12/19/05

IN RE: PETITION FOR VARIANCE

Northeast side of Sweet Air Road, 330' southeast of Jarrettsville Pike 10th Election District 3rd Councilmanic District (3418 Sweet Air Road)

Townsley-Kelly, LLC, Legal Owner and DAVCO Restaurants, Contract Purchaser/Lessee Petitioners

- BEFORE THE
- \* DEPUTY ZONING COMMISSIONER
- \* OF BALTIMORE COUNTY
- \* CASE NO. 06-245-A

\*

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by Kevin Townsley of Townsley-Kelly, LLC, Legal Owner and DAVCO Restaurants, Inc., Contract Purchaser/Lessee, of the subject property. The variance request is for property located at 3418 Sweet Air Road in the Jacksonville area of Baltimore County. The variance request is from Section 259.3.C.2.b of the Baltimore County Zoning Regulations (B.C.Z.R), to allow a side yard setback of 5' in lieu of the required 15' and 0' in lieu of the required 15' (for landscaping) and a setback of 9' in lieu of the required 15' (for building), and from Section 259.3.C.3 of the B.C.Z.R., to allow "partial" landscaping in lieu of "entire" landscaping of the required side setback areas.

The property was posted with a notice of the public hearing date and time on November 26, 2005 and notice given to the general public by publication in the Jeffersonian Newspaper on November 29, 2005.

# **Interested Persons**

Appearing at the hearing on behalf of the variance request were John Schultz as well as Kevin Townsley and Thomas Kelly, members of Townsley-Kelly, LLC, Legal Owner, and Harry Porter of DAVCO Restaurants, Inc, Lessee. Joseph Larson, Zoning Consultant, of Spellman,

DATOER RECEIVED FOR FILING

Larson & Associates, Inc., who prepared the site plan, attended the hearing. Glen Thomas, representing the Greater Jacksonville Association, Bill Shaughnessy, Esquire, appearing individually, William Bergeron, Norma Bergeron, Jay Schapiro, and Robert Bayer, appeared in opposition to the petition. Vernon Boozer, Esquire, represented the Petitioners. Peter Max Zimmerman, People's Counsel, entered his appearance in this case.

# Zoning Advisory Committee

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: ZAC comments were received by the Office of Planning dated November 28, 2005, and the Maryland Department of Transportation, State Highway Administration, dated November 16, 2005, copies of which are attached hereto and made a part hereof.

# 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."

# Testimony and Evidence

Mr. Larson, a zoning consultant, testified that the subject property contains approximately one (1) acre, and is split zoned BM-CR & RC 5 and is vacant. It is located in the commercial area of Jacksonville. He noted that the property is narrow (100 ft.) but very long (490 ft.).

The Petitioner would like to build a Wendy's fast food restaurant on the premises, which would have access to Sweet Air Road via a 25 foot wide right of way which gives the BGE substation in the rear of the property access to the public road. See Petitioner's Exhibit 1. The plan meets all County regulations of the underlying BM zone. However, the CR overlay district provides the building shall be setback 15 feet from the property line. In addition, the entire setback area (front, side and rear) shall be landscaped pursuant to the Landscape Manual. The Petitioner is proposing full setback and landscaping for the front and rear of the proposed restaurant but five (5) feet of landscaping instead of 15 feet along the east property line and no landscaping along a portion of the west side where the drive through land adjoins the BGE easement. Again see Petitioner's Exhibit 1.

Mr. Larson opined that the long narrow shape of the property made the property unique in a zoning sense. He noted that a 100 x 490 foot commercial property was very unusual in his experience and that the 15 foot side setback and landscaping regulations reduced the usable width to only 70 feet. This means he had to find a commercial use for a 70 x 460 foot envelope. He related to the many attempts he made to find a suitable commercial use for the property without success. He indicated that the best fit he has been able to find is the proposed Wendy's restaurant, which he described as "almost fits". He opined that the Petitioner would suffer hardship and practical difficulty if the CR overlay regulations were strictly enforced, as the property would be practically unusable.

On the other hand, the very long configuration allows the Petitioner to exceed the parking lot pervious surface requirement of 7%. He noted that the proposed plan provides nearly 20% pervious surface. He pointed out that the properties on either side of the subject site are commercial as well so that there is no residential area to be buffered or protected.

Mr. Larson opined that the Petitioner acknowledges the Planning Office comment that the plan must eventually meet the compatibility requirements of Section 32-4-402 of the BCZR and Jacksonville Community Plan. However, this requires the Petitioner to expend considerable architectural and engineering effort before he knows the outcome of the zoning variance request. He suggested that this Commission approve the subject variances conditioned on approval by the Planning Office of compatibility in the subsequent site plan review rather than as suggested by the Planning Office during a continuance of the subject hearing. He indicated that he submitted some compatibility information to the Planning Office. In support of this approach, he noted the comments from the State Highway Administration are also to be addressed in the later review for similar reasons.

In response to questions, he admitted the Petitioner owns the adjoining property to the west. However, he denied that the side setback variances could be avoided by lot line adjustment with this lot because the boundary between these lots is burdened by a 25 foot BGE easement as shown on Petitioner's Exhibit 1. He further denied that the easement could be moved because there are extensive underground utilities in the easement, which cannot be practically moved.

Upon questioning by the community, he admitted that a fast food restaurant is inappropriate as far as the Jacksonville Community Plan is concerned. However, he noted that the community plan is a guide only and not part of the regulations. He also indicated that the Petitioner is providing three times the specified landscaping in this plan but because of the width of the lot, cannot fully landscape both sides. He opined that there is no purpose in landscaping on the BGE

easement side (west side) as this is a driveway to allow BGE to go to the substation in the rear.

On the east side, the owner proposes a bank, which will have 15 feet of landscaping for a total of 20 feet of landscaping if one includes the proposed five feet in this plan.

Upon further questioning, Mr. Larson admitted that the proposed restaurant alone could be built within the 70 feet remaining after the side landscaping specified in the regulations is used but noted that Wendy's requires the drive through as an essential part of their business. He denied that the Petitioner should have known that the lot was too small for a Wendy's when the Petitioner bought the lot. Rather, he noted again the great difficulty he had finding any commercial use of the lot that allows only 70 feet of width.

Mr. Townsley, a member of the Petitioner LLC, indicated that he purchased the property one (1) year ago and the lot has been vacant for more the 30 years saved for a temporary fruit stand. He indicated that he wanted to work with the community regarding the design of the site and recalled he has already met three (3) times with the community as late as two (2) nights ago.

Mr. Thomas, President of the Greater Jacksonville Association, presented a resolution from the Association in opposition to the proposed use and variances. See Protestants' Exhibit 1. He noted that the Jacksonville Community Plan was approved by the Council in 2000 as part of the Master Plan. He opined that the proposed Wendy's restaurant was not consistent with the Community Plan but admitted that the Plan is a guide only and not a regulation. He appreciated the Petitioner's attempts to keep the community informed about plans for the property.

Mr. Shaughnessy noted that the variance requests were unnecessary and unwarranted under the circumstances as the site can be developed without practical difficulty or hardship. He opined that the Wendy's template was the thing driving the variance request and that a Wendy's restaurant can be built on site without the drive through feature. Finally, he opined that the site was not unique in a zoning sense as there are other 100 foot wide lots in the area that have been developed.

## Findings of Fact and Conclusions of Law

I will address the primary issues as follows:

# Jacksonville Community Plan

All agree that the Jacksonville Community Plan is a guide and not regulation. Undoubtedly it discourages more fast food restaurants in the Jacksonville Town Center but when I lay this against the regulations which allow such restaurants by right I have to find the regulations control.

## Uniqueness, hardship and practical difficulty

Mr. Larson described in some detail the difficulty he had in finding a commercial use for this long narrow property. He noted that the proposed restaurant could fit on the site without variances under the underlying BM zoning regulations. It is only when the CR overlay is applied is there a problem for the proposed use. That problem stems from the CR requirements to landscape the "entire" front side and rear of the property for the full setback (15 feet) distance.

The community opined that the Wendy's restaurant could be built on the property without the drive through feature. However, that proposal seems somewhat like asking us to turn back the clock to an earlier, less auto centered society where people walked to the store and/or got out of their car to enjoy a restaurant. However, today all fast food restaurants seem to require drive through features as well as pharmacies, banks and the like. Is it possible to build a fast food restaurant without a drive through? Yes, but the zoning question - is this practical? My answer is apparently no. That answer however does not preclude the County from protecting the community from some of the less desirable features of these restaurants.

From the evidence before me, the lot in question existed for the last 30 years. I understand that the CR regulations were imposed on the Jacksonville area in 1988. Consequently, I find that these regulations imposed after the lot was created impact this lot differently from others in the area created after the regulations were imposed. In addition, the lot is long and narrow for commercial property and it is the narrowness which triggers the request for variance. Therefore, I find the property unique in a zoning sense.

Drive through features are a real part of this kind of commercial business today. However, what drives the variance requests is the CR landscaping requirements, which the Petitioner can meet on the front and rear but because of the width of the lot cannot meet on the sides.

# Landscaping in a CR District

The regulations require landscaping on the "entire" front, rear and sides of a property for the full 15-foot setback distance. If taken literally, this would require a commercial enterprise to operate within a continuous, 15-foot wide moat, which is filled with plantings pursuant to the Landscape Manual and nothing else. There would be no driveways to allow vehicles to park on the property. Presumably all vehicles would park on the street. This cannot be. Surely, the ring of landscaping would at least be broken by driveways to allow on site parking as required by other parts of the regulations.

On the other hand, this particular Petitioner owns the adjacent lot, which by any other measure should be used to provide the landscaping, required by the overlay regulations. However, Mr. Larson tells us there is a BGE easement immediately to the west of the boundary line between these adjoining lots which cannot be moved as there are underground utilities under the easement which are not practical to move. Consequently, the Petitioner cannot move the boundary by lot line adjustment or use the easement strip in any way.

I have no reason to doubt that there are underground utilities in the easement if Mr. Larson tells me so. While I understand not being able to move the boundary to make the lot wider, I do not agree the easement area cannot be used for landscaping. If the underground utilities need to be repaired, there is no reason not to dig up the landscaping temporarily and then replace the landscaping. I acknowledge that vehicles must pass over the easement to get to the BGE substation to the rear. So the question is then, how wide a landscaping swath can be placed on the easement and still provide access to the BGE substation?

For this answer I look to the Landscape Manual. I note that there are no residential or institutional uses on the sides of this subject property. Consequently, Condition F "Service Lanes" applies which specifies that 6 feet of landscape space is to be provided for drive thru service lanes and menu boards between paved surfaces and lot lines. I find this requirement most reasonable and will apply it to both sides of this property.

# Community Compatibility

While the underlying BM zone triumphs over the local community plan for use as above, the community is protected by the requirement that what goes into a CR overlay district must be compatible with the design of the community buildings.

From these statutes, I conclude that the proposed Wendy's restaurant is an improvement of property involving building, that it is a "development" pursuant to the Code, that it is a development in a CR district, and that a recommendation of compatibility is required.

Ordinarily I would continue the hearing to receive the recommendation of the Planning Office in regard to compatibility. However, Mr. Larson asks the variances be approved conditioned on approval by the Planning Office for compatibility. I understand his concern that the Petitioner could expend great effort to find a compatible design for the building only to find the variance had been denied. Therefore, I will grant his request to reverse the process with the understanding that if the Petitioner and Planning Office disagree on the design of the building, that issue is no longer before me and will have to be taken up on appeal to the Board of Appeals.

# Summary of Findings

From the testimony and evidence and review of the applicable regulations, I will grant a variance request for the building setback of 9 feet in lieu of the required 15 feet. I will further grant a variance for a 6-foot landscape area on each side of the property, the western portion of which will be installed on the BGE easement adjacent to the property. I will grant the request for a "partial" landscaping in lieu of the required "entire" landscaping to the extent that the landscape area on the west side of the property may have driveways to give the subject property access to the adjacent easement as shown on Petitioner's Exhibit 1.

Said another way, I will deny the requested variance for 5 feet in lieu of the required 15 feet and 0 feet in lieu of the required 15 feet (for landscaping).

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted in part and denied in part.

ORDER RECEIVED FOR FILING

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 19 day of December, 2005, that a variance request from Section 259.3.C.2.b of the Baltimore County Zoning Regulations (B.C.Z.R), for the building setback of 9 feet in lieu of the required 15 feet be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petitioner's request for variance for a 6 foot landscape area on both sides of the property, the western portion of which will be installed on the Petitioner's property (BGE easement) adjacent to the property; and

IT IS FURTHER ORDERED that the Petitioner's request for a "partial" landscaping in lieu of the required "entire" landscaping to the extent that the landscape area on the west side of the property may have driveways to give the property access to the adjacent easement as shown on Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

- 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 such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition and
- 2. The Petitioner's shall submit such information to comply with the ZAC comments from the Office of Planning dated November 28, 2005 and
- 3. The approval of these variances is conditioned upon a positive finding by the Office of Planning that the proposed building is compatible with the community pursuant to Section 32-4-402 of the Baltimore County Code and the Jacksonville Community Plan; and
- 4. The Petitioner shall comply with the comments from the Maryland Department of Transportation, State Highway Administration, dated November 16, 2005.

