3/3/08

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF: **People's Counsel for Baltimore County** **105 West Chesapeake Avenue** **Towson, MD 21204**	**CIVIL**
IN THE CASE OF:	**ACTION**
IN THE MATTER OF: KEVIN GOMBESKI **PETITION FOR ZONING VARIANCE AND SPECIAL HEARING** **Case No. 06-589-SPHA**	**NO. 3-C-07-012107**

WITHDRAWAL OF PETITIONS AND RELIEF

Kevin Gombeski, Petitioner before the Zoning Commissioner for Baltimore County and Respondent before the County Board of Appeals (Case No. 06-589-SPHA) and in this Court in the above-captioned case, through his undersigned legal counsel, hereby withdraws his Petitions for Special Hearing and Variance, rendering moot any and all relief previously granted by the Zoning Commissioner and that granted and/or denied by the Board of Appeals in Case No. 06-589-SPHA and, thereby rendering moot the appeal in this case.

True Copy Test
SUZANNE MENSH, Clerk
Per Kathy J. McCann
Assistant Clerk

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

[*Certificate of Service on Following Page*]

RECEIVED AND FILED
2008 MAR -3 PM 3:29
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

APPROVED
6-24-08

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of March, 2008, a copy of the foregoing Withdrawal of Petitions and Relief was mailed via First-Class, United States Mail to the following:

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

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

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

Michael L. Snyder, Esquire
Coady & Farley
400 Allegheny Avenue
Towson, Maryland 21204

Mr. Kevin Gombeski
27 Thomas Shilling Court
Upperco, MD 21155-9334

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

Howard L. Alderman, Jr.

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

Case Number: 03-C-07-012107

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

12/21/07

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
PEOPLE'S COUNSEL FOR BALTIMORE CO. *
OLD COURTHOUSE – ROOM 47
400 WASHINGTON AVENUE *
TOWSON, MD 21204

*

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. **3-C-07-012107**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF
KEVIN GOMBESKI *
27 THOMAS SHILLING COURT
UPPERCO, MD 21155 *

BOARD OF APPEALS CASE NO.: 06-589-SPHA *

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

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith 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

May 18, 2006 Petition for Special Hearing and Variance request filed to allow:

FILED DEC 21 2007

Copy to all parties

VARIANCE

Section – 32-4-409(e)(2) – to allow panhandle strips of 2,370' (proposed lot 7A) and 2,690 (proposed lot 7B) in lieu of the maximum permitted of 1,000'.

SPECIAL HEARING REQUEST

Section 32-4-409(b)(2)ii – Waiver to allow 2 panhandle strips having individual widths of 6' in lieu of the required 12'.

May 25, 2006	Entry of Appearance filed by People's Counsel for Baltimore County
May 31, 2006	Notice of Zoning Hearing
June 22, 2006	Certificate of Posting by John J. Dill
June 27, 2006	Publication in newspaper
July 7, 2006	ZAC Summary of Comments
July 13, 2006	Hearing held before the Zoning Commissioner.
July 18, 2006	Zoning Commissioner's Order *GRANTING* Petitioner's request with *restrictions*.
Aug. 7, 2006	Letter of Appeal filed by People's Counsel.
Aug 31, 2006	File received in the Board of Appeals
July 3, 2007	Board convened for hearing.

Petitioner's Exhibits

1. Plat dated 5/3/06.
2. Subdivision plat of Piney Branch Farm – 12/9/97.
3. Same as Exibit No. 1 w/red line markings for the pull-offs.
4. Drawing of pan-handle ownerships.
5. Declaration of Restrictions – 6/22/78.
6. Garecht's Deed dated 11/2/84.
7. Letter dated 11/9/06 to Gerhold, Cross & Etzel from T. Kotroco, Dir./PDM.
8. BCBA case no. 03-264-SPH

People's Counsel

1. Carroll County MD Street Map.
2. Real property data Search – Gombeski Property
3. Aerial photo.
4. Baltimore Co. Zoning Map 1991
5. Baltimore Co. Zoning Map 1996 – RC 2 zone
6. Regulatins.
7. Baltimore County Council Bill 98-75.
8. Baltimore County Council Bill 178-79
9. Resource Conv. Zones Bill 98-175
10. Density Res. Zones Bill 100-1970
11. CBA case no.: 03-225-SPH
12. BCZR 32-4-409 Panhandle Driveways.
13. Baltimore County Planning & Zoning Map
14. Baltimore County Code – 1978
15. Bill 100, 1970 Excerpt
16. Baltimore County Code 1978
17. Scopt of Title 32-4-104

July 5, 2007	Entry of Appearance filed by Howard L. Alderman, Jr., Esq. on behalf of Mr. Gombeski.
Sept. 6, 2007	People's Counsel's Memorandum file with the Board.
Sept. 6, 2007	Petitioner's Post-Hearing Memorandum filed with the Board.
Sept. 6, 2007	In house notes.
Sept. 12, 2007	Board convened for public deliberation.
Sept. 28, 2007	Board issued its Opinion and Order as follows: *GRANTING* Petitioner's request for variance relief to allow panhandle driveway lengths of 2,370 feet and 2,690 feet for proposed Lots 7A and 7B in lieu of the maximum length; *and* ORDERED that the Petition for Special Hearing to approve a waiver for two panhandle driveway strips with individual widths in lieu of the minimum required be and the same was *DENIED*.
Oct. 24, 2007	Board received a copy of the Petition for Judicial Review filed by People's Counsel for Baltimore County.

Dec. 17, 2007 Transcript received in the Board.

Dec. 17, 2007 Record of Proceedings filed in the Circuit Court for Baltimore County.

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

Respectfully submitted,

Linda B. Fliegel

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

c: Peter M. Zimmerman, People's Counsel
and
Carole S. Demilio, Deputy People's Counsel
Howard L. Alderman, Jr., Esq.
Michael L. Snyder, Esquire
Kevin Gombeski

10/26/07

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
PEOPLE'S COUNSEL FOR BALTIMORE CO. *
OLD COURTHOUSE – ROOM 47
400 WASHINGTON AVENUE *
TOWSON, MD 21204

*

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. **3-C-07-012107**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF
KEVIN GOMBESKI *
27 THOMAS SHILLING COURT
UPPERCO, MD 21155 *

BOARD OF APPEALS CASE NO.: 06-589-SPHA *

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

CERTIFICATE OF NOTICE

Madam Clerk:

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

Peter Max Zimmerman, People's Counsel
and
Carole S. Demilio, Deputy People's Counsel
Old Courthouse – Room 47
400 Washington Avenue
Towson, MD 21204

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
Nottingham Centre – 8th Floor
502 Washington Avenue
Towson, MD 21204
Attorneys for Kevin Gombeski

Michael L. Snyder, Esquire,
Coady & Farley
400 Allegheny Avenue
Towson, MD 21204

Kevin Gombeski
27 Thomas Shilling Court
Upperco, MD 21155

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

Linda B. Fliegel

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

I HEREBY CERTIFY that on this 26th day of October, 2007, a copy of the foregoing Certificate of Notice was mailed to: Peter Max Zimmerman, People's Counsel *and* Carole S. Demilio, Deputy People's Counsel, Old Courthouse – Room 47, 400 Washington Avenue, Towson, MD 21204, Howard L. Alderman, Jr., Esquire, Levin & Gann, P.A., Nottingham Centre – 8th Floor, 502 Washington Avenue, Towson, MD 21204, *Attorneys for Kevin Gombeski*, Michael L. Snyder, Esquire, Coady & Farley, 400 Allegheny Avenue, Towson, MD 21204, Kevin Gombeski, 27 Thomas Shilling Court, Upperco, MD 21155.

Linda B. Fliegel

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

County Board of Appeals of Baltimore County

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

October 26, 2007

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

Carole S. Demilio, Deputy
County People's Counsel for
Baltimore County
Old Courthouse – Room 47
400 Washington Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-07-012107
Petition for Judicial Review
Kevin Gombeski
Board of Appeals Case No.: CBA-06-589-SPHA

Dear Counsel:

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 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 Reporters 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: July 3, 2007

This office has notified Ms. Peatt and Gore that transcripts on the above captioned matter are due by December 17, 2007, for filing in the Circuit Court.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel
Legal Secretary

/trs
c: Howard L. Alderman, Jr., Esq.
Michael L. Snyder, Esq.
Kevin Gombeski
Carolyn Peatt, Court Reporter

Printed with Soybean Ink on Recycled Paper

County Board of Appeals of Baltimore County

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

October 26, 2007

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

RE: Circuit Court Civil Action No. 3-C-07-012107
Petition for Judicial Review
Kevin Gombeski
Board of Appeals Case No.:06-589-SPHA

Dear Mr. Alderman:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on October 22, 2007 in the Circuit Court for Baltimore County, and received in the Board of Appeals on October 24, 2007, from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, **must be filed under Civil Action No. 3-C-07-012107.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel
Legal Secretary

/lbf
Enclosure

c: Peter M. Zimmerman, People's Counsel
Carole S. Demilio, Deputy/People's Counsel
Michael L. Snyder, Esquire,
Kevin Gombeski
William J. Wiseman, III/Zoning Commissioner
Timothy M. Kotroco, Dir.PDM
Bruce Doak

Printed with Soybean Ink on Recycled Paper

10/22/07

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204	*	FOR
	*	
IN THE MATTER OF THE APPLICATION OF **KEVIN GOMBESKI** FOR SPECIAL HEARING & VARIANCE for property located on the South end of Thomas Shilling Court, 963' SW of Trenton Mill (27 Thomas Shilling Court) 5th Election District, 3rd Councilmanic District	*	BALTIMORE COUNTY
	*	Civil No. 03C07-12107
Case No. 06-589-SPHA before the County Board of Appeals of Baltimore County	*	

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

PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial review of Opinion and Order of the County Board of Appeals dated September 28, 2007. People's Counsel for Baltimore County was a party to the proceeding before the County Board of Appeals of Baltimore County in this matter.

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED AND FILED
2007 OCT 22 AM 11:35
CLERK OF THE CIRCUIT COURT
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

RECEIVED
OCT 24 2007
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd of October, 2007, a copy of the foregoing Petition for Judicial Review was mailed to Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204, Attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

9/28/07

IN THE MATTER OF THE APPLICATION OF KEVIN GOMBESKI –LEGAL OWNER / PETITIONER FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE SOUTH END THOMAS SHILLING COURT, 963' SW OF TRENTON MILL (27 THOMAS SHILLING COURT) 5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 06-589-SPHA

* * * * * * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals on an appeal taken by the Office of People's Counsel from an Order of the Zoning Commissioner for Baltimore County dated July 18, 2006 granting a waiver to allow two panhandle driveway strips with individual widths of 6 feet in lieu of the minimum required 10 feet; and variance relief to allow panhandle driveway lengths of 2,370 feet and 2,690 feet in lieu of the maximum allowed 1,000 feet.

Petitioner, Kevin Gombeski, was represented by Howard L. Alderman, Jr., Esquire. Peter Max Zimmerman, People's Counsel for Baltimore County, appeared on behalf of the Office of People's Counsel.

A *de novo* public hearing was held by the Board on July 3, 2007, and a public deliberation was held on September 12, 2007. Mike Mohler, a member of the Board at the July 3, 2007 hearing, was not present at the public deliberation because of his resignation from the Board prior to the deliberation.

Testimony and Evidence

Kevin Gombeski, Petitioner, owns two lots in the "Piney Branch Farms" subdivision, Lot 6 and Lot 7. Piney Branch Farms was zoned RDP (Rural deferred Planning) at the time of approval in 1977. In 1979, the area was rezoned RC2, which the property remains today. Bruce E. Doak, a licensed professional land surveyor with Gerhold, Cross & Etzel, Ltd., testified as an expert witness for the Petitioner. Mr. Doak submitted Petitioner's Exhibit #1, the Plat to

Accompany a Petition for Zoning Variance /Special Hearing for Gombeski's Property, which he prepared. Mr. Gombeski, who resides at 29 Thomas Shilling Court (Lot 6 of Piney Branch Farms), proposes to subdivide Lot 7 of Piney Branch Farms, which he owns, into two (2) lots marked on the Plat as Lots 7A and 7B (Petitioner's Exhibit #1). The Plat shows an existing dwelling on Lot 7B, and a proposed dwelling to be built on Lot 7A (Petitioner's Exhibit #1). Both lots would be serviced by an existing panhandle driveway that is approximately 2,690 feet long and extends from Thomas Shilling Court to the existing house on Lot 7. Mr. Doak testified that a subdivision request is not currently pending. However, he stated, there would be a subdivision request if the relief requested in this case is granted. Mr. Doak testified that seven lots could exist on the present panhandle driveway. Four residents are using the panhandle at the present time.

The width of the Common Easement Area is 36 feet, 12 of which is currently paved. Lots 7, 2, and 6, as shown on the Plat, each have a 12-foot wide in-fee strip. If Lot 7 were to be divided into Lots 7A and 7B, each would have an in-fee strip of 6 feet, which is less than the minimum requirement of 10 feet for three or more lots sharing a panhandle driveway. Mr. Doak testified while the full 36 feet width could be paved, it was not necessary for one new dwelling. Instead, Mr. Gombeski would construct four pull-offs along the panhandle driveway by widening the macadam strip to accommodate any emergency vehicles and traffic. These would be created within the Common Easement area. On cross-examination, Mr. Doak testified that these pull-offs would be an improvement to the current situation, which pulling off onto grass.

Mr. Doak also testified that a 30-foot by 70-foot tee-turnaround would be constructed at the beginning of proposed Lot 7A (Petitioner's Exhibit 3). Mr. Doak acknowledged that no application for a waiver of the width requirement had been made with the Planning Director. Only a special hearing was requested.

Mr. Doak testified that Lot 7 is unique because it is larger than any of the other lots in

the development and is located at the end of the Piney Branch Farms development. Granting the variance and waiver would have no detrimental effect on the health, safety, or general welfare of the community, nor would it create congestions from traffic. He further opined that the requested relief would not cause overcrowding of the land or undue concentration of population, and the only change would be improvements to the present panhandle driveway. Finally, Mr. Doak testified that a denial of the requested relief would prevent use of the property allowed by the regulations.

People's Counsel presented Ms. Loretta Gobrecht as a witness. Mrs. Gobrecht lives at 22 Thomas Shilling Court, which was part of Tract A when it was subdivided. She is retired and has lived there for 6 years. Her property adjoins the subject panhandle driveway but she does not utilize it and is not a party to it. She has her own access to Thomas Shilling Court. Ms. Gobrecht stated the reason for her testifying is not to oppose the requested waiver or variance but rather to inform all parties that she does not want a proposed pull-off to be adjacent to her property.

Issues

Petitioner argues that the present case is focused on the need for a variance for the length of an existing panhandle driveway and a special hearing for a waiver of the minimum width of in-fee panhandle driveway strips, not the approval of a minor subdivision. He further argues that there is "concurrent, specific and express legislative authority vested in the hearing officer/the board to grant waivers from any and all requirement of Subtitle 4 Title 32 of the BCC" (emphasis in original).

People's Counsel for Baltimore County argues in his Post-Hearing Memorandum, that, since the purpose of the waiver and variance are to facilitate a subdivision of Lot 7, they should not be allowed, because the subdivision would not be allowed under current zoning.

In addition, Mr. Zimmerman, on page 16 of his Post-Hearing Memorandum, states: "County Code § 32-4-409 assigns to the Planning Director specifically the function to review and approve waivers relating to panhandle driveway width. It provides, on the other hand, that length deviations are subject to the variance process, which the Zoning Commissioner reviews in the first instance." He states further:

> The interesting procedural aspect of this legislation is that subsection (k) assigns to the planning director the function of granting or denying waivers except with respect to specific lot limits under subsection (d) and with respect to driveway length, which are subject to variance under subsection (e). The waiver provision sets specific statutory criteria for consideration by the planning director.

Mr. Zimmerman argues that the Planning Director has exclusive authority to grant panhandle driveway waivers, and the Zoning commissioner variances for panhandle driveway length. "There is thus a division of authority between the Planning Director and the Zoning Commissioner concerning different panhandle driveway issues." Because panhandle driveways pose a problem for ordinary and emergency vehicles, according to People's Counsel, they are limited by County Code Section 32-4-409.

The Law

County Code Section 32-4-409(a) reads:

> In general
>
> (1) The county may only allow a panhandle lot:
>
> (i) To achieve better use of irregularly shaped parcels;
>
> (ii) To avoid development in environmentally sensitive areas;
>
> (iii) Where the lot will not be detrimental to adjacent properties; and
>
> (iv) Where the lot will not conflict with efforts to provide for public safety and general welfare.
>
> (2) The County may only allow a panhandle driveway where necessary to provide access to interior lots where a public road is neither feasible nor desirable.

County Code Section 32-4-409(k) allows for waivers under special circumstances:

(k) Waiver. Except as provided in subjections (d) and (e) of this section, the Director of Planning may grant a waiver from any provision in this section or title if the Director finds:

(1) That the size, scope, and nature of the subdivision of land into three or fewer lots for residential single-family dwellings does not justify strict compliance with this section;

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

(3) Compliance with all other county ordinances and regulations.

Opinion

This matter is almost a take-off on the saying, "what comes first, the chicken or the egg?" Mr. Gombeski owns a lot, #7, in the Piney Branch Farms development that he would like to subdivide into two lots, #7A and #7B. Lot #7 is presently serviced by a panhandle driveway that exceeds the maximum length for an R.C. zone and which will be less than the minimum width for panhandle strips if Lot 7 is subdivided into two lots. A waiver and variance are needed in order for Mr. Gombeski to petition for the subdivision of his property, yet, without that subdivision, there is no need for a waiver and variance. Mr. Gombeski was faced with the decision whether to request the variance to allow panhandle strips in excess of the maximum length and a waiver to allow two panhandle strips with widths less than the minimum required, or to file a Petition for a Special Hearing to amend the final development plan. He chose to do the former and requested the variance and waiver first. Because he chose not to file an amendment to the final development plan at this time, this Board cannot consider the arguments put forth by People's Counsel challenging the proposed subdivision of Lot 7. We will confine our judgment to the issues presented on appeal: the variance and waiver for a panhandle driveway.

First, as to the request for the waiver to allow a panhandle driveway less than minimum width, we agree with People's Counsel's argument that, under Code § 32-4-409(k), it is not a

function of the Zoning Commissioner to grant a panhandle driveway waiver and the Planning Director has exclusive authority to grant a panhandle driveway waiver. Therefore, this Board is also not the proper venue to approve a waiver. Petitioner must submit his request to the Planning Director.

Second, there is the issue of the variance request to allow the panhandle strip to exceed the maximum length. The current length of the panhandle is 2,690 feet, extending to the existing dwelling on Lot 7B (Petitioner's Exhibit #1). As People's Counsel notes in his Memorandum, it is a nonconforming use. A variance for its use is, therefore, not necessary. It exists, albeit nonconforming to current codes regarding the length of a panhandle driveway. The entire subdivision, in fact, was planned prior to the existing panhandle code. However, we also find that although the existing driveway is longer than the code requires, it does achieve the code's main objectives stated in 32-4-409(a)(1) (i)-(iv).

Were a dwelling to be built on Lot 7A, should a subdivision be approved, a driveway to it would actually be shorter in total length than the current, existing driveway. It, too, would achieve the objectives of 32-4-409(a)(1) (i)-(iv). It is not technically an extension, since it would go to a lot closer to the main road. Were the existing panhandle driveway to end at Lot 7A, and need an extension to Lot 7B, that would be a different situation, and most likely unacceptable. But to service a lot closer in seems completely in the spirit of the law on panhandle driveways. Lot 7, in its entirety, was created at the very end of the existing panhandle driveway. There is no possible service to a public road, it is within a protected area (RC zone), not to mention surrounded by a golf course. We therefore find it also meets both the uniqueness and practical difficulty required by Section 307 and *Cromwell v. Ward.*

In conclusion, the Board unanimously grants the Petition for Variance of the maximum length of the panhandle driveway for proposed Lots 7A and 7B, and denies Petitioner's request for a waiver for the widths of the panhandle driveways.

ORDER

THEREFORE, IT IS THIS 28th day of September, 2007 by the County Board of Appeals of Baltimore County

ORDERED that, for the reasons stated in the foregoing Opinion, Petitioner's request for variance relief to allow panhandle driveway lengths of 2,370 feet and 2,690 feet for proposed Lots 7A and 7B in lieu of the maximum length is hereby **GRANTED**; and it is further

ORDERED that the Petition for Special Hearing to approve a waiver for two panhandle driveway strips with individual widths in lieu of the minimum required be and the same is **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY[1]

Margaret Brassil, Ph.D., Chairperson

Robert W. Witt

[1] This case was originally heard by a panel comprised of three members of the Board of Appeals of Baltimore County; viz., Margaret Brassil, Ph.D., Chairperson; Mike Mohler; and Robert W. Witt. However, prior to public deliberation and issuance of a final decision in this matter, Mr. Mohler resigned from the Board of Appeals.

County Board of Appeals of Baltimore County

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

September 28, 2007

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

RE: *In the Matter of: Kevin Gombeski, Legal Owner /Petitioner*
Case No. 06-589-SPHA

Dear Mr. Zimmerman:

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

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

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: Kevin Gombeski
Howard L. Alderman, Jr., Esquire
Bruce E. Doak / GERHOLD CROSS & ETZEL LTD
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

FILE

Printed with Soybean Ink
on Recycled Paper

9/6/07

RE: PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE COUNTY
27 Thomas Shilling Court; E/S Thomas Shilling Court, 963' SE Trenton Mill Road	*	BOARD OF APPEALS
5th Election & 3rd Councilmanic Districts	*	FOR
Legal Owner(s): Kevin Gombeski		
Petitioner(s)	*	BALTIMORE COUNTY
	*	06-589-SPHA

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

RECEIVED
SEP 06 2007
BALTIMORE COUNTY
BOARD OF APPEALS

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MEMORANDUM

I. Background

This office's *de novo* appeal comes to the County Board of Appeals (CBA) from the Zoning Commissioner's (ZC) July 18, 2006 decision to grant a special hearing petition for a waiver to width standards and a variance from length standards governing panhandle driveways under Baltimore County Code Sec. 32-4-409. PC Exh. 12. People's Counsel challenges the legitimacy of the waiver and variance under this code section. The panhandle driveway waiver raises procedural as well as and substantive issues. The variance brings into play BCZR Sec. 307.1.

The purpose of the requested waiver and variance is to facilitate and accomplish the subdivision of Lot 7 of Piney Branch Farms. Petitioner's current site plan includes "DENSITY CALCULATIONS LOT 7" to justify the subdivision. Bruce Doak, Petitioner's surveyor, representative, and expert witness has acknowledged that the entire undertaking involves the resubdivision of Lot 7.

In this context, People's Counsel also challenges the proposed resubdivision. It conflicts with the law governing amendment of subdivision plans and tract density limits

for amendments of subdivision plats under Bills 100, 1970, 98-75, and 178-79 BCZR 1A00.4, 1A01.3, and 1B01.3. P.C. Exh. 7-10, 15. These issues are important because they affect any existing R.C. 2 Zone subdivisions platted prior to establishment of the R.C 2 Zone mapped in 1976 and/or the R.C. 2 Zone density controls imposed in 1979.

II. Scope of the Zoning Inquiry

Petitioner's counsel has argued that because the petition on its face requests only a waiver and variance to panhandle driveway requirements, there should not be any inquiry into other zoning issues. This ignores that the site plan and testimony reflect that the essential undertaking is for a subdivision of Lot 7, which necessarily brings into play the law pertaining to amendment of development plans and plats and the controlling density.

The essence of Petitioner's position, properly understood, is that a Petitioner may circumvent the zoning law simply by choosing and framing the relief requested in a petition while, at the same time, omitting or disregarding other zoning requirements. This is a false position. It is impermissible for the County Board of Appeals to approve a petition which disregards, ignores or conflicts with applicable law. Riffin v. People's Counsel 137 Md. App. 90, 96 (2001).

Here, the proposal for resubdivision is subject to the zoning law which governs amendments to final development plans and plats. Petitioner has failed to file the required special hearing for review under this law. In addition, the proposal conflicts with the the current law which forbids resubdivision in excess of the density limits for the entire tract. Petitioner cannot avoid these issues by framing the petition narrowly and selectively as a matter of panhandle driveway law.

III. Applicability of Present Law

Land use proposals must be reviewed under current law, in the absence of vested rights. Even if zoning laws change during litigation, the new law applies. Powell v. Calvert County 368 Md. 400 (2002); Layton v. Howard County 399 Md. 36 (2007). While rights here may have vested with respect to existing lots and dwellings, there are no vested rights for amendments, for resubdivision, or for newly created lots. Indeed, the general rule is that to obtain vested rights, a property owner must obtain a valid building permit and proceed to substantial above-ground construction with respect to the specific use. Prince George's County v. Sunrise Dev. LP 330 Md. 297 (1993), Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996); Collington Corporate Center v. Prince George's County 358 Md. 296, 306 (2000); Sterling Homes v. Anne Arundel County 116 Md. App. 206 (1997).

Moreover, in 2006, the County Council recently passed Bill 24. This amended County Code Secs. 32-4-104 and 32-4-262 to reinforce the point that all development, including material amendments to development plans, must comply with current law. PC Exh. 17. The explicit requirement that a development comply with present zoning law actually predated Bill 24-06. See Code Secs. 32-4-104(c) and 32-4-114(a) (2003). Bill 24 also codified the rule that a valid building permit and substantial construction are prerequisites to vested rights. Code Sec. 32-4-273.

There does not appear to be a genuine dispute that current law applies. Rather, the disputes relate to the interpretation, meaning, and application of current law.

IV. The Piney Branch Farms Plat and the Zoning History

a. Density issues: 1975-77: timing of the original plan and plat; the 1976 legislative zoning reclassification to the R.C.2 Zone; the 1979 strengthening of density controls

A close examination of the timing of the preparation, approval, and filing of the original plan and plat is important. The record reveals that in 1976, while the plan was in process between 1975 and 1977, the County Council reclassified the property from RDP (Rural Deferred Planning) to RC-2 (Agricultural). Remarkably, this change has important legal consequences for the present case.

W.T. Sadler Associates prepared the original "JSPC" plan for Piney Branch Farms. A copy is Pet. Exh. 2. The plan shows an original date of February 7, 1975. But there was a delay before it was approved and platted in 1977. The owner's certificate of compliance with Maryland law is dated September 22, 1977 and the Circuit Court Clerk's stamp shows that the plat was "Filed of record" on December 9, 1977. The date of approval by the Baltimore County Planning Board is difficult to read, but the incomplete marking of the year appears consistent with 1977 rather than 1975 (as there are parts of two relatively vertical lines). The dates of the Surveyor's Certificate, and approval by the County Health Officer and Roads Engineer are illegible, but they are all at the bottom of the plan along with the Owner's Certificate.

The notes on "Density Calculations" also reflect that several years elapsed between preparation of the plan and its approval and filing. The notes list the "EXISTING ZONING" as "RC-2 with an asterisk. There is a footnote which states,

"*PREVIOUSLY ZONED RDP – PRESENTLY ZONED RC 2, TENTATIVE EXTENSION BY PLANNING BOARD 2-17-77"

This corroborates that the Planning Board approved the plan in 1977. It also reflects the result of the 1976 legislative comprehensive zoning process, in which the Council mapped the recently enacted Resource Conservation Zones (Bill 98-75) and designated the Piney Branch Farms area as R.C. 2.

The RDP Zone was a rural zone enacted in Bill 100, 1970. BCZR 1A00. PC Exh. 4. This zone set a minimum lot acreage requirement of one acre, subject to percolation tests. BCZR 1A00.3.B.1. (1975). The "DENSITY CALCULATIONS" on the plan show the developer placed 7 lots on 36.6 net acres, with another 2.8 acres marked as "Tract A" and apparently not for development. The "NET DENSITY" was listed as "0.190 LOTS/AC. The lots ranged in size from 2.9 to 10 acres, with an average of just over 5 acres. The "PERMITTED NO. OF LOTS" was listed as "36." This reflected the original RDP permitted density. There was no correction made to reflect the much lower density allowed in the R.C. 2 Zone. A proper correction would not have precluded the proposed subdivision. But its omission has led to confusion in the present case.

Bill 98-75 created the Resource Conservation Zones (R.C.2, R.C. 3. R.C. 4 and R.C. 5). It repealed the RDP and companion RSC Zones. As originally enacted in Bill 98-75, the R.C. 2 Zone listed, for areas of more than 20 acres, a maximum density of 0.2, one lot per five (5) acres. BCZR 1A01.3.B.1.a. PC Exh. 7, p. 14-15. Here, as a consequence of the 1976 rezoning, Piney Branch Farms actually had a maximum of seven (7) permitted lots, exactly what was proposed.

The density calculations should have been corrected to reflect the R.C. 2 zoning reclassification, and to show the number of permitted lots as 7, not 36. There was no clause in the comprehensive zoning map ordinance to preserve RDP density for plats not yet approved and filed. Nor was there any provision in the plat approval process to immunize or extend preliminary plans so as to immunize them from legislative zoning reclassification. PC Exh. 16.

At the time, the failure to correct the density calculations did not immediately cause a substantial problem. After all, the RC-2 Zone still permitted seven lots, all that was proposed. But it left the errant implication that more lots might be allowed. This would eventually cause problems, which emerge in the present case.

In 1979, the County Council passed Bill 178. PC Exh. 8. It strengthened the subdivision lot density restrictions by amending BCZR 1A01.3.B.1. This subsection currently states, in PC Exh. 9, p. 1A-10,

> "1. Subdivision lot density. No lot of record lying within an R.C. 2 Zone and having a gross area of less than two acres may be subdivided. **No such lot having a gross area between two and 100 acres may be subdivided into more than two lots (total),** and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of one lot for each 50 acres of gross area. In cases where land in single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right-of-way or easement shall not be considered separate parcels for the purpose of calculating the number of lots of record." Emphasis supplied.

The Piney Branch Farms area is still classified in the R.C. 2 Zone. There has thus been no change in the zoning classification since 1976. If the entire area were subdivided for the first time today, the tract area (under 40 acres, even if Tract A is included), would

support a maximum of two lots. The developer was thus fortunate to have developed the property before the 1979 establishment of the stronger restrictions.

b. Panhandle driveway issues; history; the current law

The Piney Branch Farms plat includes a long panhandle driveway serving several lots: 2, 6, and 7. It is described in the 1978 Declaration of Restrictions. Pet. Exh. 5, para. 13. It extends over 2300 feet to Lot 7. There is a separate panhandle driveway serving Lots 3, 4, and 5. Pet. Exh. 5, para. 12. Each panhandle strip is 12 feet wide.

There is no note on the original plan. This is understandable because there was no county code provision controlling panhandle driveways until Bill 56 was passed in 1982, including Sec. 22-85 as then codified. PC Exh. 14. The County Council has amended the law several times, leading to the current Code Sec. 32-4-409. PC Exh. 12. It provides generally for controls on panhandle driveways and also includes several specific provisions, including the width and length limits which are the subjects of the special hearing and variance.

V. Petitioner's' present undertaking to resubdivide lot 7

Lot 7, at the end of the existing panhandle driveway, is about 10 acres in size and has an existing dwelling, with the address of 27 Thomas Shilling Court. In 2004 or 2005, Daniel Rosenberger, then the owner, engaged Bruce Doak, a licensed surveyor, to assist in the resubdivision of this lot. Rosenberger subsequently sold the lot to Kevin Gombeski in November, 2005 for a price of $522,000, according to state records. PC Exh. 2. Mr. Doak continued on to represent Mr. Gombeski in the effort to subdivide the property. Eventually, Petitioner filed the present petition on May 18, 2006.

The proposal carves out two new lots. Proposed Lot 7A, nearest to Thomas Shilling Court, would have 3 acres and a proposed dwelling. Proposed Lot 7B, farthest from the Court, would have about 7 acres, including the existing dwelling. The panhandle driveway would have to be extended to a length of 2690 feet to serve Lot 7B. This is almost three times the current maximum legal length of 1000 feet and is the subject of the variance request. In addition, the existing 12-foot panhandle strip owned by the owner of Lot 7 would have to be divided into two 6-foot strips, each less than the minimum of 10 feet. The proposed new strips are the subject of the waiver request.

Remarkably, neither Petitioner nor his representative, Mr. Doak, made a formal request to the Planning Director for a waiver pertaining to the minimum width standard. This is surprising because Code Sec. 32-4-409(k) assigns to the Planning Director the authority to review and grant waivers. Indeed, the CBA may take notice that Planning Director Arnold "Pat" Keller has reviewed such requests in several other cases. Rather, Petitioner bypassed the Planning Director and went straight for a petition to the Zoning Commissioner to waive the minimum width standard.

It is also remarkable that Petitioner, then represented by Mr. Doak, did not file a petition for special hearing to amend the final development plan (FDP) in conjunction with the special hearing and variance relating to the panhandle driveway requirements. This is a standard procedure required by law. BCZR 1A00.4, 1B01.3. It has been followed in cases such as Ranshell Holdings (PC Exh. 11) and many others reviewed at the ZC and CBA levels. The legal requirements for the FDP amendment are separate

from the panhandle waiver requirements. If a proper Petition had been filed, DZC Murphy might have focused on the density issue. In its absence, the DZC overlooked it.

Questions Presented

1. a. What is the appropriate procedure for amendment of a final development plan (FDP) and final subdivision plat in connection with resubdivision of a lot? Should Petitioners have filed a Petition to amend the FDP and final plat?

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

2. a. What are the appropriate procedures for panhandle driveway waivers and variances, and how do they relate to the development plan review process?

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

c. Is there any legal justification for a variance to the length requirements of the panhandle driveway law?

Argument

I. a. Petitioner failed to file the required petition for special hearing to amend the final development plan and plat.

The source of the law governing amendment of final development plans is Bill 100, 1970, which included BCZR 1B01.3 to regulate amendments in Density Residential Zones. In 1975, Council 98-75 extended this protection to Resource Conservation Zones by incorporation in BCZR 1A00.4.

For residential subdivisions where lots have been sold prior to a requested amendment, the law sets up a review process, which refers to special exception standards as well as consistency with the spirit and intent of the original plan. BCZR 1B01.3.A.7. This provides protection to the neighborhood, including other property owners in the subdivision. There are also the substantive provisions of BCZR 1B01.3.B.2, which control density and are critical in the present case. The Ranshell Holdings case, as noted, is just one example of an FDP amendment special hearing involving resubdivision.

Petitioners' desire to resubdivide Lot 7 clearly involves an amendment to the final subdivision plan and plat. Petitioner's Exhibit 2, the 1977 recorded plat, actually includes within it the so-called JSPC Plan approved by the Planning Board earlier that year. In other words, the plan and plat ultimately became combined in one document. As Mr. Doak had to admit, however named, the 1977 recorded plat included the last approved plan. Both the 1976 "JSPC" final development plan and the final record plats are in evidence. Mr. Doak admitted, as he had to, that the current request involves a change or amendment to what was approved in 1977.

If a proper special hearing petition had been filed, there would have been the fuller review required under the BCZR 1A00.4/1B01.3 criteria. In the absence of the petition, the DZC had no authority to approve this modified subdivision request in the guise merely of a panhandle driveway waiver and variance.. Neither does the CBA have any authority on *de novo* appeal.

It should also be underlined, parenthetically, that a property owner cannot properly avoid this process by obtaining a waiver and variance and then, in the mode of divide and

conquer, filing for a minor subdivision "refinement" via the Development Review Committee (DRC) process. The authority of the PDM Director, upon a DRC recommendation, to approve a "refinement" is limited to situations involving a "slight, minor, or insignificant [change] to an approved plan." Meadows of Greenspring Homeowners v. Foxleigh Enterprises Court of Special Appeals No. 2170, October 22, 2004. There, quoting the Baltimore County Development Policy Manual, the Court held that a reduction in the size of a proposed building was not a "refinement." Here, the addition of one lot in itself is significant. Moreover, if this lot were approved as a "refinement," others could follow without limit. This would undermine and negate the FDP Plan amendment law.

b. The proposed resubdivision conflicts with and exceeds the tract density limits set by the law governing amendment of subdivision plats.

Bill 100, 1970, the source of the law relating to amendment of final development plans and plats, established significant substantive standards, which remain to the present day. As noted, Bill 98, 1975 incorporated them for the R.C. Zones.

The most critical of these standards in the present case involves the aggregate limits on subdivision lot density for the entire tract. BCZR 1B01.3.B. 2 concludes,

> "It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. Zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. Zone(s) for the entire tract."

BCZR 1A00.4 cross-references and incorporates this provision into the law governing the Resource Conservation Zones. It states,

> "Plans and plats. Development plans and final subdivision plats shall be required in the manner prescribed under Section 1B01.3, and, for the purpose of this section, all references to D.R. Zones shall include the R.C. Zones."

There is nothing ambiguous about this law. Of course, the statutory reference to "the entire tract" refers to the entire subdivision, not just a single lot. Webster's Third New International Dictionary defines the word "tract," for the purpose here, as

> "**2 :** an area either large or small: as a (1) region or stretch (as of land) that is usu. indefinitely described or without precise boundaries <a few large –s for settlement> <the wooded – between the two rivers> <a great – of unexplored area (2) : a precisely defined or definable area of land <an 80 acre -- > <an urban census -- > ...."

The entire tract at issue in the present case is the 36.6 acre tract for the Piney Brook Farms subdivision. If the 2.8-acre "Tract A" is included, the entire tract amounts to just under 40 acres, The maximum density for an unimproved tract of this size under current law is 2 dwelling units. BCZR 1A03.B.1.a. The existing 7-lot subdivision already exceeds the density allowed under current law. From any point of view, there is no more subdivision allowed by law.

As to the equities, it is to be remembered that any existing farms in the R.C. 2 zone are subject to the current strong density restrictions. There is already disparity between their allowed density and the density of Piney Branch Farms. It should not be aggravated by a ruling which could double the density of this existing subdivision and have countywide implications.

Petitioner argues that the existing subdivision is below the density allowed under the "extended" R.D.P Zone density allowed at the time it was approved. Even if this were true, it would not be a legal excuse because BCZR 1B01.3.b.2 imposes a tract density

limit based on current law. To be sure, the R.D.P. Zone in 1975 would have allowed more than 7 lots based on the minimum lot size of one acre, subject to satisfactory percolation tests. But even if the plat were approved prior to the 1976 zoning reclassification to R.C. 2, there is no room for additional density under the current law explicitly stated in BCZR 1B01.3.B.2.

In any event, there is a fatal flaw in Petitioner's argument about Planning Board "extension" of RDP zoning to the 1977 plan/plat approval and filing This occurred after the 1976 legislative zoning reclassification. The Planning Board had no authority to extend the life of the repealed R.D.P. Zone. As it happened, the proposed 7 lots were the maximum permitted at the 0.2 lot per acre R.C. 2 Zone density allowed by Bill 98-75.

