

10/7/10
IN THE MATTER OF
THE APPLICATION OF
SEMINARY GALLERIA, LLC – LO
/PETITIONER FOR SPECIAL HEARING ON
PROPERTY LOCATED ON THE SE/COR OF
YORK ROAD AND SEMINARY AVENUE
(1447 YORK ROAD)
9TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 06-411-SPHA
* * * * *

**ORDER OF THE BOARD ON REMAND FROM
THE CIRCUIT COURT FOR BALTIMORE COUNTY PURSUANT
TO ORDER OF THE MARYLAND COURT OF SPECIAL APPEALS**

This matter comes before the Board of Appeals on remand by Order of The Honorable Robert E. Cahill, Jr., Judge, Circuit Court for Baltimore County, filed December 17, 2008; pursuant to the May 27, 2010, Order of the Court of Special Appeals of Maryland, that the Judgment of the Circuit Court for Baltimore County is AFFIRMED.

Consistent with the direction set forth in the MEMORANDUM OPINION AND ORDER REVERSING THE DECISION OF THE COUNTY BOARD OF APPEALS DATED FEBRUARY 11, 2008 by Judge Robert E. Cahill, Jr., Circuit Court for Baltimore County, in which Judge Cahill orders as follows:

"ORDERED that the Opinion of the County Board of Appeals of Baltimore County be and it is hereby REVERSED. The matter is hereby REMANDED to the County Board of Appeals with instructions to enter an order DENYING all relief sought by Seminary Galleria in Case No. 06-411-SPHA."

and as set forth in the Opinion of the Court of Special Appeals, dated May 27, 2010,

IT IS THEREFORE this 7th day of October, 2010, by the Board of Appeals of Baltimore County

ORDERED that consistent with the Remand Order of the Honorable Robert E. Cahill, Jr., Judge, Circuit Court for Baltimore County, filed February 11, 2008 pursuant to the May 27, 2010, Order of the Court of Special Appeals, the Opinion and Order of the Baltimore County Board of

Appeals, dated February 11, 2008, in which Petitioners' requested zoning relief was granted is hereby REVERSED, and it is further

ORDERED that the Petitioner's request for special hearing relief filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (BCZR) in accordance with BCZR § 409.8.B to approve commercial parking adjacent to existing commercial parking on the same lot in a residential zone (10 spaces) be and is hereby **DENIED**; and it is further

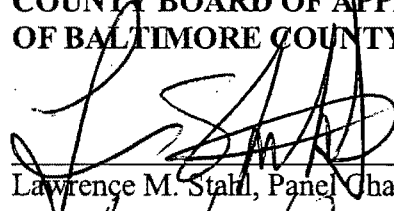
ORDERED that the Petitioner's request for special hearing to approve the second amendment of the parking plan of the Galleria Tower is hereby **DENIED**; and is it further

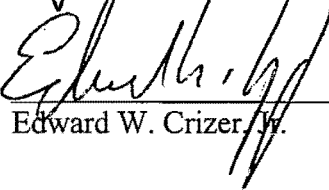
ORDERED that the Petitioner's request for special hearing pursuant to § 409.12 of the BCZR to approve a modified parking plan of 756 parking spaces is hereby **DENIED**; and it is further

ORDERED that Petitioner's requested variance relief 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 COUNTY¹**


Lawrence M. Stahl, Panel Chairman


Edward W. Crizer, Jr.

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, Margaret Brassil, Ph.D., and Edward W. Crizer, Jr., however, Dr. Brassil resigned from the Board prior to the issuance and execution of the final Order dated February 11, 2008., which was appealed to the upper courts.

10/7/10



County Board of Appeals of Baltimore County

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October 7, 2010

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
502 Washington Avenue, 8TH Floor
Towson, MD 21204

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Ste 106
Towson, MD 21204

RE: *In the Matter of: Seminary Galleria, LLC-Legal Owner/Petitioner*
Case No.: 06-411-SPHA

Dear Counsel:

Enclosed please find a copy of the Order of the Board on Remand from the Circuit Court for Baltimore County Pursuant to Order of the Maryland Court of Special Appeals issued this date by the Board of Appeals of Baltimore County in the above 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*, **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,

Theresa Shelton/KC

Theresa R. Shelton
Administrator

TRS/klc
Enclosure

Duplicate Original Cover Letter

c. Seminary Galleria, LLC, Teresa Rosier, Member
Bruce Doak/Gerhold, Cross & Etzel
Dulaney Valley Improvement Association, Inc.
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
John Beverungen, County Attorney

Bill Russell, Hill Management
Larry Townsend
Office of People's Counsel
Arnold F. "Pat" Keller, III, Director/Planning
Nancy C. West, Assistant County Attorney

5/27/10

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2591

September Term, 2008

SEMINARY GALLERIA, LLC

v.

DULANEY VALLEY IMPROVEMENT
ASS'N, INC., *et al.*

Meredith,
Wright,
Thieme, Raymond G., Jr.,
(Retired, specially assigned),

JJ.

Opinion by Meredith, J.

RECEIVED
MAY 28 2010

BALTIMORE COUNTY
BOARD OF APPEALS

Filed: May 27, 2010

Appellant, Seminary Galleria, LLC ("Seminary"), owns a commercial property used for retail and offices. The property is located in Baltimore County, and is split-zoned, with most of the property located in the "Business Local" zone and the rest in a "Density Residential" zone. In 2003, without seeking prior approval from the County, Seminary reconfigured four of the existing parallel parking spaces that were located in the residentially zoned portion of the property, and created 14 new parking spaces in their place. The net effect was that Seminary gained ten additional spaces upon the portion of the property that was zoned Density Residential. After a complaint to the County was lodged by, among others, Dulaney Valley Improvement Association, Inc. ("DVIA"), one of the appellees, Seminary attempted to obtain retroactive approval of the parking spots, but its first application for a special hearing or a variance was denied by the Zoning Commissioner. Following *de novo* review by the Board of Appeals of Baltimore County ("the Board"), the Board issued an order denying Seminary's requests for retroactive approval of the new parking spots on September 19, 2005.

Just five months later, on February 23, 2006, Seminary again filed petitions for approval of the ten new parking spaces, arguing this time that the additional spaces were needed to help it meet the County's parking requirements as amended in 1986. By the time the 2006 petitions came before the Board, the Board was composed of new members, and the Board approved Seminary's request to keep the new parking configuration on the property in the Density Residential zone. DVIA and the People's Counsel for Baltimore County, the second appellee, petitioned for judicial review in the Circuit Court for Baltimore

County. The Circuit Court for Baltimore County agreed with the appellees' contention that approval of Seminary's second petition was precluded by *res judicata*. The circuit court reversed the Board.

In its appeal to this Court, Seminary challenges the circuit court's determination.

QUESTIONS PRESENTED

Seminary presents four questions:

1. Whether an administrative agency's determination of the applicability of the doctrine of *res judicata* should be assessed pursuant to the substantial evidence standard of review when such determination constitutes a mixed question of law and fact[.]

2. Whether an assessment of the causes of action in the current and prior proceedings pursuant to a same evidence analysis establishes that the doctrine of *res judicata* does not preclude the relief granted by the Board[.]

3. Whether the substantial change of circumstances in this case establishes that the doctrine of *res judicata* does not preclude the relief granted by the Board[.]

4. Should the lower court have remanded the case to the Board for consideration of the alternative, Variance [sic] relief requested[.]

We answer "no" to questions 2, 3 and 4. With respect to question 1, we reject the appellant's implied assertion that the agency was required to resolve any disputed factual issue in this case in order to determine whether the doctrine of *res judicata* was applicable. Consequently, the appropriate standard of review in this appeal is *de novo*. We affirm the judgment of the Circuit Court for Baltimore County.

FACTS AND PROCEDURAL HISTORY

Seminary owns the subject property, the "Galleria" building complex, comprised of 211,635 square feet of space leased primarily for offices, with retail stores on the ground level. The complex is located at the intersection of York Road (a major four-lane arterial road) and Seminary Avenue (a smaller two-lane road). The majority of the property is zoned as "Business Local" or "BL" and the balance of the property is "Density Residential" or "DR." The DR zone functions as a transition or buffer zone between the commercial buildings and the residences (mostly single-family) located across the street and in the nearby area.

Pursuant to a use permit granted in 1955, parking for the Galleria complex is located in both the BL and DR zones. In 1983, the County Review Group ("CRG") approved the layout of the parking for the complex as meeting the requirements of Baltimore County Zoning Regulation ("BCZR") § 409.6, which required, based on the complex's planned uses, 728 parking spaces. The Galleria parking lots provided 734 parking spaces.

There are certain parts of the parking lots which are available to, but not close to, the busiest areas of the complex. Consequently, the prime parking area is crowded, while certain less-convenient areas of the Galleria parking lots often remain empty.

In 2003, over a holiday weekend, Seminary's parking lot contractor reconfigured four parallel parking spaces into 10 head-in parking spaces, and then added four new parking spaces and a low retaining wall. The additional spaces were created in a location where

there had previously been grassy space that was zoned DR. Seminary did not obtain a permit or seek to amend the 1983 CRG-approved plan before making these additions and modifications. Nevertheless, Seminary sought retroactive approval and attempted to legitimize the 14 newly created spaces.

A. Seminary Galleria I.

On July 31, 2003, Seminary submitted a redlined version of the 1983 plan, and petitioned for both a special hearing and a variance to allow commercial parking adjacent to existing commercial parking in a residential zone.¹ *See* BCZR § 409.8.B. A hearing was held before the Deputy Zoning Commissioner for Baltimore County, who denied both petitions on October 2, 2003.

On July 1, 2004, Seminary filed an appeal to the Board, which heard the matter *de novo*, and denied Seminary's requested relief. The Board found that the additional spaces were being proposed for convenience only, and that the additional parking "might be 'detrimental to the health, safety, or general welfare of the public.'"

Seminary sought judicial review in the circuit court. On April 21, 2005, the circuit court issued an order stating that substantial evidence supported the Board's decision. But,

¹ The variance was requested to allow construction of an additional 16 spots that Seminary proposed to create (above and beyond the 14 already constructed without a permit). The application for approval of 16 additional spots was denied, and Seminary never appealed that denial.

because the Board's explanation of its analysis was not sufficiently detailed, the circuit court remanded the matter to the Board for more specific factual and legal analysis.

On September 19, 2005, the Board issued a Supplemental Opinion, denying Seminary's request to keep the 14 spaces it had constructed without a permit in 2003. The Board noted that Bruce Doak, a surveyor testifying as an expert witness for Seminary, had testified that 728 spaces were required by the BCZR and that 734 had been approved. Approval of the additional spaces would result in 748 parking spaces. The Board held that, "based upon the testimony of the Petitioner's own witnesses, the special hearing for commercial parking in a residential zone must be denied." Noting that "Petitioner's witness admitted that it satisfied the zoning regulations regarding parking on the site," the Board found "there is no 'undue hardship' and the modified parking plan is not available." There was therefore no need for a modification under BCZR § 409.8.B in order to satisfy legal requirements, nor was there "undue hardship" to justify a modification under BCZR § 409.12.B.

Moreover, the Board held that the petition did not satisfy the special exception criteria under BCZR § 502.1, which sets out nine conjunctive conditions for a special use permit. One of these conditions requires that "the use for which the special exception is granted will not . . . [b]e detrimental to the health, safety, or general welfare of the locality involved." BCZR § 502.1.A. The Board stated in its Opinion:

In describing special exception uses, the BCZR states that "certain types of uses . . . might cause unsatisfactory results of one kind or another . . . and

under certain conditions they could be detrimental to the health, safety, or general welfare of the public” The citizens testifying before the Board explained the detrimental effects of [Seminary’s] request under the criteria set forth in § 502.1. It is basically offensive to the neighbors because (1) they are located in the D.R. 5.5 zone; (2) they extend the commercial use into the buffer area, closing in on a settled residential neighborhood; and (3) they interfere[] with a designated fire lane. Mr. Flesher, a neighbor living across the street, stated that [Seminary] dumps plowed snow onto his property when it runs out of space on its site. He felt that this situation would be exacerbated if the present open spaces were converted to parking spaces. He has experienced car alarms, noise and trash from parked vehicles on the site and such disturbing activity will actually be closer to his home if the 14 additional spaces are allowed. In addition, he stated that tenants from the site have picnicked on his yard and that the hours of operation for these tenants have been extended over the years, some of them open 24 hours a day, such as the subway [sic] operation and health club. The HMO is open Saturdays and Sundays broadening the commercial aspect of the residential uses. Richard Hurd, another neighbor across the street, also testified that the illegal parking spaces are occupied at 7:30 a.m. by tenants even when the rest of the lot is empty. Mr. Hurd disputes the need for additional parking since he has never seen all of the parking spaces occupied. Mr. Hurd explained that [Seminary] also dumped snow on his side of the street and on his property when there was no room in the open spaces. He fears that the problem will be exacerbated if the open spaces are further lost to parking spaces.

While it is true that the Fire Marshall’s Office had no comment **with respect to the additional 14 parking spaces which were constructed in the fire lane, the Board is of the opinion that the use of the fire lane for additional parking is detrimental to the health, safety, and welfare of the general public.** The 14 spaces displace the original grass and planting area in the D.R. 5.5 zone. The neighbors have testified as to the adverse effects of the unauthorized parking spaces. **The Board finds that the construction of these spaces without the proper authorization is detrimental to the health, safety, and welfare of the neighborhood.** Therefore, it does not satisfy the requirements of § 502.1 of the BCZR and the plan should be denied.

(Emphasis added.)

No appeal or request for judicial review followed. Therefore, the Board's order dated September 19, 2005, became final. We shall follow the lead of appellee People's Counsel for Baltimore County and refer to this first case as *Seminary Galleria I*.

B. Seminary Galleria II.

On February 23, 2006, the present case, which we shall refer to as *Seminary Galleria II*, began with similar petitions requesting a special hearing for business parking in a residential zone, a modified parking plan, and an alternative petition for variance. Seminary differentiated the 2006 petitions from the previously-denied 2003 petitions by limiting the requests to just the 14 spaces which it had constructed without a permit in 2003.

Seminary also reframed its classification of the Galleria complex under the zoning regulations, contending that the complex was a "shopping center" based on its tenant mix. Under BCZR § 409.6.A.2, a "shopping center" with 100,000 feet or more of gross leasable area is required to provide 5 spaces per 1,000 feet. Seminary introduced a letter from a Zoning Supervisor at the Baltimore County Department of Permits and Development Management ("BCDPDM") stating that "it is the determination of this Office that the Seminary Galleria is a 'shopping center' as defined by the Baltimore County Zoning Regulations." Seminary argued that, under this "shopping center" classification, Seminary was required to provide more parking spaces than existed on the site.

Seminary sought approval of its as-built plan, including the 14 parking spaces constructed without a permit, "to meet to the extent possible the minimum parking

requirements of BCZR § 409.6 utilizing all existing parking spaces shown,” in lieu of complying with the minimum requirements of the BCZR for shopping centers. The petition for variance sought, in the alternative, “a variance from[] BCZR §§ 409.6.A to permit a total of 746 parking spaces in lieu of: i) the 1059 spaces required [w/o shopping center provision] or ii) the 1084 spaces required for a shopping center with more than 100,000 square feet of GLA.”² Seminary now represented that the Galleria’s existing parking capacity was deficient by approximately 300 spaces, as a consequence of which Seminary requested approval of the 14 spaces to partially offset that deficit.

DVIA filed a motion to dismiss the 2006 petitions, contending that Seminary’s claims for relief were barred by *res judicata*. On July 14, 2006, the Zoning Commissioner denied the motion to dismiss, stating: “The first case involved 14 additional parking spaces in the adjacent residential zone. This case makes that issue insignificant. In this case the Petitioner admits to being short 300 spaces. Therefore I will deny the Motion.” Even so, the Commissioner noted in his Findings of Fact and Conclusions of Law: “I see nothing different in request for [*sic*] the 14 highlighted spaces on [Seminary’s] exhibit 1 from that which was denied in Case No. 04-052-A [*Seminary Galleria I*].” The Commissioner further found that the Galleria did not come under the zoning definition of a shopping center because “[t]he buildings are not connected, the walkways are not intended to facilitate customer interchange between uses, and the site does not give the appearance of a

² “GLA” refers to gross leasable area. See BCZR § 409.6.A.2.

continuous commercial area.” The Commissioner recognized that the present actual tenant mix required 1084 parking spaces even though the approved site plan was based on a projected tenant mix requiring much less parking. Nevertheless, the Commissioner found that the parking deficit problem was “wholly self imposed” by the management of the Galleria because “the mix of tenants is completely determined by management who undoubtedly wants to maximize return on investment” but did so by willfully entering into leases that required parking capacity that exceeded the total number of spaces available under the site plan. According to the Commissioner, Seminary (as of 2006) is “presently required to have 643 [sic] spaces and more importantly to have a mix of tenants that corresponds to this parking.” “The Petitioner created every bit of this problem by not controlling tenant mix.”

Finding that Seminary’s willful creation of the excess burden on the parking lot did not fall into any exception warranting approval, the Commissioner denied the variance requests. Nevertheless, the Commissioner approved the special hearing and modified parking plan (minus the 14 spots) with the additional condition that Seminary not lease vacant space in the building until the tenant mix adjusted and required no more than 1049 spaces. After commenting that Seminary “incredibly asks [the County] to approve a parking plan with the 14 spaces previously denied in Case 04-052-SPH,” the Commissioner ordered: “The Petitioner shall eliminate the 14 parking spaces shown in Petitioner’s exhibit 1

highlighted in yellow. . . .” Both Seminary and the appellees appealed to the Board of Appeals.

On March 20 and 21, 2007, the Board – now composed of totally different members than those who heard the *Seminary Galleria I* appeal – held a *de novo* hearing. The same surveyor who testified for Seminary in support of the 2003 application stated that the new calculations were made in response to updated tenant information; he offered his professional opinion that the complex was a shopping center and the petitions should be approved. Nevertheless, the surveyor admitted that neither he nor his firm performed any analysis of the tenant mix and square footage of the Galleria in connection with his 2003 testimony, nor had he verified the tenancy information he was given in 2003. Seminary also introduced a letter from the BCDPDM requiring the Galleria to comply with a newly enacted law that required surveillance cameras for shopping centers; Seminary argued that this letter demonstrated the County’s acknowledgment that the Galleria was a shopping center.

A witness called by DVIA testified that removal of the 14 spaces and restoration of the original plan was preferable, even if it resulted in the loss of the ten new parking spaces. DVIA’s main concern was minimizing or removing the disturbance of the DR-zoned area. A resident of a nearby home also testified about lights of tenants shining into his windows, and expressed his concerns about the decrease in value of his home, both as a result of the removal of vegetation and the addition of parking spaces on the Galleria site.

On February 11, 2008, the Board issued an order in which it approved both the classification of the Galleria as a shopping center and the amended parking plan. With respect to the appellees' assertion that Seminary's claim was barred by *res judicata*, the Board simply stated:

This Board feels that the matter of *res judicata* does not apply due to the specific nature of the 14 parking spaces and the matter of parking in the D.R. zone, which this Board feels is permitted. We find this case not to be another attempt to repeat prior cases.

* * *

After a review of the facts, the testimony and evidence submitted, and the law, this Board finds that the issue of *res judicata* does not apply in this case

Both DVIA and the People's Counsel for Baltimore County filed petitions for judicial review in the Circuit Court for Baltimore County. Because both petitions involved the same record and Board opinion, on the motion of the People's Counsel, the circuit court consolidated the cases. On September 4, 2008, the circuit court heard oral arguments. Appellees again argued *res judicata*, and Seminary again claimed that a newly-discovered parking deficiency justified approval of the additional parking spaces.

On December 17, 2008, the circuit court issued its opinion and order reversing the Board's 2008 decision. The circuit court stated: "The real question presented in this appeal is whether this 'short fall' was known, or knowable by Seminary Galleria before the first case was decided." The court ruled as follows:

It is well settled that the principle of *res judicata* applies to administrative proceedings. [Citations omitted.] Accordingly, if the issues sought to be litigated in Seminary Galleria II either were litigated in Seminary Galleria I, or “with propriety could have been litigated” in Seminary [Galleria] I, prosecution of relief in Seminary Galleria II is barred.

The parties were identical in each matter. The property involved was identical in each matter. Approval of the identical ten (10) [net additional] parking spaces was the issue in each matter. Substantially the same witnesses testified for the same parties in each matter. And importantly, **there was absolutely no change in the facts between the date of the Board’s decision in Seminary Galleria I and the hearing in Seminary Galleria II relating to the Board’s finding in the first matter that construction of additional spaces “is detrimental to the health, safety and welfare of the neighborhood.”** Presumptively, therefore, the doctrine of *res judicata* would seem to preclude the second litigation between these parties over these same ten (10) parking spaces.

Seminary Galleria’s argument, however, is that the “facts and circumstances have changed since the prior cases” [citation omitted], and that, therefore, the second litigation over these parking spaces was permitted. It argues that, at some point (exactly when or under what circumstances is not made clear in the record) Baltimore County required it to “file for review and approval a current as-built parking plan” [citation omitted] and that, after it did so, it discovered that it was actually required by zoning regulations to furnish over 1,000 parking spaces, as opposed to the 728 spaces which it had argued it was required to furnish by the County’s zoning regulations in Seminary Galleria I. In effect, Seminary Galleria argues that it was compelled to file Seminary Galleria II as a defensive measure against a claim that it was not in compliance with minimum parking requirements which are calculated when the retail-office property is considered a “shopping center.”

The short, and final answer to Seminary Galleria’s argument is that all facts necessary to make the parking deficiency argument that it made in Seminary Galleria II were available to Seminary Galleria when it filed, litigated and lost Seminary Galleria I. There is no evidence in the record that either the tenant mix at the property or its character as a “shopping center” substantially changed between September [19], 2005 [the date the Board issued its final ruling in *Seminary Galleria I*] and February 23, 2006 [the date Seminary filed the current petitions] to justify the filing of new

litigation. Rather, it is clear that, had Seminary Galleria's witnesses been asked in the earlier case to perform the calculations and do the other work which they ultimately did in the latter case, the theory of minimum parking requirements based on a new tenant mix and/or characterization of the property as a "shopping center" could have been advanced in the first case. Mr. Doak testified in the second case as follows:

Q. Did you do any analysis, or your firm, rather, or you do any analysis prior to your testimony in [*Seminary Galleria I*] to break down the tenancy or the square footage existing at that time in the Galleria?

A. No, sir. [Citation omitted.]

* * *

Q. What, if anything, did you do to verify the existing tenant mix was accurately reflected in the plan that you did review?

A. For the first case?

Q. For the first case.

A. Nothing, sir. [Citation omitted.]

This Court has reviewed all of the testimony of Seminary Galleria witnesses in Seminary Galleria II and specifically concludes that the issue of minimum parking requirements at the property, based on either "an amendment to a prior plan for the subject property that was approved in the 1980's" ([Seminary's] Reply Memo, p. 2) or on "current" requirements reflecting a new tenant mix and a characterization of the property as a shopping center, could plainly and clearly have been litigated in the earlier case had Seminary Galleria desired to avoid piecemeal litigation. While the Court will not conclude that Seminary Galleria's conduct after losing Seminary Galleria I amounted to an "artifice" or a "sham" as characterized by People's Counsel, the conclusion that all "minimum parking requirement", "parking deficiency" or "short fall" arguments could have and should have been made in the earlier litigation is inescapable. Prosecution of relief in Seminary Galleria II was barred by the final determination made by the Board of Appeals in Seminary Galleria I.

(Emphasis in bold added.)

The circuit court reversed the holding of the Board and remanded the case to the Board with instructions to deny all relief sought by Seminary in *Seminary Galleria II*. Seminary noted an appeal to this Court.

STANDARD OF REVIEW

Although this appeal comes to us from the circuit court, we review the decision of the Board. Our review of an administrative agency's action generally is a "narrow and highly deferential inquiry." *Park & Planning v. Greater Baden*, 412 Md. 73, 83 (2009). Our review 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 v. People's Counsel*, 336 Md. 569, 577 (1994). "[T]his 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, so long as the agency's determination is based on 'substantial evidence.'" *People's Counsel v. Surina*, 400 Md. 662, 681 (2007) (citations omitted). Judicial deference to an agency's legal determinations, however, is less broad. The Court of Appeals stated in *Belvoir Farms v. North*, 355 Md. 259, 267 (1999): "Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based on an error of law." Where the legal conclusions reached by the

agency are based on an erroneous interpretation or application of law, we may reverse those decisions. *See Trinity v. People's Counsel*, 407 Md. 53, 78 (2008).

DISCUSSION

Seminary contends that the Board's determination that *res judicata* was not applicable to the 2006 petitions in *Seminary Galleria II* was a mixed question of law and fact, which would necessitate our review under the "substantial evidence" test. *Charles County v. Vann*, 382 Md. 286, 296 (2004). Seminary contends that we must only evaluate "whether it was reasonable for the Board to conclude that the doctrine of *res judicata* does not preclude Appellant's requested relief." But DVIA and the People's Counsel respond that *res judicata* is consistently analyzed by courts as an issue of law. We agree with the appellees that the issue of whether *res judicata* applies to *Seminary Galleria II* is a question of law, and that it was proper for the circuit court – and it is appropriate for this Court – to review the legal conclusion of the Board *de novo*.

The doctrine of *res judicata* provides that "a judgment on the merits in a previous suit between the same parties or their privies precludes a second suit predicated upon the same cause of action." *Parkland Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979). In *Whittle v. Bd. of Zoning Appeals*, 211 Md. 36, 38 (1956), the Court of Appeals considered "whether or not a prior adverse ruling by the Circuit Court for Baltimore County on an application for a special permit for a funeral home on the same premises is *res judicata* as to [a second application for a similar special permit]." The Court of Appeals stated in *Whittle*: "If the

second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case on the merits is an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which *could have been* litigated.” *Id.* at 49 (emphasis added).

A similar summary of this point appears in *Alvey v. Alvey*, 225 Md. 386, 390 (1961):

The doctrine of *res judicata* is that a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action, and is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit, where the court had jurisdiction, proceedings were regular, and his omission was due to his own negligence.

In *Alvey, supra*, 225 Md. at 391, the Court of Appeals quoted with approval the following statement from *Henderson v. Henderson*, 67 Eng. Rep. 313, 319, 3 Hare 100, 115 (1843):

[W]here a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted a part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

Although there were cases decided several decades ago in which the Court of Appeals held that principles of *res judicata* did not apply to rulings of administrative agencies, the RESTATEMENT (SECOND) OF JUDGMENTS (1982) provides in § 83(1) that “a valid and final

adjudicative determination by an administrative tribunal has the same effects under the rules of *res judicata*, subject to the same exceptions and qualifications, as a judgment of a court.”

The more recent Maryland cases have held that, when an administrative agency is performing a quasi-judicial function, the principles of *res judicata* are applicable. *See, e.g., Stavely v. State Farm Mut. Auto Ins. Co.*, 376 Md. 108, 116 (2003); *Sugarloaf v. Waste Disposal*, 323 Md. 641, 658-59 (1991); *Cicala v. Disability Review Bd.*, 288 Md. 254, 263-64 (1980).

The Court of Appeals has confirmed that an administrative agency’s decision will be entitled to preclusive effect if the test first enunciated in *Exxon Corp. v. Fischer*, 807 F.2d 842, 845-46 (9th Cir. 1987), is met. *See Batson v. Shiflett*, 325 Md. 684, 705 (1992). In *Batson, id.* at 701, the Court of Appeals quoted with approval the following test for determining whether an administrative agency’s ruling “is entitled to preclusive effect”:

Whether an administrative agency’s declaration should be given preclusive effect hinges on three factors: (1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the [reviewing] court was actually litigated before the [agency]; and (3) whether its resolution was necessary to the [agency’s] decision.

(Internal quotation marks omitted.) *Accord Neifert v. Dept. of Environment*, 395 Md. 486, 507 (2006).

The Board’s decision in *Seminary Galleria I* meets this test. (1) The Board acted in a judicial capacity by conducting a *de novo* hearing, allowing the parties to present evidence, and ruling on the disputed legal issue. (2) The issue of whether the 14 parking spaces could

remain was actually litigated in *Seminary Galleria I*. (3) The ruling was necessary to – indeed, the essence of – the Board’s decision in *Seminary Galleria I*.

In *Whittle, supra*, 211 Md. at 45, the Court of Appeals reviewed a variant of *res judicata* that arises in connection with successive zoning applications:

The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions. [Citations omitted.] This rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law.

* * *

It is our view that where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in fact and circumstances between the first case and the second, the doctrine of *res judicata* would not prevent the granting of the special permit sought by the appellees.

The Court of Appeals has emphasized that, before a party can apply to a zoning agency for relief previously denied by the agency, “substantial changes in fact and circumstances” must be, indeed, substantial. *Woodlawn Ass’n v. Board*, 241 Md. 187, 197 (1965), involved several neighboring landowners’ challenge to the rezoning of 47 acres of nearby undeveloped woodland for garden-style high-occupancy apartments. The owner of the property applied for rezoning but was thwarted in his rezoning efforts three times between 1961 and 1964. When the application was finally granted in 1964, the nearby landowners appealed. The *Woodlawn* Court noted that, in *Whittle*, “[n]either neighborhood

sentiment nor the slight distinction created by the additional restrictions were deemed to amount to a substantial change in circumstances.” *Woodlawn, supra*, 241 Md. at 197. Finding *Whittle* to be “dispositive of the case before us,” the Court stated that it found “no substantial or significant change in fact and law was shown to have occurred” between the applications at issue in *Woodlawn*. *Id.* at 197. The *Woodlawn* Court held that “the principles of *res judicata* were controlling,” *id.* at 190, and barred the 1964 approval. The Court explained, *id.*, that it could

find in the record no evidence of significant change in the neighborhood of the property between 1961 and 1964, which means that the action of the Council in rezoning in 1964 on essentially the same facts and conditions it found insufficient to permit rezoning in 1961 was arbitrary, capricious, and illegal.

Similarly, in *The Chatham Corp. v. Beltram*, 243 Md. 138 (1966), the Court of Appeals rejected a second attempt to rezone a property because, although the applicant made new arguments, the facts underlying the previous denial remained unchanged. The Court stated:

On the question of whether there had in fact been any significant change between the time of the first decision and the second, we think Judge Macgill’s analysis in his opinion in the second case is impeccable in its perception and accuracy. He said:

“The resolution [of the Commissioners in the second application] made no specific finding of a change in circumstances in the neighborhood since the last decision, nor of any subsequently discovered mistake in the existing classification. The report and recommendation of the Planning Commission was a recapitulation of the report and recommendation which had been submitted, considered and

rejected by the Board at the first hearing. The availability of public water and sewerage was also a factor presented and presumably considered by the Board at its earlier hearing. It was discussed by this Court in its opinion in the case thereafter filed. The fact that the property was contiguous to land zoned for garden apartments and for a shopping center was no less a fact when the first petition was denied. **It must be concluded that the only substantial change which led to the later action of the Board was a change of mind of a majority of its members. The ability to reconsider and change one's mind is, in most aspects of human endeavor, a virtue more often than a vice. In matters such as this, however, it risks the danger of being labelled capricious."**

Id. at 151-52 (emphasis added).

In the same year that the Court of Appeals decided *Chatham*, the Court also decided *Alvey v. Hedin*, 243 Md. 334 (1966) ("*Hedin*"). Alvey had successfully applied to rezone 4.75 acres on the property to Heavy Commercial and then built a marina. The rezoning was later declared void on appeal. Alvey then attempted to obtain Light Commercial zoning. Alvey had argued mistake in the original zoning classification of the property and made the same argument in *Hedin*. But in the previous case, on the same facts, the court had found no mistake in the original zoning. The *Hedin* Court ruled against Alvey, stating:

The above holding in the first case is an absolute bar to the present attempt by the Alveys to again raise the question of mistake in original zoning of the same tract of land, because any of the testimony relied upon in the instant case as to this question could and should have been presented in the first case, and the applicability of the doctrine of res judicata as to this mistake question is not affected by the fact that they are here attempting to get a different type of commercial classification than in the first case.

Id. at 340.

Seminary contends that there was a material change in facts and circumstances because the denial in *Seminary Galleria I* of its request to keep the 14 constructed spaces thereafter “required” Seminary to “prepare and submit a completely new plan depicting all existing buildings and parking spaces and the total size of all buildings.” As a consequence, Seminary applied current parking standards to the complex and calculated the spaces that would be required if (a) the entire complex was deemed a “shopping center,” or (b) the complex was evaluated based on the types of uses of its actual tenant mix. Both of these calculations yielded a parking requirement of over 1,000 parking spaces. Moreover, Seminary had obtained a “zoning verification letter” from a zoning supervisor recognizing that the Galleria “is a ‘shopping center’ as defined in the Baltimore County Zoning Regulations,” although the supervisor never testified in this case.

Nevertheless, the tenant mix remained substantially the same between 2003 and 2006, and so did the building structures. In *Seminary Galleria II*, the Board never made a finding that the circumstances at the Galleria had changed since 2003; they had not. The only change was in Seminary’s characterization of the entire complex as a “shopping center” for the purpose of calculating how many spaces were required to be provided, notwithstanding the fact that approximately 90% of the complex was used for offices rather than retail. Seminary appears to have resorted to the revised calculations of parking spaces *after* its application for approval of the 14 spaces was denied in *Seminary Galleria I*. Although the zoning supervisor’s letter may have confirmed that the Galleria met a definition of a shopping

center for at least some purposes, the evidence to support that classification was fully available in 2003. Seminary did not demonstrate any material change in the retail use at the Galleria subsequent to 2003. The same calculations of parking requirements could have been performed in 2003, before the hearings in *Seminary Galleria I*.

Moreover, like the circuit court, we cannot find in the record any evidence to shed light on the specific circumstances of the purported demand by Baltimore County for Seminary to submit an as-built plan in 2006. But, even if there was such a directive issued by the County, Seminary makes no contention that such directive was based upon any change in law that occurred subsequent to *Seminary Galleria I*.

The result in the instant case is controlled by *Woodlawn*, *Chatham*, and *Hedin*. The facts in September 2005, when Seminary's first petition for a variance or special hearing was denied by the Board, were no different than in February 2008, when the second petition was granted by the Board in an arbitrary and capricious exercise of its authority. The use of a portion of the Galleria complex as a shopping center was no less a fact in 2005 than it was in 2008. Seminary's surveyor, Bruce Doak, testified that he had not considered the actual mix of tenants in the Galleria when he surveyed the complex in preparation for his testimony in the 2003 hearings. Instead, Doak was given numbers from the 1983 plan and was given "some information on the leases," but never performed any analysis of the square footage or existing tenants prior to testifying. In addition, Seminary, by characterizing the entire complex as a "shopping center" in 2006, sought to reapply for the same relief (approval of

the 14 parking spaces constructed without a permit) it had previously requested under a different theory.

Seminary cites *Jack v. Foster Br. Homeowners' Ass'n*, 53 Md. App. 325 (1982), and contends that the circuit court erroneously used a “transactional” analysis rather than the “same evidence” analysis adopted in *Jack*. Seminary contends that *Seminary Galleria I* sought approval of fewer spaces, and *Seminary Galleria II* sought approval of more spaces. According to Seminary, these differing desired results required proof of different facts. Nevertheless, *Jack* stated: “[T]he judgment in the former action will be a bar, provided the evidence necessary to sustain the judgment for the plaintiff in the present [second] action would have authorized a judgment for him in the former.” *Id.* at 334 (quoting *Klein v. Whitehead*, 40 Md. App. 1, 18 (1978) (citations omitted)). We are persuaded that the same evidence produced in *Seminary Galleria II* could have been offered in *Seminary Galleria I* in support of Seminary’s efforts to retain the 14 spaces constructed without a permit. In both cases, Seminary’s request for relief was the retroactive approval of the same 14 spaces it had constructed in the DR zone.

Further, the Board’s opinion that *res judicata* did not apply “due to the specific nature of the 14 spaces and the matter of parking in the D.R. zone, which this Board feels is permitted,” was “a broad conclusory statement and not based on sufficient facts in the record before it.” *Greater Baden, supra*, 412 Md. at 109. As the Court of Appeals said in *Greater Baden, id.*: “Such a half-baked conclusion is not entitled to deferential review.”

With reasonable diligence, Seminary could have discovered and asserted in support of the original 2003 filing its current argument that the Galleria needs more parking spaces in order to comply with requirements the County adopted in 1986. Seminary's failure to accurately and contemporaneously survey the Galleria in connection with its first application to approve the additional spaces is not a reason to consider a second application seeking the same relief.

Finally, Seminary contends that, instead of reversing the order of the Board and therefore disapproving the grant of the application, the circuit court should have instead remanded the case to the Board for consideration of the alternative variance relief. For the reasons we have discussed above, the request for a variance in *Seminary Galleria II* is also barred by *res judicata*. The determination of the Board in *Seminary Galleria I* was that the proposed modification of the parking spaces and green space would be detrimental to the surrounding area, and there are insufficient different facts or changed circumstances to justify a remand to consider an issue that was previously litigated.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE COUNTY
IS AFFIRMED; COSTS TO BE PAID
BY APPELLANT.**



MANDATE

Court of Special Appeals

Maryland Relay Service
1-800-735-2258
TT/VOICE

No. 02591, September Term, 2008

Seminary Galleria, LLC
vs.
Dulaney Valley Improvement Ass'n, Inc.
et al.

JUDGMENT: May 27, 2010: Judgment of the Circuit Court for Baltimore County is affirmed; costs to be paid by appellant.
Reported opinion by Judge Meredith.

June 28, 2010: Mandate issued.

From the Circuit Court: for **BALTIMORE COUNTY**
03C080002931
Includes 03-C-08-002931 & -2967.

STATEMENT OF COSTS:

Appellant(s):

Lower Court Costs-	60.00
Steno Costs of Appellant-	318.75
Filing Fee of Appellant-	50.00
Brief of Appellant-	500.40
Record Extract-JOINT EXTRACT (10)	748.80

Appellee(s):

Brief of Appellee-DULANEY VALLEY IMP.	100.80
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STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **twenty-eighth** day of **June** **2010**

Leslie D. Thadett
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

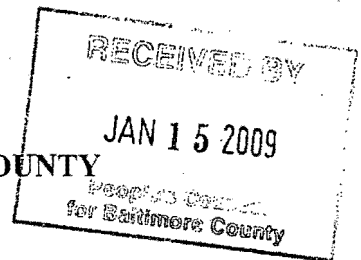
1/14/09

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE PETITION OF:
DULANEY VALLEY IMPROVEMENT ASSOCIATION,
ET AL

IN THE MATTER OF THE PETITION OF:
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY [CBA Case No. 06-411-SPHA]



CASE

NOS.

03-C-08-002931

and

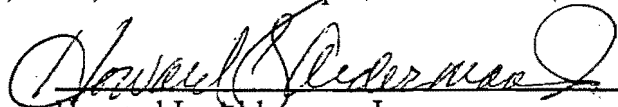
03-C-08-002967

[Consolidated with Case
No. 03-C-08-002931]

ORDER FOR APPEAL BY SEMINARY GALLERIA, LLC

Madame Clerk:

In accordance with Maryland Rule 8-201 *et seq.*, Seminary Galleria, LLC, a Maryland limited liability company, owner of the property which is the subject of the above-referenced cases, by and through its undersigned attorneys, hereby notes an appeal to the Maryland Court of Special Appeals of the Memorandum Opinion and Order rendered by this Court, Robert E. Cahill, Jr., Judge, on December 17, 2008 and filed on or about December, 17, 2008, in the above-captioned matter.



Howard L. Alderman, Jr.

Levin & Gann, P.A.

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Towson, Maryland 21204

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Attorneys for Appellant, Seminary Galleria, LLC

[Certificate of Service Follows]

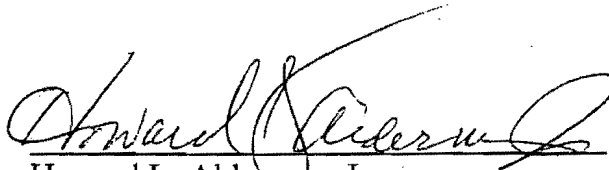
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

2009 JAN 14 PM 3:08

RECEIVED AND FILED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of January, 2009, a copy of the foregoing *Order for Appeal* was mailed, postage prepaid, First Class United States Mail to: Michael P. Tanczyn, Esq., 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204; and to Peter Max Zimmerman, Esq. and Carole S. DeMilio, Esq., both of People's Counsel For Baltimore County, The Jefferson Building, 105 W. Chesapeake Avenue, Suite 204, Towson, MD 21204.



Howard L. Alderman, Jr.

The subject of these long and hotly contested matters is ten (10) parking spaces on a parking lot lined with over 700 such spaces intended to serve a retail/office property located in Baltimore County, Maryland. What a reasonable observer might regard as a tempest in a teapot has blossomed into five (5) years of litigation between these parties, with no end in sight. This Court will do its best to try to cut through the considerable fog that the parties

have managed to create and get to a place of light, even if the stop there proves to be temporary.

In these consolidated appeals, the Dulaney Valley Improvement Association, Inc. ("Dulaney Valley"), Larry Townsend ("Townsend") and People's Counsel for Baltimore County ("People's Counsel") attack a decision of the County Board of Appeals of Baltimore County, Maryland, dated February 11, 2008 using as their primary weapon the doctrine of *res judicata*. They maintain that Seminary Galleria, LLC ("Seminary Galleria"), owner of a retail/office property (with tenant and customer parking lots)¹ located at 1447 York Road in Baltimore County, applied for, litigated and was denied an application for an increase in the number of parking spaces on its parking lot by the County Board of Appeals on September 19, 2005. They maintain that, less than six (6) months later, Seminary Galleria filed another application, seeking exactly the same relief without any material change in circumstances. They maintain that on February 11, 2008, the County Board

¹ The property is referred to variously as a "business park"; "shopping center"; "office and retail center", etc. The Court shall refer to it generally as a retail-office property. It is irregularly shaped, located at the intersection of York Road and Seminary Avenue. Improvements include a small office type building and a retail strip, housing, as of February 11, 2008, 16 different retail stores. It is split zoned. The majority of the land is zoned "Business Local" and the balance "Density Residential". Parking lots for the property are located both in the Business Local zone and the Density Residential zone, pursuant to a previously issued use permit.

of Appeals issued another decision, this time granting Seminary Galleria's request for special hearing relief, and approving the additional parking spaces which it had previously denied. They maintain that the Board was precluded from making this decision by the prior decision.

The Board's treatment of the *res judicata* question in the February 11, 2008 Opinion, which was raised and argued at that level, was as follows:

This Board feels that the matter of *res judicata* does not apply due to the specific nature of the fourteen parking spaces and the matter of parking in the DR zone, which this Board feels is permitted. We find this case not to be another attempt to repeat prior cases.

* * *

This Board finds that the issue of *res judicata* does not apply in this case ...

Dulaney Valley and People's Counsel take the position that a thorough and proper application of the principle of *res judicata* by the Board of Appeals necessarily would have yielded a result that the matter of increased parking spaces had been conclusively resolved against Seminary Galleria as of September 19, 2005, and that the Board was bound by that previous decision when it considered the case in 2008. The Court agrees.

STANDARD OF REVIEW

"Decisions of administrative agencies are *prima facie* correct and carry with them the presumption of validity." Board of Education of Montgomery County v. Paynter, 303 Md. 22, 35-36, 491 A.2d 1186 (1985). See also, Coscan Washington, Inc. v. Maryland-Nat'l Capital, 87 Md. App. 602, 590 A.2d 1080 (1991). Generally, on the factual side, courts are permitted only to determine whether an administrative agency's decision is supported by "substantial evidence". See, Montgomery County v. Buckman, 333 Md. 516, 636 A.2d 448 (1994). On the legal side, however, no deference is owed by courts to an agency's legal conclusions. Belvoir Farms Homeowners Assn. v. North, 355 Md. 259, 267-68, 734 A.2d 227 (1999).

THE FACTS

The Court finds it useful to adopt People's Counsel's method of referring to the litigation that culminated in the Board's September 19, 2005 Supplemental Opinion as "Seminary Galleria I" and the litigation that culminated in the Board's February 11, 2008 Opinion as "Seminary Galleria II".

SEMINARY GALLERIA I

In the 2005 Supplemental Opinion, the Board accurately described proceedings prior to that date as follows:

A short summary of the facts in this

matter is warranted and was fairly set forth by the Court in its [earlier] decision. The Petitioner, Seminary Galleria, own a business park at 1447 York Road in Baltimore County. The property is a split-zoned parcel of land, with the majority of the area in a business local (B.L.) and the northeastern tract in a density residential (D.R.). Currently, the Petitioner uses portions in the B.L. and the D.R. zones for business parking.

The current structure of the complex was approved by the County Review Group (CRG) development process in 1983, and parking requirements were met. According to Baltimore County Zoning Regulations (BCZR) Section 409.6, 728 spaces are required based on the size of the tract, and the site has met that requirement by providing 734. The current scheme depicts the area of commercial parking in a residential zone approved by the existing use permit.

In 2003, the Petitioner leveled 4 existing parking spaces in the D.R. zone and added 14 newly positioned spaces without obtaining zoning approval for the modification of the CRG Plan. Construction resulted in the net addition of 10 new parking spaces in the residential zone. After the new parking was installed, a complaint was filed with Baltimore County Code Enforcement alleging that the 14 spaces were added without the benefit of modifying the present approved CRG Plan. Among the Protestants at the hearing before the Board were the Peoples' Counsel for Baltimore County, the Dulaney Valley Improvement Association, the Greater Towson Council of Community Associations, and two neighbors who reside on Seminary Avenue across from the proposed parking modification. Petitioner filed a zoning petition

seeking approval of the 14 spaces as well as 16 additional parking spaces pursuant to a modified parking plan.

The Petitioner originally filed a petition before the Zoning Commissioner on October 2, 2003 for a variance and for a special hearing for the property. Special relief was requested under the Baltimore County Zoning Regulations (BCZR), Section 409.8A to allow for 16 additional commercial parking spaces on an adjacent landscaped area that also falls within a residential zone. Petitioner also sought relief under BCZR, Section 409.8B to obtain a use permit for a modified parking and landscaping plan, which had been constructed prior to obtaining County approval. The issuance of the use permit would require an amendment to the previously approved parking plan.

The Zoning Commissioner denied all of the appellant's requests, as did this Board on appeal in a decision issued on September 21, 2004. Petitioners now seek only approval of the 14 spaces which were already constructed and elected not to appeal the Board's decision to deny the request for variance to allow the additional 16 spaces.

Turning now to the substance of the September 19, 2005 Supplemental Opinion, the Board of Appeals was asked to and did specifically address three (3) distinct questions in the context of Seminary Galleria's request for approval of the 14 parking spaces which had been "constructed" on the

lot in 2003.² The Board, in the September 19, 2005 Supplemental Opinion decided first, that based on the testimony of Seminary Galleria's own witnesses,³ special hearing relief (in ordinary words, approval of the additional parking spaces) was not appropriate based on an argument that Seminary Galleria could not meet the threshold for a required minimum number of parking spaces in a commercial zone. This would have been grounds for approval of additional parking spaces, pursuant to BCZR, Section 409.8B, had Seminary Galleria been able to establish, pursuant to BCZR, Section 409.6, that it did not meet the County's requirements for a minimum number of parking spaces for the commercial enterprise. The Board decided that, since the property provided 734 spaces, and was only required to provide 728 by the County's Zoning Regulations, relief in the form of an approval of ten (10) additional spaces based on this theory was inappropriate.

The Board also decided that in its September 19, 2005 Supplemental Opinion, that Seminary Galleria had failed to establish that it was entitled to approval of these

² Because the "construction" of these parking spaces involved the elimination of four (4) previously existing spaces, and lining the lot with fourteen (14) new spaces, the net addition of spaces amounted to ten (10) in number.

³ The Board relied upon the testimony of a surveyor, Bruce Doak, and Seminary Galleria's asset manager, Theresa Rosier, to establish the number of parking spaces on the site (734) and the number required by the County's Zoning Regulations (728).

additional parking spaces based on "an undue hardship" argument, advanced pursuant to BCZR, Section 409.12B.

Finally, the Board decided, in the September 19, 2005 Supplemental Opinion, that construction of the additional parking spaces was detrimental to the health, safety and welfare of the neighborhood after analyzing the evidence presented in light of BCZR, Section 502.1. The Board specifically deemed credible evidence presented that this expansion of parking spaces would have a negative impact on the adjoining residential neighborhood (including snow removal, noise and trash problems). Also, the Board concluded that some portion of the new spaces displaced an existing fire lane on the lot, and that this was detrimental to the health, safety and welfare of the general public.

The Board denied the request to approve these additional parking spaces and that decision was not appealed further.

SEMINARY GALLERIA II

Less than six (6) months after the Board's decision in Seminary Galleria I, specifically, on February 23, 2006, Seminary Galleria filed a materially identical Petition for

Special Hearing⁴ asking for approval of the same parking spaces, along with a Petition for Variance. The Board conducted a hearing on March 20 and March 21, 2007 and a public deliberation on May 22, 2007. Seminary Galleria called as its witnesses at the hearing the same people who had testified before the Board in Seminary Galleria I, (Mr. Doak and Ms. Rosier) and in addition, William Russell, an employee of Hill Management Services, the entity that managed the retail-office property. In this case, however, Seminary Galleria argued that the Board should approve the

⁴ Compare the July 31, 2003 Request for Relief in Seminary Galleria I to the February 23, 2002 Request for Relief in Seminary Galleria II:

REQUESTED RELIEF: (Seminary I)

"why the Zoning Commissioner should approve": [1] in accordance with BCZR §409.8B, commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the plan filed herewith; [2] in lieu of the companion variance requested herewith, approval of a modified parking plan and modified parking and landscape requirements for the proposed parking areas in accordance with the specific detail shown on the Plan filed herewith; [3] the Plan filed herewith as the 3rd Amendment to the CRG for *The Galleria Tower & The Galleria*; and [4] such additional relief as the nature of the parking shown on the accompanying plan may require.

REQUESTED RELIEF: (Seminary II)

"why the Zoning Commissioner should approve": [1] in accordance with BCZR §409.8B, a use permit for commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the Plan filed herewith to meet to the extent possible, utilizing all existing parking spaces, the minimum parking requirements of BCZR §409.6; [2] in lieu of the companion variance requested herewith, approval of a modified parking plan and modified parking and landscape requirements for the existing parking spaces and areas in accordance with the specific detail shown on the Plan filed herewith in lieu of the minimum requirements of the BCZR; [3] the Plan filed herewith which depicts current, as-built conditions as the 2nd Amended Parking Plan of *The Galleria Tower*; and [4] such additional relief as the nature of the parking landscaping shown on the accompanying Plan may require.

ten (10) additional parking spaces because of a new and distinct "parking deficit" theory, based on an updated analysis of the tenant mix in the property and on characterizing the retail-office property as a "shopping center". The Board, in its February 11, 2008 opinion observed as follows:

Pursuant to the Circuit Court Order in [Seminary Galleria I],⁵ the owner of Seminary Galleria was advised by Baltimore County that an as-built parking plan would have to be submitted, reviewed, and approved pursuant to current regulations. The owner/petitioner prepared the second amended parking plan which was filed together with petitions for special hearing and variance in this case. Applying current parking standards to the existing improvements and uses required 1,077 spaces and 1,059 spaces if the shopping center calculation set forth in BCZR, Section 409.6A.2 ... is applied ... Bruce Doak ... described in detail the modifications made on the Amended Plan that accompanied the Petition to reflect any change in tenants and/or tenant-leased areas based on recent information received from the owner. Mr. Doak described the use of the subject property as a shopping center, and indicated that no change of such use was proposed, further, that no expansion or reduction of gross leasable areas was proposed. Based on his familiarity with the subject property, Mr. Doak testified that, in his opinion, Seminary Galleria

⁵ This was an evident mistake by the Board. The only Circuit Court Order in Seminary Galleria I was an April 21, 2005 Opinion remanding the matter to the Board of Appeals for a more thorough analysis and additional findings of fact and conclusions of law. While Baltimore County may have required an "as-built" parking plan at some point after Seminary Galleria I was concluded, the Circuit Court did not.

met all of the provisions of the BCZR definition of a shopping center ... This Board also finds credible the testimony of Mr. Doak on the subject matter of the subject property meeting the criteria of a shopping center. In addition, this Board finds that the subject property qualified under the definition of a shopping center, as supported by the evidence submitted from county departments. Baltimore County also qualified Seminary Galleria as a shopping center under its surveillance regulations for shopping centers and is requiring the property to comply with the new regulation ... Therefore, we find the Galleria Towers to be a shopping center ... The Board found no evidence to support the contention that the addition the additional ten parking spaces would have an impact ...

The Board concluded by granting Seminary Galleria's request for special hearing relief to approve additional commercial parking adjacent to existing commercial parking on the same lot in a residential zone (ten spaces); by granting Seminary Galleria's request for special hearing relief to approve the second amendment of the parking plan of the Galleria Towers⁶; by granting Seminary Galleria's request for special hearing relief pursuant to Section 409.12 of the County zoning regulations to approve a modified parking plan of 756 parking spaces; and denying the Petitioner's requested variance relief as moot. In

⁶ Subject to the condition that Seminary Galleria have its landscape plan reviewed by the county landscape architect and be responsible for proper maintenance of the subject area.

plain English, the Board approved the ten (10) additional parking spaces based on the evidence presented in the second case that there was a parking space deficiency on the property of some 295 to 313 spaces. The real question presented in this appeal is whether this "short fall" was known, or knowable by Seminary Galleria before the first case was decided.

DECISION

In Deleon v. Lear, 328 Md. 569, 579-580, 616 A.2d 380 (1992), the Court of Appeals addressed the doctrine of *res judicata* as follows:

In Alvey v. Alvey, 325 Md. 386, 390, 171 A.2d 92, 94 (1961), this Court set forth the traditional rule of *res judicata* as follows:

The doctrine of *res judicata* is that a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action, and is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit ... [emphasis supplied]

The rule is designed to avoid the

"expense and vexation attending multiple law suits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibilities of inconsistent decisions.

Murray Int'l Freight Corp. v. Graham, 315 Md. 543, 547, 555 A.2d 502, 503-504 (1989), quoting Montana v. United States, 440 U.S. 147, 153-154, 99 S.Ct. 970, 973-974, 59 L.Ed.2d 210, 217 (1979).

The traditional principle of *res judicata* is three elements: (1) the parties in the present litigation should be the same or in privity with the parties to the earlier case; (2) the second suit must present the same cause of action or claim as the first; and (3) in the first suit, there must have been a valid final judgment on the merits by a court of competent jurisdiction.

Rowland v. Harrison, 320 Md. 223, 229, 577 A.2d 51, 54 (1990); Shum v. Gaudreau, 317 Md. 49, 54, 562 A.2d 707, 709-710 (1989); Cassidy v. Board of Education, 316 Md. 50, 57, 557 A.2d 227, 230 (1989); Cicala v. Disability Review Board, 288 Md. 254, 263, 418 A.2d 205, 211 (1980); N.P.C., Inc. v. Kenny, 279 Md. 29, 32, 367 A.2d 486, 488-489 (1977); Metee v. Boone, 251 Md. 332, 341, 247 A.2d 390, 395 (1968); Alvey v. Alvey, *supra*, 225 Md. at 390, 171 A.2d at 94; Meyers v. Gordon, 165 Md. 534, 538-539, 170 A. 186, 187-188 (1934).

See also, Douglas v. First Security Federal Savings Bank, Inc. 101 Md. App. 170, 643 A.2d 920 (1993); Harbin v. H.E.W.S., Inc., 56 Md. App. 72, 466 A.2d 879 (1983); and

Klein v. Whitehead, 40 Md. App. 1, 389 A.2d 374, cert. denied, 283 Md. 734 (1978).

It is well settled that the principle of *res judicata* applies to administrative proceedings. Batson v. Shifflett, 325 Md. 684, 701-705, 602 A.2d 1191 (1992); Woodlawn Area Cit. Assn. v. Board of County Commissioners, 241 Md. 187, 216 A.2d 149 (1966); Whittle v. Board of Zoning Appeals of Baltimore County, 211 Md. 36, 125 A.2d 41 (1956). Accordingly, if the issues sought to be litigated in Seminary Galleria II either were litigated in Seminary Galleria I, or "with propriety could have been litigated" in Seminary I, prosecution of relief in Seminary Galleria II is barred.

The parties were identical in each matter. The property involved was identical in each matter. Approval of the identical ten (10) parking spaces was the issue in each matter. Substantially the same witnesses testified for the same parties in each matter. And importantly, there was absolutely no change in the facts between the date of the Board's decision in Seminary Galleria I and the hearing in Seminary Galleria II relating to the Board's finding in the first matter that construction of additional spaces "is detrimental to the health, safety and welfare of the neighborhood." Presumptively, therefore, the doctrine

of *res judicata* would seem to preclude the second litigation between these parties over these same ten (10) parking spaces.

Seminary Galleria's argument, however, is that the "facts and circumstances have changed since the prior cases" (Memorandum p. 17), and that, therefore, the second litigation over these parking spaces was permitted. It argues that, at some point (exactly when or under what circumstances is not made clear in the record)⁷ Baltimore County required it to "file for review and approval a current as-built parking plan" (Memorandum p.2) and that, after it did so, it discovered that it was actually required by the zoning regulations to furnish over 1,000 parking spaces, as opposed to the 728 spaces which it had argued it was required to furnish by the County's zoning regulations in Seminary Galleria I. In effect, Seminary Galleria argues that it was compelled to file Seminary Galleria II as a defensive measure against a claim that it was not in compliance with minimum parking requirements

⁷ Seminary Galleria cloaks this "order" from Baltimore County with great significance, but furnished this Court with little in the way of detail over what precipitated the "order" or when or under what circumstances it was given. If there was such an "order" or requirement by Baltimore County and it was generated before September 19, 2005, clearly, Seminary Galleria would have been in a position to raise all parking deficiency claims in the earlier case. But even if this directive post-dated the September 19, 2005 Supplemental Opinion by the Board, the facts undergirding the parking deficit theory advanced in Seminary Galleria II certainly existed at the time of the Supplement Opinion.

which are calculated when the retail-office property is considered a "shopping center."

The short, and final answer to Seminary Galleria's argument is that all facts necessary to make the parking deficiency argument that it made in Seminary Galleria II were available to Seminary Galleria when it filed, litigated and lost Seminary Galleria I. There is no evidence in the record that either the tenant mix at the property or its character as a "shopping center" substantially changed between September 18, 2005 and February 23, 2006 to justify the filing of new litigation. Rather, it is clear that, had Seminary Galleria's witnesses been asked in the earlier case to perform the calculations and do the other work which they ultimately did in the latter case, the theory of minimum parking requirements based on a new tenant mix and/or characterization of the property as a "shopping center" could have been advanced in the first case. Mr. Doak testified in the second case as follows:

Q. Did you do any analysis, or your firm, rather, or you do any analysis prior to your testimony in [Seminary Galleria I] to break down the tenancy or the square footage existing at that time in the Galleria?

A. No, sir. (Page 112)

* * *

Q. What, if anything, did you do to verify the existing tenant mix was accurately reflected in the plan that you did review?

A. For the first case?

Q. For the first case.

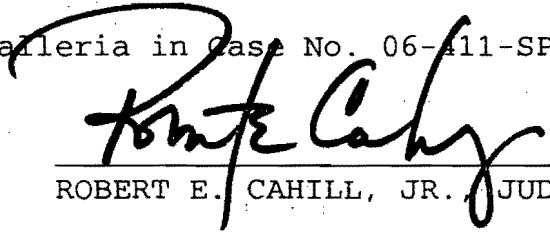
A. Nothing, sir. (Page 116)

This Court has reviewed all of the testimony of Seminary Galleria witnesses in Seminary Galleria II and specifically concludes that the issue of minimum parking requirements at the property, based on either "an amendment to a prior plan for the subject property that was approved in the 1980's" (Respondent's Reply Memo, p. 2) or on "current" requirements reflecting a new tenant mix and a characterization of the property as a shopping center, could plainly and clearly have been litigated in the earlier case had Seminary Galleria desired to avoid piecemeal litigation. While the Court will not conclude that Seminary Galleria's conduct after losing Seminary Galleria I amounted to an "artifice" or a "sham" as characterized by People's Counsel, the conclusion that all "minimum parking requirement", "parking deficiency" or "short fall" arguments could have and should have been made in the earlier litigation is inescapable. Prosecution of

relief in Seminary Galleria II was barred by the final determination made by the Board of Appeals in Seminary Galleria I.⁸

It is this 17th day of December 2008, by the Circuit Court for Baltimore County,

ORDERED that the Opinion of the County Board of Appeals of Baltimore County be and it is hereby REVERSED. The matter is hereby REMANDED to the County Board of Appeals with instructions to enter an order DENYING all relief sought by Seminary Galleria in Case No. 06-411-SPHA.


ROBERT E. CAHILL, JR., JUDGE

COPIES MAILED TO:

Michael P. Tanczyn, Esquire
Howard L. Alderman, Esquire
Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire

⁸ Little attention is given in the papers to the question of the propriety of the Board determining in Seminary Galleria I that the additional parking would have an adverse effect on neighbors and would be detrimental to the health, safety and welfare of the general public because it impinged on a fire lane; and determining in Seminary Galleria II that there was "no evidence to support the contention that the additional 10 parking spaces would have an impact."

While the Court would have had difficulty upholding the Board's findings in Seminary Galleria I had the matter been appealed and the substantial evidence test applied, given the fact that there was no appeal, it is difficult to imagine how the doctrine of collateral estoppel would allow the Board to reach this antithetical conclusion on this specific issue if *res judicata* did not bar the entirety of Seminary Galleria II.

1/21/08

IN RE: IN THE MATTER OF SEMINARY
GALLERIA, LLC

BALTIMORE COUNTY BOARD OF
APPEALS

[Case No. 06-411-SPHA]

*On the Petition of: Dulaney Valley Improvement
Association, et al*

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Case No.: 03-C-08-2931

SEE ALSO:

Case No.: 03-C-08-2967

**MEMORANDUM OF RESPONDENT IN OPPOSITION
TO PETITION FOR JUDICIAL REVIEW FILED BY
DULANEY VALLEY IMPROVEMENT ASSOCIATION, INC.**

Seminary Galleria, LLC, a Maryland limited liability company ("Seminary", "Respondent" or "Owner"), by and through its undersigned legal counsel, hereby submits this Memorandum in Opposition to the Petition for Judicial Review filed by the Dulaney Valley Improvement Association, Inc. ("DVIA", "Appellant" or "Protestant")¹ in accordance with Maryland Rule 7-207.

STATEMENT OF THE CASE

This case (filed in 2006) involves a request for relief from the current, minimum parking requirements applicable to an existing shopping center containing more than 211,000 of gross leasable area, occupied by retail, office, restaurant, medical and other

¹ The Baltimore County Office of People's Counsel has filed a separate Petition (*see* second Case No. listed above) and has filed a request that its Petition be consolidated with this Case. Since no decision has been rendered on that request, People's Counsel has not filed a Memorandum in either case. Respondent reserves the right and opportunity to file a separate, Memorandum in Response to any memorandum that may be filed by the Office of People's Counsel in either of the two pending cases.

tenants. After counting all existing parking spaces, there are still nearly 300 fewer parking spaces than required under current standards. In 2003 the Owner sought to amend, by redlining the parking count and parking space location shown on plans approved in the 1980s when parking requirements were less than present requirements. The 2003 relief was denied as it would have approved additional commercial parking in a residential zone, with the total parking provided being in excess of what was required in the 1980s.

Thereafter, responding to a requirement of Baltimore County, Maryland to file for review and approval a current, as-built parking plan for the shopping center property which Seminary owns at the corner of York Road and Seminary Avenue ("subject property"), Seminary sought, by the filing of Petitions for Zoning Special Hearing and/or Zoning Variance [filed in the alternative], relief from the minimum parking requirements imposed by the *Baltimore County Zoning Regulations* ("BCZR") and issuance of a Use Permit for additional commercial parking in a residential zone, together with a request for modification of prior plans. After public hearing on the Petitions, the then Deputy Zoning Commissioner denied the Use Permit and variance. The Deputy Zoning Commissioner's Order approved a Modified Parking Plan for the subject property, approving a total of 750 parking spaces on the subject property, subject to conditions, and granted modifications of prior plans consistent with the Order issued. *De novo* appeals were filed with the County Board of Appeals ("Board") by both the Owner and the Protestant.

The Board conducted hearings over two, separate days and, after deliberating

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The Board conducted hearings over two, separate days and, after deliberating

publicly as required by the State Open Meetings Act, issued its Opinion on February 11, 2008 (“Board’s Order”): i) granting approval of the requested Use Permit; ii) approving the as-built parking plan subject to a landscaping requirement and the modified parking plan showing all existing parking spaces; and iii) dismissed the alternative Variance relief as moot. Petitions for Judicial Review of the Board’s Order were filed timely by DVIA² and the Office of People’s Counsel.

BACKGROUND OF THE SUBJECT PROPERTY

The site plan for development of the subject property was originally approved in the 1980s. The subject property is irregularly shaped and is presently split-zoned with the majority of land zoned Business Local (BL) and the balance zoned Density Residential (DR). There is existing commercial parking on the subject property, located both in the BL zone and, pursuant to a previously issued “use permit” within a majority of the land area zoned DR. Seminary acquired title to the subject property in 1998.

In 2003, Seminary hired a contractor to perform parking lot maintenance. That contractor removed four parallel commercial parking spaces previously approved in the residential zone and reconfigured them into ten perpendicular spaces by removing the grassed area necessary for the depth of the spaces. Another area of existing grass was removed at the end of an existing bay of parking previously approved in the residential

² Larry Townsend, whose participation in this appeal was indicated by the filing of a *Supplemental Petition for Judicial Review* on March 12, 2008, has failed to file a Memorandum with this Court as required by Maryland Rule 7-207(d).

zone and four new parking spaces were added. The contractor performed this work without first obtaining the required modification to the Use Permit for commercial parking and without obtaining a permit for a small, landscaped retaining wall constructed at the end of the parking bay. A complaint was filed with the County Office of Code Enforcement and the Owner responded. The Owner, through its surveyors, modified the old, barely readable "CRG Plan" [the development plan approved in the 1980s] in red pen to show the four new spaces and the ten reoriented spaces. The Owner also proposed in red on the old CRG plan, sixteen additional parking spaces parallel to Seminary Avenue. The Owner filed the redlined CRG Plan with Petitions for Special Hearing and Variance to modify the total number of parking spaces approved in the eighties based on regulations as they then existed. The Deputy Zoning Commissioner, in Case No. 04-052-SPHA, denied the relief requested by Owner in its 2003 Zoning Petitions³. That decision was appealed and, after its initial decision denying the requested relief was remanded by the Circuit Court, the Board held that approval of commercial parking in a residential zone is only permissible under the BCZR if necessary to meet the minimum parking requirements for the commercial uses served. The spaces added and additional spaces sought by Owner were in excess of the 1980s parking requirements as then applied by the County. The Board's

³ As noted during the examination of Owner's expert witness, Bruce E. Doak, the current parking requirements and calculations of the BCZR were not applied during the 2003 case. [TR1:167-69; 179] The 2003 case sought merely to amend the old CRG Plan approved in the 1980s by way of redlining the parking configuration and parking count information shown thereon and submitting it with the Petitions.

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2005 Order on remand was not appealed further.

Following the issuance of the 2005 Order on Remand by the Board, the Owner was required by Baltimore County to prepare an as-built parking plan based on current parking lot configuration and to apply current BCZR parking requirements. The current parking requirements of the BCZR require far more parking spaces on the subject property than currently exist. The Owner filed its current, as-built parking plan for approval⁴, together with a Petition for Special Hearing and, alternatively, a Petition for Variance since the minimum number of currently required parking spaces do not exist on the subject property.

As noted above, the Deputy Zoning Commissioner denied most of the requested relief and placed certain conditions on the relief that was granted. Following *de novo* appeals, the Board approved the Owner's current, as-built parking plan, subject to certain landscape requirements and approved Use Permit and the relief necessary to allow the existing shopping center to continue to operate with all existing parking.

QUESTIONS PRESENTED

1. Is the relief granted by the Board barred by the doctrine of *res judicata*?
2. Was the decision of the Board based on substantial evidence in accordance with applicable law?
3. Did the Board properly deny the Subpoena Duces Tecum filed by the Dulaney Valley Improvement Association, Inc.?

⁴ The Owner did not seek any additional parking spaces beyond what already exist on the subject property.

STATEMENT OF MATERIAL FACTS

The Owner presented the testimony of Bruce E. Doak, a Maryland licensed property line surveyor, who is familiar with the BCZR and who has testified as an expert in zoning and development matters over 200 times. [TR1:48-9]⁵ Mr. Doak was accepted as an expert in Baltimore County zoning and development matters without *voire dire* or objection. [TR1:54-5]

Mr. Doak oversaw the preparation of the as-built plan, entitled *Second Amended Parking Plan of the Galleria Tower*, dated December 14, 2005⁶, which was prepared based on information shown on prior plans, supplemented by current, in-field inspections and measurements. [TR1:51] The subject property is presently improved with a shopping center containing retail, office and medical uses. [TR1:58-9] The proposed uses are the same, retail, office, medical and parking. *Id.* The subject property is split-zoned with the residential zoning line running parallel to Seminary Avenue, with existing commercial parking spaces already located in the residentially zoned area of the subject property. [TR1:59-60]

The shopping center on the subject property is comprised of a total of 211,635 square feet of gross leasable area. [TR1:64-5] Under the current BCZR, commercial

⁵ The Board conducted two, separate days of hearings. References to the transcript of the Board's hearing held on March 20, 2007 will be designated as "TR1" followed by the page number; the Board's hearing held on March 21, 2007 will be designated as "TR2" followed by the page number.

⁶ Accepted into evidence as Petitioner's Exhibit No. 1. [TR:105-06]

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parking requirements can be calculated in one of two ways. Either based on the total gross leasable area of the various uses in existence multiplied by the parking factor for each type of use or, in the case of shopping centers (having greater than 100,000 square feet of gross leasable area), the number of parking spaces required is calculated by dividing the total gross leasable area by 1,000 and multiplying the result by five (5), irrespective of the types of uses or tenants. [TR1:62-3]

Mr. Doak testified as to the total, gross leasable area of the various uses on the subject property as follows: retail: 17,888; office: 69,904; restaurant: 5,914; medical: 94,341; fitness center: 23,534; and vacant: 54. [TR1:63-65] Next, Mr. Doak calculated the parking requirements based on those uses as: retail - 91 spaces; office - 231; restaurant - 95 spaces; medical - 425 spaces; fitness center - 236 for a total of 1077 parking spaces required when calculated by type of use. [TR1:65-8]

Next Mr. Doak testified that in his 20 plus years of professional practice in Baltimore County he is periodically called upon to verify issues related to zoning on a piece of property. Sometimes, Mr. Doak makes the zoning determination/verification himself. In other instances, when an "official" verification is needed he writes to the Baltimore County Office of Zoning and that Office responds either by separate letter or by adding verification to his written request and returning it to him. [TR1:70] Mr. Doak identified the written verification of Baltimore County that "the Seminary Galleria is a

'shopping center' as defined in the Baltimore County Zoning Regulations"⁷ as the very type of zoning verification that he has obtained on behalf of clients. Applying the parking requirements of the BCZR applicable to the Seminary Galleria shopping center containing 211,635 of gross leasable area, Mr. Doak was able to calculate the minimum parking requirements (using the shopping center calculation) as 1,059 parking spaces, irrespective of any particular use. [TR1:85-6]

Mr. Doak testified that there are a total of 764 parking spaces in existence on the subject property. Subtracting the existing spaces from those required if parking is calculated by use, there is a shortfall of 313 spaces; subtracting the existing spaces from those required under the 'shopping center' calculation, irrespective of use, there is a shortfall of 295 spaces. [TR1:86-7] In either calculation, the parking requirements imposed by Baltimore County on the subject property are not met with existing spaces. In 2003, as noted above, there were parking spaces reconfigured and added without the necessary use permit and those spaces have been counted in the 764 existing spaces. Removing any of those spaces would result in a greater parking deficiency than already exists. [TR1:90] Moreover, there are previously approved parking spaces in the residential zone that are located closer to Seminary Avenue and the homes to the north, than 2003 the reconfigured/added spaces. [TR1:91; TR2:124] The various County/State agencies, charged with reviewing Zoning Petitions and drawings which accompany them

⁷ Petitioner's Exhibit No. 3 [TR1:79]

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for compliance with County rules, policies, etc. submit comments to be included in the Zoning file. None of the reviewing agencies had any negative comment regarding the relief requested by the Owner. [TR1:93-4]⁸

Having familiarity with the area of the subject property, Mr. Doak testified that the residential structures to the north (on the north side of Seminary Avenue) are located on partially wooded lots which are higher in elevation than the commercial parking located in the residential zone on the subject property. [TR1:95] That elevation is significant because the headlights of cars on the subject property will not disturb those residences. [TR1:95-6]

The relief set forth in the Petition for Special Hearing was filed pursuant to BCZR § 500.7⁹. Mr. Doak offered his professional opinion, without objection or contradiction, that the granting of the Special Hearing relief requested would not be detrimental to the health, safety or welfare of the community nor would it create a potential hazard or overcrowd the land or decrease light or air or increase demand on public services. [TR1:98-9] Mr. Doak further opined that the relief requested was not inconsistent with the zoning on the subject property nor would it have any negative impact on the community.

