IN RE: **PETITION FOR SPECIAL HEARING** NE/Corner Liberty Road and Chapman Road **(9218 Liberty Road)** 2nd Election District 4th Council District Liberty Properties Management, Inc. Petitioners	* * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 06-489-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, Liberty Properties Management, Inc., by Neil L. Teitelbaum, through their attorney, Francis X. Borgerding, Jr., Esquire. The Petitioners request a special hearing seeking approval of a waiver of the public works standards set forth in Section VIII, Subsection A, Paragraph 7 of the Bureau of Development Plans Review Policy Manual, to not require certain road improvements and in lieu of a revertible slope easement. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Neal Teitelbaum, on behalf of Liberty Properties Management, Inc., Bruce E. Doak, the Surveyor who prepared the site plan for this property, and Francis X. Borgerding, Jr., Esquire, attorney for the Petitioners. There were no Protestants or other interested persons present.

Testimony and evidence offered disclosed that the subject property is a roughly square shaped parcel located on the northeast corner of the intersection of Liberty Road and Chapman Road in Randallstown. The property is comprised of two separate lots, identified as 9216 and 9218 Liberty Road, which contain a combined gross area of 0.905 acres, more or less, zoned R.O. This property was the subject of prior Case No. 05-613-SPHA in which the Petitioners sought special hearing and variance relief to legitimize existing conditions on the two

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Date
By

adjoining parcels. In this regard, the property known as 9216 Liberty Road is improved with a two-story brick office building, a one-story block garage/storage building and accessory parking area. The property known as 9218 Liberty Road is located immediately adjacent to the Liberty Road/Chapman Road intersection. The front portion of this parcel is improved with a two-story frame dwelling, which is used for residential purposes. Access thereto is provided via an existing driveway that leads into the property from Chapman Road. There is an additional driveway located towards the center of this parcel, which provides access to the commercial parking area on the adjacent lot from Chapman Road through the residentially used parcel. It is this driveway access that was at issue in the prior case. By my Order dated August 29, 2005, I granted the requested relief, subject to certain terms and conditions.

The Petitioners now come before me seeking relief as set forth above to allow the redevelopment of the residentially used parcel known as 9218 Liberty Road. In this regard, testimony indicated that the Petitioners are currently proceeding through the minor subdivision process to create two separate building lots. As shown on Petitioner's Exhibit 3, Lot 1 will consist of 0.165 acres and Lot 2 will consist of 0.216 acres. The existing dwelling is apparently termite infested and will be razed to allow the new construction. Testimony indicated that during the course of proceeding through the minor subdivision process (#05-125-M), the Bureau of Development Plans Review Division wanted the Petitioners to install sidewalk, curb and gutter along Chapman Road. In addition, that agency wanted a 5-foot wide revertible slope easement along Chapman Road so that the Petitioner could sell the lots prior to actually doing the road work and still have the right of access for construction. The Petitioners argue that their proposal for one additional house does not warrant the installation of sidewalk, curb and gutter along Chapman Road and that the property is so flat, a revertible slope easement is not necessary. Thus, they filed the instant Petition.

In support of their request, the Petitioners argued that the proposed development is an infill project in an existing neighborhood and involves only the creation of one additional lot that will utilize an existing driveway for access. The Petitioners believe that there is no "essential

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Date 6-26-06
By

nexus" between the actual development proposed here and the items requested by Development Plans Review. There is no road widening being proposed nor are there curb, gutter and sidewalks in the immediate vicinity. Moreover, it was indicated that other improvements in the area have not been required to comply with the items at issue. In this regard, it was indicated that sidewalk, curb and gutter exist only at the far end of Chapman Road, where a more substantial residential subdivision was built.

In response to their argument, Development Plans Review believes that at the very least, the Petitioners should convey at no cost to the County a 50-foot right-of-way and revertible slope easement along Chapman Road for future road improvements. I find this to be an appropriate resolution to this issue. Petitioner's Exhibit 4 shows the proposed 50-foot right-of-way and easement that will be conveyed to Baltimore County.

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. I find that the proposed minor subdivision to create one additional lot does not warrant the need for road improvements to Chapman Road or the installation of sidewalk, curb and gutter. Moreover, I find that the proposal will be a benefit to the community in removing an eyesore and improve existing conditions on the property. Finally, I find that the relief requested is appropriate in this instance and that there will be no detrimental impact to adjacent properties or the health, safety or general welfare of the surrounding locale.

Pursuant to the advertisement, posting of the property and public hearing on this Petition 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 26th day of June 2006 that the Petition for Special Hearing seeking approval of a waiver of the public works standards set forth in Section VIII, Subsection A, Paragraph 7 of the Bureau of Development Plans Review Policy Manual, to not require certain road improvements and in lieu of a revertible slope easement, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

ORDER RECEIVED FOR FILING
Date 9-29-06
By

1) The Petitioners are hereby made aware that proceeding at this time is at their 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 relief granted herein is conditioned upon the Petitioners'/owners conveyance of the 50-foot wide right-of-way and revertible slope easement along Chapman Road, shown on Petitioner's Exhibit 4, at no cost to the County.

3) At such time as either of the residential lots are sold, the Petitioners shall record a new deed in the Land Records of Baltimore County conveying a fee-simple interest in the bed of the commercially used driveway for the use and benefit of the owner of the commercially used property known as 9216 Liberty Road. Failure to comply with this condition shall result in a termination of the continued use of the commercial use driveway through the residential property.

4) Notice of the right-of-way conveyance and fee-simple interest of the commercially used driveway between newly created Lots 1 and 2 shall be provided to potential purchasers of the subject properties.

5) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

ORDER RECEIVED FOR FILING
Date 9-26-05
By

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

June 26, 2006

WILLIAM J. WISEMAN III
Zoning Commissioner

Francis X. Borgerding, Jr., Esquire
409 Washington Avenue, Suite 600
Towson, Maryland 21204

RE: **PETITION FOR SPECIAL HEARING**
NE/Corner Liberty Road and Chapman Road
(9218 Liberty Road)
2nd Election District – 4th Council District
Liberty Properties Management, Inc. - Petitioners
Case No. 06-489-SPH

Dear Mr. Borgerding:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted, 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:bjs

cc: Mr. Neal L. Teitelbaum, Liberty Properties Management, Inc.
9218 Liberty Road, Randallstown, Md. 21133
Mr. Bruce E. Doak, Gerhold, Cross & Etzel
320 E. Towsontown Blvd., Towson, Md. 21204
Development Plans Review; People's Counsel; Case File

LEGAL OWNERS: Liberty Properties Management, Inc. Neil Teitlebaum Property: 9218 Liberty Road 2nd Election District - 4th Councilmanic District	* * * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY Case No.: 06-489-SPH

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

MEMORANDUM

The only issue raised in this Special Hearing is whether the Petitioner can be compelled to provide road improvements, curb and gutter and sidewalk as a condition for approval of Petitioner's minor subdivision for one lot. This type of dedication, a "subdivision dedication" is subject to limitations.

The law governing subdivision exactions, specifically subdivision dedication, was expounded by the Maryland Court of Appeals in its recent decision Annapolis v. Waterman, 357 Md. 484, 745 A.2d 1000 (2000). The Court set out the standards under which such a dedication is permitted:

> "A subdivision dedication is an exaction generally governed by the standards discussed by the Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L.Ed.2d 304 (1994): (1) whether there is an essential nexus as described in *Dolan*; and, if so, (2) whether the property interest taken is roughly proportional with the demand on public services created by the development." Waterman, p. 507

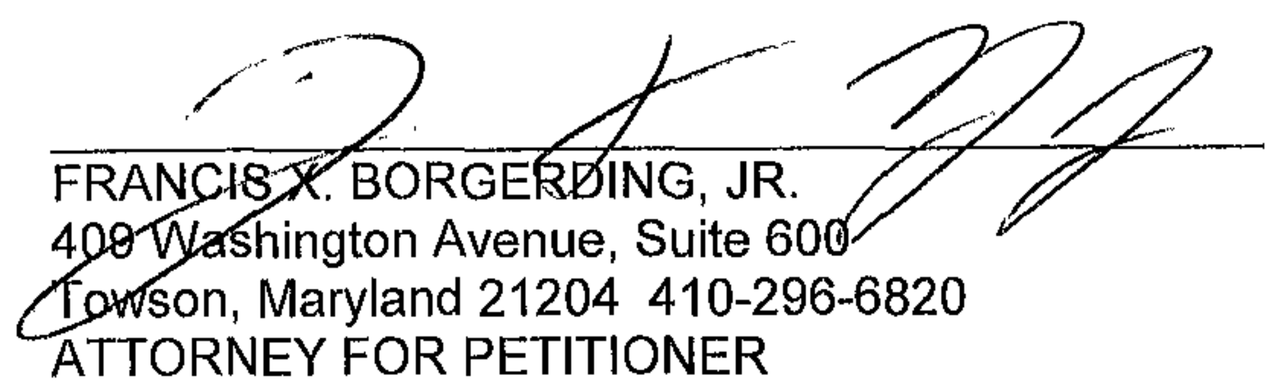
The test to permit a condition imposed by government is a two-part test. First, there must be an essential nexus to a legitimate state interest. Second, the sought after condition must be roughly proportionate to the projected impacts of the development on public services.

Maryland courts embraced this standard long before the Supreme Court set forth the rule in Dolan. In fact, the Supreme Court in Dolan favorably cited the 1984 Maryland case Howard County v. JJM, Inc., 301 Md. 256, 482 A.2d 908 (1984). In JJM, as here, the county sought a right-of-way in connection with the approval of a subdivision. In that case, Maryland's highest court held that "in order to exact from a developer a setting aside of land for highway purposes there must be a reasonable nexus between the exaction and the proposed subdivision. No such nexus has been shown here".

In reaching its decision the JJM Court considered the fact that the use of the land for any other purpose was restricted for an unlimited duration. In JJM, as here, there were no immediate construction plans or funding for the County to improve the road.

The JJM case cites the earlier decision in Maryland-National Capital Park and Planning Commission V. Chadwick, 286 Md. 1, 405 A.2d 405 (1979) where the Court of Appeals held that placing appellees' land in reservation for a road right-of-way was tantamount to a taking without compensation. The Court recognized the commendable governmental objective sought to be achieved by placing land in reservation, but held that government's desire to improve the public condition is not enough to warrant achieving that desire by a shorter cut than the constitutional way of paying for private property. See also Pennsylvania Coal Co. V. Mahon, 260 U.S. 393, 43 S. Ct. 158, 67 L. Ed 322 (1922).

Respectfully submitted,



FRANCIS X. BORGERDING, JR.
409 Washington Avenue, Suite 600
Towson, Maryland 21204 410-296-6820
ATTORNEY FOR PETITIONER

Memo to File
06-489-SPH

April 12, 2006

To Hearing Officer:

Proposed wording for Case 06-489-SPHA is as the Petitioner stated, however I feel the request should have been more specific - if only for advertising and for public information purposes.

Carl Richards

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 9218 Liberty Road

which is presently zoned R.O. and D.R. 5.5

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

A waiver of public works standards in the Bureau of Development Plans Review Policy Manual, Section VIII, Subsection A, paragraph 7 in lieu of construction of improvements and in lieu of a revertible slope easement.

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:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Francis X. Borgerding, Jr.
Name - Type or Print

Signature

Company

409 Washington Avenue Ste 600 (410)296-6820
Address Telephone No.

Towson MD 21204
City State Zip Code

Legal Owner(s):

Liberty Properties Management Inc.
Name - Type or Print

Neal L. Teitelbaum
Signature

Neal L. Teitelbaum
Name - Type or Print

Signature

9218 Liberty Road (410)-627-6146
Address Telephone No.

Randallstown Maryland 21133
City State Zip Code

Representative to be Contacted:

Gerhold, Cross, & Etzel, Ltd. - Mike Alexander
Name

320 E. Towsontown Blvd. Ste. 100
Address Telephone No.

Towson, Maryland 21286 (410)-823-4470
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING ____

UNAVAILABLE FOR HEARING ____

Reviewed By SDT Date 04-07-06

Case No. 06-489-SPH

Reviewed 7/25/98

ORDER RECEIVED FOR FILING
Date 4-7-06
By

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

April 6, 2006

Zoning Description
9218 Liberty Road

All that piece or parcel of land situate, lying and being in the Second Election District And Fourth Councilmanic District of Baltimore County, Maryland and described as follows to wit:

Beginning at a point in the centerline of Chapman Road (30 feet wide) on the north margin of Liberty Road (66 feet wide), thence running along the centerline of Chapman Road (1) North 24 degrees 26 minutes 04 seconds East 200.80 feet, thence leaving Chapman Road and running (2) South 60 degrees 06 minutes 46 seconds East 125.73 feet, and (3) South 29 degrees 23 minutes 56 seconds West 199.90 feet to the north margin of Liberty Road, thence running and binding along the north margin of Liberty Road (4) North 60 degrees 06 minutes 46 seconds West 108.35 feet to the point of beginning.

Containing 23,395 sq. ft. or 0.536 Acres of land, more or less.

Note: This description only satisfies the requirements of the Office of Zoning and is not to be used for the purposes of conveyance.

STATE OF MARYLAND
SCOTT ALAN LINDGREN
No. 21081
PROFESSIONAL LAND SURVEYOR
4/6/06

OG 489 SP11

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: #06-489-SPH
9218 Liberty Road
Northeast corner of Liberty and Chapman Roads
2nd Election District - 4th Councilmanic District
Legal Owner(s): Liberty Properties Management, Inc., Neal Teitelbaum

Special Hearing: to permit a waiver of public works standards *in the Bureau of Development* Plans Review Policy Manual, Section VIII, Subsection A, Paragraph 7 in lieu of construction of improvements and in lieu of a revertible slope easement.

Hearing: Thursday, June 15, 2006 at 10:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-3868/4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/5/763 May 30 97004

CERTIFICATE OF PUBLICATION

6/1/, 2006

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 5/30/, 2006.

- [X] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 5332

DATE 04.27.06 ACCOUNT R001000610

AMOUNT $ 325

RECEIVED FROM: LITRAMOR PARTNERS

FOR: SPEC. HEARING (WAIVER OF PETITION) 9711 LINEWOOD RD

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

DATE	ACTUAL	TIME	BY
4/11/2006	4/07/2006	10:23:41	

REF NO. PAYOR MISC NO.
VERIFICATION 4/07/2006
DESC 1 ITEM DATA VERIFICATION
CO NO. 005032
PAYMENT 325.00
FEE(S) 325.00
Baltimore County, Maryland

CASHIER'S VALIDATION

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906
Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

RE: CASE# 06-489-SPH
PETITIONER/DEVELOPER:
Liberty Properties Management, Inc.
DATE OF HEARING: June 15, 2006

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: KRISTEN MATTHEWS

LADIES AND GENTLEMEN:

THIS LETTER IS TO CERTIFY UNDER THE PENALTIES OF PERJURY THAT THE NECESSARY SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON THE PROPERTY LOCATED AT

LOCATION:
9218 Liberty Road

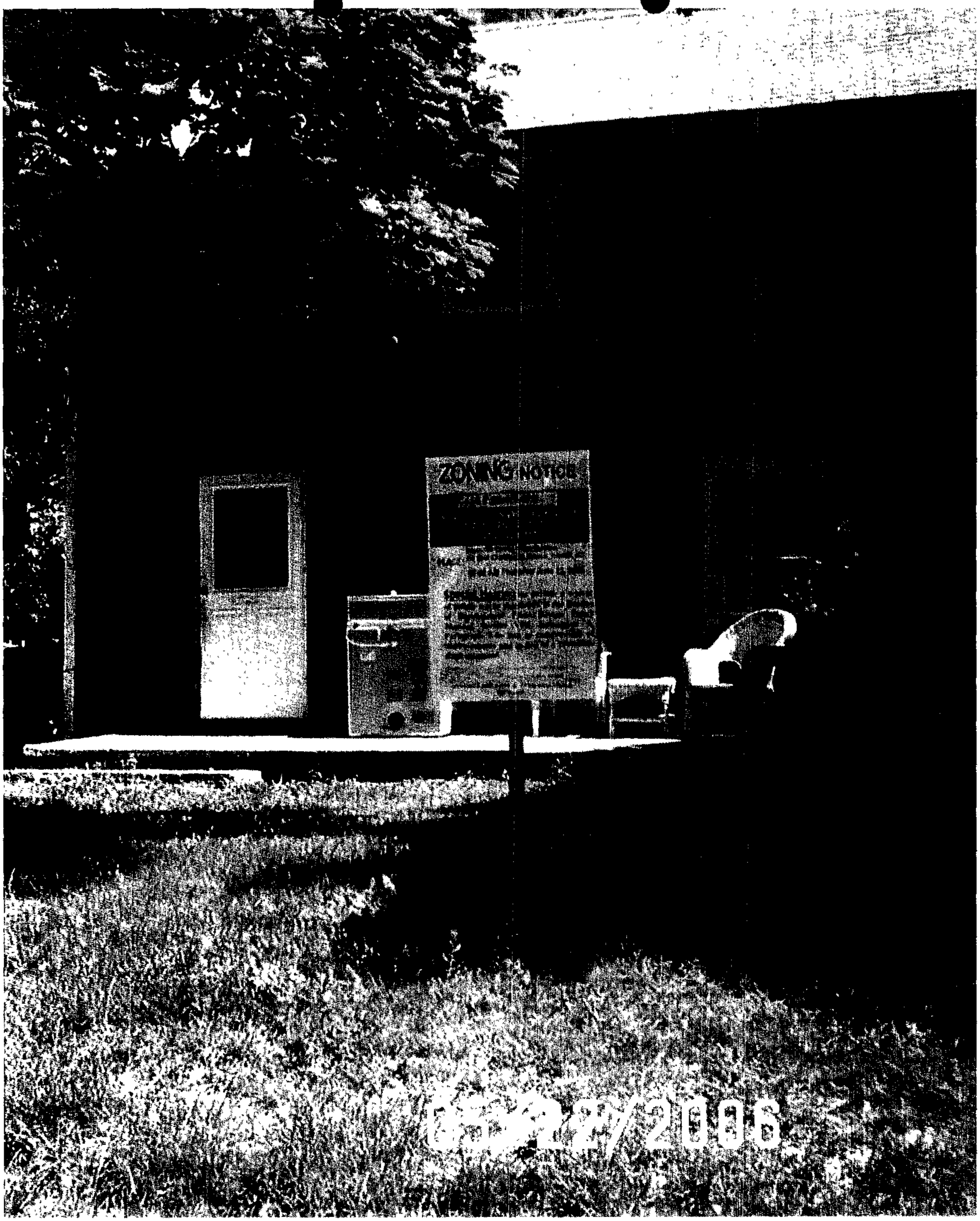
(see page 2 for full size photo)

POSTED ON: May 22, 2006

SIGNATURE OF SIGN POSTER

John J. Dill

GERHOLD, CROSS & ETZEL, LTD
SUITE 100
320EAST TOWSONTOWN BLVD
TOWSON, MARYLAND 21286
410-823-4470 PHONE
410-823-4473 FAX


ZONING NOTICE
ZONING 22/2096

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: 06-489-SPU

Petitioner: LIBERTY PROPERTIES MANAGEMENT INC

Address or Location: 9218 LIBERTY ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: LIBERTY PROPERTIES MANAGEMENT INC

Address: 9218 LIBERTY ROAD.
KNUDALLS TOWN, MD. 21133.

Telephone Number: 410-627-6146.

Revised 2/20/98 - SCJ

06-489-SPU

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

April 17, 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: 06-489-SPH
9218 Liberty Road
Northeast corner of Liberty and Chapman Roads
2nd Election District – 4th Councilmanic District
Legal Owners: Liberty Properties Management, Inc., Neal Teitelbaum

Special Hearing to permit a waiver of public works standards in the Bureau of Development Plans Review Policy Manual, Section VIII, Subsection A, Paragraph 7 in lieu of construction of improvements and in lieu of a revertible slope easement.

Hearing: Thursday, June 15, 2006 at 10:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Francis Borgerding, Jr., 409 Washington Avenue, Ste. 600, Towson 21204
Liberty Properties Management Inc., 9218 Liberty Road, Randallstown 21133
Mike Alexander, 320 E. Towsontown Blvd., Ste. 100, Towson 21286

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, MAY 31, 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

TO: PATUXENT PUBLISHING COMPANY
Tuesday, May 31, 2006 Issue - Jeffersonian

Please forward billing to:
Liberty Properties Management, Inc. 410-627-6146
9218 Liberty Road
Randallstown, MD 21133

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: 06-489-SPH
9218 Liberty Road
Northeast corner of Liberty and Chapman Roads
2nd Election District – 4th Councilmanic District
Legal Owners: Liberty Properties Management, Inc., Neal Teitelbaum

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Hearing: Thursday, June 15, 2006 at 10:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

Department of Permits and Development Management

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

Baltimore County

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

June 9, 2006

Francis X. Borgerding Jr.
409 Washington Ave
Towson, MD, 21204

Dear: Mr. Borgerding,

RE: Case Number:06-489-SPH, 9218 Liberty Rd.

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on April 7, 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.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:sma

Enclosures

c: People's Counsel
Liberty Property Management, Inc., 9218 Liberty Rd., Randallstown, MD 21133
Gerhold, Cross & Etzel Ltd, Mike Alexander, 320 E. Towsontown Blvd., Suite 100, Towson, MD, 21286``

Printed on Recycled Paper

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

SHA
Driven to Excel
State Highway Administration
Maryland Department of Transportation

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

Date: 4.18.01

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

RE: Baltimore County
Item No. 489 JRA

Dear Ms. Matthews:

We have reviewed the referenced item and have no objection to approval. Our review has determined that no construction is required within the State Highway Administration's right-of-way.

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

Very truly yours,

Steven D. Foster, Chief
Engineering Access Permits Division

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

April 19,2006

ATTENTION: Zoning Review Planners

Distribution Meeting of: April 17, 2006

Item Numbers: 484 through 490

Pursuant to your 489 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.

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

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C)443-829-2946
MS-1102F

cc: File

Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: April 19, 2006

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

DAK

SUBJECT: Zoning Advisory Committee Meeting
For April 24, 2006
Item No. 489

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment.

These are our reasons for asking for road improvements -

- There is some curb and gutter along Chapman Road between Liberty Road and Samoset Road that was built by developers.
- We feel that the property owners on this street will want curb and gutter along the whole street someday and this part would already be done.
- The widening of the pavement and the provision of curb and gutter at Liberty Road would facilitate turning movements and help protect the fire hydrant at the corner.
- County policy ties road improvements to developments based on frontage not on a showing of a reasonable nexus. In other words, the developer and subsequently the new property owners should pay for the improvements, not County taxpayers.

Should it be decided that no road improvements are required, please require the developer to convey right-of-way widening and revertible slope easements to the County at no cost, so that County taxpayers will not have to pay for improvements and acquisition later.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 489-04182006.doc

RE:	PETITION FOR SPECIAL HEARING 9218 Liberty Road; NE corner of Liberty & Chapman Roads 2nd Election & 4th Councilmanic Districts Legal Owner(s): Liberty Properties Management, Inc; Neal Teitelbaum Petitioner(s)	* * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 06-489-SPH

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

ENTRY OF APPEARANCE

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

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April, 2006, a copy of the foregoing Entry of Appearance was mailed to, Mike Alexander, Gerhold, Cross & Etzel, Ltd, 320 E. Towsontown Blvd, Suite 100, Towson, Maryland 21204 and to Francis X. Borgerding, Jr, Esquire, 409 Washington Avenue, St 600, Towson, MD, 21204, , Attorney for Petitioner(s).

RECEIVED
APR 13 2006
Per.....

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

From: Debra Wiley
To: Murray, Curtis
Date: 06/12/06 10:52:50 AM
Subject: Comments Needed for Bill's Cases on Thursday, June 15th

Good morning Curtis,

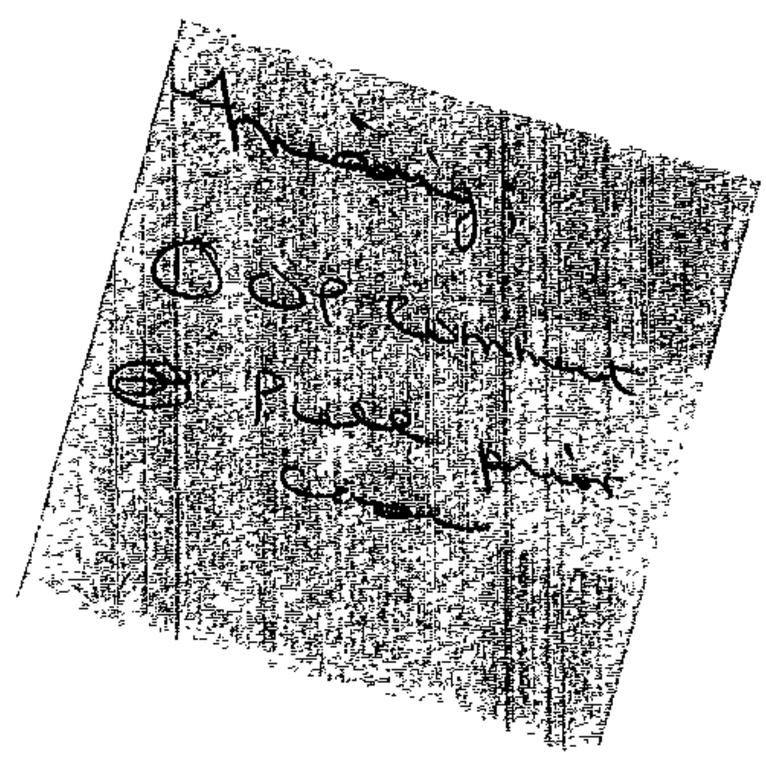
Bill has three (3) cases scheduled on Monday and I do not see comments either in the file or in my in-basket for the following:

9:00 AM - 06-486-SPHA

10:00 AM - 06-489-SPH

11:00 AM - 06-510-A

Thanking you in advance for your usual cooperation and have a great day!



FRANCIS X. BORGERDING, JR.
Attorney at Law
MERCANTILE BUILDING - SUITE 600
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 296-6820
FAX (410) 296-6884

RECEIVED

June 16, 2006

JUN 19 2006

ZONING COMMISSIONER

The Honorable William Wiseman, III
Zoning Commissioner for Baltimore County
Suite 405
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: Petition for Special Hearing
Case No.: 06-489-SPH
Property Owner: Liberty Properties Management, Inc.
Neil Teitlebaum
Property: 9218 Liberty Road

Dear Mr. Wiseman:

Pursuant to your request at the special hearing held on June 15, 2006 in relation to the above-referenced matter, I am herewith submitting the following language for your consideration as a proposed condition to the granting of the special hearing relief requested by the Petitioner. The proposed language condition is as follows:

> "The owner will convey in fee the highway widening reflected on Petitioner's exhibit number 4. The highway widening reflects a proposed 50 foot right-of-way."

Thank you for your consideration of this matter.

Very truly yours,

FRANCIS X. BORGERDING, JR.

FXBJr:bjk
cc: Mr. Neil Teitlebaum

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

March 14, 2006

Francis X. Borgerding, Jr.
Mercantile Building-Suite 600
409 Washington Avenue
Towson, Maryland 21204

Attention: Mr. Borgerding

Reference: Liberty Properties Management-Chapman Road

Dear Sir:

This is in response to your letter of March 1, 2006 about the widening of Chapman Road along the frontage of the referenced development. In the *Bureau of Development Plans Review Policy Manual*, Section VIII, Subsection A, paragraph 7, the requirement for road widening is clearly written.

If you apply for a Special Hearing, the Hearing Officer can grant a waiver of these requirements if he finds extenuating circumstances, hardship, community opposition, etc.

