5/5/07

IN RE: PETITION FOR SPECIAL HEARING SPECIAL EXCEPTION AND VARIANCE South Side of Old Frederick Road, 572' west of Centerline of Harlem Lane **(5623 Baltimore National Pike)** 1st Election District 1st Council District	* * * *	BEFORE THE FOR ZONING COMMISSIONER BALTIMORE COUNTY
McCammon Properties I, LLC Petitioner	*	Case No. 06-436-SPHXA

* *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for a Special Hearing, Special Exception and Variance filed by the owner of the subject property, McCammon Properties, LLC, by and through its attorneys, John B. Gontrum, Esquire, and Whiteford, Taylor & Preston, LLP. As filed, the Petitioner requested a Special Hearing to permit the relocation of a pawnshop that has existed since prior to July, 1995 to a new location within the same council district within one mile of the existing location, a Special Exception to use the property at 5623 Baltimore National Pike for a pawnshop, and a Variance from Section 436.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the relocation of an existing pawnshop from a site within one mile of the existing location within the same council district. The subject property and requested relief are more particularly described on the site plan which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Louis O'Brien, managing member of Lobster, LLC, and trading as County Pawnbrokers, the tenant of the Owner/Petitioner and James Howard Phelps, the former owner of County Pawnbrokers and a current employee of the pawnshop. Representing the Petitioner and the pawnshop tenants of the property, was their attorney, John B. Gontrum, Esquire. There were no Protestants or other

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Date 5-5-06
By

interested persons present. The hearing proceeded on a proffer received from Petitioner's counsel.

Petitioner's Exhibit 1 depicts the subject site of the pawnshop, which is a 20 foot wide by 123 foot deep store in the center of a small strip of stores zoned BM-CCC. Parking has been set aside for the pawnshop in the rear and appears to fully support the store and adjacent retail establishments. Behind this parking area is a substantial video arcade building and behind that is an athletic field for a local elementary school. To the east of the retail center is a service garage and to the west of the center is a mobile phone store. Across Old Frederick Road is an existing package goods store. The site plan evidences the area is highly commercialized.

Photographs collectively introduced as Petitioner's Exhibit 2 show both the interior and exterior of the already existing pawnshop. The shop appears neat and uncluttered and the exterior appears to be in keeping with the other stores in the retail center.

The pawnshop has been licensed and in existence at this location since 1998. Prior to 1998 the store was located at 5204 Baltimore National Pike. The store appears on the Baltimore County list of pawnshops with pre-July 6, 1995 approval at that address with Mr. Phelps as the licensee (Petitioner's Exhibit 4). This list is significant, for County Council Bill 112-95 established limitations on both the number and location of pawnshops within the county. Existing pawnshops appearing on the list were grandfathered under the legislation. Licenses from the State of Maryland were introduced showing the consistent operation of the pawnshop and the change in address occurring prior to 1999. It is unclear how or why the move was permitted without a zoning proceeding. Nevertheless, it was proffered without opposition that the pawnshop has existed in its current location without complaint for the past eight years. In

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support of that letters were introduced from former police officers in the area attesting as to the fine business reputation of the licensee (Petitioner's Exhibit 6).

In addition to the letters of support the Office of Planning also reviewed the proposed use and filed no objection and only requested that the owner have the existing sign comply with the applicable current zoning regulations.

Correspondence from David Robison, Treasurer of the Westgate Community Association in opposition to the pawnshop also was received. He was concerned about the fact that County Pawnbrokers was located within one mile of Catonsville Jewelry and Pawn Brokers at 5210A Baltimore National Pike and the imposition that this creates on his community.

What is not clear from the letter is the familiarity Mr. Robison has with the history of the two pawnshops and their proximity to each other. As noted above, the subject pawnshop was located for years at 5210 Baltimore National Pike. It moved in 1998 to the current location so that nothing has recently changed with regard to the experience and operation of this pawnshop at this location. On the other hand Catonsville Jewelry and Pawn Brokers moved only relatively recently to its current location. Prior to the move that business was located across Baltimore National Pike and only slightly to the east of the subject site.

In November, 2005 the Deputy Zoning Commissioner in Case No. 06-142-X, granted a Special Exception for C & D Pawn, Inc. t/a Catonsville Jewelry and Pawn Brokers to move from 5516 Baltimore National Pike to 5210 Baltimore National Pike (Petitioner's Exhibit 3). There was no opposition to the request. Consequently for a period from 1998 to 2005 the two pawnshops were located within a long block of each other. Prior to 1998 the two pawnshops were located three (3) blocks from each other. Consequently, these two pawnshops have never been

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located further apart than they are today. No mention of C & D Pawnbrokers was made in the Findings of Fact and Conclusions of Law.

As stated, the subject property is zoned BM-CCC, and the pawnshops are permitted by special exception in a BM zone pursuant to Section 233.4 of the B.C.Z.R. Section 436 of the B.C.Z.R., however, limits the number and placement of pawnshops in Baltimore County. The intent of the legislation was to limit the number of new pawnshops in the county, and the Director of Permits and Development Management is forbidden to accept special exceptions for new pawnshops in the county if there are 12 valid dealers' licenses outstanding (B.C.Z.R. Section 436.2D). Existing pawnshops, however, are clearly counted within the 12 licenses permitted.

In this case there is clear evidence that this pawnshop has continuously existed since prior to 1995 and is, in fact, on the list of pawnshops grandfathered in 1995. Consequently, the special hearing relief requested should be granted.

Petitioner like the one in Case No. 06-142-X is asking for a special exception for a new location within the council district. This location is surrounded by commercial uses. The rear of the pawnshop is located about 300 feet from the athletic field according to the site plan scale, and the proffer and testimony from the witnesses indicated that the property is fenced. Indeed, the proposed use is separated from the athletic field by a video arcade, which is worth mentioning may pose a far greater attraction to elementary school pupils than a pawnshop.

It is also noteworthy to point out that the pawnshop at this location has existed for eight years without complaint. There have been apparently no negative impacts on the traffic or environment, and there have been no negative impacts alleged by anyone in the community. All evidence indicates that this business at this location will not be injurious to the health, safety or

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general welfare of the community. The business handles no firearms and conforms to all regulations. The letters from the police officers indicate that the business is well run and does not cause any community problems. Based on the exhibits and the proffer, I find that the requirements of the B.C.Z.R. Section 502.1 have been met and that the special exception should be granted.

Finally, Petitioner seeks variance relief from the provisions of Section 436.4 of the B.C.Z.R. It appears, however, that a variance is not needed for the relocation of a pre-1995 pawnshop within one mile of another pawnshop. In *People's Counsel for Baltimore County v. Country Ridge Shopping Center*, 144 Md. App. 580, 799 A.2d 425 (2002), the court reiterated its decision in an earlier unreported opinion that grandfathered pawnshops are exempt from the provisions of Section 436.4. The Court held that while the special exception provisions pertained to a change in location, the locational provisions did not so apply. The Court stated: "Our Opinion, filed on July 21, 1999, reversed the rulings of the circuit court and of the Board of Appeals and held that the "grandfather" clause exemption from the one-mile radius limitation, indeed, applied to pawnshops that were in the process of relocating." *Id.* at 586-587. Accordingly, the Petition for Variance is really unnecessary in this case.

The spirit and intent of Section 436.4A of the Baltimore County Zoning Regulations in this case have been met with respect to the separation of the facilities. These two facilities have always operated within a mile of each other. For at least seven years they were in much closer proximity than they are today, and in 1995 they were located on the same side of Baltimore National Pike separated only by an intervening residential community. In this case, the move of this pawnshop coupled with the move of the other pawnshop permit both pawnshops to continue to exist separated by a greater distance than at any time in the past. As noted above, this is not

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a case of a new pawnshop moving into an existing council district. This is an existing pawnshop that has been validly licensed and operating, and while the Petition for Variance is moot, based on the *Country Ridge* decision it is important to note the benefits of the location shift with respect to the special exception issues.

The sign issue raised by the Office of Planning should be addressed. As Petitioner's Exhibit 2 shows, all of the signs for the stores in the strip are roof-mounted signs. Clearly, the sign supports and the sign backing for the pawnshop's location was in place well before 1998. The pawnshop's actual lettering only occupies a small portion of the overall sign that is in place for this space. Consequently, the "sign" as defined in Section 450 of the B.C.Z.R. was in place prior to the effective date of Bill 89-1997, which prohibited rooftop signs. There appears to be nothing in the pre-1997 regulations which prohibited such a sign. Consequently, based on the photograph, the sign as it exists is non-conforming, and pursuant to Section 450.8D.1. it must be removed fifteen (15) years from the effective date of Bill No. 89-1997. To order an earlier removal of this sign will simply result in a larger advertising sign for the pawnshop on the mansard roof, which does appear to be permitted. Consequently, I will limit any change to the size of the lettering and advertisement on the sign in its current location.

Based on the proffer, testimony and exhibits, the restrictions on sales of firearms, location of sales and hours similar to those imposed in Case No. 06-142, it appears to be reasonable restrictions on the operation of the business.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 5th day of May 2006, that the Petition for Special Hearing to permit the relocation of a

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Date 5-15-06
By

pawnshop that has existed since prior to July, 1995 to a new location within the same council district within one mile of the existing location and the Petition for Special Exception to use the property at 5623 Baltimore National Pike for a pawnshop, in accordance with Petitioner's Exhibit 1, be and are hereby GRANTED, subject to the following restrictions:

1) The Petitioner and/or Lessee may apply for its building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30 day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) The pawnshop shall not sell or handle firearms.

3) All transactions shall be interior to the building.

4) The hours of operation shall not begin before 9:00 AM nor end later than 9:00 PM.

5) The lettering and advertising of the pawnshop on the existing rooftop sign may not be enlarged from its current size as depicted on Exhibit 2 in its current location. Any change in the size of the existing advertisement for the pawnshop shall require removal of the existing sign and signage in accordance with current regulations.

IT IS FURTHER ORDERED that the Petition for Variance to permit the relocation of an existing pawnshop from a site within one mile of the existing location within the same council district is DISMISSED as moot.

Any appeal of this decision must be taken in accordance with Section 32-3-01 of the Baltimore County Code.

WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County

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Date 5-5-99
By

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

May 5, 2006

WILLIAM J. WISEMAN III
Zoning Commissioner

John B. Gontrum, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: **PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE**
South Side of Old Frederick Road, 572' west of centerline of Harlem Lane
(5623 Baltimore National Pike)
1st Election District – 1st Council District
McCammon Properties I, LLC - Petitioner
Case No. 06-436-SPHXA

Dear Mr. Gontrum:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing, and Special Exception have been granted with restrictions, and the Variance is dismissed as moot, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: McCammon Properties I, LLC, 5629 Old Frederick Road, Baltimore, Md. 21228
Mr. Louis O'Brien, 8910 Crystal Road, Eldersburg, Md. 21727
Mr. James Phelps, 5623 Baltimore National Pike, Catonsville, Md. 21228
People's Counsel; Case File

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 5623 Baltimore National Pike
which is presently zoned BM-CCC

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:

County Pawn Brokers
Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

John B. Gontrum
Name - Type or Print

Signature

Whiteford, Taylor & Preston
Company

210 W. Pennsylvania Ave 410 832-2055
Address Telephone No.

Towson, MD 21204
City State Zip Code

Legal Owner(s):

McCammon Properties I, LLC
Name - Type or Print

Signature

R C McCammon, managing member
Name - Type or Print

Signature

5629 Old Frederick Road
Address Telephone No.

Baltimore, MD 21228
City State Zip Code

Representative to be Contacted:

John B. Gontrum
Name

210 W. Pennsylvania Ave 410-832-2055
Address Telephone No.

Towson, MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1 1/2 hrs

UNAVAILABLE FOR HEARING

Reviewed By Date 3-9-06

Case No. 06-436SPHXA

REV 9/15/98

ORDER RECEIVED FOR FILING
Date 3-9-06
By

Attachment to Petition for Special Hearing

5623 Baltimore National Pike
Zoned ~~BR~~ BM-CCC
1st Election District
1st Councilmanic District

Requested Relief:

To permit the relocation of a pawn shop that has existed since prior to July, 1995 to a new location within the same council district within one mile of the existing location.

354082

436

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 5623 Baltimore National Pik

which is presently zoned BM-CCC

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 Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

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 Exception, 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:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

John B. Gontrum

Name - Type or Print

Signature

Whiteford, Taylor & Preston

Company

210 W. Pennsylvania Ave

Address Telephone No.

Towson, MD 21204 410 832-2055

City State Zip Code

Legal Owner(s):

McCammon Properties, I, LLC

Name - Type or Print

R C McCammon

Signature

R C McCammon, managing member

Name - Type or Print

Signature

5629 Old Frederick Road

Address Telephone No.

Baltimore, MD 21228

City State Zip Code

Representative to be Contacted:

John B. Gontrum 410 832-2055

Name

210 W. Pennsylvania Ave.

Address Telephone No.

Towson, MD 21204

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1 1/2 hr

UNAVAILABLE FOR HEARING

Reviewed By Date 3-9-06

Case No. 06-436-SPHXA

REV 09/15/98

PLUCH RECEIVED FOR FILING

Date 3-9-06

By

Attachment to Petition for Special Exception

5623 Baltimore National Pike
Zoned BM-CCC
1st Election District
1st Councilmanic District

Requested Relief:

To use the property for a new site located at 5623 Baltimore National Pike.

436

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 5623 Baltimore National Pike
which is presently zoned BM-CCC

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)

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:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

John B. Gontrum
Name - Type or Print

Signature

Whiteford, Taylor & Preston
Company

210 W. Pennsylvania Ave
Address Telephone No.

Towson, MD 21204 410 832-2055
City State Zip Code

Legal Owner(s):

McCammon Properties I, LLC
Name - Type or Print

Signature

R McCammon, managing member
Name - Type or Print

Signature

5629 Old Frederick Rd
Address Telephone No.

Baltimore, MD 21228
City State Zip Code

Representative to be Contacted:

John B. Gontrum 410 832-2055
Name

210 W. Pennsylvania Ave
Address Telephone No.

Towson, MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING See SPH

UNAVAILABLE FOR HEARING

Case No. 06-436 SPHXA

Reviewed By Date 3-9-06

REV 9/15/98

UNDER RECEIVED FOR FILING
Date 3-9-06
By

Attachment to Petition for Variance

5623 Baltimore National Pike
Zoned BR BM-CCC
1st Election District
1st Councilmanic District

Requested Variance Relief:

A variance from BCZR §436.4 to permit the relocation of an existing pawn shop from a site within one mile of the existing location within the same council district.

Practical Difficulty:

a) The pawn shop predated the current regulations and existed a few blocks from its current site that is within one mile of the existing site. The pawn shop moved to its existing site without protest and recorded a change of license eight years ago. Failure to grant the requested variance could terminate the business.

b) For such other good and substantial reasons as may be presented at hearing.

436

ZONING DESCRIPTION
5623 BALTIMORE NATIONAL PIKE

Beginning for the same at a point 51' West and 29' South of Old Frederick Road which is 40' wide at a distance of 572' west of the centerline of Harlem lane, thence: 1) South 02-22-12 East 131.57' thence 2) North 87-37-34 East 18.00' thence 3) South 02-22-26 East 68.25' thence 4) North 89-39-55 West 65.06' thence 5) North 00-25-18 East 36.00' thence 6) North 89-34-42 West 39.33' thence 7) North 01-32-40 West 36.23' thence 8) North 87-37-18 East 63.99' thence 9) North 02-22-12 West 122.65' thence 9) North 87-37-48 East 20.00' to the point of beginning.

STATE OF MARYLAND
LAYTON SMITH
No. 12906
REGISTERED
PROFESSIONAL ENGINEER

436

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: #06-436-SPHXA
5623 Baltimore National Pike
South side of Old Frederick Road, 572 feet west of centerline of Harlem Lane
1st Election District-1st Councilmanic District
Legal Owner(s): McCammon Properties I, LLC

Special Hearing: to permit the relocation of a pawn shop that has existed since prior to July 1995 to a new location within the same council district within one mile of the existing location. **Variance:** to permit the relocation of an existing pawn shop from a site within one mile of the exsisting location within the same council district. **Special Exception:** to use the property for a new site *located at 5623 Baltimore National Pike.*

Hearing: Wednesday, April 19, 2006 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

4/608 April 4 90259

CERTIFICATE OF PUBLICATION

4/6, 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 4/4, 2006.

- ☑ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 06-436-SPHXA

Petitioner/Developer: MC CAMMON PROPERTIES

Date of Hearing/Closing: 4-19-06

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

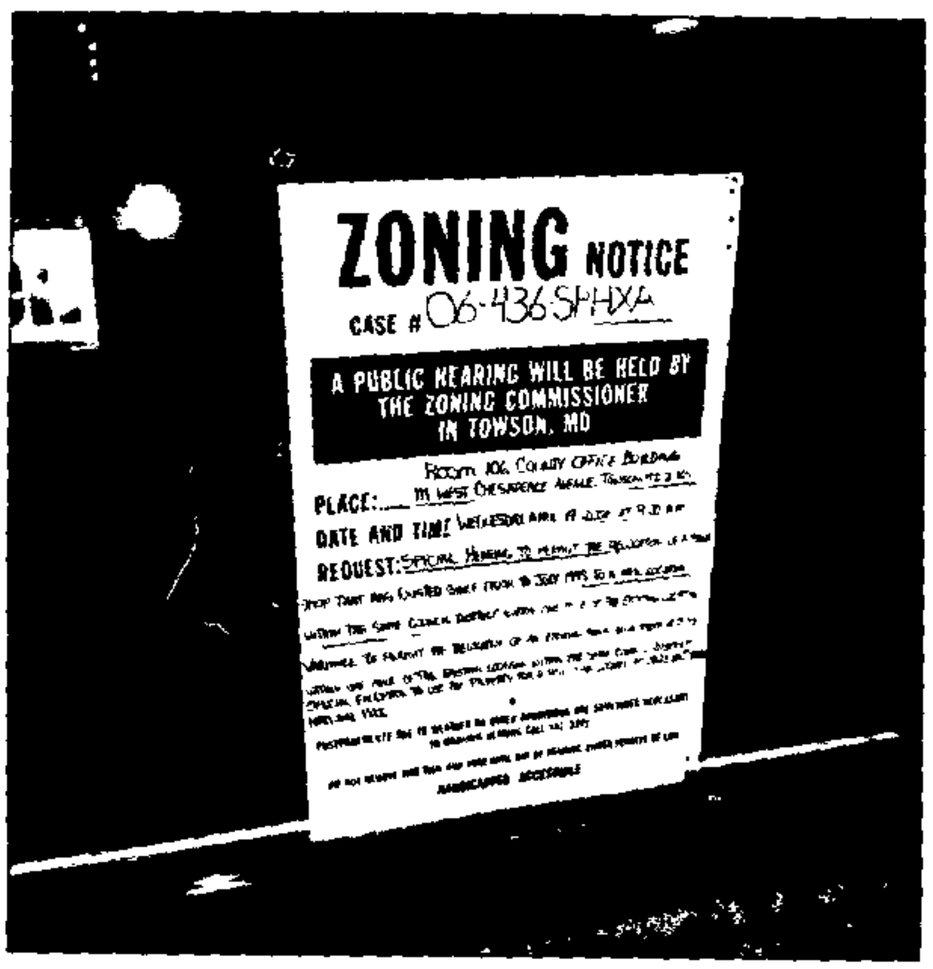
ATTN: Kristen Matthews {(410) 887-3394}

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: 5623 BALTIMORE NATIONAL PIKE

The sign(s) were posted on 4-3-06
(Month, Day, Year)

Sincerely,



Robert Black 4-5-06
(Signature of Sign Poster) (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 1,002
06-436-SPHXA

DATE 3-9-06 ACCOUNT R-001-006-6150

AMOUNT $ 800.00

RECEIVED FROM: Whiteford Taylor & Preston LLP
A special Exception & special Hearing & Variance

FOR: Max Commercial fee for
An 5623 Baltimore National Pike

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	
3/10/2006	3/09/2006	14:28:13	1

REG-001 WALKIN ZONE ZNR
>RECEIPT # 276673 3/09/2006 OFLN
Dept. 5 523 ZONING VERIFICATION
CR NO. 004923
Rcpt Tot 800.00
800.00 CK $.00 CA
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: 06-436 SPHXA

Petitioner: Rec Common Properties I, LLC

Address or Location: ~~5620 Old Baltimore Pike~~
5620 Baltimore National Pike

PLEASE FORWARD ADVERTISING BILL TO:

Name: Lobster LLC c/o Russ Sterner

Address: 4000 Coolidge Avenue, Suite G
Balt., Md 21225

Telephone Number: 410-522-4000

Revised 7/11/05 - SCJ

APPEAL SIGN POSTING REQUEST

CASE NO. 06-436-SPHXA

5623 BALTIMORE NAT'L PIKE

1ST ELECTION DISTRICT APPEALED: 5/19/2006

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

*****COMPLETE AND RETURN BELOW INFORMATION******

CERTIFICATE OF POSTING

13-F13

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 06-436-SPHXA

LEGAL OWNER: MCCAMMON PROPERTIES, I, LLC

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

5623 BALTIMORE NAT'L PIKE

The sign was posted on 9/20, 2006.

By: Jeff Radcliffe
(Signature of Sign Poster)

Jeff Radcliffe
(Print Name)

* Sign placed inside store window.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, April 4, 2006 Issue - Jeffersonian

Please forward billing to:
Russ Sternen
4000 Coolidge Avenue, Ste. G
Baltimore, MD 21229

410-977-4000

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: 06-436-SPHXA
5623 Baltimore National Pike
South side of Old Frederick Road, 572 feet west of centerline of Harlem Lane
1st Election District – 1st Councilmanic District
Legal Owners: McCammon Properties I, LLC

Special Hearing to permit the relocation of a pawn shop that has existed since prior to July 1995 to a new location within the same council district within one mile of the existing location. Variance to permit the relocation of an existing pawn shop from a site within one mile of the existing location within the same council district. Special Exception to use the property for a new site located at 5623 Baltimore National Pike.

Hearing: Wednesday, April 19, 2006 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Department of Permits 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 21, 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: 06-436-SPHXA
5623 Baltimore National Pike
South side of Old Frederick Road, 572 feet west of centerline of Harlem Lane
1st Election District – 1st Councilmanic District
Legal Owners: McCammon Properties I, LLC

Special Hearing to permit the relocation of a pawn shop that has existed since prior to July 1995 to a new location within the same council district within one mile of the existing location. Variance to permit the relocation of an existing pawn shop from a site within one mile of the existing location within the same council district. Special Exception to use the property for a new site located at 5623 Baltimore National Pike.

Hearing: Wednesday, April 19, 2006 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

C: John B. Gontrum, 210 W. Pennsylvania Avenue, Towson 21204
McCammon Properties, 5629 Old Frederick Road, Baltimore 21228

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, APRIL 4, 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.

Printed on Recycled Paper

County Board of Appeals of Baltimore County

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

April 13, 2007

NOTICE OF DELIBERATION

IN THE MATTER OF:

McCAMMON PROPERTIES, LLC
Case No. 06-436-SPHXA

Having heard this matter on 4/05/07, public deliberation has been scheduled for the following date /time:

DATE AND TIME : THURSDAY, MAY 31, 2007 at 9:30 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on Monday, May 14, 2007
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

---

c: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : John B. Gontrum, Esquire
Petitioner /Legal Owner : McCammon Properties I, LLC
Tenant : Louis O'Brien /Lobster, LLC
t/a County Pawnbrokers

James Howard Phelps

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

FYI: 2-4-7

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on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

February 8, 2007

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 06-436-SPHXA

IN THE MATTER OF: McCAMMON PROPERTIES I, LLC –
Legal Owner /Petitioner 5623 Baltimore National Pike 1st E; 1st C

5/05/2006- Z.C.'s Order in which Petitions for Special Hearing and Special Exception were GRANTED; variance request DISMISSED as moot.

which was assigned to be heard on 2/15/07 has been POSTPONED at the request of Deputy People's Counsel, without objection from Counsel for Petitioner, and has been

REASSIGNED FOR: **THURSDAY, APRIL 5, 2007 at 10:00 a.m.**

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

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

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

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

Kathleen C. Bianco
Administrator

c: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : John B. Gontrum, Esquire
Petitioner /Legal Owner : McCammon Properties I, LLC
Tenant : Louis O'Brien /Lobster, LLC t/a County Pawnbrokers

James Howard Phelps

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink on Recycled Paper

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

February 1, 2007

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

RECEIVED
FEB 0 1 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Re: McCammon Properties I, LLC
Case No.: 06-436-SPHXA

Dear Ms. Bianco:

I am writing to request a postponement of the hearing set for February 15, 2007 at 10:00 a.m. Our witness works in Washington D.C. and is unavailable to attend the hearing. I spoke with the Petitioner's attorney, John B. Gontrum on January 31st and he had no objection to the postponement. I advised the County Board of Appeals office yesterday as well but was not able to request the postponement in writing until today.

If possible, please give our office some available dates and we will coordinate with the interested parties to reach an agreed date.

Thank you for your consideration.

Sincerely,

Carole S. Demilio/rmw

Carole S. Demilio
Deputy People's Counsel for Baltimore County

CSD\rmw
cc: John B. Gontrum, Esquire

K 1/31/07

Mc Cammon (2/15/07

1 Req P.P. - witness
not available -
C. Dunello will
send letter to
Board on 2/1/07
(Mr. Goltrum agreed)

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

April 14, 2006

John B. Gontrum
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. Gontrum:

RE: Case Number: 06-436-SPHXA, 5623 Baltimore National Pike

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 9, 2006.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel
McCammon Properties I, LLC 5629 Old Frederick Road Baltimore 21228

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development Management

DATE: March 27, 2006

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For March 27, 2006
Item Nos. 429, 430, 431, 432, 433, 434, 435, 436, 437, 439, 440, and 441

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-03272006.doc

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 21, 2006

ATTENTION: Zoning Review planners

Distribution Meeting of: March 20, 2006

Item No.: Item Numbers 427 through 434 and 436 through 439 and 441

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.

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

LT. Roland P. Bosley Jr.
Fire Marshal's Office
PHONE 887-4881
MS-1102F

cc: File

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

SHA
State Highway Administration
Driven to Excel
Maryland Department of Transportation

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

Date: 3.21.06

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

RE: Baltimore County
Item No. 436 JJS

Dear. Ms. Matthews:

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

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

Very truly yours,

L. T. Gredlein

Steven D. Foster, Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: April 11, 2006

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 6-436- Special Exception**

The Office of Planning has reviewed the above referenced case(s) and requests that the petitioner add a note to the plan stating the following:

The existing building and use should meet all applicable current zoning regulations (i.e. the existing roof signage is not permitted and should be removed).

For further questions or additional information concerning the matters stated herein, please contact Dennis Wertz in the Office of Planning at 410-887-3480.

Prepared By: Curtis Murray

Division Chief: Lynn Lorsam

CM/LL

W:\DEVREV\ZAC\6-436.doc

RE:	PETITION FOR SPECIAL HEARING SPECIAL EXCEPTION & VARIANCE 5623 Baltimore National Pike; S/S Old Frederick Road, 572' W c/line Harlem Lane 1st Election & 1st Councilmanic Districts Legal Owner(s): McCammon Properties I, LLC Petitioner(s)	* * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 06-436-SPHXA

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

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 23rd day of March, 2006, a copy of the foregoing Entry of Appearance was mailed to John B. Gontrum, Esquire, Whiteford, Taylor & Preston, LLP, 210 W Pennsylvania Avenue, Towson, MD 21204 , Attorney for Petitioner(s).

RECEIVED
MAR 2 3 2006
Per

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

May 19, 2006

Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re: PETITION FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE
S/S of Old Frederick Road, 572' W c/line Harlem Lane
(5623 Baltimore National Pike)
1st Election District; 1st Councilmanic District
McCammon Properties I, LLC- Petitioners
Case No.: 06-436-SPHXA

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated May 5, 2006 by the Baltimore County Zoning Commissioner in the above-entitled case

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

RECEIVED
MAY 19 2006
Per:

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Mr. John B. Gontrum, Esquire
Mr. David Robison

Department of Permits
Development Management

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

Baltimore County

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

June 5, 2006

John Gontrum
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. Gontrum:

RE: Case: 06-436-SPHXA, 5623 Baltimore National Pike

Please be advised that an appeal of the above-referenced case was filed in this office on May 19, 2006 by People's Counsel. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
McCammon Properties, 5629 Old Frederick Road, Baltimore 21228
Louis O'Brien, 8910 Crystal Road, Eldersburg 21727
James Phelps, 5623 Baltimore National Pike, Catonsville 21228

APPEAL

Petition for Special Hearing, Special Exception & Variance
5623 Baltimore National Pike
S/side of Old Frederick Road, 572' west of centerline of Harlem Lane
1st Election District – 1st Councilmanic District
Legal Owners: McCammon Properties, I, LLC

Case No.: 06-436-SPHXA

Petition for Special Hearing & Special Exception & Variance (March 9, 2006)

Zoning Description of Property

Notice of Zoning Hearing (March 21, 2006)

Certification of Publication (The Jeffersonian – April 4, 2006)

Certificate of Posting (April 3, 2006) by SSG Robert Black

Entry of Appearance by People's Counsel (March 23, 2006)

Petitioner(s) Sign-In Sheet - One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet – None

Zoning Advisory Committee Comments

Petitioners' Exhibit
1. Site Plan
2. Photographs (A thru C)
3. Zoning Order for 06-142-X (C & D Pawn Shop)
4. Pre 7/6/95 Approval Pawn Shops
5. State of MD Licenses (Collectively)
6. Police Department Letters of Support (A thru B)
7. Letters of Support from Local Businesses (A thru D)

Protestants' Exhibits:
1. Letter in opposition from David Robison – Westgate Community Association

Miscellaneous (Not Marked as Exhibit)
1. Westlaw Documents

Zoning Commissioner's Order (Special Exception/Special Hearing – GRANTED; Variance – DISMISSED – May 5, 2006)

Notice of Appeal received on May 19, 2006 from People's Counsel

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
John Gontrum, 210 W. Pennsylvania Avenue, Towson 21204
McCammon Properties, LLC, 5629 Old Frederick Road, Baltimore 21228
Louis O'Brien, 8910 Crystal Road, Eldersburg, 21727
James Phelps, 5623 Baltimore National Pike, Catonsville 21228

date sent June 6, 2006 klm

Case No.: 06-436-SPHXA

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	SITE PLAN	Letter in OPPOSITION David Robison - Westgate Community Assoc.
No. 2	PHOTO'S - Collectively 2-A 2-B - 2C	
No. 3	ORDER 06-142X for C & D Pawn, Inc.	
No. 4	PRE 7/6/95 APPROVAL PAWN SHOPS	
No. 5	Collectively State of Md Licenses	
No. 6	LETTERS OF SUPPORT POLICE DEPT 6A - 6B Officer ZOMBRO Lt. BRADLEY	
No. 7	Community Business People in Support 7A thru 7D	
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

PAWN BROKERS
VARSITY
CLEANERS

PETITIONER'S

EXHIBIT NO. 3

.31/05 JM

IN RE: PETITION FOR SPECIAL EXCEPTION N/W corner of Charing Cross Shopping Ctr. 1st Election District 1st Councilmanic District **(5210A Baltimore National Pike, Charing Cross Shopping Center)**	* * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
Honolulu Ltd. By: Joel Winegarden, *Legal Owner* **and** C & D Pawn, Inc, *Lessee* *Petitioners*	* * *	CASE NO. 06-142-X

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Exception filed by the legal owner of the subject property, Honolulu, Ltd., by Joel Winegarden and the lessee, Joseph DeSimone. The Petitioners are requesting a special exception for property located at 5210A Baltimore National Pike, Charing Cross Shopping Center, in Baltimore County. The special exception request is to allow relocation of a pawnshop under Sections 233.4 and 436 of the Baltimore County Zoning Regulations (B.C.Z.R).

The property was posted with Notice of Hearing on October 15, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on October 13, 2005 to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 502.1 of the B.C.Z.R. - *Special Exceptions*

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air; [Bill No. 45-1982]

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the sprit and intent of these Zoning Regulations; [Bill No. 45-1982]

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 zone. [Bill No. 74-2000]

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Office of Planning dated October 4, 2005, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing in support of the request were Frank and Joseph DeSimone, Petitioners. Also appearing at the hearing on behalf of the Petitioner was Thomas Church, P. E. who prepared the site plan. Arnold Jablon, Esquire represented the Petitioners. There were no protestants or citizens who attending the hearing. Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Testimony and evidence presented in this case indicated that this property is a vacant bay of the Charing Cross Shopping Center, which contains 1800-sq. ft.. The center is zoned BM-CCC and is 3.2 acres in size. The Petitioners propose to move their existing pawn shop which is presently located in a similar shopping center approximately 1/ 4 mile to the west of this location.

Mr. Jablon proffered that the Petitioners have operated a licensed pawn shop for 10 years in the Ridgely Shopping Center without any problem. They handle no firearms. They conform to all regulations. He presented a letter of commendation from the adjacent community association indicating that they were an asset to the community. See Exhibit 4. He proffered that this request

conforms to Section 436 of the B.C.Z.R. in regard to number and location of pawn shops. Hours of operation are 10 AM to 7 PM Monday through Friday and 10 AM to 6 PM on Saturday.

However, the owner of the center in which they are now located, Honolulu LTD, is in the process of renovating the center and invited the Petitioners to move their business to the Charing Cross Center which Honolulu also owns. Both centers are small strip configurations serving the same local communities. The new location is surrounded by commercial uses such as restaurants, stores, fuel service garage, etc.

There is a residential community behind the center, which is separated from the center by a private alley. The center of this alley is the residential zone line designating the center's BM-CCC zoning and residential community's DR 10.5 zoning. The rear of the pawn shop itself would be 41 feet from the residential zoning line. Mr. Jablon opined that this configuration means that the pawn shop itself does not abut the residential zoning line and therefore Section 463.3 A regarding fences and buffering does not apply. He pointed out, however, that there is a substantial line of trees and vegetation along the center's side of the alley separating the zones. See Exhibit 1. The center meets all parking regulations and generally is underutilized. Signage will conform to Section 436.3.B. By voluntary agreement, the Petitioner will not use the word "pawn" or the three ball pawn symbol in signage or advertising but rather will designate the business as jewelry and loan.

In summary, he opined that the location of this pawn shop at the proposed location will not adversely affect the neighborhood and the request meets each criteria of Section 502.1 of the B.C.Z.R.

Findings of Fact and Conclusions of Law

I find that this pawn shop does not abut a residential zone line and therefore the provisions of Section 436.3 A do not apply. However it is not the lineal distance from the building to the zone line (41 feet in this case) that triggers the buffer requirement. If this were the case, the only time the buffer would be required would be if the building were physically located on the zone line itself,

a rare occurrence indeed. Free standing pawn shops with surrounding parking fields trigger the buffer even if the building is not located on the zone line.

However pawn shops located in shopping centers have parking fields in the general parking areas of the center. Here the general parking area is on the other side of the center buildings from the residential zone. Presumably customers of this pawn shop will not approach the protected residential zone. That said, I think the spirit of the regulation is essentially being complied with given the line of trees and vegetation along the alley behind the center.

In regard to the impact of this pawn shop on the community, the testimony and evidence indicated this is simply the transfer of the existing pawn shop in a shopping center on Rt. 40 to a new location in a shopping center on Rt. 40. It appears the existing operation has a satisfactory track record and I see no reason that will not continue at the new location. Consequently, I find that the use of the subject property as shown in Petitioner's Exhibit 1 will not adversely affect the health, safety or welfare of the community and meets all the criteria of Section 502.1 of the B.C.Z.R. Therefore, I will grant the special exception to allow relocation of a pawn shop under Sections 233.4 and 436 of the Baltimore County Zoning Regulations (B.C.Z.R) at the subject property in accord with the conditions listed.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' request for special exception should be granted subject to conditions.

THEREFORE, IT IS ORDERED, this 15 day of November, 2005, by the Deputy Zoning Commissioner, that the Petitioners' request for special exception to allow relocation of a pawn shop under Sections 233.4 and 436 of the B.C.Z.R. and to confirm that the buffer specified in Section 436.3 is not required, be and is hereby GRANTED, subject, however, to the following conditions:

1. Hours of operation shall be 10 AM to 7 PM Monday through Friday and 10 AM to 6 PM on Saturday.

2. The Petitioner shall not sell or handle firearms.

3. All transactions shall be interior to the building.

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

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:dlw

PAWN SHOPS WITH PRE-7/6/95 APPROVAL

REFERENCE WITH PAWN SHOP BILL #112-95

Post-it® Fax Note 7671 | Date 3-5-98 | # of pages ▶ 1
To Walter Willams | From Tabe Sullivan
Co./Dept. Maryland Electronic Publishing | Co. Zoning
Phone # 233-5200 | Phone # (410) 887-3391
Fax # (410) 296-2765 | Fax # (410) 887-3091

Baltimore National Pike, 5204
County Pawnbrokers
Licensee: James Howard Phelps

Baltimore National Pike, 5516
C&D Pawn & Loan
Licensee: Deborah Ann Cornias

Country Ridge Lane, 1508
Quick Cash
Licensee: Meyer Scherr

Dundalk Avenue, 3401
Fast Cash Pawnbrokers
Licensee: Christopher J. Debard

East Drive, 5305
National Gold & Silver Exchange, Inc.
Licensee: John Roylin Little

Eastern Avenue, 138
Gold Marina Limited
Licensee: Howard I. Dublick

Eastern Boulevard, 1227
Famous Pawn, Inc. (FKA Pawn-It, Inc. Essex)
Licensee: Faye Lee Kemon

Liberty Road, 5912
Liberty Loan & Jewelry Company
Licensee: John Thomas Glorioso

Liberty Road, 7106
Gold Trading Center 1
Licensee: Zakhar Trustsai

Liberty Road, 8702
Gold Trading Center III
Licensee: Vladimir Leytush

North Rolling Road, 708
A&M Jewelers, Inc./B.A.D.G.E., Inc.
Licensee: Sergio Arturo Acle

Poplar Place, 1709 (Transferred from 75 Shipping Place - zoning case #97-25-SPHX)
Family Jewelry and Pawn
Licensee: Harry James Ohle

PETITIONER'S
EXHIBIT NO. 4

Comptroller of the Treasury
Sales and Use Tax Division
301 W. Preston Street
Baltimore, Maryland
21201-2383

Louis L. Goldstein
Comptroller of the Treasury

MARYLAND
SALES & USE TAX LICENSE

This license must be displayed prominently.
A separate license is required for each place of business.

Sales and Use Tax Registration Number	Issue Date
06291682	04/17/92

PHELPS JAMES HOWARD
COUNTY PAWN BROKERS
214 BALTIMORE NATL PI
TIMORE MD 21229

01

PETITIONER'S

EXHIBIT NO. 5

30 County

State of Maryland
License

03799112
03117911
06291682

03

PHELPS JAMES HOWARD
COUNTY PAWN BROKERS
5623 BALTO NATL PI
CATONSVILLE MD 21228

CODE	UNIT	TYPE OF LICENSE	NO OF LIC	COST
1	002	CHAIN STORE	1	5.00
71	50.	TRADER'S LICENSE	1	150.00

DATE OF ISSUE
MO DAY YR
02/09/2004

MONTHS PAID
12

ISSUING FEES	4.00		
TOTAL	159.00	40.30	AMOUNT PAID 199.30

THIS LICENSE MUST BE PUBLICLY DISPLAYED
AND EXPIRES ON **APRIL 30, 2004**

ISSUED BY
SUZANNE MENSH, CLERK OF CIRCUIT COURT
401 BOSLEY AVENUE
TOWSON, MARYLAND 21204-6754

MBR

LICENSEE

30

State of Maryland 03 558229

558229
03117911

License

PHELPS JAMES HOWARD
COUNTY PAWN BROKERS
5623 BALTO NATL PI
CATONSVILLE MD
21228

01

CODE	UNIT	TYPE OF LICENSE	NO OF LIC	COST
71	50.	TRADERS	1	150.00
01	002	CHAIN STORE	1	5.00

DATE OF ISSUE
MO DAY YR
02/01/02

MONTHS PAID
12

ISSUING FEES	4.00	1/31pm	
		24%	AMOUNT PAID
TOTAL	159.00	37.20	196.20

06291682

THIS LICENSE MUST BE PUBLICLY DISPLAYED
AND EXPIRES ON THE LAST DAY OF APRIL, 2002

ISSUED BY
SUZANNE MENSH, CLERK
CIRCUIT COURT - BALTIMORE COUNTY
401 BOSLEY AVE., P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

CO/ST 802

LICENSEE

30

State of Maryland 03 678506

03678506
03117911

License

PHELPS JAMES HOWARD
COUNTY PAWN BROKERS
5623 BALTO NATL PI
CATONSVILLE MD
21223

02

CODE	UNIT	TYPE OF LICENSE	NO OF LIC	COST
71	50.	TRADERS	1	150.00
01	002	CHAIN STORE	1	5.00

DATE OF ISSUE
MO DAY YR
08/15/02

MONTHS PAID
12

06291682

ISSUING FEES	4.00		
			AMOUNT PAID
TOTAL	159.00	21.70	180.70

THIS LICENSE MUST BE PUBLICLY DISPLAYED
AND EXPIRES ON THE LAST DAY OF APRIL, 2003

ISSUED BY
SUZANNE MENSH, CLERK
CIRCUIT COURT - BALTIMORE COUNTY
401 BOSLEY AVE., P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

CO/ST 802

LICEI

30

State of Maryland License

03 012368

012368
03117911

PHELPS JAMES HOWARD
COUNTY PAWN BROKERS
5204 BALTO NATL PI
BALTIMORE MD
21229

97

CODE	UNIT	TYPE OF LICENSE	NO OF LIC	COST
71	40.	TRADERS	1	125.00
01	002	CHAIN STORE	1	5.00
		ISSUING FEES		4.00
		TOTAL		134.00

DATE OF ISSUE
MO DAY YR
05/01/97

MONTHS PAID
12

AMOUNT PAID

LOCALITY: 00
TRADERS 125.00
CHAIN STORE 5.00
ISSUE FEE: 4.00
TOTAL 134.00
Receipt# 207411
BY JP BLK#2347
Apr 23, 1997 08:06AM

06291682

ISSUED BY:
SUZANNE MENSH, CLERK
CIRCUIT COURT - BALTIMORE COUNTY
401 BOSLEY AVE., P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

THIS LICENCE MUST BE PUBLICLY DISPLAYED
AND EXPIRES ON THE LAST DAY OF APRIL, 1998

COT/ST 802

LICENSEE

30

State of Maryland License

03 887161

887161
03117911

PHELPS JAMES HOWARD
COUNTY PAWN BROKERS
5204 BALTO NATL PI
BALTIMORE MD
21229

96

CODE	UNIT	TYPE OF LICENSE	NO. OF LIC	COST
71	30.	TRADERS	1	100.00
01	002	CHAIN STORE	/	5.00
		ISSUING FEES		4.00
		TOTAL		109.00

DATE OF ISSUE
MO. DAY YR.
6-18-96

MONTHS PAID
12

XX

AMOUNT PAID
5/31

LOCALITY: 00
TRADERS 100.00
CHAIN STORE 5.00
ISSUE FEE: 4.00
TOTAL 109.00
Receipt# 177546
BY JP BLK#2353
Jun 18, 1996 10:46AM

06291682

ISSUED BY:
SUZANNE MENSH, CLERK
CIRCUIT COURT - BALTIMORE COUNTY
401 BOSLEY AVE., P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

THIS LICENSE MUST BE PUBLICLY DISPLAYED
AND EXPIRES ON THE LAST DAY OF APRIL, 1997

COT/ST 802

To Whom It May Concern:

I am currently assigned to the Wilkens Precinct's Investigative Services Team with the Baltimore County Police Department. I've been a detective at the Wilkens Police Station for the past 7 and have been with the department for the past 11 years. My current assignment requires myself and other members of the unit to interact with various local pawnshops.

I had numerous positive contacts with County Pawnbrokers, located at 5623 Baltimore National Pike Catonsville, Md. 21228. Most all of the interactions have been with James Phelps, the proprietor of the establishment. I have always found Mr. Phelps to be extremely honest and professional in his dealings with myself, as well as, the Baltimore County Police Department. Mr. Phelps has always been a valuable assistance when needed.

Detective Tim J. Zombro #3940
Baltimore County Police Department
Wilkens Precinct/Investigative Services Team
901 Walker Avenue
Catonsville, Md. 21228
(410) 887-0872 Precinct
(410) 744-1534 Office

Pet 6A

To Whom It May Concern,

At the time that James Phelps opened County Pawnbrokers, in April 1992, I was a Burglary Detective with the Baltimore County Police Department and had numerous dealings with him professionally until my retirement in 1997. I always found Mr. Phelps to be honest, above board, of high moral values and to have integrity.

Upon my retirement from the Baltimore County Police Department, I became a sworn member of the Sykesville Police Department and have continued to have professional dealings with Mr. Phelps and as always find him to be helpful and honest.

Lieut. E. Lee Bradley
Sykesville Police Department
7547 Main St.
Sykesville, Md. 21784
410 795 0757

Pet. 6B

SUPER LIQUORS

Specializing in spirits, wines and micro brew beers

To Whom It May Concern:

I am writing with regards to Mr. Jim Phelps (c/o County Pawn). In the past few years, I have gotten to know Mr. Phelps pretty well, as we work in the same area. I consider him a friend, and have found him to be a professional and honest businessman. Mr. Phelps has always been more than happy to lend a helping hand, or some helpful advice, as his experience in retail/business surpasses my own.

Sincerely,

Robert T. C. Baynes
General Manager

Pet. 7A

5605 Baltimore National Pike • Baltimore, Maryland 21228 • (410) 747-5756 • Fax (410) 747-2260

Louis J. Weinkam, Sr.
Louis J. Weinkam, Jr.*
*Also admitted in D.C.

Weinkam
Weinkam P.A.

Attorneys At Law
1002 Frederick Road • Catonsville, Maryland 21228

Ph: (410) 744-3256
Fax: (410) 744-3423
Web: www.weinkam.com
Email: lou-jr@weinkam.com
lou-sr@weinkam.com

March 30, 2006

To Whom It May Concern:

RE: Master Care Flooring

Dear Sir or Madam:

Please note that Master Care Flooring has been outstanding in their support of The Catonsville Santa House. They originally installed the floor for no charge. Since that time they have resurfaced and made several repairs to the floor. The Catonsville Santa House is a non-profit operation and without the services of institutions like Master Care Flooring, it would not be able to exist.

Should you have any questions, please feel free to contact my office.

Very truly yours,

LOUIS J. WEINKAM, JR.,
Chairperson Catonsville Santa House

LJWjr jap

W
&W

Pet. 7B

Capital One calibration
5202 Baltimore National Pike
Suite 103
Baltimore, Maryland 21229

To: Whom it concerns.

I'm Writing with regards to Mr. Jim phelps (County Pawn). I've known Mr. Phelps for 15 years. Over the last 15 years we have not only worked in the same area we have become friends. Mr. Phelps enter action with his customers is not that of a regular pawn shop his customer affectingly referrer to him as pop. I believe County Pawn is a asset as a retail store as well as pawn shop.

Thank you
Craig Whittington
Ceo. Of Capital One calibration
410.788.8700

410.788.8700 e-mail: service@capitalonecalibration.com Fax:410.788.3141
Servicing All Makes and models of Pipettes

Pet 7c

Coolidge Properties, LLC
5621 Old Frederick Road
Catonsville, MD 21228
Phone (410)-747-0678 & Fax (410)-788-3623

April 4, 2006

To Whom It May Concern:

I have known Russell Sterner and Louis O'Brien for the past five (5) years. Together they own and manage a flooring company know as Mastercare Flooring. They rent approximately 5,000 square feet in a building that I own. Their business practices are moral and their work ethics are solid.

If you require any further information, please do not hesitate to call me.

Sincerely,

Michael J. Arnold
Managing Member

Pet. 10

06-436-SPHXA

Peoples Counsel Exhibits

1. 200 scale zoning Map
2. Bill 112-95
3. Report to the Planning Board

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1995, LEGISLATIVE DAY NO. 12

BILL NO. 112-95

MR. KEVIN KAMENETZ, COUNCILMAN

BY THE COUNTY COUNCIL, JUNE 5, 1995

A BILL ENTITLED

AN ACT concerning

Pawnshops

FOR the purpose of repealing a moratorium on the establishment of pawnshops in Baltimore County; regulating the location of pawnshops; defining terms; permitting pawnshops in certain zones by Special Exception; providing certain restrictions upon existing pawnshops; limiting the total number of pawnshops permitted in the County; providing restrictions and requirements for a petition for Special Exception; and generally relating to pawnshops in Baltimore County.

BY repealing

Bill No. 14-95

BY repealing and re-enacting, with amendments,

Section 101-Definitions, by adding, alphabetically, the definition of "pawnshop"

Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments,

Sections 233.2, 233.4 and 236.4

Baltimore County Zoning Regulations, as amended

BY adding

Section 436

EXPLANATION: CAPITALS INDICATE MATTER ADDDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

P.L. Ex #2

Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council received a final report from the Planning Board, dated February 17, 1995, concerning the subject legislation and held a public hearing thereon on April 17, 1995; now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Bill No. 14-95 be and it is hereby repealed in its entirety.

SECTION 2. AND BE IT FURTHER ENACTED, that Section 101 - Definitions, of the Baltimore County Zoning Regulations, be and it is hereby repealed and re-enacted, with amendments, by adding, alphabetically, the definition of "pawnshop", to read as follows:

Section 101 - Definitions

PAWNSHOP: A BUSINESS WHICH LOANS MONEY ON DEPOSITS OF PERSONAL PROPERTY, OTHER THAN SECURITIES OR PRINTED EVIDENCES OF INDEBTEDNESS, OR DEALS IN THE PURCHASE OR POSSESSION OF PERSONAL PROPERTY ON CONDITION OF SELLING THE SAME BACK TO THE PLEDGOR OR DEPOSITOR. A PAWNSHOP IS LICENSED BY THE STATE AS A DEALER AND DEFINED BY THE STATE AS A PAWNBROKER. FOR THE PURPOSES OF THESE REGULATIONS ONLY, A BUSINESS OPERATED BY A DEALER WHO LOANS MONEY ON DEPOSITS OF SECONDHAND PRECIOUS METALS AND GEMS, ONLY, SHALL NOT BE CONSIDERED A PAWNSHOP PROVIDED THAT THE DEALER DOES NOT LOAN MONEY ON DEPOSITS OF ANY OTHER KIND OF PERSONAL PROPERTY.

SECTION 3. AND BE IT FURTHER ENACTED, that Sections 233.2, 233.4 and 236.4 of the Baltimore County Zoning Regulations, as amended, be and they are hereby repealed and re-enacted, with amendments, to read as follows:

B.M. Zone - Business, Major

Section 233 - Use Regulations

The following uses only are permitted (see Section 233.3):

233.1 - Uses permitted in B.L. Zone.

233.2

{Pawnshop.}

233.4 - Special Exceptions - The following uses when permitted as special exceptions (see Sections 270 and 502):

PAWNSHOP

B.R. Zone - Business, Roadside

Section 236 - Use Regulations

236.4 - Special Exceptions - The following uses when permitted as special exceptions (see Sections 270 and 502):

PAWNSHOP

SECTION 4. AND BE IT FURTHER ENACTED, that Section 436 be and it is hereby added to the Baltimore County Zoning Regulations, as amended, to read as follows:

SECTION 436 - PAWNSHOPS.

436.1 - LEGISLATIVE FINDINGS.

(A) THE PRINCIPLE OF COMMUNITY CONSERVATION IS AN EXPRESSED GOAL IN BALTIMORE COUNTY. THE MASTER PLAN 1989-2000 PROPOSES THAT COMMERCIAL ACTIVITIES INCOMPATIBLE WITH LOCAL NEIGHBORHOODS SHOULD BE RESTRICTED IN SUCH AREAS.

(B) THE STATE OF MARYLAND REQUIRES THAT BUSINESSES WHICH PURCHASE OR LOAN ON DEPOSIT OF SECONDHAND PRECIOUS METALS AND OTHER VALUABLES OBTAIN A "DEALER'S" LICENSE AND REPORT TRANSACTIONS TO THE LOCAL LAW ENFORCEMENT AGENCY TO HELP PREVENT STOLEN ITEMS FROM BEING TRADED.

(C) THE BALTIMORE COUNTY COUNCIL FINDS THAT AN UNDUE CONCENTRATION OR THE INAPPROPRIATE SITING OR DESIGN OF PAWNSHOP BUSINESSES HAS A REASONABLE

1. PROBABILITY OF CAUSING ADVERSE EFFECTS ON NEARBY RESIDENTIAL AND COMMERCIAL AREAS
2. BY CREATING AN IMPRESSION OF COMMUNITY DECLINE AND INSTABILITY.
3. (D) BASED UPON REPORTS SUBMITTED BY THE BALTIMORE COUNTY POLICE
4. DEPARTMENT, THE COUNTY COUNCIL FINDS THAT PAWNSHOPS WHICH DEAL IN A WIDE VARIETY
5. OF VALUABLE GOODS ARE MORE LIKELY TO HAVE A GREATER DELETERIOUS EFFECT ON
6. NEIGHBORHOODS THAN BUSINESSES WHICH DEAL EXCLUSIVELY IN SECONDHAND PRECIOUS METALS
7. AND GEMS, WHERE PAWN TRANSACTIONS ARE MERELY INCIDENTAL TO THE SALE OF NEW OR
8. SECONDHAND JEWELRY.
9. (E) SUCH ADVERSE EFFECTS WOULD DIRECTLY CONFLICT WITH THE COUNTY'S
10. COMMITMENT TO CONSERVING AND REVITALIZING OLDER COMMUNITIES AND WOULD BE
11. INORDINATELY DIFFICULT TO OVERCOME ONCE ILL-SITED PAWNSHOPS HAVE BEEN ESTABLISHED.
12. (F) THE COUNCIL FINDS THAT THE NUMBER OF EXISTING PAWNSHOPS IN
13. BALTIMORE COUNTY IS MORE THAN SUFFICIENT TO MEET THE NEEDS OF THE COMMUNITY AND
14. THAT IT IS CONSISTENT WITH THE INTENT OF THESE REGULATIONS FOR PROMOTING THE
15. PUBLIC HEALTH, SAFETY AND WELFARE TO ESTABLISH A LIMIT ON THE TOTAL NUMBER OF
16. BUSINESSES IN BALTIMORE COUNTY WHICH LOAN ON DEPOSIT OF ITEMS OTHER THAN
17. SECONDHAND PRECIOUS METALS AND GEMS.
18. 436.2 - PROCEDURE
19. (A) THE CHIEF OF POLICE, BASED ON TRANSACTION SHEETS SUBMITTED BY
20. LICENSED DEALERS, SHALL REPORT TO THE DIRECTOR OF PERMITS AND DEVELOPMENT
21. MANAGEMENT THE NAMES AND ADDRESSES OF ALL LICENSED DEALERS IN BALTIMORE COUNTY
22. WHO, IN CALENDAR YEAR 1995, MADE LOANS ON DEPOSIT OF AN ITEM OTHER THAN A
23. SECONDHAND PRECIOUS METAL.
24. (B) UPON RECEIPT OF A DEALER'S TRANSACTION SHEET REPORTING A LOAN ON
25. DEPOSIT OF ANY ITEM OTHER THAN A SECONDHAND PRECIOUS METAL, THE CHIEF OF POLICE
26. SHALL REPORT TO THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT THE NAME AND
27. ADDRESS OF THE BUSINESS, IF THE CHIEF HAS NOT PREVIOUSLY REPORTED THIS INFORMATION
28. TO THE DIRECTOR.

(C) FOR ANY LICENSE REPORTED TO THE DIRECTOR, THE CHIEF SHALL PROMPTLY NOTIFY THE DIRECTOR WHEN THE STATE RENEWS OR REVOKES THE LICENSE OR WHEN THE LICENSE EXPIRES.

(D) THE DIRECTOR MAY NOT ACCEPT A SPECIAL EXCEPTION PETITION FOR A PAWNSHOP IF THERE ARE TWELVE VALID DEALERS' LICENSES IN THE COUNTY USED TO OPERATE PAWNSHOPS.

(E) A DEALER MAY, BY AFFIDAVIT, ANNUALLY DECLARE TO THE DIRECTOR THAT ALL FUTURE PAWN TRANSACTIONS SHALL BE LIMITED SOLELY TO SECONDHAND PRECIOUS METALS, AND THE DIRECTOR SHALL REMOVE THE NAME AND ADDRESS OF THAT PAWNSHOP FROM THE LIST, DURING SUCH TIME AS THE AFFIDAVIT REMAINS IN EFFECT.

436.3 - BUFFER AND SIGN REQUIREMENTS.

A PAWNSHOP IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

(A) A PAWNSHOP ABUTTING A RESIDENTIAL ZONE LINE (OTHER THAN A STREET RIGHT-OF-WAY), A SCHOOL OR A CHURCH, SHALL PROVIDE A BUFFER IN THE FORM OF A SIX FOOT HIGH BOARD ON BOARD FENCE OR A BRICK WALL IN COMBINATION WITH LANDSCAPING; AND

(B) NOTWITHSTANDING THE REQUIREMENTS OF SUBSECTION 413.2:

1. ONE WALLMOUNTED BUSINESS SIGN IS PERMITTED WITH A SURFACE AREA OF NO MORE THAN TWICE THE LENGTH OF THE WALL ON WHICH IT IS MOUNTED, BUT IN NO CASE MORE THAN 50 SQUARE FEET.

2. THE PLACEMENT OF ANY SIGN SHALL BE SIMILAR TO THE PLACEMENT OF SIGNS MOUNTED ON WALLS OF NEIGHBORING BUSINESSES EXCEPT THAT NO SUCH SIGN MAY EXTEND ABOVE THE EAVES LINE OF A PITCHED ROOF OR THE PARAPET OF A FLAT ROOF BUILDING.

3. A FREESTANDING BUSINESS SIGN IS NOT PERMITTED.

4. MISCELLANEOUS EXTERIOR TEMPORARY SIGNS, AS DESCRIBED IN SUBSECTION 413.4, ARE NOT PERMITTED TO BE DISPLAYED ANYWHERE ON THE PREMISES, INCLUDING WINDOWS.

(C) THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING COMMISSIONER MAY CONTROL REASONABLY REGULATE THE LETTER SIZE, LIGHTING, COLOR AND OTHER DESIGN ASPECTS OF ALL SIGNAGE FOR CONSISTENCY AND COMPATIBILITY WITH SIGNAGE ON NEIGHBORING BUSINESSES.

(D) THE USE OF THE WORD "PAWN" OR THE USE OF THE THREE GOLDEN BALL SYMBOL DESIGNATING A PAWNSHOP IS RESTRICTED TO PAWNSHOPS, AS DEFINED IN THESE REGULATIONS, AND MAY NOT BE USED BY ANY OTHER BUSINESS.

(E) THE SALE OF FIREARMS IS PROHIBITED, UNLESS AUTHORIZED BY THE APPROPRIATE FEDERAL AND STATE AGENCIES.

436.4 - SPECIAL EXCEPTION PETITION.

IN ADDITION TO THE REQUIREMENTS OF SECTION 436.3 AND SUCH OTHER REQUIREMENTS OF THESE REGULATIONS RELATING TO A SPECIAL EXCEPTION PETITION, A SPECIAL EXCEPTION PETITION FOR A PAWNSHOP IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

(A) A PAWNSHOP MAY NOT BE LOCATED WITHIN A ONE MILE RADIUS OF ANY OTHER PAWNSHOP, AND NO MORE THAN TWO PAWNSHOPS MAY BE LOCATED IN A COUNCILMANIC DISTRICT.

(B) THE ZONING COMMISSIONER MAY REASONABLY LIMIT THE HOURS OF OPERATION OF A PAWNSHOP.

436.5 - ENFORCEMENT.

THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT SHALL PROVIDE FOR THE ENFORCEMENT OF THIS SECTION IN ACCORDANCE WITH THE PROVISIONS OF TITLE 26, ARTICLE IV OF THE BALTIMORE COUNTY CODE AND ARTICLE 5 OF THESE REGULATIONS.

SECTION 5. AND BE IT FURTHER ENACTED, that pawnshops lawfully in existence and operating on the effective date of this Act shall comply with the requirements of Section 436.3 within ~~six~~ eighteen months from the effective date of this Act.

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

SECTION 7. AND BE IT FURTHER ENACTED, that this Act is hereby declared to be an emergency measure affecting the public health, safety and welfare, and having been passed by the affirmative vote of five members of the County Council, the same shall take effect from the date of its enactment.

B11295/BILLS95

READ AND PASSED this 3rd day of July, 1995

BY ORDER

Thomas J. Peddicord, Jr.
Secretary

PRESENTED to the County Executive for his approval this 3rd day of July, 1995.

