



3/26/09

MANDATE

Court of Special Appeals

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

No. 01680, September Term, 2008

Windsor Rolling Road
Property LLC et al.
vs.
Woodland Services, LLC

JUDGMENT: March 26, 2009: "Notice of Stipulation of Dismissal" filed jointly by counsel. Appeal dismissed. MD Rule 8-601.

March 26, 2009: Mandate issued.

From the Circuit Court: for **BALTIMORE COUNTY**
03C080001373

STATEMENT OF COSTS:

Appellant(s):

Lower Court Costs-	60.00
Steno Costs of Appellant-	63.75
Filing Fee of Appellant-	50.00

FILED JUN 02 2009

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **twenty-sixth** day of **March** **2009**

Leslie D. Gradet
Clerk of the Court of Special Appeals

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

WINDSOR ROLLING ROAD
PROPERTY, LLC, ET AL.,
Appellants,

v.

WOODLAND SERVICES, LLC

Appellee

* IN THE
* COURT OF SPECIAL
* APPEALS OF
* MARYLAND
* No. 01680
* September Term, 2008

* * * * *

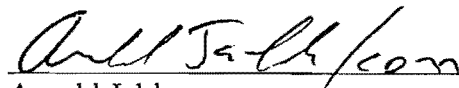
NOTICE OF STIPULATION OF DISMISSAL

LESLIE D. BRADY, CLERK
COURT OF SPECIAL APPEALS

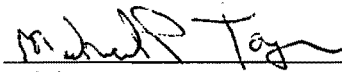
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CLERK'S OFFICE

Appellants Windsor Rolling Road Property, LLC and St. John Properties, Inc., and Appellee Woodland Services, LLC, by their respective undersigned attorneys, in accordance with Maryland Rule 8-601, file this Notice of Stipulation of Dismissal of Appeal and hereby dismiss, with prejudice, the appeal to the Court of Special Appeals filed September 16, 2008, from the judgment entered by the Circuit Court for Baltimore County in favor of Appellee. The parties further stipulate that each party shall pay its own costs.



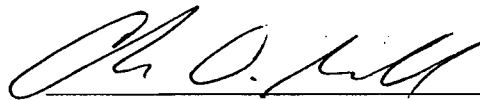
Arnold Jablon
Christopher D. Mudd
Venable LLP
210 Allegheny Avenue
Towson, Maryland 21204
Attorneys for Appellants



Michael P. Tanczyn
Michael P. Tanczyn, P.A.
606 Baltimore Avenue
Suite 106
Towson, Maryland 21204
Attorney for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 2009 a copy of the foregoing NOTICE OF STIPULATION OF DISMISSAL was hand delivered to Michael P. Tanczyn, Michael P. Tanczyn, P.A., 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204.

A handwritten signature in black ink, appearing to read "Ch. D. Mudd", is written over a horizontal line.

Christopher D. Mudd

8/20/08

**PETITION OF
WINDSOR ROLLING ROAD
PROPERTY, LLC**

**IN THE MATTER OF:
WINDSOR ROLLING ROAD
PROPERTY, LLC**

Case No. 06-583-SPH before the
Board of Appeals of Baltimore County

**IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY**

CASE NO: 03-C-08-001373

* * * * *

OPINION

This case came before the Court as a Petition for Judicial Review of the December 27, 2007 decision of the Baltimore County Board of Appeals dismissing a Petition for Special Hearing in Board of Appeals Case No. 06-583-SPH. The Court held a Hearing on August 12, 2008. Representing the Petitioners Windsor Rolling Road Property, LLC (Windsor) and St. John Properties, Inc. (SJP) was Arnold Jablon, Esq. and representing the Respondent Woodland Services, LLC (Woodland), was Michael Tanczyn, Esq.

Procedural History

At the center of this controversy is a fuel service station located at 2701 Rolling Road on the west side of Baltimore County, operated by the Respondent Woodland. Upon a Petition for Special Exception before the Zoning Commissioner for Baltimore County in Case No. 02-016-X, the property was permitted a use as a fuel station, convenience store and carry out. The Zoning Commissioner's decision in that petition did not permit the use of the car wash, although the plans provided may have included it.

In 2006, Windsor and SJP filed a Petition for Special Hearing, Case No. 06-583-SPH, alleging that the decision of the Zoning Commissioner in Case No. 02-016-X should be declared

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void due to certain illegalities, including the operation of the car wash. In a July 2006 decision the Deputy Zoning Commissioner granted the relief in regards to the car wash and ordered it closed pending zoning approval but did not grant Windsor's request regarding the convenience store and carry out, noting in part that there were no protestants to Case No. 02-016-X, when the Zoning Commissioner initially approved those uses nearly five years earlier. Woodland and Windsor appealed the Deputy Zoning Commissioner's decision to the Board.

In a turn that complicates the procedural progression of this case, prior to the hearing before the Board in this case (Case No. 06-583-SPH), Woodland filed a Petition for Special Exception to permit the use of the car wash, Case No. 07-245-X. Rather than wait for the outcome of Case No. 06-583-SPH, which would have addressed the car wash, the Zoning Commissioner granted the Petition for Special Exception, Case No. 07-245-X, thus permitting operation of the car wash. Windsor and SJP then appealed Case No. 07-245-X, to the Board.

Before hearing the appeal in Case No. 07-245-X the Board heard this case (Case No. 06-583-SPH), the Board decided four issues.

1. Whether or not Windsor and SJP are proper parties to participate in the hearing before the Board.
2. Whether or not the decision of the Zoning Commissioner in Case No. 02-016-X decided on September 21, 2001 should be considered unappealable because of the fact that it was never appealed within the appropriate time period, and that any appeal is now barred by laches.
3. Whether or not any special exception should be granted where there are outstanding violations of County regulations concerning parking, signage and the location of a propane tank.
4. Whether or not the appeal taken in Case No. 02-016-X is moot on the basis that the remedies sought in that case can be achieved in the decision in Case No. 07-245-X.

The Board dismissed Case No. 06-583-SPH. Windsor presents this Court with the question of whether or not the Board erred in dismissing the issues raised by them in Case No. 06-583-SPH. The Court holds that the Board did not err and affirms the decision of the Board.

Scope of Review

The scope of review for a Circuit Court reviewing the decision of an administrative agency is narrow, recognizing that the agency has expertise in a particular area and ordinarily should be free to exercise its discretion as such. *Annapolis v. Annap. Waterfront Co.*, 284 Md. 383, 395, 396 A.2d 1080 (1979), citing *Finney v. Halle*, 241 Md. 224, 216 A.2d 530 (1966). The court's statutory role upon review of an agency decision extends little beyond its inherent power to prevent illegal, unreasonable, arbitrary, or capricious administrative actions. *Hartford Mem. Hosp. v. Health Servs. Cost Review Comm'n*, 44 Md. App. 489, 410 A.2d 22 (1980). The court reviewing a final decision of an administrative agency determines only the legality of the decision and whether there was substantial evidence from the record to support the decision. *Dep't of Labor v. Woodie*, 128 Md. App. 398, 406, 738 A.2d 334 (1999); *Board of Education v. Paynter*, 303 Md. 22, 35, 491 A.2d 1186 (1985). An order of an administrative agency must be upheld on judicial review if it is not based upon an erroneous determination of law, and if the agency's conclusions reasonably may be based upon the facts proven; however, a reviewing court is under no constraints in reversing an administrative decision that is premised solely upon an erroneous conclusion of law. *Montgomery County v. Buckman*, 333 Md. 516, 636 A.2d 448 (1994).

In determining whether the record supports an agency's decision, "substantial evidence" is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Caucus Distributors, Inc. v. Maryland Securities Commissioner*, 320 Md. 313, 323-

24, 577 A.2d 783 (1990). In applying the substantial evidence test, the court must not substitute its own judgment for the expertise of the administrative agency. *Maryland State Police v. Lindsay*, 309 Md. 557, 563, 525 A.2d 1051 (1987). In the absence of fraud, agency decisions supported by the record are presumed valid. *Woodie*, 128 Md. App. at 406. The administrative agency's decision is considered *prima facie* correct, and the Circuit Court must view the decision in the light most favorable to the agency. *Lindsay*, 309 Md. at 563.

Discussion

Windsor presents this Court with the question of whether or not the Board erred in dismissing the issues raised by them in Case No. 06-583-SPH. This Court will address the decision as to each issue decided by the Board.

1. Woodland argued before the Board that Windsor and SJP lacked standing. The Court of Appeals held that a competitor lacks standing to intervene in a zoning appeal process. *Kreatchman v. Ramsburg*, 224 Md. 209 (1967). The Board held that while Windsor is admittedly a competitor of Woodland, as the developer of an adjacent property, SJP does indeed have standing to appeal.

In *Kreatchman*, the protestant's property was more than a mile in distance from the property in question. *Id.* at 218. The Court there concluded that his sole motivation was to prevent competition. *Id.* Here the Petitioner, SJP is the developer of an adjacent property. If preventing competition is a motivation of SJP in this action, it is hard to conclude that it is the sole motivation. Being a neighbor certainly gives one standing and this Court agrees with the conclusion of the Board.

2. Woodland argued that the appeal of the Zoning Commissioner's decision in Case No. 02-016-X is barred by laches since it was appealed nearly five years after the Commissioner's

decision. The Board decided that there was no reason to consider this issue since it concluded that the case should be dismissed as moot.

At the August 12, 2008 hearing on the appeal to this Court, Counsel for Windsor and SJP raised this issue and mentioned numerous cases where there was a time lapse between the initiation of a business and subsequent corrective enforcement of zoning provisions. One case that was recited was *Marzullo v. Kahl*, 366 Md. 158 (2001). In *Kahl* a property owner used his property to breed and raise snakes such as pythons and boas. *Id.* at 161. The Court of Appeals held that Baltimore County was not equitably estopped from enforcing its zoning code years after the use as a breeding grounds for such deadly snakes was commenced.

In *Kahl*, a residential property was being used for a commercial purpose. In 1994 an animal license was issued to Mr. Kahl “for the purpose of breeding and research of boas and pythons in his residence.” *Id.* at 162. In 1997, Mr. Kahl applied for a permit to grow the business into a larger barn. *Id.* Neighbors took note and filed a timely appeal at which point it was decided that the use was illegal in the first place, because even if the permit allowed breeding of animals, doubt existed whether a “snake is an ‘animal’” for the zoning purposes. *Id.*

In the case sub judice, an appeal wasn’t taken as soon as Petitioners realized the extent of an unconventional use of a property. The permits were approved in 2001, the use began in 2003 and no appeal was taken until 2006. The Court in *Kahl* further held that the property owner “knew, or should have known” that the use was illegal. *Kahl* at 200. Here there is no such allegation that Woodland knew or should have known that a use was illegal when the Zoning Commissioner in fact approved the plans. As a matter of fact even the use that was omitted from the Zoning Commissioner’s Special Exception in 02-016-X, the car wash, was later found to be legal and having included the car wash in their original plans, Woodland had no reason to

believe otherwise. Although the Board did not make a conclusion that could be appealed to this Court, it is the opinion of the Court that there is great distinction between *Kahl* and this case and it would not have been improper for the Board to bar this case on grounds of laches.

3. The Board held that any relief sought in this case (Case No. 06-583-SPH) would be rendered moot by the decisions in Case No. 07-245-X. Petitioners Windsor and SJP argue that in Case No. 07-245-X the Zoning Commissioner merely granted a Special Exception to permit use of the car wash but did not make conclusions as to the remaining issues raised in this case.

This Court is of the opinion that it may have been premature for the Board to conclude that this case would be properly resolved by the outcome of another, (Case No. 07-245-X) when that second case had yet to have been resolved and was awaiting appeal. This Court agrees that the issue of mootness should not have been decided until the appeal was heard and a decision made, if for no other reason than to ensure that the Petitioners had an opportunity to be heard on the merits as to the other alleged zoning violations. This request to be heard on the merits was the heart of the Petitioner's relief sought at the August 12, 2008 hearing before the Court.

At the hearing, the Court was presented with the Board of Appeals' decision in Case No. 07-245-X. The Court notes that the Board indeed addressed the issues other than the car wash in Case No. 07-245-X. The Board reviewed the allegations of illegality raised by Windsor and SJP such as the propane tank, the parking requirements, the convenience store and the carry out. Testimony was taken that acknowledged improper parking and testimony was taken in regards to various physical alterations that were made in order to conform to the Zoning Code. Even though the Board may have prematurely declared Case No. 06-583-SPH to be moot, it is the opinion of the Court that since the Board decided Case No. 07-245-X, Case No. 06-583-SPH is now moot.

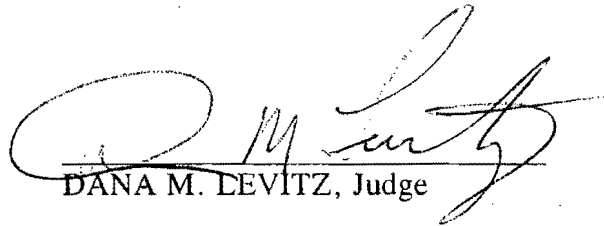
4. As the third issue noted by the Board, but decided lastly, the Board considered whether any special exception should be granted where there are outstanding violations of County regulations. The Board relied on contracts that Woodland entered into to correct any such violations and therefore found that this last issue was moot. Like the preceding issue, this Court believes that it was premature to dismiss an appeal based on a contract to correct a violation. Regardless, as it has become clear that the issues were resolved in Case No. 07-245-X, this issue is now moot as well.

Conclusion

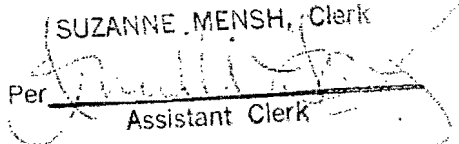
The Court is certain that the Board of Appeals was well aware of each of the cases that revolve around this property despite the complicated and unusual manner in which both the Petitioners and Respondent have proceeded. The Court is satisfied that the issues in this case were heard on the merits and that in the Board's opinion the use of the property is in compliance with the Baltimore County Zoning Code.

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

8/20/08
Date


DANA M. LEVITZ, Judge

CC: Arnold Jablon, Esquire
Michael Tanczyn, Esquire

True Copy Test
SUZANNE MENSCH, Clerk
Per 
Assistant Clerk

3/21/08

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
WINDSOR ROLLING ROAD PROPERTY, LLC
- LEGAL OWNER
2650 LORD BALTIMORE DRIVE
BALTIMORE, MD 21244

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

CIVIL ACTION
NO.: 03-C-08-1373

IN THE MATTER OF :
WOODLAND SERVICES, LLC - L/O
WINDSOR ROLLING ROAD PROPERTY, LLC
- PETITIONER FOR SPECIAL HEARING ON
PROPERTY LOCATED ON THE E/S OF
ROLLING ROAD, 1,100' NE OF TUDSBURY
ROAD (2710) ROLLING ROAD

2ND ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 06-583-SPH

* * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

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

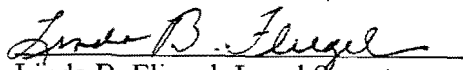
06-583-SPH

Mary 15, 2006	Petition for Special Exception to confirm whether the Order and site plan approved in Zoning Case No.: 02-016-X is void.
May 22, 2006	Entry of Appearance filed by People's Counsel for Baltimore County
May 22, 2006	Publication in newspaper
May 24, 2006	Notice of Zoning Hearing
May 26, 2006	Certificate of Posting
July 7, 2006	ZAC Summary of Comments
July 10, 2006	Hearing Held before the Zoning Commissioner
July 26, 2006	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commission and the Petition for Special Exception was <i>DENIED</i> in regard to the special exception for a fuel service station in combination with a convenience store and carry out restaurant; and IT IS FURTHER ORDERED that the Petitioners' request for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations, to confirm whether the Order and site plan approved in Zoning Case 02-016-X is void, and is <i>GRANTED</i> in regard to the special exception for car wash and that said car wash shall be closed pending further zoning relief; and IT IS FURTHER ORDERED that the Parties' informal request to determine the zoning status of the Respondent's operation of the subject property is not before me, that the indications above as to zoning status are advisory only and that no enforcement of alleged zoning violations shall result from this decision.
August 25, 2006	Notice of Appeal filed by Michael P. Tanczyn, Esq. on behalf of Thomas and Martha Whitten.
Oct. 13, 2006	File received in the Board of Appeals.

October 23, 2007	Hearing by Board of Appeals /Day #1 (Limited Issue)
Nov. 13, 2007	Memorandum filed by Arnold Jablon, Esquire and David Karceski, Esquire on behalf of the Petitioner. Memorandum of the Petitioner in Support of Motion to Dismiss Appeal filed by Michael P. Tanczyn, Esq. on behalf of the Protestants.
Petitioner's Exhibits	1. Letter dated 10/20/06 – A. Jablon to J. Thompson, Code Enforcement 2. Letter dated 10/25/2006 – A. Jablon to J. Thompson Supv. of Code Enforcement. 3. Letter dated 12/28/2006 – A. Jablon to Kotroco, Dir. PDM 4. Memo from Pat Keller, Dir./Planning to Timothy Kotroco, Dir.,PDM
Dec. 4, 2007	Board convened for Public Deliberation.
Dec. 27, 2007	Board issued its Opinion and Order - The Board Ordered that the Petition for Special Hearing in Case No.: 06-583-SPH be and is hereby <i>DISMISSED</i> as Moot.
Jan. 28, 2008	Petition for Judicial Review filed by Arnold Jablon, Esq. Civil Case No.: 03-C-08-1373.
Feb. 12, 2008	Response to Petition for Judicial Review filed by Arnold Jablon, Esq.
Feb. 12, 2008	Certificate of Mailing filed with the Circuit Court for Baltimore County and mailed to pertinent parties.
Mar. 20, 2008	Transcript of Proceedings filed.
Mar. 21, 2008	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered before the Board.

Respectfully submitted,



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

Michael Tanczyn, Esquire
Thomas & Martha Whitten
Sajid Chaudhry
Iftikar Ahmad
Arnold Jablon, Esquire
Windsor Rolling Road Property LLC/Edward St. John LLC/
Tom Pilon
WaWa, PA/Joseph Losak, VP/Real Estate
Arshad Ransha
Abdul Rauf
Khalid Azam
Jack Dillion
Nickolas Johnson, VP
Nicholas Brader, III, PE/
Kenneth Schmid
Joseph M. Cronyn

2/14/08

**PETITION OF THOMAS WHITTEN
AND MARTHA WHITTEN**

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

**IN THE MATTER OF
THE APPLICATION OF
WINDSOR ROLLING ROAD PROPERTY -
LO; WAWA, INC. - C.P. FOR A SPECIAL
EXCEPTION ON PROPERTY LOCATED
ON THE SE/COR OF ROLLING ROAD
AND WINDSOR BOULEVARD
2845 ROLLING ROAD**

**2ND ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT**

CASE NO. 06-583-SPH

* * * * *

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE COUNTY
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* Case No. 03-C-08-01060
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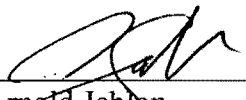
* BALTIMORE COUNTY
* BOARD OF APPEALS
*

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Respondents Windsor Rolling Road Property, LLC, and Wawa, Inc., by Arnold Jablon with Venable LLP, their attorney, in accordance with Maryland Rule 7-204, submit this Response to the Petition for Judicial Review filed by Thomas Whitten and Martha Whitten and states that they intends to participate in this action for judicial

review. Respondents were parties to the proceedings before the County Board of Appeals of Baltimore County.

Respectfully submitted,



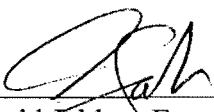
Arnold Jablon
Venable LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6200
Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 2008, a copy of the foregoing RESPONSE TO PETITION FOR JUDICIAL REVIEW was mailed first class, postage prepaid to

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, Maryland 12104-4026
Attorney for Petitioners Thomas Whitten and Martha Whitten

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals for Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204
Administrative Agency



Arnold Jablon, Esquire

2/12/08

PETITION OF
WINDSOR ROLLING ROAD
PROPERTY, LLC
2650 LORD BALTIMORE DRIVE
BALTIMORE, MD 21244

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

IN THE MATTER OF
THE APPLICATION OF
WOODLAND SERVICES, LLC – LEGAL
OWNER; WINDSOR ROLLING ROAD
PROPERTY, LLC – PETITIONER
FOR SPECIAL HEARING ON PROPERTY
LOCATED ON THE E/S OF ROLLING
ROAD, 1,100' NE OF TUDSBURY ROAD
(2710 ROLLING ROAD)

CASE NO. 06-583-SPH

* * * * *

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
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* CIVIL ACTION NO.
* 03-C-08-01373
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RESPONSE TO MOTION TO DISMISS AND REQUEST FOR HEARING

Windsor Rolling Road Property, LLC and St. John Properties, Inc., Petitioners, by
Arnold Jablon with Venable LLP, its attorney, and pursuant to Maryland Rule 2-311(b),
hereby respond to the motion to dismiss included in the “Response to Petition for Judicial
Review” filed by Respondent, Woodland Services, LLC, as follows:

1. On December 27, 2007, the County Board of Appeals for Baltimore
County (the “Board”) issued an order dismissing a Petition for Special Hearing filed by
Petitioners.

2. Petitioners filed their Petition for Judicial Review on January 28, 2008

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BALTIMORE COUNTY
BOARD OF APPEALS

3. On February 5, 2008, Respondent filed its Response to Petition for Judicial Review, in which Respondent claimed that Petitioners' Petition was untimely and made a motion that "this Honorable Court dismiss the Petition for Judicial Review."

4. According to Maryland Rule 7-203(a), a Petition for Judicial Review of a decision of the Board "shall be filed within 30 days after...the date the order or action of which review is sought."

5. Maryland Rule 1-203(a) states: "In computing any period of time prescribed by these rules, by rule or order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. If the period of time allowed is more than seven days, intermediate Saturdays, Sundays, and holidays are counted; but if the period of time allowed is seven days or less, intermediate Saturdays, Sundays, and holidays are not counted. *The last day of the period so computed is included unless: (1) it is a Saturday, Sunday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or holiday....*" (Emphasis supplied).

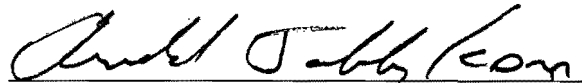
6. The 30th day following the Board's order in this case was Saturday, January 26, 2008. However, pursuant to Rule 1-203(a), Saturday, January 26th and Sunday, January 27th should *not* be included in the 30 day computation. Instead, the period of time in which Petitioners could file their Petition for Judicial Review "runs until the end of the next day that is not a Saturday, Sunday, or holiday." In this case, the 30 day period ran until January 28, 2008.

7. Therefore, pursuant to Maryland Rules 1-203(a) and 7-203(a), the Petition for Judicial Review filed by Petitioners on January 28, 2008 was timely. *See, e.g., Grayson v. State*, 354 Md. 1, 14 (1999) (finding that "September 30, 1995, was the last

day for Grayson to file [his] post conviction petition, and because September 30th fell on a Saturday, Rule 1-203...gave Grayson until the following Monday to file his petition”).

WHEREFORE, Windsor Rolling Road Property, LLC and St. John Properties, Inc. respectfully request that this Court deny the Woodland Services, LLC’s motion to dismiss the Petition for Judicial Review.

Respectfully submitted,



Arnold Jablon, Esquire
Venable LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21285-5517
(410) 494-6254
Attorney for Petitioners

REQUEST FOR HEARING

Petitioners, in accordance with Maryland Rule 2-311(f), hereby request a hearing on the motion to dismiss contained in Respondent’s Response to Petition for Judicial Review.

Respectfully submitted,



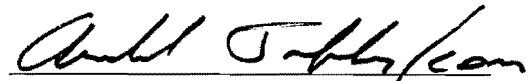
Arnold Jablon, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of February, 2008, a copy of the foregoing **Response to Motion to Dismiss and Request for Hearing** was mailed first-class, postage prepaid to:

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, Maryland 12104-4026
Attorney for Protestant Woodland Services, LLC

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals for Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204
Administrative Agency


Arnold Jablon, Esquire

2/12/08
VENABLE[®] LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

(410) 494-6365

cdmudd@venable.com

February 12, 2008

VIA HAND DELIVERY

Clerk (Civil)
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204-0754

Re: In the Matter of: The Application of Woodland Services, LLC.
Case No.: 03-C-08-01373

Dear Clerk:

Enclosed are an original and one copy of Petitioners' Response to Motion to Dismiss and Request for Hearing. Please accept the original for filing in the above-captioned case and date stamp the second copy and return it to the waiting messenger.

Thank you for your assistance in this matter.

Very truly yours,



Christopher D. Mudd

Enclosure

cc: Ms. Kathleen Bianco, County Board of Appeals
Michael P. Tanczyn, Esquire
Arnold Jablon, Esquire

TO:DOCS/255716v1

RECEIVED
FEB 14 2008

**BALTIMORE COUNTY
BOARD OF APPEALS**

2/12/08

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
WINDSOR ROLLING ROAD PROPERTY, LLC
- LEGAL OWNER
2650 LORD BALTIMORE DRIVE
BALTIMORE, MD 21244

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

CIVIL ACTION
NO. : 03-C-08-1373

IN THE MATTER OF :
WOODLAND SERVICES, LLC - L/O
WINDSOR ROLLING ROAD PROPERTY, LLC
- PETITIONER FOR SPECIAL HEARING ON
PROPERTY LOCATED ON THE E/S OF
ROLLING ROAD, 1,100' NE OF TUDSBURY
ROAD (2710) ROLLING ROAD

2ND ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 06-583-SPH

* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

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

Arnold Jablon, Esquire and David Karceski, Esq.
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
Towson, MD 21204

Windsor Rolling Road Property LLC/Edward St. John LLC/
Gerald Wit, VP

RECEIVED AND FILED

2008 FEB 12 PM 12:14

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

29 Spring Hill Farm Court
Cockeysville, MD 21030

Tom Pilon
2560 Lord Baltimore Drive
Baltimore, MD 21244

Michael Tanczyn, Esquire
606 Baltimore Avenue - Suite 106
Towson, MD 21204

Woodland Services, LLC
2101 Rolling Road
Baltimore, MD 21207

Sajid Chaudhry
2701 Rolling Road
Baltimore, MD 21244

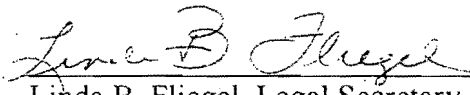
Iftikar Ahmad
2701 Rolling Road
Baltimore, MD 21244

Nicholas Brader, III, PE
Matis-Warfield, Inc.
10545 York Road - Suite M
Hunt Valley, MD 21030

Kenneth Schmid
Traffic Concepts, Inc.
325 Gambrills Road - Suite E
Gambrills, MD 21054

Ken Colbert
2835 Smith Avenue
Baltimore, MD 21209

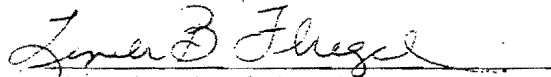
A copy of said Notice is attached hereto and prayed that it may be made a part hereof.


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

I HEREBY CERTIFY that on this 12th day of February, 2008, a copy of the foregoing Certificate of Notice has been mailed: Arnold Jablon, Esquire *and* David Karceski, Esq.

2845 ROLLING ROAD
BOARD OF APPEALS CASE NO. 06-449-X
CIRCUIT COURT CASE NO.: 03-C-08-1060

Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson, MD 21204, Windsor Rolling Road Property LLC/Edward St. John LLC/Gerald Wit, VP, 29 Spring Hill Farm Court, Cockeysville, MD 21030, Tom Pilon, 2560 Lord Baltimore Drive, Baltimore, MD 21244, Michael Tanczyn, Esquire, 606 Baltimore Avenue - Suite 106, Towson, MD 21204, Woodland Services, LLC, 2101 Rolling Road, Baltimore, MD 21207, Sajid Chaudhry, 2701 Rolling Road, Baltimore, MD 21244, Iftikar Ahmad, 2701 Rolling Road, Baltimore, MD 21244, Nicholas Brader, III, PE, Matis-Warfield, Inc., 10545 York Road - Suite M, Hunt Valley, MD 21030, Kenneth Schmid, Traffic Concepts, Inc., 325 Gambrills Road - Suite E, Gambrills, MD 21054 and Ken Colbert, 2835 Smith Avenue, Baltimore, MD 21209.



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



County Board of Appeals of Baltimore County

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

February 12, 2008

Arnold Jablon, Esquire
David Karceski, Esquire
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 03-C-08-1373
Petition for Judicial Review
Woodland Services, LLC
Board of Appeals Case No.: 06-583-SPH

Dear: Messrs. Jablon & Karceski:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

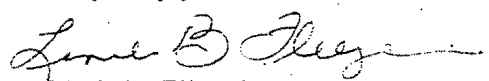
The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410-486-8209
HEARING DATE: October 23, 2007

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by April 3, 2008, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, which enables her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,


Linda B. Fliegel
Legal Secretary

lbf

Enclosure

c: Carolyn Peatt, Court Reporter
Micheal P. Tanczyn, Esquire





County Board of Appeals of Baltimore County

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

February 12, 2008

Michael P. Tanczyn, Esquire
606 Baltimore Avenue – Suite 106
Towson, MD 21204-4026

RE: Circuit Court Civil Action No. 03-C-08-1373
Petition for Judicial Review
Woodland Services, LLC
Board of Appeals Case No.: 06-583-SPH

Dear Mr. Tanczyn:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed in the Circuit Court for Baltimore County on January 28, 2008, and received in the Board of Appeals on February 8, 2008, from the decision of the County Board of Appeals rendered in the above captioned-matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 03-C-08-1373.

Enclosed is a copy of the Certificate of Notice.

Very truly yours;

Linda B. Fliegel
Legal Secretary

/trs
Enclosure

C: Arnold Jablon, Esq/David Karceski, Esq.
Windsor Rolling Road Property, LLC
Woodland Services, LLC
Tom Pilon
Sajid Chaudhry
Iftikar Ahmad
Nicholas Brader, III
Kenneth Schmid
Ken Colbert

William W. Wiseman, III/Zon. Comm.
Pat Keller/Dir. Planning
Timothy M. Kotroco/Dir. PDM



* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* BALTIMORE COUNTY

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* CIVIL ACTION NO.

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RECEIVED
FEB 07 2008
**BALTIMORE COUNTY
BOARD OF APPEALS**

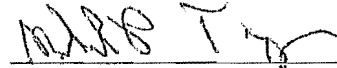
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In the preliminary matter, the Protestants aver that the Petition for Judicial Review is untimely as it was not filed within 30 days of the issuance of the decision by the Board of Appeals which occurred on December 27, 2007. Under Md. Rule 7-203, the Petition for Judicial Review in mandatory terms must be filed within 30 days of that decision. Therefore, the appeal should have been filed on or before no later than January 26, 2008. In fact, the Petition for

Judicial Review was not filed with the Court until January 28, 2008.

WHEREFORE, Woodland Services, LLC, requests this Honorable Court dismiss the Petition for Judicial Review as untimely.

Respectfully submitted,



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

POINTS AND AUTHORITIES

“Md. Rule 7-203. Time for Filing Action.

(a) **Generally.** Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

(1) the date of the order or action of which review is sought;

(2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be received by the petitioner.”

A person seeking to challenge an administrative agency decision must file a petition either within 30 days after the triggering event or within 10 days after the date the agency mails notice that another person has filed a petition. Egloff v. County Council of Prince George’s County, 130 Md.App. 113, 744 A.2d 1083 (2000), cert. denied 358 Md. 381, 749 A.2d 172.

A petition for judicial review of an administrative agency’s decision invokes the original jurisdiction of the circuit court, and the time for filing is in the nature of a statute of limitations. Wormwood v. Batching Systems, Inc., 124 Md.App. 695, 723 A.2d 568 (1999), cert. denied 354 Md. 113, 729 A.2d 405.

Untimely filings of petitions for judicial review are no longer governed by findings of good or sufficient cause or by the exercise of the court's discretion, but rather by the law relating to statutes of limitations. Quoting Md. Rules 7-202 through 7-204. Colao v. County Council of Prince George's County, 346 Md. 342, 697 A.2d 96 (1997).

"Md. Rule 7-204(b) **Preliminary Motion**. A person may file with the response a preliminary motion addressed to standing, venue, timeliness of filing, or any other matter that would defeat a petitioner's right to judicial review. Except for venue, failure to file a preliminary motion does not constitute waiver of an issue. A preliminary motion shall be served upon the petitioner and the agency."

Charter of Baltimore County, Maryland,

"Sec. 604. Appeals from decisions of the board.

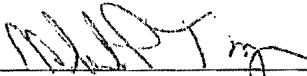
Within thirty days after any decision by the county board of appeals is rendered, any party to the proceeding who is aggrieved thereby may appeal such decision to the circuit court of Baltimore County, which shall have power to affirm the decision of the board, or, if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing, as justice may require. Whenever such appeal is taken, a copy of the notice of appeal shall be served on the board by the clerk of said court, and the board shall promptly give notice of the appeal to all parties to the proceeding before it. The board shall, within fifteen days after the filing of the appeal, file with the court the originals or certified copies of all papers and evidence presented to the board in the proceeding before it, together with a copy of its opinion which shall include a statement of the facts found and the grounds for its decision. Within thirty days after the decision of the circuit court is rendered, any party to the proceeding who is aggrieved thereby may appeal such decision to the court of appeals of this state. The review proceedings provided by this section shall be exclusive."



Michael P. Tanczyn, Esquire

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of February, 2008, a copy of the foregoing Response to Petition for Judicial Review and Points and Authorities was mailed First Class Mail, postage prepaid, to Arnold Jablon, Esquire, Venable LLP, 210 Allegheny Avenue, Towson, MD 21204, attorney for Petitioners, and to Kathleen Bianco, Administrator, County Board of Appeals.