This brings us to the CBA's Ranshell Holdings opinion. PC Exh. 11. There, in denying another attempt to resubdivide involving the same 1979 R.C.-2 lot density, the CBA observed that the subdivision was at maximum density under the law applicable at the time it was approved. The CBA concluded, at pages 9-10,

> "It is the opinion of the Board that when the above Secs. 1B01.7.A and B and 1B01.B.2, as well as the spirit and intent of the law, are considered, the Petition for Special Hearing must be denied. At the time the original Keeney Mill Woods – East subdivision was created, the zoning regulation allowed for a density of five (5) lots on the 27+ acres of the subdivision. Had the Keeney Mill Woods – East subdivision been created today, the number of lots allowed would be two (2). This indicates that the spirit and intent of the law is to reduce the density in the rural agricultural zones.
>
> "For that reason, the Board considers that any amendment to a development plan must be the amendment to the final subdivision of Keeney Mill Woods – East, not the subdivision of Lot #1 of Keeney Mill Woods – East. In considering the entire tract of Keeney Mill Woods – East, there can be no further density allowed on the Keeney Mill Woods East tract, since all five density units that were allowed at the time the final subdivision plat was approved have been utilized."

While the CBA there was absolutely right to deny the special hearing and to recognize the "spirit and intent of the law to reduce the density in the rural agricultural zones," the CBA need not have highlighted the irrelevant fact that the subdivision was at its maximum density allowed when it was approved. The Ranshell Holdings proposal had to be denied because the addition of another lot would compound the excessive density with respect to the entire R.C. 2 Zone tract under current law. The CBA's discussion of allowable tract density under the earlier zoning regime was *dictum*, icing on the cake.

In sum, the current subdivision lot density control under BCZR 1B01.B.2 does not depend for implementation on whether the old subdivision was in its time platted to the maximum density then allowed. The statutory language looks forward under the current law, not backward to what the developer might have done under the old law. Moreover, as a practical matter, to argue about what a developer might have done in the distant past is fruitless and speculative. There may have been a variety of reasons why the developer here chose to plat and sell 7 homes, and no more. These may have included percolation issues, other environmental constraints, or market considerations. We do not know. This is not, and should not be, a consideration in the implementation of current law. It is enough that the Piney Branch Farms subdivision at issue in the present case is already over density under current law, and that no more is allowed.

Separately, Petitioner has submitted the Cher-Chris Construction Co. opinion. Pet. Exh. 8. This decision is distinguishable and inapplicable because the parcel at issue there was shown as a parcel in the original subdivision and within the allowed density. The evidence showed, on balance, that it was intended for development under that plan rather

than for open space. It was not a question of adding a new lot of record. Rather, it involved the development of an approved lot of record, which had not yet been utilized. That is a far cry from a proposal to create an entirely new lot.

It also came to light that in the early 1990s, Tract A was subdivided to create two additional lots. Indeed, Bruce Doak said that he helped bring this "minor subdivision" through the county review process. These additional lots just added to the already excessive density under the R.C. 2 Zone subdivision lot density controls. Unfortunately, the county reviewers missed this point and never required a zoning hearing. The dwellings are now there. Indeed, Loretta Gobrecht, an owner of one of these lots, appeared and testified. It is too late to undo the subdivision of Tract A. But it is not too late to prevent compounding the wrong by the subdivision of Lot 7.

It should be emphasized that the present case may affect all subdivisions now in the R.C. 2 Zone which were platted under earlier zoning classifications or the pre-1979 R.C.2 zoning regime. The CBA should not, therefore, view this case in isolation as just involving a single new lot. The case means more than that. As the poet John Donne and novelist Ernest Hemingway have written, ask not for whom the bell tolls, it tolls for me.

The Agricultural Zone involves the concept of ecology. It recognizes the interconnectedness of land uses in the agricultural areas. This recognition extends to the insidious impact of incremental encroachment of subdivision development, including the expansion and sprawl of existing subdivisions.

II. a. County Code Sec. 32-4-409 assigns to the Planning Director specifically the function to review and approve waivers relating to panhandle driveway width. It provides, on the other hand, that length deviations are subject to the variance process, which the Zoning Commissioner reviews in the first instance.

As noted earlier, legislative action to control panhandle driveways began in 1982 with Bill 56-82 and the codification in Code Sec. 22-85. PC Exh. 14. The current panhandle driveway law, as amended, is in Code Sec. 32-4-409. PC Exh. 12.

The interesting procedural aspect of this legislation is that subsection (k) assigns to the planning director the function of granting or denying waivers, except with respect to specified lot limits under subsection (d) and with respect to driveway length, which are subject to variance under subsection (e). The waiver provision sets specific statutory criteria for consideration by the planning director.

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

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

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

We thought initially that the way to reconcile the various provisions is to recognize the primary decision making function of the planning director, but to allow the zoning commissioner/hearing officer to utilize the public hearing process to review the planning director's decision for errors of law. Upon further analysis of the specific statutory assignments in Code Sec. 32-4-409 and the Capital Commercial Properties decision, it appears that the Planning Director has exclusive authority to grant panhandle driveway waivers. This is not a function of the Zoning Commissioner based either on his special hearing authority in BCZR 500.7 or his general waiver authority as hearing officer under Code Sec. 32-4-107. In contrast, the Commissioner does have authority under Code Sec. 32-4-409 and BCZR 307.1 to consider variances to panhandle driveway length. There is thus a division of authority between the Planning Director and the Zoning Commissioner concerning different panhandle driveway issues.

Here, unlike the experience in other recent cases, Petitioner did not even submit a request to the planning director for a waiver. Nor has the planning director requested the ZC/HO to approve a waiver. Therefore, even if Code Sec. 32-4-107 still could ever apply

to panhandle driveway waivers, it could not apply on this record. From any point of view, the ZC/HO is without authority here to grant a waiver under BCZR 500.7 with respect to panhandle driveway width. Correlatively, the County Board of Appeals lacks such authority upon *de novo* appeal. We will nevertheless address the merits of both requests.

b. There is no justification to waive the width requirements of the panhandle driveway law

The main thing is to understand the panhandle driveway law. Code Sec. 32-4-409. PC Exh. 12. The purpose of this law is to control and limit panhandle driveways because these driveways pose access problems for ordinary and emergency vehicles compared to driveways with direct access to public streets. Therefore, the law discourages them.

The terms "panhandle driveway" and "panhandle lot" are defined as follows, in Code Sec. 32-4-101(dd) and (ee),

> (dd) "*Panhandle driveway*" means the paved roadway that serves one or more abutting panhandle lots and provides vehicular access to the local street or to a collector street.
>
> (ee) "*Panhandle lot*" means a lot shaped and situated so that the only frontage or access to a local street or to a collector street is a narrow strip of land that:
>
> (1) Is held in-fee, except as provided in Sec. 32-4-409 of this title; and
> (2) May contain a panhandle driveway, water and sewer lines, and other utilities."

Code Sec. 32-4-409(a) is particularly important. It states the essential purpose of the law to allow panhandle driveways only in limited circumstances, where it passes all of the following tests,

"(a) In general

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

(i) To achieve better use of irregularly shaped parcels;
(ii) To avoid development in environmentally sensitive areas;
(iii) Where the lot will not be detrimental to adjacent properties; and
(iv) Where the lot will not conflict with efforts to provide for public safety and general welfare.

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

Here, there is just no evidence in this record that the Gombeski's proposal to create an additional panhandle lot here satisfies these criteria. It simply serves his financial or other interest in achieving the resubdivision of Lot 7. It serves no land use or environmental purpose.

It should be underlined, moreover, that the existence of a panhandle driveway approved prior to the establishment of legal controls does not furnish an excuse to manufacture new panhandle lots. The purpose of the law is to limit such lots, not to multiply them. The arguable indifference of other lot owners on the driveway is also not an excuse. There is a public interest in this matter. Remarkably, Ms. Gobrecht did appear to express a concern, properly understood, about a "pull-off" at or near her property.

To be sure, the law provides for a waiver under specified circumstances in Code Sec. 32-4-409(k),

"(k) Waiver. Except as provided in subsections (d) and (e) of this section, the Director of Planning may grant a waiver from any provision in this section or title if the Director finds:

(1) That the size, scope, and nature of the subdivision of land into three or fewer lots for residential single-family dwellings does not justify strict compliance with this section;
(2) That a waiver would be within the scope, purpose, and intent of this section; **and**

(3) Compliance with all other county ordinances and regulations."

Subsection (k)(1) appears to allow for the grant of a waiver only in situations where there are "three or fewer lots." Here, the proposal involves a 7-lot subdivision, with a proposed fourth lot on this panhandle driveway; so, right away there is a disqualification. Secondly, even if the proposal were otherwise eligible, the waiver test refers back in subsection (k)(2) to the scope, purpose, and intent of the section, expressed primarily in subsection (a), which again is not satisfied. Thirdly, under subsection (k)(3), there must be compliance with other county laws and ordinances.

Petitioner did not and could not properly address any of the statutory criteria in his Bruce Doak advocated for the waiver on the basis that otherwise Gombeski could not achieve his desire to resubdivide the lot. If that were a justification, then the law would be delusive and meaningless. It would collapse like a house of cards.

Mr. Doak placed a great deal of emphasis on the existing panhandle driveway, which already exceeds current length standards. He suggested that the addition of another panhandle lot is harmless and acceptable. The Court of Appeals rejected a similar argument long ago in Easter v. Mayor & City Council of Baltimore 195 Md. 395 (1950),

> "The fact that the lot is irregular has no bearing on the question, not is it material that three buildings, some distance to the north, extend to the building line. These may have been built before the passage of the Ordinance, or they may have been built under permit or without permit. As was said in Potts v. Board of Adjustment, 133 N.J.L. 230, 43 A.2d 850, 854: "Prior exceptions granted by the adjustment board are no in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function that is beyond the domain of the zoning board." See also the cases collected in a note 168 A.L.R. 13, 41-44. The same principle was announced and applied in Heath v. Mayor and City Council of Baltimore, supra,

Md., 58 A.2d 896, 898, Mayor and City Council of Baltimore V. Byrd, Md., 62 A.2d 588, 591, and Cassel v. Mayor and City Council of Baltimore, Md., 73 A.2d 486.

> The principal fact relief upon to justify an exception of the area and set-back rules, adopted in the general interest under the police power, is the existence of an exception on the adjoining lot. Undoubtedly this is detrimental to the applicant, although his case is somewhat weakened by his tacit acceptance of the situation over a period of years. But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. "It is by these gradual encroachments, individually of relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * * *." Dubin v. Wich, 120 N.J.L. 469, 200 A. 751, 754. In the case of non-conforming uses, the ordinance tolerates their continuance, but looks towards their ultimate elimination. Colati v. Jirout, supra. The same principle applies to special exceptions. Heath v. Mayor and City Council of Baltimore, supra, Md., 58 A.2d 896. Use variances area doubtless more serious than dimensional changes, but that is only a matter of degree." 73 A.2d 492-93

The Court of Appeals has consistently explained that zoning law disfavors nonconforming uses. Most recently, in Purich v. Draper Properties 395 Md. 694, 710 (2006), Judge Cathell repeated this quotation by Judge Rita Davidson in Prince George's County v. E.L. Gardner 293 Md. 259, 267 (1982) from Grant v. Mayor & City Council of Baltimore 212 Md. 301, 307 (1957),

> "Nonconforming uses have been a problem since the inception of zoning. Originally they were not regarded as serious handicaps to its effective operation; it was felt they would few and likely to be eliminated by the passage of time and restrictions on their expansion."

Judge Cathell also quoted the observation of the Gardner Court that local ordinances typically address the problem by placing "... various limitations upon the right to change, expand, alter, repair, restore or recommence after abandonment." 395 Md. at 711.

It is not feasible to eliminate the existing nonconforming panhandle driveway use serving dwellings in a subdivision platted prior to the enactment of panhandle driveway controls. But the change or expansion of the use is another matter. BCZR Sec. 104.1

reflects the general policy of Maryland zoning law to preclude changes and expansions of nonconforming uses. The existence of a nonconforming panhandle driveway use is thus not an excuse for expansion of the use to serve more lots.

Finally, Mr. Doak asserted that the proposal would not produce the adverse effects listed under BCZR Sec. 502.1, as if this were a special exception case. But that is not sufficient to pass the cumulative tests of Code Sec. 32-4-409(a). The first two of the four statutory criteria require affirmative proof of better use of irregularly shaped parcels and avoidance of environmentally sensitive areas. Mr. Doak said nothing about these issues. This is understandable because the proposal for a new lot had nothing to with them.

The last two of the four criteria do address adverse effects. But even here, Mr. Doak's testimony was conclusory and vague. He was insensitive to the purpose of panhandle driveway controls and gave the impression that it is a routine bureaucratic stamp of approval. It was telling that Ms. Gobrecht's testimony, albeit not professional, gave a better indication of the realistic problems associated with adding another lot and more traffic to a long and narrow panhandle driveway.

To the contrary, the record reflects that the proposal has nothing to do with the legislative purpose "to achieve better use of irregularly shaped lots" or "to avoid development in environmentally sensitive areas." Despite the obvious presence of the existing subdivision, the area is in the center of a significant Agricultural Zone. One of the main purposes of the R.C. 2 Zone is to guard against further incremental encroachment of residential development, especially on relatively small lots.

c. There is no legal justification for a variance to the length requirements of the panhandle driveway law.

There is also no justification for the requested variance to allow additional length to a nonconforming panhandle driveway, which already more than doubles current standards. There is nothing unique about the property that causes any practical difficulty. Cromwell v. Ward 102 Md. App. 691, 705-21 (1995) should serve as a constant reminder of the strictness of variance standards. The law forbids the dispensation of variances on the basis of convenience, financial advantage, or other personal reasons. A property owner may not properly avoid of land use restrictions applicable to all property owners in the area. Riffin v. People's Counsel 137 Md. App. 90 (2001).

Petitioner, already joint owner of Lot 6, purchased Lot 7 in 2005 for $522,000. He has full use of it. It is ample in size, 10 acres, and thus has plenty of room for residential and accessory uses. There is an existing dwelling. According to SDAT records, it was constructed in 1990. So far as Mr. Doak could say, Mr. Gombeski lives on Lot 6 and rents Lot 7. Mr. Doak does not seem to have visited the dwelling. Mr. Gombeski never testified, so he never actually described anything unique or any difficulty pertaining to Lot 7. The property is large enough to accommodate a nice garden or orchard, not to mention a swimming pool, athletic field or court, or other such uses.

The subdivision of any new lot in the R.C. 2 Zone and other zones is subject to the panhandle driveway law. The creation of a new lot here must satisfy the same standards applicable to the creation of any other new lot, whether in the Piney Branch Farms subdivision or elsewhere in the R.C. 2 and other zones.

Once again, Mr. Doak focused on the existing nonconforming panhandle driveway. In his view, several hundred feet more in length to serve a new panhandle lot would be insignificant. This misses the point, made earlier, that the law calls for the gradual elimination of nonconforming uses, not their accentuation and expansion.

Indeed, Mr. Doak admitted that his reasons for advocacy here could also support other panhandle lot waivers and/or variances in the Piney Branch Farms subdivision. This multiplier would further undermine the panhandle driveway law and the fabric of the approved subdivision. This is contrary to the spirit and intent of the zoning law and the public safety, health and welfare. McLean v. Soley 270 Md. 208, 213-14 (1973).

The main point is that there is no legal justification for a variance. There is no way to finesse or get around the meaning and proper implementation of BCZR 307.1.

The density issue should also be considered. Even if there were no issue relating to density, the CBA must deny the variance. But the violation of R.C. 2 Zone density limits is a compounding factor, in that BCZR 307.1 forbids the granting of a density variance. While the petition here on its face is for a variance to the panhandle driveway width, it is effectively a request for a density variance.

Pete 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 6 day of September, 2007, a copy of the foregoing People's Counsel for Baltimore County's Memorandum was mailed to Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204 , Attorney for Petitioner.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

854 A.2d 283

CAPITAL COMMERCIAL PROPERTIES, INC.

v.

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

No. 0388, Sept. Term, 2003.

Court of Special Appeals of Maryland.

July 19, 2004.

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

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

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

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

Affirmed.

1. Administrative Law and Procedure ⇐683

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

2. Administrative Law and Procedure ⇐751

Judicial review of administrative agency action is narrow.

3. Administrative Law and Procedure ⇐760

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

4. Administrative Law and Procedure ⇐791

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

5. Administrative Law and Procedure ⇐791

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

6. Administrative Law and Procedure ⇐760, 784.1

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

7. Administrative Law and Procedure ⇐796

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

8. Administrative Law and Procedure ⇐413, 796

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

9. Administrative Law and Procedure ⇐413

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

10. Administrative Law and Procedure ⇐413, 760

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

11. Zoning and Planning ⇐353.1

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

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

12. Zoning and Planning ⇐572

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

13. Zoning and Planning ⇐743

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

14. Zoning and Planning ⇐625

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

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

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

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

RODOWSKY, Judge.

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

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

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

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

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

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

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

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

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

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

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

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

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

" 'A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground

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

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

I. Compliance with § 50–29(c)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 59–E–5.51 in part states:

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

Section 59–E–6.1 in part states:

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

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

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

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

II. Substantial Evidence

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

9/6/07

BEFORE THE

COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

Case No. 06-589-SPHA

Kevin Gombeski, *Owner*

Petitioner

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27 Thomas Shilling Court
5th Election District
3rd Councilmanic District

PETITIONER'S POST-HEARING MEMORANDUM

Kevin Gombeski ("Owner" or "Petitioner"), by and through his undersigned legal counsel, hereby submits this Post-Hearing Memorandum in accordance with the direction of the County Board of Appeals for Baltimore County ("Board") at the conclusion of the hearing held on the above-referenced appeal, in lieu of closing argument.

STATEMENT OF THE CASE

This case is not about amendment of a previously approved final development plan. This case is not about approval of a minor subdivision plan nor about loss of unused, excess density as suggested by the Baltimore County Office of People's Counsel ("People's Counsel"). This case is about the Owner's request, pursuant to the Variance and broad Special Hearing authority vested in the Zoning Commissioner and this Board

by the *Baltimore County Zoning Regulations* ("BCZR") and the *Baltimore County Code* ("BCC"), for a waiver of minimum width of in-fee, panhandle driveway strips and a variance from the present, maximum allowed length of such strips for the existing driveway, as required for the creation of one additional lot to be served by an existing panhandle driveway. However, since the Zoning Commissioner, in *dicta*, acknowledged that the Owner's property could be subdivided with an additional lot and the majority of People's Counsel's case in this *de novo* appeal involved cross-examination of Petitioner's expert witness regarding the density available for Petitioner's subdivision of his property, that issue will be addressed in this memorandum.

The Petitioner owns a single lot of record, Lot No. 7 (the "subject property" or the "Owner's lot") in the "Piney Branch Farms" subdivision, which lot has access to a public road by a shared panhandle drive and which was zoned RDP (Rural Deferred Planning) [1] at the time of approval. Thereafter, its zoning classification was changed by the Baltimore County Council to RC-2. Utilizing the available density allocated to his lot by the County Council and the Zoning Regulations, the Owner intends to create, by subdividing the subject property, one lot with access to the public road by the existing, shared, panhandle driveway. Since the Owner's lot has a panhandle, in-fee strip out to the public roadway that is more narrow than currently required for two lots, a wavier was requested as

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[1] Prior to the enactment of the Resource Conservation Zones in 1975, much of northern Baltimore County was zoned RDP.

statutorily provided for by the County Council. Additionally, since the existing, paved driveway exceeds the current, maximum length of 1000 feet, a variance was required to validate the existing driveway length. After the requested waiver and variance were granted by the Zoning Commissioner, People's Counsel filed a timely appeal to this Board. At the conclusion of the testimony and evidence presented on the appeal, this Board requested post-hearing memoranda from the Petitioner and People's Counsel in lieu of closing argument.

THE EVIDENCE

The Owner had the burden of adducing testimony and documentary evidence in support of his request for a waiver from the current standards establishing a minimum width for a new panhandle fee strip where three or more lots share the same panhandle access and variance from the current, maximum allowed length[2]. The waiver request is not for reduction of the width of the existing, paved driveway. The Petitioner, present owner of Lot No. 7 as shown on the recorded subdivision plat entitled "Piney Branch Farms" ("**Plat**")[3], by the filing of the Petition for Special Hearing in this case, requested a waiver[4] from BCC § 32-4-409(b)(2) "to permit the creation of panhandle in-fee strips of 6 feet in

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[2] As acknowledged at the hearing, at the time the existing driveway was approved and installed, there was no maximum length specified.

[3] The Plat, recorded among the Plat Records of Baltimore County in Plat Book No. 42 at page 38, is in evidence as Petitioner's Exhibit No. 2.

[4] BCC § 32-4-409(k) permits waivers if the statutorily required findings are met.

width in lieu of the required minimum 10 feet in width where three or more lots are involved." The Petitioner also requested, pursuant to BCC § 32-4-409(e)(3), a variance of BCC § 32-4-409(e)(2) which established the maximum length of panhandle driveways in RC zones at 1000 feet. In support of his requests, the Owner presented Bruce E. Doak, an expert in Baltimore County zoning and development matters and a principal at Gerhold, Cross & Etzel, Ltd., the surveying, land planning, engineering and design firm that prepared the plan to accompany the Petitions for Variance and Special Hearing in this case. The testimony and evidence provided by Mr. Doak can be categorized within specific areas:

Plat:

- the Plat was recorded on December 8, 1977
- the Plat encompassed a gross land area of 38.4 ± acres
- a total of 7 lots and **Tract A** were shown on the recorded subdivision plat
- the subject property was created as Lot No. 7 when the Plat was recorded
- Lot No. 7 is approximately 10.5 acres in size
- Lot No. 7 was, at the time of recordation of the Plat, one of three lots, each having a 12 foot wide panhandle, in-fee strip out to Thomas Shilling Court, that share a common, paved driveway located within the area of those three strips
- assuming all other development requirements were met (i.e. well and septic), the land area comprising the land area shown on the Plat could have been subdivided into a total of 36 lots

- assuming all other development requirements were met (i.e. well and septic), the land area comprising the Owner's Lot No. 7 alone could have been subdivided into a total of **10 lots**

- since recordation of the Plat in **1977**, **Tract A** was subdivided in **1984** into two (2) lots, one of which uses the existing, panhandle driveway; the subdivision of **Tract A**, increases the total number of lots on the overall tract to 9 and the total number of lots using the existing, panhandle driveway to 4

Subject Property:

- the subject property is presently improved with the Petitioner's home

- on November 25, 1979 the subject property was an existing lot of record

- today, the subject property remains zoned RC-2

- the subject property has been held intact since it was created

- application of the current RC-2 zoning regulations (adopted November 25, 1979) permits the subdivision of the subject property into a total of two lots, one for the existing dwelling and one additional lot[5]

Panhandle Access:

- panhandle Lot Nos. 7 (the subject property), 2 and 6, as shown on the Plat, each have a 12 foot wide, in-fee strip to Thomas Shilling Court (referred to, collectively, herein as the "**Common Easement Area**")

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[5] The Baltimore County Development Review Committee, on November 9, 2004, approved the Petitioner's ability to process an amendment to the development plan for Piney Branch Farms [JSPC Plan] and will require an amendment to the Plat depicting the subdivision of the subject property. *See*, DRC Decision in Case - DRC No. 101804E, dated November 9, 2004. (Petitioner's Exhibit No. 7) **No appeal of that DRC action was taken.**

- the *Declaration of Restrictions*[6] dated June 22, 1978 and recorded at Liber 5901, folio 575, provides for shared maintenance and repair of the Common Easement Area and can be amended to accommodate additional lots using the panhandle access

- within the Common Easement Area is located a paved driveway that serves as the common access to the public road for these lots

- BCC § 32-4-409 (current regulations) requires panhandle fee strips of ten feet in width when three or more lots will be sharing the panhandle

- the subject property's panhandle fee strip is only 12 feet wide, therefore a waiver from the 10 foot requirement was sought to permit the existing Lot No. 7 and the proposed lot to each have a 6 foot wide land strip within the Common Easement Area

- the existing length of the panhandle driveway is approximately 2690 feet; the Petitioner's variance request is to permit that existing driveway to remain and to serve the all existing and the one additional lot proposed on the subject property

- if the requested relief is granted and the Petitioner is subsequently successful in subdividing the subject property, a total of five (5) lots will use the existing paved driveway located within the Common Easement Area (Lot Nos. 2, 6, existing 7, proposed lot in 7 and the Hoosier lot which was created when **Tract A** was subdivided in 1984)

- all construction and design requirements for panhandle drives, as set forth in BCC § 32-4-409 (other than the waiver and variance relief requested), including without limitation mail/trash pads, etc. will be observed

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[6] A copy of the *Declaration* is in evidence in this case as Petitioner's Exhibit No. 5.

Impact/Effect of Granting the Waiver Relief:

- Mr. Doak opined that the granting of the waiver relief would not be detrimental to the health, safety or general welfare of the community or tend to create congestion from traffic; the existing drive will function without adverse effect from one additional home

- In the opinion of Mr. Doak, the requested relief will not cause an overcrowding of the land or undue concentration of population or any potential hazard or danger

- There will be, in Mr. Doak's expert opinion, no interference with public facilities or adequate light and air if the requested relief is granted

- As evaluated by Mr. Doak, the requested relief is consistent with the property's RC-2 zoning classification, the subject property **is surrounded by other residential lots**, and it will not be detrimental to the environmental and natural resources of the subject property or the area in which it is located

- **Tract A**, subdivided in 1984 into two (2) lots, will not be impacted by the installation of any required driveway pull-overs; Mr. Doak testified that all required pull-overs can be installed in the existing panhandle easement area (*See*, Petitioner's Exhibit Nos. 3 & 4.)

Waiver Criteria:

- In Mr. Doak's expert opinion, the creation of an additional lot for improvement with a residential, single-family dwelling, to be served by an existing, functioning panhandle driveway does not justify strict compliance with the minimum, in-fee strip width where a fully functioning, paved driveway already exists

- Given that a single panhandle driveway for lots all greater than 20,000 square feet can serve up to seven (7) lots [5 internal lots and two dwellings having, but not using, frontage on the public roadway], the requested waiver relief is within the scope, purpose and intent of BCC § 32-4-409

- Mr. Doak acknowledged that all other County regulations, ordinances and policies will be met if the requested relief is granted

Variance:

- the variance relief requested is to permit the existing length of the paved driveway to remain and serve all existing and the one proposed lot

- the relief requested is the minimum necessary to validate the existing driveway under current regulations

THE PROTESTANTS' CASE

Presumably, the Protestants in this case are the "people" of Baltimore County. Only one witness was called by People's Counsel – Ms. Loretta Gobrecht who lives on a 1.2 acre lot created out of **Tract A**. No other "people" expressed any protest or dissatisfaction regarding the requested waiver relief. None of the Petitioner's other neighbors, **including without limitation those who will share the panhandle drive with the proposed new home** appeared in front of or wrote to the Zoning Commissioner or this Board to voice any opposition to, interest in or concern about the waiver request.

As Ms. Gobrecht noted in her direct testimony, if any of our neighbors were concerned [about the Petitioner's relief] "they would have been here!" Ms. Gobrecht's property binds directly on the public road known as Thomas Shilling Court and neither she nor her husband own any portion of the panhandle strips forming the Common Easement Area. The main concern expressed by Ms. Gobrecht is that she does not want any portion of any required driveway pull-over located on the property which she owns adjoining the

Common Easement Area. During her direct examination, Ms. Gobrecht stated candidly, "[a]s long as it [driveway pull-over] is not on my property, I don't care about where it is located."[7]

ARGUMENT

The Waiver Relief Requested from Panhandle Fee-Simple Strip Minimum Width for an Existing Panhandle Driveway

The requirements for panhandle driveways are set out in Title 32, **Subtitle 4**, Section 409 of the *Baltimore County Code* ("BCC"). At the request of a department director the hearing officer [and subsequently this Board] may "grant a waiver of any or all requirements of **Subtitles** 3, **4** and 5 of this title ...." (BCC § 32-4-107. Emphases added.) No doubt, People's Counsel will argue that the legislative assignment to the Planning Director is the only means by which a waiver of panhandle width may be granted by an attempt to focus solely on the provisions of BCC § 32-4-409(k). Even though the Planning Director is the initial point of contact for obtaining such a waiver, there is concurrent, specific and express, legislative authority vested in the hearing officer/the Board to grant waivers from any and all requirements of Subtitle 4 of Title 32 of the BCC. The County Council has specifically legislated that **only certain panhandle requirements**

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[7] This quotation is approximate, taken from the undersigned legal counsel's hearing notes. Also, after Ms. Gobrecht concluded all testimony, the Board took a break during which People's Counsel conferred privately with Ms. Gobrecht in the hall, outside of the hearing room. When the proceedings resumed, People's Counsel proffered that Ms. Gobrecht was confused in her testimony. Ms. Gobrecht was unwilling to return to the witness stand to correct any purported confusion in her comments.

cannot be waived by the hearing officer [Board] pursuant to the authority granted in BCC § 32-4-107. (BCC § 32-4-409(d)(4))[8]

The Baltimore County procedures for obtaining waivers from panhandle driveway requirements are not general in nature as in the case of *Capital Commercial Properties v. MNCPPC*, 158 Md. App. 83 (2004) There are two, different, specific and concurrent means of obtaining a waiver of panhandle driveway width. A waiver granted by the director of planning (BCC § 32-4-409(k)) or a waiver granted by the hearing officer/this Board (BCC § 32-4-107). In contrast, relief from maximum panhandle length can only be granted by way of variance (BCC § 32-4-409(e)(3)). Thus, the County Council provided alternate, but specific flexibility on obtaining relief on all panhandle driveway requirements except maximum length. In August of this year, this Board exercised its broad, statutory authority and granted a waiver of panhandle width for the RC-2 zoned lot

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[8] 32-4-409(d) as adopted provides:

Panhandle driveways.

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

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

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

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

owned by Niels H. Braid[9].

The Zoning Commissioner and this Board have broad authority under the Special Hearing statutory scheme of BCZR § 500.7. Given that the panhandle regulations limit the maximum number of lots that can be created on a panhandle, it was prudent to give other owners with the right to use the panhandle for subdivision of their property the right to be heard in a public forum. As noted above, except for Ms. Gobrecht whose principal concern was driveway pull-overs, none of the Owner's neighbors – including those who currently use the panhandle drive and have the right to subdivide their properties – had any concern with the special hearing or variance relief requested.

Mr. Doak's opinions regarding the statutory standards remain uncontradicted. The size, scope and nature of adding one lot to a fully functioning panhandle driveway located within the Common Easement Area do not justify strict compliance with the minimum panhandle width requirements. The paved improvements constructed within the panhandle access area are not constructed to the full width of the Common Easement Area. Pull-overs can be added (if necessary) to the existing, paved driveway area, within the Common Easement Area.[10] The existing paved section of the panhandle driveway, which functions

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[9] *In the Matter of Niels H. Braid,* Case No. 06-332-SPH, decided August 3, 2004; *Amended Opinion*, dated August 10, 2006; Motion for Reconsideration pending.

[10] *See* Petitioner's Exhibits Nos. 3 & 4.

for three (3) originally created lots[11], is approximately 12 feet or one-third (1/3) of the total width of the Common Easement Area (3 existing strips at 12 feet wide each). After the 1984 subdivision of **Tract A** into two (2) lots, one of those lots adjoins Thomas Shilling Court and the other uses the panhandle drive in the Common Easement Area. The driveway Declaration was amended to include the additional lot's access and use.

The paved portion of the driveway can be increased to its full available width of 36 feet, however, as noted by Mr. Doak, such widening is not required or necessary to add only one additional lot. Adding additional width to the Common Easement Area (if it were possible) to meet the minimum requirements would not add any additional safety or convenience for the additional lot to be created in the subject property.

The Variance Relief from Maximum Panhandle Driveway Length

The existing driveway already serves the subject property which, among all lots entitled to use the panhandle drive, is located farthest from Thomas Shilling Court. Mr. Doak described the subject property as irregular in shape and nearly twice as large as other lots in the Piney Branch Farms subdivision, as well as being bisected by an existing drainage and utility easement. These principal factors were included in Mr. Doak's uncontradicted testimony regarding the uniqueness of the subject property. Mr. Doak also noted that the Petitioner had no role in creating the existing Lot No. 7 or the location of the drainage and utility easement.

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[11] Lot Nos. 2, 6 and the subject property, Lot No. 7.

The relief requested is to validate an existing improvement which was constructed before there was any specified, maximum length for panhandle driveways. If granted, there will be no change in how access is obtained to each of the existing homes using the driveway. As noted by Mr. Doak, there is no other means of obtaining access to the subject property from Thomas Shilling Court or any other public roadway. No other variance relief is being sought by the Petitioner. In Mr. Doak's uncontradicted, expert opinion, the relief requested is the minimum relief necessary to prevent a disproportionate impact of the BCZR on the Petitioner such that he would be prevented from using his property for a permitted purpose and that the relief requested can be granted within the spirit and intent of the regulations as the County Council provided specifically for such relief. [BCC § 32-4-409(e)(3)] Finally, Mr. Doak testified that the requested relief will not be detrimental to the environmental or natural resources of the site or the properties in the vicinity of the subject property.

As noted by Mr. Doak, all other County "ordinances and regulations" will be complied with during the approval of the subdivision of the Owner's property. Thus, the Owner has met – without contradiction – the requirements for a waiver and variance to permit two panhandle lots (one existing and one proposed) to have panhandle strips of 6 feet each in lieu of the 10 feet required and the driveway to remain in its existing length. The Owner has properly presented this issue to the Zoning Commissioner and now this

Board[12] on appeal and the issuance of an Order by this Board granting the relief requested is justified on the testimony and evidence presented.

The Subject Property Can be Subdivided Into Two Residential Lots – One for the Owner's Existing Dwelling and One Additional Lot – Under the Current Zoning Classification As Well as the Prior Zoning Classification

The anticipated application bu People's Counsel's of this Board's ruling *In the Matter of the Application of Ranshell Holdings, LLC*, Case No. 03-225-SPH, decided February 26, 2004. is not only misplaced, it is completely contrary to that ruling. In *Ranshell Holdings*, the Petitioner owned an unimproved lot that was greater than 2.0 acres in size and zoned RC-2. That lot was one of five lots shown on the original developer's development plan and recorded plat. At the time of approval of that subdivision, the application of the RC-2 regulations as then adopted permitted a total of five lots on the total acreage platted. The original developer used all density then available in creating those five lots. After the property was subdivided, with each lot becoming a lot of record, the "lot density" provisions of the RC-2 zoning regulations were modified in 1979 to their current status:

1A01.3 Height and area regulations.

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[12] The Owner, unlike developers Bryan and Linda Roberts in the case captioned *In the Matter of the Application of Bryan M. and Linda G. Roberts*, Case No. 05-137-SPHA (People's Counsel Ex. No. 17), has presented a proper case to this Board and has not relied on some old policy that is now contrary to the Baltimore County Code. The Owner has presented uncontradicted testimony in support of the standards for granting of a waiver of panhandle width as adopted by the County Council. BCC § 32-4-409(k)

B. Area regulations. [Bill No. 178-1979]

1. Subdivision lot density. No lot of record lying within an R.C.2 Zone and having a gross area of less than two acres may be subdivided. **No such lot having a gross area between two and 100 acres may be subdivided into more than two lots (total)**, and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of one lot for each 50 acres of gross area. In cases where land in single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right- of-way or easement shall not be considered separate parcels for the purpose of calculating the number of lots of record. [Bill Nos. 199-1990; 125-2005]

2. Lot size. **A lot having an area less than one acre may not be created in an R.C.2 Zone.** (Emphases added.)

The lot later acquired by Ranshell Holdings, LLC was approximately 2.99 acres in size. It proposed to subdivide that lot under the current regulations into two lots, each a minimum of 1.0 acre in size. This Board ruled that when the Ranshell lot was created, the developer used all density available and that a subsequent regulatory change permitting further subdivision was inapplicable where no excess density existed at the time of original subdivision. People's Counsel will no doubt argue that because the 36 lots available at the time of recordation of the Plat were not used and only 7 lots and **Tract A** were created, all excess, remaining density was lost. The *Ranshell Holdings* case is inapposite to the subject property. Mr. Doak's uncontradicted testimony was that there was excess density when the Plat which includes the subject property was recorded. People's Counsel presented no evidence to the contrary.

In another case considered by the Board where the loss of "excess density"

argument was made by People's Counsel and its witnesses, Cher-Chris Construction Co., Inc. purchased what it believed was three (3) buildable lots. When attempting to obtain building permits it discovered that one of the 'lots' was shown on the approved development plan as "Tract A" and that the development plan contained a notation that – at the time approved – Tract A was "not for building purposes." At the time of original subdivision approval, that property had zoning density for nineteen (19) lots; only five (5) lots and Tract A were depicted on the subdivision plat, leaving density available for 14 lots unused at the time of plat recordation. The original owner also restricted the use of Tract A, by a private Declaration/covenant, to pasture use "until developed by the Developer, his successors or assigns." Cher-Chris followed the statutory requirements for amending a previously approved development plan and plat to remove the "not for building purposes" notation and to have Tract A re-designated as building lot 6. Unlike the present case, numerous neighbors testified in opposition to the relief requested in the *Cher-Chris* case alleging, *inter alia*, a loss of view, loss of home value, etc.

This Board, *In the Matter of the Application of Cher-Chris Construction Co., Michael Aiello, V.P.*, Case No. 03-264-SPH, decided March 30, 2004, considered the testimony of former County planner, Jack Dillon, who testified for People's Counsel in opposition to the relief requested by Cher-Chris. Mr. Dillon's unsupported opinion in that case was that since the original developer did not subdivide the property to the maximum

extent possible, all unused density was lost. In rejecting Mr. Dillon's 'expert theory'[13], this Board held:

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

Board Opinion, Cher-Chris Construction, Inc. at 7-8. (Emphasis added.)

Between the time the Cher-Chris lots were platted and the time that building permits were sought, the County Council rezoned the property from RC-5 to RC-7. This Board held that Tract A could be re-designated as a lot by amendment to the development plan and could be improved with one, single-family dwelling based on the provisions of the RC-7 regulations as adopted, given that not all of the available density was utilized when the property was initially subdivided.

Also analogous to the issues anticipated to be raised by People's Counsel in this case is this Board's decision and, on review, that of the Circuit Court for Baltimore County in the case captioned before the Board as *In the Matter of Haussner Family Limited*

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[13] Jack Dillon also testified on behalf of People's Counsel in opposition to the relief sought in the *Braid* case cited above. The Board again rejected Mr. Dillon's theory that excess density of the overall subdivision tract in which the *Braid* property was located, if not utilized at the time of initial plat recordation, was lost forever.

Partnership, Case No. CBA-05-133, decided January 25, 2006[14]. In that case, the Partnership subdivided, by way of minor subdivision, properties that it owned that were zoned RC-4 at the time of subdivision. Three lots were created and were lots of record when the County Council rezoned those lots to a classification of RC-2.[15] People's Counsel argued in the Haussner case that this Board's decision in *Ranshell Holdings* was controlling and that the three lots could not be further subdivided. Both this Board and the Circuit Court rejected People's Counsel's attempted application of *Ranshell Holdings* to property developed initially under one zoning classification and proposed for re-subdivision after the County Council changed the zoning to RC-2. The fact that the Haussner case involved approval of a development plan rather than a Petition for Special Hearing is not germane. The underlying issue of density as approved in the Haussner case is directly on point.