Thomas J. Peddicord, Jr.
Secretary

APPROVED AND ENACTED:

7/5/95

C.A. Ruppersberger, III
County Executive

I HEREBY CERTIFY THAT BILL NO. 112-95 IS TRUE AND CORRECT AND TOOK EFFECT ON July 6, 1995.

Vincent J. Gardina
Chairman, County Council

Introduced November 10, 1994
Planning Board Public Hearing January 5, 1995
Revised Final Report adopted February 16, 1995

Legislative Project # 94-06

PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS REGARDING PAWNSHOPS

A Final Report of the Baltimore County
Planning Board
Adopted February 16, 1995

This report is in response to Council Resolution 31-94 (Attachment 1), which requests the Planning Board to consider proposing amendments to the Baltimore County Zoning Regulations in order to require a special exception for pawnshops located in BM and BR zones.

BACKGROUND

The Zoning Regulations permit pawnshops by right in BM and BR zones, but the use is not defined. In cases where no definition is provided, the Zoning Regulations require that the most recent edition of Webster's Third New International Dictionary be consulted. That dictionary defines a "pawnshop" as: "A pawnbroker's shop" and a "pawnbroker" as: "One that loans money on the security of personal property pledged in his keeping."

Pawnshops have traditionally been located in the central business district of cities and this is true for the Baltimore region. Recently however, new pawnshops have located along the commercial corridors outside the core. As is often the case in economically hard times, the number of such businesses has grown significantly. In Baltimore City, pawnshop operations increased from 16 to 45 between 1990 and 1994. Responding to community concerns, City Council in May, 1994 adopted Bill No. 818 to strengthen the City's licensing law which regulates pawnbrokers. The bill limited the total number of pawnshops permitted in the City to 45, increased the surety bond from $10,000 to $50,000 and stiffened penalties for violations. Since City Council Bill No. 818 prevents new pawnshops from locating in the City, County residents fear that more such establishments may move into Baltimore County.

P.C. Ex #3

Regulation of Pawnshops

For centuries, pawnshops have provided a service to law-abiding citizens. However, pawnshops can also be places to "fence" stolen property and can attract a criminal element into the neighborhood in which they are located. Because pawnshops can become linked to the commission of crime, jurisdictions are permitted to apply stricter regulations to pawnshops than to other kinds of businesses (McQuillin, Municipal Corporations, Vol. 19, Sec. 26.62). In most jurisdictions, pawnshops are subject to special licensing requirements, in addition to the standard vendor's license and local zoning.

From 1964 to 1982, Baltimore County licensed pawnshops. The regulations were codified in Title 19 of the County Code. They defined "pawnbroker" and regulated the manner in which the business was to be conducted. The County required that records be kept of pawned items involving precious metals or stones, serialized items, electronic equipment, furs, bicycles and other valuables. These records had to be submitted to the Police Department daily. Title 19 also required a pawnbroker to file a $10,000 bond with the County.

In 1981, the State adopted regulations for the licensing of Secondhand Precious Metal Object Dealers as part of the Maryland Annotated Code (Art. 56, Secs. 416-425). A 1982 amendment expanded the coverage of the law to include pawnbrokers. In 1992, this part of the Annotated Code was recodified as Title 12 of the Business Regulations Article. Title 12 governs all "dealers" in secondhand precious metals and numismatic items, including pawnbrokers. The State law recognizes that the business practices of the various dealer types are similar and makes them subject to the same licensing procedures. At the same time, the State acknowledges that they are different by providing definitions which distinguish "dealers" from "pawnbrokers":

> "Dealer" means a person engaged in the business of buying, acquiring, or trading commercially with members of the public in secondhand precious metals in this State or, unless otherwise provided, a pawnbroker. [12-101(b)]
>
> "Pawn transaction" means a loan of money by a dealer on deposit or pledge of personal property or other valuable thing other than securities or printed evidences of indebtedness, or a purchase by a dealer of personal property or other valuable things on condition of selling the same back at a stipulated price. [12-101(f)]
>
> "Pawnbroker" means a person who engages in pawn transactions. [12-101(e)]

In addition to specifying requirements for obtaining a license, the State, since 1981, has substantially limited the authority of local jurisdictions to regulate businesses dealing in numismatic items and secondhand precious metals. This includes pawnbrokers if they

deal in such merchandise, which virtually all pawnbrokers do. Title 12, Paragraph 102 (d) states:

> Powers of county or municipal corporation.-(1) A county or municipal corporation may not enact a law to regulate dealers, coins, or numismatic items.
>
> (2) This title supersedes any existing law of a county or municipal corporation that regulates dealers, coins, or numismatic items.

The County repealed Title 19 of the County Code in the 1989 re-codification and thereby officially acknowledged the loss of its licensing power. The ordinances of Baltimore City, Anne Arundel, Prince George's and Montgomery County were somehow "grandfathered", i.e. these jurisdictions apparently retained the authority to license and regulate pawnbrokers. This is why Baltimore City was able to change its laws recently.

Title 12 requires pawnbrokers to obtain a license from the State Department of Licensing and Regulations which is subject to renewal every two years. Applicants, including each employee, must be finger-printed and have a criminal background check. Pawnbrokers are required to keep a daily record of valuables. The registration involves filling out a form which provides a description, any serialized numbers and the assessed value of the pawned item, as well as the name and address of the client. The local law enforcement agency administers this part of the Annotated Code.

In many ways the State's regulations simply duplicate or replace the County's earlier provisions. However, several of the County's rules were stricter than those demanded by current State law. The Baltimore County Code required that a pawnbroker's license be obtained annually for $1,000; the State license costs only $300 and is good for two years. The County required the posting of a $10,000 bond; the State does not require a bond. Also, the County, rather than the State, had the power to deny or revoke a license and the County was free to impose its own standards.

Pawnshops in Baltimore County

The number of businesses that are licensed as secondhand precious metal object dealers and pawnbrokers in Baltimore County has increased significantly in recent years. In 1991 there were 27 dealers. By January 1995, there were 36. However, not all 36 businesses are pawnshops. Some of the businesses licensed as secondhand precious metal dealers are jewelry stores that buy and sell estate jewelry, but never loan money on personal property. Others are jewelry stores that trade in secondhand precious metals, but also loan money on such items. The third category are businesses which, in addition to loaning money on secondhand precious metals, also deal in "hard goods", the term used by the pawnbroker industry for such

valuables as electronic equipment, furs, guns, musical instruments, etc.

As far as the State is concerned it is of no interest whether a dealer purchases jewelry, sells jewelry or pawns hard goods. All businesses receive the same license. From a community conservation point of view, however, it is important to make a distinction between the various business types. A jewelry store that buys or provides loans for secondhand precious metals looks in outward appearance very much like any other jewelry store. Tucked into a neighborhood shopping center, announcing "loan on deposit" service on a small, discreet sign inside or outside of the store, some of these shops have served an established clientele for generations. In this type of store loaning money on deposit usually makes up only a small part of the overall business volume.

In contrast to jewelry stores, the principal business of dealers of "hard goods" is to loan money on personal property. These businesses are highly visible and tend to locate along major commercial roads where they are easily accessible. These shops often use big, colorful, flashy signs that advertise in no uncertain terms that this is a place where items can be pawned and "quick cash" obtained. Of the 36 dealers in Baltimore County, 11 deal in hard goods. Four opened in 1994.

In general, pawnshops have the reputation of attracting a low income clientele. Low income people may have difficulty getting loans due to bad credit ratings or lack of collateral. While others have the option of using credit cards, or applying to banks or other financial institutions to obtain loans, poorer people may need to resort to pawnshops. Representatives of the pawnbrokers' industry feel they provide a service to those who are less fortunate and think of themselves as being the "poor man's bankers". Additionally they point out that pawnbrokers also have middle and upper income customers. These customers may want to obtain cash discreetly or need funds to pay a bill or meet payroll while waiting for a payment from a third party.

The Planning Board could not locate documentation that pawnshops cause neighborhood instability or an increase in crime, yet it is well established that perceptions affect real estate decisions. The presence of a pawnbroker, especially a shop which is clearly and loudly advertised as such, is often seen as a sign of neighborhood decline and such an image could influence the decision of established businesses to stay in the area and affect what types of new businesses will locate there. The presence of a pawnshop could likewise sway the real estate decisions of nearby homeowners.

DISCUSSION

The licensing regulations discussed above extend only to the conduct of the business trade. Land use considerations were neither addressed by the County in Title 19, which formerly controlled pawnshops, nor are they included in the State regulations that govern

pawnshops today. To ascertain that the County has authority to enact zoning regulations for pawnshops, the Planning Board asked the County Attorney to review the preemption provision of Title 12 (see p. 3) and was advised that the State's regulations do not preempt the County's authority to establish location, setback and other customary zoning regulations, including conditions for granting special exceptions.

The majority of the nearby metropolitan jurisdictions permit pawnshops by right in some or all business zones. Pawnshops generally are not defined and are not separately catalogued in the use listings, i.e. they are regulated the same as other retail uses. The one exception is Fairfax County, Virginia, which defines pawnshops and permits them by special exception in three of its nine commercial districts. The standards which Fairfax County uses as a basis for reviewing a special exception request are open ended. An applicant must prove that the use proposed would be "in harmony" with the adopted comprehensive plan as well as with the "general purpose and intent of the applicable zoning district regulations" and that it would be harmonious with and would not adversely affect the use or development of neighboring properties. The special exception requirement for pawnshops was enacted in 1992 and has not yet been tested although two petitions have recently been submitted. Also, Fairfax County, which has a population 18 percent larger than Baltimore County, allows no more than 12 pawnshops in the County.

Baltimore County currently has no way to control the location of pawnshops <u>within</u> BR and BM zones. Provided that the dealer's license is obtained from the State, pawnshops can locate anywhere in these zones. The State is not required to forward license applications to the County to determine compliance with local zoning.

RECOMMENDATIONS

The Planning Board recommends creating a new section in the Zoning Regulations which would deal exclusively with pawnshops. The Section would include a statement of findings that would provide background information and explain the legislative intent of the proposed regulations.

A definition should be added to Section 101 to ensure that the proposed regulations would apply only to dealers licensed by the State who engage in pawn transactions. The Planning Board recommends that the definition exclude dealers who only trade in secondhand precious metals or gems, for the reasons stated above. The definition should also exclude other businesses which deal in secondhand goods such as thrift shops or consignment stores since these businesses do not fall within the police power of the State dealer's license.

The total number of pawnshops, as defined in the Zoning Regulations, should be limited to eleven. The cap would prevent any other pawnshop from locating in Baltimore County until an existing pawnshop license expires or is revoked by the State. The proposed regulations would allow the existing eleven businesses which pawn

hard goods" to remain in operation, even if there is a change in wnership, as long as the business continues at the same site and the ew owner obtains a State dealers' license.

The cap was suggested by the Baltimore County Police Department ecause of recent increases in the number of pawn transactions. apping the total number of pawnshops in Baltimore County would acilitate the Police Department's efforts in retrieving stolen roperty. Other reasons for the cap are that the existing pawnshops ccommodate local needs and additional business would undermine the ounty's community conservation efforts.

In addition to the number of pawnshops, another concern is that he concentration of pawnshops in one place could accelerate the ecline of a marginal neighborhood or business area. A spacing equirement which sets a minimum distance between pawnshops would ddress this problem. The Planning Board proposes a one mile radius. epresentatives of communities that already have pawnshops favor a istance requirement of three to five miles. The Planning Board feels hat a three to five mile distance requirement, in addition to a cap, s unnecessarily restrictive and would force any new pawnshops into reas in which there are presently none. This policy would not serve he County's community conservation goal. On the other hand, a one ile distance requirement, combined with the cap, would prevent the ndue concentration of pawnshops in any one area.

Provided the cap is not exceeded and the spacing requirement is et, any new pawnshop should be permitted in BM and BR zones by pecial exception rather than by right. The special exception process s designed to allow for discretionary approval in cases where uses hat are permitted in the zone are not suited for all locations. A se permitted by special exception cannot be "detrimental to the ealth, safety, or general welfare of the locality involved" (B.C.Z.R. ection 502.1, paragraph a). The siting of a pawnshop could have an ffect that is detrimental to the community. The fact that much of itle 12 in the State law is devoted to procedures intended to prevent the trade in stolen property shows that, in the eyes of the law, awnshops are more likely to become a locus of criminal activity than ther retail uses. The special exception process would give the ounty some control over where pawnshops might be located, which supports the County's commitment to conserve communities.

Approval by special exception also provides an opportunity to apply performance standards that can help ensure that a use will be ore compatible with its surroundings. Mandating that a landscape uffer be provided where pawnshops abut a residential zone line, hurch or school would further strengthen the special exception requirement. BR and BM zones are frequently adjacent to residential zones and a buffer in the form of a six foot high fence in combination with landscaping may lessen some of the safety concern of residents.

While field checking pawnshops, it became apparent that businesses with glaring signs and large lettering have a greater negative impact on a neighborhood than businesses using discreet signage. The Planning Board recommends giving the Zoning Commissioner broad authority to approve the placement, design, size of lettering and coloring of pawnshop signs. Similar requirements are presently used for business signs in CR zones and for "striptease business" signs. Also, banners and temporary signs should be prohibited.

None of the regulations proposed in this report would apply to licensed dealers who deal only in secondhand precious metals or gems, regardless of whether they purchase such items or loan on deposit.

The regulations proposed in this report only consider the land use implications of pawnshops, but many of the problems associated with pawnbrokers relate to the manner in which the business is being conducted and cannot be resolved through zoning. Establishing a higher licensing fee which covers all administrative and enforcement costs, requiring that pawnbrokers be substantially bonded, raising the penalties for violations, and increasing the holding limit for pawned items to allow more time for police investigation would together make it more likely that a pawnbroker would operate as a legitimate business. The County should also work closely with the State to assure that licenses are not issued to applicants who have not met County zoning requirements. These changes will require cooperative legislative action by the General Assembly. During the Planning Board's January 5, 1995 public hearing, State Senator Dolores G. Kelley offered support at the State level and she has introduced two bills, S.B. 317 and S.B. 318.

On February 6, 1995 the County Council enacted Bill 14-95 which places a six month "freeze" on new pawnshops. The bill allows the Council time to consider the Planning Board's recommendations and gives the County a tool to prevent any trader's license from being signed off by Zoning Administration and Development Management.

The Baltimore County Zoning Regulations, as amended, should be further amended as indicated below. Bold indicates text to be added, { } indicates text to be deleted.

1. To Section 101 add the following definitions:

   Pawnshop: A business which loans money on deposits of personal property, other than securities or printed evidences of indebtedness, or deals in the purchase or possession of personal property on condition of selling the same back to the pledgor or depositor. A pawnshop is licensed by the State as a dealer and defined by the State as a pawnbroker. For the purpose of these regulations, a business where money is loaned on deposits of secondhand precious metals, only, shall not be considered a pawnshop provided that the dealer does not loan money on deposits of any other kind of personal property.

2. In Section 233.2 -- Uses permitted by right in BM zones, delete

{Pawnshop}

3. To Section 233.4-- Uses permitted by special exception in BM zones add:

Pawnshop

4. To Section 236.4--Uses permitted by special exception in BR zones, add:

Pawnshop

5. Create a new Section:

Section 436--Pawnshops. This Section applies only to pawnshops as defined in Section 101 of these Regulations.

A. Statement of Legislative Findings and Policy

1. The principle of community conservation is an expressed goal in Baltimore County. The Master Plan 1989-2000 proposes that "commercial activities incompatible with local neighborhoods should be restricted in such areas;" and

2. The State requires that businesses which purchase or loan on deposit of secondhand precious metals and other valuables obtain a "dealer's" license and report transactions to the local law enforcement agency to help prevent stolen items from being traded; and

3. The County Council finds that an undue concentration or the inappropriate siting or design of pawnshop businesses has a reasonable probability of causing adverse effects on nearby residential and commercial areas by creating an impression of community decline and instability; and

4. The County Council finds, as reported by the Police Department, that pawnshops which deal in a wide variety of valuable goods are more likely to have a greater deleterious effect on neighborhoods than businesses which deal exclusively in secondhand precious metals, where pawn transactions are merely incidental to the sale of new or secondhand jewelry; and

5. Such adverse effects would directly conflict with the County's commitment to conserving and revitalizing older communities and would be inordinately difficult to overcome once ill-sited pawnshops have been established; and

6. The Council finds that it is consistent with the intent of these Regulations for promoting health, safety and welfare to

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND ATTACHMENT 1

LEGISLATIVE SESSION 1994, LEGISLATIVE DAY NO. 7

RESOLUTION NO. 31-94

MR. MELVIN G. MINTZ, COUNCILMAN

BY THE COUNTY COUNCIL, APRIL 4, 1994

A RESOLUTION of the Baltimore County Council to request the Planning Board to consider proposing amendments to the Baltimore County Zoning Regulations in order to allow pawn shops to be located in certain business zones of the County by special exception.

WHEREAS, the Baltimore County Planning Board from time to time considers certain revisions to the Baltimore County Zoning Regulations; and

WHEREAS, the Zoning Regulations currently authorize pawn shops to be located in the BR and BM zones of the County as a matter of right; and

WHEREAS, pawn shops are sometimes inappropriately located near schools, houses of worship and residential neighborhoods; and

WHEREAS, the Baltimore County Council believes that the location of pawn shops in these business zones deserves greater scrutiny than currently is provided for in the Zoning Regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Baltimore County Planning Board be and it is hereby requested to consider proposing amendments to the Baltimore County Zoning Regulations in order to require a special exception for the location of pawn shops in either the BR or BM zones of the County.

R03194/RES94

Verified 4-05-06

06-436-SPHXA

Petitioners Exhibits

1. Site Plan
2. OIT Arial Photo from Peoples Counsel
3. My Neighborhood Zoning - Map Output 1 page
4. State of Maryland License 4 pages
5. My Neighborhood Zoing Map 1 page
6. Pawn Shops List for bill 112-95 1 page
7. a-c Pictures of Pawn Shop
8. Deputy Zoning Commissioner order case# 06-142-X 9a-c

30 County

State of Maryland
License

03799112
03117911
06291682

03

PHELPS JAMES HOWARD
COUNTY PAWN BROKERS
5623 BALTO NATL PI
CATONSVILLE MD 21228

CODE	UNIT	TYPE OF LICENSE	NO OF LIC	COST
1	002	CHAIN STORE	1	5.00
71	50.	TRADER'S LICENSE	1	150.00

DATE OF ISSUE
MO DAY YR
02/09/2004

MONTHS PAID
12

ISSUING FEES	4.00		
TOTAL	159.00	40.30	AMOUNT PAID 199.30

THIS LICENSE MUST BE PUBLICLY DISPLAYED
AND EXPIRES ON **APRIL 30, 2004**

ISSUED BY
SUZANNE MENSH, CLERK OF CIRCUIT COURT
401 BOSLEY AVENUE
TOWSON, MARYLAND 21204-6754

MBR

PBT. Ex 4

LICENSEE

30

State of Maryland 03 558229

558229
03117911

License

PHELPS JAMES HOWARD
COUNTY PAWN BROKERS
5623 BALTO NATL PI
CATONSVILLE MD
21228

01

CODE	UNIT	TYPE OF LICENSE	NO OF LIC	COST
71	50.	TRADERS	1	150.00
01	002	CHAIN STORE	1	5.00

DATE OF ISSUE MO DAY YR
02/01/02

MONTHS PAID
12

ISSUING FEES	4.00	1/31pm	
TOTAL	159.00	24% 37.20	AMOUNT PAID 196.20

06291682

ISSUED BY
SUZANNE MENSH, CLERK
CIRCUIT COURT - BALTIMORE COUNTY
401 BOSLEY AVE., P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

THIS LICENSE MUST BE PUBLICLY DISPLAYED
AND EXPIRES ON THE LAST DAY OF APRIL, 2002

COT/ST 802

LICENSEE

30

State of Maryland 03 678506

03678506
03117911

License

PHELPS JAMES HOWARD
COUNTY PAWN BROKERS
5623 BALTO NATL PI
CATONSVILLE MD
21223

02

CODE	UNIT	TYPE OF LICENSE	NO OF LIC	COST
71	50.	TRADERS	1	150.00
01	002	CHAIN STORE	1	5.00

DATE OF ISSUE MO DAY YR
08/15/02

MONTHS PAID
12

06291682

ISSUING FEES	4.00		
TOTAL	169.00	21.70	AMOUNT PAID 180.70

ISSUED BY
SUZANNE MENSH, CLERK
CIRCUIT COURT - BALTIMORE COUNTY
401 BOSLEY AVE., P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

THIS LICENSE MUST BE PUBLICLY DISPLAYED
AND EXPIRES ON THE LAST DAY OF APRIL, 2003

OT/ST 802

LICEI

30

State of Maryland 03 012368

License

012368
03117911

PHELPS JAMES HOWARD
COUNTY PAWN BROKERS
5204 BALTO NATL PI
BALTIMORE MD
21229

97

CODE	UNIT	TYPE OF LICENSE	NO. OF LIC	COST
71	40.	TRADERS	1	125.00
01	002	CHAIN STORE	1	5.00
		ISSUING FEES		4.00
		TOTAL		134.00

DATE OF ISSUE
MO DAY YR
05/01/97

MONTHS PAID
12

AMOUNT PAID

Location: 30
TRADERS
CHAIN STORE
Issue fee:
TOTAL
Receipt#
SW JP BLKPCKY
Apr 29, 1997 08:00

06291682

ISSUED BY SUZANNE MENSH, CLERK
CIRCUIT COURT - BALTIMORE COUNTY
401 BOSLEY AVE., P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

THIS LICENCE MUST BE PUBLICLY DISPLAYED
AND EXPIRES ON THE LAST DAY OF APRIL, 1998

COT/ST 802

LICENSEE

30

State of Maryland 03 887161

License

887161
03117911

PHELPS JAMES HOWARD
COUNTY PAWN BROKERS
5204 BALTO NATL PI
BALTIMORE MD
21229

96

CODE	UNIT	TYPE OF LICENSE	NO. OF LIC	COST
71	30.	TRADERS	1	100.00
01	002	CHAIN STORE	/	5.00
		ISSUING FEES		4.00
		TOTAL		109.00

DATE OF ISSUE
MO. DAY YR.
6-18-96

MONTHS PAID
12

XX

AMOUNT PAID
5/31

Location: 30
TRADERS
CHAIN STORE
Issue fee:
TOTAL
Receipt#
SW JP BLKPCKY
Jun 18, 1996 10:40

06291682

ISSUED BY SUZANNE MENSH, CLERK
CIRCUIT COURT - BALTIMORE COUNTY
401 BOSLEY AVE., P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

THIS LICENSE MUST BE PUBLICLY DISPLAYED
AND EXPIRES ON THE LAST DAY OF APRIL, 1997

COT/ST 802

Comptroller of the Treasury
Sales and Use Tax Division
301 W. Preston Street
Baltimore, Maryland
21201-2383

Louis L. Goldstein
Comptroller of the Treasury

MARYLAND
SALES & USE TAX LICENSE

This license must be displayed prominently.
A separate license is required for each place of business.

Sales and Use Tax Registration Number	Issue Date
06291682	04/17/92

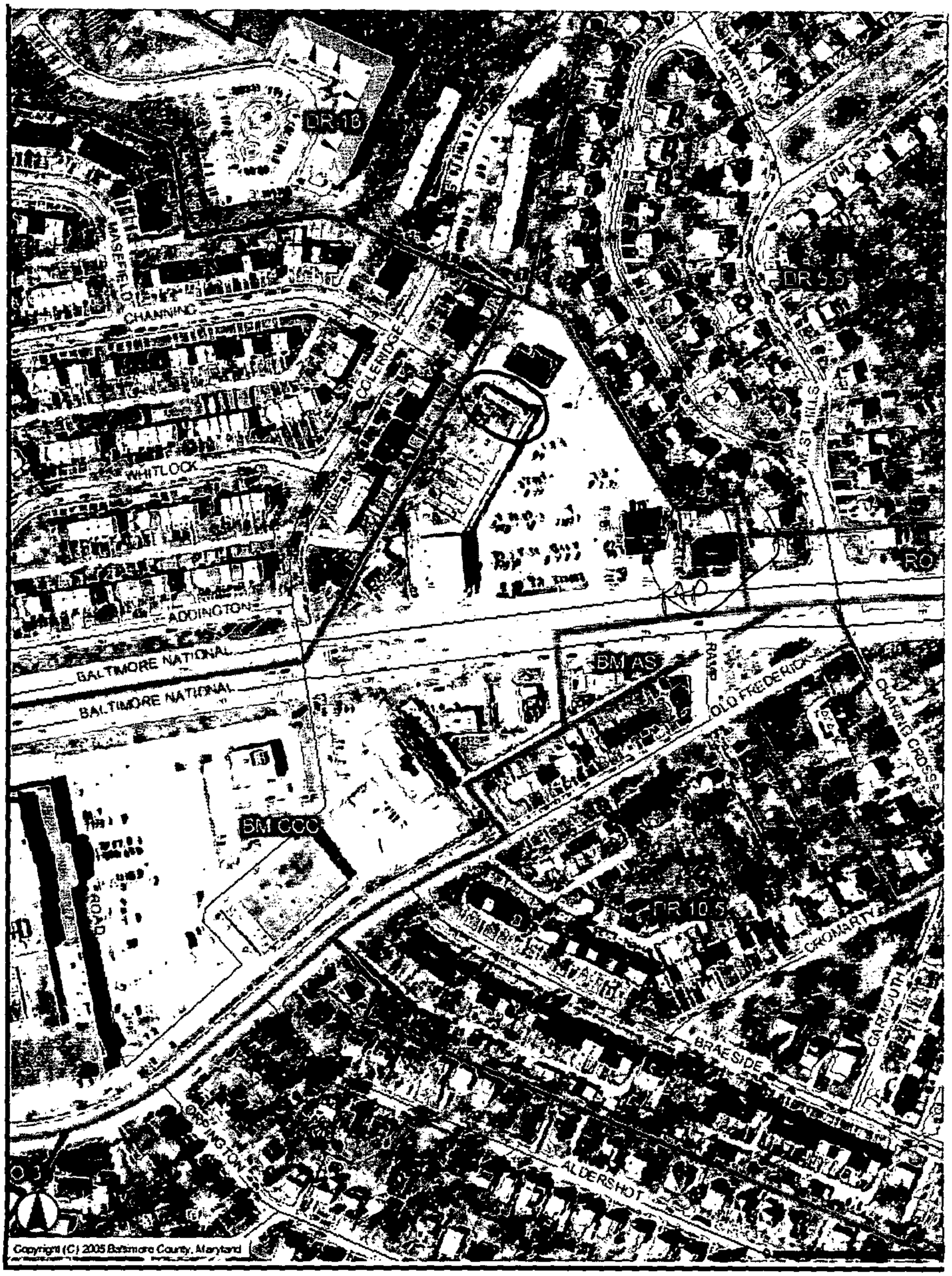
PHELPS JAMES HOWARD
COUNTY PAWN BROKERS
214 BALTIMORE NATL PI
BALTIMORE MD 21229

01

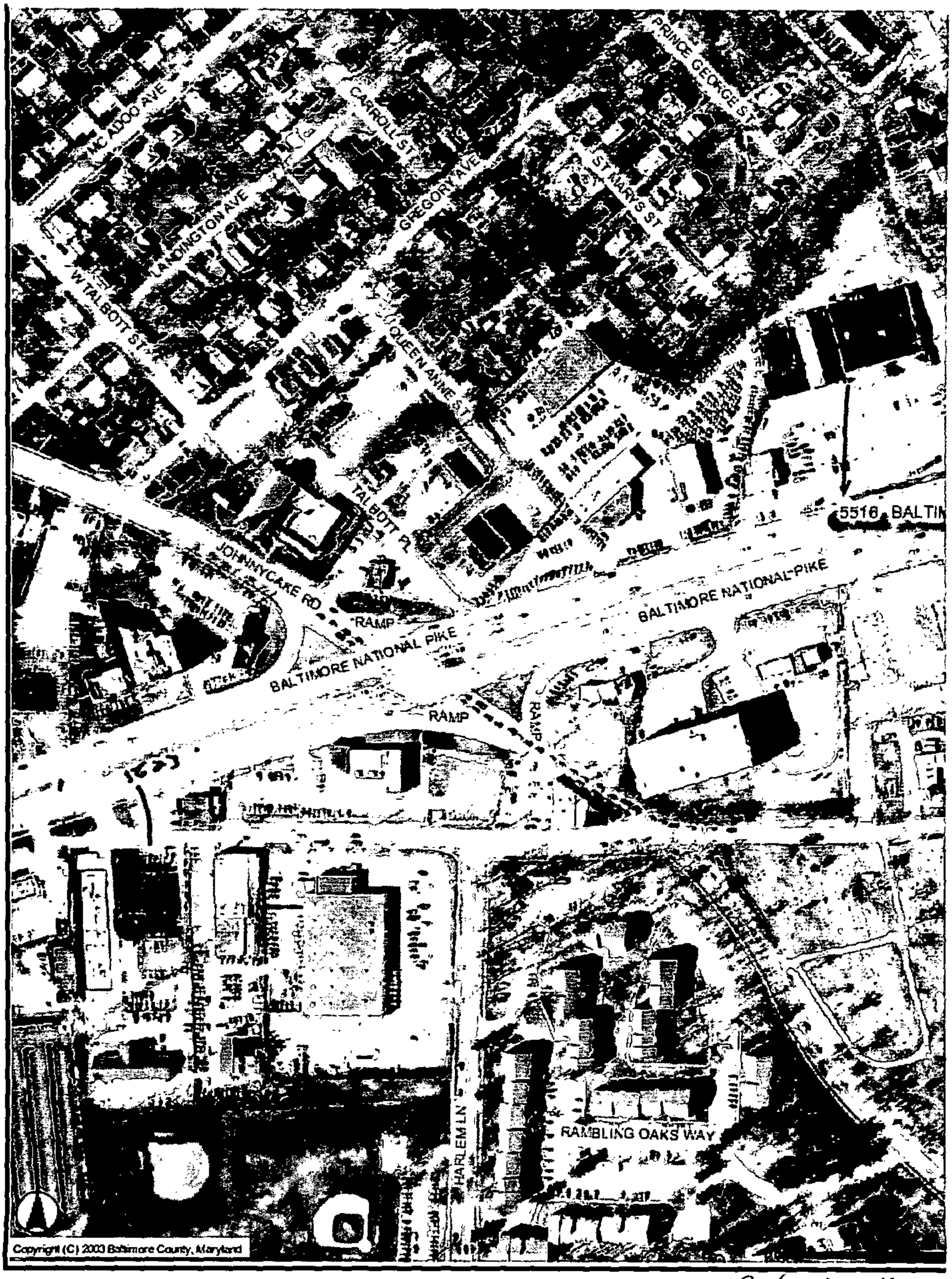
PETITIONER'S

EXHIBIT NO. 5

5210A B.W.P.



Pet. Ex #3


MC ADOO AVE
CARROLL ST
PRINCE GEORGE ST
LANDINGTON AVE
GREGORY AVE
ST MARYS ST
W TALBOTT ST
QUEEN ANNE ST
TALBOTT
5516 BALTIM
JOHNNYCAKE RD
RAMP
BALTIMORE NATIONAL PIKE
BALTIMORE NATIONAL PIKE
RAMP
RAMP
HARLEM LN
RAMBLING OAKS WAY
Copyright (C) 2003 Baltimore County, Maryland

Pet. Ex #5

PAWN SHOPS WITH PRE-7/6/95 APPROVAL

REFERENCE WITH PAWN SHOP BILL #112-95

Post-it® Fax Note 7671 Date 3-5-98 # of pages ▶ 1
To Walter Williams From John Sullivan
Co./Dept. Nolan, Plumer & Sullivan Co. PDM, Zoning
Phone # 233-5400 Phone # (410) 887-3384
Fax # (410) 296-2765 Fax # (410) 887-3827

Baltimore National Pike, 5204
County Pawnbrokers
Licensee: James Howard Phelps

Baltimore National Pike, 5516
C&D Pawn & Loan
Licensee: Deborah Ann Comias

Country Ridge Lane, 1508
Quick Cash
Licensee: Meyer Scherr

Dundalk Avenue, 3401
Fast Cash Pawnbrokers
Licensee: Christopher J. Debard

East Drive, 5305
National Gold & Silver Exchange, Inc.
Licensee: John Roylin Little

Eastern Avenue, 138
Gold Marina Limited
Licensee: Howard I. Dublck

Eastern Boulevard, 1227
Famous Pawn, Inc. (FKA Pawn-It, Inc. Essex)
Licensee: Faye Lee Kamon

Liberty Road, 5912
Liberty Loan & Jewelry Company
Licensee: John Thomas Glorioso

Liberty Road, 7106
Gold Trading Center 1
Licensee: Zakhar Truststsi

Liberty Road, 8702
Gold Trading Center III
Licensee: Vladimir Leytush

North Rolling Road, 708
A&M Jewelers, Inc./B.A.D.G.E., Inc.
Licensee: Sergio Arturo Acle

Poplar Place, 1709 (Transferred from 75 Shipping Place - zoning case #97-25-SPHX)
Family Jewelry and Pawn
Licensee: Harry James Ohle

PETITIONER'S

EXHIBIT NO. 4

BOA EX 6

Pet. Ex. #6

C
Briefs and Other Related Documents

Court of Special Appeals of Maryland.
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
v.
COUNTRY RIDGE SHOPPING CENTER, INC., et al.
No. 0952, Sept. Term, 2001.

June 3, 2002.

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

Circuit Court reversed.

West Headnotes

[1] Zoning and Planning 414 ⚷570

414 Zoning and Planning
414X Judicial Review or Relief
414X(A) In General
414k570 k. Decisions Reviewable. Most Cited Cases
Appealable final order was issued when Circuit Court remanded zoning case to county board of appeals for a de novo hearing on application for special exception to operate pawnshop in business major zone.

[2] Administrative Law and Procedure 15A ⚷760

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak754 Discretion of Administrative Agency
15Ak760 k. Wisdom, Judgment or Opinion. Most Cited Cases

Administrative Law and Procedure 15A ⚷781

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak781 k. In General. Most Cited Cases

Administrative Law and Procedure 15A ⚷784.1

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak784.1 k. In General. Most Cited Cases
An agency's factual findings and its decisions involving mixed questions of law and fact will be given deference such that reviewing court cannot substitute its judgment for that of the agency's.

[3] Administrative Law and Procedure 15A ⚷790

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak790 k. Rational Basis for

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Conclusions. Most Cited Cases

Administrative Law and Procedure 15A ⚷791

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak791 k. Substantial Evidence. Most Cited Cases
Reviewing court will accept the agency's conclusions if they are based on substantial evidence and if reasoning minds could reach the same conclusion based on the record.

[4] Administrative Law and Procedure 15A⚷ 817.1

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(F) Determination
15Ak817 Remand
15Ak817.1 k. In General. Most Cited Cases
Assuming that the membership of an administrative tribunal remains unchanged, if an appellate court is in doubt as to why the agency did what it did, it is appropriate to remand the case to the agency for nothing more than a clarification or an amplification of its reasoning.

[5] Zoning and Planning 414 ⚷728

414 Zoning and Planning
414X Judicial Review or Relief
414X(D) Determination
414k728 k. Further Proceedings by Local Authority. Most Cited Cases
On Court of Special Appeals' remand of zoning case to county board of appeals for "further proceedings" on application for special exception to operate pawnshop in business major zone, board properly clarified its prior decision that denied application, and it was not required instead to hold a de novo evidentiary hearing; while board membership changed since initial decision was made, the remand did not entail any assessment of the credibility of lay witnesses or any further first-level fact-finding.

[6] Zoning and Planning 414 ⚷607

414 Zoning and Planning
414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)1 In General
414k607 k. Variances or Exceptions, Decisions Relating To. Most Cited Cases
Contention that ordinances limiting number of pawnshops were unconstitutional because state law preempted field of pawnshop regulation, made by applicants in their appeal challenging denial of special exception to operate pawnshop in business major zone, was rendered moot by fact that county board of appeals on remand denied application on grounds that were unrelated to the ordinances. West's Ann.Md.Code, Business Regulation, § 12-101 et seq.

****426 *582** Peter Max Zimmerman (Carole S. Demilio, on the brief), Towson, for appellant.
Sebastian A. Cross (Davis K. Gildeaand Gildea, L.L.C., on the brief), Baltimore, for appellee, Southside Brokers.

Argued before KENNEY, SHARER, and CHARLES E. MOYLAN, Jr. (retired, specially assigned), JJ.
CHARLES E. MOYLAN, Jr., Judge (Retired, Specially Assigned).
The single issue before us on this zoning appeal is whether the Baltimore County Board of Appeals, on a remand to it by this Court, adequately complied with the terms of our mandate remanding for " further proceedings." We hold that, in the procedural and factual posture of this particular case, it did.

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

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the special considerations are 502.1(a) and (g):
a. Be detrimental to health, safety, or general welfare of the *locality involved;* and
g. Be inconsistent with the purposes of the zoning classification, nor in any way inconsistent with the spirit and intent of the zoning regulations.
Using the standard set forth in *Schultz v. Pritts,* 291 Md. 1, [432 A.2d 1319] [(]1981[)], "the test for considering a special exception is not whether the use will have an adverse effect, but whether the *adverse effect* at the particular location is greater than ordinarily associated with the use.... Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses. The duties *given to the Board* are to judge ... whether the use in the particular case is *in harmony* with the general purpose and intent of the plan."

***585** Properly applying *Schultz v. Pritts,* the Board then concluded that the pawnshop would have an unduly adverse impact in the intended location.
Using the *Schultz v. Pritts* standard for granting or denying a special exception-that the proposed use would have an adverse effect above and beyond what it would ordinarily have in any area-*it would appear that a pawnshop would have more than the usual adverse effects in the area of the Country Ridge Shopping Center, because the location is the focus of intense efforts at revitalization.*

(Emphasis supplied).

The Board emphasized that the neighborhood is " the highest priority revitalization area."
Contrary to the opinion of the Zoning Commissioner, who granted this Petition, we feel compelled to recognize the qualitative judgments of the County Council and the uncontradicted testimony that *this section of Essex is in the highest priority revitalization area, has the highest incidence of negative socioeconomic indicators, and has the highest incidence of major crime in the County. These adverse effects are greater in the subject neighborhood than they would be elsewhere within the zone, which is a persuasive reason for denial of the special exception for a third pawnshop in the Essex area.*

(Emphasis supplied).

At that point, to be sure, the opinion of the Board of Appeals did not stop and announce that its reasoning to that juncture was self-sufficient to justify its decision. Had it done so, this appeal would not now be before us. The Board added to its catalogue of reasons, seemingly as little more than a makeweight, the one-mile radius limitation.

Because that locational limitation was recited as one of the factors, however, it became necessary for the Board to address the applicability of the " grandfather" provision to the relocation in this case. As the Board approached its analysis of the " grandfather" clause's applicability, it seemed to be under some arguable misapprehension as to the scope of the ***586** " grandfather" clause exemption, if applicable. It is a plausible reading that the Board of Appeals believed that the Zoning Commissioner had erroneously deemed the " grandfather" provision to be not only an exemption from the one-mile radius limitation but, more broadly, an exemption from the required showings for a special exception generally. The Board itself made an ambiguous reference in the plural to "[1] ****429** special exception and [2] locational requirements."
In this Majority Opinion, we concur that the Council, in Section 6 of Bill No. 112-95, did exempt from the BCZR 436.4 *special exception and locational requirements* for pawnshops lawfully in existence and operating on the effective date of the Act.

(Emphasis supplied).

In any event, the Board of Appeals ruled that the " grandfather" clause exemption from § 436.4's one-mile radius limitation applied only to pawnshops that remained in place and not to those that were being relocated. On appeal to the Circuit Court for Baltimore County, the Board of Appeals was affirmed.

The Opinion and Mandate of the Court of Special Appeals

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The appellees appealed the denial of the special exception to this Court. The case before us focused on whether the "grandfather" clause exemption covered a pre-existing pawnshop that was in the process of relocating. Our opinion, filed on July 21, 1999, reversed the rulings of the circuit court and of the Board of Appeals and held that the "grandfather" clause exemption from the one-mile radius limitation, indeed, applied to pawnshops that were in the process of relocating.

The backbone of our opinion was our statutory construction of Baltimore County Council Bill No. 112-95, which had, on July 3, 1995, adopted both 1) the one-mile radius limitation itself, which became BCZR § 436.4; and 2) in § 6 of the Bill, the exemption for pawnshops already in existence. We held ***587** that both the Board of Appeals and the circuit court had been unduly restrictive in their construction of the exemption.

We made it very clear, however, that the exemption for a preexisting and relocating pawnshop was only from the locational requirement specifically and not from the *Schultz v. Pritts* special exception requirements generally. Those general requirements still had to be satisfied.
This does not mean, however, *that Appellant is entitled to have its special exception* in this case *granted,* as a matter of law, on the record before us. *There are other statutory requirements requiring favorable findings before a special exception may be approved.*

(Emphasis supplied).

Our opinion then confronted the problem of how to frame an appropriate remand. We were not sure what it was that the Board of Appeals had actually done. On the one hand, the Board of Appeals noted that the County Council had, in Bill No. 112-95, "provided a statement of purpose and a set of performance standards in regard to the situation for pawnshops" and had used such terms with respect to pawnshops as "adverse effect," " particular location," and "disruption of the harmony of the comprehensive plan of zoning." Using the *Schultz v. Pritts* standards, the Board had then unequivocally concluded

that *the proposed use would have an adverse effect above and beyond what it would ordinarily have in any area*-it would appear that *a pawnshop would have more than the usual adverse effects in the area of the Country Ridge Shopping Center.*

(Emphasis supplied).

After cataloguing the especially sensitive characteristics of the Back River Neck Road neighborhood, the Board, with no mention yet of the locational requirement, asserted what may well have been its dispositive conclusion.
These adverse effects are greater in the subject neighborhood than they would be elsewhere within the zone, which is ***588** a ****430** persuasive reason for denial of the special exception for a third pawnshop in the Essex area.

(Emphasis supplied).

If, indeed, that is what the Board meant to do, its further mention of the locational requirement was both redundant and unfortunate. As a good rhetorician frequently does, however, the Board chose to unleash maximum firepower. The barrage of persuasion included, counterproductively it turned out, a mention of the locational factor. The Board neither asserted nor disclaimed that factor as a *sine qua non* of its decision.

This Court in its opinion opined that, if the locational factor had, indeed, influenced the Board's decision, the Board's decision was flawed.
[A]n existing pawnshop seeking to relocate, though it must otherwise obtain a special exception as to the proposed new location, is entitled to have its special exception application evaluated free of the standards prescribed in Section 436.4.

In the last analysis, however, we were not sure if the factor had played a part in the Board's decision and we concluded, therefore, that a "new consideration" by the Board would be "necessary." We did not presume, however, to micromanage how the Board should undertake that "new consideration."
The Board's majority opinion addressed those other requirements somewhat, but did so in a manner that

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commingled its consideration of those requirements with those of Section 436.4. On remand a new consideration of Appellant's application will be necessary.

(Emphasis supplied).

Our mandate read:
CASE REMANDED TO THE CIRCUIT COURT WITH DIRECTION TO REMAND TO THE BOARD OF APPEALS FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THIS OPINION.

***589** A Complicating Factor: **The Change of Personnel**

The Board that initially denied the special exception on April 30, 1997, consisted of three members. S. Diane Levero and Harry E. Buchheister, Jr., issued the majority opinion. Charles L. Marks was in dissent. By the time the Board, on remand, issued the decision now under review on December 13, 2000, Ms. Levero and Mr. Buchheister were gone. They had been replaced by Donna M. Felling and Margaret Worrall. Mr. Marks remained as a holdover member of the Board.

The County Board of Appeals: Round Two

The two new members of the Board of Appeals " reviewed the testimony and record" of the earlier denial of the petition by the Board in 1997. A full public deliberation was held by the Board on August 16, 2000. The detailed Minutes of that Deliberation reflect discussions among the members about 1) the opinion of the Court of Special Appeals and 2) the remand and its implied directive to examine whether the "adverse impact" in the requested location would be "greater than elsewhere in the zone."

By a two to one vote, the Board again voted to deny the special exception. The majority noted its special reliance on the testimony of Mary Emmerick, the Eastern Sector Coordinator for the Baltimore County Office of Community Conservation. The majority called attention to her testimony about 1) the neighborhood's "having ****431** the highest crime rate in Baltimore County," 2) the public funding that was being directed into special rehabilitation plans for the neighborhood, 3) some federally funded community "cleanup" programs "in the immediate vicinity of [the] Country Ridge Shopping Center," and 4) the characteristics of the shopping center as "a neighbor shopping center" because "many people walk to the center because they do not have use of private transportation."

The Minutes also recited that the majority called attention to the testimony of Orlando Yarborough, who operates a non-profit organization for at-risk families and youth located ***590** across from the shopping center. The majority called attention to the testimony of both 1) John J. Dillon, a 29-year veteran of the Office of Planning and Zoning who had been "accepted by the Board as an expert planner in Baltimore County"; and 2) Captain James Johnson of the Baltimore County Police Department and the Precinct Commander in Essex, who testified that "the area immediately around the Country Ridge Shopping Center suffers from some of the highest public safety warning indicators in all of Baltimore County-a scourge of narcotic activity, recently a rash of robberies, socioeconomic decay." The majority members also noted reliance on " documenting materials" from the Baltimore County Council and the Baltimore County Planning Board.

On December 13, 2000, the Board issued a ten-page Majority Opinion and an eight-page Dissenting Opinion by Charles L. Marks. By a vote of two to one, the special exception was again denied. On December 19, 2000, the appellees filed a Motion for Reconsideration with the Board, stressing the procedural point that a *de novo* hearing should have been held because two members of the Board on remand had not been members of the original 1997 Board. On January 12, 2001, the Board unanimously denied the Motion for Reconsideration.

Reversed by the Circuit Court

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The appellees promptly appealed both the denial of the special exception and the denial of the reconsideration to the Circuit Court for Baltimore County. The circuit court on June 13, 2001, reversed the Board of Appeals and remanded for a *de novo* hearing. In rendering its decision, the court stated:

This Court concedes that a remand from the CSA does not automatically require the Board to hold a new hearing in every case. This Court will also concede that a remand to a Board with two new members does not always require a *de novo* hearing. However, due to the totality of circumstances in this case, it is this Court's opinion that a *de novo* hearing was required. Petitioner has persuaded this Court that *Prosser* is not applicable in this case. There, the ***591** remand was on a limited technical issue. In the case *sub judice,* the remand is for a " new consideration" of an application for Special Exception, which unquestionably is not a limited technical issue. It is the opinion of this Court that *Clark* is applicable as witness credibility and demeanor is certainly an important factor in the Board's decision to grant or deny an application.

The Appealability of The Remand Order

[1] People's Counsel has appealed to us that reversal and remand by the circuit court. With respect to the immediate appealability of such an action, *Schultz v. Pritts,* 291 Md. 1, 6, 432 A.2d 1319 (1981), was clear:

[A] circuit court's order remanding a proceeding to an administrative agency is an appealable final order .... When a ****432** court remands a proceeding to an administrative agency, the matter reverts to the processes of the agency, and there is nothing further for the court to do. Such an order is an appealable final order because it terminates the judicial proceeding and denies the parties the means of further prosecuting or defending their rights in the judicial proceeding.

Standard of Appellate Review

Although the judicial act being appealed to us is literally the June 13, 2001 ruling of the Baltimore County Circuit Court, our review will look not so much *at* the circuit court action as *through it* to the December 13, 2000 decision of the Baltimore County Board of Appeals. As we explained in *Pollard's Towing, Inc. v. Berman's Body Frame & Mechanical, Inc.,* 137 Md.App. 277, 287, 768 A.2d 131 (2001):

At the outset, let it be clear whose decision is being reviewed and by whom. The review on the ultimate merits is now being conducted by this Court. *We are not reviewing the procedural correctness of the earlier review by the circuit court. We are undertaking our own de novo review of the decision of the administrative agency.* As Judge Motz explained in ***592***Department of Health and Mental Hygiene v. Shrieves,* 100 Md.App. 283, 303-04, 641 A.2d 899 (1994):

Moreover, it is well recognized in Maryland that, *when reviewing administrative decisions, the role of an appellate court is precisely the same as that of the circuit court. See e.g., Baltimore Lutheran High Sch. Ass'n, Inc. v. Employment Security Admin.,* 302 Md. 649, 662, 490 A.2d 701 (1985) (" a reviewing court, be it a circuit court or an appellate court, shall apply the substantial evidence t est"). For those reasons, rather than remanding to the circuit court for it to determine, under the correct legal standards, whether the SOPD's decision is based on substantial evidence, we shall address the question.

(Emphasis supplied). See also *Stover v. Prince George's County,* 132 Md.App. 373, 380-81, 752 A.2d 686 (2000). *The decision of the circuit court, therefore, is before us only in a pro forma capacity, as the necessary procedural conduit by which the decision of the administrative agency gets to us for our review.*

(Emphasis supplied).

[2][3] In this case, moreover, we are reviewing the Board of Appeals's interpretation of what its own earlier action had been and what its reason had been for so acting. That is neither a finding of first-level fact nor a ruling of law. Whether considered as something akin to "a mixed question of law and fact " or as the type of judgment call to which the abuse

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of discretion standard typically applies, it clearly is the kind of decision to which a reviewing court extends great deference. As Judge James Eyler explained in *Powell v. Calvert County,* 137 Md.App. 425, 432, 768 A.2d 750 (2001), *reversed on other grounds,* 368 Md. 400, 795 A.2d 96 (2002) :

An agency's factual findings and its decisions involving mixed questions of law and fact, however, will be given deference such that we cannot substitute our judgment for that of the agency's. *Friends of the Ridge v. Baltimore Gas & Elec. Co.,* 120 Md.App. 444, 465, 707 A.2d 866 (1998), ***593** *vacated in part by* 352 Md. 645, 724 A.2d 34 (1999). We will "accept the agency's conclusions if they are based on substantial evidence and if reasoning minds could reach the same conclusion based on the record."

We need not necessarily agree that the Board of Appeals was correct in its interpretation****433** of its earlier decision. We will affirm its interpretation if there was any reasonable basis that could have supported it. We now look to the Board's response to our remand.

An Open-Ended Remand

Our remand for "further proceedings" was deliberately open-ended. We reject the appellees' argument that "further proceedings" necessarily implies a *de novo* hearing, with witnesses being called and arguments being made as if for the first time. "Further proceedings" could, of course, embrace such a procedure but could also embrace other less radical procedures. It was not for us to anticipate what "further proceedings" might be required. That was a determination to be made in the first instance by the Board of Appeals itself, consistent, of course, with the salient principle of law enunciated in our opinion, to wit, consistent with our statutory interpretation of § 6 of County Council Bill No. 112-95. Beyond that, we did not presume to determine what "proceedings" were required. Theoretically, the Board could have made three or four different determinations as to what "further proceedings" might under the circumstances be appropriate.

1. The Board could have decided simply to clarify its earlier rationale that had been inadvertently ambiguous. It could have said, "We are stating unambiguously **NOW** what it was that we were intending to say **THEN.**" This would simply be a present clarification of a past decision, not a new decision. *Powell v. Calvert County,* 137 Md.App. 425, 441, 768 A.2d 750 (2001), *rev'd on other grounds,* 368 Md. 400, 795 A.2d 96 (2002) ("If the court cannot tell if the administrative agency was right or wrong ... the court should remand to the agency for further proceedings.").

***594** 2. The Board could have decided to make a *de novo* policy decision based on, for instance, three proper factors, ignoring the fourth factor that had initially been improperly considered. The factors themselves having been correctly established, there would be no need for further fact-finding with respect to them. There remained only to make the ultimate policy determination based on a present consideration of the appropriate number of already established factors. *State Tax Comm'n v. Chesapeake & Potomac Telephone Co.,* 193 Md. 222, 232, 66 A.2d 477 (1949) ("Evidence may be said to have been 'considered' when it has been reviewed by a court to determine whether any probative force should be given it."); *People's Counsel v. Mockard,* 73 Md.App. 340, 346-47, 533 A.2d 1344 (1987); *People's Counsel v. Prosser Co.,* 119 Md.App. 150, 161-62, 180, 704 A.2d 483 (1998).

3. The Board could have decided that the record before the Board initially was incomplete and that it would be desirable **TO SUPPLEMENT** that record with additional argument or additional evidence. New witnesses could be called but the old witnesses would not have to be recalled. *Lawton T. Sharp Farm v. Somerlock,* 52 Md.App. 207, 209-12, 447 A.2d 500 (1982).

4. The Board could have decided to ignore the original record and to proceed *de novo* with an entirely new hearing as if the first hearing had never occurred.

The first two of those procedural options on remand would almost always be offered as a combined package of alternatives. Under the first optional

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procedure, if the Board of Appeals were to say, " We had decided and we meant to convey that the other factors, even absent the locational factor, were sufficient for us to deny the **434 special exception, " that clarification in the affirmative would be enough and there would be no need to proceed to the second optional procedure. Conversely, if the Board of Appeals were to say, "We had decided and we meant to convey that the aggregate of all of the factors, including the locational factor, was indispensable to our decision to deny the special exception," that clarification *595 in the negative would be enough and there would be no need to proceed to the second optional procedure. Neither of those clarifications would represent a new decision.

If, on the other hand, the Board of Appeals were to say, "We never gave any thought to what we would do, one way or the other, on the basis of less than all of the factors," then it would be necessary for the Board of Appeals to proceed from procedural option one to procedural option two, if it should deem option two adequate for its task on remand.

As we read what the Board of Appeals did on remand, especially in its denial of the appellees' Motion for Reconsideration wherein it provided introspective insight into its own earlier thinking, we conclude that it chose to follow the first of the four procedures listed above. Alternatively, it is conceivable that it was utilizing the second procedure. Our analysis, therefore, will consist of examining whether those two procedures were, in the circumstances of this case, within the Board's rightful prerogative. If they were, whichever of the two alternative procedures was actually utilized is not of critical importance.

Two Distinct Subissues

Two subissues are intertwined. We deem it helpful to isolate them for analysis. The first is that of whether either or both of the procedures possibly utilized by the Board on remand would have been within its rightful prerogative if, hypothetically, there had been no change in the personnel making up the Board. The second and distinct issue will then be whether a change in a critical voting majority (or, indeed, any change) in the make-up of the Board might *ipso facto* render a procedure on remand illegitimate that would otherwise have been, without such a change in personnel, legitimate.

Remand Procedures By An Unchanged Board

[4] Assuming, *arguendo,* that the members constituting the administrative tribunal remain unchanged, if an appellate court is in doubt as to why an administrative agency did what *596 it did, as we were in this case, it is appropriate to remand the case to the agency for nothing more than 1) a clarification of or 2) an amplification of its reasoning. In *Powell v. Calvert County,* 137 Md.App. 425, 429, 768 A.2d 750 (2001), *reversed on other grounds,* 368 Md. 400, 795 A.2d 96 (2002) , we approved precisely such a procedure.
As a result of an earlier petition for judicial review, this Court, in an opinion filed on April 23, 1999, vacated the board's approval and remanded the case to the Board for further proceedings on the ground that the reasons given by the Board were insufficient to permit appellate review. *On remand, without receiving additional evidence or argument, the Board amended its opinion in response to this Court's mandate and granted the special exception.* The case is now before us as a result of a second petition for judicial review. *We hold that the evidence and reasons given by the Board* in its amended opinion *are,* as explained herein, *legally sufficient to support the Board's decision.*

(Emphasis supplied).

The opinion of Judge James Eyler made it very clear that an appellate court may **435 remand to an administrative agency simply so that the agency can clarify its reasoning.
A decision of an administrative agency should be upheld only if it can be sustained on the findings and reasons given. *Montgomery County v. Stevens,* 337 Md. 471, 482, 654 A.2d 877 (1995); *Harford County v. Preston,* [*Inc.*,] 322 Md. 493, 505-06, 588 A.2d 772 (1991).
If the record fails to reflect such findings or reasons,

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the appropriate remedy is a remand to the agency with directions to comply with the requirement. *Stevens,* 337 Md. at 481-82, 482, 654 A.2d 877. *If the court cannot tell if the administrative agency was right or wrong, or to put it more accurately, whether it committed error because the court cannot discern the basis of the agency's decision to determine if it was proper, the court should remand to the agency for further proceedings.*

***597** 137 Md.App. at 441, 768 A.2d 750 (emphasis supplied). See also *People's Counsel v. Mockard,* 73 Md.App. 340, 533 A.2d 1344 (1987); *Mortimer v. Howard Research,* 83 Md.App. 432, 442, 575 A.2d 750 (1990).

Assuming again, *arguendo,* that the membership of the Board of Appeals was the same when it received the case on remand as it had been when it considered the case initially, we conclude that it would have been within the legitimate prerogative of the Board to have proceeded under any of the four procedural options listed above. Even counsel for the pawnshop conceded as much in his final argument before the Baltimore County Circuit Court.

I'll concede that, your Honor, if there were the three original members who heard the case and that it was remanded, they could make those findings from their recollection of the witnesses and the evidence.

The Board's Action on Remand Was a Clarification

Our reading of the 18-page opinion of the Board of Appeals following its consideration of the case on remand, and our further reading of the 6-page opinion of the Board in denying the appellees' Motion for a Reconsideration, convinces us that what the Board did on remand was no more than to clarify what it had earlier done on April 30, 1997.

The Board made it clear that its initial 1997 denial of the special exception had not depended on the one-mile radius limitation and that it had not considered that limitation to be a critical factor in its decision.

The December 13, 2000 opinion of the Board, to be sure, is not a model of polished appellate draftsmanship. At times, it slides into linguistic habits that are more appropriate to fact-finding.

We are not unmindful, however, that even trained appellate courts also occasionally misuse the verb " find" when they should say "hold." ("We *find* the law to be ..."; "We *find* the trial court to have been in error.") Even Homer nods. The occasional use by the Board of the verb "find," therefore, is not, we hold, dispositive as to what function the ***598** Board was performing. Neither do we conclude that the occasional and inartful use of the verbs " concur" and "affirm" establishes that the Board was sitting in appellate review of its own earlier decision.

The appellees seize upon these random usages, however, as upon the terms of a covenant. We would urge them to heed instead our admonition in *Heinlein v. Stefan,* 134 Md.App. 356, 368-69, 759 A.2d 1180 (2000):

It is tempting, particularly when it serves one's purpose, to ascribe oracular significance to what may be nothing more than stylistic happenstance in an opinion's wording, but that is not the ****436** way the opinion writing business works. The other members of an appellate panel scrutinize with painstaking care the opinion writer's articulation of the actual decision in a case. That is why in Anglo American jurisprudence actual holdings are given precedential status. The other panel members, however, do not hover critically over every word of an opinion writer's phraseology as if it were being chiseled in marble. For that matter, neither does the opinion writer. When the narrative juices are flowing, a writer's ultimate choice of words is frequently nothing more than a subliminal stylistic reflex.

There were counter-indications that the Board was merely clarifying or explaining its earlier action and, although the issue could plausibly be argued either way, those counter-indications persuade us that the Board, on remand, was engaged only in clarifying and not in either fresh fact-finding or appellate reviewing.

In characterizing what the Board had done in 1997,

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the Board on remand summarized what had in 1997 been established as the dispositive factors. It made no mention of the one-mile radius limitation.

In denying the Petitioner a special exception for a pawnshop to be relocated in the Country Ridge Shopping Center, it is abundantly clear that the Board of Appeals, in its majority opinion, relied on the evidence and concepts considered in the legislative findings and Baltimore County ***599** policy as found in Bill No. 112-95 as well as the testimony of Baltimore County employees in the Police Department, the Office of Planning and the Office of Community Conservation.

With regard to standards set forth for the granting of a special exception in BCZR 402.1, this Board affirms the majority opinion that the Petitioner did not meet the special considerations of 502.1(a) and (g):

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

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

B. Be inconsistent with the purposes of the zoning classification, nor in any way inconsistent with the spirit and intent of the zoning regulations.

The uncontradicted evidence, with no reference to the one-mile radius, had made it clear that the pawnshop would have an adverse impact on that neighborhood that it would not have elsewhere.

Evidence and testimony are uncontradicted that the Essex-Middle River area is a section of Baltimore County designated the highest priority for revitalization and conservation. It has the lowest socioeconomic indicators and the greatest incidence of crime. There are already two pawnshops in the area. A third pawnshop in this area would be detrimental to health, safety,. and specifically the general welfare of this particular area of Baltimore County.

In their Motion for Reconsideration of December 19, 2000, the appellees challenged the December 13 Opinion of the Board for the failure of the Board to have held a *de novo* hearing, particularly so the new members of the Board could "make findings on credibility." In denying that motion, the Board unequivocally stated what the nature of its decision on remand had been.

