3/1/06

IN RE: PETITION FOR SPECIAL HEARING
East Side of Middletown Road, 1006'
SE of centerline of Keeney Mill Road
6th Election District
3rd Councilmanic District
(20315 Middletown Road)

Niels Braid
Legal Owner/Petitioner

* BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* CASE NO. 06-332-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 20315 Middletown Road in the Freeland area of Baltimore County. The Petition was filed by Niels Braid, 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 32-4-409 (b) (2) of the Baltimore County Code (BCC), to permit the creation of panhandle in-fee strips of 6 feet in width in lieu of the required minimum 10 feet in width where three (3) or more lots are involved.

The property was posted with Notice of Hearing on February 1, 2006, 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 January 31, 2006, to notify any interested persons of the scheduled hearing date.

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By

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: None.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing were Niels Braid, Petitioner, as well as Guy C. Ward, from McKee & Associates, Inc., who prepared the site plan. Howard Alderman, Esq. represented the Petitioner. There were no Protestants or citizens at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

This case involves the further subdivision of Lot 18 of the Keeney Mill Woods subdivision. The property now contains 8.7 acres zoned RC.2. The property is improved by a single-family dwelling and several accessory structures. The Petitioner proposes to further subdivide the lot creating a new child lot of two (2) acres leaving the second lot with 6.7 acres. However, to succeed in this subdivision the Petitioner requests a waiver from Section 32-4-409 (b) (2) of the Baltimore County Code (BCC), to allow a 6 foot wide in-fee strip to Middletown Road from the new lot in lieu of the 10 foot wide requirement. See Petitioner's Exhibit 1, the Plat to Accompany for configuration of the further subdivision.

Mr. Alderman proffered that the Petitioner previously applied to the Director of Planning for such a waiver under section 32-4-409 (k) but that the Director denied the request indicating that there were other property owners using the driveway so it would be more appropriate to

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have a public hearing on the issue. See Letter from Arnold F. 'Pat' Keller, III dated October 20, 2005, Exhibit 2. Mr. Alderman noted that the Lijewski family also uses the common driveway as shown on Exhibit 1 but that they do not object to this request as indicated by their absence at the hearing.

Mr. Alderman indicated that the Keeney Mill Subdivision was developed under the RDP zoning regulations, which had a one-acre minimum lot size and recorded in 1976. As a 75-acre tract, 75 homes would have been allowed but Keeney Mill was divided into only 20 lots. Each lot became a lot of record prior to the imposition of the RC 2 regulations on this property and as such he opined that this 8-acre tract could be subdivided into two (2) lots. In support thereof he presented two (2) deeds, Exhibits 3 and 4, which showed the Braid family has held this property in tact since 1978. He noted that under the RDP regulations the Petitioner could have requested eight (8) lots but acknowledge the RC 2 regulations apply in this case. Finally, he presented a Declaration dated January 5, 1977 by which all lots in this subdivision were restricted by private covenants so that no further subdivision of any lot could take place. However, he pointed out paragraph 9, which showed this limitation against further subdivision expired in 1996 so that all of the lot owners in the subdivision are able to further subdivide.

Finally, he opined that granting this request would in fact change nothing as to the common driveway other than adding a few trips per day. There would be no widening of the paved portion of the driveway. Thus, the request would not be detrimental to the health, safety or welfare of the community. He briefly reviewed the criteria of Section 502.1 of the B.C.Z.R., which gives a checklist of factors which are often considered in special hearing cases. He opined that this request would not violate any criteria under this section and that the new lot would meet all of today's (RC 2) regulations so that he was not making a vesting argument under the RDP

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regulations. He noted that newly introduced Council Bill 24-06 (not yet passed at this writing) would require this Petitioner to do exactly what the Petitioner agreed to do in this case, that is, abide by current regulations.

Findings of Fact and Conclusions of Law

I want to note at the outset that whatever decision is made by this Commission in regard to the requested zoning relief, I have no jurisdiction to decide if the proposed addition of a lot and single family dwelling violates the real property rights that others who have a right to use the driveway may have. The additional single family dwelling on the lot will impose some additional traffic on the driveway, which will undoubtedly affect maintenance and use of the driveway by others. This additional burden on the driveway may well be agreeable to all as Mr. Alderman indicated given the fact that no protestants attended the hearing. All I can say is that this added burden to real property would be an issue for the Circuit Court, if there is some objection, and not for this Commission.

Having noted this caveat, I will grant the requested zoning relief as I find that the request will not adversely affect the community and is within the spirit and intent of the RC 2 regulations. Obviously this is not a farm or farming area which RC 2 was designed to protect. This is an existing subdivision on which the Council imposed RC 2 at a later date. The lots are lots of record prior to imposition of RC 2 on the area. So, the spirit and intent is simply that the RC 2 (and not RDP) height and area regulations apply with which this request fully complies.

In addition, the actual driveway will not change although some additional traffic will be generated by the new home. The new lot will have to meet all current regulations including perc and well requirements. I have no reason to believe this request will adversely affect the community.

Date 3-1-06
By

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 granted.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 1st day of March, 2006, that the Petitioner's request for 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 32-4-409 (b) (2) of the Baltimore County Code (BCC), to permit the creation of panhandle in-fee strips of 6 feet in width in lieu of the required minimum 10 feet in width where three (3) or more lots are involved, is hereby APPROVED.

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

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:dlw

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Date 3-1-06
By

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

February 28, 2006

Howard L. Alderman, Jr., Esquire
Levin & Gann, PA
502 Washington Avenue, 8th Floor
Towson, Maryland 21204

Re: Petition for Special Hearing
Case No. 06-332-SPH
Property: 20315 Middletown Road

Dear Mr. Alderman:

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

John V. Murphy
Deputy Zoning Commissioner

JVM:dlw
Enclosure

c: Niels Braid, 20315 Middletown Road, Freeland, MD 21053
Guy C. Ward, McKee & Associates, Inc., 5 Shawan Road, Suite 1,
Cockeysville, MD 21030
People's Counsel; Case File

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

DIRECT DIAL
410-321-4640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION

NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
TELEFAX 410-296-2801

ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

January 19, 2007

HAND DELIVERED
Ms. Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
400 Washington Avenue, Suite 49
Towson, Maryland 21204

RE: *Niels H. Braid*
20315 Middletown Road
Case No. 06-332-SPH
Petitioner's Post-Hearing Memorandum

Dear Ms. Bianco:

In accordance with the direction received from the Board at the conclusion of the hearing on the above-referenced matter, I am pleased to provide to the Board an original and three (3) copies of the *Petitioner's Post-Hearing Memorandum*. Should you or any member of the Board desire additional information or additional copies, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosures (4)
c (w/one encl.): Mr. Niels H. Braid
Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Mr. Guy C. Ward

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BOARD OF APPEALS

followed on July 17, 2005. Protestants raised a number of objections to the development plan relating to density use, vesting rights, and concerns regarding lighting, street signage, and the existence of scenic roads.

On June 28, 2005, the proposed Development Plan was approved by the Hearing Officer with the provision that the property owner would not be required to install certain streetlights. On July 26, 2005, the People's Counsel for Baltimore County filed a letter requesting that the Hearing Officer reconsider the approval of the Development Plan in question. On behalf of James Constable and Ruth B. Mascari, J. Carroll Holzer filed a letter adopting the Reconsideration request filed by People's Counsel. The Property Owner filed a Response on August 8, 2005, and the Hearing Officer denied the Motion for Reconsideration on August 15, 2005.

People's Counsel appealed the decision of the Hearing Officer to the Baltimore County Board of Appeals (CBA) on September 9, 2005. On September 13, 2005, J. Carroll Holzer filed an Appeal adopting the Petition and Memorandum filed by People's Counsel. Thus, the Appellants in this case are comprised of the Manor Conservancy, Inc., James Constable and Ruth B. Mascari individually, and the People's Counsel for Baltimore County.

The CBA conducted a hearing on December 15, 2005. After deliberation, the CBA issued an Opinion and Order on January 25, 2006. The Opinion affirmed the decision of the Hearing Officer to deny the Motion for Reconsideration and approve the red-lined development plan subject to the same condition imposed by the Hearing Officer. On February 15, 2006, People's Counsel filed a Petition for Judicial Review, which was adopted by the Manor Conservancy on May 19, 2006. The Developers filed a Response to the Petition for Judicial Review on March 9, 2006.

A hearing was held before this Court on October 12, 2006. Peter M. Zimmerman, J. Carroll Holzer, and Carole S. Demilio represented the Appellants, and G. Scott Barhight represented the Appellees. Mr. Zimmerman presented the majority of the oral argument for the Appellants and Mr. Holzer added an explanation of the practical application of the decision if the Court were to affirm the ruling of the CBA. The primary issue on appeal is whether the CBA erred as a matter of law when it affirmed the decision of the Hearing Officer approving a development plan to subdivide each of three recorded lots in an R.C.2 zone of northern Baltimore County.

Scope of Review

The scope of review for a Circuit Court reviewing the decision of an administrative agency is narrow, recognizing that the agency has expertise in a particular area and ordinarily should be free to exercise its discretion as such. *Annapolis v. Annap. Waterfront Co.*, 284 Md. 383, 395, 396 A.2d 1080 (1979), *citing Finney v. Halle*, 241 Md. 224, 216 A.2d 530 (1966). The court's statutory role upon review of an agency decision extends little beyond its inherent power to prevent illegal, unreasonable, arbitrary, or capricious administrative actions. *Hartford Mem. Hosp. v. Health Servs. Cost Review Comm'n*, 44 Md. App. 489, 410 A.2d 22 (1980). The court reviewing a final decision of an administrative agency determines only the legality of the decision and whether there was substantial evidence from the record to support the decision. *Dep't of Labor v. Woodie*, 128 Md. App. 398, 406, 738 A.2d 334 (1999); *Board of Education v. Paynter*, 303 Md. 22, 35, 491 A.2d 1186 (1985). An order of an administrative agency must be upheld on judicial review if it is not based upon an erroneous determination of law, and if the agency's conclusions reasonably may be based upon the facts proven; however, a reviewing court is under no constraints in reversing an administrative decision that is premised solely upon

an erroneous conclusion of law. *Montgomery County v. Buckman*, 333 Md. 516, 636 A.2d 448 (1994).

In determining whether the record supports an agency's decision, "substantial evidence" is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Caucus Distributors, Inc. v. Maryland Securities Commissioner*, 320 Md. 313, 323-24, 577 A.2d 783 (1990). In applying the substantial evidence test, the court must not substitute its own judgment for the expertise of the administrative agency. *Maryland State Police v. Lindsay*, 309 Md. 557, 563, 525 A.2d 1051 (1987). In the absence of fraud, agency decisions supported by the record are presumed valid. *Woodie*, 128 Md. App. at 406. The administrative agency's decision is considered *prima facie* correct, and the Circuit Court must view the decision in the light most favorable to the agency. *Lindsay*, 309 Md. at 563.

Discussion

Prior to considering the legal issues that were addressed on appeal, it is important to consider the factual history of the property in question. The subject property originally consisted of seventy-two acres of land zoned R.C.4. On November 22, 2000, a minor subdivision plan was approved by Baltimore County, which divided the property into three separate R.C.4 lots. Each lot was individually deeded and recorded in the Land Records of Baltimore County. These lots were identified as Lots 1, 2, and 3. Lots 1 and 2 each contain approximately 4 acres and lot 3 consists of approximately of 64 acres.

In September 2000, the Baltimore County Council passed Bill 92-00 that facilitated a comprehensive rezoning of the Sixth Councilmanic District in which the subject property was located. As a result, the property was downzoned from R.C.4 to R.C.2. The developers received a grading permit from the Baltimore County Department of Permits and Development

Management on November 28, 2000 and subsequently performed grading work for a driveway on the property. As of December 4, 2000, each of the three lots was effectively zoned R.C.2.

In 2004, the property owner sought to subdivide each of the three lots in question pursuant to the R.C.2 zoning requirements and Baltimore County development plan regulations. After the Hearing Officer approved the plan and the CBA affirmed the decision, a Petition for Judicial Review was filed.

There are numerous issues that this Court must address when determining whether the Baltimore County Board of Appeals erred as a matter of law when it affirmed the decision of the Hearing Officer. This opinion will address each of the arguments raised by the Appellants individually:

1. **Whether the County erred in approving the R.C.4 minor subdivision plan on November 22, 2000?**

The subdivision of November 22, 2000 was approved through an expedited Limited Exemption Process outlined in § 32-4-106(b)(5) of the Baltimore County Code. This provision permits exemption from Community Input Meetings and Hearing Officer hearings for subdivisions of land into three or fewer lots for residential single-family dwellings. Appellants argue that since the minor subdivision took place in the middle of a comprehensive rezoning process, it could not be legally approved. However, as the CBA noted, nothing in the County Code prevents a Limited Exemption from occurring during this time period so there is no merit to this argument.

Furthermore, the Court must clarify that it will not reevaluate the legality of the County's decision to approve a minor subdivision plan in the year 2000. The record clearly indicates that the Developer obtained approval from the necessary agencies and that a timely petition for

judicial review was never filed. Since no judicial review was requested in 2000, there is no justification for the Court to revisit the rationale of the County in approving the minor development plan.

In a Limited Exemption Process, each relevant County agency including DEPRM and the Department of Planning must approve the plan before the Director of the Department of Permits and Development Management can even issue its approval. A Development Plan can only be approved after each of these agencies provides their consent. The Court agrees that the property was legally subdivided into three R.C.4 lots as of November 22, 2000 and any argument to the contrary will be considered moot.

2. Whether the Hearing Officer properly approved the requested subdivision under the Baltimore County Zoning Regulations?

Under § 32-4-229(b)(1) of the Baltimore County Code, "[t]he Hearing Officer shall grant approval of a Development Plan that complies with these development regulations and applicable policies, rules and regulations." The standard for subdividing property in an R.C.2 zone is outlined in § 1A01.3(B)(1) of the Baltimore County Code:

> Subdivision lot density. No lot of record lying within an R.C.2 Zone and having a gross area of less than two acres may be subdivided. No such lot having a gross area between two and 100 acres may be subdivided into more than two lots (total), and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of one lot for each 50 acres of gross area…

In the present case, the three lots in question are each zoned R.C.2 and each contains between two and one hundred acres of gross area. The Hearing Officer followed the requirement in § 32-4-229(b)(1) of the County Code by granting approval of the Development Plan since it complies with the standard for subdividing lots in an R.C.2 zone. Therefore, the Court finds that the

Hearing Officer's approval was an appropriate action and the decision of the CBA to affirm the Hearing Officer's approval was based on substantial evidence.

3. Whether approval of the proposed subdivision creating six R.C.2 lots is inconsistent with prior holdings of the CBA?

The Appellants argue that the decision of the CBA to approve the development plan in question is unreasonable since it is inconsistent with prior holdings. This argument is based largely upon the decision in *Ranshell Holdings, LLC*, case number 03-225-SPH before the CBA.

As a preliminary matter, the Supreme Court of the United States has consistently held that Administrative Agency decisions are not binding precedents for courts dealing with similar problems and will not be accorded the rule of stare decisis. See *Dobson v Commissioner*, 320 US 489 (1943); *Slocum v Delaware, L. & W. R. Co.*, 339 US 239 (1950); *Federal Maritime Board v Isbrandtsen Co.*, 356 US 481 (1958). While a decision like *Ranshell Holdings* may be persuasive to the Board, it cannot be relied on a binding legal precedent since the decision was never appealed to the Circuit Court.

Furthermore, the *Ranshell Holdings* case can be distinguished from the case at hand since it involved a Petition for a Special Hearing, not a request for a development plan. The property in the prior case was always zoned R.C.2 and after one subdivision separated the land into five lots, the Developer requested a further subdivision to create a sixth lot. The R.C.2 zone specifically denies a subdivision of this nature. In contrast, the issue here is whether three separate lots that were each originally zoned R.C.4 but were subsequently rezoned R.C.2 could be subdivided into two lots each. This request fulfills the subdivision requirements of the R.C.2 zone because each lot is between two and one hundred acres in gross area. Therefore, the Court

concludes that the decision in *Ranshall Holdings* does not show that the CBA has contradicted its past practice in any manner that renders the decision illegal, arbitrary, or capricious.

4. Whether approval of the minor subdivision and issuance of a grading permit in November 2000 conferred vested rights to the Developers?

The Appellants argue that traditional case law demonstrates that developers can only acquire vested rights if they first obtain a valid building permit and commence substantial above-ground construction prior to the enactment of an adverse zoning change. This argument was supported with numerous decisions of the Maryland courts. See *Yorkdale Corp. v. Powell*, 237 Md. 121 (1965); *Powell v. Calvert County*, 368 Md. 400 (2000); *Antwerpen v. Baltimore County*, 163 Md. App. 194 (1995). In this case the Developers were only issued a grading permit and not a building permit, so the Appellants claim that they did not obtain the vested rights necessary to effect the requested subdivision.

The question of whether a grading permit confers vested rights would be an important issue in this case if the Developers were currently trying to subdivide to the maximum specifications of the former R.C.4 zoning designation. However, as the Developers have demonstrated, each of the three lots in question was recorded in the Land Records on November 28, 2000, and each was separately rezoned to R.C.2 on December 4, 2000. The primary question on appeal is not whether the proposed subdivision conforms to the former R.C.4 zone, but whether it complies with the current R.C.2 zone. Therefore, the issue of whether the Developers obtained vested rights permitting them to develop to the maximum density available prior to the down-zoning is irrelevant to the case at hand. The only issue before the Court is whether the CBA erred as a matter of law in affirming the Hearing Officer's decision approving the

subdivision of three R.C.2 lots into six total lots. The Court will not reverse the decision of the CBA based on the irrelevant issue of vested rights.

5. **Whether the intent of the legislature mandates reversal of the CBA decision to approve the development plan?**

The Appellants argue that the intent of the legislature in down-zoning the property from R.C.4 to R.C.2 was to reduce development densities, and that permitting the Developers to create six separate lots is contrary to the spirit of the law. Since the subdivision effectively increases development in an agricultural zone, the Appellants urge the Court to reverse the decision of the CBA to fulfill the purpose of the down-zoning. While the Court agrees that the purpose of any down-zoning is to decrease development densities, the intent of the legislature is not an appropriate basis for overturning the decision of the CBA in this case.

The cardinal rule of statutory construction is to ascertain and carry out the intent of the legislature. *Stapleford v. Hyatt,* 330 Md. 388, 400, 624 A.2d 526, 531 (1993); *Taxiera v. Malkus,* 320 Md. 471, 480, 578 A.2d 761, 765 (1990); *Jones v. State,* 311 Md. 398, 405, 535 A.2d 471, 474 (1988). In doing so, the Court considers the language of an enactment and gives that language its natural and ordinary meaning. *Harford County v. University,* 318 Md. 525, 529, 569 A.2d 649, 651 (1990); *NCR Corp. v. Comptroller,* 313 Md. 118, 124, 544 A.2d 764, 767 (1988); *Utt v. State,* 293 Md. 271, 286, 443 A.2d 582, 590 (1982). Thus, when there is no ambiguity or obscurity in the language of a statute, there is no need to look elsewhere to ascertain the intent of the legislative body. *In re Criminal Investigation No. 1-162,* 307 Md. 674, 685, 516 A.2d 976, 982 (1986); *Police Comm'r v. Dowling,* 281 Md. 412, 418, 379 A.2d 1007, 1011 (1977); *State v. Fabritz,* 276 Md. 416, 421, 348 A.2d 275, 278 (1975), *cert. denied,* 425 U.S. 942, 96 S.Ct. 1680, 48 L.Ed.2d 185 (1976).

In the case at hand, § 1A01.3(B) of the Baltimore County Code clearly permits an R.C.2 lot of record to be subdivided into two total lots when the property contains a gross area between two and one hundred acres. As the record demonstrates, each of the three R.C.2 lots in question does in fact contain between two and one hundred acres. The CBA found clear and substantial evidence that the Hearing Officer followed the obligation outlined in § 32-4-229(b)(1) of the Baltimore County Code by approving a Development Plan that meets the requirements of the appropriate zoning laws. Since there is no lingual ambiguity, the Court will not consult the legislative intent in order to reverse the decision of the CBA.

6. Whether the practical application of the CBA holding is so severe that it would undermine the entire zoning system if affirmed?

On behalf of the Appellants, J. Carroll Holzer asserted that the practical application of the subdivision in this case sets a precedent allowing continual re-subdivisions in the R.C.2 zone throughout Baltimore County. According to Mr. Holzer, this decision has the potential to undermine the County zoning system in its entirety. While the Court certainly understands the concerns of the Appellants, there is no basis for overturning the decision of the CBA on these grounds.

Furthermore, the Court finds that the case at hand demonstrates a limited circumstance and will not defeat the entire purpose of zoning in Baltimore County. The R.C.2 regulations prohibit the creation of more than two lots on an area of land between two and one hundred acres in gross area. See BCC § 1A01.3(B)(1). Thus, the argument of the Appellants that a one hundred acre plot could be continually re-subdivided is untrue since a maximum of two lots could be created from the entire area. The case before the Court shows the rare circumstance where a plot of land that was once considered a seventy-five acre plot was subdivided into three

separate lots immediately prior to the re-zoning of the area. As the Developers have shown, three separate R.C.4 lots were created when the lots were recorded on November 22, 2000, and three separate R.C.2 lots were created when the lots were officially rezoned on December 4, 2000. The law clearly permits the subdivision of each of the three lots into two separate R.C.2 lots. *Id.*

As Mr. Holzer admitted on the record, the Developer's decision to subdivide the property immediately prior to the 2000 rezoning was tactical and intelligent. The Court has no choice but to affirm the decision of the CBA since the law is clear, unambiguous, and actually requires the Hearing Officer to approve the development Plan that meets the R.C.2 requirements. See BCC § 32-4-299(b)(1). While the Court recognizes the potentially adverse application of the law, the Court is limited to an Appellate role where the CBA can only be reversed if the decision is clearly erroneous. See *Dep't of Labor v. Woodie*, 128 Md. App. 398, 406, 738 A.2d 334 (1999); *Board of Education v. Paynter*, 303 Md. 22, 35, 491 A.2d 1186 (1985). There is no evidence that this occurred in the case at hand.

Conclusion

While the law justifying the decision of the CBA appears clear and straightforward, the Court understands that the implications of a decision affirming the CBA decision approving the subdivision may extend far beyond the case at hand. However, the Court is bound by a limited Appellate role and cannot take on the legislative function of the Baltimore County Council. It is clear from the record that the CBA carried out its function of reviewing the Hearing Officer's decision and determined that there is substantial evidence to support the Officer's findings. There is no evidence that the Agency's decision was illegal, unreasonable, arbitrary, or capricious. Therefore, the appeal of People's Council, et al. is hereby denied.

The decision of the Baltimore County Board of Appeals is AFFIRMED.

10/26/06
Date

DANA M. LEVITZ, Judge

CC: Scott Barhight, Esquire
Peter M. Zimmerman, Esquire
J. Carroll Holzer, Esquire
Carole S. Demilio, Esquire

IN THE MATTER OF THE APPLICATION OF CHER-CHRIS CONSTRUCTION CO., MICHAEL AIELLO, V.P. –LEGAL OWNER FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE N/S CORBETT RD, 1,68-' E OF C/L CHESTERFIELD COURT (1100 CORBETT ROAD)	*	BEFORE THE COUNTY BOARD OF OF BALTIMORE COUNTY
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	Case No. 03-264-SPH

* * * * * * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals on a timely appeal brought by the Office of People's Counsel, resulting from a decision by the Deputy Zoning Commissioner dated February 19, 2003, in which a Petition for Special Hearing was granted for the subject site: 1100 Corbett Road, 8th Election District, 3rd Councilmanic District.

The Appellant was represented before the Board by Carole Demilio, Esquire, Deputy People's Counsel for Baltimore County. Howard L. Alderman, Jr., Esquire, appeared on behalf of the Petitioner, Cher-Chris Construction Co./Michael Aiello, V.P., Legal Owner.

A *de novo* hearing was held before the Board of Appeals on December 11, 2003. A public deliberation was held on March 4, 2004.

Background

The Petitioner requested a Special Hearing to amend the Final Development Plan for the subject property to change Tract "A" to building lot 6. The site consists of 3.056 acres, more or less, and is zoned R.C.7. The Final Development Plan under discussion was approved by Baltimore County in 1981 for a parcel of land then owned by Marilyn B. Resnick and T. Douglas Rollings.

In late 2001, Mr. Aiello, the current owner, purchased lots 2, 3 and Tract A in a single settlement for $150,000 each from Andrew G. and Barbara N. Shank. When applying for a

building permit for Tract "A," Mr. Aiello was advised that a Special Hearing to amend the Final Development Plan would be necessary.

Testimony

Mitchell Kellman was the first witness for the Petitioner. After offering his resume (Petitioner's Exhibit #1), Mr. Kellman was accepted by the Board as an expert in zoning and development in Baltimore County.

Mr. Kellman testified that for eleven years he was employed in the zoning review office of Baltimore County and sat on the Development Review Committee. He noted that he was not working in Baltimore County at the time the Final Development Plan on the subject site was approved in 1981. He is currently employed by DMW as the "zoning person" for Baltimore County, to present petitions to the zoning review staff, and to testify at zoning hearings.

Under his direction, DMW amended the original plan prepared by Gerhold, Cross and Etzel to change Tract "A" to lot 6. This resulted in Petitioner's Exhibit #2: the Plan to accompany the Petition for Special Hearing.

Mr. Kellman presented the history of the subdivision of the original parcel. Nineteen lots were permitted on property then zoned R.C. 5; five lots and Tract "A" were platted and recorded. In the 2000 CZMP the parcel was rezoned to R.C. 7.

According to this witness Tract "A" was so designated because there was a problem of percolation on that lot at that time. Mr. Kellman opined that the subject site would have been a buildable lot under the R.C. 5 zoning regulations and is also a buildable lot under R.C. 7 so long as it meets the County development criteria.

To support this opinion Mr. Kellman introduced into evidence the Zoning Advisory Comments (Petitioner's Exhibit #3) and pertinent sections of the BCZR (Petitioner's Exhibits #4 and #5). He said that Tract "A" meets the building envelope setbacks as required under the current zoning for a single-family dwelling.

Mr. Kellman also opined that the amendment as requested must meet the same standards as a Special Exception as set forth in Section 502.1, BCZR.

To be granted a Special Exception, the use must comply as follows:

502.1—Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

A. Be detrimental to the health, safety, or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other dangers;

D. Tend to overcrowd the land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

F. Interfere with adequate light and air;

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations;

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C. 2, R.C. 4, R.C. 5, or R.C. 7 zone.

Mr. Kellman testified and illustrated that the Petitioner's request meets each of these standards. He added that Tract "A" is larger than each of the other approved lots with the exception of lot #1.

On cross-examination by Ms. Demilio, the witness reviewed the Policy on Design Standards for D.R. Zones (People's Counsel Exhibit #2). Mr. Kellman noted that the standards refer to the D.R. zones where the houses are much closer to each other, not the R.C. zones that are more rural in character.

He further testified that Tract "A" would not need a panhandle strip for access because of its frontage on Corbett Road. It was Mr. Kellman's opinion that the designation of "not for building purposes" on the original plat meant that the lot would not be built upon "at that time." He stated that there is nothing on the plan that would reserve or preclude building on the subject site in the future if the site can comply with the current development regulations.

Michael Aiello testified next. He is the vice-president of Cher-Chris Construction Company, builders of custom homes and owner of the subject property. He related his purchase of three lots from the Shanks (Petitioner's Exhibit #6 and #7). He stated that he was aware of the private covenants (Petitioner's Exhibit #8) on the lots at the time of purchase. He noted that under that covenant agreement he is required to maintain Tract "A" as pasture, "until developed." In support of his opinion that Tract "A" is considered a building lot, Mr. Aiello submitted the tax assessment record for the lot (Petitioner's Exhibit #9), indicating that he has been paying the residential tax rate. He noted as well that the lot has been approved by DEPRM for well and septic (Petitioner's Exhibit # 10).

On cross-examination by Ms. Demilio, Mr. Aiello stated that he had made a pre-purchase study of the property based on his 18 years experience in the building industry. He understood that all three lots that he purchased had been used as pasture up to that time. He noted that all documents relating to the property speak to three separate parcels.

Christopher Aiello, 1038 Corbett Road, spoke on behalf of the Petitioner's request. He is the brother of the Petitioner and now owns lot 2 in the subdivision. He opined that a single-family dwelling on Tract "A" would increase the economic value of his house.

Raymond Knowles was the first witness for People's Counsel. Dr. Knowles has lived at 1034 Corbett Road for 12 years, having purchased the first house to be constructed in the subdivision. He testified that he was assured by the owner at that time, Mr. Shank, that Tract "A" would not be built upon but would remain in pasture.

He opined that all of the other lots (1 through 5) are built on the ridge and their view is Tract "A", 75 feet lower in elevation. He stated that the development of this tract would adversely affect the value of his property and adversely affect the environmental characteristics on that low-lying parcel which receives runoff from the adjacent ridge as noted on the topography map introduced as People's Counsel Exhibit #6. Dr. Knowles also stated that the poor sight lines and hazardous conditions of a driveway from Tract "A" onto Corbett Road would create congestion and a safety hazard. To build on Tract "A" would violate the spirit and intent of the original Final Development Plan, in his opinion.

On cross-examination by Mr. Alderman, Dr. Knowles said that he understood that under R.C. 7 zoning one house could be built on a tract less than 25 acres if recorded. The witness reiterated that he felt a house on Tract "A" would detract from the value of his house.

On re-direct by Ms. Demilio, the witness noted that he does not look into the lots next to him nor do they look at his house. The view is toward Tract "A." Dr. Knowles also noted that he did not object to the development on lots 2 and 3 because he knew they were buildable lots at the time he purchased his house.

John Andrews, 1205 Corbett Road, also appeared on behalf of People's Counsel. Mr. Andrews is employed by the Maryland State Highway Administration as a transportation engineer. He stated that he has lived on Corbett Road for 26 years and that Tract "A" has been used for pasture continuously during that time. His concerns included overcrowding on the two-lane rural Corbett Road, safety relating to additional access points, adverse effects on the value of his property, and water flow downhill into the basin of Tract "A" where it collects.

The next witness was Jack Dillon who was accepted by the Board as an expert on the Baltimore County Code, the BCZR, and planning and zoning (People's Counsel Exhibit #7).

Mr. Dillon testified that in 1981 he was employed in the Baltimore County Office of Planning. He stated that the purpose of a Final Development Plan was to give both the developer and purchasers within the subdivision a document on which they could rely. He opined that the designation of lots 2 and 3 are clearly to be built upon, according to the FDP. Tract "A," however, is not a development parcel, but open space. There is no reference, in this witness's opinion, to density retained or future development of Tract "A."

He noted that rural areas are important to Baltimore County and visual amenities are to be preserved. Tract "A" was treated differently on the FDP for a reason, according to Mr. Dillon. As evidence Mr. Dillon introduced photos that he had taken (People's Counsel Exhibits #8A-D) showing the views relative to Tract "A." He noted the difference in elevation from lots 1-5 with houses built on the ridge, overlooking Tract "A."

In his opinion the Special Hearing request does not meet the standards as set forth in Section 502.1 because the request conflicts with the R.C.7 zoning requirement for 25-acre minimum parcels; the request will create a potential hazard on this rural road with hills and S-curves; and the request is inconsistent with the spirit and intent of the R.C.7 zoning.

Mr. Dillon also noted the Master Plan section for this area (People's Counsel Exhibit #9) wherein the scenic resource is described.

On cross-examination by Mr. Alderman, Mr. Dillon testified that the Office of Planning did not comment on the scenic corridor status of Corbett Road. He also agreed that he could not be specific on the sight distances and the hazards on Corbett Road that might be exacerbated by one additional single-family dwelling. Mr. Dillon simply reiterated that access onto Corbett Road is not an "ideal situation."

Regarding changing a Final Development Plan, Mr. Dillon stated that there is a "proper amendment process," after which the record plat can be amended. He noted that he did not recall any limits in the BCZR to the types of amendments. He said that Tract "A" was not designated on the FDP as local open space by Baltimore County but was retained by the original owner.

Mr. Dillon opined that the word "developed" in the private covenant agreement could refer simply to a shed or a barn, not a residence. He also testified that leaving Tract "A" as open space would actually increase the value of the adjoining lots.

Salvatore Serio, 1036 Corbett Road, also testified on behalf of People's Counsel. He stated that when he purchased lot 4 in 1999 he understood that Tract "A" would not be used for the construction of a residence. He opined that a house with the rear facing the front of his house would negatively affect the value of his property. He emphasized that he would not have purchased his lot if he had known his view would include a house on Tract "A".

George McCeney submitted the appropriate credentials to allow him to speak on behalf of the Sparks-Glencoe Community Association (People's Counsel Exhibit #10). This organization opposes the construction of a single-family dwelling on Tract "A" because, in their opinion, such construction impinges on the integrity of the zoning process and sets a negative precedent for similar development by violating the spirit and intent of the current R.C. 7 zoning.

Opinion

Having reviewed the testimony and evidence before us, the Board finds unanimously that Tract "A" is a developable parcel acceptable for a single-family dwelling as requested by the Petitioner.

BCZR § 1B01.3A.7 provides for the amendment of a Final Development Plan. The subject property allowed for a density of 19 lots under the R.C.5 zoning in place in 1981. Five lots and Tract "A" were approved and recorded. We find no provision or evidence that all

density permitted but not used on an approved FDP is lost forever. We do not find Mr. Dillon's testimony to the contrary to be persuasive.

We note as well that even the private covenants restricting Tract "A" to use as pasture limit that use only "until developed by the Developer, his successor or assigns."

We do agree, however, that in view of the rezoning of Tract "A" from R.C. 5 to R.C. 7, the lot now has density for one single residence under those regulations. Section 1A08.6B.4 allows any lots of record in existence in 2000 when the R.C. 7 zoning regulations became effective to be improved with a single-family dwelling.

The Office of Planning has indicated that the development on the subject site will conform to the setback requirements and maximum building envelope area requirements of the R.C. 7 zone. It is also uncontradicted that DEPRM has approved the lot for well and septic and that the parcel is assessed for tax purposes as a residential lot.

Relative to the requirement that an amendment to a Final Development Plan meet the standards of § 502.1, we find the testimony of the Petitioner's expert Mr. Kellman to be substantive and convincing. We believe that the Petitioner has met his burden in this regard and that the construction of a single-family dwelling on the subject property will not adversely affect any of the standards as set forth above, nor does it violate the spirit and intent of the regulations and the original Final Development Plan as approved.

In conclusion the Board unanimously grants the Petition for Special Hearing to amend the Final Development Plan to change the designation of Tract "A" to building lot 6 at 1100 Corbett Road.

ORDER

THEREFORE, IT IS THIS 30th day of March, 2004 by the County Board of Appeals of Baltimore County

ORDERED that, for the reasons as stated in the foregoing Opinion, Petitioner's request for special hearing to amend the Final Development Plan for the subject property to change Tract "A" to a building lot be and the same is hereby **GRANTED.**

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Edward W. Crizer, Jr.

Margaret Worrall

6/24/08

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF:	**People's Counsel for Baltimore County** **105 West Chesapeake Avenue** **Towson, MD 21204**	**CIVIL**
IN THE CASE OF:		**ACTION**
	IN THE MATTER OF: NIELS BRAID **PETITION FOR SPECIAL HEARING** **Case No. 06-332-SPH**	**NO. 3-C-07-014363**

WITHDRAWAL OF PETITIONS AND RELIEF

Niels Braid, Owner and Petitioner before the Zoning Commissioner for Baltimore County and Owner/Respondent before the County Board of Appeals (Case No. 06-332-SPH) and in this Court in the above-captioned case, through his undersigned legal counsel, hereby withdraws his Petition for Special Hearing, rendering moot any and all relief previously granted by the Zoning Commissioner and that granted by the Board of Appeals in Case No. 06-332-SPH and, thereby rendering moot the appeal in this case.

Howard L. Alderman, Jr.
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
410.321.0600 [voice]/410.296.2801 [fax]
Attorneys for Owner/Respondent

[*Certificate of Service on Following Page*]

RECEIVED AND FILED

2008 JUN 24 PM 12:55

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of June, 2008, a copy of the foregoing Withdrawal of Petitions and Relief was mailed via First-Class, United States Mail to the following:

Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Baltimore County Office of People's Counsel
The Jefferson Building
105 West Chesapeake Avenue, Suite 204
Towson, MD 21204

County Board of Appeals for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

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

W. Carl Richards, Jr., Zoning Supervisor
Baltimore County Department of Permits
and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Mr. Niels Braid
20315 Middletown Road
Freeland, MD 21053

Mr. Guy C. Ward
McKee & Associates, Inc.
5 Shawan Road, Suite 1
Hunt Valley, MD 21030

Howard L. Alderman, Jr.

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

DIRECT DIAL
410-321-4640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
TELEFAX 410-296-2801

ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

June 24, 2008

Clerk, Civil Department
Circuit Court for Baltimore County
401 Bosley Avenue, **2nd Floor**
Baltimore, Maryland 21204

RE: *In the Matter of Niels Braid – Special Hearing*
Petition filed by Baltimore County Office of People's Counsel
Circuit Court Case No.: **3-C-07-014363**
Withdrawal of Petitions and Relief

Dear Madame Clerk:

My client, Niels Briad, hereby withdraws his Petition for Special Hearing, rendering moot any and all relief previously granted by the Zoning Commissioner and that granted by the Board of Appeals in Case No. 06-332-SPH and, thereby rendering moot People's Counsel's appeal in this case. Please file the enclosed Withdrawal and remove my client's participation in this matter.

Should you or the Court need any additional information in this regard, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr. /pd

Howard L. Alderman, Jr.

HLA/gk
Enclosure
c (w/encl.): Mr. Niels Braid
County Board of Appeals for Baltimore County
Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner for Baltimore County
W. Carl Richards, Jr., Zoning Supervisor
Mr. Guy C. Ward

RECEIVED AND FILED
2008 JUN 24 PM 12:55
CLERK OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY

RECEIVED
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BALTIMORE COUNTY
BOARD OF APPEALS

2/7/08

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
PEOPLE'S COUNSEL FOR *
BALTIMORE COUNTY
OLD COURTHOUSE – ROOM 47 *
400 WASHINGTON AVE
TOWSON, MD 21204 * CIVIL ACTION
NO.: 03-C-07-14363

FOR JUDICIAL REVIEW OF THE OPINION OF *
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF :
NIELS BRAID FOR SPECIAL HEARING *
For the property located on the E/S of
Middletown Road 1006' SE of C/L of Kenny Mill *
Road (20315 Middletown Road)

6th Election District *
3rd Councilmanic District

*

BOARD OF APPEALS CASE NO.: 06-332-SPH *

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

PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY:

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

Niels Braid
Case No.: 06-332-SPH
Circuit Court Case No.: 03-C-07-14363

ENTRIES FROM THE DOCKET OF THE BOARD APPEALS AND DEPARTMENT OF PERMITS & LICENSES OF BALTIMORE COUNTY

06-332-SPH

January 10, 2006	Petition for Special Hearing to approve a waiver from § 32-4-409(b)(2) of the *Baltimore County Code* to permit creation of a panhandle in-fee strips of 6' in width in lieu of the required minimum 10' in width where three or more lots are involved.
	Zoning Property Description.
January 13, 2006	Notice of Zoning Hearing/Revised Notice of Zoning Hearing
January 18, 2006	Entry of Appearance filed by People's Counsel for Balto. Co.
January 24, 2006	Certificate of Publication - #1.
January 31, 2006	Certificate of Publication - #2
January 31, 2006	ZAC Comments
February 1, 2006	Certificate of Posting – McKee & Associates, Inc.
February 23, 2006	Hearing before the Deputy Zoning Commissioner
February 23, 2006	Sign-In Sheets for hearing.
March 1, 2006	Findings of Fact and Conclusion of Law issued by the Deputy Zoning Commissioner. Petition for Special Hearing Request *APPROVED*.
March 15, 2006	Letter of Appeal filed by People's Counsel for Balto. Co.
March 28, 2006	Letter from Timothy Kotroco, Dir./PDM to People's Counsel acknowledging receipt of their appeal.
March 28, 2006	File received in the Board of Appeals.
April 5, 2006	Certificate of Posting by Jeff Radcliffe

Niels Braid
Case No.: 06-332-SPH
Circuit Ct No.: 03-C-07-14363

June 20, 2006	Notice of Assignment reflecting hearing date before the Board of Appeals.
Oct. 10, 2006	Notice of Postponement and Reassignment.
November 28, 2006	Board convened for hearing.

People's Counsel Exhibits

1. Bill 24-06 – Feb. 6, 2006
2. Baltimore County Code Vol. II
3. BALCO 1978 – 1988-89 Supplement of - 22-85
4. Subdivision – 2004 Comp Map 25
5. Map of A – Map A
6. Aerial Map – GPS

7A Excerpts of Master Plan 2010 Page 233 Map 35
7B Excerpts of Master Plan 2010 Page 239 Map 36

8. Aug. 14, 1979 by Norm for John Seyfert
9. Current Zoning Regulations for Baltimore Cunty
10. Dillion Resume
11. ADC Highway Map
12. Map BALCO Land Preservation

13A Blow-up 1A00.,4
13B Blow up 1B01.3
13.C Blow up 1B01.3
13D Blow up 32-4-104
13E Blow up 32-4-262

14. Webster's definition of tract

15 R Holdings Decision 2/26/04

16. Court of Appeals Decision
17. Roberts case – Board of Appeals
18. Rule 8 Docs.

Petitioner's Exhibits

1. Plat – 20315 Middleton Road
2. Keeney Mill Woods – JSPC Plan – May 1976
3. Letter from Keller – Oct. 20, 2005
4. Deed – July 27, 1998
5. Prior Deed & Title 1978
6. Declaration 1-5-77 by Lawson
7. Oct. 5, 1976 – Plat – EHK JR folio 31
8. Letter from Guy Ward – Oct. 4, 2005 – to Pat Keller
9. Cher Chris Opinion – 3/30/04

10. City Council Bill 125-05

November 29 2006	Notice of Deliberation – Deliberation set for Feb. 6, 2007.
January 19, 2007	Petitioner's Post-Hearing Memorandum filed by Howard L. Alderman, Jr., Esq.
January 19, 2007	People's Counsel Memorandum.
February 6, 2007	Board convened for Public Deliberation.
August 3, 2007	Board issued its' Opinion and Order *GRANTING* Petitioner's request for *waiver* FROM §32-4-409(b)(2) of the BCC.
August 10, 1007	Amended Opinion and Order issued by the Board.
August 22, 2007	People's Counsel for Baltimore County's Motion for Reconsideration.
August 23, 2007	Notice of Deliberation set for Sept. 11, 2007.
	In house notes.
August 30, 2007	Petitioner's Response to Motion for Reconsideration
September 11, 2007	Board convened for public deliberation.
November 20, 2007	Board issued its' Ruling on Motion for Reconsideration Motion for Reconsideration *DENIED.*
December 17, 2007	Copy of Petition for Judicial Review received in the Board of Appeals – **Civil Case No.: 03-C-07-14363.**
December 21, 2007	Certificate of Notice sent to interested parties.
February 7, 2008	Transcript of Proceedings filed.
February 7, 2008	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon

which said Board acted are hereby forwarded to the Court, together with exhibits entered before the Board.

Respectfully submitted,

Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals of Baltimore Co.
400 Washington Avenue, Room 49
Towson, MD 21204 (410) 887-3180

C: People's Counsel for
Baltimore County
Howard L. Alderman, Jr., Esq.
Neils Braid
Guy C. Ward, McKee & Associates, Inc.

12/21/07

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
PEOPLE'S COUNSEL FOR *
BALTIMORE COUNTY
OLD COURTHOUSE – ROOM 47 *
400 WASHINGTON AVE
TOWSON, MD 21204 * CIVIL ACTION
NO. : 03-C-07-14363

FOR JUDICIAL REVIEW OF THE OPINION OF *
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF :
NIELS BRAID FOR SPECIAL HEARING *
For the property located on the E/S of
Middletown Road 1006' SE of C/L of Kenny Mill *
Road (20315 Middletown Road)

6th Election District *
3rd Councilmanic District

*

BOARD OF APPEALS CASE NO.: 06-332-SPH *

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

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

Peter Max Zimmerman,
People's Counsel
and
Carole Demilio, Deputy
People's Counsel

Old Courthouse – Room 47
400 Washington Avenue
Towson, MD 21204

Howard L. Alderman, Jr., Esquire
Law Offices of Levin & Gann
Nottingham Center
502 Washington Ave. – 8th Floor
Towson, MD 21204

Niels Braid
20315 Middletown Road
Freeland, MD 21030

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

I HEREBY CERTIFY that on this 21st day of December, 2007, a copy of the foregoing Certificate of Notice has been mailed: Peter Max Zimmerman, People's Counsel *and* Carole Demilio, Deputy People's Counsel, Old Courthouse – Room 47, 400 Washington Avenue, Towson, MD 21204, Howard L. Alderman, Jr., Esquire, Law Offices of Levin & Gann Nottingham Center, 502 Washington Ave. – 8th Floor, Towson, MD 21204 and to Niels Braid, 20315 Middletown Road, Freeland, MD 21053.

Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

County Board of Appeals of Baltimore County

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

December 21, 2007

Howard L. Alderman, Jr., Esquire
Law Offices of Levin & Gann
Nottingham Center
502 Washington Ave. – 8th Floor
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-07-14363
Niels H. Braid
Board of Appeals Case No.: 06-332-SPH

Dear Mr. Alderman:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on December 12, 2007 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals which was rendered on November 22, 2007. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, **must be filed under Civil Action No .03-C-07-14363.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel

Linda B. Fliegel
Legal Secretary

/lbf
Enc.

c: Office of People's Counsel
Niels Braid
Guy C. Ward/McKee & Assoc., Inc.
William J. Wiseman, III, Zoning Comm.
Pat Keller, Dir./Planning
Timothy M. Kotroco, Dir./PDM

Printed with Soybean Ink
on Recycled Paper

12/12/07

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204	*	IN THE
	*	
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204	*	FOR
	*	
IN THE MATTER OF THE APPLICATION OF **NIELS BRAID** FOR SPECIAL HEARING for property located on the E/S Middletown Road, 1006' SE of C/L of Kenney Mill Road (20315 Middletown Road) 6th Election District, 3rd Councilmanic District	*	BALTIMORE COUNTY
	*	
	*	Civil No. C-07-143603
Case No. 06-332-SPH before the County Board of Appeals of Baltimore County	*	

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

PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial review of the County Board of Appeals for Baltimore County's Ruling on People's Counsel's Motion for Reconsideration dated November 20, 2007, finalizing the Board's Opinion and Order of the same case issued on August 3, 2007. People's Counsel for Baltimore County was a party to the proceedings before the County Board of Appeals of Baltimore County in this matter.

This Petition is filed pursuant to Rule 7-202 of the Maryland Rules of Procedure.

RECEIVED
DEC 17 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED AND FILED
2007 DEC 12 AM 10: 57
CLERK OF THE CIRCUIT COURT
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 of December, 2007, a copy of the foregoing Petition for Judicial Review was mailed to Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204, Attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-07-014363

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204

11/20/07

IN THE MATTER OF THE APPLICATION OF NIELS BRAID –L.O,. FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE E/S MIDDLETOWN RD, 1006' SE OF C/L OF KEENEY MILL ROAD (20315 MIDDLETOWN ROAD)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
6TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	Case No. 06-332-SPH

* * * * * * * * *

RULING ON PEOPLE'S COUNSEL'S MOTION FOR RECONSIDERATION

This matter comes before the Board on a Motion for Reconsideration requested by Peter M. Zimmerman, People's Counsel for Baltimore County. A public deliberation was held for this Motion on September 11, 2007.

This Board believes that a Motion for Reconsideration should only be necessary when there has been substantive new case law or statute not available previously, which would clearly merit a modification of a Board's previous decision.

Such does not exist here. This Board has no doubt as to People's Counsel's position and opinion of the Board's conclusion in this case. People's Counsel takes issue with the Board's determination of the facts and its legal analysis. He alleges deficiencies in the Opinion and refers to what he considers insufficient and incorrect answers in the Opinion to the issues raised in the case. That, however, is not sufficient grounds to require a modification of the Board's decision. We note that several cases are attached, one issued by the Maryland Court of Appeals and two by the Maryland Court of Special Appeals. These cases were certainly available at the time briefs were submitted by counsel.

Pursuant to the Board's Rules, the remaining two undersigned members who originally heard this case have reviewed and deliberated this Motion for Reconsideration and still constitute a majority of the panel. This Board sees no reason under the County Council approved rules to alter this long-standing procedure.

The appellate procedure in cases of this type is clear and appropriate. Therefore, any redress to which People's Counsel is entitled lies elsewhere. The Board's Opinion and Order issued on August 3, 2007 remains this Board's final decision in this matter.

IT IS THEREFORE ORDERED THIS 20th day of November 2007, that the Motion for Reconsideration filed in this matter is **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY[1]

Lawrence M. Stahl, Panel Chairman

Robert W. Witt

[1] This case was originally heard by a panel comprised of three members of the Board of Appeals of Baltimore County; viz., Lawrence M. Stahl, Mike Mohler, and Robert W. Witt, all of whom deliberated and signed the Board's final Order. Mr. Mohler resigned from the Board of Appeals effective August 10, 2007.

County Board of Appeals of Baltimore County

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

November 20, 2007

Peter Max Zimmerman
People's Counsel for
Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: Niels Braid – Legal Owner/Petitioner*
Case No. 06-332-SPH /Ruling on Motion for Reconsideration

Dear Mr. Zimmerman:

Enclosed please find a copy of the Board's Ruling on Motion for Reconsideration issued this date.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Howard L. Alderman, Jr., Esquire
Niels Braid
Guy C. Ward /McKee & Associates, Inc.
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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8/30/07

BEFORE THE

COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

Case No. 06-332-SPH

Niels H. Braid, *Owner*

Petitioner

20315 Middletown Road
6th Election District
3rd Councilmanic District

PETITIONER'S RESPONSE TO MOTION FOR RECONSIDERATION

Niels H. Braid ("Owner" or "Petitioner"), by and through his undersigned legal counsel, hereby responds in opposition to the *Motion for Reconsideration*, filed by the Baltimore County Office of People's Counsel pursuant to this Board's *Rules of Practice and Procedure*, Rule 10, and in support of such opposition states:

The Board's Statement of Facts and Reasoning

People's Counsel suggests that the Board failed "sufficiently to state [*sic*] facts and reasons to support" its decision in this case. The Board took great care to detail the facts and evidence that supported its decision in this case. Likewise, the Board set out in its opinion the legal bases applied to the facts and evidence. Applying the law to the facts and evidence, the Board agreed unanimously that the requested waiver of panhandle width was justified and

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BOARD OF APPEALS

should be granted. Clearly, the Board recited the facts and evidence upon which it relied and discounted/dismissed the purported evidence presented by People's Counsel in the attempt to mis-characterize the relief requested and the applicable law.

The Relief [Issues] Considered by the Board

This case is not about available lot density or amendment of the a Final Development Plan (FDP) of Keeney Mill Woods as argued by People's Counsel. The Board framed the relief and the issues it ruled upon correctly. It is People's Counsel that raised the issue of amendment of a final development plan – not the Board. The relief requested by the Petitioner did not originally, nor on appeal, seek amendment of a FDP. As this Board knows well, a FDP can be amended by Special Hearing pursuant to *Baltimore County Zoning Regulations* ("BCZR") § 500.7 or by obtaining the signatures of all persons owning property (within the subdivision) located within 300 feet of the subject property. BCZR § 1B01.3A.7.

The fact that the Board also addressed the [red herring] issue of density as raised by People's Counsel does not make the Board's decision incorrect or improper—just thorough. Despite prior rulings of the Board on the same density issue (cases in which People's Counsel and its expert, Jack Dillon, were involved), People's Counsel has refused to accept the Board's expertise and prior decisions on density determination. The Board ruled consistent with its prior holdings, including making reference (once again) of Mr. Dillon's inability on cross-examination to support any law, regulation or policy in support of his theory regarding allegedly lost density.

Procedure for Amending a FDP

The Board did not rule on the procedure for amending a FDP – it was not before them in this case. In People's Counsel's enumerated paragraph 5, under heading III of its Motion, the Special Hearing relief to which the Board was referring refers to the waiver for panhandle width requested by the Petitioner. *Motion* at 2. It has nothing whatsoever to do with amendments to a FDP.

The Petitioner did not amend the relief sought from and granted by the Baltimore County Zoning Commissioner. On *de novo* appeal, the Board considered the relief requested and did not expand that relief to include the specious allegations of People's Counsel and its witnesses.

Waivers of Panhandle Width Requirements

The requirements for panhandle driveways are set out in Title 32, **Subtitle 4**, Section 409 of the *Baltimore County Code* ("BCC"). As noted by the Board in its Opinion at page 8, at the request of a department director the hearing officer may "grant a waiver of any or all requirements of **Subtitles** 3, **4** and 5 of this title ...." (Citing BCC § 32-4-107. Emphases added.) The Board noted that the Director of Planning advised the Petitioner to proceed with the waiver request by way of Special Hearing. Opinion at 8.

The legislative assignment to the Planning Director (Motion at 4) as the initial point of contact for obtaining a waiver does not supercede the specific and express, legislative authority vested in the hearing officer to grant waivers from any and all requirements of Subtitle 4 of Title 32 of the BCC, if a department director recommends that waiver. In this case, the department director went even further to identify the statutory scheme and process

for seeking the waiver. The uncontradicted testimony of Mr. Ward was that the planning director wanted the waiver considered at a public hearing (afforded by way of the special hearing petition) so that all persons having the right of use and maintenance of the panhandle involved [who also had available density to subdivide their respective properties] would have notice of the contemplated waiver.

The Baltimore County procedures for obtaining waivers from panhandle driveway requirements are not general in nature as in the case of *Capital Commercial Properties v. MNCPPC* cited by People's Counsel. (Motion at 4.) There are two means of obtaining a waiver of panhandle driveway width. A waiver granted by the director of planning or a waiver granted by the hearing officer. In contrast, relief from maximum panhandle length can only be granted by way of variance. Thus, the County Council provided flexibility on obtaining relief on all panhandle driveway requirements except maximum length. The Board was correct in its analysis and ruling pursuant to the specific authority granted.

Tract Density Limits

The confirmation of available density was not part of the relief petitioned. The director of planning already acknowledged that the Petitioner's lot and other lots on the panhandle drive have available density for potential subdivision. No relief regarding density was needed. People's Counsel and its witnesses argued that unless all available [lot] density was utilized at the time of original subdivision, any density not used was lost. The Board took testimony and evidence about the excess density that existed at the time Keeney Mill was subdivided. The testimony and evidence was clear that the subdivision plat was vested

by virtue of lots being created, sold and homes built. The Board, using its recognized expertise, was required to review the evidence, consider the testimony of witnesses and assess the credibility of each. Mr. Dillon was unable to offer any legal reference or support for his erroneous, "expert" opinion that there is insufficient remaining lot density on the Petitioner's property to support creation of an additional lot. The Board rejected Mr. Dillon's testimony in this case, much like the Board rejected the testimony of People's Counsel's 'expert' witness [Paul Solomon] after it was shown that he could produce no legal authority to support his position regarding roadways and stormwater facilities in the RC-2 zone. *See, People's Counsel v. Dorothy Surina, et al*, ___ Md. ___ (2007), No. 111, September Term, 2006 at pages 43-44. (A copy of this recently filed Opinion is attached hereto and incorporated herein.)

Even though the issue of density was not raised in the Petition for Special Hearing filed by the Petitioner, this Board followed its decision rendered *In the Matter of the Application of Cher-Chris Construction Co., Michael Aiello, V.P.*, Case No. 03-264-SPH, decided March 30, 2004, in determining that excess density, not utilized at the time of initial subdivision approval, was not lost. People's Counsel attempts to re-hash arguments made at the time of the hearing and again in its post-hearing memorandum to this Board. People's Counsel is wrong and the Board was correct – again.

Conclusion

Someone once said that "the more things change, the more they stay the same." People's Counsel has changed its method of attacking legal precedent, but its arguments

remain constant. The Board has heard, reviewed and decided the propositions, arguments, etc. put forth by People's Counsel and has ruled, granting the requested waiver of panhandle driveway width. No final development plan amendment was presented for consideration. No variance from any requirements of the BCC or the BCZR was sought. The zoning commissioner/hearing officer and the Board considered the Petition for Special Hearing for waiver of panhandle requirements pursuant to the specific authority adopted by the County Council. The Petitioner followed the statutory procedure adopted and required by the director of planning. The Board reviewed the new testimony and evidence in its *de novo* hearing as required and granted the relief requested. That relief should not be disturbed as a result of People's Counsel dissatisfaction evidenced in its Motion for Reconsideration.

WHEREFORE, the Petitioner hereby requests that this Board:

A. **DENY** the Motion for Reconsideration filed by People's Counsel; and

B. **GRANT** to the Petitioner such further relief as the nature of this case may require.

Respectfully submitted,

Howard L. Alderman, Jr.
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
410.321.0600 [voice]/410.296.2801 [fax]
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2007, a copy of the foregoing

Petitioner's Response to Motion for Reconsideration and attached Order were mailed, postage prepaid, First Class United States Mail to the following:

Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

and

Mr. Niels H. Braid
20315 Middletown Road
Freeland, MD 21053-9628

and

Mr. Guy Ward
McKee & Associates, Inc.
Five Shawan Road, Suite One
Hunt Valley, MD 21030

_____
Howard L. Alderman, Jr.

RE: PETITION FOR SPECIAL HEARING **E/S Middletown Road, 1006' S/E of c/l of Keeney Mill Road (20315 Middletown Road)** **6th Election District** **3rd Councilmanic District** **Niels Braid, Petitioner**	**BEFORE THE COUNTY BOARD** **OF APPEALS FOR** **BALTIMORE COUNTY** **Case No. 06-332-SPH**

ORDER

After consideration of the Motion for Reconsideration filed by the Baltimore County Office of People's Counsel in this case and Petitioner's Response in Opposition thereto, and the undersigned members of the Board having deliberated the same as required by Board Rule 10, and the Board having determined that no further hearing, testimony or evidence is necessary, it is by the County Board of Appeals for Baltimore County this ____ day of _____, 2007,

ORDERED that the Motion for Reconsideration be and it is hereby DENIED.

COUNTY BOARD OF APPEALS:

_____

_____

_____

People's Counsel for Baltimore County, et al. v. Dorothy Surina, et al., No. 111, Sept. Term 2006.

ZONING LAW - SPLIT-ZONED PROPERTY UNDER COMMON OWNERSHIP - PERMITTED USES - STORMWATER MANAGEMENT (SWM) - SWM FACILITIES, AS AN ANCILLARY USE, ARE CONTEMPLATED BY THE ZONING SCHEME DESPITE THE LACK OF THEIR EXPRESS INCLUSION AS "USES" IN THE PERMITTED USE ENUMERATIONS IN THE ZONING ORDINANCE.

ZONING LAW - SPLIT-ZONED PROPERTY UNDER COMMON OWNERSHIP - INTERIOR ACCESS ROADS - PLACEMENT OF THE ACCESS ROAD DID NOT VIOLATE THE RESOURCE CONSERVATION PROVISIONS OF THE ZONING ORDINANCE WHERE THE ROAD SERVES IDENTICAL PERMITTED USES IN BOTH THE R.C. 2 AND R.C. 5 ZONES.

Circuit Court for Baltimore County
Case No. C-04-12588

IN THE COURT OF APPEALS OF

MARYLAND

No. 111

September Term, 2006

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

v.

DOROTHY SURINA, et al.

Bell, C.J.
Raker
*Cathell
Harrell
Battaglia
Greene,
Wilner, Alan M. (Retired, (specially assigned),
JJ.

Opinion by Harrell, J.

Filed: August 23, 2007

*Cathell, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

We are asked in this litigation to determine whether a proposed stormwater management ("SWM") facility and private residential access road, the former designed

primarily to serve new single-family residential construction on lots in Baltimore County's R.C. 5 (Rural-Residential) zone and the latter serving those lots and a lot in the R.C. 2 (Rural-Agricultural) zone, both may be placed on the R.C. 2 zoned portion of the split-zoned tract. The Baltimore County Zoning Commissioner and Board of Appeals approved the proposed development. The Circuit Court for Baltimore County, on judicial review of that action filed by neighbors of the proposed development, reversed, holding that placement of the SWM facility on the R.C. 2 portion of the development violated existing zoning regulations. The Circuit Court, however, found no zoning problem with regard to the access road. The Court of Special Appeals, in an unreported opinion, reversed-in-part and affirmed-in-part the judgment of the Circuit Court, holding that there existed "no zoning impediments" whatsoever to the development plan. We shall affirm, but for reasons different than those relied on by the Court of Special Appeals.

BACKGROUND INFORMATION

The basic facts underlying the present case are as follows, divergent inferences advocated by the parties aside. The controversy arises from a development plan submitted to Baltimore County by Respondents, Dorothy Surina and Jeanne Gough (the land owners) and Gaylord Brooks Realty Company (the developer). The development project, identified as "Lynch Property - Sweet Air Road," is proposed for a 47 acre tract of land located near the intersection of Sweet Air Road and Manor Knoll Court, east of Jacksonville, a rural area in the northeastern portion of Baltimore County (the "Property"). Under the "Rural Protection and Resource Conservation" ("R.C.") area zoning in the County, Baltimore County Zoning Regulations ("BCZR") §§ 1A00.1 - 1A09.8, the Property and immediately adjacent parcels of land[1] are subject to various development requirements aimed at agricultural, watershed, critical area, and rural resource preservation.[2] The Property is divided by Sweet Air Road, a public road which runs in an east-west direction. Approximately 32.3 acres of the Property is located south of Sweet Air Road. The remaining 14.7 acres is located to the north. The portion lying to the south of Sweet Air Road is zoned, in its entirety, in the R.C. 2 zone under the Zoning Regulations, *see* BCZR §§ 1A01.1 - 1A01.4, and is improved with an existing residential structure.[3] The part of the Property located to the north of Sweet Air Road is split-zoned, meaning that there exists multiple zoning boundaries within that portion. *Alviani v. Dixon*, 365 Md. 95, 100 n.2, 775 A.2d 1234, 1236 n.2 (2001). On the west side of the northern parcel are 10.8 acres of R.C. 5 zoned land.[4] There are two smaller areas on the eastern section of the northern portion of the

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[1]The Gunpowder State Park borders the Property immediately to the north and east. The record indicates further that, to the west, there is a R.C. 5 zoned residential community consisting of twenty to thirty single-family dwellings.

[2]The County's generally stated purposes in establishing the resource conservation zones are as follows: (1) to discourage the current patterns of development in rural areas; (2) to "[p]rovide sufficient and adequate areas for rural-suburban and related development in selected and suitable areas;" (3) to "[p]rotect both natural and man-made resources from compromising effects of specific forms and densities of development;" (4) to "[p]rotect areas desirable for more intensive future development by regulating undesirable forms of development within these areas until such time as intensive development commences[;]" and (5) to "[h]elp achieve the goals of the Chesapeake Bay Critical Area Protection Law by enacting land use policies to control development within the Critical Area by conserving the land and water resource base for agriculture, forestry and other natural resource uses; minimizing adverse effects on water quality; and conserving fish, wildlife and plant habitat." BCZR § 1A00.2.

[3]The mailing address of the existing dwelling is 4501 Sweet Air Road.

[4]As we will describe *infra*, R.C. 5 land is categorized as rural-residential. The general (continued...)

Property, collectively shaped like a wedge and approximately 3.9 acres in size, zoned R.C. 2.[5] The development plan proposes eight single-family dwelling lots for the entire Property. Specifically, the proposal provides for the development of six new homes predominantly within the R.C. 5 zone,[6] one new dwelling on the northeasterly wedge-shaped R.C. 2 zoned parcel,[7] and the retention of the existing dwelling located at 4501 Sweet Air Road.

1. Private Access Road

Part of the infrastructure proposed in support of the subdivision, to be located on the part of the Property north of Sweet Air Road, fuels the instant controversy. Vehicular access to the lots, according to the development plan, is to be provided by a private road leading from Sweet Air Road into the interior of the R.C. 5 zoned land. The access road enters the proposed subdivision in the R.C. 5 zone, crosses briefly into the R.C. 2 zone, and then back into the R.C. 5 zone, where it eventually terminates in a cul-de-sac. The road is intended to provide owners of the R.C. 2 lot and the otherwise land-locked R.C. 5 zoned lots with access to Sweet Air Road. The design and location of the interior access road follows generally the existing natural topography of the Property.

2. Stormwater Management Facility

Also at issue is the placement of a stormwater management ("SWM") facility on the R.C. 2 zoned section of the Property which, according to the record, is intended to accommodate stormwater runoff from the R.C. 5 lots and surrounding areas.[8] The SWM facility is proposed to be located entirely within the R.C. 2 zoned land, adjacent to the private access road.[9]

Section 4-204 of the Environment Article of the Maryland Code (1982, 2007 Repl. Vol.) provides that all counties in Maryland shall adopt laws to implement a comprehensive

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[4](...continued)
regulations governing development in this zone are found at BCZR §§ 1A04.1 - 1A04.4.

[5]R.C. 2 is categorized as a rural-agricultural zone. The regulations governing the permissible uses of R.C. 2 zoned land are located at BCZR §§ 1A01.1 - 1A01.4.

[6]Five of the six lots comprised exclusively of R.C. 5 zoned land are each approximately 1.5 acres in size. The sixth lot, although predominantly in the R.C. 5 zone, is 4 acres, but contains a small portion of R.C. 2 zoned land. The R.C. 2 portion of the sixth lot is not computed towards density for the overall tract or needed to satisfy minimum lot size or any other requirements applicable to the R.C. 5 zone for the sixth lot.

[7]The plan proposes in the R.C. 2 zone the construction of one single-family home on a 1.27 acre lot.

[8]Before the Zoning Commissioner and Board of Appeals, there was some disagreement as to the utility of placing the SWM facility where it was proposed by the developer. As we will discuss *infra*, although there was evidence presented that the runoff created by the R.C. 2 lot would not drain naturally into the SWM facility as sited, there was additional testimony proffered indicating that movement of the facility across the zoning boundary into the R.C. 5 zone would result in increased runoff onto the R.C. 2 lot and neighboring parcels. The reason given for this was that the proposed location of the SWM facility was positioned at the lowest-lying spot in the development area. Moving the facility into the R.C. 5 lot would therefore require moving the facility upgrade.

[9]As the intermediate appellate court noted,

> [t]he Lynch Property sits on a low ridge, so that storm drainage is currently off the property toward adjacent neighbors. Development plans show that the proposed SWM facility "shall be public" and located entirely in the R.C. 2 zone at a site that is lower than the R.C. 5 zoned land in the parcel. The proposed SWM site is situated where the R.C. 5 property will drain into it, rather than onto the neighboring property. Plans state that the SWM reservation area will "be dedicated and granted at no cost to Baltimore County."

stormwater management program.[10] Pursuant to this mandate, Baltimore County adopted a regulatory scheme which provides generally that, unless the proposed development qualifies under one of the enumerated exceptions in Baltimore County Code § 33-4-104(b), no proposed land development in the County may commence unless the developer/landowner obtains from the local government approval of a stormwater management plan. The exceptions to this requirement are: "(1) Agricultural land management practices; (2) Additions or modifications to existing single-family, detached, or semidetached residential structures, if the additions or modifications [do not disturb more than 5,000 square feet of land area]; (3) Developments that do not disturb more than 5,000 square feet of land area; and (4) Land development activities that the administration determines will be regulated under specific state laws which provide stormwater management no less stringent than the provisions of this title."). *See also* Baltimore County Code §§ 32-6-107 (providing that no building permit may issue unless the applicant first meets the requirements of Article 33,

[10]The term "stormwater management" may refer to a system of either quantitative or qualitative controls. "Quantitative control" refers to a stormwater system or abatement practice that manages "the increased volume and rate of surface stormwater runoff caused by man-made changes to the land." Baltimore County Code § 33-4-101(ff)(1). Qualitative controls refer to a system that regulates water quality by eliminating pollutants, contaminants, or other particulate matter contained in the stormwater runoff which originates from particular development site(s). Baltimore County Code § 33-4-101(ff)(2).

Title 4 of the Baltimore County Code[11] as well as § 32-4-410(c)[12] of that same Code). None of the exceptions apply to the subject development plan.

Stormwater management facilities may be located either on a proposed development site or off-site. If a facility is considered "on-site," it is intended to control stormwater runoff originating from within the site upon which the facility is located. Baltimore County Code § 33-4-101(v). An "off-site" facility, on the other hand, is intended to collect stormwater runoff from more than one site. Baltimore County Code § 33-4-101(v). "Site" is broadly defined by the Baltimore County Code and refers to "any tract, lot, or parcel of land, *or combination of tracts, lots, or parcels of land, that are in one ownership*, or are contiguous and in diverse ownership, *where development is to be done as part of a unit, subdivision, or project* . . . ." Baltimore County Code § 33-4-101(dd) (emphasis added).

As part of a proposed development plan, a SWM facility may also be designated for public or private maintenance. Baltimore County Code § 33-4-110. If designated for public maintenance, "[t]he county shall take in-fee ownership of the stormwater management devices and practices . . . ." Baltimore County Code § 33-4-110(1). If the facility is designated for private maintenance, however, the property owner (or its successor) is responsible for maintaining the facility in accordance with standards spelled out by the

[11]Article 33, tit. 4, § 33-4-101 to 33-4-116 covers, in depth, the requirements and design standards for construction of stormwater management facilities in the County.

[12]Section 32-4-410(c)(2) provides that "[p]roposed drainage facilities shall be adequate to accommodate the amount of runoff that would be generated by: (i) The proposed development; and (ii) The entire upstream area, if the area were fully developed in accordance with the Baltimore County Zoning Regulations in effect at the time of the design or construction."

County "in a recorded deed of declaration for maintenance and access." Baltimore County Code § 33-4-110(2). To that end, the Baltimore County Code defines "public improvements" as those "improvements [which are] required by the county as a condition of development *that are intended to be dedicated to the county in fee simple or by other interests in title.*" Baltimore County Code § 32-4-101(nn) (emphasis added). "Private improvements," on the other hand, are those improvements which are "required by the county as a condition of development that are *not intended to be dedicated* to the county." Baltimore County Code § 33-4-101(mm) (emphasis added). *See also* Baltimore County Code § 32-4-302(c) ("The applicant shall prepare, execute, and deliver to the county those improvements . . . required to convey to the county all rights-of-way *that are determined to be necessary and appropriate for the county to accept and maintain the public improvements.*") (emphasis added). As indicated on the approved development proposal, the stormwater management facility in the present case is intended to be conveyed by the Respondents in-fee to the County for public maintenance.[13]

The present case began at the Zoning Commissioner / Hearing Officer (Commissioner) level when Respondents filed with the County a concept plan for the Property, pursuant to Baltimore County Code § 32-4-213. The concept plan included a simple, clean, and straight-forward schematic representation of the proposed subdivision.

[13]Specifically, the development plan indicates that the SWM facility is intended by the developers to be constructed at Respondents' expense and granted in-fee to the County upon completion and approval by the Baltimore County Department of Environmental Protection and Resource Management that the facility was constructed in accordance with the County's SWM design requirements.

The review process continued according to § 32-4-216[14] with the scheduling and completion of a Concept Plan Conference between the Department of Permits and Development Management, the Department of Environmental Protection and Resource Management, the Office of Planning, and the applicants. Subsequent to that meeting, a § 32-4-217 Community Input Meeting[15] was conducted, at which time, the owners of neighboring properties were given the opportunity to review and offer comments on the proposed development. After consideration and incorporation of the suggestions proposed during the earlier phases of the development approval process, the developers submitted a Development Plan for review and comments by the County at a Development Plan Conference. Baltimore County Code §§ 32-4-221 to 32-4-226.[16] Subsequent to the Development Plan Conference, a quasi-judicial

[14]Baltimore County Code § 32-4-216(a), in pertinent part, provides that "[w]ithin 10 working days following the filing of a concept plan, the Department of Permits and Development Management shall hold a concept plan conference with the applicant and representatives from the Department of Environmental Protection and Resource Management, the Office of Planning, the Department of Permits and Development Management, and other appropriate agencies, to receive the comments of the agencies."

[15]According to the Code, a Community Input Meeting should be conducted within 10 working days after the concept plan conference. At this meeting the developer and the surrounding community may discuss and resolve "community concerns and developer constraints" in terms of zoning issues. Baltimore County Code § 32-3-217(a), (b).

[16]The Development Plan essentially is a final proposed plan which incorporates the suggestions and resolutions to issues which arose during the earlier concept phases of the process. The applicant may not file a Development Plan without first holding a community input meeting regarding the proposed development. Baltimore County Code § 32-4-221(a).

public hearing was scheduled before the Commissioner. Baltimore County Code § 32-4-227.[17]

The Long Green Valley Community Association, and three individuals, Charlotte Pine, Steve Preston, and Gary Elser, at some point prior to this hearing, filed with the Commissioner a Petition for Special Hearing pursuant to BCZR 500.7.[18] It was at the § 32-4-227 public hearing that counsel for the neighbors advised the Commissioner that the petition

[17]Baltimore County Code § 32-4-227 provides that "final action on a Development Plan may not be taken until after a public quasi-judicial hearing before a Hearing Officer."

[18]BCZR § 500.7, in pertinent part, provides:

> The said 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 as hereinafter provided. *The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.*

(emphasis added). The issues framed for the Special Hearing were as follows:

> 1) Is a road that supports R.C. 5 residential development permitted within an R.C. 2 zone; 2) Is a storm water management facility that solely supports R.C. 5 development permitted within an R.C. 2 zone; 3) Can the R.C. 2 zone on the north and south sides of Sweet Air Road support both proposed Lots 6 and 7; 4) Can the density of an R.C. 2 zone parcel on the north and south sides of Sweet Air Road support Lots 6 and 7 along with the storm water management facility, and Lot 8 on the south side of Sweet Air Road; 5) Whether the creation of non-density parcels as part of residential lots shown on a development plan require a separate special hearing request, and specifically, a portion of proposed Lot 7 in the R.C. 2 zone; and, 6) such other and further issues as may be developed by the testimony presented at the hearing.

had been filed. Pursuant to Baltimore County Code, § 32-4-230(a), "[i]f the Development Plan requires a special exception, variance, special hearing, or interpretation of the Baltimore County Zoning Regulations, the applicant may combine the public hearing required under Title 3, Subtitle 3 of this article and under the Baltimore County Zoning Regulations with the public hearing held by the Hearing Officer on the Development Plan." The applicants consented to a single public hearing, which was held on 2 December 2003. The Commissioner filed on 16 December 2003 an opinion and order approving Respondents' development plan, pending the outcome of a traffic study aimed at determining if there existed a safe sight distance at the intersection of the interior access road and Sweet Air Road. Subsequent to receipt of that study, Respondents filed a red-lined development plan incorporating necessary changes indicated by the traffic study. The amended development plan was approved on 3 June 2004 by the Commissioner.

Petitioners noted with the Board of Appeals ("CBA") a timely administrative appeal. The CBA heard the matter on 7 September 2004. After the submission of legal memoranda from the parties and open deliberation on 26 October 2004 regarding the issues presented by the Petition for Special hearing, the CBA rendered its final decision on 10 November 2004, affirming the Commissioner's decision to approve the amended Development Plan. The Long Green Valley Community Association and the People's Counsel for Baltimore County filed on 6 December 2004 a Petition for Judicial Review in the Circuit Court for Baltimore County.

The Circuit Court reversed the decision of the CBA, concluding that the SWM facility contemplated by the development plan violated Baltimore County's resource conservation zoning regulations. Specifically, the Circuit Court held that, even though the facility was to be conveyed to and maintained by the County, the SWM system, by virtue of the fact that the need for stormwater management at all was precipitated by and served only the new development, was not a "public facility." In other words, the Circuit Court found that presumed government ownership and maintenance of the facility was insufficient indicia that the SWM facility would be a "public improvement," where the facility was required by and served only the proposed subdivision.

The Circuit Court rejected the developer's argument that the SWM pond constituted, pursuant to BCZR § 101, an "uncontrolled excavation," and, therefore, a permitted accessory use, in the R.C. 2 zone. The Circuit Court concluded that "a permitted principal use [such as housing] in one zone cannot be served by [an] accessory use[,] [the SWM facility], if that accessory use is located in a separate zone having its own, specific regulations."

As to the access road, the Circuit Court found that the development plan approved by the Zoning Commissioner "show[ed] only a small piece of the roadway that extends through the R.C. 2 zone, as most of the road is located in the R.C. 5 zone. Clearly, the access road [] serv[ed] both the R.C. 2 and R.C. 5 zones separately, and this type of road [wa]s a use permitted by right in each zone according to BCZR § 1A01.2B.5 and § 1A04.2A.7." The Circuit Court reasoned further that "there is no requirement in the BCZR that requires a street or way in one particular zone to provide access to that zone only. Stated differently, each

zone is supported by that part of the access road through which it travels, and it is therefore not in violation of the BCZR."

Respondents here noted a timely appeal with the Court of Special Appeals, raising the following issues:

> (1) Did the Circuit Court substitute improperly its judgment for the County Board of Appeals in ruling that a stormwater management facility, an improvement required as part of the development approval for a split-zoned residential subdivision, is prohibited in a portion of the R.C. 2 zoned area of the subject property?
>
> (2) Does the spirit, intent and scope of the BCZR prohibit the location of the SWM facility in a portion of the R.C. 2 zoned area of the subject property?
>
> (3) Did the County Board of Appeals apply the correct law and is its written opinion supported by substantial evidence?

The Court of Special Appeals, in an unreported opinion, agreed with the Commissioner and the CBA "that the proposed SWM facility is a public facility that is exempt from [the] R.C. 2 zoning restrictions [established in the BCZR]." Relying on our holding in *Glascock v. Baltimore County*, 321 Md. 118, 581 A.2d 822 (1990) (" '[I]t is a basic long-standing principle of statutory construction that the State is not deemed to be bound by an enactment of the General Assembly unless the enactment specifically names the State or manifests a clear and indisputable intention that the State is to be bound.' ") (citations omitted), the intermediate appellate court concluded that the to-be-County-owned SWM facility would fall outside the purview of the BCZR by virtue of the fact that it would be a public facility serving an important governmental function. The appellate court placed

significant emphasis on the fact that the facility, pursuant to the approved development plan, was to be conveyed in-fee to the County and that it was to be maintained by the County for the purposes of stormwater runoff serving and protecting also neighboring tracts of land, thereby serving broadly the public's health, safety, and welfare. The panel therefore remanded the matter to the Circuit Court with instructions to affirm the CBA's approval of the amended development plan. The intermediate appellate court found it unnecessary to address the other two issues before it.

The People's Counsel of Baltimore County, along with Long Green Valley Community Association, filed with this Court on 8 November 2006 a timely Petition for Writ of Certiorari. We issued the writ, 396 Md. 12, 912 A.2d 648 (2006), in order to consider the following questions:[19]

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[19]We reworded the questions for brevity and clarity. The questions framed in the petition for writ of certiorari were as follows:

> (1) Whether a storm water management facility required as a condition of private development approval, and serving that development, is a "public facility" or "pubic use" exempt from county zoning law?
>
> (2) Whether the Court of Special Appeals misapplied, and improperly extended the rule of *Glascock v. Baltimore County*, 321 Md. 118, 581 A.2d 822 (1990), that county governmental uses and activities are exempt from zoning?
>
> (3) Whether the Court of Special Appeals confused conditions for private land development with dedications of land for public use, disregarded distinctions illustrated in *City of Annapolis v. Waterman*, [357 Md. 484, 745 A.2d 1000 (2000),] and confused subdivision restrictions with zoning use law in a way reminiscent of *Remes v. Montgomery County*[, 387 Md. 52, 874 A.2d 470 (2005)]?

(continued...)

1. Whether the Court of Special Appeals confused subdivision restrictions with zoning use law in a way reminiscent of *Remes v. Montgomery County*, 387 Md. 52, 874 A.2d 470 (2005).

2. Whether a storm water management facility, required as a condition of private development approval, and serving that development, is a "public facility" or "pubic use" exempt from county zoning law under the reasoning in *Glascock v. Baltimore County*, 321 Md. 118, 581 A.2d 822 (1990), that county governmental uses and land development activities are exempt from local and municipal zoning regulations. In other words, whether the Court of Special Appeals confused conditions for private land development with dedications of land for public use, disregarding distinctions illustrated in *City of Annapolis v. Waterman*, 357 Md. 484, 745 A.2d 1000 (2000).

3. Whether the more-restricted R.C. 2 Agricultural Zone area may be used for a SWM facility and private access road in support of lots developed in the adjoining Rural-Residential Zone Area, where the Agricultural Zone would not permit the lot density those pieces of infrastructure were designed to support.

4. Whether the Court of Special Appeals allowed the equivalent of a disguised *de facto* rezoning of the R.C. 2 zoned property.

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[19](...continued)

> (4) Whether the highly restricted Agricultural Zone area may be used for an S.M. facility, private driveway, and lot area for lots developed in the adjoining Rural-Residential Zone Area, where the Agricultural Zone itself would not permit that lot density?
>
> (5) Whether the Court of Special Appeals allowed the equivalent of a disguised rezoning or unauthorized density transfer (a.k.a. *De facto* rezoning of the property)?

STANDARD OF REVIEW

When this or any appellate court reviews the final decision of an administrative agency such as the CBA, the court looks through the circuit court's and intermediate appellate court's decisions, although applying the same standards of review, and evaluates the decision of the agency. *Mastandrea v. North*, 361 Md. 107, 133, 760 A.2d 677, 691 (2000) (citing *White v. North*, 121 Md. App. 196, 219, 708 A.2d 1093, 1105 (1998), *rev'd on other grounds*, 356 Md. 31, 736 A.2d 1072 (1999)). We therefore shall focus our attention in the main on the decision of the CBA.

In doing so, this Court may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise, *see, e.g.*, *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 68-69, 729 A.2d 376, 381 (1999), so long as the agency's determination is based on "substantial evidence." *See White*, 356 Md. at 44, 736 A.2d at 1079-80; *Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979). In that latter regard, we inquire whether the zoning body's determination was supported by "such evidence as a reasonable mind might accept as adequate to support a conclusion . . . ." *Annapolis Waterfront Co.*, 284 Md. at 398, 396 A.2d at 1089; *see also Annapolis Waterfront Co.*, 284 Md. at 398-99, 396 A.2d at 1089 ("The heart of the fact-finding process often is the drawing of inferences made from the evidence . . . . The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is

reasonableness, not rightness.") (citations omitted); *Snowden v. Mayor and City Council of Baltimore*, 224 Md. 443, 447-48, 168 A.2d 390, 392 (1961) (quoting 4 KENNETH CULP DAVIS & RICHARD J. PIERCE, ADMINISTRATIVE LAW § 29.11, at 186 (1958)). Thus, we will uphold the administrative decision of the zoning body, here the CBA, to approve the development plan if that action was "fairly debatable" on the facts as found by it. *White*, 356 Md. at 44, 736 A.2d at 1079-80; *Sembly v. County Bd. of Appeals of Baltimore County*, 269 Md. 177, 182, 304 A.2d 814, 818 (1973); *Bd. of County Comm'rs for Cecil County v. Holbrook*, 314 Md. 210, 216-17, 550 A.2d 664, 668 (1988); *Prince George's County v. Meininger*, 264 Md. 148, 152, 285 A.2d 649, 651 (1972); *Zengerle v. Bd. of County Comm'rs for Frederick County*, 262 Md. 1, 17, 276 A.2d 646, 654 (1971); *Gerachis v. Montgomery County Bd. of Appeals*, 261 Md. 153, 156, 274 A.2d 379, 381 (1971).

We are less deferential in our review, however, of the legal conclusions of the administrative body and may reverse those decisions where the legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute. *Belvoir Farms Homeowners Assoc., Inc. v. North*, 355 Md. 259, 267-68, 734 A.2d 227, 232 (1999) (citing *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569, 709 A.2d 749, 753 (1998)); *see also Mombee TLC, Inc. v. Mayor and City Council of Baltimore*, 165 Md. App. 42, 884 A.2d 745 (2005) (finding that an appellate court's role "is precisely the same as that of the circuit court," and that "like that court, we are 'limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and

conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law' ") (citations omitted). When determining the validity of those legal conclusions reached by the zoning body, however, "a degree of deference should often be accorded the position of the administrative agency" whose task it is to interpret the ordinances and regulations the agency itself promulgated. *Marzullo v. Kahl*, 366 Md. 158, 172, 783 A.2d 169, 177 (2001). Thus, "[e]ven though the decision of the Board of Appeals was based on the law, its expertise should be taken into consideration and its decision should be afforded appropriate deference in our analysis of whether it was 'premised upon an erroneous conclusion of law.' " *Marzullo*, 366 Md. at 172, 783 A.2d at 178 (quoting *Banks*, 354 Md. at 68, 729 A.2d at 380).

DISCUSSION

II. Rural Conservation Zones.[20]

Before examining the merits of the parties' arguments, it is appropriate that we first inquire into the permitted uses of R.C. 2 and R.C. 5 zoned land, particularly as it may relate to the placement of access roads and stormwater management facilities in support of residential development. When considering these uses, it is important to keep in mind the overarching principles of the Rural Conservation zones, which are to:

[20]We focus, for the purposes of this opinion, primarily on the purposes and underlying reasons for establishment of the R.C. 2 and R.C. 5 zones. For a more extensive historical discussion of the Resource Conservation Zones in Baltimore County, see *Security Mgmt. Corp. v. Baltimore County*, 104 Md. App. 234, 655 A.2d 1326 (holding that placement of property in Baltimore County's RC-4 resource conservation zone did not constitute a deprivation of the landowner's constitutional rights to either equal protection or substantive due process), *cert. denied*, 339 Md. 643, 664 A.2d 886 (1995).

> (A) Discourage present land use patterns of development and to create a framework for planned or orderly development;
>
> (B) Provide sufficient and adequate areas for rural-suburban and related development in selected and suitable areas;
>
> (C) Protect both natural and man-made resources from compromising effects of specific forms and densities of development; [and]
>
> (D) Protect areas desirable for more intensive future development by regulating undesirable forms of development within these areas until such time as intensive development commences.

BCZR § 1A00.2.

A. The R.C. 2 Rural-Agricultural Zone

The R.C. 2 agricultural zone's primary purpose is to "foster conditions favorable to continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses." BCZR § 1A01.1.B.[21] This stated purpose is based on the premise:

> a. That Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development;
>
> b. That agricultural industry is an integral part of the Baltimore County economy and that a continued conversion of agricultural land will continue to undermine this basic industry;

[21]The R.C. 2 zone was established for the purpose of preserving agricultural land, as opposed to the R.C. 3 mixed-use agricultural classification, which was established in order to "foster conditions favorable to agricultural and residential use of the land while still maintaining the rural character of the area." BCZR § 1A02.1.A.

c. That scattered development is occurring in a sporadic fashion in areas of Baltimore County containing productive agricultural land;

d. That continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area;

e. That heretofore Baltimore County has been unable to effectively stem the tide of new residential subdivisions in productive agricultural areas of Baltimore County;

* * * * *

g. That Baltimore County possesses numerous areas which are highly suitable for urban development, including residential subdivisions which are not located in areas of productive agricultural land.

