IN RE: PETITION FOR VARIANCE
NE/Corner of Middle River Road
and Pulaski Highway
15th Election District
6th Councilmanic District
(9605 Pulaski Highway)

Ilias Protopapas
Petitioner

- * BEFORE THE
- * DEPUTY ZONING COMMISSIONER
- * OF BALTIMORE COUNTY
- * CASE NO. 05-631-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owner of the subject property, Ilias Protopapas. The property is located at 9605 Pulaski Highway in the eastern area of Baltimore County. The variance request is filed from Section 409.8.A.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a front setback of 4.5 ft. in lieu of the required 10 ft. front setback from the parking space to the right-of-way line.

The property was posted with Notice of Hearing on July 9, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on July 12, 2005 to notify any interested persons of the hearing date.

Amended Petition

At the outset of the hearing the Petitioner indicated that he recently discovered that an unmamed private road to the south of the subject property had been dedicated to the public. As a result, the Petitioner requested an additional variance to allow a setback of 6.5 feet from the right-of-way of said unnamed road in lieu of the 10 foot setback required by Section 409.8A of the B.C.Z.R.

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Applicable Law

Section 307 of the B.C.Z.R. - Variances.

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

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: ZAC comments from the Office of Planning dated July 27, 2005 which are attached hereto and incorporated herein.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing and variance relief were Richard Smith from the firm of KCI Technologies, and Ilias Protopapas, Petitioner.

Jennifer Busse Esquire represented the Petitioner. There were no protestants or other interested citizens in attendance at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The subject property contains 0.844 acres, is located at the intersection of Pulaski Highway and Middle River Road and is zoned BR-AS. It is presently vacant, a prior fuel service

station having been razed some time ago on this site. The Petitioner proposes to erect a diner restaurant on the property as shown on the redline plan to accompany Exhibit 1. The proposed restaurant meets all County regulations including 72 parking spaces as required except the distance from the Pulaski Highway right-of-way and the right-of-way of an unnamed road to the south of the property. Again, the Petitioner indicated that a portion of the unnamed private road was discovered to have been dedicated to the public and because the restaurant use will be within 6.5 feet of the right-of- way a second variance is required. The required setback is 10 feet. Similarly, the distance to the Pulaski Highway right-of-way is 4.5 feet. There is 22 feet between the right-of-way and the actual paving of the highway. Ms. Busse explained that given the constraints of the site, the Petitioner opted to ask for right-of-way setback variances so that the Petitioner could provide all required parking and additional landscaping. She indicated that this approach would be more beneficial to the community. She further indicated that the site was unique form a zoning standpoint because it is bounded on three sides by roads, and the lot was oddly shaped.

Ms. Busse indicated that this site had been granted several similar variances in Case No. 03-188-SPHXA for a proposed fuel service station. Apparently, this plan fell through and the site remained vacant and has become an eyesore. Mr. Smith indicated that this site is the one corner of the intersection that would have a restaurant. The other three corners have fuel service stations and convenience stores. He opined that a restaurant would be more beneficial to the community rather than another gas station. Finally, Ms. Busse indicated that the Petitioner accepted the recommendations of the Planning Office and had already incorporated the comments into the redline plan except for the landscape aspect of the comments.

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Findings of Fact and Conclusions of Law

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I find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. First, this Commission found the site unique in the prior case in which Commissioner Schmidt noted the unusual shape of the lot and the fact that it is bordered by three roads. I certainly agree. I also find that if the regulations were strictly enforced that the Petitioner would suffer practical difficulty in meeting the setback regulations from rights-of-way. I agree it is better to provide all parking and landscaping required, rather that meet the right-of-way setback requirements. I also note that the right-of-way on Pulaski Highway is 22 feet from the paving so that grass and landscaping can be provided on this side of the property on the State right-of-way which enhances the appearance of the property from the road.

Furthermore, I find that these variances can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is a commercial area. A restaurant will not adversely affect the community but rather use of this vacant lot will enhance the neighborhood.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered by the Petitioner, I find that the Petitioner's variance request should be granted.

IT IS FURTHER ORDERED, that the Petitioner's amended request to allow a setback of 6.5 feet from the right-of-way of the unnamed road to the south of the subject property in lieu of the 10 foot setback required by Section 409.8A of the B.C.Z.R., be and is hereby GRANTED subject to the following condition:

1. The Petitioner shall comply with the ZAC comments issued by the Office of Planning dated July 27, 2005.

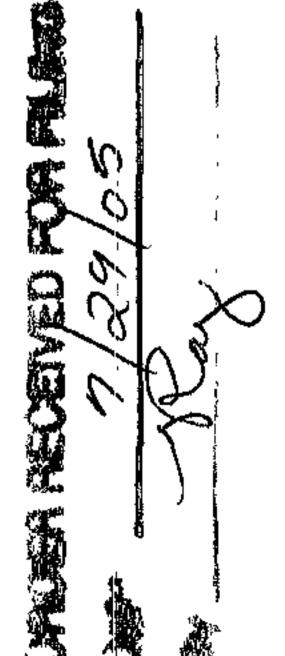
Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN'V. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:raj



Zoning Commissioner

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



Baltimore County

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

*j*9 July **28**, 2005

Jennifer R. Busse, Esquire Whiteford, Taylor & Preston, L.L.P. 210 W. Pennsylvania Avenue Towson, Maryland 21204

> Re: Petition for Variance Case No. 05-631-A Property: 9605 Pulaski Highway

Dear Ms. Busse:

Enclosed please find the decision rendered in the above-captioned case. The petition for variance has been granted in accordance with the enclosed Order.