Very truly yours,

Dennis A. Kennedy

Dennis A. Kennedy, Supervisor
Development Plans Review

DAK
cc:file

06-489-SPH

FRANCIS X. BORGERDING, JR.
Attorney at Law
MERCANTILE BUILDING - SUITE 600
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 296-6820
FAX (410) 296-6884

March 1, 2006

Dennis A. Kennedy, Supervisor
Development Plans Review
Department of Permits & Development
Management
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Liberty Properties Management - Minor Subdivision
05-125-M

Dear Mr. Kennedy:

I am writing on behalf of my client, Liberty Properties Management, Inc. in relation to your correspondence of January 30, 2006 in regard to their proposed minor subdivision. Pursuant to your correspondence, you reference your department's comments requesting pavement widening, curb and gutter and sidewalk to be built along the frontage. The minor subdivision being proposed is an infill project in existing neighborhood proposing to build one additional lot using an existing driveway. There is no road widening being proposed nor are there curb or sidewalks in the area. Additionally, other improvements in the area have not been required to comply with the items at issue. After consultation with Gerhold, Cross and Etzel, Ltd., who is processing the minor subdivision plan on behalf of my client, it is my client's position that the development that they are proposing on the subject property does not necessitate the improvements being requested as there is no "essential nexus" between the actual development proposed and the items requested.

My client would request that you re-review this matter and advise of your department's position. Thank you for your anticipated cooperation with regard to this matter.

Very truly yours,

FRANCIS X. BORGERDING, JR.

FXBJr:bjk

06-489-SPU

Department of Permits and Development Management

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

Baltimore County

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

January 30, 2006

Gerhold, Cross and Etzel, Ltd.
320 East Towsontown Boulevard
Suite 100
Towson, Maryland 21286

Attention: Mr. Michael Alexander

Reference: Liberty Properties Management-Minor Subdivision

Dear Sir:

In response to your letter of January 18, 2006 about the revertible slope easement, we discovered that the original comments actually called for pavement widening, curb and gutter and sidewalk to be built along the frontage. The reviewer missed this item on the second review. I am writing this to inform you that the pavement widening is still required and a five-foot-wide revertible slope easement is also required. The slope easement is required so that you can sell the lots prior to actually doing the road work, and still have the right to trespass for construction. For your information, there is a preliminary profile of the road in the County records for your use during design.

Very truly yours,

Dennis A. Kennedy

Dennis A. Kennedy, Supervisor
Development Plans Review

DAK
cc:file

06-489-SPH

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906
Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

COPY

January 18, 2006

Dennis Kennedy, Chief
Development Plans Review
Room 119
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204
(410)-887-3751

Subject: 05-125-M Minor Subdivision of Property of Liberty Properties Management, Inc.

Dear Mr. Kennedy:

You have requested an adequately sized revertible slope easement along Chapman Road. We feel that because the site is so flat that a revertible slope easement is not necessary. I am enclosing a copy of the plan and Phil Martin's first and second review comments. Please let me know if this is acceptable. You may reach me at (410)-823-4470. Thank you for your time and consideration on this matter.

Sincerely,

Michael Alexander

06-489 SP14

BALTIMORE COUNTY, MARYLAND

SUBJECT: MINOR SUBDIVISION REVIEW COMMENTS
D.R. ZONING

DATE: 11/8/05

FROM: Dennis A. Kennedy, DAK Supervisor
Bureau of Development Plans Review
Dept. of Permits and Development Mgmt.

PROJECT NAME: LIBERTY PROPERTIES MANAGEMENT, INC.

MINOR SUB.. NO.: 05125M

LOCATION: LIBERTY & CHAPMAN ROADS

DISTRICT: 2C4

The following comments, as checked, are supplied in response to our review of the subject site.

GENERAL COMMENTS:

☑ All construction drawings and construction for public use shall conform with *Baltimore County Department of Public Works* *Design Standards and Standard Specifications and Details for Construction.*

☑ A *Utility and/or Right-of-Way Improvement Agreement* must be executed by the owner and Baltimore County for the required public improvements.

☐ In accordance with *Bill No. 18-90, Section 26-276* dredging, filling or construction in any wetland is prohibited.

☑ The developer shall be responsible for damages to the county's facilities, such as water meters, manholes, curbs and gutters, and inlets within his subdivision. *Occupancy Permits* will be withheld until such damages have been corrected.

☐ The *State Department of the Environment* construction permits for pumped sewer systems (*including grinder pumps*) will be obtained through the *Baltimore County Department of Public Works* after approval of the construction drawings.

☐ Offsite rights-of-way are necessary for roads, storm drains or other utilities. The developer is hereby advised that the final plat and/or building permits will not be approved until the offsite right-of-way is acquired.

☑ The developer's engineer shall investigate the need and obtain the necessary permits for the facilities serving this site that may require a *"Corps of Engineer's Permit"*, a *"Water*

☒ PROVIDE AN EASEMENT FOR INGRESS, EGRESS, MAINTENANCE, AND UTILITIES OVER 20 FOOT BETWEEN LOTS # 1 & 2.

☒ THE 10 FOOT EASEMENT ALONG THE REAR PROPERTY LINE

06-489-SPH

Resources Permit", a "*Water Quality Certification*", and any other federal or state permits. These facilities cannot be sent to contract until such permits have been received.

☑ The developer shall not allow any cable television cables to be installed in this subdivision without the required county permits being obtained. Baltimore County will not assume any rights-of-way, easements, or maintenance of any public improvements, where such cables have been installed without a permit until the cables are satisfactorily located.

HIGHWAY COMMENTS:

☑ CHAPMAN ROAD is an existing road which shall ultimately be improved as a 30' street cross section on a 50' right-of-way.

☑ Show ~~future~~ PROPOSED 50 foot right-of-way on plan.

☑ The developer is responsible for the grading of the widening to the proposed cross-section based on the grade of the existing road. Where adjacent properties are adversely affected by the improvements, the developer shall be financially responsible for the necessary repairs to these properties.

☑ The developer is responsible for the preparation of the right-of-way plat for, and the dedication of, any widening and slope easements along the existing road frontage at no cost to the county.

☑ The developer is responsible for the construction of combination curb and gutter in its ultimate location and a maximum of 28.5 feet of paving adjacent thereto along the frontage of the property. The paving thickness shall conform with Baltimore County standards. A 4 foot-wide sidewalk shall be installed along the frontage of the existing street to conform with Baltimore County standards. A *Right-of-way Improvement Agreement* must be executed by the owner and Baltimore County for the required public improvements

☑ The panhandles shall be a minimum of 20 feet in width to serve one lot and a minimum of 12 feet in width per lot where two or more lots are involved. The developer shall be required to provide a paved-panhandle drive where more than one lot is to be served prior to occupancy. The panhandle driveway shall conform to *Standard Plate R-P, R-Q*, or *R-R*.

☑ Covenants must be recorded prior to, or along with the recording of the plat, establishing a cross easement over the panhandles for access over and maintenance of the common panhandle driveway, and for installation and maintenance of the private and/or sewer connections where applicable.

☑ LIBERTY ROAD is a state road. All improvements, intersections, entrances, drainage requirements and construction affecting a state road right-of-way are subject to the standards, specifications, and approval of the Maryland State Highway Administration in addition to those of Baltimore County.

☑ 350 foot sight distance should be shown on plan for new entrances.

☑ Sight lines are to be drawn from the centerline of the proposed access at a point 10 feet behind the extension of the main road curb line to the centerline of the nearest approach lane on the main road.

☑ CONVEY ADEQUATELY-SIZED REVERTIBLE SLOPE EASEMENT TO THE COUNTY AT NO COST.

☑ All subsequent plans must note that the areas between the sight line and the curb line must be cleared, graded, and kept free of any obstructions.

STORM DRAINS AND SEDIMENT CONTROL COMMENTS:

☑ The developer is responsible for the total actual cost of drainage facilities required to carry the storm water runoff through the property to be developed to a suitable outfall. The developers cost responsibilities include the acquiring of easements and rights-of-way – both onsite and offsite – and the deeding in fee of said rights-of-way to the county. Preparation of all construction, rights-of-way and easement drawings, engineering and surveys, and payment of all actual construction costs including the county overhead both within and outside the development, are also the responsibilities of the developer.

☑ The developer must provide necessary drainage facilities (*temporary or permanent*) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the developer.

☐ A flood plain study will be necessary to be reviewed and approved prior to the recording of any record plat or the issuance of any grading or building permits.

☐ The developer must furnish the *Bureau of Development Plans Review* with a flood plain study containing the following information:

a) A map of scale 1"=200', for the entire drainage area which contributes to the open stream, including a tabulation of flow quantities. Hydrology computations shall be in accordance with the June, 1986 version of TR55.

b) Field run cross sections of the stream with the flood plain of a 100-year design storm indicated on them. These sections are to be taken at 50-foot intervals and are to be shown on standard cross-section paper at 1"=5' horizontal to 1"=5' vertical scale.

c) A profile of the stream.

d) A plan with the location of the field run cross sections indicated.

e) Hydraulic computations which were used to establish the elevation of the flood plain for each cross section based on "The Standard Step Method" or "The U.S. Corps of Engineers Computer Program HEC-2".

f) Hydraulic computations, including inlet and outlet control analysis, which determine the size of any proposed structure within the flood plain. The developer's engineer shall submit economically comparable designs (type, size, and location), with estimate construction costs included, to verify his selection.

g) The stream is to be cleared of all fallen trees, stumps, and debris.

☐ In accordance with *Bill No. 173-93, Section 26-276*, no development in any riverine flood plain shall be permitted except the establishment of property subdivision lines and the installation of any pond, culvert, bridge, street, utility or drainage facility that the county finds not detrimental to flood plain management programs.

☑ Sediment control provisions will be required for the building permit application and for any grading involved.

☐ The rear of buildings may not be constructed within 20 feet of the limits of the flood plain as established for a 100-year flood level with a 1-foot freeboard. See *Plate D19* in the *Baltimore County Design Manual.*

☐ In conformance with *Federal Flood Insurance* requirements, the first floor or basement floor must be at least 1 foot over the flood plain elevation in all construction.

WATER AND SANITARY SEWER COMMENTS:

☑ The developer is responsible for any public water main extension and/or public sanitary sewerage required to serve this property. He is responsible for the preparation and the cost of construction drawings and right-of-way plats required. He is further responsible for conveying any required right-of-way to Baltimore County at no cost to the county. A Utility Agreement must be executed by the owner and Baltimore County for the required public improvements.

☑ Permission to obtain a metered connection from the existing main may be obtained from the *Department of Permits and Development Management.*

☑ Permission to connect to, or (*to connect additional sanitary fixtures to*) the existing public sanitary sewer may be obtained from the *Department of Permits and Development Management.*

☑ Water and sanitary sewer service connections shall be installed by a utility contractor prior to the road improvements and shall be included in the *Utility and/or Right-of-Way Improvement Agreement.*

☑ The total water and/or sanitary sewer connection charge is determined, and payable, upon application for the plumbing permit.

☑ Fire hydrant spacing and location is subject to review and approval by the *Fire Protection Section* of the *Fire Department.*

☐ Right-of-way is required through this property for future construction and maintenance of public sanitary sewerage. The developer is responsible for the establishment of the right-of-way, and the conveyance thereof, to Baltimore County to no cost to the county.

☐ Public sanitary sewer with the associated right-of-way is required through this property for future construction upstream of this property. The developer is responsible for the cost of the construction and design of the public sanitary sewer and the establishment of the right-of-way and conveyance thereof, to Baltimore County at no cost to the county.

☐ This property is subject to water and/or sewer system connection charges based on the size of water meters utilized in accordance with current county policy.

☐ Public sanitary sewers serving the individual lots/properties within the subdivision shall be located within the public roads serving those lots/properties, where practicable.

☒ SHOW EXIST. SEWER & WATER HOUSE CONNECTIONS FOR 9216 LIBERTY ROAD.

☒ NEED AN ADDRESS AT LOT #2

RJF/PAM

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

INTER-OFFICE CORRESPONDENCE

DATE: October 19, 2005

To:

OPZ – Development Review (3) – Mr. Zeigler
PDM – Zoning Review – Mr. Richards
PDM - House Numbers & Street Names – Ms. Kemp
PDM - DPR (3) - Mr. Oberc
PDM - Real Estate -Mr. S. Houk
Rec & Parks - Mr. Cook
DEPRM - DC/GWM (2) - Mr. Seeley
DEPRM - SWM - Mr. Wirth
DEPRM - EIR - Ms. Farr
Fire Dept – Special Projects Officer
PW - Metro District Finance – Ms.Leake
SHA Mr. Gredlien - (3)
Solid Waste Management - Mr. Makowski
Verizon - Mr. B. Seiss

R.O.
3 std. Comm. 10/26/05
DAK 11/8/05

OCT 20 2005

From: Joe Chmura, ms 1105

Subject:
Project Name: LIBERTY PROPERTIES MANAGEMENT, INC.
Minor Sub No.: 05125M
District: 2C4
Engineer: GERHOLD, CROSS & ETZEL, LTD.
Phone No.: 410 823-4470

Action: **Minor Subdivision Review**

Please review the attached plan for compliance with current regulations and return comments to this office by **NOV. 9, 2005.** If you have no comments or do not need to review this plan, please indicate by placing your initials here

_____

Please initial here if your agency requests the Office of Law, Real Estate, to acquire

_____ HIGHWAY WIDENING
_____ GREENWAY
_____ DRAIN/UTILITY EASEMENT
_____ FOREST CONSERVATION
_____ FOREST BUFFER
_____ FLOODPLAIN
_____ PUBLIC WORKS AGREEMENT*****
_____ RIGHT OF WAY IMPROVEMENT AGREEMENT*****
_____ NONE OF THE ABOVE

*******NOTE: ANY AGREEMENTS THAT ARE REQUIRED MUST BE EXECUTED PRIOR TO THE APPROVAL OF THE MINOR SUBDIVISION PLAN.**

MINORSUB.DOT

BALTIMORE COUNTY

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

BUREAU OF DEVELOPMENT PLANS REVIEW POLICY MANUAL

In accordance with Section 26-283 of the Baltimore County code, regulations in this manual are intended to repeal the following sections of the Department of Public Works Development Procedures and Policy Manual adopted by County Council Resolution No. 100-85 on November 18, 1985.

Division I	*Sections 4, 5, 6, 7, 8*
Division II	*All Sections*
Division III	*Section 14*
Division IV	*All Sections*

February 27, 2002

06489.SPH

VIII. PUBLIC FACILITIES (ROADS)

PURPOSE – The proposed street system must provide safe and convenient vehicular circulation, both within the tract and between it and neighboring properties or particular traffic generators.

A. GENERAL

1. Roads shall be of such widths, grades and locations as to accommodate existing and future traffic as determined by existing and probable future land use.

2. The street layout of a proposed development shall conform to the Master Plan of Baltimore County.

3. Classification

   a. Roads may be classified as either:

      PUBLIC ROADS – Those which are constructed and inspected in accordance with Department of Public Works standards and specifications and which, after satisfactory completion, are accepted by the County for ownership and maintenance.

      PRIVATE ROADS – Those which are designed and constructed to Department of Public Works standards and specifications, but which are inspected and certified to the Bureau of Development Plans Review by the developer's engineer (P.E.) and are retained for ownership and maintenance by a single entity, company, or corporations, within an unsubdivided lot, parcel, or tract.

   b. Driveways are not classified as roads.

      DRIVEWAYS & PANHANDLES (*including residential and commercial parking lots and access to the parking lots*) – Off-street means of vehicular ingress and egress to a parcel of land (*used also by pedestrians*) which can be designed to physical and geometric standards differing from those required for streets.

4. The developer shall be responsible for the complete cost of preparing construction drawings for roads in accordance with Baltimore County Design Standards. The drawings shall be subject to review and approval by the Department of Public Works and the Department of Permits and Development Management.

5. When the sole or primary means of access leading to a development is substandard, the developer shall be responsible for all costs of bringing the road up to a standard approved by the

Department of Public Works, including rights-of-way acquisition, grading, paving, curbs and gutters, and sidewalks. If adequate access cannot be obtained, the developer will not be permitted to proceed with the development.

6. Provisions for turnaround (*cul-de-sacs or tee's*) on dead-end roads shall be required as stated in the Baltimore County Design *Manual, Roads and Streets, and the Standard Specifications and* Details for Construction.

7. All existing roads abutting a tract of land, whether accessed by the development or not, to be developed are to be improved through the full frontage to a standard approved by the Director of Public Works on the development side. The developer shall be responsible for all costs relating to design and grading, and for improvement costs, not to exceed curb and gutter, sidewalk, and pavement up to and including a 25-foot width. Such costs are recognized to be a reasonable apportionment of the cost of improving existing roads to standards necessitated by community growth. Costs for pavement in excess of those apportioned to the development will be the responsibility of Baltimore County.

B. MINIMUM PAVEMENT WIDTHS AND PAVEMENT THICKNESS

1. Minimum road widths between curbs will necessarily vary with character of building development and the amount of traffic anticipated and shall be designed in accordance with the Department of Public Works Design Manual and the Standard Specifications and Details for Construction. The pavement widths will be in accordance with the Minor Residential Street Standards Plate R-S, Baltimore County Department of Public Works Standard Details for Construction.

2. Where deemed in the public interest, the County reserves the right to require higher standards in connection with rights-of-way and paving width for developments. In such cases, the developer shall furnish the additional rights-of-way, including grading up to a maximum width of 84 feet, plus slope easements. However, where rights-of-way greater than 84 feet are required, the County will be responsible for the additional rights-of-way at the developer's original cost per acre.

3. Paving thickness will vary with the character of building development, the soil type, and the volume and type of traffic anticipated. The developer shall be responsible for the full thickness of paving required for the development as determined by the Baltimore County Department of Public Works. In no case shall the pavement section be less than the minimum 11" standard section in accordance with Plate R-2, Baltimore County Department of Public Works Standard Details for Construction.

IN RE: **DEVELOPMENT PLAN HEARING and PETITION FOR VARIANCE** – W/S Wampler Road; S of Bird River Road **(Windlass Run)** 15th Election District 6th Council District	* BEFORE THE
	* ZONING COMMISSIONER
	* FOR
	* BALTIMORE COUNTY
Clifford L. & Marjory M. Black, Owners; Iron Horse Properties, LLC, Developers	* Cases Nos. XV-855 & 06-176-A

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

HEARING OFFICER'S INTERIM OPINION AND DEVELOPMENT PLAN ORDER

This matter came before this Hearing Officer/Zoning Commissioner for a combined hearing, pursuant to Section 32-4-230 of the Baltimore County Code (B.C.C.). That Section permits an applicant to request development plan approval and zoning relief through a single public hearing. Pursuant to the development regulations codified in Article 32, Title 4 thereof, the Developer, Iron Horse Properties, LLC, seeks approval of a red-lined development plan prepared by Daft-McCune-Walker, Inc., for the proposed residential development of the subject property with a total of 16 single-family detached dwelling units (14 new, 2 existing). In addition, a Petition for Variance was filed seeking zoning relief from Section 1B01.2.C.1.b of the Baltimore County Zoning Regulations ("BCZR") to allow a side building face to side building face setback of 25 feet in lieu of the required 30 feet for Lots 1 and 2, and a side building face to side building face setback of 20 feet in lieu of the required 30 feet for Lots 4, 5 and 6. The proposed development and requested relief are more particularly described on the redlined development plan submitted at the hearing, which was accepted into evidence and marked as Developer's Exhibit 1.

As to the current status of this project through the development review process, which is codified in Article 32 of the B.C.C., a concept plan of the proposed development was prepared and a conference held thereon on March 28, 2005. The concept plan is a schematic representation of the proposed subdivision and is reviewed by and between representatives of the Developer and the reviewing County agencies at the Concept Plan Conference (CPC). Thereafter, as required, a Community Input Meeting (CIM) is scheduled during evening hours at a location near the property to provide residents of the area an opportunity to review and comment on the plan. In this case, the CIM was held on May 10, 2005 at the Victory Villa Community Center. Subsequently, a development plan is prepared and submitted for further review at a Development Plan Conference (DPC) which is again held between the Developer's consultants and reviewing County agencies. In this case, the DPC was held on November 28, 2005. At the DPC, comments are provided by the appropriate County reviewing agencies and a revised development plan ("the redlined plan") incorporating these comments is submitted at the Hearing Officer's Hearing, which in this case was begun on December 8, 2005. The issues raised and arguments advanced by both sides were recorded by Susan E. Smith, RPR with CRC Salomon reporter services.

Appearing at the public hearing on behalf of the Developer were Charles V. Main, II of Daft-McCune-Walker, Inc. ("DMW"), the consultants who prepared the development plan; and G. Scott Barhight, Esquire, the attorney for the Owner/Developer. Numerous representatives of the various Baltimore County agencies reviewed the plan and attended the hearing, including the following individuals from the Department of

Permits and Development Management: Walt Smith, Project Manager; Ron Goodwin from Land Acquisition; Dennis Kennedy from Development Plans Review; and Bruno Rudaitis from the Office of Zoning Review. Also appearing were Lynn Lanham from the Office of Planning (OP); R. Bruce Seeley from the Department of Environmental Protection and Resource Management (DEPRM); and Jan Cook with the Department of Recreation and Parks. Lieutenant Jimmie Mezick of the Fire Department was represented at the hearing through prior correspondence.

Testimony and evidence offered disclosed that the subject property is located on the west side of Wampler Road, just south of Dee Way in Middle River. The Property contains a gross area of 10.18 acres (9.85 net acres) zoned D.R. 2., and is wooded with a large wetland system that runs through the center of the property and one intermittent stream that runs along the western boundary. The non-forested portion of the site is improved with two single-family dwellings and related outbuildings and an area, which until recently, was used as a pasture for horses. As noted above, the Developer proposes a residential subdivision of 16 single-family detached dwellings, 14 of which will be new construction. The 2 existing dwellings will be retained as proposed Lots 15 and 16. The Plan was accepted into evidence as Developer's Exhibit 1. As shown on the Plan, access to the subdivision will be via Wampler Road. The Property will be served by public water and sewer. An extensive forest buffer/forest conservation easement surrounding the wetlands and protecting a large portion of the existing woods is shown on the Plan.

Pursuant to Sections 32-4-227 and 32-4-228 of the B.C.C., which regulate the conduct at the Hearing Officer's Hearing, I must first identify any unresolved agency

comments or issues. In this regard, G. Scott Barhight, Esquire, indicated on behalf of the Developer that there are unresolved issues; namely, 1) Public Works and the Office of Planning have requesting a connection to Compass Boulevard through the Property; 2) The Office of Planning has also requesting a connection to the adjacent Mairose Property; 3) Public Works has recommended a denial of the Developer's Request for a Waiver, pursuant to Section 32-4-107(a) of the B.C.C., to allow a 40-foot Right of Way for proposed Road A; and 4) DEPRM has not yet finalized their review of the Forest Buffer Variance Application, the Alternatives Analysis, the Forest Retention Investigation Report ("FRIR"), and the Preliminary Forest Conservation Plan.

In open hearing, the Developer requested that I rule on certain of the outstanding issues in order to provide them with direction on how to proceed. Specifically, the Developer asked me to rule on the issues identified in the above paragraph as Issue Nos. 1, 2, and 3. Neither members of the public attending the hearing nor any of the County agency representatives objected to this request. I note that the purpose of a Hearing Officer's Hearing is to resolve issues and in this particular situation, proceeding in this manner appears to be most efficient. Therefore, the nature of these findings is preliminary and interlocutory and will not serve as a final order or final action on the Plan. Therefore, any party who desires to take an appeal of this case must wait until I issue a final Order. After receiving this interim opinion, the Developer may decide to propose additional redline changes to the Plan.

As to Issue No. 1, the request by the Office of Planning and Public Works for a connection to Compass Road through the Property, the Community has strongly voiced

their objection. A petition (Community Exhibit 1), which is a part of the record since it was attached to the CIM minutes, was signed by approximately 56 residents of Wampler Road, Sterling Avenue, Grantwood Road and Coltwood Road objecting to the County's request for this connection. Robert Wiley, President of the Windlass Run Improvement Association, gave a history of Compass Road and questioned why the County now wants the interconnection when nothing has been done since World War II in this regard. Campbell Boulevard and Martin Boulevard will adequately address east to west traffic flows without the need to use this neighborhood. The residents of the locale prefer that Public Road "A" as shown on the Plan terminate within the subject property as a cul-de-sac and not be extended as a through road.

I note Developer's Exhibit 8, a revised redlined Right of Way Study prepared by DMW, which shows that a connection to Compass Road through the Property is possible from an engineering standpoint. However, Developer's Exhibit 7, the Floodplain Study requested by Public Works, demonstrates that providing such a connection will be excessively burdensome on the Developer. Specifically, the Floodplain Study revealed that in order to provide a connection to Compass Road with the least amount of impacts to the environmental resource, the cost to the Developer would be approximately 1,000,000.00.

On behalf of the Department of Public Works and the Office of Planning, Dennis Kennedy and Lynn Lanham testified that Compass Road should be extended. Ms. Lanham stated that it is evident from the housing boom in this area (i.e., Grantley Station, Sherman Property, Sterling Reserve, Lanbeck Property, Greensfield and Miramar

Landing) that such a connection would improve traffic circulation in the area, provide a connection to adjacent communities, and promote ease of access by emergency vehicles and other traffic.

Since Developer's Exhibit 8 demonstrates that connecting proposed Road A to Compass Road is feasible from an engineering standpoint, and since the entire west side of the Property has been identified as an area that will be dedicated to Baltimore County at no cost, the potential for the connection will not be lost and will remain available in the future, if needed. However, forcing the Developer to provide the County with a Right of Way over land which it will own will not be necessary and furthermore, as evidenced by Developer's Exhibit 7, the cost is unreasonably excessive on the Developer to provide this connection. Upon due consideration of the testimony and evidence offered by both sides, I find that there is no reasonable nexus between this proposed development and the required connection and decline to require same. I explain further below.

First, I am sensitive to the concerns raised regarding environmental impacts and believe that disturbance in environmentally sensitive areas should not be required unless necessary. Secondly, the Community has steadfastly demonstrated that they are opposed to any connection to Compass Road through this Property. Neither the County's Master Plan nor the Bird River - Middle River Community Plan show any such connection. Additionally, upon cross-examination, Dennis Kennedy stated that there is nothing in the County's budget to demonstrate that the County is pursuing such a connection. I find that for all of these reasons, it is unlikely that this connection will ever be constructed, however, since Developer's Exhibit 8 demonstrates that such a connection is

engineeringly feasible, and since the Plan shows that this entire area of land will be dedicated at no cost to the County, the opportunity for this connection will exist. The existing and planned (Campbell Boulevard) road network in this area seem to already provide an inter-connection between adjacent neighborhoods and the extension of Compass Road for this purpose is not necessary.

Notably, some 20 years ago, the Maryland Court of Appeals ruled that "In order to exact from a Developer a setting aside of land for highway purposes, there must be a reasonable nexus between the exaction and the proposed subdivision." Howard County v. J.J.M., Inc., 301 Md. 256, 282 (1984). I have previously cited this case in ruling that another connection requested by the County was not required (see Case No. II-659). In this case, I note that traffic heading east on Compass Road can currently proceed north on Maple Crest Drive in order to connect to Bird River Road. On balance, I believe these factors support a finding that providing a connection through this proposed development, to which the residents have strongly objected, is not warranted. Additionally, following the Howard County v. J.J.M., supra, case, there is no nexus between this development and the requested improvement. Therefore, I will not require the Developer to construct either a road or utilities for such a connection.

Turning to Issue No. 2, the request by the Office of Planning for a connection to the Mairose Property, I note that Mr. Mairose objected to this connection, as documented in his letter, which he mailed to my attention prior to the hearing and further explained at the hearing. I find in favor of the Office of Planning to the extent that I will require the Developer to provide a right of way for this connection between Lots 12 and 13, but will

not require the Developer to construct a road or utilities at this location. Again, there is no reasonable nexus between the proposed development and the road or utility improvements.

As to Issue No. 3, the waiver of public works standards, per Section 32-4-107(a) of the B.C.C. seeking approval for a 40-foot right-of-way in lieu of the required 50-foot right-of-way for proposed Road A, I will rule in favor of the Developer. Again, I find it is unlikely that a connection via the proposed Road A to Compass Road will ever be constructed and thus forcing the Developer to provide a 50-foot right-of-way for the proposed Road A is pointless. The only reason Public Works identified in support of their desire for a 50-foot right-of-way is that with a 40-foot right-of-way, the sidewalks will be in a private easement instead of the public right of way. I find that there is no evidence that the rights afforded to the County will differ - it seems to be a distinction without a difference. Since the rights afforded to the County with a 40 foot right of way will be the same as those afforded to the County with a 50 foot right of way, I will grant the waiver. In an effort to respond to Public Works' concern, however, I will require the Developer to place a note on the redlined Development Plan which I will require also be placed on both the Final Development Plan ("FDP") and Record Plat, as well as on any future amendment of those plans. This note shall state that it is the responsibility and obligation of the property owner to repair and maintain the sidewalks, and that in the event that the County ever requests fee simple title to the portion of each homeowners' property which encompasses the sidewalk, each homeowner agrees to deed that area to the County at no expense.