On January 3, 2001, the Board again met in public session and deliberated the matter; and denied the Motion for ***600** Reconsideration. At the time of the public deliberation concerning the Motion for Reconsideration, the Board indicated ****437** that it could not find anywhere in the remand order that the Court of Special Appeals required any further hearings and that it was left exclusively to the discretion of the County Board of Appeals as to whether or not any further hearings should or should not be held. The Board takes significant note of the fact that the majority of the panel had already reviewed the record and denied the special exception. *The only issue determined by the panel on remand concerned the process to ascertain whether or not that denial stood independent of, or "free of the BCZR 436.4 standards." In its December 13, 2000 Opinion* at page 9, concurring with the original Board majority, *the current majority effectively found that,* based on this record, *the original majority decision to deny the special exception stood free of the BCZR 436.4 standards and was independent of them.*

(Emphasis supplied).

Significantly, the opinion of the Board denying the reconsideration was unanimous. The hold-over Board member, who had been in dissent on the merits both in 1997 and again in 2000, agreed with his colleagues as to the nature of what the decision had consisted of on remand. It cannot be gainsaid that the Board would have been entitled, without an evidentiary rehearing, to issue such a clarification of its own earlier action, had there been no change in the membership of the Board

Reweighing Established Factors Versus Resolving Disputed Credibility

That is not, however, all the Board would have been entitled to do on remand without an evidentiary rehearing. Among the other procedural options would have been the *de novo* weighing, essentially a policy determination, of already established factors

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without any necessity of fresh fact-finding as to the existence of those factors.

***601** Such a reweighing is, not uncommonly, what happens in the relitigation of mixed questions of law and fact. First-level fact-finding, frequently requiring the resolution of disputed credibilities and necessitating the choice of competing versions of the facts, is no longer involved. That fact-finding function is a *fait accompli.* It is only after the first-level facts have once been established that the second-level question even arises of what to make of those facts. That second-level question may be revisited without any necessity of revisiting the first-level fact-finding. The only question that matters is no longer, "What will actually happen in the neighborhood?" but, "What is the significance of what will happen in the neighborhood?" On such a mixed question of law and fact, the decisional process is far more one of policy-making than of fact-finding. The decisional process involves the application of the law, or of the policy, to an already given set of facts.

With some frequency, tribunals are called upon to engage in a *de novo* reassessment of the significance of established factors even though those tribunals never saw a witness and never participated in any of the first-level fact-finding that went into the establishment of those factors. Appellate courts, far from the action of resolving disputed credibilities or choosing among contradictory versions of events, frequently engage in the *de novo* process of weighing the significance of predicate facts found by others and then deciding for themselves the ultimate, conclusory fact, such as probable cause, the voluntariness of consent, the voluntariness of a confession, etc. *Ornelas v. United States,* 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996). Chancellors in equity frequently make decisions based on facts that were ****438** found by Masters. The two levels of decision making are distinct.

The essentially undisputed first-level facts in this case were established and precisely articulated by the Board of Appeals in its initial Opinion of April 30, 1997. From that moment on, they were not in any way in dispute. The Board, on remand, could readily have reassessed the ultimate second-level or conclusory fact of adverse impact on a special neighborhood ***602** without any occasion to revisit the predicate first-level facts. It could have concluded:

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

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

"The Regiment Goes On"

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

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

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members.

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

FN1. "Fort Apache" (1948).

The Caselaw On Changes in Membership

It remains then to be seen what, if any, limitations the caselaw may have imposed on the exercise of that institutional continuity.****439** In urging that the change in the membership of the Board mandated an evidentiary rehearing on remand, the appellees rely primarily on the case of *Clark v. County Board of Appeals for Montgomery County,* 235 Md. 320, 201 A.2d 499 (1964).

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

Clark involved the statutory construction of what was then § 104-22d of the Montgomery County Code (1960). The Court of Appeals concluded in *Clark* that the code provision that "all actions or decisions of the board shall be taken by a resolution, in which at least three members must concur" established a minimum quorum of three in order for the ***604** required public hearing on the matter to have any validity. 235 Md. at 323-24, 201 A.2d 499. Although a third board member had read the transcript and concurred in the decision of his colleagues, only two members of the board had actually been present at the required public hearing. The Court concluded that it was dealing with a " problem of statutory construction" and held that the absence of the required quorum rendered the hearing, and the decision reached at that hearing, a nullity.

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

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

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

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

That requirement was never violated.

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

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

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

One year and a half after the *Clark* decision, the Court of Appeals decided ***605***Younkin v. Boltz,*

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

The evidentiary hearings on the special exception in *Younkin* were spread over two days. Only three of five board members were present for the first day's hearing and only two of those three ultimately ****440** voted to grant the special exception. The necessary majority vote to grant the exception depended on at least one of the two additional board members, who joined their colleagues for the second day of the hearing but who had missed the first day. Judge Hammond, 241 Md. at 341-42, 216 A.2d 714, summarized what had happened and before whom it happened.

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

(Emphasis supplied).

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

The instant case presented a variation of the *Clark* factual situation. There were two hearings; three members of the Board attended both and the other two members attended ***606** only the second hearing. Only two of the three members who had been at both hearings voted to grant the exception and *the requisite third vote* (and a fourth) *came from a member who had been at the second hearing only.* ... Judge Shure ruled that under *Clark* the Board's action was illegal and ineffective in that only two of the three who had heard all the testimony voted to grant the exception.

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

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

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

"*The* [federal] *Administrative Procedure Act,* of course, *assumes that deciding officers need not be present at the hearing* * * *.

"The law of nearly all state courts is as clear as the law of the federal courts that *deciding officers need not be present when witnesses testify;* this attitude is implicit in most of the state cases discussed in the ensuing two sections."

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

****441** 241 Md. at 342-43, 216 A.2d 714 (emphasis supplied).

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

***607** *The Maryland Administrative Procedure Act,* applicable to state board and agencies as defined, Code (1965 Replacement Vol.), Art. 41, §§ 244-56,

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contemplates (as does the model Administrative Procedure Act, 8C Uniform Laws Annotated, on which it was based) *that in a "contested case" the evidence need not be heard by all those who will render the final decision.* Section 253 provides:
Whenever in a contested case, a majority of the officials of the agency who are to render the final decision have not heard the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision, including findings of fact and conclusions of law, has been served upon the parties, and *an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.*

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

The Court of Appeals, in conclusion, acknowledged that the *Clark* case could not, at least in its tone, be fully reconciled with *Younkin v. Boltz* and it politely confined *Clark* to its own precise facts.
In any event, we see no reason to extend the holding in *Clark* to a case not precisely similar on the facts.

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

FN2. Professor Max Radin observed that when an appellate court confines one of its own earlier opinions to "its own facts," that is the way appellate courts have "of administering euthanasia to their own non-viable progeny."

The Court of Appeals has regularly followed *Younkin v. Boltz. Bethesda Management Services v. Dep't of Licensing and Regulation,* 276 Md. 619, 627-28, 350 A.2d 390 (1976); ***608***Gemeny v. Prince George's County,* 264 Md. 85, 94, 285 A.2d 602 (1972); *Hyson v. Montgomery County Council,* 242 Md. 55, 72, 217 A.2d 578 (1966). This Court has also recognized its authority. In *Howard County v. Bay Harvestore System,* 60 Md.App. 19, 22, 478 A.2d 1172 (1984), Judge Weant observed:
The circuit court found the practice of permitting absent members of the Board to participate in a decision, provided they had familiarized themselves with the testimony, was in accordance with standard State and Federal procedures. *See Younkin v. Boltz,* 241 Md. 339, 216 A.2d 714 (1966).

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

The case of *People's Counsel for Baltimore County v. Prosser Co.,* 119 Md.App. 150, 704 A.2d 483 (1998), is, on its procedural facts, almost indistinguishable from the case now before us. It is a decision, moreover, that looms large in the arguments that have been made to us. The Circuit Court for Baltimore County had vacated a decision by the Baltimore County Board of Appeals and had remanded the case to the Board "for further consideration." By the time of the remand, however, the membership of the Board had changed.
****442** *The case was* then *remanded* to the Board pursuant to the circuit court's order. *Two of the three original Board members had resigned by that time. ... A new three-member panel was formed, which included the carry-over member from the original panel* who had voted to approve the application previously. The new panel, after reviewing the transcript of the 1994 hearing, denied appellants' request to present new evidence. The Board, through the new panel, held public deliberations on June 5 and July 3 and, in an opinion dated September 19, 1996, determined that the reclassification was warranted and granted the rezoning.

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

The challenge made to the failure of the Board of Appeals, on remand, to conduct a new evidentiary hearing in this case echoes precisely the challenge made in that case. In *Prosser,* we rejected the claim that a *de novo* evidentiary hearing was ***609** necessary. That was the actual holding of *Prosser.* By way of explaining our holding, however, we

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were actually far gentler with the argument than we need have been in light of *Younkin v. Boltz,* a case that was not cited to us.

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

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

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

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

A critical member of an administrative tribunal is not required to do more on remand than would, under *Younkin v. Boltz,* have been required the first time around. In *Younkin,* a vote critical to the Board of Appeals's decision was cast by a board member who, albeit having read the transcript of testimony***610** and having heard full argument, had not personally observed the demeanor of ten witnesses (out of a total of fifteen) whose testimony filled one hundred sixty-four pages of the transcript. There was no suggestion in the opinion that credibility had not been in dispute in assessing the testimony of the fifteen witnesses. The failure of a critical voting member to have observed personally the testimony of ten of those witnesses gave the Court of Appeals no pause, just so long ****443** as the member had read the transcript and heard the argument.

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

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

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

Under those circumstances, the distinction we drew between one hearing modality required on certain remands and another modality permitted on others was necessary, we thought, to distinguish *Prosser* from *Clark.* We affirmed the County Board of Appeals in *Prosser,* using that more circuitous rationale. Under the banner of *Younkin v. Boltz,* however, we would have reached the same result more quickly and more easily without any necessity for the convoluted "credibility-resolving" rationale, which may now mercifully evanesce. We ***611** reverse the judgment of the circuit court so that we may, in effect, affirm the judgment of the County Board of Appeals.

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The Preemption Argument

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

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

The appellees' attack on § 436 is two-pronged. They claim that Baltimore County does not possess the right to regulate in such a manner as to limit the number of state licensed pawnshops in the County to twelve and the number of pawnshops in each councilmanic district to two.

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

****444 *612** With respect to the limit of two pawnshops in each councilmanic district, it cannot be stated with absolute certainty that that limitation was not considered by the Board of Appeals in 1997. Captain Johnson, in his testimony before the Board, did make mention of the negative impact of " a third pawnshop in the 11th precinct." The Board itself made reference to the fact that there were already "two existing pawnshops in this vicinity." The issue was not moot when raised in the first appeal to this Court.

Even if the issue were not moot in 1997-99, however, it has since become so. It was County Council Bill No. 112-95, passed on June 5, 1995, that enacted what became BCZR 436.4A, which provides that a pawnshop

[l]ocation may not be within a one-mile radius of any other pawnshop, *and no more than two pawnshops may be located in a councilmanic district.*

(Emphasis supplied).

Our entire opinion of July 21, 1999, dealt with the applicability to that section of Section 6 of Bill No. 112-95, the "grandfather" provision, which stated:

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

(Emphasis supplied).

The single issue dealt with in our 1999 opinion was that the "grandfather" provision of Section 6 exempted existing pawnshops that were in the act of relocating from the locational limitations of § 436.4A. The exemption applied to the two-pawnshops-per-councilmanic-district-limitation as surely as it applied to the one-mile-radius-limitation. We held that the very limitation which the appellees now claim is unconstitutional did not apply to the appellees.

The Board of Appeals, on remand, complied with our opinion in every way. The Board's decision of December 19, 2000, was based exclusively on *Schultz v. Pritts* factors. Neither of the inapplicable locational limitations were factors in that ***613** decision. They were not even mentioned. The Baltimore County "cap" of two pawnshops per councilmanic district, whatever its constitutional merit or demerits, had absolutely nothing to do with

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the ultimate denial of the special exception in this case. This final contention is, therefore, moot.

JUDGMENT OF THE BALTIMORE COUNTY CIRCUIT COURT REVERSED AND RULING OF THE BALTIMORE COUNTY BOARD OF APPEALS AFFIRMED; COSTS TO BE PAID BY APPELLEES.

Md.App.,2002.
People's Counsel for Baltimore County v. Country Ridge Shopping Center, Inc.
144 Md.App. 580, 799 A.2d 425

Briefs and Other Related Documents (Back to top)

• 2002 WL 32590410 (Appellate Brief) People's Counsel for Baltimore County's Reply Brief (Jan. 04, 2002) Original Image of this Document (PDF)
• 2002 WL 32590411 (Appellate Brief) Appellant's Brief (Jan. 04, 2002) Original Image of this Document (PDF)
• 2001 WL 34752613 (Appellate Brief) Appellee Southside Brokers, Inc.'s (Brief and Appendix) (Dec. 01, 2001) Original Image of this Document with Appendix (PDF)
• 2001 WL 34752614 (Appellate Brief) People's Counsel for Baltimore County's Brief and Appendix (Nov. 27, 2001) Original Image of this Document (PDF)

END OF DOCUMENT

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PETITIONER'S

EXHIBIT NO. 3

.31/05 JM

IN RE: PETITION FOR SPECIAL EXCEPTION N/W corner of Charing Cross Shopping Ctr. 1st Election District 1st Councilmanic District **(5210A Baltimore National Pike,** **Charing Cross Shopping Center)**	* * *	BEFORE THE PET BOA #8 DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
Honolulu Ltd. By: Joel Winegarden, *Legal Owner* **and** C & D Pawn, Inc, *Lessee* *Petitioners*	* * *	CASE NO. 06-142-X

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Exception filed by the legal owner of the subject property, Honolulu, Ltd., by Joel Winegarden and the lessee, Joseph DeSimone. The Petitioners are requesting a special exception for property located at 5210A Baltimore National Pike, Charing Cross Shopping Center, in Baltimore County. The special exception request is to allow relocation of a pawnshop under Sections 233.4 and 436 of the Baltimore County Zoning Regulations (B.C.Z.R).

The property was posted with Notice of Hearing on October 15, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on October 13, 2005 to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 502.1 of the B.C.Z.R. - *Special Exceptions*

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

Pet. Ex #8

F. Interfere with adequate light and air; [Bill No. 45-1982]

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the sprit and intent of these Zoning Regulations; [Bill No. 45-1982]

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 zone. [Bill No. 74-2000]

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Office of Planning dated October 4, 2005, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing in support of the request were Frank and Joseph DeSimone, Petitioners. Also appearing at the hearing on behalf of the Petitioner was Thomas Church, P. E. who prepared the site plan. Arnold Jablon, Esquire represented the Petitioners. There were no protestants or citizens who attending the hearing. Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Testimony and evidence presented in this case indicated that this property is a vacant bay of the Charing Cross Shopping Center, which contains 1800-sq. ft.. The center is zoned BM-CCC and is 3.2 acres in size. The Petitioners propose to move their existing pawn shop which is presently located in a similar shopping center approximately 1/ 4 mile to the west of this location.

Mr. Jablon proffered that the Petitioners have operated a licensed pawn shop for 10 years in the Ridgely Shopping Center without any problem. They handle no firearms. They conform to all regulations. He presented a letter of commendation from the adjacent community association indicating that they were an asset to the community. See Exhibit 4. He proffered that this request

conforms to Section 436 of the B.C.Z.R. in regard to number and location of pawn shops. Hours of operation are 10 AM to 7 PM Monday through Friday and 10 AM to 6 PM on Saturday.

However, the owner of the center in which they are now located, Honolulu LTD, is in the process of renovating the center and invited the Petitioners to move their business to the Charing Cross Center which Honolulu also owns. Both centers are small strip configurations serving the same local communities. The new location is surrounded by commercial uses such as restaurants, stores, fuel service garage, etc.

There is a residential community behind the center, which is separated from the center by a private alley. The center of this alley is the residential zone line designating the center's BM-CCC zoning and residential community's DR 10.5 zoning. The rear of the pawn shop itself would be 41 feet from the residential zoning line. Mr. Jablon opined that this configuration means that the pawn shop itself does not abut the residential zoning line and therefore Section 463.3 A regarding fences and buffering does not apply. He pointed out, however, that there is a substantial line of trees and vegetation along the center's side of the alley separating the zones. See Exhibit 1. The center meets all parking regulations and generally is underutilized. Signage will conform to Section 436.3.B. By voluntary agreement, the Petitioner will not use the word "pawn" or the three ball pawn symbol in signage or advertising but rather will designate the business as jewelry and loan.

In summary, he opined that the location of this pawn shop at the proposed location will not adversely affect the neighborhood and the request meets each criteria of Section 502.1 of the B.C.Z.R.

Findings of Fact and Conclusions of Law

I find that this pawn shop does not abut a residential zone line and therefore the provisions of Section 436.3 A do not apply. However it is not the lineal distance from the building to the zone line (41 feet in this case) that triggers the buffer requirement. If this were the case, the only time the buffer would be required would be if the building were physically located on the zone line itself,

a rare occurrence indeed. Free standing pawn shops with surrounding parking fields trigger the buffer even if the building is not located on the zone line.

However pawn shops located in shopping centers have parking fields in the general parking areas of the center. Here the general parking area is on the other side of the center buildings from the residential zone. Presumably customers of this pawn shop will not approach the protected residential zone. That said, I think the spirit of the regulation is essentially being complied with given the line of trees and vegetation along the alley behind the center.

In regard to the impact of this pawn shop on the community, the testimony and evidence indicated this is simply the transfer of the existing pawn shop in a shopping center on Rt. 40 to a new location in a shopping center on Rt. 40. It appears the existing operation has a satisfactory track record and I see no reason that will not continue at the new location. Consequently, I find that the use of the subject property as shown in Petitioner's Exhibit 1 will not adversely affect the health, safety or welfare of the community and meets all the criteria of Section 502.1 of the B.C.Z.R. Therefore, I will grant the special exception to allow relocation of a pawn shop under Sections 233.4 and 436 of the Baltimore County Zoning Regulations (B.C.Z.R) at the subject property in accord with the conditions listed.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' request for special exception should be granted subject to conditions.

THEREFORE, IT IS ORDERED, this 15 day of November, 2005, by the Deputy Zoning Commissioner, that the Petitioners' request for special exception to allow relocation of a pawn shop under Sections 233.4 and 436 of the B.C.Z.R. and to confirm that the buffer specified in Section 436.3 is not required, be and is hereby GRANTED, subject, however, to the following conditions:

1. Hours of operation shall be 10 AM to 7 PM Monday through Friday and 10 AM to 6 PM on Saturday.

2. The Petitioner shall not sell or handle firearms.

3. All transactions shall be interior to the building.

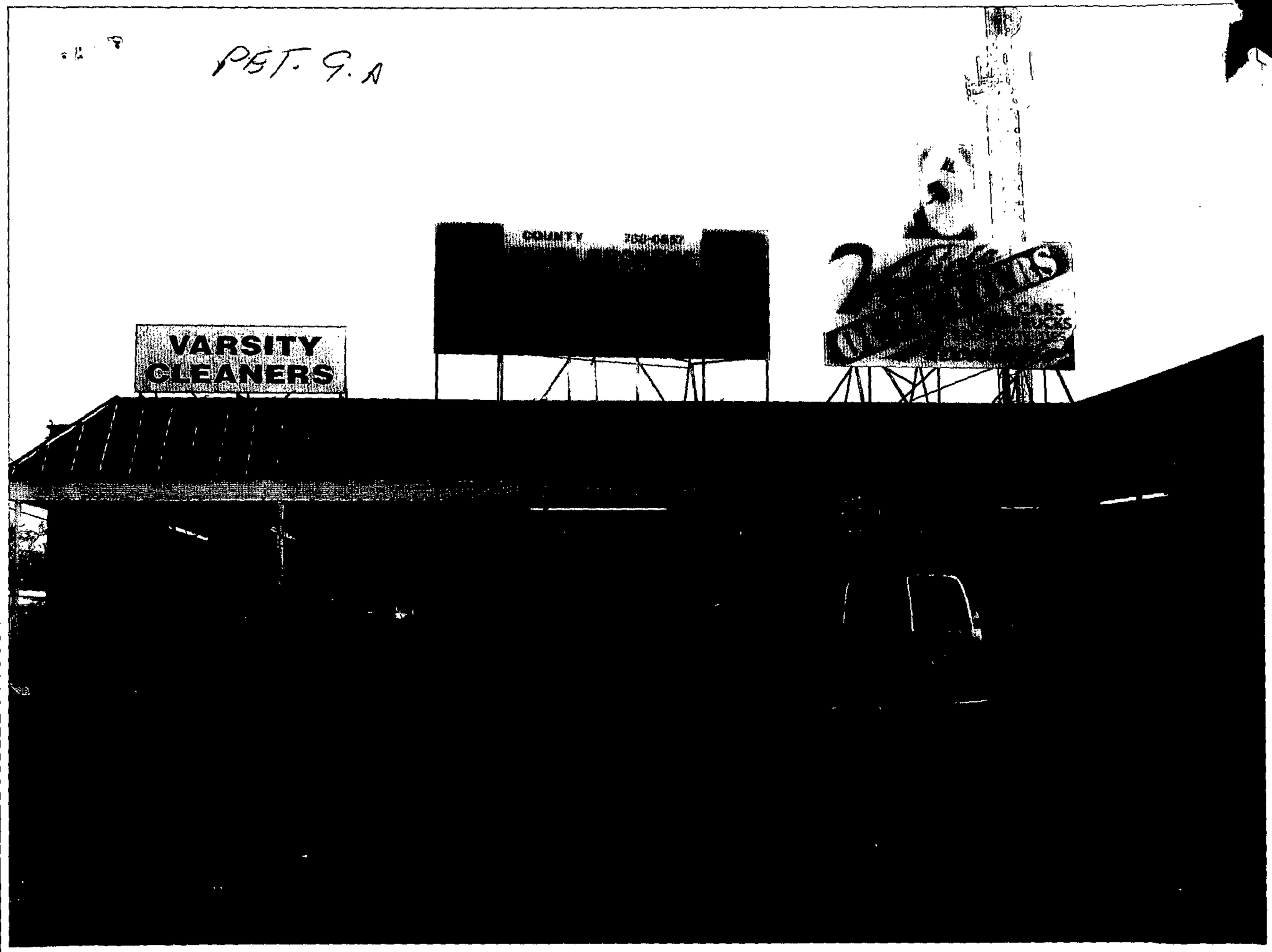
Any appeal of this decision must be made within thirty (30) days of the date of this Order.

John V. Murphy

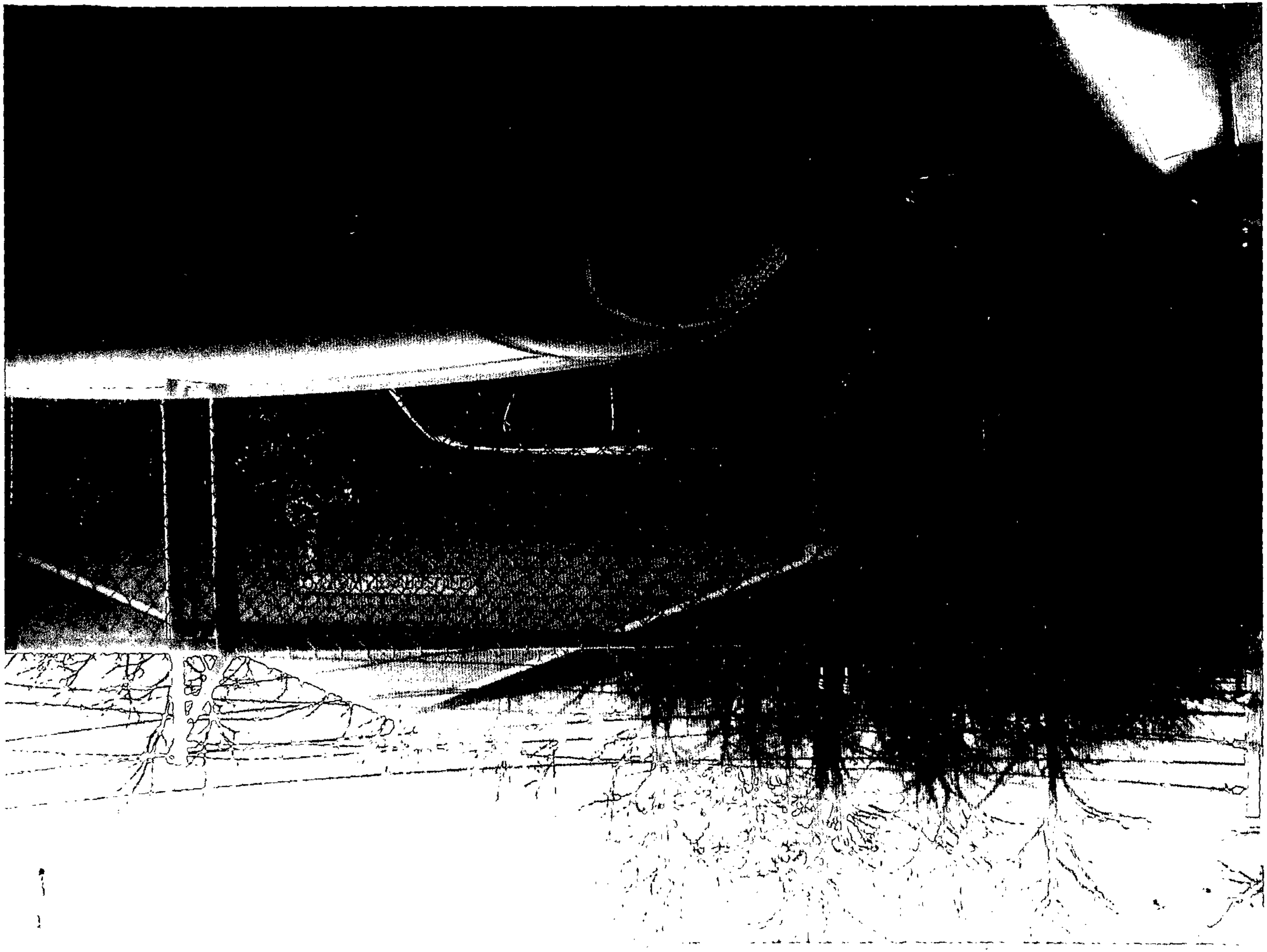
JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:dlw

PET. 9. A



PET GB



F A X

640 Coleraine Road
Baltimore, MD 21229

To:	Tim Kotroco
Fax number:	1 410 887-5708
From:	David Robison
Fax number:	
Business phone:	
Home phone:	
Date & Time:	4/17/2006 8:47:16 AM
Pages:	3
Re:	Opposition to special exception variance 5623 Balt. Nat'l Pike

Hearing Scheduled for 4/19/06

PROTESTANT'S

EXHIBIT NO. 1

April 14, 2006

Baltimore County Maryland
Attn: Tim Kotroco
Director of Permits & Development
Fax: 410-887-3408

Dear Mr. Kotroco,

I am unable to attend the April 19, 2006 hearing in person, due to work obligations, however, I ask that my response be entered into the record.

I am writing in opposition to the special exception request for re-location by County Pawnbrokers. It is evident that this business is currently operating at the address in the request: 5623 Baltimore National Pike. By operating at this location, they are in violation of Baltimore County Zoning Regulations which requires county review before re-locating and by operating less than one (1) mile from another pawnshop. Furthermore, I believe the Westgate Community, in which I reside, is adversely affected by the presence of two (2) pawnshops in such close proximity.

Baltimore County Zoning Regulation (436.4 A) states that a pawnshop "location may not be within a one-mile radius of any other pawnshop". County Pawnbrokers is in violation of this regulation. According to several measurement sources (Google Earth, Mapquest, and personal vehicle), the distance between County Pawn Brokers at 5623 Baltimore National Pike and Catonsville Jewelry & Pawn located at 5210A Baltimore National Pike is less than .8 or eight tenths of a mile. I believe that the intent of this law was to ensure that any one neighborhood or area does not contain an unequal concentration of pawnshops. The Westgate Community currently has the entire maximum Council District 1 allotment of two (2) pawnshops within walking distance to our borders. Catonsville Jewelry and Pawn is 500 feet from our community and County Pawnbrokers is a distance of .4 miles. This is an unfair burden on the residents of Westgate.

I am not aware of the previous address of County Pawnbrokers, however, it is possible that the landscape was entirely different than its current location. Did the previous location abut an Elementary School? Was it within 500 feet of a residential neighborhood? The current location both abuts Westowne Elementary School and is within 500 feet of The Timbers apartment community.

Both pawnshops are located in the "Baltimore National Pike" commercial revitalization district which was created by Baltimore County government to provide incentives to businesses in established communities. Two pawnshops concentrated in one area is contrary to commercial revitalization.

We are working diligently to retain the stability and vitality of our historic community and it is evident, through the pawnshop legislation, that the County Council is

committed to the same cause. The County Council has found that pawnshops such as County Pawnbrokers "are more likely to have a greater deleterious effect on neighborhoods"....and "such adverse effects would directly conflict with the county's commitment to conserving and revitalizing older communities and would be inordinately difficult to overcome once ill-sited pawnshops have been established".

I am asking that the Zoning Commissioner rule in favor of our community by denying the special exception request by County Pawnbrokers.

Sincerely,

David Robison

David Robison
Treasurer, Westgate Community Assoc.
640 Coleraine Road
Baltimore, MD 21229

CASE #: 06-436-SPHXA

IN THE MATTER OF: McCAMMON PROPERTIES I, LLC – Legal Owner /Petitioner 5623 Baltimore National Pike 1st E; 1st C

5/05/2006- Z.C.'s Order in which Petitions for Special Hearing and Special Exception were GRANTED; variance request DISMISSED as moot.

1/08/07 - Notice of Assignment sent to following; assigned for hearing on Thursday, February 15, 2007 at 10 a.m.:

Office of People's Counsel
John B. Gontrum, Esquire
McCammon Properties I, LLC
Louis O'Brien /Lobster, LLC
t/a County Pawnbrokers
James Howard Phelps
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

1/31/07 – C. Demilio will send letter requesting postponement of 2/15/07 date; witness not available on that date; Mr. Gontrum did not object.

2/01/07 – Letter of postponement filed by Ms. Demilio for haring date of 2/15/07.

2/08/07 – Notice of PP and Reassignment sent to parties; case reassigned to Thursday, April 5, 2007 at 10:00 a.m.

4/05/07 – Board convened for hearing (Stahl, Grier, Crizer); concluded hearing this date; memos due on 5/14/07; deliberation to be assigned.

4/13/07 – Notice of Deliberation sent to parties; assigned for Thursday, May 31, 2007 at 9:30 a.m. FYI copy to 2-4-7 (confirmed availability of "4" for this deliberation).

5/14/07 – People's Counsel's Memorandum filed by Deputy People's Counsel C. Demilio.
-- Memorandum of Petitioner filed by John B. Gontrum, Esquire, on behalf of McCammon Properties, LLC, Petitioner. Copies prepared for distribution by hand to 2-4-7 in office on 5/15/07.

5/31/07 – Board convened for public deliberation (Stahl, Grier, Crizer). Unanimous decision of the Board that the requested zoning relief is GRANTED with conditions as to special hearing and special exception; no increase in sign; will ultimately comply with regulations. Written opinion and order to be issued; appellate period to run from date of written order. (7)

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

FILE

IN THE MATTER OF: McCammon Properties, LLC
Case No. 06-436-SPHXA

DATE : Thursday, May 31, 2007

BOARD /PANEL : Lawrence M. Stahl (LMS)
Wendell H. Grier (WHG)
Edward W. Crizer, Jr. (EWC)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Case No. 06-436-SPHXA / Petitions for Special Hearing, Special Exception and Variance - relocation of pawnshop.

Deliberation:

Discussion of issues:

- Grandfathering under statute

Cited Country Ridge; memos clear – made list; pawnshop was on list; the law is clear – grandfather list is as to location – not subject to one mile, etc. but subject to location where they are, i.e. § 502.1.

Agreed unanimously to above – it is grandfathered, but is also subject to 502.1.

Also briefly touched upon transfer of business; moved several times; not much testimony.

- Application of 502.1

Moved through A through I of 502.1:

A. Be detrimental to the health, safety, or general welfare of the locality involved – TO BE DISCUSSED LATER IN DELIBERATION.

B. Tend to create congestion in roads, streets or alleys therein
NO

C. Create a potential hazard from fire, panic or other dangers
NO

D. Tend to overcrowd land and cause undue concentration of population
NO

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements
NO – briefly discussed fencing issue but agreed that this more appropriately

belongs as part of "A" above.

F. Interfere with adequate light and air
NO

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations
NO – grandfathered in

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations
NO

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C. 2, R.C. 4, R.C. 5 or R.C. 7 Zone
NO

DISCUSSION OF "A." - Be detrimental to the health, safety, or general welfare of the locality involved.

- Agreed that the issue of fencing is more of a safety issue – only concern at this point was "A" – meets 502.1 in all other areas.
- People's Counsel brought up fence and proximity to school
- Need to shut off access to school – via fence
- People's Counsel also expressed concern as to precedent
- Normally owner moving pawnshop from point A to point B – this one is distinguished from the norm – already been at Point B for a while – has track record from opening to current location
- Board not concerned about precedent in this instance – years at location then told to apply for special exception
- Testimony of community witness (testified on his own behalf; no Rule 8 issue)
  - ✓ Nothing wrong now - but could be in the future
  - ✓ Future changes /problems could be applied to any business in existence
  - ✓ Pawnshops come with stigma – but with this track record – no problems have occurred
  - ✓ Witness had no actual knowledge of pawnshop
  - ✓ Did not know it was there until notified by e-mail
  - ✓ Witness concern – stability of community
- Board discussed – Been operating successfully; "ifs" cited as future problem – only "ifs".
- Unanimous decision of Board that Petitioner has met "A: - concerns are speculative; actual history reflects no problems to date
- Will GRANT special exception – with conditions; agree to those imposed by Zoning Commissioner

- ✓ Would not be able to sell or handle firearms
- ✓ Transactions limited to interior of building; everything takes place internally
- ✓ Hours of operation – 9 a.m. to 9 p.m.
- ✓ Lettering – roof top sign – to be addressed and discussed by Board prior to decision
- ✓ Fencing – not in ZC decision – but current fencing between athletic field and site to be maintained with no access to site, including no gates or openings; solid fence only

- Also briefly discussed the issue of the fence – can Petitioner do this? Does Petitioner own the fence?

- Decided that the restriction regarding the fence would be included; fence to be maintained with no access between athletic fields of elementary school and the subject site – if Petitioner cannot meet this condition, then it would be his responsibility to apply for removal of restriction.

Sign Issue

While the Board would have preferred to see the entire sign come down – it was unanimously decided that impending legislation will take care of the sign in due course; Petitioner would be made to comply with existing sign legislation; not to be enlarged; in fact, to be removed at the time required by legislation.

Also address Schultz v. Pritts – based on evidence, would be no worse here than anywhere else in the zone. There has been no problem concerning the business at this location; has actual history to support that; unanimous decision of the Board that Schultz v. Pritts is also met by the Petitioner.

- Summary – After review and discussion of evidence and testimony provided at the hearing before the Board, Petitions for Special Hearing and Special Exception GRANTED with restrictions; no enlargement of sign; to be removed at the appropriate time as legislation in compliance with the law..

  Written Order to be issued by the Board; appellate period to run from date of written Order.

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

Respectfully submitted

Kathleen C. Bianco

Kathleen C. Bianco, Administrator
County Board of Appeals

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE _____

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
LOU OBRIEN	8940 CRYSTAL TRL	Ellicott MD. 21727	4102426401
James Phelps	5623 Balto, Natl Pike	Catonsville, 21228	410-788-0557

ATTACHMENT F

BALTIMORE COUNTY MARYLAND

Southwest Baltimore County Revitalization Strategy

County Council of Baltimore County
Court House, Towson, Maryland 21204
(410) 887-3196
Fax (410) 887-5791

RECEIVED
DEC 18 1997
OFFICE OF PLANNING

Stephen G. Samuel Moxley
FIRST DISTRICT

Kevin Kamenetz
SECOND DISTRICT

T. Bryan McIntire
THIRD DISTRICT

Douglas B. Riley
FOURTH DISTRICT

Vincent J. Gardina
FIFTH DISTRICT

Joseph Bertenfelder
SIXTH DISTRICT

Louis L. DePazzo
SEVENTH DISTRICT

Thomas J. Peddicord, Jr.
LEGISLATIVE COUNSEL
SECRETARY

December 17, 1997

Arnold F. Pat Keller, Director
Office of Planning
Courts Building
Towson, Maryland 21204

RECEIVED
FEB 12 1998
OFFICE OF PLANNING

Dear Mr. Keller:

Attached please find a copy of Resolution 112-97 adopting the Southwest Baltimore County Revitalization Strategy as part of the Baltimore County Master Plan 1989-2000.

This Resolution was passed by the County Council at its December 15, 1997 meeting and is being forwarded to you for appropriate action.

Sincerely,

Thomas J. Peddicord, Jr.
Legislative Counsel/Secretary

TJP:dp
Enclosure

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1997, Legislative Day No. 23

RECEIVED
DEC 18 1997
OFFICE OF PLANNING

Resolution No. 112-97

Mr. S.G. Samuel Moxley, Councilman

By the County Council, December 15, 1997

A RESOLUTION of the Baltimore County Council to adopt the Southwest Baltimore County Revitalization Strategy as part of the Baltimore County Master Plan 1989-2000.

WHEREAS, the Baltimore County Council adopted the Baltimore County Master Plan 1989-2000 on February 5, 1990; and

WHEREAS, the Master Plan advocates the implementation of actions and policies for the conservation, enhancement and redevelopment of the County's older established communities; and

WHEREAS, the purpose of the Strategy is to identify actions that government and the community should take to strengthen the economy, stabilize and enhance neighborhoods, and capitalize upon the unique concentration of institutions in the southwest area of the County; and

WHEREAS, by Resolution adopted July 17, 1997, the Baltimore County Planning Board adopted the Southwest Baltimore County Revitalization Strategy, as amended, to constitute part of and an amendment to the Master Plan; and

WHEREAS, the County Council held a public hearing on the recommended Southwest Baltimore County Revitalization Strategy on November 3, 1997.

READ AND PASSED this 15th day of December, 1997.

BY ORDER

Thomas J. Peddicord, Jr.
Secretary

Joseph Bartenfelder
Chairman, County Council

ITEM: Resolution 112-97

Baltimore County
Planning Board

401 Bosley Avenue
Towson, Maryland 21204
(410) 887-3495
Fax: (410) 887-5862

RESOLUTION
Adopting and Recommending the
Southwest Baltimore County Revitalization Strategy

WHEREAS the Baltimore County Master Plan 1989 - 2000 places great importance on the development and use of community plans for established areas of the County; and

WHEREAS during the past decade, various programs have been initiated and/or local plans adopted to address issues in parts of Southwestern Baltimore County; and

WHEREAS, for increased effectiveness in the continuing implementation of these initiatives, it is now timely to incorporate their various perspectives, policies and recommendations into a coordinated, action-oriented strategy; and

WHEREAS the June 1997 draft of the Southwest Baltimore County Revitalization Strategy provides a focus for public and private actions to guide future land use, funding and administrative decisions in this area, which is a logical unit for planning within Baltimore County; and

WHEREAS the draft of the Strategy, as submitted on June 19, 1997, was the subject of a public hearing on July 10, 1997;

NOW, THEREFORE, BE IT RESOLVED, pursuant to Section 26-81 of the Baltimore County Code, 1988, that the Baltimore County Planning Board hereby adopts the Southwest Baltimore County Revitalization Strategy to constitute a part of and an amendment to the Baltimore County Master Plan 1989 - 2000; and

BE IT FURTHER RESOLVED, that the Southwest Baltimore County Revitalization Strategy shall be transmitted to the Baltimore County Council for adoption in accordance with Section 523(a) of the Baltimore County Charter.

DULY ADOPTED by vote of the
Planning Board this 17th day of
July, 1997

Arnold F. 'Pat' Keller, III
Secretary to the Planning Board

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on Recycled Paper

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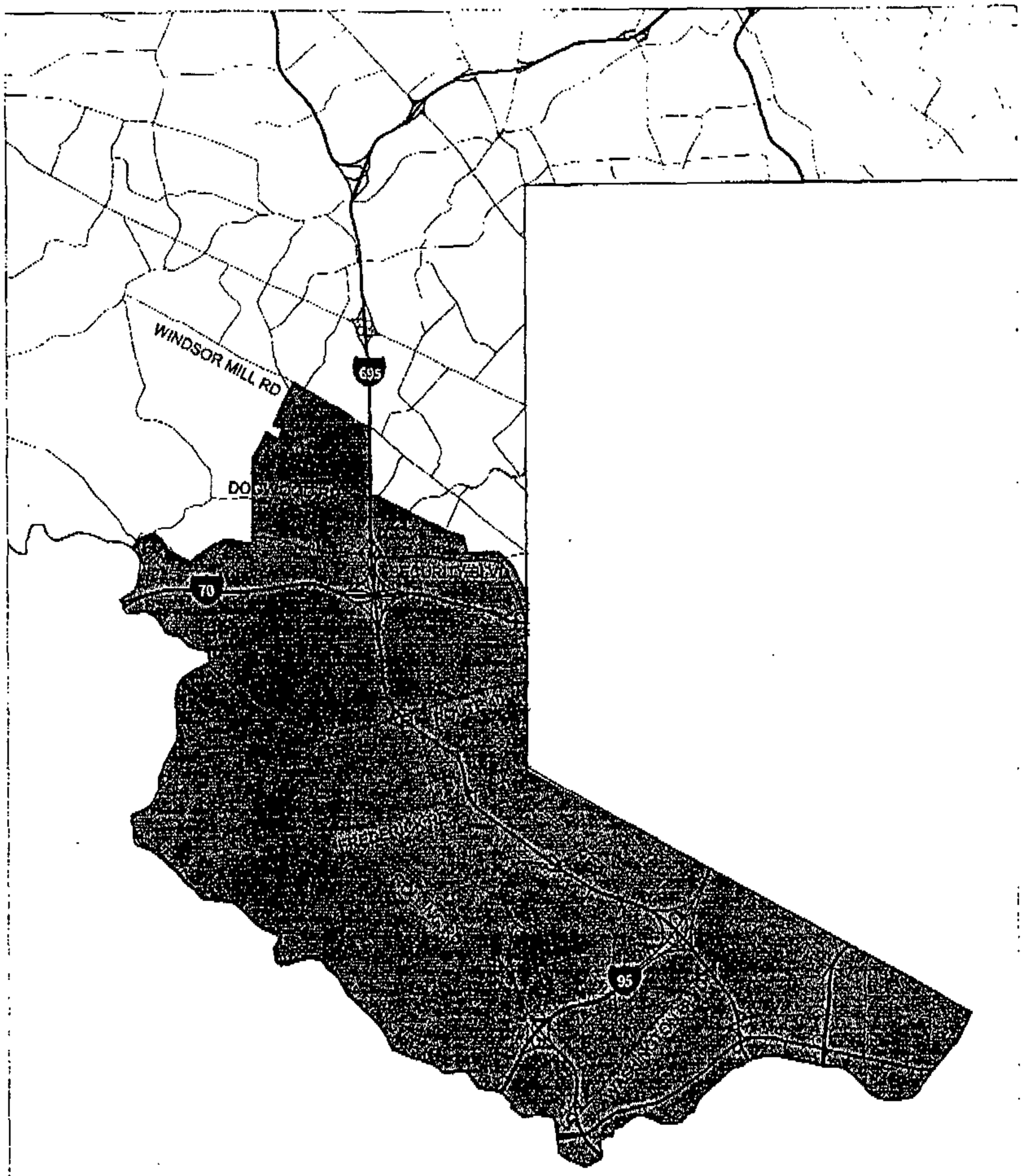
Introduction



Map 1: Southwest Study Area

INTRODUCTION

The Southwest Revitalization Strategy is the second sectorwide plan undertaken as part of the County's Revitalization Initiative. The purpose of the Strategy is to identify actions that government and the community at large should take to strengthen the local economy, stabilize and enhance neighborhoods, and capitalize upon the unique concentration of institutions in the area. To date, comprehensive planning efforts in the Southwest have been limited and the Strategy had to be developed from the ground up. As such, the actions recommended in the plan should be viewed as the starting point for positive change and consensus building about the future of the Southwest.

The Strategy has been structured so that it can also serve as a handbook to guide communities in their own planning processes. As can be seen on Map 1, the study area is very large and encompasses a diversity of communities. Many of these communities are facing issues that can best be addressed through individualized plans. The Strategy provides information on various programs, offers proven problem solving approaches, and describes techniques and ideas that have been successfully used elsewhere.

The driving forces behind this plan were the umbrella community organizations that recognized the need to proactively and comprehensively address the revitalization issues that were emerging in the Southwest. Allied with this effort were the major institutions in the area as well as representatives from major employers and the Chambers of Commerce. Representatives from these groups and about 40 volunteers from throughout the Southwest participated in this process. Also contributing to the effort were representatives from over ten different County departments that manage programs affecting the Southwest. The result should be an informed, coordinated, and committed coalition of citizen, business, institutional, and governmental interests that will continue to support and promote the long term revitalization of Southwestern Baltimore County.

ORGANIZATION

The Strategy is organized into three main chapters, each of which focuses on the strategic issues of:

Economic Development

How can the County and private sector retain, expand, and attract businesses that offer family supporting employment opportunities to the residents of Southwestern Baltimore County?

Institutions

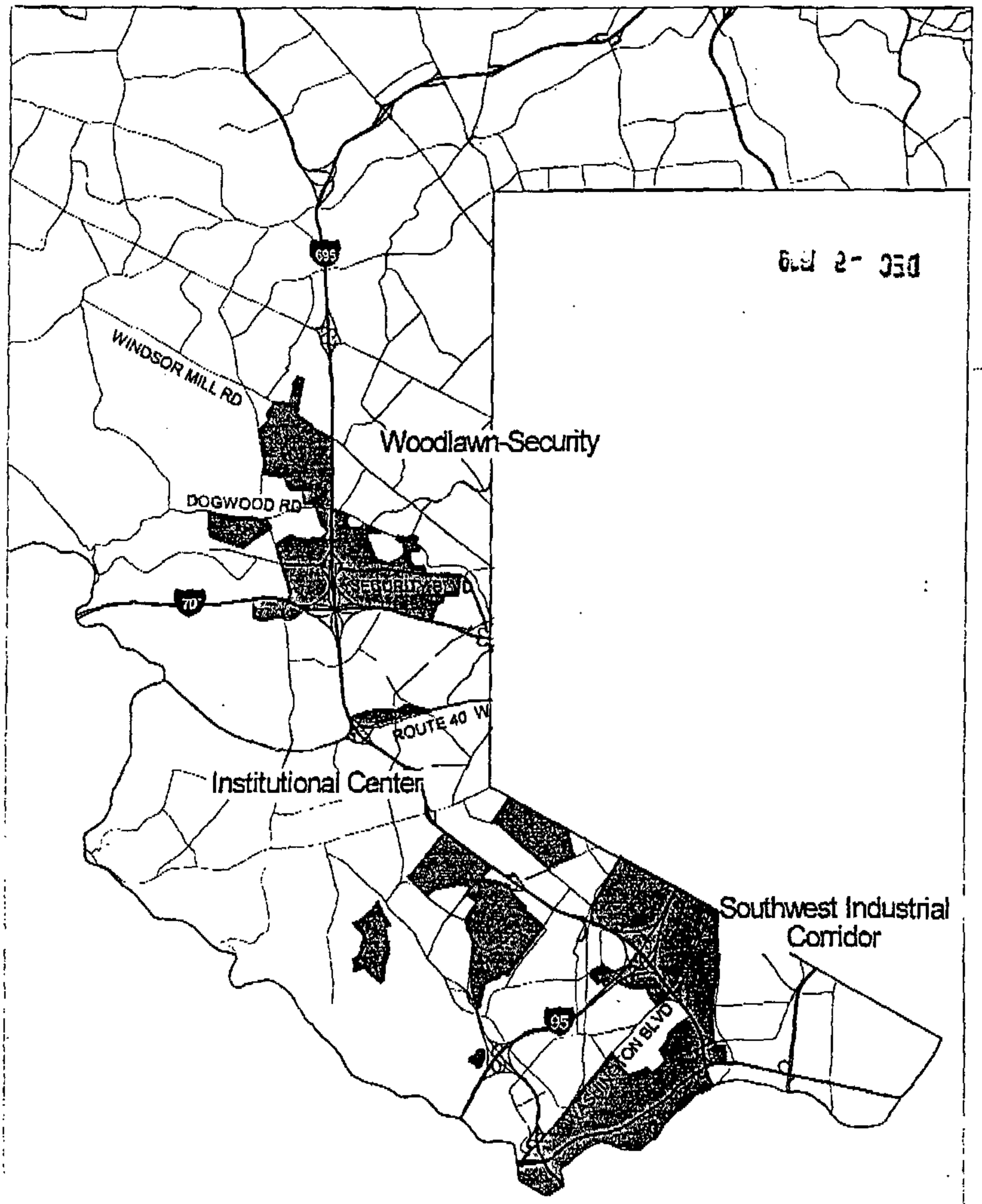
How can the unique concentration of institutional uses in the Southwest be enhanced and promoted to strengthen the existing institutions, advance complementary high technology development, and reinforce the local communities?

Community Conservation

How can the communities of Southwestern Baltimore County be preserved, stabilized, and enhanced through cooperative public-private programs and local community empowerment?

Economic Development

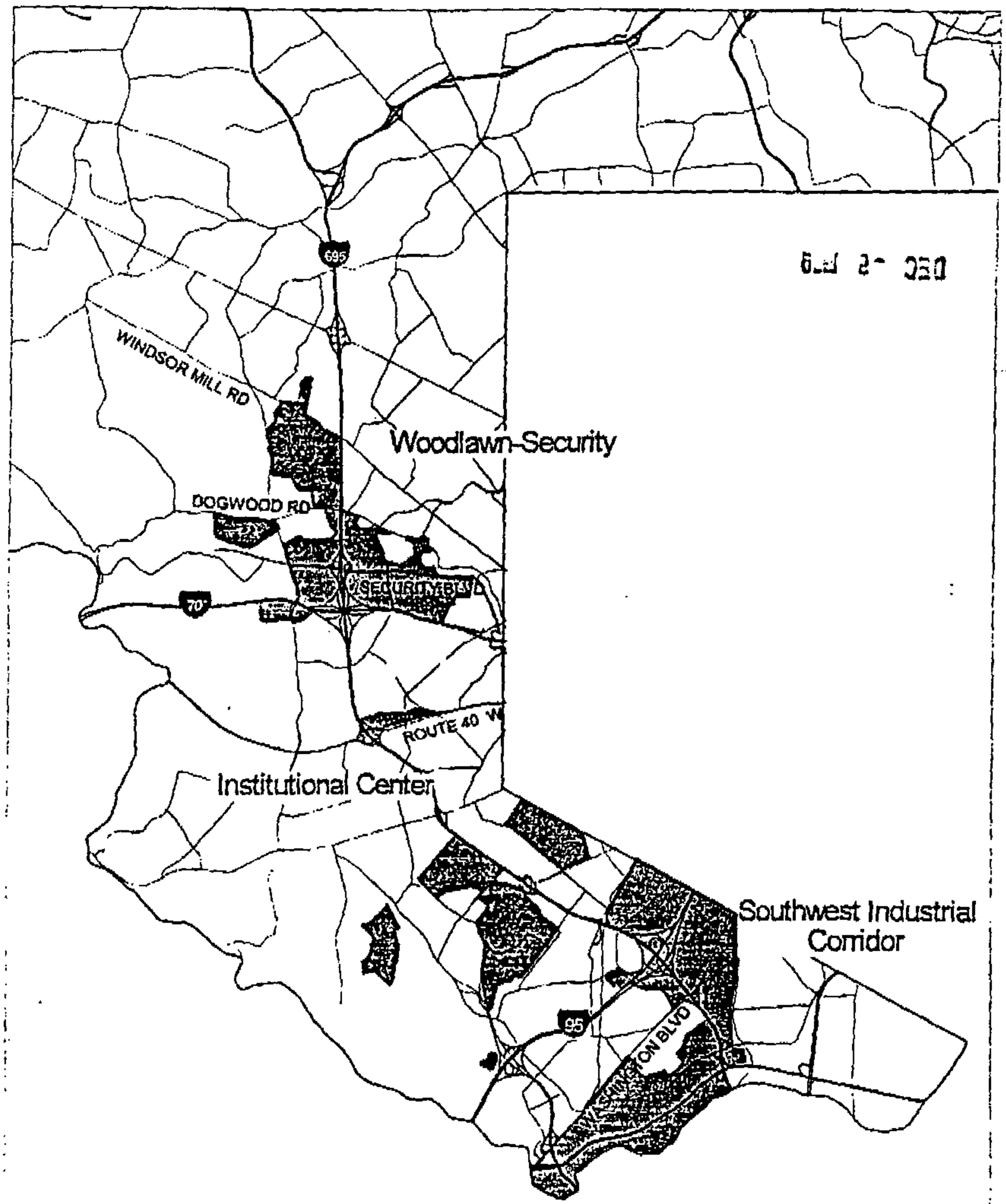
Southwest Baltimore County Revitalization Strategy



Map 2: Southwest Employment Centers

Economic Development

Southwest Baltimore County Revitalization Strategy



Map 2: Southwest Employment Centers

ECONOMIC DEVELOPMENT

The revitalization of Southwestern Baltimore County is dependent upon a strong and growing economy that provides family supporting wages and maintains the local tax base. The Southwest has significant locational advantages for businesses which include superb accessibility via an interstate highway network and an international airport, full utility service, a premiere university and excellent community college, and a range of neighborhoods and housing types. The economic development strategy for the Southwest seeks to build upon these attributes in a two pronged approach. The first is an overall program of business development, workforce education, and regional cooperation to attract and retain businesses. The second prong focuses on the three employment centers of Woodlawn-Security, the Institutional Center, and the Southwest Industrial Corridor. See Map 2. Each center has different and distinct market characteristics, which when viewed together, offer an unparalleled range of employment opportunities for the residents of the Southwest.

Recommendations:

1. *Attract, Expand, and Retain Businesses. The Baltimore County Department of Economic Development (DED) has formulated a business development program for Southwestern Baltimore County to increase the area's attractiveness as a business location.. The purpose of the program is to create family supporting job opportunities primarily by understanding and responding to he needs of existing businesses and the companies the County is trying to attract to the area. Over the past two years, the Department has strengthened a number of its programs, most notably financing assistance, market and real estate research assistance, and public policy and physical development. The key elements of the program for the Southwest are:*

   - **Business Development** - A business development representative is specifically assigned to the Southwest and serves as the point person for economic development in the area. This person is responsible for developing contacts with commercial brokers, land owners, existing businesses, and prospective businesses; assisting businesses with locational information and property searches to help prospects find sites suited to their needs; conducting prospect and familiarization tours for brokers and the Maryland Department of Business and Economic Development representatives; facilitating in the development process; and creating marketing pieces highlighting the advantages of the area.
   - **Real Estate Search Assistance** - DED uses a computerized real estate listing service to provide detailed information to companies and commercial brokers about available office, flex, and industrial property in the Southwest. This is supplemented by an internally developed and maintained database of commercially-zoned land available for development as well as an extensive database of marketing research information to assist businesses evaluating Baltimore County and the Baltimore Region as a potential location.

     Company Visitation Program - Over the past year, DED's business development representatives have visited and surveyed companies located in the proposed Southwest Enterprise Zone (see Southwest Industrial Corridor) to discuss issues affecting their operations, identify ways to resolve problems, and assist companies with expansion, employment, financing, export, and/or permit needs. This program will be expanded and representatives will meet with strategic industrial and commercial businesses in the entire Southwest Revitalization Area to establish positive working relationships and assist companies with their business development needs.
   - **Financing Assistance** - Baltimore County administers the following financing programs to encourage investment and the creation of jobs:

     Economic Development Financing Fund - provides loans and guarantees to industrial and commercial businesses that can be used for the acquisition and improvement of land, buildings, and equipment as well as for working capital. Maximum loan amount is $250,000.

     - High Technology Loan Fund - uses local and federal funds to stimulate employment in small technology/defense related firms engaged in the provision, development, and/or manufacturing of high technology products or services. These funds can be used for the acquisition and improvement of land, buildings, and equipment as well as working capital.

◊ Small Business Loan Pool - a newly created (1996) consortium of 16 area banks and Baltimore County Government that assembled a $10 million loan fund to provide gap financing to small local businesses. The funds may be used for real estate, fixed assets, and working capital.

The County may also use other state and federal financing tools such as Industrial Revenue Bonds, Neighborhood Revitalization Program, and the State Sunny Day Fund. Since 1996, the County has financially assisted three southwestern companies in their relocation and expansion. These were the relocation and expansion of Art Litho into the County, the expansion of Nash/Finch which added 39 new employees, and the purchase of a building by United Book Press which enabled the creation of a new division that resulted in 50 new jobs.

- **Production/Process Evaluation** - DED assists companies in identifying ways to increase their efficiency and productivity. DED will arrange for companies to work closely with state resources such as the Maryland Technology Extension Service, Maryland Center for Quality and Productivity, and Maryland Environmental Service in an effort to develop improved business practices.
- **Business Awards** - This new program will be an annual event honoring companies that have contributed to the County's economy. At the first ceremony last year, two southwest companies were nominated – ReVisions, Inc. in the Not-for-Profit Organization category and Weinkam & Weinkam in the Small Service Business category.
- **Economic Development Profile** - DED is investigating contracting with the Baltimore Metropolitan Council to identify the critical parameters that can be used to measure and monitor the local economy of Southwestern Baltimore County. Changes that have occurred over time will be analyzed to determine trends, opportunities, and problems. This information will be used to evaluate the success of the County's economic development program in the Southwest and to determine where additional actions are needed.

2. ***Implement New Workforce Education and Assistance Programs.*** *An educated workforce must be the cornerstone of any successful economic development strategy. The skill levels of the local workforce can be the critical factor in a company's decision to locate or remain in an area. In preparation for the revitalization plan, the DED surveyed a number of manufacturing businesses in the Southwest and found that the quality and availability of labor were among the top concerns. Workforce education begins at the earliest stages and is based on a strong public educational system. However, in this increasingly competitive and technical economy, different partnerships and educational methods are needed to successfully educate the future and current workforce. A number of creative programs have recently been started and to ensure that they are coordinated, the County's Office of Employment and Training (OET) should be the lead agency for workforce recruitment and training. The following is a brief description of the main programs:*

- **Office of Employment and Training Programs** - The Office of Employment and Training (OET) has six locations throughout Baltimore County where residents can access employment and training programs and services. In Southwest Baltimore County, the Catonsville Occupational Training Center on the campus of the Catonsville Community College offers skills training programs in Automated Manufacturing, Office Occupations, Accounting/Bookkeeping, Printing Technology, and Computer Systems Technology. Additionally, residents can access training programs in other occupational categories through the new Catonsville Office at 27 Mellor Avenue. This location houses "CareerNet"– the County's first "one stop shop" for workforce development services. This center includes 15 touch-screen computer stations where residents can gather information on education and career decisions. Resources are also available to match job seekers with specific employment opportunities.
- **Baltimore County Manufacturing Training Consortium** - This is a new initiative to recruit students for manufacturing careers and ensure that they are academically prepared for the positions available within the local manufacturing industry. The Consortium is a cooperative partnership among the Community Colleges of Baltimore County, the Baltimore County Public School System, the County Office of Employment and Training, the Department of Economic Development, the Regional Manufacturing Institute, and the local Chambers of Commerce.

- **Dislocated Worker Assistance and Retraining Programs** - The Office of Employment and Training operates the Baltimore County Reemployment Assistance Center as a one-stop shop for dislocated workers. The Center provides individualized counseling, job search and placement information, resume preparation, and workshops and seminars to address unemployment issues and opportunities for career training. The Center also offers access to a complete reference library, computer work stations, private areas with telephones, fax machines, and copiers.
- **Baltimore County Jobs Program** - The County Department of Social Services (DSS) operates an office in Catonsville where public assistance clients in the Southwest can access job training services. Under Maryland's new Family Investment Program (which replaces the program formerly known as Project Independence), local jurisdictions will be responsible for helping clients on public assistance find jobs. DSS has one Request for Proposals (RFP) already on the street for job readiness training, structured job search workshops, and programs to serve clients who are hard to place (such as those with physical and mental disabilities). The Office of Employment and Occupational Training also administers occupational training programs for public assistance recipients. DSS is planning to issue another RFP for a "one-stop" job center that will be located in the Southwest. DSS is also coordinating an effort with the Community College System of Baltimore County to provide intensive one-week orientation sessions on the new regulations for new recipients and long term clients.
- **Career Connections** - After a competitive selection process, Baltimore County was recently awarded a four year Career Connections grant in the amount of $2,263,800. Career Connections is Maryland's new comprehensive school-to-career transition program. Coordinated by the County's Office of Employment and Training, it should serve as the overarching umbrella to coordinate the County's public school, community college, and university systems with all the new and existing workplace awareness and training partnerships and programs. Career Connections will strengthen partnerships among businesses, the educational system, and government to ensure that all students acquire the knowledge and skills needed to make a successful transition from school to a career. Students will have the opportunity to become exposed to nine broad career clusters, explore career and educational opportunities in curricula of their choice, and obtain worksite-based experience. The clusters are customer service, hospitality, and tourism; health and biosciences; business management and finance; transportation technology; construction and development; arts, media, and communication; human resource services; environmental and natural resource systems; and manufacturing, engineering, and technology. Also see the "Education" section for additional information about school and business partnerships.
- **Southwest Job Fair** - As part of the revitalization effort in the Southwest, the County Department of Economic Development, the Office of Employment and Training, and the Office of Community Conservation joined with local community associations and organized a job fair targeted specifically to employers and residents of Southwestern Baltimore County. Fifty-eight employers and 1800 job seekers participated in the job fair, which was held in a facility donated by Martin's West. Work shops designed to improve job skills such as resume writing and interviewing were also conducted. A follow up evaluation is being performed to determine the actual placement resulting from the fair.

