here, they proved affirmatively through the testimony of Johns Hopkins University Professor Edward J. Bouwer, Ph.D. and Charles Gougeon of the Maryland Department of Natural Resources that the stormwater ponds will warm the tributary to the Fourth Mine Branch which will, in turn, impair the ability of trout to use and propagate in the tributary. Dr. Bouwer testified in the *Smyth Property* development plan case on similar issues. (Hearing Officer's opinion attached as Exhibit E). Furthermore, Loyola failed to prove that its nitrogen releases would case no environmental harm.

Thermal impacts. Dr. Bouwer described his analysis of whether the Proposed Use's stormwater would add heat to the tributary on the Subject Property. First, he determined that the ambient temperature of the tributary on the Subject Property was 59.4° F.[4] Second, he determined the temperature of stormwater flowing into the tributary.

[4] The applicant's attorney requested the temperature data Dr. Bouwer relied upon. This data was provided by the Protestants and showed that the average temperature in the tributary

This analysis focused upon a storm water management pond depicted on the Loyola's *Plan To Accompany Petition for Special Exception & Special Hearing*. Dr. Bouwer cited the Bahr study[5] and other research as documenting that storm water ponds of a similar design can cause the temperature in receiving waters to far exceed the 68 ° F. Dr. Bouwer used data presented in the Bahr study for an extended-detention storm water pond designed for a 12-hour drawdown time, which is identical to the pond depicted on Loyola's plans. This data showed that the discharge from this type of pond reaches a maximum temperature of 87° F with an average temperature of 77.34° F.

Dr. Bouwer then used data presented in the applicant's *Loyola College Spiritual Retreat Center Concept Storm Water Management Report* to determine the volume of heated storm water released into the Waters of the State nearest the proposed pond discharge point. Next, Dr. Bouwer testified that he used data from the Galli study[6] to compute 0.3° F of cooling of the discharge after it flowed 110 feet from the pond outfall to the point where it first enters the tributary. Finally, Dr. Bouwer explained how he computed the volume of the tributary's flow at the point of discharge entry using data presented in the applicant's report *Ground-Water Supply Investigation Loyola College Spiritual Retreat Center*.

Dr. Bouwer explained how he mixed the 86.7 ° F storm water pond discharge with the 59.4 ° F ambient temperature of the tributary to arrive at a mixed temperature of 83.1 ° F. After substituting the average Bahr study storm water pond temperature of 77.34 ° F

---

was 59.4 ° F as stated by Dr. Bouwer and only 0.5% of all 15,002 stream temperature measurements made between July 13th and September 3rd, 2004 were above 68°F. In other words, 99.5% of the time the stream temperature met the Class III standard of 68°F or less.

[5] Bahr, R.P., 1996. A temperature study of discharges from three extended detention/wetland storm water management basins in Maryland. Chesapeake Biological Laboratory, University of Maryland, Solomons, MD 20688.

[6] Galli, J.1990. Thermal impacts associated with urbanization and storm water management best practices. Department of Environmental Programs, Metropolitan Washington Council of Governments, 777 North Capitol Street, N.E., Washington, D.C. 20002. (202) 962-3200

for the maximum, Dr. Bouwer testified that the mixed temperature in the tributary State would be 74.7 ° F. Dr. Bouwer summarized by stating that regardless of how one analyzed the thermal impact of the project, the temperature of the tributary will exceed 68 ° F.

Dr. Bouwer concluded his testimony by stating that the Proposed Use will cause uniquely severe thermal impact because it is situated at the head of Class III waters where the dilutional effects are the lowest. The impact would be far less severe at the numerous other locations in the county where the discharge would enter a much larger waterway with greater assimilative capacity.

Joseph Berg was the only applicant witness who testified in rebuttal to Dr. Bouwer's testimony. Mr. Berg incorrectly that Dr. Bouwer had erred in his assumption about the design of the proposed storm water pond. During cross-examination Mr. Berg stated that Dr. Bouwer had assumed the pond would contain a permanent pool of water. Mr. Berg testified that the pond will be designed as an extended-detention facility with 12-hour drawdown. Apparently Mr. Berg was not present during Dr. Bouwer's testimony. Dr. Bouwer described the proposed pond as an extended-detention facility with 12-hour drawdown.

Charles Gougeon is the Maryland Department of Natural Resources regional fishery biologist for the central region which includes Loyola's proposed site. The site contains a tributary to the Fourth Mine Branch. Sampling he conducted with his staff shows that Fourth Mine Branch supports a viable brook trout and brown trout population.

Mr. Gougeon explained that the tributary on the site is an important component of the Fourth Mine Branch trout ecosystem. To preserve the brook and brown trout in Fourth Mine Branch one must preserve the quality of tributary streams, such as that draining the Subject Property.

Protestants introduced a GIS map showing all the R.C. 2 land in Baltimore County. The R.C. 2 land is pink. Mr. Klein color-coded the map to show streams with brook and brown trout, and streams with no trout. Stream with brook trout are red. Stream with brown trout are brown. Streams left the original blue support neither trout

species. The coding added by Mr. Klein was based on the Maryland Department of Natural Resources report *Survey and Management of Maryland's Fishery Resources.* Mr. Gougeon stated that the stream coding on the map agreed with his knowledge of waters supporting viable brook and brown trout populations in Baltimore County. Mr. Gougeon testified that the thermal impact would have less of a deleterious effect where R.C. 2 lands drained to waters which were not color coded red or brown.

Nitrogen impacts and Phosphorus. University of Maryland environmental engineering Professor Brian Reed, Ph.D. testified regarding nitrogen and phosphorus releases from the wastewater treatment and disposal system for the Proposed Use.

Dr. Reed began his testimony by stating that Loyola's consultant erred in applying wastewater flow coefficients for a luxury camp to the proposed retreat center. Instead, Dr. Reed found the retreat center to be more comparable to a motel. Dr. Reed testified that the wastewater flow coefficient for a luxury camp and a motel are, respectively, 109 and 134 gallons per day per person.

Dr. Reed explained that to compute the pounds of nitrogen released into groundwater, one needs to know the wastewater flow volume and nitrogen concentration in treatment system effluent. Dr. Reed testified that the Loyola retreat center wastewater treatment system must have the capacity to treat a maximum of 14,070 gallons per day and a total of 1,637,150 gallons for the 160 days of retreats per year. With an effluent nitrogen concentration of 60 milligrams per liter, Dr. Reed estimated that 820 pounds of nitrogen will be released to groundwater annually. Dr. Reed also testified that the present agricultural use on the site released about 200 pounds of nitrogen per year. Dr. Reed concluded that the project will cause a substantial increase in the amount of nitrogen released into Waters of the State.

Loyola failed to investigate whether its release of nitrogen or phosphorus would "[b]e detrimental to the health, safety or general welfare of the locality involved" or would "[b]e detrimental to the environmental and natural resources of the site and vicinity." Dr. Reed opined that there is insufficient information to allow Loyola to prove compliance with subparts A and I. Loyola called two witnesses, Mitchell Kellman and

George Gavrellis, to testify about 502.1, but nether addressed nitrogen or phosphorus. Loyola failed to meet its burden with respect to the nitrogen and phosphorus issues.

This Board should disapprove the application for the Special Exception because Loyola failed to prove compliance with § 502.1 A and I. Although Protestants do not have the burden of proof, they proved that thermal pollution from the Proposed Use will harm the Class III tributary on the Subject Property. Additionally, Loyola failed to prove that its nitrogen and phosphorus releases would cause no environmental harm.

Subpart B. Although the Protestants do not have the burden of proof, they affirmatively proved that the Proposed Use would "[t]end to create congestion in roads." Farm equipment already takes up almost the entire width of Stablersville Road. The addition of Loyola's buses, vans and trucks will cause congestion on Stablersville Road which is only 17 feet wide and has no shoulders. Protestants proved the existence of others areas of R.C. 2 land which contained wider roads with shoulders. The placement of Loyola's Proposed Use in one of those locations would not cause traffic congestion. Furthermore, Alicia Barbers described her concern that more traffic will create safety issues for the small children who use Miller Lane to get to the school bus

Mr. Guckert argued that there would be no conflict between the farm equipment and Loyola's buses based on two facts that Protestants subsequently disproved. First, he claimed there was very little farm equipment on this section of Stablersville Road. Protestants proved the identity and the size of the farm equipment and machinery that routinely use that section of the road. Second, he erroneously argued that school buses already use that section of Stablersville Road and that Loyola buses and trucks would be no different. Protestants proved that the school buses do not use that section of the road. They approach Miller Lane from the east.

Subpart G. Although the Protestants do not have the burden of proof, they affirmatively proved that the proposed use would "[b]e inconsistent with the purposes of the property's zoning classification." Mr. McGinnes, Mr. Solomon, Ms. Jones and Ms.

Norton all explained the inconsistency between the existing agricultural uses and the proposed non-agricultural use.

II. The Proposed Use does not comply with the *Schultz v. Pritts* test.

Schultz v. Pritts requires Loyola to prove: (1) the effect of the Proposed Use at the proposed site on the neighborhood; (2) the effect of the Proposed Use on other sites elsewhere in the same zone; and (3) that the effect of the Proposed Use at the proposed site is no worse than the effect of the Proposed Use elsewhere in the same zone.

Protestants presented three *Schultz v. Pritts* themes. The adverse effects of the Proposed Use will be greater at the proposed site than elsewhere in the R.C. 2 zone because:

- The Subject Property is in a neighborhood dominated by commercial agriculture. In contrast, there are other R.C. 2 areas, including Bird River and Granite, which are not dominated by agriculture.

- The Subject Property is in a Class III watershed which is uniquely sensitive to thermal pollution. In contrast, there are other areas in the R.C. 2 zone which are not located in Class III watershed.

- The neighborhood contains narrow and shoulderless roads which are already used year round by large farm equipment. In contrast, there are other areas of R.C. 2 land that have wider roads with shoulders.

Loyola has the burden of proving no "unique adverse effects on the neighboring properties." *The Mayor and Council of Rockville, et al. v. Rylyns Enterprises, Inc.*, 372 Md. 514, 542 814 A.2d 469, 485 (2002). Loyola failed to define the neighborhood. The Board should accept the Protestants' definition of the neighborhood because it comports with Maryland law. *Ltd. v. Walkersville*, 352 Md. 335, 722 A.2d 63 (1998) ("A neighborhood '*reasonably* constitutes the immediate environs of the subject property.'")

Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) requires Loyola to prove that the Proposed Use would cause no greater adverse effect at the proposed site than elsewhere in the same zone. *See, e.g., Lucas v. People's Counsel*, 147 Md. App. 209,

239-40, 807 A.2d 1176 (2002) (approving the Board's imposition of the burden of proof on the applicant to establish that the impact factor caused by the proposed use is no greater at the proposed site than the same use elsewhere in the zone). Here, Loyola adduced no evidence that the Proposed Use elsewhere in the zone would be in a Class III watershed, in an area dominated by commercial agriculture, and in a neighborhood with winding, narrow and shoulderless roads. Loyola had the burden to prove that the effects of the Proposed Use at the proposed site would be no worse than they were elsewhere in the R.C. 2 Zone. The Protestants had no burden to prove that the adverse effects at this site would be worse than elsewhere in the R.C. 2 zone. *See, e.g., Lucas v. People's Counsel,* 147 Md. App. 209, 239-40 (2002). Loyola could only meet that burden by comparing the effects of the Proposed Use at the proposed location with other locations in the R.C. 2 zone. It failed to do that.

The Court of Special Appeals, discussing *Board of County Comm'rs v. Holbrook,* 314 Md. 210, 550 A.2d 664 (1988), has distilled the Special Exception inquiry into a simple question: Whether there are "sufficiently localized circumstances that rendered the adverse [impact], arguably always inherent in this particular use, uniquely adverse." *Sharp v. Howard County,* 98 Md. App. 57, 83, 632 A.2d 248 (1993). The impact issue is factual and varies "case-by-case." *Richmarr Holly Hills v. American PCS,* 117 Md. App. 607, 657, 701 A.2d 879 (1997).

The "localized circumstances" addressed by courts addressing special exceptions cases have included facts relating to visual, noise, traffic, and neighborhood impacts. In *Holbrook,* for instance, the applicant sought a special exception for a trailer. The *Holbrook* trailer was sited in the open, in view of the neighbors. The Court of Appeals found these facts sufficient to support the Board's denial of the exception. That impact was visual and economic. *Sharp,* 98 Md. App. at 83 (summarizing case). In *People's Counsel v. Mangione,* 85 Md. App. 738, 753, 584 A.2d 1318 (1991), the applicant sought to build a nursing home in a residential neighborhood. The evidence was that the additional traffic, run-off, and smells would burden the neighborhood. The Court of Special Appeals found that the proposed nursing home would have a "particularly

adverse impact" on that neighborhood. In *Moseman,* the neighborhood was unique because of the existing burdens on it, and the District Council properly found that additional burdens would affect it particularly adversely. 636 A.2d at 503.

Courts upholding the denial of Special Exceptions have often found the presence of one unique circumstance to be sufficient. *See, e.g. Holbrook* (lack of vegetative screen). This case contains several; they are sufficient both separately and cumulatively to deny the Special Exception.

The Court of Special Appeals affirmed the decision of the Baltimore County Board of Appeals to deny a special exception in a RC 2 zone in *Lucas v. People's Counsel,* 147 Md. App. 209, 807A. 2d 1176 (2002). The court's reasoning in *Lucas* is helpful here:

> The Court of Appeals in *Schultz* established the standard by which the adverse effects of a special exception use are to be measured. Judge Davidson stated for the Court:
>
> > We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects **above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.**
>
> *Schultz,* 291 Md. at 22-23, 432 A.2d 1319 (citations omitted) (emphasis added).

> **** The Board must determine whether the adverse effects of the special exceptions use in the particular location in which it is sought to be located would be greater or more detrimental than they would be generally at other locations within the R.C. 2 zone. Utilizing the standard as set out in *Schultz,* the Board determined that the "question is one of whether or not the adverse effects are greater at the proposed site than they would be elsewhere in the County where they may be

established, i.e., the other areas within the R.C. 2 zones." The Board noted:

* * *

> Based on the testimony, evidence and weight assigned thereto, the Board has determined that the impact of the proposed facility at the subject site would be greater there than at any other location in the R.C. 2 zone.

After issuing its holding, the Board reiterated its analysis of the special exception standard, stating:

> The Board believes that the Appellant has the burden of establishing that the impact factor caused by the proposed use is no greater at the site than the same use elsewhere in the zone (R.C. 2 zone).
>
> To that end, the Board concludes that the impact upon the National Historical District would be greater in the Greenspring Valley than if located in other northern areas of the R.C. 2 zones. Relying considerably on the expertise of Messrs. Dillon, Solomon and Gerber, there are individual areas in the Northern part of the county that would be less impacted than at the present site. The Board concludes that it is not a matter of finding a better site for the proposed use in the R.C. 2 zone, but rather the question is one of total impact; and the Board concludes that the Appellants have not established that fact by the preponderance of the evidence to the Board's satisfaction. Acknowledging that airport and helicopter uses have inherent negative impacts, the detrimental effects upon the smaller Greenspring Valley district would clearly have a greater negative impact than if located elsewhere in the vast acreage constituting the R.C. 2 zone of Baltimore County.

The Board obviously assigned considerable weight to the testimony of Messrs. Dillon, Solomon, and Gerber. Based on that evidence, the Board determined that, at Helmore Farm, the adverse effects inherently associated with the proposed facility would be above and beyond the adverse effects associated with an airport elsewhere in the R.C. 2 zone. The record clearly indicates that there are other parcels within the R.C. 2 zone where an airport would provide a lesser adverse impact than at Helmore Farm, and the Board recognized that finding a better site was not the issue. **We believe that the Board applied the appropriate standard.**

147 Md. App at 238-40. (emphasis supplied).

This Board should disapprove the application for Special Exception because the Proposed Use will cause greater adverse impacts at the propose site than elsewhere in the R.C. 2 zone.

DEVELOPMENT PLAN

The Protestants adopt and incorporate by reference the memorandum of the Office of People's Counsel filed on August 31, 2004.

The parties presented evidence on whether Loyola's proposed water system would constitute a "multi-use water supply system." Hearing Officer Schmidt wrote, "If it is determined that such a multi-use water supply system is in place at this property, then an amendment to the County's Master Water and Sewer Plan would be required." (Opinion at 15)

The Environment Code defines a multi-use water supply system as a system that "has the capacity to supply more than 5,000 gallons of water a day." EN § 9-501(j). The Code also authorizes the Maryland Department of the Environment to "adopt rules and regulations...(2) to control, limit, or prohibit the installation and use of "(i)Water supply systems; and (ii) Sewerage systems...." EN § 9-510 (b)(2). MDE accordingly has defined multi-use water supply systems as those systems "having a capacity in excess of 1,500 GPD [gallons per day]." COMAR 26.03.01.01(P).

The Applicant's consultant, Robert Sheesley, admitted that the Applicant's water supply system has the capacity to produce more than 5,000 gallons per day. (Transcript at 586). To support his opinion that the system would not exceed the statutory 5,000 gpd maximum, Mr. Sheesley calculated average annual usage rather than capacity. He stated that the facility would be used 135 days per year. (Protestant's Exhibit #1). The facility would serve various purposes, including the accommodation of "Ignation retreats." The water usage for those retreats would exceed 5,000 gallons per day. (Transcript at 564).

On some days there would be no water usage, so the facility would not "always meet a gallon per day that is greater than 5,000 gallons." (Transcript at 549). Mr. Sheesley averaged the 230 days each year that the retreat would not be in operation with the 135 days that it would be in operation to reach an average water use of 2,881 gallons per day. (Transcript at 499). He "averaged [the gallons per day] because the use on the property is so irregular that we don't always meet a gallon per day that is greater than 5,000 gallons." (Transcript at 549). He then opined that the proposed water use does not meet the definition of a multi-use water supply because "it does not exceed 5,000 gallons per day every day." (Transcript at 569). He acknowledged that no legal authority authorizes this type of averaging. (Transcript at 550). He did not address the COMAR provision that lowers the threshold amount to 1,500 gpd.

Mr. Sheesley also did not address the question of whether the proposed sewerage system would be a "multiuse sewerage system" under EN § 9-501(i), and Mr. Schmidt made no finding on that issue. Under § 9-501(i), a "multiuse sewerage system" is a system that "...(3) Has a treatment capacity of more than 5,000 gallons a day...." *See also* COMAR 26.03.01.01(O) ("'Multi-used treatment system' means a single system...for the collection and disposal of sewage..., including various devices for the treatment of sewage and industrial wastes having a treatment capacity in excess of 5,000 gpd."). The Applicant's data (Protestants' Exhibit 1) show that every overnight retreat will generate more than 5,000 gpd; some retreats will generate over twice that amount.

The Development Plan fails to comply with the Environment Article and the Baltimore County Master Water and Sewer Plan, because the County's plan provides for neither the water supply nor the sewerage systems of the proposed facility

Section 9-503 of the Environment Article requires Baltimore County to "have a county plan... that (3) [d]eals with: (i) Water supply systems; (ii) Sewerage systems...." COMAR 26.03.01.0G(1)(g)(2) also requires that "the water and sewage maps in the county plan shall be delineated to show for each existing and proposed ...multi-use water supply and sewerage systems.... *See also* COMAR 26.03.01.04(E) and (F) (requiring

plans to specify locations for multi-use water supply and sewerage systems). The 1997 Triennial Review of the Master Water and Sewer Plan states: "Properties using in excess of 5,000 gallons per day must be added to the list of 'multi-use facilities' and so designated on the maps." Hearing Officer Schmidt noted that the Maryland Environmental Article "requires that the plan shall identify all areas in the County to be served by a 'multi-use water supply system.'" (Opinion at 15). However, he did not address the requirement that the proposed sewerage system would also have to be in the plan if its capacity exceeded 5,000 gpd.

Water supply system. The easiest definition of "multi-use water supply system" for the Applicant is that provided by statute, and the Applicant used that definition. Section 9-501(j) of the Environment Article provides, "A " 'Multiuse water supply system' means an individual water supply system that: (1) has the capacity to supply more than 5,000 gallons of water a day and (2) Serves a number of individuals." Loyola proposes to operate the facility up to 165 days per year. The undisputed evidence was that the proposed individual water supply system would supply more than 5,000 gallons on certain days to people using the facility's 165 bedrooms. Using an averaging method, Loyola presented evidence that the highest average monthly use would be 4,811 gallons per day and that the average of the days that the retreat was operating and the days that the retreat was not operating would be 2,881 gallons per day.

Hearing Officer Schmidt adopted the Applicant's average-use method numbers instead of the data on actual capacity. He then ruled as a matter of law that a system used for an anticipated average water use of less than 5,000 gallons per day did not meet the definition of a "multi-use water supply system." That interpretation of state law was erroneous. Section 9-501(j) clearly provides that any water supply system that "has the *capacity* to supply more than 5,000 gallons of water a day" (emphasis supplied) meets the definition of a "multi-use water supply system."

The canons of interpretation followed by Maryland courts are well established. The Hearing Officer erred when he did not apply them. In interpreting statutes, courts

begin with the "language of the statute itself." *Mazor v. Department of Correction*, 279 Md. 355, 360-61, 369 A.2d 82, 86-87 (1977). This statute specifies "capacity," not "anticipated use expressed as a monthly or annual average." Courts decline to "engraft upon [a] rule a meaning not evident from the plain text." *State v. Wiegmann,* 350 Md. 585, 593, 714 A.2d 841 (1998). The use of averaged usage data as a substitute for the maximum capacity figure specified by the statute engrafts new words upon the statute. Furthermore, the averaging method created by Mr. Sheesley is not supported by statutory context. The regulations and statutes neither give an applicant the discretion to substitute usage for capacity nor contemplate the averaging method used here. MDE has provided no direction, for instance, as to whether averaging might be done by day, by week, by month, or by year, or as to whether days of non-use and partial use may be used to lower the figure.

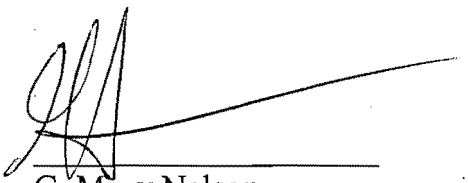
By regulation, MDE prescribed a more restrictive definition of "multi-use water supply system." Neither Mr. Sheesley nor the Hearing Officer addressed that definition. The Code authorizes the Maryland Department of the Environment to "adopt rules and regulations...(2) to control, limit, or prohibit the installation and use of "(i) Water supply systems; and (ii) Sewerage systems...." EN § 9-510 (b)(2). MDE accordingly has defined multi-use water supply systems as those systems "having a capacity in excess of 1,500 GPD [gallons per day]." COMAR 26.03.01.01(P). As shown above, the applicant's water supply system will exceed 5,000 gpd. *A fortiorari*, it will exceed 1,500 gpd, even under the applicant's averaging method.

Under either definition, the proposal includes a multi-use water supply system not included in the County's Water and Sewer Plan. The Commissioner erred in approving it.

Sewerage system. Under § 9-501(i), a "multiuse sewerage system" is a system that "...(3) has a treatment capacity of more than 5,000 gallons a day...." *See also* COMAR 26.03.01.01(O) ("'Multi-use treatment system' means a single system...for the collection and disposal of sewage..., including various devices for the treatment of sewage and industrial wastes having a treatment capacity in excess of 5,000 gpd."). The Applicant's data (Protestants' Exhibit 1) show that some retreats will generate over twice that amount

to be handled by its system. On this issue, the Applicant did not show that its proposal met the requirements of the County's Water and Sewer Plan, and the only evidence was that it did not. The Hearing Officer erred in approving the plan.

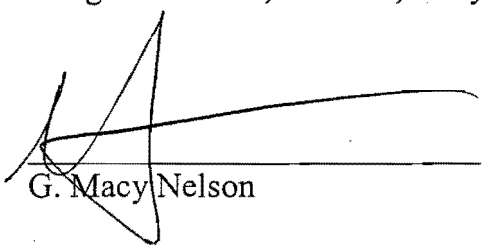
Respectfully submitted,



G. Macy Nelson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of February, 2005, a copy of the foregoing _____ was mailed to Robert Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Carole S. Demilio, Deputy People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.



G. Macy Nelson

5/1/05

IN THE MATTER OF LOYOLA COLLEGE SPIRITUAL RETREAT CENTER DEVELOPMENT PLAN AND PETITION FOR SPECIAL EXCEPTION AND SPECIAL HEARING	*	BEFORE THE
	*	COUNTY BOARD
	*	OF APPEALS
	*	OF
N AND S/S Stablersville Road at NE/corner of York Road	*	BALTIMORE COUNTY
7th Election District 3rd Councilmanic District	*	
	*	Case No. CBA-04-136 (PDM No. VII-389)
Estate of Marion Clark & Eleanor Duvall Spruill, W. Duvall Spruill, Personal Representative, Owners	*	and
	*	Case No. 04-337-SPHX
Loyola College in Maryland, Contract Purchaser/Applicant	*	
	*	

RECEIVED
FEB 07 2005
BALTIMORE COUNTY
BOARD OF APPEALS

* * * * * * * * *

APPLICANT/PETITIONER'S POST-HEARING MEMORANDUM

Applicant/Petitioner Loyola College in Maryland, contract purchaser, by Robert A. Hoffman, Arnold Jablon, and Thomas M. Lingan with Venable LLP, its attorneys, respectfully submits this Post-Hearing Memorandum in support of development plan approval and approval of the Petition for Special Exception and Petition for Special Hearing, as follows:

INTRODUCTION

Loyola College operates a private Jesuit Catholic college on a campus located at 4501 Charles Street in Baltimore City. Loyola desires to construct a facility in northern Baltimore County to conduct spiritual retreats for its students, faculty, administrators, and staff. To this end, Loyola College has contracted to purchase approximately 53 acres of a 107 acre property located on the north and south sides of Stablersville Road, east of York Road, in Parkton. Approximately 54 acres of this property are proposed to be retained by

the Spruill/Clarke family for agricultural purposes.

On 10.18 acres of the 53 acre parcel, Loyola proposes to construct a 16,000± square foot main retreat building, including chapel, meetings rooms, five faculty rooms with private bathrooms, restroom facilities, storage rooms, warming kitchen, and dining room. Phase I of construction will include three retreatant buildings with a total of 60 individual rooms (150± square feet each) with shared toilet and shower facilities between a set of two rooms. Phase II will include two additional retreatant buildings, for a total of 105 rooms/beds.[1] All of the development associated with the retreat center will take place within the 10.18 acre area of which only **1.66** acres will be impervious. The remaining 43± acres will be undisturbed or used for agricultural purposes.

Loyola submitted a development plan for the proposed facility to Baltimore County for review and approval through Baltimore County's development review and approval process outlined in the Baltimore County Code. In addition to approval of its development plan, Loyola sought approval of a Petition for Special Exception for approval of the facility as a "camp," "church or other building for religious worship," "school, including...college," or some combination thereof. *See* Baltimore County Zoning Regulations ("BCZR") §§ 1A01.2.C.4, 1A01.2.C.6, and 1A01.2.C.23.

Loyola also requested, through a Petition for Special Hearing, confirmation that the 35 parking spaces to be provided are sufficient to support the intended use of the property. Lastly, Loyola requested approval of a "non-density transfer" to permit Loyola to use the one density unit (for the 107 acre parcel) on the 53 acres under contract and to permit the Spruill/Clarke family to retain the 54 acres located on the north side of Stablersville Road

[1] Loyola has entered into a Restrictive Covenant Agreement with Maryland Line Area Association, Inc. and Parkton Area Preservation Association, Inc., requiring Loyola to wait at least ten years before constructing Phase II. *See* Restrictive Covenant Agreement, submitted to the Board of Appeals as Petitioner's Exhibit 2.

for agricultural use with no density being associated with that 54 acres.

At the combined hearing before the Zoning Commissioner of Baltimore County, sitting as Hearing Officer, Loyola produced strong and substantial evidence that its development plan was in compliance with Baltimore County's development regulations and all other applicable rules, regulations, and policies and that the requested zoning relief was justified. On June 10, 2004, the Hearing Officer issued an Opinion and Order approving the development plan and granting the Petition for Special Exception and Petition for Special Hearing. *See* Hearing Officer's Opinion and Development Plan Order, dated June 10, 2004 ("HO Order"), p. 16. From this decision, Protestants filed an appeal to the County Board of Appeals.

ARGUMENT

I. THE HEARING OFFICER PROPERLY FOUND THAT THE LOYOLA COLLEGE DEVELOPMENT PLAN FULLY COMPLIES WITH THE DEVELOPMENT REGULATIONS AND ALL APPLICABLE RULES, REGULATIONS, AND POLICIES.

A. BOARD'S REVIEW OF DEVELOPMENT PLAN APPROVAL

The Board of Appeals' role in reviewing the Hearing Officer's approval of a development plan is clearly defined in Section 32-4-281 (formerly Section 26-209) of the Baltimore County Code ("B.C.C.") and has been confirmed by the Maryland courts. In reviewing the factual basis for the Hearing Officer's decision, the Board of Appeals must limit its review to whether substantial evidence exists in the record as a whole to support the decision. *Monkton Preservation Assocs. v. Gaylord Brooks Realty Corp.*, 107 Md. App. 573, 580-81, 669 A.2d 195 (1996). "In that examination, the Board does *not* make independent evaluations, for to do so would require the Board to make credibility decisions

without having heard the testimony." *Monkton*, 107 Md. App. at 581-582 (emphasis in original).

With regard to determining whether the Hearing Officer's decision resulted from unlawful procedure, was affected by other error of law, or was arbitrary and capricious, all of which involve errors of law, the Board of Appeals makes an independent evaluation, although recent cases suggest that, "[e]ven with regard to some legal issues, *a degree of deference should often be accorded* the position of the administrative agency." *Marzullo v. Kahl*, 366 Md. 158, 172-173, 783 A.2d 169 (2001), *quoting Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67-69, 729 A.2d 376 (1999) (emphasis added). As the Court of Appeals explained, "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Id.* Because the Zoning Commissioner, sitting as Hearing Officer, is responsible for administering the Baltimore County Zoning Regulations and the Development Regulations on a daily basis, the Board of Appeals should give "considerable weight" to the Hearing Officer's interpretation and application of these regulations in this case.

Protestants, therefore, bear the burden of demonstrating that the Hearing Officer's decision to approve the development plan for the Loyola College Spiritual Retreat Center is not supported by evidence in the record or is otherwise legally incorrect. As outlined below, with regard to the only "development plan" issue addressed by Protestants in their Petition on Appeals and argued before the Board of Appeals, they were unable to demonstrate that the Hearing Officer erred in approving the development plan, and the Board should, therefore, affirm.

B. THE HEARING OFFICER CORRECTLY RULED THAT THE LOYOLA RETREAT CENTER IS NOT A "MULTIUSE WATER SUPPLY SYSTEM."

Protestants and People's Counsel (collectively "Protestants") claim that the Hearing Officer erred below when he determined that the proposed Loyola Spiritual Retreat Center ("LRC") was not a "multiuse water supply system" and failed to make a finding either way with regard to "multiuse sewerage system" as those terms are defined in the Md. Ann. Code, Envir. Art. §§ 9-501(j) and 9-501(i), respectively. Protestants argue that the consequence of the Hearing Officer's decision is that, if it is determined that the LRC is a multiuse water and/or sewage system, the project cannot proceed until the Baltimore County 10-Year Master Water and Sewer Plan ("10-Year Plan") is amended to include the proposed project.

With regard to "multiuse water system," Protestants are wrong as a matter of law in both their characterization of the LRC and their interpretation of the consequence if, in fact, the Hearing Officer erred in his ruling. The Hearing Officer correctly deferred to the interpretation of the agencies responsible for implementing environmental laws in this State in holding that the LRC is not a multiuse water system.

With regard to "multiuse sewerage system," Protestants failed to identify this as an issue before the Hearing Officer, nor did they file a memorandum with him in which this issue was addressed. *See* Transcript of Proceedings before Hearing Officer ("T."), pp. 75-86. The only issue raised by Protestants before the Hearing Officer during the hearing was "that Loyola College needs a water/sewer plan amendment in order to build a **multi-use water facility of this size.**" (T. 76) Consequently, as addressed in Section I.B.4 below, Protestants failed to preserve this issue for appeal.

1. The Hearing Officer's Holding that LRC is not a Multiuse Water System is Supported by Evidence and is Consistent with Agency Interpretation.

A "multiuse water system" is defined under State law, in relevant part, as an individual water supply system that "has the capacity to supply more than 5,000 gallons of water per day." Md. Ann. Code, Envir. Art. § 9-501(j)(1). The statute does not define the term "capacity to supply." Contrary to Protestants' assertion, the term "capacity to supply" is ambiguous, as evidenced by the conflicting interpretations offered by Protestants, on one hand, and by Maryland's Department of the Environment ("MDE") and Baltimore County's Department of Environmental Protection and Resource Management ("DEPRM"), on the other. Protestants argue that, if more than 5,000 gallons per day is **used** in "any one day," the system is a multiuse water system.

Protestants' argument is contrary to the interpretation of MDE and DEPRM, the two agencies charged with implementing and administering environmental laws in Baltimore County and the State. Loyola presented evidence through expert testimony below, that the proposed LRC would use on average, per day, significantly less water than the 5,000 gallons per day threshold for classifying a "multiuse water system." Robert Sheesley, former Director of DEPRM and Thomas Mills, a licensed engineer and geologist and President of Hydro-Terra, Inc., testified as an expert witness on behalf of Loyola. *See* Transcript of Proceedings before Hearing Officer ("T."), pp. 473-596, 774-824.

Sheesley and Mills calculated that the anticipated water usage for the LRC would be approximately 2,881 gallons per day on an annual basis. Developer's Exhibit 20. Additionally, the highest monthly use for the facility was calculated to be approximately 4,811 gallons per day. Developer's Exhibit 20. As noted by the Hearing Officer, these

calculations were based on testimony and evidence from Loyola that use of the facility would be limited to a certain number of calendar days and a certain number of persons on site according to an agreement entered below as Joint Exhibit 1. HO Order, p. 16.

Sheesley's and Mills' calculation of the "average daily use" was consistent with the interpretation of the MDE groundwater appropriation permit requirements. (T. 484, 779) Loyola must obtain a groundwater appropriation permit from MDE in order to install and operate the two groundwater wells that will supply water to the LRC. The MDE groundwater appropriation application (Developer's Exhibit 20) submitted by Loyola for this project, and the regulations implementing the MDE groundwater appropriation permit requirements, require the applicant to calculate the "annual average" of gallons per day, which is calculated by determining the total anticipated water use and dividing it by 365.

Mr. Sheesley, likewise, calculated the "highest monthly average" water use by determining the gallons used per day during the month of maximum use and dividing the figure by 30. Again, this methodology is required by the MDE groundwater appropriation permit regulations. *See* Md. Reg. Code ("COMAR") 26.17.06.04. The highest monthly average use for the LRC, as required by MDE regulations, was 4,811 gpd. Developer's Exhibit 20. Therefore, Sheesley's and Mills' calculation of the average use per day is consistent with MDE's interpretation of its statutory authority in administering the groundwater appropriation permit program. (T. 550, 780) Both the average daily and highest monthly use for the LRC are **below** the 5,000 gpd necessary for a determination that a facility is a "multiuse water system."

The Hearing Officer also noted that Sheesley's testimony on the issue was consistent with the interpretation of DEPRM, the agency "generally charged with the responsibility for

administering State environmental regulations in Baltimore County." HO Order, p. 16. The Hearing Officer correctly noted that the testimony offered by Mr. Sheesley had been accepted by DEPRM as "appropriate and in conformance with State law." HO Order, p. 16. Loyola's expert testimony was, therefore, consistent with the interpretation of the two governmental agencies, DEPRM and MDE, who are charged with implementing and interpreting the statutes at issue. The Hearing Officer's ruling, giving deference to an agency's interpretation of laws administered by it, is correct as a matter of law and should be affirmed by the Board. *See, e.g., Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67-69, 729 A.2d 376 (1999) (stating that "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight.")

2. The Hearing Officer's Ruling is Consistent with Baltimore County's Treatment of "Multiuse" Systems as Evidenced by its 10-Year Master Water and Sewer Plan.

State law requires that Baltimore County adopt and maintain a Comprehensive Water and Sewer Plan that encompasses a ten year period that "deals with," among other things, water supply systems and sewerage systems. Md. Ann. Code, Envir. Art. § 9-503(a). Each County is required to prepare, adopt, and submit their plan to MDE for approval. Md. Ann. Code, Envir. Art. § 9-503(a)(1). Baltimore County, in conformance with the statute and regulations governing the preparation of the local plan, periodically reviews its plan at least once every three years in accordance with a schedule set by MDE. Md. Ann. Code, Envir. Art. § 9-503(b).

Both State law and MDE regulations set forth, in considerable detail, what is to be included in these local plans. Md. Ann. Code, Envir. Art. § 9-505. Among the numerous

requirements, the 10-Year Plan must describe those parts of the County that reasonably may be expected to be served in the next 10 years by a "multiuse water supply system" and "multiuse sewerage system." Md. Ann. Code, Envir. Art. § 9-505(a)(7)(ii), (iv).

In satisfaction of this requirement, the Baltimore County 10-Year Master Water and Sewer Plan provides that properties "using in excess of 5,000 gallons per day" be added to the list of "multi-use facilities" appended to the 10-Year Plan. 10-Year Plan, p. 10. Baltimore County, therefore, interprets the term "capacity to supply" as applying only to systems that are, in fact, **using** 5,000 gallons of water per day. MDE has approved the 10-Year Plan and, therefore, has affirmed Baltimore County's interpretation of this statutory requirement.

An examination of Table 4 of the 10-Year Plan, at page 43, indicates that only 18 multiuse water facilities are listed in Baltimore County. As noted above, expert testimony offered by Loyola demonstrated that the LRC would use, on an average basis, far less than the 5,000 gallons threshold. The limited number of facilities identified as multiuse water systems in the County's 10-Year Plan is consistent with the Loyola expert testimony on this issue.

It is an axiom of administrative law that courts are required to read statutory language "within the context of the statutory scheme." An interpretation of a statute is likewise to be "commonsensical" in order to effectuate the purpose of the statute at issue. *See Christopher v. Montgomery Co. Dept. of Health & Human Services*, 381 Md. 188, 209, 849 A.2d 46 (2004). The argument advanced by Protestants that "capacity to supply" should be interpreted as having the potential to generate in excess of 5,000 gpd is nonsensical, as it would include arguably hundreds, if not a thousand or more, groundwater

wells in Baltimore County that are not listed as "multiuse water systems" in the 10-Year Plan.

Thomas Mills, the expert geologist/hydrologist for Loyola, testified before the Hearing Officer that any groundwater well with a pumping capacity in excess of 3.47 gallons per minute would, theoretically, have a "capacity to supply" in excess of 5,000 gallons per day. (T. 776) Mills was retained to perform a hydrogeologic study of the LRC and to evaluate water uses at the facility to determine what, if any, impact the facility would have on water and other resources at the site and in the vicinity. Developer's Exhibit 8, p. 1. In conjunction with his work, Mr. Mills conducted a groundwater well survey and identified nine domestic groundwater wells in the immediate vicinity of the proposed LRC. Developer's Exhibit 8, p. 10. (T. 519-523)

Seven of the nine wells identified in the immediate vicinity of the LRC, where pumping yields were known, had yields in excess of the 3.47 gallons per minute and, therefore, were "capable" of generating in excess of 5,000 gallons per day. Developer's Exhibit 8, p. 10. (T. 519-523) None of these wells are listed in the County 10-Year Plan as "multiuse water systems." Mills' report confirmed that the DEPRM's listing of multiuse water systems is consistent with the average daily use approach utilized by Loyola. Mr. Mills also corroborated Sheesley's testimony that MDE regulates the appropriation of groundwater using the "annual average" calculation on both the daily and highest monthly use basis. (T. 780)

3. Protestants' Reliance on a 1,500 gpd Maximum is Wrong as a Matter of Law.

Protestants note that MDE regulations define a "multiuse water supply system" as a system "having a capacity in excess of 1,500 gallons per day." COMAR 26.03.01.01(p).

Protestants argue that this regulation supersedes the statutory definition, in that it was adopted pursuant to MDE's statutory authority to adopt rules and regulations controlling, limiting, or prohibiting the installation of water supply systems and sewerage systems. Ann. Code of Md., Envir. Art. § 9-510(b)(2). Protestants claim that this "regulatory" definition controls and that the Hearing Officer erred in improperly applying the "statutory" definition of a multiuse water system as a system having a capacity to supply more than 5,000 gpd.

The Hearing Officer was correct in defining a multiuse water system as noted in the statute because it is the statutory definition that controls and not a regulation. An agency's rulemaking authority is defined and limited by the statute conferring the power. A regulation cannot contradict a statute it is authorized to implement.

> Regulations promulgated by an administrative agency must be "consistent with the letter and spirit of the law under which the agency acts."

Christ v. Dept. of Nat. Resources, 335 Md. 427, 437, 644 A.2d 34 (1994) (citation omitted). *In accord Maryland State Police v. Warwick Supply & Equipment Co.*, 330 Md. 474, 480, 624 A.2d 1238 (1993).

The Hearing Officer's reliance on the statutory definition and the 5,000 gpd figure is consistent with well-established administrative law principles. Agencies may not:

> ... issue a rule or regulation which is inconsistent or out of harmony with, or which alters, adds to, extends or enlarges, subverts, impairs, limits or restricts the act being administered.

Insurance Comm'r of Md. v. Bankers Independent Ins. Co., 326 Md. 617, 624, 606 A.2d 1072 (1992). MDE cannot adopt a regulation that is inconsistent with the statute it is required to implement. Therefore, MDE cannot adopt a regulation that is, on its face, inconsistent with a statutory provision. The Hearing Officer was, therefore, correct in utilizing the 5,000 gpd figure in defining a "multiuse water system."

4. Protestants Failed Preserve the Argument that the LRC is a Multiuse Sewerage System.

a. Appellants failed to preserve the issue before the Hearing Officer.

In a development plan case, unlike other types of proceedings, the Hearing Officer ***only*** considers outstanding or "unresolved" issues that are raised by either a County agency or a party. *See* Baltimore County Code ("BCC") §§ 32-4-227, 32-4-228. If an issue is not raised either by the County or by a party as being "unresolved," the plan is presumed to comply with the development regulations. *Id.* In this case, Protestants never alleged before the Hearing Officer that the development plan was deficient because the LRC was a "multiuse sewer system." (T. 75-86) The only issue raised in this regard was "that Loyola College needs a water/sewer amendment in order to build a **multi-use water facility** of this size. (T. 76)

Because of the nature of development plan hearings, as long as the County agencies are satisfied, if a particular element of a development plan is not questioned, the Hearing Officer ***must presume*** that the development is in compliance, and ***he must approve the plan***. BCC §§ 32-4-227, 32-4-228, and 32-4-229. It was Protestants' burden, therefore, to either raise this issue at the Hearing Officer's Hearing, or they waived their right to do so. Having failed to raise the multiuse sewer system issue before the Hearing Officer, the issue was simply not preserved for appeal, and the Board of Appeals, sitting in its appellate capacity, should not consider it. *See In the Matter of Suburban Club Property/The Oxbridge Group*, Case No. CBA-03-121 (wherein, in a development plan appeal, the Board agreed that it "lacks administrative authority to go beyond the directive established by the Hearing Officer to consider "new" issues that were not presented during the Hearing Officer's development

plan review...") Memorandum Exhibit 1, p. 5.

The Maryland appellate courts have consistently held that issues not raised before the administrative agency – here, the Hearing Officer – are not preserved and should not be considered for the first time on appeal. *Brodie v. Motor Vehicle Admin.*, 367 Md. 1, 3-4, 785 A.2d 747 (2001); *Dept. of Health & Mental Hygiene v. Campbell*, 364 Md. 108, 123-124, 771 A.2d 1051 (2001); *Cicala v. Disability Review Bd. for Prince George's County*, 288 Md. 254, 262-263, 418 A.2d 205 (1980); *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 518-519, 390 A.2d 1119 (1978); *Beeman v. Dept. of Health & Mental Hygiene*, 107 Md. App. 122, 158-159, 666 A.2d 1314 (1995).

In *Chertkof v. Dept. of Nat. Resources*, the Court of Special Appeals explained the requirement for preservation of an issue at the evidentiary hearing level:

> To permit appellant after nine years of controversy to raise an entirely new theory which was never espoused at any point in the long drawn out administrative process would make a mockery of the appellate process...This is particularly true in administrative proceedings in which a party must avail himself of the opportunity to present his position before the proper administrative body as failure to do so would preclude his being heard by a reviewing court.

43 Md. App. 10, 16, 402 A.2d 1315 (1979). Phrased another way, the Court of Special Appeals articulated that:

> The primary purpose of the rule requiring a party to raise an issue in an administrative proceeding is to give the administrative agency the opportunity to decide the issue first...."

Meadowridge Industrial Center Ltd. Part. v. Howard County, 109 Md. App. 410, 321, 675 A.2d 138 (1996).

Because Protestants did not give the Hearing Officer the opportunity to decide this issue by raising it during the hearing (and no County agency raised this as an unresolved issue), the issue has been not preserved for appeal.

b. A Determination that the LRC is not a Multiuse Sewer System is the only Supportable Conclusion.

If the Board disagrees and chooses to consider this new argument, the Hearing Officer did have, at least, some evidence before him that would have enabled him to make a determination that the LRC was not a "multiuse sewerage system." A "multiuse sewerage system" is defined, in relevant part, as a sewerage system that has a "treatment capacity of more than 5,000 gallons a day." Md. Ann. Code, Envir. Art. § 9-501(j). Protestants argue that any system having a **potential** to generate in excess of 5,000 gallons per day of wastewater has a treatment capacity of more than 5,000 gallons a day and is, therefore, a multiuse sewerage system. Mr. Sheesley's testimony before the Hearing Officer demonstrated conclusively that the LRC would **not** be considered a multiuse sewerage system.

As Sheesley explained, because the LRC will be limited in terms of number of days of operation in any given year, wastewater flows from the facility will not be consistent over 365 days a year. (T. 549-550) Accordingly, the sewerage disposal system proposed for the LRC will be sized and configured to assure that wastewater discharges are kept below the 5,000 gpd threshold. (T. 553-557) Through the means of "flow equalization," wastewater will be stored and "metered out" to achieve the required design discharge values. (T. 553-557) *See also* Protestant's Exhibit 1 (Letter, dated November 30, 2003, from Robert Sheesley to Robert Powell).

Although the LRC will not be conducting retreats throughout the year, the wastewater storage volume "will be provided for peak use then treated and disposed of over a seven day week, 52 weeks per year." Protestants' Exhibit 1. Furthermore,

> [s]ince this proposal will not exceed a sewage discharge of over 5,000 gallon [sic] per day a Maryland State Ground Water Discharge Permit is not required. For the same reason, the Baltimore County Master Water and Sewer Plan will not have to be amended.

Protestants' Exhibit 1. Mr. Sheesley's proposed water consumption values for use at the site were approved by DEPRM. A determination that the proposed facility is not a "multiuse sewerage system" is the only conclusion that could have been reached based on the evidence before the Hearing Officer.

5. The LRC does comply with the Baltimore County's Water and Sewer Plan.

Contrary to the Protestants' assertions, the LRC **does** comply with the Baltimore County 10-Year Master Water and Sewer Plan. Before the Hearing Officer, Mr. Sheesley testified that the proposed LRC is located in an area of the County that is not approved for publicly available water and sewer systems. (T. 560) As a result, any facility in an area, designated as "No Planned Service" must be serviced with a private domestic well and septic system. *See* 10-Year Plan, p. 10. This is consistent with State law and MDE regulations, which provide that an individual water supply system or sewerage system may not be permitted or installed "where an adequate community or water facility is available." COMAR 26.03.01.05(a).

The LRC's proposed water supply is to be provided by means of an onsite well. Similarly, wastewater disposal at the LRC is to be handled through a wastewater septic field. These are, in fact, the only means of providing these services that can be utilized at the LRC due to the fact that it is located in a no-service area portion of the County. Therefore, the proposed LRC is consistent with the County 10-Year Water Plan. Robert Sheesley testified to this effect at the hearing below. (T. 560-561)

6. "Listing" in the County 10-Year Water and Sewer Plan is Not a Prerequisite to Approval of the Loyola Spiritual Retreat Center Development Plan.

Even assuming the Hearing Officer was wrong, as a matter of law, and the LRC is deemed to be a multiuse water and/or sewerage system, there is no requirement that inclusion of this facility in the County 10-Year Master Water and Sewer Plan is a prerequisite to approval of the Facility's development plan. To the contrary, the Baltimore County 10-Year Master Water and Sewer Plan clearly distinguishes between those instances when a plan amendment is required and where, as is the case of a multiuse water system, simply identifying or listing the facility is sufficient.

As noted above, the State statutory scheme governing the preparation, approval, and update of 10-Year Master Water and Sewer Plans requires the County to describe areas of its jurisdiction that reasonably may be expected to be served in the next 10 years by multiuse water and/or sewerage systems; those areas in which it is not reasonably foreseeable to have service in the next 10 years by any multiuse water supply system and a description of each area in the County where a multiuse water supply system may be initiated and used; and any area where a multiuse sewerage system may be initiated and used. COMAR 26.03.01.04. MDE has also adopted regulations detailing the specific requirements applicable to adopting County 10-Year Plans, including the specific content of the Plans.

The regulations provide that the 10-Year Plan should include water and sewerage maps which "shall be delineated to show for each existing and proposed community and multiuse water supply and sewerage system" (emphasis added) to include the following:

> a) ... existing or proposed and planned ... multiuse water and sewerage facilities ...

b) ... areas served by community and multiuse water and sewerage systems which are either existing or are under construction ...

c) ... areas to be served by extension of existing community and multiuse water supply and sewerage systems which are in final planning stages.

COMAR, 26.03.01.04(g)(2) (emphasis added).

These regulations, unequivocally, demonstrate that identification of multiuse water and sewerage systems in the 10-Year Master Water and Sewer Plan maps can occur at one of several stages; when a facility is "proposed;" "under construction;" or "in the final planning stages." It is equally clear that identification of such systems is not a prerequisite for approval of a local development plan, nor the system itself. Similarly, Baltimore County's development review and approval process, which governs the approval of developments plans, contains no such requirement.

Furthermore, the Baltimore County 10-Year Water and Sewer Plan distinguishes between an amendment to the Plan and simply listing, as is required for multiuse water systems. Property owners seeking to acquire public water and sewer utility service for properties not currently within the existing service area must petition for an amendment of the 10-Year Plan. Baltimore County has established an annual amendment cycle for plan amendment which requires the submission of petitions for map amendments by May 1 of each year. Plan amendments are reviewed by various County agencies and recommendations are forwarded to the Planning Board for public hearing and subsequently to the County Executive. The County Executive, in turn, forwards any favorable recommendations to the County Council for its approval. The County Council adopts any plan amendment by adopting a resolution, which is then forwarded to MDE for its final approval. *See* Baltimore County 10-Year Plan, p. 10.

By contrast, properties that are located in "No Planned Service" areas must be served by private well water and sewage disposal facilities. The 10-Year Plan provides that properties that use in excess of 5,000 gallons per day "must be added to the list of multiuse facilities and so designated on the maps." *Id.* The 10-Year Plan clearly distinguishes between an amendment, or a legislative act of the plan, and the listing of certain "multiuse facilities," which is simply an administrative function.

Therefore, even if the Protestants are correct in their legal characterization of the LRC as a multiuse water and/or sewerage system, it would not impede the approval of the LRC development plan. It is clear that a 10-Year Plan amendment is not required, in such instance, and the listing of such facilities can occur at any number of points in the development process. In fact, it would be nonsensical to list a facility prior to obtaining all of the required development and construction approvals.

In conclusion, the Hearing Officer's determination that the LRC is not a multiuse water system was correct and consistent with MDE's and DEPRM's interpretation of the term as would have been a determination that it is not a multiuse sewerage system. The use of "averaging" daily water usage and wastewater disposal is, likewise, consistent with MDE and DEPRM regulations and guidance on the issue. Finally, the LRC is consistent with the Baltimore County 10-Year Plan. Even if the Hearing Officer is wrong on whether the LRC is a multiuse water and/or sewerage plan, "listing" of such approvals is an administrative act and is not a prerequisite to development plan approval.

II. LOYOLA PRODUCED STRONG AND SUBSTANTIAL EVIDENCE BEFORE THE BOARD OF APPEALS DEMONSTRATING ITS ENTITLEMENT TO THE REQUESTED SPECIAL EXCEPTION.

In addition to development plan approval, the proposed use of the property requires Loyola to obtain approval of a special exception for a "**camp**," "**school, including...college**," "**church or other building for religious worship**," or a combination thereof under BCZR Section 1A01.2.C. On appeal from the Zoning Commissioner, a request for special exception relief is heard *de novo* by the Board of Appeals. Baltimore County Code, *Charter,* § 603.

A. The Proposed Use Qualifies as a Camp, School, Church, or Combination of these Three Permitted Uses.

Protestants argue that the proposed Loyola facility, as reflected on the development plan and as described by Loyola's many witnesses, is not permitted by the property's RC-2 zoning. Protestants' argument appears to be based, at least in part, on Loyola's decision to refer to the facility as a "retreat center," a use category not referenced or defined in the Baltimore County Zoning Regulations. This is simply a label, chosen as a shorthand way of referring to the facility. Whether Loyola refers to the facility as a "spiritual retreat center," "Camp Loyola," or "Loyola College – North Campus," the particular wording is not the issue. Rather, the relevant inquiry for the Board is what the intended use of the property is and whether that use falls within one of the special exception categories outlined in BCZR Section 1A01.2.C. The use described by Loyola's witnesses clearly fits within any one of the three categories.

Section 1A01.2.C specifically permits:

4. **Camps**, including day camps.

...

6. **Church** or other **buildings for religious worship.**

...

23. **Schools**, including schools for agricultural training, private preparatory schools, business or trade schools, conservatories or **colleges**.

On the issue of classifying the use under the Zoning Regulations, Loyola presented the testimony of Mitchell Kellman, land planner and zoning specialist with Daft-McCune-Walker, Inc. Mr. Kellman confirmed that, because "camp," "school," and "church" are not terms specifically defined in BCZR Section 101, the Zoning Regulations dictate that these words shall be given "the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged," which definitions are outlined below:

Camp:	"a place of temporary shelter, lodging, or residence often at a distance from urban areas or the tents, cabins, or other buildings used for such shelter, lodging, or residence."
School/College:	"an organized body of scholars and teachers associated for the pursuit and dissemination of knowledge" or "a building or a number of buildings used in connection with some specific educational or religious purpose.
Church:	"a place of worship for any religion."

(Transcript of Testimony before Board of Appeals ("T."), 9/29/04, pp. 24-41) *See* Memorandum Exhibit 2.

Loyola's Proposed Use of the Property

Loyola College is a fully-accredited, nationally-recognized liberal arts institution, which has been in existence for 152 years. (T., 9/14/04, pp. 47-48) Loyola College is one of twenty-eight Jesuit Catholic institutions in the United States and, as such, is founded on the teachings of St. Ignatius Loyola. (T., 9/14/04, p. 47) In describing Loyola's mission,

Terrence Sawyer, Vice-President of Administration at Loyola College, explained that Loyola is "committed to the educational and spiritual tradition of the Society of Jesus and to the ideals of liberal education and the development of the whole person. Accordingly, the college will inspire students to learn, lead and serve in a diverse and changing world." (T., 9/14/04, p. 48)

The concept of a "retreat" comes from St. Ignatius' "Spiritual Exercises," a book which he created out of his own spiritual journey. (T., 9/14/04, p. 49) Mr. Sawyer explained that retreats are a time for discernment and reflection and are "an integral, essential component" of a Jesuit institution. (T., 9/14/04, pp. 49, 51) All twenty-eight Jesuit Catholic institutions in the United States offer "retreats" as part of their teaching program. (T., 9/14/04, p. 49)

Loyola's Department of Campus Ministry runs a very structured retreat program. (T., 9/14/04, p. 50) The Campus Ministry is headed by the Director of Campus Ministry, a Jesuit priest, and the Director of Retreat Programs, a nun. The Director of Campus Ministry reports directly to the President of Loyola College. (T., 9/14/04, p. 50) As Mr. Sawyer explained, the retreat program has two essential components for which Loyola plans to use the proposed facility: students retreats and retreats for the faculty, administrators, and staff. T., 9/14/04, pp. 50-51)

Students retreats, currently conducted at a various locations including one in Pennsylvania, are opportunities for students to be separated from the main campus and its urban environment and to have time to reflect and consider "themes" or "topics." (T., 9/14/04, pp. 50-51, 55-56) Examples of the types of student retreats are: freshman retreat, theology retreat, Ignatian retreat, men's and women's retreats, diversity retreat, and social

justice retreat. (T., 9/14/04, pp. 51-52, 56-60) Although some retreats themes or topics are "more overtly religious than others," Mr. Sawyer explained that there is a "thread of spirituality and reflection that runs through all of these retreats." (T., 9/14/04, pp. 51-52) Retreats are designed to shift the students' focus "more outward than inward and to reflect on issues that will affect them, and to make sure that they are living, making life decisions that are noble and inherently good, and to consider things in a way they not otherwise consider." (T., 9/14/04, pp. 52-53) The retreat program is an "essential element" of the learning experience at Loyola; however, participation in the student retreats is voluntary because the College wants only those students "willing" and "eager" to participate. (T., 9/14/04, pp. 50, 53, 64-65, 86)

Student retreats typically take place on weekends during the school year and run from Friday evening to Sunday midday. (T., 9/14/04, pp. 51, 53-54) During this time, the retreatants are involved in lectures and small group discussions and also have periods of quiet reflection, solitude, and journaling. (T., 9/14/04, pp. 53-56) The students are served dinner on Friday, three meals on Saturday, and brunch on Sunday. (T., 9/14/04, pp. 54-56) Mass and/or prayer services are offered at various times over the weekend. (T., 9/14/04, pp. 54-55, 56, 60-61) At the proposed facility, students would have an individual room (150± square feet each) with shared toilet and shower facilities between a set of two rooms. (T., 9/14/04, pp. 119-121) Currently, Loyola conducts approximately 20 students retreats and would like to increase that number to 25. (T., 9/14/04, pp. 140-141)

Loyola also conducts retreats for its faculty, administrators, and staff, and it proposes to continue these retreats at the new facility. (T., 9/14/04, pp. 51, 61-64) One example is the "Ignatian retreat," designed to teach lay faculty, administrators, and staff about St.

Ignatius and the mission of a Jesuit institution. (T., 9/14/04, pp. 61-63) These retreats typically run from Sunday evening through Friday midday. (T., 9/14/04, p. 62) Loyola conducts two such retreats currently, and it expects to increase this number to four at the new facility. (T., 9/14/04, pp. 141-142) Additionally, Loyola proposes to have a number of one or two day retreats covering a variety of topics. (T., 9/14/04, pp. 63-64) Loyola has agreed to limit the total number of calendar days during which retreats may be held to 160 days. *See* Petitioner's Exhibit 2. (T., 9/14/04, p. 72) All retreats would be sponsored and supervised by Loyola. (T., 9/14/04, p. 64) Loyola will not lease out or permit the facility to be used for any other purpose, including weddings or other events. (T., 9/14/04, pp. 71-72) From this testimony, the Board of Appeals should easily find that the proposed facility qualifies as any one or all three of the permitted uses of camp, church, or school.

The Proposed Use Qualifies as a "Camp."

The use, as described by Mr. Sawyer, clearly qualifies as a "**camp**." *See* BCZR §1A01.2.C.4. As confirmed by Loyola's zoning expert, Mitchell Kellman, "**camp**" is defined as "a place of **temporary** shelter, lodging, or residence often at a **distance from urban areas** or the tents, cabins, or other **buildings** used for such shelter, lodging, or residence." *See* Memorandum Exhibit 2. (T., 9/29/04, pp. 29-30) The undisputed testimony presented before the Board indicates that Loyola is seeking to provide its students or faculty, administrators, and staff members a place of temporary shelter removed from the urban environment of Baltimore City. (T., 9/14/04, pp. 88-89)

Loyola has agreed to restrict its use of the facility to a total of 160 calendar days per year with retreats varying from one to five days, thus, qualifying the length of stay as "temporary." *See* Petitioner's Exhibit 2. (T., 9/14/04, p. 72) The retreatants would be

provided with "shelter or lodging" in the form of a small retreat room containing a twin bed, a small dresser, and a desk, and access to a shared bathroom. (T., 9/14/04, p. 45) As Mr. Sawyer summarized, the LRC is for "getting away from where [the retreatants] normally are for a temporary period of time. They spend the night to accomplish some type of purpose. And in this case, the purpose is a spiritual retreat." (T., 9/14/04, pp. 88-89) Based on the undisputed testimony and the clear and unambiguous definition of "camp," Loyola's proposed facility qualifies as a "camp."

The Proposed Use Qualifies as a "School/College."

The facility also qualifies under the category of "**schools, including...colleges.**" *See* BCZR §1A01.2.C.23. As confirmed by Loyola's zoning expert, Mitchell Kellman, "**school**" is defined as " an organized body of scholars and teachers associated for the pursuit and dissemination of knowledge." *See* Memorandum Exhibit 2. (T., 9/29/04, p. 28) Kellman, likewise, confirmed the definition of "**college**" as "a building or a number of buildings used in connection with some specific educational or religious purpose." *See* Memorandum Exhibit 2. (T., 9/29/04, pp. 28-29)

There is no dispute that the proposed facility is a **building** that would be used by a recognized institution of higher learning for its students, faculty, administrators, and staff, for a specific educational or religious purpose involving the pursuit of knowledge. Loyola has confirmed that use of the facility would be **limited to its students, faculty, administrators, or staff.** (T., 9/14/04, p. 64) All retreats would be **sponsored** and **supervised** by Loyola. (T., 9/14/04, p. 64) Loyola will not lease out or permit the facility to be used for any other purpose, including weddings or other events. (T., 9/14/04, pp. 71-72)

As Mr. Sawyer confirmed, to this Jesuit Catholic institution, the retreat program is:

> [as] essential, for Loyola to be **true to its mission**, as it is to have classrooms, labs, a gym.
>
> ...
>
> an **essential element to our school** and to the **learning process** that takes place at Loyola College. Granted, it's not a credit-offering part of what you learn and what you go to Loyola College for, but it is equally, if not in some parts more important, than anything else we do....

(T., 9/14/04, pp. 65, 88)

When faced with a similar situation, Maryland's appellate courts have interpreted the words "school" and "college" broadly, and these interpretations, one actually involving Loyola College, support Loyola's argument in this case. In *Anderson v. Assoc. Prof. of Loyola College*, the Court of Special Appeals held that Loyola College's administrative offices and its president's off-campus residence were used for "educational" purposes and, thus, permitted as part of a "college" as that term was used in the Baltimore City zoning ordinance. 39 Md. App. 345, 385 A.2d 1203 (1978) In making this finding, the Court recognized that:

> [a] college is more than its classrooms, laboratories, and study halls. It is an undertaking that involves, in today's world, athletic fields, gymnasiums, libraries, faculty and student lounges, school newspaper offices, administrative offices, chapels, and oftimes faculty residences.

Id. at 349-350.

The Court of Special Appeals in *Carroll County v. Raymond I Richardson Foundation, Inc.* took a similarly broad view of the term "school" contained in the Carroll County zoning ordinance. In that case, the Court ruled that a residential facility for adolescent boys with troubled backgrounds, which provided educational, counseling, and vocational training, met the definition of "school" and was not a "detention facility." 71 Md. App. 434, 526 A.2d 81 (1987).

These cases are consistent with a ruling made by the Zoning Commissioner of Baltimore County, and confirmed by this Board of Appeals, approving a Petition for Special Exception for a private school/day camp use by The Park School of Baltimore, Inc. *See In the Matter of Hillside Nominee, Inc.*, Case No. 00-456-SPHX, a copy of two orders are attached as Memorandum Exhibits 3 and 4. In that situation, both the Zoning Commissioner and the Board of Appeals approved the school's use of a piece of property separated from The Park School by two miles "to support student athletic programs, as well as host field trips, science studies, and a day camp...." Memorandum Exhibit 4, p. 2. Loyola agrees with the conclusion that such school-related uses are part of a school, even if located on a property removed from the main campus.

The Proposed Use Qualifies as a "Church/Building of Religious Worship."

Lastly, the use qualifies as a "**church or other building for religious worship**." Loyola's retreat program, and that of every other Jesuit Catholic institutions in the United States, originates from the teachings and philosophy of St. Ignatius Loyola and his "Spiritual Exercises." (T., 9/14/04, pp. 47-49) The idea of a retreat is to take time out from everyday life to contemplate spirituality. As Mr. Sawyer described, many of the retreats offered by Loyola have a religious or spiritual theme. (T., 9/14/04, pp. 50-65) Even those retreats that are not "overtly religious" have a "thread of spirituality" that runs through them. (T., 9/14/04, pp. 51-52) Although Loyola would argue that "**religious worship**" can take place in any setting, Sawyer confirmed that the **chapel** is an essential component of the facility and that formal **prayer service** or **Mass** is offered at various times during retreats. (T., 9/14/04, pp. 60-61)

The Proposed Use is Not a "Hotel or Motel."

Protestants argue that, because Loyola charges a "nominal fee" to its retreatants to attend a retreat, the proposed use is a "hotel or motel," a use not permitted in the RC-2 zone. As Mr. Sawyer explained, the retreatants are charged a nominal fee, similar to other college activity fees, to cover expenses of the retreats, which would include the transportation, meals, and other expense related to the use of the facility. (T., 9/14/04, pp. 104-105, 134-135) The fee is not "compensation for lodging," which is what Protestants would have the Board find. (T., 9/14/04, p. 136)

Protestants' argument, taken to its logical conclusion, would prohibit a college with dormitories from ever being approved in the RC-2 zone and would prohibit sleep-away camps in this zone because some fee is associated in some respect with these uses. The "nominal fee" Loyola charges for the retreat is, in no way, comparable to the rates charged by hotels for use of a hotel room. A hotel is in the business of making a profit from renting its rooms. That is the sole purpose of a hotel. As Mr. Sawyer explained, the purpose of the retreat center is not to provide lodging for compensation or to make a profit from its retreat center. Rather, the purpose of the facility is to "provide a forum for students to have a spiritually enriched experience." (T., 9/14/04, p. 136) The LRC will not be open to the public, will only be used for Loyola-sponsored retreats as described earlier in the section. (T., 9/14/04, pp. 64, 71-72) Further, Loyola has agreed to limit it use of the facility for such retreats to 160 calendar days per year. *See* Petitioner's Exhibit 2. (T., 9/14/04, p. 72)

Loyola is confident that, when the Board reviews the testimony and evidence, it will, without difficulty, determine that the proposed facility qualifies as a "camp," "school/college," "church or other building for religious worship," or some combination

thereof. Therefore, Loyola is entitled to seek a special exception under BCZR Section 1A01.2.C.

B. Loyola, through its many witnesses, demonstrated its entitlement to the requested special exception.

In this *de novo* proceeding, Loyola had to demonstrate to the Board that the proposed facility will not result in one of the disqualifying adverse impacts outlined in BCZR Section 502.1, as that concept has been discussed by the Maryland appellate courts, and that the use will not be "detrimental to the primary agricultural uses in its vicinity" as required by Section 1A01.2.C.

1. Loyola Demonstrated Compliance with B.C.Z.R. Section 502.1.

A. Special exception uses are presumed valid and acceptable.

According to the well-developed law of Maryland, a special exception is a "valid zoning mechanism" whereby a particular use is presumed to be valid and is presumed to be consistent with the general welfare, absent facts or circumstances sufficient to negate that presumption. *Schultz v. Pritts*, 291 Md. 1, 11, 432 A.2d 1319 (1981). Although *Schultz v. Pritts* is the seminal case on special exceptions, in several more recent decisions, the Court of Appeals and Court of Special Appeals have reiterated the standard relating to the grant or denial of a special exception. *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 541-543, 814 A.2d 469 (2002); *Lucas v. People's Counsel for Baltimore County*, 147 Md. App. 209, 237-239, 807 A.2d 1176 (2002); *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md. App. 616, 640-641, 716 A.2d 311 (1998).

Most recently, the Court of Appeals explained in *Rylyns Enterprises*:

> ...a special exception use is an additional use which the controlling zoning ordinance states will be allowed in a given zone unless there is showing that the use would have unique adverse affects [sic] on the neighboring properties within the zone.

372 Md. at 542. Once a petitioner demonstrates that the proposed use satisfies the specific requirements of the applicable ordinance, the special exception **must** be granted unless "there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects **above and beyond** those **inherently** associated with such a special exception use irrespective of its location within the zone." *Id.* at 542 (*quoting Schultz*, 291 Md. at 11) (emphasis added). To defeat a special exception, therefore, a protestant must do **more** than show that the use may have adverse effects that are common to the use generally. *Rylyns Enterprises*, 372 Md. at 542; *Schultz*, 291 Md. at 14, 22-23; *Lucas*, 147 Md. App. at 238-239. "The disqualifying adverse effect or effects must be more than mere annoyance. Classifying such uses as special exceptions or conditional uses (as opposed to permitted uses) **assumes** that those uses will include some adverse impacts." *Rylyns Enterprises*, 372 Md. at 542 (emphasis added). A disqualifying adverse impact, therefore, must be something **more** than what is ordinarily expected and it must be **unique** to that particular location. *Id.* at 542. *See also Lucas*, 147 Md. App. at 238-239; *Hayfields*, 122 Md. App. at 640-641.

Through some of their witnesses, Protestants have suggested that there are better sites in the RC-2 zone for the proposed retreat center than the one selected by Loyola. Whether a "better site" exists is **not** the standard by which this Board must weigh the evidence. Rather, as the Maryland appellate courts have ruled, the Board must decide whether Loyola's proposed use will adversely impact adjoining and neighboring properties in a manner that is beyond what would ordinarily be expected from such a use and that these impact will be more significant at this particular site than if it were located elsewhere within the zone. It is not Loyola's burden to disprove that every other site

in Baltimore County's RC-2 zone is a better site. To the contrary, to deny the special exception, the Board must, essentially, determine that this particular location is a **particularly bad site**. Through its many lay and expert witnesses and related evidence, Loyola demonstrated that the proposed use will not have any negative impact on the neighboring properties and certainly not the "unique adverse effects" required to deny a special exception under *Schultz* and *Hayfields*. Protestants failed to show otherwise.

B. The Proposed Facility will not Result in any Disqualifying Adverse Impacts under BCZR Section 502.1.

With this authority in mind, as outlined below, Loyola produced strong and substantial evidence at the hearing before the Board demonstrating that the proposed facility satisfies the requirements of BCZR Section 502.1 and will not result in any "unique" adverse impact at this location.

Health, Safety, and General Welfare of the Locality (BCZR Section 502.1.A)

Loyola produced many witnesses to demonstrate that the use of the proposed facility will not "be detrimental to the health, safety or general welfare of the locality involved" with regard to general issues. BCZR § 502.1.A. Terrence Sawyer appeared on behalf of Loyola College and explained in detail Loyola's intended use of the property, as limited by Loyola through a Restrictive Covenant Agreement with two local community associations entered as Petitioner's Exhibit 2. (T., 9/14/04, p. 72) Petitioner's Exhibit 2.

To summarize, Loyola's requested approval involves an approximately 10.18 acre special exception area on a 107 acre property. Within this special exception area, Loyola proposes a modest, unobtrusive two-story facility to conduct quiet, peaceful retreats on a limited number of days (no more than 160 days a year) for a limited number of students,

faculty, administrators, and staff (a maximum of 150 people on site). More than one-half of the property (54 acres) will be retained for agricultural purposes. Development of the retreat facility will involve only 1.66 acres of impervious area or area covered with buildings, paving, or similar non-porous surfaces. Loyola, therefore, proposes an impervious area of less than **1.6%** of the total 107 acres.

The plan demonstrates that sufficient buffers will be retained between the proposed use and the surrounding community. Loyola proposes no outdoor recreational or other types of facilities with the exception of "meditation nodes" or areas of quiet reflection by retreatants. The retreats will, at all times, be supervised by Loyola faculty or staff. For these retreats, Loyola will utilize buses to minimize traffic in an out of the facility.

Having heard all of the testimony from Loyola's representatives regarding the use, having reviewed the site plan, and having visited the site, George Gavrelis and Mitchell Kellman, both land planners and zoning experts with years of experience with zoning and development in Baltimore County, both opined that the proposed use would not be detrimental to the surrounding community. (T., 9/29/04, pp. 41-48, 158-171) As Mr. Gavrelis succinctly stated, the LRC is "a very unintensive use in terms of its footprint and in terms of its impact on the land and on its site." (T., 9/29/04, p. 158) That description is similar to the words used by Mr. Sawyer when he described the use as "extremely passive" considering that, for 205 days a year, the facility will be, essentially, unoccupied. (T., 9/14/04, p. 86) As such, these experts confirmed that the use, as proposed, will not be detrimental to the health, safety, and general welfare of the community. (T., 9/14/04, pp. 46-47, 170-171)

Loyola also presented David Yates, lighting consultant, to testify regarding the

anticipated lighting on site and any impacts from such lighting. Mr. Yates explained the lighting he had designed for the site was the "bare minimum" that he could, in his professional opinion, recommend for this project. (T., 9/15/04, p. 108) As he explained, all of the lighting used would be "Dark Skies" compliant, would not extend beyond the property line, and would have no impact on the surrounding community. (T., 9/15/04, pp. 91-92, 96-97, 109) Mr. Yates also confirmed that Baltimore County had reviewed and approved his lighting plan. (T., 9/15/04, pp. 103-104, 106) *See also* Petitioner's Exhibits 14 and 15.

Detrimental to Environmental and Natural Resources (BCZR Section 502.1.I)

In addition to dealing with any environmental issues that might be phrased as "health, safety, and general welfare" concerns, Section 502.1.I requires Loyola to demonstrate that the proposed use not "be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains." Loyola produced overwhelming testimony to support its claim that there will be no detrimental impact to the environment and natural resources at the site or in the vicinity or to the health, safety or general welfare of the community.

As Robert Sheesley, an experienced and recognized expert witness before the Board and former Director of DEPRM, confirmed, the LRC is not located in the Metropolitan District and, therefore, cannot be serviced by public water and sewer. (T., 9/14/04, pp. 153-154). The property must, therefore, be equipped with a private sewage disposal area achieved through the use of a private septic system and attendant field. Similarly, the LRC must be serviced with private wells for its water supply. (T., 9/14/04, pp. 153-154).

A. The Wastewater Septic System will not be Detrimental to the Environmental or Natural Resources or the Health, Safety, or General Welfare of the Community.

Mr. Sheesley testified that the sewage reserve area, the designated septic field area at the LRC, was approved by DEPRM, which concurred both in the general concept of the septic system proposed and in the location of the septic system. (T., 9/14/04, pp. 155-163) The sewerage system is proposed to be located several hundred feet away from the forest buffer and wetland system that is on the site. Accordingly, there are no impacts to either of these natural resources. (T., 9/14/04, pp. 155-163)

As Mr. Sheesley noted, the LRC septic disposal system will differ from a conventional septic field in that biological pretreatment will be performed within the septic system prior to discharge into the septic field. Sheesley noted that as a result, the discharge from the septic field will be "most likely 99% clear and treated by the time it discharges." (T., 9/14/04, p. 159)

The LRC sewage disposal system will, likewise, be equipped with several storage basins to allow for the use of "flow equalization" in discharging wastewater from the system. Sheesley noted that, in keeping with the approved covenants governing the use of the property, the retreat facility will not be in operation year round; Loyola is limited in the number of retreats that may be conducted at the LRC in any given year. *See* Petitioner's Exhibit 2. Sheesley testified that through the use of "flow equalization," wastewater discharges from the septic system will be metered to assure that there is consistent flow from the septic system throughout the year. Sheesley noted that this is beneficial for several reasons. First, it limits the amount of discharge that will occur at any one time or on any one day and secondly, it assures that the septic field is optimally operated. Sheesley noted that

the system will be sized to accommodate the peak flows of the Facility, yet likewise assure that there is a regular metered flow from the system. Sheesley testified that this methodology was approved by both DEPRM and the Maryland Department of the Environment ("MDE"). (T., 9/14/04, pp. 168-171)

In addition to the proposed design of the septic system, the septic field will be located in an area where there are sufficient soils and an area large enough to accommodate the disposal system. (T., 9/14/04, pp. 180-181) The septic field will be located in an area currently in agricultural use, so the location of the disposal system and septic field will not result in the disturbance of onsite natural resources. The discharge area has likewise been approved by DEPRM. (T., 9/14/04, pp. 180-181)

B. Water Usage will not Impact Natural Resources Onsite or Wells in the Vicinity.

In addition to evaluating the sewage discharge requirements, Mr. Sheesley also assessed the anticipated water usage at the LRC and evaluated the adequacy of the available water supply. Sheesley calculated the anticipated water usage based upon a full facility build-out based on an annual average gallons per day ("gpd") (2,881 gpd), as well as the average highest monthly use (4,811 gpd). The methodology he employed in determining water usage at the LRC is the same as that employed by MDE in conjunction with evaluating the Maryland Groundwater Appropriation Permit application. The use of averaging, in his opinion, is especially appropriate where the usage will be inconsistent throughout the year, such as is the case at the LRC. (T., 9/14/04, pp. 160-164; Protestants' Exhibit 8). Protestants presented no testimony to contradict Sheesley's methodology.

Mr. Sheesley retained Thomas Mills, President of Hydro-Terra, to assist in determining the adequacy of the groundwater supply for the LRC. Mills, an expert

geologist, testified on behalf of Loyola concerning the hydrologic investigation he conducted at the LRC site. Mills was retained by Loyola to conduct the hydrologic investigation for purposes of determining the location of the water supply wells, defining the hydrologic properties of the aquifer, and determining the effect of the LRC water usage on the environment and other water uses in the vicinity. The hydrologic investigation included the performance of a fracture analysis for locating the wells, as well as a drawdown test to determine the impact on adjacent groundwater wells. (T., 9/15/04, pp. 11-12).

Mr. Mills testified at length about his hydrologic investigation, the report of which was entered as Petitioner's Exhibit 11. Mills testified that he assessed the availability of groundwater at the site to supply the required needs of the LRC, the potential for drawing contaminants from the Parkton landfill, the potential impacts of the LRC water use on base flow of the Fourth Mine Branch and the potential impacts on the water supply of adjacent properties. (T., 9/15/04, pp. 15-18).

As Mr. Mills explained, the subsurface features at the LRC site are conducive to good water yield, which was confirmed by the pump tests that were conducted. The geological formation which underlies the site, the Pretty Boy Schist, is rated by the Maryland Geological Survey as a moderate to good water source. (T., 9/15/04, pp. 17-18) Mills also testified that soil conditions are good at the site, with approximately 20 feet of saturated saprolite, the weathered bedrock that sits atop the fractured rock where groundwater is found. (T., 9/15/04, pp. 18-20) Mills characterized the saturation of the soil as "excellent." (T., 9/15/04, p. 20)

As Mr. Mills' research and analysis confirmed, the water supply available to the LRC is more than adequate for the use demands of the facility. (T., 9/15/04, pp. 20-23)

Two groundwater wells are contemplated to assure adequate supply and backup in the case of a well failure. (T., 9/15/04, p. 21) The primary well has a "safe well yield" of approximately 50 gallons per minute ("gpm"), compared to an average peak demand use of 3.34 gpm. (T., 9/15/04, pp. 21-22)

Mills confirmed that the methodology of estimating the required groundwater use for the LRC was consistent with the groundwater appropriation requirements of the MDE. (T., 9/15/04, pp. 27-31). This testimony corroborated Bob Sheesley's testimony on the same issue.

Mills additionally conducted a water balance assessment. The water balance study takes into account the average annual precipitation gain for the site, the annual average evapotranspiration and surface runoff loss and the average annual groundwater recharge. As Mr. Mills explained, 80% of the water that is pumped from the wells will be returned to the water table through the drain fields from the septic system. (T., 9/15/04, pp. 31-32) His conclusion was that the property demonstrated a "very favorable water balance." (T., 9/15/04, p. 32) The water balance assessment was conducted under expected "worst case" conditions. Even under "worst case" drought conditions, Mills testified that the amount of groundwater recharge lost will have a "very, very small impact" on available water resources in the area. (T., 9/15/04, p. 33)

An aquifer test was conducted to assess the "transmissivity" value and the "storativity" of the aquifer. These two values are calculated to assess both the storage and release capacity of the aquifer. Mills testified that the aquifer demonstrated "excellent transmissivity value." (T., 9/15/04, p. 40) The storativity was difficult to calculate because, in order to do so, the impact on a sample observation well must be noted. Mills noted that,

despite a 24 hour pump test conducted at 30 gallon per minute yield, there was no impact noted on the observation well. (T., 9/15/04, pp. 35-40) This pump test produced a yield of 42,000 gallons over the 24 hour period. (T., 9/15/04, p. 36) Even under conditions approximately **12 times** the expected highest yield rate for the LRC, there was **no impact on the adjacent observation well**. (T., 9/15/04, p. 36) According to Mills, both the transmissivity and storativity values confirm the abundance of water available at the site and the lack of any impact that the LRC will have on water resources in the area. (T., 9/15/04, p. 45) Petitioner's Exhibit 11.