Michael P. Tanczyn, Esquire

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

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

5
February 4th, 2008

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

Re: In the Matter of: The Application of Woodland Services, LLC
Case No. 06-583-SPH

Dear Clerk:

Enclosed please find Preliminary Motion to Dismiss Petition for Judicial Review and the Response to Petition for Judicial Review for filing in this matter.

Thank you for your assistance in this regard.

Very truly yours,


Michael P. Tanczyn, Esquire

MPT/kds

Enc.

cc: Arnold Jablon, Esquire
David Karceski, Esquire
Kathy Bianco, Administrator, Baltimore County Board of Appeals ✓
Clients

RECEIVED

FEB 07 2008

BALTIMORE COUNTY
BOARD OF APPEALS

1/28/08

PETITION OF
WINDSOR ROLLING ROAD
PROPERTY, LLC
2650 LORD BALTIMORE DRIVE
BALTIMORE, MD 21244

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

IN THE MATTER OF
THE APPLICATION OF
WOODLAND SERVICES, LLC – LEGAL
OWNER; WINDSOR ROLLING ROAD
PROPERTY, LLC – PETITIONER
FOR SPECIAL HEARING ON PROPERTY
LOCATED ON THE E/S OF ROLLING
ROAD, 1,100' NE OF TUDSBURY ROAD
(2710 ROLLING ROAD)

CASE NO. 06-583-SPH

* * * * *

* IN THE
* CIRCUIT COURT
* FOR

* BALTIMORE COUNTY

RECEIVED
JAN 29 2008

BALTIMORE COUNTY
BOARD OF APPEALS

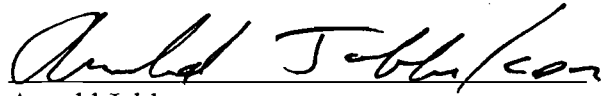
* CIVIL ACTION NO. 03 C-
08-1373

PETITION FOR JUDICIAL REVIEW

Windsor Rolling Road Property, LLC ("Windsor") and St. John Properties, Inc.
("SJP"), Petitioners, by Arnold Jablon with Venable LLP, its attorney, pursuant to
Maryland Rules 7-202 and 203, files this Petition for Judicial Review, as follows:

1. Windsor and SJP request judicial review of an order by the County Board
of Appeals for Baltimore County (the "CBA") in Case No. 06-583-SPH dated December
27, 2007, in which the CBA ordered that the Petition for Special Hearing filed by
Windsor and SJP be dismissed as moot.

2. Windsor and SJP participated in the CBA's proceedings as parties.



Arnold Jablon
Venable LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21285-5517
(410) 494-6254

Attorney for Petitioner

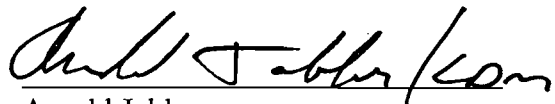
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of January, 2008, a copy of the

foregoing **Petition for Judicial Review** was mailed first-class, postage prepaid to:

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, Maryland 21204-4026
Attorney for Protestant Woodland Services, LLC

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals for Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204
Administrative Agency



Arnold Jablon

(410) 494-6365

cdmudd@venable.com

January 28, 2008

VIA HAND DELIVERY

Clerk (Civil)
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204-0754

Re: In the Matter of: The Application of Woodland Services, LLC.
Case No.: 06-583-SPH

Dear Clerk:

Enclosed are an original and two copies of Petitioner Windsor Rolling Road Property, LLC's Petition for Judicial Review. Please accept the original for filing in the above-captioned case, mail one copy to the County Board of Appeals for Baltimore County to inform the agency that this Petition has been filed (Md. Rule 7-202(d)(1)), and date stamp the second copy and return it to the waiting messenger.

Thank you for your assistance in this matter.

Very truly yours,



Christopher D. Mudd

Enclosure

cc: Ms. Kathleen Bianco, County Board of Appeals
Michael P. Tanczyn, Esquire
Arnold Jablon, Esquire

RECEIVED
JAN 29 2008

BALTIMORE COUNTY
BOARD OF APPEALS

TO1DOCS/255087v1

Hearing Dates

12/27/07

IN THE MATTER OF
THE APPLICATION OF
WOODLAND SERVICES, LLC – LEGAL OWNER;
WINDSOR ROLLING ROAD PROPERTY, LLC -
PETITIONER FOR SPECIAL HEARING ON PROPERTY * OF
LOCATED ON THE E/S OF ROLLING ROAD, 1,100'
NE OF TUDSBURY ROAD (2701 ROLLING ROAD) *
2ND ELECTION DISTRICT *
4TH COUNCILMANIC DISTRICT *

* BEFORE THE
* COUNTY BOARD OF APPEALS
*
* BALTIMORE COUNTY
* CASE NO. 06-583-SPH

* * * * *

OPINION

This case comes before the Board on an appeal of a decision by the Deputy Zoning Commissioner in which the Petitioners' request for special hearing filed pursuant to § 500.7 of the *Baltimore County Zoning Regulations* (BCZR) was denied in part and granted in part. Petitioners, Windsor Rolling Road Property, LLC (Windsor) and St. John's Property, Inc. (SJP) and the Protestant /Legal Owner, Woodland Services, LLC (Woodland) appealed the Deputy's Zoning Commissioner's (DZC) decision to this Board. A public hearing was held on October 23, 2007. Petitioners, Windsor and St. John's Property, were represented by Arnold Jablon, Esquire, and David Karceski, Esquire, with Venable, LLP. Protestant, Woodland Services, LLC, was represented by their attorney, Michael P. Tanczyn, Esquire. Briefs were submitted by the parties on November 13, 2007, and a public deliberation was held on December 4, 2007.

Background

The instant property was the subject of a Petition for Special Exception before the Zoning Commissioner for Baltimore County in Case No. 02-016-X. The owners of the property, who were the Petitioners at the time, were Rolling Road, LLC, and the contract lessee, Eastern Petroleum Corporation. The Petition for a fuel service station use in combination with a convenience store greater than 1,500 sq. ft. and to allow a carry-out restaurant as a use in

combination, was considered by the Zoning Commissioner. In his decision, the Zoning Commissioner (ZC) noted that, among those present in support of the request, were Sajid Chaudhry and Rias Ahmad. These two gentlemen are the principles in the present owner, Woodland Services, LLC. They were described by the ZC as potential proprietors for the proposed business. The Zoning Commissioner's opinion noted no protestants or other interested parties were present. In a three-page opinion and order, the Zoning Commissioner noted, on page 2, that there were other site improvements, which included a 44-foot by 22-foot carwash facility. In his decision, the Zoning Commissioner noted that the subject property and requested relief were more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioner's Exhibit #1. The site plan included the carwash facility. He noted that no zoning variance ~~were~~ requested and found that the carwash contained sufficient area for stacking and parking. The Petition was granted by the ZC by order dated September 21, 2001. The decision of the Zoning Commissioner granted the Petition for Special Exception as amended, seeking approval of a fuel service station use in combination with a convenience store and carryout restaurant greater than 1,500 sq. ft. in area ^{As} shown on the site plan. The Petition for Special Exception did not include the request to include a carwash in the special exception. The decision of the ZC also did not include the carwash. No appeal of the September 21, 2001 decision was filed and the Petitioners applied and obtained a building permit from Baltimore County and built the structure, including the carwash as set forth in the site plan.

Subsequently, in 2006, Windsor and SJP filed a Petition for Special Hearing in Case No. 06-583-SPH concerning the property at 2701 North Rolling Road. Windsor and SJP, in their Petition for Special Hearing, requested a determination that the order and site plan approved by

the ZC in Case No. 02-016-X, which approved the Woodlands /Osprey Station at 2701 North Rolling Road should be declared void because it was issued illegally. Windsor and SJP identified several items they contended were illegal with the Osprey station and the zoning relief in Case No. 02-016-X, including an assertion that Woodland never requested or obtained a special exception for the Osprey's carwash use, yet obtained permits and constructed the carwash anyway. In his decision dated July 26, 2006, the DZC ordered that the request for special hearing to confirm whether the order and site plan approved in zoning case 02-016-X was void was denied in regard to the special exception for a fuel service station in combination with a convenience store and carryout restaurant. He also further ordered that the Petitioners' request for special hearing to confirm whether the order and site plan approved in Case No. 02-016-X is void was granted in regard to the special exception for the carwash and ordered that said carwash shall be closed pending further zoning relief. In that decision, the DZC rendered an advisory opinion that the Woodland site (the Osprey station) was in violation of County regulations, including operating without providing the required amount of off-street parking spaces, installing free-standing signage in excess of that permitted by the sign regulations, and installing a propane tank within the site's required landscape transition area. Subsequently, Baltimore County issued correction notices to Woodland, LLC, to correct the violations with regard to parking, signage, and the location of the propane gas tank.

Both Woodland, and Windsor and SJP, appealed the DZC's decision to this Board. Subsequently, Woodland filed a Petition for Special Exception to approve the carwash use at the Osprey Station. The ZC granted that Petition, and Windsor, along with SJP, appealed the decision to this Board in Case No. 07-245-X.

Issues

1. Whether or not Windsor and SJP are proper parties to participate in the hearing before the Board.
2. Whether or not the decision of the ZC in Case No. 02-016-X decided on September 21, 2001 should be considered unappealable because of the fact that it was never appealed within the appropriate time period, and that any appeal is now barred by laches.
3. Whether or not any special exception should be granted where there are outstanding violations of County regulations concerning parking, signage, and the location of a propane tank.
4. Whether or not the appeal taken in Case No. 02-016-X is moot on the basis that the remedies sought in that case can be achieved in the decision in Case No. 07-245-X.

Decision

After review of the evidence presented in this matter, as well as the excellent briefs provided by both sides, the Board reaches the following decision.

1. Issue of Standing

The attorney for Windsor LLC candidly admitted that his client was a competitor of the Osprey Station owned by Woodland, LLC. In fact, Windsor is constructing a WaWa store approximately ¼ mile north of the Osprey Station at the corner of Windsor Boulevard and N. Rolling Road. As presented by counsel for Woodland, prior courts have frequently held that the prevention of competition is not a proper element for zoning, and the competitor opposing a zoning request would lack standing on that basis. *Kreatchman v. Ramsburg*, 224 Md. 209, 167 A.2d 345 (1961); see also *Eastern Services Centers, Inc., v. Cloverland Farms Dairy, Inc.*, 130

Md.App. 1, 744 A.2d 63 (2000). Therefore, Petitioner, Windsor, had no standing as a party in Case No. 06-583-SPH. However, the Board does find that SJP is the developer of the Rutherford Business Park adjacent to the Osprey Station. Therefore, the Board finds that SJP does have standing to participate as a party in both cases.

2. Is an appeal of the 2001 decision by ZC in Case No. 02-016-X barred by laches?

The Board finds that there is no need to make a decision on this issue since the Board answers the question with respect to mootness in the affirmative.

3. Are the appeals by Windsor, SJP, and Woodland moot?

The Board feels that the remedy sought by Woodland, LLC, in its Petition for Special Exception in Case No. 07-245-X to conform the carwash to the site plan for the original service station and convenience store will render any request for relief with respect to Case No. 06-583-SPH moot. Therefore, the Board will dismiss that case.

4. Should any decision granting a special exception consider any possible corrections of potential violations of County regulations?

The Board notes that the ZC in his decision in Case No. 07-245-X indicated that there were contracts executed to correct any of the violations of County regulations at the site of the Osprey Station. The Board will schedule a hearing in Case No. 07-245-X and would expect that, at the time, evidence would be presented to show that any possible violations of County regulations that would be contrary to the site plan would have been corrected at that time. Therefore, that issue with respect to Case No. 06-583-SPH is also dismissed as moot.

As stated above, the Board will schedule a hearing in Case No. 07-245-X and will deal with all issues in the decision in that matter. At that time, all issues in Case No. 07-245-X,

including standing, will be appealable after the issuance of a written decision in that matter.

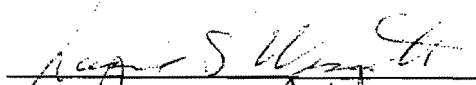
ORDER

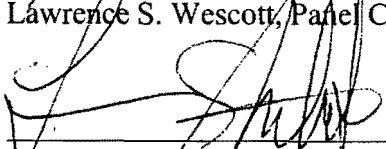
THEREFORE, IT IS THIS 27th day of December, 2007 by the
County Board of Appeals of Baltimore County

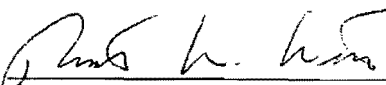
ORDERED that the Petition for Special Hearing in Case No. 06-583-SPH be and is hereby
DISMISSED as moot.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Panel Chair


Lawrence M. Stahl


Robert W. Witt

12/27/07



County Board of Appeals of Baltimore County

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

December 27, 2007

Arnold Jablon, Esquire
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
Towson, Md 21204

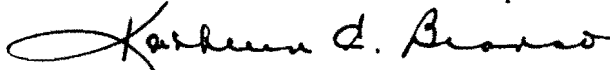
RE: *In the Matter of: Woodland Services, LLC – Legal Owner;
Windsor Rolling Road Property, LLC and St. John Property, Inc. –
Petitioners* Case No. 06-583-SPH

Dear Mr. Jablon:

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

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

Very truly yours,


Kathleen C. Bianco
Administrator

Enclosure

c: David Karceski, Esquire
Windsor Rolling Road Property LLC /
Edward St. John LLC /Gerard Wit, VP
Tom Pilon
Nicholas Brader III, PE /Matis-Warfield, Inc.
Michael P. Tanczyn, Esquire
Woodland Services, LLC
Sajid Chaudhry
Iftikar Ahmad
Ken Colbert
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM



11/13/07

IN THE MATTER OF WOODLAND
SERVICES, LLC

2701 ROLLING ROAD

2nd Election District
4th Councilmanic District

* * * * *

BEFORE THE COUNTY
BOARD OF APPEALS OF
BALTIMORE COUNTY

Case No. 06-583-SPH
Case No. 07-245-X

RECEIVED
NOV 13 2007

**BALTIMORE COUNTY
BOARD OF APPEALS**

MEMORANDUM

Windsor Rolling Road Property, LLC ("Windsor") and St. John Properties, Inc. ("SJP"), by Arnold Jablon and David Karceski with Venable LLP, its attorneys, respectfully submit this Memorandum in support of their position regarding certain legal issues identified in the two cases at issue, as follows:

INTRODUCTION

This matter relates to the existing Osprey fuel service station/car wash/convenience store located at 2701 Rolling Road, which is owned by Woodland Services, LLC ("Woodland"). Windsor is the owner of the property located at 2845 Rolling Road, which is located north of the Osprey along Rolling Road, and on which Windsor intends to construct a Wawa fuel service station use in combination with a convenience store and carry-out restaurant. In 2006, Windsor filed a Petition for Special Hearing with the Zoning Office, requesting a determination that an order and site plan approved by the Zoning Commissioner for Baltimore County ("Zoning Commissioner") in Case No. 02-016-X (Order attached), which approved Woodland's Osprey station, should be declared void because it was issued illegally. Windsor identified several illegalities with the Osprey station and the zoning relief granted in Case No. 02-016-X, including an assertion

that Woodland never requested or obtained a special exception for the Osprey's car wash use, yet obtained permits and constructed the car wash anyway. The Zoning Commissioner granted Windsor's Petition for Special Hearing in part and denied it in part, and Woodland and Windsor have each appealed that decision to this Board (Case No. 06-583-SPH).

Following Woodland's appeal, Woodland filed a Petition for Special Exception to approve the car wash use at the Osprey. The Zoning Commissioner granted that Petition and Windsor, along with SJP, whose office headquarters is located in the nearby Windsor Corporate Park, appealed that decision to this Board (Case No. 07-245-X). All appeals have been scheduled together for hearings before this Board.

Windsor and SJP now request that this Board determine that Windsor and SJP have standing and the corresponding right to participate before the Board in this matter. Additionally, Windsor and SJP ask the Board to order that Woodland must re-file the Petition for Special Exception filed in Case No. 07-245-X, and to find that the County may not process that Petition until Woodland corrects the zoning violations that have been identified by Baltimore County zoning inspectors.

ARGUMENT

I. Windsor's Appeals are Properly Before the Board of Appeals.

Woodland has suggested to the Board that Windsor has no right to present any arguments to the Board in either of the cases at issue. With regard to the appeal of Windsor's Petition for Special Hearing in Case No. 06-583-SPH, Woodland argues that Windsor and Baltimore County have failed to timely exercise any rights they may have to challenge the special exception granted to Woodland in Case No. 02-016-X and, in effect,

equity should bar them from doing so now. With regard to the appeal of both Woodland's Petition for Special Exception in Case No. 07-245-X and Windsor's Petition for Special Hearing in Case No. 06-583-SPH, Woodland argues that Windsor has no standing to appeal because of Windsor's status as a competitor to Woodland's existing fuel service station/convenience store use. As explained in detail below, both of Woodland's arguments are shortsighted and incorrect in several respects.

A. Equity does not bar Windsor's or Baltimore County's ability to challenge the special exception previously granted to Woodland.

In 2001, the Zoning Commissioner granted Woodland's Petition for Special Exception for a fuel service station in combination with a convenience store *only*. In petitioning for the instant special hearing, Windsor is seeking a determination that the special exception granted in that case was granted illegally and is, therefore, void ab initio. Woodland has argued that, because it has substantially relied upon the special exception granted in 2001 by building and continually operating its fuel service station/car wash/convenience store, Windsor should be estopped from challenging the granted relief. Furthermore, Woodland asserts that Baltimore County has no authority to subsequently declare void relief that it has previously granted and that, because Woodland has substantially relied upon the approval, the County should be estopped from declaring it void. However, the equitable principles asserted by Woodland have no application in this case.

Although, as discussed below, Windsor's ability to petition for the instant special hearing and its standing before this Board should not be in doubt, the key point for the Board to recognize is that Baltimore County absolutely has a right – indeed a duty – to assure that illegally granted zoning relief be declared void and that recipients of such

relief be required to comply with the law. The Maryland Court of Appeals has recognized this principle for years.

In *Marzullo v. Kahl*, 366 Md. 158 (2001), a landowner petitioned Baltimore County for a special exception for a reptile and snake breeding farm, which the County granted. The County subsequently issued permits to the landowner who thereafter undertook construction of a barn on his property to support the reptile and snake breeding use. Unhappy neighbors complained to the County and filed a Petition for Special Hearing to challenge the permissibility of the reptile and snake breeding use in the zone in which the landowner's property was situated.

Among other defenses, the landowner asserted both "that he ha[d] obtained a vested right to use his property" as a reptile and snake breeding farm and "that Baltimore County should be estopped from preventing him from using his property" as such.

Marzullo, 366 Md. at 191-99. Each theory relied on the premise that the landowner had performed substantial work (and spent considerable funds) on the barn for which the County issued a permit. However, with regard to both arguments, the Court of Appeals' rationale was the same: the permit granted to the landowner, upon which he relied, was not lawfully issued and, therefore, the equitable defenses asserted by the landowner were not viable. *See id.* at 200 (holding "Respondent is not entitled to a vested right to use his property to raise, breed, and keep reptiles and snakes....because his permit was never properly issued....We also hold that Baltimore County is not estopped from preventing respondent from using his property to conduct his business by enforcing the BCZR....").

Similarly, in *Permanent Financial Corp. v. Montgomery County*, 308 Md. 239 (1986), a developer began construction of an office building following Montgomery

County's issuance of a building permit. After the developer worked on the building for eight months and spent \$2 million in construction costs, the County "issued a stop work order on the grounds that the building violated statutory height limitations, set-back requirements, and floor area ratio restrictions." *Id.* at 241-42.

For nearly the same reasons as discussed in *Marzullo*, the developer in this case contended "that the doctrine of equitable estoppel should be applied against the County" to prohibit the County from halting construction that it had previously approved. *Id.* at 242. While the *Permanent Financial* Court found that the County should be estopped from reversing its initial interpretation of an ambiguous zoning regulation regarding building height, it nevertheless found that there was no ambiguity in the County's floor area ratio definition and that because the "building exceeds the prescribed [floor area ratio]...the County is not estopped to require correction of that deficiency." *Id.* at 254. In other words, because the building as constructed clearly violated County zoning laws, the County was not estopped from requiring the developer to comply with those laws, even though the County had previously approved the construction (including the illegal aspect) in error.

Both the *Marzullo* and *Permanent Financial* Courts rely upon an older Court of Appeals case – *Lipsitz v. Parr*, 164 Md. 222 (1932) – in determining the inapplicability of equitable defenses. It was in *Lipsitz* where the Court of Appeals most clearly stated the law in Maryland that

even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act of its officer or agent, it is not estopped by the unauthorized or wrongful act of its officer or agent in issuing a permit that is forbidden by the explicit terms of an ordinance.

Lipsitz, 164 Md. at 228. Indeed, "[i]t follows that, because [an] ordinance prohibit[s] the

use of the premises in question...any permit issued *would be void*, and the person who received the permit would derive *no benefit, and whatever he might do in pursuance of this permission would be at his own risk and loss....*" *Id.* (emphasis supplied).

In the instant case, the Board must reach the same conclusion. Prior to the filing of this memorandum, the Board stopped short of hearing and considering all of the facts of the matter now before it. However, for purposes of its decision regarding Woodland's motion to dismiss the case, the Board should *assume* as true the fact that the zoning relief granted and subsequent permits issued to Woodland in 2001 for the construction of its fuel service station/car wash/convenience store were issued illegally.¹ See *Ronald M. Sharrow, Chartered v. State Farm Mut. Auto Ins. Co.*, 306 Md. 754, 768 (1986) (stating that in considering a motion to dismiss a court "must assume the truth of all relevant and material facts that are well pleaded and all inferences which can be reasonably drawn from those pleadings"). As such, under the longstanding law in Maryland, Baltimore County has the right to declare that relief and those permits void and to require Woodland to come into compliance with the law. See *Marzullo, Permanent Financial*, and *Lipsitz, supra*.²

Notwithstanding Baltimore County's right to review and compel remediation of Woodland's previously granted zoning relief and permits, Windsor maintains the

¹ Actually, evidence of the illegality is already before the Board. The Board knows that Woodland has appealed from a decision of the Zoning Commissioner granting Windsor's Petition for Special Hearing to confirm the illegality of Woodland's previously granted zoning relief. Furthermore, the Board knows that, following the Zoning Commissioner's decision on the special hearing, Woodland filed for, and was granted, a special exception for the car wash use, which Windsor and SJP have now appealed. The mere fact that Woodland filed for the special exception is evidence of Woodland's *admission* that the zoning relief and permits it received for the construction of its fuel service station/car wash/convenience store were issued illegally.

² Woodland seemingly has also invoked the defense of res judicata, asserting that the County's prior decision regarding its zoning relief and permits is final and, therefore, precludes a subsequent reversal of or change to that decision. However, as with equitable estoppel, Maryland courts have determined that "the principle of res judicata should not apply to an erroneous determination of law by an administrative body." *Bd. of County Commissioners of Cecil County v. Racine*, 24 Md. App. 435, 452 (1972).

simultaneous right to challenge that relief at this juncture. Woodland seems to invoke a defense akin to laches, asserting that Windsor, by waiting 6 years after Woodland's zoning relief and permits were granted, has waived any right to challenge that relief. However, just like the neighbors in *Marzullo*, Windsor should not be precluded from challenging zoning relief and permits that were issued illegally – no matter when they mount such a challenge. *See Marzullo*, 366 Md. at 200.

Furthermore, in order for Woodland to successfully assert a laches defense, it must establish both “negligence or lack of diligence on the part of” Windsor in making its claim, as well as “prejudice or injury to” Woodland stemming from Windsor's alleged lack of diligence. *Staley v. Staley*, 251 Md. 701, 703 (1968); *see also Jahnigen v. Smith*, 143 Md. App. 547, 555 (2002) (“In essence, a plaintiff will be estopped from bringing a claim when the plaintiff has not diligently asserted his rights in a timely manner and the delay will prejudice or injure the defendant.”). Here, Windsor acted promptly once it discovered the illegality of Woodland's approvals, and Woodland cannot identify any reasonable prejudice that it suffered *due to any perceived delay* on Windsor's part to challenge the approvals. In fact, Woodland has been able to operate its business uninterrupted for the 6 years since it received its approvals, which should be evidence enough that Woodland has actually *benefited* from the delay in identifying the illegality of those approvals. *See, e.g., Gropp v. District of Columbia Bd. of Dentistry*, 606 A.2d 1010, 1015-16 (D.C., 1992) (finding that dentist's ability to practice his trade uninterrupted during alleged 3-year “delay” period between Board of Dentistry's investigation and subsequent charging of dentist was among reasons why dentist suffered no prejudice for purposes of laches defense). Consequently, Woodland's purported

laches defense should fail.

In summary, because, as the evidence to be presented to the Board will show (and as the procedural history of the matter indicates), Baltimore County illegally granted zoning relief and issued permits to Woodland for its fuel service/car wash/convenience store use, and because Woodland has benefited from the receipt of those approvals for 6 years, the Board of Appeals should find that Windsor is well within its rights to petition the County for the requested special hearing. Likewise, the County is well within its rights to require Woodland to comply with the law, and, in any event, the County has the obligation and right to require compliance with the law upon discovery of an illegally issued approval. Equity will not bar such rights.

B. Windsor and SJP have standing to appear before the Board of Appeals in this matter.

Woodland argues that, because Windsor – as the owner of land nearby the subject Osprey station on which it proposes to construct a Wawa station – is a competitor of Woodland, Windsor has no standing to challenge any of Woodland’s approvals; neither as a petitioner for special hearing, nor as an appellant in the special exception case. Although Windsor fully admits that it is a competitor of Woodland, it nevertheless refutes Woodland’s assertion because, in making that assertion, Woodland ignores several key factors that together demonstrate Windsor’s and SJP’s collective rights to participate in this matter.

Despite the fact that Windsor is a competitor of Woodland, the real issue that the Board should consider is the illegality of Woodland’s approval in 2001. As demonstrated above, a permit or zoning approval is of no effect if it was issued or granted illegally. This is the case no matter when the issue of the illegality is raised and no matter who

raises it. It is no matter whether the illegality is discovered and identified for the County by a citizen in the neighborhood, by a citizen from elsewhere in the County, by a competitor, or by the County itself. What is important is the illegality itself; the identification of the illegality obligates the County – indeed obligates this Board – to consider whether the challenged approval or permit was, in fact, granted or issued illegally. The identity of who discovered the illegality is of no importance.³

Furthermore, due to its involvement in the appeal of the Petition for Special Exception, there should be no debate over Windsor's standing to participate in the matter altogether. Woodland's decision to file for the special exception for the car wash use has effectively rendered Windsor's Petition for Special Hearing moot. Windsor filed its Petition for Special Hearing due to the fact that, among other things, Woodland's car wash was illegal without a validly granted special exception. Now that Woodland has recognized the illegality and subsequently filed its Petition for Special Exception, "there is no longer an existing controversy between the parties" with regard to the Petition for Special Hearing "so that there is no longer any effective remedy which the [Board] can provide" and that Petition is, therefore, moot. *People's Counsel for Baltimore County v. Elm Street Development, Inc.*, 172 Md. App. 690, 706, n.4 (2007) (upholding Circuit Court's decision that appeal of Baltimore County Development Review Committee approval was moot where developer had contemporaneously sought and received approval from the Hearing Officer for Baltimore County for similar relief, which

³ Practically speaking, at this point, even if the Board were to determine that, as a competitor, Windsor has no standing, there is nothing that would stop another non-competitor neighbor or entity from filing another Petition for Special Hearing requesting the same relief. Furthermore, now that the County is on notice of the illegality, there is nothing to prevent the County from taking the necessary actions to require Woodland to comply with the law. In other words, preventing Windsor from participating in this matter would be a superfluous act that would only delay the inevitable.

approval was also appealed) (citation and internal quotations omitted)⁴; *see also* *Committee for Responsible Development on 25th Street v. Mayor & City Council of Baltimore*, 137 Md. App. 60, 69-70 (2001) (determining Protestant's appeal of building permits was moot where basis of appeal was to prevent destruction of certain buildings that had already been demolished, thus leaving courts incapable to "provide an effective remedy, as the buildings cannot be put back").

Assuming that the Petition for Special Hearing is now moot, that only leaves Windsor's participation in the appeal on the Petition for Special Exception which, likewise, should not be questioned by the Board. Again, Windsor admits that it is a competitor of Woodland with respect to its appeal of the Petition for Special Exception. However, Woodland's argument that Windsor's status as a competitor negates Windsor's standing is of no moment in this particular case. What Woodland ignores in making that argument is that SJP, who has also appealed the Petition for Special Exception, is *not* a competitor. Instead, SJP is merely a party feeling aggrieved by the decision of the Zoning Commissioner and, therefore, SJP has standing to appeal that decision to this Board. *See* Baltimore County Code § 32-3-401(a). Because there is no doubt as to SJP's

⁴ Specifically, in *Elm Street*, the developer sought approval for a subdivision in the RC4 zone, which zone has certain conservancy area requirements. The Hearing Officer denied the plan, the Board reversed, and Protestants appealed to the Circuit Court. While on appeal there, the developer filed a plan with the Baltimore County Development Review Committee ("DRC") to request a limited exemption for a change to the development plan approved by the Board, which change would correct any potential issue with the conservancy area on site. The DRC approved the exemption, and the Protestants appealed to the Board of Appeals. Meanwhile, the Circuit Court remanded the original matter to require the developer to meet certain conservancy area requirements. While on remand to the Hearing Officer, the developer made red-lined changes to the development plan to correct the conservancy area issues, which the Hearing Officer approved. The Protestants also appealed that decision to the Board. The Board ultimately dismissed the protestant's appeal of the DRC's decision for mootness and found in favor of the developer on the remaining appeal, which decisions Protestants again appealed to the Circuit Court. The Circuit Court reached the same conclusion as to the mootness of the DRC appeal "finding that, because 'the case ha[d] gone forward on the [revised] 'red-lined' development plan,' the 'need for the [DRC-granted] exemption [was] no longer operative.'" *Elm Street*, 172 Md. App. at 700. Protestants did not appeal this finding. *See id.* at 706.

status as a party with standing, any standing Windsor may or may not have as a competitor is entirely irrelevant. *See, e.g., Sugarloaf Citizens Ass'n v. Dept. of Env.*, 344 Md. 271, 297 (1996) (“It is a settled principle of Maryland law that, where there exists a party having standing to bring an action...we shall not ordinarily inquire as to whether another party on the same side also has standing.”) (citations and internal quotations omitted).

II. BCZR Section 405.5.B: Woodland Must Re-file its Petition for Special Exception.

In Case No. 07-245-X, Woodland requests only a special exception for a roll-over car wash in combination with the fuel service station use. However, the Fuel Service Station Regulations require Woodland to re-file its Petition for Special Exception to include a request to amend the prior approved special exception for its fuel station. Without this request, Woodland’s Petition, as filed, is insufficient and must be denied.

Section 405.5.B of the Baltimore County Zoning Regulations (“BCZR”) requires a new special exception for an existing fuel service station, if a change to the prior approved fuel station plan is requested. As described above, the original relief granted in Case No. 02-016-X for the fuel service station did not include a car wash. In that case, the Zoning Commissioner examined Woodland’s original petition pursuant to the special exception burden of proof contained in BCZR Section 502.1.A through I. Only after determining that Woodland’s fuel service station met each requirement of Section 502.1 did the Zoning Commissioner grant the special exception for a “fuel service station use in combination with a convenience store and carryout restaurant, greater than 1,500 sq. ft. in area, pursuant to Sections 405.4.E.1 and 405.4.E.10 of the Baltimore County Zoning Regulations....”

Woodland now requests approval for a car wash on its site. Section 405.5.B provides that “[f]or all service station sites requiring a special exception, any amended plan shall constitute a new plan and be subject to the same requirements of these regulations.” Plan amendments for fuel service stations, therefore, require a re-examination of the fuel station site as a whole, pursuant to the special exception burden on proof contained in BCZR Section 502.1. The Board’s approval of the proposed car wash would constitute a change to the relief granted by way of the original special exception order for this site, because a car wash is an additional fuel service station use in combination, which was not granted in Case No. 02-016-X.

Pursuant to Section 405.5.B, Woodland must re-file its Petition for Special Exception not only for an evaluation of its proposed roll-over car wash, but also a reevaluation of its fuel service station use in combination with the car wash and convenience store. Until the relief requested in Woodland’s Petition for Special Exception is corrected, this case is not properly before the Board.

III. BCC Section 32-4-114(c): “County prohibited from processing if violations exist.”

Woodland’s fuel service station is currently in violation of the BCZR. In Case No. 06-583-SPH, the Deputy Zoning Commissioner rendered an advisory opinion that addressed Woodland’s site violations. This order was issued on July 26, 2006, more than fourteen months prior to the public hearing before this Board. In that order, the Deputy Zoning Commissioner determined that (1) Woodland’s fuel station is operating without providing the required amount of off-street parking spaces; (2) Woodland installed free-standing signage in excess of that permitted by the sign regulations; and (3) Woodland installed a propane tank within the site’s required landscape transition area. Each of the

above site conditions constitute a violation of the BCZR, and, to be considered acceptable to the County, would require a variance.

Following issuance of the Deputy Zoning Commissioner's Order, Baltimore County issued a Code Enforcement Correction Notice to Woodland (Notice attached). That Notice, which identifies violations that are nearly identical to those highlighted by the Deputy Zoning Commissioner in Case No. 06-583-SPH, was issued on December 6, 2006 – more than four (4) months after the date of the Deputy Zoning Commissioner's order. The mere issuance of that Notice confirms that Woodland did not correct its site violations during that four (4) month period. The Notice required the violations to be corrected by December 29, 2006.

The public hearing before this Board occurred on October 23, 2007, at which Woodland failed to present to the Board confirmation that it has corrected all of its site violations. Although Woodland has had ample time to correct all of the identified zoning violations, it has failed to do so. Nevertheless, Woodland now asks this Board to grant relief for another special exception use on its property, when it has not otherwise confirmed that its business operation is in compliance with the BCZR.

