1/28/05

IN THE MATTER OF
THE APPLICATION OF
KIMCO REALTY – LEGALOWNER;
SAFEWAY, INC – PETITIONER /LESSEE
FOR SPECIAL HEARING AND
VARIANCE ON PROPERTY LOCATED
ON THE N/S BALTIMORE NATIONAL
PIKE, 270' E OF C/L INGLESIDE AVE.
(5660 BALTIMORE NATIONAL PIKE)
1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT

\* BEFORE THE

\* COUNTY BOARD OF APPEALS

\* OF

\* BALTIMORE COUNTY

CASE NO. 05-101-SPHA

#### ORDER OF DISMISSAL

This matter comes to the Board of Appeals by way of an appeal filed by Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel, from a decision of the Zoning Commissioner dated November 15, 2004 in which the requested special hearing relief was granted with restrictions and the alternative Petition for Variance dismissed as moot.

WHEREAS, the Board is in receipt of a letter of withdrawal of appeal filed January 26, 2005 by the Office of People's Counsel for Baltimore County, Appellant (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Appellant requests that the appeal taken in this matter be withdrawn and dismissed as of January 26, 2005 as indicated in the attached letter,

of Appeals of Baltimore County that the appeal taken in Case No. 05-101-SPHA be and the same is hereby **DISMISSED**.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY // //

Lawrence M. Stahl, Chairman

Margaret Brassil, Ph.D.

John P. Quinn



PETER MAX ZIMMERMAN

People's Counsel

## Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

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

January 26, 2005

CAROLE S. DEMILIO
Deputy People's Counsel

Lawrence M. Stahl, Chairman County Board of Appeals

400 Washington Avenue, Room 49

Towson, MD 21204

Hand-delivered

Re:

PETITION FOR SPECIAL HEARING & VARIANCE

N/S Baltimore National Pike, 270' E of the c/l of Ingleside Avenue

(5660 Baltimore National Pike)

1<sup>st</sup> Election District; 1<sup>st</sup> Council District

KIMCO Realty, Owner, Safeway, Inc., Lessees- Petitioners

Case No.: 05-101-SPHA

Dear Mr. Stahl:

On or about December 9, 2004, our office filed an appeal of the Zoning Commissioner's Findings of Facts and Conclusions of Law dated November 15, 2004. Upon further review of the record and careful evaluation, it does not appear that pursuing the appeal is in the public interest. We therefore withdraw our appeal in this matter.

Thank you for your consideration.

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BALTIMORE COUNTY BOARD OF APPEALS Very truly yours,

Peter Max Zimmerman

People's Counsel for Baltimore County

Carole S. Demilio

Deputy People's Counsel

PMZ/CSD/rmw

ce: Sebastian Cross, Esquire Michael Tanczyn, Esquire



## 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 28, 2005

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

RE: In the Matter of: KIMCO Realty – Owner; Safety, Inc.
- Lessee/ Petitioner Case No. 05-101-SPHA
Order of Dismissal

Dear Ms. Demilio:

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

Very truly yours,

Kathleen C. Bianco /tra

Administrator

#### Enclosure

c: Sebastian Cross, Esquire
Safety, Inc. / Thomas Castleberry
KIMCO Realty / Geoffrey Glazer
Gregory Reed / Bohler Engineering
Michael P. Tanczyn, Esquire
Riaz Ahmed
William J. Wiseman III / Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director / PDM

Case No. 05-101-SPHA

KIMCO Realty – Legal Owner; Safeway, Inc. – Lessee /Petitioner 5660 Baltimore National Pike

11/15/04 – ZC's decision in which special hearing request was GRANTED; alternate variance request dismissed as moot.

1/26/05 – Letter of withdrawal of appeal filed by Office of People's Counsel; Order of Dismissal to be issued.

11/15/04.

IN RE: PETITIONS FOR SPECIAL HEARING

AND VARIANCE – N/S Baltimore National Pike, 270' E of the c/l Ingleside Avenue

(5660 Baltimore National Pike)

1<sup>st</sup> Election District 1<sup>st</sup> Council District

KIMCO Realty, Owners; Safeway, Inc., Lessees \* BEFORE THE

ZONING COMMISSIONER

\* OF BALTIMORE COUNTY

\* Case No. 05-101-SPHA

. \* \* \* \* \*

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for Baltimore County for consideration of Petitions for Special Hearing and Variance filed by the owners of the subject property, KIMCO Realty and the Contract Lessees, Safeway, Inc., through their attorney, Sebastian A. Cross, Esquire. The Petitioners request a special hearing seeking a determination as to whether a pad site within a shopping center is permitted to have one freestanding enterprise sign per frontage in a B.M. zone. In the alternative, variance relief is requested from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit one freestanding enterprise sign for a multi-tenant retail building. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Brad Rollser on behalf of Safeway, Inc., Greg Reed, with Bohler Engineering, the consultants who prepared the site plan for this property, and Sebastian Cross, Esquire, attorney for the Petitioners. Appearing as an interested citizen was Riaz Ahmad, a business proprietor in the area. Mr. Ahmad was represented by Michael P. Tanczyn, Esquire.

Testimony and evidence offered revealed that the subject property is an irregular shaped parcel located near the northeast corner of the intersection of Baltimore National Pike and Ingleside Avenue in Catonsville, not far from the Baltimore Beltway. The property contains a gross area of 10.555 acres, more or less, zoned B.M.-C.T. and is improved with a small strip retail center known as

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the Ingleside Shopping Center. The primary tenant is a Safeway food and drug store; however, there are other retail and service stores within the center.

The subject of the instant Petitions relates to a small area in the southwest corner of the property, identified as a "pad site." The pad side contains approximately 0.72 acres, more or less, and is proposed for development with a fuel service station/convenience store, which will feature a 400 sq.ft. kiosk and eight (8) multi-product fuel dispensers. There will be no direct access from Baltimore National Pike; however, there are curb cuts leading to the fuel service station from within the shopping center. The fuel station use has been designed so as to be an independent business within the shopping center. The pad site and proposal are more particularly shown on Petitioner's Exhibit 1. It is also to be noted that Safeway submitted a fuel service station development plan and received original approval for same on February 4, 2004. The Petitioner now seeks approval of its sign package, which includes a proposed identification sign for the fuel service station use. It is this sign that is the subject of the instant request.

The proposed sign will provide pricing information and incorporate a 30.75 sq.ft.-identifying banner stating the name "Safeway" with a corresponding corporate logo at the top of the sign. The sign will also display language pertaining to discounts with the use of a Safeway Club Card. At issue is whether the proposed sign is permitted on a pad site within the shopping center. In the alternative, variance relief is requested to permit one ground-mounted freestanding enterprise sign.

In support of its request, the Petitioner testified that there is currently one joint identification sign located at the main entrance to the center off of Baltimore National Pike, approximately 600 feet east of the pad site. This sign identifies all of the existing tenants, including the Safeway store, and lists the names of the smaller retail and service tenants. The proposed sign will be a ground-mounted sign that will advertise the Safeway gasoline service center and its fuel prices. The majority of the sign will be brick; however a 10' x 5' area near the top of the sign will feature the name Safeway, its corporate logo, and the prices of the three grades of gasoline offered.

As noted above, Riaz Ahmad appeared in opposition to the request. Mr. Ahmad owns and operates a BP Gasoline Service Station, which is located in close proximity to the subject site at 5612

Baltimore National Pike. He argued that the proposed sign should not be permitted given the fact that there are several other pad site businesses in the vicinity who do not have signs. He further argued that the proposed business will increase traffic congestion and that pedestrian safety was a concern in that the sign will be located in the vicinity of a pedestrian walkway and may distract motorists. He also indicated that there are 17 other gas stations within ½ mile of the subject site.

Although the public hearing in this matter concluded on October 15, 2004, the record of the proceedings was held open for three weeks by agreement of the parties during which time they had the opportunity to submit legal memoranda in support of their respective positions.

I have considered the various arguments presented by the parties. I am not persuaded that the sign at its proposed location will create safety concerns for pedestrians utilizing the sidewalk adjacent to Baltimore National Pike or create a distraction to motorists as opined by the Protestant. Any potential obstruction or distraction, if one would result, would be so momentary or brief in nature as to be negligible. Vehicles on the favored highway are constantly moving and their positions to one another (vehicles/pedestrians) are constantly changing.

The issue brought about in this case is to classify the two signs and determine whether both are permitted as a matter of right or whether variance relief is needed. A review of the definitions found in Section 450 of the B.C.Z.R. leads to the conclusion that the proposed sign should be characterized as an "enterprise sign." An enterprise sign is defined as "An accessory sign which displays the identity and which may otherwise advertise the products or services associated with the individual organization." Although part of the overall shopping center, the pad site operates as an independent use. The sign does not advertise any of the tenants within the shopping center, but the fuel service station, only. Because the sign does not identify more than one tenant and is specifically for the purpose of identifying the fuel service station use on the pad site, it is an enterprise sign and not a joint identification sign. Section 450 of the B.C.Z.R. also provides that one such sign is permitted frontage in the B.M. zone.

These findings are consistent with the language found in the B.C.Z.R. and the legislative history of Section 450 as described in Petitioners' memorandum. Based upon the testimony and

evidence offered, I am persuaded to dismiss the Petition for Variance and grant the Petition for Special Hearing. I find that the one sign is a joint identification sign and the other, an enterprise sign, both of which are permitted in the B.M. zone, which allows one sign of each type per frontage. Although both signs will front on Baltimore National Pike, they are classified differently and as such, both are permitted.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this day of November 2004 that the proposed pad site within the subject shopping center is permitted to have one freestanding enterprise sign per frontage in a B.L. zone, and as such, the Petition for Special Hearing be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their sign permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The proposed pad site sign shall be constructed substantially in accordance with the sign elevation drawing shown on Petitioner's Exhibit 1.
- 3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED that the alternative Petition for Variance seeking relief from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit one freestanding enterprise sign for a multi-tenant retail building, be and is hereby DISMISSED AS MOOT.

WJW:bis

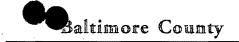
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for Baltimore County

### Zoning Commissioner

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





James T. Smith, Jr., County Executive William J. Wiseman III , Zoning Commissioner

November 15, 2004

Sebastian A. Cross, Esquire Gildea and Schmidt, LLC 300 E. Lombard Street, Suite 1440 Baltimore, Maryland 21202

RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE N/S Baltimore National Pike, 270' E of the c/l Ingleside Avenue (5660 Baltimore National Pike)

1st Election District – 1st Council District KIMCO Realty, Owners; Safeway, Inc., Lessees - Petitioners Case No. 05-101-SPHA

Dear Mr. Cross:

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

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

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

WJW:bjs

Mr. Geoffrey Glazer, V.P., Land Development, KIMCO Realty
 170 W. Ridgely Road, Suite 210, Lutherville, Md. 21093
 Messrs. Thomas Castleberry, Scott Jacobs and Brad Rollser, Safeway, Inc.
 4551 Forbes Boulevard, Lanham, Md. 20706-4389
 Mr. Gregory H. Reed, Bohler Engineering, 810 Gleneagles Ct., #300, Towson, Md. 21286
 Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, #106, Towson, Md. 21204
 People's Counsel; Case File







OCT 2 8 2004

IN THE MATTER OF
5660 Baltimore National Pike
Ingleside Marketplace
N side Baltimore National Pike, 400
feet +/- east of centerline Ingleside
Avenue
1st Election District - 1st
Councilmanic District
Legal Owner: Kimco Reality
Contract Purchaser: Safeway, Inc.
Petition for Special Hearing and
Variance

BEFORE THE ZONING COMMISSIONER ZONING COMMISSIONER

FOR

OF BALTIMORE COUNTY

**CASE NO.: 05-101 SPHA** 

#### MEMORANDUM OF LAW OF THE PROTESTANTS

NOW COMES the Protestant, Riaz Ahmad, by his counsel, Michael P. Tanczyn and submits the within Memorandum to assist the Zoning Commissioner in the decision in this matter.

This matter was heard before the Zoning Commissioner on October 15, 2004 on Safeway's two zoning petitions. The first petition was a special hearing to determine whether a pad site within a shopping center is permitted to have one free-standing enterprise sign per frontage, in a BM zone. The second petition was for a zoning variance from BCZR §450, to allow a free-standing enterprise sign for a multi tenant building and allowing two free-standing signs within 100 feet of one another on the same premises.