BCZR § 1A01.1.A.

The primary control device through which the intended purposes of rural-agricultural preservation are carried out are the use regulations contained in BCZR §§ 1A01.2 - 1A01.4. Although agricultural operations obviously are the preferred use permitted as of right in a R.C. 2 zone, BCZR § 1A01.2.A, other uses are permitted as of right, BCZR § 1A01.2.B, or by special exception. BCZR § 1A01.2.C. Uses permitted as of right, which are pertinent to the present case, include "streets and ways," BCZR § 1A01.2.B.5, and single-family detached

dwellings, BCZR § 1A01.2.B.1.[22] Stormwater management facilities are not mentioned explicitly in the enumeration.

The construction of single-family detached dwellings is subject to height and density regulations found at BCZR § 1A01.3.B. The BCZR provides that no tract within an R.C. 2 zone may be subdivided if it contains a gross area of less than two acres. BCZR § 1A01.3.B.1. Tracts having a gross area of between two and 100 acres may not be subdivided into more than two lots total. *Id.* For tracts above 100 acres in size, they may be subdivided at a density of no more than one lot per 50 acres. *Id.* In terms of minimum lot size, no lots having a gross area of less than one acre may be created in a R.C. 2 zone. BCZR § 1A01.3.B.2. *"No more than one principal dwelling is permitted on any lot in an R.C. 2 Zone."* BCZR § 1A01.3.B.4.

B. The R.C. 5 Rural-Residential Zone

The R.C. 5 rural-residential zone was established by Baltimore County on the premise that, among other things, rural-residential development "constitutes a wasteful use of land

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[22]"Uncontrolled excavations," which are

> [t]he digging of soil, sand, gravel, rock, minerals, clay or other earthen material from a land surface for any of the following purposes: When incidental to the operation of a permitted business or manufacturing use located on the same property, but excluding any digging of material for sale, exchange, processing or manufacture; *For grading or other purposes incidental to improvement of the land; and When incidental to the development of land or to grading for public improvements[.]*

BCZR § 101 (emphasis added), likewise are permitted as of right when ancillary to otherwise permitted uses in the zone. BCZR § 1A01.2.B.9.a.

and is fiscally expensive to serve with respect to the provision of basic services." BCZR § 1A04.1.A.1.b.[23] In that vein, the R.C. 5 zone was created in order to:

> 1. Provide for rural-residential development in suitable areas in which basic services are not anticipated.
>
> 2. Eliminate scattered and generally disorderly patterns of future rural-residential development.
>
> 3. Assure that encroachments onto productive or critical natural resource areas will be minimized.
>
> 4. Provide a minimum lot size which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems.

BCZR § 1A04.1.B.1 - .4. Permitted uses of right in the R.C. 5 zone pertinent to the present case are single-family detached dwellings, BCZR § 1A04.2.A.2, and streets and ways, BCZR § 1A04.2.A.7. Stormwater management facilities are not mentioned as such in the list of permitted uses within the R.C. 5 zone.[24]

A primary difference between the R.C. 2 and R.C. 5 zones, presumably because of the divergent foci between them in terms of residential and agricultural development, are the density levels permitted in each. Minimum lot size and density levels permitted within the R.C. 5 zone are more generous than those allowed in the R.C. 2 zone. The regulations provide that no lot may be created within the R.C. 5 zone with a total gross area of less than

[23]For a complete list of the findings underlying the creation of R.C. 5 zones, see generally BCZR § 1A04.1.A.

[24]Like the R.C. 2 zone, uncontrolled excavations accessory to permitted uses are allowed.

1.5 acres, BCZR § 1A04.2.B.a, and the maximum allowable residential density within the zone is 0.5 dwellings per acre. *Id.*

III. What is to be Made of the Fact That a SWM Facility, Which is a Utilization of the Property Required by the County as a Pre-Condition to the Approval of a Proposed Development, is Not Addressed As Such As a Permitted Use in the Zoning Regulations?[25][26]

Respondents posit that construction and operation of a SWM facility "is not a use within the contemplation of the zoning regulations" because the management of stormwater

[25]This question applies only to the stormwater management facility in the development plan. Access roads clearly are "uses" permitted as of right in both the R.C. 2, BCZR § 1A01.2.B.5, and R.C. 5 zones, BCZR § 1A04.2.A.7.

[26]An appellate court generally may not affirm an administrative agency (here the CBA) on grounds on which the agency itself did not rely in making its decision. *Anderson v. Dep't of Pub. Safety & Correctional Servs.*, 330 Md. 187, 213 n.2, 623 A.2d 198, 211 n. 2 (1993) ("[I]n judicial review of agency action the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency.") (quoting *United Steelworkers of America Local 2610 v. Bethlehem Steel*, 298 Md. 665, 679, 472 A.2d 62, 69 (1984)); *see Motor Vehicle Admin. v. Shepard*, 399 Md. 241, 260, 923 A.2d 100, 111 (2007) ("[T]he reviewing court, restricted to the record made before the administrative agency, may not pass upon issues presented to it for the first time on judicial review and that are not encompassed in the final decision of the administrative agency. Stated differently, an appellate court will review an adjudicatory agency decision solely on the grounds relied upon by the agency.") (citing *County Council of Prince George's County v. Brandywine Enterprises, Inc.*, 350 Md. 339, 349, 711 A.2d 1346, 1350-51 (1998); *Cicala v. Disability Review Bd. for Prince George's County*, 288 Md. 254, 260, 418 A.2d 205, 209 (1980)); *Ins. Comm'r v. Equitable Life Assurance Soc'y of the United States*, 339 Md. 596, 634, 664 A.2d 862, 881 (1995) ("[J]udicial review of administrative decisions is limited to the issues or grounds dealt with by the administrative agency.") (citations omitted).

The CBA, when addressing "whether an R.C. 2 zoned property can be used to support the development of R.C. 5 property, including density, stormwater management (SWM), and a road or driveway," found "compelling testimony that the [SWM] facility in this case will not solely support the development in R.C. 5 but will also be used to support the development in the R.C. 2 zone." More importantly, as an alternate basis to conclude that there was no zoning impediment to the development plan, "[t]he Board also cited compelling testimony that stormwater management facilities are like landscaping and not identified as a principal use in any zone."

is not addressed as such in the enumeration of permitted uses in the BCZR in the R.C. 5 or R.C. 2 zones. Rather than constituting a "use" in and of itself, Md. Code (1982, 2007 Repl. Vol.), Environment Article, § 4-204; Baltimore County Code § 33-4-104(b), Respondents contend that, because development regulations and zoning laws are separate, but interrelated bodies of law, the SWM facility, at least under the circumstances of the present case, falls outside regulation by the BCZR, notwithstanding Petitioners' assertion to the contrary.

It must be conceded, as general rule, that, when a zoning ordinance enumerates specifically the permitted uses within a particular zone, the ordinance "*establish[es] that the* only uses permitted in the [] zone are those designated as uses permitted as of right and uses permitted by special exception. Any use other than those permitted and being carried on as of right or by special exception is prohibited." *Kowalski v. Lamar*, 25 Md. App. 493, 499, 334 A.2d 536, 540 (1975) (citations omitted); *see also* ARDEN H. RATHKOPF & DAREN A. RATHKOPF, 1 THE LAW OF ZONING & PLANNING § 1:7 (4th ed. 2005) ("Reported court decisions often involve simply whether an owner's proposed use within a particular zoning district is a use allowed by right, an accessory use, a specially permitted use, or a use entirely prohibited within that district.").

It is well-settled that zoning regulations and subdivision controls regulate different aspects of the land use regulatory continuum. *Coffey v. Maryland-Nat'l Capital Park & Planning Comm'n*, 293 Md. 24, 30, 441 A.2d 1041, 1044 (1982) (holding that zoning and subdivision planning "represent separate municipal functions and neither is a mere rubber-stamp for the other") (quoting *Popular Refreshments, Inc. v. Fuller's Mil Bar*, 205 A.2d 445

(N.J. Super. 1964), *cert. denied*, 208 A.2d 143 (N.J. 1965)); *Remes v. Montgomery County*, 387 Md. 52, 64 n.8, 874 A.2d 470, 477 n.8 (2005); *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 129, 699 A.2d 434, 436 (1997) (citing generally *Board of County Comm'rs v. Gaster*, 285 Md. 233, 401 A.2d 666 (1979)). *See also* ARDEN H. RATHKOPF & DAREN A. RATHKOPF, 5 THE LAW OF ZONING & PLANNING § 90:24 (4th ed. 2005) ("[W]here the rules and regulations enacted or approved by the legislative body as a guideline for the planning board contain requirements different from those imposed by the *zoning ordinance with respect to lot size, frontage, width, setback or other non-use features*, or standards relating to design of the subdivision such as road length, size of cul-de-sacs, location of points of ingress and egress and the like, such rules and regulations have been *held to control. For example, where the subdivision regulations provide that a subdivision* must be compatible with the county master plan and the proposed plat shows a greater density than called for in the master plan, the subdivision may be rejected although the *zoning ordinance permits the density proposed.*"). *While zoning laws define the uses that* are permitted in a particular zoning district, *i.e.*, the R.C. 5 and R.C. 2 zones, subdivision regulations inform how, when, and under what circumstances a particular tract may be developed. *Remes*, 387 Md. at 74, 874 A.2d at 482 ("[Z]*oning dictates what one can build* on, or how one may use his property while subdivision or planning determines how the land is divided"). Included in these subdivision controls are provisions which require the *developer/property owner to construct infrastructure improvements of various types* necessary to support "uses" permitted in the zone by the applicable zoning regulations.

Despite their different aims, however, the two regulatory schemes are intended to complement each other in terms of the safety, health, and general welfare of the community at large. Zoning regulations and subdivision/development controls, along with the establishment of a master plan in a particular locality, serve additional common objectives in terms of the effective, efficient, and consistent use of land within similarly-situated districts. *Coffey*, 293 Md. at 30, 441 A.2d at 1044. As we stated in *Wesley Chapel Bluemount Association*,

> [g]overnmental control over land development is effected principally in three ways - through the adoption of (1) master plans delineating the desired uses for all land within the planning area, both for development and for roads, parks, schools, and other public purposes, (2) zoning regulations designed to implement the master plans by placing legal restrictions on the use of the land by non-governmental persons and entities, and (3) subdivision and other development regulations designed to ensure that private development of the land is consistent with the applicable master plan and zoning regulations. Although each of these devices has an independent purpose and may be subjected to a separate development and approval procedure, their functions, to some extent, coalesce, in that they are all designed to assure that land development occurs in a manner that is consistent with overall legislative policy and community welfare.

347 Md. at 129, 699 A.2d at 436 (citing generally *Bd. of County Comm'rs v. Gaster*, 285 Md. 233, 401 A.2d 666 (1979)). Thus, although zoning laws and subdivision regulations are separate forms of regulation, and typically are administered by different governmental agencies or bodies, they operate in practical application to ensure that land in a particular

locality is developed in a relatively uniform and consistent manner, especially when Euclidian zones,[27] such as the R.C. zones, are concerned.

Nowhere in any of the relevant cases explaining the differences between zoning and subdivision regulation is there an indication that improvements required by a subdivision regulation may be placed anywhere the developer wishes, regardless of an improvement's location relative to internal zoning boundaries and their requirements.[28] To the contrary, all

[27]"Euclidean zoning is a fairly static and rigid form of zoning named after the basic zoning ordinance upheld in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926)." *Mayor & Council of Rockville v. Rylyns*, 372 Md. 514, 534, 814 A.2d 469, 480 (2002). As we stated in *Rylyns*:

> "The term 'Euclidean' zoning describes the early zoning concept of separating incompatible land uses through the establishment of fixed legislative rules . . . ." 1 ZIEGLER, RATHKOPF'S THE LAW OF ZONING AND PLANNING (4th Ed. Rev.1994), § 1.01(c), at 120 ("Rathkopf's"). Generally, by means of Euclidean zoning, a municipality divides an area geographically into particular use districts, specifying certain uses for each district. "Each district or zone is dedicated to a particular purpose, either residential, commercial, or industrial," and the "zones appear on the municipality's official zoning map." 5 Rathkopf's, § 63.01, at 63-1-2. In this way, the municipality "provides the basic framework for implementation of land use controls at the local level." 1 Rathkopf's, § 1.01(c), at 122.

372 Md. at 534, 814 A.2d at 480 (quoting *Rouse-Fairwood Dev. Ltd. P'ship v. Supervisor of Assessments for Prince George's County*, 138 Md. App. 589, 623, 773 A.2d 535, 555 (2001)). "Euclidian zoning is designed to achieve stability in land use planning and zoning and to be a comparatively inflexible, self-executing mechanism which, once in place, allows for little modification beyond self-contained procedures for predetermined exceptions or variances." *Rylyns*, 372 Md. at 534, 814 A.2d 481.

[28]In *Remes v. Montgomery County*, 387 Md. 52, 874 A.2d 470 (2005), for example, we were called upon to determine whether two contiguous subdivided lots merged for zoning purposes as it related to Montgomery County's issuance of a permit for the construction of a single-family dwelling on one of the "combined" lots which, if the lots were individually owned, would have violated a

(continued...)

[28](...continued)
number of the County's spatial zoning requirements relative to setbacks, vehicular access, and accessory uses. 387 Md. at 59, 68, 874 A.2d at 473-74, 479. The two contiguous lots were under common ownership at the time Montgomery County's Division of Permitting Services ("DPS") issued an earlier permit for the construction of the existing single-family dwelling on one of the lots. *Remes*, 387 Md. at 58, 874 A.2d at 473. The lots were assessed by the County as one lot for tax purposes. *Id.* The newer permit was issued to the respondent, a developer, who was not, at the time of issuance, the owner of record of the lot where the second dwelling was proposed. *Remes*, 387 Md. at 59, 874 A.2d at 473.

When the common owner, one month after issuance of the new permit, attempted to convey to the respondent the lot, the petitioner, a neighboring land owner, filed in the Circuit Court for Montgomery County a Complaint for Declaratory and Injunctive Relief, seeking to rescind the sale and enjoin any future sale of the lot. *Remes*, 387 Md. at 59, 60, 874 A.2d at 474. The petitioner's challenge was based on his belief that the two lots had merged for zoning purposes, *Remes*, 387 Md. at 60, 874 A.2d at 474, an issue that this Court raised, but did not decide in *Friends of the Ridge v. Baltimore Gas & Electric Company*, 352 Md. 645, 658 n.11, 724 A.2d 34, 41 n.11 (1999):

> An owner of contiguous parcels who erects a structure in what would ordinarily be a setback of one of the individual parcels might, under this doctrine, although we do not now decide it, also cause a combination of lots thus restricting the future alienability of the unbuilt upon parcel because the conveyance of that parcel would cause the property upon which the structure is built to be in violation of the ordinance. Such an owner would also risk being forced to bring that parcel into conformity by removing the structure from the setback.

We ultimately concluded that, because the two lots "were under common ownership, and at the time of that common ownership, they were used in service to one another," they merged for zoning purposes. *Remes*, 387 Md. at 87, 874 A.2d at 490. Our decision was based, at least in part, on the concept that

> zoning merger is not a resubdivision. When zoning merger occurs, the lots remain divided. Thus, zoning merger, in effect, is an adjustment of zoning requirements. It has no effect on subdivision. Title examiners regularly consider aspects of zoning when examining titles in order to be able to indicate to purchasers the uses that can be made of a property. Those uses have no effect on subdivision regulation. One must comply with *both* zoning and subdivision requirements. In the present case, the applicant cannot meet zoning

(continued...)

proposed subdivision developments must comply with the applicable zoning ordinances in effect at the time the subdivision is proposed. Baltimore County Code § 32-4-104 ("Proposed development shall be in compliance with the present zoning classification on the property to be developed."); Baltimore County Code § 32-4-114(a) ("Except as otherwise provided in this title, all development shall comply with this title and all other applicable laws or regulations of the county."); *Wesley Chapel Bluemount Ass'n*, 347 Md. at 129, 699 A.2d at 436 ("[Z]oning decisions take into account the provisions of the applicable master plan and subdivision and development approvals take into account compliance with applicable zoning regulations.").

[28](...continued)
> requirements because of the doctrine of zoning merger and thus, while Lot 11 may be sold, it cannot be used, absent zoning variances or other zoning relief, if any.

Remes, 387 Md. at 67, 874 A.2d at 478. Thus, we concluded that the lot could not be sold to another party, notwithstanding the previous subdivision, if construction on that lot would otherwise violate the zoning setbacks applicable to the lots if the common ownership were severed.

A broad reading of our decision in *Remes* might support the conclusion that zoning laws and subdivision regulations are rigidly separate and distinct. No language in that case, however, supports the conclusion that an improvement not explicitly addressed in the zoning laws, but otherwise required by the subdivision regulations, is exempt from the zoning requirements.

Wesley Chapel Bluemount Association v. Baltimore County, the principal case relied on by Respondents, was a case of statutory interpretation involving whether the review process of a subdivision development plan proposed in a resource conservation zone constituted a "zoning matter" requiring, pursuant to Maryland Code (1957, 1995 Repl. Vol.), State Government Article, § 10-503, open deliberations by the Baltimore County Board of Appeals. 347 Md. 125, 136, 699 A.2d 434, 439-40 (1997). Beyond the abstractly stated principle that zoning law and subdivision regulations are independent, but related, concepts, *Wesley Chapel Bluemount* does not support Respondents' argument as framed.

Respondents' interpretation, however, that a SWM facility is not contemplated by, and therefore not subject to the BCZR generally and the R.C. 2 and R.C. 5 regulations specifically, when required in conjunction with single-family residential permitted use, defies logic and common sense because, at the same time, it is required by the subdivision controls as a condition of approval of that subdivision. The fault in Petitioners' reasoning is particularly apparent when the BCZR, read in broader context, contemplates expressly the construction of SWM facilities despite the absence as an enumerated permitted "use" as such in any of Baltimore County's resource conservation zones. In the R.C. 6 (Rural Conservation and Residential) zone, for example, no specific reference is made to stormwater management in terms of "uses" permitted, as of right or otherwise. BCZR § 1A07.3. Yet, the BCZR provisions governing use of land in the R.C. 6 classification provide that "[s]tormwater management facilities must be integrated with the *topography of the site* and consistent with the visual appearance of the surrounding natural features." BCZR § 1A07.8.C.1. The BCZR follow an identical pattern in its provisions relating to the R.C. 7 (Resource Preservation) zone. While stormwater management facilities are not mentioned as "uses" permitted in the R.C. 7 zone, BCZR § 1A08.3, another provision otherwise makes specific reference to stormwater management. SWM facilities located in R.C. 7 zones "must be integrated with the topography of the site and consistent with the visual appearance of the surrounding natural features." BCZR 1A08.6.C.1. In like fashion, the provisions pertaining to R.C. 8 (Environmental Enhancement) zones do not mention SWM facilities as "uses" permitted in the zone, yet they provide that SWM facilities "shall be integrated into the site design to

utilize nonstructural practices unless it is demonstrated that this is not possible." BCZR 1A09.7.C.1. Thus, regardless of whether an SWM facility properly may be characterized as a "use" in its traditional sense, it is clear that SWM facilities are nevertheless clearly contemplated by, and embraced by, the BCZR's basic zoning scheme in conjunction with allowed, explicitly mentioned uses in the rural conservation zone scheme generally. Thus, SWM facilities, required by subdivision regulations in conjunction with permitted uses in the R.C. 2 and R.C. 5 zones, are not exempt from regulation under the BCZR merely because SWM facilities are not mentioned in the permitted use enumerations.

Moreover, though we do not decide here whether a stormwater management facility is an "uncontrolled excavation" within the meaning of that term as permitted in the R.C. 5 and R.C. 2 zones as an ancillary use, primarily because Respondents did not file a cross-petition for certiorari raising that issue which they pursued in the Circuit Court, we observe that the construction of stormwater management ponds typically requires "the digging of . . . earthen material from a land surface . . . [f]or grading or other purposes incidental to improvement of the land; and [w]hen incidental to the development of land or to grading for a public improvement[] . . . ," BCZR § 101, such as here to serve to control run-off from a proposed residential subdivision. Thus, it seems not inconsistent with the development of expressly permitted uses, like single-family detached homes allowed in the R.C. 5 and R.C. 2 zones, to allow ancillary required infrastructure such as SWM facilities.

By the same token, there is no Maryland authority for Respondents' proposition that infrastructure improvements in the development approval process are immune from

appropriate zoning requirements, where the zoning ordinance may be wholly silent on the subject, because the improvements are required as conditions of the subdivision regulations. The more reasonable construction is that when an infrastructure improvement ancillary to an otherwise permitted residential subdivision is required as a condition to county approval of the development plan, some flexibility is implied in the definition of the "uses" which are subject to the zoning regulations of the county, particularly when certain other provisions of the same zoning regulations, despite the absence from the enumeration of the permitted "uses" in the particular zone of the particular "use," contemplate specifically that utilization of the land. *SWM management facilities are contemplated by the zoning scheme despite the* lack of their express inclusion as "uses" in the permitted use enumerations in the BCZR.

IV. Under the Circumstances of the Present Case, the Decisions of the Commissioner and CBA That There are No Zoning Impediments to Placing the SWM Facility and a Portion of the Interior Access Road in the R.C. 2 Zone are Correct.

"Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. Zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and, for the purpose of these regulations, shall be considered as separate parcels." BCZR § 1A00.5. With this in mind, Petitioners argue that, because "each zone is designed and structured with uniformity and to be self-contained with respect to principal and accessory uses," it is impermissible to locate in the R.C. 2 agricultural zone infrastructure, *i.e, the SWM facility and access road, designed to* support lots located on the R.C. 5 rural residential land, especially where the zoning laws

applicable to the agricultural zone would not permit the lot density the road and SWM facility were designed to support. Respondents, on the other hand, argue that no such zoning conflict exists between the commonly-owned, split-zoned Property.

A. The Proposed Placement of the SWM Facility on the R.C. 2 Land Would Not Violate the BCZR.

The record indicates that there was substantial disagreement between the parties at the CBA hearing regarding the consequences of placement of the SWM facility. Daniel O'Leary, a principal civil engineer called by Petitioners as an expert in stormwater management, testified as to various aspects of the placement of the SWM facility. Mr. O'Leary explained, *inter alia*, that, from a design standpoint, there would be more uncontrolled or un-managed flow from the development if the drainage pond were moved upgradient.[29] As such, he testified that, if the SWM facility were placed entirely within the R.C. 5 zone, "there may be some areas along the R.C. 5/R.C. 2 border that may no longer drain to it because they [would not] physically drain there," although he acknowledged that moving the facility onto the R.C. 5 land would not be fatal to the general development scheme. Regarding the environmental impacts of increased runoff from both the development and the access road ancillary to the proposed construction, counsel for

[29]Reports and plats depicting the topography of the land apparently indicate that the area in the vicinity of the R.C. 5 / R.C. 2 zoning boundary is a low point such that the bulk of stormwater runoff originating from the proposed development would flow into the SWM facility as sited by Respondents.

Respondents inquired whether "there would be more uncontrolled runoff if [the SWM facility] were constructed in the R.C. 5 versus R.C. 2 location." Mr. O'Leary replied, "Yes."

When asked whether the SWM facility would be smaller in size if designed to serve either the R.C. 2 lot by itself or, more abstractly, a single-lot development, O'Leary testified as follows:

> Question: If . . . you had none of this development in the R.C. 5, and you simply had one house where it's currently proposed on lot number seven, would you need a stormwater management facility?
>
> Answer: I don't think so. You would still need to address stormwater management.
>
> Q: But you would not need a facility such as the size and magnitude that's proposed on this [Respondent]'s [development plan]?
>
> A: I said [it would] be very unusual to have a stormwater management device for a single lot. So, yes. You have to address it, so not knowing exactly what the impact is from just that lot would be, it [is] hard for me to say. But it [is] unlikely a pond, for instance, would be required for a single lot development.
>
> * * *
>
> Q: In follow up then, it [is] the density of the housing on the R.C. 5 along with the road system that requires the facility that [is] proposed on the [Respondent]'s [development plan].
>
> A: Yes.

In a follow up question, Respondents' counsel asked O'Leary whether the SWM facility, as proposed on the R.C. 2 zoned land, would be effective controlling the runoff from the R.C.

5 property. O'Leary replied in the affirmative, indicating that at least three of the R.C. 5 lots and the roadway, which, in his opinion, was the most important factor because it would create the most runoff draining into the stormwater management pond, flowed to the facility.[30] Moreover, O'Leary testified that, because the Property sits on a low ridge, the R.C. 2 lot on the east portion of the Property actually would drain to the east and not into the SWM facility. While the bulk of the runoff collecting in the SWM facility would originate from the R.C. 5 lots, however, runoff originating from the stretch of the interior access road in the R.C. 2 zone would flow into the SWM pond.[31]

In reaching its decision to affirm the Commissioner's approval of the development plan, the CBA placed significant emphasis on the testimony of O'Leary regarding the efficacy of placing the stormwater management at the low point on the Property in an effort to minimize runoff, "indicating th[at], if the stormwater management facility were moved from the R.C. 2 zone to the R.C. 5 zone, runoff would actually be increased." We conclude that a reading of the SWM development regulations, as well as the BCZR, supports the CBA's decision.

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[30]Specifically, O'Leary testified that a small amount of run-off originating from the interior access road, which began on the R.C. 5 land and traversed the R.C. 2 portion, would drain into the SWM facility.

[31]Although the Baltimore County Code provides that SWM facilities must be able to accommodate runoff from "[t]he entire upstream area, if the area were fully developed in accordance with the Baltimore County Zoning Regulations in effect at the time of the design or construction," Baltimore County Code § 33-4-410(c)(ii), there is no evidence on the record before us that there are streams or areas upgrade from the Property that will produce additional or accelerated runoff.

The County's entire purpose in requiring adequate stormwater management is "to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with increased stormwater runoff." Baltimore County Code § 33-4-102; BALTIMORE COUNTY DEP'T OF ENVTL. PROT. & RES. MGMT., STORM WATER MANAGEMENT ENGINEERING REGULATIONS, Article 5 § 14-151(A) (2001). This coincides, to some degree, with one of the stated purposes of the BCZR resource conservation zones to "[p]rotect both natural and man-made resources from the compromising effects of specific forms and densities of development." BCZR § 1A00.2.B.

Stephen Preston, a resident in the community located to the west of the Property, testified, before the CBA, as to his concerns regarding stormwater runoff. Mr. Preston testified that "[t]he Lynch Property itself is a low ridge, basically, so that it runs off on every side onto adjacent property. It runs off to the east into Gunpowder State Park, and it runs off to the west through the adjoining properties []." Mr. Preston referred specifically to a map of the area surrounding Gunpowder State Park, and testified that the map "show[ed] the fact that [the Property sat on] a low ridge with drainage off of the east, north, and west occurring on [his (Mr. Preston's)] property immediately below where that runoff occurs." Mr. Preston testified further that his property, and the property of Mr. Elser, his neighbor to the south, sat lower than the Lynch Property, such that stormwater drained off the Property and onto their land. As the Commissioner concluded correctly, the entire purpose of having a SWM facility is to maintain stormwater runoff onto neighboring parcels at the level predating construction,

and as if the Property were undeveloped. BALTIMORE COUNTY DEP'T OF ENVTL. PROT. & RES. MGMT., STORM WATER MANAGEMENT ENGINEERING REGULATIONS, Article 5, § 14-151(C) (2001) ("Proper management of stormwater management runoff will: (1) Minimize damage to public and private property; (2) Reduce the effects of development on land and stream channel erosion; (3) Assist in the attainment and maintenance of water quality standards; (4) Reduce local flooding; and *(5) Maintain after development, as nearly as possible, the predevelopment runoff characteristics.*") (emphasis added).

The record reflects that the SWM facility design was based on the topography, the location of impervious surfaces on the Property, and achieving a pre-development rate of stormwater runoff. The CBA determined that "if the SWM facility were located in the R.C. 5 zone, that change would result in more uncontrolled or unmanaged runoff." Although "most of the runoff directed to [the SWM facility] will originate in the R.C. 5 zone," the runoff originating from the R.C. 2 portion of the road will flow additionally into the SWM facility. In other words, the SWM facility is ancillary to the single-family dwellings in both the R.C. 5 and R.C. 2 lots, which are uses permitted as of right in both zones. Based on the evidence in this record, if the Commissioner and CBA, charged with interpreting the resource conservation provisions of BCZR, chose to place emphasis on the environment impacts associated with placement of the SWM facility, a conclusion based on those environmental impacts to approve the development plan was not unreasonable or irrational.[32]

[32]We note that it appears that the location of the SWM facility on the R.C. 2 land, as (continued...)

The CBA's conclusion also is reasonable considering that BCZR provisions relating to the overall resource conservation scheme contemplate SWM facilities and that they should be sited according to topographical considerations. As stated *supra*, the BCZR provisions governing use of land in the R.C. 6 classification provide that "[s]tormwater management facilities must be integrated with the *topography of the site* and consistent with the visual appearance of the surrounding natural features." BCZR § 1A07.8.C.1 (emphasis added); BCZR 1A08.6.C.1.(providing that SWM facilities located in R.C. 7 (Resource Preservation) zone "must be integrated with the topography of the site and consistent with the visual appearance of the surrounding natural features."); *see also* BCZR 1A09.7.C.1 (stating that, in the R.C. 8 (Environmental Enhancement) zone, SWM facilities "shall be integrated into the *site design* to utilize nonstructural practices unless it is demonstrated that this is not possible.").[33] The Baltimore County Code provisions governing SWM management provide that a "site" may be comprised of one lot or even multiple lots if those lots are commonly

[32](...continued)
proposed, is neutral in terms of the total density and yield of the proposed development. Before the CBA, it was undisputed that the R.C. 5 land could support a theoretical maximum of seven dwellings. The development plan proposed only six dwellings in the R.C. 5 zone. Naturally, the developer is not entitled automatically to the maximum number of lots that a property would yield mathematically; however, nothing on this record indicates that the developer's placement, in the R.C. 2 zone, of the SWM facility maximized the achievable density in the R.C. 5 zone.

[33]We do not construe the absence of similar provisions in the BCZR for the R.C. 2 or R.C. 5 zones as indicative of a legislative intent that stormwater management facilities are prohibited in those zones. Rather, a comprehensive overview of the resource conservation zoning scheme, subdivision requirements, and the stormwater management regulations compel the conclusion that such infrastructure improvements, where required by proposing the development of otherwise permitted primary uses in those zones, are allowed.

owned and where those lots, when completed, will form a larger subdivision. Baltimore County Code § 33-4-101(dd) (defining a "site" as "any tract, lot, or parcel of land, *or combination of tracts, lots, or parcels of land, that are in one ownership*, or are contiguous and in diverse ownership, *where development is to be done as part of a unit, subdivision, or project* . . . .") (emphasis added).

B. Placement of the Access Road Did Not Violate the Resource Conservation Provisions of the BCZR Where There is Evidence in the Record that the Road was Designed to Provide Access to Both the R.C. 2 and R.C. 5 lots.

Turning our focus to the access road, although we agree with Petitioners that "zoning ordinance[s] [are] concerned with the use of property and not with ownership thereof nor with the purposes of the owners or occupants," *Anderson v. Associate Professors of Loyola College*, 39 Md. App. 345, 349, 385 A.2d 1203, 1204-05 (1978); *Mayor & City Council of Baltimore v. Poe*, 224 Md. 428, 433, 168 A.2d 193, 195 (1961); *Boulevard Scrap Co. v. Mayor and City Council*, 213 Md. 6, 10, 130 A.2d 743, 745 (1957), we conclude that the R.C. 2 and R.C. 5 zoning regulations do not conflict where the road is designed to service identical permitted uses in both zones.

In the present situation, the proposed development, currently in common ownership, is split-zoned, but each zone allows single-family, detached residential dwellings as primary uses permitted as of right. Streets and ways are permitted as of right in both zones in order to provide access to major roads for the purposes of ingress and egress. The foundation of the controversy manufactured for this case is that other zoning regulations applicable to each zone differ in terms of permissible lot density.

In *Leimbach Construction Co. v. Mayor and City Council of Baltimore*, 257 Md. 635, 264 A.2d 109 (1970), there were two adjacent parcels of land, under common ownership, one zoned for residential use and the other for commercial use. *Leimbach Construction Co.*, 257 Md. at 637, 264 A.2d at 109. Because the pre-existing access to the commercial lot was made impossible by the earlier collapse of a bridge leading to the property, the landowner applied for a permit to install a driveway across the otherwise vacant residential lot. *Leimbach Construction Co.*, 257 Md. at 637, 264 A.2d at 109-10. Because there were no structures on the residential lot to be served by the proposed road, it was manifest that the access road located within the residentially-zoned lot was intended to serve only the commercially-zoned lot. *Leimbach Construction Co.*, 257 Md. at 637-38, 264 A.2d at 110. In concluding that the road impermissibly "would be a 'business' use of land in a residential use district," *Leimbach Construction Co.*, 257 Md. at 640, 264 A.2d at 111, our predecessors reasoned, somewhat naively, that "[a]ccess can be accomplished on foot or on horseback; material can be fetched by pack-train. A bridge would be far more convenient, of course, and, in the long run, much less expensive. But this is none of our concern . . . ." *Id.*

As the CBA correctly pointed out in this case, "[i]f the roadway had been constructed only across the R.C. 2 land and its sole use was to access the lots in the R.C. 5 zone, then Petitioner's argument may have some merit." In *Leimbach*, the road had no apparent or immediate utility in terms of proposed uses on the residential lot on which it was located. In the present case, however, the proposed access road encroaches upon only a small portion of the R.C. 2 lot, and is ancillary to the proposed single-family, detached dwellings on both

the R.C. 2 and R.C. 5 zoned lots. The access road is a use permitted as of right in both the R.C. 2 and R.C. 5 zones according to BCZR §§ 1A01.2.B.5 and 1A04.2.A.7, respectively, and serves as a mode of ingress and egress for the homes located in both zones. While certainly *Leimbach* may be said to support the proposition that "each zone is designed and structured with uniformity and to be self-contained with respect to principal and accessory uses," we find nothing in the BCZR, the subdivision regulations, or our precedents which indicates that, when a split-zoned property, in which both portions are under common ownership when developed, is to contain infrastructure improvements ancillary to permitted uses consistently allowed in both zones, the relative infrastructure must be located entirely within the more densely-developed zone.[34]

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[34]In this regard, the CBA appears to have parsed the problem in different ways under different circumstances, but not so inconsistently with regard to its determination here. The record reflects that, in *In re Beth Tfiloh Congregation of Baltimore City, Inc.*, 01-468-SPH, CBA-01-136 (24 July 2002), Beth Tfiloh Congregation, owned an existing synagogue in a D.R. 1 (Density Residential) zone. When the Congregation sought to construct in the D.R. 1 zone a private school, dining hall, and gymnasium, the property owner sought also to construct in the adjacent R.C. 4 (Watershed Protection) zone camp bunkhouses and athletic fields in order to serve as accessory uses to the private school and synagogue located in the D.R. 1 zone.

The Congregation attempted to justify the location of the recreational facilities by arguing that they were accessory to the school, a use which was permitted explicitly in the D.R. 1 zone. Although the CBA acknowledged that "the bunkhouses and athletic fields and facilities [did] qualify as 'accessory uses' to the principal uses in the D.R. 1 property," because the R.C. 4 zone, the location in which the accessory uses were to be placed, did not permit the principal school use, the CBA nevertheless determined that the accessory uses were prohibited in the R.C. 4 zone.

In contrast, the proposed access road in the present case is ancillary to a single-family dwelling, a principal use permitted as of right in the R.C. 2 rural-agricultural district. Thus, we find that *Beth Tfiloh* is distinguishable, and conclude accordingly that the CBA did not commit legal error by refusing to consider it in the present case.

We are not persuaded by Petitioner's direction of our attention to *Delbrook Homes, Inc v. Mayers*, 248 Md. 89, 234 A.2d 880 (1967), *Board of County Commissioners of Anne Arundel County v. Snyder*, 186 Md. 342, 46 A.2d 689 (1946), or *Alviani v. Dixon*, 365 Md. 95, 99, 775 A.2d 1234, 1236 (2001), as support for the sweeping proposition that accessory uses may not be located in zones in which the principal use they serve is prohibited.

In *Delbrook Homes*, Chartwell, a private community located in Anne Arundel County, sought to operate a beach area for its residents in a nearby water-oriented community known as Lakeland. 248 Md. at 82, 234 A.2d at 882. Neighbors residing in Lakeland challenged the use of the beach area by Chartwell residents and their guests, claiming that it created traffic problems, excess noise, and other various encroachments, including individuals parking and otherwise trespassing on their property. *Delbrook Homes*, 248 Md. at 83-84, 234 A.2d at 882-83. Our task was to determine "whether such a private community beach must be located within the perimeter of, or contiguous to the community which it serves." *Delbrook Homes*, 248 Md. at 82, 234 A.2d at 881. We concluded that land owned in a separate water-oriented community could not be used as a "private community beach," under the Anne Arundel County zoning ordinances, where the beach is located outside the boundaries of the community it was intended to serve. Our decision hinged on the fact that

> [t]he term "private community beach" in the context of the zoning ordinance means a beach for the use and benefit of the surrounding and neighboring property owners, *not one for the exclusive use of a community in another area.* Although the uses imposed on the property by either group might well be identical, the fact remains that the residents of Chartwell cannot be expected to assume attitudes of responsibility toward the

> surrounding neighborhood and community control over the beach facilities as would those who reside in close proximity to the beach, that is, the residents of the Lakeland area.

Delbrook Homes, 248 Md. at 83, 234 A.2d at 882 (emphasis added). In other words, the violative land use was for the exclusive use of the Chartwell residents, to the exclusion of Lakeland residents. As indicated *supra*, we deal in the present case with a situation where the proposed use is ancillary to and serves permitted uses on both parcels of land.

Snyder is similarly distinguishable. Maurice Snyder applied for a permit to construct on Solomon's Island Road in Edgewater, Maryland, a showroom, office, lounge, and warehouse for the sale and display of factory-built motor boats. *Snyder*, 186 Md. at 343, 46 A.2d at 690. The proposed development site was located in a residential zoning district. *Snyder*, 186 Md. at 344-45, 46 A.2d at 690-91. Although we concluded there that "[t]he whole purpose of the [zoning] regulations is to exclude mercantile, manufacturing and trade activities from the area, and to permit therein only residential and farming activities," *Snyder*, 186 Md. at 345, 46 A.2d at 691, the case involved in no way a situation where the owner was building infrastructure in order to support two differently zoned parcels of commonly-owned land. Rather, *Snyder* involved a traditional, straightforward case in which the owner was attempting to establish a purely commercial use in a residential zone.

In *Alviani*, the property at issue was a 1.2 acre parcel located in Anne Arundel County, and split-zoned under the applicable ordinances as C1-B (community retail) and RLD (residential low density). *Alviani*, 365 Md. at 98, 99, 775 A.2d at 1236. The landowner sought to build an automotive service facility, a use permitted by special exception/variance

in the C1-B zone, but prohibited altogether in the RLD zone. *Alviani*, 365 Md. at 99, 775 A.2d at 1236. As a result, the property owner sought to have the RLD portion re-zoned as either C1-B or C4 (highway commercial), where the facility would be permitted as of right. *Id.* Aside from the fact that the holding in *Alviani* involved principally the appropriateness of granting the requested variances, rather than an issue implicating the special problem of split-zoning, the factual circumstances are entirely dissimilar from the present case. We deal in the present case with a utilization of land ancillary to permitted uses on two parcels within different residential districts with different density limitations. The proposed use in *Alviani* involved placement of a principal use spanning two zoning districts, in one of which the principal use was prohibited.

C. The Testimony of Paul Solomon

Moreover, Petitioners' argument regarding placement of both the SWM facility and interior access road is based principally upon the testimony of Paul Solomon, a former employee of the Baltimore County Office of Planning and Zoning. Mr. Solomon, according to his credentials, was involved intimately with the creation of the R.C. zones. Mr. Solomon testified before the CBA as an expert witness that, because the primary goal of the R.C. 2 zone was to preserve the land within that zoning district in order to maximize agricultural output, placement in the R.C. 2 zoning district of infrastructure improvements supporting land located in the R.C. 5 zone was inconsistent with that goal. When pressed on cross-examination, however, Mr. Solomon conceded that there was no specific reference in the BCZR to that effect. Rather, according to him, the conflict between the zoning regulations

and the placement of the SWM facility in the R.C. 2 zone was "implicit" in that infrastructure may be placed in compliance with the zoning laws only when it is ancillary to a use permitted within that particular zone. The CBA, in rendering its decision affirming the Commissioner, was unpersuaded by, and rejected the testimony of, Mr. Solomon due to his inability to offer legal support for his contention. Because the Commissioner and CBA chose to discount Mr. Solomon's testimony in interpreting the zoning regulations, we defer to their expertise and ability to assess more directly how the witnesses testified.

V. We decline to Reach the Issue of Whether the SWM Facility, Under the Circumstances of this Case, is a Governmental Use Exempt From the BCZR Pursuant to *Glascock v. Baltimore County*.

The parties' quarrel moves next to whether, pursuant to *Glascock v. Baltimore County*, 321 Md. 118, 581 A.2d 822 (1990), and its progeny, the SWM facility is a "public improvement" that qualifies as a "public use" exempt from regulation by the BCZR. The debated proposition is that the SWM facility, which is claimed to be an improvement to the Property required by the Baltimore County Code, will be constructed, and conveyed in-fee to the County for the purposes of public maintenance, and thus broadly serves the public by "reduc[ing] as nearly as possible the adverse effects of stormwater runoff and [] safeguard[ing] life, limb, property and public welfare." Maryland Code (1982, 2007 Repl. Vol.), Environment Article, § 4-201. Petitioners argue that the SWM facility, regardless of whether it constitutes a "public" or "private" improvement, nevertheless is not a "public facility" exempt from the BCZR because it is a local facility which serves only the run-off

from the proposed subdivision, rather than a regional facility broadly serving a greater public. The Commissioner, CBA and Court of Special Appeals accepted Respondents' argument, concluding that the SWM facility is a "public improvement" which serves the broad purpose of maintaining "the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with increased stormwater runoff." Baltimore County Code § 33-4-102. Because we conclude that there are no zoning impediments to the SWM facility, we need not address whether the Commissioner, CBA, and Court of Special Appeals were correct in concluding that the rule annunciated in *Glascock*, under the present circumstances, relieves the SWM facility from the requirements of the BCZR. We are compelled, however, to nevertheless discuss briefly the *Glascock* doctrine and the problems associated with applying it to the facts of the present litigation.

A. The Rule of *Glascock*: A Local Government, When it Owns, Leases, or Otherwise Controls Property in that Locality and Puts the Property to Public Use, is Not Subject to its Own Zoning Laws, Absent an Explicit Legislative Provision Manifesting an Intent that the Local Government be Subject to those Laws.

The concept that a local subdivision of State government generally is not subject to its own zoning laws, unless there is an explicit legislative provision which provides otherwise, may be traced in Maryland to *Commissioners of Cambridge v. Henry*, 263 Md. 370, 283 A.2d 415 (1971). In that case, the City of Cambridge sought to build, within city limits, a waterfront public park adjacent to a city-owned public marina. *Henry*, 263 Md. at 371, 283 A.2d at 416. After the permit application was reviewed, approved, and granted by

the proper local authorities, several neighboring residents filed, in the Circuit Court for Dorchester County, a complaint aimed at enjoining the proposed construction. *Henry*, 263 Md. at 371-72, 283 A.2d at 416. The waterfront park, according to the neighbors, would violate applicable local zoning ordinances prohibiting commercial uses in the particular zoning district. *Henry*, 263 Md. at 372, 283 A.2d at 416. Our resolution of the case hinged on the fact that the applicable zoning ordinance provided specifically that, before any statutory right to redress was available through the judicial process, certain issues presented in the case, namely that construction of the park would impose "immediate substantial and irreparable injury" on the neighborhood, needed, in the first instance, to be addressed by the local Board of Appeals. *Henry*, 263 Md. at 373-74, 283 A.2d at 417. Because the claimant failed to follow those statutory procedures, *i.e.*, bringing the complaint first before the Board of Appeals, we concluded that dismissal of the judicial action was appropriate. *Id.* In considered dicta, however, we explained for guidance that, when the appeal came before the Board, the Board would have to consider whether the City should be bound in the first place by its own zoning regulations. *Henry*, 263 Md. at 374, 283 A.2d at 417 ("[G]enerally a governmental body that has enacted a zoning law is not itself bound by that law.") (citing *Nehrbas v. Incorporated Village of Lloyd Harbor*, 140 N.E.2d 241, 242 (N.Y. 1957)). The reasoning behind this principle was that,

> [i]n the very nature of things, a municipality must have the power to select the site of buildings or other structures for the performance of its governmental duties. Accordingly, it necessarily follows, a village is not subject to zoning restrictions

> in the performance of its governmental, as distinguished from its corporate or proprietary, activities.

Id. (quoting *Nehrbas*, 140 N.E.2d at 242).

Six years after *Henry*, we were called upon, in *Mayor and City Council of Baltimore v. State*, 281 Md. 217, 378 A.2d 1326 (1977), to determine whether Baltimore City could enforce against the State the City's zoning, building, and fire codes in order to prevent the construction by the State of a correctional facility on property, within city limits, leased by the State. According to the municipal zoning laws at the time, the owner of any land within the particular zoning district was required, before it could proceed with any plans to convert an existing structure into a correctional facility, to obtain a specific zoning approval, by ordinance, from the Mayor and Council. *City of Baltimore v. State*, 281 Md. at 223, 378 A.2d at 1329. In holding that the State was not required to obtain such an approval before commencing with its proposed conversion activities, we stated that "it is a basic and long-standing principle of statutory construction that the State is not deemed to be bound by an enactment of the General Assembly unless the enactment specifically names the State or manifests a clear and indisputable intention that the State is to be bound." *Id.* Relying our earlier conclusions in *State v. Milburn*, 9 Gill 105, 118 (1850), which in turn quoted Justice Story, we reasoned that

> General Acts of the Legislature are meant to regulate and direct the acts and rights of citizens, and in most cases, the reasoning applicable to them applies with very different and often contrary force, to the government itself. It appears to me, therefore, to be a safe rule, founded in the principles of the common law, that the general words of a statute ought not to include the

> government, or affect its rights, unless that construction be clear and undisputable upon the text of the Act."

City of Baltimore v. State, 281 Md. at 223-24, 378 A.2d at 1329. Because Maryland Code (1957, 1970 Repl. Vol.), Article 66B, §§ 2.01 to 2.13, the enabling act which granted to the City the power to enact zoning laws, did not manifest an intent that the State be bound by those laws, we concluded that Baltimore City lacked the authority to enforce against the State its zoning ordinances when the land was to be used for the benefit of the general public. *City of Baltimore v. State*, 281 Md. at 223, 224, 378 A.2d at 1329, 1330. In *Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc. v. Harker*, we extended this rule to include in the exemption the "State's agencies and instrumentalities." 316 Md. 683, 693, 561 A.2d 219, 224 (1989) ("That the exemption from county zoning regulations accorded to the State under our holding in *City of Baltimore v. State* . . . extends to the State's agencies and instrumentalities is entirely manifest.").

Turning to *Glascock v. Baltimore County*, the basis of Respondents' claim that the SWM facility would not be, in any event, subject to the BCZR, we were confronted with a situation where the County, as lessee of land owned by a local volunteer fire company, sought to construct in a Baltimore County resource conservation zone a 620 foot wireless communication tower. 321 Md. 118, 120, 581 A.2d 822, 823 (1990). The communication tower, a use permitted only by special exception in the zone, was intended to be utilized by the County as part of a countrywide governmental communication system serving principally as an emergency response system for the police and fire departments. *Id.* When the County

failed to seek the requisite special exception, an adjacent property owner challenged on that basis the County's right to construct the tower. *Id.*

We held that, as a "territorial division[] of the State, created and organized for public political purposes connected with the administration of state government, and specially charged with the administration and superintendence of the local affairs of the community," the County enjoyed exemption from its zoning regulations, absent evidence of a contrary intent expressed there, when the proposed use was in furtherance of its governmental, as opposed to corporate or proprietary, functions. *Glascock*, 321 Md. at 122, 581 A.2d at 824 (citations omitted); *see also Pan Am. Health Org. v. Montgomery County*, 338 Md. 214, 226, 657 A.2d 1163, 1169 (1995) ("[T]he common law provides that [the State] is not bound by local zoning ordinances unless the General Assembly clearly indicates a contrary intent. Local governments, as instrumentalities of the State, enjoy this same common-law immunity.") (citations omitted). Thus, we extended the common-law rule from *City of Baltimore v. State*, that a State enjoys governmental immunity from its own, and its municipalities', zoning laws, to include in the exemption the counties as political subdivisions of the State. Based on our belief that "nothing could be more important than the potential savings of life of a police officer or a fire fighter," *Glascock*, 321 Md. at 121, 581 A.2d at 823, and in light of the fact that nothing in the BCZR or Maryland Code (1987 Repl. Vol.), Article 25A, § 5(X), the grant to Baltimore County of its power to enact zoning laws,

evidenced an intent that the County be bound to its own regulations, we concluded that there was no obligation that the County pursue a special exception. *Id.*[35]

B. The Assertion of Immunity Under *Glascock* in This Case is Problematic.

The Circuit Court pointed out that the determination of whether an improvement to the development site required by the subdivision regulations constitutes a "public use" immune from the BCZR under the *Glascock* doctrine is governed not only by whether the facility is owned and operated by the government, but also whether its use is "important in carrying out a government function." *See Glascock*, 321 Md. at 120, 581 A.2d at 823 (indicating the importance of adequate emergency communication equipment to public safety). The intermediate appellate court agreed with the relevant principles of law identified by the Circuit Court, but disagreed with their application to the facts of this case.

[35]This holding is not inconsistent with *Mayor & Aldermen of Annapolis v. Anne Arundel County*, 271 Md. 265, 316 A.2d 807 (1974). In that case, the Anne Arundel County government owned land located within the City of Annapolis' historic district. When the County filed an application to demolish the historically-designated building, the City and its Historic District Commission filed a complaint for injunctive relief in order to prevent the County from carrying out its plans. *Mayor & Aldermen of Annapolis*, 271 Md. at 273, 316 A.2d at 812. The County argued that it was subject neither to the Annapolis historic district zoning regulations nor the jurisdiction of the City's Historic District Commission. In the course of ruling in favor of the City, we placed emphasis on the distinction between traditional and historic district zoning. Despite the general rule, regarding traditional zoning, that the County would not be subject to the laws of the political subdivision, we observed that, in terms of historic district zoning, the General Assembly manifested explicitly an intent, by virtue of Chapter 274 of the Acts of 1963, that any political subdivision which owned land within a municipal historic district be subject to the jurisdiction of that municipality's historic district commission. *Mayor & Aldermen of Annapolis*, 271 Md. at 291, 316 A.2d at 820. Also persuasive was the fact that the City of Annapolis and Anne Arundel County had subjected themselves to their own respective zoning laws. *Mayor & Aldermen of Annapolis*, 271 Md. at 290, 316 A.2d at 820; *see also* Annapolis City Code § 22-5; Anne Arundel County Code § 13-334A.

There are two primary problems with applying *Glascock* to the present case. First is the problem with ownership of the SWM facility at the time the exemption determination was sought and made. We are unable to locate a Maryland case in which a private developer/landowner asserted successfully such an exemption from zoning laws. In the cases in which a the *Glascock*-type exemption was asserted successfully, the proponent, the "developer" if you will, was a governmental entity seeking to develop land which it owned or otherwise controlled at the time it proposed the establishment of the provocative use, facility, or structure. *Compare Henry*, 263 Md. at 371, 283 A.2d at 416 (proposed construction by the City of a waterfront public park on land adjacent to a city-owned public marina); *City of Baltimore*, 281 Md. at 223, 378 A.2d at 1329 (proposed construction by the State of a correctional facility on property leased by the State); *Glascock*, 321 Md. at 120, 581 A.2d at 823 (proposed construction by Baltimore County of a fire and police emergency communication tower on land leased by the County from the local volunteer fire department) *with Harker*, 316 Md. at 688, 561 A.2d at 222 ("[N]o exemption exist[s] 'from local zoning for privately owned land used by private organizations for functions governmental in nature' [when a non-profit corporation is providing child shelter services subject to governmental regulation] "); *Pan Amer. Health Org. v. Montgomery County*, 338 Md. 214, 223, 657 A.2d 1163, 1167 (1995) ("[T]he word 'government' [in the common law principle espoused in *City of Baltimore* and *Glascock*] refers only to the State of Maryland and its instrumentalities, not to all levels of government. [The] [Pan American Health Organization, a regional office of the World Health Organization,] is not part of and does not derive its existence from the

State of Maryland."); *Cassidy v. Board of Zoning Appeals*, 218 Md. 418, 431-32, 146 A.2d 896, 903 (1958) (distinguishing between "private undertakings" and undertakings "clothed with a public interest," and concluding that a special exception was warranted under the circumstances, thereby obviating the need to determine whether a privately owned public utility ("BGE") was given preferential treatment by the local government); *Creative County Day School of Sandy Spring, Inc. v. Montgomery County Board of Appeals*, 242 Md. 552, 219 A.2d 789 (1966) (distinguishing between public, private non-parochial, and private parochial secondary schools, and determining that it was not unreasonable for the County to require the private non-parochial school to obtain a special exception before building a school in a residential use district while excusing the public and parochial schools from that same requirement).

In the present case, however, private parties are asserting governmental exemption from the zoning laws, proposing to construct improvements on land presently owned and operated by them on the presumption that the proposed infrastructure improvement, upon completion, will be approved by the local government in terms of compliance with local design and operational standards and fee simple title will be accepted by the local government for the purpose of continuing maintenance at some future time.

The underlying purpose of the rule that a governmental entity is immune from its own zoning laws, unless a contrary result is apparent from the words of the laws, when it owns or controls land and uses it in furtherance of some governmental purpose, is premised, at least in part, on the rationale that,

> [i]n the very nature of things, a municipality must have the power to select the site of buildings or other structures for the performance of its governmental duties. Accordingly, it necessarily follows, a village is not subject to zoning restrictions in the performance of its governmental, as distinguished from its corporate or proprietary, activities.

Henry, 263 Md. at 374, 283 A.2d at 417 (citing *Nehrbas*, 140 N.E.2d at 242). With this principle in mind, in order for the immunity to attach to the proposed SWM facility, the governmental body proposed to receive title to the completed use, facility, or structure must have agreed prospectively (expressly or by operation of law), at a minimum, to accept ownership or control in "advance" or at the time of the determination of exemption.

The purpose of requiring proof of the prospective acceptance by the governmental entity qualifying for the exemption of the proposed use, facility, or structure should be obvious. First, approval of the location and intended purpose of the proposed use, facility, or structure on the land use proposal is manifested by acceptance. Further, demonstration of the prospective agreement or requirement that the proposed use, facility, or structure will be owned or controlled by the governmental entity is necessary to foreclose unilateral representations by a private applicant. As we stated in *Waterman*, 357 Md. at 504, 745 A.2d at 1010, the purpose of requiring an acceptance by the local government is to prevent a situation where a developer imposes upon the municipality the responsibility for maintenance and repair for an otherwise private facility merely by designating unilaterally the improvement for public maintenance. *See also Waterman*, 357 Md. at 504 n.8, 745 A.2d at 1010 n.8 ("In many instances, it is ultimately to a developer's sales advantage to offer to

dedicate to the local government water and sewer facilities, streets, recreational areas or other sites because, if the offer is accepted, the local government, not the future residents of the subdivision, generally will be responsible for maintenance of the facilities. In 'closed subdivisions,' which limit public access, homeowners associations generally are responsible for maintaining such facilities.").[36]

We could not locate in the record the answer to whether the County requested conveyance of the proposed SWM facility for public maintenance, and therefore required in-fee "dedication," or whether it was Respondents who initiated the proposal that the SWM facility be conveyed to the County.[37, 38] In any event, it does not matter at whose behest the

[36]Although *Waterman* involved the distinction between a"dedication" and a "condition to approval of a private use," as opposed to perhaps a conveyance in fee simple, the reasoning behind requiring evidence of prospective governmental acceptance of a dedication is equally applicable to a situation where a particular improvement is intended to be conveyed in fee simple for the same purposes as it would be used otherwise in a dedication or a reservation. Moreover, the same implications arise in that, if evidence of acceptance were not required before a conveyance takes place, any developer may unilaterally place on the local government responsibility for maintenance regardless of the nature of the improvement.

[37]*Respondents assert that they were required by the County to convey the SWM facility as* a public improvement at no cost to the County. Specifically, Respondents point to Baltimore County Code §§ 33-4-110(1), 32-4-302(c)(2)(i) ("The rights-of-way [determined to be necessary and appropriate for the county to accept and maintain the public improvements] shall be conveyed in . . . [f]ee Simple"), and 302(c)(3) ("The nature of the conveyance shall be established by the county."), "[o]nce the SWM facility has been completed and accepted, Baltimore County 'shall' take in-fee ownership for public maintenance."

Respondents' argument that all SWM facilities, regardless of the circumstances, are required to be conveyed in-fee to the county for maintenance is contradicted by our reading of Baltimore County Code § 33-4-110(1). Section 33-4-110 reads, in its entirety:

> Upon completion and acceptance of the stormwater management *devices, practices, or both:*

(continued...)

[37](...continued)

(1) The county shall take in-fee ownership of the stormwater management devices and practices *designated for public maintenance*; and

(2) *For privately maintained stormwater management devices, practices*, or both:

(i) The property owner shall be responsible for maintenance; and

(ii) The property owner's specific maintenance responsibilities shall be detailed in a recorded deed of declaration for maintenance and access.

(*emphasis added*). *Section 33-4-110(1), read in context, indicates clearly that a SWM facility may* be maintained either publicly or privately, and that only those SWM management devices and practices *actually designated by the County for public maintenance* are conveyed in-fee and therefore constitute "public improvements." *Compare* Baltimore County Code § 33-4-101(mm) (defining "private improvements" as those improvements which are "required by the county as a condition of development that are not intended to be dedicated to the county.") *with* Baltimore County Code § 32-4-101(nn) (defining "public improvements" as those which are "required by the county as a condition of development that are intended to be dedicated to the county in fee simple or by other interests in title.").

Moreover, while the Court of Special Appeals lumped together streets, drains, sewers, waterlines, sidewalks, gutters, landscaping, streetlights and traffic-control devices, and stormwater management facilities as "public improvements," the Baltimore County Code does not pigeon-hole specific types of improvements as either public or private. Baltimore County Code § 32-4-101(w) ("'Improvements' means improvements as determined necessary and appropriate by the county," and includes, *inter alia*, "stormwater management facilities"). In other words, the code neither delineates specifically that SWM facilities necessarily are all public improvements nor describes specifically when "designation," thereby requiring conveyance in-fee by the developer/landowner to the County for public maintenance, must occur.

[38]It is worth noting that the Court of Special Appeals drew an analogy to Maryland Code (1957, 2003 Repl. Vol), Article 66B, § 14, which denominates in Washington County SWM facilities as "public facilities," and also to the County Codes of Frederick and Anne Arundel counties, which define like facilities as public improvements. We find this analogy inapt, if for no other reason, than that the Baltimore County Code, which governs subdivision approval in the jurisdiction where the land is located, makes specific reference to the possibility of both private and public improvements. *See* Baltimore County Code § 33-4-110; Baltimore County Code § 32-4- (continued...)

SWM facility is to be conveyed, because there has been no affirmative indication that the governmental unit charged with maintaining such a SWM facility likely would accept the offer to convey in-fee for the purposes of continuing public maintenance.

To the contrary, a representative of the Department of Environmental Protection and Resource Management (DEPRM), the governmental unit charged with maintaining public SWM facilities, was present at the CBA hearing at which the development plan was considered. At that time, the DEPRM submitted evidence, based on Baltimore County Code *§§ 14-331 to 14-350* (*Regulations for the Protection of Water Quality, Streams, Wetlands and* Floodplains), §§ 14-401 to 14-422 (Forest Conservation Regulations), and BCZR 1A01.1.A, indicating some technical discontent with the proposed development plan. At no time did the DEPRM express any sentiment that reasonably could be construed as a willingness to accept or a likelihood of acceptance of the conveyance in-fee to the County of the proposed SWM facility for the purposes of maintenance. In this situation, mere approval by the CBA of the development plan delineating a location and intended purpose of a SWM facility proposed by the private developer does not manifest, by itself, acceptance by the appropriate governmental unit so as to satisfy the government ownership/control requirement for application of *Glascock*.

VI. Placement of the SWM Facility and Access Road in the R.C. 2 Zoned Lot Did Not Constitute a *De Facto* Rezoning of the R.C. 2 Land to the R.C. 5 zone.

[38](...continued)
101(mm), (nn).

Prior to submission of the development plan which ignited the present litigation, Respondents sought to change the zoning of the R.C. 2 portion of the Property to R.C. 5. The justification for this proposed reclassification was that, when the County Council established originally in 1976 the Baltimore County resource conservation zones for the purposes of agricultural resource preservation in the County, the wedge-shaped 3.9 acre tract in the northern parcel was zoned mistakenly as R.C. 2, instead of the intended R.C. 5. In other words, Respondents claimed that the zoning lines were drawn in error, and that the entire northern portion should have been placed in the R.C. 5 zone. The case was heard in public session before the Board of Appeals over two days. Citing the well-settled principle that there is a "strong presumption of correctness of original zoning in comprehensive rezoning and [that] to sustain a piecemeal change in circumstance such as present here, there must be strong evidence of mistake in the original zoning or comprehensive rezoning, or evidence of substantial change in the character of the neighborhood must be produced," *Rockville v. Henley*, 268 Md. 469, 472, 302 A.2d 45, 46 (1973); *Heller* v. *Prince George's County*, 264 Md. 410, 412, 286 A.2d 772, 773 (1972), the Board rendered on 6 May 2002 its opinion that there was insufficient evidence to support Respondents' argument that a "mistake" occurred. It therefore rejected Respondents' request to re-zone the entirety of the Property located north of Sweet Air Road as R.C. 5.

Because we conclude that there are no zoning impediments as a matter of law to the placement on the R.C. 2 zoned land of the SWM facility and access road, and because we defer to the expertise of the Commissioner and CBA in interpreting, on this record, the

County's resource conservation zoning regulations, we conclude that no *de facto* rezoning occurred by approval of the development plan. There arises from the CBA's earlier denial of the "mistake" rezoning application prosecuted by Respondents on evidentiary insufficiency grounds no mandatory inference that reflects adversely upon the subsequent development plan approval. The two cases are not related except as to partial identity of the subject property.

JUDGMENT OF THE COURT OF APPEALS AFFIRMED; COSTS TO BE PAID BY PETITIONERS.

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ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

August 30, 2007

HAND DELIVERED
Ms. Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
400 Washington Avenue, Suite 49
Towson, Maryland 21204

RE: *Niels H. Braid*
20315 Middletown Road
Case No. 06-332-SPH
Petitioner's Response to Motion for Reconsideration

Dear Ms. Bianco:

Niels Braid, Petitioner in this case, hereby files an original and three (3) copies of the *Petitioner's Response to Motion for Reconsideration*. Should you or any member of the Board desire additional information or additional copies, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosures (4)
c (w/one encl.): Mr. Niels H. Braid
Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Mr. Guy C. Ward

RECEIVED
AUG 30 2007
BALTIMORE COUNTY
BOARD OF APPEALS

8/22/07

RE: PETITION FOR SPECIAL HEARING
E/S of Middletown Road, 1006' SE of c/line
of Keeney Mill Road
(20315 Middletown Road)
6th Election District, 3rd Councilmanic District

Legal Owner(s): Niels and Margaret Braid
Petitioners

* BEFORE THE
* COUNTY BOARD
* OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case No. 06-332-SPH

RECEIVED
AUG 22 2007
BALTIMORE COUNTY
BOARD OF APPEALS

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

People's Counsel for Baltimore County's Motion for Reconsideration

Pursuant to CBA Rule 10, People's Counsel for Baltimore County moves for reconsideration of the County Board of Appeals opinion and order dated August 3, 2007, as corrected by amended opinion dated August 10, 2007, on these specific grounds:

I. Failure Sufficiently to State Facts and Reasons to Support Decision

1. The CBA opinion includes a summary of the testimony and a quotation in full of Baltimore County Code Sec. 32-4-409 pertaining to panhandle driveways at pages 2-7, but then fails to articulate adequate facts, reasons, and legal analysis to sustain the CBA's decision on the various issues addressed at pages 7-12.

2. It is a basic principle of administrative law that a sufficient statement of supporting facts and legal reasons is a predicate to judicial review of the legitimacy or sustainability of an agency decision. United Steelworkers v. Bethlehem Steel Corporation 298 Md. 665 (1984). This applies regularly to land use cases. Harford County v. Preston 322 Md. 493, 505 (1991); Bucktail v. County Council of Talbot County 352 Md. 530, 552-559 (1999), attached.

3. The manifest deficiencies in the CBA opinion relate to issues raised with particularity throughout the course of the trial hearing, including expert testimony of John J. Dillon, Jr., and in People's Counsel's post-hearing memorandum.

II. The CBA's Identification of the Issues

4. The CBA identified the issues generally as relating to the Petitioners' request to "put a second house on the property" and "get the panhandle waiver they seek." Page 7. The CBA proceeded to frame the issues more specifically as follows:

> "What is the appropriate procedure for amendment of a final development plan (FDP) and final subdivision plat for re-subdivision? Should Petitioners have filed a petition for special hearing to amend FDP?" Page 7.
>
> "Is there any justification for waiver of the width requirements of the panhandle driveway law?" Page 8
>
> "Does the proposed resubdivision conflict with and exceed the tract density limits set by law governing amendment of subdivision lots?" Page 9.

III. The CBA's insufficient and incorrect answer relating to procedure for amendment of the FDP and subdivision plats; failure to apply BCZR 1B01.3.A,B.

5. The CBA answered the procedural question relating to FDP amendment by quoting BCZR Sec. 500.7, the general special hearing section for determination of issues of law, and then wrote, at page 8,

> "The Board, based on BCZR 500.7 and the testimony and facts presented, that the Planning Director advised the Petitioners to proceed with the waiver by way of Special Hearing, unanimously agrees that the Petitioners were correct in seeking the Special Hearing and the Zoning Commissioner acted within the scope of the regulations bases on the BCZR."

6. This conclusory answer misses the point that a petition under BCZR 500.7 must relate to a relevant substantive or other provision of law. It is not enough to say that a petition is legitimate simply because BCZR 500.7 authorizes petitions for special hearing.

In the present case, the petition for special hearing requested only a waiver to the panhandle width requirements under Code Sec. 32-4-409. The petition for special hearing here omits any mention or request relating to the relevant law controlling FDP amendments, BCZR 1B01.3.A and amendments of subdivision plats. BCZR 1B01.3.B. Ironically, the CBA later quoted 1B01.3.A.7, at pages 10-11, (albeit incompletely) in another errant answer to the substantive question concerning tract density limits. The CBA decision with respect to the procedure for FDP plan and subdivision plat amendment reveals, therefore, not only a lack of understanding that a petition for special hearing to amend the FDP must be framed as such, but also an internal inconsistency in view of the later reference to the governing section.

This problem is not merely technical in nature. Where there is a failure to identify the nature of the special hearing and the relevant law correctly, it misdirects the entire case. As a result, the county agencies and decisionmakers either do not recognize or sidestep the relevant issues and standards under the governing law.

IV. The CBA's insufficient and incorrect answer relating to waivers of panhandle driveway width requirements.

7. The CBA answered the question about waiver of panhandle driveway width with the quotation of Baltimore County Code Sec. 32-4-107, a reference to the previously quoted Code Sec. 32-4-409, and a statement of the following conclusion, at page 9,

> "Based on the above statutes and the testimony and facts of the case, the Board determined unanimously that there was justification for the waiver."

8. This conclusory answer also misses the point. The specific section which targets panhandle driveway width waivers is Code Sec. 32-4-409(k). It delegates the

authority to grant waivers to the Planning Director, not the Zoning Commissioner (nor the CBA upon *de novo* review of the ZC). It supersedes the general Code Sec. 32-4-107. Even if Code Sec. 32-4-107 were applicable, the Planning Director would have to request the ZC to grant the waiver, and that was not done here; rather, the Planning Director simply (and erroneously) suggested the property owner apply to the Zoning Commissioner for a special hearing.

9. To understand the issue, it is necessary to review carefully Code Sec. 32-4-409. The interesting procedural aspect of this legislation is that subsection (k) assigns to the planning director the function of granting or denying waivers, except with respect to specified lot limits under subsection (d) and with respect to driveway length, which are subject to variance under subsection (e). The waiver provision sets specific statutory criteria for consideration by the planning director.

Given the legislative assignment to the planning director, what role is left to the zoning commissioner/hearing officer (ZC/HO)? Ordinarily, the hearing officer may grant waivers to development regulations under Code Sec. 32-4-107 upon the recommendation of a department director. But Code Sec. 32-4-409(k) establishes a specific and extraordinary review process for panhandle driveway waivers.

In this context, the essential statutory function of the planning director must be respected and not circumvented. Significantly, in Capital Commerical Properties v. Montgomery County Park & Planning Comm'n 158 Md. App. 88 (2004) Rodowsky, J., the Court held that where a statute delegates to a particular department a specific review function in the development process, then the decision making function rests with that

department. There, a question arose as to which agency had the function to review parking facilities plans (PFPs): the Planning Board, in its general review of the development, or the Director of the Department of Permitting Services (DPS) to whom the county code specifically assigned review of parking Facilities Plans, setbacks, and waivers. The Court held it would be duplicative to have both agencies conduct the review. Rather, as the specifically assigned agency, the DPS Director had the sole authority and function to review PFPs setbacks, and waivers. We attach to this memorandum Judge Rodowsky's discussion at 158 Md. App. 88, 97-101.

We previously considered the possibility that it might be sensible to try to harmonize Code Secs. 32-4-409 and 32-4-107. We though it might be workable to recognize the primary decision making function of the planning director, but to allow the zoning commissioner/hearing officer to utilize the public hearing process to review the planning director's decision for errors of law. The present case shows, as a practical matter, that this is a futile effort. The Zoning Commissioner effectively took over the task assigned by law to the Planning Director.

The bottom line is that the specific statutory assignment in Code Sec. 32-4-409(k) delegates to the Planning Director the exclusive authority to grant panhandle driveway waivers. The message of Capital Commercial Properties is that this must not be fudged. It is thus not within the scope of authority of the Zoning Commissioner to grant a waiver to panhandle driveway width either based on his special hearing authority in BCZR 500.7 or his general waiver authority as hearing officer under Code Sec. 32-4-107. In contrast, the Zoning Commissioner does have the authority under Code Sec. 32-4-409 and BCZR

307.1 to consider variances to panhandle driveway length. The result is that there is a division of authority between the Planning Director and the Zoning Commissioner with respect to different panhandle driveway issues.

10. In the absence of an affirmative decision by the Planning Director, based on a legally sufficient application and articulation of the applicable standards under Code Sec. 32-409, it is not proper to grant a waiver to panhandle driveway width.

V. The CBA's insufficient and incorrect answer relating to the conflict with tract density limits.

11. The CBA answered this question first by consulting and quoting BCZR 1A01.3.A, the current law relating to subdivision lot density in the R.C. 2 Zone, and then made this conclusory statement, at page 10,

> "The Board unanimously agreed that based on Sec.1A01.3 and the testimony and facts presented, the resubdivision clearly does not exceed the density limits."

The CBA then added that it "consulted BCAR [sic] Sec. 1B01.3.A.7, but proceeded to quote it incompletely and incorrectly. BCZR 1B01.3.A.7. Page 10-11. A careful reading of the bottom of page 10 and the top of page 11 shows that the CBA quoted BCZR 1A01.3.A.7.b.(2) twice, but omitted and skipped the important BCZR 1A01.3.A.7.b.(3), which states,

> " It must be determined in the course of the hearing procedure that the amendment would be consistent with the spirit and intent of the original plan and of this article."

The CBA also omitted the crucial last sentence of BCZR 1B01.3.B.2,

> "B. Final subdivision plat
>
> * * *
>
> 2. Effect. ... It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. Zone in a manner so

as to exceed the total number of dwelling units or density units **allowed under the applicable D.R. Zone(s) for the entire tract."** Emphasis supplied.

[This applies to R.C. Zones by virtue of BCZR 1A00.4, "Plans and plats. Development plans and final subdivision plats shall be required in the manner prescribed under Section 1B01.3, and for the purpose of this section, all references to D.R. Zones shall include the R.C. Zones."]

Having made these unfortunate and crucial omissions, the CBA made yet another conclusory and incorrect statement in its August 3, 2007 opinion, at pages 11-12,

"*Counsel for the Petitioner believes that BCZR § 1B01.3A.7 provides for the amendment of a Final Development Plan. The subject property allowed for density of 19 lots under the RC-5 zoning in place in 1981. Five lots and Tract "A" were approved and recorded. We find no provision or evidence that all density permitted but not used on an improved FDP is lost forever. We do not find Mr. Dillon's testimony to the contrary persuasive. *

Applying the current zoning (previously cited), the Petitioner is entitled to have one more house on the subject lot. The Board took into consideration the fact that the Planning Director initially denied the request to ensure there would be a public hearing on this matter. A public hearing was posted and no one from the Community or neighborhood showed up to protest the proposal. The Board felt that the tough standards needed to obtain the waiver had been met by the Petitioner and that the Deputy Zoning Commissioner was correct in his decision to grant the waiver in the first place.

After a thorough review of the facts, testimony and law in the matter, the Board unanimously finds that the requested waiver should be granted, and will so order."

*Remarkably, the CBA's August 10 amendment deleted the first of the above three paragraphs, as it apparently "relates to a prior matter."

12. With or without the deleted paragraph, the CBA here failed to address the key point that under BCZR 1B01.3.B.2, the critical density limits for amendments to subdivision plats prohibit density which exceeds the density allowed in the zone for the entire tract. Here, under current law, the applicable density for the entire 75-acre tract is two (2) dwelling or density units. The 20-lot subdivision here, platted prior to enactment

and mapping of the R.C. 2 Zone, already far exceeds the density permitted for the entire tract under current law.

13. The CBA has cherry-picked the current R.C. 2 Zone law under BCZR 1A01.3 to rationalize its allowance of a density multiplier for this "lot of record," as if it were never part of a platted subdivision. Conversely, the CBA has disregarded the explicit density limits which apply to amendments of subdivision plats and resubdivisions. These specific limits require **an evaluation of the density with respect to the entire tract.**

14. The sensible purpose of this law is to prevent precisely what has been proposed in the present case, a resubdivision of a lot in one of the older subdivisions which predates current law and already exceeds the tract density allowed under current law. It also prevents an even greater disparity in density between subdivisions platted prior to enactment of the R.C.2 Zone and those which came after the implementation of the strong density controls of that law.

15. It is elementary that "... the language of a statute must be viewed as a whole, with reference to the surrounding provisions of a statute." Department of Human Resources v. Howard 397 Md. 353, 362 (2007). In other words, it is important to "... construe the statute as a whole so that no word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory." The goal also is to avoid any "unreasonable, illogical or inconsistent interpretation ...." Mayor & Town Council of Oakland v. Mayor & Town Council of Mountain Park 392 Md. 301, 316 (2006); Department of Health v. Kelly 397 Md. 399, 420 (2007).

Conclusion

For the above reasons, the CBA should reconsider, correct, and reverse its August 3 Opinion and Order, as repeated and revised on August 10. The petition for panhandle driveway width fails both on procedural and substantive grounds. The proposed resubdivsion, in any event, exceed the density limits applicable to the entire tract.

Note on the Changing of the Guard

One of the CBA panel members, Michael Mohler, has resigned from his position. The CBA must, therefore, appoint a new panel member to fill the vacancy, join the two remaining, review the record, and participate in the decision. CBA Rule 1.c.1 states,

> "Rule 1. General
>
> * * *
>
> c. Three (3) members of the board of appeals, as designated by the chairman, shall sit for the purpose of conducting the business of the board; and a majority vote of two (2) members shall be necessary to render a decision, except as follows: [Bill No. 50-2005]
>
> 1. During the course of a hearing, if any member of the original panel is unable to continue to serve, the chairman shall appoint a member to fill the vacancy; or
>
> 2. In the case of a remand, if any member of the original panel is unable to serve, the chairman shall appoint a member to fill the vacancy."

See People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580, 602-11 (2002), attached. That case so held as to a remand, where Judge Moylan compared the Baltimore County CBA to a "regiment" which "goes on" with a new member to fill the place of the departed. The reference is to the movie "Fort Apache" (1948) starring John Wayne.

Peter Max Zimmerman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of August, 2007, a copy of the People's Counsel for Baltimore County's Motion for Reconsideration was mailed to Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Accordingly, we hold that the failure of the Baltimore City Police to subject Evans and Sykes–Bey to the formal criminal charging process at the time of their valid arrests under Maryland law did not offend the United States Constitution. Having validly effected arrests under Maryland law, the officers properly conducted a search incident to the arrests of Evans and Sykes–Bey. The circuit court therefore properly denied Respondents' motions to suppress.

JUDGMENTS OF THE COURT OF SPECIAL APPEALS REVERSED. CASE OF RESPONDENT EVANS REMANDED TO THE COURT OF SPECIAL APPEALS WITH DIRECTIONS TO AFFIRM THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY; COSTS IN THIS COURT AND THE COURT OF SPECIAL APPEALS TO BE PAID BY RESPONDENT EVANS. CASE OF RESPONDENT SYKES–BEY REMANDED TO THE COURT OF SPECIAL APPEALS FOR CONSIDERATION OF THE ISSUE OF PROBABLE CAUSE; COSTS IN THIS COURT TO BE PAID BY RESPONDENT SYKES–BEY AND IN THE COURT OF SPECIAL APPEALS TO ABIDE BY THAT RESULT.

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723 A.2d 440

BUCKTAIL, LLC

v.

The COUNTY COUNCIL OF TALBOT COUNTY et al.

No. 38, Sept. Term, 1998.

Court of Appeals of Maryland.

Jan. 27, 1999.

Developer petitioned for judicial review of county council's denial of its application for a growth allocation under the Chesapeake Bay Critical Area Protection Program. The Circuit Court, Talbot County, William S. Horne, J., upheld council's decision, developer appealed, and writ of certiorari was issued. The Court of Appeals, Rodowsky, J., held that: (1) council's decision was subject to judicial review; (2) substantial evidence standard of review applied; and (3) council's findings of fact were insufficient to permit judicial review, requiring remand for further findings.

Vacated and remanded.

1. Administrative Law and Procedure ⇐651

Rule governing petitions for judicial review does not grant a right of judicial review, and it is inapplicable where judicial review is not authorized by statute. Md.Rule 7–202.

2. Zoning and Planning ⇐570

County council's denial of developer's application for a growth allocation under the Chesapeake Bay Critical Area Protection Program was subject to judicial review pursuant to circuit court's original jurisdiction to review actions of administrative agencies, despite absence of provision in county charter or zoning ordinance for judicial review of a zoning reclassification by the council. Code, Natural Resources, § 8–1801 et seq.; Code, Courts and Judicial Proceedings, § 12–301.

3. Zoning and Planning ⇐708

Substantial evidence standard of review applied to judicial review of county council's denial of developer's application for a growth allocation under the Chesapeake Bay Critical Area Protection Program, absent provision in county zoning ordinance with respect to judicial review of piecemeal rezoning. Code, Natural Resources, § 8–1801 et seq.; Code 1957, Art. 25A, § 5(U).

4. Zoning and Planning ⇐561

The determination of whether a local zoning authority is acting in an adjudicative or legislative manner, for purposes of judicial review, is dependent upon the nature of the particular act in which it is engaged; this determination is not based on

whether the zoning decision adversely affects an individual piece of property but whether the decision itself is made on individual or general grounds.

5. **Administrative Law and Procedure ⇐763, 788**

Where statute or ordinance makes no provision for judicial review, an implied limitation upon an administrative board's authority is that its decisions be supported by facts and that they be not arbitrary, capricious or unreasonable.

6. **Zoning and Planning ⇐439, 726**

County council's findings of fact in support of its denial of developer's application for a growth allocation under the Chesapeake Bay Critical Area Protection Program were insufficient to permit judicial review, requiring remand for further findings; county's planning staff and planning commission recommended approval of developer's project, and council merely made conclusory statements based on criteria set forth in its zoning ordinance for amendments to zoning maps, without pointing to facts supporting its contrary conclusion. Code, Natural Resources, § 8–1801 et seq.

7. **Zoning and Planning ⇐361**

Findings of fact necessary for judicial review of zoning decision must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions.

Richard A. DeTar (Miles & Stockbridge, P.C.), on brief, Easton, for appellant.

Michael L. Pullen, David R. Thompson (Brynja M. Booth, Cowdrey, Thompson & Karsten, P.A.; John White, all on brief), Easton, for appellees.

Argued before BELL, C.J., and ELDRIDGE, RODOWSKY, CHASANOW, RAKER, WILNER and CATHELL, JJ.

RODOWSKY, Judge.

In this appeal a real estate developer contends that Talbot County (the County) erroneously denied its application for a growth allocation under the Chesapeake Bay Critical Area Protection Program. For the reasons set forth below we shall hold that there was procedural error that requires a remand to the Talbot County Council (the Council).

I

In 1984, the General Assembly enacted the Chesapeake Bay Critical Area Protection Program (the Program). Chapter 794 of the Acts of 1984, codified as amended in Maryland Code (1974, 1990 Repl.Vol., 1998 Cum.Supp.), §§ 8–1801 through 8–1817 of the Natural Resources Article (NR). The purposes of the Program are:

> "(1) To establish a Resource Protection Program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats; and
>
> "(2) To implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight."

Id. § 8–1801(b). The Chesapeake Bay critical area generally consists of the Chesapeake Bay, its tributaries to the head of tide, all designated State and private wetlands, and all land and water areas within 1,000 feet beyond the landward boundaries of designated State or private wetlands and the heads of tides of the Chesapeake Bay and its tributaries. *Id.* § 8–1807(a).

The General Assembly created the Chesapeake Bay Critical Area Commission (the Commission) to promulgate regulations and to administer the Program. *Id.* §§ 8–1803 and 8–1806. Each county within the critical area has primary responsibility for developing and implementing a local critical area protection program pursuant to criteria established by the Commis-

Kent County's initial, comprehensive zoning pursuant to the Program the appellants' property had been zoned RCA. Shortly thereafter the appellants sought a piecemeal reclassification to LDA which the County Commissioners of Kent County denied, after having been advised by the Commission that the requested map amendment should be denied. The circuit court sustained that action. The Court of Special Appeals, speaking through Judge Robert M. Bell, now Chief Judge of this Court, affirmed on the ground that there was no mistake in the original zoning within the meaning of NR § 8–1809(h)(2)(i). The opinion makes no mention of any statute either providing for judicial review or establishing the standard for review. Nevertheless, the court said: "Because the standard of review is whether there is any substantial evidence in the record to support the decision of the County Commissioners, our focus is on whether that decision is supported by the record." *Bellanca*, 86 Md.App. at 230 n. 10, 586 A.2d at 68 n. 10.

Consistently with *Ellicott* and *Bellanca*, with the judicial review statutes for rezoning in jurisdictions other than the County, and with the Maryland law involving constitutionally based judicial review of administrative adjudicatory fact-finding in contexts other than rezoning, we hold that the standard for review in the instant matter is the substantiality of the evidence.

V

[6] Logically, the next step in our analysis would be to determine if the facts found by the Council are supported by substantial evidence. The difficulty here, however, is that the Council's "findings" are insufficient to permit judicial review.

> "The court's task on review is *not* to '"substitute its judgment for the expertise of those persons who constitute the administrative agency[.]"' A reviewing 'Court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency.' A court's role is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law."

United Parcel Serv., Inc. v. People's Counsel for Baltimore County, 336 Md. 569, 576–77, 650 A.2d 226, 230 (1994) (citations omitted). *Accord Harford County v. Earl E. Preston, Jr., Inc.*, 322 Md. 493, 505, 588 A.2d 772, 778 (1991) ("[A] fundamental right of a party to a proceeding before an administrative agency [is] to be apprised of the facts relied upon by the agency in reaching its decision and to permit meaningful judicial review of those findings. In a judicial review of administrative action the court may only uphold the agency order if it is sustained by the agency's findings and for the reasons stated by the agency."); *United Steelworkers of America AFL–CIO, Local 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 679, 472 A.2d 62, 69 (1984) (same).

In accordance with the above standard of judicial review, in order for the reviewing court to determine whether the Council's action was fairly debatable, findings of fact are required.

[7] Findings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions. *Turner v. Hammond*, 270 Md. 41, 55–56, 310 A.2d 543, 551 (1973) (local board of zoning appeals denied application for a special use exception by filling out a preprinted form; "[w]e think the 'reasons' given by the Board for denying the application suggest a rather cavalier attitude in respect of its duties and responsibilities. It made no findings of fact worthy of the name and we think citizens are entitled to something more than a boiler-plate resolution"); *Rodriguez v. Prince George's County*, 79 Md.App. 537, 550, 558 A.2d 742, 748 ("It is not permissible for the Council, or any administrative body, simply to parrot general statutory requirements or rest on broad conclusory statements."), *cert. denied*, 317 Md. 641, 566 A.2d 101 (1989); *Ocean Hideaway Condominium Ass'n v. Boardwalk Plaza Venture*, 68 Md.App. 650, 662, 515 A.2d 485, 490–91 (1986) ("Although the Ocean City Board [of

Zoning Appeals] did not use a prepared printed form, the method it used and the content of its 'Findings of Fact' amount to a simple repetition of the nine statutory requirements and nothing more.").

Other judicial review cases have presented the issue of insufficient findings of fact by an administrative agency or local legislative body. In a case decided prior to *United Steelworkers, supra*, a Baltimore City board denied a city employee accidental disability retirement benefits. *Baker v. Board of Trustees*, 269 Md. 740, 741, 309 A.2d 768, 768 (1973). The circuit court, in effect, affirmed in a mandamus action. *Id.*, 309 A.2d at 769. The board had refused to apprise the employee of the reasons for its denial simply because no statute required the board to do so. *Id.* at 746–47, 309 A.2d at 771. In affirming on the basis that there was substantial evidence to sustain the decision, this Court stated that it would "remand, for appropriate findings of fact, any case which hereafter reaches us in the posture of this one." *Id.* at 747, 309 A.2d at 772. We explained that "[t]his is no more than a recognition of the fundamental right of a party to be apprised of the facts relied upon by the agency, and, even in the absence of a statutory provision, is frequently required by a court as an aid to judicial review." *Id.* (citation omitted).