⁸ Petitioner's Exhibit No. 5. [TR1:94]

⁹ BCZR § 500.7 gives the Zoning Commissioner broad authority in determining issues filed pursuant to a Petition for Special Hearing. While no specific criteria are specified in Section 500.7 for reaching his determination, the standard practice in Baltimore County is to, generally, apply the applicable provisions of BCZR § 502.1 [criteria for zoning special exceptions].

[TR1: 99-100] In all candor, Mr. Doak opined that there are additional (residentially zoned) areas adjacent to Seminary Avenue where more parking spaces could be added but existing landscaping and grass would have to be removed – landscaping and grass which separates the existing parking from Seminary Avenue to the north. [TR1:100-01]

In the event that the modified parking plan was not approved under the Special Hearing relief, the Owner filed alternative relief by way of a Petition for Variance. Mr. Doak's testimony regarding the unique features of the property were summarized in his determination that the shape and split zoning of the subject property make it unique with respect to other properties in the area. [TR1: 101-02; 171] Again, without objection or contradiction, Mr. Doak offered his professional opinion that the alternative variance relief, to permit the existing number of parking spaces instead of requiring nearly 300 more parking spaces be installed, would not negatively impact the community, that maintaining the existing conditions would do substantial justice to the Owner and the community and that the variance relief requested was the minimum relief necessary to approve the existing parking spaces¹⁰. The removal of any parking spaces [creating a greater parking deficiency from the number of spaces required] would result in practical difficulty to the Owner. [TR1:103-04]

The Protestant made numerous inquiries into the types of tenants, when the tenants

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moved in, the size of each tenant's leased area, the type of tenant that previously occupied each space and even sought production of the individual leases for each tenant. Counsel for the Protestant even attempted to have Mr. Doak compare the subject property to a property located south on York Road, known as the Heaver Plaza in an attempt to show that the subject property is not unique for zoning purposes.¹¹ Additionally, Counsel for the Protestant reviewed with Mr. Doak all prior zoning decisions affecting the subject property, even those rendered before Seminary owned it.¹²

Other testimony, relevant to the review of the decision of the Board, included that of Mr. William Russell. Mr. Russell works for the management company that manages the shopping center known as Seminary Galleria. [TR2:70-1] In that capacity, Mr. Russell produced a letter¹³ from Timothy M. Kotroco, Director of the Department of Permits and Development Management requiring shopping centers, if certain criteria are met, to install surveillance cameras, as required by recently passed legislation. [TR2:71-2] Mr. Russell's management company, Hill Management Services, Inc., received the letter because the County considered Seminary Galleria a shopping center as defined in the video surveillance statutes. [TR2:75]

¹¹ As will be argued below, the time and effort that Protestant spent attempting to challenge the uniqueness of the subject property was rendered moot as the Board granted the Special Hearing relief rendering the Variance request itself, moot.

¹² Again, this line of inquiry was immaterial. The relief requested is based on the currently codified BCZR as applied by Baltimore County to the subject property.

¹³ Petitioner's Exhibit No. 10. [TR2:74-5]

The thrust of Protestant's case was that they want the reconfigured and added parking spaces (14 spaces total, 10 of which were new) removed. Mr. Larry Townsend, testifying on behalf of Protestant, candidly admitted it was the opinion of the Board of the Protestant that the 14 reconfigured and added spaces should be removed, with the four parallel spaces put back [a net loss of 10 spaces] even if it results in more inconvenience to the community members that the Protestant represents. [TR2: 128-29] The basis for the Protestant Board's decision is that, despite increased inconvenience that may result to the members of the community that it represents, they [the DVIA Board] do not "want the D.R. area disturbed." [TR2:129] Since the reconfigured and added spaces have been in existence the DVIA Board has not received any complaints from members of the community about parking on the subject property. [TR2:133] The Protestant also called Mr. Richard Hurd who lives on the north side of Seminary Avenue who testified, primarily, about his perception of the aesthetics of the parking area as viewed from his home. On cross-examination, Mr. Hurd was asked if the Board were to condition its approval on the landscaping of the grass island running parallel to Seminary Avenue (located between Seminary Avenue and the parking area) with evergreens of an appropriate height, what he thought the effect of such landscaping would be. Mr. Hurd responded "it would be entirely possible that they [parking spaces] wouldn't even be visible"¹⁴

¹⁴ The Board conditioned its granting of the Special Hearing relief on Owner's submission of a landscape plan to Baltimore County's landscape architect and (continued...)

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¹⁴ The Board conditioned its granting of the Special Hearing relief on Owner's submission of a landscape plan to Baltimore County's landscape architect and (continued...)

After conducting its deliberations in public as required, the Board issued its ten (10) page Order on February 11, 2008. The Board recited the evidence of the case upon which it was relying and applied properly the law to that evidence.

STANDARD OF REVIEW

In reviewing a zoning board's decision, absent a clear error of law, a trial court cannot substitute its judgement for that of the agency in reviewing findings of fact, and must accept the agency's conclusions if they are based on "substantial evidence" and reasoning minds could reach the same holdings based on the record. *Friends of the Ridge v. Baltimore Gas & Electric Co.*, 120 Md App. 444 (1998). On a pure question of law, however, the courts extend no deference to the agency, beyond the weight accorded to a persuasive opinion and reasoning stated. *Id.*

Furthermore, in *Coscan Washington, Inc. v. Maryland-National Capital Park & Planning Comm'n No. 1466*, the Court of Special Appeals held that an agency decision must be viewed in the light most favorable to the agency, and that the agency decision is *prima facie* correct and carries a presumption of validity. *Coscan Washington, Inc. v. Maryland-National Capital Park & Planning Comm'n No. 1466*, 87 Md. App. 602 (1991). Where inconsistent inferences may be drawn from the evidence, it is for the agency and not the courts to draw the inferences. *Id.* There is authority for the proposition that while a

¹⁴(...continued)
making Owner responsible for proper maintenance of the area. Board's Order at 10; Condition No. 1.

court's review of question of law is expansive, generally courts will defer to a local board's interpretation of an ordinance governing accessory uses, unless such ordinance, or the agency's interpretation of it, "has no foundation in reason." 2 Zigler, Rathkopf's The Law of Zoning and Planning ("Rathkopf") §23.02., 23-6, (citing) *Nelson v. Valparaiso Bd. of Zoning Appeals*, 181 Ind. App. 252, 391 N.E. 2d 649 (1979).

The Maryland Court of Appeals, reviewing the decision of the Howard County Board of Appeals regarding a special exception/conditional use and a subsequent change in law, held:

In *Mayor and Aldermen of City of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979), we defined the substantial evidence test as "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached," *Insurance Comm'r v. Nat'l Bureau*, 248 Md. 292, 309, 236 A.2d 282 (1967), or as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," *Bulluck v. Pelham Apts.*, 283 Md. 505, 390 A.2d 1119 (1978); *Snowden v. City of Baltimore, supra*, 224 Md. [443] at 448, 168 A.2d 390.' In applying the substantial evidence test:

The question for the reviewing court is ... whether the conclusions 'reasonably may be based upon the facts proven.' 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.

Annapolis Waterfront Co., 284 Md. at 399, 396 A.2d at 1089, quoting 4 K. Davis, *Administrative Law*, § 29.05, 137, 139 (1958).

Layton v. Howard County Board of Appeals, 399 Md. 36, 49 (2007) (Emphases added.)

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Layton v. Howard County Board of Appeals, 399 Md. 36, 49 (2007) (Emphases added.)

ARGUMENT and ANALYSIS

I. The Board's Opinion and the relief granted therein are not barred by the legal doctrine of *res judicata*.

The existing shopping center improvements on the subject property, all of which have been approved by Baltimore County as depicted on the plan approved by the Board, not only reasonably lead to but actually require a result different than that reached in all prior zoning cases on the subject property.

In prior Case No. 85-256-XA, the then owner petitioned for approval of a community building/health club by way of zoning special exception and a parking variance. The special exception relief was granted and the variance denied. In denying the variance in that Case, the Board found that the owner had submitted a County Review Group Plan [development plan] for the property which, if approved, would have provided more parking spaces than required by the BCZR at that time.

In prior Case No. 04-052-SPHA, the Owner redlined the approved County Review Group Plan (mentioned as the basis for the Board's denial in Case No. 85-256-XA) to show the reconfigured/added 14 parking spaces that had been installed, to show 16 additional spaces proposed in the green 'buffer' area adjacent to Seminary Avenue and to adjust the parking space count (also with redline numbers) on the approved CRG Plan. As described above, the Board denied the relief requested because the redlined changes to the old CRG Plan showed more parking than required at the time that CRG Plan was approved in the 1980s.

The issues presented presently were not applicable to any of the prior cases where the then Petitioners sought approval for parking spaces in excess of the minimum required, based on then applicable parking regulations. In this case, the Owner obtained relief from the minimum required number of spaces, based on the current provisions of the BCZR as imposed on the subject property by Baltimore County. The relief granted is necessary under either method of calculating the minimum number of spaces required: i) based on the gross leasable area of the various uses; or ii) applying the shopping center calculation for shopping centers with more than 100,000 square feet of gross leasable area.

The burden of persuasion imposed on the Owner in this case is greater than in the prior cases – it must seek relief from a minimum requirement. In those prior cases, the petitioners had to persuade the Board that more commercial parking (located at least in part in a residential zone) was justified, even though the total number of spaces would exceed the minimum number of spaces required.

The calculation of the minimum number of parking spaces required is governed by BCZR § 409.6. A use permit may be issued to permit commercial parking in a residential zone for parking facilities to meet the requirements of Section 409.6. [BCZR § 409.8B.] The prior cases sought approval to exceed those minimum requirements.

After the final decision in prior Case No. 04-052-SPHA, Baltimore County required the Owner to have prepared an as-built, parking plan and submit it for review and approval under the current regulations. The current regulations require more parking spaces for the

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After the final decision in prior Case No. 04-052-SPHA, Baltimore County required the Owner to have prepared an as-built, parking plan and submit it for review and approval under the current regulations. The current regulations require more parking spaces for the

shopping center than are presently available on the subject property. The Protestant appears to argue that the Owner, through change of tenants over the years, created the shortfall and should, therefore, be denied relief. The shopping center development on the subject property is in excess of 100,000 square feet of gross leasable area. BCZR § 409.6 is clear that the parking requirements for such a shopping center are calculated at a rate of:

5 per 1,000 square feet of gross leasable area, including any area devoted to restaurants, but excluding any area devoted to theaters¹⁵, in which case the theaters shall be considered as a separate use.

BCZR § 409.6 (parking requirements applicable to shopping centers)

The facts and circumstances have changed since the prior cases. *See, Whittle v. Board of Zoning Appeals*, 211 Md. 36, 45 (1956); *McBee v. Baltimore County*, 221 Md. 312, 317-18 (1960). The Owner was required to obtain different relief — seeking relief from the minimum number of parking spaces required is not the same as seeking approval for more parking spaces than required as in the prior cases. The relief obtained by the Owner in this case was to bring the shopping center into compliance with the current BCZR requirements and to provide the County with a parking plan that showed all available parking on a readable, enforceable plan.

The legal doctrine of *res judicata* is inapplicable to the Board's decision on the

¹⁵ Owner's expert, Bruce Doak, testified that the parking spaces shown on Petitioner's Exhibit No. 1 met each of the requirements for issuance of the Use Permit, including without limitation that there are no theaters on the subject property. [TR1:80-81; 86; 97-98]

facts, circumstances and law presented to it. The present case is not the same cause of action presented to the Board. The evidence presented to the Board in the present case was far different than in the prior cases. In the instant case, the Owner had to present sufficient evidence to persuade the Board to approve a modified parking plan for fewer parking spaces than now required or, alternatively, to approve a variance allowing 764 parking spaces in lieu of those required. As noted above, there is a shortfall of 313 parking spaces when calculated by use and of 295 parking spaces when applying the shopping center calculation. No evidence of shortage of parking spaces from the minimum number required was presented in the prior cases. Merely suggesting that because the same labels were involved in the cases (i.e. Special Hearing, Variance) the *res judicata* doctrine should be applied is insufficient and overly simplistic. See, *Jack v. Foster Branch HOA*, 53 Md. App. 325, 334-35 (1982)

The judicially created doctrine of *res judicata* prevents re-litigation of the same factual question. However, to prevail in its assertion in this appeal, the Protestant must show that seeking relief from the minimum number of required parking spaces is the same factual question as seeking approval to provide more than the minimum number of required parking spaces; a showing that cannot be sustained. The *res judicata* doctrine “extends only to the facts and conditions as they existed at the time of the first judgment” *Towers v. Patuxent Institution*, 18 Md. App. 248, 250 (1973)

Based on the facts and circumstances before it, the Board determined correctly that

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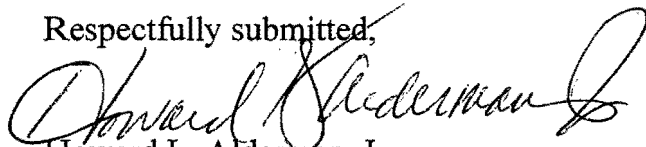
Based on the facts and circumstances before it, the Board determined correctly that

evergreen landscaping be installed parallel to Seminary Avenue in mitigation of the perceived impact of the construction/alteration of the disputed spaces and the Board conditioned its Order accordingly.

Removal of the any parking spaces will result in an increased parking deficit and in permanent inconvenience and hardship to the very community members and tenants that Protestant currently serves. Although this community inconvenience factor is not relevant to the Protestant, it is entirely relevant to the Owner, the Owner's tenants and their community member customers.

For all of the foregoing reasons, the Board's Order, granting the requested Use Permit, approval of Petitioner's Exhibit No. 1 and the modified parking plan should be affirmed to bring the subject property into regulatory compliance with the current requirements of the BCZR, without the need to construct nearly 300 additional parking spaces.

Respectfully submitted,



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8th Floor, Nottingham Centre

502 Washington Avenue

Towson, Maryland 21204

410.321.0600 [voice]/410.296.2801 [fax]

Attorneys for Owner/Respondent

the relief sought to permit a fewer number of parking spaces required was not the same as relief to permit more parking spaces than required. The evidence relied upon by the Board is recited carefully and completely in its Order and its decision should not be overturned as it is in full compliance with the judicially created doctrine of *res judicata*.

II. The decision of the Board is supported by the substantial and uncontradicted evidence of the Owner.

It is the Protestant that presented the same, factual case as presented in the prior cases, notwithstanding that the legal issue in this case is completely different than in prior cases. There is absolutely no evidence whatsoever that was presented by the Protestant to even suggest that the existing number of parking spaces on the subject property meets or exceeds the number of parking spaces required. The Board got it; the Protestant apparently did not. Through the "evidence and testimony, the Board learned that the Petitioner [below, Owner at this level] has a parking deficit." *Board's Order* at 2.

Despite having participated at the Zoning Commissioner level in this case, the Protestant made a tactical decision to not introduce any testimony or evidence before the Board on the issue of parking deficit under the minimum requirements of the BCZR presented by this case. The substantial — and only — evidence taken by the Board on the issues before it was that of the Owner. The Board evaluated the evidence and testimony presented at the hearing and found that offered on behalf of the Owners to be substantial, credible and persuasive, sufficient for Owner to meet its burdens. The considerable expertise and experience of the Board must be respected and affirmed.

III. The Board properly denied the Protestant's pre-hearing *Subpoena Duces Tecum*, which had been opposed by the Owner.

The Protestant's Subpoena Duces Tecum was never properly served on the Owner. Rather, that Subpoena was delivered to the undersigned legal counsel who advised that he was not authorized to accept such service on behalf of the Owner. Notwithstanding the lack of service, and without waiving any rights or objections, the Owner filed with the Board a Motion to Quash the Subpoena. The Board heard from all counsel at the outset of the hearing [TR1:4-29], including the Owner's arguments that the information requested by the Subpoena was overly broad, protected and not necessary for the determination of the issues presented to the Board. Owner's arguments included that the Subpoena sought disclosure of proprietary information that would enable, if introduced into a public record which is open to inspection by anyone, competitors to obtain an unfair advantage in structuring their leases or in soliciting tenants from the Owner.

Moreover, the leases requested by the Subpoena are irrelevant. The Owner presented expert testimony of Mr. Doak that the improvements and uses on the subject property meet the following definition of 'shopping center' contained in the BCZR¹⁶:

SHOPPING CENTER -- A group of three or more commercial uses which: (a) are designed as a single commercial group; (b) are under common ownership or control; (c) are connected by party walls, partitions, canopies or other structural members to form one continuous structure or, if located in separate buildings, are interconnected by walkways designed to facilitate customer interchange between the uses; (d) share a common parking area;

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and (e) otherwise present the appearance of one continuous commercial area

....

BCZR § 101 (Definitions)

The Owner presented written verification from the Baltimore County Office of Zoning that the subject property was a 'shopping center', as defined in the BCZR. As such, the parking requirements at issue specify the calculation of parking for shopping centers with more than 100,000 square feet of gross leasable area, **irrespective of the type of tenant or the size of any tenant's leased space**. The Board did not need the leases to determine the minimum number of parking spaces required at the Seminary Galleria shopping center – it is a simple, mathematical calculation. Even if the Board had, despite the evidence before it, determined that Seminary Galleria was not a 'shopping center' the testimony of Mr. Doak was clear and concise on the total size of leased area for each type of use on the subject property, without needing any other lease terms or conditions. Had it been necessary, the minimum number of parking spaces based on uses could have been calculated from that evidence.

The Board correctly quashed Protestant's Subpoena. The information requested was not necessary for the Board to render its decision on the issues presented to it.

SUMMARY and CONCLUSION

Seminary Galleria is a shopping center that over the years has maintained a consistent mix of retail, commercial, restaurant, fitness, office and medical uses to serve the neighborhood in which it is located. The County Council recognized that certain

properties could be improved with commercial uses and have insufficient commercially zoned land for required parking. To alleviate that inadequacy, parking can be approved in residentially zoned portions of the same property or **even across the street or alley in residential zones** upon the showing required by BCZR 409.8B.2. In this case, all of the requested parking is on the property now owned by Seminary Galleria, LLC.

When existing buildings, uses and centers process required, future approvals, compliance with those new regulations must be met or relief obtained. It is not the tenant mix that drives the parking requirements on the subject property. Rather, it is the size of the previously approved and now constructed buildings within the shopping center. A substantial portion of the existing parking already exists in the DR zoned portion of the subject property. Clearly, as shown on Petitioner's Exhibit No. 1, commercial parking can exist in proximity to the residential community to the east and the several houses to the north (including Mr. Hurd's) without detriment or complaint.

The evidence offered in opposition to the requested relief failed to address the relevant factors to be addressed by the Board. Those who oppose do so merely because they do not want to validate the small reduction of a portion of an existing, grassed area and they want aesthetic issues addressed. Neither is relevant to the requested relief that will permit a existing, viable shopping center to continue in operation without further construction or creation of impervious areas, despite having fewer parking spaces than required by current regulations. One of the witnesses for the Protestant even suggested that

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6/18/08

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
PEOPLE'S COUNCIL OF
BALTIMORE COUNTY
Jefferson Building, Suite 202
105 W. Chesapeake Avenue
Towson, MD 21204

CIVIL ACTION
NO. : 03-C-08-002967

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING - ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

SEE ALSO CIVIL ACTION
NO.: 03-C-08-002931

IN THE MATTER OF :
SEMINARY GALLERIA, LLC - L/O
PETITION FOR SPECIAL HEARING *and*
VARIANCE - S/E CORNER OF YORK ROAD
AND SEMINARY AVENUE
(1447 YORK ROAD)

9TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

RECEIVED AND FILED

2008 JUN 18 AM 11:26

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

BOARD OF APPEALS CASE NO.: 06-411-SPHA *

* * * * *

SECOND 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:

Michael P. Tanczyn, Esq.
606 Baltimore Avenue - Suite 106
Towson, MD. 21204

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of July, 2008 a copy of the foregoing Memorandum of Respondent in Opposition to Petition for Judicial Review Filed by Dulaney Valley Improvement Association, Inc., was mailed, postage prepaid, First Class United States Mail to the following:

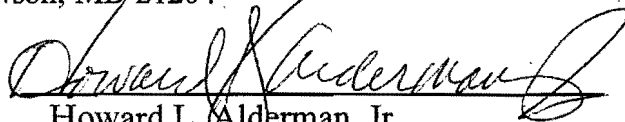
Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204

and to

Carole S. Demilio, Attorney at Law
People's Counsel for Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 204
Towson, MD 21204

and to

Baltimore County Board of Appeals
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204


Howard L. Alderman, Jr.

460

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of July, 2008 a copy of the foregoing Memorandum of Respondent in Opposition to Petition for Judicial Review Filed by Dulaney Valley Improvement Association, Inc., was mailed, postage prepaid, First Class United States Mail to the following:

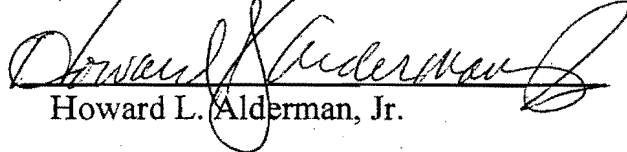
Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204

and to

Carole S. Demilio, Attorney at Law
People's Counsel for Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 204
Towson, MD 21204

and to

Baltimore County Board of Appeals
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204


Howard L. Alderman, Jr.

7/21/08

HOWARD L. ALDERMAN, JR.
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TELEFAX 410-296-2801

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

July 21, 2008

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

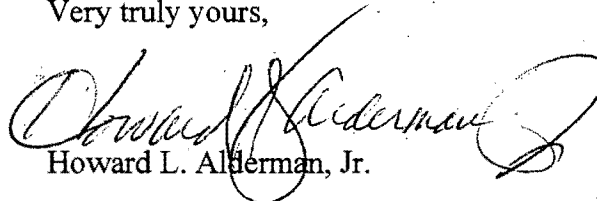
RECEIVED
JUL 22 2008
BALTIMORE COUNTY
BOARD OF APPEALS

RE: *In the Matter of Seminary Galleria, LLC*
Petition on Appeal filed by Dulaney Valley Improvement Association, Inc., et al
Circuit Court Case No.: **3-C-08-002931 AA**
Respondent's Memorandum

Dear Madame Clerk:

Please accept for filing the enclosed Memorandum of Respondent in Opposition to Petition for Judicial Review Filed by Dulaney Valley Improvement Association, Inc., filed on behalf of Seminary Galleria, LLC. 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.

HLA/gk
Enclosure

c (w/encl.): Seminary Galleria, LLC
Baltimore County Board of Appeals
Michael P. Tanczyn, Esquire
Carole S. Demilio, Attorney at Law, Deputy People's Counsel

6/20/08
**PETITION OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY**, Jefferson Building, 105 West
Chesapeake Avenue, Room 204, Towson, MD 21204

* IN THE

* CIRCUIT COURT

IN THE CASE OF **SEMINARY GALLERIA, LLC**,
LEGAL OWNERS/PETITIONERS
FOR VARIANCE ON PROPERTY LOCATED ON THE
NE/S of York Road, Corner SE/S of Seminary Avenue,
(1447 YORK ROAD)

* FOR

8th Election District, 3rd Councilmanic District

* BALTIMORE COUNTY

Case No. 06-411-SPHA
Before the County Board of Appeals

* Case No.: 03-C-08-002967

* * * * *
**PETITION OF DULANEY VALLEY IMPROVEMENT*
ASSOCIATION, INC,**

* IN THE

* CIRCUIT COURT

IN THE CASE OF **SEMINARY GALLERIA, LLC**,
LEGAL OWNERS/PETITIONERS
FOR VARIANCE ON PROPERTY LOCATED ON THE
NE/S of York Road, Corner SE/S of Seminary Avenue,
(1447 YORK ROAD)

* FOR

8th Election District, 3rd Councilmanic District

* BALTIMORE COUNTY

Case No. 06-411-SPHA
Before the County Board of Appeals

* Case No.: 03-C-08-002931

* * * * *

**PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S
MOTION TO CONSOLIDATE**

People's Counsel for Baltimore County, pursuant to Maryland Rule 2-503(a) moves to
consolidate People's Counsel's Petition for Judicial Review in Case No. 03-C-08-002967 with
the Petition for Judicial Review of Dulaney Valley Improvement Association, Inc. in Case No.
03-C-08-002931 and states:

1. Both Petitions are for review of the same administrative agency decision of the
County Board of Appeals dated February 11, 2008.

RECEIVED

JUN 20 2008

BALTIMORE COUNTY
BOARD OF APPEALS

2. The record, therefore, is the same in both cases, and has already been filed with the court in the Dulaney Valley Improvement Association's case.

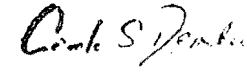
3. The facts and the law are common to both cases.

4. It would be in the interest of justice to consolidate both cases in order to avoid duplication and promote efficient administration of justice.

5. Michael Tanczyn attorney for Dulaney Valley Improvement Association, and Howard Alderman, Jr., attorney for Seminary Galleria, LLC, the property owner, have informed us that they do not oppose this consolidation.

WHEREFORE, People's Counsel for Baltimore County prays that the court enter an order consolidating both cases.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


CAROLE S. DEMILIO
Deputy People's Counsel
The Jefferson Building
105 West Chesapeake Avenue, Rm 204
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th of June, 2008, a copy of the foregoing Motion to Transfer was mailed to Michael Tanczyn, Esquire, 606 Baltimore Avenue, St. 106, Towson, MD 21204 and Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204, Attorneys for the parties of record.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

**PETITION OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY**, Jefferson Building, 105 West
Chesapeake Avenue, Room 204, Towson, MD 21204

IN THE
CIRCUIT COURT

IN THE CASE OF **SEMINARY GALLERIA, LLC**,
LEGAL OWNERS/PETITIONERS
FOR VARIANCE ON PROPERTY LOCATED ON THE
NE/S of York Road, Corner SE/S of Seminary Avenue,
(1447 YORK ROAD)

FOR

8th Election District, 3rd Councilmanic District

BALTIMORE COUNTY

Case No. 06-411-SPHA
Before the County Board of Appeals

Case No.: 03-C-08-002967

* * * * *
**PETITION OF DULANEY VALLEY IMPROVEMENT*
ASSOCIATION, INC,**

IN THE
CIRCUIT COURT

IN THE CASE OF **SEMINARY GALLERIA, LLC**,
LEGAL OWNERS/PETITIONERS
FOR VARIANCE ON PROPERTY LOCATED ON THE
NE/S of York Road, Corner SE/S of Seminary Avenue,
(1447 YORK ROAD)

FOR

8th Election District, 3rd Councilmanic District

BALTIMORE COUNTY

Case No. 06-411-SPHA
Before the County Board of Appeals

Case No.: 03-C-08-002931

* * * * *

ORDER

Upon the foregoing Motion to Consolidate and review of the record in both of the above cases, it is this ____ day of _____, 2008 ORDERED by the Circuit Court for Baltimore County that that People's Counsel for Baltimore County's Motion for Consolidation is Granted; and

That the Petition for Judicial Review for People's Counsel for Baltimore County, Case No. 03-C-08-002967 and Petition for Judicial Review of Dulaney Valley Improvement Association, Inc., Case No. 03-C-08-002931 be, and they are hereby consolidated.

JUDGE, Circuit Court for Baltimore County

Howard L. Alderman, Jr., Esq.
Levin and Gann
502 Washington Avenue – 8th Floor
Towson, MD 21204

People's Counsel for Baltimore County
Jefferson Building – Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

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



Sunny Cannington, Legal Secretary
County Board of Appeals
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
410-887-3180

I HEREBY CERTIFY that on this 18th day of June, 2008, a copy of the foregoing Certificate of Notice has been mailed: Michael P. Tanczyn, Esq., 606 Baltimore Avenue – Suite 106, Towson, MD 21204, Howard L. Alderman, Jr., Esq., Levin and Gann, 502 Washington Avenue – 8th Floor, Towson, MD 21204, People's Counsel for Baltimore County, Jefferson Building – Suite 204, 105 W. Chesapeake Avenue, Towson, MD 21204.



Sunny Cannington, Legal Secretary
County Board of Appeals
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
410-887-3180



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

June 18, 2008

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

Re: In the matter of Dulaney Valley Improvement Association, Petitioners
Regarding: Seminary Galleria, LLC/Legal Owners (1447 York Rd)
Circuit Court Civil Action No.: 03-C-08-002967 and 03-C-08-002931
County Board of Appeals Case No.: 06-441-SPHA

Dear Sir or Madam:

Please be advised that we were informed on Friday, June 13, 2008, that a Petition for Judicial Review was filed by People's Counsel for Baltimore County on March 11, 2008 and given Civil Action No.: 03-C-08-002967. This Petition was filed after the Petition of Dulaney Valley Improvement Association, in Civil Action No.: 03-C-08-002931.

Attached is the Second Certificate of Notice of the Petition for Judicial Review filed by the People's Counsel for Baltimore County and a copy of our Proceedings, which was filed in the Circuit Court this date.

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

Sincerely,

A handwritten signature in cursive script that reads "Sunny Cannington".

Sunny Cannington
Legal Secretary

cc: Michael P. Tanczyn, Esq.
People's Counsel for Baltimore County

6/18/08

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
PEOPLE'S COUNCIL OF
BALTIMORE COUNTY
Jefferson Building, Suite 202
105 W. Chesapeake Avenue
Towson, MD 21204

CIVIL ACTION
NO. : 03-C-08-002967

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING - ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

SEE ALSO CIVIL ACTION
NO.: 03-C-08-002931

IN THE MATTER OF :
SEMINARY GALLERIA, LLC - L/O
PETITION FOR SPECIAL HEARING *and*
VARIANCE - S/E CORNER OF YORK ROAD
AND SEMINARY AVENUE
(1447 YORK ROAD)

9TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

RECEIVED AND FILED

2008 JUN 18 AM 11:26

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

BOARD OF APPEALS CASE NO.: 06-411-SPHA *

* * * * *

**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 sets forth the entries from the Board of Appeals Case No.: 06-411-SPHA, in the above-entitled matter. The record in this matter, consisting of the original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County, was previously transmitted to the Circuit Court for Baltimore County on May 14, 2008 under Civil Action No.: 03-C-08-002931:

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT**

OF BALTIMORE COUNTY

No. 06-411-SPHA

February 23, 2006	Petition for Special Hearing and Petition for Variance filed by Seminary Galleria, LLC, through its attorney, Howard L. Alderman, Jr., Esquire, for use permit for commercial parking adjacent to existing commercial parking and to amend all prior plans; and variance relief for RTA requirements and parking spaces as detailed on said Petitions.
March 13	Entry of Appearance filed by People's Counsel for Baltimore County.
March 24	Certificate of Posting.
March 28	Publication in newspaper
March 30	Request for postponement by Dulaney Valley Improvement Assn., Inc.
May 22	Certificate of Posting /new date and time.
May 30	Publication in newspaper /new date and time.
June 9	ZAC Comments.
June 14	Hearing held before the Deputy Zoning Commissioner
July 14	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner. Petition for Special Hearing was denied as to use permit for commercial parking and denied as to Petitioner's request to approve as built conditions as the 2 nd Amended Parking Plan; and special hearing relief was granted as to modified parking plan with conditions and as to approval of amendment to any and all prior plans filed; and Petition for Variance was denied.
August 11	Notice of Appeal filed by Michael P. Tanczyn, Esquire, on behalf of Dulaney Valley Improvement Assn., Inc., and Larry Townsend, Protestants.
August 11	Notice of Appeal filed by Howard L. Alderman, Jr., Esquire, on behalf of Seminary Galleria, LLC, Legal Owner.
March 20, 2007	Hearing before the Board, Day #1.
March 21	Hearing before the Board, Day #2.
April 27	Memorandum filed by Office of People's Counsel.

April 30, 2007 Memorandum of Dulaney Valley Improvement Assn., Inc., filed by Michael P. Tanczyn, Esquire.

April 30 Owner's Post-Hearing Memorandum filed by Howard L. Alderman, Jr., Esquire, on behalf of Seminary Galleria, LLC.

Exhibits submitted at hearing (two days) before the Board of Appeals:

Petitioner's Exhibit No. 1 – Site Plan

- 2 – Tab List (3 pages)
- 3 – Letter from Mr. Alderman 3-15-07 (2 pages)
- 4a-c – Three pictures of subject site
- 5 – Packet of letters (4 pages)
- 6 – Packet of letters to Mr. Wiseman (5 pages)
- 7 – Petition I Support of Variances (2 pages)
- 8 – Photos of Parking
- 9 – Photos of Galleria, A – F (6 pages)
- 10 – Letter from Timothy Kotroco 8-14-2006 (4 pages)

Protestants' Exhibit No.

- 1 – Site Plan from file
- 2 – Zoning Map
- 3 – Protestants sign-in sheet
- 4 – Parking restrictions from County (6 pages)
- 5 – Array of Photos (6 pics)
- 6 – “ “ “ (4 pics) taken by Mr. Hood
- 7 – “ “ “ (3 pics) taken by Mr. Hood
- 8 – Rule 8 papers for Larry Townsend (3 pages)
- 9 – MDAT (4 pages)
- 10 – 3 Photos on a Page
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- 13 – 4 Photos on a Page
- 14 – 6 Photos on a Page
- 15 – 2 Photos on a Page
- 16 – 3 Photos on a Page taken by Mr. Hood

People's Counsel's

- Exhibit No. 1 – Petition for Special Hearing
- 2 – Opinion 03-C-04-1100 Judge Cavanaugh
- 3 – CBA Opinion from Remand
- 4 – Motion for Dismissal
- 5 – CBA Case 85-256-XA Dec 20, 1985

May 22 Public deliberation held by Board of Appeals.

February 11, 2008	Final Opinion and Order issued by the Board in which Petition for Special Hearing relief was GRANTED; Petition for Variance DISMISSED AS MOOT.
March 11	Petition for Judicial Review filed by People's Counsel; given Civil Action No.: 03-C-08-002967. (Notice received by Board of Appeals on June 16, 2008)
March 12	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michael P. Tanczyn, Esquire, on behalf of Dulaney Valley Improvement Assn., Inc., in Civil Action No.: 03-C-08-002931. Supplemental Petition for Judicial Review filed by Michael P. Tanczyn, Esquire, to include Larry Townsend as an additional party /Petitioner.
March 19	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals, in Civil Action No.: 03-C-08-002931.
March 21	Certificate of Notice sent to interested parties, in Civil Action No.: 03-C-08-002931.
May 14	Transcript of testimony filed in the Circuit Court for Baltimore County in Civil Action No.: 03-C-08-002931.
May 14	Record of Proceedings previously filed in the Circuit Court for Baltimore County in Civil Action No.: 03-C-08-002931.
June 16	Board of Appeals received a copy of Petition for Judicial Review filed by People's Counsel on March 11, 2008, in Civil Action No.: 03-C-08-002967.
June 18	Certificate of Notice sent to interested parties in Civil Action No.: 03-C-08-002967. Record of Proceedings filed in Circuit Court for Baltimore County in Civil Action No.: 03-C-08-002967 Please note: The Board's complete file, including exhibits and transcript, was filed on May 14, 2008 in the Circuit Court for Baltimore County in Civil Action No.: 03-C-08-002931

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted was forwarded to the Court, together with exhibits entered into evidence before the Board, on May 14, 2008 under Civil Action No.: 03-C-08-002931.

Sunny Cannington

Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Ave.
Towson, Maryland 21204
410-887-3180

c: Michael P. Tanczyn, Esquire
Dulaney Valley Imp. Assn., Inc. c/o Mr. Tanczyn
Larry Townsend
Howard L. Alderman, Jr., Esquire
Seminary Galleria LLC /Teresa Rosier
Office of People's Counsel for Baltimore County

5/14/08

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
DULANEY VALLEY IMPROVEMENT ASSN.

c/o Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, MD 21204

and
LARRY TOWNSEND
1111 LONG BROOK ROAD
TIMONIUM, MD 21093

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING, SUITE 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

CIVIL ACTION
No. 03-C-08-2931

IN THE MATTER OF THE CASE OF
SEMINARY GALLERIA, LLC /LO
FOR SPECIAL HEARING AND VARIANCE
ON PROPERTY LOCATED ON THE SE/COR OF
YORK RD AND SEMINARY AVENUE
(1447 YORK ROAD)

9TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO. 06-411-SPHA

RECEIVED AND FILED
2008 MAY 14 PM 3:30
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

* * * * *

**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 original papers on file in the
Department of Permits and Development Management and the Board of Appeals of Baltimore
County:

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT**

OF BALTIMORE COUNTY

No. 06-411-SPHA

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March 21	Hearing before the Board, Day #2.
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Michael P. Tanczyn, Esquire.

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Exhibit No. 1 – Petition for Special Hearing
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4 – Motion for Dismissal
5 – CBA Case 85-256-XA Dec 20, 1985

May 22 Public deliberation held by Board of Appeals.

February 11, 2008 Final Opinion and Order issued by the Board in which Petition for Special Hearing relief was GRANTED; Petition for Variance DISMISSED AS MOOT.

March 12 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michael P. Tanczyn, Esquire, on behalf of Dulaney Valley Improvement Assn., Inc.

Supplemental Petition for Judicial Review filed by Michael P. Tanczyn, Esquire, to include Larry Townsend as an additional party /Petitioner.

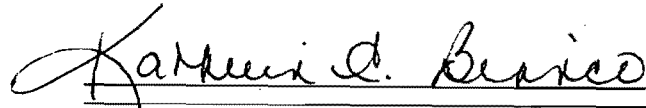
March 19 Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.

March 21 Certificate of Notice sent to interested parties.

May 14 Transcript of testimony filed.

May 14 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 into evidence before the Board.



Kathleen C. Bianco, Administrator
County Board of Appeals, Suite 203
The Jefferson Building, 105 W. Chesapeake Ave.
Towson, Maryland 21204 (410-887-3180)

c: Michael P. Tanczyn, Esquire
Dulaney Valley Imp. Assn., Inc. c/o Mr. Tanczyn
Larry Townsend
Howard L. Alderman, Jr., Esquire
Seminary Galleria LLC /Teresa Rosier
Office of People's Counsel for Baltimore County

3/21/08

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
DULANEY VALLEY IMPROVEMENT
ASSOCIATION, INC.

CIVIL ACTION
NO. : 03-C-08-2931

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF :
SEMINARY GALLERIA, LLC – L/O
PETITION FOR SPECIAL HEARING *and*
VARIANCE – S/E CORNER OF YORK ROAD
AND SEMINARY AVENUE
(1447 YORK ROAD)

9TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 06-411-SPHA *

* * * * *

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:

Michael P. Tanczyn, Esq.
606 Baltimore Avenue – Suite 106
Towson, MD 21204

RECEIVED AND FILED

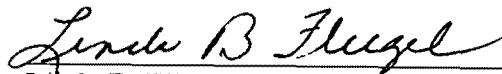
2008 MAR 21 AM 11:53

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Howard L. Alderman, Jr., Esq.
Levin and Gann
502 Washington Avenue – 8th Floor
Towson, MD 21204

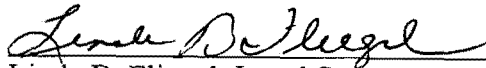
People's Counsel for Baltimore County
Jefferson Building – Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

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



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 March, 2008, a copy of the foregoing Certificate of Notice has been mailed: Michael P. Tanczyn, Esq., 606 Baltimore Avenue – Suite 106, Towson, MD 21204, Howard L. Alderman, Jr., Esq., Levin and Gann, 502 Washington Avenue – 8th Floor, Towson, MD 21204, People's Counsel for Baltimore County, Jefferson Building – Suite 204, 105 W. Chesapeake Avenue, Towson, MD 21204.



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

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

March 21, 2008

Michael P. Tanczyn, Esq.
606 Baltimore Avenue – Suite 106
Towson, MD 21204

RE: Circuit Court Civil Action No. 03-C-08-2931
Petition for Judicial Review
Seminary Galleria, Inc.
Board of Appeals Case No.: 06-411-SPHA

Dear: Mr. Tanczyn:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of 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.

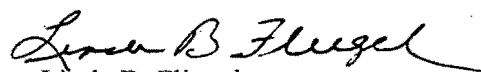
The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410- 486-8209
HEARING DATE: March 20 and March 21, 2007

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by May 13, 2008, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, to enable her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,


Linda B. Fliegel
Legal Secretary

/trs

Enclosure

c: Carolyn Peatt, Court Reporter
Howard L. Alderman, Jr., Esq.
People's Counsel for Baltimore County



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

March 21, 2008

Howard L. Alderman, Jr., Esq.
502 Washington Avenue – 8th Floor
Towson, MD 21204

RE: Circuit Court Civil Action No. 03-C-08-2931
Petition for Judicial Review
Seminary Galleria, LLC
Board of Appeals Case No.: 06-411-SPHA

Dear Mr. Alderman:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on March 12, 2008, and *retrieved by the Board on March 19, 2008*, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. 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-08-2931**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Linda B. Fliegel".

Linda B. Fliegel
Legal Secretary

/lbf

Enclosure

c: Teresa Rosier & Bill Russell/(Seminary Galleria
c/o Hill Management Services, Inc.
Bruce Doak/Gerhold, Cross & Etzel
Michael P. Tanczyn, Esq.
Larry Townsend/Dulaney Valley Imp. Assn.
Don Gerding
Office of People's Counsel
Pat Keller, Planning Dir.
Zoning Commissioner/Deputy Zoning Commissioner
Timothy M. Kotroco, Dir./PDM

3/12/08
IN THE MATTER OF SPECIAL HEARING
SE/COR of York Road and Seminary Avenue

(1447 York Road)

Seminary Galleria, LLC - Legal Owner/Petitioner

9th Election District
3rd Council District

Case No. 06-411-SPHA

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* Case No. 03-C-08-2931

*

* * * * *

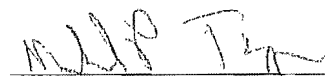
SUPPLEMENTAL PETITION FOR JUDICIAL REVIEW

NOW COMES Dulaney Valley Improvement Association, Inc., and Larry Townsend, Petitioners, by their attorney, Michael P. Tanczyn, and supplement the Petition for Judicial Review by adding Larry Townsend as an additional party, Petitioner. Mr. Townsend participated in the proceedings below and joins in the appeal previously filed by Dulaney Valley Improvement Association, Inc. and seeks Judicial review of the decisions contained in the Opinion and Order of the Board of Appeals for Baltimore County issued February 11, 2008.

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

2008 MAR 12 PM 12:44

RECEIVED AND FILED

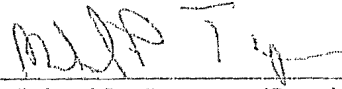


Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, MD 21204
(410) 296-8823
Attorney for Protestants/Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 2008, a copy of the foregoing Petition for Judicial Review was mailed by first class mail, postage prepaid, to Board of Appeals of Baltimore County, Attn: Ms. Kathy Bianco, Administrative Secretary, Room 203, 105 W.

Chesapeake Avenue, Towson, MD 21204; to Howard L. Alderman, Jr., Esquire, Levin and Gann, 502 Washington Avenue, 8th Floor, Towson, MD 21204; and to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Room 204, 105 W. Chesapeake Avenue, Towson, MD 21204.

A handwritten signature in dark ink, appearing to read "M. P. Tanczyn", is written over a horizontal line.

Michael P. Tanczyn, Esquire

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827
Email: mptlaw@verizon.net

March 12, 2008

Hand Delivered

Clerk, Civil Desk
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21204-0754

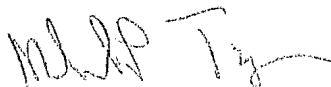
Re: In the Matter of: Seminary Galleria LLC
Case No. 06-411-SPHA

Dear Clerk:

Enclosed please find for filing a Supplemental Petition for Judicial Review regarding the above referenced matter.

Thank you for your assistance in this regard.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/kds

Enc.

cc: Howard L. Alderman, Jr., Esquire
Kathy Bianco, Administrator, Baltimore County Board of Appeals ✓
Clients

RECEIVED
MAR 13 2008

**BALTIMORE COUNTY
BOARD OF APPEALS**

3/11/08
IN THE MATTER OF SPECIAL HEARING
SE/COR of York Road and Seminary Avenue

(1447 York Road)

Seminary Galleria, LLC - Legal Owner/Petitioner

9th Election District
3rd Council District

Case No. 06-411-SPHA

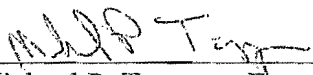
* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* Case No. 03-C-08-2931

*

* * * * *
PETITION FOR JUDICIAL REVIEW

NOW COMES Dulaney Valley Improvement Association, Inc., Protestants below and Petitioners herein, by their attorney, Michael P. Tanczyn, and in accordance with Rule 7-202 of the Maryland Rules of Procedure, who state they were a party to the agency proceedings below and seek Judicial review of the decisions contained in the Opinion and Order of the Board of Appeals for Baltimore County issued February 11, 2008.



Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, MD 21204
(410) 296-8823
Attorney for Protestants/Petitioners

RECEIVED

MAR 11 2008

CERTIFICATE OF SERVICE

**BALTIMORE COUNTY
BOARD OF APPEALS**

I HEREBY CERTIFY that on this 11th day of March, 2008, a copy of the foregoing Petition for Judicial Review was mailed by first class mail, postage prepaid, to Board of Appeals of Baltimore County, Attn: Ms. Kathy Bianco, Administrative Secretary, Room 203, 105 W.

Chesapeake Avenue, Towson, MD 21204; to Howard L. Alderman, Jr., Esquire, Levin and Gann, 502 Washington Avenue, 8th Floor, Towson, MD 21204; and to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Room 204, 105 W. Chesapeake Avenue, Towson, MD 21204.

A handwritten signature in black ink, appearing to read "MPT Tanczyn", written over a horizontal line.

Michael P. Tanczyn, Esquire

RECEIVED
MAR 11 2008

Circuit Court for Baltimore County

City or County

**BALTIMORE COUNTY
BOARD OF APPEALS**

CIVIL—NON-DOMESTIC CASE INFORMATION REPORT

Directions:

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111. A copy must be included for each defendant to be served.

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.

FORM FILED BY: ☐ PLAINTIFF ☐ DEFENDANT CASE NUMBER: _____ (Clerk to insert)

CASE NAME: In the Matter of Special Hearing - 1447 York Road

JURY DEMAND: ☐ Yes ☐ No Anticipated length of trial: _____ hours for _____ days

RELATED CASE PENDING? ☐ Yes ☐ No If yes, Case #(s), if known: _____

HAS ALTERNATIVE DISPUTE RESOLUTION (ADR): Been Tried? ☐ Yes ☐ No
Requested? ☐ Yes ☐ No

If yes, specify: _____

Special Requirements? ☐ Interpreter/communication impairment
☐ Other ADA accommodation: _____

NATURE OF ACTION (CHECK ONE BOX)		DAMAGES / RELIEF	
TORTS ☐ Motor Tort ☐ Premises Liability ☐ Assault & Battery ☐ Product Liability ☐ Professional Malpractice ☐ Wrongful Death ☐ Business & Commercial ☐ Libel & Slander ☐ False Arrest/Imprisonment ☐ Nuisance ☐ Toxic Torts ☐ Fraud ☐ Malicious Prosecution ☐ Lead Paint ☐ Asbestos ☐ Other _____	LABOR ☐ Workers' Comp. ☐ Wrongful Discharge ☐ EEO ☐ Other _____ CONTRACTS ☐ Insurance ☐ Confessed Judgment ☐ Other _____ REAL PROPERTY ☐ Judicial Sale ☐ Condemnation ☐ Landlord Tenant ☐ Other _____ OTHER ☐ Civil Rights ☐ Environmental ☐ ADA ☐ Other _____	A. TORTS Actual Damages ☐ Under \$7,500 ☐ \$7,500 - \$50,000 ☐ \$50,000 - \$100,000 ☐ Over \$100,000 ☐ Medical Bills \$ _____ ☐ Property Damages \$ _____ ☐ Wage Loss \$ _____	B. CONTRACTS ☐ Under \$10,000 ☐ \$10,000 - \$20,000 ☐ Over \$20,000 C. NONMONETARY RELIEF ☐ Declaratory Judgment ☐ Injunction ☐ Other _____

TRACK REQUEST

With the exception of Baltimore County and Baltimore City, please fill in the estimated LENGTH OF TRIAL. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.

- | | |
|---|---|
| ☐ 1/2 day of trial or less | ☐ 3 days of trial time |
| ☐ 1 day of trial time | ☐ More than 3 days of trial time |
| ☐ 2 days of trial time | |

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY, PLEASE SEE REVERSE SIDE OF FORM FOR INSTRUCTIONS.

Date: March 11, 2008 Signature: [Signature]

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY, PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

CIRCUIT COURT FOR BALTIMORE CITY (check only one)

- | | |
|---|--|
| ☐ Expedited | Trial 60 to 120 days from notice. Non-jury matters. |
| ☐ Standard-Short | Trial seven months from Defendant's response. Includes torts with actual damages up to \$7,500; contract claims up to \$20,000; condemnations; injunctions and declaratory judgment. |
| ☐ Standard-Medium | Trial 12 months from Defendant's response. Includes torts with actual damages over \$7,500 and under \$50,000, and contract claims over \$20,000. |
| ☐ Standard-Complex | Trial 18 months from Defendant's response. Includes complex cases requiring prolonged discovery with actual damages in excess of \$50,000. |
| ☐ Lead Paint | Fill in: Birthdate of youngest plaintiff _____ |
| ☐ Asbestos | Events and deadlines set by individual judge. |
| ☐ Protracted Cases | Complex cases designated by the Administrative Judge. |

CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

To assist the Court in determining the appropriate Track for this case, check one of the boxes below. This information is not an admission and may not be used for any purpose other than Track Assignment.

- ☐ Liability is conceded.
☐ Liability is not conceded, but is not seriously in dispute.
☐ Liability is seriously in dispute.

CIRCUIT COURT FOR BALTIMORE COUNTY

- | | |
|---|---|
| ☒ Expedited
(Trial Date-90 days) | Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus. |
| ☐ Standard
(Trial Date-240 days) | Condemnation, Confessed judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, Intentional Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases. |
| ☐ Extended Standard
(Trial Date-345 days) | Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency. |
| ☐ Complex
(Trial Date-450 days) | Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases. |

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824
Fax: (410) 296-8827

*Careed Civ. Ct.
3/18/08 - Talked.
w/ Sandi & told her*

March 11, 2008

Via Hand Delivery

Clerk, Civil Desk
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21204-0754

Re: In the Matter of Seminary Galleria LLC
Case No. 06-411-SPHA

Dear Clerk:

Enclosed please find for filing a Petition for Judicial Review regarding the above referenced matter.

Thank you for your assistance in this regard.

Very truly yours,



Michael P. Tanczyn, Esquire

RECEIVED

MAR 11 2008

**BALTIMORE COUNTY
BOARD OF APPEALS**

MPT/kds

Enc.

cc: Howard L. Alderman, Jr., Esquire
Kathy Bianco, Administrator, Baltimore County Board of Appeals
Peter Max Zimmerman, Esquire, People's Counsel of Baltimore County
Clients

*that I did not rec.
a copy of Pet. from
the court & would she
kindly send a copy
to us @ our new
address. (Need not
something in writing).
No address provided
& that is why it
was not sent.
Sandi will change
this one case &
forward copy of
Petition*

3/11/08

GO
PM2

IN THE PETITION OF SEMINARY GALLERIA, LLC *
FOR JUDICIAL REVIEW OF THE *
DECISION OF THE COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY *

IN THE

CIRCUIT COURT

IN THE CASE OF SEMINARY GALLERIA, LLC, *
LEGAL OWNERS/PETITIONERS *
FOR VARIANCE ON PROPERTY LOCATED ON THE *
NE/S of York Road, Corner SE/S of Seminary Avenue, *
(1447 YORK ROAD) *

FOR

8th Election District, 3rd Councilmanic District *

BALTIMORE COUNTY

Case No. 06-411-SPHA *
Before the County Board of Appeals

Case No.: 03-C-08-2967

* * * * *

PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial review of
Opinion and Order of the County Board of Appeals dated February 11, 2008. People's Counsel for
Baltimore County was a party to the proceeding 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.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio/rmw

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED AND FILED

2008 MAR 11 PM 3:20

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

AMH

A

RECEIVED

JUN 16 2008

BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th of March, 2008, a copy of the foregoing Petition for Judicial Review was mailed to Michael Tanczyn, Esquire, 606 Baltimore Avenue, St. 106, Towson, MD 21204 and Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204 , Attorney for Petitioners.

A handwritten signature in cursive script, reading "Peter Max Zimmerman". The signature is written in dark ink and is positioned above a horizontal line.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

Case No. 06-411-SPHA

1. Do the Petitioner's repeated and previous efforts of zoning relief, based on prior decisions of the Deputy Zoning Commissioner and the Board of Appeals, qualify as *res iudicata*?

2. With the current tenant selection, is Seminary Galleria a shopping center?
3. Does the request qualify under § 409.12 of the BCZR?
4. Can Seminary Galleria have ten (10) parking spaces in a D.R. zone?

Facts

Through evidence and testimony, the Board learned that the Petitioner has a parking deficit. Bill Russell, the representative from Hill Management Service, which operates Seminary Galleria, testified that they were told by the County that if they were doing work that totaled less than 5,000 sq. ft. they were within their right to do so. They started construction on 14 additional parking spaces. A complaint was filed with Baltimore County Code Enforcement regarding the disputed spaces. Thereafter, the Petitioner was advised by a County inspector that a building permit would be necessary for the installation of the landscaped retaining wall because it was 4 feet high, the minimum height requiring a permit. Subsequently, a stop work order was issued relative to the disputed spaces being added without benefit of modifying the previously approved parking plans, depicting the area of commercial parking in a residential zone approved by the existing use permit, or without processing a current configuration parking plan to bring the shopping center into compliance with present law and regulations.

Extensive testimony was presented over the two days of hearing before the Board, including the recitation of the history of prior cases relative to this property. Pursuant to the Circuit Court order in the last matter regarding this property, the owner of Seminary Galleria was advised by Baltimore County that an as-built parking plan would have to be submitted, reviewed, and approved pursuant to current regulations. The Owner /Petitioner prepared the Second Amended Parking Plan of the Galleria Tower (the "Amended Plan"), which was filed, together with Petitions for Special Hearing and Variance in this case. Applying current parking standards to the existing improvements and uses requires 1,077 spaces and 1,059 spaces if the shopping

center calculation set forth in *Baltimore County Zoning Regulations*, § 409.6A.2, as quoted below, is applied:

Type of Use**Minimum Number of Required Off-Street Parking Spaces**

Shopping center (less than 100,000 square feet of gross leasable area)

The required number of spaces shall be calculated according to the particular types of tenants in the shopping center, i.e., each tenant shall be considered as a separate use.

Shopping center (100,000 square feet or more of gross leasable area)

In the C.T. District of Towson: the required number of spaces shall be calculated according to the particular types of tenants in the shopping center, i.e., each tenant shall be considered as a separate use.

Elsewhere: 5 per 1,000 square feet of gross leasable area, including any area devoted to restaurants, but excluding any area devoted to theaters, in which case the theaters shall be considered as a separate use.

Larry Townsend, President of the Dulaney Valley Improvement Association, Inc. (the "Association"), appeared and testified on behalf of Appellant /Protestant. The main objection of the Association with respect to the subject property was the conversion of a grassy area into four new parking spaces and portions of 10 reconfigured parking spaces. Mr. Townsend testified that none of the newly paved spaces were any closer to Seminary Avenue than prior parking spaces. Mr. Townsend further stated that he had no problem finding parking spaces when he patronized the Galleria Shopping Center during what he called "busy times." He also pointed out that he felt some areas of parking were underutilized and the Galleria Shopping Center added to this problem by pushing snow there during the winter months. He also felt that the Petitioner had brought on its own hardship due to the change in tenant mix over the years.

Richard Hurd, who resides at 16 E. Seminary Avenue, north of the subject property, testified as a Protestant. He stated that he was upset when the Galleria Shopping Center removed trees and vegetation from the D.R. 5.5 zoned area to add parking spaces. He had been in contact

with the management company many times previously, whenever he felt there was a concern. His latest concern was of lights from cars shining into his home, and he also testified to his concern over traffic problems and that he had taken photographs from his property of particular tenants blocking access on Seminary Avenue.

On cross-examination, Mr. Hurd acknowledged that the spaces were, topographically, much lower than his home and that the ten reconfigured spaces would be directed to Seminary Avenue and not perpendicularly into his property. Mr. Hurd stated that he was concerned that this intrusion would make his home less valuable should he choose to sell.

Bruce Doak, a licensed professional land surveyor, who was accepted as an expert in surveying and the *Baltimore County Zoning Regulations* (BCZR), and had testified in prior cases before the Board, testified in support of the instant Petitions. He described in detail the modifications made on the Amended Plan that accompanied the Petition to reflect any change in tenants and/or tenant-leased areas based on recent information received from the owner. Mr. Doak described the use of the subject property as a shopping center, and indicated that no change of such use was proposed, and, further, that no expansion or reduction of gross leasable areas was proposed. Based on his familiarity with the subject property, Mr. Doak testified that, in his opinion, Seminary Galleria met all of the provisions of the BCZR definition of a shopping center. In further support of his testimony, Mr. Doak described the structural connections and interconnecting walkways that create one continuous, harmonious shopping center (Petitioner's Exhibit #4A-C). Mr. Doak indicated that additional walkways and structural connections were depicted on the Amended Plan.

Accepted as Petitioner's Exhibit 3# was a request and response for zoning verification regarding the subject property in a document dated March 17, 2007, from W. Carl Richards, Jr.,

Zoning Supervisor for Baltimore County, and stating that the Seminary Galleria is a "shopping center" as defined in the *Baltimore County Code* (BCC) § 17-4-101 as follows:

§ 17-4-101. "SHOPPING CENTER" DEFINED.

(a) *In general.* In this title, the term "shopping center" means a commercially zoned parcel or parcels:

- (1) Whose principal use is retail;
- (2) That is under common ownership or control;
- (3) That is a single group of 15 or more units connected by party walls, partitions, canopies or other structural members to form one continuous structure, or, if located in separate buildings, are connected by walkways designed to facilitate customer interchange between the uses; and
- (4) That share a common parking area.

(b) *Single retail unit.* Notwithstanding subsection (a) of this section, in this title, "shopping center" includes a separate, single retail unit that exceeds 75,000 square feet.

Also, through testimony, it was revealed that the Baltimore County Department of Permits & Development Management had sent a letter dated August 14, 2006, to the Petitioner, applying the newly enacted surveillance device law to the Seminary Galleria under BCC § 17-4-101, regarding Shopping Center Surveillance Devices, which states as follows:

§ 17-4-102. SURVEILLANCE DEVICES.

(a) *Required.* The owner, manager or operator of a shopping center shall maintain surveillance devices in a manner to provide coverage of at least 75% of the square footage of the parking areas that are owned, leased or operated by the shopping center for the use of the general public.

(b) *Location.* Surveillance devices shall, at a minimum, be placed in such a manner as to provide passive recorded video surveillance during operating hours of the shopping center.

(c) *Maintenance of surveillance video.* The owner, manager, or operator shall maintain security surveillance video for a minimum of three days and, upon request, shall provide copies to the Baltimore County Police Department.

(d) *Police assistance.* If requested, the Police Department shall assist the owner, manager or operator of a shopping center in performing a security study or reviewing a security plan to implement the provisions of this title.

Mr. Doak further testified that the BCZR provides two means of calculating minimum parking requirements for a shopping center. If the shopping center has less than 100,000 sq. ft. of gross leasable area, parking calculations are made based on the total square footage of each type of use. If the shopping center has more than 100,000 sq. ft. of gross leasable area, the parking requirement is five parking spaces per 1,000 sq. ft. of gross leasable area, excluding theaters. Mr. Doak stated that there were no theaters on the subject property.

According to Mr. Doak, the subject property has 211,635 sq. ft. of gross leasable area, which requires 1,059 parking spaces. At present, including the disputed spaces, there is a total of 764 spaces on the subject property. In Mr. Doak's opinion, this only adds to the deficiency if they are not allowed to maintain the disputed spaces. He stated that, based on responses from Baltimore County departments, as well as his own opinion, the modified parking plan would not be detrimental to the community, nor create congestion in roads or streets. Alternatively, requiring the Petitioner to remove 59,000 sq. ft. of existing buildings to match the parking provided would be an undue hardship, if the special hearing relief for the modified parking plan is not approved.

Mr. Doak further stated that he is familiar with the subject property and surrounding areas, and that there are previously approved, existing parking spaces in the D.R. zone of the subject property located closer to Seminary Avenue than are the disputed spaces.

Teresa Rosier, who was the property manager for Seminary Galleria from 2000 to March of 2006, testified that there were regular complaints from tenants regarding the lack of available parking. The tenants complained about the loss of business due to the parking hassles faced by customers looking for convenient parking. Ms. Rosier further stated that she feels the requested

relief is necessary to keep the subject property a functional, viable neighborhood shopping center.

William Russell, who has been with Hill Management for over 21 years and, until 2000, was the commercial leasing representative, testified that he had directly and personally addressed Mr. Hurd's concerns with him. He noted how the delicate balance of tenants can be upset with the loss of an anchor store (Rite Aid) and how, at one time, the subject property was mostly mortgage lenders having a high demand on parking. Notwithstanding the Petitioner's determination on parking, Mr. Russell candidly admitted such private calculations would have no impact on the minimum number of spaces required by the BCZR.

Conclusion

This Board feels that the matter of *res judicata* does not apply due to the specific nature of the 14 parking spaces and the matter of parking in the D.R. zone, which this Board feels is permitted. We find this case not to be another attempt to repeat prior cases.

This Board also finds credible the testimony of Mr. Doak on the matter of the subject property meeting the criteria of a shopping center. In addition, this Board finds that the subject property qualified under the definition of a shopping center, as supported by the evidence submitted from County departments. Baltimore County also qualified Seminary Galleria as a shopping center under its surveillance regulations for shopping centers, and is requiring the property to comply with the new regulation. The property clearly fits the description of structural connections and interconnecting walkways. While there are 16 different retail stores on the property, there is no statute that determines how many offices you are allowed to have in the ratio. Therefore, we find the Galleria Towers to be a shopping center.

The Board will also approve the second amendment of the parking plan, which meets the technical requirements of BCZR § 409.12. The Board found no evidence to support the contention that the additional 10 parking spaces would have an impact. This Board approves the use of commercial parking in a D.R. 5.5 zone for this subject property pursuant to BCZR § 409.8.B1, which states:

B. Business or industrial parking in residential zones.

1. Upon application, the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking facilities to meet the requirements of Section 409.6, under the following procedure:
 - a. On the property in question, notice of the application for the use permit shall be conspicuously posted for a period of 15 days following the filing of the application.
 - b. Within the fifteen-day posting period, any interested person may file a formal request for a public hearing with the Zoning Commissioner in accordance with Section 500.7.
 - c. If a formal request for a public hearing is not filed, the Zoning Commissioner, without a public hearing, may grant a use permit for parking in a residential zone if the proposed use meets all the requirements of Section 409.8.B.2. The use permit may be issued with such conditions or restrictions as determined appropriate by the Zoning Commissioner to satisfy the provisions of Section 409.8.B.2 below and to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community.
 - d. If a formal request for a public hearing is filed, the Zoning Commissioner shall schedule a date for the public hearing, such hearing to be held not less than 30 days and not more than 90 days from the date of filing of the request for public hearing.
 - e. Following the public hearing, the Zoning Commissioner may either deny or grant a use permit conditioned upon:
 - (1) His findings following the public hearing;
 - (2) The character of the surrounding community and the anticipated impact of the proposed use on that community;
 - (3) The manner in which the requirements of Section 409.8.B.2 and other applicable requirements are met; and
 - (4) Any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the

surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations.

2. In addition to all other applicable requirements, such parking facilities shall be subject to the following conditions:
 - a. The land so used must adjoin or be across an alley or street from the business or industry involved.
 - b. Only passenger vehicles, excluding buses, may use the parking facility.
 - c. No loading, service or any use other than parking shall be permitted.
 - d. Lighting shall be regulated as to location, direction, hours of illumination, glare and intensity, as required.
 - e. A satisfactory plan showing parking arrangement and vehicular access must be provided.
 - f. Method and area of operation, provision for maintenance and permitted hours of use shall be specified and regulated as required.
 - g. Any conditions not listed above which, in the judgment of the Zoning Commissioner, are necessary to ensure that the parking facility will not be detrimental to adjacent properties.

In addition, we also put this matter to the test of BCZR 502.1 and find that it satisfies the objectives of the regulations. However, this Board is concerned for the neighbors to the north of Seminary Avenue and believes that a landscape design should be approved by the County's landscape architect, and that the area should be maintained to a specific level.

After a review of the facts, the testimony and evidence submitted, and the law, this Board finds that the issue of *res judicata* does not apply in this case, and will grant Petitioner's requested relief and approve the amendment of the Parking Plan, and will so order.

ORDER

THEREFORE, IT IS THIS 11th day of February, 2008 by the
County Board of Appeals of Baltimore County

ORDERED that the Petitioner's request for special hearing relief filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (BCZR) in accordance with BCZR § 409.8.B to

approve commercial parking adjacent to existing commercial parking on the same lot in a residential zone (10 spaces) be and is hereby **GRANTED**; and it is further

ORDERED that the Petitioner's request for special hearing to approve the second amendment of the parking plan of the Galleria Tower is hereby **GRANTED**, subject to the following conditions:

1. The Petitioner shall have the landscape plan reviewed by the County's landscape architect and shall be responsible for proper maintenance of the subject area.

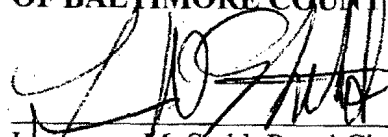
and is it further

ORDERED that the Petitioner's request for special hearing pursuant to § 409.12 of the BCZR to approve a modified parking plan of 756 parking spaces is hereby **GRANTED**. It is noted that this Board currently recognizes the tenant mix as a reflection of the community, and the subject property is still considered a shopping center according to the criteria; and it is further

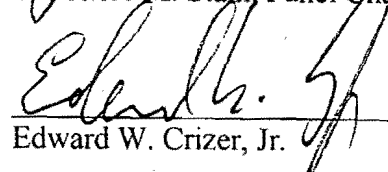
ORDERED that Petitioner's requested variance relief is hereby **DISMISSED as moot**.

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 COUNTY¹**



Lawrence M. Stahl, Panel Chairman



Edward W. Crizer, Jr.

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, Margaret Brassil, Ph.D., and Edward W. Crizer, Jr., all of whom publicly deliberated and reached the unanimous decision set forth above. However, Dr. Brassil resigned from the Board prior to the issuance of this final Order.



County Board of Appeals of Baltimore County

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

February 11, 2008

Howard L. Alderman, Jr., Esquire
LEVIN & GANN, P.A.
Nottingham Centre, 8th Floor
502 Washington Avenue
Towson, MD 21204-4525

RE: *In the Matter of: Seminary Galleria LLC*
Petitioner / Case No. 06-411-SPHA

Dear Mr. Alderman:

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*, **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: Teresa Rosier and Bill Russell /(Seminary Galleria)
c/o Hill Management Services, Inc.
Bruce Doak /Gerhold, Cross & Etzel
Michael P. Tanczyn, Esquire
Larry Townsend /Dulaney Valley Imp. Assn.
Don Gerding
Office of People's Counsel
Pat Keller, Planning Director
Zoning Commissioner /Deputy Zoning Commissioner
Timothy M. Kotroco, Director /PDM



4/30/07

BEFORE THE
COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

Case No. 06-411-SPHA

Seminary Galleria, LLC/Owner

*1447 York Road
NE/S of York Road
SE side of Seminary Avenue
8th Election District
3rd Councilmanic District*

OWNER'S POST-HEARING MEMORANDUM

Seminary Galleria, LLC, a Maryland limited liability company ("Seminary", "Petitioner" or "Owner"), by and through its 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

Seminary seeks approval of its use of a small area of residentially zoned, but not used, land which is part of a shopping center for additional parking for tenants, guests and invitees. The property owned by Seminary is located at the corner of York Road and

Seminary Avenue which is presently improved with over 211,000 square feet of previously approved buildings and uses (the “subject property”). The subject property is irregularly shaped and is presently split-zoned with the majority of land zoned Business Local (BL) and the balance zoned Density Residential (DR). There is existing commercial parking on the subject property, located both in the BL zone and, pursuant to a previously issued “use permit” within a majority of the land area zoned DR.

To meet the increasing customer demand for parking on the subject property, the Owner added a net total of 10 parking spaces in a professional and workmanlike manner, in broad daylight rather than in some surreptitious fashion. Four, existing parallel spaces and some additional grass area were reconfigured, to yield 10 head-in parking spaces; a small grass area at the end of an existing parking bay was converted to four additional spaces, together with associated retaining wall and landscape improvements (collectively the “disputed spaces”). The Owner had been advised that if less than 5,000 square feet of land area was being disturbed, no permit was needed. A complaint was filed with Baltimore County Code enforcement regarding the disputed spaces. Thereafter, the Owner was advised by a County inspector that a building permit would be necessary for the landscaped, retaining wall being installed because it was four feet high – the minimum height requiring a permit. Subsequently, a stop work order was issued relative to the disputed spaces being added without benefit of modifying the previously approved parking plans depicting the area of commercial parking in a residential zone approved by the

existing use permit or without processing a current configuration parking plan to bring the shopping center into compliance with present law and regulation. In response to the complaint, the Owner filed a Zoning Petition for Special Hearing (Case No. 04-052-SPHA), seeking approval, under prior regulations, of a modification to the CRG Plan to show the disputed spaces and proposing an additional 16 parking spaces. That case was denied by the Deputy Zoning Commissioner and the Board of Appeals which found that commercial parking in a residential zone could only be approved to meet the minimum requirements for parking under the BCZR. Given that the proposed modifications reflected more spaces than required at the time of CRG approval, the requested relief was denied. The Circuit Court affirmed the denial.