#### **FACTS**

The Ingleside Shopping Center, the subject site for this petition, is a 10.55 acre site, on which Safeway proposes to put a gasoline fuel service station on .72 acres. This property is located in the 1st election and 1st councilmanic district and was approved as a planned shopping center by the Baltimore County Office of Planning, August 11, 2000, and a gasoline service station is permitted by right, per BCZR §405.2.A.1, in a planned commercial center. There is an existing site

identification free-standing sign describing the Ingleside Shopping Center located to the east of the proposed location of this sign, which fronts on Route 40. The sign which is the subject of the special hearing and in the alternative, a variance request, is proposed to be located adjacent to the shopping center entranceway from Baltimore National Pike, approximately 295 feet east of Ingleside Avenue. The sign is proposed to be put close to the southern property line. The proposed dimensions of the sign, as shown on the detail of Petitioner's Exhibit 1B are that it will be 14'2" wide and 10' high, supported by two brick faced end sections. The gasoline station was approved as a DRC refinement, #111003A, on or about November 10, 2003, on a revised site plan, which proposed a 3980 square foot Chick Fil A restaurant and a 8MPD Safeway gasoline service station. Safeway is the anchor tenant in the main line of retail stores, located generally in a linked building, located on the north side of the property and directly across from where the proposed Safeway gas station is to be located. The Chick Fil A is proposed to be on a pad site closer to the intersection, on the property corner closest to the Ingleside Avenue, Route 40 corner of Petitioner's property.

#### October 15, 2004 Hearing

Petitioner presented one witness in support of its petitions, namely Gregory Reed, identified as a project manager employed by Bohler Engineering. Mr. Reed worked on plans for 20 to 30 gas stations in Baltimore County, for various engineering firms and received his civil engineering degree from Johns Hopkins University in 2004, however, he was not licensed in any state and did not seal the plat, which was adduced as Petitioner's Exhibit 1B. Petitioner's Exhibit 1A was the overall site plan for the shopping center and the testimony indicated that it was zoned BM-CT and highlighted the Chick Fil A pad site and the safeway pad site. Petitioner's Exhibit 1B was the plan submitted for the instant petition, showing the signs in question, which were the subject of the petition. When asked what he considered to be any factors which made the site unique, under Baltimore County's

variance statute §307, Mr. Reed testified he thought the traffic circulation pattern around the proposed fuel service station and the Chick Fil A site made the site unique. When cross-examined, he testified that he was not familiar with the case of <u>Cromwell v. Ward</u>, and had not read it, and did not consider any aspects of the site concerning the shape, size or topography to be unique, nor did he consider any other factors of the site to be unique.

He testified that he believed the practical difficulty or unreasonable hardship to Safeway was that it was required by State transportation law to have a sign indicating the price per gallon for the fuels it intended to offer for sale, and that was a problem for Petitioner to comply with the State law, when Baltimore County PDM had taken the position that a second sign was a prohibited increase because the number of enterprise signs on a particular frontage was limited to one, under the 1997 zoning sign law revision. He testified that the purpose of the sign would be to notify motorists of the prices charged per gallon. He testified that he believed the speed limit on Route 40 was 40 miles per hour, and he testified that in the vicinity of the proposed entrance there were 5 traffic lanes westbound on the divided Route 40, including 3 through lanes, a right turn lane, and a left turn lane. He further testified that the topography of the site was not proposed to be dramatically changed from the existing topography by the Petitioner and that the sign, in his opinion, would be well located in the proposed location.

He acknowledged that the sign would not be visible from Ingleside Avenue, and if the sign were moved to the corner of Ingleside and Route 40, it would then be visible from both roads. He further testified that in his opinion, the traffic entering and exiting the shopping center would not block or impede the view of the sign at its proposed location for approaching westbound traffic. He noted that there was a pedestrian walkway along Route 40, including the walkway proposed across the island dividing the roadway entrance and exit from the site, adjacent to the proposed sign. He

was not familiar with the traffic counts on Route 40 and had done no traffic study to determine the volume of traffic in the vicinity of the Petitioner's proposed entrance. He acknowledged that the proposed traffic pattern in the vicinity of the fuel dispensing pumps was proposed to be two-way on all four side, and that there were multiple entrances to and from the multiple gas pump dispensers from the shopping center parking lot, as well as the proposed entrance/exit at Route 40.

The only Protestants' witness to testify was Riaz Ahmad, who testified as to safety concerns he had for pedestrians utilizing the sidewalk adjacent to the Baltimore National Pike, as well as what he considered to be the distraction to motorists of the sign if located as proposed, and the fact that if allowed under the variance statute, it would set a precedent in derogation of the Baltimore County zoning sign statute revision from 1997, which attempted to limit and reduce signage on the main thoroughfares and corridors located in Baltimore County. He further testified that he was familiar with the traffic counts on Route 40 in this area, and that as of January, 2004, there were in excess of 30,000 cars per day passing the site. He testified that due to the numerous number of traffic lanes and to the volume of traffic, that traffic frequently backs up coming out of the existing shopping center, before the Chick Fil A and gas station have ever been opened, many times during the day. He further testified that the Sam's Club across Ingleside Avenue gas station did not have an identification sign along any frontage of either Ingleside Avenue or Route 40, and that they were pumping large volumes at Sam's Club. On that same point, Mr. Reed testified that he was aware of the Sam's Club gas station, and was unaware of any gasoline price sign on any of the frontage on Route 40 or Ingleside Avenue.

#### THE PETITION FOR SPECIAL HEARING SHOULD BE DENIED

Petitioners acknowledged that Bill 89-1997 substantially revised the sign regulation sin Baltimore County when enacted. Excerpts of the zoning sign regulations submitted by Protestants

to the Zoning Commissioner indicated the legislative intent of the County Council in enacting this revision, as codified in §450.1, including that the amount of signage in Baltimore County was excessive; that the excessive signage distracted drivers and pedestrians, creating traffic and safety hazards and impairing the utility of the highway system, and reducing the effectiveness of signs. As noted in 450.1.C, excessive and incompatible signage was found to be contrary to the goals of the County Master Plan. In §450.1.E, the legislative goals were set forth in §450.1.G, to eliminate and restrict signs, which constituted an actual or potential distraction. Further, §450.2.B.6 provided that signs must comply with the Baltimore County Building Code and where §450 imposes more stringent requirements, it shall control.

Petitioners contend that the BCZR limits a free-standing enterprise zones to one per frontage. Petitioners then argue that because the pad sites are physically separated for the Chick Fil A and the proposed fuel service station from the Ingleside Shopping Center main buildings, that they should not be seen as a contiguous entity. The Protestants argued that because gasoline stations are only permitted by right in planned shopping centers, that the pad sites are seen as part of the shopping center, including the fuel service station proposed to be an adjunct to the Safeway, which is an anchor tenant in the main building, to the north of the proposed pad site. Boiled down to its essence, Petitioners, who claimed the right to have a fuel service station there because it was part of a shopping center, now seek to distinguish the pad sites as not part of the shopping center, which is the basis in fact for approval of a fuel service station in this shopping center in the first place. If it were not considered part of the shopping center, then it would require special exception approval under the zoning regulations, if not part of an approved shopping center, as is the case here. Petitioners argument, to the contrary, attempts to read different definitions from the sign regulations,

as separate and distinct, and does not attempt to harmonize them in the context of an approved shopping center, which allows a fuel service station.

The obvious question is, if Petitioner's argument was valid, would they then consider this to be a fuel service station which would require a special exception, as not being part of the shopping center, which would be the case if it was not part of the shopping center. Further, the proposed sign does not have to be located on the frontage of Route 40 or Ingleside Avenue. No fair reading of the State Transportation Article requirements that there be a sign, mandates or militates its location at a particular point on the Petitioner's site. That is the case with the nearest similar use, called Sam's Club, which is directly located to the west across Ingleside Avenue, in the Westview Shopping Center. There is a large brick wall fronting that entire section of Route 40 along the southern edge of that shopping center, and the Sam's Club shopping center is located in the parking lot adjacent to Ingleside Avenue, some distance from Route 40. As was brought out in the testimony, Safeway is proposing a canopy with Safeway logos around the pump areas, and well above the pump, approximately 18 feet high. Therefore, there will be sufficient notice to the public that there is a gas station located on the Safeway pad site, without the necessity of violating the regulations and affording Safeway an additional free-standing enterprise sign, in blatant disregard of the limitations called for in Bill 89-1997, which sought to reduce, eliminate and limit the signage which could cause a pedestrian hazard or motorized traffic difficulty.

In reviewing Petitioner's Memorandum in support of its request for a special hearing exemption, to allow the requested sign, the regulations cited by the Petitioner, in some causes, do not stand for the proposition offered by Petitioner. In seeking to establish distinctions in the zoning regulations between shopping centers and multi-tenant retail buildings, Petitioners cite, at page 8 of their Memorandum, §259.9.D.4 of the regulations, which discusses requirements placed on both

shopping centers and multi tenant buildings. However, in reading the regulation, the prohibition or limitation on signage for one free-standing identification sign is the same for both shopping centers and multi tenant buildings. Therefore, the distinction sought to be made by Petitioner, in fact doesn't matter, because they are both limited to one free-standing identification enterprise sign.

Next, Petitioners cite the 1999 amendment to the BCZR, but again, after reading that section, the claimed exemption for individual pad sites does not help Petitioners because the sign requested is not an existing permitted use, as limited to one per frontage. The existing sign for the Ingleside shopping center already meets the definition, and therefore closes the gate on all other enterprise free-standing identification signs.

Petitioners are swimming upstream in their attempt to argue that PDM's interpretation of the signage regulations is incorrect. PDM's interpretation, indeed, harmonizes the zoning regulations and takes note of the fact that the proposed fuel service station was approved as part of a shopping center and was considered as part of a shopping center site, and would be subject to the limitations applicable to shopping centers to have one free-standing identification sign per frontage.

Protestants further submitted excerpts to the Zoning Commissioner at the hearing of portions of the sign regulations in questions. Note §450.8, Administration and Compliance, A.1, provides in considering requests for special exceptions and variances, the provisions of this section shall be strictly construed, unless the demonstrable effect of a liberal construction will prevent or reduce the confusion and visual clutter caused by excessive signage. On the facts presented at the hearing through the witnesses, the addition of this sign would not meet that test, in that, because of the traffic pattern for and the proximity of the access point. The existing topography and proposed elevation of the sign, makes its utility questionable when large or standard size vehicles are leaving the site, which would obscure the sign at its proposed location. Further, the congruence of a

pedestrian walkway ingress and egress points in close proximity to a five-lane wide west bound portion of Route 40 militate against locating the sign at this location, because it would violate the provisions of §450.8.A.1. Further, the provisions of BCZR §450.6, General Sign Requirements, A.1 provide that no sign may be erected or maintained at any highway intersection or at any other place (emphasis supplied) including intersections with railroads or with driveways intended for general public use, in such a manner that its location, position, size, shape, color, or illumination obscures or impairs a motorist's clear view of traffic conditions, pedestrian crossings, or any part of a sign or signal erected by a governmental entity...Again, on the evidence submitted to the Zoning Commissioner in this case, the utility of this sign is questionable at that location and its size and location would cause the attention of motorists to be attracted to it, in disregard of any existing pedestrians crossing the driveway or for traffic exiting or entering the site at that point.

#### THE PETITION FOR VARIANCE SHOULD BE DENIED

The Petitioner did not present legally sufficient evidence to meet the legal standard of a variance, under <u>Cromwell v. Ward</u>, 102 Md. App. 691, 651 @ A.2d 424 (1995). The <u>Cromwell</u> court defined uniqueness as used in Section BCZR 307, as follows:

"Uniqueness of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls...

In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, in Ad + Soil, Inc. v. County Commissioners, 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from Queen Anne's County Ordinance; whereby reason of the exceptional narrowness, shallowness, or unusual shape of a specific...property..., or by reason of exceptional topographic conditions or other extraordinary situation or special conditions

of...property...the literal enforcement...would make it exceptionally difficult...to comply...and would cause unwarranted hardship and injustice....Cromwell supra @ 710, 711.