In *Board of County Commissioners v. Ziegler*, 244 Md. 224, 223 A.2d 255 (1966), the Board of Commissioners of Prince George's County, sitting as a district council, denied an application for a special exception. *Id.* at 226, 223 A.2d at 256. The circuit court reversed. *Id.* On appeal, the problem was that, contrary to the requirements of the county zoning ordinance, the district council failed to make findings of fact in the record on which its decision was based. *Id.* at 228, 223 A.2d at 257. Remanding for such findings of fact, we explained:

> "There are several reasons for requiring a more comprehensive record of what transpired in this case at the hearing before the district council. Aside from the rule that a zoning authority, in the absence of evidence to support its action, cannot apply its expertise in granting or refusing a zoning change or exception, it is clear that without a record

> of the facts on which the zoning authority acted or a statement of the reasons for its action, the reviewing court could not properly perform the duty it had of determining whether the action of the zoning authority was arbitrary or capricious. The rule is as applicable to a special exception as it is to a reclassification.
>
> "Where, as seems to be the case here, the decision of the zoning authority is apparently contrary to the weight of the evidence introduced on behalf of the applicants for the special exception, the zoning authority should have stated the reasons for its action and included them in the record. When this is not done, the record should be remanded for the purpose of having the deficiency supplied."

Id. at 228–29, 223 A.2d at 257–58 (citations omitted). *See also Harford County v. Earl E. Preston, Jr., Inc.*, 322 Md. at 505, 588 A.2d at 778 ("The [county council sitting as a board of appeals] made no attempt to reconcile the contradictory findings of fact by its hearing examiner in his two reports as to whether the adverse impacts upon the neighborhood of the [owners'] proposed special exception uses were beyond those inherently associated with such special exception uses irrespective of their location within the AG zone.").

In *Mossburg v. Montgomery County*, 329 Md. 494, 620 A.2d 886 (1993), we struck down a supermajority requirement for action by a board of appeals on the following rationale:

> "Where there is a supermajority requirement, however, and where (as in the case at bar) a majority but not a supermajority of the Board of Appeals votes to grant an application, there will usually be no findings of fact or conclusions of law setting forth the basis for the agency's denial. Furthermore, the settled principle that an agency's decision will be judicially reviewed only on the grounds relied upon by the agency cannot be adhered to under such circumstances. In addition, while there may be in a particular case substantial evidence supporting the denial of an application on a certain ground, such ground may not have

been the basis for the minority votes. In fact, the two minority members might not agree with each other."

Id. at 508, 620 A.2d at 893.

One leading commentator has articulated the rule in the manner set forth below:

" 'Given express findings, the court can determine whether the findings are supported by substantial evidence, and whether the findings warrant the decision of the board. If no findings are made, and if the court elects not to remand, its clumsy alternative is to *read* the record, *speculate* upon the portions which probably were believed by the board, *guess* at the conclusions drawn from credited portions, *construct a basis* for decision, and *try to determine* whether a decision thus arrived at should be sustained. In the process, the court is required to do much that is assigned to the board, and the latter becomes a relatively inefficient instrument for the construction of a record.' "

Gough v. Board of Zoning Appeals, 21 Md.App. 697, 702, 321 A.2d 315, 317–18 (1974) (emphasis court's) (quoting 3 R.M. Anderson, *American Law of Zoning* § 16.41, at 242 (1968)); *see also Ocean Hideaway Condominium Ass'n v. Boardwalk Plaza Venture*, 68 Md.App. at 662, 515 A.2d at 490 (same).

In the instant case, the Council made twelve "Findings of Fact." Findings one through four pertain to the procedural history and have not been set forth in Part II, *supra*. Findings five through twelve are set forth in Part II, *supra*. Finding five simply refers to § 19.14(c)(1)(iv) as controlling. Finding eleven states that the required site visit was made, and finding twelve states that, "[i]n light of the above findings," the application is denied. We are concerned here with findings six through ten.

Findings seven, eight, nine, and ten appear to be based on five criteria set forth in § 19.14(c)(1)(ii)[f] that are required to be considered for certain amendments to the zoning maps, as shown by the comparison set forth in the margin.[5]

5.

Council's Findings of Fact	§ 19.14(c)(1)(ii)[f]
	"In granting approval for an amendment to the Official Zoning Maps, the Council shall take into consideration findings of fact in each specific case, including but not limited to the following:
"(7) The County Council finds that the Growth Allocation request is not consistent with the purposes and intent of the Talbot County Comprehensive Plan.	"[1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;
"(8) The County Council finds that the proposed change will not be compatible with existing and proposed development and land use in the surrounding area.	"[2] Compatibility with existing and proposed development and land use in the surrounding area;
"(9) The County Council finds upon the basis of the evidence of record that there have been no population changes that would suggest this reclassification to be wise.	"[3] Availability of public facilities;
"(10) The County Council finds that the availability of public facilities and the present and proposed transportation patterns do not support the reclassification."	"[4] The effects on present and future transportation patterns; and
	"[5] The effect on population change within the immediate area."

The introduction to subsection (ii) expressly states the scope of subsection (ii). It deals with "Amendments to the Official Zoning District Maps excepting properties within the boundaries of the Critical Area where growth allocation is requested." § 19.14(c)(1)(ii). In contrast, subsection (iv) deals with "Growth Allocation District Boundary Amendments in [the] Critical Area." Thus, the directly applicable criteria for Bucktail's requested rezoning are the nine criteria established by § 19.14(c)(1)(iv)[b], which are set forth in Part I, *supra*. In a case such as the instant one, if the developer can satisfy the criteria of subsection (iv) on a request for rezoning from one dwelling unit per twenty acres to one dwelling per five acres, the developer will have complied with the requirements for rezoning a property in the Critical Area from RCA to LDA. It would seem that reclassification under the underlying zoning from RC to RR would then follow, simply because there are no additional applicable requirements in the zoning ordinance. Thus, findings seven through ten appear to be irrelevant.

Finding six reads:

"The County Council finds 'upon the basis of the evidence of record' that the request for Critical Area Growth Allocation does not comply with all of the Critical Area Policies and applicable design standards as referenced in Section 19.14(c)(iv) of the Zoning Code of Talbot County."

This finding does not advise Bucktail, in terms of the facts and circumstances of the record, in which aspect(s) Bucktail's application fails to comply with the Critical Area criteria or policies. Thus, finding six is deficient under the legal principles reviewed above.

In the alternative, we shall assume that the requirements of subsection (ii), as well as those of (iv), must be complied with to obtain the reclassifications at both levels of zoning that are requested here. Findings seven through ten, *see* note 5, *supra*, suffer from the same deficiency as does finding six. These findings fail to advise Bucktail, in terms of the facts and circumstances of the record, in which aspect(s) the application is deficient under subsection (ii).

Council findings six through ten are *merely* conclusory statements. Here, where the planning staff and the Planning Commission have recommended approval of Bucktail's project and found that it complies with all applicable requirements, it is *not* sufficient for the Council simply to express conclusions, without pointing to the facts found by the Council that form the basis for its contrary conclusion.

The appellees, by brief and at oral argument, have pointed to certain facts in the record that arguably might justify the denial of Bucktail's application, but these arguments cannot cure the deficiency. As this Court has stated: "The courts may not accept appellate counsel's *post hoc* rationalizations for agency action. . . ." *United Steelworkers*, 298 Md. at 679, 472 A.2d at 69 (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168, 83 S.Ct. 239, 246, 9 L.Ed.2d 207, 216 (1962)).

Accordingly, the appropriate disposition in the instant matter is a remand.

JUDGMENT OF THE CIRCUIT COURT FOR TALBOT COUNTY VACATED. CASE REMANDED TO THAT COURT FOR REMAND TO THE COUNTY COUNCIL OF TALBOT COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE APPELLEES, TALBOT COUNTY, MARYLAND, JOHN W. RENNER, RICHARD J. CONWAY, ROBERT PORTER, AND SIDNEY H. DICKSON.

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723 A.2d 454

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

v.

Joseph T. LILLY.

Misc. Docket AG, Nos. 14, 37, Sept. Term, 1998.

Court of Appeals of Maryland.

Jan. 28, 1999.

ORDER

The Court having considered the Petition for Indefinite Suspension of Respondent by Consent filed by the Attorney Grievance Commission and Joseph T. Lilly, the respondent, it is this 28th day of January, 1999

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, GRANTED and the respondent, Joseph T. Lilly, is indefinitely suspended by consent from the practice of law in Maryland pending further order of this Court, and it is further

ORDERED, that the Clerk of this Court shall strike the name of Joseph T. Lilly from the register of attorneys, and pursuant to Maryland Rule 16–713, shall certify that fact to

854 A.2d 283

CAPITAL COMMERCIAL PROPERTIES, INC.

v.

MONTGOMERY COUNTY PLANNING BOARD of the Maryland–National Capital Park and Planning Commission et al.

No. 0388, Sept. Term, 2003.

Court of Special Appeals of Maryland.

July 19, 2004.

Background: Ground lessee of shopping center, which opposed fee owner's plan to expand retail center, brought action to protest planning board's approval of plan, which was approved after Department of Permitting Services approved fee owner's parking facilities plan. The Circuit Court, Montgomery County, DeLawrence Beard, J., affirmed. Ground lessee appealed, and board cross-appealed.

Holdings: The Court of Special Appeals, Rodowsky, J., held that:

(1) Department of Permitting Services had authority to determine whether parking facilities plan complied with setback requirements, and

(2) any error by circuit court in admitting fact that Department had approved parking plan was harmless.

Affirmed.

1. Administrative Law and Procedure ⇐683

When reviewing a decision of an administrative agency, the role of the Court of Special Appeals role is precisely the same as that of the circuit court.

2. Administrative Law and Procedure ⇐751

Judicial review of administrative agency action is narrow.

3. Administrative Law and Procedure ⇐760

The court's task on review of an agency action is not to substitute its judgment for the expertise of those persons who constitute the administrative agency.

4. Administrative Law and Procedure ⇐791

To the extent the issues on appeal of an agency decision turn on the correctness of an agency's findings of fact, such findings must be reviewed under the substantial evidence test.

5. Administrative Law and Procedure ⇐791

The reviewing court's task is to determine whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions.

6. Administrative Law and Procedure ⇐760, 784.1

The court cannot substitute its judgment for that of the agency, but instead must exercise a restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.

7. Administrative Law and Procedure ⇐796

The substituted judgment standard is used with respect to a claim that the agency erred as a matter of law.

8. Administrative Law and Procedure ⇐413, 796

A challenge as to a regulatory interpretation is, of course, a legal issue; upon appellate review, however, courts give special weight to an agency's interpretation of its own regulations.

9. Administrative Law and Procedure ⇐413

Courts bestow special favor on an agency's interpretation of its own regulation.

10. Administrative Law and Procedure ⇐413, 760

Recognizing an agency's superior ability to understand its own rules and regulations, a court should not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken.

11. Zoning and Planning ⇐353.1

Department of Permitting Services, and not planning board, had authority to determine whether parking facilities plan for retail expansion at shopping center complied with setback requirements, where Department was required to

review and approve, modify, or deny parking facilities plan because project did not require site plan approval.

12. Zoning and Planning ⇐572

Ground lessee failed to argue before planning board that board would be violating zoning ordinance if it approved preliminary plan for retail center expansion, and thus failed to preserve issue for appeal.

13. Zoning and Planning ⇐743

Court of Special Appeals would decline to consider ground lessee's argument on appeal that planning board could not conditionally approve fee owner's preliminary plan for retail center expansion because a party of interest announced an unwillingness to adopt a record plat, as ground lessee failed to present that issue to the board.

14. Zoning and Planning ⇐625

Any error by circuit in admitting the fact that the Department of Planning Services had approved parking facilities plan for fee owner's planned retail center expansion was harmless in ground lessee's action protesting the expansion, as court affirmed reasons given by planning board for approving the plan, so that issue of whether Department ultimately approved or disapproved plan would not alter the board's decision.

Kinley R. Dumas (Stephen J. Orens, DuFour & Kohlhoss, Chtd. on the brief), Bethesda, for appellant.

Debra Yerg Daniel and Scott C. Wallace (Michele Rosenfeld, Maryland–National Capital Park and Planning Commission on the brief), Silver Spring (Stephen Z. Kaufman, Linowes and Blocher, LLP on the brief), Bethesda, for appellee.

Argued before MURPHY, C.J., DEBORAH S. EYLER and LAWRENCE F. RODOWSKY (retired, specially assigned), JJ.

RODOWSKY, Judge.

These cross-appeals concern a preliminary plan approval in Montgomery County. CBS Associates Limited Partnership (CBS), one of the appellees, is the fee owner of the land comprising Stoneymill Square Shopping Center (Stoneymill). CBS seeks to enlarge the retail area of Stoneymill by erecting a freestanding building. In pursuit of that purpose, CBS filed preliminary plan 1–02006 (the Plan) with appellee and cross-appellant, the Montgomery County Planning Board of the Maryland–National Capital Park and Planning Commission (the Board). The Plan proposes creating a new lot by combining the whole of one, and part of another, existing lot. Capital Commercial Properties, Inc. (CCP), the appellant and cross-appellee, is the ground lessee of part of Stoneymill. Fearing that the CBS project adversely will affect parking for its patrons, CCP opposes the project.

The Board approved the Plan, subject to conditions, and the Circuit Court for Montgomery County affirmed the Board in an action for judicial review. CCP appealed to this Court and presents the following issues for our review.

"I. Whether the circuit court erred by holding that [the Board] properly exercised its authority when it failed to make the finding required by Section 50–29(c) of the subdivision regulations, that the lot width and depth of the subject property are adequate to accommodate the off-street parking requirements and minimum setbacks prescribed by the zoning ordinance.

"II. Whether the decision of the [Board], affirmed by the circuit court, was supported by substantial evidence of record.

"III. Whether the decision of [the Board], affirmed by the circuit court, violated, as a matter of law, appellant['s] protected rights to property in which it holds a recorded 99–year leasehold interest.

"IV. Whether the circuit court erred in holding that the record plat approval process is separate and distinct from the preliminary plan approval process.

"the substituted judgment standard is used with respect to a claim that the agency erred as a matter of law. A challenge as to a regulatory interpretation is, of course, a legal issue. Upon appellate review, however, courts give special weight to an agency's interpretation of its own regulations. As this Court explained:

" '[C]ourts bestow special favor on an agency's interpretation of its own regulation. Recognizing an agency's superior ability to understand its own rules and regulations, a "court should not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken." ' "

Department of Health & Mental Hygiene v. Riverview Nursing Centre, Inc., 104 Md.App. 593, 602–03, 657 A.2d 372, 376–77, *cert. denied*, 340 Md. 215, 665 A.2d 1058 (1995) (citations and attribution omitted).

Judge Eldridge, writing for the Court of Appeals in *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 729 A.2d 376 (1999), expressed the concept in the following fashion:

"Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts."

Id. at 69, 729 A.2d at 381.

The Board also asserts that certain of CCP's issues in this Court are not preserved for our review because they were not raised before the administrative agency. Under settled Maryland law, appellate review of administrative decisions is limited to those issues and concerns raised before the administrative agency. *Mayor & City Council of Rockville v. Woodmont Country Club*, 348 Md. 572, 582 n. 3, 705 A.2d 301, 305 n. 3 (1998). As the Court of Appeals has explained:

" 'A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and deprives the [agency] of an opportunity to consider the matter, make its ruling, and state the reasons for its action.' We do not allow issues to be raised for the first time in actions for judicial review of administrative agency orders entered in contested cases because to do so would allow the court to resolve matters *ab initio* that have been committed to the jurisdiction and expertise of the agency."

Delmarva Power & Light Co. v. Public Service Comm'n of Md., 370 Md. 1, 32, 803 A.2d 460, 478 (2002) (citations omitted).

I. Compliance with § 50–29(c)

[11] There is no disagreement between the parties that this project requires a PFP and that, because it does not require site plan approval, the PFP "must be submitted to the Director [of DPS] for review and approval at the time of application for a building permit." See § 59–E–4.1.[3] Thus, the issue here is whether § 50–29(c) requires that the Board itself interpret and apply the setback provisions of the Zoning Code to determine whether the depth and width of 5.5 acre Parcel P, with the new 12,425 square foot building, are adequate for the off-street parking requirements of the proposed use, or whether the condition requiring DPS approval of the site's PFP satisfies § 50–29(c). CCP argues that the Board cannot

3. Section 59–E–4.1 addresses the requirement for parking facility plans for projects constructed in accordance with building permits filed after June 28, 1984. The section in relevant part reads:

"For any use that requires 25 or more parking spaces, a parking facilities plan must be submitted:

"(a) For development that requires site plan approval ... a required parking facilities plan must be submitted to the Planning Board for review and approval as part of the site plan review process.

"(b) For development that does not require site plan approval ... a required parking facilities plan must be submitted to the Director [of DPS] for review and approval at the time of application for a building permit.

"The Department [of Permitting Services] must review all parking facilities plans to determine that all entrances and exits proposed to public roads and the internal movement of traffic in a parking facility will allow safe vehicular movement."

approve a preliminary plan for a building lot that shows the proposed building encroaching into setback areas, and CCP submits that the instant matter is no different. The appellees, to the contrary, submit that adequacy of parking is much less rigid a concept, and more complex a land use analysis in the instant matter, than CCP's analogy to siting a building on a lot.

Section 59–E–4.4 sets forth the contents required of a PFP as follows:

"The parking facility [sic] plan shall show the location and design of entrances and exits to public roads; the location and size of all buildings and structures; the location of parking spaces, directional markings, traffic-control devices and signs; walls and fences; landscape areas; slopes or berms; change of grades; planting materials, including the type and names of the materials to be planted; and such other information as required by either the director or the planning board. The parking facility [sic] plan shall be prepared with careful regard to the objectives for parking facilities enumerated in section 59–E–4.2 and the relationship between the parking facility and surrounding commercial, industrial, or residential improvements. Parking areas, therefore, shall be located so as to prevent an adverse effect on such adjoining or neighboring properties. Shrubs, trees, walls, fences, berms or other materials used as a screen shall be of a permanent nature, requiring as little maintenance as possible. Planting strips in which trees or other natural growth are located shall be of sufficient width or shall be so designed so that the plantings and trees are protected from vehicles in accordance with section 59–E–2.74. Trees and plants shall not be of a variety that contains offensive or injurious gum, moisture, fruit or seed droppings. Plantings and structures shall be located with due regard to traffic safety and effective mechanical snow removal."

Under § 59–E–4.3, a PFP must satisfy the following requirements:

"(a) Effective landscaping of parking lots contiguous to or adjacent to any public road shall be provided in accordance with the landscaping requirements of section 59–E–2.7.

"(b) Safe sight distances free of any obstruction shall be provided at all entrances and exits to public roads. Ample safe sight distances clear of any building or other artificial or natural obstructions shall be provided at the corner of intersecting public roads.

"(c) Effective channelization and division of parking areas within the interior of a parking facility shall be provided for both pedestrian and vehicular traffic. This may be accomplished by use of landscaped areas with trees, walls, fences, other natural growths or artificial features, raised curbs, marked directional lanes and controls, change of grade or other devices to mark points of turn, to separate parking areas and to control traffic movement.

"(d) Parking facilities containing 500 or more parking spaces shall be divided into several smaller parking areas and shall be separated from each other by landscaping, change of grades, buildings or other natural or artificial means.

"(e) Each parking facility shall be designed individually with reference to the size, street pattern, adjacent properties, buildings and other improvements in the general neighborhood, number of cars to be accommodated, hours of operation and kinds of use."

If compliance with setbacks must be determined by the Board in all cases, as part of preliminary plan approval, as CCP argues, then the ordinances create a duplicative process. Consider a hypothetical case in which, as here, the ultimate administrative decision on the PFP is vested in DPS. The Board, exercising the CCP version of its power, finds that the parking space setbacks comply with the code. DPS, however, in its review of the many aspects of a PFP, set forth above, requires changes in the submitted PFP that reconfigure the

setbacks. Assume further that DPS approves the revised PFP. The result is that the Board and its staff would have spent their time in reviewing setbacks in a parking plan that is not the design for which a building permit is issued. Surely the ordinances are not to be read as requiring, in our hypothetical, that the PFP, as approved by DPS, be sent back to the Board, in order to see if it would approve the setbacks in the modified PFP. Where, as with the subject project, PFP approval, modification, or rejection, rests with DPS, the reasonable construction of §§ 50–29(c) and 59–E–4.1 is that setback compliance is determined by DPS.

The illogic of the Board's determining setback compliance of a PFP at the preliminary plan approval stage is demonstrated further by the waiver power conferred on DPS by § 59–E–4.5. In relevant part, that section provides that "the Director, Planning Board, or Board of Appeals may waive any requirement in this Article [59–E. "OFF–STREET PARKING AND LOADING"] not necessary to accomplish the objectives in Section 59–E–4.2[.]" Here, the relevant entity for exercising the waiver power is the Director of DPS, inasmuch as that agency, per § 59–E–4.1, exercises the ultimate PFP approval authority. Consequently, even if the Board were presented with a preliminary plan that reflected parking spaces in a setback area, the Board should not reject a preliminary plan, for setback violations, when DPS could grant a waiver and issue a building permit.

In the instant matter, CBS advised the Board that it believed that DPS would find it exempt from bringing its parking plan up to code because the increase in floor area would not be greater than ten percent of that already existing. Counsel for the Board also advised the Board that DPS had granted waivers on parking spaces to commercial uses "across the street" from Stoneymill. These comments seemingly refer to the following provisions.

Section 59–E–5.51 in part states:

"All parking facilities constructed in accordance with an approved building permit, filed prior to June 28, 1984, that do not conform to the requirements of this article shall not be considered in violation of this article."

Section 59–E–6.1 in part states:

"In accordance with the exception provisions of section 59–E–5.51, parking facilities constructed in accordance with an approved building permit, filed prior to June 28, 1984, that do not conform to the requirements of this article, are not considered in violation of this article. Under the following circumstances, however, such parking facilities must be brought into conformance with the requirements and standards of this article unless waivers from specific requirements are approved under the waiver provisions of section 59–E–5.52. . . .

"(a) For any enlargement or reduction of a building or structure that is greater than 10 percent of the total floor area approved prior to June 28, 1984, the off-street parking must be brought into conformance with the requirements and standards of this article."

Section 59–E–5.52 reflects that the power to waive the compliance requirements rests with the Director or the Board, presumably in accordance with whether site plan approval was required or not, as set forth in § 59–E–4.1.

We intimate no opinion on the applicability of these provisions to the PFP in the instant matter. They are relevant, however, to illustrate further why, in cases where DPS ultimately decides on a PFP, the county council intended that DPS be the agency exercising the power to determine parking setbacks, rather than the Board, acting under § 50–29(c).

II. Substantial Evidence

At the hearing before the Board, CBS frankly acknowledged that it could not proffer that it "would be able to set back existing spaces under the current requirements. It simply would make the project not feasible[.]" From this, CCP argues that there was no substantial evidence of setback compliance so that the Board violated § 50–29(c). This argument is an attempt to recycle, as a factual issue, the legal

VOR OF APPELLANT; COSTS TO BE PAID BY APPELLEE.

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799 A.2d 425

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

v.

COUNTRY RIDGE SHOPPING CENTER, INC., et al.

No. 0952, Sept. Term, 2001.

Court of Special Appeals of Maryland.

June 3, 2002.

Applicants appealed county board of appeals' decision to deny special exception for the operation of a pawnshop in a business major zone. The Circuit Court, Baltimore County, John Grason Turnbull, II, J., affirmed. Applicants appealed. The Court of Special Appeals reversed and remanded to the board, which again denied application. Applicants appealed. The Circuit Court reversed and remanded. Challenger to application appealed. The Court of Special Appeals, Charles E. Moylan, Jr., J. (retired, specially assigned), held that board on remand acted properly in clarifying its decision, and it was not required instead to hold a de novo evidentiary hearing.

Circuit Court reversed.

1. Zoning and Planning ⇐570

Appealable final order was issued when Circuit Court remanded zoning case to county board of appeals for a de novo hearing on application for special exception to operate pawnshop in business major zone.

2. Administrative Law and Procedure ⇐760, 781, 784.1

An agency's factual findings and its decisions involving mixed questions of law and fact will be given deference such that reviewing court cannot substitute its judgment for that of the agency's.

3. Administrative Law and Procedure ⇐790, 791

Reviewing court will accept the agency's conclusions if they are based on substantial evidence and if reasoning minds could reach the same conclusion based on the record.

4. Administrative Law and Procedure ⇐817.1

Assuming that the membership of an administrative tribunal remains unchanged, if an appellate court is in doubt as to why the agency did what it did, it is appropriate to remand the case to the agency for nothing more than a clarification or an amplification of its reasoning.

5. Zoning and Planning ⇐728

On Court of Special Appeals' remand of zoning case to county board of appeals for "further proceedings" on application for special exception to operate pawnshop in business major zone, board properly clarified its prior decision that denied application, and it was not required instead to hold a de novo evidentiary hearing; while board membership changed since initial decision was made, the remand did not entail any assessment of the credibility of lay witnesses or any further first-level fact-finding.

6. Zoning and Planning ⇐607

Contention that ordinances limiting number of pawnshops were unconstitutional because state law preempted field of pawnshop regulation, made by applicants in their appeal challenging denial of special exception to operate pawnshop in business major zone, was rendered moot by fact that county board of appeals on remand denied application on grounds that were unrelated to the ordinances. West's Ann.Md.Code, Business Regulation, § 12–101 et seq.

Peter Max Zimmerman (Carole S. Demilio, on the brief), Towson, for appellant.

Sebastian A. Cross (Davis K. Gildea and Gildea, L.L.C., on the brief), Baltimore, for appellee, Southside Brokers.

Argued before KENNEY, SHARER, and CHARLES E. MOYLAN, Jr. (retired, specially assigned), JJ.

CHARLES E. MOYLAN, Jr., Judge (Retired, Specially Assigned).

The single issue before us on this zoning appeal is whether the Baltimore County Board of Appeals, on a remand to it by this Court, adequately complied with the terms of our mandate remanding for "further proceedings." We hold that, in the procedural and factual posture of this particular case, it did.

More is involved in that holding, however, than at first glance appears. It is necessary that we dissect, at the most elemental level, the very nature and the institutional characteristics of the Baltimore County Board of Appeals specifically and, arguably, of administrative boards and agencies generally. The focus of our examination will be on the impact that periodic changes in personnel have on the institutional continuity and operational vitality of the tribunal itself.

The Pawnshop's Petition For A Special Exception

One of the appellees, Southside Brokers, Inc., is the operator of a pawnshop. Prior to 1995, the pawnshop had been located at 8110 Pulaski Highway. When the lease on that property was about to expire, the pawnshop leased space in the Country Ridge Shopping Center, Inc., the other appellee, located at 1508 Back River Neck Road, and moved to the new location in May of 1996. The shopping center was, and is, zoned B.M. (business major). Pawnshops are permitted in a B.M. zone by way of special exception. Baltimore County Zoning Regulations, §§ 436, 233. Accordingly, the pawnshop petitioned for a special exception at its new location.

Initially the appellees ran afoul of BCZR § 436.4, which the Baltimore County Council had adopted on July 3, 1995. It provides, in pertinent part:

> 436.4 Special exception petition. *In addition to the requirements of Section 436.3 and such other requirements of these regulations relating to a special exception petition, a pawnshop is subject to the following requirements:*
>
> A. *Location may not be within a one-mile radius of any other pawnshop,* and no more than two pawnshops may be located in a councilmanic district.

(Emphasis supplied).

Invoking that provision, the Zoning Commissioner initially denied the petition for a special exception on January 22, 1996, because the relocation site was within a one-mile radius of an existing pawnshop. On a motion for reconsideration, the Zoning Commissioner on April 19, 1996 reversed his position and granted the special exception. He realized that he had failed to take into consideration the "grandfather" provision of the 1995 bill enacting the one-mile radius limitation, which had further provided:

> SECTION 6. AND BE IT FURTHER ENACTED, that pawnshops lawfully in existence and operating on the effective date of this Act are not subject to the requirements of Sections 436.4.

The County Board of Appeals: Round One

At that point, the appellant, People's Counsel for Baltimore County, representing various residents of the Back River Neck Road area including the presidents of both the Rockway Beach Association and the Back River Neck Peninsula Community Association, appealed the decision of the Zoning Commissioner to the Baltimore County Board of Appeals.

The Board of Appeals conducted two full days of hearings, on November 6, 1996 and March 12, 1997. A public deliberation on the matter was held on April 17, 1997. One witness, the owner of the pawnshop, testified in favor of the petition for special exception. A number of witnesses testified against the

without any occasion to revisit the predicate first-level facts. It could have concluded:

> Our predecessors may arguably have considered as many as four factors in deciding to deny the variance. We have now been told by the Court of Special Appeals that the fourth of those factors should not have been considered. Accordingly, we will now eliminate that factor from the equation as we decide what significance to give the other three factors, standing alone. We conclude, on the sole basis of those remaining factors, that the granting of the variance at the location in question would have an adverse impact that it would not have elsewhere in the zone. The variance is, therefore, denied.

It cannot be gainsaid that the Board would have been entitled, without an evidentiary rehearing, to engage in such a reweighing of the significance of already established factors, had there been no change in the membership of the Board.

"The Regiment Goes On"

In this case, however, there was a change in the membership of the Board. Two of the three members of the Board that received the case on remand in 2000 had not been members of the Board that initially denied the variance in 1997. To whom or what, therefore, did the Court of Special Appeals remand the case? To the same Board that had initially decided it or to a new Board? It is not a simple question. Involved is the essential nature of the Baltimore County Board of Appeals itself.

The appellees, at least for purposes of this case, conceptualize the Board of Appeals as little more than a petit jury, with no life of its own before or after the immediate adjudication. If the appellees were correct in their conceptualization, the Board, following any change in the personnel who from time to time make it up, would be unable to engage in the most minor reconsideration without starting the process all over again. Institutional continuity would terminate with the end of tenure of any of its members.

We conceptualize the Board of Appeals as an ongoing governmental entity, not as an *ad hoc* petty jury. It is an administrative tribunal with an institutional life that transcends the tenure of any of its members. Courts, by parity of behavior, unabashedly use the first personal pronouns "we," "us," and "our" in describing decisions made a century before any current member of the court was born. In this phenomenon of institutional continuity there are echoes of the stirring epilogue of a John Wayne epic,[1] "The names may change; the faces may change; but the regiment goes on." Thus it is with the Baltimore County Board of Appeals. It has a life that goes on beyond the tenure of any of its members.

The Caselaw On Changes in Membership

It remains then to be seen what, if any, limitations the caselaw may have imposed on the exercise of that institutional continuity. In urging that the change in the membership of the Board mandated an evidentiary rehearing on remand, the appellees rely primarily on the case of *Clark v. County Board of Appeals for Montgomery County*, 235 Md. 320, 201 A.2d 499 (1964).

Even to the extent that *Clark* retains any limited vitality, it provides no support for the proposition for which the appellees cite it. *Clark* was a case in which the Montgomery County Board of Appeals had granted a special exception. *Clark* did not involve a remand. *Clark* did not involve any change in the membership of the County Board of Appeals. *Clark* did not involve the modality by which a board member may receive evidence—hearing witnesses versus reviewing a transcript.

Clark involved the statutory construction of what was then § 104–22d of the Montgomery County Code (1960). The Court of Appeals concluded in *Clark* that the code provision that "all actions or decisions of the board shall be taken by a resolution, in which at least three members must concur" established a minimum quorum of three in order for the

1. "Fort Apache" (1948).

required public hearing on the matter to have any validity. 235 Md. at 323–24, 201 A.2d 499. Although a third board member had read the transcript and concurred in the decision of his colleagues, only two members of the board had actually been present at the required public hearing. The Court concluded that it was dealing with a "problem of statutory construction" and held that the absence of the required quorum rendered the hearing, and the decision reached at that hearing, a nullity.

> Other state courts have taken a contrary view, and require the presence at the hearing or hearings of all members who participate in the decision. *We think the cases holding that at least enough members to constitute a quorum for decision, be present at the public hearing, are more consistent with our construction of the ordinance* in the instant case, and with our prior decisions. Accordingly, we hold that the Board's decision was improperly reached and the order must be reversed.

235 Md. at 325, 201 A.2d 499 (emphasis supplied).

The Baltimore County Board of Appeals in this case, by contrast, was in full compliance at all times with the quorum requirement. Rule 1c of the Rules of Practice and Procedure of the Baltimore County Board of Appeals provides, in pertinent part:

> Three (3) members of the board of appeals, as designated by the chairman, shall sit for the purpose of conducting the business of the board; and a majority vote of two (2) members shall be necessary to render a decision.

That requirement was never violated.

The only comfort the appellees could take from the *Clark* opinion is the dictum:

> Insofar as the case may turn on the credibility of the witnesses, absent members do not have the opportunity of seeing and hearing the witnesses.

235 Md. at 324, 201 A.2d 499.

One year and a half after the *Clark* decision, the Court of Appeals decided *Younkin v. Boltz*, 241 Md. 339, 216 A.2d 714 (1966), another special exception case out of Montgomery County. It was a disservice for the appellees in their brief to have totally ignored the *Younkin* case, for it flatly precludes the "spin" they seek to put on *Clark*. It is *Younkin* that is absolutely dispositive of the issue before us.

The evidentiary hearings on the special exception in *Younkin* were spread over two days. Only three of five board members were present for the first day's hearing and only two of those three ultimately voted to grant the special exception. The necessary majority vote to grant the exception depended on at least one of the two additional board members, who joined their colleagues for the second day of the hearing but who had missed the first day. Judge Hammond, 241 Md. at 341–42, 216 A.2d 714, summarized what had happened and before whom it happened.

> The first hearing was held on February 27, 1964. Ten witnesses gave one hundred sixty-four pages of testimony. The second hearing was held on April 9, 1964, and the three members who had been at the first hearing were joined by *the other two members of the Board who had read the transcript of the testimony taken at the first hearing and had examined the record.* Five additional witnesses gave fifty-four more pages of testimony at the second hearing. At the conclusion of the testimony at the second hearing, *the matter was fully argued to the five members of the Board by counsel* for the petitioner and counsel for the protestants, with full and generally explicit references to particular witnesses and the essence of their testimony.

(Emphasis supplied).

Following the grant of the special exception, the protestants appealed, claiming that an indispensable member of the majority had not been present for the first day's hearing and had not seen the first day's ten witnesses or had the opportunity to assess their credibility. The trial judge, relying on the *Clark* case, reversed the Board of Appeals.

> The instant case presented a variation of the *Clark* factual situation. There were two hearings; three members of the Board attended both and the other two members attended

only the second hearing. Only two of the three members who had been at both hearings voted to grant the exception and *the requisite third vote* (and a fourth) *came from a member who had been at the second hearing only.* ... Judge Shure ruled that under *Clark* the Board's action was illegal and ineffective in that only two of the three who had heard all the testimony voted to grant the exception.

241 Md. at 341, 216 A.2d 714 (emphasis supplied). It is that reading of *Clark* that the appellees now urge upon us.

In *Younkin,* however, the Court of Appeals reversed the trial judge and rejected that reading of *Clark.* It adopted, rather, the federal and the majority state view, disdained by *Clark,* that it is not required that a voting member of an administrative agency shall have heard the witnesses so long as the member shall have "considered and appraised the evidence."

The general rule in both the federal and state systems is that in the absence of specific statutory direction to the contrary *the deciding member or members of an administrative or quasi-judicial agency need not hear the witnesses testify.* 2 Davis, Administrative Law Treatise § 11:02, p. 40.

> "*The* [federal] *Administrative Procedure Act,* of course, *assumes that deciding officers need not be present at the hearing* * * *.
>
> "The law of nearly all state courts is as clear as the law of the federal courts that *deciding officers need not be present when witnesses testify;* this attitude is implicit in most of the state cases discussed in the ensuing two sections."

The general rule is that *it is enough if those who decide have considered and appraised the evidence* and *the courts feel more satisfied that they have done so if they have heard argument.*

241 Md. at 342–43, 216 A.2d 714 (emphasis supplied).

Judge Hammond added that that procedure was fully consonant with the Maryland Administrative Procedure Act, as well as with the Model Administrative Procedure Act.

The Maryland Administrative Procedure Act, applicable to state board and agencies as defined, Code (1965 Replacement Vol.), Art. 41, §§ 244–56, *contemplates* (as does the model Administrative Procedure Act, 8C Uniform Laws Annotated, on which it was based) *that in a "contested case" the evidence need not be heard by all those who will render the final decision.* Section 253 provides:

> Whenever in a contested case, a majority of the officials of the agency who are to render the final decision have not heard the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision, including findings of fact and conclusions of law, has been served upon the parties, and *an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.*

241 Md. at 344, 216 A.2d 714 (emphasis supplied). That provision of the Administrative Procedure Act, without any significant change, is now codified as Md.Code, State Government Article, § 10–216(2).

The Court of Appeals, in conclusion, acknowledged that the *Clark* case could not, at least in its tone, be fully reconciled with *Younkin v. Boltz* and it politely confined *Clark* to its own precise facts.

> In any event, we see no reason to extend the holding in *Clark* to a case not precisely similar on the facts.

241 Md. at 344, 216 A.2d 714.[2]

The Court of Appeals has regularly followed *Younkin v. Boltz. Bethesda Management Services v. Dep't of Licensing and Regulation,* 276 Md. 619, 627–28, 350 A.2d 390 (1976); *Gemeny v. Prince George's County,* 264 Md. 85, 94, 285 A.2d

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2. Professor Max Radin observed that when an appellate court confines one of its own earlier opinions to "its own facts," that is the way appellate courts have "of administering euthanasia to their own nonviable progeny."

602 (1972); *Hyson v. Montgomery County Council,* 242 Md. 55, 72, 217 A.2d 578 (1966). This Court has also recognized its authority. In *Howard County v. Bay Harvestore System,* 60 Md.App. 19, 22, 478 A.2d 1172 (1984), Judge Weant observed:

> The circuit court found the practice of permitting absent members of the Board to participate in a decision, provided they had familiarized themselves with the testimony, was in accordance with standard State and Federal procedures. *See Younkin v. Boltz,* 241 Md. 339, 216 A.2d 714 (1966).

See also *Citizens for Rewastico Creek v. Commissioners of Hebron,* 67 Md.App. 466, 478, 508 A.2d 493 (1986).

The case of *People's Counsel for Baltimore County v. Prosser Co.,* 119 Md.App. 150, 704 A.2d 483 (1998), is, on its procedural facts, almost indistinguishable from the case now before us. It is a decision, moreover, that looms large in the arguments that have been made to us. The Circuit Court for Baltimore County had vacated a decision by the Baltimore County Board of Appeals and had remanded the case to the Board "for further consideration." By the time of the remand, however, the membership of the Board had changed.

> *The case was* then *remanded* to the Board pursuant to the circuit court's order. *Two of the three original Board members had resigned by that time. . . . A new three-member panel was formed, which included the carry-over member from the original panel* who had voted to approve the application previously. The new panel, after reviewing the transcript of the 1994 hearing, denied appellants' request to present new evidence. The Board, through the new panel, held public deliberations on June 5 and July 3 and, in an opinion dated September 19, 1996, determined that the reclassification was warranted and granted the rezoning.

119 Md.App. at 162, 704 A.2d 483 (emphasis supplied).

The challenge made to the failure of the Board of Appeals, on remand, to conduct a new evidentiary hearing in this case echoes precisely the challenge made in that case. In *Prosser,* we rejected the claim that a *de novo* evidentiary hearing was necessary. That was the actual holding of *Prosser.* By way of explaining our holding, however, we were actually far gentler with the argument than we need have been in light of *Younkin v. Boltz,* a case that was not cited to us.

> The Board recognized that there was no adverse expert testimony on the issue on remand and that the issue was of a technical nature. The Board noted that the evaluation of lay witness credibility and demeanor was not a material factor in determination of the issue before it. We believe that the Board could have properly premised its decision on a review of the transcript and the remainder of the written record. In our view, the holding in *Clark* has not been violated when a quorum participates in the proceedings on remand and when as assessment of credibility of witnesses is not required.

119 Md.App. at 180, 704 A.2d 483.

[5] The distinction made by *Prosser* between those remands that call for a resolution of disputed credibilities and those remands that do not, even assuming the distinction to be a viable one, would not help the appellees here in any event. The remand in this case did not entail any assessment of the credibility of lay witnesses or, indeed, any further first-level fact-finding. Even if, *arguendo,* the need to resolve on remand the credibility of lay witnesses were the key criterion in distinguishing a broad from a narrow remand, the appellees in this case would not have been entitled to the broad *de novo* evidentiary hearing they seek.

That entire observation as to the impact of *Prosser,* however, is in the subjunctive mood. Our holding is that, under the direct authority of *Younkin v. Boltz,* the appellees were not entitled to a *de novo* evidentiary hearing regardless of whether lay credibility were still in dispute or not.

A critical member of an administrative tribunal is not required to do more on remand than would, under *Younkin v. Boltz,* have been required the first time around. In *Younkin,* a vote critical to the Board of Appeals's decision was cast by a board member who, albeit having read the transcript of testi-

mony and having heard full argument, had not personally observed the demeanor of ten witnesses (out of a total of fifteen) whose testimony filled one hundred sixty-four pages of the transcript. There was no suggestion in the opinion that credibility had not been in dispute in assessing the testimony of the fifteen witnesses. The failure of a critical voting member to have observed personally the testimony of ten of those witnesses gave the Court of Appeals no pause, just so long as the member had read the transcript and heard the argument.

> [A]ll *the members of the Board had considered and appraised all the evidence, first* by either hearing it first hand or *by reading it, and second by hearing full argument* which was directed to the strengths and weaknesses of the testimony for the respective sides. We think the Board's action was properly taken.

241 Md. at 345, 216 A.2d 714 (emphasis supplied). That is dispositive of the issue before us.

A further word is nonetheless in order to explain why we made the distinction we did in *Prosser,* lest it lead the unwary astray. Our basic determination in *Prosser* was to affirm the trial court and to reject the challenge there being made to the remand procedure utilized by the Board of Appeals on that occasion. We were unaware of *Younkin v. Boltz,* however, which would have provided a simpler rationale for what we intended to do in any event. We were faced with what we believed to be the continuing vitality of *Clark v. County Board of Appeals, supra,* and the "spin" that was being put upon it.

Under those circumstances, the distinction we drew between one hearing modality required on certain remands and another modality permitted on others was necessary, we thought, to distinguish *Prosser* from *Clark.* We affirmed the County Board of Appeals in *Prosser,* using that more circuitous rationale. Under the banner of *Younkin v. Boltz,* however, we would have reached the same result more quickly and more easily without any necessity for the convoluted "credibility-resolving" rationale, which may now mercifully evanesce. We

reverse the judgment of the circuit court so that we may, in effect, affirm the judgment of the County Board of Appeals.

The Preemption Argument

[6] When the appellees first went to the circuit court in 1998, they argued for the first time that state law, Maryland Code, Business Regulation Article, § 12–101 *et. seq.,* preempted the field of regulating pawnshops and thereby rendered unconstitutional both 1) BCZR § 436.2(D), which imposes a countywide "cap" of twelve on the number of pawnshops in the county; and 2) BCZR § 436.4(A), which provides, *inter alia,* that there shall be no more than two pawnshops in any councilmanic district. In its opinion of February 9, 1998, the circuit court ruled that the county zoning regulation is not unconstitutional. When the appellees first appealed to this Court, they again raised the preemption issue. In our first opinion of July 21, 1999, we decided that, because of our reversal on other grounds, it was not necessary to address the preemption issue.

Although we would be strongly inclined to hold against the appellees on the basis of either 1) non-preservation for failure to raise the issue before the Board of Appeals either in 1997 or 2000 or 2) the ultimate merits, we will be content, in the interest of judicial economy, to rest our holding on the ground of mootness.

The appellees' attack on § 436 is two-pronged. They claim that Baltimore County does not possess

> the right to regulate in such a manner as to limit the number of state licensed pawnshops in the County to twelve and the number of pawnshops in each councilmanic district to two.

With respect to the countywide "cap" of twelve on the number of pawnshops, the appellees never ran afoul of that limit and it had no adverse impact on them in any way. It was never remotely alluded to as a basis for denying the special exception in this case.

8/10/07

IN THE MATTER OF THE APPLICATION OF NIELS BRAID –L.O,. FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE E/S MIDDLETOWN RD, 1006' SE OF C/L OF KEENEY MILL ROAD (20315 MIDDLETOWN ROAD)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
6TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	Case No. 06-332-SPH

* * * * * * * * *

AMENDED OPINION

On August 3, 2007, this Board issued an Opinion and Order in the above-captioned matter.

Rule 11 of the Board's Rules of Practice and Procedure states as follows:

Rule 11. Revisory power of the board.

Within thirty (30) days after the entry of an order, the board shall have revisory power and control over the order in the event of fraud, mistake or irregularity.

The Board, on its own initiative, pursuant to Rule 11, has reviewed its Opinion and Order issued in these proceedings and finds that an error exists within that Opinion.

The last full paragraph on page 11, beginning with, "Counsel for the Petitioner…" and ending with, "…testimony to the contrary persuasive" was inadvertently included in the final Opinion and Order of the Board in this matter.

Accordingly, the above-referenced paragraph, which relates to a prior matter before the Board and is not part of the instant case, shall be stricken from the Board's final Opinion and Order dated August 3, 2007, no other changes to be made.

ORDER

IT IS THEREFORE ORDERED that the last full paragraph on page 11 of the

Board's final Opinion and Order dated August 3, 2007, beginning with, "Counsel for the Petitioner believes that …" and ending with, "…testimony to the contrary persuasive," shall be **STRICKEN** from said Opinion.

No other changes having been made, any Petition for Judicial Review will be filed from the date of the Board's original Opinion and Order issued August 3, 2007.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Mike Mohler

Robert W. Witt

County Board of Appeals of Baltimore County

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

August 10, 2007

Peter Max Zimmerman
People's Counsel for
Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: Niels Braid – Legal Owner/Petitioner*
Case No. 06-332-SPH

Dear Mr. Zimmerman:

Enclosed please find a copy of an Amended Opinion issued this date by the County Board of Appeals of Baltimore County in the subject matter.

This Amended Opinion is issued for the purpose of correcting a error on page 11 of the Board's Opinion to delete an erroneous paragraph inadvertently included in the Board's final Opinion and Order issued August 3, 2007 as stated in the attached.

The balance of the Opinion and Order as issued by the Board on August 3, 2007 remains unchanged.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Howard L. Alderman, Jr., Esquire
Niels Braid
Guy C. Ward /McKee & Associates, Inc.
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

8/3/07

IN THE MATTER OF THE APPLICATION OF NIELS BRAID –L.O,. FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE E/S MIDDLETOWN RD, 1006' SE OF C/L OF KEENEY MILL ROAD (20315 MIDDLETOWN ROAD)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
6TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	Case No. 06-332-SPH

* * * * * * * * *

OPINION

Background

This matter comes to the Board of Appeals on appeal by the Office of People's Counsel to the granting of a Special Hearing to approve a waiver from § 32-4-409(b)(2) of the Baltimore *County Code* (BCC) to permit creation of panhandle in-fee strips of 6 feet in width in lieu of the required minimum 10 feet in width where three or more lots are involved.

The applicable law for special hearings is found in § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) *Special Hearings*.

> 500.7 The said 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 as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

People's Counsel challenges the "legitimacy of the waiver under this code section… and also challenges the request because of the conflict with the law governing amendment of subdivision plans and tract density limits for amendments of subdivision plats under BCZR 1A00.4 and 1B01.3."

This case involves the further subdivision of Lot 18 of the Keeney Mill Woods subdivision. The property now contains 8.7 acres zoned R.C. 2. The property is improved by a

single-family dwelling and several accessory structures. Mr. Braid, the Petitioner, proposes to further subdivide the lot creating a new lot of 2 acres leaving the second lot with 6.7 acres. To succeed in this subdivision, the Petitioner requested a waiver from § 32-4--409 (b)(2) of the BCC, to allow for a 6 foot wide in-fee strip to Middletown Road from the new lot in lieu of the 10 foot wide requirement. On March 1, 2006, the Deputy Zoning Commissioner for Baltimore County approved the request.

On March 15,2006, the Peoples Counsel for Baltimore County, Peter Max Zimmerman and Carole S. Demilio, Deputy People's Counsel, entered an appeal to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated March 1, 2006 by the Baltimore County Deputy Zoning Commissioner in the above-entitled case.

On November 28,2006 the County Board of Appeals conducted a *de novo* hearing on the above entitled case.

Testimony And Evidence

Counsel representing the Petitioner, Mr. Niels Braid, was Howard Alderman Jr., Esquire. Appearing on behalf of Appellant in this matter, the Office of People's Counsel, was Peter Max Zimmerman. Esquire.

Mr. Alderman in his Memorandum writes: " This case is about the Owner's request, pursuant to the broad special hearing authority vested in the Zoning Commissioner and this Board by the Baltimore County Zoning Regulations (BCZR) and the Baltimore County Code (BCC), for a waiver of minimum width of in-fee strips with respect to the creation of one additional lot to be served by an existing panhandle driveway. This case is not about available lot density as suggested by the Baltimore County Office of People's Counsel."

Mr. Zimmerman raised three points in his opening statement.

1. The current law and density requirements (Section 34-409), and the criteria for waivers;

2. That the re-subdividing does not conform to the current zoning laws; and

3. He asks the Board to "look below the surface" implying that this is the first request and that there are 20 to 21 lots that would be available for the same waiver and that this case is precedent setting and would "open the door" for every lot owner to re-subdivide. He cites the *Ranshall Holdings* case where the Board denied a request for similar waivers.

In support of the Petitioner's request, Mr. Guy Ward, project manager for McKean and Associates, testified. He was accepted as an expert witness. Mr. Ward testified that the Plat was recorded on October 5,1976 and encompassed a land area of 75 acres. He further stated that a total of 20 lots were shown on the recorded subdivision plat, four (4) are under 2.0 acres in size and sixteen (16) are larger than 2.0 acres. The subject property was created as lot No. 18 when the plat was recorded. He noted that Lot No. 18 comprised 8.7 acres in size and was one of three lots, each having a 12 foot wide panhandle, in-fee strip out to Middletown Rd, that share a common, paved driveway located within the arc of those three strips. He also testified that when the Plat was recorded, all of the land shown thereon was zoned RDP, requiring a minimum of 1.0 acre for each lot created. His opinion was that, assuming all other development requirements were met (well and septic), the land area comprising the land area shown on the Plat could have been subdivided into a total of 75 lots.

He provided his opinion that, assuming all other developments requirements were met (well and septic) the land area comprising the Owners' Lot No. 18 could have been subdivided into a total of 8 lots. Mr. Ward, in his testimony, declared that the property was originally conveyed to the Petitioner and his wife by deed on March 7,1978; that the property is improved with the Petitioner's home, at the time the property was zoned R.C. 2 and remains that same zoning. Additionally " application of the current R.C. 2 zoning regulations permit's the subdivision of the subject property into a total of two lots, one for the existing dwelling and one additional lot." Mr. Ward also testified that, at the time of the JSPC/Development Plan, the RDP

zoning density permitted a minimum of 75 lots; however only 20 lots were initially approved and plotted. To subdivide any of the lots shown on the Plat, an amendment to the JSPC/Development Plan would be necessary. Mr. Ward further stated that there were restrictions on subdividing lots and that private restrictions expired on January 1, 1996. He testified that inclusion of the restriction and its date of expiration, combined with General Note No. 2 on the JSPC/Development Plan, put all purchasers of lots on notice that subdivision of any lot may occur after January 1, 1996 and the procedure that would have to be followed for subdivision approval.

In conclusion, Mr. Ward testified that panhandle Lot Nos. 18, 19, 20 have a 12-foot wide strip and that it serves as common access to the public roads. He cited BCC 32-4-409 that requires panhandle fee strips of ten feet in width when three or more lots will be sharing the panhandle.

Since this case involves panhandles, the Board consulted § 32-4-409 of the Code, which states in pertinent part:

(a) *In general.*

(1) The county may only allow a panhandle lot:

(i) To achieve better use of irregularly shaped parcels;

(ii) To avoid development in environmentally sensitive areas;

(iii) Where the lot will not be detrimental to adjacent properties; and

(iv) Where the lot will not conflict with efforts to provide for public safety and general welfare.

(2) The county may only allow a panhandle driveway where necessary to provide access to interior lots where a public road is neither feasible nor desirable.

(b) *In-fee strip; required.*

(1) Except as provided in subsection (c) of this section; the county may permit a panhandle lot if the lot includes an in-fee strip of land for access to the local street.

(2) Panhandle fee strips shall be a minimum of:

(i) 20 feet in width to serve one lot;

(ii) 12 feet in width per lot where two lots are involved;
(iii) 10 feet in width per lot where three or more lots are involved; or

(iv) 12 feet in width per lot where there are two or more lots in a development that is within the metropolitan area where public water and sewer services are available, planned, or considered.

(c) *Same; exception.* In cases where a right-of-way has been established before the submission of the Development Plan, the Hearing Officer may approve access to the local street or collector street through the existing right-of-way instead of an in-fee strip.

(d) *Panhandle driveways.*

(1) A single panhandle driveway may serve up to five dwellings, three of which may be on internal lots not adjacent to the local street or collector street.

(2) Panhandle driveways serving lots greater than 20,000 square feet may serve five internal lots plus two dwellings on the front lots adjacent to the panhandle driveway and the local street or collector street.

(3) Front lots are not required to be part of the panhandle driveway development.

(4) Notwithstanding the provisions of § 32-4-107 of this title, the requirements of this subsection may not be waived.

(e) *Length of panhandle in DR and RC zones.*

(1) In a DR zone, the panhandle length may not exceed 500 feet.

(2) In an RC zone, the panhandle length may not exceed 1,000 feet.

(3) The maximum permitted length of a panhandle is subject to variance under § 307 of the Baltimore County Zoning Regulations.

(f) *Panhandle driveways serving multiple lots.*

(1) For panhandle driveways serving more than one lot, the developer shall note on the record plat any covenants that provide for common use and maintenance of the panhandle driveway and culvert.

(2) A use in common agreement is established if the panhandle driveway serves two or more abutting panhandle lots.

Per Mr. Wards testimony, the subject property's panhandle fee strip is only 12 feet wide,

therefore a waiver from the 10 foot requirement was sought to permit the existing Lot. No. 18

and the proposed lot to each have a 6 foot wide land strip within the Common Easement Area. He testified that the lot to be created in the subject property is a minimum of 2 acres in size, the remainder of Lot 18 will be more than 6 acres in size; Lot No 19 is over 9 acres and Lot No 20 is over 20 acres in size, thus up to 5 internal lots can be served by a single panhandle driveway.

Mr. Ward testified that he did submit a request for waiver relief to the Director of the Office of Planning, and that the Director replied, declining to grant the waiver, directing the owner to proceed through a zoning special hearing. He testified that the relief would not be detrimental to the health, safety or general welfare of the community and that all other County regulations, ordinances and policies will be met if the relief were granted. Mr. Ward testified that, given that a single panhandle driveway for lots all greater than 20,000 square feet can serve up to seven (7) lots [5 internal lots and 2 dwellings having, but not using, frontage on the public roadway], the requested waiver relief is within the scope, purpose and intent of BCC 32-4-409.

Peoples Counsel called on two witnesses in this case. The first to testify was Mr. Jack Dillon, who was accepted as an "expert" regarding the Zoning Regulations and the Resource Conservation zones. Mr. Dillon testified that he had visited the site area two to three times in the past couple of months but not at the site in question itself. Mr. Dillon testified that the BCZR did not permit the re-subdivision of the property because it was part of a previously approved subdivision that utilized only a portion of the available density in creating lots. He showed that the Master Plan land use maps place this subdivision in the Freeland Preservation Area, one of the County's Agricultural Land Preservation Areas (PC Ex. 7A,B). He stated that the area continues to be a significant farming area. He noted that one of the main purposes of the R.C. 2 zone is to guard against further incremental encroachment of residential development, especially on relatively small lots. He concluded that there was no additional density allowed and that the land area subdivided by the Plat had a density for 75 lots, since the developer chose to plat less

than the maximum, all of the excess density was lost.

Upon cross-examination, Mr. Dillon was questioned about, but was unable to cite, any legal or statutory basis for this position. Mr. Dillon also observed, upon cross-examination, that the fact that there was no opposition from any neighbor was immaterial and made no difference.

Ms. Theresa Moore, Vice President of The Valleys Planning Council, also testified for People's Counsel. She was allowed to testify, as an interested party and citizen of Baltimore County, that her concern was that if the waiver were granted it would set a precedent and permit widespread subdivision within the R.C. 2 zone.

Mr. Zimmerman in his memorandum asks the following questions:

1. a. What is the appropriate procedure for amendment of a final development plan (FDP) and final subdivision plat and for re-subdivision? Should Petitioners have filed a petition for special hearing to amend the FDP?

   b. What is the appropriate procedure for panhandle driveway waivers, and how does it relate to the development plan review process?

2. Is there any justification for waiver of the width requirements of the panhandle driveway law?

3. Does the proposed resubdivision conflict with and exceed the tract density limits set by the law governing amendment of subdivision lots?

Decision

The Board, based on the testimony and memorandums submitted by Counsel, considered two questions:

1. Can the Petitioners put a second house on the property?

2. Can the Petitioners get the panhandle waiver they seek?

What is the appropriate procedure for amendment of a final development plan (FDP) and final subdivision plat and for re-subdivision? Should Petitioners have filed a petition for special hearing to amend the FDP?

The Board notes the following statute (§ 500.7 of the BCZR):

> The said 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 as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations

The Board, based on BCZR 500.7 and the testimony and facts presented, that the Planning Director advised the Petitioners to proceed with the waiver by way of Special Hearing, unanimously agrees that the Petitioners were correct in seeking the Special Hearing and the Zoning Commissioner acted within the scope of the regulations based on the BCZR.

Is there any justification for waiver of the width requirements of the panhandle driveway law?

In resolving this question, the Board looked to BCC §32-4-107 Waivers, as cited below, and BCC § 32-4-409, as cited on page 4 above.

§ 32-4-107. WAIVERS.

(a) *In general.*

(1) At the request of a department director, the Hearing Officer may grant a waiver of any or all requirements of Subtitles 3, 4, and 5 of this title if the Hearing Officer finds that:

(i) 1. The size, scope, and nature of a proposed development does not justify strict compliance with this title;

2. A waiver would be within the scope, purpose, and intent of this title; and

3. All other county laws and regulations have been complied with; or

(ii) Compliance with this title would cause unnecessary hardship.

(2) A waiver shall be granted only in accordance with Title 8 of this article.

(b) *Waivers - Development Plan requirements.*

(1) The Director of Permits and Development Management may waive the Development Plan requirements under §§ 32-4-221(b) and (c) and 32-4-222 through 32-4-224 of this title and the Hearing Officer's hearing if, after consultation with appropriate county agencies, the Director finds:

(i) That the size, scope, and nature of a proposed development does not justify strict compliance with this title; and

(ii) That a waiver would be within the scope, purpose, and intent of this title; and

(iii) That the proposed development complies with all other county laws and regulations.

(2) Before proposing to grant a waiver for development within the critical area, the Director of Permits and Development Management shall obtain recommended findings from the Director of Environmental Protection and Resource Management based on the standards specified under § 32-4-226(d)(1)(iv) of this title.

Based on the above statutes and the testimony and facts of the case, the Board determined unanimously that there was justification for the waiver.

Does the proposed resubdivision conflict with and exceed the tract density limits set by the law governing amendment of subdivision lots?"

In responding to this issue, the Board consulted the following section of the BCZR:

BCZR § 1A01.3- Height and Area

1A01.3 Height and area regulations

A. Height regulation. No structure hereafter erected in an R.C.2 Zone shall exceed a height of 35 feet, except as otherwise provided under Section 300.

1. Subdivision lot density. No lot of record lying within an R.C.2 Zone and having a gross area of less than two acres may be subdivided. No such lot having a gross area between two and 100 acres may be subdivided into more than two lots (total), and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of one lot for each 50 acres of gross area. In cases where land in single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right-of-way or easement shall not be considered separate parcels for the purpose of calculating the number of lots of record. [Bill Nos. 199-1990; 125-2005]

2. Lot size. A lot having an area less than one acre may not be created in an R.C.2 Zone.

3. Setback requirements. No principal structure or dwelling (whether or not it is a principal structure) in an R.C.2 Zone may be situated within 75 feet of the center line of any street or within 35 feet of any lot line other than a street line.

4. Principal dwellings per lot. No more than one principal dwelling is permitted on any lot in an R.C.2 Zone.

The Board unanimously agreed that based on § 1A01.3 and the testimony and facts presented, the resubdivision clearly does not exceed the density limits.

Additionally, the Board consulted BCAR § 1B01.3A.7, which states:

Amendment of approved development plans. After partial or final development plans have been approved as provided under Paragraph 6, preceding, they may be amended only as provided below:

a. Amendment prior to sale of interest in nearby property. The development plans may be amended by simple resubmission, or by the submission of appropriate documents of revision, subject to the same requirements as are applied to original plans, if there is no change with respect to any lot, structure or use within 300 feet of a lot or structure which has been sold since the original plans were filed.

b. Amendment after sale of interest in nearby property or upon demand for hearing. In the case of an amendment not allowed under Subparagraph a, by reason of sale of property within the area, or in case of a demand for hearing by an eligible individual or group, the plans may be amended through special exception procedures, in the manner provided under Section 502 and subject to the following provisions:

(1) The amendment must be in accord with the provisions of the Comprehensive Manual of Development Policies and with the specific standards and requirements of this article, as determined by the Office of Planning. The Director, on behalf of the Planning Board, shall notify the Zoning Commissioner accordingly. [Bill No. 29-1995]

(2) Only an owner of a lot abutting or lying directly across a street or other right-of-way from the property in question, an owner of a structure on such a lot, or a homes association (as may be defined under the subdivision regulations or under provisions adopted pursuant to the authority of Section 504) having members who own or reside on property lying wholly or partially within 300 feet of the lot in question are eligible to file a demand for hearing. [Bill No. 29-1995]

(2) Only an owner of a lot abutting or lying directly across a street or other right-of-way from the property in question, an owner of a structure on such a lot, or a homes association (as may be defined under the subdivision regulations or under provisions adopted pursuant to the authority of Section 504) having members who own or reside on property lying wholly or partially within 300 feet of the lot in question are eligible to file a demand for hearing. [Bill No. 29-1995]

c. Amendment upon request by owner of lot within subdivision. The Zoning Commissioner may, without a public hearing but with the concurrence of the Director of Planning, amend the plans with respect to a structure on an individual lot created under the plans and used according to the purpose stated therein, or with respect to such lot, at the request of the lot owner, under the following requirements and conditions:

(1) Reasonable notification, by a standard method established pursuant to the authority of Section 504 and approved by the County Attorney, must be given to the occupants and owners of all real property which is fully or partially situated within 300 feet of the lot in question.

(2) It must be determined that a formal demand for hearing by an eligible individual or group, as described in Paragraph b, has not been filed

(3) It must be determined that standards adopted under the authority of Section 504, in addition to the specific requirements under these regulations, will not be violated by the amendment.

(4) The Zoning Commissioner and the Director of Planning must certify that the amendment is in keeping with the spirit and intent of this article and other Baltimore County land use and development requirements administered by them, and both must certify that the amendment does not violate the spirit and intent of the original plan.

d. Any amended development plan and any document of amendment of such a plan must be filed with all agencies or officials with whom copies of the original plan have been filed pursuant to paragraph above, and no amendment takes effect otherwise.

Counsel for the Petitioner believes that BCZR § 1B01.3A.7 provides for the amendment of a Final Development Plan. The subject property allowed for a density of 19 lots under the RC-5 zoning in place in 1981. Five lots and Tract "A" were approved and recorded. We find no provision or evidence that all density permitted but not used on an improved FDP is lost forever. We do not find Mr. Dillon's testimony to the contrary persuasive.

Applying the current zoning (previously cited), the Petitioner is entitled to have one more

house on the subject lot. The Board took into consideration the fact that the Planning Director initially denied the request to ensure there would be a public hearing on the matter. A public hearing was posted and no one from the Community or neighborhood showed up to protest the proposal. The Board felt that the tough standards needed to obtain the waiver had been met by the Petitioner and that the Deputy Zoning Commissioner was correct in his decision to grant the waiver in the first place.

After a thorough review of the facts, testimony and law in the matter, the Board unanimously finds that the requested waiver should be granted, and will so order.

ORDER

THEREFORE, IT IS THIS 3rd day of August, 2007 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioner's request to approve a waiver from § 32-4-409(b)(2) of the *Baltimore County Code* (BCC) to permit creation of panhandle in-fee strips of 6 feet in width in lieu of the required minimum 10 feet in width where three or more lots are involved be and the same is hereby **GRANTED.**

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Mike Mohler

Robert W. Witt

8/3/07

County Board of Appeals of Baltimore County

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

August 3, 2007

Peter Max Zimmerman
People's Counsel for
Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: Niels Braid – Legal Owner/Petitioner*
Case No. 06-332-SPH

Dear Mr. Zimmerman:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules of Procedure*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all subsequent Petitions for Judicial Review filed from this decision should be noted under the same civil action number as the first Petition.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: Howard L. Alderman, Jr., Esquire
Niels Braid
Guy C. Ward /McKee & Associates, Inc.

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

1/19/07

RE: PETITION FOR SPECIAL HEARING
E/S of Middletown Road, 1006' SE of c/line
of Keeney Mill Road
(20315 Middletown Road)
6th Election District, 3rd Councilmanic District

Legal Owner(s): Niels and Margaret Braid
Petitioners

* BEFORE THE

* COUNTY BOARD

* OF APPEALS

* FOR

* BALTIMORE COUNTY

* Case No. 06-332-SPH

RECEIVED
JAN 19 2007
BALTIMORE COUNTY
BOARD OF APPEALS

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

People's Counsel for Baltimore County's Memorandum

This office's *de novo* appeal comes to the County Board of Appeals from the Deputy Zoning Commissioer's (DZC) March 1, 2006 decision to grant a waiver to the panhandle driveway width standards under Baltimore County Code Sec. 32-4-409. PC Exh. 2. People's Counsel challenges the legitimacy of the waiver under this code section. People's Counsel also challenges the request because of a conflict with the law governing amendment of subdivision plans and tract density limits for amendments of subdivision plats under BCZR 1A00.4 and 1B01.3. P.C. Exh. 9.

The panhandle driveway waiver issues appear to be issues of first impression. They involve both procedure and substance. The CBA's decision will, therefore, be of great public importance and serve as a guide to future implementation of this law.

The density issues are also of great public importance. They affect many existing R.C. 2 Zone subdivisions. The CBA's decision will determine the ability of lot owners in subdivisions platted previously, under higher density zoning classifications, to resubdivide their lots after legislative reclassification to the R.C. 2 Zone.

With respect to density, both parties have cited Ranshell Holdings, LLC, 03-225-SPH, while disagreeing as to its impact and meaning. PC Exh. 15. Petitioner also relied on Cher-Chris Construction, 03-264-SPH. Pet. Exh. 9. People's Counsel believes Cher-Chris is distinguishable and inapplicable.

Background Facts and Zoning History

The essential facts are mostly undisputed. There was filed and approved a development ("JSPC") plan for Keeney Mill Woods in 1976. Pet. Exh. 2. The developer duly recorded the plat for Section 1 on October 5, 1976. Pet. Exh. 7.

As stated in Note 10 of the JSPC Plan, the zoning classification at that time was R.D.P., Rural Deferred Planning, a rural zone enacted in Bill 100, 1970. BCZR 1A00. This zone set a minimum lot acreage requirement of one acre, subject to meeting percolation tests. BCZR 1A00.3.B.1. The developer here placed 20 lots on 75 acres, and sold off about 50 other acres for farm use. The average lot size is listed as 4.74 acres, and this appears to be the range of the majority of the lots, with a few larger and a few smaller. Whether by choice or due to environmental requirements, most rural lots developed in the R.D.P. Zone were much larger than one acre.

The 1976 "JSPC" Plan also contained this interesting Note 2:

> "No further subdivision of the lots shown hereon will be allowed unless approved by the Balto. Co. Planning & Zoning Comm."

The recorded subdivision plat repeated this note.

On January 5, 1977, the developers filed a Declaration. Pet. Exh. 6. It stated in paragraph 9 that, "None of the aforesaid lots shall be further subdivided prior to January

1, 1996." (Petitioners rely on this to imply the allowance of resubdivision generally after the stated date. However, the expiration of a private restrictive covenant does not excuse a property owner from compliance with applicable law).

In 1978, Petitioners Niels and Margaret Braid acquired lot 18, shown on Section 1, Plat 2. Pet. Exh. 7. They have lived there ever since. Pet. Exh. 5. The evidence shows they have built a substantial home, a swimming pool, and a detached garage.

The lot is 8.744 acres in size, the third largest of the 20 lots. The two adjacent larger lots are Lots 19 and 20. These three lots share the 36-feet wide panhandle driveway giving access to Middletown Road. There was no statutory restriction on panhandle driveways until 1982. However, the width of 12 feet allocated to each of the three lots exceeds the minimum of 10 feet required by current law. There were actually six panhandle lots shown on the approved plan, with four anticipated to share the driveway in question. Plan Note 21. As it turned out, the driveway has served lots 18, 19, and 20.

Meanwhile, in 1975, the County Council passed Bill 98-75. This ordinance created four Resource Conservation Zones, including the R.C. 2 Agricultural Zone. It repealed and thus replaced the R.D.P. and companion R.S.C. Zones. The Council first mapped the R.C. Zones in the October 1976 Comprehensive Zoning Map Process (CZMP), after approval of the Keeney Woods subdivision earlier that year. In this 1976 CZMP, the Council reclassified the area including Lot 18, from R.D.P. to R.C. 2. The legislature has maintained that classification to the present day.

As originally constituted, the R.C. 2 Zone allowed a maximum .2 lot density, one lot per five acres. Arguably, the Keeney Mill Woods subdivision satisfied this limit in the

context of the entire 126-acre property. But in 1979, the Council strengthened the subdivision lot density restrictions. After review of a Planning Board Report (PC Exh. 8), the Council passed Bill 178-79. This established in BCZR 1A01.3.B.1 a stronger subdivision lot density control, which exists to this day. (There have been amendments relating to the effect of crossing roads which are not relevant to the present case). PC Exh. 9. BCZR 1A01.3.B.1 currently states,

> "1. Subdivision lot density. No lot of record lying within an R.C. 2 Zone and having a gross area of less than two acres may be subdivided. No such lot having a gross area between two and 100 acres may be subdivided into more than two lots (total), and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of one lot for each 50 acres of gross area. In cases where land in single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right-of-way or easement shall not be considered separate parcels for the purpose of calculating the number of lots of record."

If the property were subdivided for the first time today, the 75-acre tract would support a maximum of two lots (and 126 acres, three lots). The developer was thus very fortunate to have made the decision to develop the property before the 1979 establishment of the stronger restrictions in 1979.

Petitioners' 2005 Undertaking to Resubdivide Lot 18

In 2005, Petitioners engaged Guy Ward of McKee & Associates to assist in the resubdivision of Lot 18. They wished to carve out a 2.0 acre lot, which is shown on Pet. Exh. 1. This would result in a division of the panhandle driveway in half for each new lot, a reduction to six feet. The minimum width under current law, as noted, is 10 feet.

On October 4, 2005, Mr. Ward wrote a letter to the Planning Director, Arnold "Pat" Keller to request a waiver under Code Sec. 32-4-409(k). Pet. Exh. 8. He identified

the waiver needed for the two "6' wide strips in lieu of the minimum 10 foot requirement which is normally required." He wrote,

> "The subject property is approximately 8.7 acres in size and is currently zoned RC-2. It has been held since October 5, 1976 and should therefore have 2 density units available to it under the RC-2 regulations. However, originally the "Keeney Mill Woods" subdivision was crated under the R.D.P. zoning regulations. The property is currently improved by a single family dwelling. Mr. Braid has expressed a desire to subdivide the property so that he may deed land to a child."

Mr. Ward included a copy of the record plat overlaid on topographic information and a schematic description of the location for the second lot.

Apart from identification of the reduction in width of the panhandle strips and the resulting need for the waiver, the letter does not discuss at all the substance of Code Sec. 32-4-409 or the criteria for the grant of a waiver. There is another omission, which goes to the density issue. The letter does not discuss the zoning law relating to the amendment of development plans generally and the density limitation in BCZR 1A00.4/1B01.3.

The Planning Director on October 20, 2005 wrote back and denied the waiver. Pet. Exh. 3. He wrote,

> "Your request for a waiver from the provisions of Section 32-4-409 of the Baltimore County Code has been DENIED. As such, it is recommended that the relief sought of Section 32-4-409 be possibly obtained through the Special Hearing process."

The Director then went on to state a concern about the "other existing lots served by the panhandle right-of-way in question.... [and their] ... subdivision potential." He added that there is a 5-lot limit for panhandle driveways, and that a hearing would allow input for "all property owners being served."

The Planning Director's "recommendation" was not actually in favor of the waiver but rather that "relief ... be possibly obtained through the Special Hearing process." Just

as Mr. Ward's letter had failed to justify the waiver under the statutory criteria, neither did the Director's letter identify or supply any statutory justification for a waiver.

On January 10, 2006, Mr. Ward, along with Petitioners, signed the Petition for Special Hearing for a waiver of the panhandle law requirements. He did not file a petition for special hearing to amend the final development plan (FDP). BCZR 1A00.4, 1B01.3. This is a standard procedure required by law and in cases such as Ranshell Holdings and many others reviewed at the ZC and CBA levels. The legal requirements for the FDP amendment are separate from the panhandle waiver requirements. If a proper Petition had been filed, Deputy Zoning Commissioner Murphy might have focused on the density issue. In its absence, the DZC overlooked the problem..

Howard Alderman, Petitioner's current attorney, subsequently entered his appearance. The Zoning Commisioner's March 1, 2006 decision states that Mr. Alderman represented Petitioners at the hearing. Mr. Ward was the main witness. The hearing went ahead on the panhandle waiver. The Commissioner granted the waiver. People's Counsel thereupon filed a timely appeal.

Questions Presented

1. a. What is the appropriate procedure for amendment of a final development plan (FDP) and final subdivision plat and for resubdivision? Should Petitioners have filed a petition for special hearing to amend the FDP?

b. What is the appropriate procedure for panhandle driveway waivers, and how does it relate to the development plan review process?

2. Is there any justification for waiver of the width requirements of the panhandle driveway law?

3. Does the proposed resubdivision conflict with and exceed the tract density limits set by the law governing amendment of subdivision plats?

Argument

Note on the Implementation of Current Law

Fortunately, there is one issue upon which there appears to be agreement. Although the original R.D.P. Zone subdivision dates from 1976, the proposed 2005 resubdivision and lot addition is governed by current law.

Petitioners have submitted their request for a panhandle driveway waiver under current law. They have also asserted their right to additional subdivision density under the current subdivision lot density of the R.C. 2 Zone. Because there is often a dispute as to whether current law applies in cases involving amendments to subdivisions approved under different legal regimes, it is helpful to explain why current law does apply.

Residential development and construction in a properly approved subdivision will ordinarily "vest" the subdivision so as to allow development of all the lots platted for that subdivision even after an otherwise restrictive change in the law. But there are no vested rights to expand or resubdivide without regard to a change in the law. See Prince George's County v. Sunrise Dev. LP 330 Md. 297 (1993). Therefore, it is correct to proceed under current law. Moreover, the Baltimore County Council recently passed Bill 24-06. PC Exh. 1. This amended County Code Secs. 32-4-104 and 32-4-262 to reinforce the point that all development and all material amendments to development

plans shall comply with current law. PC Exh. 2. The explicit requirement that a development comply with present zoning law predated Bill 24-06. See Code Secs. 32-4-104(c) and 32-4-114(a) (2003).

Accordingly, People's Counsel agrees that current law applies. But we challenge the legitimacy of Petitioners' claim to entitlement to resubdivide and obtain a panhandle driveway waiver under current law.

I. a. Procedural Issues; the Special Hearing process to amend a final development plan and subdivision plat, including resubdivision; Petitioners' failure to file a petition for special hearing to amend the final development plan.

The source of the law governing amendment of final development plans is Bill 100, 1970, which included BCZR 1B01.3 to regulate amendments in Density Residential Zones. In 1975, Council 98-75 extended this protection to Resource Conservation Zones by incorporation in BCZR 1A00.4.

With respect to subdivisions where lots have been sold prior to a requested amendment, the law sets up a review process, which refers to special exception standards as well as consistency with the spirit and intent of the original plan. BCZR 1B01.3.A.7. This provides protection to the neighborhood, including other property owners in the subdivision. There are also the substantive provisions of BCZR 1B01.3.B.2, which control density and are critical in the present case. The Ranshell Holdings case, as noted, is just one example of an FDP amendment special hearing involving resubdivision.

It is undisputed that the Petitioners' desire to resubdivide Lot 18 involves an amendment to the final subdivision plan. Both the 1976 "JSPC" final development plan

and the final record plats are in evidence. Mr. Ward admitted, as he had to, that the current request involves an amendment of the 1976 Plan.

It should be underlined again that the 1976 Plan and Plat both had notes that no further subdivision of the lots shown would be allowed unless approved by the Baltimore County Planning and Zoning Commission. While it would have been more accurate to refer to the Zoning Commissioner, the gist of it was correct insofar as there was envisioned a formal review process prior to any further subdivision.

If a proper special hearing petition had been filed, there would have been the fuller review required under the BCZR 1A00.4/1B01.3 criteria. In the absence of the petition, the DZC had no authority to approve this resubdivision request. Neither does the CBA have any authority on *de novo* appeal.

It should also be underlined that a property owner cannot avoid this process by the overused and abusive claim of entitlement to a "refinement" via the Development Review Committee (DRC) process. The CBA has at times questioned the essential legitimacy of DRC. Even if it is properly assumed to exist, its authority to approve a "refinement" is limited to situations involving a "slight, minor, or insignificant [change] to an approved plan." Meadows of Greenspring Homeowners v. Foxleigh Enterprises Court of Special Appeals No. 2170, October 22, 2004, PC Exh. 16 There, quoting the Baltimore County Development Policy Manual, the Court held that a reduction in the size of a proposed building was not a "refinement." Here, the addition of one lot in itself is significant. Moreover, if this lot were approved as a "refinement," others could follow without limit. This would undermine and negate the FDP Plan amendment law.

b. Waiver of panhandle driveway limits; the roles of the planning director and hearing officer.

Legislative action to control panhandle driveways began in 1982 with Bill 56-82. It was codified in County Code Sec. 22-85. PC Exh. 3. As noted, the amended panhandle driveway law is now found in Code Sec. 32-4-409. PC Exh. 2.

The interesting procedural aspect of this legislation is that subsection (k) assigns to the planning director the function of granting or denying waivers, except with respect to specified lot limits under subsection (d) and with respect to driveway length, subject to variance under subsection (e). It also states specific statutory criteria for consideration by the planning director.

Given the legislative assignment to the planning director, what role is left to the hearing officer (HO)? Ordinarily, the hearing officer may grant waivers to development regulations under Code Sec. 32-4-107 upon the recommendation of a department director. But there are some exceptions here also. For example, the CBA recently held in the Seton Liberty case, No. CBA 06-040, December 14, 2006, that the specific substantive provisions regarding eligibility for open space in the Adequate Facilities Law, Code Sec. 32-6-101, et seq., take precedence over the more general waiver law.

In this context, we believe the essential statutory function of the planning director should be respected. On the other hand, there is no public notice or hearing process before the planning director. In contrast, the zoning commissioner (ZC), as hearing officer, holds a public hearing to review development plans under Code Sec. 32-4-226 -

32-2-229. This includes review for compliance with all county laws. Code Secs. 32-4-104(b) and 32-4-114. The ZC also has the function to review FDP amendments.

We believe that the most sensible way to reconcile the various provisions is to recognize the primary decision making function of the planning director, but to allow the zoning commissioner/hearing officer to utilize the public hearing process to review the planning director's decision for errors of law. The director's decision should thus be open to scrutiny at a public hearing, giving due deference to his judgment and his resolution of debatable inferences if based on the proper statutory criteria.

In our experience, the ZC/HO has routinely reviewed panhandle driveway waivers in the development plan process or in the special hearing process. It may be that the planning director, as here, has a policy of directing applicants to the special hearing process. We do not know whether the director sometimes approves waivers without requiring the applicant to file for a public hearing. If so, we disagree with that procedure.

Here, the planning director denied the waiver but directed the Petitioners to the special hearing process for further review. We agree that the hearing officer and, on appeal, the CBA can review the legitimacy of the waiver application and the planning director's decision with respect to compliance with the panhandle driveway law.

Summary

The Petitioners, Niels and Margaret Braid, having been denied by the planning director, filed a petition for special hearing for a panhandle driveway waiver. They overlooked the more basic requirement to file a special hearing for amendment to the

final development plan (FDP). Therefore, their petition is incomplete and not legally sufficient for the approval of their proposed resubdivision.

The panhandle driveway issue, therefore, is just one of the issues which should have been addressed in the departmental review process and before the zoning commissioner. This procedural failure led to the disregard entirely of FDP amendment standards, including explicit density limits.

Fortunately, there is a *de novo* appeal process. This provides an opportunity to correct the procedural errors and ensuing errors of substantive law with respect to the panhandle driveway waiver and with respect to the FDP amendment and density.

II. There is no justification to waive the width requirements of the panhandle driveway law

The main thing is to understand the panhandle driveway law. There are controls because these driveways are problematic compared to driveways with direct access to public streets. Therefore, the law discourages them.

The terms "panhandle driveway" and "panhandle lot" are defined as follows, in Code Sec. 32-4-101(dd) and (ee),

> (dd) "*Panhandle driveway*" means the paved roadway that serves one or more abutting panhandle lots and provides vehicular access to the local street or to a collector street.
>
> (ee) "*Panhandle lot*" means a lot shaped and situated so that the only frontage or access to a local street or to a collector street is a narrow strip of land that:
>
> (1) Is held in-fee, except as provided in Sec. 32-4-409 of this title; and
> (2) May contain a panhandle driveway, water and sewer lines, and other utilities."

The main substantive provision, Code Sec. 32-4-409, spans several pages and is included in PC Exh. 2. The initial subsection, 32-4-409(a) is particularly important. It states the essential purpose of the law to allow panhandle driveways only in limited circumstances, where it passes all of the following tests,

"(a) In general

(1) The county may only allow a panhandle lot:

(i) To achieve better use of irregularly shaped parcels;
(ii) To avoid development in environmentally sensitive areas;
(iii) Where the lot will not be detrimental to adjacent properties; and
(iv) Were the lot will not conflict with efforts to provide for public safety and general welfare.

(2) The county may only allow a panhandle driveway where necessary to provide access to interior lots where a public road is neither feasible nor desirable."

Here, there is just no evidence in this record that the Braids' proposal to create an additional panhandle lot here satisfies these criteria. It is for the convenience of the property owners and serves no land use or environmental purpose. It would also be, by virtue of its size, out of character with the much larger lots immediately around it.

It should be underlined, moreover, that the existence of a panhandle driveway approved prior to the establishment of legal controls does not furnish an excuse to manufacture new panhandle lots. The purpose of the law is to limit such lots, not to multiply them. The arguable indifference of the other lot owners on the driveway is also not an excuse. There is a public interest in this matter.

To be sure, the law provides for a waiver under specified circumstances in Code Sec. 32-4-409(k),

"(k) Waiver. Except as provided in subsections (d) and (e) of this section, the Director of Planning may grant a waiver from any provision in this section or title if the Director finds:

(1) That the size, scope, and nature of the subdivision of land into three or fewer lots for residential single-family dwellings does not justify strict compliance with this section;
(2) That a waiver would be within the scope, purpose, and intent of this section; and
(3) Compliance with all other county ordinances and regulations."

First of all, subsection (k)(1) appears to allow for the grant of a waiver only in situations where there are "three or fewer lots." Here, the proposal is for a fourth lot; so, right away, there is a disqualification. Secondly, even if the proposal were otherwise eligible, the waiver test refers back in subsection (k)(2) to the scope, purpose, and intent of the section, expressed primarily in subsection (a). Thirdly, under subsection (k)(3), there must be compliance with other county laws and ordinances.

Guy Ward failed to address any of the statutory criteria in his October, 2005 letter to Planning Director Keller. He had the idea that the waiver should be granted because otherwise the Braids could not implement their desire to resubdivide their lot. If that were a justification, then the law would be delusive and meaningless.

Furthermore, Mr. Ward failed to provide any substantial justification in his testimony. Again, he omitted any mention of the essential criteria in subsection (a). He did testify that the proposal would not produce the adverse effects listed under Code Sec. 502.1, as if this were a special exception case. But that is not sufficient to pass the cumulative tests of subsection (a). The first two of the four statutory criteria require affirmative proof relating to better use of irregularly shaped parcels and avoidance of

environmentally sensitive areas. Mr. Ward said nothing about these issues. This is understandable because the proposal for a new lot had nothing to with them.

The last two of the four criteria do address adverse effects. But even here, Mr. Ward's testimony was conclusory and vague. He showed no sensitivity or understanding of the purpose of panhandle driveway controls and gave the impression that it is a routine bureaucratic stamp of approval.

Mr. Dillon, in contrast, explained why there is no justification for a waiver. He underlined that the proposal had nothing to do with the legislative purpose "to achieve better use of irregularly shaped lots" or "to avoid development in environmentally sensitive areas." He also showed that the Master Plan land use maps place this subdivision in the Freeland Preservation Area, one of the county's Agricultural Land Preservation Areas. PC. Exh. 7A, 7B. Despite the obvious presence of the existing subdivision, the area is still a significant farming area. One of the main purposes of the R.C. 2 Zone is to guard against further incremental encroachment of residential development, especially on relatively small lots. In this context, Mr. Dillon also observed that the proposed new lot is much smaller than the lots around it.

All of this is separate and independent of the question presented as to compliance with zoning density, which Mr. Dillon discussed and which we address in Section III of the Argument below. The point here is that even within the four corners of the panhandle driveway law, the proposal does not qualify for a waiver. But there is also a major conflict with the law governing subdivision density with respect to the entire tract. To this, we now turn.

III. The proposed resubdivision conflicts with and exceeds the tract density limits set by the law governing amendment of subdivision plats.

As noted, Petitioners failed to file for a special hearing to approve an FDP amendment. This led the Deputy Zoning Commissioner to overlook the substantive issues arising under this law, especially the problem of conflict with the law governing tract density. Because the density conflict is so important, we shall deal with it first.

The critical provision is BCZR 1B01.3.B..2, which concludes,

> "It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. Zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. Zone(s) for the entire tract."

BCZR 1A00.4 cross-references and incorporates this provision into the law governing the Resource Conservation Zones. It states,

> "Plans and plats. Development plans and final subdivision plats shall be required in the manner prescribed under Section 1B01.3, and, for the purpose of this section, all references to D.R. Zones shall include the R.C. Zones."