People's Counsel will attempt to blur the distinction between the terms "lot" and "tract" by suggesting that after rezoning all lots shown on the Plat (including the subject property) to a classification of RC-2, the original development tract is actually developed in excess of its permitted density.[16] To accept that absurd result, one must ignore totally

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[14] A copy of the Circuit Court's decision in the *Haussner* case is attached hereto as Exhibit A.

[15] Recall that in the instant case the subject property was zoned RDP and subsequently zoned RC-2.

[16] If the land shown on the Plat had not been previously subdivided and was presented for development for the first time today, only two (2) lots could be created (continued...)

the County Council's express use of the term "lot of record" in defining density in the RC-2 Zone. BCZR § 1A01.3B.1 The Court of Appeals of Maryland has long held that "where the language of a statue is plain and unambiguous, the judicial construction cannot be controlled by extraneous considerations and no custom, however venerable, can nullify the plain meaning and purpose of a statute.' *Hope v. Baltimore County,* 288 Md. 656, 662 (1980) When interpreting a statute or regulation, its meaning and intent are to be derived or gleaned from the language used by the legislators that adopted it – "[l]aws are made for men of ordinary under-standing and should therefore be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties, which may make anything mean everything or nothing at pleasure." Letter from Thomas Jefferson to William Johnson, June 22, 1823, quoted in *Gnau v. Seidel*, 25 Md. App. 16, 23-24 (1975).

Upon being required to interpret applicable statutes and regulations, the Court of Special Appeals of Maryland has held that:

> When engaged in statutory construction, it is well settled that not only should this Court begin its investigation with the words of the statute, but we are bound by those words if their import is clear and unambiguous: The statutory language itself provides the clearest indication of the legislative intent and is thus the primary source for all statutory construction. We also adhere to the principle that the court should confine itself to construing the statute according to the ordinary and natural signification of the words used without resorting to subtle or forced interpretations designed to limit or extend the operation of the statute. When the words used convey a clear and

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[16](...continued)
because it is between 2 and 100 acres in size. BCZR § 1A01.3B.1

> plain meaning, there is no need to look beyond the statute to ascertain the legislative intent. Stated differently, when the statute is free from ambiguity, the court may not disregard the natural impact of the words so as to make the statute express an intention which is different from its plain meaning.

UPS v. Comptroller of Treasury, 69 Md. App. 458, 469-70 (1986) (Citations omitted.) (Emphasis added.)

The Maryland Court of Appeals, called upon to determine whether or not a snake is a farm animal under the BCZR, concurred:

> We have said that '[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. Legislative intent must be sought first in the actual language of the statute. Where the statutory language is plain and free from ambiguity, and expresses a definite and simple meaning, courts normally do not look beyond the words of the statute to determine legislative intent.'

Marzullo et al. v. Peter A. Kahl, 366 Md. 158, 179 (2001) (Citations omitted.)

The County Council specified that the size of a "lot of record" in the RC-2 zone is to be used to determine if it can be subdivided. *See* BCZR § 1A01.3B.1 and the discussion above. In the instant case, the subject property, a lot of record, is a "portion" of the development tract shown originally on the approved development plan and the Plat. So long as the re-subdivision of this lot of record/"portion" of the original development tract does not exceed the total number of units allowed at the time of approval of the original development plan, no violation of applicable density regulations exists. *See* BCZR § 1B01.3B.2 [People's Counsel Ex. No. 10]; *See also*, *Cher Chris, supra*

On cross-examination of Mr. Doak, People's Counsel presented Petitioner's expert witness with excerpts of the BCZR in an attempt to bolster People's Counsel's tract density

argument.[17] Mr. Doak was requested to acknowledge that pursuant to BCZR 1A00.4, "[d]evelopment plans and final subdivision plats shall be required in the manner prescribed under Section 1B01.3, and, for the purpose of this section, all references to D.R. Zones shall include the R.C. Zones." Mr. Doak was then requested to read into the record, the highlighted, last sentence of BCZR § 1B01.3B.2 which provides that: "[I]t is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. Zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. Zone(s) for the entire tract."

In response to People's Counsel's picking and choosing selected, partial provisions of sections of the BCZR, on cross-examination Mr. Doak was requested to read into the record the balance of BCZR §1B01.3B.2 which People's Counsel expressly omitted in its attempt to obfuscate the density issue. The remainder of that zoning regulation provides that:

> No subdivision of a tract or a portion of a tract may be created after the effective date of this article, except as otherwise provided under Section 1B02.3.A.2 **unless the final subdivision plat therefore contains a summary showing the total number of dwelling or density units allowed for the entire tract under the applicable D.R. Zones**. The summary shall indicate, as appropriate, the number of dwelling or density units utilized by previous final subdivision plats for portions of the same tract, the number of dwelling or density units contained in the current subdivision plat, and the balance of dwelling or density units allowed for the remainder of the tract under the applicable D.R. Zone(s). (Emphasis added.)

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[17] *See* People's Counsel Exhibit Nos. 9 & 10 – selected excerpts of BCZR Articles 1A & 1B, respectively.

Mr. Doak was requested to review Petitioner's Exhibit No. 2, the "**final subdivision plat**" for Piney Branch Farms, regarding the "**total number of dwelling or density units allowed for the entire tract**". In the "Density Calculations" shown on the Plat, the total number of lots [density is expressed in terms of "lots" in the RC zones, as opposed to dwelling or density units in the DR zones[18]] allowed on the platted property is 36.

The proposed lot to be created in the subject property will increase the total number of lots in the subdivision to 10, far less than the 36 allowed per the recorded, final subdivision plat. Mr. Doak, applying the statutory scheme developed by the County Council as interpreted by prior decisions of this Board, testified that the lot of record which is the subject property will be developed under and will meet the requirements of the subject property's present zoning classification of RC-2.

SUMMARY and CONCLUSION

This case is about a variance for the length of an existing panhandle driveway and the waiver of the width of a panhandle, fee simple strip of land – not the width of paved driveway access or driveway pull-overs. The Owner produced uncontradicted evidence and testimony that the requirements for the waiver and variance are met. The only evidence presented in opposition was the purported concern by a single, lay witness that driveway pull-overs would be placed on her property and outside of the three, 12 foot wide panhandle strips.

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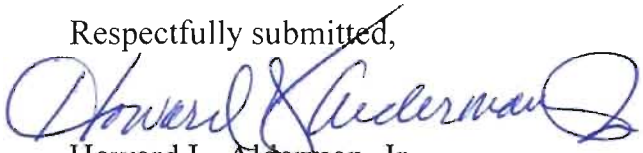
[18] *See, Hayfields, Inc. v. Valleys Planning Council*, 122 Md. App. 616 (1998)

The majority of the testimony and evidence in this case was obtained from direct and cross-examination of Petitioner's expert witness regarding whether or not the Owner has sufficient density to subdivide his lot for one additional home. The approved and recorded final subdivision plan sets forth clearly that excess density existed at the time of recordation. The subject property was a 10.5 acre lot of record on November 25, 1979 [the effective date of the lot density provisions of the RC-2 zone] and has not been subdivided since that date. Therefore, because it is between 2 and 100 acres, it can be subdivided and developed in accordance with the current RC-2 zoning regulations. This Board has ruled in two, prior cases that available density, but unused on an approved development plan is not lost. The relief should be approved as requested by the Owner/Petitioner.

Respectfully submitted,



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of September, 2007, one copy of the foregoing Petitioner's Post-Hearing Memorandum, was mailed, postage prepaid, First Class United States Mail to the following:

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

and

Mr. Kevin Gombeski
27 Thomas Shilling Court
Upperco, Maryland 21155-9334

and

Michael L. Snyder, Esquire
Coady & Farley
400 Allegheny Avenue
Towson, Maryland 21204

and

Bruce E. Doak, PLS
Gerhold, Cross & Etzel, Ltd.
320 East Towsontown Boulevard, Suite 100
Towson, MD 21286

Howard L. Alderman, Jr.

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, ET AL.	*	**IN THE**
	*	**CIRCUIT COURT**
	*	**FOR**
IN THE MATTER OF: PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, ET AL.	*	**BALTIMORE COUNTY**
	*	Attachment A
	*	
Case No. CBA-05-133 before the Board of Appeals of Baltimore County	*	**CASE NO: 03-C-06-001697**
	*	

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

OPINION

This case came before the Court as an administrative appeal from the January 25, 2006 decision of the Baltimore County Board of Appeals. The underlying appeal concerns the decision of the Baltimore County Zoning Commissioner Hearing Officer to approve a red-lined development plan on June 28, 2005, and to deny a Motion for Reconsideration of the approval.

Procedural History

This matter was presented to the Hearing Officer as a proposal to subdivide each of three existing lots of record that are currently zoned R.C.2. The development plan would create a total of six lots at the southwest corner of Bluemont and Wesley Chapel Roads in northern Baltimore County.

Pursuant to the Development Regulations of Baltimore County, a Concept Plan conference was held on May 10, 2004, and two Community Input Meetings were held on July 21 and August 2, 2004. The Development Plan was then submitted, and a Development Plan Conference was held on May 25, 2005. The Development Plan Comments called for minor changes and recommended approval of the Development Plan. A Hearing Officer's Hearing

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

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

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

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

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

Scope of Review

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

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

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

Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

10/26/06
Date

DANA M. LEVITZ, Judge

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

7/19/06

IN RE: **PETITIONS FOR SPECIAL HEARING and VARIANCE** – S/end Thomas Shilling Court, 963' SW of Trenton Mill Road **(27 Thomas Shilling Court)** 5th Election District 3rd Council District

Kevin Gombeski
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 06-589-SPHA
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owner of the subject property, Kevin Gombeski. The Petitioner requests a special hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a waiver, pursuant to Section 32-4-409(b)(2)(ii) of the Baltimore County Code (B.C.C.) to allow two panhandle driveway strips with individual widths of 6 feet in lieu of the required 12 feet each. In addition, variance relief is requested from Section 32-4-409(e)(2) of the Code to allow panhandle driveway lengths of 2,370 feet and 2,690 feet for proposed Lots 7A and 7B, respectively, in lieu of the maximum allowed 1,000 feet. 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 Kevin Gombeski, property owner, and Bruce E. Doak, the Surveyor who prepared the site plan for this property. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is an irregular shaped parcel located at the end of a lengthy panhandle driveway leading into the property from the southern end of Thomas Shilling Court, which is west of Trenton Mill Road in northern Baltimore County. The property contains a gross area of 10.456 acres, more or less, zoned R.C.2, and is improved with a single-family dwelling, known as 27 Thomas Shilling Court, in which the

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By

Petitioner resides. The Petitioner is desirous of subdividing the property to create two separate building lots. Proposed Lot 7A would consist of 3.02 acres, and is proposed for development with a single family dwelling. Lot 7B would consist of 7.43 acres and retain the existing improvements. The property is also known as Lot 7 of the Honey Branch Farms subdivision, which was created before 1979, and thus, may be subdivided one time. At issue in the instant case, however, is the proposed access to the newly created lots via an extension of the existing panhandle driveway, which is presently only 12 feet wide and 2,000-plus feet long. In that Section 32-4-409(b)(2)(ii) of the Baltimore County Code requires a minimum panhandle width of 16 feet, the requested special hearing relief is necessary. Moreover, in that the existing panhandle driveway exceeds the maximum allowed 1,000-foot length, variance relief is requested to allow proposed panhandle strip lengths of 2,370 feet for Lot 7A and 2,690 for Lot 7B.

In support of the proposal, the Petitioner testified that all of his neighbors are aware of his plans and have no objections; however, expressed concerns that the existing driveway remain at its present width to keep speeds and traffic down to a minimum. Mr. Gombeski testified that he will provide pull-off areas every 300 feet along the driveway to allow emergency vehicles to pass and provide a tee-turn around at the end of the existing driveway on his property. Finally, he noted that his property is surrounded by the Piney Branch Golf Course and as such, the proposed minor subdivision and related access will have no adverse impacts on any adjacent property. It is also to be noted that the requested variances are "internal" only and will not adversely impact any adjoining property.

After due consideration of all of the testimony and evidence presented, I am persuaded to grant the requested waiver and variance relief. As noted above, no one appeared in opposition to the request and the neighbors support the proposal. Moreover, there were no adverse Zoning Advisory Committee (ZAC) comments received from any County reviewing agency. I find that the Petitioners have met the requirements of Section 307 and *Cromwell v. Ward,* 102 Md. App. 691 (1995) for relief to be granted and that strict compliance with the regulations would result in a practical difficulty and unreasonable hardship upon the Petitioner. I further find that relief can be

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granted without detrimental impact to adjacent properties or the surrounding locale. However, as a condition of approval, the Petitioner shall amend the current shared driveway agreement to include new Lot 7A and resulting change in driveway percentage maintenance contributions. Moreover, the Petitioner shall provide pull-off areas every 300 feet along the existing panhandle driveway and provide a tee turn-around at the end of same at his property, in accordance with the redlined changes made to Petitioner's Exhibit 1 at the hearing.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 18th day of July 2006 that the Petition for Special Hearing to approve a waiver, pursuant to Section 32-4-409(b)(2)(ii) of the Baltimore County Code (B.C.C.) to allow two panhandle driveway strips with individual widths of 6 feet each in lieu of the minimum required 12 feet; and variance relief from Section 32-4-409(e)(2) of the Code to allow panhandle driveway lengths of 2,370 feet and 2,690 feet for proposed Lots 7A and 7B, respectively, in lieu of the maximum allowed 1,000 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason this order is reversed, the Petitioner shall be required to return, and be responsible for returning said property to its original condition.

2) Within ninety (90) days from the date of this Order, Petitioner shall amend the existing driveway covenant (use in common maintenance agreement) to include proposed Lot 7A, a copy of which shall be recorded with the record plat for the proposed dwelling.

3) Prior to the issuance of any use and occupancy permits for the new dwelling, the Petitioner shall improve the existing use in common right-of-way with pull-off areas every 300 feet to accommodate the passage of emergency vehicles, and provide a tee turn-around on Petitioner's

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By D. Wiseman

property, in accordance with the redlined changes made on Petitioner's Exhibit 1.

4) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this Decision must be made within 30 days of the date of this Order.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

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Date 7-18-09
By D. Wisemp

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

July 18, 2006

WILLIAM J. WISEMAN III
Zoning Commissioner

Mr. Kevin Gombeski
27 Thomas Shilling Court
Upperco, Maryland 21155-9334

RE: **PETITIONS FOR SPECIAL HEARING & VARIANCE**
S/end of Thomas Shilling Court, 963' W of the c/l Trenton Mill Road
(27 Thomas Shilling Court)
5th Election District – 3rd Council District
Kevin Gombeski - Petitioner
Case No. 06-589-SPHA

Dear Mr. Gombeski:

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

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

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

cc: Mr. Bruce E. Doak, Gerhold, Cross & Etzel
320 E. Towsontown Boulevard, Suite 100, Towson, Md. 21286
Development Plans Review; People's Counsel; Case File

Petition for Variance

AND SPECIAL HEARING

to the Zoning Commissioner of Baltimore County

for the property located at 27 THOMAS SHILLING COURT

which is presently zoned R.C. 2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

SEE ATTACHED

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

SEE ATTACHED

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

KEVIN GOMBESKI

Name - Type or Print

Signature

Name - Type or Print

Signature

27 THOMAS SHILLING COURT 410-771-9426

Address Telephone No.

UPPERCO MD 21155-9334

City State Zip Code

Representative to be Contacted:

BRUCE E. DOAK

Gerhold, Cross & Etzel, Ltd.

Name

320 E. Towsontown Blvd #100 410 823-4470

Address Telephone No.

Towson MD 21286

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BK Date 5/18/06

Case No. 06-589-SPHA

ORDER RECEIVED FOR FILING

Date 5/18/06

By

REV 9/15/98

27 THOMAS SHILLING COURT

VARIANCES REQUESTED

BALTIMORE COUNTY CODE:

SECTION 32-4-409 (e) (2)
TO ALLOW PANHANDLE STRIPS OF 2370' (PROPOSED LOT 7A) AND 2690' (PROPOSED LOT 7B) IN LIEU OF THE MAXIMUM PERMITTED 1,000'

SPECIAL HEARING REQUESTED

BALTIMORE COUNTY CODE:

SECTION 32-4-409 (b) (2) ii
WAIVER TO ALLOW 2 PANHANDLE STRIPS HAVING INDIVIDUAL WIDTHS OF 6' IN LIEU OF THE REQUIRED 12'

#589

Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

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

May 05, 2006

ZONING DESCRIPTION
Gombeski Property
27 Thomas Shilling Court
Baltimore County, Maryland

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

Beginning for the same at a point at the terminal end of Thomas Shilling Court, 963' from the intersection with Trenton Mill Road, thence leaving the end of Thomas Shilling Court in a Southwesterly direction and running thence,

1) Along the Right of Way on Thomas Shilling Court by a line curving to the right having a radius of 50 feet for an arc distance of 6.01 feet (the chord of said arc bearing South 86 degrees 00 minutes 12 seconds West 6.01 feet),
2) Along the Right of Way on Thomas Shilling Court by a line curving to the right having a radius of 50 feet for an arc distance of 6.02 feet (the chord of said arc bearing North 87 degrees 06 minutes 05 seconds West 6.02 feet),
3) South 00 degrees 32 minutes 11 seconds East 467.94 feet,
4) South 06 degrees 44 minutes 44 seconds West 206.52 feet,
5) Curving to the right having a radius of 148 feet for an arc distance of 119.94 feet (the chord of said arc bearing South 29 degrees 57 minutes 46 seconds West 116.69 feet),
6) South 53 degrees 10 minutes 47 seconds West 89 feet,
7) Line curving to the left having a radius of 150 feet for an arc distance of 125.66 feet (the chord of said arc bearing South 29 degrees 10 minutes 47 seconds West 122.02 feet),
8) Line curving to the left having a radius of 160 feet for an arc distance of 230.38 feet (the chord of said arc bearing South 36 degrees 04 minutes 13 seconds East 210.99 feet),
9) South 77 degrees 19 minutes 13 seconds East 329.02 feet,
10) South 64 degrees 40 minutes 21 seconds East 706.21 feet,
11) South 14 degrees 57 minutes 09 seconds East 259.87 feet,
12) South 32 degrees 10 minutes 25 seconds East 769.51 feet,

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

#589

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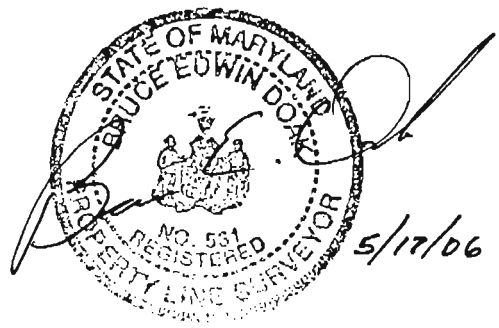
13) North 22 degrees 30 minutes 25 seconds East 908.45 feet,
14) North 71 degrees 51 minutes 02 seconds West 684.44 feet,
15) North 64 degrees 40 minutes 21 seconds West 583.34 feet,
16) North 64 degrees 40 minutes 21 seconds West 112.00 feet
17) North 77 degrees 19 minutes 13 seconds West 330.35 feet,
18) Line curving to the right having a radius of 148 feet for an arc distance of 213.10 feet (the chord of said arc bearing North 36 degrees 04 minutes 10 seconds West 195.16 feet),
19) North 05 degrees 10 minutes 47 seconds East 100 feet,
20) Line curving to the right having a radius of 138 feet for an arc distance of 115.61 feet (the chord of said arc bearing North 29 degrees 10 minutes 47 seconds East 112.26 feet),
21) North 53 degrees 10 minutes 47 seconds East 89 feet,
22) Line curving to the left having a radius of 160 feet for an arc distance of 129.67 feet (the chord of said arc bearing North 29 degrees 57 minutes 46 seconds East 126.15 feet),
23) North 06 degrees 44 minutes 44 seconds East 207.28 feet,
24) North 00 degrees 32 minutes 11 seconds West 468.71 feet to the point of beginning.

Containing 461373.91 sq. ft. or 10.45 Acres of land, more or less.



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

#589

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: # 06-589-SPHA
27 Thomas Shilling Court
East side of Thomas Schilling Court, 963 feet southeast of Trenton Mill Road
5th Election District — 3rd Councilmanic District
Legal Owner(s): Kevin Gombeski

Variance: to allow panhandle strips of 2370 feet (proposed lot 7A) and 2690 feet (proposed lot 7B) in lieu of the maximum permitted 1,000 feet.

Special Hearing: (Section 32-4-409(b)(2)ii) Waiver to allow two panhandle strips having individual widths of 6 feet in lieu of the required 12 feet.

Hearing: Thursday, July 13, 2006 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 6/752 June 27 100171

CERTIFICATE OF PUBLICATION

6/29/, 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 6/27/,2006.

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

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 5056

DATE 5/18/06 ACCOUNT 1001-000-6150

AMOUNT $ 260.00

RECEIVED FROM: Gerhold Cebulski, LTD

FOR: Variance & Special Hearing

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Folio # 459

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
5/18/2006	5/18/2006	09:17:01	4

REG WS06 WALKIN KINCH KOA
>>RECEIPT # 475768 5/18/2006 OFLN
Dept 5 520 ZONING VERIFICATION
CR NO. 006056
Rcpt Tot $260.00
$260.00 CK 0.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

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

CERTIFICATE OF POSTING

RE: CASE# 06-589-SPHA
PETITIONER/DEVELOPER:
Kevin Gombeski
DATE OF HEARING: July 13, 2006

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

ATTENTION: KRISTEN MATTHEWS

LADIES AND GENTLEMEN:

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

LOCATION:
27 Thomas Shilling Court

(see page 2 for full size photo)

POSTED ON: June 22, 2006

SIGNATURE OF SIGN POSTER

John J. Dill

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

ZONING NOTICE
CASE #
A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.
PLACE:
06/22/2006

ZONING NOTICE
CASE # :06-589-SPHA
A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD.
PLACE: Room 407 County Courts Building 401 Bosley Avenue, Towson, MD
11:00 AM Thursday, July 13, 2006
Variance to allow panhandle strips of 2370 feet (proposed lot 7A) and 2690 feet (proposed lot 7B) in lieu of the maximum permitted 1,000 feet.
Special Hearing (Section 32-4-409(b)(2)ii) waiver to allow two panhandle strips having individual widths of 6 feet in lieu of the required 12 feet.
HEARINGS ARE HANDICAPPED ACCESSIBLE
06/22/2006

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 06-589-SPHA

Petitioner: KEVIN GOMBESKI

Address or Location: 27 THOMAS SHILLING COURT

PLEASE FORWARD ADVERTISING BILL TO:

Name: KEVIN GOMBESKI

Address: 27 THOMAS SHILLING COURT

UPPERCO, MD 21155

Telephone Number:

Revised 7/11/05 - SCJ

TO: PATUXENT PUBLISHING COMPANY
Tuesday, June 27, 2006 Issue - Jeffersonian

Please forward billing to:
Kevin Gombeski 410-771-9426
27 Thomas Schilling Circle
Upperco, MD 21155

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: 06-589-SPHA
27 Thomas Shilling Court
East side of Thomas Schilling Court, 963 feet southeast of Trenton Mill Road
5th Election District – 3rd Councilmanic District
Legal Owners: Kevin Gombeski

Variance to allow panhandle strips of 2370 feet (proposed lot 7A) and 2690 feet (proposed lot 7B) in lieu of the maximum permitted 1,000 feet. Special Hearing (Section 32-4-409 (b) (2) ii) Waiver to allow two panhandle strips having individual widths of 6 feet in lieu of the required 12 feet.

Hearing: Thursday, July 13, 2006 at 11:00 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.

Department of Permits
Development Management

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

Baltimore County

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

May 31, 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: 06-589-SPHA
27 Thomas Shilling Court
East side of Thomas Schilling Court, 963 feet southeast of Trenton Mill Road
5th Election District – 3rd Councilmanic District
Legal Owners: Kevin Gombeski

Variance to allow panhandle strips of 2370 feet (proposed lot 7A) and 2690 feet (proposed lot 7B) in lieu of the maximum permitted 1,000 feet. Special Hearing (Section 32-4-409 (b) (2) ii) Waiver to allow two panhandle strips having individual widths of 6 feet in lieu of the required 12 feet.

Hearing: Thursday, July 13, 2006 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Kevin Gombeski, 27 Thomas Shilling Circle, Upperco 21155-9334
Bruce Doak, 320 E. Towsontown Blvd., Ste. 100, Towson 21286

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, JUNE 28, 2006.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed on Recycled Paper

APPEAL SIGN POSTING REQUEST

CASE NO. 06-589-SPH

27 THOMAS SHILLING COURT

5TH ELECTION DISTRICT APPEALED: 7/7/2006

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.: 06-589-SPH

LEGAL OWNER: KEVIN GOMBESKI

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

27 THOMAS SHILLING COURT

MAP 9B5

The sign was posted on 4/26/07, 2006.

By: _____
(Signature of Sign Poster)

Jeff Radcliffe
(Print Name)

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

April 26, 2007

NOTICE OF ASSIGNMENT

CASE #: 06-589-SPHA

IN THE MATTER OF: KEVIN GOMBESKI – Legal Owner /Petitioner
27 Thomas Shilling Court 5th E; 3rd C

7/18/06 – Z.C.'s Order in which requested special hearing and variance relief GRANTED with restrictions.

ASSIGNED FOR: **TUESDAY, JULY 3, 2007 at 10:00 a.m.**

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

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

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

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

Kathleen C. Bianco
Administrator

c: Appellant : Office of People's Counsel

Petitioner : Kevin Gombeski

Bruce E. Doak / GERHOLD CROSS & ETZEL LTD

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

Printed with Soybean Ink on Recycled Paper

County Board of Appeals of Baltimore County

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

Amended & re-sent 7-11-07

July 5, 2007

NOTICE OF DELIBERATION

IN THE MATTER OF:

KEVIN GOMBESKI – Legal Owner /Petitioner
Case No. 06-589-SPH

Having heard this matter on 7/03/07, public deliberation has been scheduled for the following date and time:

DATE AND TIME : **WEDNESDAY, OCTOBER 3, 2007 at ~~10~~ 9:00 a.m.**

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

PLEASE NOTE THAT CLOSING BRIEFS ARE DUE ON
THURSDAY, SEPTEMBER 6, 2007
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

c: Appellant : Office of People's Counsel

Counsel for Petitioner : Howard L. Alderman, Jr., Esquire
Petitioner : Kevin Gombeski

Bruce E. Doak / GERHOLD CROSS & ETZEL LTD

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

FYI: 5-1-6

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County Board of Appeals of Baltimore County

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

Rescheduled to 9/12/07 @ 9 am

July 11, 2007

NOTICE OF DELIBERATION – CORRECTION OF TIME **

IN THE MATTER OF:

KEVIN GOMBESKI – Legal Owner /Petitioner
Case No. 06-589-SPH

Having heard this matter on 7/03/07, public deliberation has been scheduled for the following date and time:

DATE AND TIME : WEDNESDAY, OCTOBER 3, 2007 at 9:00 a.m. **

LOCATION : Hearing Room 48, Basement, Old Courthouse

PLEASE NOTE THAT CLOSING BRIEFS ARE DUE ON
THURSDAY, SEPTEMBER 6, 2007
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

c: Appellant : Office of People's Counsel

Counsel for Petitioner : Howard L. Alderman, Jr., Esquire
Petitioner : Kevin Gombeski

Bruce E. Doak / GERHOLD CROSS & ETZEL LTD

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

FYI: 5-1-6

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County Board of Appeals of Baltimore County

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

August 16, 2007

NOTICE OF REASSIGNMENT OF DELIBERATION

IN THE MATTER OF:

KEVIN GOMBESKI – Legal Owner /Petitioner
Case No. 06-589-SPH

Having heard this matter on 7/03/07, public deliberation was originally assigned for 10/03/07. However, that date has been changed at the request of a Board member; and has been reassigned to the following date and time. Please note that memos are still to be filed on Thursday, 9/06/07 as originally scheduled.

DATE AND TIME : WEDNESDAY, SEPTEMBER 12, 2007 AT 9 A.M.

LOCATION : Hearing Room 48, Basement, Old Courthouse

PLEASE NOTE THAT CLOSING BRIEFS ARE DUE ON
THURSDAY, SEPTEMBER 6, 2007
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

c: Appellant : Office of People's Counsel

Counsel for Petitioner : Howard L. Alderman, Jr., Esquire
Petitioner : Kevin Gombeski

Bruce E. Doak / GERHOLD CROSS & ETZEL LTD

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

FYI: 5-&-6

Printed with Soybean Ink on Recycled Paper

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

July 7, 2006

Kevin Gombeski
27 Thomas Shilling Court
Upperco, MD 21155-9334

Dear: Mr. Gombeski,

RE: Case Number: 06-589-SPHA, 27 Thomas Schilling Court

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 18, 2006.

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

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

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:sma

Enclosures

c: People's Counsel
Gerhold, Cross & Etzel, Ltd. 320 Towsontown Blvd #100 Towson, MD 21286

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: May 30, 2006

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

SUBJECT: Zoning Advisory Committee Meeting
For June 5, 2006
Item No. 589

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

We have no objection to the granting of the requested variance and waiver, however the developer should be required to bring the driveway to the following panhandle standards:

- A 16-foot paved width.
- A 30x70 tee-turn around at the end of the use in common portion of driveway and a max grade of 14%.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 589-05302006.doc

Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

May 8,2006

RECEIVED
MAY 30 2006
FIRE DEPARTMENT

ATTENTION: Zoning Review Planners

Distribution Meeting of: May 30,2006

Item Numbers: 589

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

3. The site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or beginning of operation

5. The vehicle dead end condition shown at: 300 feet EXCEEDS the maximum allowed by the Fire Department.

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

cc: File

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

August 7, 2006

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

Re: PETITION FOR SPECIAL HEARING & VARIANCE
E/end Thomas Shilling Court, 963' SW Trenton Mill Road
(27 Thomas Shilling Court)
5th Election District; 3rd Council District
Kevin Gombeski - Petitioners
Case No.: 06-589-SPHA

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated July 17, 2006 by the Baltimore County Zoning Commissioner.

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

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

RECEIVED
AUG 07 2006
Per

PMZ/CSD/rmw

cc: Bruce E. Doak
Kevin Gombeski

Department of Permits and Development Management

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

Baltimore County

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

August 30, 2006

Kevin Gombeski
27 Thomas Shilling Court
Upperco, MD 21155-9334

Dear Mr. Gombeski:

RE: Case: 06-589-SPHA, 27 Thomas Shilling Court

Please be advised that an appeal of the above-referenced case was filed in this office on August 7, 2006 by People's Counsel of Baltimore County. 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

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Bruce Doak, 320 E. Towsontown Blvd., Ste. 100, Towson 21286

Printed on Recycled Paper

APPEAL

Petition for Special Hearing & Variance
27 Thomas Shilling Court
S/end Thomas Shilling Ct., 963' SW of Trenton Mill
5th Election District – 3rd Councilmanic District
Legal Owners: Kevin Gombeski

Case No.: 06-589-SPH

Petition for Special Hearing & Variance (May 18, 2006)

Zoning Description of Property

Notice of Zoning Hearing (May 31, 2006)

Certification of Publication (The Jeffersonian – June 27, 2006)

Certificate of Posting (June 22, 2006) by John J. Dill

Entry of Appearance by People's Counsel (May 25, 2006)

Petitioner(s) Sign-In Sheet - None

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet - None

Zoning Advisory Committee Comments

Petitioners' Exhibit
1. Revised Redlined Site Plan

Protestants' Exhibits:
None

Miscellaneous (Not Marked as Exhibit)
None

Zoning Commissioner's Order (GRANTED – July 18, 2006)

Notice of Appeal received on August 7, 2006 from People's Counsel

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Kevin Gombeski
Bruce Doak

date sent August 30, 2006, klm

CASE #: 06-589-SPHA

IN THE MATTER OF: KEVIN GOMBESKI – Legal Owner /Petitioner
27 Thomas Shilling Court 5th E; 3rd C

SPH – To allow two panhandle driveway strips with individual widths of 6' ilo req'd 12' each.
VAR – To allow panhandle driveway lengths of 2,370' and 2,690' for proposed Lots 7A and 7B ilo maximum allowed 1,000'.

7/18/06 – Z.C.'s Order in which requested special hearing and variance relief GRANTED with restrictions.

4/26/07 --Notice of Assignment sent to following; assigned for hearing on Tuesday, July 3, 2007 at 10:00 a.m.:

Office of People's Counsel
Kevin Gombeski
Bruce E. Doak / GERHOLD CROSS & ETZEL LTD
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

7/03/07 – Board convened for hearing (Brassil, Mohler M, Witt); Howard Alderman, Jr., Esquire, appeared on behalf of Kevin Gombeski, Petitioner (formal entry of appearance to be filed); hearing concluded this date; written closing briefs to be filed 9/06/07; public deliberation to be assigned.

7/05/07 – Entry of Appearance filed by Mr. Alderman on behalf of Kevin Gombeski; Notice of Deliberation sent to parties; deliberation assigned for Wednesday, October 3, 2007 at 9:00 a.m. FYI copy to 5-1-6.

7/11/07 – Amended Notice of Deliberation sent to parties this date – to correct time of deliberation **to correctly reflect 9:00 a.m.** as scheduled start time.

8/16/07 – Notice of Reassignment for Deliberation – reassigned to Wednesday, September 12, 2007 at 9 a.m. at request of Board member (date for filing memos remains as assigned for 9/06/07). FYI copy to 5 and 6 (two members only – Mr. Mohler no longer a member of the Board).

8/22/07 – Letter from People's Counsel, P. Zimmerman – regarding resignation of M. Mohler.

9/06/07 – Petitioner's Post-Hearing Memorandum filed by Howard Alderman, Jr., Esquire; People's Counsel for Baltimore County's Memorandum filed by Mr. Zimmerman. Copies provided to Brassil and Witt (Mohler no longer on the Board).

RE: PETITION FOR SPECIAL HEARING AND VARIANCE		*	BEFORE THE
27 Thomas Shilling Court; E/S Thomas Shilling Court, 963' SE Trenton Mill Road		*	ZONING COMMISSIONER
5th Election & 3rd Councilmanic Districts		*	FOR
Legal Owner(s): Kevin Gombeski			
	Petitioner(s)	*	BALTIMORE COUNTY
		*	06-589-SPHA

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

RECEIVED
MAY 25 2006
Per.....

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May, 2006, a copy of the foregoing Entry of Appearance was mailed Bruce E. Doak, Gerhold, Cross & Etzel, Ltd, 320 E Towsontown Blvd, Towson, MD 21286, Representative for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

RE: PETITION FOR SPECIAL HEARING & VARIANCE **27 Thomas Schilling Court** **5th Election District** **3rd Councilmanic District** ***Kevin Gombeski,*** ***Petitioner/Owner***	**Case No.: 06-589-SPHA**

ENTRY OF APPEARANCE

Madame Clerk:

Please enter the appearance of the undersigned counsel on behalf of Kevin Gombeski, Petitioner/Owner in the above-captioned case and forward all further notices and other communications to me at the address listed below.

Thank you.

Howard L. Alderman, Jr.
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
410.321.0600 [voice]
410.296.2801 [fax]
halderman@LevinGann.com [e-mail]

Attorneys for Kevin Gombeski

RECEIVED
JUL 05 2007
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of July, 2007, a copy of the foregoing Entry of Appearance was mailed via First-Class, United States Mail to: i) Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204; ii) Michael L. Snyder, Esquire, Coady & Farley, 400 Allegheny Avenue, Towson, Maryland 21204; and iii) Mr. Kevin Gombeski, 27 Thomas Shilling Court, Upperco, Maryland 21155.

Howard L. Alderman, Jr.

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

N O T I C E O F R E C O R D

Case Number: 03-C-07-012107 AA
Administrative Agency : 06-589-SPHA
C I V I L

In the Matter of Peoples Counsel For Baltimore County

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 10th day of December, 2007.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 12/22/07

TO: PETER ZIMMERMAN
People's Counsel For Baltimore County
Room 47 Courthouse
400 Washington Ave
Towson, MD 21204

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

N O T I C E O F R E C O R D

Case Number: 03-C-07-012107 AA
Administrative Agency : 06-589-SPHA
C I V I L

In the Matter of Peoples Counsel For Baltimore County

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 21st day of December, 2007.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 12/22/07

TO: KEVIN GOMBESKI
27 Thomas Shilling Court
Upper co. MD 21155

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

N O T I C E O F R E C O R D

Case Number: 03-C-07-012107 AA
Administrative Agency : 06-589-SPHA
C I V I L

In the Matter of Peoples Counsel For Baltimore County

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 21st day of December, 2007.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 12/22/07

TO: PETER ZIMMERMAN
People's Counsel For Baltimore County
Room 47 Courthouse
400 Washington Ave
Towson, MD 21204

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

DIRECT DIAL
410-321-4640

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

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

September 6, 2007

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

RE: *Kevin Gombeski, Petitioner*
27 Thomas Shilling Court
Case No. 06-589-SPHA
Petitioner's Post-Hearing Memorandum

Dear Ms. Bianco:

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

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosures (4)
c (w/one encl.): Mr. Kevin Gombeski
Peter Max Zimmerman, Esquire/Carole S. Demilio, Esquire
Michael L. Snyder, Esquire
Bruce E. Doak, PLS

RECEIVED
SEP 06 2007
BALTIMORE COUNTY
BOARD OF APPEALS

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: KEVIN GOMBESKI
27 THOMAS SHILLING COURT
CASE NO.: 06-589-SPHA
5TH E; 3RD C

DATE: September 12, 2007

BOARD/PANEL Margaret Brassil, Madame Chair
Robert W. Witt
Mike Mohler (Resigned as a Board member and was unable to publicly deliberate this case.)

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: To deliberate the following:

SPH – To allow two panhandle driveway strips with individual widths of 6' ilo the required 12' each.

VAR – To allow panhandle driveway lengths of 2,370' and 2,690' for proposed Lots 7A and 7B ilo max. allowed of 1,000'.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

A few of the questions raised are as follows:

1.) Did the Zoning Commissioner have the authority to grant a panhandle?
2.) Does the waiver require a variance?
3.) Should the panhandle issue have gone before the Office of Planning?

STANDING

- A waiver and variance would be necessary before Mr. Gombeski could apply for a subdivision of his property to add two additional lots.
- The length of the driveway is 2,690, which exceeds the maximum, of 1,000 feet, allowed by the County.
- The length of the driveway exceeds the maximum allowed by the County and is considered to be a non-conforming use.
- Petitioner is not asking for an extension/expansion of an already existing driveway.
- Without the variance the Petitioner would have no way to use/access the proposed other two additional lots.
- The Board felt that they were not the proper venue to grant the panhandle driveway waiver.
- The waiver should have been put before the Office of Planning per 3-4-409(k).

DECISION BY BOARD MEMBERS: The Board determined that they were *not the proper venue to grant a waiver*, however, the Petitioner's property did meet the criteria of *uniqueness and practically* difficult.

KEVIN GOMBESKI
PUBLIC DELIBERATION – 9/12/07
CASE NO.: 06-589-SPHA

FINAL DECISION: After a thorough review of the facts, testimony, and law in the matter, the Board unanimously decided to *GRANT* the variance sought by the Petitioner and to *DENY* their request for a waiver.

