IN RE: PETITION FOR VARIANCE
S/Side of McCann Avenue, 205' +/From centerline of York Road
8th Election District
3rd Councilmanic District
(7 McCann Avenue)

Helen Michelle Brengle, Legal Owners and
McCann F&S, LLC, Lessee

Petitioners

- * BEFORE THE
- * DEPUTY ZONING COMMISSIONER
- * OF BALTIMORE COUNTY
- * CASE NO. 06-282-A

* * * * * * * * *

IN RE: PETITION FOR VARIANCE
S/Side of McCann Avenue, 255' +/-

From centerline of York Road

8th Election District

3rd Councilmanic District

(9, 11 & 13 McCann Avenue)

McCann F&S, LLC, Legal Owners

Petitioner

BEFORE THE

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*

- * DEPUTY ZONING COMMISSIONER
- * OF BALTIMORE COUNTY
- * CASE NOS. 06-283-A, 06-284-A and 06-285-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before this Deputy Zoning Commissioner as Petitions for Variance filed by the legal owners of each property, each of which is located in the Cockeysville area of Baltimore County as more particularly described in each case file. The Petitioners are requesting variance relief for properties set forth as follows:

Case No. 06-282-A: This property is located at 7 McCann Avenue. The variance request is from Sections 255.1, 238, 409.8A.4 and 409.4A of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow front yard setback from centerline of road of 45 feet in lieu of minimum required 50 feet, side yard setback of 0 feet and 14.0 feet in lieu of the minimum required 30 feet, rear yard setback of 20 feet in lieu of minimum required 30 feet, parking spaces closer than

10 feet to right-of-way line, and driveway width for two-way movement of 14 feet in lieu of minimum required 20 feet.

Case No. 06-283-A: This property is located at 9 McCann Avenue. The variance request is from Sections 255.1 and 238 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow side yard setback of 0 feet in lieu of the minimum required 30 feet and rear yard setback of 20 feet in lieu of the minimum required 30 feet.

Case No. 06-284-A: This property is located at 11 McCann Avenue. The variance request is from Sections 255.1 and 238 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow side yard setback of 0 feet in lieu of the minimum required 30 feet and rear yard setback of 20 feet in lieu of the minimum required 30 feet.

Case No. 06-285-A: This property is located at 13 McCann Avenue. The variance request is from Sections 255.1 and 238 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow side yard setback of 0 feet and 23.0 feet in lieu of the minimum required 30 feet.

Each of these properties was posted with a notice of the public hearing date and time on December 29, 2005 and notice given to the general public by publication in the Jeffersonian Newspaper on December 29, 2005.

Applicable Law

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

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

be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Zoning Advisory Committee

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received by the Office of Planning dated December 28, 2005 for each case, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the variance request was Frederick L. Matusky, Petitioner, as well as Douglas L. Kennedy from KCW Engineering Technologies, Inc., who prepared the site plan. Edward C. Covahey, Jr., Esquire represented the Petitioners. There were no protestants or citizens attending the hearing. Peter Max Zimmerman, People's Counsel, entered his appearance in this case.

Testimony and Evidence

By agreement, these cases were consolidated and all testimony and evidence was applicable to each. These cases involve adjacent narrow lots on McCann Avenue, which lie in the center of the older section of Cockeysville between York Road and the Penn Central Railroad Line. Each is zoned ML-IM and improved by a small residential cottage. Three (3) of the four (4) lots were the subject of similar requests, which were granted, in Case Nos. 05-180-A, 05-181-A and 05-182-A. See Plat to Accompany Exhibit 1, which shows # 9, 11, and 13 McCann Avenue and the variances that were requested and granted in those cases. Mr. Covahey previously proffered that the dwellings on each lot are nonconforming having been built prior to WWII and are in poor condition. The lots vary in width from 49 feet to 60 feet. Each lot is served by public water and sewer.

Since the initial hearing, the Petitioner purchased # 7 McCann Avenue adding a fourth lot. The Petitioner would now like to reconfigure the proposed buildings into two (2) duplex office buildings, which will span 7 & 9 McCann Avenue and 11 & 13 McCann Avenue. See Petitioner's Exhibit 2 for the four (4) lots and new building configurations. All of the present uses in the immediate area are light industrial or contractor offices except the rental dwelling at # 7 McCann Avenue, which the Petitioner recently purchased. Mr. Matusky indicated that his tenant would be leaving shortly.

Mr. Covahey indicated that Mr. Matusky would repeat his previous testimony that he operates a HVAC/plumbing business that serves local homes and businesses. He noted that in the Cockeysville area there are little or no properties, which are available for the small contractor to locate their office due to the high price for industrial land in the area. His hope is to raze the four (4) existing cottages and replace each with two (2) buildings as shown in Exhibit 2. He again indicated that he would like sell these to small contractors like himself. The new buildings would adjoin his remaining three (3) lots to the south where he operates a contractor storage yard.

The Petitioner noted that the request for variances first arises because the County is requiring the Petitioner to give up 10 feet of land to increase the width of McCann Avenue as an exaction for approval of this request. He noted that the road dead ends at the railroad tracks and so would never serve any appreciable traffic volume. He opined that it is very unlikely the County would ever improve the road and so use the wider right of way. Nevertheless, the County wants 10 feet of additional right-of-way. The new office buildings would be located essentially on the same front foundation line as the existing cottages. Parking would be immediately off McCann Avenue and consequently, these parking spaces would be 0 feet from the new right-of-way in lieu of 10 feet required.

In addition, the buildings should be setback from the centerline of the road 50 feet, but building on the old footprint means the distance from the building to the centerline of the road will be 45 feet. The Petitioner indicated that it would be important to keep the front of the new buildings in line with the existing buildings along the road. Constructing the new buildings on the front of the old footprint would accomplish this goal. He also noted that the new buildings would meet the front yard setback. These requests were granted in the prior case.