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

Very truly yours,

John V. Murphy

Deputy Zoning Commissioner

JVM:raj Enclosure

c: Ilias Protopapas, 801 E. Baltimore Street, Baltimore, MD 21202



Visit the County's Website at www.baltimorecountyonline.info



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 9605 Pulaski Highway which is presently zoned BR

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

Please see attached

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

To be presented at the hearing

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

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

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

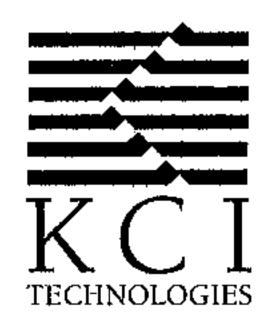
Contract Purchaser/Lessee:

Legal Owner(s):

			Ilias Protopapas.								
Name - Type or Print		Na	ame - Type or Print 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1								
Signature	.,,,		Signature,								
Address	· · · · · · · · · · · · · · · · · ·	The face of the same of the sa	Llias Protopapas								
Address		Telephone No.	Name - Type or Print I I I PVI - for a superior								
City	State	Zip Code	Signature 410 631-9090 (H)								
Attorney For Petitione	<u>r:</u>		801 E.Baltimore St. 410 576-8305 (W)								
			Address Telephone No.								
Jennifer Busse		71. 117. 117. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1.	Baltimore, MD 21202								
Name - Type or Print	Vm. K	City	ty State Zp Code								
	MIM		Representative to be Contacted:								
Signature	•	ı									
Whiteford Tayl	or & Pres	ton, LLP	Tobi Louise Kester, RLA, AICP, CA								
Company			Name KCI Technologies. Inc.								
210 W. Pennsylv	ania Ave.		2000 c/o 10 North Park Dr								
Address / /		Telephone No.	Address Telephone No.								
Address Town	MD	21204	Hunt Valley, MD 21030 410-316-7993								
City 12.	State	Zip Code	City State Zip Code								
			OFFICE USE ONLY								
Ca 2116. 45-63	31- 🛆		ESTIMATED LENGTH OF HEARING								
		Reviewed By	UNAVAILABLE FOR HEARING Date 5/25/0								
REN 15 BOOK		veriench mit	Date 5/25/05								
THE STATE OF THE S											

Attachment to Petition for Variance 9605 Pulaski Highway Zoned BR

Petition for Variance from BCZR § 409.8.A.4 to allow a front setback of 4.5' in lieu of the required 10' front setback, areas setback of 7.9' in lieu of the required 10' reas setback, and side setbacks of 4.7' and 6.1' respectively, in lieu of the required 10' side setback, from the parking space to the right-of-way line.



Engineers . Planners . Scientists . Construction Managers

10 North Park Drive • Hunt Valley, MD 21030-1846 • 410-316-7800 • Fax 410-316-7817

ZONING DESCRIPTION PROTOPAPAS PROPERTY 0.8450 ACRE PARCEL 15TH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND

BEGINNING FOR THE SAME at an iron bar and cap on the southeasterly right of way line of Pulaski Highway, 150 feet wide, distant North 40 degrees 54 minutes 47 seconds East 195.28 feet from the intersection of said Pulaski Highway and Middle River Road, 60 feet wide, thence leaving said right of way line, referring all courses of this description to the Maryland Coordinate System (NAD83/91):

- 1) South 49 degrees 16 minutes 50 seconds East 270.95 feet,
- 2) South 82 degrees 09 minutes 57 seconds West 154.15 feet,
- 3) North 07 degrees 50 minutes 03 seconds West 15.00 feet,
- Southwesterly, with a non-tangent curve to the left having a radius of 157.12 feet for a distance of 67.80 feet, the arc of said curve being subtended by a chord South 69 degrees 16 minutes 15 seconds West 67.28 feet, thence
- South 82 degrees 09 minutes 57 seconds West 60.00 feet to the northeasterly right of way line of Middle River Road, 60 feet wide, thence binding on said right of way line,
- Northwesterly, with a non-tangent curve to the left having a radius of 746.00 feet for a distance of 61.31 feet, being subtended by a chord bearing North 55 degrees 28 minutes 52 seconds West 61.29 feet, thence
- North 08 degrees 56 minutes 28 seconds West 32.40 feet to the aforementioned southeasterly right of way line of Pulaski Highway, thence,
- 8) North 40 degrees 40 minutes 10 seconds East 195.33 feet to the point of beginning.

Containing 36,808 square feet or 0.8450 acres of land, more or less.

THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED TO BE USED FOR CONVEYANCE

631

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			اً المعا ربا أوليّ وم	

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: #05-631-A
9605 Pulaski Highway
N/east corner of Middle River
Road and Pulaski Highway
15th Election District
6th Councilmanic District
Legal Owner(s):
Ilias Protopapas
Variance: to allow a front
setback of 4.5 feet in fleu of
the required 10 foot front
setback for the parking
space from the right of
way.

Way
Hearing: Wednesday, July
27, 2005 at 2:00 p.m. in
Room 407, County Courts
Building, 401 Bosley Avenue, Towson 21204.