3. ***Assist Small Businesses.*** *Small businesses play a crucial role in Baltimore County's economy. Ninety-four percent of all business establishments in the County have less than 50 employees and in 1995, the average Baltimore County company employed 18 workers. The Department of Economic Development (DED) works to support small businesses by:*

   - **Establishing a Council of Chambers** that includes the Catonsville Chamber of Commerce to coordinate activities and leverage resources to help small businesses.
   - **Funding the Small Business Council** which assists small companies with business development and financial planning including personal business and financial counseling, assistance in developing of business plans, explanation of business loan programs available through Baltimore County, and guidance in applying for County, State, or Federal business loan programs.

- **Funding the Small Business Loan Pool** which is a special loan program created in 1996. It is based on a partnership between the Baltimore County Department of Economic Development and the region's leading financial institutions. More than $10 million in private funds is available to small businesses for:
  - real estate, fixed asset, and working capital loans
  - fixed rate loans with favorable terms to businesses
  - maximum loan amount of $250,000 with the actual amount based on the economic impact of each transaction
  - improvement and expansion of small businesses, especially in Community Conservation Areas.

4. ***Support Commercial Revitalization.*** *To tie the County's support for local business areas more closely to other economic development efforts, the responsibility for commercial revitalization has now been centralized in the Department of Economic Development with direction from the Executive Office. The overall goal is to promote economically stable, accessible, and attractive business districts that, in turn, will strengthen and enhance the neighboring residential community. In the Southwest, the Program will concentrate on Arbutus and Catonsville with a renewed focus on attracting long-term regional and national businesses to stabilize and anchor the commercial centers. This program will build upon the successful redevelopment projects that have been occurring in the area. In Arbutus, this includes the redevelopment of the Hollywood Theater with financial assistance from the County, the purchase of the Arbutus Shopping Center by a regional developer with the intent of improving the site and retenanting the facility, and the relocation of Rite Aid to a more central stand-alone building. Economic revitalization in Catonsville includes the renovation of the C&P Building which is 50% preleased and the renovation of the Wilson Lumber site for retail use. Components of the Commercial Revitalization Program are:*

   - **Streetscapes** - Streetscape plans are to be a function of a total plan to ensure the leasing and occupation of existing vacant space and may be implemented upon a commitment of greater than 70% occupancy. The streetscape plans for Catonsville are in the final design stage and the parameters for the Arbutus project are being determined. Key components of streetscape plans include aesthetic improvements (gateway signage, landscaping, lighting, coordination of street furniture, etc.) to improve the "curb appeal" and create a pedestrian-friendly atmosphere; private participation via an assessment through the tax bill or an equal reinvestment in improving the exterior of the property; functional improvements such as curb cuts, cross walks, and improved traffic flow; and maintenance by the property owner for the storefront area as well as staff from the Department of Environmental Protection and Resource Management for streetscape maintenance. See the Capital Improvements Map in Appendix A for more details on the specific projects for Arbutus and Catonsville.
   - **Business Assistance** - There are specific financial incentives and services geared toward assisting businesses in designated revitalization districts. In addition to those available for all small businesses, there are the:
     - **Business Improvement Loan Program** which provides loans for exterior physical improvements. Business and property owners may borrow up to $10,000, interest free, over a five year term.
     - **Neighborhood Business Development Program** which is a State program which provides gap financing at flexible, below market interest rates. Loans must be supported by the local jurisdiction as a contingency to State approval.
   - **Advisory Groups** - The Commercial Revitalization Action Group should continue to play their important role in formulating revitalization policies and building better relationships among businesses and communities. As part of the reorganization and increased emphasis on business development, consideration should be given to establishing a Commercial Revitalization Roundtable of real estate brokers, financial lenders, property owners, and experienced revitalization planners to attract national and regional businesses to anchor and provide long term stabilization of commercial centers.

5. ***Support Regional Actions to Improve Economic Development.*** *The geography of the Southwest highlights the need for regional cooperation, especially among Baltimore, Anne Arundel, and Howard Counties and Baltimore City. The close proximity increases the employment opportunities for residents of the Southwest and the strengthening of the regional economy to supply well paying employment should be a priority. The following interjurisdictional issues should be supported:*

- **BWI Airport** - BWI Airport is an extremely important transportation facility and a key attraction to businesses considering locating in the Southwest. The BWI Business Partnership, Inc. has issued a final draft Vision Statement which should be supported by Baltimore County and the County should be an active member in this association.
- **The Greater Baltimore Alliance** - The GBA is a regional economic development marketing program designed to position and promote Greater Baltimore nationally and internationally as one of the top locations for business. With a Board of Directors that includes the Executives of the regional jurisdictions and CEOs of major private enterprises, this is a much needed public/private partnership that will coordinate a unified business outreach program through comprehensive marketing and client service efforts. These include an image/advertising campaign, domestic and international business development, education of the local constituency, targeting growth industries, custom packaging current research and data regarding labor, education, training, etc. Because of the regional characteristics of the Southwest's economy, the GBA should make this area a priority.
- **Regional Cooperation in Business Development** - The Maryland Department of Business and Economic Development and the economic development departments of the local jurisdictions are developing a formal agreement keep each other informed about potential intrastate relocations. This is to allow home jurisdictions the opportunity to retain businesses by addressing their concerns. Additionally, the departments and the State cooperatively work to attract businesses to Maryland.

EMPLOYMENT CENTER ISSUES

Security Employment Center

This area includes the Rutherford Business Center, Meadows Industrial Park, Windsor Corporate Park, Social Security Administration, Security Square Mall, and Health Care Financing Administration. The types of businesses in this important employment center include customer service centers, pharmaceutical production, printing, food production, government services, and regional retail. In general, most of the area is built out and leased, with the notable exceptions of the Windsor Corporate Park that offers some sizable acreage for development and the Meadows Business Park which has industrially zoned flex and office space vacated by the relocation of the HCFA offices to their new complex. The economic development market in this Center is strong and as such, the strategy is to continue to support and strengthen the area by facilitating economic development on a project by project basis. Key actions and policies include:

- Use of PUD-C - In general, Baltimore County's policy is to preserve industrial zoning to accommodate future employers that bring new wealth into the community by producing goods and services that are sold outside the area. However, some of the industrial buildings in the Meadows Business Park have become antiquated for modern industrial use due to low ceiling heights, poor ingress and egress, and inadequate turning radii for trucks. As a result, some specific and limited types of retail uses may be appropriate for these older buildings.

  The Commercial Planned Unit Development (PUD-C) process may be an effective tool for allowing selective retail redevelopment in this area if projects meet the following criteria:

  - space requirement of 25,000 square feet or more.
  - warehouse outlet-type retailers that serve a regional rather than neighborhood or local community market and do not rely on high visibility to attract customers. Examples include: fabric, carpet, upholstery and recreational equipment warehouse stores.
  - limited parking requirements.

- Additionally, retail uses that receive favorable PUD-C review should be allowed to construct a minimal amount of signage necessary to direct customers to the building. Large, freestanding pedestal signs, and backlit signs typically found at shopping centers should not be allowed.

- **Support the Security/Woodlawn Business Association** - The Security/Woodlawn Business Association is a unique coalition of businesses, residential communities, and government representatives. On a grass roots level, this group is invaluable in dealing directly with issues impacting local business and could serve as a model for other areas. The Association has focused on beautification, revitalization, and crime prevention issues and should continue to play a major role in improving the local business climate.
- **Target Windsor Corporate Park** as a potential location for manufacturing spin offs from the UMBC Research Park and Technology Center.

Institutional Center

The Institutional Center is the grouping of University of Maryland Baltimore County, Catonsville Community College, UMBC Technology Center and proposed Research Park, UMBC Technology Enterprise Center, Spring Grove Hospital, Charlestown, and St. Agnes Hospital. Collectively, they employ over 8000 people in a wide range of job types and skill levels. The university synergies, proximity to federal labs in the Washington, D.C. suburbs, available lab space and developable land, and educated work force make this area a superb location for research, educational, medical, and high technology employers. The economic development strategy for the Institutional Center is to attract complementary companies and institutes to the area, making it a center of intellectual and employment advancement. Specific components are:

- **UMBC Technology Center and Research Park** - Baltimore County remains committed to the development of these two areas as the core of the County's technology employment. The reuse of the former Martin Marietta Laboratories as the Technology Center has been extremely successful, with almost all of the existing office and laboratory space leased to incubator (start-up) and emerging technology companies. The Center also provides laboratory space for university and industry research collaborations and classrooms for training of entrepreneurs and scientists engaged in technology research and development. The proposed Research Park will provide over 250,000 square feet of floor space for technology research and development, with companies forming partnerships with UMBC faculty and students to encourage technology transfer and enrichment of academic, scientific, and engineering research.

- **Spring Grove Hospital Center.** This 200 acre, 57 building complex houses the Spring Grove Hospital, the Maryland Psychiatric Research Center, and a computer-equipped conference center. Almost 1000 people are employed by these uses with combined annual budgets of $48 million. The Hospital employs about 850 people and over 90% of these positions are full time and most of the employees are from Baltimore County. See "Institutional Center" for more details.

  It was anticipated by the Department of Health and Mental Hygiene that by the Year 2000, only two of the three regional hospitals (Spring Grove, Spring Field in Carroll County, and Crownsville in Anne Arundel County) would be needed. Now however, the Department is deferring any decisions until the impacts that the nationwide changes to health care and Medicaid will have on public hospitals is fully understood.

  The County should support the continuation of Spring Grove Hospital and expanded clinical and biomedical research and development that complements the mission of the Hospital and reinforces the economic viability and local employment opportunities of the Center. However, should the Hospital be closed, the Psychiatric Center will also close and the State will follow the standard process for surplus state owned land and buildings. Public agencies will review and comment on the site and if none request to use it, the Board of Public Works will determine how to dispose of the property. As part of this process, the Maryland Economic Development Corporation in conjunction with the County, should undertake a feasibility study and a development master plan for uses that support the Institutional Center.

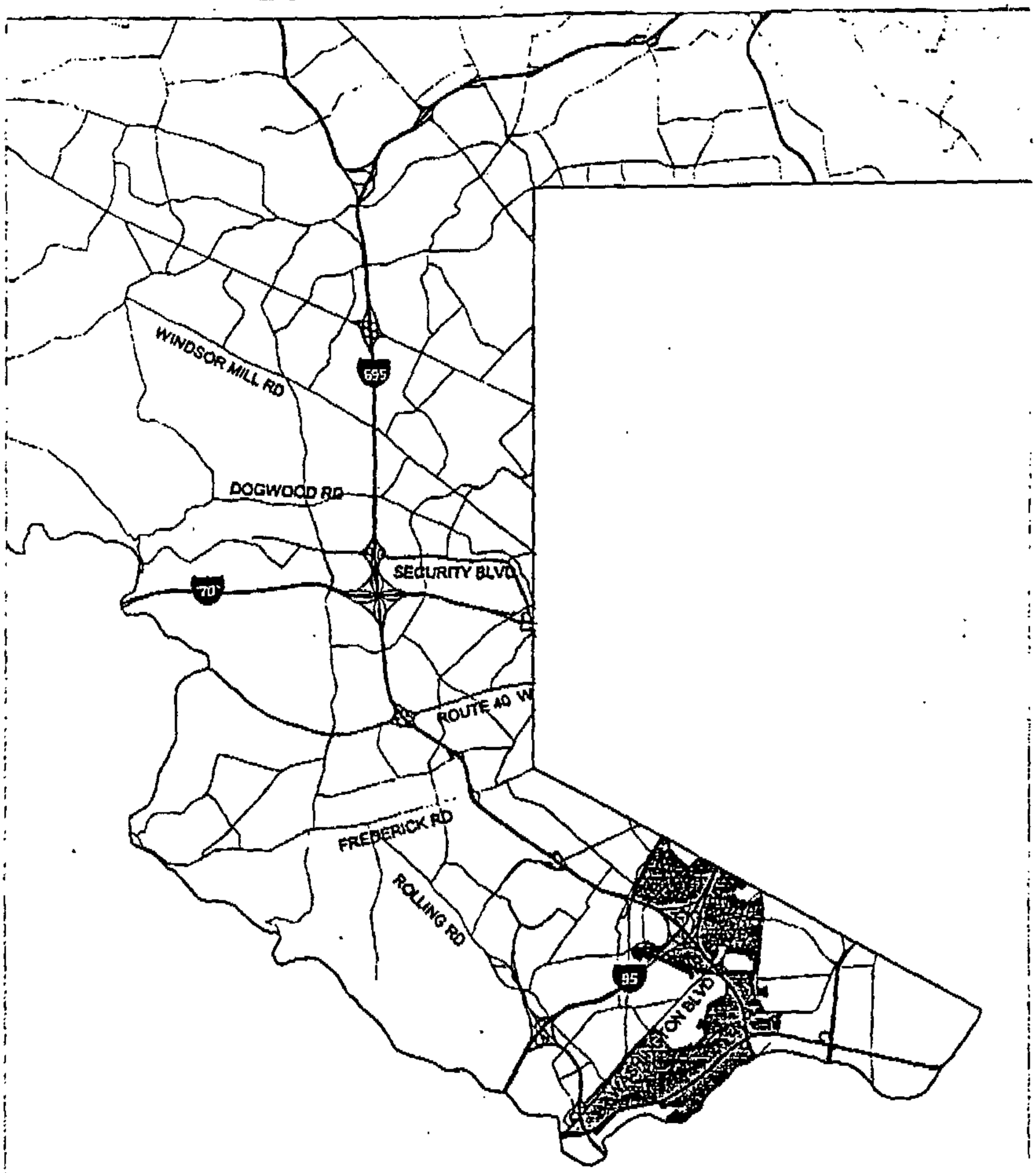
- **Kenwood Office Park** - The 11 acre OR 2 zoned site, adjacent to Spring Grove Hospital Center and with significant Beltway frontage, offers the opportunity for new office or mixed use construction in excess of 100,000 square feet. These uses would be attractive for businesses, institutions and/or government agencies and compatible with the area's research, educational, medical and high technology employment center.

- **Technology Support** - Baltimore County should continue to advance technology development in the Southwest. This is being done through:
  - ◊ **The Baltimore County Technology Council** which was recently reorganized to support the needs of technologists and technology companies. The Council has a four part program of 1) "tech talks" which highlight different technologies being used by County companies and provide networking opportunities for technologists; 2) faculty internship programs to link post secondary educators with technology companies, benefiting both the companies and the professors that can then transfer the "real life" education back to the classroom; 3) the creation of a Web site for technologists to communicate on issues of common interest; and 4) the Technology Transfer Assistance Program which will facilitate the transfer of information from laboratories and universities.
  - ◊ **Production of a Technology Brochure** which will highlight the County's (including the Southwest's) assets as a location for technology companies.
  - ◊ **High Technology Loan Fund** which uses local and federal funds to stimulate employment in small technology/defense related firms engaged in the provision, development, and/or manufacturing of high technology products or services. The funds can be used for the acquisition and improvement of land, buildings, and equipment, as well as for working capital.

Southwest Industrial Corridor

The Southwest Industrial Corridor is one of the largest concentrations of industrially zoned land in the County, straddling Hollins Ferry Road outside the Beltway and extending from the interchange of I-695 and I-95 to the City line. Over 200 companies are located in this predominantly manufacturing and distribution area. There appears to be a strong demand for land within this corridor with very few undeveloped parcels. However, there are under used properties and some available buildings, most notably the landmark Stroh's/G. Heileman Brewing Company. The strategy in this Center is to provide in-depth business development and incentives to retain and attract businesses and to promote the redevelopment of under used sites by:

- **Designating the Corridor as an Enterprise Zone** - On December 15, 1996, the State of Maryland approved the Department of Economic Development's request to designate approximately 1800 acres of contiguous industrially zoned land in the Southwest Revitalization Area as an Enterprise Zone. See Map 3. The Enterprise Zone offers two primary benefits to businesses in the zone who expand or hire new employees. These businesses will be eligible for 1) property tax credits if significant improvements are made to a property and 2) State income tax credits for net new employees hired in the Zone. A similar designation of the North Point corridor in Eastern Baltimore County one year ago has resulted in three business expansions and one new construction project. In addition, six companies have either hired or announced plans to hire a total of 160 new employees in the North Point zone. A DED business representative has been assigned exclusively to these two zones.
- **Implementing New Brownfields Grants**- In May of this year, Baltimore County was awarded a $200,000 Brownfields Demonstration Pilot Grant from the U.S. Environmental Protection Agency (EPA). The County will use the grant to identify sections of the County at higher than average risks for brownfields issues, recruit up to 10 current and prospective property owners to participate voluntarily in Brownfields assessment and clean up efforts, and encourage and conduct Brownfields assessments and cleanups by providing matching grants to current and prospective property owners. The County's target is to award five matching grants to candidate properties.

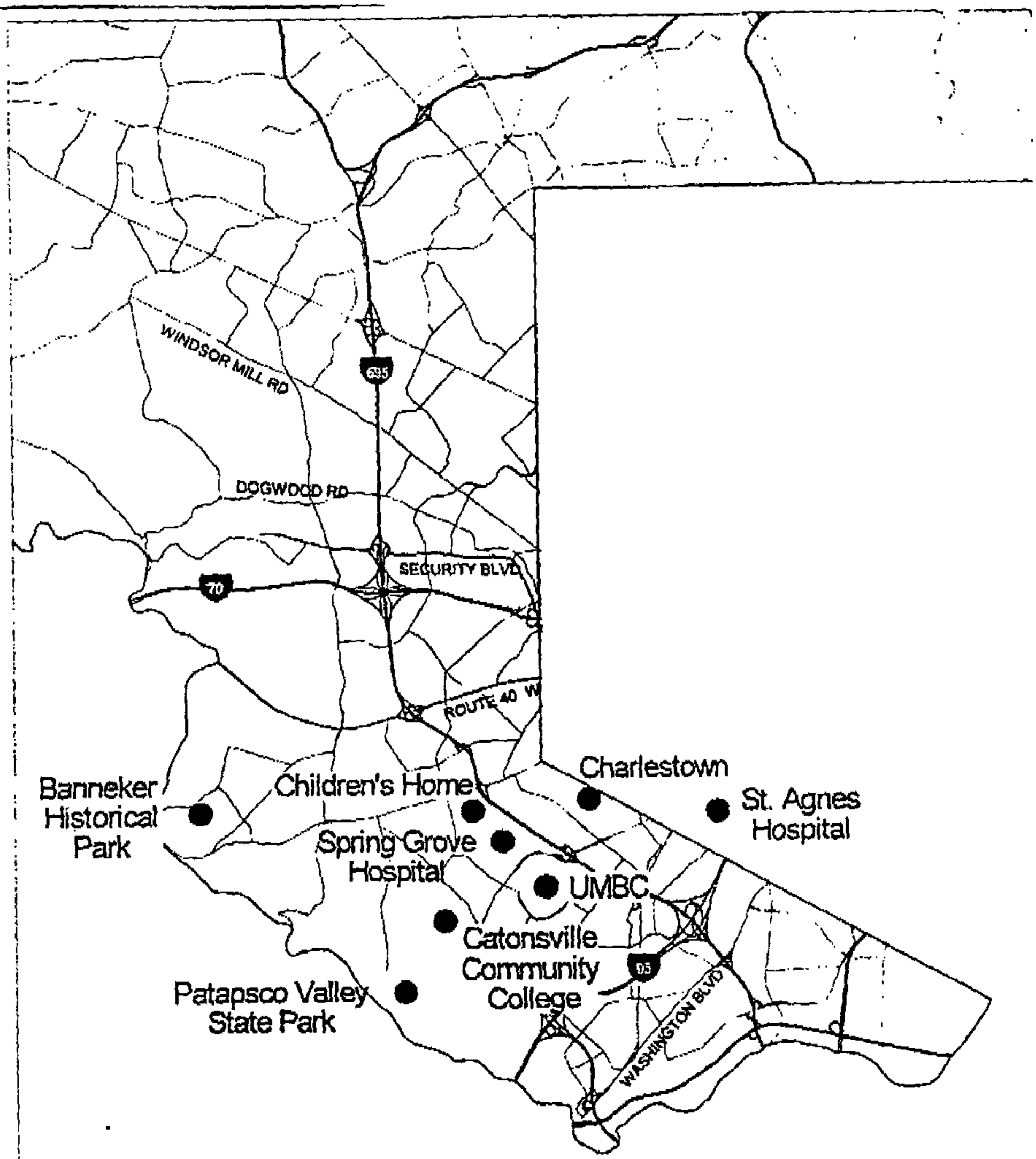


Map 3: Southwest Enterprise Zone

- **Reusing Older Buildings** - The creation of the Southwest Enterprise Zone, State Job Creation Tax Credits, County/State financing programs, and utility credits provide incentives for companies to reinvest in older properties. However, one of the problems facing older industrial areas such as Southwest Baltimore County is the large number of aging, obsolete industrial structures which are not feasible for continued use for manufacturing or warehouses, but which are expensive to demolish or renovate. As part of the revitalization effort, the DED staff will identify such buildings and work with the property owners and brokers to seek financial and processing assistance to demolish or renovate such obsolete structures to make way for new industrial development.
- **Encouraging Redevelopment Opportunities** - A few strategic sites have been identified as opportunities for redevelopment including the G. Heileman Brewery site, the Eichelman Brothers property at the intersection of Washington Boulevard and Lansdowne Road, and the Eastern Waste Management site. The DED will actively work with the owners, prospective businesses, and the State to redevelop these areas.
- **Improving Infrastructure** - The Southwest industrial area is well served by utilities, roads, and rail. One area in need of attention is the Pistoria Road/Knecht Avenue vicinity where periodic flooding and subsurface water disrupts a number of companies located in the area. The Department of Public Works (DPW) is investigating some public and private improvements on specific sites and the DED will work with DPW and the businesses in that area to try to develop a comprehensive solution to this issue.

Institutions

Southwest Baltimore County Revitalization Strategy



Map 4: Southwest Institutions

INSTITUTIONS

Institutions have long been a part of the fabric of the Southwestern Baltimore County community. In 1862, the Daughters of Charity began the St. Agnes Hospital to provide nursing care for the poor in Southwest Baltimore County and City and in 1906, it was reorganized as a full service hospital. The Children's Home was founded in 1863 as the General German Orphans' Association and moved to its 44 acre site in 1923. The Maryland Hospital for the Insane relocated from its overcrowded urban location (now the site of the Johns Hopkins Hospital) to the rural location at Spring Grove Hospital which opened in 1871 with 132 patients. Catonsville Community College was founded in 1957 and UMBC, which stands on the former farmlands of Spring Grove Hospital, celebrated its 30th birthday this year. The newest institutional use in the area is the retirement community of Charlestown which was built in 1983 on the site of the former St. Charles College and Seminary.

This historical concentration of institutional uses distinguishes the Southwest from other areas in the metropolitan region and gives the sector an economic, social, and cultural advantage. Collectively, these institutions offer an amazingly wide range of job opportunities and employ over 8200 people. UMBC and CCC provide an outstanding array of technical, undergraduate, graduate, doctoral, and continuing educational programs that can easily meet the educational needs of the regional population and employers. These institutions are also important community resources, with literally hundreds of students and faculty involved in partnerships with local neighborhoods and service organizations. St. Agnes Hospital is a 407 bed community teaching hospital with specialties in women's services, oncology, and cardiac disease. The Charlestown Retirement Community is the regional forerunner in alternative community living for senior citizens and provides a range of activities to promote an active social environment as well as health care programs and assistance designed for the elderly. UMBC and CCC comprise the cultural anchor of the area with dozens of public theatre, music, and dance performances taking place every year. The University also has galleries and an excellent library that are open to the public and that exhibit contemporary art and special collections. UMBC also sponsors lectures by specialists in the visual arts, humanities, and science. Tying off the Center are the Patapsco State Park and the Banneker Historical Park which are wonderful recreational and cultural amenities for all of the residents of Southwest Baltimore County.

Recommendations:

1. ***Establish the Identity of the Institutional Center.*** *The institutional center development concept must become part of the image of the Southwest. This can be done by coordinating the individual plans of the various institutions and by marketing and promoting the area as a center for economic development, education, culture, and human services.*
   - Use the Southwestern Revitalization Strategy as the foundation of an overall master and marketing plan for the Center. This should establish a vision and image of the area, coordinate the future plans of the individual institutions, outline significant programmatic and physical developments that are planned, promote completion of any key capital infrastructure improvements, and build upon the recommendations in the Revitalization Strategy that promote the economic, educational, cultural, and human services benefits of the Center. Representatives of the area's community and business organizations should be included in these planning processes.
   - Establish an Institutional Roundtable of top administrators to promote the Center, keep the institutions informed of each others' programs, and develop synergistic programs and partnerships.
   - Work with the Greater Baltimore Alliance to develop a regional marketing strategy for the Center.
   - Provide Internet links among the institutions' home pages to foster the Center identity
   - Use the Institutional Center in all community and economic development marketing material.
   - Build upon the educational relationships that already exist among the institutions (e.g. classes taught by UMBC and CCC at Charlestown) and collectively sponsor events that connect the institutions with each other and the community at large.

2. ***Promote the Center for Economic Development.*** *Collectively, the institutions in the Southwest are one of the area's largest employers. Of the total 8260 employees, St. Agnes Hospital has 2800, UMBC has 2000, Catonsville Community College has 1300, Charlestown has 1200, and Spring Grove Hospital Center has 960. These institutions offer a range of local employment opportunities at all skill levels, including professional, academic, managerial, technical, administrative support, and service. This employment base has an important spin-off effect, generating between 6000 - 9000 additional jobs in the local economy. As major employers and providers of invaluable public services, the continued success of the institutions is essential to the overall viability of the Southwest. However, public funding is becoming more and more limited and institutions must develop creative and complementary programs and funding alternatives in order to retain and enhance their public purpose. Located in the heart of the Washington-Baltimore corridor, the Institutional Center is poised to become a regional leader in high tech development and is an ideal location for research, educational, medical, and technology development that can support and complement the area's institutions. Most of the economic development that has occurred in the Center is linked to the institutions and new development should maintain and promote that connection. In addition to the actions in the Economic Development Section, the important components in the strategy to promote interrelated economic development are:*

- **Continued Support of the UMBC Technology Center and Research Park** - These uses will furnish much needed facilities and developable land for research and technology companies and institutes. Currently, the Technology Center is completely leased to companies employing over 160 people involved in software, biotech, engineering, materials science, training, and education. The Research Park will build on the Tech Center's success by providing 250,000 square feet of floor space for technology research and development. These uses provide highly skilled employment opportunities, revenues for the university , and training and research collaboration opportunities for entrepreneurs, students, and scientists engaged in technology research and development.
- **The Expansion of St. Agnes Hospital** - The Southwestern area of the County continues to be the primary service area for St. Agnes HealthCare. Within the next two years, St. Agnes Hospital is planning to open an additional facility in the Catonsville area to offer primary care physicians, specialists, educational programs, and ancillary services at one location.
- **Support of the Spring Grove Hospital Center** - The Center is an important mental health care and research facility and significant contributor to the local economy and biotechnological research and development. There are three main components to the Center:
    - ◊ The Spring Grove Hospital which treats approximately 750 - 850 patients annually with a budget of about $ 42 million per year. Currently, the Hospital employs 850 people of which more than half are Baltimore County residents.
    - ◊ Maryland Psychiatric Research Center which is operated by the University of Maryland at Baltimore and employs 110 people with an annual budget of $7 million. The Center is a research facility in severe mental illness and manages a clinical program with the Hospital, is a national testing center for anti-psychotic drugs, and has highly sophisticated equipment used for brain mapping research.
    - ◊ Conference Center which is equipped with the State's Financial Management Information System computer network and is a computer software training site for the Department of Health and Mental Hygiene. Additionally, all of the buildings are connected by fiber optics, creating a campus-wide computer network.

The future of the Spring Grove Hospital Center is dependent upon the State's mental health care needs as explained in greater detail in the Economic Development Section. The continuance of the Center should be supported and increased clinical and biomedical research and development should be encouraged to provide additional employment and raise the profile of the entire area as a premiere and diverse research and technology location. If the Center is closed by the State, the Maryland Economic Development Corporation in conjunction with the County, should undertake a feasibility study and initiate a development master plan for uses that support the Institutional Center.

- **Technology Studies at Catonsville Community College** - The expanding Applied Technology Center and partnership with the Western School of Technology and Environmental Science offers advanced education and training in high technology and environmental technology. Catonsville is also the host college for the Greater Baltimore Advanced Technology Center which is a virtual organization comprised of the education and customized training resources of the eight community colleges in the region.
- **Workforce Education** - A well educated workforce is prized by present and future employers and this can be the key factor in a business' decision to stay or locate to an area. With its varied educational institutions, the Southwest has an edge over other areas in its ability to provide a range of educated employees. The State, County, and institutions must capitalize on this unique advantage and fully support budgetary and programmatic actions that advance education in the Southwest. The institutions should also retain and expand their partnerships with local public schools to prepare students with the skills to meet the employment needs of businesses.

3. ***Promote the Center for Education.*** *The educational core of the Center is built upon the University of Maryland Baltimore County and the Catonsville Community College which offer a wide range of educational opportunities. St. Agnes Hospital and the Spring Grove Hospital also play an important role in medical training and research. These programs as well as others that involve local schools need to be understood and valued by the community at large and used in marketing of the Center. They include:*
   - **Catonsville Community College**, one of the three colleges in the Community Colleges of Baltimore County system, has a national reputation as one of the foremost providers of workforce education and training among community colleges. In addition to the great number of students who transfer into their junior year at local universities, the college provides technical education and training in more than 30 fields operated under the advice and counsel of area employers. Career programs include Air Transportation, Computer-Aided Design for Architecture and Engineering, Computer Graphics and Visual Communication, Computer Automated Manufacturing, Computer Information Systems, Data Communications Technology, and Environmental Technology. Through the system division of Continuing Education and Economic Development, the college provides customized workforce training to hundreds of area employers, intensive workforce training for adults seeking technical skills, a broad array of non-credit work related courses, licensure courses, and personal development courses. CCC also provides courses on the campus of Spring Grove Hospital and Charlestown for the employees and residents.
   - **University of Maryland Baltimore County** is a dynamic research university serving the Baltimore metropolitan region. UMBC is increasingly known nationally for its focused mission emphasizing science, engineering, and public policy at the graduate level, built on a foundation of very strong undergraduate programs in the arts and sciences, and for its success in attracting very productive research faculty who spend considerable time mentoring undergraduates. Unique to UMBC are its state of the art centers for imaging research and structural biochemistry; its Shriver Center for learning, work, and service; and its Howard Hughes Medical Institute Laboratory. Over ten percent of the entering undergraduates come from local high schools and colleges, and over ten percent of the UMBC alumni are area residents.
   - **Spring Grove Hospital** is the only state hospital affiliated with the Department of Psychiatry at the UMAB School of Medicine. The hospital serves as part of the psychiatric rotation for resident doctors and has internships for nursing, social work, and psychology, and is a national psychological training site.
   - **St. Agnes Hospital** offers residency programs in medicine, pediatrics, and surgery. At this time, 20 surgical residents serve for 5 years while 34 medical residents are at the hospital for 3 years. The pediatric program is a residency partnership with the Johns Hopkins Hospital and has 8 residents. In addition to teaching physicians, the hospital offers college students in the programs of respiratory therapy, nursing, occupational therapy, and physical therapy programs an opportunity to do observations and internships. Students from Towson University's Health Science Program and UMBC's Health Policy Program also do internships in the education departments at St. Agnes Hospital. Two GED programs are offered at the hospital -- a day program for pregnant and parenting adolescents and an evening program for the community. The hospital also has school partnerships with various private, parochial, and Baltimore County schools in the area. The hospital staff takes programs to the schools and some school classes come to the hospital to observe the staff at work.

- **The Partners in Excellence Program** managed by the Baltimore County Public School System has the continued commitment of UMBC, CCC, St. Agnes Hospital, and the Charlestown Retirement Community to provide management support, tutoring, curriculum development and support, and mentoring to local schools.
- **The proposed Institutional Roundtable** should explore developing and/or expanding educational partnerships among the institutions. This could be expansion of the courses offered at Charlestown by CCC, using CCC's educational Cable Television channel, sponsoring special health programs between St. Agnes and Charlestown, or investigating new internship possibilities.

4. ***Promote the Center for Cultural Arts and Human Services.*** *One of the distinct advantages of the Institutional Center is the incredible range of cultural and intellectual events and activities that are available to the community through the academic institutions of UMBC and CCC. Each year, hundreds of students, faculty, and staff work to enhance the neighboring communities. The Charlestown Retirement Community meets many of the unique needs of senior citizens by providing a social environment and specialized health services on an attractive self contained campus. St. Agnes Hospital is a well respected and growing community health care center, serving both County and City residents. The following activities, programs, and actions should be recognized and supported:*

- **Cultural Arts** - The Fine and Performing Arts Center Theatre at CCC and the renowned theatre, music, and arts departments at UMBC offer a variety of visual and performing arts opportunities to the general public. UMBC stages nationally celebrated theatrical presentations on and off campus, sending its singers into the community and inviting area residents to musical and art presentations. The art galleries at both institutions sponsor exceptional exhibitions of paintings, sculpture, and photography and there are special lectures in the humanities, visual arts, current events, and science held throughout the year. These events can be further promoted by:
    - ◊ Developing a joint calendar and a marketing strategy similar to that done by The Downtown Partnership to promote the cultural events occurring in the Center
    - ◊ Building upon the entertainment home page of the Baltimore Region's colleges and universities that includes information about performing and visual arts events and use CCC's cable television channel
    - ◊ Exploring "space and people" partnerships among the institutions such as the "Sundays at 3" musical performances by the UMBC musicians and singers at Our Lady of the Angels Chapel at Charlestown. The exquisite chapel is home to the Chapel Concert Series where premiere musicians and vocalists perform in free public concerts.
- **Service** - Each of the institutions has a strong history of public service and volunteerism that enhances the general Southwest community. The Shriver Center at UMBC places students in co-ops and internships in many Southwestern businesses and organizations and manages community service projects that bring the resources of the University to people in need. UMBC also sponsors outreach programs such as Youth in Progress Student Mentoring, Habitat for Humanity, and Into the Streets as well as numerous internships in a number of service oriented professions. Charlestown residents have partnered with local schools and St. Agnes offers a number of health care programs and events. To help focus the efforts:
    - ◊ The Shriver Center, community umbrella groups, and the Office of Community Conservation should meet to develop a list of service priorities for the Southwest.
    - ◊ Umbrella associations should review their priority projects and contact UMBC's Community Outreach Office as well as other public service coordinators at the various institutions to develop a volunteer base for ongoing projects as well as special events.
- **Senior Living** - Charlestown provides an added dimension to the Southwest housing market by providing an extremely popular form of housing geared toward the special needs and desires of the growing senior population. The Charlestown Retirement Community is an important stabilizing force and attracts new residents into the area. This, in turn, provides local employment, supports the area's retail and service economy, and contributes to the tax base. The value of this community should be recognized and efforts to further integrate the residents into the overall community should be encouraged.

- **Health Care** - Health care is no longer provided only in a physician's office or at a hospital. St. Agnes Hospital offers many services focusing on prevention at senior centers, malls, churches, and businesses. Cholesterol and blood pressure screenings are offered monthly at Westview and Security Square as well as other community sites. Mall Walkers programs at Wesrview and Security Square encourage people to exercise, learn, and socialize. The Catonsville and Lansdowne Senior Centers are the sites for educational programs on various health topics, e.g. diabetes, cholesterol, skin cancer. In addition, each year St. Agnes HealthCare offers Mission Fund Grants to organizations for activities and programs that help to improve the health and well being of the community. In 1996, grants totaling $125,000 were awarded, with 4 Southwest Baltimore County organizations receiving awards.

5. ***Pursue Infrastructure Improvements.*** *The following transportation and public improvements are needed to support and enhance the Institutional Center:*
   - Roundabout at Wilkens and Hilltop. This is a recommendation by the State Highway Administration to improve the safety and efficiency of this intersection. A second public meeting on the project will be held in the Summer of 1997. Costs of construction would be shared by the State, County, and UMBC.
   - As advanced telecommunications systems are needed by the institutions, consider options that could improve communication among the institutions and possibly increase the attractiveness of the Center to future uses.
   - See the Capital Improvements Map in Appendix A.

6. ***Strengthen Relationships with the Surrounding Communities.*** *Often the primary goals of an institution do not completely dovetail with those of adjacent neighborhoods. In the Southwest, these differences become most apparent in land use and development decisions. This may be a result of both groups' unwillingness to consider themselves a part of a greater community. A strategy for the institutions and neighborhoods to begin to work cooperatively should include*
   - Development of master plans by the institutions to share their plans for growth and development (physical as well as programmatic) with neighboring communities.
   - Development of specific partnerships and programs between institutions and communities that benefit the area as a whole. This could be spearheaded by the umbrella groups and the proposed Roundtable.
   - An established communication process that includes a clear understanding of the types of issues that need to be discussed and the contact people and groups.
   - A commitment between the institutions and the businesses to develop specific actions to draw students into the commercial core of Arbutus and Catonsville. This should be linked to an effort to improve student ties with the neighborhoods and develop a college spirit within the community.

Community Conservation

Southwest Baltimore County Revitalization Strategy

COMMUNITY CONSERVATION

Community conservation refers to public and private efforts designed to maintain or enhance the physical, social, and economic resources of the County's older, more urbanized communities. The communities of southwestern Baltimore County are extremely diverse and face quite different conservation challenges and opportunities. No single sector-wide plan can effectively address the specific issues that are facing individual communities. The Southwest Revitalization Strategy recognizes this and by necessity, the community conservation chapter is structured as a handbook that outlines problem solving approaches and provides information on County programs as well as different techniques and ideas that have been used successfully elsewhere. Depending upon their particular concerns, communities can draw upon this menu of ideas and apply and adapt them to their needs. This can be done in the form of a comprehensive community plan as is being done in the Baltimore Highlands area or as a targeted action plan aimed at resolving a specific issue as was done by the Old Catonsville/Summit Park neighborhoods in their traffic calming proposal.

The Community Conservation Chapter is divided into five main topic areas that the volunteers who participated in the planning process identified as the most important to the Southwest. They are housing, public safety, education, youth and families, and community development. These groupings can also be used as the organizational framework for community plans. The Strategy also has a map of the capital improvements that are contained in the six year capital budget and program which may provide further information. It is recommended that the Offices of Community Conservation and Planning be contacted to help communities in their planning efforts.

Housing

Housing is a crucial component of any community conservation efforts. The main housing concerns voiced by residents were the maintenance of both owner-occupied and rental housing; the need to promote homeownership, especially in areas experiencing speculative purchasing for rental purposes; the over concentration of sometimes poorly maintained, lower income rental complexes; and the integration of special needs group housing into established neighborhoods. Baltimore County, through the Office of Community Conservation, administers a number of funding programs that can be used to address these issues, but it is the communities, often in partnership with nonprofit housing organizations, that must take the lead in developing community-wide housing and promotional strategies.

It must be recognized that housing and other community conservation issues do not exist in a vacuum. The state of the local economy, quality of schools, levels of crime, public services and amenities, and condition of the streets and alleys are some of the factors that can have a powerful effect on an area's housing market. A constant theme in this Revitalization Strategy will be that everything is interrelated and that all of these issues must be addressed in as holistic a manner as possible in order to strengthen and stabilize residential and business communities of the Southwest.

Recommendations:

1. ***Establish community based housing programs.*** *Experience has shown that the most successful housing initiatives are community-based. Government money and staffing are very limited, and the best programs are those that are built upon the commitment of a community working in partnership with a private sector housing organization. The involvement of these housing groups is usually essential because they have a great deal of experience and technical expertise and maybe even more importantly, can leverage funds to finance the often very expensive housing programs needed to stabilize and revitalize a neighborhood's housing market. The key steps a community needs to take to start its own neighborhood housing program are to:*

   - **Define the problem** - Communities should meet with the Southwestern Sector Coordinator in the Baltimore County Office of Community Conservation to develop a strategy for identifying the types of housing problems occurring in their neighborhood. This should be based on an assessment of the area's housing that quantifies, as much as possible, the following: vacant buildings, abandoned buildings, poorly maintained structures, nuisance properties, ownership type (e.g., rental, owner occupied, group house, etc.), conversions from owner occupied houses to rentals, investment buying patterns, declining values, etc.

- **Identify Potential Partners** - Based on the information gathered, the Office of Community Conservation will try to facilitate partnerships with appropriate housing organizations such as St. Ambrose, Baltimore Housing Partnership, Associated Catholic Charities, Neighborhood Housing Services, Community Building Group, etc. Other partners could be local businesses, institutions, or major employers that may be able to help publish brochures and fliers, provide meeting space, or share expenses.
- **Develop a Neighborhood Housing Strategy** - The community, housing organizations, and government may design a program, including funding, that focuses on addressing the specific problems in the neighborhood. This is a step by step process that may include homebuyer education and counseling, settlement expense loans, loans or special projects for rehabilitation, marketing campaigns, targeted enforcement of the Housing and Livability Codes or nuisance laws, intervention buying, incentives to promote nonspeculative home sales rather then rentals, organizing volunteers to help residents that aren't able to properly maintain their homes, etc. The strategy should also identify other issues that affect the neighborhood's housing market such as specific infrastructure repairs, streetscaping, trash and graffiti removal, community services such as daycare and youth programs, etc.
- **Monitor the Program** - the program should be evaluated in order to make adjustments and to justify the extremely competitive funding that would be needed to continue or expand the program.

2. ***Market the Neighborhood.*** *Older neighborhoods have a sense of community and character not found in newer, and often nondescript, subdivisions. Focus on promoting the best attributes of the neighborhood by*
   - Developing community brochures, fact sheets, and lists of neighborhood contacts that can be used by real estate agents in marketing houses as well as communities. The Office of Community Conservation has examples of effective brochures designed by other neighborhoods. In this era of telecommunications, a Web site can be another method of informing and attracting prospective homeowners.
   - Holding a day long walking tour of houses on the market, possibly in conjunction with other community events. Coordinate with the Realtors and design a program and map that highlights the best features of the neighborhood, including the residents, community activities, history, schools, shopping areas, parks, etc. This was done very successfully in the Towson community and the Office of Community Conservation can be contacted for details.
   - Offering to meet with Realtors to get them informed and enthusiastic about a community. Consider targeting existing renters as first time homebuyers.
   - Working with major employers to sponsor a "Live Near Your Work" program of incentives.
   - Applying for grants to fund specific projects that can improve a neighborhood and promote homeownership. A listing of grants available to community associations can be obtained through the Office of Planning.

3. ***Clean up and Maintain the Appearance of the Neighborhood.*** *It's been said that a person never gets a second chance to make a first impression and this holds true for neighborhoods. Well maintained homes along tree-lined streets that are clear of trash, graffiti, and crumbling pavement instantly welcome people to a community. To create this image, community organizations should:*
   - **Focus on the Gateways** - Community associations, nearby residents and businesses, service organizations such as the Scouts or fraternal organizations, or "guerrilla gardeners" can "Adopt a Spot" and use landscaping, a neighborhood sign, period lighting, flags, seasonal flowers, tree planting in public rights-of-way, etc. to keep the main entrances to a community attractive and inviting. Other publicly visible spaces such as the sidewalks and gutters, ends of alleys, tree wells, undeveloped lots, walls, and medians should be maintained on regular basis as these areas also contribute to the impression that both residents and visitors will have of an area.
   - **Sponsor Neighborhood Clean Ups** - Community associations in conjunction with schools, churches, businesses, and service organizations should organize seasonal cleanups. The Greater Arbutus Community Alliance, Associated Catholic Charities, and the Lansdowne Improvement Association have held very successful cleanups and the Office of Community Conservation can be contacted for clean up application packages. Clean ups of streams and community forest projects can be organized through Maryland Save Our

Streams and the County Forestry Board which are organizations that have active partnerships with the Department of Environmental Protection and Resource Management.

- **Participate in the Community Code Enforcement Program** - This is a structured program in which community associations volunteer to work with the County to enforce zoning, community hygiene, building, and Livability Code regulations.
- **Participate in the "Nuisance Abatement" Training Sessions** - New legislation was passed that allows community associations to be a party in nuisance abatement actions. Community associations, the Community Law Center, and the Citizens Planning and Housing Association (CPHA) will be co-hosting training sessions on this law in the Fall of '97 in the Southwest. Contact CPHA at 410-539-1369.
- **Repair and Upgrade Buildings Exteriors** - Deferred maintenance of owner occupied buildings is often attributable to a change in a household's economic situation and volunteer action may be the most effective way to help improve the appearance of individual as well as groups of poorly maintained buildings. The Manager of the County's Housing Opportunities Program can provide information about successful programs such as "Christmas in April" and other community based projects such as "Operation Facelift" which was co-sponsored by St. Ambrose Housing Center in a Baltimore City neighborhood. Other situations such as neglect of specific properties by absentee landlords may need to be dealt with by enforcing existing regulations such as the Livability Code. Inspectors are assigned to the Southwest and can be contacted through the Department of Permits and Development Management.
- **Mobilize Volunteers** - recruit volunteers for specific projects from groups other than community associations such as the Scouts, schools, major employers, and UMBC through the University Center Community Outreach Program.
- **Know the Code** - The umbrella groups, in conjunction with the County, should prepare a user friendly guide to the regulations that can be used to improve the appearance of the community. The Greater Homewood Community Corporation in Baltimore City published an excellent brochure that could be used as an example. Information can then be reproduced in newsletters and distributed to new residents as part of a welcoming package.

4. ***Direct Services into Areas of Need.*** *In the Southwestern sector, there are some extensive concentrations of housing serving lower income populations and these areas are exhibiting signs of physical, social, and economic distress. The Baltimore County Consolidated Plan for Fiscal Year 1997 identified Highland Village, the Riverview Townhouse development, and the Winters Lane community as priority areas for targeted action that includes:*

- Implementing a comprehensive housing strategy in Lansdowne and Baltimore Highlands. Components of the strategy include strengthening the existing homeownership program, linking that program to the development of a senior housing facility, reducing investment buying, addressing the service needs of the large multi-family housing developments, and promoting programs to assist existing homeowners.
- Community organizing to create a neighborhood association in Riverview. The initial emphasis will be on code inspection and enforcement, community clean-up, and working with Associated Catholic Charities to increase homeownership and eradicate speculative purchasing for rental purposes.
- Working with local community associations and churches to establish housing rehabilitation and homeownership programs in the Winters Lane community.

Other actions that should be considered are:

- Directing affordable, community-based, and child-oriented services into the larger rental communities. Property managers, residents, and the County should identify areas that would be suitable for development or redevelopment for uses such as wrap around daycare facilities, a park, satellite public service offices, or community service or support centers. Programs should include tutoring, parenting skills, employment assistance, skills training, or counseling.

- Joining with the Maryland Multi-housing Association to sponsor training and informational seminars about topics such as marketing and the Fair Housing Act that can be used to strengthen and improve rental communities.
- Working with major apartment owners, landlords, and property managers to upgrade rental qualifications.
- Establishing an "award" or rating of complexes to recognize well run and maintained buildings.
- Using State rehabilitation programs to improve the appearance of developments. This should include monitoring (especially through State funding applications) to ensure that complexes are appropriately maintained and operated.
- Using Crime Prevention Through Environmental Design techniques such as lighting, landscaping, selected fencing, and road redesigns to improve security. Residents, management, and the police should identify and prioritize areas and options. Costs can be spread through out a complex's capital program.
- Employing private security in larger rental complexes.

5. ***Integrate Special Needs Housing into the Community.*** *More and more people with special needs are moving into homes managed by providers. These include the elderly and juveniles; people with mental and/ or developmental disabilities such as mental retardation, muscular dystrophy, heart disease, or visual and hearing impairments; and people recovering from alcoholism and/or drug addiction. Usually the provider is a nonprofit organization and the services offered vary. Many residences for people with mental and/or developmental disabilities are exempt from County zoning restrictions and the County has enacted special legislation for housing for the elderly. Community residents often view group homes or alternative living units as one more negative change that threatens the stability of their neighborhood. Providers are not legally required to meet with communities and many do not. The result can be very antagonistic, with both sides digging in their heels on opposite sides of the issue. Community leaders and housing providers are encouraged to:*

   - Read and follow "Developing Partnerships for Great Neighborhoods: A Guide to Successful Community Living for People with Disabilities". Prepared by the Community Living Task Force, this manual provides much needed information and outlines a communication process to best integrate people with disabilities into the County's neighborhoods.
   - Be forthright about concerns and focus on resolving them. Communities and providers can reach agreements about staffing, maintenance, noise, loitering, etc. and often clients can contribute to community projects. Management is often the key as to how well a group or alternative housing unit blends into a community. With group homes, it may be possible to negotiate issues with a provider that couldn't be with resolved with private owners or individual tenants
   - Work with agencies that fund and/or license providers to understand issues and rights. Also, many providers must meet strict licensing requirements in order to continue to receive funds. It may be possible to work through these agencies if operational disagreements cannot be negotiated.
   - In general, support broadly scattered sites to avoid over concentration in one neighborhood or one community. It must be remembered, however, that group housing and alternative living units are exempt from the County's zoning regulations and are covered under the Fair Housing Amendments Act.
   - Support housing alternatives that meet a community need and stabilize a neighborhood. In Lansdowne, the Courtesy Station housing for the elderly project successfully blends into the neighborhood and another project for the elderly on Hollins Ferry Road should be supported as a stabilizing anchor for the neighborhood.

Public Safety

Public safety is a critical determinant of the quality of life in a community. Crime, and even the perception of crime, strongly influences the image of an area and affects a community both physically and spiritually. Most people recognize the link between community stability and crime and in the Southwest, the Wilkens Police Precinct (also known as Precinct #1) is one

of the most actively involved groups in the revitalization efforts. As with other community conservation issues, public safety is a complex problem and no one group or program can make the streets safe. Business and residential communities, the police, non-profit organizations, and the various governmental agencies have to work together and use the ideas discussed below to develop specific strategies to improve public safety in their community.

Recommendations:

1. **Promote Community Policing.** *The Baltimore County Police Department's public safety strategy is a two pronged approach of enforcement and community involvement. The Southwest Revitalization Strategy will focus on the latter component. The Southwest is fortunate that most of the revitalization area is covered by just one police precinct --the Wilkens Precinct-- which has formed active partnerships with communities to tackle crime and disorder problems. The key elements of the Precinct's community involvement program are:*

   - **Community Outreach Unit** - a special two officer unit that provides community services and acts as the liaison between the police and the community. The unit works with communities to exchange information, develop and implement crime prevention strategies, sponsor youth programs, and promote communication and cooperation. Community outreach meetings are held on a monthly basis throughout the precinct. Contact the Precinct at 410-887-0872 for further information about the programs described in this section and how they can be used to help address a community's public safety concerns.
   - **Web Page** - In an effort to get the word out about various programs, the Wilkens Precinct is on the Internet (http://www.access.digex.net/~issd/pc01home.html). The Web page highlights a number of relevant crime prevention programs such as auto theft and child abuse, lists the Community Outreach calendar, describes other programs such as the Explorer Post with the Boy Scouts, responds to community concerns, and has a comment line. All branches of the County library system have terminals that can be used by the public to access the site.
   - **Robbery Prevention and Response Training** - a program in which the Police teach business organizations practical techniques to avoid crime , especially shoplifting, and how to react to a crime if it occurs. Police also make recommendations on safe cash handling procedures and bank drop methods, store design, and traditional crime prevention techniques including proper use of alarms.
   - **Commercial Corridor Security** - Three new patrol cars will be added to Precinct #1 to patrol Baltimore National Pike (Rt. 40). In addition to responding to calls for service, officers will devote significant effort toward working with individual businesses to prevent crime and solve problems.
   - **Mediation Processes** - The Wilkens Precinct is very fortunate to have a community volunteer that serves as a neutral third party to help resolve neighborhood disputes, juvenile problems, and other community issues before police intervention. The volunteer, Ed Hastry, is a member of the Baltimore County Mediation Project and has been a tremendous help in correcting many juvenile situations and assisting the police in getting secure detention for those juveniles that needed to be removed from the neighborhood.
   - **Mentoring** - Police officers pair up with students who have been identified by school administrators and staff as needing a positive role model in their life. The officers spend both on and off duty time working with the youngsters on homework, playing games, talking about issues in their lives, going to ball games, etc.
   - **Community Substations/Drop In Sites** - The Police are using several business locations in the Southwest as drop in sites to write reports and provide a periodic police presence to deter crime. Officers may also consider parking near certain trouble spots when they must write their reports in their cars. For example, a police car periodically parked in front of a house where there's suspected drug dealing can be a very effective deterrent. Contact the precinct for further information.
   - **Grants** - The Police Department administers grants from various sources that can be used to fund community projects to improve public safety. Examples include funding for COP groups to purchase radios, cell phones, signs, etc. Another pending grant will fund personnel, materials, and equipment for three projects dealing with graffiti abatement, residential speed reduction, and a mentoring/PAL program. Contact the Wilkens Police Precinct and the Southwestern Coordinator for more information about grant programs.

2. ***Create an Environment that Discourages Crime.*** *While economic and social conditions have the most influential impact on crime, there does seem to be a correlation between crime and the physical decay of a neighborhood. Graffiti, piles of trash, broken windows, and debris strewn public spaces convey a sense of failure and uncaring which can make a community vulnerable to crime. Groups and individuals need to evaluate their neighborhood and identify areas that should be cleaned up and maintained. Possible actions include:*

   - **Remove Graffiti** - Graffiti vandalism is an increasing problem and the Baltimore County Graffiti Task Force found that the most effective deterrent is immediate removal. A review of all state and county agencies that directly deal with graffiti removal also found that for the State Highway Administration, painting over the graffiti was more cost effective than using special coatings and cleanup. Other deterrents include painting a mural or using protective plantings such as ivy or thorny plants. A public awareness campaign, possibly sponsored by the County and nonprofit organizations, should be launched. Government should also set the standard of zero tolerance for graffiti on public buildings, especially schools. Contact the Office of Community Conservation for information about methods communities can use to deal with graffiti.

   - **Clean Up Highly Visible Spaces** - Streets, ends of alleys, main entrances into the community, vacant lots, etc. should be regularly cleaned up and maintained. The Maiden Choice Community has done this by reclaiming a prominent vacant corner as a memorial park. Sometimes thinking small can work best by getting groups of houses, a church, or a few businesses to focus on one particular nearby spot. See "Housing" section for additional ideas such as building repair, selective Code enforcement, neighborhood clean ups, etc.

   - **Use Crime Prevention through Environmental Design Techniques** - The Police, Office of Community Conservation, and nonprofit groups such as the Neighborhood Design Center can evaluate areas and develop simple and often very cost effective ways to deter crime. Techniques can include changing the direction of streets, lighting, strategically placed fencing, landscaping, pruning, etc.

   - **Use Traffic Calming Measures** - Signage, speed limits, directional changes, and physical changes to road designs such as humps, traffic circles, road narrowing, and islands can slow down traffic, prevent cut throughs, and limit quick escapes from a neighborhood. See "Community Development" for more information about traffic calming measures proposed by the Old Catonsville/Summit Park Traffic Calming Task Force.

   - **Improve Public Infrastructure** - Poor lighting and crumbling side walks and streets can also weaken the image of an area. Refer to "Community Development" section for an explanation of the Capital Improvement Program process and infrastructure assessment and repair programs.

   - **Participate in the "Nuisance Abatement" Training Sessions** - New legislation was passed that allows community associations in Baltimore County to be a party in nuisance abatement actions. Community associations, the Community Law Center, and the Citizens Planning and Housing Association (CPHA) will be co-hosting a training session on this law in the Fall of '97 in the Southwest. Contact CPHA at 410-539-1369.

3. ***Mobilize the Community.*** *Community groups, schools, churches, and service organizations should build upon the strengths of their organizations and design safety projects that complement their missions. Individual residents and businesses must also recognize that it is not the responsibility solely of the police to ensure a community's safety. People must get involved in organized projects or pledge to keep their property and street as safe as possible. Groups should start with the Community Outreach Unit of the Wilkens Precinct and develop a strategy that fits the needs of the neighborhood. Activities that can be undertaken include:*

   - **Parties** - Throw an old fashioned block party to get neighbors out of their houses and onto the street to meet and get to know each other. Vary the theme and have it in the alley, on the porches, or in a neighborhood park or building. Contact Traffic Engineering about permits. Try to recruit a few volunteers to establish a base and build from those connections. Social events are a positive and proactive way to recruit volunteers and people that know their neighbors are more inclined to watch out for each other.

- **Tap Other Volunteer Sources** - The Shriver Center and the Community Outreach Office at UMBC may be able to provide some volunteer services, and high schools may be able to connect community associations with students who need to perform public services as part of their graduation requirements. Neighboring businesses and institutions such as churches should also be considered as possible partners.
- **Citizens on Patrol and Neighborhood Watch** - . In Fiscal Year 1998, $100,000 has been commited specifically for Citizens on Patrol throughout the County. There are a number of active COPs in the Southwest and the Outreach Unit can give advice on how to start. Established groups can also provide tips, especially during ride alongs. The quarterly meetings with the Police should be used as a way to become more familiar with each other, exchange ideas, improve reporting between the Police and the COPs, and strengthen relationships. Neighborhood Watch is another alternative where residents agree to watch the street from their homes. However, a 60% participation rate is needed for a Watch to be formally established. A variation of this is done in Baltimore Highlands where businesses, particularly those open at night, are working with COPs to monitor the streets. Groups should also participate in public events to get the word out and sign up volunteers.
- **Citizen Responsibilities** - In many community meetings, residents have spoken about the responsibilities of citizens to prevent crime. Community leaders and the Police should prepare a straight forward list of responsibilities such as when and how to report suspicious activity, house numbering, porch and backyard lighting, etc. This could be distributed at meetings, included in welcoming packages to new residents, and published on the Web Page and in community newsletters.
- **Security for Individual Homes and Businesses** - The Police will provide security surveys of homes and businesses to identify ways of preventing crime.
- **Court Watches** - A number of communities are getting involved in the judicial system to ensure that the impact crime has on the resident victims and the community is taken into account. The Northwest Citizens Patrol in Baltimore City has a very successful and long running program and has offered advice to many associations.
- **Police Community Relations Council** - This is a group of citizens that meets monthly with the Police to discuss issues of concern to the community and to serve as an advisory group for the precinct commander. Speakers from various units within the Department are invited to brief the Council on the numerous duties and operations they carry out in a given day. The Council also supports the local police station with donations of equipment and volunteer time as well as recognizing the officers for outstanding services to the community when appropriate.

4. ***Promote Special Programs for Youths and Families*** . *The Southwest prides itself as a great place to raise a family. To support young people and their families, especially those at risk, the Wilkens Precinct has joined with other groups to create special programs that stress positive role models and activities. This year's budget includes $100,000 for a grant program designed to prevent crime by creating special community-based programs for the County's young people such as football leagues and homework clubs. The following is a list of partnership programs that community and parent groups may wish to be further involved with or perhaps replicate in their own neighborhood. See the "Youth and Families" section for other programs.*

- **PAL Center** - Destructive behavior is so easy to slip into if there are no healthy, supportive, and constructive alternatives such as Police Athletic Leagues (PALs). The Southwest's first permanent PAL center will be located in the former Lansdowne Library. To reach its full potential, community and service organizations must join with the Police in providing recreational activities and positive role models for young children and adults.
- **Mobile PAL Centers** - Community Outreach officers and counselors are able to set up temporary centers from their Post cars to meet with young people, talk over issues, and play sports. This program can be an excellent supplement to permanent centers and officers also may be able to drop in and work with children at established athletic programs such as those held at the gym at Baltimore Highlands Elementary School.