Because the Petitioner would like to build across lot lines separating # 7 & 9 and 11 & 13, the new buildings would not meet the side yard setbacks. Consequently, the Petitioner requests variances of 0 feet in lieu of the required 30 feet for all four (4) lots. These are new requests reflecting the new building configuration. In addition, as before the Petitioner noted that the lots are 49, 50, 50 and 60 feet wide and so by definition cannot meet 30 feet side yard setbacks. Of course, the existing cottages cannot meet these requirements either. Consequently, the Petitioner requests side yard setbacks of 14 feet, 9.5 feet, 19.5 feet and 23 feet in lieu of the required 30 feet.

Finally, he noted that in order to have a reasonable size office, the new buildings couldn't meet the rear yard setback of 30 feet. The Petitioner is proposing 20 feet for # 7, 9 and 11 McCann Avenue and 5 feet for # 13. These request are essentially what was granted in the prior case. The Petitioner pointed out that the rear setbacks are against three (3) lots, which the Petitioner owns and uses for a contractor storage yard. Obviously, any purchaser will see the Petitioner's contractor's storage yard now occupying these lots and the distance to the rear property line prior to purchase. The fourth request for the rear yard setback of # 7 McCann Avenue is against the Brengle property that has not raised any objection to the requests.

Finally, the Petitioner pointed out that in order to connect the rear yards of #9 and #11 with the street, the Petitioner was granted a 16 feet wide driveway on the boundary of these two (2)

lots in the prior case. The regulations require 20 feet. In this request, the Petitioner asks a 19.5-foot driveway for two-way traffic. In addition, the Petitioner requests a 14 foot driveway for two-way traffic on #7. The Petitioner indicated that because of the small lot sizes, there is not enough room to erect the buildings and provide the full width driveway. However, the Petitioner pointed out that there would be very little traffic from the rear yards to the street and that two-way traffic would be very rare.

Mr. Covahey proffered the three (3) lots were unique from a zoning standpoint, as they were very small lots in an industrially zoned area. The industrial zoning was imposed long after the lots were laid out and cottages built. Consequently, they cannot meet the present regulations. He indicated that it would be a hardship for the Petitioner to meet the regulations and erect new buildings on the four (4) lots. He also noted that there would be no adverse impact on the community, which is industrially zoned and used.

The Petitioner previously admitted that he could avoid the setback variances by building one (1) long thin building if three (3) lots were combined into one (1). However, he noted that this would once again shut out the small contractor from having an office in the area where land and leases have become so expensive. He also pointed out that the Planning Office had signed off on this request.

At this point of the hearing, a general discussion of whether or not the newly recognized doctrine of zoning merger applied to these lots. Mr. Covahey, after some research, indicated in his February 14, 2006 letter that the doctrine did not apply citing the fact that the present cottages were all separately owned, that the Petitioner intends to sell them separately and that the holding in <u>Remes v Montgomery County</u> did not apply to commercially or industrially zoned land.

Findings of Fact and Conclusions of Law

In regard to the issue of zoning merger, as discussed in prior cases, the doctrine is triggered by some overt action in a public forum that indicates this or a prior owner intended to merge the lots. There is no evidence of such overt action in this case. Prior to the lots being purchased by the Petitioner, each was an individually owned residence and later separate offices. I understand that the Petitioner is proposing to build duplex offices which will continue to have separate legal identities and be sold separately even though the building physically spans lot lines. I mentioned at the hearing the fact that case law indicates spanning lot lines could be evidence of intent to merge lots. Obviously, this in not the Petitioner's intention here.

The question in this case is whether the requested variances could be avoided by simply combining the four (4) lots into one (1) and then build one (1) large building on the combined lots. If so, the side yard setback problems clearly disappear and most likely the other requests as well. However, as the Petitioner pointed out that would result in a large building, which not only is out of character with the existing structures but also would eliminate the small contractor or business from purchasing the properties. Once again I accept the Petitioner's observation that small businesses are priced out of the market in the Cockeysville area. This is due to the high cost of industrially zoned land in the area. The hardship then is not on the owner, who presumably could make a good return on investment with a large building, but on the area small business owners who need to find a reasonably priced building for their operations. I also note, as Mr. Covahey pointed out, that the Planning Office has agreed to this request. I would normally see a comment in a case tike this recommending denial by the Planning Office. The only comment from the Planning Office in this case is that the new buildings conform to the Hunt Valley/Fimonium Guidelines.

I have no problem finding that special circumstances or conditions exist that are peculiar to the land or structure, which is the subject of the variance request. The lots are very small in the scheme of industrial lots and were laid out much before the industrial zoning was imposed. Originally these were small residential cottages along McCann Avenue. As such, I find that the later imposed regulations impact these lots in a way different from lots laid out in accord with the ML regulations.

I also find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. There is nothing in Section 307, which limits the hardship to the Petitioner only. In this case, the Petitioner could easily combine the lots and meet the regulations. But I am persuaded that the hardship on small contractors and business is real in finding a reasonably priced location in the area to serve local businesses and residents.

I further find that these variances can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. The new buildings will be compatible with the existing cottages that have been transformed into offices and light industrial uses along McCann Avenue. This is an area zoned industrial and the proposed uses would improve the community, not degrade it.

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

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this <u>32</u> day of February, 2006, that variance relief for properties set forth as follows:

Case No. 06-282-A: The property is located at 7 McCann Avenue in the Cockeysville area of Baltimore County. The variance request is from Sections 255.1, 238, 409.8A.4 and 409.4A of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow front yard setback from centerline of road of 45 feet in lieu of minimum required 50 feet, side yard setback of 0 feet and 14.0 feet in lieu of the minimum required 30 feet, rear yard setback of 20 feet in lieu of minimum required 30 feet, parking spaces closer than 10 feet to right-of-way line, and driveway width for two-way movement of 14 feet in lieu of minimum required 20 feet, be GRANTED.

Case No. 06-283-A: The property is located at 9 McCann Avenue in the Cockeysville area of Baltimore County. The variance request is from Sections 255.1 and 238 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow side yard setback of 0 feet in lieu of the minimum required 30 feet and rear yard setback of 20 feet in lieu of the minimum required 30 feet, be GRANTED.

Case No. 06-284-A: The property is located at 11 McCann Avenue in the Cockeysville area of Baltimore County. The variance request is from Sections 255.1 and 238 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow side yard setback of 0 feet in lieu of the minimum required 30 teet and rear yard setback of 20 feet in lieu of the minimum required 30 feet, be GRANTED.