There is nothing ambiguous about this law. Of course, the statutory reference to "the entire tract" refers to the entire subdivision, not just a single lot. Webster's Third New International Dictionary defines the word "tract," for the purpose here, as

> "**2 :** an area either large or small: as a (1) region or stretch (as of land) that is usu. indefinitely described or without precise boundaries <a few large –s for settlement> <the wooded – between the two rivers> <a great – of unexplored area (2) : a precisely defined or definable area of land <an 80 acre -- > <an urban census -- > …." PC Exh. 14

Coincidentally, the entire tract at issue in the present case is a 75-acre tract (or, if we include the original 51 acres set aside for farming, 126 acres). Whether the "entire tract" is 75 acres or 126 acres, the maximum density under current law is 2 dwelling units. BCZR 1A03.B.1.a. There are already 20 homes on the 75-acre subdivision plat, so

the subdivision already exceeds the density allowed under current law. From any point of view, there is no more subdivision allowed by law.

John J. Dillon, Jr. explained this conflict lucidly. He added, moreover, the planning perspective related to the legislative findings and purposes of the Agricultural Zone. He underlined that the surrounding area remains an important agricultural area, and that the existence of the subdivision does not provide a rationale to compound the residential density in the area. In other words, while the 1976 subdivision is already in excess of the density now allowed, this is not an excuse to magnify the excess.

Indeed, with respect to the equities, it is to be remembered that the existing farms in the area are subject to the strong density restrictions of the R.C. 2 Zone. The disparity between their allowed density and the density of Keeney Mill Woods is already severe. It should not be aggravated by a ruling which could double the density of this existing subdivision and have countywide implications.

Teresa Moore's appearance on behalf of the Valleys Planning Council highlights the impact of this case on all existing subdivisions in the R.C. 2 Zones in the valleys area and all across the rural north and west of Baltimore County. It is necessary to add that the Petitioners' objection to her testimony with respect to a case outside the VPC boundaries is without merit legally or as a matter of common sense. CBA Rule 8a requires an authorized representative to have "accurate knowledge of the number of members of the association and the geographic limits of the association." So long as that is satisfied, along with the production of the Rule 8 documents, a representative may testify on any matter upon which the association perceives an interest, whether inside or outside their

area, whether near or far away. The case law confirms that the standard regarding participation before administrative agencies is broad and liberal, and that in the absence of a specific prohibition, a party may express an interest in any matter. Dorsey v. Bethel AME Church 375 Md. 59, 71-74 (2003).

Petitioners rely heavily on the idea that the existing subdivision is below the density allowed under the R.D.P Zone at the time it was approved. This is not a legal excuse under current law. To be sure, the R.D.P. Zone in 1976 may have allowed more than 20 lots based on the minimum lot size of one acre, subject to satisfactory percolation tests. The 1976 subdivision is what it is. It is there with an approved plat on file. But it cannot expand or grow under the current law explicitly stated in BCZR 1B01.3.B.2.

To avoid the clear conflict with current law, the Petitioners here cite the CBA's Ranshell Holdings opinion. PC Exh. 15. There, in denying another attempt to resubdivide involving the same 1979 R.C.-2 lot density, the CBA observed that the subdivision was at maximum density under the law applicable at the time it was approved. The CBA concluded, at pages 9-10,

> "It is the opinion of the Board that when the above Secs. 1B01.7.A and B and 1B01.B.2, as well as the spirit and intent of the law, are considered, the Petition for Special Hearing must be denied. At the time the original Keeney Mill Woods – East subdivision was created, the zoning regulation allowed for a density of five (5) lots on the 27+ acres of the subdivision. Had the Keeney Mill Woods – East subdivision been created today, the number of lots allowed would be two (2). This indicates that the spirit and intent of the law is to reduce the density in the rural agricultural zones.
>
> "For that reason, the Board considers that any amendment to a development plan must be the amendment to the final subdivision of Keeney Mill Woods – East, not the subdivision of Lot #1 of Keeney Mill Woods – East. In considering the entire tract of Keeney Mill Woods – East, there can be no further density allowed on the Keeney Mill Woods East tract, since all five density units that were allowed at the time the final subdivision plat was approved have been utilized."

While the CBA there was absolutely right to deny the special hearing and to recognize the "spirit and intent of the law to reduce the density in the rural agricultural zones," the CBA should not have highlighted the irrelevant fact that the subdivision was at its maximum density allowed when it was approved. The Ranshell Holdings proposal had to be denied because the addition of another lot would compound the excessive density with respect to the entire R.C. 2 Zone tract under current law. The CBA's language with respect to allowable tract density under the earlier zoning regime should thus be considered *dictum* and icing on the cake. Unfortunately, Petitioners' counsel now cites this language; and we must respond to avoid further confusion.

The current subdivision lot density control under BCZR 1B01.B.2 does not depend for its implementation on whether the old subdivision was in its time platted to the maximum density then allowed. The statutory language looks forward under the current law, not backward to what the developer might have done under the old law.

It is not only legally correct to look forward, but also very practical. To argue about what a developer might have done in the past, especially the distant past, is fruitless and speculative. There were undoubtedly a variety of reasons why the developer here chose to plat and sell 20 homes, and no more. These may have included percolation issues, other environmental constraints, or market considerations. We do not know. This is not, and should not be, a consideration in the implementation of current law. It is enough that the Keeney Mill Woods subdivision at issue in the present case is already over density under current law, and that no more is allowed.

Separately, the Petitioners here also cite the Cher-Chris Construction Co. opinion. Pet. Exh. 9. This decision is distinguishable and inapplicable because the parcel at issue there was shown as a parcel in the original subdivision. The evidence showed, on balance, that it was intended for development under that plan rather than for open space. It was not a question of adding a new lot of record. Rather, it involved the development of an approved lot of record, which had not yet been utilized. That is a far cry from a proposal to create an entirely new lot.

The Petitioners have also cited the provision in the contractual Declaration, which sets a January 1, 1996 termination date on the prohibition of further lot subdivision. So far as contractual obligations between the lot owners are concerned, it may be relevant. But a contractual provision cannot and does not supersede the zoning law. That is a matter of public law and public interest.

Aside from the density issues, a further comment is in order as to the FDP Amendment generally. There has been a complete failure to prove that the proposal is consistent "with the spirit and intent of the original plan." BCZR 1B01.3.A.7.b (3). The contractual provisions do not serve that function. A good look at the proposed new lot shows that it is incongruous and out of place with respect to its location and size. It is a kind of gerrymandered lot to serve the personal agenda of the Petitioners.

Conclusion

It is to be remembered that this case will set the precedent for all existing subdivisions in the R.C. 2 Zone which were platted under earlier zoning classifications or the pre-1979 R.C.2 zoning regime. It will set a precedent for implementation of the

panhandle waiver law. It will set an even more significant precedent for the implementation of the tract density lots for Resource Conservation Zones.

The County Board of Appeals should resist the temptation to view this case sympathetically as a single additional lot for Petitioner's family. On its own merits, there is no legal justification. But the case means more than that. To quote John Donne, and more recently Ernest Hemingway, ask not for whom the bell tolls, it tolls for me.

The Agricultural Zone involves the concept of ecology. It recognizes the interconnectedness of land uses in the agricultural areas. This recognition extends to the insidious impact of incremental encroachment of subdivision development, whether within or at the boundaries of existing subdivisions.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of January, 2007, a copy of the foregoing Entry of Appearance was mailed to Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

1/19/07

BEFORE THE

COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

Case No. 06-332-SPH

Niels H. Braid, *Owner*

Petitioner

20315 Middletown Road
6th Election District
3rd Councilmanic District

PETITIONER'S POST-HEARING MEMORANDUM

Niels H. Braid ("Owner" or "Petitioner"), by and through his undersigned legal counsel, hereby submits this Post-Hearing Memorandum in accordance with the direction of the County Board of Appeals for Baltimore County ("Board") at the conclusion of the hearing held on the above-referenced appeal, in lieu of closing argument.

STATEMENT OF THE CASE

This case is about the Owner's request, pursuant to the broad Special Hearing authority vested in the Zoning Commissioner and this Board by the *Baltimore County Zoning Regulations* ("BCZR") and the *Baltimore County Code* ("BCC"), for a waiver of minimum width of in-fee strips with respect to the creation of one additional lot to be served by an existing panhandle driveway. This case is not about available lot density as

suggested by the Baltimore County Office of People's Counsel ("People's Counsel"). However, since the Deputy Zoning Commissioner, in *dicta*, discussed the density issue and the majority of People's Counsel's case in this *de novo* appeal involved the density available for Petitioner's subdivision of his property, that issue will be addressed in this memorandum.

The Petitioner owns a single lot of record, Lot No. 18 (the "subject property" or the "Owner's lot") which gains access to a public road by a shared panhandle drive and which was zoned RDP (Rural Deferred Planning) [1] when the lot was created. Thereafter, its zoning classification was changed by the Baltimore County Council to RC-2. Utilizing the available density allocated to his lot by the County Council and the Zoning Regulations, the Owner intends to create, by subdividing the subject property, a child's lot with access to the public road by the existing, shared, panhandle driveway. Since the Owner's lot has a panhandle, in-fee strip out to the public roadway that is more narrow than currently required for two lots, a wavier was requested as statutorily provided for by the County Council. After the requested waiver was granted by the Deputy Zoning Commissioner, People's Counsel filed a timely appeal to this Board. At the conclusion of the testimony and evidence presented on the appeal, this Board requested post-hearing memoranda from the Petitioner and People's Counsel in lieu of closing argument.

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[1] Prior to the enactment of the Resource Conservation Zones in 1975, much of northern Baltimore County was zoned RDP.

THE EVIDENCE

The Owner had the burden of adducing testimony and documentary evidence in support of his request for a waiver from the current standards establishing a minimum width for a new panhandle fee strip where three or more lots share the same panhandle access. The waiver request is not for reduction of the width of the existing paved driveway. The Petitioner, present owner of Lot No. 18 as shown on the recorded subdivision plat entitled "Keeney Mill Woods - Section 1, Plat 2" ("**Plat**")[2], by the filing of the Petition for Special Hearing in this case, requested a waiver[3] from BCC § 32-4-409(b)(2) "to permit the creation of panhandle in-fee strips of 6 feet in width in lieu of the required minimum 10 feet in width where three or more lots are involved." In support of his request, the Owner presented Guy C. Ward, an expert in Baltimore County zoning and development matters and an associate at McKee & Associates, Inc., the engineering, surveying, land planning and design firm that prepared the plan to accompany the Petition for Special Hearing in this case, as well as the original development (JSPC) plan for the development in which the Owner's lot is located.[4] The testimony and evidence provided

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[2] The Plat, recorded among the Plat Records of Baltimore County in Plat Book No. 40 at page 31, is in evidence as Petitioner's Exhibit No. 7.

[3] BCC § 32-4-409(k) permits waivers if the statutorily required findings are met.

[4] The development plan, as approved by the Joint Subdivision Planning (continued...)

by Mr. Ward can be categorized within specific areas:

Plat:

- the Plat was recorded on October 5, 1976
- the Plat encompassed a land area of 75 acres
- a total of 20 lots were shown on the recorded subdivision plat, four (4) are under 2.0 acres in size and sixteen (16) are larger than 2.0 acres
- the subject property was created as Lot No. 18 when the Plat was recorded
- Lot No. 18 is approximately 8.7 acres in size
- Lot No. 18 is one of three lots, each having a 12 foot wide panhandle, in-fee strip out to Middletown Road, that share a common, paved driveway located within the are of those three strips
- when the Plat was recorded, all of the land shown thereon was zoned RDP, requiring a minimum of 1.0 acre for each lot created
- assuming all other development requirements were met (i.e. well and septic), the land area comprising the land area shown on the Plat could have been subdivided into a total of 75 lots
- assuming all other development requirements were met (i.e. well and septic), the land area <u>comprising the Owner's Lot No. 18 alone</u> could have been subdivided into a total of 8 lots

Subject Property:

- the subject property was originally conveyed to the Petitioner and

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[4](...continued)
Committee, is in evidence as Petitioner's Exhibit No. 2.

wife by a deed from the developer, dated March 7, 1978[5]

- in 1998, the subject property was conveyed by the Petitioner and his then wife to the Petitioner, individually[6]

- the subject property is presently improved with the Petitioner's home

- at the time the subject property was zoned RC-2 by the County Council it was an existing lot of record

- today, the subject property remains zoned RC-2

- the subject property has been held intact since October 5, 1976

- application of the current RC-2 zoning regulations (adopted November 25, 1979) permits the subdivision of the subject property into a total of two lots, one for the existing dwelling and one additional lot

JSPC/Development Plan:

- at the time of approval of the JSPC/Development Plan, the RDP zoning density permitted a minimum of 75 lots, however only 20 lots were initially approved and platted

- to subdivide any of the lots shown on the Plat, an amendment to the JSPC/Development Plan would be necessary

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[5] That deed from Manor Land Associates *et al* is recorded among the Land Records of Baltimore County in Liber 5862, folio 497 and is in evidence as Petitioner's Exhibit No. 5.

[6] A deed, dated July 27, 19[0]98 from Niels and Margaret Braid Adams to Niels Braid, is recorded among the Land Records of Baltimore County in Liber 13158, folio 427 and is in evidence as Petitioner's Exhibit No. 4.

Restriction on/Notice of Future Subdivision:

- the lots shown on the Plat were subject to a private Declaration[7], recorded among the Land Records of Baltimore County in Liber 5715, folio 068, that contains a restriction prohibiting the subdivision of any lot shown thereon – *See* Restriction No. 9

- the private restriction prohibiting further subdivision, expired on January 1, 1996

- inclusion of the restriction and its date of expiration, combined with General Note No. 2 on the JSPC/Development Plan, put all purchasers of lots on notice that subdivision of any lot may occur after January 1, 1996 and the procedure that would have to be followed for subdivision approval

Panhandle Access:

- panhandle Lot Nos. 18 (the subject property), 19 and 20 as shown on the Plat each have a 12 foot wide, in-fee strip to Middletown Road (referred to, collectively, herein as the "**Common Easement Area**")

- within the Common Easement Area is located a paved driveway that serves as the common access to the public road for these lots

- BCC § 32-4-409 (current regulations) require panhandle fee strips of ten feet in width when three or more lots will be sharing the panhandle

- the subject property's panhandle fee strip is only 12 feet wide, therefore a waiver from the 10 foot requirement was sought to permit the existing Lot No. 18 and the proposed lot to each have a 6 foot wide land strip within the Common Easement Area

- the lot to be created in the subject property is a minimum of 2 acres in size, the remainder of Lot 18 will be more than 6 acres in size; Lot No. 19 is over 9 acres and Lot No. 20 is over 15 acres in size, thus up

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[7] The Declaration is in evidence as Petitioner's Exhibit No. 6.

to five internal lots can be served by a single panhandle driveway – *See* BCC § 32-4-409

- if the requested relief is granted, a total of four (4) lots will use the existing paved driveway located within the Common Easement Area

- all construction and design requirements for panhandle drives, as set forth in BCC § 32-4-409 (other than the waiver relief requested), including without limitation, length of panhandle, mail/trash pads, etc. will be observed

Waiver Request:

- on behalf of Mr. Braid, Guy Ward submitted a written request to the Director of the Office of Planning requesting that the waiver relief be granted[8]

- there was no public posting or notice required or provided of the written waiver request filed with the Director of Planning

- on October 20, 2005, Planning Director Keller replied to Mr. Ward's written correspondence, declining to grant the waiver, directing the Owner instead to proceed through a zoning Special Hearing because "there are other existing lots currently being served by the panhandle right of way in question. **Those said lots also have subdivision potential.**"[9] (Emphasis added.)

- Mr. Ward opined that the Special Hearing direction from the Planning Director would provide public notice to all persons having a right of use of any portion of the existing panhandle drive

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[8] Materials provided by People's Counsel, submitted as Petitioner's Exhibit No. 8, include a copy of Mr. Ward's written request to Planning Director Pat Keller requesting the waiver relief for the subject property.

[9] Mr. Keller's written response is included in evidence as Petitioner's Exhibit No. 3 and as part of Petitioner's Exhibit No. 8 described previously.

Impact/Effect of Granting the Waiver Relief:

- Mr. Ward opined that the granting of the waiver relief would not be detrimental to the health, safety or general welfare of the community or tend to create congestion from traffic; the existing drive will function without adverse effect from one additional home

- In the opinion of Mr. Ward, the requested relief will not cause an overcrowding of the land or undue concentration of population or any potential hazard or danger

- There will be, in Mr. Ward's expert opinion, no interference with public facilities or adequate light and air if the requested relief is granted

- As evaluated by Mr. Ward, the requested relief is consistent with the property's RC-2 zoning classification, the subject property **is surrounded by other residential lots**, and it will no be detrimental to the environmental and natural resources of the subject property or the are in which it is located

Waiver Criteria:

- In Mr. Ward's expert opinion, the creation of a 2.0 $\pm$ acre child's lot for improvement with a residential, single-family dwelling, to be served by a existing, functioning panhandle driveway does not justify strict compliance with the minimum, in-fee strip width

- Given that a single panhandle driveway for lots all greater than 20,000 square feet can serve up to seven (7) lots [5 internal lots and two dwellings having, but not using, frontage on the public roadway], the requested waiver relief is within the scope, purpose and intent of BCC § 32-4-409

- Mr. Ward acknowledged that all other County regulations, ordinances and policies will be met if the requested relief is granted

THE PROTESTANTS' CASE

Presumably, the Protestants in this case are the "people" of Baltimore County. Only two witnesses were called by People's Counsel. No other "people" expressed any protest or dissatisfaction regarding the requested waiver relief. None of the Petitioner's neighbors, **including without limitation those who will share the panhandle drive with the proposed new home** appeared in front of or wrote to the Zoning Commissioner or this Board to voice any opposition to, interest in or concern about the waiver request.

People's Counsel called John J. ("Jack") Dillon, a former employee of the Office of Planning and Zoning with recognized expertise regarding the Zoning Regulations in general and the Resource Conservation zones in particular.[10] In preparing for his appearance and testimony, Mr. Dillon examined the Deputy Zoning Commissioner's Order, the *Baltimore County Master Plan*, applicable zoning maps and aerial photos, the Baltimore County Code and the Zoning Regulations. Mr. Dillon, as admitted during his testimony, did not review the approved JSPC/Development Plan or Plat for the subject property.

According to Mr. Dillon, the BCZR do not permit the resubdivision of the subject property because it was part of a previously approved subdivision that utilized only a portion of then available density in creating lots, with the balance being somehow

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[10] Since retiring from Baltimore County and his subsequent private sector employment, Mr. Dillon testifies on a regular basis for the Office of People's Counsel in opposition to relief requested by property owners and/or developers.

extinguished. Mr. Dillon's testimony, based on his interpretation of this Board's prior decision in the *Ranshell Holdings* case[11], was that all density available under the RDP zoning when the Plat was recorded was utilized and/or extinguished by the approvals obtained in the recordation of the Plat. Thus, according to Mr. Dillon, who also appeared on behalf of People's Counsel and testified in the *Ranshell Holdings* case, the subsequent change to a classification of RC-2, does not permit the subject property – greater than 2 acres but less than 100 acres in size – to be subdivided.[12] Mr. Dillon suggests that although the land area subdivided by the Plat had density for 75 lots, since the developer chose to plat less than the maximum number of lots allowed, all excess density was lost. Mr. Dillon was unable to offer any legal or statutory basis for this position. On cross-examination Mr. Dillon was reminded of this Board's decision in the *Cher-Chris* case[13] where this Board held that his [Mr. Dillon's] testimony that density permitted but not used on a development plan was lost forever, was not persuasive. In response, Mr. Dillon stated that he disagrees

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[11] People's Counsel Exhibit No. 15: *In the Matter of the Application of Ranshell Holdings, LLC*, Case No. 03-225-SPH, decided February 26, 2004.

[12] BCZR § 1A01.3B.1: "Subdivision lot density. No **lot of record** lying within an R.C.2 Zone and having a gross area of less than two acres may be subdivided. **No such lot having a gross area between two and 100 acres may be subdivided into more than two lots** (total), and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of one lot for each 50 acres of gross area. . . ." (Emphases added.)

[13] *In the Matter of the Application of Cher-Chris Construction Co., Michael Aiello, V.P.*, Case No. 03-264-SPH, decided March 30, 2004. No appeal of this case was taken by any party. A copy of the case is attached as Exhibit "A" to this Memorandum.

with the Board's opinion in the *Cher-Chris* case.

With respect to the waiver request, Mr. Dillon opined that this Board was without authority to grant the waiver request. Moreover, Mr. Dillon's opinion was that an additional lot should not be created since the full minimum 10 foot wide access is not being provided. [If it were, no waiver would be necessary] Additionally, Mr. Dillon speculated that the proposed additional lot using the panhandle drive may be inconvenient to other neighbors.

Next, Ms. Theresa Moore, Executive Director of the Valleys Planning Council, Inc. and another recurring witness called by People's Counsel, took the stand and attempted to introduce resolutions of that corporation in satisfaction of Rule 8 of this Board. When challenged by legal counsel for the Owner, Ms. Moore had to acknowledge that the subject property is outside of the boundaries covered by her organization. Thus, she was permitted to testify only as a citizen of Baltimore County, that does not even live in the immediate area of the subject property. Notwithstanding her failure to qualify as an aggrieved person, Ms. Moore advised this Board that her concern was that granting the requested panhandle relief would set a precedent to permit widespread subdivision within the RC-2 zone.

ARGUMENT

The Waiver Relief Requested from Panhandle Fee-Simple Strip Minimum Width for an Existing Panhandle Driveway

The Zoning Commissioner and this Board have broad authority under the Special Hearing statutory scheme of BCZR § 500.7. The Director of Planning is aware of that

authority and advised the Owner to proceed with his waiver request by way of Special Hearing to ensure that public notice would be provided. Since, as acknowledged by Mr. Keller (Petitioner's Exhibit No. 3), other lots depicted on the Plat have subdivision potential just like the subject property, Mr. Keller required that the waiver request be considered in a public hearing rather than exercise the statutory right to grant a waiver upon written request. Given that the panhandle regulations limit the maximum number of lots that can be created on a panhandle, it was prudent to give other owners with the right to use the panhandle for subdivision of their property the right to be heard in a public forum. As noted above, none of the Owner's neighbors – including those who currently use the panhandle drive and have the right to subdivide their properties – had any concern with the relief requested.

Mr. Dillon's purported concern for those folks is at best misplaced. However, his participation in an unwarranted appeal resulting in extreme delay and expense to the Owner may have a chilling effect on any other owner wishing to exercise his or her right to create a lot on a panhandle.

Mr. Ward's opinions regarding the statutory standards remain uncontradicted. The size, scope and nature of adding one lot to a fully functioning panhandle driveway located within the Common Easement Area does not justify strict compliance with the minimum panhandle width requirements. The paved improvements constructed within the panhandle access area are not constructed to the full width of the Common Easement Area. The

existing paved section of the panhandle driveway, which functions for three (3) lots, is approximately 12 feet[14] or one-third (1/3) of the total width of the Common Easement Area (3 existing strips at 12 feet wide each). The paved portion of the driveway can be increased to its full available width of 36 feet, however, as noted by Mr. Ward, such widening is not required or necessary to add only one additional lot. Adding additional width to the Common Easement Area (if it were possible) to meet the minimum requirements would not add any additional safety or convenience for a fourth lot. The County Council contemplated a waiver of all but certain requirements for panhandle lots. The exceptions, which are not eligible for waiver under BCC § 32-4-409(k), are the provisions limiting the maximum number of lots utilizing a panhandle drive [BCC § 32-4-409(d)] and the maximum length of panhandles [BCC § 32-4-409(e)]. It should be noted that although a waiver of panhandle length is not permitted, relief from the maximum length standard can be obtained by way of variance. [BCC § 32-4-409 (e)(3)]

As noted by Mr. Ward, all other County "ordinances and regulations" will be complied with in the subdivision of the Owner's property. [BCC § 32-4-409(k)(3)] Thus, the Owner has met the requirements for a waiver to permit two panhandle lots (one existing and one proposed) to have panhandle strips of 6 feet each in lieu of the 10 feet required. The Owner has properly presented this issue to the Deputy Zoning

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[14] *See,* General Note No. 12 on the approved development plan in evidence as Petitioner's Exhibit No. 2.

Commissioner and now this Board[15] on appeal and the issuance of an Order by this Board granting the relief requested is justified on the testimony and evidence presented.

The Subject Property Can be Subdivided Into Two Residential Lots – One for the Owner's Existing Dwelling and One Additional Lot – Under the Current Zoning Classification As Well as the Prior Zoning Classification

The Protestants' application of this Board's ruling in the *Ranshell Holdings* case is not only misplaced, it is completely contrary to that ruling. In *Ranshell Holdings*, the Petitioner owned an unimproved lot that was greater than 2.0 acres in size and zoned RC-2. That lot was one of five lots shown on the original developer's development plan and recorded plat. At the time of approval of that subdivision, the application of the RC-2 regulations as then adopted permitted a total of <u>five lots</u> on the total acreage platted. The original developer use all density then available in creating those five lots. After the property was subdivided, with each lot becoming a lot of record, the "lot density" provisions of the RC-2 zoning regulations were modified in 1979 to their current status:

> 1A01.3 Height and area regulations.
>
> B. Area regulations. [Bill No. 178-1979]
>
> 1. Subdivision lot density. No lot of record lying within an R.C.2

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[15] The Owner, unlike developers Bryan and Linda Roberts in the case captioned *In the Matter of the Application of Bryan M. and Linda G. Roberts*, Case No. 05-137-SPHA (People's Counsel Ex. No. 17), has presented a proper case to this Board and has not relied on some old policy that is now contrary to the Baltimore County Code. The Owner has presented uncontradicted testimony in support of the <u>standards for granting of a waiver of panhandle width</u> as adopted by the County Council. BCC § 32-4-409(k)

Zone and having a gross area of less than two acres may be subdivided. **No such lot having a gross area between two and 100 acres may be subdivided into more than two lots (total),** and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of one lot for each 50 acres of gross area. In cases where land in single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right- of-way or easement shall not be considered separate parcels for the purpose of calculating the number of lots of record. [Bill Nos. 199-1990; 125-2005]

2. Lot size. **A lot having an area less than one acre may not be created in an R.C.2 Zone.** (Emphases added.)

The lot later acquired by Ranshell Holdings, LLC was approximately 2.99 acres in size. It proposed to subdivide it, under the current regulations, into two lots, each a minimum of 1.0 acre in size. This Board ruled that when the Ranshell lot was created, the developer used all density available and that a subsequent regulatory change permitting further subdivision was inapplicable where no excess density existed at the time of original subdivision. Mr. Dillon suggests in this case that the 75 acres zoned RDP shown on the Plat, which was initially subdivided into only 20 lots, lost all of the remaining density (55 lots) because all of the lots available were created at the time the Plat was recorded. The *Ranshell Holdings* case is inapposite to the subject property. Mr. Ward's uncontradicted testimony was that there was excess density when the Plat which includes the subject property was recorded. Mr. Dillon, being unable to contradict Mr. Ward, testified without any legal or statutory support whatsoever that the unused density was lost.

In the *Cher-Chris* case, Cher-Chris Construction Co., Inc. purchased what it believed was three (3) buildable lots. When attempting to obtain building permits it

discovered that one of the 'lots' was shown on the approved development plan as "Tract A" and that the development plan contained a notation that – at the time approved – Tract A was "not for building purposes." At the time of original subdivision approval, that property had zoning density for nineteen (19) lots; only five (5) lots and Tract A were depicted on the subdivision plat, leaving density available for 14 lots unused at the time of plat recordation. The original owner also restricted the use of Tract A, by a private Declaration/covenant, to pasture use "until developed by the Developer, his successors or assigns." Cher-Chris followed the statutory requirements for amending a previously approved development plan and plat to remove the "not for building purposes" notation and to have Tract A re-designated as building lot 6. Unlike the present case, numerous neighbors testified in opposition to the relief requested in the *Cher-Chris* case alleging, *inter alia*, a loss of view, loss of home value, etc.

Mr. Dillon, again retained by People's Counsel, testified in opposition to the relief requested by Cher-Chris. In Mr. Dillon's unsupported opinion, since the original developer did not subdivide the property to the maximum extent possible, all unused density was lost. In rejecting Mr. Dillon's theory, this Board held:

> BCZR § 1B01.3A.7 provides for the amendment of a Final Development Plan. The subject property allowed for a density of 19 lots under the R.C. 5 zoning in place in 1981. Five lots and Tract "A" were approved and recorded. **We find no provision or evidence that all density permitted but not used on an approved FDP [final development plan] is lost forever. We do not find Mr. Dillon's testimony to the contrary to be persuasive.**

Board Opinion, Cher-Chris Construction, Inc. at 7-8. (Emphasis added.)

Between the time the Cher-Chris lots were platted and the time that building permits were sought, the County Council rezoned the property from RC-5 to RC-7. This Board held that Tract A could be re-designated as a lot by amendment to the development plan and could be improved with one, single-family dwelling based on the provisions of the RC-7 regulations as adopted, given that not all of the available density was utilized when the property was initially subdivided.

Also analogous to the issues raised by People's Counsel in this case is this Board's decision and, on review, that of the Circuit Court for Baltimore County in the case captioned before the Board as *In the Matter of Haussner Family Limited Partnership*, Case No. CBA-05-133, decided January 25, 2006[16]. In that case, the Partnership subdivided, by way of minor subdivision, properties that it owned that were zoned RC-4 at the time of subdivision. Three lots were created and <u>were lots of record</u> when the County Council rezoned the lots to a classification of <u>RC-2</u>.[17] People's Counsel argued in the Haussner case that this Board's decision in *Ranshell Holdings* was controlling and that the three lots could not be further subdivided. Both this Board and the Circuit Court rejected People's Counsel's attempted application of *Ranshell Holdings* to property developed initially under one zoning classification and proposed for re-subdivision after the County Council

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[16] A copy of the Circuit Court's decision in the *Haussner* case is attached hereto as Exhibit B.

[17] Recall that in the instant case the subject property was zoned RDP and subsequently zoned RC-2.

changed the zoning to RC-2. The fact that the Haussner case involved approval of a development plan rather than a Special Hearing in not germane. The underlying issue of density as approved in the Haussner case is directly on point.

Mr. Dillon cleverly attempted to blur the distinction between the terms "lot" and "tract" by suggesting that after rezoning all lots shown on the Plat (including the subject property) to a classification of RC-2, the original development tract is actually developed in excess of its permitted density.[18] To accept that absurd result, one must ignore totally the County Council's express use of the term "lot of record" in defining density in the RC-2 Zone. BCZR § 1A01.3B.1 The Court of Appeals of Maryland has long held that "where the language of a statue is plain and unambiguous, the judicial construction cannot be controlled by extraneous considerations and no custom, however venerable, can nullify the plain meaning and purpose of a statute.' *Hope v. Baltimore County,* 288 Md. 656, 662 (1980) When interpreting a statute or regulation, its meaning and intent are to be derived or gleaned from the language used by the legislators that adopted it – "[l]aws are made for men of ordinary under-standing and should therefore be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties, which may make anything mean everything or nothing at pleasure." Letter from Thomas Jefferson to William Johnson, June 22, 1823, quoted in *Gnau v. Seidel*, 25 Md. App. 16,

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[18] If he land shown on the Plat had not been previously subdivided and was presented for development for the first time today, only two (2) lots could be created because it is between 2 and 100 acres in size. BCZR § 1A01.3B.1

23-24 (1975).

Upon being required to interpret applicable statutes and regulations, the Court of Special Appeals of Maryland has held that:

> When engaged in statutory construction, it is well settled that not only should this Court begin its investigation with the words of the statute, but we are bound by those words if their import is clear and unambiguous: The statutory language itself provides the clearest indication of the legislative intent and is thus the primary source for all statutory construction. We also adhere to the principle that the court should confine itself to construing the statute according to the ordinary and natural signification of the words used without resorting to subtle or forced interpretations designed to limit or extend the operation of the statute. When the words used convey a clear and plain meaning, there is no need to look beyond the statute to ascertain the legislative intent. Stated differently, when the statute is free from ambiguity, the court may not disregard the natural impact of the words so as to make the statute express an intention which is different from its plain meaning.

UPS v. Comptroller of Treasury, 69 Md. App. 458, 469-70 (1986) (Citations omitted.) (Emphasis added.)

The Maryland Court of Appeals, called upon to determine whether or not a snake is a farm animal under the BCZR, concurred:

> We have said that '[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. Legislative intent must be sought first in the actual language of the statute. Where the statutory language is plain and free from ambiguity, and expresses a definite and simple meaning, courts normally do not look beyond the words of the statute to determine legislative intent.'

Marzullo et al. v. Peter A. Kahl, 366 Md. 158, 179 (2001) (Citations omitted.)

The County Council specified that the size of a "lot of record" in the RC-2 zone is to be used to determine if it can be subdivided. *See* BCZR § 1A01.3B.1 and the discussion

above. In the instant case, the subject property, a lot of record, is a "portion" of the development tract shown originally on the approved development plan and the Plat. So long as the re-subdivision of this lot of record/"portion" of the original development tract does not exceed the total number of units allowed at the time of approval of the original development plan, no violation of applicable density regulations exists. *See* BCZR § 1B01.3B.2 [People's Counsel Ex. No. 13B]; *See also*, *Cher Chris, supra*

Finally, People's Counsel asserts that statutory modifications to the BCZR prohibit any further subdivision of the subject property. Such is not the case as shown by reference to various People's Counsel Exhibits as introduced:

> People's Counsel Ex. 13B: . . . It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. Zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. Zone(s) for the entire tract. BCZR § 1B01.3B.2

> People's Counsel Ex. 13D: . . . . *Present zoning classification.* Proposed development shall be in compliance with the present zoning classification on the property to be developed. BCC § 32-4-104(b)

The proposed lot to be created in the subject property will increase the total number of lots to 21, far less than the 75 allowed per the approved development plan. Mr. Dillon, without any justification or legal reference suggests that this Board must ignore all prior approvals and treat the land area shown on the entire plat as being zoned RC-2 today and, thereby, no further density is available. Mr. Ward applying the statutory scheme developed by the County Council, as interpreted by prior decisions of this Board, testified that the lot of record which is the subject property <u>will</u> be developed under and <u>will</u> meet the

requirements of the subject property's present zoning classification of RC-2.

If this Board were to now accept the position of Jack Dillon that once an initial, development plan has been approved it is, in effect, cast in stone why would there be a codified process for the amendment of previously approved development plans? Clearly, BCZR § 1B01.3A.7 provides specifically for the amendment of such plans. Obviously, any such amendment cannot create additional density if all available density was utilized when the original approval was obtained. However, contrary to the position of Mr. Dillon, there is no provision in § 1B01.3A.7 or elsewhere in the BCZR that provides that all density shown but not utilized on an initially approved development plan is forever lost. An expert opinion alone is insufficient unless there are facts to support it. *People's Counsel for Baltimore County v. Prosser Co., Inc.*, 119 Md. App. 150, 179 (1998) – no such facts or law were offered by Mr. Dillon.

When private property is restricted (as in prohibition from further subdivision until January 1, 1996), whether it be by notations on drawings such as the development plan or by a separate declaration or set of restrictions, if there is any doubt as to the intention of the parties, the court will naturally lean in favor of reasonable freedom of the property from the restriction. *Stansbury v. Jones*, 372 Md. 172, 203 (2002) In this case, the original, subdividing owner showed on the approved development plan and the recorded plat the overall acreage and zoning [RDP] of the subdivided property which translate into the total number of lots (75) allowed at that time. Additionally, clearly shown on the approved development plan [General Note No. 2] and the Plat [first unnumbered note in the

"NOTES" section] is a notice that the future re-subdivision of any lot requires approval by Baltimore County. As noted above, a similar disclosure was provided in the private Declaration prohibiting any such re-subdivision but only for a period of years. Read together, it is disingenuous for anyone to suggest that all density shown as available not platted was lost in perpetuity. There were no governmentally imposed restrictions on the subject property contained on the approved development plan or the Plat other than those related to building and/or health-environmental requirements such as wells.

SUMMARY and CONCLUSION

This case is about the waiver of the width of a panhandle, fee simple strip of land – not the width of paved driveway access. The Owner produced uncontradicted evidence and testimony that the requirements for the waiver are met. People's Counsel, through Mr. Dillon, questioned this Board's long-established authority and speculated about neighbor concern with another home using the existing panhandle drive. Only People's Counsel and its two witnesses have a purported concern with the waiver relief; certainly none of the Owner's neighbors have objected.

The majority of the testimony and evidence in this case revolves around whether or not the Owner has sufficient density to subdivide his lot for one additional home. The Baltimore County Planning Director recognizes the right to subdivide. The approved development plan, the Plat and the private Declaration all reference, in one way or another, the future subdivision/re-subdivision potential. This Board has ruled in a prior case that available density, but unused on an approved development plan is not lost. Only People's

Counsel and its witnesses: a) disagree with this Board's prior ruling; and b) can offer no support whatsoever (legal or otherwise) to make their case that there is no density to create one additional lot on the subject property. There is no support in any law, regulation or policy for the positions taken by Mr. Dillon nor did he offer any on direct or cross examination. The relief should be approved as requested by the Owner/Petitioner.

Respectfully submitted,

Howard L. Alderman, Jr.
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
410.321.0600 [voice]/410.296.2801 [fax]
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of January, 2007, a copy of the foregoing Petitioner's Post-Hearing Memorandum, was mailed, postage prepaid, First Class United States Mail to the following:

Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

and

Mr. Niels H. Braid
20315 Middletown Road
Freeland, MD 21053-9628

and

Mr. Guy Ward
McKee & Associates, Inc.
Five Shawan Road, Suite One
Hunt Valley, MD 21030

Howard L. Alderman, Jr.

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 20315 Middletown Road
which is presently zoned RC-2

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

*Please see Attached

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:

N/A
Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

Niels Braid
Name - Type or Print

X Niels W Braid
Signature

Name - Type or Print

Signature

20315 Middletown Road (410) 343-3778
Address Telephone No.

Freeland, MD 21153
City State Zip Code

Representative to be Contacted:

Guy C. Ward
McKee and Associates, Inc.
Name

5 Shawan Road, Suite 1 (410) 527-1555
Address Telephone No.

Cockeysville, MD 21030
City State Zip Code

ORDER RECEIVED FOR FILING
Date 3-1-06
By D

Case No. 06-332-SPH

REV 9/15/98

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By D.T. Date 1/10/06

Attachment 1
Petition for Special Hearing

Case Number 06-332-SPH

Address: 20315 Middletown Road Freeland, Maryland 21153

Legal Owner(s): Mr. Niels Braid

Petitioner : Mr. Niels Braid

Present Zoning: RC-2

Petition for Waiver from Section:

Sec. 32-4-409 (b) (2) of the Baltimore County Code to permit the creation of panhandle in-fee strips of 6 feet in width in lieu of the required minimum 10 feet in width where three or more lots are involved

Justification:

The existing in-fee strip serving 20315 Middletown Road is 12 feet in width, which prohibits the creation of the additional proposed panhandle strip without the requested relief.

FOR ADDITIONAL INFORMATION ON THIS PETITION PLEASE CONTACT:

Guy C. Ward, R.S., Associate

McKee & Associates, Inc

Engineering, Surveying, Land Planning, Real Estate Development

Shawan Place, 5 Shawan Road, Suite 1, Hunt Valley, MD 21030

Tel: (410) 527-1555 Fax: (410) 527 1563 E-Mail : mckee@qis.net

06-332-SPH

Zoning Description for 20315 Middletown Road:

Beginning at a point on the east side of Middletown Road which is 70 feet wide, more or less, at a distance of 1006' +/- south east of the centerline of the nearest improved intersecting street Keeney Mill Road, which is 60 feet wide, more or less, being Lot #18 , Section 1, Plat 2 in a subdivision of " Keeney Mill Woods" as recorded in Baltimore County Plat Book #40 , Folio #31

Containing 380,889 S.F. or 8.744 Ac. Also known as 20315 Middletown Road and located in the 6 th Election District, 3rd Councilmanic District.

06-332-SPH

NOTICE OF ZONING HEARING

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

Case: #06-332-SPH
20315 Middletown Road
East side of Middletown Road, 1,006 feet south
the centerline of Keeney Mill Road
6th Election District — 3rd Councilmanic Distric
Legal Owner(s): Niels Braid

Special Hearing to permit the creation of panhan
fee strips of 6 feet in width in lieu of the mi
required 10 feet in width where three or more lo
involved.

**Hearing: Monday, February 23, 2006 at 9:00 a.m
Room 407, County Courts Building, 401 Bos
Avenue, Towson, MD 21204.**

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; fo
special accommodations Please Contact the Zoning
Commissioner's Office at (410) 887-3868.
(2) For information concerning the File and/or Hearing,
Contact the Zoning Review Office at (410) 887-3391.

JT 1/813 Jan. 31 82917

CERTIFICATE OF PUBLICATION

2/2/, 2006

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 1/31/, 2006.

- [X] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

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: #06-332-SPH
20315 Middletown Road
East side of Middletown Road, 1,006 feet southeast of the centerline of Keeney Mill Road
6th Election District — 3rd Councilmanic District
Legal Owner(s): Niels Braid

Special Hearing to permit the creation of panhandle in-fee strips of 6 feet in width in lieu of the minimum required 10 feet in width where three or more lots are involved.

Hearing: Monday, February 6, 2006 at 2:00 p.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 accommodations Please Contact the Zoning Commissioner's Office at (410) 887-3868.

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

JT 1/778 Jan. 24 82206

CERTIFICATE OF PUBLICATION

1/27, 2006

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 1/24, 2006.

☒ The Jeffersonian
☐ Arbutus Times
☐ Catonsville Times
☐ Towson Times
☐ Owings Mills Times
☐ NE Booster/Reporter
☐ North County News

P. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 2835

DATE 1/9/06 ACCOUNT 001001616150

AMOUNT $ 165.00

RECEIVED FROM: McKEE + ASSOC

FOR: ITEM # 332 06-332-SPH

20315 MIDDLETOWN RD BY D. THOMPSON

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
FROM RECEIPT

BUSINESS	ACTUAL	TIME	DRN
1/10/2006	1/09/2006	11:23:59	2

ED 002 MAIL MSVA 3LE
RECEIPT 5 [illegible] 1/09/2006 OFLH
Dept 5 563 ZONING VERIFICATION
R NO. 002835
Recpt tot 165.00
165.00 CK 0.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

Baltimore County Dept. of Permits &
Development Management
111 W. Chesapeake Avenue, Rm. 111
Towson, MD 21204

Date: *2/2/2006*

Attention: Mrs. Kristen Matthews

RE: Case Number: 06-332-SPH

Petitioner/Developer: Niels H. Braid

Date of Hearing/Closing: *2/23/2006*

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

#20315 Middletown Road, Freeland, MD 21053

The sign(s) were posted on 2/1/2006
(Month, Day, Year)

(Signature of Sign Poster)

William D. Gulick, Jr.
(Printed Name of Sign Poster)

McKee and Associates, Inc.
5 Shawan Road, Suite 1
(Street Address of Sign Poster)

Cockeysville, MD 21030
(City, State, Zip Code of Sign Poster)

(410) 527-1555
(Telephone Number of Sign Poster)

Revised 3/1/01 - SCJ

ATTACH PHOTOGRAPH OF SIGN POSTED ON PROPERTY HERE

ZONING NOTICE

CASE # 06-332-SPH

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: COUNTY COURTS BUILDING
401 BOSLEY AVE. ROOM 407
TOWSON, MD 21204

DATE AND TIME: FEB. 23, 2006 @ 9:00AM

REQUEST: SPECIAL HEARING TO PERMIT THE CREATION OF PANHANDLE IN-FEE STRIPS OF 6 FEET IN WIDTH IN LIEU OF THE MINIMUM REQUIRED 10 FEET IN WIDTH WHERE THREE OR MORE LOTS ARE INVOLVED.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

1/31/2006


ZONING
01.31.2006

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 06-332-SPH

Petitioner: MR NIELS BRAID

Address or Location: 20315 MIDDLETOWN RD FREELAND MD 21053

PLEASE FORWARD ADVERTISING BILL TO:

Name: Mr. NIELS BRAID

Address: 20315 MIDDLETOWN ROAD
FREELAND MD 21053

Telephone Number: 410 · 303. 3378

Revised 7/11/05 - SCJ

APPEAL SIGN POSTING REQUEST

CASE NO. 06-332-SPH

20315 MIDDLETOWN ROAD

6 TH ELECTION DISTRICT APPEALED: 3/15/2006

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.: 06-332-SPH

LEGAL OWNER: NEILS BRAID

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

20315 MIDDLETOWN ROAD

The sign was posted on April 5, 2006.

By: Jeff Radcliffe
(Signature of Sign Poster)

Jeff Radcliffe
(Print Name)

MAP 2 E8

Department of Permits and Development Management

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

Baltimore County

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

January 13, 2006

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: 06-332-SPH
20315 Middletown Road
East side of Middletown Road, 1,006 feet southeast of the centerline of Keeney Mill Road
6th Election District, 3rd Councilmanic District
Legal Owner: Niels Braid

Special Hearing to permit the creation of panhandle in-fee strips of 6 feet in width in lieu of the minimum required 10 feet in width where three or more lots are involved.

Hearing: Monday, February 6, 2006 @ 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson, MD 21204

Timothy Kotroco
Director

TK:raj

C: Niels Braid, 20315 Middletown Road, Freeland, MD 21153
Guy C. Ward, McKee & Associates, Inc., 5 Shawan Road, Suite 1, Cockeysville, MD 21030

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, JANUARY 21, 2006.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Thursday, January 19, 2006 Issue - Jeffersonian

Please forward billing to:
Niels Braid (410-343-3378)
20315 Middletown Road
Freeland, MD 21053

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: 06-332-SPH
20315 Middletown Road
East side of Middletown Road, 1,006 feet southeast of the centerline of Keeney Mill Road
6th Election District, 3rd Councilmanic District
Legal Owner: Niels Braid

Special Hearing to permit the creation of panhandle in-fee strips of 6 feet in width in lieu of the minimum required 10 feet in width where three or more lots are involved.

Hearing: Monday, February 6, 2006 @ 2:00 p.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 410-887-3868.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Department of Permits and Development Management

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

Baltimore County

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

January 13, 2006

Rescheduled REVISED

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: 06-332-SPH
20315 Middletown Road
East side of Middletown Road, 1,006 feet southeast of the centerline of Keeney Mill Road
6th Election District, 3rd Councilmanic District
Legal Owner: Niels Braid

Special Hearing to permit the creation of panhandle in-fee strips of 6 feet in width in lieu of the minimum required 10 feet in width where three or more lots are involved.

Hearing: Monday, February 23, 2006 @ 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson, MD 21204

Timothy Kotroco
Director

TK:raj

C: Niels Braid, 20315 Middletown Road, Freeland, MD 21153
Guy C. Ward, McKee & Associates, Inc., 5 Shawan Road, Suite 1, Cockeysville, MD 21030

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, FEBRUARY 1, 2006.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Thursday, January 26, 2006 Issue - Jeffersonian

Please forward billing to:
Niels Braid (410-343-3378)
20315 Middletown Road
Freeland, MD 21053

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: 06-332-SPH
20315 Middletown Road
East side of Middletown Road, 1,006 feet southeast of the centerline of Keeney Mill Road
6th Election District, 3rd Councilmanic District
Legal Owner: Niels Braid

Special Hearing to permit the creation of panhandle in-fee strips of 6 feet in width in lieu of the minimum required 10 feet in width where three or more lots are involved.

Hearing: Monday, February 23, 2006 @ 9:00 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 410-887-3868.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

June 20, 2006

NOTICE OF ASSIGNMENT

CASE #: 06-332-SPH

IN THE MATTER OF: NIELS BRAID –Legal Owner /Petitioner
20315 Middletown Road 6th Election District; 3rd Councilmanic District

3/01/06 – D.Z.C.'s Order in which Petition for Special Hearing was APPROVED.

ASSIGNED FOR: TUESDAY, OCTOBER 10, 2006 at 10:00 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: Appellant : Office of People's Counsel

Counsel for Legal Owner /Petitioner : Howard L. Alderman, Jr., Esquire
Legal Owner /Petitioner : Niels Braid
Guy C. Ward /McKee & Associates, Inc.

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink on Recycled Paper

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

October 10, 2006

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 06-332-SPH

IN THE MATTER OF: NIELS BRAID –Legal Owner /Petitioner
20315 Middletown Road 6th Election District; 3rd Councilmanic District

3/01/06 – D.Z.C.'s Order in which Petition for Special Hearing was APPROVED.

which was assigned for hearing on 10/10/06 was postponed on that date by agreement of counsel and reassigned to the following agreed-upon date:

REASSIGNED FOR: **TUESDAY, NOVEMBER 28, 2006 at 10:00 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: Appellant : Office of People's Counsel

Counsel for Legal Owner /Petitioner : Howard L. Alderman, Jr., Esquire
Legal Owner /Petitioner : Niels Braid
Guy C. Ward /McKee & Associates, Inc.

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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on Recycled Paper

County Board of Appeals of Baltimore County

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

November 29, 2006

NOTICE OF DELIBERATION

IN THE MATTER OF: **NIELS BRAID – LEGAL OWNER /PETITIONER**
CASE #: 06-332-SPH

Having heard this matter on 11/28/06,, public deliberation has been scheduled for the following date /time:

DATE AND TIME : **TUESDAY, FEBRUARY 6, 2007 at 9:30 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: Closing briefs are due on Friday, January 19, 2007
(Original and three [3] copies)

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

c: Appellant : Office of People's Counsel

Counsel for Legal Owner /Petitioner : Howard L. Alderman, Jr., Esquire
Legal Owner /Petitioner : Niels Braid
Guy C. Ward /McKee & Associates, Inc.

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

FYI: 2-1-6

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on Recycled Paper

County Board of Appeals of Baltimore County

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

August 23, 2007

NOTICE OF DELIBERATION

IN THE MATTER OF: **NIELS BRAID – LEGAL OWNER /PETITIONER**
CASE #: 06-332-SPH

The following date and time has been scheduled for public deliberation – filing of Motion for Reconsideration by Office of People's Counsel:

DATE AND TIME : **TUESDAY, SEPTEMBER 11, 2007 at 9:30 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. THE BOARD'S DECISION REGARDING THIS MOTION WILL BE ISSUED AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

c: Appellant : Office of People's Counsel

Counsel for Legal Owner /Petitioner : Howard L. Alderman, Jr., Esquire
Legal Owner /Petitioner : Niels Braid
Guy C. Ward /McKee & Associates, Inc.

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

FYI: 2-6

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on Recycled Paper

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

March 15, 2006

RECEIVED
MAR 15 2006
Per

Hand-delivered
Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Re: PETITION FOR SPECIAL HEARING
E/S Middletown Road, 1006' SE c/line Keeney Mill Road
(20315 Middletown Road)
15th Election District; 6th Council District
Niels Braid, Legal Owner, - Petitioners
Case No.: 06-332-SPH

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated March 1, 2006 by the Baltimore County Zoning Commissioner in the above-entitled case.

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

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Howard L. Alderman, Jr. Esquire

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

March 28, 2006

Peter Max Zimmerman, People's Counsel
Carole S. Demilio, Deputy People's Counsel
Office of People's Counsel
Room 47, Old Court House
400 Washington Avenue
Towson, MD 21204

Dear Mr. Zimmerman & Ms. Demilio:

RE: Case: 06-332-SPH, Niels Braid, 20315 Middletown Road

Please be advised that we received your appeal of the above-referenced case on March 15, 2006. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:raj

c: John V. Murphy, Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Howard L. Alderman, Jr., Esq.
Niels Braid
Guy C. Ward, McKee & Associates, Inc.

Printed on Recycled Paper

Jack Dillon & Associates, LLC

410-337-5455 Fax 410-337-5476 410-221-0060

jackdillon@dmv.com

Baltimore County
207 Courtland Avenue
Towson, Maryland 21204

Dorchester County
922 Parson Drive
Madison, Maryland 21648

Resume of Jack Dillon
Principal of Jack Dillon & Associates, LLC

EDUCATION

B.S. in Business Management
University of Baltimore, Baltimore, MD (1969)
Graduate Summer Program in Urban Planning
Georgia Institute of Technology, Atlanta, GA (1969)
Para Legal Program University of Maryland
University of Maryland University College (1978)
Video & Television Production
Dundalk Community College (1984-1986)
Graduate Program in Landscape Architecture
Morgan State University, Baltimore, MD (1992-1994)
(Did not complete program)

PROFESSIONAL AFFILIATION

American Planning Association

EMPLOYMENT

Mr. Dillon was employed by Baltimore County from 1962 to 1996. He was assigned to a special research project at Johns Hopkins University from 1962 thru 1965 and then two years at the jointly staffed Baltimore City and Baltimore County Analyzer Office at the Ashburton Filtration Plant. He then worked in the Office of Planning and Zoning, eight years in the Zoning Office and the remaining twenty one years in the Planning Office until his retirement in 1996.

In 1997 he accepted the position of Executive Director of The Valleys Planning Council, a private non-profit planning and land preservation organization. He retired from that position in September 2004 when he formed his planning consulting firm.

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GENERAL EXPERIENCE

Mr. Dillon, a reputable and dedicated planning professional, has been involved in many aspects of planning and zoning including; community planning, environmental planning, roadway corridor planning, master plans, open space planning, waterfront planning and rural planning. For many years he has specialized in agricultural and rural zoning and land preservation. In addition he has taught planning and zoning related courses at Towson University, University of Maryland @ Baltimore and Catonsville Community College. Mr. Dillon also has extensive experience in working with citizen groups on various planning and zoning issues as well as being qualified as an expert witness in numerous zoning cases. His relative experience is listed below.

SPECIFIC EXPERIENCE

Roadway Corridor Studies

Hanover Pike Corridor Plan, Baltimore County, MD
Reisterstown Road Corridor Study, Baltimore County, MD
Old Court Road Corridor Study, Baltimore County, MD

Streetscape Design Projects (design administration and citizen participation)

Liberty Road Streetscape Design Project - Baltimore County, MD
Pikesville Streetscape Design Project - Baltimore County, MD

Comprehensive Plans

Baltimore County Comprehensive Plan Update, 1989-2000
The Essex Middle River Community Assessment - Baltimore County, MD
Herford Community Plan Assessment - Baltimore County, MD
Plan for Owings Mills - Baltimore County, MD
Concept plan for the Fisherman's Exchange at Dark Head Cove, Middle River, MD
The Baltimore County Comprehensive Zoning Map Process, 1975, 1980, 1984, 1988, 1992, 1996, 2000, 2004.

Landscape and Open Space Planning

The Owings Mills Open Space Plan, Baltimore County, MD
The Enduring Rural Landscape – A Landowners Guide to Landscaping in the Baltimore Countryside - The Valleys Planning Council, 2001
Piney Run Rural Legacy Area, The Valleys Planning Council 1998-2004

Other Significant Accomplishments
Site Selection for the Northwest Area Multipurpose Center (1982)
Proposed Amendment to Baltimore County Zoning Regulations – Sludge Disposal in Baltimore County (1982)
Areas of Critical State Concern in Baltimore County (1979)
Planner responsible for the organization and administering the Agricultural Land Preservation Program for Baltimore County (1979 – 1981)
Primary draftsman of the first four Resource Conservation Zones for Baltimore County - has become the basis for controlling growth in rural Baltimore County (1975)
Development and administration of the video production unit within the Office of Planning
Assisted in the formation and development of the Towson Farmers Market

Volunteer Organizations
President, Susquehanna Point Home Owners Association (2001 – 2003)
Member & Past President, Baltimore County Extension Advisory Committee (2001 – Present)
President, Baltimore County Agricultural Resource Center, Inc. (2004- Present)
Member, Baltimore Metropolitan Council Transportation Advisory Committee (2001 – 2004)
Board Member Scenic Maryland (2005)

SIGNIFICANT PROFESSIONAL AWARDS AND ACCOMPLISHMENTS:
Recipient of the 2004 "McHarg Award" by the Valleys Planning Council May 2004
Recipient of "American Planning Association Lifetime Achievement Award" by the Maryland Chapter of the American Planning Association, October 2004

PROVIDED EXPERT WITNESS TESTIMONY BEFORE COURT AND AGENCY PROCEEDINGS INCLUDING:

The Baltimore County Planning Board
Various Legislative Sub-Committees in Annapolis
The Baltimore County Council
The Baltimore County, MD, Zoning Commissioner
The Baltimore County, MD, Board of Appeals
The Calvert County, MD, Board of Appeals
The District Court of Maryland
The Circuit Court of Maryland
The Planning Commission for the Town of Ocean City, Worchester County, MD
The Dorchester County, MD, Board of Appeals
The Harford County, MD, Zoning Hearing Examiner Board of Appeals
The City of Cambridge, MD, Planning Commission

Baltimore County Zoning Regulations

1998 Edition

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from the Director of the Department of Environmental Protection and Resource Management.

(2) The recommendations shall be provided to the Board of Appeals within 30 days after the Department is notified by certified mail, return receipt requested, by the petitioner of the filing of the petition for reclassification, unless the Department by written request to the Board of Appeals, with good cause shown, moves that additional time not to exceed an additional 30 days is required to prepare and file said recommendations with the Board of Appeals.

B. The meeting of criteria established in this article for the filing of zoning reclassification petitions shall not in itself be sufficient grounds to reclassify property.

1A00.4 Plans and plats. Development plans and final subdivision plats shall be required in the manner prescribed under Section 1B01.3, and, for the purpose of this section, all references to D.R. Zones shall include the R.C. Zones.

1A00.5 Application to tract divided by zone boundary. Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. Zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and, for the purpose of these regulations, shall be considered as separate parcels.

Section 1A01
R.C.2 (Agricultural) Zone

1A01.1 General provisions.

A. Legislative statement of findings.

1. Declaration of findings. It is found:

a. That Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development;

b. That the agricultural industry is an integral part of the Baltimore economy and that a continued conversion of agricultural land will continue to undermine this basic industry;

c. That scattered development is occurring in a sporadic fashion in areas of Baltimore County containing productive agricultural land;

d. That continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area;

e. That heretofore Baltimore County has been unable to effectively stem the tide of new residential subdivisions in productive agricultural areas of Baltimore County;

f. That Baltimore County has certain wetlands along Chesapeake Bay and its tributaries which serve as breeding grounds and nursery areas for the bay's biotic life; and

g. That Baltimore County possesses numerous areas which are highly suitable for urban development, including residential subdivisions which are not located in areas of productive agricultural land.

B. Purposes. The R.C.2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

1A01.2 Use regulations.

A. Preferred use permitted as of right. Agricultural operations, when conducted in accordance with good and reasonable husbandry practices, shall be afforded preferential treatment over and above all other permitted uses in R.C.2 Zones.

B. Uses permitted as of right.[1] The following uses only are permitted as of right in all R.C.2 Zones: **[Bill No. 178-1979]**

1. Dwellings, one-family detached. **[Bill No. 178-1979]**

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[1] **Editor's Note: "Churches and schools for agriculture training," originally included in this section by Bill No. 98-1975, were moved to Section 1A01.2.C by Bill No. 178-1979.**

f. Spirits manufacture, including the manufacture of alcohol to be used in gasoline/alcohol mixtures, but excluding the production of these mixtures. **[Bill Nos. 178-1979; 51-1993]**

g. Firewood operations. **[Bill No. 151-1992]**

h. Winery, including accessory retail and wholesale distribution of wine produced on-premises. Temporary promotional events, such as wine tastings or public gatherings associated with the winery, are permitted, within any limits set by the special exception. **[Bill No. 51-1993]**

i. Bottled water plant, if the source of the water is located on the same site as the plant, and provided that the Director of Environmental Protection and Resource Management makes a recommendation that the proposed facility will not adversely affect the quality or capacity of surface water or groundwater. **[Bill No. 51-1993]**

1A01.3 Height and area regulations.

A. Height regulation. No structure hereafter erected in an R.C.2 Zone shall exceed a height of 35 feet, except as otherwise provided under Section 300.

B. Area regulations. **[Bill No. 178-1979]**

1. Subdivision lot-density. No lot of record lying within an R.C.2 Zone and having a gross area of less than two acres may be subdivided. No such lot having a gross area between two and 100 acres may be subdivided into more than two lots (total), and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of one lot for each 50 acres of gross area. In cases where land in single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right- of-way or easement shall not be considered separate parcels for the purpose of calculating the number of lots of record. **[Bill Nos. 199-1990; 125-2005]**

2. Lot size. A lot having an area less than one acre may not be created in an R.C.2 Zone.

3. Setback requirements. No principal structure or dwelling (whether or not it is a principal structure) in an R.C.2 Zone may be situated within 75 feet of the center line of any street or within 35 feet of any lot line other than a street line.

4. Principal dwellings per lot. No more than one principal dwelling is permitted on any lot in an R.C.2 Zone.

1A01.4 Maryland Agricultural Land Preservation Program. The use or development of land in an agricultural district established in accordance with Title 2, Subtitle 5 of the Agriculture Article of the Annotated Code of Maryland shall be governed by agricultural land preservation provisions enacted by the County Council pursuant to § 2-513 of the Agriculture Article in the case of any conflict between those provisions and these regulations. **[Bill Nos. 178-1979; 137-2004]**

2. Under the provisions adopted pursuant to the authority of Section 504.2, development in D.R. Zones may be made subject to additional standards of lot area, yard space, open-space distribution, building distribution or other aspects or characteristics of site planning or project design. Such standards shall be based upon specified existing, prospective or stipulated conditions or circumstances of development, and shall be designed to further the specific purposes of this article and the purposes of these zoning regulations in general.

3. Local open space. Local open space tracts in D.R. Zones shall be designed, established and maintained in accordance with the standards, guidelines and procedures set forth in the Baltimore County Local Open Space Manual as enabled in § 32-4-404 of the Baltimore County Code.[4] **[Bill No. 137-2004]**

1B01.3 Plans and plats.

A. Development plans.

1. Purpose. This paragraph is intended:

a. To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein; and

b. To provide for review of residential development plans to determine whether they comply with these regulations and with standards and policies adopted pursuant to the authority of Section 504.

2. Partial development plan. For the purposes of this article, a "partial development plan" is a portion of a final development plan, and a partial or final development plan is "applicable" to a given lot if it covers all property in the subdivision within 300 feet of the given lot, in addition to the lot itself.

3. Subdivision lot sales, development and use subject to partial development plan. No interest in any lot which is in a D.R. Zone and is hereafter created by subdivision of a record lot existing on the effective date of this article or created by consolidation of such lots may be sold unless a final or partial development plan applicable to the lot has been approved as required under Paragraph 6, below; further, no use may be established and no construction may take place on any lot so created except in accordance with such a plan. The provisions of this paragraph shall not apply to Class A assisted living facilities. **[Bill No. 188-1993]**

4. Notice in conveyance. Any party who sells an interest in real property within an area covered by an approved partial or final development plan shall attach to the instrument of sale a notice directing the buyer's attention to the plan (including any amendment) and listing the location of the

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4 ***Editor's Note:*** **Former Subsection C, Open Space, Building Separation and Other Area Standards, which followed, was repealed by Bill No. 126-1992.**

various certified copies which may be publicly inspected (Paragraph 6), together with a listing of the recorded plats covering all portions of the subdivision as a whole. The notice shall also generally apprise the buyer of the rights, requirements and remedies provided under the development plan, those provided under this article and these zoning regulations in general, and those set forth in provisions adopted pursuant to the authority of Section 504, and, to this end, the notice shall be on a form issued by the county and approved by the Office of Law, the Zoning Commissioner, and the Planning Board as being clear and sufficient for the purpose.

5. Forms and content of plans.

   a. Forms. Each partial development plan must be filed both as a separable document or set of documents and as part of a final development plan which includes all partial development plans as approved for other portions of the subdivision. Upon approval, each final development plan thus filed supersedes previous final development plans of the subdivision.

   b. Content. Each partial and final development plan must show: the locations, types and exterior dimensions of all proposed structures and all existing structures to be retained; generalized floor plans to scale; layout of parking facilities; streets and drives giving access to and lying within the tract; existing topography and major vegetation; proposed grading; common amenity open space (including local open space); all additional information that may be required under procedures adopted pursuant to the authority of Section 504; and all additional information which is necessary, as determined by the Director of the Department of Permits and Development Management, to ascertain whether the project will comply with the zoning and subdivision requirements of Baltimore County. The plan shall contain the note that landscaping and screening shall conform to the standards contained in the Baltimore County Landscape Manual adopted pursuant to § 32-4-404 of the Baltimore County Code. **[Bill No. 137-2004]**

6. Initial review and approval procedure. Procedural steps and requirements in the submission and review of various preliminary versions of partial and final development plans shall be as established provisions adopted pursuant to the authority of Section 504 or, in the absence of such provisions, as established by the Office of Planning. In formulating such steps and requirements, the Planning Board or the Office of Planning shall effect maximum coordination between the integration with similar and related steps and requirements in the submission and review of plans pursuant to the subdivision regulations. If the partial and final development plans for a subdivision are approved by the Zoning Commissioner as complying with the zoning regulations, approved by the Director of Planning as being consistent with the subdivision regulations and any subdivision plans filed pursuant thereto, and approved in such other manner as may be prescribed

under provisions adopted pursuant to the authority of Section 504, copies of the plans, certified by the Zoning Commissioner and the Director of Planning as having been so approved, shall be filed with such county or state agencies as they may direct and as may otherwise be required, and shall be retained in the files of the Office of Planning, including the files of the Zoning Commissioner.

7. Amendment of approved development plans. After partial or final development plans have been approved as provided under Paragraph 6, preceding, they may be amended only as provided below:

   a. Amendment prior to sale of interest in nearby property. The development plans may be amended by simple resubmission, or by the submission of appropriate documents of revision, subject to the same requirements as are applied to original plans, if there is no change with respect to any lot, structure or use within 300 feet of a lot or structure which has been sold since the original plans were filed.

   b. Amendment after sale of interest in nearby property or upon demand for hearing. In the case of an amendment not allowed under Subparagraph a, by reason of sale of property within the area, or in case of a demand for hearing by an eligible individual or group, the plans may be amended through special exception procedures, in the manner provided under Section 502 and subject to the following provisions:

      (1) The amendment must be in accord with the provisions of the Comprehensive Manual of Development Policies and with the specific standards and requirements of this article, as determined by the Office of Planning. The Director, on behalf of the Planning Board, shall notify the Zoning Commissioner accordingly. **[Bill No. 29-1995]**

      (2) Only an owner of a lot abutting or lying directly across a street or other right-of-way from the property in question, an owner of a structure on such a lot, or a homes association (as may be defined under the subdivision regulations or under provisions adopted pursuant to the authority of Section 504) having members who own or reside on property lying wholly or partially within 300 feet of the lot in question are eligible to file a demand for hearing. **[Bill No. 29-1995]**

      (3) It must be determined in the course of the hearing procedure that the amendment would be consistent with the spirit and intent of the original plan and of this article. **[Bill No. 29-1995]**

   c. Amendment upon request by owner of lot within subdivision. The Zoning Commissioner may, without a public hearing but with the concurrence of the Director of Planning, amend the plans with respect

to a structure on an individual lot created under the plans and used according to the purpose stated therein, or with respect to such lot, at the request of the lot owner, under the following requirements and conditions:

(1) Reasonable notification, by a standard method established pursuant to the authority of Section 504 and approved by the County Attorney, must be given to the occupants and owners of all real property which is fully or partially situated within 300 feet of the lot in question.

(2) It must be determined that a formal demand for hearing by an eligible individual or group, as described in Paragraph b, has not been filed.

(3) It must be determined that standards adopted under the authority of Section 504, in addition to the specific requirements under these regulations, will not be violated by the amendment.

(4) The Zoning Commissioner and the Director of Planning must certify that the amendment is in keeping with the spirit and intent of this article and other Baltimore County land use and development requirements administered by them, and both must certify that the amendment does not violate the spirit and intent of the original plan.

d. Any amended development plan and any document of amendment of such a plan must be filed with all agencies or officials with whom copies of the original plan have been filed pursuant to paragraph above, and no amendment takes effect otherwise.

B. Final subdivision plat.

1. Purpose. Pursuant to the regulations for D.R. Zones, a portion of a tract of land may be subdivided for development at a higher residential density than the maximum average density permitted, lessening the permitted density of development on the remainder of the tract; or a portion of the tract may be subdivided for development at less than the maximum average density, thus increasing the density at which the remainder of the tract may be developed (Section 1B01.2.A). It is the purpose of this paragraph to assure that these factors will be identified in the sale of any portion of a development tract in a D.R. Zone and, in particular, to prevent the unknowing purchase of a tract which, as a result of such prior subdivision, may not itself be developed at the average gross density specified in the regulations.

2. Effect. No subdivision of a tract or a portion of a tract may be created after the effective date of this article, except as otherwise provided under Section 1B02.3.A.2 unless the final subdivision plat therefore contains a summary showing the total number of dwelling or density units allowed for the entire tract under the applicable D.R. Zones. The summary shall indicate, as appropriate, the number of dwelling or density units utilized by previous

final subdivision plats for portions of the same tract, the number of dwelling or density units contained in the current subdivision plat, and the balance of dwelling or density units allowed for the remainder of the tract under the applicable D.R. Zone(s). It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. Zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. Zone(s) for the entire tract.

for Mr. Hessian

People's Counsel Ex 3

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3211

JOHN D. SEYFFERT
DIRECTOR

August 14, 1979

Enclosed are the following reports recently adopted by the Baltimore County Planning Board:

1. Final report—growth-management legislation: phase I—7/26/79 and 8/2/79

2. Final report—recommended Baltimore County master plan 1979-1995—7/26/79

Copies of the land-use map that is a part of the recommended plan, and of the proposed deficient-facilities component of the zoning map, are on display in the Office of Planning and Zoning, Room 406 County Courts Building, in Towson.

These reports have been transmitted to the County Council, and the Council will establish the date of the hearing or hearings on them.

Norman E. Gerber

for John D. Seyffert, Director of Planning and Zoning
Secretary to the Planning Board

CWM/ks

pc #8

FINAL Report of the
Baltimore County Planning Board
Adopted July 26, 1979 and August 2, 1979

GROWTH-MANAGEMENT LEGISLATION: PHASE I

Baltimore County Office of Planning and Zoning
Towson, Maryland

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Towson, Maryland 21204

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August, 1979

RESOLUTION OF THE BALTIMORE COUNTY PLANNING BOARD
TO ADOPT

THE BALTIMORE COUNTY MASTER PLAN 1979-1995 AND
GROWTH-MANAGEMENT LEGISLATION: PHASE I

JULY 26 AND AUGUST 2, 1979

WHEREAS, A PRELIMINARY REPORT ON A PROPOSED REVISION OF THE BALTIMORE COUNTY COMPREHENSIVE PLAN 1975 (GROWTH-MANAGEMENT PLAN), INCLUDING TEXTUAL AND MAP ELEMENTS, WAS ADOPTED BY THE BALTIMORE COUNTY PLANNING BOARD ON MAY 3, 1979; AND

WHEREAS, A PRELIMINARY REPORT ON PROPOSED GROWTH-MANAGEMENT LEGISLATION WAS ADOPTED BY THE PLANNING BOARD AT THE SAME MEETING; AND

WHEREAS, PRELIMINARY MAPS OF OVERLAY-DISTRICT AREAS AND SUBAREAS (INCLUDING BASIC-SERVICES MAPS) WERE ADOPTED BY THE PLANNING BOARD ON MAY 17, 1979; AND

WHEREAS, THE PRELIMINARY PROPOSED PLAN, LEGISLATION, AND MAPS WERE THE SUBJECTS OF PUBLIC HEARINGS HELD BY THE PLANNING BOARD ON JUNE 7 AND JUNE 21, 1979; AND

WHEREAS, THE PLANNING BOARD HAS REVIEWED THE COMMENTS, CRITICISMS, AND SUGGESTED REVISIONS TO THE PROPOSED PLAN, LEGISLATION, AND MAPS, AND, AS A COMMITTEE OF THE WHOLE, HAS STUDIED THE PROPOSALS IN DEPTH; AND

WHEREAS, THE BALTIMORE COUNTY PLANNING BOARD AT ITS SPECIAL MEETING ON JULY 26, 1979, BY VOICE VOTE, APPROVED A FINAL REPORT ENTITLED "BALTIMORE COUNTY MASTER PLAN 1979-1995," AS AMENDED, FOR TRANSMITTAL TO THE COUNTY COUNCIL OF BALTIMORE COUNTY; AND

WHEREAS, AT THE SAME MEETING, THE PLANNING BOARD ADOPTED, BY A SEPARATE MOTION, THE LAND-USE MAP THAT IS PART OF THAT REPORT, AS AMENDED, FOR TRANSMITTAL TO THE COUNTY COUNCIL; AND

WHEREAS, At its special meeting on July 26, 1979, by voice vote, the Planning Board adopted its final report entitled "Growth-Management Legislation: Phase I," as amended, excepting certain recommendations relating to master-plan consistency, including the proposed deficient-facilities component of the zoning map, for transmittal to the County Council; and

WHEREAS, The Planning Board has reviewed, as a committee of the whole, the proposed recommendations to establish legislative provisions relating to consistency with the Master Plan; now, therefore, be it

RESOLVED, That the Baltimore County Planning Board re-adopts its final report entitled "Growth-Management Legislation: Phase 1," including amendments relating to master-plan consistency adopted by the Board at its special meeting on August 2, 1979; and be it further

RESOLVED, That the concepts and principles of the detailed plans for Oella, Towson, Essex, and Pikesville are incorporated in the proposed Baltimore County Master Plan 1979-1995, to the extent that they are not inconsistent with that plan; and be it further

RESOLVED, That previous master plans adopted by the Planning Board are rescinded to the extent that they are inconsistent with that proposed master plan; and be it further

RESOLVED, That the planning staff of the Office of Planning and Zoning may, in preparing published editions of that proposed master plan and Phase I growth-management legislation, make minor, nonsubstantive editorial changes; correct any factual errors; and add unofficial graphic or textual material to clarify or emphasize portions of the proposed plan or legislation. The staff may also publish condensations or abridgements of the proposed plan in order to make possible widespread public distribution.

GROWTH-MANAGEMENT LEGISLATION: PHASE I

A Final Report of the Baltimore County Planning Board*

DISCUSSION

For more than three years the Baltimore County government, a large team of consultants, and numbers of County citizens have been engaged in a new planning effort of enormous proportions. It has resulted in the assembly and integration of vast arrays of planning data to serve as the basis for a comprehensive examination and, where appropriate, reformulation of County planning goals. Its ultimate purposes have been to revise the County's 1975 Comprehensive Plan on the basis of those data and goals and to provide for truly effective implementation of the revised plan through legislation and any other legitimate means at the County's disposal. The plan and implementation measures are to constitute what is now called a growth-management system.

For most of this period residential development in the County has been limited by temporary legislation now known as the "Plan in Progress Act" (originally the "Interim Development Control Act," or IDCA)—a law that will expire in mid October.

During the first four months of this year the Planning Board received a number of the consultants' preliminary recommendations for elements of a projected growth-management system, including a proposed map of present and future land use, accompanying text, and proposed growth-management legislation. These documents were given preliminary approval by the Board in May. The Office of Planning and Zoning then held "information meetings" on the proposals at three different high schools in the County. In early June, the Board held a public hearing on the recommendations, and, later in the month, there was a hearing on zoning-district maps drawn up in accordance with the proposed growth-management legislation and land-use map. The Board has also met numerous times in work sessions on the various recommendations.

It has now become clear to the Board that the issues raised by the consultants' recommendations in general, and the proposed legislation in particular, are much too sweeping and complex to be dealt with all at one time in a three- or a four-month period. The Board suspected this as early as last January, when it adopted a report recommending extension of the IDCA.[1] That report suggested that a growth-management system should be implemented in phases, the first phase to be limited to regulation of matters addressed in some fashion by the IDCA, with the intent that those regulations be established before expiration of the interim controls.

The Board now adopts the position that, under present circumstances, the most rational approach to growth management is a phased approach. The first phase, in the Board's view, should consist of master-plan adoption coupled with the recommendations in this report. The master plan itself, which is the subject of a separate report, outlines succeeding phases.

*Adopted July 26, and August 2, 1979. (Preliminary report adopted May 3, 1979. Public hearing held June 7, 1979.)

1. "Proposed Amendment to the Baltimore County Code: Extension of Interim Development Control Act," a preliminary report of the Baltimore County Planning Board, January 18, 1979.

Scope of Proposed Phase I Growth-Management Legislation

The issues that the Board feels must be addressed in this first phase of the growth-management legislation are protection of agricultural and environmentally sensitive lands, the adequacy of basic public services to support additional development in the urban areas of the County, and specific inclusion of master-plan considerations in the development review procedure.

Another integral part of the growth-management program is the limitation of time during which subdivision approvals are valid, a matter already covered by Bill No. 61-79, enacted by the County Council on April 16th of this year. That legislation, by requiring that the plan of any subdivision which remains undeveloped for an excessive length of time after its recordation be resubmitted to the Planning Board for review and approval in accordance with current regulations, will enable the County to improve the quality and appropriateness of development. The Board wishes to reiterate its support for that legislation, previously expressed in a resolution adopted by the Board on April 6, 1979, as well as in the Board's November 16, 1978, final report recommending the legislation. The additional legislation now being proposed by the Board is equally vital and, in conjunction with the provisions of Bill No. 61-79, will be the initiation of a true growth-management program for Baltimore County.

The three primary aspects of this proposed legislation are described below.

Agricultural and environmental protection. The amendments to regulations of the Resource Conservation classifications contained in this report would significantly strengthen those classifications to more fully achieve their intended purposes. The R.C.2 (agricultural) zone regulations would be revised to allow uses that would enhance the economic viability of agriculture, to prevent continued usurpation of productive farmland by residential development or other uses not supportive of agriculture, and generally to encourage the preservation of agricultural land.

The R.C.3 zoning classification was established to reserve land that may be needed for urban development in the future. Essentially, the amendments to those regulations being proposed by the Board would merely clarify that purpose.

The R.C.4 (watershed protection) zoning classification would be made more effective under the Board's proposal to extend its application to the critical watershed of any public water-supply source in the County; after enactment of this amendment, the watershed of Deer Creek can be zoned R.C.4, thus protecting that source of water for Harford County. In addition, the present prohibition on filing a rezoning petition for R.C.4-zoned land under certain circumstances would be changed to a more defensible prohibition on granting any rezoning petition under essentially the same circumstances.

The Board's recommendations for the R.C.5 zone classification would allow a residential subdivision to be designed to preserve open space and to reduce its impact on nearby farms.

* * *

"Basic Services" adequacy. This report recommends the establishment of "Deficient-Facilities" districts, to be applied to existing urban areas where certain important public facilities have inadequate capacity to accommodate the full amount of development that would be allowed by the basic zoning of the property in the area. Under this proposal, the County Council would adopt and annually revise maps restricting the issuance of building permits for residential or

commercial structures in each Deficient-Facilities district, based on the extent of deficiencies in such public services as water supply, sewerage, transportation, schools, fire protection, or open space.

Both the IDCA and the Plan in Progress Act ("PIP") attempted to control development on the basis of the adequacy of some public services. However, these laws created a problem popularly called "cumulative effect," resulting from a discrepancy in the methods of determining facility adequacy. That discrepancy was inherent in the fact that the control point under both the IDCA and the PIP was primarily at the subdivision-plan approval level. The adequacy of facilities was required to be measured in terms of conditions existing at the time the preliminary subdivision plan was considered, without regard to the potential impact of development that could be built pursuant to subdivision plans already approved. By substituting a system of subtracting measures of the impact of development to be authorized by each building permit, in terms of its projected sewage yield, traffic generation, or pupil yield, from the total amount of development impact permitted in a particular Deficient-Facilities district, the Board's proposal would eliminate the "cumulative effect" problem entirely. The effect of previously approved development would of necessity be a factor in determining whether a public facility could accommodate the additional development for which a building permit was requested.

* * *

Master-plan consistency. The third element of the Board's proposal for Phase I growth-management legislation is a requirement that master-plan considerations be included in the development-review process. Such a requirement is needed to clearly enable the Planning Board to take the leading role in reviewing development proposals and ensuring their appropriateness in terms of the County's overall planning concerns. Further, the Board believes that its review of development proposals must take into account the concerns expressed by interested citizens.

RECOMMENDATIONS

CORE PROVISIONS—MAJOR AMENDMENTS TO ZONING REGULATIONS. It is recommended that the Baltimore County Zoning Regulations, 1955, as amended, be amended additionally as follows:

[R.C.2 ZONE CLASSIFICATION—AGRICULTURE]

1. Revise Paragraph 1A01.2.B to read as follows:

B. Uses permitted as of right. The following uses, only, are permitted as of right in all R.C.2 zones:

1. Dwellings, 1-family detached
2. Farms, satellite farms, farmettes, and limited-acreage wholesale flower farms (see Section 404)
3. Open space, common
4. Streets and ways
5. Telephone, telegraph, electrical-power, or other lines or cables, provided that any such line or cable is underground; underground gas, water, or sewer mains or storm drains; or other underground conduits, except interstate or international pipelines.
6. Trailers, provided that any trailer allowed under this provision must be used or stored in accordance with the provisions of Paragraphs b, c, e or f of subsection 415.1 and subparagraph 415.2.a(1) or 415.3.c(1), as applicable.
7. Accessory uses or structures, including, but not limited to, the following:
   a. Excavations, uncontrolled
   b. Farmers' roadside stands (see Section 404)
   c. Home occupations
   d. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or persons engaged in other, similar occupations, provided that the use is established within the building that serves as the owner's domicile; occupies a floor area no greater than 25% of the floor area used for residential purposes, not including garage floor area or unfinished basement space; and does not involve the employment of more than 2 nonresidents.
   e. Parking space, including residential-garage space and space for recreational vehicles (see Section 415A)
   f. Piers, wharves, docks and bulkheads (subject to the provisions of Section 417)
   g. Radio antennas in conjunction with wireless transmitting or receiving facilities, provided that any such facility is used by a resident who has an amateur radio operator's license issued by the Federal Communications Commission. No such antenna may extend closer than the front building line to any street on which the lot may front; no rigid-structure antenna may be taller above grade level than the horizontal distance to the nearest property line or 100 feet, whichever is less; and no supporting structure may be situated within 50 feet of any property line (see also Section 400)
   h. Swimming pools, tennis courts, or similar recreational facilities.

2. Revise Paragraph 1A01.2.C to read as follows:

C. Uses permitted by special exception. The following uses, only, may be permitted by special exception in any R.C.2 zone:

1. Animal boarding places (regardless of class), kennels, veterinarians' offices, or veterinariums (see Section 421)
2. Antique shops (see Section 402B)
3. Camps, including day camps
4. Community care centers providing care for not more than 15 persons per acre[2]
5. Churches or other buildings for religious worship
6. Excavations, controlled
7. Farmers' co-op roadside stands
8. Fish hatcheries
9. Fishing and shellfishing facilities, shoreline, Class I or Class II
10. Hunting or fishing preserves
11. Offices for agriculture-related uses or for physicians or dentists (as principal uses)
12. Public-utility uses not permitted as of right, including underground interstate or international pipelines and railroads or other transportation lines or ways
13. Research institutes (see Section 418)
14. Residential art salons (see Section 402C)
15. Riding stables
16. Sanitary landfills (see Section 412)
17. Schools, including schools for agricultural training, private preparatory schools, business or trade schools, conservatories or colleges
18. Shooting ranges, including archery, pistol, skeet, trap, or small-bore rifle ranges, or turkey shoots
19. Trailers other than trailers used as tenant houses (see Section 415)
20. Volunteer-fire-company or ambulance-rescue facilities
21. Wireless transmitting or receiving facilities as principal uses

3. Revise Paragraph 1A01.3.B ("Area regulations") to read as follows:

B. Area regulations

1. Subdivision

---

2. This entry presupposes enactment of Bill No. 122-79, presently before the County Council, without amendment.

a. Lot density. No lot of record lying within an R.C.2 zone and having a gross area of 2 acres or less may be subdivided, and no such lot having a gross area between 2 and 100 acres may be subdivided into more than 2 lots (total). Such a lot having a gross area of 100 acres or more may be subdivided only at the rate of 1 lot for each 50 acres of gross area.

b. Lot size. A lot having an area less than 1 acre may not be created in an R.C.2 zone.

c. Road-front development. If a subdivision in an R.C. 2 zone is to comprise more than 3 lots, no more than 1/2 of the total number of lots created from the lot of record may front on a road that is publicly owned or maintained at the time of subdivision.

2. Setback requirements. No principal structure or dwelling (whether or not it is a principal structure) in an R.C.2 zone may be situated within 75 feet of the centerline of any street or within 35 feet of any lot line other than a street line.

3. Principal dwellings per lot. No more than 1 principal dwelling is permitted on any lot in an R.C.2 zone.

4. Revise Section 1A01 ("R.C.2 (Agricultural) Zones") as follows, by adding the following new subsection immediately after Subsection 1A01.3 ("Height and Area Regulations"):

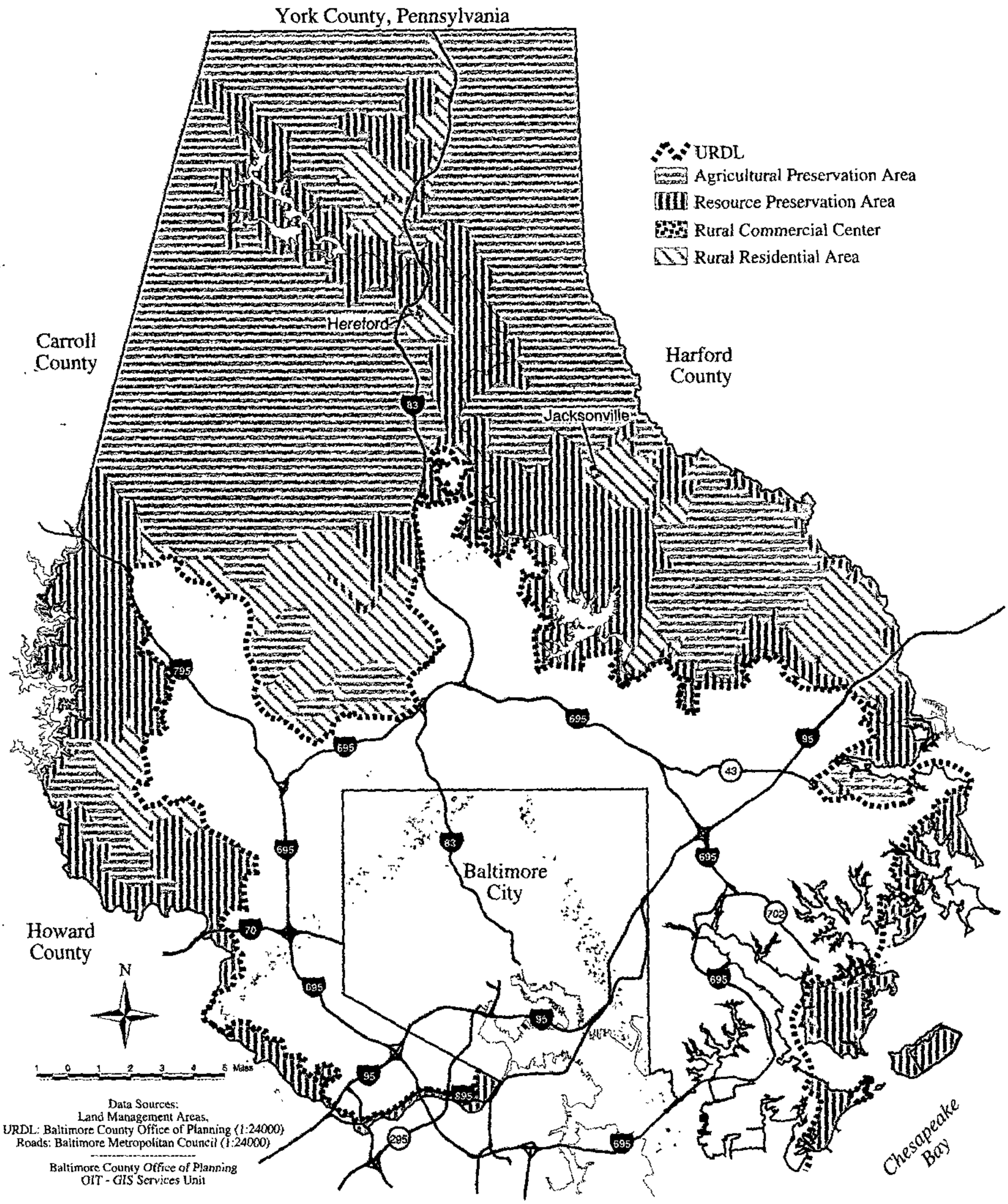
1A01.4—Maryland Agricultural Land Preservation Program. The use or development of land in an agricultural district established in accordance with Section 2-509 of the Agriculture article of the Annotated Code of Maryland, 1974, 1978 Cumulative Supplement, shall be governed by agricultural land preservation provisions enacted by the County Council pursuant to Section 2-513 of that article in the case of any conflict between those provisions and these Zoning Regulations.