Mr. Mills testified that he conducted a drawdown test to determine what, if any, impact the proposed LRC water usage would have on adjacent water supply wells. Mills first identified the domestic wells in the immediate vicinity of the LRC. Eleven wells were identified in the immediate area and are noted on Table 1 of Mills' report, "Well Inventory on Properties Adjacent/Nearby Loyola Retreat." Petitioner's Exhibit 11.

A drawdown test was conducted in an attempt to evaluate the change in the elevation of the water table or groundwater surface, on the adjacent wells, has on a modeled peak withdrawal condition of 4,811 gallons per day (3.34 gallons per minute) over a 60 day period without recharge from precipitation or discharges from the septic system. (T., 9/15/04, pp. 40-42) The peak withdrawal rate was determined from extremely conservative estimates developed for the period when the LRC is operating at full capacity. (T., 9/15/04, p. 41). The drawdown assumptions were modeled in a manner commonly used by hydrogeologists for estimating water table drawdown.

From these results, Mr. Mills concluded that the pumping of the wells on the LRC at an average daily rate of 2,881 gpd and a peak rate of 4,811 gpd during the month of

maximum demand will not adversely affect the adjacent wells on nearby properties, nor will it impact availability of water on those properties. (T., 9/15/04, pp. 44-45, 49)

C. Water Use at the LRC will not be Detrimental to the Health, Safety, or General Welfare of the Community.

Finally, Mr. Mills addressed the issue of the potential of drawing contaminants to the site from the Parkton Landfill. (T., 9/15/04, p. 45-47) The Parkton Landfill is approximately 6,000 feet from the site. (T., 9/15/04, p. 45) In evaluating the drawdown curve, Mills testified that there was "no way" the LRC groundwater pumps will draw groundwater from the Parkton site. (T., 9/15/04, p. 46)

He, likewise, confirmed that it was "impossible" for the LRC to draw water from the Fourth Mine Branch due to the fact that the LRC well is located approximately 100 feet above the elevation of the stream. (T., 9/15/04, p. 47) Mills, therefore, confirmed that there will be no impact on the Fourth Mine Branch from the LRC operation. (T., 9/15/04, pp. 45-47) In his opinion, therefore, the anticipated water use at the LRC will not have a detrimental effect on water resources at the site and in the vicinity, nor will the anticipated water usage be detrimental to the health, safety, or general welfare of the locality of the LRC. (T., 9/15/04, pp. 50-51)

D. No Additional Study is Needed to Determine Compliance with the Requirements of BCZR § 502.1.A and I.

Brian Reed, an environmental engineer, appeared as a witness on behalf of the Protestants and expressed the opinion that Loyola had not provided enough information to demonstrate that the wastewater disposal system planned for the LRC would not be detrimental to human health or to the environmental and other natural resources at the site. Reed indicated that Loyola should have conducted a "Fate and Transport Study" for both

nitrogen and phosphorus to determine the potential impact of these pollutants on adjacent waterways and, ultimately, the Loch Raven Reservoir.

Reed's testimony is without merit. He conceded that MDE Guidelines for Large Onsite Sewage Disposal Systems, which he cited as the basis of his opinion, did not, in fact, require the performance of such a study. On cross-examination, he admitted that only some additional study was required for systems discharging in excess of 5,000 gallons per day. (T., 1/04/05, pp. 38-39)

As Mr. Sheesley explained during rebuttal, Reed's opinions disregarded the plan for the wastewater discharge system at the LRC, which would employ the use of flow equalization to regulate discharges throughout the course of the year. Referencing his direct testimony, Sheesley again testified that the conceptual wastewater discharge system would be equipped with storage tanks that would equalize discharge flows throughout the course of the year, resulting in wastewater discharges averaging 2,881 gallons per day. Sheesley once again pointed out that this interpretation and calculation of the average as well as peak discharge rates has been approved by both MDE and DEPRM. (T., 1/04/05, pp. 248-250)

Reed conceded that regulatory agencies, MDE and DEPRM, were more qualified than he to assess what, if any, additional study was required for the wastewater treatment system planned for the LRC. He likewise conceded that the need for additional study was predicated upon there being discharges in excess of 5,000 gpd. (T., 1/04/05, pp. 58, 39) His failure to account for the fact that discharge flows will be regulated through the use of flow equalization is contrary to the interpretation of MDE and DEPRM and the legal and factual findings of the Hearing Officer below. No additional study was conducted or is needed because MDE and DEPRM have determined that, through the use of flow equalizations,

average flows will be far less than 5,000 gallons per day. (T., 1/04/05, pp. 253-255).

Mr. Sheesley additionally calculated a nitrogen balance for the anticipated discharges from the LRC and testified that discharges of up to 15,790 gallons per day would still result in discharges below the nitrogen drinking water levels for nitrogen. Sheesley testified that the anticipated average discharge flows from the LRC are magnitudes lower than this level. Sheesley concluded that no additional study was needed to determine whether the LRC would be detrimental to the public health, the environment or natural resources at the site. MDE and DEPRM have likewise concluded that no additional study is needed. (T., 1/04/05, pp. 253-256) Petitioner's Exhibit 35.

Furthermore, Sheesley testified and Reed agreed that there are advanced treatment systems available to remove nitrogen and phosphorus from wastewater discharges if they (or this Board determines) are needed. As Sheesley explained, an advance treatment system would only be needed if discharges exceeded 15,790 gallons per day. (T., 1/04/05, pp. 253-256) Since the LRC is not discharging anywhere near this magnitude of discharge, no additional study is needed, and a wastewater treatment facility would likewise not be necessary.

E. Protestants' Testimony on Potential Thermal Impacts of the LRC Stormwater Discharge was Seriously Flawed.

Edward Bouwer testified on behalf of the Protestants on the alleged impacts of stormwater discharges on temperature levels in the adjacent wetlands system and the unnamed tributary which begins on the LRC site.

(1) Bouwer did not investigate actual conditions at the LRC site.

Bouwer **did not visit the site** and he **did not conduct any field investigation** of actual conditions at the LRC site. He prepared **no report**, conducted **no analysis** of

potential stormwater discharges, and **failed to identify** the number of rain events that would actually result in a discharge from proposed stormwater management detention pond at the LRC site. (T., 9/30/04, pp. 156-172)

His testimony was based solely on two reports prepared by others. The first was the 1996 Master's Thesis submitted by a graduate student at Johns Hopkins University regarding the potential thermal impacts of stormwater management discharges (the "Bahr Report"). (T., 9/30/04, p. 113) The second report was used by Bouwer to estimate the potential temperature reduction resulting from the flow of water over a certain distance (the "Galli Report"). (T., 9/30/04, p. 124)

The gist of Bouwer's testimony is that discharges from the LRC conceptual stormwater detention pond **may occasionally** result in exceedances of Class III temperature water criteria. Bouwer's testimony is flawed in ways almost too numerous to describe.

At the outset, as noted above, Bouwer made no site visit, no field investigation and no individual assessment of the proposed LRC development. Nor did Bouwer visit, let alone investigate, the potential "stream," which is **not even** proximate to the proposed stormwater management pond outfall on the LRC site.

(2) Bouwer did not account for the conceptual stormwater management plan at the LRC.

Bouwer did not produce any evidence demonstrating that the stormwater management pond in the Bahr Report that was the basis of his conclusions was similar in size, form, or function to the detention pond proposed for the LRC site. The only apparent equivalent feature of the Bahr and LRC pond is the fact that both ponds are 12 hour detention ponds. This means that any stormwater that accumulates in the ponds will flow out at a controlled rate for up to a 12 hour period. However, Bouwer acknowledged that he

was not familiar with the 2000 changes to the Maryland Stormwater Design Manual, nor was he aware of what design criteria was in effect for the detention ponds that were the subject of the Bahr Report. He is not a registered engineer in Maryland or anywhere for that matter, and acknowledged that he had never, in fact, designed a stormwater water management system. (T., 9/30/04, pp. 93, 163, 165)

At least one critical feature of the LRC stormwater management conceptual plan overlooked by Bouwer is that the proposed system will utilize bioretention infiltration areas as well as a 12 hour detention basin. Bioretention was not a feature of the pond studied in the Bahr Report. (T., 9/30/04, p. 166) The proposed bioretention basins are designed to capture the first inch of rain in any storm event. The significance of this design feature is that approximately 93% of the annual storm events at the LRC will be totally captured by the bioretention basins and will not result in any discharge from the LRC stormwater management pond. Bouwer failed to account for this critical design difference. (T., 9/30/04, p. 222)

Not only did Bouwer's calculation fail to take this into account, but he likewise failed to demonstrate that of the remaining 7% of annual storm events, whether any of them would in fact result in a discharge from the LRC detention pond that exceeds the Class III temperature criteria. (T., 9/30/04, p. 166) Furthermore, Bouwer's opinion was based upon the LRC stormwater management pond discharging over the full 12 hour retention time. Bouwer did not produce any evidence indicating that any storm event, let alone any one storm event would, in fact, fill the detention basin to capacity, which would result in flow rate he estimated.

(3) The area where temperature data relied on by Bouwer was collected was not representative of the area of stormwater discharge from the LRC.

Another flaw in the Bouwer testimony was that he assumed the temperature of stagnant water in the wetland area based upon the average temperature of in-stream monitoring that was conducted between 900 and 1,000 feet downstream of the wetland area from July 13, 2004 through September 3, 2004. Stream temperature data was collected by the use of the in-stream monitoring device at the stream culvert crossing under Stablersville Road. Bouwer did not disclose, however, that the Appellant's monitoring data shows that on two occasions, July 23, 2004 (18:15:20–19:50:20) and August 1, 2004 (16:20:20–19:35:20), the Class III temperature criteria was exceeded without the presence of the LRC. *See* Memorandum Exhibits 5 and 6. Furthermore, the in-stream temperature monitoring data shows variations in temperature of more than 16 degrees in the stream sampling conducted. Bouwer did acknowledge, though, that, under present site conditions, there are currently rain events that dramatically increase the temperature of the stream area even without a stormwater management pond in place. (T., 9/30/04, p. 172) This was, in fact, confirmed by the wide range of temperatures noted in the data produced by Protestants.[2]

Bouwer utilized the Galli Report to determine the temperature reduction that will occur as the stormwater discharge travels over a certain distance. Bouwer did not, however, establish that the conditions present in the Galli were similar or in any way related to conditions at the LRC. (T., 9/30/04, p. 163) Bouwer's calculation measured the potential thermal impact of stormwater discharges on the beginning of the head waters on the LRC property. Although this unnamed tributary of the Fourth Mine Branch is categorized a Class

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2. The range of temperatures noted on the Protestants' data went from a low of 56.382° on 8/23/04 at 8:05:20 to a high of 72.782° on 8/1/04 at 17:10:20.

III stream, rebuttal testimony and photographs offered by Loyola demonstrated that the point of discharge from the proposed stormwater outfall is approximately 675 feet from the point where the wetland area eventually feeds into a clearly defined water course. (T., 1/04/05, pp. 195-196) The temperature monitoring location is another 225 feet from the point where the wetland area drains into the perennial stream portion of the unnamed tributary.

(4) Bouwer did not account for the use of bioretention ponds.

Bouwer acknowledged that bioretention ponds were not a feature of the stormwater management ponds that were studied in the Bahr Report, but he did not evaluate whether any of the storm events that were studied in the Bahr Report would have, in fact, resulted in a discharge from a facility that was equipped with biorentention ponds. (T., 9/30/04, p. 166) He, likewise, produced no evidence to indicate that any storm event would, in fact, result in an exceedance of Class III stream temperature criteria. Under current undeveloped conditions, in fact, as noted above, the temperature data upon which Bouwer relied indicates that on two occasions the criteria was exceeded without the benefit of the LRC development.

Bouwer conceded his belief that the existing Maryland Stormwater Management regulations are not protective of Class III streams. (T., 9/30/04, p. 159) This is ironic given that he admitted that he was not aware of the differences between the Stormwater Management Guidance in effect when the ponds that were the subject of the Bahr Report were constructed, the date of the Bahr Report, and the 2000 revisions to the Guidance. (T., 9/30/04, p. 165)

(5) The current stormwater management design requirements require that facilities account for thermal discharges to Class III streams.

At this stage in the development process, Loyola has proposed a conceptual plan for

the stormwater management design at the LRC. Loyola will have to design and construct a stormwater management system that is in compliance with state and local stormwater management design requirements. The current MDE Stormwater Design Manual provides as follows with regards to stormwater management in cold water Class III and Class IV streams.

> Cold and cool water streams have habitat qualities capable of supporting trout and other sensitive aquatic organisms. Therefore, the design objective for these streams is to maintain habitat quality by preventing stream warming, maintaining natural recharge, preventing bank and channel erosion, and preserving the natural riparian corridor. Techniques for accomplishing these objectives may include:
>
> - Minimizing the creation of impervious surfaces,
> - Minimizing surface areas of permanent pools,
> - Preserving existing forested areas,
> - Bypassing existing base flow and/or spring flow, or
> - Providing shade producing landscaping

See Maryland Stormwater Design Manual at 4.3.

Contrary to Bouwer's assertion, the Maryland Stormwater Design requirements do consider the thermal impact on Class III streams. The LRC stormwater system must be designed and constructed in compliance with this criteria.

(6) Bouwer's testimony has been previously dismissed as suspect.

This is not the first time that Bouwer's model has been dismissed as suspect. In a 2003 matter before the Hearing Officer of Baltimore County, *In Re Development Plan Hearing Smyth Property*, Case No. VIII-795 (affirmed by this Board and the Circuit Court), Bouwer testified using the same model and other assumptions to virtually the same effect. In the *Smyth* case, Bouwer similarly testified that the discharges from a stormwater management pond would result in excessive thermal impacts on an adjacent stream. The

Hearing Officer's opinion dismissively, but correctly, noted the flaws of the Bouwer model:

> Returning to the Bouwer model, a weakness of this model is that the Professor's conclusions are based upon data from one storm on one day (Bahr Report) from a pond which may or may not have the same depth, surface area in shading as the subject ponds. The Professor had [sic]never designed the stormwater management pond, never tested the temperature of the discharge water from any such ponds and has never confirmed his model's conclusion with actual field data to be sure that his model is accurate in these situations.
>
> The Professor's model has not had peer review which the Professor would likely admit as [sic] necessary and ordinary step in accepting the scientific model. The status of the model has been constructed from the Professor's prior work but never published as it applies to stormwater pond discharges. Peer review ordinarily occurs when the model along with a narrative describing an application is published for all to see and criticize. The mathematical model was never presented in written form or otherwise at the hearing so that someone who understood such things could judge its veracity.

See Smyth Opinion, p. 19, attached as Memorandum Exhibit 7. The Hearing Officer concluded that the opinions expressed by Bouwer were "not applicable in my view as a matter of law and fact." *Id.* at 20.

In spite of such stunning criticism, Bouwer has done nothing to correct the deficiencies that were noted by the Hearing Officer in the *Smyth* case.

> Question: So, my question is, has anything changed in terms of your own field reviews since this report [the Smyth report] was issued?
>
> Answer: No, it's not.

(T., 9/30/04, p. 179) His opinions should be similarly dismissed by the Board in this case.

F. There are no threatened fish in the unnamed tributary.

Charles Gougeon, a fish biologist with the Maryland Department of Natural Resources ("DNR"), also testified on behalf of the Protestants. Other than giving a fairly comprehensive and entertaining dialog on the evolution of trout and the ideal trout habitat,

Gougeon's testimony was relatively uncontested and inconsequential. (T., 12/7/04, pp. 17-54)

His testimony established the uncontroverted fact that DNR has identified trout in the Fourth Mine Branch, but not in the unnamed tributary. He described the ideal trout habitat as a combination of deep pools and ripples, areas of clear running water, gravel or "rough cobble." He also indicated that trout prefer water temperatures of 68 degrees or below. Finally, he acknowledged that silt and sediment are extremely harmful to trout populations. (T., 12/7/04, pp. 17-54)

Gougeon acknowledged that he had not visited the LRC site other than to view where the unnamed tributary passes through the culvert under Stablersville Road. (T., 12/7/04, p. 26) He likewise conducted no site investigation, performed no field testing or resource assessment, performed no flow measurements, nor did he measure or identify the exact location of the wetland area, the unnamed tributary on the LRC property, or any other feature of the site at issue. (T., 12/7/04, pp. 58-59) In fact, he performed only a limited visual inspection from the stream crossing on Stablersville Road, but admitted that he did not walk any part of the water course either on the LRC site or the north side of Stablersville Road. (T., 12/7/04, pp. 58-59)

Although he expressed opinions regarding the expected temperature spikes resulting in water bodies as a result of stormwater discharges, he spoke only in generalities and had no direct knowledge or understanding of the conceptual stormwater management plan for the LRC. (T., 12/7/04, pp. 68-69) In fact, he rendered no opinion regarding its potential effect on the unnamed tributary. In summary, though his testimony was educational and, at times, entertaining, it did little to advance Protestants' claims.

G. Field investigation by Loyola's ecologist confirmed the absence of the detrimental impact.

In rebuttal to both Bouwer and Gougeon, Loyola produced Joseph Berg, an ecologist with Biohabitats, Inc. In contrast to Protestants' witnesses, Berg visited the site on five separate occasions. He verified the location of the wetland area and the perennial stream and, in fact, walked the entire water course from its beginning in the wetland area on the LRC site to the area where the unnamed tributary eventually empties into the Fourth Mine Branch. (T., 1/04/05, pp. 193-200) He performed resource assessment of the portion of the perennial stream, identified the numerous fish barriers in the unnamed tributary, measured distances, conducted flow measurements and documented his work with photographic evidence. *See* Petitioner's Exhibit 34. In contrast to the rank speculation and assumptions of both Bouwer and, to a limited extent, Gougeon, Mr. Berg's testimony has far greater value due to the actual field work he conducted.

(1) The area adjacent to the proposed stormwater outfall is "ephemeral" or only occasionally wet.

As Mr. Berg explained, he measured the distance from the proposed stormwater discharge outfall to the beginning of the perennial stream at 675 feet. (T., 1/04/05, pp. 195-196, 229) Walking in a west, northwest direction, Berg described in exact detail, through the help of photographic evidence the full measure of the wetland area and perennial stream. (T., 1/04/05, pp. 194-208) He first described the wetland or "spring" area that had been identified as the "headwaters" of the unnamed tributary. (T., 1/04/05, p. 195) Berg testified that the wetland area is **not** the stream itself, but rather continues for approximately 535 feet before it even begins to form into an identified stream or water course. (T., 1/04/05, pp. 195-196)

Berg described the wetland area as an "ephemeral," or occasional, wet area which he described as an area only have "flowing surface water for a short period of time, two or three days after a single precipitation event." (T., 1/04/05, p. 195) In fact, he noted that the area from the beginning of the wetland area to the point where it forms an identifiable stream would not be wet after every precipitation event, but only larger ones. He noted that several times throughout the year, the area would be "fairly dry." (T., 1/04/05, p. 196)

At the place where the wetland area begins to drain into a defined water course or "perennial stream," it is joined by other drainage areas, seeps, and flow channels. Berg measured the flow rate of the stream at the vicinity of the Stablersville Road at .17 cubic feet per second. This flow rate is magnitudes higher than the flow estimated by Bouwer at the beginning of the headwaters. Accordingly, Berg confirmed that the contribution of the wetland area on the LRC site is at best $1/7^{th}$ or $1/8^{th}$ of the total flow that contributes to the perennial stream flow. (T., 1/04/05, pp. 206-208) Berg's measurements identified yet another flaw in Bouwer's model and calculations. Bouwer did not account for the numerous other water sources that contribute flow to the perennial stream. These numerous other water sources the volume of which obviously increase following a storm event, further dilute and offset the temperature increases that may result from a stormwater discharge, thus making Bouwer's testimony increasingly suspect.

(2) The perennial stream disperses into numerous unchannelized areas and is not conducive to supporting fish habitat.

As noted, Berg walked the entire length of the unnamed tributary and described in detail the significant change in the water course after it passes under Stablersville Road. Berg testified that the unnamed tributary continues in a channelized flow for only a short distance following the culvert crossing at Stablersville Road. Berg noted that after passing

through the culvert, the stream "widens out." (T., 1/04/05, p. 205) Rather than being confined to a single running water course, the remnants of the stream fans out through an area of shallow grass. Berg testified that the water is not even an inch deep in this area. (T., 1/04/05, p. 206)

The unchanneled portion of the stream continues for a considerable distance and eventually once again forms into a shallow channel before it once more disperses into unchanneled flow in a cattail marsh. The presence of the cattail marsh is an indication that the stream is shallow and pools in this area. As was noted by Berg, this is **not** good trout habitat. (T., 1/04/05, pp. 205-206)

At this point, the unchanneled flow has lost its tree canopy and is subject to warming because it is uncovered and not flowing. Berg testified that in such areas, organic material will decompose which will take oxygen out of the water. Oxygen levels in water are depleted as a result of thermal warming and the decomposition of organic material. This, Berg noted, is detrimental to trout. (T., 1/04/05, p. 208)

Near the end of the unnamed tributary, in the area where it discharges to the Fourth Mine Branch, Berg identified a utility pipe that, apparently, drains water from the cattail marsh area. Berg testified that, due to the impediments at this point of entry, it is highly unlikely that trout would exit the Fourth Mine Branch into this unnamed tributary. A trout would have to make it into and through the utility pipe, "hike up his fins and crawl" across the oxygen-depleted cattail marsh, scramble through a braided path of water channels with water "not even an inch deep," traverse a narrow, trash-filled channel, jump one foot in the air to reach the culvert under Stablersville Road, and maneuver through the twenty-foot long culvert in one inch deep water, all to reach a "silty" tributary devoid of trout habitat. (T.,

1/04/05, pp. 202-211, 242-244) Berg concluded that trout would bypass the unnamed tributary because there are "more suitable streams as you progress upstream or downstream from this point" off of Fourth Mine Branch for trout to utilize as spawning ground. (T., 1/04/05, pp.211-212)

(3) There are no fish in the unnamed tributary.

Berg, again in stark contrast to Bouwer and Gougeon, conducted tests to determine whether, in fact, there were any fish in the perennial stream portion of the unnamed tributary on the LRC site. Utilizing this same equipment that Protestants' witness identified as being used by DNR, Berg "electroshocked" the entire portion of the perennial stream on the LRC site. Starting at the Stablersville Crossing, Berg inventoried the entire portion of the perennial stream on the LRC site and found no fish of any type. (T., 1/04/05, pp. 213-216) Berg also testified that the stream was highly "imbedded," which is the measure of how "clogged" or covered a stream area is with fine silt. Both Berg and Gougeon testified that clear running water and gravel bottom are essential elements to trout habitat. (T., 1/04/05, pp. 217-218) Berg testified and showed photographs of numerous areas of the perennial stream that were heavily covered in silt and other fine sediment. Berg testified that agricultural activity in this area is probably the cause of the heavy silting of the perennial stream on the LRC site. (T., 1/04/05, pp. 216-217)

Berg did not find any fish in the perennial stream and testified that it was highly unlikely that the unnamed tributary would or could be utilized as fish habitat. (T., 1/04/05, pp. 213-216, 244) This is because the heavily embedded nature of the stream, the numerous fish barriers that exist along the unnamed tributary which include the significant culvert crossing at Stablersville Road, numerous prolonged areas of unchannelized dispersed flow,

considerable areas of shallow stagnant water on the north side of Stablersville Road, numerous plunge pools and trash and other debris in the water course. (T., 1/04/05, pp. 202-204, 205-208, 212-218)

(4) Stormwater Discharges from the LRC will have No Impact on Aquatic Resources at the LRC Site.

Berg disagreed with Bouwer's opinion regarding the potential impacts of the stormwater management system. Contrary to Bouwer, Berg actually measured the flow of the perennial stream and found it to be magnitudes higher than what Bouwer had estimated. (T., 1/04/05, p. 226) This significantly undermines Bouwer's calculations of the thermal impact resulting from the stormwater discharge in that the base flow in the perennial stream will dilute whatever impact occurs from any stormwater discharge to a far greater extent than estimated by Bouwer.

Berg described in detail the use of the LRC stormwater bioretention facility and its impact on discharges from the LRC stormwater management pond. He noted that 93% of the storm events in any given year will not result in any discharge from the LRC stormwater management pond. (T., 1/04/05, p. 222) The first inch of rainwater of every storm will be captured in the infiltration systems which Berg described as MDE's "best management practice." (T., 1/04/05, p. 227) He noted that the Bahr Report, upon which Bouwer relied, "used an earlier form of stormwater management, which we are not proposing here." (T., 1/04/05, p. 226) Berg testified that the LRC stormwater management approach plans to utilize a bioretention facility to filter the first inch of rainwater from every storm event back into the water table. As noted by Berg, "it doesn't get any better than these bioretention facilities for water quality treatment." (T., 1/04/05, p. 228)

Finally, Mr. Berg field measured the distance from the stormwater management pond

discharge to the area of the perennial stream and found it to be 675 feet. (T., 1/04/05, pp. 195-196, 229) Berg explained that, as stormwater makes its course through the wetland or ephemeral stream area towards the perennial stream, there will be significant evaporation, cooling and other temperature attenuation of the stormwater before it reaches the stream. (T., 1/04/05, pp. 229-230) He noted that stormwater will be slow moving through the wetland area where it will be absorbed by leaves and soil as well as evaporation which will occur over the full distance of the 675 feet. (T., 1/04/05, pp. 229-230) Bouwer claimed that distance from the outfall of the stream was 110 feet. In fact, Berg field measured the distance from the outfall to the wetland area at 140 feet. (T., 1/04/05, p. 195) This is **not** a perennial watercourse, but rather the "ephemeral" or occasionally wet seep area. Furthermore, as noted above, at the time it joins the perennial stream, there are numerous other water courses and gullies that are contributing flow in this area. Any temperature impact that may be occasioned by stormwater discharges at the LRC site will be dissipated by the time it joins the perennial stream.

On the environmental issues, when the Board weighs the evidence presented against the standard articulated by Maryland's appellate courts – that, to deny the special exception, the Board must find adverse impacts that are **more than ordinarily expected** and that are **unique to a particular location** – it should easily find that Loyola is entitled to the relief. Based on the expert witness testimony of Sheesley, Mills, and Berg, Loyola sufficiently demonstrated that there will be **no adverse impacts** from the proposed Loyola Retreat Center on either the health, safety, or the general welfare of the community or on the environmental and natural resources on-site or in the vicinity either in terms of the proposed wells and expected water usage, septic system and resulting discharge, or stormwater

management system and its relationship to adjacent wetlands, unnamed tributary, and the even more distant off-site stream. Protestants failed to rebut this convincing evidence with any credible evidence to the contrary.

Congestion in Roads
(BCZR Section 502.1.B)

In an effort to defeat Loyola's proposed retreat center, Protestants attempted to convince the Board of Appeals that the roads in the vicinity of the Loyola property, particularly Stablersville Road, are different from other country roads that run throughout Baltimore County's approximately 130,000 acres of RC-2 zoned property and that the additional traffic to be generated by the LRC would have a unique detrimental impact on these roads.

Protestants' argument must fail at the outset because they have failed to demonstrate that the proposed facility will result in **any** detrimental impact, much less a **uniquely** detrimental impact. The problem identified by Protestants – that farm equipment cannot maneuver along Stablersville Road without conflict with other vehicles – already exists and has not been caused by, nor will it be made worse by the presence of the LRC. As Protestants' own photographs demonstrate, the condition of the road and the presence of farm equipment, which no vehicle – no matter what size – could pass, already exists. The minimal amount of traffic expected to be generated by the facility during its 160 days of operation will not make this situation worse.

As Mr. Sawyer explained, for the student retreats, Loyola will require attending students to use the provided bus transportation unless exigent circumstances dictate that a particular student drive separately. (T., 9/14/04, pp. 66-70) Some of the attending faculty members would ride with the students, although the others could, potentially, drive

separately. (T., 9/14/04, p. 69) Depending upon the number of retreatants and faculty, Loyola would utilize either twenty-two passenger buses or forty-four passenger buses. (T., 9/14/04, pp. 66-69) *See also* Petitioner's Exhibits 5A-D. Therefore, even at the maximum capacity of 105 persons, the maximum number of vehicles expected would be three buses with the possibility of two or three cars driven by faculty. (T., 9/14/04, p. 69)

Loyola would also coordinate the use of buses for faculty retreats to ensure that no more than thirty-five vehicles used the parking lot. (T., 9/14/04, p. 77) (It is this type of retreat, generating forty vehicles in and out of the facility, that Loyola's traffic expert, Wes Guckert of The Traffic Group, Inc., used as his "worst case" scenario in preparing his Traffic Impact Analysis, submitted to the Board as Petitioner's Exhibit 28, discussed in detail below.) Otherwise, there would be collection of trash and recyclables once a week. (T., 9/14/04, pp. 77-78) Additionally, Loyola anticipates miscellaneous deliveries, such as food and linen service. (T., 9/14/04, pp. 68, 74) This use is simply not expected to add many vehicles to the surrounding roads.

In fact, as traffic expert Wes Guckert explained, over the course of a year, the LRC will produce **less traffic on the roads than one single-family house** and will not have any adverse impact on the surrounding roadways. (T., 9/29/04, p. 128) Before the Board, Mr. Guckert appeared and testified that he had reviewed the existing traffic conditions in the area, conducted traffic counts, and analyzed this information in light of the anticipated use of the Loyola property. (T., 9/29/04, pp. 111-129) He then prepared a report summarizing his research, analysis, and conclusions, which was submitted as Petitioner's Exhibit 28.

First, Mr. Guckert confirmed that the Loyola property does not lie within a deficient traffic shed according to Baltimore County's Basic Services Transportation Area Map. (T.,

9/29/04, p. 114) Guckert next identified the three intersections closest to the property, Maryland Route 45 (York Road) and Stablersville Road, Stablersville Road and Stablers Church Road, and Stablers Church Road and Downes Road. (T., 9/29/04, pp. 114-119) Utilizing the traffic count data collected by his company, Guckert then analyzed the three intersections under the Critical Lane Volume (CLV) Methodology, accepted by Baltimore County and the Maryland State Highway Administration, and confirmed that all three are currently operating at level of service "A. (T., 9/29/04, pp. 114-119) By way of reference, level of service "D" or better is typically considered to be acceptable for intersection operations. (T., 9/29/04, p. 119) None of the intersections are "even close to level of service "B." (T., 9/29/04, p. 119)

Mr. Guckert then considered the "worst case" scenario in terms of traffic generated by the retreat center, which would involve a faculty retreat with up to 40 vehicles, and performed an analysis of the impact on the surrounding roadways. (T., 9/29/04, pp. 121-123) *See also* Petitioner's Exhibit 28, Exhibit 4. Even under the "worst case" scenario, the studied intersections would remain at levels of service "A." (T., 9/29/05, p. 123) *See also* Petitioner's Exhibit 28, Exhibit 7.

Additionally, Mr. Guckert conducted a "link capacity analysis" or an analysis of two roadway segments using the Two-Lane Highway Methodology contained in the Highway Capacity Manual. (T., 9/29/04, pp. 119-120) Under this analysis, Guckert confirmed that "the link capacity analysis shows that we are dealing with good levels of service" both now and with the anticipated traffic from the LRC. (T., 9/29/04, p. 120) He also confirmed that adequate sight distance exists from the private drive at Stablersville Road. From his measurements, sight distance is 400 feet to the east and 675 to the west, well in excess of the

300 feet required by Baltimore County. (T., 9/29/04, pp. 126-127)

Based on the existing conditions of the surrounding roadways, which, in his opinion, are "typical rural roads," the relatively short distance from I-83 (one mile), and the minimal amount of traffic associated with this use, Mr. Guckert was confident that the proposed facility would have no impact on the operation of these roads. (T., 9/29/04, pp. 124, 128-129) Protestants offered no expert testimony in rebuttal.

Potential for Fire, Panic or other Danger
(BCZR Section 502.1.C)

As Mitchell Kellman, expert land planner, testified, the proposed facility would meet all applicable building code requirements, including having sprinklers, and Loyola has agreed to provide a 10,000 gallon underground fire protection tank to provide additional protection. (T., 9/29/04, pp. 42-43) *See also* Petitioner's Exhibit 2. Loyola has proposed no operations inside the facility that would result in an unsafe condition in terms of fire, panic, or other danger. Protestants presented no evidence or testimony to the contrary.

Overcrowding of the Land/Undue Concentration of Population
Interfere with Adequate Light and Air
(BCZR Section 502.1.D and F)

Charles Alexander, architect, testified regarding the design of the retreat building for Loyola. (T., 9/14/04, pp. 115-156) He explained that his intention with regard to both the location and design of the building was to create a quiet, secluded environment for the retreatants. (T., 9/14/04, pp. 125, 127-129, 131-134, 139-140) By working with the existing topography and vegetation, he was able to choose a location on the site whereby the visibility into the site was minimized and the privacy within the site was maximized. (T., 9/14/04, pp. 129, 131-133, 137-140)

Referring the Board to his building elevations, he described the building he designed

as "agrarian in character" because it would be broken up into smaller pieces and would be constructed of natural materials. (T., 9/15/04, pp. 137-140, 144-145) *See also* Petitioner's Exhibits 18 and 19. Working with the existing hillside, Alexander was able to design a two-story structure with the look and feel of a one-story structure, thereby reducing its massing. (T., 9/15/04, pp. 127-128, 133-135, 140-141) Having described his work on the project, Alexander then opined that, because of the limited amount of disturbance on site and the large size of the property relative to the proposed building, the retreat facility would not have an adverse impact on the surrounding area in terms of size or scale, increased population, adequate light or air, or general concerns over aesthetics. (T., 9/15/04, pp. 147-149)

Mr. Kellman testified in agreement with the position taken by Mr. Alexander and opined that no overcrowding of the land or undue concentration of population would result given the "very small building area...on a big piece of property" and that all applicable height and setback requirements were being met. (T., 9/29/04, pp. 43-44) Kellman also noted the large buffers and open areas that would still exist between the proposed use and any neighboring property. (T., 9/29/04, p. 44)

Interfere with Adequate Provisions of Public Services (BCZR Section 502.1.E)

With regard to any potential impact on adequate provisions for "schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements," Loyola produced the testimony of Mitchell Kellman, expert land planner, and Wes Guckert, expert traffic engineer, whose testimony on transportation and traffic issues is addressed above.

Mr. Kellman testified on whether the proposed use will "[i]nterfere with the adequate provisions for schools, parks, water, sewerage, transportation and other public requirements, conveniences or improvements." The facility, in his opinion, is self-contained use with a temporary population and will not utilize or impact public facilities such as schools, parks, water, or sewerage. (T., 9/29/04, p. 45) Being RC-2 zoned land, the site does not have access to public water and sewer and is served by well and septic, which issues are addressed above.

Inconsistent with RC-2 Zoning Classification (BCZR Section 502.1.G)

See Section II.C. below.

Inconsistent with Impermeable Surface/Vegetative Retention Provisions (BCZR Section 502.1.H)

The RC-2 zone has no limitation on impermeable surface, nor any vegetative retention requirements. That being said, although not directly applicable, when compared to coverage limitations contained in other Resource Conservation zones, the impervious coverage proposed at the Loyola site is **well below** that permitted in these other zones (RC 4 zone - 10%; RC 5 zone - 15%). Loyola's expert land planners testified that the proposed improvements, as shown on Petitioner's Exhibit 1, would result in a total impervious coverage area of only 1.66 acres of the entire site, which is **1.5%** of the 107 acre Spruill/Clarke property and **3.1%** of the 53 acre Loyola property. (T., 9/29/04, pp. 21-23, 44, 157-158)

2. The Proposed Facility will not be Detrimental to the Agricultural Uses in the Vicinity (Section 1A01.2.C), nor Inconsistent with the Property's RC-2 Zoning Classification (Section 502.1.G).

According to BCZR Section 1A01.2.C, Loyola has the additional burden of

demonstrating that "the use would not be detrimental to the primary agricultural uses in its vicinity." At the hearing before the Board, Protestants wrongly suggested that Section 1A01.2.C required Loyola to prove that the proposed use of the property would "support" or be beneficial to such agricultural uses. There is no such requirement.

The clear language of Section 1A01.2.C indicates that any requirement to show support or benefit **only** applies to the "agricultural-support" uses listed under Section 1A01.2.C.29 (referred to as "Item 29"). The Court of Special Appeals recognized this distinction in *Hayfields, Inc. v. Valleys Planning Council, Inc.*, when it contrasted the requirements for a special exception for a country club and those for a special exception for agricultural-support uses, such as farm-machinery sales, feed or grain mills, and fertilizer sales or storage uses. 122 Md. App. 616, 664-649. Because the special exception uses sought by Loyola are under Items 4, 6, and 23 of Section 1A01.2.C and not Section 1A01.2.C.29, the support or benefit requirement simply does not apply.

As it was required, Loyola produced strong and substantial evidence that the proposed facility **will not be detrimental** to the agricultural uses in the vicinity and, as required by Section 502.1.G, **is not inconsistent** with the property's RC-2 zoning classification. On this point, expert testimony was offered through former County department heads, George Gavrelis (Planning) and Robert Sheesley (DEPRM), and land planner and noted zoning expert, Mitchell Kellman, who has over ten years of experience in administering and applying Baltimore County's zoning and development regulations. In forming their opinions, each of these witnesses found particularly convincing that the Spruill/Clarke farm, the site of the proposed retreat center, is on the "edge," "fringe," or "border" of an agricultural area located to the east of the property, making it more of a

"transitional area" and that a large portion of the farm will continue to be available for agricultural use. (T., 9/14/04, pp. 173-174, 177) (T., 9/29/04, pp. 47-50, 163-165, 169-171)

As Mr. Gavrelis explained, the Spruill-Clarke farm is "the first farm east of York Road" and "the one closest to major circulation in terms of York Road...and its interface with the I-83 interchanges." (T., 9/29/04, pp. 164, 171) The Spruill-Clarke farm, especially south of Stablersville Road where the special exception area is proposed, is more closely associated with I-83, York Road, and the residential homes along York Road and Miller Road than it is with any of the agricultural uses to the east. (T., 9/29/04, pp. 151-153, 169-171) In Gavrelis' opinion, south of Stablersville Road, "[t]he **primary** use seems to be **residential**. Any **agricultural** use is really **incidental**." (Emphasis added) (T., 9/29/04, pp. 152-153) (Also, as confirmed by Mr. Kellman, even more houses will be built in the near future immediately to the east of the Spruill-Clark farm across York Road. (T., 9/29/04, pp. 48-49))

The surrounding area is not pristine farmland, nor is it made up of primarily agricultural uses. *See* Petitioner's Exhibit 21 (aerial photograph). (T., 9/29/04, pp. 152-153) On this issue, Mr. Gavrelis likened the surrounding vicinity to that involved in the *Hayfields* case in which he testified as an expert land planner. (T., 9/29/04, p. 171) In *Hayfields*, in considering the issue of "detriment to the primary agricultural uses in the area," the Board of Appeals specifically found that "the effects of development have already been realized in the [Hayfields Farm] vicinity." 122 Md. App. at 648, n. 23. The area around the Spruill/Clarke farm is similarly already impacted by development not related to Loyola's proposal.

Mr. Gavrelis then focused from the surrounding area to the 10.18 acre special

exception area on the 107 acre farm. Gavrelis emphasized that the amount of impervious area involved in the full build-out of the LRC, including buildings, paving, roads, sidewalks, etc., is only **1.66 acres** of the 10.18 acre special exception area. (T., 9/29/04, p. 156) Only 16.3% of the special exception area itself, 3.1% of the 53 acre Loyola property, and 1.5% of the entire 107 acre Spruill/Clarke property will be impervious. (T., 9/29/04, pp. 157-158) The remainder of the 54 acre Spruill/Clarke property and a large majority of the Loyola property will be farmed, available for farming, or, at least, open. (T., 9/29/04, pp. 157-158)

Gavrelis noted that the building site, itself, as shown on Petitioner's Exhibit 21, is "well-buffered and protected." (T., 9/29/04, pp. 161, 163) The building site is surrounded on three sides by forest, and, on the east side, it is bordered, not by an agricultural use, but by a private road and other residential homes. *See* Petitioner's Exhibit 21. This insulation not only protects the neighboring properties from any alleged impacts from the LRC, such as lights or noise, but also protects the LRC from any such impacts from its neighbors.

Based on his understanding of the proposed use, as explained by Loyola's representatives and the other witnesses, his many years of experience in Baltimore County zoning and land planning issues, and his analysis of the site and the surrounding area, Mr. Gavrelis opined that the proposed use is "highly compatible with the general agricultural uses...within the area," and is a use that "certainly is not inconsistent with the purposes of an R.C. 2 zone." (T., 9/29/04, pp. 159-161)

Mr. Gavrelis's conclusion seems obvious in light of the proposal before the Board with its 54 acres being retained for agricultural purposes; its 1.66 acres or 1.5% of impervious area on the entire 107 acre parcel; its modest, unobtrusive two-story building designed to fit into the community in terms of style and materials; its respectful, quiet,

sometimes silent, retreatants; its limited use both in terms of number of calendar days and persons (no more than 160 days a year, no more than 150 persons on site at any time); its unobtrusive lighting; and its low trip generation numbers.

Mr. Kellman and Mr. Sheesley both testified in agreement with these conclusions and, further, emphasized the property's close proximity to major roads, being less than one mile from York Road and I-83. (T., 9/14/04, pp. 184-185) (T., 9/29/04, pp. 41-42, 50) Both found it to be significant that the use will generate few additional vehicles and, therefore, will not impact traffic on the surrounding roads. (T., 9/14/04, pp. 184-185) (T., 9/29/04, pp. 41-42, 50) Over the course of a year, the resulting traffic from the retreat center will be **less than one single-family house**. (T., 9/29/04, p. 128) Sheesley considered the limited amount of traffic to be generated important given his experience with the agricultural community frequently opposing new development of all kinds on the basis of the argument that additional traffic on the rural roads will hamper the movement of farm equipment and impact agricultural operations. (T., 9/14/04, p. 185)

Mr. Sheesley's prediction was correct. Protestants have, in fact, argued that the LRC will impact the movement of farm equipment on the roads and that it will have a demoralizing, detrimental impact on the agricultural operations in the area. To Protestants' way of thinking, any RC zoned property put to non-agricultural use will result in a "domino-type effect where development of one farm triggers reduced investment by other farmers in their farm." *Hayfields*, 122 Md. App. at 648, n. 23. This argument has been used before countless times by the agricultural community, and the Board of Appeals has considered and rejected it. *Hayfields*, 122 Md. App. at 648, n. 23.

The prediction of a detrimental impact, made primarily by Paul Solomon, Protestants' land planner, is not supported by any hard facts, nor does it hold up against close examination. Loyola's proposed use of the property, as described by its many witnesses without contradiction, is incapable of having the results predicted. Solomon acknowledged, on cross-examination, that the agricultural community does not always make this argument in good faith: "[s]ometimes their arguments are valid. Sometimes they are just throwing everything they can at this Board." (T., 12/07/04, p. 177) Loyola submits that this is one of the cases where the agricultural community is "throwing everything they can at the Board" and hoping that one of their arguments sticks.

Based on the strong and substantial evidence presented by Loyola, the Board should easily conclude that the LRC will not, in any way, detrimentally impact the agricultural uses in the vicinity -- much less have any **unique** adverse impacts sufficient to deny the special exception request -- and that it would be consistent with the property's RC-2 zoning classification.

III. LOYOLA DEMONSTRATED THAT THE REQUESTED NON-DENSITY TRANSFER SHOULD BE GRANTED.

Loyola has also requested approval of a Petition for Special Hearing to permit a "non-density transfer" or, rather, "non-density retention" of 54 acres of the total 107 acres by the Spruill/Clarke family to utilize that portion of the property for agricultural purposes. The Zoning Commissioner's Policy Manual permits the transfer of RC-2 zoned property for "non-density purposes such as access, or agriculture...provided that the end result does not permit a re-subdivision into a greater number of lots." *See* Memorandum Exhibit 8. At the hearing, Loyola demonstrated that this condition is met by the proposal.

As Mr. Kellman explained, the 107 acre parcel, which resulted from the approval of a minor subdivision plan by Baltimore County in December of 2002, has one density unit associated with it. (T., 9/29/04, pp. 52-54, 59) *See* Protestants' Exhibit 6. Loyola seeks to utilize the one available density unit to construct the retreat facility on the 53 acre piece. (T., 9/29/04, p. 55) The Spruill/Clarke family would like to "retain" the other 54 acres for agricultural use. Once separated from the 53 acres to be used by Loyola, the 54 acre Spruill/Clarke piece will have no density rights associated with it. (T., 9/29/04, p.55) Therefore, the Spruill/Clarke piece will not be capable of further subdivision, and Mr. Spruill signed an Affidavit confirming his understanding of this fact. *See* Petitioner's Exhibit 26. The requested non-density "retention" will not result in a re-subdivision into a greater number of lots, and, therefore, Loyola has met its burden with regard to the requested Petition for Special Hearing.

During the Board's hearing, Protestants' counsel, in challenging the accuracy of deed references relating to the property, questioned the existence of the remaining density unit on the 107 acre parcel. However, this issue is not properly before the Board. The minor subdivision plan, which confirmed the existence of the density unit, was approved in December of 2002, and no appeal was taken to that approval. Issues related to that plan, such as density have become final and are not subject to challenge.

Further, as the Chairman of the Board of Appeals properly ruled during the hearing, this issue, in any event, is a "development plan issue." (T., 1/04/05, pp. 93-94) As such, because Protestants never raised this as an "unresolved" issue during the Hearing Officer's Hearing, and they neither raise it in their Petition on Appeal, nor during oral argument, they

have waived any right they might otherwise have had to raise it now. *See* Section I.B.4 of this Memorandum and the authorities cited therein.

IV. LOYOLA PRESENTED STRONG AND SUBSTANTIAL EVIDENCE THAT THE 35 PARKING SPACES PROVIDED ARE SUFFICIENT.

Loyola also filed a Petition for Special Hearing to confirm that the 35 parking spaces provided on site are sufficient to support the proposed use. The vast majority of students, faculty, administrators, and staff participating in retreats would be traveling to the facility by way of school-owned buses. (T., 9/14/04, pp. 66-70) As Mr. Sawyer explained, students attending the retreats will be required, absent special permission for unusual circumstances, to use the bus transportation provided by Loyola. (T., 9/14/04, pp. 66-70) *See also* Petitioner's Exhibits 5A-D. Some members of the attending faculty would also ride the bus. (T., 9/14/04, p. 69) For faculty retreats, Loyola would also coordinate the use of buses to ensure that no more than thirty-five vehicles used the parking lot. (T., 9/14/04, p. 77)

With the vast majority of students and faculty using the buses, based on Loyola's experience with conducting similar retreats, the 35 parking spaces provided would be more than sufficient to support the use. (T., 9/14/04, p. 69) This opinion was confirmed by Mr. Kellman, who indicated his belief that the parking lot would not be "at full capacity." (T., 9/29,04, pp. 17-18). Protestants offered no evidence to the contrary, and the Board of Appeals should, therefore, grant the Petition for Special Hearing.

CONCLUSION

For all the above-stated reasons, Applicant/Petitioner Loyola College in Maryland respectfully requests that the County Board of Appeals of Baltimore County affirm the Hearing Officer's approval of the Loyola College Spiritual Retreat Center development plan

and grant the requested Petitions for Special Exception and Special Hearing.

Respectfully submitted,

Robert A. Hoffman /pam

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February, 2005, a copy of the foregoing APPLICANT/PETITIONER'S POST-HEARING MEMORANDUM was mailed to G. Macy Nelson, Esquire, Suite 803, 401 Washington Avenue, Towson, Maryland, 21204, Attorney for the Protestants; and to Peter M. Zimmerman, Esquire, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

Robert A. Hoffman /pam

ROBERT A. HOFFMAN

TO1DOCS1/200089 v1

8/31/05

DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING & EXCEPTION LOYOLA COLLEGE SPIRITUAL RETREAT CTR N & S/S Stablersville Road @ NE Corner York Road 7th Election District 3rd Councilmanic District Legal Owner(s) Loyola College in Maryland	*	BEFORE THE COUNTY BOARD OF APPEALS CASE NO.: 04-337-SPHX

RECEIVED
AUG 3 1 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Memorandum of People's Counsel on the Master Water & Sewer Plan

I. Introduction

People's Counsel for Baltimore County files this pre-hearing Memorandum in the Special Exception case on the limited issue of compliance with the Master Water and Sewer Plan. The proposed use requires an amendment to the Master Water and Sewer Plan ("Plan"), a decision that rests solely with the Baltimore County Council. It is premature for the CBA to consider the zoning petition (and the development plan) prior to consideration of this issue by the Council. This Memorandum reviews the standards of the Maryland statutes in light of the facts of this case presented by Petitioner before the Zoning Commissioner/Hearing Officer ("Mr. Schmidt").

The water and sewer plan issue must be addressed anew by the CBA as part of the special exception *de novo* hearing. Charter Sec. 603. Boehm v. Anne Arundel County 54 Md.App. 497 (1983); Pollard's Towing v. Berman's Body Frame & Mechanical 137 Md.App. 277 (2001). As a matter of law, the special exception must be denied under BCZR 502.1 A.and E., or dismissed under BCZR 600, for Petitioner's failure to comply with Maryland Ann. Code Section 9-501 *et. seq.* (Concomitantly, the decision of the Hearing Officer must also be reversed because it is legally erroneous, arbitrary and

capricious, and procedurally unlawful. The Hearing Officer is not a rubber stamp for DEPRM's recommendations but must review independently DEPRM's findings and conclusions and reach a decision on the merits. Here, Mr. Schmidt deferred to DEPRM, without even reviewing whether the "methodology" complied with the Guidelines and the provisions of Maryland Ann. Code Section 9-501 *et seq.*).

II. Standing and Issues

People's Counsel is interested in this case in order to defend the Master Water and Sewer Plan pursuant to Section 524.1(b) of the Baltimore County Charter. The Court of Appeals, as well as the Zoning Commissioner and County Board of Appeals, have confirmed the standing of this office in many development and zoning cases which involve land use, including master plan and zoning issues, covered by the broad charter mandate. (See Memorandum of Standing of People's Counsel filed with the Zoning Commissioner in this case.)

The issue here is two-fold:

1. Does the "Maryland Department of the Environment Guidelines – Draft – March 19, 2001", insofar as it allows "averaging" in the calculation of water and sewer usage, comport with the Maryland Annotated Code and Code of Maryland Regulations (COMAR), particularly the definition and standards for "multiuse sewage system" and "multiuse water supply system"?

2. If the Guidelines are legitimate with respect to "averaging," can the Developer disregard the formula for averaging water usage in the Guidelines, and substitute its own formula?

A "multiuse sewage system" is a system that "Has a treatment capacity of more than 5000 gallons a day;" under Md. Ann. Code Environment Article, Section 9-501 (i) (3) (hereafter "statute"). Similarly, a "multiuse water supply system" is defined in Section 9-501 (j) (1) as an individual water supply system that "Has the capacity to supply more than 5000 gallons of water a day;"

Loyola admits the proposed retreat center will generate and use more than 5000 gallons of water a day for several retreats during the course of the year. Indeed, it appears that for every day of an active retreat, even the first phase of the two-phase project will generate 7085 gallons per day. The ultimate usage will be 11,445 gpd for an active retreat day. For those days, it is undisputed the usage more than meets the statute's definition of "multiuse water supply system" and a "multiuse sewage system." State law declares, for each of those systems, that County Council action to designate them in the County Water Supply and Sewage Plan, a part of the Master Plan, is a prerequisite for approval of a development plan or building permit. Md. Ann. Code, Environment Article, Section 9- 503-505, 9-511-12.

III. Conflict With The Statute

First of all, under the definitions in the Maryland Code (Section 9-501 i., j.), the daily "capacity of more than 5000 gallons a day" is the measuring stick. There is no adjustment or exception if less than 5000 gallons are supplied or treated from time to time. In other words, the language in the statute is clear that if the system ever uses or generates more than 5000 gallons on a given day, it has the "capacity" to supply 5000 gallons of water and treat 5000 gallons of sewage, and is a multiuse system. "Capacity" is

synonymous with "ability" and is defined as "the power or ability to hold, receive or accommodate . . . the ability to store, process, treat . . . the ability to yield and to sustain" (Webster's Third New International Dictionary, Unabridged). There is no provision in the Annotated Code for averaging the use. The project must be at or under 5000 gallons on each day to be excluded as a multiuse system. If the proposal is a multi-use system, the administrative agencies must defer to the County Council's decision. The zoning and development plan cases cannot proceed through the administrative process. This is a threshold requirement, based on undisputed material facts in the developer's case. These issues of law are not fairly debatable. A fair and efficient administration of justice requires resolution of the water and sewage plan before the zoning case/development plan is decided.

The developer here suggests that alternative relief is available in the aforesaid Guidelines, which describe "averaging" of usage and treatment under specific conditions. Preliminarily, the legitimacy of any type of averaging is questionable, since there is no provision for it in the statute, and the effect is to undermine the purpose and intent of the state law in 9-501 *et seq.* In general, guidelines can only operate within the parameters of the statute, its meaning and intent. They cannot contradict or vary the language and standards. Vest v. Giant Food Stores, 329 Md. 461, 474-76 (1993). Here, Section 9-501 *et seq* makes no provision for "averaging" the water use or the sewage treatment to avoid inclusion in the Master Water and Sewage Plan. The intent of the statute is to protect and monitor the state's resources, not to provide opportunities for non-compliance. While DEPRM, and in turn the Zoning Commissioner/Hearing Officer, rely here on practices

allegedly derived from the Guidelines, neither administrative function can operate outside the statute. In a recent Court of Appeals case involving the administrative decision of the Price George's County Board of License Commissioners, Paek v. License Commissioners, 381 Md. 583 (2004), Judge Cathell noted that while the Board is authorized to "adopt such reasonable rules and regulations as they may deem necessary to enable them effectively to discharge the duties imposed . . . As this Court has stated, however, **'rules and regulations adopted by an administrative agency must be reasonable and consistent with the letter and spirit of the statute under which the agency acts.'**" (emphasis supplied, citations omitted).

The Court of Appeals has said many times that in order to discern the purpose of a statute, one must consider the context. It reaffirmed this in the recent Board of Physicians v. Mullan 381 Md. 157, 168 (2004),

> **"...we 'avoid constructions that are illogical, unreasonable, or inconsistent with common sense..., and instead interpret and harmonize statutes as a whole, giving meaning and effect to all parts of the statutory language and refraining from interpretations that render any part of a law surplusage or contradictory."**

See Lucas v. People's Counsel for Baltimore County 147 Md. App. 209 (2002).

There is no authority for the alternative averaging in Section 3 f. of the Guidelines in lieu of the straightforward threshold of 5000 gallons a day in the statute. By the developer's admission, there are a number of days when the project exceeds 5000 gallons. Under the definition in the statute, it is a multiuse system as to both water usage and sewage treatment. There would have to be County Council approval to amend and

include the project in the Master Water and Sewer Plan in accordance with County Council Resolution 17-3 in order to sustain its approval.

IV. Conflict With The Guidelines

Secondly, even if averaging is permitted, the developer here exceeds the increased daily usage permitted by the averaging formula in the Guidelines. The Guidelines provide specific means of calculation for projects that "encompass a primary use that generates large maximum daily flows on specific days of the week and significantly less flow on other days . . ." In those instances, "**the average daily flow may be determined by adding the maximum daily flow for each day and dividing the total by 7. Such projects as churches, sports arenas, and fairgrounds may be examples of this type use. The use of flow equalization may be considered when determining the maximum daily flow for these projects.**" (emphasis supplied). If the daily average for the 7 days is less than 5000 g.p.d., the project would not require inclusion in the Master Water and Sewer Plan under an amendment approved by the County Council. No other method of calculation is permitted under the "averaging" exception. The parameters under the Guidelines is a finite period of 7 days. Presumably, it was determined the 7-day averaging is an infrequent exception that allows for very sporadic use in excess of 5000 g.p.d. The examples in the Guidelines suggest the use may occur one or two days per week and most likely not even weekly in the case of sports arenas or fairgrounds.

The developer here admits usage in Phase I of the project of more than 5000 g.p.d for about 50 retreats. Of those 50, 7085 gallons will be used daily for 29 retreats and 5450 gallons for 20 retreats. It appears from Petitioner's data that some retreats in Phase

I with a minimum of 65 participants will be held for 5 days, generating 7085 gallons per day, or nearly 35,500 per week. In Phase II with projected 105 rooms, the daily usage will be 11,445 gallons per day, or 57,225 per week for a 5 day retreat. The usage per week during these retreats exceeds 5000 g.p.d. when the weekly averaging formula exception is applied. These examples are the minimum number of retreats that violate the statute. Petitioner's data for all the retreats is too vague and incomplete to rule with the required certainty that the project will not exceed the maximum capacity of 5000 g.p.d., even if weekly averaging is applied. The Board must review the evidence and the statutes *de novo* in the special exception case, including the findings of DEPRM.

Since the developer cannot comply with the 7-day averaging formula in the Guidelines, it averages the use on an annual basis, rather than weekly, which it would clearly exceed. At the very least, if there is an exception that permits in excess of 5000 gallons per day, the exception must be calculated in accordance with the strict formula in the Guidelines. Without citing any authority for the deviation, the developer here proposes yearly averaging. There is nothing in the Code or the Guidelines to permit annual calculation under the averaging exception proposed by the developer and acquiesced by DEPRM. The Zoning Commisisoner/Hearing Officer deferred to DEPRM without questioning the impertinence of *sua sponte* rewriting the Guidelines. (See p. 15-16 of Zoning Commissioner/Hearing Officer's Decision dated June 10, 2004).

It was erroneous for the Zoning Commissioner/Hearing Officer to "rubber stamp" DEPRM's interpretation of the Guidelines when it is an obvious conflict with the permitted "averaging." Clearly, the developer's calculations show the project will exceed

5000 g.p.d. if the acceptable weekly averaging is applied. To avoid the process whereby the County Council must amend the Plan to include this project, the developer not only claims an exception based on averaging, which itself may be a dubious deviation from the statute, but proposes that the averaging calculations in the Guidelines be tossed aside in favor of its own self-serving methodology. With an apparent nonchalant "no harm, no foul" approach, the developer persuaded DEPRM and Mr. Schmidt to go along.

In other words, if the Guidelines are valid and applicable, whether as MDE policy or as adopted by DEPRM, the agency must follow its own rules and not vary them capriciously to suit a favored applicant. See Jordan Towing v. Hebbville Auto Repair 369 Md. 439 (2002).

V. Conclusion

This is a flagrant violation of the state statute. The CBA must deny or dismiss the special exception for the failure of the Petitioner to satisfy this threshold issue and prerequisite condition. In the interrelated development plan hearing, the CBA must reverse the Hearing Officer's decision based on an error of law. The Board cannot approve a development plan or grant a special exception that violates state law. The developer must obtain an amendment of the Master Water and Sewer Plan for a project that involves a water and sewer capacity in excess of 5000 g.p.d. under the clear language in the statute, or, at the very least, because it does not comply with the 7 day averaging methodology in the Guidelines.

While our focus here is on the Water Supply Plan issue, our office reserves the right to file, along with the other parties, a Memorandum on the general issues in the case in lieu of closing argument, as may be requested by the CBA.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
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(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August, 2004 a copy of the foregoing Entry of Appearance was mailed to G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland 21204, Lynn Jones, 815 Stablersville Church Road, Parkton, MD 21120 and to Robert A Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Carole S. Demilio

CAROLE S. DEMILIO
DEPUTY PEOPLE'S COUNSEL

Protestant #4

IN THE MATTER OF THE APPLICATION OF BEACHMONT, INC. FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SOUTH SIDE OF MT. VISTA ROAD, 1800 FT. SOUTHEAST OF HARFORD ROAD (6433 MT. VISTA ROAD) 11th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE ~~COUNTY~~ No. 85-245-X

Exhibit A

O P I N I O N

This case comes before the Board as an appeal from the Opinion and Order of the Zoning Commissioner, dated March 7, 1985, which granted the Petition for Special Exception for a camp with accessory uses thereto, and, additionally the amendment to the Special Exception granted for this property in Case No. 75-83-X (1974).

Rarely has this Board considered a petition which generated such community interest. The Board notes that both days of hearings were heavily attended and the Board received numerous letters both in support of, and in opposition to the petition. Rather than rehashing the testimony of each of the many witnesses, the substance of same may be summarized as follows:

There exists on this site of some 20 acres, a Christian Camp known as Beachmont. The property is located in an area which features some agricultural uses as well as an upper class residential community in which both protestants and supporters reside. The camp was established in 1974, after a bequest of the land by a benefactor who sought to establish a campground which promoted Christian fellowship and principles. Approval for this camp was originally granted by way of Special Exception, with certain limitations, in Case No. 75-83-X (1974). Since 1974, improvements have been made on this site, including a swimming pool, pavilion and other recreational facilities.

Exhibit B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1686

September Term, 1986

SCOTT STRIENBINGER, ET AL

v.

BEACHMONT, INC.

Weant
Bishop
Bell, Rosalyn B.,
JJ.

PER CURIAM

Filed: July 6, 1987

IN THE MATTER OF THE APPLICATION OF MEADOWCLIFF, A NEW COVENANT CHURCH FOR A SPECIAL EXCEPTION TO PERMIT A CHURCH AND ACCESSORY PARSONAGE N/s OF BELFAST ROAD, 340' EAST OF OLD BELFAST ROAD 8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 85-132-X

: :

OPINION Exhibit C

This case comes before this Board on appeal from a denial of a special exception by the Deputy Zoning Commissioner for a church and accessory parsonage in an R.C. 2 zone. Testimony and evidence received in this case consumed two full days of hearings.

Petitioner presented three witnesses, Mr. Albert Meyers, Petitioner and pastor of the proposed church; Mr. Wesley Guckert, traffic expert; and Frederick Walker, surveyor and land planner. Protestants presented eight witnesses, each of whom testified individually their reasons for the opposition to the granting of this special exception. People's Counsel presented one witness, Mr. Paul Solomon of the Office of Planning & Zoning for Baltimore County, an expert in agricultural purposes. All of this lengthy testimony and evidence is contained within the record produced at these two hearings and is accurately detailed in the memorandums received in this case.

From the testimony and evidence presented by Petitioner, the following statistics evolved. The proposal under the special exception is for a church building ultimately of some 20,000 square feet; a septic drainage area of 17,500 square feet; some 85,000 square feet of paved parking; a two- to three-acre storm water management area; a five- to six-acre area designated for a parsonage; and some 1,400 feet of paved driveway, all of which are to be constructed and used on a parcel of some 51 acres that is now a working farm.

IN THE MATTER OF THE THE APPLICATION OF HILBERT F. CRISTE FOR A SPECIAL HEARING AND SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE NORTHEAST SIDE CUBA ROAD, NORTHWEST OF THE CENTERLINE OF GREENCROFT LANE 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 90-477-SPHX

Exhibit D

* * * * * * * * *

OPINION

This is an appeal from the decision of the Zoning Commissioner for Baltimore County dated August 3, 1990 wherein the Petitioner, Roman Catholic Archbishop of Baltimore Corporation, was granted a special exception for a church and a caretaker's residence as an accessory use with certain restrictions on property zoned R.C. 2 (agricultural). The appeal was filed by the Protestants and a de novo hearing was held before this Board consisting of seven days of testimony. Numerous witnesses appeared and testified both expert and lay. At the conclusion of the hearing, written memorandums were submitted and considered by this Board. Prior to this special exception hearing, the Board in a separate hearing affirmed the decision of the County Review Group ("CRG") approving this project. That decision is on appeal to the Circuit Court for Baltimore County, now pending.

THE LAW

Under the regulations churches or other buildings for religious worship are permitted by special exception in R.C. 2 zones. Section 1A01.2.C.6 BCZR. Before a special exception may be granted by either this Board or the Zoning Commissioner, it is required under the Baltimore County Zoning Regulations (BCZR)

IN RE: DEVELOPMENT PLAN HEARING
E/S of Padonia Road,
N of Broadway Road
8th Election District
2nd Councilmanic District
(**Smyth Property**)

Odessa Development Corporation
Developer/Petitioner

* BEFORE THE
* HEARING OFFICER
* OF BALTIMORE COUNTY
* Case No. VIII-795
*

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

Exhibit E

HEARING OFFICER'S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before the Deputy Zoning Commissioner/Hearing Officer for Baltimore County, as a requested approval of a Development Plan known as the "Smyth Property". The Developer is proposing the development of the subject property into 44 single-family dwellings. The subject property is located on the east side of Padonia Road, north of Broadway Road. The particulars of the manner in which the property is proposed to be developed are more specifically shown on Developer's Exhibit No. 1, the Development Plan entered into evidence at the hearing.

Appearing at the hearing on behalf of the Development Plan approval request were Michael Alderman, John Canoles and Pat Gill, appearing on behalf of Petitioners. Also appearing at the hearing were Chris Hanson, George McCubbin and Dwight Little of Little & Associates, Inc., the engineering firm that prepared the site plan of the property. G. Scott Barhight, Esquire represented the Petitioners.

Appearing as interested citizens in the matter were Ken Sadofsky, Bill Fusting,, Marcia Goldberg, Richard Klein, Marrin Tenberg, J. Mitchell Crook, Carol Kakel and Sheldon & Diane Levin. Also appearing as Protestants were John Adams, David and Kay Gillis, and Kevin and Debra Gavin adjacent property owners who were represented by G. Macy Nelson, Esquire. C. William Clark, Esquire represented Fran Burns, and Frances Fox.

Also in attendance were representatives of the various Baltimore County reviewing agencies; namely, Jeffrey Perlow (Zoning Review), Dennis Kennedy (Development Plans Review), Chris Rorke (Development Management) and William Miner (Bureau of Land Acquisition), all from the Office of Permits & Development Management; R. Bruce Seeley from the Department of Environmental Protection and Resource Management (DEPRM); Anne Roane

IN THE MATTER OF SUBURBAN CLUB PROPERTY; THE OXBRIDGE GROUP -DEVELOPER PDM FILE NO. III-346 3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT	*	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
RE: DECISION OF HEARING OFFICER /DEVELOPMENT PLAN	*	CASE NO. CBA-03-121

* * * * * * * * * *

OPINION

The Development Plan approved by the Hearing Officer on April 3, 2003 was appealed in a timely manner to this Board on April 30, 2003. Thereafter, on May 28, 2003, the Board heard oral argument from Counsel. Developer was represented by Robert A. Hoffman, Esquire, Patricia A. Malone, Esquire, and VENABLE, BAETJER & HOWARD LLP; Appellants /Protestants were represented by G. Macy Nelson, Esquire. The Board received simultaneously submitted post-hearing memorandums from both parties. On June 17, 2003, the Board deliberated the matter in public session.

At that time, a decision was made to remand the case back to the Hearing Officer to determine if additional information was needed to determine if a "special variance" was required under BCC § 14-415. Thereafter, on July 9, 2003, a timeframe was established for hearing (argument) and deliberation of any motion for revision that would be filed subsequent to the issuance of the Board's Remand Order in this matter; and appropriate dates were designated at that time.

On July 14, 2003, the Board issued a Limited Order for Remand whereby the Board remanded the case back to the Hearing Officer "for clarification as to (1) whether a special variance was, in fact, requested by the Developer; and (2) if not, the basis for approval of Forest Conservation Requirement under BCC § 14-407(c) and BCC § 14-413(b)."

On July 29, 2003, the Developer filed a "Motion to Exercise Revisory Power" based on the

Webster's Third New International Dictionary

OF THE ENGLISH LANGUAGE UNABRIDGED

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MEMORANDUM EXHIBIT 2

IN RE: PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION N & S/S Hillside Road, 1600' W of Greenspring Avenue 3rd Election District 3rd Councilmanic District (1426 Hillside Road)	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 00-465-SPHX
Hillside Nominee, Inc. & Gordon E. Sugar, Inc. Petitioners	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner as a Petition for Special Exception and Petition for Special Hearing for the property located at 1426 Hillside Road in the Greenspring Valley. The Petition was filed by Hillside Nominee, Inc. and Gordon E. Sugar, Inc., property owners. The special exception relief requested is for a private school/day camp use with non-illuminated ball fields and one 10,000 sq. ft. school building. Special hearing relief is requested to confirm a reduction in the site area for non-conforming dwellings and to confirm that the proposed 88 parking spaces are adequate to serve the private school/day camp use. The subject property and requested relief are more particularly shown on the site plan to accompany the petitions for special exception and special hearing, marked as Petitioners' Exhibit 2.

After a series of postponements, due to inadequate public notice, the matter was scheduled for public hearing on September 12, 2000. Appearing at the hearing in support of the petition were David E. Jackson from the Park School, Edmund Haile, a civil engineer/consultant from Daft, McCune & Walker, Inc., Michael Staiano, acoustical engineer and Mickey Cornelius, a traffic engineer. Also appearing in support of the request were a number of residents of the locale and supporters of the Park School, including Bob Frankel, Mark Lerner,

10/15/00

IN THE MATTER OF THE PETITIONS FOR SPECIAL EXCEPTION AND SPECIAL HEARING BY HILLSIDE NOMINEE, INC. Property located on the N & S/S Hillside Road, 1600' W of Greenspring Avenue (1426 Hillside Road) 3rd Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No.: 00-465-SPHX

* *

CONSENT ORDER

Irene Maumenee and Niels Maumenee ("Appellants") filed an appeal with this Board after the Zoning Commissioner of Baltimore County granted, by Order dated October 5, 2000, the Petition for Special Exception and the Petition for Special Hearing filed by Petitioner Hillside Nominee, Inc. on behalf of The Park School of Baltimore, Inc. ("Park School"). The Petition for Special Exception sought approval for a private school/day camp use with two non-illuminated baseball/softball fields, two non-illuminated soccer/lacrosse fields, and one 10,000 square-foot school building. The Petition for Special Hearing sought a reduction in the site area for non-conforming dwellings and confirmation that the proposed 88 parking spaces are adequate to serve the private school/day camp use.

The property under consideration, approximately 129 acres zoned RC 2 ("Property"), is irregularly shaped with frontage on Hillside Road, between Greenspring Avenue and Stevenson Road. The 120.9-acre parcel subject to the Petition for Special Exception is located within a National Register Historic District. The adjacent 8.1-acre

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07/23/04 17:25:20.0	60.690
07/23/04 17:30:20.0	60.647
07/23/04 17:35:20.0	60.604
07/23/04 17:40:20.0	60.604
07/23/04 17:45:20.0	60.561
07/23/04 17:50:20.0	60.561
07/23/04 17:55:20.0	60.518
07/23/04 18:00:20.0	60.475
07/23/04 18:05:20.0	60.475
07/23/04 18:10:20.0	60.432
07/23/04 18:15:20.0	60.389
07/23/04 18:20:20.0	60.346
07/23/04 18:25:20.0	60.346
07/23/04 18:30:20.0	60.990
07/23/04 18:35:20.0	63.390
07/23/04 18:40:20.0	67.200
07/23/04 18:45:20.0	68.142
07/23/04 18:50:20.0	69.686
07/23/04 18:55:20.0	70.158
07/23/04 19:00:20.0	70.587
07/23/04 19:05:20.0	70.759
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08/01/04 17:45:20.0	71.146
08/01/04 17:50:20.0	71.017
08/01/04 17:55:20.0	71.146

IN RE: DEVELOPMENT PLAN HEARING E/S of Padonia Road, N of Broadway Road 8th Election District 2nd Councilmanic District **(Smyth Property)**	*	BEFORE THE HEARING OFFICER OF BALTIMORE COUNTY
	*	Case No. VIII-795
Odessa Development Corporation *Developer/Petitioner*	*	

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

HEARING OFFICER'S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before the Deputy Zoning Commissioner/Hearing Officer for Baltimore County, as a requested approval of a Development Plan known as the "Smyth Property". The Developer is proposing the development of the subject property into 44 single-family dwellings. The subject property is located on the east side of Padonia Road, north of Broadway Road. The particulars of the manner in which the property is proposed to be developed are more specifically shown on Developer's Exhibit No. 1, the Development Plan entered into evidence at the hearing.

Appearing at the hearing on behalf of the Development Plan approval request were Michael Alderman, John Canoles and Pat Gill, appearing on behalf of Petitioners. Also appearing at the hearing were Chris Hanson, George McCubbin and Dwight Little of Little & Associates, Inc., the engineering firm that prepared the site plan of the property. G. Scott Barhight, Esquire represented the Petitioners.

Appearing as interested citizens in the matter were Ken Sadofsky, Bill Fusting,, Marcia Goldberg, Richard Klein, Marrin Tenberg, J. Mitchell Crook, Carol Kakel and Sheldon & Diane Levin. Also appearing as Protestants were John Adams, David and Kay Gillis, and Kevin and Debra Gavin adjacent property owners who were represented by G. Macy Nelson, Esquire. C. William Clark, Esquire represented Fran Burns, and Frances Fox.

Also in attendance were representatives of the various Baltimore County reviewing agencies; namely, Jeffrey Perlow (Zoning Review), Dennis Kennedy (Development Plans Review), Chris Rorke (Development Management) and William Miner (Bureau of Land Acquisition), all from the Office of Permits & Development Management; R. Bruce Seeley from the Department of Environmental Protection and Resource Management (DEPRM); Anne Roane

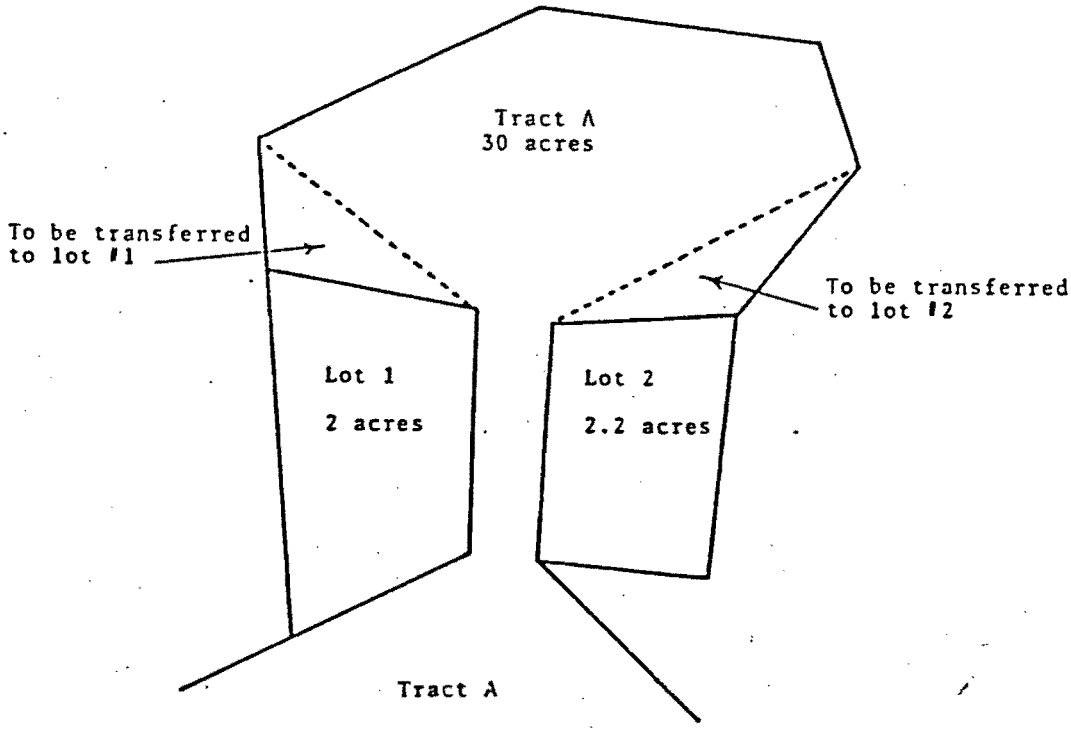
1A00.4.a AMENDMENTS TO DEVELOPMENT PLANS - INDIVIDUAL LOT OWNERS
(See Section 1B01.3.A.7.C Z.C.P.M., Page 1B-21)

1A00.4.b SALE OR TRANSFER OF SMALL PARCELS

(1) The sale or transfer of small R.C. zoned parcels, usually too small to meet the minimum lot size, for non-density purposes such as access, or agriculture, may be permitted.

(2) In an R.C. 2 zone, a parcel could possibly be transferred from the overall development tract to an adjacent existing lot of record provided that the end result does not permit a re-subdivision into a greater number of lots.

(3) Depending on the use and the size of the parcels, a special hearing before the Zoning Commissioner may be required to determine if a non-density transfer is permitted.



(4) Persons shall be advised to read both the Circuit Court and Special Appeals Cases for Steven H. Gudeman, et ux, All Parties v. People's Counsel for Baltimore County.

8/31/04

DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING & EXCEPTION LOYOLA COLLEGE SPIRITUAL RETREAT CTR N & S/S Stablersville Road @ NE Corner York Road 7th Election District 3rd Councilmanic District Legal Owner(s) Loyola College in Maryland	*	BEFORE THE COUNTY BOARD OF APPEALS CASE NO.: 04-337-SPHX

RECEIVED
AUG 31 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Memorandum of People's Counsel on the Master Water & Sewer Plan

I. Introduction

People's Counsel for Baltimore County files this pre-hearing Memorandum in the Special Exception case on the limited issue of compliance with the Master Water and Sewer Plan. The proposed use requires an amendment to the Master Water and Sewer Plan ("Plan"), a decision that rests solely with the Baltimore County Council. It is premature for the CBA to consider the zoning petition (and the development plan) prior to consideration of this issue by the Council. This Memorandum reviews the standards of the Maryland statutes in light of the facts of this case presented by Petitioner before the Zoning Commissioner/Hearing Officer ("Mr. Schmidt").

The water and sewer plan issue must be addressed anew by the CBA as part of the special exception *de novo* hearing. Charter Sec. 603. Boehm v. Anne Arundel County 54 Md.App. 497 (1983); Pollard's Towing v. Berman's Body Frame & Mechanical 137 Md.App. 277 (2001). As a matter of law, the special exception must be denied under BCZR 502.1 A.and E., or dismissed under BCZR 600, for Petitioner's failure to comply with Maryland Ann. Code Section 9-501 *et. seq.* (Concomitantly, the decision of the Hearing Officer must also be reversed because it is legally erroneous, arbitrary and

capricious, and procedurally unlawful. The Hearing Officer is not a rubber stamp for DEPRM's recommendations but must review independently DEPRM's findings and conclusions and reach a decision on the merits. Here, Mr. Schmidt deferred to DEPRM, without even reviewing whether the "methodology" complied with the Guidelines and the provisions of Maryland Ann. Code Section 9-501 *et seq.*).

II. Standing and Issues

People's Counsel is interested in this case in order to defend the Master Water and Sewer Plan pursuant to Section 524.1(b) of the Baltimore County Charter. The Court of Appeals, as well as the Zoning Commissioner and County Board of Appeals, have confirmed the standing of this office in many development and zoning cases which involve land use, including master plan and zoning issues, covered by the broad charter mandate. (See Memorandum of Standing of People's Counsel filed with the Zoning Commissioner in this case.)

The issue here is two-fold:

1. Does the "Maryland Department of the Environment Guidelines – Draft – March 19, 2001", insofar as it allows "averaging" in the calculation of water and sewer usage, comport with the Maryland Annotated Code and Code of Maryland Regulations (COMAR), particularly the definition and standards for "multiuse sewage system" and "multiuse water supply system"?

2. If the Guidelines are legitimate with respect to "averaging," can the Developer disregard the formula for averaging water usage in the Guidelines, and substitute its own formula?

A "multiuse sewage system" is a system that "Has a treatment capacity of more than 5000 gallons a day;" under Md. Ann. Code Environment Article, Section 9-501 (i) (3) (hereafter "statute"). Similarly, a "multiuse water supply system" is defined in Section 9-501 (j) (1) as an individual water supply system that "Has the capacity to supply more than 5000 gallons of water a day;"

Loyola admits the proposed retreat center will generate and use more than 5000 gallons of water a day for several retreats during the course of the year. Indeed, it appears that for every day of an active retreat, even the first phase of the two-phase project will generate 7085 gallons per day. The ultimate usage will be 11,445 gpd for an active retreat day. For those days, it is undisputed the usage more than meets the statute's definition of "multiuse water supply system" and a "multiuse sewage system." State law declares, for each of those systems, that County Council action to designate them in the County Water Supply and Sewage Plan, a part of the Master Plan, is a prerequisite for approval of a development plan or building permit. Md. Ann. Code, Environment Article, Section 9- 503-505, 9-511-12.