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

Respectfully Submitted

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals

IN THE MATTER OF: * BEFORE THE

KEVIN GOMBESKI - Legal Owner * COUNTY BOARD OF APPEALS

27 Thomas Schilling Court * OF

5th Election District * BALTIMORE COUNTY

3rd Councilmanic District * Case No.: 06-589-SPH

* July 3, 2007

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21205, at 10:000 a.m., July 3, 2007.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

CBA 06-589-SPHA

PEOPLE'S COUNSEL

EXHIBITS

Verified KCF

✓ 1. CARROLL COUNTY MD STREET MAP

✓ 2 REAL PROPERTY DATA SEARCH - SUBJECT PROPERTY

✓ 3. AERIAL PHOTO

✓ 4. BALTO. COUNTY ZONING MAP 1971 RAP

✓ 5. BALTO. COUNTY ZONING MAP 1976 RCZ

✓ 6. REGULATIONS FOR RAP ZONE.

✓ 7. BALTO. COUNTY COUNCIL BILL NO. 98-75

✓ 8. BALTO. COUNTY COUNCIL BILL NO. 178-79

✓ 9. RESOURCE CONV. ZONES BILL 98-1975 SECT. 1A00

✓ 10. DENSITY RES. ZONES BILL 100-1970

✓ 11. CBA CASE 03-225-SPH.

✓ 12. BCZ 32-4-409 PANHANDLE DRIVEWAYS.

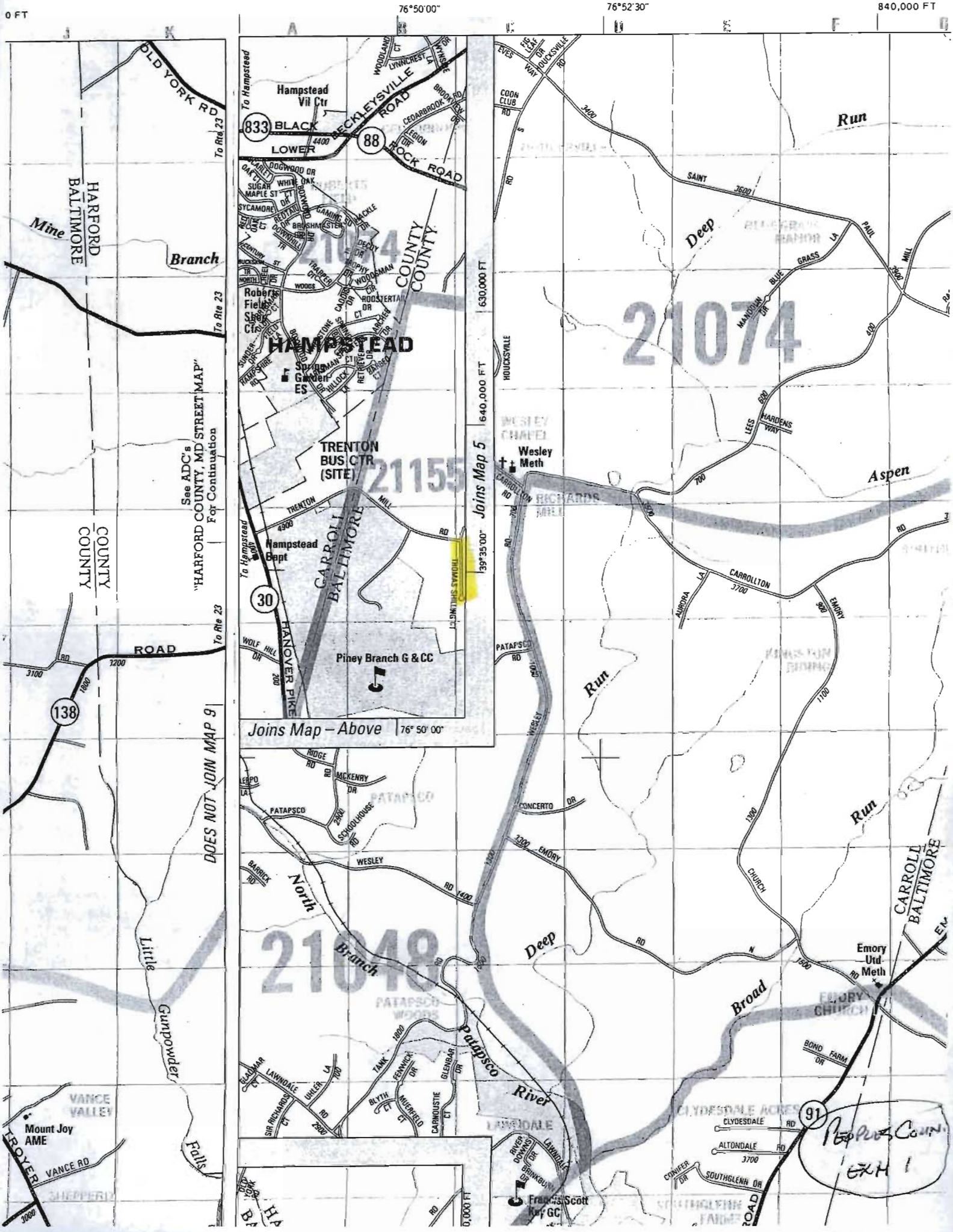
✓ 13. BALTO. COUNTY PLANNING & ZONING MAP.

✓ 14. BALTO. COUNTY CODE 1978

✓ 15. BILL 100, 1970 EXCERPT

✓ 16. BALTO. COUNTY CODE 1978

✓ 17. 32-4-104 SCOPE OF TITLE


See ADC's " CARROLL COUNTY, MD STREET MAP" For Continu
0 FT
76°50'00"
76°52'30"
840,000 FT
J
K
A
B
C
D
E
F
G
OLD YORK RD
To Rte 23
HARFORD
BALTIMORE
COUNTY
Mine
Branch
See ADC's
"HARFORD COUNTY, MD STREET MAP"
For Continuation
ROAD
3100
1200
1800
138
DOES NOT JOIN MAP 9
Little
Gunpowder
Falls
VANCE
VALLEY
Mount Joy
AME
TROYER
VANCE RD
3000
To Hampstead
Hampstead
Vil Ctr
833
BLACK
LOWER
4400
BECKLEYSVILLE
ROAD
88
ROCK ROAD
DOGWOOD DR
OAK CT
WHITE OAK
SUGAR MAPLE ST
SYCAMORE
REDTAIL
BROOMSTER
HACKLE
DECOY
TRAPPER
WOODS
Roberts
Field
Shop
Ctr
HAMPSTEAD
Spring
Garden
ES
TRENTON
BUS CTR
(SITE)
TRENTON
4900
Hampstead
Dept
30
HANOVER PIKE
WOLF HILL
200
Piney Branch G & CC
21084
21155
21048
COUNTY
CARROLL
BALTIMORE
630,000 FT
640,000 FT
39°35'00"
Joins Map 5
Joins Map – Above
76° 50' 00"
WOODLAND
LYNNCREST
LYNNS
CEDARBROOK
BROOKVIEW
LEGION
COON
CLUB
RD
3400
Run
Deep
SAINT
3600
PAUL
MILL
3900
BLUE
GRASS
MANDUHAI
DR
400
21074
HOUCKSVILLE
LEES
600
HARDENS
WAY
Wesley
Meth
CARROLLTON
RD
700
Aspen
RICHARDS
MILL
1500
CARROLLTON
3700
AURORA
LA
EMORY
900
1100
PATAPSCO
RD
Run
CONCERTO
DR
1300
1900
Run
RIDGE
RD
MCKENRY
DR
LEPPO
LA
PATAPSCO
2800
SCHOOLHOUSE
RD
WESLEY
RD
1400
BARRICK
RD
North
Branch
Deep
Run
CHURCH
RD
N
1500
Emory
Utd
Meth
Broad
BOND
FARM
DR
Patapsco
River
TANK
1800
FENWICK
DR
GLENBAR
DR
BLADMAR
LAWNDALE
UHLER
LA
700
SIR RICHARDS
CT
2500
BLYTH
CT
MUERFIELD
CT
CARMOUSTIE
CT
LAWNDALE
RIVER
DOWNS
DR
BRINKBURN
DR
Francis Scott
Key GC
CLYDESDALE
RD
ALTONDALE
RD
3700
CONIFER
DR
SOUTHGLENN DR
91
CARROLL
BALTIMORE
Peppers Coun
EXH 1

Click here for a plain text ADA compliant screen.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District -** 05 **Account Number** - 1800002653

Owner Information

Owner Name:	GOMBESKI KEVIN	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	27 THOMAS SHILLING CT UPPERCO MD 21155-9334	**Deed Reference:**	1) /22967/ 164 2)

Location & Structure Information

Premises Address
27 THOMAS SHILLING CT

Legal Description
10.456 AC
27 THOMAS SCHILLING CT
PINEY BRANCH FARMS

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:	
19	23	49					7	2	Plat Ref:	42/ 38

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1990	3,156 SF	10.45 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2005	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	117,070	167,250		
Improvements:	252,720	347,180		
Total:	369,790	514,430	418,003	466,216
Preferential Land:	0	0	0	0

Transfer Information

Seller:	ROSENBERGER DANIEL E	**Date:**	11/29/2005	**Price:**	$522,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/22967/ 164	**Deed2:**	
Seller:	ROSENBERGER ROBERT FREDERICK,JR	**Date:**	06/25/2004	**Price:**	$375,000
Type:	NOT ARMS-LENGTH	**Deed1:**	/20318/ 33	**Deed2:**	
Seller:	SMELSER SAMUEL E ,JR PERS REP OF	**Date:**	10/08/1987	**Price:**	$55,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 7694/ 588	**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2005	07/01/2006
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

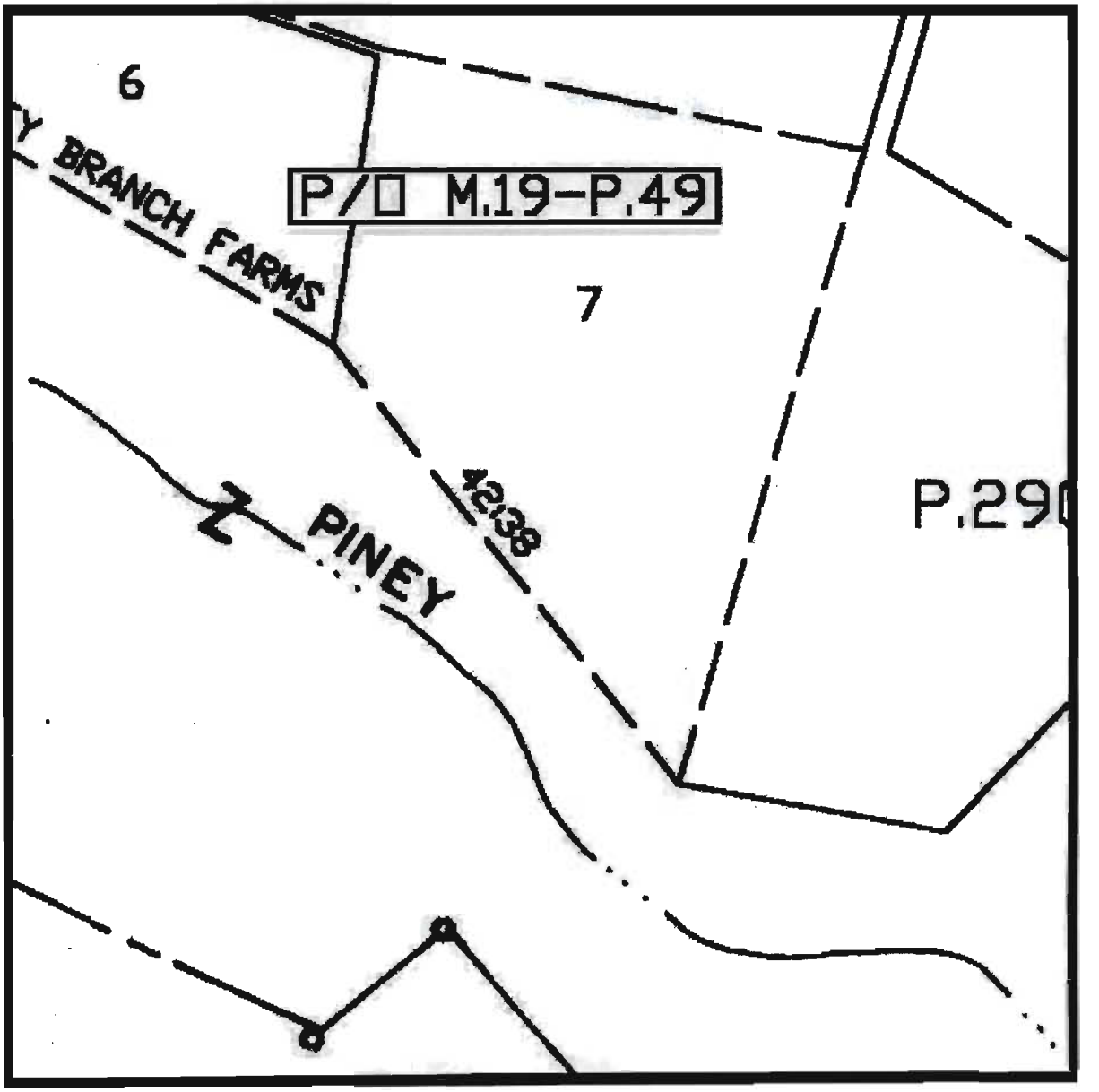
Special Tax Recapture:
* NONE *

PEOPLES COUNSEL EXH. 2

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

District - 05**Account Number** - 1800002653

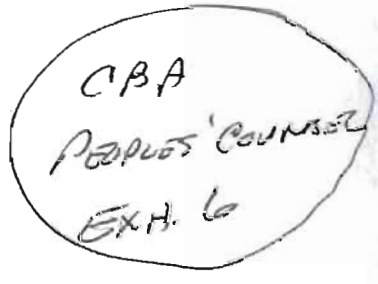


Property maps provided courtesy of the Maryland Department of Planning ©2004.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/webcom/index.html

BALTIMORE COUNTY ZONING REGULATIONS

AS AMENDED THROUGH OCTOBER 10, 1974

1975 EDITION



BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

TOWSON, MARYLAND

ARTICLE 1A—RURAL AND RURAL-SUBURBAN LOW-INTENSITY ZONES
[Bill No. 100, 1970.]

Section 1A00—R.D.P. ZONES (RURAL: DEFERRED-PLANNING). [Bill No. 100, 1970.]

1A00.1—General Provisions. [Bill No. 100, 1970.]

1.[1] Purpose. The R.D.P. zoning classification is established, pursuant to the legislative findings set forth above,[2] in order to:

a. Prevent untimely urban development of relatively open rural land; and

b. Foster conditions favorable to agriculture and other low-intensity uses appropriate in rural areas, considering both the magnitude of total land acreage needed for such uses and the current prospective needs for developable urban land.

[Bill No. 100, 1970.]

2. Intent as to application of R.D.P. zoning classification to property or removal therefrom. It is intended:

a. That rural land shall be classified within R.D.P. zones unless the Capital Budget and Five-Year Capital Program of Baltimore County and duly adopted official Baltimore County master plans, including the "county plan" required under Article 43, Section 387C of the Annotated Code of Maryland, 1957 (1965 Replacement Volume) as amended, all consistently indicate that such land is to be serviced by public sewerage and water-supply systems and, in the case of those said documents which determine the timing of construction, also consistently provide for the adequacy and availability of service to said land by such systems within a period of six years after the time of consideration with respect to zoning classification; provided further, however, that such nonserviced land as is specifically herein described (in this Subparagraph 3[3] or other provisions in these regulations) as being appropriately otherwise classified shall also be excepted from the category of land which shall be classified as R.D.P.;

b. That land classified as R.D.P. shall not be reclassified (rezoned) until such time as the documents hereinabove noted have been officially changed or replaced in kind and thereby then indicate possible appropriateness of reclassification under the criteria hereinbefore stated;

---

1. *The line designating this subparagraph and those immediately following as parts of a Paragraph "A" was deleted from Bill No. 100, 1970 by amendment after introduction.*
2. *Findings deleted from Bill No. 100, 1970 by amendment after introduction.*
3. *Now Subparagraph 2, as a result of amendment of Bill No. 100, 1970 after introduction.*

c. That reclassification of land as R.D.P. shall not represent a commitment by Baltimore County with respect to type of future development, but only that more particular planning for the use of such land shall be executed in the future; and

d. That certain distinct existing areas of compact development, such as certain approved subdivisions or the immediate environs of typical rural business centers, are not normally to be classified as R.D.P.

[Bill No. 100, 1970.]

3. Special Policy for Certain Developments. In view of possible overriding public benefits to be derived from certain large-scale unit developments, the establishment of such developments is hereby excepted from application of the policy hereinbefore stated to the extent indicated under Section 430 ("Unit Developments"). [Bill No. 100, 1970.]

B.[4] Locational Requirement. No R.D.P. zone shall be established or re-established within the urban-rural demarcation line, but said line may be re-established to include an R.D.P. zone or part thereof existing at the time said line is re-established. [Bill No. 100, 1970.]

1A00.2—Use Regulations. [Bill No. 100, 1970.]

A.[5] Uses Permitted as of Right. The following uses, only, are permitted as of right in R.D.P. zones:

1. Farms, or, on existing undersized lots, limited-acreage wholesale flower farms.[6]
2. One-family detached dwellings.
3. Churches or other buildings for religious worship.
4. Trailers (see Section 415).
5. Research institutes, as defined in Section 101 and as permitted and regulated in D.R. 1 zones (see Section 418).
6. Hospitals.
7. Telephone, telegraph, electrical-power or other electrical lines, all underground with the exception of such lines as are permitted above ground in D.R. zones.
8. Other cables; conduits; gas, water, or sewer mains; or storm-drain systems: all underground.
9. Railroads or other transportation lines.

---

4. Line designating preceding provisions as Paragraph "A" deleted--see note 1 above.

5. All provisions of this paragraph from Bill No. 100, 1970.

6. Since a limited-acreage wholesale flower farm consists of less than three acres of land (see Section 101), and since the minimum lot size in R.D.P. zones is one acre (rather than ten acres, as set forth in Bill No. 100, 1970 before amendment), there is a question as to the effect of the phrase "on existing undersized lots".

10. Animal boarding places (regardless of class), kennels, veterinarians' offices or veterinariums, subject to the provisions of Section 421.
11. Excavations, uncontrolled.
12. Schools, except business or trade schools or such schools as are permitted as special exceptions (Paragraph B, below), but including schools for agricultural training.
13. Accessory uses or buildings (not subject to the provisions of Section 400), including, but not limited to:

    a. An office or studio of a doctor, dentist, lawyer, architect, engineer, artist, musician, or other professional person, provided that such office or studio is established within the same building as that serving as his bona fide residence; does not occupy more than 25 per cent of the total floor area of such residence as existing on the effective date of this provision;[7] and does not involve the employment of more than one nonresident professional associate nor two other nonresident employees; provided, further, that signs relative to such use shall be prohibited except as noted in Section 413.

    b. Home occupations as defined in Section 101, also subject to the sign provisions of Section 413.

    c. Parking space, including residential-garage space.

B.[8] Uses Permitted by Special Exception. The following uses, only, are permitted as special exceptions:

1. Airports
2. Antique shops (see Section 402B).
3. Boat yards.
4. Cemeteries.
5. Commercial beaches
6. Community buildings, swimming pools, or other structural or land uses devoted to civic, social, recreational, or educational activities.
7. Conservatories for music or other arts.
8. Dwellings or other buildings converted to tea rooms or restaurants, as provided in Subsection 402.3, or tea rooms or restaurants expressly constructed for such purpose, but otherwise subject to the same such restrictions.
9. Excavations, controlled (see Section 403), provided renovation or appropriate adaptation of the land is assured within a reasonable time, as determined by the Zoning Commissioner.
10. Golf courses, country clubs, or other outdoor recreation clubs; also quasi-public camps, including day camps.

---

7. Regarding the effective date of the provisions of Bill No. 100, 1970, see note 3, Section 100.

8. All provisions of this paragraph from Bill No. 100, 1970.

11. Golf driving ranges, miniature-golf ranges, or baseball-batting ranges.
12. Helistops.
13. Marinas.
14. Public-utility uses not permitted as of right.
15. Residential art salons (see Section 402C).
16. Riding stables (commercial or noncommercial).
17. Sanitary landfills (see Section 412).
18. Shooting ranges.
19. Volunteer-fire-company facilities.
20. Wireless transmitting and receiving structures, except that a radio antenna in conjunction with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications Commission shall be considered an accessory structure or, if attached to another structure, an accessory use, and, as such, is permitted without a special exception, provided: (a) that if it is an accessory structure, it shall be subject to the provisions of Section 400; (b) that if it is a rigid-structure antenna, it shall be no higher than 100 feet or the horizontal distance to the nearest property line, whichever is less, above grade level, and no supporting structure thereof shall be closer than 50 feet to any property line; and, further, (c) that it does not extend closer to the street on which the lot fronts than the front building line
21. Large-scale unit developments, as provided in Section 430

1A00.3—Height and Area Regulations. [Bill No. 100, 1970.]

A. Height. No structure in an R.D.P. zone shall exceed a height of 35 feet, except as otherwise specifically provided in these Zoning Regulations (see Section 300). [Bill No. 100, 1970.]

B. Area Regulations. [Bill No. 100, 1970.]

1. Lot Area. No lot less than 1 acre in net area shall be hereafter created in an R.D.P. zone, subject to attaining percolation tests satisfactory to the Baltimore County Department of Health and conforming to the applicable health requirements. [Bill No. 100, 1970.]

2. Minimum Linear Dimension. Except as otherwise provided in Subparagraph 3, below, the minimum linear dimension of any lot hereafter created in an R.D.P. zone shall be 150 feet. For the purposes of these regulations, the minimum linear dimension of any lot shall be the diameter of the largest circle in a horizontal plane which may be inscribed within the lot boundaries. [Bill No. 100, 1970.]

3. The minimum distance between any building in an R.D.P. zone and any lot line other than a street line shall be 50 feet; the minimum distance between the building and the center line of any street shall be 75 feet. [Bill No. 100, 1970.]

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1975, Legislative Day No. 21

BILL NO. 98-75

Mr. Huddles, Councilman

By the County Council, October 6, 1975

A BILL
ENTITLED

AN ACT to amend the Baltimore County Zoning Regulations to establish four new zoning classifications intended to insure the preservation of Baltimore County's Natural Resources, by repealing subparagraph 100.1.A.2 of Section 100 of the Zoning Regulations of Baltimore County and enacting a new subparagraph 100.1.A.2 in lieu thereof by adding certain new definitions to Section 101 of said regulations; by adding new subsection 103.3 to Section 103 of said regulations; and by repealing Article 1A, and Sections 1A00 and 1A01 thereunder, of said regulations and enacting new sections 1A00 through 1A04, under new Article 1A entitled "Resource-Conservation Zones", in lieu thereof.

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED THE FINAL REPORT OF THE PLANNING BOARD, ENTITLED PROPOSED ZONING AMENDMENTS: ZONING CLASSIFICATIONS FOR RESOURCE CONSERVATION, IN ACCORDANCE WITH SECTIONS 22-20 AND 22-21 OF THE BALTIMORE COUNTY CODE (1974 SUPPLEMENT); AND,

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED TESTIMONY AT THE PUBLI HEARING HELD IN ACCORDANCE WITH SECTION 22-21 OF THE BALTIMORE COUNTY CODE (1974 SUPPLEMENT); AND,

WHEREAS, THE COUNTY COUNCIL HAS REVIEWED IN WORK SESSION AND LEGISLATIVE SESSION THE PLANNING BASIS OF THE FINAL REPORT AS ELABORATED BY THE STAFF OF THE OFFICE OF PLANNING AND ZONING OF BALTIMORE COUNTY; AND,

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED THE COMPREHENSIVE PLAI FOR BALTIMORE COUNTY APPROVED BY THE PLANNING BOARD OCTOBER 13, 1975.

SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland, that subparagraph 100.1.A.2, under section 100 of the Baltimore County Zoning Regulations, be and it is hereby repealed and new subparagraph 100.1.A.2 be and it is

CBA PEOPLES' COUN EXH NO 7

hereby enacted in lieu thereof, to read as follows:

2. Zones are classified as follows:

R. C. 2 (Resource Conservation-agriculture)

R. C. 3 (Resource Conservation-deferral of planning and development)

R. C. 4 (Resource Conservation-watershed protection)

R. C. 5 (Resource Conservation-rural-residential)

D. R. 1 (Density Residential, 1. 0 dwelling unit per acre)

D. R. 2 (Density Residential, 2. 0 dwelling units per acre)

D. R. 3. 5 (Density Residential, 3. 5 dwelling units per acre)

D. R. 5. 5 (Density Residential, 5. 5 dwelling units per acre)

D. R. 10. 5 (Density Residential, 10. 5 dwelling units per acre)

D. R. 16 (Density Residential, 16. 0 density units per acre)

R. A. E. 1 (Residential, 40. 0 density units per acre)

R. A. E. 2 (Residential, 80. 0 density units per acre)

B. L. (Business, Local)

B. M. (Business, Major)

B. R. (Business, Roadside)

M. R. (Manufacturing, Restricted)

M. L. R. (Manufacturing, Light, Restricted)

M. L. (Manufacturing, Light)

M. H. (Manufacturing, Heavy)

SECTION 2. Be it further enacted, that Section 101 of said Zoning Regulations be and it is hereby amended by adding the following definitions thereto in alphabetical order:

Commercial fishing, crabbing and shellfishing operation.

Primary-A residential or commercial property fully devoted to commercial fishing activities and the retail and wholesale sale of fish, crabs and shellfish including facilities for the repair, storage, launching, berthing, securing, loading and unloading of catches and gear including nets, crab pots, oyster tongs, trout lines and clamming equipment, also live boxes and the necessary cold storage facilities.

Secondary-A residential property which is the domicile of a person engaged full or part time as a commercial fisherman and who is required under Title 4 of the

1A00.4-Plans and Plats.

Development Plans and Final Subdivision Plats shall be required in the manner prescribed under subsection 1B01.3 and for the purpose of this subsection all references to D.R. zones shall include the R.C. zones.

1A00.5-Application to tract divided by zone boundary.

Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. zones of different classifications, the total number of dwellingS or density units permitted shall apply to each tract individually and for the purpose of these regulations shall be considered as separate parcels.

Section 1A01-R.C.2 (AGRICULTURAL) ZONES

1A01.1-General provisions.

A. Legislative Statement of Findings.

1. Declaration of findings. It is found:

a. that Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development;

b. that the agricultural industry is an integral part of the Baltimore County economy and that a continued conversion of agricultural land will continue to undermine this basic industry;

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

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

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

f. THAT BALTIMORE COUNTY HAS CERTAIN WETLANDS ALONG CHESAPEAKE BAY AND ITS TRIBUTARIES WHICH SERVE AS BREEDING GROUNDS AND NURSERY AREAS FOR THE BAY'S BIOTIC LIFE;

f G. that Baltimore County possesses numerous areas which are highly suitable for urban development including residential subdivisions which are not located in areas of productive agricultural land.

B. Purposes: The R. C. 2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

1A01.2-Use regulations.

A. PREFERRED USE PERMITTED AS OF RIGHT. AGRICULTURAL OPERATIONS, WHEN CONDUCTED IN ACCORDANCE WITH GOOD AND REASONABLE HUSBANDRY PRACTICES, SHALL BE AFFORDED PREFERENTIAL TREATMENT OVER AND ABOVE ALL OTHER PERMITTED USES IN R. C. 2 ZONES.

A--B. Uses permitted as of right. The following uses, only, are permitted as of right in R. C. 2 zones.

1. Churches or other buildings for religious worship
2. Dwellings, one-family detached
3. Farms, limited-acreage wholesale flower farms, satellite farms
4. Farmettes
5. Open space, common
6. Schools for agricultural training
7. Streets and ways
8. Telephone, telegraph, electrical-power, or other similar lines or cables--all underground; underground gas, water, or sewer mains or storm drains; other underground conduits except underground interstate and intercontinental pipe lines.
9. Trailers, provided that any trailer allowed under this provision must be used or stored in accordance with the provisions of Paragraphs b, c, e, or f of Subsection 415.1 and Subparagraph 415.2.a(1) or 415.3.c(1), as applicable
10. Accessory uses or structures, including, but not limited to, the following:
    a. Excavations, uncontrolled
    b. Farmers roadside stands (subject to the provisions of Section 404.6)
    c. Home occupations
    d. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's bona fide residence, does not occupy more than 25 per cent of the total floor area of that residence as it existed on the effective date of this provision and does not involve the employment of more than one nonresident professional associate nor two

other nonresident employees.

e. Parking spaces, including recreational vehicles (subject to the provisions of Section 415A)

f. PIERS, WHARVES, DOCKS AND BULKHEADS (SUBJECT TO THE PROVISIONS OF SECTION 417)

~~f~~ G. Swimming pools, tennis courts, garages, utility sheds or other accessory structures or uses (subject to the height and area provisions for buildings as set forth in Section 400)

~~B~~ C. Uses permitted by special exception. The following uses, only, are permitted by special exception in R.C. 2 zones.

1. Airports

2. Animal boarding places (regardless of class), kennels, veterinarians offices, or veterinariums (subject to the provisions of Section 421)

3. Antique shops (subject to the provisions of Section 402 B)

4. Camps, including day camps

5. Cemeteries

6. COMMERCIAL FISHING, CRABBING OR SHELLFISHING OPERATION - PRIMARY OR SECONDARY, EXCEPT THAT ANY SUCH USE EXISTING AT THE TIME OF DATE OF ENACTMENT OF THIS SUBSECTION MAY CONTINUE AT THE SAME LEVEL OF INTENSITY PROVIDED THAT WITHIN 365 DAYS OF THE ENACTMENT DATE OF THIS LEGISLATION, THEY SHALL FILE FOR A USE PERMIT AS PRESCRIBED UNDER SECTION 500.4 OF THE ZONING REGULATIONS

~~6~~ 7. Community buildings, swimming pools, or other uses of a civic, social, recreational, or educational nature

~~7~~ 8. Excavations, controlled (subject to the provisions of Section 403)

~~8~~ 9. Farmers Co-op roadside stand

~~9~~ 10. Fish hatcheries

~~10~~ 11. Golf courses, country clubs, or other similar outdoor recreation clubs

~~11~~ 12. Golf driving ranges, miniature-golf courses, or baseball batting ranges

~~12~~ 13. Helistops

~~13~~ 14. Hospitals

~~14~~ 15. Nursing homes and convalescent homes or sanitariums

~~15~~ 16. Offices, for agricultural related uses

~~16~~ 17. Physicians' or dentists' offices (as principal uses)

~~17~~ 18. Public utility uses not permitted as of right including underground interstate and intercontinental pipelines

~~18~~ 19. Railroads or other transportation lines or ways

~~19~~ 20. Research institutes (subject to the provisions of Section 418)

~~20~~ 21. Residential art salons (subject to the provisions of Section 402C)

~~21~~ 22. Restaurants or tea rooms converted from dwellings or other buildings as provided in Subsection 402.3

~~22~~ 23. Riding stables (commercial or noncommercial)

~~23~~ 24. Sanitary landfills (subject to the provisions of Section 412)

~~24~~ 25. Schools, including but not limited to private preparatory schools, colleges business and trade schools, conservatories or other fine arts schools

~~25~~ 26. Shooting preserves including hunting and fishing preserves

~~26~~ 27. Shooting ranges including but not limited to archery, pistol, skeet, trap, target (~~large and small bore~~ SMALL BORE RIFLE ONLY)EXCEPT THAT ANY SUCH USE EXISTING AT THE TIME OF DATE OF ENACTMENT OF THIS SUBSECTION MAY CONTINUE AT THE SAME LEVEL, PROVIDED THAT WITHIN 365 DAYS OF THE ENACTMENT DATE OF THIS LEGISLATION, THEY SHALL FILE FOR A USE PERMIT AS PRESCRIBED UNDER THE NOW EXISTING ZONING REGULATION SECTION 500.4, and turkey shoots

~~27~~ 28. Trailers (subject to the provisions of Section 415.1d)

~~28~~ 29. Volunteer fire company and ambulance rescue facilities

~~29~~ 30. Wireless transmitting and receiving structures, except that a radio antenna in conjunction with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications Commission shall be considered an accessory structure or, if attached to another structure, an accessory use, and, as such, is permitted without a special exception, provided: (a) that if it is an accessory structure, it shall be subject to the provisions of Section 400; (b) that if it is a rigid-structure antenna, it shall be no higher than 100 feet or the horizontal distance to the nearest property line, whichever is less, above grade level, and no supporting structure thereof shall be closer than 50 feet to any property line; and, further, (c) that it does not extend closer to the street on which the lot fronts than the front building line

~~30. Planned Development A more intense subdivision of land than that permitted under Section 1A02.3B1 shall be permitted by Special Exception under this subsection which will permit cluster development not to exceed a density of 0.12 units per acre. The minimum lot size shall be 1 acre and setback standards shall be the same as those standards prescribed under subsection~~

1A02.3D1d.

A. Purpose. The R.C.2 zoning classification is established in order to protect and foster conditions favorable to continue agricultural productivity in Baltimore County and these regulations have been designed to discourage preempting forms of urban development. However, since some of the land which is included in this classification may not be suitable for agricultural production and that it may be possible to support a slightly more intense residential development when certain standards are met, a planned development may be approved.

B. Procedural Steps and Requirements. Any petition submitted to the Zoning Commissioner for a special exception under this subsection for a planned development shall be subject to the provisions hereinafter set forth.

1. Any petition for such development shall first be submitted to the Zoning Commissioner in accordance with Article 5 of these regulations. For the purpose of this subsection, the filing date of the petition shall be the date the petition is accepted for filing by the Zoning Commissioner's Office.

2. By the end of the fifth regular business day after the petition has been accepted for filing, the Zoning Commissioner shall transmit certified copies of the petition and plats to the Director of Planning (as Secretary to the Planning Board) for transmittal to the Planning Board or the appropriate sub-committee of the Planning Board who shall review the proposed development and solicit comments from any agency, group or individual deemed necessary in order to evaluate the proposal.

3. Not more than 60 days after receipt of the petition the Planning Board shall complete its review of the proposed development and prepare a report to the Zoning Commissioner.

4. The final recommendations submitted by the Planning Board with respect to the petition shall be limited to a resolution effecting one of the following.

a. Adoption of a favorable report on the proposed

1. planned development with or without recommended restrictions

2. b. Modification of such plan and adoption of a

3. favorable report on the plan as modified with or without recommended restrictions

4. c. Adoption of an unfavorable report on the plan;

5. 5. A favorable or unfavorable report from the Planning

6. Board shall be supported in detail.

7. 6. The next, regular business day after the Planning Board

8. has taken action as prescribed above, the Director of Planning shall transmit to

9. the Zoning Commissioner copies of the Board's report, together with copies of the

10. resolution whereby the action was taken.

11. C. Remaining Procedural Steps and Review Requirements.

12. The following provisions apply only to petitions for planned developments in an

13. R.C.2 Zone.

14. 1. Upon his receipt of the Planning Board resolution and

15. report with respect to a petition for a planned development in an R.C.2 zone,

16. the Zoning Commissioner shall within 90 days schedule a hearing on the petition.

17. The date of the hearing shall be subject to such postponement or conditions as

18. circumstances may require, and except that the hearing may be scheduled for a

19. later date if any day in the interval specified falls within a period for which hearings

20. on zoning reclassification petitions must be scheduled pursuant to Section 22-22

21. of the Baltimore County Code 1968 Edition.

22. 2. Upon hearing and reviewing the petition, the Zoning

23. Commissioner may:

24. a. Grant the petition, as submitted; or

25. b. Deny the petition; or

26. c. Grant the petition as conditioned, restrict or

27. modify the proposed planned development and grant the petition with the plan modified

28. 3. The Zoning Commissioner may grant the petition only if

29. he affirmatively finds:

30. a. That the proposed planned development would have

~~1. no adverse effect upon the health, safety, general welfare and environment~~

~~2. in the vicinal area.~~

~~3. b. That the proposed planned development will be~~

~~4. in accord with the intent and purpose of this classification and that specifically~~

~~5. the proposed development will not be detrimental to any existing or potential~~

~~6. agricultural activities on the remainder of the property or on nearby or adjacent~~

~~7. land.~~

~~8. c. That, in due consideration of the comments or~~

~~9. reports submitted by the Planning Board and all other agencies or officials~~

~~10. required or requested to submit to him comments on the petition, the proposed~~

~~11. development would not create conditions as set forth in Paragraph b, c, d, e, or f~~

~~12. of Subsection 502.1; and~~

~~13. d. That the development, as approved, would comply~~

~~14. with all applicable provisions of the Zoning Regulations and that the resolution~~

~~15. of any conflict between other County laws or technical requirements and the~~

~~16. proposed development plan is reflected by revisions incorporated into a develop-~~

~~17. ment plan as finally approved.~~

~~18. 4. The Zoning Commissioner in considering the petition shall~~

~~19. also give consideration to the following factors:~~

~~20. a. The soil condition and type as determined by the~~

~~21. Soil Survey for Baltimore County as published by the Soil Conservation Service,~~

~~22. U. S. Department of Agriculture.~~

~~23. b. Current use and status of the property.~~

~~24. 5. A development plan shall be submitted for approval in~~

~~25. the manner prescribed under Subsection 1B01.3 of these regulations.~~

26. 1A01.3-Height and area regulations

27. A. Height regulation. No structure hereafter erected in an R.C. 2 zone

28. shall exceed a height of 35 feet, except as otherwise provided under Section 300.

29. B. Area regulations.

30. 1. Subdivision. Any subdivision of a lot in an R.C. 2 zone must be in

accordance with the provisions of ~~this subparagraph or of Subparagraph 1A02.3B2~~ or Sec. 103.3 or subparagraph 2. below.

a. The maximum number of lots in addition to an existing principal dwelling that may be created shall be based on the gross area of that tract which is to be subdivided and which constitutes the record lot of the effective date of this subparagraph, as follows:

Area of ~~Record Lot~~ LOT OF RECORD at the Time of the Effective Date of this Subparagraph, in Acres		Maximum Number of Lots Permitted
less than	3	1
at least 3 but not more than	10	2
more than 10 but not more than	20	3
more than 20 but not more than	~~40~~ 100	~~4~~ 0.2 LOTS PER ACRE
~~more than 40 but not more than~~	~~60~~	~~5~~
~~more than 60 but not more than~~	~~100~~	~~6~~
more than 100		~~2~~ 20 lots plus ~~1~~ ONE additional lot for each 25 acres IN EXCESS OF 100 ACRES of THE total tract area.

b. ~~No such lot shall be less than 1 acre in area.~~ THE MINIMUM LOT SIZE SHALL BE 2 ACRES EXCEPT ON THOSE SOIL TYPES WHICH ARE IN CAPABILITY CLASSIFICATIONS I AND II AS RATED BY THE U.S. DEPARTMENT OF AGRICULTURE SOIL CONSERVATION SERVICE, WHEREIN A 1 ACRE MINIMUM LOT SIZE IS REQUIRE HOWEVER, LOTS LOCATED IN CAPABILITY CLASSIFICATION I AND II SHALL NOT EXCEED 3 ACRES. NOT MORE THAN ONE-THIRD OF THE PERMITTED NUMBER OF LOTS SHALL BE PLACED WITHIN CAPABILITY CLASSIFICATIONS I AND II PROVIDED THAT THIS SUBSECTION SHALL NOT BE CONSTRUED SO AS TO DEPRIVE ANY PROPERTY OWNER OF THE NUMBER OF LOTS PERMITTED UNDER 1A01.3B1a.

c. Width at front setback line - The minimum width at the front setback line shall not be less than 150' and not more than 50% of the permitted number of lots ma front on an existing public road, except as provided in subparagraph 103.3, 1A01.3B.2.

d. Setbacks. The minimum setback for any dwelling or principal building shall be not less than 75' from the centerline of any street, and not less than 50' fron a future right-of-way line, a minimum of 25' from both side lot lines or a minimum of 50' from any rear lot line.

