WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

200 St. Paul Place - Suite 2530, Baltimore, Maryland 21202-2004 Tel: (410) 539-1800 Fax: (410) 962-8758

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Eric S. Mueller, Esquire
Admitted IN MD & DC
Writer's Direct Dial: (410) 962-8457
eric.mueller@wilsonelser.com

April 22, 2009

Attention: Ms. Melissa Gessner County Office Building 111 West Chesapeake Avenue Suites 105 Towson, Maryland 21204

Re:

James P. Reilman vs. Thomas J. Hoff, Inc.

District Court for Baltimore County Case No.: 08-04-0041932-2008 WEMED File No.: 10049.00205

Dear Ms. Gessner:

Enclosed please find Check No.: 001321 in the amount of \$164.25 as payment for copies of documents regarding Case Nos.: 06-289-SPH and 06-660-SPH. Thank you for your cooperation and immediate attention to this matter.

If you have any questions do not hesitate to contact me.

Best regards,

Éric S. Mueller

ESM/lde

Enclosure

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IN THE MATTER OF

THE APPLICATION OF

JAMES REILMAN – LEGAL OWNER /

PETITIONER FOR SPECIAL HEARING ON

PROPERTY LOCATED ON THE N/S OF

EAST AVENUE, 298' W OF C/L OF

AVONDALE ROAD (9208 AVONDALE RD) *

11TH ELECTION DISTRICT
6th COUNCILMANIC DISTRICT

BEFORE THE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

CASE NO. 06-289-SPH and CASE NO. 06-660-SPH

ORDER OF DISMISSAL OF PETITIONS

This case comes to the Board on appeals filed by Lawrence E. Schmidt, Esquire, and GILDEA & SCHMIDT, LLC, on behalf of James P. Reilman, Appellant /Petitioner, from the January 17, 2006 decision of the Deputy Zoning Commissioner and his Order on Motion of Reconsideration dated April 5, 2006, in Case No. 06-289-SPH, and from the October 30, 2006, decision of the Deputy Zoning Commissioner, in which Petitioner's requested zoning relief was denied.

WHEREAS, the Board is in receipt of a Notice of Withdrawal of request for relief in Case Nos. 06-289-SPH and 06-660-SPH, filed on October 18, 2007, by Sebastian A. Cross, Lawrence E. Schmidt, and Gildea & Schmidt, LLC, on behalf of James P. Reilman, Petitioner / Appellant (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Counsel for Petitioner /Appellant requests that the Petitions for Special Hearing filed in Case No. 06-289-SPH and Case No. 06-660-SPH be withdrawn and dismissed as of October 18, 2007,

IT IS THEREFORE this 18 day of 2007, by the County Board of Appeals of Baltimore County

ORDERED that said Petitions filed in Case No. 06-289-SPH and Case No. 06-660-SPH be and are hereby WITHDRAWN AND DISMISSED with prejudice, pursuant to Rule 3.b.II of the Board's Rules of Practice and Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Edward W. Crizer, Jr., Chairman

Lawrence M. Stahl

Lawrence S. Wescott



County Board of Appeals of Baltimore County

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

October 18, 2007

Sebastian A. Cross, Esquire GILDEA & SCHMIDT LLC 600 Washington Avenue Suite 200 Towson, MD 21204

> RE: In the Matter of: James P. Reilman - Petitioner / Appellant Case No. 06-289-SPH and Case No. 06-660-SPH Order of Dismissal of Petitions

Dear Mr. Cross:

Enclosed please find a copy of the Order of Dismissal of Petitions issued this date by the County Board of Appeals of Baltimore County in the above-captioned matter in which the subject Petitions have been withdrawn and dismissed.

Very truly yours,

Kathleen C. Bianco

Administrator

Enclosure

Lawrence E. Schmidt, Esquire c: James Reilman Thomas Hoff/Thomas J. Hoff, Inc. J. Carroll Holzer, Esquire Melissa and Dan Ullman Deborah and Michael Malinowski Hazel Allegiuir Stephanie Driscoll Carol Wilson Legros Montalvo Mary Beth Janczak Helen and James Billups Michael Malinowski Matthew Malinowski Ruth Baisden Warren Thomas Office of People's Counsel Pat Keller, Planning Director William J. Wiseman III /Zoning Commissioner Timothy M. Kotroco, Director /PDM

IN THE MATTER OF:

JAMES REILMAN

9208 AVONDALE ROAD

* BEFORE THE

* COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

CASE NOs.: 06-289-SPH

06-660-SPH

NOTICE OF WITHDRAWL

James P. Reilman, (hereinafter "Property Owner" or "Petitioner"), through Sebastian A. Cross, Lawrence E. Schmidt and Gildea & Schmidt, LLC, his attorneys, submits this Notice of Withdrawal and respectfully states:

I. Withdrawal

Petitioner hereby withdrawals his request for relief in Case Nos. 06-289-SPH and 06-660-SPH currently scheduled for the Baltimore County Board of Appeals.

Respectfully submitted,

Sebastian A. Cross

Lawrence E. Schmidt

Gildea & Schmidt, LLC

600 Washington Avenue

Suite 200

Towson, MD 21204

(410) 821-0070

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this ______day of October, 2007, a copy of the foregoing Hearing Memorandum was mailed, first class, postage prepaid to:

J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson MD 21204.

Sebastian A. Cross

APPEAL

Petition for Special Hearing
9208 Avondale Road
N/side of East Avenue, 298 feet west of centerline of Avondale Road
11th Election District – 6th Councilmanic District
Legal Owner: James Reilman

Case No.: 06-289-SPH

Petition for Special Hearing (December 6, 2005) Zoning Description of Property Notice of Zoning Hearing (December 13, 2005) Certification of Publication (The Jeffersonian – December 27, 2005) ✓ Certificate of Posting (December 12, 2005) by Thomas J Hoff Entry of Appearance by People's Counsel (December 12, 2005) Petitioner(s) Sign-In Sheet - One Sheet Protestant(s) Sign-In Sheet - None Citizen(s) Sign-In Sheet - Two Sheets **Zoning Advisory Committee Comments** Petitioners' Exhibit Plan to accompany Special Hearing for Waivers to the Development Regulations Photographs (2 pages) Protestants' Exhibits: Photographs A thru C Petition in Opposition Description of Community Opposition Photograph Photographs A thru I Miscellarieous (Not Marked as Exhibit) Email from Eric Rockel regarding Avondale Road (1/13/06) Response to Email from Mr. Rockel from John Murphy (1/13/06) Request for Motion for Reconsideration Protestant's Response to request for Motion for Reconsideration Interoffice Correspondence dated March 7, 2006 from Joseph Bartenfelder Deputy Zoning Commissioner's Order (DENIED – January 17, 2006) Order on Motion of Reconsideration (DENIED - April 5, 2006) Notice of Appeal received on May 4, 2006 by Lawrence Schmidt

People's Counsel of Baltimore County, MS #2010
Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
James Reilman, 9208 Avondale Road, Baltimore 21234
Thomas Hoff, 406 West Pennsylvania Avenue, Towson 21204
David Mister, 30 E. Padonia Road, Ste. 404, Timonium 21093
Mr. & Mrs. Malinowski, 3127 East Avenue, Baltimore 21234
Melissa Malinowski, 3130 East Avenue, Baltimore 21234
Mary Beth Janczak, 3134 East Avenue, Baltimore 21234
Milagros Montalvo & Carol Wilson, 3129 East Avenue, Baltimore 21234
Lawrence Schmidt, 300 E. Lombard Street, Ste. 1440, Baltimore 21202

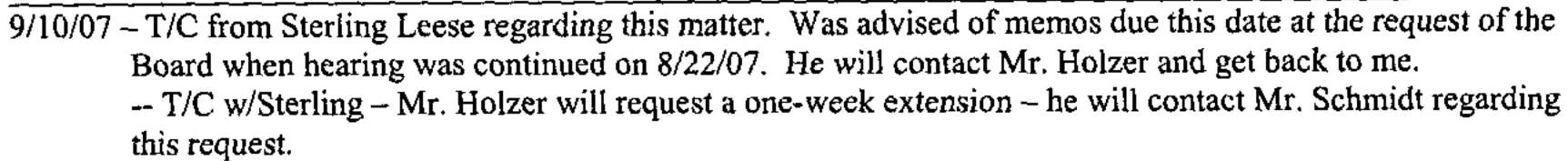
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CASE #: 06-289-SPH

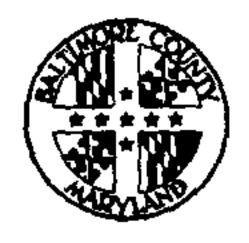
IN THE MATTER OF: JAMES REILMAN -Petitioner

9208 Avondale Road 11th E; 6th C

Page 2



- -- T/C from Mr. Schmidt although his memo was ready for filing and distribution to the Board this date, memo will be held and he will not object to the requested extension for a period of one week. Letter addressed to Mr. Holzer, with a copy to Mr. Schmidt, sent to both via FAX this date and US Mail extension of one week for filing memos granted; memos are due by close of business on Monday, September 17, 2007; both the memo to be filed by Mr. Holzer and Mr. Schmidt's memo will be included as part of the file on 9/17/07, with copies sent to the Board at that time.
- 9/12/07 Both Mr. Holzer and Mr. Schmidt have filed all copies of their respective memos as of today's date. Copies to be sent to panel members (Wescott, Stahl, Crizer).
- 9/13/07 Copies of above memos sent to 3-2-7 this date. Note on panel chair Wescott's cover letter need for public deliberation on this issue based upon the memos received to determine direction.
- 10/09/07 Notice of Deliberation sent to parties; Board (3-2-7) will convene at 9 am. on Thursday, October 18, 2007, to deliberate the issue briefed in the memos filed by Counsel.
- 10/18/07 Board convened for public deliberation (3-2-7); unanimous decision that hearing cannot go forward without road opening petition. Written decision to be issued. Appellate period to run from date of written decision on preliminary matter.
 - -- Notice of Withdrawal of requested zoning relief in Cases No. 06-289-SPH and No. 06-660-SPH filed by Sebastian Cross, Lawrence Schmidt, and Gildea & Schmidt, LLC, on behalf of Mr. Reilman. Order of Dismissal of petitions with prejudice to be issued pursuant to Board Rule 3.b.II.



County Board of Appeals of Baltimore County

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

October 9, 2007

NOTICE OF DELIBERATION

IN THE MATTER OF:

JAMES P. REILMAN – Legal Owner Case No. 06-289-SPH and 06-660-SPH

Having heard this matter on 8/22/07 public deliberation has been scheduled for the following date /time:

DATE AND TIME

THURSDAY, OCTOBER 18, 2007 at 9:00 a.m.

LOCATION

Hearing Room 48, Basement, Old Courthouse

NOTE: CLOSING BRIEFS WERE FILED BY COUNSEL ON 9/12/07.

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco Administrator

: James Reilman

: Lawrence E. Schmidt, Esquire

: J. Carroll Holzer, Esquire

c:

Counsel for Appellant /Property Owner

Appellant /Property Owner

Thomas Hoff/Thomas J. Hoff, Inc.

Counsel for Protestants

Melissa and Dan Ullman

Deborah and Michael Malinowski

Hazel Allegiuir

Stephanie Driscoll

Carol Wilson

Legros Montalvo

Mary Beth Janczak

Helen and James Billups

Michael Malinowski

Matthew Malinowski

Ruth Baisden

Warren Thomas

Office of People's Counsel

Pat Keller, Planning Director

William J. Wiseman III /Zoning Commissioner

Timothy M. Kotroco, Director /PDM

FY1: 3-2-7



IN THE MATTER OF:
JAMES REILMAN, Petitioner
Deputy Zoning Commissioner Order
denying Special Hearing – 1/17/06
06-289-SPH

And

IN THE MATTER OF:
JAMES REILMAN, Petitioner
Deputy Zoning Commissioner's Order
denying Special Hearing Relief – 10/30/06
06-660-SPH

* BEFORE THE

* COUNTY

* BOARD OF APPEALS

* OF

* BALTIMORE COUNTY

Case No.:

06-289-SPH

06-660-SPH

MEMORANDUM OF PROTESTANTS

Melissa and Dan Ullmann, et al., by J. Carroll Holzer, Esquire, Holzer & Lee, hereby responds to the County Board of Appeals request for a Memorandum as to whether or not the above-captioned Petitions for Special Hearing must comply with §18-3-302 of the Baltimore County Code.

STATEMENT OF THE CASE AND FACTS

Petitioner Reilman filed Case No.: 06-289-SPH in which he requested a Special Hearing for either a waiver from §32-4-405 B.C.C. to permit a paving width of ten (10) feet in lieu of the required thirty (30) feet in the right-of-way of Thornwood Road or a waiver from §32-4-410 of the B.C.C. Development Regulations to permit *private* water and sewer connections for one lot in the right-of-way of Thornwood Road. In that particular case, the Deputy Zoning Commissioner concluded on Page 5 of his Opinion and Order that the Petitioner has no absolute

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

(410) 825-6961 FAX: (410) 825-4923 EALTINOPE COUNTY

BOARD OF APPEALS

right to use County property for his private driveway. He rejected Petitioner's assertion that no governmental agency other than Land Acquisition would need to approve the private driveway on public property. He concluded that the Baltimore County Administration and the County Council would be required to review this request and thus denied the Special Hearing. That case came before this Board of Appeals and was held pending a second case.

Case No.: 06-660-SPH requested a Special Hearing to determine under §32-4-107 and §32-4-404 and 405 B.C.C. to allow a *public* road with a paving width of eighteen (18) feet in lieu of the required twenty-four (24) feet. They also requested a waiver from §32-4-107 to permit privately maintained utilities in the bed of the proposed public road. A hearing was held before the Deputy Zoning Commissioner who again denied the Special Hearing request and concluded in his Finding of Fact and Conclusions of Law beginning on Page 7 of his Opinion, dated October 30, 2006, that the Petitioner has no absolute right to use County property to gain access to an alleged public road. He found that the Policy Manual did not support the Petitioner's argument. He concluded that all County-owned property is not up for grabs by adjacent property owners. After a lengthy analysis, the Deputy Zoning Commissioner concluded that the parcel involved in this case is simply in the County inventory. It is neither part of an approved capital project, nor part of a Development Plan. (Opinion, page 10). He further distinguished the situation from that in which a Developer proposes internal public roads in a Development Plan which process is described in Development Regulations, §32. He further concluded that the Director of Public Works simply does not have the authority to allow the use of public property as requested.

More importantly, he then reviewed the Baltimore County Code and found that this case was controlled by §18-3-302 and §18-3-303. He found:

"Rather I find that this situation is controlled by §18-3-302 and §18-3-303 of the Baltimore County Code. Section 18-3-303 specifies the manner in which abutting property owners can petition the County to improve a road 'to a greater extent than planned by the County...' two-thirds of the adjacent property owners have to petition the County to make use of this process. However, the facts of this case reveal the opposite in that it appears two-thirds of the abutting owners are opposed to this construction.

The Petitioner, however, may proceed under §18-3-302 which provides how someone may petition the County to open a road by filing an application with the County Attorney's Office giving notice by publication and mailings, attending a hearing and obtaining a favorable decision by the County Administrative Officer. Appeals from this Decision are to the County Board of Appeals. This gives the County the opportunity to object to or support the Petition as well as the neighbors." (Opinion, Page 11).

He then found that no approval, nor request for approval from the County Administrative Officer under §18-3-302 had been made and, therefore, the Special Hearing was denied.

Since October 30, 2006, no request for a road opening has been made pursuant to §18-3-302 and this matter came before the County Board of Appeals on August 22, 2007.

The Chairman of the Board raised the issue as to whether or not the Board should be precluded from hearing these cases and/or approving the Special Hearing when the proper procedure for the Appellant would have been a Petition pursuant to §18-3-302.

ARGUMENT

The Protestants submit that this Board of Appeals cannot approve either Petition for Special Hearing to waive the width of the proposed road to access only one property (whether private or public) without a finding required from the Administrative Officer under §18-3-302.

The reason for the Protestants position is very clear as expressed and articulated by Deputy Zoning Commissioner Murphy and the clear language of the B.C.C., §18-3-302 which provides expressly for this very situation.

As this Board found in Case No.: CBA-06-037 – <u>In the Matter of Second Street</u> – <u>Petition to open a portion of Second Street</u>, the Baltimore County Code provides for this very type of process and anticipates the concerns raised by Protestants. Section 18-3-302 of the Code contains the requirements for opening, altering, relocating or closing a road or alley. In Subsection B notice, it states: (1) "the person seeking to have a new road open for the <u>public</u> <u>benefit</u> or an old road altered, relocated or closed shall give notice of the person's intention to petition for the change by ..." That was not done in this case. The inherent problems raised by the Protestants as to the effects of opening this road likewise pertain to the various County departments who have a right to appear and comment under Subsection D (hearing and appeal).