Section 32-4-114(c) of the Baltimore County Code addresses processing of site plans by Baltimore County and provides as follows:

The county may not process plans or permits for a proposed development if the applicant owns or has an interest in property located in the county upon which there exists, at the time of the application or during the processing of the application, a violation of the zoning or development regulations of the county.

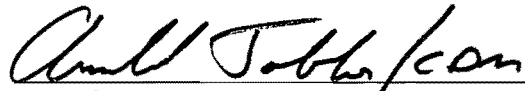
Clearly, existing conditions on Woodland's site violate the BCZR. This Board should, therefore, rule that, until Woodland has confirmed for Baltimore County that its site

violations have been corrected, it will not permit Woodland to proceed with the requested special exception.

CONCLUSION

For the foregoing reasons, Windsor and SJP respectfully request that the Board determine that they both have the requisite standing to appear before the Board in this matter and that the matter should be set in for a hearing on the merits of the appeals. Furthermore, Windsor and SJP request that the Board require Woodland to re-file its Petition for Special Exception in proper form and to correct all previously identified zoning violations before any special exception relief may be granted.

Respectfully submitted,



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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of November, 2007, a copy of the foregoing MEMORANDUM was mailed, first-class delivery, postage prepaid, to Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204-4098, Attorney for Woodland Services, LLC.


ARNOLD JABLON

IN THE MATTER OF:

* BEFORE THE

WOODLAND SERVICES, LLC-

* COUNTY BOARD OF APPEALS

Legal Owner: WINDSOR ROLLING * OF

ROAD PROPERTY LLC - Petitioner * BALTIMORE COUNTY

2701 Rolling Road

* Case No. 06-583-SPH

* October 23, 2007

and

*

IN THE MATTER OF 2701

*

ROLLING ROAD

* Case No. 07-245-X

* * * * *

The above-entitled matters came on for hearing before the county Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 9 a.m., October 23, 2007.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN RE: PETITION FOR SPECIAL EXCEPTION *

E/S Rolling Road, 1,100' N of the c/l

Tudsbury Road

(2701 Rolling Road)

2nd Election District

4th Council District

Woodland Services, LLC

Petitioner

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* * * * *

4/24/07
Wiseman
BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 07-245-X

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by Sajid Choudhry, managing member of the owner of the subject property, Woodland Services, LLC, through its attorney, Michael P. Tanczyn, Esquire. The Petition requests special exception approval of an existing car wash pursuant to Section 253.2.B (1) & (2) of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject car wash was originally shown on a site plan in Case No. 02-016-X as a use in combination, with the uses approved by Order in that case. On July 26, 2006, however, Deputy Zoning Commissioner John V. Murphy determined that the public had not been properly notified of the proposed car wash and accordingly, that this Commission had no jurisdiction to hear that aspect of the special exception request. He ruled that the car wash be closed or the instant petition filed and public notice given. The car wash herein, as originally shown on the site plan in 2001, is for a use in combination with those other uses approved in Case No. 02-016-X.¹ In any event, 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 3.

¹ In trying to resolve ongoing disputes between Windsor Rolling Road Property, LLC & WAWA, Inc. (2845 Rolling Road – Case No. 06-449-X) and Woodland Services, LLC & Osprey Food Market (2701 Rolling Road (Case Nos. 06-583-SPH and 07-245-X) over-competing business interests for market share in the area, this Commission recognizes that it could make a bad situation worse. This opinion follows a careful and rational look at all of the exhibits, code enforcement actions, testimony and arguments of counsel as well as the pertinent history set forth in the opinions and Orders of this Commission originating in September 2001. It is hoped and suggested that the parties sit down together and find a way for their businesses to co-exist without carrying the fight further to the Board of Appeals and possibly for judicial review.

7/26/06

Murphy

IN RE: PETITION FOR SPECIAL HEARING
E/S Rolling Road, 1,100 feet NW of
Tudsbury Road
2nd Election District
4th Councilmanic District
(2701 Rolling Road)

Woodland Services, LLC
Legal Owner
Windsor Rolling Road Property, LLC
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 06-583-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing for the property located at 2701 Rolling Road. The owner of the subject property is Windsor Rolling Road Property LLC. The Petition was filed by Woodland Services, LLC, owner of a nearby property, for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to confirm whether the Order and site plan approved in Zoning Case 02-016-X is void.

The property was posted with Notice of Hearing on June 24, 2006, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on June 22, 2006, to notify any interested persons of the scheduled hearing date.

Applicable Law

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

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

previous order 10/5/05
1/26/06

IN RE: PETITION FOR SPECIAL EXCEPTION
E/S of Rolling Road, 440 ft. S
centerline of Ashfield Drive
2nd Election District
4th Councilmanic District
(2705 Rolling Road)

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
CASE NO. 06-075-X

Rutherford Burger Investments, LLC,
By: Anthony Julio, *Legal Owner*
and
Stemark, Inc., By: Mark Ogrysko, *Lessee*
Petitioners

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Exception filed by the legal owner of the subject property, Rutherford Burger Investments, LLC, by Anthony Julio and Stemark, Inc., by Mark Ogrysko, the lessee. The Petitioners are requesting special exception for property located at 2705 N. Rolling Road in the Catonsville area of Baltimore County. The special exception is requested pursuant to Sections 253.2.B.2 and 419.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a car wash.

The property was posted with Notice of Hearing on September 19, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on September 20, 2005 to notify any interested persons of the scheduled hearing date.

Applicable Law

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

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

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;

9/24/01
Schmidt

IN RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
E/S Rolling Road, 1100' N of the c/l
Tudsbury Road * ZONING COMMISSIONER
(2701 Rolling Road)
2nd Election District * OF BALTIMORE COUNTY
2nd Council District
* Case No. 02-016-X
Rolling Road, LLC
Petitioners *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by the owners of the subject property, Rolling Road, LLC, and the Contract Lessee, Eastern Petroleum Corporation, through their attorney, Stuart D. Kaplow, Esquire. The Petition, as filed, requests a special exception for a fuel service station use in combination with a convenience store, greater than 1500 sq.ft., pursuant to Section 405.4.E.1 of the Baltimore County Zoning Regulations (B.C.Z.R.); however, as will be discussed hereinafter, the Petition was amended in open hearing to also request relief, pursuant to Section 405.4.E.10 of the B.C.Z.R. to allow a carryout restaurant as a use in combination with the fuel service station use. 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 Teresa Rosier on behalf of Rolling Road, LLC, Owners; Kent McNew, President, John Hollender, and Diane Taylor, representatives of Eastern Petroleum Corporation, Lessees; William P. Monk with Morris & Ritchie Associates, the consultants who prepared the site plan for this property; and Stuart D. Kaplow, Esquire, attorney for the Petitioners. Also appearing in support of the request were Sajid Lhaudhry and Riaz Ahmad, potential proprietors of the proposed business, and, Michael Brown, a lighting expert. There were no Protestants or other interested persons present.

RECEIVED FOR FILING
9/24/01
[Signature]

H

Court of Appeals of Maryland.
 Mary Pat MARZULLO et al.

v.

Peter A. KAHL.
 No. 10, Sept. Term, 2001.

Oct. 12, 2001.

Landowner sought review of county board of appeals' decision that his business of breeding, raising, and selling snakes and reptiles was not a farming activity and was not a permitted use in zone implementing resource conservation and watershed protection. The Circuit Court, Baltimore County, John Grason Turnbull II, J., reversed. Neighbor and county attorney appealed. The Court of Special Appeals, 135 Md.App. 663, 763 A.2d 1217, affirmed. Parties petitioned for a writ of certiorari. The Court of Appeals, Cathell, J., held that landowner's business was not a permitted use.

Reversed and remanded with directions.

West Headnotes

[1] Zoning and Planning **605**414k605 Most Cited Cases

On appellate review of zoning case, Court of Appeals would take into consideration county board of appeals' expertise and would afford appropriate deference to board's decision that landowner's business of breeding, raising, and selling snakes and reptiles was not a farming activity and was not a permitted use in a residential resource conservation and watershed protection zone.

[2] Zoning and Planning **279**414k279 Most Cited Cases

Landowner's business of breeding, raising, and selling snakes and reptiles was not "commercial agriculture" within scope of zoning regulation's definition of "farm," and thus, it was not a permitted use in zone implementing resource conservation and watershed protection; legislative intent suggested that drafters of regulation intended "animal husbandry" aspect of "commercial agriculture" to relate to production and care of domestic animals, and landowner's business involved wild animals.

[3] Statutes **174**361k174 Most Cited Cases

Courts do not set aside common experience and common sense when construing statutes.

[4] Statutes **181(2)**361k181(2) Most Cited Cases

Absurd statutory constructions are to be avoided.

[5] Zoning and Planning **465**414k465 Most Cited Cases

Landowner did not have a vested right to conduct on his property the business of breeding, raising, and selling snakes and reptiles, which was not a permitted use in zone implementing resource conservation and watershed protection; although landowner obtained a permit and completed substantial construction of business building, there was no change in zoning law and permit was improperly issued.

[6] Zoning and Planning **461**414k461 Most Cited Cases

Generally, in the absence of bad faith on the part of the remitting official, applicants for permits that involve the official's interpretation of zoning laws accept the afforded interpretation at their risk.

[7] Zoning and Planning **762**414k762 Most Cited Cases

County was not equitably estopped from preventing landowner from conducting on his property the business of breeding, raising, and selling snakes and reptiles, which was not a permitted use in zone implementing resource conservation and watershed protection; even though county official granted landowner a construction permit, the permit was issued in violation of zoning ordinances.

****170*159** Carole S. Demilio, Deputy People's Counsel, and Peter Max Zimmerman, People's Counsel, Office of People's Counsel for Baltimore County, Towson; (J. Carroll Holzer of Holzer & Lee, Towson, all on brief), for petitioners/cross-respondents.

***160** Michael J. Moran (Law Offices of Michael J. Moran, P.C., Towson); John B. Gontrum (Romadka, Gontrum & McLaughlin, P.A., Baltimore), all on brief, for respondent/cross-petitioner.

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

P

Court of Appeals of Maryland.
 PERMANENT FINANCIAL CORPORATION,
 Trustee
 v.
 MONTGOMERY COUNTY, Maryland et al.
 No. 69 Sept. Term 1985.

Dec. 5, 1986.

Builder sought judicial review of decision of the county board of appeals denying it relief from suspension and stop work order and refusing to grant variance. The Circuit Court, Montgomery County, Stanley Frosh, J., affirmed, and builder appealed. The Court of Special Appeals affirmed, and builder petitioned for certiorari. The Court of Appeals, McAuliffe, J., held that: (1) penthouse failed to qualify as "roof structure housing mechanical equipment," so that penthouse was not exempted from height controls imposed by local zoning ordinance; (2) county was estopped from claiming that fourth floor of building exceeded height controls imposed by local zoning ordinance; (3) structures contained within penthouse did not qualify as "rooftop mechanical structures," under local zoning ordinance providing that area occupied by such mechanical structures is not included in gross floor area of building for purpose of area restrictions; and (4) county was not barred by laches from enforcing local zoning requirements against builder.

Affirmed.

West Headnotes

[1] Zoning and Planning 253
 414k253 Most Cited Cases

Penthouse did not have "mansard roof," for purpose of height controls imposed by local zoning ordinance, where roof had no greater slope than was necessary for drainage purposes.

[2] Zoning and Planning 253
 414k253 Most Cited Cases

Penthouse failed to qualify as "roof structure housing mechanical equipment," so that penthouse was not exempted from height controls imposed by local zoning ordinance, where penthouse not only housed various mechanical equipment, but also contained office for janitorial or security personnel.

[3] Zoning and Planning 762

414k762 Most Cited Cases

County was equitably estopped from claiming that building's upper floor exceeded height control imposed by local zoning ordinance, where builder had designed and constructed building in reliance on building permit and on long-standing and reasonable interpretation of county as to how building's height should be calculated.

[4] Zoning and Planning 253

414k253 Most Cited Cases

Structures enclosed within penthouse that had structural head room of six feet, six inches were not "rooftop mechanical structures," under local zoning ordinance providing that area of such mechanical structures is not included in gross floor area of building for purpose of area restrictions.

[5] Zoning and Planning 624

414k624 Most Cited Cases

Court of Appeals would permit builder to argue that building did not violate local setback requirements, though stop work order from which builder appealed referred only to building's alleged violations of local height and area limitations, where county had notified builder subsequent to appeal that its stop work order was also based on building's failure to comply with local setback requirements, and question of setbacks was fully considered by county board of appeals.

[6] Zoning and Planning 762

414k762 Most Cited Cases

County was not barred by laches from enforcing local zoning requirements against builder, though county had waited more than eight months after it had issued building permit and after construction had begun to issue stop work order, and though builder had by that time spent more than \$2 million on project, where record disclosed that county acted promptly when violations were brought to its attention by neighboring property owners.

****124 *241** Joseph P. Blocker and Larry A. Gordon (Linowes & Blocher, on brief), Silver Spring, for appellant.

Clyde C. Henning, Asst. Co. Atty. (Paul A. McGuckian, Co. Atty. and Alan M. Wright, Sr. Asst. Co. Atty., on brief), Rockville, for Montgomery

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164 A. 743

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164 Md. 222, 164 A. 743
(Cite as: 164 Md. 222, 164 A. 743)

P

LIPSITZ v. PARR ET AL.
Md. 1933.

Court of Appeals of Maryland.
LIPSITZ

v.
PARR ET AL.
No. 112.

Feb. 15, 1933.

Appeal from Circuit Court of Baltimore City;
Charles F. Stein, Judge.

Suit by Morris Lipsitz, trading as the Northwestern Lumber Company, against William A. Parr, Buildings Engineer of the Mayor and City Council of Baltimore City, and others. From the decree, plaintiff appeals.

Affirmed.

West Headnotes

Eminent Domain 148 ⇨ 2.1

148 Eminent Domain

148I Nature, Extent, and Delegation of Power

148k2 What Constitutes a Taking; Police and Other Powers Distinguished

148k2.1 k. In General. Most Cited Cases

(Formerly 148k2(1))

Reasonable regulation which is not confiscatory, but which leaves owner in substantial enjoyment of property, although diminishing value through restriction of use, is valid without compensation. Comp.Pub.Gen.Laws Supp.1929, art. 66B.

Equity 150 ⇨ 71(1)

150 Equity

150II Laches and Stale Demands

150k68 Grounds and Essentials of Bar

150k71 Lapse of Time

150k71(1) k. In General. Most Cited

Cases

"Laches" is inexcusable delay without necessary reference to duration, in assertion of right.

Equity 150 ⇨ 72(1)

150 Equity

150II Laches and Stale Demands

150k68 Grounds and Essentials of Bar

150k72 Prejudice from Delay in General

150k72(1) k. In General. Most Cited

Cases

Unless mounting to statutory period of limitations whose application is not denied on equitable considerations, mere delay is insufficient to constitute "laches," if delay has not worked disadvantage.

Estoppel 156 ⇨ 62.5

156 Estoppel

156III Equitable Estoppel

156III(A) Nature and Essentials in General

156k62 Estoppel Against Public, Government, or Public Officers

156k62.5 k. Acts of Officers or Boards.

Most Cited Cases

Municipality held not estopped by unauthorized act of officer or agent in issuing permit to erect ice factory forbidden by explicit terms of ordinance. Code Pub.Gen.Laws Supp. 1929, art. 66B.

Zoning and Planning 414 ⇨ 68

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(B) Regulations as to Particular Matters

414k68 k. Use of Property in General.

Most Cited Cases

Something more than admissible controversy is required to show that prohibition of certain use of premises under zoning ordinance is unlawful. Code Pub.Gen.Laws Supp.1929, art. 66B.

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306 Md. 754, 511 A.2d 492
(Cite as: 306 Md. 754, 511 A.2d 492)

H

Ronald M. Sharrow, Chartered v. State Farm Mut.
Auto. Ins. Co.
Md., 1986.

Court of Appeals of Maryland.
RONALD M. SHARROW, CHARTERED
v.
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY et al.
No. 111, Sept. Term, 1985.

July 15, 1986.

Attorney representing party injured in automobile accident sued tort-feasor's insurer and two of its employees for tortious interference with contract. The Circuit Court, Baltimore City, Joseph H.H. Kaplan, J., sustained defendants' demurrer, and attorney appealed. The Court of Special Appeals, Wilner, J., 63 Md.App. 412, 492 A.2d 977, affirmed, and attorney petitioned for certiorari. The Court of Appeals, Murphy, C.J., held that attorney, who alleged that insurer had capitalized on his client's need for money by involving client in negotiations and requiring client to falsely avow that he had advised attorney of his intention to settle directly with insurer, stated cause of action against insurer for tortious interference with contract.

Reversed and remanded.
West Headnotes

[1] Torts 379 ⇨ 220**379 Torts****379III Tortious Interference****379III(B) Business or Contractual Relations****379III(B)1 In General**

379k220 k. Defense, Justification or Privilege in General. Most Cited Cases
(Formerly 379k12)

Party cannot be liable for intentionally inducing another to breach his contract, even though party acts solely for his own benefit, provided he had

right to cause breach.

[2] Torts 379 ⇨ 246**379 Torts****379III Tortious Interference****379III(B) Business or Contractual Relations****379III(B)2 Particular Cases****379k246 k. Attorneys. Most Cited****Cases****(Formerly 379k12)**

Contracts between attorneys and clients, like other business contracts, are protected from tortious interference by third parties; declining to follow *Walsh v. O'Neill*, 350 Mass. 586, 215 N.E.2d 915, and *Orr v. Mutual Ben. Health & Accident Ass'n*, 240 Mo.App. 236, 207 S.W.2d 511.

[3] Attorney and Client 45 ⇨ 101(1)**45 Attorney and Client****45II Retainer and Authority****45k101 Settlements, Compromises, and Releases****45k101(1) k. In General. Most Cited Cases**

Client may, in good faith, compromise, settle or dismiss his cause of action without his attorney's intervention, knowledge or consent.

[4] Insurance 217 ⇨ 3350**217 Insurance****217XXVII Claims and Settlement Practices****217XXVII(C) Settlement Duties; Bad Faith****217k3346 Settlement by Liability Insurer****217k3350 k. Duty to Settle Within or Pay Policy Limits. Most Cited Cases****(Formerly 217k514.2, 217k514.1)**

Insurer has right and duty to enter into good-faith negotiations, where reasonable and feasible, to settle claim against its insured within policy limits.

[5] Torts 379 ⇨ 246

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24 Md.App. 435, 332 A.2d 306
(Cite as: 24 Md.App. 435, 332 A.2d 306)

▷

Board of County Com'rs of Cecil County v. Racine,
Md.App. 1975.

Court of Special Appeals of Maryland.
BOARD OF COUNTY COMMISSIONERS OF
CECIL COUNTY et al.

v.

Elwood RACINE.

No. 303.

Feb. 13, 1975.

Owner of mobile home subdivision filed application for zoning and sanitary permit for use of one lot for mobile home without a permanent foundation. The County Board of Appeals denied the permit, and the owner appealed. The Circuit Court for Cecil County, J. Albert Roney, Jr., J., reversed, and appeal was taken. The Court of Special Appeals, Menchine, J., held that subject use of lot was a permissible use in the C-2 highway commercial zone, that at least some of the principles of the doctrine of res judicata are applicable to decisions by a zoning board and that where board's prior decision that requested use was not a permitted use was an erroneous interpretation of law, such decision did not, on principles akin to res judicata, preclude subsequent litigation of the matter before the board.

Order affirmed.

West Headnotes

[1] Zoning and Planning 414 ⇨278.1

414 Zoning and Planning

414V Construction, Operation and Effect

414V(C) Uses and Use Districts

414V(C)1 In General

414k278 Particular Terms and Uses

414k278.1 k. In General. Most

Cited Cases

(Formerly 414k278)

Under provision of cumulative zoning ordinance

that permitted uses in the C-2 highway commercial zone where all uses, except dwellings, that were permitted in the local commercial zone C-1, which authorized all uses permitted in residential zone R-3, i. e., multiple dwellings and mobile homes subdivisions, with a dwelling being defined as a residence on a permanent foundation and a mobile home being defined as a moveable or portable residence designed without a permanent foundation, use of lot in mobile home subdivision for a mobile home without a permanent foundation was an authorized use of land within the C-2 zoning.

[2] Zoning and Planning 414 ⇨360

414 Zoning and Planning

414VII Administration in General

414k358 Procedure

414k360 k. Determination in General.

Most Cited Cases

A local zoning board's decision which is the product of an erroneous interpretation or application of the zoning ordinance is arbitrary and capricious in a legal sense.

[3] Zoning and Planning 414 ⇨363

414 Zoning and Planning

414VII Administration in General

414k358 Procedure

414k363 k. Conclusiveness of Determination and Collateral Attack. Most Cited Cases

At least some of the principles of the doctrine of res judicata are applicable to decisions of a zoning board.

[4] Administrative Law and Procedure 15A ⇨501

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(D) Hearings and Adjudications

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251 Md. 701, 248 A.2d 655
(Cite as: 251 Md. 701, 248 A.2d 655)

C

Staley v. Staley,
Md. 1968.

Court of Appeals of Maryland.
Norma Jean STALEY

v.

John Wesley STALEY.
No. 432.

Dec. 12, 1968.

Proceeding on appeal by wife from a decree of the Circuit Court, Prince George's County, Perry G. Bowen, Jr., J., declaring invalid foreign decree of divorce obtained by wife and awarding divorce to husband. The Court of Appeals, Marybury, J., held that where wife had obtained divorce in another state, after living therein in motel room for six weeks, and had remarried one day after she obtained divorce, defense of laches was not available to her as defense in divorce action instituted by husband in Maryland 18 months after foreign divorce decree.

Decree affirmed.
West Headnotes

[1] Equity 150 ⚡67

150 Equity

150II Laches and Stale Demands

150k67 k. Nature and Elements in General.

Most Cited Cases

Doctrine of laches is application of general principles of estoppel and consists of negligence or lack of diligence on part of plaintiff in failing to assert his right, and prejudice or injury to defendant.

[2] Equity 150 ⚡72(1)

150 Equity

150II Laches and Stale Demands

150k68 Grounds and Essentials of Bar

150k72 Prejudice from Delay in General

150k72(1) k. In General. Most Cited

Cases

Heart of doctrine of estoppel, through laches, is that defendant's alleged change of position for worse must have been induced by, or resulted from, conduct, misrepresentation or silence of plaintiff.

[3] Divorce 134 ⚡69

134 Divorce

134IV Proceedings

134IV(C) Time for Proceeding

134k69 k. Laches. Most Cited Cases

Where wife obtained divorce in another state, after living therein in motel room for six weeks, and married one day after she obtained divorce, doctrine of laches was not available to her as defense in divorce action instituted by husband in Maryland 18 months after foreign divorce decree.

[4] Divorce 134 ⚡359(2)

134 Divorce

134VIII Foreign Divorces

134k357 Jurisdiction of Foreign Court

134k359 Genuineness and Sufficiency of
Residence

134k359(2) k. Necessity of Bona Fide
Residence or Domicile. Most Cited Cases

If there is proof that spouse who obtained foreign divorce did not acquire bona fide domicil in divorce-granting state, and other spouse did not appear or participate, giving of full faith and credit to foreign divorce is not mandatory. U.S.C.A.Const. art. 4, § 1.

[5] Judgment 228 ⚡818(5)

228 Judgment

228XVII Foreign Judgments

228k814 Judgments of State Courts

228k818 Want of Jurisdiction

228k818(5) k. Conclusiveness of
Recitals in Judgment Record. Most Cited Cases

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143 Md.App. 547, 795 A.2d 234
(Cite as: 143 Md.App. 547, 795 A.2d 234)

H

Jahnigen v. Smith
Md.App., 2002.

Court of Special Appeals of Maryland.
Philip JAHNIGEN

v.

Mary Rosalie SMITH.
No. 852, Sept. Term, 2001.

April 2, 2002.

Residential tenant brought action against landlord for constructive trust, based on landlord's alleged promise to add tenant to title as tenant in common. The Circuit Court, Baltimore County, Kathleen G. Cox, J., entered order of dismissal, and tenant appealed. The Court of Special Appeals, Greene, J., held that: (1) proper cause of action was for resulting trust, not constructive trust; (2) laches period of 20 years applied; and (3) genuine issue of material fact whether landlord promised to create tenancy in common precluded summary judgment.

Reversed and remanded.
West Headnotes

[1] Pretrial Procedure 307A ⚡679

307A Pretrial Procedure

307AIII Dismissal

307AIII(B) Involuntary Dismissal

307AIII(B)6 Proceedings and Effect

307Ak679 k. Construction of Pleadings. Most Cited Cases

In analyzing a motion to dismiss, a trial court, assuming the truth of all well-pleaded facts in the complaint and taking all inferences from those facts in the light most favorable to the plaintiff, must determine whether the plaintiff has stated a claim upon which relief can be granted.

[2] Pretrial Procedure 307A ⚡622

307A Pretrial Procedure

307AIII Dismissal

307AIII(B) Involuntary Dismissal

307AIII(B)4 Pleading, Defects In, in General

307Ak622 k. Insufficiency in General. Most Cited Cases

Dismissal is appropriate only where the facts alleged fail to state a cause of action.

[3] Judgment 228 ⚡185(2)

228 Judgment

228V On Motion or Summary Proceeding

228k182 Motion or Other Application

228k185 Evidence in General

228k185(2) k. Presumptions and Burden of Proof. Most Cited Cases

When ruling on a motion for summary judgment, a court must view the facts, including all inferences, in the light most favorable to the opposing party. Md.Rule 2-501(e).

[4] Appeal and Error 30 ⚡863

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k862 Extent of Review Dependent on Nature of Decision Appealed from

30k863 k. In General. Most Cited Cases
The standard of appellate review of a summary judgment is whether the trial court was legally correct. Md.Rule 2-501(e).

[5] Equity 150 ⚡67

150 Equity

150II Laches and Stale Demands

150k67 k. Nature and Elements in General. Most Cited Cases

The doctrine of laches is based on the general principles of estoppel and implies that a plaintiff has exhibited negligence or lack of due diligence in

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606 A.2d 1010

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(Cite as: 606 A.2d 1010)

CGropp v. District of Columbia Bd. of Dentistry
D.C., 1992.District of Columbia Court of Appeals.
Stephen W. GROPP, Petitioner,

v.

DISTRICT OF COLUMBIA BOARD OF
DENTISTRY, Respondent.
No. 90-1519.Argued Dec. 2, 1991.
Decided April 3, 1992.
As Amended May 7, 1992.

Dentist challenged findings of the Board of Dentistry for revoking his license to practice and barring him from applying for reinstatement for two years. The Court of Appeals, King, J., held that: (1) substantial evidence sustained Board's findings that dentist filed false statements for services which were not performed; (2) sanctions imposed were not disproportionate to misconduct; and (3) dentist was not entitled to relief from sanctions imposed due to three-year delay between Board's completion of its investigation and filing informal charges.

Affirmed.

West Headnotes

[1] Health 198H 218

198H Health

198HI Regulation in General

198HI(B) Professionals

198Hk214 Disciplinary Proceedings

198Hk218 k. Evidence. Most Cited
Cases(Formerly 299k11.3(3) Physicians and
Surgeons)

Substantial evidence supported findings of fact and conclusions of law made by Board of Dentistry in support of its decision to revoke dentist's license based on charge that he submitted false statements to collect fees for services which were not provided;

every date recorded by dentist was incorrect, the services listed as performed were not the same services the patient received, and dentist sought reimbursement for performance of identical services in three separate claims over a two-month period to two different insurers.

[2] Health 198H 209

198H Health

198HI Regulation in General

198HI(B) Professionals

198Hk201 Discipline, Revocation, and
Suspension198Hk209 k. Advertising or Fraud;
Dishonesty. Most Cited Cases
(Formerly 299k11.3(3) Physicians and
Surgeons)

Substantial evidence supported Board of Dentistry's finding of fraud by dentist who submitted insurance claims for services which were never performed. D.C.Code 1981, § 2-3305.14(a)(3), (c)(3).

[3] Health 198H 209

198H Health

198HI Regulation in General

198HI(B) Professionals

198Hk201 Discipline, Revocation, and
Suspension198Hk209 k. Advertising or Fraud;
Dishonesty. Most Cited Cases
(Formerly 299k11.3(4) Physicians and
Surgeons)

Two-year revocation of dentist's license was not disproportionate sanction for dentist's misconduct in submitting insurance claims for services he did not perform; dentist admitted that he forged patient's signature with respect to one of the specifications. D.C.Code 1981, § 2-3305.14(a)(13), (c)(3).

[4] Equity 150 85

150 Equity

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Court of Special Appeals of Maryland.
 PEOPLE'S COUNSEL FOR BALTIMORE
 COUNTY, Maryland et al.
 v.
 ELM STREET DEVELOPMENT, INC.
 No. 9 Sept. Term, 2006.

March 2, 2007.

Background: Challenge was brought to approval of subdivision with conservancy area. The Circuit Court, Baltimore County, Susan Souder, J., affirmed. Challengers appealed.

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

(1) county directors were not required to provide facts and reasons for decisions that plan complied with conservancy area requirements and requirement of unified control;

(2) hearing officer had to approve plan after challengers declined to point out any failings, omissions, or errors in agency recommendations; and

(3) hearing officer properly accepted revised plan and recommendations by county.
 Affirmed.

West Headnotes

[1] **Administrative Law and Procedure** ⚙️791
15Ak791 Most Cited Cases

[1] **Administrative Law and Procedure** ⚙️796
15Ak796 Most Cited Cases

In reviewing the decision of an agency, the Court of Special Appeals' role is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions and to determine if the administrative decision is premised upon an erroneous conclusion of law.

[2] **Evidence** ⚙️597
157k597 Most Cited Cases

"Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

[3] **Administrative Law and Procedure** ⚙️760
15Ak760 Most Cited Cases

[3] **Administrative Law and Procedure** ⚙️791

15Ak791 Most Cited Cases

[3] **Administrative Law and Procedure** ⚙️796
15Ak796 Most Cited Cases

In determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, the Court of Special Appeals may not substitute its judgment for that of the agency unless the agency's conclusions were not supported by substantial evidence or were premised on an error of law.

[4] **Statutes** ⚙️219(1)
361k219(1) Most Cited Cases

In deciding whether an agency's conclusions were premised on an error of law, the Court of Special Appeals ordinarily gives considerable weight to the agency's interpretation and application of the statute which the agency administers.

[5] **Zoning and Planning** ⚙️439
414k439 Most Cited Cases

County planning directors and county department of environmental protection and resource management were not required to provide facts and reasons for decisions that subdivision plan complied with conservancy area requirements and requirement of unified control.

[6] **Zoning and Planning** ⚙️438.5
414k438.5 Most Cited Cases

Once county planning directors made recommendations that subdivision plan complied with conservancy area requirements and requirement of unified control, it was not necessary for developer or the agencies to produce evidence supporting the decisions; rather, it was then up to challengers to produce evidence rebutting the directors' recommendations.

[7] **Zoning and Planning** ⚙️438.5
414k438.5 Most Cited Cases

Subdivision developer's duty to demonstrate compliance with conservancy area requirements and requirement of unified control ended when county planning directors and county department of environmental protection and resource management determined there was compliance; once that occurred, developer could simply accept those recommendations and choose not to submit any comments or conditions to the hearing officer.

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767 A.2d 906

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137 Md.App. 60, 767 A.2d 906
(Cite as: 137 Md.App. 60, 767 A.2d 906)

H

Committee for Responsible Development on 25th
Street v. Mayor and City Council of Baltimore
Md.App.,2001.

Court of Special Appeals of Maryland.
COMMITTEE FOR RESPONSIBLE
DEVELOPMENT ON 25TH STREET et al.,
v.
MAYOR AND CITY COUNCIL OF
BALTIMORE et al.
No. 2927, Sept. Term, 1999.

March 1, 2001.

Challenger to pharmacy construction sought judicial review of board of municipal and zoning appeals' decision that upheld the grant of the construction permit. The Circuit Court, Baltimore City, Alfred Nance, J., dismissed. Challenger appealed. The Court of Special Appeals, Kenney, J., held that challenger did not have standing to seek judicial review of board's decision.

Affirmed.

West Headnotes

[1] Action 13 ⇨ 6

13 Action

13I Grounds and Conditions Precedent

13k6 k. Moot, Hypothetical or Abstract Questions. Most Cited Cases

A case is moot when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy.

[2] Appeal and Error 30 ⇨ 781(1)

30 Appeal and Error

30XIII Dismissal, Withdrawal, or Abandonment

30k779 Grounds for Dismissal

30k781 Want of Actual Controversy

30k781(1) k. In General. Most Cited

Cases

Moot cases are generally dismissed without a decision on the merits.

[3] Appeal and Error 30 ⇨ 781(1)

30 Appeal and Error

30XIII Dismissal, Withdrawal, or Abandonment

30k779 Grounds for Dismissal

30k781 Want of Actual Controversy

30k781(1) k. In General. Most Cited

Cases

In rare instances an appellate court can address a moot case if it presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct, or the issue presented is capable of repetition, yet evading review.

[4] Administrative Law and Procedure 15A ⇨ 665.1

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(A) In General

15Ak665 Right of Review

15Ak665.1 k. In General. Most Cited

Cases

The requirements for administrative standing are such that one may have administrative standing, but lack standing to seek judicial review.

[5] Declaratory Judgment 118A ⇨ 299.1

118A Declaratory Judgment

118AIII Proceedings

118AIII(C) Parties

118Ak299 Proper Parties

118Ak299.1 k. In General. Most Cited

Cases

Standing to bring a declaratory judgment action is the same as for other cases; there must be a legal interest, such as one of property, one arising out of

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▷ Sugarloaf Citizen's Ass'n v. Department of EnvironmentMd.,1996.