[R.C.3 ZONE CLASSIFICATION—DEFERRAL OF PLANNING AND DEVELOPMENT]

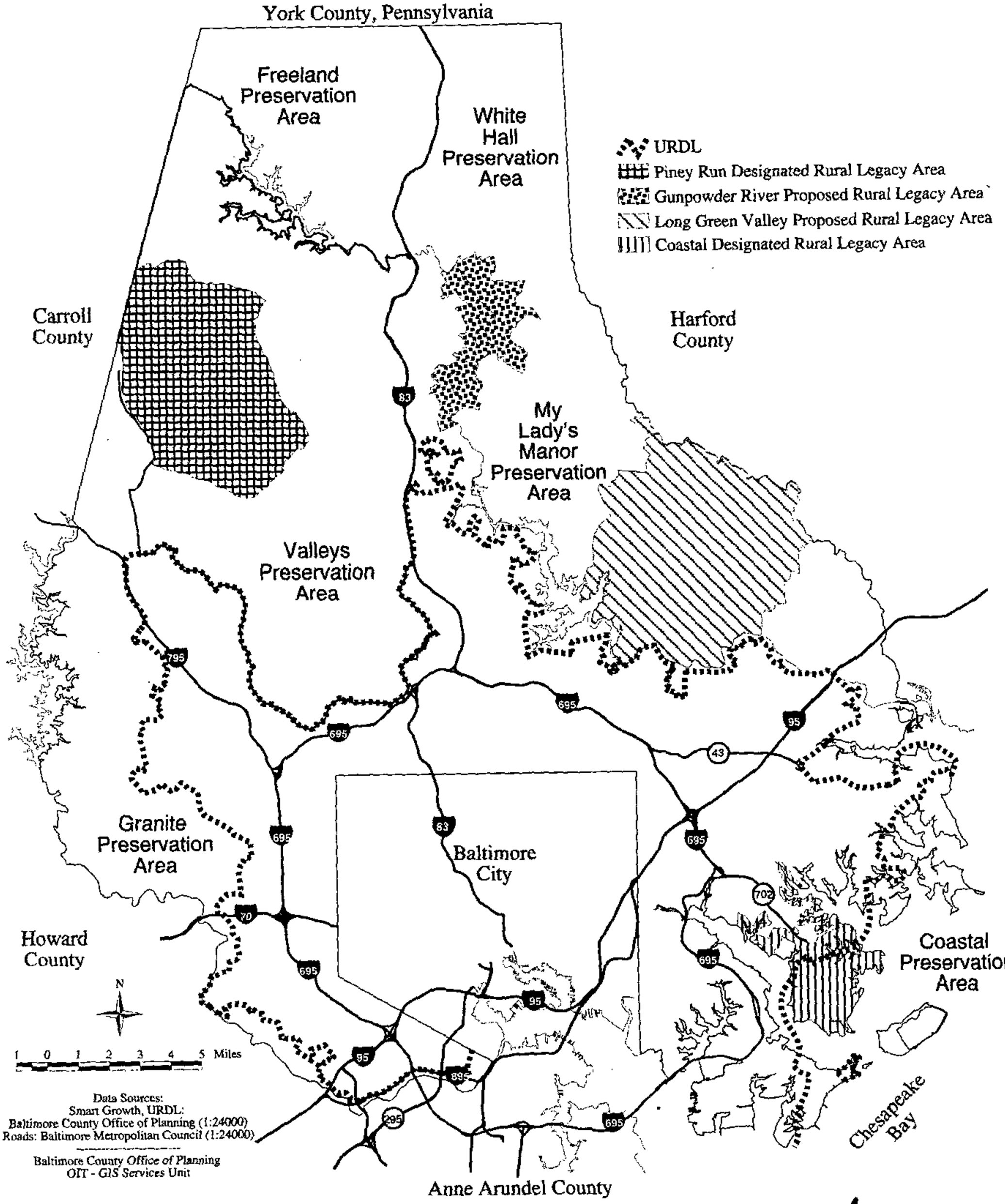
5. Revise Subsection 1A02.1 ("General provisions") to read as follows:

1A02.1—Findings and Legislative Policy

A. Declaration of findings. The County Council finds that some presently rural areas which may in the future be suitable for urban development are being preempted by sprawling development that will preclude future development of urban intensity. The Council also foresees a strong possibility that market demand, energy policies, food needs, and numerous other significant conditions may change substantially, or even drastically, with the result that the public interest would be impaired if urban development were to be allowed in some of these area, despite their physiographic suitability to accommodate urban water-supply and sewerage systems. All of these areas are suitable for agriculture, which is the preferred use of the land in these areas, thus providing a reasonable present and future use for the land.



MAP 35
RURAL LAND MANAGEMENT AREAS



MAP 36
LAND PRESERVATION PROGRAM

pc 73

FRANCIS T. MCELWEE
KAROLE K. MCELWEE
"KEENEY MILL WOODS"
△40/31
1700010729
5838/791

5796/229

676.13'
362.43'
50'
MBSL

15
WILLIAM P. SONDERMAN
EY N. SONDERMAN, TRUSTEES
"KEENEY MILL WOODS"
△40/31
1700010730
16658/287

N 73°33'34" E
313.70'
50'
MBSL
280.6'+/-
MBSL
30' DRAINAGE EASEMENT
PLAT 40/31
35'
35'
MBSL

30' DRAINAGE
EASEMENT
PLAT 40/31

50' DRAINAGE
EASEMENT
PLAT 40/31

20
DAVID L. DODSON
MARY M. DODSON
"KEENEY MILL WOODS"
△40/31
1700010735
5896/651

50

18
EXISTING
380,889 SF
8.744 AC.+/-
PROPOSED
289,761 SF
6.652 AC.+/-
NIELS H. BRAID
"KEENEY MILL WOODS"
△40/31
1700010733
13158/427

MBSL
S 22°04'52" E
192.99'

PROPOSED
LOT
2.0AC.+/-
PROP.
DWELL.
50'
MBSL
35'
35'
MBSL
292.6'+/-
MBSL

N 35°31'04" W
573.20'
60'
MBSL
295.2'+/-
20'

SEPTIC TANK
EX. COVERED DECK
EX. 1-1/2 STORY GARAGE
WELL
BA-73-5364
#20315
EX. 1-1/2 STORY DWELLING
EX. POOL
50' DRAINAGE
EASEMENT
PLAT 40/31
MBSL
50'
N 86°05'16" W
548.19'

17
FRANCES P. RAGAN
"KEENEY MILL WOODS"
△40/31
170001073
21
8032/268

19
EDWARD J. LIJEWSKI JR.
CHRISTINA W. LIJEWSKI

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BALTIMORE COUNTY CODE 1978

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Containing all additions and amendments to the Baltimore County Code, 1978, through the 1989 Session of the Baltimore County Council

Bill No. 149-89

MUNICIPAL CODE CORPORATION
Tallahassee, Florida
1990

(4) Increase the suitability of the design or construction to the terrain, soil, surface drainage, groundwater, or anticipated traffic load or speed.

In addition, the county may require the provision of turning lanes and traffic signals as necessary at heavily traveled intersections or impose other special requirements for street design or arrangement as may be necessary to minimize the total number of intersections or to minimize four-way intersections, oblique intersections, intersections on curves, or large corner radii. No proposed street may be designed so as to intersect at grade with any railroad, except sidings. (Bill No. 56, 1982, § 2)

Sec. 22-83. Parking, signs, benches and transit facilities.

(a) Parking required under provisions of the zoning regulations and the Maryland Building Code for the Handicapped must be located and designed so as not to interfere with vehicular or pedestrian traffic and so as to be convenient to the principal entrance of buildings. Parking areas may be required to be dispersed on the site so that each is relatively small.

(b) Signposts must be unobtrusive and the total number of signs minimized. In particular, informational signs must not be placed or be of such a number or design as to distract drivers' attention from traffic-control signs or devices.

(c) Benches or other outdoor furniture may be required to be grouped and be of "break-away" designs. Street lighting must be of types and sizes both adequate for safety and appropriate to the vicinity.

(d) Transit facilities such as bus turnouts may be required for sites to be served by public transit. (Bill No. 56, 1982, § 2)

Sec. 22-84. Pedestrian and bicycle paths.

The manual adopted pursuant to section 22-105(b)(4) may provide for the design and location of pedestrian and bicycle paths. (Bill No. 56, 1982, § 2)

Sec. 22-85. Panhandle driveways.

The use of panhandle lots may be permitted where such lots would not be detrimental to adjacent properties and would be

in the interests of the prospective users. No single panhandle driveway may be permitted to serve more than five (5) dwellings. Where a panhandle lot is proposed, each lot must have adequate access for emergency-service vehicles. Provision must be made at the intersection of the panhandle driveway and the street for trash collection, mail delivery, and identification for each dwelling served by the driveway. Appropriate agreements for common maintenance and use of the panhandle must be submitted with any plat showing a panhandle lot, and the agreements must be recorded with the plat, upon approval. (Bill No. 56, 1982, § 2)

Sec. 22-86. Water supply.

For tracts to be served by public water-supply facilities, water volume and pressure must be adequate to extinguish fires in any building on the tract; and hydrants must be provided in sufficient numbers and at appropriate locations to serve fire-fighting needs. (Bill No. 56, 1982, §2)

Sec. 22-87. Sewerage.

Proposed public or private sewerage facilities must be designed and located to function safely and without danger of contaminating groundwater, surface water, or public or private water supplies. (Bill No. 56, 1982, § 2)

Sec. 22-88. Drainage.

Proposed drainage facilities must be adequate to accommodate the amount of run-off that would be generated by the proposed development and from the entire upstream area, if the area were fully developed in accordance with the zoning regulations in effect at the time of design or construction. (Bill No. 56, 1982, § 2)

Sec. 22-89. Other utilities.

Easements for cable TV and other municipal and public utilities may be required where necessary to ensure adequate service to the prospective occupants or users of the proposed development. (Bill No. 56, 1982, § 2)

BALTIMORE COUNTY
CODE

VOLUME II

2006 S-7 Supplement contains
Local legislation current through Bill No. 31-06

PC #2

AMERICAN LEGAL PUBLISHING CORPORATION

432 Walnut Street Cincinnati, Ohio 45202-3909 (800) 445-5588

(12) To ensure proper descriptions of property boundaries;

(13) To encourage the wise use and management of natural resources throughout the county in order to preserve the integrity, stability, and beauty of the community and the value of property;

(14) To preserve the natural beauty and topography of the county and ensure appropriate development with regard to these natural features;

(15) To provide for open spaces in order to:

(i) Offer recreational opportunities close to home;

(ii) Enhance the appearance of neighborhoods through the preservation of natural green spaces;

(iii) Counteract the effects of urban congestion; and

(iv) Encourage participation by all age groups in the use and care of local open space tracts;

(16) To ensure an adequate supply of land suitable for development; and

(17) To simplify and clarify the development review and approval process.

(b) *Fulfillment of development policies and purposes.* Compliance with this title and the Comprehensive Manual of Development Policies fulfills the development policies and purposes set forth in § 32-4-102 of this subtitle and subsection (a) of this section, respectively.
(1988 Code, § 26-167) (Bill No. 1, 1992, § 2; Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-104. SCOPE OF TITLE.

(a) *Applicability of title.* This title shall apply to the process of review for approval of all development.

(b) *Present zoning classification.* Proposed development shall be in compliance with the present zoning classification on the property to be developed.
(1988 Code, § 26-169) (Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 79-01, § 2, 7-1-2004; Bill No. 24-06, § 1, 3-17-2006)

***Annotation**–Former § 26-169 (1988) cited in Meadows of Greenspring Homeowners Association, Inc. v. Foxleigh Enterprises, Inc., 133 Md.App. 510, 758 A.2d 611 (2000).*

§ 32-4-262. AMENDMENTS TO DEVELOPMENT PLANS.

(1) Any material amendment to an approved non-residential Development Plan shall be reviewed and approved in the same manner as the original plan.

(2) Any material amendment to than approved residential Development Plan or plat shall be reviewed in accordance with this title, and with respect to that portion of the original plan or plat to which the amendment pertains, the amendment shall be reviewed for compliance with all current law and regulations, including the development regulations and the zoning regulations.
(1988 Code, § 26-211) (Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 18, 7-1-2004; Bill No. 24-06, § 1, 3-17-2006)

***Annotation**–Former § 26-211 (1988) cited in Meadows of Greenspring Homeowners Association, Inc. v. Foxleigh Enterprises, Inc., 133 Md.App. 510, 758 A.2d 611 (2000).*

§ 32-4-263. PUBLIC WORKS AGREEMENT TO CONFORM TO DEVELOPMENT PLAN.

A public works agreement, if required by Subtitle 3 of this title, shall conform to the approved plan and may not be executed before approval of the Development Plan.
(1988 Code, § 26-212) (Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 18, 7-1-2004)

PART VII. PLATS

§ 32-4-271. REQUIRED.

(a) *In general.* The applicant shall prepare a plat in accordance with the approved Development Plan for any subdivision.

(b) *Dedication of public improvements.* Along with the subdivision plat, the applicant shall include formal irrevocable offers of dedication to the public of all public improvements including streets, local government uses, utilities, parks, and easements, in a form approved by the County Attorney.

(c) *Retention of improvement by applicant.* If an applicant retains any open space, streets, utilities, or recreational facilities, or conveys them to a homeowners association or similar entity, the applicant shall submit for the approval of the Office of Law, a declaration of protective covenants, together with the articles of incorporation and corporate bylaws that will provide for use in common and maintenance of the land.

(2) The total number of signs to be kept to a minimum; and

(3) Informational signs not to be placed or be of such a number or design as to distract drivers' attention from traffic-control signs or devices.

(c) *Benches and street lighting.*

(1) The county may require benches and other outdoor furniture to be grouped and to be of a "break-away" design.

(2) The county shall require street lighting to be of a type and size that is adequate for safety and appropriate to the vicinity.

(d) *Transit facilities.* The county may require transit facilities, such as bus turnouts, for sites to be served by public transit.
(1988 Code, § 26-264) (Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-409. PANHANDLE DRIVEWAYS.

(a) *In general.*

(1) The county may only allow a panhandle lot:

(i) To achieve better use of irregularly shaped parcels;

(ii) To avoid development in environmentally sensitive areas;

(iii) Where the lot will not be detrimental to adjacent properties; and

(iv) Were the lot will not conflict with efforts to provide for public safety and general welfare.

(2) The county may only allow a panhandle driveway where necessary to provide access to interior lots where a public road is neither feasible nor desirable.

(b) *In-fee strip; required.*

(1) Except as provided in subsection (c) of this section, the county may permit a panhandle lot if the lot includes an in-fee strip of land for access to the local street.

(2) Panhandle fee strips shall be a minimum of:

(i) 20 feet in width to serve one lot;

(ii) 12 feet in width per lot where two lots are involved;

(iii) 10 feet in width per lot where three or more lots are involved; or

(iv) 12 feet in width per lot where there are two or more lots in a development that is within the metropolitan area where public water and sewer services are available, planned, or considered.

(c) *Same; exception.* In cases where a right-of-way has been established before the submission of the Development Plan, the Hearing Officer may approve access to the local street or collector street through the existing right-of-way instead of an in-fee strip.

(d) *Panhandle driveways.*

(1) A single panhandle driveway may serve up to five dwellings, three of which may be on internal lots not adjacent to the local street or collector street.

(2) Panhandle driveways serving lots greater than 20,000 square feet may serve five internal lots plus two dwellings on the front lots adjacent to the panhandle driveway and the local street or collector street.

(3) Front lots are not required to be part of the panhandle driveway development.

(4) Notwithstanding the provisions of § 32-4-107 of this title, the requirements of this subsection may not be waived.

(e) *Length of panhandle in DR and RC zones.*

(1) In a DR zone, the panhandle length may not exceed 500 feet.

(2) In an RC zone, the panhandle length may not exceed 1,000 feet.

(3) The maximum permitted length of a panhandle is subject to variance under § 307 of the Baltimore County Zoning Regulations.

(f) *Panhandle driveways serving multiple lots.*

(1) For panhandle driveways serving more than one lot, the developer shall note on the record plat any covenants that provide for common use and maintenance of the panhandle driveway and culvert.

(2) A use in common agreement is established if the panhandle driveway serves two or more abutting panhandle lots.

(g) *Dwelling orientation on panhandle lot.*

(1) The orientation of the dwelling on each panhandle lot shall be indicated on the Development Plan.

(2) The dwelling shall be oriented to establish a desirable relationship between:

(i) Each of the proposed dwellings and existing adjacent homes; and

(ii) The proposed dwellings themselves.

(h) *Panhandle driveway and street intersection; requirements.* At the intersection of the panhandle driveway and the street, the following shall be provided by the developer:

(1) A paved trash collection area that:

(i) Is located at the right-side intersection of the panhandle driveway and public road, as the driveway is exited; and

(ii) Is at least 16 square feet per dwelling unit served by the panhandle driveway;

(2) A mail delivery area that is located at the left intersection of the panhandle driveway and public road, as the driveway is exited; and

(3) Numerical identification of each dwelling served by the panhandle driveway in accordance with § 35-2-206 of the Code.

(i) *Construction of panhandle driveway.*

(1) The panhandle driveway shall be built in accordance with standards established by the Director of Public Works.

(2) The panhandle shall be paved within 1 year of the issuance of the first occupancy permit or before the issuance of the occupancy permit of the last lot to be served, whichever comes first.

(3) In DR zones required utilities shall be provided to all lots to be served by the panhandle before the paving of the panhandle driveway.

(j) *Parking along panhandle driveway.* Parking is not permitted along a panhandle driveway.

(k) *Waiver.* Except as provided in subsections (d) and (e) of this section, the Director of Planning may grant a waiver from any provision in this section or title if the Director finds:

(1) That the size, scope, and nature of the subdivision of land into three or fewer lots for residential single-family dwellings does not justify strict compliance with this section;

(2) That a waiver would be within the scope, purpose, and intent of this section; and

(3) Compliance with all other county ordinances and regulations.
(1988 Code, §§ 26-168, 26-266) (Bill No. 172, 1989, § 2; Bill No. 106, 1990, § 1; Bill No. 1, 1992, § 2; Bill No. 173-93, § 3, 11-17-1993; Bill No. 61-95, § 1, 6-30-1995; Bill No. 8-96, § 3, 3-23-1996; Bill No. 49-96, § 15, 7-1-1996; Bill No. 38-98, § 4, 6-20-1998; Bill No. 51-99, § 1, 8-26-1999; Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-410. REQUIRED FACILITIES.

(a) *Water supply.*

(1) Water volume and pressure shall be adequate to extinguish fires in any building on a tract that is to be served by public water-supply facilities.

(2) Fire hydrants shall be provided in sufficient numbers and at appropriate locations to serve firefighting needs.

(b) *Sewage.* Proposed public or private sewage facilities shall be designed and located to function safely and without danger of contaminating groundwater, surface water, or public or private water supplies.

(c) *Drainage facilities.*

(1) In this subsection, "development" has the meaning stated in § 32-8-101 of this article.

(2) Proposed drainage facilities shall be adequate to accommodate the amount of runoff that would be generated by:

(i) The proposed development; and

(ii) The entire upstream area, if the area were fully developed in accordance with the Baltimore County Zoning Regulations in effect at the time of the design or construction.

(3) Development may not increase the extent of the floodplain on neighboring properties.

(d) *Facility easements.* Easements for cable television and other municipal and public utilities may be required where necessary to ensure adequate service to the prospective occupants or users of the proposed development.
(1988 Code, §§ 26-267, 26-268, 26-269, 26-270) (Bill No. 173-93, § 3, 11-17-1993; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004)

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2006, Legislative Day No. 3

Bill No. 24-06

Councilmembers Kamenetz, Bartenfelder, Moxley, McIntire & Olszewski

By the County Council, February 6, 2006

A BILL
ENTITLED

AN ACT concerning

Development

FOR the purpose of requiring previously approved developments to comply with the current law and the current development procedural review process; defining terms; defining the manner of the vesting of a project; clarifying the methodology employed by the Office of Planning in compiling its annual recommendation regarding overcrowded school districts; providing for the extension and expiration of development plan approvals; providing for the application of the Act; providing for the effective date of the Act; and generally relating to the scope of the County's development regulations and the vesting of development plans and plats.

BY repealing and re-enacting, with amendments

Sections 32-4-104, 32-4-261(a) and (b), 32-4-262, 32-4-273(d) and 32-6-103(d)
Article 32 - Planning, Zoning and Subdivision Control
Baltimore County Code 2003

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

PC
EX 1

BY adding

Section 32-4-101(bbb)
Article 32 - Planning, Zoning and Subdivision Control
Baltimore County Code 2003

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Sections 32-4-104, 32-4-261(a) and (b), 32-4-262, 32-4-273(d) and 32-6-103(d) of Article 32, Planning, Zoning and Subdivision Control, of the Baltimore County Code 2003, be and they are hereby repealed and re-enacted, with amendments, to read as follows:

§32-4-104. Scope of Title.

(a) Applicability of title. Except as provided in subsection (b) of this section, this title shall apply to all development.

(b) Exceptions.

(1) This title does not apply to a development that before the effective date of this article, June 11, 1982:

(i) Received tentative approval of the preliminary plan by the Planning Board;

(ii) Has a valid unexpired building permit;

(iii) Has a current executed public works agreement;

(iv) Received a CRG approval, reclamation plan approval, or was otherwise vested by law; or

(v) Where a CRG plan was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.

(2) An exempt development under paragraph (1) of this subsection shall be governed by the subdivision regulation in effect at the time:

(i) Of the preliminary plan approval in the case of a development that received tentative approval by the Planning Board;

(ii) The development received a CRG approval, reclamation plan approval, or was otherwise vested by law;

(iii) The valid unexpired building permit was issued;

(iv) The current public works agreement was executed; and

(v) Of the acceptance for filing in the case of a CRG plan that was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.]

THIS TITLE SHALL APPLY TO THE PROCESS OF REVIEW FOR APPROVAL OF ALL DEVELOPMENT.

[(c)] (B) Present zoning classification. Proposed development shall be in compliance with the present zoning classification on the property to be developed.

§32-4-261. Expiration of Development Plan Approval.

(a) In general. Unless extended under SUBSECTION (B) OR UNDER §32-4-274(a) of this subtitle, Development Plan approval shall expire [5] 4 years after the date [of] A FINAL, NON-APPEALABLE approval was granted.

(b) Request for extension.

(1) An applicant may make a written request to the Hearing Officer for [an] A ONE YEAR extension of the [5] 4 year Development Plan approval period provided under subsection (a) of this section UPON A SHOWING THAT A COUNTY AGENCY FAILED TO PROPERLY PROCESS AN ESSENTIAL REQUEST NECESSARY TO ACHIEVE VESTING IN A TIMELY FASHION, CAUSING A DELAY BEYOND THE INITIAL FOUR YEARS AFTER THE FINAL, NON-APPEALABLE APPROVAL WAS GRANTED.

(2) THE REQUEST FOR EXTENSION SHALL BE FILED PRIOR TO THE

EXPIRATION OF FOUR YEARS FROM THE DATE OF APPROVAL OF THE DEVELOPMENT PLAN.

[(2)] (3) The Hearing Officer SHALL ACT WITHIN 60 DAYS OF THE FILING OF THE REQUEST AND may grant, in writing, the request for an extension [upon certification by the applicant that the Development Plan meets the development regulations in effect at *the time of the requested* extension].

[3] (4) The Hearing Officer may not act upon the request for an extension until comments from *the applicable agencies are received*.

(5) ANY APPEAL OF THE EXTENSION GRANTED UNDER SUBSECTION (B) SHALL BE ON THE RECORD. THE STANDARD OF REVIEW SHALL BE BASED UPON AN ABUSE OF DISCRETION.

§32-4-262. Amendments to *Development Plans*.

(1) Any material amendment to an approved NON-RESIDENTIAL Development Plan shall be reviewed and approved in the same *manner as the original* plan.

[(2) Any other material amendment shall be in accordance with the comprehensive manual of administrative policy.]

(2) ANY MATERIAL AMENDMENT TO AN APPROVED RESIDENTIAL DEVELOPMENT PLAN OR PLAT SHALL BE REVIEWED IN ACCORDANCE WITH THIS TITLE, AND WITH RESPECT TO THAT PORTION OF THE ORIGINAL PLAN OR PLAT TO WHICH THE AMENDMENT PERTAINS, THE AMENDMENT SHALL BE REVIEWED FOR COMPLIANCE WITH ALL CURRENT LAW AND REGULATIONS, INCLUDING THE DEVELOPMENT REGULATIONS AND THE ZONING REGULATIONS.

§32-4-273. Time Limit for [Validity of Plats and Plans.] VESTING.

(d) Development. A subdivision or section or parcel of the subdivision is considered [developed and] vested if [any of the following has occurred with respect to the subdivision, section, or parcel:

(1) Building permits have been issued; or

(2) Substantial construction on required public improvements or private improvements has occurred on the subdivision, section, or parcel in accordance with the applicable regulations and requirements of the Department of Public Works.]

~~BUILDING PERMITS HAVE~~ A BUILDING PERMIT HAS BEEN ISSUED FOR ANY LOT IN ACCORDANCE WITH AN APPROVED PLAN OR PLAT, AND INSPECTION BY THE COUNTY CONFIRMS THAT SUBSTANTIAL CONSTRUCTION HAS OCCURRED ~~ON~~ WITHIN THE SUBDIVISION , INCLUDING ANY LOT, TRACT, SECTION, OR PARCEL THEREOF, WITHIN FOUR YEARS AFTER THE DATE OF THE FINAL, NONAPPEALABLE APPROVAL OF THE PLAN OR PLAT OR ANY EXTENSION THEREOF AUTHORIZED UNDER SECTION 32-4-261(A).

Title 6. Adequate Public Facilities

§32-6-103. Overcrowded School Districts.

(d) Recommendation. [The Office of Planning shall make the recommendation of whether a district is an overcrowded school district and whether the proposed Development Plan, in conjunction with any other proposed or approved development plan, would result in the school district becoming an overcrowded school district at the time of the filing date.]

(1) THE OFFICE OF PLANNING SHALL MAKE THE RECOMMENDATION OF WHETHER A DISTRICT IS AN OVERCROWDED SCHOOL

DISTRICT AND WHETHER THE PROPOSED DEVELOPMENT PLAN WOULD RESULT IN THE SCHOOL DISTRICT BECOMING AN OVERCROWDED SCHOOL DISTRICT AT THE TIME OF THE FILING DATE.

(2) IN MAKING ITS RECOMMENDATION ON THE PROPOSED DEVELOPMENT PLAN, THE OFFICE OF PLANNING SHALL CONSIDER THE CUMULATIVE EFFECT OF:

(I) THE SCHOOL IMPACT ANALYSIS FILED UNDER SUBSECTION (G) WITH RESPECT TO THE PROPOSED PLAN;

(II) THE IMPACT OF ANY DEVELOPMENT PLAN, OR PORTION OF A DEVELOPMENT PLAN, APPROVED WITHIN FOUR YEARS PRIOR TO THE FILING DATE; AND

(III) THE IMPACT OF ANY DEVELOPMENT PLAN APPROVED PRIOR TO THE FILING DATE, IF AN EXTENSION WAS GRANTED.

SECTION 2. AND BE IT FURTHER ENACTED, that Section 32-4-101(bbb) be and it is hereby added to Article 32, Planning, Zoning, and Subdivision Control of the Baltimore County Code 2003, to read as follows:

§32-4-101. Definitions.

(BBB) SUBSTANTIAL CONSTRUCTION MEANS ACTUAL CONSTRUCTION ACTIVITY OCCURRING ON THE GROUND OR BUILDING SITE FOR WHICH A ~~PERMIT IS SOUGHT~~ DEVELOPMENT PLAN OR PLAT HAS BEEN APPROVED THAT IS DIRECTLY RELATED TO THE ~~FACILITY OR STRUCTURE FOR WHICH THE PERMIT IS SOUGHT~~ APPROVED PLAN OR PLAT AND IS SUFFICIENTLY SUBSTANTIVE AND VISIBLE AND IS BEING PURSUED TO COMPLETION WITH REASONABLE DILIGENCE SO AS TO PUT THE PUBLIC ON NOTICE THAT THE GROUND OR SITE IS BEING DEVOTED TO THE CONSTRUCTION OF A FACILITY

OR STRUCTURE.

SECTION 3. AND BE IT FURTHER ENACTED, that this Act shall apply to any development, subdivision, parcel of land, or plat which received any form of approval from Baltimore County prior to the effective date of this Act as follows: ~~, including approval from the Planning Commission or Baltimore County Planning Board or CRG or DRG, prior to the effective date of this Act~~

(A) A development plan or plat that vested in accordance with the law in effect prior to the effective date of this Act is subject to the zoning regulations and development regulations in effect at the time the plan or plat was approved, if those regulations were not otherwise subsequently abrogated or superseded by other law; however, with respect to a material amendment to the plan or plat, the provisions of Section 32-4-262 shall apply.

(B) An unexpired development plan or plat that was approved prior to the effective date of this Act, but not yet vested, shall have four years from the effective date of this Act to achieve substantial construction, as defined in this Act. The plan or plat shall be in compliance with the zoning regulations and development regulations in effect at the time of the original approval, or any extension properly granted under Section 32-4-261(b), if those regulations were not otherwise subsequently abrogated or superseded by other law. Upon the failure to achieve substantial construction or to obtain an extension within the four-year period, the plan or plat shall be deemed to be expired.

SECTION 4. AND BE IT FURTHER ENACTED, that this Act is adopted independently of Section 103 of the Baltimore County Zoning Regulations so that it supersedes and abrogates the rights to the vesting of a development that would otherwise accrue from the zoning or development regulations or other County laws.

~~SECTION 5. AND BE IT FURTHER ENACTED, that a development plan that was approved prior to the effective date of this Act, but not yet vested, shall have three years from the effective date of this Act to achieve substantial construction as defined herein. The plan shall be in compliance with the zoning classification in effect on the property at the time of the original approval, or any extension properly granted, as the case may be. Upon the failure to achieve substantial construction or obtain an extension within the three year period, the plan shall be deemed to be expired.~~

SECTION 5. AND BE IT FURTHER ENACTED, that this Act does not apply to any development plan for which a Hearing Officer's hearing was commenced prior to March 17, 2006 or to any request accepted for filing prior to March 17, 2006 for a material amendment to a previously approved plan.

SECTION 6. AND BE IT FURTHER ENACTED, that this Act, having been approved by the affirmative vote of five members of the County Council, shall take effect on March 17, 2006.

b02406.wpd

PC 16 - ct. of Appeals Decision

PC #17 - Roberts case - Board of Appeals

PC #18 - rule & docs

People's Counsel Exhibits 06-332-SPH

Brad

PC #1: Bill 2406 Feb 6, 2006

PC #2: Balt. County Code Volume II

PC #3: BALCO 1978
1988-89 Supplement of County Code - Pertinent to Bill 105
22-85 -

PC #4: Subdivision - 2004 Comp. Zoning Map
75 acres

PC #5: Area of Intent A
Map A

PC #6: Aerial map - GPS -
6A - Overlay Property marked in yellow - w/Road Classification marks

PC #7 A: excerpts Master Plan 2010 p6 233 Map 35
B: " " " " p6 239 Map 36

PC #8: Aug 14, 1979 by Norm Gerber for John Seyffert

PC #9: Current Zoning Regulations for Baltimore County

PC #10: Diction Resume

PC #11: AOC Highway Map

PC #12: Map Balco Land Classification

PC #13: A) Blow-up 1A 00.4
B) Blow-up 1B01.3
C) Blow-up 1A01.3
D) Blow-up 32-4-104
E) Blow-up 32-4-262

PC #14: Webster Definition Tract

PC #15: Rouchell Holdings Decision 2/26/04

Department of Permits and Development Management

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

Baltimore County

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

February 20, 2006

Niels Braid
20315 Middletown Road
Freeland, Maryland 21153

Dear Mr. Briad:

RE: Case Number: 06-332-SPH, 20315 Middletown Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on January 10, 2006.

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

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

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Guy Ward 5 Shawan Road, Ste. 1 Cockeysville 21030

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development Management

DATE: January 31, 2006

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For January 23, 2006
Item Nos. 328, 329, 330, 331, 332, 333, and 335

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

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS-01312006.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: January 23, 2006

FEB - [illegible] 2006

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 6-332- Special Hearing**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

For further questions or additional information concerning the matters stated herein, please contact Bill Hughey in the Office of Planning at 410-887-3480.

Prepared By: _____

Division Chief: _____

CM/LL

W:\DEVREVZAC\6-332.doc

Baltimore County
Fire Department

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

JANUARY 20,2006

ATTENTION: Zoning Review planners

Distribution Meeting of: January 16,2006

Item #--332

3. The site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or beginning of operation.

Acting Lt. David Heath
Fire Marshal's Office
(O)410-887-4881
MS-1102F

cc: File

Printed with Soybean Ink
on Recycled Paper

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

SHA
Driven to Excel
State Highway Administration
Maryland Department of Transportation

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

Date: 1.17.04

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

RE: Baltimore County
Item No. 332 DT

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,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

RE: PETITION FOR SPECIAL HEARING 20315 Middletown Road; E/S Middletown Road, 1,006' SE c/line Keeney Mill Road 6th Election & 3rd Councilmanic Districts Legal Owner(s): Niels Braid Petitioner(s)	*	BEFORE THE
	*	ZONING COMMISSIONER
	*	FOR
	*	BALTIMORE COUNTY
	*	06-332-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
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
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 18th day of January, 2006, a copy of the foregoing Entry of Appearance was mailed to Guy C. Ward, McKee & Associates, Inc, 5 Shawan Road, Suite 1, Cockeysville, MD 21030, Representative for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
JAN 18 2006
Per CLK

CASE #: 06-332-SPH

IN THE MATTER OF: NIELS BRAID –Legal Owner /Petitioner
20315 Middletown Road 6th Election District; 3rd Councilmanic District

SPH – To approve a waiver from § 32-4-409(b)(2) of the BCC to permit creation of panhandle in-fee strips of 6 feet in width in lieu of the required minimum 10 feet in width where three or more lots are involved.

3/01/06- D.Z..C.'s Order in which Petition for Special Hearing was APPROVED.

6/20/06 --Notice of Assignment sent to following; assigned for hearing on Tuesday, October 10, 2006 at 10 a.m.:

Office of People's Counsel
Howard L. Alderman, Jr., Esquire
Niels Braid
Guy C. Ward /McKee & Associates, Inc.
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

10/10/06 – Board convened for hearing (L. Stahl and R.Witt); counsel moved for continuance which was granted by the two-member panel (W. Grier unable to be here today). To be reassigned to the agreed date of November 28, 2006.
- Notice of PP and Reassignment sent to parties; case reassigned to Tuesday, November 28, 2006 at 10 a.m.

11/29/06 – Board convened for hearing on 11/28/06 (Stahl, Mohler M, Witt); concluded hearing this date; memos to be filed on 1/19/07; public deliberation to be held on 2/06/07 at 9:30 a.m. FYI copy to 2-1-6

1/19/07 – People's Counsel for Baltimore County's Memorandum filed by P. Zimmerman.
-- Petitioner's Post-Hearing Memorandum filed by Howard Alderman, Jr., Esquire on behalf of Petitioner.

1/22/07.– Copies of above memos forwarded to 2-1-6 this date; deliberation assigned for 2/06/07.

2/06/07 – Board convened for deliberation (2-1-6); Petitioner's request for waiver GRANTED; written opinion and order to be issued; appellate period to run from date of written Order. (1)

8/22/07 – People's Counsel for Baltimore County's Motion for Reconsideration filed by P Zimmerman, People's Counsel.

8/23/07 – Notice of Deliberation sent to parties; public deliberation on Mr. Zimmerman's Motion for Reconsideration scheduled for Tuesday, September 11, 2007 at 9:30 a.m. FYI copy to L. Stahl and B. Witt (9:30 am. start on 9/11/07; only matter for Mr. Witt that date). Response to Motion to be forwarded to them upon receipt, if and when filed by opposing counsel.

8/30/07 – Petitioner's Response to Motion for Reconsideration filed by Howard Alderman, Jr., Esquire, on behalf of Petitioner, Niels Braid. Copy sent via US Mail to 2 and 6. Additional copy retained in file.

9/11/07 – Board convened for public deliberation as scheduled (Stahl and Witt; Mohler resigned 8/10/07); unanimous that Motion is denied for reasons as stated during deliberation. Writing Ruling to be issued.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Niels Braid
20315 Middletown Road
Case No.: 06-332-SPH
6th E; 3rd C

DATE: September 11, 2007

BOARD/PANEL Lawrence M. Stahl, Chairman
Robert Witt

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: Motion for Reconsideration filed by People's Counsel.

Petition for Special Hearing- Petition for Waiver from Section 32-4-409(b)(2) of the BCC to permit the creation of a panhandle in fee strip of 6' in width in lieu of the required minimum of 10' in width where three or more lots are involved.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- People's Counsel filed a Motion for Reconsideration stating that the Board failed to articulate certain points or address certain key points in the case and therefore. there were deficiencies in its Opinion/Order.
- The Board strongly disagreed with People's Counsel Motion for Reconsideration.
- The Board felt that some of his disagreements should have been presented during the hearing.
- There was no new case law, which may have been pending during the time span of this hearing, that would be relevant and cause the Board to take a new look at the case.
- The Board felt that if People's Counsel was dissatisfied with their decision, or, how they arrived at their decision then it should take it to a higher court.

DECISION BY BOARD MEMBERS: The Board felt that they did not error in their original Opinion and Order and that there were no new case laws, mistakes, fraud or irregularities that occurred that would cause them to grant People's Counsel Motion for Reconsideration and take a new approach/look at this case.

FINAL DECISION: After a thorough review of the facts, testimony, and law in the matter, the Board unanimously decided to *DENY* People's Counsel Motion for Reconsideration.

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

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

COPY

IN THE MATTER OF: Niels Braid
20315 Middletown Road
Case No.: 06-332-SPH
6th E; 3rd C

DATE: February 6, 2007

BOARD/PANEL Lawrence M. Stahl, Chairman
Mike Mohler
Robert Witt

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: To deliberate a Petition for Special Hearing- Petition for Waiver from Section 32-4-409(b)(2) of the BCC to permit the creation of a panhandle in fee strip of 6' in width in lieu of the required minimum of 10' in width where three or more lots are involved.

Some of the questions raised during the deliberation were:

1) Can they put a second house on the property?
2) Can they get the panhandle waiver he seek?

Sections of County and Zoning Regulations discussed at the deliberation were as follows:

Sec. 502.1 – Administration and Enforcement
Sec. 500.7 – Administration and Enforcement
Sec. 32-4-107 – Waivers.
Sec. 32-4-409(b)(2) - Panhandle Driveways.
Sec. 32-4-409(k) - Waiver
Sec. 1A01.3 – Height and area regulations.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- Original RDP waiver would allow (1) lot per acre at a time.
- Property is zoned R.C.2.
- Matter comes before the Board *de novo.*
- Density is lost as long as it exists, it is not a matter of "use it or loose it."
- See Ranchelle v. Sharecris case
- Driveway does not conform to regulations.
- Board read from 1A01.3 Subdivision/Lot Density.
- Board discussed P.C.'s memo regarding the differences between a lot and a tract of land.
- By applying the current zoning the Petitioner is entitled to have one more house.

- Keller denied request under Sec. 32-4-409.
- Although there were no objections from any interested parties, the request was denied to allow for a public hearing and to ensure that notice was given to the neighborhood and community.
- The public hearing was posted and no one from the community or neighborhood showed up.
- The Board felt that the tough standards needed for the granting the waiver had been met by the Petitioner.

DECISION BY BOARD MEMBERS: The Board felt that the Petitioner had met the tough standards needed to obtain the waiver, and that the Deputy Zoning Commissioner was correct in his decision to grant the waiver in the first place.

FINAL DECISION: After a thorough review of the facts, testimony, and law in the matter, the Board unanimously decided to *GRANT* Petitioner's request for a waiver.

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

Linda B. Fliegel
County Board of Appeals

PLEASE PRINT CLEARLY

CASE NAME N. Braid
CASE NUMBER
DATE 23 FEB 06

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
HOWARD A. ANDERSON JR.	502 WASHINGTON AVE STE 800	TOWSON MD 21204	
GUY C. WARD	5 SHAWAN RD SUITE 1 COCKEYSVILLE MD 21030		gcward@kaine.com
NIELS BRAID	20315 MIDDLETOWN RD	FREELAND, MD 21053	

McKEE & ASSOCIATES, INC.

Engineering • Surveying • Environmental Planning
Real Estate Development

DATE: February 2, 2006

TO: Baltimore County PDM

RE: Braid Property
#20315 Middletown Road
06-332-SPH

ATTENTION: Ms. Kristen Matthews

MAI Job No.: 05-161B

(X) We are submitting (-) We are returning ( ) We are forwarding

(X) Herewith ( ) Under separate cover (X) Hand Delivery

No.	Description
1	Certificate of Posting
	Photos

(X) For processing (X) For your use ( ) For your review

( ) Please call when ready ( ) Please return to this office ( ) In accordance with your request

Remarks:

For further information, please contact the writer at this office.

Very truly yours,

McKee & Associates, Inc.

William D. Gulick, Jr.

Enclosures

CC: MCKEE FILES

RECEIVED
FEB 2 2006
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

Shawan Place • Suite 1 • 5 Shawan Road • Cockeysville, MD 21030
Tel: 410-527-1555 • Fax: 410-527-1563 • E-Mail: @mckeeinc.com



06-332-SPH

ZONING MAP- 06A3

NIELS BRAID PROPERTY - 20315 MIDDLETOWN ROAD

IN THE MATTER OF:	*	BEFORE THE
NIELS BRAID -	*	COUNTY BOARD OF APPEALS
Legal Owner/Petitioner	*	OF
	*	BALTIMORE COUNTY
	*	Case No. 06-332-SPH
	*	November 28, 2006

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 a.m., November 28, 2006.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

BOARD MEMBERS:

LAWRENCE M. STAHL, Panel Chairman
MIKE MOHLER
ROBERT W. WITT

APPEARANCES:

HOWARD L. ALDERMAN, JR., Esquire
On behalf of Appellant

PETER MAX ZIMMERMAN, Esquire
People's Counsel
On behalf of Baltimore County

PROCEEDINGS

* * * * *

THE CHAIRMAN: Good morning, everyone. We're here in the regular meeting of the Baltimore County Board of Appeals for November 28, 2006.

We are here in Case No. 06-332-SPH, in the matter of Niels Braid, legal owner and petitioner, 20315 Middletown Road, in the 6th Election District and 3rd Councilmanic District.

Specifically, we meet today regarding a March 1, 2006 Deputy Zoning Commissioner's order in which a petition for special hearing was approved. Counsel, if you will, for the record.

MR. ALDERMAN: Thank you. Good morning, Mr. Chairman, members of Board. Howard L. Alderman, Jr., with the law firm of Levin & Gann, P.A., at 502 Washington Avenue, appearing today on behalf of Mr. Niels Braid.

Mr. Braid is in the courtroom with me today as is Guy Ward, and associate at McKee & Associates, the engineering, land planning, survey and design firm that prepared the plat which accompanied the petition in this

case.

MR. ZIMMERMAN: Peter Max Zimmerman, People's Counsel, for Baltimore County. With me today is John Dillon, Jr., a planning consultant, a former county planner, and also Theresa Moore, the Executive Director of the Valleys Planning Council.

THE CHAIRMAN: Gentlemen, are there any preliminary matters before we get started?

MR. ZIMMERMAN: I have an opening statement.

THE CHAIRMAN: Well, do you want me to do opening statements at the beginning of your case, or do you want to do it now.

MR. ZIMMERMAN: Well, I'd like to do it now, but if Mr. Alderman will go first?

MR. ALDERMAN: Thank you. Members of the Board, the case in front of you today is a waiver case, a waiver for panhandle width.

The testimony and evidence will show that Mr. Braid bought a lot of certain size, recorded on a subdivision plat. That after that plat was recorded, and after Mr. Braid purchased it, the County Council saw fit

to rezone the property.

The testimony will show there is density for creation of at least one additional lots on that property, which Mr. Braid intends to do for creation of a lot for his son.

However, because the lot already is a panhandle lot, the waiver sought is to reduce the minimum requirements for the panhandle so that the second lot could be created.

That is the sum and substance of this case. I know there have been interjected into this issues of density, and we are prepared to discuss those on direct and on rebuttal, if necessary.

THE CHAIRMAN: Thank you, Mr. Alderman. Mr. Zimmerman?

MR. ZIMMERMAN: Mr. Chairman, although this is a de novo hearing, our office did take the appeal, and we feel that it's important and helpful to explain the reasons for the appeal.

It comes to mind, a statement once made by or attributed to Oscar Wilde, The pure and simple truth is

Page 6

rarely pure and never simple. I think that applies to a lot of zoning cases.

THE CHAIRMAN: Just the kind thing you put in a pillow.

MR. ALDERMAN: Whoa. Don't go there.

MR. ZIMMERMAN: Well, I think of that, because in this case, there are levels of depth that are not apparent in the original petition, and there is history involved, and what I may think is pure and simple in one way, is quite different, I'm sure, as to how Mr. Alderman looks at it, what he may think is pure and simple.

And, ultimately, zoning cases really aren't that simple, unfortunately, but the case does come in as a waiver, a request for a waiver of a panhandle driveway regulation.

But we noticed also a density issue, which was not raised in the petition, and which none of the county departments or the Zoning Commissioner paid any attention to.

But we think there is a significant density problem. And both the panhandle waiver issue and the

Page 7

density issue relate directly or indirectly to the fact that there have been changes in the law from the time that this original subdivision plat was approved in 1976.

So we are really dealing with a lot of history in this case, and understanding that history will be important.

The law has changed with reference to panhandle driveway regulations and control. But as far as we can tell, there were no panhandle driveway regulations in 1976.

The first that we see, that we can find, is 1982. We have a reference there. So we are dealing with a subdivision of seventy-five acres, twenty lots, created in 1976.

The lot involved here happens to be one of three on a panhandle driveway. Under the current regulations, per panhandle driveway, which is now Code Section 32-4-409, we'll have a copy, which this petition is filed under, when you have three or more lots on a panhandle driveway, you have got to allocate at least ten feet to each lot.

Page 8

The current situation, each of the three existing lots happens to have twelve feet allocated each. By proposing the subdivision of Mr. Braid's lot, if approved, he would end up with six feet allocable to each of the two new lots, so he can't take away any of the allocation from the others, so the actual waiver request comes in for six feet instead of the required ten.

Now, equally significant, if not more significant, is the changes to the agricultural zoning or to the zoning law applicable to this property.

The property was subdivided in 1976, was part of a subdivision, seventy-five acres, the whole subdivision under an old RDP zone -- rural deferred planning -- which allowed one house, one dwelling per acre at the time the zone was in effect in early 1970.

The County Council through the years has evolved, has established and evolved agricultural zones beginning in 1975, and that zone itself has evolved in terms of its density regulations over the years to the point where, currently, subdivision lot density from 1979 on, from Bill 178, is basically one house per fifty acres with the

Page 9

asterisk, or qualification refinement, that any lot of record between two and one hundred acres can be subdivided into two lots. Of course, this is a seventy-five acre lot.

We believe that applying the current law both as to panhandle and to density, number one, the Board will see that the proposed panhandle waiver does not satisfy the current panhandle law, the standards of Section 32-4-409, the criteria for waivers.

Number two, we believe that we will show that in resubdividing, or amending the subdivision plan, the proposal does not conform to the current zoning law.

And, again, in carrying out to the next level of the original statement about zoning cases not being quite so simple, one has to look a little bit below the surface.

On the surface, this looks like just one additional lot. We are dealing with a subdivision of twenty lots at the moment, and apparently these twenty lots have existed since 1976, as platted.

So far as I can tell, this is the first request to subdivide one of these lots. So if one takes a narrow

kind of isolated approach, one can say well, we are just going from twenty lots to twenty one, what is the big deal? Who cares? Other than the property owner who really wants another lot for whatever purpose, whether his own use or to sell.

But the fact is this case will set a precedent. And if this lot is approved, whether from the point of view of panhandle or density, it opens up every lot in the subdivision to resubdivision.

It also becomes a precedent for all, or for many, many subdivisions in the agricultural area, not only that were approved in the RDP classification, but also that may have been approved in other less restrictive zoning classifications such as watershed protection, R.C. 4, rural residential R.C. 5, where subdivisions approved in the 1980s and 1990s in those zoning classifications may be on properties that have been reclassified to R.C. 2.

And this case, if not the very first case, presenting a similar problem in what I would say is the first wave of cases where property owners with lots approved in the 1970s, 1980s or nineties, prior to the

downzoning to R.C. 2, are coming back and asking for resubdivision.

So this case on the surface seems like the panhandle waiver of one lot, and if you look at the Zoning Commissioner's decision here, it doesn't look like a big deal, but it is a big deal.

And the one case that comes to the Board of Appeals which I think is closest, although obviously every case has its own distinguishing features, is a case called Ranshell Holdings, which I know Chairman Stahl was on that panel.

And in that case, the Board denied a request to resubdivide where the lot had been approved in the window of time between 1975 and 1979 when the R.C. 2 zone had a more liberal, less restrictive density requirement.

It was .21 house per five acres in that window of time, and it was in 1977 that the County Council strengthened the restriction in the agricultural zone.

Now, if a lot of that sounds like, you know, kind of intellectual and academic, the bottom line is what is the direction of development for existing subdivisions

which were fortunate enough to develop prior to the agricultural zoning being implemented?

And then, in spite of the apparent purpose of the agricultural zone to further agriculture and restrict urbanization, you know, can these existing subdivisions be resubdivided?

And this does have an implication, as I said, for the rest of the lots in this subdivision, for other lots around the county.

And my final quote in my introduction, I think, you know, the basic facts are going to be mostly undisputed. I think it's mostly the interpretation of these facts. The famous poem by John Dunn, If not for whom the bells toll, it tolls for me.

So it's not just this lot that we are talking about. It's really the direction of zoning and development in the R.C. 2 zone, the agricultural zone, with reference to areas that already happen to have existing subdivision, keeping in mind that this subdivision of twenty lots would not be allowed if we were starting from scratch.

If it were vacant property under the current zoning law, it would only get two lots. Fortunately for the developer, they came in before, and they got twenty lots.

Now the question is, do we hold it at twenty, or do we open it up to further resubdivision. The X-s and O's of the legal statute, we'll get into it in argument, I think, but that is the common sense or the practical problem that I think is presented here. Thank you.

THE CHAIRMAN: Thank you, Mr. Zimmerman. Mr. Alderman?

MR. ALDERMAN: Mr. Chairman, members of the Board, I call Guy Ward.

MR. ALDERMAN: If I may have Petitioner's No. 1?

GUY WARD,

having been called as a witness, was duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. ALDERMAN:

Q. Mr. Ward, state your name and address, for the record, please.

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A. My name is Guy Ward. I work for the firm of McKee & Associates. The address is 5 Shawan Road, Suite 1, Cockeysville, Maryland 21030. I'm currently a project manager.

Q. Would you please state your work experience and professional experience, for the members of the Board.

A. Yes. I have been working with McKee & Associates for fourteen years in various duties. For about the last ten years as a project manager.

Largely, my duties include preparation of and processing of plans for submittal to Baltimore County for the development process, including minor subdivision plans, development plans for major subdivisions, zoning hearings and so forth.

I also have worked for the Baltimore County Department of Environmental Protection and Resource Management for three years in the early nineties, from ninety to '93 as an environmental sanitarian, and still retain that license today.

I'm a qualified professional for forest conservation, and I have two Bachelor of Science degrees

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from the University of Maryland in egronomy and landscape design.

Q. Mr. Ward, do your responsibilities with McKee & Associates require you to be familiar with the Baltimore County zoning regulation and the Baltimore County development regulations?

A. They do.

Q. Are you generally familiar with the development, zoning and design process in Baltimore County?

A. I am.

Q. Have you ever been involved and qualified as an expert with respect to offering opinions on special hearing requests, number one, and special hearing requests with respect to driveway waivers, number two?

A. Yes, I have.

Q. Are you familiar with the subject property known as the Braid property, located at 20315 Middletown Road?

A. I am.

Q. Was the petition for special hearing filed that led to this appeal hearing today and the plan to accompany that petition prepared by you or under your direction and

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control?

A. They were.

Q. Does that plat reflect accurately the location of one proposed single family dwelling on the subject property?

A. It does.

Q. Is there also one existing dwelling on the subject property?

A. That is correct.

Q. Being familiar with the zoning requirements of Baltimore County, does the plat contain the other applicable material and notations required by the zoning office checklist for a residential special hearing request?

A. To the best of my knowledge, it does, yes, sir.

Q. Mr. Ward, I have retrieved from the Board's file the plan to accompany petition for special hearing, Braid property, 20315 Middletown Road, bearing a date of December 13, 2005, marked below as Petitioner's Exhibit 1. Is that the plan about which you have just testified?

A. Yes.

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THE CHAIRMAN: Are you going to submit that as a CBA number?

MR. ALDERMAN: Yes.

Q. Mr. Ward, are you generally familiar with the area in which the subject property is located?

A. I am.

Q. If you would, Mr. Ward, describe for the Board the subject property?

A. The subject property is known as Lot 18 of the subdivision called Keeney Mill Woods, which is recorded in plat book forty, page 31. The subdivision was recorded, I believe, on October 5 of 1976, as part of a twenty lot subdivision.

The property consist of approximately 8.7 acres, the majority of which is open.

It's improved by a single family dwelling. There's a pool, a poolhouse, and an existing garage on the property also.

The property is served currently by a twelve foot wide in-fee panhandle strip which extends from the body of the main property to -- in a direction westwardly towards

Middletown Road.

The majority of the property is open. It's maintained in lawn or meadow, if you will. However, there are some small areas of woods on the property. The existing house is served by well and a septic system.

Q. Now, you made reference to the recorded plat. When was Lot 18, the subject property, created?

A. That would be created at the date of recordation of the plat which was, I believe, October 5, 1976.

Q. So prior to recordation of the plat, Lot 18 was part of the overall tract?

A. That is correct.

Q. At the time of recordation of the plat, do you know how the subject property was zoned?

A. It was zoned RDP. Rural deferred planning.

Q. Have you reviewed the previous plan approved and the record plat for Keeney Mill Woods?

A. I have.

Q. Assume all other development requirements were met for well and septic, how many lots could have been created on the land area identified as Lot 18, had the

developer chosen?

A. Lot 18 alone, being 8.7 acres, would have permitted eight lots. Basically, it's one lot per acre with the excess remainder being rounded down.

Q. Assuming you can get well and septic?

A. Assuming you can meet all the other applicable requirements, yes.

Q. How is the property zoned today?

A. Currently zoned R.C. 2.

Q. Based on your review and preparation for your attendance and testimony today, was Lot 18 a lot of record at the time the R.C. 2 zoning was attached to this property?

A. It was.

Q. Has this property been held and attached since October 5, 1976?

A. It has.

Q. Now, having made reference to the plat of Keeney Mill Woods, there were other lots created besides this Lot 18, is that correct?

A. That is correct.

Q. Are there any that are less than two acres in size?

A. I believe they are in Section One, and I believe that there are four or five that are less than two acres in size.

Q. In preparation for today's hearing, did you research the county files and obtain a copy of the development plan approved by the Joint Subdivision Planning Committee, the JSPC?

A. I did.

Q. Have you reviewed the approved plan?

A. I have.

Q. I've provided you a copy and each Board member a copy, and I will put one on the board.

Mr. Ward, I'm affixing to the board, the corkboard in front of the Board of Appeals, a drawing entitled Keeney Mill Woods, 6th Election District, Baltimore County, with a date of May 1976, owner and developer, J. David Lawson. Is that the plan you testified you reviewed?

A. That is correct.

Q. At the top right-hand corner, there's a block approximately four inches square, looks like a stamp, and has two signatures on it. Can you tell the Board what that block is?

A. That is the approval block for the Joint Subdivision Planning Committee, the Office of Planning, and the Department of Public Works.

Q. Is Lot 18 shown on this drawing, what I referred to as the JSPC plan?

A. Yes, sir, it is.

Q. And, approximately, does it say how many acres is Lot 18?

A. 8.7.

Q. Is that consistent with the record plat?

A. It is.

Q. Which comes first, the JSPC approval or the record plat?

A. JSPC approval.

Q. So this is approved first. is the record plat is consistent with this approved drawing?

A. It is.

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MR. ALDERMAN: I would offer the JSPC plan for Keeney Mill Woods as Petitioner's Exhibit No. 2.

MR. ZIMMERMAN: I have no objection. Obviously, any legal conclusions on the petitioner's plat, number one, would be subject to review by the Board.

THE CHAIRMAN: Right, and cross examination and comment.

Q. How many lots were approved on that JSPC plan?

A. There are twenty in total.

Q. How many could have been approved based on the then applicable RDP zoning density?

MR. ZIMMERMAN: Objection. This assumes a lot of things, roads, water, sewer, septic system, so on.

THE CHAIRMAN: Why don't you rephrase the question in terms of presuming and assuming.

MR. ZIMMERMAN: There's no dispute what the RDP zone density was.

THE CHAIRMAN: Well, give him the predicate.

Q. Mr. Ward, assuming compliance with all applicable development requirements, including roads, septic, environmental areas, if any, wetlands, if any, and

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assuming compliance with all applicable setbacks, what is the maximum number of lots that might have been created on the property depicted on Petitioner's Exhibit No. 2 under the then applicable RDP zoning?

A. That answer would be based on the gross area of the tract, which has described in the site as a gross area of the tract was 125.4 acres.

Assuming that all of the required setbacks, environmental standards and so forth could be met, a maximum of 125 units could be created. Or 125 lots. Excuse me.

Q. How many lots were created?

A. Twenty.

Q. Those are the twenty shown on the record plat of Keeney Mill Woods?

A. That is correct.

Q. Mr. Ward, would you describe the special hearing relief that is being sought here today by Mr. Braid?

A. Specifically, we are requesting a waiver from Section 32-4-409.(b)(2) of the Baltimore County Code to permit the creation of a panhandle in-fee strip of six

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feet in width in lieu of the required minimum ten feet in width where three or more lots are involved.

Q. Now, prior to the filing of the petition, did Mr. Braid seek relief in any other manner?

A. We did.

Q. What was done?

A. We requested a waiver to the panhandle standards from the Director of the Office of Planning.

Q. Was that waiver approved or denied?

A. The waiver was denied.

Q. Mr. Ward, let me show you a letter dated October 20, 2005 addressed to you by Arnold F. Pat Keller, III, Director of the Office of Planning, regarding the Braid property, Lot 18, Keeney Mill Woods. Have you seen that letter before?

A. I have.

Q. What was your interpretation of that letter?

A. Our request for the waiver from the Director of the Department of Planning for the relief from a ten foot requirement was denied by the Office of Planning because there are other existing lots currently using the

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panhandle, the subject panhandle which is in question, and those lots also have subdivision potential.

A further section of the panhandle regulations indicate only five lots may be served by a panhandle driveway. Given there are three existing lots on the panhandle driveway, each of which have subdivision potential, that would create a maximum potential of six lots. As such, only five lots may be served by a panhandle driveway.

Therefore, the Office of Planning thought it would be in the best public interest to have a public hearing to allow for equal input from the owners of the adjacent lots as well.

Q. Did you attend the zoning hearing before the Zoning Commissioner?

A. I did.

Q. Or deputy Zoning Commissioner. Were any of Mr. Braid's adjoining property owners or neighbors present to voice their opposition to the request?

A. They were not.

Q. Do you see any here today?

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A. I do not.
Q. You said you talked about subdivision potential. Is that your characterization of the adjoining lots, or someone else's?
A. That's, I believe, the exact wording from Director Keller's letter to me. If I my quote, he said, Those lots also have subdivision potential.
MR. ALDERMAN: Thank you. I would offer that as Petitioner's 3.
MR. ZIMMERMAN: I have no objection. It speaks for itself.
THE CHAIRMAN: Right.
Q. Mr. Ward, have you reviewed Mr. Braid's current title deed?
A. I have.
Q. Let me show you a deed dated July 27, 1908, between Niels H. Braid and Margaret Braid Adams, recorded along the Land Records of Baltimore County in liber 13158, at page 427.
A. Yes.
Q. Is that Mr. Braid's current deed?

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A. It is.
Q. Are you aware of any typos that may be present in that deed?
A. I believe, given the signature dates on the second page here, that the date should be 1998, rather than 1908.
Q. But that is the current deed by which Mr. Braid holds title?
A. Yes.
MR. ALDERMAN: I would offer that deed as Petitioner's No. 4.
MR. ZIMMERMAN: I have no objection. It looks like the notary certified it's '98.
MR. ALDERMAN: Yes.
MR. ZIMMERMAN: Do we have a recordation date?
MR. ALDERMAN: The recordation date as depicted -- well, they didn't stamp them, Mr. Zimmerman. It's stamped by the transfer office as 1998.
MR. ZIMMERMAN: I will accept '98.
MR. ALDERMAN: They put the actual cash register stamp.

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MR. ZIMMERMAN: We'll certainly accept the fact that it's 1998
Q. Mr. Ward, in that regard, have you researched the prior deed in title?
A. I did.
Q. While I'm handing you number --
MR. ZIMMERMAN: Are you going to move that as No. 5?
MR. ALDERMAN: Yes.
MR. ZIMMERMAN: I have no objection to the deed.
Q. Let me show you a deed dated March 7, 1978, by and between Manor Land Associates and J. David Lawson, as grantors, and Niels H. Braid and Margaret Braid, as grantees, recorded among the Land Records of Baltimore County in Liber 5862, beginning at page 496, and ask you if that is the predecessor deed in the chain of title?
A. It is.
Q. In fact, Mr. Lawson, one of the grantors, is the named owner and developer on Petitioner's Exhibit 2, the JSPC plat, is that correct?
A. That is correct.

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MR. ALDERMAN: I would offer that as Petitioner's No. 5.
Q. Now, in preparing for the filing of the petition and certainly for the hearing before the Zoning Commissioner, did you have occasion to examine the Land Records regarding the Braid property?
A. I did.
Q. Did you come across any publicly recorded documents that put the purchasers of Keeney Mill Woods, the subject subdivision, on notice that the lots shown thereon could be subdivided in the future?
A. I did.
MR. ZIMMERMAN: Mr. Chairman, on this one, I have no objection to the authenticity of the document, but I do question its relevance. For the record, I will object. I understand the Board will probably look at it
THE CHAIRMAN: It's a deed kept in the normal course. We may or may not give it a lot of importance, but I see no reason not to admit it.
Q. Mr. Ward, I'm going to show you a Declaration, dated January 5, 1977, by J. David Lawson and Manor Land

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Associates, collectively, the declarant or developer, recorded among the Land Records of Baltimore County in Liber 5715, beginning at page 68, and ask you if you are familiar with that document?

A. I am.

Q. What is the relevance of that document, if any, with respect to the future subdivision of the twenty lots shown on the ISPC plan and the recorded plat for Keeney Mill Woods?

MR. ZIMMERMAN: I object. It has no relation to the zoning. It's purely a recorded document.

THE CHAIRMAN: Well, in the beginning, we got some history from you. We'll got some history from Mr. Alderman, and see where it plays out. Go ahead.

A. Specifically, item number nine under the Declaration, which could be found at page 071.

Q. Also page four of the document?

A. Page four of the document, yes, sir. It says, None of the aforesaid lots shall be further subdivided prior to January 1, 1996.

Q. And upon your review of this document, does it

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apply to Keeney Mill Woods?

A. Yes.

Q. This is obviously later than January 1, 1996?

A. That is correct.

MR. ALDERMAN: I would offer the Declaration from 1977 as Petitioner's Exhibit 6.

MR. ZIMMERMAN: Objection.

THE CHAIRMAN: Mr. Zimmerman's objection is noted, and overruled. It will be received.

Q. Mr. Ward, if the requested relief is granted and Mr. Braid creates the proposed lot, how many lots at Keeney Mill Woods would then use the existing right-of-way for ingress, egress and utilities?

A. There will be four.

Q. You stated previously under today's panhandle law, there could be a maximum of five, is that correct?

A. That is correct.

Q. Does the proposed use of the existing right-of-way and the creation of the additional lot on the Braid property require relief from any other county ordinance or regulation?

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A. I don't believe so, no.

Q. Will all construction, if the requested relief is approved, will all construction, design requirements for panhandles, set for in the County Code such as length, mail, trash pad, et cetera, be observed?

A. Yes.

Q. Now, Mr. Ward, in preparing the documents that were submitted with the zoning petition, and in your preparation for your appearance and testimony before the Zoning Commissioner, and certainly here today, and in consideration of any and all factors you have deemed relevant, as well as your experience and knowledge of the zoning regulations, the subject property and the surrounding community, have you been able to form an opinion regarding the special hearing waiver relief sought by the petitioner's respect?

A. I have.

Q. Now, if the waiver relief request is granted, it would be to allow one additional lot to serve or use the existing panhandle, is that correct?

A. That is correct.

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Q. And, as Mr. Zimmerman correctly stated at the beginning, or in his opening, if the regulations had to be followed with four panhandle lots, or two in this case on the Braid property, each would have to be ten foot in width?

A. That is correct.

Q. And the waiver relief being sought is to allow two panhandles each to be six feet in width?

A. That is correct.

Q. Based on all your preparation and experience, in your professional opinion, will the allowing of the additional lot to share that panhandle width of six feet or have a width of six feet be detrimental to the health, safety or general welfare of the community?

A. No.

Q. Mr. Ward, in your professional opinion, do you think that any traffic generated by the proposed lot would tend to create congestion in the roads, streets or alleys, including the panhandle?

A. No.

Q. Mr. Ward, do you foresee, if the relief requested

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is granted, will there be any potential hazard from fire, panic or other damages as a result of one more home using the panhandle lot?
A. No.
Q. This relief request has nothing whatsoever to do with school, public improvements, parks, or anything else?
A No, sir.
Q. Will the existing panhandle drive have to be -- there's a panhandle width, total width, and then there's the paved section of the driveway?
A. Correct.
Q. Will that paved section have to be widened to handle additional traffic?
A. Potentially.
Q. Will that widening interfere with adequate light and air or be inconsistent with the impermeable surface retention requirements of the Baltimore County zoning regulations?
A. No.
Q. In your professional opinion, will the requested relief proposed for the panhandle waiver be inconsistent

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with the property's zoning classification or the spirit and intent of the zoning regulations, as you understand them?
A. No.
Q. Based upon your environmental education and experience, if the requested relief is granted, do you foresee or do you believe there will be any detrimental impact on the environment or natural resources of the site, including forests, streams, wetlands, aquifers or floodplains?
A. No.
MR. ALDERMAN Thank you, Mr. Ward. Nothing further. Witness with you.
THE CHAIRMAN: Let me ask you something. I don't have any problem with the witness giving his opinions, but I don't recall anybody qualifying him as an expert.
MR. ALDERMAN: I asked him about his profession, but I didn't move him, for the record. You're right. I got caught up in the scope of things. I would offer Mr. Ward as an expert in zoning development matters

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specifically in Baltimore County.
THE CHAIRMAN: Mr. Zimmerman?
MR. ZIMMERMAN: I understand the Board tends to liberally accept as experts, professionals who have had some contact with the zoning process, so I won't make this a long discussion, but I just will say that any opinions are subject to -- they must be based on sufficient facts and reason. That's ultimately for the Board to decide.
THE CHAIRMAN: Right. None of that changes. I just wanted to give you an opportunity, if you have any voir dire.
MR. ZIMMERMAN: If there's any, during my cross examination --
THE CHAIRMAN: Okay. Then, officially, for the record, we will accept the witness as an expert in zoning and development matters in Baltimore County and the opinions you just gave.
MR. ZIMMERMAN: Shall I begin?
THE CHAIRMAN: Yes. Cross.
CROSS EXAMINATION
BY MR. ZIMMERMAN:

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Q. Mr. Ward, you made reference to the original subdivision plat for Keeney Mill Woods. I have a copy of what appears to me to be a plat. Mr. Alderman apparently seems to agree this is a recorded plat. Mr. Alderman has some reduced copies which may be easier to -- I don't mind if this is made a petitioner's exhibit. It doesn't matter.
MR. ALDERMAN: It doesn't matter to me.
MR. ZIMMERMAN: It's been mentioned in the direct examination. Why don't we have the actual subdivision plat marked as Petitioner's Exhibit 7?
THE CHAIRMAN: Okay. October 5, 1976. So we are going to make this No. 7.
MR. ZIMMERMAN: It has E.H.K. Jr., 40, Folio 31 marking in the center towards the bottom of the plat.
MR. ALDERMAN: Yes.
Q. Mr. Ward, I noticed McKee's Engineering name is on both the Petitioner's Exhibit 2, the Joint Subdivision Planning Committee approved plan, as well as the record plat. Is that the same firm that you're now with?
A. It is. There are principals who are the same,

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correct.
Q. But you were not there in 1976?
A. No, sir, I was not.
Q. So you have no personal knowledge as to what occurred at that time?
A. I do not.
Q. But let me ask you just a few questions. On Petitioner's Exhibit 2, you referenced the 125 acres gross area under the site?
A. That is correct.
Q. Based on your review of the record, was that 125 acres under one ownership, one parcel, at that time?
A. I cannot -- I just don't know. I have an inkling.
Q. There's no reference on the plan of existing separate or different parcels among the 125 acres, is there?
A. No, sir.
Q. And the reference, there is a reference to the panhandle driveway, note 21, is there not?
A. That is correct.

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Q. It actually states to serve Lots 17, 18, 19, and 20, is that correct?
A. That is correct.
Q. Do you know what happened with reference to whether it actually was developed to serve those four lots?
A. I can tell you Lot 17 accesses Middletown Road via an existing driveway that is directly accessed.
Q. So that --
A. It does not use the panhandle driveway.
Q. So that modification was made on the ground. The twenty lots that are described on the tentative plan were allocated to seventy-five acres, is that correct?
A. I believe that's the combined area of both plats, yes.
Q. And the remaining acreage, approximately fifty acres, is marked to be sold as farm, is that correct?
A. Yes.
Q. The reference to 26.8 acres to be sold separately?
A. There are areas that are marked to be sold as

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farm. However, not knowing the exact boundaries of those, I couldn't testify as to the exact acreage. The area to be sold separately is 26.-something acres.
Q. Do you know what happened to the rest of the 125 acres?
A. I do not. It was not platted. I'm not familiar with the remainder.
Q. Do you know what the current use is of that remaining fifty acres?
A. I know that the 26.86 acres was developed, I believe, after this section, as I think another section of Keeney Mill Woods.
Q. You don't know what year?
A. I can't answer that, no. I don't have that information in front of me.
Q. Do you know whether there are any farms in the neighborhood?
A. There are.
Q. It's generally the Freeland area part of Baltimore County?
A. Yes, sir.

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Q. That's northwest of York Road as you go up Middletown Road?
A. That is correct.
Q. The zoning in the area now is primarily R.C. 2, not just this property, but surrounding property?
A. Primarily, yes, sir. There are some scattered commercial and some scattered R.C. 5, but the majority is R.C. 2.
Q. To your knowledge, are there any restrictions on panhandle driveways in the County Code? 1976, specifically?
A. Not that I am aware of.
Q. If I suggested to you that the first provision for control of panhandle driveways came in, in 1982, would you agree with me, disagree, or not?
A. I wouldn't be certain about that.
Q. But in any event, the current code section, you know is codified in Section 32-4-409?
A. I believe so, yes.
Q. Do you know what the density provisions were in the R.C. 2 zone when originally enacted in 1975?

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A. The original R.C. 2, as my memory serves me -- again, I don't have the regulations in front of me -- I believe were at a density of 0.2 units per acre.
Q. Do you know whether this property was rezoned to R.C. 2 at the end of 1976 by the County Council?
A. Yes.
Q. So this development just came in under the wire, so to speak? It just got approval prior to that downzoning?
A. My researching the records, that's what I am finding.
Q. But just to clarify, if one takes the whole property as 125 acres, then, arguably, the twenty units may still have been permitted under the original R.C. 2 zoning?
MR. ALDERMAN: Objection. Objection. This property was subdivided before the R.C. 2 regulations went into effect.
It was subdivided under the then RDP regulations. Therefore, there's no relevance to that question.
They were lots of record. Each of the lots of

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Keeney Mill Woods was a lot of record prior to the imposition of the R.C. 2 regulations.
MR. ZIMMERMAN: Sometimes, part of the history is as relevant as anything else.
THE CHAIRMAN: His point is well taken. But, again, we are hearing background, background and background, so let's move through the background, let's not delve too much on what used to be, and hone in on what it is.
MR. ZIMMERMAN: What used to be is being used as a justification.
Q. Anyway, if you're correct, that .2 was the allowed density between 1975 and 1979, then, arguably, someone could have said that this could have been developed even in 1977 at a .2 density. I'm not trying to hurt your case. It's a question.
A. I am just trying to make sure I'm understanding your question.
Q. The .2 density, if we do the arithmetic, twenty into 125, if it's twenty lots, or even twenty-one, would have been allowed between 1975 and 1979, correct?

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A. Correct.
Q. But you know that in 1979, the R.C. 2 zoning regulations were modified?
A. That is correct.
Q. We'll get the exact law, but in general, would you agree that under the current R.C. 2 subdivision lot density standards, any lot between two and one hundred acres lots of record can only be subdivided into two lots?
A. Yes.
Q. So if this property had been vacant as of 1979 and not been developed, then the maximum density on seventy-five acres would have been two lots?
A. That is correct.
Q. Now, the twenty lots that are identified on the JSPC plan, have they been developed with houses?
A. I believe the majority of them have, if not all of them.
Q. You have been out there?
A. Yes, I have.
Q. Do you know whether all the lots have been sold?
A. By the original developer? To be honest, I have

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not researched the title of each individual lot, but I would make that assumption.
Q. How long has there been a house on the Braid lot?
A. I will have to check my records, but --
Q. If Mr. Braid knows, and he's here.
NIELS BRAID: 1978.
Q. Mr. Braid says 1978.
A. I take him at his word.
Q. And the swimming pool and the garage, about the same time?
MR. ZIMMERMAN: I don't mind Mr. Braid telling us.
NIELS BRAID: Five or eight years later.
Q. That lot has been developed for a long time?
A. Yes, sir.
Q. And, obviously, it appears that the Braids have lived there for a long time?
A. Yes.
Q. The current proposal would split the eight plus acquire lots into two lots of what size?
A. Roughly, two acres, and a remainder of, I

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believe, 6.7.
Q. 6.7 would have the existing home?
A. Yes. And two acres would be the new proposed home.
Q. Do you know what the plan is to do with the two acre lot?
A. Mr. Braid has expressed to us when he specifically came to us, that he wished to subdivide a lot off for a child in the future.
Q. But, obviously, if the lot is approved, it could be sold to anyone, ultimately?
A. Ultimately.
Q. The lots, the twenty lots, they vary in size, do they not?
A. They do.
Q. And generally speaking, in these old RDP subdivisions, it would be extraordinary to find a subdivision with a pattern of one acre lot, would it not?
A. I can't say that I have had occasion where there have been one acre lots stacked on top of one another in an RDP subdivision.

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Q. That has a lot to do with the septic system, roads, other requirements?
A. That is correct.
Q. Just because on paper, there's a maximum density, it doesn't mean as a practical matter that a subdivision can be developed at the maximum?
A. That is correct.
Q. Now, looking at Petitioner's Exhibit 7, the subdivision plat, there's a reference there under the note, the right-hand to the bottom. Do you see that?
I know Mr. Alderman has a bunch of copies. Do we have a couple of extra ones?
MR. ALDERMAN: The Board members already have one.
Q. Towards the right-hand side of the plat, towards the bottom, there's a series of notes, are there not?
A. That is correct.
Q. The first note says what? Would you read it?
A. No further subdivision of the lots shown hereon will be allowed unless approved by the Baltimore County Planning and Zoning Commission.

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Q. Unquote?
A. Unquote.
Q. Did you research this note?
A. I did.
Q. You did or did not?
A. I did.
Q. What have you found, if anything, in reference to the source of that note? Or anything discussing that note in writing?
A. I'm sorry. I misunderstood your question.
Q. Have you found anything in writing among the records of that time period, if you looked, that might shed any further light on that note?
A. No, I have not, to answer that question.
Q. As between Petitioner's Exhibit 2 -- the so-called JSPC was a committee. Do you know what they did in the 1970s?
A. They reviewed proposed subdivision plans and development plans, if you will.
Q. There was no hearing officer at the time?
A. That is correct.

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Q. Do you know whether they then submitted their plans for approval by the Baltimore County Planning Board?
A. They went to the Planning and Zoning Commissioner. Excuse me. The planning board.
Q. Do you know whether the County Code at that time required approval by the planning board?
A. I do not.
Q. Is there any indication whether the subdivision plan was approved by the planning board?
A. There is a signature approved by the Baltimore County Planning Board on the -- I guess the middle right-hand side of the plat.
Q. Of the plat?
A. Petitioner's Exhibit 7.
Q. Now, between Petitioner's Exhibit 2 and Petitioner's Exhibit 7, the JSPC plan, or plat, which of these, or both, would you call the approved development plan for the Keeney Mill Woods project?
A. Well, the development plan, I would call the JSPC plan.
Q. That plan, as you have said, shows twenty lots?

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A. Correct.
Q. So in connection with the current proposal, we would end up with twenty-one lots, if this is approved, go from twenty to twenty-one?
A. Correct.
Q. That would be a modification, in effect, of the original JSPC plan, correct?
A. Correct.
Q. And those twenty one lots would exist still on the seventy-five acres that originally was allocated to this section of the subdivision, or this section of the area?
A. Correct.
Q. Now, with reference to the panhandle waiver, did you submit anything in writing to the planning director to justify your request, or the property owner's request for a waiver?
Q. I submitted a letter.
Q. Do you have that?
A. I have a copy, yes, sir.
Q. May I see it?

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A. Sure. I have a number of copies here of the original transmittal, the original letter, and a copy of the tax account.
Q. If you could give us a couple of copies. You have given me a McKee & Associates submittal memo of October 4, 2005, along with a fax correspondence from you to Mr. Keller, same date, along with a computer printout of the assessment data relating to the property?
A. Yes.
Q. And another copy is Mr. Keller's response that's already in evidence, is that correct?
A. That is correct.
MR. ZIMMERMAN: Let me submit this as an exhibit. Should we mark this as a petitioner's exhibit? It's part of the petitioner's submittal.
MR. ALDERMAN: That's fine.
THE CHAIRMAN: That will be No. 8.
Q. Mr. Ward, just a few questions. On your letter, the second page of Petitioner's No. 8, you requested a waiver under the current law, Section 32-4-409(k) of the Baltimore County Code?

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A. Correct.
Q. Your letter does not appear to include any detailed justification for the waiver, does it? Or can you correct me on that?
Can you point out any analysis or justification for the waiver?
A. Sure. It says, Currently, the subject property is served only by a twelve foot wide in-fee strip. As such, we are hereby requesting a waiver to permit two six foot wide strips in lieu of the minimum ten, the justification being I can't physically fit two, ten foot strips in a twelve foot strip.
Q. In other words, you can't subdivide without the waiver?
A. Correct.
Q. Anything else in terms of justification?
A. No.
Q. That's in your first paragraph of the letter?
A. Yes.
Q. Turn to the second paragraph of your letter. You refer to the property size being 8.7 acres, currently

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zoned R.C. 2, and then referring back to the October 5, 1976 subdivision --
A. Yes.
Q. -- plat?
A. Yes.
Q. Correct?
A. Correct.
Q. Your letter does not make any reference to the totality of the subdivision, seventy-five acres, the twenty lots, does it?
A. No. I included a copy of the plat along with the submission, so it speaks for itself.
Q. It does not make any specific reference to the fact that this request involves a modification so that what is now a twenty foot lot subdivision would, by resubdivision, become twenty-one lots?
A. No.
Q. Why did you write a letter to the planning director to ask for a waiver?
Why didn't you write to the Director of Public Works or the Director of Permits and Development

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Management, or somebody else?
A. The subsection 32-4-409 for panhandle driveways of the Baltimore County Code, item k, specifically grants these waivers. And it says except as provided in subsection (d) and (e) of this subsection, the Director of Planning may grant a waiver from any provision of this section or title if the director finds, and then it goes on to explain.
Q. So you're trying to follow that section, procedurally?
A. Yes, sir.
Q. You did also make some reference in your direct testimony that the maximum number of lots that could be served by a panhandle would be five?
A. That would be five lots off the panhandle, correct.
Q. That's in the same general section, not in subsection (k), but in another part?
A. That's in another part of the Section 409.
Q. You don't disagree with Mr. Keller on that point?
A. No, sir.

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Q. After Mr. Keller sent you the letter, did you send him any letter back disagreeing or pointing out any error in his letter?
A. I did not.
Q. Now, what was your thought process in understanding or acknowledging that the panhandle lot request or subdivision and panhandle waiver would or should be processed under the current law?
A. If I understand you correctly, you're asking me what was my reasoning behind requesting the waiver, essentially?
Q. Right, under the current law.
A. Generally, unless otherwise directed by someone from Baltimore County, i.e., the director of planning, we'll proceed under the current regulations when it comes to panhandle driveways.
As long as I have been doing subdivision work in Baltimore County, there have been panhandle regulations, and that's what we have used in time and practice that we have done previously.
Q. And from having had some contact with the process, and understanding there is some reference to the Deputy Zoning Commissioner's decision to recent Bill 24-06, is that also consistent with the new bill, the idea one that processes amendments to subdivisions under the current regulations? Are you familiar with that bill?

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A. I am. I just want to make sure I'm talking about the same bill as you are. That's all. I think I even have a copy here someplace.
Q. Not to surprise you, but I think it was referred to in the Deputy Zoning Commissioner's decision?
A. Right.
Q. Actually -- correct me if I am wrong -- it hadn't actually being passed at the time of the Deputy Zoning Commissioner's hearing, but it was pending, and it was passed, in fact, subsequent to that hearing?
A. Yes.
Q. And would that bill also be consistent with the idea that you proceed under the current regulations?
A. Yes.
Q. Do you know what code provisions were established or modified as a result of that bill?

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A. On that point --
Q. 32-4-104?
Q. 32-4-262, as well?
A. Yes.
MR. ALDERMAN: I have copies. if you'd like.
MR. ZIMMERMAN: Actually, we're actually going to submit them, but I will do that in a little while.
THE CHAIRMAN: Off the record.
(Discussion held off the record.)
THE CHAIRMAN: Why don't you take half a second? Anything that makes this clearer is a good thing.
MR. ZIMMERMAN: To kind of speed things up, Mr. Chairman, we do have a copy of Bill 24-06, so we'll make that People's Counsel Exhibit 1.
THE CHAIRMAN: The date is?
MR. ZIMMERMAN: By the County Council, February 6, 2006, taking effect on March 17, 2006.
THE CHAIRMAN: Bill number?
MR. ZIMMERMAN: 24-06. I have some excerpts from the Baltimore County Code which include three code sections, two of them relate to Bill 24-06.

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That's Section 32-4-104, and 32-4-262, and then we also included in here Section 32-4-409 on panhandle driveways, as Mr. Ward has been referring.

MR. ALDERMAN: Mr. Zimmerman, with respect to the County Code, I note there's been a Supplement Eight. Do you know if there's been any changes? I don't. I'm just asking.

MR. ZIMMERMAN: I'm not aware of any changes, but I will certainly be glad to look at Supplement Eight, and try to find it, or be subject to your finding, if there's any changes.

My impression is this is accurate. This would be People's Counsel 2. If we find a change by virtue of Supplement 8, we'll try to do that at a break, if possible, we'll submit a corrected version. We only have one copy of this?

Q. Mr. Ward, while we have been discussing the subject of panhandle driveways, just so everybody knows what they are, there's a definition in the code, is there not?

A. Yes.

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Q. And by reference to the definition, or in common parlance, what is a panhandle lot, or a panhandle driveway?

A. A panhandle lot is any lot that is served by a narrow strip that leads to the main body of the lot.

Typically, those strips are thirty feet wide or less, individually. They can go typically up to a maximum of five wide. If they adhere to the county minimum standards, there would be five, ten feet strips. It would be a fifty foot strip which leads out to a public road from a rear portion of a parcel which needs access to a public road.

Q. So a panhandle lot, generally speaking, does not actually have access directly from its frontage to the public road?

A. It was in-fee access to the public road.

Q. But by of the panhandle driveway?

A. The main body of the lot has access via the in-fee strip which also has access on a public road.

Q. As distinguished from lots which have their own driveways completely, totally owned by the owner, which

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would have access on a main public road, correct? Am I making myself clear?

A. I understand what you are asking me.

Q. Or the lot basically fronts on a public road?

A. The lot basically has adequate frontage, and the body of the lot, if you will, fronts the public road, as opposed to the in-feet strip fronting the public road.

Q. And the reason for the use of the term panhandle is that a panhandle lot itself is kind of a pan, looks like a pan?

A. Correct. The lot looks like the pan, and the handle looks like the strip.

Q. And then each of the lots has some part of the strip allocated to it to guarantee that that property owner does have access to a public road?

A. Yes.

Q. And as far as you know, Section 32-4-409 is the section of the County Code currently dealing with panhandle lots?

A. Yes.

Q. Let me ask you this, since we have submitted

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People's Counsel Exhibit 2.