The difference between the Petition for Special Hearing and the road closing process is as the Board found in the Second Street road opening case, that the standard to be applied was whether or not there was a "public benefit" from building this road." That standard of proof as to the public benefit must be presented during the appropriate procedure. There is absolutely no proof as illustrated by both Deputy Zoning Commissioner Decisions and the evidence that will be presented to the Board that there is any public benefit other than to Mr. Reilman to permit Reilman's use of the unopened Thornwood Road for his sole purpose of subdividing one lot. There can be no explanation that this road serves any "public purpose." From the Petitioner's

own opening statement, it is clear that Thornwood Road and Thornwood Drive will never be connected, that there is no public works agreement in place for its construction, that it is not part of an approved subdivision and that the County has no plans for opening that road.

The Protestants attach hereto *In the Matter Of: Second Street, Case No.: CBA-06-037* as an appendix to this Memorandum.

The Protestants, therefore, submit that the Board should grant Protestants' Motion to Dismiss both Petitions for Special Hearing because they do not comply with the procedure required by the Baltimore County Code for opening a road. The fact that a minor subdivision for Reilman was approved on May 9, 2007 does not alter the legal requirements for opening Thornwood Road and is of no consequence unless the proper procedure is adopted to first open Thornwood Road. If ultimately the County Administrative Officer approves the opening of Thornwood Road, then the question of road width may become relevant. Protestants request that both Petitions for Special Hearing be denied on the basis that the Baltimore County Code §18-3-302 has not been followed.

It is clear from material contained in the file from the Deputy Zoning Commissioner before the Board that Eric Rockel, on January 13, 2006, in a Memorandum to John Murphy on Avondale Road expressed similar concern that Thornwood Drive should not be used as a private drive for access for the Avondale Road property because of liability issues as well as approval for a private drive from the Baltimore County Council. Secondly, he raised concerns that a public works agreement and a road agreement needed to be completed. (See attached Memo contained in the Board's file). It is clear that Rockel's concern emanating from Land Acquisition was the same as that expressed by Deputy Zoning Commissioner Murphy: the normal road opening procedures had not been complied with in this case.

Respectfully submitted,

CARROLL HOLZER, Esquire

Holzer & Lee

508 Fairmount Avenue

Towson, Maryland 21286

410-825-6961

Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ________ day of September, 2007, a copy of the

foregoing Memorandum of Protestants was mailed first class, postage pre-paid to the following:

Lawrence E. Schmidt, Esquire, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200,

Towson, Maryland 21204.

J. CARROLL HOLZER, Esquire

C:\My Docs\Memos 2007\Ullmann - Memo of Protestants - 9/12/07



County Board of Appeals of Baltimore County

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

September 10, 2007

VIA FACSIMILE 410-825-4923 and US MAIL

J. Carroll Holzer, Esquire 508 Fairmount Avenue Towson, MD 21286

RE: In the Matter of: James Reilman - Petitioner
Case No. 06-660-SPH and Case No. 06-289-SPH
Extension of Time for Filing Memos

Dear Mr. Holzer:

In response to your telephone request this date, and without opposition by Mr. Schmidt, your request for a one-week extension for filing of the requested memoranda in the subject matter has been granted. The requested briefs are now due from all parties by close of business on Monday, September 17, 2007 (original for file and three copies for distribution to the Board).

Should you have any questions, please call me.

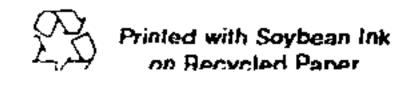
Very truly yours,

Kathleen C. Bianco Administrator

Enclosure

c: Lawrence E. Schmidt, Esquire / VIA FACSIMILE 410-821-0071and US MAIL





9/10/01

IN THE MATTER OF:

JAMES REILMAN

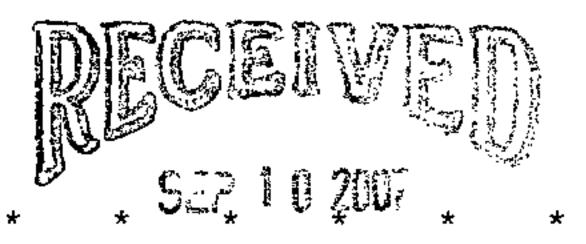
9208 AVONDALE ROAD



- * COUNTY BOARD OF APPEALS
- * OF BALTIMORE COUNTY

CASE NOs.: 06-289-SPH

06-660-SPH



BALTIMORE COUNTY BOARD OF APPEALS

HEARING MEMORANDUM

James P. Reilman, (hereinafter "Property Owner" or "Petitioner"), through Lawrence E. Schmidt and Gildea & Schmidt, LLC, his attorneys, submits this Hearing Memorandum and respectfully states:

I. Procedural Status

This matter comes before the Board for consolidation of two matters considered by then-Deputy Zoning Commissioner John V. Murphy, Jr. The first was within Case No. 06-289-SPH. Therein, the Petitioner requested a waiver from Baltimore County Code ("BCC") §32-4-405, to permit a 10 foot paving width in lieu of the 30 foot width in the right-of-way of Thornwood Road and also to permit a waiver to allow private water and sewer connections for one lot in the right-of-way of Thornwood Road. The matter was considered in a public hearing before then-Deputy Commissioner Murphy and by written Opinion and Order dated January 17, 2006, the Petition for Special Hearing was denied. A Motion for Reconsideration was likewise denied on April 5, 2006 and the matter

thereafter timely appealed by the Petitioner to the County Board of Appeals of Baltimore County (hereinafter "CBA" or "Board").

The second matter was within Case No. 06-660-SPH. Therein, the Petitioner sought a waiver to allow a public road with the paving width in lieu of the required 24 feet for a proposed non-arterial and non-collector road. Further, relief was sought to permit privately maintained utilities (e.g. water and sewer) in the bed of the proposed public road. Lastly, the Petitioner requested such other and further relief as may be deemed necessary and/or appropriate by the Zoning Commissioner. Following a public hearing, then-Deputy Zoning Commissioner likewise denied this Petition by written decision and Order dated October 30, 2006. That Order was likewise appealed by the Petitioner, and these two matters were consolidated for hearing and consideration.

These matters came in for hearing before the Board on August 22, 2007. Following opening statement by Petitioner's counsel and before the introduction of any testimony and evidence, the Board adjourned the proceedings and requested, *sua sponte*, the following memorandum from counsel. The memorandum is to address the issue of whether a road opening is required before the appealed matters are considered by the Board.

II. <u>Facts</u>

The subject property under consideration was acquired by Petitioner on December 14, 2001. The property is an irregularly shaped lot, approximately .71 acres in gross area. The property is split-zoned D.R. 5.5 and D.R. 3.5. The

predominant zoning of the property is D.R. 5.5 (23,243 sq. ft.), with a smaller portion zoned D.R. 3.5 (7,702 sq. ft.). The property immediately abuts two public roads. To the east, the property adjoins Avondale Road, an existing public paved road. To the south, the property immediately abuts a County-owned strip of land, which is approximately 40 feet by 100 feet in dimension. That strip is currently not improved; however, is to be paved as Thornwood Road, a public County road.

The eastern portion of the subject property is improved with a two-storey single-family detached dwelling, which is occupied by the Petitioner as his family home. Located next to the home is a detached garage. The western portion of the property is unimproved.

Based on the property's zoning classifications, acreage, and the applicable provisions of County law, the Petitioner has submitted a proposal for subdivision of the property into two lots. Lot 1 will be 0.24 acres in area, and contain the eastern portion of the property, including the existing single-family dwelling and the garage. That dwelling is known as 9208 Avondale Road and is accessed via a driveway leading from Avondale Road. Lot 2 will contain 0.47 acres, and occupies the western portion of the site. A proposed dwelling is to be constructed on Lot 2, to be known as 3128A East Avenue. Access to the dwelling on proposed Lot 2 will be from East Avenue, via the County-owned strip referenced above, known as Thornwood Road.

Pursuant to the County's development regulations, the Petitioner has submitted a minor subdivision plan, depicting this subdivision. (see attached Exhibit No. 1, subdivision plan) The minor subdivision plan was approved by Baltimore County on May 14, 2007. (see attached Exhibit No. 2, letter of approval) There was no appeal of the minor subdivision approval. Thus, all issues presented through the minor subdivision review process have been fully resolved and are final. Those issues are not before the Board in the instant matter.

III. The Issue Presented

As noted above, access to the existing single-family dwelling known as Lot 1 known as 9208 Avondale Road is by way of a private driveway, which leads into that lot from Avondale Road. The proposed means of access to Lot 2 is the issue in this case. As shown on Exhibit No. 1, the minor subdivision plan, Petitioner proposes improving Thornwood Road in the 100 foot by 40 foot strip owned by Baltimore County in order to provide access. This strip is currently unimproved. The strip was acquired by Baltimore County on June 5, 1968 by Deed recorded in the Land Records of Baltimore County at Liber 4870, Page 683. (see attached Exhibit No. 3, County Highway Deed).

That document is identified as a "County Highway Deed" and identifies the grantors as Henry A. Volpini and Gertrude L. Volpini, his wife. Madison and Bradford Savings and Loan Association, Inc. are also identified as mortgagee. The grantee is identified as Baltimore County, and indeed the

document indicates that the transfer was approved and accepted by Baltimore County on April 26, 1968. Moreover, the Deed specifically states that the purpose of the conveyance is "for public highway purposes."¹

Then-Deputy Zoning Commissioner Murphy, in his written decision in Case No. 06-660-SPH, questioned whether that portion of Thornwood Road located within the strip must be "opened." As noted above, the Board raised a similar issue in open hearing. Then-Deputy Zoning Commissioner Murphy cited BCC §\$18-3-302 and 18-3-303 as a basis for his comment. BCC §18-302 provides that "a person may petition to open, alter, relocate or close a road." The procedure to file the requisite petition is set forth in BCC §18-3-302(c). Requisite notice is set forth in BCC §18-3-302(b), and the hearing procedure before Baltimore County's Administrator Officer or his designee is set forth in BCC §18-3-302(d). Finally, if a property owner wishes Baltimore County to pay for the construction of a road, the process to institute that County expenditure is set forth in BCC §18-3-302(g).

Few roads in Baltimore County, especially residential streets, are constructed by County government. Surely, inter-state highways and some state highways are constructed by the government. However, most residential community streets are built by developers or property owners desiring access to their properties. After the construction of the roads, they are then conveyed to

¹ It is evident that the property was acquired by Baltimore County in order to ultimately connect East Avenue to existing Thornwood Road, located to the north. As shown on vicinity map on Exhibit No. 1, the strip occupies a portion of a gap between East Avenue and existing Thornwood Road.

and accepted by Baltimore County as public roads. Thereafter, the County maintains the roads and owns them. Nearly every residential street in Baltimore County was built, conveyed, and is now maintained in that fashion. None of these roads are subject to the road opening process in BCC §18-3-302.

BCC §18-3-303 sets out language providing that one may petition to improve a road "to a greater extent than planned by the County." This regulation governs those instances when the County plans a road of a particular width or dimension and adjacent or interested property owners desire a wider or larger road. The Petitioner is not requesting that Thornwood Road be constructed to a "greater extent than planned by the County." His Petition does not ask that the road be reduced from its 40 foot width, rather, Mr. Reilman requests approval to allow the paving of Thornwood to be narrower than required by the Department of Public Works. Moreover, through the Petition filed in Case No. 06-660-SPH, he does not seek that a private road be constructed.² The issue in this case is whether the strip at issue needs to be "opened."

During Petitioner's counsel's opening statement, the Board chairman questioned whether a road opening is required in this case and cited, as a basis for his comment, a recent matter that came before the Board. That case is CBA-

² From a practical standpoint, it makes little sense for Thornwood Road to be a public roadway. It will be of a short length and serve limited properties, e.g. the subject property and the properties of East Avenue on either side. Whether a private road can be constructed on public land is an issue for the Board to consider another day.

06-037, IN THE MATTER OF SECOND STREET-PETITION TO OPEN A PORTION OF SECOND STREET. It is clear that the facts in that case are easily distinguished from the instant matter. In that case, the appellants (represented by Howard A. Alderman, Jr., Esquire) petitioned Baltimore County to open a portion of Second Street so that his client could utilize the same for access to its property and proposed development thereon. Second Street was originally shown on the plat of a residential subdivision (Cherry Heights). Although shown on that plat, the underlying property on which Second Street was to be constructed was never accepted by Baltimore County for ownership; nor was the property used by the public or improved by Baltimore County. Thus, the appellant never had right to use the road for access to its property and was required to seek a road opening pursuant to BCC §18-3-302.

The need for the road opening in that case is evidenced during an exchange between the Administrative Officer's Designee (Donald Rascoe, Hearing Officer), his counsel (County Attorney Steven Verch, Esquire) and appellants counsel (Howard A. Alderman, Jr. Esquire). During opening remarks, the following exchange occurred:

THE HEARING OFFICER: Why do we need to go through a road opening if this is already an offer to convey to the county fee simple ownership when brought to county standard?

MR. ALDERMAN: For two reasons. Number one, an offer for dedication is not acceptance of dedication.

MR. VERCH: That's correct.

MR. ALDERMAN: An offer for dedication is just that. Dedication can be made in one of two ways in accordance with Maryland law. Dedication can be made for public use. For instance, if the County had paved the entire section of roadway to be opened and had used it and maintained it, dedication would be by prescription.

THE HEARING OFFICER: Whether we own the underlying fee simple.

MR. ALDERMAN: Whether you own the underlying fee simple.

THE HEARING OFFICER: And we have that in many, many cases in Baltimore County.

MR. ALDERMAN: That is correct. The second way is certainly by deed. As it is, neither of those two things has ever happened.

THE HEARING OFFICER: Correct.

(see attached Exhibit No. 4, Transcript, In the matter of the Opening of a Portion of Second Street, October 3, 2005)

In the instant case, Petitioner's right to use the road (indeed the public's right to use the road) is manifest. Unlike Second Street, which was never accepted by Baltimore County expressly by deed or accepted by prescription, the 40 foot by 100 foot strip of land has been expressly accepted by Baltimore County by the Deed referenced herein above. As noted herein, the County accepted that property via the Deed from Mr. and Mrs. Volpini specifically for "public highway purposes." When that acceptance occurred, the road was opened, As

it has never been closed, Mr. Reilman unquestionably has the right to use the road to provide access to his property.

Respectfully, the Board chair was perhaps confusing the concept of the opening of a public road with the County's standards for paving of a roadway. These are two entirely different issues.

There are numerous cases where a similar issue was presented to the appellate courts of this state; to wit, when does the political jurisdiction, in effect, assume dominion and control of a roadway so that same becomes an open road available for public use. With all respect to Mr. Alderman, there are actually three means (not two) for this to occur. They are: 1. expressly, by deed or other instrument as occurred in the instant matter; 2. when the County paves or otherwise physically improves the road; or. 3, by acts *in pais*, whereby members of the public use the road. See e.g. <u>Chapman v. Rogan</u>, 22 Md. 12, 158 A.2d 626 (1963), <u>Bonhage v. Cruse</u>, 233 Md. 10, 194 A.2d 803 (1963), <u>Canton Co. of Baltimore v. Mayor and City Council of Baltimore</u>, 106 Md. 69, 66 A. 679 (1909).

IV. Conclusion

This case is about the requested waiver of a standard of the Baltimore County Department of Public Works for the paving of road. Mr. Reilman and indeed any member of the public, has the right to build Thornwood Road at this location to access his property because the County has accepted the road by virtue of the Deed of conveyance recorded in the Land Records of Baltimore County at Liber 4870 Page 683. If this were not the case, the County

Administrative Officer would need to have a road opening hearing every time a developer built a subdivision and thereafter dedicated roads therein to the County. Obviously, this does not occur. The fact that this road is opened insofar as Baltimore County is concerned is further evidenced by the approved subdivision plan (Exhibit No. 1). Clearly, the County could not have approved that plan for Lot 2 without access thereto. That approved plan shows access via Thornwood Road. A road opening is required only when a property has been offered, but not accepted, by the County either expressly or by prescription. The sole issue in this case is as to how wide the paving should be.

WHEREFORE, the Board should:

- 1. Issue its ruling that a road opening is not required;
- 2. Schedule this matter for a *de novo* hearing to consider the merits of the Petitions for Special Hearing; and
- 3. For such other and further relief as the nature of this cause may require.

Respectfully submitted,

Lawrence E. Schmidt

Gildea & Schmidt, LLC

600 Washington Avenue

Suite 200

Towson, MD 21204

(410) 821-0070

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this <u>/O</u> day of September, 2007, a copy of the foregoing Hearing Memorandum was mailed, first class, postage prepaid to:

J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson MD 21204.