<u>Case No. 06-285-A:</u> The property is located at 13 McCann Avenue in the Cockeysville area of Baltimore County. The variance request is from Sections 255.1 and 238 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow side yard setback of 0 feet and 23.0 feet in lieu of the minimum required 30 feet, be GRANTED.

IT IS FURTHER ORDERED that these cases are 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.
- 2. The Petitioners must be in compliance with the ZAC comments submitted by the Office of Planning dated December 28, 2005, a copy of which is attached hereto and made a part hereof.
- 3. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

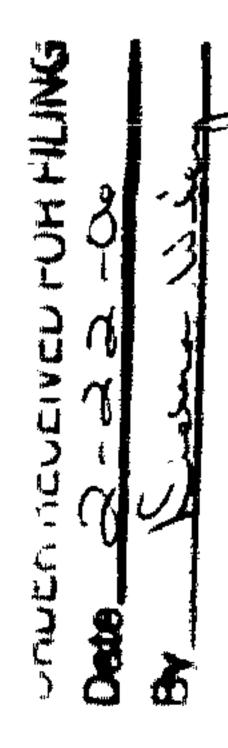
Any appeal of this decision must be made within thirty (30) days of the date of this Order.

John V. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:dlw





JAMES T. SMITH, JR. County Executive

WILLIAM J. WISEMAN III

Zoning Commissioner

February 21, 2006

Edward C. Covahey, Esquire Covahey, Boozer, Devan & Dore, P.A. 614 Bosley Avenue Towson, Maryland 21204

Re: Petition for Variance

Case Nos. 06-282-A, 06-283-A, 06-284-A & 06-285-A

Property: 7, 9, 11 & 13 McCann Avenue

Dear Mr. Covahey:

Enclosed please find the decision rendered in the above-captioned case. The Petitions for Variance has been granted with restrictions 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

John V. Murphy

for Baltimore County

JVM:dlw Enclosure

c: Frederick L. Matusky, 10604 Beaver Dam Road, Hunt Valley, MD 21030 Douglas L. Kennedy, P.E., 3106 Lord Baltimore Drive, Baltimore, MD 21244 Helen Michelle Brengle, T14 North Main Street, York, PA 17407 People's Counsell-Case File



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 7 McCann Ave., Hunt Valley, MD
which is presently zoned ML-IM

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

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

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

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

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

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

Contract Purchaser/Lessee: MCCANN F&S, LLC Name - Type or Print By: Signaturé Frederick L. Matusky, Managing Member 410-527-0060_{_} 10604 Beaver Dam Road Telephone No Address 21030 MD Hunt Valley, Zip Code State City Attorney For Petitioner: Edward C. Covahey, Jr. Type or Print Signature Covehey, Boozer, Devan & Dore, P.A. Company 410-828-9441 514 Bosley Ave. Telephone No. Address 21204 formon, MD Zip Code State se No. 06-282 A

SE THE SE

PER RECEIVED

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

Legal Owner(s):

Helen Michelle	Brengle	
Name - Type or Print		
Signature 1	\mathcal{O}	<u> </u>
Milliohal	l'Mend	<u> </u>
Name - Type or Print	J	
Signature	<u></u>	
114 N. Main Str	eet	······································
Address		Telephone No.
York,	P▲	17407
City	State	Zip Ccde
Representative to Helen Michelle	_	
Name	<u> </u>	
114 N. Main Str	eet	
Address		Telephone No
York,	PA	17407
City	State	Zip Code
OFF	ICE USE ONLY	
ESTIMATED LENG	TH OF HEARING	ا المانطونية ماندان المانطونية والمانية
Reviewed By CO	R HEARING Date	11.24.05

EXHIBIT A

For the property located at 7 McCann Avenue

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petitions for a Variance from Sections 255.1 and 238 of the Baltimore County Zoning Regulations to allow:

Front Yard setback from centerline of road of 45 ft. in lieu of minimum required 50 ft.

Side Yard setback of 0 ft. and 14.0 ft. in lieu of the minimum required 30 ft.

Rear Yard setback of 20 ft. in lieu of minimum required 30 ft.

Variance requested from Section 409.8A.4 from the Baltimore County Zoning Regulations to allow parking spaces closer than 10 ft. to Right-of-Way line.

Variance requested from Section 409.4A from the Baltimore County Zoning Regulations to allow driveway width for two-way movement of 14 ft. in lieu of minimum required 20 ft.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:

- 1. The subject property is unique in that the present zoning designation of ML-IM was created and imposed on the property after the erection of the existing improvements, which zoning created violations which are now non-conforming.
- 2. Practical difficulty and unreasonable hardship exist because of the fact that the property cannot be developed for industrial commercial use within the context of the ML-IM zoning without the granting of the requested variance.
- 3. The granting of the requested variance would be in accordance with Section 307 of the Baltimore County Zoning Regulations in that it would be in harmony with the spirit and intent of the Regulations, would not be detrimental to the public safety and general welfare of the community, and in fact would promote the health, safety and general welfare of the community in that utilizing same for commercial purposes would serve the intent of the existing zoning as opposed to allowing the improvements to continue to be used as private residences.



KCW Engineering Technologies, Inc. 3106 Lord Baltimore Drive, Suite 110 Baltimore, MD 21244

(410) 281-0030 Fax (410) 298-0604 www.KCW-ET.com

William K. Woody, L.S.

President and CEO

Douglas L. Kennedy, P.E. Senior Vice President

J. Peter McDonnell
Vice President

Joseph P. Wood
Associate

Reginald C. Roberts
Associate

Kevin C. Anderson Jr., P.E. Associate

ZONNING DESCRIPTION PROPERTY OF McCANN F&S, LLC #7 McCANN AVENUE 8th ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point on the Southernmost Right-of-Way line of McCann Avenue, 20 feet wide, said point being distant 205 feet., more or less, from the centerline of York Road, thence leaving said Right-of-Way line of McCann Avenue the following four courses and distances:

- 1. South 03 degrees 00 minutes West 100 feet to a point; thence
- 2. North 87 degrees 42 minutes West 50 feet to a point; thence
- 3. North 03 degrees 00 minutes East 100 feet to a point; thence
- 4. North 87 degrees 42 minutes West 50 feet to the Point of Beginning.