I recognize that additional side building face to side building face variances may be required should the Developer chose to redline the Plan to provide the Right of Way I am requiring to allow for a future connection to the Mairose Property. (Issue number 2) Therefore, in that event, and by way of this interim opinion, I will instruct the Developer to re-post the Property to notify the public of any request for additional variances. Re-advertising the Property will not be required. Instead, the Developer shall send a letter to everyone who signed the sign-in sheet at the hearing held on December 8, 2005, enclosing a copy of any amended petition for zoning variances.

Therefore, as to the status of the redlined Development Plan, I expect that the Developer will continue to attempt to resolve the outstanding issues that remain with DEPRM and that DEPRM will advise me as to the results of these efforts. As to the status of the pending zoning relief, the hearing will be reconvened at such time as DEPRM advises in writing that the outstanding issues have been resolved.

The above finding represents a summary of the testimony and exhibits offered at the initial hearing. The summary is not intended to be exhaustive, nor recite every comment or conclusion offered. However, a review of the testimony and evidence offered and rulings made upon certain issues is appropriate given the record of this case will be held open to allow DEPRM an opportunity to review and evaluate environmental impacts for this site as outlined above.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Article 32, Title 4 of the Baltimore County Code, the advertising of the property and public hearing held thereon,

Urban Planning and Land Development Control Law § 140, at 259 (1975):

> "Dedication ordinarily involves the conveyance of an interest in land by the fee owner *to the public;* usually to the local government having jurisdiction over the land. Reservation, on the other hand, involves no conveyance but restricts the right of the subdivider and others to use the land for anything but the restricted purpose." [Emphasis added.]

River Birch Associates v. City of Raleigh, 326 N.C. 100, 108, 388 S.E.2d 538, 542 (1990), further explains this public versus private conveyance distinction:

> A conveyance creates a "dedication" only when the conveyance benefits the public at large and not merely a portion of it, such as the property owners within a particular subdivision. "[T]here is no such thing as a dedication between owner and individuals. The public must be a party to every dedication. In fact the essence of a dedication to public uses is that it shall be for the use of the public at large." *Jackson v. Gastonia*, 246 N.C. 404, 409, 98 S.E.2d 444, 447 (1957) (quoting authorities). The ordinance in this case states unequivocally that the conveyance of common areas shall be in fee simple to the home owners' association, which is composed of the property owners of the subdivision. [Alteration in original.] [Citation omitted.]

[7] The recreational area condition on appellees' subdivision request does not constitute a dedication because the proposed recreational space is not for general public use; it is intended only for the use of those residing within the Parkway development. The recreational space requirement is a condition.

A subdivision dedication can be distinguished from a condition imposed on a subdivision approval (whether a reservation or otherwise) depending on the intended recipient. A subdivision dedication requires a developer to give the public the right to use a portion of his property or gives one of the incidents of ownership (e.g., an "in lieu" fee) to the public at

large to use. A subdivision condition, like the provision at issue in this case, merely limits the method in which a property owner may thereafter use the property. A subdivision dedication is an exaction generally governed by the standards discussed by the Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994):(1) whether there is an essential nexus as described in *Dolan;* and, if so, (2) whether the property interest taken is roughly proportional with the demand on public services created by the development. A condition not equating to an exaction normally is governed by "regulatory takings" analysis: (1) whether, as with statutes in general, a public purpose exists, and, if so, (2) whether the regulation deprives the property owner of all viable economic use of the entire property at issue,[9] which in the case at bar is, at the least, the entire third phase of the development.[10] *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015–16, 112 S.Ct. 2886, 2894–95, 120 L.Ed.2d 798 (1992).

> The *Nollan/Dolan* [exaction] requirement takes the form of a two-part test: . . . a permit condition imposed by government: (1) must have an "essential nexus" to a legitimate state interest; and (2) be "roughly proportionate" to the projected impacts of the proposed development. . . .
>
> Accordingly, the *Nollan/Dolan* unconstitutional conditions subset of regulatory takings law possesses its own legal

9. The primary focus in exactions cases will be whether the exaction is roughly proportionate; in "regulatory taking" cases the focus is on whether viable economic use remains.

10. Recent "takings" analysis in the cases has tended to compartimentalize takings into two main areas: (1) actual physical takings including exactions, and (2) *regulatory* takings, *i.e.*, the effect of a regulation leaving a property owner with no, or little, remaining viable economic use of the property. In the regulatory takings area, one important issue is the meaning of the term "viable" in the context of a specific case. There are in addition several subsets of takings jurisprudence that remain extant despite the apparent attempts to formalize the area of constitutional law into the two main areas. These subsets of constitutional analysis come primarily from earlier cases and generally have not been overruled or discarded by the more modern cases. We shall attempt to distinguish the older, but surviving concepts, *infra*.

standards, and is conceptually distinct from "partial," "total" or "temporary" regulatory takings principles.

Dwight H. Merriam, *What is the Relevant Parcel in Takings Litigation?*, *in 1999 Zoning and Planning Law Handbook* 353, 370 (Deborah A. Mans ed.1999). For instance, the Oregon Court of Appeals in *Clark*, 137 Or.App. at 301–02, 904 P.2d at 190, concluded

> that the condition [to create an on-site traffic-free area] is not an exaction; it is essentially a traffic regulation. Regulations of that kind are not "exactions" and are not subject to the *Dolan* test, as distinct from the tests for pure "regulatory takings." Condition 10 is a simple limitation on use, and petitioner makes no *regulatory* taking argument. [Citation omitted.]

The two concepts are very different, although exactions and regulatory takings both may arise from statutes. *Cf. Lucas*, 505 U.S. at 1015, 112 S.Ct. at 2893, 120 L.Ed.2d 798. The statute in *Lucas*, for instance, prohibited Mr. Lucas from building anything on his property. It did not require him, for instance, to give any of the incidents of his property ownership, or any part of the property, to the State, nor did it require him to permit the public at large to use his property or exercise any of the incidents of ownership over his property. The Supreme Court said:

> We have, however, described at least two discrete categories of regulatory action as compensable without case-specific inquiry into the public interest advanced in support of the restraint. The first encompasses regulations that compel the property owner to suffer a physical "invasion" of his property. In general (at least with regard to permanent invasions), no matter how minute the intrusion, and no matter how weighty the public purpose behind it, we have required compensation. For example, in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982), we determined that New York's law requiring landlords to allow television cable companies to emplace cable facilities in their apartment buildings constituted a taking, even though the facilities occupied at most only 1½ cubic feet of the landlords' property. See also *United States v. Causby*, 328 U.S. 256, 265, and n. 10, 66 S.Ct. 1062, 1067, and n. 10, 90 L.Ed. 1206 (1946) (physical invasions of air space); cf. *Kaiser Aetna v. United States*, 444 U.S. 164, 100 S.Ct. 383, 62 L.Ed.2d 332 (1979) (imposition of navigational servitude upon private marina).
>
> The second situation in which we have found categorical treatment appropriate is where regulation denies all economically beneficial or productive use of land. As we have said on numerous occasions, the Fifth Amendment is violated when land-use regulation "does not substantially advance legitimate state interests [essential nexus] *or denies an owner economically viable use of his land.*"

Id. at 1015–16, 112 S.Ct. at 2893–94, 120 L.Ed.2d 798 (some citations omitted). The *Lucas* Court meant that in these two instances, even if there is a valid, connected public purpose, i.e., an essential nexus, there still must be compensation for the taking.

There are two prongs to both exaction and regulatory takings. The first prong for both is generally the same, the essential nexus between the legitimate public purpose and the requirement. In practice, the essential nexus may need to be more specific in *pure* exaction cases because of the more specific nature of the taking, i.e., it may need to relate more specifically to the need for the exaction. The second prong for exactions is the rough proportionality analysis; the second prong for regulatory takings is whether there remains viable economic use of the entire tract involved. If the taking is an exaction, it is an actual taking and whether remaining viable economic use exists is irrelevant.[11] If it is a "regulatory taking," whether the limitation is "roughly proportional" to the demands for public services is irrelevant. This distinction is important because exactions now are scrutinized typically under Fifth Amendment Taking Clause jurisprudence pursu-

11. Any exaction, no matter how small or large, must comply with the rough proportionality standard of *Dolan*.

ant to *Dolan*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), while "regulatory takings" usually are examined under *Lucas*, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798, and related cases.

While the trend of the cases in the last twenty years has been towards a formulaic approach tending to include all "takings" analysis within either the *Lucas* "regulatory takings" analysis or the *Dolan* "exactions" analysis, there remain other relevant "takings" issues that do not fit into current "mainstream" concepts. We stated as much in *Maryland Port Administration v. QC Corp.*, 310 Md. 379, 388, 529 A.2d 829, 833 (1987): "To date courts have not developed a test which can be comprehensively and consistently applied to determine whether a government has taken property." While at the time of *QC Corp.* the impact of the "modern" takings cases, *Lucas, Dolan, Nollan,* and *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987), was not yet apparent, there is no indication in those more recent cases that they are to supplant completely the areas of "takings" law that, even with the broad limits of the modern cases, do not fit within their framework.

Moreover, some of the early cases were based in substantial part on Maryland constitutional law. They include *Grant v. Mayor & City Council*, 212 Md. 301, 129 A.2d 363 (1957), where we noted that the property owner was challenging the ordinance at issue there under state constitutional grounds: "the enforcement of Ordinance 711 . . . would take from them [rights of property] without compensation contrary to Art. 3, Sec. 40 of the Constitution of Maryland." *See also Stevens*, 240 Md. 563, 214 A.2d 778, ("appellants insist that § 42 is an attempt to 'take' their property . . . which is proscribed by Article 23 of The Declaration of Rights, Article III, § 40 of the Maryland Constitution . . . .") *See also Leet v. Montgomery County* and *Richmond Corp. v. Board of County Comm'rs*, *infra*. We have not limited the consideration of Maryland constitutional issues to the "regulatory takings" (loss of viable economic use) analysis of the Supreme Court's *Mahon/Lucas*

line of cases or the federal standard for exactions under *Nollan/Dolan* (although our *Howard County v. JJM, Inc.*, *infra*, case, in essence, was a precursor of the *Nollan/Dolan* rough proportionality standard).

An example of one type of case that generally would not fit within the *Lucas/Mahon* or *Nollan/Dolan* lines of cases would be when a governmental entity desires to prohibit altogether the operation of certain types of uses and enacts a statute that requires the cessation and subsequent demolition of an already existing use. In the absence of sufficient and proper amortization and nonconforming use provisions, constitutional "takings" issues could arise, even if remaining viable economic use would exist after the termination of the use and even if no exactions would result.

Grant v. Mayor of Baltimore, 212 Md. 301, 129 A.2d 363 (1957), and *Stevens*, 240 Md. 556, 214 A.2d 775, illustrate one of our pre *Nollan* and pre *Lucas* approaches to regulatory takings. These two cases show that, given the appropriate circumstances, we have held certain restrictions on existing nonconforming uses to be unconstitutional regardless of whether they effected deprivations of all economically beneficial use of property. In *Grant*, billboard companies and two owners of land leased for billboard use sought to invalidate a zoning ordinance establishing a five-year amortization period at the expiration of which all billboards in residential districts had to be taken down. This Court remarked that state courts across the nation have held that "it is unreasonable and unconstitutional for a zoning law to require immediate cessation of nonconforming uses otherwise lawful," *Grant*, 212 Md. at 308, 129 A.2d at 365, and cited, *inter alia*, the prior Maryland decision of *Amereihn v. Kotras*, 194 Md. 591, 601, 71 A.2d 865, 869 (1950) ("Manifestly this cannot be done, because it would amount to a confiscation of the property, and nonconforming use is a vested right and entitled to constitutional protection.").

This Court, however, then distinguished between regulations requiring immediate cessation of nonconforming uses

and those demanding cessation only after a reasonable amortization period. We reasoned that every regulation "impairs some vested rights because it affects property owned at its effective date"; therefore, the "distinction between an ordinance that restricts future uses and one that requires existing uses to stop after a reasonable time, is not a difference in kind but one of degree and, in each case, constitutionality depends on overall reasonableness, on the importance of the public gain in relation to the private loss." *Grant*, 212 Md. at 314, 315, 129 A.2d at 369. We further stated that the "significance and effect of difference in degree in any given case depends on circumstances, environment and length of the period allowed for amortization." *Id.* at 316, 129 A.2d at 370.

In *Grant*, the Court then conducted an in-depth consideration of the facts and competing interests involved in the particular case. The Court held that the amortization period was not unconstitutional for a number of specific reasons. First, it noted the extensive legislative findings that billboards depreciated property values and otherwise contributed to the detriment of residential neighborhoods. This demonstrated that there was a valid public purpose behind the ordinance. Next, the Court observed that the five-year amortization period was fair because the billboard companies themselves used a five-year depreciation rate for federal tax purposes. Even if the billboards proved to have a useful life beyond the five-year period, they could be transferred to commercial and industrial districts. Moreover, the billboards in residential districts constituted only 5% of the companies' total number of billboards in the City, and the companies' leases with landowners all contained clauses exempting the companies from liability for rent if the municipal ordinance required the billboards to be taken down. Thus, the Court concluded that, with regard to the billboard companies, the character of the governmental action was fair and reasonable and the economic impact on the companies was not severe. *Id.* at 316–21, 129 A.2d at 370–73.

In *Grant*, this Court also similarly considered the ramifications of the ordinance with respect to the two landowners who

leased their land to the billboard companies, finding that "any loss or harm that they suffer . . . is not sufficiently substantial compared to the public good to make the ordinance invalid as to them." *Grant*, 212 Md. at 321, 129 A.2d at 373. Although we stated that "[i]f the ordinance imposed such restrictions that the land could not be used for any reasonable purpose, it would, of course, be invalid," we did not limit our analysis to a finding that there had been no deprivation of all economically beneficial use. *Grant*, 212 Md. at 321, 129 A.2d at 373. Instead, the Court again considered such factors as the reasonable length of the amortization period and certain other factors, finding, *inter alia*, that their leases were only for one-year terms and that for the entire five-year amortization period they were able to earn revenue from the leases while seeking other uses for their property. *Id.* at 321–22, 129 A.2d at 373.

In *Stevens*, 240 Md. 556, 214 A.2d 775, we held that a purported amortization period did not prevent sections of an ordinance eliminating nonconforming uses from amounting to an unconstitutional taking. What distinguished the improper amortization in *Stevens* from the "true" amortization in *Grant* was that the nonconforming uses in *Stevens* did not pertain to commercial uses that lent themselves to amortization in order to protect the owner's investment. *Stevens*, 240 Md. at 570–71, 214 A.2d at 783. Rather, the ordinance compelled the removal or reduction of shrubbery, walls, other fixtures, and even soil above a certain height from portions of residential corner lots in order to serve the public purpose of improved traffic safety. As the Court noted, the City was attempting to force a few landowners to bear the burden of providing the public benefit of improved traffic safety "possibly to avert the necessity of erecting, at public expense, a stop sign or other traffic signal." *Stevens*, 240 Md. at 569, 214 A.2d at 782. In considering the fairness and reasonableness of the ordinance in detail, we again stressed that distinguishing a valid regulation of land use from an unconstitutional taking does not always lend itself to the application of sharply defined categories:

> [A] careful examination of the authorities discloses that when a "regulation" approaches the line of demarcation between it and a "taking" (and we think this is such a case), it sometimes does so by almost imperceptible gradations, so that it is difficult to determine where "regulation" ends and a "taking" is effectuated.

Id. at 564–65, 214 A.2d at 779. We held that the prospective sections of the ordinance were valid, as was the requirement that landowners trim their shrubbery and trees so long as the usefulness of the objects was not destroyed and no substantial losses were incurred. We held, however, that insofar as the ordinance required the reduction, removal, or destruction of existing property at the owners' expense, it was a taking, even though the owners would clearly not suffer from a deprivation of all economically beneficial or reasonable use of their property. *Id.* at 572–73, 214 A.2d at 784.

In several other cases, we have held that government action constituted a taking when the owners in question were not denied all beneficial uses of their property. For example, in *Leet v. Montgomery County*, 264 Md. 606, 287 A.2d 491 (1972), we held unconstitutional the application of trash-removal ordinances requiring a landowner to remove, at his own expense, automobiles abandoned on his property by trespassers against his will and without his knowledge. This Court held that, although there was no physical invasion or legal taking by the government, nonetheless the landowner was compelled to expend substantial private resources to serve the public good and therefore was deprived of his property without just compensation.

Several of our cases have also found unconstitutional takings when the government has attempted to use its regulatory powers to keep depressed, or even to depress, the value of property it anticipates it might need to acquire in the future. We have held that the government cannot use its regulatory powers to depress values in order to acquire the property at the lower values. Whether the regulations deprived the owner of all use for a temporary period, or reduced use over a longer period, we have held, generally, that when the purpose

is to depress values a "taking" can occur. *See Hoyert v. Board of County Comm'rs*, 262 Md. 667, 278 A.2d 588 (1971); *Carl M. Freeman Assocs., Inc. v. State Rds. Comm'n*, 252 Md. 319, 250 A.2d 250 (1969). We quoted *Freeman*, 252 Md. at 329–30, 250 A.2d at 255, in *Mayor of Baltimore v. Kelso Corp.*, 281 Md. 514, 519–20, 380 A.2d 216, 220 (1977):

> [I]n a case where the direct and sole purpose of the ordinance is to depress property values, . . . we must weigh the public purpose sought to be advanced and the means taken to achieve it, in light of the constitutional right of the property owner to receive just compensation for his property taken by eminent domain. In such a situation the Walls of Jericho must fall and the property owner be permitted to defend himself against the ordinance. The ordinance is directly involved and is directly impinging upon one of his constitutional guarantees. The property owner must be protected from prejudicial evidence as to value based on restrictions on the use of his property unconstitutionally impressed as part of a design to freeze or depress its value. To hold otherwise is to deprive him of the opportunity to receive just compensation for his property guaranteed by section 40 of Article III of the Constitution of Maryland. [Alteration in original.]

Another area of "takings" law in which the cases have found unconstitutional takings not involving exactions, and in which remaining viable economic use arguably remains, are "vesting" cases. "Vesting" occurs when property owners have made significant steps in the development of a project prior to the enactment of statutes that prohibit what formerly was permitted. Even in Maryland, where the concept seems to be limited to situations in which some progress under the prior statutes is required, we have recognized the potential for unconstitutional takings to occur, even though a property owner might be permitted an economically viable use under the new statute. Although we held the ordinance valid in *Rockville Fuel & Feed Co. v. City of Gaithersburg*, 266 Md. 117, 291 A.2d 672 (1972), and held that Rockville Fuel's actions had not been substantial enough to vest in it the right to

proceed under the old ordinance, we acknowledged by implication that, had its actions been substantial enough, the new ordinance's impact on Rockville Fuel might have amounted to an unconstitutional taking, even though remaining viable economic use might have remained and any exaction from the property owner might not have occurred. In *Richmond Corp. v. Board of County Comm'rs*, 254 Md. 244, 255–56, 255 A.2d 398, 404 (1969), we said:

> In Maryland it is established that in order to obtain a "vested right" in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use.

That type of constitutional protection would be available in the absence of exactions and even if remaining viable economic use might remain.

These cases and situations which we discuss next above—and there may be other situations as well (we have not discussed actual physical takings outside an "exaction" context, for instance nor have we here discussed the concept of zoning estoppel)—indicate that, while many "takings" situations may be categorized into "regulatory takings" as defined in the *Lucas/Mahon* line of cases, or into "exactions" as defined in the *Nollan/Dolan* line of cases, there are other categories that simply do not fit into these analyses of "takings" law. Accordingly, the Court will need, on occasion, to address the constitutionality of statutes outside the structure of the regulatory takings and viable economic use standards applied in most instances.

[8] There are cases in which, even though viable economic use remains under the *Lucas* standard, further constitutional analysis is appropriate. In other words, if no viable economic use remains, and traditional nuisance issues are absent, an

unconstitutional taking generally will have occurred. If economic use remains, the additional analyses of the earlier cases, including our own, or even of current cases as they develop over time may, in a given instance, be necessary.

In *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631 (1978), the United States Supreme Court, prior to *Lucas*, *First English Evangelical*, *Nollan*, *Dolan*, and *Del Monte Dunes*, *infra*, opined: "this Court, quite simply, has been unable to develop any 'set formula' for determining when 'justice and fairness' require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons." In *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999), *aff'g* 95 F.3d 1422 (9th Cir.1996), the Court returned to the dilemma it recognized in *Penn Central* (if it had ever departed, given some of the language used in the previous cases). The *Del Monte Dunes* Court said:

> Almost from the inception of our regulatory takings doctrine, we have held that whether a regulation of property goes so far that "there must be an exercise of eminent domain and compensation to sustain the act ... depends upon the particular facts." Consistent with this understanding, we have described determinations of liability in regulatory takings cases as "'essentially ad hoc, factual inquiries,'" requiring "complex factual assessments of the purposes and economic effects of government actions."

Id. at ——, 119 S.Ct. at 1644, 143 L.Ed.2d 882 (citations omitted).

[9] In the case at bar, however, appellees have presented no evidence or compelling reason, nor did they proffer any constitutional questions other than the *Lucas* and *Dolan* issues. Indeed, under the circumstances of this case, it is difficult to contemplate other constitutional issues. The issue, *as presented* in the case *sub judice*, involves only a question of whether all viable economic use has been taken by the regula-

tion, whether there has been an exaction, and whether the trial court applied the correct concepts.

Continuing our consideration of the present case, the Supreme Court recently noted the inapplicability of the *Dolan* "rough proportionality" test to general "regulatory takings" issues in *Del Monte Dunes*. There, in a six-year effort, the developer originally had submitted subdivision plans for 344 residential units on a parcel where more than 1,000 units were permitted. When the planning commission disapproved that plan and informed the developer that a subdivision of 264 units would be approved, he submitted plans for a subdivision of 264 units. The planning commission disapproved that plan and asked the developer to resubmit a plan for 224 units, which the developer submitted. When the planning commission disapproved the 224-unit subdivision, the developer appealed to the city council, which referred the project back to the planning commission to consider a 190-unit subdivision. The developer resubmitted a plan for a 190-unit subdivision to the commission. The commission rejected that plan and the developer appealed to the city council. The council overruled the commission and granted the developer an eighteen-month conditional use permit. Several conditions were imposed on the permit including open space and environmental limitations, one of which was to preserve habitat for "Smith's Blue Butterflies," only one larva of which had ever been seen on the property. The developer then resubmitted his plans to the commission as required by the city council. The commission's staff found that the developer had complied with all of the city's conditions and recommended approval. The commission then rejected its staff's recommendation and again rejected the plan, leaving less than two months on the developer's conditional use permit. The developer again appealed to the city council and requested a twelve-month extension on the life of his conditional use permit. The city council finally denied the developer any extension and disapproved his plan. By this time, a sewer moratorium was in place. The Supreme Court noted "after five years, five formal decisions, and 19 different site plans, respondent Del Monte Dunes decided the

city would not permit development of the property under any circumstances. Del Monte Dunes commenced suit against the city...." *Id.* at ——, 119 S.Ct. at 1633, 143 L.Ed.2d 882 (citation omitted). The developer filed a 42 U.S.C. § 1983 action and ultimately was awarded $1,400,000.00 in damages. His property, in the meantime, had been bought by the State of California for use as a park.

The primary issues related to the developer's right to a jury trial. The Supreme Court, however, took notice that the United States Court of Appeals for the Ninth Circuit, in affirming the district court, had stated: "[e]ven if the City had a legitimate interest in denying Del Monte's development application, its action must be 'roughly proportional' to furthering that interest.... That is, the City's denial must be related 'both in nature and extent to the impact of the proposed development.'" *Id.* at ——, 119 S.Ct. at 1635, 143 L.Ed.2d 882 (quoting 95 F.3d at 1430) (alteration in original). The Supreme Court rejected the Ninth Circuit's attempt to apply the rough proportionality analysis to a "regulatory takings" case, stating:

> Although in a general sense concerns for proportionality animate the Takings Clause, see *Armstrong v. United States*, 364 U.S. 40, 49, 80 S.Ct. 1563, 4 L.Ed.2d 1554 (1960) ("The Fifth Amendment's guarantee ... was designed to bar the Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole"), we have not extended the rough-proportionality test of *Dolan* beyond the special context of exactions—land-use decisions conditioning approval of development on the dedication of property to public use. See *Dolan*, supra, at 385, 114 S.Ct. 2309; *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 841, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987). The rule applied in *Dolan* considers whether dedications demanded as conditions of development are proportional to the development's anticipated impacts. It was not designed to address, and is not readily applicable to, the much different questions arising where, as here, the landowner's challenge is based not on excessive exactions but on denial of development. We believe, accordingly, that

the rough-proportionality test of *Dolan* is inapposite to a case such as this one.

Id. at ——, 119 S.Ct. at 1635, 143 L.Ed.2d 882.[12]

We further note that in *Messer v. Town of Chapel Hill*, 59 N.C.App. 692, 297 S.E.2d 632 (1982), *review denied*, 307 N.C. 697, 301 S.E.2d 390 (1983), a case cited by appellant and almost exactly on point, a state statute allowed local ordinances to require either a dedication or reservation of recreation areas. The developer in that case wished to place open space on the northeast corner of the parcel to be subdivided. The local Planning Board disagreed with the proposed shape and location of that parcel. The North Carolina Court of Appeals noted the importance of the disjunctive "dedication or reservation" requirement "because dedication of private property contemplates public use." *Id.* at 695, 297 S.E.2d at 634. The reservation, by contrast, did not amount to eminent domain because that power typically "is defined as 'the power of the sovereign or some agency authorized by it to take private property for public use.'" *Id.* at 696, 297 S.E.2d at 635 (quoting *Virginia Elec. & Power Co. v. King*, 259 N.C. 219, 220, 130 S.E.2d 318, 320 (1963)). The court concluded that "[m]erely changing the location of a recreation area as a condition of approval of a subdivision plan does not amount to a taking so as to require compensation." *Id.*

As in *Messer*, the case *sub judice* does not involve an exaction because no dedication has occurred. A rough proportionality review as to whether the need for recreational space is generated by the demands of the development is unnecessary because nothing has been exacted for the general public. Presuming that a valid public purpose exists, the test described in *Lucas*, whether the regulatory impact is so severe as to leave the property owner with no remaining viable economic use of the totality of his land, is the type of taking alleged in the case at bar.

12. The Supreme Court was unanimous in its rejection of using the "rough proportionality" test in regulatory limitation cases, although other parts of the majority opinion were challenged in concurring or dissenting opinions.

We note that in its opinion, the trial court utilized the term "dedication" indiscriminately. It used "dedication" to describe what actually were conditions, and then attempted to apply the *Dolan* "rough proportionality" standard. In doing so, the trial court erred.

In his opinion, the trial judge commented on Judge Williams' findings in the previous case, which we describe in part, *supra*. The trial judge below stated that Judge Williams had "ordered that the Commission was to approve the Section III Proposal and then send it to the Annapolis City Council to consider the limited issue of whether there was a need for recreational space, and if so, where it was to be located." Ultimately, the City Council approved Section III, attaching certain conditions that did not include any dedication to public use or any exactions relevant to this appeal. The pertinent conditions were

> that the preliminary Plat entitled "Parkway, Section III", be approved subject to the following conditions . . .:
>
> 1. The developer shall provide a minimum of 2,375 square feet of recreational space *for common use* at Lot One located on the corner of Hilltop Lane and Tyler Avenue;
> 2. Lot One located on the corner of Hilltop Lane and Tyler Avenue shall not be improved with any residential dwelling unit. . . .