2. Exceptions for certain record lots. Any existing lot or parcel of land with boundaries duly recorded among the Land Records of Baltimore County with the approval of the Baltimore County Office of Planning and Zoning ~~or tentative~~

~~approval of a preliminary~~ plan on or before the effective date of these regulations and not part of an approved subdivision, that cannot meet the minimum standards as provided within the zone may be approved for residential development in accordance with the setback standards as prescribed and in force at the time of the lot recordation.

3. DwellingS ~~units~~ per lot. No more than one dwelling ~~unit~~ is permitted on any lot in an R.C. 2 zone but not excluding additional dwellingS ~~units~~ for bona fide tenant farmers.

~~4. Additional development. Any remaining land may be further subdivided under the provisions of Section 1A02.2B-30.~~

Section 1A02-R.C. 3 (DEFERRAL OF PLANNING AND DEVELOPMENT) ZONES

1A02.1-General provisions.

A. Legislative Statement of Findings.

1. Declaration of findings. It is found:

a. That specific areas in Baltimore County are ideally suited for future higher density development due to their favorable geographic location to existing urban areas.

b. That these areas can be most economically provided with metropolitan water and sewer and other services.

c. That these areas are being preempted by scattered large lot development which will effectively destroy their use for future higher density development.

d. That any appreciable amount of preempting development must be deferred until future urban development can proceed.

e. That adequate large lot development areas are available without preempting these areas.

B. Purpose. The RC 3 zoning classification is established pursuant to the legislative findings set forth above, in order to: prevent undesirable, preempting forms of development which will prohibit a desirable higher density development pattern in the future.

2. Minimum diametral dimension. The minimum diametral dimension of any lot hereafter created in an R.C. 5 zone shall be 250 feet except as otherwise provided in Paragraph 5, below.

3. Building setbacks. Any principal building hereafter constructed in an R.C. 5 zone shall be situated at least 75 feet from the centerline of any street and at least 50 feet from any lot line other than a street line, except as otherwise provided in Paragraph 5, below.

4. Coverage. No more than 15 percent of any lot in an R.C. 5 zone may be covered by buildings, except as otherwise provided in Paragraph 5, below.

5. Exceptions for certain record lots. Any existing lot or parcel of land with boundaries duly recorded among the Land Records of Baltimore County with the approval of the Baltimore County Office of Planning and Zoning ~~or tentative approval of a preliminary plan~~ on or before the effective date of these zoning regulations and not part of an approved subdivision that cannot meet the minimum standards as provided within the zone may be approved for residential development in accordance with the standards prescribed and in force at the time of the lot recordation.

6. Dwelling~~S units~~ per lot. No more than one dwelling ~~unit~~ is permitted on any lot in an R.C. 5 zone, BUT NOT EXCLUDING ADDITIONAL DWELLINGS FOR BONA FIDE TENANT FARMERS.

SECTION 5. AND BE IT FURTHER ENACTED, THAT EVERY PART OF EVERY SECTION AND ZONING REGULATION OF THIS ACT IS ENACTED INDEPENDENTLY AND IS, THEREFORE, SEVERABLE; IF ANY PART IS DECLARED INVALID BY A COURT OF COMPETENT JURISDICTION, THE REST OF THIS ACT REMAINS VALID.

SECTION 6. AND BE IT FURTHER ENACTED, THAT ANY AMENDMENTS HEREIN, OR ANY NEW ZONING CLASSIFICATIONS PROVIDED FOR IN THIS BILL, SHALL NOT BE PROMULGATED AS TO ANY EXISTING ZONING MAPS, BUT SHALL BE EFFECTIVE ONLY UPON THE ADOPTION BY THE COUNTY COUNCIL OF ANY NEW ZONING MAPS ON OR BEFORE OCTOBER 15, 1976.

SECTION ~~5~~ 7. And be it further enacted, that this Act shall take effect forty-five days after its enactment.

READ AND PASSED this 3rd day of November 1975

By Order

Thomas Toporovich
Secretary, Pro Tem

PRESENTED to the County Executive, for his approval this 4th day of November 1975

Thomas Toporovich
Secretary, Pro Tem

APPROVED AND ENACTED:

11/7/75
Date

County Executive

I HEREBY CERTIFY THAT BILL NO. 98 IS TRUE AND CORRECT AND WILL TAKE EFFECT ON Dec 22, 1975.

Chairman, County Council

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1979, Legislative Day No. 20

BILL NO. 178-79

Mr. Norman W. Lauenstein, Councilman

By the County Council, October 15, 1979

A BILL
ENTITLED

AN ACT to implement various elements of the County's ~~Comprehensive~~ Master Plan, and more specifically those objectives, policies and standards relating to the assimilation, location, quantity, quality and timing of growth and development in Baltimore County, the provision of adequate public facilities to support development and the protection of agricultural and environmentally-sensitive land in the resource conservation zoning classifications, ~~and to provide for the establishment of overlay district areas and regulations and requirements pertaining thereto; to provide for a master plan consistency determination~~ AND TO ADOPT BASIC SERVICES MAPS AND REGULATIONS AND REQUIREMENTS PERTAINING THERETO; and to provide for monitoring of development activity; by adding new Article 4A - GROWTH MANAGEMENT; by repealing Subsections 1A01.2.B., 1A01.2.C., 1A01.3.B., 1A02.1, 1A03.1, 1A03.2, 1A03.4.B.1. and 2., 1A03.4.B.5. and 1A04.3.B.1. of said regulations and enacting new Subsections 1A01.2.B., 1A01.2.C., 1A01.3.B., 1A02.1, 1A03.1, 1A03.2, 1A03.4.B.1. and 2., 1A03.4.B.5. and 1A04.3.B.1. in lieu thereof; by adding Subsections 1A01.4, 1A02.4, 259.3 and new definitions ~~"Facilities impact use, Class A"; "Facilities impact use, Class B";~~ "Housing for the elderly"; "Industrial, quasi-industrial, or industry-related use"; and "Nonindustrial use" to Section 101, all of the Baltimore County Zoning Regulations; ~~by repealing and re-enacting with amendments Subsections 100.1.B.2, 100.1.C., 100.4., the definition of "Farm" under Section 101, and Subsection 259.2, all of the Baltimore County Zoning Regulations;~~ by repealing Subsection 1A04.3.B.2 of said regulations; and by repealing Council Bill 177-79.

CBA
PEOPLES' COUNSEL
EXH. NO. 8

NOTE: NOTICE OF AMENDMENT TO THIS BILL.
At the time of Final Reading, the Council unanimously voted to delete pages 3 through 43 of the bill as introduced and replace them with pages 3 through 21. For purposes of clarity and economy, the deleted pages are not included.

WHEREAS, by Article XI-A of the Maryland Constitution, the General Assembly is authorized to provide a grant of "express powers" to counties that form a charter government; and

WHEREAS, by Article 25A, Section 5 of the Annotated Code of Maryland, the General Assembly has designated the "express powers" to be granted to charter counties, which powers include the power to enact local laws for the protection and promotion of public health, safety and welfare, relating to planning, zoning and subdivision and to pass all ordinances, resolutions or bylaws that may be necessary and proper to execute and enforce any of the powers expressly enumerated; and

WHEREAS, the people of Baltimore County in accordance with the Constitution and Laws of the State of Maryland have adopted, ordained and established the Baltimore County Charter; and

WHEREAS, pursuant to provisions of the Charter and of the County Code, the County is responsible for planning for the future growth and development of the County, including the preparation of a Master Plan; and

WHEREAS, pursuant to Section 523 of the Baltimore County Charter, the Master Plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the County; and

WHEREAS, the County Council has adopted the Master Plan by Resolution No. 71 -79 dated ~~October 15~~ NOVEMBER 19, 1979; and

WHEREAS, pursuant to the Baltimore County Charter and Code, the County Council is responsible for the implementation of the Master Plan through the adoption or amendment of zoning maps and regulations, subdivision regulations, capital improvement programs and such other legislation, regulations, policies and programs which may be necessary; and

WHEREAS, said Master Plan divides the County into areas for the purpose of achieving specific plan objectives related to the location, density, timing and quantity of growth and development in such areas and the appropriate distribution of population, housing units and land uses throughout the County; and

WHEREAS, said Master Plan contains objectives, policies and standards designed to assimilate full population growth by the County representing the County's share of regional growth, to insure orderly growth and development of said population in the County; to protect valuable and irreplaceable natural, agricultural and environmental land and resources; to promote economic growth; to meet the housing needs of present and future anticipated residents; to assure that new development is adequately served by public facilities and services; to correct service and facility deficiencies in existing neighborhoods; and to promote the public health, safety and welfare of all residents of the County; now, therefore

SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland, that a new Article 4A - GROWTH MANAGEMENT, be and it is hereby added to the Baltimore County Zoning Regulations, said new article to read as follows:

ARTICLE 4A - GROWTH MANAGEMENT

Section 4A00 - Purpose and Definitions

4A00.1 - Purpose.

The purpose and intent of this Article is to implement the objectives of the County-wide Master Plan and to adopt standards and guidelines relative to new development in all areas of the County which would result in land use patterns, location of new growth and timing of growth and development that is consistent with preservation of the quality of life in existing neighborhoods, with the ability of the County to provide necessary public facilities and services to support new development, with the ability of the County to correct existing service and facility deficiencies, with the preservation of natural, agricultural and environmental resources and with the promotion of new growth and development in appropriate areas.

b. The number of daily peak-hour vehicle trips generated by a building or a part of a building to be devoted principally to uses other than dwellings or retail or office uses shall be determined by the Department of Traffic Engineering.

4. Exception.

This subparagraph does not apply to any development application relating to a residential development of no more than 3 dwelling units on a lot of record as of the effective date of this Article or to any development in a CCC district, CSA district OR RAE zone or IN a town center, other than a town center within a new development area so designated in the Master Plan.

~~4A02.5--Basic-Services-Determination.~~

~~A.--Generally.~~

~~Any-development-application-within-any-basic-services-mapped-area-in-addition-to-all-other-requirements-imposed-by-the-zoning-regulations,-subdivision-regulations-and-other-County-legislation-and-regulations,-shall-be-subject-to-a-basic-services-availability-determination.~~

~~B.--Scope-and-Applicability-of-Basic-Services-Availability-Determination.~~

~~The-basic-services-availability-determination-shall-be-made-by-the-Director-of-the-Office-of-Planning-and-Zoning,-in-accordance-with-the-basic-services-maps-and-standards-set-forth-in-this-Article.~~

SECTION 2. Be it further enacted, that Subsections 1A01.2.B., 1A01.2.C., 1A01.3.B., 1A02.1, 1A03.1, 1A03.2, 1A03.4.B.1. and 2., 1A03.4.B.5, and 1A04.3.B.1 of the Baltimore County Zoning Regulations, by and they are hereby repealed and new Subsections 1A01.2.B., 1A01.2.C, 1A01.3.B., 1A02.1, 1A03.1,

1A03.2, 1A03.4.B.1. and 2., 1A03.4.B.5 and 1A04.3.B.1 are hereby enacted in lieu thereof to said regulations, to read as follows:

Section 1A01 - R.C.2 (AGRICULTURAL) ZONES

1A01.2-Use regulations.

E. Uses permitted as of right. The following uses, only, are permitted as of right in all R.C. 2 zones:

1. Dwellings, 1-family detached

2. Farms, satellite farms, farmettes, and limited-acreage wholesale flower farms (see Section 404)

3. Open space, common

4. Streets and ways

5. Telephone, telegraph, electrical-power, or other lines or cables, provided that any such line or cable is underground; underground gas, water, or sewer mains or storm drains; or other underground conduits, except interstate or international pipelines.

6. Trailers, provided that any trailer allowed under this provision must be used or stored in accordance with the provisions of paragraphs b, c, e or f of subsection 415.1 and subparagraph 415.2.a(1) or 415.3.c(1), as applicable.

7. Accessory uses or structures, including, but not limited to, the following:

a. Excavations, uncontrolled

b. Farmers' roadside stands (see Section 404)

c. Home occupations

d. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or persons engaged in other, similar occupations, provided that the use is established within the building that serves as the owner's domicile; occupies a floor area no greater than 25% of the floor area used for residential purposes, not including garage floor area or unfinished basement space; and does not involve the employment of more than 2 nonresidents.

e. Parking space, including residential-garage space and space for recreational vehicle (see Section 415A)

f. Piers, wharves, docks and bulkheads (subject to the provisions of Section 417)

g. Radio antennas in conjunction with wireless transmitting or receiving facilities, provided that any such facility is used by a resident who has an amateur radio operator's license issued by the Federal Communications Commission. No such antenna may extend closer than the front building line to any street on which the lot may front; no rigid-structure antenna may be taller above grade level than the horizontal distance to the nearest property line or 100 feet, whichever is less; and no supporting structure may be situated within 50 feet of any property line (see also Section 400).

h. Swimming pools, tennis courts, garages, utility sheds or other accessory structures or uses (subject to the height and area provisions for buildings as set forth in Section 400)

I. TENANT HOUSES, INCLUDING TRAILERS USED AS TENANT HOUSES.

C. Uses permitted by special exception. The following uses, only, may be permitted by special exception in any R.C. 2 zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity; and, in the case of any use permitted under Item 24, further provided that the hearing authority finds that the use would support the primary agricultural use in its vicinity and would not itself be situated on land more appropriately used for primary agricultural uses:

1. Airports

2. Animal boarding places (regardless of class), kennels, veterinarians' offices, or veterinariums (see Section 421)

3. Antique shops (see Section 402B)

4. Camps, including day camps

5. Community care centers providing care for not more than 15 persons per site

6. Churches or other buildings for religious workship

7. Excavations, controlled

8. Farmers' co-op roadside stands

9. Fishing and shellfishing facilities, Class I or II

10. Golf courses or country clubs

11. Hunting or fishing preserves

12. Offices for agriculture-related uses; physicians' or dentists' offices as principal uses

13. Public-utility uses not permitted as of right

14. Research institutes (see Section 418)

15. Residential art salons (see Section 402C)

16. Restaurants or tea rooms converted from dwellings (see subsection 402.3)

17. Riding stables

18. Sanitary landfills (see Section 412)

19. Schools, including schools for agricultural training, private preparatory schools, business or trade schools, conservatories, or colleges

20. Shooting ranges, including archery, pistol, skeet, trap, or small-bore rifle ranges, or turkey shoots

21. Trailers as provided in Paragraph 415.1.d

22. Volunteer-fire-company or ambulance rescue facilities

23. Wireless transmitting or receiving facilities as principal uses

24. The following "agricultural-support" uses:

a. Farm-machinery sales, storage, or service; blacksmithing

b. Feed or grain mills or driers

c. Fertilizer sales or storage

d. Sawmills

e. Slaughter houses or manufacture, processing, or packing of fruit, vegetables, animal, or meat products, or by-products

f. Wine or spirits manufacture, including the manufacture of alcohol to be used in gasoline-alcohol mixtures, but excluding the production of those mixtures (as a principal use)

1A01.3 - Height and area regulations

B. Area regulations

1. Subdivision Lot Density.

No lot of record lying within an R.C.2 zone and having a gross area of LESS THAN 2 acres ~~or less~~ may be subdivided. No such lot having a gross area between 2 and 100 acres may be subdivided into more than 2 lots (total), and such a lot having a gross area of MORE THAN 100 acres ~~or more~~ may be subdivided only at the rate of 1

lot for each 50 acres of gross area.

2. Lot size. A lot having an area less than 1 acre may not be created in an R.C. 2 zone.

3. Setback requirements. No principal structure or dwelling (whether or not it is a principal structure) in an R.C.2 zone may be situated within 75 feet of the centerline of any street or within 35 feet of any lot line other than a street line.

4. Principal dwellings per lot. No more than 1 principal dwelling is permitted on any lot in an R.C. 2 zone.

Section 1A02 - R.C. 3 (DEFERRAL OF PLANNING AND DEVELOPMENT) ZONES

1A02.1 - Findings and Legislative Policy.

A. Declaration of findings. The County Council finds that some presently rural areas which may in the future be suitable for urban development are being pre-empted by sprawling development that will preclude future development of urban intensity. The Council also foresees a strong possibility that market demand, energy policies, food needs, and numerous other significant conditions may change substantially, or even drastically, with the result that the public interest would be impaired if urban development were to be allowed in some of these areas, despite their physiographic suitability to accommodate urban water-supply and sewerage systems. All of these areas are suitable for agriculture, which is the preferred use of the land in these areas, thus providing a reasonable present and future use for the land. The R.C. 3 zoning classification and its regulations are established, therefore, to prevent inappropriate sprawling development when WHERE urban development may be appropriate in the future and where the detailed planning necessary for that development must be deferred.

B. Location. The R.C. 3 classification may be applied only to land that lies beyond the Urban-Rural Demarcation Line, as established in the 1979- 1975 Master Sewer and Water Plan, and as amended from time to time.

Section 1A03 - R.C. 4 (WATERSHED PROTECTION) ZONES

1A03.1 - Findings and Legislative Policy. The County Council finds that major, high-quality sources of water supply for the entire Baltimore metropolitan area and for other neighboring jurisdictions lie within Baltimore County and that continuing development in the critical watersheds of those water-supply sources is causing increased pollution and sedimentation in the impoundments, resulting in

or industry-related use.

SECTION 4. Be it further enacted, that Subsection 1A04.3.B.2 of the Baltimore County Zoning Regulations, be and it is hereby repealed.

SECTION 5. Be it further enacted, that Council Bill No. 177-79 be and it is hereby repealed ~~upon the enactment of this bill.~~ EFFECTIVE 12:01 A.M. November 25, 1979.

SECTION 6. Be it further enacted, that every part of every section, subsection, sentence, clause or word of this Act is enacted independently and is therefore, severable; if any section, subsection, sentence, clause, phrase or word hereof is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions shall not be affected thereby, it being the intent of the County Council of Baltimore County, Maryland in adopting this Act that no portion thereof or provision or regulation contained therein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision or regulation.

SECTION 7. And be it further enacted, that this Act is hereby declared to be an emergency measure affecting the public health, safety or welfare, and having been passed by the affirmative vote of five members of the County Council, the same shall take effect ~~from the date of its enactment.~~ 12:01 A.M. November 25, 1979.

ARTICLE 1A

RESOURCE CONSERVATION ZONES
[Bill No. 98-1975[1]]

Section 1A00
General Provisions for All R.C. Classifications

1A00.1 Findings. It is found:

A. That development in the rural areas of Baltimore County has in recent years been taking place at an increasing rate;

B. That this development has occurred without the framework of a land use plan or other planning components;

C. That due to this and other factors, this development has formed very undesirable land use patterns;

D. That in general, these patterns are, or can be described as, urban sprawl;

E. That a significant amount of urban sprawl development is occurring as linear development along the various highways of the rural areas of the county as tracts of land immediately fronting along highways are "lotted off"; the utility of the road system is being impaired and future improvements will be frustrated if this process continues;

F. That it has been established that this development carries with it an extremely high cost to the county in a number of respects including:

1. The cost of servicing this pattern of development;

2. The cost with respect to its consumption and use of prime agricultural land, critical watershed areas, mineral extractive sites, as well as of other important natural resource areas;

3. The cost of future development opportunities due to the fact that viable, rational alternatives will be lost totally or compromised significantly by the present form of development;

G. That the aspect of the comprehensive plan that is applicable and which is being considered for rural Baltimore County embodies solutions to the various problems;

H. That the effective implementation of this plan requires additional zoning classifications; and

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[1] Editor's Note: Bill No. 98-1975, which enacted this Article, also repealed former Article 1A, Sections 1A00 and 1A01, previously added by Bill No. 100-1970.

I. That effective implementation of the resource conservation area requirements in the Chesapeake Bay Critical Area criteria requires additional resource conservation zoning classifications to accommodate strictly controlled growth while conserving habitat and water quality within the Critical Area. **[Bill No. 32-1988]**

1A00.2 Purposes. Pursuant to the above findings, it is the purpose of the Resource Conservation Zones to:

A. Discourage present land use patterns of development and to create a framework for planned or orderly development;

B. Provide sufficient and adequate areas for rural-suburban and related development in selected and suitable areas;

C. Protect both natural and man-made resources from compromising effects of specific forms and densities of development;

D. Protect areas desirable for more intensive future development by regulating undesirable forms of development within these areas until such time as intensive development commences.

E. Help achieve the goals of the Chesapeake Bay Critical Area Protection Law[2] by enacting land use policies to control development within the Critical Area by conserving the land and water resource base for agriculture, forestry and other natural resource uses; minimizing adverse effects on water quality; and conserving fish, wildlife and plant habitat. **[Bill No. 32-1988]**

1A00.3 Rezoning. **[Bill No. 32-1988]**

A. Filing of rezoning petitions.

1. No petition to reclassify an R.C. Zone or portion thereof as other than an R.C. Zone may be accepted for filing by the Zoning Commissioner unless:

a. The capital program, duly adopted Baltimore County Master or Comprehensive Plans, and the "county plan" required under Subtitle 5 of Title 9 in the Environment Article of the Annotated Code of Maryland 1987, as amended, show that the property under petition is to be serviced by public sewerage and water supply systems within two years after the date the petition is submitted; and

b. Required recommendations.

(1) No zoning reclassification may be granted for property zoned R.C.20 or R.C.50 by the Board of Appeals of Baltimore County unless the Board has received, in addition to any other recommendations from county agencies required by law or regulations, a recommendation on such requested reclassification

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2 **Editor's Note: See Title 8, Subtitle 18, of the Natural Resources Article of the Annotated Code of Maryland.**

from the Director of the Department of Environmental Protection and Resource Management.

(2) The recommendations shall be provided to the Board of Appeals within 30 days after the Department is notified by certified mail, return receipt requested, by the petitioner of the filing of the petition for reclassification, unless the Department by written request to the Board of Appeals, with good cause shown, moves that additional time not to exceed an additional 30 days is required to prepare and file said recommendations with the Board of Appeals.

B. The meeting of criteria established in this article for the filing of zoning reclassification petitions shall not in itself be sufficient grounds to reclassify property.

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

1A00.5 Application to tract divided by zone boundary. Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. Zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and, for the purpose of these regulations, shall be considered as separate parcels.

Section 1A01
R.C.2 (Agricultural) Zone

1A01.1 General provisions.

A. Legislative statement of findings.

1. Declaration of findings. It is found:

a. That Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development;

b. That the agricultural industry is an integral part of the Baltimore economy and that a continued conversion of agricultural land will continue to undermine this basic industry;

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

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

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

f. That Baltimore County has certain wetlands along Chesapeake Bay and its tributaries which serve as breeding grounds and nursery areas for the bay's biotic life; and

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

B. Purposes. The R.C.2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

1A01.2 Use regulations.

A. Preferred use permitted as of right. Agricultural operations, when conducted in accordance with good and reasonable husbandry practices, shall be afforded preferential treatment over and above all other permitted uses in R.C.2 Zones.

B. Uses permitted as of right.[1] The following uses only are permitted as of right in all R.C.2 Zones: **[Bill No. 178-1979]**

1. Dwellings, one-family detached. **[Bill No. 178-1979]**

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[1] **Editor's Note: "Churches and schools for agriculture training," originally included in this section by Bill No. 98-1975, were moved to Section 1A01.2.C by Bill No. 178-1979.**

2. Farms and limited acreage wholesale flower farms (Section 404). **[Bill Nos. 178-1979; 51-1993]**

3. Open space, common. **[Bill No. 178-1979]**

4. Public schools. **[Bill Nos. 63-1980; 47-1982; 47-1985]**

5. Streets and ways. **[Bill No. 178-1979]**

6. Telephone, telegraph, electrical-power or other lines or cables, provided that any such line or cable is underground; underground gas, water or sewer mains or storm drains; or other underground conduits, except interstate or international pipelines. **[Bill No. 178-1979]**

7. Trailers, provided that any trailer allowed under this provision must be used or stored in accordance with the provisions of Subsection B, C, E or F of Section 415.1 and Section 415.2.A.1 or 415.3.C.1, as applicable. **[Bill No. 178-1979]**

8. Antennas used by CATV systems operated by companies franchised under Article 25 of the Baltimore County Code, if situated on property owned by the county, state or federal government or by a governmental agency. **[Bill Nos. 220-1981; 137-2004]**

9. Accessory uses or structures, including, but not limited to, the following:

   a. Excavations, uncontrolled. **[Bill No. 178-1979]**

   b. Farmer's roadside stand and produce stand, subject to the provisions of Section 404.4. **[Bill Nos. 178-1979; 41-1992]**

   c. Home occupations (see Section 101). **[Bill Nos. 124-1978; 178-1979]**

   d. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident employee. **[Bill Nos. 78-1979; 105-1982; 65-1999]**

   e. Parking space, including residential-garage space and space for recreational vehicle (Section 415A). **[Bill No. 178-1979]**

   f. Piers, wharves, docks and bulkheads, subject to the provisions of Section 417. **[Bill No. 178-1979]**

   g. Radio operator antennas, subject to Section 426A. **[Bill Nos. 178-1979; 30-1998]**

   h. Swimming pools, tennis courts, garages, utility sheds, satellite receiving dishes (subject to Section 429) or other accessory structures or uses (subject to the height and area provisions for buildings as set forth in Section 400). **[Bill No. 178-1979; Bill No. 71-1987]**

i. Tenant houses, including trailers used as tenant houses. **[Bill No. 178-1979]**

j. Rubble landfills, provided that the actual fill area does not exceed 3% of the total contiguous acreage of the property in the same ownership and subject to the provisions of Section 412.7 only. **[Bill No. 97-1987]**

k. Signs, subject to Section 450. **[Bill No. 89-1997]**

10. Commercial film production, subject to Section 435. **[Bill No. 57-1990]**

11. Transit facilities. **[Bill No. 91-1990]**

12. Equestrian centers, provided that any such equestrian center has access to two roads, one of which is a road having, within two miles from the equestrian center, an interchange with an interstate expressway; contains no permanent grandstand; and contains no lights other than those consistent with farm use. Temporary structures, such as removable tents, viewing stands and seating, are permitted, provided that they are removed within a reasonable time following the event or events which they serve. **[Bill No. 24-2002]**

C. Uses permitted by special exception.[1] The following uses, only, may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity; and, in the case of any use permitted under Item 29, further provided that the hearing authority finds that the use would support the primary agricultural use in its vicinity and would not itself be situated on land more appropriately used for primary agricultural uses: **[Bill No. 178-1979]**

1. Airports. **[Bill No. 178-1979]**

2. Animal boarding places (regardless of class), commercial kennels, private kennels, veterinarians' offices or veterinariums (see Section 421). **[Bill Nos. 178-1979; 87-2001]**

3. Antique shops (see Section 402B). **[Bill No. 178-1979]**

4. Camps, including day camps. **[Bill No. 178-1979]**

5. Community care centers provided that no residential community care center, i.e., a center which serves as the residence of the persons for whom care is provided, shall provide care for more than 15 persons per site, and no day community care center shall provide care for more than 15 persons per acre nor more than 75 persons per site. **[Bill Nos. 178-1979; 157-1986]**

6. Churches or other buildings for religious worship. **[Bill No. 178-1979]**

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1 **Editor's Note: The following uses were included in this section by Bill No. 98-1975, and deleted by Bill No. 178-1979: "baseball batting ranges," "cemeteries," "community bldgs. swimming pools," "fish hatcheries," "golf driving ranges, miniature-golf," "helistops," "hospitals," "nursing, convalescent homes," "railroads," "sanitariums" and "shooting preserves."**

7. Excavations, controlled. **[Bill No. 178-1979]**

8. Farm market, subject to the provisions of Section 404.4. **[Bill Nos. 178-1979; 41-1992]**

9. Fishing and shellfishing facilities, Class I and II. **[Bill No. 178-1979]**

10. Golf courses or country clubs. **[Bill No. 178-1979]**

11. Home occupations of disabled persons, where the use is established in a structure originally constructed as a dwelling or as accessory to a dwelling or where the use is established in a structure that is situated on the same lot as a dwelling and which the Zoning Commissioner finds to be compatible with its surrounding neighborhood, provided that:

    a. Only three persons, including the disabled person and the members of his immediate family who are residents of the dwelling, are employed in the use on the premises; and

    b. In any case the use is conducted by a disabled person whose domicile is the dwelling to which the use is accessory and whom the hearing authority finds is so severely disabled as to be unable to engage in his occupation away from the premises of his home.

    Any provision of Section 502.2 to the contrary notwithstanding, any special exception granted pursuant to this item shall expire upon the first to occur of the following:

    (1) Five years after the issuance of the permit;

    (2) The death of a disabled person;

    (3) The termination of the disability; or

    (4) The failure of the disabled person to permanently reside at the premises.

    A new special exception for the use may be granted when the previous special exception expires but only upon the completion of the entire application and hearing process in the same manner as if it were the initial application for this special exception. It is the purpose of this provision to prevent the use of residential property for business purposes by an occupant other than a disabled person and to ensure that any occupation permitted pursuant to this item will be conducted in a manner appropriate to its surroundings. **[Bill No. 27-1981]**

12. Horticultural nurseries, subject to the provisions of Sections 404.1 and 404.2. **[Bill No. 41-1992]**

13. Hunting or fishing preserves. **[Bill No. 178-1979]**

14. Landscape service operations, subject to the provisions of Sections 404.1 and 404.3. **[Bill No. 41-1992]**

15. Offices for agriculture-related uses. **[Bill Nos. 178-1979; 37-1988]**

16. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons as an accessory use, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident professional associate nor two other nonresident employees. **[Bill Nos. 105-1982; 65-1999]**

(Cont'd on page 1A-9)

17. Public utility uses not permitted as of right. **[Bill No. 178-1979]**

18. Rail passenger station, subject to Section 434. **[Bill No. 91-1990[1]]**

19. Residential art salons (see Section 402C). **[Bill No. 178-1979]**

20. Standard restaurants or tearooms converted from dwellings (Section 402.3). **[Bill Nos. 178-1979; 110-1993]**

21. Riding stables. **[Bill No. 178-1979]**

22. Sanitary landfills, or rubble landfills in which the actual fill area exceeds 3% of the total contiguous acreage of the property in the same ownership. However, the fill area of a rubble landfill may not exceed 7% of the total contiguous acreage, nor may the fill area exceed a depth of 20 feet unless the Zoning Commissioner specifically finds that the landfill should be exempt from the depth limitation (see Section 412). **[Bill Nos. 178-1979; 97-1987]**

23. Schools, including schools for agricultural training, private preparatory schools, business or trade schools, conservatories or colleges. **[Bill No. 178-1979]**

24. Shooting ranges, including archery, pistol, skeet, trap or small-bore rifle ranges, or turkey shoots. **[Bill No. 178-1979]**

25. Sludge disposal facility – landspreading (Section 412A.2.E). **[Bill No. 46-1982]**

26. Trailers, as provided in Section 415.1.D. **[Bill No. 178-1979]**

27. Volunteer fire company or ambulance-rescue facilities. **[Bill No. 178-1979]**

28. Wireless telecommunications towers, subject to Section 426. **[Bill No. 30-1998]**

29. The following "agricultural-support" uses as principal commercial uses: **[Bill Nos. 178-1979; 51-1993]**

    a. Farm-machinery sales, storage or service; blacksmithing. **[Bill No. 178-1979]**

    b. Feed or grain mills or driers. **[Bill No. 178-1979]**

    c. Fertilizer sales or storage. **[Bill No. 178-1979]**

    d. Sawmills. **[Bill No. 178-1979]**

    e. Slaughterhouses or manufacture, processing or packing of fruit, vegetables, animal or meat products, or by-products. **[Bill No. 178-1979]**

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1 **Editor's Note: Former Item 14, "Research institutes (see Section 418)," which followed this item, was repealed by Bill No. 122-1984.**

f. Spirits manufacture, including the manufacture of alcohol to be used in gasoline/alcohol mixtures, but excluding the production of these mixtures. **[Bill Nos. 178-1979; 51-1993]**

g. Firewood operations. **[Bill No. 151-1992]**

h. Winery, including accessory retail and wholesale distribution of wine produced on-premises. Temporary promotional events, such as wine tastings or public gatherings associated with the winery, are permitted, within any limits set by the special exception. **[Bill No. 51-1993]**

i. Bottled water plant, if the source of the water is located on the same site as the plant, and provided that the Director of Environmental Protection and Resource Management makes a recommendation that the proposed facility will not adversely affect the quality or capacity of surface water or groundwater. **[Bill No. 51-1993]**

1A01.3 Height and area regulations.

A. Height regulation. No structure hereafter erected in an R.C.2 Zone shall exceed a height of 35 feet, except as otherwise provided under Section 300.

B. Area regulations. **[Bill No. 178-1979]**

1. Subdivision lot density. No lot of record lying within an R.C.2 Zone and having a gross area of less than two acres may be subdivided. No such lot having a gross area between two and 100 acres may be subdivided into more than two lots (total), and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of one lot for each 50 acres of gross area. In cases where land in single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right- of-way or easement shall not be considered separate parcels for the purpose of calculating the number of lots of record. **[Bill Nos. 199-1990; 125-2005]**

2. Lot size. A lot having an area less than one acre may not be created in an R.C.2 Zone.

3. Setback requirements. No principal structure or dwelling (whether or not it is a principal structure) in an R.C.2 Zone may be situated within 75 feet of the center line of any street or within 35 feet of any lot line other than a street line.

4. Principal dwellings per lot. No more than one principal dwelling is permitted on any lot in an R.C.2 Zone.

1A01.4 Maryland Agricultural Land Preservation Program. The use or development of land in an agricultural district established in accordance with Title 2, Subtitle 5 of the Agriculture Article of the Annotated Code of Maryland shall be governed by agricultural land preservation provisions enacted by the County Council pursuant to § 2-513 of the Agriculture Article in the case of any conflict between those provisions and these regulations. **[Bill Nos. 178-1979; 137-2004]**

ARTICLE 1B

DENSITY RESIDENTIAL (D.R.) ZONES
[Bill No. 100-1970]

Section 1B00
Legislative Statement of Findings; Policy With Respect to D.R. Zones in General

1B00.1 Declaration of findings. The Baltimore County Council finds:

A. That residential zoning regulations heretofore in effect have not been conducive to the creation of housing diversity in Baltimore County subdivisions;

B. That minimum standards for individual lots, having been derived from maximum overall density standards, have resulted in an excessive spreading of residential development over subdivision tracts; such spreading of development has led to removal or undesirable transformation of natural vegetation and other features more properly left in their natural or previous states, and has led to visual monotony;

C. That zoning reclassifications based on lot sizes and types of housing have, in some situations, prevented the construction of the maximum numbers of housing units intended to be permitted on development tracts, especially in cases of severe topographical variation, or have induced "cramped" layout or other undesirable subdivision design characteristics as accommodation of maximum density is achieved;

D. That evolving markets for types of housing units not permitted in lower-density zones have created pressures leading to frequent rezoning, ultimately resulting in vastly greater population levels than have been planned for, tending to nullify planning efforts and to overload and overcrowd public facilities;

E. That, as a result of such rezoning, residential zoning classifications at the various density levels have not been applied to a satisfactory degree in proper relation or with sufficient regard to: location or size of commercial or industrial areas or uses; utilities, motorways, schools or other public facilities; timeliness of development; conservation and allocation of land resources; and other factors which should be considered in planning for the development of the county on the basis of a comprehensive rationale;

F. That, in light of the above findings, it is in the interest of the general welfare that new zoning classifications, formulated so as to avoid such effects in future residential development, be established as hereinafter provided;

G. That the ability to distribute density across different zone boundaries, as provided for in Bill 100-1970, has resulted in density patterns often unintended by the county during the comprehensive zoning map process; and **[Bill No. 2-1992]**

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Exh No. 10

H. That the flexibility of density residential zoning has resulted, in some situations, in residential development that is incompatible with existing neighborhoods. **[Bill No, 2-1992]**

1B00.2 Purpose. The D.R. zoning classifications are established, pursuant to the legislative findings set forth above, in order to:

A. Foster a greater variety in housing types within future residential developments;

B. Allow more feasible preservation of natural features and induce the reservation of ample and more suitably designed open spaces and parks, in order to better satisfy the needs of residents without economic disadvantage to developers;

C. Allow greater flexibility in subdivision-development planning and provide for the inducement of more creative as well as more economic approaches to residential development, with the goal of desirable and distinctive identity and character of individual residential locales;

D. Provide the means to satisfy differing housing-market requirements without rezoning, and thus without disruptive changes in density potential;

E. Provide for the application of residential zoning classifications in a manner more nearly in accord with comprehensive plans and comprehensive-planning goals; and

F. Provide greater certainty about dwelling types and densities within existing communities with the goal of conserving and maintaining these areas. **[Bill No. 2-1992]**

Section 1B01
Regulations With Respect to D.R. Zones in General

1B01.1 General use regulations in D.R. Zones.

A. Uses permitted as of right. The following uses only are permitted as of right in D.R. Zones of all classifications, subject to the restrictions hereinafter prescribed. **[Bill No. 2-1992]**

1. Dwellings as provided herein and as provided in Section 430 and subject to Section 402:

a. In all D.R. Zones: single-family detached, semidetached or duplex dwellings.

b. In all D.R. Zones: alternative site-design dwellings, subject to findings of compatibility pursuant to § 32-4-402 and the hearing officer's hearing under Article 32, Title 4, Subtitle 2 of the Baltimore County Code, and as provided for in the Comprehensive Manual of Development Policies. **[Bill No. 137-2004]**

c. In D.R.5.5 Zones, subject to findings of compatibility by the hearing officer: group houses and multifamily buildings. **[Bill No. 85-1997]**

2. Under the provisions adopted pursuant to the authority of Section 504.2, development in D.R. Zones may be made subject to additional standards of lot area, yard space, open-space distribution, building distribution or other aspects or characteristics of site planning or project design. Such standards shall be based upon specified existing, prospective or stipulated conditions or circumstances of development, and shall be designed to further the specific purposes of this article and the purposes of these zoning regulations in general.

3. Local open space. Local open space tracts in D.R. Zones shall be designed, established and maintained in accordance with the standards, guidelines and procedures set forth in the Baltimore County Local Open Space Manual as enabled in § 32-4-404 of the Baltimore County Code.[4] **[Bill No. 137-2004]**

1B01.3 Plans and plats.

A. Development plans.

1. Purpose. This paragraph is intended:

a. To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein; and

b. To provide for review of residential development plans to determine whether they comply with these regulations and with standards and policies adopted pursuant to the authority of Section 504.