Containing 5,000 square feet or 0.11 acres of land more or less.

As recorded in Deed Liber 22773, folio 519.

Also known as #7 McCann Avenue and located in the 8th Election District of Baltimore County, MD.

Dauglas X Sannady

				CASHIER'S VALIDATION
BALTIMORE COUNTY, MARYLAND office of BUDGET & FINANCE No. $75/3$ Miscellaneous receipt	DATE 11-2" (D.S. ACCOUNT DD1 - (D.D. C. 1.5")	· P WALL . J.	FOR UTIL MECHAN MUS.	DISTRIBUTION (A) CIZ.1(110.A) IN FILC (1.2.4) WHATE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

NOTICE OF ZUMANG 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: #86-282-A

7 McAnn Avenue S/side of McCann Avenue, 205 feet +/- from centerline of York Road

8th Election District - 3rd Councilmanic District

Legal Owner(s): Helen Michelle Brengle Contract Purchaser: McCann F & S, LLC

Variance: to allow front yard setback from centerline of road of 45 feet in lieu of the minimum required 50 feet. Side yard setback of 0 and 14.0 feet in lieu of the minimum required 30 feet. Rear yard setback of 20 feet in lieu of minimum required 30. To allow parking spaces closer than 10 feet to right of way line. To allow driveway width for two-way movement of 14 feet in lieu of minimum required 20 feet.

Hearing: Friday, January 13, 2006 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

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

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

12/393 Dec. 29

CERTIFICATE OF PUBLICATION

y ·
12/29,2005
THIS IS TO CERTIFY, that the annexed advertisement was published
n the following weekly newspaper published in Baltimore County, Md.,
once in each ofsuccessive weeks, the first publication appearing
on 12 29 05.
The Jeffersonian
☐ Arbutus Times
☐ Catonsville Times
☐ Towson Times
Owings Mills Times
□ NE Booster/Reporter
☐ North County News
S. William

LECAL ADVERTISING

CERTIFICATE OF POSTING

RE: **06-282-A**

Petitioner/Developer:
Frederick L. Matusky
Hearing Date: 1/13/06

Baltimore County Department of Permits and Development Management County Office Building, Room 111 111 West Chesapeake Avenue Towson, MD 21204 Attention: Ms. Kristen Matthews

Ladies and Gentlemen:

This Letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 7 McCann Ave.

The sign(s) were posted on 12/29/05.

Ser 110g

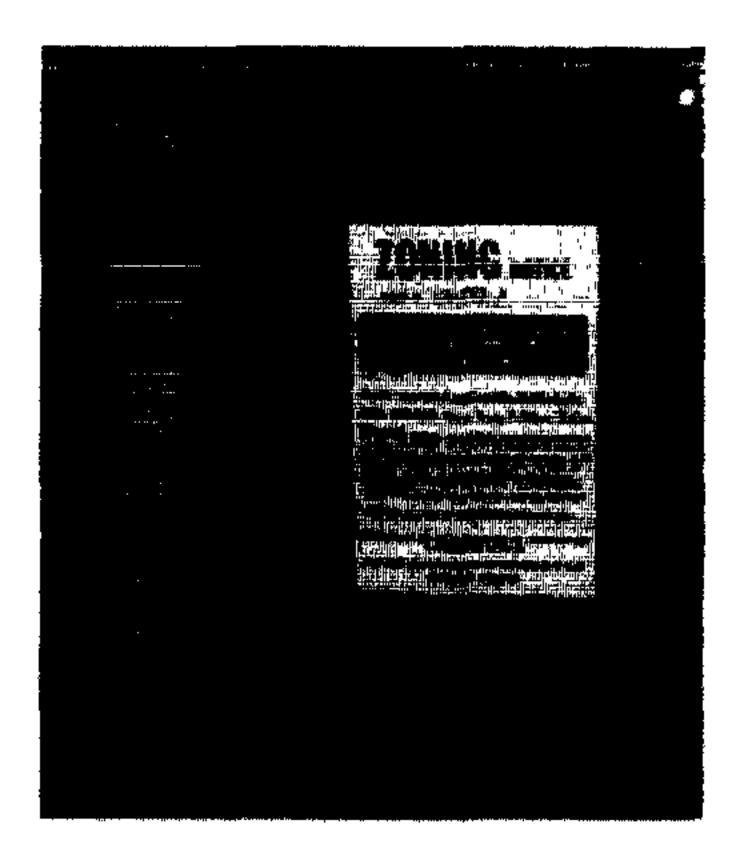
Sincerely,

Thomas J. Hoff, Inc.

406 West Pennsylavnia Avenue

Towson, MD 21204

410-296-3668



DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (BCZR) require that notice be given to the general public/neighboring property owners relative to property that is the subject of an upcoming zoning hearing. For those petitions that 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 Newsp	aper Advertising:
Item Numbe	er or Case Number: 282
Petitioner:	MCCANN FES, LLC
Address or	Location: jksjfksdlskld 7 McCANN AVENUE
Please For	ward Advertising Bill to:
Name:	FRED MATUSKY
Address:	10604 BEAVER DAM
	HUNT VALLEY, MD 21030
Telephone:	410-527-0060

Department of Permits and Development Management

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



Baltimore County

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

December 6, 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: 06-282-A

7 McAnn Avenue

S/side of McCann Avenue, 205 feet +/- from centerline of York Road

8th Election District – 3rd Councilmanic District

Legal Owner: Helen Michelle Brengle Contract Purchaser: McCann F & S, LLC

Variance to allow front yard setback from centerline of road of 45 feet in lieu of the minimum required 50 feet. Side yard setback of 0 and 14.0 feet in lieu of the minimum required 30 feet. Rear yard setback of 20 feet in lieu of minimum required 30. To allow parking spaces closer than 10 feet to right of-way line. To allow driveway width for two-way movement of 14 feet in lieu of minimum required 20 feet.