Resolution R–47–95 (emphasis added). These conditions are not exactions. The usual and customary meaning of the phrase "for common use" in a subdivision context is that all of the subdivision residents have the right to use the area.[13] Generally, it does not, without more, extend any rights to the public at large to use the area.[14] The condition does not limit

13. Under the circumstances of this case, the condition could also be construed to mean that the residents of all three phases have the right to use the area.

14. It may well be possible for a regulation to be so extensive that it might amount to an exaction or a "taking," even without any express provision for actual physical public use.

the right of appellees to exclude nonresidents of the subdivision from new Lot 1. It does not prohibit the posting of "no trespassing" signs for instance or other ways to deny access to the public. The second condition merely limits the uses appellees can make of new Lot 1. This, accordingly, is not an exactions case; thus, under the issues presented in this case, our review of the constitutionality of the conditions is governed by whether the conditions deny appellees all *viable* economic use of the property.

The trial judge further commented in reference to the first condition that "[t]he use of [appellees'] property as a mini-park would deprive [appellees] of their right to exclude others." He then cites two cases that describe the "right to exclude others" as an essential element of property ownership. As we have noted, the condition in the case at bar does not interfere with appellees' rights to exclude others. The condition does not require them to confer any rights of access to members of the general public, only to the owners of the subdivision and their successors in interest as appellees agreed to do in 1976.

The lower court then cited two "regulatory takings" cases, *Agins v. City of Tiburon*, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980), and *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922), for the proposition that if a regulation deprives a property owner of all economically viable use of his land, it is an unconstitutional taking of property. The trial court compounded its previous mistake by adding a third step:

> the final step of a takings analysis requires the Court "to determine whether the degree of the exactions demanded by the City's permit conditions bear the required relationship to the projected impact of the Plaintiffs' proposed development." *Dolan v. City of Tigard*, 512 U.S. 374 [114 S.Ct. 2309, 129 L.Ed.2d 304] (1994). In *Dolan*, the Supreme Court adopted the "rough proportionality test" for determining the question above.
>
> . . . .

Having articulated the standard of law applicable in an analysis of a takings case, the Court can now apply the standard to the facts in the case at bar.

At this point the lower court had improperly mixed two different concepts: regulatory takings and exactions. As we stated, *supra*, a regulatory taking claim does not allege an actual physical taking. It is merely a claim that a regulation so limits the use of an owner's property that it leaves him with no viable economic use.[15] Initially, the concept of an exaction has been held to include, although they are not necessarily limited to, actual takings, albeit done by regulatory action. Exactions have been held to include such things as lateral beach easements, *see, e.g., Nollan*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677, flood plain and public bicycle easements, *see, e.g., Dolan*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304, a cable television easement, *see Loretto*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868, a $280,000 mitigation fee and $33,220 "in lieu of art" fee, *see Ehrlich v. City of Culver City*, 15 Cal.App.4th 1737, 19 Cal.Rptr.2d 468 (1993), *vacated*, 512 U.S. 1231, 114 S.Ct. 2731, 129 L.Ed.2d 854 (1994),[16] dedication of land for canals, *see, e.g., Wald Corp. v. Metropolitan Dade County*, 338 So.2d 863 (Fla.Dist.Ct.App.1976), *cert. denied*, 348 So.2d 955 (Fla.1977), impact fees, *see, e.g., Board of County Comm'rs v. Bainbridge, Inc.*, 929 P.2d 691 (Colo.1996); *Southern Nev. Homebuilders Ass'n, Inc. v. Las Vegas Valley Water Dist.*, 101 Nev. 99, 693 P.2d 1255 (1985), dedication of parks,

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15. As we have explained, *supra*, in some situations regulatory "takings" claims may not be limited to cases in which no remaining economical use remains. In this case, however, the only allegations involved a loss of all economical use or an exaction.

16. The Supreme Court sent this case back to the state court for reconsideration in light of *Dolan*. On remand, the intermediate appellate court affirmed its prior holding that the exactions were permissible even under *Dolan* and *Nollan*. On appeal, the Supreme Court of California determined that the record did not contain sufficient evidence to satisfy the rough proportionality test, but remanded the case to the trial level to enable the city to again address rough proportionality. *See Ehrlich v. City of Culver City*, 12 Cal.4th 854, 50 Cal.Rptr.2d 242, 911 P.2d 429, *cert. denied*, 519 U.S. 929, 117 S.Ct. 299, 136 L.Ed.2d 218 (1996).

playgrounds and schools to the public at large, or fees in lieu thereof, *see, e.g., Associated Home Builders v. City of Walnut Creek*, 4 Cal.3d 633, 94 Cal.Rptr. 630, 484 P.2d 606, *appeal dismissed*, 404 U.S. 878, 92 S.Ct. 202, 30 L.Ed.2d 159 (1971); *Krughoff v. City of Naperville*, 68 Ill.2d 352, 12 Ill.Dec. 185, 369 N.E.2d 892 (1977); *Pioneer Trust & Sav. Bank v. Village of Mount Prospect*, 22 Ill.2d 375, 176 N.E.2d 799 (1961); *Collis v. City of Bloomington*, 310 Minn. 5, 246 N.W.2d 19 (1976); *Home Builders Ass'n v. City of Kansas City*, 555 S.W.2d 832 (Mo.1977); *Billings Properties, Inc. v. Yellowstone County*, 144 Mont. 25, 394 P.2d 182 (1964); *Bayswater Realty & Capital Corp. v. Planning Bd.*, 76 N.Y.2d 460, 560 N.Y.S.2d 623, 560 N.E.2d 1300 (1990); *Jenad, Inc. v. Village of Scarsdale*, 18 N.Y.2d 78, 271 N.Y.S.2d 955, 218 N.E.2d 673 (1966); *Frank Ansuini, Inc. v. City of Cranston*, 107 R.I. 63, 264 A.2d 910 (1970); *City of College Station v. Turtle Rock Corp.*, 680 S.W.2d 802 (Tex.1984); *Call v. City of West Jordan*, 606 P.2d 217 (Utah 1979), *rev'd on other grounds in reh'g*, 614 P.2d 1257 (Utah 1980); *Jordan v. Village of Menomonee Falls*, 28 Wis.2d 608, 137 N.W.2d 442 (1965), *appeal dismissed*, 385 U.S. 4, 87 S.Ct. 36, 17 L.Ed.2d 3 (1966), mandatory dedications of streets, *see, e.g., City of Bellefontaine Neighbors v. J.J. Kelley Realty & Bldg. Co.*, 460 S.W.2d 298 (Mo.Ct.App.1970); *Vogel v. Board of County Comm'rs*, 157 Mont. 70, 483 P.2d 270 (1971); *Simpson v. City of North Platte*, 206 Neb. 240, 292 N.W.2d 297 (1980); *McKain v. Toledo City Plan Comm'n*, 26 Ohio App.2d 171, 270 N.E.2d 370 (1971), dedication of geothermal rights, *see Parks v. Watson*, 716 F.2d 646 (9th Cir.1983), dedication of drainage facilities, *see, e.g., Petterson*, 9 Ill.2d 233, 137 N.E.2d 371; *Divan Builders, Inc. v. Planning Bd.*, 66 N.J. 582, 334 A.2d 30 (1975), and the imposition of navigational servitudes, *see Kaiser Aetna*, 444 U.S. 164, 100 S.Ct. 383, 62 L.Ed.2d 332. Nothing similar to the exactions described in the cases above, and in many others, has happened here.

In the present case, the trial court stated that the city had overstepped its authority when it imposed the condition that proposed Lot 1 could not have a dwelling constructed on it. Apparently, the trial court made the mistake of considering

only the portion of the third-phase subdivision directly affected by the building and recreational space limitations, new Lot 1. After finding that both conditions met the essential nexus test, "the city has satisfied the requirements for the essential nexus test as specified by the U.S. Supreme Court in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 [107 S.Ct. 3141, 97 L.Ed.2d 677] (1987)," [17] the trial court went on to apply the *Dolan* rough proportionality test to the condition that no dwelling be built on Lot 1, saying there must be "' . . . some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.'" (Quoting *Dolan*, 512 U.S. at 391, 114 S.Ct. at 2319–20, 129 L.Ed.2d 304.) The trial court found "that [the] City Council's condition ordering that Lot One of the Section III Proposal be dedicated as recreational space to serve as a mini-park is not reasonably related to the needs that would be created by the subdivision should it be built." [18] The trial court applied the wrong standard because there was no dedication or other exaction. There was a condition that the open space area previously agreed to be placed at that location for the "common use" of the subdivision residents. The trial court should have applied the regulatory takings standard, i.e., under the issues, as presented in this case, whether there was loss of all viable economic use.

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17. Again the trial court utilized an exactions case. The Nollans were required to give a lateral beach access easement to the general public. That is an exaction and an actual taking. The essential nexus or public purpose standards, however, apply generally to both exactions and regulatory takings cases.

18. "Reasonably related" is a term used by this Court in *Howard County v. JJM, Inc.*, 301 Md. 256, 482 A.2d 908. The Supreme Court in *Dolan*, 512 U.S. at 391, 114 S.Ct. at 2319, 129 L.Ed.2d 304, stated:

> We think the "reasonable relationship" test adopted by a majority of the state courts is closer to the federal constitutional norm.... But we do not adopt it as such, partly because the term "reasonable relationship" seems confusingly similar to the term "rational basis".... We think a term such as "rough proportionality" best encapsulates what we hold to be the requirement of the Fifth Amendment [in respect to exactions].

The trial court also erred by not including *at least* the entire third-phase property (all of Lot 4, including the duplex lots).[19] In considering whether a regulatory taking has left remaining viable economic use of the property, the property to be assessed for economically viable use is, as we have said, the entire tract of land, not just the proposed new corner Lot 1. The Supreme Court began to establish limits when considering property in such a takings context in *Penn Central*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631. In *Penn Central*, the Supreme Court was considering the effect of "landmark preservation" ordinances that had resulted in Penn Central being unable to erect a high rise in the airspace above its train station in New York City. Penn Central admitted that viable economical uses remained in the existing uses of the train station. It argued that the total denial of the ability to build above the train station was a complete limitation of its right to that segment of its property—the air rights. The Court noted that they argued

> that the Landmarks Law has deprived them of any gainful use of their "air rights"... and that, irrespective of the value of the remainder of their parcel, the city has "taken" their right to this superadjacent air space, thus entitling them to "just compensation" measured by the fair market value of these air rights.

Id. at 130, 98 S.Ct. at 2662, 57 L.Ed.2d 631. The Supreme Court declined to adopt Penn Central's theory that the air rights could be separated for "takings" considerations.

> "Taking" jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In deciding whether a particular governmental action has effected a taking, this Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole—here, the city tax block designated as the "landmark site."

Id. at 130–31, 98 S.Ct. at 2662, 57 L.Ed.2d 631. The Court noted that Penn Central's assertion that it could "establish a 'taking' simply by showing that [it] ha[s] been denied the ability to exploit a property interest that they ... believed was available ... is quite simply untenable." *Id.* at 130, 98 S.Ct. at 2662, 57 L.Ed.2d 631. In its discussion of the air rights issue, the Court discussed a claim that the city was taking Penn Central's air rights for use of the public. The Court said:

> The Landmark Law's effect is simply to prohibit [Penn Central] or anyone else from occupying portions of the airspace above the Terminal, while permitting [Penn Central] to use the remainder of the parcel in a gainful fashion. This is no more an appropriation of property by government for its own uses than is a zoning law prohibiting, for "aesthetic" reasons, two or more adult theaters within a specified area, or a safety regulation prohibiting excavations below a certain level.

Id. at 135, 98 S.Ct. at 2665, 57 L.Ed.2d 631 (citations omitted).

The more recent case of *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987), involved a Pennsylvania statute that required companies mining subsurface coal to leave a certain portion of the coal in place to support the surface above, avoiding subsidence problems.[20] The statute required the companies to leave in place 27 million tons of coal. The companies argued, in a takings context, that in determining whether there was any

19. As there clearly remains viable economic use in the remainder of Lot 4, the entire phase now being subdivided, we do not have to decide whether in assessing economic viability all three phases should be considered. We note that this property has been considered from the beginning as a three-phase project, and appellees have retained ownership of the future phases throughout the length of the project. They presumably have already received viable economic benefits from the sales of the first two phases. An assessment of economic viability may well require a consideration of the whole three-phase project.

20. In Pennsylvania, property law "subsurface" rights, under certain circumstances, were considered separate property. Many original owners, when subsurface and surface rights were combined as one property, had conveyed their subsurface mineral rights without reserving surface support rights. *See id.* at 478, 107 S.Ct. at 1238, 94 L.Ed.2d 472.

remaining viable economic use in the property only that 27 million tons of coal should be considered as the property. The State of Pennsylvania argued that all of the coal should be considered in assessing remaining viable economic use. The 27 million tons of coal required to remain in place constituted less than 2% of the total amount of coal. The Supreme Court said:

> The parties have stipulated that enforcement of the [statute] will require petitioners to leave approximately 27 million tons of coal in place. Because they own that coal but cannot mine it, they contend that Pennsylvania has appropriated it for the public purposes described in the Subsidence Act.
>
> This argument fails for the reason explained in *Penn Central* and *Andrus*. The 27 million tons of coal do not constitute a separate segment of property for takings law purposes. Many zoning ordinances place limits on the property owner's right to make profitable use of some segments of his property. A requirement that a building occupy no more than a specified percentage of the lot on which it is located could be characterized as a taking of the vacant area as readily as the requirement that coal pillars be left in place. Similarly, under petitioners' theory one could always argue that a setback ordinance requiring that no structure be built within a certain distance from the property line constitutes a taking because the footage represents a distinct segment of property for takings law purposes. There is no basis for treating the less than 2% of petitioners' coal as a separate parcel of property.
>
> . . . .
>
> When the coal that must remain beneath the ground is viewed in the context of any reasonable unit of petitioners' coal mining operations and financial-backed expectations, it is plain that petitioners have not come close to satisfying their burden of proving that they have been denied the economically viable use of that property. The record indicates that only about 75% of petitioners' underground coal can be profitably mined in any event, and there is no

> showing that petitioners' reasonable "investment-backed expectations" have been materially affected by the additional duty to retain the small percentage that must be used to support the structures protected by [the statute].

Id. at 498–99, 107 S.Ct. at 1248–49, 94 L.Ed.2d 472 (citation omitted).[21]

In *Concrete Pipe & Products v. Construction Laborers Pension Trust*, 508 U.S. 602, 113 S.Ct. 2264, 124 L.Ed.2d 539 (1993), the company argued that the provisions denying it the ability to withdraw from pension plans constituted an unconstitutional taking of its property. There the Supreme Court relied on both *Penn Central* and *Keystone Bituminous* in holding:

> While Concrete Pipe tries to shoehorn its claim into this analysis by asserting that "[t]he property of [Concrete Pipe] which is taken, is taken in its entirety," we rejected this analysis years ago in *Penn Central* . . . where we held that a claimant's parcel of property could not first be divided into what was taken and what was left for the purpose of demonstrating the taking of the former to be complete and hence compensable. To the extent that any portion of property is taken, that portion is always taken in its entirety; the relevant question, however, is whether the property taken is all, or only a portion of the parcel in question. Accord, *Keystone Bituminous* . . . . [Alterations in original.] [Citations omitted.]

Id. at 643–44, 113 S.Ct. at 2290, 124 L.Ed.2d 539; *accord Clajon Prod. Corp. v. Petera*, 70 F.3d 1566, 1577 (10th Cir.

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21. The Supreme Court also distinguished regulatory takings from exactions:

> We do not suggest that the State may physically appropriate relatively small amounts of private property for its own use [(an exaction)] without paying just compensation. The question here is whether there has been any taking at all when no coal has been physically appropriated, and the regulatory program places a burden on the use of only a small fraction of the property that is subjected to regulation.

Id. at 499 n. 27, 107 S.Ct. at 1249 n. 27, 94 L.Ed.2d 472.

1995) ("Regulatory taking jurisprudence 'does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated.'" (quoting *Penn Central*, 438 U.S. at 130, 98 S.Ct. at 2662, 57 L.Ed.2d 631)); *Tabb Lakes, Ltd. v. United States*, 10 F.3d 796, 802 (Fed.Cir.1993) ("Clearly, the quantum of land to be considered is not each *individual* lot containing wetlands.... If that were true, the Corps' protection of wetlands via a permit system would, *ipso facto*, constitute a taking in every case where it exercises its statutory authority."); *cf. Andrus v. Allard*, 444 U.S. 51, 65–66, 100 S.Ct. 318, 327, 62 L.Ed.2d 210 (1979) ("[T]he denial of one traditional property right does not always amount to a taking. At least where an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking, because the aggregate must be viewed in its entirety.") [22]

The town in *Quirk v. Town of New Boston*, 140 N.H. 124, 663 A.2d 1328 (1995), amended its zoning ordinance while Quirk was in the process of seeking subdivision approval for additions to an existing camping ground. One amendment required a 200-foot "buffer" for campgrounds, prescribing that the outer 100 feet of the buffer stay in its natural condition. Quirk challenged the provision on several bases including "takings" claims.

The New Hampshire Constitution contained a provision, not specifically found in the Maryland Constitution or the United States Constitution, which provided that "no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people." *Id.* at 130, 663 A.2d at 1332. After noting that "[a] reasonable zoning ordinance, therefore, effects an unconstitutional taking only if its application 'to a particular parcel denies the owner an economically viable use of his or her land,'" the New Hampshire Supreme Court noted that the owner considered only the 200-foot wide "buffer" area to be the property affected for unconstitutional taking purposes. *Id.* at 130–31, 663 A.2d at 1332 (quotation omitted). The court disagreed:

> Focusing on a discrete portion of a larger tract may be appropriate where the land owner has fragmented the property for distinct development or uses. *See, e.g., Penna. Coal Co. v. Mahon*, 260 U.S. 393, 414–15, 43 S.Ct. 158, 160, 67 L.Ed. 322 (1922) (surface rights distinguished from mining rights); *Loveladies Harbor, Inc.*, 28 F.3d at 1174 (land developed or sold before regulatory environment existed not considered part of property affected by permit denial)....
>
> In the present case, we find no compelling reason to view the perimeter as a discrete segment of the campground....
>
> ... Accordingly, we uphold the trial court's determination that no constitutional taking occurred.

Id. at 131, 663 A.2d at 1332–33. *See also State Dep't of Envtl. Reg. v. Schindler*, 604 So.2d 565 (Fla.Dist.Ct.App.), *review denied*, 613 So.2d 8 (Fla.1992); *K & K Constr., Inc., v. Department of Natural Resources*, 456 Mich. 570, 575 N.W.2d 531, *cert. denied*, 525 U.S. 819, 119 S.Ct. 60, 142 L.Ed.2d 47 (1998); *American Dredging Co. v. State Dep't of Envtl. Protection*, 169 N.J.Super. 18, 404 A.2d 42 (App.Div.1979); *Zealy v. City of Waukesha*, 201 Wis.2d 365, 548 N.W.2d 528 (Wis. 1996); Richard C. Ausness, *Regulatory Takings and Wetland Protection in the Post-*Lucas *Era*, 30 Land & Water L.Rev. 349, 409–11 (1995); Merriam, *supra*, at 374 ("With the exception of the Scalia dictum in Lucas, the Court has uniformly taken the view that the denominator in regulatory takings cases should be viewed expansively, both to afford government regulators deference and to avoid a mode of analysis in which virtually every government regulation could be viewed as a

22. The Supreme Court in *Concrete Pipe* has mixed principles it created for some federal "takings" cases relating to real property with a personal property "takings" case. We believe, however, that there could well be different principles applicable in respect to personal property "takings" issues. The case *sub judice* relates to the regulation of real property and we need not address the "taking" of personal property.

taking.").[23] The creation of the "rough proportionality" standard for exactions in *Dolan* did not affect the "nonsegmentation" principles established by *Penn Central, Keystone Bituminous, Concrete Pipe* and their progeny, which limit the geographic extent of regulatory takings analysis. The trial court in the case *sub judice* should have applied the regulatory takings analysis to at least the entire final phase of appellees' subdivision, rather than only the part affected by the conditions incorporated in Resolution R–47–95.

III. Conclusion

The trial judge utilized an "exactions" standard from *Dolan* in reversing the decision of the City Council. In doing so, he erred. As we have indicated, *supra*, the facts of the present case do not support that the City has exacted anything from appellees by subdivision dedication or otherwise. The conditions imposed on the subdivision as a part of the City's subdivision approval process were, for the most part, agreed upon in 1976, and were, as finally imposed in 1995 pursuant to the design review provisions then in effect, limitations on the use of a part of the entire final phase of the three-phase subdivision project. There is no evidence that appellees were deprived of all remaining economically viable uses for the third phase of the subdivision.[24] Based on the facts of this case, and the issues, as presented, we perceive no unconstitutional taking of appellees' property. Accordingly, we reverse.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED; COSTS TO BE PAID BY APPELLEES.

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23. For a history of statutory dedication, exaction and impact fees, see David L. Callies & Malcolm Grant, *Paying for Growth and Planning Gain: An Anglo–American Comparison of Development Conditions, Impact Fees, and Development Agreements, in Exactions, Impact Fees and Dedications* 357 (Robert H. Freilich & David W. Bushek eds., 1995).

24. *See supra* note 19.

745 A.2d 1026

ADMIRAL MORTGAGE, INC.

v.

Calvin COOPER.

No. 41, Sept. Term, 1999.

Court of Appeals of Maryland.

Feb. 7, 2000.

Reconsideration Denied March 7, 2000.

Employee brought action to recover unpaid commissions from his former employer. Employer counterclaimed to recover, on unjust enrichment theory, what it characterized as a gratuitous payment to employee. The Circuit Court, Baltimore County, J. William Hinkel, J., entered judgment in favor of employee on employer's counterclaim and entered judgment on jury verdict in favor of employee on his claim for unpaid commissions, and appeal was taken. The Court of Special Appeals affirmed. The Court of Appeals granted certiorari, 354 Md. 570, 731 A.2d 969. The Court of Appeals, Wilner, J., held that: (1) as matter of apparent first impression, although discretionary additional damages is for the trier of fact to determine, the determination of attorney fees and costs is for judge for purposes of statute providing that, if employer withheld wages not as result of bona fide dispute, the court may award employee additional damages, attorney fees, and costs; (2) jury was properly allowed to determine the extent of additional damages to employee on his claim for unpaid commissions; and (3) jury's attorney fee award would be remanded in order to allow judge to determine attorney fee award.

Affirmed in part and vacated in part; remanded with instructions.

1. Judgment ⟹92

Judgment of default is permitted only if motion to vacate is not filed or, if filed, is denied.

745 A.2d 1000

CITY OF ANNAPOLIS

v.

Mareen WATERMAN et ux.

No. 37, Sept. Term, 1999.

Court of Appeals of Maryland.

Jan. 7, 2000.

Reconsideration Denied March 8, 2000.

Developers filed suit against city, alleging that certain conditions contained in subdivision approval constituted an unconstitutional taking of property. The Circuit Court, Anne Arundel County, Michael E. Loney, J., entered judgment for developers. City appealed. Following grant of writ of certiorari, the Court of Appeals, Cathell, J., held that requirement that developer set aside recreational space was not an unconstitutional taking.

Reversed.

1. Zoning and Planning ⚷382.6

Conditions may be imposed by a municipal planning commission in connection with the approval of a proposed subdivision map or plan.

2. Zoning and Planning ⚷381.5

Subdivision plat may be disapproved where it fails to comply with subdivision legal requirements, applicable zoning laws, or reasonable conditions imposed on the development.

3. Dedication ⚷1

Generally, common-law "dedications" are voluntary offers to dedicate land to public use, and the subsequent acceptance, in an appropriate fashion, by a public entity.

4. Dedication ⚷35(1, 3)

Generally, acceptance of a common-law dedication is made by an express recorded document or by the appropriate entity assuming control and maintenance of the property offered.

5. Zoning and Planning ⚷382.2

A "subdivision exaction," including a subdivision dedication, is a type of subdivision regulation that requires developers to make public improvements or install public facilities, or to finance them, at their own expense.

6. Zoning and Planning ⚷382.3

A "reservation," a type of condition, is a setting aside of specified land for a specific public purpose; it effects no conveyance to the government, but it restricts the right of the subdivider to use the reserved land.

7. Zoning and Planning ⚷382.3

Requirement that developer set aside recreational space, which was a condition of approval of developer's subdivision request, was not a "dedication," where proposed recreational space was intended only for use of those residing within development and was not for public use.

8. Eminent Domain ⚷2(1)

If no viable economic use remains, and traditional nuisance issues are absent, an unconstitutional taking generally will have occurred. U.S.C.A. Const.Amend. 5.

9. Eminent Domain ⚷2(1.2)

Requirement that developer set aside recreational space, which was a condition of approval of developer's subdivision request, was not an unconstitutional taking; conditions imposed on subdivision had been previously agreed to by developer, and there was no evidence that developer was deprived of all remaining economically viable uses for subdivision. U.S.C.A. Const.Amend. 5.

Paul Garvey Goetzke, City Attorney, Annapolis; Jonathan P. Kagan (Rignal W. Baldwin, Jr., Brassel & Baldwin, P.A., on brief), Annapolis, for petitioner/cross-respondent.

William M. Simmons, Annapolis, for respondents/cross-petitioners.

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

CATHELL, Judge.

Appellant, the City of Annapolis (City), appeals from a decision of the Circuit Court for Anne Arundel County, which principally involves the City's subdivision approval process as it applies to the three-phase, twenty-year plus processing of a residential development proposed by appellees, Mareen D. Waterman and Marian Waterman. Appellees filed suit against the City alleging that certain conditions contained in the subdivision approval applicable to their property constituted an unconstitutional taking of that property. Appellees' complaint alleged in relevant part:

> 15. . . . [T]he City Council's decision to *take* all of Lot 1 results in an additional taking of 3,163 square feet over and above the 2,375 square feet required by Resolution R–20–76.
>
> 16. There exists no essential nexus between a legitimate state interest and the subdivision condition imposed by the City Council requiring Lot 1 of Section 3 to be dedicated entirely as a recreational space. . . .
>
> 17. In requiring the dedication of this recreational space, the City Council has denied [appellees] all economically viable use of *Lot 1*. [Emphasis added.]

As relevant to this appeal, the claim before the circuit court was a claim only that the conditions imposed on Lot 1 constituted an unconstitutional taking of Lot 1. The trial court accordingly dealt with an alleged taking only of that lot. The circuit court found

that the Annapolis City Council impermissibly conditioned approval of the Plaintiffs' subdivision proposal where it ordered that Lot One of the Section III Proposal shall be dedicated as recreational space pursuant to Resolution R–20–76 and where it ordered that Lot One of the Section III Proposal shall not be approved for use as a residential dwelling lot.

Appellant presents the following issues for our consideration:

I. Whether the lower court erred in finding that conditions one and two of City of Annapolis Resolution No. R–47–95 constituted a "dedication" of a portion of appellees' property to the City as a public "mini-park."

II. Whether the lower court erred in failing to apply the "nonsegmentation" principle in its takings analysis by focusing only on proposed Lot 1 (the corner piece of the Parkway property) and not on the entire Parkway property.[1]

III. Whether the lower court erred in finding that conditions one and two of City of Annapolis Resolution No. R–47–95 constituted an unconstitutional taking despite the fact that appellees had not lost all economically viable use of their property.

IV. Whether the lower court erred in finding that conditions one and two of City of Annapolis Resolution No. R–47–95 failed to meet the Supreme Court's "rough proportionality test," and thus, constituted an unconstitutional taking.

V. Whether the lower court erred in awarding damages dating back to May 21, 1992 . . . when the cause of

1. The "nonsegmentation" principle, with its attendant "denominator" parcel principle, arose primarily out of *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987). The principle had been mentioned twenty-five years earlier in the "nuisance" regulation case of *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 596, 82 S.Ct. 987, 991, 8 L.Ed.2d 130 (1962).

action did not accrue until the passage of Resolution No. R–47–95 on December 11, 1995.

VI. Whether the lower court erred in calculating damages on the value of the entire Section III of the Parkway property (valued at $328,000), instead of on the value of Lot One (valued at $40,000) that was the only portion [a]ffected by conditions one and two of City of Annapolis Resolution No. R–47–95.