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

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

JT/7/636 July 12 58433

CERTIFICATE OF PUBLICATION

7/13/,2005					
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 7/12 ,20 <u>05</u> ,					
The Jeffersonian					
🖵 Arbutus Times					
☐ Catonsville Times					
Towson Times					
Owings Mills Times					
□ NE Booster/Reporter					
☐ North County News					

LEGAL ADVERTISING

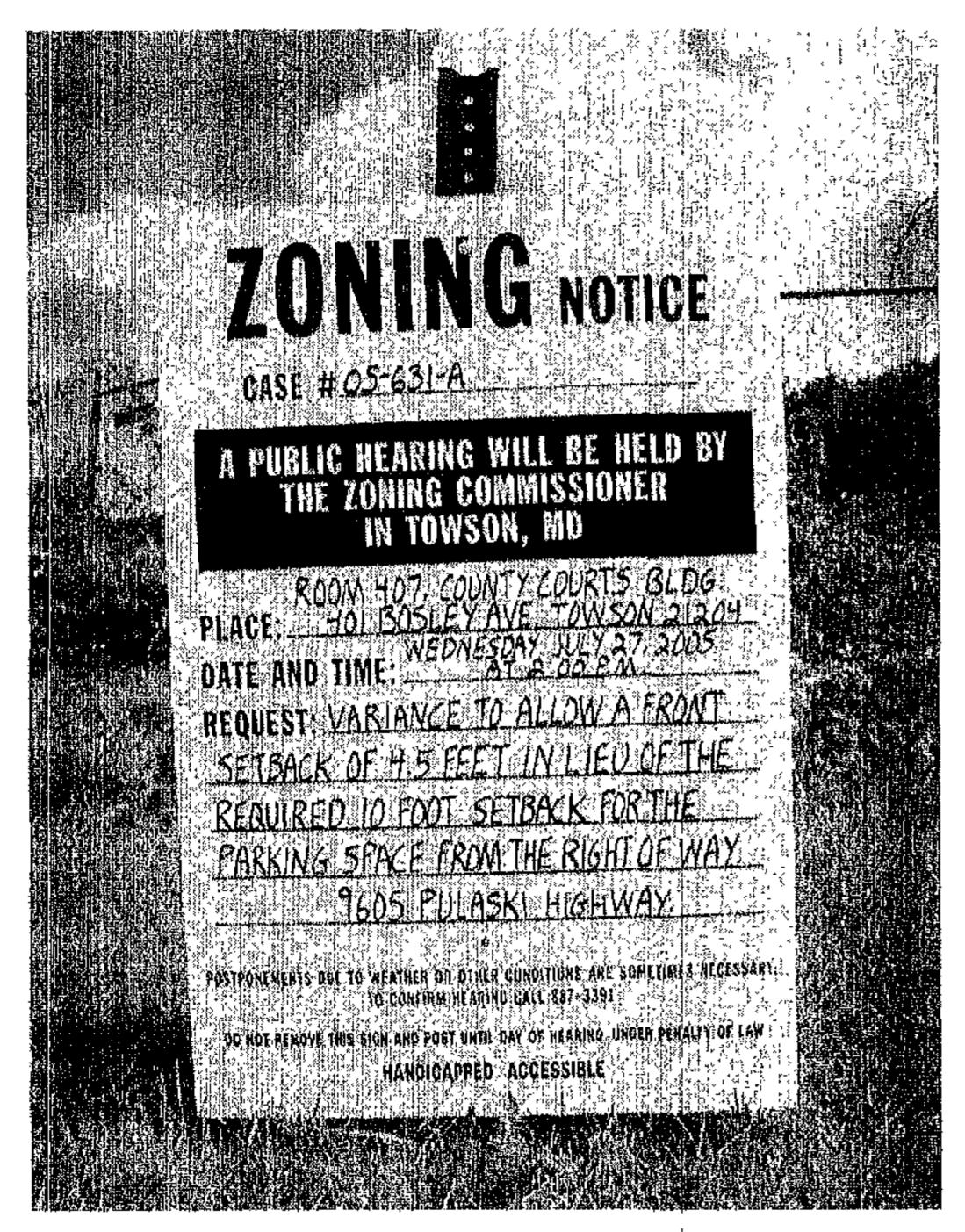
CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS Date July 12, 2005
RE: Case Number 05-631-A

Petitioner/Developer JENNIFER BUSSE/ILIAS PROTOPAPAS / TOBI LOUISE KESTER Date of (Hearing) Closing JULY 27, 2005

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 9605 PULASKI. IH 6-HWAY

The sign(s) were posted on JULY 9,2005



Linda O'Keefe (Printed Name of Sign Poster)

523 Penny Lane (Street Address of Sign Poster)

Hunt Valley Maryland 21030 (City, State, Zip Code of Sign Poster)

410-666-5366 (Telephone Number of Sign Poster) TO: PATUXENT PUBLISHING COMPANY

Tuesday, June 12, 2005 Issue - Jeffersonian

Please forward billing to:

Jennifer Busse, Esq.

410-832-2077

Whiteford, Taylor & Preston, LLP

210 W. Pennsylvania Avenue, Ste. 400

Towson, MD 21204

NOTICE OF ZONING HEARING

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

CASE NUMBER: 05-631-A

9605 Pulaski Highway

N/east corner of Middle River Road and Pulaski Highway

15th Election District – 6th Councilmanic District

Legal Owner: Ilias Protopapas

Variance to allow a front setback of 4.5 feet in lieu of the required 10 foot front setback for the parking space from the right of way.

Hearing: Wednesday, July 27, 2005 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

WILLIAM J WISEMAN III

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 Development Management



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

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

June 2, 2005

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: 05-631-A

9605 Pulaski Highway N/east corner of Middle River Road and Pulaski Highway 15th Election District – 6th Councilmanic District Legal Owner: Ilias Protopapas

<u>Variance</u> to allow a front setback of 4.5 feet in lieu of the required 10 foot front setback for the parking space from the right of way.

Hearing: Wednesday, July 27, 2005 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco

Director

TK:klm

C: Jennifer Busse, 210 W. Pennsylvania Avenue, Towson 21204 llias Protopapas, 801 E. Baltimore St., Baltimore 21202 Tobi Louise Kester, 10 North Park Dr., Hunt Valley 21030

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, JUNE 12, 2005.

- (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.