The Owner was then advised by Baltimore County that an as-built parking plan would have to be submitted, reviewed and approved pursuant to current regulations. The Owner retained Gerhold, Cross & Etzel, Ltd. to prepare the *Second Amended Parking Plan of the Galleria Tower* (the "Amended Plan"), which was filed, together with Petitions for Special Hearing and Variance (in the alternative) in this present case. Applying current parking standards to the existing improvements and uses requires 1077 spaces if parking is calculated by the respective types of uses on the Subject property and 1059 spaces if the Shopping Center calculation set forth in *Baltimore County Zoning Regulations* "(BCZR)" Section 409.6.A.2 is applied. The Deputy Zoning Commissioner, apparently based on personal evidence gleaned outside of the testimony and evidence presented at the hearing,

determined that the Subject property was not a Shopping Center as defined by the BCZR because the “buildings are not connected, the walkways are not intended to facilitate customer interchange between uses, and the site does not give the appearance of a continuous commercial area.” (Deputy Zoning Commissioner’s Order at 7.) With respect to the alternative variance relief, the Deputy Zoning Commissioner reasoned that the tenant mix was of the Owner’s own efforts and therefore should be denied. The Deputy Zoning Commissioner, granted the modified parking plan but imposed an impermissible condition limiting the tenant mix at this shopping center. Appeals of that decision followed to this Board.

THE REQUESTED RELIEF

The Petitions filed in this case requested approval of a variety of relief (modified per W. Carl Richards, Jr. in the Zoning Office) as follows:

Special Hearing

- in accordance with BCZR § 409.8B, a use permit for commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the Plan filed herewith to meet to the extent possible the minimum parking requirements of BCZR §409.6 utilizing all existing parking spaces shown on the Plat filed herewith;
- in lieu of the companion variance requested herewith, approval of a modified parking plan and modified parking and landscape and any applicable RTA requirements for the existing parking spaces and areas in accordance with the specific detail shown on the Plan filed herewith in lieu of the minimum requirements of the BCZR;
- approval of the Plan filed herewith which depicts current, as-built conditions as the 2nd Amended Parking Plan of The Galleria Tower;

- an amendment to any and all prior parking plans filed in connection with the subject property consistent with the existing parking depicted on the Plan filed herewith, including without limitation all plans in Case Nos. 4893-XA, R3410, 85-256-XA and all prior commercial parking in residential zone approvals; and
- such additional relief as the nature of the parking and landscaping shown on the accompanying Plan may require.

Variance:

In the event that the Second Amended Parking Plan of The Galleria Tower depicting current, as-built conditions on the subject property is not approved as a modified parking plan pursuant to a companion Petition for Special Hearing:

- a variance from: BCZR §§ 409.6.A to permit a total of 746 parking spaces in lieu of: i) the 1059 spaces required for a shopping center with more than 100,000 square feet of gross leaseable area; or ii) the 1077¹ spaces required due to tenant mix [w/out shopping center provision];
- approval of variance from any applicable RTA requirements for the existing parking and improvements shown on the Plat filed herewith; and
- for all such additional variance relief as the nature of this request and the parking layout on the Plan filed herewith may require.

THE EVIDENCE

The Protestants' Case

Although somewhat unusual, the evidence presented by the Protestants will be discussed first as it is minimal in scope and practically irrelevant to the issue pending before this Board. The first witness, Mr. Larry Townsend, is the president of the Dulaney Valley Improvement Association, Inc. (the "Association"). The subject property is located

¹ While the Petition for Variance as filed listed 1084 spaces, that number was amended at the hearing before the Board to reflect the then current tenant mix.

in the very northwest corner of the Association's geographic boundaries. When presented for testimony on the first day, and after being sworn, Mr. Townsend failed to produce the authorizations required by Rule 8 of the Rules of Practice and Procedure before this Board. Over objection, Mr. Townsend was permitted to return the second day, produce the required materials and testify.

Mr. Townsend, through a series of photographs, described the uses on the Subject property that he has witnessed and attempted to compare the buildings and uses on the Subject property to the Heaver Plaza property to the south. Mr. Townsend was unable to identify any uses in the Heaver Plaza other than a restaurant, could not identify the gross leaseable area of the Heaver Plaza and could not say that the Heaver Plaza would be classified as a shopping center under the BCZR. On behalf of his Association, Mr. Townsend acknowledged that there was no opposition to the operation of the Subject property by the Owner.

The main objection of the Association with respect to the Subject property was the conversion of grassed area into four new parking spots and portions of ten reconfigured parking spots. Mr. Townsend was candid in his answer that none of the newly paved spots were located closer to Seminary Avenue than long-existing, approved and constructed parking spaces. According to Mr. Townsend, the Association's position is that of its Board as the general membership was not polled. When asked to reconcile the Association's position regarding the disputed spaces against the greater convenience offered by the

additional parking to the very members the Association represents, Mr. Townsend indicated that the position was taken irrespective to the convenience offered to its members.

Mr. Richard Hurd, a contractor who operates his contracting business out of his home on the north side of Seminary Avenue (which sits much higher than the Subject property) was the next to testify. Mr. Hurd presented his photographs of the construction of the four new parking spaces and the reconfigured spaces. Mr. Hurd complained that one of the tenants in the shopping center offered a drive-through flu clinic and that the associated traffic prohibited him from exiting his drive. When asked why, in his own photos, no backed-up traffic blocking his exit was depicted on his side of Seminary Avenue (thus, not blocking his driveway), he indicated that the traffic apparently cleared just before he took the picture.

Mr. Hurd testified of prior issues relating to snow removal that were corrected after he contacted representatives of the Owner. With respect to the disputed spaces, Mr. Hurd was concerned that headlights would illuminate his property. On cross-examination, Mr. Hurd had to acknowledge that the four new spaces were, topographically, much lower than his home and shielded from his home by the landscaped retaining wall. Moreover, the car headlights in the ten reconfigured spaces would be directed parallel to Seminary Avenue and not perpendicularly into his property. Mr. Hurd summarized his concerns as aesthetics and making homes on the north side of Seminary Avenue less desirable. Mr. Hurd did

acknowledge that additional landscaping on the subject property in the expansive green area running parallel to Seminary Avenue (which was not modified in any way by the construction of the disputed spaces) would help to address his aesthetic concerns.

The Owner's Case

Bruce E. Doak, PLS

Bruce E. Doak, a licenced, professional land surveyor, who has offered expert testimony in hundreds of cases regarding matters dealing with surveying and the Baltimore County Zoning Regulations was also accepted as such an expert in this case. Mr. Doak testified before the Deputy Zoning Commissioner in this case and in the prior case (Case No. 04-052-SPHA). Since testifying below in this case, Mr. Doak described the modifications made to the tabular information shown on the Amended Plan which accompanied the Petitions to reflect any change in tenants and/or tenant leased areas based on recent information received from the Owner. As modified, Mr. Doak opined that the Amended Plan fairly and accurately depicted all existing improvements on the subject property (including the disputed spaces) and all other information required for approval as an amended parking plan; the Amended Plan was accepted into evidence as Petitioner's Exhibit No. 1.

Mr. Doak next described the use of the subject property as a shopping center, and that no change of such use was proposed and that no expansion or reduction of gross leaseable area was proposed. Based on his familiarity with the subject property, Mr. Doak

testified in his professional opinion and without contradiction that Seminary Galleria met all of the following provisions of the **BCZR definition of 'shopping center'**:

- there are three or more commercial uses which are grouped on the subject property
- those uses designed and function as a single commercial group
- all of the uses on the subject property under common ownership or control
- the uses are connected by structural members and/or parking deck or decks to form one continuous structure
- the uses are interconnected by party walls, walkways designed to facilitate customer interchange among the uses
- all of the uses share a common parking area
- the retail, restaurant, office and medical uses function as the single commercial group described
- the uses on the subject property otherwise present the appearance of one continuous commercial area

BCZR § 101

In further support of his testimony, Mr. Doak described (using photographs in evidence as Petitioner's Exhibit No. 4 A-C) the structural connections and interconnecting walkways which create one continuous, harmonious shopping center. Mr. Doak indicated that additional walkways and structural connections (including parking decks) were depicted on the Amended Plan accepted as Petitioner's Exhibit No. 1.

In his professional practice, Mr. Doak regularly requests written zoning verifications about property and/or uses on property and other zoning determinations from the Office of Zoning. Typically, those verifications take the form of a separate, written response or a response added to the original written request. Mr. Doak utilizes such verifications in processing projects through the various approval processes.

Accepted as Petitioner's Exhibit No. 3 was a request and response for zoning verification regarding the subject property. Mr. Doak acknowledged that he had reviewed the written verification, dated March 16, 2007, from W. Carl Richards, Jr., Zoning Supervisor for Baltimore County, that the "Seminary Galleria is a 'shopping center' as defined in the Baltimore County Zoning Regulations."

Applying the more strict definition of shopping center codified in Baltimore County Code Section 17-4-101 regarding **Shopping Center Surveillance Devices**, the Baltimore County Department of Permits and Development Management sent a letter to the Owner, dated August 14, 2006, applying the newly enacted surveillance device law to the Seminary Galleria². Although not part of the BCZR, the County determined that Seminary Galleria was a shopping center that met the following criteria:

- (a) In general. In this title, the term "shopping center" means a commercially zoned parcel or parcels:
 - (1) Whose principal use is retail;
 - (2) That is under common ownership or control;
 - (3) That is a single group of 15 or more units connected by party walls, partitions, canopies or other structural members to form one continuous structure, or, if located in separate buildings, are connected by walkways designed to facilitate customer interchange between the uses; and
 - (4) That share a common parking area.

² Petitioner's Exhibit No. 10. This Exhibit was introduced during the testimony of Mr. William Russell, but is included here for a single, complete discussion of the issue.

Baltimore County Code § 17-4-101(a).

According to the expert and unchallenged testimony of Mr. Doak, the BCZR provide two means of calculating minimum parking requirements for a shopping center. If the shopping center has less than 100,000 square feet of gross leaseable area, parking calculations are made based on the total square feet of each type of use. If the shopping center has more than 100,000 square feet of gross leaseable area ("GLA"), the parking requirement is 5 parking spaces per 1,000 square feet of GLA, excluding theaters. Mr. Doak acknowledged that there are no theaters located on the subject property.

The subject property has 211,635 square feet of GLA which, according to Mr. Doak's calculations shown on Petitioner's Exhibit No. 1, require a total of 1059 parking spaces. At present, including the disputed spaces, there are a total of 764 spaces on the subject property.

The disputed spaces, in Mr. Doak's opinion help to address the minimum parking requirements of the BCZR. Retaining the disputed spaces in the DR zone will not result in more parking than minimally required. Conversely, removal of the disputed spaces will result in a greater parking deficiency under the minimum requirements of the BCZR. In Mr. Doak's opinion, if no retaining wall had been required and the total size of the disturbed area for the disputed spaces was less than 5,000 square feet, a permit would not

have been required.³

Based on his familiarity with the subject property and surrounding areas, Mr. Doak testified affirmatively that there are previously approved, existing parking spaces in the DR zone of the subject property located closer to Seminary Avenue than are the disputed spaces. Mr. Doak compared the existing configuration of parking and drive aisles to the prior approved plan and noted that in the area of the 10 realigned spaces no fire lane exists today because of the much greater aisle width provided. The Zoning Advisory Committee comments⁴ contain responses from both the Baltimore County Fire Department and the Office of Planning. Neither review agency had any negative comment concerning approval of the relief requested.

In Mr. Doak's professional opinion, the approval of the Amended Plan introduced as Petitioner's Exhibit No. 1 and the other Special Hearing relief, including the use permit and modified parking plan, would not be detrimental to the community or create congestion in roads or streets. Alternatively, requiring removal of 59,000 square feet of existing buildings to make the gross leaseable area match the available parking would work an undue hardship on the Petitioner. Approval of the requested relief will not create any danger, undue concentration of population or interfere with provisions for public improvements. Additionally, Mr. Doak opined that based on his knowledge of the area and

³ The contractor hired by the Owner did not obtain a building permit before constructing the disputed spaces or the landscaped retaining wall.

⁴ Petitioner's Exhibit No. 5

the zoning regulations, there would be no negative impact on the community if the relief is approved and that such approval can be granted within the spirit and intent of the BCZR.

Specifically with respect to the use permit, Mr. Doak testified in his expert opinion that the disputed spaces:

- adjoin the land on which the business they are designed to support is located
- are restricted to use by passenger vehicles, excluding buses
- any associated lighting will be regulated relative to location, direction, hours of illumination, glare and intensity that complies with all Baltimore County requirements
- provide for safe and efficient parking arrangement and vehicular access
- were installed in a professional/workmanlike manner and that they completely blend in with the hundred plus existing parking spaces in the DR zone
- are and will be maintained in the same manner as the balance of the previously approved parking and in accordance with all applicable laws and restrictions

If the special hearing relief for modified parking plan is not approved, Mr. Doak testified that the disputed spaces can only be approved by the alternative variance relief. Mr. Doak described the uniqueness of the subject property, including its irregular shape and location/footprints of existing buildings and the zoning district line which bisects the existing parking field. The testimony offered by Mr. Doak was that the variance relief requested in the alternative would do substantial justice to the Petitioner and other property

owners, that it was the minimum relief necessary and that it could be granted within the spirit and intent of the BCZR. Finally, Mr. Doak opined that, based on all of the factors about which he testified, the failure to grant the requested relief would result in practical difficulty to the Petitioner and its tenants, invitees, customers, patients, an aging in place population and, overall, the neighborhood which it supports.

Ms. Teresa Rosier

Ms. Rosier testified on behalf of Seminary Galleria, LLC. She described her familiarity with the subject property⁵, its tenants and concerns voiced by neighborhood customers and tenants alike with regard to lack of readily available parking. Ms. Rosier discussed the volume of complaints received from tenants, customers and patrons regarding the lack of available parking. The nature of the complaints included customers having to wait for spaces to be vacated or their having to circle the parking areas looking for an empty space. Tenants complained about the loss of business due to the parking hassles faced by customers looking for convenient parking.

The Owner took action to address the complaints and contracted to install four new parking spaces and to reorient 4 parallel spaces into 10 perpendicular spaces. Additionally, employee parking spaces were striped, metal doors were removed from the rear of the shopping center and replaced with a canopy covered glass entrance to make that entrance

⁵ Ms. Rosier was the property manager for the subject property from 2000 to March, 2006.

more attractive and to make it and the parking behind the center more conducive to use. Contrary to the apparent perception of the Protestants, the Owner recognized no monetary gain from its attempts to address the parking complaints received.

Over the past ten (10) years, on a daily basis, the maintenance representative for the shopping center either ropes off or segregates with rubber cones, until 10:00 a.m. spaces in the front of the center that are most convenient for neighborhood customers. Recent photographs of the subject property were accepted as Petitioner's Exhibits No. 8 and 9 A-F. Ms. Rosier noted that the human nature of customers is such that parking must be convenient and centrally located, as distant or more remote spaces (i.e. the rear parking lot and deck) are not used by those patronizing the shopping center.

Ms. Rosier testified without contradiction that the above-described efforts, the most important and effective of which was installation of the disputed spaces, have alleviated most of the complaints about parking. Many of the tenants have been located in this shopping center for over 20 years and the mix has remained relatively stable.

The Owner has continued to invest in the shopping center, improving both the interior and the exterior of the buildings. Those on-going improvements translate into direct benefits for the community and tenants alike. When this case was pending before the Deputy Zoning Commissioner, many tenants sent letters directly to the Commissioner and/or signed a Petition in support of the relief requested. Copies of the letters and the Petition in support were accepted as Petitioner's Exhibit Nos. 6 and 7 respectively.

Finally, Ms. Rosier testified that irrespective of all of the Owner's efforts regarding effective utilization and accessibility to parking, the shortfall between the number of parking spaces provided and the BCZR requirements will not be affected. The relief requested is necessary to keep the subject property a functional, viable, neighborhood shopping center.

Mr. William Russell

Mr. Russell testified that he has been with Hill Management Company for over 21 years and, until 2000, was the commercial leasing representative. Mr. Russell noted that prior tenants on the subject property were predominantly mortgage lenders which have a high demand for parking. Mr. Russell also described the ultimate effect of a loss of tenants, including without limitation the major anchor – Rite Aid. The loss of such quality tenants results in an underutilized and/or discount store oriented shopping center, with empty/dark storefronts that contributes negatively to the welfare of the community. Once a shopping center develops a reputation for poor parking, commercial brokers tend to steer the better tenants to centers with better parking.

Mr. Russell described efforts taken by the Owner to keep the shopping center neat and attractive and a "good neighbor." Activities in which Mr. Russell was personally involved included addressing Mr. Hurd's concerns directly with him.

With respect to consideration of new tenants, Mr. Russell indicated that the Owner used its experience in commercial leasing to determine whether sufficient parking would

be available on-site for a prospective tenant. Notwithstanding the Owner's determination on parking, Mr. Russell candidly admitted such private calculations would have no impact on the minimum number of spaces required by the BCZR.

ARGUMENT

The Petitioner Has Met Its Burden With Respect to the Relief Requested

It is not the tenant mix that dictates the required parking for this shopping center. Rather, it is the size of the previously approved and presently constructed improvements, combined with an overall increase in population and associated traffic, as well as the number of vehicles that exist today, compared to when the shopping center was originally approved. Section 409.6.A.2 of the BCZR provides, with respect to parking in shopping centers, as follows:

Shopping center (less than 100,000 square feet of gross leasable [sic] area)	The required number of spaces shall be calculated according to the particular types of tenants in the shopping center, i.e., each tenant shall be considered as a separate use.
Shopping center (100,000 square feet or more of gross leasable [sic] area)	In the C.T. District of Towson: the required number of spaces shall be calculated according to the particular types of tenants in the shopping center, i.e., each tenant shall be considered as a separate use. Elsewhere: 5 per 1,000 square feet of gross leasable area, including any area devoted to restaurants, but excluding any area devoted to theaters, in which case the theaters shall be considered as a separate use.

BCZR § 409.6.A.2 (Emphases added.)

The testimony, photographic and graphic evidence offered by Bruce Doak,

Petitioner's expert, together with the official zoning verification from the County Office of Zoning provide irrefutable evidence that the subject property is a shopping center as defined in the BCZR. The existing improvements were constructed based on old, outdated and now superceded requirements. The Amended Plan depicts how the as-built parking addresses, in so far as possible, the current BCZR parking requirements being applied by the County to the subject property. Even under the old requirements, the minimum required commercial parking was permitted in the residentially zoned portion of the subject property by way of use permit pursuant to BCZR § 409.8B.2. Current day requirements, even utilizing the most advantageous calculation possible (shopping center with more than 100,000 sq. ft. of GLA), require far more spaces than exist on the subject property.

The Protestants assert that there is more than ample parking already and that the disputed spaces should be removed, irrespective of any inconvenience to the members of the community that use those spaces. Mr. Townsend acknowledged that the Association's position was not the result of a general meeting of its membership. Rather, it was merely the position of the Board of Directors, which might also explain why the Association failed to produce a petition or other form of wide-spread community support for the Board of Directors' asserted position. Merely saying that there is ample parking, however, does not make the subject property comply with the applicable provisions of the BCZR. Denying the requested relief and requiring the Owner to remove approximately 59,000 square feet

of existing buildings⁶ will create an absolute undue hardship on the Owner, be a disservice to the community and result in unwarranted economic waste.

The Seminary Galleria shopping center has the tenant mix necessary for the neighborhood in which it is located. There are more people who now drive to their neighborhood shopping center. More people exercise, eat out and, with the graying population of the County, more people are seeking convenient medical care in the neighborhood in which they live. As traffic and gasoline prices have both increased, thereby reducing trips to the larger, less centrally located community/regional centers, the demand for convenient and quality neighborhood services has grown dramatically, including prescriptions and housewares, restaurants, hair care, skin care, dental care, etc.

The zoning regulations are clear. To avoid the undue hardship on this Owner that would result from building demolition to comply with existing, available parking, a modified parking plan can be approved after a public hearing in accordance with BCZR § 409.12.B⁷. There was no testimony or other evidence that the requested use permit was not warranted because even with the disputed spaces, the current minimum parking requirements cannot be achieved. A use permit for commercial parking in a residential

⁶ To reduce the ratio of gross leaseable area of the shopping center to the number of parking spaces in existence.

⁷ BCZR §409.12.B provides: "If the requirements for parking space or loading space in Section 409 would create an undue hardship, the Zoning Commissioner may approve a modified plan upon petition and after a public hearing, the procedure for which is set forth in Section 409.8.B.1 above."

zone can be approved in accord with the following:

B. Business or industrial parking in residential zones.

1. Upon application, the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking facilities to meet the requirements of Section 409.6, under the following procedure:

a. On the property in question, notice of the application for the use permit shall be conspicuously posted for a period of 15 days following the filing of the application.

b. Within the fifteen-day posting period, any interested person may file a formal request for a public hearing with the Zoning Commissioner in accordance with Section 500.7.

c. If a formal request for a public hearing is not filed, the Zoning Commissioner, without a public hearing, **may grant a use permit for parking in a residential zone if the proposed use meets all the requirements of Section 409.8.B.2. The use permit may be issued with such conditions or restrictions as determined appropriate by the Zoning Commissioner to satisfy the provisions of Section 409.8.B.2 below and to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community.**

d. If a formal request for a public hearing is filed, the Zoning Commissioner shall schedule a date for the public hearing, such hearing to be held not less than 30 days and not more than 90 days from the date of filing of the request for public hearing.

e. Following the public hearing, the Zoning Commissioner may either deny or grant a use permit conditioned upon:

- (1) His findings following the public hearing;
- (2) The character of the surrounding community and the anticipated impact of the proposed use on that community;
- (3) The manner in which the requirements of Section 409.8.B.2 and other applicable requirements are met; and
- (4) Any additional requirements as deemed necessary by

the Zoning Commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations.

2. In addition to all other applicable requirements, **such parking facilities shall be subject to the following conditions:**

- a. The land so used must adjoin or be across an alley or street from the business or industry involved.
- b. Only passenger vehicles, excluding buses, may use the parking facility.
- c. No loading, service or any use other than parking shall be permitted.
- d. Lighting shall be regulated as to location, direction, hours of illumination, glare and intensity, as required.
- e. A satisfactory plan showing parking arrangement and vehicular access must be provided.
- f. Method and area of operation, provision for maintenance and permitted hours of use shall be specified and regulated as required.
- g. Any conditions not listed above which, in the judgment of the Zoning Commissioner, are necessary to ensure that the parking facility will not be detrimental to adjacent properties.

BCZR § 409.8.B.1 & 2 (Emphases added.)

Alternatively, the testimony and evidence support the granting of the variance for a reduced number of parking spaces. The Petitioner presented clear and substantial evidence of the uniqueness of the subject property, with respect to its shape, illogical split-zoning, previously approved parking in the DR zone and its topography, as related to other

properties in the neighborhood. The condition of previously approved and constructed improvements which must now be brought into compliance with applicable regulations works disproportionately upon the subject property. *Cromwell v. Ward*, 102 Md. App. 691 (1995). The Protestants' efforts to suggest that the subject property is not unique by comparing it to the Heaver Plaza Office structure should be rejected as incongruous and irrelevant. Such a comparison is so far out of kilter it is not even apples and oranges; rather it is more like apples and coconuts.

The Petitioner has, again, met its burden. The Deputy Zoning Commissioner misunderstood and misapplied the law and exceeded his authority in attempting to dictate a tenant mix that he found acceptable. No evidence was offered below or at the hearing before this Board by the Protestants to show that the subject property is anything other than a shopping center as determined by the County. The primary thrust of the Protestants' case is that the disputed spaces (only 4 of which are totally new) are not necessary or warranted.

Perhaps the one constructive area of Protestants' case was to suggest that evergreen landscaping be installed in the grassed area between the existing parking field and Seminary Avenue to the north. Such plantings would improve the aesthetics as requested by Mr. Hurd and would ensure that the Association's concerns about not losing additional "green area" would be addressed. With or without such a planting requirement, the Petitioner's case remains unrebutted and based on substantial evidence proving the requirements of the relief requested.

The Motion to Quash Subpoena Should be Granted

The Owner has provided during its case the relevant information requested by Protestants' Subpoena Duces Tecum. All present tenants have been identified and the size of the leased premises to each has been added to Petitioner's Exhibit No. 1. The information that has not been produced are the individual leases, the interior layout and public records (permits). The interior floor plan and individual leases are irrelevant to the issues pending before the Board. Applications for permits and issued permits are all public records which the Protestants may obtain on their own time and at their own expense; they have no relevance to the relief requested. Moreover, requiring production of the individual leases (redacted or not) places an unfair burden on the Petitioner and potentially opening Petitioner's leasing strategy to review by its competitors. If the leases were redacted fairly, the only specific information that would be left in each is the name of the tenant and the location and size of the leased premises. That information is already shown on Petitioner's Exhibit No. 1.

Finally, and if for no other reason, the Subpoena fails to meet the minimum requirements of Rule 5 of this Board's Rules of Practice and Procedure. Specifically, Rule 5.b provides:

The board may cause subpoenas and subpoenas duces tecum to be issued upon its own motion, or upon the application of any party to any hearing; but **subpoenas will not be issued upon application unless** such application is **in writing and sets forth** the persons, records, books, papers or other documents to be produced and **a general statement as to the purpose.**

Rule 5.b (Emphases added.)

The Subpoena as filed merely commands the Petitioner to “appear and bring to the hearing” information specified in enumerated items 1-5. There is not even an attempt to comply with the requirements of the Board’s Rules⁸ that the Subpoena contain a general statement as to the purpose of the request. The Subpoena was served on the undersigned counsel, without authority to accept for the Petitioner.

For all of the foregoing reasons, the Petitioner’s Motion to Quash Subpoena Duces Tecum should be granted.

No Prior Decision is Res Judicata to the Issues Presented by these Petitions.

The existing shopping center improvements on the subject property, all of which have been approved by Baltimore County (saving and excepting the disputed spaces which started this controversy), as depicted on the Amended Plan for which approval is sought, not only reasonably leads to but actually requires a result different than that reached in either Case No. 85-256-XA or 04-052-SPHA. The issues presented presently were not applicable to either of the prior cases where the then Petitioners sought approval for parking spaces in excess of the minimum required. In this case, the Petitioner is seeking relief from the minimum required number of spaces. Therefore the asserted doctrine of *res judicata* is not applicable. *Whittle v. Board of Zoning Appeals*, 211 Md. 36, 45 (1956).

⁸ Similarly, the Association disregarded the Board’s Rules by attempting to have a representative testify without the necessary authorizations.

SUMMARY and CONCLUSION

Seminary Galleria is a shopping center that over the years has maintained a consistent mix of retail, commercial, restaurant, fitness, office and medical uses to serve the neighborhood in which it is located. The County Council recognized that certain properties could be improved with commercial uses and have insufficient commercially zoned land for required parking. To alleviate that inadequacy, parking can be approved in residentially zoned portions of the same property or **even across the street or alley in residential zones** upon the showing required by BCZR 409.8B.2. In this case, all of the requested parking is on the property now owned by Seminary Galleria, LLC.

As that same legislative body changes the zoning/parking requirements, when existing buildings, uses and centers seek needed future approvals, compliance with or relief from those new regulations must be obtained. It is not the tenant mix that drives the parking requirements on the subject property. Rather, it is the size of the previously approved and now constructed buildings within the shopping center. A substantial portion of the existing parking already exists in the DR zoned portion of the subject property. Clearly, as shown on Petitioner's Exhibit No. 1, commercial parking can exist within fifty feet of residential lots in the Garden Ridge Garden community to the east without detriment or complaint. The disputed spaces are significantly further away and down grade from the homes on the north side of Seminary Avenue.

The disputed spaces⁹ exist and they exist without objection by the Fire Marshal's Office or the Office of Planning. They can remain with the approval of the requested Use Permit and approval of the *Second Amended Parking Plan of the Galleria Tower*, Petitioner's Exhibit No. 1.

The evidence offered in opposition to the requested relief failed to address the relevant factors to be addressed by this Board. Those who oppose do so merely because they do not want to validate the small reduction of a portion of an existing, grassed area and they want aesthetic issues addressed. Neither is relevant to the requested relief that will permit a existing, viable shopping center to continue in operation without further construction or creation of impervious areas, despite having fewer parking spaces than required by current regulations. Certain of the Protestants even suggested that evergreen landscaping be installed parallel to Seminary Avenue in mitigation of the perceived impact of the construction/alteration of the disputed spaces.

All witnesses acknowledged that the disputed spaces are among the first to be occupied each day. Removal of the disputed spaces will result in permanent inconvenience and hardship to the very community members and tenants that they currently serve.

For all of the foregoing reasons, the requested Use Permit and approval of Petitioner's Exhibit No. 1 should be approved and the modified parking plan or the

⁹ The disputed spaces comprise approximately 4.1% of the front parking field.

variance should be approved to permit the existing parking spaces, including the disputed spaces, to remain.

Respectfully submitted,



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Attorneys for Owner/Petitioner

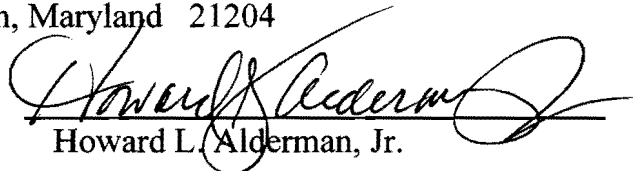
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of April, 2007, a copy of the foregoing Owner's Post-Hearing Memorandum, was mailed, postage prepaid, First Class United States Mail to the following:

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204

and to

Carole S. Demilio, Attorney at Law
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204



Howard L. Alderman, Jr.

4/30/07

RE: PETITION FOR SPECIAL
HEARING AND VARIANCE
NE/S of York Road corner; SE/S of
Seminary Avenue
(1447 York Road)
8th Election District, 3rd Councilmanic
District

Legal Owner(s): Seminary Galleria,
LLC by
Theresa Rosier, Authorized Member
Petitioners

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
*
* CASE NO. 06-411-SPHA

* * * * *

**MEMORANDUM OF DULANEY VALLEY IMPROVEMENT
ASSOCIATION, INC., PROTESTANT**

Now comes, Dulaney Valley Improvement Association, Inc., Protestant, by their undersigned counsel and submits the within Memorandum to assist the Board in reaching a decision in this matter.

THE PENDING REQUEST

Petitioner, the Owners of the Seminary Galleria, located at 1447 York Road, namely Seminary Galleria, LLC. petitioned the County for zoning relief as follows:

1. Special hearing relief under BCZR §500.7 for a use permit, under BCZR §409.8.B for commercial parking adjacent to existing commercial parking on the same lot proposed for residential zone, as shown and laid out on the plan from therein.
2. In lieu of that relief, Petitioner sought approval of a modified parking plan and modified parking and landscape and relief from any applicable RTA requirements.
3. Petitioner averred that the plan filed depicted current "as built conditions" as the second amended parking plan of the Galleria Tower.

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BALTIMORE COUNTY
BOARD OF APPEALS

4. An amendment to any and all prior plans filed in connection with the subject property, including without limitations, all plans in Case No. 4893XA, R3410, 95-256 XA, and all prior commercial parking and residential zone approvals.
5. Such additional relief as the nature of the parking and landscaping shown on Petitioner's plan may require.

Petitioner also requested variance relief from BCZR §409.6 to permit

1. 746 parking spaces in lieu of 1,059 spaces claimed to be required, without a shopping center provision or 746 parking spaces in lieu of 1,084 spaces required for a shopping center with more than 100,000 square feet of gross leaseable area.
2. Approval of a variance from applicable RTA for existing parking and improvements.
3. Such additional variance relief as the nature of Petitioner's request and the parking laid out on the plan may require.

Significantly, Petitioner failed to mention in its request for special hearing relief the preceding zoning case filed by it, known as 04-052 SPHA, nor was said case noted on Petitioner's plan. Also, the Petitioner's recitation of cases failed to mention 85-256 XA heard by the Board of Appeals October 9, 1986. In 85-256 XA, as in 04-252, SPHA, the property owner sought parking variances. In the earlier case, the Board of Appeals denied the variance request, finding that the Petitioners on their original site plan stated they could provide 631 parking spaces, therefore did not require a variance to provide fewer spaces. In 04-052 SPHA, Petitioner claimed consistently they required fewer parking spaces than were provided on site and sought the additional spaces as a "convenience." Case 04-052 SPHA was filed following Petitioner's receipt of a stop work order

issued it for a creation of new parking spaces on the Seminary Avenue side of its commercial buildings in DR zoned land, constructed without a building permit or zoning approval. All of Petitioner's requests in 04-052 SPHA were denied, by the decision of the Board of Appeals September, 2005, on remand from the Circuit Court for Baltimore County, which decision became final when the Petitioner filed the following appeal.

HISTORY OF THIS CASE FOR 06-411 SPHA

This matter was heard by the Deputy Zoning Commissioner in June, 2006 and the Deputy Zoning Commissioner subsequently issued an Opinion, expressing Findings of Fact and Conclusions of Law and Order, July 14, 2006, denying Petitioner's request for special hearing relief for commercial parking in a residential zone, as well as the Petitioner's request for approval of "as built conditions" on the second amended parking plan.

The Deputy Zoning Commissioner further denied all Petitioner's requests for variances. The Deputy Zoning Commissioner approved and granted special hearing relief to approve a modified parking plan of 750 parking spaces, subject to two conditions, as stated in the Order, namely, Petitioner shall eliminate the 14 parking spaces shown on Exhibit 1, highlighted in yellow and Petitioner shall not lease vacant space in any building until they have adjusted the tenant mix, so as to require no more than 1,049 spaces, as calculated by the BCZR. The Deputy Zoning Commissioner further granted the Petitioner's request to approve an amendment to any and all prior plans filed in connection with the subject property consistent with the Order.

Timely appeals were filed by the Protestants, DVIA to all relief granted by the Deputy Zoning Commissioner; as well as an appeal by the Petitioner of all zoning relief denied by the

Deputy Zoning Commissioner. This matter was then scheduled for hearing and hearing held before the Board of Appeals for Baltimore County on March 20 and March 21, 2007.

QUESTIONS PRESENTED

1. Are the Petitioner's continued efforts to disobey the law by repetitively seeking zoning relief for its past transgressions barred by the application of the doctrine of *res judicata*, based on the prior decisions of the Deputy Zoning Commissioner and Board of Appeals in Case 04-052 SPHA?

2. Are the Petitioner's requests for variances based on its actions in leasing out space to high-volume users of parking spaces to be denied as a self-created hardship, based on Petitioner's tenant selection?

3. Was there substantial evidence of chronic available parking spaces which the Petitioner deems, in the testimony of its witnesses, "inconvenient", as in the Case 04-052 SPHA, which confirms Protestant's position and the Board of Appeals Opinion in Case 04-052 SPHA, that the Petitioner suffers from a failure to manage its existing parking spaces prudently or effectively to support denial of both Petitions?

STATEMENT OF FACTS

Petitioner called three witnesses in support of its Petition. It's first witness, Bruce Doak, was qualified as an expert witness, and was accepted as such by the Board. Mr. Doak and his firm, Gerhold, Cross and Etzel had participated in Case 04-052 SPHA, as well as 06-411 SPHA, and had prepared the site plan and he testified he was familiar with the subject property. Mr. Doak testified on direct that prior to the preparation of his plan, he had taken the previous applications to the County and had performed some field measurements and had received new information from the

owner's management company. He further testified before the Board that his plan originally dated December 14, 2005 had been supplemented, based on information received from the Petitioner/Owner on March 19, 2007, just before the Board's hearing, noting changes in tenant information and parking tabulations.

He testified that the uses at the site were commercial and included retail, office, and medical. He testified that the property zoning lines were split-zoned BL and DR, exactly the same as it had been at the time of the hearing on 04-052 SPHA. He claimed that the fact that it was split-zoned and he knew of no similar commercial property that was split-zoned as a basis to find that the property was unique, under the Cromwell v. Ward standard.

Photos were introduced, showing areas of the parking lot at the Petitioner's site at different times. Mr. Doak, when asked when the changes occurred to the site's gross leaseable area, testified that, based on his calculations, the number of parking spaces that the Petitioner could provide today equaled 764, which he calculated as being short of the required parking spaces between 295 or 313 spaces. He identified on Petitioner's Exhibit 1, the 14 spaces highlighted in yellow, located and created in the DR 5.5 zone, which were built, according to his testimony, and knowledge by the Petitioner/Owner, without obtaining a permit or zoning approval in the DR 5.5 zone.

When asked how this need for a variance arose, in light of his testimony before the Deputy Zoning Commissioner and Board of Appeals in Case 04-052 SPHA, he testified that his information received from the owner in that case did not include an accurate listing of tenants or uses. He acknowledged, but did not explain, the failure to mention Case 04-052 SPHA in the Petition for zoning relief nor on his site plan, even though he had testified in that case before the Zoning Commissioner and the Board, and was familiar with that case. When asked on cross what use the

property owner would be left with on this property, if the variance relief were denied, he testified they can still operate their commercial facility, just not with the tenant mix which they had at present. He also testified what he described as the irregular shape of the Petitioner's property as creating zoning uniqueness, under the Cromwell v. Ward standard.

On cross-examination, he acknowledged and testified that he had not reviewed the 86-256 XA Case, in which the Petitioner's request for a variance had been denied. When asked, he was not sure if the Heaver Plaza property due South was split-zoned and what commercial uses were maintained in that property, although he acknowledged and was aware that it was one block away from the Petitioner's property on York Road.

The Petitioner's next witness, Theresa Rosier, who had testified in the 04-052 Case, testified she, at the time of the filing of the instant case, had been the property manager for this facility, but recently had been transferred from that position. She testified she had been, what she described as a direct asset manager for this property from 2002 through 2005. She testified in this case, as she had in the 04-052 SPHA Case, when shown her testimony from that transcript, that the management company had received complaints about parking from tenants and what she said were neighborhood folks on the north and west sides of the building.

She testified as to steps taken by the management to rope off certain parking on the parking lot between 7 to 10 a.m., which she testified helped substantially, however, she then testified when she visited she saw and heard from the tenants that they were up in arms and that people were driving through the barrier ropes. She testified that she was involved in the addition of the 14 spaces constructed without a permit in the DR Zone and that she "thought we were within our rights, " until an inspector came and told them differently after the construction had begun. Those

spaces, once created, have continued in existence and are in use at present. She testified they then filed for a permit, but were told to stop by Baltimore County, based on complaints of neighbors. She testified that a complainant named Richard Hurd was not here to testify before the Board on this appeal. She testified that the construction work was finished up and in her opinion, done tastefully and resulted in an increase in landscaping. She testified that the creation of those spaces, in her opinion, helped the parking situation because the complaints stopped.

She testified that it was human nature, in her opinion, that anyone would look for more convenient parking spaces and that the objection to the 14 spaces was trivial, in her opinion, because she thought it was mutually beneficial to the shopping center, as well as the neighbors. She introduced as Petitioner's Exhibit 6 and 7, letters of support from tenants and petitions in support of the Petitioner's request. When cross-examined, she acknowledged that she had testified in the 04-052 Case, that the spaces were created because the tenants would not park in the available spaces in the rear of the building or to the east of the building, which were generally available. She acknowledged on Protestant's photo exhibits the empty parking spaces, as well as unplowed snow covered parking spaces.

Petitioner's third witness was William Russell, who testified he had worked with Hill Management Services for 21 years in commercial leasing, including working with the management to lease up this property. He had knowledge of the creation of the 14 parking spaces in the DR Zone. He testified about on-going negotiations with the State Highway Administration to add a center turn lane on York Road, which he believed would not result in a permanent taking of parking but in the short term or temporary basis would result in losing the first row of parking on the York Road side of the property during the construction, from Seminary to the first entrance, for

approximately 16 of 20 existing spaces. His duties and responsibilities had to do with new development and new acquisitions, as well as dealing with existing property, such as the Galleria, for Hill Management. He was generally aware of the issue of parking and the ongoing problems at Galleria regarding parking. He was aware that the owners of the property made a decision to install the additional parking in the front in the DR zone and he testified of his awareness of complaints from guests and patrons about inability to find a parking space. He felt that the parking spaces added had improved the situation. When asked, on cross-examination about the tenant mix, he testified he was aware that the tenant mix had changed over the years, particularly in the Galleria Towers, to more medical use tenants from general office tenants, who required more parking spaces.

Protestants called two witnesses in opposition, in addition to submitting themselves or through Deputy People's Counsel, the prior case decisions and information for Case 86-256 XA and Case 04-052 SPHA. Protestant's witnesses included Larry Townsend, who testified, after submission of Rule 8 documentation papers, in conformance with the Board of Appeals Rules, as President of the Dulaney Valley Improvement Association, Inc. Mr. Townsend testified that the community association position espoused in Case 04-052 SPHA had remained the same, namely that it favored the retention and recreation in this case, of the green buffer provided, under prior zoning lines of provision and decisions in the DR zoned property adjacent to Seminary Avenue, prior to the unlawful construction without permit of the additional spaces by the owner of the property.

During Mr. Townsend's testimony, he marked the outline of the perimeter of the Heaver Plaza property, which was split-zoned BL and DR 5.5, as well and testified as to the numerous commercial uses in the Heaver Plaza. He further testified as to his frequent patronage of the

Galleria Shopping Center and the fact that he has never had trouble finding a parking space when he visited the property during busy times, as well as less busy times. He testified as to Protestant's pictorial exhibits showing the unused and snow covered parking spaces which had been acknowledged by Ms. Rosier when cross-examined, showing current conditions at the property. He further testified that the owner's failure to force the utilization of those under-utilized parking spaces made the Petitioner's request for parking spaces out front one of convenience, rather than necessity. He stated that the position of the Dulaney Valley Improvement Association was to oppose, once again, the Petitioner's request on the basis that any problems at the site were the result of a self created hardship, which was created by the Petitioner's leasing out its property as it did over the years, rather than something which would legitimately justify variance relief. He did not consider Petitioner's property to be in any way unique from a zoning sense.

Protestant's second witness was Richard Hurd, the resident of 16 E. Seminary Avenue for many years. He identified photos showing the view from his house over to the Petitioner's property. Those photos indicated a situation which he described, of the health use clinic tenants on the Petitioner's property had held a vaccination or flu shot offering as a drive through event on the weekend and he identified the pictures showing the back-up of cars on the site and the effect that had on blocking access on Seminary Avenue from his property and other adjacent properties.

He further confirmed that the Protestants' pictures accurately showed the general availability of numerous parking spaces to the rear of the Galleria Towers building, as well as to the east of that building. He authenticated other pictures showing the operation of a portable or traveling auto detailing business in the parking lot on the weekends, which he had complained about to the tenant, as well as the management company.

He testified as to pictures taken, as well, at the time of the owner's construction of the parking spaces without a permit by the Petitioner, as legal owners and that his complaints to management went unanswered. When that happened, he contacted the County and ultimately the County issued a stop-work order. He testified as to the effect on his quality of life in the neighborhood by the lights shining in the cars parked in the DR zoned land and as to the trees, which had been cut down by the Petitioner, in the Fall of 2006, which had provided some measure of shading. He also testified that the spaces created by the Petitioner were filled up on a regular basis early in the morning on weekdays, which indicated to him that they were being used, not by customers, but by employees, because the retail businesses would not be open at that early hour.

He expressed his opinion that the Galleria had been a bad neighbor to the community, because it had dug up the DR 5.5 land and put in parking spaces without a permit and without getting zoning approval. He questioned why those spaces continued to exist in light of the decision rendered in prior Case 04-052 SPHA at the present.

1. Are the Petitioner's continued efforts to disobey the law by repetitively seeking zoning relief for its past transgressions barred by the application of the doctrine of *res judicata*, based on the prior decisions of the Deputy Zoning Commissioner and Board of Appeals in Case 04-052 SPHA?

The Petitioner's requests in this case had already been presented and decided, adversely to Petitioner, in Case 04-052 SPHA and are subject to the application of the doctrine of *res judicata*. By simply reviewing the prior decisions of the Board of Appeals in Case 04-052 SPHA, Seminary Galleria, LLC, before and after the remand from the Circuit Court, the Board could not have been more clear in its Findings of Fact and Conclusions of Law, in denying the Petitioner's relief. The

Board found the Petitioners did not meet the standard of undue hardship, because of the existence of numerous parking spaces that often go unutilized. That Board also concluded that the additional parking was being sought by the Petitioner for the sake of "tenant convenience" which the Board did not feel was supported by statute. That condition continues even in the testimony of Petitioner's witnesses, in the current case. The Board properly concluded that the additional parking would violate BCZR 502.1 in that it would be detrimental to the health, safety or general welfare of the public. In the Board's supplemental Opinion, after remand from the Circuit Court, in an Order signed September 19, 2005, the Board again denied both the special hearing relief and the variance relief. The Board focused on the testimony of the Petitioner's own witnesses, that the relief requested was not due to a shortage of parking spaces, but was for the convenience of tenants, citing Bruce Doak, the surveyor and Theresa Rosier, the asset manager, by name. Those conditions and testimony are repeated in the instant case. The Board further confirmed that the BCZR §502.1 requirements were not met, which is of course the burden of the Petitioner to show that the proposed use would not be detrimental to the health, safety or general welfare of the public.

The Board cited the same reasons presented by the Protestants in the current case, namely that the parking spaces created were located in the DR 5.5 zone and that they encroached into the buffer area closing in on the settled residential neighborhood and they interfered with a designated fire lane. That decision of the Board of Appeals was never appealed and became the final judgment in that case.

However, soon thereafter, with the preparation of the surveyor's December 14, 2005 plan, the Petitioner's filed for relief, essentially now saying that they had not been candid with the Deputy Zoning Commissioner or the Board in the prior case and then Petitioner's now claim to lack

somewhere between 295 and 313 spaces below what they should have for parking spaces. They claimed, in their testimony in the current case, that this situation had existed for many years at the site. Therefore, Petitioner's credibility was placed in issue before this Board, as before the Deputy Zoning Commissioner, based on their prior testimony and representations to the same bodies in Case 04-052 SPHA. Notwithstanding that, what is common to both cases are the photographs which show the continued existence of ample unused parking spaces on Petitioner's site. Similarly, Petitioner's witnesses again spoke of the convenience of these spaces and did not, because they could not, bring any evidence showing that the Petitioner's ability to utilize this site would not yield a reasonable return, under its current zoning and use, if its zoning relief sought were not granted.

Then, as now, the Petitioner's problems were self-inflicted and self-created by its choices in the change of the tenant mix from a situation where Petitioners claimed that they had more than the required spaces, while in Case 04-052 SPHA, in the present time frame, claiming that they had been short by hundreds of spaces for years. They are, as owners of the property, responsible for using it in accordance with the zoning regulations.

On the issue of *res judicata*, without repetition, Protestants incorporate the position of People's Counsel on *res judicata*, as stated in their Memorandum.¹ *Res judicata* should be applied in this case because the same facts and circumstances which were present at the time of the 04-052 SPHA case on Petitioner's site are present today, including the available unused parking spaces, as well as the convenient parking spaces built without permit or approval in the DR5.5 zone. The audacity of the Petitioner to appear before this Board and testify as to its lack of candor in its prior sworn testimony before the Board, while acknowledging that the reasons why the Board turned it down before, for failure to properly manage its parking assets continue unabated. Those are the

same facts exacerbated, if at all, by the property owner's decisions in leasing out to medical clinics, exercise centers and other high volume traffic creators for its site. It is breathtaking how the Petitioner acts as if it is above the law, while seeking zoning relief and ignoring the prior final decision of the Board of Appeals in Case 04-052 SPHA. Whittle v. Board of Zoning Appeals, 211 Md. 36, 45, quoted in Woodlawn Area Citizens Association v. Board of County Commissioners, 241 Md. 187 (1966). The Petitioner's (emperor's) new clothes is the Petitioner's (emperor's) new plan. Having lost on the facts previously, it now seeks to fess up to its lack of candor and claim it really does need additional spaces, without ever acknowledging that it, as Landlord, created the problem. In order to decide whether *res judicata* should apply, the Board should properly compare the prior Decisions and the testimony of Petitioner's witnesses, particularly when confronted with their similar testimony in the 04-052 SPHA on the matter of convenient parking, so that the Board can determine whether *res judicata* should apply. The current case, as the People's Counsel maintains, is a repetition of the prior case. In any event, the circumstances are self-created by the Petitioner. The frustration expressed by the Deputy Zoning Commissioner in his Findings of Fact and Conclusions of Law, with the actions of the property owner, should be felt by this Board, as well. The emperor's charade should end.

The prior Board's denial of the request for the 14 parking spaces in the DR zone created in the 2004 case should be significant to the Board, who in considering the Decision of Case 04-052 SPHA will find that the same Petitioner, then as now, did not calculate parking on its site plan to reflect the current conditions. Rather, in its current plan, it asked the Board, after the Deputy Zoning Commissioner failed to do so, to bless the existing conditions. The existing conditions on the site reflect the continued existence of parking spaces created without permit or without zoning

approval and in the face of zoning denial in Case 04-052 SPHA. Enough should be enough. Issues litigated in this case were already litigated in the first case, 04-052 SPHA, Maryland Digest Judgment, §540, quoting Jack v. Foster Branch Homeowner's Association #1, Inc., 53 Md.App. 325 (1982). See also Roberts v. Gates, 24 Md.App. 374 (1975). What the Petitioner has in its evidence presented does not show a change in circumstances, as much as a change in strategy. Having lost on its prior strategic claim, which did not acknowledge the self-created hardship by leasing out space for which required parking was not provided by the Petitioner, the Petitioner acknowledges, through its witnesses, that the under utilized parking spaces remain and its claim or justification for the spaces it was denied previously are there for the convenience of its tenants.

The claim of Mr. Doak that the property is unique are the same reasons that he cited and the Board was not persuaded by in Case 04-052 SPHA, namely that the site had an irregular shape and was split-zoned. What was different this time is that even though Mr. Doak did not bother to read Case 86-256 XA, the Board was presented with that case, which illustrates that the under-utilized parking existing today was created following the denial of the variance in that case.

Further, the Heaver Plaza property, within a block of the Petitioner's property is also split-zoned DR 5.5 and BL and contains a restaurant, a commercial bank, and other commercial tenants, so it could not be more similar than Petitioner's property and certainly within the same neighborhood. Petitioner's property remains short on proof that it meets the test of unique set forth in Cromwell v Ward.

2. Are the Petitioner's requests for variances based on its actions in leasing out space to high-volume users of parking spaces to be denied as a self-created hardship, based on Petitioner's tenant selection?

Petitioners boldly, and without benefit of a permit, bulldozed DR 5.5 land to create ten more parking spaces adjacent to the entrance way from Seminary Avenue, which is a fire access lane, in blatant violation of BCZR §409.4.B. The Board should properly weigh the nature of the Petitioners' request and the testimony and exhibits, and should conclude, as did the Deputy Zoning Commissioner previously, that the impact on the community, under BCZR §409.8.E.1.e(2) militated in favor of denial of the petition. As this Board previously found in the 04-052 SPHA case, the construction of the parking spaces which backed up into the fire lane would violate BCZR §409.8.B.1.e(4) as "detrimental to the health, safety, or general welfare of the surrounding community.

The special hearing relief of the Petitioners amounts to a request to bless, after the fact, the unauthorized illegal acts of the Petitioners, to provide what they termed "more convenient parking" for their tenants, employees, and patrons of this highly profitable center. There is no evidence or even a claim by the Petitioners that they are denied a reasonable use of the property, under the prior approved site plan or that they are having trouble attracting tenants because of site-specific circumstances, in order to justify special hearing relief of the type requested. Even more galling to Protestants, Petitioner's current case essentially claims they have cheated on not providing required parking, while changing the tenant mix with new leases to reflect higher parking use medical offices in greater numbers at this center.

On the other hand, Protestant's witnesses testified that the approval of the special hearing relief would be zoning by forgiveness, as to not only the 14 spaces built previously, but also as to the Petitioner's leasing decisions. The complaints of the residential neighbors supported their

characterization of the Petitioners as a bad neighbor, based on the unauthorized dumping of large volumes of snow on their properties by the center, again for its convenience; as well as the effect on the residential quality of life that would be created by bringing the headlights, car engine noise, and parking lot, up to the edge of the Petitioners' property line on Seminary Avenue. When the Board weighs the requests of the Petitioners against the objections of the Protestant, the Board will certainly consider the fact that there are, beyond dispute, a substantial number of unused parking spaces on Petitioners' existing parking lot, which if utilized through better management by Petitioners, would obviate their request for this additional parking. The situation in this case is the polar opposite, factually of the case Marek v. Baltimore County Board of Appeals, 218 Md. 351, 146 A.2d 875 (1958). In that case, the Board of Appeals had granted off-street parking permits to beach owners, who operated their beach as a non-conforming use in a residential zone. That Order was affirmed by the Circuit Court for Baltimore County and by the Court of Appeals, construing the Baltimore County predecessor language to BCZR §409.8, then described in BCZR §409.4, which language is very similar to the current statute. The Court of Appeals concluded there were eight conditions which must be observed as a condition precedent to the granting of the permissive use. Marek, supra @ 357. The Board, in granting the permit in that case, stated its justification for its grant:

“Many problems of public health, traffic congestion, and expansion of the business under non-conforming privileges were considered carefully by the Board and a decision to grant the use permit and variance was made to most sensibly meet conditions, therefore the petition is granted with the following restrictions... Marek, supra @ 359.

As part of its holding, the Court of Appeals found, in affirming the Circuit Court decision appeals held:

“Clearly it is the purpose of this section to provide for unusual conditions that may appear in a certain case, as in this one, which justified the lifting or easing of general restrictions in order to permit the use of land, if the public will be benefitted, in a manner contrary to the general restrictions. The Zoning Commissioner may not be arbitrary in his action. If the general public good appears to be clearly attained by the granting of the permit, then he must grant it. If not, then he must refuse it. But, as has been said, he may not be arbitrary or capricious in the exercise of his judgment. Marek, supra @ 359-360.

Not one witness in this case testified that Petitioner’s lot was full, or that between 50 to 150 unutilized spaces were available in the southeast portion of the Petitioners’ parking lot at all times. There is, therefore, neither necessity nor reason to support the Petitioners’ request to invade the only DR 5.5 green land remaining on its site, merely because it wants to do so. Here, as in Ad+Soil, the only hardships, are of its own making. Ad+Soil, Inc. v. County Commissioners, 307 Md. 307, 513 A.2d 893 (1986). Cromwell supra @ 709.

In deciding this case, the Board’s action will be reviewed, if at all, under the standards set forth in Red Roof Inns, Inc. v. Peoples’ Counsel, 96 Md.App. 219, 224, 624 A.2d 1281 (1993), wherein the Court said:

“In reviewing the zoning authorities decision, the Court must consider all of the evidence in the administrative record. The reviewing Court’s role, however, is confined to determining the legality of the procedure employed, and whether the decision was fairly debatable, in light of the evidence adduced before the zoning authority.” Cromwell supra @ 709.

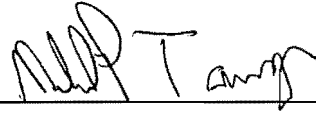
3. Was there substantial evidence of chronic available parking spaces which the Petitioner deems, in the testimony of its witnesses, “inconvenient”, as in the Case 04-052 SPHA, which confirms Protestant’s position and the Board of Appeals Opinion in Case 04-052 SPHA, that the Petitioner suffers from a failure to manage its existing parking spaces prudently or effectively to support denial of both Petitions?

We incorporate the argument regarding additional parking spaces presented as part of the self created hardship in answer to Question 2 above. Additionally, the Protestant's photographic evidence clearly demonstrates the existence of spaces which are always open for use on the Petitioner's site. Petitioner's witnesses acknowledge those spaces, but merely said they were not in a convenient location or where their customers or tenants would use them. That is a management failure, because the spaces are there and are just not utilized. It is certainly within the control of a Landlord, as to its right to direct its tenants or visitors to its property where they must park. The Petitioner in this case has acknowledged that it has attempted and given up on trying to accomplish that very straight-forward task. There are no reported decisions which would support the Petitioners' requests for granting a variance from parking requirements, when there are under or unutilized parking spaces. That is notwithstanding the Petitioner's making intentional decisions to lease space in its property to users who require more parking spaces than the Petitioners provide. The Petitioners, on the one hand, are now telling the Board that they are 300 spaces short, while the pictures, which the Board has received in evidence, show notwithstanding the Petitioner's claim, that there are an abundance of available parking spaces to meet the demand, if utilized. The Petitioner's decisions on leasing to tenants also needs to change, to accommodate its responsibility to operate its property in accordance with existing law.

CONCLUSION

The Board of Appeals is respectfully urged to deny the Petitioner's requests for zoning relief.

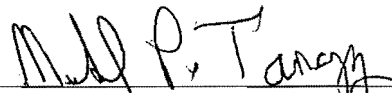
Respectfully submitted,



MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823
Attorney for the Protestant
Dulaney Valley Improvement Association, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 30th day of April, 2007, a copy of the foregoing was mailed first-class, postage prepaid to Howard L. Alderman, Jr., Esquire, 8th Floor, Nottingham Centre, 502 Washington Avenue, Towson, Maryland 21204-4525, Attorney for the Petitioners and to Carol S. Demilio, Esquire, Assistant Deputy, Peoples' Counsel for Baltimore County, Room 47, 400 Washington Avenue, Towson, Maryland 21204.



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Towson, Maryland 21204
(410) 296-8823
Attorney for the Protestant
Dulaney Valley Improvement Association

LAW OFFICES
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(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827
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April 30, 2007

VIA HAND-DELIVERY

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

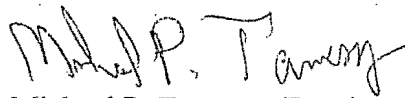
Re: Case No. 06-411-SPH

Dear Kathy:

Per the instructions of the Board of Appeals, enclosed herewith please find the Protestant's post-hearing Memorandum, original and three copies, for filing in this matter.

Please advise us of any dates set for the deliberation.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/cbl

Encl.

cc: Dulaney Valley Improvement Association
People's Counsel
Attn: Carole DeMilio, Esquire
Howard L. Alderman, Jr., Esquire

RECEIVED
APR 30 2007

**BALTIMORE COUNTY
BOARD OF APPEALS**

Page Two
Melanie Grumble-Sears
April 27, 2007

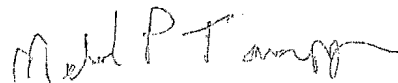
has demanded of, and received from, the maker or drawer collection costs exceeding Thirty-Five Dollars (\$35.00).

It shall be a complete defense to any action brought under Sec. 15-802 of the Commercial Law Article by a holder to whom a dishonored check or other instrument was issued that the dishonor of the check or other instrument was due to a justifiable stop payment order or to the attachment of the account.

PLEASE NOTE THAT THIS IS AN ATTEMPT TO COLLECT A DEBT UNDER THE FAIR DEBT COLLECTION ACT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

I look forward to hearing from you soon.

Very truly yours,


Michael P. Tanczyn, Esquire

MPT/cbl
cc: Mr. and Mrs. Morris Lohmeyer

4/30/07

RE: PETITION FOR SPECIAL HEARING
AND VARIANCE

NE/S of York Road corner; SE/S of Seminary Ave *
(1447 York Road)
8th Election District, 3rd Councilmanic District *

Legal Owner(s): Seminary Galleria, LLC by *
Theresa Rosier, Authorized Member *
Petitioners *

BEFORE THE

COUNTY BOARD OF APPEALS

FOR

BALTIMORE COUNTY

Case No. 06-411-SPHA

RECEIVED

APR 27 2007

* * * * *

BALTIMORE COUNTY
BOARD OF APPEALS

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

People's Counsel's Position

"Justice requires that every cause be once fairly and impartially tried; but the public tranquility demands that having been once so tried, all litigation of that question and between the same parties should be closed forever." Maryland Digest, Judgment Section 540 quoting McKinzie v. Baltimore & O.R. Co. 28 Md. 161 (1868).

This case is the latest in a long line of attempts by this property owner to circumvent Baltimore County parking requirements for its commercial office buildings at York Road and Seminary Avenue. The property owner refuses to operate the facility within the parameters of the existing 728 parking spaces. There has been no testimony that the parking is inadequate for the square footage of the office buildings on the site. Instead, the owner's deliberate tenant selection and its failure to fully utilize the ample surface and deck parking on the southern end of the site have caused its predicament, not Baltimore County zoning regulations, nor the residential neighborhood to the north.

The case is also particularly egregious because of the legal manipulations here to circumvent the CBA's and Circuit Court's denial of the very same relief in Case # 04-052-SPHA, hereafter "2004 case". This Board should not allow itself to be tricked by Petitioner's self-serving, unfounded distinction between the type of relief requested in the 2004 case and the

instant case. The excerpts from the Petitions filed show the relief requested in this 2006 case is indistinguishable from the relief in the 2004 case:

2004 Petition for Special Hearing for “*why the Zoning Commissioner should approve*”: [1] in accordance with BCZR § 409.8B, commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the plan field herewith; [2] in lieu of the companion variance requested herewith, approval of a modified parking plan and modified parking and landscape requirements for the proposed parking areas in accordance with the specific detail shown on the Plan field herewith; [3] the Plan filed herewith as the 3rd Amendment to the CRG for *The Galleria Tower and The Galleria*; and [4] such additional relief as the nature of the parking shown on the accompanying plan may require.”

2006 Petition for Special Hearing for “*why the Zoning Commissioner should approve*”: [1] in accordance with BCZR § 409.8B, a use permit for commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the plan field herewith to meet to the extent possible, utilizing all existing parking spaces, the minimum parking requirements of BCZR § 409.6; [2] in lieu of the companion variance requested herewith, approval of a modified parking plan and modified parking and landscape requirements for the existing parking spaces and areas in accordance with the specific detail shown on the Plan field herewith in lieu of the minimum requirements of the BCZR; [3] the Plan filed herewith which depicts current, as-built conditions as the 2nd Amended Parking Plan of The Galleria Tower; and [4] such additional relief as the nature of the parking and landscaping shown on the accompanying plan may require.”

2004 Petition for Variance for “In the event that the requested modified parking plan is not approved: [1] a variance from BCZR § 409.8 to permit parking spaces to be located within 10 feet of the right of way of a public street utilizing existing landscaping; and [2] for such additional relief as the nature of this request and the parking layout on the Plan filed herewith may require.”

2006 Petition for Variance for “In the event that the Second Amended Parking Plan of The Galleria Tower depicting current, as-built conditions on the subject property is not approved as a modified parking plan pursuant to a companion Petition for Special Hearing: [1] a variance from: BCZR § 409.6.A to permit a total of 746 parking spaces in lieu of: i) the 1059 spaces required [w/out shopping center provision] or ii) the 1084 spaces required for a shopping center with more than 100,000 square feet of GLA; and [2] for all such additional variance relief as the nature of this request and the parking layout on the Plan filed herewith may require.”

To get around the 2004 CBA and Circuit Court denials, Petitioner now claims that case was for an amendment to the earlier plan, while the current case presents a new plan, a

“distinction without a difference.” It’s an affront to suggest the CBA should be blind to the 2004 case. The relief is the same: Petitioner requests a use permit for parking in the long-standing D.R. portion at the northern end of the site. Petitioner appears to create a parking deficiency by signing on tenants without regard to the parking requirements under BCZR 409, in order to qualify for the use permit in the D.R. zone. In other words, Petitioner proceeds backwards – first it signed up tenants, then sought zoning relief for the parking deficiency it created by the very terms of the lease.

It is ironic that in both the 2004 case and the current case, Petitioner claims to fret about tenant and customer complaints over lack of parking, yet it continues with audacity to rent to high traffic tenants first, and seek variance relief after the fact. Petitioner created the so-called deficiency and continues to exacerbate the parking violation. Moreover, Petitioner claims it may have actually been in violation of the minimum parking requirements for some time, yet expects the CBA to not only condone this but reward it with expansive parking relief in the D.R. zone. The entire tone of the 2004 case was that the Petitioner exceeded the number required under “the Plan”. Its actions in 2004 are shameful. Either the property owner knew it was in violation but did not want to risk a variance for so many spaces along with seeking business parking in the D.R. zone; or, it negligently and carelessly relied on an outdated plan without regard to the applicable regulations. When the 2004 decision pointed out that relief for business parking in a residential zone was only available if a parking deficiency existed, Petitioner realized it was defeated by its own slyness. Its response is to mask the same relief under a “new plan.”

Either scenario, coupled with Petitioner proceeding in 2003 to install parking without a permit in clear violation of the Plan and zoning requirements, and its failure to cite the 2004 case on the current plan, is troubling. In order to circumvent the hurdle of *res judicata*, which

prohibits retrying the same case, Petitioner makes the senseless argument that the 2004 case was for an amendment of the prior plan while the current case is for a new plan. But the relief is the same because nothing has changed at the site. In other words, the location and number of parking spaces are identical in 2004 and today. The CBA cannot reach a different decision on the same evidence. The doctrine of *res judicata* is actually based on fairness and finality of judicial decisions. It is easily understood in that context as explained by the Court of Appeals:

“The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions. * * * This rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at the opposite conclusions on substantially the same state of facts and the same law.” *Whittle v. Bd. Of Zoning Appeals*, 211 Md. 36, 45. quoted in *Woodlawn Area Cit. Ass’n v. Board of County Com’rs*, 241 Md 187 (1966), attached. (emphasis added).

If Petitioner’s parking was deficient in 2004, but it claimed it met the parking requirement, *res judicata* prohibits a second bite at the apple to retry the case and correct the mistakes made at the hearing. Otherwise, why have a specific amount of time to take an appeal, or an appellate process, if the losing party can simply refile for the same relief under a “new” plan. Petitioner cannot evade the doctrine of *res judicata* because he chooses to call this action a “new” plan while the identical relief was requested in 2004 under an “amended” plan. The current case could just as easily be labeled as an “amended” plan and the 2004 case could have been labeled a “new” parking plan – either way the relief reverts back to the original development of the site *vis a vis* the current parking regulations in BCZR. The labels are merely Petitioner’s angle to avoid application of *res judicata* and to disguise its own actions, which are the sole cause of the parking deficiency.

The very nature of the principle of *res judicata* requires a review of the earlier case and the claims made. It would be patently unfair and in complete disregard of applicable legal principles to prohibit PC and protestants from comparing the relief in the current case to the 2004 case. How else could *res judicata* be applied?

In summary of PC's position, the current case is a repetition of the prior case. The circumstances are self-created. This Board should not reward a recalcitrant property owner with expanded parking in the residential buffer zone and a variance for a deficiency recklessly created by tenant selection. This charade must end.

Facts and *Res Judicata* Argument

Chronology

1955 – Use permit issued by Zoning Commissioner Wilsie Adams for commercial parking in the residentially zoned part of the site (Protestant's Exhibit # 5).

1983 – Confirmation of the 1955 use permit, with restrictions, by Zoning Commissioner William Hammond (Protestant's Exhibit # 5).

1986 – Second Amendment and parking addition plan – “728 required, 734 existing,

2003 – Third Amendment of the plan (2004 case) – Petitioner used the Plan from the Second Amendment in 1986 and marked up as a separate entry on the Plan – 728 required, 734 existing, 30 proposed. (see attached); the proposed were denied by the CBA and decision remanded by the Circuit Court, and again denied on remand by the CBA. (PC Exhibit # 3).

2005 – Second Amendment of the plan seeking 14 of the 30 spaces requested and denied in the 2004 case, and reconfiguring the parking calculations. (Pet. Exh #1)

It is important to review the history and prior decisions for the site in this case because Petitioner cannot ask for the same relief and call it a “new” plan in order to overcome the denial of the 14 parking spaces in the 2004 case. *Res judicata* bars this Board from approving a use permit for these 14 parking spaces in the instant case. It is also important to know some details about the current leases because Petitioner now claims the site requires 1000 parking spaces. Petitioner was required to recalculate the parking in the 2004 case – the site plan submitted in

that case must reflect current conditions on the site. **BCC 32-4-224 Required Development Plan Information** states the requirements for a site plan at 32-4-224 (a) (15):

“(15) A chart indicating:

(i) Required and proposed area of open space and parking spaces; (emphasis added).

If Petitioner failed to do so in 2004 either to shortcut the process or to avoid the need for a variance then, it is barred from filing a new case on the same issues to support another attempt for a use permit for business parking in the residential zone.

“Rule of res judicata is that judgment between same parties and their privies is a final bar to any other suit upon same cause of action, and is conclusive, not only as to all matters that have been decided in original suit, but as to all matters which with propriety could have been litigated in first suit.” (emphasis added) Maryland Digest, Judgment Section 540 quoting Jack v. Foster Branch Homeowner’s Ass’n No. 1, Inc. 53 Md. App. 325 (1982). See also Roberts v. Gates, 24 Md. App. 374 (1975).

If Petitioner claims the deficiency arose since the earlier case, it has the burden to prove a change in circumstances to overcome the *res judicata* bar. Without such evidence this Board would be acting arbitrarily and capriciously if it granted relief. There was no evidence in the instant case that the parking deficiency occurred since 2004 and moreover, this is the precise reason why Petitioner did not want to produce the tenant leases. If it should have produced evidence showing the deficiency in 2004 but failed to do so, it cannot now retry that issue under the guise of a “new plan” in a new case.

There is no doubt the same relief is requested. In its remand Order of September 19, 2005, the CBA noted on page 3:

“ The Zoning Commissioner denied all the Appellant’s requests, as did this Board on appeal in a decision issued on September 21, 2004. Petitioners now seek only approval of the 14 spaces which were already constructed and elected not to appeal the Board’s decision to deny the request for variance to allow the additional 16 spaces.”

On page 4 of its Supplemental Opinion, the CBA also found the Petitioner failed to satisfy the provisions of 502.1 for the use permit. It concluded on page 5 with these words: **"The Board finds that the construction of these spaces without the proper authorization is detrimental to the health, safety and welfare of the neighborhood."** At the very least, Petitioner must show a *change in circumstances* to justify a request for the same relief. On the contrary, the only difference is that Petitioner now claims it has a parking deficiency which would qualify it for the use permit under the terms of the statute; however, it failed to meet the burden of proof that the relief "will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations." Bruce Doak may have given perfunctory answers to the provisions of 502.1. His testimony failed to meet the standard that an expert's opinion must be based on sufficient facts and sound reason. In a zoning reclassification case, the Court rejected superficial testimony from an expert: **"A self-evident reason for rejecting as an effective catalyst an expert opinion that a mistake was made is the fact that the opinion is merely conclusory or is, at best, quasi-conclusory."** People's Counsel v. Beachwood 107 Md. App. 627, 650-61 (1995), cert. denied 342 Md. 472 (1996).

Nor did Mr. Doak show how the conditions have changed since the CBA considered the issue in 2004. A change in circumstances is required. The Court in Woodlawn, *supra*, 156 quoting Whittle, *supra* stated:

"Neither neighborhood sentiment nor the slight distinction created by the additional restrictions were deemed to amount to a substantial change in circumstances. In conclusion we held:

"Because essentially the same facts appeared in the second case as appeared or as could have been shown in the first case, the appellees are barred by *res judicata*, and their petition should have been denied." (citations omitted)

As to the variance, Mr. Doak addressed why he thought the property was unique – essentially because of its shape and split zoning. The witness admitted he presented the same criteria to this Board in 2004, where the variance was denied and not appealed by the Petitioner. Petitioner presented no new evidence that would authorize this Board to reverse its prior findings on the variance. To grant a variance relying on the same criteria of uniqueness that were rejected in the 2004 case would be arbitrary and capricious. This prohibition against arbitrary and capricious action by a judicial agency, such as the CBA, is the basis for the doctrine of *res judicata*, which prohibits retrying the same case.

Res judicata and *collateral estoppel* bar a subsequent attack upon an existing administrative decision. *Res judicata* generally involves the same parties in both the prior and current case; *collateral estoppel* involves the same cause of action, even if the parties are not the same.