The Petitioner's site does not meet the test of uniqueness because it is rectangular, large, flat, and the same as the Westview Shopping Center immediately to its west. The factor considered to be unique by the Petitioner's engineer, Mr. Reed, namely the traffic circulation plan, they believe could cause confusion, is not a factor recognized as unique, and is in fact, of human creation, rather than a site specific factor. Stated another way, by changing the traffic pattern to make it one-way, the confusion could be reduced, but that would have nothing to do with the physical attributes of the site, none of which preclude the Petitioner from complying with the regulations. In fact, in this case, what the Petitioners seek by a variance, is an additional sign, not an exemption from complying with an area or site setback type variance. In considering the remaining requirements of practical difficulty or unreasonable hardship under BCZR §307, a fair review of the evidence adduced by Petitioner's sole witness indicated there was no substantive complaint of practical difficulty or unreasonable hardship. The sign could be placed anywhere else on the site, just not on the frontage, and still allow compliance with the Baltimore County sign regulations and State Transportation law. Petitioner is not prevented from making a reasonable use or getting a reasonable return on their property, since the gas station will go in there regardless of whether the sign is allowed on the frontage or not.

Protestants also submitted for consideration by the Zoning Commissioner at the time of hearing, the case of Red Roofs Inn, Inc. v. People's Counsel for Baltimore County, 96 Md. App. 219, 624 A.2d 1281 (1993). In that case, a motel operator appealed the decision of the County Board of Appeals denying the variance regarding signs. That decision was affirmed by the Circuit Court and by the Court of Special Appeals, which found that the evidence before the Board

supported the Board's denial of the variance. It should be first noted that that decision antedates the revision of the Baltimore County sign regulation by Bill 89-1997, which attempted to further restrict signage, as aforesaid, in Baltimore County. In considering the evidence presented in support of the variance request, the Red Roof Petitioner alleged that the low elevation of the site and screening of the site by trees were natural conditions that caused the site to have unique topography. Red Roof further claimed that because of the commercial nature of the area in which the site was located, it could not participate in the Maryland State Highway Logo Program, which allows eligible businesses to put their logos on signs along certain designated highways. Next, Red Roof asserted that the neighboring competitors enjoyed significantly higher and larger rooftop signs than the one proposed by Red Roof Inn, placing Petitioner at a potential disadvantage with other motels in the same commercial zones. Finally, Red Roof claimed the Zoning Commissioner's decision was arbitrary and capricious because of the Zoning Commissioner's determinations in two unrelated petitions for variance by other lodging establishments 15 miles from the subject property. Red Roof supra @ 1284. Affirming the Board of Appeals, and Circuit Court, the Court of Special Appeals found that the Board of Appeals was correct in concluding that the Petitioner would not suffer any practical difficulty or undue hardship. Red Roof supra @ 1284. The same is the case in the instant Petition For Variance where Safeway will not be harmed or prevented from making a reasonable return if it is prevented from having one more sign with its name on it along the frontage of Route 40. Due to the traffic and pedestrian situations in the proposed vicinity of the sign, the Protestants urge that those bases be considered sufficient by the Zoning Commissioner to deny the Petition for Variance for the reasons presented in the hearing and in this memo.

#### CONCLUSION

Protestant respectfully requests the Zoning Commissioner to deny the Petition for Special

Hearing and to Deny the Petition for Variances, on the points and authorities cited

Respectfully submitted,

MICHAEL P. TANCZYN, Esquire

606 Baltimore Avenue, Suite 106

Towson, Maryland 21204

(410) 296-8823

Attorney for the Protestant

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY this 28th day of October, a coy of foregoing was mailed, postage prepaid to Sebastian A. Cross, Esquire, Gildea, LLC, 300 E. Lombard Street, Suite 1440, Baltimore, MD 21202, Attorney for Safeway, Inc.

MICHAEL P. TANCZYN, Esquire 606 Baltimore Avenue, Suite 106

Towson, Maryland 21204

(410) 296-8823

Attorney for the Protestant

IN THE MATTER OF 5660 Baltimore national Pike Ingleside Marketplace N side Baltimore National Pike, 400 feet +/east of centerline Ingleside Avenue 1st Election District – 1st Councilmanic

District

Legal Owner: Kimco Reality

Contract Purchaser: Safeway, Inc. Petition for Special Hearing and Variance **BEFORE THE** 

RECEIVED

OCT 13 2004

TISSING COMMISSIONER ZONING COMMIS

**FOR** 

**BALTIMORE COUNTY** 

Case No.: 05-101-SPHA

#### MEMORANDUM IN SUPPORT OF PETITION FOR SPECIAL HEARING

This Memorandum is in support of Safeway, Incorporated's ("Safeway") Petition for Special Hearing to determine whether a padsite within a shopping center is permitted to have one freestanding enterprise sign per frontage in a BM zone. This Special Hearing is scheduled to be heard by a Zoning Commissioner on October 15, 2004 and resulted from Safeway's proposal for a fuel service station use within the Ingleside Shopping Center. This Memorandum will address the issues Safeway believes are pertinent in determining this fuel service station be permitted one freestanding enterprise sign per frontage as provided by the Baltimore County Zoning Regulations ("BCZR").

#### I. INTRODUCTION

Safeway has submitted a signage package consisting of a ground-mounted freestanding enterprise sign located at the southeast corner of its fuel service station padsite within the Ingleside Shopping Center ("the Property"). The Property is zoned BM-CT. This sign will provide pricing information as required by Maryland Business Regulation Code §10-315. Along with the pricing information, Safeway has proposed to incorporate a 30.75 square foot identifying banner plainly stating the name "Safeway" with a corresponding corporate logo at the top of the sign. This sign will also display language pertaining to discounts received with the use of a Safeway Club Card. The height of the ground mounted freestanding enterprise sign is 10 feet.

Baltimore County Department of Permits and Development Management ("PDM"), through administrative practice, incorrectly interprets the BCZR by mandating such signs in planned shopping centers are prohibited. As such, Safeway has filed this Petition for a Special Hearing to determine its fuel service station padsite is permitted one ground mounted freestanding enterprise sign per frontage as provided under the BCZR. In the alternative, Safeway has also filed a Petition for Variance of Section 450.4 of the BCZR to allow one ground mounted freestanding enterprise sign for this site.

#### II. BACKGROUND

Safeway is currently the anchor tenant of the Ingleside Shopping Center which exists in Baltimore County as a "planned shopping center," as provided under Section 101 of the BCZR. This shopping center contains not only a Safeway grocery and drug store, but also various other retail and service stores within the planned shopping center boundaries. The Ingleside Shopping Center currently has one joint identification sign along its main entrance off of Baltimore National Pike displaying the identification of Ingleside Marketplace. Safeway is permitted a fuel service station as of right in a planned shopping center pursuant to Section 405.2 of the BCZR. As such, Safeway has submitted a fuel service station development plan and received original approval on this plan on February 4, 2004.

Safeway now submits its signage package to be included with the approved development plan consisting of one ground-mounted sign displaying pricing information, the "Safeway" lettering with attached logo and the club card information. The sign, as currently proposed, is comprised of mainly brick with a decorative crown in harmony with the joint identification sign

currently located at Ingleside Shopping Center. This sign will display pricing information for the three different grades of fuel offered at the station in conformance with Maryland State law. <u>See</u> Md. Ann. Code Section, Business Regulation §10-315. Above this pricing information, this sign will include the Safeway logo accompanied by the lettering "Safeway" and the previously mentioned club card language. The entire identifying banner will be 30.75 square feet in area in conformance with the BCZR.

Upon inquiry with PDM as to the signage package, it was revealed that the current administrative practice in Baltimore County is to prohibit such enterprise signs from padsites within planned shopping centers. This prohibition is due to PDM's misinterpretation of the signage regulations of the BCZR. The BCZR prohibits enterprise signs for multi-tenant retail buildings and, as such, PDM has incorrectly classified Safeway's fuel service station padsite as comprising part of a multi-tenant retail building. This position from PDM has necessitated Safeway to file a Petition for Special Hearing and Petition for Variance in order to seek approval for its State mandated sign.

This identical issue was previously ruled upon by Zoning Commissioner Lawrence E. Schmidt through Case No. 02-522-SPHA and granted approval for a proposed pad site to maintain a freestanding enterprise sign in the subject shopping center. *See Attachment* 1. The language of "subject center" has been determined by PDM to be site specific and has therefore required the current Special Hearing.

#### III. ARGUMENT

A. Joint Identification and Enterprise Signs are both Permitted in the BM Zone as Provided by the BCZR.

As the Ingleside Shopping Center and fuel station padsite exist in a BM zone, both a joint identification and enterprise sign are permitted in this zone as provided by the BCZR. Section 450.4 of the BCZR specifically defines a joint identification sign as:

An accessory sign displaying the identity of a multi-occupant non-residential development such as a **shopping center**, office building or office park.

This Section goes on to state that the maximum number allowed per premises is one per frontage. <u>See</u> BCZR Section 450.4.I.7. (emphasis added).

As stated previously, the current sign located at Ingleside Shopping Center contains only the name of the marketplace. By the definition previously cited, this sign serves as a joint identification sign for the multi-occupant development within the shopping center. The fact that joint identification signs are specifically permitted for "shopping centers" also demonstrates the correct classification of the existing sign at the Ingleside Shopping Center as a joint identification sign.

The padsite for the proposed fuel service station is also permitted an enterprise sign under Section 450.I.5(b). An enterprise sign is defined in the zoning code as:

An accessory sign which displays the identity and which may otherwise advertise the products or services associated with the individual organization.

The proposed sign for Safeway displays solely this type of identity of the organization providing the gasoline and the club card service and, as such, is classified as an enterprise sign.

These enterprise signs are also allowed one per frontage in a BM zone as provided under Section 450.I.5(b).

### B. Safeway's Proposed Signage is Required Under Maryland State Law.

The Safeway fuel service station is not only entitled to have this sign under the zoning regulations of Baltimore County, but this type of pricing sign is also required by Maryland State

Business Regulation Code §10-315. These requirements of the Business Regulation Code specifically pre-empt any restrictions imposed by local laws or ordinances as mandated in Section 10-315(e) where it states:

A sign required by a service station in this §10-315 or any other state or federal law is exempt from the provisions of a local law, ordinance or regulation for the purpose of determining:

- (1) The total number of signs permitted; and,
- (2) The area of signs permitted. (emphasis added)

Therefore, the prohibition PDM attempts to place on these enterprise signs for this station is preempted by State law.

- C. Prohibition for Freestanding Enterprise Signs Not Applicable to Padsites Within A Shopping Center Development.
  - 1. Freestanding Enterprise Signs Are Prohibited from Multi-Tenant Retail Buildings in BM zones.

BCZR Section 450.I.5(b) provides that freestanding enterprise signs are permitted in BM zones, "excluding MULTI-TENANT OFFICE, RETAIL, OR INDUSTRIAL BUILDING." *See* BCZR Section 450.I.5(b). PDM has interpreted this section to extend prohibition for freestanding enterprise signs to shopping center padsites ignoring the fact that this limitation only attaches to multi-tenant retail buildings. As will be demonstrated, shopping centers and padsites do not share the same characteristics as the more limited definition of multi-tenant retail buildings and, as such, padsites within shopping centers are exempt from the prohibition of one freestanding enterprise sign per frontage.

#### 2. Multi-Tenant Retail Buildings in the Signage Regulations of the BCZR.

Although there is not a precise definition contained within the BCZR of a "multi-tenant retail building," the Zoning Code specifically defines "building" in its General Provisions

Section 101 of the BCZR. This Section defines building as:

A structure enclosed with exterior walls or firewalls for the shelter, support or enclosure of persons, animals or property of any kind.

Therefore, for a padsite to be defined as a building, it would have to be attached to the same enclosed exterior walls of other multi-tenant uses which is not the situation *sub justice*.

3. Shopping Centers as Developments Rather Than Buildings in the Zoning Code.

Section 450.I.5(b) of the BCZR states that one freestanding enterprise sign is allowed in an BM zone with a maximum number of one per frontage. Frontage is defined in Section 450.3 of the BCZR as:

A lot line of a **premises** which is coterminous with a right-of-way line of a highway to which the premises has or would be allowed pedestrian or vehicular access.

Therefore, when determining the maximum number of signage per frontage one must look to the definition of premises, also defined under Section 450.3 of the BCZR. Premises is defined as:

A recorded lot, or in the case of a multi-occupant lot, such as a shopping center, office park, or industrial park, the total area of the development under common ownership or control.

Therefore, the premises would be seen as the entire shopping center development and not simply one large building as PDM would find. The Ingleside Shopping Center therefore has frontage along Baltimore National Pike, as this is the property line adjacent to a right-of-way for the entire development. Freestanding enterprise signs are allowed in BM zones of one per frontage. These definitions are important because shopping centers encompass the entire development boundary of the property, containing within their boundaries separate padsites and multi-tenant retail buildings, both of which are distinct entities within the shopping center itself.