Visit the County's Website at www.baltimorecountyonline.info



ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:							
Item Number or Case Number: 05-63/-							
Petitioner: 1/100 Histopapas							
Address or Location: 9605 Pulaski Hwy							
PLEASE FORWARD ADVERTISING BILL TO:							
Name: Jennifor C. Busse, Esq.							
Address: Co White And Taylor & Preston							
210 W Dennsylvania Ave. Ste 400							
TAWSON MD 21204							
Telephone Number: <u>410</u> 832 2077							

Department of Permits and Development Management

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



Baltimore County

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

July 18, 2005

Jennifer Busse Whiteford, Taylor & Preston, LLP. | 210 W. Pennsylvania Avenue Towson, Maryland 21204

Dear Ms. Busse:

RE: Case Number: 05-631-A, 9605 Pulaski Highway

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 25, 2005

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

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

Very truly yours, Call Richall D.

M. Coul Dioboude Ju

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Ilias Protopapas 801 E. Baltimore Street Baltimore 21202
Tobi Kester KCl Technologies 10 North Park Dr. Hunt Valley 21030



Visit the County's Website at www.baltimorecountyonline.info

Fire Department

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



Baltimore 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

June 2, 2005

ATTENTION: Zoning Review planners

Distribution Meeting of: Fune 6, 2005

Item No.: 595, 608-632

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

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

Lieutenant J.D.Mezick Fire Marshal's Office (0)410-887-4881 (C)443-829-1947 MS-1102F

cc: File



Visit the County's Website at www.baltimorecountyonline.info

BALTIMORE COUNTY, MARYLAND DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO:

Tim Kotroco

FROM:

John D. Oltman, Jr Jack

DATE:

June 28, 2005

SUBJECT:

Zoning Items # See List Below

Zoning Advisory Committee Meeting of June 6, 2005

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

05-611

05-613

05-615

05-617

05-618

05-619

05-620

05-621

05-622

05-624

05-628

05-629

05-631

Reviewers: Su

Sue Farinetti, Dave Lykens

S:\Devcoord\ZAC SHELL 11-20-03.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE: July 27, 2005

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT:

9605 Pulaski Highway

INFORMATION:

Item Number:

5-631

Petitioner:

Ilias Protopapas

Zoning:

BR

Requested Action:

Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose the petitioner's request provided the following conditions are met:

- 1) The petitioner shall provide full-length concrete wheel stops on all parking spaces to prevent vehicle overhang into planted areas and public sidewalks.
- 2) The petitioner shall provide an accessible 5'sidewalk to align with the adjacent existing off-site sidewalk as shown on the attached sketch. Furthermore the petitioner shall provide a pedestrian crosswalk, also as shown on the attached sketch, to cross the vehicular way and connect the sidewalk adjacent to the building with the sidewalk mentioned above. The proposed pedestrian walk shall be either light gray pavers with a pattern dimension identical to the block windows used on the building, or concrete scored with a pattern dimension identical to the block windows.
- 3) Continue the 5' sidewalk along Middle River Road with a 3' curb offset to be grassed. Coordinate the depressed curb at the intersection of Middle River Road and Pulaski Highway as well as the sidewalk shown along Pulaski Highway with the State Highway Administration.

4) Provide 3 additional trees as shown on the attached sketch.

For further information concerning the matters stated here in, please contact David Pinning at 410-887-3480.

Prepared by:

Division Chief:

AFK/LL: CM Attachment State Highway
Administration

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

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

Maryland Department of Transportation

Date:

6.3.05

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

RE:

Baltimore Count

Item No.

RF

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 47. 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,

Steven D. Foster, Chief

Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

DATE: June 6, 2005

Department of Permits & Development

Management

FROM:

Dennis A. Kennedy, Acting Supervisor

Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

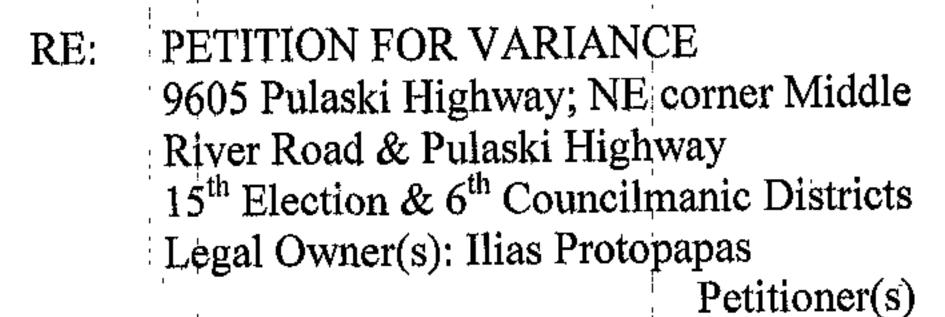
For June 13, 2005

Item No. 607, 610, 614, 615, 616, 618, 620, 621, 623, 625, 628, 630, 631, 632

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

DAK::CEN::clw cc; File

ZAC-NO COMMENTS-06062005.doc



BEFORE THE

ZONING COMMISSIONER

* FOR

BALTIMORE COUNTY

* 05-631-A

ENTRY OF APPEARANCE

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

RECEIVED

JUN ~ 2 2005

Person

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

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 2nd day of June, 2005, a copy of the foregoing Entry of Appearance was mailed to, Tobi Louise Kester, RLA, AICP, CA, c/o KCI Technologies, Inc., 10 North Park Drive, Hunt Valley, MD 21030 and Jennifer R. Busse, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioner(s).