2. Partial development plan. For the purposes of this article, a "partial development plan" is a portion of a final development plan, and a partial or final development plan is "applicable" to a given lot if it covers all property in the subdivision within 300 feet of the given lot, in addition to the lot itself.

3. Subdivision lot sales, development and use subject to partial development plan. No interest in any lot which is in a D.R. Zone and is hereafter created by subdivision of a record lot existing on the effective date of this article or created by consolidation of such lots may be sold unless a final or partial development plan applicable to the lot has been approved as required under Paragraph 6, below; further, no use may be established and no construction may take place on any lot so created except in accordance with such a plan. The provisions of this paragraph shall not apply to Class A assisted living facilities. **[Bill No. 188-1993]**

4. Notice in conveyance. Any party who sells an interest in real property within an area covered by an approved partial or final development plan shall attach to the instrument of sale a notice directing the buyer's attention to the plan (including any amendment) and listing the location of the

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4 **Editor's Note: Former Subsection C, Open Space, Building Separation and Other Area Standards, which followed, was repealed by Bill No. 126-1992.**

various certified copies which may be publicly inspected (Paragraph 6), together with a listing of the recorded plats covering all portions of the subdivision as a whole. The notice shall also generally apprise the buyer of the rights, requirements and remedies provided under the development plan, those provided under this article and these zoning regulations in general, and those set forth in provisions adopted pursuant to the authority of Section 504, and, to this end, the notice shall be on a form issued by the county and approved by the Office of Law, the Zoning Commissioner, and the Planning Board as being clear and sufficient for the purpose.

5. Forms and content of plans.

   a. Forms. Each partial development plan must be filed both as a separable document or set of documents and as part of a final development plan which includes all partial development plans as approved for other portions of the subdivision. Upon approval, each final development plan thus filed supersedes previous final development plans of the subdivision.

   b. Content. Each partial and final development plan must show: the locations, types and exterior dimensions of all proposed structures and all existing structures to be retained; generalized floor plans to scale; layout of parking facilities; streets and drives giving access to and lying within the tract; existing topography and major vegetation; proposed grading; common amenity open space (including local open space); all additional information that may be required under procedures adopted pursuant to the authority of Section 504; and all additional information which is necessary, as determined by the Director of the Department of Permits and Development Management, to ascertain whether the project will comply with the zoning and subdivision requirements of Baltimore County. The plan shall contain the note that landscaping and screening shall conform to the standards contained in the Baltimore County Landscape Manual adopted pursuant to § 32-4-404 of the Baltimore County Code. **[Bill No. 137-2004]**

6. Initial review and approval procedure. Procedural steps and requirements in the submission and review of various preliminary versions of partial and final development plans shall be as established provisions adopted pursuant to the authority of Section 504 or, in the absence of such provisions, as established by the Office of Planning. In formulating such steps and requirements, the Planning Board or the Office of Planning shall effect maximum coordination between the integration with similar and related steps and requirements in the submission and review of plans pursuant to the subdivision regulations. If the partial and final development plans for a subdivision are approved by the Zoning Commissioner as complying with the zoning regulations, approved by the Director of Planning as being consistent with the subdivision regulations and any subdivision plans filed pursuant thereto, and approved in such other manner as may be prescribed

under provisions adopted pursuant to the authority of Section 504, copies of the plans, certified by the Zoning Commissioner and the Director of Planning as having been so approved, shall be filed with such county or state agencies as they may direct and as may otherwise be required, and shall be retained in the files of the Office of Planning, including the files of the Zoning Commissioner.

7. Amendment of approved development plans. After partial or final development plans have been approved as provided under Paragraph 6, preceding, they may be amended only as provided below:

   a. Amendment prior to sale of interest in nearby property. The development plans may be amended by simple resubmission, or by the submission of appropriate documents of revision, subject to the same requirements as are applied to original plans, if there is no change with respect to any lot, structure or use within 300 feet of a lot or structure which has been sold since the original plans were filed.

   b. Amendment after sale of interest in nearby property or upon demand for hearing. In the case of an amendment not allowed under Subparagraph a, by reason of sale of property within the area, or in case of a demand for hearing by an eligible individual or group, the plans may be amended through special exception procedures, in the manner provided under Section 502 and subject to the following provisions:

      (1) The amendment must be in accord with the provisions of the Comprehensive Manual of Development Policies and with the specific standards and requirements of this article, as determined by the Office of Planning. The Director, on behalf of the Planning Board, shall notify the Zoning Commissioner accordingly. **[Bill No. 29-1995]**

      (2) Only an owner of a lot abutting or lying directly across a street or other right-of-way from the property in question, an owner of a structure on such a lot, or a homes association (as may be defined under the subdivision regulations or under provisions adopted pursuant to the authority of Section 504) having members who own or reside on property lying wholly or partially within 300 feet of the lot in question are eligible to file a demand for hearing. **[Bill No. 29-1995]**

      (3) It must be determined in the course of the hearing procedure that the amendment would be consistent with the spirit and intent of the original plan and of this article. **[Bill No. 29-1995]**

   c. Amendment upon request by owner of lot within subdivision. The Zoning Commissioner may, without a public hearing but with the concurrence of the Director of Planning, amend the plans with respect

to a structure on an individual lot created under the plans and used according to the purpose stated therein, or with respect to such lot, at the request of the lot owner, under the following requirements and conditions:

(1) Reasonable notification, by a standard method established pursuant to the authority of Section 504 and approved by the County Attorney, must be given to the occupants and owners of all real property which is fully or partially situated within 300 feet of the lot in question.

(2) It must be determined that a formal demand for hearing by an eligible individual or group, as described in Paragraph b, has not been filed.

(3) It must be determined that standards adopted under the authority of Section 504, in addition to the specific requirements under these regulations, will not be violated by the amendment.

(4) The Zoning Commissioner and the Director of Planning must certify that the amendment is in keeping with the spirit and intent of this article and other Baltimore County land use and development requirements administered by them, and both must certify that the amendment does not violate the spirit and intent of the original plan.

d. Any amended development plan and any document of amendment of such a plan must be filed with all agencies or officials with whom copies of the original plan have been filed pursuant to paragraph above, and no amendment takes effect otherwise.

B. Final subdivision plat.

1. Purpose. Pursuant to the regulations for D.R. Zones, a portion of a tract of land may be subdivided for development at a higher residential density than the maximum average density permitted, lessening the permitted density of development on the remainder of the tract; or a portion of the tract may be subdivided for development at less than the maximum average density, thus increasing the density at which the remainder of the tract may be developed (Section 1B01.2.A). It is the purpose of this paragraph to assure that these factors will be identified in the sale of any portion of a development tract in a D.R. Zone and, in particular, to prevent the unknowing purchase of a tract which, as a result of such prior subdivision, may not itself be developed at the average gross density specified in the regulations.

2. Effect. No subdivision of a tract or a portion of a tract may be created after the effective date of this article, except as otherwise provided under Section 1B02.3.A.2 unless the final subdivision plat therefore contains a summary showing the total number of dwelling or density units allowed for the entire tract under the applicable D.R. Zones. The summary shall indicate, as appropriate, the number of dwelling or density units utilized by previous

final subdivision plats for portions of the same tract, the number of dwelling or density units contained in the current subdivision plat, and the balance of dwelling or density units allowed for the remainder of the tract under the applicable D.R. Zone(s). It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. Zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. Zone(s) for the entire tract.

THE APPLICATION OF RANSHELL HOLDINGS, LLC - LEGAL OWNERS /PETITIONERS FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE S/S KEENEY MILL ROAD, 750' E OF C/L SOUTH RUHL ROAD (20713 KEENEY MILL ROAD) 6TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 03-225-SPH

* * * * * * * * *

OPINION

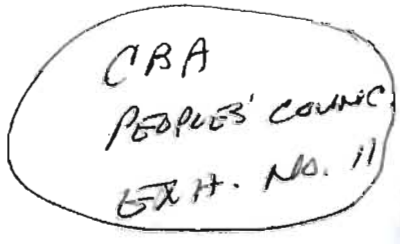
Background

This matter is before the Board on an appeal from a decision of the Deputy Zoning Commissioner dated March 7, 2003 in which a Petition for Special Hearing to confirm the existence of two building lots on the property known as Lot #1 of Keeney Mill Woods – East was denied and the finding that there does not exist a sufficient amount of density for said lot to be divided to create two separate building lots.

A hearing was held before the Board on October 29, 2003 and December 3, 2003. The Petitioner, Ranshell Holdings, LLC, by Randolph H. Shelly, General Manager, was represented by Howard L. Alderman, Jr., Esquire. Protestants, John C. Boyle, Brian Gebhart, Joseph Matricciani, and Mr. and Mrs. Joseph R. Fuchs, adjacent property owners, were represented by J. Carroll Holzer, Esquire. People's Counsel for Baltimore County was represented by Deputy People's Counsel, Carole S. Demilio, Esquire. Briefs were submitted to the Board by all parties, and a public deliberation was held on January 29, 2004.

Facts

The subject property is an unimproved parcel located on the south side of Keeney Mill Road, just west of South Ruhl Road in northern Baltimore County. The property is also known as Lot #1 of Keeney Mill Woods – East and contains a gross area of 2.999 acres +/-, zoned R.C. 2.



Petitioners purchased the subject property from Gloria Evangelisti on or about September 12, 2002 and desire to subdivide the property into two separate building lots in order to construct a single-family dwelling on each lot. The Petition herein was filed to confirm that the density exists to allow the proposed subdivision and to determine the proper procedure for subdividing the property.

The Protestants are neighbors in the subdivision and argue that it would be out of character with the existing community to subdivide Lot 1. They testified that Lot 1 is the smallest of five lots in the subdivision and that the proposed development would overcrowd this parcel. Mr. Fuchs, the owner of Lot #2, is fearful that the proposed building envelope for one of the lots would be too close to his home on Lot #2. He also is concerned about drain fields from that home going into his lot, and the rainwater from Lot 1 running off in gullies over his property. All of the Protestants argue that there is no right of subdivision on this lot based upon the zoning history of the property.

It was noted previously that the property is also known as Lot 1 of Keeney Mill Woods – East, which was approved as a five-lot subdivision in May 1977. The overall tract contained 27.501 acres, zoned R.C. 2, which at that time permitted the subdivision of the property into no more than five residential building lots. In 1979 County Council Bill No. 178-79, which became effective on November 25, 1979, changed the method by which R.C. 2 zoned land may be subdivided. The new method established by Bill 178-79 restricted the amount of density associated with R.C. 2 zoned land. Under the new R.C. 2 regulations which were effective in 1979, the same 27.501-acre parcel would yield only two lots and not the five that were approved at the time the development was approved in 1977.

Lot #1 is the only lot upon which a building has not been erected. As stated above, the Petitioner seeks to divide Lot #1 into two lots in accordance with the present zoning laws.

Petitioner's Position

Petitioner presented Geoffrey C. Schultz as an expert witness in support of its position. Mr. Schultz is vice president of the firm McKee & Associates. He prepared the plat which was submitted in support of the Petition as Petitioner's Exhibit #1. Mr. Schultz testified that, based upon his expertise and research, the subdivision plat of Keeney Mill Woods – East was duly recorded in the land records of Baltimore County and that the lots 1 through 5 shown thereon were considered lots of record. He also testified as to the chain of title of Lot #1 being conveyed from James Kassolis, the Developer of Keeney Mill Woods, to Gloria Evangelisti, and the subsequent deed from Evangelisti to the Petitioner, Ranshell Holdings, LLC.

Mr. Schultz also testified that in preparing the proposed development plan, in evidence as Petitioner's Exhibit 1, he relied on the current zoning regulations in accordance with § 26-169 of the *Baltimore County Code*. He read § 26-169 as follows:

> These regulations shall apply to all development except:
>
> (i) such development which, prior to the effective date of this article (June 11, 1982) has received tentative approval of the preliminary plan by the planning board for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property; and (ii) such development as has received CRG approval, reclamation plan approval, or any other project vested by law, or such development for which a CRG plan has been accepted for filing by the Department of Public Works prior to the date of adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be. **[Emphasis added.]**

It was Mr. Schultz's opinion that, since there was a tentative approval of the preliminary plan for the subdivision by the Planning Board prior to the effective date of the article (June 11, 1982), the subdivision was subject to the regulations that were effective at the time of the approval, which would have been the joint subdivision advisory committee process. Mr. Schultz then stated that the sentence in § 26-169 which stated "proposed development shall be in compliance with the present zoning classification on the subject property" gave him the direction for the zoning classification of Lot #1, that he proposed to divide Lot #1 into two lots. It was Schultz's position that Council Bill 79-178, which was effective November 25, 1979, governed this subdivision in that Lot #1 was a lot of record on November 25, 1979 and the lot was between 2 and 100 acres, it could be divided into two lots.

Mr. Schultz also testified that he was familiar with the Zoning Commissioner's Policy Manual, specifically § 1A01.3.B.1, entitled "Subdividing Existing Lots." That states:

1A01.3.B.1. Subdividing existing lots

a) Subdivision or further subdividing of legally existing R.C. 2 zoned lots of record prior to Bill 178-79 (effective 11/25/79) is permitted provided that:

1) only the most recent deed shall be used to determine the number of lots of record; and that

2) the lots recorded met the existing zoning regulations at that time.

Mr. Schultz indicated that he was familiar with this section and that he had been required to use that policy in his practice several times. He stated that it was necessary to demonstrate to the Baltimore County zoning office that the parcel existed on November 25, 1979 in the same configuration as it exists today to verify that it has density. Mr. Schultz did this by starting with the most recent deed and going back through the chain of title to demonstrate that there had been no change in the boundaries of that parcel and that the density had not been utilized for other

parcels of land since 1979. Based upon his review of the documents, he concluded that the subdivision plat of Keeney Mill Woods met the zoning regulations in effect at the time they were recorded. Therefore, he felt that the subdivision of Lot #1 into two lots was justified under the Zoning Commissioner's Policy Manual.

Protestants' Evidence

In addition to the testimony of the neighbors in Keeney Mill Woods, the Protestants presented the written comments of the zoning office authorized by Mr. Lloyd Moxley. Moxley's comments by memo dated November 7, 2002 indicated that § 103 of the Baltimore County Zoning Regulations precludes the additional re-subdivision requested since this development continues to be governed by the zoning regulations in place at the time Baltimore County Planning Commission approval was granted. It was the opinion of the staff that no further density existed on the property.

Protestants also presented Mr. Jack Dillon who was accepted as an expert in planning, zoning and subdivision. Mr. Dillon testified as to his employment with Baltimore County from 1962 until 1973, where he served in the County Planning Office as a Planner during that period and also worked in the Baltimore County zoning office from 1966 to 1972, where he served as Chairman of the Zoning Advisory Committee and Zoning Enforcement. Dillon also worked as an Environmental Planner in the Planning Office from 1974 to 1981 and was District Area Planner and Administrator of the Baltimore County Agricultural Land Preservation Program from 1981 to 1987. From 1987 until 1996, when he retired, he was the Senior Planner and Deputy Division Chief for the rural area of Baltimore County.

It was Mr. Dillon's opinion that the Petitioner's request for the re-subdivision of Lot #1 could not be accomplished based upon the unavailability of any density left on the site. Dillon

testified that the property was subdivided in 1977 and at that time, the density factor permitted a maximum of five (5) density units on the site. In 1979 the R.C. 2 zone was amended to permit only two (2) density units on sites between 2 and 100 acres, which meant that the present law was more restrictive than the previous law.

Mr. Dillon produced a copy of the final development plan for Keeney Mill Woods which was passed pursuant to Bill 12-77, the Interim Development Control Act (IDCA). The IDCA was in effect from April 16, 1977 until November 25, 1979. The final development plan for Keeney Mill Woods – East Subdivision was approved by the County and signed on April 29, 1977.

On cross-examination, Mr. Dillon was questioned with respect to § 26-169 of the *Baltimore County Code*. Mr. Dillon was confronted with a preliminary plan for the Keeney Mill Woods – East subdivision which was approved March 30, 1977. He was questioned as to whether or not subsection (i) of § 26-169 applied in this particular situation. It was Dillon's opinion that, since a final development plan had been approved, Section (i) did not apply because it applied only to preliminary plans. He stated that the subdivision was reviewed under the Joint Subdivision Planning Review Process (JSPC). This was the process that preceded the CRG process and the community input process now in effect. He felt that the whole section did not apply but if any part of it applied, it would be subsection (ii). Mr. Dillon testified that the Keeney Mill Woods – East subdivision did not receive CRG approval since the CRG was not in effect at the time that the subdivision was approved.

Mr. Dillon was also questioned with respect to § 103.1 and § 103.3 of the zoning regulations. These sections were relied on by Mr. Moxley of the zoning office in his memorandum. It was Mr. Dillon's testimony that the first part of § 103.1 was an evolving

section. He opined that it pertained to a tentative approval of a preliminary plan prior to the adoption of the regulations which were adopted on March 30, 1955 and did not apply to the preliminary plan for the Keeney Mill Woods – East subdivision since a final development plan had been approved. He felt that § 103.3 was specific to the R.C. 5 zones, and that 103.3 was a grandfather regulation.

Mr. Dillon was also asked to comment on the Zoning Commissioner's Policy Manual § 1A01.3.B.1 which was referred to by the Deputy Zoning Commissioner in his decision in this matter, when he stated:

> It appears to me that the provision relied upon by the Petitioner relates to legally existing R.C. 2 zoned lots of record that were created by deed or multiple deeds. That particular provision does not apply to the re-subdivision of an existing lot which was part of an approved final subdivision plat such as Keeney Mill Woods – East.

Mr. Dillon agreed with the Deputy Zoning Commissioner's analysis stating, "I think the Deputy Zoning Commissioner hit it very correctly in that the section of the policy manual really deals with parcels or tracts of land that were out there that were created, and not part of a subdivision...if they were part of a subdivision, I don't believe they would fall under that section."

Mr. Dillon also relied heavily on § 1B01.B.2 of the zoning regulations and § 1B01.3 which regulates the amendment of approved development plans. Mr. Dillon quoted the last sentence of § 1B01.B.2 which states:

> It is the intent of the zoning regulations to prohibit subdivision or re-subdivision of portions of a tract in R.C. zones in a manner so to exceed the total number of dwelling or density units allowed under the applicable R.C. zones for the entire tract.

When asked as to the significance of the word "entire," Dillon states: "You can't take it out of context...You can't take a lot created in 1977 and then come back in 1979 and then say,

'now we're our own tract,' and re-subdivide under the new regulations...You can't have your foot in both zones. You have to look at the entire tract."

Dillon then concluded that this development was approved in 1977 under the 1977 regulations and that they have maximized the density that was allowed under the zone at the time and that the subdivision was subsequently recorded. He felt that the grandfather clause was generally meant to provide some insurance to a developer to rely on that their plans were approved and the same protection goes to the people who bought the properties.

Decision

The Board has carefully reviewed the testimony, exhibits and excellent briefs filed by the parties in this matter. The Petitioner has been very creative in its attempt to subdivide the remaining lot in the Keeney Mill Woods – East subdivision. However, the Board feels that the Petition for Special Hearing in this matter should be denied. It is unfortunate that the myriad of zoning regulations that have been passed in Baltimore County have not been coordinated in some way so that the previous regulations, which may have created a right at a particular time, have not been either deleted or grandfathered in some way by the most recent zoning regulations. This appears to create some confusion with respect to the rights under the current regulations.

However, the Board is persuaded by the testimony of Mr. Dillon citing § 1B01.7 entitled "Amendment of Approved Development Plans" and § 1B01.B.2 of the regulations with respect to density residential zones. Sections 1B01.7.A and B provide for amendment of approved development plans through special exception procedures in the manner provided under § 502 of the BCZR and subject to three provisions. The last provision states: "(3) It must be determined in the course of the hearing procedure that the amendment would be consistent with the spirit and intent of the original plan and of this article." Section C(4) of the above section states, "The

zoning commissioner and the director of planning must certify that the amendment is in keeping with the spirit and intent of this article and other Baltimore County land use and development requirements administered by them, and both must certify that the amendment does not violate the spirit and intent of the original plan."

Finally, § 1B01.B.2 states:

> In fact, no subdivision of a tract or a portion of a tract may be created after the effective date of this article except as otherwise provided under § 1B02.3.A.2 unless the final subdivision plat therefore contains a summary showing the total number of dwelling or density units allowed for the entire tract under the applicable D.R. zones. The summary shall indicate as appropriate the number of dwelling or density units utilized by previous final subdivision plats or portions of the same tract. The number of dwelling or density units contained in the current subdivision plat and the balance of dwelling or density units allowed for the remainder of the tract under the applicable D.R. zones. It is the intent of these zoning regulations to prohibit subdivision or re-subdivision of portions of a tract in a D.R. zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. zones for the entire tract.

Mr. Dillon indicated that § 1A00.4 and the general regulations of R.C. 2 indicate that the manner prescribed under § 1B01.3 for the purposes of interpretation with reference to the D.R. zones are in the Code and that you substitute R.C. for D.R. in those areas and that they are now part of that section.

It is the opinion of the Board that when the above §§ 1B01.7.A and B and 1B01.B.2, as well as the spirit and intent of the law, are considered, the Petition for Special Hearing must be denied. At the time the original Keeney Mill Woods – East subdivision was created, the zoning regulations allowed for a density of five (5) lots on the 27+ acres of the subdivision. Had the Keeney Mill Woods – East subdivision been created today, the number of lots allowed would be two (2). This indicates that the spirit and intent of the law is to reduce the density in the rural agricultural zones.

For that reason, the Board considers that any amendment to a development plan must be the amendment to the final subdivision of Keeney Mill Woods – East, not the subdivision of Lot #1 of Keeney Mill Woods – East. In considering the entire tract of Keeney Mill Woods – East, there can be no further density allowed on the Keeney Mill Woods – East tract, since all five density units that were allowed at the time the final subdivision was approved have been utilized.

ORDER

THEREFORE, IT IS THIS 26th day of February, 2004 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to confirm the existence of two building lots for the subject property and to determine the proper procedure for subdividing same in accordance with Petitioner's Exhibit #1 be and is hereby **DENIED**; and it is further

ORDERED that there does not exist a sufficient amount of density for Lot #1 of Keeney Mill Woods – East to be subdivided to create two separate building lots; thus only one residential dwelling can be constructed on the subject 2.99 acre parcel.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Edward W. Crizer, Jr.

Lawrence S. Wescott

(2) The total number of signs to be kept to a minimum; and

(3) Informational signs not to be placed or be of such a number or design as to distract drivers' attention from traffic-control signs or devices.

(c) *Benches and street lighting.*

(1) The county may require benches and other outdoor furniture to be grouped and to be of a "break-away" design.

(2) The county shall require street lighting to be of a type and size that is adequate for safety and appropriate to the vicinity.

(d) *Transit facilities.* The county may require transit facilities, such as bus turnouts, for sites to be served by public transit.
(1988 Code, § 26-264) (Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-409. PANHANDLE DRIVEWAYS.

(a) *In general.*

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

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

(ii) To avoid development in environmentally sensitive areas;

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

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

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

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

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

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

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

(ii) 12 feet in width per lot where two lots are involved;

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

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

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

(d) *Panhandle driveways.*

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

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

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

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

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

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

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

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

(f) *Panhandle driveways serving multiple lots.*

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

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

(g) *Dwelling orientation on panhandle lot.*

(1) The orientation of the dwelling on each panhandle lot shall be indicated on the Development Plan.

(2) The dwelling shall be oriented to establish a desirable relationship between:

(i) Each of the proposed dwellings and existing adjacent homes; and

(ii) The proposed dwellings themselves.

(h) *Panhandle driveway and street intersection; requirements.* At the intersection of the panhandle driveway and the street, the following shall be provided by the developer:

(1) A paved trash collection area that:

(i) Is located at the right-side intersection of the panhandle driveway and public road, as the driveway is exited; and

(ii) Is at least 16 square feet per dwelling unit served by the panhandle driveway;

(2) A mail delivery area that is located at the left intersection of the panhandle driveway and public road, as the driveway is exited; and

(3) Numerical identification of each dwelling served by the panhandle driveway in accordance with § 35-2-206 of the Code.

(i) *Construction of panhandle driveway.*

(1) The panhandle driveway shall be built in accordance with standards established by the Director of Public Works.

(2) The panhandle shall be paved within 1 year of the issuance of the first occupancy permit or before the issuance of the occupancy permit of the last lot to be served, whichever comes first.

(3) In DR zones required utilities shall be provided to all lots to be served by the panhandle before the paving of the panhandle driveway.

(j) *Parking along panhandle driveway.* Parking is not permitted along a panhandle driveway.

(k) *Waiver.* Except as provided in subsections (d) and (e) of this section, the Director of Planning may grant a waiver from any provision in this section or title if the Director finds:

(1) That the size, scope, and nature of the subdivision of land into three or fewer lots for residential single-family dwellings does not justify strict compliance with this section;

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

(3) Compliance with all other county ordinances and regulations.
(1988 Code, §§ 26-168, 26-266) (Bill No. 172, 1989, § 2; Bill No. 106, 1990, § 1; Bill No. 1, 1992, § 2; Bill No. 173-93, § 3, 11-17-1993; Bill No. 61-95, § 1, 6-30-1995; Bill No. 8-96, § 3, 3-23-1996; Bill No. 49-96, § 15, 7-1-1996; Bill No. 38-98, § 4, 6-20-1998; Bill No. 51-99, § 1, 8-26-1999; Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-410. REQUIRED FACILITIES.

(a) *Water supply.*

(1) Water volume and pressure shall be adequate to extinguish fires in any building on a tract that is to be served by public water-supply facilities.

(2) Fire hydrants shall be provided in sufficient numbers and at appropriate locations to serve firefighting needs.

(b) *Sewage.* Proposed public or private sewage facilities shall be designed and located to function safely and without danger of contaminating groundwater, surface water, or public or private water supplies.

(c) *Drainage facilities.*

(1) In this subsection, "development" has the meaning stated in § 32-8-101 of this article.

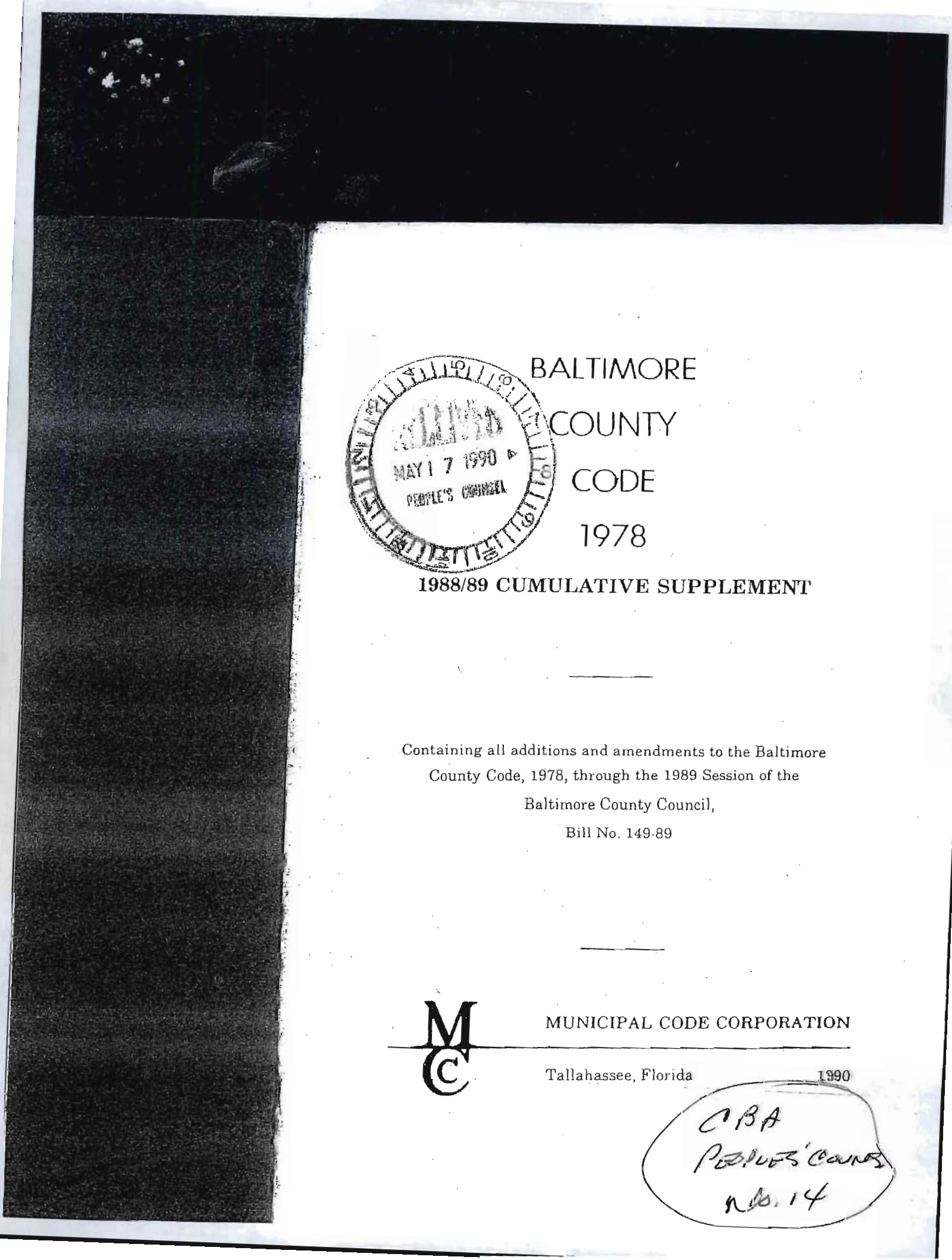
(2) Proposed drainage facilities shall be adequate to accommodate the amount of runoff that would be generated by:

(i) The proposed development; and

(ii) The entire upstream area, if the area were fully developed in accordance with the Baltimore County Zoning Regulations in effect at the time of the design or construction.

(3) Development may not increase the extent of the floodplain on neighboring properties.

(d) *Facility easements.* Easements for cable television and other municipal and public utilities may be required where necessary to ensure adequate service to the prospective occupants or users of the proposed development.
(1988 Code, §§ 26-267, 26-268, 26-269, 26-270) (Bill No. 173-93, § 3, 11-17-1993; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004)



MAY 17 1990
PEOPLE'S COUNSEL

BALTIMORE COUNTY CODE 1978

1988/89 CUMULATIVE SUPPLEMENT

Containing all additions and amendments to the Baltimore County Code, 1978, through the 1989 Session of the Baltimore County Council, Bill No. 149-89

MUNICIPAL CODE CORPORATION

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(4) Increase the suitability of the design or construction to the terrain, soil, surface drainage, groundwater, or anticipated traffic load or speed.

In addition, the county may require the provision of turning lanes and traffic signals as necessary at heavily traveled intersections or impose other special requirements for street design or arrangement as may be necessary to minimize the total number of intersections or to minimize four-way intersections, oblique intersections, intersections on curves, or large corner radii. No proposed street may be designed so as to intersect at grade with any railroad, except sidings. (Bill No. 56, 1982, § 2)

Sec. 22-83. Parking, signs, benches and transit facilities.

(a) Parking required under provisions of the zoning regulations and the Maryland Building Code for the Handicapped must be located and designed so as not to interfere with vehicular or pedestrian traffic and so as to be convenient to the principal entrance of buildings. Parking areas may be required to be dispersed on the site so that each is relatively small.

(b) Signposts must be unobtrusive and the total number of signs minimized. In particular, informational signs must not be placed or be of such a number or design as to distract drivers' attention from traffic-control signs or devices.

(c) Benches or other outdoor furniture may be required to be grouped and be of "break-away" designs. Street lighting must be of types and sizes both adequate for safety and appropriate to the vicinity.

(d) Transit facilities such as bus turnouts may be required for sites to be served by public transit. (Bill No. 56, 1982, § 2)

Sec. 22-84. Pedestrian and bicycle paths.

The manual adopted pursuant to section 22-105(b)(4) may provide for the design and location of pedestrian and bicycle paths. (Bill No. 56, 1982, § 2)

Sec. 22-85. Panhandle driveways.

The use of panhandle lots may be permitted where such lots would not be detrimental to adjacent properties and would be

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Sec. 22-87. Sewerage

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in the interests of the prospective users. No single panhandle driveway may be permitted to serve more than five (5) dwellings. Where a panhandle lot is proposed, each lot must have adequate access for emergency-service vehicles. Provision must be made at the intersection of the panhandle driveway and the street for trash collection, mail delivery, and identification for each dwelling served by the driveway. Appropriate agreements for common maintenance and use of the panhandle must be submitted with any plat showing a panhandle lot, and the agreements must be recorded with the plat, upon approval. (Bill No. 56, 1982, § 2)

Sec. 22-86. Water supply.

For tracts to be served by public water-supply facilities, water volume and pressure must be adequate to extinguish fires in any building on the tract; and hydrants must be provided in sufficient numbers and at appropriate locations to serve fire-fighting needs. (Bill No. 56, 1982, §2)

Sec. 22-87. Sewerage.

Proposed public or private sewerage facilities must be designed and located to function safely and without danger of contaminating groundwater, surface water, or public or private water supplies. (Bill No. 56, 1982, § 2)

Sec. 22-88. Drainage.

Proposed drainage facilities must be adequate to accommodate the amount of run-off that would be generated by the proposed development and from the entire upstream area, if the area were fully developed in accordance with the zoning regulations in effect at the time of design or construction. (Bill No. 56, 1982, § 2)

Sec. 22-89. Other utilities.

Easements for cable TV and other municipal and public utilities may be required where necessary to ensure adequate service to the prospective occupants or users of the proposed development. (Bill No. 56, 1982, § 2)

County Council of Baltimore County Maryland

Legislative Session 1970, Legislative Day No. 11

BILL NO. 100

Introduced by Mr. Bartenfelder, Councilman

(Request of County Executive)

By the County Council, July 6, 1970.

A BILL

Entitled

AN ACT to amend the Baltimore County Zoning Regulations to provide certain new regulations and to revise certain existing regulations for establishment of zoning classifications, conversion and redesignation of "Residence" zoning classifications; to provide for the deletion and addition of terms and definitions; to provide for the application of light manufacturing zoning regulations to areas covered by previously submitted subdivision plans; to establish Rural and Rural-Suburban zoning classifications, "Density" Residential (D.R.) zoning classifications and Elevator-Apartment-Residence Zoning Classifications; to amend the special regulations for Community-Core Commercial (C.C.C.) Districts; to revise the use regulations in Light Manufacturing (M.L.) Zones; to revise the regulations governing automotive service stations in permitted parking garages; to establish regulations for Unit Developments and the classifications and authorizations thereof; to provide for the continuing validity of special exceptions granted for elevator apartment buildings or office buildings under R.A. Zoning Classifications; to provide that the Planning Board may adopt and implement certain policies and procedures in furtherance of the Zoning Regulations; by repealing and re-enacting with amendments Subparagraph 100. 1. A. 2; by adding new Subsection 100.3A; by deleting and adding certain definitions to Section 101, entitled "Definitions"; by amending Subsection 103.1; by adding new Articles 1A and 1B; by repealing designation and title, "Article 2-Zones and Districts: Use, Height and Area Regulations" and the subtitle, "R.40 Zone-Residence, One-Family" and enacting in lieu thereof a new designation and title as follows:

CBA
Peoples' Counc.
No. 15

"ARTICLE 2 — ELEVATOR — APARTMENT RESIDENCE ZONES, BUSINESS AND MANUFACTURING ZONES, AND DISTRICTS"; by repealing Sections 200 to 217 (inclusive) and enacting in lieu thereof new Sections 200, 201 and 202; by repealing and re-enacting Subsection 232.5; by redesignating existing Section 232A as Section 232B; by redesignating existing Subsections 232A.1 to 232A.6 (inclusive) as 232B.1 to 232B.6 (inclusive); by adding new Section 232A; by redesignating existing Section 235A as Section 235B; by redesignating existing Subsections 235A.1 to 235A.6 (inclusive) as 235B.1 to 235B.6 (inclusive); by adding new Section 235A; by adding new Section 238A; by redesignating existing Section 238A as Section 238B; by redesignating existing subsections 238A.1 to 238A.5 (inclusive) as 238B.1 to 238B.5 (inclusive); by deleting Section 253 and enacting in lieu thereof, new Section 253; by repealing and re-enacting with amendments Subparagraph 405.2.A.4 and Paragraph d of Subsection 409.2; by adding new Section 430; by adding new Subsection 502.4 and by adding new Section 504; all being provisions of said Baltimore County Zoning Regulations, 1955, as amended.

WHEREAS, the amendments to the zoning regulations which are contained in this Bill, having been formulated in accordance with the procedure specified in sections 22-20 and 22-21 of the Baltimore County Code, 1968, the said several public hearings required by said sections having been held after the required public notice; now, therefore

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland*, That subsection 100.1.A.2 be and it is hereby repealed and re-enacted with amendments as follows:

2. Zones are as follows: R.D.P. Zones—Rural: Deferred-Planing; R.S.C. Zones—Rural-Suburban: Conservation; D.R. 1 Zones—Density Residential, 1.0 Dwelling Units per Acre; D.R. 2 Zones—Density Residential, 2.0 Dwelling Units Per Acre; D.R. 3.5 Zones—Density Residential, 3.5 Dwelling Units Per Acre; D.R. 5.5 Zones—Density Residential, 5.5 Dwelling Units Per Acre; D.R. 10.5 Zones—Density Residential, 10.5 Dwelling Units Per Acre; D.R. 16 Zones—Density Residential, 16.0 Density Units Per Acre; R.A.E. 1 Zones—Residential, 40.0 Density Units Per Acre; R.A.E. 2 Zones—Residential, 80.0 Density Units Per Acre; B.L. Zones—Business, Local; B.M. Zones—Business, Major; B.R. Zones—Business, Roadside; M.R. Zones—Manufacturing, Restricted; M.L.R. Zones—Manufacturing, Light Restricted; M.L. Zones—Manufacturing, Light; M.H. Zones—Manufacturing, Heavy.

SECTION 2. *And be it further enacted*, That Article 1 be and it is hereby amended by adding sub-section 100.3A, said new sub-section to read as follows:

Town: A coherent urban area generally comprising: three to five communities (up to approximately 25 neighborhoods, 100,000-150,000 persons); a central concentration of public facilities, institutions, and commercial uses necessary or appropriate to serve the population of the area as a whole, including a high school and one or more major department stores; and industrial or similar major-employment uses.

Water-supply system, public: A water-supply system which is operated by the County or a public agency of metropolitan or regional jurisdiction, and which is owned by or meets design and performance standards whereby it is eligible for ownership by the County or such agency, whether or not it is part of or connected with the physical facilities of the metropolitan or regional water-supply system.

SECTION 4. *And be it further enacted,* That Sub-section 103.1 is hereby amended by adding the following:

Provided further, however, that the use and development of land in M.L. zones shall not be affected by the foregoing provision, but development is permitted in accordance with any preliminary development plan approved by the Office of Planning and Zoning before the effective date of this further proviso, even though such development may be counter to then-current regulations for M.L. zones, if, on the fifth anniversary of such effective date, construction either is completed or is substantially commenced and diligently being pursued to completion; otherwise, the regulations generally in effect at the time such use or development is to be established shall control.