Lawrence E. Schmidt



County Board of Appeals of Baltimore County

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

Hearing Room – Room 48 Old Courthouse, 400 Washington Avenue

July 19, 2007

NOTICE OF ASSIGNMENT

CASE #: 06-660-SPH

IN THE MATTER OF: JAMES REILMAN -Petitioner

9208 Avondale Road IIth E; 6th C

10/30/06 -D.Z.C.'s Order in which requested special hearing relief was

DENIED

AND

CASE #: 06-289-SPH

IN THE MATTER OF: JAMES REILMAN -Petitioner

1/17/2006 -D.Z.C.'s Order in which petition for special hearing was DENIED.

ASSIGNED FOR:

WEDNESDAY, AUGUST 22, 2007 at 10 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 Appellant /Property Owner

Appellant /Property Owner

Thomas Hoff/Thomas J. Hoff, Inc.

: Lawrence E. Schmidt, Esquire

: J. Carroll Holzer, Esquire

: James Reilman

Counsel for Protestants

Melissa and Dan Ullman

Deborah and Michael Malinowski

Hazel Allegiuir

Stephanie Driscoll

Carol Wilson

Legros Montalvo

Mary Beth Janczak

Helen and James Billups

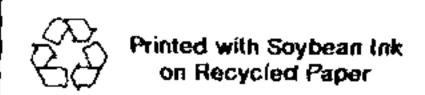
Michael Malinowski

Matthew Malinowski

Ruth Baisden

Warren Thomas

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



APPEAL SIGN POSTING REQUEST

CASE NO. 06-289-SPH

9208 AVONDALE ROAD

11TH ELECTION DISTRICT

APPEALED: 5/4/2006

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.: 06-289-SPH

LEGAL OWNER:

JAMES REILMAN

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

9208 AVONDALE ROAD	
The sign was posted on 6/1/06, 2006. By:	
(Signature of Sign Poster)	
(Print Name)	

-/4/06

IN RE: PETITION FOR SPECIAL HEARING

9208 Avondale Road

North/side of East Avenue, 298 feet West of centerline of Avondale Road

11th Election District 6th Councilmanic District

Legal Owner: James Reilman

BEFORE THE

* ZONING COMMISSIONER

* OF

* BALTIMORE COUNTY

* Case No.: 06-289-SPH

NOTICE OF APPEAL

James Reilman, property owner, Appellant in the above-captioned case, by and through his attorney, Lawrence E. Schmidt of Gildea & Schmidt, LLC, feeling aggrieved by the decision of the Zoning Commissioner in the above-captioned matter, hereby notes an appeal to the County Board of Appeals from the Findings of Fact and Conclusions of Law of the Zoning Commissioner of Baltimore County dated January 17, 2006, and Order on Motion for Reconsideration dated April 5, 2006, attached hereto, and incorporated herein respectively as Exhibit A & Exhibit B.

Filed concurrently with this Notice of Appeal is Appellant's check made payable to Baltimore County to cover the costs of the appeal. Appellant was a party below and fully participated in the proceedings.

Respectfully submitted,

RECEIVED

MAY 0 4 2006

Per XI

Lawrence E. Schmidt

Gildea & Schmidt, LLC

300 East Lombard Street

Suite 1440

Baltimore, MD 21202

(410) 234-0070

Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May 2006, a copy of the foregoing Notice of Appeal was mailed first-class, postage pre-paid to:

Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
Old Courthouse
400 Washington Avenue
Room 47
Towson, MD 21204
(410) 887-2188,

Carole S. Demilio
Deputy People's Counsel for Baltimore
County
Old Courthouse
400 Washington Avenue, Room 47
Towson, MD 21204
(410) 887-2188, and to

David F. Mister, Esq.
Mister, Winter & Bartlett, LLC
30 E. Padonia Road
Suite 404 - Padonia Centre
Timonium, MD 21093
(410) 561-3000

Lawrence E. Schmidt

IN RE: PETITION FOR SPECIAL HEARING
North Side of East Avenue, 298' West
Of Centerline of Avondale Road
11th Election District
6th Councilmanic District
(9208 Avondale Road)

James Reilman

Petitioner

BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

CASE NO. 06-289-SPH

* * * * * * *

ORDER ON MOTION FOR RECONSIDERATION

*

This matter comes before this Deputy Zoning Commissioner as a Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire, Co-Counsel for Petitioner.

Original Case

The Petitioner, James Reilman, originally filed a Special Hearing for property located at 9208 Avondale Road in Baltimore County. The relief was requested, pursuant to Section 500.7 the Baltimore County Zoning Regulations (B.C.Z.R.), to determine whether or not the Zoning Commissioner should approve a waiver from Section 32-4-405 of the Baltimore County Code, Development Regulations, to permit a paving width of 10 feet in lieu of the required 30 feet in the right-of-way of Thornwood Road, and from Section 32-4-410, of the Baltimore County Code, Development Regulations, to permit private water and sewer connections, for one lot, in the right-of-way of Thornwood Road.

Motion for Reconsideration

On February 14, 2006, Mr. Schmidt filed a timely Motion for Reconsideration of this Deputy Zoning Commissioner's Order dated January 17, 2006. Mr. Schmidt opined that the proposed road improvements are intended to be constructed as a public, not private road and in view of the fact that the county owns the property over which the road will be constructed, the Petitioner believes that he has the absolute right to construct the road. He requested to reconvene

Date A-5-00 PPLING
By A-5-00 Sections

the hearing so that testimony from a representative from the Department of Public Works should be entertained. He also indicated that the Order requires clarification based on his communications with the Department of Public Works regarding the standards for public roads. Finally, he noted that the Findings of Fact were silent as to reasons for denial for the portion of the Special Hearing request to permit private water and sewer connections in the right-of-way of Thornwood Road.

On February 20, 2006, Ms. Finneran, Co-Counsel for the protestants, responded to the Petitioner's Motion for Reconsideration indicating that the proposed construction of an undersized privately maintained roadway as a private road was correctly interpreted, and that a second hearing should not be scheduled for a representative from the Department of Public Works. Also, she reiterated that the requested waiver of a 30-foot wide road should be denied. Finally, she opined that although specific reasons for the denial of the private and sewer connections were not provided, it is a reasonable inference from reading the opinion that the denial was a direct result of the construction of the private road way.

Findings of Fact and Conclusions of Law

After reviewing the evidence in the case, the Petitioner's Motion for Reconsideration and protestant's Response, I see no reason to reopen the hearing to allow additional evidence. The case was fully contested with excellent presentations by both sides. I also will deny the Petitioner's request and clarify my reasons for this decision as below.

Notwithstanding Mr. Schmidt's assertions otherwise, it was clear to me that the Petitioner proposed to build a private road although this was not explicitly stated in the first request in the Petition. All the testimony in the case by the Petitioner's and reaction thereto by the protestants indicated that the Petitioner's wanted to build a 10 foot wide private road from East Avenue to the rear of the Petitioner's property over County owned property which the Petitioner designated as "Thornwood Road" on Exhibit 1. Thirty (30) feet of paving is required by the regulations.

The Petition also requested a waiver from Section 32-4-410, of the Baltimore County Code, Development Regulations, to permit <u>private</u> water and sewer connections, for one lot, in the right-of-way of Thornwood Road. (Emphasis supplied) I believe that the word "private" indicated again the Petitioner's proposed a private road. No one suggested at the hearing that the request was for connection to some off-site private septic and/or sewer system. Petitioner's Exhibit 1 clearly shows the water and sewer lines in the proposed roadbed connecting to the public systems. So in my mind the only thing private about the water and sewer connection was that they were located in the private road.

At the hearing, the protestants opposed the request for a private road demanding a public road be built because the public road would have all the parking, storm drain and water management systems which they cited as major problems in the neighborhood. The Petitioner understandably does not want to pay for these expensive features for only one lot. In fact, the strip of land, which the Petitioner calls Thornwood Road, has never been built as a road or dedicated to the County as a road. The County simply owns it. I do not believe and so find that the Petitioner does not have a right to build a private road and utilities on public land in these circumstances.

After reviewing the evidence and arguments of counsel, I come to the conclusion that granting these waivers and/or allowing the utilities in the proposed private road would adversely affect the neighborhood. There will be additional noise, traffic, runoff, construction and disruption from the private road and/or utilities connecting the new home to East Avenue as proposed. This additional burden will be borne by the protestants if the waivers are granted and the private road built. The rear lot is not landlocked but can be accessed for vehicles and utilities from Avondale Road albeit by a driveway which passes by the Petitioner's home. The

Petitioner would be then affected by the additional traffic, noise and the like instead of the protestants. Public water and sewer connections can be made to facilities in Avondale Road. So there is no need to use this County owned strip for these utilities.

After due consideration of the arguments by Counsel and a further review of my Opinion and Order, I am not persuaded to grant the Motion.

THEREFORE, IT IS ORDERED, this _____ day of April, 2006, by this Deputy Zoning Commissioner, that the Motion for Reconsideration is hereby DENIED.

Any appeal of this decision shall be made within thirty days of the date of this Order.

JOHN V. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:dlw

c: Lawrence E. Schmidt, Esquire, Gildea & Schmidt, LLC, 300 East Lombard Street, Suite 1440, Baltimore, MD 21202

David F. Mister, Esquire, & Amy K. Finneran, Esquire, 30 E. Padonia Road, Suite 404, Timonium, MD 21093

James Reilman, 9208 Avondale Road, Baltimore, MD 21234

Thomas J. Hoff, 406 West Pennsylvania Avenue, Towson, MD 21204

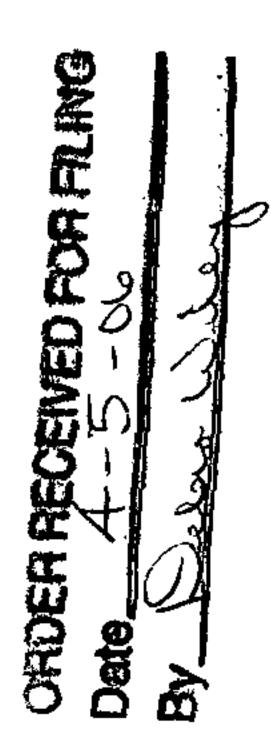
Deborah and Michael Malinowski, 3127 East Avenue, Baltimore, MD 21234

Melissa Malinoski, 3130 East Avenue, Baltimore, MD 21234

Mary Beth Janczak, 3134 East Avenue, Baltimore, MD 21234

Milagros Montalvo & Carol Wilson, 3129 East Avenue, Baltimore, MD 21234

People's Counsel; Case File



IN RE: PETITION FOR SPECIAL HEARING North Side of East Avenue, 298' West Of centerline of Avondale Road 11th Election District 6th Councilmanic District (9208 Avondale Road)

> James Reilman Petitioner

- BEFORE THE
- DEPUTY ZONING COMMISSIONER
- OF BALTIMORE COUNTY
- * CASE NO. 06-289-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing for the property located at 9208 Avondale Road in the eastern area of Baltimore County. The Petition was filed by James Reilman, Legal Owner. Special Hearing relief is requested pursuant under Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to determine whether or not the Zoning Commissioner should approve a waiver from Section 32-4-405 of the Baltimore County Code, Development Regulations, to permit a paving width of 10 ft. in lieu of the required 30 ft. in the right-of-way of Thornwood Road, and from Section 32-4-410, of the Baltimore County Code, Development Regulations, to permit private water and sewer connections, for one lot, in the right-of-way of Thornwood Road.

The property was posted with Notice of Hearing on December 28, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on December 27, 2005, to notify any interested persons of the scheduled hearing date.

Section 500.7 of the B.C.Z.R. Special Hearings

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all

zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Zoning Advisory Committee Comments

The Zoning Advisory Committee Comments are made part of the record of this case and contain the following highlights: ZAC comments were received by the Department of Public Works dated December 20, 2005, and the Office of Planning, dated January 4, 2006, copies of which are attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing relief was James Reilman, Petitioner, as well as Thomas Hoff from Thomas J. Hoff, Inc., who prepared the site plan. Sebastian Cross, Esquire represented the Petitioner. The following persons appeared at the hearing in opposition to the petition: David F. Mister, Esq., Amy K. Finneran, Esq., Deborah and Michael Malinowski, Melissa Malinowski, Mary Beth Janczak, Milagros Montalvo and Carol Wilson. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The subject property contains approximately 0.75 acres, is zoned DR 5.5 and DR 3.5 and improved by a single-family dwelling, the Petitioner's home. See Petitioner's Exhibit 1. The Petitioner's home fronts on Avondale Road. He has access to the garage behind his house by means of a common driveway between his home and the Thomas property to the south.

Mr. Cross indicated that the Petitioner would like to subdivide his property and build a second dwelling in the rear yard. Mr. Hoff indicated that the property area would support three

(3) or four (4) homes strictly by density standards, but there are wetlands and environmental constraints as shown on Petitioner's Exhibit 1 which limit the development to one more home.

This case arises because instead of creating a panhandle lot using the Petitioner's common driveway off Avondale Road, the rear of the Petitioner's property lies at the end of a County-owned strip of land approximately 40 feet wide by 110 feet long which intersects with East Avenue. The Petitioner would like to build a private driveway having 12 feet of paving from East Avenue to the proposed dwelling using this County-owned strip of land. County Public Works regulations require private roads to be paved 30 feet wide. In addition, the Petitioner would like to construct the private water and sewer lines to serve the new home connecting to the public facilities within East Road, again using this County-owned strip of land.

Mr. Cross asserts that the Petitioner has an absolute right to use this public property for this private road because the strip touches the Petitioner's rear yard. He argues that the Petitioner has an absolute right to build a full width (30 ft.) private road within the right-of-way without any waivers. However, as shown in Petitioner's photographs, Exhibit 2, photos one and three as well as Protestant's photograph, Exhibit 4, there are mature oak trees that line the sides of the County strip of land. Mr. Hoff opined that, if the full 30 foot paving were required by denying these waiver requests, many of these trees would have to be removed. The Petitioner would like to construct the driveway with 12 feet of paving. In addition, he noted that an additional 18 feet of paving would increase storm water runoff which the County may or may not require the Petitioner to control. Overall, there would be a net loss of environmental health if the full road width were required.

Mr. Cross indicated that the County strip of land was to be called Thornwood Drive and was intended in earlier times to connect the properties to the north to East Road. For whatever

reason, Thornwood Road was never constructed or dedicated to the County. The County however owns the strip of land, which was transferred to the County by deed in 1968 as an exaction for approval of a minor subdivision on East Road. He admitted that he has not yet secured the Department of Land Acquisition's approval of the use of the right-of-way for this private road. He denied that he needed any other government approval to build the driveway as proposed.

Mr. Hoff recognized that storm water flow across the Petitioner's back yard toward East Avenue but opined that the storm water runoff downstream of the Petitioner's property will not get any worse and will likely get better because of the construction of the new house and grading for the driveway to East Avenue. He also indicated that access for the new home from Avondale Road rather than to East Avenue might be difficult because the distance between the Petitioner's home and south property line was surely tight and may need to be varianced. Finally, he noted that the County would address issues such as landscaping at the minor subdivision review stage rather than at this stage.

The Protestants presented written objections to the Petitioner's requests (Protestants Exhibit 3) supplemented by Ms. Malinowski's testimony. She is an adjacent property owner who cuts the grass and maintains the County strip of land. She indicated that it was not fair to have the Petitioner benefit from the sale of the new house financially only to place the burden of dealing with the traffic, storm water runoff and parking problems generated by this driveway on the residents of East Avenue. She indicated that if the Petitioner wants to build another house in his rear yard, the traffic to and from the house should go to Avondale Road through his driveway next to his home. She presented a petition signed by owners and tenants of East Avenue opposing the requested relief as shown in Protestants Exhibit 2. She and other neighbors

described the existing parking problems on East Avenue as well as the sanitary sewer problems, which occur during heavy rains. She opined that these would only worsen if the requests were granted.

Findings of Fact and Conclusions of Law

Taking the Petitioner's case as presented, the Petitioner has the absolute right to construct a private driveway on the County strip of land. It is only a question as to how wide the paving will have to be. If this were the case, surely it would be better from an environmental standpoint to accept the Petitioner's reasoning and grant the requests.

However, I am troubled by the underlying assumption that the Petitioner has such an absolute right to use County property for this private driveway. I understand that the strip of land was obtained as an exaction of a minor subdivision presumably in the event the County wanted to give lots to the north access to East Avenue at some future date. As it turned out, this was not necessary and Thornton Road was never built or dedicated to the County.