- **Project Attend** - This project was first started in the County at the Lansdowne High School with the goal of increasing the attendance in a school with high absenteeism. A special board composed of representatives from the school, police, and social service agencies administers the program. The police notify a family of a student with high absenteeism to attend a hearing about the child's problem. Fines of up to $50/day can be levied if the situation is not corrected. Other groups such as senior citizens can also be partners in this program. The result has been a significant increase in attendance and the program is now used throughout the County.
- **Violence Reduction in the Classroom** - The Southwest is once again a leader in innovative programs by offering the first program in the County that selects, upon the recommendation of a teacher, certain students for intensive training on dealing with confrontation. This is a proactive way of trying to break the cycle of violence, especially if it is a problem in the family.
- **Domestic Violence** - The police have established a new Domestic Partnership with several Baltimore County service providers. The program is designed to combat the increasing problem of domestic violence by conducting in-depth follow up visits with repeat offenders of domestic violence. During the visits, a police officer from the Domestic Violence Unit and service providers from Family and Children's Services offer information to all parties involved, including information on obtaining counseling, exparte procedures, and other services to help stop domestic violence. Substance abuse counseling should also be a component of this program.
- **Juvenile Offenders In Need of Supervision (JOINS)** - The Police Department is re-establishing the JOINS program which provides aggressive early intervention with young people who have committed one offense to stop them from committing future offenses. This program will start in the Wilkens and Woodlawn precincts.
- **Explorer Post** - This is a joint program sponsored by the Baltimore County Police and chartered through the Exploring Division of the Boy Scouts of America. It is set up as an introduction to all phases of law enforcement for young people between 14 and 21 years of age. Call the Wilkens Post Advisor for more information.

5. ***Target Anti-Drug Programs.*** *Recognizing that probably the single most destructive influence in our communities today is drug abuse, the Wilkens Precinct has developed a very aggressive strategy of:*
   - identifying, arresting, and prosecuting all drug distributors. In every instance, distributors are targeted for jail. Four police detectives and a sergeant are dedicated to the investigation of drug offenders in the District and they use traditional as well as the most up to date and technologically advanced methods to carry out their mission every day.
   - Users are targeted for arrest with the understanding that it is better for the community if they can benefit from treatment, escape their addiction, and be productive and self supportive. Special operations are occasionally conducted in selected areas to identify and arrest users that are plaguing the neighborhood. At the same time, the Police work in conjunction with the Office of Substance Abuse and trained counselors meet with every arrestee at the time of the arrest. They interview the offenders, counsel them to determine if they are willing and able to benefit from treatment, and provide information on treatment services in Baltimore County.
   - There are 4 substance abuse treatment or counseling centers serving the Southwest: Epoch Counseling in Lansdowne and Catonsville, Lighthouse Youth Services (under 18) in Catonsville, Southwest Community Mental Health Center on Winters Lane, and the Southwest Community Health Center in Lansdowne. The Baltimore County Bureau of Substance Abuse also publishes a guide entitled "Drug and Alcohol Information Referral Booklet" which contains advice on how to talk to children about drugs and alcohol, teens and drugs, impact on families, addictions, facts, laws, and a resource list. For further information, call 410-887-3828.

Education

The quality of local schools is usually one of the most important factors in a family's decision to locate or remain in a neighborhood. In the course of preparing this revitalization strategy, the significance of the local schools was continually stressed by residents and business owners and it was the opinion of many that school construction and repair should be the highest priority for capital improvements in the area. In terms of quality, most of the fourteen elementary, four middle, and three high schools in the study area have overall scores similar to the County's average on the tests administered as part of the Maryland State Performance Assessment Program. However, as with all areas that have a diverse student population, the scores can range widely. Probably most significantly, the vast majority of the Southwest schools have demonstrated improvement over the past three years. The purpose of this section is to identify actions that can be taken by both the school system and communities to strengthen schools, describe actions that can be taken for physical improvements, and provide educational goals for specific community plans.

Recommendations:

1. ***Decrease student and teacher mobility.*** *Schools with lower achievement rates and higher number of suspensions and retentions are usually the schools with the greatest number of free and reduced lunches, the highest mobility of students, and the least experienced teachers. The Southwest Area Office has identified a number of programs that can keep children in a stable school environment and reduce the turnover of experienced and skilled teachers. Active community involvement can make a difference and this can be done through the school improvement teams, PTAs, and/or special partnerships for specific issues. The following menu of programs can be used as a starting point in developing specific programs:*

   - **Parental Involvement** - A child's success in school is largely dependent upon the family. Parents and guardians are responsible for instilling the value of an education and a love of learning in a child at an early age. However, this is very difficult for adults who weren't successful in school themselves or who may have overwhelming problems in their own lives. A fundamental restructuring to a team approach involving families, schools, social service agencies, and the community is needed. This can include:

     - Supportive education of parents, especially those of very young children: The Department of Social Services (DSS) offers parenting classes through the Job Network Program (formerly Project Independence) and there are special projects such as the Young Parents Support Center for young parents of children from birth to 3 years. This program recognizes the value of early intervention and works with parents in a supportive environment to educate them about child development and the process of learning. There is a center on the Eastside and DSS is actively investigating establishing one in the Southwest.

     - Parent Teacher Associations and School Improvement Teams: PTAs are the traditional way for many parents to get involved in their children's education. All schools now involve parents on School Improvement Teams that are charged with developing site-specific improvements ranging from curriculum to discipline to community involvement. Some schools also sponsor programs to inform and involve parents such as Even Start, Parent Education Program, and Family Nights. In the Southwest, Parent Liaisons have been hired to bridge relations and programs between the schools and parents. To foster greater involvement of parents pressed for time, it is recommended that projects be broken down into specific and focused tasks that can be accomplished in a set amount of time.

     - Administrative Initiative: Administrators are being encouraged to establish parental involvement as a priority initiative for School Improvement Plans.

     - Teacher Interaction: Teachers are the most important link between a family and the school. Teachers should be encouraged to contact parents and involve them in the issues facing their children. Many teachers must call parents after school on their own time and better communication could be promoted by allowing time and private and accessible phones during the school day.

- **"Stay Put" Program** - This innovative Eastern Baltimore County pilot program should be extended to the Southwest. It focuses on 1) working with the families, apartment managers, social services, and school personnel to help families stay in their children's school districts and 2) easing children's transitions into new schools by transferring records promptly and developing special programs to welcome children and families into the new school.
- **Teacher Support** - Many experts believe that increasing the number of trained professionals to work with teachers in the classroom can result in more individualized attention, improved discipline, and reduced teacher burnout This can be done by team teaching with special education teachers, using teacher mentors to guide new teachers, employing parent helpers or teaching assistants to work with teachers in the classroom, and assigning social workers and psychologists to help children and families under stress. To this end, $3.5 million has been allocated to expand the County's teacher mentoring program and $2.4 million is to be used in targeted poverty grants to schools in which students need substantial help, based on state wide testing scores in reading.
- **Equity Grants** - Special funds for student improvement programs such as computers and software, tutoring or small group instruction, after school programs, text books, and staff development. One school used their grant to purchase educational materials which were delivered to a home where a parent agreed to work with neighborhood children after school.
- **Incentives** - Opportunities to work additional days for extended student instruction, curricular preparation, and staff development.
- **Conflict Management** - Special programs that work with chosen students to develop positive and nonviolent ways of dealing with confrontation.
- **Project Attend** - A partnership among schools, police, and social service agencies to identify students with high absenteeism and work with the parents to keep children in school. A fine can be levied if students do not improve their attendance records.
- **Magnet Programs** - Magnet schools are not based on traditional district boundaries and may enable children of mobile families to stay in one school. Magnet schools also offer distinctive and specialized programs that may cause parents to stay in an area and attract more experienced teachers.
- **Adult Literacy** - Adult literacy programs based in the school can positively connect parents to a school, enable them to better help their children in school, and improve their opportunities for stable and better paying employment. Schools and community associations should seek out volunteers from the community to be teaching partners.
- **Before and After School Care** - Nonprofit private providers and the Department of Recreation and Parks, usually using grant funds, provide before and after care in schools. In select areas, the Office of Community Conservation, with school and parent involvement, should evaluate the child care needs and resources, including before and after school care. This should include the possibilities of extending care into the larger rental complexes, use of Purchase of Care vouchers, proposed community based facilities such as a Boys and Girls Club, use of parents in the community, and expansion of existing daycare to before and after school care.
- **Head Start** - Early childhood education is a proven way to promote educational success. A Head Start Program is operating in the Riverview Elementary School.
- **Four Period Day Organization** - Combined periods to increase the class time with one teacher. This is used in the high schools and should enable a smaller teacher/student ratio and allow teachers to better know their students.
- **Looping** - The teacher stays with the class throughout certain grades to promote better teacher student relationships.
- **Student Mentoring** - Mentors from the community, especially men for boys, can greatly help children in need. Churches can be instrumental in recruiting mentors as is being done in a successful program in the Catonsville Middle School.

2. ***Create Partnerships.*** *In 1983, the Baltimore County Public School system recognized the value of school and business partnerships and formed the Partners in Excellence Program (PIE). The purpose of PIE is to create partnerships between schools and businesses to help students acquire the knowledge, skills, and values needed to be life long learners and successfully compete in the changing economy. These partnerships now extend beyond funding for incentives and special programs and equipment. Business partners are becoming mentors, tutors, team teachers, and coaches for resume writing and interview techniques; providing technical assistance in developing specialized curricula; and offering job shadowing, internship, and apprenticeship opportunities. Service organizations can also be valuable partners, especially for small group instruction, tutoring, mentoring, or funding for specific projects. To start a partnership:*

   - Businesses and organizations may contact Ms. Sharon Norman, Manager of Business and Community Relations for the Baltimore County Public School System at 410-887-4243 as a first step or communicate directly with the principal of the neighborhood school.
   - Schools should designate partnership committees to assess the needs of the school; identify the focus and role for a business partner; identify potential businesses among parents, in the community, or systemwide; and contact them directly to get a partnership going. These partners should also be on the School Improvement Team.
   - According to the Association for Supervisory and Curriculum Development's Task Force on Business Involvement in Schools, businesses and schools should consider the following guidelines:
     - ◊ focus on a part of the curriculum or school management that is related to the business and of interest to the business and the employees.
     - ◊ carefully structure the program to ensure that it is balanced and objective and that the goals of both the business and school are understood and compatible.
     - ◊ concentrate on teacher development as well as materials.
     - ◊ make certain that all parties agree on the objectives and that they can be measured.
   - Businesses should also consider institutionalizing their commitment to education and adopt policies that allow time for employees to participate in partnerships. Volunteers from the Health Care Financing Administration are allowed time during the work day that enables them to work consistently with the same children, thus significantly improving the success of their partnership.
   - Different service organizations should also be approached as potential partners. The Shriver Center and Community Outreach Office of UMBC sponsors a *Youth-in-Progress Student Mentoring Program* in which students serve as peer advisors and mentors and *Into the Streets* which is an all campus community service tradition for students to donate a day to particular groups or projects, including area schools. The Shriver Center also coordinates community service projects and internships that could be used by schools.
   - Many excellent partnerships exist in the Southwest and specific new partners are needed for the following projects:
     - ◊ establishing and operating a Wellness Center in Featherbed Elementary School
     - ◊ tutoring individual students in reading and math skills to meet the systemwide goal.

3. ***Address Overcrowding.*** *The Southwest was targeted for extensive capital investment to address overcrowding. Additions and improvements were recently completed for Hillcrest, Chadwick, Baltimore Highlands, Relay, Featherbed, and Halethorpe Elementary Schools. Additionally, a new southwestern elementary school is being constructed and a gym is being added to the Western School of Technology and Environmental Science. Provision of sufficient secondary school seats is now the highest priority. Specific projects that are in the FY 1998 Capital Budget and Program as well as other recommendations to prevent overcrowding are:*

   - a 600 seat addition and minor renovations for the Catonsville High School to be constructed in FY 98 and 99.

- a 197 seat addition to Johnnycake Elementary School to be constructed in FY 98
- using relocatables at the discretion of the school system. The Southwest Area Office has recommended their possible use at Johnnycake, Chadwick, Edmonson Heights, Relay, Southwest Academy, and Woodbridge. Schools are often highly visible public buildings in a community and the visual impact of relocatables should also be considered in making decisions about the location of relocatables.
- investigating different organizational models such as K-8, grouping PreK-2 and 3-5, or extending the day for high schools.
- assigning additional administrative staff to review student residence requirements in schools.
- consider investigating the impact of therapeutic homes to ensure that the academic needs of the children are being well served. This may be needed because of the unpredictable influx of group therapeutic homes in the Southwest that has added students (275 nonresident students in the Southwest as of January, 1997) and put a drain on the impacted special education services.
- consider reevaluating the current system of projecting school age children for the enrollment numbers that are used in determining staffing and school budgets.
- the need for protected passages between main buildings and additions may be an issue at certain schools. Where they are desired, community and/or parent groups are encouraged to work with the school principal to explore various funding sources.

4. ***Repair and Renovate Aging Buildings and Grounds.*** *Maintenance of school buildings is a County priority. In the Southwest, nineteen of the twenty-two schools are over 30 years old and in need of varying degrees of maintenance. Over $145 million of County and State money is programmed over the next six years for major maintenance in schools throughout the County. The County Council reallocated $1.85 million for maintenance projects across the County and $1.75 million was procured from the State under the aging school program. Maintenance projects include Code updates, renovations, fuel tank removal, roof rehabilitation, asbestos removal, etc. See Appendix A for a listing of the seven Southwest area schools that will be done using the aging and maintenance school money. Future countywide maintenance priorities will be based on the outcome of a recently approved special study that will assess and prioritize school facility needs including heating and air conditioning, air quality, lighting, building cleanliness, structural soundness, exteriors, etc. This will be done by an independent professional consulting firm that has the technical expertise to evaluate the mechanical and electrical systems in a building and that can provide an objective and standardized evaluation. The Fiscal Year 1998 - 2000 school budget referendum will request funds to address the maintenance needs identified in this study.*

5. ***Incorporate Education into all Community Revitalization Plans.*** *In the educational meetings for this Strategy, the inextricable relationship between education and community revitalization was repeatedly stressed. Education is a cornerstone of strong and healthy communities and likewise, stable, economically secure and involved families are the underpinning of a successful educational system. As described in the Community Development section of this Strategy, communities in the Southwest are preparing specific action plans based on the array of ideas presented in this overall Strategy. Education must be addressed in these plans and the following points should be considered:*
   - wherever possible, school districts boundaries should reinforce traditional neighborhoods and not divide them. However, this goal must be balanced with the equally important need to prevent racial and economic segregation.
   - the quality of the teachers and the educational system in Baltimore County remains high. However, changing socioeconomic demographics have presented tremendous challenges that the school system alone cannot overcome. Community action plans must focus on education as a integral element of stabilization while recognizing that families have the strongest influence on their children's success in school.

- teachers in highly demanding schools need administrative, family, and community support. In preparing their individual plans, community activists must meet with the principals, Improvement Teams, PTAs, and teachers to identify the specific actions that would help their neighborhood schools and teachers. This can range from the programs listed in this section to something as simple as a telephone and upgraded furniture for teachers and students.

Youth and Families

The Southwest has rightfully prided itself as a "good place to raise a family" and to retain that reputation, activities that support families and improve the quality of life must be continued and improved. The main issues raised at community meetings were the need for more youth oriented programs, especially before and after school, and the expansion and better maintenance of existing recreational facilities and parks.

Recommendations:

1. ***Expand and Integrate Programs that Benefit Children and Families.*** *In the Southwest, there is a strong commitment among community associations, service organizations, and religious institutions to support family oriented activities. Additionally, there are a number of different governmental agencies that manage programs geared toward the health and well being of children. These departments and community based groups recognize the need to work together as teams to integrate the various programs and holistically address the issues that can improve the quality of life for families in the Southwest. The following programs and actions should be actively supported:*
   - **Boys and Girls Club in Arbutus** - The Greater Arbutus Community Alliance is searching for a location for a Center to be operated by the Boys and Girls Club of Maryland. The Center would be a walk-in facility with programs and activities that are of proven interest to youth and based on the realistic understanding that most kids like to cluster in small groups. The Boys and Girls Club has a history of working with other community and recreational programs to develop a comprehensive youth and family center in which the entire community is invested.
   - **School Linked Family Services** - This is a partnership between the Public Schools and Department of Social Services in the Northwest and Eastside. Under the program, DSS social workers are assigned to a cluster of schools and, in conjunction with the teachers, work with identified students as well as their families. What distinguishes this program from others is that the families can be directly connected into DSS services that may help with the homelife issues affecting a child, such as eviction prevention, counseling, emergency food, etc. It also enables a family to receive help before they are in a desperate crisis situation. The Public School system and DSS should investigate extending this program to the Southwest.
   - **Highland Village Family Center** - This is a partnership among the Office of Community Conservation, Department of Social Services, the YMCA, and Partners Management to create a family center in the Highland Village apartment complex. The Center would provide recreation and enrichment activities, daycare, parenting and child development education, employment training, and a safe and friendly place to strengthen community and family ties. Additionally, a program with the goal of 100% immunization for children will be started. The types of programs to be held at the Center are based on a survey of residents about their needs and interests.
   - **Catonsville Teen & Parent Consortium** - This is a grass roots program with the goal of working with local organizations to involve middle and high school aged teenagers more fully into the life of the community. Activities include a teen events calendar, teen and adult dialog nights, possible teen center, hobby clubs, community service and job opportunities.
   - **Drop-In Center** - In an effort to increase the convenience and thus the opportunity for families to access needed services, DSS is experimenting in offering services directly in a community on a periodic basis, such as one day per week. The Department should investigate the feasibility of extending this to the Southwest, possibly in the apartment complexes or in conjunction with a school, either during the day or before or after school hours.

- **Riverview Head Start Village Center** - This Center houses the YMCA Baltimore County Head Start as well as programs operated by DSS and the Health Department, Infants and Toddlers Program, and Family and Children's Services' mental health program. On the grounds of the Riverview Elementary School, the Center should increase the availability of services to the Riverview townhome and rental communities and Circle Terrace Apartments. This may also be a suitable location for other programs that could serve this area.
- **Teenage Mothers Program** - St. Clements Church operates an innovative program to keep teenage mothers in school and provide quality day care for their babies. Transportation is provided between the home, center, and school and mothers attend morning homeroom and parenting classes at the center before each school day. This extremely successful program is potentially threatened by welfare reform that makes most young women who live at home income-ineligible for daycare vouchers. This program should be reviewed for other alternatives to ensure its continued operation.
- **Health and Human Services** - DSS, the Health Department, Public School system, and St. Agnes Hospital operate a number of different programs aimed at improving the overall health of families in the Southwest. Highlights are :
  - St. Agnes Hospital is the community hospital offering comprehensive health care as well as home care services, a hospice program, bereavement care, and a family health resource center that provides a broad range of educational programs. The Hospital also sponsored a Community Health Assessment of the communities surrounding St. Agnes and developed a series of recommendations for an intervention plan to address the most pressing issues of cancer and crime.
  - DSS provides state-mandated services to families, children, adolescents, and adults. They range from protective services for children, parenting skills for pregnant teenagers, domestic violence reduction services with the Police, in-home aid to prevent premature institutionalization of the elderly, aiding shelters for the homeless, mental health and substances abuse referral, etc. They also are implementing changes to the governmental entitlement programs from that of public assistance to job training, child care assistance, and post employment support to sustain job retention. See the Economic Development Chapter for further details.
  - Schools, recreation councils, institutions, etc. are directly linked with families and may be the most effective and creative way to deliver some services. As an example, the Southwest Leadership Team worked with the Medical Society of Maryland, St. Agnes Hospital, and the University of Maryland to provide free medical exams for all high schoolers trying out for athletic teams. Expansion of this program through the recreational councils should be explored.
- **Libraries** - Catonsville Community College and the Albin O. Kuhn Library at UMBC offer non-student borrowing privileges for a small fee. There are also three public libraries serving the Southwest (Arbutus, Catonsville, and Woodlawn) which provide books, video cassettes, CDs, information services, and family programming. Internet access is available in branches as well as Internet accounts that allow access at home. Word processing software is also available at the Arbutus and Woodlawn libraries. Other programs include:
  - In partnership with the Public Schools, a Summer and Winter Reading Club.
  - Regular programming for families including storytelling, theater productions, musical performances, puppet shows, and educational events throughout the year. Family oriented and individual computer demonstrations have been recently added.
  - The largest database of agencies serving Baltimore County. The Community Information File is searchable by subject or agency name and available on the computer catalogs or through the Baltimore County Public Library Home Page.
  - On May 1, 1997, the Arbutus Library opened a Computer Learning Center with 6 additional computers provided by the Microsoft Corporation. Services include up-to-date word processing software (Microsoft Office '97), Internet access, and an array of Microsoft CD-ROM software. Special demonstrations and hands-on learning sessions will be provided, covering such topics as resumes, newsletters, finance, small business, general word processing, Internet, travel, school projects, etc.

- ◊ LOCATE: Child care referral service that provides information on child care options, regulations, child care programs, and names of providers in the area. Call 410-887-6171.
- ◊ OPERATION INFO-LINK: a service available to non-profit organizations operating in the County that includes an Internet account, template, instructions, and consultation to create a home page on the World Wide Web. Call 410-887-6196 for more information.

- YMCA - The Western YMCA offers a range of family based programs including water exercise, fitness, and special programs for teenagers, preschool, and adults. The YMCA also offers financial assistance and rents its facility for family oriented activities.

2. ***Maintain and Increase Recreational and Park Activities.*** *Recreation, be it passive or active, can be a unifying element in a community, bringing together a variety of people and families. In the Southwest, there are 6 very active and successful recreation councils that with the Department of Recreation and Parks, offer a tremendous number of programs. Additionally, recreational facilities at UMBC and CCC are also available to the general public for a fee.*

   Most of the recreational activities occur on school sites and this partnership is very fiscally efficient. As with many older areas that are already substantially developed, there is not much room for further growth, especially for activities that require large field space. Major projects to improve the recreational opportunities in the Southwest include:

- **Lansdowne Community Park** - County owned property bounded by Baltimore, Washington, Fifth, and Winifred Avenues. A Concept Plan was designed with citizen input and the decision was to develop it as passive open space. Fencing, lighting, and planting work should begin in Fall of 1997.
- **Police Athletic League Center**- creation of the first permanent PAL center in the Southwest to be housed at the former Lansdowne Library.
- **Westowne Playground** - Installation of equipment in Fall 1997.
- **Skate Bowl** - improvements, including playing fields, to serve the Southwest community.
- **Patapsco Heritage Greenway** - Support the designation and development of the Greenway as a regional recreational and tourist attraction. As proposed, the Greenway would run along the Patapsco River from Sykesville to the Inner Harbor in Baltimore City. It will contain a bike and pedestrian trail system tied into other trails, parks, and historic sites to showcase the natural beauty and rich history of the area.
- **Banneker Park** - construction of the Banneker Museum.
- **Short Line Rail Road** - Develop the right-of-way of the Caton Loudon rail line as a greenway park and trail. The issues about ownership need to be resolved and the greenway should also connect into community parks and open space such as the area behind Western School of Technology.
- **Consideration of Non-Sports Recreation** - Not everyone is interested in team sports. Activities such as Scouting, environmental studies, or nature walks as well as open space for family picnics, community activities, or just a pocket park to sit in should be incorporated into the park plans for the area. Also, in appropriate commercial areas, uses that offer other activities such as a video arcade, child entertainment center (e.g. Discovery Zones or Chuck E Cheese), book stores, etc. should be encouraged. An outdoor ice rink is another use that should be considered.
- **Southwest Area Park** - Ball fields currently under construction on this anchor park should be completed by Spring of '98. To address community concerns about access, the construction road will be closed and only one main entrance will be opened.
- **Bloomsbury School** - After its closing, this school continued to house recreational activities. Now however, the building is completely closed and fenced and is in danger of becoming a blighting influence. The County has formed a committee to explore potential recreational and community uses of this site.

Community Development

In this Strategy, community development refers to the more traditional elements of planning such as land use and physical infrastructure. The map in Appendix A highlights the capital improvements planned for the Southwest. However, the "community" infrastructure is equally important if the Southwest is to develop a cohesive and united voice to successfully advocate for the programs and funding needed to revitalize its varied neighborhoods.

Recommendations:

1. ***Improve Infrastructure.*** *Government has a serious obligation to support the revitalization effort through its capital improvement program (CIP). Specific improvements for the Southwest are shown on the CIP map in Appendix A and include storm drains, road improvements, alley improvements, building improvements, recreational facilities, and general community improvements. Projects to be continued or undertaken include:*

- **Halethorpe Infrastructure Improvements** - To address this community's long-standing flooding problems, due in part to the absence of curb, gutter, and storm drains, County General Obligation Bonds have been allocated for improvements to 4 streets: Woodside, Leola, Arline, and Catanna. Improvements to Woodside are complete and the County is working with community leaders to obtain the required rights-of-way for work to begin on the other 3 streets. Phase I of a watershed drainage study was conducted, and the options for storm water management improvements will be presented for community input. Inlet and pipe systems have been installed on Lincoln and Bell Avenues to address the flooding of homes on these roadways.
- **Winters Lane Street Improvements** - The contract for the design of street improvements to Winters Lane between Edmonson Avenue and Frederick Road, has been approved by the County Council. Construction is planned for Spring 1998, if cooperation is obtained from adjacent property owners. Reconstruction of Roberts Avenue is currently underway.
- **Commercial Revitalization** - Significant investments are planned for the Catonsville and Arbutus Streetscapes. See "Commercial Revitalization" section as well as the capital improvements map in Appendix A.
- **Alley Repair** - In 1995, the Department of Public Works surveyed and rated the alleys throughout the County. Those ranked as "poor" and "terrible" are resurveyed annually. To date, almost 120 alleys are rated as "terrible" and they are the County's only priority for repair. In order for such an alley to be repaired, 51% of the property owners along it must sign a petition. A flat fee of $750, which can be paid in increments of $50 per year for 15 years through the tax bill, is charged to the property owner with the County paying for the rest of the cost. The Office of Community Conservation is acting as the liaison to get petitions out and signed. To find out the rating of an alley, contact the Department of Public Works at 410-887-3797.
- **Curbs and Gutters** - Construction of new curbs and gutters is done through a similar petition process, but two-thirds of owners must sign for the Department of Public Works to rank a project. Drainage problems receive the highest priority. Projects under $500,000 are generally done under the Highways 5.2 Program and the limited funding and complications associated with these types of projects has created a backlog of over 10 years. Projects over $500,000 are a CIP line item and must compete with other County projects. The Bureau of Highways surveys the condition of road paving, curbs, and gutters yearly and rates them. As of July 1, 1997, $2.5 million will be allocated to repair deteriorated streets in 5 management districts. Call the Bureau at 410-887-3560 for further information about the ranking of neighborhood streets and the repair process.
- **Gwynns Falls Watershed Waterway Improvements** - The Department of Environmental Protection and Resource Management (DEPRM) is working jointly with the U.S. Army Corps of Engineers and Baltimore City to develop a comprehensive watershed plan to identify and prioritize stream restoration measures in the Gwynns Falls. This plan is scheduled for completion in 1998. The Dead Run sub-watershed falls within the Southwest Revitalization Area. CIP construction funds will be available starting July, 1997 (FY 1998), although at this time, the scheduling for Dead Run is unknown.

- **Patapsco Watershed Waterway Improvements** - DEPRM will engage a consultant to develop a comprehensive watershed plan to identify and prioritize non-point source pollution control and stream restoration measures in the Patapsco Watershed, shortly after July, 1997 (FY 1998) when CIP funds become available. This watershed study will be completed approximately 12 months after inception. CIP construction funds for storm water retrofitting and stream restoration also became available in July, 1997. DEPRM has identified the Herbert Run subwatershed as having significant problems and further evaluation will pinpoint locations for capital improvements to be implemented using FY 1998 funds. Future CIP funding and construction will be directed by the Patapsco Watershed Plan. For more information regarding a Watershed Plan, contact DEPRM at 887-5683. Questions regarding Waterway CIP projects should be directed to DEPRM-CIP at 410-887-2904.
- **Citizen Input** - The Planning Board solicits input on community priorities for capital improvements prior to beginning of the process in November. Community and business associations as well as individuals are encouraged to appear to promote needed projects in their neighborhoods. Call the Planning Office at 410-887-3495 for further information.

2. ***Investigate Traffic Calming Measures.*** *Traffic is a serious concern in the Southwest and was one of the top rated concerns at the Town Meeting. The Old Catonsville/ Summit Park Neighborhood prepared an excellent plan for ways to reduce the volume and speed of traffic through their community that may serve as a prototype for future plans. The Office of Community Conservation has contracted with the Neighborhood Design Center to cast out the proposals which will be presented to the Department of Public Works (which participated in the study) for review. The Department is receptive to these measures and is interested in developing a pilot program. Other areas that were identified for study were Winters Lane and the Paradise-Edmonson area.*

3. ***Initiate Community Action Plans.*** *Because of the large size and diversity of the Southwest, the Strategy is by necessity a handbook of different ideas, programs, and strategies that communities can use to draft their own specific action plans. Depending upon the issues, these plans can be very targeted and address only a few issues as was done by the Old Catonsville/Summit Park Neighborhood in their Traffic Calming Proposal or they can be more comprehensive such as the Lansdowne/Baltimore Highlands Community Conservation Action Plan. The Office of Community Conservation will be the lead county agency to coordinate work with communities and government. Plans underway or anticipated are:*
   - **Lansdowne/Baltimore Highlands Community Conservation Action Plan** - The Office of Community Conservation is working with leaders in the community and a number of governmental agencies to identify and implement specific actions to address housing, public safety, family and youth, recreation, educational, and employment issues facing the area. Special components of this plan are the stabilization of the Riverview Townhouse Community based on community organizing, creation of a Head Start Village Center, and a Family Center at Highland Village.
   - **Baltimore Highlands Commercial Revitalization** - A grant was provided to the Greater Baltimore Highlands Community Association to purchase 2 gateway signs to be installed on Annapolis Road. A group of real estate professionals toured the area and provided input on the area's development potential. The general consensus indicated consolidation or possible rationalization of scattered commercial uses along the corridor rather than redevelopment or expansion, as was previously envisioned. The Annapolis Road Revitalization Committee will continue to discuss and develop options for this area, and will look to further involve local businesses.
   - **Greater Arbutus Community Plan** - To be prepared under the leadership of the Greater Arbutus Community Alliance which is the area's umbrella association.

4. ***Update Community Land Use Plans:*** *As part of the community planning process or as a separate initiative prior to the Comprehensive Zoning Map Process in 2000, communities should review their zoning and land use. As a guide:*
   - Residential zoning should be comparable to the existing built out density in the neighborhood.

- Commercial zoning should reinforce the existing commercial centers. This is on a neighborhood basis and the goal is to strengthen the commercial centers as the heart of the communities.

5. ***Continue the Community Conservation Action Grants.*** *This is a program designed to fund small ($10,000 or less) capital projects that improve and support neighborhoods in the County's Community Conservation areas. The County has allocated $100,000 matched by a generous grant from the Weinberg Foundation. Projects that implement the strategies outlined in the Southwestern Revitalization Strategy or any of the approved community action plans should be given serious consideration in the countywide competition for funding through this program. Call the Office of Community Conservation for further information at 410-887-3317.*

6. ***Support the Umbrella Associations.*** *Four major community umbrella organizations are taking the lead in promoting the revitalization of the Southwest. The Southwest Leadership Team, Greater Arbutus Community Alliance, Banneker Community Development Corporation, and Greater Catonsville Leadership Alliance are creating a unified voice and vision for the area and acting as advocates for the enhancement and revitalization of the Southwest.*

APPENDIX

Commercial Revitalization

Catonsville Streetscape

Streetscape

The streetscape project is budgeted to include $250,000 of County funds and $750,000 of State funds. The project will include at least 4 blocks of Frederick Road in the commercial district of Catonsville. Improvements will include new sidewalks, pedestrian lighting, street trees, decorative iron railings, enhanced bus stops, and two "pocket parks." The design/engineering consultant has completed the conceptual design with considerable public input. Construction is anticipated to begin in Fall, 1997.

Utility Relocation

Utility poles and lines on the two blocks of Frederick Road, from Bloomsbury Lane to Newburg Avenue will be relocated to enhance the appearance of the commercial area and enhance the streetscape project. BGE and Bell Atlantic are engineering the project and construction is scheduled for Spring, 1997. Funding includes $750,000 in County funds and $250,000 in State funds.

Eggs Lane at Route 144

This project will realign the Egges Lane/Mellor Avenue/Frederick Road area into a 90 degree intersection. A traffic light will be removed to allow traffic to proceed more efficiently. County General Obligation Bonds have been appropriated for this project in the amount of $400,000, which includes all costs associated with the alignment and acquisition. Construction will be coordinated closely with the streetscaping.

On-street and Off-street Parking

The County and State are working to improve access to on-street and off-street parking in the commercial district. Plans include on-street metered spaces where possible, renovating the existing public parking facility, improving the flow of traffic on Frederick Road, and improving access to private parking areas.

Development Sites

Developers are working to redevelop and remove various physical constraints on three acres of underused land north of Frederick Road, bounded by Egges Lane, Melrose Avenue, and Ingleside Avenue. Opposite this site, there are approximately eight acres that were being considered for development. While the fact that there are multiple property owners may prohibit a single development project for this parcel, new retail is being considered. In addition, 27,000 square feet of renovated office space on this site has been made available and is already 50% leased.

Building Improvement Loan Program

Three loans, totaling approximately $30,000 have been made to Frederick Road business owners through the County's Building Improvement Loan Program. These funds, which will generate $60,000 in private investment, will be used for building and site improvements to be repaid over five years at no interest.

Appendix

Southwest Baltimore County Revitalization Strategy

Arbutus Streetscape

Streetscape

Funds have been budgeted for this project including $110,000 for design and engineering and $500,000 for construction. The project is intended to enhance the functioning and appearance of the commercial district centering on East Drive and Sulphur Spring Road. A streetscape advisory committee made up of local business representatives has been established by Councilman Moxley, and meetings with County representatives have been held to begin project planning. The request for the design/engineering consultant has been advertised.

Parking Issues

Efforts are underway to enhance access to parking in the commercial district. County representatives and local businesses are working with the Baltimore County Revenue Authority and the Councilman's office to resolve issues including metering (hours of operation, length of mater time, placement of meters), appropriateness of "loading zone" areas in key locations, appropriateness of bus stop locations, and disposition of the two local public parking facilities.

Redevelopment of Hollywood Theater

Financial assistance is being provided by Baltimore County for the reconstruction of the Hollywood Theater. Ground breaking is anticipated Summer, 1997.

Baltimore County
Department of Economic Development

400 Washington Avenue
Towson, Maryland 21204
410-887-8000
fax: 410-887-8017

e-mail -- econdev@co.ba.md.us

PETITIONER'S

EXHIBIT NO. 3

.31/05 jhm

IN RE: PETITION FOR SPECIAL EXCEPTION N/W corner of Charing Cross Shopping Ctr. 1st Election District 1st Councilmanic District **(5210A Baltimore National Pike, Charing Cross Shopping Center)**	* * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
Honolulu Ltd. By: Joel Winegarden, *Legal Owner* **and** C & D Pawn, Inc, *Lessee* *Petitioners*	* * *	CASE NO. 06-142-X PRIOR ATTACHMENT D

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Exception filed by the legal owner of the subject property, Honolulu, Ltd., by Joel Winegarden and the lessee, Joseph DeSimone. The Petitioners are requesting a special exception for property located at 5210A Baltimore National Pike, Charing Cross Shopping Center, in Baltimore County. The special exception request is to allow relocation of a pawnshop under Sections 233.4 and 436 of the Baltimore County Zoning Regulations (B.C.Z.R).

The property was posted with Notice of Hearing on October 15, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on October 13, 2005 to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 502.1 of the B.C.Z.R. - *Special Exceptions*

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air; [Bill No. 45-1982]
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the sprit and intent of these Zoning Regulations; [Bill No. 45-1982]
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]
I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 zone. [Bill No. 74-2000]

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Office of Planning dated October 4, 2005, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing in support of the request were Frank and Joseph DeSimone, Petitioners. Also appearing at the hearing on behalf of the Petitioner was Thomas Church, P. E. who prepared the site plan. Arnold Jablon, Esquire represented the Petitioners. There were no protestants or citizens who attending the hearing. Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Testimony and evidence presented in this case indicated that this property is a vacant bay of the Charing Cross Shopping Center, which contains 1800-sq. ft.. The center is zoned BM-CCC and is 3.2 acres in size. The Petitioners propose to move their existing pawn shop which is presently located in a similar shopping center approximately 1/ 4 mile to the west of this location.

Mr. Jablon proffered that the Petitioners have operated a licensed pawn shop for 10 years in the Ridgely Shopping Center without any problem. They handle no firearms. They conform to all regulations. He presented a letter of commendation from the adjacent community association indicating that they were an asset to the community. See Exhibit 4. He proffered that this request

conforms to Section 436 of the B.C.Z.R. in regard to number and location of pawn shops. Hours of operation are 10 AM to 7 PM Monday through Friday and 10 AM to 6 PM on Saturday.

However, the owner of the center in which they are now located, Honolulu LTD, is in the process of renovating the center and invited the Petitioners to move their business to the Charing Cross Center which Honolulu also owns. Both centers are small strip configurations serving the same local communities. The new location is surrounded by commercial uses such as restaurants, stores, fuel service garage, etc.

There is a residential community behind the center, which is separated from the center by a private alley. The center of this alley is the residential zone line designating the center's BM-CCC zoning and residential community's DR 10.5 zoning. The rear of the pawn shop itself would be 41 feet from the residential zoning line. Mr. Jablon opined that this configuration means that the pawn shop itself does not abut the residential zoning line and therefore Section 463.3 A regarding fences and buffering does not apply. He pointed out, however, that there is a substantial line of trees and vegetation along the center's side of the alley separating the zones. See Exhibit 1. The center meets all parking regulations and generally is underutilized. Signage will conform to Section 436.3.B. By voluntary agreement, the Petitioner will not use the word "pawn" or the three ball pawn symbol in signage or advertising but rather will designate the business as jewelry and loan.

In summary, he opined that the location of this pawn shop at the proposed location will not adversely affect the neighborhood and the request meets each criteria of Section 502.1 of the B.C.Z.R.

Findings of Fact and Conclusions of Law

I find that this pawn shop does not abut a residential zone line and therefore the provisions of Section 436.3 A do not apply. However it is not the lineal distance from the building to the zone line (41 feet in this case) that triggers the buffer requirement. If this were the case, the only time the buffer would be required would be if the building were physically located on the zone line itself,

a rare occurrence indeed. Free standing pawn shops with surrounding parking fields trigger the buffer even if the building is not located on the zone line.

However pawn shops located in shopping centers have parking fields in the general parking areas of the center. Here the general parking area is on the other side of the center buildings from the residential zone. Presumably customers of this pawn shop will not approach the protected residential zone. That said, I think the spirit of the regulation is essentially being complied with given the line of trees and vegetation along the alley behind the center.

In regard to the impact of this pawn shop on the community, the testimony and evidence indicated this is simply the transfer of the existing pawn shop in a shopping center on Rt. 40 to a new location in a shopping center on Rt. 40. It appears the existing operation has a satisfactory track record and I see no reason that will not continue at the new location. Consequently, I find that the use of the subject property as shown in Petitioner's Exhibit 1 will not adversely affect the health, safety or welfare of the community and meets all the criteria of Section 502.1 of the B.C.Z.R. Therefore, I will grant the special exception to allow relocation of a pawn shop under Sections 233.4 and 436 of the Baltimore County Zoning Regulations (B.C.Z.R) at the subject property in accord with the conditions listed.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' request for special exception should be granted subject to conditions.

THEREFORE, IT IS ORDERED, this 15 day of November, 2005, by the Deputy Zoning Commissioner, that the Petitioners' request for special exception to allow relocation of a pawn shop under Sections 233.4 and 436 of the B.C.Z.R. and to confirm that the buffer specified in Section 436.3 is not required, be and is hereby GRANTED, subject, however, to the following conditions:

1. Hours of operation shall be 10 AM to 7 PM Monday through Friday and 10 AM to 6 PM on Saturday.

2. The Petitioner shall not sell or handle firearms.

3. All transactions shall be interior to the building.

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

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:dlw

Citation/Title
107 Md.App. 1, 666 A.2d 1253, Mossburg v. Montgomery County, (Md.App. 1995)

*1 107 Md.App. 1

666 A.2d 1253

ATTACHMENT E

Court of Special Appeals of Maryland.

William H. MOSSBURG, Jr., et al.
v.
MONTGOMERY COUNTY, Maryland, et al.

No. 58, Sept. Term, 1995.
Oct. 2, 1995.

Reconsideration Denied Dec. 7, 1995.

The Circuit Court, Montgomery County, S. Michael Pincus, J., affirmed order of county board of appeals denying applicants' request for special exception for operation of solid waste transfer station in I-2 industrial zone in county, and applicants appealed. The Court of Special Appeals, Cathell, J., held that board's decision to deny special exception was not based on substantial evidence of adverse impacts at the subject site greater than or above and beyond impacts elsewhere in this particular I-2 zone or in any other I-2 zones and therefore, decision was arbitrary and illegal.

Reversed and remanded.

West Headnotes

[1] Zoning and Planning ⚷1

414 ----
414I In General
414k1 Nature in General.

Zoning is an interference (if done correctly, a permissible one) with property owner's constitutional rights to use his own property as he sees fit.

[2] Zoning and Planning ⚷70

414 ----
414II Validity of Zoning Regulations
414II(B) Regulations as to Particular Matters
414k70 Complete Prohibition of Use Within Municipality.

[See headnote text below]

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[2] Zoning and Planning ⚷87

414 ----
414II Validity of Zoning Regulations
414II(B) Regulations as to Particular Matters
414k87 Variances or Exceptions.

There was no illegality on part of legislative body of county in establishing that solid waste transfer operations were permitted as special exceptions only in I-2 industrial zones of county; in fact, had that policy-making body chosen to prohibit such uses altogether, court would not be inclined to question its powers to do so unless, in so doing, it eliminated all viable economical uses of property.

[3] Zoning and Planning ⚷481

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k481 Nature and Necessity in General.

Special exception/conditional use in zoning ordinance recognizes that legislative body of representative government has made policy decision for all of the inhabitants of the particular governmental jurisdiction and that the exception or use is desirable and necessary in its zoning planning provided certain standards are met.

[4] Zoning and Planning ⚷489

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k489 Grounds for Grant or Denial in General.

It is not whether special exception/conditional use is compatible with permitted uses that is relevant in administrative proceedings and thus, in special exception cases, general compatibility is not normally proper issue for agency to consider for that issue has already been addressed and legislatively resolved; by designating special exception, legislative body has deemed it to be generally compatible with the other uses.

[5] Zoning and Planning ⚷489

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k489 Grounds for Grant or Denial in General.

In special exception cases, the question is not whether use permitted by way of

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special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), but rather whether adverse effects in particular location would be greater than adverse effects ordinarily associated with particular use that is to be considered by agency.

[6] Zoning and Planning ⚷502.1

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k502 Particular Structures or Uses
414k502.1 In General.

Question in case involving applicants' request for special exception for operation of solid waste transfer station in I-2 industrial zone was not whether station had adverse effects (it inherently had them) nor was it whether station would have adverse effects at this proposed location (certainly it would and those effects were contemplated by statute); proper question was whether those adverse effects were above and beyond, i.e., greater here than they would generally be elsewhere within the areas of the county where they might be established, i.e., the other few I-2 industrial zones.

[7] Zoning and Planning ⚷502.1

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k502 Particular Structures or Uses
414k502.1 In General.

Court of Special Appeals' discussion of county board of appeals' denial of applicants' request for special exception for operation of solid waste transfer station in industrial zone would be primarily directed to board's findings of adverse effects since the special exception had, by the very reason of provisions for its existence, been predetermined by the legislative, policy-making body of county to be generally beneficial.

[8] Zoning and Planning ⚷539

414 ----
414IX Variances or Exceptions
414IX(B) Proceedings and Determination
414k537 Weight and Sufficiency of Evidence
414k539 Particular Uses.

County board of appeals' finding that environmental concerns warranted denial of applicants' request for special exception for operation of solid waste transfer station in I-2 industrial zone in county was not based upon substantial

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evidence and, accordingly, was arbitrarily made; the clear and uncontradicted evidence was that those agencies in county charged with determining whether there would be unacceptable adverse environmental impact from the use on the subject site determined that there would not be and there was no evidence that environmental impact of applicants' use at the subject site would be greater, or above and beyond, that impact elsewhere within the I-2 zone or other I-2 zones in county.

[9] Zoning and Planning ⚷539

414 ----
414IX Variances or Exceptions
414IX(B) Proceedings and Determination
414k537 Weight and Sufficiency of Evidence
414k539 Particular Uses.

County board of appeals' decision to deny special exception for operation of solid waste transfer station in I-2 industrial zone in county was not based on substantial or sufficient evidence of adverse impacts at the subject site greater than or above and beyond the impacts elsewhere in this particular I-2 zone or in any other I-2 zones and therefore, decision to deny special exception was arbitrary and illegal.

[666 A.2d 1255] *3 Todd D. Brown (Joseph P. Blocher and Linowes and Blocher, on the brief), Silver Spring, for appellants.

Karen L. Federman Henry, Associate County Attorney (Charles W. Thompson, Jr., County Attorney, and A. Katherine *4 Hart , Senior Assistant County Attorney, on the brief), Rockville, for appellee Montgomery County.

Norman G. Knopf (Dennis M. Cate and Knopf & Brown on the brief), Washington, DC, for appellees Twin Lakes, et al.

William Jensen, Rockville, on the brief, pro se.

Argued before MOYLAN, WENNER and CATHELL, JJ.

CATHELL, Judge.

William H. Mossburg Jr., *et al.*, appeal from an order of the Circuit Court for Montgomery County that affirmed the order of the Montgomery County Board of Appeals denying appellants' request for a special exception for the operation of a solid waste transfer station in an I-2 Industrial Zone in the Southlawn Lane industrial corridor of Rockville, a zone in which such uses are permitted as special exceptions.

This case is a companion case to one also on appeal and being considered by the same panel of this Court, *Mossburg v. Montgomery County* [No. 57, 1995 Term], which involves the grant of declaratory and injunctive relief, foreclosing

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Mossburg's attempt to continue the operation of a solid waste transfer operation at another location as a legal nonconforming use. The case*sub judice* arises out of appellants' attempt to transfer the business from that location to the one in the instant case. In order to do so, a special exception is necessary.

There have been several judicial proceedings involving this matter. At least one has proceeded as far as the Court of Appeals. The companion case, at one point, at least facially, was subject to a compromise via a consent agreement before an administrative agency. That settlement contemplated the possible relocation of the operation. At that time, the Montgomery County zoning code did not permit such uses in any zone. The County apparently amended the code to provide for such uses in certain industrial zones. The legislative process began as an attempt to classify such uses as permitted in the designated zone. For whatever reason, by the time the *5 process was completed, solid waste transfer uses were permitted in I-2 Industrial Zones, but only as special exceptions.

The inventory of I-2 Zones in Montgomery County is apparently extremely limited. (FN1) The I-2 industrial corridor at issue here is already intensively built up with heavy industrial uses, as we shall hereafter discuss.

On this appeal, appellants present two questions:

I. Was the Board of Appeal[s]'s denial of the application on remand the result of impermissible "change of mind" conclusions and therefore arbitrary and capricious?

II. Were the reasons given by the Board of Appeals for its denial of the application supported by substantial evidence of record?

[666 A.2d 1256] Before discussing the facts of this particular case, it may be helpful to discuss, once again, (1) how provisions for special exceptions are created in zoning codes, (2) the policy statements made by the creation of those provisions, (3) the inherent permissive nature of such exceptions, and (4) the proper focus to be utilized in determining whether a proposed special exception satisfies the conditions of the statute.

[1] Any discussion of any zoning matter, be it, *inter alia*, rezoning, special exceptions/conditional uses, or variances, must always recognize that zoning is an interference (if done correctly, a permissible one) with a property owner's constitutional rights to use his own property as he sees fit. The Fifth *6 Amendment to the United States Constitution provides, in pertinent part:

> No person shall be ... deprived of ... property, without due process of law; nor shall private property be taken for public use, without just compensation.

See also Article 24 of the Maryland Declaration of Rights. In *Offen v. County Council*, 96 Md.App. 526, 625 A.2d 424 (1993), *aff'd in part, rev'd in part on*

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other grounds, 334 Md. 499, 639 A.2d 1070 (1994), we noted that, in *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 1012-15, 112 S.Ct. 2886, 2892-93, 120 L.Ed.2d 798 (1992), the Supreme Court there said that, in *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922), the Court "had first recognized" that

> [i]f ... the uses of private property were subject to unbridled, uncompensated qualification under the police power, "the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed]."

Offen, 96 Md.App. at 550-51, 625 A.2d 424. We went on, in *Offen,* to describe part of the history of zoning generally and its legitimate regulation of uses of private property, recognizing the awesome (but not unlimited) power of government to regulate such uses.

[2] In that regard, we perceive no illegality, in the case *sub judice,* on the part of the legislative body of Montgomery County in establishing that solid waste transfer operations are permitted as special exceptions only in the I-2 Industrial Zones of Montgomery County. In fact, had that policy-making body chosen to prohibit such uses altogether, we would not be inclined to question its powers to do so unless, in so doing, it eliminated all viable economical uses of a property. (FN2) Appellants, in the case *sub judice,* do not challenge the ***7** power of the County to provide for the use by way of a special exception, but question whether the body charged with administering that law, *i.e.,* the Board, has done so properly.

Special Exceptions

We noted, in *Cromwell v. Ward,* 102 Md.App. 691, 701, 651 A.2d 424 (1995), citing *Stacy v. Montgomery County,* 239 Md. 189, 193, 210 A.2d 540 (1965), that "[a] special exception ... is expressly permissible...." *See also Montgomery County v. Merlands Club, Inc.,* 202 Md. 279, 288, 96 A.2d 261 (1953); *Cromwell,* 102 Md.App. at 702, 651 A.2d 424 (citing *Eberhart v. Indiana Waste Systems, Inc.,* 452 N.E.2d 455, 459 (Ind.App. 3 Dist.1983) ("A conditional use [(FN3)] is a desirable use which is attended with detrimental effects which require that certain conditions be met.")); *Ash v. Rush County Bd. of Zoning Appeals,* 464 N.E.2d 347, 350 (Ind.App. 1 Dist.1984) ("A special exception involves a use which is permitted ... once certain statutory criteria have been satisfied.").

[3] We noted, in respect to attempts to utilize variance procedures to eliminate conditions, in the conditional use case of *Chester Haven Beach Partnership v. Board of Appeals,* 103 Md.App. 324, 336, 653 A.2d 532 [666 A.2d 1257] (1995) To view preceding link please click here , that it is "the generally accepted proposition[ ] that, if the express conditions ... are met, it is a permitted use because the legislative body has made that policy decision." Thus, we conclude, as this Court and the Court of Appeals often have, that a special exception/conditional use in a zoning ordinance recognizes that the legislative body of a representative government has made a policy decision for

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all of the inhabitants of the particular governmental jurisdiction, and that the exception or use is *8 desirable and necessary in its zoning planning provided certain standards are met.

The modern seminal case, authored by the late Judge Davidson (who had herself risen through the community organizations and the planning/zoning arena of Montgomery County), is *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981). That case, with but minor modifications, and with but one or two strained deviations, *see Board of County Comm'rs v. Holbrook*, 314 Md. 210, 550 A.2d 664 (1988), remains the standard by which special exception questions are resolved. After furnishing legal and historical background, Judge Davidson noted for that Court that

> [w]hen the legislative body determines that *other uses are compatible with the permitted* uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their *possible* adverse effect, such uses are designated as conditional or special exception uses. Such uses cannot be developed *if at the particular location proposed* they have an adverse effect *above and beyond* that ordinarily associated with such uses.

Schultz, 291 Md. at 21-22, 432 A.2d 1319 (emphasis added, citations omitted).

[4] [5] [6] Thus, it is not whether a special exception/conditional use is compatible with permitted uses that is relevant in the administrative proceedings. The legislative body, by designating the special exception, has deemed it to be generally compatible with the other uses. In special exception cases, therefore, general compatibility is not normally a proper issue for the agency to consider. That issue has already been addressed and legislatively resolved. Moreover, it is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use *9 that is to be considered by the agency. As Judge Davidson opined in *Schultz:*

> [T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects *above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.*

Id. at 22-23, 432 A.2d 1319 (emphasis added). The question in the case*sub judice*, therefore, is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at issue here will have adverse effects at this proposed location. Certainly, it will and those adverse effects are contemplated by the statute. The proper question is whether those adverse effects are above and

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beyond, *i.e.*, *greater here* than they would generally be elsewhere within the areas of the County where they may be established, *i.e.*, the other few I-2 Industrial Zones. In other words, if it must be shown, as it must be, that the adverse effects at the particular site are greater or "above and beyond," then it must be asked, greater than what? Above and beyond what? Once an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere.

In the recent case of *Sharp v. Howard County Bd. of Appeals*, 98 Md.App. 57, 73, 632 A.2d 248 (1993), Judge Harrell, for this [666 A.2d 1258] Court, noted the position of the appellants in that case:

> [A]ppellants postulate that *Schultz v. Pritts* can only be correctly applied if the agency ... first identifies the universe of potential adverse effects inherently associated with the abstract special exception use (which the legislative ***10** body was presumptively aware of when it permitted the use only after the grant of a special exception). With those inherent adverse effects in mind, the Board must then analyze which of the actual adverse effects on adjoining and surrounding properties demonstrated in the particular application exceed, in kind or degree, the inherent adverse effects due to the proposed location of the subject property of the application.

Judge Harrell then acknowledged the *Schultz* Court's discussion of the nature of the requisite adverse effect that would compel denial of a special exception. That discussion involved a contrasting review of two cases--*Deen v. Baltimore Gas & Elec. Co.*, 240 Md. 317, 214 A.2d 146 (1965), involving overhead power lines, and *Anderson v. Sawyer*, 23 Md.App. 612, 329 A.2d 716 (1974), *cert. denied*, 274 Md. 725 (1975), which, like *Schultz*, involved a funeral home. In discussing the cases, we quoted a portion of *Deen* that appears especially appropriate here:

> Appellants assert that it was error for the Board to fail to consider the future effects which the high tension wires would have on the health, safety and general welfare of the locality.... This factor was without relevance in this case, *because there was no evidence produced at the hearing which would show that the effect of high tension wires ... [in] this area would be* ***in any respect different than its effect on any other rural area.*** *Section 502.1 implies that the effect on health, safety or general welfare must be in some sense unique or else a special exception could never be granted in such an area* ....

Sharp, 98 Md.App. at 77-78, 632 A.2d 248 (bold added). We likewise emphasized in *Sharp* portions of our *Anderson* decision:

> "... *Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in any way other* than result *from*

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the location of any funeral home in any residential zone, ***the *11 evidence presented by the protestants was, in effect, no evidence at all.***"

Id. at 79, 632 A.2d 248 (bold added.)

We shall now consider the issues of this case--*i.e.*, the evidence presented and the findings of the Board, findings affirmed by the trial court--keeping in mind as we do what we said about special exceptions in *People's Counsel v. Mangione*, 85 Md.App. 738, 747-48, 584 A.2d 1318 (1991):

> The term "special exception" refers to a "grant by a zoning administrative body pursuant to existing provisions of zoning law and subject to certain guides and standards of special use permitted under provisions of existing zoning law." *Cadem v. Nanna*, 243 Md. 536, 543, 221 A.2d 703 (1966). *It is a part of a comprehensive zoning plan, sharing the presumption that it is in the interest of the general welfare* and is, therefore valid. It is a use which has been legislatively predetermined to be conditionally compatible with the uses permitted as of right in a particular zone.... In sum, special exception is a "valid zoning mechanism that ... the legislative body has determined can, *prima facie*, properly be allowed in a specified use district, absent any fact or circumstance in a particular case which would change this presumptive finding."

85 Md.App. at 747-48, 584 A.2d 1318 (some emphasis added, footnote and citations omitted). We also keep in mind the standard of review we reiterated in *Mangione*, at 750, 584 A.2d 1318:

> The general standard of judicial review of most administrative factfinding is: "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment." *Holbrook*, 314 Md. at 218, 550 A.2d 664 (quoting *Supervisor of Assess. v. Ely*, 272 Md. 77, 84, 321 A.2d 166 (1974)). Specifically, we shall review facts [666 A.2d 1259] and circumstances upon which the Board could have found that the special exception use and location proposed would cause an ***12** adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone. *Holbrook*, 314 Md. at 217-18, 550 A.2d 664. [Footnotes omitted.]

We shall first direct our attention to appellants' second issue. We shall recite the facts as necessary.

II.

Were the reasons given by the Board of Appeals for its denial of the application supported by substantial evidence of record?

[7] We address the relevant portion of the "Opinion of the Board," *i.e.*, the findings and opinion of the Board. As the special exception here at issue has,

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by the very reason of provisions for its existence, been predetermined by the legislative, policy-making body of Montgomery County to be generally "beneficial," *Schultz, supra,* and presumptively compatible, our discussion of the Board's opinion will be primarily directed to its findings of adverse effects.

In its findings, the Board stated that the majority of its

members remain concerned, as they were in 1990,[(FN4)] about the impact of the proposed special exception on the environment and on traffic safety. The Board concludes that the application must be denied because the applicant has not met its burden on these two vital issues.

We shall thus limit this portion of our review to those issues, *i.e.*, findings the Board states are the basis for its denial of the application, *i.e.*, the "environment" and "traffic safety." We shall attempt to focus on the relationship those two findings have in respect to the standards that apply in cases involving special exceptions, especially to the requirement that such adverse effects be greater, *i.e.*, above and ***13** beyond, the adverse impact generally in other areas where such special exceptions are permitted. We therefore look for evidence, if any, in the record of the adverse effects and impact that could generally be expected as an inherent adverse impact anywhere in the I-2 Zones in order to determine whether the environmental and traffic safety impact at the subject site is greater.

The Board found that there would be adverse impact from runoff from the subject site into a tributary that ultimately drains into Rock Creek, the Potomac River, and the Chesapeake Bay. There is evidence to support that finding. There was no evidence, however, that other areas in this particular I-2 industrial corridor do not drain into the same tributary. The exhibits indicate that other properties in the corridor very possibly do. Moreover, there was no evidence as to whether the three other I-2 Zones located elsewhere in Montgomery County (Pepco, Montgomery Industrial Park, Brookville) drain into Rock Creek, the Potomac River, or the Chesapeake Bay watershed. Indeed, we know of no areas in Montgomery County where storm water runoff does not ultimately drain into the Chesapeake Bay. (FN5) We note again that the exhibits in the record indicate that Rock Creek, through its tributary, Southlawn Creek, drains the entire Southlawn I-2 industrial corridor, the specific I-2 Zone at issue here.

[666 A.2d 1260] Appellants asserted below, and here, that the drainage pattern of the industrial uses of the subject site runs from the site, *i.e.*, the southeast side of Southlawn Lane, to Southlawn ***14** Creek, and argue that runoff would, therefore, cross Southlawn Lane and find its way into that Creek. This pattern of runoff is due to the presence of a hill behind the subject site and, apparently, behind the other sites as well. It appears from the exhibits that most, if not all, of the existing uses in the I-2 Zone along the Southlawn Lane industrial corridor to the north of Gude Drive that abut on the lane drain in that direction as well. (FN6) If so, and it appears so, Southlawn Creek is subject to drainage from the printing plant, the Levine junkyard, the Wilcoxon operation, Montgomery Concrete batching operation, Montgomery Scrap Corporation

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(apparently a metal recycling facility), F.O. Day Co. (a construction company that appears to process scrap material at this location), Brigham & Day Paving Company, Genstar Stone Products Co., and A.H. Smith Asphalt Plant. Rockville Fuel and Feed and Beltway Movers also abut on Southlawn. Just behind Beltway Movers is Genstar Asphalt (another asphalt mixing plant) and, between Beltway Movers and Rockville Fuel and Feed, abutting on Southlawn, is another concrete batching plant, which utilizes, among other vehicles, numerous concrete and dump trucks.

Additionally, on the westerly side of Southlawn Creek, partially to the rear and across the Creek from the uses we have identified as being generally on the west side of Southlawn Lane, is a former Montgomery County landfill and incinerator operation that appears from the exhibits to be in the Southlawn/Rock Creek drainage basin. Moreover, there is a Montgomery County Sewage Treatment Plant off of Gude Drive, whose rear property line abuts on a wooded area that appears to be contiguous with Southlawn Creek and its drainage basin.

In respect to the environmental issue, the Board concluded that it "cannot approve a use which it believes would run counter to the steps currently being taken to protect and ***15** improve Southlawn Creek. Denial is warranted for this reason alone." Interestingly, in so finding, the Board ignored the County Environmental Planning Division's (EPD) findings and recommendations, including the fact that "staff would recommend conditional approval subject to the applicant revising the currently approved ... plan and obtaining approval from MCDEP." Appellant revised the plan and agreed to meet the criteria and conditions of EPD. We shall further address this "environmental issue," *infra*.