“The cause of action is the same when the evidence will support both actions; or rather the judgment in the former action will be a bar, provided the evidence necessary to sustain the judgment for the plaintiff in the present action would have authorized a judgment for him in the former.’ *If this identity of evidence is found, it will make no difference that the form of the two actions is not the same.*” Klein v. Whitehead, 40 Md. App.1, 18 (1978).

“*Res judicata* has three elements: (1) the parties in the present litigation should be the same or in privity with the parties to the earlier case; (2) the second suit must present the same cause of action or claim as the first; and (3) in the first suit, there must have been a valid final judgment on the merits by a court of competent jurisdiction.”

Maryland Digest, Judgment, Section 540 quoting FWB Bank v. Richman, 354 Md. 472 (1999).

“Doctrine of *res judicata* is intended to prevent multiplicity of litigation and to avoid vexation, costs, and expenses incident to more than one suit on same cause of action.” . . . “*Res judicata* principles are justified on sound and obvious principle of judicial policy that losing litigant deserved no rematch after defeat fairly suffered, in adversarial proceedings, on issue identical in substance to the one he or she subsequently seeks to raise.” Maryland Digest, Judgment, Section 540 quoting

Maryland State Dept. of Educ. V. Shoop, 119 Md App. 181, cert denied 349 Md. 495. (1998).

Both *collateral estoppel* and *res judicata* apply to administrative hearings.

“Agency findings made in course of proceedings that are judicial in nature should be given same preclusive effect, under principles of *res judicata* or *collateral estoppel*, as findings made by court.” Maryland Digest Administrative Law Section 501 quoting *Batson v. Shiflett*, 325 Md. 684 (1992). See also *Mills v. Freeman*, 294 F. Supp. 119 (1968).

Here, the Circuit Court also agreed with the decision of the CBA in the 2004 case, remanding only for more explanation or amplification to support its decision. This review by the Circuit Court solidifies the application of *res judicata* and *collateral estoppel*:

“Application of collateral estoppel is particularly compelling with respect to administrative proceedings when administrative action based on administrative findings has been appealed to court of general jurisdiction and affirmed.” Maryland Digest, Administrative Law, Section 500 quoting *In re McCown*, 129 B.R. (1991) (Bankruptcy Court, D. Md.).

The Petition Must Be Denied On The Merits

There is no evidence to support the expansion of parking into the residential zone. Petitioner created the single reason for the parking shortage at the site by admittedly entering into leases with medical offices knowing such uses require additional parking under BCZR and generate a higher volume of traffic. It is undisputed there is ample parking for general offices under BCZR 409.6 (3.3 spaces per 1000 sq. ft.). Instead, the Petitioner chose to lease space for medical offices, which require 4.5 per 1000 sq. ft. (BCZR 409.6).

The limited exception for commercial parking in the residential zone under BCZR 409.8 B is a hardship provision strictly applied. It does not create *carte blanche* for commercial property landlords to circumvent the purpose of the zoning regulations:

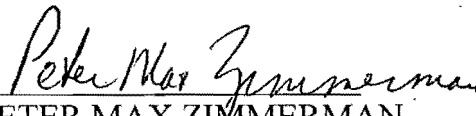
“BCZR 409.1. Applicability:

A. All structures and uses established hereafter shall provide accessory off-street parking and loading in accordance with the following regulations. When an existing structure or use is enlarged, accessory off-street parking and loading shall be provided in accordance with the following regulations for the area or capacity of such enlargement.”

Here, Petitioner was well aware from the 2004 case that the CBA and Circuit Court denied expansion of parking into the D.R. portion of the site. Petitioner argued for parking along Seminary Avenue in the 2004 case because allegedly tenants and guests preferred to park in the upper lot, although ample parking existed on the south side of the property. Thus Petitioner was aware of the prohibition to expand parking in the residential zone and its own tenants’ parking habits, yet deliberately chose to lease to medical offices. There are no unusual aspects of the site itself that would support the expanded parking.

In addition to applying the special exception standards to determine the merits of the relief for expanded parking in the residential zone, the CBA must also weigh the property owner’s position with the following standards: (i) the degree of impact on the surrounding community; (ii) the inconsistency with the D.R. zone; and (iii) the spirit and intent of the limited relief under BCZR 409.7 B. for a use permit for business parking in the residential zone. Not only is the alleged parking shortage self-created by the property owner here, but the witnesses opposing the use permit explained the adverse effect on the neighborhood and the community. Clearly, the property has been split-zoned for many decades. The logical assumption is that the County Council intends to maintain a buffer along Seminary Avenue for the residential neighborhood to the north. The witnesses presented the details of the adverse affect of commercial uses abutting their residences, thus supporting the buffer concept. There is ample under-utilized parking on the site. The onus is on the property to make better use of its space

rather than burden the residential community. The property owner has some obvious choices. For instance, Mr. Doak could not refute the feasibility of constructing a second tier on the parking deck. Also, the landlord could assign specific parking spaces for the tenants and enforce its designations. Additionally, the landlord could employ a parking attendant to monitor the parking. The solution lies with better business decisions and efforts from the owner rather than exploiting the limited exception for business parking in the residential zone under BCZR. Obviously, this commercial site is desirable for office and retail space. The landlord is clearly making a profit on this site. Now he must expend funds to meet its tenants' needs and to satisfy the general parking requirements under BCZR 409.6. It is not up to the community and the neighborhood to enrich the property owner here to the detriment of their own property values and the enjoyment of their homes. The request for business parking violates, at a minimum, BCZR 409.7 B.1.e and 502.1 A., D. & G. and must be denied.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


CAROLE S. DEMILIO
Deputy People's Counsel
400 Washington Avenue
Towson, MD 21204
410-887-2188

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2007, a copy of the Memorandum of People's Counsel for Baltimore County was mailed, postage prepaid, to Michael Tanczyn, Esquire, 606 Baltimore Avenue, St. 106, Towson, MD 21204 and Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204, Attorney for Petitioners.


CAROLE S. DEMILIO
Deputy People's Counsel

241 Md. 187

WOODLAWN AREA CITIZENS
ASSOCIATION, Inc., et al.

v.

BOARD OF COUNTY COMMISSIONERS
FOR PRINCE GEORGE'S
COUNTY et al.

No. 96.

Court of Appeals of Maryland.

Jan. 21, 1966.

As Modified Feb. 7, 1966.

Zoning case. The Circuit Court for Prince George's County, Roscoe H. Parker, J., affirmed the district council's decision granting zoning reclassification from single family detached homes to garden type apartments, and the protesting neighbors appealed. The Court of Appeals, Hammond, J., held that the principles of res judicata were controlling, and found in the record no evidence of significant change in the neighborhood of the property between time when prior application for same relief was denied and the instant application.

Order reversed.

Barnes, J., dissented.

1. Zoning ⚡13

The district council for Prince George's county has no inherent power to zone or rezone; these powers are entirely delegated by grant of general assembly. Code 1957, art. 66B, §§ 21-37, 35; Acts 1943, c. 992; Acts 1959, c. 780 and §§ 78, 79; Acts 1965, cc. 624, 854, 873, 898.

2. Zoning ⚡153

The general assembly imposed definite conditions and restrictions on power and right of district council for Prince George's county to rezone in individual instances; the council does not act as a plenary legislative body but acts as an adjudicatory agency in large part; it must follow statutory authority and procedure, it must act

lawfully, it must find support for its action in competent, material and substantial evidence adduced at public hearing of which transcript is made, and it must not act arbitrarily or capriciously. Acts 1943, c. 992; Acts 1959, c. 780 and §§ 78, 79; Acts 1965, cc. 624, 854, 873, 898.

3. Zoning ⚡151, 158

When general assembly enacted 1959 law relating to zoning and rezoning in Prince George's county and repeated decisions of Court of Appeals had clearly established that to justify a deviation from comprehensive zoning a change must be supported by evidence either of error in original zoning or a substantial change in character of neighborhood, the general assembly was deemed to have known of this established rule and to have meant, in enacting the 1959 law, that unless the competent, material and substantial evidence at hearing before district council fairly permitted a finding of error or change, a rezoning would be affected by error of law or would be arbitrary or capricious. Acts 1959, c. 780.

4. Zoning ⚡197

Although action of district council for Prince George's county in rezoning in individual cases is ultimately legislative, in performing this delegated and restricted function it acts largely as administrative or adjudicatory agency. Acts 1959, c. 780.

5. Zoning ⚡363

In light of the administrative procedures and adjudications which district council of Prince George's county is required to follow and make in process of rezoning, principles of public policy which underlie rule of res judicata logically would seem to be applicable to its actions in this respect. Acts 1959, c. 780.

6. Administrative Law and Procedure ⚡501

Judgment ⚡646

Judgment or order of court, including trial court, which affirms or reverses ad-

3/12/07

IN RE: PETITION FOR SPECIAL HEARING
and VARIANCE
1447 York Road
8th Election District
3rd Councilmanic District

Seminary Galleria, LLC
Petitioner/Owner

BALTIMORE COUNTY
BOARD OF APPEALS
MAR 12 2007
RECEIVED

BEFORE THE

COUNTY BOARD OF APPEALS

FOR

BALTIMORE COUNTY

Case No.: 06-411-SPHA

PETITIONER'S MOTION TO QUASH SUBPOENA DUCES TECUM

Seminary Galleria, LLC, Petitioner and Owner of the above referenced, shopping center property, by its undersigned counsel, moves to quash the Subpoena Duces Tecum ("Subpoena") served on its legal counsel, and in support of its motion states:

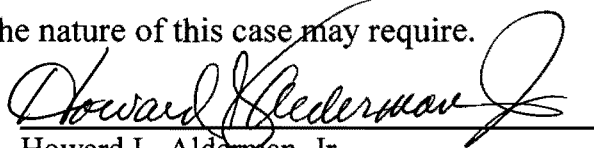
1. The Subpoena fails to comply with Rule 5 of this Board's Rules and Practice of Procedure and, on that fact alone, should be quashed.
2. The Subpoena is overly broad and seeks to discover proprietary and confidential information of the Owner and third-party tenants which are not relevant to the issues presented by the Petitions for Special Hearing and/or Variance.
3. The Owner has not authorized its legal counsel to accept service of process on its behalf.
4. The undersigned legal counsel is not the Resident Agent of the Owner.
5. Counsel for Dulaney Valley Improvement Association ("Protestant's Counsel") never communicated in any manner with undersigned Owner's legal counsel regarding service of the Subpoena. Rather, Protestant's Counsel had the Subpoena issued by this Board on February 28, 2007 and then appeared in the law office of the undersigned one week later (March 7, 2007), unannounced and left the Subpoena with the undersigned.
6. The undersigned, on whom the Subpoena was served, does not have any of the

requested materials in his possession or control.

7. The obvious intent of the Subpoena, delivered at the eleventh-hour, is to harass Petitioner and its tenants and to seek information that is proprietary and irrelevant to the Petitions.

WHEREFORE, Seminary Galleria, LLC, respectfully requests that:

- A. The Subpoena Duces Tecum be QUASHED; and
- B. For such further relief as the nature of this case may require.



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]
halderman@LevinGann.com [e-mail]

Attorneys for Seminary Galleria, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 2007, a copy of the foregoing Petitioner's Motion to Quash Subpoena Duces Tecum and Order attached thereto was transmitted via confirmed telefax and was mailed via First-Class, United States Mail to the following:

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204

and to

Peter Max Zimmerman, Esquire
Baltimore County People's Counsel
Old Courthouse, Room 44
400 Washington Avenue
Towson, Maryland 21204



Howard L. Alderman, Jr.

IN RE: PETITION FOR SPECIAL HEARING
and VARIANCE
1447 York Road
8th Election District
3rd Councilmanic District

Seminary Galleria, LLC,
Petitioner/Owner

BEFORE THE
COUNTY BOARD OF APPEALS
FOR
BALTIMORE COUNTY
Case No.: 06-411-SPHA

ORDER

Upon consideration of the Motion to Quash Subpoena Duces Tecum filed by the Seminary
Gallreia, LLC, Petitioner, and any and all opposition thereto, it is this _____ day of ____
_____, 2007,

ORDERED, that the Motion to Quash Subpoena Duces Tecum filed by the Dulaney Valley
Improvement Association, Inc. is hereby QUASHED; and it is

FURTHER ORDERED, that the neither the Petitioner nor its legal counsel need produce
any of the materials sought for discovery in the Subpoena Duces Tecum.

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)

March 12, 2007

HAND DELIVERED

Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
Old Courthouse, Suite 49
400 Washington Avenue
Towson, Maryland 21204

RE: Seminary Galleria, LLC, Petitioner/Owner
Case No. 06-411-SPHA
Motion to Quash Subpoena Duces Tecum

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MAR 12 2007

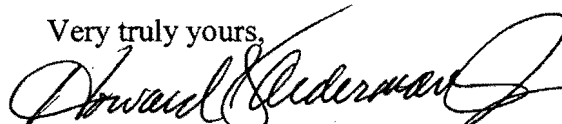
**BALTIMORE COUNTY
BOARD OF APPEALS**

Dear Ms. Bianco:

I enclose the original and three (3) copies of my client's Motion to Quash Subpoena Duces Tecum and attached Order for the Board's consideration and action. Should you or the Board need any additional information in support of the enclosed Motion, please do not hesitate to contact me.

Thank you for your attention to this matter.

Very truly yours,


Howard L. Alderman, Jr.

HLA/gk
Enclosure
c (w/encl.): Seminary Galleria, LLC
Michael P. Tanczyn, Esquire

3/8/07

IN RE:
1447 York Road
Southeast corner of York Road and
Seminary Avenue

9th Election District - 3rd Councilmanic
District

Legal Owners:
Seminary Galleria, LLC,

Petitioner

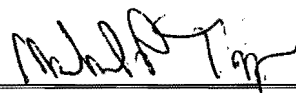
* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
*
* CASE NO. 06-411-SPH
*

* * * * *

AFFIDAVIT OF SERVICE

I, Michael P. Tanczyn do solemnly swear under the penalties of perjury that the statements made herein are true to the best of my knowledge, information and belief:

1. That I am a competent person over the age of eighteen and not a party to the case.
2. That on March 7, 2007 at approximately 1:50 p.m., I personally served a Subpoena in this matter on Seminary Galleria, LLC, c/o Howard L. Alderman, Jr., Esquire, 8th Floor, Nottingham Centre, 502 Washington Avenue, Towson, Maryland 21204-4525.



AFFIANT

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MAR 12 2007

**BALTIMORE COUNTY
BOARD OF APPEALS**

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827
Email: mptlaw@verizon.net

March 8, 2007

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

Re: Case No. 06-411-SPH

Dear Kathy:

Enclosed please find an Affidavit of Service regarding the above captioned matter.

Please feel free to contact me with any questions.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/cbl

Encl.

cc: Dulaney Valley Improvement Association
Howard L. Alderman, Jr., Esquire

RECEIVED

MAR 12 2007

BALTIMORE COUNTY
BOARD OF APPEALS

2/28/07

IN RE:
1447 York Road
Southeast corner of York Road and
Seminary Avenue

9th Election District - 3rd Councilmanic
District

Legal Owners:
Seminary Galleria, LLC,

Petitioner

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
*
* CASE NO. 06-411-SPH
*

* * * * *

SUBPOENA DUCES TECUM

TO: Seminary Galleria, LLC
c/o Howard L. Alderman, Jr., Esquire
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204-4525

You are hereby commanded to appear and bring to the hearing:

1. Leases for all tenants at the property from April, 2006 to the present.
2. A diagram of the interior layout at the Galleria site, showing all tenant spaces as they existed at the time that the leases were executed.
3. All applications for or use permits applied for and received from Baltimore County for each of the tenants.
4. Copies of all permits for construction of the parking spaces, whether grading, excavating, or construction of the parking areas.
5. Leases of all tenants who either entered into or occupied since the Zoning Commissioner's decision in the instant case was rendered.

on: Beginning Tuesday, March 20, 2007

at: County Board of Appeals of Baltimore County
Old Courthouse, Room 48
400 Washington Avenue
Towson, Maryland 21204

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BALTIMORE COUNTY
BOARD OF APPEALS

This Subpoena was requested by Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland, 21204, 410-296-8823, counsel for Dulaney Valley Improvement Association and any questions should be referred to that office.

2/28/07
DATE

Lincoln B. Fliegel
Board of Appeals

8/11/06
IN RE:
1447 York Road
Southeast corner of York Road and
Seminary Avenue

9th Election District - 3rd Councilmanic
District

Legal Owners:
Seminary Galleria, LLC,

Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
*
* CASE NO. 06-411-SPH

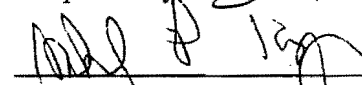
* * * * *

PETITION FOR APPEAL

Now comes Dulaney Valley Improvement Association, Inc., P.O. Box 102, Lutherville, Maryland 21094 and Larry Townsend, 1111 Longbrook Road, Lutherville, Maryland 21093, Protestants, by their attorney, Michael P. Tanczyn, Esquire, who appeal from that part of the Deputy Zoning Commissioner's Opinion and Order dated July 14, 2006, only as to the grant of the special hearing petition relief to the Board of Appeals of Baltimore County, as to the approval of a modified parking plan of 750 parking spaces and as to the Petitioner's request to approve the amendment to any and all prior plans filed in connection with the subject property consistent with the Deputy Zoning Commissioner's Order.

Please advise of any and all hearing dates.

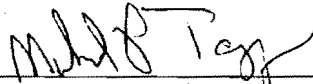
Respectfully submitted,



MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823
Attorney for the Protestants
Dulaney Valley Improvement Association and
Larry Townsend

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 12th day of August, 2006, a copy of the foregoing was mailed first-class, postage prepaid to Howard L. Alderman, Jr., Esquire, Levin and Gann, 8th Floor, 502 Washington Avenue, Towson, Maryland 21204-4525, Attorney for the Petitioners.



MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823
Attorney for the Protestants
Dulaney Valley Improvement Association and
Larry Townsend

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue

Towson, Maryland 21204

Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

August 11, 2006

VIA HAND-DELIVERY

Director, Permits and Development Management

Attn: Ms. Kristen Matthews

111 W. Chesapeake Avenue

Towson, MD 21204

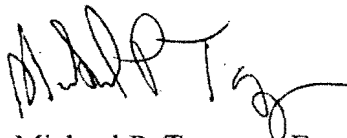
Re: 1447 York Road
Case No.: 06-411-SPH

Dear Kristen:

Enclosed herewith please find the Appeal of Dulaney Valley Improvement Association, Inc. and Larry Townsend, as to the special hearing relief only, granted by the Deputy Zoning Commissioner's Order of July 14, 2006. We have also enclosed our check for filing fees.

Please keep us posted on all future hearing dates.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/cbl

Encl.

cc: Dulaney Valley Improvement Association, Inc.
Howard L. Alderman, Jr., Esquire

RECEIVED

AUG 11 2006

Per. *any*

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 06-411-SPH

*
* * * *

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PZ

Amended Petition

Applicable Law

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.

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

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

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) Comments are made part of the record of this case and contain the following highlights: None.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing were Bruce Daok, from Gerhold Cross and Etzel, who prepared the site plan, Bill Russell and Theresa Rosier, from Hill Management Services, for the corporate Petitioner, Seminary Galleria, LLC. Howard L. Aldeman, Jr., Esquire, appeared as the Petitioner's attorney. Larry Townsend, from the Dulaney Valley Improvement Association attended the hearing. Michael Tanczyn, Esquire, entered his appearance on behalf of the Association but did not attend the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case. Numerous letters were received from tenants of the property in support of the Petition.

Code Enforcement Comments

This matter is currently the subject of an active violation case (Case No. 03-2247) in the Division of Code Inspections and Enforcement. A citation for code violation has been issued in this matter due to the alleged failure of the Petitioner to remove added parking spaces and restore site to original condition.

It should be noted, for the record, that the fact that a zoning violation is issued is simply ignored in this zoning case. This means that the Petitioner cannot use the fact that parking spaces were built to set a precedent in order to allow it to continue. Nor does the fact that these spaces may be costly to remove or modify come into consideration of the zoning case. The

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KJ

reason for this is that this condition is clearly self-imposed and as such cannot be a basis for the hardship or practical difficulty required by Section 307 of the B.C.Z.R. Conversely, the fact that something may have been done which could violate the law is not held against the Petitioner as some sort of an additional punishment. Zoning enforcement is conducted by the Department of Permits and Development Management, which has the authority to impose fines and other penalties for violation of law. This is not the province of this office.

Preliminary Matter

Mr. Tancyn filed a Motion to Dismiss on the basis that the relief sought herein was the same relief requested, litigated and denied at the Zoning Commissioner, Board of Appeals and Circuit Court in Case No. 04-052-SPH. Mr. Alderman filed a response citing the differences between this case the prior cases in facts, and relief.

I agree with Mr. Alderman. The first case involved 14 additional parking spaces in the adjacent residential zone. This case makes that issue insignificant. In this case the Petitioner admits to being short 300 spaces. Therefore I will deny the Motion.

Testimony and Evidence

Mr. Alderman proffered that this property had been the subject of a request in Case No. 04-052-SPH to modify a 1986 CRG Plan which depicts the parking on the property. He noted that this Commission denied the Petitioner's request to modify the CRG Plan to allow 14 additional parking spaces in the residential zone which was upheld by the Board of Appeals in the final case.

However this plan reflects the existing conditions based upon a survey performed by Mr. Doak. The site can provide 764 parking spaces. Considering the actual tenant mix, the regulations require 1,084 spaces. If the uses are considered a shopping center > 100,000 square

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feet GLA, the regulations require 1,059 spaces. The 14 spaces previously proposed are included in the 764 spaces provided. See exhibit 1, the Plat to Accompany.

Mr. Doak noted that the property is split zoned, BL and DR 5.5, and is improved by large commercial buildings including an eight story tower in which there are mixed office, medical office, service and retail uses. The commercial uses are located in the BL zone while there is some parking in the DR 5.5 zone in support of the commercial uses. In cooperation with management, he performed a survey of tenants which is the basis of the Petitioner's latest request. He noted that the prior case indicated that there were 600 spaces provided but by reconfiguring the site, 764 could be provided. He opined that the 14 additional spaces outlined in yellow on Petitioner's exhibit 1 should be approved by way of use permit because to deny these spaces would be to increase the deficit for the existing uses. He indicated that the Petitioner's request for a modified parking plan is based on current conditions, the requests met the criteria of Section 502.1 of the BCZR and would not adversely affect the neighborhood.

In regard to the alternative request for variance, Mr. Doak noted that the property was completely built out, has an existing footprint and there is no property available on which a larger parking field can be built. The Petitioner could propose to build more parking by removing landscaping but that the community would object to this approach. Given the existing conditions he opined the property is unique from a zoning perspective, there are no density issues, relief will give justice to the Petitioner without harm to the neighborhood.

Upon questioning by the community he admitted that he failed to list Case No. 04-052-SPH in note 17 by oversight, that the 10 spaces added in the residential zone (highlighted in yellow on Petitioner's exhibit 1) were located in a fire lane but that the fire lane was omitted because the width of the aisleway exceeds the requirements. Mr. Doak noted that the Fire Department had no comments in this regard. He also opined that the property meets the

7-14-06
Pg 1

definition of a shopping center although the buildings are not connected. He also noted that there had been a slight realignment of the BL/DR 5.5 line which transects the property resulting in one of the 14 added spaces now located in the BL zone.

Ms. Rosier, who is charge of tenant relations for the Petitioner indicated that there have been complaints about the number and location of parking spaces by the tenants and customers of the site. In response she indicated the Petitioner reconfigured the parking field to add spaces and restriped the parking area to indicate by yellow striping the spaces were reserved for tenants while white striping indicates spaces for customers. In addition the Petitioner added an entrance for tenants to make their area of parking more accessible.

She noted that the 14 spaces added in the residential zone were another attempt to satisfy tenants and customers for parking which has helped the situation considerably. She presented photographs of the parking fields (exhibit 2) which shows the areas blocked off from parking by employees of tenants so as to provide parking for customers. Exhibit 2 D is a photograph of the 14 spaces. Finally she noted that many tenants had sent letters of support, exhibit 3.

Upon questioning by the community she admitted that there has been a significant change in mix of tenants in the past seven years which has increased the need for additional parking on the site. She indicated that she was not aware of how management took the need for parking into account when they negotiated a lease. In regard to enforcement of parking rules on the lot, she noted that in addition to sending memos to tenants that vehicles have been towed where there have been violations of the rules.

On redirect she noted that with each change in tenants, the Petitioner applies for and has approved County use permits.

Mr. Townsend indicated that the community association continues to oppose the 14 additional spaces, they now realize the site is short 300 spaces, and asked that the new plan be denied.

Findings of Fact and Conclusions of Law

I find that the Petitioner's use of the property does not meet the definition of "shopping center" as specified in the BCZR. The buildings are not connected, the walkways are not intended to facilitate customer interchange between uses, and the site does not give the appearance of a continuous commercial area. While there is a common parking lot, the evidence presented shows the Petitioner leases to a wide variety of tenants who have unrelated businesses in separate and distinct locations. There is no commercial pattern.

In regard to the Petitioner's request for variance, the problem of parking arose within the last seven years when the mix of tenants changed significantly as Ms. Rosier testified. The reconfiguration of the parking field, new entrance for tenants and added spaces are all attempts by management to accommodate this new mix. However after best efforts to manage the parking, the Petitioner is 320 spaces short of the required parking of 1,084 spaces.

To appreciate the scale of the parking problem on this site, one has to recall that the Board of Appeals denied a parking variance in Case No. 85-256-XA. In this case the Petitioner asked for a parking variance to allow 600 spaces in lieu of the required 643 spaces. As this request was denied, the required parking prior to the latest reconfiguration was 643 spaces. How or if the Petitioner attempted to provide the 43 additional spaces is not known. It is apparent from the zoning record that the Petitioner has had a parking problem on this site for the last 20 years. In addition the parking is provided at ground level and by means of a two deck parking garage. There was no evidence of the feasibility or desirability of adding additional decks to the existing garage or second decks to the ground level parking fields.

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In summary the Petitioner has a site which the tenant mix requires 643 parking spaces. Although there have been problems in the past with parking, the present tenant mix requires 1,084 spaces.

This problem is wholly self imposed. The mix of tenants is completely determined by management who undoubtedly wants to maximize return on investment but who never seems to get the message that they also have to obey the zoning laws of the County. Management cannot enter leases with tenants that cause a zoning violation. There is an approved site plan. With reconfigured parking the site will hold 764 vehicles. They are presently required to have 643 spaces and more importantly to have a mix of tenants that corresponds to this parking. Management cannot enter into leases which exceed the total number of spaces available according to the calculations of Section 409. If they do, they risk a final decision in this case which could require them to break one-third of their leases, refund hundreds of thousands of dollars of tenant improvements, and pay daily fines of hundreds of thousands of dollars to the County over the many years that it would take to come into conformance. I am trying to get their attention once again. Obviously I failed to get their attention in Case No. 04-052-A.

In regard to the legal issues in the variance request I cannot approve a variance in which the hardship is self imposed as it clearly is here. We have recognized an exception to the general rule against self imposed hardship for "existing conditions". Typically there may be some existing structure such as barn worth saving which falls into a prohibited side yard after subdivision. We have recognized this kind of exception under the assumption the Petitioner did not erect the barn and to rule otherwise would mean the barn had to be razed.

This case does not fall into that exception. There is no existing structure or condition which the Petitioner has to deal with but did not create. The Petitioner created every bit of this

7-14-06
PZ

problem by not controlling tenant mix. Labeling this request as reflecting present conditions does not change the facts.

We have also recognized a second exception to the rule against self imposed variances when government action essentially dictates the request for variance. For example the Planning Office may find some feature helpful to a site plan and "suggests" to the Petitioner to add this feature. The feature may trigger a request for variance. We have recognized that some features are really not by the Petitioner's volition and so not self imposed.

This case does not fall into that exception. Whether the Petitioner obtained use permits from the County for every tenant or not does not in any way alleviate the Petitioners' responsibility to comply with the zoning regulations. The County could not possibly be charged with the responsibility to keep tract of any citizens' use of its property so as to guarantee that the Petitioner meets the zoning regulations.

This problem created by the Petitioner, is wholly self imposed and consequently I must deny the variance requests.

That said, there are also many innocent tenants, employees, customers and the community who will be badly injured if the Petitioner is not granted some relief. Tenants would have to leave the premises after investing tens of thousands of dollars in tenant improvements. Patients of medical providers would be forced to find new doctors. Employees would lose their jobs in offices. And of course everyone would be suing the Petitioner for damages.

Remarkably, considering the parking problem the Petitioner has created, many of the tenants still want to stay as shown by the many letters of support. These letters from tenants indicate the issue is about 14 added spaces when in fact the issue is whether they can stay on site at all. I am sure if they knew the danger the Petitioner has placed them they would not be appreciative.

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[Signature]

Given the facts of this case, the Petitioner incredibly asks to approve a parking plan with the 14 spaces previously denied in Case 04-052-SPH. More shocking is the request for parking for vacancies in office, retail and medical office which require 35 spaces. Said another way the Petitioner has caused its site to violate the zoning regulations by 320 parking spaces and then asks to approve a parking plan that allows further expansion of tenants.

The community opposition is centered on the parking spaces located in the residential zone. I understand their concern of commercial incursion into this residentially zoned community. I see nothing different in request for the 14 highlighted spaces on Petitioner's exhibit 1 from that which was denied in Case No. 04-052- A. The location of the DR swath along Seminary Avenue tells me that the County Council wanted to separate the commercial uses on this property from the residential uses across Seminary Avenue. There is no reason to violate the Council's intent in this case.

I find however that the tenants, employees and customers of the site would suffer undue hardship if no relief were given. Therefore I will approve a modified parking plan under Section 409.12 of the BCZR for 750 parking spaces ($764 - 14 = 750$) in lieu of the required 1,084 and will require the Petitioner to limit the gross leasable area of the site to those specified on Petitioner's exhibit 1 less all vacancies. There is no undue hardship on tenants or the Petitioner for vacant space which if leased would only exacerbate the self imposed parking problem on this site.

Over time the Petitioner can adjust the tenant mix to lease these spaces if, as, and when the tenant mix requires 1,049 spaces ($1084 - 35 = 1049$) as calculated by the BCZR.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioner, I find that the Petitioners' request for variance should be denied and the request for special hearing should be granted as described.

7-14-06
RZ

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 14th day of July, 2006, that the Petitioners' request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), (1) in accordance with BCZR SS 409.8B, a use permit for commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown on Petitioner's exhibit 1 is hereby DENIED; and

IT IS FURTHER ORDERED that the Petitioner's request for special hearing pursuant to Section 409.12 to approve a modified parking plan of 750 parking spaces is hereby GRANTED subject to the following condition:

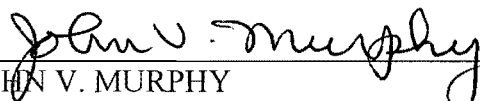
1. The Petitioner shall eliminate the 14 parking spaces shown in Petitioner's exhibit 1 highlighted in yellow; and
2. The Petitioner may not lease vacant space in any building until the Petitioner has adjusted the tenant mix so as to require no more than 1049 spaces as calculated by the BCZR.

IT IS FURTHER ORDERED that the Petitioner's request for special hearing to approve as-built conditions as the 2nd Amended Parking Plan of the Galleria Tower is DENIED; and

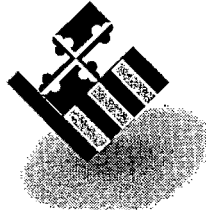
IT IS FURTHER ORDERED that the Petitioner's request to approve the amendment to any and all prior plans filed in connection with the subject property consistent with this order is GRANTED; and

IT IS FURTHER ORDERED that the Petitioner's requests for variances are DENIED.

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:pz



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

July 14, 2005

HOWARD ALDERMAN, ESQUIRE
LEVIN & GANN
502 WASHINGTON AVENUE, 8TH FLOOR
TOWSON, MD 21204

Re: Petition for Special Hearing and Variance
Case No. 06-411-SPHA
Property: 11447 York 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,

A handwritten signature in cursive script, reading "John V. Murphy".

John V. Murphy
Deputy Zoning Commissioner
for Baltimore County

JVM:pz
Enclosure

c: Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, MD 21204
Teresa Rosier, Seminary Galleria LLC, c/o Hill Management, 9640 Deereco Road, Timonium MD 21093
Bruce Doak, Gerhold Cross & Etzel, 320 East Towsontown Blvd, Suite 100, Towson MD 21286
Bill Russell, Hill Management, 9640 Deerco Road, Timonium MD 21093
Larry Townsend, 1111 Long Brook Road, Lutherville MD 21093

7-14-06
JVM

6/13/06

**IN RE: PETITION FOR SPECIAL HEARING
and VARIANCE
1447 York Road
8th Election District
3rd Councilmanic District**

***Seminary Galleria, LLC,*
Petitioner/Owner**

**BEFORE THE
ZONING COMMISSIONER
FOR
BALTIMORE COUNTY
Case No.: 06-411-SPHA**

OPPOSITION TO PROTESTANT'S MOTION TO DISMISS

Seminary Galleria, LLC, Petitioner and Owner of the above referenced, shopping center property, by its undersigned counsel, submits this opposition to the eleventh-hour Motion to Dismiss filed by Protestant Dulaney Valley Improvement Association, Inc., and in furtherance of its opposition says:

1. The relief prayed and facts in support of the relief in the instant case are different, separate and distinct from the facts and relief sought in Case No. 04-052-SPH (the "Prior Case"), where Owner was also the Petitioner.
2. The relief denied in the Prior Case pertained to proposed redline modifications of a previous plan approved by Baltimore County to add commercial parking spaces in a residential zone in excess of the parking requirements shown thereon. The special hearing and variance relief was denied by the Board of Appeals after finding that the Petitioner met the parking requirements set forth in Section 409 of the *Baltimore County Zoning Regulations* ("BCZR") as the same were depicted on the previously approved plan.
3. The instant Petition seeks approval of the applicable parking requirements of the BCZR based on current uses on the subject property and/or the current gross leaseable area of the buildings constructed within the Owner's shopping center.

4. The instant Petition presents a current, as-built site plan for approval, together with the relief required to maintain fewer than the number of parking spaces mandated by the BCZR.

5. The Protestant and its counsel should be aware that neither a Special Exception nor a zoning reclassification were requested in Case No. 04-052-SPHA, thus there is no applicable eighteen (18) month period that must expire. (See BCZR § 500.12)

6. Protestant's reliance on the Board's decision in Case No. 85-256-XA is similarly misplaced. In that case the Board granted a special exception for a community building/health club on the subject property but denied a parking variance finding that the petitioner in that case had recently submitted a County Review Group Plan for the same property which, if approved, would have provided more parking spaces than were required under the BCZR – thus, no variance was warranted or necessary.

7. The existing conditions on the subject property, all of which have been approved by Baltimore County (saving and excepting the 14 parking spaces which started this controversy), as depicted on the current site plan for which approval is sought, not only reasonably lead to but actually require a result different than that reached in either Case No. 85-256-XA or 04-052-SPHA. Therefore the asserted doctrine of *res judicata* is not applicable. *Whittle v. Board of Zoning Appeals*, 211 Md. 36, 45 (1956).

8. The evidence necessary to maintain fewer parking spaces in a commercial shopping center than the number required by the BCZR (based on either use or gross leaseable area) is dramatically different than that presented in support for additional parking spaces which exceeded the required parking depicted on the previously approved plan. Thus, the “same evidence” requirement of *res judicata* doctrine fails. *Jack v. Foster Branch Homeowner's Association No. 1*,

53 Md. App. 325, 336 (1982).

9. This case was originally scheduled to be heard on April 17, 2006. At the unilateral request of Protestant, without consult of the Petitioner, the hearing was postponed. Protestant now waits until less than 48 hours to file its Motion to Dismiss.

WHEREFORE, Seminary Galleria, LLC, respectfully requests that:

- A. The Motion to Dismiss be DENIED; and
- B. The hearing scheduled for Wednesday, June 14, 2006 be held, irrespective of the availability of the Protestant or its legal counsel; and
- C. For such further relief as the nature of this case may require.



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]
halderman@LevinGann.com [e-mail]

Attorneys for Seminary Galleria, LLC

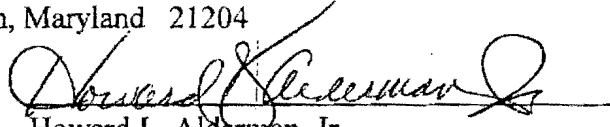
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2006, a copy of the foregoing Opposition to Protestant's Motion to Dismiss and Order attached thereto was transmitted via confirmed telefax and was mailed via First-Class, United States Mail to the following:

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204

and to

Peter Max Zimmerman, Esquire
Baltimore County People's Counsel
Old Courthouse, Room 44
400 Washington Avenue
Towson, Maryland 21204



Howard L. Alderman, Jr.

**IN RE: PETITION FOR SPECIAL HEARING
and VARIANCE
1447 York Road
8th Election District
3rd Councilmanic District**

***Seminary Galleria, LLC,
Petitioner/Owner***

**BEFORE THE
ZONING COMMISSIONER
FOR
BALTIMORE COUNTY**

Case No.: 06-411-SPHA

ORDER

Upon consideration of the Motion to Dismiss Petition filed by the Dulaney Valley Improvement Association, Inc. and any and all opposition thereto, it is this _____ day of _____, 2006,

ORDERED, that the Motion to Dismiss Petition filed by the Dulaney Valley Improvement Association, Inc. is hereby **DENIED**; and it is

FURTHER ORDERED, that the hearing on this case will proceed at 10:00 a.m. in Room 407 of the County Courts Building at 401 Bosley Avenue as scheduled on June 14, 2006.

Zoning Commissioner for Baltimore County

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)

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

DIRECT DIAL
410-321-4640

June 13, 2006

VIA TELEFAX & REGULAR MAIL

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

RE: 1447 York Road - Case No. 06-411-SPHA
Opposition to Motion to Dismiss

Dear Mr. Wiseman:

Having reviewed when I arrived in the office this morning the Motion to Dismiss filed by Mr. Tanczyn, I file herewith my client's opposition to the granting of that Motion. I am transmitting this letter, my opposition and proposed order to you and Messrs. Tanczyn and Zimmerman by telefax and regular mail.

Should you need any additional information on behalf of my client in your consideration of Mr. Tanczyn's Motion and our opposition thereto, please do not hesitate to contact me.

Very truly yours,



Howard L. Alderman, Jr.

HLA/gk
Enclosures
c(w/encl.): Seminary Galleria, LLC
Michael P. Tanczyn, Esquire
Peter Max Zimmerman, Esquire

6/12/06

IN RE:	*	BEFORE THE
1447 York Road		
Southeast corner of York Road and	*	ZONING COMMISSIONER
Seminary Avenue		
	*	FOR
9 th Election District - 3 rd Councilmanic		
District	*	BALTIMORE COUNTY
Legal Owners:	*	
Seminary Galleria, LLC,		
	*	CASE NO. 06-411-SPHA
Petitioner		

* * * * *

MOTION TO DISMISS PETITION

Now comes Dulaney Valley Improvement Association, Inc., Protestant, by its counsel, Michael P. Tanczyn, and moves that the instant Petition be dismissed on grounds of res judicata, and because eighteen (18) months have not transpired since the final Order of the Board of Appeals in Case 04-052-SPHA involving the same parties, the same property, and the same issues, under Whittle v. Board of Zoning Appeals of Baltimore County, 211 Md. 36, 125 A.2d 41 (1956).

PREAMBLE

The same Owner/Petitioner, Seminary Galleria, LLC, in Case 04-052-SPHA presented the exact same issues and requests before the Deputy Zoning Commissioner, who denied the relief requested in a well-reasoned opinion dated October 2, 2003. Petitioner, Seminary Galleria, LLC appealed those decisions to the Baltimore County Board of Appeals, which conducted de novo hearings July 1, 2004 and similarly denied all petitions by its Order September 21, 2004. Seminary Galleria, LLC then appealed to the Circuit Court for Baltimore County, only, the denial of a modified parking plan and accepted as a final judgment, the denial of the variance by the Board of Appeals. The Circuit Court for Baltimore County, in Case 03-C-04-11000, remanded the case to

the Baltimore County Board of Appeals for reconsideration to include complete findings of fact and conclusions of law as to why it denied Petitioner's special hearing request for issuance of a use permit. Following remand, the Board of Appeals issued a subsequent Opinion and Order dated September 19, 2005, denying the Petitioner's request for a modified parking plan and modified parking and landscape requirements. The Petitioner did not appeal that decision, which would have become final October 19, 2005. The parking spaces created by Seminary Galleria, LLC, without benefit of a building permit or prior zoning approval and constructed prior to the filing of Case 04-052-SPHA, were constructed in the green space adjacent to Seminary Avenue and the residential community on the north side of Seminary Avenue.

Petitioner claims in 06-411-SPHA were previously adjudicated and adverse to Petitioner, and the instant case should be dismissed on that basis.

Petitioner refuses to accept the rule of law which holds that when a final decision is reached, the parties abide by the terms and conditions of the final decision. In this case, having illegally constructed additional parking spaces in the DR5.5 portion of its split-zoned property, the Petitioner has chosen to file its current petition, when all previous rulings on similar requests were resolved adverse to Petitioner. Ironically, as noted in the Board of Appeal's Decision's referenced in Case 04-052-SPHA, the Board of Appeals, for the same property, had previously denied a Petition for Variance for parking, in Case 85-256XA, by its Opinion and Order December 20, 1985. The doctrine of res judicata applies where essentially the same facts were previously considered and decided to a final decision. Whittle v. Board of Zoning Appeals of Baltimore County, 211 Md. 36 @ 49, the Court held:

“If the second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case on the merits is an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which could have been litigated.” “The first re-zoning case was litigated and all the information which could have been produced should have been produced and the second case cannot be decided on testimony which might have been introduced in the first case. Further, any applicable Baltimore County Ordinance which, until after the lapse of eighteen months prevents a zoning board from considering and acting on a new application for a special permit previously denied, does not dispense with the rule of res judicata” Whittle, supra @ 45.

The community, including Dulaney Valley Improvement Association, Inc., Protestants previously in the earlier cases cited, should not be put to the inconvenience and expense of re-litigating issues which are covered by the doctrine of res judicata, as applied to the facts of this case. It should be clear to all that Petitioners do not want to accept the final decisions as the rule of law applicable to this property. It should also be clear to all that Petitioners have exhausted all of their available legal opportunities to argue Petitioner’s position and have been unsuccessful in their efforts to do so through a final decision, which was not appealed by Petitioner. Instead of digging up the illegally constructed parking spaces and placing them back in the condition they were in as green area, the Petitioner has chosen to file another petition essentially asking for zoning by forgiveness for a matter which has already been finally decided.

CONCLUSION

For the foregoing reasons, the Petition should be dismissed without a hearing.

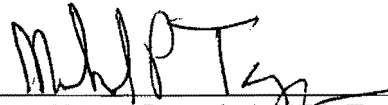
Respectfully submitted,



MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823
Attorney for the Protestants
Dulaney Valley Improvement Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 12th day of June, 2006, a copy of the foregoing was mailed first-class, postage prepaid to Howard L. Alderman, Jr., Esquire, Levin and Gann, 8th Floor, 502 Washington Avenue, Towson, Maryland 21204-4525, Attorney for the Petitioners and to Peter Max Zimmerman, Esquire, Peoples' Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.



MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823
Attorney for the Protestants
Dulaney Valley Improvement Association



County Board of Appeals of Baltimore County

Room 200 Court House
Cotson, Maryland 21204
(301) 494-3180

December 20, 1985

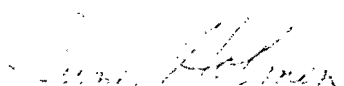
Glenn L. Wilson, President
Dulaney Valley Improvement Assoc.
P. O. Box 102
Lutherville, Md. 21093

Dear Mr. Wilson:

Re: Case No. 85-256-XA
Seminary Limited Partnership

Enclosed herewith is a copy of the Opinion and Order
passed today by the County Board of Appeals in the above entitled case.

Very truly yours,


June Holmen, Secretary

Encl.

cc: G. Scott Barhight, Esq.
Jasper M. Buck
Seminary Ltd. Partnership
Fitness Unlimited, Inc.
Michael P. Tanczyn, Esq.
Thomas J. Bollinger, Esq.
Phyllis C. Friedman
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean Jung
James E. Dyer

(2)

PETITION —
CORRESPONDENCE



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 1447 York Road
which is presently zoned BL & DR 5.5

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

SEE ATTACHED

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:

NONE

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Howard L. Alderman, Jr., Esquire

Name - Type or Print City

Signature

Levin & Gann, PA

Company
502 Washington Avenue, Suite 800 410-321-0600

Address Telephone No.

Towson Maryland 21204
City State Zip Code

Legal Owner(s):

Seminary Galleria, LLC

Name - Type or Print

By: Teresa Rosier
Signature Teresa Rosier, Authorized Member

Name - Type or Print

Signature

c/o Hill Managment 9640 Deereco Road 410-561-1300

Address Telephone No.

Timonium MD 21093
State Zip Code

Representative to be Contacted:

Bruce E. Doak, PLS Gerhold, Cross & Etzel, Chtd.

Name
320 E. Towsontown Blvd., Suite 100 410-823-4470

Address Telephone No.

Towson MD 21286
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 20 min

UNAVAILABLE FOR HEARING

Reviewed By [Signature] Date 2-23-06

Case No. 06-411 SP4A



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 1447 York Road
which is presently zoned BL & DR 5.5

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

SEE ATTACHED

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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:

NONE

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Howard L. Alderman, Jr., Esquire

Name - Type or Print

Signature

Levin & Gann, PA

Company

502 Washington Avenue, Suite 800

410-321-0600

Address

Telephone No.

Towson

Maryland

21204

City

State

Zip Code

Legal Owner(s):

Seminary Galleria, LLC

Name - Type or Print

By:

Signature Teresa Rosier
Teresa Rosier, Authorized Member

Name - Type or Print

Signature

c/o Hill Managment 9640 Deereco Road 410-561-1300

Address

Telephone No.

Timonium

MD

21093

State

Zip Code

Representative to be Contacted:

Bruce E. Doak, PLS Gerhold, Cross & Etzel, Chtd.

Name

320 E. Towsontown Blvd., Suite 100

410-823-4470

Address

Telephone No.

Towson

MD

21286

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2.5 hr.

UNAVAILABLE FOR HEARING

Reviewed By

Date

2-23-06

Case No. 06-411 SPHA

Attachment 1

PETITION FOR SPECIAL HEARING

CASE NO: _____

Address: 1447 York Road

Legal Owners: Seminary Galleria, LLC

Present Zoning: BL & DR 5.5

REQUESTED RELIEF:

“why the Zoning Commissioner should approve”: [1] in accordance with BCZR § 409.8B, a use permit for commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the Plan filed herewith to meet to the extent possible the minimum parking requirements of BCZR §409.6 utilizing all existing parking spaces shown on the Plat filed herewith; [2] in lieu of the companion variance requested herewith, approval of a modified parking plan and modified parking and landscape and any applicable RTA requirements for the existing parking spaces and areas in accordance with the specific detail shown on the Plan filed herewith in lieu of the minimum requirements of the BCZR; [3] the Plan filed herewith which depicts current, as-built conditions as the 2nd Amended Parking Plan of The Galleria Tower; [4] an amendment to any and all prior plans filed in connection with the subject property consistent with the existing parking depicted on the Plan filed herewith, including without limitation all plans in Case Nos. 4893-XA, R3410, 85-256-XA and all prior commercial parking in residential zone approvals; and [5] such additional relief as the nature of the parking and landscaping shown on the accompanying Plan may require.



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 1447 York Road

which is presently zoned BL & DR 5.5

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

SEE ATTACHED

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

SEE ATTACHED

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

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

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

Contract Purchaser/Lessee:

NONE

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Howard L. Alderman, Jr., Esquire

Name - Type or Print

Signature

Levin & Gann, PA Nottingham Centre, 8th Floor

Company

502 Washington Avenue 410-321-0600

Address

Telephone No.

Towson, MD 21204

City

State

Zip Code

Legal Owner(s):

Seminary Galleria, LLC

Name - Type or Print

By:

Signature

Teresa Rosier
Teresa Rosier, Authorized Member

Name - Type or Print

Signature

c/o Hill Management 9640 Deereco Road 410-561-1300

Address

Telephone No.

Timonium

MD

21093

State

Zip Code

Representative to be Contacted:

Bruce E. Doak, PLS Gerhold, Cross & Etzel, Chtd.

Name

320 E. Towsontown Blvd., Suite 100 410-823-4470

Address

Telephone No.

Towson

MD

21286

City

State

Zip Code

OFFICE USE ONLY

Case No.

06-4115 PHA

ESTIMATED LENGTH OF HEARING

See SPH

UNAVAILABLE FOR HEARING

Reviewed By

Date *2-23-06*



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 1447 York Road
which is presently zoned BL & DR 5.5

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

SEE ATTACHED

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

SEE ATTACHED

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

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

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

Contract Purchaser/Lessee:

NONE

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Howard L. Alderman, Jr., Esquire

Name - Type or Print

Signature

Levin & Gann, PA Nottingham Centre, 8th Floor

Company

502 Washington Avenue 410-321-0600

Address

Telephone No.

Towson, MD 21204

City

State

Zip Code

Legal Owner(s):

Seminary Galleria, LLC

Name - Type or Print

By:

Signature

Teresa Rosier, Authorized Member

Name - Type or Print

Signature

c/o Hill Management 9640 Deereco Road 410-561-1300

Address

Telephone No.

Timonium

MD

21093

State

Zip Code

Representative to be Contacted:

Bruce E. Doak, PLS Gerhold, Cross & Etzel, Chtd.

Name

320 E. Towsontown Blvd., Suite 100 410-823-4470

Address

Telephone No.

Towson

MD

21286

City

State

Zip Code

OFFICE USE ONLY

Case No. 06-411 SPHA

ESTIMATED LENGTH OF HEARING SEE SPH

UNAVAILABLE FOR HEARING

Reviewed By [Signature]

Date 2-23-06

411

Attachment 1

PETITION FOR VARIANCE
[Alternate Relief]

CASE NO: _____

Address: 1447 York Road

Legal Owners: Seminary Galleria, LLC

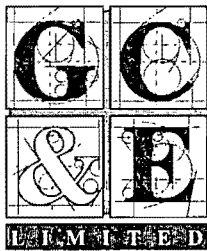
Present Zoning: BL & DR 5.5

REQUESTED RELIEF:

In the event that the Second Amended Parking Plan of The Galleria Tower depicting current, as-built conditions on the subject property is not approved as a modified parking plan pursuant to a companion Petition for Special Hearing: [1] a variance from: BCZR §§ 409.6.A to permit a total of 746 parking spaces in lieu of: i) the 1059 spaces required [w/out shopping center provision] or ii) the 1084 spaces required for a shopping center with more than 100,000 square feet of GLA; [2] approval of variance from any applicable RTA requirements for the existing parking and improvements shown on the Plat filed herewith; and [3] for all such additional variance relief as the nature of this request and the parking layout on the Plan filed herewith may require.

JUSTIFICATION:

1. Parking adjoins additional commercial parking on the same lot;
2. Existing topographic constraints;
3. Plan reflects all existing, as-built improvements and parking spaces; and
4. For such further reasons that will be presented at the hearing on this Petition.



Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towson Town Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

February 21, 2006

ZONING DESCRIPTION
Seminary Galleria LLC
1407 – 1447 York Road
Baltimore County, Maryland

All that piece or parcel of land situate, lying and being in the Ninth Election District, Third Councilmanic District of Baltimore County, Maryland and described as follows to wit:

Beginning for the same at a point at the intersection of the east side of York Road and the south side of Seminary Avenue, thence leaving York Road and running and binding along the south side of Seminary Avenue,

- 1) by a line curving to the right having a radius of 30 feet for an arc distance of 11.72 feet, the chord of said arc bearing north 15 degrees 18 minutes 48 seconds east 11.65 feet,
- 2) by a line curving to the right having a radius of 30 feet for an arc distance of 10.73 feet, the chord of said arc bearing north 36 degrees 45 minutes 29 seconds east 10.68 feet,
- 3) north 80 degrees 33 minutes 57 seconds east 144.10 feet,
- 4) by a line curving to the left having a radius of 1361.46 feet for an arc distance of 253.51 feet, the chord of said arc bearing north 75 degrees 13 minutes 46 seconds east 253.15 feet,
- 5) by a line curving to the left having a radius of 1361.46 feet for an arc distance of 58.17 feet, the chord of said arc bearing north 68 degrees 40 minutes 16 seconds east 58.16 feet,
- 6) north 67 degrees 26 minutes 50 seconds east 241.28 feet, thence leaving Seminary Avenue and running,
- 7) south 21 degrees 42 minutes 09 seconds east 609.59 feet,
- 8) north 68 degrees 17 minutes 50 seconds east 240.00 feet,
- 9) south 21 degrees 42 minutes 10 seconds east 182.60 feet,
- 10) south 68 degrees 17 minutes 50 seconds west 69.29 feet,
- 11) south 21 degrees 42 minutes 10 seconds east 15.00 feet,
- 12) south 68 degrees 17 minutes 50 seconds west 50.38 feet,
- 13) north 21 degrees 36 minutes 31 seconds west 102.22 feet,
- 14) north 68 degrees 57 minutes 00 seconds east 20.00 feet,
- 15) north 21 degrees 48 minutes 10 seconds west 95.29 feet,
- 16) north 21 degrees 48 minutes 10 seconds west 190.00 feet,
- 17) south 68 degrees 08 minutes 00 seconds west 353.22 feet,
- 18) north 12 degrees 31 minutes 35 seconds east 5.71 feet,
- 19) south 68 degrees 23 minutes 00 seconds west 9.00 feet,
- 20) south 68 degrees 23 minutes 00 seconds west 7.00 feet, to east side of York Road, thence running and binding on east side of York Road
- 21) north 21 degrees 37 minutes 00 seconds west 458.03 feet, to the point of beginning.

Containing 390,686 square feet or 8.97 Acres of land, more or less.

Note: This description only satisfies the requirements of the Office of Zoning and is not to be used for the purposes of conveyance.



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: #06-411-SPHA

1447 York Road

Southeast corner of York Road and Seminary Avenue

9th Election District - 3rd Councilmanic District

Legal Owner(s): Seminary Galleria, LLC

Special Hearing: for a use permit for commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the Plan filed herewith to meet to the extent possible, utilizing all existing parking spaces, the minimum parking requirements and in lieu of the companion variance requested herewith, approval of a modified parking plan and landscape requirements for the existing parking spaces and areas in accordance with the specific detail shown on the Plan filed herewith in lieu of the minimum requirements of the Plan filed herewith which depicts current, as-built conditions as the 2nd Amended Parking Plan of the Galleria Tower, and such additional relief as the nature of the parking and landscaping shown on the accompanying Plan may require. **Variance:** to permit a total of 746 parking spaces in lieu of the 1059 spaces required (without shopping center provision) of the 1084 spaces required for a shopping center with more than 100,000 square feet of GLA and for all such additional variance relief as the nature of this request and the parking layout on the Plan filed herewith may require.

Hearing: Monday, April 17, 2006 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

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

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

JT/3/763 Mar. 28

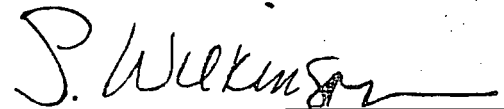
89410

CERTIFICATE OF PUBLICATION

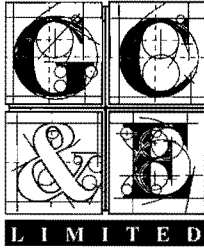
3/30/ 2006

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 3/28/ 2006.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News



LEGAL ADVERTISING



Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

RE: CASE# 06-411-SPHA
PETITIONER/DEVELOPER:
Seminary Galleria, LLC
DATE OF HEARING: April 17, 2006

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: KRISTEN MATTHEWS

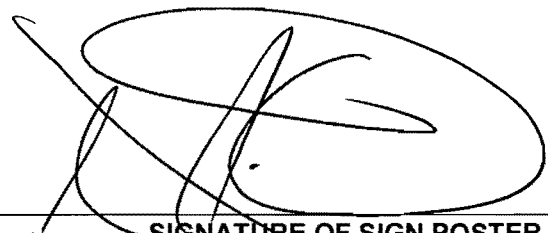
LADIES AND GENTLEMEN:

THIS LETTER IS TO CERTIFY UNDER THE PENALTIES OF PERJURY THAT THE NECESSARY
SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON THE PROPERTY LOCATED AT

(see page 2 for full size photo)

LOCATION:

1447 York Road



SIGNATURE OF SIGN POSTER

John J. Dill

GERHOLD, CROSS & ETZEL, LTD

SUITE 100

320 EAST TOWSONTOWN BLVD

TOWSON, MARYLAND 21286

410-823-4470 PHONE

410-823-4473 FAX

POSTED ON: March 24, 2006

CASE # :06-411-SPHA
A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.

Room 407 County Courts Building
PLACE: 401 Basley Avenue, Towson, MD
9:00 AM Monday, April 17, 2006

[illegible]

Variance To permit a total of 744 parking spaces in lieu of the 1000 spaces required by the zoning ordinance, the applicant has proposed a 1000 spaces required for a shopping center with more than 100,000 sq. ft. of GFA and for each additional variance on the nature of the proposed lot the parking based on the plan must be at least 1000 spaces.

RECOMMENDATION Due to the hearing on other conditions and conditions, the applicant is not in a position to accept the conditions of the hearing. The applicant is not in a position to accept the conditions of the hearing. The applicant is not in a position to accept the conditions of the hearing.

HEARINGS ARE HAN APPEAL ACCESSIBLE

03/24/2006

ZONING NOTICE

CASE #: 06-411-SPHA

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.

Room 407 County Courts Building
PLACE: 401 Bosley Avenue, Towson, MD

9:00 AM Monday, April 17, 2006

Special Hearing for a use permit for commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the Plan filed herewith to meet to the extent possible, utilizing all existing parking spaces, the minimum parking requirements and in lieu of the companion variance requested herewith, approval of a modified parking plan and landscape requirements for the existing parking spaces and areas in accordance with the specific detail shown on the Plan filed herewith in lieu of the minimum requirements of the Plan filed herewith which depicts current, as-built conditions as the 2nd Amended Parking Plan of the Galleria Tower, and such additional relief as the nature of the parking and landscaping shown on the accompanying Plan may require.

Variance to permit a total of 746 parking spaces in lieu of the 1059 spaces required (without shopping center provision) of the 1084 spaces required for a shopping center with more than 100,000 square feet of GLA and for such additional variance as the nature of this request and the parking layout on the plan filed herewith may require.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES
NECESSARY TO CONFIRM HEARING
CALL 410-687-3381 THE DAY BEFORE THE SCHEDULED HEARING DATE

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW
HEARINGS ARE HANDICAPPED ACCESSIBLE

03/24/2006

GALLERIA
1407-1447

- Kaiser Permanente
- LUTHERVILLE ORIGINS
- Progressive Nursing Staffs
- doodledesign
- Mary Kraft
- RITE AID
- FRANKLIN WEINSTEIN
- GALLERIA DELI
- H&R BLOCK
- JOHN A. SAWCHUK, D.D.S.
- CERTIFIED RARITIES
- New World
- MAXIM

ZONING NOTICE

CASE # :06-411-SPHA

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.

Room 407 County Courts Building
PLACE: 401 Bosley Avenue, Towson, MD

9:00 AM Monday, April 17, 2006

Special Hearing for a variance to the zoning ordinance is being held for the purpose of allowing the applicant to use the property for a purpose not permitted by the zoning ordinance. The applicant is requesting a variance to the zoning ordinance to allow the property to be used for a purpose not permitted by the zoning ordinance. The applicant is requesting a variance to the zoning ordinance to allow the property to be used for a purpose not permitted by the zoning ordinance.

Variance is a grant of relief from the strict application of the zoning ordinance. The applicant is requesting a variance to the zoning ordinance to allow the property to be used for a purpose not permitted by the zoning ordinance. The applicant is requesting a variance to the zoning ordinance to allow the property to be used for a purpose not permitted by the zoning ordinance.

ACCOMMODATION: 100% HANDICAPPED ACCESSIBLE
HEARINGS ARE HANDICAPPED ACCESSIBLE

03/24/2006

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: #06-411-SPHA

1447 York Road

Southeast corner of York Road and Seminary Avenue

9th Election District - 3rd Councilmanic District

Legal Owner(s): Seminary Galleria, LLC

Special Hearing: for a use permit for commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the Plan filed herewith to meet to the extent possible, utilizing all existing parking spaces, the minimum parking requirements and in lieu of the companion variance requested herewith, approval of a modified parking plan and landscape requirements for the existing parking spaces and areas in accordance with the specific detail shown on the Plan filed herewith in lieu of the minimum requirements of the Plan filed herewith which depicts current, as-built conditions as the 2nd Amended Parking Plan of the Galleria Tower, and such additional relief as the nature of the parking and landscaping shown on the accompanying Plan may require. **Variance:** to permit a total of 746 parking spaces in lieu of the 1059 spaces required (without shopping center provision) of the 1084 spaces required for a shopping center with more than 100,000 square feet of GLA and for all such additional variance relief as the nature of this request and the parking layout on the Plan filed herewith may require.

Hearing: Wednesday, June 14, 2006 at 10:00 a.m. in Room 407, County Office Building, 111 West Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-3868/4386.

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

JT/5/759 May 30

96997

CERTIFICATE OF PUBLICATION

6/1/, 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 5/30/, 2006.

☒ The Jeffersonian

☐ Arbutus Times

☐ Catonsville Times

☐ Towson Times

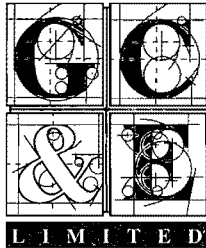
☐ Owings Mills Times

☐ NE Booster/Reporter

☐ North County News

S. Wilkinson

LEGAL ADVERTISING



Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

RE: CASE# 06-411-SPHA
PETITIONER/DEVELOPER:
Seminary Galleria, LLC
DATE OF HEARING: June 14, 2006

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: KRISTEN MATTHEWS

LADIES AND GENTLEMEN:

THIS LETTER IS TO CERTIFY UNDER THE PENALTIES OF PERJURY THAT THE NECESSARY
SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON THE PROPERTY LOCATED AT

(see page 2 for full size photo)

LOCATION:

1447 York Road

SIGNATURE OF SIGN POSTER

John J. Dill

GERHOLD, CROSS & ETZEL, LTD
SUITE 100
320 EAST TOWSONTOWN BLVD
TOWSON, MARYLAND 21286
410-823-4470 PHONE
410-823-4473 FAX

POSTED ON: May 22, 2006



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 0005

DATE 8/11/06 ACCOUNT 001-006-6150

AMOUNT \$ 400.00

RECEIVED FROM: Appeal

FOR: 1447 York Rd.

Case # 06-411-SP+1A

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 0006

DATE 8/11/06 ACCOUNT 001-006-6150

AMOUNT \$ 400.00

RECEIVED FROM: Appeal

FOR: 1447 York Road

Case # 06-411-SPH

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

8/17/2006 8/17/2006 12:20:52
REQ 1291 BALTIMORE COUNTY MD
PRECEDENT 2 2006-0 8/17/2006 CASH
CASH 3 578 YEARS VERIFICATION
EX 12. CASHES
Receipt for 400.00
CASHED BY 0.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

8/17/2006 8/17/2006 12:21:16
REQ 1301 BALTIMORE COUNTY MD
PRECEDENT 2 2006-0 8/17/2006 CASH
CASH 3 578 YEARS VERIFICATION
EX 12. CASHES
Receipt for 400.00
CASHED BY 0.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

Case No. 0486

06-411 SPHA

DATE 2-23-06 ACCOUNT R-001-006-6150

AMOUNT \$ 650.00

RECEIVED FROM: Beckhold Cross Fitzer

FOR: Commercial Special Hearing + Verdict
for 1447 YORK Rd.

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS DATE TIME CRN

2/22/2006 2/22/2006 09:47:26 4

REQ. WFOG WALKIN JEROM KOO

RECEIPT # 2421004 2/22/2006 OFLA

Dept 5 520 207TH VERIFICATION

CR NO. 000456

Receipt Tot \$650.00

\$705.00 LX \$1.00 CA

\$55.00 RE

Baltimore County, Maryland

CASHIER'S VALIDATION

**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: 06-411 SPHA
Petitioner: Seminary Galleria LLC
Address or ^{Site} Location: 1447 YORK RD

PLEASE FORWARD ADVERTISING BILL TO:

Name: Same
Address: c/o Hill Management
9640 DEER CREEK RD.
TIMONICUM, MD 21093
Telephone Number: 410-561-1300

Revised 7/11/05 - SCJ

TO: PATUXENT PUBLISHING COMPANY
Tuesday, March 27, 2006 Issue - Jeffersonian

Please forward billing to:
Hill Management
9640 Deereco Road
Timonium, MD 21093

410-561-1300

NOTICE OF ZONING HEARING

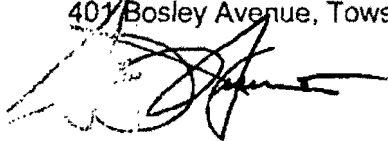
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 06-411-SPHA

1447 York Road
Southeast corner of York Road and Seminary Avenue
9th Election District – 3rd Councilmanic District
Legal Owners: Seminary Galleria, LLC

Special Hearing for a use permit for commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the Plan filed herewith to meet to the extent possible, utilizing all existing parking spaces, the minimum parking requirements and in lieu of the companion variance requested herewith, approval of a modified parking plan and landscape requirements for the existing parking spaces and areas in accordance with the specific detail shown on the Plan filed herewith in lieu of the minimum requirements of the Plan filed herewith which depicts current, as-built conditions as the 2nd Amended Parking Plan of the Galleria Tower, and such additional relief as the nature of the parking and landscaping shown on the accompanying Plan may require. Variance to permit a total of 746 parking spaces in lieu of the 1059 spaces required (without shopping center provision) of the 1084 spaces required for a shopping center with more than 100,000 square feet of GLA and for all such additional variance relief as the nature of this request and the parking layout on the Plan filed herewith may require.

Hearing: Monday, April 17, 2006 at 9:00 a.m., Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

**Department of Permits and
Development Management**



Baltimore County

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Tel: 410-887-3353 • Fax: 410-887-5708

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

April 19, 2006

NEW 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: 06-411-SPHA

1447 York Road

Southeast corner of York Road and Seminary Avenue

9th Election District – 3rd Councilmanic District

Legal Owners: Seminary Galleria, LLC

Special Hearing for a use permit for commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the Plan filed herewith to meet to the extent possible, utilizing all existing parking spaces, the minimum parking requirements and in lieu of the companion variance requested herewith, approval of a modified parking plan and landscape requirements for the existing parking spaces and areas in accordance with the specific detail shown on the Plan filed herewith in lieu of the minimum requirements of the Plan filed herewith which depicts current, as-built conditions as the 2nd Amended Parking Plan of the Galleria Tower, and such additional relief as the nature of the parking and landscaping shown on the accompanying Plan may require.

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Hearing: Wednesday, June 14, 2006 at 10:00 a.m., Room 407, County Office Building,
111 West Chesapeake Avenue, Towson 21204

A handwritten signature in dark ink, appearing to read "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Howard Alderman, 502 Washington Avenue, Ste. 800, Towson 21204
Seminary Galleria, Hill Management, 9640 Deereco Road, Timonium 21093
Bruce Doak, 320 E. Towsontown Blvd., Ste. 100, Towson 21286

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, MAY 30, 2006.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

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

TO: PATUXENT PUBLISHING COMPANY
Tuesday, ~~March 27~~ ^{May 30}, 2006 Issue - Jeffersonian

Please forward billing to:

Hill Management
9640 Deereco Road
Timonium, MD 21093

410-561-1300

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: 06-411-SPHA

1447 York Road

Southeast corner of York Road and Seminary Avenue

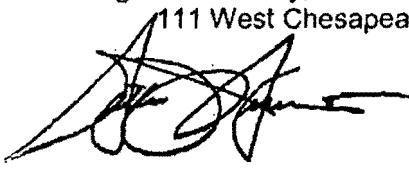
9th Election District - 3rd Councilmanic District

Legal Owners: Seminary Galleria, LLC

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Hearing: Wednesday, June 14, 2006 at 10:00 a.m., Room 407, County Office Building,
111 West Chesapeake Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

**Department of Permits 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 20, 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: 06-411-SPHA

1447 York Road
Southeast corner of York Road and Seminary Avenue
9th Election District – 3rd Councilmanic District
Legal Owners: Seminary Galleria, LLC

Special Hearing for a use permit for commercial parking adjacent to existing commercial parking on the same lot in a residential zone, as shown and laid out on the Plan filed herewith to meet to the extent possible, utilizing all existing parking spaces, the minimum parking requirements and in lieu of the companion variance requested herewith, approval of a modified parking plan and landscape requirements for the existing parking spaces and areas in accordance with the specific detail shown on the Plan filed herewith in lieu of the minimum requirements of the Plan filed herewith which depicts current, as-built conditions as the 2nd Amended Parking Plan of the Galleria Tower, and such additional relief as the nature of the parking and landscaping shown on the accompanying Plan may require.
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Hearing: Monday, April 17, 2006 at 9:00 a.m., Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

A handwritten signature in black ink, appearing to read "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Howard Alderman, 502 Washington Avenue, Ste. 800, Towson 21204
Seminary Galleria, Hill Management, 9640 Deereco Road, Timonium 21093
Bruce Doak, 320 E. Towsontown Blvd., Ste. 100, Towson 21286

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, MARCH 27, 2006.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

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

APPEAL SIGN POSTING REQUEST

CASE NO. 06-411-SPHA

1447 YORK ROAD

9TH ELECTION DISTRICT

APPEALED: 8/11/2006

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

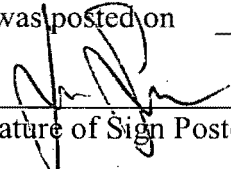
CASE NO.: 06-411-SPHA

LEGAL OWNER: SEMINARY GALLERIA, LLC

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

1447 YORK ROAD

The sign was posted on 1-25-07, 2006.

By: 
(Signature of Sign Poster)

(Print Name)

JASON SEIDELMAN



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

December 27, 2006

NOTICE OF ASSIGNMENT

CASE #: 06-411-SPHA

IN THE MATTER OF: SEMINARY GALLERIA, LLC –Petitioner/
Legal Owner (1447 York Road)
9th Election District; 3rd Councilmanic District

10/02/03 – DZC's Order in which requested special hearing and variance relief
was **GRANTED in part AND DENIED in part.**

ASSIGNED FOR:

TUESDAY, MARCH 20, 2007 at 10:00 a.m. /Day #1 and
WEDNESDAY, MARCH 21, 2007 at 10 a.m. /Day #2

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

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

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

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

Kathleen C. Bianco, Administrator

c:	Counsel for Appellant /Petitioner	: Howard L. Alderman, Jr., Esquire
	Appellant /Petitioner	: Teresa Rosier and Bill Russell /(Seminary Galleria)
		c/o Hill Management Services, Inc.
	Bruce Doak /Gerhold, Cross & Etzel	
	Counsel for Appellants /Protestants	: Michael P. Tanczyn, Esquire
	Appellants /Protestants	: Larry Townsend /Dulaney Valley Imp. Assn.
	Don Gerding	
	Office of People's Counsel	
	Pat Keller, Planning Director	
	Zoning Commissioner /Deputy Zoning Commissioner	
	Timothy M. Kotroco, Director /PDM	





County Board of Appeals of Baltimore County

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

March 23, 2007

NOTICE OF DELIBERATION

IN THE MATTER OF:

SEMINARY GALLERIA, LLC – Legal Owner
Case No-06-411-SPHA

Having heard this matter on 3/20 and 3/21/07, public deliberation has been scheduled for the following date /time:

DATE AND TIME : **TUESDAY, MAY 22, 2007 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

**NOTE: Closing briefs are due on Monday, April 30, 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: Counsel for Appellant /Petitioner : Howard L. Alderman, Jr., Esquire
Appellant /Petitioner : Teresa Rosier and Bill Russell /(Seminary Galleria)
c/o Hill Management Services, Inc.