III. Conflict With The Statute

First of all, under the definitions in the Maryland Code (Section 9-501 i., j.), the daily "capacity of more than 5000 gallons a day" is the measuring stick. There is no adjustment or exception if less than 5000 gallons are supplied or treated from time to time. In other words, the language in the statute is clear that if the system ever uses or generates more than 5000 gallons on a given day, it has the "capacity" to supply 5000 gallons of water and treat 5000 gallons of sewage, and is a multiuse system. "Capacity" is

synonymous with "ability" and is defined as "the power or ability to hold, receive or accommodate . . . the ability to store, process, treat . . . the ability to yield and to sustain" (Webster's Third New International Dictionary, Unabridged). There is no provision in the Annotated Code for averaging the use. The project must be at or under 5000 gallons on each day to be excluded as a multiuse system. If the proposal is a multi-use system, the administrative agencies must defer to the County Council's decision. The zoning and development plan cases cannot proceed through the administrative process. This is a threshold requirement, based on undisputed material facts in the developer's case. These issues of law are not fairly debatable. A fair and efficient administration of justice requires resolution of the water and sewage plan before the zoning case/development plan is decided.

The developer here suggests that alternative relief is available in the aforesaid Guidelines, which describe "averaging" of usage and treatment under specific conditions. Preliminarily, the legitimacy of any type of averaging is questionable, since there is no provision for it in the statute, and the effect is to undermine the purpose and intent of the state law in 9-501 *et seq.* In general, guidelines can only operate within the parameters of the statute, its meaning and intent. They cannot contradict or vary the language and standards. Vest v. Giant Food Stores, 329 Md. 461, 474-76 (1993). Here, Section 9-501 *et seq* makes no provision for "averaging" the water use or the sewage treatment to avoid inclusion in the Master Water and Sewage Plan. The intent of the statute is to protect and monitor the state's resources, not to provide opportunities for non-compliance. While DEPRM, and in turn the Zoning Commissioner/Hearing Officer, rely here on practices

allegedly derived from the Guidelines, neither administrative function can operate outside the statute. In a recent Court of Appeals case involving the administrative decision of the Price George's County Board of License Commissioners, Paek v. License Commissioners, 381 Md. 583 (2004), Judge Cathell noted that while the Board is authorized to "adopt such reasonable rules and regulations as they may deem necessary to enable them effectively to discharge the duties imposed . . . As this Court has stated, however, **'rules and regulations adopted by an administrative agency must be reasonable and consistent with the letter and spirit of the statute under which the agency acts.'**" (emphasis supplied, citations omitted).

The Court of Appeals has said many times that in order to discern the purpose of a statute, one must consider the context. It reaffirmed this in the recent Board of Physicians v. Mullan 381 Md. 157, 168 (2004),

> **"...we 'avoid constructions that are illogical, unreasonable, or inconsistent with common sense..., and instead interpret and harmonize statutes as a whole, giving meaning and effect to all parts of the statutory language and refraining from interpretations that render any part of a law surplusage or contradictory."**

See Lucas v. People's Counsel for Baltimore County 147 Md. App. 209 (2002).

There is no authority for the alternative averaging in Section 3 f. of the Guidelines in lieu of the straightforward threshold of 5000 gallons a day in the statute. By the developer's admission, there are a number of days when the project exceeds 5000 gallons. Under the definition in the statute, it is a multiuse system as to both water usage and sewage treatment. There would have to be County Council approval to amend and

include the project in the Master Water and Sewer Plan in accordance with County Council Resolution 17-3 in order to sustain its approval.

IV. Conflict With The Guidelines

Secondly, even if averaging is permitted, the developer here exceeds the increased daily usage permitted by the averaging formula in the Guidelines. The Guidelines provide specific means of calculation for projects that "encompass a primary use that generates large maximum daily flows on specific days of the week and significantly less flow on other days . . ." In those instances, "**the average daily flow may be determined by adding the maximum daily flow for each day and dividing the total by 7. Such projects as churches, sports arenas, and fairgrounds may be examples of this type use. The use of flow equalization may be considered when determining the maximum daily flow for these projects.**" (emphasis supplied). If the daily average for the 7 days is less than 5000 g.p.d., the project would not require inclusion in the Master Water and Sewer Plan under an amendment approved by the County Council. No other method of calculation is permitted under the "averaging" exception. The parameters under the Guidelines is a finite period of 7 days. Presumably, it was determined the 7-day averaging is an infrequent exception that allows for very sporadic use in excess of 5000 g.p.d. The examples in the Guidelines suggest the use may occur one or two days per week and most likely not even weekly in the case of sports arenas or fairgrounds.

The developer here admits usage in Phase I of the project of more than 5000 g.p.d for about 50 retreats. Of those 50, 7085 gallons will be used daily for 29 retreats and 5450 gallons for 20 retreats. It appears from Petitioner's data that some retreats in Phase

I with a minimum of 65 participants will be held for 5 days, generating 7085 gallons per day, or nearly 35,500 per week. In Phase II with projected 105 rooms, the daily usage will be 11,445 gallons per day, or 57,225 per week for a 5 day retreat. The usage per week during these retreats exceeds 5000 g.p.d. when the weekly averaging formula exception is applied. These examples are the minimum number of retreats that violate the statute. Petitioner's data for all the retreats is too vague and incomplete to rule with the required certainty that the project will not exceed the maximum capacity of 5000 g.p.d., even if weekly averaging is applied. The Board must review the evidence and the statutes *de novo* in the special exception case, including the findings of DEPRM.

Since the developer cannot comply with the 7-day averaging formula in the Guidelines, it averages the use on an annual basis, rather than weekly, which it would clearly exceed. At the very least, if there is an exception that permits in excess of 5000 gallons per day, the exception must be calculated in accordance with the strict formula in the Guidelines. Without citing any authority for the deviation, the developer here proposes yearly averaging. There is nothing in the Code or the Guidelines to permit annual calculation under the averaging exception proposed by the developer and acquiesced by DEPRM. The Zoning Commisisoner/Hearing Officer deferred to DEPRM without questioning the impertinence of *sua sponte* rewriting the Guidelines. (See p. 15-16 of Zoning Commissioner/Hearing Officer's Decision dated June 10, 2004).

It was erroneous for the Zoning Commissioner/Hearing Officer to "rubber stamp" DEPRM's interpretation of the Guidelines when it is an obvious conflict with the permitted "averaging." Clearly, the developer's calculations show the project will exceed

5000 g.p.d. if the acceptable weekly averaging is applied. To avoid the process whereby the County Council must amend the Plan to include this project, the developer not only claims an exception based on averaging, which itself may be a dubious deviation from the statute, but proposes that the averaging calculations in the Guidelines be tossed aside in favor of its own self-serving methodology. With an apparent nonchalant "no harm, no foul" approach, the developer persuaded DEPRM and Mr. Schmidt to go along.

In other words, if the Guidelines are valid and applicable, whether as MDE policy or as adopted by DEPRM, the agency must follow its own rules and not vary them capriciously to suit a favored applicant. See Jordan Towing v. Hebbville Auto Repair 369 Md. 439 (2002).

V. Conclusion

This is a flagrant violation of the state statute. The CBA must deny or dismiss the special exception for the failure of the Petitioner to satisfy this threshold issue and prerequisite condition. In the interrelated development plan hearing, the CBA must reverse the Hearing Officer's decision based on an error of law. The Board cannot approve a development plan or grant a special exception that violates state law. The developer must obtain an amendment of the Master Water and Sewer Plan for a project that involves a water and sewer capacity in excess of 5000 g.p.d. under the clear language in the statute, or, at the very least, because it does not comply with the 7 day averaging methodology in the Guidelines.

While our focus here is on the Water Supply Plan issue, our office reserves the right to file, along with the other parties, a Memorandum on the general issues in the case in lieu of closing argument, as may be requested by the CBA.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. DeMilio

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(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August, 2004 a copy of the foregoing Entry of Appearance was mailed to G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland 21204, Lynn Jones, 815 Stablersville Church Road, Parkton, MD 21120 and to Robert A Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

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August 31, 2004

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

Lawrence S. Wescott, Chairman
County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: Loyola Spiritual Retreat Center
N & S/S Stablersville Road @ NE corner of York Road
Case No.: 04-337-SPHA

Dear Chairman Wescott,

People's Counsel entered its appearance below in the aforementioned case. Please accept this letter and Memorandum to enter our appearance as a party in this case before the County Board of Appeals, currently scheduled to begin September 14, 2004.

The enclosed Memorandum sets forth our position and concerns regarding compliance with the Master Water and Sewer Plan, a Master Plan issue.

This issue exists in both the development plan case and the special exception. Out of fairness to the Petitioner, People's Counsel is filing this Memorandum prior to the hearing to apprise Petitioner of our office's position in this serious matter.

We also recognize the parties are well represented by counsel, and the evidence will be thoroughly presented to the Board. For these reasons, it may not be necessary for our office to participate throughout the evidentiary hearing, but we reserve the right to present oral argument or closing memorandum. We hope the enclosed Memorandum will be helpful to the Board.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw
cc: G. Macy Nelson, Esquire
Robert A Hoffman, Esquire (Sent via fax also)
Lynn Jones

RECEIVED
AUG 3 1 2004
BALTIMORE COUNTY
BOARD OF APPEALS

7/16/04

IN RE: DEVELOPMENT PLAN HEARING and PETITIONS FOR SPECIAL HEAING & SPECIAL EXCEPTIONS- N & S/S Stablersville Road @ NE/Cor. York Road (Loyola College Spiritual Retreat Ctr.)	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY
7th Election District 3rd Council District	*	Case Nos. VII-389 & 04-337-SPHX
	*	

Estate of Marion Clark & Eleanor Duvall Spruill,
W. Duvall Spruill, Personal Representative, Owners;
Loyola College of Maryland, Contract Purchasers/Developers

PETITION

Petitioners, Lynne Jones, James Voshell, Juli Butler, David Adams, Sharon and Theodore Norton, Melissa Norton, Joseph Amos, Edward and Barbara Underwood, Citizens Against Loyola Multi-Use Center (CALM), and Weisburg Community Association, by their attorney, G. Macy Nelson, file this Petition pursuant to Section 26-209(a)(1) of the Baltimore County Code.

On June 10, 2004, Hearing Officer Lawrence E. Schmidt approved the development plan for the project known as the Loyola College Spiritual Retreat Center. (Opinion attached as Exhibit A). Petitioners noted a timely appeal on July 7, 2004.

Loyola has a contract to purchase approximately 53 acres out of 107 acres from the Clark and Spruill estates. The site is zoned R.C.2. Loyola described the transaction as a "non-density retention of 54 acres." (its Hearing Officer memo at 19). Loyola proposes to construct a "main retreat building" consisting of 16,170 square feet which will include a chapel, meeting rooms, five faculty rooms with private bathrooms and a dining room. Loyola also proposes to construct five retreatant buildings containing 165 bedrooms. (Opinion at 5). The Master Water and Sewer Plan does not identify any part of the site as an area to be served by either a "multi-use water supply system" or a "multi-used sewerage system."

The parties presented evidence on the question of whether Loyola's proposed water system would constitute a "multi-use water supply system." Hearing Officer Schmidt wrote, "If it is determined that such a multi-use water supply system is in place at this property, then an amendment to the County's Master Water and Sewer Plan would be required." (Opinion at 15)

The Environment Code defines a multiuse water supply system as a system that "has the capacity to supply more than 5,000 gallons of water a day." EN § 9-501(j). The Code also authorizes the Maryland Department of the Environment to "adopt rules and regulations...(2) to control, limit, or prohibit the installation and use of "(i)Water supply systems; and (ii) Sewerage systems...." EN § 9-510 (b)(2). MDE accordingly has defined multi-use water supply systems as those systems "having a capacity in excess of 1,500 GPD [gallons per day]." COMAR 26.03.01.01(P).

The Applicant's consultant, Robert Sheesley, admitted that the Applicant's water supply system has the capacity to produce more than 5,000 gallons per day. (Transcript at 586). To support his opinion that the system would not exceed the statutory 5,000 gpd maximum, Mr. Sheesley calculated average annual usage rather than capacity. He stated that the facility would be used 135 days per year. (Protestant's Exhibit #1). The facility would serve various purposes, including the accommodation of "Ignation retreats." The water usage for those retreats would exceed 5,000 gallons per day. (Transcript at 564). On some days there would be no water usage, and so the facility would not "always meet a gallon per day that is greater than 5,000 gallons." (Transcript at 549). Mr. Sheesley averaged the 230 days each year that the retreat would not be in operation with the 135 days that it would be in operation to reach an average water use of 2,881 gallons per day. (Transcript at 499). He "averaged [the gallons per day] because the use on the property is so irregular that we don't always meet a gallon per day that is greater than 5,000

gallons." (Transcript at 549). He then opined that the proposed water use does not meet the definition of a multiuse water supply because "it does not exceed 5,000 gallons per day every day." (Transcript at 569). He acknowledged that no legal authority authorizes this type of averaging. (Transcript at 550). He did not address the COMAR provision that lowers the threshold amount to 1,500 gpd.

Mr. Sheesley also did not address the question of whether the proposed sewerage system would be a "multiuse sewerage system" under EN § 9-501(i), and Mr. Schmidt made no finding on that issue. Under § 9-501(i), a "multiuse sewerage system" is a system that "...(3) Has a treatment capacity of more than 5,000 gallons a day...." *See also* COMAR 26.03.01.01(O) ("'Multi-used treatment system' means a single system...for the collection and disposal of sewage..., including various devices for the treatment of sewage and industrial wastes having a treatment capacity in excess of 5,000 gpd."). The Applicant's data (Protestants' Exhibit 1) show that every overnight retreat will generate more than 5,000 gpd; some retreats will generate over twice that amount.

I. The Development Plan fails to comply with the Environment Article and the Baltimore County Master Water and Sewer Plan, because the County's plan provides for neither the water supply nor the sewerage systems of the proposed facility

Section 9-503 of the Environment Article requires Baltimore County to "have a county plan... that (3) [d]eals with: (i) Water supply systems; (ii) Sewerage systems...." COMAR 26.03.01.0G(1)(g)(2) also requires that "the water and sewage maps in the county plan shall be delineated to show for each existing and proposed ...multi-use water supply and sewerage systems.... *See also* COMAR 26.03.01.04(E) and (F) (requiring plans to specify locations for multi-use water supply and sewerage systems). The 1997 Triennial Review of the Master Water and Sewer Plan states: "Properties using in excess of 5,000 gallons per day must be added to the

list of 'multi-use facilities' and so designated on the maps." Hearing Officer Schmidt noted that the Maryland Environmental Article "requires that the plan shall identify all areas in the County to be served by a 'multi-use water supply system."" (Opinion at 15). However, he did not address the requirement that the proposed sewerage system also would have to be in the plan if its capacity exceeded 5,000 gpd.

Water supply system. The easiest definition of "multi-use water supply system" for the Applicant is that provided by statute, and the Applicant used that definition. Section 9-501(j) of the Environment Article provides, "A " 'Multiuse water supply system' means an individual water supply system that: (1) has the capacity to supply more than 5,000 gallons of water a day and (2) Serves a number of individuals." Loyola proposes to operate the facility up to 165 days per year. The undisputed evidence was that the proposed individual water supply system would supply more than 5,000 gallons on certain days to people using the facility's 165 bedrooms. Using an averaging method, Loyola presented evidence that the highest average monthly use would be 4,811 gallons per day and that the average of the days that the retreat was operating and the days that the retreat was not operating was 2,881 gallons per day.

Hearing Officer Schmidt adopted the Applicant's average-use method numbers instead of the data on actual capacity. He then ruled as a matter of law that a system used for an anticipated average water use of less than 5,000 gallons per day did not meet the definition of a "multi-use water supply system." That interpretation of state law was erroneous. Section 9-501(j) clearly provides that any water supply system that "has the *capacity* to supply more than 5,000 gallons of water a day" (emphasis supplied) meets the definition of a "multi-use water supply system."

The canons of interpretation followed by Maryland courts are well established. The Hearing Officer erred when he did not apply them. In interpreting statutes, courts begin with the

"language of the statute itself." *Mazor v. Department of Correction*, 279 Md. 355, 360-61, 369 A.2d 82, 86-87 (1977). This statute specifies "capacity," not "anticipated use expressed as a monthly or annual average." Courts decline to "engraft upon [a] rule a meaning not evident from the plain text." *State v. Wiegmann,* 350 Md. 585, 593, 714 A.2d 841 (1998). The use of averaged usage data as a substitute for the maximum capacity figure specified by the statute engrafts new words upon the statute. Furthermore, the averaging method created by Mr. Sheesley is not supported by statutory context. The regulations and statutes neither give an applicant the discretion to substitute usage for capacity nor contemplate the averaging method used here. MDE has provided no direction, for instance, as to whether averaging might be done by day, by week, by month, or by year, or as to whether days of non-use and partial use may be used to lower the figure.

By regulation, MDE prescribed a more restrictive definition of "multi-use water supply system." Neither Mr. Sheesley nor the Hearing Officer addressed that definition. The Code authorizes the Maryland Department of the Environment to "adopt rules and regulations...(2) to control, limit, or prohibit the installation and use of "(i) Water supply systems; and (ii) Sewerage systems...." EN § 9-510 (b)(2). MDE accordingly has defined multi-use water supply systems as those systems "having a capacity in excess of 1,500 GPD [gallons per day]." COMAR 26.03.01.01(P). As shown above, the applicant's water supply system will exceed 5,000 gpd. *A fortiorari*, it will exceed 1,500 gpd, even under the applicant's averaging method.

Under either definition, the proposal includes a multi-use water supply system not included in the County's Water and Sewer Plan. The Commissioner erred in approving it.

Sewerage system. Under § 9-501(i), a "multiuse sewerage system" is a system that "...(3) Has a treatment capacity of more than 5,000 gallons a day...." *See also* COMAR

26.03.01.01(O) ("'Multi-used treatment system' means a single system...for the collection and disposal of sewage..., including various devices for the treatment of sewage and industrial wastes having a treatment capacity in excess of 5,000 gpd."). The Applicant's data (Protestants' Exhibit 1) show that some retreats will generate over twice that amount to be handled by its system. On this issue, the Applicant did not show that its proposal met the requirements of the County's Water and Sewer Plan, and the only evidence was that it did not. The Commissioner erred in approving the plan.

CONCLUSION

Petitioners respectfully request that the Board of Appeals reverse the Hearing Officer's decision and disapprove the Development Plan.

Respectfully submitted,

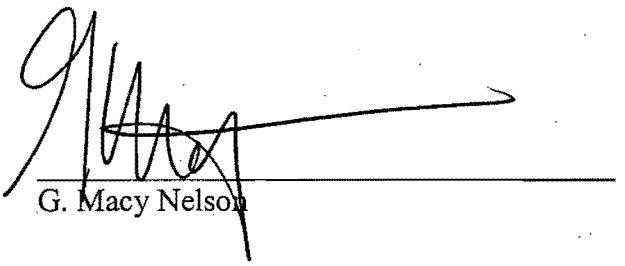
G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, 2004, a copy of the foregoing Petition was mailed first-class, postage prepaid, to:

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



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July 16, 2004

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BALTIMORE COUNTY
BOARD OF APPEALS

HAND DELIVERY

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

Re: *Petition for Judicial Review in Re: Petitions for Special Hearing and Special Exception – N & S/S Stablersville Road @ NE/Cor. York Road (**Loyola College Spiritual Retreat Center**); 7th Election District, 3rd Council District Estate of Marion Clark & Eleanor Duvall Spruill, W. Duvall Spruill, Personal Representative, Owners; Loyola College of Maryland, Contract Purchasers/Developers*
Case Nos. VII-389 and 04-337-SPHX

Dear Clerk:

Enclosed for filing in the above-referenced case is the Protestants' Petition. The original plus two copies are enclosed.

Thank you for your assistance in this matter.

Very truly yours,

G. Macy Nelson

GMN:kcm
Enclosures
cc: Robert Hoffman, Esq. (w/enc.)

6/10/04

IN RE: DEVELOPMENT PLAN HEARING and PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION – N & S/S Stablersville Road @ NE/Cor. York Road **(Loyola College Spiritual Retreat Ctr.)**

7th Election District
3rd Council District

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Cases Nos. VII-389 & 04-337-SPHX
*

Estate of Marion Clark & Eleanor Duvall Spruill,
W. Duvall Spruill, Personal Representative, Owners;
Loyola College of Maryland, Contract Purchasers/Developers

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Zoning Commissioner for a combined public hearing, pursuant to Section 26-206.1 of the Baltimore County Code (B.C.C.). That Section permits the Owner/Developer (Applicants) to seek approval of a development plan and associated zoning relief through a single public hearing. In accordance with the development review regulations codified in Title 26 thereof, the Estate of Marion T Clark and the Estate of Eleanor Duvall Spruill, property owners, as well as Loyola College in Maryland, Contract Purchasers, seek development plan approval for a spiritual retreat center on the subject property. In addition, the Applicants request special exception relief as set forth in the Petition for Special Exception to permit a building for religious worship/school/camp in an R.C.2 zone, pursuant to Sections 1A01.2.C.4, 1A01.2.C.6 and/or 1A01.2.C.23 of the Baltimore County Zoning Regulations (B.C.Z.R.). Further, the Applicants request special hearing relief pursuant to the Petition for Special Hearing to confirm that the proposed parking as shown on the development plan is adequate and to approve the transfer of approximately 54 acres of R.C.2 zoned land as a non-density transfer. The proposed development and requested zoning relief are more particularly described on the three-page, redlined development plan submitted into evidence as Developer's Exhibit 2A through 2C.

Development of land in Baltimore County is reviewed in accordance with those laws and regulations contained within Article V of Title 26 of the Baltimore County Code. The

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development review process described therein requires that an Applicant submit a plan for review through a series of steps and stages. The process is initiated by the filing of a concept plan, which, as the name suggests, is a schematic representation of the proposed development. The concept plan is submitted for review at a conference held by and between representatives of the Developer and the County at a Concept Plan Conference (CPC). This conference is held so that the Applicant can receive written comments from the reviewing County agencies regarding the plan. In this case, the CPC was conducted on July 28, 2003. The second step of the process is designed to insure community input. In this regard, a Community Input Meeting (CIM) is conducted during evening hours at a public facility in the vicinity of the proposed development. The Developer and its representatives/consultants appear at that meeting to answer questions and receive input from adjoining property owners and interested members of the community. The CIM for this project was held on September 18, 2003 at the Hereford High School. The third step of the review process requires a Development Plan Conference (DPC) which is again held between County agency and Developer representatives. Following the CPC and CIM, the Developer/Applicant often revises its plan in accordance with the information/comments received to that point and a development plan is submitted for review and comment. At that conference, written agency comments are submitted by the County agencies. The DPC in this instance was held on March 24, 2004. The fourth and final step of the review process requires that a public hearing on the proposal be conducted before the Zoning Commissioner/Deputy Zoning Commissioner. This is a quasi-judicial hearing in which all interested parties are invited to attend and present testimony and evidence to express their position. As noted above, that hearing can be combined with any zoning relief deemed necessary. In this case, the Hearing Officer's Hearing was held over the course of three days, specifically, April 16, 2004, April 19, 2004, and April 21, 2004. Numerous witnesses appeared and testified on behalf of the Developer/Applicant, the reviewing agencies of Baltimore County and interested citizens from the locale. By agreement of the parties, the record of the case was held open for receipt of written memoranda through May 26, 2004. The Hearing Officer's decision that follows is

rendered in accordance with Section 26-206(I) of the B.C.Z.R., which requires a decision within 15 days of that date, or in this case, June 10, 2004.

A transcript of the hearing was obtained from the Court Reporter who recorded the proceedings. In addition, an audio taped recording was kept of the hearing. Sign-In sheets were also circulated at the hearing and those individuals who appeared and/or participated at the hearing were invited to register their attendance.

On the first hearing date, testimony was received from several witnesses on behalf of Loyola College, who was represented by Robert A. Hoffman, Esquire and David Karceski, Esquire. Testifying on behalf of the Developer/Applicant were Terence Sawyer, special assistant to the President of Loyola College, and David Yates, a lighting expert. In addition, Michael Pieranunzi, a Registered Landscape Architect employed by Daft-McCune-Walker, Inc., presented the plan his firm prepared on behalf of Loyola College. He described the subject property and surrounding locale and the proposed development.

Representatives of the various Baltimore County agencies who reviewed the plan also testified on the first hearing day, including the following individuals from the Department of Permits and Development Management (DPDM): Christine Rorke, Project Manager; Bob Bowling, Development Plans Review; Eric Rockel, Land Acquisition; and, John Alexander, Zoning Review. Also appearing on behalf of the County were Kathy Schlabach, Office of Planning (OP); R. Bruce Seeley and John Oltman, Department of Environmental Protection and Resource Management (DEPRM); and Jan Cook, Department of Recreation and Parks (R&P). Appearing and testifying in opposition to the proposal on the first hearing date were several residents from the surrounding locale. These included Tom Reedy, Sally Stocksdale, Susan Wunder-Hucisk, Wayne McGinnis, Joseph Amos, Alicia Barbers and the Honorable Julie L. Ensor. These witnesses expressed a variety of concerns including traffic, environmental impacts, incompatibility with the rural/agricultural nature of the locale, etc. Additionally, Dr. Richard McQuaid appeared on behalf of the Maryland Line Area Association, and Janice Staples appeared on behalf of the Parkton Area Preservation, Inc. Michael P. Tanczyn, Esquire

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represented these two community groups. As a preliminary matter, it was indicated that an agreement had been reached by and between those two community groups and Loyola College in Maryland. A copy of that written agreement was submitted into evidence as Joint Exhibit 1 and the parties thereto asked that it be incorporated in any Order approving the project. That agreement sets out a substantial number of conditions and broad-based understandings between the parties as to the use of the subject property. Based on that agreement, those two associations do not oppose approval of the development plan and related zoning relief.

The hearing was continued and appearing on the second day on behalf of Loyola were Helen Snyder, an assistant vice president for campus services at Loyola College; Robert Sheeseley, a registered Sanitarian and Environmental Consultant; Wes Guckert, a traffic engineer; and Charles Hoffman, the architect who designed the proposed buildings. Other Protestants who appeared and testified on the second hearing date included David Adams, John Stewart and Sharon Norton. Finally, on the third and final day of testimony, the Developer's witnesses included Thomas Repshur, a Registered Landscape Architect with Daft-McCune-Walker, Inc., Mitchell Kellman, a zoning consultant with that firm, and Thomas Mills, President of Hydro-Terra, a geologist and environmental consultant. A number of other Protestants also appeared including Sharon Bailey, David Boyd, George Blatchley, Katherine H. Jones, Bertha Strube, Bridgette Lesley, James Voshel, Dureem Passinitti, Lynn Jones, Netta Evans, Linda Losey, Joseph L. Evans, and Thomas Bonvissuto. Throughout the proceedings, Ms. Jones and Ms. Evans served as spokespersons for the Protestants. But for Mr. Tanczyn who represented the two community associations that reached agreement with the Applicants, the other Protestants were not represented by counsel.

The specific testimony of the Developer's witnesses related to various issues that were raised during the course of the hearing, including the nature of the proposed use, potential environmental impacts (well water, septic reserve areas, forest conservation, etc.), traffic, etc. The Protestants also raised numerous concerns and issues. Although the Protestants who appeared and testified were not "expert" witnesses as defined under the rules of evidence, I

found their testimony to be sincere and well intentioned. Other than the boorish antics of Mr. Boyd, the citizens who testified offered reasonable and rational testimony. Nonetheless, some of the Protestants' testimony was unrelated to the issues before me and represented a misunderstanding of the development review and zoning process and the legal questions presented.

As there were a number of issues raised at the hearing, they will be addressed in turn.

PROPERTY & PROPOSAL (An Overview)

The property under consideration is an irregularly shaped parcel located on both the north and south sides of Stablersville Road, just east of York Road and the Baltimore Harrisburg Expressway (I-83) in the rural agricultural area of northern Baltimore County. Vehicular access is by way of Middletown Road, York Road (Md. Route 45), and ultimately to Stablersville Road, which bisects the property. The property contains a gross area of 107.68 acres, zoned R.C.2. As noted above, the Estate of Marion T. Clark and the Estate of Eleanor Duvall Spruill own the property, however, it is under contract to be purchased by the Loyola College in Maryland. At this time, the property is unimproved and has been used for agricultural purposes for many years. In additional to its agricultural use, the property features numerous environmental constraints, including areas of forest, wetlands, streams, etc. Therefore, much of the property is in a natural state.

The Applicants propose to develop the site with a spiritual retreat center. As shown on the development plan, a main retreat building and five retreatant buildings (cabins) are proposed. The main retreat building will be 16,170 sq.ft. in area and will include a chapel, meeting rooms, five faculty rooms with private bathrooms, restroom facilities, storage rooms, a warming kitchen and a dining room. Additionally, Phase 1 of the construction will include three cabins with a total of 60 individual rooms. There will be shared toilet and shower facilities between a set of two rooms. In accordance with the restrictive covenant agreement, Phase 2 of the project will not be built out for at least 10 years, however, will feature two additional retreatant buildings. In total there will be 105 rooms/beds.

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Loyola's proposed construction will occur on the southern portion of the property. In fact, of the 107 acres that comprise the entire parcel, Loyola will acquire only 53 acres. The remaining 54 acres will be retained by the Spruill/Clark family for agricultural use and are the subject of the non-density transfer requested in the Petition for Special Hearing. Additionally, it is to be noted that of the 53 acres to be acquired by Loyola, only 10.1 acres will be disturbed for the construction of the retreat center and cabins. The remaining approximately 43 acres will continue to be used agriculturally and/or retained in its natural state.

ZONING RELIEF

Petition for Special Exception – In that the fundamental issue presented in this case through the Petition for Special Exception is the manner in which the subject property is to be used, that issue will be addressed first. As noted above, the Developer/Applicants seek special exception approval for the use of the subject property as a building for religious worship, a school and/or camp. The use of land in Baltimore County is governed by the B.C.Z.R. A brief explanation of the application of the B.C.Z.R. to this site is appropriate.

All land in Baltimore County is assigned a given zoning classification by the Baltimore County Council during its quadrennial zoning map review process. The subject property is zoned R.C.2 (Resource Conservation — Agricultural) and has apparently been so zoned for many years. This is the most restrictive zone in Baltimore County. That is, this classification significantly limits the types of land uses permitted in that zone. The R.C.2 zoning classification favors agricultural and low intensity land uses.

Additionally, it is to be noted that the B.C.Z.R. are written in the inclusive. That is, only uses permitted by right or special exception as identified in the regulations are allowed. (See Section 102.1, B.C.Z.R. and Kowalski v. Lamar, 25 Md. App. 493 (1975).

Essentially, any given use of land in the R.C.2 zone falls within one of three categories of permissibility. The first category identifies those uses permitted by right. These are uses that are allowed automatically under the R.C.2 regulations. That is, the property owner can use a parcel zoned R.C.2 for uses permitted "by right" without petitioning for any zoning relief

through a public hearing. Single family dwellings, farms, agricultural uses, etc. are "by right" uses and are automatically allowed in the R.C.2 zone.

Second, at the other end of the spectrum are those land uses that are prohibited under any circumstances. For example, service garages, gasoline stations, office buildings and restaurants are uses that are not permitted in the R.C.2 zone under any circumstances. These types of uses have been legislatively pre-determined to be incompatible with the rural nature of the R.C.2 zone. The third category of uses represents a middle ground between the other two. In many political jurisdictions, these middle-ground uses are identified as "conditional uses." In Baltimore County, they are called "special exceptions." Special exception uses are uses that ***may*** be permitted in the R.C.2 zone; however, the property owner/applicant must file the requisite Petition for Special Exception and a public hearing before the Office of the Zoning Commissioner is held. The use can be approved only if the Applicant meets the criteria for special exception approval set out in Section 502.1 of the B.C.Z.R. Also, in the R.C.2 zone, the application for special exception relief must demonstrate that the proposed use will not be detrimental to the primary agricultural uses in the vicinity. (See Section 1A01.2.C, B.C.Z.R.)

Among the uses identified in the B.C.Z.R. as being permitted by special exception in the R.C.2 zone are camps, churches or other buildings for religious worship, schools, including schools for agricultural training, private preparatory schools, business or trade schools, conservatories, or colleges.

The Protestants first argue that a "retreat center" is not specifically listed in the B.C.Z.R. as a use permitted by special exception in the R.C.2 zone and thus, Loyola's application under the Petition for Special Exception cannot be approved.

The identification of land uses in the B.C.Z.R. is broad; however, admittedly the regulations cannot define every potential use of land. For example, the B.C.Z.R. do not specifically mention "tanning salons" anywhere within the regulations. Nonetheless, those of us living in the 21st Century are cognizant of the fact that a tanning salon is a lawful business/land use and that there are numerous tanning salons existing in various locations throughout

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Baltimore County. When tanning salons were first proposed in Baltimore County, it was recognized that the term "tanning salon" did not appear anywhere in the regulations. It was also recognized that tanning salons were not an illegal business (such as a casino or brothel). Thus, to pass constitutional muster, they must be permitted in some zone. Ultimately, tanning salons were categorized within that land use identified in the B.C.Z.R. as a "community building, swimming pool, or other structure or land use devoted to civic, social, recreational and educational activities, including use of a building as a catering hall." This is but one example where a lawful land use is not specifically identified in the B.C.Z.R., but has been categorized within a defined use provided for in the regulations. As a retreat center is likewise not listed in the B.C.Z.R., a similar analysis is required in this case.

Through the testimony of its representatives, the Applicant provided an extensive description of the proposed use of the subject property. Loyola College is an accredited institute of higher learning with its campus located in Baltimore City, Maryland. Periodically, students or staff leave the City campus atmosphere for a retreat. Presently, the retreats are conducted at leased premises in rural Pennsylvania. The retreats can last over a weekend, or can occur over a day or two. Participants are transported to the retreat center to spend time in reflection, discussion and contemplation of a particular issue. Loyola emphasized the spiritual nature of both its educational mission and its retreats. The retreat center will not be used for parties, classes, sporting events or social functions.

Many of the Protestants who appeared expressed concerns about the intrusion of Loyola's staff and students upon the bucolic nature of this neighborhood. Although I appreciate their concerns, I do not believe that their fears will be realized. The purpose of this center is not to conduct classes, or provide a social atmosphere for Loyola's' staff or students. As described at the hearing, the retreats are designed to be consistent with the peaceful and bucolic nature of the locale. There was no credible evidence that loud parties, drug use, sexual activity, etc. will occur at these retreats. Indeed, Loyola favors this "out of the way" site as an alternative to its urban campus.

Land uses and words used in the B.C.Z.R. are defined in Section 101 thereof. Unfortunately, such uses as "camp", "church" and "school" are not defined. In such event, the regulations direct the reader to Webster's Third New International Dictionary of the English Language, Unabridged.

I have reviewed the definitions of those terms in Webster's. In my judgment, the word "camp" encompasses the proposed use. One of the definitions found in Webster's for camp is, "A place of temporary shelter, lodging or residence, often at a distance from urban areas where the tents, cabins or other buildings used for such shelter, lodging or residence." Upon due consideration of the testimony and evidence offered, I find that Loyola's proposed retreat center is a camp under the B.C.Z.R. As the proposed use falls within that defined use, the Applicants are eligible for special exception relief, pursuant to Sections 1A02.2.B.4 of the B.C.Z.R.

Having determined that the proposed use is a camp under the B.C.Z.R., the next task for the undersigned is to determine whether the special exception should be approved. As noted above, any potential special exception must be adjudged in accordance with Section 502.1 of the B.C.Z.R. Therein, certain factors are identified which must be applied in considering the special exception. Specifically, that Section states:

"Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A) Be detrimental to the health, safety or general welfare of the locality involved;

B) Tend to create congestion in roads, streets or alleys therein;

C) Create a potential hazard from fire, panic or other danger;

D) Tend to overcrowd land and cause undue concentration of population;

E) Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F) Interfere with adequate light and air (Bill No. 45-1982);

G) Be inconsistent with the purposes of the property's zoning classification nor in any

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other way inconsistent with the spirit and intent of these Zoning Regulations; (Bill No. 45-1982);

H) Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; (Bill No. 45-1982), nor;

I) Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 zone (Bill No. 74-2000).

As noted in Anderson v. Sawyer, 23 Md. 612 App. (1974), a special exception "...is a part of the comprehensive zoning plan sharing the presumption that as such, it is in the special interests of the general welfare, and therefore valid." (Pg. 617) The seminal case regarding special exceptions in Maryland is Schultz v. Pritts, 291 Md. 1 (1981). Therein the Court opined "The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. 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 particular case is in harmony with the general purpose and intent of the plan." (Pg. 11) It is clear from these cases that the zoning authority does not consider whether a proposed special exception use provides a benefit to the community or fulfills a need. Rather, the test is whether the proposed use will cause an adverse impact upon the surrounding locale.

The adverse impact test has been further clarified in subsequent decisions of the appellate courts of this State. In Mossberg v. Montgomery Co., 107 Md. App.1 (1995), the Court noted "Furthermore, it is not whether a use permitted by way of special exception will have adverse effects, since such effects are already presumed by the legislature – it is whether the adverse effects in a particular location would be greater or more severe than the adverse effects ordinarily associated with the particular use that is to be considered by the agency." (Pg. 8) In Mossberg, special exception approval was sought for a solid waste transfer station. The Court acknowledged that any solid waste transfer station would produce inherent impacts on the

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surrounding locale. That is, any solid transfer station would generate traffic, noise and other undesirable impacts. However, the Court stated that the existence of these impacts in and of themselves was not sufficient to deny the special exception. As the Court reasoned, the true test is whether the adverse impacts would be greater at the subject location than they would be elsewhere within areas similarly zoned. Thus, the issue properly framed in this case is whether the adverse impacts inherent with the proposed retreat center would be worse here than elsewhere in the R.C.2 zone. It is the appreciation of this point that I believe most of the Protestants have failed to grasp. They generally object to what they perceive as an urban type land use in an agricultural rural area. However, the legislature (Baltimore County Council) has already determined that a camp can be permitted by special exception in the R.C.2 zone. If the Council wishes to amend the law and classify camps, churches and schools as among those uses never allowed in the R.C.2 zone, it may do so; however, at this time, these uses are allowed as special excerptions.

Upon due consideration of all of the testimony and evidence offered in this case, I do not believe that Loyola's retreat center as proposed at this location will cause adverse impacts greater here than if it were located elsewhere in the zone. The testimony from Loyola's witnesses was that great care has been taken to minimize the impact of the proposed construction and land use. Moreover, I note the subject property's reasonable proximity from I-83 and York Road, two of the major north/south corridors through northern Baltimore County. Admittedly, Stablersville Road is a narrow and winding rural road; however, it is not unlike any of the smaller roads that serve and traverse the R.C.2 zone.

I have considered carefully the concerns and issues identified by the Protestants. These include, but are not limited to, concerns about the impact on wildlife, traffic, environmental degradation, etc. I have also considered the potential impact of Loyola's proposal upon agricultural uses in the vicinity. Admittedly, Loyola's retreat will have a limited impact upon this locale; however, applying the legal standard that I must, I do not conclude that the impacts will be greater at this location than elsewhere in the R.C.2 zone. The comprehensive testimony

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presented by the witnesses on behalf of the Applicant easily support this finding. From a traffic perspective, Mr. Guckert's report (Developer's Exhibit 12) was convincing and credible. As noted above, the property is proximate to I-83 and York Road, two major roads in the area. Also, the use will generate minimal traffic, given the infrequent use of the facility (no more than 160 days per year), and the fact that many students will be transported to the site by bus/van, as opposed to each driving their own vehicle. Also, much of the traffic to the site will not be at peak traffic times (7:00 AM to 9:00 AM and 4:00 PM to 6:00 PM).

From an environmental perspective, the testimony of Messrs. Repshur, Pieranunzi, Sheeseley and Mills was cumulatively persuasive. I do not find that the use will detrimentally impact the groundwater resources in this vicinity. The Developer's methodology and analysis of this issue is appropriate. The Applicant also appropriately mitigated other environmental impacts (storm water management, forest conservation, etc.) Moreover, although this is certainly an agricultural area of Baltimore County at large it is to be noted that there are a number of single family dwelling, non-farmed lots in the vicinity. I do not believe that this use will adversely impact existing agricultural operations in the area.

The design of the buildings (Mr. Hoffman) and the lighting plan (Mr. Yates), also deserve comment. The buildings have been designed in a manner consistent with the setting and the lighting plan is cognizant of the rural surroundings. Additionally, restrictions and limitations upon the use as contained in the agreement by and between Loyola and the two community groups who no longer oppose the project, supply further assurance that the retreat center can be conducted here with limited impact on the locale. This agreement assures that impacts upon the locale will be minimal both now and in the future.

Finally, I acknowledge that certain of the Protestants' specific concerns have merit. The proposal by Loyola will change the landscape of this property; the 10 acres to be disturbed will no longer be in its natural state. However, the concepts of zoning and land use controls do not abrogate private property rights and ownership. Some property owners may wish that land be farmed, others prefer that the land remains natural in forest or meadows, while still others prefer

development or a more intense use of the property. That is an individual choice and option. Unless and until Baltimore County imposes a moratorium on development or abrogates private property rights through other lawful means, I am bound to apply the law as I see it. Those who would oppose any land use other than agricultural in the rural County must seek their redress legislatively. In this case, I find that the totality of the evidence offered supports a grant of the Petition for Special Exception.

Petition for Special Hearing – As noted above, the Petitioners also request special hearing relief. The relief requested is two fold; to confirm that the parking provided is adequate and to approve the transfer of 54 plus or minus acres of R.C.2 zoned land as a non-density transfer.

As to the parking, the development plan (Developer's Exhibit 2B), shows that access to the site will be by way of a private shared driveway/right-of-way from Stablersville Road. Apparently, Loyola will improve that section of the drive from Stablersville Road to the driveway access entering its property. Loyola's representatives indicated that the college has the legal right, under the relevant deeds, to use that shared driveway to provide access. If any of the other property owners challenge that assertion, it would likely be resolved in a court of law.

In any event, Loyola further proposes the construction of a paved entrance into its property that will lead to the main retreat building and retreatant cabins. A relatively small macadam parking lot featuring 35 parking spaces is proposed. Obviously the Applicant desires to provide sufficient parking to accommodate the proposed use, while limiting the amount of grading and impervious surface on site so as to retain the rural character of the property. Given the extent of the proposed use and the transportation of students and retreat participants by bus and/or van, the amount of proposed parking and layout of the lot is appropriate. I also find that the means of access is adequate. Thus, that portion of the relief requested within the Petition for Special Hearing shall be approved.

The second request under the Petition for Special Hearing relates to the transfer of 54 acres of R.C.2 zoned land as a non-density transfer. This relief is necessary to address the

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somewhat technical issue resulting from the ownership of the property and the application of the B.C.Z.R. The subject property of 107 acres is a single tract. As noted above, Loyola proposes to acquire only 54 acres and the proposed development will be clustered therein within an approximately 10-acre area. The current property owners will retain the remaining 53 acres, which is located on the north side of Stablersville Road. It is envisioned that this area of the tract will not be acquired by Loyola and will remain in its present condition. Apparently, the family that owns this area of the property will continue farming operations on that portion of the parcel and/or other areas will remain in their natural state.

As the proposed conveyance of 54 acres to Loyola and retention by the property owners of the remaining 53 acres is a technical subdivision, the B.C.Z.R. requires that special hearing relief be granted to approve the non-density transfer/retention of the property by its current owners. This relief is appropriate and indeed, is consistent with many of the Protestants' concerns in that it assures that the 54-acre tract will continue to be used for agricultural purposes or retained in its natural state. For these reasons, I will likewise approve this relief requested under the Petition for Special Hearing.

DEVELOPMENT PLAN APPROVAL

As noted above, Loyola seeks not only zoning relief under the Petitions for Special Exception and Special Hearing but also development plan approval, pursuant to Title 26 of the Baltimore County Code. Section 26-206 thereof requires that the Hearing Officer determine if the plan meets all standards and requirements for development in Baltimore County. In this regard, testimony was received on the first day's hearing from various representatives of the County agencies that reviewed the project. These included representatives from DEPRM, Office of Planning, DPW, etc. All of these representatives testified that the plan met the various standards and requirements administered by their respective agencies. Similarly, Mr. Pieranunzi, who prepared the plan, testified that the project was in compliance with all applicable County law. These technical proofs were not contradicted by the Protestants who appeared. Therefore, based upon the testimony and evidence as contained in the record of this case, I find that the

development plan should be approved subject to compliance with the development plan comments submitted by the various agencies as contained within the case file.

Well Water Usage: In considering any development plan, the Hearing Officer is required to determine if the plan meets all applicable regulations, requirements and standards for development in Baltimore County. As noted above, I find that the plan is compliant and should be approved. Nonetheless, this written opinion and order should address one issue raised relating to plan approval, mainly whether Loyola's proposed water supply system requires further relief/approval from Baltimore County.

In this regard, the Protestants allege that the anticipated level of groundwater usage at the proposed retreat center should require that Loyola seek an amendment to Baltimore County's Master Water and Sewer Plan. Specifically, if the Protestants' argument were adopted, the retreat center would utilize a "multi-use water supply system" as defined in the Master Water and Sewer Plan. If it is determined that such a multi-use water supply system is in place at this property, then an amendment to the County's Master Water and Sewer Plan would be required.

The County's Master Water and Sewer Plan is required by State law (Maryland Code Annotated, Environmental Article, Section 9-503. The Code requires that the plan shall identify all areas in the County to be served by a "multi-use water supply system." Such a system is defined in Section 9-501(j) as "An individual water supply system that ...has the capacity to supply more than 5,000 gallons of water a day and serves a number of individuals." The narrow issue in this case is a determination as to how the proposed system will function and whether it should be defined as a multi-use water supply system.

Testimony and evidence was received on this issue from two witnesses presented by the Owners/Developers, namely, Robert Sheeseley and Thomas Mills. Their detailed testimony is contained in the record of this case. Essentially, they opined that the proposed facility would use, on average per day, significantly less water than the 5,000 gallons per day threshold. Specifically, Mr. Sheeseley calculated anticipated water usage to be 2,881 gallons per day on an annual basis. For the highest monthly use, he opined that the site would use 4,811 gallons per

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day. These calculations are based on the fact that retreats can be conducted no more than 165 days per year. During a majority of the days in a 365-day calendar year, the site will not be in operation. Obviously, during those times the amount of water usage will be minimal. However, when retreats are being conducted, participants may use more than 5,000 gallons per day. Thus, the issue turns on whether a potential single highest day's usage/capacity should be considered, or whether the average should be used.

In this case, I give great deference to the County's Department of Environmental Protection and Recourse Management (DEPRM). That agency is generally charged with the responsibility for administering State environmental regulations in Baltimore County. Testimony and evidence offered at the hearing indicated that DEPRM has accepted the Developer's analysis as appropriate and in conformance with State law. Moreover, although disagreeing with this methodology, the Protestants produced no expert testimony to the contrary. Moreover, they cite no legal opinion or precedent which is contrary to the Developer's assertions. Thus, I find that the Developer's annual average "methodology" which has been accepted by the administering governmental authorities is appropriate in this instance.

CONCLUSION

After due consideration of all of the testimony and evidence offered in this case, I am persuaded that the relief requested should be granted. I find that the Developer has produced clear and convincing evidence to support a grant of the Petition for Special Exception and Petition for Special Hearing. I also find that the development plan meets all County requirements and should be approved.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the advertising of the property and public hearing held thereon, the development plan shall be approved and the Petitions for Special Hearing and Special Exception granted.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 10th day of June 2004 that the development plan for the Loyola

College Spiritual Retreat Center, identified herein as Developer's Exhibit 2A, 2B and 2C, be and is hereby APPROVED; and,

IT IS FURTHER ORDERED that the proposed Retreat Center as described at the hearing is a "camp" under the B.C.Z.R. and as such, the Petition for Special Exception to permit a camp in an R.C.2 zone, pursuant to Sections 1A01.2.C.4, 1A01.2.C.6 and/or 1A01.2.C.23 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Developer's Exhibit 2A, 2B and 2C, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED THAT THE Petition for Special Hearing to confirm that the proposed parking as shown on the development plan is adequate and to approve the transfer of approximately 54 acres of R.C.2 zoned land as a non-density transfer, in accordance with Developer's Exhibit 2A, 2B and 2C, be and is hereby GRANTED, subject to the following restriction:

1) Compliance with the terms and conditions of the agreement reached by and between the Maryland Line Area Association and the Parkton Area Preservation, Inc., a copy of which was entered into evidence as Joint Exhibit 1.

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

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

LES:bjs

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By bjs

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

June 10, 2004

Robert A. Hoffman, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, Maryland 21204

RE: DEVELOPMENT PLAN HEARING and PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION
(Loyola College Spiritual Retreat Center)
N & S/S Stablers Church Road @ NE/corner York Road
7th Election District – 3rd Council District
Estate of Marion Clark and Eleanor Duvall Spruill, W. Duvall Spruill, P.R.
Cases Nos. VII-389 and 04-337-SPHX

Dear Mr. Hoffman:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The development plan has been approved and the Petitions for Special Hearing and Special Exception granted, in accordance with the attached Order.

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

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Terry Sawyer & Ms. Helen Schneider, Loyola College
4501 N. Charles Street, Baltimore, Md. 21210
Mr. Tom Repsher, Daft-McCune-Walker, Inc.
200 E. Pennsylvania Ave., Towson, Md. 21286
Mr. Wes Guckert, The Traffic Group, 9900 Franklin Sq.Dr., Baltimore, Md. 21236
Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Md. 21204
Ms. Nedda Evans, 2224 Tracey's Road, Sparks, Md. 21152
Ms. Lynn Jones, 815 Stablers Church Road, Parkton, Md. 21120
Christine Rorke, DPDM; DEPRM; OP; DPW; R&P; People's Counsel; Case Files

Printed on Recycled Paper

5/26/04

IN THE MATTER OF LOYOLA COLLEGE IN MARYLAND FOR DEVELOPMENT PLAN APPROVAL AND APPROVAL OF SPECIAL EXCEPTION AND SPECIAL HEARING	*	BEFORE THE HEARING OFFICER/ ZONING COMMISSIONER FOR BALTIMORE COUNTY
S/S of Stablersville Road, East of York Road	*	*
3rd Councilmanic District 7th Election District	*	PDM No. VII-389 Case No. 04-337-SPHX
Estate of Marion T. Clark and Estate of Eleanor Duvall Spruill, Legal Owners	*	
Loyola College in Maryland, Contract Purchaser	*	
	*	
* * * * * * *		

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ZONING COMMISSIONER

DEVELOPER'S POST-HEARING MEMORANDUM

Loyola College in Maryland, contract purchaser and developer, by Robert A. Hoffman with Venable LLP, its attorney, respectfully submits this Post-Hearing Memorandum in support of approval of the Loyola College Spiritual Retreat Center development plan and approval of the requested zoning relief, as follows:

INTRODUCTION

Loyola College operates a private Jesuit college on its campus located at 4501 Charles Street in Baltimore City. Loyola desires to construct a facility in northern Baltimore County to conduct spiritual retreats for its students, faculty, and administration. To this end, Loyola College has contracted to purchase approximately 53 acres of a 107

acre property located on the north and south sides of Stablersville Road, east of York Road, in Parkton. Approximately 54 acres of this property are proposed to be retained by the Spruill/Clarke family for agricultural purposes.

On 10.18 acres of the remaining 53 acres, Loyola proposes to construct a 16,170± square foot main retreat building, including chapel, meetings rooms, five faculty rooms with private bathrooms, restroom facilities, storage rooms, warming kitchen, and dining room. Phase I of construction will also include three retreatant buildings with a total of 60 individual rooms (150± square feet each) with shared toilet and shower facilities between a set of two rooms. Phase II will include two additional retreatant buildings, for a total of 105 rooms/beds.[1] All of the development associated with the retreat center will take place within the 10.18 acre area. The remaining 43± acres will be undisturbed or used for agricultural purposes.

Loyola submitted a development plan for the proposed facility to Baltimore County for review and approval through the Development Review and Approval Process, outlined in Sections 26-201 through 26-209 of the Baltimore County Code ("BCC"). The property's RC-2 zoning permits, by special exception, "camps," "churches or other buildings for religious worship," and "schools, including...colleges." *See* Baltimore County Zoning Regulations ("BCZR") §§ 1A01.2.C.4, 1A01.2.C.6, and 1A01.2.C.23. As discussed in detail in Section I below, before the Hearing Officer/Zoning Commissioner, Loyola produced strong and substantial evidence that the Loyola College Spiritual

[1] Loyola has entered into a Restrictive Covenant Agreement with Maryland Line Area Association, Inc. and Parkton Area Preservation Association, Inc., requiring Loyola to wait at least ten years before constructing Phase II. *See* Restrictive Covenant Agreement, submitted to the Hearing Officer as Joint Exhibit No. 1.

Retreat Center development plan fully complies with the Development Regulations and all applicable rules, regulations, and policies, including demonstrating that the proposed use, in fact, meets the definition of a "camp," "church or other building for religious worship," "school," or a combination thereof.

In addition to development plan approval, Loyola sought approval of a Petition for Special Exception under BCZR Sections 1A01.2.C.4, 1A01.2.C.6, and 1A01.2.C.23 and BCZR Section 502.1 and, to that end, offered strong and substantial evidence before the Hearing Officer as to the lack of any adverse impact from the proposed facility. Loyola also requested, through a Petition for Special Hearing, that the Hearing Officer confirm the 35 parking spaces provided are sufficient to support the intended use of the property. Lastly, Loyola requested approval of a "non-density transfer" to permit Loyola to use the one density unit (for the 107 acre parcel) on the 53 acres under contract and to permit the Spruill/Clarke family to retain the 54 acres located on the north side of Stablersville Road for agricultural use. As outlined in Section II below, Loyola demonstrated through its many witnesses and exhibits that the requested zoning relief was justified.

ARGUMENT

I. Loyola's Development Plan Fully Complies with the Development Regulations and All Applicable Rules, Regulations, and Policies.

A. Baltimore County agencies and Loyola's experts confirmed compliance.

As the record reflects, during the course of the Hearing Officer's Hearing, representatives from the relevant County agencies appeared (or submitted written

comments) and indicated that the redlined development plan, submitted as Developer's Exhibit 2A-2C, complied with all applicable requirements:

DEPRM: Bruce Seeley confirmed, on behalf of the Department of Environmental Protection and Resource Management, that, after having been reviewed by the Environmental Impact Review section, Groundwater Management section, Storm Water Management section, and Agricultural Preservation section, the development plan was found to be in compliance with all applicable regulations, and there were no outstanding issues to be resolved by the Hearing Officer. (T. 38-40)[2]

Office of Planning: With respect to the development plan, Kathy Schlabach of the Office of Planning had two requests: that Loyola show the limits of the special exception area on the development plan; and that the plan indicate "materials and colors" of the siding and the roofing materials. (T. 48-50) Loyola agreed to handle the first request by submitting a copy of the special exception site as an exhibit to the Hearing Officer (submitted as Developer's Exhibit 18), and the Hearing Officer suggested the second request be handled by a condition allowing the Office of Planning to review materials and colors prior to the issuance of building permits. (T. 37, 48-49) Otherwise, Planning had no unresolved issues on the development plan.

Department of Public Works: Robert Bowling appeared on behalf of the Department of Public Works and indicated that his department's site specific comments (additional grading on Stablersville Road and the relocation of landscaping to provide

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[2] A copy of the transcript of the proceedings has been provided to the Hearing Officer with this Post-Hearing Memorandum.

350 feet of site distance) had been addressed by the redlined development plan, and his office, therefore, had no outstanding issues or comments. (T. 57-59)

Zoning Review: John Alexander of the Zoning Review office appeared and indicated that his office had no unresolved issues. (T. 66-67)

Bureau of Land Acquisition: Eric Rockel of the Bureau of Land Acquisition confirmed that, with the addition of a note to the plan providing Baltimore County with a blanket easement for access to the property, his office was satisfied with the redlined development plan. (T. 67-69)

Fire Department: The Fire Department submitted a written comment to the Hearing Officer, indicating that it had no outstanding issues. (T. 70)

Department of Recreation and Parks: Jan Cook submitted a written comment on behalf of the Department of Recreation and Parks, confirming that his office had no unresolved development plan issues. (T. 74-75)

On behalf of Loyola, Michael Pieranunzi, registered landscape architect with Daft-McCune-Walker, the firm responsible for preparation of the development plan, introduced the redlined plan, gave a brief description of the project, and answered questions regarding the plan. (T. 89-134) Mr. Pieranunzi described the proposed buildings and improvements, including access and road conditions, septic reserve areas, well locations, storm water management facilities, and forest buffer and forest conservation areas. (T. 90-118) He further confirmed that lighting and landscaping plans for the site had been reviewed and approved by Baltimore County. (T. 94-96)

With this testimony and the concurrence of the various County agencies, Loyola

satisfied its burden of proof and was, therefore, entitled to approval of the development plan unless a specific failure of the plan to comply with the applicable regulations was identified. As discussed below, while many individual property owners and community representatives expressed generalized complaints or concerns over the proposed development, they failed to point to a specific deficiency that would prevent plan approval. Loyola is, thus, entitled to approval of its development plan.

B. Protestants identified no specific deficiency that would prevent plan approval.

Certain individual property owners and community representatives ("Protestants") appeared to protest approval of the development plan. The vast majority of their testimony consisted of generalized concerns over the impact of the proposed development. However, Protestants raised two issues regarding the development plan that require specific rebuttal:

1. Loyola's proposed water supply system (two wells) needs no additional relief from Baltimore County.

Protestants alleged that the anticipated level of groundwater usage at the retreat facility would require Loyola to seek an amendment to Baltimore County's master water and sewer plan and, thus, arguably would prevent plan approval at this time. This argument is based on an assumption that Loyola's proposed groundwater usage renders its retreat center a "multiuse water supply system," which, in turn, should be specifically included on a list of such systems in the county's water and sewer plan.

The State of Maryland requires that Baltimore County adopt a plan for the provision of adequate water supply and sewerage throughout the County that is consistent

with its comprehensive land use plan (Master Plan 2010). Md. Code Ann., Envir. § 9-503 (1996 Repl. Vol., 2003 Supp.) Baltimore County adopted the "10-Year Baltimore County Water Supply and Sewerage Plan 1990-2000" on July 6, 1992 (Council Resolution No. 50-92), and the plan received the necessary biennial/triennial review up through and including its adoption on February 18, 2003 (Council Resolution No. 17-03). *See* Introduction of 10-Year Baltimore County Water Supply and Sewerage Plan 1990-2000, pp. 1-4.3, attached as Memorandum Exhibit 1.

According to Section 9-505 of the Environmental Code, county water and sewerage plans shall identify the areas in the county to be served by a "multiuse water supply system." "Multiuse water supply system" is defined in Section 9-501(j) as "an individual water supply system that...[h]as the capacity to supply more than 5,000 gallons of water a day; and [s]erves a number of individuals." Before the Hearing Officer, Protestants argued that any water system "capable" of producing 5,000 gallons per day is, by definition, a "multiuse water supply system." (T. 564-569) The strict application of a 5,000 gallons per day "capacity" test, as advocated by Protestants, however, is not the interpretation given or method used by the State of Maryland and Baltimore County.

According to the State of Maryland, the calculation of water usage is actually based on "average" usage. According to Code of Maryland Regulations ("COMAR") Section 26.17.06.04, the State uses a formula based on the "anticipated *average* daily appropriation calculated on an annual basis" and, for ground water withdrawal, "the anticipated *average* daily appropriation during the month of highest use." (Emphasis

added.) Using these calculations, Loyola's anticipated water usage does not reach the 5,000 gallons per day mark. *See* Developer's Exhibit 20, reflecting 2,881 gallons per day (annual average) and 4,811 gallons per day (average during highest monthly use).

On this issue, Loyola presented the testimony of two well-respected experts: Robert Sheesley, expert environment consultant, and Thomas Mills, professional geologist, who rendered opinions based on their many years of experience working with MDE and DEPRM. Mr. Sheesley started by explaining the water usage figures contained in his submittal to DEPRM, which was introduced as Protestants' Exhibit 1. As Mr. Sheesley explained, he was retained by Loyola to determine, first, whether the property could provide the necessary amount of water for the facility and, second, whether the site could handle the expected sewerage discharge. (T. 481)

To make this determination, Mr. Sheesley conferred with representatives from Loyola to come up with usage figures based on the types of anticipated activities, numbers of people at the facility, and number of days the facility would be in use. (T. 481-484) Based on his research, Mr. Sheesley utilized a conservative 109 gallons of water per day per person, based on a "luxury camp" classification, which took into account personal water usage and usage of water for items such as cooking, cleaning, etc. (T. 486-489) He then created a Projected Usage chart, showing Phase I and Full Build-Out, included in Protestants' Exhibit 1. (T. 489-492) According to Mr. Sheesley's analysis, the water usage of the facility at full build-out will be 1,051,650 gallons per year. (T. 495) *See also* Protestants' Exhibit 1. This analysis was reviewed and approved by Baltimore County. (T. 492)

Utilizing MDE's methodology for obtaining permission to appropriate water in the State of Maryland, Mr. Sheesley calculated anticipated water usage to be 2,881 gallons per day (annual average) and 4,811 gallons per day (average during highest monthly use). *See* Developer's Exhibit 20, Loyola's Application to Appropriate and Use Waters of the State. (T. 499-500) Mr. Sheesley explained that using this "accepted" methodology to analyze anticipated water usage is particularly relevant where, as with the retreat center, there will be an "erratic" rather than a consistent use of the property. (T. 496-500)

Buttressing Mr. Sheesley's testimony, Mr. Mills also confirmed that the State regulates the appropriation of ground water using the "annual average" calculation and a calculation based on the "highest monthly use," which he explained is the annual average multiplied by 1.67 to get a maximum daily use during the highest use month. (T. 778-780) Using these averages to determine capacity of a withdrawal system is "the normal standard practice" for MDE. (T. 780)

MDE's practice is also consistent with Baltimore County's Water Supply and Sewerage Plan, reviewed and approved by MDE, which only requires listing of "multi-use facilities" "*using in excess of 5000 gallons [of water] per day.*" *See* Memorandum Exhibit 1, p. 10. This language clearly indicates that review of water supply systems is based on the actual, anticipated use of the system, not on its theoretical, physical capacity and that such use must be examined over a period of time. (T. 784-785)

In further refuting Protestants' argument that the focus should be on the maximum "capacity" of Loyola's two wells on any given day, Mr. Mills further explained that such

an analysis would mean that any well having a yield of 3.47 gallons per minute would qualify as a multiuse water supply system because it has the physical "capacity" to produce 5,000 gallons per day. (T. 776) Given the relatively few "Community/Multi-Use Wells" listed in Baltimore County's Water Supply and Sewerage Plan (Memorandum Exhibit 1, p. 43), Protestants' interpretation is clearly not being utilized by Baltimore County, which evidently agrees with Loyola as it has classified Loyola's proposed water supply as "non-community, transient supply," and not multiuse water supply system. *See* Development Plan Comments, DEPRM (Ground Water Management) Comment, dated March 18, 2004, from J. Robert Powell to Bruce Seeley.

Because Loyola produced strong and substantial evidence that the applicable County and State standards and requirements had been met in this case, which Protestants failed to rebut with any evidence to the contrary, the Hearing Officer should approve the development plan.

2. The proposed facility is permitted as a "camp," "church or other building for religious worship," or "school."

Protestants argued that the proposed Loyola facility, as reflected on the development plan and as described by Loyola's many witnesses, is not permitted by the property's RC-2 zoning. Protestants' argument appears to be based solely on Loyola's decision to refer to the facility as a "retreat center." This is simply a label, chosen as a shorthand way of referring to the facility. Whether Loyola refers to the facility as a "spiritual retreat center," "Camp Loyola," or "Loyola College – North Campus," the

particular wording is not the issue.[3] Rather, the relevant inquiry is on what is the intended use of the property and whether the use falls within one of the special exception categories outlined in BCZR Section 1A01.2.C.

Loyola sought development plan approval of the proposed facility as one or more of the following uses under Section 1A01.2.C, dependent, of course, upon the approval of a special exception:

4. Camps, including day camps.

...

6. Church or other buildings for religious worship.

...

23. Schools, including schools for agricultural training, private preparatory schools, business or trade schools, conservatories or colleges.

Because "camp," "church," and "school" are not defined terms in BCZR Section 101, the Zoning Regulations dictate that these words shall be given "the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged," which are outlined below:

Camp: "a place of temporary shelter, lodging, or residence often at a distance from urban areas or the tents, cabins, or other buildings used for such shelter, lodging, or residence." *See* Memorandum Exhibit 2.

Church: "a place of worship for any religion." *See* Memorandum Exhibit 2.

School: "a place where instruction is given." *See* Memorandum Exhibit 2.

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[3] "What's in a name? That which we call a rose/By any other name would smell as sweet." William Shakespeare, *Romeo and Juliet*, Act ii. Sc. 2.

Loyola College is a 150-year-old Jesuit higher-education institution founded in the teachings of St. Ignatius Loyola. (T. 199-200) As explained by Terrence Sawyer, Special Assistant to the President of Loyola College, "St. Ignatius used retreats and reflection and discernment as critical components to the way he taught and the way he provided education to the people that were under his charge." (T. 201) Loyola College's teaching method has included some form of retreats since its inception. (T. 201)

For the last twenty-three years, Loyola has run a very structured retreat program through its Department of Campus Ministries. (T. 201-202) Student retreats, currently conducted at a facility in Pennsylvania, are opportunities for students to be separated from the main campus and to have time to reflect and consider "major life questions" or other theological topics. (T. 203-205, 208-209) As Mr. Sawyer explained, these retreats usually take place on weekends and run from Friday evening to Sunday midday. (T. 209-212) During this time, the retreatants are involved in lectures and small group discussions and also have periods of quiet reflection and solitude. (T. 210-212) Participation in the student retreats is voluntary. (T. 207) Last year, Loyola conducted seventeen students retreats, and it hopes that number will increase. (T. 215-217)

Loyola also conducts retreats for the faculty and administrators. One example is the "Ignatian retreat," designed to teach lay faculty and administrators about St. Ignatius and the mission of a Jesuit institution. (T. 217-218, 220-221) These retreats typically run from Sunday evening through Friday. Loyola conducted two such retreats last year, and it expects this number to increase to four if the new facility is approved. (T. 218) All retreats would be sponsored and supervised by Loyola. (T. 223) Loyola will not lease

out or permit the facility to be used for any other purpose, including weddings or other events. (T. 223, 245-246)

From this testimony, the Hearing Officer should easily find that the proposed facility qualifies as any one or all three of the permitted uses of camp, church, or school. The use clearly qualifies as a "camp." Loyola is providing its students or faculty members a place of temporary shelter removed from an urban environment. Loyola agreed to restrict its use of the facility for retreats to a total of 160 calendar days per year with retreats varying from one to five days, thus, qualifying it as "temporary shelter." (T. 223, 387-389) The regulations contain no restriction as to the quality of shelter that may be provided; simply because the accommodations are of a better quality than tents or cabins does not disqualify the facility from being a camp. For these reasons, Loyola's proposed facility clearly qualifies as a "camp."

Additionally, the use qualifies as a "church or other building for religious worship." As Mr. Sawyer explained, regardless of the particular topic of the retreats, "there is a thread of spirituality that runs through all the retreats." He also confirmed that the chapel is an essential component of the facility and the retreat experience. (T. 205-206) Protestants would have the Hearing Officer determine this facility not to be a place of religious worship because the public is not invited to attend or participate in the religious worship. (T. 899) Not only does this argument make no sense -- there is no such requirement in the Zoning Regulations -- but also, the imposition of such a requirement as a condition for approval of this facility would violate the United States Constitution and the Constitution of the State of Maryland.

Lastly, the facility qualifies as a "school." There is no dispute that the retreatants, the students and faculty of Loyola, are receiving instruction, whether it be in terms of life lessons or whether it be furthering their religious education. Protestants argue that the facility is not a school because there is "not a prescribed course of study over a prescribed term of time where...specific instruction is given." (T. 899) The Maryland courts, though, have not interpreted "school" or "college" so narrowly. *See, e.g., Carroll County v. Raymond I Richardson Foundation, Inc.*, 71 Md. App. 422, 526 A.2d 81 (1987) (ruling that group home for adolescent boys, which provides educational, counseling, and vocational training, met the definition of "school" and was not a "detention facility."); *Anderson v. Assoc. Prof. of Loyola College*, 39 Md. App. 345, 385 A.2d 1203 (1978) (ruling that administrative offices and president's off-campus residence were used for "educational" purposes and, thus, permitted as part of a "college.") As Mr. Sawyer confirmed, the above-described retreats are "an essential critical element of Loyola College" and cannot be separated out from the basic mission of the college. (T. 204)

On the issue of classifying the use under the Zoning Regulations, Loyola presented the testimony of Mitchell Kellman, land planner and zoning specialist with Daft-McCune-Walker. Based on his experience and familiarity with the Baltimore County Zoning Regulations, Mr. Kellman discussed the definitions of camp, church, and school, as indicated by BCZR Section 101 and the specified resource dictionary, and opined that the proposed use would qualify under any of these uses or as a combination of the three uses. (T. 826-834)

Protestants presented no evidence to the contrary. Rather, they chose to argue that "retreat center" is not a permitted use category. As the Hearing Officer pointed out, there is no such use category anywhere in the Zoning Regulations. Similarly, there is no such use category as "diner," but the "Double-T Diner" on Route 40 still qualifies as a "restaurant." While testifying, Protestant Sharon Bailey implored the Hearing Officer to make this decision "based on a common sense approach of what the actual use of this facility is going to be." (T. 900) Loyola seconds this request. Loyola is confident that, when common sense is employed and the actual uses are examined rather than relying on the terminology, it becomes clear that the proposed facility qualifies as a "camp," a "church or other building for religious worship," or a "school" or some combination thereof.

Therefore, Loyola is entitled to seek a special exception under BCZR Section 1A01.2.C.

II. Loyola Produced Strong and Substantial Evidence as to its Entitlement to the Requested Zoning Relief.

A. Loyola clearly met its burden of proof with respect to the Petition for Special Exception.

In addition to seeking approval of its development plan, Loyola also requested approval of a special exception for a "church or other building for religious worship," "camp," "school," or a combination thereof under BCZR Section 1A01.2.C. Special exceptions in Baltimore County are approved in accordance with BCZR Section 502.1.

According to the well-developed law of Maryland, a special exception is a "valid zoning mechanism" whereby a particular use is presumed to be valid and is presumed to be consistent with the general welfare, absent facts or circumstances sufficient to negate

that presumption. *Schultz v. Pritts*, 291 Md. 1, 11, 432 A.2d 1319 (1981). Although *Schultz v. Pritts* is the seminal case on special exceptions, in several recent decisions, the Court of Appeals and Court of Special Appeals have reiterated the standard relating to the grant or denial of a special exception. *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 541-543, 814 A.2d 469 (2002); *Lucas v. People's Counsel for Baltimore County*, 147 Md. App. 209, 237-239, 807 A.2d 1176 (2002); *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md. App. 616, 640-641, 716 A.2d 311 (1998).

As the Court of Appeals explained in *Rylyns Enterprises*:

> ...a special exception use is an additional use which the controlling zoning ordinance states will be allowed in a given zone unless there is showing that the use would have unique adverse affects [sic] on the neighboring properties within the zone.

372 Md. at 542. Recent appellant decisions have served to emphasize that, once a petitioner demonstrates that the proposed use satisfies the specific requirements of the applicable ordinance, the special exception must be granted unless "there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Id.* at 542 (*quoting Schultz*, 291 Md. at 11) (emphasis added).

To defeat a special exception, therefore, a protestant must do more than show that the use may have adverse effects that are common to the use generally. *Rylyns Enterprises*, 372 Md. at 542; *Schultz*, 291 Md. at 14, 22-23; *Lucas*, 147 Md. App. at 238-239. "The disqualifying adverse effect or effects must be more than mere annoyance.

Classifying such uses as special exceptions or conditional uses (as opposed to permitted uses) assumes that those uses will include some adverse impacts." *Rylyns Enterprises*, 372 Md. at 542 (emphasis added). A disqualifying adverse impact, therefore, must be something more than what is ordinarily expected and it must be unique to that particular location. *Id.* at 542. *See also Lucas*, 147 Md. App. at 238-239; *Hayfields*, 122 Md. App. at 640-641.

Loyola produced strong and substantial evidence at the hearing before the Hearing Officer that the proposed Loyola facility would have little or no impact on the surrounding community, thus entitling it to the requested special exception. Representatives from Loyola, Terrence Sawyer and Helen Schneider, fully explained the anticipated use of the facility in light of the Restrictive Covenant Agreement entered as Joint Exhibit 1. (T. 206-309, 389-457) David Yates, lighting consultant, explained the proposed lighting on site, which he opined would be the "bare minimum...required for safety" and would result in "no lights spilling beyond the property line, and actually not even close...to the property line." (T. 332-333)

Charles Alexander, architect, described the design of the building, explaining how the agrarian-type structures would be constructed of natural materials and would be built into the hillside to minimize visual intrusion. Developer's Exhibits 15A-E (building elevations), 16A-D (floor plans). Because of the limited amount of disturbance and the large size of the property, he opined that the facility would not have an adverse impact on the surrounding area in terms of size or scale, increased population, light or air, or aesthetics. (T. 651-673)

Wes Guckert, expert traffic engineer, reviewed the existing traffic conditions in the area, conducted traffic counts, and analyzed this information in light of the anticipated use of the Loyola property. (T. 600-605) His then prepared a report summarizing his research, analysis, and conclusions, which was submitted as Developer's Exhibit 12. Mr. Guckert confirmed the adequacy and safety of the surrounding roadways and confirmed that the proposed facility would not have an adverse impact on the operation of these roads. (T. 605-608)

Robert Sheesley, expert environmental consultant, testified that he performed various tests and analyses regarding water usage and water resources on site to analyze the potential impact of the proposed facility on the surrounding community and, particularly, on neighboring wells. (T. 501-511) Based on his investigation, the use of the wells on site for the proposed facility will have no adverse impact on the other wells in the area. (T. 511-512) Mr. Sheesley's conclusions in this regard are summarized on Page 18 of Developer's Exhibit 8.

Mr. Sheesley also confirmed that the Loyola facility would not be detrimental to the agricultural uses in the vicinity. (T. 529-533) As Mr. Sheesley explained, this area is not "pristine" farmland; rather, the existing farms are broken up by single-family homesites. (T.529) *See also* Developer's Exhibit 9. In forming his opinion, he also found significant that a majority of the 107 acre tract will continue to be used for agricultural purposes and that only 10± acres of open fields will be disturbed for development. (T. 532-533) Lastly, he testified that, because of the limited disturbance area, the project will not have an impact on forests, wetlands, aquifers, or other

environmental resources. (T. 535-536)

Loyola also produced Thomas Repshur and Mitchell Kellman with DMW to testify regarding the other factors outlined in BCZR Section 502.1 and the lack of resulting adverse impact. (T. 722-745, 835-842). The comprehensive testimony and evidence provided to the Hearing Officer by Loyola was not rebutted by any of the Protestants. Loyola, therefore, met its burden, and the Hearing Officer should grant the requested special exception.

B. Loyola demonstrated that the requested non-density transfer should be granted.

Loyola also requested approval of a Petition for Special Hearing to permit a "non-density transfer" or, rather, non-density retention of 54 acres of the total 107 acres by the Spruill/Clarke family to utilize that portion of the property for agricultural purposes. The Zoning Commissioner's Policy Manual permits non-density transfers, provided the end result does not permit a re-subdivision into a greater number of lots. At the hearing, Loyola demonstrated that this condition is met by the proposal.

Expert land planner Mitchell Kellman and landscape architect Michael Pieranunzi from Daft-McCune-Walker testified that, once separated from the 53 acres to be used by Loyola, the 54 acre Spruill/Clarke piece will have no density rights associated with it. (T. 92, 109-114, 842-851) Loyola will utilize the one available density unit to construct the retreat facility on the 53 acre Loyola piece. (T. 844-845) Therefore, the Spruill/Clarke piece will not be capable of further subdivision, and Mr. Spruill signed an Affidavit confirming his understanding of this fact. *See* Developer's Exhibit 3.

Once the request was explained, Ms. Nedda Evans, speaking on behalf of, at least, some members of the community, indicated that "I understand from what's been explained to me today...we would not be concerned [about the non-density transfer]." (T. 858) Loyola has met its burden with regard to the requested Petition for Special Hearing for a non-density transfer or retention.

C. Loyola presented strong and substantial evidence that the 35 parking spaces provided are sufficient.

Loyola also filed a Petition for Special Hearing to confirm that the 35 parking spaces provided on site are sufficient to support the proposed use. As Loyola's representative testified, the vast majority of students, faculty, and administrators participating in retreats would be traveling to the facility by way of school-owned vans or buses. (T. 213, 228-229, 236-238) *See also* Developer's Exhibits 4A-4D. Therefore, based on Loyola's experience with conducting similar retreats, the 35 parking spaces provided would be more than sufficient to support the use. (T. 236-238) There was no evidence to the contrary, and the Hearing Officer should, therefore, grant the Petition for Special Hearing.

CONCLUSION

During the three days of testimony before the Hearing Officer, Loyola clearly demonstrated that its development plan meets all applicable regulations and merits approval. Loyola further produced strong and substantial evidence of its entitlement to the requested zoning relief, which evidence was not rebutted by Protestants. Loyola, therefore, respectfully requests that the Hearing Officer/Zoning Commissioner approve

the redlined development plan and its Petitions for Special Exception and Special Hearing.

Respectfully submitted,

Robert A. Hoffman /PAM

ROBERT A. HOFFMAN
Venable LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6200
Attorney for Loyola College
in Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of May, 2004, a copy of the foregoing POST-HEARING MEMORANDUM was mailed to Ms. Nedda Evans, 2224 Tracey's Road, Sparks, Maryland, 21152, Protestant; Ms. Lynn Jones, 815 Stablersville Church Road, Parkton, Maryland, 21120, Protestant; and to Peter M. Zimmerman, Esquire, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

Robert A. Hoffman /PAM

ROBERT A. HOFFMAN

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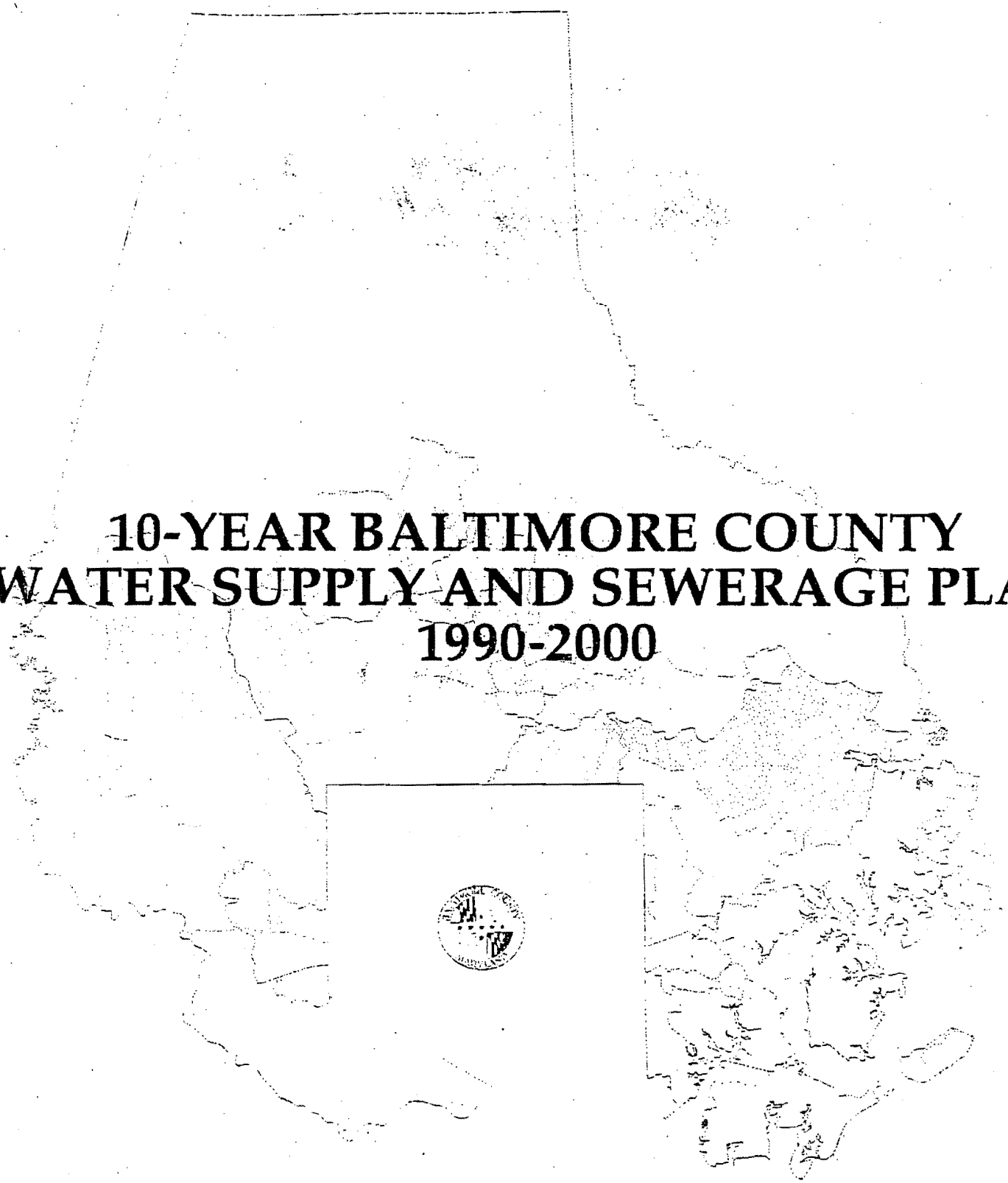

10-YEAR BALTIMORE COUNTY WATER SUPPLY AND SEWERAGE PLAN 1990-2000

1997 Triennial Review

MEMORANDUM EXHIBIT 1

~~@ 10 a.m.~~ PP'd

am Day 1

am Day 2

am Day 3

am Day 4

ard 1/05/04-
337-5PHX)

~~05 @ 1:00 pm~~

9 am Delib.