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County



A)

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

Go Back View Map **New Search Ground Rent**

Account Identifier:

District - 15 Account Number - 1522000640

Owner Information

Owner Name:

PROTOPAPPAS ILIAS

Use:

COMMERCIAL

Mailing Address:

C/O SILVER MOON II **801 EAST BALTIMORE ST** Principal Residence: Deed Reference:

1) /20784/ 561

Lot

NO

BALTIMORE MD 21202-4701

Location & Structure Information

Section

Premises Address

9605 PULASKI HWY

Grid

Мар

Legal Description

LT SES PULASKI HWY 9605 PULASKI HWY **NE COR MIDDLE RIVER**

Assesment Area

166 22 82 Town **Special Tax Areas**

Sub District

Ad Valorem Tax Class

Primary Structure Built 0000

Parcel

Enclosed Area

Subdivision

Property Land Area

36,938.00 SF

County Use

20

Plat No:

Plat Ref:

Stories

Basement'

Type

Block

Exterior

Value Information

Base Value Value As Of 01/01/2003

Phase-in Assessments As Of As Of 07/01/2004 07/01/2005

213,800 Land: 259,800 **Improvements:**

Total:

Preferential Land:

213,800

259,800

287,797

259,800

Transfer Information

Seller: MOTIVA ENTERPRISES LLC IMPROVED ARMS-LENGTH Type:

Seller: SHELL OIL COMPANY Type:

NOT ARMS-LENGTH

Seller: VANDEVANDER ROSCOE IMPROVED ARMS-LENGTH Type:

Date: 10/05/2004

Date:

Deed1: /20784/ 561 04/20/2001

Price: \$675,000 Deed2:

Price: \$281,800

Deed1: /15136/ 175 Deed2: 12/05/1990 Date:

Deed1: / 8665/612

\$300,000 Price:

Deed2:

Exemption Information

07/01/2004 **Partial Exempt Assessments** Class 07/01/2005 000 County State 000 000 Municipal

Tax Exempt: Exempt Class: NO

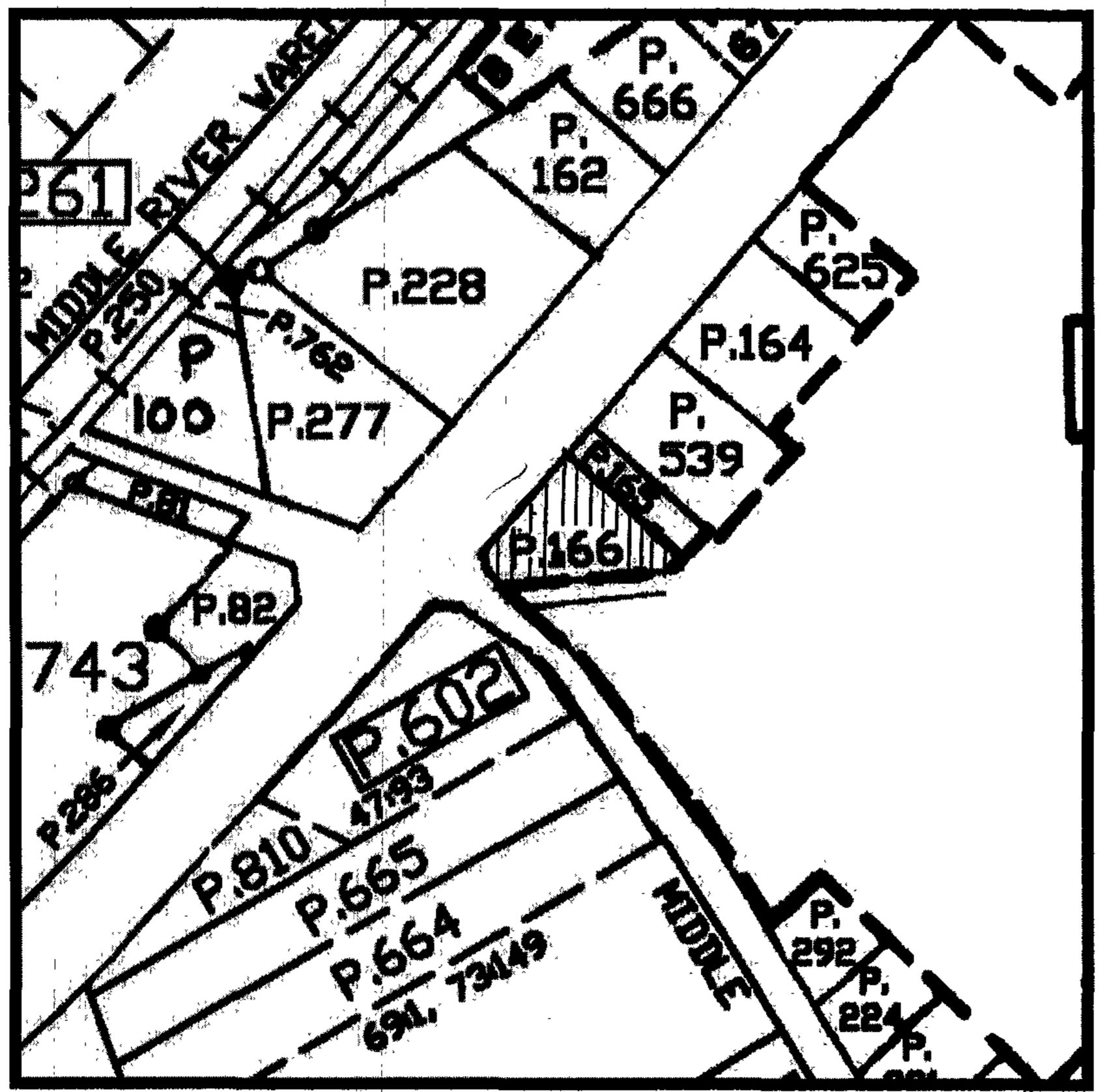
Special Tax Recapture:

* NONE *

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

Go Back View Map New Search

District - 15Account Number - 1522000640



Property maps provided courtesy of the Maryland Department of Planning ©2004. For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/webcom/index.html

PLEASE PRINT CLEARLY

CASE NAME AUGAR (HUZ)
CASE NUMBER 05- (031-14)
DATE 7/27/OS

PETITIONER'S SIGN-IN SHEET

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E-MAIL r Smith@kincom	Junge Carlden,								
HUNT YALLEY, MD. 21090	2m2								
KCI TECHNSOLOGIES, LIC.	we 200 address								
Right L Smith	Jenn Bussell								

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE -

SE/Corner Pulaski Highway (Md. Rte. 40) *

and Middle River Road

(9605-09 Pulaski Highway)

15th Election District

6th Council District

BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY.