It would be one thing if there were some lonely land locked lot to the north of the strip of land that only Thornton Road could provide access to the public road. However, there is no such lot at present. The Petitioner seeks to create such a lot herein after called the "rear lot".

However, this rear lot is not landlocked. Obviously, the Petitioner can create a panhandle lot with access to Avondale Road by means of a driveway next to his home. I am not saying that the driveway so created would or would not need a variance. Mr. Hoff did not know if this was needed nor do I. But the access via Avondale may well be available. Even if the rear lot were already in existence, since it is carved out of the subject lot, it would trigger an easement for access to the public road through the front lot by prescription.

I also do not accept the Petitioner's assertion that no government agency other than Land Acquisition would need to approve the driveway on public property. It seems to me that Thornton Road was intended to be a public road not a private road and that the county would have to grant an easement to improve the public property with a permanent driveway. I have no idea as to whether the Administration and perhaps the County Council would support such an easement, which brings up the off debated issue of conditional approval. It is clear in my view that the Code and regulations allow this Commission to grant zoning relief subject to conditions such as hours of operation, compliance with ZAC comments, etc. It is hotly debated whether this Commission may grant conditional zoning relief, that is, approval conditioned on approval of another government agency. We have always treated this issue on a case by case basis but where the road to approval by the second government agency looks long and problematic, we have denied such approval.

Finally, the Protestants have a strong case in fairness. The burden of putting up with a new neighbor behind the Protestants homes falls not on the Petitioner but on the Protestants if the requested relief is granted. I am not saying that one new home will be the straw that overwhelms the capacity of the sanitary sewer system. I concede the traffic generated by one home is not great. But there is some traffic, some storm water run off, some noise and the like that is different from the Petitioner using his backyard for a barbecue.

There is no specified standard or checklist in Section 500.7 of the B.C.Z.R. The standards traditionally applied are reasonableness, spirit and intent of the regulations and adverse impact on the community. Considering the testimony and evidence presented and these criteria, I will deny the requested relief.

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' request for special hearing should be denied.

IT IS FURTHER ORDERED that the request for special hearing relief filed pursuant to Section 500.7 of the B.C.Z.R. from Section 32-4-410, of the Baltimore County Code, Development Regulations, to permit private water and sewer connections, for one lot, in the right-of-way of Thornwood Road, be and is hereby DENIED.

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

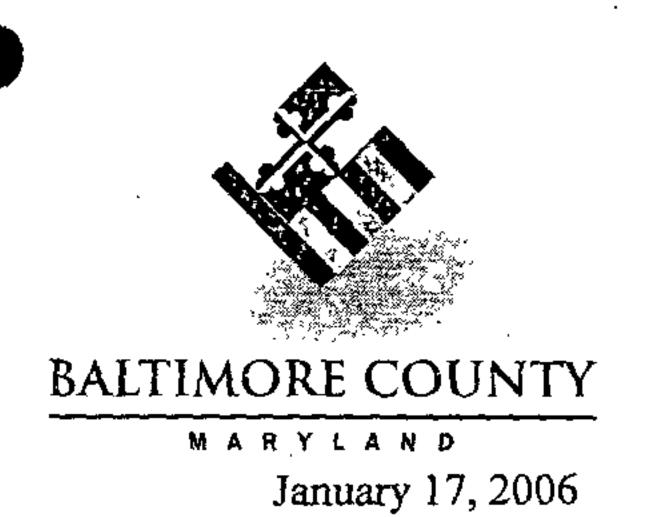
IOHN V MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:dlw

Jate 1 - VT - O'S TILLING



JAMES T. SMITH, JR. County Executive

WILLIAM J. WISEMAN III

Zoning Commissioner

Sebastian Cross, Esquire Gildea & Schmidt, LLC 300 East Lombard Street Suite 1440 Baltimore, Maryland 21202

> Re: Petition for Special Hearing Case No. 06-289-SPH Property: 9208 Avondale Road

Dear Mr. Cross:

Enclosed please find the decision rendered in the above-captioned case.

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 I musphy

JVM:dlw Enclosure

c: James Reilman, 9208 Avondale Road, Baltimore, MD 21234
Thomas J. Hoff, 406 West Pennsylvania Avenue, Towson, Maryland 21204
David F. Mister, Esq., & Amy K. Finneran, Esq., 30 E. Padonia Rd., Suite 404,
Timonium, MD 21093
Deborah and Michael Malinowski, 3127 East Avenue, Baltimore, MD 21234
Melissa Malinowski, 3130 East Avenue, Baltimore, MD 21234
Mary Beth Janczak, 3134 East Avenue, Baltimore, MD 21234
Milagros Montalvo & Carol Wilson, 3129 East Avenue, Baltimore, MD 21234
People's Counsel; Case File



PADER RECEIVE.

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 9208 AVONDALE RO which is presently zoned DR 5.5 1 3.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

SEE ATTACHED EXHIBIT

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

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

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition. Contract Purchaser/Lessee: Legal Owner(s): KEILMAN AMES Name - Type or Print Name Type or Print Signature Signature Address Telephone No. Name - Type or Print City State Zip Code Signature 9208 AVONDALE RD Attorney For Petitioner: Address Telephone No. Name - Type or Print State Zip Code Representative to be Contacted: Signature Company W. PENNSYLVANIA AVE Adres Telephone No. Telephone No. 410-296-3668 75W50N State Zip Code OFFICE USE ONLY ESTIMATED LENGTH OF HEARING UNAVAILABLE FOR HEARING Date \underline{J}



- A Waiver from Section 32-4-405, of the Baltimore County Code Development Regulations to permit a paving width of 10' in lieu of the required 30' in the R/W of Thornwood Road.
- A waiver from Section 32-4-410, of the Baltimore County Code Development Regulations to permit private water and sewer connections, for one lot, in the R/W of Thornwood Road.





THOMAS J. HOFF, INC.

Landscape Architects and Land Development Consultants
406 WEST PENNSYLVANIA AVENUE
TOWSON, MD. 21204
410-296-3668
FAX 410-296-5326

289

December 5, 2005

Description of Thornwood Drive, to Accompany Petition for Special Hearing

BEGINNING FOR THE SAME at a point on the north side of East Avenue, 298 feet more or less west of the centerline of Avondale Road.

Thence binding on the north side of East Avenue,

- 1) North 56 degrees 52 minutes West 70.00 feet, thence leaving the north side of East Avenue,
- 2) North 78 degrees 08 minutes East 21.21 feet, thence,
- 3) North 33 degrees 08 minutes East 99.00 feet, thence,
- 4) South 59 degrees 44 minutes East 40.05 feet, thence,
- 5) South 33 degrees 08 minutes West 101.00 feet, thence,
- 6) South 11 degrees 52 minutes East 21.21 feet to the place of beginning.

Containing 0.11 acres of land more or less.

BEING the roadbed of Thornwood Drive as recorded in the land records of Baltimore County in Liber 4870 folio 683.

The bearings and distances for this description are based on the record plat of "Section One, Volpini Property" recorded in the land records of Baltimore County in O.T.G. 32 folio 87.

Note:

This Description has been prepared for zoning purposes only.



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1	Manie Minima and Minima Ro	FOR: Junious of the Manney Commission	FROM: Holl Man	AMOUNT \$ 32500	DATE 12/16/16 ACCOUNT 001 106 6150	BALTIMORE COUNTY, MARYLAND OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT MISCELLANEOUS RECEIPT WARYLAND A A A A A A A A A A A A A A A A A A A	4
CASHER'S VALIDATION			County, Mary 1 and	CR MO. CO1594 Respit for	설용		
			~		灣		- 4

CERTIFICATE OF POSTING

RE: 06-289-SPH

Petitioner/Developer: James

Reilman

Hearing Date: 1/12/06

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 9208 Avondale Rd.

The sign(s) were posted on 12/28/05.

1 Illower

Sincerely,

Thomas J. Hoff 'Thomas J. Hoff, Inc.

406 West Pennsylavnia Avenue

Towson, MD 21204

410-296-3668



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 or the property identified herein as follows:

Case: #06-289-SPH
9208 Avondale Road
North/side of East Avenue, 298 feet west of centerline of Avondale Road
Avondale Road
Avondale Road
Tith Election District - 6th Councilmanic District
Legal Owner(s): James Reilman
Special Hearing: to permit a waiver to allow paving width of 10 feet in lieu of the required 30 feet in the right-of-way of Thornwood Road. To permit a waiver to allow private of Thornwood Road. To permit a waiver to allow private, way of Thornwood Road. To permit a waiver to allow private, way of Thornwood Road.
Hearing: Thursday, January 12, 2006 at 10:00 a.m. in Hearing: Thursday, January 12, 2006 at 10:00 a.m. in Roam 407, County Courts Building, 401 Bosloy.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County
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/12/738 Dec. 27

,2005

THIS IS TO CERFIFY, that the annexed advertisement was published successive weeks, the first publication appearing in the following weekly newspaper published in Baltimore County, Md., 8 once in each of

The Jeffersonian

- Arbutus Times
- Catonsville Times
- Towson Times
- Owings Mills Times
- NE Booster/Reporter
- County News □ North

W. W. S.

LEGAL ADVERTISING

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

or Newspaper Advertising:
em Number or Case Number 06 289 SPH
etitioner JAMES P. REILMAN
ddress or Location. 9208 AVONDALE RD, BAUTIMORE, MD, 21234
LEASE FORWARD ADVERTISING BILL TO
ame: JAMES P. REILIAN
ddress 9208 AVONDAUE RD.
BAUTIMORE MO. 21234
elephone Number: 40-494-1881

TO: PATUXENT PUBLISHING COMPANY

Tuesday, December 27, 2005 Issue - Jeffersonian

Please forward billing to:

James P. Reilman (410-494-1881)

9208 Avondale Road Baltimore, MD 21234

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: 06-289-SPH

9208 Avondale Road

North/side of East Avenue, 298 feet west of centerline of Avondale Road

11th Election District - 6th Councilmanic District

Legal Owner: James Reilman

Special Hearing to permit a waiver to allow paving width of 10 feet in lieu of the required 30 feet in the right-of-way of Thornwood Road. To permit a waiver to allow private water and sewer connections, for one lot in the right-of-way of Thornwood Road.

Hearing: Thursday, January 12, 2006 @ 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, 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 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

December 13, 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: 06-289-SPH

9208 Avondale Road North/side of East Avenue, 298 feet west of centerline of Avondale Road 11th Election District – 6th Councilmanic District Legal Owner: James Reilman

Special Hearing to permit a waiver to allow paving width of 10 feet in lieu of the required 30 feet in the right-of-way of Thornwood Road. To permit a waiver to allow private water and sewer connections, for one lot in the right-of-way of Thornwood Road.

Hearing: Thursday, January 12, 2006 @ 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue Towson, MD 21204

Timothy Kotroco Director

TK:raj

C: Thomas J. Hoff, 406 W. Pennsylvania Avenue, Towson, MD 21204

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, DECEMBER 28, 2005

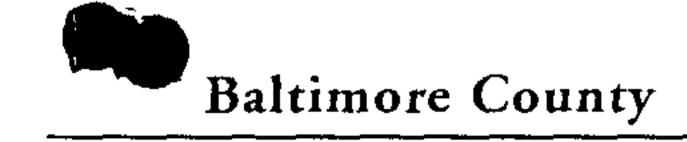
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

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

Department of Permits Development Management

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





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

January 9, 2006

James Reilman 9208 Avondale Road Baltimore, Maryland 21234

Dear Mr. Reilman:

RE: Case Number: 06-289-SPH, 9208 Avondale Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on December 6, 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.

U. Callabella Quella Callabella Quella Robert Callabella Robert Cal

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Thomas Hoff 406 W. Pennsylvania Avenue Towson 21204



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

BALTIMORE COUNTY, MARYLAND

INTER OFFICE CORRESPONDENCE

TO:

Timothy Kotroco, Director,

Permits & Development Management

ATTN:

Kristen Matthews

MS 1105

FROM:

Edward Adams, Director,

Public Works

DATE:

December 20, 2005

SUBJECT: Case No. 06-289 SPH

Special Hearing to permit a waiver to allow paving width of 10 feet in lieu of the required 30 feet, and to allow private water & sewer connections for

one lot, in the right-of-way of Thornwood Road.

I have reviewed the subject waiver request. Unless there is significant community opposition, I support the waiver as requested with the following conditions.

The driveway paving must be a minimum of 12 feet wide and shall be built in accordance with the standards for a private panhandle driveway serving a single lot in urban areas. Both the driveway and the utility connections must be labeled as "privately maintained" on the site plan, with water meter and sewer cleanout locations established as if the north right-of-way line of East Avenue were the property line.

A copy of the site plan shall be recorded with the deed to the lot to disclose the private maintenance responsibility for the driveway (including grading and drainage) and utilities.

The applicant has the option of pursuing a road closure for the right-of-way so that the above-noted improvements may be built on private property instead.

ECA/DLT/s

CC: Thomas J. Hoff, Dennis Kennedy

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:

9208 Avondale Road

INFORMATION:

Item Number:

6-289

Petitioner:

James Reilman

Zoning:

DR 5.5 and DR 3.5

Requested Action:

Special Hearing

The applicant has requested a waiver from Section 32-4-405 of the Baltimore County Code Development Regulations to permit a paving width of 10 Feet in lieu of the required 30 feet in the right of way of Thornwood Road, and a waiver from Section 32-4-410 of the Baltimore County Code Development Regulations to permit private water and sewer connections for one lot in the right of way of Thornwood Road.

SUMMARY OF RECOMMENDATIONS:

The subject property is located in the boundaries of the Carney-Cub Hill-Parkville Area Plan (Resolutions 91-05 and 127-05) for which the Office of Planning along with the Planning Board, has been requested to prepare a community plan as a revision and update to the Baltimore County Master Plan. This plan will serve as a guide for the development of unimproved, residentially zoned properties in the planning area, and to recommend implementation legislation and programs. The Community Plan process will commence January 9, 2006 and is expected to be complete by June 1, 2006. As such the Office of Planning offers the following comments:

If the petitioner's request is granted, the applicant shall submit to Baltimore County a development plan minor subdivision for review and approval.

The following shall be indicated on the minor subdivision plan:

- 1. Orientation of the proposed dwelling.
- 2. Landscaping that shows screening for rear yard privacy.

DATE: January 4, 2006

JAN 0 : 2006

3. Detailed building elevations indicating exterior building materials, color, and architectural details.

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

Prepared by:

Division Chief:

AFK/LL: CM



Office of the Fire Marshal 700 East Joppa Road Towson, Maryland 21286-5500 410-887-4880

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

December 15, 2005

ATTENTION: Zoning Review planners

Distribution Meeting of: December 05, 2005

Item No.: 281, 287-293 (289)

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.

Lieutenant J.D.Mezick Fire Marshal's Office 410-887-4880 MS-1102F

cc: File

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO:	Timothy M. Kotroco					
FROM:	R. Bruce Seeley, DEPRM					
DATE:	January 19, 2006					
SUBJECT	T: Zoning Item # (06-289) Address 9208-Avondale Road Reilman Property					
Zo	oning Advisory Committee Meeting of December 5, 2006					
	he Department of Environmental Protection and Resource Management has no mments on the above-referenced zoning item.					
	X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:					
	Mater Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).					
	X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).					
	Development of this property must comply with the Chesapeake Bay					

Additional Comments:

A variance from the DEPRM director to encroach into the forest buffer must be granted prior to minor subdivision approval.

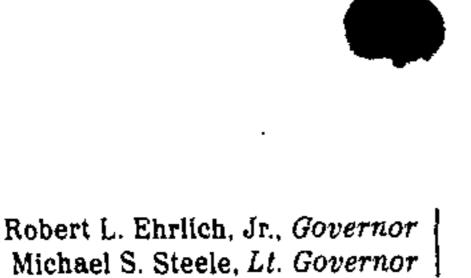
other Sections, of the Baltimore County Code).

Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and

Reviewer:

M. Stauss

Date: 1/19/2006





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

Maryland Department of Transportation

Date:

12.9.05

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

RE:

Baltimore County
Item No. 289

JLL

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

RE: PETITION FOR SPECIAL HEARING
9208 Avondale Road; N/S East Avenue,
298' W c/line Avondale Road
11th Election & 6th Councilmanic Districts
Legal Owner(s): James Reilman
Petitioner(s)

- BEFORE THE
- * ZONING COMMISSIONER
- * FOR
- * BALTIMORE COUNTY
- * 06-289-SPH

ENTRY OF APPEARANCE

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

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

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 12th day of December, 2005, a copy of the foregoing Entry of Appearance was mailed to Thomas J. Hoff, 406 W. Pennsylvania Avenue, Towson, MD 21204, Representative for Petitioner(s).