Although a shopping center development may have a multi-tenant building within its confines, this does not convert all open space, parking lots and padsites of the entire development into one enclosed building. Therefore, viewing a padsite as a building connected directly to other retail uses cannot be seen as valid both in light of the physical separation between the padsite and any building, and the fact that shopping centers exist as the entire development made up of several separate parts. Only one of a shopping center's parts is comprised of multi-tenant buildings.

- D. Separate Treatment of Shopping Centers, Multi-Tenant Retail Buildings, and Individual Padsites in the Zoning Code.
  - 1. Amendments made to the signage regulations of the BCZR.
    - a. Signage Regulations of 1997.

On September 19, 1996, the Baltimore County Planning Board submitted a report entitled, "Proposed Revisions to the Baltimore County Zoning Regulations Concerning Signs" ("Report"), assigned as legislative project number 96-01. As a result of this report and the corresponding recommended amendments to the signage regulations, Baltimore County Council passed Bill No. 89-97 on August 4, 1997 which amended the Zoning Code Regulations for all signage in Baltimore County. These amendments created what substantially exists as the present Zoning Regulations today. It is within these current Zoning Regulations where treatment for signage for shopping centers and multi-tenant retail buildings are clearly distinguished.

# b. Planning Commission's Recommendations Deliberately Altered by the County Council.

In the original recommendation to the Baltimore County Council, the Planning Board stated freestanding enterprise signs should be allowed in BM districts, "excluding shopping centers." Legislative Project No. 96-10, p. 25, *See Attachment* 2. Although retaining the rest of

the recommendations for freestanding enterprise signs in BM zones, the Baltimore County Council specifically eliminated shopping centers from the prohibition of these signs on their premises. Balt Co. Bill No. 89-97, *See Attachment* 3. Instead of maintaining the prohibition on freestanding enterprise signs for shopping centers, this recommendation was altered to prohibit freestanding enterprise signs only for multi-tenant office, retail or industrial buildings. Through this amendment, the County Council ensured that only multi-tenant retail buildings, and not shopping centers, be subjected to a freestanding enterprise sign prohibition. This separate treatment of shopping centers and multi-tenant retail buildings is also reflected elsewhere in the signage regulations amended in 1997.

## 2. Other Distinctions Between Shopping Centers and Multi-Tenant Retail Buildings Within the Code.

The only other section of the BCZR dealing specifically with signage regulations for shopping centers and multi-tenant retail buildings can be seen in Section 259 of the BCZR. Particularly, Section 259.9D (which deals with development standards for H and H1 overlay districts) demonstrates the disparate treatment granted to shopping centers and multi-tenant retail buildings. This Section was also a part of the original amended signage Bill passed in 1997. See Attachment 4.

Section 259.9.D.4 imposes requirements for both shopping centers and multi-tenant buildings, and does so by clearly separating each entity into the own category in the regulation which states:

Only one freestanding joint identification sign of no more than 12 feet in height and not more than 100 square feet in area for each shopping center <u>or</u> multi-tenant building is permitted. (emphasis added).

This clear separation is repeated in Section 259.9.D.5 where it states:

<sup>&</sup>lt;sup>1</sup> This is signified by the text "shopping centers" being stricken out and the amended text being added below.

Only one wall-mounted joint identification sign, which for each shopping center <u>or</u> multi-tenant building identifies the center or building and which does not exceed the greater of 100 square feet or 12% of the wall upon which it is mounted, is permitted.

These provisions of the BCZR demonstrate the regulations apply to both shopping centers and multi-tenant retail buildings, but these entities could not both be listed under a common definition. Rather, the Code provision explicitly lists both individually due to a "shopping center" and a "building" existing as two distinctively different formations. A shopping center and multi-tenant retail building are not seen as synonymous under the Code and, therefore, Baltimore County Council's deliberate omission of shopping centers from the prohibition on freestanding enterprise signs demonstrates these signs were to be permitted for shopping centers - one per frontage.

#### 3. Padsites Distinguished in the Signage Regulations of the BCZR.

In 1999, the Baltimore County Council again amended Section 259.9.D.1 of the signage regulations dealing with shopping centers and multi-tenant retail buildings through Bill No. 73-1999. Originally, the 1997 regulations stated that signage in the H and H1 districts were to be subjected to Section 450 and:

1. Freestanding enterprise and freestanding joint identification signs are not permitted.

See Attachment 4.

In 1999, the Baltimore County Council amended this section to create the regulation that:

1. Freestanding enterprise and freestanding joint identification signs are not permitted **on individual padsites** unless the sign is an existing permitted use. (Additional text highlighted)

See BCZR 259.9.D.1.

This additional language of the current regulation now prohibited freestanding and joint enterprise signs only for padsites, distinguishing these padsites from both shopping centers and

multi-tenant retail buildings. As stated previously, BCZR Sections of 259.9.D.4 and 5 both treated shopping centers and multi-tenant retail buildings separately and now the 1999 amendments also add the distinctive category of "padsite" as receiving unique treatment under the Code.

With the County Council recognizing padsites as a separate portion of an overall development, this same type of prohibition for signage on padsites could have been placed upon shopping centers in Section 450. As of the date of the writing of this Memorandum, this prohibition specifically for shopping centers has not been made. As such, the decision of the County Council to handle shopping centers, multi-tenant retail buildings and padsites as separate entities is demonstrated through an analysis of the Code. With these separate classifications controlling the regulations, PDM cannot blindly classify a padsite within a shopping center as a multi-tenant retail building.

#### E. PDM's Interpretation of the Signage Regulations is Incorrect.

As demonstrated *supra*, the BCZR clearly separates what can be defined as a shopping center, multi-tenant retail building and padsite. While a building is defined as one enclosed area made up of adjoining walls, a planned shopping center is defined as:

An integral retail shopping **development** for which an overall plan has been approved by the Office of Planning and which: is under common ownership or control; has a site at least three acres in net area; has vehicular access to physically separate buildings on the site by means of interior service drives or ways; and has no more than two points of vehicular access from the site to public streets ...

BCZR Section 101.

Stated previously, a building is one enclosed area, while a shopping center encompasses an entire development under common control. Padsites exist within this area of common control without sharing the common walls or being enclosed with other uses in the same building.

PDM has interpreted these padsites within a shopping center development (and indeed the entire shopping center development itself) as being synonymous with a multi-tenant retail building. This attempt to categorize an expansive development into a smaller specific definition of one building is a misinterpretation of the Zoning Code and goes against the purpose and intent of the County Council. Denying padsites freestanding enterprise signs of one per frontage is an administrative practice that attempts to legislate a prohibition for signage which the County Council did not.

Although it was proposed by the PDM that shopping centers be prohibited from having freestanding signs, the amendments made in 1997 specifically disregarded this recommendation and, instead, changed the prohibition for shopping centers to affect only multi-tenant retail buildings. PDM intends, with their interpretation, to merge the classifications of a building with that of a shopping center by relying on the fact that Safeway applied for a fuel service station in a planned shopping center. Although it is true fuel service stations are allowed as of right in planned shopping center developments, this does not transform a padsite into a multi-tenant retail building. The physical separation, as well as the Zoning Code's separate treatment of these entities, demonstrate the error of PDM's administrative practice, a practice that should be rectified.

#### V. CONCLUSION

Safeway proposes a fuel service station to be located in the BM zone within the Ingleside Shopping Center. As part of its development proposal, Safeway has included a signage package consisting of one ten foot ground mounted freestanding enterprise 30.75 square feet in area. This type of enterprise sign is permitted under Baltimore County Zoning Regulations and Maryland state law. Baltimore County Department of Permits and Development Management has

misinterpreted the Baltimore County Zoning Regulations in determining that these types of freestanding enterprise signs are banned from padsites within shopping centers. However, upon analysis of the Zoning Code itself and the spirit and intent of the legislative history surrounding signage regulations in Baltimore County, this interpretation from the Department of Permits and Development Management is invalid. In fact, this exact issue was previously argued in Zoning Case No. 02-522-SPHA whereby it was determined that such padsites are permitted one freestanding enterprise sign per frontage. As such, Safeway should be permitted to maintain its signage package as submitted and receive approval for its Petition for Special Hearing.

Sebastian A. Cross

Gildea, LLC

300 E. Lombard Street, Suite 1440

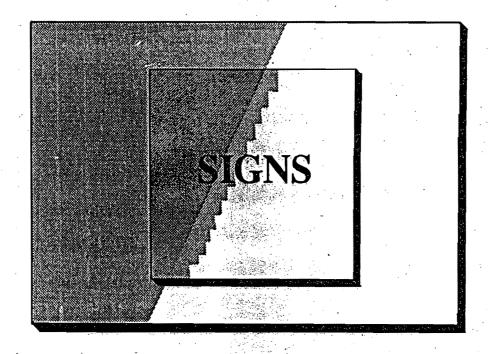
Baltimore, MD 21202

(410)234-0070

Attorney for Safeway, Inc.

## Legislative Project No. 96-01 Part 1

# PROPOSED REVISION TO THE BALTIMORE COUNTY ZONING REGULATIONS CONCERNING:



A Final Report of the Baltimore County Planning Board
September 19, 1996

1	II	Ш	IV	V	VI	VII	VIII	IX
Class	Structural Type	Zone or Use	Permit Req.	Area/Face	No./prem.	Ht.	Illumination	Additional Limitations
4. DIRECTORY, meaning an accessory sign displaying the identity and location of the nonresidential occupants of a building or development	Wall-mounted; free-standing	All zones; See Section 450.6.A	Bldg.	Not regulated, except 25 sq. ft. in S-E zone	Not regulated	6 ft.	Yes	See Sec. 450.6.A
5. ENTERPRISE, meaning an accessory, commercial sign which displays the	(a) Wall- mounted; project- ing; canopy	BL, BM, BR, CB, BLR excluding shopping centers	Bldg.	Twice the length of the wall to which the signs are affixed	One in CB, otherwise three, no more than two on each facade	Not applicable	Yes, but No in CB when use to which sign is accessory is open	No single sign larger than 50 sq. ft.;150 sq ft otherwise.
identity and which may otherwise advertise the products or services asso- ciated with the individual commercial entity	(b) Free- standing	BLR, BM, BL, BR, , MLR,MR ML, MH, exclud- ing shopping centers	Bldg.	75 sq. ft.; 100 sq. ft. if premise has more than 300 ft. of frontage	One per frontage	25 ft.	Yes	25 sq. ft. for dealer- ship also displaying one or more new motor vehicle signs; see 450.3.5.g.

# Attenhiment 3

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	11	III	īv	v	VI	VII	VIII	IX.	
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				,				Except for windows, commercial	

# COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND Legislative Session 1997, Legislative Day No. 15

Bill No. 89-97

Attachment 4

#### All Councilmembers

By the County Council, August 4, 1997

#### A BILL ENTITLED

AN ACT concerning

Signs

FOR the purpose of updating and amending the Baltimore County Zoning Regulations concerning permanent and temporary on-premises signs and permanent off-premises signs; defining certain terms; identifying classes and structural types of signs; establishing use, area, height, number, illumination and other limitations; establishing general prohibitions and exceptions; establishing special requirements for particular classes of signs; establishing County policies concerning compliance with sign regulations; permitting certain exemptions; requiring the submission of signage information as part of the development review and approval process; and generally relating to the regulation of signs.

**EXPLANATION:** 

CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter stricken from existing law.

Strike out indicates matter stricken from bill.

Underlining INDICATES AMENDMENTS TO BILL.

## Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

>	for the property located at				Pike			
which is presently zoned BM-CT								

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

To determine whether a padsite within a shopping center is permitted to have one freestanding enterprise sign per frontage in BM zone.

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.

• '	
Contract Purchaser/Lessee:	
T	
Safeway, Inc.	
Name - Type or Print	
Thomas Castleberry, V.P. Real	Fstate
1	
4551 Forbes Blvd. (801)918-6	N-
	one No.
Lanham, MD 20706-4389	
City State 2	ip Code
Attorney For Petitioner:	
Sebastian A. Cross	
Name - Type of Frint	
Sel Inn	•
Signature	
Gildea, LLC	
Company	_
300 E. Lombard Street, Suite 1	.440
	hone No.
Baltimore, MD 21202 (410)23	34-0070
City , State	Zip Code
·	•

lase No. 05-101-SPHA

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.