Hearing: Friday, January 13, 2006 @ 9:00 a.m. in Room 407, County Courts Building, 401

Bosley Avenue, Towson, MD 21204

Muthy Kotroco

Timothy Kotroco

Director

TK:raj

C: Edward C. Covahey, Jr., Covahey, Boozer, Devan & Dore, P.A., 614 Bosiey Avenue, Towson, MD 21204 Helen Michelle Brengle, 114 N. Main Street, York, PA 17407 McCann F & S, LLC, 10604 Beaver Dam Road, Hunt Valley, MD 21030

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY.THURSDAY, DECEMBER 29, 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.



TO: PATUXENT PUBLISHING COMPANY

December 29, 2005 Issue - Jeffersonian

Please forward billing to: Fred Matusky (410-527-0060)

10604 Beaver Dam Road Hunt Valley, MD 21030

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: 06-282-A

7 McAnn Avenue

S/side of McCann Avenue, 205 feet +/- from centerline of York Road

8th Election District – 3rd Councilmanic District

Legal Owner: Helen Michelle Brengle Contract Purchaser: McCann F & S, LLC

Variance to allow front yard setback from centerline of road of 45 feet in lieu of the minimum required 50 feet. Side yard setback of 0 and 14.0 feet in lieu of the minimum required 30 feet. Rear yard setback of 20 feet in lieu of minimum required 30. To allow parking spaces closer than 10 feet to right of-way line. To allow driveway width for two-way movement of 14 feet in lieu of minimum required 20 feet.

Hearing: Friday, January 13, 2006 @ 9:00 a.m. in Room 407, County Courts Building, 401

Bosley Averue, Towson, MD 21204

WILLIAM J. WISEMAN, III

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.

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

Department of Permits de 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 9, 2006

Edward C. Covahey, Jr. 614 Bosley Avenue Towson, Maryland 21204

Dear Mr. Covahey:

RE: Case Number: 06-282-A, 7 McCann Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on November 29, 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.

W. Carl Richards, Jr.

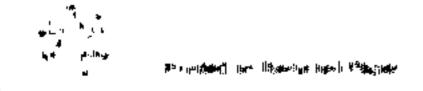
Supervisor, Zoning Review

U. Carl Richal

WCR: clb

Enclosures

c: People's Counsel
Helen Michelle Brengle 114 N. Main Street York PA 17407
McCann F&S, LLC Frederick Matusky 10604 Beaver Dam Road Hunt Valley 21030





Robert L. Ehrlich, Jr., Governor Michael S. Steele, Lt. Governor Robert L Flanagan, Secretary Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: 12.2.05

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

RE:

Baltin ore County, ten No. 282

JCM

Dear. Ms. Matthews:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

Steven D. Foster, Chief

Engineering Access Permits Division

1. 1. Nach

7/1/3

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

DATE: December 28, 2005

DEC 2 2005

SUBJECT:

7, 9, 11, and 13 McCann Avenue

INFORMATION:

Item Number:

6-282, 6-283, 6-284 and 6-285

Petitioner:

McCann F & S, LLC.

Zoning:

ML-IL

Requested Action:

Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose the petitioner's request provided elevations (all sides) of the proposed structures are submitted to this office for review and approval. The elevations shall conform to the Hunt Valley Timonium development guidelines.

Prepared by:

Division Chief:

AFK/LL:CM:

Fire Department

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



Baltimore County

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

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

December 7, 2005

ATTENTION: Zoning Review Planners

Distribution Meeting of: November 28, 2005

Item No.: 265, 267, 271, 272, 273, 274, 275, 276, 277, 279, 286, 284, 285.

282, 283,

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

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

DATE: December 20, 2005

Department of Permits & Development

Management

FROM:

Dennis A. Kennedy, Supervisor

Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For December 5, 2005

Item Nos. 251,267, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 282, 283, 284, 285

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-12202005 doc

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director DATE: December 20, 2005

Department of Permits & Development

Management

FROM: Dennis A. Kennedy, Supervisor DAK/

Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting

For December 5, 2005

Item Nos. 251,267, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 282, 283, 284, 285

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-12202005.doc



7 McCann Avenue; S/S McCann Avenue,

205' c/line York Road

8th Election & 3rd Councilmanic Districts Legal Owner(s): Helen Michelle Brengle Contract Purchaser(s): Frederick Matusky, Managing Member of McCann F&S, LLC

Petitioner(s)

* BEFORE THE

* ZONING COMMISSIONER

* FOR

* BALTIMORE COUNTY

* 06-282-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

10WSON, IVID 2120 (410) 997-2199

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of December, 2005, a copy of the foregoing Entry of Appearance was mailed to, Helen Brengle, 114 N. Main Street, York, PA 17407 and Edward C. Covahey, Jr, Esquire, Covahey, Boozer, Devan & Dore, P.A., 614 Bosley Avenue, Towson, MD 21204, Attorney for Petitioner(s).

RECEIVED

DEC 0 6 2005

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

tee Max 2immerman

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

MICHAEL T. PATE

BRUCE EDWARD COVAHEY

JENNIFER MATTHEWS HERRING

YONA OPENDEN

FRANK V. BOOZER, JR.

FAX 410-823-7530

410-828-9441

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

*ALSO ADMITTED TO D.C. BAR

February 14, 2006

Deputy Zoning Commissioner John V. Murphy Baltimore County Zoning Commissioner's Office 401 Bosley Ave., Suite 405 Towson, Maryland 21204

> Re: 7 McCann Avenue - 06-282-A 9 McCann Avenue - 06-283-A 11 McCann Avenue - 06-284-A 13 McCann Avenue - 06-285-A

Dear Deputy Commissioner Murphy:

You will recall that the above-captioned four cases were essentially subjected to a recess in order to address the doctrine of zoning merger as enunciated in Friends of the Ridge v. BGE, Remes v. Montgomery County, and your comprehensive Opinion in the Clarks Point Road, et al cases.

It would appear that the doctrine of merger is not applicable to the subject cases. You will recall at the hearing that the owner proposes four separate and distinct commercial buildings that would be situate on the four lots. This would enable the buildings to be sold to four separate individual purchasers. This is consistent with the fact that there is a separate individual dwelling on each of the four enumerated individual lots.