RECEIVED

DEC 1 2 2005

Per TUN

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

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

May 11, 2006

Lawrence Schmidt Gildea & Schmidt 300 East Lombard Street, Ste. 1440 Baltimore, MD 21202

Dear Mr. Schmidt:

RE: Case: 06-289-SPH, 9208 Avondale Road

Please be advised that this office received your appeal of the above-referenced case filed in this office on May 4, 2006 on behalf of your client James Reilman. 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.

Shicerery

Timothy Kotroco

Director

TK:klm

C: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
James Reilman, 9208 Avondale Road, Baltimore 21234
Thomas Hoff, 406 West Pennsylvania Avenue, Towson 21204
David Mister, 30 E. Padonia Road, Ste. 404, Timonium 21093
Mr. & Mrs. Malinowski, 3127 East Avenue, Baltimore 21234
Melissa Malinowski, 3130 East Avenue, Baltimore 21234
Mary Beth Janczak, 3134 East Avenue, Baltimore 21234

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

Milagros Montalvo & Carol Wilson, 3129 East Avenue, Baltimore 21234

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

Tim Kotroco, Director Permits & Development Management

FROM:

Joseph Bartenfelder Councilman, Sixth District

SUBJECT:

Appeal relative to constructing driveway and providing utility

Amy Finneran

410887324

Mister, Winter, & Barlett, LLC

Suite 404 - Padonia Center 30 E. Padonia RD 21093

DATE:

Telephone: 410-561-3000

March 7, 2006

See the accompanying documents. As stated in Ms. Finneran's cover letter, at issue is a proposal "to construct a private driveway and private water and sewer connections on county owned land". Note that related information has already been forwarded to Mr. Adams in Public Works, and your name as well as John Murphy's name

The controversy does not fall within the purview of my office, but I am asking you or someone you designate to contact Ms. Finnernan to discuss options and explain procedures.

JB:bs

CC: Ms. Finneran

RECEIVED

LAW OFFICES MISTER, WINTER & BARTLETT, LLC SUITE 404-PADONIA CENTRE 30 E. PADONIA ROAD

TIMONIUM, MD 21093 (410) 561-3000 FACSIMILE

(410) 560-0588

FEB 2 2 2006

ZGNING COMMISSIONER

OF COUNSEL: ANDREW H. VANCE ROBERT L. FRANK ELIZABETH C. YAREMA

WRITER'S EMAIL dmister@mwblaw.net

February 20, 2006

DAVID F. MISTER
LESLIE A. WINTER
ANTHONY T. BARTLETT
AMY K. FINNERAN

John V. Murphy
Deputy Zoning Commissioner
Baltimore County
401 Bosley Avenue
Towson, MD 21204
VIA FACSIMILE AND FIRST CLASS MAIL

Re: Reilman/9208 Avondale Road Petition for Special Hearing

Dear Deputy Zoning Commissioner Murphy:

As co-counsel with David F. Mister for the Protestants, please accept this letter as the Protestants' Response to the Motion for Reconsideration of Findings of Fact and Conclusions of Law and Order issued in the above-referenced matter.

I will address Mr. Schmidt's issues as they are set forth in his letter of February 14, 2006.

1. Although Mr. Schmidt indicates that the proposed road improvements are intended to be constructed as a public road, the testimony presented at the hearing was to the contrary. The testimony presented during the Petitioner's case was such that the roadway was to be a private drive, to be accompanied by a private water and sewer line. I believe that you correctly interpreted the proposed construction of an undersized privately maintained roadway as a "private road". Additionally, the fact that the road improvements will lead to only one private, residential dwelling without available public parking, storm water management and public maintenance, also contradicts the contention that the road will be a public road.

The Protestants continue to assert the position that the Petitioner's request is an inappropriate use of public land. It is a euphemism to identify a driveway that will only access one private residential dwelling as a public driveway. The proposed driveway will not allow parking for anyone else located near it. Additionally, as the testimony revealed at the hearing, the proposed driveway will not have the appropriate storm water management or other amenities usually associated with a true public road way. While it may be a benefit to the County

John V. Murphy Deputy Zoning Commissioner February 20, 2006 Page 2

> for the Petitioner to privately maintain this driveway, it will not be beneficial to the nearby residents, because the quality of the maintenance will not be the same as it would be for a publicly maintained road.

Lastly, although the Petitioner believes he has the absolute right to construct the road on County property, it is the Protestants belief that before the Petitioner would be permitted to construct an undersized, privately maintained road way, he would be required to compensate Baltimore County for that portion of the land. If the Petitioner believed he had the right to construct the road way, he should have had a representative from the Department of Public Works testify on his behalf at the hearing on January 17, 2006. A second hearing should not be scheduled for a witness that the Petitioner failed to avail himself of at the first hearing.

- We agree that the requested waiver of a 30 foot wide road should be denied. Therefore, an opinion of the Department of Public Works that the requirements of the Baltimore County Code Development Regulations must be complied with for construction of the public road is correct.
- 3. Although you did not provide any specific reasons for the denial of the private water and sewer connections, it is a reasonable inference from reading your Opinion that the denial of the private water and sewer line was a direct result of the denial of the construction of the private road way. The denial of the private roadway, without another suggested location for an alternate roadway, results in a lack of access to any newly constructed private dwelling. Reasonableness would indicate that one would not construct a new private dwelling without some way to access that dwelling, in turn leaving no reason for a private water and sewer line. The Petitioner has access for both a private driveway and private water and sewer lines over his existing property which he seeks to sub-divide.

For all-of the above reasons, we request that the Petitioner's Motion for Reconsideration and request for further proceedings to take additional testimony be denied.

If you have any questions concerning this matter, please do not hesitate to contact me.

Respectfully submitted,

Dry & Finnera (lan

Amy K. Finneran

:akf

cc: Lawrence E. Schmidt, Esquire

Melissa Malinowski

GILDEA & SCHMIDT, LLC

300 EAST LOMBARD STREET

SUITE 1440

BALTIMORE, MARYLAND 21202

TELEPHONE 410-234-0070
FACSIMILE 410-234-0072
www.gildeallc.com

February 14, 2006

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

RECEIVED

FEB 1 4 2006

ZONING COMISSIONER

DAVID K. GILDEA DAVIDGILDEA GILDEALLC.COM

LAWRENCE E. SCHMIDT LSCHMIDT & GILDEALLC.COM

SEBASTIAN A. CROSS SCROSSOGILDEALLC.COM

JOSEPH R. WOOLMAN, HI JWOOLMAN@GILDEALLC.COM

D. DUSKY HOLMAN DHOLMAN @GILDEALLC.COM

JASON T. VETTORI JVETTORI@GILDEALLC.COM

Towson MD 21204

Via Hand Delivery
John (Jack) V. Murphy
Deputy Zoning Commissioner
Baltimore County
401 Bosley Avenue, 4th Floor

Re: Reilman/9208 Avondale Road Petition for Special Hearing

Dear Deputy Zoning Commissioner Murphy:

Kindly enter my appearance as co-counsel with Sebastian A. Cross in reference to the above matter. Also, please accept this letter as a Motion for Reconsideration of the Findings of Fact and Conclusions of Law and Order issued by you in the above case on January 17, 2006. This Motion is filed pursuant to Rule K of the Zoning Commissioner's Rules of Practice and Procedure before the Zoning Commissioner/Hearing Officer of Baltimore County, as contained in Appendix G of the Baltimore County Zoning Regulations.

The grounds and reasons for the Motion for Reconsideration are as follows:

1. Your Findings of Fact and Conclusions of Law state that you are "troubled" by the underlying assumption that Mr. Reilman has an absolute right to improve the County property for a "private driveway". The proposed road improvements are intended to be constructed as a public road. Although the road will ultimately serve only one structure, the proposed road will be public, not private. Additionally, in view of the fact that the County owns the property over which the road will be constructed, the Petitioner believes that he has the absolute right to construct the road. I believe it appropriate to reconvene the hearing so that you may entertain testimony from a representative of the Department of Public Works to confirm this representation.

- 2. Since the date of your Order, this office has communicated with the Department of Public Works regarding the standards for public roads. From those conversations, it is apparent that the Department of Public Works has interpreted your Order so as to mandate construction of a 30 foot road in the right-of-way of Thornwood Road. I believe that your Order is intended to be read to deny a requested 10 foot paving width within the right-of-way, rather then mandate a 30 foot wide road. Clarification of the intent of your Order is requested.
- 3. Your Findings of Fact and Conclusions of Law are silent as to any reasons for denial of that portion of the Special Hearing request to permit private water and sewer connections in the right-of-way of Thornwood Road. Clarification of your decision is appropriate and perhaps additional testimony and evidence should be presented regarding the proposed connections and technical requirements for the same.

For all of these reasons, Petitioner kindly requests that you reset this matter for further proceedings so that testimony, evidence and argument can be offered.

Please do not hesitate to contact me should you have any questions in this regard. I would be pleased to coordinate calendars with Mr. Mister to arrive at a mutually agreeable date.

Very truly yours,

Lawrence E. Schmidt

LES: sf

CC: James Reilman

David F. Mister, Esquire

John Murphy - Avondale Road

From:

Eric Rockel

To:

Murphy, John

Date:

1/13/2006 11:17 AM

Subject:

Avondale Road

Jack, After further consideration of the situation concerning Thornewood Drive as access for the Avondale Road property, I have come to the following conclusion. Thornewood Drive should not be used as a private drive for access to the Avondale Road property. There are liability issues and the arguement that a private drive needs an easement approved by the Baltimore County Council as reasons for not allowing a private drive.

On the other hand, it would be permissable to allow a "below standards" public road within the right of way for Thornewood Drive, but I feel that several conditions would need to be placed on this approach. First, a Public Works Agreement and Road Agreement (RA) should be completed and security posted by the applicant. Secondly, normally on a "dead end" road a turn around needs to be constructed, and I don't remember if Ed Adams comments addressed the turn around issue.

I hope these thoughts help you answer the question.





John Murphy - Re: Avondale Road

From:

Eric Rockel

To:

Murphy, John

Date:

1/13/2006 11:49 AM

Subject:

Re: Avondale Road

Going back to the deed whereby the County obtained Thornewood Road, the deed reads that the property being conveyed is for "public highway purposes" and since it would not be used for that purpose, our office typically would react that the County Council would have to approve a different use and the County would have to grant the user an easement since the use is intended to be permanent in nature.

>>> John Murphy 1/13/2006 11:24 AM >>>

Eric:

Would you amplify your comment about the need for the Council to approve an easement? The protestant's attorney brought this up at my hearing but the attorney for the Petitioner denied that this is needed.

>>> Eric Rockel 1/13/2006 11:17 AM >>>

Jack, After further consideration of the situation concerning Thornewood Drive as access for the Avondale Road property, I have come to the following conclusion. Thornewood Drive should not be used as a private drive for access to the Avondale Road property. There are liability issues and the arguement that a private drive needs an easement approved by the Baltimore County Council as reasons for not allowing a private drive.

On the other hand, it would be permissable to allow a "below standards" public road within the right of way for Thornewood Drive, but I feel that several conditions would need to be placed on this approach. First, a Public Works Agreement and Road Agreement (RA) should be completed and security posted by the applicant. Secondly, normally on a "dead end" road a turn around needs to be constructed, and I don't remember if Ed Adams comments addressed the turn around issue.

I hope these thoughts help you answer the question.

LAW OFFICES MISTER, WINTER & BARTLETT, LLC SUITE 404-PADONIA CENTRE 30 H. PADONIA ROAD TIMONIUM, MD 21093

Finail: mwbiaw@ncoved.net (410) 561-3000 FACSIMILE (410) 550-0588

DAVID F. MISTER LESLIE A. WINTER ANTHONY T. BARTLETT AMY K. FINNERAN

OF COUNSEL: ANDREW H. VANCE ROBERT L. FRANK ELIZABETH C. YAREMA

WRITER'S EMAIL afinnetarydim wblaw nei

February 24, 2006

Councilman Joseph Bartenfelder 400 Washington Avenue Towson, MD 21204

Re:

Thornwood Road

Dear Councilman Bartenfelder:

Please be advised that we represent Melissa Malinowski and other individual Protestants regarding a Petition for Special Hearing filed by James Reilman of 9208 Avondale Road, seeking to construct a private driveway and private water and sewer connections on County owned land known as Thornwood Road. I have enclosed a copy of a Petition signed by twenty-four of your constituents who are in opposition to the Petition filed by James Reilman.

John Murphy, Deputy Zoning Director, denied Mr. Reilman's Fetition on January 17, 2006. Since that time, however, Mr. Reilman's attorney has filed for reconsideration of said

Enclosed is a copy of a letter sent to Edward Adams, Director of the Baltimore County Department of Public Works, setting forth the Protestants position in this matter. We hope that if need be, you will lend your support to the Protestants in this matter.

Thank you for your attention to this matter.

Very truly yours,

Amy K. Finneran

akf

Enclosure

cc: Melissa Malinowski

MISTER, WINTER & BARTLETT, LIC SUITE 404-PADONIA CENTRE 30 S. PADONIA ROAD TIMONIUM, MD 21093

DAVID F. MISTER
LESLIE A. WINTER
ANTHONY T. BARTLETT
AMY K. FINNERAN

(410) 561-3600 FACSIMILE (410) 560-0588

OF COUNSEL: ANDREW H. VANCE ROBERT L. FRANK ELIZABETH C. YAREMA

WRITER'S EMAIL

February 24, 20/)6

Edward Adams, Director
Baltimore County Department of Public Works
County Office Building, Suite 307
111 W. Chesapeake Avenue
Towson, MD 21204

Re:

Reilman/9208 Avandale Road Petition for Special Hearing

Dear Mr. Adams:

Please be advised that we represent Melissa Malinowski and other individual Protestants in the above referenced matter. On December 20, 2005 you sent a memo to Timothy Kotroco, Director of Permits and Development Management and indicated that unless there was significant community opposition to the waivers requested by James Reilman to allow paving and private water and sewer connections in the right-of-way of Thorn vood Road, that you would support the waiver under several conditions. Enclosed please find a petition signed by twenty-four residents of Avondale Road and East Avenue who oppose the waivers requested by James Reilman.

As you may know, on January 12, 2006 a hearing was held before John Murphy, Deputy Zoning Commissioner. On January 17, 2006, Mr. Murphy submitted his opinion on the matter and denied the waivers requested by the Petitioner. On February 14, 2006 Lawrence E. Schmidt, and denied the waivers requested by the Petitioner. On February 14, 2006 Lawrence E. Schmidt, and Order submitted a Motion for Reconsideration of the Findings of Fact and Conclusions of Law and Order issued by John Murphy, Deputy Zoning Commissioner. On February 20, 2006, we filled a Protestants' Response to the Motion for Reconsideration of the Findings of Fact and Conclusions of Law and Order.

The following is a summary of the issues presented by the Protestants in opposition to the requested waivers at the January 12, 2006 hearing and raised in my letter of February 20, 2006 to John Murphy.

The testimony presented during the Petitioner's case was such that the roadway was to be a private drive, to be accompanied by a private water and sewer line. The "private" aspect of the proposed construction of an undersized privately maintained roadway was supported by the fact that the road improvements will lead to only one private, residential dwelling without available

Mr. Edward Adams February 24, 2006 Page 2

public parking, storm water management and public maintenance.

The Protestants assert the position that the Petitioner's request is an inappropriate use of public land. The proposed driveway will not allow parking for anyone else located near it. Several Protestants testified regarding the lack of adequate parking on East Avenue which will be compounded by granting the Petitioner's waiver. Additionally, as the testimony revealed at the hearing, the proposed driveway will not have the appropriate storm we ter management or other amenities usually associated with a true public road way. Again, testingony at the hearing revealed an existing drainage problem in the right-of-way of Thornwood Road which would not be adequately resolved by the Petitioner's proposed driveway and like y would increase the storm water runoff in that area. While it may be a benefit to the County for the Petitioner to privately maintain this driveway, it will not be beneficial to the nearby residents, because the quality of the maintenance will not be the same as it would be for a publicly maintained road.

Lastly, as reiterated in Mr. Murphy's opinion, there are concerns regarding the destruction of mature oak trees that line the sides of this strip of land, as well as the disruption to the neighbors for the installation of this driveway and water and sewer connections.

While we cannot speak on behalf of all of the residents of the East Avenue, Avondale Road area, the Protestants opinion is that if the County decides that there is to be a right of way on Thornwood Road, then it should be constructed as a full public road with adequate parking available to all the residents and provide for the appropriate storm water management.

While Mr. Murphy was not clear about the reference to "significant community opposition", it is our position that the enclosed Petition signed by twenty-four residents as well as the testimony presented at the January 12, 2006 hearing constitutes such opposition. It should also be noted that no one, other than the Petitioner himself, appeared at the hearing in support of the requested waivers.