#### Legal Owner(s):

KIMCO Realty

Signature Glazen,	Vice President	of Land
Name - Type or Print Acquisiti	au & Developmen	it.
Signature		
170 W. Ridgely Roa	ad, Suite	510
Address		Telephone No
Lutherville, MD 2	1093 (410	)684-200
City	State	Zip Code

#### Representative to be Contacted:

Sebastian A. Cross Name Suite 1440 300 E. Lombard Street, Address Telephone No.-(410)234-0070 State Zip Code

#### OFFICE USE ONLY

ESTIMATED	LENGTH	OF	HEARING	 	

DIANANTENDEE I OK LIENKTIAO	UNAVAILABLE	FOR	HEARING	
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Date 8/24/04

REV 9115198



## **Petition for Variance**

to the Zoning Commissioner of Baltimore County
for the property located at 5660 Baltimore National Pike

which is presently zoned BM-CT

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

BCZR Section 450.4 to allow one freestanding enterprise sign for a multi-tenant retail building.

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

To be presented at hearing.

Property is to be posted and advertised as prescribed by the zoning regulations. I, or we, agree to pay expenses of above Vanance, 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:

Safeway, Inc.

Name - Type or Print

Address

Lanham,

Signature Thomas

Name - T	ype or Print
. Real Estate	Signature //
918-6661	Geoff Glazer Vice President of Land Acquisi
Telephone No.	Name - Type or Print and development
•	
Zip Code	Signature
	170 W. Ridgely Road, Suite 210
	Address Telephone No.
	Lutherville, MD 21093(410)684-2000

Legal Owner(s):

KIMCO Realty

Attorney	For	Petiti	oner:

4551 Forbes Blvd.

Sebastian A. Cross Name - Type of Print Signature Gildea, Company Lombard Street, Suite 1440 300 E. Telephone No. MD 21202 (410)<sub>234</sub>-0070 Baltimore, Cit State Zip Code

Case No. 05-101-5PMA

Castlebe

MD 20706-4389

(301)

Representative to be Contacted:

Lutherville, MD

Sebastian A. Cross Name 300 E. Lombard Street, Address (410)234-0070 Baltimore,MD 21202 Zip Code City State

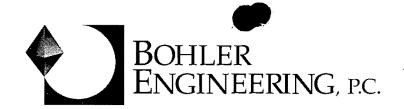
Zip Code

OFFICE USE ONLY

	UNAVAILABLE FOR	RHEARING			
Reviewed By _	LTM	_ Date _&	124	104	į

ESTIMATED LENGTH OF HEARING

RBV 9/15/98



810 Gleneagles Court, Suite 300 Towson, MD 21286 410.821.7900 410.821.7987 fax md@bohlereng.com

August 24, 2004

## ZONING DESCRIPTION OF PART OF THE LANDS KNOWN AS PARCEL 69, TAX MAP 95, GRID 20 WITH DEED REF 12265/ 579 AS RECORDED IN THE DATABASES OF BALTIMORE COUNTY, MD 1<sup>ST</sup> ELECTION DISTRICT

BEGINNING AT A POINT ON THE NORTH SIDE OF BALTIMORE NATIONAL PIKE, WHICH IS OF VARIABLE WIDTH AT THE DISTANCE OF 270 FEET EAST OF THE CENTERLINE OF THE INTERSECTING STREET, INGLESIDE AVENUE.

THENCE, BINDING ON THE EASTERN MOST OUTLINE OF PARCEL 347, AND BINDING ON THE NORTHERNMOST OUTLINE OF PARCEL 54, AND REFERRING SAID COURSES AND DISTANCES TO THE MARYLAND STATE GRID NAD 83 NORTH:

- 1. NORTH 35 DEGREES, 22 MINUTES 13 SECONDS WEST; 75.87 FEET TO A POINT.
- 2. NORTH 21 DEGREES, 15 MINUTES, 30 SECONDS WEST; 84.26 FEET TO A POINT.
- 3. NORTH 87 DEGREES, 06 MINUTES, 25 SECONDS EAST; 234.61 FEET TO A POINT.
- 4. SOUTH 15 DEGREES, 32 MINUTES, 03 SECONDS EAST; 38.46 FEET TO A POINT.
- 5. SOUTH 22 DEGREES, 43 MINUTES, 16 SECONDS EAST; 37.11 FEET TO A POINT.
- 6. SOUTH 44 DEGREES, 54 MINUTES, 56 SECONDS EAST; 23.82 FEET TO A POINT.
- 7. SOUTH 72 DEGREES, 02 MINUTES, 56 SECONDS WEST; 294.89 FEET TO A POINT TO THE PLACE OF BEGINNING.

BEING ALSO KNOWN AS 5670 BALTIMORE NATIONAL PIKE, BALTIMORE COUNTY, AS RECORDED IN THE BALTIMORE COUNTY DATABASE CONTAINING IN ALL. 31,306 SQUARE FEET OR 0.718 ACRES OF LAND MORE OR LESS.



#### Other Office Locations:

#### 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: #05-101-SPHA 5660 Baltimore National Pike

North side Baltimore National Pike, 400 feet +/- east of

centerline ingleside Avenue

1st Election District - 1st Councilmanic District Legal Owner(s): KIMCO Realty, Geoffrey Glazer, VP of

Land Acquisition

Contract Purchaser: Safeway, Inc. Thomas Castleberry VP Real Estate

Special Hearing: to determine whether a padsite within a shopping center is permitted to have one freestanding sign per frontage in BM zone. Variance: to allow one freestanding enterprise sign for multi-tenant retail:

Hearing: Friday; October 15, 2004 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley :Avenûe.

#### LAWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

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

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391. 9/430 Sept. 30

#### CERTIFICATE OF PUBLICATION

9 30 ,2004
THIS IS TO CERTIFY, that the annexed advertisement was published
in the following weekly newspaper published in Baltimore County, Md.,
once in each ofsuccessive weeks, the first publication appearing
on 930/,2004.
∑ The Jeffersonian
☐ Arbutus Times
☐ Catonsville Times
☐ Towson Times
Owings Mills Times
☐ NE Booster/Reporter
☐ North County News
S. Wilkings

LEGAL ADVERTISING

#### CERTIFICATE OF POSTING

RE: Case No.: 05 - 101-SPHA.

Petitioner/Developer: KIMCO Date of Hearing/Closing: 10/15/04 This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were 5660 BALTIMORE WATIONAL

Sincerely,



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

Ladies and Gentlemen:

The sign(s) were posted on

ATTN: Kristen Matthews {(410) 887-3394}

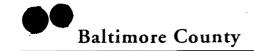
posted conspicuously on the property located at:

Robert Blash 10/3/04 (Signature of Sign Poster) (Date)
SSG Robert Black
(Print Name)
1508 Leslie Road
(Address)
Dundalk, Maryland 21222
(City, State, Zip Code)
(410) 282-7940
(Telephone Number)

#### Department of Permits Development Management

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





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

September 2, 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: 05-101-SPHA

5660 Baltimore National Pike

North side Baltimore National Pike, 400 feet +/- east of centerline Ingleside Avenue 1<sup>st</sup> Election District—1<sup>st</sup> Councilmanic District

Legal Owners: KIMCO Realty, Geoffrey Glazer, VP of Land Acquisition

Contract Purchaser: Safeway, Inc. Thomas Castleberry, VP Real Estate

Special Hearing to determine whether a padsite within a shopping center is permitted to have one freestanding sign per frontage in BM zone.

Variance to allow one freestanding enterprise sign for multi-tenant retail building

Hearing: Friday, October 15, 2004 at 9:00 am in Room 407, County Courts Building

401 Boslev Avenue

**Timothy Kotroco** Director

TK: clb

C: Sebastian A. Cross Gildea, LLC. 300 E. Lombard Street, Ste. 1440 Baltimore 21202 Safeway, Inc. Thomas Castleberry 4551 Forbes Blvd. Lanham 20706-4389 KIMCO Realty Geoffrey Glazer 170 W. Ridgely Road Ste. 210 Lutherville 21093

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY SEPTEMBER 30, 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.



#### APPEAL SIGN POSTING REQUEST

CASE NO.: 05-101-SPHA

KIMCO RESALTY - LEGAL OWNER SAFEWAY INC., LESSEE

5660 BALTIMORE NATIONAL PIKE

1<sup>ST</sup> ELECTION DISTRICT RECEIVED AT BOARD ON 1/18/2005

APPEALED: 12/9/2004

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.: 05-101-SPHA

Petitioner/Developer:

KIMCO RESALTY - LEGAL OWNER SAFEWAY INC., LESSEE

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

#### 5660 BALTIMORE NATIONAL PIKE

· .	-/0/-1/20 PM	
The sign was posted or	n 16/5 / 12005	
D		
By: (Signature of S	ign Poster)	
(======================================		
	COCKED JA	
(Printed Name)	CREED DA	

#### Theresa Shelton - Sign removal

From:

Theresa Shelton

To:

Freund, Gary

Date:

2/16/2005 10:46:47 AM

Subject:

Sign removal

#### Gary:

A sign that was just posted needs to be removed. The case was dismissed.

On the other matter, if I don't hear back from you in a week, I'll contact the party for another exhibit sheet. The case is a multiple case file. (Figures). Two appeals, same location. I'm staying positive that the paperwork will be located.

Also, I will be leaving the Board. I received a promotion and will be going to the Health Department. My last day here is the 25th. I have enjoyed working with you. Take Care.

The address on the removal is

5660 Baltimore National Pike 05-101-SPHA 1st District

Theresa R. Shelton Baltimore County Board of Appeals 410-887-3180 FAX: 410-887-3182

## Department of Permits and Development Management

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





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

October 4, 2004

Sebastian A. Cross Gildea, LLC. 300 E. Lombard Street, Ste. 1440 Baltimore, Maryland 21202

Dear Mr. Cross:

RE: Case Number:05-101-SPHA, 5660 Baltimore National Pike

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 24, 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.

1. Cal Ribal D

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR: clb

**Enclosures** 

c: People's Counsel KIMCO Realty Geoffrey Glazer 170 W. Ridgely Road, Ste. 210 Lutherville 21093 Safeway, Inc. Thomas Castleberry 4551 Forbes Blvd. Lanham 20706-4389







DATE: September 14, 2004

#### **BALTIMORE COUNTY, MARYLAND**

#### INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits & Development Management

FROM:

Robert W. Bowling, Supervisor Bureau of Development Plans

Review

**SUBJECT:** 

Zoning Advisory Committee Meeting

For September 13, 2004

Item Nos. (101), 102, 103, 104, 105, 106, 107, 109, 110, 111, 112, 113, 114, and

115

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

RWB:CEN:jrb

cc: File



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

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

Maryland Department of Transportation

Date: 9.7.04

Ms. Kristen Matthews Baltimore County Office of Permits and Development Management County Office Building, Room 109 Towson, Maryland 21204 RE:

Baltimore County

Item No. 101

LTM

Dear Ms. Matthews:

We have reviewed the referenced item and have no objection to approval, as a field inspection reveals that the existing entrance(s) on to MD/US 40. are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA 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,

1. f. South

Steven D. Foster, Acting Chief Engineering Access Permits Division

#### Fire Department

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



Saltimore County

James T. Smith, Jr., County Executive John J. Hohman, Chief

County Office Building, Room 111 Mail Stop #1105 111 West Chesapeake Avenue Towson, Maryland 21204 September 7, 2004

ATTENTION: Zoning Review planners

Distribution Meeting of: September 7, 2004

Item No.:

101)-103, 105-111, 113-115

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

2. The Fire Marshal's Office has no comments at this time.

LIEUTENANT JIM MEZICK Fire Marshal's Office PHONE 410-887-4881 MS-1102F

cc: File

#### BALTIMORE COUNTY, MARYLAND

#### INTER-OFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

**SUBJECT:** 

Zoning Advisory Petition(s): Case(s) 5-101

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared By:

Division Chief

MAC/LL

RECEIVED

**DATE:** September 7, 2004

SEP - 9 2004

ZONING COMMISSIONER



TO:

Tim Kotroco

FROM:

John D. Oltman, Jr

DATE:

September 30, 2004

SUBJECT:

Zoning Items # See List Below

Zoning Advisory Committee Meeting of September 7, 2004

X The Department of Environmental Protection and Resource Management has no comments on the following zoning items:

04-103

04-105

04-106

04-107

04-109

04-110

04-112

04-113

04-114

Reviewers:

Sue Farinetti, Dave Lykens

RE: PETITION FOR SPECIAL HEARING AND VARIANCE

5660 Baltimore National Pike; N/side Balto. \*

National Pike, 400' E c/line of Ingleside Ave 1st Election & 1st Councilmanic Districts \*

Legal Owner(s): KIMCO Realty, Geoffrey

Glazer, VP of Land Acquisition& Dev't Contract Purchaser(s): Safeway, Inc by

Thomas Castleberry, VP Real Estate

Petitioner(s)

BEFORE THE

ZONING COMMISSIONER

**FOR** 

**BALTIMORE COUNTY** 

05-101-SPHA

#### **ENTRY OF APPEARANCE**

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

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

<u>CANOUS - DEMULO</u> 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 13<sup>th</sup> day of September, 2004, a copy of the foregoing Entry of Appearance was mailed to Sebastian A. Cross, Esquire, Gildea, LLC, 300 E. Lombard Street, Suite 1440, Baltimore, MD 21202, Attorney for Petitioner(s).