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

JOHN Y. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:dlw

1/19/07

IN THE MATTER OF KEVIN TOWNSLEY - DAVCO RESTAURANTS Petition for Variance 3418 Sweet Air Road 10<sup>th</sup> Election District 3<sup>rd</sup> Councilmanic District

- \* BEFORE THE
- \* COUNTY BOARD OF APPEALS
- \* FOR
- \* BALTIMORE COUNTY
- \* Case No.: 06-245-A

# MOTION TO DISMISS DECISION OF ZONING COMMISSIONER GRANTING VARIANCE

Comes now the Appellants, William D. Shaughnessy, Jr. and Greater Jacksonville Association, Inc., by and through their attorneys William D. Shaughnessy, Jr. and move for an Order dismissing the Decision of the Zoning Commissioner granting a variance in this matter, and, as the grounds therefore, say:

- 1. On or about November 3, 2005, Respondents, Kevin Townsley, Townsley-Kelly, LLC (collectively, "Townsley") filed a Petition for Variance with the Zoning Commissioner regarding property located at 3418 Sweet Air Road ("the Property"). The variance was requested in connection with Townsley's proposed improvement of the Property for use as a Wendy's Restaurant ("the Restaurant").
- 2. On or about December 15, 2005, a hearing was held before the Zoning Commissioner at which time Townsley presented evidence in support of its request for variance from various set back requirements that Townsley allegedly needed to enable development of the Property for the Restaurant.

- 3. On or about December 19, 2005, the Zoning Commissioner issued an Order and Decision granting the variances requested (the "December 2005 Order").
- 4. On or about January 17, 2006, Appellants filed an appeal from the Decision of the Zoning Commissioner.
- 5. In mid to late January 2006, there was an underground release of in excess of twenty thousand gallons of gasoline at the Jacksonville Exxon station, located several hundred yards southeast of the Property.
- 6. Upon information and belief, Townsley negotiated with Exxon for Exxon to acquire the Property for use in connection Exxon's remediation efforts in the Jacksonville area.
- 7. Pursuant to a Deed dated April 25, 2006, a copy of which is attached hereto as **Exhibit A**, Townsley conveyed the Property to ExxonMobile Oil Corporation ("the Deed"). For some time prior to the Deed, and at all times subsequent to the Deed, the Property has been utilized by Exxon as a staging site for its remediation of the gasoline discharge in the Greater Jacksonville area.
- 8. The undersigned, counsel for Appellants, has had several communications with Mr. Vernon Boozer, counsel for Townsley (until he recently withdrew his appearance on January 15, 2007). Mr. Boozer has verbally confirmed that Townsley conveyed the Property, that the Property is being used by Exxon and that Townsley does not have plans for a Restaurant at the Property. Mr. Shaughnessy has asked Mr. Boozer to have his client withdraw the variance request and/or join in a joint stipulation dismissal of the variance granted and the within appeal. Copies of communication from Mr. Shaughnessy to Mr. Boozer are attached hereto as **Exhibit B**

and Exhibit C. Mr. Boozer has replied that he has been unable to reach his client to get such authorization.

- 9. On or about January 10, 2007, the Board of Appeals rescheduled the hearing on the appeal in this matter for February 6, 2006.
- 10. On or about January 15, 2007, Mr. Boozer withdrew his appearance in this matter.
- 11. It is clear from the Deed that Townsley has no interest in the Property, having conveyed all of its interest in the Deed. In light of the ongoing remediation activities of the Property by Exxon, it is clear that there is no plan to proceed with the Property as a Restaurant, which necessitated the variance requested and granted by the Zoning Commissioner. The December 2005 Order should be dismissed as moot.
- 12. Appellants cannot unilaterally dismiss their appeal, because such unilateral dismissal would result in final approval of variances granted in the December 2005 Order, a result unacceptable to Appellants.
- 13. From all of the above, it is clear that there is no proponent of the variances requested and granted in the December 2005 Order. It would be a waste of the time of the Board of Appeals and of counsel to the Appellants to appear and attend at the appeal currently scheduled for February 6, 2007, when the variances sought and granted by the December 2005 Order should be dismissed because (a) the matter is moot and (b) there is no party seeking the variances.

WHEREFORE, the Appellants pray that this Board dismiss the application for variance and the December 2005 Order of the Zoning Commissioner.

William D. Shaughnessy, Jr., individually 14 Edgarwood Court

Phoenix, MD 21131 410/666-5033

William D. Shaughnessy, Jr. 233 East Redwood Street Baltimore, Maryland 21202

410/576-4092

Attorney for Appellants

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_\_\_\_ day of January, 2007, a copy of the foregoing Appellants' Motion To Dismiss Decision Of Zoning Commissioner Granting Variance was mailed, first-class, postage prepaid, to

F. Vernon Boozer, Esquire Covahey & Boozer, P.A. 614 Bosley Avenue Towson, Maryland 21204 Kevin Townsley 14808 Jarrettsville Pike Monkton, Maryland 21111

Thomas Kelley 13330 Long Green Pike Hydes, Maryland 21082 Harry Porter/DAVCO Restaurants 1657 Crofton Boulevard Crofton, Maryland 21114

Joseph Larson 105 West Chesapeake Avenue Towson, Maryland 21204 Glen Thomas 3806 Donerin Way Phoenix, Maryland 21131

William and Norma Bergeron 4 Valley Green Court Phoenix, Maryland 21131 Jay Schapiro 12 Ruby Field Court Baltimore, Maryland 21209

Robert Bayer 8 Ansari Court Baldwin, Maryland 21013 John Schultz 2328 West Joppa Road Lutherville, Maryland 21093

Peter Max Zimmerman People's Counsel Old Courthouse, Room 47 400 Washington Avenue Towson, Maryland 21204 William J. Wiseman, III, Zoning Commissioner 401 Bosley Avenue Towson, Maryland 21204

Pat Keller, Planning Director 401 Bosley Avenue Towson, Maryland 21204 Timothy M. Kotroco, Director/PDM 111 West Chesapeake Avenue Towson, Maryland 21204 Mark Ellerkmann 3930 Dance Mill Road Phoenix, Maryland 21131 Steve Cornet 13 Glenberry Court Phoenix, Maryland 21131

David Fritz 3601 Jackson Cabin Road Phoenix, Maryland 21131

William D. Shaughnessy, Jr

1/18/06

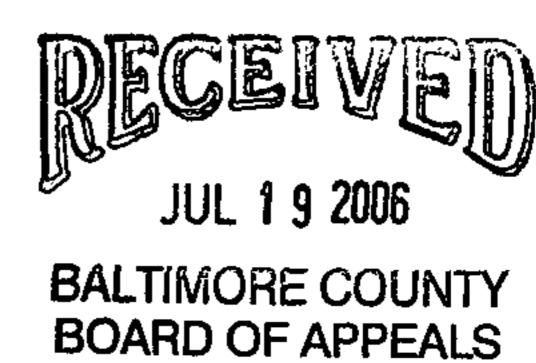
IN THE MATTER OF KEVIN TOWNSLEY - DAVCO RESTAURANTS Petition for Variance 3418 Sweet Air Road 10<sup>th</sup> Election District 3<sup>rd</sup> Councilmanic District

- \* BEFORE THE
- \* COUNTY BOARD OF APPEALS
- \* FOR
- \* BALTIMORE COUNTY
- \* Case No.: 06-245-A

# APPELLANTS' REQUEST FOR POSTPONEMENT

Appellants, William D. Shaughnessy, Jr. and Greater Jacksonville Association, Inc., by and through their undersigned counsel, request a postponement of the hearing in this matter scheduled for Thursday, August 17, 2006, at 10 o'clock a.m., and as grounds therefore state:

- 1. This action is an appeal from the Decision of the Deputy Zoning Commissioner as set forth in the Findings of Facts and Conclusions of Law, and Order, dated December 19, 2005.
- 2. On or about May 10, 2006, the Board sent notice of a hearing in this matter, with a hearing date scheduled for Thursday, August 17, 2006, at 10 o'clock a.m.
- 3. Upon receiving the hearing notice, counsel for the Appellants, William D. Shaughnessy, Jr., ("Mr. Shaughnessy") contacted counsel for the Petitioners/Appellees, F. Vernon Boozer, Esquire ("Mr. Boozer"). Mr. Shaughnessy advised Mr. Boozer that Mr. Shaughnessy would need to request that the hearing be



appeal might have been mooted if the Petitioners/Appellees had withdrawn their plan and Variance Request due to the conveyance of the property by Townsley-Kelly to Exxon.

6. Absent the withdrawal of the development plan and Request for Variance by the Appellees, Appellants must at this time request a postponement of the currently scheduled hearing.

WHEREFORE, the reasons set forth above, the Appellants respectfully request that the hearing in the matter, currently scheduled for August 17, 2006 at 10 o'clock a.m., be postponed to a later date.

William D. Shaughnessy, Jr.

Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC The Garrett Building 233 East Redwood Street Baltimore, Maryland 21202 410/576-4092

Attorneys for Appellants

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_\_\_\_ day of July, 2006, a copy of

the foregoing Appellants' Request for Postponement was mailed, first-class, postage prepaid, to

F. Vernon Boozer, Esquire Covahey & Boozer, P.A. 614 Bosley Avenue Towson, Maryland 21204 Kevin Townsley 14808 Jarrettsville Pike Monkton, Maryland 21111

Thomas Kelley 13330 Long Green Pike Hydes, Maryland 21082 Harry Porter/DAVCO Restaurants 1657 Crofton Boulevard Crofton, Maryland 21114

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William and Norma Bergeron 4 Valley Green Court Phoenix, Maryland 21131

Jay Schapiro
12 Ruby Field Court
Baltimore, Maryland 21209

Robert Bayer 8 Ansari Court Baldwin, Maryland 21013 John Schultz 2328 West Joppa Road Lutherville, Maryland 21093

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

William J. Wiseman, III, Zoning Commissioner 401 Bosley Avenue Towson, Maryland 21204

Pat Keller, Planning Director 401 Bosley Avenue Towson, Maryland 21204

Timothy M. Kotroco, Director/PDM 111 West Chesapeake Avenue Towson, Maryland 21204 Mark Ellerkmann 3930 Dance Mill Road Phoenix, Maryland 21131

David Fritz 3601 Jackson Cabin Road

Phoenix, Maryland 21131

Steve Cornet 13 Glenberry Court Phoenix, Maryland 21131

William D. Shaughnessy, Jr.

# GORDON • FEINBLATT

ROTHMAN, HOFFBERGER & HOLLANDER, LLC

WILLIAM D. SHAUGHNESSY, JR. 410.576.4092 FAX 410.576.4246 wshaughnessy@gfrlaw.com ATTORNEYS AT LAW
233 EAST REDWOOD STREET
BALTIMORE, MARYLAND
21202-3332
410.576.4000
www.gfrlaw.com

July 18, 2006

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

Re: Matter of Kevin Townsley – Davco Restaurants CBA Case No: 06-245-A

Dear Clerk:

Enclosed for filing is Appellants' Request for Postponement. Kindly present to the Board for consideration.

Please call the undersigned if you have any questions.

Very truly yours,

William D. Shaughnessy, Jr.

Encl.

cc: all persons on Certificate of Service

JUL 1 y 2008

BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: PETITION FOR VARIANCE

Northeast side of Sweet Air Raod, 350'

Southeast of Jarrettsville Pike

10<sup>th</sup> Election District

3<sup>rd</sup> Councilmanic District

(3418 Sweet Air Road)

**BEFORE THE** 

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

Case: 06-245-A

Townsley-Kelly, LLC, Legal Owner and

DAVCO Restaurants, Contract

Purchaser/Lessee

\*

# NOTICE OF APPEAL TO BOARD OF APPEALS

Appellants, Greater Jacksonville Association, Inc., and William D. Shaughnessy, Jr., persons aggrieved by a decision of the Deputy Zoning Commissioner, by and through their undersigned attorney, file the within Notice of Appeal to Board of Appeals and states:

- The action that is the subject of this appeal is the decision of the Deputy Zoning Commissioner as set forth in the Finding of Facts and Conclusions of Law, and Order, dated December 19, 2005, issued by the Deputy Zoning Commissioner in the above-referenced case (the "December 19 Decision"). Petitioner hereby appeals the December 19 Decision.
  - This appeal is filed within 30 days of the issuance of the December 19 Decision. 2.
  - This appeal is authorized pursuant to Section 32-3-401 of the Baltimore County Code. 3.
  - The name and address of the parties taking this appeal is: 4.

Greater Jacksonville Association, Inc.

P.O. Box 126

Phoenix, MD 21131

William D. Shaughnessy, Jr.

14 Edgarwood Court

Phoenix, MD 21131

William D. Shaughnessy, Jr.