In reviewing Judge Cathell's opinion in Remes, I would submit that the mere zoning, without construction taking place, is not a manifestation of intention and actions of the owner that would trigger the doctrine of merger. It is important to bear in mind in the case *sub judice* that 7, 9, 11 and 13 McCann Avenue are at the present time improved by dwellings which existed prior to the imposition of the ML zoning. I note that with respect to the BGE and the Remes case, that they were not dealing with industrial or commercially zoned real estate as in the case at bar.

Deputy Zoning Commissioner John V. Murphy Baltimore County Zoning Commissioner's Office February 14, 2006 Page 2

It is respectfully requested that the Petitions be granted, or in the alternative that you cause same to be rescheduled.

Thank you for your consideration and the materials provided.

Very truly yours,

Edward C. Covahey, Jr.

ECC,Jr./ldr 0208ldr04

cc: Mr. Fred Matusky
Douglas Kennedy, P.E.

IN RE: PETITION FOR VARIANCE

S/S of McCann Avenue, 255 ft. W

centerline of York Road

8th Election District

3rd Councilmanic District

(9 McCann Avenue – 05-180-A)

(11 McCann Avenue – 05-181-A)

(13 McCann Avenue - 05-182-A)

McCann F & S LLC

By: Frederick L. Matusky, Managing Member

Petitioners

BEFORE THE

* DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

* CASE NOS. 05-180-A, 05-181-A

& 05-182-A

ORDER ON MOTION FOR RECONSIDERATION

*

WHEREAS, these matters originally came before this Deputy Zoning Commissioner as Petitions for Variance filed by McCann F & S, LLC, by Frederick L. Matusky, Managing Member, for property they own at 9, 11 and 13 McCann Avenue in the Cockeysville area of Baltimore County. The variances requested were approved by the Zoning Commissioner's office on December 7, 2005.

WHEREAS, a letter dated December 29, 2004 was received from the Office of People's Counsel requesting that their letter be accepted as a Motion for Reconsideration in this matter as to the following items:

- 1. That the Office of Planning ZAC comment dated November 19, 2004 be incorporated into the Order as an additional condition (Condition No. 3) for the approval of the variances requested.
- 2. Correct a typographical error on Page 8, Condition 2, by changing the date November 17, 2003 to November 17, 2004.

THEREFORE, IT IS THIS ____ day of January, 2005, by the Deputy Zoning Commissioner for Baltimore County,

ORDERED, that the Motion for Reconsideration be and is hereby GRANTED and my previous Order dated December 7, 2004, be amended as set forth below:

That the Office of Planning ZAC comment dated November 19, 2004 be incorporated into the Order as an additional condition for the approval of the variances requested as follows:

3. The Petitioner must comply with the ZAC comments received from the Office of Planning dated November 19, 2004, a copy of which is attached hereto and made a part hereof;

IT IS FURTHER ORDERED, that the typographical error on Page 8, Condition 2, shall be corrected by changing the date November 17, 2003 to **November 17, 2004**.

IT IS FURTHER ORDERED, that all other findings made in my previous order shall remain in full force and effect.

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

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

IN RE: PETITION FOR VARIANCE
S/S of McCann Avenue, 255 ft. W
centerline of York Road
8th Election District
3rd Councilmanic District

* BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

• CASE NO. 05-180-A

CASE NO. 05-181-A

• CASE NO. 05-182-A

McCann F & S LLC

(9 McCann Avenue)

By: Frederick L. Matusky, Managing Member Petitioners

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as three Petitions for Variance filed by the legal owner of the subject property, McCann F & S LLC, by Frederick L. Matusky, Managing Member. The Petitioner is requesting variance relief for property located at 9, 11 and 13 McCann Avenue in the Hunt Valley area of Baltimore County. The variances are requested from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

CASE NO. 05-180-A

- 1. from Sections 255.1 and 238, to allow a front yard setback from centerline of road of 45 ft. in lieu of the minimum required 50 ft., a side yard setback of 4.0 ft. and 7.5 ft. in lieu of the minimum required 30 ft. and a rear yard setback of 21 ft. in lieu of the minimum required 30 ft.;
- 2. from Section 409.4.A, to allow a driveway width for two-way movement of 16 ft. in lieu of the minimum required 20 ft.; and
- 3. from Section 409.8A.4, to allow parking spaces closer than 10 ft. to right-of-way line.

CASE NO. 05-181-A

- 4. from Sections 255.1 and 238, to allow a front yard setback from centerline of road of 45 ft. in lieu of the minimum required 50 ft., a side yard setback of 3.0 ft. and 8.5 ft. in lieu of the minimum required 30 ft. and a rear yard setback of 21 ft. in lieu of the minimum required 30 ft.;
- 5. from Section 409.4.A, to allow a driveway width for two-way movement of 16 ft. in lieu of the minimum required 20 ft.; and

6. from Section 409.8A.4, to allow parking spaces closer than 10 ft. to right-of-way line.

CASE NO. 05182-A

- 7. from Sections 255.1 and 238, to allow a front yard setback from centerline of road of 45 ft. in lieu of the minimum required 50 ft., a side yard setback of 2.0 ft. and 23.0 ft. in lieu of the minimum required 30 ft. and a rear yard setback of 5 ft. in lieu of the minimum required 30 ft.;
- 8. from Section 409.8A.4 to allow parking spaces closer than 10 ft. to right-of-way line.

Each property was posted with Notice of Hearing on November 8, 2004, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing for each case was published in "The Jeffersonian" newspaper on November 9, 2004 to notify any interested persons of the scheduled hearing date.

Applicable Law

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

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

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Department of

Environmental Protection & Resource Management (DEPRM) dated November 17, 2004, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the variance request were Frederick Matusky on behalf of the Petitioner and Douglas Kennedy, civil engineer, who prepared the Plat to Accompany for each case. The Petitioner was represented by Edward C. Covahey, Jr., Esquire. No protestants or citizens appeared at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

By agreement all testimony and evidence presented in Case no. 05-180-A applies to all three cases except where each is specifically distinguished. Testimony and evidence indicated that the property, which is the subject of this variance request, consists of three adjacent lots on McCann Road which lie in the center of the older section of Cockeysville between York Road and Penn Central rail road line. These lots are zoned ML-IM and each is improved by existing residential cottages. Mr. Covahey proffered that the present dwellings are non conforming and having been built prior to WWII are in poor condition. The lots vary in width from 49 feet (lot 3), 50 feet (lot 11) and 60 feet (lot 13). See Petitioner's exhibit 1.