SECTION 5. *And be it further enacted,* That new Articles 1A and 1B be and they are hereby added immediately after Article 1, said new Articles to read as follows:

ARTICLE 1A—RURAL AND RURAL-SUBURBAN LOW-INTENSITY ZONES

Section 1A00-*R.D.P. Zones (Rural: Deferred-Planning).*

1A00.1-General Provisions.

~~A. Legislative Statement of Findings and Policy.~~

~~1. Declaration of Findings. It is found.~~

~~a. That new development in Baltimore County has occurred to an appreciable degree in the form of urban sprawl;~~

~~b. That there are disadvantages experienced by the residents of prematurely developed outlying areas which are part of the urban sprawl pattern, namely inefficiencies, diseconomies, and inconveniences resulting from the nonscheduled and thus necessarily lagging construction or installation of various public facilities, from the~~

inadequacy or lack of choice in retail shopping or service establishments, from a relatively time-consuming journey to work, and from a prospectively lasting absence or insufficiency in choice of transportation mode;

c. That, characteristically, commercial as well as industrial and other major employment activities in such areas are similarly hampered by the same and related inefficiencies, diseconomies, and inconveniences;

d. That urban sprawl leads to increasingly excessive capital outlays for public facilities;

e. That the processes of urban sprawl have typically been such as to induce qualities of environmental incoherence and unsightliness;

f. That conversely, a pattern of urban containment obviates the deleterious effects of urban sprawl, and that, notably in the case of a high rate of development activity, total capital outlays for public facilities within the context of urban containment can be substantially lower than the aforementioned excessive outlays required to support urban sprawl, for an equivalent or greater level of service, in that user proximity, system compactness, and other advantages of containment provide for substantially more efficient and economical installation;

g. That sound policies to prevent urban sprawl would not inhibit desirable urban growth, but, to the contrary would result in continuing accommodation of undiminished urban growth within relatively compact, rationally expanding areas of urban development;

h. That, for the foreseeable future, it is in the public interest to reserve suitable rural lands for agricultural purposes and for certain other needed low-intensity uses appropriately located in rural areas;

i. That detailed public planning for future urban development in certain outlying rural areas is not desirable in view of (1) prevailing uncertainties as to long-range demographic trends, (2) the necessarily indefinite or uncertain nature of economic projections as they may affect the selection of alternative development patterns applied to outlying, presently rural areas, (3) the similarly indefinite or uncertain nature of various other data and projections that would be necessary to the preparation of such plans, (4) patterns of land ownership and typical sizes of individual or conglomerate land holdings, particularly as these matters relate to a possible trend or inducement toward a greater employment of unit development systems where desirable, (5) an anticipation that numerous relevant planning studies being undertaken, at the time of the enactment of this Section 1A00, by Baltimore County, by agencies of the governmental jurisdictions at other levels, and by private agencies, as well as certain relevant studies expected to be commenced in a period of several years hereafter, will produce findings essential to such planning, (6)

~~the fact that the present urban area and certain limited, adjacent areas suitable for the orderly accommodation of urban growth (including the provision of open spaces of various sizes and functions) together contain land which is vacant or sparsely developed but which has been determined to be suitable and sufficient in extent to accommodate urban development and any probable increment of population growth for a period of more than a decade hereafter;~~

~~j. That, in view of the foregoing, further urban sprawl would be inimical to the public interest and, conversely, an affirmative policy to foster a pattern of urban containment is essential to the general welfare of the County;~~

~~k. That typical agricultural usage, or other use or development of land at very low intensity, clearly provides for a potential feasibility of development at *urban* intensity, where desirable, in future stages of the County's growth, while urban development would not be feasible after preemption of rural land for development at typical suburban intensities; and~~

~~l. That the promulgation of zoning regulations to prohibit the subdivision of land in outlying rural areas into small tracts is an accepted, valid, appropriate, and otherwise reasonable action to inhibit urban sprawl and to minimize the prospective health hazards brought about by development of moderately sized lots not serviced by public water supply or sewerage systems.~~

~~2.~~ *1.* Purpose. The R.D.P. zoning classification is established, pursuant to the legislative findings set forth above, in order to:

a. Prevent untimely urban development of relatively open rural land; and

b. Foster conditions favorable to agriculture and other low-intensity uses appropriate in rural areas, considering both the magnitude of total land acreage needed for such uses and the current prospective needs for developable urban land.

~~3.~~ *2.* Intent as to application of R.D.P. zoning classification to property or removal therefrom. It is intended:

a. That rural land shall be classified within R.D.P. zones unless the Capital Budget and Five-Year Capital Program of Baltimore County and duly adopted official Baltimore County master plans, including the "county plan" required under Article 43, Section 387C of the Annotated Code of Maryland, 1957 (1965 Replacement Volume), as amended, all consistently indicate that such land is to be serviced by public sewerage and water-supply systems and, in the case of those said documents which determine the timing of construction, also consistently provide for the adequacy and availability of service to said land by such systems within a period of six years after the time of consideration with respect to zoning classification; provided further, however, that such non-

serviced land as is specifically herein described (in this Subparagraph 3 or other provisions in these regulations) as being appropriately otherwise classified shall also be excepted from the category of land which shall be classified as R.D.P.;

b. That land classified as R.D.P. shall not be reclassified (rezoned) until such time as the documents hereinabove noted have been officially changed or replaced in kind and thereby then indicate possible appropriateness of reclassification under the criteria hereinbefore stated;

c. That reclassification of land as R.D.P. shall not represent a commitment by Baltimore County with respect to type of future development, but only that more particular planning for the use of such land shall be executed in the future; and

d. That certain distinct existing areas of compact development, such as certain approved subdivisions or the immediate environs of typical rural business centers, are not normally to be classified as R.D.P.

~~4.~~ *3.* Special Policy for Certain Developments. In view of possible overriding public benefits to be derived from certain large-scale unit developments, the establishment of such developments is hereby excepted from application of the policy hereinbefore stated to the extent indicated under Section 430 ("Unit Developments").

B. Locational Requirement. No R.D.P. zone shall be established or re-established within the urban-rural demarcation line, but said line may be re-established to include an R.D.P. zone or part thereof existing at the time said line is re-established.

1A00.2-Use Regulations.

A. Uses Permitted as of Right. The following uses, only, are permitted as of right in R.D.P. zones:

1. Farms, or, on existing undersized lots, limited-acreage wholesale flower farms.

2. One-family detached dwellings.

3. Churches or other buildings for religious worship.

4. Trailers (see Section 415).

5. Research institutes, as defined in Section 101 and as permitted and regulated in D.R. 1 zones (see Section 418).

6. Hospitals.

7. Telephone, telegraph, electrical-power, or other electrical lines, all underground with the exception of such lines as are permitted above ground in D.R. zones.

6. Under provisions adopted pursuant to the authority of Section 504, development in D.R. zones may be made subject to additional standards of lot area, yard space, open-space distribution, building distribution, or other aspects or characteristics of site planning or project design. Such standards shall be based upon specified existing, prospective, or stipulated conditions or circumstances of development, and shall be designed to further the specific purposes of this article and the purposes of these Zoning Regulations in general.

1B01.3—Plans and Plats.

A. Development Plans.

1. Purpose. This paragraph is intended:

a. To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein; and

b. To provide for review of residential-development plans to determine whether they comply with these regulations and with standards and policies adopted pursuant to the authority of Section 504.

2. Partial Development Plan. For the purposes of this article, a "partial development plan" is a portion of a final development plan, and a partial or final development plan is "applicable" to a given lot if it covers all property in the subdivision within 300 feet of the given lot, in addition to the lot itself.

3. Subdivision Lot Sales, Development, and Use Subject to Partial Development Plan. No interest in any lot which is in a D.R. zone and is hereafter created by subdivision of a record lot of the effective date of this article or created by consolidation of such lots may be sold unless a final or partial development plan applicable to the lot has been approved as required under Subparagraph 5, below; further, no use may be established and no construction may take place on any lot so created except in accordance with such a plan.

4. Notice in Conveyance. Any party who sells an interest in real property within an area covered by an approved partial or final development plan shall attach to the instrument of sale a notice directing the buyer's attention to the plan (including any amendment) and listing the location of the various certified copies which may be publicly inspected (see Subparagraph 6) together with a listing of the recorded plats covering all portions of the subdivision as a whole. The notice shall also generally apprise the buyer of the rights, requirements, and remedies provided under the development plan, those provided under this article and these zoning regulations in general, and those set forth in provisions adopted pursuant to the authority of Section 504, and, to this end, the notice shall be on a

form issued by the County and approved by the Office of Law, the Zoning Commissioners, and the Planning Board as being clear and sufficient for the purpose.

5. Forms and Content of Plans.

a. Forms. Each partial development plan must be filed both as a separable document or set of documents and as part of a final development plan which includes all partial development plans as approved for other portions of the subdivision. Upon approval, each final development plan thus filed supersedes previous final development plans of the subdivision.

b. Content. Each partial and final development plan must show: the locations, types, and exterior dimensions of all proposed structures and all existing structures to be retained; generalized floor plans to scale; layout of parking facilities; streets and drives giving access to and lying within the tract; existing topography and major vegetation; proposed grading, landscaping, and screening; common amenity open space (including local open space); all additional information that may be required under procedures adopted pursuant to the authority of Section 504; and all additional information which is necessary, as determined by the Zoning Commissioner and the Director of Planning, to ascertain whether the project will comply with the zoning and subdivision requirements of Baltimore County.

6. Initial Review and Approval Procedure. Procedural steps and requirements in the submission and review of various preliminary versions of partial and final development plans shall be as established under provisions adopted pursuant to the authority to Section 504 or, in the absence of such provisions, as established by the Office of Planning and Zoning. In formulating such steps and requirements, the Planning Board or the Office of Planning and Zoning shall effect maximum coordination between and integration with similar and related steps and requirements in the submission and review of plans pursuant to the subdivision regulations. If the partial and final development plans for a subdivision are approved by the Zoning Commissioner as complying with the Zoning Regulations, approved by the Director of Planning as being consistent with the subdivision regulations and any subdivision plans filed pursuant thereto, and approved in such other manner as may be prescribed under provisions adopted pursuant to the authority of Section 504, copies of the plans, certified by the Zoning Commissioner and the Director of Planning as having been so approved, shall be filed with such County or State agencies as they may direct and as may otherwise be required, and shall be retained in the files of the Office of Planning and Zoning, including the files of the Zoning Commissioner.

7. Amendment of Approved Development Plans. After partial or final development plans have been approved as provided under Subparagraph 6, preceding, they may be amended only as provided below.

a. Amendment Prior to Sale of Interest in Nearby Property. The development plans may be amended by simple resubmission, or by the submission of appropriate documents of revision, subject to the same requirements as are applied to original plans, if there is no change with respect to any lot, structure, or use within 300 feet of a lot or structure which has been sold since the original plans were filed.

b. Amendment After Sale of Interest in Nearby Property or Upon Demand for Hearing. In the case of an amendment not allowed under Sub-subparagraph a, by reason of sale of property within the area, or in case of a demand for hearing by an eligible individual or group, the plans may be amended through special-exception procedures, in the manner provided under Section 502 and subject to the following provisions:

i. The amendment must first be approved by the Planning Board as being in accord with provisions adopted under the authority of Section 504.

ii. The amendment must be in accord with specific standards and requirements of this article, as determined by the Office of Planning and Zoning.

iii. Only an owner of a lot abutting or lying directly across a street or other right of way from the property in question, an owner of a structure on such a lot, or a homes association (as may be defined under the Subdivision Regulations or under provisions adopted pursuant to the authority of Section 504) having members who own or reside on property lying wholly or partially within 300 feet of the lot in question are eligible to file a demand for hearing.

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

c. Amendment Upon Request by Owner of Lot Within Subdivision. The Zoning Commissioner may, without a public hearing but with the concurrence of the Director of Planning, amend the plans with respect to a structure on an individual lot created under the plans and used according to the purpose stated therein, or with respect to such lot, at the request of the lot owner, under the following requirements and conditions:

i. Reasonable notification, by a standard method established pursuant to the authority of Section 504 and approved by the County Solicitor, must be given to the occupants and owners of all real property which is fully or partially situated within 300 feet of the lot in question.

ii. It must be determined that a formal demand for hearing by an eligible individual or group, as described in Sub-subparagraph b, has not been filed.

iii. It must be determined that standards adopted under the authority of Section 504, in addition to the specific requirements under these regulations, will not be violated by the amendment.

iv. The Zoning Commissioner and the Director of Planning must certify that the amendment is in keeping with the spirit and intent of this article and other Baltimore County land-use and development requirements administered by them, and both must certify that the amendment does not violate the spirit and intent of the original plan.

d. Any amended development plan and any document of amendment of such a plan must be filed with all agencies or officials with whom copies of the original plan have been filed pursuant to Subparagraph above, and no amendment takes effect otherwise.

B. Final Subdivision Plat.

1. Purpose. Pursuant to the regulations for D.R. zones, a portion of a tract of land may be subdivided for development at a higher residential density than the maximum average density permitted, lessening the permitted density of development on the remainder of the tract; or a portion of the tract may be subdivided for development at less than the maximum average density, thus increasing the density at which the remainder of the tract may be developed. (See Paragraph 1B01.2.A.) It is the purpose of this paragraph to assure that these factors will be identified in the sale of any portion of a development tract in a D.R. zone, and, in particular, to prevent the unknowing purchase of a tract which, as a result of such prior subdivision, may not itself be developed at the average gross density specified in the regulations.

2. Effect. No subdivision of a tract or a portion of a tract may be created after the effective date of this article, except as otherwise provided under subparagraph 1B02.3A2 unless the final subdivision plat therefor contains a summary showing the total number of dwelling or density units allowed for the entire tract under the applicable D.R. zones(s). The summary shall indicate, as appropriate, the number of dwelling or density units utilized by previous final subdivision plats for portions of the same tract, the number of dwelling or density units contained in the current subdivision plat, and the balance of dwelling or density units allowed for the remainder of the tract under the applicable D.R. zones(s). It is the intent of these Zoning Regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. zones(s) for the entire tract.

TION OF THIS ACT ARE ENACTED INDEPENDENTLY AND ARE, THEREFORE, SEVERABLE; IF ANY PART IS DECLARED INVALID BY A COURT OF COMPETENT JURISDICTION, THE REST OF THIS ACT REMAINS VALID.

SECTION 20. *AND BE IT FURTHER ENACTED*, THAT ANY AMENDMENTS HEREIN, OR ANY NEW ZONING CLASSIFICATIONS PROVIDED FOR IN THIS BILL SHALL NOT BE PROMULGATED AS TO ANY EXISTING ZONING MAPS, BUT SHALL BE EFFECTIVE ONLY UPON THE ADOPTION BY THE COUNTY COUNCIL OF ANY NEW ZONING MAPS ON OR BEFORE MARCH 31, 1971.

SECTION 21. *AND BE IT FURTHER ENACTED*, THAT THIS ACT SHALL TAKE EFFECT FORTY-FIVE DAYS AFTER ITS ENACTMENT.

READ AND PASSED this 3rd day of August, 1970.

By Order:

Herbert Hohenberger, Secretary

PRESENTED to the County Executive, for his approval this 4th day of August, 1970.

Herbert Hohenberger, Secretary

APPROVED AND ENACTED: August 5, 1970.

Dale Anderson,

County Executive

I HEREBY CERTIFY THAT BILL NO. 100 IS TRUE AND CORRECT AND WILL TAKE EFFECT ON SEPTEMBER 19, 1970.

Harry J. Bartenfelder,

Chairman, County Council

BALTIMORE COUNTY CODE 1978

Published by Order of the County Council

MUNICIPAL CODE CORPORATION

Tallahassee, Florida 1979

CBA
PETITIONER'S EXH. NO. 16

who shall violate such regulations, restrictions or final order shall be deemed guilty of a separate offense for every day that such violation shall continue. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-30)

Sec. 22-36. Injunctive proceedings.

In addition to all other remedies provided by law, the zoning commissioner, or any person whose property is affected by any violation, including abutting and adjacent property owners, whether specially damaged or not, may maintain an action in, the circuit court for the county for an injunction enjoining the erection, construction, reconstruction, alteration, repair or use of buildings, structures and land in violation of zoning regulations and restrictions adopted pursuant to this title. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-31)

Annotation—Similar section of 1955 County Code cited in Commissioners of Baltimore County v. Oxford Company, 209 Md. 373, 121 A. 2d 239 (1956).

ARTICLE IV. SUBDIVISION CONTROL GENERALLY*

Sec. 22-37. Subdivision regulations.

The planning board from time to time shall prepare and submit to the county council for its approval or disapproval recommendations for the amendment or supplement to regulations governing the subdivision of land throughout the county (codified in article V of this title), including but not limited to standards for approving the design of subdivisions, requirements for the submission of subdivision plats and the procedure to be followed by subdividers. Such regulations may provide for the proper arrangement of streets, in relation to other existing planned streets and to the master plan, and local open space tracts, for adequate and convenient open spaces for traffic, recreation, utilities, access of fire-fighting apparatus, light and air, and for the avoidance of congestion of population, including minimum widths and areas of lots. Such minimums shall coincide with such provisions in the zoning regulations for the county.

These subdivision regulations may include provisions as to the extent to which streets and other ways, water, sewer and drain pipes, local open space tracts and other public facilities shall be provided for, as a condition precedent to approval of the plat. Such regulations may provide for tentative approval of the plat, but any such tentative approval shall

*State law reference—Requirements for recording plats of subdivisions, §§ 3-108, 3-304, unnumbered article Real Property, Anno. Code of Md., 1974 Volume.

Annotation—There is nothing in this article requiring the planning commission tentatively to approve a subdivision plan. Board of County Commissioners of Baltimore County v. Oxford Development Company, 209 Md. 373, 121 A. 2d 239 (1956).

be revocable. The subdivision regulations shall be adopted, with amendments of any, and may from time to time thereafter be amended by the county council by ordinance after public hearing. Copies of the subdivision regulations shall be made available to the public, and a reasonable charge therefor may be made. (Bill No. 80, 1960; Bill No. 48, 1963, § 2; Balto. Co. Code, 1968, § 22-32)

Sec. 22-38. Exemption of governmental approval of subdivision regulations.

Any such subdivision regulations may exempt from the requirements of governmental approval, subdivisions wherein the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats or subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the planning board chairman, or its director, shall certify the exemption on the plat, deed or instrument to be filed with the clerk of the circuit court for recording. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-23)

Sec. 22-39. Requirements for subdivisions and plats generally.

(a) In acting upon subdivisions, the planning board shall require, among other conditions in the public interest, that the tract shall be adequately drained, and the streets shall be of sufficient width and suitable grade and suitably located to accommodate the prospective traffic, to provide access for firefighting equipment to buildings and to be coordinated so as to comprise a convenient system, relating properly to the existing street system. Where the planning board after hearing has adopted portions of the master plan with proposals regarding the street system within the proposed subdivision, the board may require that the streets shown conform in design and in width to the proposals shown on the master plan. No street shall be less than fifty (50) feet within right of way lines and shall be of such width as may be required in the subdivision regulations or as shown on the master plan for the county.

(b) The planning board shall further require that all lots shown on the plats shall be adaptable for the intended purposes without danger to health or peril from flood, fire erosion or other menace.

(c) Before final approval of subdivisions the director of public works may require, in accordance with the subdivision regulations, the execution of a public works agreement for any or all of the following improvements it may deem necessary or appropriate: Street grading, pavement, gutters, curbs, sidewalks, shade trees, surveyor's monuments, water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, local open space tracts and such other sub-

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Sec. 22-40. Appr

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division improvements as the county may find necessary in the public interest. The director of public works shall review and approve the subdivision plan, which must include the design of underground distribution facilities for the supply of street lights. Failure to provide for adequate illumination on all streets and parking areas of the proposed subdivision will result in the withholding of final approval by the director. Provision for street lighting must accompany the plans for all developments of two (2) or more homes. (Bill No. 80, 1960; Bill No. 48, 1963, § 2; Bill No. 32, 1972, § 1; Balto. Co. Code, 1968, § 22-34)

Sec. 22-40. Approval or disapproval of plats.

(a) Final plats of subdivisions shall conform to the standards prescribed by Annotated Code of Maryland, 1974 Volume, unnumbered article Real Property, sections 3-108 and 3-304. A final plat shall be deemed to have been submitted when an application for final approval has been delivered to the office of the planning board in conformance with the printed requirements governing the submission of subdivision plats.

(b) The planning board may approve or after hearing disapprove a plat. If the planning board disapproves any plat, the findings and reasons for such disapproval shall be stated upon the records of the planning board, and the applicant shall be given a copy.

(c) Where approval of a plat, map or plan of land is required by any officer or body of the county, including the board of health, department of public works, board of education and board of recreation, under the provisions of any other law or ordinance, such approval shall be certified on the plat before the final plat shall be approved as a prerequisite to its acceptance for filing by the clerk of the circuit court.

(d) The planning board shall take action under this section within forty-five (45) days after submission of the final plat for approval, or within such further time as the applying party may agree to. Otherwise such plat shall be deemed to have been given favorable approval. Such approval by default, however, shall not be valid unless all necessary prerequisites for approval of a final plat have been fulfilled by the applicant. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-35)

Sec. 22-41. Expiration of final approval of plat.

The final approval by the planning board of a plat shall expire ninety (90) days from the date of such approval, unless within the period such plat shall have been duly filed by the owner or his agent with the clerk of the circuit court for recording. The planning board for good cause shown may extend the time for plat filing for a period not to exceed ninety (90) days. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-36)

Sec. 22-42. Prerequisites to acceptance for filing of plats; notification of filing.

No plat shall be accepted for filing by the clerk of the circuit court for the county until it has been approved by the planning board and such approval has been endorsed on the instrument in such manner as the planning board may designate. It shall be the duty of the clerk of the circuit court to notify the planning board in writing within three (3) days of the filing of any plat approved by the planning board, identifying such plat by its title, date of filing and official number. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-37)

Sec. 22-43. Appeal to circuit court from decision of planning board.

If any person shall be aggrieved by the action of the planning board on final plats of subdivisions under section 22-42 of this Code, an appeal may be taken to the circuit court for the county within thirty (30) days after the date of action by the planning board. The court shall hear all such appeals without the intervention of a jury and shall have power to affirm, modify or reverse in part or in whole any such decision from and may remand any case for the entering of a proper order or for further proceedings as the court shall determine. Upon the hearing of such appeal, the decision of the planning board shall be presumed by the court to be proper and to best serve the public interest; the burden of proof shall be upon the appellant to show that the decision complained of was against the public interest and that the planning board's discretion in rendering its decision was not honestly and fairly exercised, or such decision was arbitrary, or procured by fraud, or unsupported by any substantial evidence, or was unreasonable, or that such decision was beyond the powers of the planning board and was illegal. (Bill No. 80, 1960, Balto. Co. Code, 1968, § 22-38)

Sec. 22-44. Appeal to court of appeals from circuit court.

An appeal may be taken to the court of appeals of the state from any decision of the circuit court for the county reviewing the decision of the planning board. In such cases, the court of appeals shall not award costs of the appeal against any party to the appeal except the appellant. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-39)

Annotation—Similar section under prior law cited in Zinn v. Board of Zoning Appeals, 207 Md. 355, 114 A. 2d 614 (1955).

Sec. 22-45. Sale, transfer, etc., of any land in unapproved plat.

(a) If before approval of a plat has been obtained, any person transfers, sells or agrees to sell, as owner or agent, any land which forms a

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Sec. 22-46. Certif

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Sec. 22-47. Same plicat

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part of a subdivision on which, by ordinance, the planning board is required to act, such person shall be subject to a fine not to exceed one hundred dollars ($100.00) or to imprisonment for not more than thirty (30) days, and each parcel, plat or lot so disposed of shall be deemed a separate violation.

(b) In addition to the foregoing, the county may institute and maintain a civil action to set aside and invalidate any conveyance made pursuant to such a contract or sale.

(c) In any such action the transferee, purchaser or grantee shall be entitled to a lien upon a portion of the land from which the subdivision was made that remains in the possession of the subdivider, his assigns or successors, to secure the return of any deposit made or purchase price paid, and also a reasonable search fee, survey expense and title closing expense, if any. Any such action must be brought within two (2) years after the date of the recording of the instrument of transfer, sale or conveyance of the land, or within six (6) years if unrecorded.

(d) In addition to the foregoing, if the conditions in any public works agreement executed in accordance with the provisions of subsection (c) of section 22-39 of this Code have been violated, the county may institute proceedings in the circuit court for the county for the specific enforcement of the public works agreement and for injunctive relief to prohibit the sale or other disposition of any land which forms a part of the subdivision to which the public works agreement pertains, pending the outcome of such litigation. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-40)

Sec. 22-46. Certificate of approval of subdivision—Application.

The prospective purchaser, prospective mortgager or any other person interested in any land which forms part of a subdivision, or which, since the first day of October, 1955, formed part of such a subdivision, may apply in writing to the proper official or, if such official is unknown to the applicant, then to the secretary to the county executive for the issuance of certificate certifying whether or not such subdivision has been approved by the planning board. Such application shall contain a diagram showing the location and dimension of the land to be covered by the certificate and the name of the owner thereof. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-41)

Sec. 22-47. Same—Issuing official certificates and time of issuance; duplicates.

The county executive may designate some other county official as the official who shall make and issue such certificates, and the official so

designated shall issue such certificate within fifteen (15) days after the receipt of such written application and the fees therefor. Such official shall keep a duplicate copy of each certificate, consecutively numbered, including a statement of the fees charged, in a binder as a permanent record of his office. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-42)

Sec. 22-48. Same—Rights under certificates.

Any person who shall acquire for a valuable consideration an interest in the lands covered by any such certificate of approval of a subdivision in reliance upon the information therein contained shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the county pursuant to the provisions of this title. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-43)

Sec. 22-49. Same—Contents.

Each such certificate shall be designated a "certificate as to approval of subdivision of land," and shall certify:

(1) That there exists in the county a duly established planning board which meets regularly and that there is an ordinance controlling subdivision of land, adopted under the authority of this title.

(2) Whether the subdivision or resubdivision, as it relates to the land shown in said application has been approved by the planning board, and, if so, the date of such approval.

(3) Whether such subdivision or resubdivision, if the same has not been approved, is exempt from the requirement of approval as provided in this title. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-44)

Sec. 22-50. Same—Applications addressed to county.

Any such application addressed to the secretary of the county executive shall be deemed to be addressed to the proper designated official and the county shall be bound thereby to the same extent as though the same was addressed to the designated official. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-45)

Sec. 22-51. Same—Fees.

All fees payable for the issuance of such certificates shall be collected by the county in accordance with the billing and collection procedures in effect at the time of payment. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-46)

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Sec. 22-52. Sam

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Sec. 22-53. Def

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Sec. 22-52. Same—Effect of failure to issue.

If the official designated to make and issue any such certificate fails to issue the same within fifteen (15) days after receipt of an application and the fees therefor, any person acquiring an interest in the lands described in such application shall hold such interest free of any right, remedy or action which could be prosecuted or maintained pursuant to the provisions of this title. (Bill No. 80, 1960; Balto. Co. Code, 1968, § 22-47)

DIVISION 1. GENERALLY

Sec. 22-53. Definitions.

The following definitions represent the meanings of terms as used in this article:

Alley. A right of way other than a street, which provides service access for vehicles to the side or rear of abutting properties.

Board. The word "board" shall mean the planning board of the county.

Crosswalkway. A right of way intended primarily for pedestrians, and excluding motor-propelled vehicles, which cuts across a block in order to improve access to adjacent streets or properties.

Developer. An individual, partnership or corporation (or agent therefor) that undertakes the activities covered by this article, particularly the drawing up of a subdivision plat showing the layout of the land and the public improvements involved therein. Inasmuch as the subdivision plat is merely a necessary means to the end of assuring a satisfactory development, the term "developer" is intended to include the term "subdivider," even though the personnel involved in successive stages of the project may vary.

Easement Reservation. A strip of land extending along a property line or across a lot, for which an easement has been or is to be granted for a specific purpose or purposes.

Front building line. A line beyond which the front foundation wall of a building shall not project into the front yard as defined by the zoning regulations of the county.

House, detached. A one-family living unit in a single building. (May also consist of two (2) such units, one above the other.)

House, semidetached. One of two (2) one-family living units placed side by side in a single building. (May also consist of one of two (2) two-family units, one above the other).

(iii) Counteract the effects of urban congestion; and

(iv) Encourage participation by all age groups in the use and care of local open space tracts;

(16) To ensure an adequate supply of land suitable for development; and

(17) To simplify and clarify the development review and approval process.

(b) *Fulfillment of development policies and purposes.* Compliance with this title and the Comprehensive Manual of Development Policies fulfills the development policies and purposes set forth in § 32-4-102 of this subtitle and subsection (a) of this section, respectively.

(1988 Code, § 26-167) (Bill No. 1, 1992, § 2; Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-104. SCOPE OF TITLE.

(a) *Applicability of title.* This title shall apply to the process of review for approval of all development.

(b) *Present zoning classification.* Proposed development shall be in compliance with the present zoning classification on the property to be developed.

(1988 Code, § 26-169) (Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 79-01, § 2, 7-1-2004; Bill No. 24-06, § 1, 3-17-2006)

***Annotation**–Former § 26-169 (1988) cited in Meadows of Greenspring Homeowners Association, Inc. v. Foxleigh Enterprises, Inc., 133 Md.App. 510, 758 A.2d 611 (2000).*

§ 32-4-105. GENERAL EXEMPTIONS.

(a) *Voluntary Cleanup Program exemption.* The creation of a separate lot of record for the sole purpose of applying for or participating in the Voluntary Cleanup Program under Title 7, Subtitle 5 of the Environment Article of the Annotated Code of Maryland is exempt from Articles 32 and 33 of this Code and from the Baltimore County Zoning Regulations for the period of time that the lot is subject to the requirements of the state law.

(b) *Agricultural exemption.* Subject to compliance with all applicable Baltimore County Zoning Regulations, the subdivision of land for agricultural purposes is exempt from this title if no new streets are involved.

(1988 Code, § 26-170) (Bill No. 18, 1990, § 2; Bill No. 79-01, § 2, 7-1-2004; Bill No. 150-05, §1, 3-5-2006)

CBA
People's Counc.
Exh No. 17

§ 32-4-106. LIMITED EXEMPTIONS.

(a) *Exemption from development review and approval process.*

(1) The following proposed development is exempt from compliance with Subtitle 2 of this title:

(i) The building or preparation of land for building a dwelling for one or two families:

(1) An applicant may make a written request to the Hearing Officer for a one year extension of the 4 year Development Plan approval period provided under subsection (a) of this section upon a showing that a county agency failed to properly process an essential request necessary to achieve vesting in a timely fashion, causing a delay beyond the initial four years after the final, non-appealable approval was granted.

(2) The request for extension shall be filed prior to the expiration of four years from the date of approval of the Development Plan.

(3) The Hearing Officer shall act within 60 days of the filing of the request and may grant, in writing, the request for an extension.

(4) The Hearing Officer may not act upon the request for an extension until comments from the applicable agencies are received.

(5) Any appeal of the extension granted under subsection (b) shall be on the record. The standard of review shall be based upon an abuse of discretion.

(c) *Expiration of reclamation plan.* Approval by the Hearing Officer of a Development Plan for which there is an approved reclamation plan shall expire 15 years from approval of the reclamation plan by the Planning Board under Subtitle 5 of this title.

(1988 Code, § 26-210) (Bill No. 1, 1992, § 2; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, §§ 18, 19, 7-1-2004; Bill No. 24-06, § 1, 3-17-06)

§ 32-4-262. AMENDMENTS TO DEVELOPMENT PLANS.

(1) Any material amendment to an approved non-residential Development Plan shall be reviewed and approved in the same manner as the original plan.

(2) Any material amendment to an approved residential Development Plan or plat shall be reviewed in accordance with this title, and with respect to that portion of the original plan or plat to which the amendment pertains, the amendment shall be reviewed for compliance with all current law and regulations, including the development regulations and the zoning regulations.

(1988 Code, § 26-211) (Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 18, 7-1-2004; Bill No. 24-06, § 1, 3-17-2006)

***Annotation**–Former § 26-211 (1988) cited in Meadows of Greenspring Homeowners Association, Inc. v. Foxleigh Enterprises, Inc., 133 Md.App. 510, 758 A.2d 611 (2000).*

§ 32-4-263. PUBLIC WORKS AGREEMENT TO CONFORM TO DEVELOPMENT PLAN.

A public works agreement, if required by Subtitle 3 of this title, shall conform to the approved plan and may not be executed before approval of the Development Plan.

(1988 Code, § 26-212) (Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 18, 7-1-2004)

PART VII. PLATS

§ 32-4-271. REQUIRED.

CASE 06-589-SPHA

PETITIONER'S EXHIBITS

✓ 1. PLAT DATED 5/3/06

✓ 2. SUBDIVISION PLAT OF PINEY BRANCH FARM 12/9/77

✓ 3. SAME AS EXHIBIT ~~without~~ NO1. WITH THE RCA LINE MARKINGS FOR THE ~~TOWNHOUSES~~ PULL-OFFS.

✓ 4. DRAWING OF PAN-HANDLE OWNERSHIPS

✓ 5. DECLARATION OF RESTRICTIONS 6/22/78

✓ 6. GOBRECHT'S DEED DATED 11/2/84.

✓ 7. LETTER DATED 11/9/04 TO GERHOLD, CROSS & ETZEL FROM T. KOTROCO.

✓ 8. BCBA CASE NO. 03-264-SPH

Case No.: 06-589 -SPHA

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	REVISED RED-LINED SITE PLAN	
No. 2		
No. 3		
No. 4		
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

DENSITY CALCULATIONS

EXISTING ZONING	RC-2 *
MINIMUM LOT SIZE	43,560 SQ FT.
GROSS AREA	38.356AC±
NET AREA	36.662AC±
PERMITTED NO. OF LOTS	36
PROPOSED NO OF LOTS	7
GROSS DENSITY	0.182 LOTS / AC.
NET DENSITY	0.190 LOTS / AC.

* PREVIOUSLY ZONED RDP - PRESENTLY ZONED RC-2, TENTATIVE EXTENSION BY THE PLANNING BOARD 2-17-77

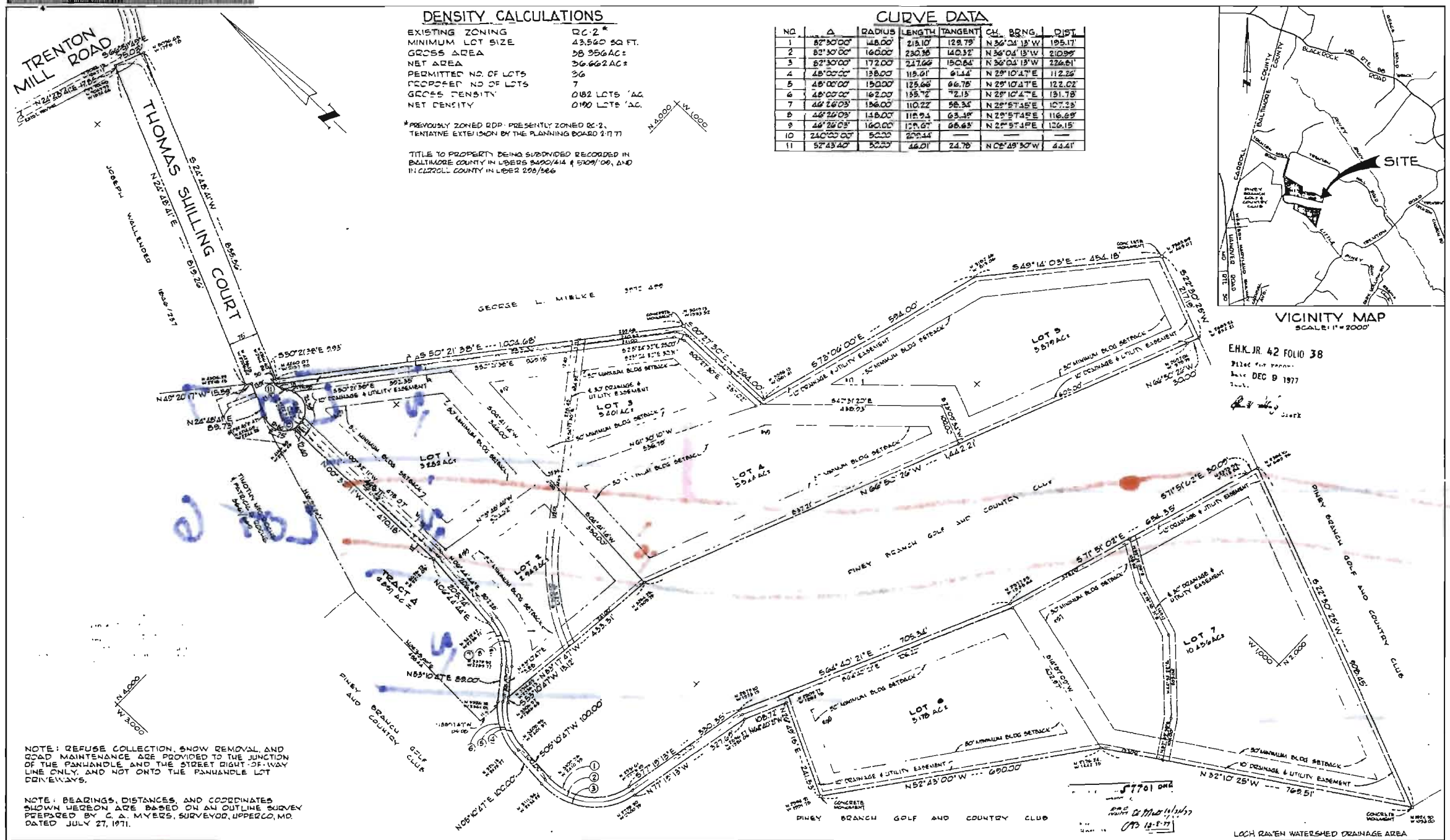
TITLE TO PROPERTY BEING SUBDIVIDED RECORDED IN BALTIMORE COUNTY IN LIBERS 5490/414 & 5709/108, AND IN CARROLL COUNTY IN LIBER 206/366

CURVE DATA

NO.	Δ	RADIUS	LENGTH	TANGENT	CH. BRNG.	DIST.
1	82°30'00"	148.00'	213.10'	128.79'	N 36°04'15"W	195.17'
2	82°30'00"	160.00'	230.36'	140.32'	N 36°04'15"W	210.99'
3	82°30'00"	172.00'	247.66'	150.84'	N 36°04'15"W	226.81'
4	48°00'00"	138.00'	115.61'	61.44'	N 29°10'47"E	112.26'
5	48°00'00"	150.00'	125.66'	66.78'	N 29°10'47"E	122.02'
6	48°00'00"	162.00'	135.72'	72.15'	N 29°10'47"E	131.78'
7	46°26'05"	136.00'	110.22'	58.34'	N 25°57'35"E	107.23'
8	46°26'05"	148.00'	119.94'	63.49'	N 25°57'35"E	116.68'
9	46°26'05"	160.00'	129.67'	68.65'	N 25°57'35"E	126.15'
10	240°00'00"	50.00'	209.44'	—	—	—
11	52°43'20"	50.00'	46.01'	24.78'	N 05°48'30"W	44.41'

VICINITY MAP
SCALE: 1" = 2000'

E.H.K. JR. 42 FOLIO 38
Plat(s) for record
Date DEC 9 1977
Test
Clerk



NOTE: REFUSE COLLECTION, SNOW REMOVAL, AND ROAD MAINTENANCE ARE PROVIDED TO THE JUNCTION OF THE PANHANDLE AND THE STREET RIGHT-OF-WAY LINE ONLY, AND NOT ONTO THE PANHANDLE LOT DRIVEWAYS.