254715.1 1/13/2006

Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC The Garrett Building 233 East Redwood Street Baltimore, Maryland 21202-3332 Phone: 410.576.4092

Attorneys for Appellants

#### Certificate of Service

William D. Shaughnessy, Jr.

# GORDON • FEINBLATT

ROTHMAN, HOFFBERGER & HOLLANDER, LLC

WILLIAM D. SHAUGHNESSY, JR. 410.576.4092 FAX 410.576.4246 wshaughnessy@gfrlaw.com ATTORNEYS AT LAW
233 EAST REDWOOD STREET
BALTIMORE, MARYLAND
21202-3332
410.576.4000
www.gfrlaw.com

January 17, 2006

# VIA HAND DELIVERY

Timothy M. Kotroco, Director
Baltimore County Department of Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

Re: NOTICE OF APPEAL TO BOARD OF APPEALS

In re: Petition for Variance 3418 Sweet Air Road (Zoning Commissioner Case No. 06-245-A)

Appellant:

(1) Greater Jacksonville Association, Inc

(2) William D. Shaughnessy, Jr.

Property: 3418 Sweet Air Road

Dear Mr. Kotroco:

The undersigned, William D. Shaughnessy, Jr., individually, and as counsel to Greater Jacksonville Community Association, Inc., both an interested person and aggrieved party in the above matter, hereby appeals the December 19, 2005 Findings of Fact and Conclusions of Law, and Order, of the Deputy Zoning Commissioner in the above-referenced case (Case No. 06-245-A). Enclosed herewith for filing is a Notice of Appeal to Board of Appeals. The basis for the appeal is that the December 19, 2005 decision is unlawful and erroneous.

The name and address of the aggrieved parties taking this appeal are:

William D. Shaughnessy, Jr.,

Greater Jacksonville Association, Inc.

c/o 233 East Redwood Street

P.O. Box 126

Baltimore, Maryland 21202-3332

Phoenix, MD 21131

Enclosed is a check in the amount of \$300.00 to cover the cost of docketing the appeal and costs of sign posting. Please contact the undersigned if anything further is needed.

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JAN 1 / 2006

254676.1 1/13/2006



Timothy M. Kotroco, Director January 17, 2006 Page 2

Very truly yours,

William D. Shaughnessy, Jr.

WDS:jc Enclosures

cc: People's Counsel

Hon. John V. Murphy

Greater Jacksonville Association, Inc.

# 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

December 19, 2005

Vernon Boozer, Esquire 614 Bosley Avenue Towson, Maryland 21204

> Re: Petition for Variance Case No. 06-245-A Property: 3418 Sweet Air Road

Dear Mr. Boozer:

Enclosed please find the decision rendered in the above-captioned case. The petition for Variance has been granted in part and denied in part 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

for Baltimore County

JVM:dlw Enclosure

c: John Schultz, 2328 W. Joppa Rd., Lutherville, MD 21093
Kevin Townsley, 14808 Jarrettsville Pike, Monkton, MD 21111
Thomas Kelly, 13330 Long Green Pike, Hydes, MD 21082
Harry Porter, 1657 Crofton Blvd., Crofton, MD 21114
Joseph Larson, Spellman, Larson & Associates, Inc., 105 W. Chesapeake Ave.,
Towson, MD 21204
Glen Thomas, President, Greater Jacksonville Community Association,
3806 Donerin Way, Phoenix, MD 21131
Bill Shaughnessy, Esq., 14 Edgerwood Ct., Phoenix, MD 21131
William & Norma Bergeron, 4 Valley Green Ct., Phoenix, MD 21131
Jay Schapiro, 12 Ruby Field Ct., Baltimore, MD 21209
Robert Bayer, 8 Ansari Ct., Baldwin, MD 21013
People's Counsel; Case File



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



# Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 3418 Sweet Air Road

which is presently zoned BM-CR & RC5

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) 259.3.C.2.b to a low a side yard

setback of 5' in lieu of the required 15' and 0' in lieu of the required 15' (for landscaping) and a setback of 9' in lieu of the required 15' (for building)Section 259.3.C.3.a to allow "partial" landscaping in lieu of "entire" landscaping of the required side setback areas.

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

Reasons for the Variance and legal argument 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 Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning it is to the zoning law for Baltimore County.

regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Reviewed By

			•
Contract Purc	haser/Less	see:	**
DAVCO Restai	urants Inc	C;	
Name - Type or Print			
Signature	<u> </u>		
1657 Crofton	Blvd.	410	793-3905- Telephone No
Address Crofton:	MD	• •	21114
City		State	Zip Code
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рфар	<u> </u>		
1	· · · · · · · · · · · · · · · · · · ·	· · · · · · · · · · · · · · · · · · ·	Telephone No.
1034	•	٠.	
1 1	<del></del>	State	Zip Code
1			
	_		•

oning regulations. ng, etc. and further agree to and a the zoning law for Baltimore Count	re to be bounded by the zoning		
We do solemnly declare and affirm, under the penalties of perfury, that I we are the legal owner(s) of the property which is the subject of this Petition.			
Legal Owner(s): Townsley-Kelly LLC			
Kevin Townsley			
Name - Type or Print			
Signature			
Name - Type or Print			
Signature			
10525 York Road Address	410-917-4900		
	Telephone No.		
Cockeysville. MD	21030 State Zip Code		
City			
Representative to be Cor	tacted:		
Joseph Larson	·		
Name	410-823-3535		
105 W. Chesapeake Ave.	Telephone No.		
Towson MD	21204		
Clty	State - Zip Code		
OFFICE USE ONLY			
ESTIMATED LENGTH OF HEARING			
UNIVERSE FOR HEART			
	13(17)		





ROBERT E. SPELLMAN, P.L.S. JOSEPH L. LARSON

CIVIL ENGINEERS AND LAND SURVEYORS

105 W. CHESAPEAKE AVENUE

TOWSON, MARYLAND 21204

TEL (410) 823-3535 / FAX (410) 825-5215

# LEGAL DESCRIPTION TO ACCOMPANY ZONING PETITION 3418 SWEET AIR ROAD 10<sup>TH</sup> ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND

BEGINNING for the same at a point on the north side of Sweet Air Road 330 feet more or less easterly from the center line of Jarrettsville Pike thence running along the north side of Sweet Air Road south 30 degrees 48 minutes 20 seconds east 121.75 feet thence leaving the north side of Sweet Air Road north 25 degrees 10 minutes 25 seconds east 490.5 feet to a point on the rear lot line of Lot No. 24 as shown on the Plat of Hampshire recorded among the Land Records of Baltimore County in Plat Book 58 Folio 147 thence running along the southern boundary of said subdivision north 56 degrees 59 minutes 47 seconds west 101.86 feet to a point on the rear lot line of Lot No. 25 of the Plat of Hampshire thence south 25 degrees 10 minutes 25 seconds west to the place of beginning.

CONTAINING 1.07 acres of land more or less.

August 25, 2005

File#D08220501

06-245-A

•	

•

# NOTICE OF ZONING HEARING

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

Case: #16-245:4

3418 Sweet.Air Road
Northeast side of Sweet Air Road, 330 feet southeast of Jarrettsville Pike.

10th Election District - 3rd Councilmanic District
Legal Owner(s): Kevin Townsley
Contract Purchaser: DAVCO Restaurants, Inc.

Variance: to allow a side yard setback of 5 feet in lieu of the required 15 feet and 0 feet in lieu of the required 15 feet (for landscaping) and a setback of 9 feet in lieu of the required 15 feet (for building) and to allow "partial" landscaping in lieu of the "entire" landscaping of the required 15 feet (for building) and to allow partial landscaping of the landscaping in lieu of the "entire" landscaping of the required side setback areas.

Hearing: Thursday, Detember 15, 2005 at 10:00 a.m. Hearing: Thursday, Detember 15, 2005 at 10:00 a.m. In Room 106, Baltimore County Office Building, 111 West Chesapeake 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/11/743 Nov. 29

# 河

that the annexed advertisement was published successive weeks, the first publication appearing in the following weekly newspaper published in Baltimore County, Md., THIS IS TO CERTIFY once in each of 6

The Jeffersonian Arbutus Times

Catonsville Times

Towson Times

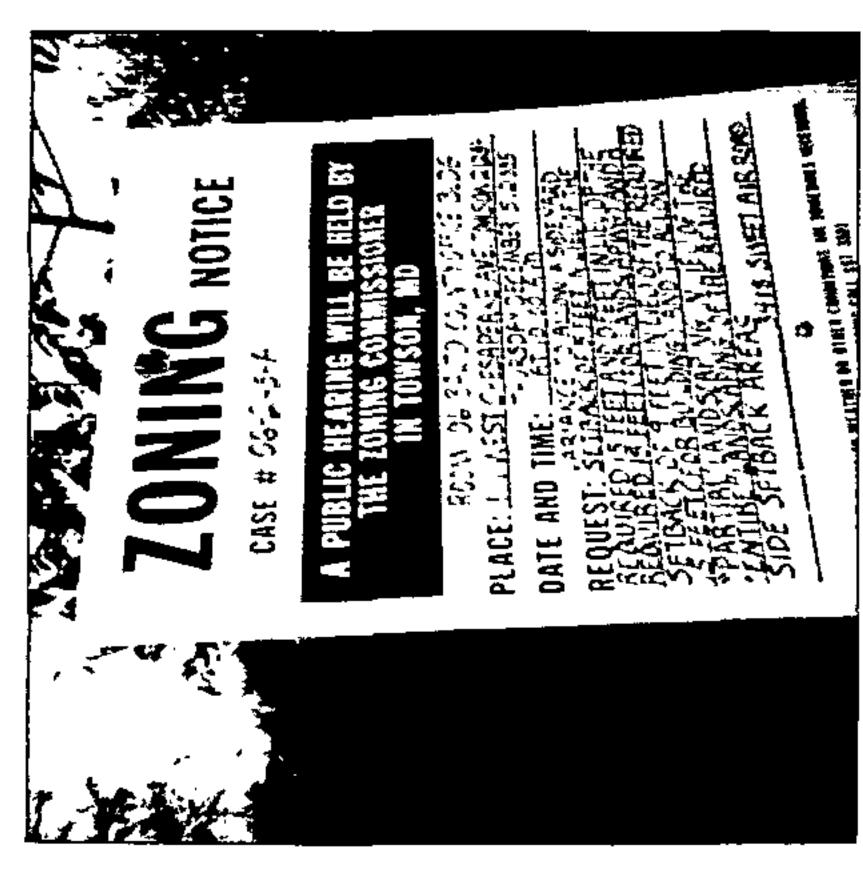
NE Booster/Reporter Owings Mills Times

North County News

LEGAL ADVERTISING

# CERTIFICATE OF POSTING

AT	TENTION: KRISTEN MATTHEWS Date: November 28, 2005
RE:	Case Number <u>06-245-A</u> Petitioner/Developer: <u>KEVIN TOWNSLEY/DAVCO RESTARUANTS</u> /JOE LARSON  Date of (Hearing) Closing: <u>DECEMBER 15, 2005</u>
were	This is to certify under the penalties of perjury that the necessary sign(s) required by law posted conspicuously on the property located at 3418 SWEET AIR ROAD
	The sign(s) were posted on
	$\frac{1}{1+\sqrt{1+\sqrt{1+\sqrt{1+\sqrt{1+\sqrt{1+\sqrt{1+\sqrt{1+\sqrt{1+\sqrt{1$



(Signature of Sign Poster)

LINDA O'KEFF
(Printed Name of Sign Poster)

523 PENNY LANE (Street Address of Sign Poster)

HUNT VALLEY MD 21030
(City, State, Zlp Code of Sign Poster)

(Telephone Number of Sign Poster)

BALTIMORE COUNTY, MARY AND OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT	No. 1048	i	PHILEST THE MEDITION OF STREET
DATE 1 7 () () ACCOUNT <u>CO</u>	1-006-6150		03 (M. 10) (FR) (F)  IFT E TERRY (F) (F)  5 (578 ) THE TERRY (F)  ED1032
RECEIVED Godon Feinblat FROM: Sondon Feinblat	1		Recommend CO CA CA Baltimana Canada Ca
FOR: Appeal Case No.	16-245-4		
DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER			CASHIER'S VALIDATION

NOV 2 9 2005

\*- \*\*

# APPEAL SIGN POSTING REQUEST

CASE NO. 06-245-A

# 3418 SWEET AIR ROAD

10 TH ELECTION DISTRICT

**APPEALED: 1/17/06** 

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, MD 21204

Attention: Kathleen Bianco Administrator

CASE NO.: 06-245-A

LEGAL OWNER: KEVIN TOWNSLEY

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

3418 SWEET AIR ROAD N/E SIDE OF SWEET AIR ROAD, 330' S/E OF JARRETTS-VILLE PIKE

The sign was posted on $\frac{2}{\sqrt{6}}$	_, 2006.	MAP	14A	12
By: Made/fe		· /	_	
(Signature of Sign Poster)				-
(Print Name)				



# 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: $06-245-4$
Petitioner: TOWNSLEY-KELLY, LLC
Petitioner: TOWNSLEY-KELLY, LLC Address or Location: 34/8 SWEET AIR ROAD
PLEASE FORWARD ADVERTISING BILL TO:
Name: JOSEPH LARSON
Address: SPELLMAN, LARSON & ASSOCIATES, INC.
105 W. CHESAPEAKE AVE.
TOWSON, MD 21204
Telephone Number: 410 - 823-3535

# Department of Permits: Development Management

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



# Baltimore County

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

November 9, 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: 06-245-A

3418 Sweet Air Road

Northeast side of Sweet Air Road, 330 feet southeast of Jarrettsville Pike.