Bruce Doak /Gerhold, Cross & Etzel

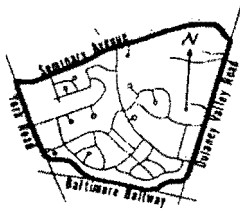
Counsel for Appellants /Protestants : Michael P. Tanczyn, Esquire
Appellants /Protestants : Larry Townsend /Dulaney Valley Imp. Assn.

Don Gerding

Office of People's Counsel
Pat Keller, Planning Director
Zoning Commissioner /Deputy Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Copy to: 5-2-7





**Dulaney
Valley
Improvement
Association, Inc.**

P.O. Box 102 · Lutherville, MD · 21094-0102

March 30, 2006

Mr. Timothy M. Kotroco, Director
Permits and Development Management
County Office Building
111 West Chesapeake Avenue, Suite 105
Towson, Maryland, 21204

*Postponement granted
T.K.*

Dear Mr. Kotroco:

This is in reference to a Zoning Hearing, Case 06-411-SPHA.

The Dulaney Valley Improvement Association, Inc., wishes to continue to participate in all zoning matters that affect our community. This case, 06-411-SPHA, is yet another attempt by Seminary Galleria to obtain "zoning by forgiveness" for failing to obtain a building permit for parking places that were constructed in a residentially zoned area within our community association boundaries.

Due to a scheduling conflict, we will be unable to be present at the hearing that is now scheduled for April 17, 2006. A commitment made near the end of last year will also prevent us from preparing for this case and appearing before the second week in June. Therefore, we respectfully request that this case be postponed and rescheduled for sometime after June 12, 2006.

Thank you.

Very truly yours,

Larry Townsend
President

Timothy Kotroco - Zoning Case Postponement Request

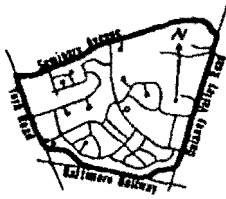
From: Larry Townsend <lertjr@att.net>
To: <tkotroco@co.ba.md.us>
Date: 04/04/06 9:08 PM
Subject: Zoning Case Postponement Request

Tim:

Attached sent last week asking for a zoning case postponement. Has it been received. I sent the original under the DVIA website dvia@att.net.

Thanks.

Larry Townsend



**Dulaney
Valley
Improvement
Association, Inc.**

P.O. Box 102 · Lutherville, MD · 21094-0102

March 30, 2006

Mr. Timothy M. Kotroco, Director
Permits and Development Management
County Office Building
111 West Chesapeake Avenue, Suite 105
Towson, Maryland, 21204

Dear Mr. Kotroco:

This is in reference to a Zoning Hearing, Case 06-411-SPHA.

The Dulaney Valley Improvement Association, Inc., wishes to continue to participate in all zoning matters that affect our community. This case, 06-411-SPHA, is yet another attempt by Seminary Galleria to obtain "zoning by forgiveness" for failing to obtain a building permit for parking places that were constructed in a residentially zoned area within our community association boundaries.

Due to a scheduling conflict, we will be unable to be present at the hearing that is now scheduled for April 17, 2006. A commitment made near the end of last year will also prevent us from preparing for this case and appearing before the second week in June. Therefore, we respectfully request that this case be postponed and rescheduled for sometime after June 12, 2006.

Thank you.

Very truly yours,

Larry Townsend
President

*Kristen
Postponement granted
Reset after June 12, 2006.
* Please call Mr. Townsend
and the Petitioner to
advise them of the
postponement*



County Board of Appeals of Baltimore County

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

January 11, 2008

Michael Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204

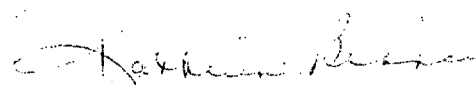
RE: Your Inquiry – Status of Seminary Galleria, LLC
Case No. 06-411-SPH


Dear Mr. Tanczyn:

In response to your letter dated January 4, 2008, the decision of the Board in the subject matter is in draft format, presently being reviewed by the respective Board members. I would expect to be able to issue the final Opinion and Order by the end of this month.

Should you have any further questions, please call me at 410-887-3180.

Very truly yours,


Kathleen C. Bianco
Administrator

c: Carole Demilio, Deputy People's Counsel
Office of People's Counsel
Dulaney Valley Improvement Association
Howard L. Alderman, Jr., Esquire



LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827
Email: mptlaw@verizon.net

January 4, 2008

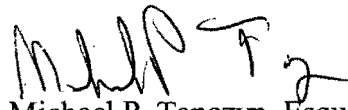
Board of Appeals of Baltimore County
Attn: Kathy Bianco
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: Case No. 06-411-SPH

Dear Kathy:

This case was deliberated in May, 2007. However, we have not to this time ever received a decision of the Board. Can you tell us when we can expect such a decision?

Very truly yours,


Michael P. Tanczyn, Esquire

MPT:kds

cc: Carole DeMilio, Esquire
Dulaney Valley Improvement Association
Howard L. Alderman, Esquire

RECEIVED

JAN 08 2008

**BALTIMORE COUNTY
BOARD OF APPEALS**

**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*

June 9, 2006

Howard L. Alderman, Jr.
502 Washington Ave, Suite 800
Baltimore, MD, 21204

Dear: Mr. Alderman

RE: Case Number: 06-411-SPHA; 1447 York Rd.

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 23, 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,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:sma

Enclosures

c: People's Counsel
Seminary Galleria, LLC, C/O Hill Management, 9640 Deereco Rd., Timonium, MD 21093
Bruce E. Doak, PLS, 320 E. Towsontown Blvd., Suite 100, Towson, MD, 21286

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



Fire Department

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



Baltimore County

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

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

March 14, 2006

ATTENTION: Zoning Review Planners

Distribution Meeting of: March 13, 2006

Item No.: 411, 418, 419, 420, 421, 423, 424, 426

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

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

Acting Lieutenant Don W. Muddiman
Fire Marshal's Office
(O) 410-887-4881
MS-1102F

cc: File

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



Printed on Recycled Paper

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



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

Maryland Department of Transportation

Date: 3.14.06

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

RE: Baltimore County
Item No. 411 JJS

Dear Ms. Matthews:

We have reviewed the referenced item and have no objection to approval, as a field inspection reveals that the existing entrance(s) on to MD/US 45, are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA projects.

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

Very truly yours,

Steven D. Foster, Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development
Management

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For March 20, 2006
Item Nos. ~~411~~ 418, 419, 420, 421, 422,
423, 424, and 426

DATE: March 14, 2006

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-03142006.doc

jm
6/14

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: April 18, 2006

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): Case(s) 6-411- 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:

Cydia Murray

Division Chief:

Pat Keller

CM/LL

RECEIVED

MAY - 2006

PLANNING COMMISSIONER

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
AND VARIANCE *
1447 York Road; NE/side York Road * ZONING COMMISSIONER
corner SE/side Seminary Avenue *
8th Election & 3rd Councilmanic Districts * FOR
Legal Owner(s): Seminary Galleria, LLC *
Teresa Rosier, Authorized Member * BALTIMORE COUNTY
Petitioner(s) *
06-411-SPHA

* * * * *

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 13th day of March, 2006, a copy of the foregoing Entry of Appearance was mailed to Bruce Doak, PLS, Gerhold, Cross & Etzel, Chtd, 320 E Towsontowne Boulevard, Suite 100, Towson, MD 21286 & Howard L Alderman, Jr, Esquire, Levin & Gann PA, 502 Washington Avenue, Towson, MD 21204, Attorney for Petitioner(s).

RECEIVED

MAR 13 2006

Per *gc*

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RE: PETITION FOR SPECIAL HEARING * BEFORE THE COUNTY
AND VARIANCE *
1447 York Road; NE/side York Road * BOARD OF APPEALS
corner SE/side Seminary Avenue *
8th Election & 3rd Councilmanic Districts * FOR
Legal Owner(s): Seminary Galleria, LLC *
Teresa Rosier, Authorized Member * BALTIMORE COUNTY
Petitioner(s) * 06-411-SPHA

* * * * *

ENTRY OF APPEARANCE

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

RECEIVED

SEP 27 2006

BALTIMORE COUNTY
BOARD OF APPEALS

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 27th day of September, 2006, a copy of the foregoing Entry of Appearance was mailed to Michael Tanczyn, Esquire, 606 Baltimore Avenue, St. 106, Towson, MD 21204 & Howard L Alderman, Jr, Esquire, Levin & Gann PA, 502 Washington Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

**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

September 22, 2006

Howard Alderman, Jr.
Levin & Gann
502 Washington Avenue, 8th Floor
Towson, MD 21204

Dear Mr. Alderman:

RE: Case: 06-411-SPHA, 1447 York Road

Please be advised that appeals of the above-referenced case were filed in this office on August 11, 2006 from your office and Michael Tanczyn. 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,
Handwritten signature of Timothy Kotroco in black ink.

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Michael Tanczyn, 606 Baltimore Avenue, Ste. 106, Towson 21204
Teresa Rosier, Seminary Galleria, LLC, 9640 Deereco Rd. Timonium 21093
Bruce Doak, 320 E. Towsontown Blvd., Ste. 100, Towson 21286
Larry Townsend, 1111 Long Brook Road, Lutherville 21093



APPEAL

Petition for Special Hearing & Variance
1447 York Road
S/E Corner of York Road and Seminary Avenue
9th Election District – 3rd Councilmanic District
Legal Owners: Seminary Galleria, LLC

Case No.: 06-411-SPHA

- ✓ Petition for Special Hearing (February 23, 2006)
one variance
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (March 20, 2006)
- ✓ Certification of Publication (March 28, 2006 – The Jeffersonian)
- ✓ Certificate of Posting (March 24, 2006) by John J. Dill
- ✓ Request for Postponement (March 30, 2006 by Dulaney Valley Improvement Association)
- ✓ Certificate of Publication indicating new date & time (May 30, 2006 – The Jeffersonian)
- ✓ Certificate of Posting indicating new date & time (May 22, 2006 by John J. Dill)
- ✓ Entry of Appearance by People's Counsel (March 13, 2006)
- ✓ Petitioner(s) Sign-In Sheet – One Sheet
- ✓ Protestant(s) Sign-In Sheet- None
- ✓ Citizen(s) Sign-In Sheet – One Sheet
- ✓ Zoning Advisory Committee Comments

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SEP 25 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Petitioners' Exhibit

- ✓ 1. Second Amended Parking Plan of The Galleria Tower
- ✓ 2. Not located in File
- ✓ 3. Letters of support from tenants of Seminary Galleria

Protestants' Exhibits:

None in File

Miscellaneous (Not Marked as Exhibit)-

- ✓ 1. Photographs (A thru D)
- ✓ 2. Active Violation Case Documents from Code Enforcement
- ✓ 3. Opinion for 04-052-SPHA
- ✓ 4. Board of Appeals Remand Opinion (03-C-04-11000)
- ✓ 5. Motion to Dismiss from Michael Tanczyn (06-12-06)
- ✓ 6. Opposition to Motion to Dismiss from Howard Alderman (06-13-06)
- ✓ Deputy Zoning Commissioner's Order (Parts Granted & Denied – July 14, 2006)
- ✓ Notice of Appeal received on August 11, 2006 from Michael Tanczyn
- ✓ Notice of Appeal received on August 11, 2006 from Howard Alderman

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Howard Alderman
Michael Tanczyn
Teresa Rosier
Bruce Doak
Bill Russell
Larry Townsend

date sent September 22, 2006, klm

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

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AUG - 5 2008

**BALTIMORE COUNTY
BOARD OF APPEALS**

N O T I C E O F H E A R I N G / T R I A L

Case Number: 03-C-08-002967 AA

Administrative Agency : 06-411-SPHA

C I V I L

In The Matter Of Peoples Counsel For Baltimore County

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

TO: County Board Of Appeals
The Jefferson Building Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204

You are hereby NOTIFIED TO APPEAR before a Judge of the:

CIRCUIT COURT FOR BALTIMORE COUNTY
County Courts Building
401 Bosley Avenue
Towson, MD 21285-6754

Court date:
October 21, 2008
At: 09:30 AM
Civil Non-Jury Trial

1/2 HOUR ADMINISTRATIVE APPEAL HEARING DATE OF
10-21-08 IS CANCELLED DUE TO CONSOLIDATION WITH
C-08-2931

PLEASE NOTE: All counsel are expected to confer with each other with regard to the assigned trial date and to advise the court and other parties of any pre-existing conflict promptly.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Application for postponement must be made in writing with copies to all attorneys.

Please refer to Information Desk for Court Room Designation.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., **cameras and recording equipment are strictly prohibited** in courtrooms and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

Assignment Clerk: Oldewurtel Joan M
Assignment Office Phone: (410)-887-2660

Date Issued: 07/31/08

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

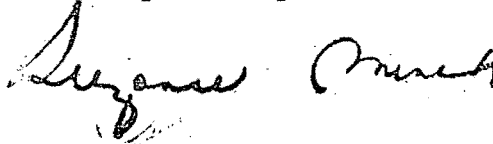
N O T I C E O F R E C O R D

Case Number: 03-C-08-002931 AA
Administrative Agency : 06-411-SPHA
C I V I L

In The Matter Of Dulaney Valley Improvement Assn Inc

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 14th day of May, 2008.



Suzanne Mensh
Clerk of the Circuit Court, per 

Date issued: 05/16/08

TO: BOARD OF APPEALS FOR BALTIMORE COUNTY
105 W. Chesapeake Avenue
Jefferson Bldg. Suite 203
Towson, MD 21204

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-08-002931

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MAY 19 2008

**BALTIMORE COUNTY
BOARD OF APPEALS**

TO: BOARD OF APPEALS FOR BALTIMORE COUNTY
105 W. Chesapeake Avenue
Jefferson Bldg. Suite 203
Towson, MD 21204

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

County Board Of Appeals
The Jefferson Building Su
105 W. Chesapeake Avenue
Towson MD 21204

Assignment Date: 07/25/08

Case Title: In The Matter Of Peoples Counsel For Baltimore County
Case No: 03-C-08-002967 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 08/09/08
 2. All Motions (excluding Motions in Limine) are due by..... 09/11/08
 3. TRIAL DATE is..... 10/21/08
- Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients **MUST** attend the settlement conference **in person**. All insurance representatives **MUST** attend this conference **in person** as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs **MUST** be paid on the date of the settlement conference or trial.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., cameras and recording equipment are prohibited in courtrooms.

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JUL 28 2008

BALTIMORE COUNTY
BOARD OF APPEALS

and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: Michael P Tanczyn Esq
cc: Howard L Alderman Jr
cc: Peter M Zimmerman Esq
cc: Carole S Demilio Esq
Issue Date 07/25/08

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

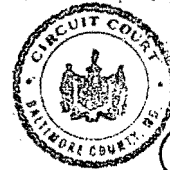
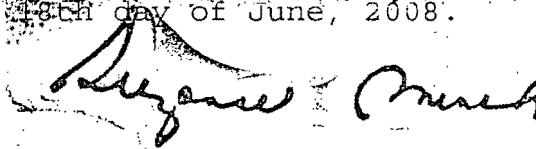
N O T I C E O F R E C O R D

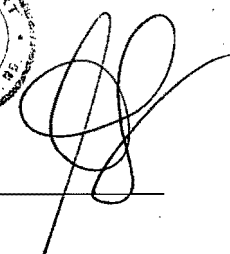
Case Number: 03-C-08-002967 AA
Administrative Agency : 06-411-SPHA
C I V I L

In The Matter Of Peoples Counsel For Baltimore County

Notice

Pursuant to Maryland Rule 7-205(e), you are advised that the Record of Proceedings was filed on the 18th day of June, 2008.



Suzanne Mensh
Clerk of the Circuit Court, per 

Date issued: 07/01/08

TO: COUNTY BOARD OF APPEALS
THE JEFFERSON BLDG., SUITE 203
105 W. CHESAPEAKE AVE.
TOWSON, MD 21204

RECEIVED

JUL 03 2008

BALTIMORE COUNTY
BOARD OF APPEALS

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

Board Of Appeals For Baltimore County
105 W. Chesapeake Avenue
Jefferson Bldg. Suite 203
Towson MD 21204

Assignment Date: 06/03/08

Case Title: In The Matter Of Dulaney Valley Improvement Assn Inc
Case No: 03-C-08-002931 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 06/18/08
2. All Motions (excluding Motions in Limine) are due by..... 07/26/08
3. TRIAL DATE is..... 09/04/08

Civil Non-Jury Trial: Start Time: 09:30AM: To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., cameras and recording equipment are strictly prohibited in courtrooms

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JUN - 4 2008

BALTIMORE COUNTY
BOARD OF APPEALS

and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: Michael P Tanczyn Esq

cc: Howard L Alderman Jr

Issue Date 06/03/08

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

County Board Of Appeals
The Jefferson Building Su
105 W. Chesapeake Avenue
Towson MD 21204

Assignment Date: 06/02/08

Case Title: In The Matter Of Peoples Counsel For Baltimore County
Case No: 03-C-08-002967 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 06/18/08
2. All Motions (excluding Motions in Limine) are due by..... 07/26/08
3. TRIAL DATE is..... 09/04/08

Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL; CONSOLIDATED
W/C-08-2931

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

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Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

RECEIVED

AUG - 5 2008

BALTIMORE COUNTY
BOARD OF APPEALS

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., cameras and recording equipment are strictly prohibited in courtrooms and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: Michael P Tanczyn Esq
cc: Howard L Alderman Jr
cc: Peter M Zimmerman Esq
cc: Carole S Demilio Esq
Reissue Date 08/01/08

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

Board Of Appeals For Baltimore County
105 W. Chesapeake Avenue
Jefferson Bldg. Suite 203
Towson MD 21204

Assignment Date: 06/02/08

Case Title: In The Matter Of Dulaney Valley Improvement Assn Inc
Case No: 03-C-08-002931 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 06/18/08
2. All Motions (excluding Motions in Limine) are due by..... 07/26/08
3. TRIAL DATE is..... 09/04/08

Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL CASES
C-08-2931 & C-08-2967 ARE CONSOLIDATED PER COURT ORDER

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

RECEIVED

AUG - 5 2008

BALTIMORE COUNTY
BOARD OF APPEALS

DIVISION OF CODE INSPECTIONS AND ENFORCEMENT

ACTIVE VIOLATION CASE DOCUMENTS

BALTIMORE COUNTY MARYLAND
INTER-OFFICE CORRESPONDENCE

DATE: March 21, 2006

TO: W. Carl Richards, Jr.
Zoning Review Supervisor

FROM: Rick Wisnom, Chief
Division of Code Inspections & Enforcement

SUBJECT: Item No.: 6-411-SPHA
Legal Owner/Petitioner: Seminary Galleria LLC
Contract Purchaser: N/A
Property Address: 1447 York Rd.
Location Description: SE corner York Rd & Seminary Ave

VIOLATION INFORMATION: Case No. 03-2247
Defendants:

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following person(s) regarding the hearing date:

NAME	ADDRESS
Richard Hurd	410-303-4163

In addition, please find attached a duplicate copy of the following pertinent documents relative to the violation case, for review by the Zoning Commissioner's Office:

- X 1. Complaint letter/memo/email/fax (if applicable)
- ☐ 2. Complaint Intake Form/Code Enforcement Officer's report and notes
- X 3. State Tax Assessment printout
- ☐ 4. State Tax Parcel Map (if applicable)
- ☐ 5. MVA Registration printout (if applicable)
- ☐ 6. Deed (if applicable)
- ☐ 7. Lease-Residential or Commercial (if applicable)
- ☐ 8. Photographs including dates taken
- X 9. Correction Notice/Code Violation Notice
- X 10. Citation and Proof of Service (if applicable)
- X 11. Certified Mail Receipt (if applicable)
- ☐ 12. Final Order of the Code Official/Hearing Officer (if applicable)
- ☐ 13. Office of Budget & Finance Billing Notice/Property Lien Sheet (if applicable)
- ☐ 14. Complete Chronology of Events, beginning with the first complaint through the Billing Notice/Property Lien Sheet (if applicable).

After the public hearing is held, please send a copy of the Zoning Commissioner's order to Helene Kehring in Room 113 in order that the appropriate action may be taken relative to the violation case.

RSW/ph
C: Code Enforcement Officer

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Esquire Commerce Place
Michael L. Quinn
1 South ST 27th Floor
Baltimore, MD 21202

A. Signature

X

B. Received by (Printed Name)

Agent

Addressee

C. Date of Delivery

1/17/06

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7003 3110 0005 5895 9136

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Bill Russell
9640 Deerco RD
Timonium, MD 21093

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

Agent

Addressee

C. Date of Delivery

1-17

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7003 3110 0005 5895 9112

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Howard Alderman
502 Washington Ave
Towson, MD 21204

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

N. Novins

Agent

Addressee

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7003 3110 0005 5895 9105

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael L. Quin, ESQ
1 South 27th Floor
Baltimore, MD 21202

#03-2247

2. Article Number

(Transfer from service label)

7002 1000 0005 2083 7623

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Signature]

☐ Agent☐ Addressee

B. Received by (Printed Name)

[Signature]

C. Date of Delivery

5/9

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes



Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Code Enforcement: 410-887-3351
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CITATION

SERVE ON RESIDENT AGENT, CORPORATE OFFICER, OWNER, TENANT, AS APPLICABLE

Citation/Case No. 03-2247 Property No. 1900014868 Zoning: 8

Name(s): Seminary Galleria LLC

Address: 216 Schilling Cir Cockeysville Md

Violation Location: 1447 York Rd 21031

Violation Dates: 5/6/03 thru 1/12/06

BALTIMORE COUNTY FORMALLY CHARGES THAT THE ABOVE NAMED PERSON(S) DID
UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS OR REGULATIONS:

B.C.C.R. 101; 102.1; 409.2; 409.4
B.C.C. 26-121 Failure to remove added
parking spaces and restore site to
original condition. Failure to bring
property in compliance with approved site
Plan

Pursuant to Section 1-8, Baltimore County Code, a civil penalty
has been assessed, as a result of the violation cited herein, in
the amount indicated:

\$ 196,200.00

A quasi-judicial hearing has been pre-scheduled in Room 116,
111 West Chesapeake Avenue, Towson, Maryland, for:

Date: 2/28/06

Time: 9:00 AM

Citation must be served by:

Date: 1/27/06

I do solemnly declare and affirm, under the penalty of perjury, that the contents stated above are true
and correct to the best of my knowledge, information, and belief.

Print Name: Paul Hohay

Date: 1/12/06 Inspector's Signature: [Signature]

SEE REVERSE SIDE FOR ADDITIONAL DETAILS AND INFORMATION

NOTICE OF INTENTION TO DEFEND

Print Name: [Blank] Citation/Case No.: [Blank]

Address: [Blank]

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

BALTIMORE COUNTY, Plaintiff, vs. Seminary Galleria LLC, Defendant

Hearing Date 2/28/06 Issued Date 1/12/06 Expiration Date 1/27/06

REQUEST FOR SERVICE

Please serve the attached process on the person shown.

ORDER FOR SERVICE

You are hereby commanded to serve the attached process and to make your return promptly on this Order if served, and if you are unable to serve, you are to make your return on this Order and return the original process no later than the last day following the termination of the validity of the process.

PROOF OF SERVICE

I hereby CERTIFY that:

☒ A Citation and all other papers filed with it were served by restricted delivery mail, return card attached.

☐ A Citation and all other papers filed with it were served by personal delivery to _____
Adult person's name

_____, on _____, at _____ a.m./p.m.
At this address Date Time

Description of person served: Race _____ Sex _____ Height _____

Weight _____ Age _____ Other _____

_____. The premises at _____ were posted.

☐ I was unable to serve because _____

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief, and do further affirm that I am a competent person over 18 years of age and not a party to the case.

[Signature]
Signature

CEO
Title

111 W. Chesapeake Ave
Address

410-887-3953
Telephone No.

1/20/06
Date

9:30 (a.m.)
Time



Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office
111 West Chesapeake Avenue
Towson, MD 21204

Code Enforcement: 410-887-3351
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CITATION
SERVE ON RESIDENT AGENT, CORPORATE OFFICER, OWNER, TENANT, AS APPLICABLE

Citation/Case No. 03-2247 Property No. 1900014868 Zoning: _____

Name(s): Seminary Fullerton

Address: 10 Parks Ave

Violation Location: 1447 York Rd

Violation Dates: 5/5/03 thru 6/24/03

BALTIMORE COUNTY FORMALLY CHARGES THAT THE ABOVE-NAMED PERSON(S) DID
UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS OR REGULATIONS:

BCC 101, 102, 1, 409, 2 and BCC 26-22 A

Failure to revise approved site plan
prior to creating additional
parking spaces and enlarging paved
area of parking lot

✓ Seminary Fullerton

Pursuant to Section 1-8, Baltimore County Code, a civil penalty
has been assessed, as a result of the violation cited herein, in
the amount indicated:

\$ 9,400.00

A quasi-judicial hearing has been pre-scheduled in Room 116,
111 West Chesapeake Avenue, Towson, Maryland, for:

Date: 6/24/03

Time: 9:00 AM

Citation must be served by:

Date: 5/23/03

I do solemnly declare and affirm, under the penalty of perjury, that the contents stated above are true
and correct to the best of my knowledge, information, and belief.

Print Name: David C. Mahone

Date: 5/19/03 Inspector's Signature: [Signature]

SEE REVERSE SIDE FOR ADDITIONAL DETAILS AND INFORMATION

NOTICE OF INTENTION TO DEFEND

Print Name: _____ Citation/Case No.: _____

Address: _____

Date: _____ Defendant's Signature: _____

VIOLATION SITE

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

County Office Building, Room 119
111 West Chesapeake Avenue
Towson, Maryland 21204

BALTIMORE COUNTY, Plaintiff, vs. Seminary "Galleria" LLC, Defendant

Case # 03-2247 Violation Address 1447 York Rd Zip _____

Hearing Date 1 / 1 Issued Date 1 / 1 Expiration Date 1 / 1

Author of Citation Paul Hohn

REQUEST FOR SERVICE

Please serve the attached process on the person shown.

ORDER FOR SERVICE

You are hereby commanded to serve the attached process and to make your return promptly on this Order if served, and if you are unable to serve, you are to make your return on this Order and return the original process no later than the last day following the termination of the validity of the process.

PROOF OF SERVICE

I hereby CERTIFY that:

☒ A Citation and all other papers filed with it were served by restricted delivery mail, return card attached.

☐ A Citation and all other papers filed with it were served by personal delivery to _____
Individual or agent served

At this address _____ Zip _____ on _____ Date _____ Time _____ a.m./p.m.

Description of Person Served: Race _____ Sex: M F Height: _____ ft. _____ in. Wt. _____ lbs.
Age: _____ yrs. Other: _____

Telephone verification of citation acknowledgment from _____ on _____

was unable to serve:

1 st Attempt	_____	_____ a.m./p.m.	because _____	Initials _____
2 nd Attempt	_____	_____ a.m./p.m.	because _____	Initials _____
3 rd Attempt	_____	_____ a.m./p.m.	because _____	Initials _____

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief, and do further affirm that I am a competent person over 13 years of age and not a party to the case.

1 W. Chesapeake Ave. Towson, MD 21204
Server's Address

410-887-3351
Telephone

Paul Hohn

5.14.03

11/11/03

Type of Use

~~Shopping center (100,000~~
~~square feet or more of gross~~
~~leasable area)~~

Minimum Number of Required Off-Street Parking Spaces

In the C.T. District of Towson: the required number of spaces shall be calculated according to the particular types of tenants in the shopping center, i.e., each tenant shall be considered as a separate use.

~~Elsewhere: 5 per 1,000 square feet of gross leasable area, including any area devoted to restaurants, but excluding any area devoted to theaters, in which case the theaters shall be considered as a separate use.~~

Transit center or transit facility

As determined by the Baltimore County Zoning Commissioner upon the recommendations of the State of Maryland Mass Transit Administration. [Bill No. 91-1990]

Transit storage or repair yard

1 per employee on the largest shift. [Bill No. 91-1990]

3. Industrial uses.

Type of Use

Manufacturing wholesale or warehouse

Minimum Number of Required Off-Street Parking Spaces

1 per employee on the largest shift.

Research institute or laboratory

2.5 per 1,000 square feet of gross floor area.

Trucking facility, Class I

5 plus 1 per 2 employees in the largest shift.

Trucking facility, Class II

1 per 2 employees in the largest shift or 1 per 3,000 square feet of total area devoted to parking of truck tractors, truck trailers or tractor-trailers (not including truck maneuvering area or loading area), but in no case less than 10.



Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

8

Code Enforcement: 410-887-3351

Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620

Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation/Case No. 03-2247	Property No. 1900014868	Zoning: LLC
-------------------------------------	-----------------------------------	-----------------------

Name(s): **Seminary Galleria LLC**

Address: **216 Schilling Cir Cockeysville Md**

Location: **1447 York Rd 21031**

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

BCZR 101 ; 102.1 ; 409.2 BCC 26-121

BCZR 409A - Non Compliance

With site plan

Remove added parking spaces

and restore site to original

condition

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

On or Before: 12/30/05	Date Issued: 11/30/05
----------------------------------	---------------------------------

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF \$200, \$500, OR \$1000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

Print Name: **Paul Hohne**

INSPECTOR: **[Signature]**

STOP WORK NOTICE

PURSUANT TO INSPECTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN:

Not Later Than:	Date Issued:
-----------------	--------------

DATE CLOSED:

INSPECTOR:

AGENCY



Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Code Enforcement: 410-887-3351
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation/Case No. 03-2247	Property No. 10 Park Ave	Zoning: Residential
-------------------------------------	------------------------------------	-------------------------------

Name(s): **Seminary Galleria LLC**

Address: **10 Park Ave, Pk 40, Md. 21093**

Violation Location: **1447 York Rd**

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

BCZR 101, 102, 409.2 BCC 26-121
BCZR 409.4 - Now compliance
With site plan.
Remove added parking spaces
and return site to original
condition

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

On or Before: 12/21/5	Date Issued: 11/21/5
------------------------------	-----------------------------

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF \$200, \$500, OR \$1000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

Print Name: **Paul Hohne**

INSPECTOR:

STOP WORK NOTICE

PURSUANT TO INSPECTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN:

Not Later Than:	Date Issued:
-----------------	--------------

INSPECTOR:

AGENCY

HOWARD L. ALDERMAN, JR.
halderman@LevinGunn.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)

May 20, 2003

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME	TELEFAX NO.
Stanley Schapiro, Code Enforcement Officer	410-887-2824
c: Seminary Galleria LLC	410-628-2700
Paul Hohne, Code Enforcement Inspector	410-887-2824
Thomas M. Wood, IV, Esquire	410-332-8564

FROM: HOWARD L. ALDERMAN, JR., ESQUIRE

NUMBER OF PAGES [INCLUDING THIS COVER PAGE]: 2

CLIENT/MATTER: 1447 York Road, Seminary Galleria LLC; Case No. 03-2247

COMMENTS: Please accept the following request for postponement of Code Enforcement Hearing to permit the Owner to pursue its administrative remedies.

[x] ORIGINAL TO FOLLOW VIA MAIL AS INDICATED.

If you do not receive all of the pages indicated above, please call 321-0600 as soon as possible.
My return FAX Number is (410) 296-2801.

WARNING: UNAUTHORIZED INTERCEPTION OF THIS TELEFAX COMMUNICATION
COULD BE A VIOLATION OF FEDERAL AND MARYLAND LAW.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for expenses. Thank You.

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)

May 20, 2003

VIA TELEFAX & REGULAR MAIL

Stanley Schapiro, Code Enforcement Officer
Baltimore County Department of Permits
and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Seminary Galleria, LLC
1447 York Road
Citation/Case No. 03-2247

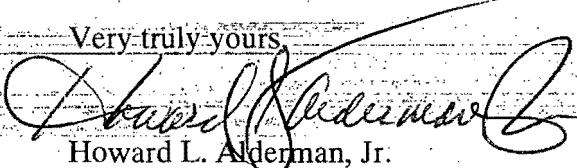
Dear Mr. Schapiro:

I have been retained to represent Seminary Galleria LLC, owner of the property at 1447 York Road. Recently, there has been a complaint filed with the County regarding additional commercial parking in a DR zone that has resulted in the issuance of the above-referenced citation.

I have advised my client of the need to move forward with a Petition for Special Hearing regarding the commercial parking complaint and any required amendment to previously approved plans. I expect my client to select a surveying/engineering firm within the next 48 hours. The required site plans and zoning Petition will be prepared promptly thereafter. As soon as the signed Petitions are returned to me and I receive the requisite number of zoning plats, I will schedule promptly a filing appointment with the Office of Zoning. In the meantime, I hereby request that the hearing on the alleged violation, presently scheduled for **June 24, 2003**, be taken off of your docket and held pending the outcome of the Special Hearing. In order to keep your office informed, as soon as I have a filing appointment date I will advise you. Likewise, I will advise you when the Petitions are filed and the date of the hearing, once it is scheduled.

Should you need additional information in support of this request, please do not hesitate to contact me. Thank you for your consideration in this regard.

Very truly yours


Howard L. Alderman, Jr.

HLA/gk

c: Seminary Galleria LLC

Paul C. Hohne, Code Enforcement Inspector

Thomas M. Wood, IV, Esquire

(via telefax only)

(via telefax only)

PLEASE PRINT LEGIBLY

SIGN-IN SHEET

[illegible]

LAW OFFICES

LEVIN & GANN

A PROFESSIONAL ASSOCIATION

NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor

TOWSON, MARYLAND 21204

410-321-0600

TELEFAX 410-296-2801

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.comDIRECT DIAL
410-321-4640ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

May 20, 2003

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME	TELEFAX NO.
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c: Seminary Galleria LLC	410-628-2700
Paul Hohne, Code Enforcement Inspector	410-887-2824
Thomas M. Wood, IV, Esquire	410-332-8564

FROM: HOWARD L. ALDERMAN, JR., ESQUIRE

NUMBER OF PAGES [INCLUDING THIS COVER PAGE]: 2

CLIENT/MATTER: 1447 York Road, Seminary Galleria LLC; Case No. 03-2247

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WARD 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)

May 20, 2003

VIA TELEFAX & REGULAR MAIL

Stanley Schapiro, Code Enforcement Officer
Baltimore County Department of Permits
and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Seminary Galleria, LLC
1447 York Road
Citation/Case No. 03-2247

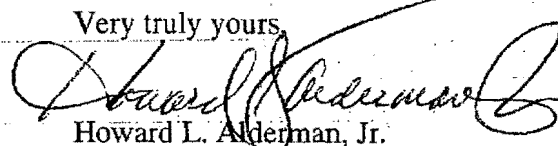
Dear Mr. Schapiro:

I have been retained to represent Seminary Galleria LLC, owner of the property at 1447 York Road. Recently, there has been a complaint filed with the County regarding additional commercial parking in a DR zone that has resulted in the issuance of the above-referenced citation.

I have advised my client of the need to move forward with a Petition for Special Hearing regarding the commercial parking complaint and any required amendment to previously approved plans. I expect my client to select a surveying/engineering firm within the next 48 hours. The required site plans and zoning Petition will be prepared promptly thereafter. As soon as the signed Petitions are returned to me and I receive the requisite number of zoning plats, I will schedule promptly a filing appointment with the Office of Zoning. In the meantime, I hereby request that the hearing on the alleged violation, presently scheduled for June 24, 2003, be taken off of your docket and held pending the outcome of the Special Hearing. In order to keep your office informed, as soon as I have a filing appointment date I will advise you. Likewise, I will advise you when the Petitions are filed and the date of the hearing, once it is scheduled.

Should you need additional information in support of this request, please do not hesitate to contact me. Thank you for your consideration in this regard.

Very truly yours,



Howard L. Alderman, Jr.

HLA/gk

c: Seminary Galleria LLC
Paul C. Hohne, Code Enforcement Inspector (via telefax only)
Thomas M. Wood, IV, Esquire (via telefax only)

5/15/03
JTG

LAW OFFICES
NEUBERGER, QUINN, GIELEN, RUBIN & GIBBER, P.A.

27TH FLOOR
ONE SOUTH STREET
BALTIMORE, MARYLAND 21202-3282
(410) 332-8550

THOMAS M. WOOD, IV
(410) 332-8523

FAX NO.
(410) 332-8564
E-MAIL ADDRESS:
TMW@NQGRG.COM

May 14, 2003

Director of Permits and Development Management
County Office Building
Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: *Citation No. 03-2247*
Property No. 1900014868
Seminary Galleria LLC
10 Parks Avenue
Violation Location: 1447 York Road

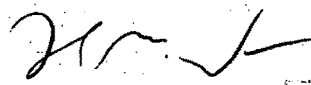
Dear Sir/Madam:

Please be advised that I represent Seminary Galleria LLC in connection with the enclosed Baltimore County Uniform Code Enforcement Citation. This letter will serve as notice that Seminary Galleria LLC intends to contest this citation and the proposed civil penalty at the hearing currently scheduled for June 24, 2003 at 9 a.m.

Enclosed is the Notice of Intention to Defend.

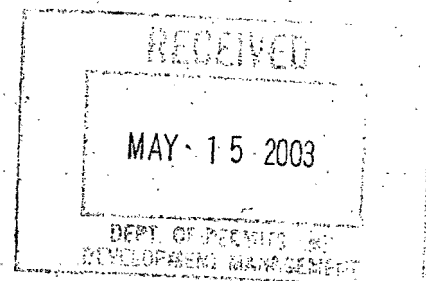
Of course, if you have any questions, please do not hesitate to call.

Very truly yours,


Thomas M. Wood, IV

TMW:imd
Enclosure

183751; 167.7



LAW OFFICES
NEUBERGER, QUINN, GIELEN, RUBIN & GIBBER, P.A.

27TH FLOOR
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May 14, 2003

Director of Permits and Development Management
County Office Building
Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

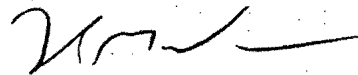
Re: *Citation No. 03-2247*
Property No. 1900014868
Seminary Galleria LLC
10 Parks Avenue
Violation Location: 1447 York Road
Issue Date: 5/5/03

Dear Sir/Madam:

Please be advised that I represent Seminary Galleria LLC in connection with the enclosed Baltimore County Uniform Code Enforcement Correction Notice. This letter will serve as notice that Seminary Galleria LLC intends to contest this citation and the proposed civil penalty at the hearing currently scheduled for June 24, 2003 at 9 a.m.

Of course, if you have any questions, please do not hesitate to call.

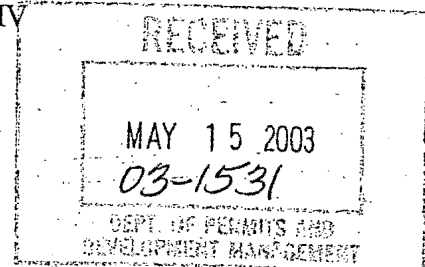
Very truly yours,



Thomas M. Wood, IV

TMW:lmd
Enclosure

183752; 167.7



CODE ENFORCEMENT REPORT

DATE: 4/30/03 INTAKE BY: D. Rioux CASE #: 03-2247 INSPEC: 15

COMPLAINT LOCATION: 1447 York Rd

ZIP CODE: 21093 DIST: _____

COMPLAINANT NAME: RICHARD Hurd PHONE #: (H) all 303 4163

ADDRESS: 16 E Seminary ave ZIP CODE: 21093

PROBLEM: site plan violation increased size of parking lot with Ret wall.

IS THIS A RENTAL UNIT? YES _____ NO _____

IF YES, IS THIS SECTION 8? YES _____ NO _____

OWNER/TENANT INFORMATION: _____

permit # B 517026

TAX ACCOUNT #: 19-00-014868 ZONING: _____

INSPECTION: open P Hottel

REINSPECTION: OPEN

REINSPECTION: SCH - RE-CK 5-5

REINSPECTION: _____



Baltimore County
Department of Permits and
Development Management

Code Inspection and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Code Enforcement: 410-887-3351
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation/Case No. 03-2247	Property No. 1900014868	Zoning: R-1
-------------------------------------	-----------------------------------	-----------------------

Name(s): **Seminary Galleria LLC**

Address: **10 Parks Ave 21093**

Violation Location: **1447 York Rd**

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:
As C & R 101, 102, 1 & 409.2 & BCC 26-121A
Adding parking spaces in residential
Zone D.R. 5.5 requires zoning
Approval Non compliance
With approved site plan - file
revised site plan for approval

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

On or Before: 5/30/03	Date Issued: 5/5/03
---------------------------------	-------------------------------

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF \$200, \$500, OR \$1000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

Print Name: **Paul Hohnle**

INSPECTOR: **[Signature]**

STOP WORK NOTICE

PURSUANT TO INSPECTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN:

Not Later Than:	Date Issued:
-----------------	--------------

INSPECTOR: _____

03-2247

Bulldog
RJR

4/16/03

4/17/03
JT
8

To: Code Enforcement
Baltimore County Government (410) 887-2824

Re: 1447 York Road Zip Code 21093

Presently the parking lot at 1447 York road is under going significant alterations. The parking lot is zoned and recorded as DR S.S. As a neighbor who has had numerous problems with this property pushing the zoning limits in the past, the construction in progress has no permits pulled, cite plan changes from the current zoning map (DR S.S to help eliminate this type of problem) or sediment control in place. I believe this to be a violation of current zoning and request an investigation. I will follow up this fax with a phone call. Thank you.

An affected neighbor



Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Code Enforcement: 410-887-3351
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation/Case No. 03-2247	Property No.	Zoning
-------------------------------------	--------------	--------

Name(s):

Address:

Violation

Location: **1447 York Rd**

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

BCZ R 101 103.1 409.2 + B 11 26-121

NON compliance with site plan

**Stop Work - Adding Parking
in Residential Zone DR 5.5
Without Zoning Approval**

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

On or Before:	Date Issued:
---------------	--------------

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF \$200, \$500, OR \$1000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

Print Name: **Paul Hohne**

INSPECTOR: **[Signature]**

STOP WORK NOTICE

PURSUANT TO INSPECTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN:

Not Later Than: Immediately	Date Issued: 5/6/03
------------------------------------	----------------------------

INSPECTOR: **[Signature]**



Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Code Enforcement: 410-887-3351
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation/Case No. 03-2247	Property No. 1900014808	Zoning:
Name(s): Seminary Galleria LLC		
Address: 10 Parks Ave 21093		
Violation Location: 1447 York Rd.		

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

I.B.C. Sec 105.1

**Failure to obtain grading permit
for parking lot extension - obtain
permit**

1000.00 Fine

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

On or Before: 5/22/03	Date Issued: 5/8/03
------------------------------	----------------------------

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF \$200, \$500, OR \$1000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION; OR 90 DAYS IN JAIL, OR BOTH.

Print Name: **Paul Hohnle**

INSPECTOR: **Paul Hohnle**

STOP WORK NOTICE

PURSUANT TO INSPECTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN:

Not Later Than: 5/22/03	Date Issued: 5/8/03
--------------------------------	----------------------------



Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Code Enforcement: 410-887-3351
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation/Case No. 03-2247	Property No. 1900014868	Zoning:
------------------------------	----------------------------	---------

Name(s): Seminary Galleria LLC

Address: 16 Parks Ave Cockeysville Md 21030

Violation Location: 1447 York Rd

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

FBC Sec 105.1 - Constructing retaining
Wall without permits - Obtain
Building Permit for wall

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

On or Before: 5/5/03	Date Issued: 4/21/03
----------------------	----------------------

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF \$200, \$500, OR \$1000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

Print Name: Paul Hahn

INSPECTOR:

STOP WORK NOTICE

PURSUANT TO INSPECTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN:

Not Later Than: 5/5/03	Date Issued: 4/21/03
------------------------	----------------------

INSPECTOR: Paul Hahn

AGENCY

ENFORCEMENT REPORT

DATE: 4.18.03 INTAKE BY: CB CASE #: 03-2247 INSPEC:

COMPLAINT LOCATION: 1447 YORK RD

ZIP CODE: DIST: 8

COMPLAINANT NAME: RICHARD HURD PHONE #: (H) 410-303-4163 (W)

ADDRESS: 221 WAVE WITH OUT ZIP CODE:

PROBLEM: PERMITS

OWNER/TENANT INFORMATION: 10. PARKS AVE COCKEYSVILLE

TAX ACCOUNT #: 1900014868 ZONING:

INSPECTION: 4.18.03. STOPPED AT SITE TO SEE.

CONSTRUCTION STARTED, EXTENDING PARKING SPACES WITH RETAINING WALL BEING BUILT NO ONE ON SITE (RAINY CONDITIONS). STOPPED AT OWNER'S ADDRESS 10 PARKS

REINSPECTION: 2 216 SCHILLINGS CIR BOTH PLACES WERE CLOSED WILL STOP OUT 4.21.03. AND GIVE STOP WORK. CALLED AND INFORM COMPLAINANT.

4/21/03 - NO ONE ON SITE. POSTED STOP WORK ORDER AND

REINSPECTION: NOTICE TO OBTAIN PERMIT RECHECK RECHECK 5/5 COMPLAINT CALLED

REINSPECTION:

RA1001B

4/18/2003

STANDARD ASSESSMENT INQUIRY (1)

11:40:08

ERTY NO. DIST GROUP CLASS OCC. HISTORIC DEL LOAD DATE
 00 014868 09 2-2 15-00 N NO 03/19/03
 SEMINARY GALLERIA LLC
 10 PARKS AVE
 DESC-1.. IMPS4.346 AC PARCEL B
 DESC-2.. GALLERIA
 PREMISE. 01447 YORK RD
 00000-0000

COCKEYSVILLE MD 21030-4922 FORMER OWNER: SEMINARY LIMITED PARTNERSH

FCV		PHASED IN		
PRIOR	PROPOSED	CURR	CURR	PRIOR
		FCV	ASSESS	ASSESS
LAND: 1946,500	1946,500			
IMPV: 10649,700	11015,800	TOTAL.. 12840,266	12840,266	12718,233
TOTL: 12596,200	12962,300	PREF...	0	0
PREF: 0	0	CURT...	0	0
CURT: 0	0	EXEMPT.	0	0
DATE: 10/98	08/01			

TAXABLE BASIS		FM DATE
03/04 ASSESS: 12840,266		03/17/03
02/03 ASSESS: 12718,233		05/30/02
01/02 ASSESS: 12596,200		06/01/01

ENTER-INQUIRY2 PA1-PRINT PF4-MENU PF5-QUIT PF7-CROSS REF

08:33:11
05/05/2003

AUTOMATED PERMIT TRACKING SYSTEM
GENERAL PERMIT APPLICATION DATA

PANEL BP1003M
LAST UPDATE 04/24/2003
KRA 11:55:16

PERMIT #: B517026
RECEIPT #: A467539
CONTROL #: RRC-
XREF #: B517026

PROPERTY ADDRESS
1447 YORK RD
SUBDIV: GALLERIA

TAX ACCOUNT #: 1900014868

DISTRICT/PRECINCT 09 08

OWNERS INFORMATION (LAST, FIRST)

FEE: 25.00

NAME: SEMINARY GALLERIA LLC

PAID: 25.00

ADDR: 10 PARKS AVE 21093

PAID BY: APP

DATES

APPLICANT INFORMATION

APPLIED: 04/24/2003

NAME: MEGAN JACKSON

ISSUED: 04/24/2003

COMPANY: HILL MANAGEMENT

OCCPNY:

ADDR1: 9640 DEERECO RD

ADDR2: TIMONIUM, MD 21093

INSPECTOR: 09C

PHONE #: 410-561-1300

LICENSE #:

NOTES: TLM/KRA

PASSWORD :

ENTER - PERMIT DETAIL
PF2 - APPROVALS

PF3 - INSPECTIONS
PF4 - ISSUE PERMIT

PF7 - DELETE
PF8 - NEXT PERMIT

PF9 - SAVE
PF10 - INQRY

PANEL BP1004M

TIME: 08:33:20

AUTOMATED PERMIT TRACKING SYSTEM

LAST UPDATE 04/24/2003

DATE: 05/05/2003

BUILDING DETAIL 1

KRA

11:58:28

PERMIT # B517026

PLANS: CONST 0

PLOT 1

DRC#

PLAT

DATA

EL 2

PL 2

BUILDING CODE:

CONTR: DUKELAND CONSTRUCTION

IMPRV 1

ENGR:

USE 23 RET WALL

SELLR:

FOUNDATION BASE

WORK: CONSTRUCT 61LF W/20' WING WALL RETAINING WALL ON

PARKING LOT. 36' MAX HEIGHT. KEYSTONE BLOCK CONST.

CONSTRUC FUEL SEWAGE WATER

FENCE OR RAILING TO CODE. PLANS WAIVED, JMA

CENTRAL AIR

ESTIMATED COST

PROPOSED USE: OFFICE & RETAINING WALL

OWNERSHIP: 1

EXISTING USE: OFFICE

RESIDENTIAL CAT:

#EFF: #1BED:

#2BED:

#3BED:

TOT BED:

TOT APTS:

1 FAMILY BEDROOMS:

PASSWORD:

ENTER - NEXT DETAIL
PF1 - GENERAL PERMIT

PF2 - APPROVALS
PF3 - INSPECTIONS

PF7 - PREV. SCREEN
PF8 - NEXT SCREEN

PF9 - SAVE
CLEAR - MENU

PANEL BP1005M

TIME: 08:33:32

AUTOMATED PERMIT TRACKING SYSTEM

LAST UPDATE 04/24/2003

DATE: 05/05/2003

BUILDING DETAIL 2

KRA

11:58:28

PERMIT #: B517026

BUILDING SIZE

LOT SIZE AND SETBACKS

FLOOR: 61

SIZE: 189311SF

WIDTH:

FRONT STREET:

DEPTH:

SIDE STREET:

GARBAGE DISP:

HEIGHT: 36'

FRONT SETB: NC

POWDER ROOMS:

STORIES:

SIDE SETB: NC/NC

BATHROOMS:

SIDE STR SETB:

KITCHENS:

REAR SETB: NC

LOT NOS: B

CORNER LOT:

ZONING INFORMATION

DISTRICT:

BLOCK:

ASSESSMENTS

PETITION:

SECTION:

LAND: 1946500.00

DATE:

1 TRFR: 005

IMPROVEMENTS: 1015800.00

TOTAL ASS.:

LAW OFFICES
NEUBERGER, QUINN, GIELEN, RUBIN & GIBBER, P.A.

27TH FLOOR
ONE SOUTH STREET
BALTIMORE, MARYLAND 21202-3282
(410) 332-8550

THOMAS M. WOOD, IV
(410) 332-8523

FAX NO.
(410) 332-8564
E-MAIL ADDRESS:
TMW@NQGRG.COM

May 14, 2003

Director of Permits and Development Management
County Office Building
Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

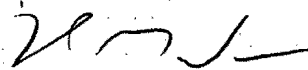
*Re: Baltimore County Uniform Code Enforcement Correction Notice
Citation No. 03-2247
Property No. 1900014868
Seminary Galleria LLC
10 Parks Avenue
Violation Location: 1447 York Road
Issue Date: 5/8/03*

Dear Sir/Madam:

Please be advised that I represent Seminary Galleria LLC in connection with the enclosed Baltimore County Uniform Code Enforcement Correction Notice. This letter will serve as notice that Seminary Galleria LLC intends to contest this correction notice and the proposed civil penalty at the hearing currently scheduled for June 24, 2003 at 9 a.m.

Of course, if you have any questions, please do not hesitate to call.

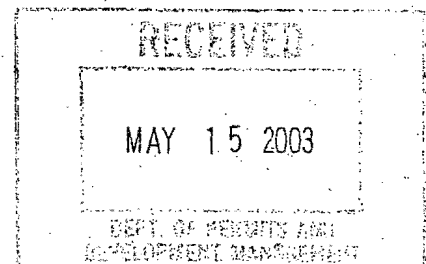
Very truly yours,



Thomas M. Wood, IV

TMW:imd
Enclosure

183753; 167.7



LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue

Towson, Maryland 21204

(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

December 26, 2006

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

Re: Case No. ⁰⁶⁻⁴¹¹~~04-052~~-SPHA, 1447 York Road

Dear Kathy:

The matter of the appeals of the Galleria petitions for the parking lot at Seminary and York has never been scheduled for hearing, ever since the appeals were taken from the Deputy Zoning Commissioner's Order in this matter. This is a matter of continuing concern for the community and we would ask that it be set in. If you would be kind enough to contact the undersigned counsel, as well as counsel for the Petitioner, Mr. Alderman, I would like to get dates that are available, so that this can be placed on the Board's hearing calendar.

Thank you very much for your attention to this matter. My best to you and your family for a safe and healthy 2007.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/cbl

cc: Dulaney Valley Improvement Association

3/20/07
3/21/07

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)

April 30, 2007

HAND DELIVERED

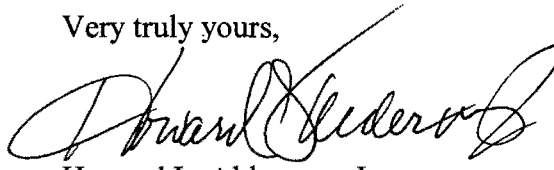
Ms. Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
400 Washington Avenue, Suite 49
Towson, Maryland 21204

RE: *IN RE: Seminary Galleria, LLC*
1447 York Road
Case No. 06-411-SPHA
Owner'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 *Owner'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.):

Michael P. Tanczyn, Esquire
Carole S. Demilio, Attorney at Law, Deputy People's Counsel

RECEIVED
APR 30 2007

**BALTIMORE COUNTY
BOARD OF APPEALS**

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)

August 11, 2006

HAND DELIVERED

Timothy M. Kotroco, Director
Baltimore County Department of Permits
and Development Management
111 West Chesapeake Avenue, Suite 111
Towson, Maryland 21204

RE: 1447 York Road
Seminary Galleria, LLC, Petitioner
Case No. 06-411-SPHA
Notice of Appeal

**Stamp here and initial indicating date
appeal was filed:**

RECEIVED

AUG 11 2006

Per.....*amj*....

Dear Mr. Kotroco:

On behalf of my client, Seminary Galleria, LLC, owner of the above-referenced property, an appeal of the July 14, 2006 decision of the Deputy Zoning Commissioner for Baltimore County denying the relief requested by the Petitioner is hereby noted to the County Board of Appeals for Baltimore County. This appeal is authorized by *Baltimore County Code* §32-3-401 and I have enclosed this firm's check in the amount of \$400 as the requisite filing fee that representatives of your department advised would be charged. Obviously, this amount is different than that published on your Department's website in the County's Revised Fee Schedule (Effective January 1, 2003). If the enclosed fee is incorrect, please contact my office immediately so that the correct amount can be submitted.

Upon the docketing of this appeal, please transmit all required papers, exhibits and other evidence to the Board of Appeals. Should you or your staff need additional information to enable the prompt processing of this appeal, as always, do not hesitate to contact me at your convenience.

Very truly yours,

Howard L. Alderman, Jr.
Howard L. Alderman, Jr.

HLA/gk
Enclosure

c: Seminary Galleria, LLC
Peter Max Zimmerman, Peoples' Counsel
Michael Tanczyn, Esquire

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

DIRECT DIAL
410-321-3640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-3600
TELEFAX 410-296-2801

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

June 13, 2006

VIA TELEFAX & REGULAR MAIL

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

RE: 1447 York Road - Case No. 06-411-SPHA
Opposition to Motion to Dismiss

Dear Mr. Wiseman:

Having reviewed when I arrived in the office this morning the Motion to Dismiss filed by Mr. Tanczyn, I file herewith my client's opposition to the granting of that Motion. I am transmitting this letter, my opposition and proposed order to you and Messrs. Tanczyn and Zimmerman by telefax and regular mail.

Should you need any additional information on behalf of my client in your consideration of Mr. Tanczyn's Motion and our opposition thereto, please do not hesitate to contact me.

Very truly yours,



Howard L. Alderman, Jr.

HLA/gk
Enclosures
c(w/encl.):

Seminary Galleria, LLC
Michael P. Tanczyn, Esquire
Peter Max Zimmerman, Esquire



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

June 21, 2011

Hill Management
9640 Deereco Road
Timonium, MD 21093

Attention: Bill Russell

Re: The Galleria Parking Lot

Dear Bill:

I have enclosed 6 documents and have highlighted key provisions. The first doc is Section 12-202 of the Public Safety Article which states that enforcement of the MD Accessibility Code shall be performed by local governments. The second doc is a copy of a portion of the MD Accessibility Code adopted by the MD Department of Housing & Community Development regulations, page 2 of which addresses "van accessible" spaces (05.02.02.07 C. (2) (d)) and parking space signs. The third doc is titled "Sign Installation Procedures Manual" and gives specs for configuration of the various signs. The fourth doc is a copy of the County Code which states the amount of the fine, \$152.00, which includes \$2.00 administrative fee.

Pages 4 and 5 of the fifth doc discuss compliance dates etc. The sixth and last doc is a handout which I have included because it has the table which shows the number of "van accessible parking spaces" and standard accessible parking spaces required based on the total number of spaces provided.

The only other issue I want to address is the "accessible route" which was the primary focus of the complaint received. The ADA requires the travel path to be unobstructed (no bumps, curbs, etc. which would impede travel by wheelchair, crutches or cane) and the shortest route from access aisles to building entrances. In buildings with multiple entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the acceptable entrances.

I look forward to meeting you at the site and discussing what needs to be done and when you can do it.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Don Brand", with a long horizontal flourish extending to the right.

Donald E. Brand

Enclosures

From: Lionel Van Dommelen
To: Chen, Jerry
Date: 04/28/11 12:12 PM
Subject: Re: Fwd: Code Inspector's Visit
Attachments: L1140513.JPG; L1140511.JPG; Van Dommelen, Lionel.vcf

J, can you, at your convenience, check on these items and formulate a response to Dr. Cordes. Thanks,
L

Lionel van Dommelen, Chief,
 Bureau of Code Inspections & Enforcement
 410-887-3351

>>> Robert Cordes <cordesra@comcast.net> 4/27/2011 2:43 PM >>>
 Dear Mr. Van Dommelen,

I'm going to pass on an email that I sent to the office of our Councilman, Mr. Todd Huff. It contains many items that are chronic and also seem to come under your area of interest. I'd be delighted to receive your thoughts and guidance as to additional steps I could take to "facilitate" things. Understand that I'm writing to you as a member of the Board of the Dulaney Valley Improvement Association. Particularly of interest is a conclusion to the Seminary-Galleria vs. DVIA parking places AND FINE that date back to 2003. The attached photo L1140511.JPG shows the parking spots still in place. No grass!!!

Sincerely,

Robert A. Cordes, M.D.

"I've heard nothing more on:

1. Seminary Galleria: as of several days ago, the parking spaces were still holding cars!

1) I asked to see the added papers that supposedly have been found which would move Code Enforcement to have Seminary Galleria convert the parking spaces over to grass. I've not heard or seen any such papers. Is this the missing "file"? Where was it missing and how come it has turned up now???

2) I have asked why Seminary Galleria isn't to pay any fine? And I've been told that this will "go away." Why? You pay your parking and speeding tickets and so do I. Our fines don't "go away."

3) I have asked who are the "judges" who rule on cases such as Seminary Galleria and who oversees them and their decisions and whether I might speak to the "judge" on behalf of our community. Nothing heard.

I've mentioned items that would be "fair" in my eyes, at the time of final "judging" of Seminary-Galleria, like reimbursement of DVIA's legal fees, and setting up an expedited means for settling future matters with Seminary-Galleria, and having the original folks who complained - receive an apology from Seminary-Galleria. Again, nothing heard.

✓ 4) 2. The north side of Valley Court, running west from Dulaney Valley Road, where trash continues to collect. Who is responsible for this property and the 15-20 feet bordering Valley Court. Why do they not pick up the trash or why are they not penalized for this deficiency?

(Valley Ct Rd @ Dulaney Valley Rd)
 3. 208 Meadowvale - where the house is in disrepair with tilted out basement screens, badly painted window paint peeling off, and a downspout at the rear of the house which is bent badly out from the house. I asked Todd to drive past and see what he thought since most of the members of the Board of DVIA are away of this house.

PAI # 9389
 1407 York Rd Linda Rm 123

Arnold's # 410-887-3353



KEVIN KAMENETZ
County Executive

DON BRAND'S # SAME

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

JUNE 15th, 2011

TO: ISAAC NEUBERGER
FROM: TIM THOMPSON
RE: SEMINARY GALLERIA

PLEASE REVIEW THE
ENCLOSED LETTER DATED 5-19-11.

DID YOUR OFFICE EVEN
RECEIVE THIS LETTER FOR ARNOLD
JABLON OR DON BRAND HAVE NOT
HEARD FROM YOU?

THE VIOLATION STILL REMAINS
WE HAVE A COMPLIANCE DATE
OF 6-19-11.

James Thompson - Seminary-Galleria

From: Robert Cordes <cordesra@comcast.net>
To: <jthompson@baltimorecountymd.gov>
Date: 6/8/2011 3:16 PM
Subject: Seminary-Galleria

Dear Mr. Thompson,

Thanks for taking my phone call a few minutes ago.

When you take the time to go over the materials you have collected on the Seminary-Galleria issue, in addition to searching for the court decision as to what should be done with the specific parking spaces (? asphalt to grass?), would you please look for that Wisnom hearing decision dated 6-25-03 and cited on page 5 of the pages emailed to you by Marcie and coming from People's Counsel's office. That "file" is important because it should contain the Wisnom determination regarding the fine shown on page 2 in the amount of \$196,200.00 on 1-12-2006 (and the fine amount continued to accumulate???) . This is the "lost file" that's the first lost file for years and years, according to a senior gentleman at Code Enforcement.

Be well,

Robert A. Cordes, M.D.

From: James Thompson <JThompson@baltimorecountymd.gov>
To: Robert Cordes <cordesra@comcast.net>
Cc: Marcie Goodman <mgoodman@baltimorecountymd.gov>
Sent: Wed, 22 Jun 2011 20:44:51 -0000 (UTC)
Subject: Re: Seminary Galleria - 6-20-2011

Dr. Cordes , on 06/20/11 , after a late lunch , I inspected the parking lot . Upon returning to the office around 2:30 p.m. , I was told by Building Engineer Don Brand, that he had received a call only hours ago from Bill Russell of Hill Management Services . Mr. Russell stated that the law firm for Mr. Neuberger had just faxed him my letter of 05/19/11 . He went on to state , that he would like to meet both Mr. Brand and myself at the galleria . Yesterday , I met Mr. Russell (Vice President) at the shopping complex . Mr. Brand has sent a detailed letter to Mr. Russell outlining what must be done to comply with ADA requirements . A copy of this letter is being sent to you at 1217 Oakcroft Road . Mr. Brand provided Mr. Russell with two dates next week when his schedule would allow him to meet him on site . I also will be at their meeting . After our meeting , I will provide you with a time line when this site will be brought into compliance .

James H. Thompson
Permits, Approvals & Inspections
jthompson@baltimorecountymd.gov
Phone 410-887-8094
Fax 410-887-5708

>>> Robert Cordes <cordesra@comcast.net> 6/20/2011 3:11 PM >>>
Dear Mr. Thompson,

Drove past Seminary Galleria this afternoon and noted no new changes in their parking lot, beyond the new mulch over asphalt and curbing at the lower level.

Since 30 days have now passed since Mr. Jablon's letter of May 19, 2011, when are you going to send out an inspector, cite the property owner, and get on with this matter?

Sincerely,

Robert A. Cordes, M.D.

James Thompson - Re: Seminary Galleria - 6-20-2011

From: James Thompson
To: Cordes, Robert
Subject: Re: Seminary Galleria - 6-20-2011
CC: Goodman, Marcie

Dr. Cordes , on 06/20/11 , after a late lunch , I inspected the parking lot . Upon returning to the office around 2:30 p.m. , I was told by Building Engineer Don Brand, that he had received a call only hours ago from Bill Russell of Hill Management Services . Mr. Russell stated that the law firm for Mr. Neuberger had just faxed him my letter of 05/19/11 . He went on to state , that he would like to meet both Mr. Brand and myself at the galleria . Yesterday , I met Mr. Russell (Vice President) at the shopping complex . Mr. Brand has sent a detailed letter to Mr. Russell outlining what must be done to comply with ADA requirements . A copy of this letter is being sent to you at 1217 Oakcroft Road . Mr. Brand provided Mr. Russell with two dates next week when his schedule would allow him to meet him on site . I also will be at their meeting . After our meeting , I will provide you with a time line when this site will be brought into compliance .

>>> Robert Cordes <cordesra@comcast.net> 6/20/2011 3:11 PM >>>
Dear Mr. Thompson,

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Since 30 days have now passed since Mr. Jablon's letter of May 19, 2011, when are you going to send out an inspector, cite the property owner, and get on with this matter?

Sincerely,

Robert A. Cordes, M.D.

James Thompson - Re: Seminary Galleria - 6-20-2011

From: Robert Cordes <cordesra@comcast.net>
To: James Thompson <JThompson@baltimorecountymd.gov>
Date: 6/23/2011 10:26 AM
Subject: Re: Seminary Galleria - 6-20-2011
CC: Marcie Goodman <mgoodman@baltimorecountymd.gov>

Dear Mr. Thompson,

Thank you for providing the update regarding Seminary-Galleria and the parking lot issues. I look forward to receiving Mr. Brand's "detailed letter."

As you continue to meet with the representatives of Seminary-Galleria, please note the following:

1. Seminary-Galleria (S-G) did not respond to your May 19, 2011 letter within 30 days.

The last paragraph in your May 19th letter states: "Lastly, all issues outlined in this letter again, need to be resolved in the next 30 days; otherwise, this department will proceed with appropriate action to have all fines imposed on this property."

2. DVIA has not been invited to participate in these meetings.

3. The focus of your engagement with S-G now seems to be whether their parking lot meets ADA requirements.

4. Although adjudicated in DVIA's favor by the Appeals Court in Annapolis, DVIA's concerns about S-G building parking places on residential zoned property are not being addressed by S-G, other than via your May 19th letter directing mulch over asphalt and a new curb for 4 parking spaces.

5. No mention is being made of the fine noted by Inspector Hohne, \$196,200.00 on 1-12-2006 or the "missing file" of Mr. Wisnom's hearing 6-25-2003.

6. S-G has not corrected their parking space numbers to comply with the May, 2010 decision of the Court of Appeals, which compliance would reduce the number of current parking spaces in present use. With the new and added ADA requirements concerning parking spaces, the current number of parking spaces would be reduced even more.

Thanks again for keeping me posted and your hopefully presenting the above issues when future meetings come up. Better to settle this entire matter now than to let this drag on for years to come.

Sincerely,

Robert A. Cordes, M.D.

----- Original Message -----

James Thompson - Seminary Galleria - 6-20-2011

From: Robert Cordes <cordesra@comcast.net>
To: <JThompson@baltimorecountymd.gov>
Date: 6/20/2011 3:11 PM
Subject: Seminary Galleria - 6-20-2011

Dear Mr. Thompson,

Drove past Seminary Galleria this afternoon and noted no new changes in their parking lot, beyond the new mulch over asphalt and curbing at the lower level.

Since 30 days have now passed since Mr. Jablon's letter of May 19, 2011, when are you going to send out an inspector, cite the property owner, and get on with this matter?

Sincerely,

Robert A. Cordes, M.D.



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

May 19, 2011

Mr. Isaac M. Neuberger, Esquire
One South Street
27th Floor
Baltimore, MD 21202-3282

Re: Seminary Galleria
1447 York Road

Dear Mr. Neuberger:

On April 8, 2011, we held a meeting within the office of Arnold Jablon, Deputy Administrative Officer and Director of the Department of Permits, Approvals & Inspections, to review the current parking layout for Seminary Galleria. Discussions centered around the decision of the Court of Special Appeals of Maryland, Seminary Galleria, L.L.C. vs. Dulaney Valley Improvement Association, Inc. et al., No. 02591 and your proposed options towards correcting the outstanding violation. In the end, you agreed that the 14 parking spaces added in 2003 had to be eliminated from the parking lot. A proposal presented to you by the Deputy Administrative Officer/ Director was the placement of mulch on the blacktop parking lot over the illegal parking spaces.

A re-inspection of the Galleria complex was made on May 11, 2011. The four illegal spaces created in the D.R. 5.5 zoned area that initially had two rows of 14 spaces have been covered with mulch. Concrete curbing has been installed to actually contain the mulch. As for the row of ten illegal striped parking spaces at the first entrance off of Seminary Avenue from York Road, they have all been painted over with black paint. Unfortunately, this action has not stopped patrons of this complex from parking in this area. In the next 30 days, one should consider the action taken in resolving the four illegal parking spaces at this area.

Further, this department has received several complaints that the accessible parking spaces are not located on the shortest route to an accessible pedestrian entrance, for example the Union Memorial's Office, and not properly dispersed throughout the lot to serve the two separate buildings. Building Engineer Donald Brand has conducted a site visit and discovered that the parking lot does not contain any van accessible spaces and the existing access aisles do not appear to be the required 60 inches wide. Based on the 744 parking spaces, this lot needs four van accessible spaces and 11 car accessible spaces. One should note that access aisles can be shared by two spaces. Mr. Brand welcomes the opportunity to further discuss these issues with either yourself or a representative of the Galleria complex. He can be reached at 410-887-3353.



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

Lastly, all issues outlined in this letter again, need to be resolved in the next 30 days; otherwise, this department will proceed with appropriate action to have all fines imposed on this property. We trust this action will not be required and look forward towards closing the chapter on a long outstanding zoning violation.

Sincerely,

A handwritten signature in black ink, appearing to read "J. H. Thompson", is written over a large, stylized, and somewhat illegible signature that also appears to be "J. H. Thompson".

James H. Thompson
Special Assistant to the Director

Cc: Building Engineer

NQGRG

ONE SOUTH STREET, 27TH FLOOR
BALTIMORE, MARYLAND 21202
410-332-8550

Neuberger • Quinn • Gielen • Rubin • Gibber • P.A.

ISAAC M. NEUBERGER

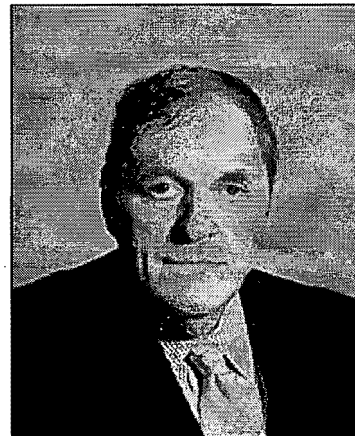
Neuberger, Quinn, Gielen, Rubin & Gibber, P.A.
One South Street, 27th Floor
Baltimore, Maryland 21202-3282

Contact Information

Phone: (410) 332-8510

Email: imn@nqgrg.com

Fax: (410) 332-8511



Secretary

Deborha Caldwell - deborha@nqgrg.com
(410) 332-2021

Yvette Castillo - yvette@nqgrg.com
(410) 332-2022

Isaac Neuberger focuses his practice on business transactions, including mergers and acquisitions, venture and project financing, reorganizations and restructurings and complex business disputes. A 1969 graduate of the University of Maryland School of Law, he is an advisor to senior management and boards of directors of a number of public and privately held companies.