Court of Appeals of Maryland.
 SUGARLOAF CITIZENS' ASSOCIATION et al.
 v.
 DEPARTMENT OF ENVIRONMENT et al.
 No. 60 Sept. Term 1995.

Dec. 20, 1996.

Local landowners, environmental organizations and citizens' groups sought judicial review of determination of the Maryland Department of Environment (MDE) allowing construction to proceed for power-generating solid waste incinerator. The Circuit Court, Montgomery County, DeLawrence Beard, J., dismissed petitions for lack of standing, and appeal was taken. The Court of Special Appeals, 103 Md.App. 269, 653 A.2d 506,affirmed. Writ of certiorari was granted. The Court of Appeals, Eldridge, J., held that: (1) owners of farm adjacent to tract which encircled incinerator were adjoining or nearby property owners who were prima facie aggrieved by issuance of permits for incinerator for purposes of standing to bring action for judicial review; (2) evidence that much higher levels of toxic substances would fall on farm than on properties farther away from incinerator showed that effect on farm owners different from that on general public so as to support standing to bring action for judicial review; (3) administrative law judge (ALJ) sufficiently considered evidence that pollution from incinerator would harm wildlife and humans; (4) refuse disposal permit sufficiently indicated disposal sites for nonhazardous and possibly hazardous ash and compliance with county solid waste management plan; (5) air quality standards for ozone nonattainment areas under 1990 Amendments to Clean Air Act (CAA) did not apply to applications for permits submitted before state had incorporated new regulations into its plan; and (6) plaintiffs were not entitled to discovery prior to contested case hearing on issuance of permits for incinerator.

Judgment of the Court of Special Appeals reversed, and case remanded with directions.
 West Headnotes

[1] Administrative Law and Procedure 15A
 ⚡665.1

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(A) In General

15Ak665 Right of Review

15Ak665.1 k. In General. Most Cited Cases

Person may properly be party at agency hearing under relatively lenient standards for administrative standing but not have standing in court to obtain judicial review to challenge adverse agency decision.

[2] Administrative Law and Procedure 15A ⚡668

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(A) In General

15Ak665 Right of Review

15Ak668 k. Persons Aggrieved or Affected. Most Cited Cases

In order to be "aggrieved" for purposes of standing to bring action for judicial review under Administrative Procedure Act (APA), person ordinarily must have interest such that he or she is personally and specifically affected in way different from public generally. Code, State Government, § 10-222(a)(1).

[3] Administrative Law and Procedure 15A ⚡450.1

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(D) Hearings and Adjudications

15Ak450 Parties

15Ak450.1 k. In General. Most Cited Cases

Environmental Law 149E ⚡378

149E Environmental Law

149EVIII Waste Disposal and Management

149Ek377 Administrative and Local Agencies and Proceedings

149Ek378 k. In General. Most Cited Cases (Formerly 199k25.5(9) Health and Environment)

Local landowners, environmental organizations and citizens' groups had standing as parties to participate

Type of Use	Integral Planned Development	Individual Site
6. Trailer rental, for trailers not exceeding $\frac{3}{4}$ ton chassis weight, with a maximum stock of 20 trailers. Additional site area of 5,000 square feet must be provided.	SE	SE
7. Light-truck rental, including rental of trucks equipped with campers, for trucks not exceeding $1\frac{1}{2}$ tons' capacity, with a maximum stock of eight trucks. Additional site area of 4,000 square feet must be provided.	SE	SE
8. Parking of not more than six school buses. Additional site area of 2,600 square feet must be provided.	SE	SE
9. Self-service car washes. No additional site area required, provided that the stacking, parking and buffer requirements of Section 419 are met.	SE	Not Permitted
10. Restaurant, including fast food, fast food drive-through only, and carry-out restaurants. Additional site area of six times the gross square footage of the restaurant must be provided.	SE	SE

405.5 Plan approvals.

- A. Conversion of any conforming fuel service station building to another use, permitted in the basic zone or district in which the site is located, shall require approval of the overall plan of the entire site by the Directors of Planning, Public Works and Permits and Development Management or, in the case of a special exception, the Zoning Commissioner.
- B. For all service station sites requiring a special exception, any amended plan shall constitute a new plan and be subject to the same requirements of these regulations.

405.6 Fuel service stations existing prior to the effective date of Bill No. 172-1993.

- A. Expansion, reconstruction or addition of uses.
 1. Any fuel service station which legally existed by right or by special exception on the effective date of Bill No. 172-1993 may be expanded or reconstructed, and any ancillary use listed in Section 405.4.D may be added, provided that the project is confined to the limits of the site as it existed on the effective date of Bill No. 172-1993; and

administrative procedures for the review and processing of plans and plats under the provisions of Subtitle 2 of this title.

(1988 Code, § 26-178) (Bill No. 1, 1992, § 2; Bill No. 69-95, § 10, 7-1-1995; Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-113. DELINQUENT ACCOUNTS.

(a) *Payment required before processing.* Before the county may process plans or permits for a proposed development, the applicant shall pay all delinquent accounts of the applicant.

(b) *Exception.* The provisions of subsection (a) of this section do not apply if the applicant disputes the county's claim and posts collateral to satisfy the claim pending resolution of the dispute.

(1988 Code, § 26-179) (Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-114. COMPLIANCE WITH OTHER LAWS AND REGULATIONS.

(a) *Compliance with other county laws required.* Except as otherwise provided in this title, all development shall comply with this title and all other applicable laws or regulations of the county.

(b) *Laws not superseded by this title; exception.* Other laws or regulations of the county that affect development are not superseded by this title unless specifically stated in this title.

(c) *County prohibited from processing if violations exist.* The county may not process plans or permits for a proposed development if the applicant owns or has an interest in property located in the county upon which there exists, at the time of the application or during the processing of the application, a violation of the zoning or development regulations of the county.

(1988 Code, § 26-180) (Bill No. 18, 1990, § 2; Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-115. ENFORCEMENT AND REMEDIES.

(a) *In general.* A permit may not be issued without compliance with this title.

(b) *Remedies.* The county may bring an action:

(1) For specific performance of a provision of this title; or

(2) To set aside a conveyance made in violation of this title at the cost and expense of the transferor.

(1988 Code, § 26-175) (Bill No. 79-01, § 2, 7-1-2004)



Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation/Case No. 06-9534	Property No. 2300007603	Zoning: ML-IM
Name(s): Woodland Services		R/A Istikhar Ahmad
Address: 2318 Halls Grove Rd.		486 Worthington Road, May
Violation Location: Gambrills Md. 21054-1953 Millerville, Md 21108		
2701 S. Rolling Rd 21244		

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

- BCZR 253; 102.1; 405.4E; 405.4.A.3d. (115); 450.4**
1. Cease the operation of a car wash in conjunction with a service garage without a Special Exception. (02-016-X site plan)
 2. Non Compliance with an approved site plan. Parking - Accessory uses requiring additional parking spaces not shown: (2) additional carvacs. total (4) (1) additional air pump (1) ATM 2 additional employees per shift. 35 spaces shown 40 required per site visit.
 3. Variances may be required for parking spaces and for deficient parking space widths. Note: 3 spaces found to be less than 8'6" in width
 4. Remove propane tank installed within the landscape transition area.
 5. 8 signs erected without permits (remove promptly)

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE **for permits**

On or Before: 12/29/06	Date Issued: 12/6/06
----------------------------------	--------------------------------

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF \$200, \$500, OR \$1000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

Print Name: W. Asilewski	Copies Forwarded to: Michael TANCZYK
------------------------------------	--

INSPECTOR: **W. Asilewski** **410-296-8827**

BCC 32-3-102; 602 STOP WORK NOTICE
PURSUANT TO INSPECTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN:

On or Before:	Date Issued:
---------------	--------------

INSPECTOR: _____

8/25/06

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
E/S Rolling Road, 1,100 feet NW of	*	DEPUTY ZONING
Tudsbury Road	*	
2 nd Election District	*	COMMISSIONER OF
4 th Councilmanic District	*	
(2701 Rolling Road)	*	BALTIMORE COUNTY
Woodland Services, LLC	*	CASE NO. 06-583-SPH
Legal Owner	*	
Windsor Rolling Road Property, LLC	*	
Petitioner	*	
* * * * *	*	* * * * *

NOTICE OF APPEAL

Windsor Rolling Road Property, LLC, Petitioner in the instant matter, by and through its attorney Arnold Jablon, Venable, LLP, feeling aggrieved by part of the final decision and determination of the Deputy Zoning Commissioner of Baltimore County, attached hereto and incorporated herein as Exhibit A, denying the appellant's request to confirm the approval for a fuel service station in combination with a convenience store and carry out restaurant granted in case No. 02-016X is void.

Appellant herewith specifically takes exception to that part of the final decision of the Deputy Zoning Commissioner, as reflected in Exhibit A, in which he denies the Appellant's request to confirm that the fuel service station in combination with a convenience store and carry out restaurant is void, and appeals only the denial to the County Board of Appeals.

In compliance with Rule 3(a) of the Rules of Practice and Procedure of County Board of Appeals, Appellant states its name and address as follows:

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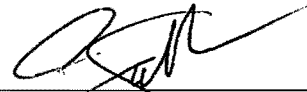
AUG 25 2006

Per *amj*.....

Windsor Rolling Road Property, LLC
c/o Edward St. John, LLC
Edward St. John, General Manager
2560 Lord Baltimore Drive
Baltimore, Maryland 21244

Filed concurrently with this Notice of Appeal is a check made payable to
Baltimore County to cover the costs of the appeal.

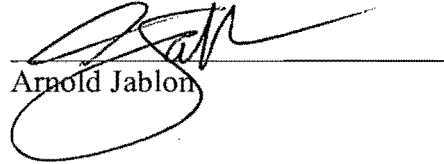
Respectfully submitted



Arnold Jablon
Venable, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6298
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 25 day of August, 2006, a copy of the foregoing Notice of Appeal was hand-delivered to the Baltimore County Board of Appeals, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204; and to Timothy M. Kotroco, Director, Baltimore County Department of Permits and Development Management, County Office Building, 111 Chesapeake Avenue, Towson, Maryland 21204; and mailed to Michael P. Tanczyn, 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204; Woodland Services, LLC, 2318 Halls Grove Road, Gambrills, Maryland 21054-1953.


Arnold Jablon

1/26/06

IN RE: PETITION FOR SPECIAL HEARING
E/S Rolling Road, 1,100 feet NW of
Tudsbury Road
2nd Election District
4th Councilmanic District
(2701 Rolling Road)

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 06-583-SPH

Woodland Services, LLC
Legal Owner
Windsor Rolling Road Property, LLC
Petitioner

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing for the property located at 2701 Rolling Road. The owner of the subject property is Windsor Rolling Road Property LLC. The Petition was filed by Woodland Services, LLC, owner of a nearby property, for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to confirm whether the Order and site plan approved in Zoning Case 02-016-X is void.

The property was posted with Notice of Hearing on June 24, 2006, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on June 22, 2006, to notify any interested persons of the scheduled hearing date.

Applicable Law

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

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

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Zoning Advisory Committee Comments

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

Interested Persons

Appearing at the hearing on behalf of the requested special hearing were Nick Brader and Tom Pilon. Arnold Jablon, Esquire, and David Karceski, Esquire, represented the Petitioner, Woodland Services, LLC hereinafter called "Woodland". Appearing in opposition to the request were Ken Colbert, Iftikhar Ahman and Sajid Chaudhry for Windsor Rolling Road Property, LLC, herein after called "Osprey". Macy Nelson, Esquire, represented these Respondents. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Petitioner's Case

The subject property contains 1.74 acres zoned ML-IM and is improved by a fuel service station in combination with a convenience store and a roll over car wash operated by Respondent, Osprey. Mr. Jablon proffered that the special exception granted Osprey in September, 2001 in Case No. 02-016-X was void as it conflicts with the County zoning regulations. In addition he proffered Osprey is in violation of the zoning regulations as it operates its business on site.

Mr. Nelson indicated that Windsor filed this request in retaliation for Osprey's opposition to Windsor's proposed convenience store farther north on North Rolling Road. He complained that he asked for but was not provided a list of grievances that Windsor had on Osprey's operation at the subject site.

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Mr. Brader, civil engineer, presented Petitioner's exhibit 1 which is the original site plan for the 02-016-X case on which is superimposed in red Mr. Brader's list of zoning flaws and violations which he derived from research into the history of the site and on site visits. See Petitioner's exhibit 2 for the decision in Case No. 02-016-X.

Mr. Brader pointed out that the fuel service station in combination with the convenience store was approved under Section 405.4.E.1 and 405.4.E.10. The original site plan (Petitioner's exhibit 3) in note 6 indicates that the property is part of an integral planned development and an approved industrial park greater than 50 acres. This would indicate the Petitioner was alleging it could proceed by right as the plan met Section 405.2A 2. He presented Petitioner's exhibit 4, the original CRG plan which indicates this property was part of a larger industrial development. However this larger development plan (Petitioner's exhibit 5) shows only 23+ acres and a later plan (Petitioner's exhibit 6) shows 19+ acres. In addition he noted that the site plan violated Section 405.2A which requires fuel service stations alleged to be allowed by right to have "no part of the lot" within 100 feet of a residentially zoned property. He noted that the lot was within 70 feet of a residentially zoned property across Rolling Road and so once again could not proceed by right. He opined therefore Osprey had to proceed by special exception.

Having determined Osprey could proceed only by special exception, Mr. Brader noted that this property is subject to Section 253.2.B. This section allows auxiliary service uses by special exception where the property is in an IM district and the use will primarily serve the industrial uses in the surrounding industrial area. He further noted that Section 405.4E allows fuel service stations in combination with other uses such a convenience stores and car washes again by special exception.

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In conclusion he opined that there had been no request for nor granting of a special exception for a fuel service station under Section 253 nor car wash under Section 405.4.E.2. Therefore these uses are illegal.

In regard to the operations of the Osprey site, Mr. Bader testified that the site plan (Petitioner's exhibit 3) indicates that 34 parking spaces are required and 35 spaces provided. Consequently no request for parking variance was made in the 02-016-X case. However he testified that there is an ATM machine on site which was not shown on the site plan approved in Case 02-016-X. Section 405.4.d (5) requires one parking space for each ATM. He also noted that there are 2 additional vacuum units, which were not on the approved site plan, are now on site and these require 2 additional parking spaces under the regulations. He also testified that as the result of his visit to the site, he counted 6 employees. The site plan approved in Case 02-016-X shows 4 employees as the maximum number. Section 405.4 requires one parking space per largest shift. Consequently 2 additional spaces are required. Next he indicated that there was a kerosene dispenser and a propane dispenser on site again which were not on the approved site plan. He opined that each falls under Section 405.4.A.3c(3) require two additional parking spaces. In summary he opined that Osprey was 5 parking spaces below he regulatory requirements and in violation of the regulations.

Mr. Brader also indicated that the propane tank is located within the landscape transition area in violation of the regulations. Finally he opined that the signage on site violates the regulations by having four free standing signs where one is allowed.

Upon questioning he admitted that Case No. 02-016-X was heard and decided in 2001 and not appealed. He further admitted that Osprey applied for a special exception and was granted a special exception. Osprey presented a tax map of the area as Respondent's exhibit 1

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which shows the Osprey site in red and very large industrial area outlined in green to the east of the property. Mr. Brader denied that the subject property should be considered part of the larger industrial area.

Upon further questioning Mr. Brader noted that 5 parking spaces are needed for the 4 vacuums and one air dispenser. He denied needing one less space because the air dispenser and one vacuum are in close proximity to one another. He admitted that he does not know when the employee shift changes which could account for more employees on the premises, or that employees could travel from site to site. However he noted that the employees he saw were dressed in uniforms and appeared to be working. He was unsure whether kerosene was dispensed as a fuel for vehicles.

On redirect he indicated that the area outlined in green on Respondent's exhibit 1 was not a planned industrial park and is not in common ownership. He opined that there was no minimum acreage required for fuel service stations granted by special exception. In addition he indicated that even if kerosene is not dispensed to vehicles for fuel, the dispenser requires a parking space and one stacking space.

Respondent's Case

Mr. Colbert, a professional engineer, testified that although the car wash was not mentioned in the Petition, it was shown on the site plan which is turn is cited in the order in Case No. 02-016-X. He also noted that the Osprey was granted a special exception for a fuel service station in combination which meets the requirements of Section 253.2B because this is in an IM district.

In regard to Respondent's exhibit 1, the large area outlined in green was the boundary of a very large industrial park which started with 180 acres. As parcels were sold this later became

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the Rutherford Industrial Park, Security Industrial Park, RBC South. Together with two parcels to the north owned by RBC, there are 45 acres in the entire RBC holding.

Regarding parking spaces, the vacuum and air dispenser are so close together they should be considered one unit. The kerosene dispenser does not have to appear on the site plan but requires only a permit. The intent of Section 405 is to regulate stations for fueling motor vehicles. Kerosene is a heating fuel and never put into motor vehicles. Customers do not pull up to a kerosene dispenser and fuel their cars. There is no requirement for parking spaces for this kind of dispenser.

In regard to parking on site, Mr. Colbert's firm reevaluated the parking field and can get 36 spaces on site. He admitted that the site needs 37 spaces and perhaps 38 for largest employee shift. If needed, Osprey could remove two vacuum units to get down to 36 spaces.

He admitted upon questioning the property is not in a planned industrial park, the Section 253 is not mentioned in the Order of Case No. 02-016-X (but denied this is required), that note 6 in the site plan is incorrect, that the car wash is not mentioned in the Petitioner of Case No. 02-016-X and there is no definition of motor fuel. He reiterated that kerosene is not a motor fuel, but rather a home product.

Findings of Fact and Conclusions of Law

Alleged Zoning Violations

In regard to the Petitioner's allegations that the site as presently operated in violation of the zoning regulations, I find the following:

Mr. Jablon's proffers that this Office has jurisdiction to hear zoning violation cases even though the Department of Permits and Development Management enforces complaints. Section 500.7 of the BCZR continues to list this Office as having the power to enforce such violations

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while Section 32-3-602 of the BCC gives the Department of Permits and Development Management the power to enforce zoning violations. Certainly the County has operated under the latter for the past 15 years. I find that the Code prevails and zoning enforcement belongs exclusively to the Department of Permits and Development Management.

That said, I see no reason why this Office cannot consider a request for special hearing for an interpretation of the zoning regulations that a particular property is or is not in conformance with the zoning regulations. This requires, however, that a request for special hearing be filed pursuant to Section 500.7 of the BCZR with a site plan and a listing of alleged violations. This would give the property owner notice of the alleged violations by posting the property and notice to the general public by publication of such a request for interpretation.

The Petition for Special Hearing in the subject case requests only to determine that the Order and site plan in case 02-016-X are void. It does not mention alleged zoning violations. The posted sign and notice of publication have no mention of such a request in this case. Consequently I have no jurisdiction to interpret the regulations as requested at the public hearing. However, the Parties have indicated that I should make a determination if such is the case for their convenience. They point out that the Petitioner herein can simply file complaints consistent with Petitioner's exhibit 1, DPDM will investigate and charge the owner with alleged violations and the owner will file a request for this Office to interpret the regulations. Consequently for the convenience of the Parties and in an advisory capacity only, I find as follows:

1. There is some confusion about the actual number of vacuums on site. Several witnesses testified that there were 4 vacuums each of which needed a parking space and that the approved site plan listed 2. However the photographs of the convenience store on Petitioner's exhibit 1 shows 2 vacuums, one air pump and one kerosene dispenser. In

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addition this exhibit shows one propane tank dispenser. I believe the Petitioner contends 5 spaces are needed for these functions and listed these 5 under the heading of "vacuum spaces required" in red on note 11 of Petitioner exhibit 1. I will proceed on this basis.

2. I find that Section 405.4.3d requires one parking space for the air pump and one for each vacuum unit for a total of 3 spaces for these functions. I do not accept that the air pump and vacuum can be considered as one even if they are physically close. The features have different functions and each will require its own space.
3. I find that neither the kerosene dispenser or the propane dispenser require parking spaces separate from and in addition to the general parking field. I believe that modern technology may well have vehicles fueled by propane or kerosene shortly. I know of vehicles fueled by natural gas, alcohol, electricity, etc., in addition to standard gasoline and diesel fuels. Perhaps it will be more appropriate in the future to refer to the process as transferring energy to vehicles to be used by their motors for travel. It is not the nature of the energy that requires parking spaces but the process of transferring energy to motor vehicles. Whatever the type of energy, the physical process will take time to transfer that energy to the vehicle. This time delay causes the need for a fueling space and stacking space. So a station which fuels vehicles with propane will need 2 spaces while another station not equipped to fuel vehicles with propane will not. In the instant case it is clear Osprey is not fueling vehicles with either propane or kerosene. Therefore Osprey has no need for added spaces for these products. If, as and when they wish to fuel vehicles with propane or kerosene, they will need parking spaces for this function.
4. Osprey needs one space for the ATM

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5. In regard to employees, I find that Osprey needs 6 spaces. I do not know if six is the largest shift but Mr. Brader counted 6 uniformed employees working at the site. I have no reason to believe these were supervisory, temporary or transitory employees. Once the Petitioner establishes 6 employees, the burden shifts to the Osprey to present facts which dispute that allegation. They have presented no such facts and so I find that Osprey needs 6 spaces.
6. In summary Osprey needs 2 spaces for the vacuums, one space for the air pump, one space for the ATM and 6 spaces for employees or a total of 10 spaces for these functions. The approved plan shows 2 vacuum spaces and 4 employee spaces or 6 spaces. Osprey is then 4 spaces short of the required number. The approved plan shows 34 spaces required. Consequently the present operation requires 38 spaces for the site. Testimony indicated that the site could be reconfigured for 36 spaces. Osprey should either remove functions or employees to meet the requirements or request a variance.
7. I find that Osprey is entitled to have one free standing sign on the premises but, in fact, has 4 free standing signs. Osprey should either remove 3 signs or request a variance.
8. I find the propane tank is located in the landscape transition area in violation of the regulations. Osprey should either move the tank or ask for a variance.
9. Osprey should update its site plan to show the propane tank and kerosene dispenser if it wants to continue these functions.

Case 02-016-X Order and site plan are void?

In regard to the car wash, I find that the car wash in combination with a fuel service station requires a special exception, that no special exception was requested in the Petition filed in Case No. 02-016-X nor was such a special exception granted in that case. I acknowledge that

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the car wash is shown on the site plan and included in the original parking calculations. I have no doubt the Zoning Commissioner was aware of the car wash. However the public was not notified of the proposed car wash and this Commission has no jurisdiction to hear a request for special exception for a car wash unless the public is notified of the request. Perhaps this is why the Zoning Commissioner did not include it in his order. Osprey must either close the car wash permanently or request a special exception. The car wash should not operate while the special exception is pending as the order and site plan are void in regard to the car wash.

In regard to the fuel service station, all agree that the property is in an IM district and I find it simply does not matter what size the adjacent industrial area is. Osprey requested a special exception for a fuel service station in combination with a convenience store and amended their petition to include a carry out restaurant. The order included the carry out restaurant pursuant to Section 405.4 E.10 and presumably the site was large enough to accommodate the additional space required. I admit neither the findings of fact nor the order mention the requirement regarding abandoned stations pursuant to Section 405.3 or that the station will primarily serve the industrial uses in the surrounding industrial area as required by Section 253.2. However not every detail of testimony and evidence needs to be mentioned in an opinion to have the decision be valid. The Zoning Commissioner is presumed to know the law and apply it in each case. I see no reason to declare the special exception for a fuel service station in combination with a convenience store and carry out restaurant void because not every detail is listed or mentioned in the opinion. In addition the public was notified of Osprey's request for a special exception for a fuel service station in combination with the convenience store. The Zoning Commissioner allowed the Petitioner to amend the request to include a carry out

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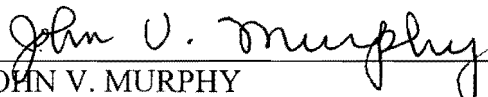
restaurant. As such he had all necessary jurisdiction to decide the special exception case for the fuel service station in combination.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 26th day of July, 2006, that the Petitioners' request for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to confirm whether the Order and site plan approved in Zoning Case 02-016-X is void, hereby is DENIED in regard to the special exception for a fuel service station in combination with a convenience store and carry out restaurant; and

IT IS FURTHER ORDERED that the Petitioners' request for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to confirm whether the Order and site plan approved in Zoning Case 02-016-X is void, and is GRANTED in regard to the special exception for car wash and that said car wash shall be closed pending further zoning relief; and

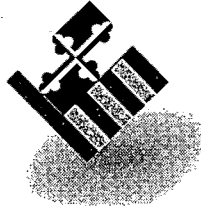
IT IS FURTHER ORDERED that the Parties' informal request to determine the zoning status of the Respondent's operation of the subject property is not before me, that the indications above as to zoning status are advisory only and that no enforcement of alleged zoning violations shall result from this decision.

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


JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

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BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

July 26, 2006

WILLIAM J. WISEMAN III
Zoning Commissioner

WOODLAND SERVICES, LLC
2318 HALLS GROVE ROAD
GAMBRILLS, MD 21054-1953

Re: Petition for Special Hearing
Case No. 06-583-SPH
Property: 2701 Rolling Road

Dear Sir:

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

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

A handwritten signature in cursive script that reads "John V. Murphy".

John V. Murphy
Deputy Zoning Commissioner
for Baltimore County

JVM:pz
Enclosure

- c: Windsor Rolling Road Property, LLC, Edward St. John General Manager, 2560 Lord Baltimore Drive, Baltimore MD 21244
David Karceski, Esquire, Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson, MD 21204
Arnold Jablon, Esquire, Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson, MD 21204
Nick Brader, 10540 York Road, Suite M, Hunt Valley MD 21030
Tom Pilon, St John Properties Inc., 2650 Lord Baltimore Drive, Baltimore MD 21117
Ken Colbert, 2835 Smith Avenue, Baltimore MD 21209
Iftikhar Ahman, 10346 Champions Way, Laurel MD 20723
Sajid Chaudhry, 2913 George Howard Way, Davidsonville MD 21035

RECEIVED FOR FILING
7-26-06
PB

7/19/06

G. MACY NELSON
ATTORNEY AT LAW

TELEPHONE
(410) 296-8166, EXT. 290

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com
gmacynelson@gmacynelson.com

FACSIMILE
(410) 825-0670

July 19, 2006

RECEIVED

JUL 20 2006

John V. Murphy
Deputy Zoning Commissioner for Baltimore County
401 bosley Avenue
Towson, Maryland 21204

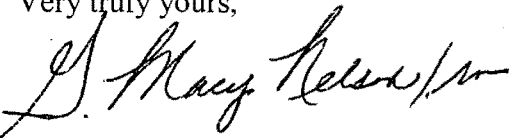
ZONING COMMISSIONER

RE: *Osprey Fuel Service Station* – Case No. 06-583-SPH

Dear Mr. Murphy:

I acknowledge receipt of Mr. Jablon's letter dated July 12, 2006 in which he attached three cases for your review. Contrary to Mr. Jablon's assertion, I believe that these cases are not relevant to the issues before you.

Very truly yours,


G. Macy Nelson

GMN/ro
cc: Arnold Jablon, Esquire

TO: Mr. John V. Murphy, Deputy Zoning Commissioner, Baltimore County
FROM: G. Macy Nelson, Attorney at Law
SUBJECT: Osprey Fuel Service Station, Case No. 06-583-SPH

TO: Jack Murphy
FROM: Ked Whitmore
RE: Cases concerning *Osprey Fuel Service Station – Case No. 06-583-SPH*

July 20, 2006

Introduction

Equitable estoppel appealed against municipal corporations is a fluid and uncertain concept, sometimes available and sometimes not. *Permanent Fin. Corp. v. Montgomery Cty.*, 308 Md. 239 (1986).

Maryland cases have held that, generally, a local official who mistakenly issues a permit (or makes a ruling) in violation of a statute has overstepped the boundaries of his legal duty, and thus the action is void.

Mary Pat Marzullo v. Peter A. Kahl

In *Marzullo v. Kahl*, 366 Md. 158 (2001) Respondent landowner Kahl sought review of a board of appeals decision that his breeding and selling snakes was not a farming activity.

Kahl was granted permits to build a barn and a basement in which to house facilities for breeding and selling snakes. After beginning construction, the owner of a neighboring property filed a Petition for Special Hearing with the Zoning Commissioner, who held that Kahl's breeding area was indeed considered a farm under Section 101 of the BCZR. This holding was based on the Zoning Commissioner's finding that this property was used for "Commercial Agriculture" as per Section 101 of the BCZR and thus allowed to go forward. This decision was subsequently appealed through the Board of Appeals, Circuit Court, and Court of Special Appeals.

Finally, Petitioner Marzullo appealed to the Maryland Court of Appeals. The Court held, in pertinent part, that Kahl was not entitled to take advantage of the doctrine of equitable estoppel based on the permits issued by Baltimore County.

The Court held that when one deals with a local official, equitable estoppel is not available when that official takes an action inconsistent with local ordinances. Detrimental reliance on a government official's action cannot make an illegal action legal. *Id.* at 191 (Citing *City of Baltimore v. Crane*, 27 Md. 198, 206 (1944)).

The Court cites an opinion with a similar fact pattern. In *Lipsitz v. Parr*, 164 Md. 222, 227-8 (1933), Petitioner was mistakenly issued permits to build an ice factory in a zone in Baltimore City where such a factory was prohibited. When the City attempted to revoke these permits, Petitioner argued that equitable estoppel prevented such a revocation. The Court held that if a local official issues a permit in violation of an ordinance, that official has stepped outside of his power to grant the permit. Thus, such a permit does not prevent the activity from being unlawful.

In addition, the Court held that when dealing with local officials, one is charged with constructive knowledge of their duties and powers, such that they may not charge that they have been misled if those officials act outside of their duty. This would include issuing illegal permits. *Id.* at 227-8.

The Court also cited *Town of Berwyn Heights v. Rogers*, 228 Md. 271, 279 (1962), which came to a similar conclusion that the Town was not estopped from revoking improper building permits that Rogers had detrimentally relied on in constructing a home.

Therefore, the Court held that in the present case the issuance of improper permits did not give Kahl the right to act in violation of BCZR

George Gilmore v. Sally Ruhl

Similar findings were made by the Court of Special Appeals in *Gilmore v. Ruhl*, an unreported decision from 1989. There, a building permit was issued for a plan with many mistakes in it: a strip of land that should have been dedicated was not, setbacks were improper, and the plans submitted were inaccurate, leaving out one existing structure and improperly rendering a proposed structure. The Court held that these violations made the permits issued void *ab initio*.

The Court held that the right to proceed under the auspices of a building permit is only vested upon reliance on a **valid** permit; an illegal permit will not vest the right to build. The Court cites a variety of cases supporting this contention at page 8.

Additionally, the Court held consistently with *Marzullo, supra*, as to the use of estoppel against a municipality based on the issuance of invalid permits.

Permanent Financial Corporation v. Montgomery County

The builders in *Permanent Fin. Corp. v. Montgomery Cty.*, 308 Md. 239 (1986) were able to successfully claim the defense of laches in beginning construction based on improper permits. In that case, however, the code being interpreted was somewhat ambiguous and could reasonably be interpreted in two different ways. Thus, Builder was not attempting to rely on illegal permits to make an illegal action legal, but on an alternative interpretation of the laws. Under this interpretation of the laws, the permits would have been legal, and so the Court allowed the building to proceed. This fact pattern contrasts with many other cases on the topic.

Conclusion

Based on these cases, it appears to be well-settled in Maryland law that the issuance of an illegal permit is illegal *ab initio* and confers no right to build in violation of the BCZR. Additionally, the defense of estoppel cannot be raised against a municipality in such a situation, as the local official issuing an illegal permit is doing so outside of his authority. Such a permit does not make an otherwise illegal action proper, and one dealing with local government is on constructive notice of the limits of a particular official's power.

July 12, 2006

RECEIVED

JUL 14 2006

ZONING COMMISSIONER

John V. Murphy
Deputy Zoning Commissioner for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

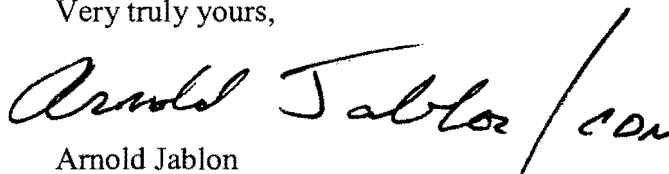
Re: Osprey Fuel Service Station – Case No. 06-583-SPH

Dear Mr. Murphy,

Inasmuch as Mr. Nelson has argued to you that the principle of *res judicata* applies to the issues in the above-referenced case, I have enclosed three Maryland cases for your review. I believe these cases confirm that principle does not apply and that you have the authority to grant the relief requested in the Petition for Special Hearing, or, at the very least, to require the applicant to file for the proper relief.

Thank you for your attention to this matter. Please contact me with any questions or concerns you may have.

Very truly yours,


Arnold Jablon

AJ : cdm
Enclosures
cc: G. Macy Nelson, Esquire (w/ encl.)

#231869

H

Court of Appeals of Maryland.
 Mary Pat MARZULLO et al.

v.

Peter A. KAHL.
 No. 10, Sept. Term, 2001.

Oct. 12, 2001.

Landowner sought review of county board of appeals' decision that his business of breeding, raising, and selling snakes and reptiles was not a farming activity and was not a permitted use in zone implementing resource conservation and watershed protection. The Circuit Court, Baltimore County, John Grason Turnbull II, J., reversed. Neighbor and county attorney appealed. The Court of Special Appeals, 135 Md.App. 663, 763 A.2d 1217, affirmed. Parties petitioned for a writ of certiorari. The Court of Appeals, Cathell, J., held that landowner's business was not a permitted use.

Reversed and remanded with directions.