Very Truly Yours,

David F. Mister

Amy K. Finneran

akf Enclosure

C¢;

David L. Thomas, Assistant to the Director Timothy Kotroco, Director, Permits & Development Councilman Joseph Bartenfelder Lawrence E. Schmidt, Esquire Melissa Malinowski

BOARD OF APPEALS OF BALTIMORE COUNTY MINUTES OF DELIBERATION

IN THE MATTER OF:

JAMES REILMAN, L/O 9208 AVONDALE ROAD

06-289-SPH and 06-660-SPH

11TH E; 6TH C

DATE:

October 17, 2007

BOARD/PANEL

Edward W. Crizer, Jr., Chairman

Lawrence M. Stahl
Lawrence S. Wescott

RECORDED BY:

Linda B. Fliegel/Legal Secretary

PURPOSE:

To deliberate:

06-289-SPH

Hearing relief requested under Section 500.7 of the B.C.Z.R, to determine whether or not the Zoning Commissioner should approve a waiver from Section 32-4-405 of the Baltimore County Code, Development Regulations, to permit a paving width of 10' in lieu of the required 30' in the right-of-way of Thornwood Road, and from Section 32-4-410, of the Baltimore County Code, Development Regulations, to permit private water and sewer connections, for one lot, in the right-of-way of Thornwood Road.

06-660-SPH

Petition for Special Hearing for Waivers to the Development Regulations, Thornwood Drive.

- 1) A waiver, pursuant to Section 32-4-107, of the Baltimore County Code (BCC) of the requirements of Sections 32-4-404 and 32-4-405 of the BCC, to allow a public road with a paving width of 18 feet in lieu of the required 24 feet, for a proposed non-arterial and non-collector public road.
- 2) A waiver, pursuant to BCC Section 32-4-107, of the requirements of BCC Section 32-4-410, to permit privately maintained utilities (e.g., water and sewer), in the bed of the proposed public road.
- For such other and further relief as may be deemed necessary and/or appropriate by the Zoning Commissioner.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Petitioner owns a rather large piece of land and wishes to put an additional home on his property.
- Petitioner wishes to open Thornwood Road, which is considered to be a paper road, so it can be used for the purpose of a driveway.
- This road was part of a development plan but never opened.
- The Board referred to § 18-3-302 of the BCC, which states the criteria

9208

JAMES REILMAN, L/O AVONDALE ROAD 06-289-5PH and 06-660-5PH

necessary for opening a road.

The Board stated that not all of the criteria had been met by the Petitioner and that the hearing can not move forward without a petition for road opening.

DECISION BY BOARD MEMBERS: Although in Petitioner's brief it states that there is no requirement to open a road, there is nothing in the current County legislation that says it does not have to be followed by a deed or other legal instrument.

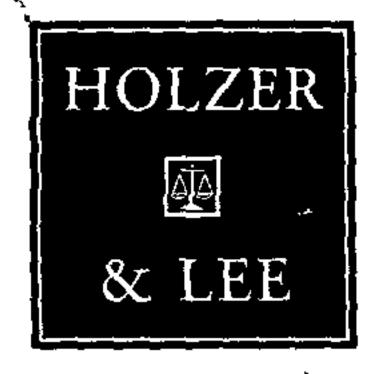
FINAL DECISION: After a thorough review of the facts, testimony, and law in the matter, the Board unanimously decided that this matter should be DISMISSED and that the Petitioner should go back and follow the appropriate County procedures to have this road opened.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted

Linda B. Fliegel

County Board of Appeals



Law Offices

J. CARROLL HOLZER, PA

J. HOWARD HOLZER 1907-1989

THOMAS J. LEE OF COUNSEL

THE 508 BUILDING

508 Fairmount Ave. Towson, MD 21286 (410) 825-6961 Fax: (410) 825-4923

January 14, 2008 #7647

HAND-DELIVERED

Mr. Edward C. Adams, Jr.
Director
Baltimore County
Department of Public Works
111 West Chesapeake Avenue
Towson, Maryland 21204

Mr. Timothy Kotroco, Director Permits & Development Management 111 Chesapeake Avenue Towson, Maryland 21204

RE:

James Reilman

9208 Avondale Road Special Hearing

Case No.:

06-289-SPH

and

Case No.:

06-660-SPH

Dear Messrs. Adams & Kotroco:

I represent the Protestants who were extremely concerned about the potential development of Thornwood Road. Two (2) cases were presented to the Office of the Zoning Commissioner of Baltimore County which I have attached hereto in which the Deputy Zoning Commissioner ruled that this paper road needed to be open formally pursuant to §18-3-302.

Mr. Edward C. Adams Mr. Timothy Kotroco January 14, 2008 Page two

The Board of Appeals confirmed that decision after the case was tried before them by the attached Minutes of Deliberation. Unfortunately, Mr. Reilman dismissed his request prior to the time that the Board issued a written decision. However, that does not alter the Board's decision of this contested case.

I have not been able to determine whether or not the County has approved in any way the construction of this road, even if it is to current County standards, without the necessary prerequisite as determined by the County Board of Appeals in these cases under §18-3-302.

I would appreciate your advice as to how and if Reilman will be permitted to construct this road without the necessary filings pursuant to the above Baltimore County Code Sections.

Attached is a letter from my client which raises an issue that there is some current activity in regard to this aspect of the road. I would appreciate your prompt response to this letter raising these issues.

Very truly yours,

J. Carroll Holzer

JCH:mlg

Enclosure

cc:

Mr. Donald Rascoe
Baltimore County Board of Appeals
The Honorable Vincent Gardina
County Councilman
The Honorable James T. Smith, Jr.
County Executive
Ms. Melissa Ullmann

3130 East Avenue Baltimore, MD 21234 January 13, 2008

J. Carroll Holzer, Esquire 508 Fairmount Avenue Towson, MD 21286

Mr. Holzer:

Over the past few weeks there has been activity on the county-owned property/paper road (Thornwood Road) that greatly concern myself and my neighbors. It seems as though Mr. Reilman is preparing to proceed with the driveway (or "road") construction without filing for a road opening.

On December 21st, Mr. Reilman, along with another gentleman, was assessing the trees located in both his backyard and the county property. Upon further inspection, I noticed that the aforementioned gentleman arrived in a van which advertised a tree removal business. Then, on January 9th, my father, Michael Malinowski (resident of 3127 East Avenue) came home to find two other men on both the county property and the property surrounding my home (3130 East Avenue). He spoke with the men and they stated that they were surveying the properties to evaluate the water runoff for the proposed road.

Ever since the Board of Appeals deliberation on October 17th, my father and I have been periodically calling the offices of Permits and Development Management and Land Acquisitions to determine if Mr. Reilman has filed for either a building permit or a road opening. On November 5th, December 7th, and January 9th we were told by both offices (haven spoken with Julie, Sandy, Tina, and Doug Swan from Permits and Development Management and Jeff and Ms. Bergman from Land Acquisitions) that neither application had been submitted.

It would appear that Mr. Reilman is ignoring the comments made by Commissioner Murphy in his decision regarding Special Hearing #06-660 and the final decision of the Board of Appeals referenced in their "Minutes of Deliberation." The residents of East Avenue are very anxious in light of the recent events. Please assist us in ensuring that the necessary Baltimore County offices are made aware of this troubling situation and advise us of any other possible courses of action we may pursue to make certain that Mr. Reilman follows the appropriate county procedures for a road opening.

Thank you for your time and consideration in this matter.

Sincerely,

Melissa J. Ullmann

Melessa J. allman

PLEASE PRINT CLEARLY

	2	
CASE NAME	CASE NUMBER	DATE

CITIZEN'S SIGN-IN SHEET

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CASE	CASE	DATE

ETITIONER'S SIGN-IN SHEET

E- MAIL	COASTACFICO AGG, COM		TOM @ THOMAS HOPEP, CON									
CITY, STATE, ZIP	MAKKULE, MD 21234	Balx 21202	TOWSON, MP. 21204									
ADDRESS	9208 AVONDACE RD	3/	406 W. PONDY VANIA AVE.									
NAME	THUIS REILMAN	1/2n C	THOURS J. HOFF			•						

PLEASE PRINT CLEARLY

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CASE NAME	CASE NUMBER	DATE

CITIZEN'S SIGN-IN SHEET

E-MAIL	Muster & mubleun							•						
STATE, ZIP	1		•		•									
CITY,	Mon	7										-		
SS	404, 30 E. Manha 10										-			
2	SUITE	414	0	_		-								
NAME	MISTER	MAN H. FAMERRA												

Exhibit A

IN RE: PETITION FOR SPECIAL HEARING
North Side of East Avenue, 298' West
Of centerline of Avondale Road
11th Election District
6th Councilmanic District
(9208 Avondale Road)

James Reilman

Petitioner

BEFORE THE

- DEPUTY ZONING COMMISSIONER
- * OF BALTIMORE COUNTY
- * CASE NO. 06-289-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing for the property located at 9208 Avondale Road in the eastern area of Baltimore County. The Petition was filed by James Reilman, Legal Owner. Special Hearing relief is requested pursuant under Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to determine whether or not the Zoning Commissioner should approve a waiver from Section 32-4-405 of the Baltimore County Code, Development Regulations, to permit a paving width of 10 ft. in lieu of the required 30 ft. in the right-of-way of Thornwood Road, and from Section 32-4-410, of the Baltimore County Code, Development Regulations, to permit private water and sewer connections, for one lot, in the right-of-way of Thornwood Road.

The property was posted with Notice of Hearing on December 28, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on December 27, 2005, to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 500.7 of the B.C.Z.R. Special Hearings

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all

zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Zoning Advisory Committee Comments

The Zoning Advisory Committee Comments are made part of the record of this case and contain the following highlights: ZAC comments were received by the Department of Public Works dated December 20, 2005, and the Office of Planning, dated January 4, 2006, copies of which are attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing relief was James Reilman, Petitioner, as well as Thomas Hoff from Thomas J. Hoff, Inc., who prepared the site plan. Sebastian Cross, Esquire represented the Petitioner. The following persons appeared at the hearing in opposition to the petition: David F. Mister, Esq., Amy K. Finneran, Esq., Deborah and Michael Malinowski, Melissa Malinowski, Mary Beth Janczak, Milagros Montalvo and Carol Wilson. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The subject property contains approximately 0.75 acres, is zoned DR 5.5 and DR 3.5 and improved by a single-family dwelling, the Petitioner's home. See Petitioner's Exhibit 1. The Petitioner's home fronts on Avondale Road. He has access to the garage behind his house by means of a common driveway between his home and the Thomas property to the south.

Mr. Cross indicated that the Petitioner would like to subdivide his property and build a second dwelling in the rear yard. Mr. Hoff indicated that the property area would support three

(3) or four (4) homes strictly by density standards, but there are wetlands and environmental constraints as shown on Petitioner's Exhibit I which limit the development to one more home.

This case arises because instead of creating a panhandle lot using the Petitioner's common driveway off Avondale Road, the rear of the Petitioner's property lies at the end of a County-owned strip of land approximately 40 feet wide by 110 feet long which intersects with East Avenue. The Petitioner would like to build a private driveway having 12 feet of paving from East Avenue to the proposed dwelling using this County-owned strip of land. County Public Works regulations require private roads to be paved 30 feet wide. In addition, the Petitioner would like to construct the private water and sewer lines to serve the new home connecting to the public facilities within East Road, again using this County-owned strip of land.

Mr. Cross asserts that the Petitioner has an absolute right to use this public property for this private road because the strip touches the Petitioner's rear yard. He argues that the Petitioner has an absolute right to build a full width (30 ft.) private road within the right-of-way without any waivers. However, as shown in Petitioner's photographs, Exhibit 2, photos one and three as well as Protestant's photograph, Exhibit 4, there are mature oak trees that line the sides of the County strip of land. Mr. Hoff opined that, if the full 30 foot paving were required by denying these waiver requests, many of these trees would have to be removed. The Petitioner would like to construct the driveway with 12 feet of paving. In addition, he noted that an additional 18 feet of paving would increase storm water runoff which the County may or may not require the Petitioner to control. Overall, there would be a net loss of environmental health if the full road width were required.

Mr. Cross indicated that the County strip of land was to be called Thornwood Drive and was intended in earlier times to connect the properties to the north to East Road. For whatever

reason, Thornwood Road was never constructed or dedicated to the County. The County however owns the strip of land, which was transferred to the County by deed in 1968 as an exaction for approval of a minor subdivision on East Road. He admitted that he has not yet secured the Department of Land Acquisition's approval of the use of the right-of-way for this private road. He denied that he needed any other government approval to build the driveway as proposed.

Mr. Hoff recognized that storm water flow across the Petitioner's back yard toward East Avenue but opined that the storm water runoff downstream of the Petitioner's property will not get any worse and will likely get better because of the construction of the new house and grading for the driveway to East Avenue. He also indicated that access for the new home from Avondale Road rather than to East Avenue might be difficult because the distance between the Petitioner's home and south property line was surely tight and may need to be varianced. Finally, he noted that the County would address issues such as landscaping at the minor subdivision review stage rather than at this stage.

The Protestants presented written objections to the Petitioner's requests (Protestants Exhibit 3) supplemented by Ms. Malinowski's testimony. She is an adjacent property owner who cuts the grass and maintains the County strip of land. She indicated that it was not fair to have the Petitioner benefit from the sale of the new house financially only to place the burden of dealing with the traffic, storm water runoff and parking problems generated by this driveway on the residents of East Avenue. She indicated that if the Petitioner wants to build another house in his rear yard, the traffic to and from the house should go to Avondale Road through his driveway next to his home. She presented a petition signed by owners and tenants of East Avenue opposing the requested relief as shown in Protestants Exhibit 2. She and other neighbors

described the existing parking problems on East Avenue as well as the sanitary sewer problems, which occur during heavy rains. She opined that these would only worsen if the requests were granted.

Findings of Fact and Conclusions of Law

Taking the Petitioner's case as presented, the Petitioner has the absolute right to construct a private driveway on the County strip of land. It is only a question as to how wide the paving will have to be. If this were the case, surely it would be better from an environmental standpoint to accept the Petitioner's reasoning and grant the requests.

However, I am troubled by the underlying assumption that the Petitioner has such an absolute right to use County property for this private driveway. I understand that the strip of land was obtained as an exaction of a minor subdivision presumably in the event the County wanted to give lots to the north access to East Avenue at some future date. As it turned out, this was not necessary and Thornton Road was never built or dedicated to the County.

It would be one thing if there were some lonely land locked lot to the north of the strip of land that only Thornton Road could provide access to the public road. However, there is no such lot at present. The Petitioner seeks to create such a lot herein after called the "rear lot".

However, this rear lot is not landlocked. Obviously, the Petitioner can create a panhandle lot with access to Avondale Road by means of a driveway next to his home. I am not saying that the driveway so created would or would not need a variance. Mr. Hoff did not know if this was needed nor do I. But the access via Avondale may well be available. Even if the rear lot were already in existence, since it is carved out of the subject lot, it would trigger an easement for access to the public road through the front lot by prescription.

I also do not accept the Petitioner's assertion that no government agency other than Land Acquisition would need to approve the driveway on public property. It seems to me that Thornton Road was intended to be a public road not a private road and that the county would have to grant an easement to improve the public property with a permanent driveway. I have no idea as to whether the Administration and perhaps the County Council would support such an easement, which brings up the off debated issue of conditional approval. It is clear in my view that the Code and regulations allow this Commission to grant zoning relief subject to conditions such as hours of operation, compliance with ZAC comments, etc. It is hotly debated whether this Commission may grant conditional zoning relief, that is, approval conditioned on approval of another government agency. We have always treated this issue on a case by case basis but where the road to approval by the second government agency looks long and problematic, we have denied such approval.

Finally, the Protestants have a strong case in fairness. The burden of putting up with a new neighbor behind the Protestants homes falls not on the Petitioner but on the Protestants if the requested relief is granted. I am not saying that one new home will be the straw that overwhelms the capacity of the sanitary sewer system. I concede the traffic generated by one home is not great. But there is some traffic, some storm water run off, some noise and the like that is different from the Petitioner using his backyard for a barbecue.

There is no specified standard or checklist in Section 500.7 of the B.C.Z.R. The standards traditionally applied are reasonableness, spirit and intent of the regulations and adverse impact on the community. Considering the testimony and evidence presented and these criteria, I will deny the requested relief.

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' request for special hearing should be denied.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore

County, this ______ day of January 2006, that the Petitioner's request for special hearing relief

filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to

determine whether or not the Zoning Commissioner should approve a waiver from Section 32-4-

405 of the Baltimore County Code, Development Regulations, to permit a paving width of 10 ft.

in lieu of the required 30 ft. in the right-of-way of Thornwood Road, is hereby DENIED.