Appellees/Cross–Appellants pose several questions that appear to be counter arguments to appellant's questions, rather than separate questions. We shall treat them as arguments and address them, as necessary, in our discussion of the questions presented by appellant. Moreover, because we answer appellant's first three questions in the affirmative, and accordingly reverse the erroneous decision of the trial court, it is unnecessary to address appellant's remaining questions, or to address any of appellees' questions separately.

I. Facts

Appellees purchased a three-acre triangular tract of land in Annapolis in the mid–1970's for the purpose of developing it. They proposed to develop the land, called "Parkway," in three phases. The last phase was designated as "Lot 4" during the second phase of development. While seeking subdivision approval of the first phase, appellees agreed to provide, in the subsequent phases of the subdivision, at least 2,375 square feet of recreational space for the use of the first-phase residents. Thus, the parties agreed to defer creating the recreational space needed for the first-phase residents until a later date. The language of the 1976 resolution stated in pertinent part "[t]hat the developer agree[s] to provide 2375 square feet of recreational space in an appropriate location as part of the future development of his remaining adjacent land *in addition to* any recreational area required by that development." City of Annapolis Resolution R–20–76 (Apr. 12, 1976) (emphasis added). In other words, the recreational area now at issue was required as a condition for approval of phase one (or Section I) in 1976. In return for not being required to

provide, at that time, recreational area within Section I for the use of Section I residents, appellees agreed to provide it in a future phase of development, in addition to providing recreational space for the needs of the residents of those future phases.

No timely challenge was made to the 1976 imposition of the future recreational area requirement. The parties to the agreement left the exact location of the agreed upon recreational space open for future approval. To some extent, the time of determining the specific location of the recreational space was dependent upon the development phase in which appellees chose to perform their part of the agreement. They put off creating the recreational space required for Section I until seeking subdivision approval for the last phase, Section III.

The 1976 agreement was incorporated as a condition into Resolution R–20–76 approving the first-phase subdivision. The following year, phase two was approved and developed. It did not contain the recreational space that appellees had agreed to provide for the first-phase residents. At that time, the remaining two contiguous triangular parcels were combined as Lot 4.

The third, and final, phase was submitted for subdivision approval in 1990. In this phase, appellees proposed to subdivide the final .87–acre parcel, Lot 4, of the development into five new lots. The five new lots were to be created from two contiguous triangular parcels that had been identified during the second phase of development as Lot 4. Four parcels of the final-phase subdivision were designated to be developed as eight duplex units. These four parcels were contained on one of the triangular parcels within Lot 4. The other triangular part of the original Lot 4 was redesignated on the proposed third-phase subdivision plat as new "Lot 1." The proposed new Lot 1 was located on the corner of Tyler Avenue and Hilltop Lane and consisted of 5,538 square feet. The proposed third-phase subdivision indicated that new Lot 1 would be used for a single-family residence.

The proposed third-phase subdivision also designated a 4,598 square foot "recreational easement" running behind and across the rear of the eight duplex units. It was appellees' contention that this proposed 4,598 square foot recreational area would satisfy the open space and recreational condition in the 1976 resolution that approved the first phase of the development.

The Department of Planning and Zoning (DPZ) recommended denial of appellees' third-phase subdivision request on the basis of alleged density and traffic problems. The Planning and Zoning Commission (Commission) agreed and recommended a reduction in the number of units, and also found that the third phase, as proposed, violated the recreational area condition incorporated in Resolution R–20–76, and further violated City subdivision regulations. Appellees appealed to the City Board of Appeals, which upheld the Commission's findings.

Appellees sought judicial review in the Circuit Court for Anne Arundel County. The circuit court, in that judicial review, reversed the decision of the Board of Appeals. The trial judge, Judge Bruce C. Williams, found:

> When the City Council approved the initial development of the Parkway property, its approval was conditioned on the inclusion of 2,375 square feet of recreational space on the property. [Appellees] propose[ ] to dedicate an easement across the rear portion of the duplex lots of the proposed subdivision to satisfy the recreational requirement. The Board of Appeals below held that such an easement would deprive ... each lot owner [the eight duplex owners] of his exclusive use of the property *dedicated*,[2] reducing the size of their lot below the requisite 3600 sq. ft. minimum.
>
> This Court finds that the Board of Appeals erred in finding that the lot size of each respective lot owner would be reduced by the provision of an open space easement on their lot. The Annapolis City Code contemplates figuring recreation areas into, rather than out of, minimum lot size area calculations.... Section 21.74.050 D states, the area of land set aside for common open space or recreational use may be included in determining the number of dwelling units permitted.... Nothing in the Annapolis City Code authorizes such determinations by the Commission.
>
> ....
>
> The Annapolis Comprehensive Plan does not support the exclusion of easement *dedicated* space in lot size calculations....
>
> ... With regard to residential lot configurations, the plan encourages the "establishment of block homeowners' associations, *with pooling of portions of long back yards as common open space or garden areas, owned and maintained by the associations.*" An easement would accomplish this goal. The City Council should be afforded the opportunity to determine whether an easement would be appropriate.
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> ....
>
> *This Court finds that in light of changes in the Annapolis City's zoning regulations since the passage of R–22–76, the issue of recreational space needs to be resolved by the Annapolis City Council and not the Planning and Zoning Commission.... The Commission's denial cannot be supported by substantial evidence or its statutory authority.*
>
> ....
>
> **ORDERED**, that the decision of the Board of Appeals is hereby **REVERSED** and that the Waterman subdivision plat be approved by the Planning and Zoning Commission to allow this case to proceed to the Annapolis City Council *in accordance with the statutory scheme established by the City of Annapolis and the State of Maryland.* [Third emphasis in original; all others added.] [Citations omitted.]

After the Board of Appeals affirmed the Commission's decision, but before Judge Williams had reversed the Board of

2. The lower courts throughout this process have misconstrued the 1976 agreement as a "dedication." As we explain, *infra*, it was not a dedication but a condition or, at most, a reservation of land, for future use as recreational space by the first-phase residents.

Appeals, the City enacted Ordinance O–2–93, which required site design review prior to subdivision approval. That site design review was to be done by the DPZ. Accordingly, after Judge Williams' reversal of the Board, appellees' subdivision application was resubmitted to the DPZ for site design review.[3]

Subsequently, pursuant to the site design review required by the newly enacted ordinance, the DPZ and the Commission again expressed their reservations about density and traffic problems in their submission to the City Council. The DPZ and the Commission recommended approval of the third-phase subdivision and recommended three conditions. One of the conditions was that the single-family dwelling proposed for new Lot 1 be relocated. In approving the subdivision, the City Council agreed with the recommendation and imposed a limitation that no dwelling be permitted on new Lot 1. Additionally, they imposed a separate condition that the 2,375 square feet of recreational area required by the conditions for approval of the first-phase subdivision, be located on new Lot 1. *See* City of Annapolis Resolution No. R–47–95 (Dec. 11, 1995).

Appellees responded by filing suit in the circuit court *for damages only,* alleging that the conditions attached to the approval created an unconstitutional taking of Lot 1. The circuit court found in favor of appellees and awarded damages. In the liability phase, the court's opinion initially stated:

> The Plaintiffs allege that there has been an unconstitutional taking of their property to the extent that they cannot freely develop Lot One of the Proposed Section III Subdivision. Nor can the Plaintiffs exclude others from using Lot One. . . .
>
> . . . The use of the Plaintiffs' property [Lot One] as a mini-park would deprive the Plaintiffs of their right to exclude others. . . .
>
> . . . It has long been held that "a land use regulation does not effect a taking if it . . . does not 'deny an owner of all economically viable use of his land.'" . . .
>
> . . . .
>
> . . . The Court finds that the City's actions in applying the [recreational area and no dwelling] conditions . . . are proper in light of the recommendations made to it by the various sources discussed above. . . . The actions taken by the City created a nexus whereby the interests of the City, most notably traffic concerns, were addressed by the imposed conditions and were a proper exercise of the City's police powers. . . .
>
> . . . .
>
> . . . Rather, the condition imposed upon Lot One is an impermissible taking because it singles out only one small portion of the entire Section III Proposal where there was evidence before the Council which suggested that the entire Section III Proposal would adversely affect traffic at that location.

The circuit court went on to find an unconstitutional taking by focusing on Lot One:

> [I]t appears to the Court that the *dedication* of Lot One as recreational space for use as a mini-park would prove to be at least as hazardous to traffic patterns . . . as would a single family home.
>
> . . . .
>
> . . . [T]he Court finds that [the] City Council's condition ordering that Lot One of the Section III Proposal be dedicated as recreational space to serve as a mini-park is not reasonably related to the needs that would be created by the subdivision. . . .

3. Appellees argue that this submission of the subdivision plan to the DPZ violated Judge Williams' order. There is no indication in the record that any effort was made at that time to ask Judge Williams to clarify his order in that respect. Judge Williams' order required a forwarding of the subdivision application to the City Council "in accordance with the statutory scheme established by the City of Annapolis. . . ." At the time of Judge Williams' order, the statutory scheme then in effect required the plans to be submitted to the DPZ for additional review pursuant to Ordinance 0–2–93. The City had legislated faster than the parties had litigated. Moreover, the record contains a July 21, 1995, letter from appellees that appears to accede to the subsequent procedure. No estoppel issues are raised by appellees.

. . . .

. . . [T]he Court finds that the actions . . . represent an impermissible taking . . . because the exactions made through the two conditions are not reasonably related to the impact [of] the proposed subdivision. . . . [Emphasis added.]

The City filed a timely appeal to the Court of Special Appeals and we granted a writ of certiorari prior to that court's review of the matter. We reverse the circuit court.

II. Discussion and Analysis

Maryland Code (1957, 1998 Repl.Vol.), Article 66B, section 4.01(a)(1), contained within the subtitle "General Development Regulations and Zoning," provides in relevant part that the policy of the State is to empower "municipal corporations . . . to regulate and restrict . . . the percentage of lot that may be occupied, . . . the size of yards, courts and other open spaces, . . . and use of . . . land for . . . residence or other purposes."[4] Within the subtitle "Subdivision Control," section 5.03(a) provides in relevant part that "the planning commission shall prepare regulations governing the subdivision of land within

4. In *Coffey v. Maryland-National Capital Park & Planning Commission*, 293 Md. 24, 27–28, 30, 441 A.2d 1041, 1042, 1044 (1982), we said, quoting in part from *Board of County Commissioners v. Gaster*, 285 Md. 233, 246, 401 A.2d 666, 672–73 (1979):

> As we noted . . . some confusion exists relative to the terms planning and zoning, which are not synonymous. Zoning is concerned with the use of property but planning is broader in its concept. . . . There are three integral parts of adequate land planning, the master plan, zoning, and subdivision regulations. . . . '[Z]oning ordinances are not calculated to protect the community from the financial loss which may result from imperfect development. Some of these purposes are sought through the imposition of subdivision controls.' . . .
>
> . . . .
>
> . . . If planning boards had no alternative but to rubber-stamp their approval on every subdivision plat which conformed with the zoning ordinance, there would be little or no reason for their existence. While planning and zoning complement each other and serve certain common objectives, each represents a separate municipal function and neither is a mere rubber-stamp for the other. [Citations omitted.]

its jurisdiction. Those regulations may provide for . . . the adequate and convenient placement of . . . open spaces for traffic, . . . recreation, light and air and the avoidance of congestion of population. . . ." Section 5.04 provides that planning commissions may "agree with applicant[s] upon use, height, area or bulk requirements or restrictions which are designed to promote the purposes of the zoning ordinance of the jurisdiction." The general purposes of the planning and zoning processes in the City are found in section 21.02.010 of the City of Annapolis Code (1996). They include:

> A. To protect the public health, safety, general welfare of the community and to promote the public comfort, convenience and prosperity;
>
> B. To ensure the integrity of, and help implement, the comprehensive master plan;
>
> C. To foster a more rational pattern of relationships between residential, business, commercial and manufacturing uses for the mutual benefit of all;
>
> . . . .
>
> H. To provide adequate standards of light, air and open space;
>
> I. To prevent the overcrowding of land and buildings and thereby to ensure proper living and working conditions and to prevent blight and slums. . . .

In essence, planning commissions are authorized, presuming the respective jurisdictions have enacted proper subdivision controls, to review the plans for proposed subdivisions for compliance with the subdivision requirements (and compliance with separate zoning requirements). In that review process, in addition to insuring compliance, planning commissions attempt to encourage developers to accept design features deemed appropriate for each respective subdivision. During that process, appropriate conditions may be incorporated into a subdivision approval.

Albeit sometimes in the context of zoning ordinances, we have previously discussed the need and appropriateness of such governmental controls. We noted in *Board of County*

Commissioners v. Gaster, 285 Md. 233, 248–50, 401 A.2d 666, 674 (1979):

> How can a county effectively plan for capital expenditures for roads, schools, sewers, and water facilities if, without regard to preexisting plans, a developer, as proposed here, might place a settlement of 1,200 or more people in the middle of a previously undeveloped area, a settlement which would overtax school facilities and which would necessitate improvement of a road whose reconstruction had not been contemplated before 1990? Planning would be futile in such situations.
>
> In those instances the developer, not the constituted authority of the county, is in control of planning for the future of the county....
>
> ... In the case at bar we see no basic conflict between the zoning regulations and the subdivision regulations. If there were a conflict, the subdivision ordinance in this instance provides that the more restrictive provision shall prevail. Moreover, Art. 66B, § 3.08 specifies that once a master plan has been adopted by the local legislative body "no street ... shall be constructed or authorized ... until the location, character, and extent of such development shall have been submitted to and approved by the commission as *consistent with the plan* ...." [I]f this proposed subdivision were approved, the streets contemplated in it would be spewing traffic out onto a county road "which has poor vertical and horizontal alignment, poor sight distances, and narrow width [, a] road ... not programmed for reconstruction before 1990." Given the provisions of § 3.08, this in itself was a sufficient basis for the disapproval of the subdivision plat by the commission.
>
> ... The county here has preordained by its subdivision regulations that one who seeks to cut up a larger tract by creating a subdivision must not disrupt the master plan and that the subdivision must be compatible with that master plan. Likewise, many zoning ordinances specify relative to special exceptions that they shall be granted only if they are compatible with and will not disrupt the master plan.[5] [Second alteration in original.]

We outlined some basic principles of governmental regulatory authority in respect to property in *Stevens v. City of Salisbury*, 240 Md. 556, 562–63, 567, 214 A.2d 775, 778, 781 (1965):

> After the close of the Revolutionary War, the ownership of property in this country has frequently been referred to as "allodial" in nature or that the property is held by "allodial tenure." In its strict sense, "allodium" means land owned absolutely, and not subject to any rent, service, or other tenurial right of an overlord; however, it has been, and is, uniformly recognized throughout this country that the ownership of property is subject to the rights of government to tax the property, to regulate reasonably its use and enjoyment under the police power of the States, and to take the same, upon payment of the value thereof, when needed for a public purpose.
>
> ....
>
> It is an accurate statement to say that every restriction upon the use and enjoyment of property is a "taking" to the extent of such restriction; but every "taking" is not a "taking" in a constitutional sense for which compensation need be paid.

Appellant has enacted subdivision controls pursuant to the authority granted it by Article 66B. Its subdivision regulations are found in Title 20 of the City Code. They provide, in relevant part, that "[t]he planning commission shall not approve a preliminary plat absent a specific finding that the plat meets the provisions of Chapter 21.98, Site Design Plan Review." City Code, § 20.24.170. Chapter 21.98 has a general intent clause, which provides:

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5. Judge Marvin H. Smith's opinion for the Court in *Gaster* provides an extensive history of planning, zoning and subdivision matters in Maryland.

21.98.010 Intent.

The purpose of this chapter is to ensure that property is developed with sound planning and design principles while allowing flexibility of design. The intent is to ensure reasonable consideration of, among other things, ... orderly development, and the relationship between the built and natural environments.

Section 21.98.050(Q) also provides that site design plan review shall encourage open space: "Areas of usable open space should be provided on site in order to afford visual relief."[6] The duties of the DPZ are stated in section 21.98.100, including that it

shall review, approve, approve subject to modifications or disapprove ... the preliminary site design plan....

... In reaching its decision, the [DPZ] shall determine if:

A. The site design plan meets all of the requirements of the zone in which it is located;

B. The locations of the buildings and structures, open spaces, landscaping, and pedestrian and vehicular circulation systems are adequate, safe, and efficient;

....

The [DPZ] shall not approve the site design plan if it finds that the development would not achieve a maximum of compatibility, safety, efficiency, and attractiveness; and the fact that a site design plan complies with all of the stated ... regulations ... shall not, be deemed by itself to create a presumption that the proposed site plan is compatible ... and, in itself, shall not be sufficient to require approval....

[1, 2] To better understand the functions and public purposes of subdivision controls, it is important to note further that:

6. Neither the subdivision ordinance nor the site design ordinance contains a formula or methodology for computing open space or recreational area. The validity of these ordinances were not challenged on that basis.

Today, the primary purpose of subdivision regulation is integration of a new development into an existing community....

Subdivision regulation is important for a variety of reasons. First, it enables a community to ensure (insofar as is possible) that a new development will "fit in" with the existing community character, that the existing community will be able to provide needed services ..., and that the new development will be a safe and healthy place for its citizens to live. Second, in a broader sense, subdivision controls give local governments the opportunity to attempt to ensure the success of a new development....

....

... Common [subdivision] provisions include the regulation of ... open space for recreation, light, and air....

13 Richard R. Powell, *Powell on Real Property,* ¶¶ 873[1][a][i], 873[2][d][i], at 79D–8, 79D–30 (MB ed.1998) (footnote omitted).

It is well settled that conditions may be imposed by a municipal planning commission in connection with the approval of a proposed subdivision map or plan.

The subdivision of land has a definite economic impact upon the municipality and hence the regulation of subdivision activities has been sustained as a means by which the interests of the public and the general taxpayer may be safeguarded and protected....

The imposition of reasonable regulations as a condition precedent to the approval of the subdivision of lands and the recording of plats thereof has been held not to violate any constitutional provisions respecting uniformity of taxation and not tantamount to the taking of private property for public use without just compensation. In *Krieger v. Planning Commission of Howard County,* [224 Md. 320,] 167 A.2d 885 ([ ]1961), the Court of Appeals of Maryland held that requirements of subdividers that impose a limitation of access to highways did not constitute a taking of land in the constitutional sense.

3 E.C. Yokley, *Zoning Law and Practice*, § 17-8, at 71-74 (4th ed.1979) (footnotes omitted). "A subdivision plat may be disapproved for any number of reasons. It may be disapproved where it fails to comply with subdivision legal requirements, applicable zoning laws, or reasonable conditions imposed on the development." 8 Eugene McQuillin, *The Law of Municipal Corporations*, § 25.118.30, at 443 (3d ed.1991) (footnotes omitted).

Numerous courts have approved the imposition of reasonable conditions in the subdivision approval process. We said in discussing access conditions in *Krieger*, 224 Md. at 323, 167 A.2d at 886:

> If [the planning commission] could properly [adopt subdivision regulations], it was not arbitrary to enforce them by denying approval of a plan which did not conform. In the absence of constitutional objection the power of a municipal corporation to impose reasonable conditions upon the issuance of a permit can hardly be doubted.

In *Prudential Trust Co. v. City of Laramie*, 492 P.2d 971, 973 (Wyo.1972), the primary question for the Wyoming Supreme Court was "how much discretion does the city have in exercising its right to approve or reject a proffered plat[?]" The court opined:

> Our view is that the right and duty of the city to approve a plat necessarily carries with it the right to set reasonable and just prerequisites and requirements for approval of the plat, and in particular in the area of bringing the plat into conformity with other areas with respect to lots, blocks, streets, and the like.

Id. at 974.

The California Supreme Court in *Ayres v. City Council*, 34 Cal.2d 31, 37-38, 207 P.2d 1, 5 (1949), stated in respect to exactions *and* conditions that:

> Where as here no specific restriction or limitation on the city's power is contained in the Charter, and none forbidding the particular conditions ... it is proper to conclude that conditions are lawful which are not inconsistent with the Map Act and the ordinances and are reasonably required by the subdivision type and use as related to the character of local and neighborhood planning and traffic conditions.
>
> ....
>
> With regard to condition 2, that an additional ten feet be reserved for a planting strip ... the creation of the subdivision necessitated the restricted use to confine ingress and egress to and from the lots away from [the] Boulevard [and] to screen the lot owners from the traffic noises, fumes and views of the fast-moving traffic....

Other types of conditions have been upheld as well, including recreational open space conditions. *See Coffey v. Maryland-Nat'l Capital Park & Planning Comm'n*, 293 Md. 24, 441 A.2d 1041 (1982) (ordinance requiring compliance with master plan); *Gaster*, 285 Md. 233, 401 A.2d 666 (relieving traffic and population density); *see also Pima County v. Arizona Title Ins. & Trust Co.*, 115 Ariz. 344, 565 P.2d 524 (Ariz.Ct.App.1977) (paving of all interior streets in the subdivision); *Ayres*, 34 Cal.2d 31, 207 P.2d 1 (buffer strip); *Timber Trails Corp. v. Planning & Zoning Comm'n*, 222 Conn. 380, 389-93, 610 A.2d 620, 625-27 (1992) (installing state-approved water service and modifying lot size); *Aunt Hack Ridge Estates, Inc. v. Planning Comm'n*, 160 Conn. 109, 111, 273 A.2d 880, 882 (1970) (local ordinance authorizing park and open space requirements, which "shall in all cases be available and accessible to all residents of the subdivision."); *Garvin v. Baker*, 59 So.2d 360 (Fla.1952) (condition requiring on-site street and sidewalk standards); *City Nat'l Bank v. City of Coral Springs*, 475 So.2d 984 (Fla.Dist.Ct.App.1985) (ten-foot buffer strips, street signs and widening of street); *Oakes Constr. Co. v. City of Iowa City*, 304 N.W.2d 797 (Iowa 1981); [7]

7. In *Oakes Constr.*, 304 N.W.2d at 806, the Iowa Supreme Court described the two approaches to the imposition of subdivision conditions, the strict approach "whereby a council must be able to point to an explicit provision on which it bases disapproval of a plat," and the liberal approach, which "takes account of the likelihood that not every conceivable flaw ... can be anticipated by specific language in ordi-

United Reis Homes, Inc. v. Planning Bd., 359 Mass. 621, 270 N.E.2d 402 (1971) (construction of drainage facilities); *Sansoucy v. Planning Bd.*, 355 Mass. 647, 246 N.E.2d 811 (1969) (installation of underground utility lines); *Ellen M. Gifford Sheltering Home Corp. v. Board of Appeals*, 349 Mass. 292, 208 N.E.2d 207 (1965) (upholding condition of not more than one dwelling on each lot); *River Birch Assocs. v. City of Raleigh*, 326 N.C. 100, 388 S.E.2d 538 (1990) (conveyance of open space to the owner's subdivision); *Clark v. City of Albany*, 137 Or.App. 293, 904 P.2d 185 (1995) (on-site traffic-free area and storm drain facilities), *review denied*, 322 Or. 644, 912 P.2d 375 (1996); *Crownhill Homes, Inc. v. City of San Antonio*, 433 S.W.2d 448 (Tex.Civ.App.1968, writ ref'd n.r.e.) (on-site water mains); *In re Denio*, 158 Vt. 230, 240–41, 608 A.2d 1166, 1172–73 (1992) (aesthetic open space requirements); *Prudential Trust Co.*, 492 P.2d 971 (reconfiguring streets to line up with off-site public streets).

In *City of Carbondale v. Brewster*, 78 Ill.2d 111, 34 Ill.Dec. 838, 398 N.E.2d 829 (1979), *appeal dismissed*, 446 U.S. 931, 100 S.Ct. 2145, 64 L.Ed.2d 783 (1980), the Illinois Supreme Court noted that "a residential land subdivider may properly be required, as a condition to approval of the plat, to provide curb and gutter and suitable storm-water drainage facilities." *Id.* at 115, 34 Ill.Dec. at 840, 398 N.E.2d at 831. That same court, in *Petterson v. City of Naperville*, 9 Ill.2d 233, 137 N.E.2d 371 (1956), also upheld a subdivision approval subject to the condition that the developer provide curbs, gutters and drainage facilities within the subdivision. In *Petterson*, the court stated "[t]he privilege of the individual to use his property as he pleases is subject always to a legitimate exercise of the police power under which new burdens may be imposed upon property and new restrictions placed upon its use when the public welfare demands." *Id.* at 247, 137 N.E.2d at 379.

nances and statutes." The court adopted the liberal approach. It then held that "the council could consider the subject of access" and upheld the subdivision disapproval. *Id.* at 807.

In *Patenaude v. Town of Meredith*, 118 N.H. 616, 392 A.2d 582 (1978), the Meredith Planning Board imposed several conditions before it would approve a subdivision plat. They included one provision that identified several proposed lots, considered unsuitable for building, to be left as open space. The New Hampshire Supreme Court stated:

> [W]hen an owner intends to develop his land in a manner that will result in a significant number of people forming a community on that land, adequate recreational space is a necessity.... [T]he Meredith Planning Board clearly intends that those moving into the subdivision will have an adequate recreational area. Thus the limitation in use is necessitated by the subdivision itself and need not be compensated.

Id. at 623, 392 A.2d at 586.

With the above in mind, it is important to understand that not all conditions attached to subdivision approvals or imposed on approved subdivisions are "subdivision dedications," and that no such conditions are "common-law dedications." Subdivision dedications and common-law dedications are different creatures as well.

> Dedications required under subdivision regulations should be distinguished from common law dedications. Common law dedication involves an offer to dedicate and a corresponding acceptance by a local government. Under common law dedication a developer is estopped from later questioning the acceptance. In subdivision regulation dedication, however, questions of legislative authority and constitutionality arise.

Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* 315 (1998).

[3, 4] Generally, common-law dedications are voluntary offers to dedicate land to public use, and the subsequent acceptance, in an appropriate fashion, by a public entity. Common-law dedications are not mandated by statute. The offers are generally, although not exclusively, made by showing roads, parks or similar facilities on plats without any limitations on

dedication, and the recording of those plats. Generally, acceptance is made by an express recorded document or by the appropriate entity assuming control and maintenance of the property offered. With acceptance, common-law dedication is complete.

Referring to common-law dedication in *Carr v. Hopkin*, 556 P.2d 221, 224 (Wyo.1976), the Wyoming Supreme Court stated, "[t]here must be intent of the owner to devote the property to a public use ... and there must be an acceptance. This last requirement is most important to protect municipalities from having someone impose upon them the responsibility for maintenance and repair of streets or highways." [8] (Citations omitted.)

In *Priolo v. City of Dallas*, 257 S.W.2d 947, 953 (Tex.Civ.App.—Dallas 1953, writ ref'd n.r.e.), the Texas Court of Appeals noted the difference between a statutory dedication and a common-law dedication:

> Prior [to the statute at issue], ... an offer of dedication was accepted in one of the three well-recognized methods, (1) by the municipality through proper authorities; (2) estoppel created by sale of lots to persons relying on such plat dedicating streets; or (3) actual public user.... It is therefore with reference to a common law offer of dedication that the foregoing methods of acceptance are applicable in contrast to an offer under the statute. "A common-law dedication by a plat may be revoked in whole or in part by the filing of an instrument vacating the plat or a part of it...."

The court noted further:

> " 'Dedication' is a setting apart of land for the public use, and may be either statutory or at common law, the distinction between a statutory and a common-law dedication being that the statutory dedication operates as a grant, while the common-law dedication operates by way of estoppel in pais...."

Id. at 953 n. 2.

[5] "A subdivision exaction [including a "subdivision dedication"] is a type of subdivision *regulation* that requires developers to make public improvements or install public facilities (or to finance them) at their own expense." 13 Powell, *supra*, ¶ 873[2][d][ii], at 79D–33 (emphasis added). Subdivision exactions typically take two forms: (1) a statutory dedication or (2) a payment of a fee in lieu of such dedication. *Id.* ¶ 873[3][c][i], at 79D–45.