Case No. 03-188-SPHXA

Motiva Enterprises, LLC, Owners; Pinnacle Realty II, Contract Purchasers

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by the owners of the subject property, Motiva Enterprises, LLC, and the Contract Purchasers, Pinnacle Realty II, through their attorney, Sebastian A. Cross, Esquire. The Petitioners request a special hearing to approve an amendment to the special hearing and site plan approved in prior Case No. 83-26-SPHA, and a special exception for a fuel service station use in combination with a convenience store/carryout restaurant, pursuant to Sections 236.4 and 405.2 B.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, the Petitioners request variance relief from Section 405.4.A.2.b&c to allow a landscape transition area (LTA) setback of 0 feet in lieu of the required 6 feet along the northern boundary, and 0 foot setbacks in lieu of the required 10 feet along the eastern boundary line and Pulaski Highway and a waiver from the screening requirements set forth in the Landscape Manual for those three sides; and, from Section 238.2 of the B.C.Z.R. to allow side and rear yard setbacks of 1 foot each in lieu of the required 30 feet. 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 Dennis Williams, Vice President of Pinnacle Realty, II, Contract Purchasers; Greg Reed, on behalf of Bohler Engineering, the consultants who prepared the site plan for this property; and, Sebastian

By We see that

Cross, Esquire, attorney for the Petitioners. There were no Protestants or other interested persons present.

The subject property under consideration is an irregular shaped parcel located on the southeast corner of the intersection of Pulaski Highway (U.S. Route 40) and Middle River Road in eastern Baltimore County. The property contains approximately .844 acres in area, zoned B.R.-A.S. and was formerly the site of a gasoline service station. Although the service garage building and fuel pumps remain, the fuel service station is closed and the property is not now in active use. Pinnacle Realty II proposes to acquire the site and perform extensive renovations to rehabilitate the property. As has been the trend in the business, the site will be rehabilitated to sell both fuel and convenience items. As more particularly shown on the plan, the Petitioners propose a one-story "L"-shaped building of 3150 sq.ft. towards the rear of the property. The building will contain both a carryout restaurant and convenience store. Additionally, there will be eight multi-product dispensers to sell fuel. Six of these dispensers will be located towards the front of the site and two will be located on the side. Those two pumps will sell diesel fuel.

It was indicated at the hearing that the site has been used as a fuel service station for many years. The original service station was opened in 1951 and most recent improvements were completed in 1982. As noted above, the existing service station recently closed. Moreover, the property is located within a highly commercial/industrial area. This portion of Pulaski Highway (U.S. Route 40) features a number of similar commercial/industrial/retail uses.

The redevelopment of this site will require substantial renovations to the property. In this regard, Zoning Advisory Committee (ZAC) comments were received most notably from the State Highway Administration (SHA) and the Office of Planning. But for a single issue, these comments have been incorporated on the redlined plan that was offered at the hearing. Specifically, there are presently three curb cut access points to the site from Pulaski Highway. Evidence offered at the hearing revealed that one of these curb cuts would be closed so that only two points of access will remain. The exact location of these access points is to be determined following consultation with the Office of Planning and the SHA. Obviously, it is the intent of

these agencies to relocate the access points further from the intersection so as to promote better traffic flow and serve the public safety. However, the final design has not been completed. Additionally, the Petitioner will be required to replace the existing curb cut and entrance paving along U.S. Route 40 and the two access points along that road will be restricted to one right-turn in and one right-turn out. Additionally, the SHA will require a traffic impact analysis to determine the final design of any roadway improvements and modifications may be required to the existing traffic signal at the intersection. The Petitioners indicated at the hearing that all of these requirements would be satisfied.

The ZAC comment from the Office of Planning mirrored many of the concerns set out by the SHA, but also offered other suggestions. Additional recommendations made regarded potential landscaping to the property. A 6-foot landscape transition area will be provided along the frontage of the site adjacent to Pulaski Highway. The final design will be determined based upon the exact location of the two access points referenced above. Additionally, a fence will be provided along the entire north side of the property. This fence will also buffer the site from a restaurant/tavern on that side. Additionally, improvements towards the rear of the property are also contemplated. The rear of the site abuts a 30-foot wide access road which provides access to the Pulaski Business Park located east of the subject property. Apparently, the property owner dedicated a portion of the subject site for development of that road. Additionally, there will be access to the service station from that access road. The Petitioners provided details at the hearing regarding that access and improvements to that portion of the site. It was also indicated that there would be an internal 12-foot wide drive aisle provided towards the rear of the site to allow for traffic flow next to the proposed building. The Office of Planning has apparently agreed to that design and reduced its demand that the drive aisle be a minimum width of 18 feet.

The only unresolved issue raised in the ZAC comments submitted by the SHA and the Office of Planning relates to potential construction of sidewalks along Middle River Road. The Office of Planning has requested that this condition be added and the Petitioner believes that the construction of sidewalks in that area of the site is impractical. Testimony offered at the hearing

demonstrated that this area is not used by pedestrians and is heavily traveled. The property is uniquely configured so that its frontage on Middle River Road is limited. As shown on the plan, that frontage abuts Pulaski Highway to the north (front) and the access road to the south (rear) and is less than 75 feet in length overall. The Petitioners felt that construction of sidewalks in this area would serve no real purpose in view of the road system in this area. I agree and will therefore not require that sidewalks be constructed on that portion of the site.