West Headnotes

[1] Zoning and Planning **605**
414k605 Most Cited Cases

On appellate review of zoning case, Court of Appeals would take into consideration county board of appeals' expertise and would afford appropriate deference to board's decision that landowner's business of breeding, raising, and selling snakes and reptiles was not a farming activity and was not a permitted use in a residential resource conservation and watershed protection zone.

[2] Zoning and Planning **279**
414k279 Most Cited Cases

Landowner's business of breeding, raising, and selling snakes and reptiles was not "commercial agriculture" within scope of zoning regulation's definition of "farm", and thus, it was not a permitted use in zone implementing resource conservation and watershed protection; legislative intent suggested that drafters of regulation intended "animal husbandry" aspect of "commercial agriculture" to relate to production and care of domestic animals, and landowner's business involved wild animals.

[3] Statutes **174**

361k174 Most Cited Cases

Courts do not set aside common experience and common sense when construing statutes.

[4] Statutes **181(2)**
361k181(2) Most Cited Cases

Absurd statutory constructions are to be avoided.

[5] Zoning and Planning **465**
414k465 Most Cited Cases

Landowner did not have a vested right to conduct on his property the business of breeding, raising, and selling snakes and reptiles, which was not a permitted use in zone implementing resource conservation and watershed protection; although landowner obtained a permit and completed substantial construction of business building, there was no change in zoning law and permit was improperly issued.

[6] Zoning and Planning **461**
414k461 Most Cited Cases

Generally, in the absence of bad faith on the part of the remitting official, applicants for permits that involve the official's interpretation of zoning laws accept the afforded interpretation at their risk.

[7] Zoning and Planning **762**
414k762 Most Cited Cases

County was not equitably estopped from preventing landowner from conducting on his property the business of breeding, raising, and selling snakes and reptiles, which was not a permitted use in zone implementing resource conservation and watershed protection; even though county official granted landowner a construction permit, the permit was issued in violation of zoning ordinances.

****170*159** Carole S. Demilio, Deputy People's Counsel, and Peter Max Zimmerman, People's Counsel, Office of People's Counsel for Baltimore County, Towson; (J. Carroll Holzer of Holzer & Lee, Towson, all on brief), for petitioners/cross-respondents.

***160** Michael J. Moran (Law Offices of Michael J. Moran, P.C., Towson); John B. Gontrum (Romadka, Gontrum & McLaughlin, P.A., Baltimore), all on brief, for respondent/cross-petitioner.

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

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1384

September Term, 1989

GEORGE GILMORE, et al.,

v.

SALLY RUHL, et al.

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MAY 14 1990
ZONING OFFICE

Gilbert, C.J.,
Bell, Robert M.,
Wenner,

JJ.

Per Curiam

Filed: May 8, 1990

P

Court of Appeals of Maryland.
 PERMANENT FINANCIAL CORPORATION,
 Trustee
 v.
 MONTGOMERY COUNTY, Maryland et al.
 No. 69 Sept. Term 1985.

Dec. 5, 1986.

Builder sought judicial review of decision of the county board of appeals denying it relief from suspension and stop work order and refusing to grant variance. The Circuit Court, Montgomery County, Stanley Frosh, J., affirmed, and builder appealed. The Court of Special Appeals affirmed, and builder petitioned for certiorari. The Court of Appeals, McAuliffe, J., held that: (1) penthouse failed to qualify as "roof structure housing mechanical equipment," so that penthouse was not exempted from height controls imposed by local zoning ordinance; (2) county was estopped from claiming that fourth floor of building exceeded height controls imposed by local zoning ordinance; (3) structures contained within penthouse did not qualify as "rooftop mechanical structures," under local zoning ordinance providing that area occupied by such mechanical structures is not included in gross floor area of building for purpose of area restrictions; and (4) county was not barred by laches from enforcing local zoning requirements against builder.

Affirmed.

West Headnotes

[1] Zoning and Planning **253**
414k253 Most Cited Cases

Penthouse did not have "mansard roof," for purpose of height controls imposed by local zoning ordinance, where roof had no greater slope than was necessary for drainage purposes.

[2] Zoning and Planning **253**
414k253 Most Cited Cases

Penthouse failed to qualify as "roof structure housing mechanical equipment," so that penthouse was not exempted from height controls imposed by local zoning ordinance, where penthouse not only housed various mechanical equipment, but also contained office for janitorial or security personnel.

[3] Zoning and Planning **762**
414k762 Most Cited Cases

County was equitably estopped from claiming that building's upper floor exceeded height control imposed by local zoning ordinance, where builder had designed and constructed building in reliance on building permit and on long-standing and reasonable interpretation of county as to how building's height should be calculated.

[4] Zoning and Planning **253**
414k253 Most Cited Cases

Structures enclosed within penthouse that had structural head room of six feet, six inches were not "rooftop mechanical structures," under local zoning ordinance providing that area of such mechanical structures is not included in gross floor area of building for purpose of area restrictions.

[5] Zoning and Planning **624**
414k624 Most Cited Cases

Court of Appeals would permit builder to argue that building did not violate local setback requirements, though stop work order from which builder appealed referred only to building's alleged violations of local height and area limitations, where county had notified builder subsequent to appeal that its stop work order was also based on building's failure to comply with local setback requirements, and question of setbacks was fully considered by county board of appeals.

[6] Zoning and Planning **762**
414k762 Most Cited Cases

County was not barred by laches from enforcing local zoning requirements against builder, though county had waited more than eight months after it had issued building permit and after construction had begun to issue stop work order, and though builder had by that time spent more than \$2 million on project, where record disclosed that county acted promptly when violations were brought to its attention by neighboring property owners.

****124 *241** Joseph P. Blocker and Larry A. Gordon (Linowes & Blocher, on brief), Silver Spring, for appellant.

Clyde C. Henning, Asst. Co. Atty. (Paul A. McGuckian, Co. Atty. and Alan M. Wright, Sr. Asst. Co. Atty., on brief), Rockville, for Montgomery



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2701 Rolling Road

which is presently zoned ML-1M

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

Special Hearing to confirm whether the Order and site plan approved in Zoning Case No. 02-016-X is void.

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.

Petitioner:

~~Contract Purchaser/Lessee:~~

See Attached

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Arnold Jablon/Robert A. Hoffman

Name - Type or Print

Signature

Venable, LLP

Company

210 Allegheny Avenue 410-494-6200

Address

Telephone No.

Towson, MD 21204

City

State

Zip Code

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.

Legal Owner(s):

Woodland Services, LLC

Name - Type or Print

Signature

Name - Type or Print

Signature

2318 Halls Grove Road

Address

Telephone No.

Gambrills, MD 21054-1953

City

State

Zip Code

Representative to be Contacted:

Arnold Jablon

Name

210 Allegheny Avenue

410-494-6200

Address

Telephone No.

Towson, MD 21204

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2 HRS

UNAVAILABLE FOR HEARING -

Reviewed By DROP OFF

Date 5/15/06

FILED JL

Case No. 06 583 SPH

RECEIVED 9/15/98

7-26-06

ph

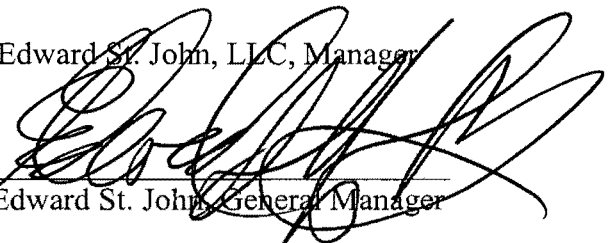
**PETITION FOR SPECIAL HEARING
SIGNATURE PAGE**

Petitioner:

WINDSOR ROLLING ROAD PROPERTY, LLC

By: Edward St. John, LLC, Manager

By:


Edward St. John, General Manager

Address: 2560 Lord Baltimore Drive
Baltimore, MD 21244
(410) 788-0700

MORRIS & RITCHIE ASSOCIATES, INC.

ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS,
AND LANDSCAPE ARCHITECTS



583

ZONING DESCRIPTION

BEGINNING at a point located on the easterly right-of-way line of Rolling Road (70 feet wide), said point being distant 1100 feet measured northeasterly from the intersection of said easterly right-of-way line of Rolling Road with the centerline of Tudsbury Road, said point being also located at the southwesterly most corner of Lob B-7 laid out and shown on a plat entitled "A Resubdivision of Lot B-3 and Lot B-4 R.B.C. South" dated September 15, 1999 and recorded among the Land Records of Baltimore County, Maryland in Plat Book S.M 72, Page 22. Thence the following courses and distances as noted on the aforementioned plat:

Northerly by a non-tangent curve to the left having a radius of 820.00, an arc length of 43.26 feet, the chord of said arc bearing North 01 degrees 22 minutes 18 seconds East, 43.26 feet; Northerly by a non-tangent curve to the left having a radius of 1180.92 feet, an arc length of 233.51 feet, the chord of said arc bearing North 04 degrees 33 minutes 38 seconds West, 233.13 feet; North 76 degrees 52 minutes 42 seconds East, 219.40 feet; South 13 degrees 07 minutes 18 seconds East, 55.37 feet; South 04 degrees 46 minutes 37 seconds East, 299.20 feet; South 24 degrees 02 minutes 55 seconds West, 60.89 feet; North 65 degrees 57 minutes 05 seconds West, 228.18 feet to the point and place of beginning. Containing an area, as noted on the aforementioned plat, of 1.744 acres of land, more or less.

Being located in the Second Election District of Baltimore County, Maryland, also being known as #2701 Rolling Road and being further known as Lot B-7 as shown on the aforementioned plat.



Michael L. Ray 5/23/01
Michael L. Ray, Professional Land Surveyor
Maryland License No. 11041

MR:sdm\12077\zoningdescrip1.744acres.doc\052201

- ☐ 3445-A BOX HILL CORPORATE CENTER DRIVE, ABINGDON, MD 21009
- ☒ 110 WEST ROAD, SUITE 245, TOWSON, MD 21204
- ☐ 9090 JUNCTION DRIVE, SUITE 9, ANNAPOLIS JUNCTION, MD 20701

- 410-515-9000 ■ FAX 410-515-9002
- 410-821-1690 ■ FAX 410-821-1748
- 410-792-9792 ■ FAX 410-792-7395

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: 06 583 SPH
Petitioner: Windsor Rolling Road Property, LLC
Address or Location: 2701 Rolling Road

PLEASE FORWARD ADVERTISING BILL TO:

Name: Amy Dantell
Address: 210 Allegheny Avenue
Towson, MD. 21204

Telephone Number: (410) 444-16244

May 12, 2006

HAND DELIVERED

Mr. W. Carl Richards
Department of Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

503

Re: Petition for Special Hearing
Petitioner: Windsor Rolling Road Property, LLC
Location: 2701 Rolling Road

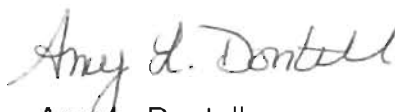
Dear Mr. Richards:

I am drop filing the enclosed Petition for Special Hearing for the above-referenced property. With this letter, I have enclosed the following documents:

1. Petition for Special Hearing (3)
2. Zoning Descriptions (3)
3. Site Plans (12)
4. Newspaper advertising form (1)
5. Portion of 2000 Zoning Map (3)
6. Check in the amount of \$325.00 (1)

If you have any questions or concerns regarding this filing, please give me a call.

Very truly yours,


Amy L. Dontell
Paralegal

ALD
Enclosures
cc: David Karceski, Esquire

TO1DOCS1/#228897v1

06 583 SPH
TO FILE

FREQUENT FLYER ATTORNEYS
DROP OFF ZONING PETITIONS
POLICY PROCEDURES

The following zoning policy is related to the filing of zoning petitions and is aimed at expediting the petition filing process with this office:

1. The Director of the Office of Permits and Development Management (PDM) allows zoning attorneys who frequently file for zoning hearings and who are capable of filing petitions that comply with all technical aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of an appointment for review by zoning personnel.
2. Any attorney using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. In the event that the petition has not been filed correctly, there is the possibility that another hearing will be required or the zoning commissioner may deny the petition due to errors or incompleteness. All petitions filed in this manner will receive a cursory review and if necessary they will be commented on by zoning personnel prior to the hearing. A corrective memo by zoning review may be placed in the hearing file to be considered by the Hearing Officer.
3. When a petition has been dropped off by the attorney, it will only be reviewed for very basic necessary input, logging, and distribution information.

THE COUNCIL DIST. ON PLAN APPEARS
INCORRECT BASED ON COMPARISON
WITH COUNCIL/DIST ADDRESS LOCATION
BOOK

3/22/05
JLL/rjc

VENABLE, BAETJER AND HOWARD, LLP

Incorporating Professional Corporations

05261

OUR REF. NUMBER	YOUR INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
		05/12/06	\$325.00			
		16995:200424	St. John Properties - Windsor Office Park			
		Baltimore County, MD				
		Filing fee				

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 6294

DATE 5/15/06 ACCOUNT 001 006 6150

AMOUNT

\$ 325.00

RECEIVED
FROM:

Venue, Baltzer...

FOR: Appl Res SPH

2701 Rolling RD

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS ACTUAL TIME DRW

5/16/2006 5/16/2006 08:53:59 4

REG MSD6 WALKIN KNCH ICK

>>RECEIPT # 475142 5/16/2006 OFLN

Dept 5 528 ZONING VERIFICATION

CR NO. 006294

Recpt Tot \$325.00

\$325.00 CK \$0.00 CA

Baltimore County, Maryland

CASHIER'S VALIDATION

**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: #06-583-SPH

2701 Rolling Road
East side of Rolling Road,
1,100 feet northeast of
Tudsbury Road

2nd Election District
4th Councilmanic District
Legal Owner(s):

Woodland Services, LLC
Petitioners: Windsor Roll-
ing Road Property, LLC

Special Hearing: to con-
firm whether the order and
site plan approved in Zon-
ing Case 02-016-X is void

Hearing: Monday, July
10, 2006 at 9:00 a.m. in
Room 407, County Courts
Building, 401 Bosley
Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are
Handicapped Accessible;
for special accommoda-
tions Please Contact the
Zoning Commissioner's Of-
fice at (410) 887-4386.

(2) For information con-
cerning the File and/or
Hearing, Contact the Zon-
ing Review Office at (410)
887-3391.

6/27/1 June 22 99838

CERTIFICATE OF PUBLICATION

6/22, 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 6/22, 2006.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 06-583-SPH

Petitioner/Developer: WINDSOR

ROLLING ROAD PROPERTY

Date of Hearing/Closing: JULY 10, 2006

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

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

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:

2701 ROLLING ROAD

The sign(s) were posted on

6-24-06
(Month, Day, Year)

Sincerely,

Robert Black
(Signature of Sign Poster)

6-26-06
(Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

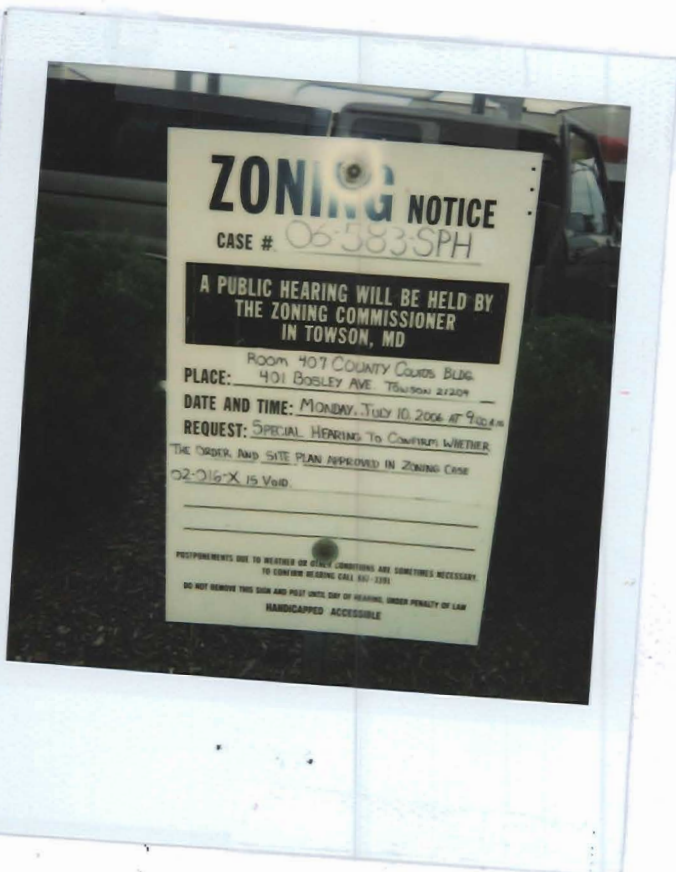
(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)



Requested: 3/26/2007

APPEAL SIGN POSTING REQUEST

CASE NO. 06-583-SPH

2845 ROLLING ROAD

2ND ELECTION DISTRICT

APPEALED: 8/25/2006

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

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

CERTIFICATE OF POSTING

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

Attention: Kathleen Bianco
Administrator

CASE NO.: 06-583-SPH

LEGAL OWNER: WOODLAND SERVICES, LLC

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

2701 ROLLING ROAD

The sign was posted on 5-1-07, 2007.

By: _____

(Signature of Sign Poster)

(Print Name)

JASON SEIDELMAN





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

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

May 24, 2006

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 06-583-SPH

2701 Rolling Road

East side of Rolling Road, 1,100 feet northeast of Tudsbury Road

2nd Election District – 4th Councilmanic District

Legal Owners: Woodland Services, LLC

Petitioners: Windsor Rolling Road Property, LLC

Special Hearing to confirm whether the order and site plan approved in Zoning Case 02-016-X is void.

Hearing: Monday, July 10, 2006 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

A handwritten signature in black ink, appearing to read "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Arnold Jablon/Robert Hoffman, 210 Allegheny Avenue, Towson 21204
Woodland Services, LLC, 2318 Halls Grove Road, Gambrills 21054-1953
G. Macy Nelson, 401 Washington Avenue, Ste. 803, Towson 21204
Edward St. John, 2560 Lord Baltimore Drive, Baltimore 21244

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, JUNE 24, 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.





County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

May 1, 2007

NOTICE OF ASSIGNMENT

CASE #: 06-583-SPH

IN THE MATTER OF: **WOODLAND SERVICES, LLC -**
Legal Owner; WINDSOR ROLLING ROAD PROPERTY LLC -
Petitioner 2701 Rolling Road 2nd E; 4th C

726/06 – D.Z.C.'s Order in which requested special hearing was DENIED in regard to SE for fuel service station in combo w/convenience store and carry out restaurant; GRANTED in regard to SE for car wash and that said car wash shall be closed pending further zoning relief.

ASSIGNED FOR:

THURSDAY, JULY 26, 2007 at 10:00 a.m.

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

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

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

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellants / Petitioners

Petitioners

: Arnold Jablon, Esquire
David Karceski, Esquire
: Windsor Rolling Road Property LLC /
Edward St. John LLC / Gerard Wit, VP
Tom Pilon

Nicholas Brader III, PE /Matis-Warfield, Inc.

Counsel for Appellants /Protestants /Legal Owner
Appellants /Protestants /Legal Owner

: Michael P. Tanczyn, Esquire
: Woodland Services, LLC
Sajid Chaudhry
Iftikar Ahmad

Ken Colbert

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

*pp'd @ reg of legal
downed for
Gmms; to
8/02/07*



LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue

Towson, Maryland 21204

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

Email: mptlaw@verizon.net

May 22, 2007

County Board of Appeals of Baltimore County
Attn: Kathleen C. Bianco, Administrator
Old Court House, Room 49
400 Washington Avenue
Towson, MD 21204

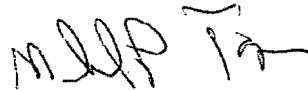
Re: Case No. 06-583-SPH
Case No. 06-449-X

Dear Kathy:

I, for some reason, did not receive the Board of Appeals notices for this case on 2701 Rolling Road scheduled for July 26, 2007. I have previously been scheduled to appear in the Circuit Court for Baltimore County on that date in the matter of CareFirst of Maryland, Inc. v. Cytodiagnostics, Inc. for what I believe will be lengthy Motions. I therefore would request that this matter be combined with the other more recent zoning case which has been appealed by the Protestants represented by Mr. Jablon and scheduled to begin on August 2nd at 10:00 a.m. before the Board of Appeals.

By copy of this letter to Mr. Jablon, I am acquainting him with my conflict and asking him to advise you whether he has any opposition to the request for continuance under these circumstances.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT:kds

cc: Mr. Iftikar Ahmad

Mr. Sajid Choudhry

Arnold Jablon, Esquire

RECEIVED
MAY 23 2007

**BALTIMORE COUNTY
BOARD OF APPEALS**

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

N O T I C E O F M O T I O N S H E A R I N G

Case Number: 03-C-07-002054 CN

C I V I L

Carefirst Of Maryland Inc vs Cytodiagnostics Inc, et al

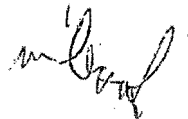
STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

TO: Michael P. Tanczyn
Michael P. Tanczyn, P.A.
606 Baltimore Avenue
Suite 106
Baltimore, MD 21204

This case has been assigned a hearing on all open motions on:

CIRCUIT COURT FOR BALTIMORE COUNTY
County Courts Building
401 Bosley Avenue
Towson, MD 21285-6754

Court date:
July 26, 2007
At: 09:30 AM
Motion Hearing (Civil)
1/2 HOUR MOTIONS



PLEASE NOTE: If you desire to submit prior to this hearing date, please contact the Motion Assignment Clerk. A total of no more than one-half hour is allotted for a hearing on "Motion Days". If motions will take more than one-half hour, please contact the Motion Assignment Clerk for reassignment.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment's Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

A court reporter will not be present at the motion hearing unless specifically requested. Requests for reporters should be directed to the Motion Assignment Clerk. All requests for a postponement **MUST BE MADE IN WRITING AS SOON AS POSSIBLE**. This should be directed to the Motion Assignment Clerk with a copy to all counsel. Claim of not receiving this notice will not constitute reason for postponement.

Please refer to Information Desk for Court Room Designation.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., cameras and recording equipment are strictly prohibited in courtrooms and

adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

Assignment Clerk: Culbertson Rebecca
Assignment Office Phone: (410)-887-2660

Date Issued: 05/09/07



County Board of Appeals of Baltimore County

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

*pld to 10/23/07 -
reg of Mr. Janczyn*

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

May 29, 2007

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 06-583-SPH

IN THE MATTER OF: WOODLAND SERVICES, LLC -
Legal Owner; WINDSOR ROLLING ROAD PROPERTY LLC -
Petitioner 2701 Rolling Road 2nd E; 4th C

726/06 – D.Z.C.'s Order in which requested special hearing was DENIED in regard to SE for fuel service station in combo w/convenience store and carry out restaurant; GRANTED in regard to SE for car wash and that said car wash shall be closed pending further zoning relief.

which was scheduled to be heard on 7/26/07 has been **POSTPONED** at the request of Counsel for Appellants /Protestants/Legal Owner, without opposition by Counsel for Petitioners; and has been

REASSIGNED FOR:

THURSDAY, AUGUST 2, 2007 at 10:00 a.m. *

*** NOTE: THIS MATTER HAS BEEN SCHEDULED SAME DATE /TIME AS CASE NO. 07-245-X IN THE MATTER OF 2701 ROLLING ROAD.**

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

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code. IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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

Kathleen C. Bianco, Administrator

c: Counsel for Appellants / Petitioners

Petitioners

: Arnold Jablon, Esquire
David Karceski, Esquire
: Windsor Rolling Road Property LLC /
Edward St. John LLC /Gerard Wit, VP
Tom Pilon

Nicholas Brader III, PE /Matis-Warfield, Inc.

Counsel for Appellants /Protestants /Legal Owner
Appellants /Protestants /Legal Owner

: Michael P. Tanczyn, Esquire
: Woodland Services, LLC
Sajid Chaudhry
Iftikar Ahmad

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



LAW OFFICES
MICHAEL P. TANCZYN, P.A.

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

June 6, 2007

County Board of Appeals of Baltimore County
Attn: Kathleen C. Bianco, Administrator
Old Court House, Room 49
400 Washington Avenue
Towson, MD 21204

Re: Case No. 06-583-SPH
Case No. 06-449-X

Dear Kathy:

My client, Mr. Chaudhry, called me when he received notices of the new trial date for the above cases which were set for August 2, 2007. He had already made confirmed plans to be out of the country from July 27 through August 9, 2007. As Mr. Chaudhry testified for the Petitioner as one of the owners of the property last time, he is a material witness. Thanks to your quick assistance you had offered us a replacement date for those two cases beginning October 23, 2007 at 9:00 a.m. before the Board of Appeals. I communicated that to Mr. Jablon who graciously and quickly agreed to the continuance. I then called you and advised you of same and told you I would confirm it with this letter.

By copy of this letter to my client and Mr. Jablon, I am confirming these details and thanking Mr. Jablon once again for his gracious agreement to the continuance.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT:kds
Encl.
cc: Client
Arnold Jablon, Esquire

RECEIVED
JUN - 7 2007

**BALTIMORE COUNTY
BOARD OF APPEALS**

Sajid Chaudhry

2913 George Howard Way
Davidsonville Md. 21035

6/4/2007

Dear Mr. Tanczyn:

Based on the old hearing date of July 26th, I planned to join my family in a vacation to Europe. I'm flying on the 27th of July and returning to the United States on August 9th. I am supposed to be meeting my wife and three kids in Europe, and because of the hearing date, it will impact my family's summer vacation greatly. The new date that was set on August 2nd, will interfere with my family trip. If it is not too much trouble, I would like to request to the board, that the hearing can be rescheduled, after the date of August 10th. Please look over the attached sheet that contains the flight schedule.

Thanks,


Sajid Chaudhry

**UNIVERSAL TRAVEL & TOURS**

PHONE: 301-776-8012/240-553-0215

VISIT PLANET EARTH WITH UNIVERSAL TRAVEL

E-MAIL UNIVERSAL TRAVEL & TOURS

Print this page

Itinerary

SAJID CHAUDHRY

Reservation code: CXVNVN

Fri, Jul 27**Flights: VIRGIN ATLANTIC, VS 0058**

From: WASHINGTON DULLES, DC (IAD)	Departs: 11:10pm Fri, Jul 27
To: LONDON HEATHROW, UNITED KINGDOM (LHR)	Arrives: 11:35am Sat, Jul 28
Departure Terminal:	Duration: 7 hour(s) and 25 minute(s)
Arrival Terminal: TERMINAL 3	Class: Economy
Seat(s): Check-In Required	Status: Confirmed
Notes:	
Gate:	
Aircraft: AIRBUS INDUSTRIE A343 JET	Airline: AVKHEC
Meal: Dinner , Breakfast	Confirmation:
Smoking: No	Mileage: 3072
	Frequent Flyer:

Please verify flight times prior to departure

Thu, Aug 9**Flights: VIRGIN ATLANTIC, VS 0055**

From: LONDON HEATHROW, UNITED KINGDOM (LHR)	Departs: 5:30pm
To: WASHINGTON DULLES, DC (IAD)	Arrives: 8:56pm
Departure Terminal: TERMINAL 3	Duration: 8 hour(s) and 25 minute(s)
Arrival Terminal:	Class: Economy
Seat(s): Check-In Required	Status: Confirmed
Notes:	
Gate:	
Aircraft: AIRBUS INDUSTRIE A343 JET	Airline: AVKHEC
Meal: Dinner , Snack	Confirmation:
Smoking: No	Mileage: 3672
	Frequent Flyer:

Please verify flight times prior to departure

**Sabre
virtually
there**

Received Time Jun. 6. 8:40AM

<https://www.virtuallythere.com/new/printerFriendlyChron.html?pr=CXVNVN&name=CH>

6/6/2007



County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

June 11, 2007

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 06-583-SPH

IN THE MATTER OF: WOODLAND SERVICES, LLC -
Legal Owner; WINDSOR ROLLING ROAD PROPERTY LLC -
Petitioner 2701 Rolling Road 2nd E; 4th C

726/06 -- D.Z.C.'s Order in which requested special hearing was DENIED in regard to SE for fuel service station in combo w/convenience store and carry out restaurant; GRANTED in regard to SE for car wash and that said car wash shall be closed pending further zoning relief.

which was reassigned to be heard on 8/02/07 has been POSTPONED at the request of Counsel for Appellants /Protestants, without objection by Counsel for Appellants /Petitioners; and has been

REASSIGNED FOR: TUESDAY, OCTOBER 23, 2007 at 9:00 a.m. *

*** NOTE: THIS MATTER HAS BEEN SCHEDULED SAME DATE /TIME AS CASE NO. 07-245-X IN THE MATTER OF 2701 ROLLING ROAD.**

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

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code. IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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

Kathleen C. Bianco, Administrator

c: Counsel for Appellants / Petitioners
Petitioners

: Arnold Jablon, Esquire
David Karceski, Esquire
: Windsor Rolling Road Property LLC /
Edward St. John LLC /Gerard Wit, VP
Tom Pilon

Nicholas Brader III, PE /Matis-Warfield, Inc.

Counsel for Appellants /Protestants /Legal Owner
Appellants /Protestants /Legal Owner

: Michael P. Tanczyn, Esquire
: Woodland Services, LLC
Sajid Chaudhry
Iftikar Ahmad

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





County Board of Appeals of Baltimore County

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

October 23, 2007

NOTICE OF DELIBERATION

IN THE MATTER OF:

WOODLAND SERVICES, LLC -Legal Owner;
WINDSOR ROLLING ROAD PROPERTY, LLC - Petitioners
Case No-06-583-SPH

Public deliberation has been scheduled for the following date /time in the subject matter for deliberation on limited issues as indicated by the Board of Appeals:

DATE AND TIME : **TUESDAY, DECEMBER 4, 2007 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

**NOTE: Requested memos limited to specific issues as requested
are due on TUESDAY, NOVEMBER 13, 2007
(Original and three [3] copies)**

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellants / Petitioners : Arnold Jablon, Esquire
Petitioners : David Karceski, Esquire
: Windsor Rolling Road Property LLC /
Edward St. John LLC /Gerard Wit, VP
Tom Pilon

Nicholas Brader III, PE /Matis-Warfield, Inc.

Counsel for Appellants /Protestants /Legal Owner : Michael P. Tanczyn, Esquire
Appellants /Protestants /Legal Owner : Woodland Services, LLC
Sajid Chaudhry
Iftikar Ahmad

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

Copy to: 3-2-6



TO: PATUXENT PUBLISHING COMPANY
Thursday, June 22, 2006 Issue - Jeffersonian

Please forward billing to:
Amy Dontell
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

410-494-6244

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: 06-583-SPH

2701 Rolling Road

East side of Rolling Road, 1,100 feet northeast of Tudsbury Road

2nd Election District – 4th Councilmanic District

Legal Owners: Woodland Services, LLC

Petitioners: Windsor Rolling Road Property, LLC

Special Hearing to confirm whether the order and site plan approved in Zoning Case 02-016-X is void.

Hearing: Monday, July 10, 2006 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL 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.

G. MACY NELSON

ATTORNEY AT LAW

TELEPHONE
(410) 296-8166, EXT. 290

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com
gmacynelson@gmacynelson.com

FACSIMILE
(410) 825-0670

May 17, 2006

Timothy M. Kotroco
Director
Permits and Development Management
Room 111
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

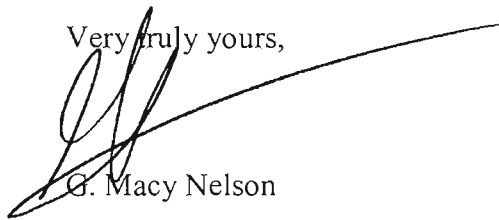
Re: Entry of Appearance in Case No. 06-583-SPH

Dear Mr. Kotroco:

On May 15, 2006, Windsor Rolling Road Property, LLC, by its attorney, Arnold Jablon, filed a Petition for a Special Hearing "to confirm whether the Order and site plan approved in Zoning Case No. 02-016-X is void" (Case No. 06-583-SPH). I write now to enter my appearance on behalf of Woodland Services, LLC, which owns the business that is the subject of Zoning Case No. 02-016-X.

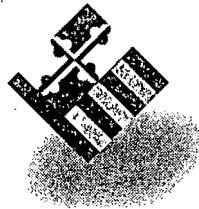
I would appreciate it if you would communicate with my office before you schedule any hearing or other proceedings.

Very truly yours,



G. Macy Nelson

GMN/ro
cc: Arnold Jablon, Esquire



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

July 7, 2006

Arnold Jablon/Robert Hoffman
Venable, LLP
210 Allegheny Ave.
Towson, MD 21204

Dear: Mr. Hoffman,

RE: Case Number: 06-583-A, 2701 Rolling Rd.

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 15, 2006.

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

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

Very truly yours,

A handwritten signature in black ink that reads "W. Carl Richards, Jr.".

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:sma

Enclosures

c: People's Counsel
Woodland Services, LLC 2318 Halls Grove Rd. Gambrills, MD 21054-1953

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Timothy M. Kotroco
FROM: Jeff Livingston, DEPRM – Development Coordination *JWL*
DATE: May 31, 2006
SUBJECT: Zoning Item # See List Below

Zoning Advisory Committee Meeting of May 22, 2006

X The Department of Environmental Protection and Resource Management has no comments on the following zoning items:

06-569-A
06-570-A
06-574-SPH
06-575-A
06-576-A
06-577-A
06-580-SPH
~~06-583-SPH~~
06-584-SPHA
06-586-A



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

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

Maryland Department of Transportation

Date: 5.19.06

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

RE: Baltimore County
Item No. 583 JLL

Dear Ms. Matthews:

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

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

Very truly yours,

Steven D. Foster, Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: May 25, 2006

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

SUBJECT: Zoning Advisory Committee Meeting
For May 30, 2006
Item No. 569, 570, 574, 575, 576, 577,
578, 579, 583, 584, 586, and 588

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have no comments.