MEMO TO FILE

March 3, 2006

To: Carl Richards, Supervisor
From: John S. Sullivan, Jr. Planner II



Subject: Zoning Case #06411 SPHA
1447 York Road

Per your instructions on March 2, I telephoned the Engineer and requested that the areas in question for the proposed hearing be highlighted on all copies of the site plan. This was done that afternoon. I also telephoned the Petitioner's attorney, Mr. Howard Alderman at 9:12 am and advised him that the wording on the Petition forms must be revised to add some apparently missing words, ie Residential Transition Area (RTA) to make the request more clear. Subsequent to that call I saw Mr. Alderman in our building and informed him that I left a message on his voice mail that morning and asked him to please see me before left. He agreed. Today, March 3rd at 10:19 am I left the same message on Mr. Alderman's voice mail and added that the petition wording must be corrected by 1:00 pm today or it will not be included on the current Agenda.

MAX COLLINS
DULANEY VALLEY IMPROVEMENT ASSN.
40 W. CHESAPEAKE AVENUE
SUITE 200
TOWSON, MD 21204

Copy of Seminary Galleria when it's mailed out.

(11/02/07 telephone call)

Sent
2-11-08

Please send copy of
Order to
that indicated
for copy only.
Thank

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Seminary Gallaria, LCC
1447 York Road
Case No.: 06-411-SPHA

DATE: May 22, 2007

BOARD/PANEL: Margaret Brassil, Chairman
Lawrence Stahl
Edward W. Crizer, Jr.

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: Petition for Special Hearing & Variance – Present Zoning BL & DR 5.5

As stated:

In the event that the 2nd amended parking plan of the Galleria Tower depicting current, as-built conditions on the subject property is not approved as a modified parking plan pursuant companion Petition for Special Hearing: [1] a variance from: BCZR § 409.6.A to permit a total of 746 parking spaces in lieu of: i) the 1059 spaced required [w/out shopping center provision] or ii) the 1084 spaces required for a shopping center with more than 100,000 sq. feet of GLA; [2] approval of variance from any applicable RTA requirements for the existing parking and improvements shown on the Plat filed herewith; and [3] for all such additional relief as the nature of t his request and the parking layout on the Plan filed herewith may require.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

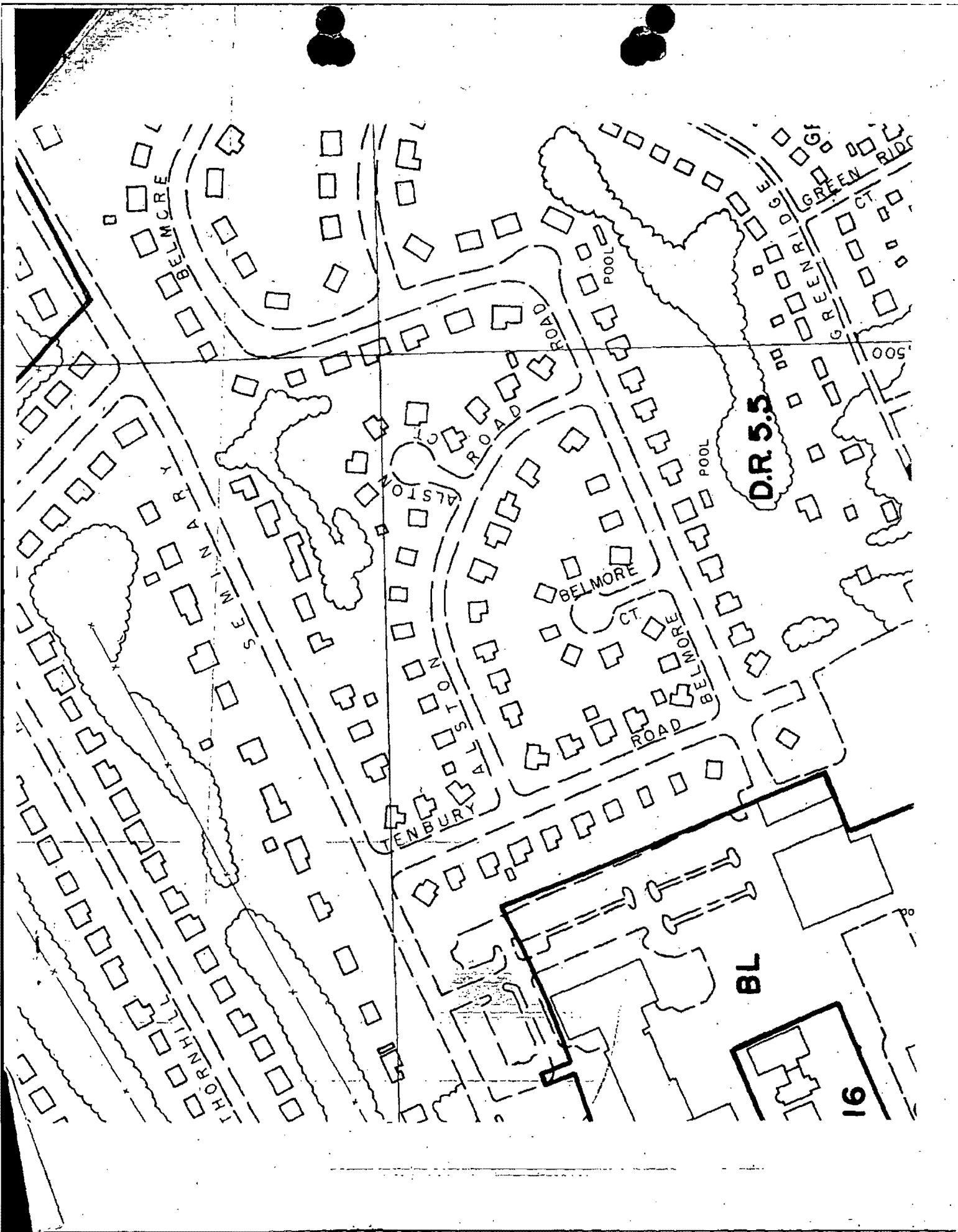
Questions: 1) Does the request qualify under 409.8 of the BCZR?
 2) Is this a shopping center?
 3) Is this a matter of *res judicata*?
 4) Can they have (10) parking spaces in a D.R. zone?

Some of the sections of the law that were discussed:

1) 409.6 & 409.8 of the BCZR
2) 17-4-101 of the BCC – “Shopping Center” Defined.

STANDING

- Modified parking plan meets the technical requirements under 409.12.B of the BCZR.
- The Board did not feel that this was a matter of *res judicata*.
- The property appears to meet the criteria of a shopping center.
- The County will make them fall under the surveillance code for shopping centers.
- While there are sixteen different retails stores on the property, there doesn't seem to be anything that determines how many offices there are in order to make a comparison/percentage ratio.



CASE NAME ERLOTINIB
CASE NUMBER 06-411-SPHA
DATE 6-14-06 1000

[illegible]

CASE NAME _____
CASE NUMBER _____
DATE _____

[illegible]

EXHIBITS -
TRANSCRIPTS

③

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF	*	
<u>SEMINARY GALLERIA, LLC</u> - LEGAL	*	COUNTY BOARD OF APPEALS
<u>OWNER /PETITIONER</u> FOR SPECIAL	*	
HEARING AND VARIANCE ON PROPERTY	*	OF
LOCATED ON THE NE/S OF YORK ROAD,	*	
CORBER SE/S OF SEMINARY AVENUE	*	BALTIMORE COUNTY
(1447 YORK ROAD)	*	
	*	Case No. 04-052-SPHA
8 TH ELECTION DISTRICT	*	
3 RD COUNCILMANIC DISTRICT	*	

* * * * *

OPINION

This case comes to the Board based upon an appeal from a decision of the Deputy Zoning Commissioner of Baltimore County issued on October 2, 2003. The case came to the Deputy Zoning Commissioner as Petition for Variance and Petition for Special Hearing for the property located at 1447 York Road in the Lutherville area of Baltimore County. Special hearing relief was requested in accordance with the *Baltimore County Zoning Regulations* (BCZR) §409.8B, to allow commercial parking adjacent to existing commercial parking on the same lot in a residential zone. The Petitioners also requested approval of a modified parking and landscape plan. In addition, the Petitioners requested variance relief from §409.8.A of the BCZR to permit parking spaces to be located within 10 feet of the right-of-way of a public street.

The Board held a public hearing on this matter on July 1, 2004 which was subsequently followed by a public deliberation on August 31, 2004. Present at the public hearing was Howard L. Alderman, Jr., Esquire, representing Theresa Rosier /Seminary Galleria c/o Hill Management (hereinafter "Petitioners"). Also present was Michael P. Tanczyn, Esquire, representing the Dulaney Valley Improvement Association (hereinafter "Protestants"). Appearing for the People's Counsel for Baltimore County was Deputy People's Counsel, Carole S. Demilio (hereinafter "People's Counsel").

In his opening statement, Mr. Alderman indicated that the Deputy Zoning Commissioner applied

*host
decision*

IN THE MATTER OF
THE APPLICATION OF
SEMINARY GALLERIA, LLC - LEGAL
OWNER/PETITIONER FOR SPECIAL
HEARING AND VARIANCE ON
PROPERTY LOCATED ON THE NE/S
OF YORK ROAD, CORNER SE/S OF
SEMINARY AVENUE
(1447 YORK ROAD)

* ON REMAND
* FROM THE
* CIRCUIT COURT FOR
* BALTIMORE COUNTY
* Civil Action
* No. 03-C-04-11000

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
(Case No. 04-052-SPHA)

* * * * *
SUPPLEMENTAL OPINION OF THE BOARD OF APPEALS
ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY

This matter has been remanded to the Board by the Circuit Court for Baltimore County.

In its decision, the Court stated that "the case is hereby Remanded to the Baltimore County Board of Appeals for a more definite analysis, to include complete Findings of Fact and Conclusions of Law, as to the sole issue of denying Petitioners/Appellants requests for Petition for Special Hearing regarding the issuance of a use permit for the additionally constructed parking spaces."

A short summary of the facts in this matter is warranted and was fairly set forth by the Court in its decision. The Petitioner, Seminary Galleria, owns a business park at 1447 York Road in Baltimore County. The property is a split-zoned parcel of land, with a majority of the area in a business local (B.L.) and the northeastern tract in density residential (D.R.). Currently, the Petitioner uses portions in the B.L. and D.R. zones for business parking.

The current structure of the complex was approved by the County Review Group (CRG) development process in 1983, and parking requirements were met. According to *Baltimore*

Court of Special Appeals of Maryland.

SEMINARY GALLERIA LLC v. DULANEY VALLEY IMPROVEMENT ASS INC

SEMINARY GALLERIA, LLC v. DULANEY VALLEY IMPROVEMENT ASS'N, INC., et al.

No. 2591, Sept. Term 2008.

-- May 27, 2010

MEREDITH, WRIGHT and RAYMOND G. THIEME, JR., (Retired, specially assigned), JJ.

Appellant, Seminary Galleria, LLC ("Seminary"), owns a commercial property used for retail and offices. The property is located in Baltimore County, and is split-zoned, with most of the property located in the "Business Local" zone and the rest in a "Density Residential" zone. In 2003, without seeking prior approval from the County, Seminary reconfigured four of the existing parallel parking spaces that were located in the residentially zoned portion of the property, and created 14 new parking spaces in their place. The net effect was that Seminary gained ten additional spaces upon the portion of the property that was zoned Density Residential. After a complaint to the County was lodged by, among others, Dulaney Valley Improvement Association, Inc. ("DVIA"), one of the appellees, Seminary attempted to obtain retroactive approval of the parking spots, but its first application for a special hearing or a variance was denied by the Zoning Commissioner. Following de novo review by the Board of Appeals of Baltimore County ("the Board"), the Board issued an order denying Seminary's requests for retroactive approval of the new parking spots on September 19, 2005.

Just five months later, on February 23, 2006, Seminary again filed petitions for approval of the ten new parking spaces, arguing this time that the additional spaces were needed to help it meet the County's parking requirements as amended in 1986. By the time the 2006 petitions came before the Board, the Board was composed of new members, and the Board approved Seminary's request to keep the new parking configuration on the property in the Density Residential zone. DVIA and the People's Counsel for Baltimore County, the second appellee, petitioned for judicial review in the Circuit Court for Baltimore County. The Circuit Court for Baltimore County agreed with the appellees' contention that approval of Seminary's second petition was precluded by res judicata. The circuit court reversed the Board.

In its appeal to this Court, Seminary challenges the circuit court's determination.

QUESTIONS PRESENTED

Seminary presents four questions:

IN THE MATTER OF:

* BEFORE THE

SEMINARY GALLERIA, LLC -

* COUNTY BOARD OF APPEALS

Legal Owner/Petitioner

* OF

1447 York Road

* BALTIMORE COUNTY

9th Election District

* Case No. 06-411-SPHA

3rd Councilmanic District

* March 20, 2007

* * * * *

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., March 20, 2007.

* * * * *

Reported by:

C.E. Peatt

IN THE MATTER OF:	* BEFORE THE
SEMINARY GALLERIA, LLC -	* COUNTY BOARD OF APPEALS
Legal Owner/Petitioner	* OF
1447 York Road	* BALTIMORE COUNTY
9th Election District	* Case No. 06-411-SPHA
3rd Councilmanic District	* March 21, 2007

* * * * *

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., March 21, 2007.

* * * * *

Reported by:

C.E. Peatt



A



B



C



D













on the evidence adduced that he refused to comply with the placement order.

Livingston's reading of the placement order is unreasonably narrow. It required him to admit himself to the hospital, and he did so. It further mandated, however, that he be quarantined at the hospital and obtain medical treatment until it was determined, among other things, that he no longer posed a risk to others. The hospital, not Livingston, determined the conditions necessary to establish a quarantine and treat Livingston for tuberculosis.

Livingston was informed upon arriving at the hospital that he had to wear a mask before coming out of his room into the anteroom or hospital hallway. There was testimony from nurses that observed Livingston enter the anteroom without wearing a mask, near his vehicle without a mask, and either outside the hospital building or in the anteroom without a mask.

The testimony of these witnesses was sufficient to support the trial court's finding that Livingston failed to comply with the Secretary's placement order for him.

Livingston contended the evidence was legally insufficient to support his conviction for behaving in a disorderly manner. See HG §18-325(b)(1).

"Disorderly" is defined as "not in order," "irregularly," "confusedly," "turbulent," and "unruly." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 652. It is also defined as "[c]ontrary to the rules of good order and behavior; violative of the public peace or good order; turbulent, riotous, or indecent." BLACK'S LAW DICTIONARY, 422.

The meaning of "disorderly" as it pertains to the disorderly conduct offense codified at CL §10-01(c)(2), which prohibits a person from "willfully act[ing] in a disorderly manner that disturbs the public peace." "The gist of the crime of disorderly conduct...as it was in the cases of common law predecessor crimes, is the doing or saying, or both, of that which offends, disturbs, incites, or tends to incite, a number of people gathered in the same area." *Drews v. State*, 224 Md. 186, 192 (1961).

The crime of behaving in a disorderly manner applies to individuals such as Livingston whom the secretary has ordered into a placement for tuberculosis treatment because their condition "endangers, or may endanger, the public health." HG §18-324(b)(1). Rarely will such individuals offend or disturb "a number of people gathered in the same area" by simple virtue of the fact that their treatment

nurses and that his conduct disturbed the orderly operation of the facility. Moreover, regardless of what Livingston said, the testimony about his conduct alone supported a reasonable finding that he behaved in a disorderly manner in violation of HG §18-325(b)(1).

Accordingly, the evidence was legally sufficient to support his conviction for behaving in a disorderly manner while in a placement for tuberculosis treatment.

COMMENTARY: Livingston contended that HG §18-325(b)(1) is unconstitutionally vague because it does not provide fair notice of the conduct proscribed and fails to provide legally fixed standards and adequate guidelines for triers of fact.

The "void-for-vagueness doctrine," as applied to the analysis of penal statutes, requires courts to consider two criteria. The first criterion is that a statute must be "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." *Eanes v. State*, 318 Md. 436, 459 (1990). "The standard for determining whether a statute provides fair notice is whether persons of common intelligence must necessarily guess at [the statute's] meaning." *Galoway v. State*, 365 Md. 599, 610 (2001).

The second criterion pertains to enforcement. It requires "that criminal statutes provide 'legally fixed standards and adequate guidelines for police, judicial officers, triers of fact and others whose obligation it is to enforce, apply and administer the penal laws.'" *Id.* at 615-16 (quoting *Williams v. State*, 329 Md. 1, 8-9 (1992)).

Whereas disorderly conduct offenses generally are concerned with maintaining public peace and order, behaving in a disorderly manner in a tuberculosis treatment facility requires consideration of the purpose of the statute, which is to prevent and control the spread of tuberculosis; the purpose of medical quarantine, which is to safeguard the public health; the need to maintain peace and order within the treatment facility; and, the need to ensure the safety of medical professionals, staff members, other patients, visitors, and the public at large.

Within the context of a treatment center for people with communicable tuberculosis, disorderly conduct would include willful actions that would tend to expose health care workers and other non-patients to the disease.

"A statute is not unconstitutionally vague merely because it allows for the exercise of some discretion on the part of law enforcement and

form a person of ordinary intelligence of the nature of the activity proscribed.

Accordingly, the statute is not unconstitutionally vague.

Zoning

Res judicata

BOTTOM LINE: *Res judicata* precluded review of a second petition seeking approval of the reconfiguration of parking spots in a commercial property where the first petition was denied by an administrative agency in a final judgment.

CASE: *Seminary v. Dulaney Valley Improvement Ass'n, Inc., et. al.*, No. 2591, September Term 2008 (filed May 27, 2010) (Judges MEREDITH, Wright & Thierne (retired, specially assigned)). Record-Fax No. 10-0527-08, 25 pages.

FACTS: Seminary Galleria, LLC owned a commercial property used for retail and offices. The property was split-zoned, with most of the property located in the "Business Local" zone and the rest in a "Density Residential" zone.

In 2003, without seeking prior approval from the County, Seminary reconfigured four of the existing parallel parking spaces that were located in the residentially zoned portion of the property, and created 14 new parking spaces in their place. The net effect was that Seminary gained ten additional spaces upon the portion of the property that was zoned Density Residential.

After a complaint to the County was lodged by, among others, the Dulaney Valley Improvement Association (DVIA), Seminary attempted to obtain retroactive approval of the parking spots, but its first application for a special hearing for a variance was denied by the Zoning Commissioner. Following *de novo* review by the Board of Appeals of Baltimore County, the Board issued an order denying Seminary's requests for retroactive approval.

Seminary sought judicial review in the circuit court, which held that substantial evidence supported the Board's decision. However, because the Board's explanation of its analysis was not sufficiently detailed, the circuit court remanded the matter to the Board for more specific factual and legal analysis.

Accordingly, the Board issued a Supplemental Opinion, holding, *inter alia*, that the petition did not satisfy the special exception criteria under BCZR §502, and that the additional parking might be detrimental to the health, safety, or general welfare of the public.

In 2006, Seminary again filed

6/14/10
Dulaney
Record

Maryland Department of Assessments and Taxation
Real Property Data Search (vw2.3A)
BALTIMORE COUNTY

[Go Back](#)
[View Map](#)
[New Search](#)
[GroundRent](#)
[Redemption](#)
[GroundRent](#)
[Registration](#)

Account Identifier: District - 09 Account Number - 1900014867

Owner Information

Owner Name: SEMINARY GALLERIA LLC **Use:** COMMERCIAL
Mailing Address: 216 SCHILLING CIR STE 300 **Principal Residence:** NO
HUNT VALLEY MD 21031-8632 **Deed Reference:** 1) /13148/ 00443
2)

Location & Structure Information

Premises Address **Legal Description**
1407 YORK RD 3.992 AC PARCEL A
LUTHERVILLE MD 21093-0000 HSE #1407-29
GALLERIA

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
0061	0019	0074		190			A	2	Plat Ref: 0053/0078

Special Tax Areas **Town** NONE
Ad Valorem Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1961	76,995 SF	173,895 SF	14

Stories **Basement** **Type** **Exterior**
OFFICE BUILDING

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2011	07/01/2010	07/01/2011
Land	5,216,800	5,216,800		
Improvements:	5,072,200	4,267,200		
Total:	10,289,000	9,484,000	10,289,000	9,484,000
Preferential Land:	0			0

Transfer Information

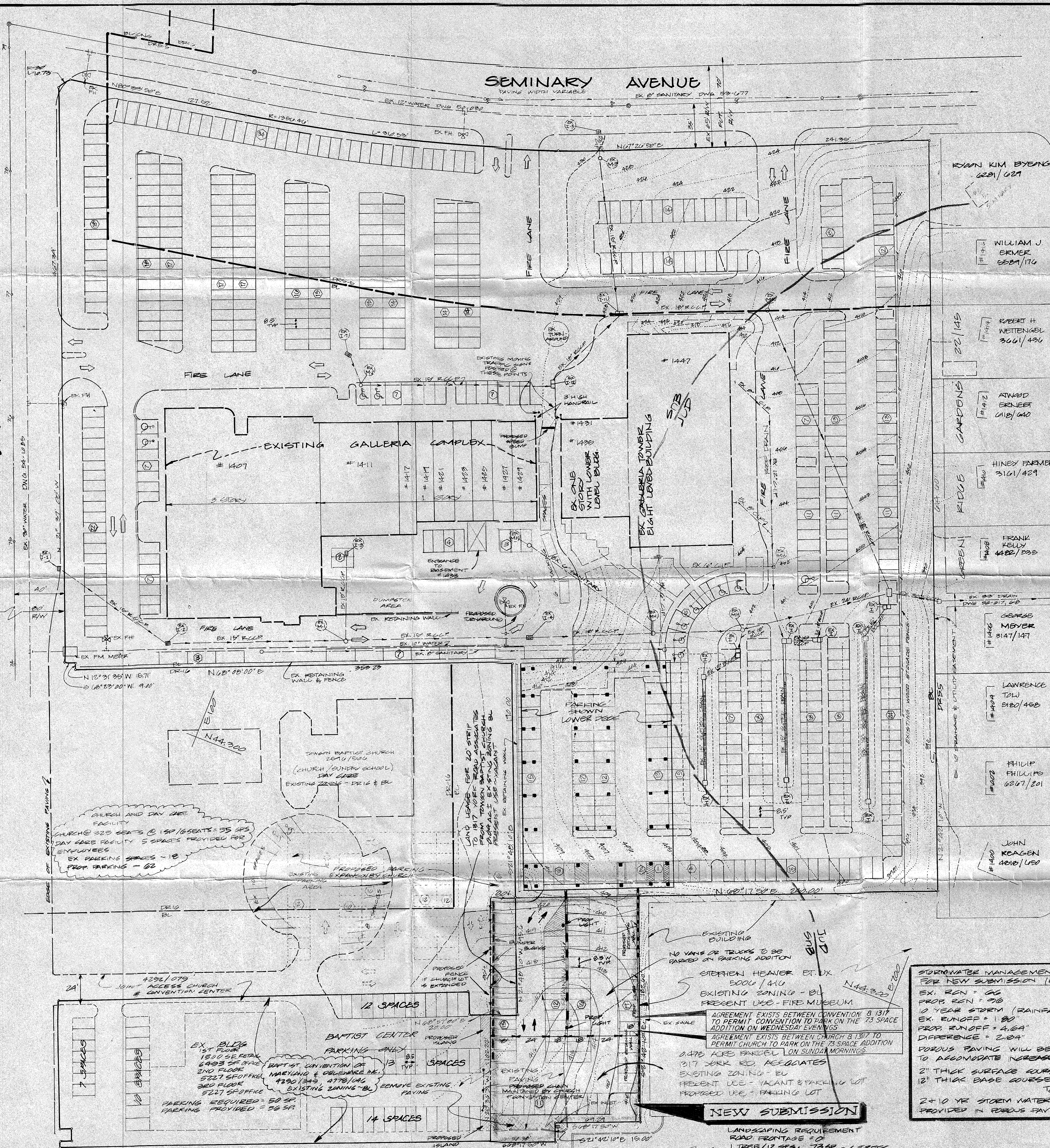
Seller: SEMINARY LIMITED PARTNERSHIP	Date: 09/14/1998	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /13148/ 00443	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2011	07/01/2012
County			0.00
State			0.00
Municipal			0.00

Tax Exempt: **Special Tax Recapture:**
Exempt Class: * NONE *

RT. 45
YORK ROAD



ALL FIRE LANES TO BE POSTED WITH NO PARKING SIGNS

STORMWATER MANAGEMENT DATA FOR NEW SUBMISSION (PARKING EXPANSION)

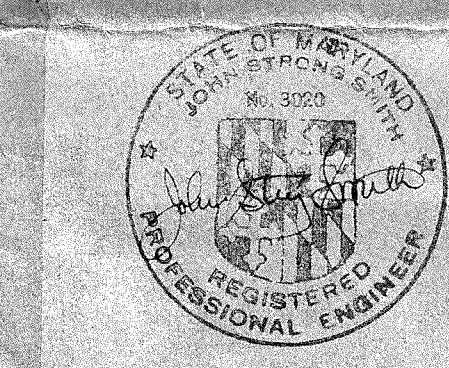
EX. RUN = 66
PROP. RUN = 76
10 YEAR STORM (RAINFALL 5.1 INCHES)
EX. RUNOFF = 1.80
PROP. RUNOFF = 2.84
DIFFERENCE = 1.04

POROUS PAVING WILL BE UTILIZED TO ACCOMMODATE INCREASE IN RUNOFF

2" THICK SURFACE COURSE (15% VOID) = 0.30"
12" THICK BASE COURSE (30% VOID) = 3.60"
TOTAL = 3.90" > 2.84"

2+0 YR STORM WATER MANAGEMENT PROVIDED IN POROUS PAVEMENT.

OWNER/APPLICANT
SEMINARY CH. PARTNERSHIP
200 PARK AVENUE
HUNTS VALLEY, MARYLAND
21038
686-0040
ACCOUNT NO. 03-06-45240
20-00-003991
686-1801
686-3395

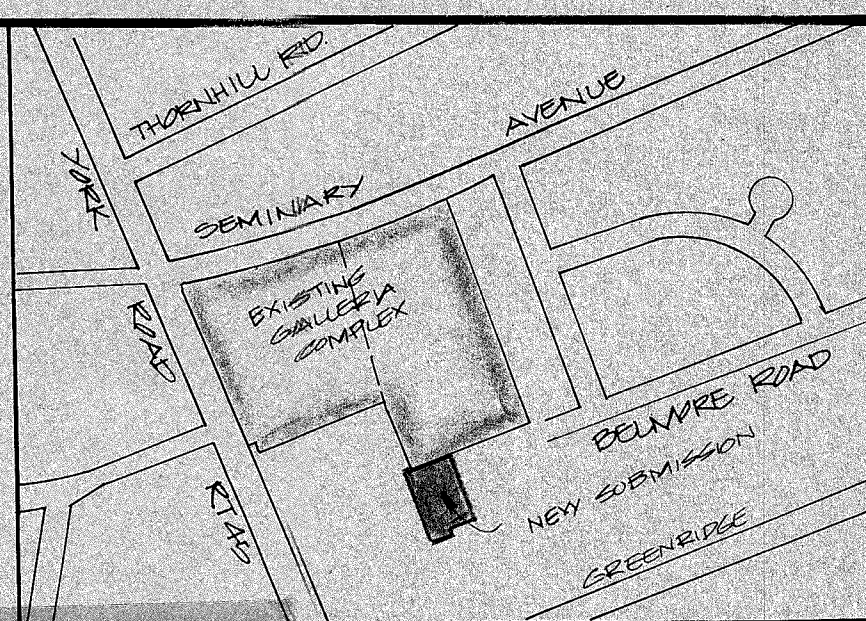


GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
303 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204
(301) 825-8120

CRG PROJECT NO. 88040 PLANNING NO. 88040
CRG PLAN
2ND AMENDMENT & PARKING ADDITION TO
THE GALLERIA TOWER & THE GALLERIA
BALTIMORE CO., MD. ELECTION DISTRICT 9
SCALE: 1" = 40' JUNE 20, 1986
REVISED JUNE 27, 1986 (CRG COMMENTS)
REVISED JULY 11, 1986
SHEET 1 OF 1 PN. 04714

UPPER DECK STRIPPING PLAN
SCALE 1" = 40'

LANE APPROVED
OFFICE OF PLANNING & ZONING
BY: [Signature]
DATE: 7/5/86
u. Calhoun
ZONING COMMISSIONER
DATE: 7/5/86



SITE DATA

EXISTING ZONING: PR-5.5, BL
AREA OF SITE:
A. EXISTING SHOPPING CENTER = 0.420 AC
B. PARKING EXPANSION AREA = 0.475 AC
C. LARGE AREA FROM BAPTIST CHURCH = 0.004 AC

REFERENCE

A. EXISTING SHOPPING CENTER * 1ST AMENDED MORTGAGE PLAT, GALLERIA AT YORK AND SEMINARY EHK JR. 55, FOLIO 70
DEED REFERENCE 6261/401

B. PARKING EXPANSION AREA - DEED DATED MAY 22, 1985, LIBER 6229, FOLIO 395

PARKING TABULATION				
ADDRESS	LEVEL	SPACES	USE	SPACE KEYS
# 1407 YORK ROAD	1ST	6,199	OFFICE & 1,000	227
	1ST	10,841.55	RETAIL & 1,000	501
	2ND	10,841.55	OFFICE & 1,000	215
	2ND	3,800	MEDICAL OFFICE & 1,000	127
	2ND	2,901.3	SMALL BUSINESS / BEAUTY BARBER & 1,000	83
	3RD	7,160	GENERAL OFFICE & 1,000	335
# 1411	1ST	12,356.61	RETAIL & 1,000	335
	BASEMENT	8,773.6	RETAIL & 1,000	335
# 1417	1ST	5,760	RETAIL 1,000	269
	1ST	1,440	RETAIL 1,000	172
	1ST	2,400	DEL & 1,000	48
	1ST	1,200	BEAUTY SHOP & 1,000	1
	1ST	1,200	RETAIL 1,000	6
	1ST	1,200	BANK & 1,000	13
# 1429	1ST	2,822.5	HEALTH CLUB & 1,000	13
	BASEMENT	8,800	RETAIL 1,000	24
# 1431-1447	1ST	11,308	OFFICE & 1,000	88
	2ND	5,000	RESTAURANT/1,000	122
	2ND	7,232	RETAIL & 1,000	87
	2ND	16,274	MEDICAL OFFICE & 1,000	558
	3RD	3,825	OFFICE	1262
	4TH	1,033	OFFICE	1262
# 1449	5TH	1,033	OFFICE	1262
	6TH	1,033	OFFICE	1262
	7TH	1,033	OFFICE	1262
	8TH	1,033	OFFICE	1262
# 1451	1ST	1,200	MEDICAL OFFICE 1,000	55
	5TH	2,438	MEDICAL OFFICE 1,000	21

TOTAL PARKING REQUIRED = 726 SPACES
TOTAL PARKING SHOWN = 733 SPACES
733 - 726 = 7 SPACES
733 - 726 = 7 SPACES

TOTAL EXCLUDES 6 STAGING SPACES FOR BANK, SPACES 8' X 10' TYP / HANDICAP SPACES 13' X 10' TYP (11 SHOWN)

NO VANS OR TRUCKS TO BE PARKED ON PARKING ADDITION

STEPHEN HEAVER ET. UX
5000/440
EXISTING ZONING - BL
PRESENT USE - FIRE MUSEUM

AGREEMENT EXISTS BETWEEN CONVENTION & 1317 TO PERMIT CONVENTION TO PARK ON THE 73 SPACE ADDITION ON WEDNESDAY EVENINGS

AGREEMENT EXISTS BETWEEN CHURCH & 1317 TO PERMIT CHURCH TO PARK ON THE 73 SPACE ADDITION PERMIT CHURCH TO PARK ON THE 73 SPACE ADDITION PERMIT CHURCH TO PARK ON SUNDAY MORNINGS

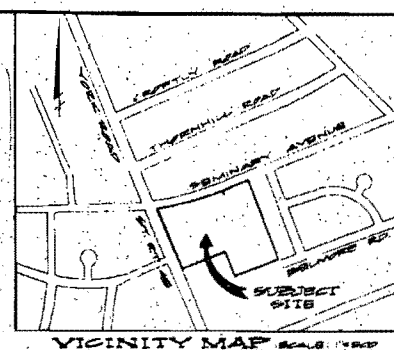
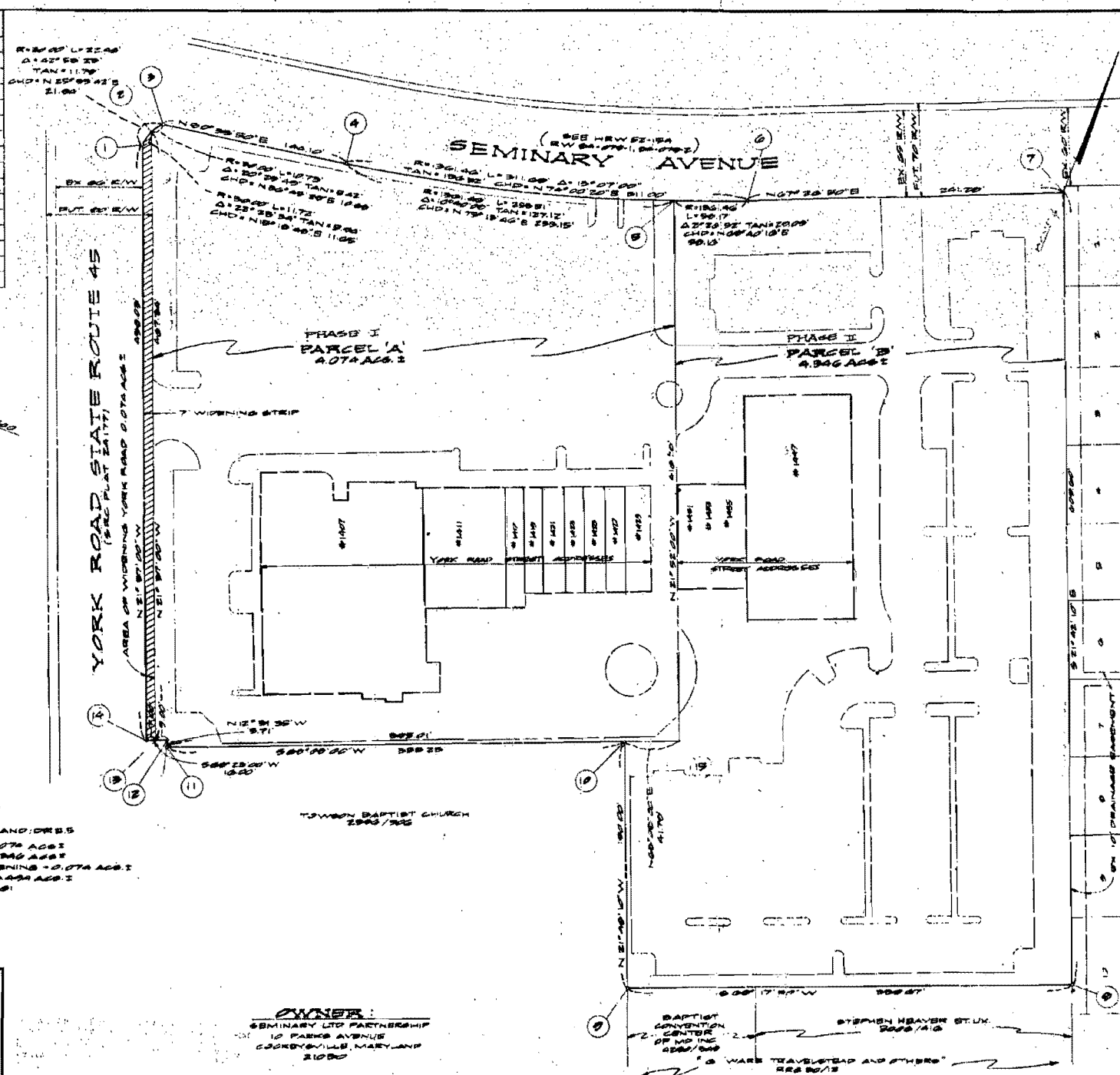
0.475 ACRES PARCEL ON SUNDAY MORNINGS

EXISTING ZONING - BL
PRESENT USE - VACANT & PARKING LOT
PROPOSED USE - PARKING LOT

NEW SUBMISSION

LANDSCAPING REQUIREMENT
ROAD FRONTAGE 100'
1 TREE/12 FT. 73 FT. = 6 TREES

COORDINATES		
NO	NORTH	EAST
1	44742.51	59.71
2	44753.73	52.64
3	44763.90	100.19
4	44769.02	44.10
5	44,892.45	200.00
6	44,871.05	284.86
7	44,854.19	277.00
8	44,877.77	200.11
9	44,873.16	207.92
10	44,840.87	310.93
11	44,817.01	10.00
12	44,822.59	12.10
13	44,818.27	32.47
14	44,818.00	50.90
15	44,828.19	55.75



RECORD BY COUNTY
DATE 1985
TAX

SEE R. 99 FOLD 78

LEGEND	
TRACT BOUNDARY	---
RAW LINE	---
FUTURE RAW LINE	---
HIGHWAY WIDENING	---
LOT LINES	---
HOUSE NUMBERS	---
COORDINATES	---

NOTE

- THE RECORDS OF THIS PLAT DOES NOT CONSTITUTE OR IMPLY ANY GUARANTEE BY THE COUNTY OF ANY STREET, EASEMENT, PARK, OPEN SPACE, OR OTHER PUBLIC AREA SHOWN ON THIS PLAT, NOR DOES IT GUARANTEE THE INSTALLATION OF STREETS OR UTILITIES BY BALTO. CO.
- THIS PLAT MAY EXPIRE IN ACCORDANCE WITH SECTION 22-60, (EIGHT YEARS AFTER THE DATE OF APPROVAL OF THE PLAT TO WHICH THIS PLAT WAS REFERRED).
- ADDITIONAL INFORMATION CONCERNING THIS PLAT MAY BE OBTAINED FROM THE OFFICE OF PLANNING AND ZONING AND THE DEPARTMENT OF PUBLIC WORKS.
- THE INFORMATION SHOWN HEREON MAY BE SUPERSEDED BY A SUBSEQUENT OR AMENDED PLAT.
- REFERENCE IS DIRECTED TO ZONING CASE 1980-10 WHICH GRANTED PASSENGER VEHICLE PARKING IN THE DE SEVERE PORTION OF THE PROPERTY, AND ZONING CASE 1980-12 WHICH PERMITTED A DRY CLEANING PLANT ON LOT 1.
- THIS PLAT ESTABLISHES EXPRESSLY FOR PARCELS 'A' AND 'B' AS SHOWN HEREON A COMPREHENSIVE CROSS EASEMENT FOR THE PURPOSE OF VEHICULAR INGRESS AND EGRESS, PASSENGER AUTOMOBILE PARKING, AND UTILITY NETWORKS THROUGH EACH PARCEL.
- PARCELS 'A' AND 'B' ARE CREATED FOR MORTGAGE PURPOSES ONLY.
- SEE APPROVAL DATE 9/23/85
- PARCELS 'A' AND 'B' SUBJECT TO AGREEMENTS WITH THE BALTO GAS AND ELECTRIC COMPANY, ONE LIBER 8884/212, 8884/214, AND 8747/100
- THE PLAT IS AN AMENDMENT TO A PLAT ENTITLED "MORTGAGE PLAT, GALLERIA AT YORK AND SEMINARY" DATED JUNE 20, 1984 AND RECORDED JUNE 20, 1984 IN THE OFFICE OF BALTIMORE COUNTY IN PLAT BOOK 0116 OF PL. 0116.

1ST AMENDED*
MORTGAGE PLAT

GALLERIA
AT YORK AND SEMINARY

BALTIMORE COUNTY, MARYLAND ELECTION DISTRICT NO 9
SCALE 1" = 40'
REASON FOR AMENDMENT: TO RECONSTRUCT HOUSE NUMBERS (STREET ADDRESSES) FOR BUILDINGS

TABULATION

EXISTING ZONING-DISTRICTS AND USES
AREA OF PARCEL 'A' - 4.074 ACES
AREA OF PARCEL 'B' - 4.346 ACES
AREA OF YORK ROAD WIDENING - 0.074 ACES
TOTAL AREA OF TRACT - 8.494 ACES
DEED REFERENCE - 630/100

NOTE

COASTAL AND MOUNTAIN DISTRICTS, UNUSUAL AND UTILITY EASEMENTS SHOWN HEREON ARE REVEALED UNTIL THE DEVELOPER AND ARE HEREBY OFFERED FOR DISCUSSION BY THE BALTIMORE COUNTY MARYLAND AND THE BALTIMORE COUNTY METROPOLITAN DISTRICT AND SMALL CHARTERED AREAS SUBJECT TO BALTIMORE COUNTY MARYLAND AND NO COST

OWNER:
SEMINARY LTD PARTNERSHIP
10 PARKS AVENUE
CROFTONVILLE, MARYLAND
21036

LONGQUARTER DRAINAGE AREA

OWNERS CERTIFICATE

THE UNDERSIGNED, OWNER OF THE LAND SHOWN ON THIS PLAT, HEREBY CERTIFIES THAT THE PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE LAND SHOWN ON THE PLAT AND THAT THE PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE LAND SHOWN ON THE PLAT AND THAT THE PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE LAND SHOWN ON THE PLAT.

SURVEYORS CERTIFICATE

THE UNDERSIGNED, A LICENSED SURVEYOR FOR THE STATE OF MARYLAND, HEREBY CERTIFIES THAT THE PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE LAND SHOWN ON THE PLAT AND THAT THE PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE LAND SHOWN ON THE PLAT.

APPROVED BY BALTIMORE COUNTY HEALTH DEPARTMENT

David J. [Signature] 7/1/85
HEALTH OFFICER

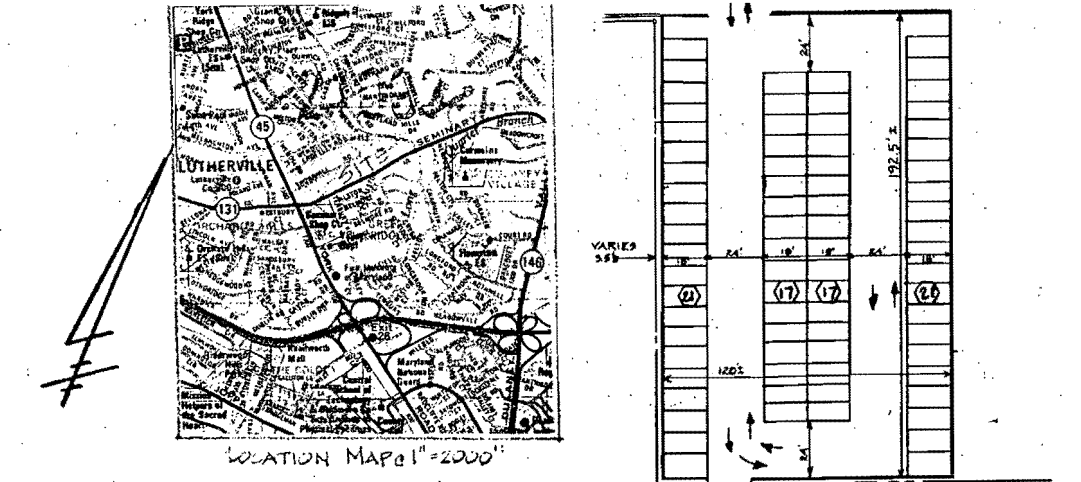
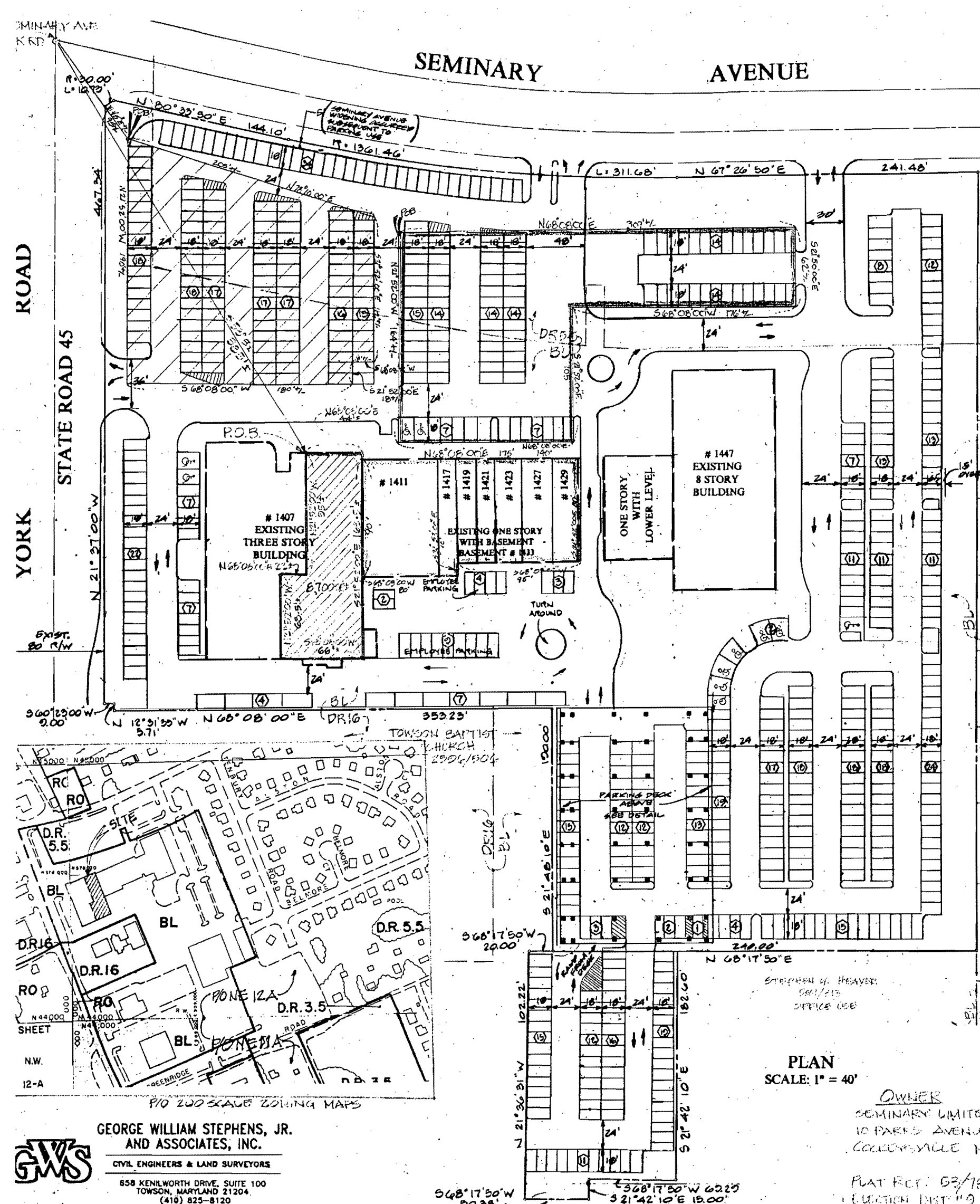
APPROVED BY BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
[Signature] 7/1/85
DIRECTOR

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.

CIVIL ENGINEERS & LAND SURVEYORS
1000 N. MARYLAND 21014

APPROVED DEPARTMENT OF PUBLIC WORKS
[Signature] 7/1/85
DIRECTOR OF PUBLIC WORKS

COMPUTED BY WFS CHECKED BY WFS
DRAWN BY JEM. W.D. NO. 247-A



PARKING TABULATION

TENANT	SUITE	SF	USE	PARKING	PARKING REQ'D
new office tenant	101	5440	office	1/500	10.88
Ryland Homes	104	3000	retail	1/200	15
Oldie	105	3277	office	1/500	6.55
Voice of Video	108	1265.1	retail	1/200	6.33
Subway	109	1078	restaurant	1/50	21.56
Jenny Craig	110	2044	service	1/300	6.81
Boston Metals	200	1016	office	1/500	2.03
Hearing Assessment	201	1377	medical	1/300	4.59
office tenant	204	1487	office	1/500	2.97
office tenant	208	1800	office	1/500	3.6
Vacant	207	1200	office	1/500	2.4
Hair Act	208	1213.25	service	1/300	4.04
Mercantile Mortgage	209	1772	office	1/500	3.54
American Home Loan	210	2257	office	1/500	4.51
Boston Metals	210A	413	office	1/500	.83
State Farm Insurance	211	662	office	1/500	1.32
Dr. Kliff	212	1503	medical	1/300	5.01
Azman Eye Care	213	2800	service	1/300	9.33
Allstate Insurance	215	348	office	1/500	.7
Dr. Perez	300	1283	medical	1/300	4.21
AP Greene	301	224	office	1/500	.45
Tackamattix	302	3690	office	1/500	7.38
Bob Ehrlich	304	2214	office	1/500	4.43
Pulmonary Critical Care	305	1078	medical	1/300	3.59
Dr. Martin Lang, DDS	308	1237.2	medical	1/300	4.12
John Sawchuk	308	1375	medical	1/300	4.58
Dr. Lafferman	309	1365	medical	1/300	4.55
Dr. Jeffrey Kilson	310	1115	medical	1/300	3.72
Columbia National Mortgage	311	4025	office	1/500	8.05

PARKING DECK
DETAIL
SCALE: 1" = 40'

TENANT	SUITE	SF	USE	PARKING	PARKING REQ'D
Kaiser Health	100-200	28887.78	medical	1/300	96.28
Vacant	301	860	service	1/300	2.87
H & R Block	302-303	2172	service	1/300	7.24
Dr. John Skouge, MD	304	2481	medical	1/300	8.27
Certified Rentals, Inc.	310	1368	retail	1/200	6.84
Independence One Mortgage	312,314, 400A	4027	office	1/500	8.05
PSA Financial	400	14995	office	1/500	29.99
Dr. Edwin Epstein, MD	502	1688	medical	1/300	5.23
Lisa Rubin, MD	504	1273	medical	1/300	4.24
Technical Aid Corp	505	1403	office	1/500	2.81
Mary Kraft & Associates	606	2237	office	1/500	4.47
GBMC Agency	508	2820	office	1/500	5.24
Johns Hopkins Health Center	510	2350	office	1/500	4.7
First National Mortgage	601	4788	office	1/500	9.58
Dr. Stotz	605	1716	medical	1/300	5.72
Vacant	608	212	medical	1/300	.71
Vacant	607	1991	office	1/500	3.98
Rossmann-Hurt-Hawkins, Inc.	608	6189	office	1/500	10.38
Ryland Homes	700,704, 705	11432	office	1/500	22.86
Smith Abbot & Co.	800	11116	office	1/500	22.23
Norrell Services, Inc.	801	1407	office	1/500	2.81

TENANT	SUITE	SF	USE	PARKING	PARKING REQ'D
Rite Aid	1411	5780	retail	1/200	28.8
One Hour Mini-Marketing	1417	1440	service	1/300	4.8
Galleria Deli	1419	1138	carry out	1/200	5.68
Rolling Road Tobacco Shop	1421	1264	retail	1/200	6.32
Coco & But	1423	1500	service	1/300	5
Szechuan House	1427	2100	restaurant	1/50	42
First Virginia Bank	1429	1600	bank	1/300	5.33
Quest	1433	9827.5	health club	1/500	19.28
Quest	1433	4900	health club	1/500	9.8
Quest (proposed addition)	1433	8700	health club	1/100	87

TOTAL PARKING REQUIRED: 1174.08
TOTAL PARKING SHOWN: 1174.08
PARKING REQUIREMENT BASED ON PARKING REGULATIONS IN EFFECT AT TIME OF C.R.G. APPROVAL (EXCEPT HEALTH CLUB ADDITION)
722 STANDARD SPACES @ 1:1 IF TYPICAL
11 HANDICAP SPACES @ 1:1 IF TYPICAL
11 PARALLEL SPACES @ 2:1 IF TYPICAL
(668 SURFACE SPACES 76 SPACES ON DECK)

ALL EXISTING AND FUTURE SIGNS MUST COMPLY WITH SECTION 413.6 OF THE BALTO. CO. ZONING REGULATIONS.

PLAN
SCALE: 1" = 40'

OWNER
SEMINARY LIMITED PARTNERSHIP
10 PARKS AVENUE
COLUMBIA, MD 21030-4122

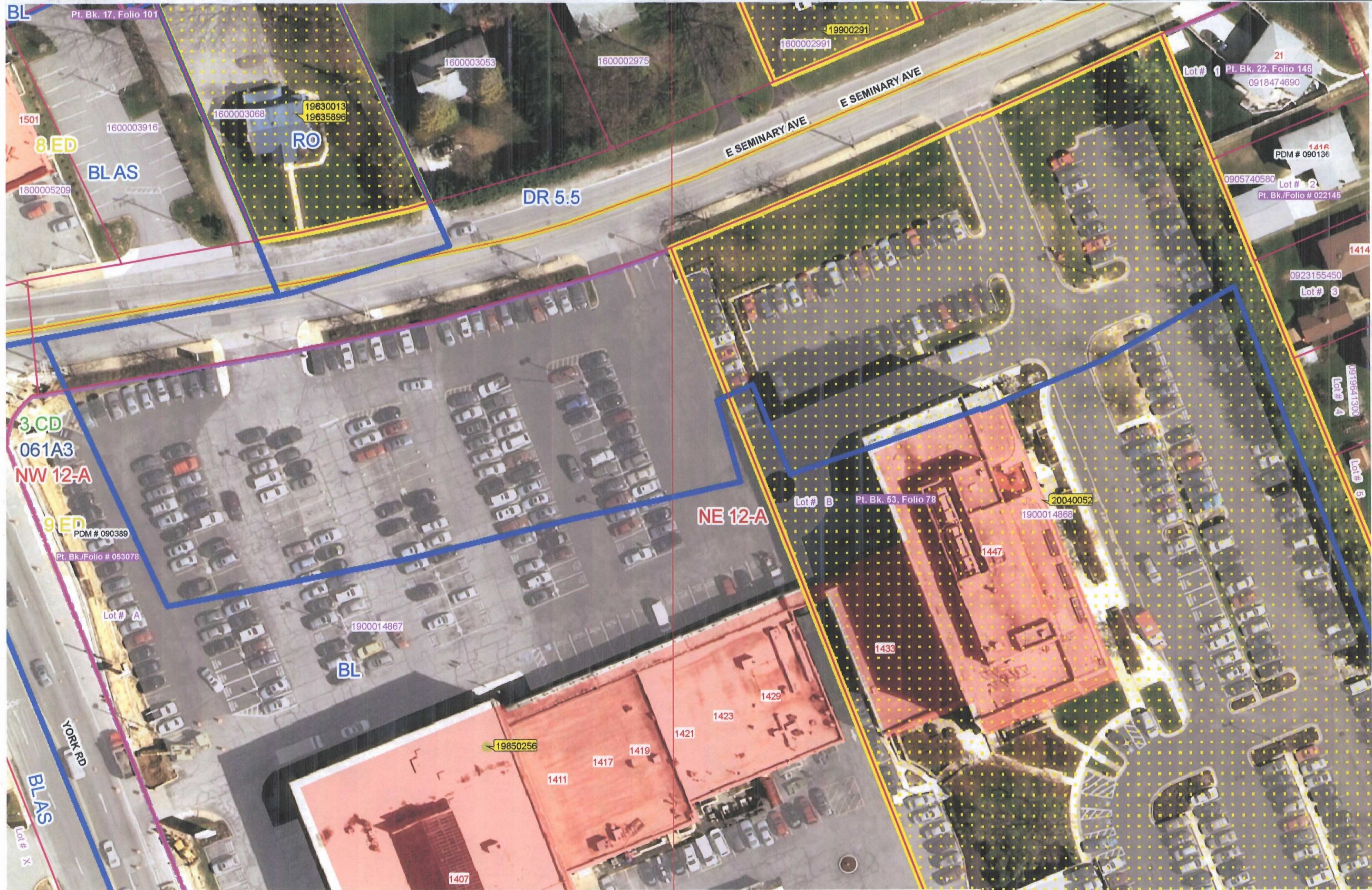
PLAT REC. 63/18
ELECTION DIST. 10 COUNCILMANIC DIST. 4

NO COMMERCIAL PERMITS FOUND FOR THE CONSTRUCTION OF THE PARKING DECK.

Reference is directed to:
(1) Existing use field which allows passenger vehicle parking in the lot and portion of the property, (restriction made by letter dated Jan. 15, 1981 to Melvin Bernberger, Jr. from James Dyer, zoning supervisor), subject to the following restrictions:
a-1. This passenger vehicle shall be permitted to use such parking area.
a-2. No service of any kind shall be extended to persons occupying vehicles in said parking area, nor shall any such space be used for automobile service or repair.
a-3. No lighting installation shall be so arranged as to reflect the light away from the adjoining residential property and also the property on the opposite side of boundary street.
a-4. There shall be compact planting to screen the residential property on the opposite side of boundary street. Such planting shall be done at the time this property shall be used for parking and planting shall be restricted only for those portions of this property which shall be actually used for the parking of vehicles. Those portions which must be approved for antennas and/or other use by the planning board shall not have to be screened under this provision.
(2) Existing use field which permitted a dry cleaning plant in the existing Galleria Center.
(3) Existing use field which permitted a community building in a 20' x 20' area and a parking area (various other restrictions).
(4) The following restrictions shall apply to the parking area:
a. The parking area shall be restricted to the use of passenger vehicles only. No other vehicles shall be parked in the parking area.
b. The parking area shall be restricted to the use of passenger vehicles only. No other vehicles shall be parked in the parking area.
c. The parking area shall be restricted to the use of passenger vehicles only. No other vehicles shall be parked in the parking area.
d. The parking area shall be restricted to the use of passenger vehicles only. No other vehicles shall be parked in the parking area.

PARKING PLAN
FOR THE
GALLERIA
YORK ROAD & SEMINARY AVENUE
BALTIMORE COUNTY, MD ELECTION DISTRICT #9
SCALE: 1" = 40'
FEB. 2, 1993
REV. MAP. 3, 1997

GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-8120



Pt. Bk. 17, Folio 101

1600003053

1600002975

19900291
1600002991

21
Pt. Bk. 22, Folio 145

0918474690

141A
PDM # 090136

0905740580

Lot # 2
Pt. Bk./Folio # 022145

1414

0923155450

Lot # 3

Lot # 4
0919641300

Lot # 5

1501

8ED

BLAS

1800005209

RO

19630013
19635896

DR 5.5

E SEMINARY AVE
E SEMINARY AVE

3CD

061A3

NW 12-A

9ED

PDM # 090339

Pt. Bk./Folio # 053078

Lot # A

BL

1900014867

NE 12-A

Lot # B

Pt. Bk. 53, Folio 78

20040052
1900014868

1447

1433

1429

1423

1421

1419

1417

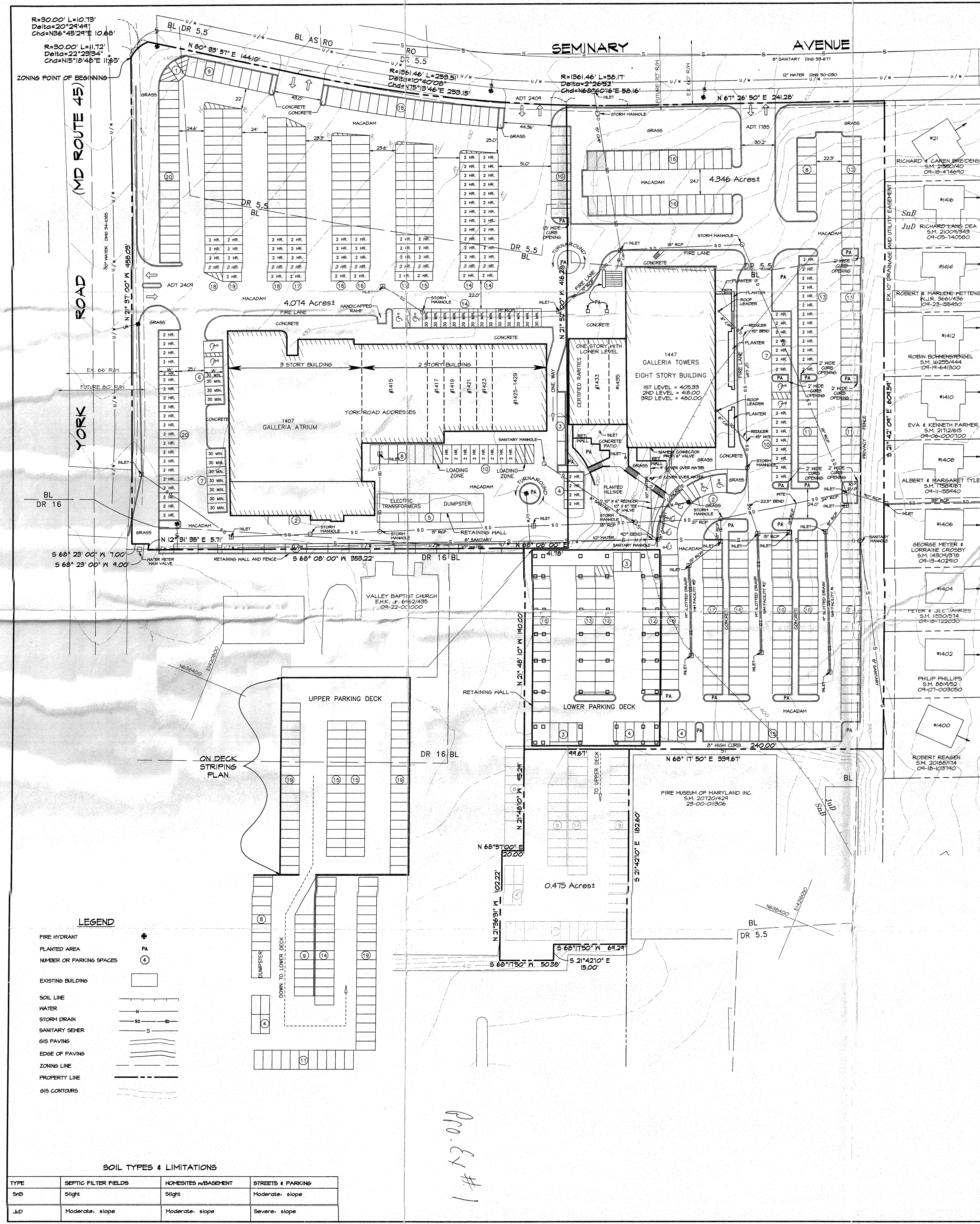
1411

1407

YORK RD

BLAS

Lot # X



GALLERIA TOWERS 1447 YORK ROAD

TENANT	OFFICE	SQUARE FEET
COLQUITT CASABIAN		2,820
HELLS FARGO BANK		2,820
PSA FINANCIAL		2,820
ASSOCIATION INSURERS AGENCY		2,820
PROGRESSIVE NURSING STAFFERS		2,820
BL CONSTRUCTION ASSOCIATES		2,820
MARY L. KRAFT		2,820
NATIONAL TELECOMMUNICATIONS		2,820
WATER COMMUNICATIONS		2,820
ALTERNATE TRAINING SOLUTIONS		2,820
VACANT		2,820
TOTAL OFFICE SQUARE FOOTAGE:		47,560

GALLERIA TOWERS - MEDICAL

TENANT	OFFICE	SQUARE FEET
KAISER PERMANENTE		2,820
FRANKLIN FEINSTEIN MD		2,820
MICHAEL WHITE DDS		2,820
ROBERT STOLTZ MD		2,820
OSHA BEHAVIORAL HEALTH		2,820
MEDSTAR HEALTH		2,820
VACANT		2,820
TOTAL MEDICAL SQUARE FOOTAGE:		64,280

GALLERIA TOWERS - RETAIL

TENANT	OFFICE	SQUARE FEET
CERTIFIED RARITIES		1,260
VPS		1,260
VACANT		1,260
TOTAL RETAIL SQUARE FOOTAGE:		3,780

GALLERIA ATRIUM 1407 YORK ROAD

TENANT	OFFICE	SQUARE FEET
DOODLE DESIGN		1,260
GORDON & ASSOCIATES		1,260
ANITA JENKINS		1,260
MOO KRON		1,260
PARADE & SHERR		1,260
MIDWEST RAILCAR CORP.		1,260
SPHERION ATLANTIC ENTERPRISE		1,260
NEW WORLD TITLE		1,260
ACCESS NURSING SERVICES		1,260
TECHNOC		1,260
NETCO		1,260
BERLITZ LANGUAGES		1,260
VACANT		1,260
TOTAL OFFICE SQUARE FOOTAGE:		16,102

GALLERIA ATRIUM - MEDICAL

TENANT	OFFICE	SQUARE FEET
MEDSTAR HEALTH		2,820
NATIONAL REHABILITATION HOSPITAL		2,820
EMT GRAIS OPERATIONS		2,820
HEARING ASSESSMENT CENTER		2,820
MARTIN T. LANG DDS		2,820
DR. MICHAEL KRAFT		2,820
IVORY HEALTHCARE MANAGEMENT		2,820
PEACE SOFTWARE LABS		2,820
ADVANCED MEDICINE		2,820
JOHN A. SANKHAGE DDS		2,820
CHRISTINE B. LACROIX MD		2,820
MAXIM HEALTHCARE SERVICES		2,820
VACANT		2,820
TOTAL MEDICAL SQUARE FOOTAGE:		32,636

GALLERIA ATRIUM - RETAIL

TENANT	OFFICE	SQUARE FEET
SIGMA-RAMA		1,260
INNOVATIONS HAIR SALON		1,260
HTR BLOCK		1,260
WHITE STILE		1,260
SOUNDS PERFECT		1,260
RITE AID OF MARYLAND		1,260
GALLERIA CLEANERS		1,260
ANNIE'S APPLE PATCH		1,260
COCO & BUFF HAIR SALON		1,260
VACANT		1,260
TOTAL RETAIL SQUARE FOOTAGE:		17,608

GALLERIA ATRIUM - RESTAURANT

TENANT	OFFICE	SQUARE FEET
SLEWATY RESTAURANT		1,260
GALLERIA DELI		1,260
SEZICMAN HOUSE		1,260
TOTAL RESTAURANT SQUARE FOOTAGE:		3,780

GALLERIA ATRIUM - FITNESS CENTER

TENANT	OFFICE	SQUARE FEET
GUEST FITNESS CENTER		2,354
TOTAL FITNESS CENTER SQUARE FOOTAGE:		2,354

GALLERIA ATRIUM - SQUARE FOOTAGE TOTALS

TENANT	OFFICE	SQUARE FEET
OFFICE		64,280
MEDICAL		32,636
RETAIL		17,608
RESTAURANT		3,780
FITNESS CENTER		2,354
TOTAL		119,558

GALLERIA TOWERS / GALLERIA ATRIUM COMBINED TOTALS

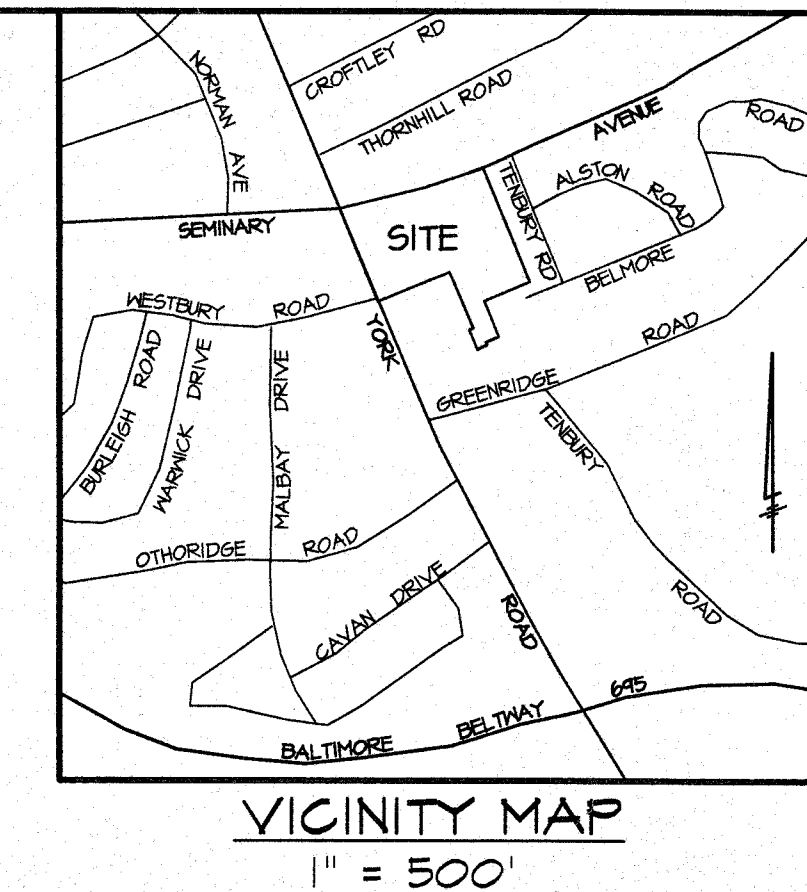
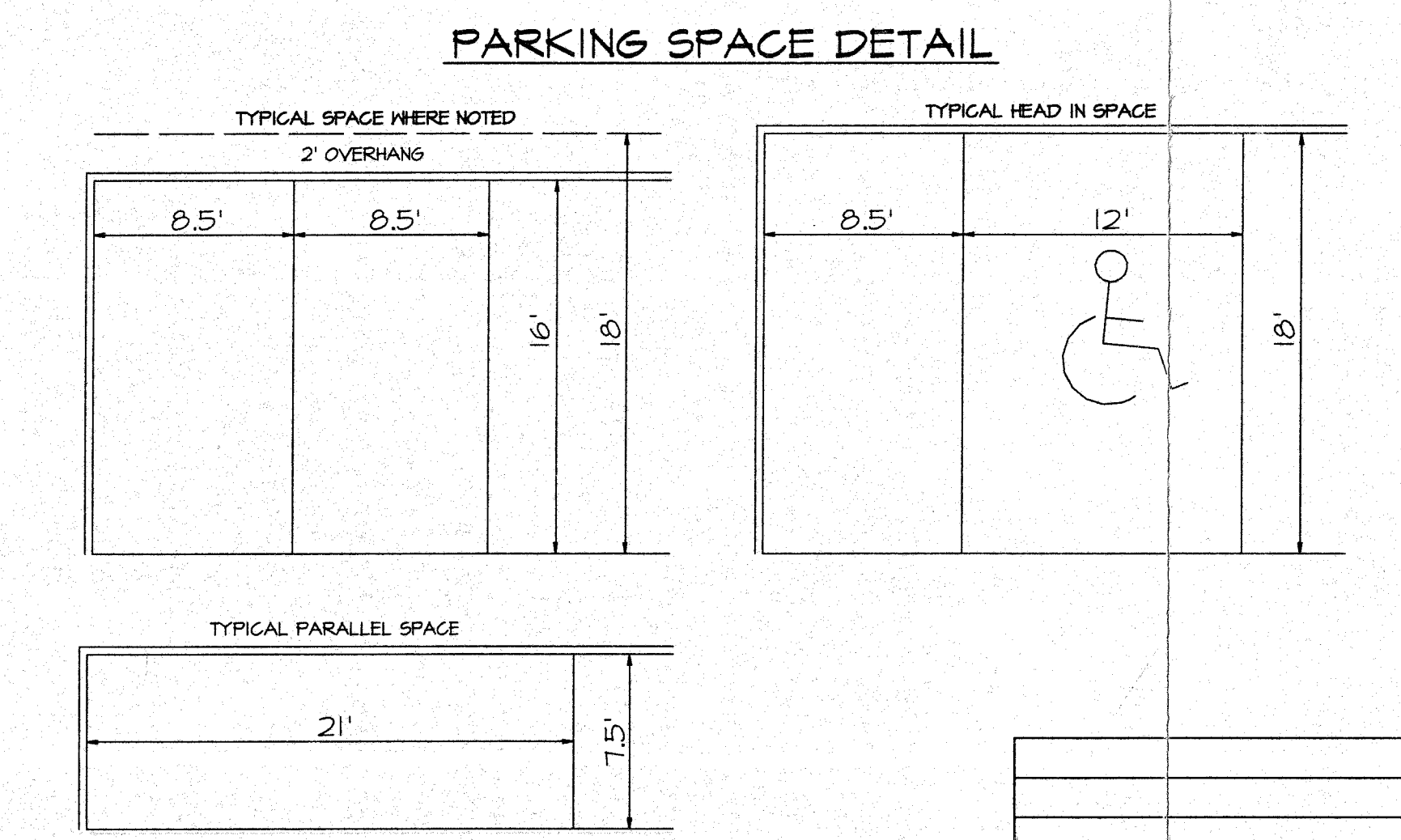
TENANT	OFFICE	SQUARE FEET
OFFICE		64,280
MEDICAL		32,636
RETAIL		17,608
RESTAURANT		3,780
FITNESS CENTER		2,354
TOTAL SQUARE FOOTAGE:		119,558

PARKING CALCULATIONS GALLERIA TOWERS / GALLERIA ATRIUM COMBINED TOTALS

TENANT	SQUARE FOOTAGE	REQUIRED SPACES
OFFICE	64,280	212
MEDICAL	32,636	436
RETAIL	17,608	208
RESTAURANT	3,780	65
FITNESS CENTER	2,354	236
TOTAL	119,558	1,047
TOTAL PARKING SHOWN		1,047 SPACES

PARKING CALCULATIONS GALLERIA TOWERS / GALLERIA ATRIUM COMBINED TOTALS

TENANT	SQUARE FOOTAGE	REQUIRED SPACES
OFFICE	64,280	212
MEDICAL	32,636	436
RETAIL	17,608	208
RESTAURANT	3,780	65
FITNESS CENTER	2,354	236
TOTAL	119,558	1,047
TOTAL PARKING SHOWN		1,047 SPACES



- GENERAL NOTES**
- THE BOUNDARY SHOWN HEREON IS FROM PLAT ENK. J. 55-18.
 - AND DEED S.M. NO. 13151 FOLIO 617.
 - THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 61 AS.
 - THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP NO. 24.
 - CENSUS TRACT 440200 REGIONAL PLANNING DISTRICT 308
 - WATERSHED 1001 RAVEN SUBWERSHED 26
 - SCHOOL DISTRICT: ELEMENTARY - LUTHERVILLE ES; MIDDLE - RIDGELY MS; HIGH - TOWSON HS.
 - ADDC MAP 1 GRID 21 E2
 - THE BUILDING SHOWN ON THE SUBJECT PROPERTY ARE FROM PLAT ENK. J. 55-18.
 - THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.
 - THE BUILDINGS ON THE ADJOINING PROPERTIES ARE FROM GIS TILE 61 AS.
 - THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
 - THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
 - THE ADJOINING LOT LINES ARE FROM THE FIRST AMENDED PARKING PLAN OF THE GALLERIA TOWER.
 - THE EXISTING PARKING LAYOUT WAS FIELD VERIFIED BY GERHOLD, CROSS & ETZEL, LTD. ON 12/28/05.
 - PRESENT USE - SHOPPING CENTER WITH OFFICE, MEDICAL, RETAIL, AND RESTAURANT SPACE.
 - PARKING ADJACENT TO SEMINARY AVENUE, IN THE DR 5.5 ZONE WAS GRANTED BY LETTER FROM ZONING COMMISSIONER DATED DECEMBER 14, 2005 (ZONING CASE #3410).
 - HIGHWAY HEDGING FOR YORK ROAD TO BE OFFERED TO THE STATE AT NO COST.
 - ADT COUNTS BASED ON "TRIP GENERATION" PUBLISHED BY THE INSTITUTE OF TRAFFIC ENGINEERS.
 - AREA OF SITE = 0.245 ACRES ±
 - FUTURE ROAD HEDGING = 0.15 ACRES ±
 - NET AREA = 0.145 ACRES ±
 - REFERENCE IS DIRECTED TO ZONING CASES: 405-256-KA WHICH GRANTED A SPECIAL EXCEPTION FOR A COMMUNITY BUILDING (HEALTH CLUB) AND A VARIANCE OF 49 PARKING SPACES. 4493-KA WHICH PERMITTED A DRY CLEANING PLANT IN THE EXISTING SHOPPING CENTER (USE EXTING.). 40410 WHICH PERMITTED PASSENGER VEHICLE PARKING ON THE DR ZONED PORTION OF THE SITE.
 - THE FIRST AMENDED PARKING PLAN OF THE GALLERIA TOWER WAS APPROVED ON 4/22/10.
 - BENCH MARK X-5844, ELEVATION = 444.02', RAILROAD SPIKE IN MACADAM NORTH SIDE OF SEMINARY AVENUE WEST OF YORK ROAD.