E CBA-04-136

ARYLAND – DEVELOPER

anscripts and Misc. Corresp.

RGE EXHIBITS

Closed 6/2/05 Opinion & Order published

CBA-04-136
(riding w/ 04-337-5PHX)

20040337 "A"

supplemental

Scanned 4/19/12 C.P.

(5)

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at S/S of Stablersville Road, East of York Road

which is presently zoned R.C.2

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

SEE ATTACHED

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

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

Contract Purchaser/Lessee:

Loyola College in Maryland
Name - Type or Print

Signature By: John A. Palmucci, Vice President for Administration, Finance and Treasurer
4501 North Charles Street (410) 617-2345
Address Telephone No.
Baltimore, Maryland 21210-2699
City State Zip Code

Attorney For Petitioner:

Robert A. Hoffman
Name - Type or Print

Signature

Venable, LLP
Company
210 Allegheny Avenue (410) 494-6200
Address Telephone No.
Towson, Maryland 21204
City State Zip Code

Legal Owner(s):

SEE ATTACHED
Name - Type or Print

Signature

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Representative to be Contacted:

Robert A. Hoffman
Name
210 Allegheny Avenue (410) 494-6200
Address Telephone No.
Towson, Maryland 21204
City State Zip Code

ORDER RECEIVED FOR FILING
Date 1/26/04
By

Case No. 04-337-SPHX

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BK Date 1/26/04

R&V 9/15/98

Petition For Special Hearing

Loyola College in Maryland
S/S of Stablersville Road
East of York Road

1. Special hearing to confirm the parking provided is adequate.

2. Special hearing to approve the transfer of 54± acres of R.C.2 zoned land as a non-density transfer.

ORDER RECEIVED FOR FILING
Date 6/16/04
By

TO1DOCS1/DHK01/#171524v1

#337

Petition for Special Hearing

Signature Page

Legal Owners:

Estate of Marion T. Clarke
Estate of Eleanor Duvall Spruill

W. Duvall Spruill, Personal Representative
P. O. Box 1473
Columbia, South Carolina 29202
(803) 227-4291

TO1DOCS1/DHK01/#171522 v1

ORDER RECEIVED FOR FILING
Date 6/10/14
By

#337

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at S/S of Stablersville Road, East of York Road

which is presently zoned R.C.2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, leg owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto a made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use t herein described property for

Special exception to permit a building for religious worship/school/camp in the R.C.2 zone, pursuant to Sections 1A01.2.C.4, .6 and .23 of the Baltimore County Zoning Regulations.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Exception, advertising, posting, etc. and further agree to and are to be bounded by t 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:

Loyola College in Maryland
Name - Type or Print

Signature By: John A. Palmucci, Vice President for Administration, Finance and Treasurer
Signature

4501 North Charles Street (410) 617-2345
Address Telephone No.

Baltimore, Maryland 21210-2699
City State Zip Code

Attorney For Petitioner:

Robert A. Hoffman
Name - Type or Print

Robert A. Hoffman/JHK
Signature

Venable, LLP
Company

210 Allegheny Avenue (410) 494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Legal Owner(s):

SEE ATTACHED
Name - Type or Print

Signature

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Representative to be Contacted:

Robert A. Hoffman
Name

210 Allegheny Avenue (410) 494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BK Date 1/26/04

Case No. 04-337-SPHX

ORDER RECEIVED FOR FILING
Date 1/10/04
By

REVISED 09/15/98

Petition for Special Exception

Signature Page

Legal Owners:

Estate of Marion T. Clarke
Estate of Eleanor Duvall Spruill

W. Duvall Spruill, Personal Representative
P. O. Box 1473
Columbia, South Carolina 29202
(803) 227-4291

TO1DOCS1/DHK01/#164338 v1

ORDER RECEIVED FOR FILING
Date 9/10/14
By

#337

Description

to Accompany Special Hearing

109.984 Acre Parcel

East Side of York Road

North and South Sides of Stablersville Road

Seventh Election District, Baltimore County, Maryland

DMW

Daft•McCune•Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21286
http://www.dmw.com
410 296 3333
Fax 410 296 4705

A Team of Land Planners,
Landscape Architects,
Golf Course Architects,
Engineers, Surveyors &
Environmental Professionals

Beginning for the same at the end of the second of the two following courses and distances measured from the intersection of the centerline of York Road and the centerline of Stablsersville Road, (1) Northeasterly 100 feet, more or less, and thence (2) Southeasterly 40 feet, more or less, thence leaving said point of beginning and running for the forty-nine following courses and distances, viz: (1) North 10 degrees 11 minutes 02 seconds East 297.30 feet to a point of curvature, thence (2) Northeasterly by a line curving to the right, having a radius of 1947.49 feet, for a distance of 375.26 feet (the arc of said curve being subtended by chord bearing North 15 degrees 13 minutes 02 seconds East 374.68 feet), thence (3) North 20 degrees 44 minutes 14 seconds East 631.87 feet to a point of curvature, thence (4) Northeasterly by a line curving to the left, having a radius of 1293.50 feet, for a distance of 265.23 feet (the arc of said curve being subtended by a chord bearing North 14 degrees 51 minutes 47 seconds East 264.76 feet), thence (5) South 84 degrees 29 minutes 53 seconds East 18.27 feet to a point of curvature, thence (6) Northeasterly by a line curving to the left, having a radius of 3879.72 feet, for a distance of 158.77 feet (the arc of said curve being subtended by a chord bearing

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North 04 degrees 19 minutes 47 seconds East 158.75 feet), thence (7) North 03 degrees 09 minutes 26 seconds East 194.94 feet, thence (8) South 80 degrees 06 minutes 54 seconds East 1102.30 feet, thence (9) North 83 degrees 10 minutes 06 seconds East 410.35 feet, thence (10) South 45 degrees 48 minutes 45 seconds East 283.79 feet, thence (11) South 28 degrees 41 minutes 26 seconds West 440.43 feet, thence (12) South 49 degrees 34 minutes 06 seconds West 391.23 feet thence (13) South 67 degrees 07 minutes 21 seconds East 1054.56 feet, thence (14) South 20 degrees 58 minutes 53 seconds West 627.21 feet, thence (15) North 84 degrees 24 minutes 07 seconds East 206.23 feet, thence (16) South 35 degrees 42 minutes 29 seconds East 279.56 feet, thence (17) South 44 degrees 29 minutes 25 seconds West 51.04 feet, thence (18) South 38 degrees 30 minutes 45 seconds East 546.68 feet, thence (19) South 28 degrees 38 minutes 05 seconds West 24.57 feet, thence (20) South 36 degrees 41 minutes 14 seconds West 93.48 feet, thence (21) South 15 degrees 43 minutes 10 seconds West 54.53 feet, thence (22) South 06 degrees 56 minutes 08 seconds West 43.78 feet, thence (23) South 00 degrees 35 minutes 30 seconds East 197.17 feet, thence (24) South 47 degrees 22 minutes 37 seconds East 13.72 feet, thence (25) South 00 degrees 35 minutes 30 seconds East 14.39 feet, thence (26) South 23 degrees 44 minutes 00 seconds West 30.22 feet, thence (27) South 33 degrees 45 minutes 05 seconds West 89.94 feet, thence (28) South 16 degrees 22 minutes 55 seconds West 126.17 feet, thence (29) South 40 degrees 14 minutes 16 seconds West 30.13 feet, thence (30) South 48 degrees 04 minutes 05 seconds West 236.65 feet, thence (31) South 65 degrees 04 minutes 22 seconds West 330.62 feet, thence (32) North 14 degrees 24 minutes 54 seconds West 482.44 feet, thence (33) South 73 degrees 32 minutes 31 seconds West 235.22 feet, thence (34) South 60

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degrees 32 minutes 08 seconds West 574.00 feet, thence (35) North 16 degrees 06 minutes 36 seconds West 558.66 feet, thence (36) North 27 degrees 58 minutes 13 seconds West 376.20 feet, thence (37) North 33 degrees 46 minutes 01 second West 462.27 feet, thence (38) South 87 degrees 05 minutes 45 seconds East 126.25 feet to a point of curvature, thence (39) Southeasterly by a line curving to the right, having a radius of 1700.00 feet, for a distance of 440.29 feet (the arc of said curve being subtended by a chord bearing South 79 degrees 40 minutes 35 seconds East 439.06 feet), thence (40) North 70 degrees 17 minutes 27 seconds East 273.25 feet, thence (41) North 32 degrees 03 minutes 08 seconds East 842.75 feet, thence (42) North 67 degrees 07 minutes 21 seconds West 1025.50 feet, thence (43) South 45 degrees 58 minutes 10 seconds West 1185.34 feet thence (44) South 03 degrees 46 minutes 12 seconds West 98.85 feet, thence (45) North 61 degrees 31 minutes 50 seconds West 2.23 feet to a point of curvature, thence (46) Northwesterly by a line curving to the left, having a radius of 1200.00 feet, for a distance of 303.49 feet (the arc of said curve being subtended by a chord bearing North 71 degrees 46 minutes 34 seconds West 302.68 feet), thence (47) North 79 degrees 01 minute 17 seconds West 127.85 feet, thence (48) North 10 degrees 10 minutes 54 seconds East 10.01 feet, and thence (49) North 33 degrees 59 minutes 42 seconds West 61.72 feet to the point of beginning; containing 109.984 acres of land, more or less.

THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED TO BE USED FOR CONVEYANCE.

January 24, 2004

Project No. 00026.E (L00026.E)

#337

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: #04-337-SPHX
S/side of Stablersville Road, East of York Road
E/side of York Road, 2000 feet south of centerline of Stabler's Church Road
7th Election District - 3rd Councilmanic District
Legal Owner(s): Estate of Marion Clark & Eleanor Duvall Spruill, W. Duval Spruill, Personal Rep.
Contract Purchaser: Loyola College in MD, John Palmucci, V.P.

Special Exception: to permit a building for religious worship/school/camp in the R.C.2 zone, Pursuant to Sections 1A01.2.C.4.6. and .23 of the Baltimore County Zoning Regulations. **Special Hearing:** to approve the transfer of 54 +/- acres of R.C.2 zoned land as non-density Transfer.
Hearing: Friday, April 16, 2004 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.
1/012 Apr. 1 C657336

CERTIFICATE OF PUBLICATION

4/1, 2004

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 4/1, 2004.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No. **Hearing Officer's Hearing and Case # 04-337-SPHX**

Petitioner/Developer **Loyola College in MD**

Date of Hearing/Closing **April 16, 2004**

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

Ladies and Gentlemen:

This letter is to certify under penalties of perjury that the necessary sign(s) required by law were posted conspicuously for the property known as

Loyola Spiritual Retreat Center

2 Zoning case signs posted

2 Hearing Officer's Hearing signs posted

The signs were posted on March 18, 2004
(Month, Day, Year)

Sincerely,

(Signature of Sign Poster and Date)

Michael Alexander
(Printed Name)

Daft- McCune- Walker, Inc.
200 East Pennsylvania Avenue
Towson, MD 21286
(Address)

410-296-3333
(Telephone Number)



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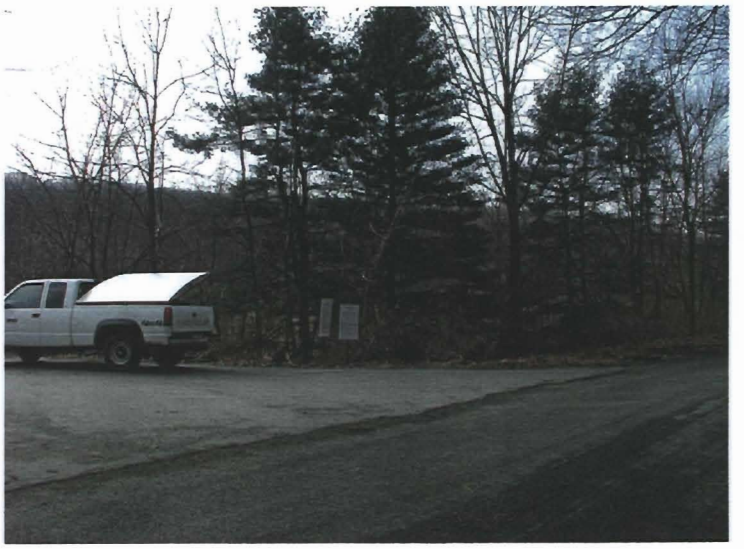

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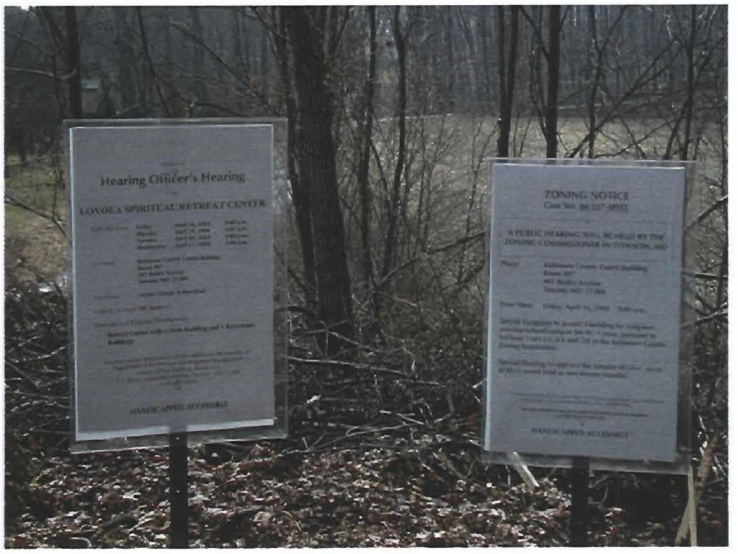

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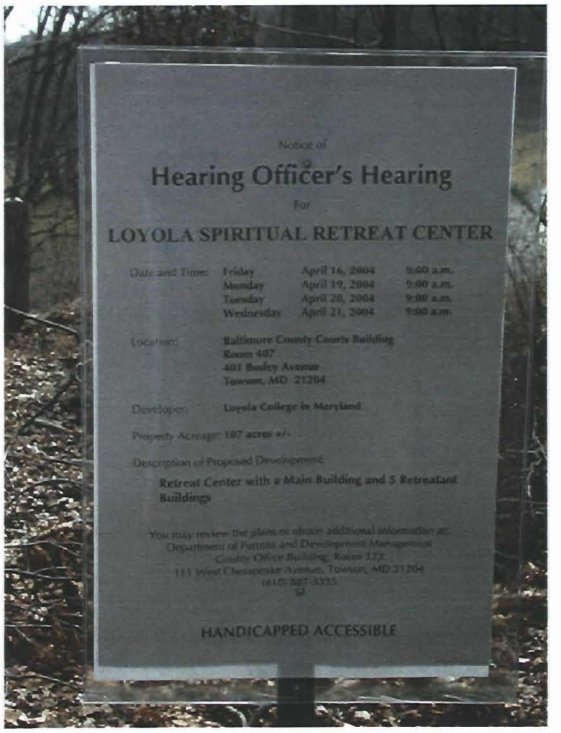

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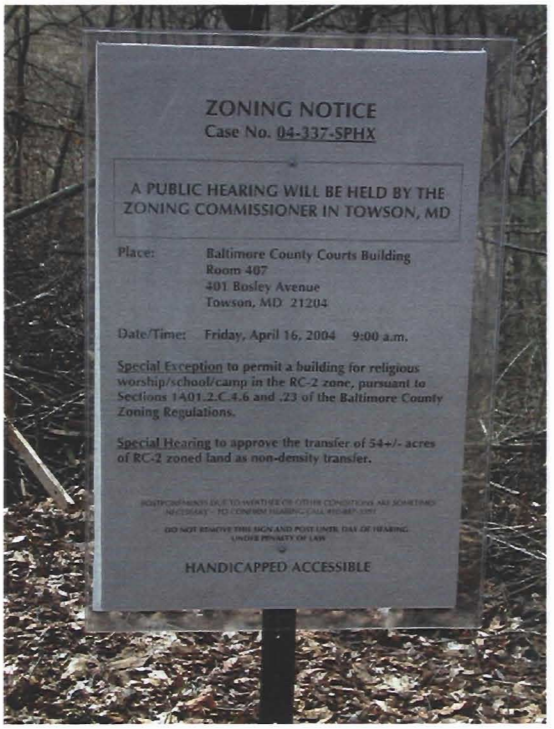

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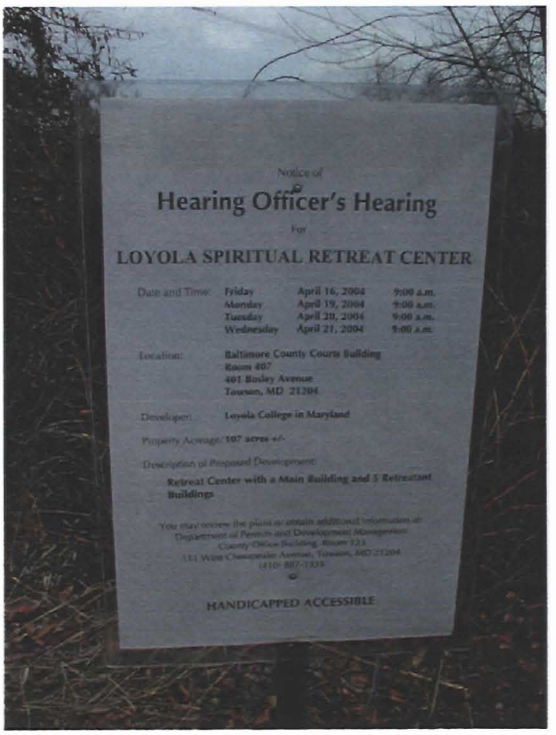

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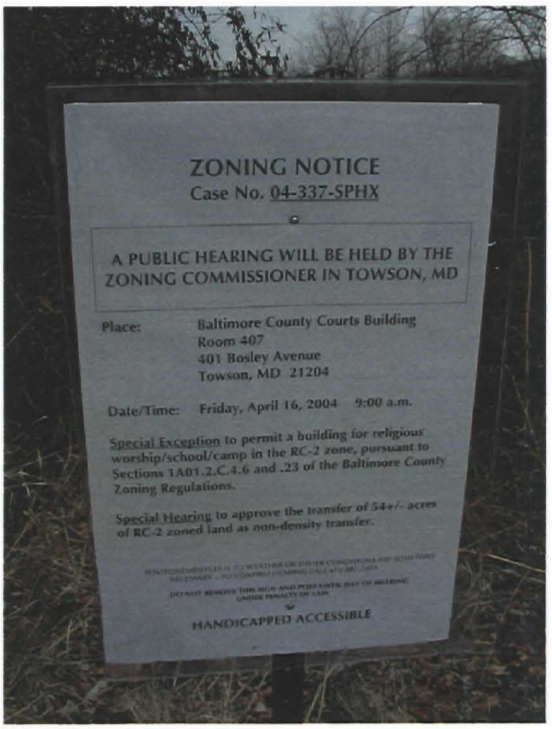

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CERTIFICATE OF POSTING

RE: Case No. **Hearing Officer's Hearing**

Petitioner/Developer **Loyola College in MD**

Date of Hearing/Closing **April 16, 2004**

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

Ladies and Gentlemen:

This letter is to certify under penalties of perjury that the necessary sign(s) required by law were posted conspicuously for the property known as

Loyola Spiritual Retreat Center

2 Hearing Officer's Hearing signs re-posted with revised dates

The signs were posted on April 07, 2004
(Month, Day, Year)

Sincerely,

(Signature of Sign Poster and Date)

Michael Alexander
(Printed Name)

Daft- McCune- Walker, Inc.
200 East Pennsylvania Avenue
Towson, MD 21286
(Address)

410-296-3333
(Telephone Number)



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9/14

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-336-SPHX

LOYOLA COLLEGE OF MARYLAND– LEGAL OWNER

STABLERSVILLE ROAD AND YORK ROAD

7TH ELECTION DISTRICT APPEALED: 7/7/2004

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

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

CERTIFICATE OF POSTING

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

Attention: Kathleen Bianco
Administrator

CASE NO.: 04-337-SPHX

Petitioner/Developer:

LOYOLA COLLEGE OF MARYLAND – LEGAL OWNER

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

STABLERSVILLE ROAD AND YORK ROAD

The sign was posted on 8/20, 2004

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

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

February 23, 2004

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: 04-337-SPHX
S/side of Stablersville Road, East of York Road
E/side of York Road, 2000 feet south of centerline of Stabler's Church Road
7th Election District – 3rd Councilmanic District
Legal Owners: Estate of Marion Clark & Eleanor Duvall Spruill, W. Duval Spruill, Personal Rep.
Contract Purchaser: Loyola College in MD, John Palmucci, V.P.

Special Exception to permit a building for religious worship/school/camp in the R.C.2 zone, Pursuant to Sections 1A01.2.C.4.6. and .23 of the Baltimore County Zoning Regulations.
Special Hearing to approve the transfer of 54 +/- acres of R.C.2 zoned land as non-density Transfer.

Hearing: Friday, April 16, 2004, at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco
Director

TK:klm

C: Robert Hoffman, Venable, LLP, 210 Allegheny Avenue, Towson 21204
W. Duvall Spruill, P.O. Box 1473, Columbia South Carolina 29202
John Palmucci, V.P. Loyola College, 4501 N. Charles St., Baltimore 21210-2699

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, APRIL 1, 2004.**
(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 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

PP'd for 9/14/04 w/o of Developer's Counsel w/o objection

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

July 14, 2004

NOTICE OF ASSIGNMENT

CASE #: CBA-04-136
(PDM # VII-389)

and

CASE #: 04-337-SPHX

IN THE MATTER OF: LOYOLA COLLEGE SPIRITUAL RETREAT CENTER; Loyola College of Md. - Developer
N & S/s Stablersville Rd @ NE/cor York Road
7th Election District; 3rd Councilmanic District
FDP – Development Plan Approval / § 26-209 BCC
SPH – Proposed parking and non-density transfer
SE – Building for religious worship/school/camp in R.C. 2 zone

6/10/2004 – Decision of the Hearing Officer (ZC); Plan **APPROVED with restriction**; special hearing and special exception relief **GRANTED**.

ASSIGNED FOR: **WEDNESDAY, AUGUST 4, 2004 at 10:00 a.m.**

As to CBA-04-136 : This matter has been assigned for hearing in accordance with Section 26-209 of the *Baltimore County Code.*

As to 04-337-SPHX: Assigned for evidentiary hearing.

NOTE: The Board's Rules of Practice & Procedure are found in *Baltimore County Code, Appendix 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 Appellants /Protestants : G. Macy Nelson, Esquire
Appellants /Protestants : Citizens Against Loyola Multi-Use Center
Weisburg Community Assn.
David Adams
Joseph Amos
Lynne Jones, James Voshell, and Juli Butler
Sharon and Theodore Norton and Melissa Norton
Edward and Barbara Underwood

Counsel for Developer /Petitioner : Robert A. Hoffman, Esquire
Developer /Petitioner : Loyola College / Terence Sawyer and Helen Schneider /Representatives
Tom Repsher /Daft McCune Walker Inc.
Wes Guckert /The Traffic Group

Michael P. Tanczyn, Esquire on behalf of Maryland Line Assn. and Parkton Area Preservation, Inc.
Nedda Evans /Protestant

Office of People's Counsel
Pat Keller, Director /Planning
David Carroll, Director /DPM
Edward Adams, Jr., Director /DPW
Robert J. Barrett, Director /Rec & Parks
Lawrence E. Schmidt /Zoning Commissioner
Don Rascoe /PDM
Timothy M. Kotroco, Director /PDM

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COUNTY BOARD OF APPEALS

FACSIMILE TRANSMITTAL SHEET

TO: **ROB HOFFMAN /PATSY MALONE**	FROM: **KATHLEEN BIANCO**
FAX NUMBER: **410-821-0147**	**DATE:** **JULY 19, 2004**
COMPANY:	**TOTAL NO. OF PAGES INCLUDING COVER:** **TWO (2)**
PHONE NUMBER:	**SENDER'S REFERENCE NUMBER:** **CASE NO. CBA-04-136/ 04-337-SPHX**
RE: **LOYOLA COLLEGE RETREAT CNTR**	**YOUR REFERENCE NUMBER:**

URGENT FOR REVIEW **X FOR YOUR RECORDS** PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

PERSONAL AND CONFIDENTIAL

Per our phone conversation, attached is a copy of the Notice of Assignment sent out on July 14, 2004 for the Loyola College Spiritual Retreat Center. (It may not have actually gotten into the US Mail system until 7/15/04.)

The window for hearing this appeal is 7/25 – 8/09/04; hence the early hearing date. At this time, this is the only date available within the prescribed window.

Should you have any questions, please call me at 410-887-3180.

kathi

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

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 July 27, 2004

NOTICE OF POSTPONEMENT AND REASSIGNMENT

CASE #: CBA-04-136
(PDM # VII-389)

and

CASE #: 04-337-SPHX

IN THE MATTER OF: LOYOLA COLLEGE SPIRITUAL RETREAT CENTER; Loyola College of Md. - Developer
N & S/s Stablersville Rd @ NE/cor York Road 7th E; 3rd C
FDP – Development Plan Approval / § 26-209 BCC; **SPH** -parking and non-density transfer; **SE** – Building for religious worship/school/camp in R.C. 2 zone

6/10/2004 – Decision of the Hearing Officer (ZC); Plan **APPROVED with restriction**; special hearing and special exception relief **GRANTED**.

which was assigned to begin on 8/04/04 has been **POSTPONED** to four dates in September as follows, with agreement by Counsel for Developer and Counsel for Appellants /Protestants as to designated dates beyond the 15-day window; and has been

REASSIGNED FOR:

TUESDAY, SEPTEMBER 14, 2004 at 10:00 a.m. /Day #1
WEDNESDAY, SEPTEMBER 15, 2004 at 10:00 a.m. /Day #2
WEDNESDAY, SEPTEMBER 29, 2004 at 10:00 a.m. /Day #3 and
THURSDAY, SEPTEMBER 30, 2004 at 10:00 a.m. /Day #4

As to CBA-04-136 : This matter has been assigned for hearing in accordance with Section 26-209 of the *Baltimore County Code*. As to 04-337-SPHX: Assigned for evidentiary hearing.

NOTE: The Board's Rules of Practice & Procedure are found in *Baltimore County Code, Appendix 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 Appellants /Protestants : G. Macy Nelson, Esquire
Appellants /Protestants : Citizens Against Loyola Multi-Use Center
Weisburg Community Assn.
David Adams
Joseph Amos
Lynne Jones, James Voshell, and Juli Butler
Sharon and Theodore Norton and Melissa Norton
Edward and Barbara Underwood

Counsel for Developer /Petitioner : Robert A. Hoffman, Esquire
Developer /Petitioner : Loyola College / Terence Sawyer and Helen Schneider /Representatives
Tom Repsher /Daft McCune Walker Inc.
Wes Guckert /The Traffic Group

Michael P. Tanczyn, Esquire on behalf of Maryland Line Assn. and Parkton Area Preservation, Inc.
Nedda Evans /Protestant

Office of People's Counsel
Pat Keller, Director /Planning
David Carroll, Director /DPM
Edward Adams, Jr., Director /DPW
Robert J. Barrett, Director /Rec & Parks
Lawrence E. Schmidt /Zoning Commissioner
Don Rascoe /PDM
Timothy M. Kotroco, Director /PDM

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COUNTY BOARD OF APPEALS

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
MACY NELSON (1)	**KATHLEEN BIANCO**
PATSY MALONE (2)	
FAX NUMBER:	**DATE:**
410-825-0670 (1)	**JULY 27, 2004**
410-821-0147 (2)	
COMPANY:	**TOTAL NO. OF PAGES INCLUDING COVER:** **TWO (2)**
PHONE NUMBER:	**SENDER'S REFERENCE NUMBER:** **CASE # CBA-04-136/ 04-337-SPHX**
RE: PP AND REASSIGNMENT - LOYOLA RETREAT CENTER	**YOUR REFERENCE NUMBER:**

URGENT FOR REVIEW **X FOR YOUR RECORDS** PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

PERSONAL AND CONFIDENTIAL

Attached is a copy of the Notice of Postponement and Reassignment for Loyola moving it from 8/04/04 to the four September dates. A copy has also gone out to all parties via USPS this date.

kathi

Attachment

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

457
5

County Board of Appeals of Baltimore County

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

August 11, 2004

NOTICE OF DELIBERATION

IN THE MATTER OF:

HOWARD BOLLING – Legal Owner
Case No. 04-118-A

Having heard this matter on 8/10/04, public deliberation has been scheduled for the following date /time:

DATE AND TIME : **WEDNESDAY, SEPTEMBER 15, 2004 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

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: Appellant /Petitioner : Howard Bolling

Emily Wolfson
Mr. and Mrs. Gary M. Sholly

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

FYI: 4-3-7

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4/57 (7)

County Board of Appeals of Baltimore County

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

August 19, 2004

NOTICE OF DELIBERATION

IN THE MATTER OF:
CAROL SUSAN GREEN-BOTELER – Legal Owner /Petitioner
Case No. 03-572-A

Having heard this matter on 8/17/04, public deliberation has been scheduled for the following date /time:

DATE AND TIME : **WEDNESDAY, SEPTEMBER 15, 2004 at 9:30 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: Closing briefs are due on Tuesday, August 31, 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: Appellant /Protestant : Gina Hrybyk /Relay Improvement Assn.
Protestants: Doreen and Alan DeSa
Richard O'Heir

Counsel for Petitioner : Michael P. Tanczyn, Esquire
Petitioner : Carol Susan Green-Boteler

Interested Party : Dawn DaCosta

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

FYI: 4-5-1

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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 October 6, 2004

NOTICE OF ASSIGNMENT /Days 5 and 6

CASE #: CBA-04-136
(PDM # VII-389)

and

CASE #: 04-337-SPHX

IN THE MATTER OF: LOYOLA COLLEGE SPIRITUAL RETREAT CENTER; Loyola College of Md. - Developer
N & S/s Stablersville Rd @ NE/cor York Road 7th E; 3rd C
FDP – Development Plan Approval / § 26-209 BCC; **SPH** -parking and non-density transfer; **SE** – Building for religious worship/school/camp in R.C. 2 zone

6/10/2004 – Decision of the Hearing Officer (ZC); Plan **APPROVED with restriction**; special hearing and special exception relief **GRANTED**.

Hearing days to date: 9/14/04; 9/15/04; 9/29/04; and 9/30/04; assigned for days 5 and 6 to:

REASSIGNED FOR: **TUESDAY, DECEMBER 7, 2004 at 10:00 a.m. /Day #5 AND TUESDAY, JANUARY 4, 2005 at 10:00 a.m. /Day #6**

As to CBA-04-136 : This matter has been assigned for hearing in accordance with Section 26-209 of the *Baltimore County Code*. As to 04-337-SPHX: Assigned for evidentiary hearing.

NOTE: The Board's Rules of Practice & Procedure are found in *Baltimore County Code, Appendix 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 Appellants /Protestants : G. Macy Nelson, Esquire
Appellants /Protestants : Citizens Against Loyola Multi-Use Center
Weisburg Community Assn. Lynne Jones, James Voshell, and Juli Butler
David Adams Sharon and Theodore Norton and Melissa Norton
Joseph Amos Edward and Barbara Underwood

Counsel for Developer /Petitioner : Robert A. Hoffman, Esquire
Developer /Petitioner : Loyola College / Terence Sawyer and Helen Schneider /Representatives
Tom Repsher /Daft McCune Walker Inc.
Wes Guckert /The Traffic Group

Michael P. Tanczyn, Esquire on behalf of Maryland Line Assn. and Parkton Area Preservation, Inc.
Nedda Evans /Protestant

Office of People's Counsel
Pat Keller, Director /Planning
David Carroll, Director /DPM
Edward Adams, Jr., Director /DPW
Robert J. Barrett, Director /Rec & Parks
William J. Wiseman III //Zoning Commissioner
Don Rascoe /PDM
Timothy M. Kotroco, Director /PDM

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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 December 7, 2004

NOTICE OF ASSIGNMENT /Days 6 and 7 (AS AGREED)

CASE #: CBA-04-136
(PDM # VII-389)

and

CASE #: 04-337-SPHX

IN THE MATTER OF: LOYOLA COLLEGE SPIRITUAL RETREAT CENTER; Loyola College of Md. - Developer
N & S/s Stablersville Rd @ NE/cor York Road 7th E; 3rd C
FDP – Development Plan Approval / § 26-209 BCC; **SPH** -parking and non-density transfer; **SE** – Building for religious worship/school/camp in R.C. 2 zone

6/10/2004 – Decision of the Hearing Officer (ZC); Plan **APPROVED with restriction**; special hearing and special exception relief **GRANTED**.

Hearing days to date: 9/14/04; 9/15/04; 9/29/04; 9/30/04; and 12/07/04; assigned for days 6 and 7 to:

ASSIGNED FOR: **TUESDAY, JANUARY 4, 2005 at 9:00 a.m. /Day #6 and**
WEDNESDAY, FEBRUARY 2, 2005 at 1:00 p.m. /Day #7

As to CBA-04-136 : This matter has been assigned for hearing in accordance with Section 26-209 of the *Baltimore County Code.* As to 04-337-SPHX: Assigned for evidentiary hearing.

NOTE: The Board's Rules of Practice & Procedure are found in *Baltimore County Code, Appendix 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 Appellants /Protestants : G. Macy Nelson, Esquire
Appellants /Protestants : Citizens Against Loyola Multi-Use Center
Weisburg Community Assn. Lynne Jones, James Voshell, and Juli Butler
David Adams Sharon and Theodore Norton and Melissa Norton
Joseph Amos Edward and Barbara Underwood

Counsel for Developer /Petitioner : Robert A. Hoffman, Esquire
Developer /Petitioner : Loyola College / Terence Sawyer and Helen Schneider /Representatives
Tom Repsher /Daft McCune Walker Inc.
Wes Guckert /The Traffic Group

Michael P. Tanczyn, Esquire on behalf of Maryland Line Assn. and Parkton Area Preservation, Inc.
Nedda Evans /Protestant

Office of People's Counsel
Pat Keller, Director /Planning
David Carroll, Director /DPM
Edward Adams, Jr., Director /DPW
Robert J. Barrett, Director /Rec & Parks
William J. Wiseman III //Zoning Commissioner
Don Rascoe /PDM
Timothy M. Kotroco, Director /PDM

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County Board of Appeals of Baltimore County

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

January 7, 2005

NOTICE OF DELIBERATION

IN THE MATTER OF:

***LOYOLA COLLEGE SPIRITUAL RETREAT CENTER* /PDM VII-389**
Case No. CBA-04-136 and Case No. 04-337-SPHX

Having heard this matter on 9/14; 9/15; 9/29; 9/30; 12/07/04; and 1/04/05, public deliberation has been assigned for the following date and time:

DATE AND TIME : **THURSDAY, MARCH 24, 2005 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

Closing briefs are due on Monday, February 7, 2005
(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 Appellants /Protestants : G. Macy Nelson, Esquire
Appellants /Protestants : Citizens Against Loyola Multi-Use Center
Weisburg Community Assn. Lynne Jones, James Voshell, and Juli Butler
David Adams Sharon and Theodore Norton and Melissa Norton
Joseph Amos Edward and Barbara Underwood

Counsel for Developer /Petitioner : Robert A. Hoffman, Esquire
Developer /Petitioner : Loyola College / Terence Sawyer and Helen Schneider /Representatives
Tom Repsher /Daft McCune Walker Inc.
Wes Guckert /The Traffic Group

Michael P. Tanczyn, Esquire on behalf of Maryland Line Assn. and Parkton Area Preservation, Inc.
Nedda Evans /Protestant

Office of People's Counsel
Pat Keller, Director /Planning
David Carroll, Director /DPM
Edward Adams, Jr., Director /DPW
Robert J. Barrett, Director /Rec & Parks
William J. Wiseman III //Zoning Commissioner
Don Rascoe /PDM
Timothy M. Kotroco, Director /PDM

FYI copy: 3-5-7

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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

April 6, 2004

Robert A. Hoffman
Venable, LLP.
210 Allegheny Avenue
Towson, Maryland 21204

Dear Mr. Hoffman:

RE: Case Number:04-337-SPHX

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on January 26, 2004.

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: clb

Enclosures

c: People's Counsel
W. Duvall, Spruill P.O. Box 1473 Columbia, SC 29202
Loyola College in Maryland John A. Palmucci, 4501 North Charles Street Baltimore 21204

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: February 11, 2004

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

SUBJECT: Loyola College Spiritual Retreat Center

INFORMATION:

Item Number: 4-337

Petitioner: Loyola College in Maryland

Zoning: RC 2

Requested Action: Special Hearing/Special Exception

SUMMARY OF RECOMMENDATIONS:

The Office of Planning supports the non-density transfer and the special exception for the religious worship/school/camp as shown on the submitted plan contingent upon the following conditions:

1. The area outside of the special exception is permanently preserved in an agricultural conservation easement.
2. To avoid potential conflicts, the following restrictions are placed on the special exception development:
   (a) The facility will be used for Loyola College retreats only.
   (b) No more than 120 people shall be present on the site at any one time
   (c) No more than 40 vehicles shall be present on the site at any one time.
   (d) Parking is not permitted along the adjoining roadways.
   (e) No vehicle larger than a 16-passenger van is permitted to transport people to the site.
   (f) Lighting shall conform to the "dark skies" practices.
   (g) Signage shall be restricted to one non-illuminated ground mounted sign at the entrance to the project, as shown on the plan.

3. The forest along Stablersville Road and the road leading to the entrance drive shall be preserved and augmented with evergreen trees to screen the proposed development. The non-forested frontage of the site shall be substantially screened with a landscaped berm.

For further information concerning the matters stated herein, please contact Kathy Schlabach at 410-887-3480.

Prepared by: _____

Section Chief: _____

AFK/LL:MAC:

Baltimore County
Fire Department

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

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

February 4, 2004

ATTENTION: Rebecca Hart

Distribution Meeting of: February 2, 2004

Item No.: (337), 340

Dear Ms. Hart:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

4. The site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or beginning of operation.

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

cc: File

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

SHA State Highway Administration — Driven to Excel

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

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 2.3.09

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

RE: Baltimore County
Item No. 337 BPR

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,

K. A. McDonald

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

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: February 10, 2004

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

SUBJECT: Zoning Advisory Committee Meeting
For February 9, 2004
Item Nos. 329, 330, 331, 335, 336,
337, 338, 339, and 340

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

RWB:CEN:jrb

cc: File

ZAC-02-09-2004-NO COMMENT ITEMS 329-340-02102004

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: February 11, 2004

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

RECEIVED
FEB 17 2004
ZONING COMMISSIONER

SUBJECT: Loyola College Spiritual Retreat Center

INFORMATION:

Item Number: 4-337

Petitioner: Loyola College in Maryland

Zoning: RC 2

Requested Action: Special Hearing/Special Exception

SUMMARY OF RECOMMENDATIONS:

The Office of Planning supports the non-density transfer and the special exception for the religious worship/school/camp as shown on the submitted plan contingent upon the following conditions:

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   (a) The facility will be used for Loyola College retreats only.
   (b) No more than 120 people shall be present on the site at any one time
   (c) No more than 40 vehicles shall be present on the site at any one time.
   (d) Parking is not permitted along the adjoining roadways.
   (e) No vehicle larger than a 16-passenger van is permitted to transport people to the site.
   (f) Lighting shall conform to the "dark skies" practices.
   (g) Signage shall be restricted to one non-illuminated ground mounted sign at the entrance to the project, as shown on the plan.

3. The forest along Stablersville Road and the road leading to the entrance drive shall be preserved and augmented with evergreen trees to screen the proposed development. The non-forested frontage of the site shall be substantially screened with a landscaped berm.

For further information concerning the matters stated herein, please contact Kathy Schlabach at 410-887-3480.

Prepared by: _____

Section Chief: _____

AFK/LL:MAC:

RE:	PETITION FOR SPECIAL HEARING AND SPECIAL EXCEPTION S/side Stablersville Rd, E of York Rd; E/side York Rd, 2000' S c/line Stabler's Church Rd 7th Election & 3rd Councilmanic Districts Legal Owner(s): Estate of Mrion T Clarke & Eleanor Duvall Spruill, W. Duvall Spruill. PR Contract Purchaser(s): Loyola College of MD Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 04-337-SPHX

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

ENTRY OF APPEARANCE

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

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 2004, a copy of the foregoing Entry of Appearance was mailed to, Robert A Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204. Attorney for Petitioner(s).

RECEIVED
FEB 0 9 2004
Per.....

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

DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING & EXCEPTION LOYOLA COLLEGE SPIRITUAL RETREAT CTR N & S/S Stablersville Road @ NE Corner York Road 7th Election District 3rd Councilmanic District Legal Owner(s) Loyola College in Maryland	*	BEFORE THE COUNTY BOARD OF APPEALS CASE NO.: CBA-04-136 & 04-337-SPHX

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

ENTRY OF APPEARANCE

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

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 20 day of July, 2004 a copy of the foregoing Entry of Appearance was mailed to G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland 21204, to Michael P. Tancyzn, Esquire, 606 Baltimore Avenue, St. 106, Towson, MD 21204, and to Robert A Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

RECEIVED
JUL 20 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Peter Max Zimmerman

PETER MAX ZIMMERMAN

Baltimore County Government
Department of Permits and Development Management

111 West Chesapeake Avenue
Towson MD 21204

(410) 887-3321
(410) 887-2877 (fax)

July 8, 2004

RECEIVED
JUL 09 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Robert A. Hoffman, Esquire
David Karceski, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: Appeal of Hearing Officer's Opinion
and Development Plan Order
N & S/S Stablersville Road
@ NE/Corner York Road
Loyola College Spiritual Retreat Ctr
District: 7 c 3
Loyola College of MD - Developer
PDM # VII-389

Dear Mr. Hoffman and Mr. Karceski:

Please be advised that an appeal of the above-referenced case was filed in this office on July 7, 2004 by G. Macy Nelson, Esq. on behalf of Citizens Against Loyola Multi-Use Center, Weisburg Community Association, Lynne Jones, James Voshell, and et al. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

Sincerely,

Timothy Kotroco
Director

TK:kw
Enc.
c: G. Macy Nelson, Esq.
Terence Sawyer
Helen Schneider
Daft McCune Walker, Inc.
People's Counsel
Baltimore County Board of Appeals
File

CBA-04-136

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

July13, 2004

RECEIVED
JUL 14 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Robert Hoffman
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

Dear Mr. Hoffman:

RE: Case: 04-337-SPHX, Loyola College Spiritual Retreat Center

Please be advised that an appeal of the above-referenced case was filed in this office on July 7, 2004 by G. Macy Nelson for Protestants. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

c: People's Counsel
Terry Sawyer/Helen Schneider, 4501 N. Charles St., Baltimore 21210
Tom Repsher, DMW, 200 E. Pennsylvania Ave., Towson 21286
Wes Guckert, The Traffic Group, 9900 Franklin Sq. Dr., Baltimore 21236
Michael Tanczyn, Esq., 606 Baltimore Ave., Ste. 106, Towson 21204
Nedda Evans, 2224 Tracey's Road, Sparks 21152
Lynn Jones, 815 Stablers Church Rd., Parkton 21120
G. Macy Nelson, 401 Washington Ave., Ste. 803, Towson 21204
CALM, P.O. Box 373, Parkton 21120
Weisburg Community Association, 18200 York Road, Parkton 21120
Lynne Jones, James Voshell, Juli Butler, 815 Stablers Church Road, Baltimore
David Adams, 914 Miller Road, Parkton 21120
Sharon & Theodore Norton, Melissa Norton, 1802 Stablersville Rd., White Hall 21161
Joseph Amos, 818 Miller Road, Parkton 21120
Edward & Barbara Underwood, 929 Stablersville Road, Parkton 21120

Printed on Recycled Paper

APPEAL

Petition for Special Hearing and Special Exception
Loyola College Spiritual Retreat Center
N & S/s Stablersville Rd. @ NE/corner York Rd.
7th Election District – 3rd Councilmanic District
Estate of Marion Clark & Eleanor D. & W. D. Spruill – Owners
Loyola College of Maryland – Contract Purchasers

Case No.: 04-337-SPHX

✓ Petition for Special Hearing and Special Exception (January 26, 2004)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (February 23, 2004)

✓ Certification of Publication (April 1, 2004 – The Jeffersonian)

✓ Certificate of Posting – Not located in File

✓ Entry of Appearance by People's Counsel (February 9, 2004)

✓ Petitioner(s) Sign-In Sheet
None in file

✓ Protestant(s) Sign-In Sheet
None in file

✓ Citizen(s) Sign-In Sheet
None in file

✓ Zoning Advisory Committee Comments (4-6-04)

✓ Petitioners' Exhibit
✓ 1. Plan to accompany petition for Special Exception

✓ Protestants' Exhibits:
None in File

✓ Miscellaneous (Not Marked as Exhibit)
None in file

✓ Zoning Commissioner's Order (June 10, 2004 – GRANTED)

✓ Notices of Appeal received on July 7, 2004 from G. Macy Nelson for Protestants

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Terry Sawyer/Helen Schneider, 4501 N. Charles St., Baltimore 21210
Tom Repsher, DMW, 200 E. Pennsylvania Ave., Towson 21286
Wes Guckert, The Traffic Group, 9900 Franklin Sq. Dr., Baltimore 21236
Michael Tanczyn, Esq., 606 Baltimore Ave., Ste. 106, Towson 21204
Nedda Evans, 2224 Tracey's Road, Sparks 21152
Lynn Jones, 815 Stablers Church Rd., Parkton 21120 ✓
G. Macy Nelson, 401 Washington Ave., Ste. 803, Towson 21204
CALM, P.O. Box 373, Parkton 21120 ✓
Weisburg Community Association, 18200 York Road, Parkton 21120 ✓
Lynne Jones, James Voshell, Juli Butler, 815 Stablers Church Road, Baltimore ✓
David Adams, 914 Miller Road, Parkton 21120 ✓
Sharon & Theodore Norton, Melissa Norton, 1802 Stablersville Rd., White Hall 21161 ✓
Joseph Amos, 818 Miller Road, Parkton 21120 ✓
Edward & Barbara Underwood, 929 Stablersville Road, Parkton 21120 ✓

date sent July 14, 2004, klm

JE

Clerk - Emma

will send copy IOM today 7/28/05

Loyola Ref. Center 3/24/05

Mr. Asper

Would like to be notified when Order is ready to go out.

443-790-2675

8/24/05

Appeal to the Ct. will check to see (by pulling court file) if a copy & the Citizens Against Loyola Ref. was ever mailed to the oppn. People's Counsel's had to be retrieved.

Letter Returned

Linda,

I'm going to check w/ my manager on Monday if we can possibly put the Board of Appeals w/ address on our frequent party screen.

Emma

APPEAL

Petition for Special Hearing and Special Exception
Loyola College Spiritual Retreat Center
N & S/s Stablersville Rd. @ NE/corner York Rd.
7th Election District – 3rd Councilmanic District
Estate of Marion Clark & Eleanor D. & W. D. Spruill – Owners
Loyola College of Maryland – Contract Purchasers

Case No.: 04-337-SPHX

✓ Petition for Special Hearing and Special Exception (January 26, 2004)

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✓ Notice of Zoning Hearing (February 23, 2004)

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None in file

✓ Protestant(s) Sign-In Sheet
None in file

✓ Citizen(s) Sign-In Sheet
None in file

✓ Zoning Advisory Committee Comments (4-6-04)

✓ Petitioners' Exhibit
✓ 1. Plan to accompany petition for Special Exception

✓ Protestants' Exhibits:
None in File

✓ Miscellaneous (Not Marked as Exhibit)
None in file

✓ Zoning Commissioner's Order (June 10, 2004 – GRANTED)

✓ Notices of Appeal received on July 7, 2004 from G. Macy Nelson for Protestants

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Terry Sawyer/Helen Schneider, 4501 N. Charles St., Baltimore 21210
Tom Repsher, DMW, 200 E. Pennsylvania Ave., Towson 21286
Wes Guckert, The Traffic Group, 9900 Franklin Sq. Dr., Baltimore 21236
Michael Tanczyn, Esq., 606 Baltimore Ave., Ste. 106, Towson 21204

Case No. CBA-04-136

and

Case No. 04-336-SPHX

Development Plan – Loyola College Spiritual Retreat Center
Loyola College of Maryland - Developer

SPH – To confirm that proposed parking is adequate and to approve transfer of approx 54 acres of RC 2 zoned land as a non-density transfer;
SE – To permit a building for religious worship/school/camp in RC 2 zone.

6/10/04 – Hearing Officer's Decision (ZC) in which Plan was approved with restriction; special hearing and special exception relief GRANTED.

7/14/04 --Notice of Assignment sent to following parties; matter scheduled for hearing on Wednesday, August 4, 2004 at 10:00 a.m.:

G. Macy Nelson, Esquire
Citizens Against Loyola Multi-Use Center
Weisburg Community Assn. — Lynne Jones, James Voshell, and Juli Butler
David Adams — Sharon and Theodore Norton and Melissa Norton
Joseph Amos — Edward and Barbara Underwood
Robert A. Hoffman, Esquire
Loyola College / Terence Sawyer and Helen Schneider /Representatives
Tom Repsher /Daft McCune Walker Inc.
Wes Guckert /The Traffic Group
Michael P. Tanczyn, Esquire on behalf of Maryland Line Assn. and Parkton Area Preservation, Inc.
Nedda Evans /Protestant
Office of People's Counsel — Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Director /Planning — Don Rascoe /PDM
David Carroll, Director /DPM — Timothy M. Kotroco, Director /PDM
Edward Adams, Jr., Director /DPW
Robert J. Barrett, Director /Rec & Parks

7/23/04 – Per telephone conversations earlier this week and also this date with Amy Dontelle (Venable), several witnesses for Loyola will be unavailable on the assigned date of 8/04/04; has spoken with Mr. Nelson; she will review four possible September dates with all parties involved and then call back regarding those dates. Both Counsel for the Developer and Counsel for Appellants are aware of the time frame and would agree to these dates which would be outside of the designated time frame set out in the development regulations.

7/26/04 – T/C from Patsy Malone (Venable); four dates in September will work for both Developer and Counsel for Appellants /Protestants. Letter to follow.
- Letter from Patricia A. Malone, Esquire – requesting postponement from 8/04/04 to 9/14, 9/15, 9/29, and 9/30; Mr. Nelson has agreed to the new hearing dates per Ms. Malone.

7/27/04 - Notice of PP and Reassignment sent to parties; case reassigned for a total of 4 hearing days and to the dates agreed: Tuesday, September 14, 2004; Wednesday, September 15, 2004; Wednesday, September 29, 2004; and Thursday, September 30, 2004, all dates beginning at 10:00 a.m. FYI copy also sent this date with accompanying note to prospective panel for this case. Copy of Notice sent to counsel this date via FAX; copy hand-delivered to Mr. Zimmerman's office.

8/31/04 – As to Case No. 04-337-SPHA, Memorandum of People's Counsel on the Master Water & Sewer Plan filed by People's Counsel this date; may not participate through the evidentiary portion of hearing (parties represented by counsel); reserved right to present oral argument or closing memorandum. - filed in folder 04-337-SPHA

9/14/04 –Board convened for day #1 (Wescott, Brassil, Crizer); concluded day #1; to reconvene on 9/15/04 for day #2. Hearing room left as it was when Board recessed at conclusion of Day #1. Exhibits to be reviewed and accounted for at the conclusion of day #2.

9/15/04 – Board convened for day #2 (4-5-7); concluded day #2; to reconvene on 9/29/04 for day #3. Exhibits reviewed this date.

Case No. CBA-04-136 Development Plan – Loyola College Spiritual Retreat Center
Loyola College of Maryland - Developer

and
Case No. 04-336-SPHX

9/29/04 – Board convened for Day #3 (Wescott, Brassil, Crizer); concluded day #3; to 9/30/04 for day #4.

9/30/04 – Convened for day #4 (4-5-7); concluded day #4. Case has not yet concluded. To be assigned for Day #5 to 12/07/04 and either 12/21/04 or 12/28/04 for Day #6. Will have final dates and send notice for days 5 and 6 on Tuesday, October 5, 2004. Exhibits reviewed this date.

10/05/04 – Letter from G. Macy Nelson, Esquire; available 12/07 and 12/21/04; however, not available 12/28/04 (three dates discussed for days 5 and 6). R. Hoffman is not available on 12/21/04. Next date in January will be utilized for day #6, with 12/07/04 for day #5. Notice to be sent.

10/06/04 – Notice of Assignment /Days 5 and 6 sent out this date; Tuesday, December 7, 2004 at 10:00 a.m. for day #5; and Tuesday, January 4, 2005 at 10:00 a.m. for day #6. FYI copy to Wescott, Brassil, and Crizer.

12/07/04 – Board convened for day #5 (4-5-7); concluded day #5. With agreement of counsel, will convene as scheduled on 1/04/05 for day #6 BUT AT 9:00 A.M.; also, holding Wednesday, 2/02/05 at 1 p.m. for additional time as day #7 if needed. Notice of Assignment for days 6 and 7 as agreed sent to parties this date. FYI copy to 4-5-7. (NOTE: effective 12/18/04, Wescott will represent the 3rd Councilmanic District; codes to changes.)

1/04/05 – Board convened for day #6 (3-5-7). (NOTE: Wescott represents 3rd Councilmanic District effective 12/18/04.) Concluded hearing this date. Memos due on 2/07/04; deliberation assigned for 3/24/05; notice to be sent.

1/07/05 – Notice of Deliberation sent to parties; assigned for Thursday, March 24, 2005 at 9:00 a.m. FYI copy to 3-5-7.

1/24/05 – Copy of letter from R. Hoffman to M. Nelson re: copies of promised monitoring data collected by Richard Klein re recorded temperature in vicinity of stream crossing Stablersville Road.

2/07/05 – Applicant /Petitioner's Post-Hearing Memorandum filed by Robert Hoffman, Arnold Jablon, and Thomas M. Lingan with VENABLE LLP.

-- Protestants' Closing Memorandum filed by Macy Nelson, Esquire. Original filed; copies to filed early 2/08/05 (computer problems this afternoon).

- Copies to be distributed to Wescott, Brassil (2/08/05), and Crizer (2/09/05); deliberation assigned for 3/24/05.

NOTE: ORIGINAL FILE COPY OF MEMOS CAN BE FOUND IN THE LETTER-SIZED BROWN WALLET MARKED "POST-HEARING BRIEFS – BOARD OF APPEALS – FILED 2/07/05," AND BANDED TO THE ZONING FILE, CASE NO. 04-337-SPHX.

2/08/05 – Three copies of Protestants' Memos hand-delivered this date. Copies of both memos to Wescott and Brassil today.

2/09/05- Copies of memos to E. Crizer this date.

3/24/05 – Board convened for public deliberation (Wescott, Brassil and Crizer); unanimous decision of the Board that the Hearing Officer's decision is AFFIRMED; and special hearing and special exception requests GRANTED. Written Opinion to be issued (5); appellate period to run from date of written Order.

CIRCUIT COURT FOR BALTIMORE COUNTY
DCM OFFICE
401 Bosley Avenue
County Courts Building
P.O. Box 6754
Towson MD, 21285-6754

N O T I C E O F N E W C I V I L T R I A L D A T E

Case Number:03-C-05-007730 AE

Case Title: In The Matter of: Citizens Against Loyola Multi Use Center, et al

To: County Board Of Appeals Of Baltimore County
OLD COURT HOUSE, RM 49
400 WASHINGTON AVENUE
TOWSON MD 21204

A postponement of the Trial Date has been granted in this case. A new trial date has been scheduled on:

Civil Non-Jury Trial on 02/28/06 at 09:30AM
1/2 HOUR ADMINISTRATIVE APPEAL

Please Note: Scheduling Order Deadlines: This Notice does not alter or extend those deadlines set forth in the current Scheduling Order, except that the Deadline for the exchange of lists of all exhibits and copies of paper exhibits and the Deadline for Motions in Limine, including objections to exhibits, will remain, respectively, fifteen (15) and five (5) prior to the New Trial date in this Notice.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)887-2660 or use the Court's TDD line, (410)887-3081, or the Voice/TDD M.D. Relay Service, (800)735-2258.

Please refer to the Information Desk for Court Room designation.

Date Issued: 10/27/05

Honorable John Grason Turnbull
County Administrative Judge

CC: James A Dunbar Esq
G Macy Nelson Esq
Peter M Zimmerman Esq

CIRCUIT COURT FOR BALTIMORE COUNTY
DCM OFFICE
401 Bosley Avenue
County Courts Building
P.O. Box 6754
Towson MD, 21285-6754

N O T I C E O F N E W C I V I L T R I A L D A T E

Case Number:03-C-05-007730 AE

Case Title: In The Matter of: Citizens Against Loyola Multi Use Center, et al

To: County Board Of Appeals Of Baltimore County
OLD COURT HOUSE, RM 49
400 WASHINGTON AVENUE
TOWSON MD 21204

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1 HOUR ADMINISTRATIVE APPEAL

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If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)887-2660 or use the Court's TDD line, (410)887-3081, or the Voice/TDD M.D. Relay Service, (800)735-2258.

Please refer to the Information Desk for Court Room designation.

Date Issued: 11/14/05

Honorable John Grason Turnbull
County Administrative Judge

CC: James A Dunbar Esq
G Macy Nelson Esq
Peter M Zimmerman Esq

RECEIVED
NOV 15 2005
BALTIMORE COUNTY
BOARD OF APPEALS

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

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

Case Number: 03-C-05-007730 AE
Administrative Agency : 04-337-SPHX
Administrative Agency : CBA-04-136
C I V I L

In The Matter of: Citizens Against Loyola Multi Use Center, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 21st day of September, 2005.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 09/27/05

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

RECEIVED
SEP 29 2005
BALTIMORE COUNTY
BOARD OF APPEALS

10/24/05 -
Linda -
Do you
OK with
these dates,
Joe for
Loyola.
K,

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

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

County Board Of Appeals Of Baltimore County
OLD COURT HOUSE, RM 49
400 WASHINGTON AVENUE
TOWSON MD 21204

Assignment Date: 10/12/05

Case Title: In The Matter of: Citizens Against Loyola Multi Use Center, et al
Case No: 03-C-05-007730 AE

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

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 10/27/05
2. All Motions (excluding Motions in Limine) are due by..... 12/03/05
3. TRIAL DATE is..... 01/12/06
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned; 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

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

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

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

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

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

Reissue Date 10/20/05

RECEIVED
OCT 24 2005
BALTIMORE COUNTY
BOARD OF APPEALS

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

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

Case Number: 03-C-05-007730 AE
Administrative Agency : 04-337-SPHX
Administrative Agency : CBA-04-136
C I V I L

In The Matter of: Citizens Against Loyola Multi Use Center, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 14th day of September, 2005.

Suzanne Mensh
Clerk of the Circuit Court, per _____

Date issued: 09/21/05

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

RECEIVED
SEP 22 2005
BALTIMORE COUNTY
BOARD OF APPEALS

RE: In the Matter of:
LOYOLA COLLEGE SPIRITUAL RETREAT CENTER, Loyola College of MD - Developer; N & S/s Stablersville Rd @ NE/cor York Rd. 7th E; 3rd C (PDM #VII-389) and 04-337-SPHX

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CBA-04-136

* * * * * * * * *

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County)

PATT FARR
DEPRM,
4th Floor, County Courts Bldg.
401 Bosley Avenue
Towson, MD 21204

YOU ARE HEREBY COMMANDED TO: ( ) Personally appear; ( ) Produce documents and/or objects only; (XX) Personally appear and produce documents or objects;

in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on September 30, 2004 **at** 10:00 **a.m./~~p.m.~~.**

YOU ARE COMMANDED TO produce the following documents or objects **(for general purpose as stated):**

All documents related to Loyola College's application for a Spiritual Retreat Center.

RECEIVED
SEP 24 2004
BALTIMORE COUNTY
BOARD OF APPEALS

SUBPOENA REQUESTED BY:

G. Macy Nelson, Esq.
(Name of Party /Attorney)
Suite 803, 401 Washington Ave., Towson, MD 21204
(Address /Telephone #)
(410) 296-8166

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

Lawrence B. Skelton
County Board of Appeals of Baltimore County

RE: In the Matter of:	*	BEFORE THE
LOYOLA COLLEGE SPIRITUAL RETREAT CENTER, Loyola College of MD - ~~Developer; N & S/s Stablersville~~ Rd @ NE/cor York Rd. 7th E; 3rd C ~~(PDM #VII-389) and~~ 04-337-SPHX	*	COUNTY BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
	*	CASE NO. CBA-04-136

* * * * * * * * *

S U B P O E N A

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County)

DAVE LYKENS
DEPRM
4th Floor, County Courts Building
401 Bosley Avenue
Towson, MD 21204

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in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on September 30, 2004 **at** 10:00 **a.m.** ~~/p.m.~~

YOU ARE COMMANDED TO produce the following documents or objects **(for general purpose as stated):**

All documents related to Loyola Coillege's application for a Spiritual Retreat Center.

RECEIVED
SEP 24 2004
BALTIMORE COUNTY
BOARD OF APPEALS

SUBPOENA REQUESTED BY:

G. Macy Nelson, Esq.
(Name of Party /Attorney)

Suite 803, 401 Washington Ave., Towson, MD 21204
(Address /Telephone #)

(410) 296-8166

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

Edward R. Shelton
County Board of Appeals of Baltimore County

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

Patricia A. Malone
Of Counsel

(410) 494-6206

pamalone@venable.com

July 26, 2004

RECEIVED
JUL 26 2004
BALTIMORE COUNTY
BOARD OF APPEALS

HAND-DELIVERED

County Board of Appeals
for Baltimore County
ATTENTION: Kathleen Bianco
Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: In the Matter of Loyola College Spiritual Retreat Center for Development Plan Approval and Petitions for Special Exception and Special Hearing
Case Nos. CBA-04-136 and 04-337-SPHX

Dear Ms. Bianco:

This letter should serve as a formal request that the hearing in the above-referenced matter, currently scheduled for August 4, 2004, be reassigned to September 14th, 15th, 29th, and 30th, 2004. As we discussed, several of the witnesses for Loyola College were unable to make it on the originally scheduled date due to scheduling conflicts.

Counsel for the Appellants/Protestants Macy Nelson has agreed to the new hearing dates.

I appreciate your assistance with this matter.

Very truly yours,

Patricia A. Malone

PAM/bl
cc: G. Macy Nelson, Esquire
Peter M. Zimmerman, Esquire
Mr. Terrence M. Sawyer
Ms. Helen Schneider
TO1DOCS1/PAM01/#189653 v1

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

Robert A. Hoffman, Esq. 410 494-6262 rahoffman@venable.com

January 21, 2005

RECEIVED
JAN 24 2005
BALTIMORE COUNTY
BOARD OF APPEALS

G. Macy Nelson, Esquire
Attorney at Law
401 Washington Avenue, Suite 803
Towson, Maryland 21204

Re: In the Matter of Loyola College Spiritual Retreat Center
Case Nos. CBA-04-136 and 04-337-SPHX

Dear Macy:

On numerous occasions throughout the hearing in the above-referenced matter, we requested copies of monitoring data collected by Richard Klein indicating recorded temperature in the vicinity of the stream crossing on Stablersville Road. You represented to the Board of Appeals that this data was available both in electronic and hard copy format and that you would provide us a copy.

Please call me at (410) 494-6262 as soon as possible to advise me when I should expect to receive Mr. Klein's materials.

Sincerely,

Robert A. Hoffman

RAH: kjd

cc: Lawrence M. Stahl, Chairman
Board of Appeals

TO1DOCS1/DHK01/#200338 v1

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

July 7, 2004

HAND DELIVERY

Timothy R. Kotroco
Baltimore County Government
Department of Permits and Development
Management, Room 111
111 W. Chesapeake Avenue
Towson, Maryland 21204

Attention: Kristin

Re: *Petition for Judicial Review in Re: Petitions for Special Hearing and Special Exception – N & S/S Stablersville Road @ NE/Cor. York Road (**Loyola College Spiritual Retreat Center**); 7th Election District, 3rd Council District Estate of Marion Clark & Eleanor Duvall Spruill, W. Duvall Spruill, Personal Representative, Owners; Loyola College of Maryland, Contract Purchasers/Developers*
Case Nos. VII-389 and 04-337-SPHX

Dear Mr. Kotroco:

I represent certain Protestants in the above-captioned case and identify them below:

Citizens Against Loyola Multi-Use Center (CALM)
P.O. Box 373
Parkton, MD 21120

Weisburg Community Association
18200 York Road
Parkton, MD 21120

RECEIVED
JUL 07 2004
Per.....

Lynne Jones, James Voshell, Juli Butler
815 Stablers Church Road
Parkton, MD 21120

David Adams
914 Miller Road
Parkton, MD 21120

Sharon and Theodore Norton
Melissa Norton
1802 Stablersville Road
White Hall, MD 21161

Joseph Amos
818 Miller Road
Parkton, MD 21120

Edward and Barbara Underwood
929 Stablersville Road
Parkton, MD 21120

My clients appeal Commissioner Schmidt's decision dated June 10, 2004, to grant the relief requested in the Petition for Special Hearing. I have attached a copy of the Opinion as Exhibit A.

I have enclosed a check made payable to Baltimore County, Maryland, in the amount of $225.00.

Very truly yours,

G. Macy Nelson

GMN:pwc
Enclosures
cc: Lawrence E. Schmidt, Zoning Commissioner/
Hearing Officer for Baltimore County (w/enc.)
Robert Hoffman, Esq. (w/enc.)

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

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FACSIMILE
(410) 825-0670

July 7, 2004

HAND DELIVERY

Timothy R. Kotroco
Baltimore County Government
Department of Permits and Development
Management, Room 111
111 W. Chesapeake Avenue
Towson, Maryland 21204

Attention: Kristin

Re: *Petition for Judicial Review in Re: Petitions for Special Hearing and Special Exception – N & S/S Stablersville Road @ NE/Cor. York Road* ***(Loyola College Spiritual Retreat Center)****; 7th Election District, 3rd Council District*
Estate of Marion Clark & Eleanor Duvall Spruill,
W. Duvall Spruill, Personal Representative, Owners;
Loyola College of Maryland, Contract Purchasers/Developers
Case Nos. VII-389 and 04-337-SPHX

Dear Mr. Kotroco:

I represent certain Protestants in the above-captioned case and identify them below:

Citizens Against Loyola Multi-Use Center (CALM)
P.O. Box 373
Parkton, MD 21120

Weisburg Community Association
18200 York Road
Parkton, MD 21120

Lynne Jones, James Voshell, Juli Butler
815 Stablers Church Road
Parkton, MD 21120

RECEIVED
JUL 07 2004
Per...

David Adams
914 Miller Road
Parkton, MD 21120

Sharon and Theodore Norton
Melissa Norton
1802 Stablersville Road
White Hall, MD 21161

Joseph Amos
818 Miller Road
Parkton, MD 21120

Edward and Barbara Underwood
929 Stablersville Road
Parkton, MD 21120

My clients appeal Commissioner Schmidt's decision dated June 10, 2004, to grant the Petition for Special Exception. I have attached a copy of the Opinion as Exhibit A.

I have enclosed a check made payable to Baltimore County, Maryland, in the amount of $400.00. $325.00 is for the Special Exception, and $75.00 is for posting.

Very truly yours,

G. Macy Nelson

GMN:pwc
Enclosures
cc: Lawrence E. Schmidt, Zoning Commissioner/
Hearing Officer for Baltimore County (w/enc.)
Robert Hoffman, Esq. (w/enc.)

IN RE: DEVELOPMENT PLAN HEARING and PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION – N & S/S Stablersville Road @ NE/Cor. York Road **(Loyola College Spiritual Retreat Ctr.)**

7th Election District
3rd Council District

Estate of Marion Clark & Eleanor Duvall Spruill,
W. Duvall Spruill, Personal Representative, Owners;
Loyola College of Maryland, Contract Purchasers/Developers

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Cases Nos. VII-389 & 04-337-SPHX
* Exhibit A

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Zoning Commissioner for a combined public hearing, pursuant to Section 26-206.1 of the Baltimore County Code (B.C.C.). That Section permits the Owner/Developer (Applicants) to seek approval of a development plan and associated zoning relief through a single public hearing. In accordance with the development review regulations codified in Title 26 thereof, the Estate of Marion T Clark and the Estate of Eleanor Duvall Spruill, property owners, as well as Loyola College in Maryland, Contract Purchasers, seek development plan approval for a spiritual retreat center on the subject property. In addition, the Applicants request special exception relief as set forth in the Petition for Special Exception to permit a building for religious worship/school/camp in an R.C.2 zone, pursuant to Sections 1A01.2.C.4, 1A01.2.C.6 and/or 1A01.2.C.23 of the Baltimore County Zoning Regulations (B.C.Z.R.). Further, the Applicants request special hearing relief pursuant to the Petition for Special Hearing to confirm that the proposed parking as shown on the development plan is adequate and to approve the transfer of approximately 54 acres of R.C.2 zoned land as a non-density transfer. The proposed development and requested zoning relief are more particularly described on the three-page, redlined development plan submitted into evidence as Developer's Exhibit 2A through 2C.

Development of land in Baltimore County is reviewed in accordance with those laws and regulations contained within Article V of Title 26 of the Baltimore County Code. The

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

October 1, 2004

RECEIVED
OCT 04 2004
BALTIMORE COUNTY
BOARD OF APPEALS

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

Re: *Petition for Judicial Review in Re: Petitions for Special Hearing and Special Exception – N & S/S Stablersville Road @ NE/Cor. York Road* ***(Loyola College Spiritual Retreat Center)****; 7th Election District, 3rd Council District*
Estate of Marion Clark & Eleanor Duvall Spruill,
W. Duvall Spruill, Personal Representative, Owners;
Loyola College of Maryland, Contract Purchasers/Developers
Case Nos. VII-389 and 04-337-SPHX

Dear Ms. Bianco:

Yesterday, we discussed three possible dates for the *Loyola* case: December 7th, December 21st and December 28th. I am available December 7th and December 21st, but not December 28th. This may present a problem because my memory is that one of Loyola's lawyers is unavailable December 21st. It may be necessary to select a date in early January.

Very truly yours,

G. Macy Nelson

GMN:kcm
cc: Robert Hoffman, Esq.

Lawrence S. Wescott, Chairman
Baltimore County Board of Appeals
400 Washington Avenue
Room 49
Towson, Maryland 21204
Reference: Loyola College Retreat Center Appeal

RECEIVED
POST - HEARING
DAY ONE

Dear Mr. Wescott,

We are residents of the Parkton Community, residing at 609 Miller Road. Even though we were "members" of the Parkton Area Preservation Association we were NOT contacted to vote by that association, nor by the Maryland Line Community Association regarding any covenants with Loyola College. In fact, we were not even informed such discussion was taking place. We strongly disagree with the usage of RC2 agricultural land for the purposes Loyola intends. Hopefully, the County will see fit to preserve this area as intended.

Respectfully Yours,

Mary A. Billings
Margaret Purdum
609 Miller Road
Parkton, MD 21120

RECEIVED
SEP 30 2004
BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED
POST - HEARING
DAY ONE

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

July 15, 2005

HAND DELIVERY

Clerk
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: *Petition of Citizens Against Loyola Multi-Use Center, et al.*
For the Judicial Review of the Decision of: The County Board of Appeals Of Baltimore County
In the Matter of ***Loyola College Spiritual Retreat Center:*** *Loyola College in Maryland –Developer N& S/S Stablersville Road @ NE/COR York Road, 7th Election District, 3rd Councilmanic District*
Case No. CBA-04-136 and 04-337-SPHX
Circuit Court Case No.

Dear Clerk:

I have enclosed for filing in the above-referenced matter an original plus one copy of a Petition for Judicial Review. Also enclosed is a check in the amount of $115.00 for the filing fee.

Should you have any questions, please feel free to call. Thank you for your assistance.

Very truly yours,

G. Macy Nelson

GMN:kcm
Enclosures
cc: Robert Hoffman, Esquire (w/enc.)
Peter Max Zimmerman, Esquire (w/enc.)
Carole S. Demilio, Esquire (w/enc.)
Kathleen C. Bianco, Administrator,
County Board of Appeals of Baltimore County (w/enc.)

From: Theresa Shelton
To: Freund, Gary
Subject: INCORRECT NUMBER ON SIGN

Gary:

The sign located at York Road and Satblersville Road - Loyola College Retreat has the incorrect number on it (my fault - not yours). The sign shows 04-336-SPH and it should read 04-337-SPH.

If/When you are out and about in the area, could you please change the 336 to 337? Thank you and I apologize for any inconveniece my mistake has caused you.

Theresa

CC: Bianco, Kathleen

8/24/04

Theresa:

I received a call this afternoon regarding the sign for Loyola – 04-337-SPH.

The gentleman who telephone was inquiring about Case No. 04-336-SPH – that's the number he said was on the sign.

He's going to ride by there again later today (he lives in the area) and if the number is incorrect as written, he'll call back.

Should he call back, you'll probably be the one to get the call – so I just wanted you to know what he'll be talking about.

If the sign is correct and he just read it wrong, he will not call back.

Kasi

FILE COPY

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: LOYOLA COLLEGE SPIRITUAL RETREAT
CASE NO. CBA-04-0136 AND 04-337-SPX

DATE: March 24, 2005

BOARD/PANEL: Larry S. Wescott
Margaret Brassill
Edward W. Crizer, Jr.

RECORDED BY: Linda Fliegel/ Legal Secretary

PURPOSE: To deliberate whether Loyola College would meet the legal requirements to have a special exception and variance granted that would enable the construction of a spiritual retreat.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- Whether the retreat will be a part/extension of Loyola College
- Discussed if request complies with 502.1 – Special Exception
- Water – did not seem to be a problem because of its limited use
- Sewage – did not appear to be a problem and if one should arise then it could be easily be remedied with chemical treatment
- Density – appears not to be a problem because of its potential limited use
- Lighting – would not impact adversely on area – light downward, not taking away from the night sky
- Traffic - because this facility will have limited use during any given year, and since the traffic would mostly be Friday evenings and Sunday afternoons, traffic did not appear to present a problem
- Parking, for all intents and purposes, would be adequate – 35 spaces
- Design of building was to blend in with the surrounding landscape

DECISIONS BY BOARD MEMBERS:

A unanimous decision was reached to grant the variance and special exception and to affirm the approval of the development plan for the Loyola College Spiritual Retreat.

FINAL DECISION: The Board discussed the appropriate statutes and felt that the requirements of the law had been met. The variance and special exception were granted.

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,

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals

PETITIONER'S EXHIBITS

20040337 "A"

Supplemental

(4)

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- STREAM/RIVER EDGE
- RC-2 / RC-5 — ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 35' PRINCIPAL SETBACK LINE
- PRELIM. 100 YR. FLOODPLAIN
- EX. FENCE
- EX. TREELINE
- EXISTING STRUCTURE
- 110 — FAILED PERC TEST LOCATION
- 110 — PASSED PERC TEST LOCATION
- SLOPES (25%+)
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- EX. WETLAND

GENERAL NOTES

1. COORDINATES AND BEARINGS SHOWN ON THIS PLAN ARE REFERRED TO THE SYSTEM OF COORDINATES ESTABLISHED BY THE STATE OF MARYLAND (NAD 83/91) AND BASED ON THE FOLLOWING TRAVERSE STATIONS:

GIS-120	N 726023.904	E 1402308.532
GIS-120 AZ	N 726460.562	E 1402385.456

2. PROPERTY OWNER:
ELEANOR D. SPRUILL, MARION T. CLARKE, W. DUVALL SPRUILL, & FORREST F. BRAMBLE
PERSONAL REPRESENTATIVES
P.O. BOX 1473
COLUMBIA, S.C. 29202

PROPERTY ADDRESS:
NORTH & SOUTH SIDE OF STABLERSVILLE ROAD, EAST OF YORK ROAD.

DEVELOPER:
LOYOLA COLLEGE IN MARYLAND
4501 NORTH CHARLES STREET
BALTIMORE MD. 21210

3. AREA OF PROPERTY
PROJECT AREA = 127.68 AC.(4,680,541 S.F.)
AREA OF SPECIAL EXCEPTION = 10.18 AC.(443,446 S.F.)
AREA OF SPECIAL HEARING = 109.964 AC (4792803 S.F.)*
*SPECIAL HEARING ACREAGE INCLUDES RIGHT OF WAY AREA ALONG STABLERSVILLE ROAD.