DAK:CEN:clw

cc: File

ZAC-NO COMMENTS-05252006.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: June 14, 2006

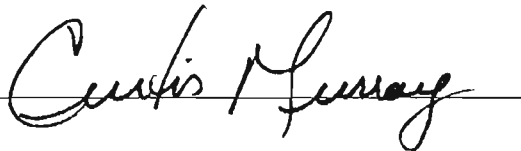
FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 6-583- Administrative Variance**

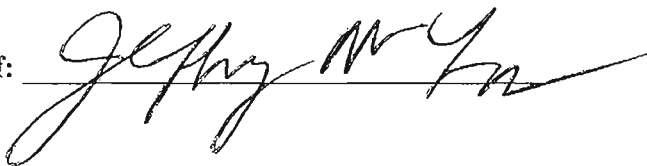
The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

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

Prepared By:



Division Chief:



CM/LL

BALTIMORE COUNTY, MARYLAND**INTER-OFFICE CORRESPONDENCE**

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

DATE: December 13, 2006

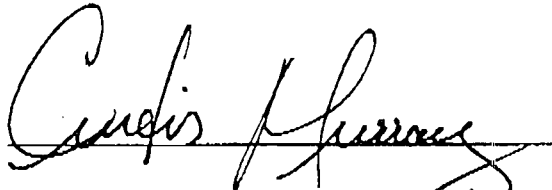
FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): Case(s) 7-245- Special Exception

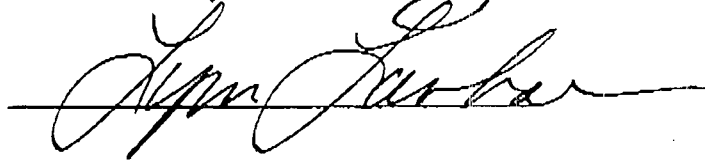
The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

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

Prepared By:



Division Chief:



CM/LL

DEC 13 2006

DEC 13 2006

CBA
PET. EXH
No. 4

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
2701 Rolling Road; E/S Rolling Road, * ZONING COMMISSIONER
1,100' NE of Tudsbury Road *
2nd Election & 4th Councilmanic Districts * FOR
Legal Owner(s): Woodland Services, LLC * BALTIMORE COUNTY
Contract Purchaser(s): Windsor Rolling *
Road Property, LLC *
Petitioner(s) * 06-583-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 22nd day of May, 2006, a copy of the foregoing Entry of Appearance was mailed to, Arnold Jablon, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

RECEIVED

MAY 22 2006

Per... LM

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204

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

Torkington
8/28/06
m

August 25, 2006

VIA HAND-DELIVERY

The Honorable Timothy Kotroco, Esquire
Room 109
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Petition for Special Haring
Case No.: 06-583-SPH

Dear Mr. Kotroco:

Please enter an appeal from the Decision and Order of the Deputy Zoning Commissioner, dated July 26, 2006, only as to his granting of the Petitioner's Request for Special Hearing, that the Order and site plan approved in Zoning Case 02-016X is void, in regard to the special exception for car wash and that said car wash shall be closed pending further zoning relief. To be clear, that is the only portion of the Deputy Zoning Commissioner's Decision, to which Property Owners/Protestants take an appeal to the Board of Appeals. Our check for filing costs is included. Please keep us posted of and advised of all hearing dates and contact us in terms of scheduling the hearing. My clients are Woodland Services, LLC, 2701 Rolling Road, Baltimore, Maryland 21244, property owner, Mr. Iftikar Ahmad, 2701 Rolling Road, Baltimore, Maryland 21244, Protestant, Mr. Sajid Chaudhry, 2701 Rolling Road, Baltimore, Maryland 21244, Protestant.

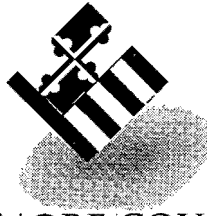
Thank you for your anticipated cooperation with this request.

Very truly yours,


Michael P. Tanczyn, Esquire

MPT/cbl

cc: Mr. Sajid Chaudhry
Mr. Iftikar Ahmad
Arnold Jablon, Esquire



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

October 12, 2006

Woodland Services, LLC
2318 Halls Grove Road
Gambrills, MD 21054-1953

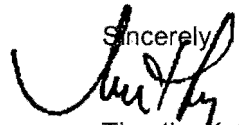
Dear Sir:

RE: Case 06-583-SPH , 2701 Rolling Road

Please be advised that two appeals of the above-referenced case was filed in this office on August 25, 2006 from Venable, LLP and Michael P. Tanczyn, P.A. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely

Timothy Kotroco
Director

RECEIVED
OCT 13 2006

TK:amf

**BALTIMORE COUNTY
BOARD OF APPEALS**

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel

Windsor Rolling Road Property, LLC, Edward St. John General Manager, 2560 Lord Baltimore Drive, Baltimore 21244

David Karceski, Esquire, Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson 21204

Arnold Jablon, Esquire, Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson 21204

Nick Brader, 10540 York Road, Suite M, Hunt Valley 21030

Tom Pilon, St John Properties Inc, 2560 Lord Baltimore Drive, Baltimore 21117

Ken Colbert, 2835 Smith Avenue, Baltimore 21209

Iftikhar Ahman, 10346 Champions Way, Laurel 20723

Sajid Chaudhry, 2913 George Howard Way, Davidsonville 21035

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

APPEAL

Petition for Special Hearing
2701 Rolling Road
East side of Rolling Road, 1,100 feet northeast of Tudsbury Road
2nd Election District – 4th Councilmanic District
Woodland Services, LLC – Legal Owners
Windsor Rolling Road Property, LLC – Petitioners
Case No.: 06-583-SPH

- ✓ Petition for Special Hearing (5/15/06)
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (5/24/06)
- ✓ Certification of Publication (Jeffersonian – 6/22/06)
- ✓ Certificate of Posting (6/24/06) by Robert Black
- ✓ Entry of Appearance by People's Counsel (5/22/06)
- ✓ Petitioner(s) Sign-In Sheet – 1 sheet
- Protestant(s) Sign-In Sheet
- ✓ Citizen(s) Sign-In Sheet – 1 sheet
- ✓ Zoning Advisory Committee Comments

Petitioners' Exhibit

- ✓ 1. Site Plan
- ✓ 2. Zoning Order for Case No. 02-016-X
- ✓ 3. Site Plan
- ✓ 4. Petition for Special Exception – 2701 Rolling Road
- ✓ 5. CRG Plan
- ✓ 6. Plan of Resubdivision of Lot B-3 and Lot B-4

Protestants' Exhibits:

- None

Respondents Exhibits

- ✓ Property Map

Miscellaneous (Not Marked as Exhibit)

- ✓ 1. Documents dated July 19, 2006 from G. Macy Nelson
- ✓ 2. Zoning Order for Case No. 06-075-X

✓ Deputy Zoning Commissioner's Order (July 26, 2006)

✓ Notice of Appeal received on August 25, 2006 from Venable, LLP

✓ *and Michael P. Janney, Esq.*
c: People's Counsel of Baltimore County MS #2010

Zoning Commissioner/Deputy Zoning Commissioner

Timothy Kotroco, Director of PDM

Windsor Rolling Road Property, LLC, Edward St. John General Manager, 2560 Lord Baltimore Drive, Baltimore 21244

David Karceski, Esquire, Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson 21204

Arnold Jablon, Esquire, Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson 21204

Nick Brader, 10540 York Road, Suite M, Hunt Valley 21030

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Sajid Chaudhry, 2913 George Howard Way, Davidsonville 21035

RECEIVED

OCT 1 2006

BALTIMORE COUNTY
BOARD OF APPEALS

date sent October 13, 2006, amf

SPH - To confirm whether the Order and site plan approved in 02-016-X is void as it conflicts with County zoning regulations.

726/06 - D.Z.C.'s Order in which requested special hearing to confirm whether Order and site plan in 02-016-X is void was DENIED with regard to service station; and that said special hearing relief is GRANTED with regard to SE for car wash and that said car wash shall be closed pending further zoning relief.

5/01/07 --Notice of Assignment sent to following; assigned for hearing on Thursday, July 26, 2007 at 10:00 a.m.:

Arnold Jablon, Esquire
David Karceski, Esquire
Windsor Rolling Road Property LLC /
Edward St. John LLC /Gerard Wit, VP
Tom Pilon
Nicholas Brader III, PE /Matis-Warfield, Inc.
Michael P. Tanczyn, Esquire
Woodland Services, LLC
Sajid Chaudhry
Ifikar Ahmad
Ken Colbert
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

5/23/07 - Letter requesting postponement filed by Michael P. Tanczyn, Esquire, counsel for appellants /protestants; conflict with matter previously scheduled in Circuit Court for Baltimore County for that date. Confirmed no objection with Mr. Jablon, counsel for petitioner. To be reassigned to 8/02/07; Case No. 07-245-X to be added to schedule for 8/02/07 as well.

5/29/07 - Notice of PP and Reassignment sent to parties; case reassigned to Thursday, August 2, 2007 at 10:00 a.m. (Notice will also be sent for Case No. 07-245-X /2701 Rolling Road - to be heard on 8/02/07 at 10 a.m. as well.)

6/07/07 - Letter from Mr. Tanczyn formally requesting postponement of 8/02/07 hearing (letter references 06-449-X; however, this matter is NOT scheduled for 8/02/07 but rather 7/25/07 and 8/01/07 and therefore is not part of this postponement request. This matter was scheduled with 07-245-X, which is the same property and scheduled for 8/02/07 along with 06-583-SPH).
Notice of PP and Reassignment sent this date for this matter, as well as Case No. 07-245-X - assigned for hearing on Tuesday, October 23, 2007 at 9 a.m.

10/23/07 - Board convened for hearing (Wescott, Stahl, Witt); regarding threshold issue - memos due from counsel on 11/13/07 re 2001 original Development Plan and whole issue of vesting and latches. After review and deliberation of memos to be filed on 11/13/07, hearing on special exception may or may not be necessary; additional hearing in this matter may or may not be assigned.
-- Notice of Deliberation sent to parties this date for public deliberation on threshold issue as described above - case no. 06-583-SPH. Scheduled for Tuesday December 4, 2007 at 9:00 a.m. FYI copy to 3-2-6.

11/13/07 - Memorandum filed by Arnold Jablon and David Karceski on behalf of Windsor Rolling Road Property, LLC, (with four sets of attachments).
-- Memorandum of the Petitioner in Support of Motion to Dismiss Appeal filed by Michael Tanczyn, Esquire, on behalf of Woodland Services, LLC.
(Public deliberation in this matter on 12/04/07 could determine next step in related 07-245-X.)

NOTE: CLOSING BRIEFS - SEE FILE 2 OF 2.

12/04/07 – Board convened for public deliberation (Wescott, Stahl, Witt); unanimous decision to grant Woodland Services Motion to Dismiss; finding that Windsor Rolling Road Property LLC cannot be a party to this matter to oppose the zoning petition as a competitor. Therefore the Board will issue a written decision in Case No. 06-583-SPH dismissing the appeal. Related Case No. 07-245-X, the special exception petition filed by Woodland Services, LLC, will go forward and will be assigned a hearing date; however, only St. John Properties, Inc., as property owner, can be a party to that case. (3)

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: WOODLAND SERVICES, INC. 06-583-SPH
 WINDSOR ROLLING ROAD PROPERTY, LLC 07-245-X
 2701 ROLLING ROAD
 2ND E; 4TH C

DATE: December 4, 2007

BOARD/PANEL Lawrence Wescott, Panel Chairman
 Lawrence M. Stahl
 Robert W. Witt

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: To confirm whether the Order and site plan approved in Zoning Case No. 02-016-X is void.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

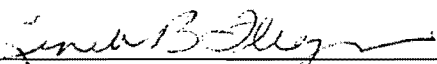
- The Board has jurisdiction to hear the matter.
- Windsor is out of the matter since competition is not a basis to appeal.
- St. John's, as an owner of property, has a standing and can qualify as an aggrieved party.
- The filing of the petition in "07" makes this issue moot.
- The Board will dismiss case no. 06-583-SPH as moot and will move forward with case no. 07-245-X.

DECISION BY BOARD MEMBERS: The Board determined that only the petition for special exception case, case no. 07-245-X, will proceed forward and that St. John's Properties, as a property owner, can be a party to this case.

FINAL DECISION: After a thorough review of the facts, testimony, and law in the matter, the Board unanimously decided to *DISMISS* case no. 06-583-SPH as *MOOT* and proceed with case no. 07-245-X when scheduled by the Board.

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

Respectfully Submitted



Linda B. Fliegel
County Board of Appeals

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

DATE: December 16, 2009

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Sunny Cannington, Legal Secretary
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILES/CASES DISMISSED**

The following list of cases are closed as of today.

<u>Case Number</u>	<u>Name</u>
98-294-SPHX	Edgar Lucas
06-583-SPH	Woodland Services, LLC

CASE NAME _____
CASE NUMBER _____
DATE _____

[illegible]

10-23-07

MR TANCZYK

PETITIONER'S EXHIBITS

07-245-X
06-583-SPH

- ✓ 1. LETTER DATED 10/24/06 ARNOLD JABLON TO MR. THOMPSON,
CODE ENFORCEMENT
- ✓ 2. LETTER DATED 10/25/06 JABLON TO JAMES THOMPSON
SUPER. OF CODE ENFORCEMENT
- ✓ 3. LETTER 12/28/06 - JABLON TO KOTROCO, Esq.
- ✓ 4. MEMO. FR. PAT KELLER TO T. KOTROCO. RE: COMMENTS (NONE)

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

20 October 2006

Mr. James Thompson
Supervisor
Code Enforcement Baltimore County
111 West Chesapeake Ave
Towson, Maryland 21204

Re: 2701 Rolling Road
Osprey Fuel Service Station

Dear Mr. Thompson:

I represent Woodland Services LLC. On behalf of my client, we are filing a zoning complaint against the above captioned property. We are requesting that Code Enforcement immediately seek enforcement of the relevant provisions of the zoning regulations of Baltimore County that are currently not being adhered to by the owners of this subject property. The subject property is apparently owned by Windsor Rolling Road Property, and is referred to herein as "Osprey".

This letter is to be considered a formal complaint and the violations we believe are currently occurring on site are as follows: (1) operation of a car wash without a special exception as required by §405.E.2 or §405E.3. BCZR; (2) violation of the parking requirements as set forth in §405.4.A3 and §405.D.; (3) violation of the sign requirements as set forth in §§405C.1.2 and 450; (4) location of a propane tank in the landscape transition area, and (5) failure to amend the site plan filed in case No. 02-016X.

All of these issues were presented to the Deputy Zoning Commissioner in Case No. 06-583 SPH. The order is self-explanatory and is attached hereto. Although Osprey has filed an appeal to the County Board of Appeals of the finding that the car wash is improperly being operated, this should not in any way impede Code Enforcement from insuring that the property owner conforms both to the requirements set forth in the Baltimore County Zoning Regulations and orders issued by the Zoning Commissioner in case No. 02-016X and case No. 06-583 SPH. The former is the case by which the Zoning Commissioner granted certain relief to Rolling Road, LLC, the then owners of the subject property, for the operation of a fuel service station in combination with a convenience store, and the latter is the opinion of the Deputy Zoning Commissioner by which he finds that Osprey is in violation of the order issued in Case No. 02-016X and the site plan approved in that case. Specifically, the Deputy Zoning Commissioner concludes that the car wash is illegally being operated in contravention of case No. 02-016X.

CAA
P67. EXH
No. 1

October 20, 2006
Page 2

Further, the Deputy Zoning Commissioner provides an advisory opinion that Osprey is in violation of certain other, and specific, provisions and requirements of the BCZR.

I attach copies of both decisions for your information. While the Deputy Zoning Commissioner clearly states that the violations he refers to are advisory, they provide a road map to the continuing and obvious zoning violations on site. The American Automobile Association or Map Quest could not have provided clearer directions. I am not suggesting that testimony and evidence not be required, again, to prove the violations; I am requesting that immediate citations be issued and Osprey be held accountable for its continuing violations. There is no provision in the law to delay the issuance of the citation on issues which are the subject of an appeal. The Code Enforcement Hearing Officer has separate and distinct responsibilities. A hearing should immediately be scheduled before the Code Enforcement Hearing Officer. My client is prepared to cooperate with your office and the County Attorney's Office to present the expert testimony necessary for supporting the allegations contained in this letter.

The facts are that violations exist and should be stopped.

Thank you for your cooperation.

Sincerely,



Arnold Jablon
AEJ/aj

c: Michael Tanczyn , w/o attach

VENABLE^{LLP}

Arnold Jablon

Telephone 410-494-6298

ajablon@venable.com

Mike

as stated (+ is) as
it seems, I delineated
the wrong client -
1st sentence should
read that my
client is *debra*,
not *Woodland*, which
is your client !!!

CBA
PET. EXH
No. 2

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

28 December 2006

Timothy M. Kotroco, Esq.
Director, PDM
County Office Building
111 West Chesapeake Ave
Towson, Maryland 21204

Re: Woodland Services, LLC
Case No. 07-245 X

Dear Mr. Kotroco:

I am in receipt of a copy of a letter Michael Tanczyn, Esq. wrote to you dated 26 December 2006, in which he voices concerns to my request for a postponement in the above captioned matter.

While Mr. Tanczyn is correct in his accusation that my client is a competitor to his client, he fails to mention that his client objected to and has appealed a special exception for same and similar uses that was granted by the Zoning Commissioner of Baltimore County to my client. Yes, the bottom line is that these matters are interrelated and they do involve competitors.

However, what Mr. Tanczyn also fails to mention is that the code enforcement complaint filed by my client involves not just the continued operation of the car wash, which was found to be in violation of the original order, but also continued violations of various other zoning requirements that were confirmed by the code inspector after his site visit.

I requested the postponement because Jack Dillon, an expert land planner, will be out of the country for the entire month of February. Mr. Dillon, who is familiar with the instant site and is also intimately familiar with the entire surrounding neighborhood, will be an important witness. Certainly, my request for postponement was made well in advance to the necessary posting as required by law. And equally as important is that the code enforcement complaint is not conditioned on the petition for special exception filed by Mr. Tanczyn's client. As far as I know, no request for variances have been filed, the need for which was confirmed by the code inspector. The car wash is still in violation of Deputy Zoning Commissioner Murphy's order. These continued violations should not be permitted to occur even with the pending special exception for a car wash. Mr. Tanczyn's client should be held to the same standards as his client has imposed on mine. If my client cannot proceed to open its business because of the actions

December 28, 2006

Page 2

taken by Mr. Tanczyn's client, then Mr. Tanczyn's client should not be permitted to operate his until all of the outstanding zoning issues are resolved.

The request for postponement, I suggest, is warranted. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
AEJ/aj

c: Michael Tanczyn, Esq.

06-583-SPH

File 2 of 2

Issued 12/27/2007

20060583 "A"

supplemental

3

EXHIBITS

TRANSCRIPT

WOODLAND SERVICES, LLC – LO; WINDSOR ROLLING
ROAD PROPERTY, LLC - PETITIONER
2701 ROLLING ROAD

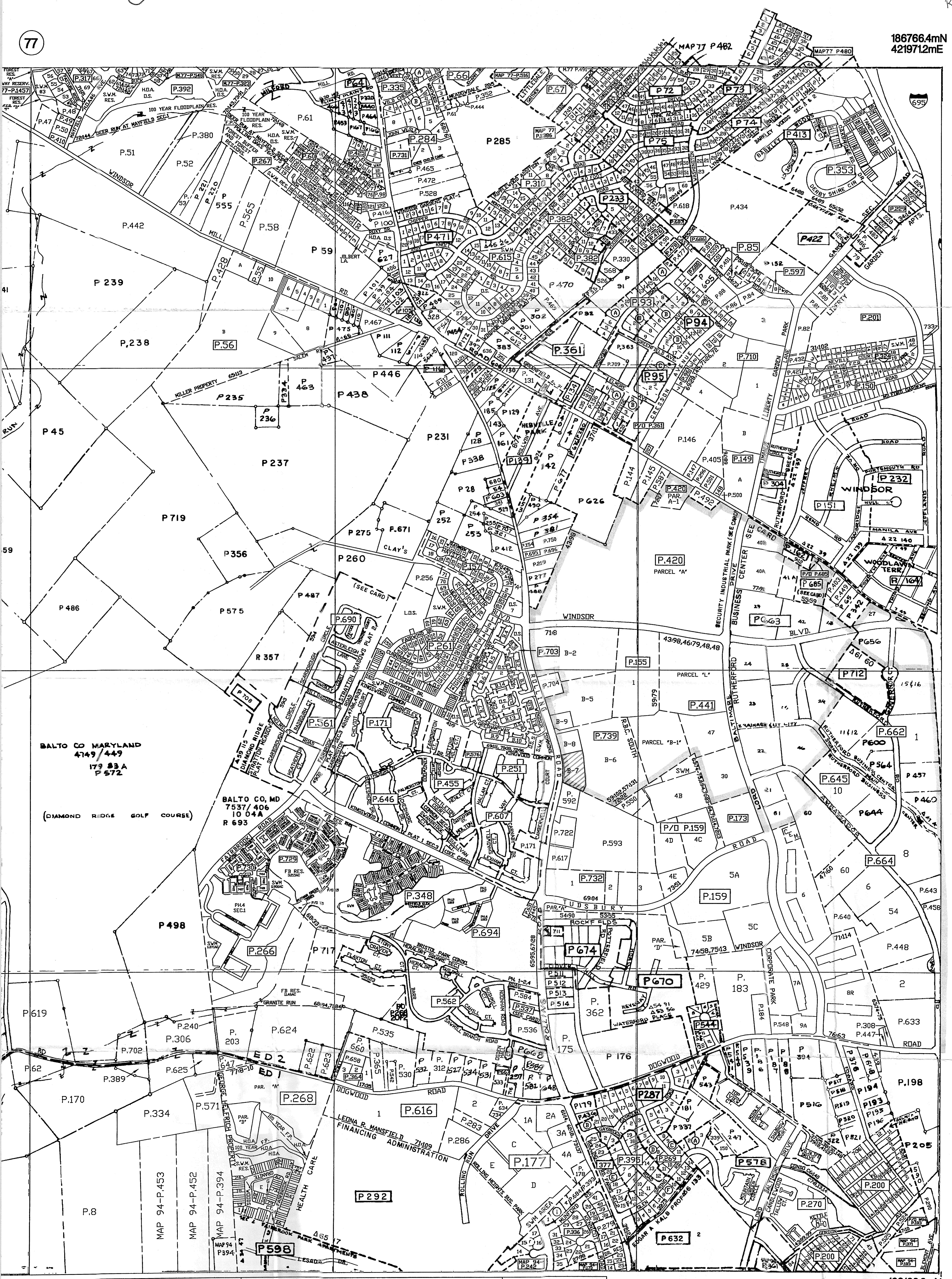
CASE NO. 06-583-SPH

FILE 2 OF 2 – POST-HEARING MEMOS FILED IN
CBA HEARING

(File #1 contains Board's case file – 06-583-SPH.)

552

77



549

88 546

543

540

183108.8mN
421971.3mE

854-540
MAP NO.
87

872

869

**BALTIMORE COUNTY,
MARYLAND**

COMPILED BY:
MARYLAND DEPARTMENT OF PLANNING
PROPERTY MAPPING SECTION

The information shown on this map has been compiled from descriptions and plats and is not an actual survey. It should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning, Property Mapping Section, Room 1101, 301 W. Preston St., Baltimore, MD 21201-2305.

PROPERTY LINE
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE

CONTINUING OWNERSHIP - **Z** **1a** **Z** **2** **Z**

PARCEL NUMBERING - P.### (ASSIGNED TO IDENTIFY OWNERSHIP. MUST BE PRECEDED BY A MAP NUMBER)

SCALE 1"=600' (RF 1:7200)



94

863

REVISED TO:	DATE JAN. '05	BY ML	LIBER	LAST P. NO.	QUARTER-QUADRANGLE	DATE OF PHOTO	SHA GRID
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IN RE: PETITION FOR SPECIAL EXCEPTION

E/S Rolling Road, 1100' N of the c/l
Tudsbury Road
(2701 Rolling Road)
2nd Election District
2nd Council District

Rolling Road, LLC
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 02-016-X
*

* * * * *

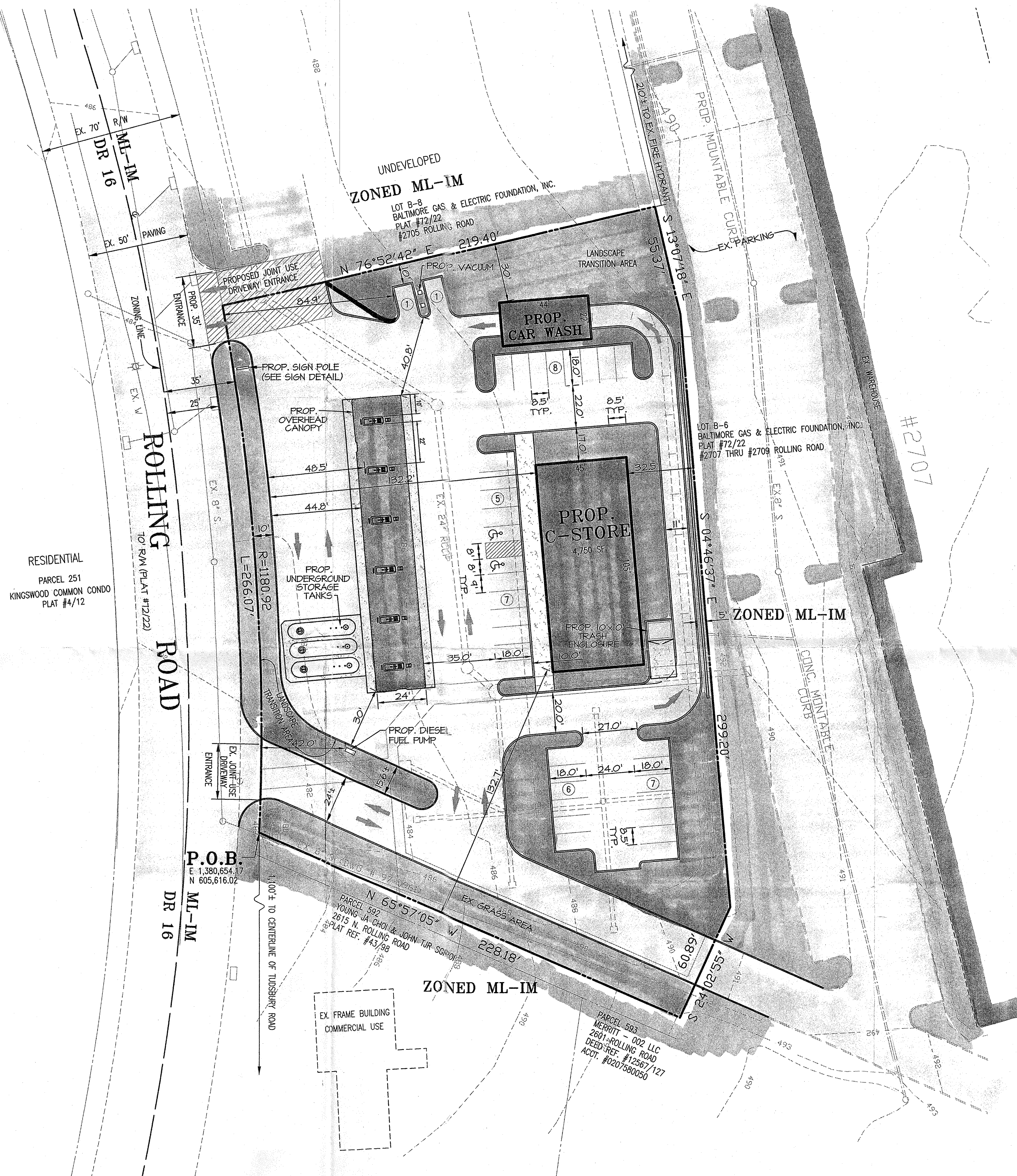
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by the owners of the subject property, Rolling Road, LLC, and the Contract Lessee, Eastern Petroleum Corporation, through their attorney, Stuart D. Kaplow, Esquire. The Petition, as filed, requests a special exception for a fuel service station use in combination with a convenience store, greater than 1500 sq.ft., pursuant to Section 405.4.E.1 of the Baltimore County Zoning Regulations (B.C.Z.R.); however, as will be discussed hereinafter, the Petition was amended in open hearing to also request relief, pursuant to Section 405.4.E.10 of the B.C.Z.R. to allow a carryout restaurant as a use in combination with the fuel service station use. 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 Teresa Rosier on behalf of Rolling Road, LLC, Owners; Kent McNew, President, John Hollender, and Diane Taylor, representatives of Eastern Petroleum Corporation, Lessees; William P. Monk with Morris & Ritchie Associates, the consultants who prepared the site plan for this property; and Stuart D. Kaplow, Esquire, attorney for the Petitioners. Also appearing in support of the request were Sajid Lhaudhry and Riaz Ahmad, potential proprietors of the proposed business, and, Michael Brown, a lighting expert. There were no Protestants or other interested persons present.