10th Election District 3rd Councilmanic District

Legal Owner: Kevin Townsley

Contract Purchaser: DAVCO Restaurants, Inc.

<u>Variance</u> to allow a side yard setback of 5 feet in lieu of the required 15 feet and 0 feet in lieu of the required 15 feet (for landscaping) and a setback of 9 feet in lieu of the required 15 feet (for building) and to allow "partial" landscaping in lieu of the "entire" landscaping of the required side setback areas.

Hearing: Thursday, December 15, 2005 at 10:00 a.m. in Room 106, Baltimore County Office Building, 111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco

Muth Rotroco

Director

TK: clb

C: Kevin Townsley 10525 York Road Cockeysville 21030 DAVCO Restaruants 1657 Crofton Blvd. Crofton 21114

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





TO: PATUXENT PUBLISHING COMPANY

November 29, 2005 Issue - Jeffersonian

Please forward billing to:

Joseph Larson

410-823-3535

105 West Chesapeake Avenue

Towson, Maryland 21204

### **NOTICE OF ZONING HEARING**

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CASE NUMBER: 06-245-A

3418 Sweet Air Road

Northeast side of Sweet Air Road, 330 feet southeast of Jarrettsville Pike.

10<sup>th</sup> Election District 3<sup>rd</sup> Councilmanic District

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<u>Variance</u> to allow a side yard setback of 5 feet in lieu of the required 15 feet and 0 feet in lieu of the required 15 feet (for landscaping) and a setback of 9 feet in lieu of the required 15 feet (for building) and to allow "partial" landscaping in lieu of the "entire" landscaping of the required side setback areas.

Hearing: Thursday, December 15, 2005 at 10:00 a.m. in Room 106, Baltimore County Office Building, 111 West Chesapeake Avenue, Towson 21204

WILLIAM WISEMAN

ZONING COMMISSIONER FOR BALTIMORE COUNTY

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(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



## County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

January 9, 2007

#### **NOTICE OF ASSIGNMENT**

CASE #: 06-245-A

IN THE MATTER OF: KEVIN TOWNSLEY; TOWNSLEY-KELLY LLC

- Legal Owner /Petitioner 3418 Sweet Air Road 10<sup>th</sup> E; 3<sup>rd</sup> C

12/19/2005 – D.Z.C.'s Order in which requested variance relief was GRANTED with restrictions.

which had been postponed from the previously assigned date of 8/17/06 by request of Appellants has been reassigned as follows:

#### **REASSIGNED FOR:**

### TUESDAY, FEBRUARY 6, 2007 at 10:30 a.m.

**NOTICE:** 

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

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

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

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

Kathleen C. Bianco Administrator

c:

Counsel for Appellants /Protestants
Appellants /Protestants

: William D. Shaughnessy, Jr., Esquire

: William D. Shaughnessy, Jr.

Greater Jacksonville Association, Inc.

Mark Ellerkmann /Dance Mill Comm Assn. Steve Cornet

David Fritz

: F. Vernon-Boozer, Esquire w/n 1-16-07

: Kevin Townsley / Townsley-Kelly LLC

Thomas Kelly

Petitioners

Counsel-for-Petitioners

John Schultz
Joseph Larson / Spellman, Larson & Associates

Office of People's Counsel William J. Wiseman III /Zoning Commissioner Pat Keller, Planning Director Timothy M. Kotroco, Director /PDM





## County Board of Appeals of Baltimore County

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

Aug 8, 2006

William D. Shaughnessy, Jr., Esq. Gordon Feinblatt Rothman, Hoffberger & Hollander, LLC 233 East Redwood Street Baltimore, MD 21202-3332

Re: In the Matter of: Kevin Townsley - DAVCO Restaurants

Case No.: CBA-06-245-A

Dear Mr. Shaughnessy:

The Board of Appeals is in receipt of your request for postponement of the aboveentitled case, and your postponement has been granted.

Kathleen Bianco, the Board's Administrator, will be in touch with you in the next couple of weeks regarding a new hearing date and time.

Please feel free to contact our office should you need any further assistance.

Very truly yours,

Linda B. Fliegel

Very truly yours,

Linda B. Fliegel

Legal Secretary

F. Vernon Boozer, Esq.

Thomas Kelley

c:

Joseph Larson/Spellman, Larson & Assoc.

William & Norma Bergeron

Robert Bayer Kevin Townsley Glen Thomas Jay Schapiro

John Schultz

People's Counsel

William J. Wiseman, III, Zoning Commissioner

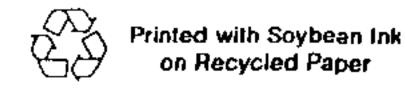
Timothy M. Kotroco, Dir./PDM

Pat Keller, Dir./Planning

William D. Shaughnessy, Jr./ Greater Jacksonville Assoc., Inc.

Mark Ellerkmann/Dance Mill Comm Assoc.

Steven Cornet David Fritz



# 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

December 12, 2005

Kevin Townsley 10525 York Road Cockeysville, Maryland

Dear Mr. Townsley:

RE: Case Number: 06-245-A, 3418 Sweet Air Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on November 3, 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 Rill D.

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Joseph Larson 105 W. Chesapeake Avenue Towson 21204
DAVCO Restaurants 1657 Crofton Blvd. Crofton 21114



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

DEC - - 2005

DATE: November 28, 2005

## 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:** 

3418 Sweet Air Road

INFORMATION:

Item Number:

6-245

Petitioner:

Kevin Townsley

Zoring:-----BM-CR And RC 5

Requested Action:

Variance

#### SUMMARY OF RECOMMENDATIONS:

The Office of Planning has reviewed the petitioner's request and offers the following comments:

Exhibits submitted do not indicate whether the proposed restaurant complies with the Building Design guidelines of the Jacksonville Community Plan (adopted by County Council July 3, 2000). The guidelines that need review in Section 5.3.1 of the Community Plan are as follows:

- 1. Transitions between existing and proposed buildings.
- 2. Architectural treatments of building elevations.
- 3. The quality of exterior materials.
- 4. Scale and massing of building elevations.
- 5. Roof forms and styles.
- Compatibility and appropriateness of proposed structures in relation to adjacent structures and features.

As previously stated these guidelines are within the Jacksonville Community Plan. Their review is necessary to make a possible positive recommendation to the Zoning Commissioner. Additionally the Community Plan mentions in Section 4.9 that drive thru restaurants are one of many "inappropriate uses of land in the Jacksonville Rural Commercial Center."

ANDER RECEIVED FOR

W:\DEVREV\ZAC\6-245.doc

The applicant is also required to submit pursuant to Section 32-4-402 of the BCC a compatibility report addressing and/or giving an explanation of compliance with the eight compatibility objectives listed therein.

For the reasons and outstanding issues listed above the Office of Planning recommends that the petitioner's request be denied or the hearing be continued until the site design and architectural details can be reviewed and commented on accordingly.

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

Prepared by:

Division Chief:

AFK/LL: CM

OHDER RECEIVED FOR FILING

## BALTIMORE COUNTY, MARYLAND

#### INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

**DATE:** November 23, 2005

Department of Permits & Development

Management

FROM:

Dennis A. Kennedy, Supervisor

Bureau of Development Plans Review

**SUBJECT:** 

Zoning Advisory Committee Meeting

For November 14, 2005

Item Nos: 244, 245, 246, 248, and 249

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-11232005.doc

## BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

**DATE:** November 28, 2005

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT:

3418 Sweet Air Road

INFORMATION:

Item Number:

6-245

Petitioner:

Kevin Townsley

Zoning:

BM-CR And RC 5

Requested Action:

Variance

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- 5. Roof forms and styles.
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Prepared by:

**Division Chief:** AFK/LL: CM

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Prepared by:

**Division Chief:** AFK/LL: CM

## Fire Department

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





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

November 15, 2005

ATTENTION: Zoning Review Planners

Distribution Meeting of: November 7, 2005

Item No.: 243, 244, 245) 246, 247, 248, 249.

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.

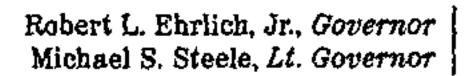
The Fire Marshal's Office has no comments at this time.

Acting Lieutenant Don W. Muddiman Fire Marshal's Office 410-887-4880 MS-1102F

cc: File



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





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

### Maryland Department of Transportation

Date:

November 16, 2005

Ms. Kristen Matthews

Baltimore County Office of

Permits and Development Management

County Office Building, Room 109

Towson, Maryland 21204

RE:

Baltimore County

Item No. 245 (JNP)

3418 Sweet Air RD

MD 145

Mile Post 5.61

Dear Ms. Matthews:

This office has reviewed the referenced Item and has no objection to approval of the Variance. However we will require the owner to obtain an access permit through our office and as a minimum the following roadway improvements will be required:

- 25' wide curbed entrance with 25' curbed radii using standard type "A" combination curb and gutter.
- A 15' wide auxiliary lane widening from property corner to property corner with type "A"
  combination curb, gutter and sidewalk.
- Highway widening dedication for the Right-of Way required to accommodate the future construction of SHA Contract No. BA7725187, MD 146 at MD 145.
- A historical and archeological review will be conducted by our Office of Planning.
- A hydraulic analysis will be required.

Please have their representative contact this office regarding the roadway improvements conditioned to the permit.

Should any additional information be required 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

HOEH RECEIVED FOR FILMS

## Department of Permits a 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

January 20, 2006

William D. Shaughnessey, Jr., Esquire Gordon Feinblatt 233 East Redwood Street Baltimore, Maryland 21202

Dear Mr. Shaughnessey:

RE: Case: 06-245-A, 3418 Sweet Air Road

Please be advised that we received your appeal of the above-referenced case on January 17, 2006. 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.

Very truly yours,

Timothy Kotroco

Director

TK:raj

C: People's Counsel of Baltimore County
Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Kevin Townsely, 10525 York Road, Cockeysville, MD 21030
DAVCO Restaurants, Inc., 1657 Crofton Blvd., Crofton, MD 21114
Thomas Kelly, 13330 Long Green Pike, Hydes, MD 21082
Harry Porter, 657 Crofton Blvd., Crofton, MD 21114
John Schultz, 2328 W. Joppa Road, Lutherville, MD 21093
Joseph Larson, 105 W. Chesapeake Avenue, Towson, MD 21204





RE: PETITION FOR VARIANCE

3418 Sweet Air Road; NE/side Sweet Air

Road, 330' SE Jarrettsville Pike

10<sup>th</sup> Election & 3<sup>rd</sup> Councilmanic Districts

Legal Owner(s): Kevin Townsley

RECEIVED

NOV 1 0 2005

Contract Purchaser(s): DAVCO Restaurants, Inc

Petitioner(s) \*

BEFORE THE

ZONING COMMISSIONER

FOR

**BALTIMORE COUNTY** 

06-245-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.

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 10th day of November, 2005, a copy of the foregoing Entry of Appearance was mailed to, Joseph Larson, 105 W. Chesapeake Avenue, Towson, MD 21204, Representative for Petitioner(s).

THE MAX ZIMMERMAN

People's Counsel for Baltimore County

#### **APPEAL**

Petition for Variance 3418 Sweet Air Road Northeast side of Sweet Air Road, 330 feet southeast of Jarrettsville Pike. 10th Election District - 3rd Councilmanic District Legal Owner: Kevin Townsley Contract Purchasers: DAVCO Restaurants, Inc.