Code section -- let me show it to you, and we'll doublecheck the supplement -- Mr. Ward, why don't you take a look at the section that we have submitted as an exhibit, take a look at it and see if that conforms with your understanding of it, and what you were operating under when yu made the application in 2005?

A. It does.

MR. ZIMMERMAN: Once again, Mr. Chairman, we will doublecheck to make sure we have it accurate.

Q. Just to clarify one point, in your direct examination, when you suggested -- correct me if I'm wrong -- on paper, back in 1976, those particular eight acres that Mr. Braid ultimately bought, could have been divided into eight lots.

Have you evaluated in detail as a practical matter whether eight lots could have been developed, given public road requirements, septic system, and the rest?

A. No, I haven't, to answer your question. I think the testimony was that was the maximum.

Q. Based on the RDP zone, on paper, the maximum

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density is one lot per acre?
A. Correct.
Q. RDP stands for what?
A. I believe it's rural deferred planning.
MR. ZIMMERMAN: Thank you, Mr. Chairman. That's all our cross examination.
THE CHAIRMAN: Redirect?
MR. ALDERMAN: Yes.

REDIRECT EXAMINATION

BY MR. ALDERMAN:

Q. Mr. ward, referring you to what has been marked as Petitioner's 2, the JSPC plan, in fact, lots two, three, six and seven are all under two acres in size as depicted, is that correct?
A. Yes, sir.
THE CHAIRMAN: Do that again.
Q. Lots two, three, six and seven are all under two acres in size, is that correct?
A. Yes, sir.
Q. And with respect to the proposed subdivision of Lot 18, Mr. Zimmerman asked you if there were any farms in

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the area. Do you recall that question being posed to you?
A. Yes, sir.
Q. If an addition lot is created within the current recorded boundaries of Lot 18 as a lot of record, what surrounds Lot 18? Any farms, or other residential lots?
A. They are all residential lots at this point.
MR. ALDERMAN: Nothing further of Mr. Ward.
THE CHAIRMAN: Off the record for a second.
(Discussion held off the record.)
MR. ZIMMERMAN: Mr. Chairman, we have additional copies of People's Counsel Exhibit 2.
THE CHAIRMAN: Okay.
MR. ZIMMERMAN: With the kind assistance of Ms. Theresa Moore.
(Discussion held off the record.)
THE CHAIRMAN: Do you have any recross, Mr. Zimmerman?
MR. ZIMMERMAN: just a couple.

RECROSS EXAMINATION

BY MR. ZIMMERMAN:

Q. With reference to the four lots being under two

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acres in the approved 1976 plan, that means sixteen of the twenty approved lots being is in excess of two acres, is that correct?
A. Yes, sir.
Q. And most of your work is for property owners who want to process development plans, correct?
A. Yes, sir.
Q. A lot of it is a fair amount in the rural area?
A. Yes.
Q. You would agree that if the Board of Appeals approves this subdivision combined with a panhandle waiver here, then it would be reasonable for the other lot owners in the subdivision, if they were to come to you, to have you process a resubdivision of their lot as well?
MR. ALDERMAN: I'm going to objection because it's outside the redirect.
THE CHAIRMAN: Number one, it's outside the redirect. Number two, you've already mentioned it in your direct. It's pure conjecture.
Q In reference to your observations, if four existing lots are under two acres, do you know of any

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difference that makes with regard to potential resubdivision?
A. Yes.
Q. What would be your understanding?
A. If the subject lots were requested to be developed under current regulations, they would not have adequate size to be subdivided under the R2C. regulations. A minimum of two acres is needed.
Q. So you are applying the current R.C.2 regulations?
A. Correct.
Q. Do you have the zoning regulations with you? That would bc in section -- we'll submit this later -- Section 1B01.3. Excuse me. 1A01.3 of the regulations?
A. I don't have them memorized, but --
Q. I'll show you page 1A-10 of my copy of the zoning regulations.
MR. ALDERMAN: We'll stipulate to that.
Q. 1A01.3.B.1 is what you're referring to?
A. Yes.
MR. ZIMMERMAN: We'll submit a copy. Thank you.

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That's all I have.

MR. ALDERMAN: That's all of Mr. Ward.

THE CHAIRMAN: Thank you, sir.

MR. ALDERMAN: Mr. Chairman, that's the petitioner's case. We certainly reserve the right to call and recall on rebuttal, if necessary.

THE CHAIRMAN: Mr. Zimmerman. Let's go off the record a second

(Discussion held off the record.)

MR. ZIMMERMAN: Before Mr. Dillon gets on the witness stand, I have some documents to submit.

THE CHAIRMAN: Mr. Dillon, why don't you bring them all up here and stand in front of Mr. Mohler.

MR. ALDERMAN: May I approach?

THE CHAIRMAN: Bring everything up here and let's go through them, and Mr. Alderman will look over your shoulder, and we'll get them all in.

MR. ZIMMERMAN: People's Counsel Exhibit 4 --

THE CHAIRMAN: What happened to three?

MR. ZIMMERMAN: I'm sorry -- three -- is an excerpt from the 1988-1989 cumulative supplement of the

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1978 county code which includes, so far as we can tell, the first regulations on panhandle driveways, as codified in Code Section 22-85 at that time, with a reference to Bill No. 56-1982.

THE CHAIRMAN: Okay. Tell you what, Mr. Alderman, as we go through these, if you have any objection, just sing out.

MR. ALDERMAN: I will, unless you hear from me.

THE CHAIRMAN: That's what I mean.

MR. ZIMMERMAN: People's Counsel Exhibit 4 is the current 200 scale comprehensive zoning map.

Outlined in yellow magic marker is the entire subdivision that we're talking about, meaning the entire seventy-five acres, without marking out the individual lots.

This is the 2004 comprehensive zoning map, the current one. And we do have a thousand scale map.

THE CHAIRMAN: Five.

MR. ZIMMERMAN: Which Mr. Dillon obtained. People's Counsel Exhibit 5. I'm looking for a reference. It says area of interest A, with a C inside a circle.

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MR. DILLON: That's the new map numbering today.

THE CHAIRMAN: That's five?

MR. ZIMMERMAN: Yes. We obtained, as we customarily do, from the Baltimore County GIS section, Geographic System, an aerial photo, 2005 date, and the subject property of the eight acres is actually outlined in yellow along with the panhandle that serves the three lots currently, and that would be No. 6.

And Mr. Dillon has done a -- I think we'll call it 6A, if I may suggest, because we have an overlay which I'm showing Mr. Alderman, and we'll call that 6-B.

THE CHAIRMAN: 6A.

MR. ZIMMERMAN: Excuse me. The aerial was six and the overlay is 6A.

THE CHAIRMAN: Well, Mr. Zimmerman, what we've done with overlays before, so we can match them up, in some color, why don't you just bracket the four corners of where the overlay would go, so when you put the overlay on --

MR. ZIMMERMAN: The overlay, I will say, will actually, essentially, go over the property marked in

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yellow.

THE CHAIRMAN: That's where it will fit on top of it?

MR. ZIMMERMAN: Yes. It will fit the mark in yellow, although it does not have the entirety of the panhandle driveway. It just has a part of it.

THE CHAIRMAN: Off the record for a minute.

(Discussion held off the record.)

MR. ALDERMAN: Members of the Board, what we have done, or I have done in front of the Board in the past, we have indicated the four corners of the overlay and then put two red line registration marks so you can line them up.

MR. ZIMMERMAN: That's fine. If it helps the Board to understand.

THE CHAIRMAN: Got to get with the technology, Mr. Zimmerman.

MR. ZIMMERMAN: I always appreciate Mr. Alderman's considerable planning background.

MR. ALDERMAN: That's my considerable planning background, right, Mr. Dillon?

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(Discussion held off the record.)
THE CHAIRMAN: We can go back on the record. What else have you got?
MR. ZIMMERMAN: Two excerpts from the Baltimore County Master Plan 2010.
THE CHAIRMAN: Let's do them A and B.
MR. ZIMMERMAN: 7A, Master Plan 2010, page 233, and showing the area as an agricultural protection area, at least the witness will confirm that.
7B, page 239 of the same Master Plan 2010, which was adopted in or about 2000, and this is a map of the entire Baltimore County. Map 35 is Exhibit 7A entitled Rural Land Management Areas.
7B for People's Counsel is Map 36, entitled, Land Preservation Program, and it shows this property to be generally within the Freeland preservation area.
People's Counsel Exhibit 8 is the excerpt from the planning board report of August 14, 1979, signed by Norman Gerber on behalf of John Seyffert, then director of planning, and predates or led to Bill 178-79.
And so there's no confusion or misleading, we did

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highlight in yellow a paragraph on page two on agricultural and environmental protection, page two being the numbered page two, not the second page of the actual document.
MR. ALDERMAN: I have no objection to what's been marked as People's Counsel 8, assuming that People's Counsel will agree that this has no legal effect.
I mean, it's historical in nature. In fact, it's whatever the Council adopted by legislation, this is merely historic.
MR. ZIMMERMAN: It's part of the legislative history. The weight is for the Board to decide.
Then we do have several of the Baltimore County zoning regulations relating to the R.C. 2 zone. That's going to be No. 9. The amendment to final development plans. That would be People's Counsel Exhibit 9.
MR. ALDERMAN: As highlighted.
MR. ZIMMERMAN: Again, it's highlighting, which is my highlighting, or Mr. Dillon's, I should say, because certain sections are going to be looked at more closely than others, but it does give you Section 1A00.4, which is

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under the general resource conservation zone section, and then the entire R.C. 2 zone sections are here. Or excuse me --
MR. ALDERMAN: Mr. Zimmerman, this cover sheet says these are the 1998 edition, but the regulations attached are not.
MR. ZIMMERMAN: These are the current regulations. I just put a title page because our title pages don't seem, in the looseleaf, to get amended.
MR. ALDERMAN: But these are the current regulations.
MR. ZIMMERMAN: If Mr. Alderman wants to check during the break --
MR. ALDERMAN: No. no. I just want to make sure. When I saw this, I was looking for the 1998 regulations, and these are not they.
MR. ZIMMERMAN: These are the current regulations, and one can see that by reference to several of the bills that are mentioned throughout.
THE CHAIRMAN: If you wish, we'll ignore the cover page and just read the contents.

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MR. ZIMMERMAN: I just needed some reference to the fact these are the Baltimore County zoning regulations.
Unfortunately, in our looseleaf edition, they don't seem to update the title page. I don't know how it is with anyone else's edition.
THE CHAIRMAN: As Mr. Alderman goes to look --
MR. ZIMMERMAN: Maybe he's with the program better than I am. But just to clarify --
MR. ALDERMAN: I've got the 2005 as the title page.
MR. ZIMMERMAN: Well -- off the record.
(Discussion held off the record.)
MR. ZIMMERMAN: These are excerpts from the R.C. 2 zones as well as from provisions relating to amendments of final development plans, again with some yellow highlighting, which is obviously something that Mr. Dillon will focus on.
But, obviously, the County Council didn't put the yellow highlighting on it, so that's Exhibit 9.
THE CHAIRMAN: Exhibit 9. What else?

MR. ZIMMERMAN: I may have some other exhibits later, but that's the majority of our exhibits.

THE CHAIRMAN: All right. Since we are getting close, why don't we do some more housekeeping. Swear the witness in, make him an expert, go through all that.

JOHN DILLON, JR.,

having been called as a witness, was duly sworn, and testified as follows:

DIRECT EXAMINATION

THE CHAIRMAN: Name and address, please.

THE WITNESS: My name is Jack Dillon. My office address is 207 Courtland Avenue, here in Towson.

THE CHAIRMAN: Mr. Zimmerman, do you want to just offer him and we'll see if there's any objection?

MR. ZIMMERMAN: I would like to give a little bit of background.

THE CHAIRMAN: I think, for the record, the Board is familiar enough with Mr. Dillon in the many, many, many, many times he's testified.

MR. ZIMMERMAN: I would note that the appellate courts have quoted him with approval in agricultural

zoning cases.

THE CHAIRMAN: For the record, I will state on behalf of the Board, we have no difficulty, subject to any voir dire in this particular situation that Mr. Alderman may have, that Mr. Dillon is well qualified to give opinions and speak as an expert.

MR. ZIMMERMAN: I do have Mr. Dillon's CV.

THE CHAIRMAN: Okay. Having said that, Mr. Alderman, do you have any particular voir dire?

MR. ALDERMAN: Mr. Chairman, I have been fortunate enough on a number of occasions when Mr. Dillon was on, I guess what they call the other side, and I was able to use him as a witness to qualify him myself, so, no, I have no voir dire.

THE CHAIRMAN: No. 10 of People's Counsel is Mr. Dillon's CV, and Mr. Dillon will be accepted as an expert in -- you phrase it, Mr. Zimmerman?

MR. ZIMMERMAN: An expert in planning, as a planner with expertise and experience in dealing with and implementing the zoning regulations and expressing --

THE CHAIRMAN: How about planning and zoning in

Baltimore County?

MR. ZIMMERMAN: With a particular concentration, but not excluding other aspects of planning and zoning, but with particular concentration and understanding of the resource conservation zones including the agricultural zones.

THE CHAIRMAN: Including the R.C. zone?

MR. ZIMMERMAN: Including the R.C. zones.

THE CHAIRMAN: Hearing no objection --

MR. ALDERMAN: No objection.

THE CHAIRMAN: -- he's so noted. And why don't we --

MR. ZIMMERMAN: Let me ask, to save time, what we often do, we have an ADC highway map showing the approximate area along Middletown Road where we find this subdivision, and that will be People's Counsel No. 11.

THE CHAIRMAN: Eleven.

MR. ALDERMAN: I promise not to make my copy-write objection.

MR. ZIMMERMAN: There will be several other exhibits, but this gives a good basis.

THE CHAIRMAN: Okay. That's all you have at this point, Mr. Zimmerman?

MR. ZIMMERMAN: Yes.

THE CHAIRMAN: Why don't we take a break now? You can leave everything the way it is. We are adjourned. Don't go real far because I'm told it's only going to take about a half hour or less.

(A luncheon recess was taken.)

* * * * *

AFTERNOON SESSION

* * * * *

THE CHAIRMAN: We are back on the record. Mr. Dillon has been sworn, he has been qualified an expert. Mr. Zimmerman, you're on.

MR. ZIMMERMAN: We do have one more exhibit to introduce now.

THE CHAIRMAN: Mr. Zimmerman.

MR. ZIMMERMAN: First of all, before lunch, there was a question of the County Code provision, and we do have the Supplement 8 in our office, and we can produce it, but the Supplement 8 indicates what provisions have been amended since Supplement 7, and from our looking at it, there were no amendments to the code section.

MR. ALDERMAN: I accept that.

MR. ZIMMERMAN: At this time, I think we're up to thirteen?

THE CHAIRMAN: Twelve.

MR. ZIMMERMAN: Twelve? This is another map which is entitled Baltimore County Land Preservation Accomplishments through 2006, which is prepared by the

Baltimore County Department of Environment Geographic Systems Office, and I have three colored copies. Okay.

MR. ZIMMERMAN: Thank you.

J A C K D I L L O N, JR.,

called as a witness having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ZIMMERMAN:

Q. Mr. Dillon, give us some sense of the scope of your review in this case, what you looked at, what information, and what you did.

A. Okay. First of all, I looked at the zoning Commissioner's order. I did review the zoning map, just verifying for my own information the zones for that area, which I am totally familiar with.

I looked at the aerials. I reviewed the Master Plan. And I reviewed various sections of the Baltimore County Code and the zoning regulations.

Q. ABout approximately when did you make any visit to the general area?

A. I'm involved with another case just up the road

from this, so I have been out there two or three times for that case within the last three months or so.

Although I did not physically go on there property -- I usually try to do that -- but I did not do that in this case.

Q. Where exactly then did you go?

A. I was on Middletown Road, Keeney Mill Road, and I was looking at the property there. It's in close proximity as well.

Q. Did you get up the panhandle driveway at all?

A. I did not go in the driveway.

Q. With reference to the Master Plan and for the agricultural preservation area delineation, what observations have you made?

A. First of all, I verified the Master Plan. This is in an agricultural preservation area which is part of that exhibit that was submitted. I think it was Exhibit 7A, 7B.

7B was showing this is in the Freeland preservation area within the Master Plan.

Q. What is the significance of an area of the county

being described as an agricultural preservation area in the Master Plan?

A. Well, it's part of the overall strategy in terms of agricultural support, support of agriculture being a major industry in this county, that the agricultural zones were created.

And the fact that the Master Plan consistently has been reinforced to supplement to -- I should say reinforced that industry through its commitment to land preservation on behalf of agriculture, and to help promote agriculture in Baltimore County.

Q. At one time during your career with Baltimore County, you were the director of the county's agricultural land preservation program, were you not?

A. Yes. I was the director, yes.

Q. In reference to the additional map that's been identified as Exhibit 13 for People's Counsel, based on the GIS, what significance --

THE CHAIRMAN: We don't have a thirteen.

MR. ZIMMERMAN: I'm sorry. Number 12. I apologize. I keep getting my numbers transposed.

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Q. No. 12 That we just introduced, the colored map, what significance does that have for this case, in your opinion?

A. I don't have a larger copy of that, but it is --

Q. In your opinion.

A. I requested through the Department of Environmental Protection and Resource Management, to get an idea of what the activity is in terms of land preservation in this general area, and this is a county wide map showing that there are various areas under preservation in the county.

This shows the different types of preservation programs, and they are color coded at the bottom of the page.

Generally speaking, we have approximately 49,000 acres, a little over 50,000 right now, in one of the preservation programs in the county.

The goal for the county is to achieve at least 80,000 acres in preservation.

Q. Is the Keeney Mill subdivision in one of those areas?

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A. It's in the agricultural area, and there are a number of agricultural district preservation sites that land that has been preserved under the various programs relatively close to this area. There's probably over a thousand acres in the general vicinity.

Q. By virtue of district or easement?

A. Some are easements. Some are agricultural districts, both county or state.

I don't know if there is any Maryland Environmental Trust easements there. There's no Rural Legacies in that area.

Q. But there are agricultural easements?

A. Yes.

Q. There are other projects by which property owners are compensated to an extent in return for an agreement not to develop their property?

A. Yes. It's called a purchase of development rights.

Q. Do you know, with reference to the current R.C. 2 agricultural zone, approximately how many acres in Baltimore County are in that zone?

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A. My understanding is that, now, there's probably about 140,000 acres. When the R.C. 2 was first initiated in 1976, there was approximately 120,000 acres.

Through rezoning over the years, there's been another 10,000 acres added.

Q. Obviously, these are all in rural parts of the county, outside the so-called urban rural demarcation line?

A. Yes.

Q. To the best of your knowledge, are there more acres in the R.C. 2 zone than in any other zone in Baltimore County?

A. That is the largest zone, yes.

Q. Briefly, what did you observe with reference to the neighborhood and the land use on the subject property and the surrounding area as you visited the area?

A. Well, the particular site, as we discussed earlier, was subdivided when it was RDP, rural deferred planning, and that allowed a density that was much more significant than it is today.

That development has been, as far as I can tell,

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pretty much built out to its present number of lots that it was allocated.

Q. Approximately twenty?

A. Yes. In the general area, there are -- the area is generally rolling. Middletown Road is a fairly straight road, it has some bends to it here and there, but it's a pretty straight road.

Q. Two-lane road?

A. Two-lane road. On both sides, there is a significant amount of agricultural land in production, up and down the road.

There are some other scattered residential developments both above and below this, but predominant land use in the area is agricultural.

Q. Now, while the petitioner concentrated on the request for a panhandle lot width waiver, before we get to that in more detail, what concerns, if any, did you identify with respect to satisfaction or consistency with the current zoning and development regulations, especially in reference to density?

A. When I first read the case and saw the case, I

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was a little bit surprised, because I don't believe there is any density allowed, any additional density allowed, because of the rezoning that took place in 1976.

When the zoning maps went into effect, that did away with the RDP zoning, the RSC zoning and incorporated the R.C zones.

Q. That also incorporated the amendments to the R.C. 2 zone in 1979?

A. I was going to get to that.

Q. Excuse me. I'll keep quiet.

A. As it turned out, there was a two-step process. The RDP zone, as we discussed, again, very briefly, did allow one house per acre, as did the RSC and as did the D.R. 1 zone in the urban part of the county.

The effort was to develop resource conservation zones that would clearly fit specific objectives within the county Master Plan, and that was the protection of agricultural, protection of reservoirs, set aside some areas for rural residential development, and also created then a deferred planning area for future higher density growth, such as Owings Mills, White Marsh, and other

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areas.

Q. Very briefly, what were the designations of the four original R.C. zones, that relates to what?

A. R.C. 2 is the agricultural zone. R.C. 3 is deferred planning areas for future development.

R.C. 4 is the watershed protection zone, and R.C.5 is rural residential zones. They have since been added to with other zones. It goes up to R.C. 8 now.

Q. For the record, when those R.C. zones came into existence, did the actual RDP and its relatively so-called RSC zone disappear? Were they, in other words, replaced?

A. Yes. They were taken off the records.

Q. What further review then or analysis did you do with reference to the R.C. zones and the proposal for the resubdivision?

A. My reaction was, aside from the request for the two, six foot panhandle lots, the question I asked is, why was there another panhandle lot if you don't have a density to put it to?

And in reviewing that, and through the various sections of the code, I believe it's fairly clear that the

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regulations do not allow you to resubdivide a previously approved subdivision in this fashion.

Q. Now, we have already introduced as an exhibit, it would be helpful, actually, People's Counsel 9, I think I've got this number right, various excerpts from the Baltimore County zoning regulations. Also, we have some blow-ups of the pertinent part.

Would you please tell the Board which regulations you primarily focused on or found relevant in your thought process?

A. First, for clarification purposes, I did go to the Section 1A00.4, plans and plats. That referred back, or that clarifies that when the term D.R is used, it also included the R.C. zones. So what that section did, it adjusted the D.R. reference, and it was amended to include R.C. zones.

Q. Did you prepare a kind of a blow-up of that section?

A. Yes, I did.

MR. ZIMMERMAN: To be of assistance to the Board, another way of highlighting certain sections, we prepared

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a blow-up. Shall we call this --

THE CHAIRMAN: Thirteen.

MR. ZIMMERMAN: Should we call this 13A? Because we have a number of other blow-ups like that.

THE CHAIRMAN: Yes. So this is People's Counsel Exhibit 13A. 13A is A100.4.

MR. ZIMMERMAN: And we'll get to it in a few moments, but the blow-up section makes reference to Section 1B01.3.

Q. Generally speaking, what is that section talking about?

A. That section of the R.C. zones deals with final subdivision plats, and under the section two is the effect of subdivisions.

And there's a last sentence in that reference is the part that I'm focusing on.

Q. And just to clarify, 1B01.3 is actually in the D.R. zone section, correct?

A. Yes. Did I say R.C? I'm sorry.

Q. That's incorporated by Section 1A00.4, for the purpose of the R.C. zones?

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A. Yes.
Q. And you have a blow-up of part of Section 1B01.3, which we'll submit as People's Counsel Exhibit 13B.
Why did you focus on this section in relation to the case at hand?
A. Because of the language of that section. I think that's the section that, in my opinion, that restricts this from being resubdivided, this property from being resubdivided.
Q. Well, it may seem obvious to you, but explain what you're talking about?
A. If I read that last sentence of that section there, it reads, It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. zones for the entire tract.
Q. Did you also consider -- so how does that translate for this case?
A. That means, in my interpretation of this, it's

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similar to the Ranshell property that we dealt with sometime ago, where if you were to resubdivide, you need to go back to the entire tract size and apply today's standards.
So if you had seventy-five acres in the subdivision, you have two lots, not twenty lots.
Q. So you're suggesting that seventy-five acres is the relevant tract?
A. That was the development plan I looked at, yes.
Q. In that connection, did you also look at the Webster's Dictionary definition of tract?
A. Yes, I did.
Q. Do you have that with you? From your planning and zoning point of view, what is the relevant aspect of the definition of tract which fits best the current case?
A. It talks about usually as a defined or a definable area of land, such as an eighty acre parcel or tract.
Q. I have a copy that I'm going to show you, a copy of what I have excerpted from the Webster's Dictionary definition, two sheets, one a blow-up, the second the

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entire definition with yellow marking highlighted under item two under the third definition of tract. Is that what you're looking at?
A. Yes. I found that very hard to ride, that small print.
MR. ZIMMERMAN: I would submit for the Board of Appeals, People's Counsel No. 14 at this point, the Webster's Dictionary definition.
Q. Mr. Dillon, for the record, would you read the area, highlighted area?
A. Fourteen or thirteen?
Q. Now we're on fourteen. The blow-up of the zoning regulations, we'll keep within the 13A and B. This is separate item, so we'll call this fourteen.
Just for the record, the highlighted portion reads how,
A. A region or stretch, as of land, that is usually indefinitely described or without precise boundaries. A few large -- doesn't apply here -- a precisely defined or definable area of land, an eighty acre --
Q. Tract?

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A. -- tract, an urban census, which doesn't apply. So in this case, we are dealing with a seventy-five acre tract which was the original tract size.
Q. And as it says, a tract can be areas either large or small?
A. Yes.
Q. So if we take the current density regulations for the R.C. 2 zones, did you do a blow-up of Section 1A01.3.B?
A. Yes, I did.
Q. This it?
A. Yes.
MR. ZIMMERMAN: This would be People's Counsel 13C, another blow-up. This is of Section 1A01.3.B.
Q. So what does this tell you about the permitted maximum density in relation to the current case and what you just talked about in Section 1B01.3?
A. This is for subdivision of lot density. No lot or record lying within an R.C. 2 zone having a gross area of less than two acres may be subdivided.
No such lot having a gross area between two and

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one hundred acres may be subdivided into more than two lots total, and such a lot having a gross area of more than one hundred acres may be subdivided only at the rate of one lot for each fifty acres of gross area.

My opinion is this was a previously approved subdivision for twenty lots in a different zone that created the various lots in the subdivision.

That subdivision has exhausted its development potential. The R.C. 2, if you want to apply this particular part of it, you have to apply it to the entire tract.

Q. You used the term "tract" because of what regulation? Not to be repetitive.

A. I lost it.

Q. If we go back to 13B.

A. Yes. It's 1B01.3.B.2. I'm looking right at it. Sorry I missed it.

Q. What part of the tract is referenced in Section 1B01.3.2? A fraction of the tract? A half of the tract? The whole tract? I mean, what tract?

A. It talks about the entire tract.

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Q. What do you say, or what is your reply to what's been suggested by Mr. Ward, either explicitly or implicitly, that since the Braid lot of record has eight acres, that that is between two and one hundred acres and, therefore, if one reads the subdivision lot density section, then that ought to be allowed to be subdivided?

A. I don't believe that was the intent of what Section 1B01.3 says.

Q. So that's really a major point or issue of controversy?

A. Yes. Because if you can't get to the point where they are allowed to have a lot, then we don't even get to deal with the issue of whether a small panhandle lot was allowed.

Q. Now, you also did a blow-up of several sections that were established or amended by Bill 24-06, did you not?

A. Yes.

Q. And the first one is Section 32-4-104, correct?

A. That is correct.

MR. ZIMMERMAN: I will give this --

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Q. We are on the same page, literally?

A. Yes.

THE CHAIRMAN: We'll mark this "D" then?

MR. ZIMMERMAN: Yes. 13D.

Q. Before we get to the discussion, I highlighted or made more prominent this Section 32-4-462, did you not?

A. Yes.

MR. ZIMMERMAN: Mr. Chairman, may I suggest People's Counsel 13E.

THE CHAIRMAN: 13E.

Q. Mr. Dillon, in this connection, you also did look at Bill 24-06, did you not, which is actually People's Counsel Exhibit No. 1?

A. Yes.

Q. Now, with reference to these latest exhibits, 13D and E, tell the Board how, if at all, these sections are consistent or inconsistent or how they relate to what you just have been talking about?

A. Both sections go to reinforce the position that we're dealing with the current regulations, and that the regulations are to be applied to the entire tract, not

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individual lots within that previous subdivision.

And that's what I believe the results are of these two sections of the code.

Q. Just for the record, on Exhibit 13D, 32-4-104, you highlighted which section?

A. Small letter (b) states, Present zoning classification. Proposed development shall be in compliance with the present zoning classification on the property to be developed.

Q. And as to Section 32-4-262, with respect to material amendments, what language did you highlight?

A. The last part of that sections states the amendment shall be reviewed for compliance with all current law and regulations, including the development regulations and the zoning regulations.

Q. You have been here throughout the hearing today correct?

A. Yes.

Q. You've seen the so-called JSPC plan approved for Keeney Mill Woods subdivision in 1976?

A. Yes, although I had not seen that before today.

Q. But before today, you had seen the record plat --
A. Yes.
Q. -- introduced as Petitioner's Exhibit 2?
A. Yes.
Q. Considering what was approved in 1976, the twenty lot subdivision, what would be your observation as to whether the addition or the resubdivision to provide another lot here is a material amendment?
A. I don't believe it's allowed under the code.
Q. Is it a material or a significant amendment?
A. I believe it would be a significant amendment, yes.
Q. What implication, apart from this case alone, what concerns, if any, do you have as to whether the approval here would be or could be a precedent for resubdivision of other existing subdivision lots that were approved in the RDP zone or other zones that predated downzoning to R.C. 2?
MR. ALDERMAN: Objection as to relevance.
THE CHAIRMAN: Go ahead.
MR. ZIMMERMAN: The relevance is --

MR. ALDERMAN: It's been overruled, Mr. Zimmerman.
MR. ZIMMERMAN: Oh, I'm sorry.
Q. Go ahead, Mr. Dillon.
A. I think that Mr. Ward's commentary on the issue that he believed that these other lots except the ones less than two acres would be able to be resubdivided, that would be the concern.
If this were interpreted that you are allowed to take individual lots and resubdivide them again, the code, as written in the R.C. 2, restricting the development, in effect, is on the multiplier, not a restriction, and I think that consistently, since 1976, the regulations and the Master Plan have tried to reinforce the need to protect the agricultural zone from residential development intrusion.
Q. Correct me if I'm wrong, you may have mentioned Mr. Wood --
A Mr. Ward.
Q. I wasn't sure how I heard it. Okay. And what do you say, if anything, in reply to Mr. Ward's observation

that this Keeney Mill Woods subdivision is already developed, no longer directly in farm use, and that the addition of a lot inside the development has no impact -- if I am interpreting his thoughts correctly -- or has no or little impact on agriculture? What do you say to that?
A. The experience over the years has been that residential development and agricultural don't make a great mix.
There are too many things that occur between the two that cause problems for long-term continuation of agricultural.
While one lot would only directly add possible even ten additional cars a day on the road, you multiply that times the number of subdivisions, that they all came in, that would be a significant factor in terms of traffic alone.
There is the continued problem of nuisances. While Middletown Road serves as an arterial, because it carries a lot of traffic, it's a main road out coming down from Pennsylvania to 83, it's also used by farm vehicles.

Additional traffic just runs conflict to that.
In general, it is just not a good practice as the zone has implied to encourage residential development in these areas.
Q. In connection with that, what consideration, if any, did you give to the legislative findings under Section 1A01.1 of the Baltimore County zoning regulations?
A. Well, the findings of the R.C. 2 reinforce the purposes of what the zone is for. That is -- I guess it would be better to read them.
Q. Which ones do you think would be the most important for the Board to consider? 1A01.1(a) through (g). You have those in front of you, do you not?
A. I think they are all important.
Q. Put in your own words. I don't want to cramp your answer.
A. Well, (b) The agricultural industry is an integral part of the Baltimore County economy and that a continued conversion of agricultural land will continue to undermine this basic industry.
That scattered development -- this is (c) --

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scattered development is occurring in a sporadic fashion in areas of Baltimore County containing productive agricultural land.

That -- (d) -- continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs, but is incompatible with the agricultural use of the surrounding areas.

(e) Again, this is written in 1976 -- that heretofore, Baltimore County has been unable to effectively stem the time of new residential subdivisions in productive agricultural areas of Baltimore County.

(f) The Chesapeake Bay -- (g) just refers there are other areas for future residential development, other urban types.

Under purposes, under B --

Q. That are not located in areas of productive agricultural land, correct?

A. Yes. There are other potential development areas in the county.

Q. Now, turn to 1A01.1.B, the purposes.

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A. That R.C. 2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses. Period.

Q. So, in general, briefly, what is your observation as to whether all these findings that you've described are consistent with your view that the proposed resubdivision is contrary to the effect of the zoning regulations?

A. Because, as I said earlier, the regulations were established for a specific purposes.

The R.C. 2 was to promote and preserve agricultural. And these purposes and the findings are the basis for that R.C. 2 agriculture zone.

Q. Okay. While each case is reviewed on its own facts and law, you did make mention of the Ranshell Holdings case, did you not?

A. Yes.

MR. ZIMMERMAN: Mr. Chairman, I do have a copy of that decision. Is my memory is correct, Mr. Alderman

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participated in that case. That would be People's Counsel Exhibit --

Q. I'm showing you, Mr. Dillon, my copy of the decision, Case No. 03-225-SPH, dated February 26, 2004.

A. Yes.

MR. ZIMMERMAN: This would be People's Counsel's Exhibit 15.

I have a copy for each panel member, as noted before Chairman Stahl.

THE CHAIRMAN: Do you want to make this your exhibit?

MR. ZIMMERMAN: I made it People's Counsel. For the record, as I mentioned earlier, Mr. Stahl was the panel chairman. The panel did include Mr. Edward Crizer and Mr. Lawrence Wescott.

THE CHAIRMAN: A sterling panel.

Q. Mr. Dillon, understanding that every case has its own particular facts, and the Board generally looks at each case anew, on its merits, if I may assume that, what comparison, if any, or what points of comparison, if any, would you make with reference to the current case?

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A. Well, this subdivision occurred, I believe it was R.C. 2, and under the original R.C. 2, it allowed five lots, if I remember correctly.

Q. The existing subdivision in the Ranshell case?

A. Yes. The R.C. 2 was then amended in 1979 to limit it. And this Ranshell property case, there was one vacant lot that had not developed, and the request was to add a second, to split that into two lots under the provisions cited under the R.C. 2, two lots per parcel, and that was decided based on the regulations that we already put in today, that you don't get a second bite of the apple, basically, that if you want to do that, you have to go back to the full tract size, and you're only entitled to two lots under today's standards.

Q. For the record, the existing subdivision in the Ranshell case had been approved in 1977?

A. Yes.

Q. And actually had gone through the Joint Subdivision planning review process as well?

A. Yes.

Q. And it was within that window of time when the

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R.C. zone allowed a .2. density prior to 1979?
A. Yes.
Q. Was there a reference to 1B01 point --
A. Four.
Q. B.2?
A. B.2.
Q. And perhaps 1B01 point -- to speed this up -- on page nine of the decision, and, actually, you testified in that case, did you not?
A. Yes, I did.
THE CHAIRMAN: And the engineer, interestingly enough, was McKee & Associates.
Q. Do you know whether the Ranshell property was in the same general neighborhood as the current case?
A. It's not very far away. It's on Keeney Mill Road.
Q. While we are on this case, suppose it had said, well, the Keeney Mill Woods-East subdivision in the Ranshell case had built five lots, set out, laid out five lots, the maximum then allowed in the R.C. 2, under the R.C. 2, between 1975 and 1979 --

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A. Yes.
Q. -- so even under the original zoning, no lots were available, whereas in the current case, if one looks at the original subdivision, twenty lots were laid out, whereas in theory, as Mr. Ward said, more lots could have been laid out, at least on paper, up to seventy-five, subject to meeting other requirements, does that change your opinion?
A. No. That was done under a different zone, different time. And the developer elected to develop twenty lots.
He could have tried to go for more lots at the time. He went for twenty --
Q. You mean in the current case?
A. The current case, yes. And then the zoning changed to a different zone. The new regulations came into play since that time.
Q. What if it said, Well, in the Ranshell Holdings case, there were some adjacent property owners, some neighbors that came in and objected for various reasons, whereas we don't have any neighbors attending the present

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hearing and speaking out?
A. Yes. I think the point we tried to make in that case, and I think still applies here, even though no one came in to object, is that when people buy into a subdivision, they buy into that subdivision. That they understand --
MR. ALDERMAN: Objection. Objection. How can Mr. Dillon possibly know what people understand?
THE CHAIRMAN: It is sort of --
Q. Putting it in an objective way, what is one of the main purposes of subdivision law in terms of establishing baseline zoning and subdivision law and establishing baseline for the future?
A. Make it simpler, it gives notice to everyone who purchases in that subdivision as to what is expected.
Q. So, therefore, it should or should not depend when one is reviewing the legality of a proposed resubdivision whether or not a neighboring property owner happens to show up?
A. My opinion, it doesn't make any difference.
Q. And your opinion in the Ranshell case would have

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been the same, regardless of whether the neighbors identified as Mr. Fuchs and Mrs. Fuchs, and several others, John Boyle, Brian Gebhart, Joseph Matricciani, even if they had not shown up, your opinion would have been the same?
A. That's correct.
Q. And do you know whether or not the Ranshell case actually predated Bill 24-06?
A. Yes, it did.
Q. As you said, Bill 24-06 is, in your view, consistent with your thought process in the present case?
A. Yes.
MR. ZIMMERMAN: Rather than delve into Ranshell any further at this time, I'm sure Chairman Stahl is quite familiar with it and the rest of the Board.
THE CHAIRMAN: I'm sure everything else you have to tell us, you will tell us in writing.
Q. Mr. Dillon, unless you have anything else you want to highlight on the density issue, if not, I'd like to turn to the panhandle issue.
A. Okay.

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Q. What did you review in connection with the panhandle issue?

A. Well, I looked at Section 32-4-409, the requirements for panhandles, and also the request for waiver and what the standards are for panhandles.

I think it is covered pretty clearly in the petitioner's case that the smallest panhandle that's allowed under the regulations is ten feet. If there's more than three or four lots involved -- in this particular case, there were three lots established with each of twelve foot panhandles, and one of those, they now want to split in half and have two, six foot access panhandles.

Q. In the course of your review, did you take note of whether or not there were any panhandle controls in the County Code in 1976 when this panhandle driveway was originally set up for what eventually turned out to be three lots?

A. Well, frankly, I didn't research that, but I did become aware of that later on. Obviously, there were probably panhandles granted at that time, which, in my

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opinion, may have brought about the need for some controls of panhandles.

Q. Whether or not the existing panhandle would have been approved under the current regulations is a question that is out there, but you do or do not need to answer at this time?

MR. ALDERMAN: Objection. The existing panhandle was created before the current regulations.

THE CHAIRMAN: I'm not quite sure where that question was going.

Q. The question is there some question as to whether the existing panhandle would have been approved if the current statutes were in effect?

A. That's a question subject to review.

Q. In any event, considering both -- did you give some consideration to the purpose of panhandle driveways or the general provisions in Section 32-4-409(a)?

A. Sorry?

Q. Did you give some consideration -- if we look at 32-4-409, which you mentioned --

A. Yes.

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Q. -- the general provisions are contained in subsection (a)?

A. That is correct.

Q. Did you look at them in the course of your review?

A. Yes.

Q. Did you also look, in the course of your review looking at the entire section, the waiver provisions particularly, as well?

A. Yes, I did.

Q. In general, what are your observations as to whether the proposed panhandle waiver is consistent with the general purposes of the panhandle driveway law and/or the specific provisions with respect to waivers?

A. Well, the way I read the section -- if I can read it -- it's under (k) -- Except as provided in subsections (d) and (e) of this section, the Director of Planning may grant a waiver from any provision in this section or title if the Directors finds, and then there's three conditions.

But before I get into the conditions, it seems to me that the Director is given the sole responsibility to

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grant or deny the waiver.

I don't know that it can be transferred to someone else. And then there's conditions that he must find if he were inclined to grant the waiver, that were applicable.

Q. Let's assume for a moment that anybody can grant the waiver, not just the director. What is your observation on the merits of the request under subsection (k) and/or also considerations of the general provisions under subsection (a).

A. Well, the first is that the size, scope and nature of the subdivision of land into three or fewer lots for residential single family dwellings does not justify strict compliance with this section.

Here again, I think we are putting an additional lot in that may be inconvenient to other neighbors in terms of the driveway access.

Two. That a waiver would be within the scope, purpose, and intent of this section. And I'm not sure it is. It's six feet, not ten feet. Ten feet is the smallest that they allow.

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And, three, compliance with all other county ordinances and regulations.

And I think we tried to point out we believe this is not -- it is a conflict with other regulations in the county, the fact that you can even get -- it's questionable whether you can get another lot from which this panhandle is served.

Q. You mean density?

A. The density issue.

Q. If you turn to Section 32-4-409(a), how does that relate, if at all, to what you just said?

A. Well, 32-4-409(a) is the general requirements. The county may only allow a panhandle lot, one -- small Roman i -- To achieve better use of irregularly shaped parcels -- ii -- to avoid development in environmentally sensitive areas -- iii -- where the lot will not be detrimental to adjacent properties, and iv, where the lot will not conflict with efforts to provide for public safety and general welfare.

I don't think we're dealing necessarily with an irregularly shaped lot.

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I don't know that there's an environmental problem here that would require this.

And that where the lot would be detrimental to adjacent properties, while no one has come in to oppose it, there again, it will add additional activity on that road and they may eventually have a problem with that.

Q. That was one of the concerns of the planning director, apparently?

A. That was one of the concerns in his comments. And where the lot will not conflict with efforts to provide for public safety and general welfare, that's probably the least of my concerns in this one.

There's an existing entrance onto Middletown Road that's safe. It will add some traffic to it, but not significant. I'm not as concerned about that as number four.

Q. Of course, the density issue is considered to be a public safety and general welfare issue?

A. Particularly on the other parcels.

Q. From your review of the records -- have you seen Mr. Ward's letter that was just introduced today?

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A. I didn't see his letter to Mr. Keller, but I did see the letter from Mr. Keller.

Q. Let me show you Mr. Ward's letter for a moment.

MR. ZIMMERMAN: Petitioner's Exhibit No. 8.

Q. I know reference was made to it during Mr. Ward's testimony, but I will give you a minute or two, just to look at it.

A. Okay.

Q. From your review of the entire record before today, and now having looked at Mr. Ward's letter, Petitioner's Exhibit 8, and what he states in there, can you find or see any affirmative information or facts that would satisfy the provisions that you just described in 32-4-409(a) of the County Code?

A. No. Nor (k).

Q. And in reference to consideration of the panhandle law and its application to the current proposal for resubdivision of Mr. Braid's lot, what implications, if any, may it have for approval of other panhandle lots and driveways with reference to other lots in the Keeney Mill subdivision or elsewhere around the rural areas of

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Baltimore County?

MR. ALDERMAN: Objection. Speculative. Mr. Zimmerman has already said each case is considered on its own merits.

THE CHAIRMAN: True.

MR. ZIMMERMAN: But one can also consider the potential.

THE CHAIRMAN: It's more argument.

MR. ZIMMERMAN: I think the witness would --

THE CHAIRMAN: It's argument, Mr. Zimmerman.

MR. ALDERMAN: And it's speculative.

THE CHAIRMAN: Just move on. It's not that important an issue, move on.

Q. Well, let me ask you this. You have looked at the development plans for the Keeney Mill subdivision and/or the record plat, correct?

A. Yes.

Q. If other property owners in the Keeney Mill subdivision decided to resubdivide based on the location of the existing lots, would you believe it more probable than not that any such resubdivision would require

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panhandle driveways?
A. In looking at the subdivision that was approved, forgetting the ones in this quadrant of the development, it would appear all the, potentially, if permitted to resubdivide, it would have to be in the rear of the houses that front on Keeney Mill Road. Therefore, they would require a panhandle.
Q. You're not at this point expressing an opinion as to whether or not they would require width or length waivers?
A. No. I haven't done any analysis of that.
Q. Now, Mr. Dillon, you did, in the course of your review, obtain an aerial photo and took the trouble to do an overlay.
MR. ZIMMERMAN: That would be People's Counsel --
MR. WITT: Six --
MR. ZIMMERMAN: Thank you, Mr. Witt.
Q. I have placed on the board -- it's actually a 100 scale GIS aerial, prepared by the GIS.
THE CHAIRMAN: Just for the record, if you use our CBA exhibit number.

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Q. That does show the -- it's an aerial view of a portion of the Keeney Mill Woods subdivision, indicating Middletown Road running in an southeasterly, northwesterly direction, with Keeney Mill Road intersecting it, and running in a northeasterly direction. I guess that would be in this case.
Q. Keeney Mill is actually printed on the aerial, is it not?
A. Yes, it is. And you can see on the aerial, the driveways go in and service the three parcels that are part of the three lots that are part of the subdivision.
Q. Eighteen, nineteen and twenty?
A. Yes. And what I have done, just for clarification to help the Board, I've marked in orange, but it's faded significantly, I prepared an overlay that for the purpose of context, basically, so you can see in good color what the area looks like, the access road, and the second panhandle that would go into the proposed two acre lot that is in back of lot seventeen and northwest of the existing house on Lot No. 18.
This is the outline in orange to show the

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perimeter of that property.
Q. Mr. Braid's name is actually marked in the center of his eight acre lot?
A. Yes.
Q. Does the aerial show the home, the swimming pool and the garage that was referred to in Mr. Ward's testimony?
A. Yes. It clearly shows the existing conditions on the property.
Q. If this resubdivision were granted, then Mr. Braid would be left with his home, the swimming pool and garage on approximately six acres, or the six-plus acres?
A. 6.7.
Q. And then there would be approximately a two acre lot carved out, 2.08 acres. Is that the proposal as you understand it?
A. Yes.
Q. Now, for the record, as far as this map shows, in the immediate area around Lot 18, how would you describe the layout of residential lots as well as farms?
A. Well, there's several open fields, lots, that are

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on eighteen, nineteen and twenty. This is nineteen to the south of the property. There's a large open field. I did not go back to see if it's currently in any kind of production.
Behind it, there's a much larger lot size, Lot 20. It looks like it has quite a few trees, that appear to a number of ornamental trees around the property. I can't tell if it's in any kind of active agriculture.
Q. Can you tell if that area involved in an assembly of lots owned by Mr. David Dopson? How does that square with the original subdivision plan.
A. The Dopson property is 20. The Loginski is 17 -- or 19. I'm sorry. Lot 19. I don't think there's any similar ownerships.
Q. I guess my question was whether, very briefly, can you tell whether Mr. Dopson may own more than one of the original subdivision lots based on the original subdivision plat or not?
A. I don't see that.
Q. Is it hard to tell?
A. I don't see that.

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Q. And then beyond those lots of Keeney Mill subdivision --

A. There's active agriculture fields to the east. There's an active agriculture field along Middletown Road to the west.

And to the north, a significant amounts of agricultural land continues to the north.

Q. In terms of the Keeney Mill subdivision, are any, from your observations, what are the sizes of the residential lots surrounding the -- immediately surrounding the Braid property, approximately?

And if you want to look back at the subdivision plat, you could be more precise.

Q. They're indicated on the plat that's been submitted. Lot 19 immediately to the south of this property is nine acres. Lot 20 in the back looks to be about sixteen acres.

Q. That would be the Dopson?

A. The Dopson property.

Q. Is that shown as sixteen acres on the original plat?

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A. It shows 16.9 acres. Lot 17 in the front, it's a 3.6 acre property.

The corner property is another three acre plus property. And then as we do down along Keeney Mill Road, 2.99 is Lot No. 15. Fourteen is 4.25 acres. Fifteen here is five plus acres.

And that's about as far as we can see on this plat, but they are sizable tracts.

Q. And given the proposal to create a 2.0 acre tract carved out of the current Braid property, how does that compare in size and scale to the area immediately surrounding the Keeney Mill Woods lots?

A. Well, it does meet, in terms of its minimum size in R.C. 2, the two acres meet that, but it's smaller than the adjacent lots by at least an acre.

Q. So if size is considered relevant to the spirit and intent of the original subdivision, the size of lots, is the proposal consistent or inconsistent from that point of view?

A. From that point of view, it's a much smaller lot.

Q. Now, does this aerial photo, taken in 2005,

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reasonably accurately reflect, as far as you know, the current condition?

A. Yes.

Q. Separately, you did obtain the 200 scale and thousand scale zoning maps which have been introduced in evidence?

A. Yes.

Q. Is there anything on the zoning maps you would like to point out to the Board?

A. No. I don't think we need to pull the maps out, but if you look at the maps, you will see that there's a significant part of R.C. 2 around this area. There is some scattered R.C. 5, but mostly R.C. 2.

Q. R.C. 5 is the rural residential zones?

A. Yes.

Q. For the record, in Ranshell, and in a number of other cases, to the best of your knowledge, are requests for resubdivision typically reviewed as amendments to final development plans under Section 1B01.3, or in the case of the R.C. zones, by reference to 1A00.4?

A. They should be.

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Q. That procedure, at least in Ranshell, would be the normal procedure to review amendments for final development plan?

A. Yes.

MR. ZIMMERMAN: Thank you. That's all I have, Mr. Chairman.

THE CHAIRMAN: Cross?

MR. ALDERMAN: Thank you, sir.

CROSS EXAMINATION.

BY MR. ALDERMAN:

Q. Mr. Dillon, there's a very large area of B.L. just southeast of this property, isn't there?

A. Yes. It's owned by the Meadowcroft family.

Q. And a lot of areas zoned B.L. C.R., correct?

A. Along Middletown, there's some nodes of commercial, yes.

Q. Why the C.R. district?

A. Commercial rural.

Q. Why isn't the big B.L. --

A. I don't know.

COURT REPORTER: Excuse me. You're talking over

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top of each other.
Q. The GIS aerial, People's Counsel 6, doesn't show the smaller lots less than two considers in size to the northeast?
A. No. The last lots as you go down Keeney Mill Road are smaller. But I think the question was in relation to this lot.
Q. Now, you indicated that the panhandle shown in yellow on People's Counsel 6 serves three lots, is that correct?
A. I believe it serves seventeen, eighteen and nineteen.
Q. All three of which are recorded lots?
A. Eighteen, nineteen and twenty. I'm sorry.
Q. They are all recorded lots?
A. Yes.
Q. With respect to the panhandle, is there anything that can't be waived in the panhandle regulations?
A. Can't be waived?
Q. Yes.
A. I suppose if the director found a reason to

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waive, he could waive anything in terms of the panhandle.
Q. Have you familiarized yourself with the zoning regulations?
A. Yes.
Q. Are you familiar with Section k of the zoning regulations? Strike that. Not the zoning regulations. The Baltimore County Code 32-4-409, Section k?
A. Yes.
MR. ZIMMERMAN: Can I request the witness have it in front of him.
Q. Do you have it?
A. I have it.
Q. And it says except as provided in subsection (d) and (e) of this section, the Planning Director may grant a waiver, doesn't it?
A. Yes.
Q. So not everything is waivable, is that correct?
A. Actually, yes, you're right.
Q. Section (a) is listed as being non-waivable?
A. No.
Q. So in terms of section (a), it can be waived?

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A. Theoretically, yes.
Q. Same with section (b), same with all the subsections, except (d) and (e)?
A. (d) and (e) are exceptions, right.
Q. Now, you indicated that your review of the documents and evidence reflects the Planning Director's concerns that adjoining owners may be concerned about others using their panhandle drive, correct?
A. I'm finding that memo now.
A. Yes. He says there are currently other existing lots currently -- there are other existing lots currently being served by the panhandle right-of-way in question.
Q. And he goes on to say those lots also have subdivision potential, correct?
A. Yes. I think he's mistaken.
Q. But you indicated that it was your interpretation that he had concerns for those other lot owners?
A. That's the way I interpreted it, yes.
Q. You reviewed the Zoning Commissioner's order?
A. I did, yes.
Q. None of those other lot owners showed up, did

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they?
A. No.
Q. None are here today?
A. That is correct.
Q. In fact, Mr. Braid followed the requirements of the Director of Planning to file a special hearing request under Section 500.7, is that correct?
MR. ZIMMERMAN: Objection. That's not what the letter says.
THE CHAIRMAN: The letter speaks for itself.
MR. ZIMMERMAN: It speaks for itself. It's not a requirement.
THE CHAIRMAN: The letter speaks for itself. Period.
Q. Going back to the requirements of 32-4-409, that's the ten foot standard you talked about, that can be waived also?
A. Yes, it can.
Q. Which is why we are here?
A. That's why you're here for.
Q. Let's turn to the density, Mr. Dillon.

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A. Okay.
Q. I will try to do this as concisely as I can. You're familiar with the R.C. zone as adopted in 1975, correct?
A. Yes.
Q. You're familiar with the R.C. zones, at least one of them amended after November 25, 1979, correct?
A. Yes.
Q. Do each of those R.C. zones as of November 26, 1979, permit single family dwellings as a use permitted as of right?
A. Yes.
Q. Let's talk about the Ranshell case. And as I said earlier, I think there's some of the same actors here in the room that were involved in that case.
And you described what you believe the holding of the Ranshell case to be, correct?
A. I think so, yes.
Q. Do you have a copy of that with you?
A. Yes, I do.
Q. I want you to turn to the last paragraph on page

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nine.
A. I had it. What did I do with it?
MR. ZIMMERMAN: People's Counsel 15.
THE CHAIRMAN: Yes, No. 15.
Q. In the last paragraph, the second sentence, it says, At the time the original Keeney Mill Woods-East subdivision was created, the zoning regulations allowed a density of five lots, and that's consistent with your testimony?
A. I believe it is, yes.
Q. Had it been created today, only two lots would be created?
A. Yes.
Q. Now, turn the page. Look at the top paragraph of the Board's findings.
It says, Considering the entire tract of Keeney Mill Woods-East, there can be no further density allowed on the Keeney Mill Woods-East tract, since all five density units that were allowed at the time the final subdivision was approved have been utilized. Do you agree?

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A. Yes.
Q. On the subject property, the JSPC plan, when it was approved, what was the then available density for lots to be created under the RDP?
A. One house per acre.
Q. So I'm asking you, how many lots could have been created, had the developer chosen to do so, assuming it met all the development regulations?
MR. ZIMMERMAN: Objection. Speculative.
THE CHAIRMAN: Well, he set the criteria for a hypothetical.
A. If it was seventy-five acres, seventy-five lots.
Q. So there was density available that was not utilized, correct, at that time, to create a lot?
A. Under that zone, yes.
Q. And in fact, unlike the Ranshell case, Ranshell consumed all of the density when it was originally platted, correct?
A. They did.
Q. So there's a major difference between Ranshell and this case?

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There was available density here that was never utilized?
A. I think I distinguished that, this is also a different zone. And the RDP is a different zone than the R.C. 2 zone is, and I don't believe density was carried over.
Q. So density got wiped out?
A. I think the density that was left over was wiped out.
Q Well, Mr. Dillon, you've made that argument before, haven't you?
A. I may have.
Q. Do you remember the Cher-Chris case?
A. I sure do.
Q. I think you made that exact same argument in that case?
MR. ZIMMERMAN: Objection. Argumentative.
THE CHAIRMAN: Let's try to move along.
q. I'm going to provide you a copy --
A. Thank you.
Q. -- of the Cher-Chris case, and let's just cut to

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the quick, given the late hour. Go to page seven.
A. Yes.
MR. ZIMMERMAN: Is this going to be an exhibit?
MR. ALDERMAN: It certainly is.
MR. ZIMMERMAN: What number --
MR. ALDERMAN: Just a second, Mr. Zimmerman.
THE CHAIRMAN: It's going to be No. 9. You've gotten along all day today. Just relax.
Q. Let's go to page seven, in the opinion portion.
A. Yes.
Q. Second paragraph. It says that the zoning regulations provide for the amendment of final development plans. Do you agree with that?
A. I see that, yes.
Q. And that in the Cher-Chris case, that property had density for nineteen, but they only platted five.
The Board goes on to say -- I'm going to quote -- We find no provision or evidence that all density permitted but not used on an approved FDP is lost forever.
We do not find Mr. Dillon's testimony to the contrary to be persuasive. End quote.

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So, in fact, this Board has already ruled that with there's excess density not utilized, it doesn't get wiped out, even whereas in Cher-Chris, there has been a subsequent zoning change to a more restrictive zone?
MR. ZIMMERMAN: Objection. It's argumentative.
Q. Is that correct?
MR. ZIMMERMAN: Objection.
THE CHAIRMAN: You asked him whether or not he agreed with Ranshell. He's asking whether or not this one changes his opinion.
MR. ZIMMERMAN: It's out of context.
THE CHAIRMAN: No, it's not.
A. I see what the Board did. I don't necessarily agree with the Board.
Q. Well, sometimes I find myself in the same position.
A. Isn't it funny?
THE CHAIRMAN: And considering I was part of both opinions.
MR. ALDERMAN: At this point in time, I would offer the Cher-Chris, Case 03-264-SPH, an opinion decided

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on March 30, 2004, by Mr. Stahl as Chairman, Mr. Crizer as co-Board member, and then Board member Margaret Worrall, as petitioner's next exhibit.
THE CHAIRMAN: That's Petitioner's No. 9
Q. Now, Mr. Dillon, if on November 26, 1979, I had a forty-five acre piece of land zoned R.C. 2, and we owned it for a hundred years, how many lots could I theoretically put on that, from the zoning regulations?
A 1979?
Q. November 26, 1979. Forty-five acres.
A. I'm trying to decide -- is that after the R.C. amendments --
Q. November 25 was the effective date of the change.
A. If it was past the effective date, it would be two lots.
Q. And that's not special to just one, forty-five acre tract, that would be applicable to any forty-five acre tract zoned R.C. 2?
A. Yes.
Q. If I came in for development, the tract boundary would be the entire forty-five acres, correct?

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A. I believe so.
Q. Now, if I also owned a directly adjoining forty-five acre tract, and I came in to develop both lots at once, both forty-five acre lots, and I showed them both on one subdivision plan, or concept plan, you pick the drawing, how many lots could I do?
A. There are two separate parcels?
Q. Yes, sir.
A. I believe you'd have four.
Q. And take it one step further. If I had three, forty-five acre separate parcels that existed November 25, 1979, this is three weeks later, and I came in to develop all three of those at one time, showing them all on one drawing, I can get six lots, correct?
MR. ZIMMERMAN: I object to the relevance.
MR. ALDERMAN: I'm going to tie it up.
THE CHAIRMAN: Okay.
Q. I get six lots, correct?
A. Yes.
Q. Now, under the Board's holding in Cher-Chris, if I only platted four when I initially subdivided, under

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that holding, there would still be two floating out there available for use, correct?

MR. ZIMMERMAN Objection. That's argumentative. That's not what Ranshell holds.

THE CHAIRMAN: That's fine. He's taking him through a hypothetical. And on redirect, you can go back and show why that's not a valid thing.

A. But each one of those was subdivided -- each one is standing on its own in terms of its own parcel.

Q. Yes. We can't concentrate all six onto one of those forty-five acre parcels, we agree with that, correct?

A. Yes.

Q. Let's do it this way. If on the subdivision plan, I showed two on the first parcel, one on the second parcel, and one on the third parcel, all one big plan, the tract boundary would be what?

A. Well, I still think the tract boundary is still the individual parcels for each one. You're working your density on the parcel that has -- each parcel is forty-five acres. That was the theory, right? That even

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though they are adjacent to each other and they're the same ownership, each one is standing on its own in terms of what it's allowed to subsubdivide. So the tract boundary for each one is forty-five acres.

Q. The tract boundary as shown on my hypothetical subdivision plan is what, Mr. Dillon?

It's that big heavy line around the perimeter of all three lots. Isn't that the tract boundary?

A. I might disagree with that, but I'm not too sure.

Q. Do you have any authority that would --

A. I think it would be -- each one of the parcels has to stand on its own in terms of its density, and you're talking about three, forty-five acre pieces.

If you develop two on the first, one on the second, one on the third, each of those other two are entitled to one additional lot.

Q. They don't lose them because they are all shown on a major subdivision plan, are they?

MR. ZIMMERMAN: Objection. Are we talking about parcels that were subdivided or not subdivided? I'm confused.

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Q. The tract boundary surrounds three, forty-five acre parcels, each one having the right for two lots, correct?

A. There, again, you may have a boundary -- all right. I'm not so sure I totally agree, but, okay, say it's a tract boundary. They are individual parcels is what I'm looking at.

Q. That's correct, and within there, each parcel can only have two lots on it?

A. And each one of those has its own internal tract boundary of the forty-five acres.

Q. It's a lot of record?

A. It's a parcel. It's a lot of record, yes.

Q. And because it was a lot of record on November 26, 1979, it can be subdivided into two lots, correct?

A. If it was not subdivided before, it's a totally independent tract -- parcel.

Q. So it can be subdivided, correct?

A. I think that's distinguishable from here, that it was part of the subdivision.

Q. How are projects vested today?

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A. Through development.

Q. And is this project vested?

A. Oh, yes.

Q. Did Bill 24-06 do anything to the vesting statute?

A. I don't believe it did. 24-06. Well, maybe it did, because it says present zoning classification for proposed development shall be in compliance with the present zoning classification on the property to be developed.

Q. Now, Bill 24-06 requires that any development on Lot 18 of Keeney Mill Road be developed in accordance with the present zoning, is that correct?

A. The proposed development shall in compliance with the present zoning classification of the property to be developed.

Q. And Lot 18 was a lot of record when the R.C. 2 was attached, correct?

A. It is a lot of record.

Q. And it was a lot of record when the R.C. 2 zone attached to it, correct?

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A. Yes.
Q. And there remains unused density from the original development of Keeney Mill Woods of about fifty-five lots, corrected?
MR. ZIMMERMAN: Objection. He already answered.
A. That's where we differ. I don't believe there's density carried over.
Q. So you differ with the Board?
MR. ZIMMERMAN I object. That's absolutely argument.
MR. ALDERMAN: I just want to make sure.
THE CHAIRMAN: All right. Right, it argument. So how relevant it is and how probative it is, let's just move on.
Q. Mr. Dillon, you indicated your review of the lot in Keeney Mill Woods as shown on People's Counsel 6, you indicated that your review was that most of these lots had been constructed on, correct?
A. I believe they have. As I said earlier, I did not physically go onto the properties, but I'm looking at the aerial, and it appears to be that they all have a

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dwelling on each one.
Q. If the lot listed as Francis T. McElwee (phonetic), do you see that lot? Which is slightly northwest of Lot 18?
A. Yes.
Q. If that lot had not been developed before the R.C. 2 zoning attached, would that owner have lost the right to put a single family dwelling there?
A. He would have had the right to build one single family dwelling.
Q. Where would he get the density, in your scenario?
A. Because the subdivision that was approved allowed twenty lots. And that's what was recorded. That allowed him to have one house on that property.
Q. Well, the subdivision of the overall tract into twenty lots, correct?
A. They were specifically laid out, yes.
Q. Into twenty lots?
A. Twenty lots.
Q. Didn't just allow twenty lots? Only twenty lots were proposed?

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A. Twenty lots were proposed, twenty lots were recorded, yes.
Q. Do you know of any other lots within Keeney Mill Woods that have been subdivided?
A. Not that I'm aware of.
Q. Let me ask you to assume a hypothetical that one was.
If one were developed or subdivided, gone through all the approval processes in Baltimore County, but the Francis T. McElwee property had never been built on, and Mr. McElwee comes in now to get a building permit, is there any density for him to build his house?
A. Under the recorded subdivision, it allows one lot and one house.
Q. Wait a minute. You just said there were only twenty lots permitted?
A. I thought you said it was a vacant lot.
Q. It is a vacant lot, but you said there were only twenty density units available.
And I asked you to assume one of the lots had been subdivided after going through the normal process.

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MR. ZIMMERMAN: Objection.
THE CHAIRMAN: It's a hypothetical.
Q. After that subdivision --
A. Then you're confusing me.
Q. Let me back up. Is it your position that there only twenty lots available in Keeney Mill Woods?
A. That's true.
Q. I'm asking you to assume that one of those twenty has been subdivided since November 25, 1979 --
MR. ZIMMERMAN: I will object, that's an illegal assumption.
THE CHAIRMAN: Fine. You can point that out. Again, Mr. Zimmerman, objections are not when you disagree about something. It's when something is wrong technically.
I don't think a hypothetical is wrong, technically. He's laying out the hypothetical. If you want to attack the basis of the hypothetical on redirect, go ahead.
A. I think I see where you're going.
Q. Mr. McElwee never built a house, just owns that

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four acres, more ore less, and he cuts the grass, kept it real nice.

Let's say the Francis Ragan lot was split into two, and now, on November 28, 2006, Mr. McElwee comes in to get a building per permit for this lot. can it be issued?

A. Well, first of all, I'd have to say I believe the lot on seventeen would have been an illegal lot. He should have been -- the lot that was assigned to --

Q. The McElwee lot?

A. The McElwee lot -- he would have been entitled to build on his lot. If there was a mistake and there was a subdivision allowed, in my opinion, I guess we'd have a hearing to see what the result would be. I don't think it should have been allowed.

Q. But the house is up, people are living there. Now Mr. McElwee comes to get his building permit. Can he build?

A. Probably not, because he'd be at twenty lots.

Q. Now, you referred to a material amendment. Are you aware of the ten percent rule in terms of ten percent

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of the total dwelling shown employed by reviewing county agencies?

A. Generally, yes.

Q. What is that rule of thumb?

A. I don't know how to explain that.

Q. Let me try it and see if you like my definition or my proposal, that if you have a recorded residential subdivision and there is a potential resubdivision proposed, if the number of additional lots do not exceed ten percent of the original total, it is not a material amendment?

MR. ZIMMERMAN: Objection.

MR. ALDERMAN: I'm asking if that's the way he understands it.

Q. Is that the ten percent rule, as you understand, Mr. Dillon?

A. I have only seen that applied that way in the D.R., but not the RC. But I know what you're going to come back with.

Q. What's good for the goose is good for the gander, Mr. Dillon.

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A. It still would be an increase in density above what I believe would be allowed.

Q. But under the ten percent rule, as commonly employed in this county, it would be a non-material amendment, right?

MR. ZIMMERMAN: Objection. There's technically no legal basis for a ten percent rule.

MR. ALDERMAN: A longstanding interpretation and application.

THE CHAIRMAN: Excuse me, Mr. Alderman. You've got an expert witness in zoning. If his answer was no such thing exist to what you are talking about, Mr. Alderman, no such thing exists.

MR. ZIMMERMAN: My objection is whether or not it may exist in some county agency, if it exists, there is absolutely no legal basis for it.

THE CHAIRMAN: Well, that may be, but that's not an objection. That's something he's proposing to an expert on zoning, who's capable of giving a response.

Q. Mr. Dillon, you were around the planning office and the zoning office for a lot of years?

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A. Too many, I think.

Q. Do you know what constitutes a material amendment to a residential subdivision plan versus a non-material amendment to a residential subdivision plan?

A. Generally, it's an amendment that has a significant impact on that development. It could be a number or houses or the design of the lots.

Q. So the number or the significance has generally been applied to ten percent. Correct?

A. I am trying to think back where that section is, if there is one.

Q. I'm not making this up, though, am I?

A. No. I've heard the ten percent and I've understood the ten percent, but I can't pinpoint it.

Q. Is that rule is applicable, twenty lots, you would need three lots or more to be material under that assumption, correct?

A. Under that assumption, you need three lots or more.

Q. Mr. Dillon, going back to the JSPC plan, Petitioner's 2, the developer could have proposed more

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than twenty lots?
A. He elected not to.
Q. You indicated that one purpose of the final development plan or development plan is to give notice to what might happen, is that correct?
A. Gives a level of expectation to the purchasers of those lots.
Q. And is it there a provision embodied in the Baltimore County zoning regulations for amendment to final development plans?
A. There are.
Q. And, finally, notice provisions, or a notice was given more or less with respect to the covenants that were recorded on the subject property, isn't that correct?
A. Yes.
Q. One final question. Mr. Dillon, are you aware of any provision or any legislation by the Baltimore County Council adjusting the area regulations for R.C. 2 zones within the past five years?
A. I don't recall any.
Q. Are you aware of any actions by the Baltimore

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County Council by way of legislation to eliminate a grandfathering provisions relating to permissible subdivision lot density in the R.C. 2 zone?
A. Say again.
Q. Are you aware of any legislation or legislative acts by the Baltimore County Council to eliminate a grandfathering provision relating to the permissible subdivision lot density in an R.C. 2 zone?
MR. ZIMMERMAN: Objection. Vague.
THE CHAIRMAN: Go ahead.
A. I don't recall any.
Q. Okay.
A. It may be there.
Q. Let me show you County Council Bill 125-05.
THE CHAIRMAN: We are going to call this your exhibit number?
MR. ALDERMAN: Ten, I believe.
Q. Are you familiar with that piece of legislation, Mr. Dillon?
A. This is where they deleted the portion that -- this amendment deleted the last sentence, a portion of the

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last sentence, I believe from the regulation B. 1., With the exception that any zoning petition site plan, subdivision plan or record plat filed with or approved by the county between November 27, 1979 and October 1, 1990. shall not be so affected and be considered valid, provided as to any zoning petition pending on appeal, that it be upheld on appeal. End paren. That was what was deleted.
Q. That was deleted, and that eliminated double density where you had a parcel on either side of the road, correct?
A. Yes.
MR. ZIMMERMAN: Objection.
THE CHAIRMAN: It speaks for itself.
Q. With reference to those dates. but the County Council left in place that a lot of record in R.C. 2 zone between two and a hundred acres can still be subdivided, right?
MR. ZIMMERMAN: Objection. It is argument.
THE CHAIRMAN: No. He's asking him to comment on what this section of the code --
MR. ALDERMAN: Mr. Zimmerman --

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THE CHAIRMAN: Mr. Alderman, just keep going.
MR. ALDERMAN: I'm sorry, but he put in all kinds of legislation --
THE CHAIRMAN: Keep going.
MR. ALDERMAN: I'm sorry. You're right.
A. It does say no lot of record.
Q. It says no lot of record may be subdivided?
A. That's right, but it says --
Q. No such lot of record between two and a hundred acres may be subdivided into more than two lots?
A. That is correct.
Q. So a lot over record between two and one hundred acres can be subdivided once if it only has one house, under this provision?
A. I still think that with that subdivision that was approved, that's what it relates to, the original subdivision.
THE CHAIRMAN: Okay. You're on.
REDIRECT EXAMINATION
BY MR. ZIMMERMAN:
Q. Mr. Dillon, first of all, trying to keep these

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questions in relation to some of Mr. Alderman's questions, under 32-4-409, specifically subsection (k), from your review of the state statute, is there anyone other than the planning director who is identified as having the function to grant waivers to panhandle lots?

A. I think I pointed that out.

Q. Separately, with reference to the Cher-Chris class, Petitioner's Exhibit 9, do you recall whether the parcel, the vacant parcel which Cher-Chris sought to develop in that case was already identified as a parcel in the subdivision plat approved, existing back in 1981 one?

A. It was identified, I believe, as Tract A.

Q. In the present case, is there any separate tract or parcel, lot, or anything else that matches the two acres that Mr. Braid seeks to carve out here that was in the 1977 plan?

A. Not that I know of.

Q. Would that be a difference, one difference among the differences in the Cher-Chris case?

A. I think that was significant.

Q. With reference to the hypothetical Mr. Alderman

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gave you, with reference to his hypothetical about two or three, forty-five acre parcels of land and what their development could be, once the R.C. 2, 1079 zoning regulations came into effect, was your understanding that he was talking about parcels that were not yet subdivided, had never been subdivided when you answered his question?

A. I think I asked for clarification. We were talking about forty-five acre tracts that were never subdivided.

Q. And is that another difference between the present case, where we are dealing with parcels that were already subdivided?

A. Yes.

Q. And similarly, with reference to the hypothetical, with reference to both the Francis Ragan -- R-a--g-a-n -- property, in reference to Mr. Alderman's question about if that had been subdivided, in your view, that would not be allowed once the R.C. 2 zoning came in effect, correct?

A. That's what I believe.

Q. If it were done on this lot or any of the other

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lots, your view would be the same?

A. The same.

Q. And your observation as to, separately, if Mr. McElwee's lot, which does have a house on it, if that had been vacant now, and never been built on, nevertheless, it could be built on because it was identified as a lot in the approved plat prior to the R.C. 2 zoning coming into effect?

A. I believe that's what my testimony was.

Q. Separately, do you know of anything in writing with reference to a written regulation, statute, that refers to a, quote, unquote, ten percent rule?

Is there any documentation of anything like that, that you are aware of?

A. I think, as I indicated, I am familiar with the term, I'm familiar with what the theory was to it, but I don't think I've ever seen a regulation.

Q. Is there anything --

A. Because I don't think you can increase density just by a ten percent rule.

Q. Is there anything in the county code that talks

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about a ten percent rule, that you know of?

A. I've failed to find it, if it's there.

Q. With reference to a material amendment, do you know whether or not the Court of Special Appeals has addressed that issue in reference to the Baltimore County Code in the Meadows of Green Spring Homeowners Association case holding, even a reduction in the size of a commercial building would be a material amendment? Are you familiar with that case?

A. Yes.

MR. ZIMMERMAN: Are we up to People's Counsel Exhibit 16?

THE CHAIRMAN: Yes. Sixteen.

MR. ZIMMERMAN: And I would submit, and I won't spend time on this right now, Exhibit 16, Court of Special Appeals, decision, October 22, 2004.

MR. ALDERMAN: I'll object.

MR. ZIMMERMAN: Unreported.

MR. ALDERMAN: It's an unreported decision, plus it applies to commercial property, as opposed to residential property. No commercial property involved.

THE CHAIRMAN: We're going to accept it and give it the weight to which we feel proper, and you will comment in your memos as you see fit.

Q. Separately, with reference to Mr. Alderman's concluding or near concluding questions about amendments to final development plans, you're familiar that there's a process for review by the Zoning Commissioner, and then, on appeal, the Board of Appeals of amendments to final development plans?

A. Yes.

Q. Under Section 1B01.3 --

A. Yes.

Q. -- or 1A00.4?

A. Yes.

Q. That was actually the process in the Ranshell case?

A. Yes.

Q. To your knowledge and review of this record, has this petitioner ever filed a petition for special hearing to amend the final development plan?

A. No.

MR. ZIMMERMAN: That's all.

THE CHAIRMAN: Recross?

MR. ALDERMAN: Nothing.

THE CHAIRMAN: Thank you, sir.

MR. ZIMMERMAN: We call Ms. Theresa Moore. While Ms. Moore is going to the witness stand, not to surprise anyone in the memo, we do have another opinion of the Board of Appeals that we would like to refer to in our memorandum, and this is --

THE CHAIRMAN: Seventeen?

MR. ZIMMERMAN: No. 17. The Roberts case, No. 05-137-SPH, a November 3, 2005.

MR. ALDERMAN: If I may ask, was that appealed beyond the Board?

MR. ZIMMERMAN No. These are final Board of Appeals' decisions.

THERESA MOORE,

having been called as a witness, was duly sworn, and testified as follows:

THE CHAIRMAN: Ma'am, please give your full name, please.

THE WITNESS: Theresa Moore.

THE CHAIRMAN: Mr. Zimmerman.

DIRECT EXAMINATION

BY MR. ZIMMERMAN:

Q. Ms. Moore, please give your name and address and capacity as an official of the Valleys Planning Council?

A. My name is Theresa Moore. I'm the Executive Director of the Valleys Planning Council, and we're located at 207 Courtland Avenue, in Towson.

Q. How long have you been in this position?

A. A little over two years.

Q. What generally is the function or purpose of the Valleys Planning Council?

A. It is a regional land use and land planning organization that represents over five hundred families in northwest Baltimore County.

Q. Very briefly, what's the geography or general boundaries?

A. North of Reisterstown Road, east -- I mean west of 83, south of Pretty Boy.

Q. And the subject property?

A. Slightly out of our boundaries. We had --

MR. ALDERMAN: Objection. A community representative cannot testify about something that is outside of their boundaries, their geographic boundaries.

THE CHAIRMAN: That's the rule.

MR. ZIMMERMAN: That's Rule 8.

MR. ZIMMERMAN: I have to check that.

THE CHAIRMAN: Please do.

MR. ALDERMAN: Off the record.

(Discussion held off the record.)

MR. ZIMMERMAN: I don't see anything in Rule 8 that limits the testimony, and in any event, she can testify as a citizen, but I see nothing in Rule 8 that precludes a community association from testifying about something that is beyond or near the boundary, around the boundary.

THE CHAIRMAN: Mr. Alderman, do you want to be heard?

MR. ALDERMAN: Mr. Chairman, as long as I have been practicing in front of this Board, a community association representative appearing in a Rule 8 capacity

has never been allowed to testify as that representative in the event that the property exists outside the geographic boundaries.

That's precisely why this Board has incorporated the geographic boundaries requirement in it rules and regulations, or in its rules governing practice before this Board.

MR. ZIMMERMAN: It's unfortunate that at the end of the day, we're having to spend time --

THE CHAIRMAN: Why don't we do this?

MR. ZIMMERMAN: It's absolutely not true.

THE CHAIRMAN: I don't want to slight the witness who's been here the entire day. We are going to let you put the testimony on. I will let you address it in the memo. Certainly, this is an education Board, this is not a jury.

If we determine that her testimony is not admissible, we will disregard it at that time.

Q. Ms. Moore, are you also here as a citizen of Baltimore County?

A. Yes, I am.

Q. What are you concerned about in this case as a citizen as well as the Executive Director of the Valleys Planning Council?

A. Yes.

Q. Briefly, and we'll kind of shorten this, because I know you have a written statement, give us the highlights of why you and your association are concerned about the impact of this case and the issues in it?

A. Primarily, we are concerned with the impact that it would have in other instances where other subdivisions might look at this and try to resubdivide as well, and the impact it would have on the R.C. 2.

We don't feel it would be in keeping with the intent of the legislation, which is to limit residential growth in agricultural areas.

Q. That would be a concern, that it would affect subdivisions and development within the boundaries of the Valleys Planning Council, correct?

A. Correct. We had another case very similar to this, which was withdraw. We were preparing to oppose it.

Q. You brought with you the Rule 8 materials?

A. I did. I left copies on the table.

THE CHAIRMAN: Again, with the same understanding that we'll accept them, so the record is complete if we determine to admit the testimony.

MR. ZIMMERMAN: We have the three-page related material that we will submit as People's Counsel Exhibit 18.

Q. Ms. Moore, in addition to the Rule 8 material, do you have any statement you would like to make to the Board or to submit a written statement?

A. I would split the written statement which basically says we are concerned about lots being resubdivided when they've already been part of prior subdivision.

Q. And lots in areas that have been rezoned to R.C. 2 agricultural?

A. Yes.

Q. Let me have your ubmission. Do you have several copies?

A. That's the original, and I gave you copies.

Q. There is part of the Rule 9 materials?

A. Yes.

Q. Anything else you want to add at this point?

A. No.

THE CHAIRMAN: Cross?

MR. ALDERMAN: Nothing.

THE CHAIRMAN: All right. Thank you ma'am. All right. This will conclude the testimony. Realizing the holidays are coming up, New Year's, all kinds of things coming up, gentlemen, normally we could say thirty days. Would you like something different?

MR. ALDERMAN: We have agreed on Friday, January 19th.

THE CHAIRMAN: Then Friday January 19, it will be. Thank you all very much. This meeting is adjourned.

(Hearing concluded.)

* * * * *

INDE

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John Dillon, Jr.	79	125	153	159
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LIBER 5715 PAGE 068

THIS DECLARATION, Made this 5th day of January, in the year nineteen hundred and seventy seven, by J. DAVID LAWSON, of Baltimore County, State of Maryland, and MANOR LAND ASSOCIATES, a Limited Partnership formed under the Uniform Limited Partnership Act, a certificate thereof being recorded among the Partnership Records of Baltimore County in Liber O.T.G. No. 2, folio 349 (hereinafter sometimes referred to as the "Developer"), parties of the first part, and LIZZETTA M. BEDGAR, of Baltimore County, State of Maryland, party of the second part.

WHEREAS, the parties of the first part are the owners in fee simple of the following lots of ground situate in the Sixth Election District of Baltimore County, State of Maryland and described as follows:

1. BEING known and designated as Lots Nos. 1 thru 9, Block "A" as shown on a Plat entitled Section One-Plat One, Spring Valley Farms", which Plat is recorded among the Land Records of Baltimore County in Plat Book E.H.K.Jr. No. 40 folio 28.

2. BEING known and designated as Lots Nos. 1 thru 12 as shown on a Plat entitled "Section One-Plat Two, Spring Valley Farms", which Plat is recorded among the Land Records aforesaid in Plat Book E.H.K.Jr. No. 40 folio 29.

3. BEING known and designated as Lots Nos. 1 thru 7 as shown on a Plat entitled "Section 1, Plat 1, Keeney Mill Woods", which Plat is recorded among the Land Records aforesaid in Plat Book E.H.K.Jr. No. 40 folio 30.

4. BEING known and designated as Lots Nos. 8 thru 20 as shown on a Plat entitled "Section 1, Plat 2, Keeney Mill Woods", which Plat is recorded among the Land Records aforesaid in Plat Book E.H.K.Jr. No. 40 folio 31.

BEING a portion of the property which by Deed dated October 5, 1976 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5681, folio 342 was granted and conveyed by Lizzetta M. Bedgar unto J. David Lawson and Manor Land Associates, in fee simple; and

WHEREAS, the parties of the first part, for the purpose of creating and maintaining a general scheme of development, desire that the lots hereinbefore described, and no other lots, shall be subject to the covenants, conditions, restrictions and reservations hereinafter set forth; and

ALL-STATE LEGAL
PETITIONER'S EXHIBIT
6

WHEREAS, the party of the second part, holder of a Mortgage from the parties of the first part dated October 5, 1976 and recorded among the Land Records aforesaid in Liber E.H.K.Jr. No. 5683, folio 350, joins herein to waive the lien of said Mortgage as to the restrictions hereby imposed on the lots of ground hereinabove set forth and to subordinate the lien of said Mortgage to the imposition of said restrictions in the same manner and to the same extent as if this Declaration had been executed, delivered and recorded prior to the execution and recordation of said Mortgage.

NOW, THEREFORE, THIS DECLARATION WITNESSETH, That the parties of the first part, for themselves, their personal representatives, successors and assigns, in consideration of the mutual benefits to be derived by them and their personal representatives, successors and assigns, hereby impose upon the aforesaid lots of ground, and no other lots, the following covenants, conditions, restrictions and reservations, to wit:

1. The aforesaid lots shall not be used for any purpose other than private residential and/or agricultural use. All dwellings shall be designed for single family occupancy, and such other buildings or structures appurtenant to the dwelling, as may be approved by the developer, may be erected, altered, placed or permitted to remain on any lot. Single occupancy shall not be construed to prevent the erection of a dwelling with an attached apartment or living area for use by member or members of the owner's family.

2. No dwelling or other structure shall be commenced, erected, placed or altered in structure or color, on any of the aforesaid lots until the plans and specifications and including color scheme and showing the location of the structure have been approved in writing by the Developer, their personal representatives, successors, assigns, or duly appointed Agent. The Developer shall have the right to refuse

to approve any such plans or specifications, or location plans which are not suitable or desirable, in their opinion, for esthetic or other reasons, and in so passing upon such plans, specifications, or location plans, they shall have the right to take into consideration the suitability of the proposed building, or other structures, and of the materials, of which it is built, to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure or the roadway as planned on the outlook from the adjacent or neighboring properties. No house or other buildings may have white colored roofing material. In no event shall a two story structure contain less than 1,800 square feet of living area of which at least 1,000 square feet shall be on the first floor; in no event shall a one and one half story structure contain less than 1,700 square feet of living area of which at least 1,000 square feet shall be on the first floor; in no event shall a one story structure contain less than 1,400 square feet of living area. Garages and basements shall not be construed as living area. However, twenty five percent of the square footage of an attached garage and/or breezeway may be used to compute the square footage of the living area of the dwelling. Basement area shall be considered any area which has one or more walls three feet below the finished grade. No modular or prefabricated houses shall be allowed on any lot. All raised ranchers or bi-levels must have at least 1,300 square feet on the bottom level. In the event of the failure of the purchasers of lots in "Spring Valley Farms" or "Keeney Mill Woods" to obtain the required prior written approval of plans, specifications and location plan as established in this paragraph, said purchasers hereby agree to reimburse the developer or their assigns for all costs and expenses to which it may be put as a result of said failure including, but not limited to, court costs, and attorneys fees. Any dwelling constructed on said lot shall be completed in every exterior detail within 12 months from the date of beginning such construction.

3. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Before construction of a dwelling the owner shall maintain the lot in a reasonable manner such as mowing and removing fallen trees and other debris of any kind or the same may be accomplished by the Developer at the Owner's expense.

4. No building of any kind may be erected or construction commenced prior to the construction of the main dwelling unless approved by the Developer or their Agents, O'Neill & Setler, Realtors.

5. No swine shall be kept on any lot of less than 7 acres. Poultry, cattle and horses may be kept on any lot comprised of two acres or more provided they are suitably housed and not used for commercial purposes.

6. Easements for installation and maintenance of utilities and drainage facilities are reserved as set forth on the aforesaid plats.

7. The Developer reserves the right to adjust, alter or change lot lines on any of the aforesaid lots still owned by the Developer.

8. Owners of lots shall be responsible for complying with Health Department Regulations of Baltimore County and/or the State of Maryland in regards to the drilling of a well on their lots.

9. None of the aforesaid lots shall be further subdivided prior to January 1, 1996.

10. The Developer, their personal representatives, successors and assigns, reserve the right to waive such portion of the protective covenants placed on this property as they deem necessary in the best interest of the development as determined by their judgment.

11. Any or all of the rights and powers (including discretionary powers and rights) herein reserved by or conferred upon the Developer may be assigned or transferred by said Developer to any one or more corporations or associations agreeing to accept them. Any such assignment or transfer shall be evidenced by an appropriate instrument recorded

among the Land Records of Baltimore County and upon recordation thereof, the grantee or grantees of such rights and powers shall thereupon and thereafter have the right to exercise and perform all the rights and powers reserved by or conferred upon the Developer by this instrument.

12. These covenants are to run with and bind the land and shall be b ng upon all of the parties and all of the persons claiming under them, until thirty (30) years from the date of these presents, at which time said covenants shall automatically extend for successive periods of ten (10) years; unless, by a vote of the majority of the then owners of the lots in fee simple or the leasehold estate therein (excluding mortgagees under mortgages on said properties or parts thereof, and also excluding owners of annual ground rents who have a reversionary interest therein), it shall be agreed to change said covenants, in whole or in part. The vote above provided for shall be taken within sixty (60) days after the date of the termination of one of the periods aforesaid.

13. The designation of the Roads on the aforesaid Plats is for the purpose of description only and not dedication and the rights of said parties of the first part in and to the same are specifically reserved.

14. Enforcements shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants, and it shall be lawful for any person or persons owning any part of this tract to prosecute such proceedings. Invalidation of any one or more of these covenants by judgment or Court order shall in no wise affect any other provisions, which shall remain in full force and effect.

15. Any failure by any party entitled to enforce any of the covenants, restrictions, conditions, reservations and agreements herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach, or as to one occurring prior or subsequent thereto.