In discussing traffic safety, the Board of Appeals initially acknowledged that a preliminary plan of subdivision will ultimately be required before actual permits for a solid waste transfer station could issue. It then acknowledged that the Planning Board was the proper body to evaluate the adequacy of the roads to handle the traffic generated by the use. It noted that § 59-G-1.21(a)(8) of the Montgomery County Code directs the Board of Appeals to condition the grant of a special exception on the Planning Board's determination of adequacy, *i.e.*, to defer to the Planning Board, and acknowledged that it is not its function to determine the adequacy of intersections or other facilities in respect to traffic. "Therefore, this Board will not make a finding about the adequacy of nearby intersections or other *elements* related to the adequacy of public facilities." (Emphasis added.) Nevertheless, it immediately did that which it has just said it would not do, by bootstrapping specific traffic safety matters under the general provisions of the Code.

The Board then paid lip service to the *Schultz* requirement of site specific adverse impact by saying:

> The Board's findings about traffic safety relate to the unique location of the subject property within the I-2 Zone. The subject property faces Southlawn Lane, which is a four lane road until just west of the Mossburg site.

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[666 A.2d 1261] Only one other established use is northeast of, *i.e.*, farther out, ***16** the Southlawn Lane industrial corridor from Gude Drive, (FN7) that being the printing plant. This commercial printing plant also has truck loading and off-loading facilities and, from the photos admitted in evidence, parking for scores of vehicles. Further, it is situated on the two-lane portion of the road. It appears that Montgomery Concrete, a batching, mixing, and truck loading plant, across Southlawn Lane, is just south of the subject site. It fronts Southlawn Lane at the point where the road narrows. The exhibits show numerous heavy trucks at that location. The Levine property is situated on the southeast side of Southlawn Lane, abutting the subject site. It is, apparently, a junkyard--or at least a storage area for junked vehicles. Approximately 100 or more vehicles, including trucks and trailers, are shown situated on that location on the exhibits admitted in evidence. The Levine property is also on the two-lane section of Southlawn Lane.

Next to the Levine property, on the same side of Southlawn Lane as the subject property, is a site identified as the J.W. Wilcoxon property. It is located approximately where Southlawn Lane begins to narrow to less than four lanes. In the exhibit in evidence, in addition to buildings and cars, there were eleven or twelve trucks of various sizes on the site at the time the pictures were taken, and several vehicle trailers in addition to other equipment the purpose or use of which is unclear. On the west side of Southlawn Lane is another J.W. Wilcoxon facility abutting on "Incinerator Lane," south of Montgomery Concrete. It contains what appears to be large garages and warehouses. In addition to numerous cars, there are many trucks of various sizes, including tractor-trailer trucks and front-end loaders, and stored timber, pilings and other lumber situated on the site. These uses are all situated at the two-lane area of Southlawn Lane and/or at, or near, the point of its transformation from four to two lanes.

***17** The Board determined that this particular site is unique because it abuts on what is a two-lane road and because trucks cannot continue past the subject property because of restrictions on a bridge located further up Southlawn Lane. The Board stretches the facts to support the result it desires to achieve. The truck traffic generated by the subject site will not go past the subject site in any event. The traffic generated by the use terminates at the use. These trucks will not "proceed past" the subject site, so the fact that they *cannot* proceed past it because of a bridge is irrelevant. Except for the printing plant, the exhibits reflect no present industrial use in this I-2 Zone past the subject site. As the Board posits, the I-2 Zone contemplates the intense involvement of heavy trucks. When the legislative body provided for the subject special exception in I-2 Zones, it necessarily contemplated heavy truck traffic as normally associated with the use. As we indicate elsewhere, this legislative body knew exactly the type of business or use for which it was providing (as it had been involved in litigation over it) and devised the special exception process, at least partially, to address this specific use. (FN8)

The Board went on to find that the subject use generated a heavy traffic load, and that there would be many left turns *from* the subject site onto Southlawn Lane

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across both lanes of traffic because right turns from the subject site would be restricted because of the bridge. What the Board and appellees fail to recognize is that, even though trucks are required to exit left, though their destinations might be to the right, because the bridge forecloses that direction of travel, these vehicles are trucks that, without the bridge limitation, would be approaching the site from the direction of the bridge and making a left turn across the same opposing traffic and the same two lanes into the site. In actuality, left turns across two lanes of [666 A.2d 1262] traffic are not increased; they would be approximately ***18** the same. They are, because of the bridge, unidirectional. The traffic problem would be roughly the same. The existence of the bridge does not increase those problems.

The Board went on to note, not *find:*

> In addition, if trucks cannot enter the site because too many trucks are already there, the only place for them to wait is on Southlawn Lane, effectively blocking the eastbound lane. *While the petitioner indicated that the site could accommodate all the trucks that he expects to arrive at one time, the Board appreciates the seriousness of the problem if the estimates prove to be faulty. If* trucks block the eastbound lane waiting to enter the site, other eastbound vehicles must either wait behind them, thus backing up traffic on Southlawn Lane, or they must pull out into the westbound lane to go around the truck. On a road as narrow as Southlawn Lane, this *may* pose a serious traffic hazard.
>
> The Board heard testimony that the County plans to widen Southlawn Lane to four lanes in front of and beyond the Mossburg site. The roadway would be relocated to the north, and the existing pavement would become a service drive in front of the site. The Board believes that this would be a much better configuration to handle the high volume of heavy truck traffic expected at the site. However, in 1990 when this testimony was presented, the widening of Southlawn Lane was not included in the County's six-year Capital Improvements Program. Given several years of serious fiscal difficulty for the County, the Board is doubtful that Southlawn Lane will be widened in the near future. *In any event, if the weight limitations on the bridge continue, outgoing trucks will still be restricted to left turns only.* [Emphasis added.]

This statement by the Board is not a finding of what is, but what *may* be. It is mere speculation, and not a finding of present or future adverse impact that would be different here than elsewhere on Southlawn Lane or in the other I-2 Zone areas of Montgomery County.

***19 The Statute(s)**

Section 59-C-5.2 of the Code, "Land Uses," offers a general definition of I-2 "Heavy Industrial" uses:

> A fundamental distinction between heavy industrial uses and light industrial uses involves the character of the industrial development. Typically, heavy

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industrial uses require larger sites to accommodate activities that often involve a variety of concurrent industrial processes on one site. *Heavy industrial developments generally involve larger volumes of heavy truck traffic and are located near specialized transportation links such as rail and major highways. In addition, heavy industrial uses are often noisy, dusty and dirty, as compared to other types of industrial and commercial activities. Heavy industrial uses are restricted to land classified in the I-2 Zone because the large scale nature of such uses, the traffic impacts, and environmental effects could be disruptive to lighter intensity industrial and commercial areas.* [Emphasis added.]

Included in permitted uses in I-2 Heavy Industrial Zones are bakeries, blacksmith shops, ornamental iron works, machine shops, battery plants, contracting storage yards, dry cleaning plants, small part manufacturing, food production, including packing, packaging, and canning, fuel storage, ice manufacturing and storage, sheet metal manufacturing, numerous other manufacturing operations, including paint manufacturing, mobile home manufacturing, the manufacturing of paper products, stoneworks, distillation of alcohol, breweries, coal and tar operations, asphalt and concrete mixing plants, chemical and dye works, foundries, incinerators, junk yards, off-loading, storage and transfer of sand, gravel, or rocks, rock crushing (washing and screening), sanitary landfills, steam power plants, sugar refineries, pipelines, railroad yards and tracks, building material sales (wholesale or retail), lumberyards, outdoor storage quarries, and sand, gravel, and clay pits. In addition to solid waste transfer stations, other special exceptions that are permitted include fertilizer mixing plants, cable communication systems, [666 A.2d 1263] heliports, gas stations, shooting ranges, and stockyards.

***20** A solid waste transfer station is defined in § 59-A-2.1. as "[a] place ... where solid waste is taken from collection vehicles and placed in other vehicles or containers for transportation to other intermediate or final disposal facilities."

The general provisions in respect to all special exceptions include:

59-G-1.21. General conditions.

(a) A special exception may be granted when the board, the hearing examiner, or the district council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

(2) Complies with the standards and requirements set forth for the use in division 59-G-2.

(3) Will be consistent with the general plan for the physical development of the district, including any master plan or portion thereof adopted by the commission.

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(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity.

(6) Will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature. Special exception uses in accord with the recommendations of a master or sector plan are deemed not to alter the nature of an area.

***21** (7) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

(8) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities. If the special exception use requires approval of a preliminary plan of subdivision in accordance with chapter 50 of this Code, title "Subdivision of Land," the adequacy of public facilities will be determined by the planning board at the time of subdivision approval. In that case, the board of appeals must include such planning board approval as a condition of the grant of the special exception.

By reason of the holdings in *Schultz, supra,* and its progeny, such general conditions as are applied to special exceptions are themselves subject to the limitation that the adverse effects must be greater than or above and beyond the effects normally inherent with such a use anywhere within the relevant zones in the regional district (Montgomery County in this case). In the absence of a provision in the zoning statute clearly requiring a stricter standard than *Schultz, Schultz v. Pritts* applies. As we indicate elsewhere, some adverse impact is contemplated or the use would be permitted generally without resort to the special exception process. As so limited, the general provisions would have added to them, by operation of the language of the case law, *i.e., Schultz,* limiting language similar to that that we emphasize below as we reiterate certain of the relevant general conditions:

59-G-1.21. General conditions.

....

(5) Will not be [*more*] detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood [*at the subject site than it would be generally elsewhere in the zone or* [

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666 A.2d 1264] *applicable other zones*]; and will cause no [*more*] objectionable noise, vibrations, fumes, odors, ***22** dust, glare or physical activity [*at the subject site than it would generally elsewhere in* the zone or applicable other zones].

....

(7) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area [*more at the subject site than it would generally elsewhere in the zone or applicable other zones*].

See also the more recent Court of Appeals special exception case of *Harford County v. Earl E. Preston Jr. Inc.*, 322 Md. 493, 588 A.2d 772 (1991), wherein, after restating that portion of *Schultz* in respect to adverse impacts "above and beyond" inherent impacts of special exceptions, that Court rejected our contention that a *Gowl v. Atlantic Richfield Co.*, 27 Md.App. 410, 341 A.2d 832 (1975), standard had been engrafted in Harford County's statute. The Court of Appeals, in *Preston*, reiterated the continued viability of the *Schultz* standard in special exception cases; Judge Karwacki, for the Court, opined, at 503, 588 A.2d 772, "[W]e find no intention ... to substitute a *Gowl* test for the test ... for measuring ... adverse impact ... which we adopted in *Schultz*." It is with the caveats, found in the clauses we have added and emphasized above, in mind that we review the actions of the Board, as affirmed by the trial court.

Utilizing the standard of review discussed, *supra*, in assessing the Board's determination of applicant's compliance with the "General Conditions" of the statute, *but including* the emphasized limitations that we feel must be considered when a special exception--deemed to be part of comprehensive zoning--is considered, we perceive that the application for a special exception has been wrongly denied. We explain.

First, the Board utilized only two findings in its denial--traffic safety and environmental concerns, *i.e.*, wastewater/stormwater management. We address the wastewater management issue first. The legislative body of Montgomery County has expressly provided for the environmental effects ***23** of private solid waste transfer stations, in the County's comprehensive Solid Waste Management Plan. Moreover, the County expressly included the area of this subject property in the Southlawn Lane industrial corridor in that plan in order that the State would "process Travilah Recovery's application for a solid waste permit at the new site. The County supports this amendment to facilitate moving the operation to the new site." The County went on to emphasize that solid waste management was primarily to be part of the waste management plan, noting in the amendment to its waste management plan:

II.I.3.c(2), Transfer Stations, private.

Private persons who wish to operate solid waste transfer stations or recycling facilities in Montgomery County may not do so without a State

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solid waste disposal permit. The State will not issue a permit unless the site is shown in the Comprehensive Solid Waste Management Plan. With respect to these sites:

1. The County will review and comment on State solid waste disposal permit applications.

2. The site and any facility on the site must comply with all existing and future County laws and with relevant parts of this ten year solid waste management plan.

3. The County, as part of its review of permit applications, will designate materials which may be handled by private transfer stations and recycling facilities. These designations will be made at the time of application according to public solid waste flow control needs and may change from application to application.

This statute clearly indicates that the actual governmental monitoring of environmental concerns relating to a private solid waste transfer operation would be part of the County's waste management program, as opposed to its zoning programs. It reads: "The County, *as part of its review of permit applications, will designate....*" [Emphasis added.] The permit application therein mentioned thus provides for the ***24** County's review of the State permitting process in respect to any particular permit application.

[666 A.2d 1265] In the case *sub judice,* it was uncontradicted that handling of the materials to be transferred would be conducted inside a building serviced by interior drains that would funnel any drainage into the sanitary (not storm) sewer system. Thus, runoff from the interior operations, *i.e.*, that matter considered most polluting, would not drain ordinarily into Southlawn Creek. The sanitary system met the approval of the appropriate County agencies. Thus, as designed, it is rain water, *i.e.*, storm water, drainage that *might* periodically affect the Creek basin.

The Montgomery County Department of Environmental Protection designed and then approved a stormwater management plan for use at the subject site that included streambank protection by appellants off the subject site. Additionally, the Department required the construction of a sediment outlet trap on site and utilization of an oil/grit separator on site. All of these were agreed upon and the Department gave its approval, on July 11, 1989, that, insofar as the County was concerned, the wastewater and storm water control measures were sufficient. Subsequent agreements and covenants concerning maintenance of the required systems and bonding were duly formalized by execution and recordation of documents among the land records. As we have indicated, the Planning staff of the County recommended approval of the special exception, subject to appellants meeting certain conditions. The evidence clearly indicates that appellants have met and/or have agreed to meet those conditions.

Thus, the evidence is clear and uncontradicted that those agencies in

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Montgomery County charged with determining whether there would be an unacceptable adverse environmental impact from the use on the subject site have determined that there would not be.

But even more important, as we indicated earlier, there is absolutely no evidence, in respect to environmental concerns, that the environmental impact of appellants' use at the subject ***25** site would be greater, or above and beyond, that impact elsewhere within the I-2 Zone in this industrial corridor or other I-2 Zones in that part of the regional district situated in Montgomery County. In fact, all of the evidence indicates that the impact would be the same anywhere within this I-2 industrial corridor; from the evidence, the entire area appears to be in the Southlawn Creek watershed. Additionally, there is no evidence that the impact would be different in other I-2 Industrial Zone areas in the County. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with special exceptions and conditional uses, accepts some level of such impact in light of the beneficial purposes the legislative body has determined to be inherent in the use. It regulates the level of adverse impact by prohibiting only that level that is not inherent in the use. It does that primarily, as we have said, by restricting only those uses, the impact of which is greater at a particular location than it would generally be elsewhere. Appellants, by obtaining and producing at the hearing the extensive documentation in regards to the sanitary and storm water management plans, and evidence of the approval of those plans by the appropriate agencies, satisfied the burden of establishing that the use at this site was, in regards to the environmental matters, in compliance with the special exception provisions, as limited by the case law we have described, *i.e.*, that there would be no additional adverse environmental impact because of the specific location of this use at the subject site.

[8] The protestants merely reiterated and attempted to argue that the impact from the use was greater than that stated by the Department of Environmental Planning. Even if that were so, and we are not persuaded that it is, there was insufficient evidence (virtually none) from which a reasoning mind could have determined that the impact at this site on Southlawn Lane was unique or different than the impact would be elsewhere in this I-2 Industrial Zone (north of the intersection of Southlawn Lane and Gude Drive) or, for that matter, any different than in any other I-2 Zone in the ***26** County. Accordingly, this finding of the Board was not based upon substantial evidence. It was a finding arbitrarily made.

Traffic

The Montgomery County Master Plan describes this Southlawn Lane I-2 industrial [666 A.2d 1266] area as developed with heavy industrial uses, and as undesirable for residential use. As we have previously noted, the traffic patterns that might be caused by the bridge restriction would not cause any extra impact on through traffic flowing on Southlawn Avenue, in that ingress and egress lane crossing would be the same, in total, had there been no restriction on the use of the bridge.

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We agree with the Board's legal conclusion that the impact of traffic flows, and the pattern caused thereby are, in Montgomery County, primarily delegated to the Montgomery County Planning Board. Moreover, as we have indicated, regardless of where in this I-2 industrial corridor this use was to be conducted, the traffic impact, including both the crossing of lanes and the potential for backups, if any, would be the same. There is no evidence to the contrary.

It is equally clear that traffic backups, if they were to exist (and the Board's discussion of the issue is little more than speculation in the face of appellants' substantial evidence that most traffic would be contained on site) would occur as trucks arrived, *i.e.*, on the easterly and southeastern side of Southlawn Lane. If such a backup of entering traffic did occur, and was as extensive as appellees contend, it would only extend a short distance on the two-lane portion of Southlawn Lane. If it were extensive, it would extend to the four-lane section of that road. The subject site is at the end of that four-lane section and at the end of the built-up area. Thus, most, if not all, of the traffic of other heavy trucks generated within this I-2 Zone would not pass by the subject site because that traffic must exit and enter via Gude Drive by virtue of the bridge limitations. Additionally, on the east side, large tracts of property are not being used at all and thus do not, at present, generate substantial traffic.

***27** The Master Plan and the I-2 Zone contemplate heavy truck traffic in I-2 Heavy Industrial Zones. The proposed use will not generate anything more. The fact that residents of residential areas outside the zone perceive that additional industrial activity in this industrial zone will generate heavier truck traffic, making their attempts to utilize this industrial corridor more difficult, does not make the traffic stemming from appellants' use--a use that is presumed to be in conformance with comprehensive zoning--unique, greater, or above and beyond that which would occur anywhere else in the zone. The generic traffic concerns of appellees do not constitute substantial evidence upon which the Board could have based its decisions.

When Montgomery County created I-2 Heavy Industrial Zones, it made a policy statement that heavy industrial uses, and the traffic generated thereby, were necessary. When the County provided, by way of special exception, that solid waste transfer stations could be conducted there, it made an additional policy statement, as relevant to the Board's findings in the present case, that such uses were appropriate, beneficial, and generally compatible, so long as, at any particular location, the traffic safety and environmental impact would be no greater than, *i.e.*, would not be above and beyond, the adverse impacts inherent in such uses if conducted at an alternate site. Moreover, when Montgomery County created the provisions for special exceptions for solid waste transfer stations, it knew what that use entailed because the special exception, and the inclusion of this site in the solid waste management plan, resulted, at least in part, from appellants' operation at another site, the County's desire to stop the operation there, and the County's cooperation in seeking to have it moved elsewhere, *i.e.*, to the subject site. Not only were the general impacts of solid waste transfer stations contemplated, but the specific impacts of *this particular operation* were

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also contemplated.

Moreover, the planning staff reported to the Board that

the adequacy of public facilities will be determined by the Planning Board at time of subdivision....

....

*28 The staff ... finds the location of a transfer station at this location acceptable. This area of Southlawn Lane is characterized by large, heavy trucks carrying cement, concrete products, building materials, fuel and similar bulky products....

[666 A.2d 1267] ....

Community Plans North Division of the technical staff recommended approval ... concluding the use was compatible with the other uses....

The Transportation Planning Division ... recommended approval....

....

The Environmental Planning Division recommended approval....

....

The Development Review Division ... finds that the use limited to 400 tons is consistent with the Montgomery County Comprehensive Solid Waste Management Plan....

....

The staff agrees with the findings and recommendations of the technical staff and further finds that the use conforms with the development standards of the I-2 Zone.... [T]he staff finds ...:

....

3. ... [T]hat the location of a solid waste transfer station at this location is consistent with the other uses allowed in the I-2 Zone and is consistent with the Upper Rock Creek Master Plan.

4. The proposed use ... will be in harmony with the general character of neighborhood considering the character of activity. The use ... will have *less impact* ... than existing uses....

5. The staff further finds that the transfer station ... will not be detrimental to the use, enjoyment, economic *29 value or development of

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surrounding properties or general neighborhood....

....

8. The use will be served by adequate facilities.... [Emphasis added.]

The staff then recommended approval subject to certain conditions.

The protestants appear to protest the increasing development of this area of I-2 Industrial Zoning. The purpose of creating such zones is to restrict and concentrate heavy industrial activity to certain designated portions of the County. The concepts embodied in such zoning contemplate that these particular areas will become more industrialized in order that other zones will not be subject to those types of uses--uses the legislative body has determined are necessary. As long as the County experiences population growth, there must be a development of wholesale and retail businesses to service the up-front needs of the growing population. There will also be a continuous need for the management and disposal of end result problems, *i.e.*, the waste products of human society. Something has to be done with it. Even a cursory examination of the exhibits admitted in the case *sub judice* causes a succinct observation--if not here, where? The answer cannot be "nowhere," as the legislative body has inferentially determined that the operation is needed and should be conducted somewhere.

To the extent appellees, Twin Lakes Citizens Association and Manor Lake Civic Association, are displeased with the County's decision to permit such uses as special exceptions in industrial zones in the first instance, an alternate, and perhaps better, recourse would be to petition the legislative body for amendments to the County zoning code prohibiting such uses generally, rather than attacking the applications for special exceptions on a piecemeal, "not in my backyard," basis. Zoning *policy* is generally better, and more appropriately addressed, in legislative forums, rather than quasi-judicial or judicial forums. Normally, *general* objections to legislative ***30** initiatives are better addressed legislatively. As we noted earlier, however, efforts to prohibit the handling within Montgomery County of the waste therein generated might not sit well with those neighbors of the County that might end up with Montgomery County's problems.

[9] The Board's decision to deny the special exception was not based on substantial or sufficient evidence of adverse impacts at the subject site greater than or above and beyond the impacts elsewhere in this particular I-2 Zone, or in any other I-2 Zones. It was, therefore, arbitrary and illegal.

We shall reverse the decision of the circuit court affirming the denial of the Board of the [666 A.2d 1268] application for special exception and shall direct that court to order the Board to grant the special exception. In so doing, the Board may consider the imposition of those reasonable conditions that the record reflects have already been recommended by staff and agreed upon by appellants.

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In light of our decision, we find it unnecessary to address appellants' "change of mind" argument, except to note that the collective mind of the Board did not change. We would question, however, whether the change of mind doctrine would apply in the first instance when the decision of the entity making the decision remains the same, even if one or more of the component parts, *i.e.*, members of the entity, may have changed their individual minds.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED; CASE REMANDED TO THE CIRCUIT COURT FOR THAT COURT TO REVERSE THE DECISION OF THE BOARD AND TO ORDER THAT THE BOARD GRANT THE SPECIAL EXCEPTION; COSTS TO BE PAID BY APPELLEES.

[666 A.2d 1269]

*31. APPENDIX

RPT.CC.1995196062.00010

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE

(FN1.) In a statement to the Board, appellants' counsel, without objection, noted:

As this Board knows ... we have basically four pockets of industrial zoning in the county; the Pepco site ..., Montgomery Industrial Park on Route 29 ..., a pocket of Industrial-2 around Brookville ... and Southlawn Lane.

... [T]hat deal [at Montgomery Industrial Park] fell through....

He couldn't buy anything from Pepco ... that is obvious; and the ground at Brookville ... doesn't exist as far as vacant, available ground. So his only choice was to go to Southlawn Lane.

(FN2.) Of course, if all jurisdictions prohibited such uses, the debris presumably would not be permitted to leave Montgomery County and would accumulate at the locations throughout the County where it first became debris. Whether a county can legislate that the debris accumulating within its borders cannot remain there is another question for another day and might well raise interesting issues to be addressed by the State.

(FN3.) As we pointed out in *Cromwell v. Ward*, 102 Md.App. 691, 699 n. 5, 651 A.2d 424 (1995), special exceptions and conditional uses are clearly intertwined.

(FN4.) Apparently, the Board misspoke. In 1990, a majority of its members voted to grant the special exception. Because of a "super-majority" requirement, since ruled invalid, it was not granted.

(FN5.) An official publication of the Maryland Department of Natural Resources, "Trees for Maryland's 'Watersheds,' " provides:

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Maryland has six major watersheds. A small percentage of water in the western most part of the State [the Youghiogheny River watershed in Garrett County] flows to the Ohio River, through the Mississippi and eventually to the Gulf of Mexico. Another small percentage in the east [situated completely within Worcester County] flows directly to the Atlantic Ocean. The remaining water, ["Potomac River Watershed," "West Chesapeake Watershed," "Susquehanna River Watershed," "East Chesapeake Watershed," and the "Patuxent River Watershed"] approximately 90%, drains into the Chesapeake Bay.

(FN6.) Attached hereto is a photocopy of a photograph admitted below, showing the relative locations of Southlawn Lane and the uses situated on that road. Mossburg's proposed location is identified as "Site."

(FN7.) See the photocopy attached hereto that shows the relative location of the existing industrial uses and the subject site in this industrial corridor.

(FN8.) We are informed that there is out there another special exception case involving a similar use that appellees contend generated the creation of this particular special exception legislation. The record is unclear. In any event, it was created to address solid waste transfer operations.

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11/26/07

IN THE MATTER OF THE APPLICATION OF McCAMMON PROPERTIES I, LLC – LEGAL OWNER /PETITIONER FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE S/S OLD FREDERICK ROAD, 572' W OF C/L OF HARLEM LANE (5623 BALTIMORE NATIONAL PIKE)	* * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 06-436-SPHXA
1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	

* * * * * * * * *

OPINION

This matter comes before the County Board of Appeals of Baltimore County on an appeal taken by the Office of People's Counsel for Baltimore County from an Order of the Zoning Commissioner dated May 5, 2006 in which Petitions for Special Exception and Special Hearing were granted, and the Petition for Variance dismissed as moot.

The Petitioner, McCammon Properties, LLC, has leased a store to County Pawnbrokers at 5623 Baltimore National Pike, and was represented by John Gontrum, Esquire. Carole S. Demilio, Deputy People's Counsel for Baltimore County, appeared on behalf of the Office of People's Counsel.

As filed, the Petitioner requested a special hearing to permit the relocation of a pawnshop that has existed since prior to July 1995 to a new location within the same council district within 1 mile of the existing location; a special exception to use the property at 5623 Baltimore National Pike for a pawnshop; and a variance from § 436.4 of the Baltimore County Zoning Regulations (BCZR) to permit the relocation of an existing pawnshop from a site within 1 mile of the existing location within the same council district. The subject property and requested relief are more detailed on Petitioner's Exhibit #1, the Site Plan.

Appearing for the Petitioner at the de novo hearing before this Board was Wilbert Duvall, Professional Engineer for W. Duvall and Associates, Inc., 530 E. Joppa Road, who prepared the Plan to Accompany Special Exception. Through his expert testimony and evidence, the Board learned that Petitioner's Exhibit #1 depicts the subject site of the pawnshop, which is a 20-foot wide by 123-foot deep store in the center of a small strip of stores zoned B.M.-C.C.C. Parking has been set aside for the pawnshop in the front and appears to fully support the store and adjacent retail establishments. There is additional parking in the rear. Behind this parking area is a substantial video arcade building, and behind that is an athletic field for a local elementary school. To the east of the retail center is a service garage, and to the west of the center is a mobile phone store. Across Old Frederick Road is an existing package goods store. The site plan evidences that the area is highly commercialized. The elementary school is West Town Elementary. The rear sports field backs up to the rear of the whole complex of the pawnshop. The property is separated with a fence. There is no residential adjoining property line with the subject property. Mr. Duvall, with his 42 years experience, feels this pawnshop does not have a negative impact on the community.

Photographs submitted as Petitioner's Exhibit 7a-7c show a clean, very presentable jewelry-type store with an area off to the side of the jewelry counter for larger pawned items (tools, TV's, videos, etc.). The store has a modern clean look, and the exterior appears to be in keeping with the other stores in the retail center.

The pawnshop has been licensed and in existence at this location since 1998. Prior to 1998, the store was located at 5204 Baltimore National Pike. The store appears on the Baltimore County list of pawnshops with pre-July 6, 1995 approval at that address with Mr. Phelps as the licensee (Petitioner's Exhibit #6). This list is significant for County Council Bill 112-95

established limitations on both the number and location of pawnshops within the County. Existing pawnshops appearing on the list were grandfathered under the legislation. Licenses from the State of Maryland were introduced showing the consistent operation of the pawnshop and the change in address occurring prior to 1999. It is unclear how or why the move was permitted without a zoning proceeding. Nevertheless, it was proffered without opposition that the pawnshop has existed in its current location without complaint for the past 9 years.

This Board recognizes that pawnshops come with a certain stigma. The subject pawnshop has a running history of no problems in the past or any current problems. David Robinson, with witness for People's Counsel, testified that he did not know the pawnshop existed until notified by an e-mail. His main concern is the stability of his community that is in a revitalization zone so designated by Baltimore County. He also testified that it sounded like a well-run business to him.

This Board cannot react to "what if's." This business will not be given a license to start running badly. This pawnshop will still have to adhere to the current BCZR and laws of this County.

In November 2005, the Deputy Zoning Commissioner, in Case No. 06-142-X, granted a special exception for C & D Pawn, Inc. t/a Catonsville Jewelry and Pawn Brokers to 5210 Baltimore National Pike (Petitioner's Exhibit #8). There was no opposition to the request. Consequently, for a period from 1998 to 2005, the two pawnshops were located within a long block of each other. Prior to 1998, the two pawnshops were located three blocks from each other. Consequently, these two pawnshops have never been located further apart than they are today. No mention of C & D Pawnbrokers was made in the Findings of Fact and Conclusions of Law.

The subject property is zoned B.M.-C.C.C., and the pawnshops are permitted by special exception in a B.M. zone, pursuant to § 233.4 of the BCZR. Section 436 of the BCZR, however, limits the number and placement of pawnshops in the County, and the Director of the Department of Permits and Development Management is forbidden to accept special exceptions for new pawnshops in the County if there are 12 valid dealers' licenses outstanding (BCZR § 436.2D. Existing pawnshops, however, are clearly counted within the 12 licenses permitted.

In this case, there is clear evidence that this pawnshop has continuously existed since prior to 1995 and is, in fact, on the list of pawnshops grandfathered in 1995.

James Phelps, the previous owner who currently is employed by the new owners after selling in 2006, testified that there are no parking or traffic problems of which he is aware. At best, he stated, he may have two customers in the store at one time. He testified that he does not, nor would he, pawn or buy firearms, and that he has a regular base of clients who have dealt with him over the years.

Mr. Paul Perrora, who lives on Harlem Lane within walking distance of the subject property, feels the pawnshop has no negative impact on his neighborhood. He testified, in fact, that he has pawned items and bought merchandise in the past. He has owned his home for at least 10 years and grew up in the same house.

Through testimony and evidence, this Board finds no negative impact on the traffic or environment, and there have been no negative impacts alleged by anyone in the community. All evidence indicates that this business, at this location, will not be injurious to the health, safety, or general welfare of the community. Based on the evidence presented, the business handles no firearms and conforms to all regulations. Based on the testimony and evidence, we find that the requirements of BCZR § 502.1 have been met and that the special exception should be granted.

Petitioner also seeks variance relief from the provisions of § 436.4 of the BCZR. It appears, however, that a variance is not needed for the relocation of a pre-1995 pawnshop within 1 mile of another pawnshop. In *People's Counsel for Baltimore County v. Country Ridge Shopping Center*, 144 Md.App. 580, 799 A.2d 425 (2002), the Court reiterated its decision in an earlier unreported opinion that grandfathered pawnshops are exempt from the provisions of § 436.4. The Court held that, while the special exception provisions pertained to a change in location, the location provisions did not so apply. The Court reversed the rulings of the Circuit Court and the Board of Appeals and held that the grandfather clause exemption from the 1-mile radius limitation applied to pawnshops that were in process of relocating. The Petition for Variance is really unnecessary in this case.

The spirit and intent of § 436.4A of the BCZR in this case have been met with respect to the separation of the facilities. These two facilities have always operated within a mile of each other. For at least 7 years, they were in much closer proximity than they are today, and in 1995 they were located on the same side of Baltimore National Pike, separated only by an intervening residential community. In this case, the move of this pawnshop coupled with the move of the other pawnshop permits both pawnshops to continue to exist separated by a greater distance than at any time in the past.

This is not a case of a new pawnshop moving into an existing council district. This is an existing pawnshop that has been validly licensed and operating, and while the Petition for Variance is moot, based on the *Country Ridge* decision, it is important to note the benefits of the location shift with respect to the special exception issues.

People's Counsel also raised the issue of *Schultz. v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981).

Based on the evidence of the history of this pawnshop, this facility would be no worse here than anywhere else in the zone. The test of *Schultz v. Pritts* has been met by the Petitioner based on its actual history.

The Planning Board and People's Counsel both noted the sign on the building, Petitioner's Exhibit 7a shows that all of the signs for the stores in the strip are roof-mounted signs. While the Board would have preferred to see all of the signs in that shopping strip come down, it was unanimously decided that pending legislation will take care of the signs in due course. Petitioner would be made to comply with existing sign legislation, and be removed in accordance with § 450.8 of the BCZR. Current lettering size is not to be enlarged on existing signs.

ORDER

THEREFORE, IT IS THIS 26th day of November, 2007 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to permit the relocation of a pawnshop that has existed since prior to July 1995 to a new location within the same council district within 1 mile of the existing location be and is hereby **GRANTED**; and it is further

ORDERED that the Petition for Special Exception to use the property at 5623 Baltimore National Pike for a pawnshop in accordance with Petitioner's Exhibit 1, be and the same is hereby **GRANTED**, subject to the following restrictions:

1. The Petitioner and/or Lessee may apply for its building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2. The pawnshop shall not sell or handle firearms.

3. All transactions shall be interior to the building.

4. The hours of operation shall not begin before 9:00 a.m. nor end later than 9:00 p.m.

5. The lettering and advertising of the pawnshop on the existing rooftop sign may not be enlarged from its current size as depicted on Exhibit 7 in its current location. Any change in the size of the existing advertisement for the pawnshop shall require removal of the existing sign and signage in accordance with current regulations.

IT IS FURTHER ORDERED that the Petition for Variance to permit the relocation of an existing pawnshop from a site within 1 mile of the existing location within the same council district is 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 COUNTY

Lawrence M. Stahl, Panel Chair

Wendell H. Grier

Edward W. Crizer, Jr.

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
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November 26, 2007

Carole S. Demilio
Deputy People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: McCammon Properties I, LLC -Petitioner*
Case No. 06-436-SPHXA

Dear Ms. Demilio:

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

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

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: John B. Gontrum, Esquire
McCammon Properties I, LLC
Louis O'Brien /Lobster, LLC
t/a County Pawnbrokers
James Howard Phelps
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

5/14/07

RE: PETITION FOR SPECIAL HEARING SPECIAL EXCEPTION & VARIANCE 5623 Baltimore National Pike; S/S Old Frederick Road, 572' W c/line Harlem Lane 1st Election & 1st Councilmanic Districts Legal Owner(s): McCammon Properties I, LLC Petitioner(s)	* * * *	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 06-436-SPHXA

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

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BOARD OF APPEALS

PEOPLE'S COUNSEL'S MEMORANDUM

The Petitioner requests a special exception for a pawnshop in a BM zone. Typically, the zoning regulations applicable to a Petition for Special Exception is the special exception statute (BCZR 502.1) and the use provisions under the applicable zone for the proposed special exception use. (Here BCZR 233.4). There is an additional layer of zoning standards for a pawnshop use under BCZR 436, a part of Article 4, known as "Special Regulations." In other words, a pawnshop use is akin to a "super special exception". The standards are greater than those for a traditional special exception use under BCZR 502.1, and require the Petitioner to satisfy the concomitant burden of proof for each standard.

The "legislative findings" stated in 436.1 establish the criteria for a proposed pawnshop use. These criteria must be applied to all facets of the relief requested, i.e. the special exception, variances, and special hearing. Here the findings state the County Council's concerns:

> **"436.1 C. The Baltimore County Council finds that an undue concentration or the inappropriate siting or design of pawnshop businesses has a reasonable probability of causing adverse effects on nearby residential and commercial areas by creating an impression of community decline and instability"**

> **"436.1 E. Such adverse effects would directly conflict with the county's commitment to conserving and revitalizing older communities and would be inordinately difficult to overcome once ill-sited pawnshops have been established."**

For these reasons, the County Council, in Bill 112-95 (P.C. Exh # 2) limits the total number of pawnshops in Baltimore County to 12 (436.1 F.), limits the number in a single councilmanic district to 2, and prohibits a pawnshop within a one-mile radius of another pawnshop. (BCZR 436.4 A.). In addition, there are specific buffer requirements under 436.3 A.

These and other specific criteria in 436.1 *et seq,.* as well as the statutory legislative findings, establish strict standards that must be considered by the CBA when it applies the language in 502.1 that a special exception will not **"A. Be detrimental to the health, safety or general welfare of the locality involved; . . .** and **" G. . . . nor in any other way [be] inconsistent with the spirit and intent of these Zoning Regulations;"**

In addition, the Planning Board Report (P.C. # 3) and the language in Bill 112-95 should be utilized to interpret and establish the "health, safety or general welfare" of the community surrounding the pawnshop.

Petitioner argues that, under *Southside Brokers, Inc. v. People's Counsel for Baltimore County et al.*, an unreported opinion in the Court of Special Appeals, the language in 436.4 A. that requires a one-mile distance between pawnshops does not apply to a *relocation* of one of the 12 existing pawnshops cited in Bill112-95. It should be noted that this opinion is not binding on the CBA. Maryland Rule 1-104 (a): **"An unreported opinion in the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority."**

While the Board is not bound to accept the statutory interpretation rendered in an unreported opinion, People's Counsel would like to clarify the significance in this case, regardless of the decision in *Southside Brokers.* The Board may agree with the CSA in *Southside Brokers* and find that the distance standard is not an absolute bar to relocation of a pawnshop that

existed in 1995. Nonetheless, the Board may and should consider the proximity of 2 pawnshops within a neighborhood under the "super" special exceptions standards discussed above. There is no dispute in the instant case, and the *Southside Brokers* opinion confirms, that a relocation of an existing pawnshop is not permitted by right; the petitioner must seek a special exception and satisfy the standards of 502.1 and 436.1, including the concerns the County Council expressed in the legislative findings about "ill-sited pawnshops," and "undue concentration or the inappropriate siting" of pawnshops. The existence of 2 pawnshops here within a few blocks of each other is a legitimate consideration in applying the "health, safety or general welfare" standard in 502.1.

Similarly, in applying 502.1, the Board cannot ignore the language in the Planning Board Report. For instance, the Report states on page 2 that pawnshops **"can attract a criminal element into the neighborhood . . ."** On page 6, the Report states that in addition to concerns about the total number of pawnshops in the County, **"another concern is that the concentration of pawnshops in one place could accelerate the decline of a marginal neighborhood or business area."** The Planning Board also changed the pawnshop use from a use permitted by right to a special exception because **"Approval by special exception also provides an opportunity to apply performance standards that can help ensure that a use will be more compatible with its surroundings."** (Report, p. 6).

While the Board may not choose to apply the location bar *per se,* it is still a factor (as in "fact") under the special exception. Obviously, the potential detrimental effect of two pawnshops in close proximity exists, whether the request is a new business or a relocated business. In other words, if one pawnshop exposes a neighborhood to the detrimental effects, a second pawnshop in close proximity increases the risk exponentially.

The question for the Board in the instant case is whether the use, which **"under certain conditions could be detrimental . . ."** (Introduction to 502.1) is more harmful to the health, safety or general welfare of the community, including the specific considerations in 436 and 502.1 at this location than at other sites in the zone (B.M.). BCZR 436 is clear that pawnshops must be strictly regulated at the risk of **"adverse effects"** on nearby communities.

Mr. David Robinson, the neighbor who testified in opposition to the special exception, succinctly and accurately stated why a pawnshop here is more detrimental than at other B.M. locations:

- Another pawnshop is operating within 4 blocks of the subject site.
- An elementary school abuts the southside of the property.
- Mt. DeSalles Academy, a private girls' secondary school is in the immediate area of both pawnshops
- The site is in a revitalization and community conservation area; this older community is just undergoing early signs of commercial revitalization as empty stores are being leased or purchased by retail and food establishments typically found on the boundaries of residential communities.
- The site is surrounded by residential zones and uses; primarily only the properties adjoining Baltimore National Pike are zoned commercial (P.C. Exh.# 1). The surrounding neighborhood is not a heavily commercial or industrial area. (Petitioner's Exh. #2 – GIS aerial map).

Mr. Wilbert Duvall, the Petitioner's engineer did not provide cogent testimony to refute Mr. Robinson's concerns. Mr. Duvall gave perfunctory answers regarding the special exception standards. He admitted residential neighborhoods surround the site, except for commercial uses on the lots abutting Baltimore National Pike. He had no comment to refute concerns for the impact on the surrounding schools, nor on the revitalization for this community conservation district. 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).

Furthermore, it is evident the area to the rear of the site that abuts the school fields is used for parking for the pawnshop. The gate to the rear business on the same site is open during weekdays when school is in session. The Petitioner, Mr. Phelps, who no longer owns the business, but presently operates it for the current owner, lives in Ellicott City. The current owner, Mr. O'Brien, who lives in Frederick, Maryland, bought the pawnshop with a partner, as a commercial investment.

The more intuitive testimony was given by David Robinson, who lives in the area and is concerned for its revitalization into a stable, viable, desirable neighborhood for families and home owners.

THE SPECIAL EXCEPTION WAS DENIED IN SOUTHSIDE BROKERS, INC.

Even though the Court of Special Appeals concluded the one-mile restriction did not apply to the relocation of an existing pawnshop, it recognized on page 8 of its Opinion that Petitioner must satisfy the special exception standards in BCZR 436 and 502.1:

> **"This does not mean, however, that Appellant is entitled to have its special exception in this case granted, as a matter of law, on the record before us. There are other statutory requirements requiring favorable findings before a special exception may be approved."**

On remand, the CBA denied the special exception. Citing the standard in *Turner v. Hammond,* 270 Md. 41,55 (1973), the CBA stated on page 4 of its Opinion:

"If he [the Petitioner] shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adverse the public health, he has met his burden.

The Board determined, again based on the transcript and evidence, that the Petitioner had not met that burden. In reaching its conclusion, the CBA on page 8 of its December 13, 2000 Opinion, stated:

> **In denying the Petition for Special Exception for a pawnshop to be relocated in the Country Ridge Shopping Center, it is abundantly clear that the Board of Appeals, in its Majority Opinion, relied on the evidence and concepts considered in the legislative findings and Baltimore County policy as found in Bill No. 112-95, as well as the testimony of Baltimore County employees and the Police Department, the Office of Planning and the Office of Community Conservation."**

THE SPECIAL EXCEPTION STANDARDS

A special exception, of course, is a conditional use. Schultz v. Pritts 291 Md. 1, 11 (1981); County Comm'rs v. Holbrook 314 Md. 210 (1986). It is subject to compliance with basic special exception standards as well as other statutory prerequisites. Chester Haven L.P. v. Queen Anne's County Board of Appeals 103 Md. App. 324 (1995).

The burden of proof for a special exception remains with the applicant. Turner v. Hammond 270 Md. 41, 55-56 (1973); Futoryan v. Mayor & City Council 150 Md. App. 157 (2003). Judge Davidson wrote in Schultz 291 Md. 1, 15:

> "These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such special exception use irrespective of its location within the zone."

This means that a special exception must be denied where the adverse effects are particular to the location, and above and beyond the normal adverse effects. It should be underlined, in this context, that in order for a special exception to be denied, it is not necessary that the CBA find that the proposal is in the worst possible location in the county or that it is the most extreme in size and scope. It just has to present some particular adverse effect which is not inherent in the use wherever it may be. Here, the existence of another pawn shop in close proximity and two schools in the immediate area make the negative aspects of the use particularly adverse to the surrounding neighborhood.

As shown above, Mr. Duvall failed to differentiate this site from other sites in the zone. He disregarded the unique circumstances of having a second pawnshop a few blocks away, two schools in the immediate neighborhood and the location within a community conservation area. In the present case, the Schultz criterion for denial is more than met. There are demonstrably adverse effects not found at other locations in the zone.

THE SIGN VARIANCE STANDS ON ITS OWN UNDER BCZR 436.3 B. 1.-2.

It is undisputed the separate sign restrictions under the specific regulations for a pawn shop apply to relocating pawn shops. There is no grandfathering of signs, either for the relocated business or arising from the previous tenant on the site. Petitioner must comply with the aforesaid regulations, which restrict a pawnshop sign to a limited size wall-mounted sign that *does not extend above the eaves or the parapet of the roof.* Furthermore, roof top signs are prohibited altogether under BCZR 450.5 B. 7.

A nonconforming sign cannot be changed except to bring it into compliance with the sign regulations. BCZR 450.8 C. 4. Here, the new pawnshop use at this location requires compliance with BCZR 450 and 436. There is no relief from the prohibition of rooftop signs or the inability

to alter a nonconforming sign for a new use. BCZR 436 specifies the exact type of signs permitted for a pawnshop and Petitioner here must comply. If the CBA grants the special exception, it must nonetheless deny the relief for the sign and require compliance with 436 as to signs and buffers.

PETITIONER'S FAILURE TO OBTAIN A SPECIAL EXCEPTION FOR 5623 BALTIMORE NATIONAL PIKE

Petitioner's failure to obtain a special exception in 1998 when he moved to the current location is not a factor in his favor. In other words, there should be no consideration given to an ongoing business, regardless of an allegedly "good track record." To rely on the description of the existing operation to support the long overdue special exception gives property owners who operate without authority an advantage in the subsequent approval process. The special exception must be reviewed as a new proposal in the neighborhood under the facts presented, without consideration of the testimony about the pawnshop operation since its move to the current address in 1998.

Petitioner was required to obtain a special exception and is not excused from the application of the zoning regulations because he was given erroneous advice. See Marzullo v. Kahl 366 Md. 158 (2001). In Francis v. MacGill, 75 A.2d 91(1950) the Court held that a property owner must obtain all necessary permits and approvals before the proposed use is permitted. The first requirement is the issuance of a valid authorization from the appropriate zoning authority, i.e. a special exception in this case. Lipsitz v. Parr, 164 Md. 222 (1933). The CBA must weigh the impact of the pawnshop under all possible scenarios, not just how the existing illegal pawnshop has been conducted. A special exception runs with the land – once a pawnshop is approved here, it can change hands and management without further review. While this owner, Mr. O'Brien, and manager, Mr. Phelps, may appear responsible to the CBA, there is

no guarantee that future owners and managers will operate in the same manner. Then the burden falls upon citizens to enforce restrictions on a successor and possible recalcitrant owner. The relief must be reviewed objectively. Otherwise, counterpoint to claims of responsible operation under Mr. Phelps, is that he moved the business and operated illegally since 1998.

RESTRICTIONS

Mr. Phelps and Mr. O'Brien discussed concessions and restrictions including prohibition against the sale of firearms and hours of operation if the special exception is granted. The CBA has authority to impose restrictions and conditions under BCZR 502.2:

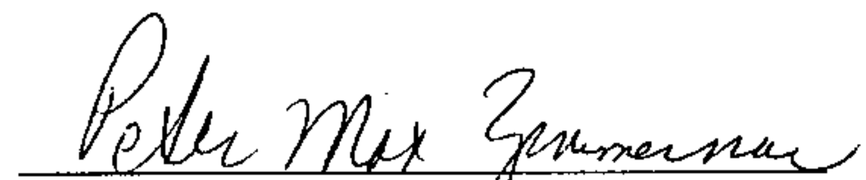
> "In granting any special exception, the Zoning Commissioner or the Board of Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a special exception is granted, if required by the Zoning Commissioner, or Board of Appeals, upon appeal, shall enter into an agreement in writing with said Zoning Commissioner and/or the County Commissioners of Baltimore County, [EN] stipulating the conditions, restrictions or regulations governing such special exception, the same to be recorded among the land records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such special exception. When so recorded, said agreement shall govern the exercise of the special exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer"

The Court of Appeals held in Halle v. Crofton Civic, 339 Md. 131, 140-141 (1995) that such authority to impose conditions is inherent in the authority to grant a special exception. The CBA can impose whatever conditions are appropriate **"to mitigate its effect upon neighboring property and the community at large."** The CBA here is not limited to conditions from the Petitioner but may impose stricter restrictions.

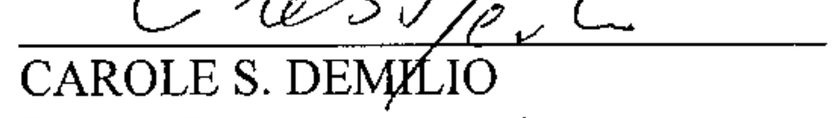
CONCLUSION

For these reasons, the special exception, variance and special hearing must be denied. There is no authority to grant the sign variance. If any part of the special hearing or special

exception is granted, the CBA should consider appropriate conditions on the operation of the business to do justice to the neighborhood.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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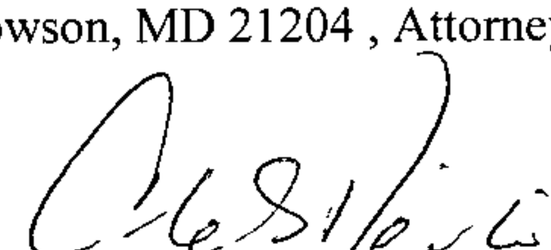
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May, 2007, a copy of the foregoing People's Counsel's Memorandum was mailed first class, postage pre-paid to David Robinson, 640 Coleraine Road, Baltimore, MD 21229 and John B. Gontrum, Esquire, Whiteford, Taylor & Preston, LLP, 210 W Pennsylvania Avenue, Towson, MD 21204 , Attorney for Petitioner(s).



CAROLE S. DEMILIO
Deputy People's Counsel for Baltimore County

5/14/07

IN THE MATTER OF: McCAMMON PROPERTIES, LLC Legal Owner/Petitioner 5623 Baltimore National Pike 1st Election District 1st Councilmanic District	* * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 06-436-SPHXA

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MEMORANDUM OF PETITIONER

These petitions for Special Exception, Special Hearing and Variance come before the County Board of Appeals of Baltimore County (the "Board") on an appeal taken by the Office of Baltimore County People's Counsel from an Order of the Zoning Commissioner for Baltimore County dated May 5, 2006 granting the Special Hearing and Special Exception relief and dismissing the Variance petition as moot.

Since 1998, the Petitioner McCammon Properties, LLC has leased a store to County Pawnbrokers at 5623 Baltimore National Pike in the 1st Council District of Baltimore County. Prior to 1998 and prior to 1995 County Pawnbrokers was located at 5204 Baltimore National Pike. At the time County Pawnbrokers relocated in 1998 a new license was issued for the current location (Petitioner Ex. 4).

Pawnshops are defined by the Baltimore County Zoning Regulations (hereinafter cited as the "BCZR") and are permitted in the B.M. zone only by special exception (BCZR § 233.4). Section 436 of the BCZR codifies provisions of Baltimore County Council Bill No. 112-95 (hereinafter cited as the "Bill") (a copy is attached as **Attachment A**). Section 436 establishes two categories of pawnshops: pawnshops existing as of the date of the enactment of Bill No. 112-95 and pawnshops coming into

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existence after the date of enactment. The Bill sets a limit on the number of pawnshops which may exist throughout Baltimore County and a limit on the number of pawnshops within any given council district. In addition, provisions regulating the distance between pawnshops are included in Section 436 as well as signage and special screening regulations.

Pawnshops existing prior to 1995 are not subject to the limitation on the number of pawnshops existing within a particular council district and are not subject to the distance requirement between pawnshops (BCZR § 436 n. 9; County Council Bill No. 112-95, Sec. 6). These points were conceded by People's Counsel at the hearing.

The interpretation and application of County Council Bill 112-95 to existing pawnshops initially caused confusion. It was not until the decision in *People's Counsel for Baltimore County v. Country Ridge Shopping Center,* 114 Md. App. 580, 799 A.2d 425 (2002) (a copy is attached as **Attachment B**) that the Bill's application to pawnshops existing prior to 1995 and wishing to relocate became clear. In *Country Ridge* a pawnshop existing prior to the enactment of the Bill relocated from its previous location on Pulaski Highway to the Country Ridge Shopping Center on Back River Neck Road within one mile of another pawnshop. In early 1996 the Zoning Commissioner denied the relocation because of the one mile separation restriction in BCZR § 436.4 only to subsequently realize that this Section of the law did not apply to existing pawnshops. The Zoning Commissioner in April, 1996 reversed himself and granted the special exception.

An appeal was taken to the Board, where two days of hearings were held. Both the local police precinct commander and the Director of Community Conservation testified as well as several community witnesses testified about the particular adverse impacts of the location of the pawnshop in the shopping center. The Board denied the Special Exception and stated:

> "...we feel compelled to recognize the qualitative judgments of the County Council and the uncontradicted testimony that *this section of Essex is in the highest priority revitalization area, has the highest incidence of negative socioeconomic indicators, and has the highest incidence of major crime in the County.* These adverse effects are greater in the subject neighborhood than they would be elsewhere within the zone, which is a persuasive reason for denial of the special exception for a third pawnshop in the Essex area." *Id.* at 585. [emphasis in original]

Unfortunately, the Board also included language confusing to the reviewing courts on the issue of the one mile separation requirement between pawnshops. In addition, it is clear that at that time the Board and the Zoning Commissioner were both trying to grapple with the issue of the extent to which existing pawnshops were grandfathered under the regulations upon relocation. It was not even clear whether a Special Exception was necessary in order for an existing pawnshop to relocate. *Id.* at 585-586.[1]

The case ultimately was remanded to the Board for further proceedings, again appealed and eventually resulted in the reported decision. *Country Ridge* clarifies that special exceptions are required for pawnshops desiring to relocate within a district even though the limitations as to number and distance from other pawnshops do not apply.

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[1] The title heading of BCZR § 436.4 refers to "Special Exception," and if relocating pawnshops are not subject to the provisions of the distance and numeric limitations, a question could be raised as to whether they need special exceptions.

The Court stated: "...the exemption for a preexisting and relocating pawnshop was only from the locational requirement specifically and not from the *Schultz v. Pritts* special exception requirements generally. *Id.* at 587.

Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), (a copy is attached as **Attachment C**) framed the standards which must be met for the granting of a special exception. The Court stated:

> "We now hold that the appropriate standard to be used in determining whether a requested special exception use would have and adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Id.* at 22-23.

County Pawnbrokers relocated to 5623 Baltimore National Pike over 8 years ago. Its relocation occurred at a time when the law was not clear what was needed to justify the relocation of an existing pawnshop. The Zoning Commissioner in *Country Ridge* had determined that the locational requirements did not apply to pawnshops existing prior to 1995. As *Country Ridge* indicated, however, there also may have been some confusion over whether a special exception was necessary. It was only upon the sale of the pawnshop in 2006 that the new owners were required to obtain a special exception and to have a special hearing affirming their pre-existing status.[2] There was no testimony that County Pawnbrokers had in any way a deleterious impact on the

[2] The Petitioner was required by the zoning reviewers to apply for a variance from the locational requirements based on the location of Catonsville Jewelry and Loan despite the clear holding in *Country Ridge* and despite the fact that no variance had been required Catonsville Jewelry and Loan moved in 2006. See **Attachment D**. The variance request was dismissed as moot.

community during its tenure at 5623 Baltimore National Pike or even during its tenure at its previous location at 5204 Baltimore National Pike. Apparently, its track record at is previous location was sufficiently satisfactory to allow the Deputy Zoning Commissioner in November, 2005, to grant the Special Exception for the relocation of Catonsville Jewelry and Loan to the adjacent shopping center at 5210A without concerns and without any community protest.

After *Schultz v. Pritts* the courts have reiterated that special exception uses **must** be treated as **permitted uses** within a zone. *Mossberg v. Montgomery County,* 107 Md. App. 1 (1993) (a copy is attached as **Attachment E**).

> [I]t is not whether a special exception/conditional use is compatible with permitted uses that is relevant in the administrative proceedings. The legislative body, by designating the special exception, has deemed it to be generally compatible with the other uses. In special exception cases, therefore, general compatibility is not normally a proper issue for the agency to consider. That issue has already been addressed and legislatively resolved. Moreover, it is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered by the agency. *Id.* at 8-9.

Consequently, if the express conditions necessary to obtain a special exception are met, a pawnshop is a permitted use because the county council made a policy decision to permit the use within the zone.

In this case County Pawnbrokers has been in existence along Baltimore National Pike since 1992 and has provided a service to the neighborhood. It is on the 1995 list

required by Section 436 (Petitioner's Ex. 6) and enjoys the status of pre-existing pawnshops. It is well-run. No parking or traffic variances are necessary. Mr. Phelps testified that many of the residents are able to walk to the store. It is rare that more than a couple of customers are in the store at any one time. Ample public water and sewer service exists to support the use. The business hours are normal retail hours of business. Petitioner's witnesses addressed each of the criteria of Section 502.1, and the photos and exhibits show that the location of the use within the BM-CCC zone is certainly consistent with adjoining uses. There is ample testimony and evidence to support the conclusion that this pawnshop in this location will not be harmful to the health, safety or general welfare of the community.

Pawnshops are specially regulated entities by means of Section 436. Unlike other specially regulated entities, however, there are no special setbacks from schools or residential communities attached to the granting of a special exception. In fact, it is clear that in the case of pawnshops existing as of 1995, the separation limitation, which would apply to new pawnshops, does not apply. Consequently, the County Council made a qualitative decision that the pre-existing pawnshops could relocate within their district without prejudice despite the distance between them unless special conditions were shown, which special conditions were shown in *Country Ridge*.

This case is quite different from *Country Ridge*. There is no testimony that the local community is suffering from blight or high crime. There are no county agencies, and certainly no police, objecting to the location of this pawnshop. In fact, Mr. Robison, the one protesting witness, admitted that he moved into a community about .4

miles away from Petitioner's property with no knowledge of the existence of this pawnshop or of the other pawnshop, which at the time was closer to him. He was completely unaware of the fact that these two pawnshops had been for six years much closer in proximity and they were now further apart than they ever had been. Clearly, the location of this pawnshop in this location had absolutely no personal impact on him or his decision to locate in the community.[3]

Mr. Robison could only speculate that if he were the parent of a child in a nearby school that the location of this pawnshop might cause him concern. He had absolutely no knowledge, however, of how this or any other pawnshop might have an adverse impact on the school. He only testified that its mere presence "like pornography stores or liquor stores" might have an adverse impact on the community. Mr. Robison's coupling of these uses was quite a statement as to his own feelings, but certainly is not in harmony with the way such uses are treated legislatively.

Liquor stores are permitted by right without special exceptions even in the less intense BL zone. Need for new liquor stores must be shown, but that requirement is in the liquor laws in order to make sure that all such stores, including existing stores remain viable. By "pornography stores" we assume that Mr. Robison was referring to

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[3] It should be noted that nowhere do the surrounding communities appear on any list of adopted community plans or on the list of Renaissance Opportunity Areas kept by the Planning Office. According to the Baltimore County Land Management Area Map most of the area inside the URDL line is in a community conservation, growth or employment area. No county council adopted map creates a unique or special planning area over this locality. As testimony indicated, the County Council did adopt a Southwest Baltimore County Revitalization Strategy (Resolution 112-97), which includes the area of the subject property. Mr. Robison was not familiar with the contents of the study, which included the entire 1st council district and substantial portions of the 4th council district. A copy of the Study is attached as **Attachment F**. There is no adverse reference to pawnshops in the Study, and it speaks positively of the need to retain existing small, local businesses.

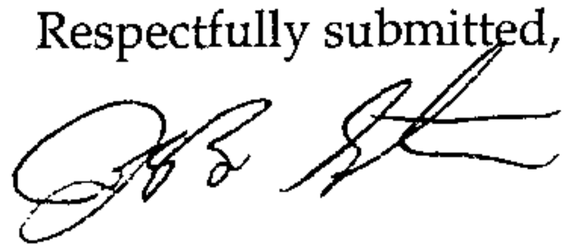
what the zoning regulations refer to as an "Adult Store" which is specially regulated. BCZR § 4B-101. This use is only permitted in an M.H. zone and may not be located within 1,000 feet of a school or residential zone. BCZR § 4B-102. Had the county council wished to treat pawnshops similarly they could have put such stringent requirements upon them, but it did not. It also could have phased out pawnshops within certain zones as junk yards were phased out of residential zones, but it did not.

The fact that not one person from the locality of the pawnshop or local community association appeared in opposition is very telling. Unlike *Country Ridge* there was no expert testimony and no opposition from the immediate neighborhood to the proposed use. Because Mr. Robison had no idea that the pawnshop had been located at this address for over eight (8) years and had no personal or even community hearsay that the pawnshop at 5623 created "an adverse impact on the surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone" (*Alviani v. Dixon,* 365 Md. 95 at 113, 775 A.2d 1234 (2001)), his reasoning for opposing the special exception requests lacks all probative value.