RECEIVED

SEP 1 3 2004

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Per.....

#### 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

January 14, 2005

Sebastian A. Cross, Esquire Gildea & Schmidt, LLC 300 E. Lombard Street, Ste. 1440 Baltimore, MD 21202

Dear Mr. Cross:

**BALTIMORE COUNTY** 

RE: Case: 05-101-SPHA, 5660 Baltimore National Pike

Please be advised that an appeal of the above-referenced case was filed in this office on December 9, 2004 by People's Counsel of Baltimore County. 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.

Timothy Kotroco

Director

#### TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner Timothy Kotroco, Director of PDM People's Counsel Geoffrey Schultz, 170 W. Ridgely Rd., Ste.210, Lutherville 21093 Safeway Inc., 4551 Forbes Blvd., Lanham 20706-4389 Gregory Reed, Bohler Engineering, 810 Gleneagle Ct., #300, Towson 21286 Michael Tanczyn, 606 Baltimore Avenue, #106, Towson 21204



## Saltimore County, Maryland



PETER MAX ZIMMERMAN People's Counsel

#### OFFICE OF PEOPLE'S COUNSEL

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

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

> > CAROLE S. DEMILIO
> > Deputy People's Counsel

December 9, 2004

RECEIVED

DEC 0 9 2004

Per. JR.F.

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

Timothy Kotroco, Director

#### Hand-delivered

Re:

PETITION FOR SPECIAL HEARING & VARIANCE

N/S Baltimore National Pike, 270' E of the c/l Ingleside Avenue

(5660 Baltimore National Pike)

1<sup>st</sup> Election District; 1<sup>st</sup> Council District

KIMCO Realty, Owner; Safeway, Inc., Lessees- Petitioners

Case No.: 05-101-SPHA

#### Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated November 15, 2004 by the Baltimore County Zoning Commissioner in the above-entitled case

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

Very truly yours,

Peter Max Zimmerman

People's Counsel for Baltimore County

Carole S. Demilio

Deputy People's Counsel

#### PMZ/CSD/rmw

cc: Sebastian A. Cross, Esquire, Gildea & Schmidt LLC 300 E. Lombard Street, Suite 1440, Baltimore, MD 21202

Michael Tancyzn, Esquire, 606 Baltimore Avenue, St. 106, Towson, MD 21204

#### APPEAL

Petition for Special Hearing & Variance
5660 Baltimore National Pike
N/s Baltimore National Pike, 270" E of c/l Ingleside Avenue
1st Election District – 1st Councilmanic District
Legal Owners: KIMCO Realty
Petitioners/Lessees: Safeway, Inc.

Case No.: 05-101-SPHA

Petition for Special Hearing & Variance (August 24, 2004)

Zoning Description of Property

✓ Notice of Zoning Hearing (September 2, 2004)

✓ Certification of Publication (September 30, 2004 – The Jeffersonian)

VCertificate of Posting (September 30, 2004) by SSG Robert Black

Entry of Appearance by People's Counsel (September 13, 2004)

Petitioner(s) Sign-In Sheet - One Sheet

✓Protestant(s) Sign-In Sheet - None

VCitizen(s) Sign-In Sheet - One Sheet

√Zoning Advisory Committee Comments

Petitioners' Exhibit

✓A. Overall Site Plan

→ B. Sign Variance Plan

√Protestants' Exhibits: - None

Miscellaneous (Not Marked as Exhibit)

1. Findings of Fact & Conclusions of Law (02-522-SPHA)

忆. Memorandum of Law of the Protestants

A. Reply to above indicated Memorandum dated October 14, 2004

√4. Final Report of the Baltimore County Planning Board – Sept. 19, 1996 – 4 pts.

BALTIMORÉ COUNTY BOARD OF APPEALS

✓ Zoning Commissioner's Order (GRANTED – November 14, 2004)

★ Voltice of Appeal received on December 9, 2004 from Office of People's Counsel of Baltimore County

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
Sebastian Cross, 300 E. Lombard St., #1440, Baltimore 21202
Geoffrey Schultz, 170 W. Ridgely Rd., Ste.210, Lutherville 21093
Safeway Inc., 4551 Forbes Blvd., Lanham 20706-4389
Gregory Reed, Bohler Engineering, 810 Gleneagle Ct., #300, Towson 21286
Michael Tanczyn, 606 Baltimore Avenue, #106, Towson 21204

SEBASTIAN CROSS, ESQUIRE GILDEA AND SCHMIDT, LLC 300 EAST LOMBARD STREET SUITE 1440 BALTIMORE, MD 21201 ATTORNEY FOR PETITIONER

SAFEWAY, INC. ATTN: THOMAS CASTLEBERRY 4551 FORBES BLVD. LANHAM, MD 20706-4389 *LESSEE* 

KIMCO REALTY ATTN: GEOFFREY GLAZER 170 W. RIDGELY ROAD, SUITE 210 LUTHERVILLE, MD 21093 GREGORY REED BOHLER ENGINEERING 810 GLENEAGLE CT #300 TOWSON, MD 21286 ENGINEER

MICHAEL P. TANCZYN, ESQUIRE SUITE 106 606 BALTIMORE AVENUE TOWSON, MD 21204

RIAZ AHMED 5612 BALTIMORE NATIONAL PIKE BALTIMORE, MD 21228 (INTERESTED CITIZEN)

#### GILDEA & SCHMIDT, LLC

300 EAST LOMBARD STREET SUITE 1440

BALTIMORE, MARYLAND 21202

TELEPHONE 410-234-0070

FACSIMILE 410-234-0072

www.gildeallc.com

TOWSON, MD OFFICE
220 BOSLEY AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 410-337-7057

SEBASTIAN A. CROSS SCROSSØGILDEALLC.COM

LAWRENCE E. SCHMIDT

DAVID K. GILDEA

JOSEPH R. WOOLMAN, HI JWOOLMAN@GILDEALLC.COM

LSCHMIDT@GILDEALLC.COM

DAVIDGILDEA # GILDEALLC.COM

D. DUSKY HOLMAN DHOLMAN©GILDEALLC.COM

October 14, 2004

William J. Wiseman, III, Esquire Zoning Commissioner for Baltimore County County Courts Building, Suite 405 401 Bosley Avenue Towson, MD 21204

Re:

Safeway, Inc./Ingleside Avenue

Case No.: 05-101-SPHA

Dear Mr. Wiseman:

Enclosed please find Petitioner's Reply to Protestant's Memorandum of Law. Should you have any questions or comments, please contact me. With kind regards, I am

Very truly yours,

Sebastian A. Cross

SAC: dls

CC: Michael P. Tanczyn, Esquire Scott Jacobs, Safeway, Inc. Gregory H. Reed, Bohler Engineering David K. Gildea, Esquire IN RE: PETITIONS FOR SPECIAL HEARING
AND VARIANCE – SE/S Belair Road,
490' NE of Chapel Hill Road
(9633 Belair Road, Perry Hall Mrktplc.)
11<sup>th</sup> Election District
5<sup>th</sup> Council District

Perry Hall Center, LLC, Owner; Safeway, Inc., Lessee

- \* BEFORE THE
- \* ZONING COMMISSIONER
- \* OF BALTIMORE\_COUNTY
- Case No. 02-522-SPHA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owner of the subject property, Perry Hall Center, LLC, and Safeway, Inc., through their attorney, Sebastian A. Cross, Esquire. The Petitioners request a special hearing to determine whether a pad site within a shopping center is permitted to have one freestanding enterprise sign per frontage in a B.L. zone. In the alternative, the Petitioners request a variance from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit one freestanding enterprise sign for a multi-tenant retail building. The subject property and requested relief are more particularly described on the two-page site plan submitted, which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Kenneth Hornbeck, Director of Real Estate for Safeway, Inc., Contract Lessees; Daniel Duke, Professional Engineer with Bohler Engineering, the consultants who prepared the site plan for this property; and, Sebastian Cross, Esquire, attorney for the Petitioners. Also appearing in support of the request was Dennis Eckard, on behalf of the Perry Hall Improvement Association. There were no Protestants or other interested persons present.

The subject property is a rectangular shaped parcel with frontage on the north side of Belair Road, opposite Glen Park Road in Perry Hall. The overall tract contains 22.52 acres in area, zoned B.L., and is improved with a 55,256 sq.ft. strip shopping center, known as Perry Hall

Case No.:		)5-10	2	1 SP	1	1	A	
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#### Exhibit Sheet

#### Petitioner/Developer

Protestant

	No. 1	1A-OMall Site Plan 1B-Sign Variance for	
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CASE NAME	
CASE NUMBER	
DATE	,