The Petitioner owns all three of the subject lots and three companion lots to the south (lots 9, 10 and 3A) where he maintains a contractor's storage yard. Mr. Covahey proffered that all of the uses in the immediate area are light industrial or contractor office except the rental dwelling adjacent to the subject properties at # 7 McCann Avenue. Each lot is served by public water and sewer.

Mr. Matusky testified that he purchased the properties 18 months ago to locate his contractor storage yard. He operates a HVAC/plumbing business serving local homes and

businesses. He noted that in the Cockeysville area there are little or no properties which are available for the small contractor to locate their office due to the high price for industrial land in the area. His hope is to raze the existing cottages replacing each with a small office building which would be sold to small contractors like himself. The new offices buildings would

Mr. Kennedy, the Petitioner's civil engineer, noted that the request for variances first arises because the County is requiring the Petitioner to give up 10 feet of land to increase the width of McCann Avenue as an exaction for approval of this plan. He noted that the road dead ends at the railroad tracks and so will never serve any appreciable traffic volume. Nevertheless the County wants 10 feet of additional right of way. The new office buildings would be located essentially on the foot print of the existing cottages. Parking would be immediately off McCann Avenue and meet the required number of spaces. Consequently the new parking spaces would not meet the 10 foot setback required from the new right of way. The Petitioner proposes parking spaces 0 feet form the new right or way. In addition the buildings should be setback from the centerline of the road 50 feet but building on the old footprint means the distance from the building to the centerline of the road will be 45 feet. Mr. Kennedy indicated that it would be important to keep the front of the new buildings in line with the existing buildings along the road which building on the old footprint would accomplish. He also noted that the new buildings will meet the front yard setback.

Again because the Petitioner would like to build on nearly the same foot print, the new buildings would not meet the side yard setbacks. Mr. Kennedy noted that the lots are 49, 50 and 60 feet wide and so by definition can not meet 30 foot side yard setbacks. Of course the existing cottages can not meet these requirements either.

Finally he noted that in order to have a reasonable size office, the new buildings can not meet the rear yard setback of 30 feet. The Petitioner is proposing 21 feet for lots 3A and 11 and

5 feet for lot 13. However he pointed out that the rear setbacks are against lots 9, 10 and 3A, all of which the Petitioner own. Obviously any purchaser will see the Petitioner's contractor's storage yard now occupying these lots and the distance to the rear property line prior to purchase.

Finally Mr. Kennedy pointed out that in order to connect the rear yards of lots 3A and 11 with the street, the Petitioner proposes to have a 16 foot wide driveway on boundary of these two lots. The regulations require 20 feet but because of the small lots size there is not enough room to erect the buildings and provide the full width driveway. However Mr. Kennedy pointed out that there would be very little traffic from the rear yards to the street and two way traffic very rare.

Mr. Covahey proffered the three lots were unique from a zoning standpoint as they were very small lots in an industrially zoned area. The industrial zoning was imposed long after the lots were laid out and cottages built. Consequently they can not meet the present regulations. he also indicated that it would be a hardship for the Petitioner to meet the regulations and erect new buildings on the three lots. He also noted that there would be no adverse impact on the community which is industrial except for one rental dwelling next door. In regard to the adjacent dwelling the Petitioner indicated that he would provide landscape screening along the east edge of lot 3A to separate the residence from the new uses.

In discussion the Petitioner admitted that he could avoid the setback variances by building one long thin building on a lot in which the three lots are combined into one. However he noted that this would once again shut out the small contractor from having an office in the area which land and leases have become so expensive. He also pointed out that the Planning Office had signed off on this request.

Findings of Fact and Conclusions of Law

The question in this case is whether the requested variances could be avoided by simply combining the three lots into one. If so the side yard setback problems clearly disappear and most likely the other requests as well. However as the Petitioner pointed out that would result in a large building which not only is out of character with the existing structures but would eliminate the small contractor or business from purchasing the properties. I accept the Petitioner's observation that small businesses are priced out of the market in the Cockeysville area due to the high cost of industrial zoning in the area. The hardship then is not on the owner, who presumably could make a good return on investment with a large building, but on the area small business owners who need to find a reasonably priced building for their operations. I also note as Mr. Covahey pointed out that the Planning Office has agreed to this request. I would normally see a comment in a case like this recommending denial by the Planning Office. All the Planning Office requests in this case is that the new buildings conform to the Hunt Valley Timonium Guidelines.

I have no problem finding that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The lots are very small in the scheme of industrial lots and were laid out much before the industrial zoning was imposed. Originally these were small residential cottages along McCann Avenue. As such I find that the later imposed regulations impact these lots in a way different from lots laid out in accord with the regulations.

I also find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. There is nothing in Section 307 which limits the hardship to the Petitioner only. In this case the Petitioner could easily combine the lots and meet the regulations. But I am persuaded that the hardship on small contractors and

business is real in finding a reasonably priced location in the area to serve local businesses and residents.

I further find these variances can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. The new buildings will be compatible with the existing cottages which have been transformed into offices and light industrial uses along McCann Avenue. This is an area zoned industrial and the proposed uses would improve the community not degrade it.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' variance requests should be granted.

THEREFORE, IT IS ORDERED, this _____ day of December, 2004, by this Deputy Zoning Commissioner, that the Petitioner's request for variance from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

CASE NO. 05-180-A

- 9. from Sections 255.1 and 238, to allow a front yard setback from centerline of road of 45 ft. in lieu of the minimum required 50 ft., a side yard setback of 4.0 ft. and 7.5 ft. in lieu of the minimum required 30 ft. and a rear yard setback of 21 ft. in lieu of the minimum required 30 ft.;
- 10. from Section 409.4.A, to allow a driveway width for two-way movement of 16 ft. in lieu of the minimum required 20 ft.; and
- 11. from Section 409.8A.4, to allow parking spaces closer than 10 ft. to right-of-way line.