It is also to be noted that a ZAC comment was also received from the Department of Environmental Protection and Resource Management (DEPRM). That comment indicated that the Maryland Department of the Environment (MDE) had opened a file (Case No. 01-78BA4) for this site because of potential groundwater contamination by existing fuel tanks. Apparently, some petroleum-impacted soil had been excavated and removed along with the underground storage tanks previously utilized by the prior station. In response to DEPRM's comment, the Petitioners produced a letter from Epoch Consultants, Inc. which indicates that they had researched this issue on behalf of the Petitioners and that MDE closed all outstanding files regarding this matter in August 2001. Thus, it appears that this issue has been resolved.

Based upon the testimony and evidence offered, I am persuaded that the proposed redevelopment of this site is appropriate and that the special hearing, special exception and variance relief should be granted. It is to be noted that a comment in support of the plan was received from the Windlass Run Community Association which would be most affected by this proposal. Although there are no residences in the immediate proximity of the site, a letter was submitted from that community association indicating their support of the Petitioners' efforts to rehabilitate and revitalize this lot. Indeed, replacement of a closed operation with a new facility will enhance the area at large. In sum, I find that the Petitioners have met the requirements for special exception and variance relief as set out in Sections 502.1 and 307 of the B.C.Z.R. Clearly, the proposed use will not detrimentally impact the surrounding locale. Additionally, the property is surely unique given its unusual shape and access from three sides. These factors drive the need for variance relief and the plan in total represents an appropriate redevelopment of this site.

As noted above, the redlined (revised) plan does incorporate all of the requirements made by the SHA and the Office of Planning, with the exception of the sidewalks on Middle River Road. For clarification, those comments will be incorporated herein and attached hereto as conditions to the relief granted, irrespective of the fact that the plan has been so amended but for the sidewalks on Middle River Road.

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

this day of December, 2002 that the Petition for Special Hearing to approve an amendment to the special hearing and site plan approved in prior Case No. 83-26-SPHA, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a fuel service station use in combination with a convenience store/carryout restaurant, pursuant to Sections 236.4 and 405.2 B.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 405.4A.2.b&c to allow a landscape transition area (LTA) setback of 0 feet in lieu of the required 6 feet along the northern boundary, and 0 foot setbacks in lieu of the required 10 feet along the eastern boundary line and Pulaski Highway, and a waiver from compliance from the screening requirements set forth in the Landscape Manual for those three sides; and, from Section 238.2 of the B.C.Z.R. to allow side and rear yard setbacks of 1 foot each in lieu of the required 30 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