Case No.: 06-245-A

Petition for Variance (November 3, 2005)

Zoning Description of Property

1

Notice of Zoning Hearing (November 9, 2005)

Certification of Publication (November 29, 2005 - The Jeffersonian)

Certificate of Posting (November 26, 2005) by Linda O'Keefe

Entry of Appearance by People's Counsel (November 10, 2005)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet - One Sheet

Zoning Advisory Committee Comments

#### Petitioners' Exhibits

- Site Plan for 3418 Sweet Air Road
- 2. Photograph

#### Protestants' Exhibits:

- Resolutions Greater Jacksonville Association, Inc.
- 2. Affidavit, Glen A. Thomas, Board of Directors, Greater Jacksonville Association

#### Miscellaneous (Not Marked as Exhibit)

- Board of Appeals Opinion and Order, Case No. 04-566-A
- 2. Requirements for Project Conditions-Service Lanes, from Landscape Manual

Zoning Commissioner's Order (Petition for Variance- GRANTED 12-19-05) Notice of Appeal received on 1/17/06 from William D. Shaughnessy, Jr.

c: People's Counsel of Baltimore County Deputy Zoning Commissioner Timothy Kotroco, Director of PDM Kevin Townsley, 10525 York Road, Cockeysville, MD 21030 Joseph Larson, 105 W. Chesapeake Avenue, Towson, MD 21204 DAVCO Restaurants, Inc., 1657 Crofton Blvd., Crofton, MD 21114 Thomas Kelly, 13330 Long Green Pike, Hydes, MD 21082 Harry Porter, 657 Crofton Blvd., Crofton, MD 21114 John Schultz, 2328 W. Joppa Road, Lutherville, MD 21093

date sent January 20, 2006, raj

CASE #: 06-245-A

## IN THE MATTER OF: KEVIN TOWNSLEY – Legal Owner; DAVCO Restaurants, Inc. C.P. 3418 Sweet Air Road 10<sup>th</sup> E; 3<sup>rd</sup> C

VAR – To allow a side yard setback of 5' ilo req'd 15' and 0' ilo req'd 15' (for landscaping) and a setback of 9' ilo req'd 15' (for building) and to allow partial landscaping ilo entire landscaping of the rqd side setback areas.

12/19/2005 – D.Z.C.'s Order in which requested variance relief was GRANTED with restrictions.

5/10/06 -- Notice of Assignment sent to following; assigned for hearing on Thursday, August 17, 2006 at 10 a.m.:

William D. Shaughnessy, Jr., Esquire

William D. Shaughnessy, Jr.

Greater Jacksonville Association, Inc.

Mark Ellerkmann /Dance Mill Comm Assn.

Steve Cornet

**David Fritz** 

F. Vernon Boozer, Esquire

Kevin Townsley /Townsley-Kelly LLC

Thomas Kelly

Harry Porter /DAVCO Restaurants, Inc.

John Schultz

Joseph Larson / Spellman, Larson & Associates

Office of People's Counsel

William J. Wiseman III /Zoning Commissioner

Pat Keller, Planning Director

Timothy M. Kotroco, Director /PDM

#### 1/09/07 - Summary of past events:

6/30/06 – FAX from DAVCO Restaurants, Inc. – Harry Porter is no longer a party to this matter. Also provided copy of Termination of Build to Suit Lease between Townsley-Kelly LLC and DAVCO Restaurants. Mr. Porter and DAVCO removed from notification list.

7/19/06 - Request for Postponement filed by William D. Shaughnessy, Jr., Esquire

8/08/06 - Letter to Mr. Shaughnessy granting request; new date to be scheduled.

-- Notice of Assignment sent to parties above, excluding Mr. Porter /DAVCO Restaurants, Inc. per his correspondence and documents filed on 6/30/06. Hearing scheduled for Tuesday, February 6, 2007 at 10:30 a.m.

1/16/07 – Letter from F. Vernon Boozer, Esquire, striking appearance in this matter.

1/18/07 – Letter to Mr. Boozer acknowledging his letter; appearance has been stricken.

1/22/07 – Motion to Dismiss Decision of Zoning Commissioner filed by William D. Shaughnessy, Jr., Esquire, counsel for Appellants. (Scheduled for hearing on 2/06/07 2-1-6) Copy to be provided to panel prior to hearing.

2/06/07 – Board convened for hearing (Stahl, Mohler M, Witt); Petitioner /Legal Owner did not appear, nor did anyone on his behalf. Board granted Appellants' Motion to Dismiss; order of dismissal to be issued by Board.





## 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 18, 2007

F. Vernon Boozer, Esquire COVAHEY, BOOZER, DEVAN & DORE, P.A. 614 Bosley Avenue Towson, MD 21204



RE: In the Matter of: Kevin Townsley; Townsley-Kelly, LLC . – Legal Owner/Petitioner Case No. 06-245-A

Dear Mr. Boozer:

This will acknowledge receipt of your letter dated January 15, 2007 in which you request that your appearance be stricken on behalf of Petitioner in connection with the subject matter.

The file has been noted so that you will no longer receive future correspondence and/or notices regarding this matter.

Please call me if I can be of any further assistance.

Very truly yours,

Kathleen C. Bianco

Administrator

c: William D. Shaughnessy, Jr., Esquire Kevin Townsley



WILLIAM D. SHAUGHNESSY, JR. 410.576.4092 FAX 410.576.4182 wshaughnessy@gfrlaw.com

ATTORNEYS AT LAW
233 EAST REDWOOD STREET
BALTIMORE, MARYLAND
21202-3332
410.576.4000
www.gfrlaw.com

January 19, 2007

County Board of Appeals of Baltimore County Old Courthouse Room 49 400 Washington Avenue Towson, MD 21204 JAN 2 2 2007

BALTIMORE COUNTY
BOARD OF APPEALS

Re: Matter of Kevin Townsley - Davco Restaurants

**CBA Case No.: 06-245-A** 

Dear Clerk:

Enclosed for filing is Motion to Dismiss Decision of Zoning Commissioner Granting Variance. Kindly present to the Board for consideration.

Please call the undersigned if you have any questions.

Very truly yours,

William D. Shaughnessy, Jr.

WDS/gh

Enclosure

cc: All persons on Certificate of Service

## COVAHEY, BOOZER, DEVAN & DORE, P. A.

# ATTORNEYS AT LAW 614 BOSLEY AVENUE TOWSON, MARYLAND 21204

EDWARD C. COVAHEY, JR.

F. VERNON BOOZER \*

MARK S. DEVAN

THOMAS P. DORE

BRUCE EDWARD COVAHEY

JENNIFER MATTHEWS HERRING

FRANK V. BOOZER, JR.

410-828-9441

FAX 410-823-7530

ANNEX OFFICE SUITE 302 606 BALTIMORE AVE. TOWSON, MD 21204 410-828-5525 FAX 410-296-2131

January 15, 2007

\*ALSO ADMITTED TO D.C. BAR

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

RE: In the Matter of

Kevin Townsley; Townsley-Kelly, LLC

Case No. 06-245-A

Dear Ms. Bianco:

Please strike my appearance on behalf of the Petitioner in connection with the above captioned matter.

Thank you for your attention to this matter. If you have any questions, do not hesitate to contact me.

Very truly yours

F. VERNON BOOZER

cc: William D. Shaughnessy, Jr., Esq.

Kevin Townsley, Petitioner

0115gab02

JAN 1 6 2005

BALTIMORE COUNTY
BOARD OF APPEALS

Aug 8, 2006

Mr. Wescott,

I spoke with Kathleen about the Motion requesting a postponement of the Townsley case this morning. Kathi said that we can grant the request for postponement, and that we should do it by way of letter versus an official ruling.

I am in the process of putting together next week's schedule, and I will hold off sending it out until I receive your decision regarding the postponement of this case.

Linda

WILLIAM D. SHAUGHNESSY, JR. 410.576.4092 FAX 410.576.4182 wshaughnessy@gfrlaw.com

June 7, 2006

ATTORNEYS AT LAW
233 EAST REDWOOD STREET
BALTIMORE, MARYLAND
21202-3332
410.576.4000
www.gfrlaw.com

F. Vernon Boozer, Esquire Covahey & Boozer, P.A. 614 Bosley Avenue Towson, MD 21204

Re:

Kevin Townsley - Davco Restaurants

County Board of Appeals Case No. 06-245-A

Dear Vernon:

This is to follow up on my telephone conversation with you. I have received a Notice of Assignment by which the above appeal is scheduled before the Board of Appeals on Thursday, August 17, 2006 at 10:00 a.m. I am unable to make that date as I will be taking my daughter to college. I have not requested a postponement or change in hearing date due to the fact that newspapers have reported that Mr. Townsley has conveyed the property to Exxon. During my telephone conversation with you, you confirmed the conveyance and you advised that you would speak with Joe Larson about withdrawing the proposed development plan. Would you kindly let me know the status of your discussions with Mr. Larson.

Assuming the development plan is withdrawn, it would moot the appeal and I could either file a withdrawal of appeal or we can file a joint stipulation of withdrawal.

Kindly call me after you have discussed this with Mr. Larson and your client.

Thank you for your attention to this matter.

Very truly yours,

William D. Shaughnessy, Jr.

WDS:jc

cc:

Enclosure

Greater Jacksonville Association, Inc.

Attn: Glen A. Thomas, President

334775.1 6/6/2006 Exhibit "A"

# Greater Jacksonville Association, Inc. P. O. Box 126 Phoenix, Maryland 21131

In the Matter of: Case # 6-245

Townsley-Kelly, Sweet Air Road, Phoenix, MD 21131; 10th E; 3rd C

RESOLVED: That the Greater Jacksonville Association, Inc. (hereafter GJA) Board of Directors, at its November 8, 2005 meeting, adopted a resolution to oppose the proposed Wendy's development in the Jacksonville town center. The Jacksonville Community Plan, adopted by GJA in February 2000, and subsequently incorporated into the Baltimore County Master Plan by the Baltimore County Council in July 2000, specifies that the community found any additional fast food or drive through restaurants to be inappropriate land uses for the Jacksonville Rural Commercial Center (Section 4.9).

FURTHER RESOLVED: That the GJA Board of Directors, at its November 8, 2005 meeting, adopted a resolution to oppose the requested variances to the BM-CR zoning requirements for this development. GJA and the community have strived to maintain the rural nature of the Jacksonville Commercial Center, and feel that any exceptions to the existing CR zoning protection are NOT in the community's best interests.

The Jacksonville Community Plan, which is now part of the Baltimore County Master Plan, also contains specific standards and requirements for commercial development in Sections 5.1 through 5.7.2 regarding site design, building design and architecture guidelines, landscaping, parking lots, lighting, and signage. We believe that any variances granted to any of the above referenced standards, either in the Zoning Hearing or subsequent Planning Review process would NOT be in the community's best interest.

At a regularly scheduled GJA community meeting on December 13. 2005 the membership voted to support the positions taken by the GJA Board, as stated above.

AS WITTNESS OUR HANDS this day of December 13, 2005

ATTEST: THE GREATER JACKSONVILLE ASSOCIATION, INC.

Glen A. Thomas

President

Elizabeth H. Lehmann

Secretary

Q M

# Greater Jacksonville Association, Inc. P. O. Box 126 Phoenix, Maryland 21131

RESOLVED: That at the general membership meeting of the Greater Jacksonville Association, Inc. held on February 15, 2005, a motion was passed that responsibility for review and action on all zoning matters within the Greater Jacksonville area for the year 2005 be placed in the Board of Directors.

The Board of Directors consists of the following duly elected members, each of whom is hereby authorized to testify on behalf of the Association before the Baltimore County Board of Appeals, or other duly constituted Baltimore County zoning agency, body, or commission:

Glen Thomas, President
David Palmer, Vice President
Elizabeth Lehmann, Secretary
William Bergeron, Treasurer
Stephen Kirsch, Past President

Ron Allen
James McCoy
Wilbur Sauerbrey
William Shaughnessey
Steven Wheeler

AS WITTNESS OUR HANDS this day of March 15, 2005

ATTEST: THE GREATER JACKSONVILLE ASSOCIATION, INC.

Glen A. Thomas

President

Elizabeth H. Lehmann

Secretary

## **AFFIDAVIT**

STATE OF MARYLAND BALTIMORE COUNTY, SS:	-
TO WIT:	
I hereby swear upon penalty of perjury that I, Glan A. Thomas	am currently
a duly elected member of the Board of Directors of the GREATER JACKSONVILI	<u>E</u>
ASSOCIATION, INC.	
ATTEST: GREATER JACKSONVILLE ASSOCIATION, INC.	•
President Block Secretary	
March 15, 5005	

Date

ĩ.

## COUNTY BOARD OF APPEALS

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

FACSIMILE TRANSMITTAL SHEET

TO AND FAX NUMBER:

FROM:

DEBBIE WILEY /OFFICE OF ZC

FAX: 410-887-3182

FAX: 410-887-3468

. . . . . .

TELEPHONE: 410-887-3180

DATE:

**DECEMBER 16, 2006** 

TOTAL NO. OF PAGES INCLUDING

RE: COPY OF BOARD'S ORDER - CASE

COVER:

#04-586-A

FIVE (5)

URGENT

FOR REVIEW

FOR YOUR RECORDS

PLEASE REPLY

PLEASE RECYCLE

## PERSONAL AND CONFIDENTIAL

Debbie:

As requested.

kathi -

## DAVCO RESTAURANTS, INC. DEVELOPMENT DEPARTMENT

410-721-3770/FAX 410-721-8283

TO:		FROM	<b>:</b>	
Kathleen Bianco		Cathic Maley		
COMPANY:		DA'IE:		
County Board of Appels		6/30/2006		
FAX NUMBER:		TOTAL NO. OF PAGES INCLUDING COVER:		
410-887-3182		5		
PHONE NUMBER		SENDER'S ALPERENCE NUMBER:		
TE: Proposed Ja	cksonville Wendy	YOUR REFERENCE NUMBER:		
	<u></u>			
URGRNT	X FOR REVIEW	PLEASE COMMENT	D please reply	C PLEASE RECYCLE

6/30/06

Holony Porter Crelled to Say he is no longer a Jarry invocand in Case. I asked that he forf mul BOD Something. We need to remove him from

> 1657 CROFTON BLVD. CROFTON, MD 21114

not efector lest.