4. a. DEED REFERENCE: 6614/466 & 6284/291

b. TAX MAP NO.12, PARCEL 142 & 221

c. 3rd COUNCIL MANIC DISTRICT

d. TAX ACCOUNT NO's: 0703303770, 2100003793, & 2100013794

e. ZONING MAPS: NW B-3E

f. ZONING: R.C. 2

g. PLAT REFERENCE # 75166

h. ALL SURROUNDING PROPERTY ZONED R.C. 2 & R.C. 5

5. PARKING:
PARKING REQUIRED = 27 SPACES (105 BEDS, 1 SPT4 BEDS)
PARKING PROVIDED = 29 SPACES (20 CAR SPACES, 9 VAN SPACES)

6. ALL PARKING AREAS WILL BE PAVED WITH DURABLE DUSTLESS MATERIAL.

7. ALL PROPOSED SIGNAGE WILL COMPLY WITH SECTION 450 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

8. TO THE BEST OF OUR KNOWLEDGE, THERE ARE NO COMMERCIAL PERMITS ISSUED ON THE PROPERTY.

9. TO THE BEST OF OUR KNOWLEDGE, NO ZONING DECISIONS HAVE BEEN ISSUED ON THE PROPERTY.

10. ALL BUILDINGS & USES WITHIN 200' OF THE PROPERTY ARE SHOWN ON THE PLAN.

11. ALL PROPOSED BUILDINGS ON SITE ARE ATTACHED.

12. THERE ARE NO EXISTING BUILDINGS ON SITE.

13. THERE ARE NO COMMERCIAL BUILDINGS WITHIN 100' OF THE SIDE PROPERTY LINES.

14. ALL UTILITIES ARE PRIVATE.

15. THE AREA OF SPECIAL EXCEPTION IS NOT WITHIN THE 100 YEAR FLOOD PLAIN.

16. FLOOR AREA RATIO AND AMENITY OPEN SPACE REQUIREMENTS DO NOT APPLY TO THE SITE BASED ON THE ZONING CLASSIFICATION.

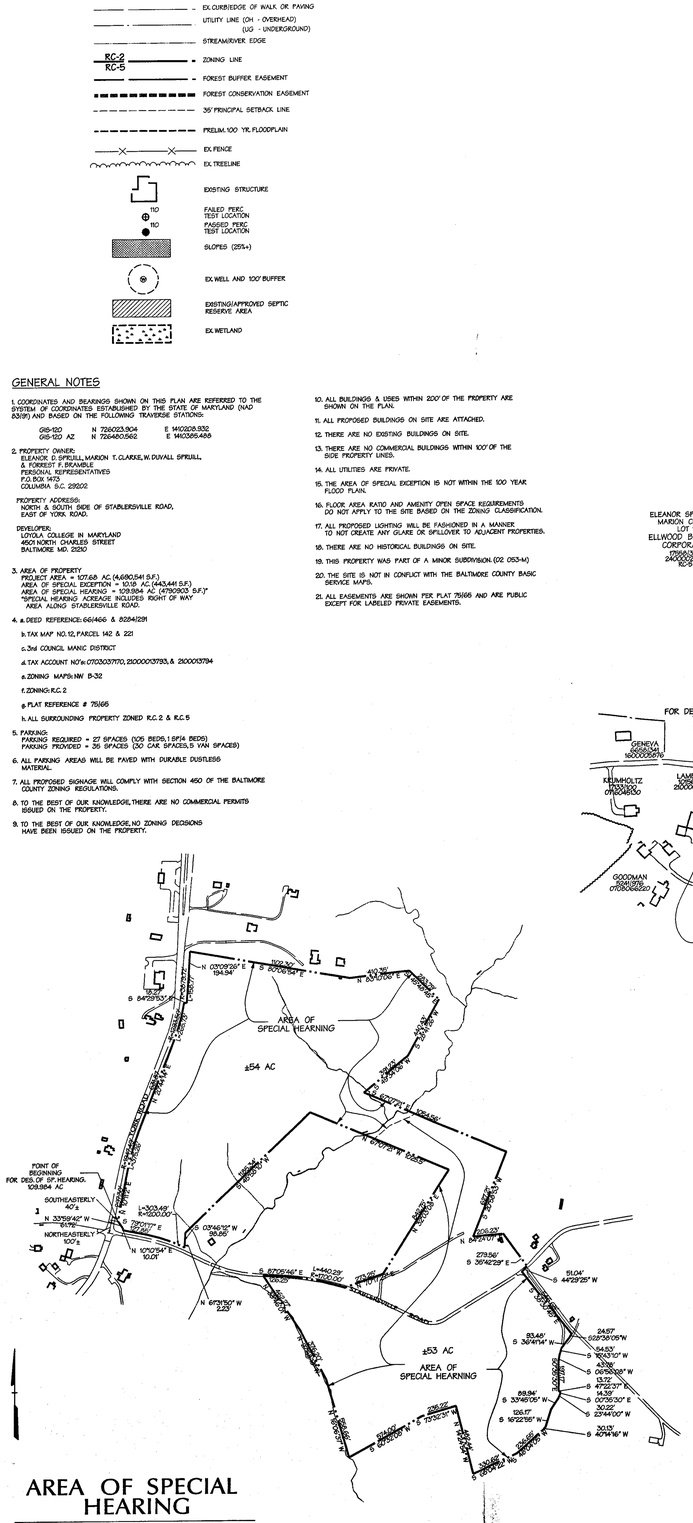
17. ALL PROPOSED LIGHTING WILL BE FASHIONED IN A MANNER TO NOT CREATE ANY GLARE OR SPILLOVER TO ADJACENT PROPERTIES.

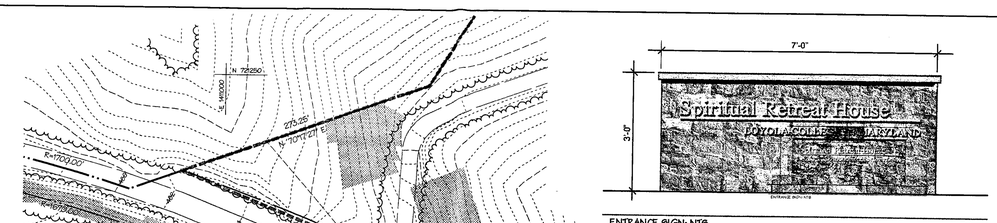
18. THERE ARE NO HISTORICAL BUILDINGS ON SITE.

19. THIS PROPERTY WAS PART OF A MINOR SUBDIVISION (02-053-M)

20. THE SITE IS NOT IN CONFLICT WITH THE BALTIMORE COUNTY BASIC SERVICE MAPS.

21. ALL EASEMENTS ARE SHOWN PER PLAT 75166 AND ARE PUBLIC EXCEPT FOR LABELED PRIVATE EASEMENTS.


AREA OF SPECIAL HEARING
±54 AC
AREA OF SPECIAL HEARING
±53 AC
AREA OF SPECIAL HEARING
POINT OF BEGINNING FOR DES. OF SP. HEARING. 109.964 AC
SOUTHEASTERLY 40'±
NORTHEASTERLY 100'±
N 10°10'54" E 10.01'
S 67°31'50" E 2.23'
S 84°29'53" E 15.27'
N 03°08'26" E 194.34'
N 64°00'00" E 1592.96'
S 60°08'54" E 1592.96'
S 64°00'00" W 1592.96'
N 60°08'54" W 1592.96'
N 64°00'00" E 1592.96'
N 60°08'54" W 1592.96'
S 64°00'00" W 1592.96'
S 60°08'54" E



ENTRANCE SIGN: NTS

ENTRANCE SIGN ELEVATION
NOT TO SCALE
(11 SF OF SIGNAGE, SINGLE FACED, NOT LIGHTED)

SITE DEVELOPMENT PROPOSAL

DWELLING TYPE *	PROPOSED UNITS	PARKING REQUIRED (PER DOMI REQ'S.)	PARKING PROVIDED ***	OPEN SPACE REQ'D.	OPEN SPACE PROP.	AVG. DAILY TRIPS	PHASE **
NONE	5 FACILITY ROOMS & 100 RETREATANT ROOMS (105 BEDS)	27 SPACES	30 SPACES 5 VAN SP.	N/A	N/A	48	PHASE I & II
TOTAL	5 FACILITY ROOMS & 100 RETREATANT ROOMS (105 BEDS)	27 SPACES	30 SPACES 5 VAN SP.	N/A	N/A	48	

* The plan is for a Retreat Center with a Main Building and 5 Retreatant Buildings, no dwelling units are proposed.

** The Development Plan & Zoning Relief seek approval of both Phase I & II at this time.

*** Note: Retreatants will be transported to the site by passenger vans.

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. MINOR CONTOUR (2')
- EX. MAJOR CONTOUR (10')
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- RIVER EDGE
- R-2 ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 35' PRINCIPAL SETBACK LINE
- PRELIM. 100 YR. FLOODPLAIN
- LIMIT OF DISTURBANCE
- EX. FENCE
- EX. TREELINE
- EXISTING STRUCTURE
- FAILED PERC TEST LOCATION
- PASSED PERC TEST LOCATION
- SLOPES (25%+)
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- PROPOSED MINOR CONTOUR (2')
- PROPOSED MAJOR CONTOUR (10')
- PROPOSED ORNAMENTAL TREE
- PROPOSED SHADE TREE
- PROPOSED EVERGREEN TREE

SPECIAL EXCEPTION REQUEST

THE APPLICANT IS REQUESTING A SPECIAL EXCEPTION TO PERMIT A BUILDING FOR RELIGIOUS WORSHIP/ SCHOOL/ CAMP IN THE RC-2 ZONE.

* SPECIAL HEARING REQUESTS

1. TO CONFIRM THE PARKING PROVIDED IS ADEQUATE.

2. TO APPROVE THE TRANSFER OF 54± ACRES OF RC2 ZONED LAND AS A NON-DENSITY TRANSFER.

* COMBINED INTO ONE HEARING.

DATA SOURCES:

TOPOGRAPHY PER BALT. CO. OIT/GIS, DATE OF CAPTURE IS MARCH 1995.

EX. BOUNDARY, FOREST BUFFER EASEMENT, FOREST CONSERVATION EASEMENT, SETBACKS, 100-YR. FLOODPLAIN EASEMENT AND UTILITY & ACCESS EASEMENTS DIGITIZED FROM PLAT BY KJ WELLS, INC. (BALTIMORE COUNTY SM 75-66).

ADJACENT PROPERTY LINES DIGITIZED FROM EXISTING BALTIMORE COUNTY TAX MAPS.

EXISTING WETLANDS AND STEEP SLOPES (25%+) DIGITIZED FROM EXISTING WETLAND AND FOREST STAND DELINEATION PLAN BY K.J. WELLS DATED NOVEMBER 14, 2001.

ADJACENT WELL AND SEPTIC RESERVE AREA LOCATIONS IN THE VICINITY OF THE PROPOSED RETREAT CENTER SHOWN PER EX. BALTIMORE COUNTY RECORDS AND FIELD OBSERVATION.

NOTE:

THIS SHEET REPRESENTS THE SPECIAL EXCEPTION AREA ONLY.

DMW
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

PLAN TO ACCOMPANY PETITION FOR
SPECIAL EXCEPTION & SPECIAL HEARING

LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

7th ELECTION DISTRICT | 3rd COUNCIL MANIC DISTRICT | BALTIMORE COUNTY, MD

STATE OF MARYLAND — MELANIE J. WELLER — No. 951 — LANDSCAPE ARCHITECT

DATE	BY	REVISIONS

ISSUE DATES
REVIEW:
BID:
PERMIT:
CONSTRUCTION:

BASE: a|s
DRAWN: a|s
DESIGNED:
CHECKED BY:
DATE CHECKED: 1/28/04
SCALE: 1"=50'
PROJECT NO.: 00026.c
DRAWING:

2 of 2

Wed Jan 28 15:27:11 2004
m:\00026\dwg\100026b.s2

on 1/28/2004 12:26:56 PM I:\ATHENS\MSTATION\CADNETA\DCF\daylotF_pnorman dz\hpn\100026b.hpn

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- STREAM/RIVER EDGE
- RC-2 / RC-5 ZONING LINE
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- PRELIM. 100 YR. FLOODPLAIN
- EX. FENCE
- EX. TREELINE
- EXISTING STRUCTURE
- 110 FAILED PERC TEST LOCATION
- 110 PASSED PERC TEST LOCATION
- SLOPES (25%+)
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- EX. WETLAND

GENERAL NOTES

1. COORDINATES AND BEARINGS SHOWN ON THIS PLAN ARE REFERRED TO THE SYSTEM OF COORDINATES ESTABLISHED BY THE STATE OF MARYLAND (NAD 83/91) AND BASED ON THE FOLLOWING TRAVERSE STATIONS:

GIS-120	N 726023.804	E 1412208.832
GIS-120 AZ	N 726480.562	E 1410365.488

2. PROPERTY OWNER:
ELEANOR D. SPRUILL, MARION T. CLARKE, W. DUVALL SPRUILL, & FORREST F. BRAMBLE
PERSONAL REPRESENTATIVES
P.O. BOX 1473
COLUMBIA S.C. 29202

PROPERTY ADDRESS:
NORTH & SOUTH SIDE OF STABLERSVILLE ROAD, EAST OF YORK ROAD.

DEVELOPER:
LOYOLA COLLEGE IN MARYLAND
4501 NORTH CHARLES STREET
BALTIMORE MD. 21210

3. AREA OF PROPERTY
PROJECT AREA = 107.68 AC (4,690,541 S.F.)
AREA OF SPECIAL EXCEPTION = 10.18 AC (443,441 S.F.)
AREA OF SPECIAL HEARING = 109.964 AC (4793803 S.F.)*
*SPECIAL HEARING ACREAGE INCLUDES 'RIGHT OF WAY' AREA ALONG STABLERSVILLE ROAD.

4. a. DEED REFERENCE: 66/466 & 8284/231
b. TAX MAP NO. 12, PARCEL 142 & 221
c. 3rd COUNCIL MANIC DISTRICT
d. TAX ACCOUNT NO's: 0703037770, 2100013793, & 2100013794
e. ZONING MAPS: NW B-32
f. ZONING: R.C. 2
g. PLAT REFERENCE # 75/66
h. ALL SURROUNDING PROPERTY ZONED R.C. 2 & R.C. 5

5. PARKING:
PARKING REQUIRED = 27 SPACES (105 BEDS, 1 SP/4 BEDS)
PARKING PROVIDED = 35 SPACES (30 CAR SPACES, 5 VAN SPACES)

6. ALL PARKING AREAS WILL BE PAVED WITH DURABLE DUSTLESS MATERIAL.

7. ALL PROPOSED SIGNAGE WILL COMPLY WITH SECTION 450 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

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11. ALL PROPOSED BUILDINGS ON SITE ARE ATTACHED.

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13. THERE ARE NO COMMERCIAL BUILDINGS WITHIN 100' OF THE SIDE PROPERTY LINES.

14. ALL UTILITIES ARE PRIVATE.

15. THE AREA OF SPECIAL EXCEPTION IS NOT WITHIN THE 100 YEAR FLOOD PLAIN.

16. FLOOR AREA RATIO AND AMENITY OPEN SPACE REQUIREMENTS DO NOT APPLY TO THE SITE BASED ON THE ZONING CLASSIFICATION.

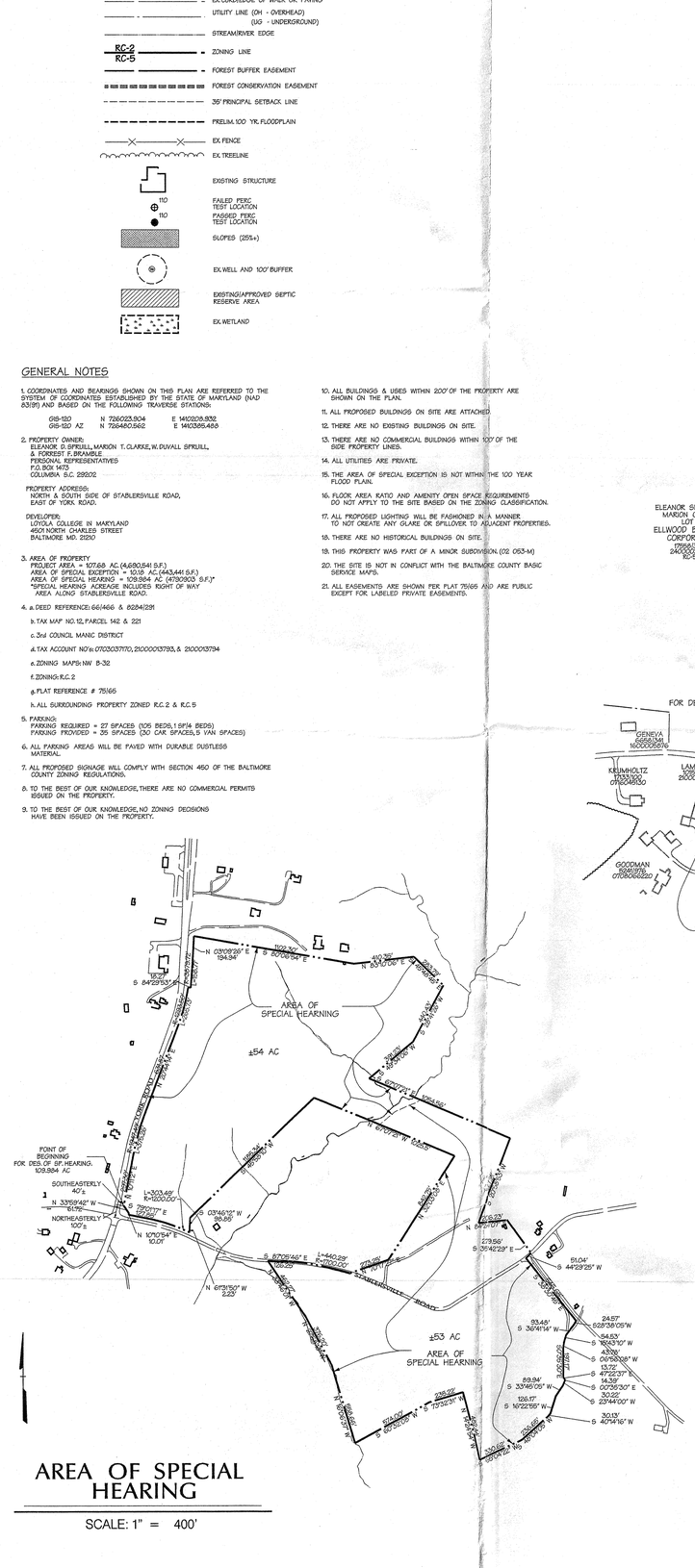
17. ALL PROPOSED LIGHTING WILL BE FASHIONED IN A MANNER TO NOT CREATE ANY GLARE OR SPILLOVER TO ADJACENT PROPERTIES.

18. THERE ARE NO HISTORICAL BUILDINGS ON SITE.

19. THIS PROPERTY WAS PART OF A MINOR SUBDIVISION. (02 053-M)

20. THE SITE IS NOT IN CONFLICT WITH THE BALTIMORE COUNTY BASIC SERVICE MAPS.

21. ALL EASEMENTS ARE SHOWN PER PLAT 75/66 AND ARE PUBLIC EXCEPT FOR LABELED PRIVATE EASEMENTS.



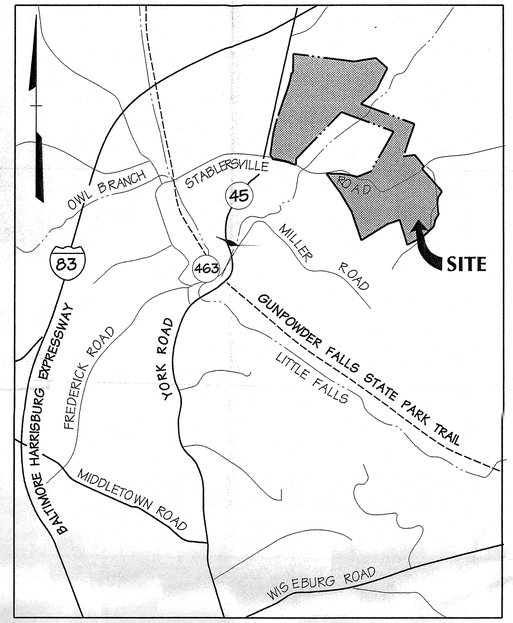
AREA OF SPECIAL HEARING

SCALE: 1" = 400'



OVERALL PROPERTY PLAN

SCALE: 1" = 200'



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VICINITY MAP

SCALE: 1" = 1000'

SPECIAL EXCEPTION REQUEST

THE APPLICANT IS REQUESTING A SPECIAL EXCEPTION TO PERMIT A BUILDING FOR RELIGIOUS WORSHIP/ SCHOOL/ CAMP IN THE RC-2 ZONE.

* SPECIAL HEARING REQUESTS

1. TO CONFIRM THE PARKING PROVIDED IS ADEQUATE.

2. TO APPROVE THE TRANSFER OF 54± ACRES OF RC2 ZONED LAND AS A NON-DENSITY TRANSFER.

* COMBINED INTO ONE HEARING.

DATA SOURCES:

TOPOGRAPHY PER BALT. CO. OIT/GIS, DATED MARCH 1995.

EX BOUNDARY, FOREST BUFFER EASEMENT, FOREST CONSERVATION EASEMENT, SETBACKS, 100-YR. FLOODPLAIN EASEMENT AND UTILITY & ACCESS EASEMENTS DIGITIZED FROM PLAT BY K.J. WELLS, INC. (BALTIMORE COUNTY SM 75-65)

ADJACENT PROPERTY LINES DIGITIZED FROM EXISTING BALTIMORE COUNTY TAX MAPS.

EXISTING WETLANDS AND STEEP SLOPES (25%+) DIGITIZED FROM EXISTING WETLAND AND FOREST STAND DELINEATION PLAN BY K.J. WELLS DATED NOVEMBER 14, 2001.

ADJACENT WELL AND SEPTIC RESERVE AREA LOCATIONS IN THE VICINITY OF THE PROPOSED RETREAT CENTER SHOWN PER EX. BALTIMORE COUNTY RECORDS AND FIELD OBSERVATION.

EX. SOILS DELINEATION LINES SHOWN PER BALTIMORE COUNTY SOIL SURVEY.

DMW
Daft·McCune·Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION & SPECIAL HEARING

LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

7th ELECTION DISTRICT 3rd COUNCIL MANIC DISTRICT BALTIMORE COUNTY, MD

STATE OF MARYLAND — MELANIE J. NOSER — No. 551 — 12/20/2005 — REGISTERED LANDSCAPE ARCHITECT

ISSUE DATES	
REVIEW:	7/21/03
BID:	
PERMIT:	
CONSTRUCTION:	
BASE:	a\s
DRAWN:	a\s
DESIGNED:	
CHECKED BY:	
DATE CHECKED:	1/28/04
SCALE:	1"=200'
PROJECT NO.:	00026.c
DRAWING:	1 of 2

DATE	BY	REVISIONS

Mon Jan 26 16:56:48 2004
S:\00026\dwgs\00026-01.dwg
Tue Jan 27 08:52:32 2004 jmorrison
S:\00026\dwgs\00026-02.dwg

LANDSCAPE REQUIREMENTS

LANDSCAPING TABULATION		PLANTING UNITS
INTERIOR ROAD @ 1 P.U. / 20 L.F.	310 L.F.	16
ADJACENT ROAD @ 1 P.U. / 40 L.F.	600 L.F.	15
PARKING LOT INTERIOR @ 1 P.U. / 12 SPACES	35 SPACES	3
SIDE/REAR YARD @ 1 P.U. / 15 L.F	N/A.	N/A
SWM PERIMETER @ 1 P.U. / 15 L.F	225 L.F.	15
OPEN SPACE @ 1 P.U. / 1,500 S.F.	N/A	N/A
TOTAL		49
LANDSCAPING PROVIDED		
OVERSTORY TREES	26	26
EVERGREEN TREES	48	24
ORNAMENTAL TREES	30	15
TOTAL		65.5

SEE SHEET 1 OF 2 FOR GENERAL NOTES AND CHARTS

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. MINOR CONTOUR (2')
- EX. MAJOR CONTOUR (10')
- EX. CURB/EDGE OF MAJ. OR MIN. STREETS
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- RIVER EDGE
- R-2 ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 35' PRINCIPAL SETBACK LINE
- PRELIM. 100 YR. FLOODPLAIN
- EX. FENCE
- EX. TREELINE
- EXISTING STRUCTURE
- FAILED PERC TEST LOCATION
- PASSED PERC TEST LOCATION
- SLOPES (25%+)
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- PROPOSED MINOR CONTOUR (2')
- PROPOSED MAJOR CONTOUR (10')
- PROPOSED ORNAMENTAL TREE
- PROPOSED SHADE TREE
- PROPOSED EVERGREEN TREE

ZONING HEARING REQUESTS

THE APPLICANT IS REQUESTING A SPECIAL EXCEPTION TO PERMIT A BUILDING FOR RELIGIOUS WORSHIP/ SCHOOL/ CAMP IN THE RC-2 ZONE.

DATA SOURCES:

TOPOGRAPHY PER BALT. CO. GIS (GIS), DATE OF CAPTURE IS MARCH 1995.

EX. BOUNDARY, FOREST BUFFER, EASEMENT, FOREST CONSERVATION EASEMENT, SETBACKS, AND UTILITY & ACCESS EASEMENTS DIGITIZED FROM EX. PLAT BY KJ WELLS, INC. (BALTIMORE COUNTY SM 75-65). LOCATIONS ARE APPROXIMATE AND FOR PLANNING PURPOSES ONLY.

ADJACENT PROPERTY LINES DIGITIZED FROM EXISTING BALTIMORE COUNTY TAX MAPS.

EXISTING WETLANDS AND STEEP SLOPES (25%+) DIGITIZED FROM EXISTING WETLAND AND FOREST STAND DELINEATION PLAN BY KJ WELLS DATED NOVEMBER 14, 2001.

ADJACENT WELL AND SEPTIC RESERVE AREA LOCATIONS IN THE VICINITY OF THE PROPOSED RETREAT CENTER SHOWN PER EX. BALTIMORE COUNTY RECORDS AND FIELD OBSERVATION.

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LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

CONCEPT PLAN
SITE PROPOSAL MAP

7th ELECTION DISTRICT — BALTIMORE COUNTY, MD

DATE	BY	REVISIONS

ISSUE DATES
REVIEW: 7/03/03
BID:
PERMIT:
CONSTRUCTION:

BASE: a/c
DRAWN: a/c
DESIGNED:
CHECKED BY: [illegible]
DATE CHECKED:
SCALE: 1"=50'
PROJECT NO.: 00026.b
DRAWING: 2 of 2

Thu Jul 3, 10:26:25 2003
c:\00026\sheet\00026b-s2

GENERAL NOTES:

1. OWNER:
Eleanor D. Spruill & Marion T. Clarke
W. Duvall Spruill & Forest F. Bramble, Personal Rep.
P.O. Box 1403
Columbia, SC 29202
2. APPLICANT:
Loyola College in Maryland
4501 North Charles Street
Baltimore, Maryland 21210-2699
3. Plan prepared by:
Daft-McCune-Walker, Inc.
200 E. Pennsylvania Ave.
Towson Maryland 21286
4. Gross Tract Area: 107.68 Ac.
5. Tax Account Nos. 0712037170, 2100013783, 2100013784
6. Tax Map No. 12, Grid 20, 21, Parcels 142 & 221
7. Deed References: 6614/66 & 8264/291
8. Election Districts: 7th
Councilmanic District: 3rd
Census Tracts: 4070.00
Watersheds: Gunpowder Falls
Subsewersheds: Non Service
9. The 100-year floodplain on this site is shown per plat prepared by KJ Wells
10. There are no streams or ponds on and with in 200 feet of the development site.
11. There are no significant regulated plant or wildlife communities on site.
12. The site is not located within the Chesapeake Bay Critical Area.
13. There are no known historic structures on site. The house on lot 1 (Elwood Building Co.) is listed with the Baltimore County Landmark Preservation Commission. The house is non-conforming with regards to the required minimum building setback lines.
14. There are no significant views.
15. Existing land use: Agricultural
16. Existing well is shown.
Existing/Proposed Water Service: Private
Proposed Sewer Service: Private
17. All lighting for parking areas shall be arranged so as to reflect the light away from adjacent residential areas and public streets & comply with Sect. 1B01.1 B.1.c.(4) BCZR. A plan, with the locations and details of the proposed lighting and a computed lighting design with point-by-point calculations that conforms with the Illumination Engineering Society (IES) standards, has been approved by Avery Harden, PDM on 11-26-03.
18. Amenity Open Space: N/A
19. Building Height shall not exceed 35'
20. All signage to conform to section 460 of the Baltimore County Zoning Regulations.
21. Previous commercial permits: None Found
22. A.D.T. = 48 Average daily trips
23. Per Phase I Environmental Report prepared by PMT & Associates, Inc., there are no underground storage tanks on site.
24. Existing Zoning: RC-2
25. No prior zoning cases found.
26. The community input meeting was held on October 9, 2003
27. Parking/Drive Area = 26,140 SF ±
Building Area: 44,860 SF ±
28. Hours of building operation: The spiritual retreat will be used primarily on weekends with occasional and periodic use during the week.
29. The Loyola College Spiritual Retreat Center will be used only for Loyola College Retreats, no other institutions will be allowed to use this facility.
30. The Loyola College Spiritual Retreat Center will not generate noticeable levels of smoke, noise, dust, odors, etc.
31. Meditation nodes will not contain any buildings.
32. A 20-foot wide private access along an existing lane within the forest conservation easement, north of Stablersville Rd., shall remain in use by owner to access the land north of the forest conservation easement.
33. Meditation nodes within the forest conservation easement as shown on the forest conservation plan have been authorized by DEPRM for use by the owner.
34. The meditation areas will consist of a 6-foot wide wood chip nodes at a maximum of 30-feet south of the existing road bed with the forest conversation easement..
35. A variance was granted by Baltimore County Department of Environmental Protection and Resource Management from the regulations for the protection of water quality, streams, wetlands and floodplains to reduce the forest buffer easement limits by establishing good vegetative cover. See approved waiver for details.
36. All requirements of the Maryland State Department of the Environment and Baltimore County Department of Environmental Protection and Resource Management pertaining to private water and/or sewage system must be complied with prior to approval of building applications.
37. The shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer easement, forest conservation easement and forest buffer & forest conservation easement except as permitted by Baltimore County Department of Environmental Protection and Resource Management.
38. Sewage to be collected by gravity and stored in tanks, then pumped to sewage disposal area.
39. Fire suppression facilities will be provided per plan.
40. SWM will be provided by 2 bioretention facilities and 1 extended retention facility.
41. A Hydrological Study & Environmental Study have been submitted.
42. No petitions for variances, Chesapeake Bay Critical Area variations, or requests for waivers from county regulations or standards have been filed.
43. No limitations established by the courts, County Board of Appeals, Planning Board and/or Zoning Commissioner or restrictive covenants recorded with individuals or groups which would limit proposed development on the site are known.
44. No existing buildings on the property.
45. No designated areas of critical state concern identified as such under the procedures of Section 5-611 of the State Finance and Procurement Article of the Annotated Code of Maryland as from time to time amended, and as mapped and available for inspection in the Office of Planning are known.
46. No Transit services when appropriate as per the Maryland Mass Transit Administration's Access by Design Publication are proposed.
47. No proposed and existing water and sewer lines, except for proposed septic and well system.

UNRESOLVED COMMENTS OR CONDITIONS
(From the Community Input Meeting on October 9, 2003)
26-203 (e), Baltimore County Code

1. Caretaker(s) on premises;
2. Use of the property as drug rehab center;
3. How property was acquired;
4. Water consumption of project;
5. Will Loyola enter into permanent covenants on expansion and for use;
6. Extent to which character of community will be changed; benefits of facility to northern Baltimore County;
7. Whats other properties did Loyola look at, and why was this site selected;
8. RC 2 zoning is not the appropriate zoning for this proposed use; Loyola should look for land not zoned RC2;
9. Loyola should not be permitted on this site; Loyola is not wanted;
10. Loyola is circumventing the zoning regulations by requesting a special exception for a school use, chapel and church use;
11. Use of the private road, ownership of the private road, and access on Miller Road from York Road to Stablersville Road;
12. Traffic to and from this site caused by Loyola;
13. What will students do on the weekends and where will they go?;
14. Students will wander off-site and how will Loyola prevent students from doing so;
15. This is farm land and preservation of farm land, and this use does not preserve farm use;
16. Impact of use on the peace and quiet of the area;
17. Loyola is coming to this site for the "bucolic" setting, but there is noise from farm equipment, chain saws, ATV's and hunting, so why come;
18. Food service, delivered or prepared on site;
19. Lighting, from the parking areas, entrances to buildings, impact on adjoining properties;
20. property taxes;
21. Location of wells, depth of wells, impact on surrounding wells; water consumption impacts;
22. Size and impact of the septic drain field;
23. Number of retreats per year;
24. Summer camp, outdoor activities; use of loudspeaker;
25. Spirituality of the community;
26. Use of conservation easements;
27. Past and current use of other sites;
28. Use of site for weekend retreats, and what constitutes a weekend retreat;
29. Use of alcohol;
30. Use of "reflection nodes";
31. Water storage for fire protection;
32. County inspection of sites;
33. Proposed use's impact on deer herds;
34. Impact of toxic dump on this site and on watershed;
35. Loyola provide comprehensive essential data about similar construction of retreat centers in the county and impact on adjoining residences and tax structure;
36. Amendment to the Master Water and Sewer Plan;
37. Laundry on premises;
38. Limitation on number of retreats per year; limitations on use of site, weekends, summer, during week; proposed use of site, i.e., weekends, summer and winter breaks, during semester breaks, during week.
39. Loyola's restrictions on adjoining property.

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. MINOR CONTOUR (2')
- EX. MAJOR CONTOUR (10')
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVER-HEAD, UG - UNDERGROUND)
- STREAM/RIVER EDGE
- RC-2 / RC-5 — ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 35' PRINCIPAL SETBACK LINE
- 100 YR. FLOODPLAIN
- EX. FENCE
- EX. TREELINE
- GgD2 / MoC2 — SOILS DELINEATION LINE
- EXISTING STRUCTURE
- FAILED PERC TEST LOCATION
- PASSED PERC TEST LOCATION
- SLOPES (25%+)
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- EX. WETLAND

18. Per Plat 75/65: the property shown hereon shall be subject to a 30' reversible slope easement parallel to the proposed highway widening area.

19. Per Plat 75/65: the following easements have been taken.

A. RW: 02161
B. Highway: 17750/738
C. Forest Buffer: 17750/720
D. Forest Buffer / Conservation: 17750/713
E. Conservancy: 17750/736
F. Forest Conservation: 17750/726

50. Owner/Developer will record a "Right of Entry Agreement" with Baltimore County to access stormwater management facilities and the fire pump vault and forest conservation easement.

ENVIRONMENTAL INFORMATION

EXISTING	NOT EXISTING	FIELD DELINEATED	FIELD VERIFIED	
X				Topography and street grades (min. 5 ft. contour appropriately labeled)
X				Slopes greater than 25%
X				100 yr. floodplain
X				Soils mapped according to Soil Survey, Baltimore County, Maryland
X				Streams, seeps, ponds or other water bodies shown* on site and within 200ft. of site boundaries
X		X		Wetlands*
X		X		Forest buffer limits including adjustments for* steep slopes and/or erodible soils
X				Land cover on and within 200ft. of site
	X			Significant regulated plant or wildlife communities
X				Wells on site and within 100ft. of site
X				Septic on site and within 100ft. of site
	X			Underground fuel tanks on site and within 100ft. of site
X		X		Soil evaluation tests (perc tests) performed (YES) NO DATE 5/7/2003

* Wetland limits and Forest Buffer established by Eco-Science Professionals, Inc. and shown on Forest Conservation Plan for Clarke/Spruill Property by K.J. Wells Inc., dated 12-19-2001.

EXISTING BUILT CONDITIONS

EXISTING	NOT EXISTING	
X		Locations of existing buildings within 200ft. of site boundaries
X		Location of existing roads within 200ft. of site boundaries
	X	Designated historic sites
	X	Designated archeological sites
	X	Significant views
	X	Significant features (specimen trees, buildings, streetscapes, etc.)
X		Land uses on and within 200ft. of site
X		Roads rights-of-way and easements

SITE DEVELOPMENT PROPOSAL

DWELLING TYPE*	PROPOSED UNITS	PARKING REQUIRED (PER DORM REQ'S.)	PARKING PROVIDED***	OPEN SPACE REQ'D.	OPEN SPACE PROP.	AVG. DAILY TRIPS	PHASE**
NONE	5 FACILITY ROOMS & 100 RETREATANT ROOMS (105 BEDS)	27 SPACES	30 SPACES 5 VAN SP.	N/A	N/A	48	PHASE I & II
TOTAL	5 FACILITY ROOMS & 100 RETREATANT ROOMS (105 BEDS)	27 SPACES	30 SPACES 5 VAN SP.	N/A	N/A	48	

* The plan is for a Retreat Center with a Main Building and 5 Retreatant Buildings, no dwelling units are proposed.
** The Development Plan & Zoning Relief seek approval of both Phase I & II at this time.
*** Note: Retreatants will be transported to the site by passenger vans, and/or buses.

PRIME AND PRODUCTIVE SOILS

SYMBOL	NAME
CcC2	Chester silt loam, 8-15% slopes, moderately eroded
CgB2	Chester gravelly silt loam, 3-8% slopes, moderately eroded
Cu	Codorus silt loam
GcC2	Glenelg loam, 8-15%, slopes moderately eroded
GgC2	Glenelg channery loam, 8-15% slopes, moderately eroded
GnA	Glenville silt loam, 0-3% slopes
MoC2	Manor channery loam, 8-15% slopes, moderately eroded

SITE DATA

ZONE	ACRES	UNITS ALLOWED	DENSITY UNITS	UNITS PROPOSED
RC-2	107.68 AC *	1	N/A	NONE
TOTAL	107.68 AC	1	N/A	NONE

* LIMIT OF DISTURBANCE = 7.35± AC

LIGHT DETAIL (N.T.S.) — 25'

BOLLARD DETAIL (N.T.S.) — 4'

COUNTY ADOPTED PLANS

EXISTING	NOT EXISTING	IN CONFORMANCE	
		X	Balto. Co. Master Plan 1989-2000
	X		Community or Revitalization Plan(s)
	X		Recreation and Parks Plan
	X		Streetscape Plan
	X		Greenways Plan
	X		Other:_____

CERTIFICATION AS TO DELINQUENT ACCOUNTS

I, John A. Palmucci certify under oath that there are no delinquent accounts for any other development with respect to any of the following: The applicant, a person with a financial interest in the proposed development, or a person who will perform contractual services on behalf of the proposed development.

FOREST BUFFER & FOREST CONSERVATION NOTES

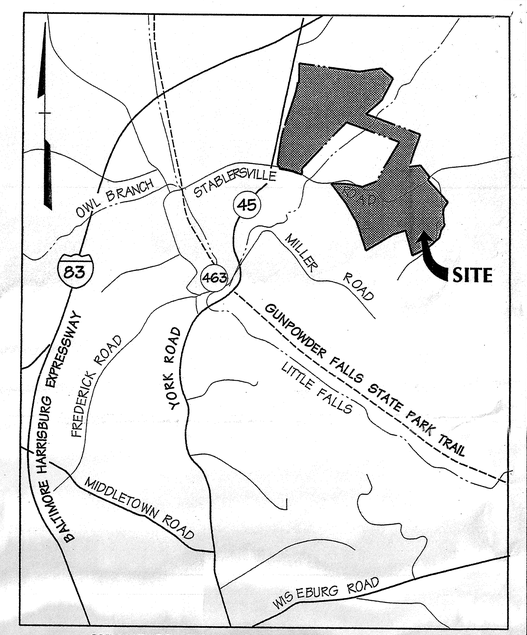
STANDARD NON-DISTURBANCE NOTE:

"THERE SHALL BE NO CLEARING, GRADING, OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER & FOREST CONSERVATION EASEMENTS, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT."

PROTECTIVE COVENANTS NOTE:

"ANY FOREST BUFFER & FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS."





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VICINITY MAP

SCALE: 1" = 1000'

COORDINATES AND BEARINGS SHOWN ON THIS PLAN ARE REFERRED TO THE SYSTEM OF COORDINATES ESTABLISHED BY THE STATE OF MARYLAND (NAD 83/91) AND BASED ON THE FOLLOWING TRAVERSE STATIONS:

GIS-120	N 726023.904	E 1410208.932
GIS-120 AZ	N 726480.562	E 1410286.488

SPECIAL EXCEPTION REQUEST

THE APPLICANT IS REQUESTING A SPECIAL EXCEPTION TO PERMIT A BUILDING FOR RELIGIOUS WORSHIP/ SCHOOL/ CAMP IN THE RC-2 ZONE.

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A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

ELEANOR SPRUILL & MARION CLARKE PROPERTY, LOT 2

DEVELOPMENT PLAN

7th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

PDM#VII-389
BALTIMORE COUNTY, MD

STATE OF MARYLAND — MELANIE D. WALKER — No. 21551 — REGISTERED LANDSCAPE ARCHITECT

ISSUE DATES
REVIEW: 11/25/03
BID:
PERMIT:
CONSTRUCTION:

BASE: a|s
DRAWN: a|s
DESIGNED:
CHECKED BY:
DATE CHECKED: 02/03/04
SCALE: 1"=200'
PROJECT NO.: 00026.D
DRAWING: 1 of 3

DATE	BY	REVISIONS

Jan 23/2004 3:18:31 AM J:\PROJECTS\00026\DWG\SHEET\00026B.DWG

PROPOSED BUILDINGS

MAIN BUILDING 15,630 SF (900 STABLERSVILLE ROAD)
INCLUDES CHAPEL
RETREATANT BUILDING #1 5,950 SF 20 ROOMS (20 BEDS)
#2 5,950 SF 20 ROOMS (20 BEDS)
#3 5,950 SF 20 ROOMS (20 BEDS)
#4 5,950 SF 20 ROOMS (20 BEDS)
#5 5,950 SF 20 ROOMS (20 BEDS)
TOTAL BUILDING AREA 44,880 SF

STABLERSVILLE ROAD

EX. FOREST

EX. FOREST

EX. FOREST

MEDITATION NODE #1

MEDITATION NODE #2

MEDITATION NODE #3

LOD = 7.35 AC

LEGEND

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- EX. MAJOR CONTOUR (10')
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- RIVER EDGE
- RC-2 ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
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- PRELIM. 100 YR. FLOODPLAIN
- EX. FENCE
- EX. TREELINE
- PROPOSED TREELINE
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- PROPOSED MINOR CONTOUR (2')
- PROPOSED MAJOR CONTOUR (10')
- LIGHTS
- BOLLARDS WITH LIGHTS
- FLOOD LIGHTS
- SPECIAL PAVING
- SIDEWALKS
- 18" D. PROPOSED STORM DRAIN
- PROPOSED INLET
- LIMIT OF DISTURBANCE
- WETLANDS

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DATA SOURCES:

TOPOGRAPHY PER BALT. CO. OIT/GIS, DATE OF CAPTURE IS MARCH 1995.

EX. BOUNDARY, FOREST BUFFER EASEMENT, FOREST CONSERVATION EASEMENT, SETBACKS, AND UTILITY & ACCESS EASEMENTS DIGITIZED FROM EX. PLAT BY K.J. WELLS, INC. (BALTIMORE COUNTY SM 75-65). LOCATIONS ARE APPROXIMATE AND FOR PLANNING PURPOSES ONLY.

ADJACENT PROPERTY LINES DIGITIZED FROM EXISTING BALTIMORE COUNTY TAX MAPS.

EXISTING WETLANDS AND STEEP SLOPES (25%+) DIGITIZED FROM EXISTING WETLAND AND FOREST STAND DELINEATION PLAN BY ECO SCIENCE PROFESSIONALS DATED NOVEMBER 14, 2001.

ADJACENT WELL AND SEPTIC RESERVE AREA LOCATIONS IN THE VICINITY OF THE PROPOSED RETREAT CENTER SHOWN PER EX. BALTIMORE COUNTY RECORDS AND FIELD OBSERVATION.

NOTE: PER DAVE LYKENS OF BALTIMORE COUNTY THE PROPOSED SWM FACILITIES HAVE SUITABLE OUTFALL.

DMW
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

ELEANOR SPRULL & MARION CLARKE PROPERTY, LOT 2

DEVELOPMENT PLAN
PROPOSED CONDITIONS

7th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

PDM#VII-389
BALTIMORE COUNTY, MD

STATE OF MARYLAND — THELMA MARIE MYERS — No. 551 — REGISTERED LANDSCAPE ARCHITECT

DATE	BY	REVISIONS

ISSUE DATES
REVIEW: 11/25/03
BID:
PERMIT:
CONSTRUCTION:

BASE: a|s
DRAWN: a|s, JSN
DESIGNED: MM, MJP
CHECKED BY: MM, MJP
DATE CHECKED: 02/03/04
SCALE: 1"=50'
PROJECT NO.: 00026.D
DRAWING: 2 of 3

Petitioners Exhibit # 2B

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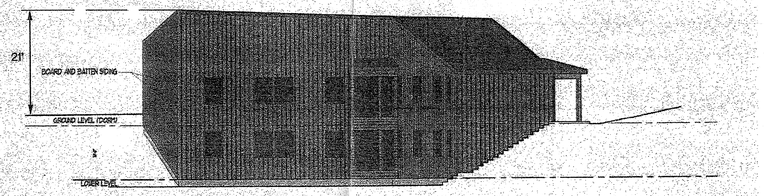
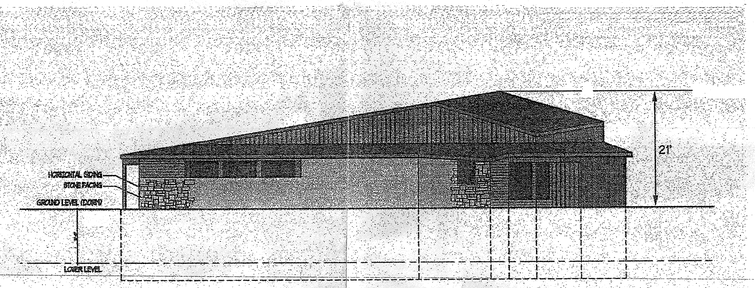
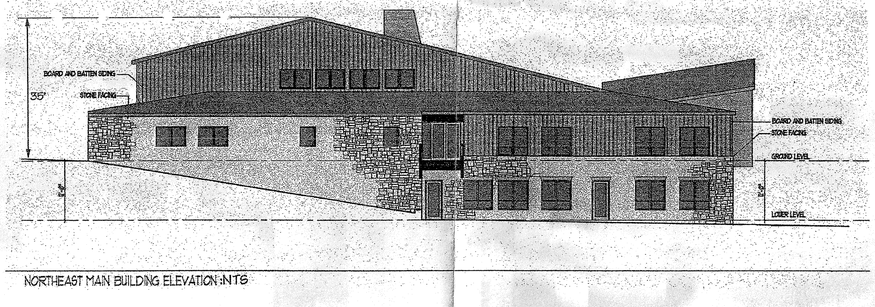


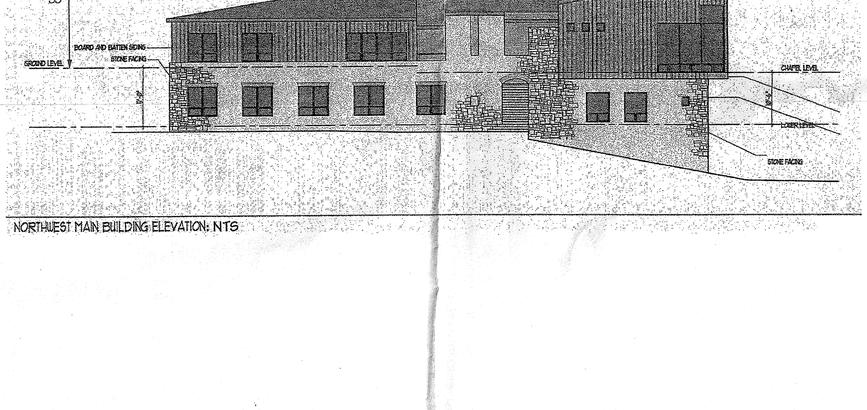
RETREATANT BUILDING ELEVATION: NTS



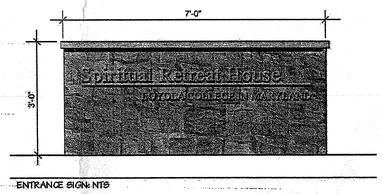
NORTHEAST RETREATANT BUILDING ELEVATION: NTS



NORTHEAST MAIN BUILDING ELEVATION: NTS



NORTHWEST MAIN BUILDING ELEVATION: NTS

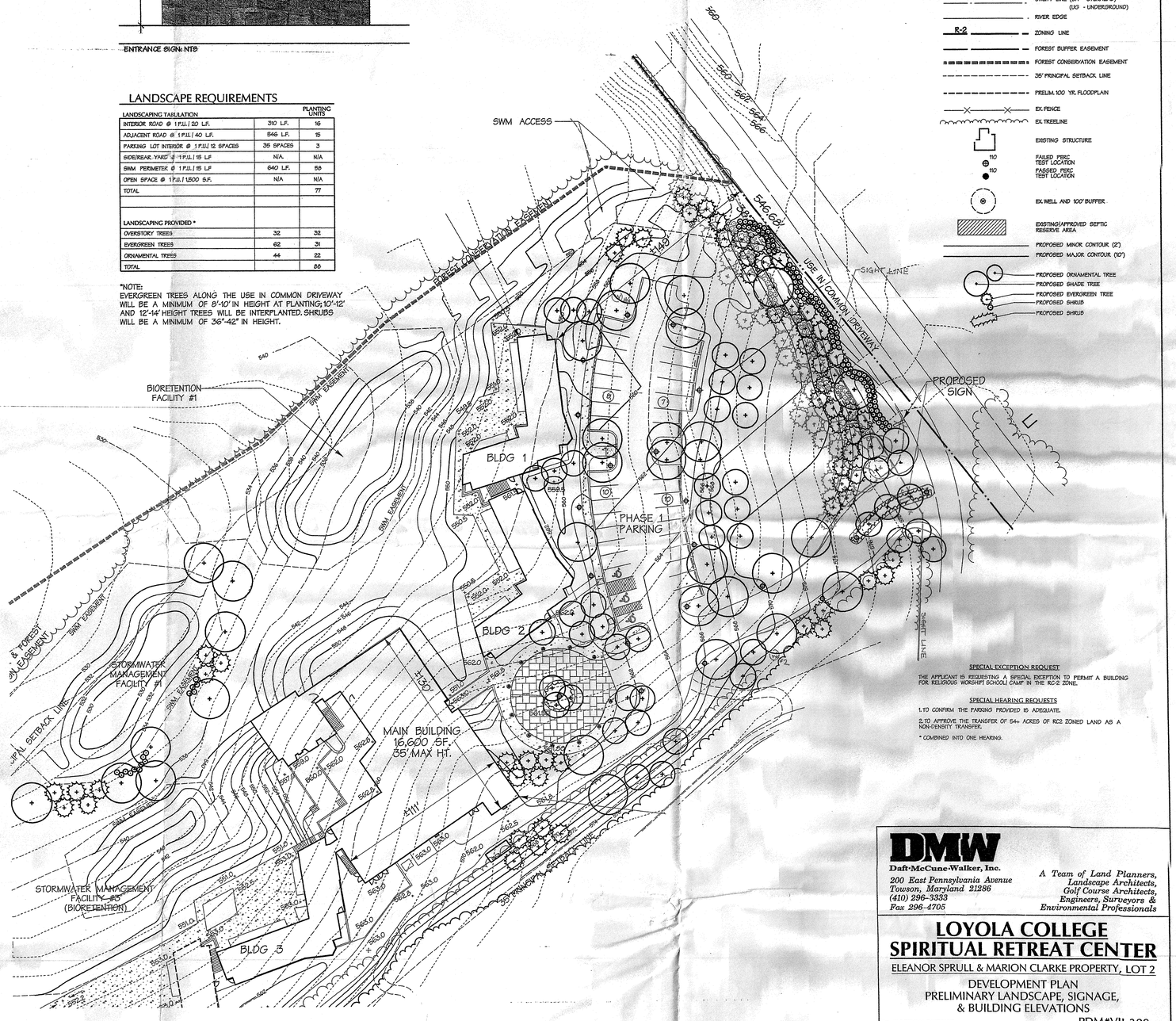


ENTRANCE SIGN: NTS

LANDSCAPE REQUIREMENTS

LANDSCAPING TABULATION		PLANTING UNITS
INTERIOR ROAD @ 1 P.U. / 20 L.F.	310 L.F.	16
ADJACENT ROAD @ 1 P.U. / 40 L.F.	546 L.F.	15
PARKING LOT INTERIOR @ 1 P.U. / 12 SPACES	35 SPACES	3
SIDE/REAR YARD @ 1 P.U. / 15 L.F	N/A.	N/A
SWM PERIMETER @ 1 P.U. / 15 L.F	640 L.F.	58
OPEN SPACE @ 1 P.U. / 1500 S.F.	N/A	N/A
TOTAL		77
LANDSCAPING PROVIDED *		
OVERSTORY TREES	32	32
EVERGREEN TREES	62	31
ORNAMENTAL TREES	44	22
TOTAL		85

*NOTE:
EVERGREEN TREES ALONG THE USE IN COMMON DRIVEWAY WILL BE A MINIMUM OF 8'-10' IN HEIGHT AT PLANTING; 10'-12' AND 12'-14' HEIGHT TREES WILL BE INTERPLANTED. SHRUBS WILL BE A MINIMUM OF 36"-42" IN HEIGHT.



LANDSCAPE PLAN
SCALE: 1"=30'

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. MINOR CONTOUR (2')
- EX. MAJOR CONTOUR (10')
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- RIVER EDGE
- R-2 ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 35' PRINCIPAL SETBACK LINE
- PRELIM. 100 YR. FLOODPLAIN
- EX. FENCE
- EX. TREELINE
- EXISTING STRUCTURE
- 110 FAILED PERC TEST LOCATION
- 110 PASSED PERC TEST LOCATION
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- PROPOSED MINOR CONTOUR (2')
- PROPOSED MAJOR CONTOUR (10')
- PROPOSED ORNAMENTAL TREE
- PROPOSED SHADE TREE
- PROPOSED EVERGREEN TREE
- PROPOSED SHRUB
- PROPOSED SHRUB

SPECIAL EXCEPTION REQUEST

THE APPLICANT IS REQUESTING A SPECIAL EXCEPTION TO PERMIT A BUILDING FOR RELIGIOUS WORSHIP, SCHOOL, CAMP IN THE RC-2 ZONE.

SPECIAL HEARING REQUESTS

1. TO CONFIRM THE PARKING PROVIDED IS ADEQUATE.

2. TO APPROVE THE TRANSFER OF 54± ACRES OF RC2 ZONED LAND AS A NON-DENSITY TRANSFER.

* COMBINED INTO ONE HEARING.

DMW
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Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

LOYOLA COLLEGE
SPIRITUAL RETREAT CENTER

ELEANOR SPRULL & MARION CLARKE PROPERTY, LOT 2

DEVELOPMENT PLAN
PRELIMINARY LANDSCAPE, SIGNAGE, & BUILDING ELEVATIONS

7th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

PDM#VII-389
BALTIMORE COUNTY, MD

STATE OF MARYLAND — MELANIE WOOD — No. 1901 — REGISTERED LANDSCAPE ARCHITECT

ISSUE DATES

REVIEW:	11/25/03
BID:	
PERMIT:	
CONSTRUCTION:	
BASE:	als
DRAWN:	CRH
DESIGNED:	MJP
CHECKED BY:	MJP
DATE CHECKED:	02/03/04
SCALE:	AS SHOWN
PROJECT NO.:	00026.b
DRAWING:	3 of 3

DATE	BY	REVISIONS

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SITE DEVELOPMENT PROPOSAL

DWELLING TYPE *	PROPOSED UNITS	PARKING REQUIRED (PER DORM REQ'S.)	PARKING PROVIDED	OPEN SPACE REQ'D.	OPEN SPACE PROP.	AVG. DAILY TRIPS	PHASE	DEVELOPMENT SCHEDULE
NONE	5 FACULTY ROOMS & 60 RETREATANT ROOMS (65 BEDS)	16.25 SPACES	35 SPACES	N/A	N/A	75	PHASE I	SPRING 2004
NONE	40 ROOMS (40 BEDS)	10 SPACES	-- SPACES	N/A	N/A	125	PHASE II	2014
NONE	5 FACULTY ROOMS & 100 RETREATANT ROOMS (105 BEDS)	27 SPACES	35 SPACES	N/A	N/A	200		

*The plan is for a Retreat Center with a Main Building and 5 Retreatant Buildings, no dwelling units are proposed.

ENVIRONMENTAL INFORMATION

EXISTING	NOT EXISTING	FIELD DELINEATED	FIELD VERIFIED	
X				Topography and street grades (min. 5 ft. contour appropriately labeled)
X				Slopes greater than 25%
X				100 yr. floodplain
X				Soils mapped according to Soil Survey, Baltimore County, Maryland
X				Streams, seeps, ponds or other water bodies shown * on site and within 200ft. of site boundaries
X		X		Wetlands *
X		X		Forest buffer limits including adjustments for * steep slopes and/or erodible soils
X				Land cover on and within 200ft. of site
	X			Significant regulated plant or wildlife communities
X				Wells on site and within 100ft. of site
X				Septic on site and within 100ft. of site
	X			Underground fuel tanks on site and within 100ft. of site
X		X		Soil evaluation tests (perc tests) performed (YES) NO DATE 5/7/2003

* Wetland limits and Forest Buffer established by Eco-Science Professionals, Inc. and shown on Forest Conservation Plan for Clarke/Sprsill Property by K.J. Wells Inc., dated 12-19-2001.

EXISTING BUILT CONDITIONS

EXISTING	NOT EXISTING	
X		Locations of existing buildings within 200ft. of site boundaries
X		Location of existing roads within 200ft. of site boundaries
	X	Designated historic sites
	X	Designated archeological sites
	X	Significant views
	X	Significant features (specimen trees, buildings, streetscapes, etc.)
X		Land uses on and within 200ft. of site
X		Roads rights-of-way and easements

COUNTY ADOPTED PLANS

EXISTING	NOT EXISTING	IN CONFORMANCE	
		X	Balt. Co. Master Plan 1989-2000
	X		Community or Revitalization Plan(s)
	X		Recreation and Parks Plan
	X		Streetscape Plan
	X		Greenways Plan
	X		Other:_____

OPEN SPACE PROPOSAL

Open Space Type	Acres
Active Open Space	N/A
100 yr Floodplain	2.0± ac
Forest Buffer	4.9± ac
Amenity Areas	N/A
Trails and Connections	N/A
Other	26.1± ac in Forest Con. Easmts. & Forest Con./ Forest Buffer Easmts.
Total Provided	33.0± ac
Proposed Ownership	Private

Undeveloped Areas	Acres
Storm Water Management	0.3± ac
HOA/COA Areas	N/A
Other	--
Total Provided	

FOREST BUFFER NOTES

STANDARD NON-DISTURBANCE NOTE:

"THERE SHALL BE NO CLEARING, GRADING, OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER EASEMENTS, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT."

PROTECTIVE COVENANTS NOTE:

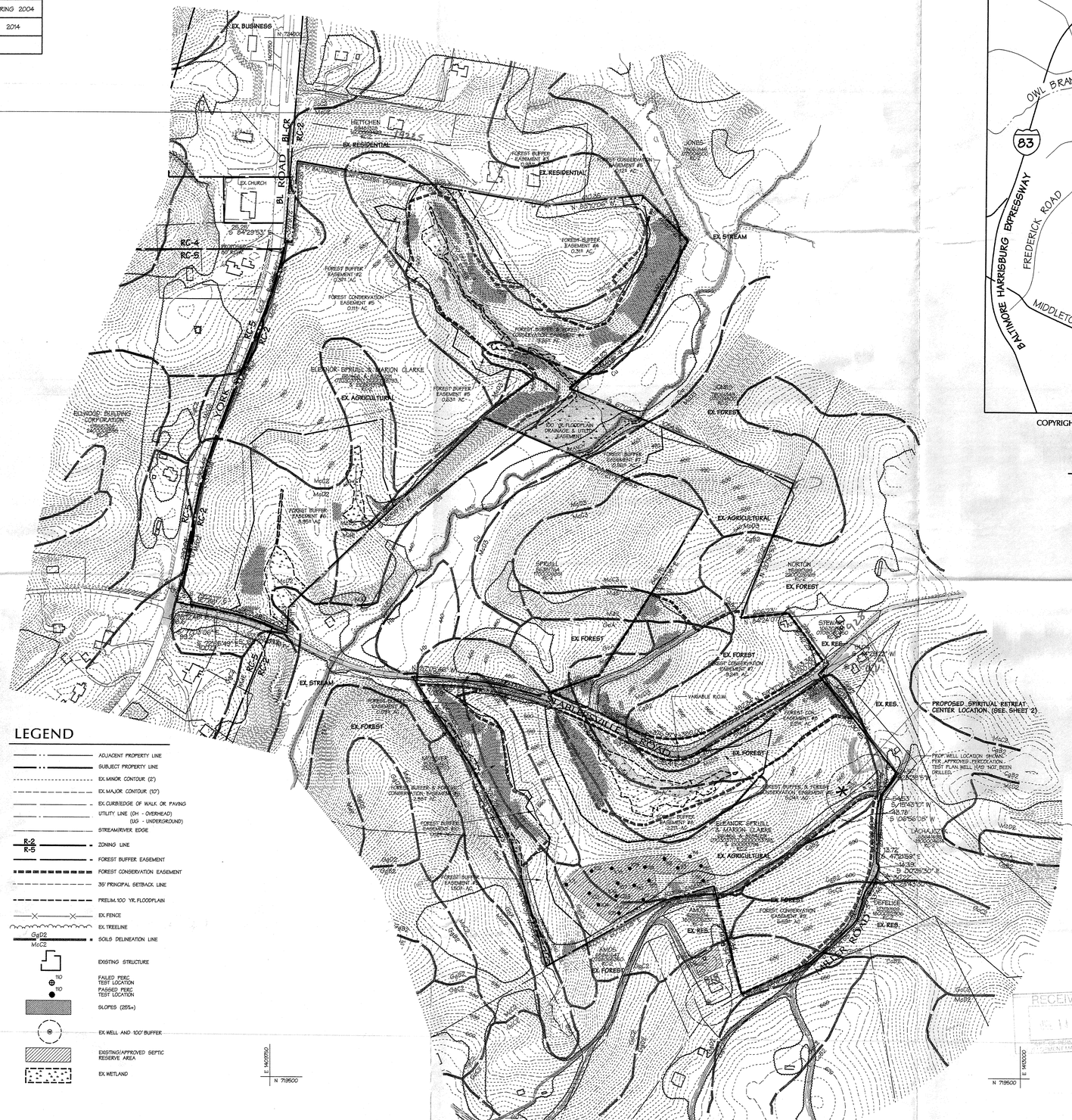
"ANY FOREST BUFFER EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS."

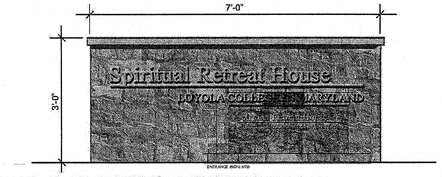
GENERAL NOTES

1. OWNER: ELEANOR D. SPRUILL, MARION T. CLARKE, W. DUVALL SPRUILL, & FORREST F. BRAMBLE PERSONAL REPRESENTATIVES P.O. BOX 1473 COLUMBIA S.C. 29202
2. DEVELOPER: LOYOLA COLLEGE IN MARYLAND 4501 NORTH CHARLES STREET BALTIMORE, MARYLAND 21210-2699
3. TAX ACCOUNT NO.'S: 0703037170, 2100013793, & 2100013794
4. AREA: 107.68 ACRES
5. ZONING: RC-2
6. STORMWATER MANAGEMENT WILL BE PROVIDED IN EXTENDED DETENTION AND BIORETENTION FACILITIES.
7. EX. LAND USE: AGRICULTURAL

SITE DATA

ZONE	ACRES	UNITS ALLOWED	DENSITY UNITS	UNITS PROPOSED
RC-2	107.68 AC	1	N/A	NONE
TOTAL	107.68 AC	1	N/A	NONE


EX. BUSINESS
N 724000
M0750
HETTCHEN 25.00 AC
EX. RESIDENTIAL
BL ROAD
BL-CR
RC-2
EX. CHURCH
S 84°29'53" E
RC-4
RC-5
RC-3
YORK ROAD
ELEANOR SPRUILL & MARION CLARKE 0703037170 RC-2
EX. AGRICULTURAL
ELKWOOD BUILDING CORPORATION 2100013794 RC-2
FOREST BUFFER EASEMENT #1 0.951 AC
FOREST BUFFER EASEMENT #2 0.091 AC
FOREST CONSERVATION EASEMENT #3 0.115 AC
FOREST BUFFER EASEMENT #3 0.951 AC
FOREST BUFFER EASEMENT #4 0.311 AC
FOREST CONSERVATION EASEMENT #5 0.157 AC
FOREST BUFFER & FOREST CONSERVATION EASEMENT #6 2.861 AC
FOREST BUFFER EASEMENT #7 0.951 AC
FOREST BUFFER EASEMENT #8 0.233 AC
FOREST BUFFER & FOREST CONSERVATION EASEMENT #9 1.905 AC
FOREST BUFFER EASEMENT #10 0.241 AC
FOREST BUFFER EASEMENT #11 1.160± AC
FOREST CONSERVATION EASEMENT #12 0.951 AC
FOREST CONSERVATION EASEMENT #13 0.951 AC
FOREST CONSERVATION EASEMENT #14 3.045 AC
FOREST CONSERVATION EASEMENT #15 0.951 AC
FOREST CONSERVATION EASEMENT #16 0.951 AC
FOREST CONSERVATION EASEMENT #17 0.951 AC
FOREST CONSERVATION EASEMENT #18 0.951 AC
FOREST CONSERVATION EASEMENT #19 0.951 AC
FOREST CONSERVATION EASEMENT #20 0.951 AC
FOREST CONSERVATION EASEMENT



ENTRANCE SIGN: NTS

ENTRANCE SIGN ELEVATION

NOT TO SCALE
(11 SF OF SIGNAGE, SINGLE FACED, NOT LIGHTED)

SITE DEVELOPMENT PROPOSAL

DWELLING TYPE*	PROPOSED UNITS	PARKING REQUIRED (PER DOOR REQ'S.)	PARKING PROVIDED***	OPEN SPACE REQ'D.	OPEN SPACE PROP.	AVG. DAILY TRIPS	PHASE**
NONE	5 FACULTY ROOMS & 100 RETREATANT ROOMS (105 BEDS)	27 SPACES	30 SPACES 5 VAN SP.	N/A	N/A	48	PHASE I & II
TOTAL	5 FACULTY ROOMS & 100 RETREATANT ROOMS (105 BEDS)	27 SPACES	30 SPACES 5 VAN SP.	N/A	N/A	48	

* The plan is for a Retreat Center with a Main Building and 5 Retreatant Buildings, no dwelling units are proposed.

** The Development Plan & Zoning Relief seek approval of both Phase I & II at this time.

*** Note: Retreatants will be transported to the site by passenger vans.

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. MINOR CONTOUR (2')
- EX. MAJOR CONTOUR (10')
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- RIVER EDGE
- R-2 ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 35' PRINCIPAL SETBACK LINE
- PRELIM. 100 YR. FLOODPLAIN
- LIMIT OF DISTURBANCE
- EX. FENCE
- EX. TREELINE
- EXISTING STRUCTURE
- FAILED PERC TEST LOCATION
- PASSED PERC TEST LOCATION
- SLOPES (25%+)
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- PROPOSED MINOR CONTOUR (2')
- PROPOSED MAJOR CONTOUR (10')
- PROPOSED ORNAMENTAL TREE
- PROPOSED SHADE TREE
- PROPOSED EVERGREEN TREE

SPECIAL EXCEPTION REQUEST

THE APPLICANT IS REQUESTING A SPECIAL EXCEPTION TO PERMIT A BUILDING FOR RELIGIOUS WORSHIP/ SCHOOL/ CAMP IN THE RC-2 ZONE.

* SPECIAL HEARING REQUESTS

1. TO CONFIRM THE PARKING PROVIDED IS ADEQUATE.

2. TO APPROVE THE TRANSFER OF 54± ACRES OF RC2 ZONED LAND AS A NON-DENSITY TRANSFER.

* COMBINED INTO ONE HEARING.

DATA SOURCES:

TOPOGRAPHY PER BALT. CO. OIT/GIS, DATE OF CAPTURE IS MARCH 1995.

EX. BOUNDARY, FOREST BUFFER EASEMENT, FOREST CONSERVATION EASEMENT, SETBACKS, 100-YR. FLOODPLAIN EASEMENT AND UTILITY & ACCESS EASEMENTS DIGITIZED FROM PLAT BY K.J. WELLS, INC. (BALTIMORE COUNTY SM 75-66)

ADJACENT PROPERTY LINES DIGITIZED FROM EXISTING BALTIMORE COUNTY TAX MAPS.

EXISTING WETLANDS AND STEEP SLOPES (25%+) DIGITIZED FROM EXISTING WETLAND AND FOREST STAND DELINEATION PLAN BY K.J. WELLS DATED NOVEMBER 14, 2001.

ADJACENT WELL AND SEPTIC RESERVE AREA LOCATIONS IN THE VICINITY OF THE PROPOSED RETREAT CENTER SHOWN PER EX. BALTIMORE COUNTY RECORDS AND FIELD OBSERVATION.

NOTE:

THIS SHEET REPRESENTS THE SPECIAL EXCEPTION AREA ONLY.

DMW
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200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

PLAN TO ACCOMPANY PETITION FOR
SPECIAL EXCEPTION & SPECIAL HEARING

LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

7th ELECTION DISTRICT 3rd COUNCIL MANIC DISTRICT BALTIMORE COUNTY, MD

STATE OF MARYLAND — MELANIE WALKER — No. 581 — REGISTERED LANDSCAPE ARCHITECT

ISSUE DATES	
REVIEW:	
BID:	
PERMIT:	
CONSTRUCTION:	
BASE:	a/s
DRAWN:	a/s
DESIGNED:	
CHECKED BY:	
DATE CHECKED:	1/28/04
SCALE:	1"=50'
PROJECT NO.:	00026.c
DRAWING:	2 of 2

DATE	BY	REVISIONS

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Mon 1/26/2004 12:26:05 PM \\ATHENS\STATION\CADNET\Projects\Plan Drawings\00026.dwg

GENERAL NOTES:

1. OWNER:
Eleanor D. Spruill & Marion T. Clarke
W. Duvall Spruill & Forest F. Brambel, Personal Rep.
P.O. Box 1473
Columbia, SC 29202
2. APPLICANT:
Loyola College in Maryland
4501 North Charles Street
Baltimore, Maryland 21210-2699
3. Plan prepared by:
Daft-McCune-Walker, Inc.
200 E. Pennsylvania Ave.
Towson Maryland 21286
4. Gross Tract Area: 107.68 Ac.
5. Tax Account Nos. 0703033770, 2100013793, 2100013794
6. Tax Map No. 12, Grid 20, 21, Parcels 142 & 221
7. Deed Reference: 6614/466 & 8284/291
8. Election District: 7th
Councilmanic District: 3rd
Census Tracts: 4070.00
Watershed: Gunpowder Falls
Subwatershed: Non Stemkos
9. The 100-year floodplain on this site is shown per plat prepared by K.J. Wells
10. There are no streams or ponds on and with in 200 feet of the development site.
11. There are no significant regulated plant or wildlife communities on site.
12. The site is not located within the Chesapeake Bay Critical Area.
13. There are no known historic structures on site. The house on lot 1 (Elwood Building Co.) is listed with the Baltimore County Landmark Preservation Commission. The house is non-conforming with regards to the required minimum building setback lines.
14. There are no significant views.
15. Existing land use: Agricultural
16. Existing well is shown.
Existing/Proposed Water Service: Private
Proposed Sewer Service: Private
17. All lighting for parking areas shall be arranged so as to reflect the light away from adjacent residential areas and public streets & comply with Sect. 1B01.1 B1.c(4) BCZR. A plan, with the locations and details of the proposed lighting and a computed lighting design with point-by-point calculations that conforms with the Illumination Engineering Society (IES) standards, has been approved by Avery Harden, PDM on 11-26-03.
18. Amenity Open Space: N/A
19. Building Height shall not exceed 35'
20. All signage to conform to section 450 of the Baltimore County Zoning Regulations.
21. Previous commercial permits: None Found
22. A.D.T. = 48 Average daily trips
23. Per Phase I Environmental Report prepared by FMT & Associates, Inc., there are no underground storage tanks on site.
24. Existing Zoning: RC-2
25. No prior zoning cases found.
26. The community input meeting was held on October 9, 2003
27. Parking/Drive Area = 26,140 SF ±
Building Area: 44,860 SF ±
28. Hours of building operation: The spiritual retreat will be used primarily on weekends with occasional and periodic use during the week.
29. The Loyola College Spiritual Retreat Center will be used only for Loyola College Retreats, no other institutions will be allowed to use this facility.
30. The Loyola College Spiritual Retreat Center will not generate noticeable levels of smoke, noise, dust, odors, etc.
31. Meditation routes will not contain any buildings.
32. A 20-foot wide private access along an existing lane within the forest conservation easement, north of Stablersville Rd., shall remain in use by owner to access the land north of the forest conservation easement.
33. Meditation routes within the forest conservation easement as shown on the forest conservation plan have been authorized by DEPRM for use by the owner.
34. The meditation areas will consist of a 6-foot wide wood chip nodes at a maximum of 30-feet south of the existing road bed with the forest conservation easement..
35. A variance was granted by Baltimore County Department of Environmental Protection and Resource Management from the regulations for the protection of water quality, streams, wetlands and floodplains to reduce the forest buffer easement limits by establishing good vegetative cover. See approval waiver for details.
36. All requirements of the Maryland State Department of the Environment and Baltimore County Department of Environmental Protection and Resource Management pertaining to private water and/or sewage system must be complied with prior to approval of building applications.
37. The shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer easement, forest conservation easement and forest buffer & forest conservation easements except as permitted by Baltimore County Department of Environmental Protection and Resource Management..
38. Sewage to be collected by gravity and stored in tanks, then pumped to sewage deposal area.
39. Fire suppression facilities will be provided per plan.
40. SWM will be provided by 2 Horetention facilities and 1 extended retention facility.
41. A Hydrological Study & Environmental Study have been submitted.
42. No petitions for variances, Chesapeake Bay Critical Area variations, or requests for waivers from county regulations or standards have been filed.
43. No limitations established by the course, County Board of Appeals, Planning Board and/or Zoning Commissioner or restrictive covenants recorded with individuals or groups which would limit proposed development on the site are known.
44. No existing buildings on the property.
45. No designated areas of critical state concern identified as such under the procedures of Section 5-611 of the State Finance and Procurement Article of the Annotated Code of Maryland as from time to time amended, and as mapped and available for inspection in the Office of Planning are known.
46. No Transit services when appropriate as per the Maryland Mass Transit Administration's Access by Design Publication are proposed.
47. No proposed and existing water and sewer lines, except for proposed septic and well system.

UNRESOLVED COMMENTS OR CONDITIONS
(From the Community Input Meeting on October 9, 2003)
26-203 (e), Baltimore County Code

1. Caretaker(s) on premises;
2. Use of the property as drug rehab center;
3. How property was acquired;
4. Water consumption of project;
5. Will Loyola enter into permanent covenants on expansion and for use;
6. Extent to which character of community will be changed; benefit of facility to northern Baltimore County;
7. What other properties did Loyola look at, and why was this site selected;
8. RC 2 zoning is not the appropriate zoning for this proposed use; Loyola should look for land not zoned RC2;
9. Loyola should not be permitted on this site; Loyola is not wanted;
10. Loyola is circumventing the zoning regulations by requesting a special exception for a school use, chapel and church use;
11. Use of the private road, ownership of the private road, and access on Miller Road from York Road to Stablersville Road;
12. Traffic to and from this site caused by Loyola;
13. What will students do on the weekends and where will they go?;
14. Students will wander off-site and how will Loyola prevent students from doing so;
15. This is farm land and preservation of farm land, and this use does not preserve farm use;
16. Impact of use on the peace and quiet of the area;
17. Loyola is coming to this site for the "bucolic" setting, but there is noise from farm equipment, chain saws, ATV's and hunting, so why come;
18. Food service, delivered or prepared on site;
19. Lighting, from the parking areas, entrances to buildings, impact on adjoining properties;
20. property taxes;
21. Location of wells, depth of wells, impact on surrounding wells water consumption impacts;
22. Size and impact of the septic drain field;
23. Number of retreats per year;
24. Summer camp, outdoor activities; use of loudspeaker;
25. Spirituality of the community;
26. Use of conservation easements;
27. Past and current use of other sites;
28. Use of site for weekend retreats, and what constitutes a weekend retreat;
29. Use of alcohol;
30. Use of "reflection nodes";
31. Water storage for fire protection;
32. County inspection of site;
33. Proposed use's impact on deer herds;
34. Impact of tools dump on this site and on watershed;
35. Loyola provide comprehensive essential data about similar construction of retreat centers in the county and impact on adjoining neighbors and tax structure;
36. Amendment to the Master Water and Sewer Plan;
37. Laundry on premises;
38. Limitation on number of retreats per year; limitations on use of site, weekends, summer, during week; proposed use of site, i.e., weekends, summer and winter breaks, during semester breaks, during week.
39. Loyola's restrictions on adjoining property.

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. MINOR CONTOUR (2')
- EX. MAJOR CONTOUR (10')
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- STREAM/RIVER EDGE
- RC-2 / RC-5 — ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 35' PRINCIPAL SETBACK LINE
- 100 YR. FLOODPLAIN
- EX. FENCE
- EX. TREELINE
- GaD2 / MoC2 — SOILS DELINEATION LINE
- EXISTING STRUCTURE
- TP1 — FAILED PERC TEST LOCATION
- TP2 — PASSED PERC TEST LOCATION
- SLOPES (25%+)
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- EX. WETLAND

ENVIRONMENTAL INFORMATION

EXISTING	NOT EXISTING	FIELD DELINEATED	FIELD VERIFIED	
X				Topography and street grades (min. 5 ft. contour appropriately labeled)
X				Slopes greater than 25%
X				100 yr. floodplain
X				Soils mapped according to Soil Survey, Baltimore County, Maryland
X				Streams, seeps, ponds or other water bodies shown* on site and within 200ft. of site boundaries
X		X		Wetlands*
X		X		Forest buffer limits including adjustments for* steep slopes and/or erodible soils
X				Land cover on and within 200ft. of site
	X			Significant regulated plant or wildlife communities
X				Wells on site and within 100ft. of site
X				Septic on site and within 100ft. of site
	X			Underground fuel tanks on site and within 100ft. of site
X		X		Soil evaluation tests (perc tests) performed (YES) NO DATE 5/7/2003

* Wetland limits and Forest Buffer established by Eco-Science Professionals, Inc. and shown on Forest Conservation Plan for Clarke/Spruill Property by K.J. Wells Inc., dated 12-19-2001.

EXISTING BUILT CONDITIONS

EXISTING	NOT EXISTING	
X		Locations of existing buildings within 200ft. of site boundaries
X		Location of existing roads within 200ft. of site boundaries
	X	Designated historic sites
	X	Designated archeological sites
	X	Significant views
	X	Significant features (specimen trees, buildings, streetscapes, etc.)
X		Land uses on and within 200ft. of site
X		Roads rights-of-way and easements

SITE DEVELOPMENT PROPOSAL

DWELLING TYPE*	PROPOSED UNITS	PARKING REQUIRED (PER DORM REQ'S.)	PARKING*** PROVIDED	OPEN SPACE REQ'D.	OPEN SPACE PROP.	AVG. DAILY TRIPS	PHASE**
NONE	5 FACULTY ROOMS & 100 RETREATANT ROOMS (105 BEDS)	27 SPACES	30 SPACES 5 VAN SP.	N/A	N/A	48	PHASE I & II
TOTAL	5 FACULTY ROOMS & 100 RETREATANT ROOMS (105 BEDS)	27 SPACES	30 SPACES 5 VAN SP.	N/A	N/A	48	

* The plan is for a Retreat Center with a Main Building and 5 Retreatant Buildings, no dwelling units are proposed.
** The Development Plan & Zoning Relief seek approval of both Phase I & II at this time.
*** Note: Retreatants will be transported to the site by passenger vans.

PRIME AND PRODUCTIVE SOILS

SYMBOL	NAME
CcC2	Chester silt loam, 8-15% slopes, moderately eroded
CgB2	Chester gravely silt loam, 3-8% slopes, moderately eroded
Cu	Codorus silt loam
GcC2	Glenelg loam, 8-15%, slopes moderately eroded
GgC2	Glenelg channery loam, 8-15% slopes, moderately eroded
GnA	Glenville silt loam, 0-3% slopes
McC2	Manor channery loam, 8-15% slopes, moderately eroded

SITE DATA

ZONE	ACRES	UNITS ALLOWED	DENSITY UNITS	UNITS PROPOSED
RC-2	107.68 AC *	1	N/A	NONE
TOTAL	107.68 AC	1	N/A	NONE

* LIMIT OF DISTURBANCE = 7.35± AC



COUNTY ADOPTED PLANS

EXISTING	NOT EXISTING	IN CONFORMANCE	
		X	Balto. Co. Master Plan 1989-2000
	X		Community or Revitalization Plan(s)
	X		Recreation and Parks Plan
	X		Streetscape Plan
	X		Greenways Plan
	X		Other:

LIGHT DETAIL N.T.S.

BOLLARD DETAIL N.T.S.

CERTIFICATION AS TO DELINQUENT ACCOUNTS

I, JOHN A. PALMUCCI certify under oath that there are no delinquent accounts for any other development with respect to any of the following: The applicant, a person with a financial interest in the proposed development, or a person who will perform contractual services on behalf of the proposed development.

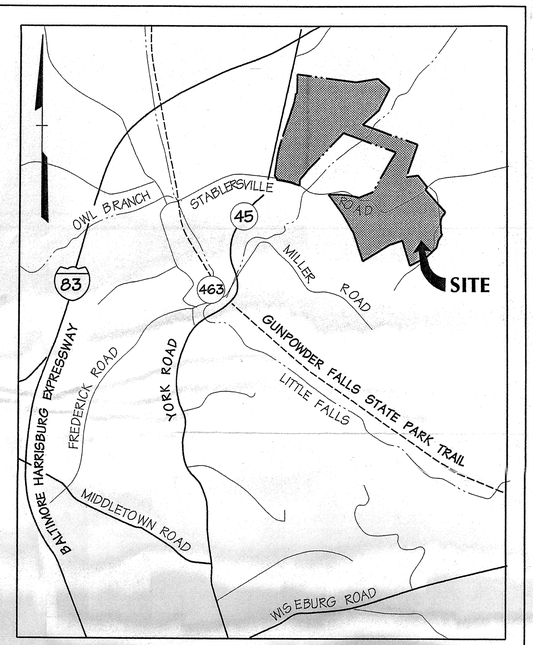
FOREST BUFFER & FOREST CONSERVATION NOTES

STANDARD NON-DISTURBANCE NOTE:

"THERE SHALL BE NO CLEARING, GRADING, OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER & FOREST CONSERVATION EASEMENTS, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT."