AS WITNESS the hand and seal of J. DAVID LAWSON; also witness the signature of JOSEPH M. O'NEILL, General Partner of Manor Land Associates; also witness the hand and seal of the party of the second part.

WITNESS:

Howard F Pearce

J. David Lawson (SEAL)
J. David Lawson

MANOR LAND ASSOCIATES

Howard F Pearce

By Joseph M. O'Neill (SEAL)
Joseph M. O'Neill
General Partner

Howard F Pearce

Lizzetta M. Bedgar (SEAL)
Lizzetta M. Bedgar

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY, That on this 5th day of January, 1977, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared J. DAVID LAWSON and he acknowledged the foregoing Declaration to be his act and in my presence signed and sealed the same.

AS WITNESS my hand and Notarial Seal.

Howard F Pearce

Notary Public

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY, That on this 5th day of January, 1977, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared JOSEPH M. O'NEILL, General Partner of Manor Land Associates, a Limited Partnership, and he acknowledged the

foregoing Declaration to be the act of said Limited Partnership and in my presence signed and sealed the same.

AS WITNESS my hand and Notarial Seal.

Notary Public

OF MARYLAND, BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY, That on this 5th day of January, 1977, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared LIZZETTA M. BEDGAR, and she acknowledged the foregoing Declaration to be her act and in my presence signed and sealed the same.

AS WITNESS my hand and Notarial Seal.

Notary Public

Rec'd for record JAN 7 1977 at 12 50 P M
Per Elmer E. Kahline, Jr., Clerk
Mail to THE TITLE GUARANTEE COMPANY
Receipt No. 3

LIBER 5715 PAGE 075

TO
THE TITLE GUARANTEE COMPANY
(Individual Form)

App. #- 91660

This Deed, Made this 6th day of January, in the year one thousand nine hundred and ------seventy-~~six~~seven------, by and between J. DAVID LAWSON, party of the first part, and MANOR LAND ASSOCIATES, a Maryland Limited Partnership, see Certificate of Limited Partnership recorded among the Land Records of Baltimore County in Liber OTG No. 2, folio 349, party of the second part, Grantors; and NELSON C. PATZ and MARY ANNE PATZ, his wife, parties of the third part, Grantees.

Witnesseth: that in consideration of the sum of Five Dollars, and other valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant, convey, and assign unto the said Grantees, as tenants by the entireties, their assigns and unto the survivor of them, his or her, heirs and assigns, in fee simple, all ----------

---------- t h a t ---------- lot(s) of ground situate in the Sixth Election District of Baltimore County, in the State of Maryland, and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot No. 10, as shown on Plat of Section 1, Plat 2, Kenney Mill Woods, which Plat is recorded among the Land Records of Baltimore County in Plat Book EHK,JR No. 40, folio 31.

BEING part of the lot of ground described in a Deed dated October 5, 1976 and recorded among the Land Records of Baltimore County in Liber EHK,JR No. 5683, folio 342, from Lizzetta M. Bedgar to the within named Grantors.

3 @ 5.00 ASC

5715 676

Together with the buildings and improvements thereupon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

To have and to hold the said described lot(s) of ground and premises, unto and to the use of the said Grantees, as tenants by the entireties, their assigns and unto the survivor of them, his or her heirs and assigns, in fee simple, subject, however, to the covenants, conditions restrictions and reservations set forth in a Declaration, dated January 5, 1977, by J. David [illegible]son and Manor Land Associates and recorded or intended to be recorded among the Land Records of Baltimore County immediately prior hereto.

And the said Grantor covenants to warrant specially the property hereby granted and conveyed, and to execute such further assurances of said land as may be requisite.

Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

Witness the hand(s) and seal(s) of the said grantor(s):

WITNESS: _____ J. David Lawson [Seal]
GORDON J. KELLY, JR. J. DAVID LAWSON

MANOR LAND ASSOCIATES, a Maryland Limited Partnership

_____ BY: Joseph M. O'Neill [Seal]
GORDON J. KELLY, JR. Joseph M. O'Neill, General Partner

State of Maryland, Baltimore City, TO WIT:

I HEREBY CERTIFY, that on this 6th day of January, 1977, before me, a Notary Public of the State aforesaid, personally appeared J. DAVID LAWSON and JOSEPH M. O'NEILL, General Partner of MANOR LAND ASSOCIATES, a Maryland Limited Partnership, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, who signed the same in my presence, and acknowledged that they executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

_____
GORDON J. KELLY, JR. Notary Public

My commission expires: July 1, 1978.

GORDON J. KELLY, JR. NOTARY PUBLIC BALTIMORE CO., MD.

Rec'd for record JAN 7 1977 at 12 12 M
Per Elmer H. Kahline, Jr., Clerk
Mail to TITLE GUARANTEE COMPANY
Receipt No. V $ 9.50

LIBER 5862 PAGE 496

This Deed, Made this 7th day of March

in the year one thousand nine hundred and seventy-eight *between* MANOR LAND ASSOCIATES, a Maryland Limited Partnership, and J. DAVID LAWSON,

of Baltimore County ---------- State of Maryland of the first part, and NIELS H. BRAID and MARGARET BRAID, his wife, of Baltimore County, State of Maryland ----------

of the second part, **WITNESSETH**, that in consideration of the sum of Five Dollars, and other good and valuable considerations, the receipt whereof is hereby acknowledged,

the said MANOR LAND ASSOCIATES, a Maryland Limited Partnership, and J. DAVID LAWSON ----------

do(es) grant and convey unto the said NIELS H. BRAID and MARGARET BRAID, his wife, as tenants by the entireties, their assigns, the survivor of them, his or her ----------

heirs and assigns, in fee-simple, all that property situate, lying and being in the Sixth Assessment District of ---------- Baltimore County ---------- State of Maryland, the improvements thereon being now known as Number 20315 Middletown Road ----------

and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot 18 as shown on the Plat entitled "Section One, Plat Two, Keeney Mill Woods", which Plat is recorded among the Land Records of Baltimore County in Plat Book E.H.K.Jr. No. 40, folio 31.

BEING part of the property described in a Deed from Lizzetta M. Bedgar to J. David Lawson and Manor Land Associates dated October 5, 1976 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5683, folio 342.

SUBJECT to the legal operation and effect of restrictions contained in a Declaration by J. David Lawson et al dated January 5, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5715, folio 068.

SUBJECT ALSO to the legal operation and effect of a Deed and Agreement between J. David Lawson and Manor Land Associates, Grantors, and Edward J. Lijewski, Jr. and Christina W. Lijewski, his wife, Grantees, dated September 6, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5804, folio 13.

[illegible] 17 MAR 9 330.00 MSC

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PETITIONER'S EXHIBIT

5

BALTIMORE COUNTY CIRCUIT COURT [illegible]

Together with the buildings and improvements thereupon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or in anywise appertaining.

To have and hold the said described lot(s) of ground and premises, unto and to the use of the said NIELS H. BRAID and MARGARET BRAID, his wife, as tenants by the entireties, their assigns, the survivor of them, his or her heirs and assigns, forever in fee simple.

And the said MANOR LAND ASSOCIATES and J. DAVID LAWSON ---------- hereby covenant(s) that they --------- done no act, to encumber said land hereby conveyed; that they ------- will warrant specially the property hereby conveyed; and that they ------ will execute such further assurances of said land as may be requisite.

WITNESS the hand(s) and seal(s) of said grantor(s)

TEST:

James H. Patterson

MANOR LAND ASSOCIATES
A Maryland Limited Partnership
By: _____ (SEAL)
Joseph M. O'Neill, General Partner

_____ (SEAL)
J. DAVID LAWSON

0001**** MD12052 01-6-78
0011**** MD12052 01-6-78
0088**** MD12052 01-6-78
0802**** MD12052 01-6-78

STATE OF MARYLAND, BALTIMORE CITY, to wit:

I hereby certify, that on this 1st day of March ----------
in the year one thousand nine hundred and seventy-eight before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared Joseph M. O'Neill, General Partner of Manor Land Associates, and J. David Lawson, known to me to be the persons whose names are subscribed to the within instrument ---------- the above-named grantor(s) and acknowledged the foregoing Deed to be their act, and that they ------- executed the same for the purposes therein contained.

Rec'd for Record MAR 9 1978 at 12:18 PM
Clerk
Mail to Condy & Parker
Receipt No. 6100

As witness my hand and Notarial Seal.

NOTARY'S SEAL HERE NOTARY PUBLIC BALTIMORE COUNTY, MD.

Rosalie Polanowski
Rosalie Polanowski Notary Public.

My commission expires 7-1-78

NO TITLE SEARCH
NO CONSIDERATION

This Deed, made this 27 day of July in the year one thousand nine hundred and eight by and between NIELS H. BRAID and MARGARET (BRAID) ADAMS, County of Baltimore, State of Maryland of the first part, and NIELS H. BRAID, of Baltimore County, Maryland, of the second part.

Witnesseth, that in consideration of the sum of one dollar ($1.00) and other good and valuable considerations, as set forth in a divorce settlement agreement, receipt of which is hereby acknowledged (The actual consideration paid or to be paid is "NONE") the said parties of the first part do hereby grant and convey to the said NIELS H. BRAID, his personal representatives/successors and assigns, in fee simple, all that lot of ground situate in Baltimore County, Maryland and the improvements thereon being known as 20315 Middletown Road, described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot 18 as shown on the Plat entitled "Section One", Plat Two, Keeney Mill Woods", which Plat is recorded among the Land Records of Baltimore County in Plat Book E.H.K. Jr. No. 40, folio 31.

BEING PART of the property described in a Deed from Lizzetta M. Bedgar to J. David Lawson and Manor Land Associates dated October 5, 1976 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr., No. 5683, folio 342.

BEING THE SAME lot of ground described in a Deed from Manor Land Associates and J. David Lawson to Niels H. Braid and Margaret (Braid) Adams, the within named Grantees, dated March 7, 1978 and recorded among the Land Records of Baltimore County in Liber 5862 page 497.

SUBJECT TO the legal operation and effect of restrictions contained in a Declaration by J. David Lawson et al. dated January 5, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K. Jr. No. 5715, Folio 068.

SUBJECT ALSO to the legal operation and effect of a Deed and Agreement between J. David Lawson and Manor Land Associates, Grantors and Edward J. Lijewski Jr. and Christina W. Lijewski, his wife, Grantees, dated September 6, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5804, folio 13.

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

TO HAVE AND TO HOLD the said described lot of ground and

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PETITIONER'S EXHIBIT
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premises unto and to the use of the said NIELS H. BRAID, his personal representatives/successors and assigns, in fee simple.

AND the said parties of the first part hereby covenants that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property hereby granted; and that they will execute such further assurances of the same as may be requisite.

WITNESS the hand and seal of said grantors.

Test:

Niels H Braid (SEAL)
NIELS H. BRAID

Margaret (Braid) Adams (SEAL)
MARGARET (BRAID) ADAMS

STATE OF MARYLAND, County of Baltimore, to wit:

I HEREBY CERTIFY, that on this 27th day of July, in the year one thousand nine hundred and ninety-eight, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared NIELS H. BRAID and MARGARET (BRAID) ADAMS, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

ANGELO C. VONAMS NOTARY PUBLIC BALTIMORE CO. MD

My commission expires: 11-01-01

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Attorney's Signature

0013150 429

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

1 Type(s) of Instruments (☐ Check Box if Addendum Intake Form is Attached.)

☒ Deed | ☐ Mortgage | ☐ Other | ☐ Other
☐ Deed of Trust | ☐ Lease

2 Conveyance Type Check Box

☒ Improved Sale Arms-Length [1] | ☐ Unimproved Sale Arms-Length [2] | ☐ Multiple Accounts Arms-Length [3] | ☐ Not an Arms-Length Sale [9]

3 Tax Exemptions (If Applicable)

Recordation
State Transfer
County Transfer

H/O TO H

Cite or Explain Authority

INF FD SURC $ 5.00
RECORDING FEE 25.00
TOTAL 35.00
Rcpt# BARC Rcpt: $ 44[illegible]

4 Consideration and Tax Calculations

Consideration Amount	
Purchase Price/Consideration	$ 1.00
Any New Mortgage	$
Balance of Existing Mortgage	$
Other:	$
Other:	$
Full Cash Value	$

Finance Office Use Only $ 361.

Transfer and Recordation Tax Consideration	
Transfer Tax Consideration	$
X ( )% =	$
Less Exemption Amount −	$
Total Transfer Tax =	$ EXEMPT
Recordation Tax Consideration	$
X ( ) per $500 =	$
TOTAL DUE	$

Agent:
Tax Bill:
C.B. Credit:
Ag. Tax/Other:

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$	$
Surcharge	$	$
State Recordation Tax	$	$
State Transfer Tax	$	$
County Transfer Tax	$	$
Other	$	$
Other	$	$

6 Description of Property

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG (5)
06	17-00-010733	5862/197			

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage (4)
	18		2		

Location/Address of Property Being Conveyed (2)
20315 Middletown Road, Baltimore County

Other Property Identifiers (If applicable) | Water Meter Account No.

Residential ☒ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ | Amount:
Partial Conveyance? ☐ Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Niels H. Braid Margaret (Braid) Adams	
Doc. 1 - Owner(s) of Record, If Different from Grantor(s)	Doc. 2 - Owner(s) of Record, If Different from Grantor(s)

8 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
Niels H. Braid	

New Owner's (Grantee) Mailing Address
20315 Middletown Road

9 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person
Name: J. Bruce Hanley
Firm: Ridgely & Hanley
Address: 305 W. Pennsylvania Ave.
Towson, MD 21204 Phone: (410) 296-6040

☒ Return to Contact Person
☐ Hold for Pickup
☐ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☐ Yes ☐ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☒ No Does transfer include personal property? If yes, identify:
☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Terminal Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number: Date Received: Deed Reference: Assigned Property No.

Year	19	19	Geo.	Map	Sub	Block
Land			Zoning	Grid	Plat	Lot
Buildings			Use	Parcel	Section	Occ. Cd.
Total			Term Cd.	Ex. St.	Ex. Cd.	

REMARKS:

TRANSFER TAX NOT REQUIRED
Director of Finance
Sec. 13-139

Date

Distribution: White - Clerk's Office
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer
AOC-CC-300 (6/96)

PETITIONER'S EXHIBITS

06-332-SPH

Braid

#1 PLAT - 2035 MIDDLETON RD

#2 KEENEY MILL WOODS - JSPC PLAN
MAY 1976

#3 LETTER FROM KELLER OCT 20 2005

#4 DEED - JULY 27 1998

#5 PRIOR DEED + TITLE 1979

#6 DECLARATION 1-5-77 BY LAWSON

#7 OCT 5 1976 ORIGINAL PLAT EHK JR FOLIO 31

#8 Letter from Guy Ward OCT 4 2005 TO DAT KELLER

#9 CHER-CHRIS OPINION - 3/30/04

#10 CTY. COUNCIL BILL 125-05

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

Arnold F. Pat Keller, III, Director

October 20, 2005

Guy C. Ward
McKee & Associates, Inc.
5 Shawan Road
Shawan Place, Suite 1
Cockeysville, Maryland 21030

Re: Braid Property Lot 18 "Keeney Mill Woods"

Dear Mr. Ward:

Your request for a waiver from the provisions of Section 32-4-409 of the Baltimore County Code has been DENIED. As such, it is recommended that the relief sought of Section 32-4-409 be possibly obtained through the Special Hearing process. There are other existing lots currently being served by the panhandle right-of-way in question. Those said lots also have subdivision potential. Section 32-4-409 indicates only 5 lots may be served by a panhandle driveway, granting your waiver request would result in a hindrance of adjacent property owners subdividing their lots. The conduction of a public hearing would allow for equal input of all property owners being served by the subject panhandle right-of-way.

Should you have any questions concerning the matters stated herein, please call Curtis J. Murray with the Office of Planning at 410-887-3480.

ALL-STATE LEGAL® PETITIONER'S EXHIBIT 3

Sincerely,

Pat Keller

Arnold F. 'Pat' Keller, III
Director

AFK:LL:CJM:kma

RECEIVED OCT 25 2005

W:\DEVREV\WAIVERS\Braid Property denial.doc

Printed on Recycled Paper

T.E.R. & M. Assoc
5220/291

Alice W. Sattler
1339/243

John W. Neal
3107/34, 4892/106

KEENEY MILL ROAD 60' R/W

MIDDLETOWN ROAD

Mountcraft Brothers, Inc.
4726/402

Spring Valley Farms
Plat 1 - Section 1

Liszetta M. Bedgar
2583/995

Keeney Mill Woods
Section 1 - Plat 1

The 25' revertible slope easement along the future 50' R/W, as shown hereon, is to be retained by Lizzetta M. Bedgar, her heirs or assigns.

VICINITY MAP
SCALE: 1" = 2,000'

NOTE: [illegible] IS REQUIRED [illegible] MAY BE PURCHASED FOR SALE AS FOR SOLD AND NO CONSTRUCTION ON ANY LOT BEFORE FINAL WATER APPROPRIATION PERMIT IS OBTAINED.

THE STREETS AND/OR ROADS AS SHOWN HEREON AND THE MENTION THEREOF IN DEEDS, ARE FOR THE PURPOSE OF DESCRIPTION ONLY, AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE. THE FEE SIMPLE TITLE TO THE BEDS THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEEDS TO WHICH THIS PLAT IS ATTACHED THEIR HEIR AND ASSIGNS.

THE COURSES AND COORDINATES SHOWN HEREON ARE REFERRED TO AN ASSUMED COORDINATE SYSTEM AND ARE REFERRED TO THE FOLLOWING TRAVERSE STATIONS

T-118 N 57556.794 E 48935.013
T-123 N 7428.4903 E 5024.526
T-130 N 03346.924 E 5154.8725

APPROVED: BALTIMORE COUNTY PLANNING BOARD
BY _____ DIRECTOR
DATE _____

APPROVED: BALTIMORE COUNTY HIGHWAYS DEPT.
BY Thomas D. Murray HIGHWAYS ENGINEER
DATE 10/5/76

APPROVED: BALTIMORE COUNTY HEALTH DEPT.
BY [signature]
DATE 1-23-76

PANHANDLE NOTE
FOR PANHANDLE LOTS, REFUSE COLLECTION, SNOW REMOVAL AND ROAD MAINTENANCE ARE PROVIDED TO JUNCTION OF THE PANHANDLE AND THE STREET RIGHT OF WAY LINE ONLY, AND NOT ONTO THE PANHANDLE LOT DRIVEWAY.

CURVE DATA

NO	RADIUS	ARC	DELTA	TANGENT	CHORD	
1	300.00'	151.89'	45°48'12"	79.10'	N50°15'56"W	150.77'
2	353.53'	267.74'	41°49'17"	139.96'	N41°19'57"W	261.77'
3	246.89'	248.28'	41°49'17"	135.62'	S41°19'57"E	242.77'
4	280.17'	245.00'	50°05'16"	132.33'	S51°18'26"W	237.19'
5	280.17'	98.80'	20°12'20"	49.95'	S32°17'52"W	98.27'
6	127.50'	60.28'	26°50'50"	30.76'	S34°11'55"W	59.71'
7	127.50'	90.28'	40°10'16"	47.07'	S13°11'28"W	88.38'
8	225.00'	211.06'	09°58'16"	105.80'	S25°26'39"W	210.19'

EASEMENT DATA

NO	BEARING	DISTANCE
A	N00°52'00"E	60'
B	N47°08'00"E	79.95'
C	N61°34'00"E	121'
D	N16°46'00"E	160'
E	N13°46'00"E	150'
F	N 06°20'00"W	200'
G	N 69°58'00"W	295'
H	N 27°39'W	440'
I	N 30°21'34"W	470'
J	N 82°52'00"W	267'
K	S 41°08'00"W	227'
L	S 61°08'32"W	987'
M	S 46°38'32"W	980'
N	N 74°00'00"W	246'
O	S 15°10'00"W	70'
P	N 74°50'00"W	418'
Q	N 74°50'00"W	220'
R	N 60°10'00"E	61'
S	S 29°50'00"E	311'
T	S 76°20'00"E	252'
U	S 34°40'00"E	408'
V	S 21°35'00"E	91'
W	N 89°50'00"W	98'
X	N 89°50'00"W	150'

COORDINATES

NO	NORTH	EAST
110	9755.0000	4894.0018
115	9980.0391	5016.1151
120	8841.4850	4653.2712
121	8002.9147	5015.2094
122	7758.8729	5222.5617
123	7418.8965	5514.5731
124	7606.2550	4924.1565
125	7940.0940	5355.2323
126	8230.9749	5656.6994
127	8090.2810	5078.8577
128	8110.3972	4904.1738
129	7815.5898	5302.7101
130	8294.6851	5451.4213
131	8567.1896	5771.2254
132	7412.8861	6030.0206
133	6118.5341	4746.1849
134	6756.7416	4871.2716
135	7491.9182	4970.9146
136	7671.0889	4782.0080
137	8064.1557	4994.1428
138	8382.0000	3995.2370
139	6101.8888	3087.4707
140	8604.7557	5081.1981
141	7213.3974	3741.1944

NOTE: HIGHWAY AND HIGHWAY WIDENING - SLOPE, DRAINAGE AND UTILITY EASEMENTS SHOWN HEREON ARE RESERVED UNTO THE DEVELOPER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MARYLAND. THE DEVELOPER, HIS PERSONAL REPRESENTATIVES, AND ASSIGNS, SHALL CONVEY SAID AREAS, BY DEED, TO BALTIMORE COUNTY, MARYLAND, AT NO COST.

LEGEND
LOT NUMBERS SHOWN THUS: (5)
COORDINATES SHOWN THUS: 155
MINIMUM BUILDING LINE SHOWN THUS: ———
R/W LINE SHOWN THUS: ———
LOT LINES SHOWN THUS: ———
PROPERTY LINES SHOWN THUS: ———
EASEMENTS SHOWN THUS: = = = = =

NOTES:
NO FURTHER SUBDIVISION OF THE LOTS SHOWN HEREON WILL BE ALLOWED UNLESS APPROVED BY THE BALTIMORE COUNTY PLANNING AND ZONING COMMISSION.

THE LOTS SHOWN HEREON ARE FOR SINGLE FAMILY RESIDENTIAL USE ONLY.

NO BUILDING PERMIT SHALL BE ISSUED FOR THE CONSTRUCTION OF A DWELLING ON A LOT SHOWN HEREON UNTIL A WELL IS APPROVED BY APPLICABLE STATE AND COUNTY AGENCIES HAVING JURISDICTION.

GROSS AREA: 75.2810 Ac±
NET AREA: 11.3930 Ac±
AREA BETWEEN TITLE LINE & WIDENING LINE: 3.8809 Ac±
AVERAGE LOT SIZE: 5.9918 Ac±

TOTAL NUMBER OF LOTS: 13
TITLE REFERENCE: LIZZETTA M. BEDGAR LIBER: 2583 FOLIO: 995

P. W. A. Complete: NONE DHL
Final Plat Number: VII-81
Plotted: 8-30-76
Engineering Approval Given: 9-22-76
Street Nos.: 9-22-76

PRESENT ZONING: R.D.P.

OWNER'S CERTIFICATE
The requirements of Sections 72A to 72.D of Article 17 of the Annotated Code of Maryland, 1939 Edition Chapter 1016 of the Acts of 1945 as amended by Chapters 84 and 700 of the Acts of 1947 and subsequent Acts if any amendatory thereto, so far as they concern the making of the plat and setting of the markers, have been complied with. LIZZETTA M. BEDGAR Owner of Land Shown Hereon

SURVEYOR'S CERTIFICATE
I, JAMES W. McKEE, a Registered Land Surveyor of the State of Maryland, do hereby certify that the land shown hereon has been laid out and the plat thereof prepared in compliance with Sections 72.A to 72.E, inclusive, of Article 17 of the Annotated Code of Maryland, 1939 Edition as enacted or amended by the Acts of 1945 and 1947 and subsequent acts, if any, amendatory thereto.

JAMES W. McKEE, L.S. MD REG. NO.

LOCH RAVEN RESERVOIR DRAINAGE AREA

McKee Engineering
1824 Ridge Road Reisterstown, Maryland 21136

JOB NO.	SCALE	DRAWN	LAID OUT BY	SHEET NO.
76-9	1"=100'	JWM	JWM/RWH	1 of 1
	DATE Sept. 76	CHECKED	DEPT. BY	

ELK. JR. 40 FOLIO 31
Filed for record
Date OCT 15 1976
Test:
Clerk

SECTION 1 PLAT 2

KEENEY MILL WOODS

6th ELECTION DISTRICT BALTIMORE COUNTY, MD.
AUGUST, 1976

OWNER & DEVELOPER
LIZZETTA M. BEDGAR
PARKTON, MARYLAND
21120

PETITIONER'S EXHIBIT 4
ALL-STATE LEGAL

P52963

MSA SSW 1836-6196

40-31

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2005, Legislative Day No. 19

Bill No. 125-05

Councilmembers McIntire & Kamenetz

By the County Council, October 17, 2005

AN ACT concerning

R. C. 2 Zone - Area Regulations

FOR the purpose of amending the Zoning Regulations in order to eliminate a grandfathering provision relating to the permissible subdivision lot density in an R.C. 2 Zone; and generally relating to the area regulations in the R.C. 2 Zone.

BY repealing and re-enacting, with amendments

Section 1A01.3.B.1.

Baltimore County Zoning Regulations as amended

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND that Section 1A01.3.B.1 of the Baltimore County Zoning Regulations, as amended, be and it is hereby repealed and re-enacted, with amendments, to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

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SECTION 1A01

R.C. 2 (Agricultural) Zone

1A01.3 Height and area regulations.

B. Area regulations.

1. Subdivision lot density. No lot of record lying within an R.C. 2 Zone and having a gross area of less than two acres may be subdivided. No such lot having a gross area between two and 100 acres may be subdivided into more than two lots (total), and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of one lot for each 50 acres of gross area. In cases where land in single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right-of-way or easement shall not be considered separate parcels for the purpose of calculating the number of lots of record[, with the exception that any zoning petition site plan, subdivision plan or record plat filed with or approved by the county between November 27, 1979, and October 1, 1990, shall not be so affected and be considered valid, provided as to any zoning petition pending on appeal, that it be upheld on appeal].

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect 45 days after its enactment.

b12505.wpd

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2006, Legislative Day No. 3

Bill No. 24-06

Councilmembers Kamenetz & Bartenfelder

By the County Council, February 6, 2006

A BILL
ENTITLED

AN ACT concerning

Development

FOR the purpose of requiring previously approved developments to comply with the current law and the current development procedural review process; defining terms; defining the manner of the vesting of a project; clarifying the methodology employed by the Office of Planning in compiling its annual recommendation regarding overcrowded school districts; providing for the extension and expiration of development plan approvals; providing for the application of the Act; providing for the effective date of the Act; and generally relating to the scope of the County's development regulations and the vesting of development plans and plats.

BY repealing and re-enacting, with amendments

Sections 32-4-104, 32-4-261(a) and (b), 32-4-262, 32-4-273(d) and 32-6-103(d)
Article 32 - Planning, Zoning and Subdivision Control
Baltimore County Code 2003

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

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BY adding

Section 32-4-101(bbb)
Article 32 - Planning, Zoning and Subdivision Control
Baltimore County Code 2003

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Sections 32-4-104, 32-4-261(a) and (b), 32-4-262, 32-4-273(d) and 32-6-103(d) of Article 32, Planning, Zoning and Subdivision Control, of the Baltimore County Code 2003, be and they are hereby repealed and re-enacted, with amendments, to read as follows:

§32-4-104. Scope of Title.

(a) Applicability of title. [Except as provided in subsection (b) of this section, this title shall apply to all development.

(b) Exceptions.

(1) This title does not apply to a development that before the effective date of this article, June 11, 1982:

(i) Received tentative approval of the preliminary plan by the Planning Board;

(ii) Has a valid unexpired building permit;

(iii) Has a current executed public works agreement;

(iv) Received a CRG approval, reclamation plan approval, or was otherwise vested by law; or

(v) Where a CRG plan was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.

(2) An exempt development under paragraph (1) of this subsection shall be governed by the subdivision regulation in effect at the time:

(i) Of the preliminary plan approval in the case of a development that received tentative approval by the Planning Board;

(ii) The development received a CRG approval, reclamation plan approval, or was otherwise vested by law;

(iii) The valid unexpired building permit was issued;

(iv) The current public works agreement was executed; and

(v) Of the acceptance for filing in the case of a CRG plan that was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.]

THIS TITLE SHALL APPLY TO THE PROCESS OF REVIEW FOR APPROVAL OF ALL DEVELOPMENT.

[(c)] (B) Present zoning classification. Proposed development shall be in compliance with the present zoning classification on the property to be developed.

§32-4-261. Expiration of Development Plan Approval.

(a) In general. Unless extended under SUBSECTION (B) OR UNDER §32-4-274(a) of this subtitle, Development Plan approval shall expire [5] 4 years after the date [of] A FINAL, NON-APPEALABLE approval was granted.

(b) Request for extension.

(1) An applicant may make a written request to the Hearing Officer for [an] A ONE YEAR extension of the [5] 4 year Development Plan approval period provided under subsection (a) of this section UPON A SHOWING THAT A COUNTY AGENCY FAILED TO PROPERLY PROCESS AN ESSENTIAL REQUEST NECESSARY TO ACHIEVE VESTING IN A TIMELY FASHION, CAUSING A DELAY BEYOND THE INITIAL

FOUR YEARS AFTER THE FINAL, NON-APPEALABLE APPROVAL WAS GRANTED.

(2) THE REQUEST FOR EXTENSION SHALL BE FILED PRIOR TO THE EXPIRATION OF FOUR YEARS FROM THE DATE OF APPROVAL OF THE DEVELOPMENT PLAN.

[(2)] (3) The Hearing Officer SHALL ACT WITHIN 60 DAYS OF THE FILING OF THE REQUEST AND may grant, in writing, the request for an extension [upon certification by the applicant that the Development Plan meets the development regulations in effect at the time of the requested extension].

[3] (4) The Hearing Officer may not act upon the request for an extension until comments from the applicable agencies are received.

(5) ANY APPEAL OF THE EXTENSION GRANTED UNDER SUBSECTION (B) SHALL BE ON THE RECORD. THE STANDARD OF REVIEW SHALL BE BASED UPON AN ABUSE OF DISCRETION.

§32-4-262. Amendments to Development Plans.

(1) Any material amendment to an approved NON-RESIDENTIAL Development Plan shall be reviewed and approved in the same manner as the original plan.

[(2) Any other material amendment shall be in accordance with the comprehensive manual of administrative policy.]

(2) ANY MATERIAL AMENDMENT TO AN APPROVED RESIDENTIAL DEVELOPMENT PLAN OR PLAT SHALL BE REVIEWED IN ACCORDANCE WITH THIS TITLE, AND WITH RESPECT TO THAT PORTION OF THE ORIGINAL PLAN OR PLAT TO WHICH THE AMENDMENT PERTAINS, THE AMENDMENT SHALL

BE REVIEWED FOR COMPLIANCE WITH ALL CURRENT LAW AND REGULATIONS, INCLUDING THE DEVELOPMENT REGULATIONS AND THE ZONING REGULATIONS.

§32-4-273. Time Limit for [Validity of Plats and Plans.] VESTING.

(d) Development. A subdivision or section or parcel of the subdivision is considered [developed and] vested if [any of the following has occurred with respect to the subdivision, section, or parcel:

(1) Building permits have been issued; or

(2) Substantial construction on required public improvements or private improvements has occurred on the subdivision, section, or parcel in accordance with the applicable regulations and requirements of the Department of Public Works.]

BUILDING PERMITS HAVE BEEN ISSUED IN ACCORDANCE WITH AN APPROVED PLAN OR PLAT, AND INSPECTION BY THE COUNTY CONFIRMS THAT SUBSTANTIAL CONSTRUCTION HAS OCCURRED ON THE SUBDIVISION, SECTION, OR PARCEL WITHIN FOUR YEARS AFTER THE DATE OF THE FINAL, NONAPPEALABLE APPROVAL OF THE PLAN OR PLAT OR ANY EXTENSION THEREOF AUTHORIZED UNDER SECTION 32-4-261(A).

Title 6. Adequate Public Facilities

§32-6-103. Overcrowded School Districts.

(d) Recommendation. [The Office of Planning shall make the recommendation of whether a district is an overcrowded school district and whether the proposed Development Plan, in conjunction with any other proposed or approved development plan, would result in the school

district becoming an overcrowded school district at the time of the filing date.]

(1) THE OFFICE OF PLANNING SHALL MAKE THE RECOMMENDATION OF WHETHER A DISTRICT IS AN OVERCROWDED SCHOOL DISTRICT AND WHETHER THE PROPOSED DEVELOPMENT PLAN WOULD RESULT IN THE SCHOOL DISTRICT BECOMING AN OVERCROWDED SCHOOL DISTRICT AT THE TIME OF THE FILING DATE.

(2) IN MAKING ITS RECOMMENDATION ON THE PROPOSED DEVELOPMENT PLAN, THE OFFICE OF PLANNING SHALL CONSIDER THE CUMULATIVE EFFECT OF:

(I) THE SCHOOL IMPACT ANALYSIS FILED UNDER SUBSECTION (G) WITH RESPECT TO THE PROPOSED PLAN;

(II) THE IMPACT OF ANY DEVELOPMENT PLAN, OR PORTION OF A DEVELOPMENT PLAN, APPROVED WITHIN FOUR YEARS PRIOR TO THE FILING DATE; AND

(III) THE IMPACT OF ANY DEVELOPMENT PLAN APPROVED PRIOR TO THE FILING DATE, IF AN EXTENSION WAS GRANTED.

SECTION 2. AND BE IT FURTHER ENACTED, that Section 32-4-101(bbb) be and it is hereby added to Article 32, Planning, Zoning, and Subdivision Control of the Baltimore County Code 2003, to read as follows:

§32-4-101. Definitions.

(BBB) SUBSTANTIAL CONSTRUCTION MEANS ACTUAL CONSTRUCTION ACTIVITY OCCURRING ON THE GROUND OR BUILDING SITE FOR WHICH A PERMIT IS SOUGHT THAT IS DIRECTLY RELATED TO THE FACILITY OR

STRUCTURE FOR WHICH THE PERMIT IS SOUGHT AND IS SUFFICIENTLY SUBSTANTIVE, VISIBLE AND IS BEING PURSUED TO COMPLETION WITH REASONABLE DILIGENCE SO AS TO PUT THE PUBLIC ON NOTICE THAT THE GROUND OR SITE IS BEING DEVOTED TO THE CONSTRUCTION OF A FACILITY OR STRUCTURE.

SECTION 3. AND BE IT FURTHER ENACTED, that this Act shall apply to any development, subdivision, parcel of land, or plat which received any form of approval from Baltimore County, including approval from the Planning Commission or Baltimore County Planning Board or CRG or DRC, prior to the effective date of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, that this Act is adopted independently of Section 103 of the Baltimore County Zoning Regulations so that it supersedes and abrogates the rights to the vesting of a development that would otherwise accrue from the zoning or development regulations or other County laws.

SECTION 5. AND BE IT FURTHER ENACTED, that a development plan that was approved prior to the effective date of this Act, but not yet vested, shall have three years from the effective date of this Act to achieve substantial construction as defined herein. The plan shall be in compliance with the zoning classification in effect on the property at the time of the original approval, or any extension properly granted, as the case may be. Upon the failure to achieve substantial construction or obtain an extension within the three-year period, the plan shall be deemed to be expired.

SECTION 6. AND BE IT FURTHER ENACTED, that this Act, having been approved by the affirmative vote of five members of the County Council, shall take effect on March 17, 2006.

b02406.wpd

IN THE MATTER OF THE APPLICATION OF	*	BEFORE THE
CHER-CHRIS CONSTRUCTION CO., MICHAEL AIELLO, V.P. –LEGAL OWNER FOR A	*	COUNTY BOARD OF
SPECIAL HEARING ON PROPERTY LOCATED ON THE N/S CORBETT RD, 1,68-‘ E OF C/L	*	OF
CHESTERFIELD COURT (1100 CORBETT ROAD)	*	BALTIMORE COUNTY
8TH ELECTION DISTRICT	*	Case No. 03-264-SPH
3RD COUNCILMANIC DISTRICT		

* * * * * * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals on a timely appeal brought by the Office of People's Counsel, resulting from a decision by the Deputy Zoning Commissioner dated February 19, 2003, in which a Petition for Special Hearing was granted for the subject site: 1100 Corbett Road, 8th Election District, 3rd Councilmanic District.

The Appellant was represented before the Board by Carole Demilio, Esquire, Deputy People's Counsel for Baltimore County. Howard L. Alderman, Jr., Esquire, appeared on behalf of the Petitioner, Cher-Chris Construction Co./Michael Aiello, V.P., Legal Owner.

A *de novo* hearing was held before the Board of Appeals on December 11, 2003. A public deliberation was held on March 4, 2004.

Background

The Petitioner requested a Special Hearing to amend the Final Development Plan for the subject property to change Tract "A" to building lot 6. The site consists of 3.056 acres, more or less, and is zoned R.C.7. The Final Development Plan under discussion was approved by Baltimore County in 1981 for a parcel of land then owned by Marilyn B. Resnick and T. Douglas Rollings.

In late 2001, Mr. Aiello, the current owner, purchased lots 2, 3 and Tract A in a single settlement for $150,000 each from Andrew G. and Barbara N. Shank. When applying for a

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building permit for Tract "A," Mr. Aiello was advised that a Special Hearing to amend the Final Development Plan would be necessary.

Testimony

Mitchell Kellman was the first witness for the Petitioner. After offering his resume (Petitioner's Exhibit #1), Mr. Kellman was accepted by the Board as an expert in zoning and development in Baltimore County.

Mr. Kellman testified that for eleven years he was employed in the zoning review office of Baltimore County and sat on the Development Review Committee. He noted that he was not working in Baltimore County at the time the Final Development Plan on the subject site was approved in 1981. He is currently employed by DMW as the "zoning person" for Baltimore County, to present petitions to the zoning review staff, and to testify at zoning hearings.

Under his direction, DMW amended the original plan prepared by Gerhold, Cross and Etzel to change Tract "A" to lot 6. This resulted in Petitioner's Exhibit #2: the Plan to accompany the Petition for Special Hearing.

Mr. Kellman presented the history of the subdivision of the original parcel. Nineteen lots were permitted on property then zoned R.C. 5; five lots and Tract "A" were platted and recorded. In the 2000 CZMP the parcel was rezoned to R.C. 7.

According to this witness Tract "A" was so designated because there was a problem of percolation on that lot at that time. Mr. Kellman opined that the subject site would have been a buildable lot under the R.C. 5 zoning regulations and is also a buildable lot under R.C. 7 so long as it meets the County development criteria.

To support this opinion Mr. Kellman introduced into evidence the Zoning Advisory Comments (Petitioner's Exhibit #3) and pertinent sections of the BCZR (Petitioner's Exhibits #4 and #5). He said that Tract "A" meets the building envelope setbacks as required under the current zoning for a single-family dwelling.

Mr. Kellman also opined that the amendment as requested must meet the same standards as a Special Exception as set forth in Section 502.1, BCZR.

To be granted a Special Exception, the use must comply as follows:

502.1—Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

A. Be detrimental to the health, safety, or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other dangers;

D. Tend to overcrowd the land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

F. Interfere with adequate light and air;

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations;

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C. 2, R.C. 4, R.C. 5, or R.C. 7 zone.

Mr. Kellman testified and illustrated that the Petitioner's request meets each of these standards. He added that Tract "A" is larger than each of the other approved lots with the exception of lot #1.

On cross-examination by Ms. Demilio, the witness reviewed the Policy on Design Standards for D.R. Zones (People's Counsel Exhibit #2). Mr. Kellman noted that the standards refer to the D.R. zones where the houses are much closer to each other, not the R.C. zones that are more rural in character.

He further testified that Tract "A" would not need a panhandle strip for access because of its frontage on Corbett Road. It was Mr. Kellman's opinion that the designation of "not for building purposes" on the original plat meant that the lot would not be built upon "at that time." He stated that there is nothing on the plan that would reserve or preclude building on the subject site in the future if the site can comply with the current development regulations.

Michael Aiello testified next. He is the vice-president of Cher-Chris Construction Company, builders of custom homes and owner of the subject property. He related his purchase of three lots from the Shanks (Petitioner's Exhibit #6 and #7). He stated that he was aware of the private covenants (Petitioner's Exhibit #8) on the lots at the time of purchase. He noted that under that covenant agreement he is required to maintain Tract "A" as pasture, "until developed." In support of his opinion that Tract "A" is considered a building lot, Mr. Aiello submitted the tax assessment record for the lot (Petitioner's Exhibit #9), indicating that he has been paying the residential tax rate. He noted as well that the lot has been approved by DEPRM for well and septic (Petitioner's Exhibit # 10).

On cross-examination by Ms. Demilio, Mr. Aiello stated that he had made a pre-purchase study of the property based on his 18 years experience in the building industry. He understood that all three lots that he purchased had been used as pasture up to that time. He noted that all documents relating to the property speak to three separate parcels.

Christopher Aiello, 1038 Corbett Road, spoke on behalf of the Petitioner's request. He is the brother of the Petitioner and now owns lot 2 in the subdivision. He opined that a single-family dwelling on Tract "A" would increase the economic value of his house.

Raymond Knowles was the first witness for People's Counsel. Dr. Knowles has lived at 1034 Corbett Road for 12 years, having purchased the first house to be constructed in the subdivision. He testified that he was assured by the owner at that time, Mr. Shank, that Tract "A" would not be built upon but would remain in pasture.

He opined that all of the other lots (1 through 5) are built on the ridge and their view is Tract "A", 75 feet lower in elevation. He stated that the development of this tract would adversely affect the value of his property and adversely affect the environmental characteristics on that low-lying parcel which receives runoff from the adjacent ridge as noted on the topography map introduced as People's Counsel Exhibit #6. Dr. Knowles also stated that the poor sight lines and hazardous conditions of a driveway from Tract "A" onto Corbett Road would create congestion and a safety hazard. To build on Tract "A" would violate the spirit and intent of the original Final Development Plan, in his opinion.

On cross-examination by Mr. Alderman, Dr. Knowles said that he understood that under R.C. 7 zoning one house could be built on a tract less than 25 acres if recorded. The witness reiterated that he felt a house on Tract "A" would detract from the value of his house.

On re-direct by Ms. Demilio, the witness noted that he does not look into the lots next to him nor do they look at his house. The view is toward Tract "A." Dr. Knowles also noted that he did not object to the development on lots 2 and 3 because he knew they were buildable lots at the time he purchased his house.

John Andrews, 1205 Corbett Road, also appeared on behalf of People's Counsel. Mr. Andrews is employed by the Maryland State Highway Administration as a transportation engineer. He stated that he has lived on Corbett Road for 26 years and that Tract "A" has been used for pasture continuously during that time. His concerns included overcrowding on the two-lane rural Corbett Road, safety relating to additional access points, adverse effects on the value of his property, and water flow downhill into the basin of Tract "A" where it collects.

The next witness was Jack Dillon who was accepted by the Board as an expert on the Baltimore County Code, the BCZR, and planning and zoning (People's Counsel Exhibit #7).

Mr. Dillon testified that in 1981 he was employed in the Baltimore County Office of Planning. He stated that the purpose of a Final Development Plan was to give both the developer and purchasers within the subdivision a document on which they could rely. He opined that the designation of lots 2 and 3 are clearly to be built upon, according to the FDP. Tract "A," however, is not a development parcel, but open space. There is no reference, in this witness's opinion, to density retained or future development of Tract "A."

He noted that rural areas are important to Baltimore County and visual amenities are to be preserved. Tract "A" was treated differently on the FDP for a reason, according to Mr. Dillon. As evidence Mr. Dillon introduced photos that he had taken (People's Counsel Exhibits #8A-D) showing the views relative to Tract "A." He noted the difference in elevation from lots 1-5 with houses built on the ridge, overlooking Tract "A."

In his opinion the Special Hearing request does not meet the standards as set forth in Section 502.1 because the request conflicts with the R.C.7 zoning requirement for 25-acre minimum parcels; the request will create a potential hazard on this rural road with hills and S-curves; and the request is inconsistent with the spirit and intent of the R.C.7 zoning.

Mr. Dillon also noted the Master Plan section for this area (People's Counsel Exhibit #9) wherein the scenic resource is described.

On cross-examination by Mr. Alderman, Mr. Dillon testified that the Office of Planning did not comment on the scenic corridor status of Corbett Road. He also agreed that he could not be specific on the sight distances and the hazards on Corbett Road that might be exacerbated by one additional single-family dwelling. Mr. Dillon simply reiterated that access onto Corbett Road is not an "ideal situation."

Regarding changing a Final Development Plan, Mr. Dillon stated that there is a "proper amendment process," after which the record plat can be amended. He noted that he did not recall any limits in the BCZR to the types of amendments. He said that Tract "A" was not designated on the FDP as local open space by Baltimore County but was retained by the original owner.

Mr. Dillon opined that the word "developed" in the private covenant agreement could refer simply to a shed or a barn, not a residence. He also testified that leaving Tract "A" as open space would actually increase the value of the adjoining lots.

Salvatore Serio, 1036 Corbett Road, also testified on behalf of People's Counsel. He stated that when he purchased lot 4 in 1999 he understood that Tract "A" would not be used for the construction of a residence. He opined that a house with the rear facing the front of his house would negatively affect the value of his property. He emphasized that he would not have purchased his lot if he had known his view would include a house on Tract "A".

George McCeney submitted the appropriate credentials to allow him to speak on behalf of the Sparks-Glencoe Community Association (People's Counsel Exhibit #10). This organization opposes the construction of a single-family dwelling on Tract "A" because, in their opinion, such construction impinges on the integrity of the zoning process and sets a negative precedent for similar development by violating the spirit and intent of the current R.C. 7 zoning.

Opinion

Having reviewed the testimony and evidence before us, the Board finds unanimously that Tract "A" is a developable parcel acceptable for a single-family dwelling as requested by the Petitioner.

BCZR § 1B01.3A.7 provides for the amendment of a Final Development Plan. The subject property allowed for a density of 19 lots under the R.C.5 zoning in place in 1981. Five lots and Tract "A" were approved and recorded. We find no provision or evidence that all

density permitted but not used on an approved FDP is lost forever. We do not find Mr. Dillon's testimony to the contrary to be persuasive.

We note as well that even the private covenants restricting Tract "A" to use as pasture limit that use only "until developed by the Developer, his successor or assigns."

We do agree, however, that in view of the rezoning of Tract "A" from R.C. 5 to R.C. 7, the lot now has density for one single residence under those regulations. Section 1A08.6B.4 allows any lots of record in existence in 2000 when the R.C. 7 zoning regulations became effective to be improved with a single-family dwelling.

The Office of Planning has indicated that the development on the subject site will conform to the setback requirements and maximum building envelope area requirements of the R.C. 7 zone. It is also uncontradicted that DEPRM has approved the lot for well and septic and that the parcel is assessed for tax purposes as a residential lot.

Relative to the requirement that an amendment to a Final Development Plan meet the standards of § 502.1, we find the testimony of the Petitioner's expert Mr. Kellman to be substantive and convincing. We believe that the Petitioner has met his burden in this regard and that the construction of a single-family dwelling on the subject property will not adversely affect any of the standards as set forth above, nor does it violate the spirit and intent of the regulations and the original Final Development Plan as approved.

In conclusion the Board unanimously grants the Petition for Special Hearing to amend the Final Development Plan to change the designation of Tract "A" to building lot 6 at 1100 Corbett Road.

ORDER

THEREFORE, IT IS THIS 30th day of March, 2004 by the County Board of Appeals of Baltimore County

ORDERED that, for the reasons as stated in the foregoing Opinion, Petitioner's request for special hearing to amend the Final Development Plan for the subject property to change Tract "A" to a building lot be and the same is hereby **GRANTED.**

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Edward W. Crizer, Jr.

Margaret Worrall

McKEE & ASSOCIATES, INC.

Engineering • Surveying • Environmental Planning
Real Estate Development

DATE: October 4, 2005

TO: Baltimore County OfficeOf Planning

Re: Braid Property
Lot 18 "Keeney Mill Woods"

ATTENTION: Mr. Arnold " Pat " Keller

(X) We are submitting ( ) We are returning ( ) We are forwarding

(X) Herewith ( ) Under separate cover

No.	Description
1	Panhandle waiver request package

(X) For processing ( ) For your use ( ) For your review

( ) Please call when ready ( ) Please return to this office ( ) In accordance with your request

Remarks :

For further information, please contact the writer at this office.

Very truly yours,

McKee & Associates, Inc.

Guy C. Ward, R.S. , Associate

Enclosures
Cc:

Pet Ex 8

Shawan Place • Suite 1 • 5 Shawan Road • Cockeysville, MD 21030
Tel: 410-527-1555 • Fax: 410-527-1563 • E-Mail: @mckeeinc.com

McKEE & ASSOCIATES, INC.
Engineering • Surveying • Environmental Planning
Real Estate Development

October 04, 2005

Mr. Arnold " Pat" Keller, Director
Baltimore County Office of Planning
401 Bosley Avenue
Towson Md. 21204

Subject : Panhandle Waiver Request
Braid Property
Lot 18 "Keeney Mill Woods"

Dear Mr. Keller,

On behalf or the owner of the above listed property, Mr.Neils Braid, we are hereby requesting a waiver to the panhandle requirements for the creation of a new lot (i.e. lot 2 of the Minor Subdivision Plan) in accordance with Section 32-4-409(K) Baltimore County Code. Specifically an waiver to the in-fee strip width requirement is sought in accordance with the parameters established in Section 32-4-409(b). Currently the subject property is served only by a twelve foot wide in-fee strip. As such we are hereby requesting a waiver to permit two 6' wide strips in lieu of the minimum 10 foot requirement which is otherwise normally required.

The subject property is approximately 8.7 acres in size and is currently zoned RC-2. It has been held intact since October 5, 1976 and should therefore have 2 density units available to it under the RC-2 regulations. However , originally the "Keeney Mill Woods" subdivision was created under the R.D.P. zoning regulations. The property is currently improved by a single family dwelling. Mr. Braid has expressed a desire to subdivide the property so that he may deed land to a child.

We are including a copy of the record plat for the property for your review. We are also including a copy of the plat which has been overlayed on the current topographic information for your use, and have depicted a schematic location for the second lot thereon.

Should you have any questions please contact our offices.

Thank you for your consideration in this matter, we look forward to hearing from you in the near future.

Very truly yours,

Guy C. Ward, R.S., Associate

Shawan Place • Suite 1 • 5 Shawan Road • Cockeysville, MD 21030
Tel: 410-527-1555 • Fax: 410-527-1563 • E-Mail: @mckeeinc.com

Click here for a plain text ADA compliant screen.

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

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 06 **Account Number** - 1700010733

Owner Information

Owner Name: BRAID NIELS H

Mailing Address: 20315 MIDDLETOWN RD
FREELAND MD 21053-9628

Use: RESIDENTIAL
Principal Residence: YES
Deed Reference: 1) /13158/ 427
2)

Location & Structure Information

Premises Address
20315 MIDDLETOWN RD

Legal Description
8.744 AC
20315 MIDDLETOWN RD
KEENEY MILL WOODS

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:	Plat Ref:
6	20	152					18	2	2	40/ 31

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1979	2,756 SF	8.74 AC	04

Stories	Basement	Type	Exterior
2	NO	SPLIT LEVEL	SIDING

Value Information

	Base Value	Value As Of 01/01/2005	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	63,480	126,960		
Improvements:	137,080	154,150		
Total:	200,560	281,110	227,410	254,260
Preferential Land:	0	0	0	0

Transfer Information

Seller: BRAID NIELS H	Date: 09/18/1998	Price: $0	
Type: NOT ARMS-LENGTH	Deed1: /13158/ 427	Deed2:	
Seller: LAWSON, J DAVID & MANOR LAND	Date: 03/09/1978	Price: $22,000	
Type: IMPROVED ARMS-LENGTH	Deed1: / 5862/ 496	Deed2:	
Seller:	Date:	Price:	
Type:	Deed1:	Deed2:	

Exemption Information

Partial Exempt Assessments	Class	07/01/2005	07/01/2006
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

Arnold F. Pat Keller, III, Director

October 20, 2005

Guy C. Ward
McKee & Associates, Inc.
5 Shawan Road
Shawan Place, Suite 1
Cockeysville, Maryland 21030

Re: Braid Property Lot 18 "Keeney Mill Woods"

Dear Mr. Ward:

Your request for a waiver from the provisions of Section 32-4-409 of the Baltimore County Code has been DENIED. As such, it is recommended that the relief sought of Section 32-4-409 be possibly obtained through the Special Hearing process. There are other existing lots currently being served by the panhandle right-of-way in question. Those said lots also have subdivision potential. Section 32-4-409 indicates only 5 lots may be served by a panhandle driveway, granting your waiver request would result in a hindrance of adjacent property owners subdividing their lots. The conduction of a public hearing would allow for equal input of all property owners being served by the subject panhandle right-of-way.

Should you have any questions concerning the matters stated herein, please call Curtis J. Murray with the Office of Planning at 410-887-3480.

Sincerely,

Arnold F. 'Pat' Keller, III
Director

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AFK:LL:CJM:kma

W:\DEVREV\WAIVERS\Braid Property denial.doc

APPEAL

Petition for Special Hearing
20315 Middletown Road
East side of Middletown Road, 1006' SE
Centerline of Keeney Mill Road
6th Election District – 3rd Councilmanic District
Legal Owner: Niels Braid

Case No.: 06-332-SPH

✓ Petition for Special Hearing (January 10, 2006)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (January 13, 2006)

✓ Revised Notice of Zoning Hearing (January 13, 2006)

✓ (2) Certificates of Publication (January 24, 2006 & January 31, 2006 – The Jeffersonian)

✓ Certificate of Posting (February 1, 2006) by McKee & Associates, Inc. – 4 pages

✓ Entry of Appearance by People's Counsel (January 18, 2006)

✓ Petitioner(s) Sign-In Sheet

Protestant(s) Sign-In Sheet - None

✓ Citizen(s) Sign-In Sheet - None

✓ Zoning Advisory Committee Comments

✓ Petitioner's Exhibits
1 ✓ Site Plan of the property.
2 10/20/05 letter to Guy C. Ward, McKee & Associates, Inc. from Arnold 'Pat" Keller, II, Director of Planning.
3 ✓ Title Search of Property – Land Records for Baltimore County – 3 pages.
4 ✓ 3/7/1978 Deed to Niels & Margaret Braid from Manor Land Associates – 2 pages.
5 ✓ 1/5/1977 7-page Declaration by Manor Land Associates to Lizzetta Bedgar for subject property **and** 2-page Deed dated 1/6/1977 between J. David Lawson & Manor Land Associates.
6 ✓ Photocopy of County Council Bill No. 24-06 - - - 7-pages

✓ Deputy Zoning Commissioner's Order (Petition for Special Hearing – APPROVED) dated 3/1/06

✓ Notice of Appeal received on March 15, 2006 from Office of People's Counsel for Baltimore County, MD

c: People's Counsel of Baltimore County
John V. Murphy, Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Howard L. Alderman, Jr., Esq.
Niels Braid
Guy C. Ward, McKee & Associates, Inc.

date sent March 28, 2006, raj

RECEIVED
MAR 2 8 2006
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
THE APPLICATION OF		
BRYAN M AND LINDA G. ROBERTS -	*	COUNTY BOARD OF APPEALS
LEGAL OWNERS/PETITIONERS		
FOR SPECIAL HEARING AND	*	OF
VARIANCE ON THE PROPERTY		
LOCATED ON E/S HALETHORPE	*	BALTIMORE COUNTY
AVENUE, 640' S/OF C/LINE OF		
WASHINGTON BOULEVARD	*	CASE NO.: 05-137-SPHA
(1919 HALETHORPE AVENUE)		
	*	
13TH ELECTION DISTRICT	*	
1ST COUNCILMANIC DISTRICT		
* * * * *	*	* * * * * *

OPINION

This matter is before the Board on appeal from the Zoning Commissioner's Order in which a request for special hearing was denied and a request for variance was granted in part and dismissed in part as moot.

The Petitioners, Bryan M. Roberts and his wife Linda G. Roberts, by their attorney, J. Carroll Holzer, Esquire, requested a special hearing pursuant to § 500.7 of the *Baltimore County Zoning Regulations* (B.C.Z.R.) to approve a waiver, pursuant to § 32-4-409(a)(2) of the *Baltimore County Code* (BCC) to allow a panhandle driveway and to confirm the use of an 8-foot wide in-fee strip along with a 20-foot wide easement for a proposed dwelling on Lot 2 consistent with §102.4 of the B.C.Z.R. and Section RM-1 of the Zoning Commissioner's Policy Manual (Z.C.P.M.). In addition, variance relief was requested from § 1B02.3.C of the B.C.Z.R. to allow a minimum front yard setback of 34 feet in lieu of the required 40 feet and a rear yard setback of 18 feet in lieu of the required 40 feet for the existing dwelling on Lot 1.

The Board held a hearing on May 24, 2005. Appellants/Petitioners were represented by J. Carroll Holzer, Esquire, and People's Counsel, Peter M. Zimmerman, Esquire, participated in

PC #17

opposition. The parties filed Briefs in lieu of closing arguments on June 27, 2005. A Public Deliberation was held on August 10, 2005.

Background

Petitioners, Bryan and Linda G. Roberts, are developers who live in Ellicott City in Howard County, Maryland. They acquired 1919 Halethorpe Avenue in southwestern Baltimore County in 2001. It has an existing dwelling on the property. The property itself is .9619 acre in size (104 feet by 400 feet), and is zoned D.R.2, having been reclassified from D.R. 5.5 in 1996.

The Petitioners purchased the property with the intention of refurbishing the existing dwelling, and subdividing the property to create a second building lot to the rear. Lot #1 would remain 20,038 sq. ft. in area and the existing improvements on proposed Lot #2 would consist of 21,780 sq. ft. and would be developed with a single family dwelling. Access to Lot #2 would be provided via a panhandle driveway leading into the property from Halethorpe Avenue.

Petitioners commenced making renovations to the existing home and that home has been reoriented so that the door of the dwelling now faces the north side and the west side faces Halethorpe Avenue. Charles Crocken, a licensed professional engineer retained by the Roberts to prepare the development plan, found that when the minor subdivision plans were drafted, he learned that the D.R. 2 zoning of the property would require County approval to allow a panhandle driveway and that a minimum 20-foot wide in-fee strip was required pursuant to § 32-4-409(b) of the B.C.C. This panhandle strip would then jeopardize Lot #1's ability to meet the 20,000 sq. ft. requirement mandated by § 102.4 of the B.C.Z.R. Crocken stated that the special hearing was requested in order to confirm the use of an 8-foot wide in-fee strip for Lot #2 along with a 20-foot wide easement for access to and from Halethorpe Avenue to the proposed building to be located on Lot #2 at the rear of the property. He then stated that the request for the

8-foot wide strip was consistent with Baltimore County Zoning Policy set forth in the Zoning Commissioner's Policy Manual dated September 20, 1985 which stated

> RM-1A Access Residential Regulation: 102.4 (Baltimore County Zoning Regulations). No dwelling shall be built on a lot containing less than 20,000 sq. ft. which does not abut on a right-of-way at least 30' wide over which the public has an easement of travel.
>
> **Policy:**
>
> A. Pursuant to Section 102.4 (B.C.Z.R.) the Zoning Office will require in-fee access to a public road for all lots.
>
> B. Where more than one lot is involved several substandard panhandle in-fee strips "with a 2 ft. minimum width" may be established to meet this requirement.
>
> C. If the required in-fee strip is located in the only possible access area, the in-fee portion of the access or utility easement must be at least 8 ft. wide. A 12' or wider easement may be required for each lot by other agencies to provide for access or utilities.

(Section of policy manual submitted by the Petitioners as Petitioners' Exhibit No. 3.)

Mr. Crocken contended that a variance was requested for Lot #1 from § 1B02.3(c) of the B.C.Z.R. to allow a minimum front yard of 34 feet in lieu of the required 40 feet since the existing dwelling would be positioned on Lot #1 facing north towards the side of the proposed driveway. Petitioners proposed to reorient the front of the building on Lot #1 towards the north side of the property and this would be 34 feet from the proposed 8-foot strip rather than the required 40 feet if it is accepted that the front of the property is the north side of the building. Petitioners also requested a rear yard set back on the south side of the property of 18-foot in lieu of the required 40 feet for the existing drawing of Lot #1. The Zoning Commissioner granted the rear yard variance request and that was not a subject of appeal before the Board. Based upon the granting of that request, Petitioners took the position that the Zoning Commissioner had adopted

their position that the front of the building on Lot #1 was facing the north side of the property rather than towards Halethorpe as it was originally oriented.

The Planning Office, by way of a memo dated September 27, 2004 from the Director to Timothy Kotroco, Director of Permits and Development Management, stated:

> Summary of Recommendations: The Office of Planning reviewed the subject minor subdivision and forwarded comments to the Petitioners on April 30, 2004. The content of the comments are as follows:
>
> > The subject property is not wide enough to be subdivided. The minimum lot width in the T.R. zone is 100'. Minus a 20-foot in-fee strip required for Lot 2, Lot 1 will have a front yard width of approximately 84'. This office will not support any variance to create a panhandle lot, or to create a substandard lot. The Petitioner currently proposes an 8-foot wide in-fee strip for Lot #2. Lot #1 will still not meet the minimum lot width requirement of 100'. As such, this office recommends that the Petitioners' request be denied.

Petitioners contended that the Planning Office did not consider the fact that the front of the building on Lot #1 has been reoriented towards the north side of the property. Petitioners contended that the issue with respect to the driveway was an access issue and that it was not a panhandle driveway issue. They contended that it was a question as to whether adequate access for Lots #1 and #2 from Halethorpe Avenue had been provided.

Petitioners called Lloyd Moxley, a technician of the Baltimore County Zoning Office, in support of its position with respect to the access issue. Mr. Moxley testified that he had reviewed the proposed plan of the Petitioners and discussed the matter with his superiors. He referred to the BCZR § 102.4 and the policy manual relevant thereto as noted in RM-1A Access Residential and Policy C. Moxley stated that in his opinion the plan met the zoning requirements and that the Zoning Office approved the plan. On cross-examination, Moxley admitted that Section RM-1A was no longer in the current policy manual which was adopted May 31, 1991 and amended in 1992. His opinion was that it was left out due to an oversight. He stated that

the policy, with respect to the 8-foot of access, was followed by his department. Moxley also agreed on cross-examination that the law would supersede the regulations if the law were more specific with respect to panhandle lots. In addition, he stated that he defers to the Office of Planning as to whether or not Lot #2 is a panhandle lot. He also agreed that the Planning Office had the primary jurisdiction over the orientation of a lot.

Decision

A. The Motion to Dismiss

At the beginning of the hearing, People's Counsel moved to dismiss the appeal with prejudice on the following basis:

1) The two letters of appeal, attached, were prepared and signed by Charles Crocken, P.E. as a representative of Bryan Roberts.
2) The letters were not signed by Petitioners or by an attorney.
3) Under these circumstances, the appeal does not comply with Code § 32-3-401, CBA Rule 3(a) 6 and Maryland Law because it is not directly filed by Petitioners and because an engineer is not qualified to file an appeal in a representative capacity.
4) The Code allows "a person aggrieved or feeling aggrieved" to file an appeal. To satisfy this law, either the individual person or his/her attorney may file the appeal. The CBA Rules limit representation to attorneys.
5) The appeal is a nullity. The County Board of Appeals lacks jurisdiction.
6) In any event, People's Counsel believes that the appeal is without merit.

The Panel Chair of the Board ruled that the Board would accept the appeal as filed, but would not allow Mr. Crocken, the engineer, to represent the Petitioners at the hearing, to examine and cross –examine witnesses and present evidence, except as a witness.

The Board affirms the decision made at the hearing. Section 32-3-401 of the B.C.C. entitled Appeals to the Board of Appeals states:

> (a) In General. A person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner or the Director of Permits and Development Management may appeal the decision or Order to the Board of Appeals.

This section does not prohibit an appeal from being filed by any person representing the Appellant, nor does that section require that the appeal be signed by the Appellant. Rule 3 of the Board's Rules states "a. no appeal shall be entertained by the Board of Appeals unless the notice of appeal shall state the names and addresses of the persons taking such appeal."

This does not require that the original Appellant sign the appeal. Mr. Crocken signed the appeal on behalf of Mr. and Mrs. Roberts and indicated that the appeal was taken with respect to the property of 1919 Halethorpe Avenue on behalf of Bryan Roberts, *et ux* – Petitioners. The Board would prefer that the appeal be signed by an attorney or by the actual individual effecting the appeal. However, there is no requirement under the Board rules that this be done.

Rule 6 of the Board's Rules covers the appearances and practice before the Board of Appeals. This rule allows any individual, who is a party to the proceeding, to appear in his own behalf and any member of a partnership may appear as representing said partnership if it is a party or a duly authorized officer of a corporation, trust, or an association as representing said body if it is a party to said proceedings. This rule also allows any party to be represented by an attorney at law admitted to practice before the Court of Appeals of Maryland. Section C states "no person shall appear before the Board in a representative capacity, engage in practice, examine witnesses or otherwise act in a representative capacity except as provided in Sections A and B above." As stated previously, the Board allowed the appeal to be accepted on the basis of filing by Mr. Cracken the engineer, but refused to allow Mr. Cracken to represent the Petitioners in the hearing before the Board. The Board considers that its position at that time was correct.

B. The Panhandle Lot Issue

The policy of the County Department of Permits and Development Management (PDM) follows the policy set forth in the Zoning Commissioner's Manual (RM-1A Access – Residential):

> c. If the required in-fee strip is located in the only possible access area, the in-fee portion of the access or utility easement must be at least 8-foot wide. (A 12' wide or wider easement may be required for each lot by other agencies to provide for access or utilities).

This is in direct contravention to B.C.C. Section 32-4-101(ee) and 32-4-409. Section 32-4-101(ee) defines *Panhandle lot*:

> "Panhandle lot" means a lot shaped and situated so that the only frontage or access to a local street or collector street is a narrow strip of land that:
>
> (1) Is held in-fee, except as provided in Section 32-4-409 of this title; and
>
> (2) May contain a panhandle driveway, water and sewer lines, and other utilities.

Section 32-4-409 of the B.C.Z.R. entitled Panhandle Driveway states:

> ...(b) In-fee strip; required.
>
> (1) Except as provided in subsection (c) of this section, the county may permit a panhandle lot if the lot includes an in-fee strip of land for access to the local street.
>
> (2) Panhandle fee strips shall be a minimum of:
>
> i. 20 feet in width to serve one lot;
> ii. 12 feet in width per lot where two lots are involved...."

Nothing in § 32-4-409 mentions an 8-foot wide in-fee strip. As stated by the Court of Appeals in *Vest v. Giant Food Stores*, 329 Md. 461, 476 (1993):

> An agency cannot override the plain meaning of the statute or extend its provisions beyond the import of the language employed.

The *Baltimore County Code* does allow the Director of Permits and Development Management to adopt policies under Code § 32-3-105, but his authority is circumscribed. Any policies must be consistent with relevant legislation. Section 32-3-102 states:

> The Director of Permits and Development Management shall interpret and enforce the Baltimore County Zoning Regulations to ensure the uses or buildings, including structures, landscaping, roads, and streets, conform to plans approved by the county.

This does not give the Director of Permits and Development Management the authority to substitute his interpretation of the zoning regulations for that of the Zoning Commissioner or the Board of Appeals.

The Board finds that the policy of the Director of Permits and Development Management in interpreting Section RM-1A of the Policy Manual is contrary to, and in conflict with, the *Baltimore County Code*. The special hearing to allow an 8-foot strip in lieu of the 20-foot strip required by § 32-4-101(e) and § 32-4-409 is denied.

C. The Variance Request

The Planning Office noted that the required panhandle strip of 20 feet wide would leave Lot #1 substandard both as to net area and front lot width under B.C.Z.R. 1B02.3.C, Small Lot Table Requirements for the D.R.2 zone. In this assessment, the Planning Office assumed that the orientation of the lot was fronting on Halethorpe Avenue. Petitioners contend that the orientation of the lot is now fronting toward the north side of the lot which would make the front of the lot nearly 200 feet wide and the width of the lot approximately 104 feet without the in-fee strip. Petitioners contend that since the Zoning Commissioner allowed the variance for what he considered to be the rear of the lot and this issue was never appealed, the question of the orientation of the building on the lot is a settled matter. The Board disagrees. The tax map and data search shows 1919 Halethorpe Avenue as Parcel 73, one of several lots in Halethorpe

Terrace. The building was constructed in 1873 (PC Exhibit 10). It is one of a group of five lots of about the same size with street frontage and driveways on Halethorpe Avenue. The GIS aerial photograph submitted by People's Counsel (PC Exhibit 1) confirms this layout and shows a walkway leading from Halethorpe Avenue to the building constructed on the property in question. This is in addition to the driveway that shows on the aerial photograph. Two neighbors, Donald Hawkins and David Howard, who have lived in the area for many years, both testified that prior to the Roberts' purchasing the house, the entrance to the house was on Halethorpe Avenue.

Petitioners contend that the entrance to the house is now on the north side of the building and opens into a center hall, with stairs going to the upstairs rooms. The living room is to the right of the entranceway and the dining room and kitchen are to the left of the entranceway. In addition, the Petitioners contend that the entrance to the cellar, by means of metal doors opening up from the south side of the building, confirms that the house is oriented towards the north.

The fact that the Petitioners may have re-oriented the entrance to the house facing north does not change the original orientation of the house and the fact that the house still has an address on Halethorpe Avenue. The situation is much different from the *Wilder* case (CBA Case No. 04-252-SPHA), recently decided by the Board and quoted by the Petitioners. In that case, the house in question, in Rodgers Forge, was an end-of-group home that was constructed with the main entrance oriented toward Pinehurst Road, although the address was on Murdock Road. It contained an entranceway on Pinehurst and a walkway to Pinehurst. The rear of that home was attached to the neighbor's home in a row of homes in Rodgers Forge.

In attempting to prove its point that the address was on Murdock Road, the Protestants in *Wilder* cited several instances where homeowners had re-oriented the main entrance to their

homes to the side, as was done in the instant case. However, despite the main entrance being on the side of the home, the front of the home and the address remained the same. The Board finds a definite difference between the house in question and the home in the *Wilder* case.

Having found that the 8-foot in-fee strip is invalid, the Board feels that the request for a variance is moot. However, in the event the 8-foot strip should be allowed, the Board feels that the issue of uniqueness as required in the case of *Cromwell v. Ward*, 102 Md. App. 691 (1995) has not been proven in this case. Tax maps and the aerial photograph submitted by People's Counsel shows that this property is a long rectangular piece of property very similar to other properties on Halethorpe Avenue and in the immediate vicinity. In *Cromwell v. Ward*, 102 Md. App. 691 at page 710, the Court stated:

> In the zoning context the "unique"' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic that is not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.

Even assuming that the building is oriented towards the north side of the property, this does not make the property "unique." Therefore, the Petitioners' request for variance must be denied.

ORDER

THEREFORE, IT IS THIS 3rd day of November, 2005, by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to approve a waiver pursuant to § 32-4-409(a)(2) of the *Baltimore County Code* to allow a panhandle driveway and to confirm the use of an 8-foot wide in-fee strip along with a 20-foot wide easement for access to and from Halethorpe

Avenue for a dwelling proposed on Lot #2 of the Development Plan consistent with § 102.4 of the B.C.Z.R. be and is hereby **DENIED**; and it is further

ORDERED that the Petition for Variance seeking relief from §B02.3.C of the B.C.Z.R. to allow a front yard setback of 34 feet in lieu of the required 40 feet be and is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chair

Michael O. Ramsey

John P. Quinn

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I, Teresa Moore, am currently the Executive Director of the Valleys Planning Council, Inc.

Teresa Moore
Executive Director

ATTEST:

The Valleys Planning Council, Inc.

~~John Beckley, Secretary~~
Katrina Amos VP
Date: 9/12/04

Peter Fenwick, President

pc #18

pc 18

The Valleys Planning Council, Inc.

RESOLVED: That at the May 9, 2005 annual meeting of the Valleys Planning Council, Inc. it was reconfirmed by the Association that responsibility for review and action on all zoning matters be placed with the Executive Committee consisting of the following members, each of whom is hereby authorized to testify on behalf of the Association before the County Board of Appeals or other duly constituted zoning agency, body, or commission:

Peter Fenwick, President
Kathleen Pontone, Vice President
William Stewart, Treasurer
John Beckley, Secretary
Richard Buck, Chairman

AS WITNESS OUR HANDS AND SEAL THIS 9th **day of** September 2006

ATTEST:

The Valleys Planning Council, Inc.

John Beckley, Secretary
KLP, VP

Peter Fenwick, President

The Valleys Planning Council, Inc.

RESOLVED: That the position of the Valleys Planning Council, Inc., as adopted by the Executive Committee on the zoning matter known as: *the Neils Braid request for zoning relief* is that: The VPC is opposed to the re-subdivision of property that was subdivided under the prior RDP zoning and was subsequently downzoned to RC2 Agricultural Zone. Such a property has already taken advantage of a higher density zoning and has an approved subdivision plat. Individual lots that are part of the larger subdivision are not eligible for subdivision. Re-subdivisions of this type are not in keeping with the intent of the RC2 zone. Moreover, the proposed re-subdivision exceeds the permitted RC2 zone density for the entire 75-acre tract of land.

The VPC is concerned that the approval of this re-subdivision undermines the purposes of the Agricultural Zone not only by causing more suburban sprawl here, but also by setting a precedent for the multiplication of sprawl all over the RC2 zoned areas, including much of the valleys.

AS WITNESS OUR HANDS AND SEAL THIS 27th **day of** October, 2006.

ATTEST: The Valleys Planning Council, Inc.

John Beckley, Secretary

Peter Fenwick, President

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2170

September Term, 2003

MEADOWS OF GREENSPRING HOMEOWNERS ASSOCIATION, INC., et al.

v.

FOXLEIGH ENTERPRISES, INC.

Murphy, C.J.,
Barbera,
Meredith,
JJ.

Opinion by Meredith, J.

Filed: October 22, 2004

PC #16

4-1022-10 (19)

3C00011312

This case involving a proposal to develop an additional commercial building at Green Spring Station has been before this Court on two prior occasions. When we first reviewed the case, in *Meadows of Greenspring Homeowners Association, Inc. v. Foxleigh Enterprises, Inc.*, 133 Md. App. 510, 758 A.2d 611 (2000), we remanded the case because it was not yet ripe for appeal. After further proceedings upon remand, the case again made its way to this Court, and in an unreported opinion, the Court again found the appeal premature and remanded the case for further proceedings. *See Foxleigh Enterprises, Inc. v. Johns Hopkins Suburban Health Center, Limited Partnership, et al.*, No. 844, September Term, 2001. When the case made its way back to the Board of Appeals upon the second remand, the Board of Appeals rejected the neighboring property owners' objections to administrative approval of the proposed development. The Board of Appeals, by order dated March 11, 2003, stated that it was affirming "the decision of the County Review Group in Case No. CBA-99-151, in which the CRG approved the 1st Refinement CRG Plan." (E. 127) The neighboring property owners then petitioned the Circuit Court for Baltimore County for judicial review, and that court affirmed the Board's decision. (E. 132)This appeal by the neighboring property owners followed.

Appellants raise the following four questions on this appeal:

1. Whether the circuit court erred when it affirmed the Board's finding that failed to consider the plan's

expiration and the failure of the plan to comply with current zoning regulations?

2. Whether the circuit court erred when it affirmed the Board's conclusion that the amendment to the Development Plan, changing the proposed eight-story building to a two-story building, was a "refinement"?

3. Whether the circuit court erred when it affirmed the Board after the Board had failed to remand the case to the CRG as it had been ordered to do by this Court and by the circuit court?

4. Whether the Board's action in approving the change as a "refinement" was an illegal action because only two of the required three members of the Board participated in that action in violation of Rule 1 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals?

The developer, as appellee, contends that there is only one question this Court needs to decide, namely, "Did the County Board of Appeals err when it affirmed the County's approval of the 2-story alternative as a 'refinement' to a previously approved Amended CRG Plan for Green Spring Station?" This is essentially a rewording of the appellants' second question. Upon reviewing the entire history of this case, we conclude that the Board of Appeals was in error in its application of Baltimore County Code § 22-63,

and we will accordingly reverse the judgment of the Circuit Court for Baltimore County, and will remand the case for review by the CRG of the material amendment proposed by the developer.

Background

The case traces its roots back to 1983, when the Baltimore County "County Review Group," commonly referred to as the "CRG," approved a development plan for Green Spring Station. That development plan was reviewed and approved pursuant to the procedure mandated by Bill 56-82, codified as Baltimore County Code §§ 22-52, et seq., that was the generally applicable review procedure in place from 1982 until 1992. (Although Baltimore County adopted a new revision of its County Code which became effective on July 1, 2004, all citations in the briefs of the parties and in this opinion refer to the Baltimore County Code as it existed prior to July 1, 2004.)

As approved by the CRG in 1983, the development plan for Green Spring Station included proposed improvements upon certain parcels of the Green Spring Station property that were eventually conveyed by the developer to two of the protestants who are now among the neighboring property owners. Pursuant to the 1983 plan, the developer constructed a multi-story building on the property, and also paved much of the property for parking.

In 1992, Baltimore County enacted Bill 1-92, codified as Baltimore County Code, §§ 26-166, *et seq.*, altering the procedure for review of proposed developments such as Green Spring Station. As a consequence of Bill 1-92, developments subsequently proposed would no longer be referred to the CRG, but would instead be reviewed by the "Development Review Committee" ("the DRC"), with one relevant exception. The Bill provided that proposed amendments to development plans which had previously been approved by the CRG would still be reviewed by the CRG under the CRG process that was in effect at the time of the earlier approval. See Baltimore County Code, § 26-169(ii) and § 26-211.

In early 1998, the developer began seeking County approvals to construct an eight-story building on a portion of the property that was previously utilized as a parking lot. The neighboring property owners have consistently opposed the new construction.

When the developer first approached the County in April 1998, the developer asked the DRC to rule that its review was not necessary because the proposed development was merely a refinement to a plan previously approved by the CRG. In May 1998, the DRC agreed that the CRG was the proper body to review the proposed project, but did not agree the proposed 8-story building was merely a refinement of the previously approved development plan. By letter dated May 12, 1998, the Director of the Baltimore County Department of Permits and Development Management wrote to the developer and

material change to the CRG. Please submit new plans, so a new CRG can be scheduled."

All parties were unhappy with the DRC's decision and appealed to the Board of Appeals, then to the Circuit Court, and then to this Court. In *Meadows, supra*, 133 Md. App. 510 (2001), we held that these appeals were premature.

In the meantime, while the first round of appeals were underway, the developer proceeded to seek CRG approval of the proposed 8-story building as a material amendment to the 1983 CRG approved development plan. An open CRG meeting was properly held on August 13, 1998, at the conclusion of which the CRG approved the proposal to add an 8-story building. The neighboring property owners promptly filed an appeal to the Baltimore County Board of Appeals (Case No. CBA 98-145).

The Board of Appeals did not begin holding its hearings on Case No. CBA 98-145 until early March of 2000. By the time the Board of Appeals hearings began, there had been additional changes to the developer's plans. Bill 111-98 imposed a building height limit of 35 feet. Consequently, the proposed 8-story building would require a variance to exceed the new height limit. In response to the new height limit, on October 13, 1999, the developer submitted a new proposal for construction of a 2-story building instead of an 8-story building. Based upon its internal review of the new

proposal, the DRC concluded that the 2-story proposal was not a "material amendment" to the 8-story plan the CRG had approved on August 13, 1998, and that consequently, further CRG review was not required. Without conducting any sort of public hearing, the Director of the Department of Permits and Development Management approved the 2-story proposal as a "refinement" to an approved CRG plan. The proposed refinement was then stamped "Plan Approved" under a caption that referenced the "BALTIMORE COUNTY MD. COUNTY REVIEW GROUP," and the approval stamp was signed by representatives of the Department of Public Works and the Office of Planning and Zoning on November 2, 1999. (E. 17) The neighboring property owners appealed this approval to the Board of Appeals. The Board of Appeals then consolidated the appeal from the CRG approval of the 8-story proposal (Case No. CBA 98-145) with the appeal from the approval of the 2-story proposal (Case No. CBA 99-151).

An additional wrinkle in this already complicated history is that Baltimore County changed the zoning applicable to Green Spring Station from B-M to O-3 by a bill adopted October 10, 2000, effective December, 2000. The neighboring property owners assert that the Board of Appeals has never considered the impact of that change in zoning.

On October 12, 2000, the Board of Appeals issued its ruling in both appeals. It affirmed the CRG approval of the 8-story proposal (Case No. CBA 98-145). In Case No. CBA 99-151, the Board of Appeals

found that the 2-story proposal did not appear to be a refinement. But rather than reverse the administrative approval outright, the Board of Appeals issued an order remanding Case No. CBA 99-151 "to the CRG for further proceedings and clarification of the approval as a 'refinement' prior to a final determination by the Board." (E. 84)

The neighboring property owners promptly filed for judicial review of the October 12, 2000, ruling in the Circuit Court for Baltimore County, and the case eventually came to this Court. We ruled, in an unreported opinion issued August 21, 2002, that the Board of Appeals ruling was not a final, appealable ruling. *Foxleigh Enterprises, Inc. v. Johns Hopkins Suburban Health Center, Limited Partnership, et al.*, September Term, 2001, No.844 (August 21, 2002). The case was remanded to the Circuit Court for Baltimore County "with instructions to remand the case to the County Board of Appeals for further proceedings consistent with this opinion." The Circuit Court for Baltimore County, in turn, issued an order dated December 17, 2002, that affirmed the Board of Appeals' approval of the 8-story proposal, but remanded the appeal involving the 2-story proposal "for further proceedings in accordance [with] its Order of October 12, 2000, remanding the 1st Refinement to Amended CRG Plan for Green Spring Station/Valley Concourse to the County Review Group for clarification of its approval as a 'refinement.'"

When the case was next considered by the Board of Appeals, two members – rather than the normal panel of three – held a public deliberation on March 5, 2003. At that time, the two members of the Board of Appeals reviewed a letter that had been written by the Director of the Department of Permits and Development Management soon after the Board of Appeals had issued its ruling dated October 12, 2000. In that letter dated October 25, 2000, the Director indicated that he was responding to the language in the Board of Appeals order that "remanded [the case approving the 2-story proposal] to the CRG for further proceedings and clarification of this approval as a 'refinement' prior to a final determination by this Board." The Director pointed out that there had never been a CRG meeting to review this proposal, stating: "In the instant case, the CRG did not determine that the proposed amendment was a refinement. The Development Review Committee (DRC) did." The Director continued, "I therefore have considered the Board's order as a remand to the DRC, the entity which did in fact review [the 2-story proposal] for compliance with county policy."

According to the Director, the DRC had analyzed the 2-story proposal pursuant to the Policy Manual of the Department of Permits and Development Management, which provides in Policy Number 1, Paragraph C: "In order to further clarify the 'Plan Amendment Process', it is proposed that slight, minor or insignificant changes to an approved plan, which have no significant impact on

the site or on adjacent properties or the neighborhood at large may be considered as 'Plan Refinements' fully in keeping with the informative, conceptual and schematic nature of the CRG plan...." The Director concluded his letter to the Board of Appeals by stating: "If this is not the information the Board seeks, or if it is the Board's [intention] that a CRG be convened, please let me know. I would emphasize that should a CRG be convened, not reconvened, the issue would be for the review of a proposed material change."

On March 11, 2003, the two members of the Board of Appeals who had held the public deliberation issued an order stating "that the decision of the County Review Group in Case No. CBA-99-151 [involving the 2-story proposal], in which the CRG approved the 1st Refinement CRG Plan, be and the same is hereby AFFIRMED." The Board of Appeals indicated that its "decision to affirm the decision of the CRG in [the case involving the 2-story proposal] relative to the refinement issue, with no necessity for further remand," was based upon its review of the Director's "detailed letter of October 25, 2000 ..., written in response to the Board's remand Order of October 12, 2000."

The neighboring property owners again sought judicial review by the Circuit Court for Baltimore County. By order dated November 16, 2003, the Circuit Court for Baltimore County affirmed the

ruling of the Board of Appeals. The neighboring property owners then filed the present appeal to this Court.

Standard of Review

The applicable standard of review is the same in this appeal as it was the last time this case came before this Court. As we said there:

> In our review of the action of an administrative agency we do not review the action of the circuit court, but essentially look through that court to the action of the agency, because our function is the same as was that of the circuit court - to determine whether, on the record, the agency may have committed error. *See Meadows of Greenspring Homeowners Ass'n, et al. v. Foxleigh Enterprises, Inc.*, *supra*, 133 Md. App. at 514 (stating that "[a]n appellate court must essentially repeat the circuit court's review of an agency decision"); *Gigeous v. E.C.I.*, 363 Md. 481, 495-96 (2001) (noting that an appellate court "re-evaluate[s] the decision of the agency, not the decision of the lower court.").

Foxleigh Enterprises, supra, No. 844, September Term, 2001, Opinion at 5.

Accordingly, we review the final order of the administrative agency – *i.e.*, the Board of Appeals – not the judgment of the Circuit Court for Baltimore County. In conducting our review of the action of the Board of Appeals, we determine "whether the agency's decision is premised on an erroneous conclusion of law." *United Parcel v. People's Counsel*, 336 Md. 569, 577 (1994).

Discussion

Here, the final order of the Board of Appeals approved the action of the Director of the Department of Permits and Development Management as outlined in the Director's letter dated October 25, 2000. (E. 97) In that letter, the Director acknowledged that: "No CRG meeting was ever convened to review this refinement." Instead, the proposal for a 2-story project had been submitted to the DRC, which had concluded that the proposal "constituted a refinement." In affirming this internal agency approval process – that bypassed the CRG review process required by Baltimore County Code, § 22-63 – the Board of Appeals based its decision on an erroneous conclusion of law. Even though members of the CRG signed off on the proposed 2-story plan, the plan has not been reviewed in accordance with the applicable CRG process as required by the Baltimore County Code.

In *Beth Tfiloh Congregation of Baltimore City, Inc. v. Glyndon Community Association, Inc.*, 152 Md. App. 97, 831 A.2d 93 (2003), we incorporated the following summary of the Baltimore County procedures for processing requests for changes to a development plan previously approved by the CRG:

> If a request for amendment to a previously approved plan is received, the DRC [Development Review Committee] first evaluates which development law applies. Baltimore County Code § 26-169 and § 26-211, "grandfather," for the benefit of the developer, certain projects which have been approved pursuant to an earlier development process than the one which is currently in effect. Under the regulations presently in effect, which went into effect

in 1992, development approval requires a community input meeting and a hearing officer's hearing. Baltimore County Code, 1988 ed., §§ 26-201, *et seq.* This is referred to as the "Development Process." Between 1982 and 1992 there was a process in effect known as the "CRG Process." The CRG Process involved a public meeting by county agencies and ultimate approval or disapproval of the plan by the Directors of the Department of Public Works and the Office of Planning. Baltimore County Code, 1978 ed., 1988 supp., §§ 22-52 *et seq.* Prior to 1982, there was only a subdivision review process. The subdivision process, often referred to as the "JSPC Process," ("Joint Subdivision Planning Committee"] involved a planning board approval of a subdivision plat. Baltimore County Code, 1978 ed., §§ 22-40, *et seq.*

Subdivision approval is required for plat recordation, which, in turn, is required to legally transfer title of real property.... Development approval, by CRG Process or Development Process, as the case may be, is required for "development," which is currently defined generally as building or the preparation of land for building. ...