## BARGAIN AND SALE FEE SIMPLE DEED

RETURN TO: STEWART TITLE OF MARYLAND 409 WASHINGTON AVENUE - SUITE 920 TOWSON, MARYLAND 21204 410/296-5380 OPTION 2

THIS DEED, made this 25 day of APRIL, 20 06, by and between TOWNSLEY-KELLY, LLC, a Maryland limited liability company, ("Grantor"), and EXXONMOBIL OIL CORPORATION, a New York Corporation, having an office at 3225 Gallows Road, Fairfax, Virginia 22037-0001, ("Grantee").

WITNESSETH: That in consideration of the sum of One Million Six Hundred Thousand & 00/100 DOLLARS (\$1,600,000.00), the said Grantor does grant and convey to the said Grantee, its successors and/or assigns, in fee simple, the land together with the buildings, structures, fixtures and improvements located thereon, in Baltimore County, Maryland, and more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, subject to those valid and subsisting easements, rights-of-way, conditions, covenants, restrictions, reservations and exceptions of record that are set forth on Exhibit "B" attached hereto and incorporated herein by this reference.

BEING KNOWN AS Exhibit "A" attached hereto and made a part hereof. The improvements thereon being known as 3418 Sweet Air Road.

BEING the same property which by Deed dated September 21, 2004 and recorded among the Land Records of Baltimore County in Liber SM 20870 and folio 395 was granted and conveyed by The Rittenhouse Fuel Co. unto Townsley-Kelly, LLC.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot(s) of ground and premises to the said Grantee, its successors and/or assigns, in fee simple.

AND the said Grantor does hereby covenant that he/she/they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that he/she/they will warrant specially the property hereby granted; and that he/she/they will execute such further assurances of the same as may be requisite.

Current real estate taxes and assessments affecting the Property have been prorated between the parties and the payment of Grantee's portion of the same is hereby assumed by Grantee.

0023818 509

Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate Affidavit of Residence or Principle Residence

Based on the certification below, Transferor claims exemption from the tax withholding requirements of § 10-912 of Maryland's Tax General Article. Section 10-912 states that certain tax payments must be withheld when a deed or other instrument that affects a change in ownership of real property is recorded. The requirements of § 10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

	1. Transferor Information			
Name of Tran				
Town	stey ji Krug LCC			
2. Reason for Exemption				
Resident Status	O I, Transferor, am a resident of the State of Maryland. O Transferor is a resident entity under § 10-912(A)(4)			
acacas	of Maryland's Tax General Article, I am an agent of			
	Transferor, and I have authority to sign this document			
	on Transferor's behalf.			
Principal	O Although I am no longer a resident of the State of			
Residence	Maryland, the property is my principal residence as			
<u></u>	defined in IRC § 121.			
Under penalt	y of perjury, I certify that I have examined this			
declaration	and that, to the best of my knowledge, it is true,			
correct and	complete.			
ſ <del></del>	3a. Individual Transferors			
	· · · · · · · · · · · · · · · · · · ·			
Name	Name			
Signature	Signature			
<del></del>				
<b>L</b>	3b. Entity Transferors			
	Name of Entity			
Witness/Atte	Name of Entity			
•	tranging menbir			
	By:			
	Name:			
•	•			
	Title:			

## 0023838 590

WITNESS the hand(s) and seal(s) of the said Grantor(s).

**GRANTOR:** [Seal] [Seal] STATE OF MARYLAND CITY/COUNTY OF BALDMORDE, TO WIT: I HEREBY CERTIFY, that on this 25 day of APUL, 20 6, before me, the subscriber, a Notary Public of the State of MANYCAN, in and for Britimens County/City personally appeared KEVIN JOSEPH TOWNSLEY , known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged the foregoing Deed to be his/her/their act, and in my presence signed and sealed the same. IN TESTIMONY WHEREOF, I hereunto set my hand and official seal. Wotary Publi My Commission Expires: (affix notarial seal)

THIS IS TO CERTIFY THAT THE WITHIN INSTRUMENT HAS BEEN PREPARED BY, OR UNDER THE SUPERVISION, OF THE UNDERSIGNED MARYLAND ATTORNEY, OR BY A PARTY TO THIS INSTRUMENT.

Prepared by:
EXXON MOBIL CORPORATION
3225 Gallows Road - ExxonMobil Law
Fairfax, XA 22037-0001
(703) 846-2348
Don Fullerton
May Line State Ban

23848

Occ. Cd.

State of Maryland Land Instrument Inflate Sheeto ? & County: BALL marce

☐ Baltimore City Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.) (Type or Print in Black Ink Only-All Copies Must Be Legible) HP FD SURE \$ 20.00 Type(s) ( Check Box if addendum Intake Form is Attached.) 20.80 EDROING FEE Deed of Instruments Other Mortgage Other. MAX STATE 8,000.00 Deed or Trust 8,640.66 Lease Not an Arms-2 Conveyance Type Unimproved Sale Multiple Accounts Improved Sale Rcpt # 9192 船 納能 Check Box Arms-Length [2] Arms-Length [3] Length Sale [9] BC Blk # 2922 Arms-Length [1] 12:29 Pm Recordation Has 16, 2006 Tax Exemptions State Transfer (if Applicable) County Transfer Cite or Explain Authority Finance Office Use Only Consideration Amount Purchase Price/Consideration 600,000 -Transfer and Recordation Tax Consideration Consideration Transfer Tax Consideration Any New Mortgage and Tax Balance of Existing Mortgage )% \$ = Calculations Less Exemption Amount Other: 24.000.00 Total Transfer Tax Other: Recordation Tax Consideration \$ ) per \$500 = TOTAL DUE Full Cash Value: Agent: Dac. 1 Doc. 2 Amount of Fees フィー Recording Charge Fees Tax Bill: 20-Surcharge State Recordation Tax K-000 -C.B. Credit: State Transfer Tax 400c --County Transfer Tax \$2400c -Ag. Tax/Other: Other Other Property Tax ID No. (1) Var. LOG Grantor Liber/Folio Parcel No. District Map 6 10-18-035374 **(5)** 0 Description of Subdivision Name Lot (3a) | Block (3b) | Sect/AR (3c) | Plat Ref. SqFt/Acreage (4) Property SDAT requires Location/Address of Property Being Conveyed (2) submission of all SWRET AIR AICA 3308 SWRRIAIN applicable information. A maximum of 40 Other Property Identifiers (if applicable) Water Meter Account No. characters will be Fee Simple Deor Ground Rent indexed in accordance Residential . or Non-Residential Amount: with the priority cited in Partial Conveyance? Yes No Description/Amt. of SqFt/Acreage Transferred: Real Property Article Section 3-104(g)(3)(i). If Partial Conveyance, List Improvements Conveyed: Doc. 1 - Grantor(s) Name(s) Doc. 2 - Grantor(s) Name(s) 2NS 127-10811-100 Transferred From Doc. 2 - Owner(s) of Record, if Different from Grantor(s) Doc. 1 - Owner(s) of Record, if Different from Grantor(s) Doc. 1 - Grantee(s) Name(s) Doc. 2 - Grantee(s) Name(s) Transferred EXXCH MCBIL OIL CORPORMITOH To New Owner's (Grantee) Mailing Address 3225 GALLIUS READ FAIRFAXO VA 2203 Doc. 1 - Additional Names to be Indexed (Optional) Doc 2 - Additional Names to be Indexed (Optional) Other Names to Be Indexed Return to Contact Person Instrument Submitted By or Contact Person Contact/Mail Name: Information Firm Hold for Pickup Address: TEMPS AS 1 1 1 1 1 1 1 1 2 2 2 14 Return Address Provided #17/706-53947 (SP11/Phope: ( IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER Yes No Will the property being conveyed be the grantee's principal residence? Yes No Does transfer include personal property? If yes, identify: \_ Assessment Information Yes No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required). Assessment Use Only - Do Not Write Below This Line ρυετλιεμί , γάπου 👮 Δετλιβerminal Actitication Agricultural Verification Whole Tran. Process Verification Part Transfer Number: Date Received: Deed Reference: Assigned Property No.: \$700 NO EDAPERO CER Geo. Мар Sub Block 20 Lot

Kecher Ke Zoning Grid Plat \$35,000,00 Use Parcel OVERENTE WHITE BEGINDEN Section Ex. St. Town Cd. Ex. Cd. SEXAL MOLITARIAN SECONDALION TAXES >>KECETEL # 414967 5/15/2006 <del>UEC M299 --- NUR</del>違M KNEH KXM

271775CO7 \$2\12\5000 1d 15007713 EXILTIMORE COUNTIVICATION (U) 158 18 1974 (Land Records) [MSA-CE 62-23703] Book SM 23848, p. 0502. Printed 01/19/2007. Online White - Clerk's Office 09/15/2006.

> Goldenrod - Preparer AOC-CC-300 (8/95)

Canary - SDAT Pink - Office of Finance

11/30



WILLIAM D. SHAUGHNESSY, JR. 410.576.4092 FAX 410.576.4182 wshaughnessy@gfrlaw.com

June 7, 2006

ATTORNEYS AT LAW
288 EAST REDWOOD STREET
BALTIMORE, MARYLAND
21202-8882
410.576.4000
www.gfrlaw.com

F. Vernon Boozer, Esquire Covahey & Boozer, P.A. 614 Bosley Avenue Towson, MD 21204

Re:

Kevin Townsley - Davco Restaurants

County Board of Appeals Case No. 06-245-A

Dear Vernon:

This is to follow up on my telephone conversation with you. I have received a Notice of Assignment by which the above appeal is scheduled before the Board of Appeals on Thursday, August 17, 2006 at 10:00 a.m. I am unable to make that date as I will be taking my daughter to college. I have not requested a postponement or change in hearing date due to the fact that newspapers have reported that Mr. Townsley has conveyed the property to Exxon. During my telephone conversation with you, you confirmed the conveyance and you advised that you would speak with Joe Larson about withdrawing the proposed development plan. Would you kindly let me know the status of your discussions with Mr. Larson.

Assuming the development plan is withdrawn, it would moot the appeal and I could either file a withdrawal of appeal or we can file a joint stipulation of withdrawal.

Kindly call me after you have discussed this with Mr. Larson and your client.

Thank you for your attention to this matter.

Very truly yours,

William D. Shaughnessy, Jr.

WDS:jc Enclosure

cc:

Greater Jacksonville Association, Inc.

Attn: Glen A. Thomas, President

334775.1 6/6/2006

EXHIBIT 18



WILLIAM D. SHAUGHNESSY, JR. 410.576.4092 FAX 410.576.4182 wshaughnessy@gfrlaw.com

August 15, 2006

ATTORNEYS AT LAW
233 EAST REDWOOD STREET
BALTIMORE, MARYLAND
21202-3332
410.576.4000
www.gfrlaw.com

F. Vernon Boozer, Esquire Covahey & Boozer, P.A. 614 Bosley Avenue Towson, MD 21204

Re:

Kevin Townsley - Davco Restaurants

County Board of Appeals

Case No. 06-245-A

Dear Vernon:

Attached is a copy of the notice of the Board, granting the postponement I have requested. Clearly, Ms. Bianco will be calling in the next several days to schedule a new date.

It makes no sense to schedule a hearing if the property is not to be developed as envisioned by the plan submitted. Please contact your client to have the plan withdrawn so that this appeal can be dismissed. If, for whatever reason, your client or the new property owner, ExxonMobile, have any intent to proceed with the plan, please immediately so advise me.

Kindly contact me at your earliest opportunity.

Thank you for your attention to this matter.

Very truly yours,

William D. Shaughnessy, Jr.

WDS:jc Enclosure

cc:

Greater Jacksonville Association, Inc.