For example, the court in *Coulter v. City of Rawlins*, 662 P.2d 888 (Wyo.1983), reviewed a subdivision regulation that imposed a dedication or fee requirement:

> "a. All residential subdivisions shall provide for public parks and recreational sites *by dedication of land*.... [D]edication of such sites and land areas *to the City* or ... in lieu thereof ... payment to the City of a sum of money equal to the value of the land which would otherwise be dedicated to the City.... Dedication of such sites and land areas shall be made at the time of final platting in one or any combination of the following ways:
>
> "1. By dedicating to the City ... on the final plat.
>
> "2. By granting the land area in fee simple or general warranty deed to the City...."

Id. at 893 (emphasis added).

[6] A "[r]eservation[, a type of condition,] ... is a setting aside of specified land for a specific public purpose. It effects no conveyance to the government, but it restricts the right of the subdivider to use the reserved land." 83 Am.Jur.2d *Zoning and Planning* § 563, at 451 (1983). We noted this distinction in *Howard County v. JJM, Inc.*, 301 Md. 256, 270, 482 A.2d 908, 915 (1984), when we quoted from D. Hagman,

8. In many instances, it is ultimately to a developer's sales advantage to offer to dedicate to the local government water and sewer facilities, streets, recreational areas or other sites because, if the offer is accepted, the local government, not the future residents of the subdivision, generally will be responsible for maintenance of the facilities. In "closed subdivisions," which limit public access, homeowners associations generally are responsible for maintaining such facilities.

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER
DATE

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Bruce E. Doak	320 E. Towsontown Blvd	Towson Md 21286	
Gerhold Cross & Etzel			
Neal Teitelbaum	9216 Liberty Rd 21133	Randallstown MD 21133	
Frank Borgerding	409 washington ave suite 600	Towson, md 21204	

Case No.: 06-489-SPH 9018 Liberty Rd. ~~06-510-A 14626 THORNTON MILL~~ RD

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	PLAT in Case # 05-613 SPHA	
No. 2	05-613-SPHA ORDER ISSUED	
No. 3	MINOR SUB DIVISION Plat Submittal	
No. 4	PROPOSED Subdivision Plat to Accompany Petition	
No. 5	1-18-06 — Letter No reversible slope necessary	
No. 6	1-30-06 - reply letter from Dennis Kennedy	
No. 7	3-9-06 - Borgerding response	
No. 8	Mr. Kennedy's Reply	
No. 9	9A thru 9E IT Collectively	
No. 10		
No. 11		
No. 12		

IN RE: **PETITIONS FOR SPECIAL HEARING** and* BEFORE THE
VARIANCE – N/S Liberty Road, 108' E of
Chapman Road * ZONING COMMISSIONER
(9216 & 9218 Liberty Road)
2nd Election District * OF BALTIMORE COUNTY
4th Council District

* Case No. 05-613-SPHA

Liberty Properties Management, Inc.
Petitioners *

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Neal L. Teitelbaum, President of Liberty Properties Management, Inc., Owners of the subject properties, through their attorney, Francis X. Borgerding, Jr., Esquire. The Petitioners request a special hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve the continued commercial use of a driveway through a residential lot and to allow for the continued use of an existing garage/storage building for commercial purposes. In addition, variance relief is requested from Section 204.4.C.4 of the B.C.Z.R. to allow an existing Class A Office Building, known as 9216 Liberty Road, with a side yard setback of 15 feet in lieu of the required 20 feet from an adjacent residentially used property (9218 Liberty Road). The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Neal Teitelbaum and Francis X. Borgerding, Jr., Esquire, attorney for the Petitioners. Also appearing was Bruce Doak, a Registered Property Line Surveyor who prepared the site plan for these properties. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is a roughly square shaped parcel located at the northeast corner of Liberty Road and Chapman Road in Randallstown. The property consists of two separate lots, which contain a combined gross area of 0.905 acres,

PETITIONER'S
EXHIBIT NO. 2

more or less, zoned R.O. The property known as 9216 Liberty Road is approximately 80 feet wide and 200 feet deep, and is improved with a two-story brick office building, a one-story block garage/storage building, which is used in conjunction with the business, and parking area. The property known as 9218 Liberty Road is approximately 108 feet wide and 200 feet deep, and is located immediately adjacent to the Liberty Road/Chapman Road intersection. The front portion of this parcel is improved with a two-story frame dwelling, which is used for residential purposes. Access thereto is provided via an existing driveway that leads into the property from Chapman Road. There is an additional driveway located towards the center of this parcel, which provides access to the commercial parking area on the adjacent lot from Chapman Road. It is this driveway access that is at issue in the instant case. As shown on the site plan marked as Petitioner's Exhibit 1, driveway access to the commercially used parcel is provided from both Liberty Road and Chapman Road; however, the access from Chapman Road is through the residentially used premises. Relief is requested as set forth above to legitimize the locations and uses of existing improvements on the properties.

In this regard, testimony and evidence offered indicated that the Petitioners have owned and utilized the properties in their current fashion for at least 40 years. Testimony indicated that this stretch of Liberty Road contains a mix of residential and commercial uses, including Churches, an 84 Lumber Company, and a Funeral Home, and many of the residences in the area have been converted for business use. Further testimony indicated that the variance is necessary given the unique configuration of the property and the location of existing improvements thereon. Mr. Teitelbaum acknowledged the Zoning Advisory Committee (ZAC) comment submitted by the Office of Planning, dated July 8, 2005, and agreed that approval be conditioned upon the contiguous ownership of the two properties. He further agreed that at such time as contiguous ownership ceases to exist, ownership of the commercially used driveway on the residential lot (9218 Liberty Road) would be conveyed in-fee simple to the owner of 9216 Liberty Road.

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. As noted above, the properties are located in an area that contains a mix of both commercial and residential uses. Moreover, the improvements and uses on the respective properties have remained the same for over 40 years. There were no adverse comments submitted by any County reviewing agency, and no one voiced any opposition to the request. Thus, I find that the relief requested is appropriate in this instance to legitimize existing conditions. I further find that the relief requested will not adversely impact adjacent uses or the surrounding locale.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 29th day of August 2005 that the Petition for Special Hearing to approve the continued commercial use of a driveway through a residential lot and the continued use of an existing garage/storage building for commercial purposes, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 204.4.C.4 of the B.C.Z.R. to allow an existing Class A Office Building, known as 9216 Liberty Road, with a side yard setback of 15 feet in lieu of the required 20 feet from an adjacent residentially used property (9218 Liberty Road), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners are hereby made aware that proceeding at this time is at their 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 relief granted herein is conditioned upon the contiguous ownership of the subject two properties. In the event such contiguous ownership ceases, the Petitioners shall record a new deed in the Land Records of Baltimore County conveying a fee-simple interest in the bed of the commercially used driveway on the residential property for the use and benefit of the owner of the commercially used property. Failure to

comply with this condition shall result in a termination of the continued use of the commercial use driveway through the residential property.

3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906
Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

COPY

January 18, 2006

Dennis Kennedy, Chief
Development Plans Review
Room 119
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204
(410)-887-3751

Subject: 05-125-M Minor Subdivision of Property of Liberty Properties Management, Inc.

Dear Mr. Kennedy:

You have requested an adequately sized revertible slope easement along Chapman Road. We feel that because the site is so flat that a revertible slope easement is not necessary. I am enclosing a copy of the plan and Phil Martin's first and second review comments. Please let me know if this is acceptable. You may reach me at (410)-823-4470. Thank you for your time and consideration on this matter.

Sincerely,

Michael Alexander

PETITIONER'S
EXHIBIT NO. 5

Department of Permits a
Development Management

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

Baltimore County

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

January 30, 2006

Gerhold, Cross and Etzel, Ltd.
320 East Towsontown Boulevard
Suite 100
Towson, Maryland 21286

Attention: Mr. Michael Alexander

Reference: Liberty Properties Management-Minor Subdivision

Dear Sir:

In response to your letter of January 18, 2006 about the revertible slope easement, we discovered that the original comments actually called for pavement widening, curb and gutter and sidewalk to be built along the frontage. The reviewer missed this item on the second review. I am writing this to inform you that the pavement widening is still required and a five-foot-wide revertible slope easement is also required. The slope easement is required so that you can sell the lots prior to actually doing the road work, and still have the right to trespass for construction. For your information, there is a preliminary profile of the road in the County records for your use during design.

Very truly yours,

Dennis A. Kennedy

Dennis A. Kennedy, Supervisor
Development Plans Review

DAK
cc:file

PETITIONER'S

EXHIBIT NO. 6

Printed on Recycled Paper

FRANCIS X. BORGERDING, JR.
Attorney at Law
MERCANTILE BUILDING - SUITE 600
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 296-6820
FAX (410) 296-6884

March 1, 2006

Dennis A. Kennedy, Supervisor
Development Plans Review
Department of Permits & Development
Management
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Liberty Properties Management - Minor Subdivision
05-125-M

Dear Mr. Kennedy:

I am writing on behalf of my client, Liberty Properties Management, Inc. in relation to your correspondence of January 30, 2006 in regard to their proposed minor subdivision. Pursuant to your correspondence, you reference your department's comments requesting pavement widening, curb and gutter and sidewalk to be built along the frontage. The minor subdivision being proposed is an infill project in existing neighborhood proposing to build one additional lot using an existing driveway. There is no road widening being proposed nor are there curb or sidewalks in the area. Additionally, other improvements in the area have not been required to comply with the items at issue. After consultation with Gerhold, Cross and Etzel, Ltd., who is processing the minor subdivision plan on behalf of my client, it is my client's position that the development that they are proposing on the subject property does not necessitate the improvements being requested as there is no "essential nexus" between the actual development proposed and the items requested.

My client would request that you re-review this matter and advise of your department's position. Thank you for your anticipated cooperation with regard to this matter.

Very truly yours,

FRANCIS X. BORGERDING, JR.

FXBJr:bjk

PETITIONER'S
EXHIBIT NO. 7

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

March 14, 2006

Francis X. Borgerding, Jr.
Mercantile Building-Suite 600
409 Washington Avenue
Towson, Maryland 21204

Attention: Mr. Borgerding

Reference: Liberty Properties Management-Chapman Road

Dear Sir:

This is in response to your letter of March 1, 2006 about the widening of Chapman Road along the frontage of the referenced development. In the *Bureau of Development Plans Review Policy Manual*, Section VIII, Subsection A, paragraph 7, the requirement for road widening is clearly written.

If you apply for a Special Hearing, the Hearing Officer can grant a waiver of these requirements if he finds extenuating circumstances, hardship, community opposition, etc.

Very truly yours,

Dennis A. Kennedy

Dennis A. Kennedy, Supervisor
Development Plans Review

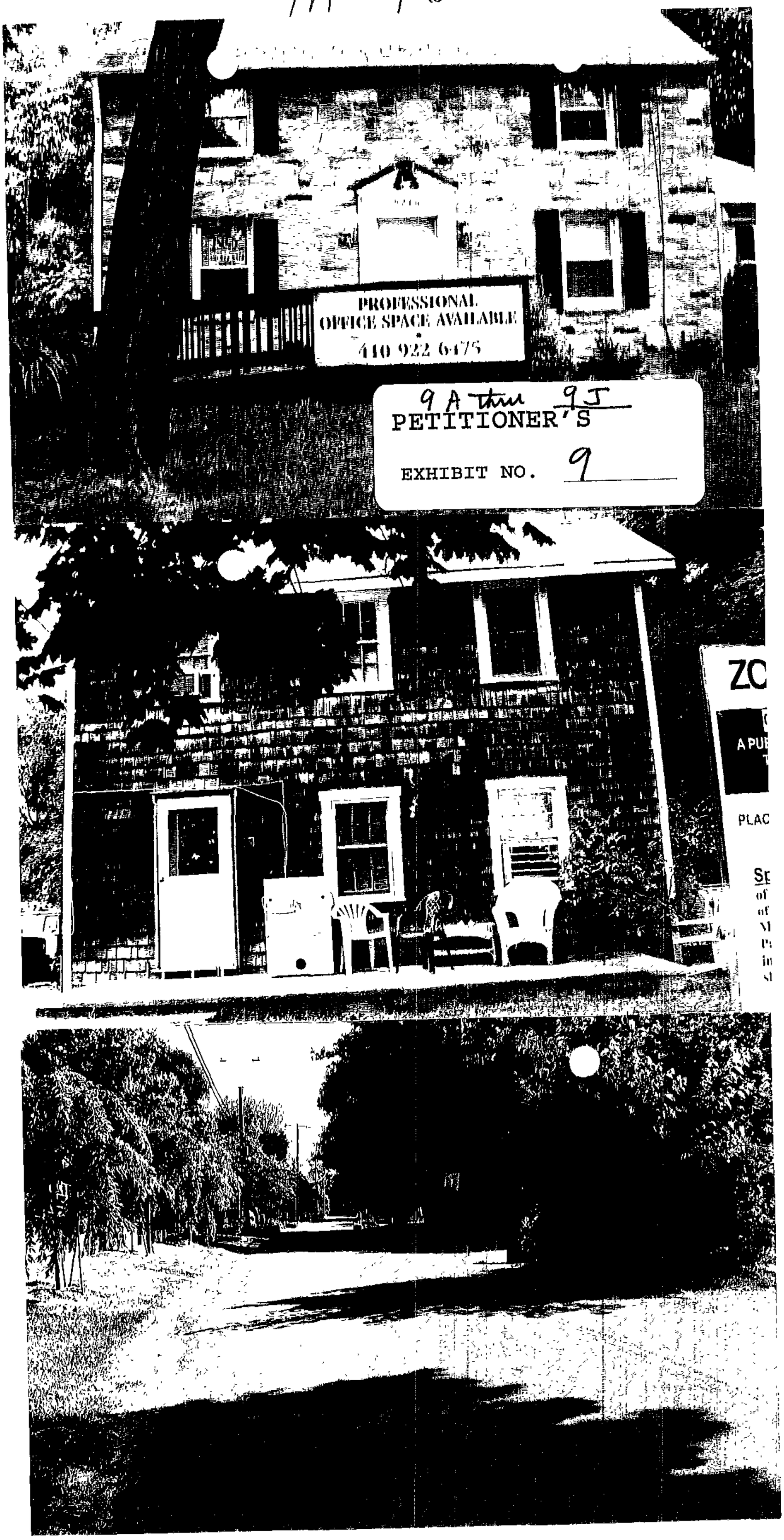
DAK
cc:file

PETITIONER'S

EXHIBIT NO. 8

Printed on Recycled Paper

9A - 9J


PROFESSIONAL
OFFICE SPACE AVAILABLE
440 922 6475
9 A thru 9 J
PETITIONER'S
EXHIBIT NO. 9
ZC
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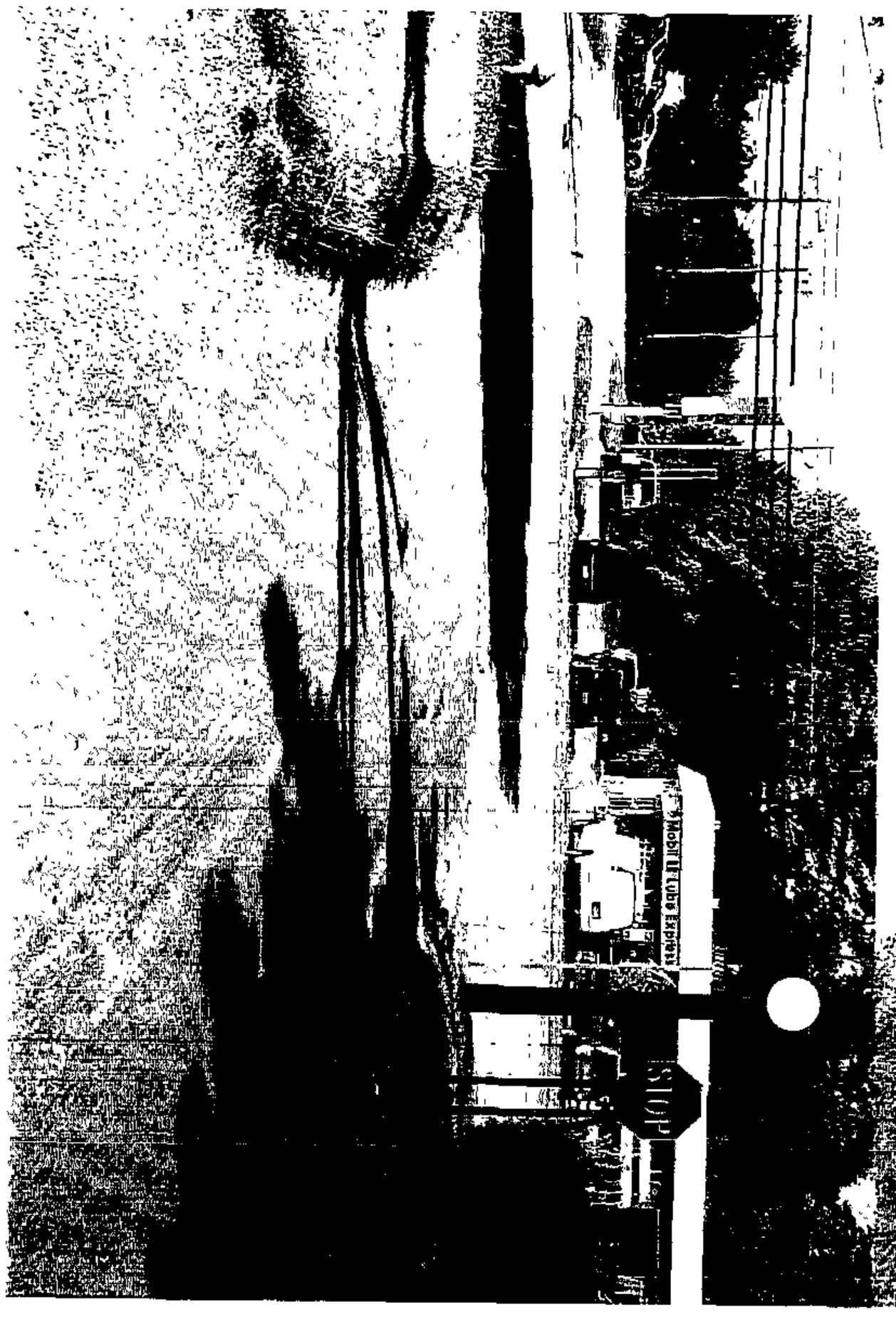
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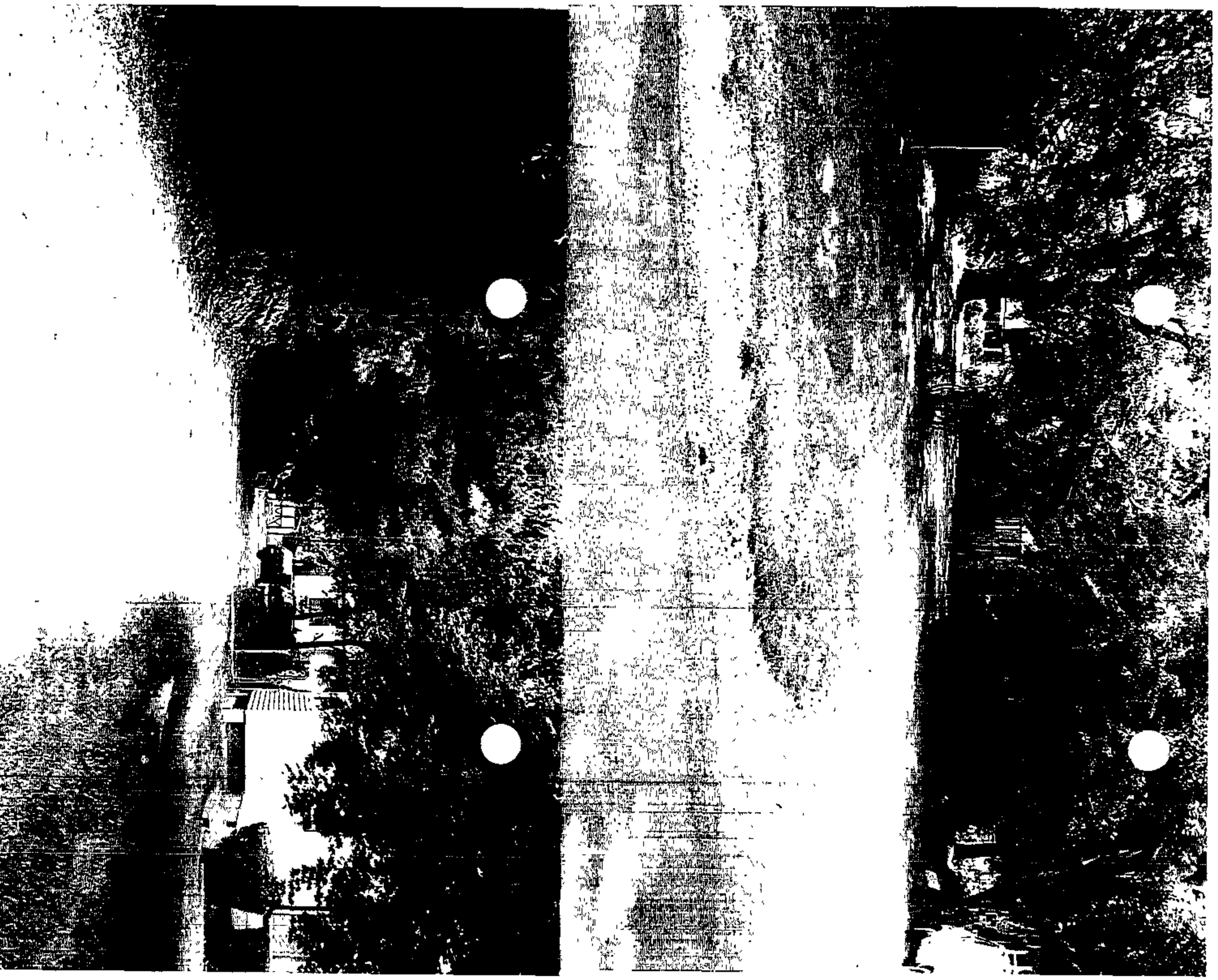

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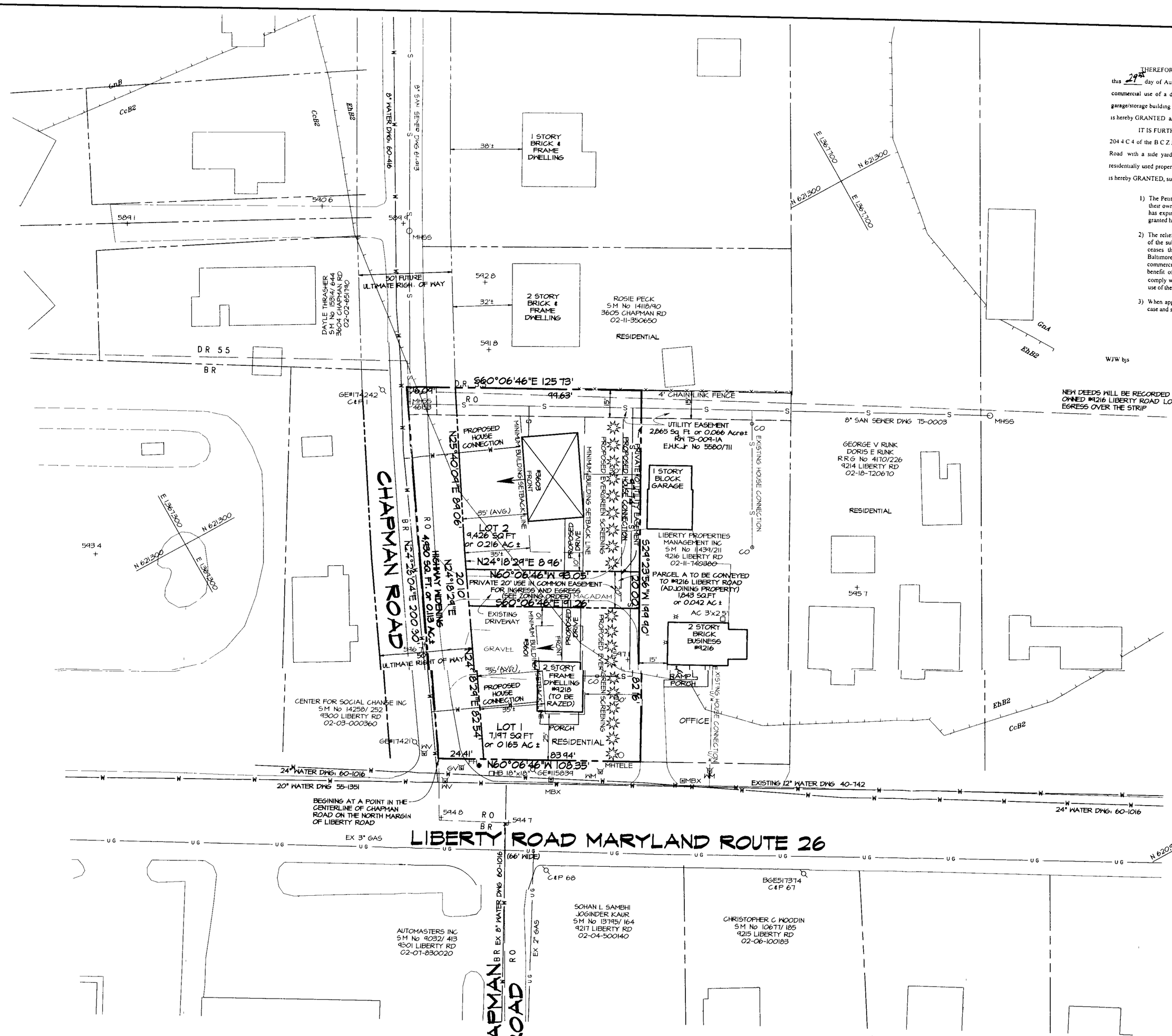


ZONING ORDER
CASE No 05-613-SPHA

THEREFORE IT IS ORDERED by the Zoning Commissioner for Baltimore County this 24th day of August 2005 that the Petition for Special Hearing to approve the continued commercial use of a driveway through a residential lot and the continued use of an existing garage/storage building for commercial purposes, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 204.4.C.4 of the B.C.Z.R. to allow an existing Class A Office Building known as 9216 Liberty Road with a side yard setback of 15 feet in lieu of the required 20 feet from an adjacent residentially used property (9218 Liberty Road) in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions

1) The Petitioners are hereby made aware that proceeding at this time is at their 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 relief granted herein is conditioned upon the contiguous ownership of the subject two properties. In the event such contiguous ownership ceases, the Petitioners shall record a new deed in the Land Records of Baltimore County conveying a fee simple interest in the bed of the commercially used driveway on the residential property for the use and benefit of the owner of the commercially used property. Failure to comply with this condition shall result in a termination of the continued use of the commercial use driveway through the residential property

3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order

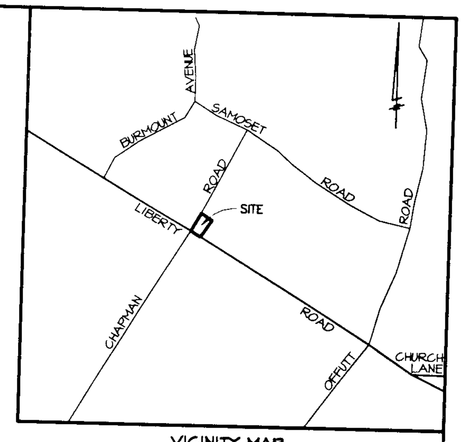
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW bjs

NEW DEEDS WILL BE RECORDED INCORPORATING THE 20 FEET WIDE STRIP INTO THE CONTIGUOUSLY OWNED #9216 LIBERTY ROAD LOTS 1 AND 2 WILL BE GRANTED AN EASEMENT FOR INGRESS AND EGRESS OVER THE STRIP

LEGEND

EXISTING LAMP POST (24" HIGH)
EXISTING CLEANOUT
PROPOSED DWELLING
EXISTING BUILDING
SOIL LINE
WOODS LINE
EXISTING PAVING
PROPOSED PAVING
ZONING LINE
PROPERTY LINE
CONTOURS



VICINITY MAP
1" = 1000'