CONCLUSION

In conclusion Petitioner met its burdens with respect to producing persuasive evidence to satisfy the criteria of BCZR § 502.1. No credible testimony of any kind was offered that the pawnshop at this location would be detrimental to the health, safety or general welfare of the locality. Petitioner respectfully requests this Board to grant the Special Hearing and Special Exception requests.

Respectfully submitted,



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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May, 2007 a copy of the foregoing Memorandum of Petitioner, McCammon Properties, LLC, was hand-delivered to:

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Carol S. Demilio
Old Courthouse, Room 407
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Towson, Maryland 21204
Office of People's Counsel for Baltimore County

John B. Gontrum, Esquire
Attorney for Petitioner

Dated: May 14, 2007

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1995, LEGISLATIVE DAY NO. 12

BILL NO. 112-95

MR. KEVIN KAMENETZ, COUNCILMAN

BY THE COUNTY COUNCIL, JUNE 5, 1995

ATTACHMENT A

A BILL ENTITLED

AN ACT concerning

Pawnshops

FOR the purpose of repealing a moratorium on the establishment of pawnshops in Baltimore County; regulating the location of pawnshops; defining terms; permitting pawnshops in certain zones by Special Exception; providing certain restrictions upon existing pawnshops; limiting the total number of pawnshops permitted in the County; providing restrictions and requirements for a petition for Special Exception; and generally relating to pawnshops in Baltimore County.

BY repealing

Bill No. 14-95

BY repealing and re-enacting, with amendments,

Section 101-Definitions, by adding, alphabetically, the definition of "pawnshop"

Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments,

Sections 233.2, 233.4 and 236.4

Baltimore County Zoning Regulations, as amended

BY adding

Section 436

EXPLANATION: CAPITALS INDICATE MATTER ADDDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

WHEREAS, the Baltimore County Council received a final report from the Planning Board, dated February 17, 1995, concerning the subject legislation and held a public hearing thereon on April 17, 1995; now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Bill No. 14-95 be and it is hereby repealed in its entirety.

SECTION 2. AND BE IT FURTHER ENACTED, that Section 101 - Definitions, of the Baltimore County Zoning Regulations, be and it is hereby repealed and re-enacted, with amendments, by adding, alphabetically, the definition of "pawnshop", to read as follows:

Section 101 - Definitions

PAWNSHOP: A BUSINESS WHICH LOANS MONEY ON DEPOSITS OF PERSONAL PROPERTY, OTHER THAN SECURITIES OR PRINTED EVIDENCES OF INDEBTEDNESS, OR DEALS IN THE PURCHASE OR POSSESSION OF PERSONAL PROPERTY ON CONDITION OF SELLING THE SAME BACK TO THE PLEDGOR OR DEPOSITOR. A PAWNSHOP IS LICENSED BY THE STATE AS A DEALER AND DEFINED BY THE STATE AS A PAWNBROKER. FOR THE PURPOSES OF THESE REGULATIONS ONLY, A BUSINESS OPERATED BY A DEALER WHO LOANS MONEY ON DEPOSITS OF SECONDHAND PRECIOUS METALS AND GEMS, ONLY, SHALL NOT BE CONSIDERED A PAWNSHOP PROVIDED THAT THE DEALER DOES NOT LOAN MONEY ON DEPOSITS OF ANY OTHER KIND OF PERSONAL PROPERTY.

SECTION 3. AND BE IT FURTHER ENACTED, that Sections 233.2, 233.4 and 236.4 of the Baltimore County Zoning Regulations, as amended, be and they are hereby repealed and re-enacted, with amendments, to read as follows:

B.M. Zone - Business, Major

Section 233 - Use Regulations

The following uses only are permitted (see Section 233.3):

233.1 - Uses permitted in B.L. Zone.

233.2

{Pawnshop.}

233.4 - Special Exceptions - The following uses when permitted as special exceptions (see Sections 270 and 502):

PAWNSHOP

B.R. Zone - Business, Roadside

Section 236 - Use Regulations

236.4 - Special Exceptions - The following uses when permitted as special exceptions (see Sections 270 and 502):

PAWNSHOP

SECTION 4. AND BE IT FURTHER ENACTED, that Section 436 be and it is hereby added to the Baltimore County Zoning Regulations, as amended, to read as follows:

SECTION 436 - PAWNSHOPS.

436.1 - LEGISLATIVE FINDINGS.

(A) THE PRINCIPLE OF COMMUNITY CONSERVATION IS AN EXPRESSED GOAL IN BALTIMORE COUNTY. THE MASTER PLAN 1989-2000 PROPOSES THAT COMMERCIAL ACTIVITIES INCOMPATIBLE WITH LOCAL NEIGHBORHOODS SHOULD BE RESTRICTED IN SUCH AREAS.

(B) THE STATE OF MARYLAND REQUIRES THAT BUSINESSES WHICH PURCHASE OR LOAN ON DEPOSIT OF SECONDHAND PRECIOUS METALS AND OTHER VALUABLES OBTAIN A "DEALER'S" LICENSE AND REPORT TRANSACTIONS TO THE LOCAL LAW ENFORCEMENT AGENCY TO HELP PREVENT STOLEN ITEMS FROM BEING TRADED.

(C) THE BALTIMORE COUNTY COUNCIL FINDS THAT AN UNDUE CONCENTRATION OR THE INAPPROPRIATE SITING OR DESIGN OF PAWNSHOP BUSINESSES HAS A REASONABLE

PROBABILITY OF CAUSING ADVERSE EFFECTS ON NEARBY RESIDENTIAL AND COMMERCIAL AREAS BY CREATING AN IMPRESSION OF COMMUNITY DECLINE AND INSTABILITY.

(D) BASED UPON REPORTS SUBMITTED BY THE BALTIMORE COUNTY POLICE DEPARTMENT, THE COUNTY COUNCIL FINDS THAT PAWNSHOPS WHICH DEAL IN A WIDE VARIETY OF VALUABLE GOODS ARE MORE LIKELY TO HAVE A GREATER DELETERIOUS EFFECT ON NEIGHBORHOODS THAN BUSINESSES WHICH DEAL EXCLUSIVELY IN SECONDHAND PRECIOUS METALS AND GEMS, WHERE PAWN TRANSACTIONS ARE MERELY INCIDENTAL TO THE SALE OF NEW OR SECONDHAND JEWELRY.

(E) SUCH ADVERSE EFFECTS WOULD DIRECTLY CONFLICT WITH THE COUNTY'S COMMITMENT TO CONSERVING AND REVITALIZING OLDER COMMUNITIES AND WOULD BE INORDINATELY DIFFICULT TO OVERCOME ONCE ILL-SITED PAWNSHOPS HAVE BEEN ESTABLISHED.

(F) THE COUNCIL FINDS THAT THE NUMBER OF EXISTING PAWNSHOPS IN BALTIMORE COUNTY IS MORE THAN SUFFICIENT TO MEET THE NEEDS OF THE COMMUNITY AND THAT IT IS CONSISTENT WITH THE INTENT OF THESE REGULATIONS FOR PROMOTING THE PUBLIC HEALTH, SAFETY AND WELFARE TO ESTABLISH A LIMIT ON THE TOTAL NUMBER OF BUSINESSES IN BALTIMORE COUNTY WHICH LOAN ON DEPOSIT OF ITEMS OTHER THAN SECONDHAND PRECIOUS METALS AND GEMS.

436.2 - PROCEDURE

(A) THE CHIEF OF POLICE, BASED ON TRANSACTION SHEETS SUBMITTED BY LICENSED DEALERS, SHALL REPORT TO THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT THE NAMES AND ADDRESSES OF ALL LICENSED DEALERS IN BALTIMORE COUNTY WHO, IN CALENDAR YEAR 1995, MADE LOANS ON DEPOSIT OF AN ITEM OTHER THAN A SECONDHAND PRECIOUS METAL.

(B) UPON RECEIPT OF A DEALER'S TRANSACTION SHEET REPORTING A LOAN ON DEPOSIT OF ANY ITEM OTHER THAN A SECONDHAND PRECIOUS METAL, THE CHIEF OF POLICE SHALL REPORT TO THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT THE NAME AND ADDRESS OF THE BUSINESS, IF THE CHIEF HAS NOT PREVIOUSLY REPORTED THIS INFORMATION TO THE DIRECTOR.

(C) FOR ANY LICENSE REPORTED TO THE DIRECTOR, THE CHIEF SHALL PROMPTLY NOTIFY THE DIRECTOR WHEN THE STATE RENEWS OR REVOKES THE LICENSE OR WHEN THE LICENSE EXPIRES.

(D) THE DIRECTOR MAY NOT ACCEPT A SPECIAL EXCEPTION PETITION FOR A PAWNSHOP IF THERE ARE TWELVE VALID DEALERS' LICENSES IN THE COUNTY USED TO OPERATE PAWNSHOPS.

(E) A DEALER MAY, BY AFFIDAVIT, ANNUALLY DECLARE TO THE DIRECTOR THAT ALL FUTURE PAWN TRANSACTIONS SHALL BE LIMITED SOLELY TO SECONDHAND PRECIOUS METALS, AND THE DIRECTOR SHALL REMOVE THE NAME AND ADDRESS OF THAT PAWNSHOP FROM THE LIST, DURING SUCH TIME AS THE AFFIDAVIT REMAINS IN EFFECT.

436.3 - BUFFER AND SIGN REQUIREMENTS.

A PAWNSHOP IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

(A) A PAWNSHOP ABUTTING A RESIDENTIAL ZONE LINE (OTHER THAN A STREET RIGHT-OF-WAY), A SCHOOL OR A CHURCH, SHALL PROVIDE A BUFFER IN THE FORM OF A SIX FOOT HIGH BOARD ON BOARD FENCE OR A BRICK WALL IN COMBINATION WITH LANDSCAPING; AND

(B) NOTWITHSTANDING THE REQUIREMENTS OF SUBSECTION 413.2:

1. ONE WALLMOUNTED BUSINESS SIGN IS PERMITTED WITH A SURFACE AREA OF NO MORE THAN TWICE THE LENGTH OF THE WALL ON WHICH IT IS MOUNTED, BUT IN NO CASE MORE THAN 50 SQUARE FEET.

2. THE PLACEMENT OF ANY SIGN SHALL BE SIMILAR TO THE PLACEMENT OF SIGNS MOUNTED ON WALLS OF NEIGHBORING BUSINESSES EXCEPT THAT NO SUCH SIGN MAY EXTEND ABOVE THE EAVES LINE OF A PITCHED ROOF OR THE PARAPET OF A FLAT ROOF BUILDING.

3. A FREESTANDING BUSINESS SIGN IS NOT PERMITTED.

4. MISCELLANEOUS EXTERIOR TEMPORARY SIGNS, AS DESCRIBED IN SUBSECTION 413.4, ARE NOT PERMITTED TO BE DISPLAYED ANYWHERE ON THE PREMISES, INCLUDING WINDOWS.

(C) THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING COMMISSIONER MAY CONTROL REASONABLY REGULATE THE LETTER SIZE, LIGHTING, COLOR AND OTHER DESIGN ASPECTS OF ALL SIGNAGE FOR CONSISTENCY AND COMPATIBILITY WITH SIGNAGE ON NEIGHBORING BUSINESSES.

(D) THE USE OF THE WORD "PAWN" OR THE USE OF THE THREE GOLDEN BALL SYMBOL DESIGNATING A PAWNSHOP IS RESTRICTED TO PAWNSHOPS, AS DEFINED IN THESE REGULATIONS, AND MAY NOT BE USED BY ANY OTHER BUSINESS.

(E) THE SALE OF FIREARMS IS PROHIBITED, UNLESS AUTHORIZED BY THE APPROPRIATE FEDERAL AND STATE AGENCIES.

436.4 - SPECIAL EXCEPTION PETITION.

IN ADDITION TO THE REQUIREMENTS OF SECTION 436.3 AND SUCH OTHER REQUIREMENTS OF THESE REGULATIONS RELATING TO A SPECIAL EXCEPTION PETITION, A SPECIAL EXCEPTION PETITION FOR A PAWNSHOP IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

(A) A PAWNSHOP MAY NOT BE LOCATED WITHIN A ONE MILE RADIUS OF ANY OTHER PAWNSHOP, AND NO MORE THAN TWO PAWNSHOPS MAY BE LOCATED IN A COUNCILMANIC DISTRICT.

(B) THE ZONING COMMISSIONER MAY REASONABLY LIMIT THE HOURS OF OPERATION OF A PAWNSHOP.

436.5 - ENFORCEMENT.

THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT SHALL PROVIDE FOR THE ENFORCEMENT OF THIS SECTION IN ACCORDANCE WITH THE PROVISIONS OF TITLE 26, ARTICLE IV OF THE BALTIMORE COUNTY CODE AND ARTICLE 5 OF THESE REGULATIONS.

SECTION 5. AND BE IT FURTHER ENACTED, that pawnshops lawfully in existence and operating on the effective date of this Act shall comply with the requirements of Section 436.3 within ~~six~~ eighteen months from the effective date of this Act.

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

SECTION 7. AND BE IT FURTHER ENACTED, that this Act is hereby declared to be an emergency measure affecting the public health, safety and welfare, and having been passed by the affirmative vote of five members of the County Council, the same shall take effect from the date of its enactment.

B11295/BILLS95

READ AND PASSED this 3rd day of July, 1995

BY ORDER

Thomas J. Peddicord, Jr.
Secretary

PRESENTED to the County Executive for his approval this 3rd day of July, 1995.

Thomas J. Peddicord, Jr.
Secretary

APPROVED AND ENACTED:

7/5/95

C.A. Ruppersberger, III
County Executive

I HEREBY CERTIFY THAT BILL NO. 112-95 IS TRUE AND CORRECT AND TOOK EFFECT ON July 6, 1995.

Vincent J. Gardina
Chairman, County Council

Citation/Title
144 Md.App. 580, 799 A.2d 425, People's Counsel for Baltimore County v. Country Ridge Shopping Center, Inc., (Md.App. 2002)

*580 144 Md.App. 580

799 A.2d 425

ATTACHMENT B

Court of Special Appeals of Maryland.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
v.
COUNTRY RIDGE SHOPPING CENTER, INC., et al.

No. 0952, Sept. Term, 2001.
June 3, 2002.

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

Circuit Court reversed.

West Headnotes

[1] Zoning and Planning ⚷570

414 ----
414X Judicial Review or Relief
414X(A) In General
414k570 Decisions Reviewable.

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

[2] Administrative Law and Procedure ⚷760

15A ----
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak754 Discretion of Administrative Agency

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15Ak760 Wisdom, Judgment or Opinion.

[See headnote text below]

[2] Administrative Law and Procedure ⚷781

15A ----
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak781 In General.

[See headnote text below]

[2] Administrative Law and Procedure ⚷784.1

15A ----
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak784.1 In General.

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

[3] Administrative Law and Procedure ⚷790

15A ----
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak790 Rational Basis for Conclusions.

[See headnote text below]

[3] Administrative Law and Procedure ⚷791

15A ----
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak791 Substantial Evidence.

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

[4] Administrative Law and Procedure ⚷817.1

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144 Md.App. 580, 799 A.2d 425, People's Counsel for Baltimore County v. Country Ridge Shopping Center, Inc., (Md.App. 2002)

15A ----
15AV Judicial Review of Administrative Decisions
15AV(F) Determination
15Ak817 Remand
15Ak817.1 In General.

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

[5] Zoning and Planning ⚷728

414 ----
414X Judicial Review or Relief
414X(D) Determination
414k728 Further Proceedings by Local Authority.

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

[6] Zoning and Planning ⚷607

414 ----
414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)1 In General
414k607 Variances or Exceptions, Decisions Relating To.

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

[799 A.2d 426] ***582** Peter Max Zimmerman (Carole S. Demilio, on the brief), Towson, for appellant.

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

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

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assigned), JJ.

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

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

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

The Pawnshop's Petition For A Special Exception

One of the appellees, Southside Brokers, Inc., is the operator of a pawnshop. Prior to 1995, the pawnshop had been located at 8110 Pulaski Highway. When the lease on that property was about to expire, the pawnshop leased space in the Country [799 A.2d 427] Ridge Shopping Center, Inc., the other appellee, located at 1508 Back River Neck Road, and moved to the new location in May of 1996. The shopping center was, and is, zoned B.M. (business major). Pawnshops are permitted in a B.M. zone by way of special exception. Baltimore County Zoning Regulations, §§ 436, 233. Accordingly, the pawnshop petitioned for a special exception at its new location.

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

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

(Emphasis supplied).

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

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

The County Board of Appeals: Round One

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

The Board of Appeals conducted two full days of hearings, on November 6, 1996 and March 12, 1997. A public deliberation on the matter was held on April 17, 1997. One witness, the owner of the pawnshop, testified in favor of the petition for special exception. A number of witnesses testified against the ***584** petition. On April 30, 1997, a two-to-one majority of the Board of Appeals denied the special exception. In the majority opinion, two strands of reasoning were intertwined. The ultimate outcome of this appeal may turn 1) on the extent to which those separate strands of reasoning are capable of being isolated and independently evaluated and 2) on whether they were actually so isolated and independently evaluated in the Board's decision.

On our present reading, it seems overwhelmingly likely to us that the original majority opinion of the Board of Appeals concluded, with solid evidentiary support for so concluding, that the pawnshop had failed to show, under traditional *Schultz v. Pritts,* 291 Md. 1, 432 A.2d 1319 (1981) standards, that it was entitled to the special exception. This apparent conclusion of the Board of Appeals seems to have been completely independent of any consideration of the debatable one-mile radius limitation. The Board of Appeals initially set out the test that framed its analysis.

BCZR Section 502.1 sets the standards for the granting of a special exception. [799 A.2d 428] In this case, the special considerations are 502.1(a) and (g):

a. Be detrimental to health, safety, or general welfare of the *locality involved;* and

g. Be inconsistent with the purposes of the zoning classification, nor in any way inconsistent with the spirit and intent of the zoning regulations.

Using the standard set forth in *Schultz v. Pritts,* 291 Md. 1, [432 A.2d 1319] [(]1981[)], "the test for considering a special exception is not whether the use will have an adverse effect, but whether the *adverse effect* at the particular location is greater than ordinarily associated with the use.... Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses.

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The duties *given to the Board* are to judge ... whether the use in the particular case is *in harmony* with the general purpose and intent of the plan."

***585** Properly applying *Schultz v. Pritts,* the Board then concluded that the pawnshop would have an unduly adverse impact in the intended location.

Using the *Schultz v. Pritts* standard for granting or denying a special exception--that the proposed use would have an adverse effect above and beyond what it would ordinarily have in any area--*it would appear that a pawnshop would have more than the usual adverse effects in the area of the Country Ridge Shopping Center, because the location is the focus of intense efforts at revitalization.*

(Emphasis supplied).

The Board emphasized that the neighborhood is "the highest priority revitalization area."

Contrary to the opinion of the Zoning Commissioner, who granted this Petition, we feel compelled to recognize the qualitative judgments of the County Council and the uncontradicted testimony that *this section of Essex is in the highest priority revitalization area, has the highest incidence of negative socioeconomic indicators, and has the highest incidence of major crime in the County. These adverse effects are greater in the subject neighborhood than they would be elsewhere within the zone, which is a persuasive reason for denial of the special exception for a third pawnshop in the Essex area.*

(Emphasis supplied).

At that point, to be sure, the opinion of the Board of Appeals did not stop and announce that its reasoning to that juncture was self-sufficient to justify its decision. Had it done so, this appeal would not now be before us. The Board added to its catalogue of reasons, seemingly as little more than a makeweight, the one-mile radius limitation.

Because that locational limitation was recited as one of the factors, however, it became necessary for the Board to address the applicability of the "grandfather" provision to the relocation in this case. As the Board approached its analysis of the "grandfather" clause's applicability, it seemed to be under some arguable misapprehension as to the scope of the ***586** " grandfather" clause exemption, if applicable. It is a plausible reading that the Board of Appeals believed that the Zoning Commissioner had erroneously deemed the "grandfather" provision to be not only an exemption from the one-mile radius limitation but, more broadly, an exemption from the required showings for a special exception generally. The Board itself made an ambiguous reference in the plural to "[1] [799 A.2d 429] special exception and [2] locational requirements."

In this Majority Opinion, we concur that the Council, in Section 6 of Bill

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> No. 112-95, did exempt from the BCZR 436.4 *special exception and locational requirements* for pawnshops lawfully in existence and operating on the effective date of the Act.
>
> (Emphasis supplied).

In any event, the Board of Appeals ruled that the "grandfather" clause exemption from § 436.4's one-mile radius limitation applied only to pawnshops that remained in place and not to those that were being relocated. On appeal to the Circuit Court for Baltimore County, the Board of Appeals was affirmed.

The Opinion and Mandate of the Court of Special Appeals

The appellees appealed the denial of the special exception to this Court. The case before us focused on whether the "grandfather" clause exemption covered a pre-existing pawnshop that was in the process of relocating. Our opinion, filed on July 21, 1999, reversed the rulings of the circuit court and of the Board of Appeals and held that the "grandfather" clause exemption from the one-mile radius limitation, indeed, applied to pawnshops that were in the process of relocating.

The backbone of our opinion was our statutory construction of Baltimore County Council Bill No. 112-95, which had, on July 3, 1995, adopted both 1) the one-mile radius limitation itself, which became BCZR § 436.4; and 2) in § 6 of the Bill, the exemption for pawnshops already in existence. We held ***587** that both the Board of Appeals and the circuit court had been unduly restrictive in their construction of the exemption.

We made it very clear, however, that the exemption for a preexisting and relocating pawnshop was only from the locational requirement specifically and not from the *Schultz v. Pritts* special exception requirements generally. Those general requirements still had to be satisfied.

> *This does not mean,* however, *that Appellant is entitled to have its special exception* in this case *granted,* as a matter of law, on the record before us. *There are other statutory requirements requiring favorable findings before a special exception may be approved.*
>
> (Emphasis supplied).

Our opinion then confronted the problem of how to frame an appropriate remand. We were not sure what it was that the Board of Appeals had actually done. On the one hand, the Board of Appeals noted that the County Council had, in Bill No. 112-95, "provided a statement of purpose and a set of performance standards in regard to the situation for pawnshops" and had used such terms with respect to pawnshops as "adverse effect," "particular location," and "disruption of the harmony of the comprehensive plan of zoning." Using the *Schultz v. Pritts* standards, the Board had then unequivocally concluded

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that *the proposed use would have an adverse effect above and beyond what it would ordinarily have in any* area-it would appear that *a pawnshop would have more than the usual adverse effects in the area of the Country Ridge Shopping Center.*

(Emphasis supplied).

After cataloguing the especially sensitive characteristics of the Back River Neck Road neighborhood, the Board, with no mention yet of the locational requirement, asserted what may well have been its dispositive conclusion.

These adverse effects are greater in the subject neighborhood than they would be elsewhere within the zone, which is ***588** a [799 A.2d 430] persuasive reason for denial of the special exception for a third pawnshop in the Essex area.

(Emphasis supplied).

If, indeed, that is what the Board meant to do, its further mention of the locational requirement was both redundant and unfortunate. As a good rhetorician frequently does, however, the Board chose to unleash maximum firepower. The barrage of persuasion included, counterproductively it turned out, a mention of the locational factor. The Board neither asserted nor disclaimed that factor as a *sine qua non* of its decision.

This Court in its opinion opined that, if the locational factor had, indeed, influenced the Board's decision, the Board's decision was flawed.

[A]n existing pawnshop seeking to relocate, though it must otherwise obtain a special exception as to the proposed new location, is entitled to have its special exception application evaluated free of the standards prescribed in Section 436.4.

In the last analysis, however, we were not sure if the factor had played a part in the Board's decision and we concluded, therefore, that a "new consideration" by the Board would be "necessary." We did not presume, however, to micromanage how the Board should undertake that "new consideration."

The Board's majority opinion addressed those other requirements somewhat, but did so in a manner that *commingled its consideration of those requirements with those of Section 436.4.* On remand a new consideration of Appellant's application will be necessary.

(Emphasis supplied).

Our mandate read:

CASE REMANDED TO THE CIRCUIT COURT WITH DIRECTION TO REMAND TO THE BOARD OF

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APPEALS FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THIS OPINION.

***589 A Complicating Factor: The Change of Personnel**

The Board that initially denied the special exception on April 30, 1997, consisted of three members. S. Diane Levero and Harry E. Buchheister, Jr., issued the majority opinion. Charles L. Marks was in dissent. By the time the Board, on remand, issued the decision now under review on December 13, 2000, Ms. Levero and Mr. Buchheister were gone. They had been replaced by Donna M. Felling and Margaret Worrall. Mr. Marks remained as a holdover member of the Board.

The County Board of Appeals: Round Two

The two new members of the Board of Appeals "reviewed the testimony and record" of the earlier denial of the petition by the Board in 1997. A full public deliberation was held by the Board on August 16, 2000. The detailed Minutes of that Deliberation reflect discussions among the members about 1) the opinion of the Court of Special Appeals and 2) the remand and its implied directive to examine whether the "adverse impact" in the requested location would be "greater than elsewhere in the zone."

By a two to one vote, the Board again voted to deny the special exception. The majority noted its special reliance on the testimony of Mary Emmerick, the Eastern Sector Coordinator for the Baltimore County Office of Community Conservation. The majority called attention to her testimony about 1) the neighborhood's "having [799 A.2d 431] the highest crime rate in Baltimore County," 2) the public funding that was being directed into special rehabilitation plans for the neighborhood, 3) some federally funded community "cleanup" programs "in the immediate vicinity of [the] Country Ridge Shopping Center," and 4) the characteristics of the shopping center as "a neighbor shopping center" because "many people walk to the center because they do not have use of private transportation."

The Minutes also recited that the majority called attention to the testimony of Orlando Yarborough, who operates a non-profit organization for at-risk families and youth located ***590** across from the shopping center. The majority called attention to the testimony of both 1) John J. Dillon, a 29-year veteran of the Office of Planning and Zoning who had been "accepted by the Board as an expert planner in Baltimore County"; and 2) Captain James Johnson of the Baltimore County Police Department and the Precinct Commander in Essex, who testified that "the area immediately around the Country Ridge Shopping Center suffers from some of the highest public safety warning indicators in all of Baltimore County--a scourge of narcotic activity, recently a rash of robberies, socioeconomic decay." The majority members also noted reliance on " documenting materials" from the Baltimore County Council and the Baltimore County Planning Board.

On December 13, 2000, the Board issued a ten-page Majority Opinion and an eight-page Dissenting Opinion by Charles L. Marks. By a vote of two to one, the

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special exception was again denied. On December 19, 2000, the appellees filed a Motion for Reconsideration with the Board, stressing the procedural point that a *de novo* hearing should have been held because two members of the Board on remand had not been members of the original 1997 Board. On January 12, 2001, the Board unanimously denied the Motion for Reconsideration.

Reversed by the Circuit Court

The appellees promptly appealed both the denial of the special exception and the denial of the reconsideration to the Circuit Court for Baltimore County. The circuit court on June 13, 2001, reversed the Board of Appeals and remanded for a *de novo* hearing. In rendering its decision, the court stated:

> This Court concedes that a remand from the CSA does not automatically require the Board to hold a new hearing in every case. This Court will also concede that a remand to a Board with two new members does not always require a *de novo* hearing. However, due to the totality of circumstances in this case, it is this Court's opinion that a *de novo* hearing was required. Petitioner has persuaded this Court that *Prosser* is not applicable in this case. There, the ***591** remand was on a limited technical issue. In the case *sub judice,* the remand is for a "new consideration" of an application for Special Exception, which unquestionably is not a limited technical issue. It is the opinion of this Court that *Clark* is applicable as witness credibility and demeanor is certainly an important factor in the Board's decision to grant or deny an application.

The Appealability of The Remand Order

[1] People's Counsel has appealed to us that reversal and remand by the circuit court. With respect to the immediate appealability of such an action, *Schultz v. Pritts,* 291 Md. 1, 6, 432 A.2d 1319 (1981), was clear:

> [A] circuit court's order remanding a proceeding to an administrative agency is an appealable final order.... When a [799 A.2d 432] court remands a proceeding to an administrative agency, the matter reverts to the processes of the agency, and there is nothing further for the court to do. Such an order is an appealable final order because it terminates the judicial proceeding and denies the parties the means of further prosecuting or defending their rights in the judicial proceeding.

Standard of Appellate Review

Although the judicial act being appealed to us is literally the June 13, 2001 ruling of the Baltimore County Circuit Court, our review will look not so muchat the circuit court action as *through it* to the December 13, 2000 decision of the Baltimore County Board of Appeals. As we explained in *Pollard's Towing, Inc. v. Berman's Body Frame & Mechanical, Inc.,* 137 Md.App. 277, 287, 768 A.2d 131 (2001) :

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144 Md.App. 580, 799 A.2d 425, People's Counsel for Baltimore County v. Country Ridge Shopping Center, Inc., (Md.App. 2002)

At the outset, let it be clear whose decision is being reviewed and by whom. The review on the ultimate merits is now being conducted by this Court. *We are not reviewing the procedural correctness of the earlier review by the circuit court. We are undertaking our own de novo review of the decision of the administrative agency.* As Judge Motz explained in *Department of Health and Mental Hygiene* ***592** *v. Shrieves,* 100 Md.App. 283, 303-04, 641 A.2d 899 (1994) To view preceding link please click here :

> Moreover, it is well recognized in Maryland that, *when reviewing administrative decisions, the role of an appellate court is precisely the same as that of the circuit court. See e.g., Baltimore Lutheran High Sch. Ass'n, Inc. v. Employment Security Admin.,* 302 Md. 649, 662, 490 A.2d 701 (1985) ("a reviewing court, be it a circuit court or an appellate court, shall apply the substantial evidence test"). For those reasons, rather than remanding to the circuit court for it to determine, under the correct legal standards, whether the SOPD's decision is based on substantial evidence, we shall address the question.

(Emphasis supplied). See also *Stover v. Prince George's County,* 132 Md.App. 373, 380-81, 752 A.2d 686 (2000). *The decision of the circuit court, therefore, is before us only in a pro forma capacity, as the necessary procedural conduit by which the decision of the administrative agency gets to us for our review.*

(Emphasis supplied).

[2][3] In this case, moreover, we are reviewing the Board of Appeals's interpretation of what its own earlier action had been and what its reason had been for so acting. That is neither a finding of first-level fact nor a ruling of law. Whether considered as something akin to "a mixed question of law and fact" or as the type of judgment call to which the abuse of discretion standard typically applies, it clearly is the kind of decision to which a reviewing court extends great deference. As Judge James Eyler explained in *Powell v. Calvert County,* 137 Md.App. 425, 432, 768 A.2d 750 (2001),*reversed on other grounds,* 368 Md. 400, 795 A.2d 96 (2002):

> An agency's factual findings and its decisions involving mixed questions of law and fact, however, will be given deference such that we cannot substitute our judgment for that of the agency's. *Friends of the Ridge v. Baltimore Gas & Elec. Co.,* 120 Md.App. 444, 465, 707 A.2d 866 (1998), ***593** *vacated in part by* 352 Md. 645, 724 A.2d 34 (1999). We will "accept the agency's conclusions if they are based on substantial evidence and if reasoning minds could reach the same conclusion based on the record."

We need not necessarily agree that the Board of Appeals was correct in its interpretation[799 A.2d 433] of its earlier decision. We will affirm its interpretation if there was any reasonable basis that could have supported it. We now look to the Board's response to our remand.

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An Open-Ended Remand

Our remand for "further proceedings" was deliberately open-ended. We reject the appellees' argument that "further proceedings" necessarily implies a *de novo* hearing, with witnesses being called and arguments being made as if for the first time. "Further proceedings" could, of course, embrace such a procedure but could also embrace other less radical procedures. It was not for us to anticipate what "further proceedings" might be required. That was a determination to be made in the first instance by the Board of Appeals itself, consistent, of course, with the salient principle of law enunciated in our opinion, to wit, consistent with our statutory interpretation of § 6 of County Council Bill No. 112-95. Beyond that, we did not presume to determine what "proceedings" were required. Theoretically, the Board could have made three or four different determinations as to what "further proceedings" might under the circumstances be appropriate.

1. The Board could have decided simply to clarify its earlier rationale that had been inadvertently ambiguous. It could have said, "We are stating unambiguously **NOW** what it was that we were intending to say **THEN.**" This would simply be a present clarification of a past decision, not a new decision. *Powell v. Calvert County,* 137 Md.App. 425, 441, 768 A.2d 750 (2001), *rev'd on other grounds,* 368 Md. 400, 795 A.2d 96 (2002) ("If the court cannot tell if the administrative agency was right or wrong ... the court should remand to the agency for further proceedings.").

***594** 2. The Board could have decided to make a *de novo* policy decision based on, for instance, three proper factors, ignoring the fourth factor that had initially been improperly considered. The factors themselves having been correctly established, there would be no need for further fact-finding with respect to them. There remained only to make the ultimate policy determination based on a present consideration of the appropriate number of already established factors. *State Tax Comm'n v. Chesapeake & Potomac Telephone Co.,* 193 Md. 222, 232, 66 A.2d 477 (1949) ("Evidence may be said to have been 'considered' when it has been reviewed by a court to determine whether any probative force should be given it."); *People's Counsel v. Mockard,* 73 Md.App. 340, 346-47, 533 A.2d 1344 (1987); *People's Counsel v. Prosser Co.,* 119 Md.App. 150, 161-62, 180, 704 A.2d 483 (1998).

3. The Board could have decided that the record before the Board initially was incomplete and that it would be desirable **TO SUPPLEMENT** that record with additional argument or additional evidence. New witnesses could be called but the old witnesses would not have to be recalled. *Lawton T. Sharp Farm v. Somerlock,* 52 Md.App. 207, 209-12, 447 A.2d 500 (1982).

4. The Board could have decided to ignore the original record and to proceed*de novo* with an entirely new hearing as if the first hearing had never occurred.

The first two of those procedural options on remand would almost always be

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offered as a combined package of alternatives. Under the first optional procedure, if the Board of Appeals were to say, "We had decided and we meant to convey that the other factors, even absent the locational factor, were sufficient for us to deny the [799 A.2d 434] special exception," that clarification in the affirmative would be enough and there would be no need to proceed to the second optional procedure. Conversely, if the Board of Appeals were to say, "We had decided and we meant to convey that the aggregate of all of the factors, including the locational factor, was indispensable to our decision to deny the special exception," that clarification ***595** in the negative would be enough and there would be no need to proceed to the second optional procedure. Neither of those clarifications would represent a new decision.

If, on the other hand, the Board of Appeals were to say, "We never gave any thought to what we would do, one way or the other, on the basis of less than all of the factors," then it would be necessary for the Board of Appeals to proceed from procedural option one to procedural option two, if it should deem option two adequate for its task on remand.

As we read what the Board of Appeals did on remand, especially in its denial of the appellees' Motion for Reconsideration wherein it provided introspective insight into its own earlier thinking, we conclude that it chose to follow the first of the four procedures listed above. Alternatively, it is conceivable that it was utilizing the second procedure. Our analysis, therefore, will consist of examining whether those two procedures were, in the circumstances of this case, within the Board's rightful prerogative. If they were, whichever of the two alternative procedures was actually utilized is not of critical importance.

Two Distinct Subissues

Two subissues are intertwined. We deem it helpful to isolate them for analysis. The first is that of whether either or both of the procedures possibly utilized by the Board on remand would have been within its rightful prerogative if, hypothetically, there had been no change in the personnel making up the Board. The second and distinct issue will then be whether a change in a critical voting majority (or, indeed, any change) in the make-up of the Board might *ipso facto* render a procedure on remand illegitimate that would otherwise have been, without such a change in personnel, legitimate.

Remand Procedures By An Unchanged Board

[4] Assuming, *arguendo,* that the members constituting the administrative tribunal remain unchanged, if an appellate court is in doubt as to why an administrative agency did what ***596** it did, as we were in this case, it is appropriate to remand the case to the agency for nothing more than 1) a clarification of or 2) an amplification of its reasoning. In *Powell v. Calvert County,* 137 Md.App. 425, 429, 768 A.2d 750 (2001), *reversed on other grounds,* 368 Md. 400, 795 A.2d 96 (2002), we approved precisely such a procedure.

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As a result of an earlier petition for judicial review, this Court, in an opinion filed on April 23, 1999, vacated the board's approval and remanded the case to the Board for further proceedings on the ground that the reasons given by the Board were insufficient to permit appellate review. *On remand, without receiving additional evidence or argument, the Board amended its opinion in response to this Court's mandate and granted the special exception.* The case is now before us as a result of a second petition for judicial review. *We hold that the evidence and reasons given by the Board* in its amended opinionare, as explained herein, *legally sufficient to support the Board's decision.*

(Emphasis supplied).

The opinion of Judge James Eyler made it very clear that an appellate court may [799 A.2d 435] remand to an administrative agency simply so that the agency can clarify its reasoning.

A decision of an administrative agency should be upheld only if it can be sustained on the findings and reasons given. *Montgomery County v. Stevens,* 337 Md. 471, 482, 654 A.2d 877 (1995); *Harford County v. Preston,* [*Inc.*,] 322 Md. 493, 505-06, 588 A.2d 772 (1991).

If the record fails to reflect such findings or reasons, the appropriate remedy is a remand to the agency with directions to comply with the requirement. *Stevens,* 337 Md. at 481-82, 482, 654 A.2d 877. *If the court cannot tell if the administrative agency was right or wrong, or to put it more accurately, whether it committed error because the court cannot discern the basis of the agency's decision to determine if it was proper, the court should remand to the agency for further proceedings.*

***597** 137 Md.App. at 441, 768 A.2d 750 (emphasis supplied). See also *People's Counsel v. Mockard,* 73 Md.App. 340, 533 A.2d 1344 (1987); *Mortimer v. Howard Research,* 83 Md.App. 432, 442, 575 A.2d 750 (1990).

Assuming again, *arguendo,* that the membership of the Board of Appeals was the same when it received the case on remand as it had been when it considered the case initially, we conclude that it would have been within the legitimate prerogative of the Board to have proceeded under any of the four procedural options listed above. Even counsel for the pawnshop conceded as much in his final argument before the Baltimore County Circuit Court.

I'll concede that, your Honor, if there were the three original members who heard the case and that it was remanded, they could make those findings from their recollection of the witnesses and the evidence.

The Board's Action on Remand Was a Clarification

Our reading of the 18-page opinion of the Board of Appeals following its consideration of the case on remand, and our further reading of the 6-page

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opinion of the Board in denying the appellees' Motion for a Reconsideration, convinces us that what the Board did on remand was no more than to clarify what it had earlier done on April 30, 1997. The Board made it clear that its initial 1997 denial of the special exception had not depended on the one-mile radius limitation and that it had not considered that limitation to be a critical factor in its decision.

The December 13, 2000 opinion of the Board, to be sure, is not a model of polished appellate draftsmanship. At times, it slides into linguistic habits that are more appropriate to fact-finding. We are not unmindful, however, that even trained appellate courts also occasionally misuse the verb "find" when they should say "hold." ("We *find* the law to be ..."; "We *find* the trial court to have been in error.") Even Homer nods. The occasional use by the Board of the verb "find," therefore, is not, we hold, dispositive as to what function the ***598** Board was performing. Neither do we conclude that the occasional and inartful use of the verbs "concur" and "affirm" establishes that the Board was sitting in appellate review of its own earlier decision.

The appellees seize upon these random usages, however, as upon the terms of a covenant. We would urge them to heed instead our admonition in *Heinlein v. Stefan*, 134 Md.App. 356, 368-69, 759 A.2d 1180 (2000):

> It is tempting, particularly when it serves one's purpose, to ascribe oracular significance to what may be nothing more than stylistic happenstance in an opinion's wording, but that is not the [799 A.2d 436] way the opinion writing business works. The other members of an appellate panel scrutinize with painstaking care the opinion writer's articulation of the actual decision in a case. That is why in Anglo American jurisprudence actual holdings are given precedential status. The other panel members, however, do not hover critically over every word of an opinion writer's phraseology as if it were being chiseled in marble. For that matter, neither does the opinion writer. When the narrative juices are flowing, a writer's ultimate choice of words is frequently nothing more than a subliminal stylistic reflex.

There were counter-indications that the Board was merely clarifying or explaining its earlier action and, although the issue could plausibly be argued either way, those counter-indications persuade us that the Board, on remand, was engaged only in clarifying and not in either fresh fact-finding or appellate reviewing.

In characterizing what the Board had done in 1997, the Board on remand summarized what had in 1997 been established as the dispositive factors. It made no mention of the one-mile radius limitation.

> In denying the Petitioner a special exception for a pawnshop to be relocated in the Country Ridge Shopping Center, it is abundantly clear that the Board of Appeals, in its majority opinion, relied on the evidence and concepts considered in the legislative findings and Baltimore County ***599** policy as

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found in Bill No. 112-95 as well as the testimony of Baltimore County employees in the Police Department, the Office of Planning and the Office of Community Conservation.

With regard to standards set forth for the granting of a special exception in BCZR 402.1, this Board affirms the majority opinion that the Petitioner did not meet the special considerations of 502.1(a) and (g):

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

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

B. Be inconsistent with the purposes of the zoning classification, nor in any way inconsistent with the spirit and intent of the zoning regulations.

The uncontradicted evidence, with no reference to the one-mile radius, had made it clear that the pawnshop would have an adverse impact on that neighborhood that it would not have elsewhere.

Evidence and testimony are uncontradicted that the Essex-Middle River area is a section of Baltimore County designated the highest priority for revitalization and conservation. It has the lowest socioeconomic indicators and the greatest incidence of crime. There are already two pawnshops in the area. A third pawnshop in this area would be detrimental to health, safety, and specifically the general welfare of this particular area of Baltimore County.

In their Motion for Reconsideration of December 19, 2000, the appellees challenged the December 13 Opinion of the Board for the failure of the Board to have held a *de novo* hearing, particularly so the new members of the Board could "make findings on credibility." In denying that motion, the Board unequivocally stated what the nature of its decision on remand had been.

On January 3, 2001, the Board again met in public session and deliberated the matter; and denied the Motion for ***600** Reconsideration. At the time of the public deliberation concerning the Motion for Reconsideration, the Board indicated [799 A.2d 437] that it could not find anywhere in the remand order that the Court of Special Appeals required any further hearings and that it was left exclusively to the discretion of the County Board of Appeals as to whether or not any further hearings should or should not be held. The Board takes significant note of the fact that the majority of the panel had already reviewed the record and denied the special exception. *The only issue determined by the panel on remand concerned the process to ascertain whether or not that denial stood independent of, or "free of the BCZR 436.4 standards." In its December 13, 2000 Opinion* at page 9, concurring with the original Board majority, *the current majority effectively found that,* based on this record, *the*

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original majority decision to deny the special exception stood free of the BCZR 436.4 standards and was independent of them.

(Emphasis supplied).

Significantly, the opinion of the Board denying the reconsideration was unanimous. The hold-over Board member, who had been in dissent on the merits both in 1997 and again in 2000, agreed with his colleagues as to the nature of what the decision had consisted of on remand. It cannot be gainsaid that the Board would have been entitled, without an evidentiary rehearing, to issue such a clarification of its own earlier action, had there been no change in the membership of the Board

Reweighing Established Factors Versus Resolving Disputed Credibility

That is not, however, all the Board would have been entitled to do on remand without an evidentiary rehearing. Among the other procedural options would have been the *de novo* weighing, essentially a policy determination, of already established factors without any necessity of fresh fact-finding as to the existence of those factors.

***601** Such a reweighing is, not uncommonly, what happens in the relitigation of mixed questions of law and fact. First-level fact-finding, frequently requiring the resolution of disputed credibilities and necessitating the choice of competing versions of the facts, is no longer involved. That fact-finding function is a *fait accompli*. It is only after the first-level facts have once been established that the second-level question even arises of what to make of those facts. That second-level question may be revisited without any necessity of revisiting the first-level fact-finding. The only question that matters is no longer, "What will actually happen in the neighborhood?" but, "What is the significance of what will happen in the neighborhood?" On such a mixed question of law and fact, the decisional process is far more one of policy-making than of fact-finding. The decisional process involves the application of the law, or of the policy, to an already given set of facts.

With some frequency, tribunals are called upon to engage in a *de novo* reassessment of the significance of established factors even though those tribunals never saw a witness and never participated in any of the first-level fact-finding that went into the establishment of those factors. Appellate courts, far from the action of resolving disputed credibilities or choosing among contradictory versions of events, frequently engage in the *de novo* process of weighing the significance of predicate facts found by others and then deciding for themselves the ultimate, conclusory fact, such as probable cause, the voluntariness of consent, the voluntariness of a confession, etc. *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996). Chancellors in equity frequently make decisions based on facts that were [799 A.2d 438] found by Masters. The two levels of decision making are distinct.

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The essentially undisputed first-level facts in this case were established and precisely articulated by the Board of Appeals in its initial Opinion of April 30, 1997. From that moment on, they were not in any way in dispute. The Board, on remand, could readily have reassessed the ultimate second-level or conclusory fact of adverse impact on a special neighborhood ***602** without any occasion to revisit the predicate first-level facts. It could have concluded:

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

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

"The Regiment Goes On"

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

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

***603** We conceptualize the Board of Appeals as an ongoing governmental entity, not as an *ad hoc* petty jury. It is an administrative tribunal with an institutional life that transcends the tenure of any of its members. Courts, by parity of behavior, unabashedly use the first personal pronouns " we," "us," and "our" in describing decisions made a century before any current member of the court was born. In this phenomenon of institutional continuity there are echoes of the stirring epilogue of a John Wayne epic, (FN1) "The names may change; the faces may change; but the regiment goes on." Thus it is with the Baltimore County Board of Appeals. It has a life that goes on beyond the tenure of any of

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its members.

The Caselaw On Changes in Membership

It remains then to be seen what, if any, limitations the caselaw may have imposed on the exercise of that institutional continuity. [799 A.2d 439] In urging that the change in the membership of the Board mandated an evidentiary rehearing on remand, the appellees rely primarily on the case of *Clark v. County Board of Appeals for Montgomery County,* 235 Md. 320, 201 A.2d 499 (1964).

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

Clark involved the statutory construction of what was then § 104-22d of the Montgomery County Code (1960). The Court of Appeals concluded in *Clark* that the code provision that "all actions or decisions of the board shall be taken by a resolution, in which at least three members must concur" established a minimum quorum of three in order for the ***604** required public hearing on the matter to have any validity. 235 Md. at 323-24, 201 A.2d 499. Although a third board member had read the transcript and concurred in the decision of his colleagues, only two members of the board had actually been present at the required public hearing. The Court concluded that it was dealing with a "problem of statutory construction" and held that the absence of the required quorum rendered the hearing, and the decision reached at that hearing, a nullity.

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

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

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

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

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That requirement was never violated.

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

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

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

One year and a half after the *Clark* decision, the Court of Appeals decided *Younkin v. Boltz,* 241 Md. 339, 216 A.2d 714 ***605** (1966) To view preceding link please click here , another special exception case out of Montgomery County. It was a disservice for the appellees in their brief to have totally ignored the *Younkin* case, for it flatly precludes the "spin" they seek to put on *Clark*. It is *Younkin* that is absolutely dispositive of the issue before us.

The evidentiary hearings on the special exception in *Younkin* were spread over two days. Only three of five board members were present for the first day's hearing and only two of those three ultimately [799 A.2d 440] voted to grant the special exception. The necessary majority vote to grant the exception depended on at least one of the two additional board members, who joined their colleagues for the second day of the hearing but who had missed the first day. Judge Hammond, 241 Md. at 341-42, 216 A.2d 714, summarized what had happened and before whom it happened.

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

(Emphasis supplied).

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

The instant case presented a variation of the *Clark* factual situation. There were two hearings; three members of the Board attended both and the other two members attended ***606** only the second hearing. Only two of the three members who had been at both hearings voted to grant the exception and*the requisite*

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

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

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

> The general rule in both the federal and state systems is that in the absence of specific statutory direction to the contrary *the deciding member or members of an administrative or quasi-judicial agency need not hear the witnesses testify*. 2 Davis, Administrative Law Treatise § 11:02, p. 40.
>
> "*The* [federal] *Administrative Procedure Act*, of course, *assumes that deciding officers need not be present at the hearing* * * *.
>
> "The law of nearly all state courts is as clear as the law of the federal courts that *deciding officers need not be present when witnesses testify;* this attitude is implicit in most of the state cases discussed in the ensuing two sections."

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

[799 A.2d 441] 241 Md. at 342-43, 216 A.2d 714 (emphasis supplied).

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

> ***607** *The Maryland Administrative Procedure Act*, applicable to state board and agencies as defined, Code (1965 Replacement Vol.), Art. 41, §§ 244-56, *contemplates* (as does the model Administrative Procedure Act, 8C Uniform Laws Annotated, on which it was based) *that in a "contested case" the evidence need not be heard by all those who will render the final decision*. Section 253 provides:
>
> Whenever in a contested case, a majority of the officials of the agency who are to render the final decision have not heard the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision, including findings of fact and

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> conclusions of law, has been served upon the parties, and *an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.*

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

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

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

241 Md. at 344, 216 A.2d 714. (FN2)

The Court of Appeals has regularly followed *Younkin v. Boltz*. *Bethesda Management Services v. Dep't of Licensing and Regulation*, 276 Md. 619, 627-28, 350 A.2d 390 (1976); *Gemeny v. Prince George's County*, 264 Md. 85, 94, 285 A.2d ***608** 602 (1972) To view preceding link please click here ; *Hyson v. Montgomery County Council*, 242 Md. 55, 72, 217 A.2d 578 (1966). This Court has also recognized its authority. In *Howard County v. Bay Harvestore System*, 60 Md.App. 19, 22, 478 A.2d 1172 (1984), Judge Weant observed:

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

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

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

> [799 A.2d 442] *The case was* then *remanded* to the Board pursuant to the circuit court's order. *Two of the three original Board members had resigned by that time. ... A new three-member panel was formed, which included the carry-over member from the original panel* who had voted to approve the application previously. The new panel, after reviewing the transcript of the 1994 hearing,

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> denied appellants' request to present new evidence. The Board, through the new panel, held public deliberations on June 5 and July 3 and, in an opinion dated September 19, 1996, determined that the reclassification was warranted and granted the rezoning.

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

The challenge made to the failure of the Board of Appeals, on remand, to conduct a new evidentiary hearing in this case echoes precisely the challenge made in that case. In *Prosser*, we rejected the claim that a *de novo* evidentiary hearing was ***609** necessary. That was the actual holding of *Prosser*. By way of explaining our holding, however, we were actually far gentler with the argument than we need have been in light of *Younkin v. Boltz*, a case that was not cited to us.

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

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

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

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

A critical member of an administrative tribunal is not required to do more on remand than would, under *Younkin v. Boltz*, have been required the first time around. In *Younkin*, a vote critical to the Board of Appeals's decision was cast by a board member who, albeit having read the transcript of testimony ***610** and having heard full argument, had not personally observed the demeanor of ten witnesses (out of a total of fifteen) whose testimony filled one hundred sixty-four pages of the transcript. There was no suggestion in the opinion that

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credibility had not been in dispute in assessing the testimony of the fifteen witnesses. The failure of a critical voting member to have observed personally the testimony of ten of those witnesses gave the Court of Appeals no pause, just so long [799 A.2d 443] as the member had read the transcript and heard the argument.

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

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

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

Under those circumstances, the distinction we drew between one hearing modality required on certain remands and another modality permitted on others was necessary, we thought, to distinguish *Prosser* from *Clark*. We affirmed the County Board of Appeals in *Prosser*, using that more circuitous rationale. Under the banner of *Younkin v. Boltz*, however, we would have reached the same result more quickly and more easily without any necessity for the convoluted "credibility-resolving" rationale, which may now mercifully evanesce. We ***611** reverse the judgment of the circuit court so that we may, in effect, affirm the judgment of the County Board of Appeals.

The Preemption Argument

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

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

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

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

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

[799 A.2d 444] ***612** With respect to the limit of two pawnshops in each councilmanic district, it cannot be stated with absolute certainty that that limitation was not considered by the Board of Appeals in 1997. Captain Johnson, in his testimony before the Board, did make mention of the negative impact of "a third pawnshop in the 11th precinct." The Board itself made reference to the fact that there were already "two existing pawnshops in this vicinity." The issue was not moot when raised in the first appeal to this Court.

Even if the issue were not moot in 1997-99, however, it has since become so. It was County Council Bill No. 112-95, passed on June 5, 1995, that enacted what became BCZR 436.4A, which provides that a pawnshop

> [l]ocation may not be within a one-mile radius of any other pawnshop, *and no more than two pawnshops may be located in a councilmanic district.*

(Emphasis supplied).

Our entire opinion of July 21, 1999, dealt with the applicability to that section of Section 6 of Bill No. 112-95, the "grandfather" provision, which stated:

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

(Emphasis supplied).

The single issue dealt with in our 1999 opinion was that the "grandfather" provision of Section 6 exempted existing pawnshops that were in the act of relocating from the locational limitations of § 436.4A. The exemption applied to

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the two-pawnshops-per-councilmanic-district-limitation as surely as it applied to the one-mile-radius-limitation. We held that the very limitation which the appellees now claim is unconstitutional did not apply to the appellees.

The Board of Appeals, on remand, complied with our opinion in every way. The Board's decision of December 19, 2000, was based exclusively on *Schultz v. Pritts* factors. Neither of the inapplicable locational limitations were factors in that ***613.** decision. They were not even mentioned. The Baltimore County "cap" of two pawnshops per councilmanic district, whatever its constitutional merit or demerits, had absolutely nothing to do with the ultimate denial of the special exception in this case. This final contention is, therefore, moot.

JUDGMENT OF THE BALTIMORE COUNTY CIRCUIT COURT REVERSED AND RULING OF THE BALTIMORE COUNTY BOARD OF APPEALS AFFIRMED; COSTS TO BE PAID BY APPELLEES.

(FN1.) "Fort Apache" (1948).

(FN2.) Professor Max Radin observed that when an appellate court confines one of its own earlier opinions to "its own facts," that is the way appellate courts have "of administering euthanasia to their own non-viable progeny."

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Citation/Title
291 Md. 1, 432 A.2d 1319, Schultz v. Pritts, (Md. 1981)

*1 291 Md. 1

432 A.2d 1319

ATTACHMENT C

Court of Appeals of Maryland.

Roger SCHULTZ et al.
v.
Robert K. PRITTS et al.

No. 153.
July 16, 1981.

Applicants for special use permit to construct funeral establishment in single family residential zone appealed the denial of their application by the county board of zoning appeals. The Circuit Court, Carroll County, Donald J. Gilmore, J., reversed and remanded the matter to the board for a new hearing, and application protestants appealed. The Court of Special Appeals dismissed the appeal on the ground that the circuit court's order was not a final judgment. Protestant filed a petition for writ of certiorari and applicants filed a cross petition, both of which the Court of Appeals granted. The Court of Appeals, Davidson, J., held that: (1) circuit court's order remanding the proceeding to the board was a final appealable order; (2) applicants were not denied due process by the board's consideration of cumulative evidence submitted after close of the hearing on the application where applicants acquiesced in submission of the evidence; and (3) the appropriate standard to be used in determining whether requested special exception use would have adverse effect and therefore should be denied is whether there are facts and circumstances that show that particular use proposed at particular location proposed would have any adverse effects above and beyond those inherently associated with such special exception use irrespective of this location within zone.

Vacated and remanded with directions.

Smith, J., concurred in part and dissented in part and filed opinion.

West Headnotes

[1] Zoning and Planning ⚷741

414 ----
414X Judicial Review or Relief
414X(E) Further Review
414k741 In General.

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291 Md. 1, 432 A.2d 1319, Schultz v. Pritts, (Md. 1981)

Circuit court's order, on appeal from decision of county board of zoning appeals denying application for special exception use permit, which remanded case to board and thereby terminated judicial proceeding and denied parties means of further prosecuting or defending their rights in judicial proceeding was appealable final order. Code, Courts and Judicial Proceedings, §§ 12-101(f), 12-301.

[2] Administrative Law and Procedure ⚷458.1

15A ----
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak458 Evidence
15Ak458.1 In General.

(Formerly 15Ak458)

In general, while administrative agencies are not bound by technical common-law rules of evidence, they must observe basic rules of fairness as to parties appearing before them.

[3] Constitutional Law ⚷318(1)

92 ----
92XII Due Process of Law
92k318 Administrative Proceedings
92k318(1) In General.

When administrative agency relies upon evidence submitted after close of hearing, due process may be violated if no opportunity is provided to challenge evidence by cross-examination or rebuttal; however, when administrative agency relies on evidence submitted after close of hearing, there may be no due process violation when parties are aware that evidence will be considered but make no objection, particularly if evidence is duplicative in nature. U.S.C.A.Const. Amend. 14.

[4] Administrative Law and Procedure ⚷482

15A ----
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak480 Rehearing
15Ak482 Power and Discretion to Order Rehearing.

Question whether to grant rehearing is matter within administrative agency's sound discretion.

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[5] Constitutional Law ⚷278.2(2)

92 ----
92XII Due Process of Law
92k278.2 Zoning, Building, and Planning Regulations
92k278.2(2) Proceedings and Review.

Where applicants for special use exception acquiesced in submission of written report by traffic expert hired by permit protestants after close of hearing before county board of zoning appeals and were given opportunity to challenge evidence by cross-examination or rebuttal or to request opportunity to challenge newly acquired evidence before board reached its decision, and where evidence was duplicative in nature, applicants were not denied due process of law by receipt of evidence after hearing had been closed. U.S.C.A.Const. Amend. 14.

[6] Zoning and Planning ⚷547

414 ----
414IX Variances or Exceptions
414IX(B) Proceedings and Determination
414k547 Rehearing or Reconsideration; New Application.

Where applicants for special exception use acquiesced in receipt by county board of zoning appeals of report from permit protestants' traffic expert after close of hearing on application and had opportunity to challenge evidence by cross-examination or rebuttal or to request opportunity to challenge evidence before board reached a decision, board's denial of rehearing on its decision denying application was not abuse of its discretion.

[7] Zoning and Planning ⚷678

414 ----
414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)3 Presumptions
414k678 Variances or Exceptions.

Special exception use is part of comprehensive zoning plan sharing presumption that, as such, it is in interest of general welfare and therefore valid.

[8] Zoning and Planning ⚷481

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k481 Nature and Necessity in General.

[See headnote text below]

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[8] Zoning and Planning ⚷490

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k490 Public Interest and Welfare, and Harmony With, or Impairment Of, Regulation.

Special exception use is valid zoning mechanism that delegates to administrative board limited authority to allow enumerated uses which legislature has determined to be permissible absent any fact or circumstances negating the presumption, and duties given board are to judge whether neighboring properties in general neighborhood would be adversely affected and whether use in particular case is in harmony with general purpose and intent of comprehensive zoning plan.

[9] Zoning and Planning ⚷536

414 ----
414IX Variances or Exceptions
414IX(B) Proceedings and Determination
414k536 Presumptions and Burden of Proof.

Whereas applicant for special exception use has burden of adducing testimony which will show that his use meets prescribed standards and requirements, he does not have burden of establishing affirmatively that his proposed use would be benefit to community; if he shows to satisfaction of county board of zoning appeal that proposed use would be conducted without real detriment to neighborhood and would not actually adversely affect public interest, he has met his burden.

[10] Zoning and Planning ⚷489

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k489 Grounds for Grant or Denial in General.

Extent of any harm or disturbance to neighboring area and uses is material to granting special exception use.

[11] Zoning and Planning ⚷537.1

414 ----
414IX *1 Variances or Exceptions
414IX(B) Proceedings and Determination
414k537 Weight and Sufficiency of Evidence
414k537.1 In General.

(Formerly 414k537)

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291 Md. 1, 432 A.2d 1319, Schultz v. Pritts, (Md. 1981)

If evidence on application for special exception use makes question of harm or disturbance or question of disruption of harmony of comprehensive plan of zoning fairly debatable, matter is one for county board of zoning appeals to decide, but if there is no probative evidence of harm or disturbance in light of nature of zone involved or factors causing disharmony to operation of comprehensive plan, denial of application for special exception use is arbitrary, capricious and illegal.

[12] Zoning and Planning ⚷489

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k489 Grounds for Grant or Denial in General.

If requested special exception use is properly determined to have adverse effect upon neighboring properties in general area, it must be denied.

[13] Zoning and Planning ⚷489

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k489 Grounds for Grant or Denial in General.

Special exception use has adverse effect and must be denied when it is determined from facts and circumstances that grant of requested special exception use would result in adverse effect upon adjoining and surrounding properties unique and different from adverse effect that would otherwise result from development of such special exception use located anywhere within zone.

[14] Zoning and Planning ⚷1

414 ----
414I In General
414k1 Nature in General.

Zoning provides tool by which to establish general areas or districts devoted to selective uses.

[15] Zoning and Planning ⚷1

414 ----
414I In General
414k1 Nature in General.