CASE NO. 05-181-A

- 12. from Sections 255.1 and 238, to allow a front yard setback from centerline of road of 45 ft. in lieu of the minimum required 50 ft., a side yard setback of 3.0 ft. and 8.5 ft. in lieu of the minimum required 30 ft. and a rear yard setback of 21 ft. in lieu of the minimum required 30 ft.;
- 13. from Section 409.4.A. to allow a driveway width for two-way movement of 16 ft. in lieu of the minimum required 20 ft.; and

14. from Section 409.8A.4, to allow parking spaces closer than 10 ft. to right-of-way line.

CASE NO. 05182-A

- 15. from Sections 255.1 and 238, to allow a front yard setback from centerline of road of 45 ft. in lieu of the minimum required 50 ft., a side yard setback of 2.0 ft. and 23.0 ft. in lieu of the minimum required 30 ft. and a rear yard setback of 5 ft. in lieu of the minimum required 30 ft.;
- 16. from Section 409.8A.4 to allow parking spaces closer than 10 ft. to right-of-way line. be and they are hereby GRANTED.

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

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

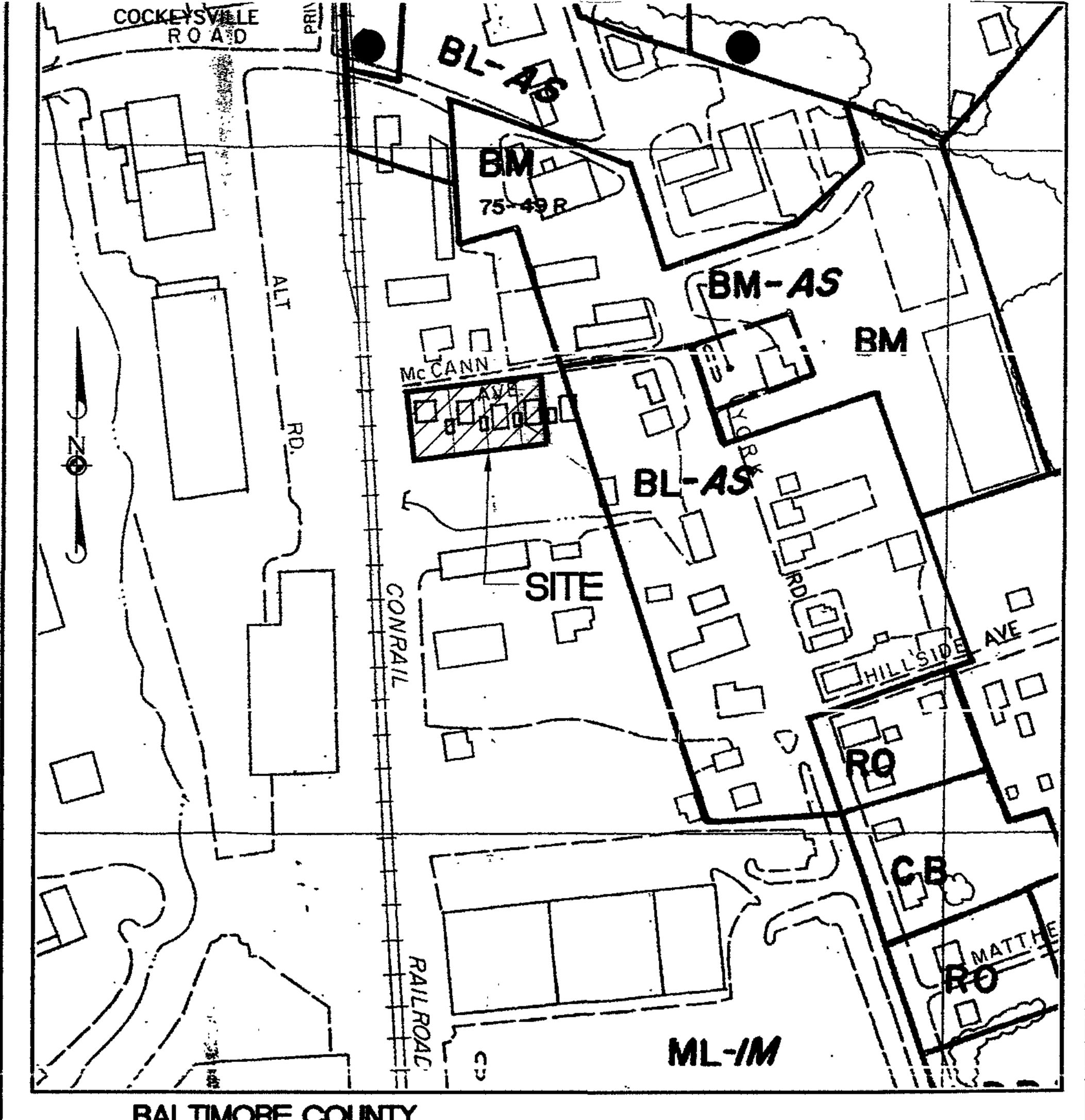
PLEASE PRINT CLEARLY

CASE NAME NO CANN AVE.
CASE NUMBER ** 2000

* IN SHEET

NOON TANGON I 0000 710 STATE PETITIONER'S SIGN-ADDRESS

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Kenneoy C.E.	3106 LORD BALTO. DRIVE	BALTO, MD. 21244	DKennedy @ K.CW-E+.Com
Covamy	GIY BOSURY AUE	Towser MM 21304	
MATUSKY	10604 BAKE DAM RS.	HWT WWLY, MD, 21030	fred & flotton. con
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BALTIMORE COUNTY

ZONING MAP



KCW Engineering Technologies, inc. 3106 Lord Baltimore Drive, Suite 110 Baltimore, Maryland 21244 Tele (410) 281-0033 Fax (410) 281-1065 www.KCW-ET.com

PLAT TO ACCOMPANY PETITION for ZONING VARIANCES

PROPERTY OF McCANN F and S

7, 9, 11 and 13 McCANN AVENUE

BALTIMORE CO., MARYLAND ELECTION DISTRICT - 08 SCALE: 1"= 200" COUNCILMANIC DISTRICT - C3