PROTECTIVE COVENANTS NOTE:

"ANY FOREST BUFFER & FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS."



COPYRIGHT ADC – THE MAP PEOPLE, PERMITTED USE No. 20995366

VICINITY MAP

SCALE: 1" = 1000'

COORDINATES AND BEARINGS SHOWN ON THIS PLAN ARE REFERRED TO THE SYSTEM OF COORDINATES ESTABLISHED BY THE STATE OF MARYLAND (NAD 83/91) AND BASED ON THE FOLLOWING TRAVERSE STATIONS:

GIS-120	N 726023.904	E 1410228.932
GIS-120 AZ	N 726480.562	E 1410366.468

SPECIAL EXCEPTION REQUEST

THE APPLICANT IS REQUESTING A SPECIAL EXCEPTION TO PERMIT A BUILDING FOR RELIGIOUS WORSHIP/ SCHOOL/ CAMP IN THE RC-2 ZONE.

* SPECIAL HEARING REQUESTS

1. TO CONFIRM THE PARKING PROVIDED IS ADEQUATE.

2. TO APPROVE THE TRANSFER OF 54± ACRES OF RC2 ZONED LAND AS A NON-DENSITY TRANSFER.

* COMBINED INTO ONE HEARING.

DATA SOURCES:

TOPOGRAPHY PER BALTIMORE COUNTY OITGIS, DATE OF CAPTURE IS MARCH 1996.

EX. BOUNDARY, FOREST BUFFER EASEMENT, FOREST CONSERVATION EASEMENT, SETBACKS, 100-YR FLOODPLAIN EASEMENT AND UTILITY & ACCESS EASEMENTS DIGITIZED FROM PLAT BY K.J. WELLS, INC. (BALTIMORE COUNTY SM 75-55)

ADJACENT PROPERTY LINES DIGITIZED FROM EXISTING BALTIMORE COUNTY TAX MAPS.

EXISTING WETLANDS AND STEEP SLOPES (25%+) DIGITIZED FROM EXISTING WETLAND AND FOREST STAND DELINEATION PLAN BY ECO SCIENCE PROFESSIONALS, INC. DATED NOVEMBER 14, 2001.

ADJACENT WELL AND SEPTIC RESERVE AREA LOCATIONS IN THE VICINITY OF THE PROPOSED RETREAT CENTER SHOWN PER EX. BALTIMORE COUNTY RECORDS AND FIELD OBSERVATION.

EX. SOILS DELINEATION LINES SHOWN PER BALTIMORE COUNTY SOIL SURVEY.

DMW
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

ELEANOR SPRUILL & MARION CLARKE PROPERTY, LOT 2

DEVELOPMENT PLAN

7th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

PDM#VII-389
BALTIMORE COUNTY, MD

ISSUE DATES
REVIEW: 11/25/03
BID:
PERMIT:
CONSTRUCTION:

STATE OF MARYLAND — JEANIE M. [illegible] — No. 655 — REGISTERED LANDSCAPE ARCHITECT

BASE: a|s
DRAWN: a|s
DESIGNED:
CHECKED BY:
DATE CHECKED: 02|03|04
SCALE: 1"=200'
PROJECT NO.: 00026.D
DRAWING:

1 of 3

DATE	BY	REVISIONS

M:\00026\SHEET\00026D.DWG

PROPOSED BUILDINGS

MAIN BUILDING 15,630 SF
INCLUDES CHAPEL
RETREATANT BUILDING #1 5850 SF 20 ROOMS (20 BEDS)
#2 5850 SF 20 ROOMS (20 BEDS)
#3 5850 SF 20 ROOMS (20 BEDS)
#4 5850 SF 20 ROOMS (20 BEDS)
#5 5850 SF 20 ROOMS (20 BEDS)
TOTAL BUILDING AREA 44,880 SF

STABLERSVILLE ROAD

EX. FOREST

LOD = 7.35 AC

SWM ACCESS

PROPOSED SIGN 3'H x 7'W

ACCESS POINT

PROPOSED WELL

DRAINAGE & UTILITY EASEMENT D.038 Ac

AGRICULTURAL ACCESS POINT

20' WIDE PRIVATE ACCESS

HIGHWAY WIDENING AREA PER RECORD PLAT

FOREST CONSERVATION EASEMENT

FOREST BUFFER EASEMENT

REVERTABLE SLOPE EASEMENT

PROPERTY LINE W/ DOMINION CONVEYANCE

STORMWATER MANAGEMENT FACILITY #1 (BIORETENTION)

STORMWATER MANAGEMENT FACILITY #2 (EXTENDED DETENTION)

STORMWATER MANAGEMENT FACILITY #3 (BIORETENTION)

3-1200 GAL. SEPTIC TANKS

CHAPEL FF=561.0

MAIN BUILDING 35' MAX HT. GROUND=563.0 LOWER=560.0 BASEMENT=540.0 PHASE 1

RETREATANT BUILDING 21' HT. (TYP.)

PHASE 1 BLDG 5 FF=562.0 LL=552.0

PHASE 1 BLDG 4 FF=562.0 LL=552.0

PHASE 1 BLDG 3 FF=563.0 LL=553.0

PHASE 2 BLDG 1 FF=563.0 LL=553.0

PHASE 2 BLDG 2 FF=563.0 LL=553.0

PHASE 2 BLDG 4 FF=563.0 LL=558.0

PHASE 2 BLDG 5 FF=563.0 LL=558.0

PARKING

WHEEL STOP

FIRE PUMP VAULT

MEDITATION NODE #1

MEDITATION NODE #2

MEDITATION NODE #3

AMOS 1283/274 1600002629 RC-2

DEFELICE 1238/029 1600012806 RC-2

30' PRINCIPAL SERVICE LINE

30' BALTIMORE COUNTY ACCESS EASEMENT

FOREST BUFFER EASEMENT

N 72250

E 1452250

N 720000

E 1452250

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. MINOR CONTOUR (2')
- EX. MAJOR CONTOUR (10')
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- RIVER EDGE
- RC-2 ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 35' PRINCIPAL SETBACK LINE
- PRELIM. 100 YR. FLOODPLAIN
- EX. FENCE
- EX. TREELINE
- PROPOSED TREELINE
- EXISTING STRUCTURE
- 110 FAILED PERC TEST LOCATION
- 110 PASSED PERC TEST LOCATION
- SLOPES (25%+)
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- PROPOSED MINOR CONTOUR (2')
- PROPOSED MAJOR CONTOUR (10')
- LIGHTS
- BOLLARDS WITH LIGHTS
- FLOOD LIGHTS
- SPECIAL PAVING
- SIDEWALKS
- 18" D. PROPOSED STORM DRAIN
- PROPOSED INLET
- LIMIT OF DISTURBANCE
- WETLANDS

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DATA SOURCES:

TOPOGRAPHY PER BALT. CO. OIT/GIS, DATE OF CAPTURE IS MARCH 1995.

EX. BOUNDARY, FOREST BUFFER EASEMENT, FOREST CONSERVATION EASEMENT, SETBACKS, AND UTILITY & ACCESS EASEMENTS DIGITIZED FROM EX. PLAT BY K.J. WELLS, INC. (BALTIMORE COUNTY SM 75-65). LOCATIONS ARE APPROXIMATE AND FOR PLANNING PURPOSES ONLY.

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ADJACENT WELL AND SEPTIC RESERVE AREA LOCATIONS IN THE VICINITY OF THE PROPOSED RETREAT CENTER SHOWN PER EX. BALTIMORE COUNTY RECORDS AND FIELD OBSERVATION.

NOTE: PER DAVE LYKENS OF BALTIMORE COUNTY THE PROPOSED SWM FACILITIES HAVE SUITABLE OUTFALL.

DMW
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

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LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

ELEANOR SPRULL & MARION CLARKE PROPERTY, LOT 2

DEVELOPMENT PLAN
PROPOSED CONDITIONS

7th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

PDM#VII-389
BALTIMORE COUNTY, MD

STATE OF MARYLAND — MELANIE M. KAISER — No. 21581 — REGISTERED LANDSCAPE ARCHITECT

DATE	BY	REVISIONS

ISSUE DATES
REVIEW: 11/25/03
BID:
PERMIT:
CONSTRUCTION:

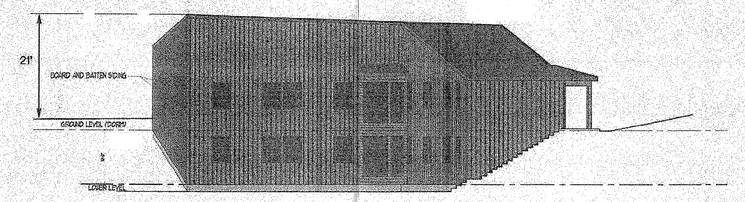
BASE: ajs
DRAWN: ajs, JSN
DESIGNED: MM, MJP
CHECKED BY: MM, MJP
DATE CHECKED: 02/03/04

SCALE: 1"=50'
PROJECT NO.: 00026.D
DRAWING:

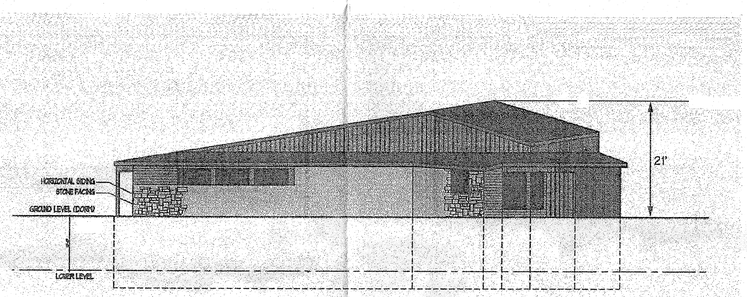
2 of 3

K:\00026\SHEET\00026B.DWG

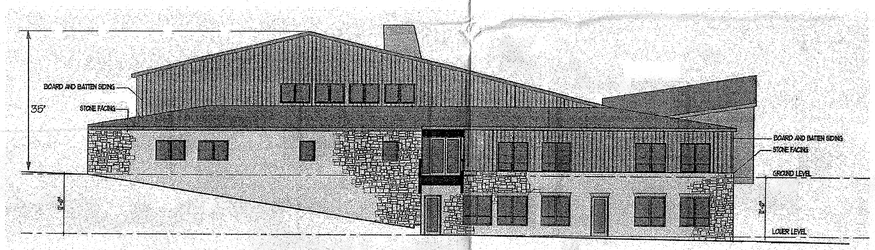
Plotted: 2/3/2004 9:11:44 AM \\ATHENS\UTILITY\CADNET\WGEF\dwgsdf_grantham c:\tpan\WA026b.tpan



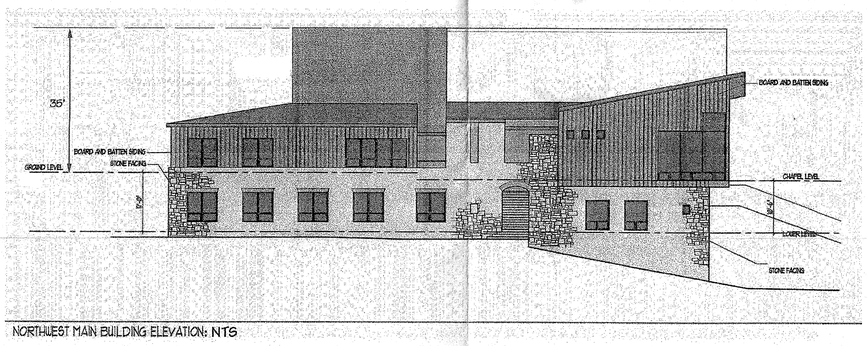
RETREATANT BUILDING ELEVATION: NTS



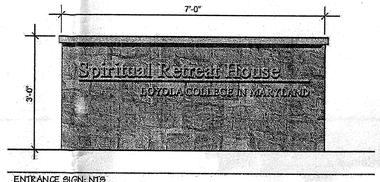
NORTHEAST RETREATANT BUILDING ELEVATION: NTS



NORTHEAST MAIN BUILDING ELEVATION :NTS



NORTHWEST MAIN BUILDING ELEVATION: NTS

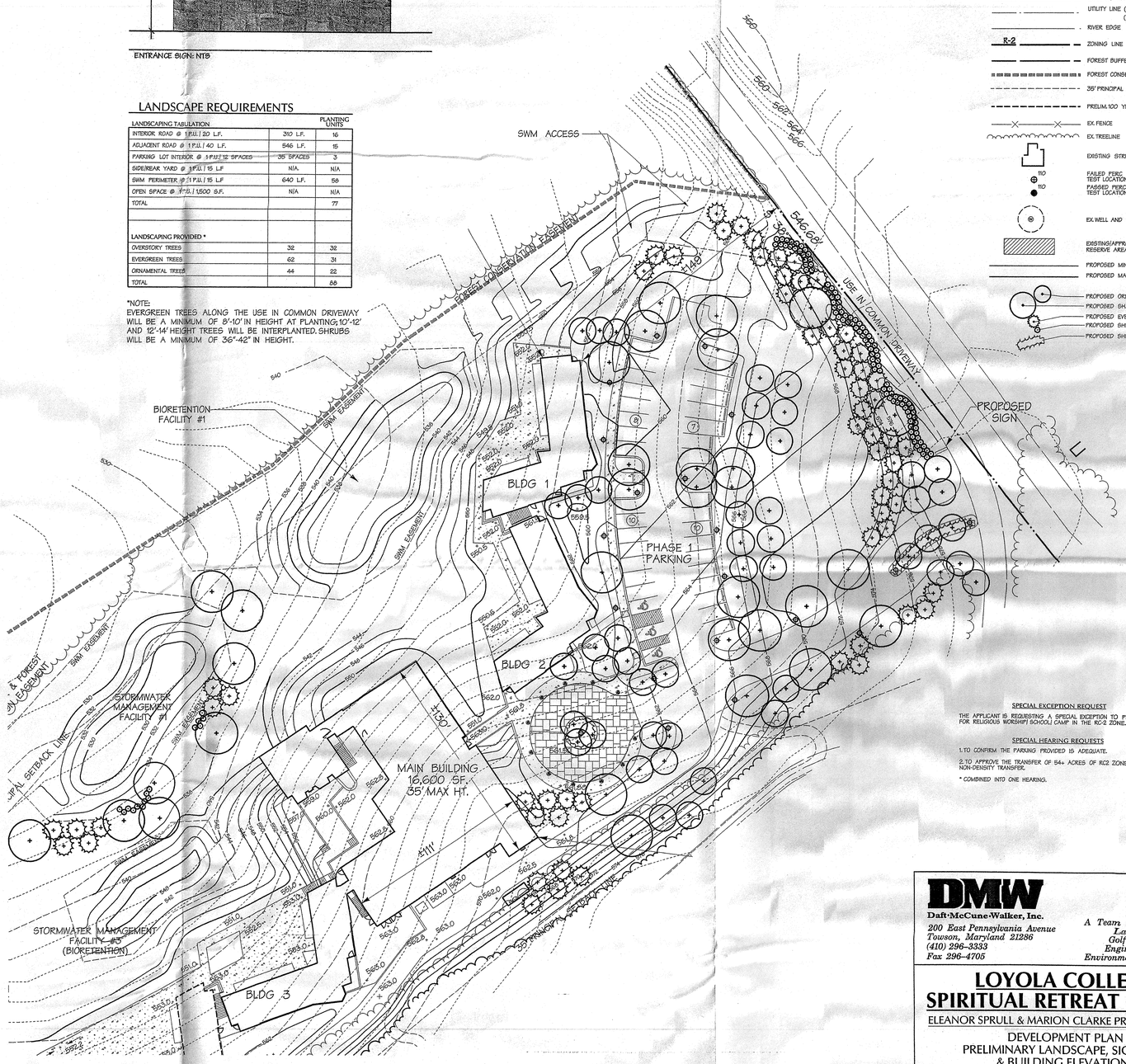


ENTRANCE SIGN: NTS

LANDSCAPE REQUIREMENTS

LANDSCAPING TABULATION		PLANTING UNITS
INTERIOR ROAD @ 1 P.U. / 20 L.F.	310 L.F.	16
ADJACENT ROAD @ 1 P.U. / 40 L.F.	546 L.F.	15
PARKING LOT INTERIOR @ 1 P.U. / 12 SPACES	35 SPACES	3
SIDE/REAR YARD @ 1 P.U. / 15 L.F	N/A.	N/A
SWM PERIMETER @ 1 P.U. / 15 L.F	640 L.F.	56
OPEN SPACE @ 1 P.U. / 1,500 S.F.	N/A	N/A
TOTAL		77
LANDSCAPING PROVIDED *		
OVERSTORY TREES	32	32
EVERGREEN TREES	62	31
ORNAMENTAL TREES	44	22
TOTAL		85

*NOTE:
EVERGREEN TREES ALONG THE USE IN COMMON DRIVEWAY WILL BE A MINIMUM OF 8'-10' IN HEIGHT AT PLANTING; 10'-12' AND 12'-14' HEIGHT TREES WILL BE INTERPLANTED. SHRUBS WILL BE A MINIMUM OF 36"-42" IN HEIGHT.



LANDSCAPE PLAN
SCALE: 1"=30'

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. MINOR CONTOUR (2')
- EX. MAJOR CONTOUR (10')
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- RIVER EDGE
- R-2 ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 35' PRINCIPAL SETBACK LINE
- PRELIM. 100 YR. FLOODPLAIN
- EX. FENCE
- EX. TREELINE
- EXISTING STRUCTURE
- FAILED PERC TEST LOCATION
- PASSED PERC TEST LOCATION
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- PROPOSED MINOR CONTOUR (2')
- PROPOSED MAJOR CONTOUR (10')
- PROPOSED ORNAMENTAL TREE
- PROPOSED SHADE TREE
- PROPOSED EVERGREEN TREE
- PROPOSED SHRUB
- PROPOSED SHRUB

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A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

ELEANOR SPRULL & MARION CLARKE PROPERTY, LOT 2

DEVELOPMENT PLAN
PRELIMINARY LANDSCAPE, SIGNAGE, & BUILDING ELEVATIONS

7th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

PDM#VII-389
BALTIMORE COUNTY, MD

STATE OF MARYLAND — MELANIE MORRIS JOY — No. 1365 — LANDSCAPE ARCHITECT

DATE	BY	REVISIONS

ISSUE DATES
REVIEW: 11/25/03
BID:
PERMIT:
CONSTRUCTION:

BASE: a|s
DRAWN: CRH
DESIGNED: MJP
CHECKED BY: MJP
DATE CHECKED: 02/03/04
SCALE: AS SHOWN
PROJECT NO.: 00026.b
DRAWING: 3 of 3

N:\00026\SHEET\00026.DWG

04-337-SPHX (riding w/ COA-04-136) Verified 9-30-04 Verified 12/07/04 Loyola

Verified 9-15-04

Exhibits for Petitioners

- Ex. 1a Elevation Plat
- 1b Site Plat (vicinity Map)
- Ex. ~~2~~ 3 Rule 8 papers
- Ex. ~~3~~ 2 Restrictive Covenant Agreement
- Ex. 4 C.V. for Terrence M. Sawyer
- Ex. 5 a-d pictures of school vehicles
- Ex. 6 Projected Usage chart
- Ex. 7 C.V. for Robert W. Sheesley
- Ex. 8 letter from Sheesley to Powell dated 11-30-04
- Ex. 9 Ariel view
- Ex. 10 C.V. for Thomas Mills
- Ex. 11 Ground-Water Supply Investigation by T. Mills
- Ex. 12 ~~C.V. for David S. Yates~~ Contour Map
- Ex. 13 C.V. for David S. Yates
- Ex. 14 Site Lighting Plan
- Ex. 15 Site Lighting Plan in Color
- Ex. 16 C.V. for Charles W. Alexander AIA
- Ex. 17 a. Panoramic
  - b. close up of site
  - c. proposed site in corn field
- Ex 18 Main Building Elevation drawings
- Ex 19 Retreat House Elevation drawings
- Ex 20 Mitchell J. Kellman - C.V.
- Ex. 21 Ariel view w/ whit line around property
- Ex. 22 a. plat layout by DMW
- Ex. 22 b. plat layout by DMW
- Ex. 23 a definition of "school"
- Ex. 23 b definition of "college"
- Ex 24 definition of "camp"
- Ex 25 definition of "retreat"
- Ex 26 ~~For I.O.~~ Affidavit of W. Duvall Sproill
- Ex 27 C.V. for Wes Guckert
- Ex. 28 Traffic Impact Analysis for Loyola Retreat Center
- Ex. 29 Conceptual Road Improvements
- Ex. 30 Hayfields, Inc. v. VPC Inc.

04-337-SPHX
Loyola
p. 2

Exhibits for Petitioners Verified 12/07/04

Ex 31 CV. for Gavrelis
Ex 32 Joe Berg Resume'
Ex 33 Plat of Loyola Property marked by Mr. Berg
Ex 34 Pictures of Propert + stream
Ex 35 Nitrogen balance sheet

JOINT EX NO 1

P.T. EX. 2

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is entered into, as of the 16th day of April, 2004, by and between LOYOLA COLLEGE IN MARYLAND (hereinafter "Loyola"), a non-profit corporation and private college, and the MARYLAND LINE AREA ASSOCIATION, INC. (hereinafter "MLAA"), a local community association, and the PARKTON AREA PRESERVATION ASSOCIATION, INC. (hereinafter "PAPA"), a local community association.

RECITALS:

A. Loyola is the contract purchaser of approximately fifty-three (53) acres of land (hereinafter the "Land"), in the 3rd Councilmanic District of Baltimore County, Maryland, located on the east side of York Road and north and south sides of Stablersville Road. The Land is a portion of certain land more particularly described in deeds recorded among the Land Records of Baltimore County at Liber 66, folio 466 and Liber 8284, folio 291, and is identified and shaded in gray on the vicinity map of the plans entitled "LOYOLA COLLEGE SPIRITUAL RETREAT CENTER DEVELOPMENT PLAN" (hereinafter the "Development Plan") and PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION & SPECIAL HEARING LOYOLA COLLEGE SPIRITUAL RETREAT CENTER" (hereinafter the "Special Exception & Special Hearing Plan") (collectively referred to as the "Site Plans") and attached hereto as Exhibits 1A and 1B. The Land is proposed to be utilized by Loyola for a retreat center and related purposes.

B. Loyola has submitted for approval the Development Plan, dated February 3, 2004, and Special Exception & Special Hearing Plan, dated January 28, 2004, in Case Nos. VII-389 and 04-337-SPHX.

C. The Land is zoned RC2, and Loyola desires to obtain Development Plan approval and a special exception in order to construct a retreat center for Loyola College on the Land and special hearing approval for a non-density transfer for agricultural purposes.

D. MLAA and PAPA are associations of Baltimore County area residents interested in preserving the existing character and quality of life of the rural and residential areas in the vicinity of the Land and protecting their communities from intrusive and inappropriate types of land uses.

E. MLAA and PAPA have reviewed the submitted Site Plans and desire to place certain restrictions upon the Land and use of the Land in order to ensure that the Land is used and maintained in a manner consistent with the Site Plans as proposed and to assure that future use does not have a deleterious effect on the surrounding area.

Pet. Ex. 3

THE PARKTON AREA PRESERVATION ASSOCIATION, INC.

The undersigned hereby acknowledge and attest the Board of the Parkton Area Preservation Association, Inc., a Maryland corporation, in accordance with Section 2-408 of the Maryland Corporations and Association Code, and its Charter and By-Laws, approved the resolution below:

RESOLVED:

That the position of the Parkton Area Preservation Association, Inc., as adopted by the Organization's Board of Directors on the zoning matter known as:

Loyola College Spiritual Retreat Center, Cases Nos. VII-389 & 4-337-SPHX is that

A written agreement was forged (Joint Exhibit 1) between the Parkton Area Preservation Association, Inc. (PAPA) and Loyola College, Maryland, setting out a substantial number of conditions and broad-based understandings between PAPA and Loyola as to the use of the subject property and other stipulations. Based on the agreement, PAPA has agreed not to oppose formally approval of the development.

AND FURTHER RESOLVED:

That the Board empowers and instructs Richard W. McQuaid, as Board Member At-Large, to represent PAPA at an appeal before the Board of Appeals and to make known PAPA's position on the above matter.

AS WITNESS OUR HANDS AND SEAL ON September 10, 2004.

The Parkton Area Preservation Association, Inc.

Wayne P. Hunt
Secretary

Janice L. Staples
President

Pet. Ex 4

CURRICULUM VITAE

TERRENCE M. SAWYER

4501 N. Charles Street
Baltimore, Maryland 21210
410.617.5161

EDUCATION

Widener University School of Law — **Juris Doctor awarded May, 1995**
Harrisburg, Pennsylvania

University of Maryland — **Bachelor of Arts awarded June, 1992**
College Park, Maryland

HIGHER EDUCATION EXPERIENCE

Loyola College in Maryland — **December 1998 - Present**
Baltimore, Maryland

Vice President for Administration: Oversee and provide professional leadership, expertise and control of the Division of Administration at Loyola College, including the Department of Public Safety, the Department of Environmental Health and Safety, the Department of Human Resources, and the Office of Government and Community Relations and Trustee Affairs. Serve on the President's Executive Council and involved in all major decisions at the College. (July 2004 - Present).

Special Assistant to the President: Represent the College and its interests before all levels of government (local, state, federal). Direct projects through all regulatory processes. Represent the College before various civic organizations and community groups. Represent the President on various committees and assignments as directed. Member of the President's Executive Council and involved in all major decisions at the College. Oversee the Department of Public Safety and Environmental Health and Safety. (December 1998 - Present).

PROFESSIONAL EXPERIENCE

Maryland Department of Business and Economic Development — **1996-1998**
Baltimore, Maryland

Director of Governor's Office of Business Advocacy: Managed and directed a staff of four professional ombudsman charged with assisting businesses in navigating through the processes of state, local and federal government. Oversaw and facilitated Maryland's Business License Information System. Facilitated communication and mediated disputes between businesses and government entities to ensure predictable and efficient regulatory process.

pt Ex 4.

Pet. Ex. 5a



DEVELOPER'S
EXHIBIT NO. 4A

5b



DEVELOPER'S
EXHIBIT NO. 4B

5C



DEVELOPER'S
EXHIBIT NO. 4C

5d



DEVELOPER'S
EXHIBIT NO. 4D

11/30/03 ltr from Eco Sages

Loyola Spiritual Retreat
Projected Usage--Phase 1

	Number of Retreats	Number of Days	Number of Retreatants	Gal/Day Per Person	Meals Per Day	Gallons Per Meal	Gallons Per Day	Gallons Per Year
Current Student Retreat Program	20	40	65	100	3	3	109	283,400
Current Ignation Retreats	2	10	65	100	3	3	109	70,850
Retreat Program Expansion	5	10	65	100	3	3	109	70,850
2 Additional Ignation Retreats	2	10	65	100	3	3	109	70,850
Faculty/Admin Retreats	20	40	50	100	3	3	109	218,000
Daytime Retreats	26	25	50	20	2	3	26	32,500
Total	74	135						746,450

Notes:
1. College Reserves the right to change the retreat program schedule as needed but will stay within the above specified gallons per year.
2. No commercial laundry will take place on site.
3. Kitchen specifications include:
   - Refrigerator
   - Freezer
   - 4 Burner Range with Oven
   - 2 Stacked Convertion Ovens
   - Combination Oven--Steamer and Oven
   - Commercial Dishwasher
   - Food Warmer
   - Ice Machine
   - Hand Sink and Prep Sink (must be separated per Board of Health)
   - Stainless Steel Counters
   - Exhaust System for Ovens

Protestants No 1

Pet. Ex. #7

ROBERT W. SHEESLEY
ECO SENSE, INC.
8354 Chestnut Farm Lane
Ellicott City, Maryland 21043

BACKGROUND

Mr. Sheesley has over twenty nine years of experience in government, regulatory ,and permitting processes with a specialty in environmental matters. During the past eight years Mr. Sheesley has acted as a private consultant to real estate developers, banking institutions, and local and state governments providing assistance on land use issues, government regulation, permitting requirements and negotiation, environmental sanitation, and natural resource identification and characterization.

In most of the positions that Mr Sheesley has held, he was responsible for, or participated in, public forums, community involvement, consensus building, and working with many competing interests. Such involvement includes building a Department, establishing a regional solid waste recycling program, siting solid and hazardous waste facilities, establishing watershed management policy, alternative road and highway alignments, waterway dredging projects, and regional environmental management strategies.

QUALIFICATIONS

- Eight years as a private consultant.
- Over twenty nine years of experience in environmental protection and resource management.
- Proven skills in program planning, personnel supervision, and budget management.
- Demonstrated political interaction skills and consensus building.
- Skilled in legislative and regulatory processes.
- Skilled in effecting public participation, consensus building, addressing competing interests, conflict resolution, problem solving

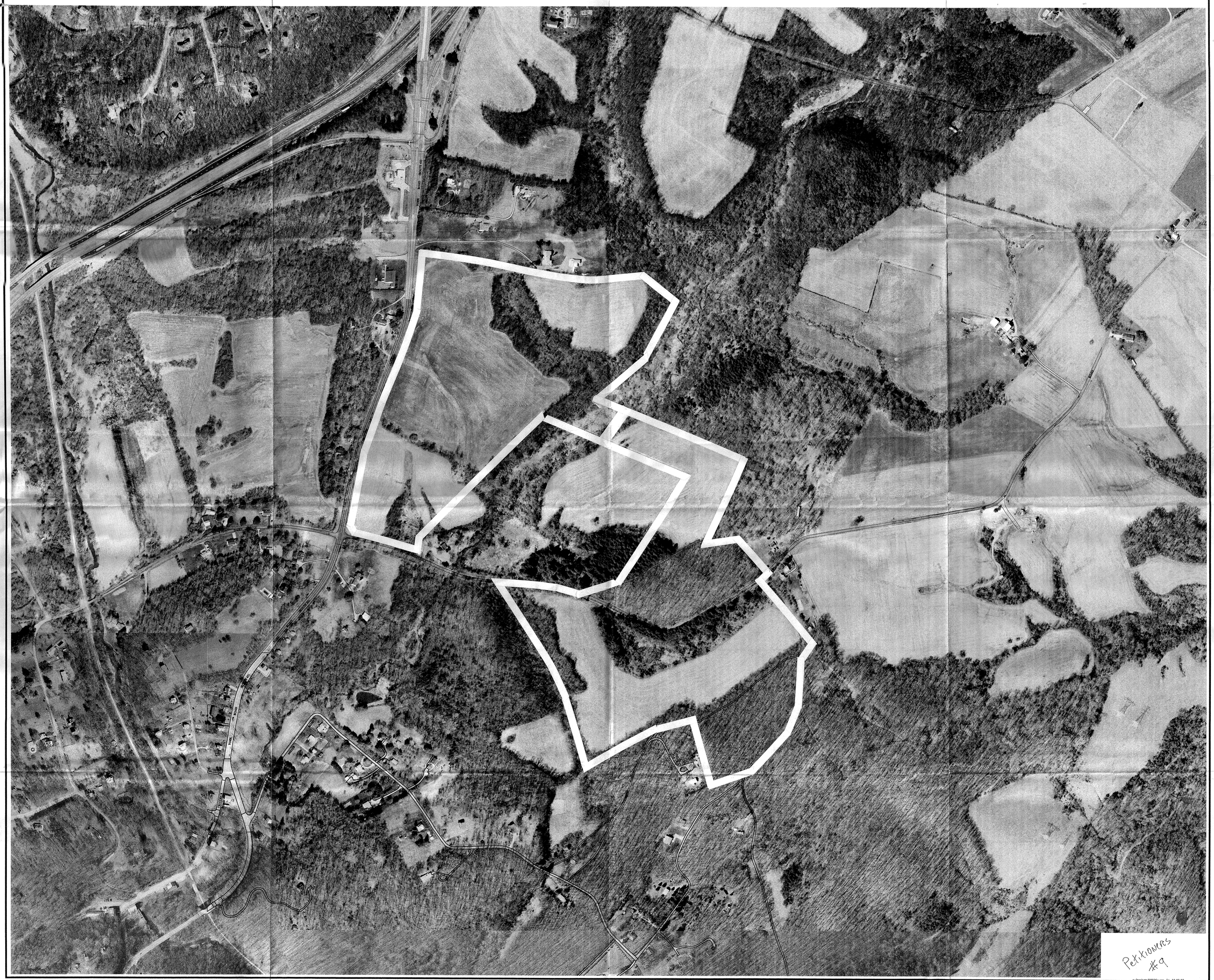
GOVERNMENT AND REGULATORY EXPERIENCE

- Planned, developed, and administered the Baltimore County, Maryland Department of Environmental Protection and Resource Management.
- Coordinated the development of Baltimore County Programs in the following disciplines:

  Watershed Management
  Wetland Protection
  Coastal Waterway Improvement
  Groundwater Protection
  Forest Management Strategy
  Solid Waste Recycling
  Agricultural Protection
- In Howard County, Maryland, reorganized, staffed, and administered the Bureau of Environmental Health, Maryland Department of Health.
- President of the Maryland Conference of Environmental Health Directors Association (1984 - 1987).
- Coordinated statewide effort to provide consistency and standardization of local environmental health programs in the State of Maryland.
- Member, Governors Task Force:

  Maryland Non Tidal Wetlands Act;
  Forestry Management Regulation;
  Greenways Program.
- Member of the Board of Directors Chesapeake Bay Trust
- Member, Maryland Association of County's Subcommittees:

  Managing Municipal Sewage Sludge
  Maryland Solid Waste Regulation
- Member , Governor's Council on Toxic Substances (assisted the Deputy State Health Officer for Baltimore County.


YORK ROAD - MARYLAND ROUTE 45
YORK ROAD
DOVER ROAD
SHAWAN ROAD
YORK ROAD
YORK ROAD
YORK

P.C.T. Ex #10

THOMAS R. MILLS, P.E., P.G.

EDUCATION

B.S., Geological Engineering, 1965, Michigan Technological University

Study in soils engineering, foundation engineering, and geohydrology at Johns Hopkins and Howard Universities

WORK HISTORY

5/82 – Present : President and Principal Engineer/Geologist; Hydro-Terra, Inc.; Columbia, MD

2/72 - 5/82: Project Environmental Engineer to Vice President; Hittman Associates, Inc.; Columbia, MD

3/68 - 2/72: Geotechnical Engineer; Rummel, Klepper & Kahl; Baltimore, MD

2/66 - 1/68: Commissioned Officer; U.S. Army Corps of Engineers; Stateside and Vietnam

7/65 - 1/66: Geophysical Engineer; Continental Oil Company; Western U.S.

PROFESSIONAL REGISTRATION

Professional Engineer - Maryland, Pennsylvania, and Virginia
Professional Geologist - Pennsylvania

SUMMARY OF EXPERIENCE

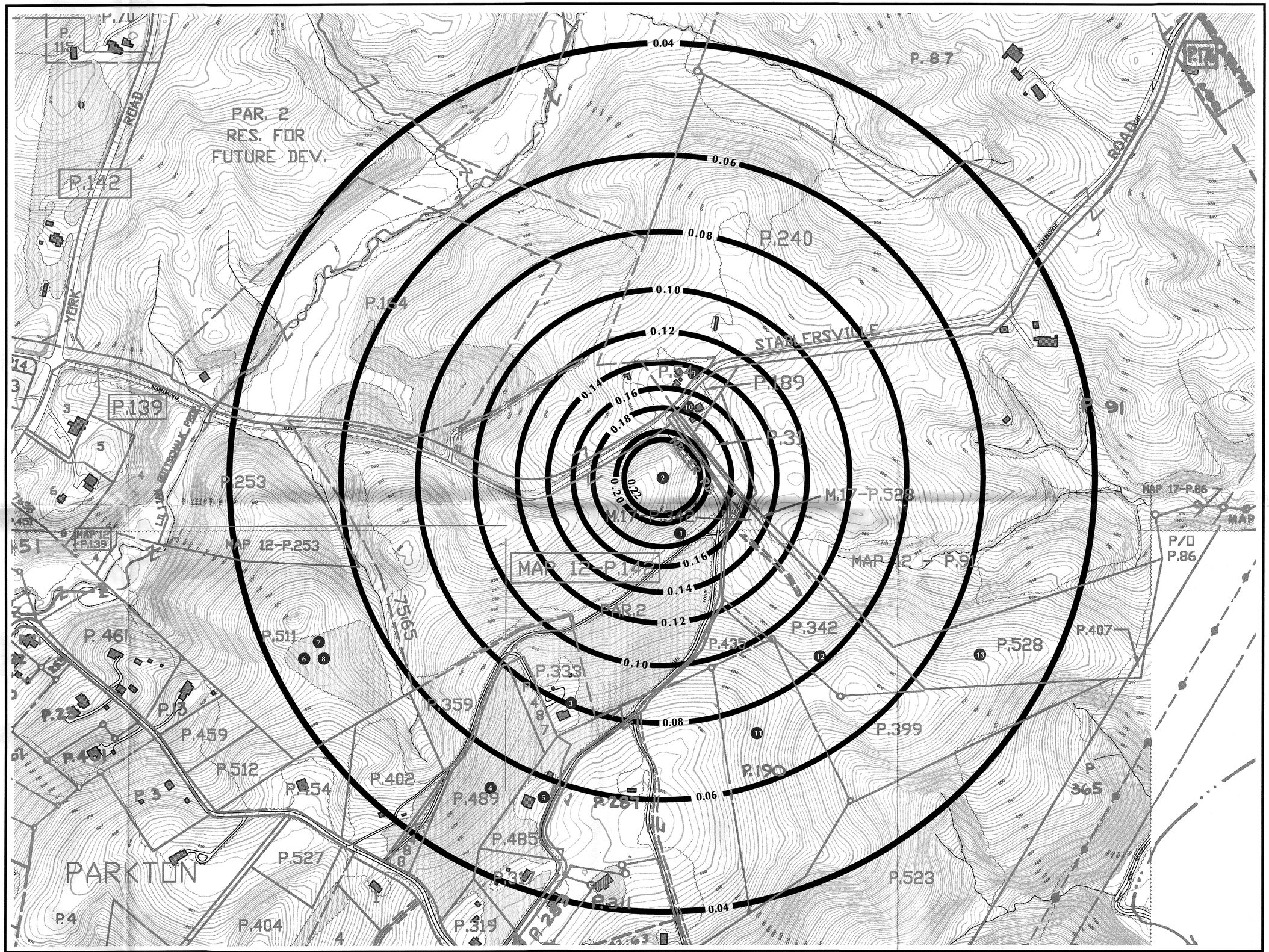
Mr. Mills has over 36 years of professional experience in the geotechnology and environmental fields. During his career, he managed interdisciplinary teams of consultants in several parts of the U.S. working on private- and government-sector projects dealing mainly with soil and ground-water contamination, water-resource development, earth engineering, land reclamation, and water-pollution control. He has performed environmental investigations to characterize environmental conditions and assess risks, and has designed and implemented remedial measures addressing soil and ground-water contamination problems. Mr. Mills also has conducted hydrogeologic investigations for the purpose of siting water-supply wells, defining the hydraulic properties of aquifers, and determining the effects on the environment and other water users due to the pumping of ground water. Furthermore, he has completed geotechnical investigations required in the construction of earthworks, the assessment of geologic hazards, the reclamation of mined land, and the landfilling of solid wastes. Following is a more detailed description of Mr. Mills' professional experience.

Pet. Ex. 11

GROUND-WATER SUPPLY INVESTIGATION
LOYOLA COLLEGE SPIRITUAL RETREAT

Parkton
Baltimore County, Maryland

Hydro-Terra
INCORPORATED



DMW

Daft·McCune·Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

DMW Project # 00026.A

Loyola Retreat Center

ON-SITE AND ADJACENT PROPERTIES
HAVING AVAILABLE WELL DATA

NOTE:
WELL LOCATIONS SHOWN HEREON ARE APPROXIMATE, BASED ON INFORMATION PROVIDED BY HYDROTERRA, INC.

200 0 200 400 Feet

DRAWDOWN CONTOURS

1 APPROXIMATE WELL LOCATIONS

o:/projects/00026A.apr ko 09-09-04

DATA SOURCE:
BALTIMORE COUNTY OIT GIS
HORIZONTAL DATUM: NAD 83
VERTICAL DATUM: NAVD 88
DATE OF CAPTURE: MARCH 1997 & 2000
MD PROPERTY VIEW 2003

Petitioner's Exhibit 12

Pet. Ex. 13

David S. Yates — *Electrical Designer / Lighting Specialist*

Throughout more than 17 years Dave Yates has been an electrical draftsman, designer, project engineer and lighting representative. While a lighting representative, he developed extensive knowledge in the practical installation, application and cost evaluation of light fixtures to supplement his electrical design capabilities. He has been instrumental in the growth of the firm's lighting design capabilities by introducing the use of a computer-rendering program that allows the user a realistic glimpse of fixture applications in the proposed environment. With his unique knowledge of available products and vendors, he can suggest appropriate fixtures and layouts that will permit an owner or architect to achieve the ambiance they seek. Other tasks include product review for construction, performance, energy consumption, costs and aesthetics.

Mr. Yates also offers a broad background in electrical design and works closely with the firm's electrical engineers in complete systems design for various project types. Among the systems in which he has experience are dimming control, fire alarm, audio, security, and power distribution. Project building types range from residential to commercial, industrial, academic and health care facilities.

Mr. Yates continuously expands his design capabilities by completing courses in numerous electrical and lighting support disciplines. He is currently working on earning his Lighting Certification license. This additional knowledge contributes to the firm's available services and technical proficiency in the constantly changing design and construction field.

Partial List of Completed Projects:

Supermarkets:
Mars - Various Locations
SuperFresh - Various Locations
Food Lion - Various Locations

Educational:
Fort Smallwood Elementary School - Anne Arundel County, MD
Carroll Community College Offices and Classrooms - Westminster, MD
Anne Arundel Community College Student Services Center - Arnold, MD
Bloomsburg Library - Bloomsburg, PA
Piney Point Elementary School - St. Mary's Co, MD

Office Buildings:
McLean & Cinderella Office Building - Salisbury, MD
Large Scale Proteomics - Rockville, MD
State Employees Credit Union Office - Greenbelt, MD
Atwood Medical Center - Bel Air, MD
Johns Hopkins University Renovation of Eastern High School – Baltimore, MD
Mercy High School Auditorium – Baltimore, MD

Hotels/Housing:
Sleep Inn - Silver Spring, MD
Hampton Inn - Baltimore, MD
Ravenwood Nursing & Rehabilitation Center Canopy Lighting - Baltimore, MD
Ivy Hall Assisted Living - Baltimore, MD
Windrows at Princeton Forrestal Independent Living Facility - Plainsboro Township, NJ
Marlborough Apartments - Baltimore, MD
Quantico Housing Development - Quantico, VA

Retail and Banks:
Bell Atlantic Stores - Various Locations
CitiBank - Largo, MD
Slavie Federal Savings & Loan - Baltimore, MD
Beacon Mall - Alexandria, VA
Cranbrook Shopping Center - Cockeysville, MD
Fallsgrove Village Center - Rockville, MD
Annapolis National Bank - Annapolis, MD
Best Buy Department Stores - Various Locations
The Colonnade at State College - State College, PA
Timonium Mall - Timonium, MD
Solomons Towne Square - Solomons Island, MD
Potomac Yard - Alexandria, VA
Market Square Phase II Site Lighting – Shrewsbury, PA

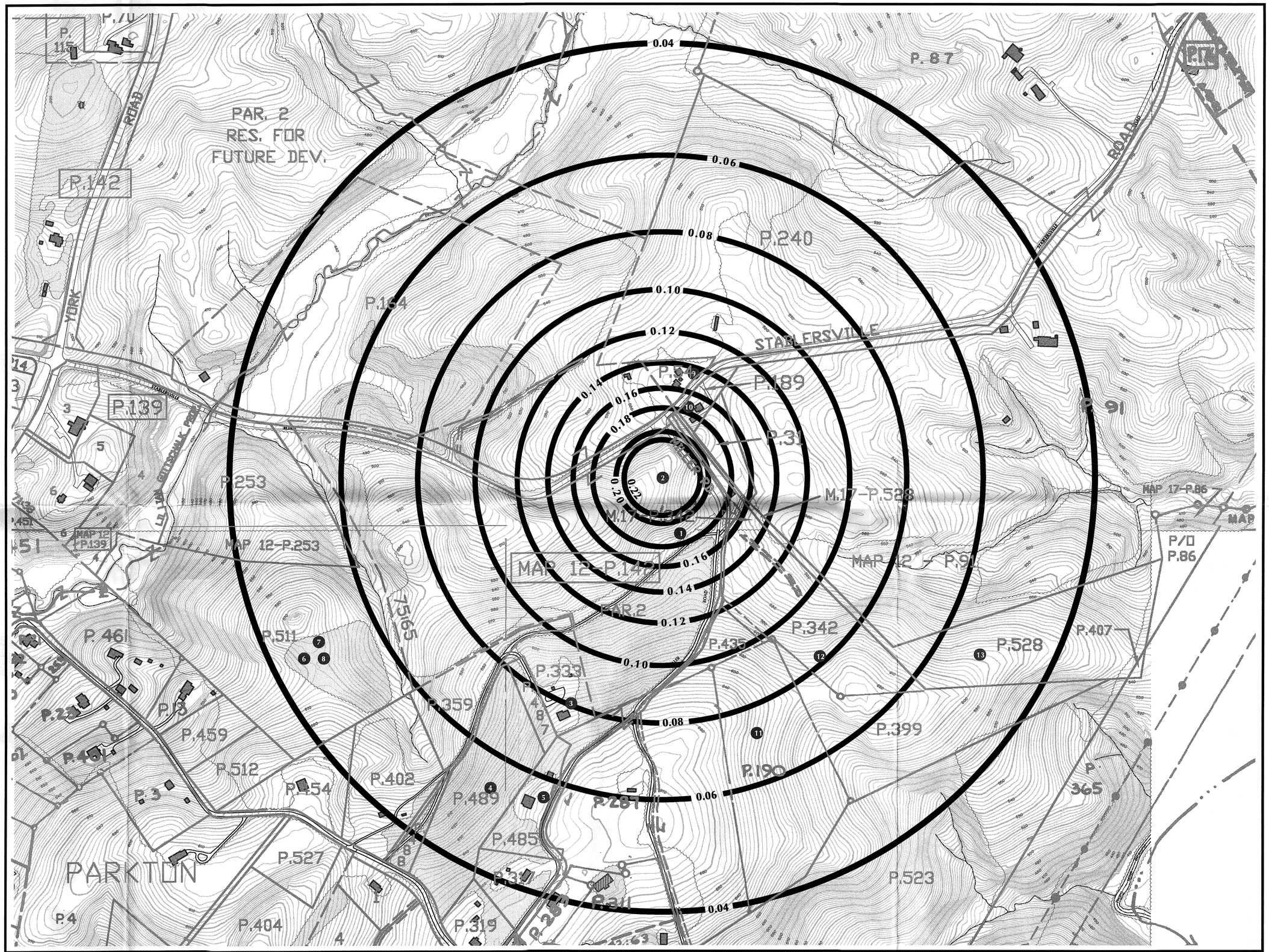
Miscellaneous:
Father Martin's Ashley - Havre de Grace, MD
Bluestone Restaurant Lighting Revisions - Timonium, MD
Bethany Beach Town Hall/Beach Patrol Building - Bethany Beach, DE
Ellicott City Fire Station No. 2 - Ellicott City, MD

NASA Projects:
- Site Communications
- Buildings 3, 4 and 13 Shuttle Renovations
- Campus Switchgear Upgrades

Andrews Air Force Base - Forest Hill, MD
- Hangar Fire Suppression
- Chapel

Rockville Nature Center - Rockville, MD
Bowie Ice Arena - Bowie, MD

DEVELOPER'S EXHIBIT NO. 5



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DMW Project # 00026.A

Loyola Retreat Center

ON-SITE AND ADJACENT PROPERTIES
HAVING AVAILABLE WELL DATA

NOTE:
WELL LOCATIONS SHOWN HEREON ARE APPROXIMATE, BASED ON INFORMATION PROVIDED BY HYDROTERRA, INC.

200 0 200 400 Feet

DRAWDOWN CONTOURS

1 APPROXIMATE WELL LOCATIONS

o:/projects/00026A.apr ko 09-09-04

DATA SOURCE:
BALTIMORE COUNTY OIT GIS
HORIZONTAL DATUM: NAD 83
VERTICAL DATUM: NAVD 88
DATE OF CAPTURE: MARCH 1997 & 2000
MD PROPERTY VIEW 2003

Petitioner's Exhibit 12


Bega 1226
Bega 873MH
Bega 6536x
Bega 8418MH
Bega 3117P
Bega 1226
Bega 873MH
Bega 6536x
Bega 1226
Bega 873MH
Bega 6536x
Bega 1226
Bega 873MH
Bega 6536x

Charles W. Alexander, AIA
Alexander Design Studio,P.C.

EDUCATION
1989, Master of Architecture, Yale University
1987, Bachelor of Architecture, Cornell University

HONORS
Cornell University Presidential Scholar
AIA Student Gold Medal
New York Society of Architects Del Gaudio Award
Yale University Merit Scholarship
William Downing Prize
Baird Prize
Phi Kappa Phi Honor Fraternity
National Wood Council First Prize

LICENSURE
Registered Architect: 1991

PROFESSIONAL AFFILIATIONS
Member: American Institute of Architects
Board of Directors, Baltimore Architecture Foundation

VOLUNTEER ACTIVITIES
Mr. Alexander has participated in or provided pro-bono services for groups ranging from, among others, Habitat for Humanity, Bridges to Community, the Susquehanna Art Museum, the Ark Park Project, The Whitaker Center for Science and Arts, the Neighborhood Design Center, CAN (Cure Autism Now), The Living Classrooms Foundation, and the Howard County Office on Aging.

DEVELOPER'S EXHIBIT NO. 14

Pet. Ex. 16



Ret-

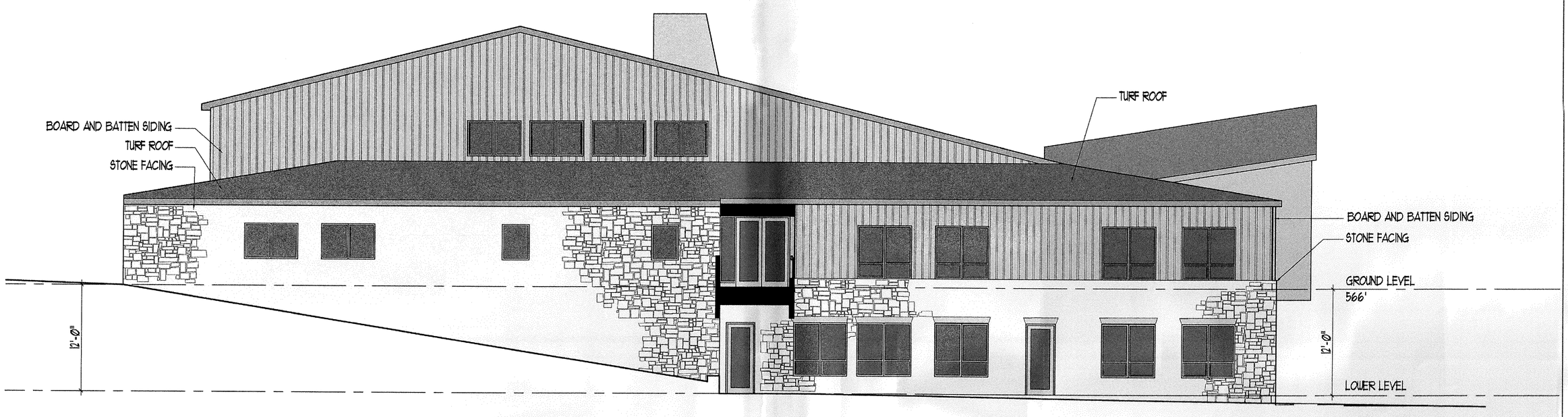


Pet. Ex
17 b



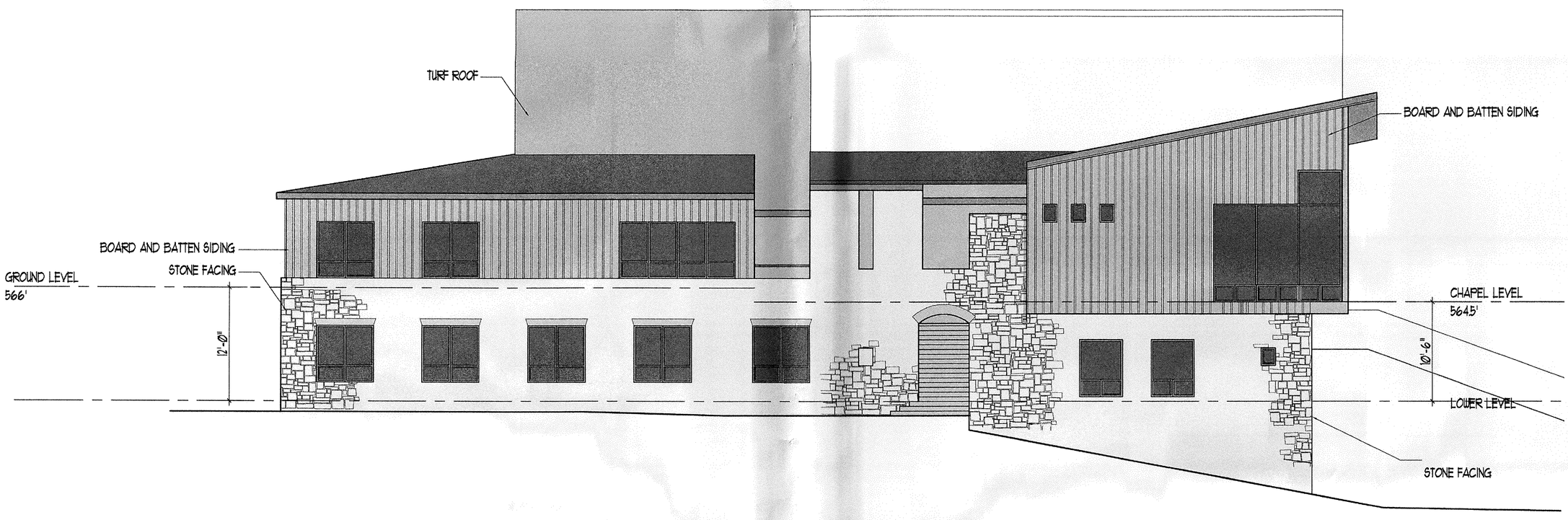
Pet. Ex. 17c

© Alexander Design Studio, P.C.



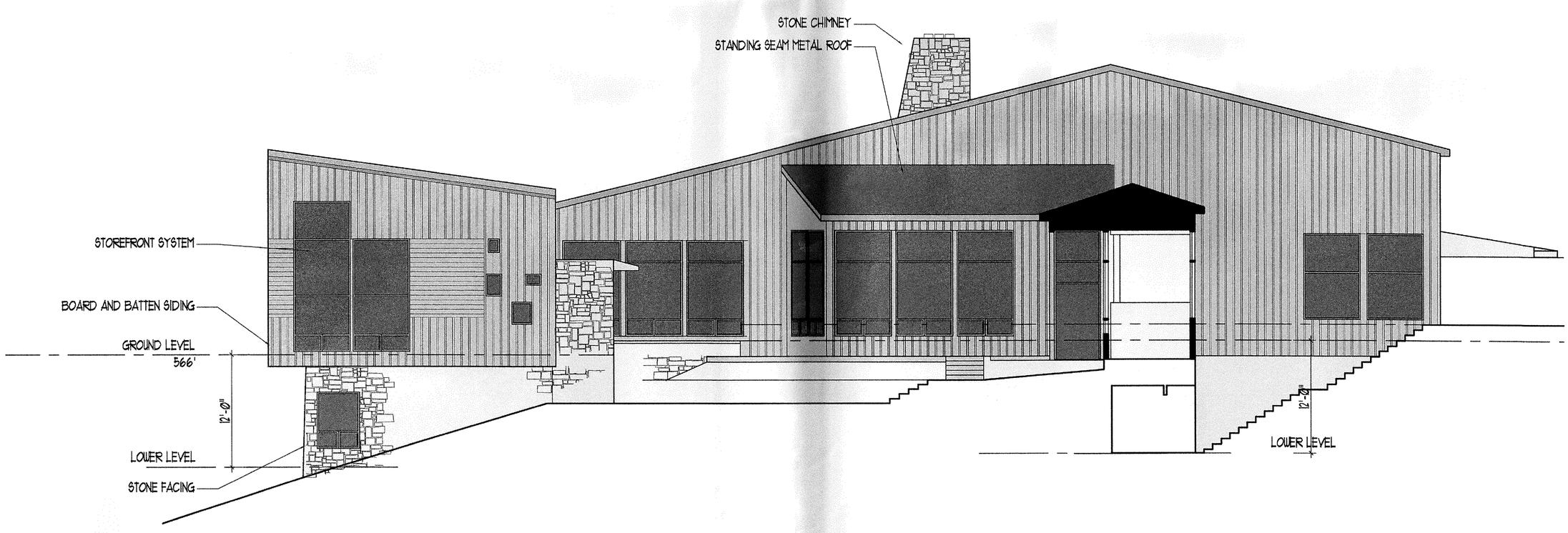
NORTHEAST MAIN BUILDING ELEVATION

1/8" = 1'0" | A1.1B | 1



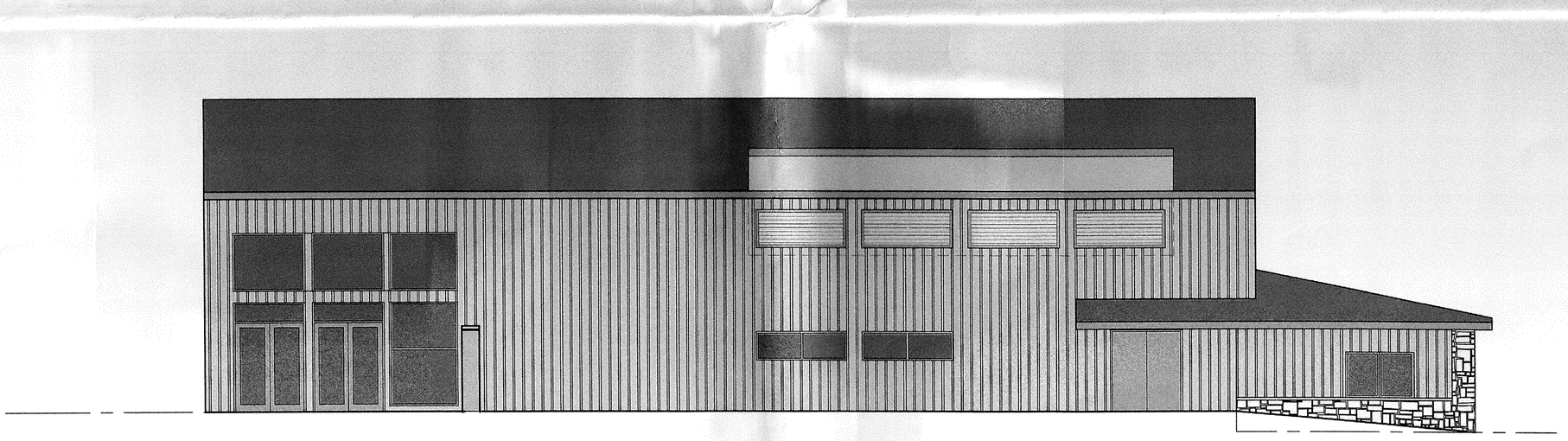
NORTHWEST MAIN BUILDING ELEVATION

1/8" = 1'0" | A1.1B | 2



SOUTHWEST MAIN BUILDING ELEVATION

1/8" = 1'0" | A1.1B | 3

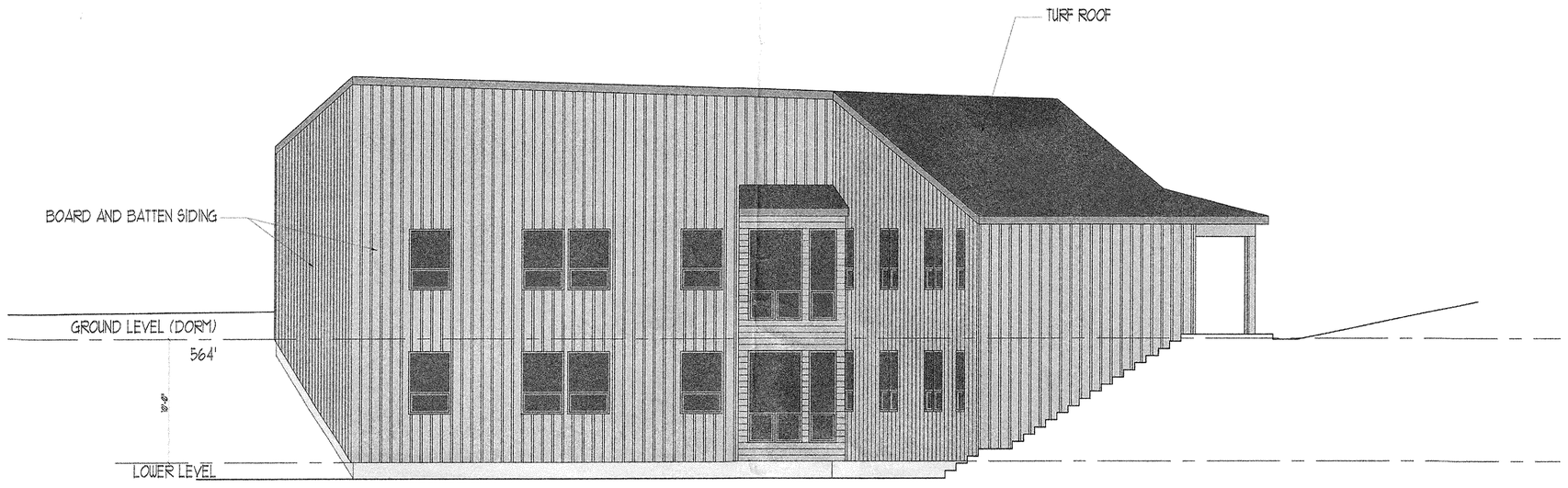


Pet. Ex. 18

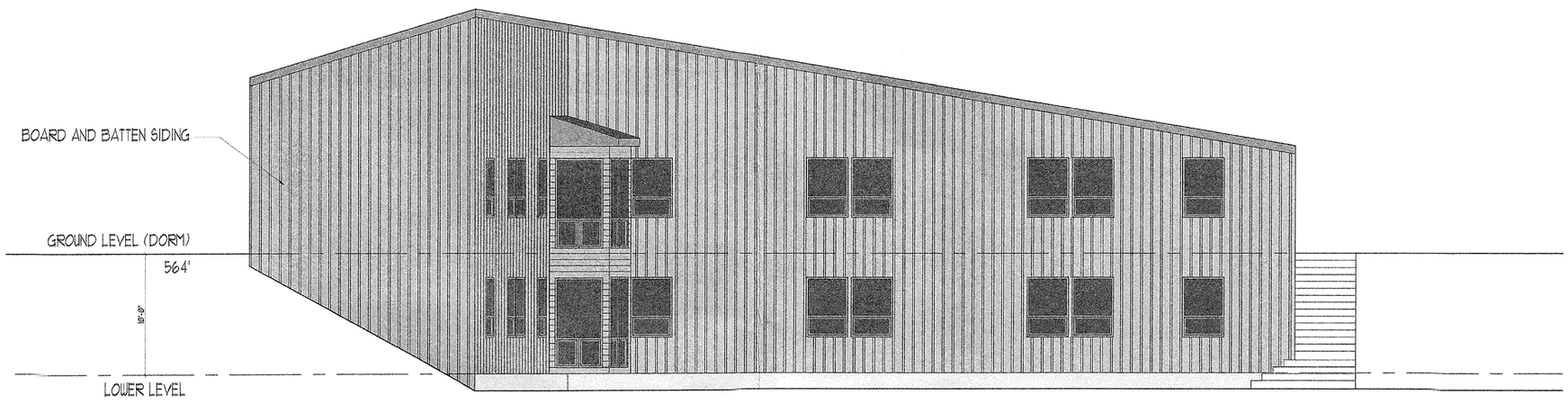
SIDE ELEVATION

1/8" = 1'0" | A1.1B | 4

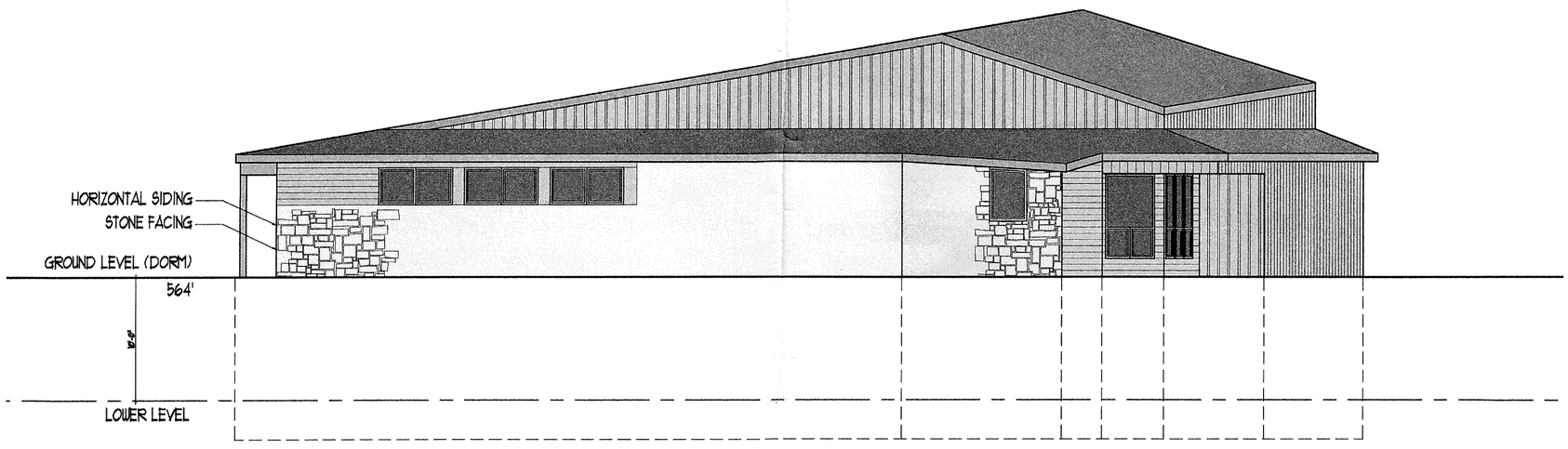
A4.1			ELEVATIONS	LOYOLA COLLEGE SPIRITUAL RETREAT BALTIMORE COUNTY, MD	McLain Associates/Alexander Design Studio 8212 Main Street Ellicott City, Maryland 21043 410.313.9930 (T.) 410.465.8208 (F.)



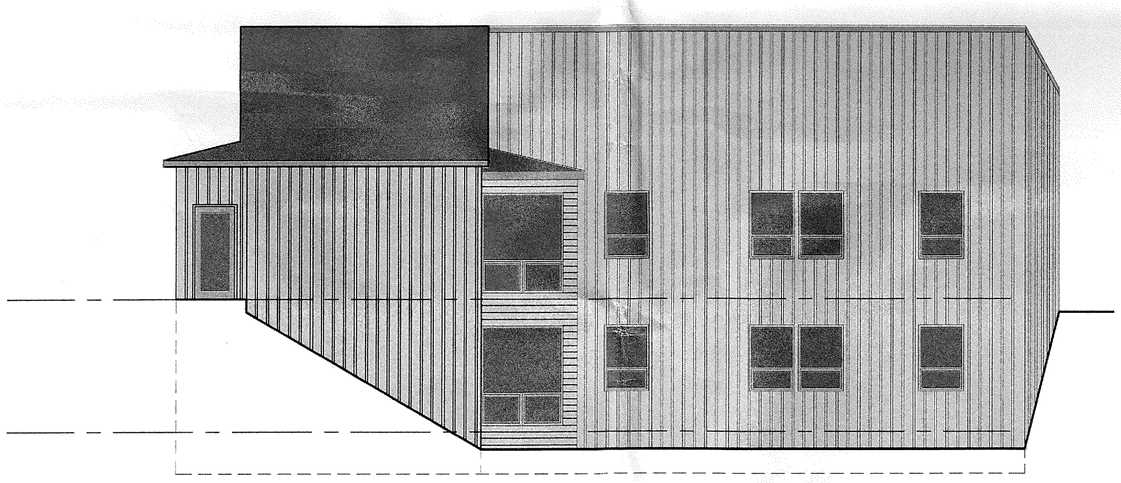
COURTYARD ELEVATION | 1/8" = 1'Ø" | A1.1B | 1



COURTYARD ELEVATION | 1/8" = 1'Ø" | A1.1B | 2



NORTHEAST RETREATANT BUILDING ELEVATION | 1/8" = 1'Ø" | A1.1B | 3



Pet. Ex. 19

REAR ELEVATION | 1/8" = 1'Ø" | A1.1B | 4

A4.2	Ø4 NOV '03	PRELIMINARY	ELEVATIONS	LOYOLA COLLEGE SPIRITUAL RETREAT BALTIMORE COUNTY, MD	McLain Associates/Alexander Design Studio 8212 Main Street Ellicott City, Maryland 21043 410.313.9930 (T.) 410.465.8208 (F.)

Mitchell J. Kellman
Zoning Expert

DMW
Daft·McCune·Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21204
Phone 410 296 3333
Fax 410 296 4705
mkellman@dmw.com

A Team of Land Planners, Landscape Architects, Golf Course Designers, Engineers, Surveyors & Environmental Professionals



Mr. Kellman has over 11 years of experience working in zoning administration and subdivision regulation for the public sector; 9 of those years were with the Baltimore County Office of Planning and Zoning. His responsibilities included review, approval and signatory powers on behalf of the Director of Final Development Plans and Record Plats. He represented the Zoning Office on the County Development Review Committee, a body reviewing the procedural compliance of all development submissions. Review of petitions and site plans filed for zoning hearing approvals were within his authority. Additionally, he supervised county review staff, met with professionals and public on development project matters, and

DEVELOPER'S EXHIBIT NO. 20

Significant Projects

Waterview
Baltimore County, Maryland

Hopewell Pointe
Baltimore County, Maryland

GBMC
Baltimore County, Maryland

Sheppard and Enoch Pratt Hospital
Baltimore County, Maryland

Charlestown Retirement Community
Baltimore County, Maryland

Oakcrest Village Retirement Community
Baltimore County, Maryland

Goucher College
Baltimore County, Maryland

Notre Dame Preparatory School
Baltimore County, Maryland

Professional Background

Daft-McCune-Walker, Inc.
Towson, Maryland
2000 - Present

Baltimore County Office of Permits and Development Management - Development Control
1988 - 2000

Education

B.A. Towson University
Geography and Environmental Planning - Urban Planning
1983

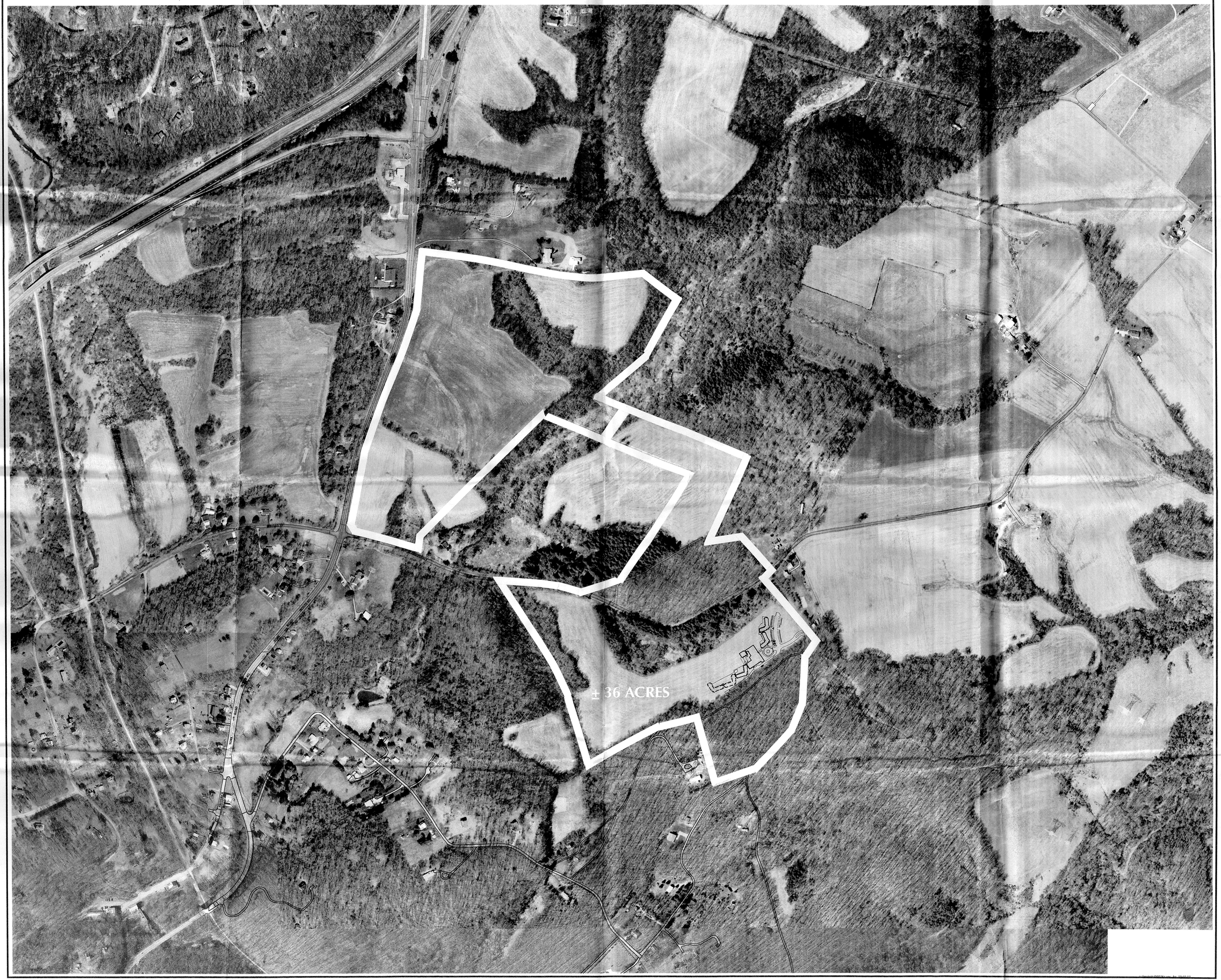
Masters Geography and Environmental Planning - Urban Planning
1987

Associations

Gama Theta Epsilon (International Graphic Honor Society)

American Planning Association

PRT EXHIBIT 20



DMW

Dalt -McCune -Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21204
(410) 296-3333
Fax 944-0796

A Team of Land Planners, Landscape Architects, Civil Engineers, Surveyors & Environmental Professionals

DMW Project # 00026.c

Loyola Retreat Center

200 0 200 400 600 800 Feet

DATA SOURCE:
BALTIMORE COUNTY OIT GIS
HORIZONTAL DATUM: NAD 83
VERTICAL DATUM: NAVD 88
DATE OF CAPTURE: MARCH 1995

PDS #21
EXH

LANDSCAPE REQUIREMENTS

LANDSCAPING TABULATION		PLANTING UNITS
INTERIOR ROAD @ 1 P.U. / 20 L.F.	310 L.F.	16
ADJACENT ROAD @ 1 P.U. / 40 L.F.	600 L.F.	15
PARKING LOT INTERIOR @ 1 P.U. / 12 SPACES	35 SPACES	3
SIDE/REAR YARD @ 1 P.U. / 15 L.F.	N/A	N/A
SWM PERIMETER @ 1 P.U. / 15 L.F.	225 L.F.	15
OPEN SPACE @ 1 P.U. / 1,500 S.F.	N/A	N/A
TOTAL		49
LANDSCAPING PROVIDED		
OVERSTORY TREES	26	26
EVERGREEN TREES	48	24
ORNAMENTAL TREES	30	15
TOTAL		66.5

SEE SHEET 1 OF 2 FOR GENERAL NOTES AND CHARTS

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. MINOR CONTOUR (2')
- EX. MAJOR CONTOUR (10')
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- RIVER EDGE
- R-2 ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 35' PRINCIPAL SETBACK LINE
- PRELIM. 100 YR. FLOODPLAIN
- EX. FENCE
- EX. TREELINE
- EXISTING STRUCTURE
- FAILED PERC TEST LOCATION
- PASSED PERC TEST LOCATION
- SLOPES (25%+)
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- PROPOSED MINOR CONTOUR (2')
- PROPOSED MAJOR CONTOUR (10')
- PROPOSED ORNAMENTAL TREE
- PROPOSED SHADE TREE
- PROPOSED EVERGREEN TREE

ZONING HEARING REQUESTS

THE APPLICANT IS REQUESTING A SPECIAL EXCEPTION TO PERMIT A BUILDING FOR RELIGIOUS WORSHIP/ SCHOOL/ CAMP IN THE RC-2 ZONE.

DATA SOURCES:

TOPOGRAPHY PER BALT. CO. OIT/GIS, DATE OF CAPTURE IS MARCH 1995.

EX. BOUNDARY, FOREST BUFFER EASEMENT, FOREST CONSERVATION EASEMENT, SETBACKS, AND UTILITY & ACCESS EASEMENTS DIGITIZED FROM EX. PLAT BY K.J. WELLS, INC. (BALTIMORE COUNTY SM 75-65). LOCATIONS ARE APPROXIMATE AND FOR PLANNING PURPOSES ONLY.

ADJACENT PROPERTY LINES DIGITIZED FROM EXISTING BALTIMORE COUNTY TAX MAPS.

EXISTING WETLANDS AND STEEP SLOPES (25%+) DIGITIZED FROM EXISTING WETLAND AND FOREST STAND DELINEATION PLAN BY K.J. WELLS DATED NOVEMBER 14, 2001.

ADJACENT WELL AND SEPTIC RESERVE AREA LOCATIONS IN THE VICINITY OF THE PROPOSED RETREAT CENTER SHOWN PER EX. BALTIMORE COUNTY RECORDS AND FIELD OBSERVATION.