Date 9/21/11
by [Signature]

E 1,380,500
N 606,000

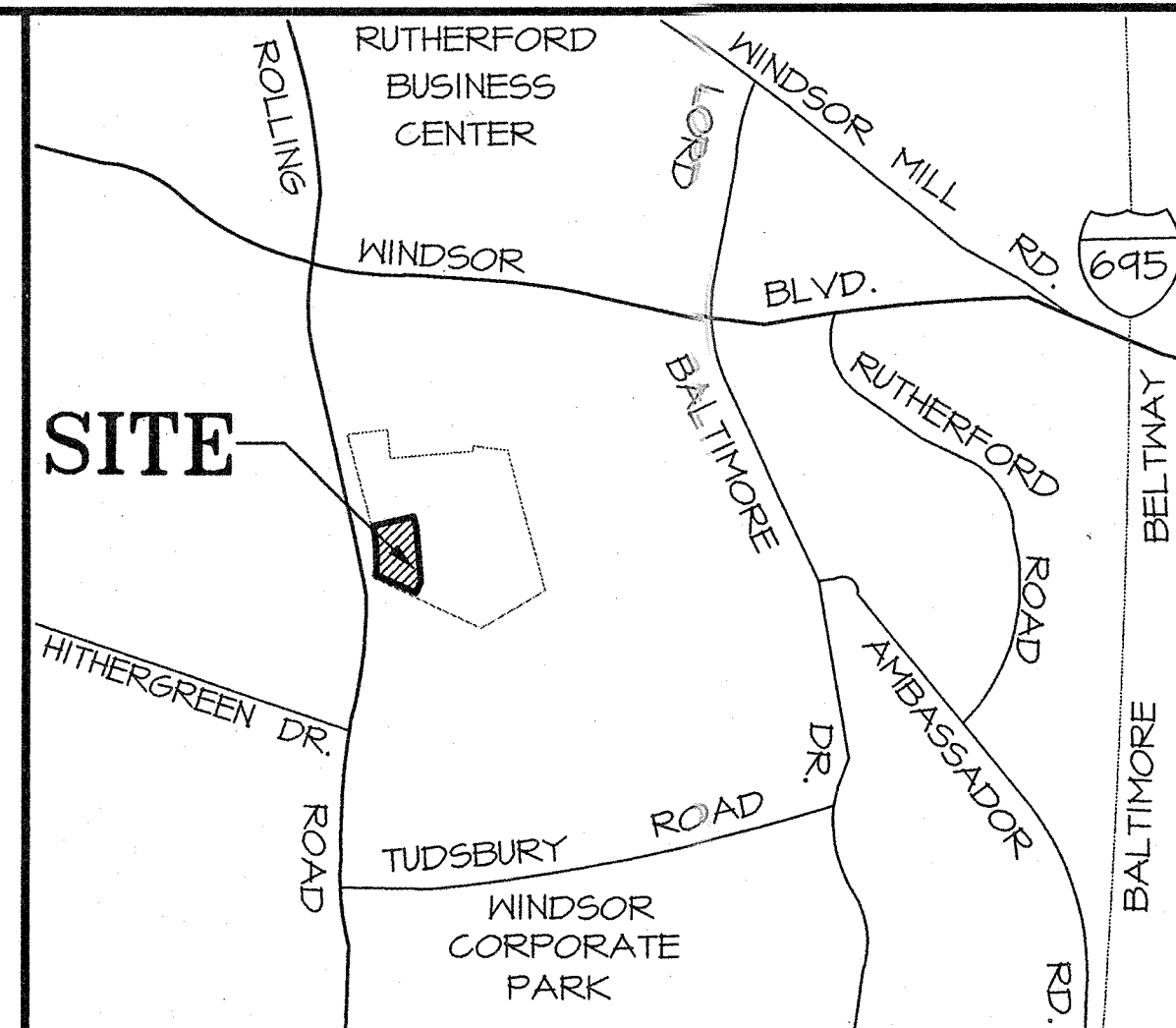


NOTES:

- OWNER:
PARCEL #134, LOT B-4:
PLAT #12/22 (REBID DIVISION), LOT B-1:
ROLLING ROAD LLC
HILL MANAGEMENT SERVICES INC.
9640 DEERCO ROAD
TIMONUM, MD 21043
DEED REFERENCE: 13413/60, PLAT #11/8
TAX ACCT. #2300004221
- APPLICANT/CONTRACT PURCHASER:
EASTERN PETROLEUM CORPORATION
1915 LINCOLN DRIVE
ANNAPOLIS, MD 21401
- SITE DATA:
SITE AREA: 75,968 SF = 1.744 AC.
BALTIMORE COUNTY ADC MAP #33, A-6
ELECTION DISTRICT: 02
COUNCILMANIC DISTRICT: 02
TAX MAP #7, GRID 17, PARCELS: #134, LOT B-3 & B-4
ZONING MAP: N4, 3-6
EXISTING ZONING: ML-IM (MANUFACTURING, LIGHT - INDUSTRIAL, MAJOR)
EXISTING USE: VACANT
- PROPOSED USE: FUEL SERVICE STATION WITH CONVENIENCE STORE AND ROLL OVER CAR WASH. THIS PROPERTY IS PART OF A INTEGRAL PLANNED DEVELOPMENT AND AN APPROVED INDUSTRIAL PARK GREATER THAN 50 ACRES, PER CRG PLAN II 154 (AKA RBC SOUTH)
- PROPOSED BUILDING AREA:
C-STORE: 4,750 SF.
1 STORY COMMERCIAL BUILDING
MAXIMUM BUILDING HEIGHT NOT TO EXCEED 25'
CAR WASH: 968 SF
- F.A.R.:

	ALLOWED	PROPOSED
FLOOR AREA RATIO	2.0	0.08
(4,750 SF + 968/75,968 SF)		
- REQUIRED SITE AREA:
FUEL SERVICE STATION (12 FUELING POSITIONS x 1500 SF) = 18,000 SF
FOOD STORE (4 x 4,750) = 19,000 SF
TOTAL AREA REQUIRED = 37,000 SF
TOTAL AREA PROVIDED = 75,921 SF = 1.74 AC.
- SETBACKS TO PROPERTY LIMITS:

	BUILDING	CANOPY	FUEL PUMPS	
	REQUIRED	PROVIDED	REQUIRED	PROVIDED
FRONT	35'	132.2'	15'	44.8'
SIDE	30'	30' (CAR WASH BLDG.)	25'	42'
REAR	30'	32.5'		
- PARKING CALCULATIONS:
 - PARKING REQUIRED:
CONVENIENCE FOOD STORE
(4,750 SQ. FT. @ 5/1000) = 24
EMPLOYEE ON LARGEST SHIFT = 4
CAR WASH DRYING SPACES = 2
CAR WASH ADDITIONAL SPACES REQUIRED = 2
VACUUM SPACES REQUIRED = 2
TOTAL PARKING REQUIRED = 34
 - PARKING PROVIDED:
INCLUDING 2 HANDICAP = 35
- POINT OF BEGINNING IS ON WEST SIDE OF ROLLING ROAD, 1100' NORTH OF CENTERLINE OF TUDSBURY ROAD AT ITS INTERSECTION WITH ROLLING ROAD.
- THE PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA (CBCA).
- THE SITE IS NOT IN A 100 YEAR FLOODPLAIN.
- THE SITE IS NOT WITHIN A MORATORIUM AREA OR IN AN AREA WHERE FAILURE OF BASIC SERVICES MAPS CURRENTLY EXISTS PER SECTION 4A02 (BCZR).
- THERE ARE NO NON-TIDAL WETLANDS ON THIS SITE.
- THERE ARE NO FOREST BUFFERS ON THIS SITE.
- THERE ARE NO KNOWN REGULATED PLANT OR WILDLIFE COMMUNITIES ASSOCIATED WITH THIS SITE.
- THERE ARE NO KNOWN HISTORICAL STRUCTURE OR ARCHEOLOGICAL AREAS ASSOCIATED WITH THIS SITE.
- THERE ARE NO KNOWN EXISTING WELLS OR SEPTIC FIELDS WITHIN 100' OF THIS PROPERTY.
- SCREENING AND LANDSCAPE REQUIREMENTS SHALL COMPLY WITH BALTIMORE COUNTY REQUIREMENTS AS OUTLINED IN THE BALTIMORE COUNTY LANDSCAPE MANUAL.
- BUILDING CONSTRUCTION SHALL COMPLY WITH BUILDING AND FIRE CODE REQUIREMENTS.
- ALL LIGHTING SHALL CONFORM TO IES STANDARDS (ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA)
- SIGNAGE ON THIS SITE SHALL CONFORM WITH THE SIGNAGE REQUIREMENTS OF THE BALTIMORE COUNTY ZONING REGULATIONS SECTION 450.
- THIS SITE SHALL BE SERVICED BY PUBLIC WATER AND SEWER.
- A REST ROOM FACILITY, WATER AND COMPRESSED AIR SHALL BE PROVIDED FOR CUSTOMERS.
- ALL PAVING SHALL BE BITUMINOUS DUST-FREE SURFACE.
- PREVIOUS ZONING CASE: NONE
- STACKING (FOR ROLL OVER CAR WASH):
REQUIRED STACKING: 9 SPACES (@ 20' IN LENGTH)
PROPOSED: 11 SPACES
CAR WASH RATED CAPACITY: 45-50 CARS/HOUR
- STACKING FOR FUEL PUMPS SHALL COMPLY WITH SECTION 405, BCZR.
- A WAIVER OF STORM WATER MANAGEMENT QUALITY REQUIREMENTS WILL BE REQUESTED.
- SPECIAL EXCEPTION
* TO PERMIT A FUEL SERVICE STATION IN COMBINATION WITH CONVENIENCE STORE GREATER THAN 1,500 SF PURSUANT TO SECTION 405.4.E.I. BCZR.



VICINITY MAP

SCALE: 1"=1,000'



* Carry Out Restaurant
9/10/01

1000
50 feet
for Carry Out Restaurant
9/10/01

PETITIONER'S EXHIBIT No 1

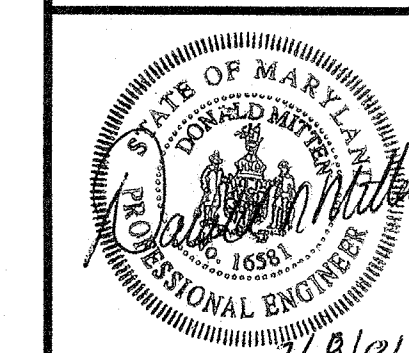
DRC #07069A
PDM #11-154

PETITIONER'S EXHIBIT No. 3



MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

110 WEST ROAD SUITE 245
TOWSON, MARYLAND 21204
(410) 821-1690
FAX (410) 821-1748



**PLAN TO ACCOMPANY
SPECIAL EXCEPTION APPLICATION**

2701 ROLLING ROAD

ROLLING ROAD COMMERCE CENTER LOT B-7
BALTIMORE COUNTY, MARYLAND

DATE	REVISIONS	JOB NO.:
7/3/01	RELOCATE CAR WASH AND PARKING	12077
		SCALE: 1"= 30'
		DATE: 07/05/01
		DRAWN BY: SL
		DESIGN BY: WM/SL
		REVIEW BY: WM
		SHEET: 1 OF 1



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 2701 Rolling Road
which is presently zoned ML-1M

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

(See attached)

Property is to be posted and advertised as prescribed by the zoning regulations. I, or we, agree to pay expenses of above Special Exception, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Eastern Petroleum Corporation
Name - Type or Print
By: [Signature]
Signature Kent McNew, President
1915 Lincoln Drive 410-296-0287
Address Telephone No.
Annapolis MD 21401
City State Zip Code

Attorney For Petitioner:

Stuart D. Kaplow
Name - Type or Print
Signature [Signature]
Stuart D. Kaplow, P.A.
Company
15 East Chesapeake Ave. 410-339-3910
Address Telephone No.
Towson MD 21286
City State Zip Code

Legal Owner(s):

Rolling Road, LLC
Name - Type or Print
By: [Signature]
Signature Anthony Julio, Manager
Name - Type or Print
Signature
9640 Deercro Road 410-666-1000
Address Telephone No.
Timonium MD 21093
City State Zip Code

Representative to be Contacted:

Stuart D. Kaplow
Name
15 E. Chesapeake Ave. 410-339-3910
Address Telephone No.
Towson MD 21286
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2 1/2 hrs
UNAVAILABLE FOR HEARING

Reviewed By [Signature] Date 6-21-10

Ret.
No
7/10/10

Petitioner's Exhibit No. 4

ORDER RECEIVED FOR FILING

Date 7/21/10
By [Signature]

Case No. 02-016-X
REV 09/15/98



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 2701 Rolling Road
which is presently zoned ML-1M

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

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City State Zip Code

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Address Telephone No.
Towson MD 21286
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2 1/2 hrs
UNAVAILABLE FOR HEARING

Reviewed By [Signature] Date 6-6-01 7-10-

Ret.
No
[Signature] 7/10/01

Petitioner's Exhibit No. 4

ORDER RECEIVED FOR FILING

Date

By

REV 09/15/98

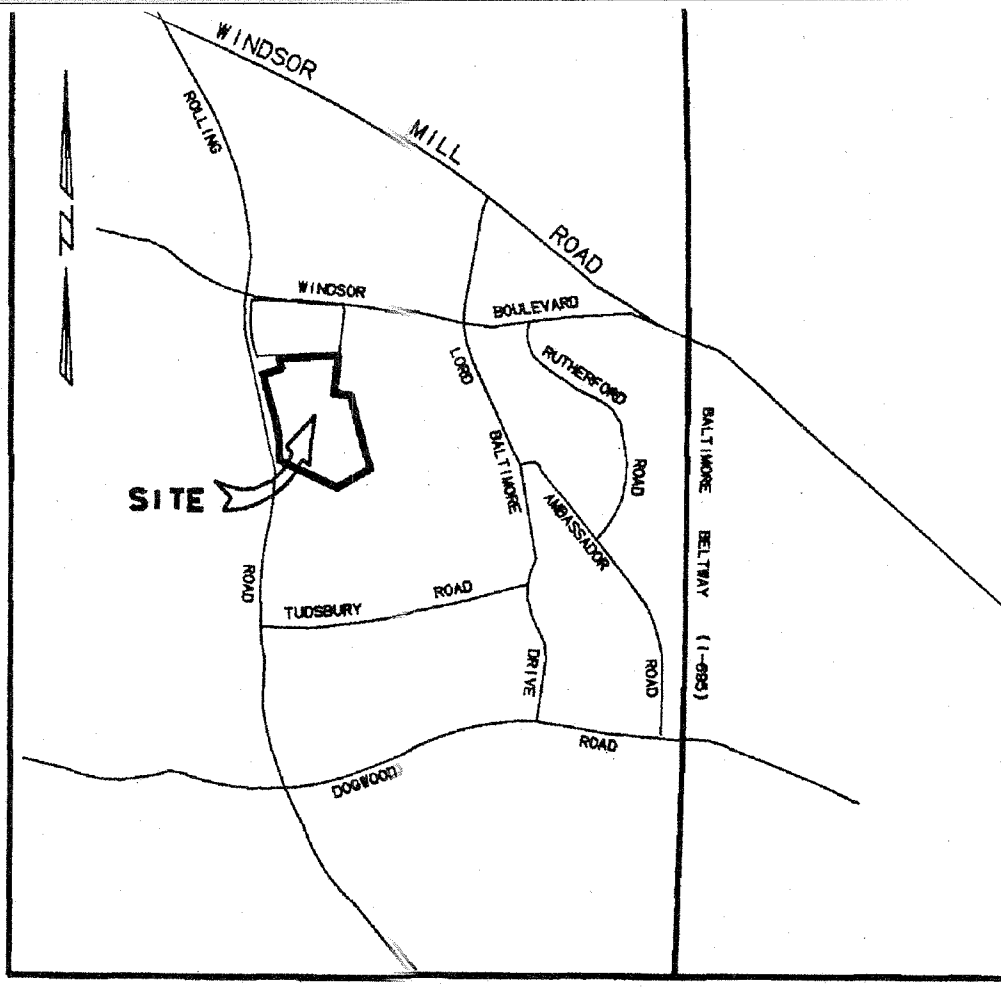
Case No. 02-016-X

(2)

ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION
FOR THE PROPERTY LOCATED AT 2701 ROLLING ROAD

To permit a fuel service station in combination with a convenience store, greater than 1,500 square feet, pursuant to BCZR §405.4.E.1.

216



VICINITY MAP
SCALE: 1"=2000'

PETITIONER'S EXHIBIT No 3

GENERAL NOTES

THIS PLAT MAY EXPIRE IN ACCORDANCE WITH THE PROVISIONS OF THE BALTIMORE COUNTY CODE, SECTION 26-216

THE INFORMATION SHOWN HEREON MAY BE SUPERSEDED BY A SUBSEQUENT OR AMENDED PLAT

ADDITIONAL INFORMATION CONCERNING THIS PLAT MAY BE OBTAINED FROM THE BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT AND THE DEPARTMENT OF PUBLIC WORKS

THE PLAN FOR THE PROPERTY SHOWN ON THIS PLAT WAS APPROVED ON JULY 23, 1999, DRC #07069A

THE RECORDING OF THIS PLAT DOES NOT GUARANTEE THE INSTALLATION OF STREETS OR UTILITIES BY BALTIMORE COUNTY

THE RECORDING OF THIS PLAT DOES NOT CONSTITUTE OR IMPLY ACCEPTANCE BY THE COUNTY OF ANY STREET, EASEMENT, PARK, OPEN SPACE OR OTHER PUBLIC AREA SHOWN ON THE PLAT

THE OWNER/DEVELOPER WILL COMPLY WITH THE BEST MANAGEMENT PRACTICES ADOPTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

EXCEPT AS OTHERWISE INDICATED, ALL BUILDING RESTRICTION LINES SHOWN HEREON HAVE BEEN PLACED AS THE RESULT OF AN INTERPRETATION ONLY OF CURRENTLY APPLICABLE REGULATIONS AND POLICIES OF THE BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT. EXCEPTIONS TO THESE RESTRICTIONS MAY APPLY

THIS SITE IS LOCATED IN THE PATAPSCO SEWERHEAD

THE APPROVAL OF THIS PLAT IS BASED UPON A REASONABLE EXPECTATION THAT THE WATER AND SEWER SERVICE WHICH IS PLANNED FOR THE DEVELOPMENT WILL BE AVAILABLE WHEN NEEDED. HOWEVER, BUILDING PERMITS MAY NOT BE ISSUED UNTIL THE PLANNED WATER AND SEWER FACILITIES ARE COMPLETED AND DETERMINED TO BE ADEQUATE TO SERVE THE PROPOSED DEVELOPMENT

STORMWATER MANAGEMENT FOR ALL LOTS IN THIS SUBDIVISION WILL BE ACCOMPLISHED THROUGH THE USE OF THE EXISTING REGIONAL STORMWATER MANAGEMENT POND. NO GRADING PERMITS OR BUILDING PERMITS WILL BE ISSUED FOR THIS SUBDIVISION UNTIL APPROVAL OF THE STORMWATER MANAGEMENT PLAN. WATER QUALITY WILL BE PROVIDED INDIVIDUALLY ON EACH LOT OR IN JOINT FACILITIES TO LOTS B-5 THROUGH B-9

THE LOTS CREATED BY THIS SUBDIVISION PLAT ARE SUBJECT TO A FEE OR ASSESSMENT TO COVER OR DEFRAIT ALL OR PART OF THE DEVELOPER'S COST OF INSTALLATION OF WATER AND SEWER FACILITIES, PURSUANT TO THE BALTIMORE COUNTY CODE SECTION 26-246. THIS FEE OR ASSESSMENT, WHICH RUNS WITH THE LAND, IS A CONTRACTUAL OBLIGATION BETWEEN THE DEVELOPER AND EACH OWNER OF THIS PROPERTY AND IS NOT IN ANY WAY A FEE OR ASSESSMENT OF BALTIMORE COUNTY

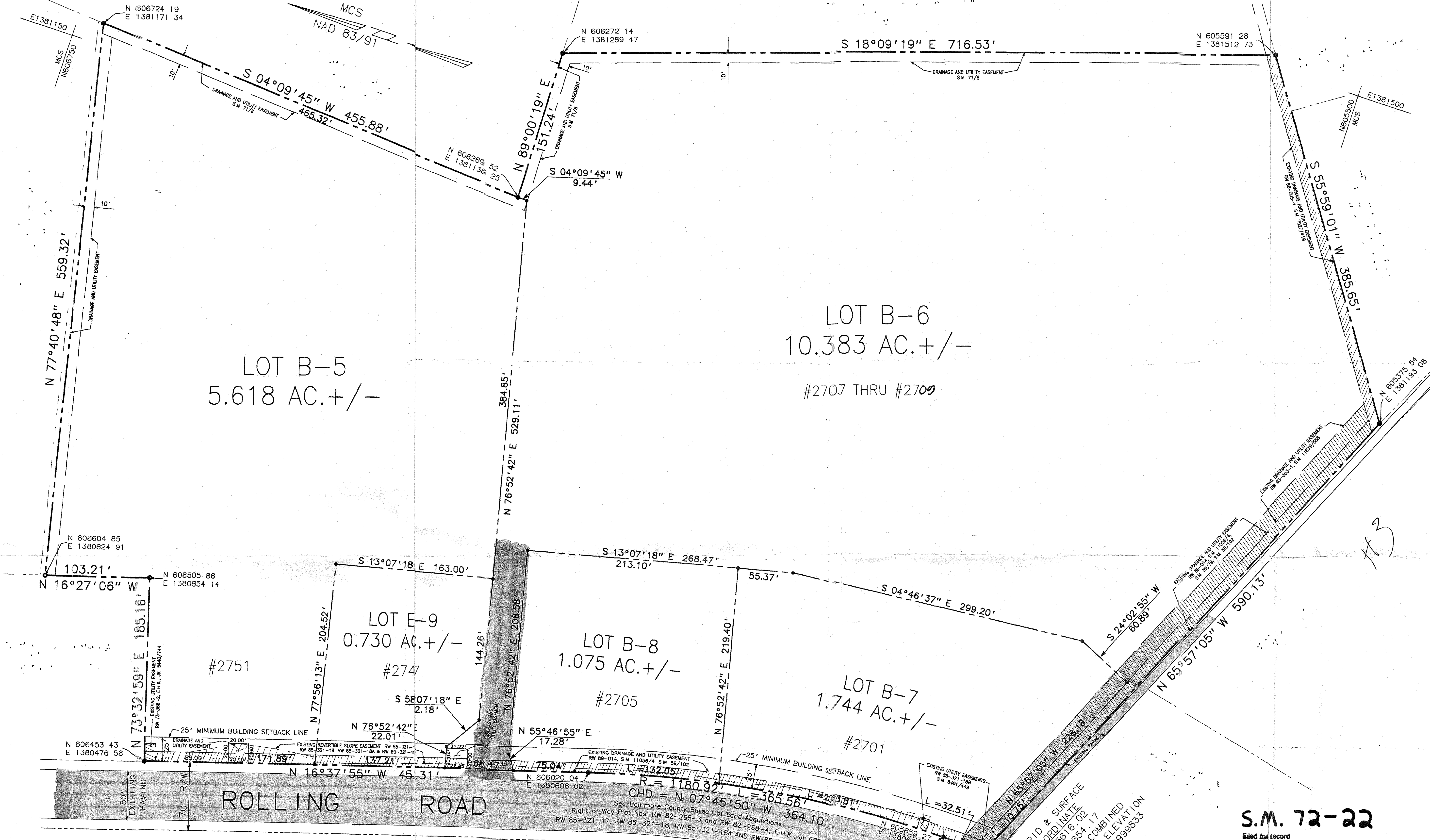
DEED REFERENCE: S.M. 13413 Folio 60
TAX ACCOUNT Nos. 23-00-004227 & 23-00-004228

EXISTING ZONING - ML-IM

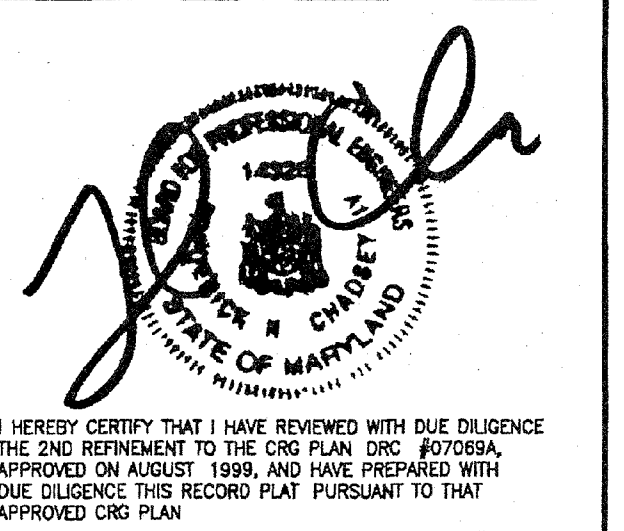
EACH LOT MUST HAVE ITS OWN METERED SERVICE

TOTAL AREA OF LOTS = 19.550 AC
TOTAL AREA OF PLAT = 19.550 AC

THE PURPOSE OF THE PLAT IS TO RESUBDIVIDE LOT B-3 AND LOT B-4 SHOWN ON THE PLAT ENTITLED "RESUBDIVISION OF A PORTION OF R.B.C. SOUTH, DATED DECEMBER 19, 1997, RECORDED AMONG THE PLAT RECORDS OF BALTIMORE COUNTY, MARYLAND, IN PLAT BOOK S.M. 71/8 AND CREATE NEW LOT B-5, LOT B-6, LOT B-7, LOT B-8 AND LOT B-9



NOTE:
HIGHWAYS AND HIGHWAY WIDENINGS, SLOPE EASEMENTS, DRAINAGE AND UTILITY EASEMENTS, ACCESS EASEMENTS, FOREST BUFFER AREAS IN FEE OR EASEMENT, GREENWAY AREAS IN FEE OR EASEMENT, AND STORM WATER MANAGEMENT AREAS, NO MATTER HOW ENTITLED, SHOWN HEREON ARE RESERVED UNTO THE OWNER AND, EXCEPT FOR THOSE INDICATED OTHERWISE, ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MARYLAND. THE OWNER, HIS PERSONAL REPRESENTATIVES AND ASSIGNS SHALL CONVEY SAID AREAS BY DEED TO BALTIMORE COUNTY, MARYLAND, AT NO COST, UNTIL SUCH TIME AS SAID CONVEYANCE IS ACCEPTED BY BALTIMORE COUNTY. THE OWNER AUTHORIZES BALTIMORE COUNTY, ITS AGENTS AND ASSIGNS, THE RIGHT TO ENTER UPON THE PROPERTY FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, MAINTAINING AND REPAIRING ROADS, UTILITY LINES AND FACILITIES, AND STORM WATER MANAGEMENT PONDS AND FACILITIES.



OWNER
BALTORE GAS AND ELECTRIC
FOUNDATION, INC. P.O. BOX 1475
BALTIMORE MD 21203

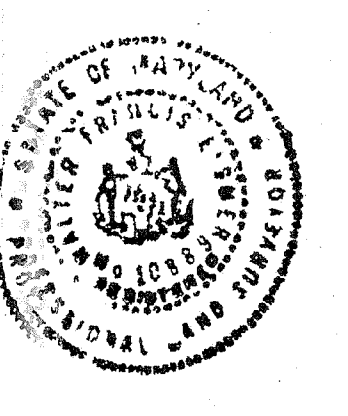
DEVELOPER
ROLLING ROAD LLC
C/O HILL MANAGEMENT
9640 DEERCO ROAD
TIMONIUM MD 21093
(410) 561-1300

NOTE:
GRID COORDINATE AND BEARINGS SHOWN ON THIS PLAT ARE REFERRED TO THE NAD 83/21 MARYLAND COORDINATE SYSTEM AND PROJECTED BY BALTIMORE COUNTY PRIMARY GPS NETWORK MONUMENTS
ELEVATION = 460.240 USR
ELEVATION = 462.269 USR
ELEVATION = 462.269 USR
ELEVATION = 462.269 USR

NOTE:
THE STREETS AND/OR ROADS AS SHOWN HEREON AND THE MENTION THEREOF IN DEEDS ARE FOR THE PURPOSE OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE. THE FEE SIMPLE TITLE TO THE BEDS THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED, THEIR HEIRS AND ASSIGNS

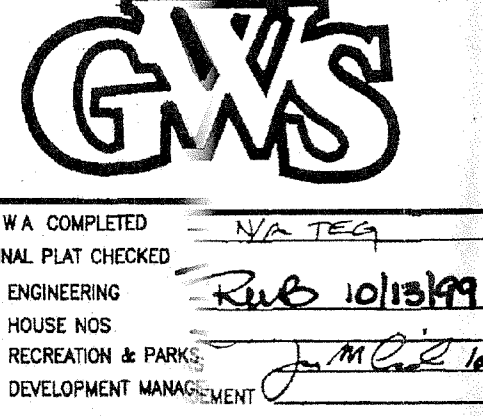
OWNERS CERTIFICATE:
I, THE UNDERSIGNED OWNER OF THE LAND SHOWN ON THIS PLAT HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT, AND THAT I HAVE READ AND UNDERSTOOD THE ENTIRE CONTENTS OF THIS PLAT AND THE DEED TO WHICH IT IS ATTACHED, AND I HAVE AGREED TO THE SAME.

SURVEYORS CERTIFICATE:
THE UNDERSIGNED, A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, DOES HEREBY CERTIFY THAT HE IS THE SURVEYOR WHO PREPARED THIS PLAT AND THAT THE LAND SHOWN ON THIS PLAT HAS BEEN LAID OUT AND THE PLAT THEREOF HAS BEEN PREPARED, IN COMPLIANCE WITH SUBSECTION (C) OF SECTION 3-108 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND, PARTICULARLY IN SO FAR AS SAME CONCERNS THE MAKING OF THE PLAT AND SETTING OF THE MARKERS.



APPROVED BY BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
DIRECTOR OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
DATE: 10-18-99

APPROVED BY THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT
PURSUANT TO SECTION 26-212(C), BALTIMORE COUNTY CODE
DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT
DATE: 10-19-99



GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CONSULTING ENGINEERS, LAND PLANNERS & LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD
TOWSON, MARYLAND 21286
(410) 825-8120

DESIGN AND DRAWING BASED ON
MARYLAND COORDINATE SYSTEM
HORIZONTAL - NAD83/91
VERTICAL - NAVD 88







72



37



78







**PROPOSED WAWA
CONVENIENCE STORE
2845 Rolling Road
Baltimore County, MD**

DEMAND ANALYSIS

Prepared For:

St. John Properties, Inc.
2560 Lord Baltimore Drive
Baltimore MD 21244

Submitted by:

Lipman Frizzell & Mitchell LLC
8815 Centre Park Drive
Suite 200
Columbia, Maryland 21045

July 25, 2007

previous
order

Jm
10/5/05
C.A. 11/26/06

IN RE: PETITION FOR SPECIAL EXCEPTION *
E/S of Rolling Road, 440 ft. S *
centerline of Ashfield Drive *
2nd Election District *
4th Councilmanic District *
(2705 Rolling Road) *

Rutherford Burger Investments, LLC, *
By: Anthony Julio, *Legal Owner* *
and *
Stemark, Inc., By: Mark Ogrysko, *Lessee* *
Petitioners *

BEFORE THE

DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

CASE NO. 06-075-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Exception filed by the legal owner of the subject property, Rutherford Burger Investments, LLC, by Anthony Julio and Stemark, Inc., by Mark Ogrysko, the lessee. The Petitioners are requesting special exception for property located at 2705 N. Rolling Road in the Catonsville area of Baltimore County. The special exception is requested pursuant to Sections 253.2.B.2 and 419.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a car wash.

The property was posted with Notice of Hearing on September 19, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on September 20, 2005 to notify any interested persons of the scheduled hearing date.

Applicable Law

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

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

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;

- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air; [Bill No. 45-1982]
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 zone. [Bill No. 74-2000]

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Office of Planning dated August 30, 2005, a copy of which is attached hereto and made a part hereof.

Interested Persons

~~Appearing at the hearing on behalf of the special exception request were Steve Ogrysko,~~
David West, Mark Ogrysho, B. Kacey Carter and Bill Monk for the Petitioners. C. William Clark, Esquire represented the Petitioners. Laura Vu, Hector and Yvonne O'Berry, Sajid Chaudhry and Iftikhar Ahmod attended the hearing in opposition to the requests. Michael Tanczyn, Esquire represented the protestants. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The Petitioners are proposing to build a car wash with six (6) self-service and two (2) automatic bays on vacant property located on North Rolling Road on the edge of the Rutherford Business Park. Property in the business park is zoned M1-IM. As such, the Petitioner requests approval of a special exception under Section 253.2B.2 and the special car wash regulations in Section 419.1 of the B.C.Z.R. See Petitioner's Exhibits 1A and 1B.

The Petitioner indicated that he owns several car washes presently in other locations and has twenty-five years experience in fuel service stations. He was familiar with the business park rules regarding the appearance of buildings in the park and agreed to follow those rules. Consequently, the new car wash building will have the same block, color, roof, etc. as other buildings in the park. He presented extensive photographs of similar car wash facilities. The park provides storm water management facilities. He noted that the proposed car wash would accommodate SUV and automobiles only. No trucks or recreational vehicles will be allowed. He will not service or repair vehicles on this property. While the property has access to public water and sewer, the car wash equipment recycles much of the water used so that little actual water will be discharged into the sewer system. A family member will clean the facility. There will be one (1) attendant on duty from 8 AM to 6 PM. The Petitioner will install security cameras on the site.

The Petitioner is requesting that the facility be allowed to operate seven (7) days a week, twenty-four hours a day. Not only will the equipment heat the water used in the car wash, but the pavement in front of and behind each bay. He agreed to comply with the comments from the Planning Office.

He admitted that apartments are located across Rolling Road on property zoned DR 16 and that the zoning boundary between the ML-IM of the park and DR 16 of the apartment complex is the center of Rolling Road.

Mr. West described the car wash equipment, vending and payment machines. Each of the vacuums has sound suppression features built into the machine. He mentioned that overall the goal is to operate the equipment at a noise level equal to the traffic on Rolling Road.

Mr. Monk, a zoning consultant, noted that the fuel service station to the south has a car wash, which was approved by this Commission by means of special exception. He noted that the business park has more than 25 acres. He admitted that an apartment complex has recently been constructed

across Rolling Road but that the nearest residence is approximately 150 feet away from the car wash. Directly across Rolling Road is the storm water management facility serving the apartment complex. Traffic will not exit or enter directly from or to Rolling Road but rather will use two (2) existing service roads. The service road on the south side now serves the convenience store (with car wash). He indicated that the distance from the DR 16 / ML boundary in Rolling Road is 100 feet as required by the regulations. The plan meets all County parking and stacking requirements as well as landscaping buffers specified in the regulations.

He opined that the plan presented met each criteria of Section 502.1 of the B.C.Z.R. and would not adversely affect the neighborhood as all uses to the northeast and south are industrial. Directly across Rolling Road is the storm water management facility for the apartment complex.

He admitted that some of the vacuums associated with the self-service portion of the facility were within 100 feet of the DR 16/ ML-IM boundary. He opined that setting the car wash building back 100 feet from a residential boundary has met the long-standing interpretation of the Zoning Office. He further opined that the Rutherford Business is much larger than the 25-acre minimum specified in Section 253.2.B and that the car wash would primarily serve the industrial uses of the business park.

He admitted that he was involved in the special exception case in which the adjacent convenience store/car wash was approved for 24-hour operation. However, he noted that there is no requirement that the car wash portion be attended 24 hours each day. He saw the risk of undesirable elements coming to the car wash after the attendant left for the day was minimal given the heavy traffic on Rolling Road and convenience store attendant next door 24 hours a day. He noted that because of the site layout using service roads as access to the site, it would be difficult for a wrong doer to move from the site to residential communities. In regard to noise from the car wash, he noted that the only residential buildings were 150 to 200 feet away and with modern air

conditioning he did not foresee noise from the site to be a problem. Nor did he see that there would be a problem with vehicles in the stacking lanes for the rollover bays blocking access to the self-service bays.

Mr. O'Berry, who owns a home in a nearby residential area, objected primarily to 24-hour operation of the proposed car wash. He related his frightening experience when he observed a 24-hour unattended car wash near Security Boulevard. He indicated that although he was wearing his police officer's uniform, customers after 11:30 PM appeared to be making drug deals, playing loud music and generally acting obnoxiously. He opined that such places act as a gathering place for undesirables. He expressed concern for the many persons including children crossing Rolling Road at night from the apartment complex to the convenience store adjacent to the subject site.

By agreement, counsel submitted summary memorandum of their client's position. The Petitioner pointed out that the Zoning Office had interpreted Section 419.4 A.1 to exclude from consideration "residentially zoned property" where the residentially zoned boundary is in a public street. The Petitioner contends that one should measure to the residential property line across Rolling Road, which is 137 feet from the self-service bay buildings and thus meets the statutory requirements. In addition, the Petitioner submitted an amended plan in which the building housing the self-serve tunnels was moved farther from Rolling Road and the DR 16 zoning line.

Mr. Tanczyn objected to the new plan requesting a hearing to examine the revised plan and present contrary evidence. A further hearing was scheduled by agreement on January 26, 2006 in which the Petitioner presented an extensive summary of past cases, which interpret the regulations. See Petitioner's Exhibit 10 for a highlighted plan illustrating the legal issues, and Exhibits 13 through 17 for the prior cases. In addition to cross-examination of the Petitioner's expert, Mr. Tanczyn submitted additional argument as to why the Petition should be turned down.

Findings of Fact & Conclusions of Law

Zoning line in a public street

Mr. Clark presented one of the most comprehensive collections of self-serve car wash cases in which a residential zoning line adjacent to a car wash lies within a public street. Mr. Tanczyn provided an excellent summary of the legislative differences between self-service and other car wash operations. Hopefully we can keep this information available for future reference.

This issue is whether in Section 419.4 A 1 the phrase, "residentially zoned property" means to the farthest edge of the public road or to the actual residential zone boundary, which happens to lie within a public road. Mr. Clark argues that there is a long history of Zoning Office and Commission interpretations, which say the proper starting point is the farthest edge of the right of way. He notes that there are obviously no residential uses in the right of way of public street which could be disturbed by the noise and traffic generated by a car wash. On the other hand, Mr. Tanczyn argues that there is nothing in the regulations allowing such an interpretation. "Residentially zoned property" means just what it says, no part of any self-service car wash shall be within 100 feet of the residential zoning boundary.