GENERAL NOTES

1 THE BOUNDARY SHOWN HEREON IS FROM A SURVEY PERFORMED BY GERHOLD, CROSS, AND ETZEL, LTD
2 THE TOPOGRAPHY SHOWN HEREON HAS TAKEN FROM BALTIMORE COUNTY GIS TILE 77A1
3 THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No 32
4 CENSUS TRACT 4025.06 REGIONAL PLANNING DISTRICT 312
WATERSHED GWYNNS FALLS SUBSEWERSHED 64
SCHOOL DISTRICT: ELEMENTARY - RANDALLSTOWN E.S., MIDDLE - DEER PARK M.S., HIGH - RANDALLSTOWN H.S
A.D.C. MAP & GRID 24 D11
5 THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA
6 THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOODPLAIN
7 THE SUBJECT PROPERTY IS SERVICED BY PUBLIC WATER AND SEWER.
8 THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT
9 ZONING CASE #1748-T HAS GRANTED JUNE 28, 1950 ALLOWING FOR A TEMPORARY USE ROADSIDE STAND (FARM PRODUCTS) WITHIN THE CURRENT SUBJECT PROPERTY
10 THERE ARE NO APPARENT SEPTIC SYSTEMS, WELLS, OR SOIL PERCOLATION TESTS ON OR WITHIN 100' OF THE SUBJECT PROPERTY
11 THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY
12 THE ENVELOPES SHOWN HEREON ARE FOR THE LOCATION OF ALL PRINCIPAL BUILDINGS ONLY
THE ENVELOPE BUT MUST COMPLY WITH SECTIONS 400 AND 301 OF THE BALTIMORE COUNTY ZONING REGULATIONS (SUBJECT TO COVENANTS AND APPLICABLE BUILDING PERMITS)
13 AVERAGE DAILY TRIPS (2 LOTS) x 12.4 = 24.8
14 LOCAL OPEN SPACE IS NOT REQUIRED FOR MINOR SUBDIVISIONS
15 ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARDS CANNOT BE LOCATED IN FLOOD PLAIN AREAS OR HYDRIC SOILS
16 HIGHWAY, SLOPE EASEMENTS, DRAINAGE AND UTILITIES EASEMENTS, ACCESS EASEMENTS AND STORM WATER MANAGEMENT AREAS, NO MATTER HOW ENTITLED, SHOWN HEREON, ARE RESERVED UNTO THE OWNER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MARYLAND
17 BALTIMORE COUNTY MAKES NO WARRANTY EXPRESSED OR IMPLIED AS TO THE RIGHT OF ANY PRESENT OR FUTURE OWNER OF ANY LOT SHOWN ON THIS PLAT TO USE ALL OR ANY PART OF THAT LAND DESIGNATED AS PRIVATE RIGHT OF WAY FOR THE PURPOSE OF INGRESS, EGRESS, OR THE RIGHT TO OPEN OR EXCAVATE THE AFORESAID RIGHT OF WAY FOR THE PURPOSES OF INSTALLING, CONSTRUCTING AND MAINTAINING UTILITIES SUCH AS BUT NOT LIMITED TO WATER, SEWER, ELECTRICAL, TELEPHONE OR CABLE T.V.
18 THIS PROPERTY, AS SHOWN HEREON, HAS BEEN HELD INTACT SINCE NOVEMBER 13, 1945 THE DEVELOPER'S SURVEYOR HAS CONFIRMED THAT NO PART OF THE GROSS AREA OF THIS PROPERTY AS SHOWN ON THE PLAN HAS EVER BEEN UTILIZED, RECORDED OR REPRESENTED AS DENSITY OR AREA TO SUPPORT ANY OFF-SITE DWELLINGS
19 EXISTING USE: ONE SINGLE FAMILY DWELLING, PROPOSED USE: TWO SINGLE FAMILY DWELLINGS
20 A ZONING FINAL DEVELOPMENT PLAN MAY BE REQUIRED, DEPENDING ON THE NUMBER OF LOTS CREATED, AS DETERMINED FROM ZONING AND THE EFFECTIVE DATE OF THE ZONING REGULATIONS FOR THAT ZONE.
21 THE GROSS AREA OF THE SUBJECT PROPERTY IS LESS THAN 40,000 SQUARE FEET, THEREFORE THIS PROPERTY IS EXEMPT FROM THE FOREST CONSERVATION REQUIREMENTS
22 EXISTING USE: ONE SINGLE FAMILY DWELLING, PROPOSED USE: TWO SINGLE FAMILY DWELLINGS
23 A USE IN COMMON EASEMENT AND MAINTENANCE AGREEMENT FOR INGRESS AND EGRESS IS TO BE RECORDED PRIOR TO BUILDING PERMIT
24 A PRIVATE EASEMENT AND MAINTENANCE AGREEMENT FOR UTILITIES IS TO BE RECORDED PRIOR TO BUILDING PERMIT
25 BUILDING ELEVATIONS SHOWING BUILDING MATERIALS FOR THE PROPOSED DWELLING ALONG LIBERTY ROAD MUST BE REVIEWED AND APPROVED BY THE OFFICE OF PLANNING PRIOR TO THE ISSUANCE OF A BUILDING PERMIT
26 THE EXISTING DWELLING IS TO BE RAISED BY THE OWNER PRIOR TO APPLICATION FOR BUILDING PERMIT FOR LOT 1
27 THE SITE IS EXEMPT FROM THE REQUIREMENTS OF THE FOREST CONSERVATION LAW DUE TO ITS LIMITED AREA
28 THE HIGHWAY WIDENING WILL BE CONVEYED TO BALTIMORE COUNTY, MARYLAND PRIOR TO SUBDIVISION APPROVAL

DENSITY CALCULATIONS

GROSS AREA	0.586 Ac ±
HIGHWAY WIDENING	0.163 Ac ±
NET AREA	0.423 Ac ±
LOTS PERMITTED	5.5 x 0.423 Ac ± = 2 Lots
LOTS PROPOSED	2

OWNER

LIBERTY PROPERTIES MANAGEMENT, INC
9216 LIBERTY ROAD
RANDALLSTOWN, MARYLAND 21133
(410)-627-6146

BALTIMORE COUNTY MINOR SUBDIVISION
Project No _____
DEVELOPMENT REGULATIONS
☐ Exempt from Article 32, Title 4, Subtitle 2
☐ Panhandle exempt from Sections 32-4-211 through 32-4-211 and Sections 32-4-226 and 32-4-227
PDM CERTIFICATION
☐ Approved ☐ Disapproved
By _____ Date _____
APPROVED, DEPRM
By _____ Date _____

BALTIMORE COUNTY ZONING REGULATIONS

R.O. BUILDING REGULATIONS

204.3.A.1 USES PERMITTED AS OF RIGHT AND AS LIMITED IN D.R. 5.5 ZONES

204.4.A USES PERMITED UNDER SECTIONS 204.3.A.1 ARE GOVERNED BY THE BULK REGULATIONS OF D.R.5.5 ZONES

303.1 IN D.R.5.5 ZONES THE FRONT YARD DEPTH OF ANY BUILDING HEREAFTER ERECTED SHALL BE THE AVERAGE OF FRONT YARD DEPTHS OF THE LOTS IMMEDIATELY ADJOINING ON EACH SIDE, PROVIDED SUCH ADJOINING LOTS ARE IMPROVED WITH PRINCIPAL BUILDINGS SITUATE WITHIN 200 FEET OF THE JOINT SIDE PROPERTY LINE. PROVIDED THAT NO DWELLING SHALL BE REQUIRED TO BE SET BACK MORE THAN 40 FEET IN D.R.5.5 ZONES

BALTIMORE COUNTY ZONING POLICY MANUAL

S-14 SIDE STREET SETBACKS
WHEN THE SMALL LOT TABLE APPLIES

SIDE STREET SETBACKS APPLICABLE TO THE SMALL LOT TABLE SHOULD BE THE SAME AS THE FRONT YARD REQUIREMENT. AVERAGING IS NOT PERMITTED ON A SIDE STREET SETBACK AND A FRONT AVERAGE SETBACK CANNOT BE DUPLICATED ON THE SIDE STREET CENTERLINE SETBACKS ARE NOT REQUIRED

REFERENCE B.C.Z.R. 1B023.C.1

BALTIMORE COUNTY ZONING REGULATIONS

D.R. 5.5 DEVELOPMENT STANDARDS

1B023.C.1

MINIMUM NET LOT AREA PER DWELLING UNIT (sq. ft.)	6,000
MINIMUM LOT WIDTH (feet)	55
MINIMUM FRONT YARD DEPTH (feet)	25
MINIMUM WIDTH OF INDIVIDUAL SIDE YARD (feet)	10
MINIMUM REAR YARD DEPTH (feet)	30

303.1 IN D.R.5.5 ZONES THE FRONT YARD DEPTH OF ANY BUILDING HEREAFTER ERECTED SHALL BE THE AVERAGE OF FRONT YARD DEPTHS OF THE LOTS IMMEDIATELY ADJOINING ON EACH SIDE, PROVIDED SUCH ADJOINING LOTS ARE IMPROVED WITH PRINCIPAL BUILDINGS SITUATE WITHIN 200 FEET OF THE JOINT SIDE PROPERTY LINE. PROVIDED THAT NO DWELLING SHALL BE REQUIRED TO BE SET BACK MORE THAN 40 FEET IN D.R.5.5 ZONES

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES w/BASEMENT	STREETS & PARKING
CcB2 EhB2	Slight	Slight	Moderate: slope
GnB, GnA	Severe: high water table, moderately slow permeability	Severe: high water table	Severe: high water table

I HEREBY CERTIFY THAT I HAVE REVIEWED WITH DUE DILIGENCE THE MINOR SUBDIVISION COMMENTS AND HAVE PREPARED WITH DUE DILIGENCE THIS MINOR SUBDIVISION PLAN PURSUANT TO THOSE AGENCY COMMENTS THIS PLAN AGREES WITH THE PLAN AND ORDER FOR CASE #05-613-SPHA

REVISION	DATE
REVISED PER MEETING WITH JOHN LEWIS	01-25-2006
SECOND REVIEW COMMENTS ADDRESSED	01-18-2006
FIRST REVIEW COMMENTS ADDRESSED	12-01-2005

05-125-M
MINOR SUBDIVISION
PROPERY OF LIBERTY PROPERTIES MANAGEMENT, INC.

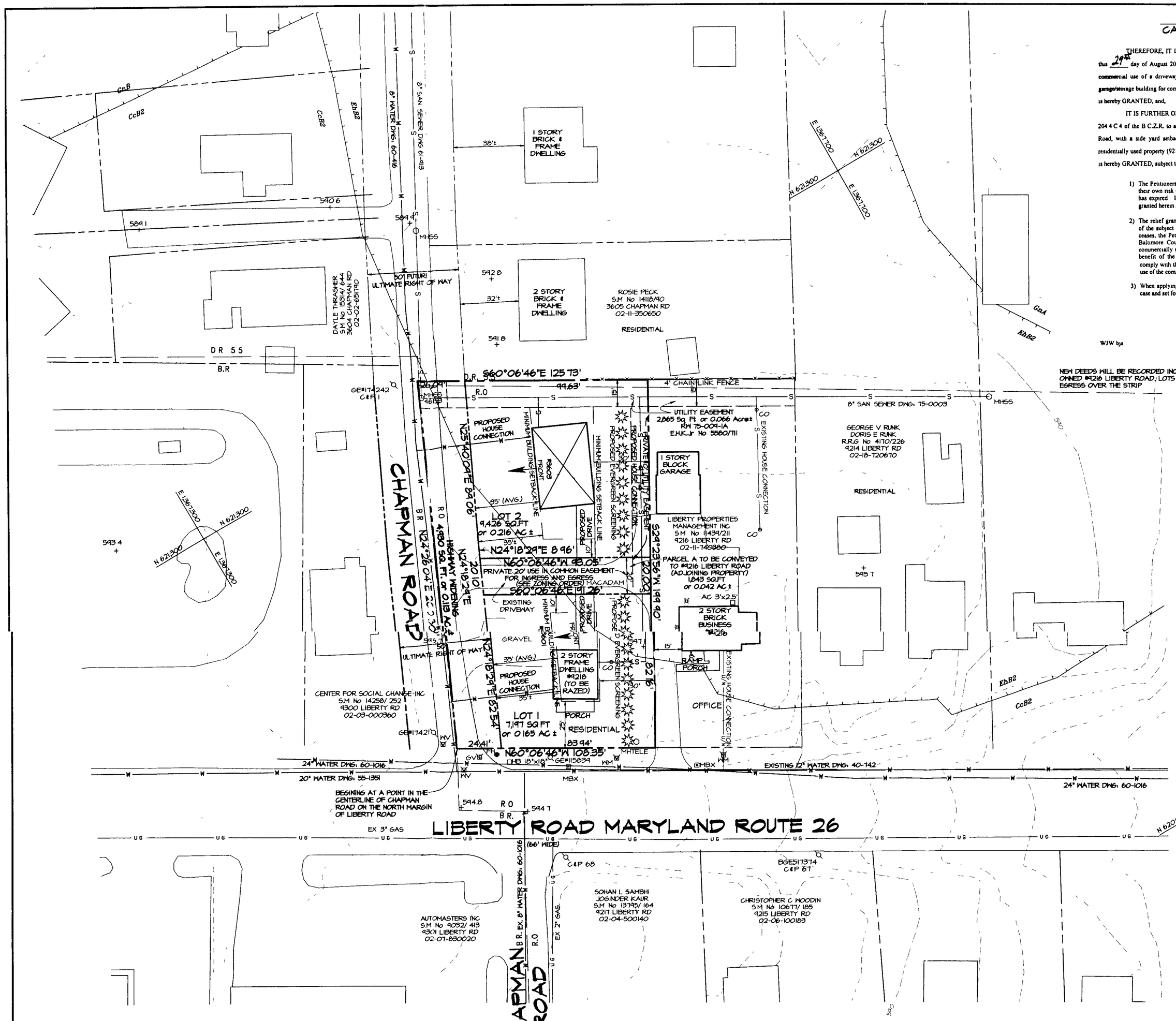
9218 LIBERTY ROAD
Deed Ref: S.M. No. 11439 folio 211 "SECOND"
Tax Account No. 02-01-740381
Zoned R.O., GIS Tile 077A1
Tax Map 77, Grid 7, Parcel 39 & 38
2nd ELECTION DISTRICT
4th COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale 1"=30' Date: OCTOBER 11, 2005

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevar
Tonson, Maryland 21286
(410) 823-4470

DEVELOPER'S EXHIBIT NO 3

COMPUTED	DRAWN M.E.A.	CHECKED S.A.L.	FILE:X:\Toitelbaum\minorsub.pro



ZONING ORDER
CASE No 05-613-SPHA

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 24th day of August 2005 that the Petition for Special Hearing to approve the continued commercial use of a driveway through a residential lot and the continued use of an existing garage/storage building for commercial purposes, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 204.4 C.4 of the B.C.Z.R. to allow an existing Class A Office Building, known as 9216 Liberty Road, with a side yard setback of 15 feet in lieu of the required 20 feet from an adjacent residentially used property (9218 Liberty Road), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions

1) The Petitioners are hereby made aware that proceeding at this time is at their 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 relief granted herein is conditioned upon the contiguous ownership of the subject two properties In the event such contiguous ownership ceases, the Petitioners shall record a new deed in the Land Records of Baltimore County conveying a fee simple interest in the bed of the commercially used driveway on the residential property for the use and benefit of the owner of the commercially used property Failure to comply with this condition shall result in a termination of the continued use of the commercial use driveway through the residential property

3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

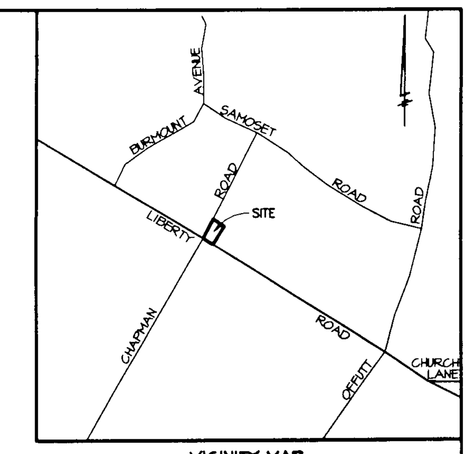
WJW bjs

NEW DEEDS WILL BE RECORDED INCORPORATING THE 20 FEET WIDE STRIP INTO THE CONTIGUOUSLY OWNED #9216 LIBERTY ROAD, LOTS 1 AND 2 WILL BE GRANTED AN EASEMENT FOR INGRESS AND EGRESS OVER THE STRIP

MARYLAND COORDINATE SYSTEM NAD83(1991)

LEGEND

EXISTING LAMP POST (24' HIGH)
EXISTING CLEANOUT
PROPOSED DWELLING
EXISTING BUILDING
SOIL LINE
WOODS LINE
EXISTING PAVING
PROPOSED PAVING
ZONING LINE
PROPERTY LINE
CONTOURS



VICINITY MAP
1" = 1000'

GENERAL NOTES

1 THE BOUNDARY SHOWN HEREON IS FROM A SURVEY PERFORMED BY GERHOLD, CROSS, AND ETZEL, LTD
2 THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 77A1
3 THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No 32
4 CENSUS TRACT 4025.06 REGIONAL PLANNING DISTRICT 312
WATERSHED GWYNNS FALLS SUBWATERSHED 64
SCHOOL DISTRICT: ELEMENTARY - RANDALLSTOWN E.S.; MIDDLE - DEER PARK M.S., HIGH - RANDALLSTOWN H.S
A.D.C. MAP & GRID 24 D11
5 THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA
6 THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOODPLAIN
7 THE SUBJECT PROPERTY IS SERVICED BY PUBLIC WATER AND SEWER.
8 THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT
9 ZONING CASE #1746-T HAS GRANTED JUNE 28, 1950 ALLOWING FOR A TEMPORARY USE ROADSIDE STAND (FARM PRODUCTS) WITHIN THE CURRENT SUBJECT PROPERTY
10 THERE ARE NO APPARENT SEPTIC SYSTEMS, WELLS, OR SOIL PERCOLATION TESTS ON OR WITHIN 100' OF THE SUBJECT PROPERTY
11 THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY
12 THE ENVELOPES SHOWN HEREON ARE FOR THE LOCATION OF ALL PRINCIPAL BUILDINGS ONLY ACCESSORY STRUCTURES, FENCES, AND PROJECTIONS INTO YARDS MAY BE CONSTRUCTED OUTSIDE THE ENVELOPE BUT MUST COMPLY WITH SECTIONS 400 AND 301 OF THE BALTIMORE COUNTY ZONING REGULATIONS (SUBJECT TO COVENANTS AND APPLICABLE BUILDING PERMITS)
13 AVERAGE DAILY TRIPS (2 LOTS) = 12.4 = 24.8
14 LOCAL OPEN SPACE IS NOT REQUIRED FOR MINOR SUBDIVISIONS
15 ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARDS CANNOT BE LOCATED IN FLOOD PLAIN AREAS OR HYDRIC SOILS
16 HIGHWAY, SLOPE EASEMENTS, DRAINAGE AND UTILITIES EASEMENTS, ACCESS EASEMENTS AND STORM WATER MANAGEMENT AREAS, NO MATTER HOW ENTITLED, SHOWN HEREON, ARE RESERVED UNTO THE OWNER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MARYLAND
17 BALTIMORE COUNTY MAKES NO WARRANTY EXPRESSED OR IMPLIED AS TO THE RIGHT OF ANY PRESENT OR FUTURE OWNER OF ANY LOT SHOWN ON THIS PLAT TO USE ALL OR ANY PART OF THAT LAND DESIGNATED AS PRIVATE RIGHT OF WAY FOR THE PURPOSE OF INGRESS, EGRESS, OR THE RIGHT TO OPEN OR EXCAVATE THE AFORESAID RIGHT OF WAY FOR THE PURPOSES OF INSTALLING, CONSTRUCTING AND MAINTAINING UTILITIES SUCH AS BUT NOT LIMITED TO WATER, SEWER, ELECTRICAL, TELEPHONE OR CABLE TV
18 THIS PROPERTY, AS SHOWN HEREON, HAS BEEN HELD INTACT SINCE NOVEMBER 13, 1945 THE DEVELOPER'S SURVEYOR HAS CONFIRMED THAT NO PART OF THE GROSS AREA OF THIS PROPERTY AS SHOWN ON THE PLAN HAS EVER BEEN UTILIZED, RECORDED OR REPRESENTED AS DENSITY OR AREA TO SUPPORT ANY OFF-SITE DWELLINGS
19 EXISTING USE: ONE SINGLE FAMILY DWELLING ; PROPOSED USE: TWO SINGLE FAMILY DWELLINGS
20 A ZONING FINAL DEVELOPMENT PLAN MAY BE REQUIRED, DEPENDING ON THE NUMBER OF LOTS CREATED, AS DETERMINED FROM ZONING AND THE EFFECTIVE DATE OF THE ZONING REGULATIONS FOR THAT ZONE.
21 THE GROSS AREA OF THE SUBJECT PROPERTY IS LESS THAN 40,000 SQUARE FEET, THEREFORE THIS PROJECT IS EXEMPT FROM THE FOREST CONSERVATION REQUIREMENTS
22 EXISTING USE: ONE SINGLE FAMILY DWELLING; PROPOSED USE: TWO SINGLE FAMILY DWELLINGS
23 A USE IN COMMON EASEMENT AND MAINTENANCE AGREEMENT FOR INGRESS AND EGRESS IS TO BE RECORDED PRIOR TO BUILDING PERMIT
24 A PRIVATE EASEMENT AND MAINTENANCE AGREEMENT FOR UTILITIES IS TO BE RECORDED PRIOR TO BUILDING PERMIT
25 BUILDING ELEVATIONS SHOWING BUILDING MATERIALS FOR THE PROPOSED DWELLING ALONG LIBERTY ROAD MUST BE REVIEWED AND APPROVED BY THE OFFICE OF PLANNING PRIOR TO THE ISSUANCE OF A BUILDING PERMIT
26 THE EXISTING DWELLING IS TO BE RAISED BY THE OWNER PRIOR TO APPLICATION FOR BUILDING PERMIT FOR LOT 1
27 THE SITE IS EXEMPT FROM THE REQUIREMENTS OF THE FOREST CONSERVATION LAW DUE TO ITS LIMITED AREA
28 THE HIGHWAY WIDENING WILL BE CONVEYED TO BALTIMORE COUNTY, MARYLAND PRIOR TO SUBDIVISION APPROVAL

DENSITY CALCULATIONS

GROSS AREA	0.556 Ac ±
HIGHWAY WIDENING	0.113 Ac ±
NET AREA	0.423 Ac ±
LOTS PERMITTED	5.5 x 0.423 Ac ± = 2 Lots
LOTS PROPOSED	2

OWNER

LIBERTY PROPERTIES MANAGEMENT, INC
9216 LIBERTY ROAD
RANDALLSTOWN, MARYLAND 21133
(410)-627-6146

BALTIMORE COUNTY ZONING REGULATIONS

R.O. BUILDING REGULATIONS

204.3.A.1 USES PERMITTED AS OF RIGHT AND AS LIMITED IN D.R. 5.5 ZONES

204.4 A. USES PERMITTED UNDER SECTIONS 204.3.A.1 ... ARE GOVERNED BY THE BULK REGULATIONS OF D.R.5.5 ZONES

301.1 IN D.R.5.5 ZONES THE FRONT YARD DEPTH OF ANY BUILDING HEREAFTER ERECTED SHALL BE THE AVERAGE OF FRONT YARD DEPTHS OF THE LOTS IMMEDIATELY ADJOINING ON EACH SIDE, PROVIDED SUCH ADJOINING LOTS ARE IMPROVED WITH PRINCIPAL BUILDINGS SITUATE WITHIN 200 FEET OF THE JOINT SIDE PROPERTY LINE. PROVIDED THAT NO DWELLING SHALL BE REQUIRED TO BE SET BACK MORE THAN 40 FEET IN D.R.5.5 ZONES ...

BALTIMORE COUNTY ZONING POLICY MANUAL

S-14 SIDE STREET SETBACKS
WHEN THE SMALL LOT TABLE APPLIES

SIDE STREET SETBACKS APPLICABLE TO THE SMALL LOT TABLE SHOULD BE THE SAME AS THE FRONT YARD REQUIREMENT AVERAGING IS NOT PERMITTED ON A SIDE STREET SETBACK AND A FRONT AVERAGE SETBACK CANNOT BE DUPLICATED ON THE SIDE STREET CENTERLINE SETBACKS ARE NOT REQUIRED

REFERENCE: B.C.Z.R. 1B02.3.C.1

BALTIMORE COUNTY ZONING REGULATIONS

D.R. 5.5 DEVELOPMENT STANDARDS

1B02.3.C.1

MINIMUM NET LOT AREA PER DWELLING UNIT (sq. ft.)	6,000
MINIMUM LOT WIDTH (feet)	55
MINIMUM FRONT YARD DEPTH (feet)	25
MINIMUM WIDTH OF INDIVIDUAL SIDE YARD (feet)	10
MINIMUM REAR YARD DEPTH (feet)	30

301.1 IN D.R.5.5 ZONES THE FRONT YARD DEPTH OF ANY BUILDING HEREAFTER ERECTED SHALL BE THE AVERAGE OF FRONT YARD DEPTHS OF THE LOTS IMMEDIATELY ADJOINING ON EACH SIDE, PROVIDED SUCH ADJOINING LOTS ARE IMPROVED WITH PRINCIPAL BUILDINGS SITUATE WITHIN 200 FEET OF THE JOINT SIDE PROPERTY LINE. ... PROVIDED THAT NO DWELLING SHALL BE REQUIRED TO BE SET BACK MORE THAN 40 FEET IN D.R.5.5 ZONES ...

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES w/BASEMENT	STREETS & PARKING
GcB2 EhB2	Slight	Slight	Moderate: slope
GnB, GnA	Severe: high water table; moderately slow permeability	Severe: high water table	Severe: high water table

PLAT TO ACCOMPANY PETITION FOR SPECIAL HEARING
PROPERY OF LIBERTY PROPERTIES MANAGEMENT, INC.

9218 LIBERTY ROAD
Deed Ref: S.M. No 11439 folio 211 "SECOND"
Tax Account No.: 02-01-740381
Zoned R.O.; GIS Tile 077A1
Tax Map 77, Grid 7; Parcel 39
2nd ELECTION DISTRIC
4th COUNCILMANIC DISTR
BALTIMORE COUNTY, MARYL...