### PETITIONER'S SIGN-IN SHEET

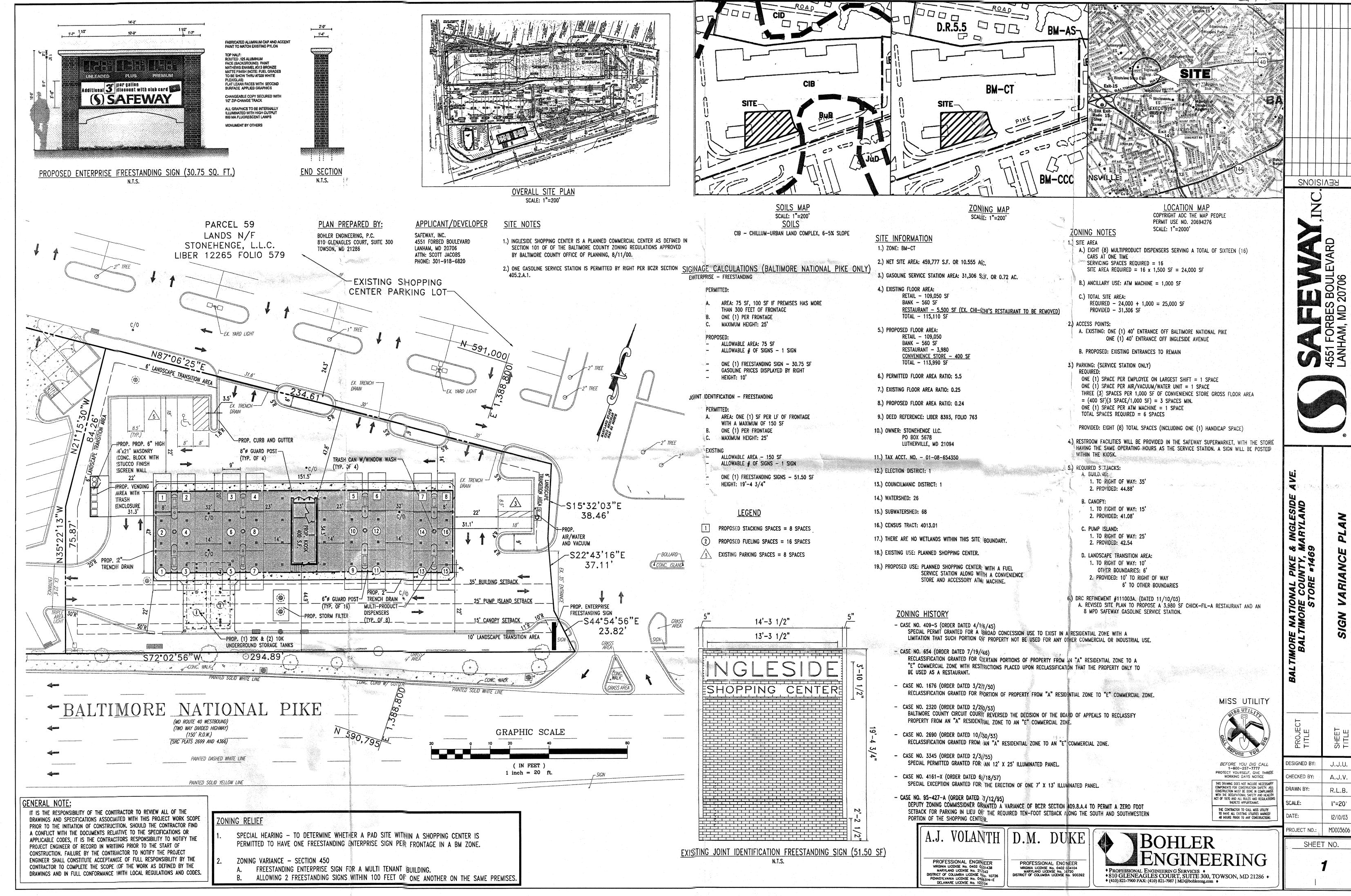
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GREG REED	# 80 GLEY ENGLES CT	BEL AIR MD 21286	greede BOHLENEUG. COM		
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BRAD ROUSER	4551 Forbes Blud	LANDAM, Md. 20706	BRAND, POLISER @SATEWAY		
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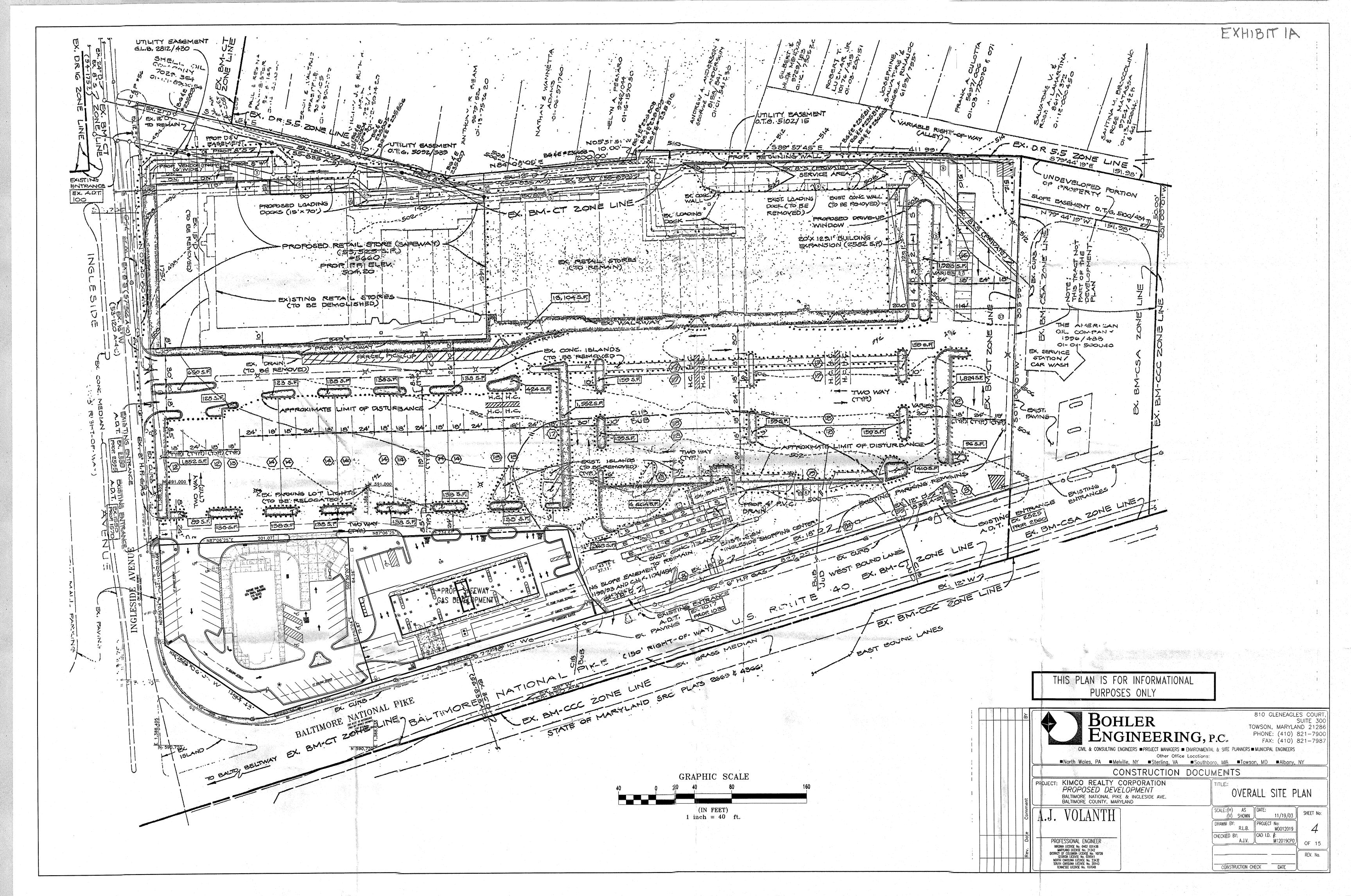
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CASE NAME	\$
CASE NUMBER	
DATE 10/15/04	

#### CITIZEN'S SIGN-IN SHEET

N.	AME		ADDRESS	CITY, STAT	E, ZIP	E-MAIL MPTLAW@Verizow. Neg		
Michael	CC CSOGA	5TE106	. 60 & BAKTIMORE AUG		21204			
RIAZ	AHMAD	5612	BACTIMONE NA	BACTIMORO	21228	RAHMAD 2178 AOL		
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IN THE MATTER OF \* BEFORE THE

5660 Baltimore national Pike

Ingleside Marketplace \*

N side Baltimore National Pike, 400 feet +/- ZONING COMMISSIONER

east of centerline Ingleside Avenue \*

1st Election District – 1st Councilmanic FOR

District

Legal Owner: Kimco Reality

Contract Purchaser: Safeway, Inc. \* BALTIMORE COUNTY
Petition for Special Hearing and Variance \* Case No.: 05-101-SPHA

## REPLY TO PROTESTANT'S MEMORANDUM OF LAW

This Memorandum serves as a response to Protestant's Memorandum of Law in this matter previously submitted to the Zoning Commissioner on October 28, 2004. This Memorandum serves as a response to the argument presented in Protestant's Memorandum, as well as support of Safeway, Inc.'s ("Safeway") Petition for Special Hearing to determine whether a padsite within a shopping center is permitted to have one freestanding enterprise sign per frontage in a BM zone.

## I. INTRODUCTION

Safeway has submitted a signage package consisting of a ground-mounted freestanding enterprise sign located at the southeast corner of its fuel service station padsite within the Ingleside Shopping Center ("the Property"). The Property is zoned BM-CT. This sign will provide pricing information as required by Maryland Business Regulation Code §10-315. Along with the pricing information, Safeway has proposed to incorporate a 30.75 square foot identifying banner plainly stating the name "Safeway" with a corresponding corporate logo at the top of the sign. This sign will also display language pertaining to discounts received with the use of a Safeway Club Card. The height of the ground mounted freestanding enterprise sign is 10 feet.

Baltimore County Department of Permits and Development Management ("PDM"), through administrative practice, incorrectly interprets the BCZR by mandating such signs in planned shopping centers are prohibited. As such, Safeway has filed a Petition for a Special Hearing to determine its fuel service station padsite is permitted one ground mounted freestanding enterprise sign per frontage as provided under the BCZR.

## II. RESPONSE TO PROTESTANT'S MEMORANDUM OF LAW

## A. Clarification of Signage Classifications in Baltimore County.

In Protestant's Memorandum of Law ("Protestant's Memo") there exists confusion between the character and treatment of different signage classifications in Baltimore County. In particular, Protestant has confused and intermingled the separate definitions of enterprise and joint identification signs throughout their filing. Enterprise and joint identification signs differ both as to the elements that comprise each, as well as their separate treatment under the BCZR. In fact, the differences between these signs provide preliminary justification for allowing Safeway's fuel service station padsite to maintain a separate freestanding sign at Ingleside Shopping Center.

BCZR Section 450.4 defines enterprise signs as:

Meaning an accessory sign which displays the identity and which may otherwise advertise the products or services associated with the **individual** organization. (*emphasis added*)

In contrast, this same section defines joint identification signs as:

Meaning an accessory sign displaying the identity of a multi-occupant non-residential development, such as a shopping center, office building or office park. (emphasis added)

Therefore, the main difference between these signs lies in the fact that enterprise signs advertise the identity and products of an <u>individual user</u> while joint identification signs identify

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Missing



# Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 5660 Baltimore National Pike which is presently zoned BM-CT

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

To determine whether a padsite within a shopping center is permitted to have one freestanding enterprise sign per frontage in BM zone.

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.

Safeway, Inc.		
Name - Type or Print		
Thomas Cont to	. 1	
Signature Thomas Castle	berry, v.P.	Real Estate
4551 Forbes Blvd.	(301)918	8-6661
Address	1	elephone No.
Lanham, MD 20706-4		•
City	State	Zip Code
Attorney For Petitioner:		
Sebastian A. Cross		
Name - Type or Print	<del></del> -	
Su Inn		
Signature	<u> </u>	<del></del> -
Gildea, LLC		
Company		
300 E. Lombard Str	eet, Suite	e 1440
Address	1	elephone No.
Baltimore, MD 212	02 (410)	234-0070
City	State	Zip Code

Case No. 05-101-57-1A

Contract Purchaser/Lessee:

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.

## Legal Owner(s):

KIMCO Realty

<u></u>		
Name - Type or Print		
Geoff ey Glazer, Vic		Land
Name - Type or Print Acquisition	& Development	<u> </u>
Signature		<del>,</del>
170 W. Ridgely Road,	Suite 210	)
Address	Te	lephone No.
Lutherville, MD 2109	3 (410)68	34-2000
City	State	Zip Code
Representative to be Cont	acted:	
Sebastian A. Cross		
Name	<u> </u>	
300 E. Lombard Stre	et, Suite	1440
Address	Tel	ephone No.
Baltimore, MD 21202		4-0070
City	State	Zip Code

	OFFICE US	E ONLY
ESTIMATED I	LENGTH OF	HEARING

UNAVAILABLE FOR I	HEARING
Reviewed By Lim	Date 8/29/04

529 ZINING VERIFICATION Hary Land 46.00.00) **₩** Wand making VALIDATION B/72/72004 WILL THE Baltimore County, H XXXX WAKIR RucyA, Tot \$650.00 1139743 2 MULTERS 0/24/2XD4 DHECT INT 0 C ACCOUNT (200) YELLOW . CUSTOMER AMOUNT \$ BALTIMORE COUNTY, MARYLAND OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT andres of the standard of the second of the standard of the st PINK - AGENCY DISTRIBUTION WHITE - CASHIER RECEIVED FROM: DATE.

TO: PATUXENT PUBLISHING COMPANY

Thursday, September 30, 2004 Issue - Jeffersonian

Please forward billing to:

Gildea, LLC.

410-234-0070

300 E. Lombard Street, Ste. 1440

Baltimore, Maryland 21202

## 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: 05-101-SPHA

5660 Baltimore National Pike

North side Baltimore National Pike, 400 feet +/- east of centerline Ingleside Avenue 1<sup>st</sup> Election District—1<sup>st</sup> Councilmanic District

Legal Owners: KIMCO Realty, Geoffrey Glazer, VP of Land Acquisition Contract Purchaser: Safeway, Inc. Thomas Castleberry, VP Real Estate

Special Hearing to determine whether a padsite within a shopping center is permitted to have one freestanding sign per frontage in BM zone.