IT IS FURTHER ORDERED that the request for special hearing relief filed pursuant to

Section 500.7 of the B.C.Z.R. from Section 32-4-410, of the Baltimore County Code,

Development Regulations, to permit private water and sewer connections, for one lot, in the

right-of-way of Thornwood Road, be and is hereby DENIED.

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

OHN V MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:dlw

7

IN RE: PETITION FOR SPECIAL HEARING
North Side of East Avenue, 298' West
Of Centerline of Avondale Road
11th Election District
6th Councilmanic District
(9208 Avondale Road)

James Reilman
Petitioner

BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* CASE NO. 06-289-SPH

ORDER ON MOTION FOR RECONSIDERATION

This matter comes before this Deputy Zoning Commissioner as a Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire, Co-Counsel for Petitioner.

Original Case

The Petitioner, James Reilman, originally filed a Special Hearing for property located at 9208 Avondale Road in Baltimore County. The relief was requested, pursuant to Section 500.7 the Baltimore County Zoning Regulations (B.C.Z.R.), to determine whether or not the Zoning Commissioner should approve a waiver from Section 32-4-405 of the Baltimore County Code, Development Regulations, to permit a paving width of 10 feet in lieu of the required 30 feet in the right-of-way of Thornwood Road, and from Section 32-4-410, of the Baltimore County Code, Development Regulations, to permit private water and sewer connections, for one lot, in the right-of-way of Thornwood Road.

Motion for Reconsideration

On February 14, 2006, Mr. Schmidt filed a timely Motion for Reconsideration of this Deputy Zoning Commissioner's Order dated January 17, 2006. Mr. Schmidt opined that the proposed road improvements are intended to be constructed as a public, not private road and in view of the fact that the county owns the property over which the road will be constructed, the Petitioner believes that he has the absolute right to construct the road. He requested to reconvene

the hearing so that testimony from a representative from the Department of Public Works should be entertained. He also indicated that the Order requires clarification based on his communications with the Department of Public Works regarding the standards for public roads. Finally, he noted that the Findings of Fact were silent as to reasons for denial for the portion of the Special Hearing request to permit private water and sewer connections in the right-of-way of Thornwood Road.

On February 20, 2006, Ms. Finneran, Co-Counsel for the protestants, responded to the Petitioner's Motion for Reconsideration indicating that the proposed construction of an undersized privately maintained roadway as a private road was correctly interpreted, and that a second hearing should not be scheduled for a representative from the Department of Public Works. Also, she reiterated that the requested waiver of a 30-foot wide road should be denied. Finally, she opined that although specific reasons for the denial of the private and sewer connections were not provided, it is a reasonable inference from reading the opinion that the denial was a direct result of the construction of the private road way.

Findings of Fact and Conclusions of Law

After reviewing the evidence in the case, the Petitioner's Motion for Reconsideration and protestant's Response, I see no reason to reopen the hearing to allow additional evidence. The case was fully contested with excellent presentations by both sides. I also will deny the Petitioner's request and clarify my reasons for this decision as below.

Notwithstanding Mr. Schmidt's assertions otherwise, it was clear to me that the Petitioner proposed to build a private road although this was not explicitly stated in the first request in the Petition. All the testimony in the case by the Petitioner's and reaction thereto by the protestants indicated that the Petitioner's wanted to build a 10 foot wide private road from East Avenue to the rear of the Petitioner's property over County owned property which the Petitioner designated as "Thornwood Road" on Exhibit 1. Thirty (30) feet of paving is required by the regulations.

The Petition also requested a waiver from Section 32-4-410, of the Baltimore County Code, Development Regulations, to permit <u>private</u> water and sewer connections, for one lot, in the right-of-way of Thornwood Road. (Emphasis supplied) I believe that the word "private" indicated again the Petitioner's proposed a private road. No one suggested at the hearing that the request was for connection to some off-site private septic and/or sewer system. Petitioner's Exhibit 1 clearly shows the water and sewer lines in the proposed roadbed connecting to the public systems. So in my mind the only thing private about the water and sewer connection was that they were located in the private road.

At the hearing, the protestants opposed the request for a private road demanding a public road be built because the public road would have all the parking, storm drain and water management systems which they cited as major problems in the neighborhood. The Petitioner understandably does not want to pay for these expensive features for only one lot. In fact, the strip of land, which the Petitioner calls Thornwood Road, has never been built as a road or dedicated to the County as a road. The County simply owns it. I do not believe and so find that the Petitioner does not have a right to build a private road and utilities on public land in these circumstances.

After reviewing the evidence and arguments of counsel, I come to the conclusion that granting these waivers and/or allowing the utilities in the proposed private road would adversely affect the neighborhood. There will be additional noise, traffic, runoff, construction and disruption from the private road and/or utilities connecting the new home to East Avenue as proposed. This additional burden will be borne by the protestants if the waivers are granted and the private road built. The rear lot is not landlocked but can be accessed for vehicles and utilities from Avondale Road albeit by a driveway which passes by the Petitioner's home. The

Petitioner would be then affected by the additional traffic, noise and the like instead of the protestants. Public water and sewer connections can be made to facilities in Avondale Road. So there is no need to use this County owned strip for these utilities.

After due consideration of the arguments by Counsel and a further review of my Opinion and Order, I am not persuaded to grant the Motion.

THEREFORE, IT IS ORDERED, this _____ day of April, 2006, by this Deputy Zoning Commissioner, that the Motion for Reconsideration is hereby DENIED.

Any appeal of this decision shall be made within thirty days of the date of this Order.

JOHN V. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:dlw_

c. Lawrence E. Schmidt, Esquire, Gildea & Schmidt, LLC, 300 East Lombard Street, Suite 1440, Baltimore, MD 21202

David F. Mister, Esquire, & Amy K. Finneran, Esquire, 30 E. Padonia Road, Suite 404, Timonium, MD 21093

James Reilman, 9208 Avondale Road, Baltimore, MD 21234

Thomas J. Hoff, 406 West Pennsylvania Avenue, Towson, MD 21204

Deborah and Michael Malinowski, 3127 East Avenue, Baltimore, MD 21234

Melissa Malinoski, 3130 East Avenue, Baltimore, MD 21234

Mary Beth Janczak, 3134 East Avenue, Baltimore, MD 21234

Milagros Montalvo & Carol Wilson, 3129 East Avenue, Baltimore, MD 21234

People's Counsel; Case File

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

DATE:

January 11, 2008

TO:

Timothy Kotroco, Director

Permits & Development Management

FROM:

Linda B. Fliegel

Board of Appeals

SUBJECT:

CLOSED APPEAL CASE FILES/CASES DISMISSED

NAME 2004	CASE NUMBER	DATE OF ORDER OF DISMISSAL
ERIC DOTT PROPERTY/PDM XI-964	04-027-M	MAY 29, 2007
2006		
GEMCRAFT HOMES	CBA-06-022	SEPT. 26, 2007
2200 ROLLING ROAD	CBA-06-029	OCT. 31, 2007
TERRY WILLIAMS	CBA-06-012	OCT. 11, 2006
TERRY WILLIAMS	CBA-06-036	OCT. 11, 2006
TREAVOR & KELLY WELLS	04-343-X-and 06-073-X	SEPT. 27, 2007
JAMES REILMAN	06-029-SPH	OCT. 18, 2007
JAMES REILMAN	06-660-SPH	OCT. 18, 2007
BENHOFF BUILDERS, INC.	06-257-A	MAY 31, 2007
FRANCIS & PHYLLIS COPPERSMITH	06-676-SPH	NOV. 7, 2007
2007	`	
CHARLESTOWN - DRC	CBA-07-106	SEPT. 7, 2007
RUN CROSSING	CBA-07-121	JULY 27, 2007
FULLERTON FEDERAL SAVINGS	CBA-07-127	OCT. 2, 2007
ANGELA L. SIDBURY	07-111-SPHA	SEPT. 26, 2007
WINDSOR CONDOMINIUM-PERRY HALL	07-113-SPH	AUG. 31, 2007
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ZONING HEARING FILE INTERNAL CHECKLIST Zoning Case No. 06-289 SPH

Date Completed/Initials	
	PREPARE HEARING FILE (put case number on all papers; hole punch and place appropriately; put label and case number on folder; complete information on stamp on front of folder)
	DETERMINE HEARING DATE (schedule within 45 days of filing; post and advertise at least 15 days prior to hearing)
	TYPE HEARING NOTICE AND ADVERTISING NOTICE (type according to sample, taking billing information for advertising from advertising form in file; make appropriate copies; mail original and copies of hearing notice; place original advertising notice in Patuxent's box; file copies of both notices in hearing file; update ZAC in computer for hearing date, time and place)
1006	UPDATE ZONING COMMISSIONER'S HEARING CALENDAR (keep original in "red" folder; mail copy to zoning commissioner's office)
- Volling	COMPLETE FILE (write hearing date, time, and room on front of hearing folder; file in numerical order in cabinet next to copier until it is pulled for sending to zoning commissioner's office)
	POSTPONEMENTS (type postponement letter; make appropriate copies; mail original and copies; send copy to zoning commissioner; file copy in hearing file; update hearing calendar and ZAC in computer)
	RESCHEDULING (determine hearing date; type letter confirming new date; make appropriate copies; mail original and copies; file copy in hearing file; update hearing calendar and ZAC in computer; refile hearing folder)
	INDEX CARDS (prepare index cards, according to sample; file cards in cabinet)
	ADVERTISING/POSTING CERTIFICATES (check off on front of hearing file; put certificates in file)
	COMMENTS (check off agency comments received on front of hearing file; make copies; type comments letter; mail original to petitioner; file copy in hearing file)
	FILES TO ZONING COMMISSIONER'S OFFICE (pull the files for the following week every Friday and administrative files on Tuesday; verify that checklist on front of hearing file has been completed; secure all papers under clips in file; send files for hearings to zoning commissioner's office by noon on Friday and files for administrative on Tuesday morning)

PETITION IN OPPOSITION TO ZONING WAIVER FILED BY JAMES P. REILMAN FOR WAIVER TO ALLOW PAVED, PRIVATE DRIVEWAYAND FOR WATER AND SEWER CONNECTION IN THE RIGHT OF WAY OF THORNWOOD ROAD

We the undersigned residents of East Avenue, Avondale Road neighborhoods, being aggrieved thereby, are in opposition to the zoning petition filed by James P. Reilman for a waver to allow a paved, private driveway and for water and sewer connections in the right of way of Thornwood Road and hereby request that the Baltimore County Zoning Commissioner deny the Petition filed by James P. Reilman, as contrary to the interests and desires of the community residents on January 12, 2006.

Opponent Name

1. Melissa of Malinoustice
2. Michael Malinister
3. Deboah J. Malinouski
4. Casa & A. A. D.
5. alice R. Marie
6. Jan.C. Montesterf.
7. La cuffy Hooperfr.
8. Theresa C. Honford
9. Francis E. Davidson
10. Delen Sphingen
10. Delen Sphinster
12. Taron Mariga
13. Lewi. Marion
14. Lou Hill

Address

3130 East Ave.
3127 Cast Ave.
3127 Cast Ave.
3129 Eagh allelled

3131 East Ave.
3131 East Ave.
9200 Avondate Road.
9200 Avondate Road.
9202 Avondate Road.
92184 Aven Dule Road.
9218 A Avondate Road.
9218 A Avondate Road.
9218 A Avondate Road.

Dro #2

Opponent Name

15. Hilda Suthard

16. Katorya Showell

17. Nancy Jean Rossey

18. Mary Jean Rossey

20. Land Jamesak

21. Mary Both Jamesak

22. Daniel & Nuscoll

23. Explain Driscoll

24. Milagros Montalvo

25.

26.

27.

28.

<u>Address</u>

9202 avondale Rood

3132 East Ave.

3045 East Ave.

3045 East Ave.

3130 East Ave.

1 Und ex 3c (to aner 4 7)

3134 East Ave.

3128 East Ave, 3128 East Auc

Re: Community opposition to 10 foot private driveway on Thornewood Drive

- Private driveway on county-owned property (future legal issues/confusion)
- Public land benefitting only one resident in the community
- Adverse effect on property values
- Decrease in parking availability on East Avenue (already congested)
- Water runoff currently collects in proposed area and surrounding properties (driveway would decrease available porous surfaces and increase swamplike conditions)
- Overworked storm drains adversely affect sewer lines causing flooding and waste backups in 3127 East Avenue; additional runoff would exacerbate existing issues; Primarily affects 3127 East Avenue; however, on occasion other residences have been affected
- Concerned about construction traffic/congestion
- Increase in noise and lights during construction and after completion of proposed developed property
- Destruction of trees (mature trees border 3130 East Avenue and Thornewood Drive)
- Concerns with destruction of surrounding private property (proposed waterline and driveway position are in exceptionally close proximity to the property line of 3130 East Avenue)
- Had previously inquired about acquisition/purchase of county property and told that it was not available and could not be re-zoned
- Thornewood Drive property has been maintained by current and previous residents of 3130 and 3128 East Avenue (maintained by 3130 East Avenue since June 2000)