PETITIONER'S EXHIBIT NO 4

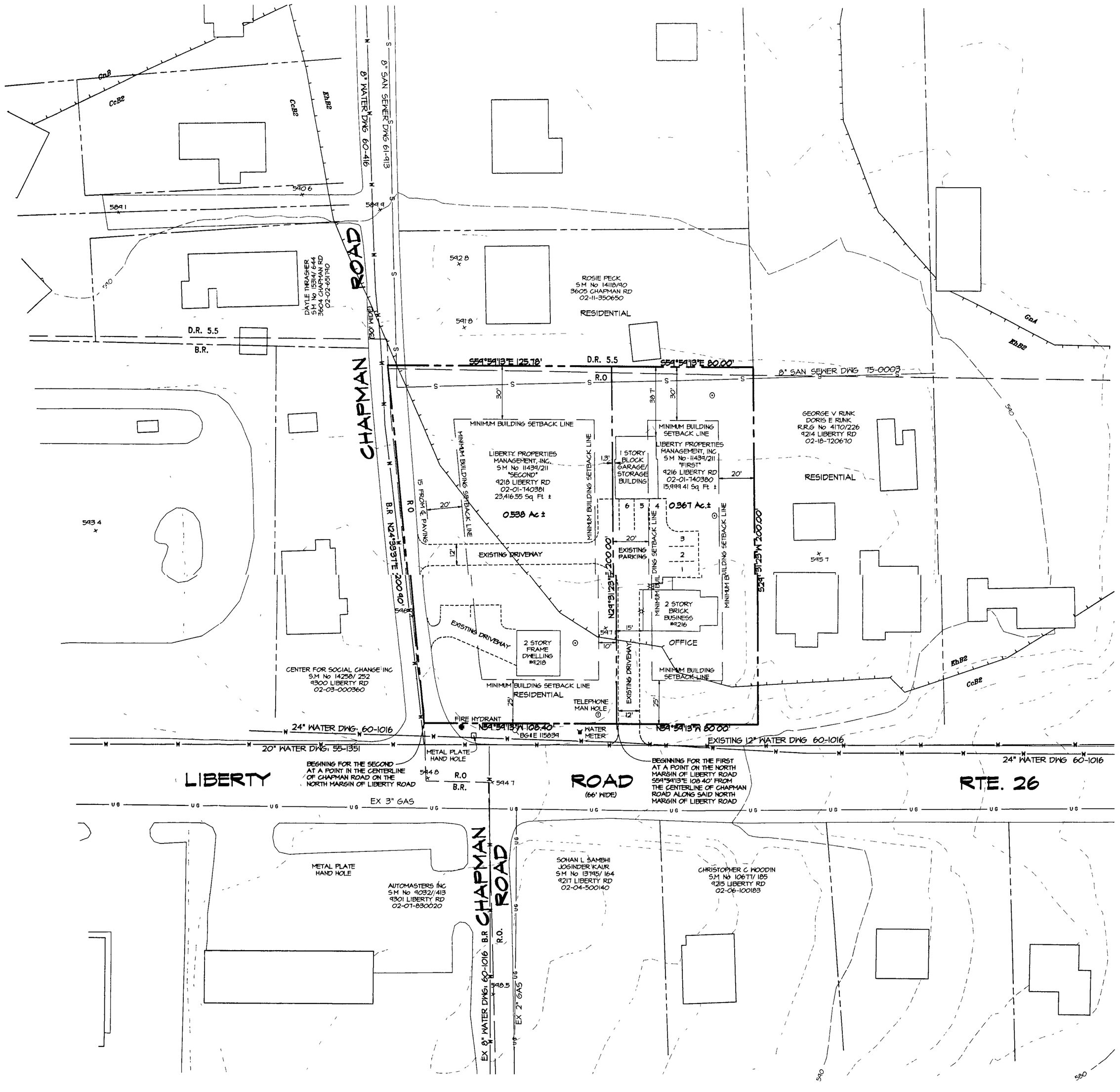
Scale: 1"=30'
Date: APRIL 06, 2006

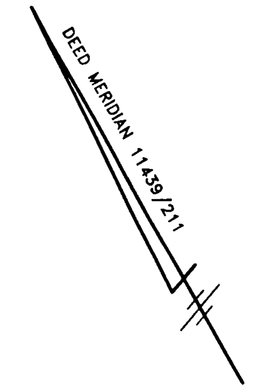
STATE OF MARYLAND PROFESSIONAL LAND SURVEYOR 4/10/06

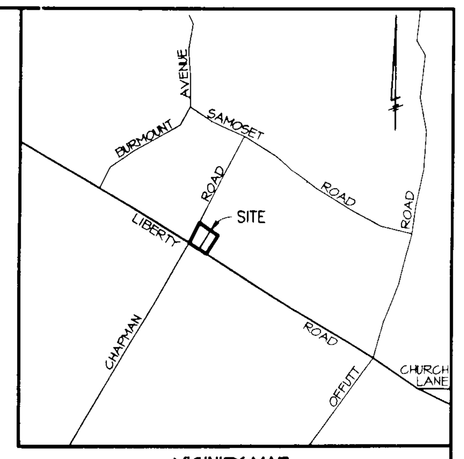
GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

REVISION	DATE

COMPUTED:	DRAWN: M.E.A	CHECKED: S.A.L	FILE:X:\Teitelbaum\zone2.pro







VICINITY MAP
1" = 1000'

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM A DEED RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY IN LIBER 11439, FOLIO 211
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 7TA1
3. THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No 32
4. CENSUS TRACT 4025.06 REGIONAL PLANNING DISTRICT 312
   WATERSHED GWYNNS FALLS SUBWATERSHED 64
   SCHOOL DISTRICT: ELEMENTARY - RANDALLSTOWN E.S., MIDDLE - DEER PARK M.S., HIGH - RANDALLSTOWN H.S
   A.D.C. MAP & GRID 24 D11
5. THE SUBJECT PROPERTIES ARE NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA
6. THE SUBJECT PROPERTIES ARE NOT WITHIN A 100 YEAR FLOODPLAIN
7. THE SUBJECT PROPERTIES ARE SERVICED BY PUBLIC WATER AND SEWER.
8. THE SUBJECT PROPERTIES ARE NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT
9. ZONING CASE #1149-T WAS GRANTED JUNE 20, 1950 ALLOWING FOR A TEMPORARY USE ROADSIDE STAND (FARM PRODUCTS) WITHIN THE CURRENT SUBJECT PROPERTIES
10. FIRST LOT WAS AFFECTED BY PERMIT B-255454 TO ALLOW LIBERTY PROPERTIES MANAGEMENT, INC 9216 LIBERTY ROAD 21133 TO USE AND OCCUPY THE LAND AND/OR BUILDINGS DESCRIBED AND LOCATED

R.O. BUILDING SETBACKS

MAXIMUM FLOOR AREA RATIO	0.33
MAXIMUM HEIGHT OF STRUCTURE (feet)	35
MINIMUM FRONT YARD SETBACK (feet)	25 OR THE AVERAGE OF THE SETBACKS OF THE ADJACENT STRUCTURES, WHICHEVER IS LESS
MINIMUM SIDE YARD SETBACKS (feet)	10, EXCEPT IF THE ADJACENT PROPERTY IS PREDOMINANTLY RESIDENTIALLY ZONED, RESIDENTIALLY USED, OR IS ADJACENT TO A RESIDENTIAL STREET, IN WHICH CASE THE SETBACK SHALL BE 20
MINIMUM REAR YARD SETBACK (feet)	30

FLOOR AREA RATIO (FAR) CALCULATIONS

FLOOR AREA:
1ST FLOOR 828 Sq. Ft.
2ND FLOOR 818 Sq. Ft.
TOTAL: 1646 Sq. Ft.
GARAGE/STORAGE: 788 Sq. Ft.

F.A.R.:
1,646÷788/16,000×2,400 = 0.136

PARKING CALCULATIONS

MINIMUM NUMBER OF PARKING SPACES REQUIRED

3.3 PER 1,000 Sq. Ft. GROSS FLOOR AREA

TOTAL PARKING SPACES REQUIRED = 6
(0.0033 x 1646 = 5.34)

PARKING SPACES PROVIDED = 6

SPECIAL HEARING REQUEST

TO ALLOW THE CONTINUED COMMERCIAL USE OF A DRIVEWAY THROUGH A RESIDENTIAL LOT AND TO ALLOW FOR THE CONTINUED USE OF AN EXISTING GARAGE/STORAGE BUILDING

VARIANCE REQUEST

VARIANCE FROM B.C.Z.R. SECTION 204.4.C.4 TO ALLOW AN EXISTING BUSINESS A SIDE YARD SETBACK OF 15 FEET IN LIEU OF THE REQUIRED MINIMUM 20 FEET SETBACK FROM ADJACENT RESIDENTIALLY USED PROPERTY

LEGEND

- EXISTING LAMP POST (24' HIGH)
- EXISTING CLEANOUT
- EXISTING BUILDING
- SOIL LINE
- WOODS LINE
- EXISTING PAVING
- PROPOSED PAVING
- PROPERTY LINE
- CONTOURS

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
CcB2 EkB2	Slight	Slight	Moderate: slope
GnB, GnA	Severe: high water table, moderately slow permeability	Severe: high water table	Severe: high water table

OWNER

LIBERTY PROPERTIES MANAGEMENT, INC
9216 LIBERTY ROAD
RANDALLSTOWN, MARYLAND 21133
(410)-627-6146

REVISION	DATE

PLAT TO ACCOMPANY A PETITION FOR SPECIAL HEARING AND A PETITION FOR VARIANCE

PROPERY OF LIBERTY PROPERTIES MANAGEMENT, INC.

9216 & 9218 LIBERTY ROAD
Deed Ref: S.M. No. 11439 folio 211
Tax Account No.: 02-01-740380 & 02-01-740381
Zoned R.O.; Map NW 7-I
Tax Map 77; Grid 7; Parcel 39 & 3
2nd ELECTION DISTRICT
4th COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND
BRUCE EDWIN ROSS
No. 5[illegible]
REGISTERED PROPERTY LINE SURVEYOR
4/15/05

PETITIONER'S EXHIBIT NO. 1

Scale: 1"=30' Date: APRIL 12, 2005

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

COMPUTED:	DRAWN: K.D.B	CHECKED: M.E.A	FILE: X:\Teitelbaum\zoneplan.pro

Plan Sheet *077A1*

Note
Section 32-3-202 of the Baltimore County, 2003 Code establishes the zoning geodatabase This map represents the actions of the Baltimore County Council on August 31, 2004 (Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04) effective September 3, 2004

Legend

Zoning — Streams — Vegetation
Buildings — Roads

Baltimore County
Office of Planning and Zoning
Official Zoning Map

066B3	066C3	067A3	067B3	067C3
076B1	076C1	077A1	077B1	077C1
076B2	076C2	077A2	077B2	077C2

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

2nd Minor Subdivision Review

TO 123

INTEROFFICE CORRESPONDENCE

PAM

FOR GERHARD CROSS & ETZEL PICK UP.

DATE: 1/06/06

TO: DEPRM - DC (Bruce Seeley/Alli Cauthorn)
GWM (Dan Esser)
Agric. Pres. (Wally Lippincott)
SWM (Al Wirth/Ed Schmaus)
EIR (Pat Farr)
DPW – Solid Waste Management
Fire Dept. (Jim Mezzie)
OPCC - Development Review (Mark Cunningham)
PDM - House Numbers & Street Names (Joe Chmura)
Development Plans Review (Herb Oberc) DAK / RO.
Land Acquisition (Steve Houk)
Rec & Parks (Jan Cook)
SHA (Larry Gredlein)

RECEIVED
JAN - 6 2006
DEPT. OF PLANNING AND DEVELOPMENT MANAGEMENT

FROM: JOHN LEWIS
Planner, Zoning Review

SUBJECT: **Minor Subdivision Review** Liberty Properties
Minor Subdivision Name: ~~LIBERTIES PROPERTY~~ MANAGEMENT
Minor Subdivision Number: 05 125 M Election District: 2
Engineer: GERHOLD, CROSS & ETZEL, LTD. Phone No.: 410 823 4470

ACTION: Please review the attached plan for compliance with the current regulations and **return comments to this office by** 1/27/06. *If you have no comments or do not need to review this plan, please indicate by placing your initials here* _____.

Please initial here if your agency requests Land Acquisition to acquire:

✓ HIGHWAY WIDENING
_____ GREENWAY
_____ DRAIN/UTILITY EASEMENT
_____ FOREST CONSERVATION
_____ FOREST BUFFER
_____ FLOODPLAIN
_____ PUBLIC WORKS AGREEMENT
_____ NONE OF THE ABOVE

COMMENTS:
① Show 350' sight Lines.
② Show & Convey Adequatley sized Revertible Slope Easements to the County at no cost.

1/11/06

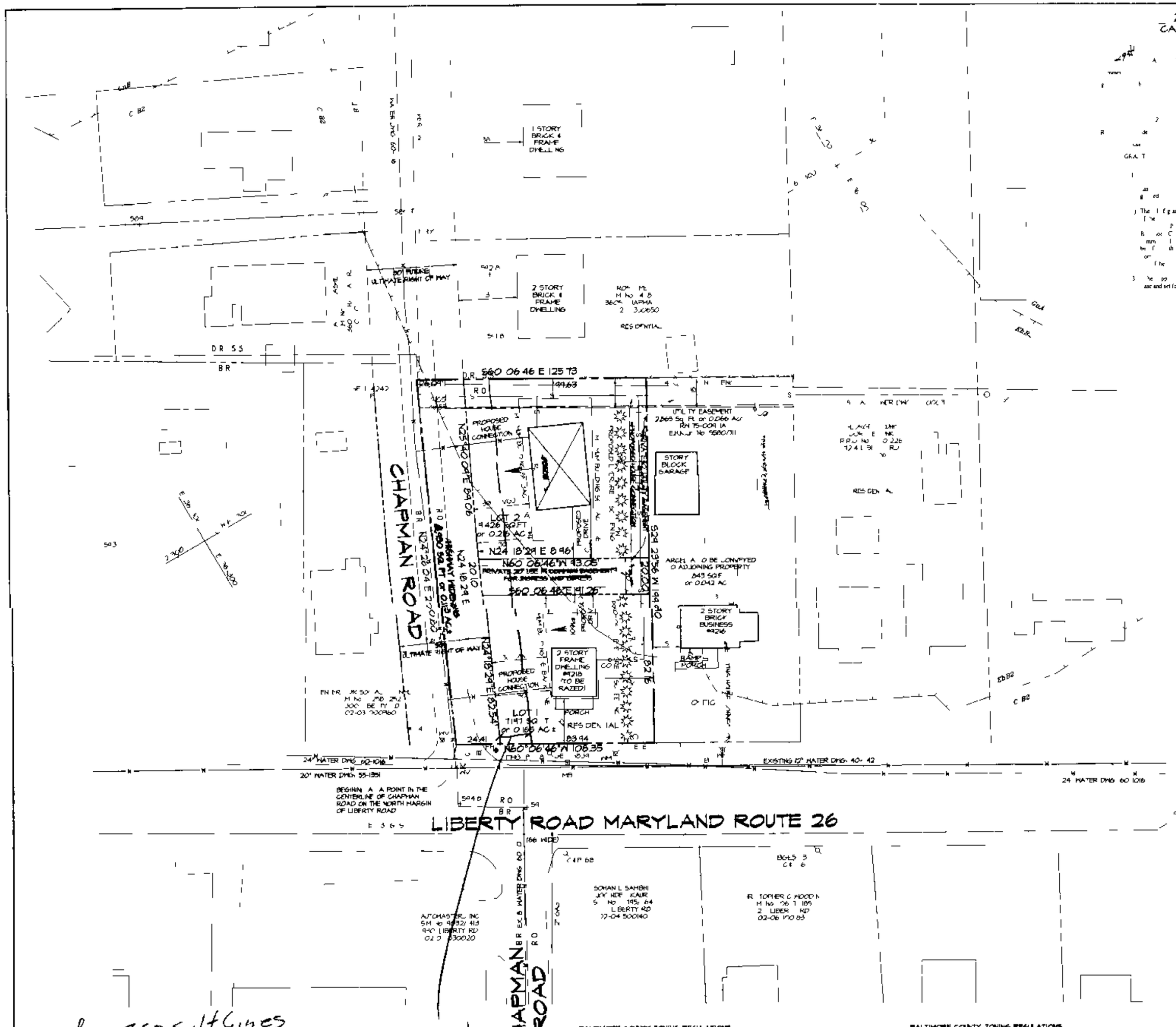
SCJ – Revised 11/21/00

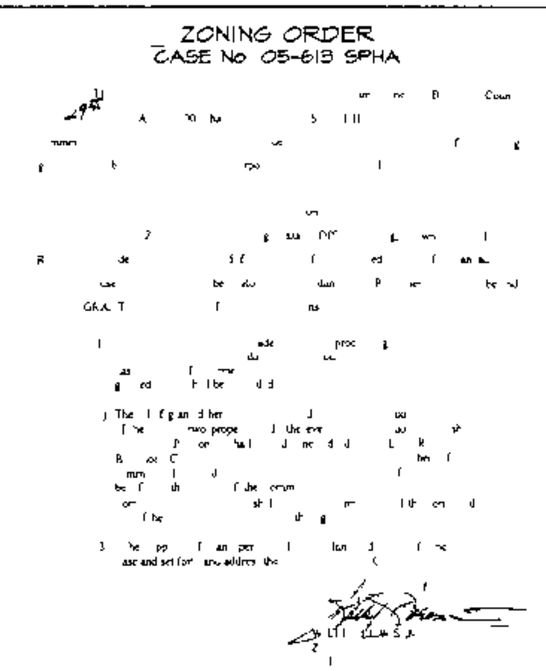
OG 489.SP11

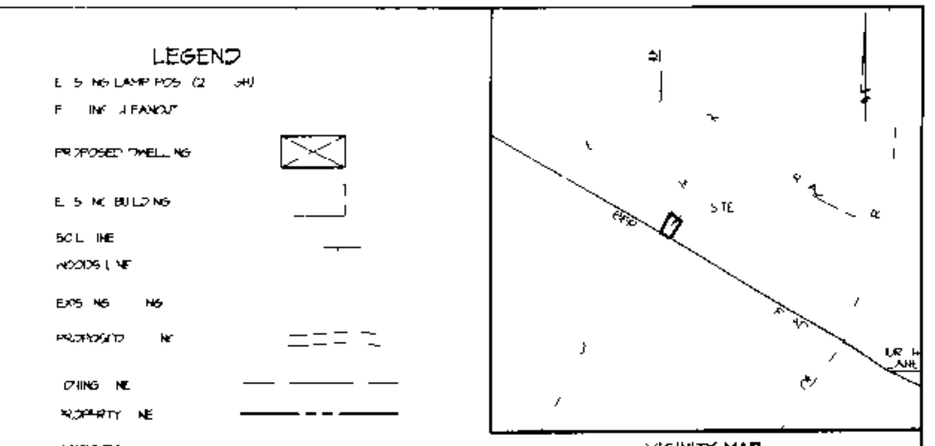
IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this _____ day of December 2005 that within ninety (90) days of the date of this Order, DEPRM shall complete its review of the environmental impacts outlined above and submit its requisite findings after which this matter shall be scheduled for further proceedings before this Hearing Officer.

WILLIAM J. WISEMAN, III
Zoning Commissioner/Hearing Officer

for Baltimore County







VICINITY MAP

LEGEND

E S NG LAMP POS (2)
F INF J FANOUT
PROPOSED DWELL NG
E S NG BUILD NG
SOL INE
WOODS LINE
EXIS NG NG
PROPOSED NG
DRING NG
PROPERTY NE
CONTOURS

GENERAL NOTES

1 THE BOUNDARY SHOWN HEREON IS FROM A SURVEY MADE FOR WILLIAM B GERHOLD CROSS AND ETZEL LTD
2 THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY G S TILE TTA
3 THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No 32
CENSUS TRACT 402506 REGIONAL PLANNING DISTRICT 32
WATERSHED GWYNNS FALLS SUBWATERSHED 64
SCHOOL DISTRICT ELEMENTARY RANDALLSTOWN ELS MIDDLE DEER PARK HIGH RANDALLSTOWN S
ADC MAP & GRID 24 E11
5 THE SUBJECT PROPERTY IS NOT WITHIN A DEVELOPMENT CONSTRAINT AREA
6 THE SUBJECT PROPERTY IS NOT WITHIN A DEVELOPMENT CONSTRAINT AREA
THE SUBJECT PROPERTY IS SERVICED BY PUBLIC WATER AND SEWER
8 THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT
9 ZONING CASE 7148 WAS GRANTED JUNE 28 50 ALLOWING FOR A TEMPORARY USE ROADSIDE STAND
PARKING PROVIDED WITHIN THE CURRENT SUBJECT PROPERTY
10 THERE ARE NO APPARENT SEPTIC SYSTEMS WELLS OR SOIL PERCOLATION TESTS ON OR WITHIN 100 OF THE SUBJECT PROPERTY
THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY
11 THE IMPROVEMENTS SHOWN HEREON ARE FOR THE LOCATION OF ALL EXISTING AND BUILDINGS ONLY
ACCESSORY STRUCTURES FENCES AND PROJECTIONS INTO YARDS MAY BE CONSTRUCTED OUTSIDE THE ENVELOPE BUT MUST COMPLY WITH SECTIONS 400 AND 30 OF THE BALTIMORE COUNTY ZONING REGULATIONS (SUBJECT TO COVENANTS AND PERMITTABLE BY ZONING PERMITS)
12 AVERAGE DAILY TRIPS (2 LANES) 24 248
LOCAL OPEN SPACE IS NOT REQUIRED FOR MINOR SUBDIVISIONS
ACCESSORY STRUCTURES FENCES AND PROJECTIONS INTO YARDS CANNOT BE LOCATED
PLAN REFLECTS HYDRIC SOILS
HIGHWAY SLOPE EASEMENTS DRAINAGE AND UTILITIES EASEMENTS ACCESS EASEMENTS AND STORM WATER MANAGEMENT AREAS NO MATTER HOW ENTITLED SHOWN HEREON ARE RESERVED UNTO THE OWNER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY OR LANDS
BALTIMORE COUNTY MAKES NO WARRANTY EXPRESSED OR IMPLIED AS TO THE RIGHT OF ANY PRESENT OR FUTURE OWNER OF ANY LOT SHOWN ON THIS PLAN TO USE ALL OR ANY PART OF THE LAND DESIGNATED AS PRIVATE RIGHT OF WAY FOR THE PURPOSE OF INGRESS EGRESS OR THE RIGHT TO OPEN OR EXCAVATE THE PORTION OF RIGHT OF WAY FOR THE PURPOSES OF INSTALLING CONSTRUCTING AND MAINTAINING UTILITIES SUCH SUBJECT TO WATER SEWER ELECTRICAL TELEPHONE OR CABLE
13 S PROPERTY AS SHOWN HEREON HAS BEEN HELD INTACT SINCE NOVEMBER 3 1945 THE DEVELOPERS SURVEYOR HAS CONFIRMED THAT NO PART OF THE GROSS AREA OF THIS PROPERTY AS SHOWN ON THE PLAN HAS EVER BEEN UTILIZED RECORDED OR REPRESENTED A DENSITY OR AREA TO SUPPORT ANY OFF SITE DWELLING
NO ACTUAL LINE WILL BE TRANSFERRED USE NEW AND LINE
14 ZONING NO DEVELOPMENT PLAN MAY BE REQUIRED DEPENDING ON THE NUMBER OF LOTS CREATED AS DETERMINED FROM ZONING AND THE EFFECTIVE DATE OF THE ZONING REGULATIONS FOR THAT ZONE
15 THE GROSS AREA OF THE SUBJECT PROPERTY IS LESS THAN 40000 SQUARE FEET THEREFORE THIS PROJECT IS EXEMPT FROM THE FOREST CONSERVATION REQUIREMENTS
2 LOTS NO USE ONE SINGLE FAMILY DWELLING PROPOSED USE TWO SINGLE FAMILY DWELLINGS
23 USE COMMON EASEMENT AND MAINTENANCE AGREEMENT OR NORMAL AND EGRESS IS TO BE RECORDED PRIOR TO BUILDING PERMIT
A PRIVATE EASEMENT AND MAINTENANCE AGREEMENT FOR UTILITIES IS TO BE RECORDED PRIOR TO BUILDING PERMIT
2 BUILDING ELEVATIONS SHOWING BUILDING MATERIALS FOR THE PROPOSED DWELLINGS ALONG LIBERTY ROAD MUST BE REVIEWED AND APPROVED BY THE OFFICE OF PLANNING PRIOR TO THE ISSUANCE OF A BUILDING PERMIT THE EXISTING DWELLING IS TO BE RAISED BY THE OWNER ON OR BEFORE APPLICATION FOR BUILDING PERMIT FOR LOT
2 THE SITE IS EXEMPT FROM THE REQUIREMENT OF THE FOREST CONSERVATION LAW DUE TO ITS LIMITED AREA

DENSITY CALCULATIONS

GROSS AREA	0.588 AC	
ROAD WIDENING	0 AC	
NET AREA	0.588 AC	
LOTS PERMITTED	3.3 0.588 AC x	2 Lots
LOTS PROPOSED	2	

OWNER

LIBERTY PROPERTIES MANAGEMENT INC
9218 LIBERTY ROAD
RANDALLSTOWN, MARYLAND 21133
(410)-627-6146

BALTIMORE COUNTY NOR SUBDIV S OFFICE
Project No
DEVELOPMENT RESULATIONS
Exclusion of Area 32 Sub Lot 2
Planned unit Development 32 2 3 and Sections 4.7 2 and 3 221
PDM CE G ON
Approved
Disapproved
By Date
APPROVED SPRM
By Date

2nd Review
Reviewed 1/11/06

-05-125-M

MINOR SUBDIVISION
PROPERY OF LIBERTY PROPERTIES MANAGEMENT, INC

9218 LIBERTY ROAD
Deed Ref S M No 11439 folio 211 SECOND
Tax Account No 02-01-740381
Zoned R O G15 Tile 077A1
Tax Map 77 Grid 7 Parcel 39 & 38
2nd ELECTION DISTRICT
4th COUNCILMANIC DISTRICT
BALTIMORE COUNTY MARYLAND

Scale 1 30 Date OCTOBER 11 2005

R O BUILDING REGULATIONS

BALTIMORE COUNTY ZONING REGULATIONS

B023.6

2045.A.1 USES PERMITTED AS OF RIGHT AND AS LIMITED IN D.R. 5.5 ZONES

2044.A USES PERMITTED UNDER SECTIONS 2045.A.1 ARE GOVERNED BY THE BULK REGULATIONS OF D.R.5.5 ZONES

IN D.R.5.5 ZONES THE FRONT YARD DEPTH OF ANY BUILDING HEREAFTER ERECTED SHALL BE THE AVERAGE OF FRONT YARD DEPTHS OF THE LOTS IMMEDIATELY ADJOINING ON EACH SIDE, PROVIDED SUCH ADJOINING LOTS ARE IMPROVED WITH PRINCIPAL BUILDINGS SITUATE WITHIN 200 FEET OF THE JOINT SIDE PROPERTY LINE, PROVIDED THAT NO DWELLING SHALL BE REQUIRED TO BE SET BACK MORE THAN 40 FEET IN D.R.5.5 ZONES

B03

BALTIMORE COUNTY ZONING POLICY MANUAL

S-14 SIDE STREET SETBACKS

WHEN THE SMALL LOT TABLE APPLIES

SIDE STREET SETBACKS APPLICABLE TO THE SMALL LOT TABLE SHOULD BE THE SAME AS THE FRONT YARD REQUIREMENT AVERAGING IS NOT PERMITTED ON A SIDE STREET SETBACK AND A FRONT AVERAGE SETBACK CANNOT BE DUPLICATED ON THE SIDE STREET CENTERLINE SETBACKS ARE NOT REQUIRED

REFERENCE B.C.Z.R. B023.C1

D R 5.5 DEVELOPMENT STANDARDS

BALTIMORE COUNTY ZONING REGULATIONS

B023.6

MINIMUM NET LOT AREA PER DWELLING UNIT (sq. ft.)	6,000
MINIMUM LOT WIDTH (feet)	55
MINIMUM FRONT YARD DEPTH (feet)	25
MINIMUM WIDTH OF INDIVIDUAL SIDE YARD (feet)	0
MINIMUM REAR YARD DEPTH (feet)	30

B03 IN D.R.5.5 ZONES THE FRONT YARD DEPTH OF ANY BUILDING HEREAFTER ERECTED SHALL BE THE AVERAGE OF FRONT YARD DEPTHS OF THE LOTS IMMEDIATELY ADJOINING ON EACH SIDE, PROVIDED SUCH ADJOINING LOTS ARE IMPROVED WITH PRINCIPAL BUILDINGS SITUATE WITHIN 200 FEET OF THE JOINT SIDE PROPERTY LINE PROVIDED THAT NO DWELLING SHALL BE REQUIRED TO BE SET BACK MORE THAN 40 FEET IN D.R.5.5 ZONES

show 350 sight lines

Adequately sized Revetment slope Extend along Chapman Road

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
GcB2 EnB2	Slight	Slight	Moderate slope
GnB GnA	Severe high water table moderately low permeability	Severe high water table	Severe high water table

PETITIONER'S EXHIBIT NO 3

I HEREBY CERTIFY THAT I HAVE REVIEWED WITH DUE DILIGENCE THE MINOR SUBDIVISION COMMENTS AND HAVE PREPARED WITH DUE DILIGENCE THIS MINOR SUBDIVISION PLAN PURSUANT TO THOSE AGENCY COMMENTS

REVISION	DATE
FIRST REVIEW COMMENTS ADDRESSED	2-04 2005

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson Maryland 21286
(410) 823-4470

COMPUTED	DRAWN M.E.	CHECKED S.A.L.	LEX lotbaum\minorsubdp