Attn: Glen A. Thomas, President

EXHIBIT

## Requirements for Project Conditions

## Condition F: Service Lanes

## Standards

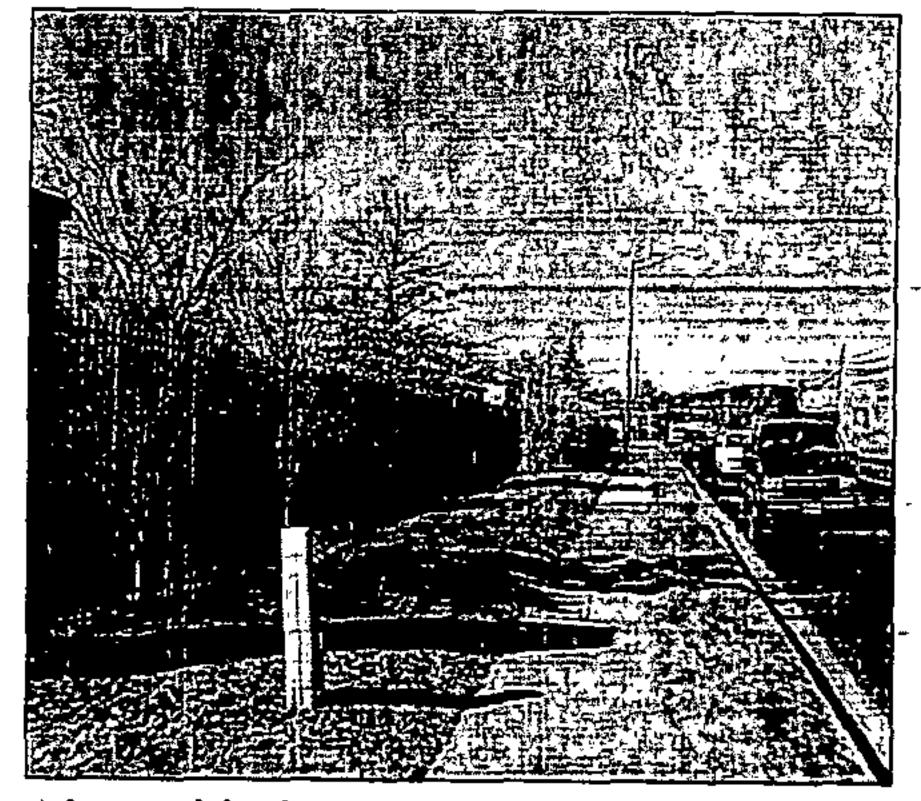
 Screen mini-warehouse service lanes and doors, drive-thru service lanes, stacking spaces, menu boards, and teller facilities adjacent to public rights-of-way. Provide:

## One PU per 15 linear feet of paving perimeter.

2. Provide 6 feet of landscape space between paved surfaces and lot lines or lease lines adjacent to commercial uses or zones. Plant at:

## One PU per 20 linear feet of paving perimeter.

- 3. A "Class A" screen is required adjacent to residential and institutional properties.
  - a. For sites one acre or greater, provide a 15foot landscape strip between paved areas
    and property boundaries if RTA does not
    apply.
  - b. A brick or split-face block wall may be considered as an alternative if the minimum 10-foot landscape strip is not feasible in redevelopment on commercial corridors. The height of the wall should mitigate the impact from noise, fumes, and light on adjacent residences.



A fence with landscaping provides an effective screen for this mini-warehouse service lane.



A low hedge combined with flowering trees frame and soften the view of this drive-thru teller lane from the road.

IN THE MATTER OF THE APPLICATION
OF PEARCE, GOLDBERG, SCHNIDER,
Legal Owners;
AND
BP North America Products, Inc.,
Contract Purchasers
Petitioners
For Variance on Property Located On
SW/S of Paper Mill Road and SE/S of
Jarrettsville Pike
10<sup>th</sup> Election District
3<sup>rd</sup> Councilmanic District

BEFORE THE

BALTIMORE COUNTY

BOARD OF APPEALS

Case No.: 04-566-A

## OPINION AND ORDER

Upon consideration of the evidence in the de novo hearing held on November 18, 2004 and upon public deliberations that same day, this Board enters the following Opinion and Order upon the Petition for Variance.

The subject property is located on the southwest side of Paper Mill Road and the southeast side of Jarrettsville Pike. The property contains a gross area of 0.689 acres of land, is zoned BM-CR and is improved with a fuel service station. The property is located in the Four Corners area of Jacksonville and is surrounded by a number of other business and retail uses. The proposal is to reimage the existing Amoco signage on site with the new BP logo while otherwise maintaining the current existing fuel service station use. In particular, the new signage package requires the following variances from the Baltimore County Zoning Regulations ("BCZR"):

- from Section 259.3.C.7(c) to permit an illuminated BP Helios sign in lieu of non-illuminated signs;
- 2. from Section 259.3.C.7(b) to permit a sign 66.43 sq. ft. in area in lieu of the permitted 25 sq. ft.; and
- from Section 259.3.C 7(a) to permit 3 wall mounted "Shop" signs of 19.34 sq. ft. each in lieu of 1 wall mounted sign at 8 sq. ft. each.

## COUNTY BOARD OF APPEALS

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

#### FACSIMILE TRANSMITTAL SHEET

TO AND FAX NUMBER:

FROM:

DEBBIE WILEY /OFFICE OF ZC

FAX: 410-887-3182

FAX: 410-887-3468

TELEPHONE: 410-887-3180

DATE:

**DECEMBER 16, 2005** 

TOTAL NO. OF PAGES INCLUDING

RE: COPY OF BOARD'S ORDER - CASE

COVER:

#04-566-A

FIVE (5)

URGENT

FOR REVIEW FOR YOUR RECORDS.

PLEASE REPLY

PLEASE RECYCLE

## PERSONAL AND CONFIDENTIAL

Debbie:

As requested.

kathi

## TERMINATION OF BUILD TO SUIT LEASE

THIS TERMINATION OF BUILD TO SUIT LEASE (this "Termination Agreement") dated as of April 24, 2006 by and between TOWNSLEY-KELLY, LLC, a Maryland limited liability company ("Landlord") and DAVCO RESTAURANTS, INC., a Delaware corporation ("Tenant").

#### RECITALS

WHEREAS, pursuant to that certain Build to Suit Lease having an Effective Date of August 8, 2005, as amended by that certain First Amendment to Build to Suit Lease dated as of October 4, 2005 and as further amended by that certain Letter Agreement dated as of October 17, 2005 (collectively, the "Lease"), Landlord leased to Tenant and Tenant leased from Landlord all that certain premises containing approximately 1.12 acres and bearing the address of 3418 Sweet Air Road, Jacksonville, Maryland, as more particularly described in the Lease (the "Premises"); and

WHEREAS, the Premises are located approximately 300 feet from an ExxonMobil service station (the "Station"); and

WHEREAS, on or about January 13, 2006, there occurred a gasoline leak at the Station, which leak was discovered on February 16, 2006 (the "Gasoline Leak"); and

WHEREAS, the Gasoline Leak resulted in approximately 25,000 gallons of gasoline to infiltrate the soil and groundwater in the area of the Station and the Premises, and

WHEREAS, Tenant has decided to avail itself of its right under the Lease to terminate the Lease, citing the Gasoline Lease as a primary reason therefor, and

WHEREAS, the parties have agreed to terminate the Lease, effective as of the date hereof, in accordance with the terms hereof.

#### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the recitals set forth above, the sum of One Dollar (\$1.00) and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree to the following:

1. Recitals. The recitals set forth above are hereby incorporated herein and made a part hereof.

- Termination. The parties hereto acknowledge and agree that the Lease is hereby terminated, effective as of the date hereof, and that the parties hereto shall have no further liability to one another from and after the date hereof.
- Return of Deposit: Development Expenses. Within 3 days after the date hereof, Landlord shall cause the Escrow Agent to pay Tenant the Security Deposit, including all accrued interest thereon. Upon receipt of the Security Deposit by Tenant, Tenant shall pay to Landlord the amount of \$1,500.00, relating to legal work performed by Covahey, Boozer, Devan & Dore, P.A. Tenant will not be obligated to pay any amounts in respect of work performed by Spelman, Larson & Associates, Inc. ("SL&A") at the Premises, including specifically those invoices dated March 6 and March 25, 2006 which total \$4,826.25, but excluding any amounts which Tenant has already in fact paid to SL&A (collectively, the "Development Expenses"). Landlord agrees to indemnify, defend and hold harmless Tenant from any claims, expenses or other loss relating to Landlord's failure to pay such Development Expenses.
- 4. Authority. Each party represents and warrants to the other party that it has the full right, power and authority to execute this Termination Agreement.
- 5. Entire Agreement. This Termination Agreement contains all the agreements and conditions between Landlord and Tenant relating to the termination of the Lease, and no statement, promise, representation or inducement relating to such termination which is not contained herein shall be valid or binding. This Termination Agreement may be modified or amended only by a written document signed by all parties hereto. This Termination Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, devises, representatives, affiliates, successors and assigns.
- 6. <u>Counterparts</u>. This Termination Agreement may be signed in two or more counterparts, which together shall constitute one original.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals to this Termination Agreement the date, month and year first above written.

WITNESS:

ATTEST:

LANDLORD:

TOWNSLEY-KELLY, LLC, a Maryland limited liability company

Kevin Townsley, Authorized Agent

TENANT:

DAVCO RESTAURANTS, INC., a Delaware corporation

Harvey Rothstein, Chairman and CEO

# PLEASE PRINT CLEARLY

CASE NAME 3418 SWEET AIR.
CASE NUMBER 06-245-A

PETITIONER'S SIGN-IN SHEE

E- MAIL					
CITY, STATE, ZIP  1001500, Md ZIZO4  24 Log Mo. 21082  CROSTON MO. 21082	Z Z				
105 W. Coop and Blue. 1557 Cooper Man Riha 1557 Cooper Man Blue. 2519 W. Loop W. O.	4308				
Horay Parkell	🛁				

PLEASE PRINT CLEARLY

CASE NAME	CASE NUMBER	7 T. C
CAS	CAS	7 7 7

CITIZEN'S SIGN-IN

NAME	ADDRESS	CILY, SIAIE, LIF	E-WAIL
* Gler Thomas	3806 Danerin Way	Phoenix MD 21131	act 3806 @ ad. com
5			
* Bill Shavahnessy	4) Edgarwood Ct	pm 1	
IM P. GERGERON	ME	MIX MA	
Norma "	"	*	
JAY SCHAPIRES	12 RUBY FIRED OT	84 cm 3212 Ch 52048	
FORTER	1654 Corpan Bind 2114	Chorten MD 21114	
西がん	8 ANSARIOS.	BANDWIN, MO, 21013	RIBAYER ASSEC CHU.CO.
			-
		-	

# BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

DATE:

February 15, 2005

TO:

Timothy Kotroco, Director

Permits & Development Management

Attn.: David Duvall

FROM:

Theresa R. Shelton

Board of Appeals

SUBJECT:

CLOSED APPEAL CASE FILES

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

BOARD OF	
APPEALS	
CASE NUMBER	

<u>PDM</u> FILE NUMBER

NAME

LOCATION

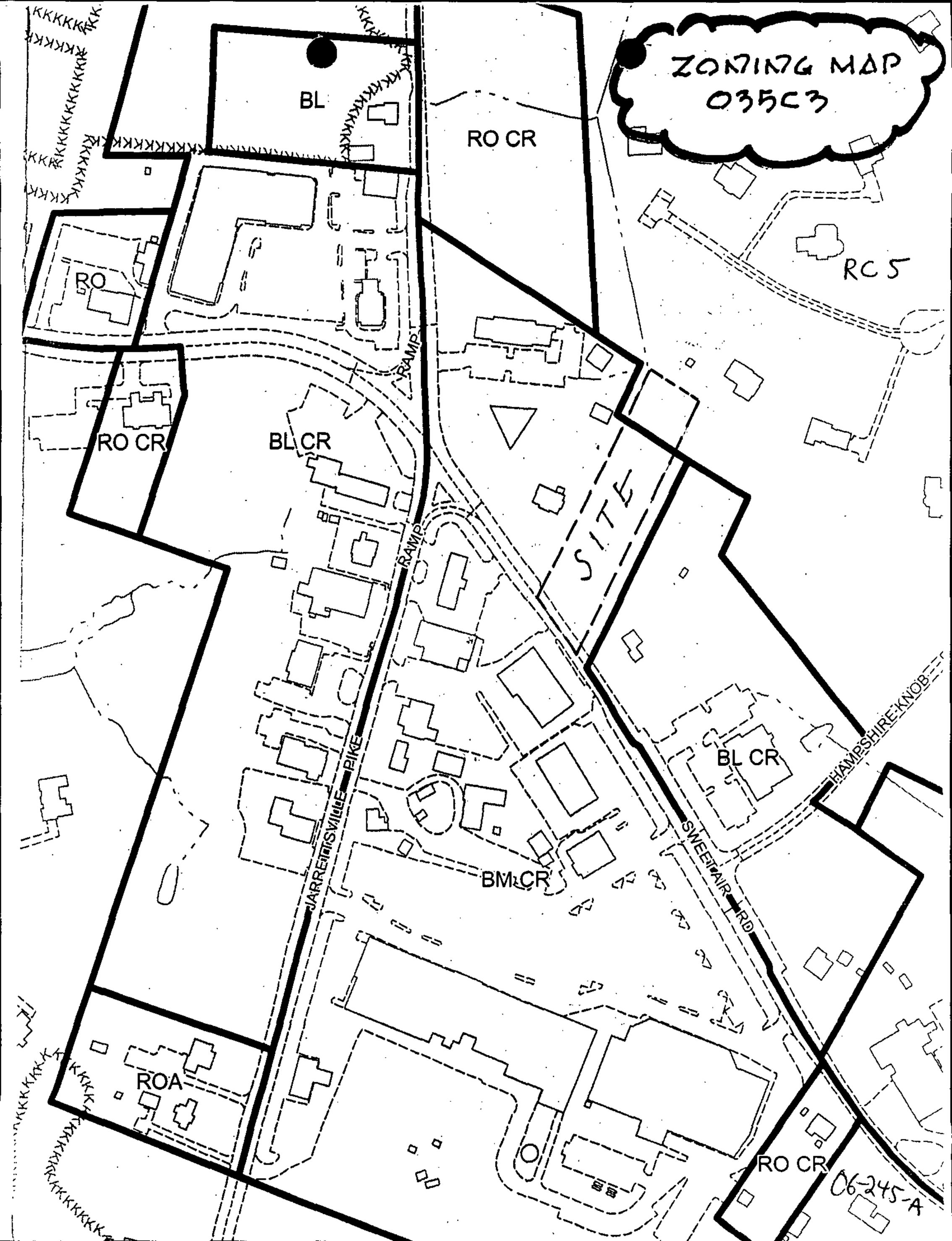
04-566-A

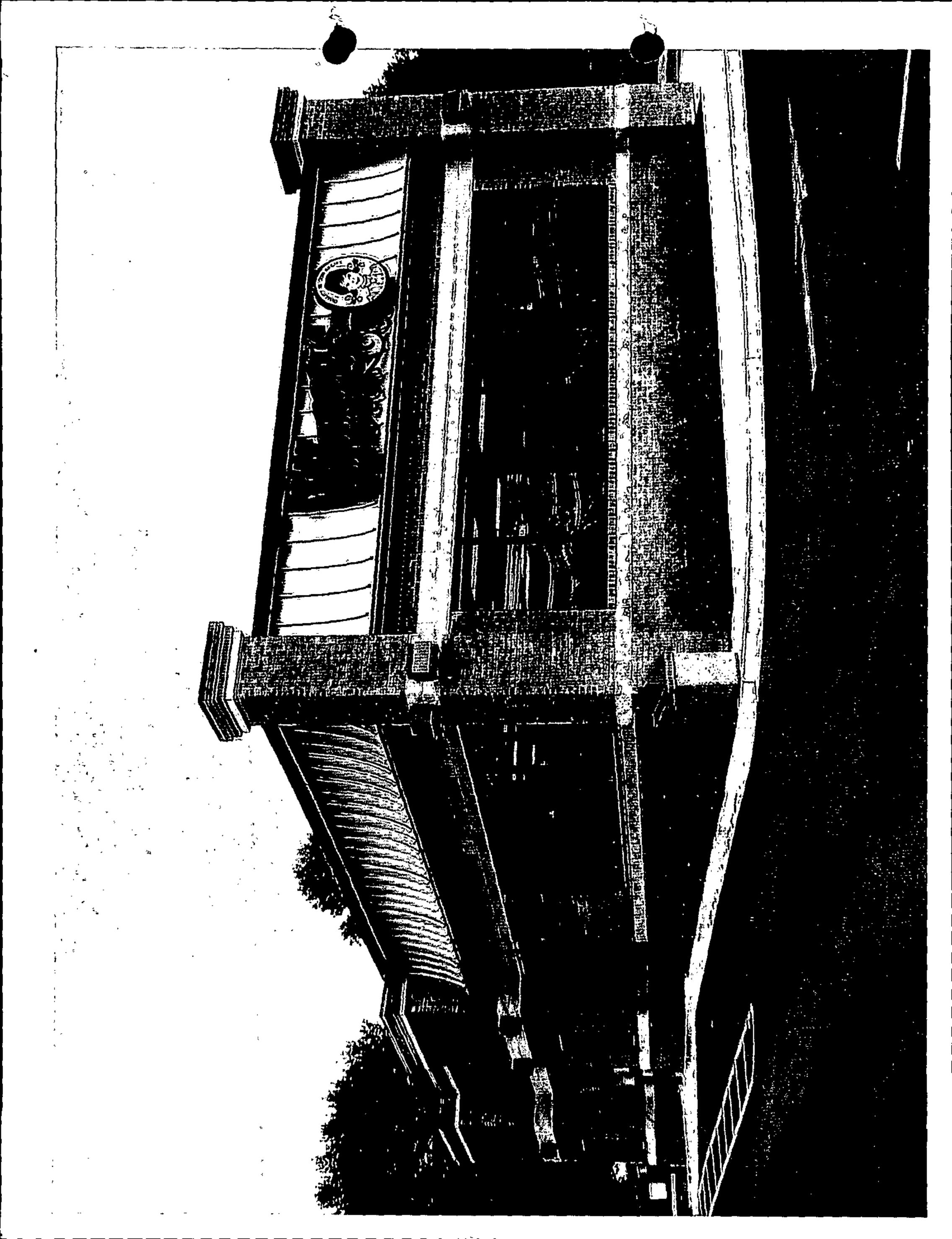
04-566-A


PEARCE, GOLDBERG, SCHNIDER

PAPER MILL ROAD AND JARRETTSVILLE PIKE

BP NORTH AMERICA







4/4/07

IN THE MATTER OF

THE APPLICATION OF

KEVIN TOWNSLEY -LEGAL OWNER

FOR VARIANCE ON PROPERTY

LOCATED ON THE NE/S'OF SWEET AIR \* OF

RD, 330' SE OF JARRETTSVILLE PIKE

3418 SWEET AIR ROAD

\* BALTIMORE COUNTY

\* COUNTY BOARD OF APPEALS

10<sup>TH</sup> ELECTION DISTRICT 3<sup>RD</sup> COUNCILMANIC DISTRICT

\* CASE NO. 06-245-A

BEFORE THE

# ORDER OF DISMISSAL OF PETITION

This matter comes to the Board on appeal filed by William D. Shaughnessy, Jr., Individually, and as Counsel for the Greater Jacksonville Association, Inc., Protestants, from a decision of the Deputy Zoning Commissioner dated December 19, 2005 in which the requested variance relief was granted with conditions.

On January 22, 2007, a Motion to Dismiss Decision of Zoning Commissioner was filed by Mr. Shaughnessy, Individually and as Counsels for the Greater Jacksonville Association, Inc., Appellants /Protestants, moving for dismissal of the instant Petition on the grounds as stated in the Motion.

A hearing was scheduled to be held before this Board on Tuesday, February 6, 2007 at 10:30 a.m., for which proper notice was given. William D. Shaughnessy, Jr., Esquire, appeared Individually and as Counsel for the Greater Jacksonville Association, Inc., Appellants /Protestants, at the scheduled time of hearing. Kevin Townsley, Legal Owner, did not appear, nor did anyone on his behalf, nor in support of the Petition for Variance filed in this matter.

# Case No. 06-245-A /Kevin Townsley — Legal Owner /Petitioner — Order of Dismissal of Petition for Variance

On the record and in open hearing, Mr. Shaughnessy, Individually and as Counsel for Appellants /Protestants, moved for dismissal of the Petition for Variance in Case No. 06-245-A. Upon consideration of same, the Board granted said Motion for Dismissal and will so order.

IT IS THEREFORE ORDERED this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 2007 by the County Board of Appeals of Baltimore County

ORDERED that said Petition for Variance filed in Case No. 06-245-A is hereby

DISMISSED, rendering moot the appeal filed by Appellants in this matter; and, further,
that the Deputy Zoning Commissioner's Order of December 19, 2005, including any and all
relief granted to Petitioner therein, is rendered NULL AND VOID.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*. If no such petition is filed within 30 days from the date of this Order, the subject file will be closed.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Mike Mohler

Robert W. Witt

rescheduled due to the fact that he would be out-of-town August 17, 2006, taking his daughter to college. Mr. Boozer responded that it was his understanding that the property that is the subject of the appeal had been conveyed to Exxon for part of Exxon's remediation activities in the Jacksonville area and, accordingly, Mr. Boozer did not believe that the property would be developed for a fast food restaurant as envisioned by the plan which is the subject of this appeal. Mr. Shaughnessy suggested that Petitioners/Appellees withdraw the development plan and Request for Variance and the parties could thereafter file a joint Stipulation withdrawing the current appeal. Mr. Boozer advised that he would discuss the matter with the project engineer. Mr. Shaughnessy confirmed this telephone conversation in a letter dated June 7, 2006, a copy of which is attached hereto as Exhibit "A".

- 4. On or about July 17, 2006, Mr. Shaughnessy spoke with Mr. Boozer. Mr. Boozer stated that he had not received any confirmation from the engineer for the project that the development plan or Request for Variance would be withdrawn. Mr. Shaughnessy advised that, given the approaching scheduled hearing date, he would file a Request for Postponement.
- 5. Mr. Shaughnessy is an individual Appellant and is also counsel to another Appellant, the Greater Jacksonville Association, Inc. Mr. Shaughnessy will be out-of-town on the date scheduled for the hearing, August 17, 2006, taking his daughter to college at Clemson University. Mr. Shaughnessy has made opposing counsel, Mr. Boozer, aware of this conflict for over a month, however, Mr. Shaughnessy has delayed filing the formal Request for a Postponement due to the possibility that the entire

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### EXHIBIT "A"

## (LEGAL DESCRIPTION)

Beginning for the same at an iron pipe heretofore set for the end of the third line of that same Lot of Ground described in a deed dated September 21, 2004 and recorded among the Land Records of Baltimore County in Liber No. 20870, folio 395, etc from The Rittenhouse Fuel Co.Inc. unto Townsley-Kelly, LLC, the coordinates of said point being North 80,591.873 and East 16,324.542 feet based on the Maryland State Grid and running thence as now surveyed and with courses referred to Maryland State Grid and binding reversely on the outlines of said conveyance the four following courses and distances viz; (1) South 56 degrees 59 minutes 46.9 seconds East 101.86 feet to an iron bar with cap heretofore set, thence (2) South 25 degrees 10 minutes 25 seconds west 490.50 feet to a point on the northeasternmost side of Sweet Air Road (MD. Route No. 145 original right of way), thence (3) binding thereon North 30 degrees 48 minutes 19.6 seconds West 121.75 feet to a point, thence (4) leaving Sweet Air Road and running North 25 degrees 10 minutes 25 seconds East 436.26 feet, in part binding reversely on the third or South 33 degrees 59 minutes West 219.70 feet line of that same lot of ground which by Deed dated September 21, 2004 and recorded among the Land Records of Baltimore County in Liber No. 20870, folio 400 was conveyed unto Townsley-Kelly, LLC to the Place of Beginning.

Being all that same land conveyed unto Townsley-Kelly, LLC by The Rittenhouse Fuel Co., Inc.by deed dated September 21, 2004 and recorded among the Land Records of Baltimore County in Liber 20870, folio 395, etc.



Petitioners were represented by Sebastian A. Cross, Esquire on behalf of BP. People's Counsel, Carole S. DeMilio, appeared to defend the Zoning Maps. The Board heard testimony from Gregory H. Reed with Bohler Engineering as to the proposed improvements upon the site.

Upon agreement of both parties, an amended site plan was submitted due to concern raised by People's Counsel over the freestanding sign variance granted. In agreement of all aforementioned parties, the previously granted sign variance was amended and a new freestanding sign was proposed to be placed along Jarrettsville Pike. The former variance granted by the Zoning Commissioner permitted a 76.49 sq. ft. sign in lieu of the permitted 25 sq. ft. After negotiations between the parties, an amended site plan proposing a freestanding sign measuring 66.43 sq. ft. was submitted to this Board. Upon submittal of this amended signage proposal, People's Counsel stated they had no objection to the amended freestanding sign or the remaining requested variances.

Based on the evidence and testimony submitted, the Board finds the proposed signage package with the amended freestanding sign, as conditioned below, satisfies the variance standards of BCZR Section 307. Special circumstances and conditions exist that are peculiar to the land or structure which is the subject of this variance request and compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. Furthermore, these variances can be granted in strict harmony with the spirit and intent of said regulations and in such a manner as to grant relief without injury to the public health, safety or general welfare. Additionally, there are no residential areas which will be adversely affected by granting this Variance request.

The Board ORDERS as follows this 5th day of July 2005:

- Variance granted from Section 259.3.C.7(c) to permit an illuminated BP Helios sign in lieu of non-illuminated signs;
- Variance granted from Section 259.3.C.7(b) to permit a sign 66.43 sq. ft. in area in lieu of the permitted 25 sq. ft.; and

3. Variance granted from Section 259.3.C.7(a) – to permit 3 wall mounted "Shop" signs of 19.34 sq. ft. each in lieu of 1 wall mounted sign at 8 sq. ft. each.

Any Petition for Judicial Review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules.

LAWrence M. Stani, Panel Chair

Margaret Brassil, Ph.D.

\* See note below.

<sup>\*</sup> Donald I. Mohler III, the third member of this panel, who participated in this unanimous decision, including deliberation, was no longer a member of the Board of Appeals at the time of signature of this Opinion.