Pursuant to the grandfathering provisions of Baltimore County Code § 26-169 and § 26-211, with regard to development approval, a property acquired a right to further development approval in accordance with those procedures which governed the first development (or subdivision) approval thereon. This is beneficial to an owner of property with a previously approved subdivision or development because it is generally accepted that the current Development Process is more onerous than the earlier CRG Process or the JSPC Process.

Accordingly, if a developer seeks development approval for a tract or parcel in the first instance, *i.e.*, before there has been any previous subdivision or development on the property, then clearly, neither § 26-169 nor § 26-211 grandfathers the property into any prior development approval process and the current Development Process governs. In such cases the developer is bound to proceed in accordance with the development approval procedures presently provided for in §§ 26-201, *et seq.*, unless the developer is otherwise exempt from these requirements under § 26-171.... Equally clear is that if a developer approaches the DRC with a change or amendment to a plan which was first approved by the CRG Process or by the JSPC Process, then the DRC must find that the appropriate earlier process applies....

If the DRC determines that the proposed project is an amendment to a plan previously approved pursuant to an

earlier process, *i.e.*, the CRG Process or the JSPC Process, then the amendment is characterized as either a "refinement" or a "material amendment."

> Refinements to CRG plans are processed administratively.... These plans are circulated to the Department of Public Works and the Office of Planning, each of which must approve the refinement.... Ultimately, the Director of Public Works and the Director of Planning will approve the refined plan. Refinements to JSPC plans are processed administratively by the Director of Planning, pursuant to Baltimore County Code, 1968 ed., §§ 22-33.
>
> Material amendments to CRG Plans require approval by the Director of Public Works and the Director of Planning, after a public meeting of the county agencies known as the CRG Meeting. Material amendments to a JSPC Plan would require approval by the Baltimore County Planning Board, after a public hearing.
>
> When an applicant submits a request for amendment to a previously approved plan, the first issue the DRC must decide is what development law applies. If the DRC determines that the plan had been approved under one of the earlier processes, it then determines which process it was approved under; it next determines whether the proposed amendment is a material change to, or a refinement of, the existing approved plan.

Id. at 110-11.

According to the letter dated October 25, 2000, from the Director, this procedure was generally followed with respect to the request for approval of the developer's 2-story proposal. We take issue, however, with the characterization, first by the DRC, and ultimately by the Director and the Board of Appeals, that the 2-story proposal constituted a mere "refinement" that could be exempt from the CRG review process. While it may be correct that some proposed minor changes to a development plan could be deemed as not material, and hence mere refinements, we do not agree that a change from an 8-story building to a 2-story building could be considered

so negligible as to fall outside the definition of a "material amendment." The governing statute provides that any proposal for a "material amendment" to a development plan previously approved by the CRG must be approved in the same manner as the original CRG approved plan. {E. 79}. Specifically, Baltimore County Code, § 22-63, provides: "Any material amendment to an approved plan shall be reviewed and approved in the same manner as the original plan."

As this Court stated in its opinion in the first appeal of this case, *Meadows, supra*, 133 Md. App. at 515, and the Board of Appeals similarly stated in its opinion dated October 12, 2000: {E. 79}

> Sections 26-169 and 26-211 unambiguously state that there is no discretion involved in deciding which review process is applicable. A previously approved plan by the CRG must be reviewed by the CRG process for any material amendments.

Assuming that the 8-story proposal was properly approved by the CRG – a conclusion of the Board of Appeals that was affirmed in prior appeals – a request for a material amendment to the 8-story plan should have been subjected to the full CRG review process.

Our conclusion that the plain meaning of "any material amendment" would necessarily encompass a change from 8 stories to 2 stories is buttressed by the findings of fact made by the Board of Appeals in its ruling issued October 12, 2000. In that order the Board of Appeals pointed to expert testimony that the change in the height of the building made the proposed project "not only a

quantitatively but qualitatively different project than the approved plan." (E. 82) The Board pointed to expert testimony from another expert who opined: "that Foxleigh's proposed building was 'obviously out of scale' with the rest of the Greenspring Station development. ..." (E.82) The majority of the Board also "felt that the proposed 'refinement' had a significant affect on neighborhood property, or the neighborhood at large, different from the approved plan. ...There was much unchallenged testimony from traffic experts, tenants, and neighbors to give credibility to a 'significant' affect on the surrounding community." (E. 83)

When the Board of Appeals issued its order dated March 11, 2003, the only additional information before it (E.125) was the letter dated October 25, 2000, from the Director of the Department of Permits and Development Management. In that letter, the Director explained that the Development Policy Management Manual provides that "slight, minor or insignificant changes to an approved plan, which have no significant impact on the site or on adjacent properties or the neighborhood at large may be considered as 'Plan Refinements' fully in keeping with the informative, conceptual and schematic nature of the CRG plan...." Since the proposed change from an 8-story building to a 2-story building could not reasonably be considered a "slight, minor or insignificant [change] to an approved plan," this information in the Director's letter provided

no rational basis for a conclusion that the proposed change was not a "material amendment."

The only other information provided in the Director's letter was the comment that: "Historically, the reduction in size or scope of an approved project is considered a refinement that ... may be processed by revising or red-lining the approved CRG plan and obtaining interagency review for approval of the correction(s)." While it may well be that many reductions in size do not constitute "material amendments," it does not logically follow that all reductions in size, regardless of magnitude, are beyond the definition of material amendments within the meaning of § 22-63. By any reasonable interpretation of the term "material amendment," a reduction from 8 stories to 2 would be covered. *See Baltimore City v. Johnson*, 156 Md. App. 569, 592 (2004) (generally, we give the words of the statute their "ordinary and common meaning within the context in which they are used") (quoting *Polomski v. Mayor and City Council of Baltimore*, 344 Md. 70, 75 (1996)). Accordingly, the Board of Appeals should have found that the DRC and Director of the Department of Permits and Development Management had failed to properly refer the 2-story proposal for CRG review.

In *Beth Tfiloh, supra*, 152 Md. App. 97, 117 (2003), we held that an internal agency manual (the same Development Management Policy Manual relied upon by the appellee in the present case) could not override the plain meaning of the relevant Baltimore

County Code section. The same holds true in this case, notwithstanding the authority of the various County agencies to adopt a procedural manual which is consistent with the County Code pursuant to § 26-178 and § 22-49.

Because the Board of Appeals erred in its conclusion that the proposed 2-story plan which was the subject of Case No. CBA-99-151 was not a material amendment to an approved plan within the purview of § 22-63, its ruling affirming the decision of the DRC and the Director of the Department of Permits and Development Management and affirming the approval of the proposed "1st Refinement" must be reversed. On remand, the proposed revision to the CRG plan for Green Spring Station should be referred for CRG review as a proposed material amendment.

Because the ruling of the two members of the Board of Appeals must be reversed for the reasons explained above, we need not reach the question of whether a third member should have been added to the Board of Appeals panel following the resignation of one panel member. Nor do we need to decide at this stage whether the CRG approval of the 8-story plan expired or was abandoned, because the 2-story proposal would constitute a material amendment of an approved CRG plan in any event. Finally, because the effect of the property's zoning change will be subject to review by the CRG upon remand, we need not pre-empt their consideration of that issue. Appellants themselves stated in their Reply Brief at 11 n. 4:

"Appellants concede that the appellate forum is not the proper forum for introduction of evidence of the plan's failure to meet current zoning." Accordingly, we do not reach the issue appellants raised regarding the change in zoning from B-M to O-3.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS VACATED; CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REMAND THE CASE TO THE BALTIMORE COUNTY BOARD OF APPEALS WITH INSTRUCTIONS THAT ITS ORDER DATED MARCH 11, 2003, IS REVERSED AND DIRECTING THAT THE CASE BE REMANDED TO THE BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT AND THE BALTIMORE COUNTY CRG FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLEE

IN THE MATTER OF THE APPLICATION OF RANSHELL HOLDINGS, LLC - LEGAL OWNERS /PETITIONERS FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE S/S KEENEY MILL ROAD, 750' E OF C/L SOUTH RUHL ROAD (20713 KEENEY MILL ROAD) 6TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 03-225-SPH

* * * * * * * * * *

OPINION

Background

This matter is before the Board on an appeal from a decision of the Deputy Zoning Commissioner dated March 7, 2003 in which a Petition for Special Hearing to confirm the existence of two building lots on the property known as Lot #1 of Keeney Mill Woods – East was denied and the finding that there does not exist a sufficient amount of density for said lot to be divided to create two separate building lots.

A hearing was held before the Board on October 29, 2003 and December 3, 2003. The Petitioner, Ranshell Holdings, LLC, by Randolph H. Shelly, General Manager, was represented by Howard L. Alderman, Jr., Esquire. Protestants, John C. Boyle, Brian Gebhart, Joseph Matricciani, and Mr. and Mrs. Joseph R. Fuchs, adjacent property owners, were represented by J. Carroll Holzer, Esquire. People's Counsel for Baltimore County was represented by Deputy People's Counsel, Carole S. Demilio, Esquire. Briefs were submitted to the Board by all parties, and a public deliberation was held on January 29, 2004.

Facts

The subject property is an unimproved parcel located on the south side of Keeney Mill Road, just west of South Ruhl Road in northern Baltimore County. The property is also known as Lot #1 of Keeney Mill Woods – East and contains a gross area of 2.999 acres +/-, zoned R.C. 2.

pc #15

Petitioners purchased the subject property from Gloria Evangelisti on or about September 12, 2002 and desire to subdivide the property into two separate building lots in order to construct a single-family dwelling on each lot. The Petition herein was filed to confirm that the density exists to allow the proposed subdivision and to determine the proper procedure for subdividing the property.

The Protestants are neighbors in the subdivision and argue that it would be out of character with the existing community to subdivide Lot 1. They testified that Lot 1 is the smallest of five lots in the subdivision and that the proposed development would overcrowd this parcel. Mr. Fuchs, the owner of Lot #2, is fearful that the proposed building envelope for one of the lots would be too close to his home on Lot #2. He also is concerned about drain fields from that home going into his lot, and the rainwater from Lot 1 running off in gullies over his property. All of the Protestants argue that there is no right of subdivision on this lot based upon the zoning history of the property.

It was noted previously that the property is also known as Lot 1 of Keeney Mill Woods – East, which was approved as a five-lot subdivision in May 1977. The overall tract contained 27.501 acres, zoned R.C. 2, which at that time permitted the subdivision of the property into no more than five residential building lots. In 1979 County Council Bill No. 178-79, which became effective on November 25, 1979, changed the method by which R.C. 2 zoned land may be subdivided. The new method established by Bill 178-79 restricted the amount of density associated with R.C. 2 zoned land. Under the new R.C. 2 regulations which were effective in 1979, the same 27.501-acre parcel would yield only two lots and not the five that were approved at the time the development was approved in 1977.

Lot #1 is the only lot upon which a building has not been erected. As stated above, the Petitioner seeks to divide Lot #1 into two lots in accordance with the present zoning laws.

Petitioner's Position

Petitioner presented Geoffrey C. Schultz as an expert witness in support of its position. Mr. Schultz is vice president of the firm McKee & Associates. He prepared the plat which was submitted in support of the Petition as Petitioner's Exhibit #1. Mr. Schultz testified that, based upon his expertise and research, the subdivision plat of Keeney Mill Woods – East was duly recorded in the land records of Baltimore County and that the lots 1 through 5 shown thereon were considered lots of record. He also testified as to the chain of title of Lot #1 being conveyed from James Kassolis, the Developer of Keeney Mill Woods, to Gloria Evangelisti, and the subsequent deed from Evangelisti to the Petitioner, Ranshell Holdings, LLC.

Mr. Schultz also testified that in preparing the proposed development plan, in evidence as Petitioner's Exhibit 1, he relied on the current zoning regulations in accordance with § 26-169 of the *Baltimore County Code*. He read § 26-169 as follows:

> These regulations shall apply to all development except:
>
> (i) such development which, prior to the effective date of this article (June 11, 1982) has received tentative approval of the preliminary plan by the planning board for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property; and (ii) such development as has received CRG approval, reclamation plan approval, or any other project vested by law, or such development for which a CRG plan has been accepted for filing by the Department of Public Works prior to the date of adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be. **[Emphasis added.]**

It was Mr. Schultz's opinion that, since there was a tentative approval of the preliminary plan for the subdivision by the Planning Board prior to the effective date of the article (June 11, 1982), the subdivision was subject to the regulations that were effective at the time of the approval, which would have been the joint subdivision advisory committee process. Mr. Schultz then stated that the sentence in § 26-169 which stated "proposed development shall be in compliance with the present zoning classification on the subject property" gave him the direction for the zoning classification of Lot #1, that he proposed to divide Lot #1 into two lots. It was Schultz's position that Council Bill 79-178, which was effective November 25, 1979, governed this subdivision in that Lot #1 was a lot of record on November 25, 1979 and the lot was between 2 and 100 acres, it could be divided into two lots.

Mr. Schultz also testified that he was familiar with the Zoning Commissioner's Policy Manual, specifically § 1A01.3.B.1, entitled "Subdividing Existing Lots." That states:

1A01.3.B.1. Subdividing existing lots

a) Subdivision or further subdividing of legally existing R.C. 2 zoned lots of record prior to Bill 178-79 (effective 11/25/79) is permitted provided that:

1) only the most recent deed shall be used to determine the number of lots of record; and that

2) the lots recorded met the existing zoning regulations at that time.

Mr. Schultz indicated that he was familiar with this section and that he had been required to use that policy in his practice several times. He stated that it was necessary to demonstrate to the Baltimore County zoning office that the parcel existed on November 25, 1979 in the same configuration as it exists today to verify that it has density. Mr. Schultz did this by starting with the most recent deed and going back through the chain of title to demonstrate that there had been no change in the boundaries of that parcel and that the density had not been utilized for other

parcels of land since 1979. Based upon his review of the documents, he concluded that the subdivision plat of Keeney Mill Woods met the zoning regulations in effect at the time they were recorded. Therefore, he felt that the subdivision of Lot #1 into two lots was justified under the Zoning Commissioner's Policy Manual.

Protestants' Evidence

In addition to the testimony of the neighbors in Keeney Mill Woods, the Protestants presented the written comments of the zoning office authorized by Mr. Lloyd Moxley. Moxley's comments by memo dated November 7, 2002 indicated that § 103 of the Baltimore County Zoning Regulations precludes the additional re-subdivision requested since this development continues to be governed by the zoning regulations in place at the time Baltimore County Planning Commission approval was granted. It was the opinion of the staff that no further density existed on the property.

Protestants also presented Mr. Jack Dillon who was accepted as an expert in planning, zoning and subdivision. Mr. Dillon testified as to his employment with Baltimore County from 1962 until 1973, where he served in the County Planning Office as a Planner during that period and also worked in the Baltimore County zoning office from 1966 to 1972, where he served as Chairman of the Zoning Advisory Committee and Zoning Enforcement. Dillon also worked as an Environmental Planner in the Planning Office from 1974 to 1981 and was District Area Planner and Administrator of the Baltimore County Agricultural Land Preservation Program from 1981 to 1987. From 1987 until 1996, when he retired, he was the Senior Planner and Deputy Division Chief for the rural area of Baltimore County.

It was Mr. Dillon's opinion that the Petitioner's request for the re-subdivision of Lot #1 could not be accomplished based upon the unavailability of any density left on the site. Dillon

testified that the property was subdivided in 1977 and at that time, the density factor permitted a maximum of five (5) density units on the site. In 1979 the R.C. 2 zone was amended to permit only two (2) density units on sites between 2 and 100 acres, which meant that the present law was more restrictive than the previous law.

Mr. Dillon produced a copy of the final development plan for Keeney Mill Woods which was passed pursuant to Bill 12-77, the Interim Development Control Act (IDCA). The IDCA was in effect from April 16, 1977 until November 25, 1979. The final development plan for Keeney Mill Woods – East Subdivision was approved by the County and signed on April 29, 1977.

On cross-examination, Mr. Dillon was questioned with respect to § 26-169 of the *Baltimore County Code*. Mr. Dillon was confronted with a preliminary plan for the Keeney Mill Woods – East subdivision which was approved March 30, 1977. He was questioned as to whether or not subsection (i) of § 26-169 applied in this particular situation. It was Dillon's opinion that, since a final development plan had been approved, Section (i) did not apply because it applied only to preliminary plans. He stated that the subdivision was reviewed under the Joint Subdivision Planning Review Process (JSPC). This was the process that preceded the CRG process and the community input process now in effect. He felt that the whole section did not apply but if any part of it applied, it would be subsection (ii). Mr. Dillon testified that the Keeney Mill Woods – East subdivision did not receive CRG approval since the CRG was not in effect at the time that the subdivision was approved.

Mr. Dillon was also questioned with respect to § 103.1 and § 103.3 of the zoning regulations. These sections were relied on by Mr. Moxley of the zoning office in his memorandum. It was Mr. Dillon's testimony that the first part of § 103.1 was an evolving

section. He opined that it pertained to a tentative approval of a preliminary plan prior to the adoption of the regulations which were adopted on March 30, 1955 and did not apply to the preliminary plan for the Keeney Mill Woods – East subdivision since a final development plan had been approved. He felt that § 103.3 was specific to the R.C. 5 zones, and that 103.3 was a grandfather regulation.

Mr. Dillon was also asked to comment on the Zoning Commissioner's Policy Manual § 1A01.3.B.1 which was referred to by the Deputy Zoning Commissioner in his decision in this matter, when he stated:

> It appears to me that the provision relied upon by the Petitioner relates to legally existing R.C. 2 zoned lots of record that were created by deed or multiple deeds. That particular provision does not apply to the re-subdivision of an existing lot which was part of an approved final subdivision plat such as Keeney Mill Woods – East.

Mr. Dillon agreed with the Deputy Zoning Commissioner's analysis stating, "I think the Deputy Zoning Commissioner hit it very correctly in that the section of the policy manual really deals with parcels or tracts of land that were out there that were created, and not part of a subdivision...if they were part of a subdivision, I don't believe they would fall under that section."

Mr. Dillon also relied heavily on § 1B01.B.2 of the zoning regulations and § 1B01.3 which regulates the amendment of approved development plans. Mr. Dillon quoted the last sentence of § 1B01.B.2 which states:

> It is the intent of the zoning regulations to prohibit subdivision or re-subdivision of portions of a tract in R.C. zones in a manner so to exceed the total number of dwelling or density units allowed under the applicable R.C. zones for the entire tract.

When asked as to the significance of the word "entire," Dillon states: "You can't take it out of context...You can't take a lot created in 1977 and then come back in 1979 and then say,

'now we're our own tract,' and re-subdivide under the new regulations...You can't have your foot in both zones. You have to look at the entire tract."

Dillon then concluded that this development was approved in 1977 under the 1977 regulations and that they have maximized the density that was allowed under the zone at the time and that the subdivision was subsequently recorded. He felt that the grandfather clause was generally meant to provide some insurance to a developer to rely on that their plans were approved and the same protection goes to the people who bought the properties.

Decision

The Board has carefully reviewed the testimony, exhibits and excellent briefs filed by the parties in this matter. The Petitioner has been very creative in its attempt to subdivide the remaining lot in the Keeney Mill Woods – East subdivision. However, the Board feels that the Petition for Special Hearing in this matter should be denied. It is unfortunate that the myriad of zoning regulations that have been passed in Baltimore County have not been coordinated in some way so that the previous regulations, which may have created a right at a particular time, have not been either deleted or grandfathered in some way by the most recent zoning regulations. This appears to create some confusion with respect to the rights under the current regulations.

However, the Board is persuaded by the testimony of Mr. Dillon citing § 1B01.7 entitled "Amendment of Approved Development Plans" and § 1B01.B.2 of the regulations with respect to density residential zones. Sections 1B01.7.A and B provide for amendment of approved development plans through special exception procedures in the manner provided under § 502 of the BCZR and subject to three provisions. The last provision states: "(3) It must be determined in the course of the hearing procedure that the amendment would be consistent with the spirit and intent of the original plan and of this article." Section C(4) of the above section states, "The

For that reason, the Board considers that any amendment to a development plan must be the amendment to the final subdivision of Keeney Mill Woods – East, not the subdivision of Lot #1 of Keeney Mill Woods – East. In considering the entire tract of Keeney Mill Woods – East, there can be no further density allowed on the Keeney Mill Woods – East tract, since all five density units that were allowed at the time the final subdivision was approved have been utilized.

ORDER

THEREFORE, IT IS THIS 26th day of February, 2004 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to confirm the existence of two building lots for the subject property and to determine the proper procedure for subdividing same in accordance with Petitioner's Exhibit #1 be and is hereby **DENIED**; and it is further

ORDERED that there does not exist a sufficient amount of density for Lot #1 of Keeney Mill Woods – East to be subdivided to create two separate building lots; thus only one residential dwelling can be constructed on the subject 2.99 acre parcel.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Edward W. Crizer, Jr.

Lawrence S. Wescott

1A00.4 «Plans and plats. Development plans and final subdivision plats shall be required in the manner prescribed under Section 1B01.3, and, for the purpose of this section, all references to D.R. Zones shall include the R.C. Zones.

Pc 13 A

1B01.3 Plans and plats.

B. Final subdivision plat.

2. Effect. No subdivision of a tract or a portion of a tract may be created after the effective date of this article, except as otherwise provided under Section 1B02.3.A.2 unless the final subdivision plat therefore contains a summary showing the total number of dwelling or density units allowed for the entire tract under the applicable D.R. Zones. The summary shall indicate, as appropriate, the number of dwelling or density units utilized by previous final subdivision plats for portions of the same tract, the number of dwelling or density units contained in the current subdivision plat, and the balance of dwelling or density units allowed for the remainder of the tract under the applicable D.R. Zone(s). It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. Zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. Zone(s) for the entire tract.

PC #13 B

1A01.3 Height and area regulations

B. Area regulations. [Bill No. 178-1979]

1. Subdivision lot density. No lot of record lying within an R.C.2 Zone and having a gross area of less than two acres may be subdivided. No such lot having a gross area between two and 100 acres may be subdivided into more than two lots (total), and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of one lot for each 50 acres of gross area.

PC #13 C

§ 32-4-104. SCOPE OF TITLE.

(a) *Applicability of title.* This title shall apply to the process of review for approval of all development.

(b) *Present zoning classification.* Proposed development shall be in compliance with the present zoning classification on the property to be developed.

(1988 Code, § 26-169) (Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 79-01, § 2, 7-1-2004; Bill No. 24-06, § 1, 3-17-2006)

Pet #3 D

§ 32-4-262. AMENDMENTS TO DEVELOPMENT PLANS.

(1) Any material amendment to an approved Development Plan shall be reviewed and approved in the same manner as the original plan.

(2) Any material amendment to than approved residential Development Plan or plat shall be reviewed in accordance with this title, and with respect to that portion of the original plan or plat to which the amendment pertains, the amendment shall be reviewed for compliance with all current law and regulations, including the development regulations and the zoning regulations.

(1988 Code, § 26-211) (Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 18, 7-1-2004; Bill No. 24-06, § 1, 3-17-2006)

pc #13 E

[redacted]

2421

handling, discussion, treatise — more at TRACTATE] 1 *archaic* : a literary work dealing with a particular topic : TREATISE 2 : a pamphlet, leaflet, or folder issued (as by a political or religious group) for propaganda; *esp* : one containing a religious exhortation, a doctrinal discussion, or a proselytizing appeal

²tract \'trakt\ *n* -s [L *tractus* action of drawing, trailing, extension, track, tract of land, space of time, fr. *tractus*, past part. of *trahere* to draw, pull, drag — more at DRAW] 1 a *archaic* : extent or lapse of time : continued or protracted duration : COURSE b : a period in time : STRETCH (hoping for a ~ of fair weather) c *archaic* : a continuous course (as of action or events) : CONTINUITY 2 : an area either large or small: as a (1) : a region or stretch (as of land) that is usu. indefinitely described or without precise boundaries (a few large ~s for settlement) (the wooded ~ between the two rivers) (a great ~ of unexplored sea) (2) : a precisely defined or definable area of land (an 80 acre ~) (an urban census ~) b (1) : a system of body parts or organs acting in concert to perform some function or serve some special purpose (the digestive ~) (upper respiratory ~) (2) : a bundle of nerve fibers having a common origin, termination, and function; *esp* : such a bundle within the spinal cord or brain — called also *fiber tract*; compare FASCICULUS (3) : PTERYLA c : a particular and usu. identifiable part of something (large ~s of the job about which I know nothing —Robertson Davies) (psychological ~s that . . . lurk shapelessly outside the action of a novel —C.H. Rickword) 3 *chiefly dial* : TRACK: as a : a footprint or other mark indicative of passage b : PATH, COURSE, WAY c : VESTIGE, TRACE

trac·ta·bil·i·ty \,trakt∂'bil∂d·ē, -ət·ē, -i\ *n* [L *tractabilitas*,

²**track** \"\ *vb* -ED/-ING/-S *vt* **1 a** : to follow the tracks or traces of : pursue by following marks *made by (the pursued)* : TRAIL *(~ a deer)* **b** : to follow until caught up with — used with adverbs of direction (as *down*) *(~ down a criminal)* **2** : *to mark out or beat down* (a path or other course) **3 a** : to ascertain and follow up through vestiges : TRACE *(~ the course of an ancient wall)* **b** : *to follow* or plot the moving path of (a target) with an instrument (as a gun, telescope, or searchlight) for the purpose of *determining* point of aim, path of interception, or future position **4** : to pass over : TRAVEL, TRAVERSE *(~ a desert)* **5 a** : *to make tracks upon* (new snow *~ed* by rabbits); *esp* : to carry mud or other soiling agent on the feet and deposit it upon — often *used with up (don't ~ up* my *clean floor)* **b** : to carry (as mud) on the feet and deposit in stepping *(~ed* mud all over the house) **6** : *to furnish with tracks or rails* — often used in compounds *(single-track) (double-track)* ~ *vi* **1** : to make one's way : WALK, GO, TRAVEL — often *used with around, about,* or *up* (got up late and *~ed* about for a while) **2 a** : to follow a track in searching (takes a woodsman to really *~*) **b** : *to move* a camera toward, beside, or away from a subject on a smooth moving trolley or tricycle **c** *of a phonograph needle* : *to follow* the groove undulations of a recording **3 a** *of a pair of wheels* (1) : to maintain a constant distance apart on the *straightaway* (2) : *to fit a track or* rails **b** *of a rear wheel of a vehicle* : to accurately follow its corresponding fore wheel on a straightaway **c** : *to be in perfect alignment* with a corresponding part — used esp. of a gear or cutter **4** : to leave tracks (as on a floor) *(~ing* all over the *house with his* muddy boots)

³**track** \"\ *n* -S [by alter. of *¹tract*] *chiefly dial* : EXTENT; *esp* : an extent of land

⁴**track** \"\ *vb* -ED/-ING/-S [prob. modif. (influenced by *¹track*) of D *trekken* to pull, fr. MD *trecken* — more at TRACK *(n.)*] *vt* **1** : *to draw along; esp* : to tow (as a ship) from the shore **2** *chiefly Scot* : to prepare (tea) by infusing : DRAW ~ *vi* : to become *towed* ; *travel in* a towed boat

⁵**track** \"\ *n* -S *chiefly Scot* : TEAPOT

track·able \'trakəbəl\ *adj* : *capable* of being tracked : suitable for tracking

¹**track·age** \-kij, -kēj\ *n* -S [*¹track* + *-age*] : *an act of* towing : TOWAGE

²**trackage** \"\ *n* -S [*¹track* + *-age*] **1** : *lines of railway track (1000 miles of* antiquated *~)* **2 a** *usu* **trackage right** : a right to use the tracks of another road **b** *usu* **trackage charge** : the charge *for such right*

track-and-field \ˌ⁼ˌ⁼\ *adj* : of, relating to, or being a sport performed on a running *track or on* the field usu. encircled by it — see TRACK 8; compare FIELD EVENT

track and slide *n* [*¹track*] : *a combination on* a mast for hoisting and lowering a sail

trackbarrow \'⁼ˌ⁼(ˌ)⁼\ *n* [*¹track* + *barrow*] : *a wheelbarrow with* a wheel grooved for use on railroad tracks

track boat *n* : a boat towed from the shore

track brake *n* : a brake (as on a streetcar) that presses the track instead of the wheels

track circuit *n* : an *electrical circuit* conducted partly through the rails of a track (as of a railway line)

tracked *part of* TRACK

¹**track·er** \'trakə(r)\ *n* -S [*¹track* + *-er*] **1** : one that tracks (as by tracing): as **a** : one that tracks *down game or criminals* **b** : *an instrument* used to track a gunnery target; *also* : the operator of such an instrument **2** : a maker of a track

²**tracker** \"\ *n* -S [*¹track* + *-er*] : a tower of a boat or raft

tracker action *n* [*tracker*] : a completely mechanical action in a pipe organ

track gage *n* : a tool by which the gage of a track (as of a railroad) is determined

track harness *n* : a light harness used in harness racing

trackhound \'⁼ˌ⁼\ *n* : a hound that tracks by scent

track indicator *n* : *a device* used to indicate the condition of a railroad track section

tracking *pres part of* TRACK

tracking shot *n* [*tracking* fr. pres. part. of *¹track*] : TRUCKING SHOT

track instrument *n* : a treadle device on a railroad track depressed by a passing train to operate an *alarm (as near a crossing)*

track jack *n* : a device for raising railway track *during ballasting or other track* operations

tracklayer \'⁼ˌ⁼(ə)\ *n* **1 a** : a workman engaged in work involved in putting *railway tracks in* place **b** : a machine used in track construction for advancing the rails and ties from supply cars in the rear to the *point where they are* to be placed in the track **2** : a Caterpillar tractor

¹**tracklaying** \'⁼ˌ⁼\ *adj* **1** : *used in the laying of tracks* **2** : of, relating to, or being a caterpillar tread vehicle

²**tracklaying** \"\ *n* [*¹track* + *laying, gerund of ¹lay*] : *the laying of* track on a railway line

track-less \'traklәs\ *adj* **1** : having no track : UNTROD *(a ~ wilderness)* **2** : *making* or leaving no tracks (~ footsteps) **3** : not running on tracks or rails (a ~ train) — **track-less-ly** *adv* — **track-less-ness** *n* -ES

trackless trolley *n* : TROLLEYBUS

track-man \'trakmən\ *n, pl* **trackmen** : *a worker engaged* in the laying or maintenance of railway tracks or rails; *specif* : TRACKWALKER

track map *n* : *a map* showing existing physical plant including tracks, bridges, water service and mains, leases, station facilities, and *all other physical property* of a railway line

trackmaster \'⁼ˌ⁼ə(r)\ *n* : ROADMASTER 1

track-mile \'⁼ˌ⁼\ *n* : *a mile of track (as of a railway* line) (costs per *track-mile)*

track oven *n* : a drying oven *in which drying racks* run on a track over a fire

track pan *n* : a very long shallow trough *between the rails of a railroad track for* holding water to be picked up by a moving steam locomotive

trackpot \'⁼ˌ⁼\ *n* [*¹track* + *pot*] *chiefly Scot* : TEAPOT

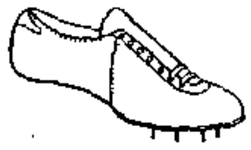
track road *n* [*¹track*] : TOWPATH

tracks *pl of* TRACK, *pres 3d sing of* TRACK

track scale *n* : a scale fitted with tracks for the weighing of loaded or empty railway cars

trackshifter \'⁼ˌ⁼ə(r)\ *n* : an appliance used in shifting a railway track laterally

track shoe *n* **1** : the shoe of a track brake **2** : a heelless leather shoe having steel spikes on the *sole to give traction* to a runner



track shoe 2

¹**trackside** \'⁼ˌ⁼\ *n* [*¹track* + *side*] : the space beside a track

²**trackside** \'⁼ˌ⁼\ *adj* : of, relating to, or situated in the area immediately adjacent to a track and *esp. a railway* track

track spike *n* : an appliance driven or *screwed into a tie to* hold a rail and tie plate

track storage *n* : storage in *railroad cars on other* than private or industrial tracks beyond the free time allowed for loading or unloading for which a charge in *addition to demurrage is usu. made; also* : the charge for such storage

trackwalker \'⁼ˌ⁼ə(r)\ *n* : a worker employed to walk over and inspect *a section of tracks*

trackway \'⁼ˌ⁼\ *n* [*¹track* + *way*] **1** : a beaten or trodden path : ROADWAY **2 a** : *one of* two *or more* narrow paths of steel plates, smooth stone, or other suitable material laid in a public roadway otherwise formed *of an inferior pavement* (as of cobblestones) to provide an easy way for wheels **b** : a way (as a tramway or railway) with steel or *other rails on which flange*-wheeled vehicles travel **3** : a usu. grooved or curved guide in which a door, drawer, or other movable part runs often on *ball bearings*

tracs *pl of* TRAC

¹**tract** \'trakt\ *n* -S *often cap* [*ME tracte, fr. ML tractus,* fr. L, action of drawing, extension, length; fr. its being sung without a break by one voice] : the verses of *Scripture sung or recited in* the Roman liturgy of the mass after the gradual or instead of the alleluia on penitential days from Septuagesima *to Holy Saturday, on ember* days, and at most vigils and requiems

²**tract** \"\ *n* -S [ME *tracte,* modif. of L *tractatus* action of handling, *discussion, treatise* — *more at* TRACTATE] **1** *archaic* : a literary work dealing with a particular topic : TREATISE **2** : a pamphlet, leaflet, or *folder issued (as by a* political or religious group) for propaganda; *esp* : one containing a religious exhortation, a doctrinal discussion, or a *proselytizing appeal*

³**tract** \'trakt\ *n* -S [L *tractus* action of drawing, trailing, extension, track, tract of land, space of time, fr. *tractus,* past part. *of trahere to draw,* pull, drag — more at DRAW] **1 a** *archaic* : extent or lapse of time : continued or protracted duration : COURSE **b** : *a period in time* : STRETCH (hoping for a ~ of fair weather) **c** *archaic* : a continuous course (as of action or events) : CONTINUITY **2** : *an area either* large or small; as **a** (1) : a region or stretch (as of land) that is usu. indefinitely described or without precise *boundaries (a few large ~s* for *settlement)* (the wooded ~ between the two rivers) (a great ~ of unexplored sea) (2) : a precisely defined or *definable area of land (an 80* acre *~)* (an urban census *~)* **b** (1) : a system of body parts or organs acting in concert to perform *some function or serve some special* purpose (the digestive ~) (upper respiratory ~) (2) : a bundle of nerve fibers having a common origin, *termination, and function; esp* : such a bundle within the spinal cord or brain — called also *fiber tract;* compare FASCICULUS (3) : PTERYLA **c** : *a particular* and usu. identifiable part of something (large *~s* of the job about which I know nothing —Robertson Davies) (*psychological ~s that* . . . *lurk shapelessly* outside the action of a novel —C.H. Rickword) **3** *chiefly dial* : TRACK : as **a** : a footprint or other mark *indicative of passage* **b** : PATH, COURSE, WAY **c** : VESTIGE, TRACE

trac·ta·bil·i·ty \ˌtraktə'bilәd-ē, -ilәtē, -i\ *n* [L *tractabilitas,* fr. *tractabilis* tractable + *-itas* -ity] : the quality or state of being tractable (was only too *delighted at this* ~ — Thomas Hardy)

trac·ta·ble \'traktəbəl\ *adj* [L *tractabilis,* fr. *tractare* to handle, treat + *-abilis* -able] **1 a** : capable of being easily led, taught, or controlled : DOCILE, GOVERNABLE, PLIANT *(~ children) (a ~ horse)* **b** : ready to listen, yield, conform, or agree — used with *to* (thou shalt find me ~ to any honest season —Shak.) **2** : *easily handled,* managed, or wrought : MALLEABLE (gold is ~) SYN see OBEDIENT

trac·ta·ble·ness *n* -ES : the *quality or state of being* tractable

trac·ta·bly \-blē, -li\ *adv* : in a tractable manner

¹**trac·tar·i·an** \trak'terēən, -'tā(ə)r-, -'tär-\ *n* -S [*²tract* + *-arian*] **1** : one who writes, prints, or distributes tracts **2** *usu cap* [so called fr. the *Tracts for the Times,* series of pamphlets expounding *Tractarianism*] **a** : one of the authors of the *Tracts for the Times* **b** : a promoter or supporter of Tractarianism

²**trac·tar·i·an** \(ˌ)⁼ē⁼\ *adj* **1** : of or relating to tractarians **2** *usu cap* : of or relating to Tractarianism

trac·tar·i·an·ism \-ēəˌnizəm\ *n* -S *usu cap* [*¹tractarian* + *-ism*] : a system of principles set forth in a series of pamphlets issued at Oxford (1833–41) aimed *at the Erastianism* and *liberalism* of that day and urging a revival of the patristic sacramental piety and theology of the *17th century* : *the doctrines of the early* leaders of the Oxford movement toward Catholicism in the Church of England — compare ANGLO-CATHOLICISM, *EAUDIANISM*

trac·tate \'trakˌtāt, *usu* -ədˌ+V\ *n* -S [L *tractatus* action of handling, discussion, *treatise, fr. tractatus,* past part. of *tractare* to draw out, handle, discuss, treat — more at TREAT] : TREATISE, DISSERTATION, ESSAY (an economic ~ *of the first importance* —*Manchester Guardian Weekly*) SYN see DISCOURSE

trac·ta·tor \-ədˌā(r), -ətə-\ *n* -S [LL, fr. L, handler, *fr. tractatus (past part.)* + *-or*] **1** *obs* : a writer of tracts or treatises **2** *usu cap* [so called fr. the *Tracts for the Times,* series of Tractarian pamphlets] : TRACTARIAN 2

trac·ta·tule \'traktəˌtyül\ *n* -S [*tractate* + *-ule*] : a small or minor tractate

trac·tile \'trakt°l, -kˌtīl, -kˌ(ə)til\ *adj* [L *tractus* (past part. of *trahere* to draw, pull) + E *-ile*] : capable *of being drawn and esp. of being drawn* out in length : DUCTILE — **trac·til·i·ty** \trak'tilәd-ē\ *n* -ES

tract index *n* [*²tract*] : *a record* kept by a register of deeds or other proper county official showing the location, size, and name of owner *of each plot of land in a* [redacted]ty

trac·tion \'trakshən\ *n* -S *often attrib* [ML *tractiōn-, tractio,* fr. L *tractus* (past part. of *trahere to draw, pull, drag*) + *-iōn-, -io -ion* — more at DRAW] **1 a** : the act of drawing or pulling : the state of being drawn; *also* : force exerted in *drawing — opposed to pulsion* **b** : the drawing of a body (as a vehicle) along a plane or gradient by motive power; *also* : the *motive power* employed *in such drawing* (steam ~) **2** : power or influence that attracts : ATTRACTION **3** : public utility transportation service (as electric *railways and trolley* lines) (reviewing the interurban ~ charters) (sales of ~ bonds) **4 a** : the adhesive friction of a body on *a surface on which it moves* (as of a wheel on a rail or a rope on a pulley) **b** (1) : the pulling of or tension established in one body part by another (*the gravitational* ~ *exerted* by abdominal viscera on the diaphragm) (~ of skeletal muscle on the joints) (2) : a pulling force exerted *on a skeletal structure (as in fracture)* by means of a special device or apparatus (a ~ splint); *also* : a state of tension created by such a pulling force (*a leg in* ~)

trac·tion-al \-shən°l, -shnəl\ *adj* : of or relating to traction

traction engine *n* **1** : *a locomotive for drawing* vehicles on highways or in the fields **2** : a railway locomotive that moves by the friction of its driving wheels on *rails — compare* COG RAILWAY, RACK RAILWAY

traction fiber *n* : a spindle fiber that by its contraction *is held* to draw *a mitotic chromosome* to a pole of the spindle

traction sand *n* : sand carried by a locomotive or trolley car for spraying under the *driving wheels to prevent* slippage at starts or on grades — called also *engine sand*

traction sprayer *n* : an *agricultural spray outfit* on wheels that is operated by a power drive from the wheels and used esp. for spraying rows of truck crops

traction transport *n* : the rolling or sliding of particles along a stream bed by running water, over the ground surface *by wind,* or on *a beach by waves and currents* — compare SALTATION

traction wheel *n* **1** : a locomotive driving wheel that acts by frictional adhesion *to a smooth track* **2** : a smooth-rimmed friction wheel for giving motion (as to an endless link belt)

tract·ite \'trakˌtīt\ *n* -S *usu cap* [*tract (in Tract) for the Times, series* of Tractarian pamphlets) + *-ite*] : TRACTARIAN

trac·tive \'traktiv, -tēv *also* -əv\ *adj* [L *tractus* (past part. *of trahere to draw,* pull) + E *-ive*] : that draws or is used or exerted in drawing or pulling; *also* : of or concerned with *traction (~ power)*

tractive effort *n* : the force in pounds exerted by powered equipment (*as a locomotive*) *as* measured for statistical purposes at the rim of the driving wheels

trac·tor \'traktə(r)\ *n* -S *often attrib* [NL, fr. L *tractus* (past part. of *trahere* to draw, pull, drag) + *-or* — more at DRAW] **1 a** *archaic* : either of the pair of metal rods *used in tractoration* **b** : *an instrument* used to exert traction on a body part or tissue (as in surgical procedures) **2** : an apparatus or *device* for the *draft or sometimes* propulsion of another body: as **a** : TRACTION ENGINE 1 **b** (1) : a 4-wheeled or caterpillar-tread rider-controlled automotive *vehicle used esp. for* drawing agricultural or other implements or for bearing and propelling such implements (2) : a smaller 2-wheeled *apparatus controlled through* handlebars by a walking operator and used similarly with gardening and lawn implements **c** *also* **tractor truck** : a *motive power* unit in the form of a truck with short chassis and no body used in a combination highway freight vehicle — see FULL TRAILER, SEMITRAILER **d** : a small harbor tug (as one designed to draw barges) — called also *marine tractor* **3** *also* **tractor airplane** : *an airplane* having the propeller forward of the main supporting surfaces — compare PUSHER

trac·to·ra·tion \ˌtaktə'rāshən\ *n* -S *archaic* : a technique of therapy first used about 1796 by Elisha Perkins of Norwich, Conn., consisting *in the operation* of drawing over an affected part the points of two small rods of different metals, and held to be helpful in local *inflammation or* pains (as of rheumatism)

trac·tor·ist \'⁼ərəst\ *n* -S : a *tractor operator*

trac·tor·iza·tion \ˌ⁼ərə'zāshən, -ˌrī'z-\ *n* -S [obs. E *tractorize* to use tractors (fr. E *tractor* + *-ize*) + E *-ation*] : adoption of tractors *as a source of draft* power — compare MOTORIZATION

tractor-mounted \'⁼ˌ⁼ə⁼\ *adj* : bolted or clamped to a tra rather than drawn *behind it (tractor-mounted* implement

tractor propeller *n* : a propeller of an airplane that is pl at the forward end of its *shaft and pulls on the thrust bea instead of* pushing — compare PUSHER

trac·tot·o·my \trak'tad-əmē\ *n* -ES [ISV *tract* + *-o-* + *-to ; cf* CHONDROTOMY

trac·trix \'traktriks\ *n, pl* **tractri·ces** \trak'trīˌsēz\ [*fr. L, tractus (past part. of trahere* to draw) + *-trix* — mor DRAW] : a curve in which the part of the tangent between point of tangency *and a given* straight line is constant which is an involute of a catenary

tracts *pl of* TRACT

tract society *n* : a society having as its aim the publication distribution of religious tracts

trac·tus \'traktəs\ *n, pl* **tractus** [NL, fr. L, tract — mor TRACT] : TRACT 2b(2)

trad *abbr* tradition; traditional

trad·able *also* **trade·able** \'trādəbəl\ *adj* : that can be *tra*

trad·al \'trād°l\ *adj* : COMMERCIAL

¹**trade** \'trād\ *n* -S [ME, path, track, course of conduct, MLG, path, track; *akin to OS trada* tread, track, OHG *t* trend, track, course, OE *tredan* to tread — more at TRE **1 a** *obs* : a path traversed *or for traverse* ; COURSE, W **b** *archaic* : a track or trail left by a man or animal : TREA (some savage beast's ~ —Edmund Spenser) **2 a** : *a course action or conduct* : mode of procedure or life **b** : a custom course of action : HABIT, PRACTICE (thy *sin's* not *accident* but a ~ —*Shak.*) **3 a** : the business one practices or the wo in which one engages regularly ; one's calling ; gainful e ployment ; means of *livelihood* ; OCCUPATION (wherever . . . writer or any sort of artist is plying his ~ —C.E.Montag (a doctor by ~ —*Times Lit. Supp.*) **b** (1) : an occupati requiring manual or mechanical skill and training ; a craft which only skilled workers are employed *(the harness ma . . . had learned his* ~ after five years' service as an apprenti —Sherwood Anderson) (worked at the printer's ~ *wh preparing for the teaching* profession) (a carpenter carryi the tools of his ~) (2) : the occupation of a merchant (as retail merchant) *(had demeaned herself* a little, as the daughi of a doctor, by marrying into ~ . . . when she married t matter-of-fact, industrious rising *young cheese merchant* Florence Bullock) (English society . . . preserved intact t distinction between ~ and gentility —*G.H.Sabine*) **c** : *workman engaged* in a trade (mechanical ~s can move in soon as . . . sheets are placed —*Sweet's Catalog Servic* **c** (1) : *the group of persons* engaged in a particular occupatio business, or industry (as a member of the writing ~ —*H.,* Smith) (the *book and news* ~ clearly oppose the adoption of national censorship —*Publishers' Weekly*) (the word in the i is that May sales were not *up to expectations* —*Securiti Outlook*) (2) : a corporation, guild, union, or other organiz tion of craftsmen in a Scottish burgh **4 a** (1) *archaic* : *tray to and fro* : coming and going (2) *obs* : dealings betwee persons or groups : INTERCOURSE (have you *any further* ~ *with us* —*Shak.*) (3) *dial* : FUSS, BOTHER **b** (1) : the busines of buying and selling or bartering commodities ; exchange c goods for convenience *or profit* ; COMMERCE (a materials shor age that affected first manufacturing, then ~) : TRAFFIC (slump in the cotton ~) (*laid off the new clerks* when ~ wa slack) (was doing a brisk ~ in umbrellas) ; MARKET (souvenir imported for the tourist ~) (*children's books . . . issue annually* for the Christmas ~ —*Bookman's Glossary*); *speci* : exchange of merchandise between different places on *a larg* scale (*maritime nations* for whom world ~ is an importan source of income) (carried on ~ in tea and spices with th Orient) (a ship engaged *in the coastwise* ~) (2) : commodities for barter (salt . . . which sold for 2 dollars cash per bushel, o 3 dollars in ~ —*Andrew Ellicott*) (3) *archaic* : a trading ex *pedition* (this new scheme of a ~ round the world —Danie Defoe) (4) : an act or instance of trading ; TRANSACTIO (reported *the ~ from* the floor of the exchange); *esp* : a exchange of property usu. without any use of money (an ever ~) (*he's interested in making a* ~ for another good pitcher — *N.Y.Times*) (repairing a car he had taken in ~) (5) : a firm's customers ; the *clientele of a business* (a girl who waited on ~ in his father's shop —Sherwood Anderson) (sent notices to the ~ about the new location *of the store*) (*a restaurant* cater *ing to* the breakfast ~) (6) : the group of firms or corporations engaged in a line of work ; BUSINESS (*data reported for thirty-seven wholesale ~s* —E.L.Smith) ; INDUSTRY (in the rug and shawl ~*s* —C.M.Whittaker & C.C.Wilcock) **6** *chiefly dial* **a** : STUFF; *specif* : BOOTSTUFF (all that ~ —Sir Walter Scott) **b** : inferior matter or people : TRASH (with beatings up . . . by sailors and rough ~ —Gershon Legman) **6** : TRADE WIND (the steady drive of the *~s* is changed to fitful inland airs —Marjory S. Douglas)

²**trade** \"\ *vb* -ED/-ING/-S *vi* **1** *obs* : to make one's way along or through ; TREAD, TRAVERSE, LEAD **2** *obs* **a** : *to pursue constantly as* a course, end, or occupation **b** : to use regularly or habitually (the Greek language which then *was the most traded . . . through the* whole universe —John Donne) **c** : to bring to a state of practice, discipline, or familiarity : SCHOOL (learned schoolmasters *(a ~ up the* Christian youth in . . . liberal arts —Thomas Becon) **3** *archaic* : to resort to for trade ; engage in trade with (*captain of a ship trading* the *Indies* —Amy Lowell) **4 a** (1) : to give in exchange for another commodity : BARTER (the white men *who penetrated to the . . . wilds* were always ready . . . to ~ rifles and watches —J.F.Cooper) (stolen horses, which would only be sold *or traded off . . . hundreds* of miles from home —J.F.Dobie) (2) : to give in return ; EXCHANGE (reluctant to ~ the security and rewards of private *life for the hazards* . . . and the low pay of government office —*Time*) (~ off the right to navigate the lower Mississippi *for a slice of the* Newfoundland fisheries —E.S.Corwin) (~ a proven pitcher to another team for four rookies); *also* : to make an exchange *of (when parties ~ votes on certain* bills on purely party grounds —G.H. Benton) (~ places with someone who likes to sit by *open* windows) ; *exchange in give-and-take* (we *traded* shots and I got winged —Harvey Fergusson) **b** : to buy and sell (as stock) regularly (*~ holdings at a good profit*) — *vi* **1 a** (1) *chiefly dial* : to make one's way ; WALK, PASS, GO (where be ye *trading* today —Thomas Hardy) (2) : *to pass to and fro* ; come and go — used esp. of birds (a place . . . over which the pigeons were *trading* between the stubbles and *the wood* —*John Collier b. 1901*) **b** *obs* : to have dealings ; NEGOTIATE (would come and speak with him and ~ for a peace —*Nicholas Lichefield*) **c** *archaic* : *to occupy* oneself ; ENGAGE (in private . . . she *traded* more deeply in the occult sciences —Sir Walter Scott) **2 a** : to go *for purposes of* trade (all the vessels that ~ to or from the Red Sea —Samuel Johnson) **b** (1) : to engage in the exchange, purchase, or *sale of* goods or other *property* ; carry on trade ; do business for profit (prohibits American firms from *trading* with the enemy) (*a company is formed to ~ in* building materials —Edward Jenks) (2) : to buy and sell securities, real estate, or goods for quick *profits* rather than *for long-term investment* (he likes the stock . . . and he is accustomed to *trading* in and out of its shares —*A.B.C. of Puts & Calls*) **c** : *to deal in something* not properly for sale ; TRAFFIC — usu. used with *in* (the chief justice . . . *traded* largely in pardons —T.B.Macaulay) **d** : *to deal* regularly *or frequently* as a customer (~ only with merchants she knows) ; make one's purchases ; SHOP (*~s at his store* when she *is in town*) **e** : to have a specified price in securities trading ; SELL (the common *~s* around 15 —*Investor's Reader*) **3** : to give one *thing in return for* another (wanted to change his days off and got a friend to ~ with him) ; make an exchange (wore each other's hat *for a while* and then *traded back*) — **trade on** *also* **trade upon** : to take often unscrupulous advantage of ; EXPLOIT (*traded on their influence . . . in securing special* favors for contractors —T.C.Pease) (individuals who attempt to *trade on* . . . their social *standing or* their forebears —*H.H.Arnold & I.C.Baker*) (the theater *trades on* a will to believe —Bernard DeVoto) — **trade on the equity** : to use borrowed *funds,* bonds, or preferred stock in the operation of a company in order to augment profits for the common stockholder — compare LEVERAGE

³**trade** \"\ *adj* **1** : of or relating to trade (~ channels) (~ statistics) (~ problems) **2** : used in trade (a ~ path) (*a ~*

MAP 2

To New Freedom 870,000 FT

76°45'00"

See ADC's "YORK COUNTY, PA STREET MAP" For Continuation

880,000 FT

A B C D E F G H

1 2 3 4 5 6 7 8 9 10

39°42'30"

680,000 FT

MD GRID 670,000 FT

39°40'00"

Joins Map 1

STELTZ ROAD

BALTIMORE COUNTY

MARYLAND

PENNSYLVANIA

SUNSET VIEW

Freeland

MIDDLETOWN ESTATES

MIDDLETOWN DOWNS

MIDDLETOWN ROAD

BRIDGE

RYE CT

SLAB

MATTHEW DR

ROCKDALE

SLAB BRIDGE RD

COTTER

FLINTSTONE

ROCKDALE

PUMPERNICKEL LA

BOLLINGER

TRAIL

PRETTYBOY

KESLER

CHICKENTOWN RD 2500

PEPLER RD W

RUHL RD N

RUHL RD 2300

RUHL 2500

RUHL RD

PETERMAN RD 2100

KEENEY RD 21000

OAKLAND MILL

LINDER SPRINGS

NEW

MILL

Little Falls

BROOK VALLEY CT

BROOK VALLEY RD

BROOK VALLEY FARMS

KEENEY MILL FARMS

OLD RUHL CT

RD 20700

RD 18800 20800

KEENEY MILL WOODS

SPRING VALLEY FARMS

FREELAND

NELSON RD

Middletown Meth

Gunpowder Baptist

Gunpowder

MIDDLETOWN

MILL GORES RD 19800

GORES MILL RD 19400

Prettyboy Res

RD 2400 20800

RD 2600

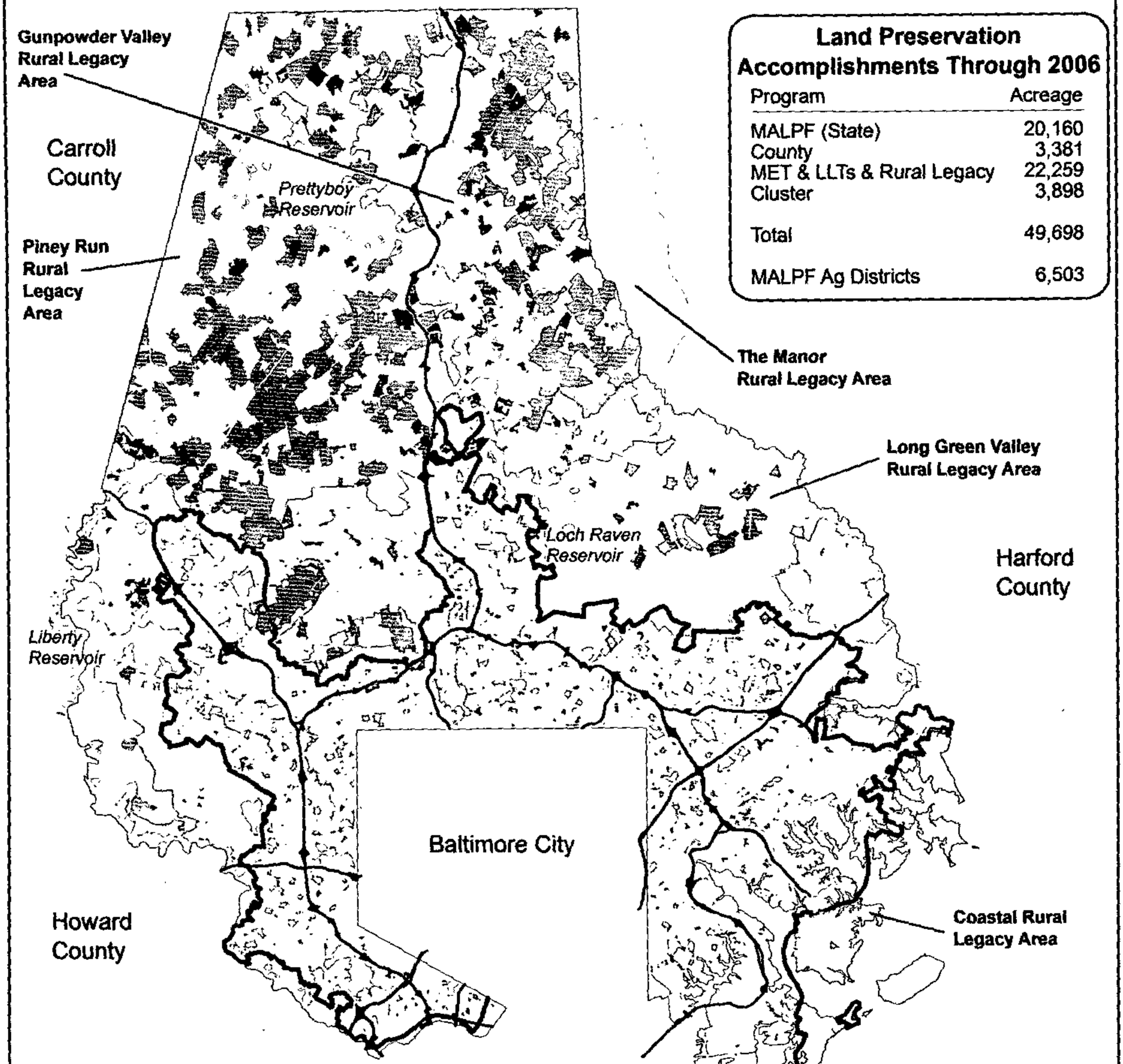
RD 2600

RD 2400

21053

Call

Baltimore County's Land Preservation Accomplishments Through 2006



Land Preservation Accomplishments Through 2006

Program	Acreage
MALPF (State)	20,160
County	3,381
MET & LLTs & Rural Legacy	22,259
Cluster	3,898
Total	49,698
MALPF Ag Districts	6,503

Key to Features

- URDL
- Major Roads
- Public Lands
- Rural Legacy Areas
- Ag Preservation Areas
- Reservoirs

Land Preservation

- MALPF Easements
- MALPF Ag Districts
- County
- MET & Trust
- Rural Legacy
- Cluster

Prepared by Geographic Information Systems
Baltimore County Department of Environmental Protection and Resource Management
10.4.2006
c:\gis_projects\wally\2005presinitiatives.mxd
c:\gis_data\images_pictures\wally\landpresinit2006_October.pdf

pc #12



Produced by Baltimore County GIS Services Unit
Date: September 25, 2006
Date of Imagery: 2005

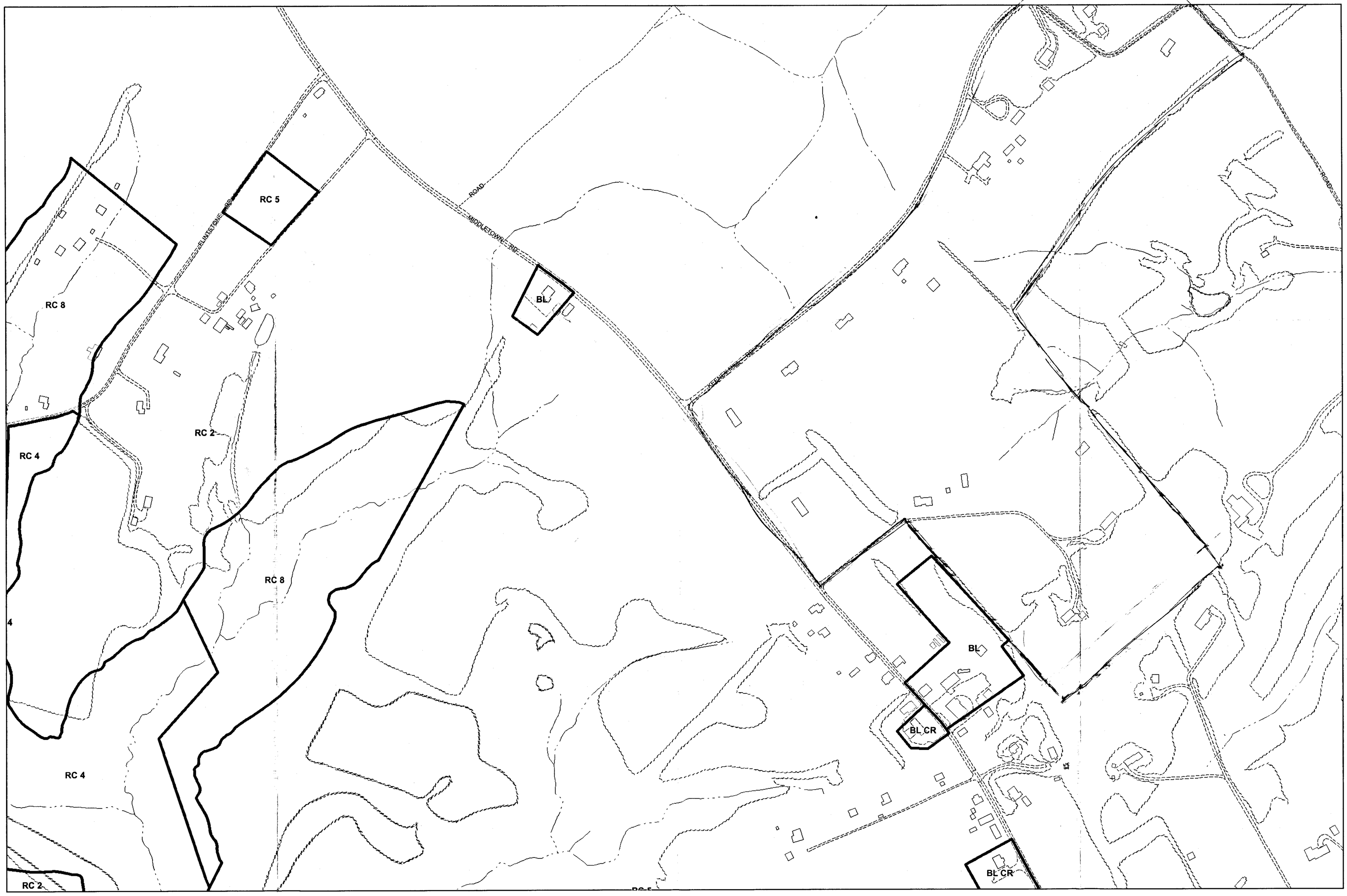
1 inch equals 100 feet

The Cadastral Information on this Plot was compiled from existing deed information. This Information is not to be considered authoritative. The Survey Information was not field checked and Certified by a licensed land surveyor.

N
W E
S

Pc #6

06-332-SPH



Plan Sheet: *006A3*

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

Zoning — Streams — Vegetation
Buildings — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

005B2	005C2	006A2	006B2	006C2
005B3	005C3	006A3	006B3	006C3
010B1	010C1	011A1	011B1	011C1

Scale

1" = 200'

0 100 200 400 Feet

N

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

Pc #4

Baltimore County
JOINT SUBDIVISION PLANNING COMMITTEE
OF THE OFFICE OF PLANNING AND DEPT OF PUB. WORKS
Tentatively Reviewed (Date) 7/1/76
Chairman
Member

BALTIMORE COUNTY OFFICE OF PLANNING
Tentatively Approved (Date) 7/16/76
Director

DEPARTMENT OF PUBLIC WORKS
Bureau of Engineering 6/30/76
Tentatively Approved for Street Alignment and Location Only.
Location & Size of Water, Sewer & Storm Drain Facilities, including Highway plans, subject to approval of Construction Drawings.
(Date) 7/7/76
Chief, Bureau of Engr

Reviewed by Site Plan Comm 6/9/76

Baltimore County Department of Health
Reviewed for tentative approval
Date
Approved
Disapproved
SCALE: 1" = 2000'
All requirements of the Department of Health and Baltimore County Department of Health pertaining to private water and/or sewerage systems must be complied with prior to approval of building applications.
DEPUTY STATE & COUNTY HEALTH OFFICER
Signature 7/7/76

VICINITY MAP
SCALE: 1" = 2000'

DEVELOPER PLEASE NOTE

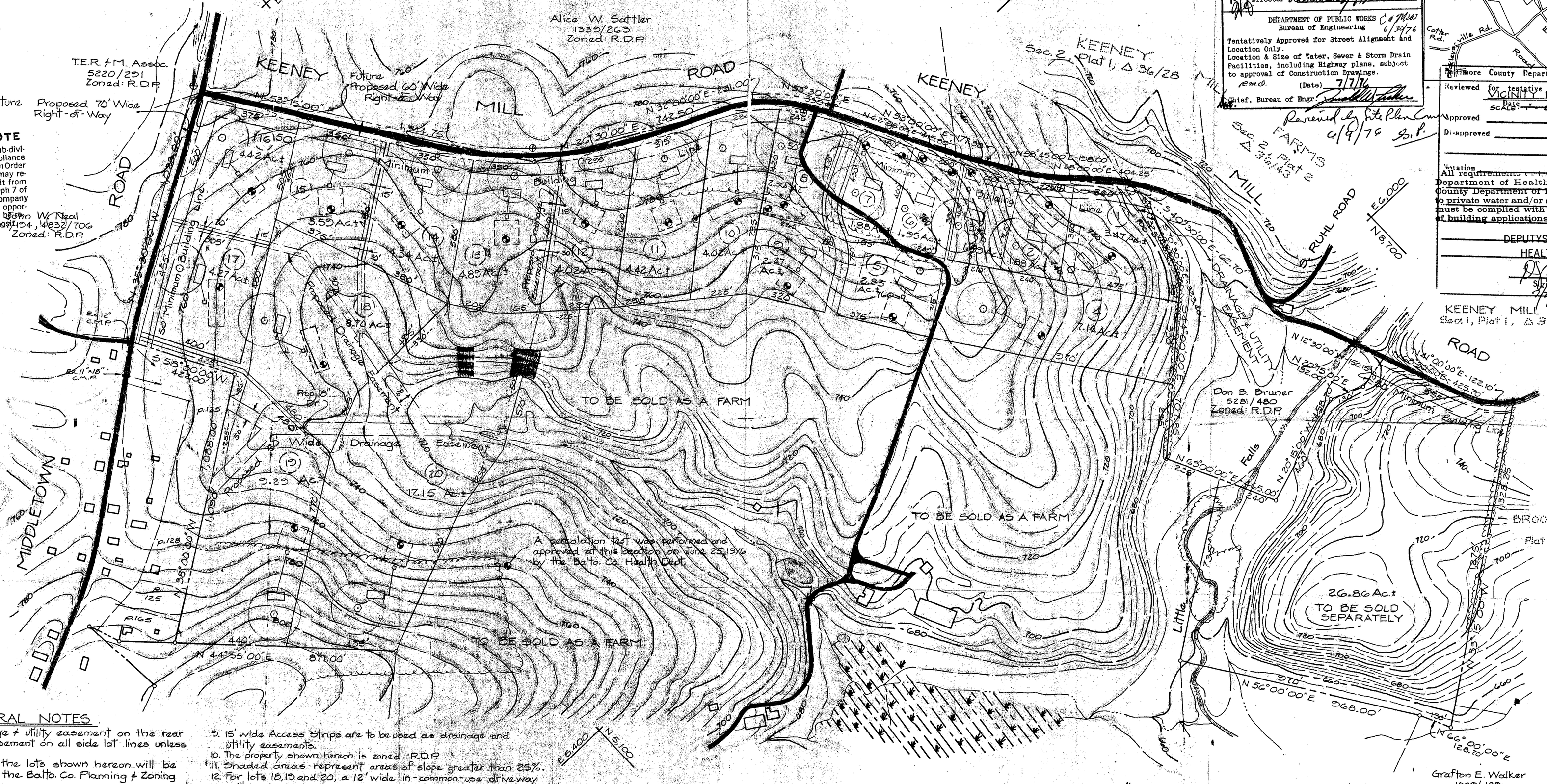
Telephone facilities serving the planned sub-division will be constructed underground in compliance with the Maryland Public Service Commission Order Number 60316. The Telephone Company may require a pre-construction refundable deposit from your Company in accordance with paragraph 7 of the Order. Please contact the Telephone Company local Engineering Manager at your earliest opportunity to determine whether a deposit will be required, and if required, the size of the deposit.

BALTIMORE COUNTY FIRE DEPARTMENT

This Preliminary Plan is Tentatively Approved ONLY for location, width and turning radii of "private" streets, roads, drives, alleys and similar means of ingress. This approval will be VOID if any buildings are shifted or any of the means of ingress are altered without prior notice to the Fire Department for additional approvals.

LEGEND

- Existing Septic Tanks
- Existing Wells
- Proposed Wells
- Prop. Perc. Tests & Septic Areas
- Proposed Street Lights
- Min. Bldg. Line
- Property Line
- R/W Line
- Easement Line
- Ex. Paving



GENERAL NOTES

1. There is a 10' wide drainage & utility easement on the rear lot lines and a 10' wide easement on all side lot lines unless otherwise noted.
2. No further subdivision of the lots shown hereon will be allowed unless approved by the Balto. Co. Planning & Zoning Comm.
3. Any and all property located within 55' of the centerline of Middletown Road and 30' of the centerline of Keeney Mill Road is hereby dedicated to Baltimore County for public use.
4. If and when water and sewerage facilities become available to this subdivision, connection thereto shall be required by the agency having jurisdiction.
5. Where applicable, utilities shall be installed in accordance with the current regulations or as may hereafter be amended by the Public Service Commission of Md. regarding underground service.
6. The lots and tracts shown hereon are for single family residential use only.
7. A building permit will not be issued for the construction of a dwelling on a lot shown hereon until a well exists that has been approved by applicable State and County agencies having jurisdiction.
8. Refuse collection, snow removal and road maintenance for panhandle lots are provided to the junction of the panhandle and the street right-of-way line only, and not onto the panhandle lot driveway.
9. 15' wide Access Strips are to be used as drainage and utility easements.
10. The property shown hereon is zoned R.D.P.
11. Shaded areas represent areas of slope greater than 25%.
12. For lots 18, 19 and 20, a 12' wide in-common-use driveway will be provided.
13. Title reference: Lizzetta M. Badgar & Carrie Norris Liber - 2543, folio - 485, dated Aug. 25, 1954 and recorded among the Land Records of Baltimore County.
14. The topography is from photogrammetric map sheet NW 36-F.
15. R/W width of Middletown Road is 70'; Keeney Mill Rd. is 60'.
16. There is a 50' Minimum Building Line on all lot lines except as noted.
17. p. 125 - Meadowcroft Bros., Inc. 4724/406
p. 128 - Phillip J. Meadowcroft 4818/82
p. 165 - Floyd Lam. 5378/788
18. The Flood Plain Reservation on Lot # 1 has been extended from the "Keeney Mill Farms" Reservation, Sec. 2, A 36/28.
19. Revertible slope easements will be granted along all roadway frontages.
20. The entrance road leading to the main farm shall serve as egress and ingress for lots 5, 7, 8 and 9.
21. The in-common-use panhandle driveway off Middletown Road should also serve lots 17, 18, 19 and 20.

SITE DATA

Gross Area	125.43 Ac.±
Area of Dedication - Keeney Mill Rd.	3.02 Ac.±
Area of Dedication - Middletown Rd.	0.71 Ac.±
Area to be Sold Separately	26.86 Ac.±
Net Area	94.84 Ac.±
Number of Lots	20
Average Lot Size	4.74 Ac.±
No. of Panhandles	6

"KEENEY MILL WOODS"

6th ELECTION DISTRICT BALTIMORE COUNTY, MD.
MAY, 1976

OWNER & DEVELOPER
J. DAVID LAWSON
BECKLEYSVILLE ROAD
PARKTON, MARYLAND
21120

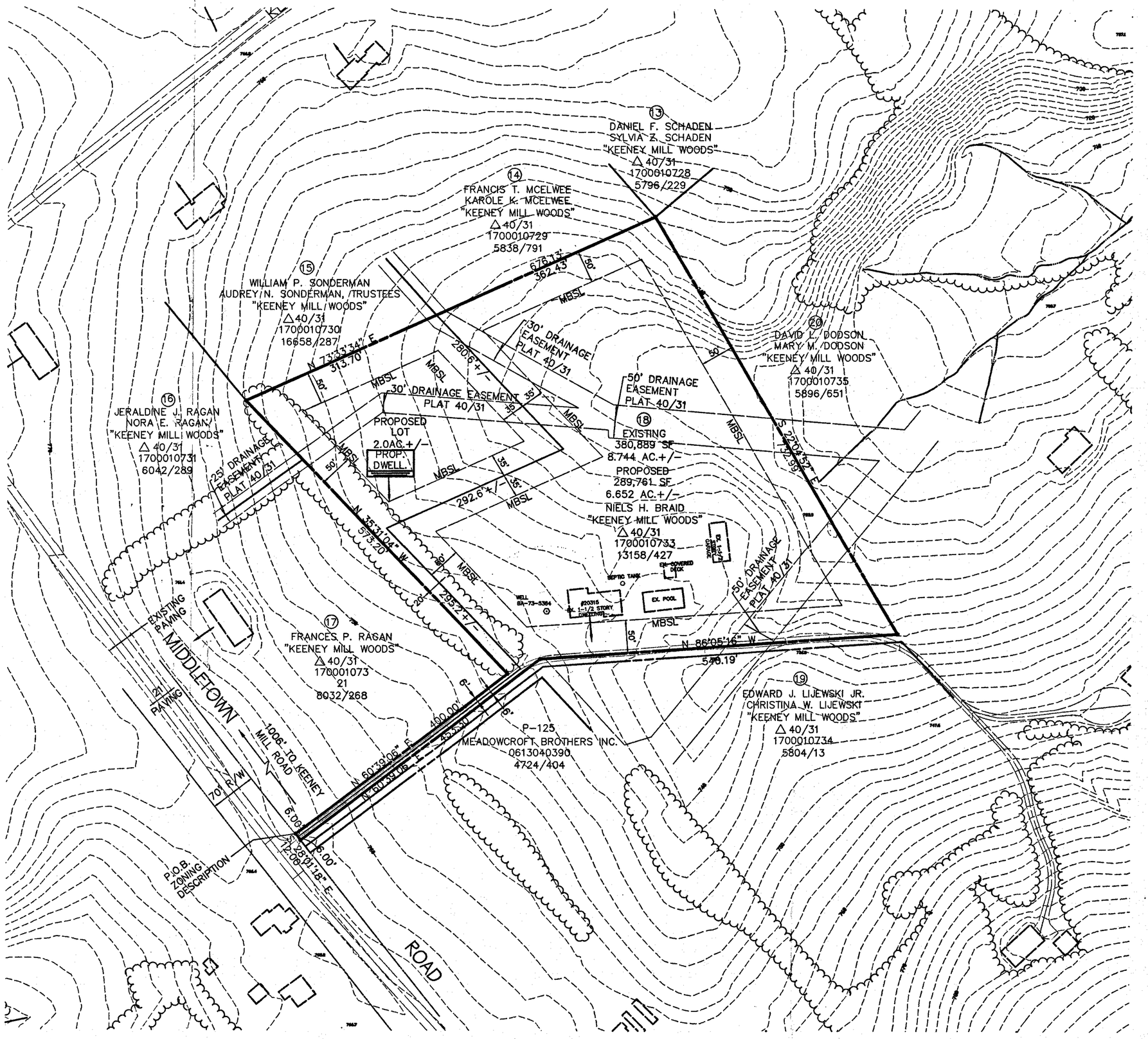
PETITIONER'S EXHIBIT 2

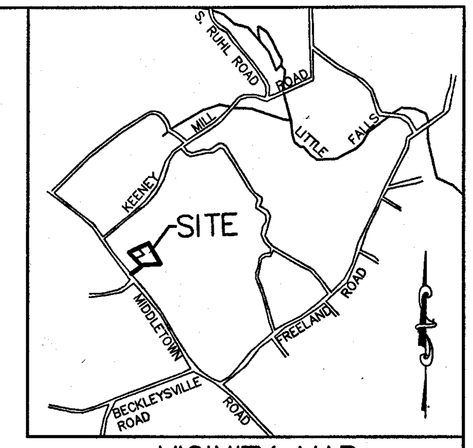
Signed Jen Falone

Date	REVISION	By
5/6/76	Initial Submission	DWD
5/18/76	Revised per JSPC	DWD
6/23/76	Revised per Comments, dtd. 6/16/76	DWD

McKee Engineering
1824 Ridge Road Reisterstown, Maryland 21136

JOB NO.	SCALE: 1" = 200'	ENGR	DWN DWD
	DATE: APRIL, 1976	DES	CKD





VICINITY MAP

SCALE: 1"= 1000'

NOTES:
1. OWNER INFO:
LOT 18– NIELS H BRAID
20315 MIDDLETOWN ROAD
FREELAND MD 21053–9628
17–00–010733
13158/427

2. TO THE BEST OF OUR KNOWLEDGE THERE HAVE BEEN NO PRIOR ZONING HEARINGS FOR THE SUBJECT PROPERTY.

3. THESE LOTS ARE SERVED BY PRIVATE WELL AND SEPTIC SYSTEMS.

	PUBLIC	PRIVATE
SEWER	☐	☒
WATER	☐	☒

	YES	NO	
CHESAPEAKE BAY CRITICAL AREA	☐	☒	
100 YEAR FLOOD PLAIN	☐	☒	(PER FEMA FIRM MAP– 240010 0050 B)
HISTORIC PROPERTY/ BUILDING	☐	☒	

EXISTING ZONING: RC–2.
NO. OF LOTS PERMITTED = BETWEEN 2 AND 100 ACRES = 2
NO. OF LOTS PROPOSED = 2

PLAN TO ACCOMPANY PETITION FOR ZONING ~~VARIANCE~~ SPECIAL HEARING

BRAID PROPERTY
#20315 MIDDLETOWN ROAD

LOT 18 "KEENEY MILL WOODS"
△ 40/31

6TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
SCALE: 1"= 100'
BALTIMORE COUNTY, MARYLAND
DATE:DECEMBER 13, 2005

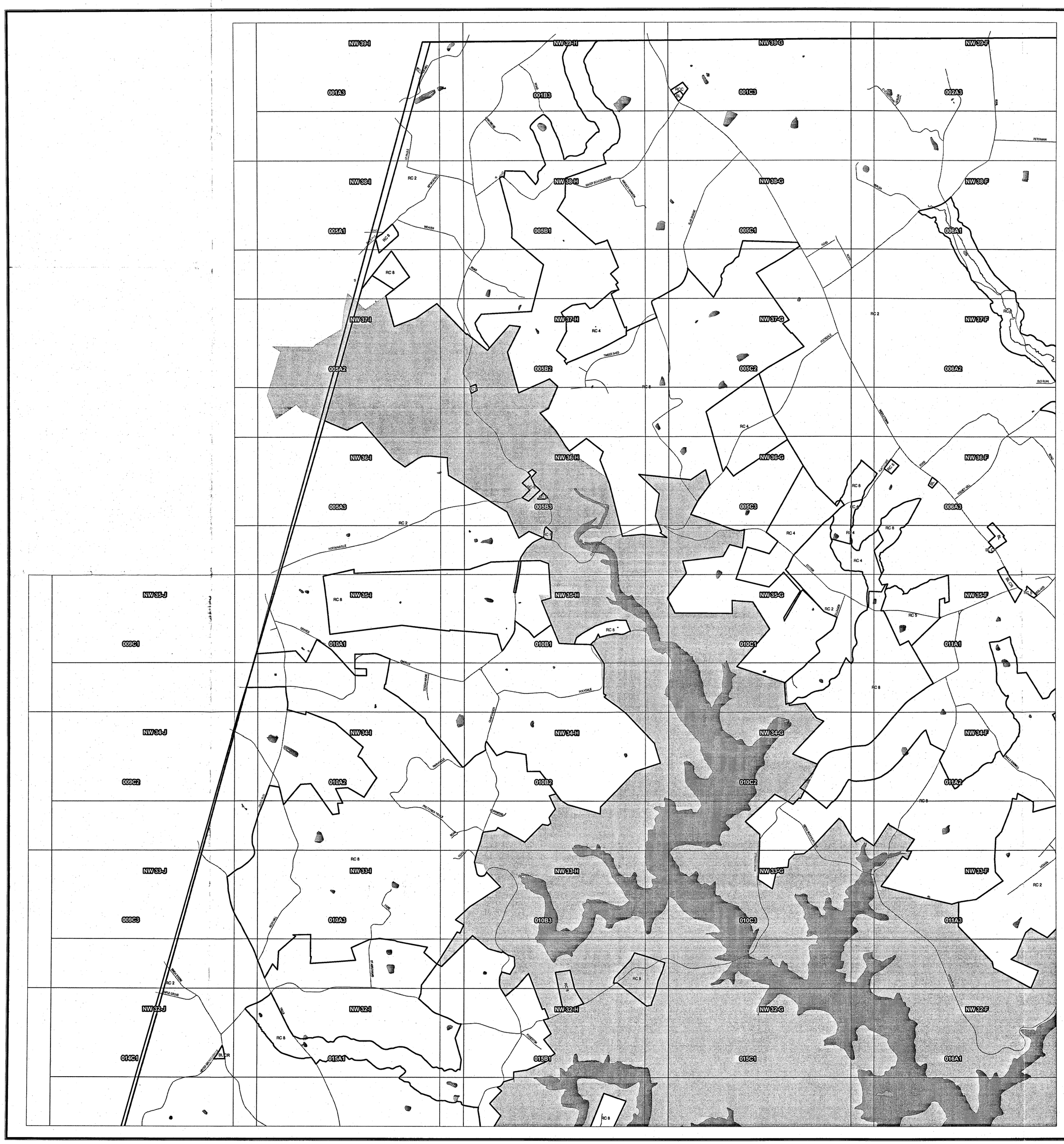
Petition #1

COMPUTED BY:	DRAWN BY: NS	CHECKED BY: GCW	JOB No.: 05-1618

McKEE & ASSOCIATES, INC.
Engineering – Land Planning – Land Surveying
Natural Resource Planning – Real Estate Development
5 SHAWAN ROAD, Suite 1 COCKEYSVILLE, MARYLAND 21030
TELEPHONE: (410) 527–1555 FACSIMILE: (410) 527–1563

P:\jobs\gary\05-1618\dwg\ZONING PLAN.dwg, 1/9/2006 10:38:32 AM, ns

06-332-SPH

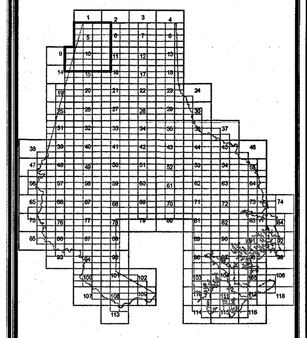


BALTIMORE COUNTY

Permits & Development Zoning Maps

Legend

- Zoning
- New 200' Scale Grid
- Old 200' Scale Grid
- Railroad
- Roads
- County Border
- Board of Education
- Military
- Recreation And Parks



Area of Interest

A

©

Scale: 1:12000
1" = 1000'

0 550 1,100 2,200 Feet

DISCLAIMER:

The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Data Sources:
Planimetric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

Prepared By LACQGIS. JSM.
Baltimore County Department of
Permits & Development.
February 15, 2006 d:\arcmap\PDM Zoning Maps.mxd

pc #5

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, ET AL.	*	**IN THE**
	*	**CIRCUIT COURT**
	*	**FOR**
IN THE MATTER OF: PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, ET AL.	*	**BALTIMORE COUNTY**
	*	
	*	
Case No. CBA-05-133 before the Board of Appeals of Baltimore County	*	**CASE NO: 03-C-06-001697**
	*	

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

OPINION

This case came before the Court as an administrative appeal from the January 25, 2006 decision of the Baltimore County Board of Appeals. The underlying appeal concerns the decision of the Baltimore County Zoning Commissioner Hearing Officer to approve a red-lined development plan on June 28, 2005, and to deny a Motion for Reconsideration of the approval.

Procedural History

This matter was presented to the Hearing Officer as a proposal to subdivide each of three existing lots of record that are currently zoned R.C.2. The development plan would create a total of six lots at the southwest corner of Bluemont and Wesley Chapel Roads in northern Baltimore County.

Pursuant to the Development Regulations of Baltimore County, a Concept Plan conference was held on May 10, 2004, and two Community Input Meetings were held on July 21 and August 2, 2004. The Development Plan was then submitted, and a Development Plan Conference was held on May 25, 2005. The Development Plan Comments called for minor changes and recommended approval of the Development Plan. A Hearing Officer's Hearing

County Board of Appeals of Baltimore County

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

December 21, 2007

Peter M. Zimmerman,
People's Counsel
Old Courthouse – Room 47
400 Washington Avenue
Towson, MD 21204

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

RE: Circuit Court Civil Action No. 03-C-07-14363
Petition for Judicial Review
Niels Braid
Board of Appeals Case No.:06-332-SPH

Dear Mr. Zimmerman and Ms. Demilio:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings for the Petition for Judicial Review, which you have taken to the Circuit Court for Baltimore County, in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410-486-8209
Dates of Hearings: November 28, 2006

This office has notified Ms. Peatt that a transcript on the above-captioned matter would be due by February 4, 2007 for filing in the Circuit Court.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel
Legal Secretary

/lbf
Enc.
c: Carolyn Peatt, Court Reporter
Howard L. Alderman, Jr., Esq.
Niels Briad

Printed with Soybean Ink
on Recycled Paper

zoning commissioner and the director of planning must certify that the amendment is in keeping with the spirit and intent of this article and other Baltimore County land use and development requirements administered by them, and both must certify that the amendment does not violate the spirit and intent of the original plan."

Finally, § 1B01.B.2 states:

> In fact, no subdivision of a tract or a portion of a tract may be created after the effective date of this article except as otherwise provided under § 1B02.3.A.2 unless the final subdivision plat therefore contains a summary showing the total number of dwelling or density units allowed for the entire tract under the applicable D.R. zones. The summary shall indicate as appropriate the number of dwelling or density units utilized by previous final subdivision plats or portions of the same tract. The number of dwelling or density units contained in the current subdivision plat and the balance of dwelling or density units allowed for the remainder of the tract under the applicable D.R. zones. It is the intent of these zoning regulations to prohibit subdivision or re-subdivision of portions of a tract in a D.R. zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. zones for the entire tract.

Mr. Dillon indicated that § 1A00.4 and the general regulations of R.C. 2 indicate that the manner prescribed under § 1B01.3 for the purposes of interpretation with reference to the D.R. zones are in the Code and that you substitute R.C. for D.R. in those areas and that they are now part of that section.

It is the opinion of the Board that when the above §§ 1B01.7.A and B and 1B01.B.2, as well as the spirit and intent of the law, are considered, the Petition for Special Hearing must be denied. At the time the original Keeney Mill Woods – East subdivision was created, the zoning regulations allowed for a density of five (5) lots on the 27+ acres of the subdivision. Had the Keeney Mill Woods – East subdivision been created today, the number of lots allowed would be two (2). This indicates that the spirit and intent of the law is to reduce the density in the rural agricultural zones.