Protect 2





PHOTO

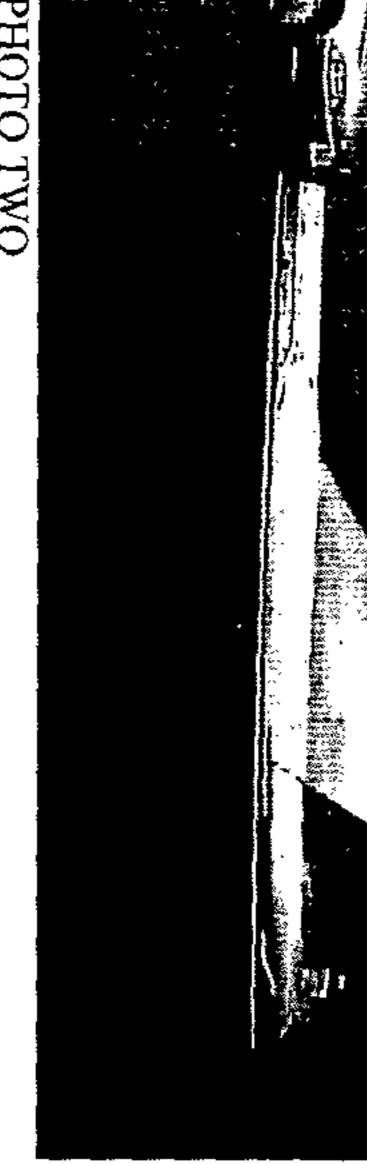


PHOTO FOUR

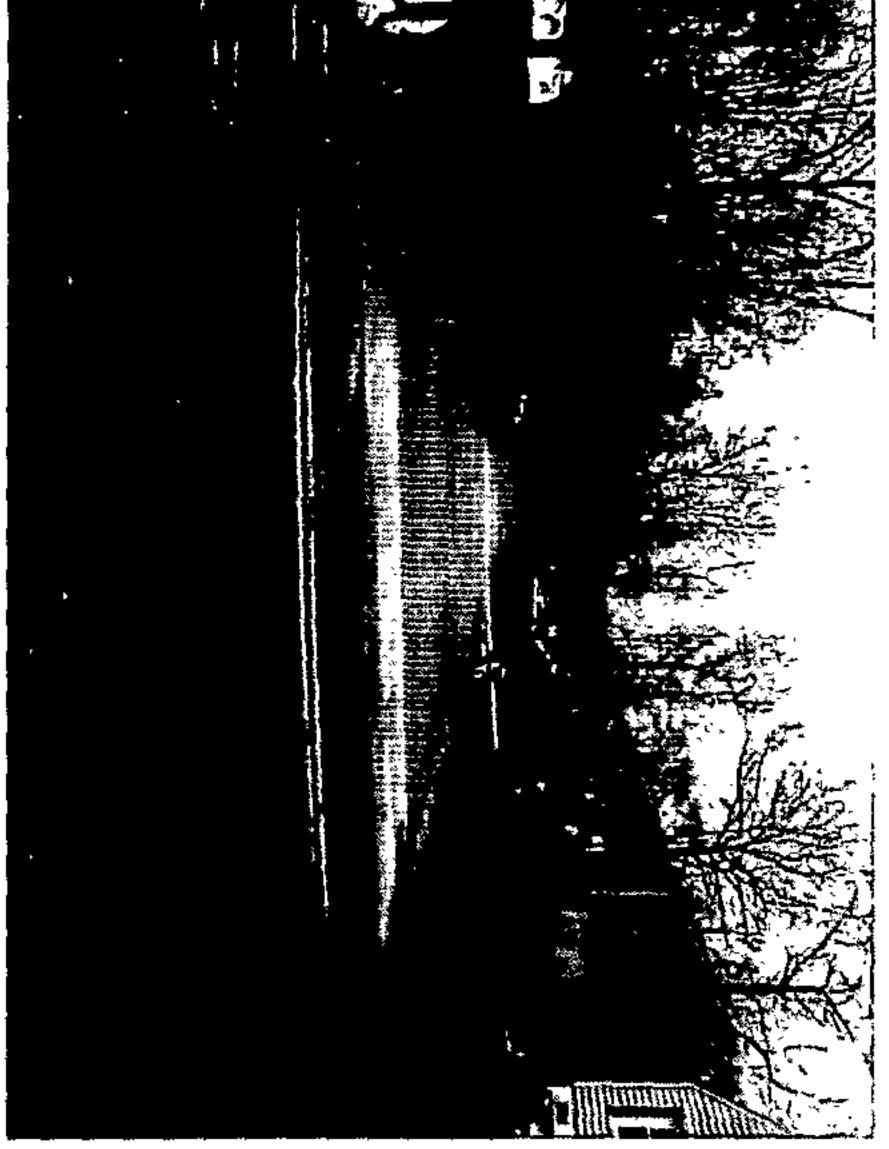
PHOTO THREE



PETITIONER'S EXHIBIT



PHOTO SIX



64 X

9208 Avondaile Rel



JAMES REILMAN 06-289-SPH

PHOTOGRAPHS





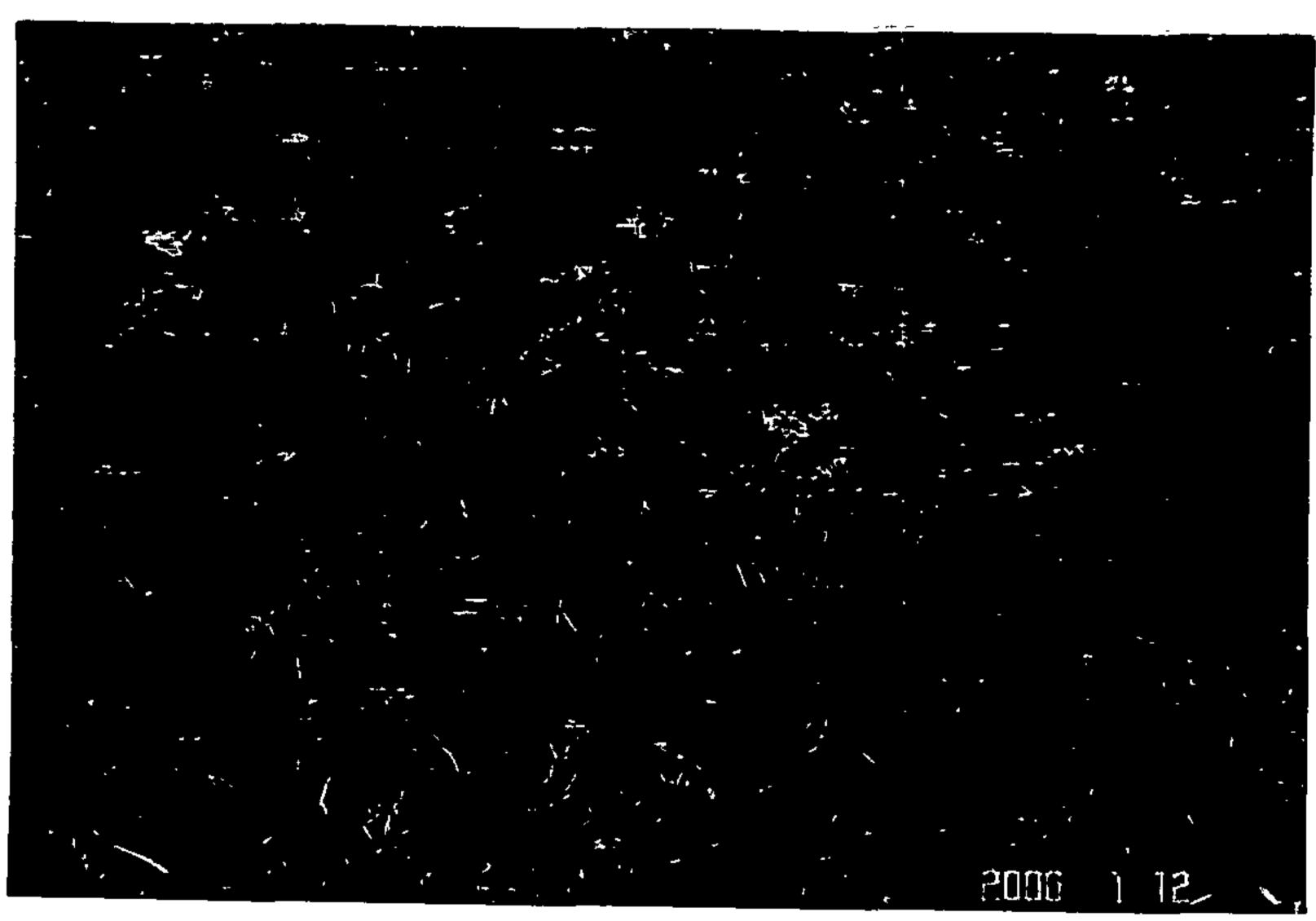










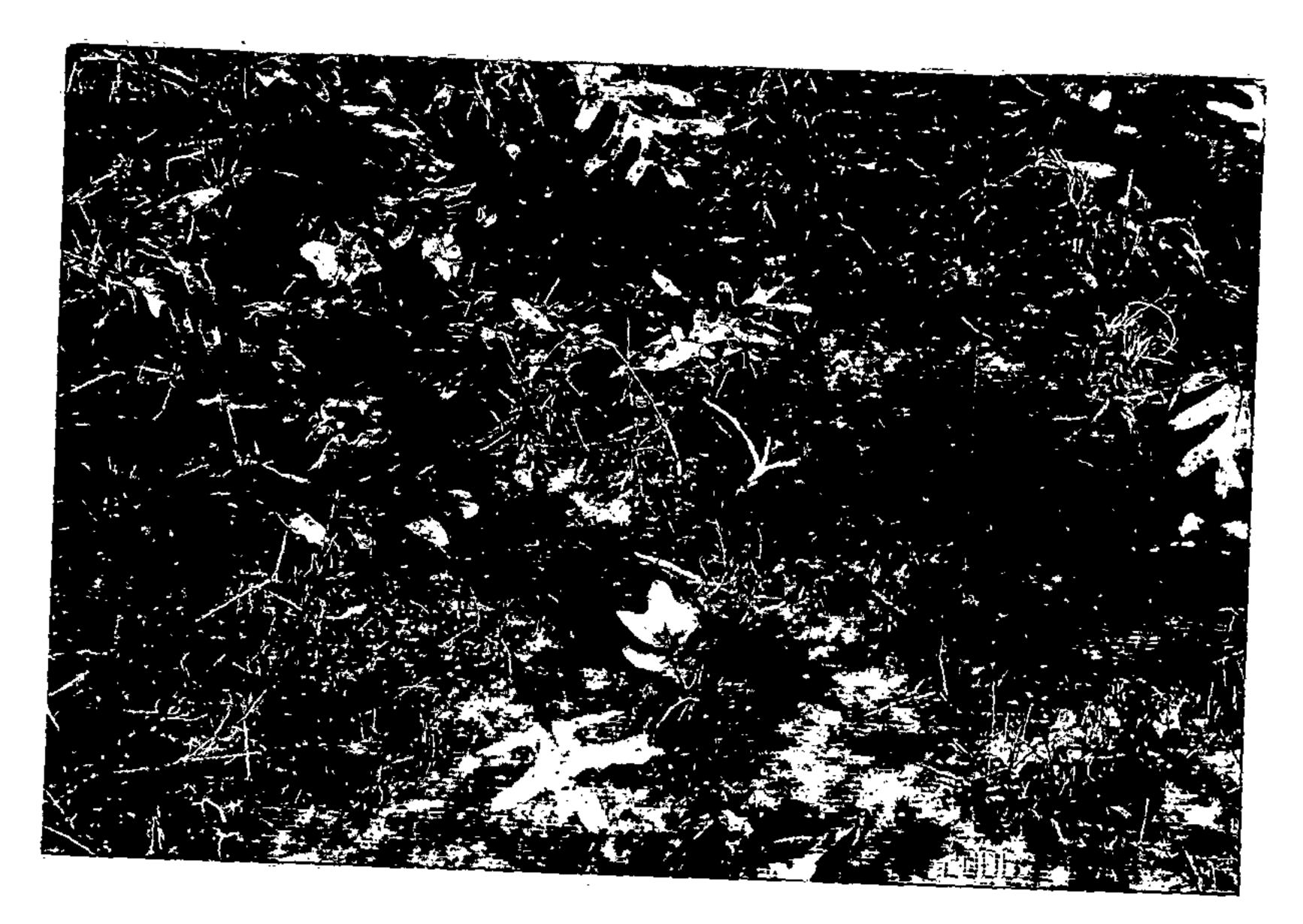




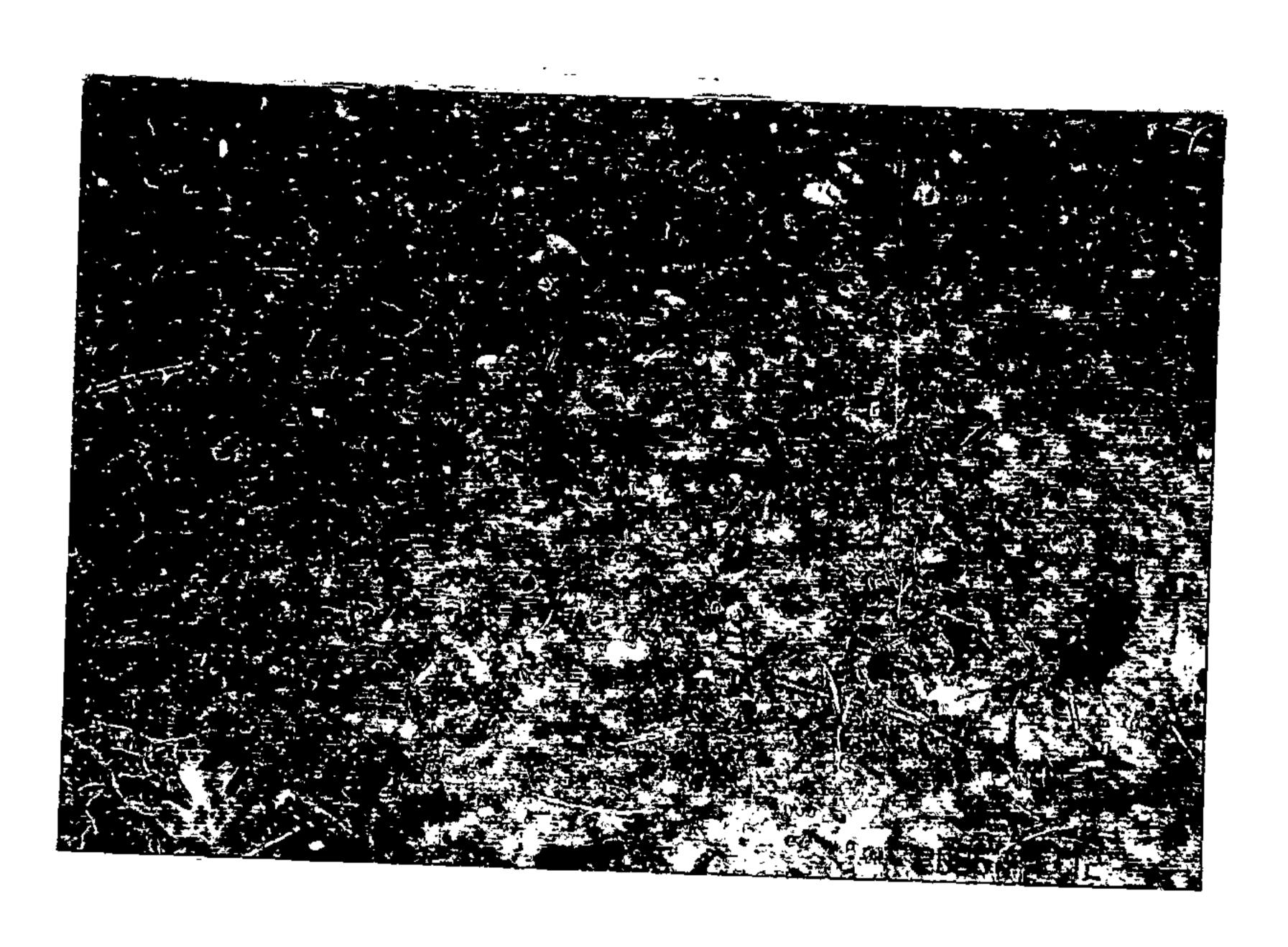






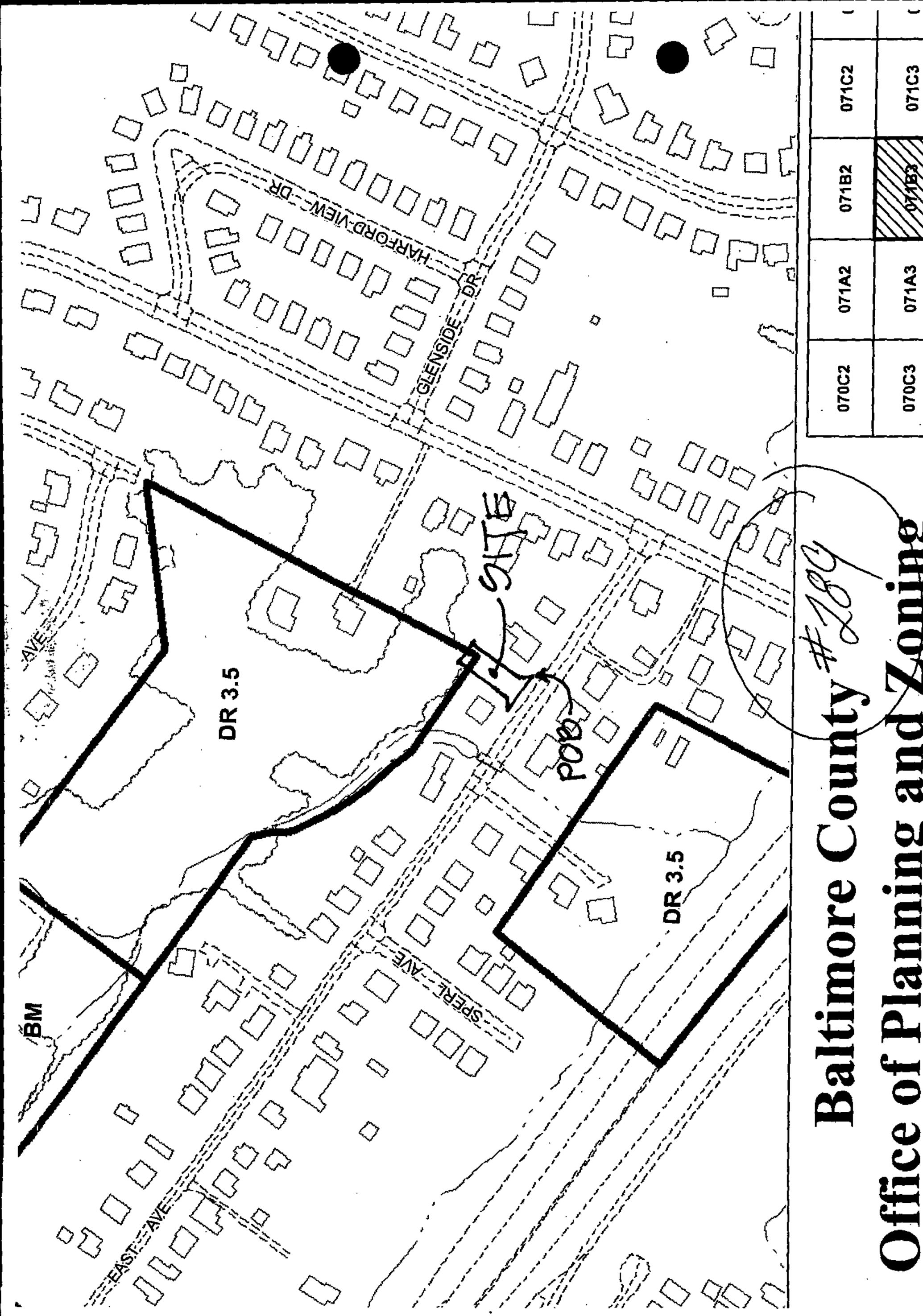






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