DMW
Daft·McCune·Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

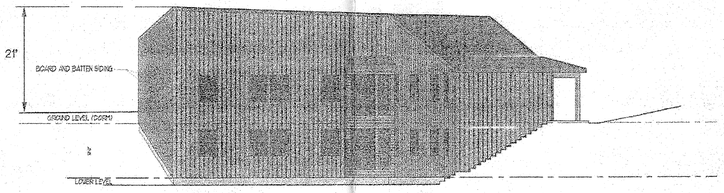
CONCEPT PLAN
SITE PROPOSAL MAP

7th ELECTION DISTRICT — BALTIMORE COUNTY, MD

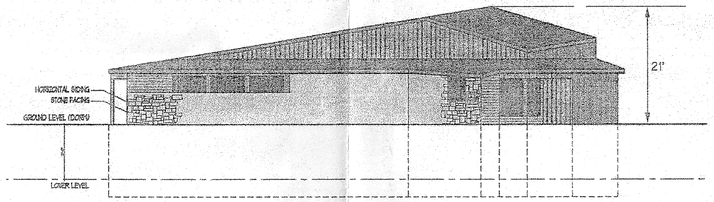
ISSUE DATES	
REVIEW:	7/03/03
BID:	
PERMIT:	
CONSTRUCTION:	
BASE:	a/s
DRAWN:	a/s
DESIGNED:	
CHECKED BY:	
DATE CHECKED:	
SCALE:	1"=50'
PROJECT NO.:	00026.b
DRAWING:	2 of 2

DATE	BY	REVISIONS

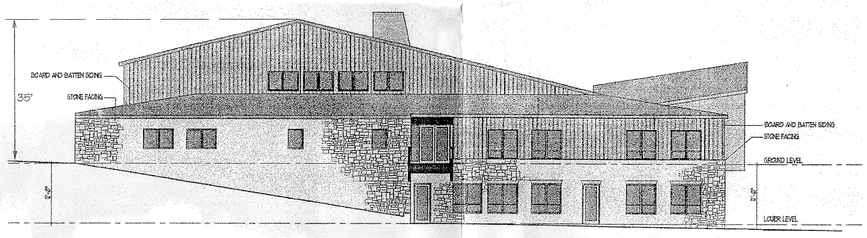
N:\00026\dwg\sht\00269-02 Tue Oct 7 14:24:24 2003



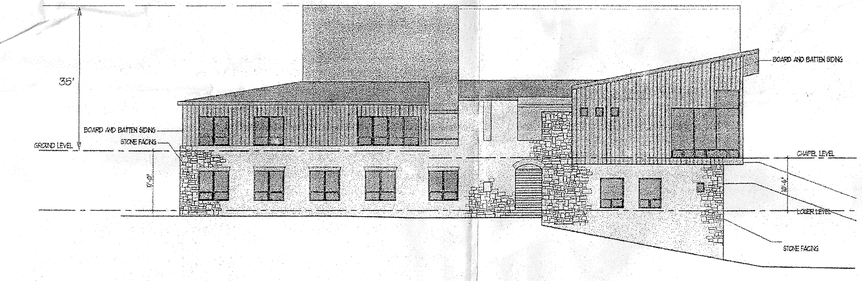
RETREATANT BUILDING ELEVATION: NTS



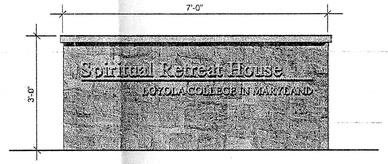
NORTHEAST RETREATANT BUILDING ELEVATION: NTS



NORTHEAST MAIN BUILDING ELEVATION :NTS



NORTHWEST MAIN BUILDING ELEVATION: NTS



ENTRANCE SIGN: NTS

LANDSCAPE REQUIREMENTS

LANDSCAPING TABULATION		PLANTING UNITS
INTERIOR ROAD @ 1 P.U. / 20 L.F.	310 L.F.	16
ADJACENT ROAD @ 1 P.U. / 40 L.F.	546 L.F.	15
PARKING LOT INTERIOR @ 1 P.U. / 12 SPACES	35 SPACES	3
SIDE/REAR YARD @ 1 P.U. / 15 L.F.	N/A.	N/A
SWM PERIMETER @ 1 P.U. / 15 L.F.	640 L.F.	58
OPEN SPACE @ 1 P.U. / 1500 S.F.	N/A	N/A
TOTAL		77
LANDSCAPING PROVIDED *		
OVERSTORY TREES	32	32
EVERGREEN TREES	62	31
ORNAMENTAL TREES	44	22
TOTAL		85

*NOTE:
EVERGREEN TREES ALONG THE USE IN COMMON DRIVEWAY WILL BE A MINIMUM OF 8'-10' IN HEIGHT AT PLANTING; 10'-12' AND 12'-14' HEIGHT TREES WILL BE INTERPLANTED. SHRUBS WILL BE A MINIMUM OF 36"-42" IN HEIGHT.



LANDSCAPE PLAN
SCALE: 1"=30'

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. MINOR CONTOUR (2')
- EX. MAJOR CONTOUR (10')
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- RIVER EDGE
- R-2 ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 35' PRINCIPAL SETBACK LINE
- PRELIM. 100 YR. FLOODPLAIN
- EX. FENCE
- EX. TREELINE
- EXISTING STRUCTURE
- 110 FAILED PERC TEST LOCATION
- 110 PASSED PERC TEST LOCATION
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- PROPOSED MINOR CONTOUR (2')
- PROPOSED MAJOR CONTOUR (10')
- PROPOSED ORNAMENTAL TREE
- PROPOSED SHADE TREE
- PROPOSED EVERGREEN TREE
- PROPOSED SHRUB
- PROPOSED SHRUB

SPECIAL EXCEPTION REQUEST

THE APPLICANT IS REQUESTING A SPECIAL EXCEPTION TO PERMIT A BUILDING FOR RELIGIOUS WORSHIP/ SCHOOL/ CAMP IN THE RC-2 ZONE.

SPECIAL HEARING REQUESTS

1. TO CONFIRM THE PARKING PROVIDED IS ADEQUATE.

2. TO APPROVE THE TRANSFER OF 54± ACRES OF RC2 ZONED LAND AS A NON-DENSITY TRANSFER.

* COMBINED INTO ONE HEARING.

DMW
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

ELEANOR SPRULL & MARION CLARKE PROPERTY, LOT 2

DEVELOPMENT PLAN
PRELIMINARY LANDSCAPE, SIGNAGE, & BUILDING ELEVATIONS

7th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

PDM#VII-389
BALTIMORE COUNTY, MD

STATE OF MARYLAND — MELANIE ANNE WALKER — LANDSCAPE ARCHITECT — NO. 1321 — EXPIRES

DATE	BY	REVISIONS

ISSUE DATES
REVIEW: 11/25/03
BID:
PERMIT:
CONSTRUCTION:

BASE: als
DRAWN: CRH
DESIGNED: MJP
CHECKED BY: MJP
DATE CHECKED: 02/03/04
SCALE: AS SHOWN
PROJECT NO: 0002
DRAWING NO: 3 of 3

Pet DPM 320

J:\0002\PET\0002DB.DWG

Webster's Third New International Dictionary

OF THE ENGLISH LANGUAGE UNABRIDGED

A Merriam-Webster
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Utilizing all the experience and resources of more than one hundred years of Merriam-Webster® dictionaries

EDITOR IN CHIEF
PHILIP BABCOCK GOVE, Ph.D.
AND
THE MERRIAM-WEBSTER
EDITORIAL STAFF



MERRIAM-WEBSTER INC., *Publishers*
SPRINGFIELD, MASSACHUSETTS, U.S.A.

pet EXH 23(a)

Webster's Third New International Dictionary

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P Rt
EXH 23(b)

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EDITORIAL STAFF



MERRIAM-WEBSTER INC., *Publishers*

SPRINGFIELD, MASSACHUSETTS, U.S.A.

PET REM
24

Webster's Third New International Dictionary

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AND
THE MERRIAM-WEBSTER
EDITORIAL STAFF



PRH EXH 25

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SPRINGFIELD, MASSACHUSETTS, U.S.A.

PRT EXH 26

IN THE MATTER OF PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION S/S OF STABLERSVILLE ROAD, EAST OF YORK ROAD	*	BEFORE THE ZONING COMMISSIONER FOR
	*	BALTIMORE COUNTY
ESTATE OF MARION T. CLARKE ESTATE OF ELEANOR DUVALL SPRUILL – LEGAL OWNERS	*	CASE NO. 04-337-SPHX

* * * * * * * * *

AFFIDAVIT OF W. DUVALL SPRUILL

I, W. Duvall Spruill, hereby declare and affirm as follows:

1. I am over twenty-one (21) years of age, and I am competent to testify to the matters set forth in this Affidavit.

2. The matters set forth in this Affidavit are based upon my own personal knowledge.

3. I am personal representative for the Estates of Marion T. Clarke and Eleanor Duvall Spruill.

4. The Estates of Marion T. Clarke and Eleanor Duvall Spruill are legal owners of the property subject to the Petition for Special Hearing filed in Case No. 04-337-SPHX as shown on the Plat, entitled "PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION AND SPECIAL HEARING."

5. Fifty-four (54)± acres of the property, labeled "AREA OF SPECIAL HEARING" on the Plat, are proposed for a non-density transfer.

6. The property is currently in agricultural use.

The Traffic Group

Traffic Impact Analysis

for

Loyola Retreat Center

Baltimore County, Maryland

Prepared for

Loyola College

September 29, 2004

Pet. Ex. # 28

Petitioners Exhibit #27

DEVELOPER'S EXHIBIT NO. 27

WES GUCKERT
President

Wes Guckert is a recognized and well respected expert in the field of traffic engineering and transportation planning. Serving as a technical advisor in the areas of traffic impact analysis, traffic signal design, traffic circulation, access studies and transportation planning, Mr. Guckert has played a major role in over 3,000 projects spanning both urban and suburban areas primarily in the Mid-Atlantic area. Mr. Guckert has also provided consultation on projects throughout the United States, as well as internationally. Early in his career, Mr. Guckert served for five years with the Maryland State Highway Administration Traffic Division. Prior to founding The Traffic Group, Inc., Mr. Guckert served as a traffic engineering consultant for eight years.

Since founding The Traffic Group, Inc., Mr. Guckert has been responsible for providing a variety of traffic engineering services to both the public and private sector. He has directed the design and implementation of traffic access systems for numerous regional projects such as the National Business Park, Cole Field House at UMCP, Largo Town Center, Wheaton Plaza, Salisbury Centre, Bowie New Town Center, Maple Lawn Farms, Montgomery Mall, Annapolis Mall, National Harbor, Greenbelt Metro Park, Traville, Fallsgrove, and King Farm. Mr. Guckert has undertaken Traffic and Transportation Studies for "Big Box" Stores including, Wal-Mart, Sam's Club, Target, Lowe's, Best Buy, Costco, and Home Depot, as well as numerous studies of Value-Oriented Centers and Regional Malls throughout the United States.

In addition to Mr. Guckert's technical expertise, as a renowned expert in the field, he is often asked to serve as an expert witness, testifying before County and Municipal Boards, District Courts, and Planning Commissions on traffic engineering and transportation planning issues.

Job History

1985 - Present
President, The Traffic Group, Inc.

1977-1985
Traffic and Transportation Planning Consultant

1972-1977
Assistant Regional Traffic Engineer
Maryland State Highway Administration-Traffic Division

Educational Background

- *Bachelor of Science*
  University of the State of New York
- *Civil Engineering Preparation*
  Johns Hopkins University
  Towson State University
  Essex Community College
- *Traffic Engineering Courses*
  Northwestern University Traffic Institute
  University of Tennessee Transportation Center
  University of Maryland

Affiliations

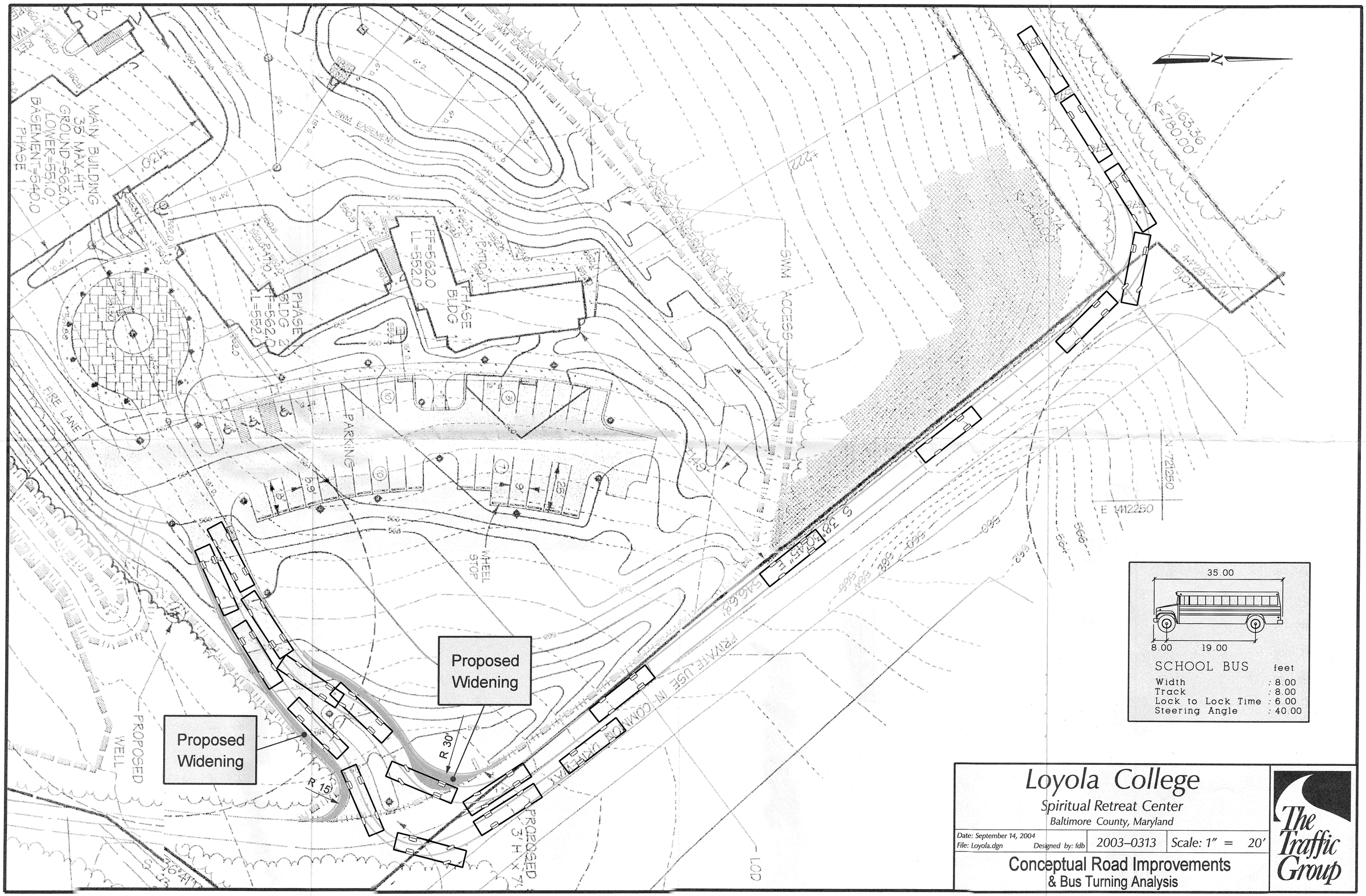
- American Planning Association (A.P.A.)
- Essex Community College Foundation
  Board of Directors
- Horsehead Wetlands Center – Board of Trustees
  (Grasonville, MD)
- Institute of Transportation Engineers (I.T.E.) - Fellow
- International Council of Shopping Centers (ICSC)
- Subcommittee on Planning of the Smart Growth Commission
  appointed by Governor Parris N. Glendening
- The M.U.S.E. Foundation – Board Member
- Transportation Research Board (T.R.B.)
- Urban Land Institute (U.L.I.)

I.T.E. Professional Committees

- Committee No. 5P-5 - Capacities of Multiple
  Left-Turn Lanes
- Committee No. 5P-07 - Traffic Counting Practices
- Committee No. 5S-1 - Capacities of Triple
  Left-Turn Lanes
- Internal Transportation Systems for Majority
  Activity Centers
- Parking Facilities for Industrial Plants
- Traffic Considerations for Special Events

Publications

- *The Evolution of Adequate Public Facilities and Their Effectiveness as Growth Management Tools in Maryland* (Co-Author) - I.T.E. Annual Meeting



Loyola College

Spiritual Retreat Center

Baltimore County, Maryland

Date: September 14, 2004
File: Loyola.dgn *Designed by: fdb* | *2003–0313* | *Scale: 1" = 20'*

Conceptual Road Improvements & Bus Turning Analysis

The Traffic Group

P.C. Ex. #29

Pet. Ex #30

Court of Special Appeals of Maryland.

HAYFIELDS, INC.
v.
VALLEYS PLANNING COUNCIL, INC., et al.

No. 1118, Sept. Term, 1997.

Aug. 27, 1998.

Objectors sought review of county zoning commission's grant of special exception for country club on landowner's historic farm property in resource conservation zone and approval of landowner's subdivision development plan. The county board of appeals approved petition and plan with conditions. On review, the Circuit Court, Baltimore County, James T. Smith, Jr., J., affirmed board's decisions but removed two conditions. Landowner appealed and objectors cross-appealed. The Court of Special Appeals, Salmon, J., held that: (1) area for country club special exception use was not required to be removed prior to calculation of subdivision lot density; (2) adverse impacts analysis for grant of special exception required consideration of off-site effects, not off-site and on-site effects; (3) board failed to decide questions concerning threat to water quality in aquifer; (4) board adequately reviewed impact of proposed development on relevant vicinity, which included national register historic district; (5) board reasonably imposed "use condition" on driving range; and (6) restriction on number of practice tees at driving range was invalid.

Judgment of circuit court affirmed in part, reversed in part, and remanded with instructions.

West Headnotes

[1] Zoning and Planning ⚿601
414k601

There are two general standards of review of decision of zoning board: in regard to findings of fact, trial court cannot substitute its judgment for that of agency and must accept agency's conclusions if they are based on substantial evidence and if reasoning minds could reach same conclusion based on record; however, when court reviews findings of law, no such deference is given agency's conclusion.

[2] Zoning and Planning ⚿741
414k741

Court of Special Appeals reviews decision of zoning board and not the decision of the trial court, and applies standard of review stated in *Prosser*.

[3] Zoning and Planning ⚿85
414k85

Plain language of county's resource conservation zoning regulations did not require that area for special exception use be removed prior to calculation of subdivision lot density, even though landowner's development plan called for residential use on remaining acreage, and thus, landowner seeking to develop country club with golf course and residential sites on historic farm property could divide acreage into five, rather than three, lots, each of which would meet minimum area, setback, and dwelling limit requirements, despite claim that landowner was attempting to "double use" acreage.

[4] Zoning and Planning ⚿1
414k1

"Zoning" is the legislative division of a community into areas in each of which only certain designated uses of land are permitted so that the community may develop in an orderly manner in accordance with a comprehensive plan.

[5] Zoning and Planning ⚿323
414k323

Use permitted as of right may be developed, as a matter of zoning, regardless of the kind and extent of adverse impact, from a land use perspective, it will create in the particular location proposed.

[6] Zoning and Planning ⚿271
414k271

"Conditional use," that is, a use permitted by special exception, may be developed only under certain circumstances.

[7] Zoning and Planning ⚿505
414k505

When conducting adverse impacts analysis with respect to proposed special exception for country club with golf course on historic farm property in resource conservation zone, county board of appeals needed to consider off-site effects, not off-site effects and on-site effects.

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PRT
GAH 31

George E. Gavrelis
Vice President

DMW

Daft·McCune·Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21204
Phone 410 296 3333
Fax 410 296 4705
ggavrelis@dmw.com

A Team of Land Planners,
Landscape Architects,
Golf Course Architects,
Engineers, Surveyors &
Environmental Professionals



George Gavrelis is DMW's senior specialist in local planning and zoning. With extensive public-sector leadership service, he has complete knowledge of planning and zoning procedures, as well as detailed requirements and standards of zoning and development regulations. His expertise assures that projects comply with applicable standards and move expediently through the approval process.

George is recognized as an expert witness in Baltimore County planning, zoning, and land use issues, and testifies before the Zoning Commissioner, Board of Appeals, and circuit court.

Significant Projects

Towson Commons
Towson, Maryland

Mays Chapel North
Planned Unit Development
Timonium, Maryland

Caves Valley Golf Club
Baltimore County, Maryland

Hayfields
Baltimore County, Maryland

Land Owners Council,
Reciprocal Regional
Development Agreement
Owings Mills Growth Area
Baltimore County, Maryland

New Density
Residential Zones
Baltimore County, Maryland

The Guide Plan for
Baltimore County, Maryland

Professional Background

Daft-McCune-Walker, Inc.
Towson, Maryland
1984 - Present

Private Planning
Consultant
Towson, Maryland
1982 - 1984

Developers General Corp.
Towson, Maryland
1972 - 1982

Office of Planning and
Zoning, Baltimore County,
Maryland
1951 - 1972
Director, 1963 - 1972

Education

M.A. - City Planning
Harvard University
Graduate School of Design

A.B. - Architectural Sciences
Harvard College

Associations

American Institute of
Certified Planners
Charter Member

American Planning Assoc.

Civic Involvement

The Towson Partnership
Urban Design and Towson
Core Subcommittees

Baltimore County Master
Plan, Strategic Plan 2000
Executive Steering
Committee

Trinity Episcopal Church
Long Range Planning
Committee

1992 Comprehensive
Zoning Map Guidelines
Advisory Group

Petitioners 32

Biohabitats

Joseph A. Berg, PWS

Employment

2004 – present	Biohabitats, Inc., Timonium, MD, Senior Ecologist
2002 - 2004	Parsons Transportation Group, Fairfax, VA. Senior Environmental Scientist
1998 - 2002	Biohabitats, Inc., Timonium, MD, Senior Ecologist
1984 - 1998	EA Engineering, Science, and Technology, Inc., Hunt Valley, MD, Senior Ecologist
1981 - 1984	Univ. of Maryland Ctr. for Estuarine & Environmental Science, College Park, MD, Research Fellow

Education

M.S., Ecology, University of Maryland, Center for Marine, Environmental, and Estuarine Science, College Park, MD 1984
B.S., Environmental Science, California University of Pennsylvania, California, PA 1981

Professional Registration

MD Forest Stand Delineation and Conservation Plan Development Qualified Professional, 1999
U.S. Army Corps of Engineers Certified Wetland Delineator, # WDCP93MD100100B, 1993
Society of Wetland Scientist's Certified Professional Wetland Scientist, PWS # 000520, 1995
State of Maryland Certification in Erosion and Sediment Control, 1989

Experience

Mr. Berg is an ecologist with over 20 years of experience in systems ecology. His responsibilities in resource management have included wetlands; terrestrial and aquatic plant resources; rare, threatened, and endangered species; forest resources; wildlife resources; aquatic resources, including fish and benthic invertebrates; and related water-quality issues. Mr. Berg has experience with a variety of habitat and wildlife evaluation methodologies, including HEP, Pa-MHEP, FORFLO, HGM, WET, and others. He is experienced in wetland mitigation design, stream channel restoration design using principles of fluvial geomorphology, construction oversight, development and implementation of adaptive management plans, and monitoring program development and implementation. He is also experienced in the use of geographic information systems (GIS) for characterizing resources, as a spatial database, and as a land-use planning tool. Mr. Berg has also written operation and maintenance guides for newly installed natural vegetation resources. He is experienced in working with local, state, and federal regulatory and resource agencies, and coordinates project-specific regulatory agency consultation. He is experienced in the preparation and submittal of a variety of documentation, including design justification reports, mitigation reports, FONSI, Environmental Assessments, Environmental Impact Statements, and others.

Relevant Project Experience

Chem Metals Property, *Baltimore, MD.* As project manager, Mr. Berg examined distribution of wetlands, performed wetland delineation on a newly aquired MES site. He also provided regulatory analysis of potential impacts.

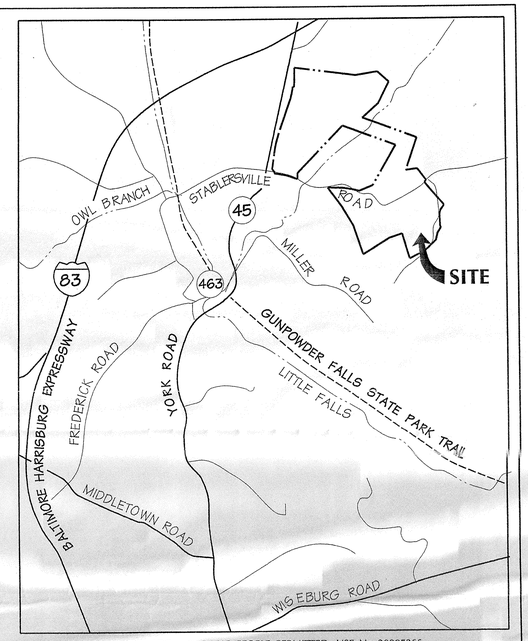
Ohio Army Reserve Facility Natural Resources Inventory, *Multiple Locations, OH.* As Project Manager, Mr. Berg organized and implemented the environmental inventory of 38 Army Reserve Facilities across Ohio. Facilities ranged from intensively developed and utilized small urban properties to large, undeveloped parcels of land. For each facility, a GIS database was compiled using available existing information, including topography, floodplains, aerial photograph, vegetative cover, hydrographic features, National Wetland Inventory map information, and protected species and habitats polygons. Following review of this information, a sampling strategy was developed in include acquisition of missing field data (e.g., tree distribution), wetland delineation, stream assessment and sampling for aquatic invertebrates, inventory/inspection for the presence of protected species or habitats, presence of improvements, etc. The sampling approach was reviewed and approved by the Army Reserve Readiness Command and implemented. Coordination with facility managers was undertaken to establish a cost effective and efficient schedule for field evaluations. Collected information, including GPS points, was incorporated into the GIS database. A report was prepared documenting the approach and results, including hard copies, digital copies, and a functional GIS database.

Maine Turnpike Authority Remedial Stream Restoration, *Sabbatus, ME.* Mr. Berg was instrumental in developing an adaptive management strategy and remedial construction plan for an unsuccessful stream

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX.MINOR CONTOUR (2')
- EX.MAJOR CONTOUR (10')
- EX.CURBEDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- RIVER EDGE
- RC-2 ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 25' PRINCIPAL SETBACK LINE
- FEEMA 100 YR. FLOODPLAIN
- EX.FENCE
- EX.TREELINE
- EXISTING STRUCTURE
- FAILED PERC TEST LOCATION
- PASSED PERC TEST LOCATION
- SLOPES (25%+)
- EX.WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- PROPOSED MINOR CONTOUR (2')
- PROPOSED MAJOR CONTOUR (10')
- LIGHTS
- BOLLARDS WITH LIGHTS
- FLOOD LIGHTS
- SPECIAL PAVING
- SIDEWALKS
- 18" D. PROPOSED STORM DRAIN
- PROPOSED INLET
- WETLANDS





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LOCATION MAP

SCALE: 1" = 1000'

COORDINATES AND BEARINGS SHOWN ON THIS PLAN ARE REFERRED TO THE SYSTEM OF COORDINATES ESTABLISHED BY THE STATE OF MARYLAND (NAD 83/91) AND BASED ON THE FOLLOWING TRAVERSE STATIONS:

615-120	N 728023.904	E 1410208.932
615-120 AZ	N 726480.562	E 1410365.486

SWM SUMMARY

DESIGN POINT	TYPE OF FACILITY	CREDITS	WQv REQUIRED (Acft) (AFTER CREDITS)	Rev REQUIRED (Ac.)	Cpv REQUIRED (Acft) (AFTER CREDITS)	Qp10	Qp100
			CF	CF	CF	CFS	CFS
1	2 - BIORETENTION, 2 - ED POND (MICROPOOL)	NA	7,186	1,868	6,931	16	26

DATA SOURCES:

TOPOGRAPHY PER BALTIMORE COUNTY GITIS, DATE OF CAPTURE IS MARCH 1996.

EX. BOUNDARY, FOREST BUFFER EASEMENT, FOREST CONSERVATION EASEMENT, SETBACKS, 100-YR. FLOODPLAIN EASEMENT AND UTILITY & ACCESS EASEMENTS DIGITIZED FROM PLAT BY KJ WELLS, INC. (BALTIMORE COUNTY SM. 75-65)

ADJACENT PROPERTY LINES DIGITIZED FROM EXISTING BALTIMORE COUNTY TAX MAPS.

EXISTING WETLANDS AND STEEP SLOPES (25%+) DIGITIZED FROM EXISTING WETLAND AND FOREST STAND DELINEATION PLAN BY ECO SCIENCE PROFESSIONALS, INC. DATED NOVEMBER 14, 2001.

ADJACENT WELL AND SEPTIC RESERVE AREA LOCATIONS IN THE VICINITY OF THE PROPOSED RETREAT CENTER SHOWN PER EX. BALTIMORE COUNTY RECORDS AND FIELD OBSERVATION.

EX. SOILS DELINEATION LINES SHOWN PER BALTIMORE COUNTY SOIL SURVEY.

DMW
Daft·McCune·Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

ELEANOR SPRUILL & MARION CLARKE PROPERTY, LOT 2

STORMWATER MANAGEMENT DRAINAGE AREA MAP

7th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

BALTIMORE COUNTY, MD

STATE OF MARYLAND — JOHN W. NEWCOMER — No. 9 — REGISTERED PROFESSIONAL ENGINEER

2-12-04

DATE	BY	REVISIONS

ISSUE DATES
REVIEW: 11/25/03
BID:
PERMIT:
CONSTRUCTION:

BASE: JSN
DRAWN: JSN
DESIGNED: MJP
CHECKED BY: MJP
DATE CHECKED: 02/12/04
SCALE: 1"=100'
PROJECT NO.: 00026.D
DRAWING:
1 of 1

Loyola #33

Thu Feb 12 12:01:46 2004 \\DMW\DMW\00026\sheet\00026.dgn
Thu Feb 12 12:01:32 PM \\ATHENS\VEGETATION\CADNETNOD\dwg\ref_pnames c:\tmp\688025.tmp

Pet. Ex. 34



11-17-04-007.JPG



11-17-04-008.JPG

NITROGEN BALANCE – LOYOLA RETREAT

The nitrogen mass balance was performed using the method recommended by the Maryland Department of the Environment (MDE). The analysis is shown below and indicates that the maximum rate of wastewater disposal to the ground-water system on the 79.2-acres comprising the proposed development area including building and drainfield areas and watershed draining onto those areas is 15,790 gallons per day.

Formula: $W = [(4.43C + a(P-ET) - cP] \div [(y-a)-y(d + n)]$

Where:
W = allowable wastewater loading (inch/year)
C = removal of nitrogen by vegetation (lb/acre-year), = 0
a = allow. nitrogen conc. in ground water (mg/L), = 10
P = infiltration due to precipitation (inch/year), = 14.1
ET = potential evapotranspiration (inch/year), = 0
c = concentration of nitrogen in precipitation (mg/L), = 0.5
y = concentration of nitrogen in wastewater (mg/L), = 60
d = fraction of nitrogen denitrified, = 0
n = fraction of nitrogen volatilized as ammonia, = 0

Solution: $W = [4.43(0) + 10(14.1-0)-0.5(14.1)] \div [(60-10) - 60(0+0)]$

W = 2.68 inches / year

Allowable Daily Application Rate (proposed development area including building and drainfield areas and watershed draining onto those areas) =

[(2.68 in/yr ÷ 12 in/ft)(79.2 ac)(43,560 sf/ac)(7.48 gal/cf)] ÷ 365 days/yr

= 15,790 gallons per day

Jan-04-05 02:29p 410 730-1785 P.01

04-337-SPHX
riding w/ CBA-04-136)

Verified 9-30-04

Verified 12/07/04 Loyola

Exhibits for Protestants

Verified 9-15-04

- ✓ ✓ Ex. 1 Building Plan for Main Building
- ✓ ✓ Ex. 2 Hypothetical Stream
- ✓ ✓ Ex. 3 CBA Order 85-132-X
- ✓ ✓ Ex. 4 CBA Order 85-245-X
- ✓ ✓ Ex 5 Court of Special Appeals Unreported
- ✓ ✓ Ex 6. Final Plan for Clarke/Spruill prop.
- ✓ ✓ Ex. 7a for ID
- ~~b~~ for ID
- ✓ ✓ Ex. 8 Letter from Sheesley to Heyman 7 pages
- ✓ ✓ Ex 9 Rule 8 papers for J. Lee Bishop
- ✓ ✓ Ex 10 Letter from Farm Bureau
- ✓ ✓ Ex 11 Map made by Lynn Jones
- ✓ ✓ Ex 12 C.V. for Dr. Bouwer
- ✓ ✓ Ex 13 ~~ID only~~ Storm Water Chart
- ✓ ✓ Ex 14 ~~ID only~~ Storm Water Chart Table 1a
- ✓ ✓ EX 15 Storm Water Chart Table 1c
- ✓ ✓ Ex 16 " " " Table 4
- ✓ ✓ Ex 17 ID only DEPRM Letter 10 pages
- ✓ ✓ Ex 18 Trout data for Balto. Co.
- ✓ ✓ Ex 19 Map of Brook Trout streams
- ✓ ✓ Ex 20. Land Use Map Large Board Exhibit
- ✓ ✓ Ex 21. Pictures of Area
- ✓ ✓ Ex 22. Arial Photo of Loyola Property Vicinity — ~~Large Board~~ Exhibit
- ✓ ✓ Ex 23. Dr. Brian Reed C.V.
- ✓ ✓ Ex 24. Dr. Reed's Summary Report
- ✓ ✓ Ex 25. Mr. Kline's Data
- ✓ ✓ Ex 26 Mr. Kline's Data
- ✓ ✓ Ex 27 Map of Bird River Area #73
- ✓ ✓ Ex 28 Map of Bird River Area #83
- ✓ ✓ Ex 29 Map of Granite Area #66
- ✓ ✓ Ex 30 Map of Granite Area #75
- ✓ ✓ Ex 31 Map of Granite Area #76
- ✓ ✓ Ex 32 Map of Granite Area #86
- ✓ ✓ Ex 33 Map of Shawan Area #41
- ✓ ✓ Ex 34 Part of a Deed I.D. only

Exhibits for Protestants

- Ex. 35 I.D. only (Deed)
- Ex 36 Inter-Office Memo I.D only
- Ex 37 a, b, c, d Photo's of Millers Lane
- Ex. 38 Photo Book by Lynn Jones
- Ex 39 Pictures of Farm Equip.
- Ex 40. Letters from farmers
- Ex. 41 I.D. only
- Ex. 42 Panaramic View of Norton Farm
- Ex. 43 Packet of letters To be returned by M. Nelson

returned 2/02/05

PROTESTANT EX 38

Photographs of Baltimore County
RC2 Area Roadways
With Width Dimensions

Photos Taken
November and December, 2004
By
Lynne Jones, Sharon Norton
& Francis Turner

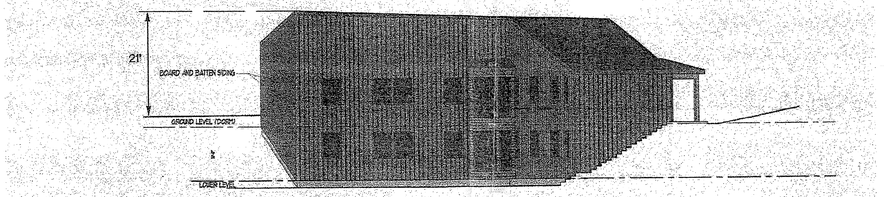
PROTESTANTS' EX #21

Photographs of Proposed Loyola College Development Vicinity

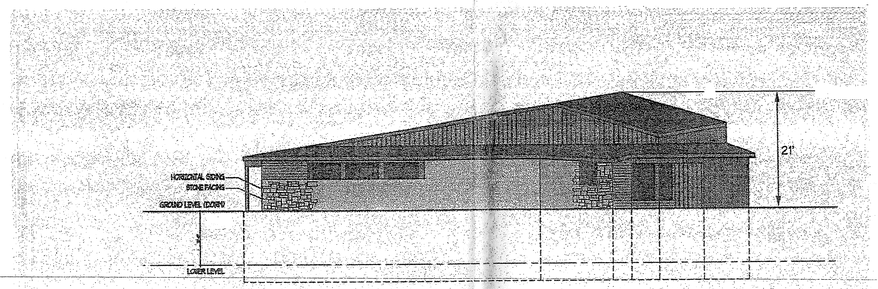
Taken November, 2004

By

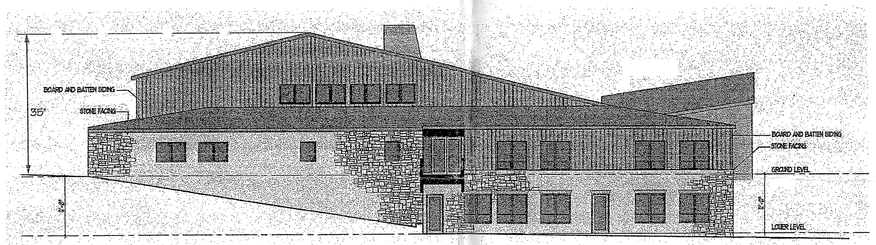
Lynne Jones & Francis Turner



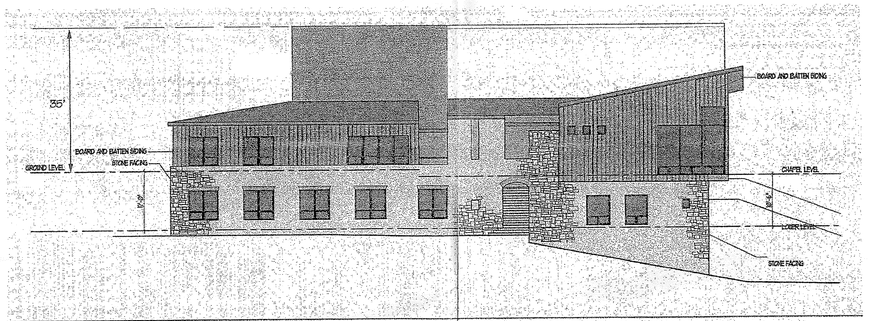
RETREATANT BUILDING ELEVATION: NTS



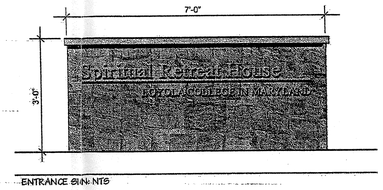
NORTHEAST RETREATANT BUILDING ELEVATION: NTS



NORTHEAST MAIN BUILDING ELEVATION: NTS



NORTHWEST MAIN BUILDING ELEVATION: NTS



ENTRANCE SIGN: NTS

LANDSCAPE REQUIREMENTS

LANDSCAPING TABULATION		PLANTING UNITS
INTERIOR ROAD @ 1 P.U. / 20 L.F.	310 L.F.	16
ADJACENT ROAD : 1 P.U. / 40 L.F.	546 L.F.	15
PARKING LOT INTERIOR @ 1 P.U. / 12 SPACES	35 SPACES	3
SIDE/REAR YARD 1 P.U. / 15 L.F	N/A.	N/A
SWM PERIMETER 1 P.U. / 15 L.F	640 L.F.	58
OPEN SPACE @ 1 P.U. / 1,500 S.F.	N/A	N/A
TOTAL		77
LANDSCAPING PROVIDED *		
OVERSTORY TREE:	32	32
EVERGREEN TREE	62	31
ORNAMENTAL TREE	44	22
TOTAL		88

*NOTE:
EVERGREEN TEES ALONG THE USE IN COMMON DRIVEWAY WILL BE A MIIMUM OF 8'-10' IN HEIGHT AT PLANTING; 10'-12' AND 12'-14' HEIGHT TREES WILL BE INTERPLANTED. SHRUBS WILL BE A MIIMUM OF 36"-42" IN HEIGHT.



LANDSCAPE PLAN
SCALE: 1"=30'

LEGEND

- ADJACENT PROPERTY LINE
- SUBJECT PROPERTY LINE
- EX. MINOR CONTOUR (2')
- EX. MAJOR CONTOUR (10')
- EX. CURB/EDGE OF WALK OR PAVING
- UTILITY LINE (OH - OVERHEAD) (UG - UNDERGROUND)
- RIVER EDGE
- R-2 ZONING LINE
- FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- 35' PRINCIPAL SETBACK LINE
- PRELIM. 100 YR. FLOODPLAIN
- EX. FENCE
- EX. TREELINE
- EXISTING STRUCTURE
- FAILED PERC TEST LOCATION
- PASSED PERC TEST LOCATION
- EX. WELL AND 100' BUFFER
- EXISTING/APPROVED SEPTIC RESERVE AREA
- PROPOSED MINOR CONTOUR (2')
- PROPOSED MAJOR CONTOUR (10')
- PROPOSED ORNAMENTAL TREE
- PROPOSED SHADE TREE
- PROPOSED EVERGREEN TREE
- PROPOSED SHRUB
- PROPOSED SHRUB

SPECIAL EXCEPTION REQUEST

THE APPLICANT IS REQUESTING A SPECIAL EXCEPTION TO PERMIT A BUILDING FOR RELIGIOUS WORSHIP, SCHOOL, CAMP IN THE RC-2 ZONE.

SPECIAL HEARING REQUESTS

1. TO CONFIRM THE PARKING PROVIDED IS ADEQUATE.

2. TO APPROVE THE TRANSFER OF 54± ACRES OF RC2 ZONED LAND AS A NON-DENSITY TRANSFER.

* COMBINED INTO ONE HEARING.

DMW
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

ELEANOR SPRULL & MARION CLARKE PROPERTY, LOT 2

DEVELOPMENT PLAN
PRELIMINARY LANDSCAPE, SIGNAGE, & BUILDING ELEVATIONS

7th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

PDM#VII-389
BALTIMORE COUNTY, MD

STATE OF MARYLAND — MELANIE MORRIS — No. 1351 — LANDSCAPE ARCHITECT

ISSUE DATES	
REVIEW:	11/25/03
BID:	
PERMIT:	
CONSTRUCTION:	

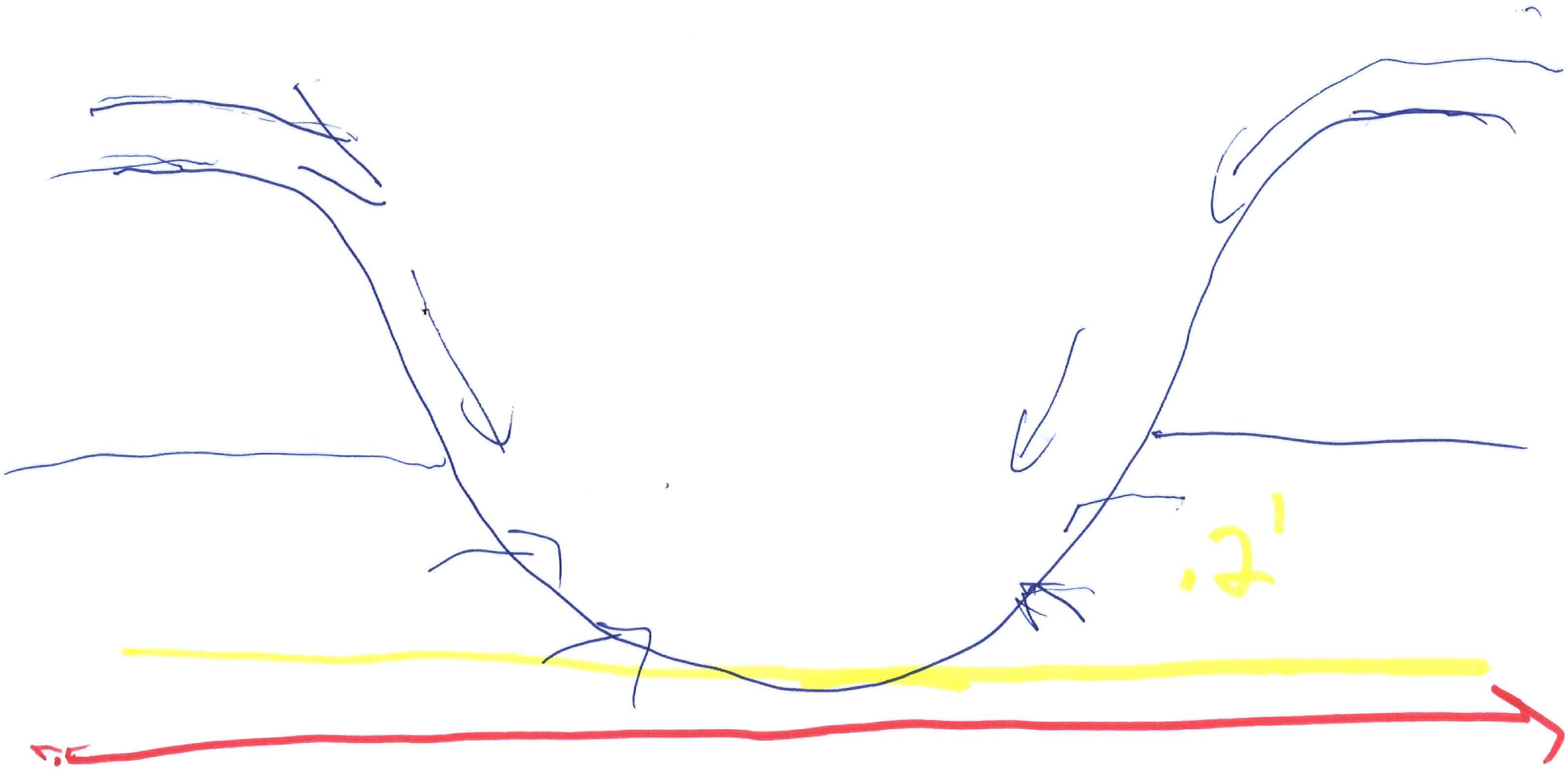
BASE:	ajs
DRAWN:	CRH
DESIGNED:	MJP
CHECKED BY:	MJP
DATE CHECKED:	02/03/04
SCALE:	AS SHOWN
PROJECT NO.:	00026.b
DRAWING:	3 of 3

DATE	BY	REVISIONS

Petitioners Exhibit # 2C

2/3/2004 9:12:46 AM J:\ATHES\MSLIDTION\CADWE1N\DCT\dwg.dgt plummer: C:\Tspm\WA0325a.tpm
N:\00026\SHEET\00026.DWG

PROTESTANTS' #2



Protestant #3

IN THE MATTER OF THE APPLICATION OF MEADOWCLIFF, A NEW COVENANT CHURCH FOR A SPECIAL EXCEPTION TO PERMIT A CHURCH AND ACCESSORY PARSONAGE N/s OF BELFAST ROAD, 340' EAST OF OLD BELFAST ROAD 8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 85-132-X

: :

O P I N I O N

This case comes before this Board on appeal from a denial of a special exception by the Deputy Zoning Commissioner for a church and accessory parsonage in an R.C. 2 zone. Testimony and evidence received in this case consumed two full days of hearings.

Petitioner presented three witnesses, Mr. Albert Meyers, Petitioner and pastor of the proposed church; Mr. Wesley Guckert, traffic expert; and Frederick Walker, surveyor and land planner. Protestants presented eight witnesses, each of whom testified individually their reasons for the opposition to the granting of this special exception. People's Counsel presented one witness, Mr. Paul Solomon of the Office of Planning & Zoning for Baltimore County, an expert in agricultural purposes. All of this lengthy testimony and evidence is contained within the record produced at these two hearings and is accurately detailed in the memorandums received in this case.

From the testimony and evidence presented by Petitioner, the following statistics evolved. The proposal under the special exception is for a church building ultimately of some 20,000 square feet; a septic drainage area of 17,500 square feet; some 85,000 square feet of paved parking; a two- to three-acre storm water management area; a five- to six-acre area designated for a parsonage; and some 1,400 feet of paved driveway, all of which are to be constructed and used on a parcel of some 51 acres that is now a working farm.

Protest #4

IN THE MATTER OF THE APPLICATION OF BEACHMONT, INC. FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SOUTH SIDE OF MT. VISTA ROAD, 1800 FT. SOUTHEAST OF HARFORD ROAD (6433 MT. VISTA ROAD) 11th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. 85-245-X

O P I N I O N

This case comes before the Board as an appeal from the Opinion and Order of the Zoning Commissioner, dated March 7, 1985, which granted the Petition for Special Exception for a camp with accessory uses thereto, and, additionally the amendment to the Special Exception granted for this property in Case No. 75-83-X (1974).

Rarely has this Board considered a petition which generated such community interest. The Board notes that both days of hearings were heavily attended and the Board received numerous letters both in support of, and in opposition to the petition. Rather than rehashing the testimony of each of the many witnesses, the substance of same may be summarized as follows:

There exists on this site of some 20 acres, a Christian Camp known as Beachmont. The property is located in an area which features some agricultural uses as well as an upper class residential community in which both protestants and supporters reside. The camp was established in 1974, after a bequest of the land by a benefactor who sought to establish a campground which promoted Christian fellowship and principles. Approval for this camp was originally granted by way of Special Exception, with certain limitations, in Case No. 75-83-X (1974). Since 1974, improvements have been made on this site, including a swimming pool, pavilion and other recreational facilities.

Probation #5

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1686

September Term, 1986

SCOTT STRIENBINGER, ET AL

v.

BEACHMONT, INC.

Weant
Bishop
Bell, Rosalyn B.,
JJ.

PER CURIAM

Filed: July 6, 1987



Probate
#79



Pickerstaff
#73

PROTESTANTS' EX #9

Baltimore County
Department of Environmental Protection
& Resource Management
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
494-3733

Robert W. Sheesley
Director

July 18, 1988

Dennis F. Rasmussen
County Executive

Charles B. Heyman, Esq.
Kaplan, Heyman, Greenberg,
Engelman & Belgrad, P.A.
Tenth Floor - Sun Life Building
20 South Charles Street
Baltimore, Maryland 21201

Dear Mr. Heyman:

This is in reference to the issue regarding the Charles Lott property's potential conflict with the Baltimore County Master Plan.

I have recently reviewed the documents you sent to me on behalf of your client, Charles Lott. In addition, I have evaluated my original position and have also received an opinion from the Office of Law regarding this issue, a copy of which is attached. Based on all information provided to me, it is my decision that the Charles Lott property as proposed is in conflict with the Baltimore County Master Plan. One major factor in my decision is the issue of prime and productive soils. It is quite apparent that in the RC4 portion of the proposed Charles Lott development, there is substantial acreage that encompasses prime and productive agricultural soils. It is my feeling that the Charles Lott property as proposed should be reevaluated to account for the prime and productive agricultural soils on the RC4 site and that a revised plan be submitted to reflect development appropriate with RC2 zoning and the issue of prime and productive soils.

I offer this response and accompanying legal opinion for your information and to assist your client in determining what future course of action he should follow. If there are any questions, please contact me.

Very truly yours,

Robert W. Sheesley

Robert W. Sheesley
Director

RWS:pmf
Attachments

cc: Mr. Charles Lott
Arnold Jablon, Esq.
The Honorable Charles A. "Dutch" Ruppersberger, III

Peterborough
#9

THE GREATER SPARKS GLENCOE COMMUNITY COUNCIL

RESOLVED: That at the GENERAL meeting of The Greater Sparks Glencoe Community Council held on April 22, 2004, it was decided by the Council that responsibility for review and action on all zoning/development matters for the period 2004-2005 be placed in the Board of Directors consisting of the following members:

J. Lee Bishop – President
Irving Spitzberg – Vice President
Wendy McIver – Recording Secretary
Laura Sheffield – Corresponding Secretary
Page Crosby – Treasurer

AS WITNESS OUR HANDS AND SEAL THIS 28th DAY OF September 2004.

ATTEST: The Greater Sparks Glencoe Community Council

Wendy L. McIver
Secretary

J. Lee Bishop
President

PROTESTANTS #10

Baltimore County Farm Bureau

1840 York Road, Suite J, Timonium, MD 21093 * BCFB@hotmail.com * phone 410-666-1033 * fax 410-561-7018

September 24, 2004

Baltimore County, Maryland
County Board of Appeals
400 Washington Ave., Room 49
Towson, Maryland 21204

Attention: Mr. Lawrence S. Wescott, Chairman

Dear Chairman Wescott:

As president of Baltimore County Farm Bureau, Inc., I want to inform you of our decision to adamantly oppose Loyola College's plan to develop a facility on agricultural land in Parkton. Our board voted unanimously to oppose this development for the following reasons:

1) Prime and productive farmland will be removed from crop production forever.

2) Baltimore County's nationally recognized program to preserve rural lands will be compromised.

3) Inappropriate development would forever change the character of the area and encourage
Supporting commercial development.

4) It would discourage local farmers from pursuing avenues of permanent agricultural preservation for their lands.

5) It would put added pressure on rural roads endangering the conveyance of agricultural equipment and compromising public safety.

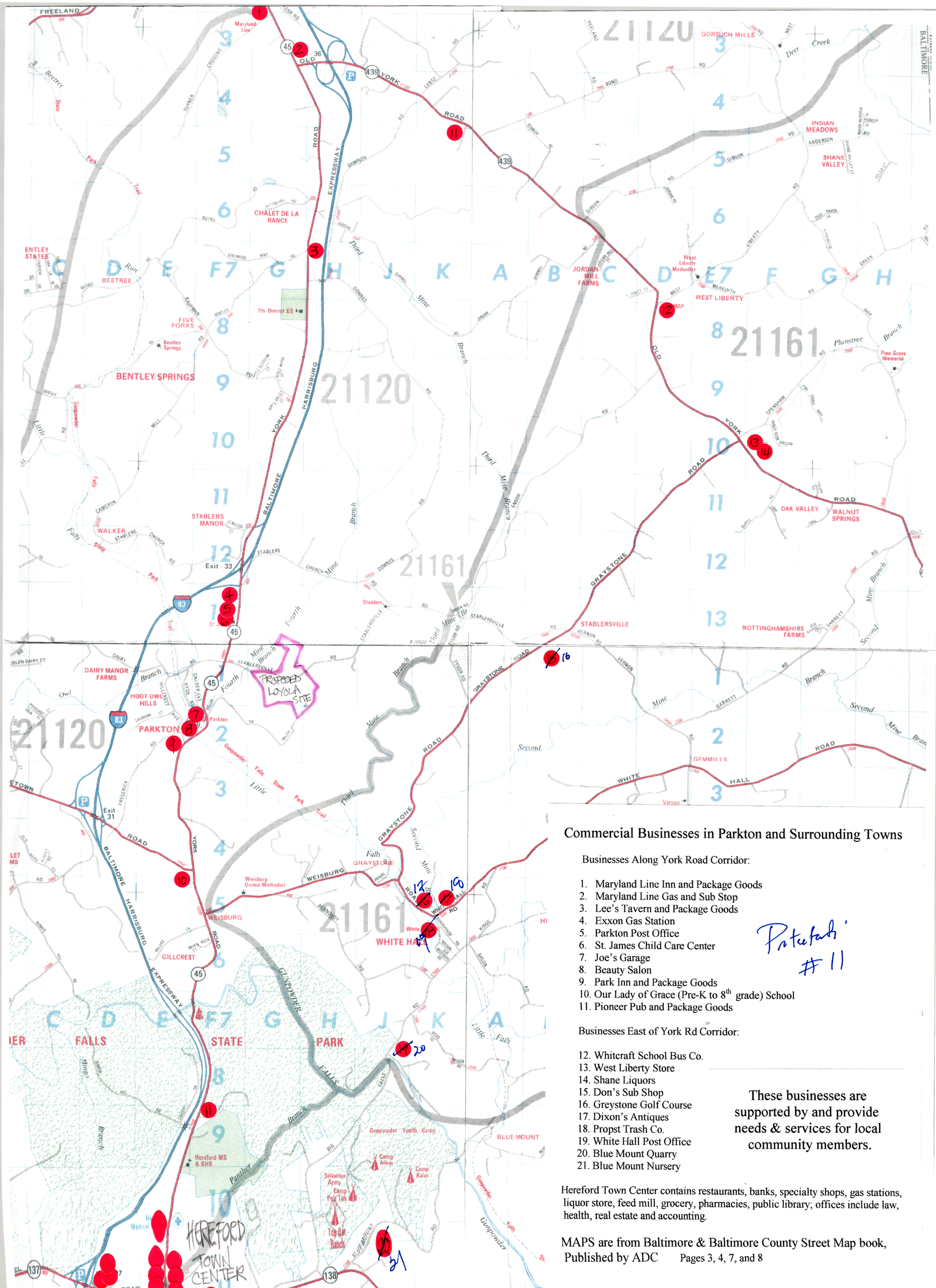
In closing we have come to the conclusion that this is a remarkably bad idea and urge you to deny Loyola's request.

Sincerely Yours,

Leslie A. Richardson,
President

Pro. Ex. #11

LYNNE JONES
815 STABLER'S CHURCH RD
PARKTON, MD 21120
410-343-1468



Commercial Businesses in Parkton and Surrounding Towns

Businesses Along York Road Corridor:

1. Maryland Line Inn and Package Goods
2. Maryland Line Gas and Sub Stop
3. Lee's Tavern and Package Goods
4. Exxon Gas Station
5. Parkton Post Office
6. St. James Child Care Center
7. Joe's Garage
8. Beauty Salon
9. Park Inn and Package Goods
10. Our Lady of Grace (Pre-K to 8th grade) School
11. Pioneer Pub and Package Goods

Protestants #11

Businesses East of York Rd Corridor:

12. Whitcraft School Bus Co.
13. West Liberty Store
14. Shane Liquors
15. Don's Sub Shop
16. Greystone Golf Course
17. Dixon's Antiques
18. Propst Trash Co.
19. White Hall Post Office
20. Blue Mount Quarry
21. Blue Mount Nursery

These businesses are supported by and provide needs & services for local community members.

Hereford Town Center contains restaurants, banks, specialty shops, gas stations, liquor store, feed mill, grocery, pharmacies, public library; offices include law, health, real estate and accounting.

MAPS are from Baltimore & Baltimore County Street Map book, Published by ADC Pages 3, 4, 7, and 8

Protocols - #12

CURRICULUM VITAE

Edward J. Bouwer, Ph.D.

ADDRESS: Geography and Environmental Engr.
The Johns Hopkins University
34th and Charles St.
Baltimore, MD 21218
(410) 516-7437; FAX: (410) 516-8996; E-mail: bouwer@jhu.edu

1115 Dulaney Gate Circle
Cockeysville, MD 21030
(410) 628-6451

BIRTHDATE: December 5, 1955

EDUCATION:

Ph.D.	Stanford University	1982	Environmental Engineering and Science
	Thesis Advisor: Dr. Perry L. McCarty		
	Title: "Transformations of Trace Halogenated Organic Compounds in Biofilms"		
M.S.	Stanford University	1978	Environmental Engineering and Science
B.S.C.E.	Arizona State University	1977	Civil Engineering

PROFESSIONAL EXPERIENCE:

2001-Present	Director, Center for Hazardous Substances in Urban Environments (funded by USEPA)
1992-Present	Professor of Environmental Engineering, The Johns Hopkins Univ. Teaching: Environmental Engineering, Engineering Microbiology, Biological Processes, Biofilms, and Hazardous Waste Management.
1992	Visiting Professor, Dept. of Microbiology, Agricultural University, Wageningen, The Netherlands.
1988-1992	Associate Professor of Environmental Engineering, The Johns Hopkins Univ.
1985-1988	Assistant Professor of Environmental Engineering, The Johns Hopkins Univ.
1983-1984	Assistant Professor of Civil Engineering, University of Houston.
1984 (June)	Research Advisorship, National Institute for Water Supply, The Netherlands.
1983 (July)	Project: "The Behavior of Organic Micropollutants in the Soil".
1978-1982	Graduate Student Research Assistant, Stanford University.
1981-1982	Acting Instructor, Department of Civil Engineering, Stanford University.
1976-1977	Research Assistant in Chemical Technology Division at Oak Ridge National Laboratory, Oak Ridge, Tennessee.

HONORS:

National Science Foundation Graduate Fellowship, 1978-1982.
Engineering Science Inc./Association of Environmental Engineering Professors Award for the Best Doctoral Thesis Relevant to Environmental Engineering Practice for the 1982-1983 Academic Year.
Outstanding Teaching Award, College of Engineering, University of Houston, 1984.
National Science Foundation Presidential Young Investigator Award, 1985-1990.
First Prize in WPCF Student Paper Competition (awarded jointly to Ph.D. student Dennis Lew), 1988.
Paper Award, AWWA Chesapeake Section (awarded jointly to Ph.D. students G. Cobb and D. Lew), 1989.
Kappe Environmental Engineering Lecture, Penn State University, 1990.
Paper Award, AWWA Chesapeake Section (awarded jointly to Ph.D. student A. Leeson), 1990.
Pedagogical Lecture, Contaminants and Sediments, American Chemical Society, 1990.
Outstanding Doctoral Thesis Award, Engineering Science/Association of Environmental Engineering Professors (awarded jointly to Ph.D. student Gordon Cobb), 1990
Outstanding Doctoral Thesis Award, CH2M Hill/Association of Environmental Engineering Professors (awarded jointly to Ph.D. student Robert Martin), 1991
EERO Keynote Lecture, "Microbial Remediation: Strategies, Potentials, and Limitations," Maastricht, The Netherlands, 1992.
Paper Award, AWWA Chesapeake Section (awarded jointly to Ph.D. student Sudha Goel), 1997
Outstanding Doctoral Thesis Award, Parsons Engineering Science/Association of Environmental Engineering Professors (awarded jointly to Ph.D. student Laura Ehlers), 1998
Outstanding Paper Award, Association of Environmental Engineering Professors (with Perry McCarty), 1998
Paper Award, AWWA Chesapeake Section (awarded jointly to Ph.D. student Josh Weiss), 2000
Editor's Award, Journal of Environmental Engineering, ASCE, 2002

Table 3: Summary of Loyola Retreat Center Thermal Effect Scenarios

SCENARIO	MIXED TEMPERATURE		
	With Recharge Loss Table 1a-1d	Without Recharge Loss Table 2a-2d	Difference
	(°F)	(°F)	(°F)
With Maximum Two-Hour Basin B Temperature (87°F)	83.1	82.8	0.2
Maximum Temperature Discharge Can Be Without Causing A Mixed Temperature >68°F	69.6	70.3	
With Average Basin B Discharge Temperature (77.34°F)	74.7	74.5	0.2
With Average Daily Maximum Basin B Discharge Temperature (81.08°F)	77.9	77.7	0.2
MDE Class III-P Temperature Standard	68.0	68.0	
Lethal Temperature for Brook Trout	72.0	72.0	

Protestant Ex #13

TABLE 1a: ANALYSIS OF THE EFFECT OF PROPOSED LOYOLA COLLEGE SPIRITUAL RETREAT CENTER STORMWATER FACILITIES ON WATER TEMPERATURE AT THE HEAD OF WATERS OF THE STATE USING THE MAXIMUM TWO-HOUR BASIN B (12-HR) POND DISCHARGE TEMPERATURE FROM THE BAHR STUDY (Footnote 1)

		FORMULA	VALUE	UNIT
	Receiving Water Computations			
A	Drainage Area at the Head of Waters of the State (from USGS Topographic Map)		17.264	acres
B	July-August average monthly stream flow for the nearest long term U.S. Geological Survey gaging station (Little Falls at Blue Mount)		51.80	cubic feet/second (cfs)
C	Drainage area for nearest gaging station		52.90	square miles
D	Drainage area converted to acres	C * 640	33,856	acres
E	July-August average discharge converted to cfs/acre	B / D	0.0015	cfs/acre
F	July-August average discharge at Head of Waters of the State	A * E	0.0264	cfs
G	Net recharge loss stated by applicant's geohydrologist (Tom Mills)		461,200	gallons per year
H	Net recharge loss converted to cubic feet per second	G / (7.48 * 365 *24 * 60 *60)	0.0020	cfs
I	Net July-August flow at Head of Waters of the State		0.0245	cfs
J	July-August average temperature at Head of Waters of the State (See footnote 2)		59.4	degrees Fahrenheit
K	Temperature x Discharge	I * J	1.45	dimensionless
	Proposed Stormwater Pond			
L	Channel Protection Volume SWM Facility #2		6,931.00	cubic feet
M	Discharge with 12-hour drawdown	L / (60 * 60 * 12)	0.16	cfs
N	Maximum Temperature of Two-Hour Duration (from Bahr 1996 footnote 1)		87	degrees Fahrenheit
O	Distance from SWM Facility #2 outfall to Head of Waters of the State		110	feet
P	Anticipated cooling between outfall and Head of Waters of the State (see footnote 3)	O X 0.0029	0.3	degrees Fahrenheit
Q	Temperature of the discharge upon arrival at the Head of Waters of the State	N - P	86.7	degrees Fahrenheit
R	Temperature x Discharge	M * Q	14	dimensionless
S	**MIXED TEMPERATURE**	(K + R) / (I + M)	**83.1**	degrees Fahrenheit

1 Bahr, R.P., 1996. A temperature study of discharges from three extended detention/wetland stormwater management basins in Maryland. Chesapeake Biological Laboratory, University of Maryland, Solomons, MD 20688.

2 Water temperature at the head of stream was measured with Hobo Water Temperature Pro immersed in the tributary from 7-11-04 through 9-03-04 at the Stablersville Road bridge.

3 Anticipated cooling is 0.0029 degrees Fahrenheit per foot of distance between the stormwater pond outfall and the head of waters of the state. This rate of cooling is based upon Figure 15, in *Thermal Impacts Associated with Urbanization and Stormwater Ma*

Petitioner's Ex #14

TABLE 1c: ANALYSIS OF THE EFFECT OF PROPOSED LOYOLA RETREAT CENTER STORMWATER FACILITIES ON WATER TEMPERATURE AT THE HEAD OF WATERS OF THE STATE USING THE *AVERAGE* TEMPERATURE FOR BASIN B (12-HR) FROM THE BAHR STUDY (Footnote 1)

		FORMULA	VALUE	UNIT
	Receiving Water Computations			
A	Drainage Area at the Head of Waters of the State (from USGS Topographic Map)		17.264	acres
B	July-August average monthly stream flow for the nearest long term U.S. Geological Survey gaging station (Little Falls at Blue Mount)		51.80	cubic feet/second (cfs)
C	Drainage area for nearest gaging station		52.90	square miles
D	Drainage area converted to acres	C * 640	33,856	acres
E	July-August average discharge converted to cfs/acre	B / D	0.0015	cfs/acre
F	July-August average discharge at Head of Stream	A * E	0.0264	cfs
G	Net recharge loss stated by applicant's geohydrologist (Tom Mills)		461,200	gallons per year
H	Net recharge loss converted to cubic feet per second	G / (7.48 * 365 *24 * 60 *60)	0.0020	cfs
I	Net July-August flow at Head of Waters of the State		0.0245	cfs
J	July-August average temperature at Head of Stream (See footnote 2)		59.4	degrees Fahrenheit
K	Temperature x Discharge	I * J	1.45	dimensionless
	Proposed Stormwater Pond			
L	Channel Protection Volume SWM Facility #2		6,931.00	cubic feet
M	Discharge with 12-hour drawdown	L / (60 * 60 * 12)	0.16	cfs
N	**Average Basin B (12-hr) Discharge Temperature (from Bahr 1996)**		**77.34**	degrees Fahrenheit
O	Distance from SWM Facility #2 outfall to head of waters of the state		110	feet
P	Anticipated cooling between outfall and head of stream (see footnote 3)	O X 0.0029	0.3	degrees Fahrenheit
Q	Temperature of the discharge upon arrival at the head of stream	N - P	77.0	degrees Fahrenheit
R	Temperature x Discharge	M * Q	12	dimensionless
S	**MIXED TEMPERATURE**	(K + R) / (I + M)	**74.7**	degrees Fahrenheit

1 Bahr, R.P., 1996. A temperature study of discharges from three extended detention/wetland stormwater management basins in Maryland. Chesapeake Biological Laboratory, University of Maryland, Solomons, MD 20688.

2 Water temperature at the head of stream was measured with Hobo Water Temperature Pro immersed in the tributary from 7-11-04 through 9-03-04 at the Stablersville Road bridge.

3 Anticipated cooling is 0.0029 degrees Fahrenheit per foot of distance between the stormwater pond outfall and the head of waters of the state. This rate of cooling is based upon Figure 15, in *Thermal Impacts Associated with Urbanization and Stormwater Ma*

Protected Cr #75

TABLE 4: WATERSHED AREA REQUIRED TO NEGATE THERMAL IMPACT OF LOYOLA COLLEGE SPIRITUAL RETREAT CENTER USING THE MAXIMUM TWO-HOUR BASIN B (12-HR) POND DISCHARGE TEMPERATURE FROM THE BAHR STUDY (Footnote 1)

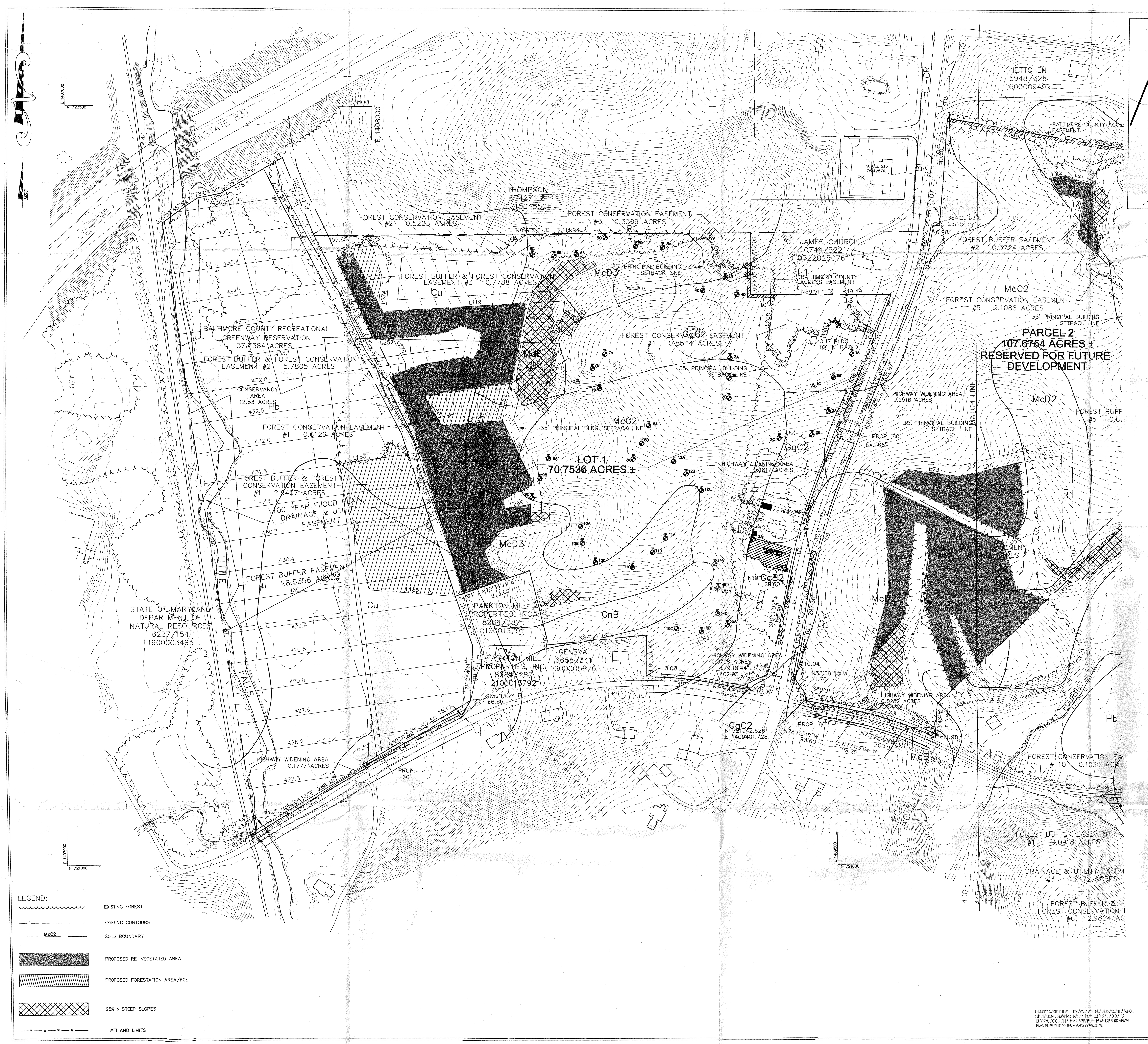
		FORMULA	VALUE	UNIT
	Receiving Water Computations			
A	**Drainage Area**		**230.0**	acres
B	July-August average monthly stream flow for the nearest long term U.S. Geological Survey gaging station (Little Falls at Blue Mount)		51.80	cubic feet/second (cfs)
C	Drainage area for nearest gaging station		52.90	square miles
D	Drainage area converted to acres	C * 640	33,856	acres
E	July-August average discharge converted to cfs/acre	B / D	0.0015	cfs/acre
F	July-August average discharge at Head of Waters of the State	A * E	0.3519	cfs
G	Net recharge loss stated by applicant's geohydrologist (Tom Mills)		461,200	gallons per year
H	Net recharge loss converted to cubic feet per second	G / (7.48 * 365 *24 * 60 *60)	0.0020	cfs
I	Net July-August flow at Head of Waters of the State		0.3499	cfs
J	July-August average temperature at Head of Waters of the State (See footnote 2)		59.4	degrees Fahrenheit
K	Temperature x Discharge	I * J	20.79	dimensionless
	Proposed Stormwater Pond			
L	Channel Protection Volume SWM Facility #2		6,931.00	cubic feet
M	Discharge with 12-hour drawdown	L / (60 * 60 * 12)	0.16	cfs
N	Maximum Temperature of Two-Hour Duration (from Bahr 1996 footnote 1)		87	degrees Fahrenheit
O	Distance from SWM Facility #2 outfall to Head of Waters of the State		110	feet
P	Anticipated cooling between outfall and Head of Waters of the State (see footnote 3)	O X 0.0029	0.3	degrees Fahrenheit
Q	Temperature of the discharge upon arrival at the Head of Waters of the State	N - P	86.7	degrees Fahrenheit
R	Temperature x Discharge	M * Q	14	dimensionless
S	**MIXED TEMPERATURE**	(K + R) / (I + M)	**68.0**	degrees Fahrenheit

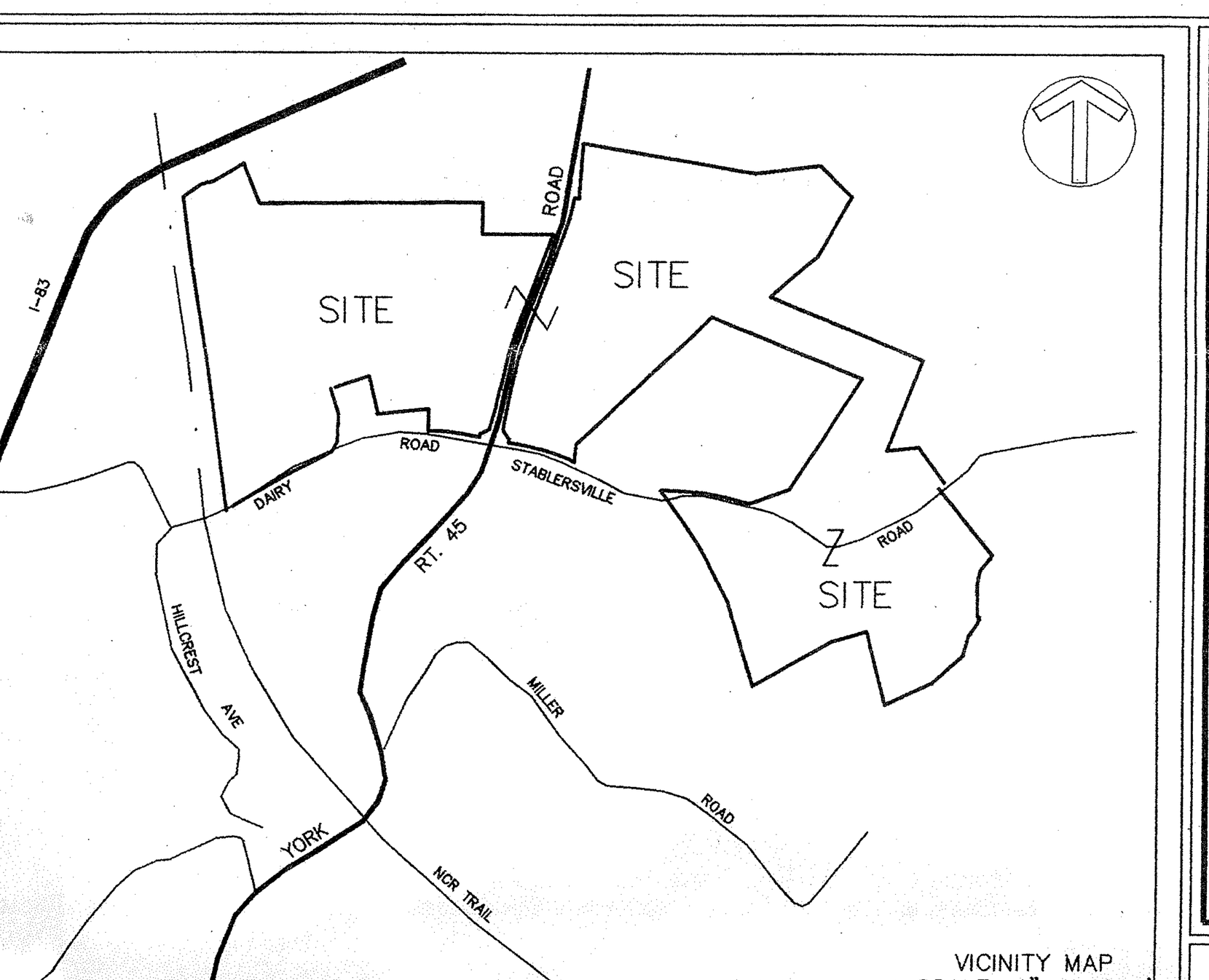
1 Bahr, R.P., 1996. A temperature study of discharges from three extended detention/wetland stormwater management basins in Maryland. Chesapeake Biological Laboratory, University of Maryland, Solomons, MD 20688.

2 Water temperature at the head of stream was measured with Hobo Water Temperature Pro immersed in the tributary from 7-11-04 through 9-03-04 at the Stablersville Road bridge.