REASON FOR AMENDMENT:
TO UPDATE PLAN TO CURRENT CONDITIONS

SECOND AMENDED PARKING PLAN OF THE GALLERIA TOWER

YORK ROAD & SEMINARY AVENUE
Deed Ref: S.M. No. 13148 folio 443
and S.M. No. 13151 folio 617
Tax Account No.: 19-00-014867,
19-00-014868, 20-00-003391
Zoned BL & DR 5.5; GIS Tile 61 AS
Tax Map 61; Grid 19; Parcel 74 & 454
9th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=40' Date: DECEMBER 14, 2005

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Townsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/ABSEMENT	STREETS & PARKING
SnB	Slight	Slight	Moderate slope
JD	Moderate slope	Moderate slope	Severe slope

REVISION	DATE	COMPUTED	DRAWN	CHECKED	FILE

June 8, 2006

RECEIVED

JUN 15 2006

ZONING COMMISSIONER

Mr. William J. Wiseman, III
Zoning Commissioner
Office of Zoning Commissions
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: Seminary Galleria LLC
Owner Case 06-411-SPHA

Dear Commissioner Wiseman:

Please accept this letter as my support of Hill Management to maintain and keep the added parking spaces at the Galleria Towers. I am the East Coast Director, Facility Services, and we have been a tenant of the building for over twenty (20) years and occupy nearly 29,000 square feet of space.

The building Owner has informed me that they have requested a variance to keep the added spaces. The added spaces have only helped the parking situation on the property, and removing them would have a negative impact on an already very busy lot, especially during peak hours of the day. By granting Hill Management the variance, everyone will benefit all businesses at the Galleria Towers and their visiting clientele

Your consideration given to help us would be greatly appreciated.

Sincerely,



Cary Chambers
East Coast Director
Facility Services
Kaiser Permanente

Rel #3



401 Bosley Avenue
Towson, MD 21204

(410) 887-3211
Fax (410) 887-5862

LETTER OF TRANSMITTAL

DATE: 9/26/06

TO: Walt Smith
PDM
MS 1125

FROM: Lynne Larkin

WE ARE SENDING YOU THE FOLLOWING ITEMS:

☐ Report ☐ Prints ☐ Original Plans
☐ Maps ☐ Copy of Letter ☒ Other

COPIES	DATE	DESCRIPTION
<u>1</u>	<u>9/26/06</u>	<u>Pattern Book -</u>
		<u>revised & approved</u>
		<u>MORGAN'S GLEN</u>
		<u>PDM # XL-928</u>

THESE ITEMS ARE TRANSMITTED AS CHECKED BELOW:

☐ For approval ☐ Approved as submitted ☐ Approved as noted
☒ For your use ☐ For review/comment ☐ As requested
☐ Returned for corrections ☐ Prints returned after loan to us

REMARKS: _____

Reynolds/SPIERS
11-928

Lynne

Just scan this page - D

Morgan's Glenn

Reynolds | Speirs Property

PDM : 9/26/2006
Copy Approved: Lynn Julian

PDM File #X9-928

September, 2006

A Residential Community

GEMCRAFT  HOMES
SETTING A STANDARD OF EXCELLENCE IN HOME BUILDING



Morris & Ritchie Associates, Inc.
1220-C East Joppa Road
Towson, MD 21286
410.821.1690



Pattern Book

SEMINARY AVE
K RD

SEMINARY AVENUE

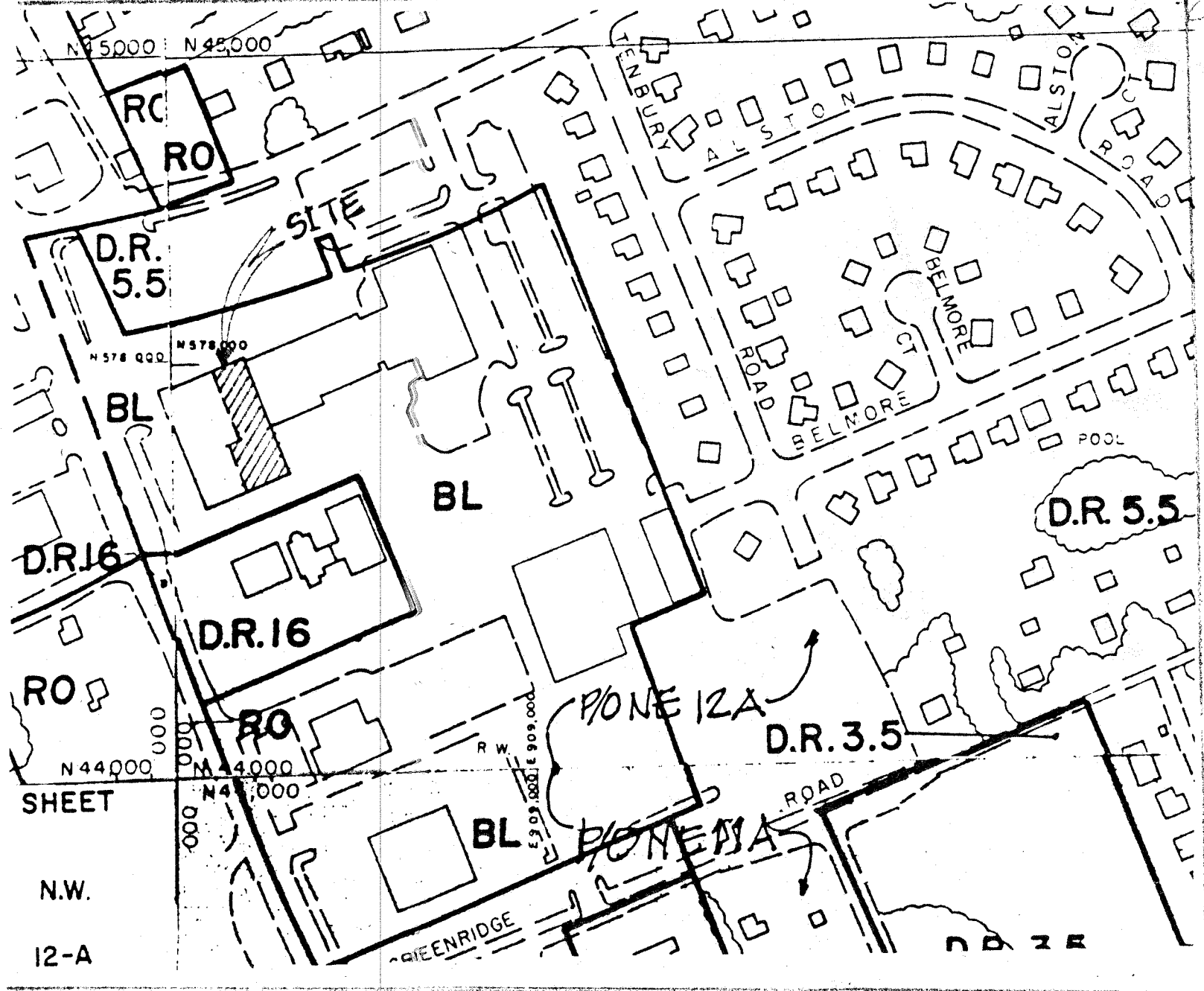
ROAD

STATE ROAD 45

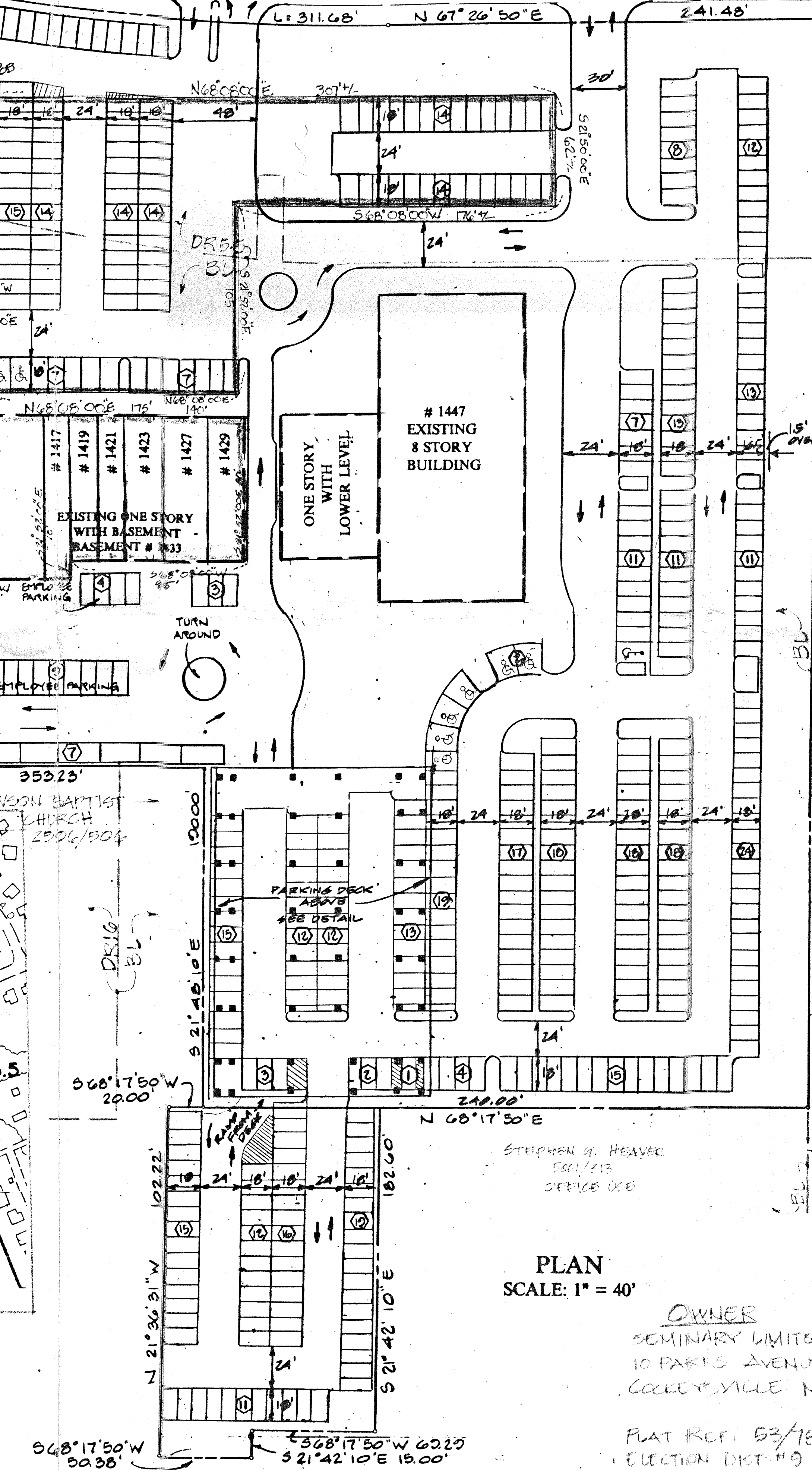
YORK

EXIST.
RD RW

660'23'00"W
9.00'



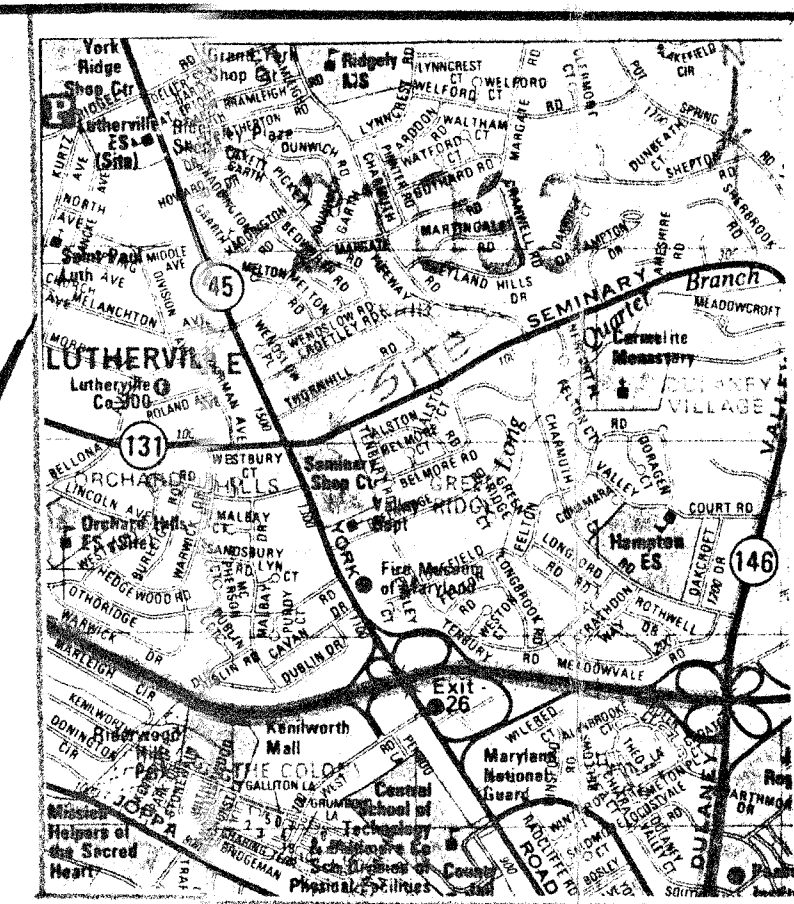
**GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.**
CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-8120



PLAN
SCALE: 1" = 40'

OWNER
SEMINARY LIMITED PARTNERSHIP
10 PARIS AVENUE
CROFTSVILLE MD 21030-4922

PLAT REF: 53/18
ELECTION DIST #9 COUNCILMANIC DIST #4



PARKING TABULATION

#1407 York Road

TENANT	SUITE	SF	USE	PARKING	PARKING REQ'D
new office tenant	101	5440	office	1/500	10.88
Ryland Homes	104	3000	retail	1/200	15
Oldie	105	3277	office	1/500	6.55
Voice of Video	108	1266.1	retail	1/200	6.33
Subway	109	1078	restaurant	1/50	21.56
Jenny Craig	110	2044	service	1/300	6.81
Boston Metals	200	1016	office	1/500	2.03
Hearing Assessment	201	1377	medical	1/300	4.59
office tenant	204	1487	office	1/500	2.97
office tenant	206	1800	office	1/500	3.6
Vacant	207	1200	office	1/500	2.4
Hair Act	208	1213.25	service	1/300	4.04
Mercantile Mortgage	209	1772	office	1/500	3.54
American Home Loan	210	2257	office	1/500	4.51
Boston Metals	210A	413	office	1/500	.83
State Farm Insurance	211	662	office	1/500	1.32
Dr. Klatt	212	1503	medical	1/300	5.01
Azman Eye Care	213	2800	service	1/300	9.33
Allstate Insurance	215	348	office	1/500	.7
Dr. Perez	300	1263	medical	1/300	4.21
AP Greene	301	224	office	1/500	.45
Teckamatrix	302	3690	office	1/500	7.38
Bob Ehrlich	304	2214	office	1/500	4.43
Pulmonary Critical Care	305	1078	medical	1/300	3.59
Dr. Martin Lang, DDS	306	1237.2	medical	1/300	4.12
John Sawchuk	308	1375	medical	1/300	4.58
Dr. Lafferan	309	1365	medical	1/300	4.55
Dr. Jeffrey Kilson	310	1115	medical	1/300	3.72
Columbia National Mortgage	311	4025	office	1/500	8.05

Strip Stores

TENANT	SUITE	SF	USE	PARKING	PARKING REQ'D
Rite Aid	1411	5780	retail	1/200	28.9
One Hour Martinizing	1417	1440	service	1/300	4.8
Galleria Deli	1419	1138	carry out	1/200	5.69
Rolling Road Tobacco Shop	1421	1264	retail	1/200	6.32
Coco & Buff	1423	1500	service	1/300	5
Szechuan House	1427	2100	restaurant	1/50	42
First Virginia Bank	1429	1600	bank	1/300	5.33
Quest	1433	9627.5	health club	1/500	19.26
Quest	1433	4900	health club	1/500	9.8
Quest (proposed addition)	1433	8700	health club	1/100	87

TOTAL PARKING REQUIRED
TOTAL PARKING SHOWN

PARKING REQUIREMENT BASED ON PARKING REGULATIONS IN EFFECT AT TIME OF C.G. APPROVAL
(EXCEPT HEALTH CLUB ADDITION)

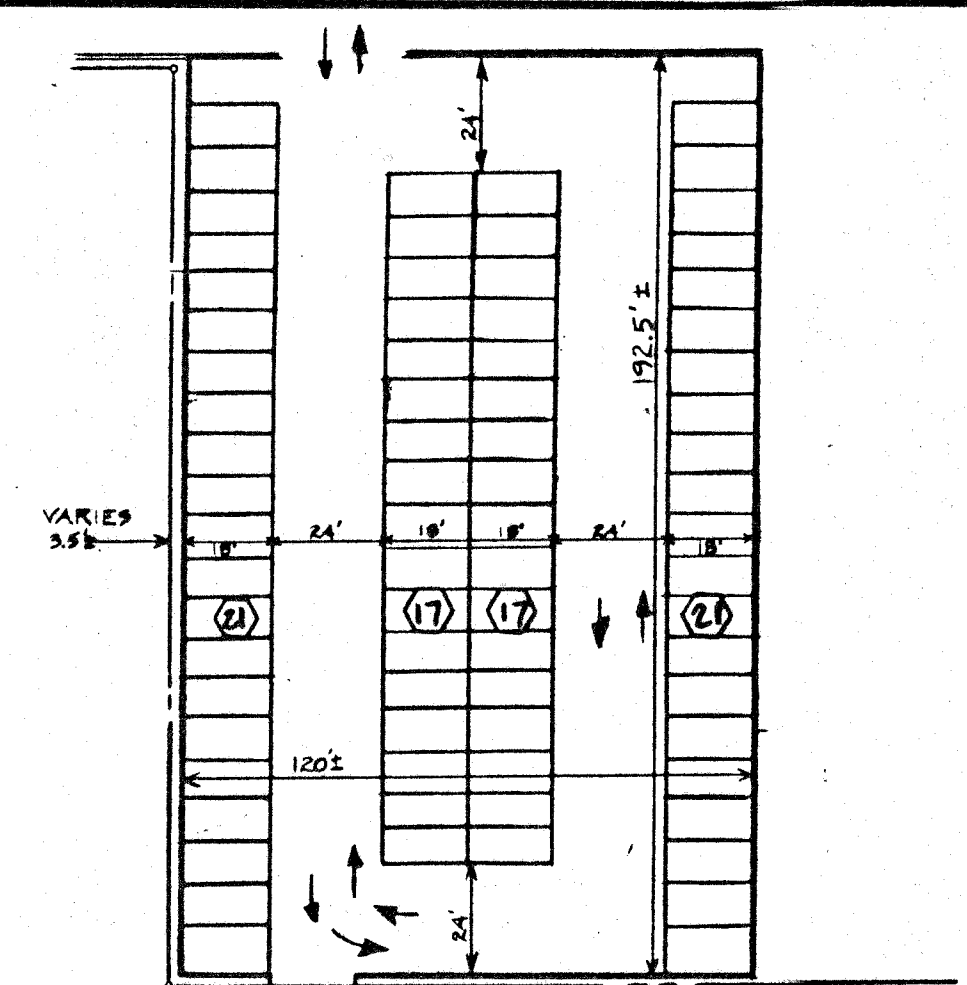
722 STANDARD SPACES @ 8.5' x 18' TYPICAL
11 HANDICAP SPACES @ 17' x 18' TYPICAL
11 PARALLEL SPACES @ 22' x 18' TYPICAL
(668 SURFACE SPACES 76 SPACES ON DECK)

ALL EXISTING AND FUTURE SIGNS MUST COMPLY WITH SECTION 413.6 OF THE BALTO. CO. ZONING REGULATIONS.

#1447 York Road

TENANT	SUITE	SF	USE	PARKING	PARKING REQ'D
Kaiser Health	100-200	28887.78	medical	1/300	96.29
vacant	301	860	service	1/300	2.87
H & R Block	302-303	2172	service	1/300	7.24
Dr. John Skouge, MD	304	2481	medical	1/300	8.27
Cardinal Paratels, Inc	310	1368	retail	1/200	6.84
Independence One Mortgage	312,314, 400A	4027	office	1/500	8.05
PSA Financial	400	14995	office	1/500	29.99
Dr. Edwin Epstein, MD	502	1568	medical	1/300	5.23
Lisa Rubin, MD	504	1273	medical	1/300	4.24
Technical Aid Corp	505	1403	office	1/500	2.81
Mary Kraft & Associate	506	2237	office	1/500	4.47
GBMC Agency	508	2620	office	1/500	5.24
Johns Hopkins Health Center	510	2350	office	1/500	4.7
First National Mortgage	601	4788	office	1/500	9.58
Dr. Stoltz	605	1716	medical	1/300	5.72
vacant	606	212	medical	1/300	.71
vacant	607	1991	office	1/500	3.98
Rossman-Hurt-Hawman, Inc	608	5189	office	1/500	10.38
Ryland Homes	700,704, 705	11432	office	1/500	22.86
Smith Abbot & Co	800	11116	office	1/500	22.23
Norrell Services, Inc	801	1407	office	1/500	2.81

PARKING DECK DETAIL SCALE: 1" = 40'

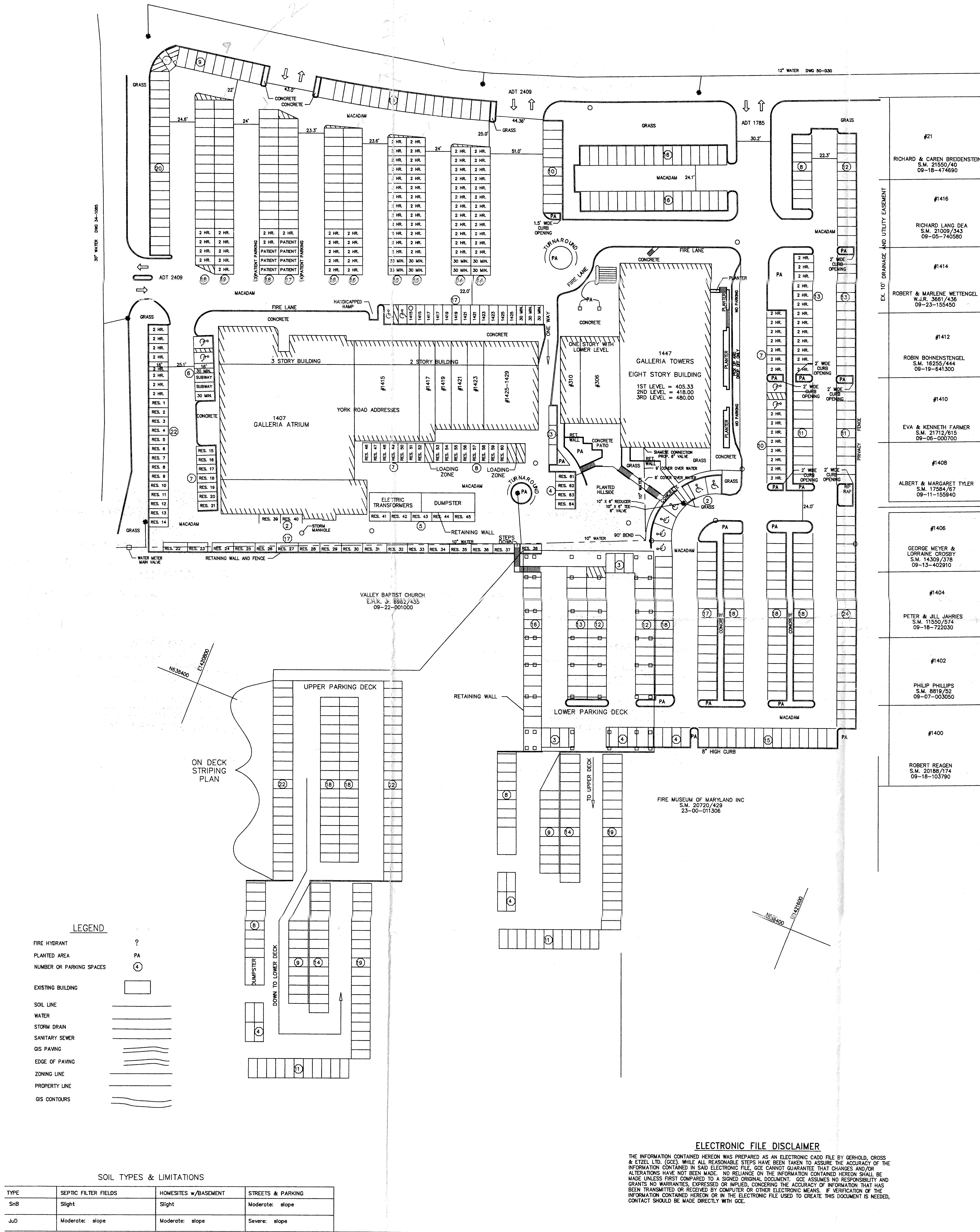


NO COMMERCIAL PERMITS FOUND FOR THE CONSTRUCTION OF THE PARKING DECK.

Reference is directed to:
(a) Zoning Map 11416 which allows passenger vehicle parking in the DR 5.5 zone of the property, (verification made by letter dated Jan 15, 1993 to Melvin R. Hershberger, Jr. from James Dyer, Zoning Administrator), subject to the following restrictions:
A-1. Only passenger vehicles shall be permitted to use such parking area.
A-2. No service of any kind shall be extended to persons occupying vehicles in said parking space, nor shall any such space be used for automobile service or repair.
A-3. Any lighting installation shall be so arranged as to reflect the light away from the adjoining residential property and also the property on the opposite side of Seminary Avenue.
A-4. There shall be compact planting to screen the residential property on the opposite side of Seminary Avenue. Such planting shall be done at the time this property shall be used for parking and planting shall be maintained only for those portions of this property which shall be actually used for the parking of vehicles. Those portions which must be approved for entrances and exits by the Planning Board shall not have to be screened under this provision.
(b) Zoning Map 14959-24 which permitted a dry cleaning plant in the existing Galleria complex.
(c) Zoning Map 14959-24 which permitted a community building and a parking garage and a parking garage (variance requested) SUBJECT TO THE FOLLOWING RESTRICTIONS

- The Petitioner must comply with the restrictions set forth in Case No. 14959-24 which allow parking in the DR 5.5 Zone along Seminary Avenue within 30 days.
- The Petitioner must notify all employees and tenants that there shall be no parking in any illegal area or on the streets and shall vigorously enforce this restriction.
- The Petitioner must bear the cost of all signs needed to prevent parking of vehicles other than those of the residents on the streets adjacent to the property.
- The variance granted herein will be valid for one year from the date of this order, at which time the Petitioner must present evidence at a public hearing that the variance has not adversely impacted the on-street parking privileges of the residents living adjacent to and surrounding the instant property.

#30-97
Revised/Updated
Parking Calculations
Shop CTR. File
**PARKING PLAN
FOR THE
GALLERIA
YORK ROAD & SEMINARY AVENUE**
BALTIMORE COUNTY, MD ELECTION DISTRICT #9
SCALE: 1" = 40'
FEB. 2, 1993
REV. MAR. 3, 1997
PN 5145



GALLERIA TOWERS 1447 YORK ROAD	
TENANT	SQUARE FEET
COLOUTY CARRUTHERS	2,010
WELLS FARGO BANK	2,828
FSA FINANCIAL	2,753
ASSOCIATION INSURERS AGENCY	1,368
PROGRESSIVE NURSING STAFFERS	3,365
R. COMPTON & ASSOCIATES	4,350
MARY L. KRAFT	3,414
NATIONAL TELECOMMUNICATIONS	2,760
HATTER COMMUNICATIONS	2,808
ALTERNATE TRAINING SOLUTIONS	2,001
VACANT	1,001
TOTAL OFFICE SQUARE FOOTAGE:	47,585

GALLERIA TOWERS 1447 YORK ROAD	
TENANT	SQUARE FEET
KAISER PERMANENTE	28,888
FRANKLIN WEINSTEIN, MD	2,154
MICHAEL WEISS, DDS	1,665
ROBERT STOLTA, MD	1,716
OSHA BEHAVIORAL HEALTH	13,666
MEDSTAR HEALTH	2,001
VACANT	2,001
TOTAL MEDICAL SQUARE FOOTAGE:	64,289

GALLERIA TOWERS 1447 YORK ROAD	
TENANT	SQUARE FEET
CERTIFIED PARTIES	1,365
UPS	2,001
VACANT	2,001
TOTAL RETAIL SQUARE FOOTAGE:	3,376

GALLERIA TOWERS 1447 YORK ROAD	
TENANT	SQUARE FEET
OFFICE	47,585
MEDICAL	64,289
RETAIL	3,376
TOTAL	115,251

GALLERIA ATRIUM 1407 YORK ROAD	
TENANT	SQUARE FEET
DOODLE DESIGN	1,090
GORDON & ASSOCIATES	1,241
ANTA JENKINS	1,744
MOO KIM	1,629
PARAGE & SHERR	1,374
MIDWEST RAILCAR CORP.	1,297
SPHERION ATLANTIC ENTERPRISE	1,468
NEW WORLD TITLE	2,214
ACCESS NURSING SERVICES	1,404
TEAM LOOK	1,269
NETCO	1,641
SENITZ LANGUAGES	1,196
VACANT	1,095
TOTAL OFFICE SQUARE FOOTAGE:	16,702

GALLERIA ATRIUM 1407 YORK ROAD	
TENANT	SQUARE FEET
MEDSTAR HEALTH	6,897
NATIONAL REHABILITATION HOSPITAL	7,697
JENNY CRAIG OPERATIONS	2,044
HEARING ASSESSMENT CENTER	1,377
MARTIN T. LANG, DDS	3,428
DR. MICHAEL KLAF	3,503
IVORY HEALTHCARE MANAGEMENT	1,615
PEACE SOFTWARE LABS	1,365
ADVANCED MEDICINE	1,344
JOHN A. SAWHUCK, DDS	1,375
CHRISTINE B. LAFERMAN, MD	1,365
MAXIM HEALTHCARE SERVICES	1,671
VACANT	1,095
TOTAL MEDICAL SQUARE FOOTAGE:	32,636

GALLERIA ATRIUM 1407 YORK ROAD	
TENANT	SQUARE FEET
SIGN-A-RAMA	1,213
INNOVATIONS HAIR SALON	1,213
HAR BLOCK	3,257
WHITE, STALE	1,448
SOUNDS PERFECT	413
SITE AD OF MARYLAND	5,760
GALLERIA CLEANERS	3,420
ANNIE'S APPLE PATCH	1,264
GOOD & BUFF HAIR SALON	1,500
VACANT	1,095
TOTAL RETAIL SQUARE FOOTAGE:	17,608

GALLERIA ATRIUM 1407 YORK ROAD	
TENANT	SQUARE FEET
SUBWAY RESTAURANT	1,078
GALLERIA BELL	1,341
SZECHUAN HOUSE	3,105
TOTAL RESTAURANT SQUARE FOOTAGE:	5,914

GALLERIA ATRIUM 1407 YORK ROAD	
TENANT	SQUARE FEET
QUEST FITNESS CENTER	23,534
TOTAL FITNESS CENTER SQUARE FOOTAGE:	23,534

GALLERIA ATRIUM 1407 YORK ROAD	
TENANT	SQUARE FEET
OFFICE	16,702
MEDICAL	32,636
RETAIL	17,608
RESTAURANT	5,914
FITNESS CENTER	23,534
TOTAL	96,394

GALLERIA TOWERS / GALLERIA ATRIUM	
TENANT	SQUARE FEET
OFFICE	64,289
MEDICAL	64,289
RETAIL	3,376
RESTAURANT	5,914
FITNESS CENTER	23,534
TOTAL SQUARE FOOTAGE:	211,635

PARKING CALCULATIONS

GALLERIA TOWERS / GALLERIA ATRIUM COMBINED TOTALS

TENANT	SQUARE FOOTAGE	REQUIRED SPACES
OFFICE	64,289	212
MEDICAL	64,289	436
RETAIL	3,376	105
RESTAURANT	5,914	85
FITNESS CENTER	23,534	118
TOTAL	211,635	1084
TOTAL PARKING SHOWN		764 SPACES

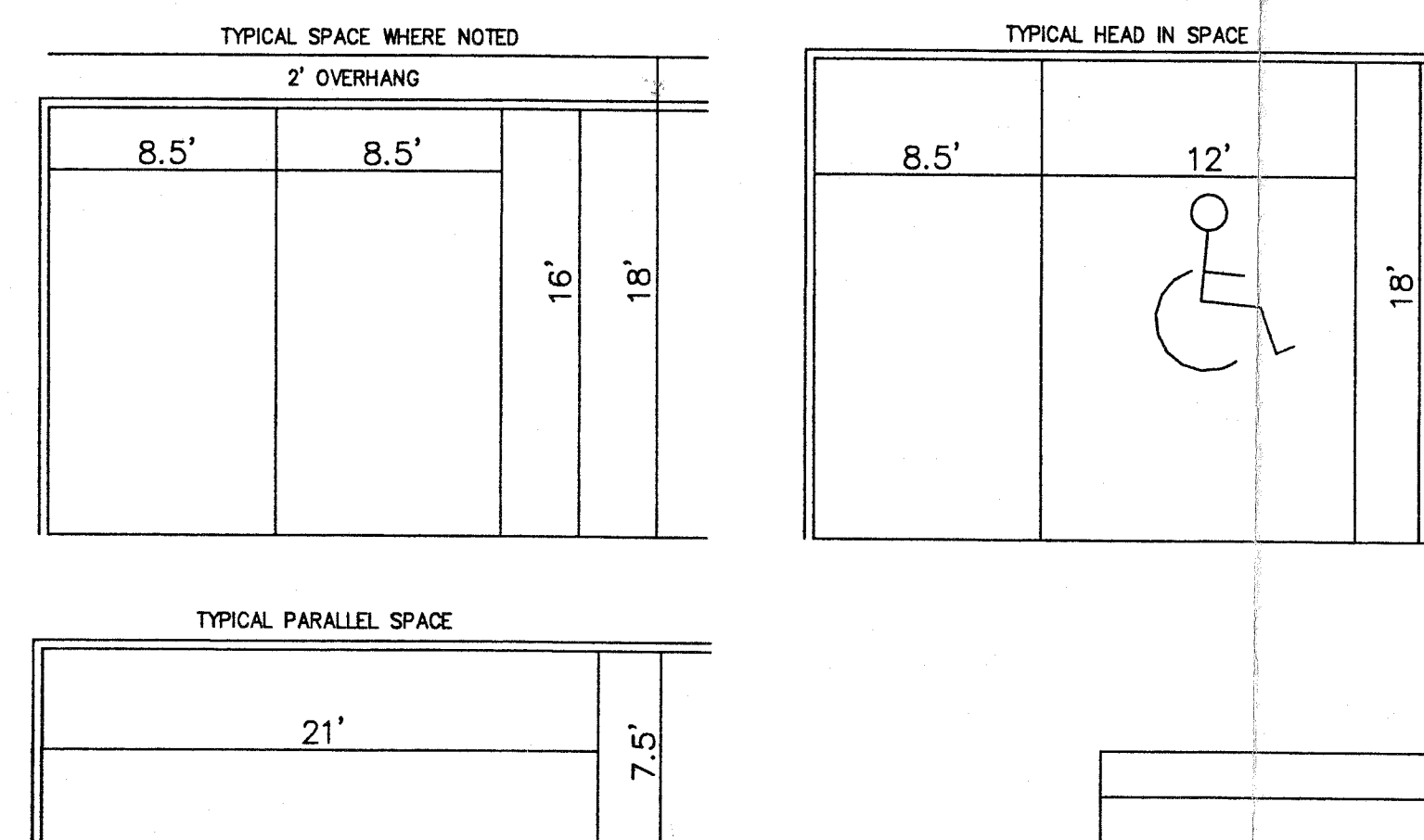
43 (IF ZONING APPROVAL APPLIES, SEE NOTE 17.)

PARKING CALCULATIONS

GALLERIA TOWERS / GALLERIA ATRIUM COMBINED TOTALS

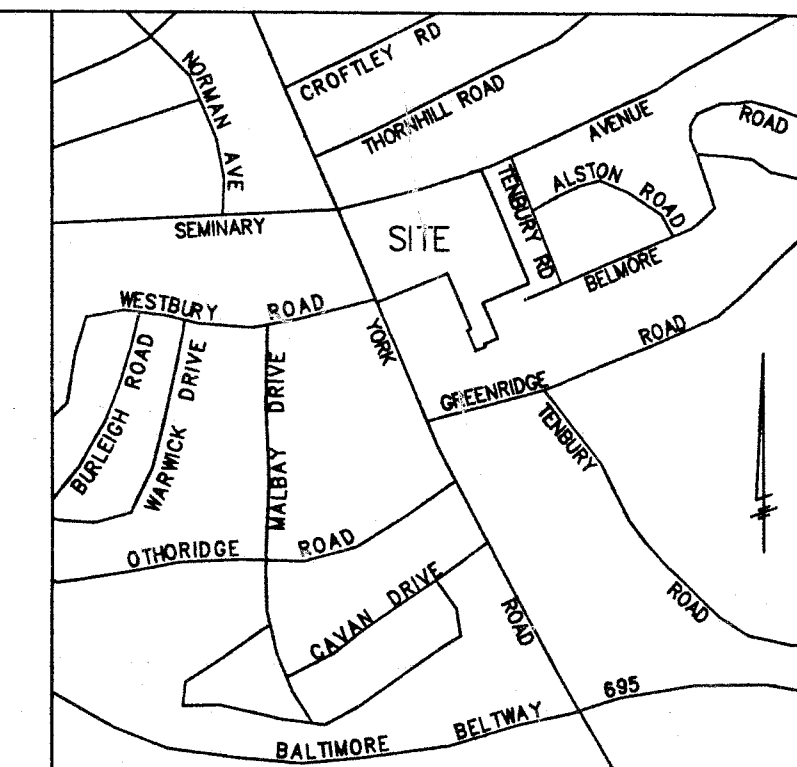
TENANT	SQUARE FOOTAGE	REQUIRED SPACES
OFFICE	64,289	212
MEDICAL	64,289	436
RETAIL	3,376	105
RESTAURANT	5,914	85
FITNESS CENTER	23,534	118
TOTAL	211,635	1089
TOTAL PARKING SHOWN		764 SPACES

PARKING SPACE DETAIL



ELECTRONIC FILE DISCLAIMER

THE INFORMATION CONTAINED HEREON WAS PREPARED AS AN ELECTRONIC CAD FILE BY GERHOLD, CROSS & ETZEL LTD. (2003). WHILE ALL REASONABLE STEPS HAVE BEEN TAKEN TO ASSURE THE ACCURACY OF THE INFORMATION CONTAINED IN SAID ELECTRONIC FILE, GCE CANNOT GUARANTEE THAT CHANGES AND/OR ALTERATIONS HAVE NOT BEEN MADE. NO RELIANCE ON THE INFORMATION CONTAINED HEREON SHALL BE MADE UNLESS FIRST COMPARED TO A SIGNED ORIGINAL DOCUMENT. GCE ASSUMES NO RESPONSIBILITY AND GRANTS NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY OF INFORMATION THAT HAS BEEN TRANSMITTED OR RECEIVED BY COMPUTER OR OTHER ELECTRONIC MEANS. IF VERIFICATION OF THE INFORMATION CONTAINED HEREON OR IN THE ELECTRONIC FILE USED TO CREATE THIS DOCUMENT IS NEEDED, CONTACT SHOULD BE MADE DIRECTLY WITH GCE.



GENERAL NOTES

- THE BOUNDARY SHOWN HEREON IS FROM PLAT E.H.K. J. 53-78.
- AND DEED S.M. NO. 13151 FOLIO 617.
- THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE #1 A3.
- THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP NO. 29.
- CENSUS TRACT 402000 REGIONAL PLANNING DISTRICT 308
- WATERSHED 1001 RAINIER RIDGELY M.S.; HIGH - TOWSON H.S.
- SCHOOL DISTRICT: ELEMENTARY - LUTHERVILLE E.S.; MIDDLE - RIDGELY M.S.; HIGH - TOWSON H.S.
- A.D.C. MAP & GRID 27 E2
- THE BUILDINGS SHOWN ON THE SUBJECT PROPERTY ARE FROM PLAT E.H.K. J. 53-78.
- THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.
- THE BUILDINGS ON THE ADJOINING PROPERTIES ARE FROM GIS TILE #1 A3.
- THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
- THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
- THE ADJOINING LOT LINES ARE FROM THE FIRST AMENDED PARKING PLAN OF THE GALLERIA TOWER.
- THE EXISTING PARKING LAYOUT WAS FIELD VERIFIED BY GERHOLD, CROSS & ETZEL LTD. ON 12/22/05.
- PRESENT USE - SHOPPING CENTER WITH OFFICE, MEDICAL, RETAIL, AND RESTAURANT SPACE.
- PARKING ADJACENT TO SEMINARY AVENUE, IN THE DR 5.5 ZONE WAS GRANTED BY LETTER FROM ZONING COMMISSIONER DATED DECEMBER 19, 1955. (ZONING CASE #3410).
- HIGHWAY WIDENING FOR YORK ROAD TO BE OFFERED TO THE STATE AT NO COST.
- ADT COUNTS BASED ON "TRIP GENERATION" PUBLISHED BY THE INSTITUTE OF TRAFFIC ENGINEERS.
- AREA OF SITE = 8.885 ACRES ±.
- FUTURE ROAD WIDENING = 0.15 ACRES ±.
- NET AREA = 8.745 ACRES ±.
- REFERENCE IS DIRECTED TO ZONING CASES: #85-286-XA WHICH GRANTED A SPECIAL EXCEPTION FOR A COMMUNITY BUILDING (HEALTH CLUB) AND A VARIANCE OF 43 PARKING SPACES. #4893-XA WHICH PERMITTED A DRY CLEANING PLANT IN THE EXISTING SHOPPING CENTER (USE EXTINGUISH). #3410 WHICH PERMITTED PASSENGER VEHICLE PARKING ON THE DR ZONED PORTION OF THE SITE.
- THE FIRST AMENDED PARKING PLAN OF THE GALLERIA TOWER WAS APPROVED ON 9/22/1986.
- BENCH MARK X-3844 ELEVATION = 449.02', RAILROAD SPIKE IN MACADAM NORTH SIDE OF SEMINARY AVENUE WEST OF YORK ROAD.

HILL MGMT. REVISION DATE: 3/4/08

OWNER
SEMINARY GALLERIA LLC
216 SCHILLING CIRCLE, SUITE 300
HUNT VALLEY, MARYLAND 21031

REASON FOR AMENDMENT:
TO UPDATE PLAN TO CURRENT CONDITIONS

SECOND AMENDED PARKING PLAN OF THE GALLERIA TOWER

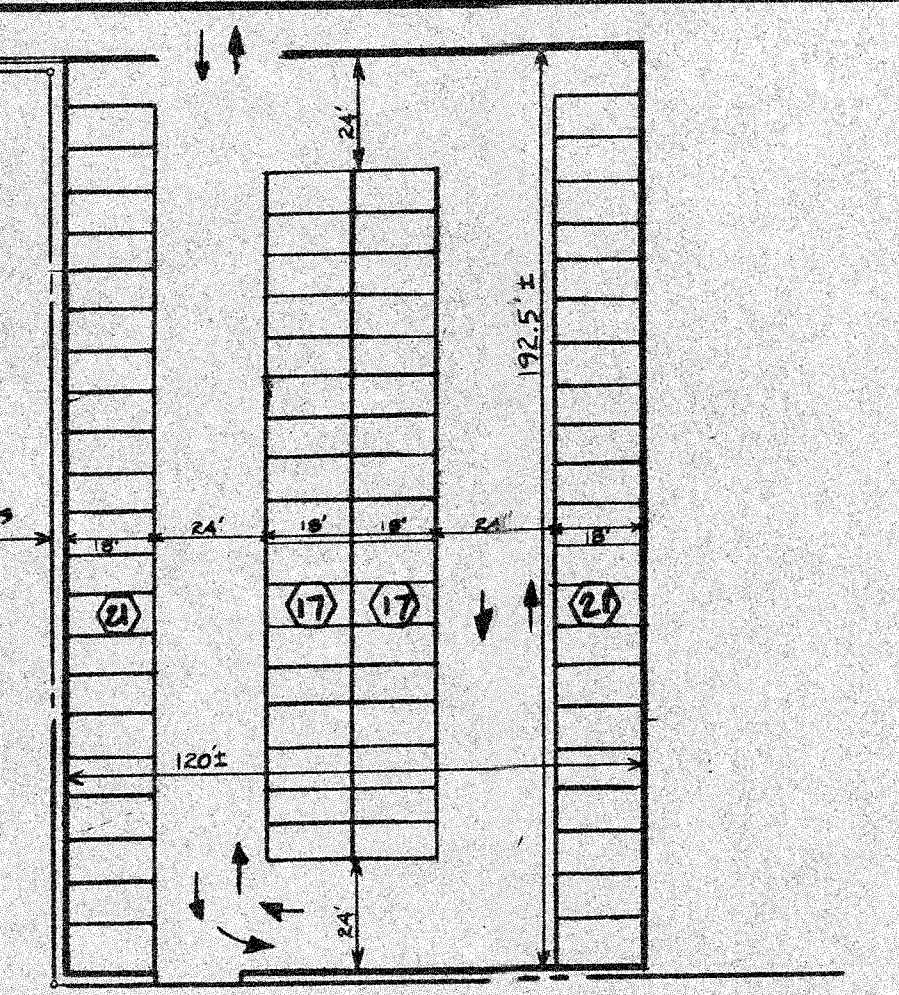
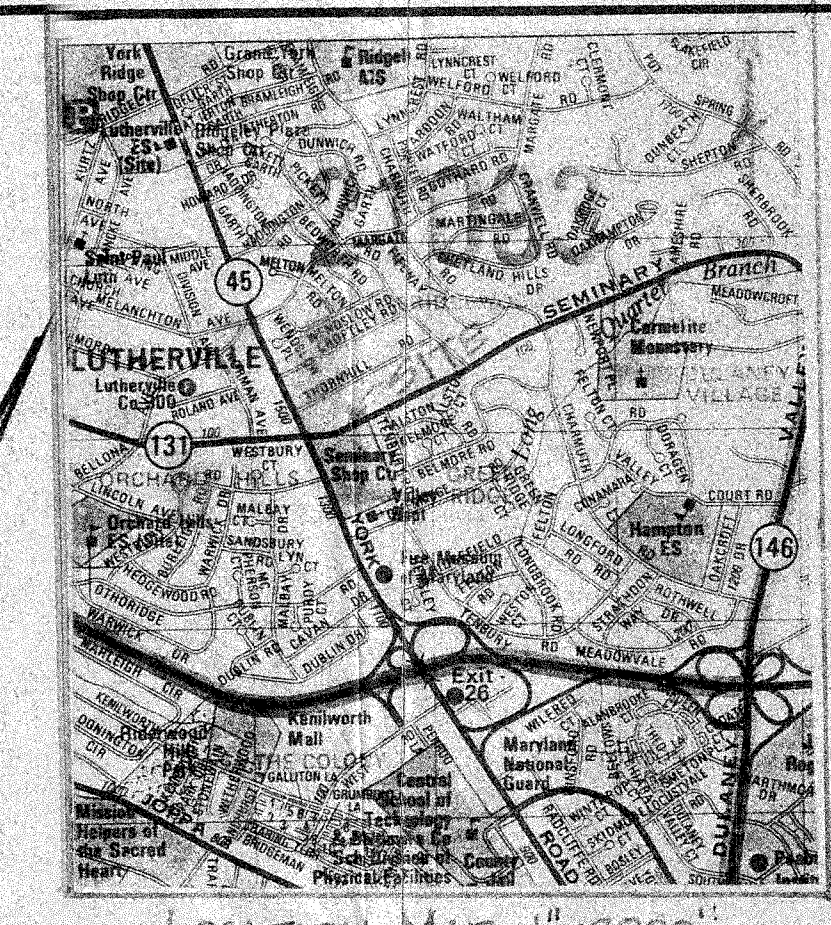
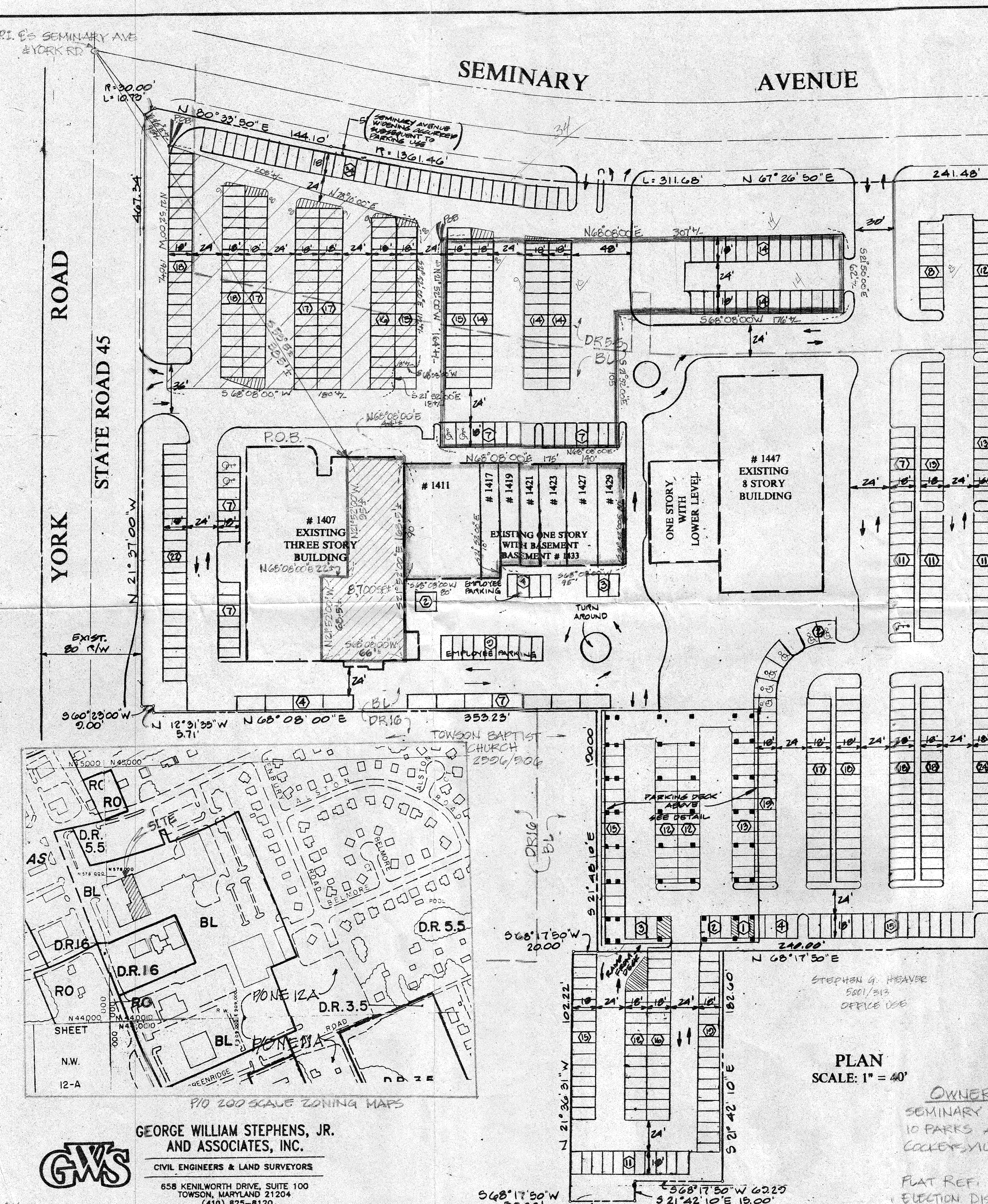
YORK ROAD & SEMINARY ROAD
Deed Ref: S.M. No. 13148 folio 443
and S.M. No. 13151 folio 617
Tax Account No.: 19-00-014867,
19-00-014868, 20-00-003391
Zoned BL & D.R. 5.5; GIS Tile #1 A3
Tax Map 61; Grid 19; Parcel 74 & 454
9th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=40' Date: DECEMBER 14, 2005

GERHOLD, CROSS & ETZEL, L.T.D.
REGISTERED PROFESSIONAL LAND SURVEYORS

Suite 100
320 East Townsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

DATE COMPUTED: DRAWN: SMH CHECKED: FILE: N:\Hill Mgmt - Galleria\ood export



PARKING TABULATION

TENANT	SUITE	SF	USE	PARKING	PARKING REQ'D
new office tenant	101	5440	office	1/500	10.88
Ryland Homes	104	3000	retail	1/200	15
Oldie	105	3277	office	1/500	6.55
Voice of Video	108	1266.1	retail	1/200	6.33
Subway	109	1078	restaurant	1/100	21.56
Jenny Craig	110	2044	service	1/300	6.81
Boston Metals	200	1016	office	1/500	2.03
Hearing Assessment	201	1377	medical	1/300	4.59
office tenant	204	1487	office	1/500	2.97
vacant	206	1800	office	1/500	3.6
vacant	207	1200	office	1/500	2.4
Hair Act	208	1213.25	service	1/300	4.04
Mercantile Mortgage	209	1772	office	1/500	3.54
American Home Loan	210	2257	office	1/500	4.51
Boston Metals	210A	413	office	1/500	.83
State Farm Insurance	211	662	office	1/500	1.32
Dr. Klaff	212	1503	medical	1/300	5.01
Azman Eye Care	213	2800	service	1/300	9.33
Allstate Insurance	215	348	office	1/500	.7
Dr. Perez	300	1263	medical	1/300	4.21
AP Greene	301	224	office	1/500	.45
Teckamatrix	302	3690	office	1/500	7.38
Bob Ehrlich	304	2214	office	1/500	4.43
Pulmonary Critical Care	305	1078	medical	1/300	3.59
Dr. Martin Lang, DDS	308	1237.2	medical	1/300	4.12
John Sawchuk	308	1375	medical	1/300	4.58
Dr. Lafferan	309	1365	medical	1/300	4.55
Dr. Jeffrey Kilson	310	1115	medical	1/300	3.72
Columbia National Mortgage	311	4025	office	1/500	8.05

TENANT	SUITE	SF	USE	PARKING	PARKING REQ'D
Kaiser Health	100-200	28887.78	medical	1/300	96.29
vacant	301	860	service	1/300	2.87
H & R Block	302-303	2172	service	1/300	7.24
Dr. John Skovga, MD	304	2481	medical	1/300	8.27
Cantified Rareties, Inc.	310	1368	retail	1/200	6.84
Independence One Mortgage	312,314, 400A	4027	office	1/500	8.05
PSA Financial	400	14995	office	1/500	29.99
Dr. Edwin Epstein, MD	502	1568	medical	1/300	5.23
Lisa Rubin, MD	504	1273	medical	1/300	4.24
Technical Aid Corp	505	1403	office	1/500	2.81
Mary Kraft & Associate	506	2237	office	1/500	4.47
GBMC Agency	508	2620	office	1/500	5.24
Johns Hopkins Health Center	510	2350	office	1/500	4.7
First National Mortgage	601	4788	office	1/500	9.58
Dr. Stoltz	605	1716	medical	1/300	5.72
vacant	606	212	medical	1/300	.71
vacant	607	1991	office	1/500	3.98
Rossmann-Hunt-Hawman, Inc.	608	5189	office	1/500	10.38
Ryland Homes	700,704, 705	11432	office	1/500	22.86
Smith Abbott & Co	800	11116	office	1/500	22.23
Norrell Services, Inc.	801	1407	office	1/500	2.81

TENANT	SUITE	SF	USE	PARKING	PARKING REQ'D
Rite Aid	1411	5760	retail	1/200	28.8
One Hour Martinizing	1417	1440	service	1/300	4.8
Galleria Deli	1419	1136	carry out	1/200	5.68
Rolling Road Tobacco Shop	1421	1264	retail	1/200	6.32
Coco & Buff	1423	1500	service	1/300	5
Szechuan House	1427	2100	restaurant	1/150	42
First Virginia Bank	1429	1600	bank	1/300	5.33
Quest	1433	9627.5	health club	1/500	19.26
Quest	1433	4900	health club	1/500	9.8
Quest (proposed addition)	1433	8700	health club	1/100	87

TOTAL PARKING REQUIRED
TOTAL PARKING SHOWN
PARKING REQUIREMENT BASED ON PARKING REGULATIONS IN EFFECT AT TIME OF C.R.G. APPROVAL (EXCEPT HEALTH CLUB ADDITION)
722 STANDARD SPACES @ 8.5' x 18' TYPICAL
11 HANDICAP SPACES @ 13' x 18' TYPICAL
11 PARALLEL SPACES @ 22' x 10' TYPICAL
(648 SURFACE SPACES - 76 SPACES ON DECK)

ALL EXISTING AND FUTURE SIGNS MUST COMPLY WITH SECTION 413.6 OF THE BALTO. CO. ZONING REGULATIONS.

PLAN
SCALE: 1" = 40'

OWNER
SEMINARY LIMITED PARTNERSHIP
10 PARKS AVENUE
COCKEYSVILLE MD 21030-4922

PLAT REF. 53/78
ELECTION DIST #9 COUNCILMANIC DIST #4

PLAT TO ACCOMPANY A PETITION FOR A SPECIAL EXCEPTION & PARKING PLAN FOR THE GALLERIA

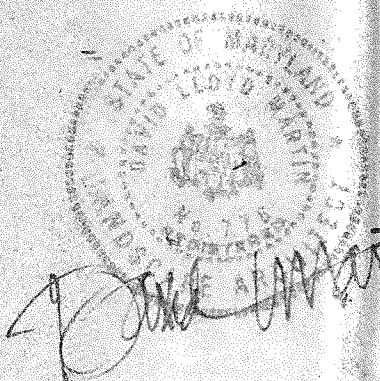
Updated SHOPPING CENTER FILE
Permit #B-299347 YORK ROAD & SEMINARY AVENUE

BALTIMORE COUNTY, MD ELECTION DISTRICT #9
SCALE: 1" = 40'

GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.

CIVIL ENGINEERS & LAND SURVEYORS

658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-8120



④

PETITIONER'S
EXHIBITS

Varjice 3-2007
3/21/07

Petitioners Exhibits

- ✓ 1. Site Plan ~~E.O. only~~
- ✓ 2. Tab list (3 pages)
- ✓ 3. Site Plan from Letter from Mr. Alderman
3-15-07 (2 pages)
- ✓ 4. 3 pictures of subject site
- ✓ 5. Packet of letters (4 pages)
- ✓ 6. Packet of letters to Mr. Wiseman (5 pages)
- ✓ 7. Petition in Support of Variance (2 pages)
- ✓ 8. Photos of Parkings
- ✓ 9. Photos of Galleria A-F (6 pages)
- ✓ 10. Letter from Timothy Kotroco 8-14-2006 (4 pages)

I. GALLERIA TOWERS***1447 York Road**

Yellow shaded is a new tenant.
Green shaded is a changed sf.

OFFICE	
Tenant	Square Footage
1. Colquitt Carruthers	5,010 sf
2. Brooks Financial	2,828 sf
3. PSA Financial	25,444 sf
4. Progressive Nursing Staffers	3,301 sf
5. R.L. Compton & Associates	1,818 sf
6. Mary L. Kraft	3,414 sf
7. National Telecommunications	2,084 sf
8. Hatter Communications	780 sf
9. Alternate Training Solutions	2,808 sf
10. Wells Fargo	2,957 sf
Total Office square footage:	50,444 sf

MEDICAL	
Table	Square Footage
1. Kaiser Permanente	28,887 sf
2. Franklin Weinstein, M.D., P.A.	2,154 sf
3. Michael A. White, DDS, P.A.	1,665 sf
5. Dr. Eric R. Volk, D.D.S., LLC	1,200 sf
6. Cigna Behavioral Health	14,000 sf
7. Medstar Health, Inc.	13,856 sf
8. Dr. Stoltz	1,716 sf
Total Medical square footage:	63,478 sf

RETAIL	
Tenants	Square Footage
1. Certified Rarities	1,368 sf
2. UPS	7 sf
Total RETAIL square footage:	1,375 sf

GALLERIA TOWERS - SQUARE FOOTAGE TOTALS	
Office	50,444 sf
Medical	63,478 sf
Retail	1,375 sf
TOTAL	115,297 sf

Per T. Ex. #2

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)

March 15, 2007

Timothy M. Kotroco, Director
Baltimore County Department of Permits
and Development Management
111 West Chesapeake Avenue, Suite 109
Towson, Maryland 21204

RE: Zoning Verification - Seminary Galleria Shopping Center
9th Election District, 3rd Councilmanic District
York Road and Seminary Avenue

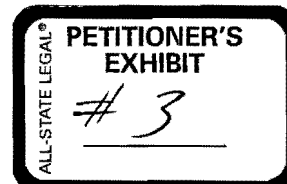
Dear Mr. Kotroco:

We represent Seminary Galleria, LLC, owner of all of the land and improvements located at the southeast corner of York Road and Seminary Avenue. The property is presently split-zoned, BL and DR 5.5.

As shown on the enclosed drawing entitled "Second Amended Parking Plan of The Galleria Tower" [dated December 14, 2005 and prepared by Gerhold, Cross & Etzel, Ltd.] the improvements on the property are comprised of a total of 211,635 square feet of commercial buildings, together with common parking areas and parking decks. The commercial uses located within the improvements include office, retail, medical and restaurant uses and a fitness center.

I have also enclosed recent photographs of portions of the subject property depicting structural connections among the buildings and the interconnection of walkways designed for customer use to patronize the various uses. The integration of this commercial shopping center provides a single, commercial area as well as the appearance thereof. The design of the improvements has been approved over the years as an integrated commercial use.

The purpose of this letter is to request **written verification** from your department that the commercial uses and buildings at the Seminary Galleria meet the definition of a "Shopping Center" as set forth in Section 101 of the *Baltimore County Zoning Regulations*.





ALL-STATE LEGAL®
PETITIONER'S
EXHIBIT
#4A

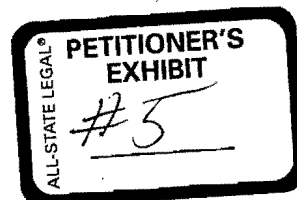
**Department of Permits and
Development Management**

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



June 9, 2006

Howard L. Alderman, Jr.
502 Washington Ave, Suite 800
Baltimore, MD, 21204

Dear: Mr. Alderman

RE: Case Number: 06-411-SPHA; 1447 York Rd.

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 23, 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,

A handwritten signature in black ink that reads "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:sma

Enclosures

c: People's Counsel
Seminary Galleria, LLC, C/O Hill Management, 9640 Deereco Rd., Timonium, MD 21093
Bruce E. Doak, PLS, 320 E. Towsontown Blvd., Suite 100, Towson, MD, 21286



CIGNA Behavioral Health

June 6, 2006

Mr. William J. Wiseman, III
Zoning Commissioner
Office of Zoning Commissions
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Regional Care Center
1447 York Road, Suite 700
Lutherville, MD 21093
Telephone 410.494.0176
Facsimile 410.494.0179
Toll Free 1.800.274.7603

Re: Seminary Galleria LLC
Owner Case 06-411-SPHA

Dear Commissioner Wiseman:

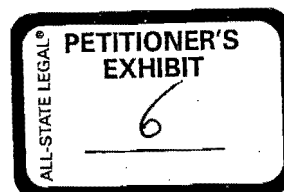
I am writing you this letter today to express my support to Hill Management in maintaining and keeping the added parking spaces at the Galleria Towers. My company, Cigna Behavioral Health, has been a tenant of Hill Management for quite some time, over eight years.

It is my understanding that the building owner is requesting a variance so the added spaces can remain. Although the parking situation still continues to be a problem, the added spaces have significantly helped the situation, especially during peak times of the day. The newly added spaces are not separate from the rest of the parking lot, but blend in with what was existing prior. By granting Hill Management the variance, the additional spaces will not only benefit my company, but other tenants' and their customers as well.

Your consideration given to help us with this on-going problem would be greatly appreciated.

Sincerely,

Princess Little
Regional Director
CIGNA Behavioral Health



Petition In Support Of Requested Galleria Parking Variance

We, the below listed tenants at the Galleria Towers located at 1447 York Road, Lutherville, Maryland, are in support of the additional parking spaces, which were added to relieve the parking congestion. The additional spaces have alleviated the problem we were experiencing, and we strongly protest the Baltimore County's position to remove these spaces.

1. Name: [Signature]
Tenant: GALLERIA DELI
Suite: 1419 YORK RD

2. Name: [Signature]
Tenant: Seminole Church
Suite: 1419 YORK RD

3. Name: Tammy Wright
Tenant: Rite Aid
Suite: 1411 York Rd.

4. Name: [Signature]
Tenant: LIGEN WASH
Suite: 1427 YORK RD

5. Name: [Signature]
Tenant: CERTIFIED PARTIES, INC.
Suite: 310 1447 York Rd.

6. Name: Tammy McIntyre
Tenant: Prudential
Suite: 309

7. Name: Deborah Kitchener
Tenant: PSA
Suite: 300

8. Name: Shirley Owens
Tenant: PSA
Suite: 300

9. Name: [Signature]
Tenant: Mary Kraft Associates
Suite: 601

10. Name: [Signature]
Tenant: Progressive Nursing
Suite: 506

11. Name: Christopher P. Compton
Tenant: Compton Financial Group
Suite: 505

12. Name: Gamela Crowell
Tenant: Wells Fargo
Suite: 510

13. Name: Anaie Schmidt
Tenant: Computer Training Center
Suite: 610

14. Name: Molly Muddox
Tenant: Computer Training Center
Suite: 610

15. Name: [Signature]
Tenant: Michael A. White DDS PA
Suite: 602

16. Name: Cont Sandstrom
Tenant: NTC
Suite: 604





ALL-STATE LEGAL®
PETITIONER'S
EXHIBIT
9A-F
06-411-5PHA

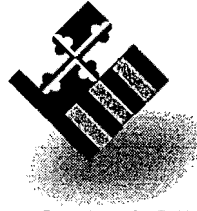












BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

August 14, 2006

The Galleria
Hill Management Management Services, Inc.
9460 Deereco Road
Timonium MD 21093

Re: Shopping Center Surveillance Devices

Dear Property Owner/Manager/Agent:

You may recall that the County Council of Baltimore County passed legislation requiring certain shopping center owners to implement security measures on their property. The specifics of that law can be found within Section 17-4-101 of the Baltimore County Code. For your convenience, I have printed out and included within this mailing that section of the Code.

As you can see by reading this newly enacted law, it is my responsibility, as Director of Permits and Development Management, to ensure that all shopping center owners comply with its provisions. The purpose of this letter is to notify you that your property has been identified as being subject to this law. If you do not agree with my department's assessment and feel that you are not subject to this law, kindly send a letter to my attention stating your position. If verified as being accurate, I will remove your property from my database.

If you are subject to these security requirements, you have until the end of the calendar year 2006, to bring your property into compliance. As Director, I am required to maintain a "Certificate of Compliance" in my file, evidencing the fact that you have made these security modifications to your property. Accordingly, I have enclosed with this mailing a blank "Certificate of Compliance" that you may use for the purpose of demonstrating that you have complied with your security obligations. Please have this form executed by your representative and return it to me no later than December 31, 2006.