Case No. 00-277-XA approved a plan in which the car wash buildings were approximately 120 feet from the residential line in the public street but access driveways to the public street, aisles, parking and drying spaces and vacuums were within the 100-foot setback line. None of these latter features were within 100 feet of the far side of the right of way of that street.

Case No. 99-302-X approved a plan in which the car wash buildings were approximately 225 feet from the residential line in the public street but access driveways to the public street, aisles, and one (1) stacking space were within the 100 foot setback line. The driveway was within 100 feet of the far side of the right of way of that street.

Case No. 99-124-X approved a plan in which the car wash buildings were approximately 280 feet from the residential line in the public street. No access driveways to the public street, aisles, parking and drying spaces and vacuums were within the 100-foot setback line.

In contrast, the subject case has a plan in which one of the self-serve car wash tunnels is 94 feet from the residential line in the public street (Rolling Road) and access driveways to the public street, aisles, drying spaces and vacuums are within the 100 feet of that residential line. Remarkably in the alternative design, Exhibit 1B, while the self-service tunnel is moved back to be 100 feet from the residential line in the street, access driveways to the public street, aisles, drying spaces and vacuums are within the 100 feet of the farthest right of way line of Rolling Road.

My first observation is that if we take "no part of a self-service car wash" to include access driveways to the public street and driveways, there could be no self-serve car wash facilities when the residential line is in the public street. One has to get to and from the car wash to the public street. Surely, the Council never intended to carve out an absolute prohibition against self-serve car washes along public streets. I therefore read "no part of a self-service car wash" does not include access driveways to the public street or driveways.

My second observation is that there are parts of a self-service car wash, which are detrimental to adjoining residential uses. The washing machinery, vacuums and parking make noise and can be visually objectionable. One complaint often heard is that patrons park their cars on a summer night and play music at painful sound pressure levels while they clean their vehicles. Vacuums scream a high pitched sound that can be heard far from the canister and motor. The washing machinery clunks and groans and even the vehicles vibrate as high-pressure water is applied to the vehicle by the patron. Clearly, these components of the self-service car wash can adversely affect the community.

Having said that, the question is does "residentially zoned property" include the right of way of public streets when the residential boundary is located in the center of the street. Although there are exceptions, generally abutting property owners have title to the centerline of a street as the County usually has no more than a right of way. So one can argue as Mr. Tanczyn does so ably that this is no different from any other location for the residential line. In addition, nothing in the regulations allows this Commission to interpret the regulations to trigger the setback from the car wash to residential uses. If we start down this slope, there is no stopping unless we evaluate each residential use as to how it might be affected by the less desirable characteristics of the car wash.

On the other hand, there clearly is no reason to protect the southbound lanes of Rolling Road from adjacent car wash operations. Surely, the traffic on those lanes will not be adversely affected even if a patron plays music a little loud. I accept Mr. Clark's assertion that the Zoning Office has interpreted the regulations to set back self-service car wash facilities from the farthest edge of the right of way and not the actual residential boundary.

On balance I find that Mr. Clark has the better argument. I think the Council wanted to protect the public where they live, work and play from the adverse aspects of self-service car washes but that this did not include the areas within the right of ways of streets.

Having said that, I see no reason to consider the alternative design presented by the Petitioner in Exhibit 1B.

However, I note that there is a self-service bay between the roll over bay and equipment room shown in Exhibit 1. Clearly, there are drying spaces, parking and vacuums, which serve this self-service bay within the 100 feet from the farthest edge of the right of way of Rolling Road. These are not allowed under the regulations and must be removed. Frankly, given the mix of self-service and roll over bays in the northern portion of the building, I do not know how any of the vacuum stations/drying spaces along Rolling Road serve the roll over and not the self-serve bays.

I also note that the southern most vacuum station and drying space towards Rolling Road clearly serves the self-serve bays behind it. These are parts of the self-service car wash and must be removed. Again, the vacuums and drying spaces along Rolling Road will generate a great deal of noise and activity when in use, which can adversely affect the residential community on the other side of Rolling Road.

Finally, I note the great wisdom enunciated by the Deputy Zoning Commissioner Kotroco regarding hours of operation in Case No. 00-277-XA where he observed that 24-hour car wash operations can be compatible with the neighborhood as long as there is a caretaker to see that the patrons are well behaved. In the subject case, I note that there is only a storm water management facility immediately across Rolling Road rather than homes or recreational facilities so that the residents do not as directly feel the impact of lights and activity. So, I see no reason to simply limit the hours of operation. However, given the protestants' testimony, I see every reason to require that this facility have an attendant while it is open to the public.

In summary, I find that granting the special exception for the proposed car wash meets the criteria of Section 502.1 of the B.C.Z.R. - *Special Exceptions* and will not adversely affect the health, safety or welfare of the community if certain conditions are met. Therefore, I will grant the Special Exception subject to the following conditions:

1. That there be no audible paging system;
2. That all support facilities associated with the self-service bays including parking spaces, drying spaces and vacuums be removed from the area of 100 feet from the westernmost edge of the right of way of Rolling Road;
3. That the facility be open to the public only when an attendant is on duty;
4. That entrance gates be locked after hours;
5. That the lighting be directed away from the residences to the west, and

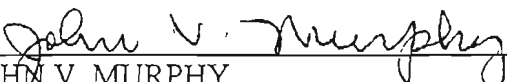
6. That the Petitioners comply with the recommendations of the Planning Office dated August 30, 2005, a copy of which is attached and made a part of record thereof.

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

THEREFORE, IT IS ORDERED, this 8 day of February, 2006, by this Deputy Zoning Commissioner, that the Petitioners' special exception request pursuant to Sections 253.2.B.2 and 419.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a car wash, be and is hereby GRANTED, subject, however, to the following conditions:

1. That there be no audible paging system;
2. That all support facilities associated with the self-service bays including parking spaces, drying spaces and vacuums be removed from the area of 100 feet from the westernmost edge of the right of way of Rolling Road;
3. That the facility be open to the public only when an attendant is on duty;
4. That entrances shall be locked after hours;
5. That the lighting be directed away from the residences to the west; and
6. That the Petitioners comply with the recommendations of the Planning Office dated August 30, 2005, a copy of which is attached and made a part of record thereof.

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


JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1384

September Term, 1989

GEORGE GILMORE, et al.,

v.

SALLY RUHL, et al.

RECEIVED
MAY 14 1990
ZONING OFFICE

Gilbert, C.J.,
Bell, Robert M.,
Wenner,

JJ.

Per Curiam

Filed: May 8, 1990

This appeal was spawned when the Board of Appeals of Baltimore County (the "Board") ordered the reissuance to appellee, Ruhl Building Corporation,¹ of building permits authorizing the construction of two new single family homes in Lutherville, Baltimore County. The appellants² are adjacent property owners. They noted this appeal from an order of the Circuit Court for Baltimore County which affirmed the decision of the Board. Upon appeal, appellants ask us to consider:

- I. Whether the building permits were properly suspended by the [Baltimore County Buildings Engineer] and void ab initio?
- II. Whether the [Baltimore County Buildings Engineer] was estopped from suspending the permits because appellees relied upon the initial building permits?
- III. Whether the requirements of the Lutherville Historic District would apply if the building permits are reissued?
- IV. Whether the Board's findings of fact are supported by the evidence?

The appellees have noted a cross-appeal. They ask us to consider:

¹The appellees are Sally Ruhl and Ruhl Building Corporation. Sally Ruhl is president and sole shareholder of Ruhl Building Corporation. Hereinafter, unless otherwise specified, we shall refer to them collectively as "appellees."

²The appellants are Lutherville Community Association, Inc., Earl Penn Jones and George Thomas Gilmore, individually. Hereinafter, unless otherwise specified, we shall refer to them as "appellants."

- V. Whether the circuit court erred in declining to grant relief by way of mandamus or injunction on the issue of the porch?

We shall hold that the Board erred as a matter of law in determining that the appellees' right to build had vested and that the Buildings Engineer was estopped from suspending the permits. We shall also hold that the Board's finding that the permits would not have been rescinded was unsupported by substantial evidence. Accordingly, we shall reverse the judgment of the circuit court.

Facts

As the parties are fully conversant with the facts, we shall but briefly recount those facts relevant to this appeal.

In January, 1987, appellees purchased a lot at the intersection of Seminary and Bellona Avenues in Lutherville, Baltimore County. Appellees applied to the County for approval of a small subdivision to add two new single family homes to the existing lot. After reviewing the application, the County required the dedication of a strip of land for the future widening of Bellona Avenue.

In March, 1987, and again in July, 1987, appellees applied to the County for a waiver of the required dedication. The requests for waiver were denied and the posting of a security bond was required.

In November, 1987, the County issued building permits to the appellees for two new homes at 205 West Seminary Avenue (hereinafter "Lot 2") and 203 West Seminary Avenue (hereinafter "Lot 3"). On December 4, 1987, the County Zoning Office

discovered errors in the issuance of the permits and, consequently, rescinded them. In the meantime, however, the appellees had begun grading and excavating the lots. On December 8, 1987, the County Buildings Engineer formally suspended the building permits and issued a stop work order.

On December 9, 1987, the Lutherville Historic District was created, which required that all new construction comply with certain architectural and planning requirements. Appellees' property is located within the Lutherville Historic District.

In January, 1988, appellees appealed the suspension of their building permits to the Board. Between February and June of 1988, the Board conducted four days of hearings. On November 2, 1988, the Board reversed the decision of the County Buildings Engineer and ordered that the building permits be reissued. Upon appeal, the circuit court affirmed the decision of the Board. Undeterred, the appellants now turn to us for solace.

Standard of Review

Upon appeal, we may reverse or modify the Board's decision only if a substantial right of the appellant may have been prejudiced because the Board's finding, conclusion or decision is affected by an error of law or is unsupported by competent, material and substantial evidence in light of the entire record as submitted.

Inasmuch as we shall determine that the Board based its decision on an error of law, our review of the Board's decision is expansive. See Harford County v. McDonough, 74 Md. App.

119, 122, 536 A.2d 724 (1988). That is to say, we may substitute our judgment for that of the Board. See Id.

When reviewing the factual findings of an administrative agency, however, our scope of review is more narrow. In reviewing those findings, Maryland courts apply the substantial evidence test. Doctor's Hosp. v. Maryland Health Resources Planning Commission, 65 Md. App. 656, 667, 501 A.2d 1324 (1986). Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Maryland Shipbuilding & Drydock Co. v. Maryland Commission on Human Relations, 70 Md. App. 538, 551, 521 A.2d 1263, cert. denied, 310 Md. 130 (1987) (quoting Bulluck v. Pelham Wood Apts., 283 Md. 505, 390 A.2d 1119 (1978)).

In reviewing the decision of an administrative agency, we must first determine "whether the question before the agency was fairly debatable." Mayor and Aldermen of the City of Annapolis v. Annapolis Waterfront Company, 284 Md. 383, 395, 396 A.2d 1080 (1979). A "fairly debatable" issue involves "testimony from which a reasonable man could come to different conclusions." Id. at 396 (quoting, Egar v. Stone, 253 Md. 533, 542, 253 A.2d 372 (1969)).

In the case sub judice, there was evidence before the Board from both parties disputing whether the building permits would have been rescinded. We find, therefore, that the issue before the Board was fairly debatable.

Standing

At the outset, we shall address appellees' contention upon cross-appeal that appellants, George Gilmore and Earl Penn Jones, should not have been allowed to intervene because they do not have standing. We disagree.

Section 22-36 of the Baltimore County Code allows "any person whose property is affected by any violation, including abutting and adjacent property owners, whether specifically damaged or not ..." to maintain or intervene in an action involving the construction of buildings in violation of zoning regulations. Moreover, Maryland Rule 2-214 permits a person to intervene in an action when the person claims an interest relating to the property that is the subject of the action. In the case sub judice, Gilmore and Jones own property adjacent to the property which is the subject of this controversy. And, Maryland courts have held that "[a]n adjoining, confronting or nearby property owner is deemed, prima facie, to be specifically damaged and, therefore, a person aggrieved." Bryniarski v. Montgomery County, 247 Md. 137, 145, 230 A.2d 289 (1967). Accordingly, we hold that Gilmore and Jones had standing to intervene.

Discussion

Appellant contends that the County Buildings Engineer properly suspended the building permits because they were void ab initio. We agree.

A review of the record before us reveals that the appellees failed to dedicate the required strip of land for the

future widening of Bellona Avenue. Consequently, the appellees were in violation of Section 500.1 of the Baltimore County Zoning Regulations (hereinafter "Zoning Regulations"), mandating compliance in all respects with the existing zoning regulations.

In addition, there were several existing setback violations. The setback between the driveway of Lot 3 and the existing side porch on the house on the neighboring lot, Lot 1, was less than two feet.³ This setback was in violation of Section 1B02.3.C.1 of the Zoning Regulations requiring a minimum setback of ten feet. Further, the setback for Lot 2 was only twenty-five feet from Seminary Avenue. This violated Section 303.1 of the Zoning Regulations requiring a forty foot setback.

Finally, the sketch plans submitted by the appellees in their application for the building permits were inaccurate. The drawings did not show the existing side porch on the house on Lot 1. In addition, the drawing of the proposed building on Lot 3 not only differed in dimensions from the subsequent survey, but also showed a discrepancy in the actual setback from Bellona Avenue.

We hold that because of the aforementioned violations the building permits were void ab initio.

³Lot 1, known as 201 West Seminary Avenue, was sold by appellees on February 1, 1988. Lot 1 is improved by an existing house.

The Board, however, concluded that the Baltimore County Bureau of Public Services would not have rescinded the building permits. That conclusion is directly contradicted by the record.

At the hearing before the Board, Robert Covahey, Assistant Chief of the Bureau of Public Services, testified that the Bureau would have rescinded the building permits. See Appendix of Appellees/Cross-appellants at 152. Covahey explained that the permits would have been rescinded because of the appellees' failure to dedicate the required strip of land for the widening of Bellona Avenue and because the appellees had failed to provide security for the roadway improvements as required by the county. See Appendix to Appellees/Cross-appellants Brief at 153-154.

From our careful review of the record, we conclude that there was not substantial evidence to support the Board's finding that the permits would not have been rescinded.

Appellees argue, however, that their rights in the building permits had vested and that, consequently, the County Buildings Engineer was estopped from revoking them. We disagree.

In determining whether rights have vested, a majority of states follow the basic rule that:

A landowner will be held to have acquired a vested right to continue and complete construction of a building or structure, and to initiate and continue a use, despite a restriction contained in an ordinance or an amendment thereof where, prior to the effective date of the legislation and in reliance upon a permit validly issued, he

has, in good faith, (1) made a substantial change of position in relation to the land, (2) made substantial expenditures, or (3) incurred substantial obligations.

4 Rathkopf, The Law of Zoning and Planning, § 50.03(3) (4th Ed., 1988).

Appellees contend that they began construction in reliance on the building permits. The mere issuance of a permit, however, does not cause appellees' rights to vest. See Ross v. Montgomery County, 252 Md. 497, 505, 250 A.2d 635 (1969) (and cases cited therein); Francis v. MacGill, 196 Md. 77, 85, 75 A.2d 91 (1950). Moreover, we have already held that the permits were void ab initio. See supra. Maryland courts have consistently held that permits issued in violation of an existing law or zoning ordinance do not create any vested rights in the permittee. City of Hagerstown v. Long Meadow Shopping Center, 264 Md. 481, 495, 287 A.2d 242 (1972). See also Berwyn Heights v. Rogers, 228 Md. 271, 280, 179 A.2d 712 (1962); Permanent Financial Corp. v. Montgomery County, 308 Md. 239, 249, 518 A.2d 123 (1986).

The Board, however, found that "work had begun on the ground which was fully recognizable as the commencement of this particular project ..." and that there was an intention to continue the work. The Board, therefore, found that the appellees' right to build had vested and that the County Buildings Engineer was estopped from suspending the permits. That finding by the Board, however, is contrary to Maryland law.

Prior to the suspension of the permits, the appellees had begun to grade and excavate the lots. No "footers" had been poured for the building foundations, however, nor had construction of the buildings begun. Maryland courts have held, that "grading the site does not constitute the commencement of the building that is to be erected on the site." People's Counsel v. Public Service Commission, 259 Md. 409, 421, 270 A.2d 105 (1970). But cf. Ross, supra, 252 Md. at 506-507 (held that even when excavation begun and one foundation "footer" poured, right to build had not vested where the permit was otherwise void). While we realize that the appellees may have incurred substantial expenditures in beginning to grade the two lots, we point out that substantial expenditures are not sufficient to support a claim of a vested right. Steuart Petroleum Co. v. Board of County Commissioners of St. Mary's County, 276 Md. 435, 444, 347 A.2d 854 (1975). We therefore hold, as a matter of law, that the Board erred in concluding that substantial work had commenced and that appellees' right to continue and complete construction had vested. We also hold, as a matter of law, that the Board erred when it concluded that the County Buildings Engineer was estopped from revoking the permits.

As we have previously explained, the building permits were erroneously issued and were void ab initio, see supra, and that the appellees' reliance on the permits did not create a vested right. See supra. We have also explained that appellees' reliance on the issuance of the building permits did not estop

the County Buildings Engineer from revoking them where, as here, the permits were erroneously issued and were thus void ab initio. Maryland courts have consistently held that:

A permit thus issued without the official power to grant does not, under any principle of estoppel, prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality Every one dealing with the officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.

Long Meadow Shopping Center, supra, 264 Md. at 494-495, (quoting Lipsitz v. Parr, 164 Md. 222, 227-228, 164 A. 743 (1933)).

Appellants next ask us to consider whether the requirements of the Lutherville Historic District would apply if the permits were to be reissued. We answer that query in the affirmative.

We agree with the appellees' assertion that they did not receive proper notice of the hearing concerning the creation of the Lutherville Historic District. Section 22-149 of the Baltimore County Code requires notice by certified mail, return receipt requested, to persons whose names last appear on the tax rolls. In the case sub judice, however, notice was mailed to Sonya Rusche, the previous owner of appellees' property. Testimony at the hearings before the Board revealed that the Historic Preservation Commission knew that Sonya Rusche no longer lived there and no longer owned the property. Moreover, the Historic Preservation Commission did not use the tax rolls

to determine the current owner of the property. Instead, it used microfiche files in the Planning Office. A proper search of the tax rolls would have revealed that "Ruhl Building Corp." was the current owner of the property.

However that may be, we hold that the Historic District requirements will apply to the appellees' properties. The law to be applied is that which is in effect at the time a case is decided, provided that the application of the existing law does not affect any intervening vested rights. O'Donnell V. Bassler, 289 Md. 501, 508, 425 A.2d 1003 (1981). We have already held that the appellees' rights in the building permits that had been erroneously issued had not vested.

Finally, on cross-appeal, the appellees ask us to consider whether the circuit court erred in declining to grant them relief by way of mandamus or injunction on the issue of the porch. The circuit court declined to rule on that issue, because the porch was on Lot 1. The court said that it was concerned only with the permits issued for Lots 2 and 3. Inasmuch as the circuit court did not rule on the issue, we shall decline to do so now. Md. Rule 8-131(a).

JUDGMENT REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE COUNTY WITH INSTRUCTIONS TO REVERSE THE DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY AND REMAND THE CASE TO THE BOARD OF APPEALS OF BALTIMORE COUNTY WITH INSTRUCTIONS TO AFFIRM THE DECISION OF THE COUNTY BUILDING ENGINEER TO SUSPEND PERMITS NR 99241 and NR 99242.

COSTS TO BE PAID BY APPELLEES.

D.R. 16

W 40.500W 40.500

ML-1M

SITE

503

PRIVATE

P.O.B.

ROAD

ML-1M

SCALE

1" = 200' ±

LOCATION

BELMONT
AREA

SHEET

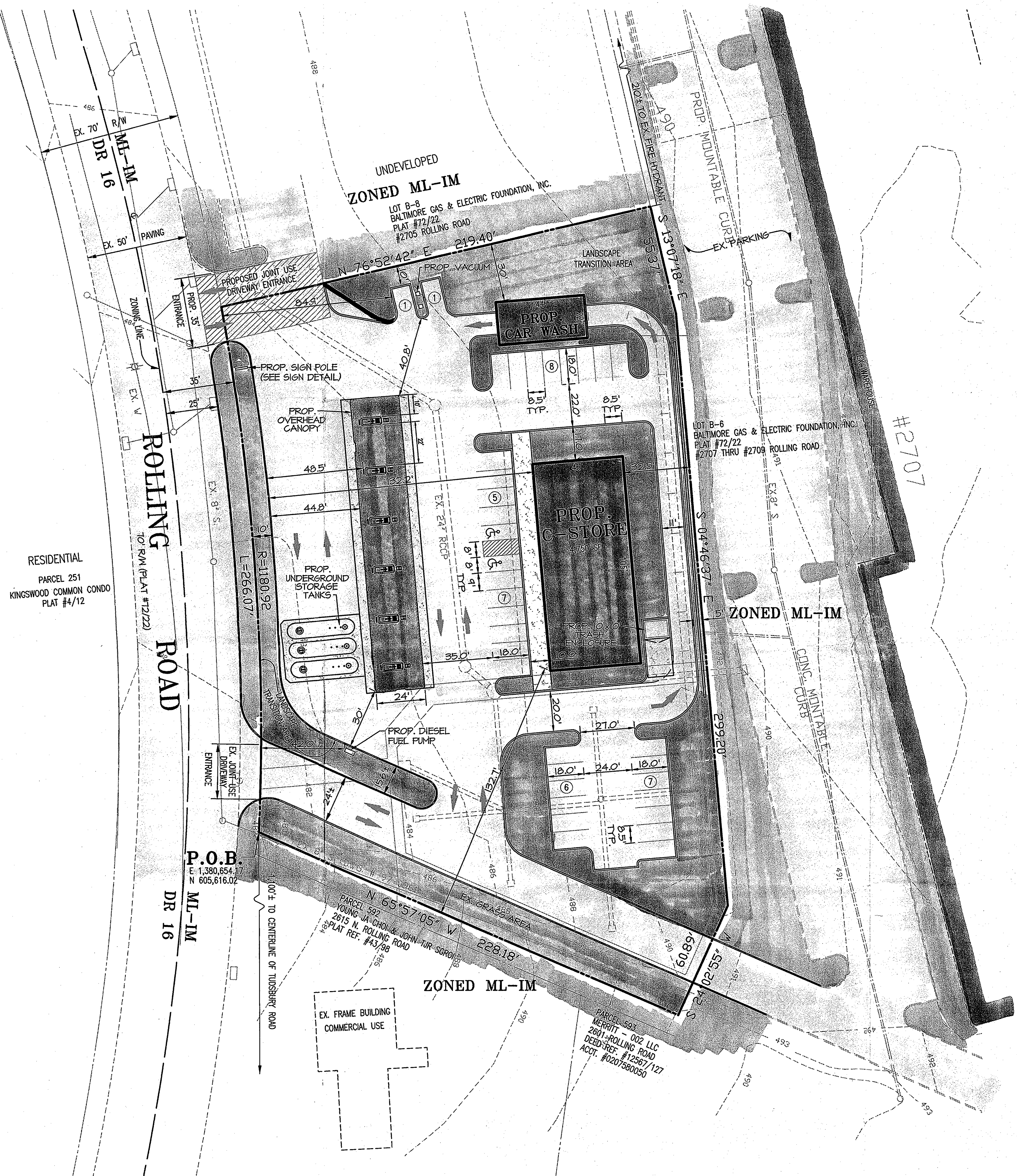
N.W.

3-G

4-G

DATE
OF
PHOTOGRAPHY
JANUARY
1986

E 1,380,500
N 606,000



NOTES:

- OWNER:
PARCEL #734, LOT B-4:
PLAT #72/22 (RESUBDIVISION), LOT B-7:
ROLLING ROAD LLC
HILL MANAGEMENT SERVICES INC.
9640 DEERCO ROAD
TIMONIUM, MD 21093
DEED REFERENCE: 1843/60, PLAT #71/8
TAX ACCT. #2300004221
- APPLICANT/CONTRACT PURCHASER:
EASTERN PETROLEUM CORPORATION
1915 LINCOLN DRIVE
ANNAPOLIS, MD 21401
- SITE DATA:
SITE AREA: 75,968 SF = 1.744 AC.±
BALTIMORE COUNTY ADC MAP #33; A-6
ELECTION DISTRICT: 02
COUNCILMANIC DISTRICT: 04
TAX MAP 81, GRID 11, PARCELS: #734, LOT B-3 & B-4
ZONING MAP: NM, 3-6
EXISTING ZONING: ML-IM (MANUFACTURING, LIGHT - INDUSTRIAL, MAJOR)
EXISTING USE: VACANT
- PROPOSED USE: FUEL SERVICE STATION WITH CONVENIENCE STORE AND ROLL OVER CAR WASH. THIS PROPERTY IS PART OF A INTEGRAL PLANNED DEVELOPMENT AND AN APPROVED INDUSTRIAL PARK GREATER THAN 50 ACRES, PER CR6 PLAN 1154 (AKA REC SOUTH)
- PROPOSED BUILDING AREA:
C-STORE: 4,750 SF.
1 STORY COMMERCIAL BUILDING
MAXIMUM BUILDING HEIGHT NOT TO EXCEED 25'
CAR WASH: 468 SF
- F.A.R.:

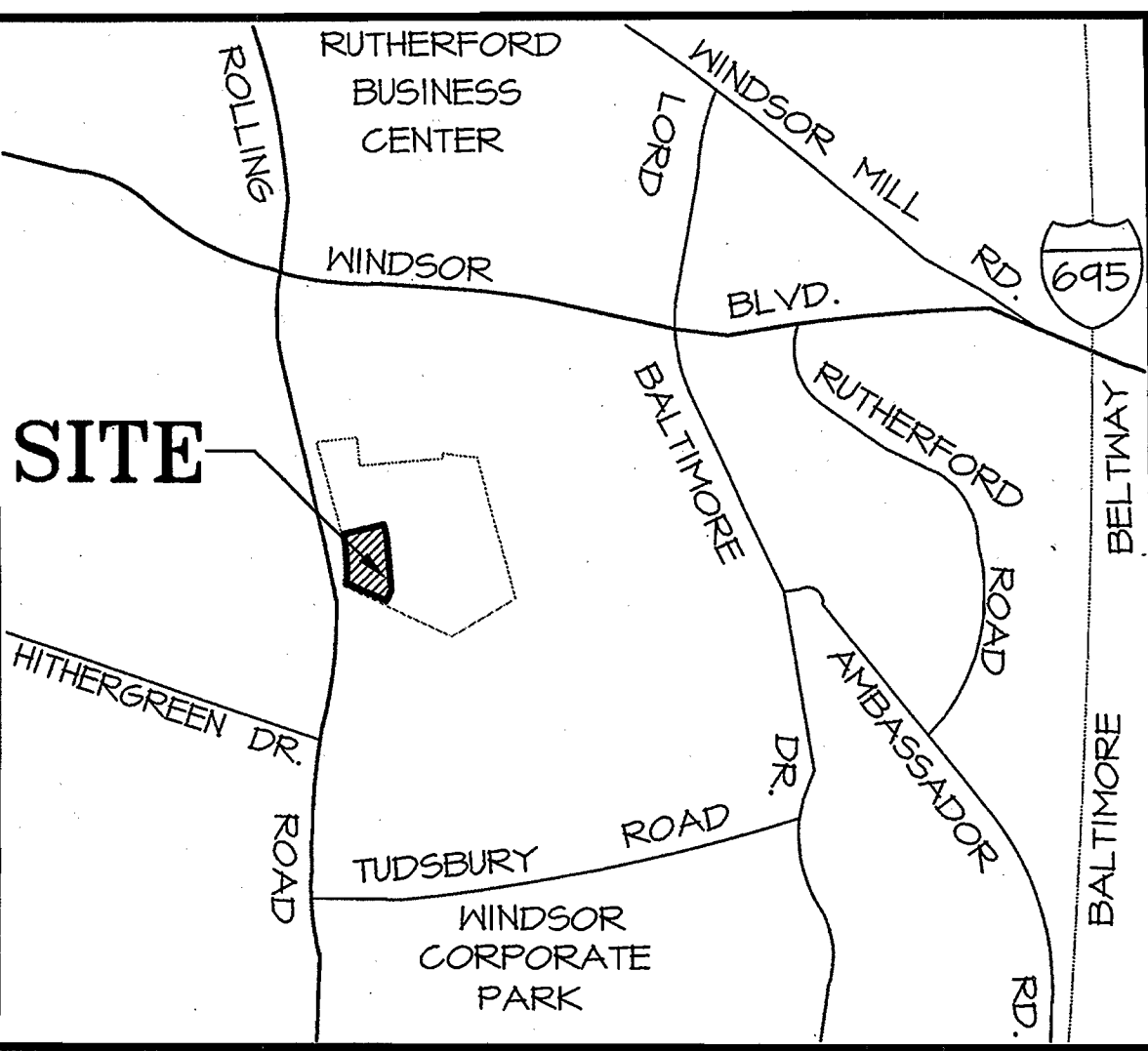
	ALLOWED	PROPOSED
FLOOR AREA RATIO	2.0	0.06
(4,750 SF + 968)/75,968 SF		
- REQUIRED SITE AREA:
FUEL SERVICE STATION (12 FUELING POSITIONS x 1,500 SF) = 18,000 SF
FOOD STORE (4 x 4,750) = 19,000 SF
TOTAL AREA REQUIRED = 37,000 SF
TOTAL AREA PROVIDED = 75,921 SF = 1.74 AC.±
- SETBACKS TO PROPERTY LIMITS:

	BUILDING	CANOPY	FUEL PUMPS	
	REQUIRED	PROVIDED	REQUIRED	PROVIDED
FRONT	35'	32.2'	15'	44.8'
SIDE	30'	30' (CAR WASH BLDG)	25'	42'
REAR	30'	32.5'		
- PARKING CALCULATIONS:
A. PARKING REQUIRED:
CONVENIENCE FOOD STORE (4,750 SQ. FT. @ 510,000) = 24
1/EMPLOYEE ON LARGEST SHIFT = 4
CAR WASH DRYING SPACES = 2
CAR WASH ADDITIONAL SPACES REQUIRED = 2
VACUUM SPACES REQUIRED = 2
TOTAL PARKING REQUIRED = 34
B. PARKING PROVIDED = 35
INCLUDING 2 HANDICAP
- POINT OF BEGINNING IS ON WEST SIDE OF ROLLING ROAD 1,000' NORTH OF CENTERLINE OF TUDSBURY ROAD AT ITS INTERSECTION WITH ROLLING ROAD.
- THE PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA (CBCA).
- THE SITE IS NOT IN A 100 YEAR FLOODPLAIN.
- THE SITE IS NOT WITHIN A MORATORIUM AREA OR IN AN AREA WHERE FAILURE OF BASIC SERVICES MAPS CURRENTLY EXISTS PER SECTION 4A02 (BCZR).
- THERE ARE NO NON-TIDAL WETLANDS ON THIS SITE.
- THERE ARE NO FOREST BUFFERS ON THIS SITE.
- THERE ARE NO KNOWN REGULATED PLANT OR WILDLIFE COMMUNITIES ASSOCIATED WITH THIS SITE.
- THERE ARE NO KNOWN HISTORICAL STRUCTURE OR ARCHEOLOGICAL AREAS ASSOCIATED WITH THIS SITE.
- THERE ARE NO KNOWN EXISTING WELLS OR SEPTIC FIELDS WITHIN 100' OF THIS PROPERTY
- SCREENING AND LANDSCAPE REQUIREMENTS SHALL COMPLY WITH BALTIMORE COUNTY REQUIREMENTS AS OUTLINED IN THE BALTIMORE COUNTY LANDSCAPE MANUAL.
- BUILDING CONSTRUCTION SHALL COMPLY WITH BUILDING AND FIRE CODE REQUIREMENTS.
- ALL LIGHTING SHALL CONFORM TO IES STANDARDS (ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA)
- SIGNAGE ON THIS SITE SHALL CONFORM WITH THE SIGNAGE REQUIREMENTS OF THE BALTIMORE COUNTY ZONING REGULATIONS SECTION 450.
- THIS SITE SHALL BE SERVICED BY PUBLIC WATER AND SEWER.
- A REST ROOM FACILITY WATER AND COMPRESSED AIR SHALL BE PROVIDED FOR CUSTOMERS
- ALL PAVING SHALL BE BITUMINOUS DUST-FREE SURFACE.
- PREVIOUS ZONING CASE: NONE
- STACKING (FOR ROLL OVER CAR WASH):
REQUIRED STACKING: 9 SPACES (@ 20' IN LENGTH)
PROPOSED: 11 SPACES
CAR WASH RATED CAPACITY: 45-50 CARS/HOUR
- STACKING FOR FUEL PUMPS SHALL COMPLY WITH SECTION 405, BCZR.
- A WAY OF STORM WATER MANAGEMENT QUALITY REQUIREMENTS WILL BE REQUESTED.
- SPECIAL EXCEPTION
* TO PERMIT A FUEL SERVICE STATION IN COMBINATION WITH CONVENIENCE STORE GREATER THAN 1,500 SF PURSUANT TO SECTION 405.4.E.1. BCZR.

* Carry Out Restaurant
9/10/01

1000 sq. feet for Carry Out Restaurant
9/10/01

583
D/O



VICINITY MAP
SCALE: 1"=1,000'

DRC #07069A
PDM #II-154

	MORRIS & RITCHIE ASSOCIATES, INC. ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS 110 WEST ROAD SUITE 245 TOWSON, MARYLAND 21204 (410) 821-1690 FAX (410) 821-1748																											
	PLAN TO ACCOMPANY SPECIAL EXCEPTION APPLICATION 2701 ROLLING ROAD ROLLING ROAD COMMERCE CENTER LOT B-7 BALTIMORE COUNTY, MARYLAND																											
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