3 Anticipated cooling is 0.0029 degrees Fahrenheit per foot of distance between the stormwater pond outfall and the head of waters of the state. This rate of cooling is based upon Figure 15, in *Thermal Impacts Associated with Urbanization and Stormwater Ma*

Protestants' Ex. #16





kjWellsInc
7403 NEW CUT ROAD
KINGSVILLE, MARYLAND 21087
(410) 592-8800

Land Surveyors & Site Planners

SEAL

SITE DATA:

1) OWNERS: ELEANOR D. SPRUILL & MARION T. CLARKE
W. DUVALL SPRUILL & FOREST F. BRAMBLE, PERSONAL REPRESENTATIVES
2) OWNER'S ADDRESS: P.O. BOX 1473
COLUMBIA, SC 29202
3) DEED REFERENCES: 66/466 & 8284/291
4) TAX ACCOUNT NUMBERS: 0703037170, 2100013793 & 2100013794
5) TAX MAP: 12 GRIDS 20 & 21 PARCELS 142 & 221
6) ZONING: RC-2, RC-4 & RC-5
7) ZONING MAP: NW 32-B, 32-C, 33-B & 33-C
8) CENSUS TRACT: 4070.00
9) COUNCILMANIC DISTRICT: 3rd
10) ELECTION DISTRICT: 5th
11) WATERSHED: NON SERVICE
12) SUBSEWERSHED: NON SERVICE
13) SCHOOL DISTRICT: SEVENTH DISTRICT ES
14) REGIONAL PLANNING DISTRICT: 301
15) AREA OF TRACT: 181.5349 ACRES
16) AREA OF HIGHWAY WIDENING: 3.1059 ACRES
17) NET AREA: 178.4290 ACRES
18) DENSITY CALCULATIONS:
LOTS ALLOWED: RC 2 = 1 UNIT
RC 4 = 18.33 AC x 0.2 = 3 UNITS
RC 5 = 57.78 x 0.667 = 38 UNITS
(SEE NOTE 11 BELOW FOR LIMITATIONS)
LOTS PROPOSED: RC 2 = 1 UNIT
RC 4 = 0 UNITS
RC 5 = 1 UNITS
19) EXISTING AND PROPOSED USE:
SINGLE FAMILY DWELLING / AGRICULTURAL
20) AREA OF DISTURBANCE: -0- SF
21) PRIOR ZONING HEARINGS: NONE
22) RC-4 CONSERVANCY COMPUTATIONS
AREA = 18.33 ACRES
PROPOSED CONSERVANCY = 18.33 AC x 0.70 = 12.83 AC

NOTES:

1) THE RC-2 PORTION OF THE PROPERTY AS SHOWN HEREON HAS BEEN HELD INTACT SUBSEQUENT TO JANUARY 15, 1982. THE RC-4 PORTION OF THE PROPERTY SHOWN HEREON HAS BEEN HELD INTACT SINCE NOVEMBER 25, 1979. THE RC-5 PORTION OF THE PROPERTY SHOWN HEREON HAS BEEN HELD IN TACT SUBSEQUENT AUGUST 30, 1989. THE DEVELOPER'S SURVEYOR HAS CONFIRMED THAT NO PART OF THE GROSS AREA OF THE PROPERTY AS SHOWN HEREON HAS EVER BEEN UTILIZED, RECORDED OR REPRESENTED AS DENSITY OR AREA TO SUPPORT ANY OFF-SITE DWELLING.
2) BY SEPARATE NOTARIZED CERTIFICATION THERE ARE NO DELINQUENT ACCOUNTS FOR ANY OTHER DEVELOPMENT DUE AND OWED BALTIMORE COUNTY, MARYLAND BY THE APPLICANT, A PERSON WITH FINANCIAL INTEREST IN THE PROPOSED DEVELOPMENT, OR ANY PERSON WHO WILL PERFORM CONTRACTUAL SERVICES ON BEHALF OF THE PROPOSED DEVELOPMENT.
3) THIS PLAN IS ACCURATE AND HAS BEEN PREPARED IN COMPLIANCE WITH THESE REGULATIONS.
4) THE ROAD SHOWN HEREON IS TO BE A PUBLIC ROAD AND SHALL BE DEDICATED TO BALTIMORE COUNTY AT NO COST TO THE COUNTY.
5) NO MORE THAN 15% OF ANY LOT IN A RC 5 ZONE MAY BE COVERED BY BUILDINGS. NO MORE THAN 10% OF ANY LOT IN A RC 4 ZONE MAY BE COVERED BY BUILDINGS. NO MORE THAN 25% OF THE NATURAL VEGETATION MAY BE REMOVED IN A RC 4 ZONE.
6) ANY PROPOSED SIGNAGE WILL COMPLY WITH BCZR SECTION 450 AND ALL ZONING SIGN POLICIES.
7) THE MAXIMUM HEIGHT FOR A STRUCTURE IN RC-2 AND RC 5 ZONES ARE 35 FEET.
8) THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST CONSERVATION EASEMENT, FOREST BUFFER EASEMENT AND THE FOREST BUFFER & FOREST CONSERVATION EASEMENT EXCEPT AS PERMITTED BY BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
9) ANY FOREST CONSERVATION EASEMENTS, FOREST BUFFER EASEMENTS AND FOREST BUFFER & FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO THE PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS.
10) THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION, SOIL COMP ACTION OR EXCAVATION, INTRODUCTION OF TOXIC CHEMICALS OR OTHER DISTURBANCES DETRIMENTAL TO THE LIVE SPECIMEN TREES OR CRITICAL ROOT ZONES FOR THESE TREES EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
11) THERE IS A LIMITATION OF RECORD ESTABLISHED BY A RESTRICTIVE COVENANT AGREEMENT DATED OCTOBER 10, 2000 BETWEEN THE ESTATE OF MARION T. CLARKE AND THE ESTATE OF ELEANOR DUVALL SPRUILL AND WALTER T. VAIT RECORDED IN LIBER 14910 FOLIO 118.
12) ALL ROADS/STREETS ARE OR WILL BE PUBLIC.
13) PROPOSED AVERAGE DAILY TRIPS = 12 x 3 = 36 A.D.T.
14) NO SIGNIFICANT CHANGES TO TOPOGRAPHY ARE PROPOSED.
16) A LANDSCAPE PLAN IS NOT REQUIRED AT THIS TIME
17) ENVELOPES SHOWN HEREON ARE FOR LOCATION OF ALL PRINCIPAL BUILDINGS ONLY. ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARDS MAY BE CONSTRUCTED OUTSIDE THE ENVELOPE, BUT MUST COMPLY WITH SECTIONS 400 AND 301 OF THE BALTIMORE COUNTY ZONING REGULATIONS. (SUBJECT TO COVENANTS AND APPLICABLE BUILDING PERMITS.)
18) ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARD CANNOT BE LOCATED IN FLOOD PLAIN AREAS OR HYDRIC SOILS.
19) STORMWATER MANAGEMENT IS NOT REQUIRED AT THIS TIME AS THE AMOUNT OF PROPOSED DISTURBED AREA IS LESS THAN 5000 SQUARE FEET. ANY FUTURE SUBDIVISION OF THIS PROPERTY SHOWN HEREON MAY REQUIRE STORMWATER MANAGEMENT WATER QUANTITY AND QUALITY CONTROL.
20) YORK ROAD IS A MASTER PLAN SCENIC CORRIDOR.
21) BUREAU OF TRAFFIC ENGINEERING AND TRANSPORTATION HAS CONFIRMED THAT THE SUBJECT SITE IS NOT WITHIN A TRAFFIC DEFICIENT AREA.
22) ALL PARCELS ARE FOR SALE.
23) THERE ARE NO UNDERGROUND STORAGE TANKS ON OR WITHIN 100 FEET OF THE SUBJECT PROPERTY.
24) THE DWELLING LOCATED ON THE WEST SIDE OF YORK ROAD IS HISTORICALLY SIGNIFICANT. AN MARYLAND INVENTORY OF HISTORIC PROPERTIES FORM HAS BEEN PREPARED FOR THE MARYLAND HISTORICAL TRUST.
25) THE GUNPOWDER FALLS STATE PARK TRAIL IS DESIGNATED AS A SCENIC CORRIDOR ON THE SCENIC RESOURCES MAP AND AS A MASTER PLAN STREAM VALLEY PARK IN THE MASTER PLAN 2010.
26) ALL EASEMENTS AND HIGHWAY WIDENING AREAS SHOWN HEREON SHALL BE SHOWN AND CONVEYED PER A RECORD PLAT.
27) A VARIANCE WAS GRANTED BY BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT FROM THE REGULATIONS FOR THE PROTECTION OF WATER QUALITY, STREAMS, WETLANDS AND FLOODPLAINS TO REDUCE THE FOREST BUFFER EASEMENT LIMITS BY ESTABLISHING GOOD VEGETATIVE COVER. CONDITIONS WERE PLACED UPON THE VARIANCE TO MINIMIZE WATER QUALITY IMPACTS.
28) A GREENWAY RESERVATION HAS BEEN OFFERED FOR DEDICATION TO BALTIMORE COUNTY OF THE 100 YEAR FLOODPLAIN BOUNDARY AND THE ADJOINING FOREST BUFFER. THE TOTAL ACREAGE OF THE GREENWAY RESERVATION = 37.4757.
29) WITHIN THE AREA SHOWN AS BALTIMORE COUNTY RECREATIONAL GREENWAY RESERVATION, PERMITTED USES MAY INCLUDE: PUBLIC ACCESS FOR HIKING, BICYCLING, FISHING, NATURE/ENVIRONMENTAL STUDIES, AND BALTIMORE COUNTY SUPERVISED TRAIL IMPROVEMENTS AND MAINTENANCE, SUBJECT TO APPROVAL BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
30) THE HOUSE ON LOT 1 IS LISTED WITH THE BALTIMORE COUNTY LANDMARK PRESERVATION COMMISSION. HOUSE IS NON-CONFORMING WITH REGARDS TO THE REQUIRED MINIMUM BUILDING SETBACK LINES.

AGRICULTURAL NOTE:

ANY DWELLING MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATIONS, INCLUDING BUT NOT LIMITED TO, NOISE, ODORS, FUMES, DUST, THE OPERATIONS OF MACHINERY OF ANY KIND DURING 24 HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. THE COUNTY SHALL NOT CONSIDER AN AGRICULTURAL OPERATION TO BE A PUBLIC OR PRIVATE NUISANCE, IF THE OPERATION COMPLIES WITH THESE REGULATIONS AND ALL FEDERAL, STATE OR COUNTY HEALTH OR ENVIRONMENTAL REQUIREMENTS.

BALTIMORE COUNTY MINOR SUBDIVISION
Project No. 02-053-M

DEVELOPMENT REGULATIONS
[x] Exempt from Division 2
[ ] Panhandle, exempt from Section# 26-202 & 26-206

PDM CERTIFICATION
[x] Approved [ ] Disapproved
By: Bruno Rudaitis Date: 12/16/02

APPROVED, DEPRM
By: Thomas L. Vidmar Date: 12/11/02

I HEREBY CERTIFY THAT I REVIEWED WITH DUE DILIGENCE THE MINOR SUBDIVISION COMMENTS DATED FROM JULY 23, 2002 TO JULY 23, 2002 AND HAVE PREPARED THIS MINOR SUBDIVISION PLAN PURSUANT TO THE AGENCY COMMENTS.

GRAPHIC SCALE
100 0 50 100 200 400
(IN FEET)
1 inch = 100 ft.

MINOR SUBDIVISION OF THE CLARKE/SPRUILL PROPERTY
19112 YORK ROAD
BALTIMORE COUNTY
MARYLAND
5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

REVISIONS:	
NO.	DATE

DRAWN BY: KJW
CHECKED BY: KJW
DATE: 10/01/01
TITLE:
SHEET 1 OF 2
PROJECT NO.:
2001-018

Plat Exh 6

PROTESTANTS Ex #17 D ONLY

Baltimore County
Department of Environmental Protection
and Resource Management

Office of the Director
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

RECEIVED
AUG 20 2002

August 8, 2002

Mr. W. Duvall Spruill
P.O. Box 1473
Columbia, South Carolina 29202

Re: Clarke/Spruill Property
Forest Buffer Variance

Dear Mr. Spruill:

The Department of Environmental Protection and Resource Management is in receipt of a request for a variance to the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains for the Clarke/Spruill Property located in Parkton, Maryland. The variance proposes to allow the applicant to establish good vegetative cover in selected areas in order to reduce the width of the Forest Buffer Easement. The majority of the areas in question are currently being farmed and as such represent poor vegetative cover.

The minor subdivision of this property will create two parcels of land. The first parcel (Parcel 1) is located on the west side of York Road and contains approximately 70 acres of land. The second parcel (Parcel 2) is located on the east side of York Road and contains approximately 107 acres of land. It is anticipated that Parcel 1 will be the subject of a major subdivision in the near future, and that Parcel 2 will continue to be farmed indefinitely.

This Department has reviewed your request and has determined that a practical difficulty exists and that approval of the variance will minimize water quality impacts. Therefore, in accordance with Section 14-334(a)(1) of the Baltimore County Code, we hereby grant the requested variance with the following conditions:

1. The following note must be shown on all future plans prepared for this property:

   "A variance was granted by the Baltimore County Department of Environmental Protection and Resource Management form the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains to reduce Forest Buffer Easement limits by establishing good

Printed with Soybean Ink on Recycled Paper

PROTESTANTS' EX 18

ANNUAL (2000) and FINAL (1996-2000) PERFORMANCE REPORT

Maryland Department of Natural Resource
Fisheries Service
Freshwater Fisheries Division

SURVEY AND MANAGEMENT OF MARYLAND'S FISHERY RESOURCES

Management of Maryland's Coldwater Streams

Federal Aid Project: F-48-R-10
2000

Baltimore County Streams With RC 2 Zoning

PROTESTANTS' EX #19


Prettyboy Reservoir
Loch Raven Reservoir
Bird River
Gunpowder Falls
Middle River
Back River
Patapsco River
YORK RD
HARRIS MILL RD
OLD HARFORD RD
HOFFMANVILLE RD
ROCKDALE RD
MIDDLETOWN RD
THELAND RD
WALNUT GROVE CHURCH RD
STAFFORD RD
WISEBURG RD
MILLER SHOP RD
BECKLEYSVILLE RD
BRECKENRIDGE RD
RAYVILLE RD
GUNPOWDER RD
PRETTYBOY DAM RD
MT CARMEL RD
PLEASANT MEADOW RD
EAGLE RD
YEOMAN RD
BLACKSMITH RD
DOVER RD
FRINGER RD
BAKER RD
BELFAST RD
MANCHESTER RD
HANOVER RD
WESTMINSTER PIKE
TYLER RD
WORTHINGTON RD
SHAWAN RD
TUNNEL RD
MC CONNICK RD
ASHLAND RD
FOREST HILL RD
MERRYMAN MILL RD
PAPER MILL RD
FOREST VILLE RD
SYLVERWOOD RD
WARREN RD
BORLEY RD
CRANBROOK RD
OLD BORLEY RD
SUNNY LANE PL
GREENSIDE DR
ALMS HOUSE RD
CHURCH LN
PADONIA RD
FOX SPRING RD
EASTERN RD
TIMONIUM RD
AYLESBURY RD
RIDGELY RD
MARGATE RD
JARVIS RD
FRANCINE RD
SEMINARY AVE
MANSA TRL
FALLS RD
GREENWOOD AVE
BROADWAY RD
WALNUT AVE
PARK VIEW TERRACE AVE
CALES RD
GREENSPRING VALLEY RD
GREENSPRING AVE
GARRISON FOREST RD
NICODEMUS RD
REISTERSTOWN RD
GREYSTONE CASTLE LN
DEER PARK RD
CHURCH RD
TOLLGATE RD
GOLF FIELD RD
WINDS CHASE RD
LAKESIDE BLVD
LYONS MILL RD
MC DONOGH RD
WINANDS RD
LIBERTY RD
WINFIELD RD
OLD COURT RD
WOODVALLEY DR
RUXTON RD
BOYCE AVE
BELLONA AVE
CHARLES ST
JOPPA RD
DULANEY HAMPTON LN
PROVIDENCE RD
CROMWELL BRIDGE RD
PENNSYLVANIA AVE
GOUCHER BLVD
BURKE AVE
HILLEN RD
DULANEY DR
STEVENSON LN
TAYLOR AVE
OAKLEIGH RD
OLD HARFORD RD
WOODSIDE AVE
WALKER AVE
REGESTER AVE
SMITH AVE
LAKE AVE
OLD PIMLICO RD
OLD COURT RD
HOOKS LN
BELLONA MACKENZIE AVE
MONKTON RD
MATTHEWS RD
CORBETT RD
YORK RD
OLD YORK RD
HESS RD
JANNETTSVILLE PIKE
SWEET AIR RD
PHOENIX RD
SPARKS RD
OLD YORK RD
GLENCOE RD
KING GREEN RD
WILLIAMS RD
MANOR RD
DULANEY VALLEY RD
SUNNYMEAD RD
SUNSHINE AVE
JERUSALEM RD
KENILWORTH AVE
BROADMOOR RD
PHILADELPHIA RD
FORGE RD
CONVENTION AVE
JOPPA RD
EBENEZER RD
SILVER SPRING RD
PULASKI HWY
PUTTY HILL AVE
WALTHER BLVD
PERRY HALL BLVD
CARAWELL BLVD
BELAIR RD
GOLDSPRING RD
KING AVE
PULASKI HWY
BIRD RIVER BEACH RD
GRACE E ROBERTSON RD
EDGEMERE AVE
EDGEMERE RD
LAKELAND
HAZELWOOD AVE
GOLDEN RING RD
WHITE MARSH BLVD
MARTIN BLVD
MOSS RIDGE RD
WILSON POINT RD
CARROLL ISLAND RD
ORIOLE RD
HAMILTON AVE
VIRGINIA RD
OAKLEIGH AVE
PATAPSCO AVE
MACK AVE
ESSEX AVE
OLD EASTERN AVE
MOSS BORO RD
MARILYN AVE
RIVERSIDE DR
TURKEY POINT RD
ROLLING MILL RD
NORTHPOINT BLVD
GERMAN HILL RD
DELVALE AVE
BULLERS POINT RD
DUNKIRK RD
DUNVILLE RD
BRISBANE WAY
LYNCH RD
NORTHPOINT RD
BUCKINGHAM DR
BACK RIVER NECK RD
SPARROWS POINT RD
LOOSE FARM RD
MILLERS ISLAND RD
MC COMAS RD
CHESTER AVE
BELAIR RD
OAKLEIGH RD
CONNIE LN

CURRICULUM VITAE

BRIAN E. REED

EDUCATION

Ph.D.	**1990**	State University of New York at Buffalo, Environmental Engineering
MS	**1986**	State University of New York at Buffalo, Environmental Engineering
BS	**1984**	State University of New York at Buffalo, Civil Engineering

Experience in Higher Education

8/2002 - present	University of Maryland Baltimore County, Acting Chair and Associate Professor, Civil and Environmental Engineering
8/2000-8/2002	University of Missouri-Columbia, Associate Professor, Civil and Environmental Engineering
1995 – 8/2000	West Virginia University, Associate Professor, Civil and Environmental Engineering
1991 - 1995	West Virginia University, Assistant Professor, Civil and Environmental Engineering
1990 - 1991	Texas A&M University-Kingsville, Assistant Professor, Civil and Environmental Engineering
9/86 - 5/89	State University of New York at Buffalo, University Research Lecturer, Engineering and Applied Sciences
9/84 - 7/86	State University of New York at Buffalo, Teaching and Research Assistant, Civil Engineering.

Experience in Other than Higher Education

7/84 - 8/84	Material Engineering Associates, Water Chemist, Buffalo, New York

Honors Received

WVU Department of Civil and Environmental Engineering, Excellence in Teaching Award, 1999
Phi Kappa Phi – Faculty Inductee 1998
WVU Department of Civil and Environmental Engineering, Excellence in Teaching Award, 1997-98
1993 DOE Environmental Restoration/Waste Management Junior Faculty Award
WVU College of Engineering 1993 Young Researcher of the Year
University Research Lectureship in Engineering, 1986-89
Graduated *Cum Laude*, 1984
Dean's Honor List, 1983-84

Protestants · Ex #24

Nitrogen & Phosphorus - Loyola College Spiritual Retreat Center

Prepared By
Dr. Brian Reed
University of Maryland Baltimore County
1000 Hilltop Circle
TRC Building Room 278
Baltimore, MD 21250
410.455.8649

January 3, 2005

Petitioner Ex #25

All RC-2 Parcels: Vacant ; >10 Acres; in watersheds lacking trout; Privately owned

COUNT	MAP	PARCEL	ACREAGE	OWNER NAME
1	1	1	18.00	SIEGMAN H WAYNE & JEFFREY L
2	1	9	30.00	FISHER EDWARD B & KATIE A
3	1	13	11.41	BERNA ANDREA A
4	1	14	15.80	BERNA ANDREA NOLASCO PAULA
5	1	20	20.00	HEDEMANN ROBERT F & JO ANN
6	1	37	34.73	DUNCAN ROGER C
7	14	5	16.33	SNYDER GEORGE W ET AL
8	14	11	25.97	MARTIN JAMES E & BEATRICE D
9	14	30	108.88	REEDER FRANCES A & JOHN H CO-TRUSTEES
10	14	50	23.06	MARTIN JAMES E & BEATRICE D
11	15	9	39.13	WARD WILLIAM F JR
12	15	17	44.30	MARTIN MARION AMOS & JANET LOU
13	15	27	34.65	TRACEY ROBERT W & EDITH A
14	15	57	71.94	SPARKLE DEW FARMS INC
15	15	116	17.55	FLEISCHMANN MARK J & SALLY C
16	15	186	14.00	TRACEY DAVID W & WENDY C
17	15	241	30.48	TRACEY ROBERT W & EDITH A
18	19	8	10.09	MUNSHAUR ALTON M & DOROTHY F
19	19	8	10.10	WALSH STERLING E & GLADYS T
20	19	9	27.28	MERRYMAN W LEROY & CATHERINE ALVERTA
21	19	10	49.50	ELSEROAD SHIRLEE GREEN
22	19	11	17.00	COLE THOMAS EUGENE & DIANNE C
23	19	12	65.94	TRIPLE J JOINT VENTURE
24	19	32	14.50	COLE DONALD E
25	19	33	38.86	MAUSER JANE ALLENDER OEFFNER JOAN ALLENDER
26	19	35	124.55	MIELKE WILLIAM C SR & CHARLES R/GEORGE H
27	19	51	16.60	MAUSER JANE ALLENDER OEFFNER JOAN ALLENDER
28	19	112	40.64	MIELKE GEORGE H & RHODA ANN
29	19	112	23.40	ROUSE JAMES CHRISTENSEN-OELKE ANY
30	30	5	38.07	MELLON BANK N A G DONALD GERLACH TRUSTEES
31	30	10	28.70	MELLON BANK N A G DONALD GERLACH TRUSTEES
32	30	12	59.00	GOULD H THORNE & HANNAH B
33	30	13	198.64	HARFORD PARTNERS LLC

Protestants' Ex #26

PARCELS IN THE BIRD RIVER, GRANITE & SHAWAN AREAS

RC-2 Parcels: Vacant ; >10 Acres; Privately owned

AREA	MAP	PARCEL	ACREAGE	TROUT WATERSHED	MDE USE DESIGNATION	OWNER NAME
Bird River	73	63	23.02	NO	I	FURNKAS THOMAS H & CATHERINE M
Bird River	73	106	12.12	NO	I	BYRUM BARNEY L BYRUM ELIZABETH & BARNEY L 3RD ET AL
Bird River	73	329	13.98	NO	I	WIRTZ & DAUGHTERS INC
Bird River	83	132	77.37	NO	I	SINES NORMAN L JR & VICTORIA D
Bird River	83	133	53.96	NO	I	SINES JOSHUA M & BARBARA D
Bird River	83	494	10.08	NO	I	EURICE JOSEPH G & HELEN A
Bird River	83	553	128.92	NO	I	SOUTHERN FOUR INC
Granite	66	523	13.57	NO	I	REDLAND GENSTAR INC
Granite	66	663	11.22	NO	I	SHERRON ROBERT J & MARY A
Granite	75	2	76.30	NO	I	REDLAND GENSTAR INC
Granite	75	28	56.89	NO	I	REDLAND GENSTAR INC
Granite	75	46	12.86	NO	I	JACKSON SHARON HUBBARD & ALAN E
Granite	76	1	135.00	NO	I	REDLAND GENSTAR INC
Granite	76	7	10.96	NO	III	SCHLEE JOSEPH F/HELEN C & KENNETH A
Granite	76	129	50.18	NO	I	REDLAND GENSTAR INC
Granite	76	230	14.23	NO	I	RANDALL WILLIAM E 3RD & DAWN T
Granite	86	202	113.85	NO	I	NEUBAUER MARGARET ELIZABETH ALBRECHT ANN T CULVER JANE ELLEN
Granite	86	202	37.80	NO	III	NEUBAUER MARGARET ELIZABETH ALBRECHT ANN T CULVER JANE ELLEN
Granite	86	273	13.29	NO	III	MATHENA JEFFREY E SR BERG VERNA JEAN
Shawan	41	10	33.43	YES	III	MURRAY FAMILY LIMITED PARTNERSHIP
Shawan	41	25	20.00	YES	III	GRISWOLD JACK S & CAROL I
Shawan	41	27	11.66	YES	III	COLLINS MARK M JR & VICTORIA C
Shawan	41	27	14.79	YES	III	COLLINS MARK MCC & VICTORIA C
Shawan	41	96	46.94	YES	III	GERBER WILLIAM E & DOROTHY M
Shawan	41	114	18.74	YES	III	SCHIRMER GRETE B
Shawan	41	137	22.10	YES	III	SCHIRMER HORST K & GRETE B
Shawan	41	138	22.49	YES	III	EASTER JOHN HAMILTON & VIRGINIA CROKER
Shawan	41	156	27.41	YES	III	FENWICK ELIZABETH W WHITE DAVISONWHEDBEE THOMAS C
Shawan	41	161	15.05	YES	III	WALSH PATRICK C & MARGARET C
Shawan	41	163	29.70	YES	III	FRANKEL STUART D & LYN E
Shawan	41	169	52.67	YES	III	KENNEDY JAMES A C & KAREN S

Portions of #27

194082.1mN
449403.6mE

64

194081.9mN
454890.0mE

576

573

570

567

564

72

74

HARFORD CO MAP 68

HARFORD CO

BALTIMORE CO

GUNPOWDER FALLS STATE PARK

STATE OF MARYLAND
DEPT OF FORESTS & PARKS
507 3/108
115.05 A
P 154

STATE OF MD
DEPT OF NATURAL RESOURCES
6202/255
59.81 A
P 386

STATE OF MARYLAND
(DEPT OF NATURAL RESOURCES)
6461/825
224.48 A
P 152

STATE OF MARYLAND
(DEPT OF NATURAL RESOURCES)
6202/255
79.94 A
P 215

STATE OF MARYLAND
(DEPT OF NATURAL RESOURCES)
7365/1
15.82 A
P 35

STATE OF MD
DEPT OF NATURAL RESOURCES
6930/489
6877/8
31.33 A
P 85

STATE OF MARYLAND
DEPT OF NATURAL RESOURCES
6930/489
132.00 A
P 77

STATE OF MARYLAND
(DEPT OF NATURAL RESOURCES)
7378/52
109.50 A.
P.19

STATE OF MARYLAND
(DEPT OF NATURAL RESOURCES)
7378/52
144.00 A
P.368

STATE OF MARYLAND
(DEPT OF NATURAL RESOURCES)
7378/48
103.84 A
P 434

STATE OF MARYLAND
(DEPT OF NATURAL RESOURCES)
7378/52A
126.93 A
P 17

STATE OF MARYLAND
(DEPT OF NATURAL RESOURCES)
7378/48
177.16 A
P.8

STATE OF MARYLAND
(DEPT OF NATURAL RESOURCES)
8047/474
272.65 A
P4

BALTO CO. MD
6324/768
22.30 A
P 56

BALTO CO. MD.
6324/768
11.46 A
P 336

BALTIMORE COUNTY
EASTERN SANITARY LANDFILL
BALTIMORE COUNTY, MD
6302/8
327.14 A.
P 416

BALTIMORE COUNTY
7391/625
83.77 A
P 432

HOWARD R FURNKAS
4145/161
54.00 A
P7

DARRYL GARDENS

DAYS COVE PARK

MAP 64 - P 665

MAP 64 - P 123

MAP64 P 125

MAP 72 - P.128

MAP 72 - P.164

MAP83-P.230

MAP 83-P.563

MAP 83-P.465

JOHN F KENNEDY MEMORIAL HIGHWAY

CSX TRANSPORTATION INC

ALLENDER ROAD

BOWERMAN ROAD

LORELEY BEACH RD.

PULASKI HIGHWAY

GENERAL RUSSEL AVE

NEW FORGE RD

13 MILE LANE

ED II
ED 15
BIRD RIVER

DAY'S COVE

DUCK CREEK

GUNPOWDER FALLS

GUNPOWDER

STATE PARK

STATE

PARK

BIRD RIVER AREA

- MDE Use I No Trout
- MDE Use III Natural Trout
- MDE Use IV Recreational Trout
- RC-2 Vacant, Privately-Owned Parcel

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SCALE IN FEET
600 0 600 1200 1800

965 968 971 977 980

83

COMPILED BY:
MARYLAND DEPARTMENT OF PLANNING
PROPERTY MAPPING SECTION

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SCALE 1"=600' (RF 1:7200)

PROPERTY LINE
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE
CONTINUING OWNERSHIP - Z 1A Z Z Z
PARCEL NUMBERING - P.### (ASSIGNED TO IDENTIFY OWNERSHIP. MUST BE PRECEDED BY A MAP NUMBER.)

REVISED TO:	DATE	BY	LIBER	LAST P. NO.	QUARTER-QUADRANGLE	DATE OF PHOTO	SHA GRID
	MAY '04	GPM					

MDP Maryland Department of Planning

190424.3mN
454890.0mE

BALTIMORE COUNTY,
MARYLAND

962-564

MAP NO. 73

Preliminary - Sh #28

190424.5mN
449403.6mE

73

190424.3mN
457890.0mE

564

561

558

555

552

82

84

43

149

150

BIRD RIVER

ED 11
ED 15

MAP 73-P 79

MAP 82
P/O P107
2 OF 2

P 560

P 356

MARTIN F. MEYERS
1621/516
109.55 A
P 250

JOSEPH V EURICE
6649 / 588
151.00 A.
P 523

DONALD J EURICE
5212/190
63.36 A
P 601

ALBERT WILLIAMS
6104/578
77.37 A
P 132

SOUTHERN FOUR INC
5517/361
128.92 A
P 553

ALBERT V WILLIAMS
6104/578
33.34 A
P 133

MINNIE SCHAADT ETAL
5516 / 328
11.75 A
P 135

BOARD OF EDUCATION
4946/121
15.94 A
P 422

JOHN W RICHARDSON
5922/705
70.66 A
P 352

BALTIMORE COUNTY
6740/219
2.70 A
P 188

SCI MARYLAND
FUNERAL SERVICES, INC.
4387/314
P.427

ALBERT H. WILLIAMS, ETAL
5324/132
P 147

SECURITY MANAGEMENT CORP
6773/465
179.42 A
P 360

ALBERT V. WILLIAMS
5896/458
86.03 A
P 194

P/O MAP 82 - P 741

MAP 91 - P 196

MAP 82-P.111

MAP 82-P.220

MAP 82-P.838

M91-P.48

M91-P.40

MAP 84-P.31

MAP 84-P1

P/O P.659

P.243

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P.1000

ROUTE 43

MD

SHA

EBENEZER ROAD

BIRD RIVER BEACH ROAD

HARFORD ROAD

BRINKMANS RD

EBENEZER ROAD EXTENDED

RAILROAD

BIRD RIVER BEACH

CREEK

DUNDEE CREEK

RESERVATION OF THE DUNDEE A 9105

ZELINSKI PROP

CHASE MANOR

MYERSVIEW DR

MARLEY POINT ROAD

EASTERN AVE

CONRAIL (ANTIETAM & POTOMAC R.R.)

BIRD RIVER AREA

- MDE Use I No Trout
- MDE Use III Natural Trout
- MDE Use IV Recreational Trout
- RC-2 Vacant, Privately-Owned Parcel

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SCALE IN FEET

600 0 600 1200 1800

COMPILED BY
MARYLAND DEPARTMENT OF PLANNING
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PROPERTY LINE
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE
CONTINUING OWNERSHIP -
PARCEL NUMBERING - P.888 (ASSIGNED TO IDENTIFY OWNERSHIP. MUST BE PRECEDED BY A MAP NUMBER.)

SCALE 1"=600' (RF 1:7200)

REVISED TO:	DATE	BY	LIBER	LAST P. NO.	QUARTER-QUADRANGLE	DATE OF PHOTO	SHA GRID
	MAY '04	GPM					

MDP Maryland Department of Planning

186766.7mN
454890.0mE

BALTIMORE COUNTY, MARYLAND

962-552

MAP NO. 83

PRINCE GEORGES' EV #29

1940816mN
410998.1mE

1940817mN
416484.6mE

57

576

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67

839 842 845 76 851 854

190424.0mN
416484.7mE

MAP 56-P 12 | MAP 57-P 227 | MAP 57-P 254

P.323 | P.657 | P.124 | P.123 | P.125 | P.127 | P.131 | P.16 | P.572 | P.538 | P.307 | P.310 | P.523 | P.663 | P.664 | P.405 | P.107 | P.108 | P.103 | P.100 | P.630 | P.74 | P.73 | P.75 | P.118 | P.121 | P.399 | P.398 | P.385 | P.498 | P.559 | P.219 | P.217 | P.218 | P.35 | P.34 | P.479 | P.334 | P.382 | P.315 | P.283 | P.253 | P.365 | P.398 | P.406 | P.43 | P.571 | P.355 | P.335 | P.466 | P.268 | P.267 | P.337 | P.277 | P.276 | P.278 | P.274 | P.249 | P.90 | P.57 | P.6 | P.97 | P.96 | P.78 | P.555 | P.318 | P.462 | P.629 | P.419 | P.5 | P.4 | P.279 | P.509 | P.494 | P.291 | P.299 | P.213 | P.214 | P.402 | P.465 | P.464 | P.473 | P.469 | P.580 | P.46 | P.48 | P.47 | P.470 | P.468 | P.272 | P.275 | P.49 | P.504 | P.9 | P.93 | P.84 | P.87 | P.211 | P.263 | P.207 | P.573 | P.395 | P.60 | P.662 | P.115 | P.427 | P.570 | P.148 | P.568 | P.346 | P.376 | P.172 | P.71 | P.170 | P.186 | P.187 | P.441 | P.152 | P.525 | P.22 | P.23 | P.30 | P.491 | P.539 | P.583 | P.582 | P.526 | P.363 | P.29 | P.589 | P.607 | P.65 | P.424 | P.279 | P.293 | P.608 | P.618 | P.619 | P.599 | P.313 | P.497 | P.165 | P.420 | P.455 | P.450 | P.603 | P.423 | P.418 | P.248 | P.193 | P.197 | P.138 | P.188 | P.189 | P.185 | P.184 | P.183 | P.178 | P.177 | P.176 | P.175 | P.174 | P.173 | P.172 | P.171 | P.170 | P.169 | P.204 | P.203 | P.202 | P.201 | P.200 | P.199 | P.198 | P.297 | P.296 | P.295 | P.294 | P.302 | P.372 | P.404 | P.553 | P.554 | P.555 | P.556 | P.557 | P.558 | P.559 | P.560 | P.561 | P.562 | P.563 | P.564 | P.565 | P.566 | P.567 | P.568 | P.569 | P.570 | P.571 | P.572 | P.573 | P.574 | P.575 | P.576 | P.577 | P.578 | P.579 | P.580 | P.581 | P.582 | P.583 | P.584 | P.585 | P.586 | P.587 | P.588 | P.589 | P.590 | P.591 | P.592 | P.593 | P.594 | P.595 | P.596 | P.597 | P.598 | P.599 | P.600 | P.601 | P.602 | P.603 | P.604 | P.605 | P.606 | P.607 | P.608 | P.609 | P.610 | P.611 | P.612 | P.613 | P.614 | P.615 | P.616 | P.617 | P.618 | P.619 | P.620 | P.621 | P.622 | P.623 | P.624 | P.625 | P.626 | P.627 | P.628 | P.629 | P.630 | P.631 | P.632 | P.633 | P.634 | P.635 | P.636 | P.637 | P.638 | P.639 | P.640 | P.641 | P.642 | P.643 | P.644 | P.645 | P.646 | P.647 | P.648 | P.649 | P.650 | P.651 | P.652 | P.653 | P.654 | P.655 | P.656 | P.657 | P.658 | P.659 | P.660 | P.661 | P.662 | P.663 | P.664 | P.665 | P.666 | P.667 | P.668 | P.669 | P.670 | P.671 | P.672 | P.673 | P.674 | P.675 | P.676 | P.677 | P.678 | P.679 | P.680 | P.681 | P.682 | P.683 | P.684 | P.685 | P.686 | P.687 | P.688 | P.689 | P.690 | P.691 | P.692 | P.693 | P.694 | P.695 | P.696 | P.697 | P.698 | P.699 | P.700

STATE OF MARYLAND (DEPT. OF NATURAL RESOURCES) 5979/642 72.72 A P 326

STATE OF MARYLAND (DEPT OF NATURAL RESOURCES) 5900/64 64 24 A P 126

MAYOR & CITY COUNCIL 2249/422 54 8A P 375

MAYOR & CITY COUNCIL 1802/279 P 125

WM BRADY, SR 1700/199

STATE OF MARYLAND DEPT OF NATURAL RESOURCES 6089/758 68.34 A. P 249

STATE OF MD (DEPT F & R) 5195/492 40 92A P 459

STATE OF MD DEPT NATURAL RESOURCES 5419/613 18 26A P 284

ST OF MD DEPT OF NATURAL RESOURCES 5434/646 20 93A P 212

STATE OF MARYLAND (DEPT OF F & F) 5225/427 491 00 A P 337

STATE OF MARYLAND (DEPT FORESTS & PARKS) 5134/50 39 30 A P 332

STATE OF MD. (DEPT OF F & F) 5146/57 51 92A P 362

MARY HANNAH ARNOT 6667/685 52 73A P 354 1 OF 3

P/O P 354 3 OF 3

P/O P 354 2 OF 3

ALFRED G. TEMPLE 2145/208 53 A P 109

WARDS CHAPEL

HOLBROOK

WESTON

PAINTERS MILL ES, MS, HS (SITE)

ROLLING RIDGE

WOODRIDGE APTS SEC 3

LOCAL OPEN SPACE

PRIVATE OPEN SPACE

FLOOD PLAIN RESERVATION

GREENWAY RESERVATION

P/O LOT 1

P/O P 337

P/O P 23

P/O P 363

P/O P 277

P/O P 249

P/O P 179

P/O P 455

P/O P 515

P/O P 215

P/O P 354

P/O P 23

P/O P 227

P/O P 1

P/O P 2

P/O P 3

P/O P 4

P/O P 5

P/O P 6

P/O P 7

P/O P 8

P/O P 9

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P/O P 699

P/O P 700

GRANITE AREA

- MDE Use I No Trout
- MDE Use III Natural Trout
- MDE Use IV Recreational Trout
- RC-2 Vacant, Privately-Owned Parcel

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SCALE IN FEET

600 0 600 1200 1800

COMPILED BY: MARYLAND DEPARTMENT OF PLANNING PROPERTY MAPPING SECTION

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PROPERTY LINE
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE
CONTINUING OWNERSHIP - PARCEL NUMBERING - P ### (ASSIGNED TO IDENTIFY OWNERSHIP. MUST BE PRECEDED BY A MAP NUMBER.)

SCALE 1"=600' (RF 1:7200)

REVISED TO:	DATE	BY	LIBER	LAST P. NO.	QUARTER-QUADRANGLE	DATE OF PHOTO	SHA GRID
	MAY '04	ML					

MDP Maryland Department of Planning

BALTIMORE COUNTY, **MARYLAND**

836-564

MAP NO. 66

Protestants' Ex #30

190424.0mN
405511.7mE

65

190424.0mN
xxxxxx.xmE

564

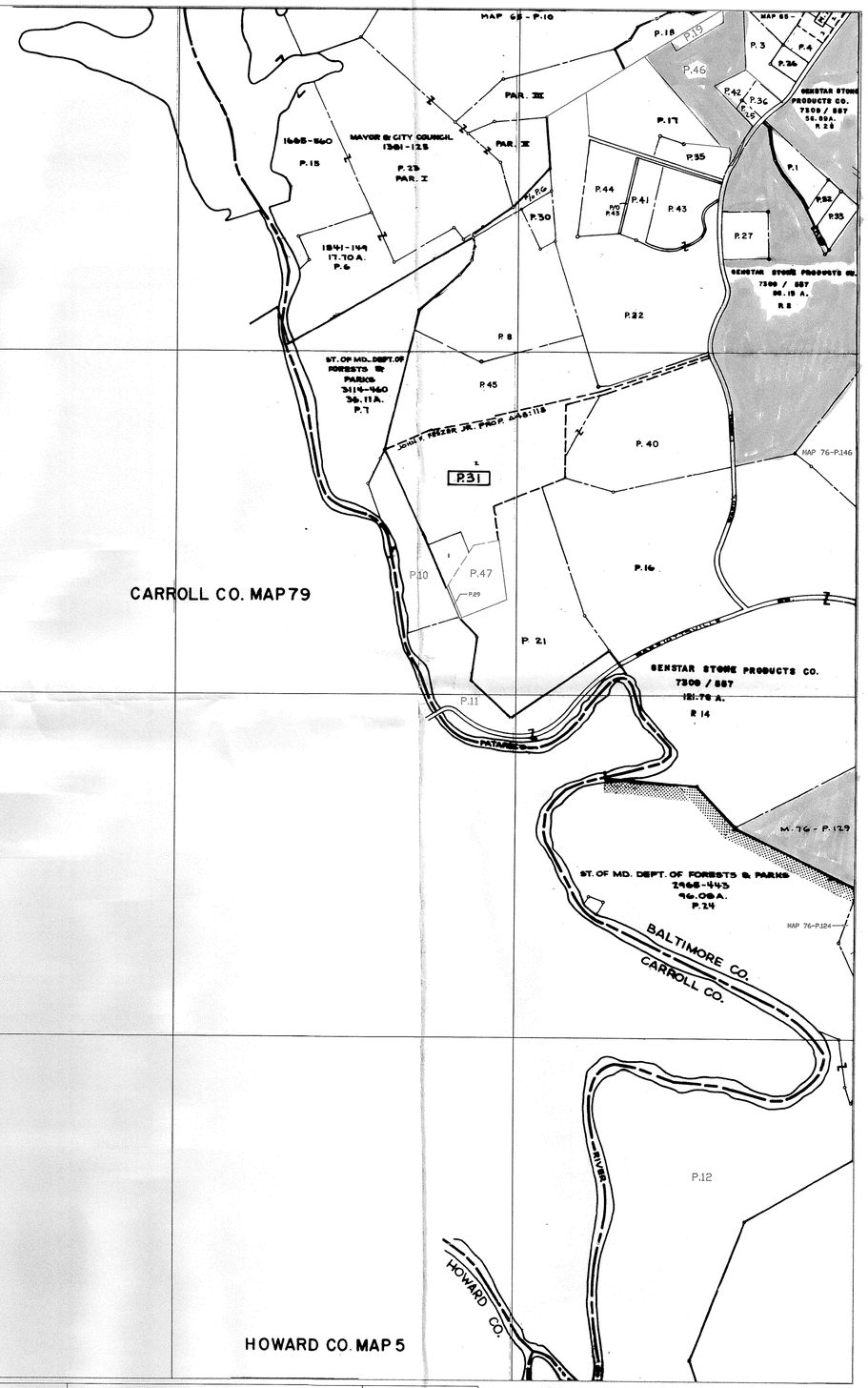
561

76

558

555

552



GRANITE AREA

- MDE Use I No Trout
- MDE Use III Natural Trout
- MDE Use IV Recreational Trout
- RC-2 Vacant, Privately-Owned Parcel

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SCALE IN FEET

600 0 600 1200 1800

85

COMPILED BY:
MARYLAND DEPARTMENT OF PLANNING
PROPERTY MAPPING SECTION

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PROPERTY LINE
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE
CONTINUING OWNERSHIP - Z Ia Z Z Z
PARCEL NUMBERING - P.### (ASSIGNED TO IDENTIFY OWNERSHIP. MUST BE PRECEDED BY A MAP NUMBER)

SCALE 1"=600' (RF 1:7200)

REVISED TO:	DATE	BY	LIBER	LAST P. NO.	QUARTER-QUADRANGLE	DATE OF PHOTO	SHA GRID
	MAY '04	ML					

MDP Maryland Department of Planning

186766.3mN
410998.3mE

BALTIMORE COUNTY,
MARYLAND

818-552

MAP NO. 75

821 824 827 833 836

190424.0mN
410998.2mE

66

190424.0mN
416484.7mE

564

561

558

555

552

836-552

MAP NO. 76

76

77

839

842

845

851

854

186766.4mN
416484.7mE

BALTIMORE COUNTY,
MARYLAND

MAP 66 - P 523 | P 508 | MAP 66 - P 385 | P 346 | P 383 | MAP 66 P 554 | MAP 66 P. 187 | P 189 | P 193 | P 135 | P 198 | P 197 | P 196 | P 195 | P 194 | P 192 | P 191 | P 190 | P 188 | P 187 | P 186 | P 185 | P 184 | P 183 | P 182 | P 181 | P 180 | P 179 | P 178 | P 177 | P 176 | P 175 | P 174 | P 173 | P 172 | P 171 | P 170 | P 169 | P 168 | P 167 | P 166 | P 165 | P 164 | P 163 | P 162 | P 161 | P 160 | P 159 | P 158 | P 157 | P 156 | P 155 | P 154 | P 153 | P 152 | P 151 | P 150 | P 149 | P 148 | P 147 | P 146 | P 145 | P 144 | P 143 | P 142 | P 141 | P 140 | P 139 | P 138 | P 137 | P 136 | P 135 | P 134 | P 133 | P 132 | P 131 | P 130 | P 129 | P 128 | P 127 | P 126 | P 125 | P 124 | P 123 | P 122 | P 121 | P 120 | P 119 | P 118 | P 117 | P 116 | P 115 | P 114 | P 113 | P 112 | P 111 | P 110 | P 109 | P 108 | P 107 | P 106 | P 105 | P 104 | P 103 | P 102 | P 101 | P 100 | P 99 | P 98 | P 97 | P 96 | P 95 | P 94 | P 93 | P 92 | P 91 | P 90 | P 89 | P 88 | P 87 | P 86 | P 85 | P 84 | P 83 | P 82 | P 81 | P 80 | P 79 | P 78 | P 77 | P 76 | P 75 | P 74 | P 73 | P 72 | P 71 | P 70 | P 69 | P 68 | P 67 | P 66 | P 65 | P 64 | P 63 | P 62 | P 61 | P 60 | P 59 | P 58 | P 57 | P 56 | P 55 | P 54 | P 53 | P 52 | P 51 | P 50 | P 49 | P 48 | P 47 | P 46 | P 45 | P 44 | P 43 | P 42 | P 41 | P 40 | P 39 | P 38 | P 37 | P 36 | P 35 | P 34 | P 33 | P 32 | P 31 | P 30 | P 29 | P 28 | P 27 | P 26 | P 25 | P 24 | P 23 | P 22 | P 21 | P 20 | P 19 | P 18 | P 17 | P 16 | P 15 | P 14 | P 13 | P 12 | P 11 | P 10 | P 9 | P 8 | P 7 | P 6 | P 5 | P 4 | P 3 | P 2 | P 1

MAP 75 - P 28 | MAP 75 - P 2 | MAP 75 - P 14 | MAP 75 - P 24 | MAP 75 - P 12 | MAP 75 - P 13 | MAP 86 - P 1 | MAP 86 - P 99 | MAP 86 - P 360 | MAP 67 - P 118 | MAP 77 - P 676 | MAP 77 - P 849

GENSTAR STONE PRODUCTS CO
7308 / 557
135.00A
P 1

GENSTAR STONE PRODUCTS CO
7308 / 557
50.18A
P 129

GAEL R MACNAMARA
6466/513
208.75A
P 16

BERNARD P CARAHER
1856/552
75.38A
P 74

GEORGE L STROHMER
4533/134
57.22A
P 79

COUNTY COMM OF BALTO CO
2967/150
73.62A
P 60
PAR I

BALTIMORE CO MD
5381/1
89.00A
P 302

STATE OF MD
DEPT OF FORESTS & PARKS
3447/387
18.30A
P 124

BALTIMORE CO MD
5280/790
7C.39A
P 280

CHARLES W GARRIOT
5804/726
165.75A.
R40

BOARD OF EDUCATION
4169/369
4259/40
4309/79
4525/13
P 116

HERNWOOD ELEM. SCHOOL

P106 10F2

P R106 20F2

P R107

P 108

P 109

P 110

P 111

P 112

P 113

P 114

P 115

P 116

P 117

P 118

P 119

P 120

P 121

P 122

P 123

P 124

P 125

P 126

P 127

P

Proposed Ex #32

186766.3mN
410998.3mE

186766.4mN
416484.7mE

76

552

549

543

540

85

87

546

839 842 845 851 854

GRANITE AREA

- MDE Use I No Trout
- MDE Use III Natural Trout
- MDE Use IV Recreational Trout
- RC-2 Vacant, Privately Owned Parcel

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SCALE IN FEET

600 0 600 1200 1800

93

COMPILED BY:
MARYLAND DEPARTMENT OF PLANNING
PROPERTY MAPPING SECTION

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PROPERTY LINE
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE
CONTINUING OWNERSHIP - Z la Z Z Z
PARCEL NUMBERING - P.###. (ASSIGNED TO IDENTIFY OWNERSHIP. MUST BE PRECEDED BY A MAP NUMBER.)
SCALE 1"=600' (RF 1:7200)

REVISED TO:	DATE	BY	LIBER	LAST P. NO.	QUARTER-QUADRANGLE	DATE OF PHOTO	SHA GRID
	MAY '04	ML					

MDP Maryland Department of Planning

183108.7mN
416485.0mE

BALTIMORE COUNTY,
MARYLAND

836-540

MAP NO. 86

Protestants Ex # 33

205054.8mN
421971.0mE

205054.9mN
427457.5mE

612

609

603

600

872-600

MAP NO. 41

33

40

42

606

875 881 887 890

50

M-40 P.14

MAP 40 - P. 8

MAP 40 P.123

MAP 42 - P.473

MAP 50 - P. 115

MAP 50 - P. 59

M.41-P.50

M42-P.541
CONSERVANCY AREA
AREA #7
785

M42-P.542
PART 'A' COUNTRY CLUB LOT
783

EDWARD MURRAY
6295/277
52.48A
P.9

MAP 32 - P.234

MAP 33 - P. 101

MAP 40 - P.173

PINE HILL FARMS A58:86

P135

LOSEMAN PROP. A48:25

LOSEMAN MANOR A36:28

SHAWAN

P27

P130

LOSEMAN ROAD PROP. A39:118

FALLS

PRIVATE RD.

P.138

P.136

P.12

P.89

P.168

P.137

P.87

P.114

P.92

P.144

RD.

P.116

JAMES C. ALBAN, III
6623/756
56.14 A.
P.139

P.161

P.22

P.163

P.169

P.97

P.105

P.113

P.29

LINDA L. COOPER
5473/317
148.11A.
P.25

P.142

P.26

P.21

P.171

P.14

P.141

P.124

P.20

P.16

P.10

P.160

P.13

P.8

P.98

P.102

P.100

MANTUA MILL RD.

E/ST

P.19

P.24

P.123

P.18

P.90

P.156

P.154

P.170

AVENUE

TUPTON

P.155

P.157

EASEMENT

P.158

P.88

P.167

P/O P.167

P.57

P.56

P/O P.56

P.60

P.49

P.55

P.54

P.53

P.52

P.117

P.59

P.91

BEAVER DAM RD.

ELIZABETH W. FENWICK, ET AL
8394/261
61.00 A.
P.153

OREGON RIDGE PARK

BALTIMORE COUNTY, MARYLAND
5056/650
438.06 A.
P.56

OREGON RIDGE PARK
BALTIMORE COUNTY,
MARYLAND
5629/866
243.33 A.
P.23

P.159

P.160

'PAR. 1'

'PAR. 2'

PAR. 3

P.61

P.62

NICHOLSON'S MANOR SEC ONE

NICHOLSON'S MANOR

NICHOLSON'S MANOR 6817

P.63

P.94

P.64

P.67

P.46

P.75

P.69

P.83

P.95

P.66

P.68

P.78

P.71

P.70

P.72

P.73

P.79

P.74

P.148

FARM 1

FARM 2

FARM 3 LOT 2

FARM 3 LOT 1

FARM 5

FARM 6

FARM 7

FARM 8

FARM 8A

FARM 9

P.58

P.36

PROPOSED FUTURE R/W

EASEMENT

DRAINAGE

TUPTON FARMS PLAT 4 SECT. 2 441:93

443.27,444.23

440.93

A43:66

P.134

TUPTON FARMS SECT. 2

TUPTON FARMS PLAT 3 SECT. 2

TUPTON FARMS PLAT 2 SECT. 2

TUPTON FARMS PLAT 1 SECT. 2

P.133

P.1

P.146

P.147

P.150

P.122

P.121

P.40

P.41

P.42

P.76

P.164

P.165

P.43

P.44

P.45

P.30

P.35

P.108

P.33

P.34

P.31

P.106

P.107

P.99

P.85

P.38

P.39

P.149

P.397

P.120

P.119

P.110

P.6

P.5

P.129

P.2

P.4

PETER Y. MARTIN
5579/775
69.00 A
P.2

CAROL M. CORRIGAN
5579/759
76.08 A
P.129

ALEXANDER B. MARTIN
5579/764
128.05 A
P.4

TRACT 'A'

TRACT 'B'

SHAWAN VALLEY SECT. 2 PLAT 2

SHAWAN VALLEY SECT. 2 PLAT 1

SHAWAN VALLEY SECT. 1

SHAWAN VALLEY SECT. 1 PLAT 2

SHAWAN VALLEY SECT. 1 PLAT 1

SHAWAN VALLEY SECT. 1 PLAT 3

SHAWAN VALLEY SECT. 1 PLAT 4

SHAWAN VALLEY SECT. 1 PLAT 5

SHAWAN VALLEY SECT. 1 PLAT 6

SHAWAN VALLEY SECT. 1 PLAT 7

SHAWAN VALLEY SECT. 1 PLAT 8

SHAWAN VALLEY SECT. 1 PLAT

I.D. only Protestant 9k # 34

specially the property hereby conveyed and that the will & to and further assurances to may be required. Witness our hands and seals.

Philip [illegible] Sullivan (Seal)
Ellen [illegible] Sullivan (Seal)

Test
Chas. J. Haile {

State of Maryland Baltimore County to wit.

I hereby Certify that on this fourth day of December in the year Eighteen hundred and sixty nine before the subscriber a Justice of the Peace for the state and County aforesaid personally appeared Philip Sullivan and Ellen Sullivan his wife and acknowledged the foregoing deed to be their act and deed.

Chas. J. Haile.

Recorded on the 11th Day of June 1870 and Examined.
per Edward H. Ady Clk.

Delived Jany 23. 1877. per Rept.

Ernest Knabe & wf Deed to Hugo Goerty.

This Deed made this fourth day of June in the Year one thousand Eight Hundred and seventy by Ernest Knabe and Laura Knabe his wife of the City of Baltimore in the state of Maryland of the first part and Hugo Goerty of the same place of the second part. Witnesseth that in Consideration of the sum of twenty one hundred dollars lawful money in hand paid the receipt whereof is hereby acknowledged the said Ernest Knabe and Laura Knabe his wife do grant and convey unto the said Hugo Goerty his heirs and assigns in fee. All that parcel of land in Baltimore County being part of the following tracts of land to wit. The Addition to "Harrisons Mellows" and "Efsta Den" and described as follows to wit. Beginning for the same in the Centre of the Garrison Forest Road at the end of the north twenty six degrees west twenty five perches line being the fourth line of the land sold by William Baker & Trustees to John Coe and running thence with and binding on the part sold as aforesaid to said Coe the following Courses to wit south Eighty degrees west ninety seven perches and four tenths of a perch to a Chesnut tree supposed to stand in the second line of "Efsta Den" then running and binding on said line north one degree east thirty five perches then north Eighty Eight and a half degrees east four perches north seventeen and a quarter degrees east seven perches to a marked maple tree then north fifty degrees east seventy and one half perches to the Centre of Garrison Forest Road and then running along the middle of said Road south twenty six degrees east eight perches to the place of beginning. Containing twenty seven acres and one quarter. Being the same parcel of land which by deed dated the 25th day of February A.D. 1865 and recorded among the Land Records of

U.S.S. $250

U.S.S. 5 Stas

U.S.S. $500

I.D. only Protestant Ex #35
FOR I.D ONLY

THIS DEED, Made this 30th day of August, in the year one thousand nine hundred and eighty-nine, by and between PARKTON MILL PROPERTIES, INCORPORATED, a Maryland Corporation, party of the first part; and ELEANOR DUVALL SPRUILL of the City of Cheraw, State of South Carolina, and MARION T. CLARKE of Baltimore County, State of Maryland, parties of the second part;

WITNESSETH that in consideration of NO CONSIDERATION, and other good and valuable considerations, the receipt of which is hereby acknowledged, the said party of the first part does grant and convey unto the said Eleanor Duvall Spruill and Marion T. Clarke, as tenants in common, their personal representative and assigns, in fee simple, all those two (2) lots of ground situate, lying and being in Baltimore County, State of Maryland and described as follows, that is to say:

FOR DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

BEING two (2) of the lots of ground which by Deed dated of even date herewith and recorded or intended to be recorded immediately prior hereto among the Land Records of Baltimore County, were granted and conveyd by Catherine M. Kersse, unto Parkton Mill Properties, Incorporated, the Grantor herein.

TOGETHER WITH the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said described lots of ground and premises to the said Eleanor Duvall Sprill and Marion T. CLarke, as tenants in common, their personal representatives and assigns, in fee simple.

AND THE SAID party of the first part hereby covenants that it has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that it will warrant specially the property hereby granted; and that it will execute such further assurances of same as may be requisite.

ADDITIONAL TRANSFER TAX
NOT ASSESSED
SIGNATURE 9/27/89

9/27/89 15.00
5.00
20.00
SETTLEM
134245 C001 R02 11:22
09/27/89

8 8135******1344Da 8279A

PROTESTANT

BALTIMORE COUNTY, MARYLAND Ex # 36

Inter-Office Memorandum

I.D only

DATE: July 25, 2003

TO: Clare Brunner

FROM: Robert Powell, Supervisor,
Soil Evaluation Section

SUBJECT: Water Usage Information for Proposed Loyola College Spiritual Retreat Center, Located Stablersville Road, District 7

I have reviewed the usage letter dated March 20, 2003 that was submitted by the engineer. The information contained in the letter seems to indicate an initial phase that includes a main building (containing meeting rooms and presumably eating facilities, a chapel (number of seats unknown), five single occupancy rooms for faculty, and "standard, minimal kitchen and laundry facilities) and one retreat building that will house an additional 40 people. The letter also notes that two additional retreat buildings may also be included in an additional phase that will house an additional 60 people.

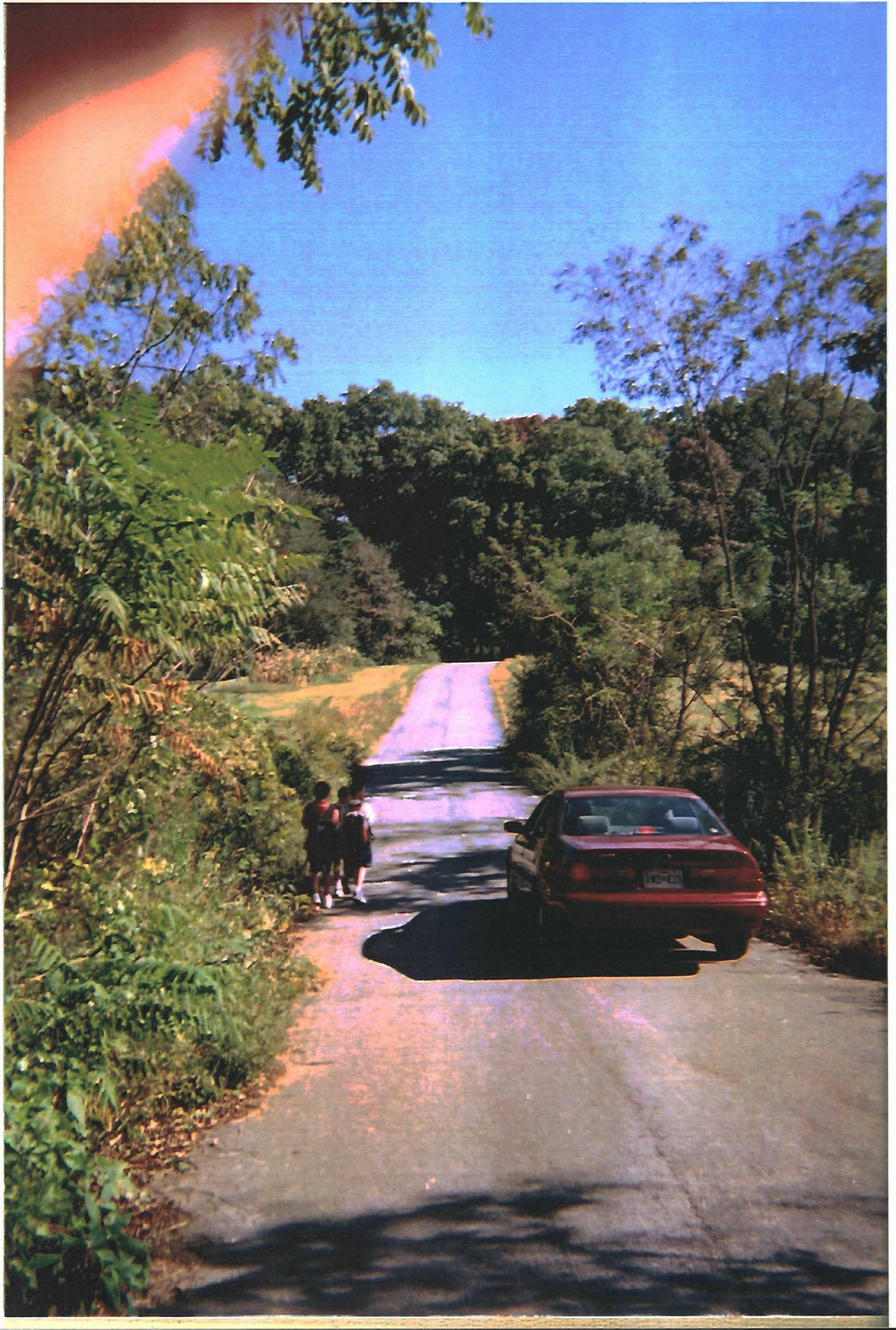
The concept plan depicts what appears to be three retreat centers for housing with another two in a future phase. The number of people that could be housed in the five buildings could significantly exceed the total of 100 people noted in the letter. Consequently, a revised usage letter must be submitted that clarifies the following:

1. Note how many occupants will be housed in each of the retreat buildings, both for the initial and future phases of construction.
2. Identify the number of seats in the eating facility in the Main Building, along with the number of meeting rooms and seating capacity (if known)
3. Specify the "standard, minimal kitchen and laundry facilities". How many washing machines will be provided both in the Main Building and in each of the Retreat Buildings? Specify the type of kitchen equipment to be installed and the type of food service operation for the facility. The letter notes that large events will be catered. Does this mean that all food will be prepared off site, warmed up on the premises and all dirty dishes utensils removed off site for cleaning? Will single service dishes/utensils be used at the facility? What about smaller events; will food be prepared onsite?
4. Have the engineer fill out the new "Water Usage Letter for On-Site Sewage Disposal System Design and Evaluation in Baltimore County" and respond to the questions/concerns noted above. The information


603

37B





37c

37-D



PROTESTANTS' EX. 39

Photographs of Agricultural Equipment Transported Year-round on Stablersville Road and 'Miller Lane'

With Width Measurements

Photos taken by Sharon Norton and Jamie Houston, 2004

Protestant Ex #90

To whom it may concern,

Troyer Farms uses Stablersville and Miller Roads to access farm ground throughout the year. These roads are traveled by combines, tractors, discs, trucks, and other farm equipment ranging from fourteen feet two inches to eighteen feet in width. We try to use the secondary roadways whenever possible to alleviate traffic problems on the main roads (ie. York road). These roadways are very narrow and have no shoulder, usually the oncoming traffic is warned to slow down and if needed stopped, by an alerting vehicle until the equipment reaches its destination. The Loyola facility will have to co-exist with the farming community.

Our family has owned and operated our farm for four generations. Over those four generations problems with traffic has increased dramatically. It has become extremely dangerous for a farmer to move his equipment regardless of the time of day or the day of the week. Fighting the urbanization of the farm country has become a daily confrontation. A facility of this magnitude along with the added traffic would certainly bring superfluous adversity to this farming community.

Thank you for your patience and time, your drivers will surly need it.

Troyer Farms

223343.0mN
427457.5mE

223343.0mN
432944.0mE

07

672

669

666

663

660

657

654

651

648

11

13

16

18

890

893

896

899

905

908

890-648

MAP #12

223343.0mN
427457.5mE

216027.8mN
427457.5mE

216026.8mN
432943.9mE

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SCALE IN FEET

600 0 600 1200 1800

COMPILED BY:
MARYLAND DEPARTMENT OF PLANNING
PROPERTY MAPPING SECTION

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PROPERTY LINE
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE
CONTINUING OWNERSHIP - Z to Z
PARCEL NUMBERING - P ### (ASSIGNED TO IDENTIFY OWNERSHIP. MUST BE PRECEDED BY A MAP NUMBER.)
SCALE 1"=600' (RF 1:7200)

REVISED TO:	DATE	BY	LIBER	LAST P. NO.	QUARTER-QUADRANGLE	DATE OF PHOTO	SHA GRID
	DEC. '01	ML					

MDP Maryland Department of Planning

BALTIMORE COUNTY,
MARYLAND

MAP NO. 17

724 Miller Road
Parkton, Md. 21120

September 28, 2004

Chairman L.Wescott
County Board of Appeals
400 Washington Ave.
Room 49
Towson, Md. 21204

Dear Mr. Wescott:

As a resident of Parkton, Maryland for the past five years, I have enjoyed the scenic beauty and tranquility of this area. This is one of the many reasons I built my home in this area. When I was informed of the possible construction of a Loyola Retreat Center, I was very upset. The construction of such a large facility would change the natural beauty of the area, not to mention the interference with the habitats of the wildlife on the land.

I joined the PAPA organization and was involved in some fund raising activities. A few weeks later, I was informed that the PAPA organization and Maryland Line Association had negotiations with Loyola. I was never notified or ask to join the discussions with Loyola nor contacted and asked if I was for or against the Loyola Retreat. Decisions were made by a few selected group of people without notifying other members .

There are many reasons I am opposed to the construction of such a facility. My main concern is the well water. Even though my house is fairly new, I had problems with my well during the drought a few years ago. I feel that such a large facility will affect the water supply in my well. How will I be insured that this will not happen? Furthermore, what action does Loyola plan to take if this happens to the residents in the Parkton area?

I am also concerned with the increased traffic on the roads and possible infringement on my property. Miller Road is a narrow road and can hardly accommodate two passing cars, much less a van or bus. During the last hearings, I was told that Miller Road would not be used. How would Loyola stop individuals using their own cars or vehicles ?

It is my hope that the County Board of Appeals considers the negative ramifications of building such a large facility in this area. Traffic and pedestrian safety, well water consumption, and the the natural beauty of the land would be compromised if the Retreat Center would be approved.

Sincerely,

Susan Wunder Hucik

Susan Wunder Hucik
Parkton Resident

Specific Habitat and Wildlife Concerns About
Loyola's Planned Retreat Development
By James Voshell
815 Stablers Church Rd
Parkton, MD 21120

1. I'm concerned about possible infringement of the rules and guidelines of the *Endangered Species Act of 1973* which is monitored through the federal and local *US Fish and Wildlife Service* and the *Maryland Department of Natural Resources.*

2. I'm concerned about the possible infringement of the rules and guidelines of the *Clean Water Act of 1972* controlled by the Federal Environmental Protection Agency and locally, the Department of Environmental Protection and Resource Management.

3. I'm concerned about the silt generated during the construction phases that could end up in our nearby waterways – smothering various species of aquatic wildlife.

4. I'm concerned about the use of chemicals on site – pesticides, herbicides and fertilizers and any large area spraying (for example mosquitoes) which would affect immediate wildlife and water systems.

5. I'm concerned about the immediate danger to wildlife by the serious number of vehicles, buses and trucks traveling Stablersville Road.

6. I'm concerned about the lack of knowledge of the people onsite in reference to the habits, needs and behavior particulars of wildlife.

7. I have reservations about the possible sewage system effects or failures on such a sensitive habitat area.

8. I'm concerned about any vegetation used in site landscaping – flowers, shrubs and plants that are not indigenous to our area and may be toxic to our local wildlife.

9. I'm concerned that this special exception request will set a negative precedent for other development attempts to change the zoning in our rural areas.

10. I'm concerned about any and all negative effects to this pristine and bio-diverse habitat that stretches from the Gunpowder State Park, through the Clarke property into our property and continuing north into Pennsylvania. These are vital areas for Northern Baltimore County. They should not be fragmented by continued development projects.

James W. Voshell
Submitted Sept 29th-2004

PROTESTANTS EX 43

Mr. Lawrence S. Wescott, Chairman
County Board of Appeals
400 Washington Ave. — Rm. 49
Towson, Md 21204

619 Miller Road
Parkton, MD 21120
September 28, 2004

Mr. Lawrence S. Wescott, Chairman
County Board of Appeals
400 Washington Avenue - Room 49
Towson, MD 21204

Reference: Loyola Appeal

Dear Mr. Wescott:

Covenants agreed to by Loyola College, the Maryland Line Community Association and Parkton Area Preservation Association were never voted on by members of these two community associations or by members of either of these two communities. I don't like people representing me without my input and/or vote.

I am strongly opposed to the Loyola Multi-Use Center being built on RC2 land and, especially, being built in the North County area. I do not feel this is a proper use of agricultural land and definitely is not a proper use if one abides by the special exception laws written by Baltimore County.

I trust you will grant a favorable decision to the Citizens Against the Loyola Multi-Use Center in this appeals hearing.

Very truly yours,

Ruth A. Neeper

(Mrs.) Ruth A. Neeper

Mr. Lawrence S. Wescott, Chairman
County Board of Appeals
400 Washington Ave. - Room 49
Towson, Md 21204

619 Miller Road
Parkton, MD 21120
September 28, 2004

Mr. Lawrence S. Wescott, Chairman
County Board of Appeals
400 Washington Avenue - Room 49
Towson, MD 21204

Reference: Loyola Appeal

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I trust you will grant a favorable decision to the Citizens Against the Loyola Multi-Use Center in this appeals hearing.

Very truly yours,

Doris R. Thompson

(Mrs.) Doris R. Thompson

drt

Mr. Wescott

Sept.28,2004

Nancy Marchetti
621 Miller Rd.
Parkton, Md 21120

Mr. Lawrence Wescott
Chairman County Board of Appells
Baltimore County, Maryland

Mr. Wescott

I would like to address several issues regarding the Loyola Multi-use center that is up for decision. I would appreciate it if you would take the time to read and consider the following opinions.

I have lived in Northern Baltimore County for 17 years and currently live in proximity to the proposed Loyola plan. This project is a totally inappropriate use of this property. This is not an area that should be subjected to this type of development. The buildings and traffic are inappropriate for farming area. Also, there is no commitment by Loyola to keep this area from being further developed. This project will not benefit the surrening community since it is for private use only. This project is strongly opposed by the community and we have not had the right to have our voices heard.

The community did not have the right to know about the plan that Loyola signed with the Parkton Preservation Commitee. It is our goal to not allow Loyola to build in this area.

Please consider the long term effects of this plan on our community. Thank You

Nancy L Marchetti

VOLUME I

IN THE MATTER OF: * BEFORE THE
LOYOLA COLLEGE SPIRITUAL * ZONING COMMISSIONER/
RETREAT CENTER * HEARING OFFICER
* OF
* BALTIMORE COUNTY
* PDM Number VII-389
* April 16, 2004

* * * * *

The above-entitled matter came on for hearing before the Zoning Commissioner/Hearing Officer, at the County Courts Building, 401 Bosley Avenue, Towson, Maryland 21204, at 9 a.m., April 16, 2004.

* * * * *

REPORTED BY: C.E. Peatt

VOLUME II

BEFORE THE BALTIMORE COUNTY ZONING COMMISSIONER

IN RE: LOYOLA COLLEGE PDM - VII-389
SPIRITUAL RETREAT CENTER

The above-entitled matter was continued for hearing on Monday, April 19, 2004 commencing at 9:00 a.m. at the Baltimore County Courthouse, 401 Bosley Avenue, Room 407, Towson, Maryland 21204, before Lawrence Schmidt, Zoning Commissioner.

APPEARANCES:

ROBERT HOFFMAN, ESQUIRE
On behalf of the Petitioner

REPORTED BY: Paula J. Eliopoulos

VOLUME III

BEFORE THE BALTIMORE COUNTY ZONING COMMISSIONER

IN RE: LOYOLA COLLEGE PMD VII-389
SPIRITUAL RETREAT CENTER

The above-titled matter continued for hearing on Wednesday, April 21, 2004, commencing at 9:00 a.m., at the Baltimore County Courthouse, 401 Bosley Avenue, Room 407, Towson, Maryland, 21204, before Lawrence Schmidt, Zoning Commissioner.

APPEARANCES:

ROBERT HOFFMAN, ESQUIRE
On behalf of Petitioners

REPORTED BY: Paula J. Eliopoulos

IN THE MATTER OF:	* BEFORE THE
LOYOLA COLLEGE SPIRITUAL	* BOARD OF APPEALS
RETREAT CENTER: Loyola College	* OF
of Md. - Developer	* BALTIMORE COUNTY
N & S/s Stablersville Rd @ NE/	* Case No. CBA-04-136
cor York Road 7th E, 3rd C	* (PDM #VII-389)
FDP - Development Plan Approval	* and
26-209 BCC, SPH-parking and	* Case # 04-337-SPHX
non-density transfer; SE -	* September 14, 2004
Building for religous worship/	*
school/camp in R.C. 2 zone	* (Day One)

* * * * *

The above-entitled matter came on for hearing the Board of Appeals of Baltimore County, at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., September 14, 2004

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF:	* BEFORE THE
LOYOLA COLLEGE SPIRITUAL	* BOARD OF APPEALS
RETREAT CENTER: Loyola College	* OF
of Md. - Developer	* BALTIMORE COUNTY
N & S/s Stablersville Rd @ NE/	* Case No. CBA-04-136
cor York Road 7th E, 3rd C	* (PDM #VII-389)
FDP - Development Plan Approval	* and
26-209 BCC, SPH-parking and	* Case # 04-337-SPHX
non-density transfer; SE -	* September 15, 2004
Building for religous worship/	*
school/camp in R.C. 2 zone	* (Day Two)

* * * * *

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., September 15, 2004.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF:	* BEFORE THE
LOYOLA COLLEGE SPIRITUAL	* BOARD OF APPEALS
RETREAT CENTER: Loyola College	* OF
of Md. - Developer	* BALTIMORE COUNTY
N & S/s Stablersville Rd @ NE/	* Case No. CBA-04-136
cor York Road 7th E, 3rd C	* (PDM #VII-389)
FDP - Development Plan Approval	* and
26-209 BCC, SPH-parking and	* Case # 04-337-SPHX
non-density transfer; SE -	* September 29, 2004
Building for religous worship/	*
school/camp in R.C. 2 zone	* (Day Three)

* * * * *

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., September 29, 2004.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF:	* BEFORE THE
LOYOLA COLLEGE SPIRITUAL	* BOARD OF APPEALS
RETREAT CENTER: Loyola College	* OF
of Md. - Developer	* BALTIMORE COUNTY
N & S/s Stablersville Rd @ NE/	* Case No. CBA-04-136
cor York Road 7th E, 3rd C	* (PDM #VII-389)
FDP - Development Plan Approval	* and
26-209 BCC, SPH-parking and	* Case # 04-337-SPHX
non-density transfer; SE -	* September 30, 2004
Building for religous worship/	*
school/camp in R.C. 2 zone	* (Day Four)

* * * * *

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., September 30, 2004.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF: * BEFORE THE

LOYOLA COLLEGE SPIRITUAL * BOARD OF APPEALS

RETREAT CENTER: Loyola College * OF

of Md. - Developer * BALTIMORE COUNTY

N & S/s Stablersville Rd @ NE/ * Case No. CBA-04-136

cor York Road 7th E, 3rd C * (PDM #VII-389)

FDP - Development Plan Approval* and

26-209 BCC, SPH-parking and * Case # 04-337-SPHX

non-density transfer; SE - * December 7, 2004

Building for religious worship/ *

school/camp in R.C. 2 zone * (Day Five)

* * * * *

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., December 7, 2004.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF:	* BEFORE THE
LOYOLA COLLEGE SPIRITUAL	* BOARD OF APPEALS
RETREAT CENTER: Loyola College	* OF
of Md. - Developer	* BALTIMORE COUNTY
N & S/s Stablersville Rd @ NE/	* Case No. CBA-04-136
cor York Road 7th E, 3rd C	* (PDM #VII-389)
FDP - Development Plan Approval	* and
26-209 BCC, SPH-parking and	* Case # 04-337-SPHX
non-density transfer; SE -	* January 4, 2005
Building for religious worship/	*
school/camp in R.C. 2 zone	* (Day Six)

* * * * *

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 9 o'clock a.m., January 4, 2005.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

RELATED AND MISCELLANEOUS ITEMS

EXHIBITS AND CORRESPONDENCE

LOYOLA COLLEGE SPIRITUAL RETREAT CENTER

VII –389

COMMUNITY INPUT MEETING

HEARING OFFFICER'S HEARING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 28134

DATE 1/26/04 ACCOUNT 1001-006-6150

AMOUNT $ 705.00

RECEIVED FROM: Donald Bachman & Howard Co.

FOR: Special Exception & Special Hearing

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
1/27/2004	1/26/2004	14:34:41	5

REG WS05 WALKIN LAND LEB
>>RECEIPT # 348038 1/26/2004 OFLN
Dept: 5 528 ZONING VERIFICATION
CR NO. 028134
Recpt Tot $705.00
$705.00 CK $.00 CA
Baltimore County, Maryland

TO: PATUXENT PUBLISHING COMPANY
Thursday, April 1, 2004 Issue - Jeffersonian

Please forward billing to:
Amy Dontell 410-494-6244
210 Allegheny Avenue
Towson, MD 21204

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: 04-337-SPHX
S/side of Stablersville Road, East of York Road
E/side of York Road, 2000 feet south of centerline of Stabler's Church Road
7th Election District – 3rd Councilmanic District
Legal Owners: Estate of Marion Clark & Eleanor Duvall Spruill, W. Duval Spruill, Personal Rep.
Contract Purchaser: Loyola College in MD, John Palmucci, V.P.

Special Exception to permit a building for religious worship/school/camp in the R.C.2 zone, Pursuant to Sections 1A01.2.C.4.6. and .23 of the Baltimore County Zoning Regulations.
Special Hearing to approve the transfer of 54 +/- acres of R.C.2 zoned land as non-density Transfer.

Hearing: Friday, April 16, 2004, at 9:00 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.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 04-337-SPHX

Petitioner: Loyola College in Maryland

Address or Location: S/S Stablestone Road, East of York Road

PLEASE FORWARD ADVERTISING BILL TO:

Name: Amy Dontell

Address: 20 Allegheny Avenue
Towson Maryland 21204

Telephone Number: (410) 494-6294

Revised 2/20/98 - SCJ

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

April 22, 2004

Robert A. Hoffman, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, Maryland 21204

RE: DEVELOPMENT PLAN HEARING and PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION
(Loyola College Spiritual Retreat Center)
N & S/S Stablers Church Road @ NE/corner York Road
7th Election District – 3rd Council District
Estate of Marion Clark and Eleanor Duvall Spruill, W. Duvall Spruill, P.R.
Cases Nos. VII-389 and 04-337-SPHX

Dear Mr. Hoffman:

This letter is to confirm that at the conclusion of the hearing in the above-captioned matter and by agreement of the parties, post-hearing memoranda must be submitted by no later than May 17, 2004. As required by law, a final decision in the matter will be issued by me within 15 days thereafter.

In the meantime, should anyone have any questions, please do not hesitate to call me.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Terry Sawyer & Ms. Helen Schneider, Loyola College
4501 N. Charles Street, Baltimore, Md. 21210
Mr. Tom Repsher, Daft-McCune-Walker, Inc.
200 E. Pennsylvania Ave., Towson, Md. 21286
Mr. Wes Guckert, The Traffic Group, 9900 Franklin Sq.Dr., Baltimore, Md. 21236
Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Md. 21204
Ms. Nedda Evans, 2224 Tracey's Road, Sparks, Md. 21152
Ms. Lynn Jones, 815 Stablers Church Road, Parkton, Md. 21120
Christine Rorke, DPDM; DEPRM; OP; DPW; R&P; People's Counsel; Case Files

(SHEET N.W.34-B)

N132,000 E932,000 W12,500 W10,500 W9,000 W7,500 E942,000 N132,000 W6,000

N665,000

R.C. 4 | R.C. 5 | R.C. 5 | R.C. 2 | R.C. 2 | R.C. 2

CHURCH RD. | STABLER'S | HURLEY RUN | BRANCH STREET | PUT | BRANCH | STABLER'S | CHURCH | DOWNES RD. | RD

N131,000

R.C. 5 | R.C. 5 | R.C. 2 | R.C. 2

BALTIMORE | ROAD | 83 | MINE | FOURTH

N130,000

(SHEET N.W.33-C) | (SHEET N.W.35-A)

STA. JULIA AZIMUTH MARK (U.S.C. & G.S.) | HILL HOUSE

R.C. 4 | BL-CR | R.C. 2 | R.C. 2

BL | 45

N129,000

R.C. 5 | R.C. 2 | R.C. 2 | R.C. 2

YORK | GREENMEADOW PARK | RD | STABLERSVILLE

N665,000 E932,000 W12,000 W10,500 W9,000 W7,500 E942,000 N128,000 W6,000

N128,000

(SHEET N.W.32-B)

KK-SE
KK-NE

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 10, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00,

Joseph Bartenfelder
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	NORTH OF PARKTON	N.W. 33-B
DATE OF PHOTOGRAPHY JANUARY 1986		

NW 33 B

#337

(SHEET N.W.33-B)

N128,000 — W12,000 — W10,500 — W9,000 — W7,500 — W6,000 — N128,000

N661,000 — N661,000

R.C. 5 — R.C. 2 — R.C. 2 — R.C. 2

BL-CR

BEGINNING OF SPECIAL HEARING

SILO

BRANCH

RD.

STABLERSVILLE

POINT OF BEGINNING OF SPECIAL EXCEPTION

AREA OF SPECIAL EXCEPTION

N127,000 — N127,000

45

MINE

YORK

R.C. 5 — R.C. 2 — R.C. 2 — R.C. 2

FOURTH

(SHEET N.W.32-C)

N126,000 — N126,000

(SHEET N.W.32-A)

MILLER

RD.

Trail — Trail — Trail

R.C. 2 — R.C. 2 — R.C. 2

BM-CR

N125,000 — N125,000

PRIVATE RD.

POWER LINE

TRANSMISSION

PARKTON

R.C. 2 — R.C. 2 — R.C. 2 — R.C. 2

N658,000 — N658,000

PENNSYLVANIA R.R. (ABAND.)

LITTLE FALLS

R.C. 2 — R.C. 2 — R.C. 2 — R.C. 4

W12,000 — W10,500 — W9,000 — W7,500 — W6,000

N124,000 — N124,000

(SHEET N.W.31-B)

KK-SE

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 10, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00,

Joseph Bertholdt
Chairman, County Council

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	PARKTON	N.W. 32-B
DATE OF PHOTOGRAPHY JANUARY 1986		

Loyola College Spiritual Retreat Ctr.

000426.B 1/26/04

NW 32 B

#337