Very essence of zoning is territorial division of land into use districts according to character of land and buildings, suitability of land and buildings for particular uses, and uniformity of use.

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291 Md. 1, 432 A.2d 1319, Schultz v. Pritts, (Md. 1981)

[16] Zoning and Planning ⚷489

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k489 Grounds for Grant or Denial in General.

When legislative body determines that other uses are compatible with permitted uses in use district, but that beneficial purposes such other uses serve do not outweigh their possible adverse effect, such other uses are designated as conditional or "special exception uses."

[17] Zoning and Planning ⚷489

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k489 Grounds for Grant or Denial in General.

Conditional or special exception uses cannot be developed if at particular location proposed they have adverse effect above and beyond that ordinarily associated with such uses.

[18] Zoning and Planning ⚷542.1

414 ----
414IX Variances or Exceptions
414IX(B) Proceedings and Determination
414k542 Determination
414k542.1 In General.

(Formerly 414k542)

Appropriate standard to be used in determining whether requested special exception use would have adverse effect and therefore should be denied is whether there are facts and circumstances that show that particular use proposed at particular location proposed would have any adverse effects above and beyond those inherently associated with such special exception use irrespective of its location within zone.

[19] Zoning and Planning ⚷516

414 ----
414IX Variances or Exceptions
414IX(A) In General
414k502 Particular Structures or Uses
414k516 Undertakers, Mortuaries, and Funeral Homes.

Where zoning ordinance designated funeral establishment as special exception

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use in particular zoning district, funeral establishment could not be developed at particular location if it had adverse effect on traffic above and beyond that ordinarily associated with funeral establishments irrespective of location within zone.

[20] Zoning and Planning ⚷749

414 ----
414X Judicial Review or Relief
414X(E) Further Review
414k749 Determination and Disposition.

Where county board of zoning appeals determined grant of special exception use for funeral establishment would result in dangerous traffic conditions at proposed location and should therefore be denied but evidence primarily relied upon by board was based on questionable assumptions, and where lower courts did not reach the merits but decided case on erroneous procedural grounds, case would be remanded for further proceedings to permit introduction of additional evidence for determination of whether adverse effect on traffic was above and beyond that ordinarily associated with funeral establishments irrespective of location within zone.

[432 A.2d 1321] *3 John T. Willis, Westminster (Willis & Leahy, Westminster, on brief), for appellants.

William B. Dulany, Westminster (Wesley D. Blakeslee and Dulany & Davis, Westminster, on brief), for appellees.

Argued and Reargued before MURPHY, C. J., and SMITH, DIGGES, ELDRIDGE, COLE, DAVIDSON and RODOWSKY, JJ.

DAVIDSON, Judge.

This case presents three questions. The first question is whether an order of the Circuit Court for Carroll County remanding a proceeding to the Carroll County Board of Zoning Appeals (Board) was a final judgment from which an appeal may be taken under Maryland Code (1974, 1980 Repl.Vol.), s 12-301 of the Courts and Judicial Proceedings Article. The second question is whether the Board's consideration of written evidence filed subsequent to the close of a hearing constituted a denial of due process of law under the fourteenth amendment of the United States Constitution. The third question is whether the Board's denial of the conditional or special exception use ([FN1]) requested in this case was arbitrary, capricious, and illegal.

The respondents, Robert and Ann Pritts, are contract purchasers of a 2.74 acre tract of land located in Carroll County, zoned R-20,000 (single-family residential development 20,000 square feet minimum lot size). These contract purchasers filed an application with the Board requesting a *4 special exception use to develop a funeral establishment and a variance for reduction of

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the minimum front yard requirements. The Board held a hearing at which the petitioners, Roger Schultz and others (protestants), appeared in opposition. After the hearing, the Board denied the requested special exception use and held that the request for the variance was moot.

The contract purchasers appealed to the Circuit Court for Carroll County which determined that there had been a denial of [432 A.2d 1322] due process because the Board had considered evidence submitted after the close of the hearing. The Circuit Court reversed and remanded the matter to the Board for a new hearing. That Court specifically refused to consider the merits of the case and to decide whether a standard set forth in Gowl v. Atlantic Richfield Co., 27 Md.App. 410, 417-18, 341 A.2d 832, 836 (1975), was an appropriate standard to be applied on remand in determining whether the special exception use should be granted.

The protestants appealed to the Court of Special Appeals. The contract purchasers cross-appealed on the ground that the Circuit Court should have granted the special exception use. The Court of Special Appeals determined on its own motion that the Circuit Court's order remanding the case to the Board was not a final judgment and dismissed the appeal. That Court did not consider the merits of the case and did not decide whether the standard set forth in Gowl was an appropriate standard to be applied on remand in determining whether the special exception use should be granted.

The protestants filed a petition for a writ of certiorari, and the contract purchasers filed a cross petition. We granted both the petition and the cross petition. The case was argued on 3 June 1980. On 28 April 1981 a reargument was held limited to the following questions:

> "(1) Was an appropriate standard established in Gowl ... which held that it is arbitrary, capricious and illegal for a Board of Appeals to deny an application *5 for a special exception when 'the potential volume of traffic under the requested use would appear to be no greater than that which would arise from permitted uses'?
>
> (2) Is the evidence sufficient when viewed in light of the standard deemed to be appropriate?"

We have determined that the standard established in Gowl is inappropriate and that in the interest of justice we shall remand the case to the Board for further proceedings without affirmance or reversal.

I

Final Judgment

[1] The protestants contend and the contract purchasers concede that the Circuit Court's remand order was a final judgment and that the appeal should not have been dismissed. We agree.

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Maryland Code (1974, 1980 Repl.Vol.) s 12-301 of the Courts and Judicial Proceedings Article provides in pertinent part:

"(A) party may appeal from a final judgment entered in a civil ... case by a circuit court."

Maryland Code s 12-101(f) of the Courts and Judicial Proceedings Article provides:

" 'Final judgment' means a judgment, decree, sentence, order, determination, decision, or other action by a court, including an orphans' court, from which an appeal, application for leave to appeal, or petition for certiorari may be taken."

The statutory definition of "final judgment" in s 12-101(f) has been explicated by case law. Fred W. Allnutt, Inc. v. Commissioner of Labor & Industry, 289 Md. 35, 40, 421 A.2d 1360, 1362-63 (1980); Warren v. State, 281 Md. 179, 183, 377 A.2d 1169, 1171 (1977). This Court has consistently stated ***6** that a judgment or order of a court is final when it determines or concludes the rights of parties or when it denies the parties means of further prosecuting or defending their rights and interests in the subject matter of the proceeding. Fred W. Allnutt, Inc., 289 Md. at 40, 421 A.2d at 1363; Department of Pub. Safety & Correctional Servs. v. LeVan, 288 Md. 533, 542-43, 419 A.2d 1052, 1057 (1980); Boteler v. State, 7 G. & J. 109, 112-13 (1835).

More particularly, we have recently reiterated that a circuit court's order remanding a proceeding to an administrative agency is an appealable final order. LeVan, 288 Md. at 542-43, 419 A.2d at 1057; Criminal Injuries Compensation Bd. v. Remson, 282 Md. 168, 177, 384 A.2d 58, 64 (1978). See Allen v. Glenn L. Martin Co., 188 Md. 290, 294-95, 52 A.2d 605, 607 (1947). When a court remands a proceeding to an administrative agency, the matter reverts to the [432 A.2d 1323] processes of the agency, and there is nothing further for the court to do. Such an order is an appealable final order because it terminates the judicial proceeding and denies the parties means of further prosecuting or defending their rights in the judicial proceeding. Fred W. Allnutt, Inc., 289 Md. at 40, 421 A.2d at 1363.

In this case, the Circuit Court's order remanded the proceeding to the Board, a local administrative agency. As a result, the matter reverted to the Board, and there was nothing further for the Circuit Court to do. Thus, the parties were denied the means of further prosecuting or defending their rights and interests in the judicial proceeding. The Circuit Court's order was an appealable final order. ([FN2]) Accordingly, we shall vacate the judgment of the Court of Special Appeals which dismissed the appeal as premature.

***7** II

Due Process

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The protestants next contend that the contract purchasers were not denied due process of law under the fourteenth amendment of the United States Constitution. ([FN3]) While they concede that the Board considered evidence received after the close of the hearing, they claim that the contract purchasers' due process rights were not violated because the contract purchasers acquiesced in the submission of the evidence and because the evidence considered was cumulative to that presented at the hearing. We agree.

[2] [3] In general, while administrative agencies are not bound by the technical common law rules of evidence, they must observe the basic rules of fairness as to parties appearing before them. Ottenheimer Publishers, Inc. v. Employment Sec. Admin., 275 Md. 514, 520, 340 A.2d 701, 704 (1975); Hyson v. Montgomery County Council, 242 Md. 55, 69, 217 A.2d 578, 587 (1966); Dal Maso v. Board of County Comm'rs of Prince George's County, 238 Md. 333, 337, 209 A.2d 62, 64 (1965). When an administrative agency relies upon evidence submitted after the close of a hearing, due process may be violated if no opportunity is provided to challenge the evidence by cross-examination or rebuttal. Rogers v. Radio Shack, 271 Md. 126, 129, 314 A.2d 113, 115 (1974); Temmink v. Board of Zoning Appeals for Baltimore County, 205 Md. 489, 496-97, 109 A.2d 85, 88-89 (1954). However, when an administrative agency relies upon evidence submitted after the close of a hearing, there may be no due process violation when the parties are aware that the evidence will be considered but make no objection, particularly if the evidence is duplicative in nature. Under such circumstances, the requisite procedural fairness has been accorded because there was the opportunity to challenge the original evidence by cross-examination or rebuttal or to request the opportunity *8 to challenge the newly acquired evidence before the agency reached its decision. Dickinson-Tidewater, Inc. v. Supervisor of Assessments of Anne Arundel County, 273 Md. 245, 254, 329 A.2d 18, 24 (1974); Montgomery County, Md. v. National Capital Realty Corp., 267 Md. 364, 375-76, 297 A.2d 675, 681-82 (1972); Birckhead v. Board of County Comm'rs for Prince George's County, 260 Md. 594, 600, 273 A.2d 133, 136 (1971); Dal Maso, 238 Md. at 337, 209 A.2d at 65.

Here the record shows that the Board held a hearing on 5 January 1978. At that hearing, Mr. Stephen G. Peterson, a Traffic Planning and Engineering Consultant, qualified as a traffic expert (traffic expert), appeared and testified on behalf of the [432 A.2d 1324] protestants. He pointed out that the contract purchasers had "indicated that typically a procession takes 5 minutes to exit from the site." He then testified that based upon the contract purchasers' estimate, traffic counts, traffic flow, stop times, and the topography of the subject property, he had concluded that, under certain circumstances, collisions with vehicles waiting for a funeral procession to exit the site might occur. In addition, he testified that funeral processions would have an adverse effect upon emergency vehicles and other traffic attempting to enter or leave a medical center located opposite the site. The contract purchasers did not challenge this evidence by cross-examination or rebuttal.

During the traffic expert's testimony, the following colloquy took place:

"Mr. Willis (protestants' attorney): The data that you collected, does

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that have any regular scheme to it or could you perhaps summarize the total figures and provide that to the Board? Do you have them with you?

Mr. Peterson: Yes, I could provide them.

Mr. Willis: You have them in pencil. Would the Board desire to have those figures?

Mr. Ulino (Board member): We would.

*9 Mr. Peterson: I would like to put them in the form of a brief memorandum either to you or to the Board.

Mr. Willis: With a copy to Mr. Hildenbrand, of course.

Mr. Peterson: Surely.

Mr. Willis: Mr. Hildenbrand, do you have any questions?

Mr. Peterson: Or I might provide it to you and you can distribute it.

Mr. Hildenbrand (contract purchasers' attorney): That would be adequate...."

Thus, at the 5 January 1978 hearing, the contract purchasers knew that after the close of the hearing the Board was going to receive and consider written evidence containing a compilation or summary of the data testified to by the traffic expert. At that time, they not only failed to object, but indeed acquiesced in the procedure. On 19 January 1978, the traffic expert forwarded to both the Board and to the contract purchasers a written statement containing a compilation of the data that the traffic expert had presented at the hearing. Thus, before the Board had made any determination, the contract purchasers knew the contents of the traffic expert's written statement and that the Board had received that statement. Nevertheless, at that time the contract purchasers raised no objection and did not request a further hearing. On 21 February 1978, the Board, relying upon the traffic expert's testimony, including his written statement, denied the requested special exception use on the sole ground that it would result in dangerous traffic conditions. Thereafter, the contract purchasers requested a rehearing that the Board denied.

[4] [5] [6] Here the record establishes that the evidence submitted after the close of the hearing was duplicative in nature and that the contract purchasers were aware that it would be considered but made no objection. Under these circumstances, the requisite procedural fairness has been accorded *10 because the contract purchasers had the opportunity to challenge the original evidence by cross-examination or rebuttal or to request the opportunity to challenge the newly acquired evidence before the Board reached its decision. Moreover, under these circumstances, the Board's denial of the requested rehearing was not an abuse of its discretion. ([FN4]) Thus, the contract purchasers were not denied

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due process of law.

III

Cross Petition

The contract purchasers contend that the Board's decision denying the requested special[432 A.2d 1325] exception use was arbitrary, capricious, and illegal. Initially, they assert that the Board did not apply the proper criteria in determining that the requested special exception use would result in dangerous traffic conditions. They claim that the Board failed to take into account the critical fact that the requested special exception use would generate less traffic than would be generated by permitted uses. In support of their position, they rely upon Gowl v. Atlantic Richfield Co., 27 Md.App. 410, 417-18, 341 A.2d 832, 836 (1975).

In Gowl, the Court of Special Appeals reversed a Board of Appeals' decision denying a requested special exception use on the ground of traffic. There that Court stated that the proper standard by which to determine whether a requested special exception use should be denied on the ground of traffic is a comparison between the traffic problems that might arise under the requested special exception use and those that might arise under a permitted use. It held that when "the potential volume of traffic under the requested use would appear to be no greater than that which would arise ***11** from permitted uses," the requested special exception use must be granted. Gowl, 27 Md.App. at 417-18, 341 A.2d at 836. We do not agree.

[7][8] This Court has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. 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.

[9][10][11][12] Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But

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if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. ***12** 279, 287, 96 A.2d 261, 264 (1953) To view preceding link please click here ; Anderson v. Sawyer, 23 Md.App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.

The specific nature of the requisite adverse effect was defined in Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146, 153 (1965). There the Baltimore Gas and Electric Company requested a special exception use that would permit construction of high tension transmission lines above ground. At that time, the Baltimore County Zoning Regulations stated that a special exception use could not be granted if the requested use would "be detrimental to the health, safety, or general welfare of the locality involved." The Baltimore[432 A.2d 1326] County Board of Appeals (Board) granted the requested special exception use for that portion of the proposed transmission lines that would traverse a rural area not then serviced by public sewer or water facilities. The trial court affirmed.

On appeal, this Court affirmed stating:

"Appellants assert that it was error for the Board to fail to consider the future effects which the high tension wires would have on the health, safety and general welfare of the locality 'which could be reasonably anticipated in the normal course of its development.' This factor was without relevance in this case, because there was no evidence produced at the hearing which would show that the effect of high tension wires on the future health, safety and welfare of this area would be in any respect different than its effect on any other rural area. Section 502.1 implies that the effect on health, safety or general welfare must be in some sense unique or else a special exception could never be granted in such an area for the above ground location of high tension wires. The only evidence as to future conditions was testimony revealing the possibility of ***13** future residential development of this land but such a possibility alone does not come close to showing a future deleterious effect upon the public health, safety or general welfare." Deen 240 Md. at 330-31, 214 A.2d at 153 (emphasis added).

Subsequently, a similar analysis was employed in Anderson v. Sawyer, 23 Md.App. at 617-18, 329 A.2d at 720. There an owner requested a special exception use that would permit construction of a funeral home in a residential zone. Protestants presented evidence to show that the requested special exception use would tend to create congestion and unsafe conditions on neighboring roads and streets and would have a depressing psychological effect that would interfere with the enjoyment of the adjoining properties, make them less saleable, and

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prevent them from appreciating in value as much as other homes in the area. The Board found that the grant of the requested special exception use would create traffic problems and would, in fact, "be detrimental otherwise to the general welfare of the locality involved." It denied the requested special exception use. The Circuit Court for Baltimore County reversed.

The Court of Special Appeals affirmed the order of the Circuit Court requiring the grant of the requested special exception use. The Court of Special Appeals agreed with the trial court that there was no probative evidence to show any adverse effect. More particularly, with respect to the alleged depreciation of value and enjoyment of neighboring properties, it said:

"There can be no doubt that an undertaking business has an inherent depressing and disturbing psychological effect which may adversely affect persons residing in the immediate neighborhood in the enjoyment of their homes and which may lessen the values thereof. Indeed, it is precisely because of such inherent deleterious effects that the action of a local legislature in prohibiting such uses in a given zone or zones will be regarded as promoting the general welfare and as constitutionally sound. ***14** But in the instant case the legislature of Baltimore County has determined that as part of its comprehensive plan funeral homes are to be allowed in residential zones notwithstanding their inherent deleterious effects. By defining a funeral home as an appropriate use by way of special exception, the legislature of Baltimore County has, in essence, declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the community. As part of the comprehensive zoning plan this legislative declaration shares in a presumption of validity and correctness which the courts will honor.

The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized[432 A.2d 1327] proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses. Consequently, the bald allegation that a funeral home use is inherently psychologically depressing and adversely influences adjoining property values, as well as other evidence which confirms that generally accepted conclusion, is insufficient to overcome the presumption that such a use promotes the general welfare of a local community. Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in any way other than would result from the location of any funeral home in any residential zone, the evidence presented by the protestants was, in effect, no evidence at all."

Anderson, 23 Md.App. at 624-25, 329 A.2d at 724 (emphasis added) (citations omitted).

[13] ***15** These cases establish that a special exception use has an adverse

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effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

In Gowl, the Atlantic Richfield Company requested a special exception use that would permit construction of above ground storage for more than 10 million gallons of fuel oil and gasoline to be located on approximately 19 acres of land zoned M-2 (Manufacturing-Heavy). At a hearing before the Board of Appeals for Howard County (Board), there was much evidence presented to show that the particular use proposed at the particular location proposed would have an adverse effect on neighboring properties in the general area. There was expert and lay testimony to show, among other things, that the access roads to the property were inadequate and dangerous and that the increased traffic could not be accommodated on the existing roads. The Board found, among other things, "that the proposed use would adversely affect the surrounding and vicinal properties by creating undue traffic congestion on a presently inadequate and hazardous road network...." It denied the requested special exception use.

Atlantic Richfield filed an appeal in the Circuit Court for Howard County. In a memorandum opinion filed after a hearing, the trial court said with respect to traffic:

> "The finding of the Board that the use would create undue traffic congestion on a presently ***16** inadequate and hazardous road network presents a more serious question. The evidence before the Board was certainly substantial, and more than substantial, that the access roads to the property, in their present state, were inadequate to service the proposed use or, presumably, any substantial industrial use, and that the presence of any number of trailer-trucks on these roads would create a hazard."

In essence, the trial court concluded that there was sufficient evidence to support the Board's finding that the particular use proposed at the particular location proposed would have an adverse effect on traffic above and beyond the adverse effect on traffic ordinarily associated with such uses. Notwithstanding the existence of this adverse effect, the trial court concluded that the Board's denial should be reversed and that the special exception use should be granted. In explanation, the trial court said:

> [432 A.2d 1328] "The crux of the matter, as pointed out by counsel for the appellant, is that the proposed use in this instance insofar as the evidence before the Board was concerned, would not create any greater traffic congestion

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on the presently inadequate and hazardous road network than any number of uses permitted as a matter of right under the M-1 and M-2 zoning classifications. For instance, among the uses permitted as a matter of right in the M-1 zoning district, such uses also being permitted as a matter of right in the M-2 zoning district, are truck terminals and warehouses, wholesale houses, merchandise distribution centers, and the manufacture of cement, cinder or slag products. In the M-2 zoning districts, among other uses permitted as a matter of right are: aircraft manufacture or assembly, automobile or truck assembly plants, food manufacturing, packing or processing plants and bituminous road material mixing plants. Presumably any or all of these uses permitted as a matter of right in the area in question would create precisely ***17** the same, if not a greater, traffic hazard than the use in question here. The fault, if any, lies not with the use proposed but with the zoning regulations and map in effect at this time. In other words, an increase in traffic, including trailer trucks, or inadequate roads, is not a factor unique or peculiar to this proposed use." (Emphasis added.)

In affirming the trial court, the Court of Special Appeals said:

"(The trial court) went on to point out that in rejecting this application because of possible increase in vehicular traffic, the Board was making a comparison between existing traffic patterns around the presently undeveloped property and traffic patterns that could arise if the proposed use were to be permitted, without considering at all that an even greater volume of traffic than that anticipated from the storage facility could arise from any of several uses for which the property is now zoned and for which no special exception would be required. (It) noted that under the present M-2 zoning, the subject premises could be used for aircraft manufacture or assembly; automobile or truck assembly plants; food manufacturing, packing or processing plants and bituminous road material mixing plants.

We believe it obvious that any one of these permissible uses of these premises could result in increased vehicular traffic of greater volume and density than that which is considered probable for the bulk storage facility, and we do not believe it arguable that it is any more desirable to have a concrete or bituminous mixing vehicle drive past one's home than a gasoline or fuel oil tank truck.

We think it fully appropriate that (the trial court) found the proper test to be a comparison between the traffic problems that might arise under the proposed use and traffic problems that could arise ***18** from the usage of the premises now permitted by law. We recognize that traffic impact is a sufficient basis to deny a zoning application, including an application for a special exception. Templeton v. County Council, 21 Md.App. 636, 321 A.2d 778 (1974); Temmink v. Board of Zoning Appeals, 212 Md. 6, 128 A.2d 256 (1956); Hardesty v. Zoning Board, 211 Md. 172, 126 A.2d 621 (1956). But traffic impact on an application for a special exception ought to be measured against that which could arise under permissible use, and not merely on existing traffic loads around the undeveloped premises. Where, as here, the potential volume of

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traffic under the requested use would appear to be no greater than that which would arise from permitted uses, we believe it arbitrary, capricious and illegal to deny the application for special exception on vehicular traffic grounds.

Although, as (the trial court) noted, the Board could correctly conclude that the requested use would considerably increase the volume of traffic on the premises over existing traffic patterns and thereby menace the public safety or interfere with the reasonable enjoyment of [432 A.2d 1329] people in their homes, we also agree with (it) that this reason would be insufficient to deny the application because similar or even more disadvantageous traffic conditions could easily arise if the premises in question were utilized for any of the lawful purposes now permitted under the heavy industrial zoning affecting this property. " Gowl, 27 Md.App. at 417-20, 341 A.2d at 836-37 (emphasis added).

In essence, the Court of Special Appeals agreed with the trial court that although the particular special exception use proposed at the particular location proposed had an adverse effect on traffic above and beyond that ordinarily associated ***19** with such uses, the requested special exception should be granted.

In reaching this conclusion, the trial court cited only Deen, 240 Md. at 330-31, 214 A.2d at 153, and the Court of Special Appeals cited no authority at all. Indeed, there is no persuasive authority that applies the Gowl standard or supports this conclusion. ([FN5])

An analysis of the rationale underlying the statutory scheme by which certain uses are delineated as either a permitted use or a conditional or special exception use leads to the conclusion that the Gowl standard is logically inconsistent and in conflict with the standards established in Turner as explicated by Deen and Anderson. The general purpose of adequate land planning is to guide and accomplish the "coordinated, adjusted, and harmonious ***20** development of (a) jurisdiction ... which will ... promote ... (the) general welfare." Md.Code (1957, 1978 Repl.Vol.), Art. 66B, s 3.06. Zoning is one of the important elements of land planning that is used to further this purpose. Board of County Comm'rs of Cecil County v. Gaster, 285 Md. 233, 246, 401 A.2d 666, 672 (1979). The various purposes of zoning regulations, made in accordance with the plan, are:

"(T)o control congestion in the streets; to secure the public safety; to promote health, and the general welfare; to provide adequate light and air; to promote the conservation of natural resources; to prevent environmental pollution, to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, recreation, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its suitability for particular [432 A.2d 1330] uses, and with a view to conserving the value of buildings and encouraging the orderly development and the most appropriate use of land throughout the jurisdiction." Art. 66B, s

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4.03.

[14] [15] Zoning provides a tool by which to establish general areas or districts devoted to selected uses. Ellicott v. Mayor of Baltimore, 180 Md. 176, 181, 23 A.2d 649, 651 (1942). Indeed, the very essence of zoning is the territorial division of land into use districts according to the character of the land and buildings, the suitability of land and buildings for particular uses, and uniformity of use. Harbor Island Marina, Inc. v. Board of County Comm'rs of Calvert County, 286 Md. 303, 312, 407 A.2d 738, 743 (1979); Heath v. Mayor of Baltimore, 187 Md. 296, 305, 49 A.2d 799, 804 (1946). See County Comm'rs of Anne Arundel County v. Ward, 186 Md. 330, 338-39, 46 A.2d 684, 687-88 (1946).

Generally, when a use district is established, the zoning regulations prescribe that certain uses are permitted as of right (permitted use), while other uses are permitted only under certain conditions (conditional or special exception ***21** use). ([FN6]) In determining which uses should be designated as permitted or conditional in a given use district, a legislative body considers the variety of possible uses available, examines the impact of the uses upon the various purposes of the zoning ordinance, determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide for coordinated, adjusted, and harmonious development of the district. P. Hagman, Urban Planning and Land Development Control Law 105 (1971). See Art. 66B, s 4.03.

Because the legislative body, in reaching its determination, is engaged in a balancing process, certain uses may be designated as permitted although they may not foster all of the purposes of the zoning regulations and, indeed, may have an adverse effect with respect to some of these purposes. Thus, when the legislative body determines that the beneficial purposes that certain uses serve outweigh their possible adverse effect, such uses are designated as permitted uses and may be developed even though a particular permitted use at the particular location proposed would have an adverse effect above and beyond that ordinarily associated with such uses. For example, churches and schools generally are designated as permitted uses. Such uses may be developed, although at the particular location proposed they may have an adverse effect on a factor such as traffic, because the moral and educational purposes served are deemed to outweigh this particular adverse effect.

[16] [17] When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. See City of ***22** Takoma Park v. County Bd. of Appeals for Montgomery County, 259 Md. 619, 621, 270 A.2d 772, 773 (1970) To view preceding link please click here ; Creswell v. Baltimore Aviation Servs. Inc., 257 Md. 712, 719, 264 A.2d 838, 842 (1970); Art. 66B, s 1.00. Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses. For example, funeral establishments generally are designated as special exception uses. Such uses may not be developed if at the particular location

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proposed they have an adverse effect upon a factor such as traffic because the legislative body has determined that the beneficial purposes that such establishments serve do not necessarily outweigh their possible adverse effects.

[18] More particularly, by definition, a permitted use may be developed even [432 A.2d 1331] though it has an adverse effect upon traffic in the particular location proposed. By definition, a requested special exception use producing the same adverse effect at the same location must be denied. Thus, by definition, a church may be developed even if the volume of traffic that it generates causes congestion and unsafe conditions at the particular location proposed. By definition, however, a special exception use for a funeral establishment producing the same volume of traffic and, therefore, the same congestion and unsafe conditions at the particular location proposed must be denied. It is precisely because a permitted use may be developed even though it may have an adverse effect on traffic at the particular location proposed, whereas a special exception use may not, that to grant a requested special exception use on the ground that it generates traffic volume no greater than that generated by a permitted use is logically inconsistent and in conflict with previously established standards. Accordingly, the standard articulated in Gowl is inappropriate. We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated ***23** with such a special exception use irrespective of its location within the zone. Turner, 270 Md. at 54-55, 310 A.2d at 550-51; Deen, 240 Md. at 330-31, 214 A.2d at 153; Anderson, 23 Md.App. at 617-18, 624-25, 329 A.2d at 720, 724.

[19] Here the purposes of the Carroll County Zoning Ordinance are "to promote the health, safety, morals, and the general welfare of the community, by regulating ... the location and use of buildings ... to provide for adequate light and air; to prevent congestion and undue crowding of the land; to secure safety from fire, panic, and other danger; and to conserve the value of property." Carroll County Zoning Ordinance s 1.0. The local legislative body, the County Commissioners of Carroll County, after engaging in a balancing process, designated single-family dwellings, churches, schools, colleges, and community buildings such as libraries, cultural and civic centers as permitted uses in a R-20,000 Residence District. Carroll County Zoning Ordinance s 7.1. As a result of this designation, such uses can be developed even if they have an adverse effect on traffic. The Commissioners also designated certain other uses of land, including funeral establishments, as special exception uses in a R-20,000 Residence District. Carroll County Zoning Ordinance s 7.2. As a result of this designation, funeral establishments cannot be developed at a particular location if they have an adverse effect on traffic above and beyond that ordinarily associated with funeral establishments irrespective of location within the zone. Carroll County Zoning Ordinance s 17.6.

[20] Here the Board determined that the grant of the requested special

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exception use for the proposed funeral establishment would result in dangerous traffic conditions at the proposed location and, therefore, that the special exception should be denied. However, the record here shows that the evidence primarily relied upon by the Board was based on questionable assumptions. On appeal, the trial court did not decide whether a reasoning mind could reasonably have concluded, as did the Board, that the granting of the requested special exception use would result in dangerous ***24** traffic conditions. Rather, the trial court erroneously decided only that there had been a denial of due process and reversed and remanded the matter to the Board for a new hearing. The trial court specifically refused to determine whether, on remand, the Gowl standard was applicable.

The Court of Special Appeals did not decide whether the question of adverse effect on traffic was fairly debatable. Rather, it erroneously decided only that the trial court's order remanding the case to the Board was not a final judgment. It dismissed the appeal, without indicating whether the Gowl standard was applicable.

[432 A.2d 1332] In our view, under all of these circumstances, the purposes of justice will be advanced by permitting further proceedings in this case through the introduction of additional evidence before the Board and the application of the appropriate standard set forth in this opinion. Accordingly, we shall remand the case to the Board without affirmance or reversal for further proceedings in accordance with this opinion. Md. Rule 871.

JUDGMENT OF THE COURT OF SPECIAL APPEALS VACATED. CASE REMANDED TO THAT COURT WITH DIRECTIONS TO VACATE THE JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AND TO REMAND THE CASE TO THAT COURT WITH DIRECTIONS TO VACATE THE ORDER OF THE CARROLL COUNTY BOARD OF ZONING APPEALS AND TO REMAND THE CASE TO THAT BOARD FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THIS OPINION. COSTS TO BE PAID EQUALLY BY THE PARTIES.

SMITH, J., concurs in part and dissents in part.

SMITH, Judge, concurring and dissenting.

I concur in the determination that the order of the Circuit Court for Carroll County was an appealable final order and ***25** that the applicant was not denied due process of law. I dissent, however, from Part III of the opinion dealing with the cross petition.

I

I do not think there was sufficient evidence before the Board of Zoning Appeals for Carroll County to warrant denial of the special exception here.

The Board of Appeals stated as its reason for denying the application:

While the requirements of the Maryland State Highway Administration,

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Bureau of Engineering Access Permits could be met, expert testimony presented in opposition to the request emphasized that the characteristics of the vehicular traffic that would be generated by the funeral home, or funeral processions in particular, would result in dangerous conditions for both north and south bound traffic, as well as vehicles in such processions, because of sight distance problems resulting from the curve near the north end of the property and the hump, or vertical curve located past the southerly end of the property. Therefore, the Board finds the request to establish the funeral home as a Conditional Use must be denied.

The expert's letter to the board, upon which letter the decision was based, said, "A funeral procession requires the stopping of traffic on Washington Road for approximately five minutes or 1/12th of an hour." It obviously is this to which the majority opinion refers when it states of the expert, "He pointed out that the contract purchasers had 'indicated that typically a procession takes 5 minutes to exit from the site.' " Pritts, the contract purchaser, said:

Well, the average I would say would probably be 12 or 15 cars and sometimes we have six cars, ***26** sometimes fewer, but I would say 15 cars would probably be the average.

I don't believe it would take (if we had 30 cars, even 30 cars going) I don't see where it would take over five minutes, at the most.... ((Emphasis added.))

It can plainly be seen that the five minute estimate was not the average nor was it typical. There was no other evidence before the board on this subject. Not only did the expert upon whom the board relied make his calculation on the basis of a figure other than the average number of cars at a funeral testified to by Mr. Pritts, but he also failed to take into consideration the traffic which might be generated by a permitted use in the area in question.

We have said repeatedly, frequently in a zoning context, that an expert's opinion is of no greater probative value than the soundness of his reasons given therefor will warrant. See, e. g., County Council v. District Land, 274 Md. 691, 704, 337 A.2d 712 (1975); A. H. Smith Sand & Gravel v. [432 A.2d 1333] Dep't, 270 Md. 652, 667, 313 A.2d 820 (1974) To view preceding link please click here ; Surkovich v. Doub, 258 Md. 263, 272, 265 A.2d 447 (1970); Creswell v. Baltimore Aviation, 257 Md. 712, 721, 264 A.2d 838 (1970); Westview Park v. Hayes, 256 Md. 575, 581, 261 A.2d 164 (1970); Hunter v. County Commissioners, 252 Md. 305, 310, 250 A.2d 81 (1969); Smith v. Co. Comm'rs of Howard Co., 252 Md. 280, 284, 249 A.2d 708 (1969); Dill v. The Jobar Corporation, 242 Md. 16, 23, 217 A.2d 564 (1966); and Miller v. Abrahams, 239 Md. 263, 273, 211 A.2d 309 (1965).

The permissible basis for denial of a petition for a special exception was articulated for the Court by Chief Judge Hammond in Rockville Fuel v. Bd. of Appeals, 257 Md. 183, 262 A.2d 499 (1970):

If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly

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debatable, the matter is one for the Board to decide. ***27** But, if there is no probative evidence at all of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal. (Montgomery Co. v.) Merlands (Club, 202 Md. 279, 96 A.2d 261 (1953)). (Id. at 191.)

A more recent case in which we reversed the denial of a special exception by a local board and an affirmance of that denial by the circuit court is Turner v. Hammond, 270 Md. 41, 310 A.2d 543 (1973). Judge McWilliams concluded his opinion for the Court there by stating:

We have said that substantial evidence is required to support the findings of the Board and that substantial evidence is more than a scintilla of evidence. Prince George's County v. Meininger, 264 Md. 148, 152, 285 A.2d 649 (1972), and Kirkman v. Montgomery County Council, 251 Md. 273, 277-78, 247 A.2d 255 (1968). All definitions of scintilla, at least in this context, are imprecise but if we assume it takes ten gossamers to make a scintilla then the appellees' evidence before the Board falls well short of five gossamers. (Id. at 60, 310 A.2d 543.)

In my view the evidence of the protestants here "falls well short of five gossamers." Thus, the special exception should have been granted.

II

I believe the test articulated in Gowl v. Atlantic Richfield Co., 27 Md.App. 410, 341 A.2d 832 (1975), is a proper one to be applied in determining whether a special exception should be granted. I believe it consistent with Turner, 270 Md. 41, 310 A.2d 543, and Rockville, 257 Md. 183, 262 A.2d 499, and not inconsistent with other of our decisions. I recognize that, as the majority opinion asserts, no court of last resort appears to have ***28** applied that standard. That does not make it wrong, however. By the same token, no court of last resort seems to have rejected the Gowl standard. Moreover, Chief Judge James Macgill of the Fifth Judicial Circuit of Maryland, whose reasoning was adopted by the Court of Special Appeals in Gowl, was regarded by such people as Chief Judge Hall Hammond of this Court in my early day on the Court as one of the outstanding authorities in Maryland on zoning. At the time of the decision in the trial court in Gowl Judge Macgill had already been a Maryland circuit judge for more than nineteen years and he was a zoning examiner in Howard County for several years prior to that.

It is recognized by the majority opinion, "that 3 R. Anderson, American Law of Zoning s 19.14, p. 407 (2d ed. 1977) and 3 A. Rathkopf, The Law of Zoning and Planning s 41.10, p. 41-61 (4th ed. 1980), cited by the contract purchasers articulate a standard approximating that articulated in Gowl.'' What Anderson says is, "The effect of a proposed use on its neighbors will not support a denial of a special permit unless the effect is greater than that of uses permitted in the district without special permit." Id. at 407. Citing Turner, 270 Md. 41,

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310 A.2d 543, Rathkopf states, "The board must also consider uses to which the property could be put without a special exception, and the extent to which they would measure[432 A.2d 1334] up to the criteria imposed," Id. at 41-61. These authorities reinforce my point of view. After all, these gentlemen are recognized in the field. There is such a thing as the law of common sense.

We all agree that the board of appeals may not arbitrarily and capriciously deny a request for a special exception. The problem is against what do we measure traffic in determining that it will have an adverse effect and produce a hazard warranting rejection of an application? Surely there must be some standard. It seems to me logically that since the legislative body has determined that in the district in question "(p)rincipal permitted uses" include "(c)hurches, schools and colleges," and "(b)uildings and properties of a cultural, civic, educational, social or community service-type such as libraries, ponds(,) ... playgrounds (and) ***29** community centers," that it follows that in determining whether or not the board has been arbitrary one should measure the traffic to be generated by the proposed special exception against that generated by permitted uses. Why is it not arbitrary and capricious to deny permission for this funeral home on the basis of the traffic hazard when a church or certain others of the permitted uses may generate as much or more traffic?

Members of some religious denominations, e. g., the Protestant Episcopal Church, regularly have their funeral services from their church sanctuary. Thus, a church could be erected here which in the case of a funeral would generate exactly the same amount of traffic this funeral home would generate, but the church is a permitted use. Moreover, it is conceivable that after attendance at Sunday morning worship services, weddings, or other events on the church calendar the traffic which might pour out of its parking lot would be substantially in excess of that from the funeral home.

A playground is a permitted use. In my part of the State the traffic which would be generated by just an average Little League baseball game would dwarf that which is suggested as the average for a funeral in this instance. A hotly contested game between two bitter rivals obviously would produce even greater traffic.

A college is a permitted use. What amount of traffic might be expected to spew out of a parking lot adjacent to a college athletic field after a major football game?

To hold to the Gowl rule would not mean that every application for a special exception for a funeral home would have to be granted simply because the application is made. There can be a difference in funeral homes. All are not the same, by any means. Counsel for Pritts was asked at oral argument if he could articulate circumstances warranting denial by virtue of a demonstrable adverse effect upon surrounding property. In pointing out that all funeral homes are not the same he said:

***30.** If a funeral home is one that does contract embalming work, for example,

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and has a lot of traffic in and out and has a laboratory facility, that is entirely different from the normal funeral home. If a funeral home is in the business of selling caskets to a lot of other funeral homes in the area, that is something larger than the normal funeral home. If a funeral home is in the business of selling grave markers or funeral paraphernalia, then I think in that circumstance you have something different than the normal funeral home.

I have known even in a town smaller than Westminster of a very busy funeral home that sometimes had as many as three funerals in one day. No such proposition was involved here.

When, as here, the special exception is denied on the basis that operation under the granted exception would create a traffic hazard and an identical or worse traffic hazard could arise from permitted uses, I must regard the action as arbitrary and capricious, such that should not be tolerated in a free land.

III

In my view whether one proceeds upon the reasoning set forth in I or that in II we [432 A.2d 1335] should direct that the case be remanded to the board for the granting of the application for special exception upon such conditions and safeguards as the board may find appropriate under the ordinance and the evidence.

(FN1.) For the purposes of this opinion, the terms "special exception use" and "conditional use" are synonymous. Zellinger v. CRC Dev. Corp., 281 Md. 614, 619 n.4, 380 A.2d 1064, 1067 n.4 (1977); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187, 262 A.2d 499, 502 (1970).

(FN2.) In Hayden v. Walker, 208 Md. 114, 115, 117 A.2d 109, 109 (1955) (per curiam), this Court held that a circuit court's order remanding a proceeding to a local board of appeals was not an appealable final order. In LeVan, we overruled not only United States Fire Insurance Co. v. Schwartz, 280 Md. 518, 374 A.2d 896 (1977), but also "any cases with a similar holding." LeVan, 288 Md. at 544, 419 A.2d at 1057. Because the holding in Hayden is similar, it is one of the cases overruled in LeVan.

(FN3.) U.S.Const. amend. XIV provides in pertinent part:

"No State shall ... deprive any person of life, liberty, or property, without due process of law...."

(FN4.) The question whether to grant a rehearing is a matter within an administrative agency's sound discretion. United States v. Pierce Auto Freight Lines, Inc., 327 U.S. 515, 535, 66 S.Ct. 687, 697, 90 L.Ed. 821 (1946); Tidewater Express Lines, Inc. v. United States, 278 F.Supp. 561, 566-67 (D.Md.1968); Monumental Motor Tours v. United States, 110 F.Supp. 929, 932 (D.Md.1953) (per curiam).

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(FN5.) The contract purchasers have not cited any case decided by a court of last resort in any other jurisdiction that applies the Gowl standard. They have cited only two cases decided by an intermediate appellate court applying the Gowl standard. Both of these cases were decided by the Supreme Court, Appellate Division of New York. Long Island Lighting Co. v. Griffin, 272 App.Div. 551, 554, 74 N.Y.S.2d 348, 351 (1947), aff'd on other grounds, 297 N.Y. 897, 79 N.E.2d 738 (1948), is nonpersuasive because it involves a request for a special exception by a public utility to which the ordinary standard concerning adverse effect may not apply. See County Council for Prince George's County v. Potomac Elec. Power Co., 263 Md. 159, 176-77, 282 A.2d 113, 121 (1971). Hobbs v. Albanese, 70 App.Div.2d 1049, 1050, 417 N.Y.S.2d 556, 557 (1979), is nonpersuasive because the authority it cites does not articulate the Gowl standard and is, therefore, misapplied. In addition, no rationale is offered for the Court's improperly supported conclusion.

We recognize that 3 R. Anderson, American Law of Zoning s 19.14, p. 407 (2d ed. 1977) and 3 A. Rathkopf, The Law of Zoning and Planning s 41.10, p. 41-61 (4th ed. 1980), cited by the contract purchasers articulate a standard approximating that articulated in Gowl. However, those treatises are similarly nonpersuasive because the cases cited do not articulate the Gowl standard, and are, therefore, misapplied. For example, some of the cited cases are inapposite because they compare a special exception use to an existing use, not to a permitted use. See, e. g., Baxter v. Gillispie, 60 Misc.2d 349, 303 N.Y.S.2d 290, 292, 294-96 (1969). Others are inapposite because a comparison between the adverse effect of a special exception use and that of a permitted use is considered to be an appropriate factor to be taken into account, but is not relied upon as the determining factor in deciding whether the special exception use should be granted. See, e. g., Cantelli v. Town Bd. of Oyster Bay, 28 Misc.2d 126, 219 N.Y.S.2d 506, 507 (1960).

*30_ All of the other cases cited by the contract purchasers are inapposite. They compare a special exception use to another special exception use, not to a permitted use. See, e. g., Phillips Petroleum Co. v. Zoning Bd. of Appeals of Bangor, 260 A.2d 434, 435-36 (Me.1970).

(FN6.) Art. 66B, s 1.00 provides in pertinent part:

" 'Special exception' (conditional use) means a grant of a specific use that would not be appropriate generally or without restriction and shall be based upon a finding that certain conditions governing special exceptions as detailed in the zoning ordinance exist, that the use conforms to the plan and is compatible with the existing neighborhood."

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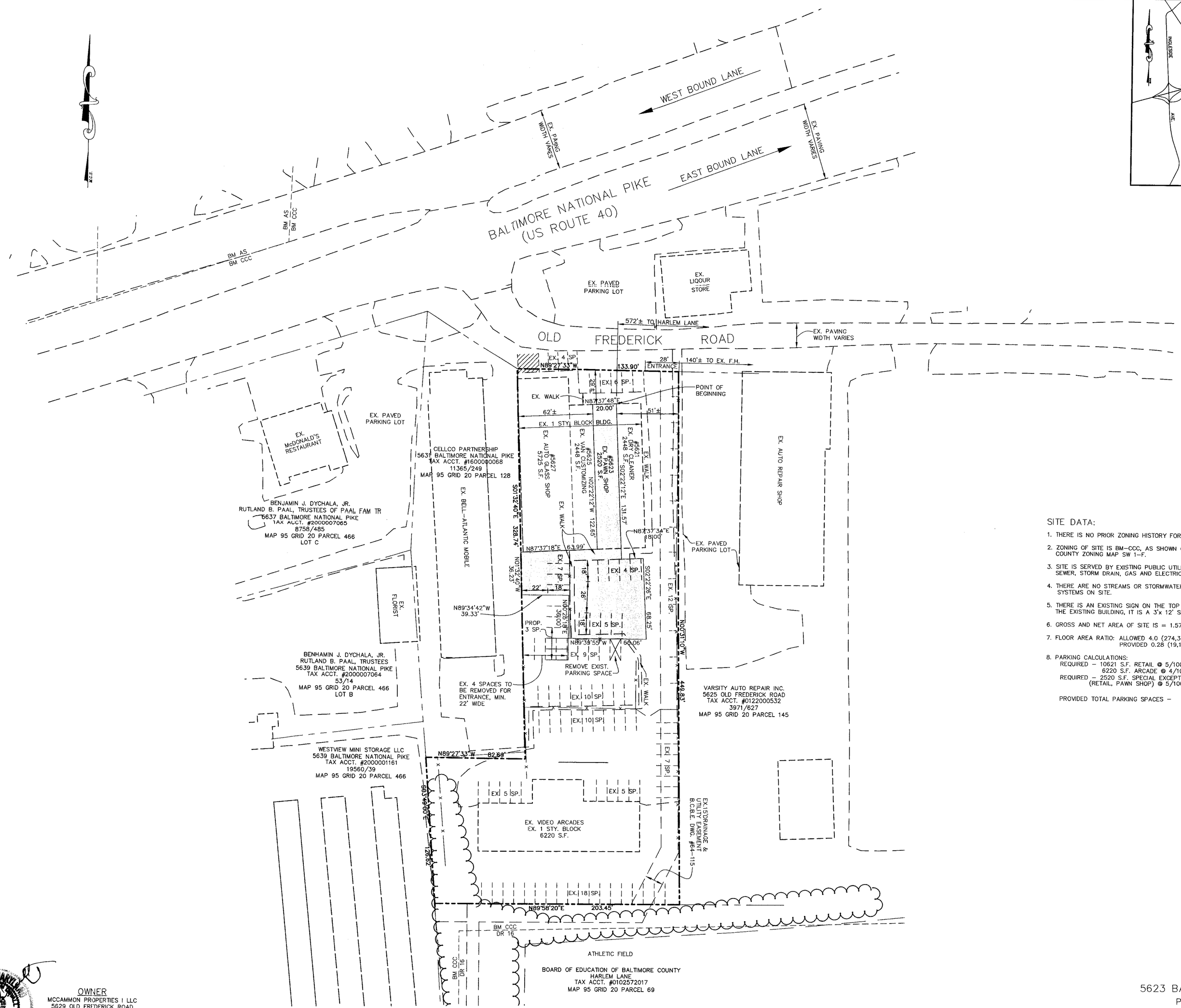
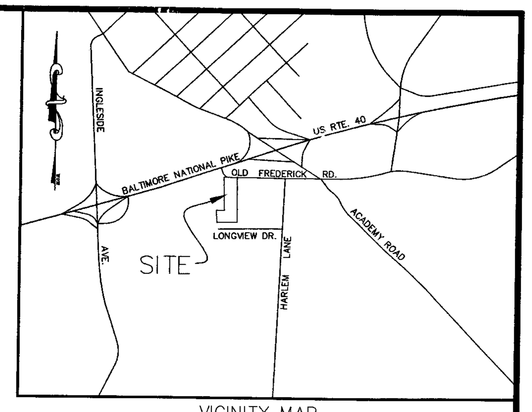
COUNTY 789-0567
PAWNBROKERS
VARSITY
CLEANERS
Vehicle
OUTFITTERS
CARS
VANS TRUCKS
SPORT UTILITIES
Accessories

LBA photos (3)

exh. 7a - 7c

Petitioner's exhibits





VICINITY MAP
SCALE: 1" = 1000'

SITE DATA:

1. THERE IS NO PRIOR ZONING HISTORY FOR THIS SITE.
2. ZONING OF SITE IS BM-CCC, AS SHOWN ON BALTIMORE COUNTY ZONING MAP SW 1-F.
3. SITE IS SERVED BY EXISTING PUBLIC UTILITIES, WATER, SEWER, STORM DRAIN, GAS AND ELECTRIC.
4. THERE ARE NO STREAMS OR STORMWATER MANAGEMENT SYSTEMS ON SITE.
5. THERE IS AN EXISTING SIGN ON THE TOP OF THE ROOF OF THE EXISTING BUILDING, IT IS A 3'x 12' SIGN.
6. GROSS AND NET AREA OF SITE IS = 1.5744 AC.±.
7. FLOOR AREA RATIO: ALLOWED 4.0 (274,323 S.F.±)
   PROVIDED 0.28 (19,100 S.F.±)
8. PARKING CALCULATIONS:
   REQUIRED – 10621 S.F. RETAIL @ 5/1000 S.F. = 53.11
   6220 S.F. ARCADE @ 4/1000 S.F. = 24.88
   REQUIRED – 2520 S.F. SPECIAL EXCEPTION
   (RETAIL, PAWN SHOP) @ 5/1000 S.F. = 12.60
   90.59 SPACES
   PROVIDED TOTAL PARKING SPACES – 91 SPACES

436

W. DUVALL & ASSOCIATES, INC.
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Phone: 410-583-9571
Fax: 410-583-1513
Email: wduvall2@qwest.net

STATE OF MARYLAND
WILLIAM E. DUVALL
No. 12970
REGISTERED
PROFESSIONAL ENGINEER

OWNER
MCCAMMON PROPERTIES I LLC
5629 OLD FREDERICK ROAD
TAX ACCT. #0125450043
19891/152
MAP 95 GRID 20 PARCEL 154

PETITIONER'S
EXHIBIT NO. 1

5623 BALTIMORE NATIONAL PIKE
PLAN TO ACCOMPANY
SPECIAL EXCEPTION
COUNCILMANIC DISTRICT 1
ELECTION DISTRICT 1 BALTIMORE COUNTY, MD.
SCALE: 1"=40' DATE: DECEMBER 19, 2005

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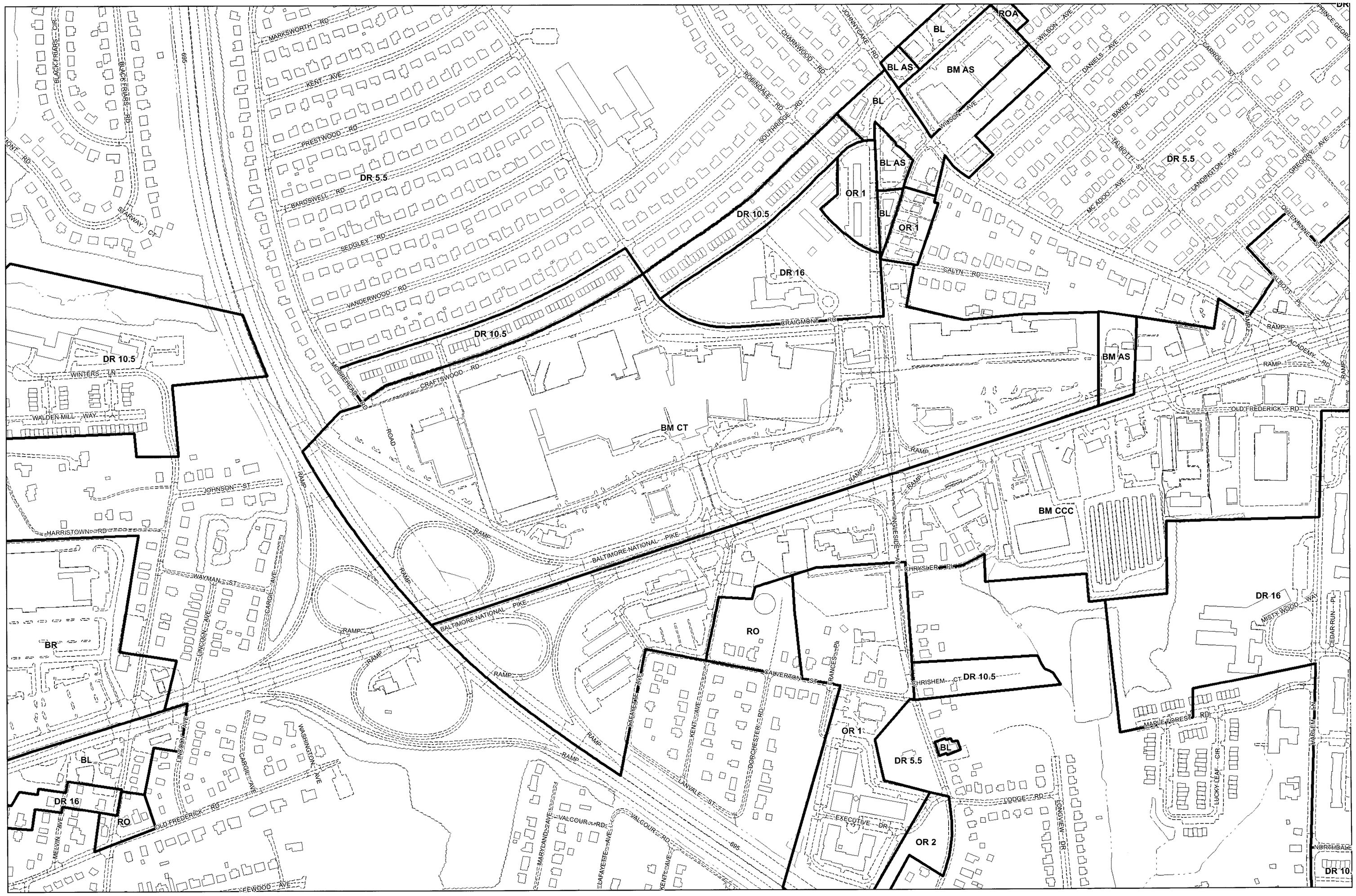


Plan Sheet: *095A3*

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

Zoning — Streams — Vegetation
Buildings — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

094B2	094C2	095A2	095B2	
094B3	094C3	095A3	095B3	
100B1	100C1	101A1	101B1	101C1

Scale

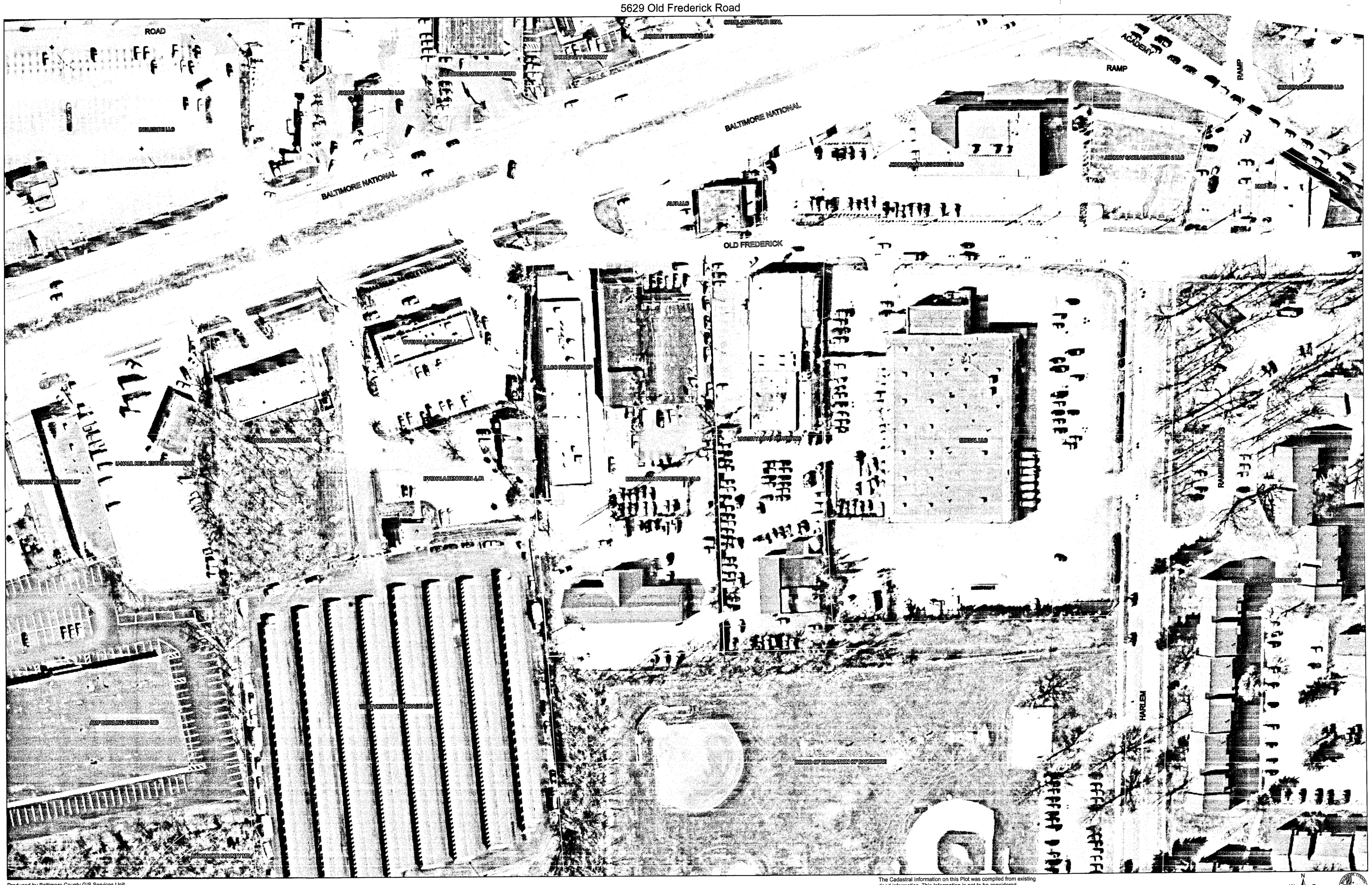
1" = 200'

0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

5629 Old Frederick Road



Produced by Baltimore County GIS Services Unit
Date: February 16, 2007
Date of Imagery: April 2005

1 inch equals 50 feet

The Cadastral Information on this Plot was compiled from existing deed information. This Information is not to be considered authoritative. The Survey Information was not field checked and Certified by a licensed land surveyor.

PET. Ex 2

periodic changes in personnel have on the institutional continuity and operational vitality of the tribunal itself.

The Pawnshop's Petition For A Special Exception

One of the appellees, Southside Brokers, Inc., is the operator of a pawnshop. Prior to 1995, the pawnshop had been located at 8110 Pulaski Highway. When the lease on that property was about to expire, the pawnshop leased space in the Country **427 Ridge Shopping Center, Inc., the other appellee, located at 1508 Back River Neck Road, and moved to the new location in May of 1996. The shopping center was, and is, zoned B.M. (business major). Pawnshops are permitted in a B.M. zone by way of special exception. Baltimore County Zoning Regulations, §§ 436, 233. Accordingly, the pawnshop petitioned for a special exception at its new location.

***583** Initially the appellees ran afoul of BCZR § 436.4, which the Baltimore County Council had adopted on July 3, 1995. It provides, in pertinent part:
436.4 Special exception petition. *In addition to the requirements of Section 436.3 and such other requirements of these regulations relating to a special exception petition, a pawnshop is subject to the following requirements:*
A. *Location may not be within a one-mile radius of any other pawnshop,* and no more than two pawnshops may be located in a councilmanic district.

(Emphasis supplied).

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

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

The County Board of Appeals: Round One

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

The Board of Appeals conducted two full days of hearings, on November 6, 1996 and March 12, 1997. A public deliberation on the matter was held on April 17, 1997. One witness, the owner of the pawnshop, testified in favor of the petition for special exception. A number of witnesses testified against the ***584** petition. On April 30, 1997, a two-to-one majority of the Board of Appeals denied the special exception. In the majority opinion, two strands of reasoning were intertwined. The ultimate outcome of this appeal may turn 1) on the extent to which those separate strands of reasoning are capable of being isolated and independently evaluated and 2) on whether they were actually so isolated and independently evaluated in the Board's decision.

On our present reading, it seems overwhelmingly likely to us that the original majority opinion of the Board of Appeals concluded, with solid evidentiary support for so concluding, that the pawnshop had failed to show, under traditional *Schultz v. Pritts,* 291 Md. 1, 432 A.2d 1319 (1981) standards, that it was entitled to the special exception. This apparent conclusion of the Board of Appeals seems to have been completely independent of any consideration of the debatable one-mile radius limitation. The Board of Appeals initially set out the test that framed its analysis.
BCZR Section 502.1 sets the standards for the granting of a special exception.***428** In this case,

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