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

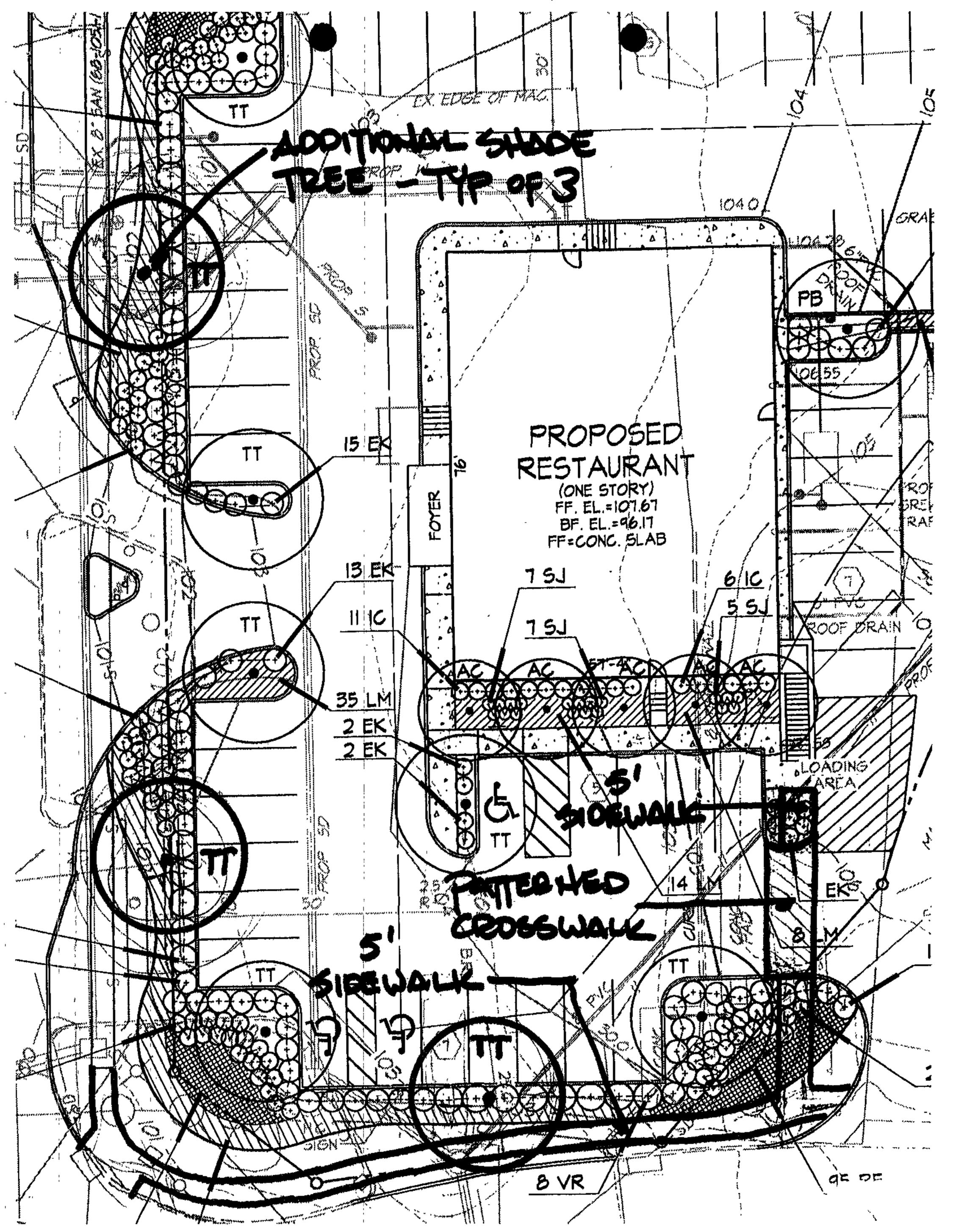
Date 1918 W. P. W. By

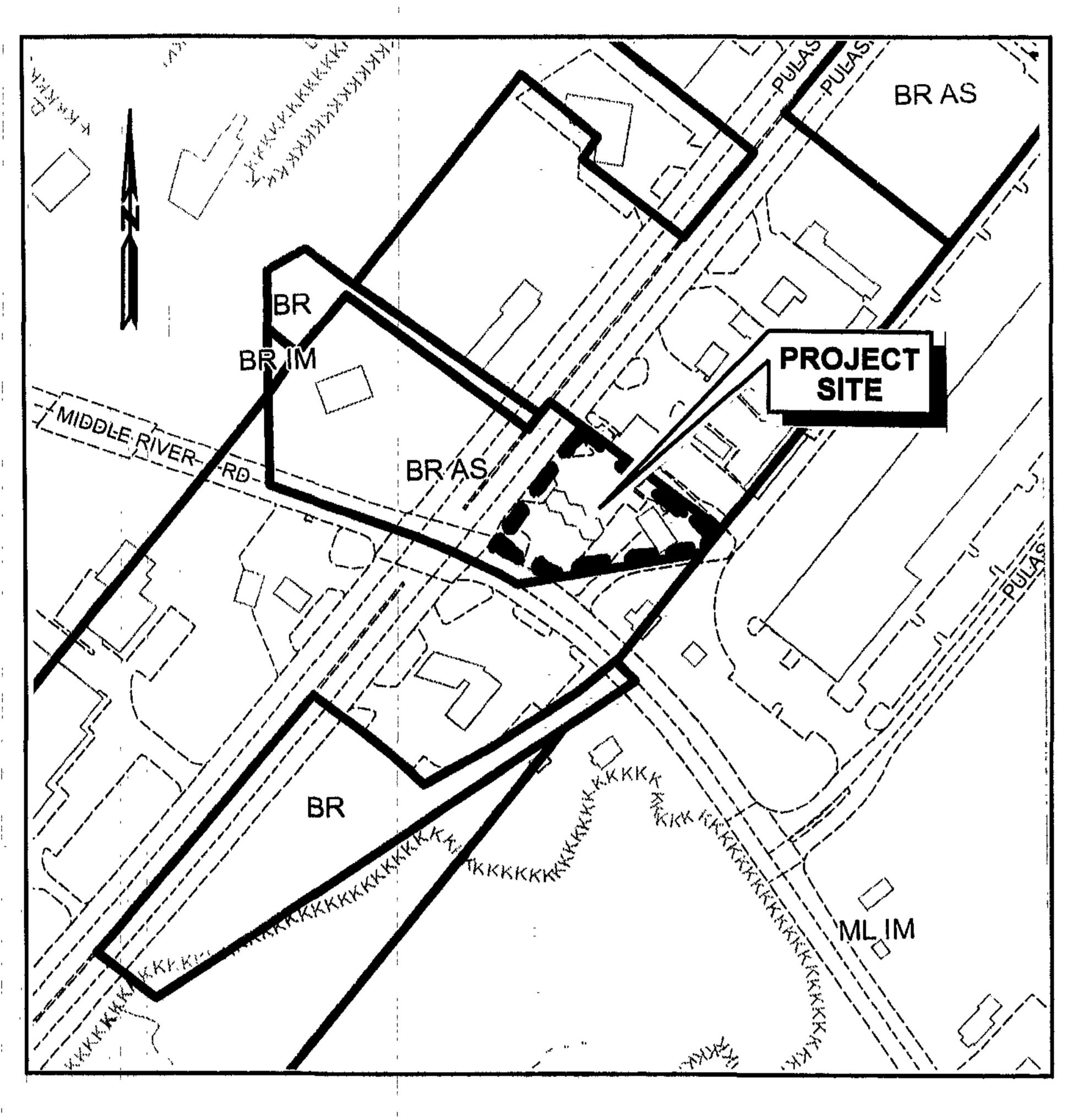
- 2) Compliance with the ZAC comments submitted by the SHA, dated October 31, 2002, and the Office of Planning, dated November 21, 2002, saving and excepting the sidewalk construction on Middle River Road. Copies of these comments are attached hereto and made a part hereof.
- 3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

LAWRENCE E. SCHMIDT

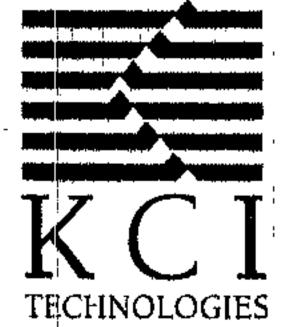
Zoning Commissioner for Baltimore County

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Engineers
Planners
Scientists
Construction Managers

10 North Park Drive Hunt Valley, MD 21030 Phone: (410) 316-7800 Fax: (410) 316-7817 www.kci.com DATE
MAY 13. 2005

SCALE
1" = 200'

DESIGNED BY

DRAWN BY

VARIANCE REQUEST

SILVER MOON DINER

PROTOPAPAS PROPERTY
9605 PULASKI HIGHWAY
BALTIMORE, MARYLAND 21220

SHEET

082B3