I thank you for your anticipated cooperation with this new program. I am happy to work with you or answer any questions you may have regarding your obligations under this new law. I can be reached at 410-887-3353 should you need to contact me.

Very truly yours,

Timothy M. Kotroco

Timothy M. Kotroco, Director
Permits & Development Management

Pe T. Ex #10

Verified 3-20-07
3/21/07

Protestants Exhibits

- ✓✓ 1. Site Plan from file
- ✓✓ 2. Zoning Map
- ✓✓ 3. Protestants sign in sheet
- ✓✓ 4. Parking restrictions from County (6 pages)
- ✓✓ 5. Array of Photos (6 pics) ~~from~~ ^{in 3-21-07}
- ✓✓ 6. " " " (4 pics) Taken by Mr. Hurd
- ✓✓ 7. " " " (3 pics) Taken by Mr. Hurd
- ✓ 8. Rule 8 papers for Larry Townsend (3 pages)
- OK 3/21/07 ✓ 9. MDAT (4 pages)
- ✓ 10. 3 Photos on a Page
- ✓ 11. 4 Photos on a Page
- ✓ 12. 4 Photos on a Page
- ✓ 13. 4 Photos on a Page
- ✓ 14. 6 Photos on a Page
- ✓ 15. 2 Pictures on a Page
- ✓ 16. 3 Photos on a Page Taken by Mr. Hurd

JOE 3/20
INCURRED

Case 06-41157 HA Secretary ~~Hall~~ LLC

Tues Sept 20, 2007 Protestants sign in sheet

LARRY TOWNSEND PRES. DVIA

1111 LONGBROOK ROAD LUTHERVILLE MD 21093

410-321-8242 LETTJR@ATT.NET

ROBERT A. CORDS, M.D.

1217 OAK CROFT DR

LUTHERVILLE, MD 21093

410-825-3651 CORDSRA@COMCAST.NET

Michael TANCZYK Esq STE 106 606 BALTIMORE AVE Towson MD
21204 410 296-8823

Pro. Ex #3

BALTIMORE COUNTY, MARYLAND

SUBJECT: COUNTY REVIEW GROUP COMMENTS

DATE: September 22, 1983

FROM: ZONING

10100 11.11.11

PROJECT NAME: Galleria, Phase II

PLAN: *✓*

Approved 9/22/83

LOCATION: S/E Corner of York Road
and Seminary Avenue

DEVELOPMENT PLAN:

DISTRICT: 9th Election District

PLAT:

1. This office recognizes that the parking use permit granted for the residential portion of this property on the S/S of Seminary Avenue in 1955 remains valid; however, there were four restrictions in this approval and they are outlined in a letter from James Dyer, Zoning Supervisor, dated June 15, 1983 (attached). These restrictions should be included on the plan under Note No. 5.
2. Another zoning approval that should be indicated on the plan is the Special Exception for a dry cleaning plant, No. 5 on the site plan, Case No. 4895-X.
3. All screening for parking areas should be minimum 4 foot high dense and indicate type.
4. It should be noted on the parking chart that all medical offices would be on the 1st or 3rd floor in the office building.

W. Carl Richards Jr.

W. CARL RICHARDS, JR.
Zoning Associate III

WCR:nr

Post #4



March 19, 2007 1:30 pm Protestant's Exhibit 5 #1



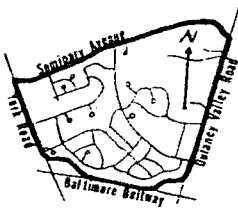


Protestant's
EXHIBIT





Protestant's Exhibit 7



**Dulaney
Valley
Improvement
Association, Inc.**

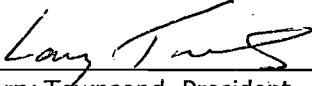
P.O. Box 102 · Lutherville, MD · 21094-0102

RESOLVED: That the DULANEY VALLEY IMPROVEMENT ASSOCIATION, INC., shall, from January 8, 2007 to January 31, 2008, assign official responsibility for review, representation, and action on all zoning and development matters to the EXECUTIVE BOARD members listed as follows:

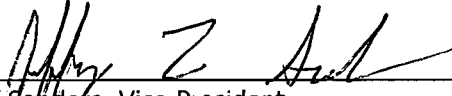
Larry Townsend, President
Jeff Sanders, Vice President
Max Collins, Treasurer

AS WITNESS: Our hands and seal this 8th day of January 2007.

ATTEST: DULANEY VALLEY IMPROVEMENT ASSOCIATION, INC.



Larry Townsend, President



Jeff Sanders, Vice President

Pro. Ex. #8

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 - 09 Account Number - 2300011304

Owner Information

Owner Name: HEAVER PLAZA II LLC Use: COMMERCIAL
Principal Residence: NO
Mailing Address: SUITE 707 Deed Reference: 1) /15181/ 168
1301 YORK RD 2) /15181/ 152
LUTHERVILLE TIMONIUM MD 21093-6010

Location & Structure Information

Premises Address

1301 YORK RD

Legal Description

1.801 AC UNIT 707
1301 YORK RD ES
HEAVER PLAZA II

CONDO UNIT: 707

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
61	19	79					1	2	Plat Ref: 73/ 110

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		78,408.00 SF	15
Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2005	Phase-in Assessments As Of 07/01/2006	As Of 07/01/2007
Land:	1,426,700	1,176,100		
Improvements:	8,253,600	9,056,000		
Total:	9,680,300	10,232,100	10,048,166	10,232,100
Preferential Land:	0	0	0	0

Transfer Information

Seller: HEAVER DORIS A HEAVER ALLAN B Date: 05/08/2001 Price: \$0
Type: NOT ARMS-LENGTH Deed1: /15181/ 168 Deed2: /15181/ 152
Seller: Date: Price:
Type: Deed1: Deed2:
Seller: Date: Price:
Type: Deed1: Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Print



Protestant's Exhibit

10 8

March 19, 2007

1:30 p.m.





march 19, 2007 - 1:30 pm Protestant's Exhibit 11





March 19, 2007

1:30 pm.



Protestant's Exhibit 12





Protestant's
Exhibit

13



March 19, 2007

1:30 p.m.



March 19, 2007 1:30 P.M.

Protestant's Exhibit

14





Protestant's Exhibit ~~15~~
March 19, 2007 1:30 p.m.



Protestants EXHIBIT 16

Saturday 10/28/06

6

PEOPLE'S
COUNSEL
EXHIBITS

4
verified 3-21-07

Peoples Counsel Exhibits (CD)

- ✓ 1 Petition for Sp. Hearing
- ✓ 2 ~~CBA~~ Opinion 03-C-541100 Judge Cavanaugh
- ✓ 3 CBA opinion from Demand
- ✓ 4 Motion for Dismissal
- ✓ 5 CBA Case 85-256-XA Dec. 1985



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 1447 York Road

which is presently zoned _____

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

SEE ATTACHED

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:

NONE

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Howard L. Alderman, Jr., Esquire

Name - Type or Print

Signature

Levin & Gann, PA

Company

502 Washington Avenue, Suite 800

410-321-0600

Address

Telephone No.

Towson

Maryland

21204

City

State

Zip Code

Legal Owner(s):

Seminary Galleria, LLC

Name - Type or Print

By:

Signature

Teresa Resior, Authorized Member

Name - Type or Print

Signature

c/o Hill Management 9640 Deereco Road 410-561-1300

Address

Telephone No.

Timonium

MD

21093

State

Zip Code

Representative to be Contacted:

Bruce E. Doak, PLS Gerhold, Cross & Etzel, Chtd.

Name

320 E. Towsontown Blvd., Suite 100

410-823-4470

Address

Telephone No.

Towson

MD

21286

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By D THOMPSON Date 7/31/03

Case No. 04-052-SPHA

P.C. Ex. 1

IN THE MATTER OF
SEMINARY GALLERIA, LLC
1447 York Road

SEMINARY GALLERIA, LLC
Owner/Petitioner/Appellant

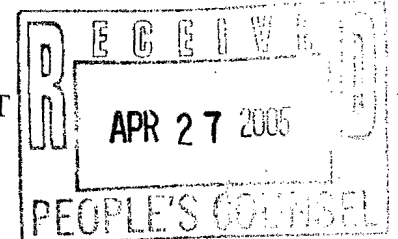
DULANEY VALLEY
IMPROVEMENT ASSOCIATION,
Protestant/Appellee

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
Protestant/Appellee

04-052-SPHA

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* CASE NO.: 03-C-04-11000
*



* * * * *

**-OPINION-
APPEAL FROM THE
BALTIMORE COUNTY BOARD OF APPEALS**

Questions Presented for Appeal

Did the Baltimore County Board of Appeals commit error when it denied Petitioner's requests for approval of a modified commercial parking plan in a split residential/business zone? Specifically, did the Board of Appeals adequately set forth its conclusions and findings of fact in the decision to affirm the findings of the Deputy Zoning Commissioner, and did the Board of Appeals properly consider the weight of the evidence regarding the issuance of a use permit?

Summary

The record contains substantial evidence to support the findings of the Board of Appeals, and the decisions drawn from the facts and inferences in the record could be

P.C. Ex 2
FILED APR 26 2005

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
(Case No. 04-052-SPHA)

*
*

* * * * *

This matter has been remanded to the Board by the Circuit Court for Baltimore County.

A short summary of the facts in this matter is warranted and was fairly set forth by the Court in its decision. The Petitioner, Seminary Galleria, owns a business park at 1447 York Road in Baltimore County. The property is a split-zoned parcel of land, with a majority of the area in a business local (B.L.) and the northeastern tract in density residential (D.R.). Currently, the Petitioner uses portions in the B.L. and D.R. zones for business parking.

The current structure of the complex was approved by the County Review Group (CRG) development process in 1983, and parking requirements were met. According to *Baltimore*

P.C.E_x 3

RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE
SOUTHEAST CORNER OF SEMINARY AVENUE AND YORK ROAD
9TH ELECTION DISTRICT
FITNESS UNLIMITED, INC.
Petitioner
Seminary Ltd. Partnership

BEFORE THE
COUNTY BOARD
OF APPEALS
FOR BALTIMORE COUNTY
Case No. 85-256-XA
(Item No. 195)

MOTION FOR DISMISSAL

Fitness Unlimited, Inc., Petitioner, by its attorneys, G. Scott Barhight and Nolan, Plushoff and Williams, Chartered, hereby moves this Honorable Board of Appeals to dismiss the appeal filed by the Dulaney Valley Improvement Association, and states:

1. By Order dated March 27, 1985, (the "Order") the Zoning Commissioner of Baltimore County (the "Commissioner") granted the requested Special Exception and Zoning Variance subject to certain restrictions.
2. By Amended Order dated April 10, 1985, the Commissioner modified Restriction 1 of the Order.
3. By letter dated April 25, 1985, the Dulaney Valley Improvement Association appealed the Order.
4. A civic association, community association or improvement association does not have standing to appeal a zoning decision unless it is either a taxpayer or an aggrieved

party. Largo Civic Association v. Prince George's County, Maryland, 21 Md. A. 76, 318 A.2d 834 (1974). See also Windsor Hills Improvement Association v. Mayor & City Council of Baltimore, 195 Md. 383, 73 A.2d 531 (1950), Southland Hills Improvement Association of Baltimore County, Inc. v. Baine, 220 Md. 213, 151 A.2d 734 (1959). An association lacks standing to sue where it has no property interest of its own, which is separate and distinct from that of its individual members, which may be affected by the official action being attacked. Citizen's Planning & Housing Association v. County Executive of Baltimore County, 273 Md. 333, 345, 329 A.2d 681, 687 (1974).

5. As the appealing party, Dulaney Valley Improvement Association, does not have standing to appeal, and as time for filing an appeal has passed, the appeal should be dismissed.

WHEREFORE, the Petitioner respectfully requests that the County Board of Appeals dismiss the appeal and grant such other and further relief as this case may require.

Respectfully submitted,

G. Scott Barhight
G. SCOTT BARHIGHT

Nolan, Plushoff & Williams
NOLAN, PLUSHOFF & WILLIAMS
CHARTERED
204 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 823-7800

-2-

June 7, 1985

Mr. J. C. Jullio
Vice President
Seminary Limited Partnership
10 Parks Avenue
Cockeysville, Maryland 21030

RE: Case No. 85-256-XA
Seminary Limited Partnership, Petitioner

Dear Mr. Jullio:
The above proposed is acceptable, temporarily meet the requirements stipulated in the December 19, 1955 correspondence you refer to.

Sincerely,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

ALJ/ST

September 30, 1982

Mr. James E. Dyer
Zoning Supervisor
County Office Building
Towson, Maryland 21204

Re: Confirmation of Long Established Parking Usage
At Seminary Avenue Shopping Center Pursuant to
Original E.L. Zoning and Use Permit for Parking
Granted By Former Zoning Commissioner Millicent H.
Adams, dated December 19, 1955

Dear Mr. Dyer:

At the outset, on behalf of our office, as well as Mr. Theodore Julio, Mr. Mel Herberberger and Mr. John Smith at Stephens & Associates, we would like to thank you and Plans for having set up such a prompt meeting on September 29 concerning the above matter.

We are attaching hereto another copy of Commissioner Adams' letter of December 19, 1955, granting a use permit for parking pursuant to the Zoning Regulations and subject to the four conditions set out therein.

It is our further understanding that Seminary Center Plan, dated July 27, 1982, was approved at the September 16 CMC meeting, and was signed by representatives of both Public Works and the Office of Planning and Zoning, and that the requested minor revisions pursuant to the CMC comments will be promptly made and submitted to the County.

It has always been our understanding that once granted, a use permit for parking exists in perpetuity, just like any other special exception, and of course, there has been substantial usage of a substantial majority of the area originally granted. By separate letter to follow this letter, we will be reaffirming and reasserting the right of the property owner to use the entire area granted for parking pursuant to the December 19, 1955 Order, for future improvement of the Shopping Center. It is our understanding from the Julio representatives that the area improvement association involved would welcome a development of the currently under-utilized areas at the east end of the Shopping Center, which presently tends to collect neighborhood teenagers, etc.

P.C.Ex 4



County Board of Appeals of Baltimore County

Room 200 Court House
Cotson, Maryland 21204
(301) 494-3180

December 20, 1985

Glenn L. Wilson, President
Dulaney Valley Improvement Assoc.
P. O. Box 102
Lutherville, Md. 21093

Dear Mr. Wilson:

Re: Case No. 85-256-XA
Seminary Limited Partnership

Enclosed herewith is a copy of the Opinion and Order
passed today by the County Board of Appeals in the above entitled case.

Very truly yours,


June Holmen, Secretary

Encl.

cc: G. Scott Barnight, Esq.
Jasper M. Buck
Seminary Ltd. Partnership
Fitness Unlimited, Inc.
Michael P. Tanczyn, Esq.
Thomas J. Bollinger, Esq.
Phyllis C. Friedman
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean Jung
James E. Dyer

P.C. Ex 5

MEMO TO FILE

March 3, 2006

To: Carl Richards, Supervisor
From: John S. Sullivan, Jr. Planner II



Subject: Zoning Case #06411 SPHA
1447 York Road

Per your instructions on March 2, I telephoned the Engineer and requested that the areas in question for the proposed hearing be highlighted on all copies of the site plan. This was done that afternoon. I also telephoned the Petitioner's attorney, Mr. Howard Alderman at 9:12 am and advised him that the wording on the Petition forms must be revised to add some apparently missing words, ie Residential Transition Area (RTA) to make the request more clear. Subsequent to that call I saw Mr. Alderman in our building and informed him that I left a message on his voice mail that morning and asked him to please see me before left. He agreed. Today, March 3rd at 10:19 am I left the same message on Mr. Alderman's voice mail and added that the petition wording must be corrected by 1:00 pm today or it will not be included on the current Agenda.

APPEAL

Petition for Special Hearing & Variance
1447 York Road
S/E Corner of York Road and Seminary Avenue
9th Election District – 3rd Councilmanic District
Legal Owners: Seminary Galleria, LLC

Case No.: 06-411-SPHA

Petition for Special Hearing (February 23, 2006)

Zoning Description of Property

Notice of Zoning Hearing (March 20, 2006)

Certification of Publication (March 28, 2006 – The Jeffersonian)

Certificate of Posting (March 24, 2006) by John J. Dill

Request for Postponement (March 30, 2006 by Dulaney Valley Improvement Association)

Certificate of Publication indicating new date & time (May 30, 2006 – The Jeffersonian)

Certificate of Posting indicating new date & time (May 22, 2006 by John J. Dill)

Entry of Appearance by People's Counsel (March 13, 2006)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet- None

Citizen(s) Sign-In Sheet – One Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibit

1. Second Amended Parking Plan of The Galleria Tower
2. Not located in File
3. Letters of support from tenants of Seminary Galleria

Protestants' Exhibits:

None in File

Miscellaneous (Not Marked as Exhibit)-

1. Photographs (A thru D)
2. Active Violation Case Documents from Code Enforcement
3. Opinion for 04-052-SPHA
4. Board of Appeals Remand Opinion (03-C-04-11000)
5. Motion to Dismiss from Michael Tanczyn (06-12-06)
6. Opposition to Motion to Dismiss from Howard Alderman (06-13-06)

Deputy Zoning Commissioner's Order (Parts Granted & Denied – July 14, 2006)

Notice of Appeal received on August 11, 2006 from Michael Tanczyn

Notice of Appeal received on August 11, 2006 from Howard Alderman

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Howard Alderman
Michael Tanczyn
Teresa Rosier
Bruce Doak
Bill Russell
Larry Townsend

date sent September 22, 2006, klm

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue

Towson, Maryland 21204

Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

June 12, 2006

RECEIVED

VIA HAND-DELIVERY

The Honorable William J. Wiseman, III
Zoning Commissioner
Suite 405
County Courts Building
Towson, Maryland 21204

JUN 13 2006

ZONING COMMISSIONER

Re: Case No.: 06-411-SPHA

Dear Mr. Commissioner:

Enclosed herewith please find Motion to Dismiss Petition of Dulaney Valley Improvement Association. As I am scheduled to be in depositions all day on Wednesday, a representative of the association will appear at the hearing.

Please feel free to contact me should you have any questions.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/cbl

Encl.

cc: Dulaney Valley Improvement Association
Peter Max Zimmerman, Esquire
Howard L. Alderman, Jr., Esquire

LAW OFFICES

LEVIN & GANN

A PROFESSIONAL ASSOCIATION

NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th FloorTOWSON, MARYLAND 21204
410-321-0600
TELEFAX 410-296-2801ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)HOWARD L. ALDERMAN, JR.
haldetman@LevinGann.comDIRECT DIAL
410-321-4640

June 13, 2006

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME	TELEFAX NO.
William J. Wiseman, III, Zoning Commissioner	410-887-3468
c: Michael P. Tanczyn, Esquire	410-296-8827
Peter Max Zimmerman, Esquire	410-823-4236

FROM: HOWARD L. ALDERMAN, JR., ESQUIRE

NUMBER OF PAGES [INCLUDING THIS COVER PAGE]:

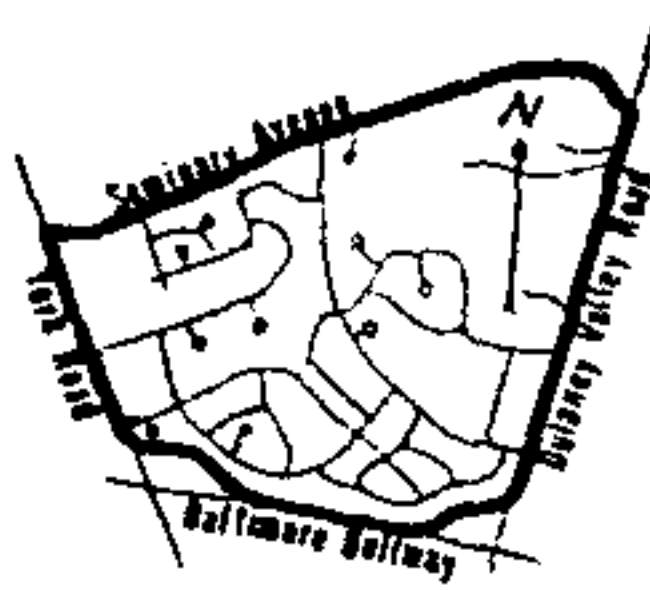
7

CLIENT/MATTER: Case No. 06-411-SPH

COMMENTS: Petitioner's Opposition and proposed Order regarding Protestant's Motion to Dismiss follows.

☒ ORIGINAL WILL BE MAILEDIf you do not receive all of the pages indicated above, please call 321-0600 as soon as possible.
My return FAX Number is (410) 296-2801.WARNING: UNAUTHORIZED INTERCEPTION OF THIS TELEFAX COMMUNICATION
COULD BE A VIOLATION OF FEDERAL AND MARYLAND LAW.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for expenses. Thank You.



**Dulaney
Valley
Improvement
Association, Inc.**

P.O. Box 102 · Lutherville, MD · 21094-0102

March 30, 2006

Mr. Timothy M. Kotroco, Director
Permits and Development Management
County Office Building
111 West Chesapeake Avenue, Suite 105
Towson, Maryland, 21204

Dear Mr. Kotroco:

This is in reference to a Zoning Hearing, Case 06-411-SPHA.

The Dulaney Valley Improvement Association, Inc., wishes to continue to participate in all zoning matters that affect our community. This case, 06-411-SPHA, is yet another attempt by Seminary Galleria to obtain "zoning by forgiveness" for failing to obtain a building permit for parking places that were constructed in a residentially zoned area within our community association boundaries.

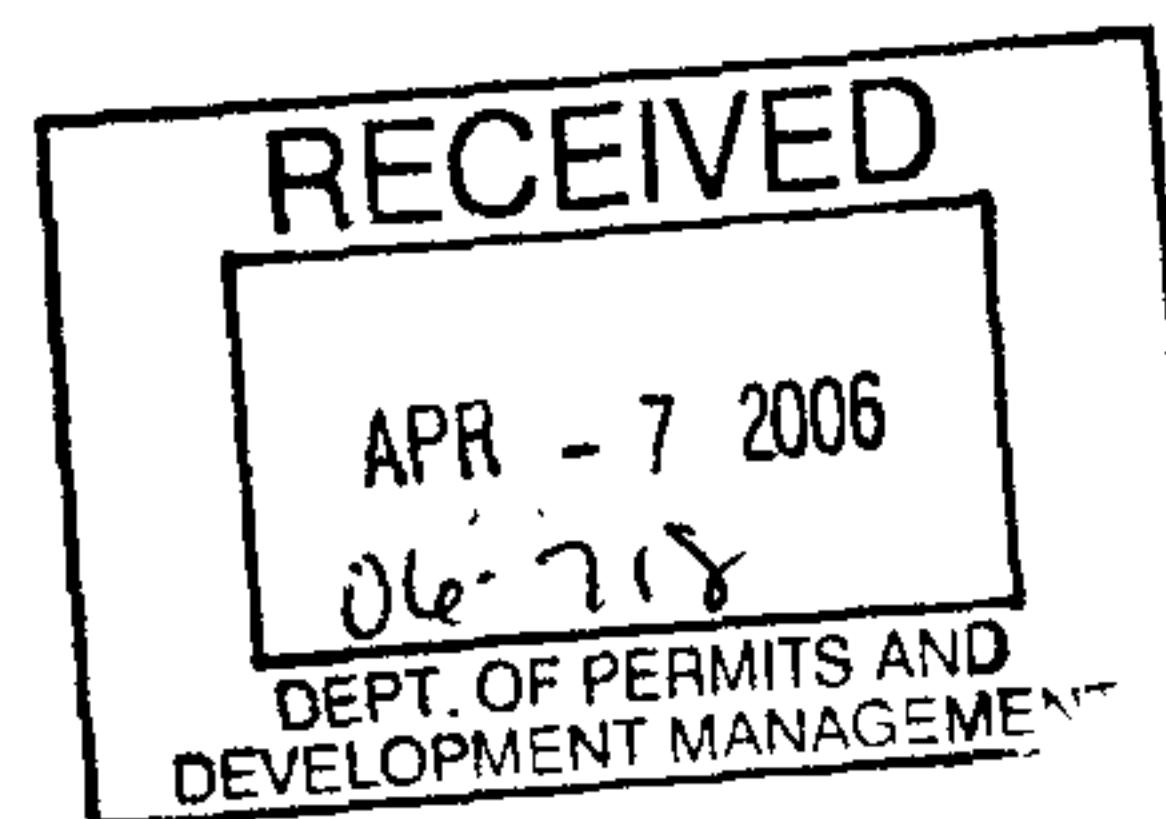
Due to a scheduling conflict, we will be unable to be present at the hearing that is now scheduled for April 17, 2006. A commitment made near the end of last year will also prevent us from preparing for this case and appearing before the second week in June. Therefore, we respectfully request that this case be postponed and rescheduled for sometime after June 12, 2006.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Larry Townsend".

Larry Townsend
President



June 8, 2006

RECEIVED

JUN 15 2006

ZONING COMMISSIONER

Mr. William J. Wiseman, III
Zoning Commissioner
Office of Zoning Commissions
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: Seminary Galleria LLC
Owner Case 06-411-SPHA

Dear Commissioner Wiseman:

Please accept this letter as my support of Hill Management to maintain and keep the added parking spaces at the Galleria Towers. I am the East Coast Director, Facility Services, and we have been a tenant of the building for over twenty (20) years and occupy nearly 29,000 square feet of space.

The building Owner has informed me that they have requested a variance to keep the added spaces. The added spaces have only helped the parking situation on the property, and removing them would have a negative impact on an already very busy lot, especially during peak hours of the day. By granting Hill Management the variance, everyone will benefit all businesses at the Galleria Towers and their visiting clientele

Your consideration given to help us would be greatly appreciated.

Sincerely,



Cary Chambers
East Coast Director
Facility Services
Kaiser Permanente

Pet #3



1433 York Road
Lutherville, MD 21093
(410) 828-4653
www.planetfitness.com

June 6, 2006

Mr. William J. Wiseman, III
Zoning Commissioner
Office of Zoning Commissions
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: Seminary Galleria LLC
Owner Case 06-411-SPHA

Dear Commissioner Wiseman:

As a long time tenant in the Galleria Towers, this letter serves as my support of maintaining the parking spaces Hill Management added to help alleviate the parking problem at this complex.

The parking situation still continues to be a problem, but the spaces added to existing parking areas have significantly helped the situation, especially during the more active times of day. The Galleria Towers is an ideal location for my fitness center and having parking available to my members is crucial to my success.

I understand the building's owner is requesting a variance so the added spaces can remain. I strongly support this because, not only I will continue to benefit from having these spaces available, but it will also serve the interest of each tenant whose clients need the convenience of being able to park.

I appreciate any consideration given to help us with this on-going problem.

Sincerely,

Diana Hamilton
Owner
Planet Fitness

RECEIVED

JUN 12 2006

ZONING COMMISSIONER

jm
6/14

ROBERT B. STOLTZ, M.D.
1447 YORK ROAD - SUITE 605
LUTHERVILLE, MD 21093
(410) 821-1300
FAX 821-0201

June 8, 2006

RECEIVED

JUN 19 2006

Mr. William J. Wiseman, III
Zoning Commissions
Office of Zoning Commissions
401 Boslev Avenue, Suite 405
Towson, MD 21204

ZONING COMMISSIONER

Re: Seminary Galleria LLC
Owner Case 06-411-SPHA

Dear Commissioner Wiseman:

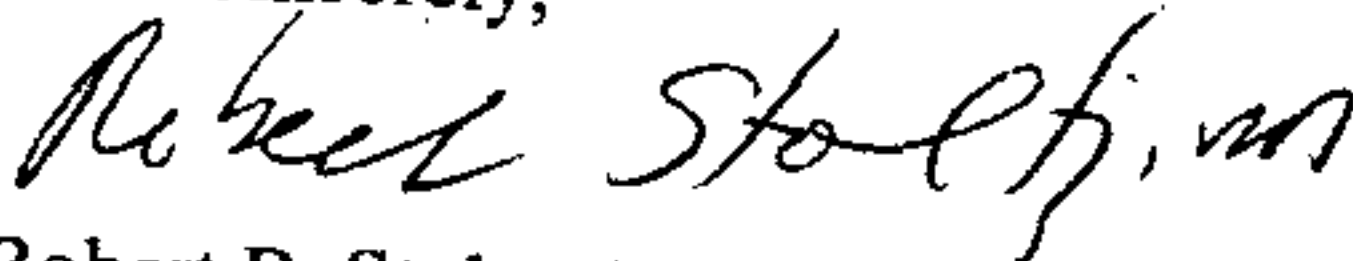
As a long time tenant in the Galleria Towers, this letter serves as my support of maintaining the parking spaces Hill Management added to help alleviate the parking problem at this complex.

The parking situation still continues to be a problem, but the spaces added to existing parking areas have significantly helped the situation especially during the more active times of day. The Galleria Towers is an ideal location for my practice and having parking available to my patients is crucial to my success.

I understand the building's owner is requesting a variance so the added spaces can remain. I strongly support this because I will not only continue to benefit from having these spaces available, but it will also serve the interest of each tenant whose clients need the convenience of being able to park.

I appreciate any consideration given to help us with this on-going problem.

Most Sincerely,



Robert B. Stoltz, M.D.
RBS/leh



PSA Financial Center, Inc.
1447 York Road • Lutherville, MD 21093-6032
410-821-7766 • 800-677-7887 • Fax 410-828-0242
www.psafinancial.com

fm
6/14

June 7, 2006

RECEIVED

JUN 1 2006

Mr. William J. Wiseman, III
Zoning Commissioner
Office of Zoning Commissions
401 Bosley Avenue, Suite 405
Towson, MD 21204

ZONING COMMISSIONER

Re: Seminary Galleria LLC
Owner Case 06-411-SPHA

Dear Commissioner Wiseman:

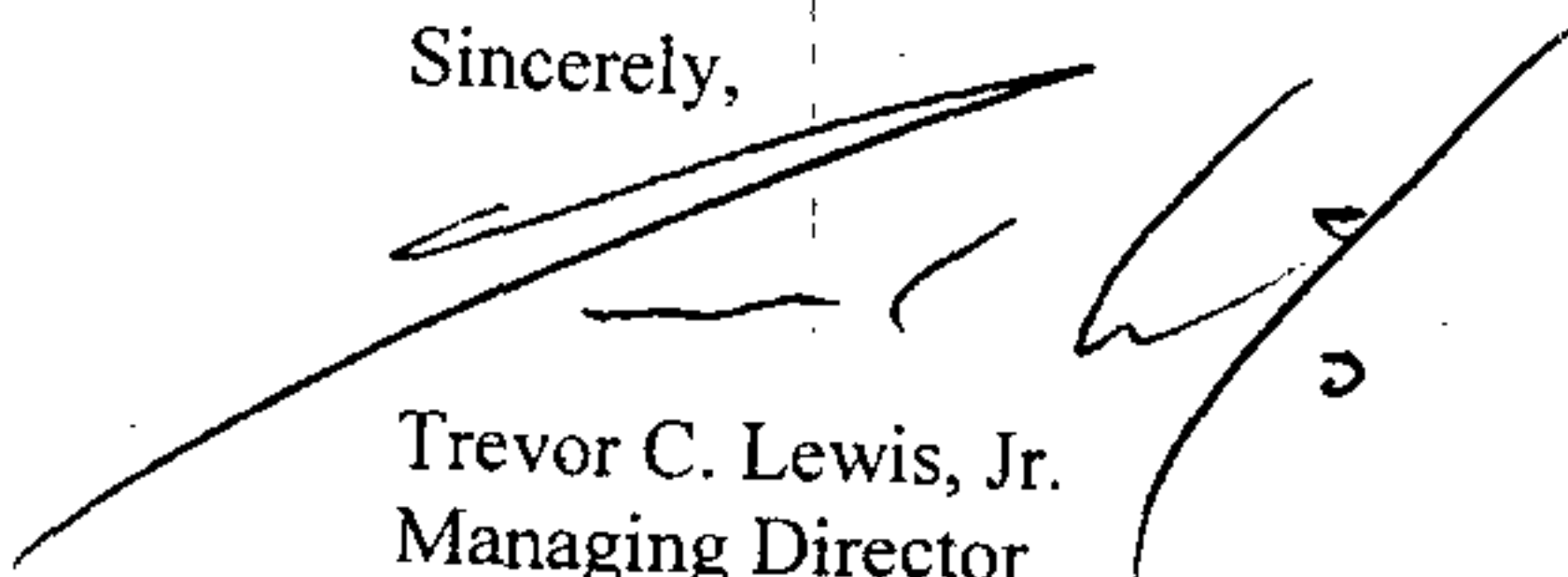
As a tenant in the Galleria Towers for several years, let this letter serve as my support for the additional parking spaces Hill Management put in to help alleviate the parking problem for the Galleria complex.

Although parking still continues to be a problem, the spaces added have certainly helped the situation. As a financial institution we have many clients visiting our offices in the course of a day and having parking available for them is a necessity as is the location the Galleria complex offers.

It is my understanding that the building's owner is requesting a variance so the additional spaces will remain. I strongly support this variance as it has certainly lessened the problem of finding a parking space for our clients, as well as the clients of the other tenants in this complex.

I regret that I am unable to attend this hearing and I appreciate any consideration you can give to help us with this on-going problem.

Sincerely,


Trevor C. Lewis, Jr.
Managing Director

TCL:pl

Affiliated Companies

Financial Advisors, Inc.
Financial Planning
Investment Management

PSA Financial, Inc.
Employee Benefits

PSA Equities, Inc.
Registered Broker/Dealer
NASD/SIPC

PSA Professional Liability, Inc.
Malpractice

PSA Consulting Group, Inc.

PSA Insurance, Inc.
Agents & Brokers

Am
6/14



CIGNA Behavioral Health

June 6, 2006

RECEIVED

JUN 1 2006

ZONING COMMISSIONER

Regional Care Center
1447 York Road, Suite 700
Lutherville, MD 21093
Telephone 410.494.0176
Facsimile 410.494.0179
Toll Free 1.800.274.7603

Mr. William J. Wiseman, III
Zoning Commissioner
Office of Zoning Commissions
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: Seminary Galleria LLC
Owner Case 06-411-SPHA

Dear Commissioner Wiseman:

I am writing you this letter today to express my support to Hill Management in maintaining and keeping the added parking spaces at the Galleria Towers. My company, Cigna Behavioral Health, has been a tenant of Hill Management for quite some time, over eight years.

It is my understanding that the building owner is requesting a variance so the added spaces can remain. Although the parking situation still continues to be a problem, the added spaces have significantly helped the situation, especially during peak times of the day. The newly added spaces are not separate from the rest of the parking lot, but blend in with what was existing prior. By granting Hill Management the variance, the additional spaces will not only benefit my company, but other tenants' and their customers as well.

Your consideration given to help us with this on-going problem would be greatly appreciated.

Sincerely,

Princess Little
Regional Director
CIGNA Behavioral Health

2/ 2
Jm
6/14

MedStar Health

June 7, 2006

RECEIVED

JUN 1 2006

Mr. William J. Wiseman, III
Zoning Commissioner
Office of Zoning Commissions
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

ZONING COMMISSIONER

Re: Seminary Galleria LLC
Owner Case 06-411-SPHA

Dear Commissioner Wiseman:

I wanted to take the time to write this letter to express my support to Hill Management for maintaining and keeping the added parking spaces at the Galleria Towers. I am a Senior Property Manager for MedStar Health, and we have been a tenant at both the Galleria Towers and Galleria Atrium for over five (5) years and nine (9) years, respectively.

I have been informed that the building owner has requested a variance to keep the added spaces. Parking at the property is at a premium, and the added spaces have significantly helped the situation, especially during peak times of the day. The newly added spaces are on an existing parking lot, and losing these spacing would have an adverse effect on the already congested lot. By granting Hill Management the variance, the additional spaces will not only benefit my company and our patients, but other tenants' and their customers as well.

Your consideration given to help us would be greatly appreciated.

Sincerely,



Meg Medoff, RPA
Senior Property Manager



County Board of Appeals of Baltimore County

Room 200 Court House

Towson, Maryland 21204

(301) 494-3180

December 20, 1985

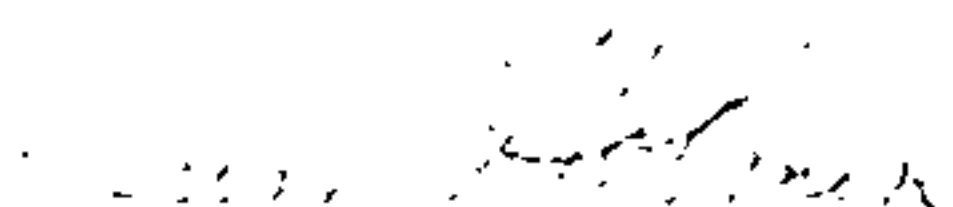
Glenn L. Wilson, President
Dulaney Valley Improvement Assoc.
P. O. Box 102
Lutherville, Md. 21093

Dear Mr. Wilson:

Re: Case No. 85-256-XA
Seminary Limited Partnership

Enclosed herewith is a copy of the Opinion and Order
passed today by the County Board of Appeals in the above entitled case.

Very truly yours,


Jane Holmen, Secretary

cc:

G. Scott Earhight, Esq.
Jasper M. Buck
Seminary Ltd. Partnership
Fitness Unlimited, Inc.
Michael P. Tanczyn, Esq.
Thomas J. Bollinger, Esq.
Phyllis C. Friedman
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean Jung
James E. Dyer

IN THE MATTER OF
SEMINARY LIMITED PARTNERSHIP
(FITNESS UNLIMITED, INC.)
RE: PETITIONS FOR SPECIAL
EXCEPTION AND ZONING VARIANCES
ON PROPERTY LOCATED ON THE
SOUTHEAST CORNER OF SEMINARY
AVENUE AND YORK ROAD
9th DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

No. 85-256-XA

O P I N I O N

This case comes before the Board on two requests by the Petitioner, Seminary Limited Partnership; namely, a request for Special Exception for a community building for a health club/fitness center and a request for a variance to permit 600 parking spaces instead of the required 643. The Zoning Commissioner granted both petitions, subject to certain restrictions.

Addressing first the Petition for Special Exception, there exists, already in operation, the requested community building which houses a health club/fitness center. This facility, known as Fitness Unlimited, Inc. and trading as Gold's Gym, is located within the site and offers the public aerobics and body building programs. Without repeating all of the testimony produced before the Board, we believe that the proposed use complies with the Standards set forth in Section 502.1 of the Baltimore County Zoning Regulations (BCZR). It is also interesting to note that the Protestants offered no witnesses in opposition to the Special Exception petition, and, in light of the evidence before the Board, we will grant that petition.

Turning to the second petition, that for a zoning variance from parking requirements, the Board notes heated opposition to this request. The variance sought is for the entire on project site, that retail/office complex known as the Galleria. Pursuant to the applicable parking regulations, 643 spaces are required, however, the Petitioner asks for a variance reducing this to 600.

In support of the requested variance, the Petitioner produced a number of witnesses, including Melvin Herzburger, the manager for Seminary Limited Partnership, Jay S. Smith, a professional engineer and land surveyor, and John Erdman, a traffic engineer. All testified in support of the variance. The crux of their arguments was that in view of the mixed uses on site, i.e. office and retail, the number of spaces required under the parking regulations was excessive. Additionally, Mr. Herzburger testified that although 643 spaces were required, only 600 spaces could possibly be provided on site.

Notwithstanding this testimony, the Board notes Protestants' Exhibit No. 1, the Amended CRG Plan, dated Aug. 28, 1985. This site plan provides for a parking deck, and indicates that 672 spaces can be provided.

Section 307 of the BCZR provides the standards under which a variance can be granted. It is specifically required that a variance may be granted "only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship". Applying this standard to the petition before us, our conclusion is clear; the variance must be denied. The Petitioner, during the approval process with the CRG in August 1985, indicated that 672 spaces could be provided. Based upon this promise, there cannot be any claim that practical difficulty or unreasonable hardship results from the County parking regulations. We must therefore deny the petition for variance and will so order.

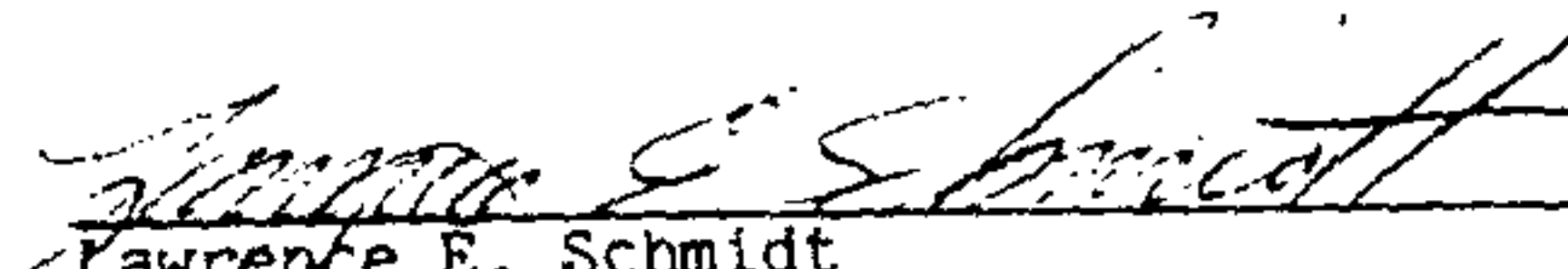
O R D E R

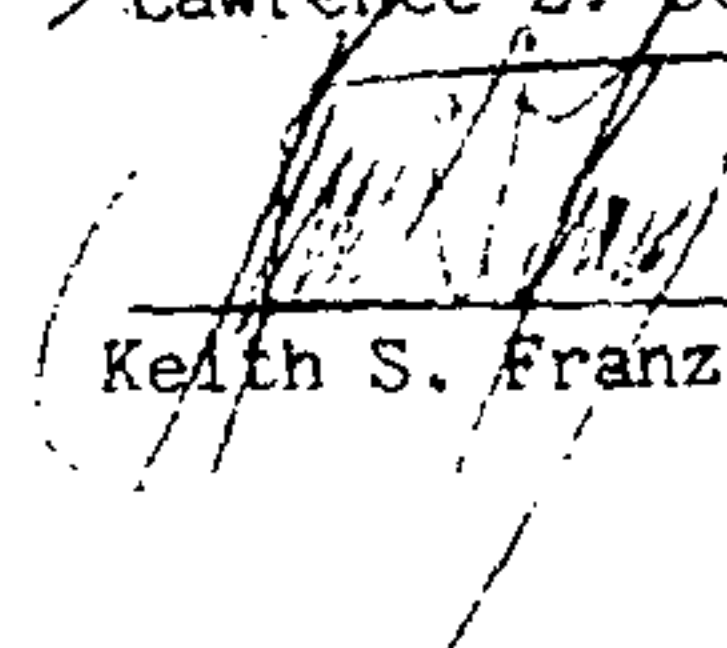
For the reasons set forth in the foregoing Opinion, it is this 20th day of December, 1985, by the County Board of Appeals, ORDERED that the Petition for Special Exception for a community building for a health club/fitness center is hereby GRANTED and that the Petition for Variance from Section 409.2b (1) (3) (4) (5) (6), to permit 500 spaces in lieu of the required 643 spaces is hereby DENIED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


William T. Hackett, Chairman


Lawrence E. Schmidt


Keith S. Franz

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF	*	COUNTY BOARD OF APPEALS
<u>SEMINARY GALLERIA, LLC</u> - LEGAL	*	OF
OWNER /PETITIONER FOR SPECIAL	*	BALTIMORE COUNTY
HEARING AND VARIANCE ON PROPERTY *		
LOCATED ON THE NE/S OF YORK ROAD,	*	Case No. 04-052-SPHA
CORBER SE/S OF SEMINARY AVENUE *		
(1447 YORK ROAD)		
8 TH ELECTION DISTRICT	*	
3 RD COUNCILMANIC DISTRICT	*	

* * * * *

OPINION

This case comes to the Board based upon an appeal from a decision of the Deputy Zoning Commissioner of Baltimore County issued on October 2, 2003. The case came to the Deputy Zoning Commissioner as Petition for Variance and Petition for Special Hearing for the property located at 1447 York Road in the Lutherville area of Baltimore County. Special hearing relief was requested in accordance with the *Baltimore County Zoning Regulations* (BCZR) §409.8B, to allow commercial parking adjacent to existing commercial parking on the same lot in a residential zone. The Petitioners also requested approval of a modified parking and landscape plan. In addition, the Petitioners requested variance relief from §409.8.A of the BCZR to permit parking spaces to be located within 10 feet of the right-of-way of a public street.

The Board held a public hearing on this matter on July 1, 2004 which was subsequently followed by a public deliberation on August 31, 2004. Present at the public hearing was Howard L. Alderman, Jr., Esquire, representing Theresa Rosier /Seminary Galleria c/o Hill Management (hereinafter "Petitioners"). Also present was Michael P. Tanczyn, Esquire, representing the Dulaney Valley Improvement Association (hereinafter "Protestants"). Appearing for the People's Counsel for Baltimore County was Deputy People's Counsel, Carole S. Demilio (hereinafter "People's Counsel").

In his opening statement, Mr. Alderman indicated that the Deputy Zoning Commissioner applied

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the law incorrectly and generated his own facts and assumptions. In his opening statement, Mr. Tanzyn reminded the Board that in 1985 it had denied a similar request, and he remarked that the Petitioners had moved forward with parking plans hoping to obtain forgiveness rather than permission. He opined that the Petitioners had illegally constructed parking spaces in a main drive aisle and that the county recommends that these spaces be removed. People's Counsel reminded the Board that in the past it has taken a dim view of extending parking spaces into a residential area.

The Petitioner's first witness was Mr. Bruce Doak who was accepted as an expert witness in the area of land surveying. Mr. Doak reviewed the red-line site plan displaying both the existing and proposed parking areas. Mr. Doak indicated that the primary uses of the property were retail space and medical offices. He pointed out that some portions of the property were zoned B.L. and other portions were zoned D.R. 5.5. He testified that the east-west line and the southern border are zoned B.L. while the northern border is zoned D.R. 5.5. Mr. Doak referred to the site plan and identified 14 spaces that had been constructed without a permit, and he also showed where the proposed additional 16 spaces adjacent to Seminary Avenue would be located. Mr. Doak indicated that the Petitioners had received a correction notice from Baltimore County regarding the 14 spaces that had been constructed. He indicated that a variance would be needed for the additional 16 spaces. Upon review of the GIS map of the property, Mr. Doak testified that there were grassy areas where the 14 parking spaces were now located.

Under cross-examination by Mr. Tanzyn, Mr. Doak identified a correction notice that the Petitioners had received from Baltimore County. He also acknowledged that Pat Keller, Director of Baltimore County's Office of Planning, recommended denial of the additional parking spaces on the lot. Mr. Doak also testified that on the CRG Plan a fire lane existed where 10 of the 14 parking spaces have been constructed.

As the hearing continued, Ms. Theresa Rosier, representative of Hill Management, testified on behalf of the Petitioner. Ms. Rosier testified that she has received numerous requests for additional

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parking spaces from the tenants, and that she visits the site on an average of once a week. She did testify that, to the best of her knowledge, at no time are all of the parking spaces on the property utilized. In her testimony, she stated that more parking would make the center more customer-friendly, and that her company is committed to a landscaping plan along Seminary Avenue. She denied that the management company unloads snow on the private property of the residents on Seminary Avenue.

Under cross-examination, Ms. Rosier testified that the addition of medical offices has necessitated the need for additional parking spaces.

The Protestant's first witness was Mr. Richard Hurd who resides at 16 E. Seminary Avenue. Mr. Hurd testified that he has lived at his current address since 1986. Mr. Hurd testified that in the past he spoke to Mr. Anthony Julio about Hill Management placing snow on the private properties along Seminary Avenue. He also observed that the 14 parking spaces were being utilized by tenants and not by customers visiting the center. Mr. Hurd also testified that a large portion of the southeast corner of the Petitioners' property always has parking spaces available. He also indicated that he contacted Ms. Rosier as soon as he saw work beginning on the 14 spaces to inform her that the Petitioners were in violation of the law because he had called the County and determined that Hill Management did not have a permit for the additional spaces. Responding to a question from People's Counsel, Mr. Hurd also indicated that there was a parking deck on the southeast corner of the property with additional parking spaces available underneath.

Under cross-examination, Mr. Hurd testified that the snow that had been removed from the site was actually placed on County property and not private property. He also acknowledged that a dumpster that had been placed on the parking lot was there temporarily during a renovation project.

The Protestant's second witness was Mr. Eric Flesher who resides at 10 E. Seminary Avenue. He testified that he has resided at that address since 1993. Mr. Flesher testified that the addition of the 14 parking spaces had created a disruption to the neighborhood. He indicated that there is more noise and trash in the area as a result of these additional spaces. Mr. Flesher confirmed earlier testimony that

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there are always parking spaces available on the southeast corner of the property. He also rejected earlier testimony that the snow was only dumped on County property. Mr. Flesher stated that the snow had been dumped on his property.

Under cross-examination, Mr. Flesher acknowledged that he had applied for commercial zoning of his property.

The Protestants then presented Mr. Larry Townsend, Vice President of the Dulaney Valley Improvement Association, and Mr. Donald Gregory, representing the Greater Towson Council of Community Associations. Both witnesses presented Rule 8 Papers authorizing them to speak on behalf of their organizations. Both witnesses opposed the additional parking, indicating that their groups are dedicated to preserving green areas in the community and to maintaining the residential character of the surrounding neighborhood.

In a memorandum received by the Board of Appeals on July 30, 2004, Mr. Tanczyn stated that the Petitioners' variance request should be rejected because the Petitioners' parking spaces exceed the number required by the *Baltimore County Zoning Regulations* and also because the property is not unique. Mr. Tanczyn also indicated that the Petitioners' hardship was "self-inflicted," and that there is no practical difficulty or unreasonable hardship present in this case. Mr. Tanczyn cited the Court of Special Appeals on the issue of convenience to justify a variance:

Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant a variance, the Board must find from the evidence, more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owners. The Board must find there was proof of 'urgent necessity, hardship peculiar to the particular property...'...Specific reason, specific bases to support the finding must be revealed by the evidence before the Board." *Cromwell v. Ward*, 102 Md.App. 691, 651 A.2d 424 (1995)

In his brief, Mr. Tanczyn also wrote that the Petitioners had not produced proof to warrant special hearing relief and that the Protestants had presented substantial evidence in opposition to such a hearing. Mr. Tanczyn cited §409.8B.1 which states: "Upon application, the Zoning Commissioner may issue a

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use permit for the use of land in a residential zone for parking facilities to meet the requirements of §409.6." The memorandum states that provisions of that section are to be used only when it is impossible to meet the parking requirements under §409.6.

Also regarding the special hearing request, Mr. Tanczyn wrote:

On the other hand, Protestants' witnesses testified that the approval of the special hearing relief would be zoning by forgiveness, as to the 14 spaces built previously. Further, the County Planning Office recommended denial of the special hearing relief because the blacktopping of the entire DR 5.5 zoned green area would remove the only green area on this very large commercial site.... The petitioner already has all of the required spaces that it needs. It is an extreme suggestion by the Petitioners, that it should be granted a modified parking plan, when it already provides, not counting the 14 spaces illegally created, 734 parking spaces, where zoning regulations only require 728 spaces.

In a memorandum from People's Counsel received by the Board of Appeals on July 30, 2004, Counsel writes that the site in question meets current parking requirements under BCZR which requires 728 spaces. Excluding the 30 spaces being requested, 734 spaces exist on the site. In its Memorandum, People's Counsel writes:

In other words, if certain conditions are satisfied, BCZR will permit commercial parking in residential zones only in those cases where the Petitioner cannot provide the required minimum number of parking spaces in the commercial zone. Here, since Petitioner satisfies Section 409.6 requirements, it cannot seek a special hearing for commercial parking in the residential zone.

Furthermore, Petitioner is not qualified for special hearing relief for a modified parking plan for the same reason. BCZR 409.12 B provides for a modified parking plan if the parking requirements in Section 409 (general requirements for minimum parking spaces for each use) creates an undue hardship. But Petitioner's witnesses admitted it satisfies the zoning regulations regarding parking on the site. Thus there is no "undue hardship" and a modified parking plan is not available. In addition, 409.12 B follows the procedure for business parking requirements under BCZR 409.

People's Counsel also wrote that the parking permit cannot be granted if it "adversely affects any of the nine factors in the special exception law under BCZR 502.1." In emphasizing this point, People's

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Counsel referenced Judge Moylan's decision in *Furoryan v. Baltimore*, 150 Md. App. 157, 171 (2003). In that opinion, Judge Moylan cited the criteria for special exception written by Judge Davidson in *Anderson v. Sawyer*, 23 Md. App. 612 (1974) in which he wrote: "The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan"

Summarizing its case, People's Counsel wrote:

Petitioner constructed 14 spaces perpendicular to Seminary Avenue in the DR 5.5 zone without zoning approval. These spaces are offensive to the neighbors because (i.) they are located in the DR 5.5 zone, (ii.) they extend the commercial use into the buffer area, closing in on a settled residential neighborhood, (iii.) they interfere with the designated fire lane. The standards are not relaxed because the spaces exist before approval. Petitioner ignored the zoning regulations and engaged in an unlawful act when it constructed the 14 spaces. See *Cromwell*, supra @ 722.

Petitioner proposes 16 additional parking spaces along the property line parallel to Seminary Avenue. The neighbors oppose these spaces because: (i.) they will be constructed in the remaining green space integral to the spirit and intent of the buffer area in the original development plan; (ii.) they extend the commercial use into the buffer area, closing in on a settled residential neighborhood in conflict with the spirit and intent; (iii.) they fail to maintain the 10 foot buffer area from a public right of way.

People's Counsel concluded by stating that the Petitioner failed to satisfy its burden of proof by not satisfying the special exception standards established in BCZR § 502.1.

Mr. Alderman also supplied a brief to the Board of Appeals on behalf of the Petitioners in the case. In his brief, Mr. Alderman referred to Ms. Rosier, manager of the property, who stated that the additional parking was needed "to provide existing tenants and their customers/invitees adequate, convenient parking within a reasonable distance of the offices and stores." In his brief, Mr. Alderman also indicated that Ms. Rosier felt that the parking in the southeast area of the subject property was "significantly downhill from the public entrances to the offices and shops on the subject property."

In taking issue with the decision of the Deputy Zoning Commissioner, Mr. Alderman wrote:

A fair reading of the decision of the Deputy Zoning Commissioner in

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this case reveals that he clearly did not understand the alternative concept of modified parking plan versus variance from the setback from right of way. He, essentially, found that because the Owner had not demonstrated some non-codified need test relative to the proposed 16 new spaces, there was no undue hardship as that term is used in BCZR §409.12B. Perhaps had the Commissioner had the considered testimony of long-time resident Mr. Gerding, he would understand that the "grassy buffer area" referenced on page 6 of his Order is ineffective given the extensive traffic on Seminary Avenue separating the two uses.

In his summary and conclusions, Mr. Alderman reiterated that "parking can be approved in residential zoned portions of the same property or even across the street or alley in residential zones upon the showing required by BCZR 409.8B.2." He also wrote that "the 14 spaces that had been added without a permit exist without any objection from the Fire Marshal's Office."

In its public deliberation that was held on August 31, 2004, the Board reviewed all of the testimony as well as the entire record in the case. In its discussion, the Board focused on the issue of "undue hardship" required for a modified parking plan in BCZR 409.12B. Since the subject property has more than the number of required parking spaces, the Board did not feel the Petitioners met the standard of "undue hardship." In carefully considering all of the testimony, the Board was moved by numerous testimonies indicating that there were numerous parking spaces in the southeast portion on the property that often go unutilized. The Board also concluded that the additional parking was being sought for the sake of "tenant convenience" which the Board did not feel was supported by statute. The Board also discussed the fact that a special exception may not be granted if it adversely affects any of the nine factors outlined in BCZR § 502.1. The Board was concerned that the additional parking in this case might be "detrimental to the health, safety, or general welfare of the public."

For the reasons cited, the Board will deny the special hearing request to permit additional parking spaces on the subject property. This Board will also deny the variance relief requested from § 409.8A of the BCZR.

ORDER

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THEREFORE, IT IS THIS _____ day of _____, 2004 by the County
Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to allow commercial parking adjacent to existing commercial parking on the same lot in a residential and, in lieu of the variance relief requested, approval of a modified parking plan and modified parking and landscape requirements for the proposed parking areas be and the same is hereby **DENIED**; And it is further

ORDERED that the Petition for Variance to permit parking spaces to be located within 10 feet of the right-of-way of a public street utilizing existing landscaping in the event the requested modified parking plan is not approved be and the same 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**

Lawrence S. Wescott, Chairman

Donald I. Mohler III

John P. Quinn

The current structure of the complex was approved by the County Review Group (CRG) development process in 1983, and parking requirements were met. According to *Baltimore*

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On Remand from the Circuit Court /Civil Action # 03-C-04-11000**

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County Zoning Regulations (BCZR) § 409.6, 728 spaces are required based on the size of the tract, and the site has met that requirement by providing 734. The current scheme depicts the area of commercial parking in a residential zone approved by the existing use permit.

In 2003, the Petitioner leveled 4 existing parking spaces in the D.R. zone and added 14 newly positioned spaces without obtaining zoning approval for modification of the CRG Plan. Construction resulted in the net addition of 10 new parking spaces in the residential zone. After the new parking was installed, a complaint was filed with Baltimore County Code Enforcement alleging that the 14 spaces were added without the benefit of modifying the present approved CRG Plan. Among the Protestants at the hearing before the Board were the People's Counsel for Baltimore County, the Dulaney Valley Improvement Association, the Greater Towson Council of Community Associations, and two neighbors who reside on Seminary Avenue across from the proposed parking modification. Petitioner filed a zoning petition seeking approval of the 14 spaces as well as 16 additional parking spaces pursuant to a modified parking plan.

The Petitioner originally filed a petition before the Zoning Commissioner on October 2, 2003 for a variance and for a special hearing for the property. Special relief was requested under the *Baltimore County Zoning Regulation (BCZR) § 409.8A* to allow for 16 additional commercial parking spaces on an adjacent landscaped area that also falls within a residential zone. Petitioner also sought relief under *BCZR § 409.8B* to obtain a use permit for a modified parking and landscaping plan, which had been constructed prior to obtaining County approval. The issuance of the use permit would require an amendment to the previously approved parking plan.

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On Remand from the Circuit Court /Civil Action # 03-C-04-11000

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The Zoning Commissioner denied all of the Appellant's requests, as did this Board on appeal in a decision issued on September 21, 2004. Petitioners now seek only approval of the 14 spaces which were already constructed and elected not to appeal the Board's decision to deny the request for variance to allow the additional 16 spaces.

DECISION

The Special Hearing relief was requested in accordance with BCZR § 409.8B to allow commercial parking adjacent to existing commercial parking on the same lot in a residential zone. Petitioners also requested approval of a modified parking and landscape plan in addition to Petitioner's requested variance relief from § 409.A of the BCZR to permit parking spaces to be located within 10 feet of the right-of-way of a public street. Section 409.8B states:

Upon application, the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking facilities to meet the requirements of § 409.6....

Two of the witnesses for the Petitioner, Bruce Doak the surveyor, and Theresa Rosier, the asset manager, admitted that the site currently provides 734 spaces exclusive of the 30 spaces requested in the case and that 728 spaces were required by the BCZR. Doak testified that the relief requested was not due to a shortage of parking spaces but he was told that it was for the convenience of tenants. This testimony was confirmed by Ms. Rosier.

BCZR § 409.6 sets forth general requirements for the required number of parking spaces for various uses in the County including the office retail use here. The BCZR will permit commercial parking in residential zones only in those cases where the Petitioner cannot meet the required minimum number of parking spaces in the commercial zone. Here, since the Petitioner

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On Remand from the Circuit Court /Civil Action # 03-C-04-11000**

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satisfies § 409.6 requirements, it cannot seek a special hearing for commercial parking in the residential zone. Therefore, the Board finds that, based upon the testimony of the Petitioner's own witnesses, the special hearing for commercial parking in a residential zone must be denied.

In addition, Petitioner is not qualified for a Special Hearing relief for the modified parking plan for the same reason. BCZR § 409.12B provides for a modified parking plan if the parking requirements in § 409 (General Requirements for Minimum Parking Spaces for Each Use) creates an undue hardship. Petitioner's witness admitted that it satisfies the zoning regulations regarding parking on the site. Thus, there is no "undue hardship" and the modified parking plan is not available.

The permit cannot be granted if it adversely affects any of the nine factors in the special exception law under BCZR § 502.1. In describing special exception uses, the BCZR states that "certain types of uses...might cause unsatisfactory results of one kind or another...and under certain conditions they could be detrimental to the health, safety or general welfare of the public...." The citizens testifying before the Board explained the detrimental effects of the Petitioner's request under the criteria set forth in § 502.1. It is basically offensive to the neighbors because (1) they are located in the D.R. 5.5 zone; (2) they extend the commercial use into the buffer area, closing in on a settled residential neighborhood; and (3) they interfere with a designated fire lane. Mr. Flesher, a neighbor living across the street, stated that the Petitioner dumps plowed snow onto his property when it runs out of space on its site. He felt that this situation would be exacerbated if the present open spaces were converted to parking spaces. He also experienced car alarms, noise and trash from parked vehicles on the site and such disturbing

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activity will actually be closer to his home if the 14 additional spaces are allowed. In addition, he stated that tenants from the site have picnicked on his yard and that the hours of operation for these tenants have been extended over the years, some of them open 24 hours a day, such as the subway operation and health club. The HMO is open Saturdays and Sundays broadening the commercial aspect of the residential uses. Richard Hurd, another neighbor across the street, also testified that the illegal parking spaces are occupied at 7:30 a.m. by tenants even when the rest of the lot is empty. Mr. Hurd disputes the need for additional parking since he has never seen all of the parking spaces occupied. Mr. Hurd explained that the Petitioner also dumped snow on his side of the street and on his property when there was no room in the open spaces. He fears that the problem will be exacerbated if the open spaces are further lost to parking spaces.

While it is true that the Fire Marshall's Office had no comment with respect to the additional 14 parking spaces which were constructed in the fire lane, the Board is of the opinion that the use of the fire-lane for additional parking is detrimental to the health, safety and welfare of the general public. The 14 spaces displace the original grass and planting area in the D.R. 5.5 zone. The neighbors have testified as to the adverse effects of the unauthorized parking spaces. The Board finds that the construction of these spaces without the proper authorization is detrimental to the health, safety and welfare of the neighborhood. Therefore, it does not satisfy the requirements of § 502.1 of the BCZR and the plan should be denied.

ORDER

THEREFORE, IT IS this _____ day of _____, 2005, by the County Board
of Appeal of Baltimore County

Case No. 04-052-SPHA /In the Matter of Seminary Galleria
On Remand from the Circuit Court /Civil Action # 03-C-04-11000

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ORDERED that the Petition for Special Hearing to allow commercial parking adjacent to existing commercial parking on the same lot in a residential zone and, in lieu of the Variance relief requested, approval of a modified parking plan and modified parking and landscape requirements for the proposed parking area be and is same hereby **DENIED**; and it is further

ORDERED that the Petition for Variance to permit parking spaces to be located within 10 feet of the right-of-way of a public street utilizing existing landscaping in the event the requested modified parking plan is not approved be and the same is hereby **DENIED**.

Any petition for judicial review of 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 COUNTY¹**

Lawrence S. Wescott, Chairman

John P. Quinn

¹ The Board panel in this matter consisted of Lawrence S. Wescott, John P. Quinn, and Donald I. Mohler III. Mr. Mohler has subsequently left the Board. Since the decision was unanimous, this Supplemental Opinion is issued by the two remaining original Board members.

8TH ELECTION-DISTRICT
3RD COUNCILMANIC DISTRICT
(Case No. 04-052-SPHA)

Civil Action
No. 03-C-04-11000

The current structure of the complex was approved by the County Review Group (CRG) development process in 1983, and parking requirements were met. According to *Baltimore*

County Zoning Regulations (BCZR) § 409.6, 728 spaces are required based on the size of the tract, and the site has met that requirement by providing 734. The current scheme depicts the area of commercial parking in a residential zone approved by the existing use permit.

In 2003, the Petitioner leveled 4 existing parking spaces in the D.R. zone and added 14 newly positioned spaces without obtaining zoning approval for modification of the CRG Plan. Construction resulted in the net addition of 10 new parking spaces in the residential zone. After the new parking was installed, a complaint was filed with Baltimore County Code Enforcement alleging that the 14 spaces were added without the benefit of modifying the present approved CRG Plan. Among the Protestants at the hearing before the Board were the People's Counsel for Baltimore County, the Dulaney Valley Improvement Association, the Greater Towson Council of Community Associations, and two neighbors who reside on Seminary Avenue across from the proposed parking modification. Petitioner filed a zoning petition seeking approval of the 14 spaces as well as 16 additional parking spaces pursuant to a modified parking plan.

The Petitioner originally filed a petition before the Zoning Commissioner on October 2, 2003 for a variance and for a special hearing for the property. Special relief was requested under the *Baltimore County Zoning Regulation (BCZR) § 409.8A* to allow for 16 additional commercial parking spaces on an adjacent landscaped area that also falls within a residential zone. Petitioner also sought relief under *BCZR § 409.8B* to obtain a use permit for a modified parking and landscaping plan, which had been constructed prior to obtaining County approval. The issuance of the use permit would require an amendment to the previously approved parking plan.

The Zoning Commissioner denied all of the Appellant's requests, as did this Board on appeal in a decision issued on September 21, 2004. Petitioners now seek only approval of the 14 spaces which were already constructed and elected not to appeal the Board's decision to deny the request for variance to allow the additional 16 spaces.

DECISION

The Special Hearing relief was requested in accordance with BCZR § 409.8B to allow commercial parking adjacent to existing commercial parking on the same lot in a residential zone. Petitioners also requested approval of a modified parking and landscape plan in addition to Petitioner's requested variance relief from § 409.A of the BCZR to permit parking spaces to be located within 10 feet of the right-of-way of a public street. Section 409.8B states:

Upon application, the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking facilities to meet the requirements of § 409.6....

Two of the witnesses for the Petitioner, Bruce Doak the surveyor, and Theresa Rosier, the asset manager, admitted that the site currently provides 734 spaces exclusive of the 30 spaces requested in the case and that 728 spaces were required by the BCZR. Doak testified that the relief requested was not due to a shortage of parking spaces but he was told that it was for the convenience of tenants. This testimony was confirmed by Ms. Rosier.

BCZR § 409.6 sets forth general requirements for the required number of parking spaces for various uses in the County including the office retail use here. The BCZR will permit commercial parking in residential zones only in those cases where the Petitioner cannot meet the required minimum number of parking spaces in the commercial zone. Here, since the Petitioner satisfies § 409.6 requirements, it cannot seek a special hearing for commercial parking in the

residential zone. Therefore, the Board finds that, based upon the testimony of the Petitioner's own witnesses, the special hearing for commercial parking in a residential zone must be denied.

In addition, Petitioner is not qualified for a Special Hearing relief for the modified parking plan for the same reason. BCZR § 409.12B provides for a modified parking plan if the parking requirements in § 409 (General Requirements for Minimum Parking Spaces for Each Use) creates an undue hardship. Petitioner's witness admitted that it satisfies the zoning regulations regarding parking on the site. Thus, there is no "undue hardship" and the modified parking plan is not available.

The permit cannot be granted if it adversely affects any of the nine factors in the special exception law under BCZR § 502.1. In describing special exception uses, the BCZR states that "certain types of uses...might cause unsatisfactory results of one kind or another...and under certain conditions they could be detrimental to the health, safety or general welfare of the public...." The citizens testifying before the Board explained the detrimental effects of the Petitioner's request under the criteria set forth in § 502.1. It is basically offensive to the neighbors because (1) they are located in the D.R. 5.5 zone; (2) they extend the commercial use into the buffer area, closing in on a settled residential neighborhood; and (3) they interfere with a designated fire lane. Mr. Flesher, a neighbor living across the street, stated that the Petitioner dumps plowed snow onto his property when it runs out of space on its site. He felt that this situation would be exacerbated if the present open spaces were converted to parking spaces. He also experienced car alarms, noise and trash from parked vehicles on the site and such disturbing activity will actually be closer to his home if the 14 additional spaces are allowed. In addition, he stated that tenants from the site have picnicked on his yard and that the hours of operation for

these tenants have been extended over the years, some of them open 24 hours a day, such as the subway operation and health club. The HMO is open Saturdays and Sundays broadening the commercial aspect of the residential uses. Richard Hurd, another neighbor across the street, also testified that the illegal parking spaces are occupied at 7:30 a.m. by tenants even when the rest of the lot is empty. Mr. Hurd disputes the need for additional parking since he has never seen all of the parking spaces occupied. Mr. Hurd explained that the Petitioner also dumped snow on his side of the street and on his property when there was no room in the open spaces. He fears that the problem will be exacerbated if the open spaces are further lost to parking spaces.

While it is true that the Fire Marshall's Office had no comment with respect to the additional 14 parking spaces which were constructed in the fire lane, the Board is of the opinion that the use of the fire lane for additional parking is detrimental to the health, safety and welfare of the general public. The 14 spaces displace the original grass and planting area in the D.R. 5.5 zone. The neighbors have testified as to the adverse effects of the unauthorized parking spaces. The Board finds that the construction of these spaces without the proper authorization is detrimental to the health, safety and welfare of the neighborhood. Therefore, it does not satisfy the requirements of § 502.1 of the BCZR and the plan should be denied.

ORDER

THEREFORE, IT IS this 19th day of September, 2005, by the County Board of Appeal of Baltimore County

ORDERED that the Petition for Special Hearing to allow commercial parking adjacent to existing commercial parking on the same lot in a residential zone and, in lieu of the Variance

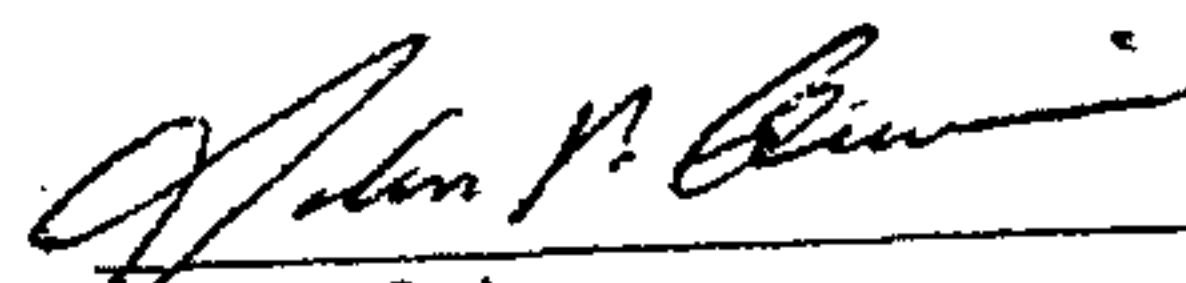
relief requested, approval of a modified parking plan and modified parking and landscape requirements for the proposed parking area be and is same hereby **DENIED**; and it is further

ORDERED that the Petition for Variance to permit parking spaces to be located within 10 feet of the right-of-way of a public street utilizing existing landscaping in the event the requested modified parking plan is not approved be and the same is hereby **DENIED**:

Any petition for judicial review of 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 COUNTY¹


Lawrence S. Wescott, Chairman


John P. Quinn

¹ The Board panel in this matter consisted of Lawrence S. Wescott, John P. Quinn, and Donald I. Mohler III. Mr. Mohler has subsequently left the Board. Since the decision was unanimous, this Supplemental Opinion is issued by the two remaining original Board members.