Variance to allow one freestanding enterprise sign for multi-tenant retail building

Hearing: Friday, October 15, 2004 at 9:00 am in Room 407, County Courts Building

401 Sosley Avenue

rence 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

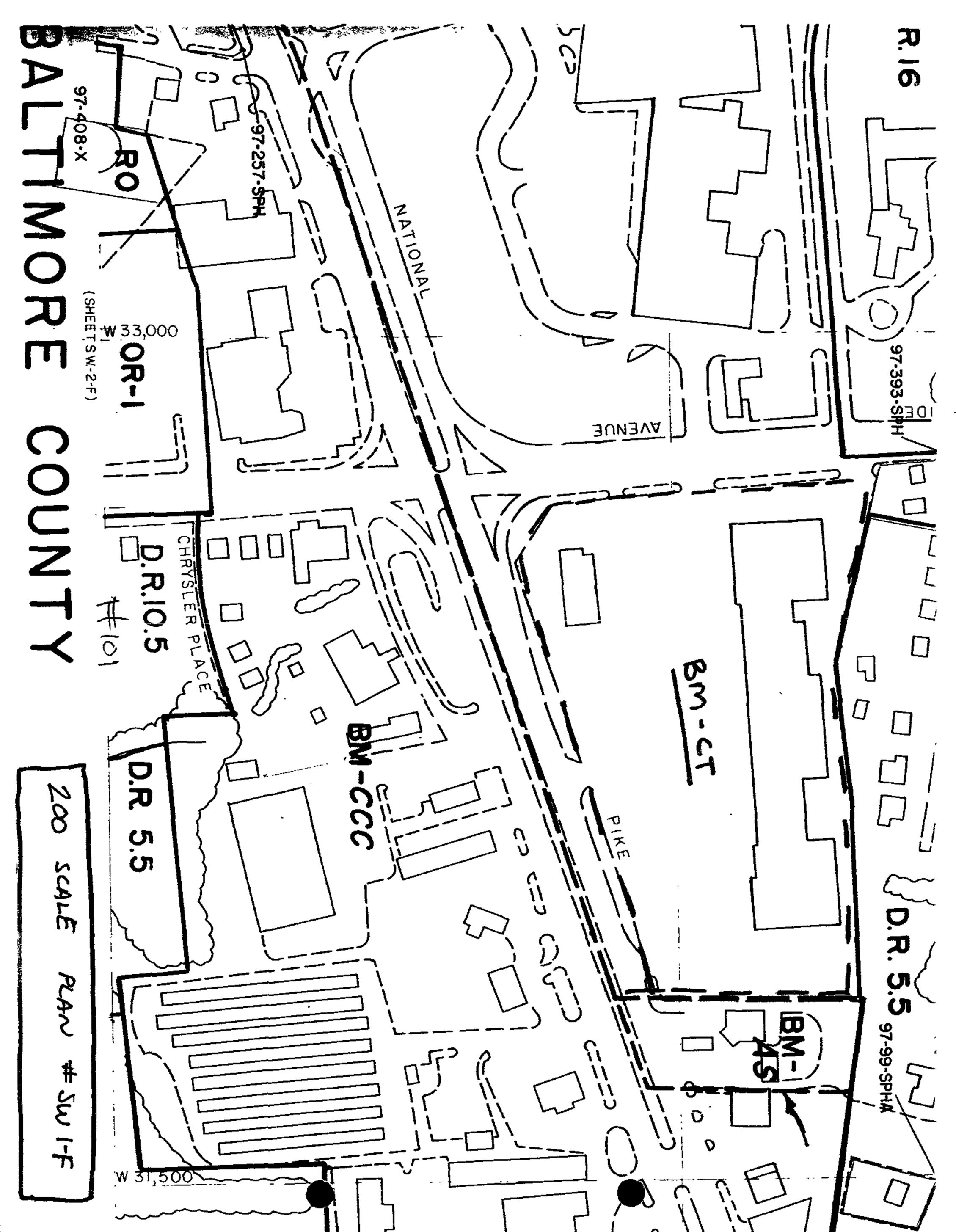
# ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (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
Petitioner. <u>Safenay Inc.</u>
Address or Location 5660 Baltimore National -Pile
PLEASE FORWARD ADVERTISING BILL TC
Name Fildea LLC
Address 300 30 E. Lombard 54.
Suite 1440
· Baltimora Md 21202
Telephone Number: 410 234 - 00 70



IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE — SE/S Belair Road, 490' NE of Chapel Hill Road (9633 Belair Road, Perry Hall Mrktplc.) 11<sup>th</sup> Election District 5<sup>th</sup> Council District

> Perry Hall Center, LLC, Owner; Safeway, Inc., Lessee

- \* BEFORE THE
- \* ZONING COMMISSIONER
- OF BALTIMORE COUNTY

Case No. 02-522-SPHA

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owner of the subject property, Perry Hall Center, LLC, and Safeway, Inc., through their attorney, Sebastian A. Cross, Esquire. The Petitioners request a special hearing to determine whether a pad site within a shopping center is permitted to have one freestanding enterprise sign per frontage in a B.L. zone. In the alternative, the Petitioners request a variance from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit one freestanding enterprise sign for a multi-tenant retail building. The subject property and requested relief are more particularly described on the two-page site plan submitted, which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Kenneth Hornbeck, Director of Real Estate for Safeway, Inc., Contract Lessees; Daniel Duke, Professional Engineer with Bohler Engineering, the consultants who prepared the site plan for this property; and, Sebastian Cross, Esquire, attorney for the Petitioners. Also appearing in support of the request was Dennis Eckard, on behalf of the Perry Hall Improvement Association. There were no Protestants or other interested persons present.

The subject property is a rectangular shaped parcel with frontage on the north side of Belair Road, opposite Glen Park Road in Perry Hall. The overall tract contains 22.52 acres in area, zoned B.L., and is improved with a 55,256 sq.ft. strip shopping center, known as Perry Hall

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Marketplace. The primary tenant is a Safeway food and drug store; however, there are other retail and service stores within the center.

Although the subject tract encompasses 22.52 acres, the subject of the Petitions actually relates to a small area in the southwest corner of the property, identified as a "pad" site. The pad site actually contains .47 acres in area and is proposed for development as a fuel service station. There will be a 352 sq.ft. Kiosk and six (6) multi-service fuel dispensers. There will be no direct access from Belair Road; however, there are curb cuts leading to the fuel service station from the shopping center. The pad site is more particularly shown on Petitioner's Exhibit 1B and it is designed so as to be an independent business within the property.

The instant request relates to a proposed identification sign for the business on the pad site. There are actually two signs that exist along the property's frontage on Belair Road. The primary sign is a 20' high by 9½' wide sign advertising the site as the Perry Hall Marketplace shopping center. It also advertises the Safeway food and drug store and lists the names of the smaller retail and service tenants. At issue is the second sign, which will be located on the frontage of the property on Belair Road. This sign will be a 10' high by 14'2" wide, ground-mounted sign that will advertise the Safeway gasoline service center and its fuel prices. The majority of the sign will be brick; however, a 10' x 5' area near the top of the sign features the name Safeway, its corporate logo, and the prices of the three grades of gasoline offered.

The issue brought about in this case is to classify the two signs and determine whether both are permitted as a matter of right or whether variance relief is needed. An examination of the definitions found in the sign regulations set forth in Section 450 of the B.C.Z.R. is in order. Therein are definitions of the various signs that are permitted in Baltimore County. The larger sign appears to be a "joint identification sign," which is defined as "An accessory sign displaying the identity of a multi-occupant, non-residential development, such as a shopping center, office building or office park." (Emphasis added). Obviously, the entire site has been developed as a shopping center and the structure in which the Safeway store and other retail tenants are located is a multi-occupant, non-residential building. Additionally, the larger sign advertises the names of

many of the multi-tenants therein. For all of these reasons, I find that the large sign is a "joint identification sign" as defined. It is likewise a freestanding sign, as it is not attached to a building. Finally, it meets all the requirements contained within Section 450 of the B.C.Z.R. in terms of height and dimension, and size of lettering, and is therefore permitted by right.

The second sign to be considered is the pad site sign that will advertise the Safeway gasoline service station and the fuel prices. A review of the definitions found in Section 450 of the B.C.Z.R. leads to the conclusion that this sign should be characterized as an enterprise sign. An enterprise sign is defined as "An accessory sign which displays the identity and which may otherwise advertise the products or services associated with the individual organization." It is to be noted that although part of the overall shopping center, the pad site operates as an independent use. The sign does not advertise any of the tenants within the shopping center, but the fuel service station, only. Because the sign does not identify more than one tenant and is specifically for the purpose of identifying the fuel service station use on the pad site, it is an enterprise sign and not a joint identification sign. Section 450 of the B.C.Z.R. also provides that one such sign is permitted frontage in the B.L. zone.

These findings are consistent with the language found in the B.C.Z.R. and the legislative history of Section 450 as described in Petitioners' memorandum. Based upon the testimony and evidence offered, I am persuaded to dismiss the Petition for Variance and grant the Petition for Special Hearing. I find that the one sign is a joint identification sign and the other, an enterprise sign, both of which are permitted in the B.L. zone, which allows one sign of each type per frontage. Although both signs will front on Belair Road, they are classified differently and as such, both are permitted.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this day of August, 2002 that the proposed pad site within the subject shopping center is

permitted to have one freestanding enterprise sign per frontage in a B.L. zone, and as such, the Petition for Special Hearing be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their sign permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The proposed pad site sign shall be constructed substantially in accordance with the sign elevation drawings submitted into evidence as Petitioner's Exhibit 1B.
- 3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED that the alternative Petition for Variance seeking relief from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit one freestanding enterprise sign for a multi-tenant retail building, be and is hereby DISMISSED AS MOOT.

AWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

LES:bjs

## COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND Legislative Session 1997, Legislative Day No. <u>15</u>

## Bill No. 89-97

## All Councilmembers

## By the County Council, August 4, 1997

## A BILL ENTITLED

AN ACT concerning

Signs

FOR the purpose of updating and amending the Baltimore County Zoning Regulations concerning permanent and temporary on-premises signs and permanent off-premises signs; defining certain terms; identifying classes and structural types of signs; establishing use, area, height, number, illumination and other limitations; establishing general prohibitions and exceptions; establishing special requirements for particular classes of signs; establishing County policies concerning compliance with sign regulations; permitting certain exemptions; requiring the submission of signage information as part of the development review and approval process; and generally relating to the regulation of signs.

**EXPLANATION:** 

CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter stricken from existing law.

Strike out indicates matter stricken from bill.

Underlining INDICATES AMENDMENTS TO BILL.

	after a hearing; and
	after a hearing; and
2	d. Display of goods, vehicles, and equipment is permitted in the front yard, but
3	not more than five feet in front of the required front building line.
4	259.9 Development Standards - H and H1 Overlay Districts.
5	D. Signage standards. SIGNS ARE PERMITTED, SUBJECT TO SECTION 450;
6	EXCEPT THAT THE FOLLOWING SIGN CLASSES ARE ALSO LIMITED AS FOLLOWS
7	AND THE FOLLOWING ADDITIONAL RESTRICTIONS:
8	1. Freestanding ENTERPRISE AND FREESTANDING JOINT
9	IDENTIFICATION SIGNS [business signs, as defined in Section 413.5 of these regulations,] are
10	not permitted.
11	2. [Miscellaneous temporary signs, as defined in Section 413.4 of these
12	regulations,] COMMERCIAL SPECIAL EVENT SIGNS are not permitted.
13	3. Outdoor advertising signs[, as defined in these regulations,] are not permitted.
14	4. Only one freestanding JOINT identification sign of no more than 12 feet in
15	height and no more than 100 square feet in area for each shopping center or multi-tenant building
16	is permitted.
17	5. Only one wall-mounted JOINT identification sign, which for each shopping
18	center or multi-tenant building identifies the center or building and which does not exceed the
19	greater of 100 square feet or 12% of the wall upon which it is mounted, is permitted.
20	6. Only one wall-mounted [business] ENTERPRISE sign, for each commercial
21	establishment with an exterior entrance where the sign does not exceed, in square feet, two times

the length of the wall upon which it is mounted, is permitted.

ì	Section 402Conversion of Dwellings for Residential Use:
2	402.3-To be converted for tea room or restaurant use in a R.40 or R.20 zone as a Specia
3	Exception, the following requirements must be met:
4	c. [Only one business sign shall be permitted (see Section 413.1.d);] SIGNS ARE
5	PERMITTED, SUBJECT TO SECTION 450;
6	Section 402BAntique Shops in Residential Zones
7	402B.3[One sign in addition to those permitted under Subsection 413.1 may be
8	displayed, provided that it shall show only the name of the business; shall be single-faced,
9	stationary, and non-illuminated; and shall not exceed 5 square feet in area.] SIGNS ARE
0	PERMITTED, SUBJECT TO SECTION 450.
1	Section 402CResident Art Salons.
2	402C.3[One sign in addition to those permitted under Subsection 413.1 may be
3	displayed, provided that it shall show only the name of the establishment or its proprietor, shall
4	be single-faced, stationary, and non-illuminated, and shall not exceed 5 square feet in area.]
5	SIGNS ARE PERMITTED, SUBJECT TO SECTION 450.
6	Section 402DConversion of Dwellings to a Bed and Breakfast Home or Bed and Breakfast
17	in D.R. or R.C. Zones.
18	402D.5[One sign in addition to those permitted under Subsection 413.1 may be
19	displayed, provided that it shall show only the name of the business, shall be single-faced,
20	stationary, and non-illuminated; and shall not exceed five (5) square feet in area.] SIGNS ARE
21	PERMITTED, SUBJECT TO SECTION 450.