NOTE: BEARINGS, DISTANCES, AND COORDINATES SHOWN HEREON ARE BASED ON AN OUTLINE SURVEY PREPARED BY C. A. MYERS, SURVEYOR, UPPERCO, MD. DATED JULY 27, 1971.

OWNERS CERTIFICATE

THE REQUIREMENTS OF SECTION 72B, ARTICLE 17, OF THE ANNOTATED CODE OF MARYLAND (BLACK 1967 SUPPLEMENT) AS FAR AS THEY RELATE TO THE MAKING OF THIS PLAT, HAVE BEEN COMPLIED WITH.

Margaret B. Shuck
For Robert S. Kuehl, Jr.
OWNER MARGARET B. SHUCK — DATE 9/22/77

SURVEYOR'S CERTIFICATE

I, WILLIAM T. SADLER, A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE LAND SHOWN HEREON WAS BEEN LAID OUT AND THE PLAT THEREOF PREPARED IN ACCORDANCE WITH THE LAW RELATING TO THE SUBDIVISION OF LAND KNOWN AS HOUSE BILL 492, CHAPTER 1018 OF THE ACTS OF 1945 AND SUBSEQUENT ACTS AMENDATORY THEREOF.

PROFESSIONAL LAND SURVEYOR NO 1132 — DATE

NOTES

THE STREETS AND OR ROADS 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 THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED, THEIR HEIRS AND ASSIGNS.

COORDINATES SHOWN ON THIS PLAT ARE BASED UPON ASSUMED DATUM.

APPROVED BY BALTIMORE COUNTY HEALTH DEPARTMENT

DEPUTY STATE & COUNTY HEALTH OFFICER — DATE

APPROVED BY BALTIMORE COUNTY PLANNING BOARD

DIRECTOR — DATE

APPROVED AS TO ALIGNMENT AND LOCATION OF STREETS

ROADS ENGINEER OF BALTIMORE CO., MD. — DATE

PINEY BRANCH FARMS

FIFTH ELECTION DISTRICT — BALTIMORE COUNTY, MARYLAND

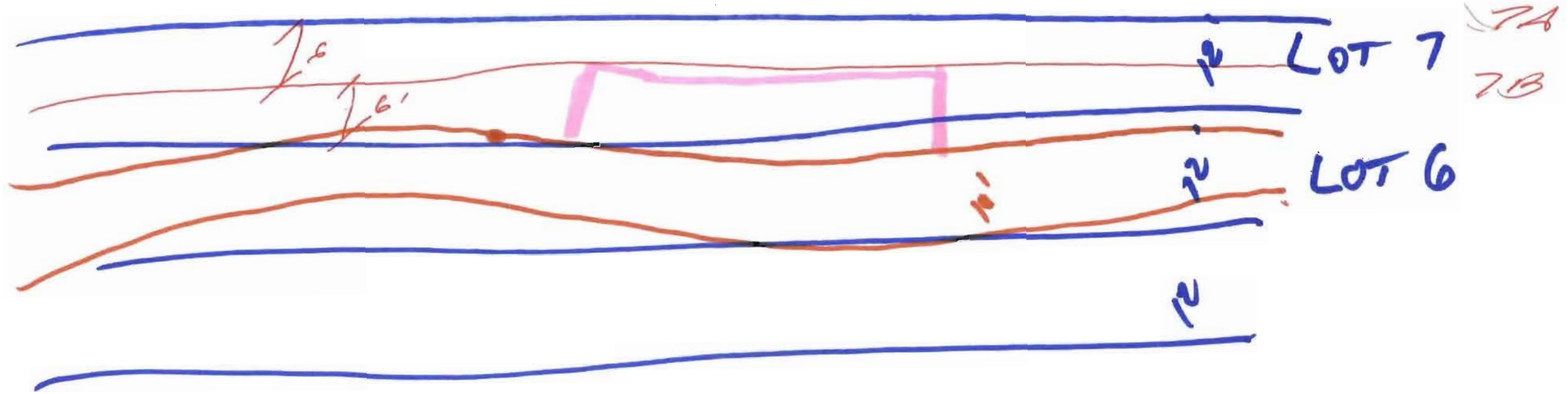
W. T. SADLER, INC.
SURVEYORS
508 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND - 21204

SCALE	1" = 100'
DATE	2-7-1975
JOB NO.	276

MSA SSC 1236-1433

PETITIONER'S EXHIBIT

ALL-STATE LEGAL®



Petitioners #4 CBA

THIS DECLARATION OF RESTRICTIONS made this 7th day of June 1978, by MARGARET B. SMOCK, of Warren County, in the State of New Jersey.

Whereas, Margaret B. Smock is the owner of certain parcels of land situate South of Trenton Mill Road, in the Fifth Election District of Baltimore County, Maryland, by virtue of the following deeds:

a) Deed from Walter W. Johnston and Marie S. Johnston, his wife, to Thomas E. Shilling and Margaret B. Shilling, his wife, dated December 18, 1958 and recorded among the Land Records of Baltimore County in Liber No. 3490, Folio 214, which land upon the death of Thomas E. Shilling vested in severalty in Margaret B. Shilling, his wife, now Margaret B. Smock,

b) Deed of Exchange between Margaret B. Smock and Piney Branch Golf and Country Club, Inc., et als., dated December 3, 1976 and recorded among said Land Records in Liber No. 5707, Folio 109; and

Whereas, the said Margaret B. Smock has subdivided a part of said land into subdivisions known and designated as "Piney Branch Farms", a plat of which is recorded among the Land Records of Baltimore County in Plat Book No. 42, Folio 38; and

Whereas, the said Margaret B. Smock does hereby subject the Lots Nos. 1 thru 7 as designated on said plat to the covenants, conditions and restrictions hereinafter set out.

Now therefore, this Declaration of Restrictions witnesseth, that the Lots in the development known as "Piney Branch Farms", a plat of which is recorded as aforesaid, are subject to the following covenants, conditions and restrictions:

1) The land included in this tract shall be used for private residential purposes only, and no building shall be erected, altered, placed or permitted to remain on any lot other than one detached dwelling not to exceed two and one-half stories in height, each dwelling being designed for occupancy by a single family, and such outbuildings as may be necessary or desirable for residential purposes, to be approved as hereinafter provided.

2) No building, fence, wall, or other structure shall be commenced, erected, placed or altered on any lot until the construction plans and specifications, and a plan showing the location of the structure, have been approved in writing by the Developer, his successors and assigns, or such architect as may be designated by the Developer, his successors and assigns. The Developer, his successors and assigns, shall have the right to refuse to approve any such plans or specifications, or location plan which are not suitable or desirable, in its opinion, for aesthetic or other reasons.

ALL-STATE LEGAL® PETITIONER'S EXHIBIT 5

3) Developer shall have the right to refuse to approve any such plans or specifications or grading plans, which are not suitable or desirable, in its opinion, for aesthetic or other reasons; and in so passing upon such plans, specifications and grading plan, it shall have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure or the roadway, as planned, on the outlook from the adjacent or neighboring property.

4) Plans so submitted shall have incorporated into them a complete grading plan showing existing grades and finished grades of the lot relative to the finished road elevations, the location of Septic Tank and Well dimensions from dwelling and property lines.

5) All four elevations of house or dwelling shall show exterior material to be used; where masonry such as brick or stone is called for, it shall start at finish grade and run the full height of the wall; however, where frame dwelling is to be constructed, foundation material shall be of stone, brick, or block stucco.

6) Where shutters are used on one window elevation, they must be used on all elevations.

7) The Developer reserves the right to enter at any time along the periphery ten (10) feet of any lot, now or hereafter laid out, to install and maintain or license others to install and maintain wires, poles, pipes, cables and other apparatus, above or below ground, for electric light, telephone, for general use, and for other public or quasi public purposes.

8) Easements for the installation and maintenance of the utilities are reserved within the roadways as shown on the record plats.

9) No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

10) No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

11) No poultry or hogs shall be kept on any lot or part of this tract of land. The permission in writing of the Developer, his successors and assigns, may grant the keeping of other livestock in part of this tract.

12) A Right of Way is designated on said plat extending from Thomas Shilling Court in a southeasterly direction and consisting of contiguous strips of land 12 feet in width being the fee simple Pan-handle strips of Lots Nos. 3, 4 and 5, which roadways are for the use in common of said lots and for ingress and egress to and from said lots. This use in common to the use thereof shall run with and bind the land subject

Y CIRCUIT COURT (Land Records) [MSA CE 62-5756] Book EHK 5901, p. 0576. Printed 06/25/2007 Online

thereto. Each of the owners of said Lots, their personal representatives and assigns, shall share the maintenance of the roadway constructed thereon, on an equal basis, to wit, one-third of the subject maintenance costs shall be shared by each lot owner and said right of way shall be repaired upon the agreement of two of the three lot owners.

13) A Right of Way is designated on said plat extending from Thomas Shilling Court in a southerly and easterly direction and consisting of contiguous strips of land 12 feet in width being the fee simple Panhandle strips of Lots Nos. 2, 6 and 7, which roadways are for the use in common of said lots and for ingress and egress to and from said lots. This use in common to the use thereof shall run with and bind on the land subject thereto. Each of the owners of said Lots, their personal representatives and assigns, shall share the maintenance of the roadways constructed thereon on the following basis: Lot No. 2 - 25%; Lot No. 6 - 37 1/2%; Lot No. 7 - 37 1/2%. Should the owners of Lot No. 1 or Tract A as designated on said plat connect a driveway from said Lot No. 1 or Tract A to the roadway then said owner shall be required to pay for the maintenance of said roadway on the following basis: Lot No. 1 - 25%; Tract A - 25%; and the share charged to Lots Nos. 2, 6 and 7 shall be proportionately reduced.

14) Those covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five years from date those covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years unless and instrument, signed by a majority of the then owners of the lots, excluding mortgagees, has been recorded agreeing to change said covenants in whole or in parts.

15) Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, and it shall be lawful for any person or persons owning any part of this tract to prosecute such proceedings.

16) Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Witness the hand and seal of the Declarant.

Witness:

Charles O. Fisher

Margaret B. Smock (SEAL)

Margaret B. Smock

CIRCUIT COURT (Land Records) [MSA CE 62-5756] Book EHK 5901, p. 0577. Printed 06/25/2007. Online

State of Maryland

County of Carroll

On this 22nd day of June, 1978, before me, a Notary Public of the State of Maryland, in and for Carroll County aforesaid, the undersigned officer, personally appeared MARGARET B. SMOCK, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and Official Seal.

Kelly Davidson
Notary Public
My commission expires: July 1, 1978

Rec'd for record JUN 26 1978 at 1:47 P M
Per Elmer H. Kahling, Jr., Clerk
Mail to Walsh, Fisher
Receipt No. 8 13.00

JUN 26-78 2823548 ****13.00
JUN 26-78 2823547 ****13.00

CIRCUIT COURT (Land Records) for CARROLL County, MD [illegible] Book LHK 5901, p.0578. Printed 06/25/2007. Online

LIBER 6812 FOLIO 083

THIS DEED, made this 2nd day of November, in the year one thousand nine hundred and eighty-four, by and between DOUGLAS C. MYERS and ANGELA L. MYERS, his wife, parties of the first part, and GERRY R. GOBRECHT and LORETTA A. GOBRECHT, his wife, parties of the second part.

WITNESSETH, that in consideration of the sum of Twenty-seven Thousand Five Hundred ($27,500.00) Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Douglas C. Myers and Angela L. Myers, do grant and convey unto the said Gerry R. Gobrecht and Loretta A. Gobrecht, his wife, as tenants by the entireties, their assigns, the survivor of them, and the survivor's personal representatives and assigns, in fee simple, all that lot or parcel of ground situate, lying and being in the Fifth Election District of Baltimore County, State of Maryland and more particularly described in a survey and shown on plat designated "Exhibit A" attached hereto and hereby made a part hereof, made by C. A. Myers, Registered Surveyor No. 2783, dated October 26, 1984, as follows:

BEGINNING for the same at a pipe now set at the end of 361.86 feet in the North 02 degrees 55 minutes 00 seconds East 438.44 foot line of the outlines of Tract "A" as shown on a plat of Piney Branch Farms, recorded among the Plat Records of Baltimore County in Plat Book No. 42 folio 38, thence binding on the outlines of said tract the three following lines, North 02 degrees 55 minutes 00 seconds East 76.58 feet to a stake, North 18 degrees 37 minutes 20 seconds East 478.24 feet to a pipe and South 71 degrees 22 minutes 40 seconds East 4.77 feet to a point on the West side of Thomas Shilling Court, thence running with the side of said road by a curve to the left with a radius of 50.00 feet, an arc of 37.30 feet and a chord of South 08 degrees 08 minutes 01 seconds East 54.38 feet to a point, thence leaving said road and running for a new line of division being 20.00 feet from and parallel to the North 00 degrees 32 minutes 11 seconds West 470.13 foot line as shown on the above mentioned Plat, South 00 degrees 32 minutes 11 seconds East 483.13 feet to a pipe now set, thence running for another line of division, North 87 degrees 05 minutes 00 seconds West 173.54 feet to the place of beginning, containing one acre and two hundred forty four thousandths of an acre, (1.244), more or less.

AND THE GRANTORS DO FURTHER GRANT unto Gerry R. Gobrecht and Loretta A. Gobrecht, his wife, their assigns, the survivor of them and the survivor's personal representatives and assigns, the perpetual right to use for any purpose except the construction of buildings that area being approximately 20 feet in width between the South 00 degrees 32 minutes 11 seconds East 483.13 foot line of the property designated Lot 1 herein

B

STATE DEPARTMENT OF ASSESSMENTS & TAXATION
CLERK
DATE 11-5-84

AGRICULTURAL TRANSFER TAX NOT APPLICABLE
DATE 11-5-84

CBA
PET. EXH. No. 6

conveyed and the South 00 degrees 32 minutes 11 seconds East 470.18 foot line of the parcel retained by the grantors and designated Lot 2 on the plat dated October 26, 1984, and designated "Exhibit B" attached hereto and hereby made a part hereof. Said area is subject to the existing drainage and utility easement and further subject to the rights of the grantors, their assigns, the survivor of them and the survivor's personal representatives and assigns to utilize said area shown cross-hatched on said plat for ingress and egress, if necessary. The grantees, their assigns, the survivor of them and the survivor's personal representatives and assigns shall be responsible to mow any grass growing on said area.

BEING part of the property which by deed dated December 21, 1983 and recorded among the Land Records of Baltimore County in Liber E.H.K. Jr. No. 6653 at folio 838 was granted and conveyed by Margaret B. Smock unto Douglas C. Myers and Angela L. Myers, his wife, within grantors.

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lot of ground and premises above described and mentioned and hereby intended to be conveyed together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Gerry R. Gobrecht and Loretta A. Gobrecht, his wife as tenants by the entireties, their assigns, the survivor of them, and the survivor's personal representatives and assigns, in fee simple.

AND the said parties of the first part hereby covenant that they have not done or suffered to be done, any act, matter or thing whatsoever to encumber the property hereby conveyed, and that they will warrant specially the property granted, and that they will execute such further assurances of the same as may be requisite.

WITNESS the hands and seals of the within Grantors.

WITNESS:

George B. McRae

Douglas C. Myers (SEAL)

_____ _____ (SEAL)
Angela L. Myers

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, that on this 1st day of November, 1984, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Douglas C. Myers and Angela L. Myers, his wife, and they acknowledged the aforegoing deed to be their act.

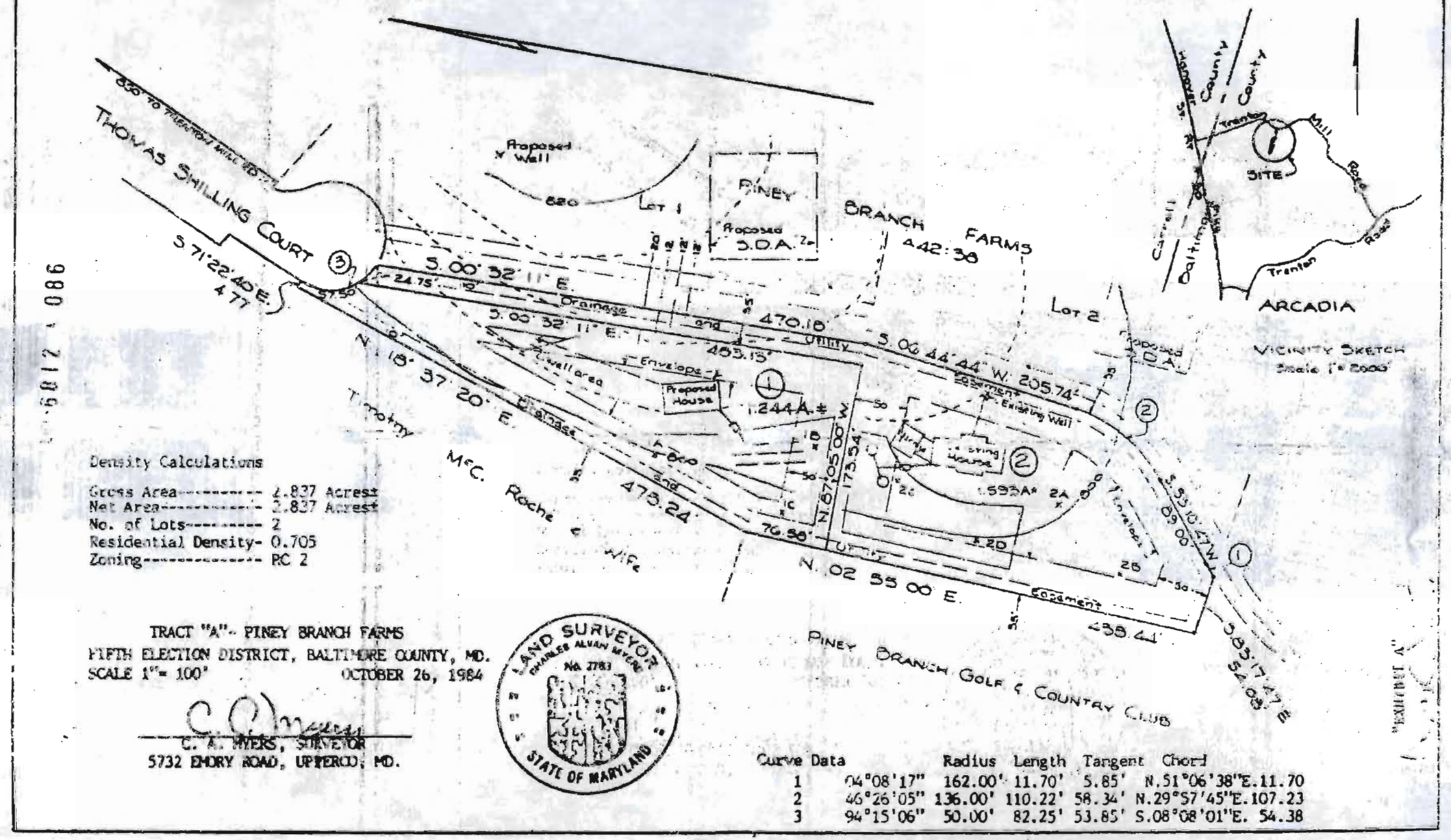
AS WITNESS my hand and Notarial Seal.

_____
Notary Public

My Commission Expires: 7-1-86

GEORGE B. JOHNS NOTARY PUBLIC Baltimore Co. Md.

B REC/F 24.00
B T TX 137.50
B RECS 137.50
DEED 0 ##
ESK JR T 299.00
ESK JR 299.00
#91368 0004 ROI T10:23
11/05/84



5812 086

Density Calculations

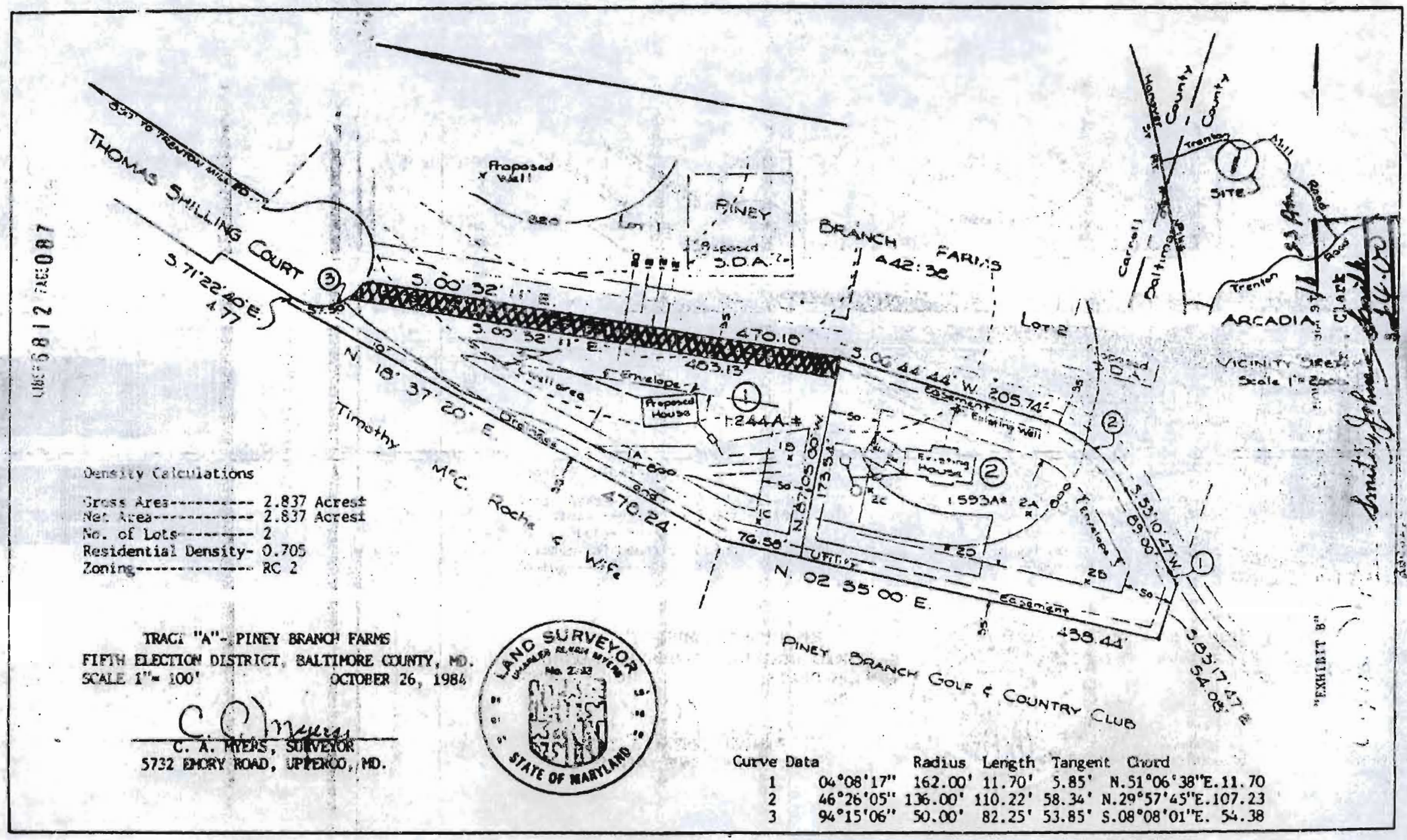
Gross Area---------- 2.837 Acres±
Net Area---------- 2.837 Acres±
No. of Lots---------- 2
Residential Density- 0.705
Zoning---------- RC 2

TRACT "A"- PINEY BRANCH FARMS
FIFTH ELECTION DISTRICT, BALTIMORE COUNTY, MD.
SCALE 1"= 100' OCTOBER 26, 1984

C. A. MYERS, SURVEYOR
5732 EMORY ROAD, UPPERCO, MD.

LAND SURVEYOR
CHARLES ALVAN MYERS
No. 2783
STATE OF MARYLAND

Curve Data	Radius	Length	Tangent	Chord
1	04°08'17"	162.00'	11.70'	5.85' N.51°06'38"E.11.70
2	46°26'05"	136.00'	110.22'	58.34' N.29°57'45"E.107.23
3	94°15'06"	50.00'	82.25'	53.85' S.08°08'01"E. 54.38



Density Calculations

Gross Area	2.837 Acres±
Net Area	2.837 Acres±
No. of Lots	2
Residential Density	0.705
Zoning	RC 2

TRACT "A" - PINEY BRANCH FARMS
FIFTH ELECTION DISTRICT, BALTIMORE COUNTY, MD.
SCALE 1" = 100' OCTOBER 26, 1984

C. A. Myers

C. A. MYERS, SURVEYOR
5732 EMORY ROAD, UPPERCO, MD.

LAND SURVEYOR
CHARLES ALVIN MYERS
No. 2133
STATE OF MARYLAND

Curve Data		Radius	Length	Tangent	Chord
1	04°08'17"	162.00'	11.70'	5.85'	N.51°06'38"E.11.70
2	46°26'05"	136.00'	110.22'	58.34'	N.29°57'45"E.107.23
3	94°15'06"	50.00'	82.25'	53.85'	S.08°08'01"E. 54.38

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

November 9, 2004

Gerhold, Cross, & Etzel, LTD
320 East Towsontown Boulevard
Towson, MD 21286

RE: Rosenberger/Thomas Shilling
27 Thomas Shilling Court
DRC Number 101804E, Dist. 5C3

Dear Sir or Madam:

Pursuant to Article 25A, Section 5(U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on October 18, 2004, and made the following recommendations:

The DRC has determined that your project was originally approved by the Joint Subdivision Planning Committee (JSPC). You may process a plan with changes to the last approved JSPC in compliance with JSPC regulations. To submit a JSPC plan for consideration, please contact this office for a transmittal form. It is also necessary to amend the Record Plat.

OBA

ALL-STATE LEGAL®
PETITIONER'S EXHIBIT
7

I have reviewed the recommendation carefully, and I have determined to adopt the recommendations set forth above. It is this 9th day of November 2004, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Timothy Kotroco
Director

TK:DTR:dak

c: Kristin Weis
File

...IMORE COUNTY, MARYLAND
...ICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 40469

DATE 9-28-04 ACCOUNT R-006-6150

AMOUNT $50.00

RECEIVED FROM: Gerhold, Cross, + Etzel

FOR: Rosenbergen / Thomas Shilling

DRC # 101804E DK

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
9/30/2004	9/29/2004	14:12:35	2

REG W504 MAIL 0001 CHRD
>>RECEIPT # 202971 9/29/2004 OFLN
Dept 5 520 ZONING VERIFICATION
CR NO. 040449
Recpt Tot $50.00
$50.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

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

* * * * * * * * *

OPINION

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

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

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

Background

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

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

CBA

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

Testimony

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Interfere with adequate light and air;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Opinion

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

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

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

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

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

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

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

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

ORDER

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

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

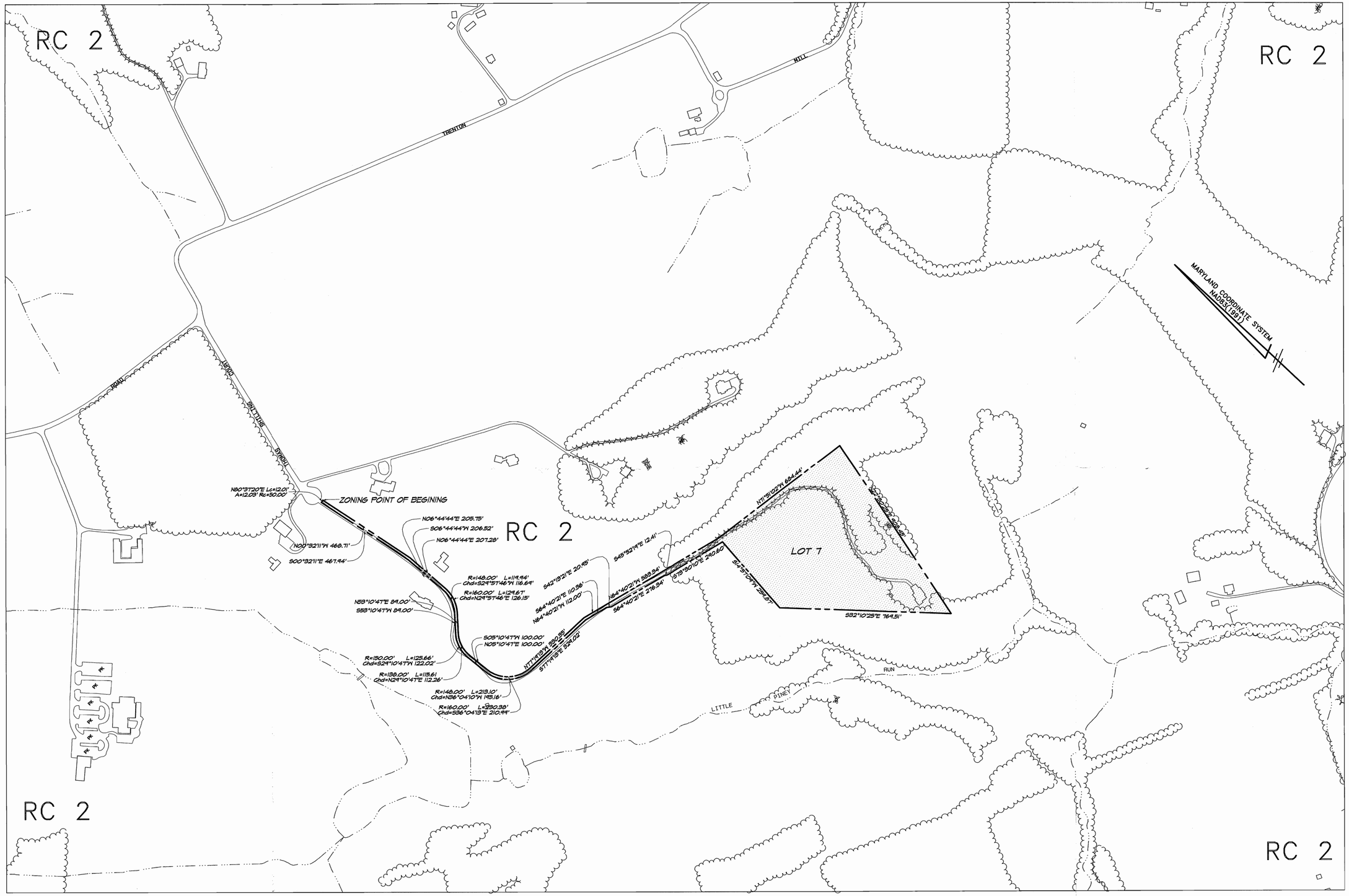
Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Edward W. Crizer, Jr.

Margaret Worrall



ZONING MAP

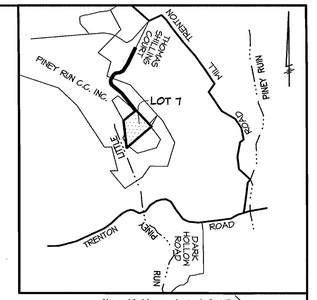
GIS TILE: 19B3, 19C3, 25B1, 25C1

SCALE: 1" = 200'

#589

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM A BOUNDARY SURVEY BY M.T.SADLER, INC.
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILES 19B3, C3, 25 B1, C1.
3. THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No. 11.
4. CENSUS TRACT 4050.00 REGIONAL PLANNING DISTRICT 302
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT: ELEMENTARY - FRANKLIN E.S.; MIDDLE - FRANKLIN M.S.; HIGH - FRANKLIN H.S.
   A.D.C. MAP & GRID 5-A13, 9-K13
5. THERE ARE NO KNOWN PRIOR ZONING CASES ON THE SUBJECT PROPERTY.
6. THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.
7. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
8. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
9. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
10. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PRIVATE WELLS AND SEPTIC SYSTEMS.

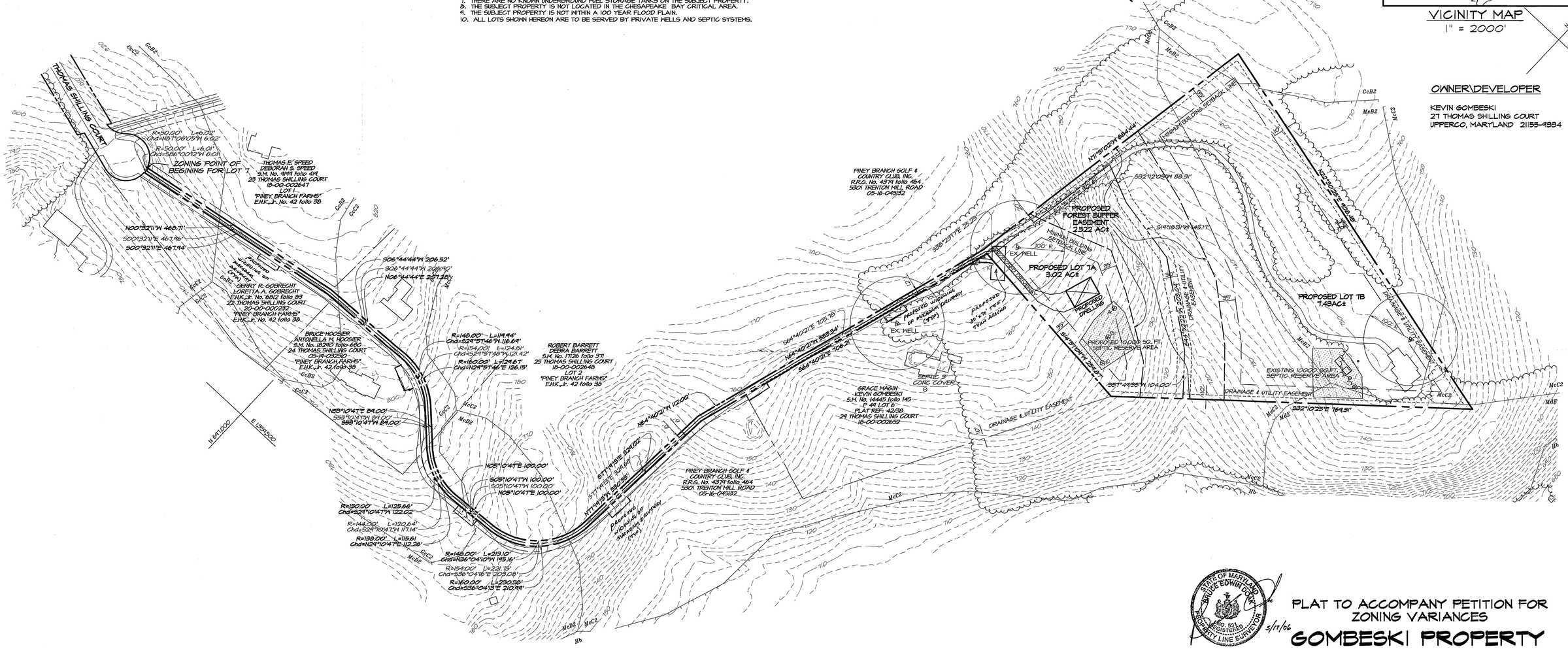


VICINITY MAP
1" = 2000'

N 615000
E 1358000

OWNER\DEVELOPER

KEVIN GOMBESKI
27 THOMAS SHILLING COURT
UPPERCO, MARYLAND 21155-9334



LEGEND

- PROPOSED PERC TEST ⊗
- EXISTING WELL △
- PROPOSED DWELLING ☒
- EXISTING BUILDING ▭
- SOIL LINE
- WOODS LINE
- PROPOSED PAVING
- EXISTING PAVING
- ZONING LINE
- PROPERTY LINE
- CONTOURS
- SLOPES ≥ 25%

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
GcB2, MeB2	Slight	Slight	Moderate: slope
GcC2, MeC2	Moderate: slope	Moderate: slope	Severe: slope
Hb	Severe: high water table; flooding hazard.	Severe: high water table; flooding hazard.	Severe: high water table; flooding hazard.
MeD2, MeE	Severe: slope	Severe: slope	Severe: slope

VARIANCES/SPECIAL HEARING REQUESTED

BALTIMORE COUNTY CODE

SECTION 32-4-409 (a) (2)
TO ALLOW PANHANDLE STRIPS OF 23'0" (PROPOSED LOT 7A) AND 26'0" (PROPOSED LOT 7B) IN LIEU OF THE MAXIMUM PERMITTED 1,000'

SECTION 32-4-409 (b) (2) II
TO ALLOW 2 PANHANDLE STRIPS HAVING INDIVIDUAL WIDTHS OF 6' IN LIEU OF THE REQUIRED 12'

DENSITY CALCULATIONS LOT 7

GROSS AREA	10.456 Ac.±
NET AREA	10.456 Ac.±
LOTS PERMITTED	2-100 Ac.± = 2 Lots
LOTS PROPOSED	2

STATE OF MARYLAND BRUCE EDWIN DORSEY NO. 521 REGISTERED PROPERTY LINE SURVEYOR 5/1/06

PLAT TO ACCOMPANY PETITION FOR ZONING VARIANCES
GOMBESKI PROPERTY

27 THOMAS SHILLING COURT
Deed Ref: S.M. No. 22967 folio 164
Tax Account No.: 18-00-002653
Tax Map 19; Grid 23; Parcel 49 LOT 7
Zoned RC 2; GIS Tile 19B3, 19C3, 25B1, 25C1
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=100' Date: MAY 03, 2006

REVISION	DATE
PAVING WIDENING, AREAS & TOE TRIM ADDED	7/13/06

COMPUTED:	DRAWN:	CHECKED:	FILE:X:\6

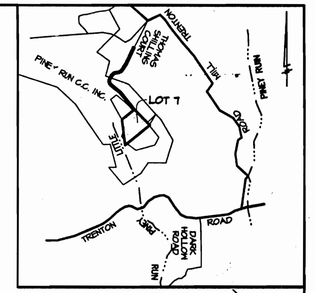
GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

PLOT DATE: May 17, 2006

PETITIONER'S EXHIBIT NO. #1 CBA # 31

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM A BOUNDARY SURVEY BY M.T.SADLER, INC.
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILES 19B3, C3, 25 B1, C1.
3. THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No. 11.
4. CENSUS TRACT 4050.00 REGIONAL PLANNING DISTRICT 302
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT: ELEMENTARY - FRANKLIN E.S., MIDDLE - FRANKLIN M.S., HIGH - FRANKLIN H.S.
   A.D.C. MAP & GRID 5-A13, 9-K13
5. THERE ARE NO KNOWN PRIOR ZONING CASES ON THE SUBJECT PROPERTY.
6. THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.
7. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
8. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
9. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
10. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PRIVATE WELLS AND SEPTIC SYSTEMS.



VICINITY MAP
1" = 2000'.

PLAT MERIDIAN E.&W. 42 / 38

N 45500 E 43500

OWNER\DEVELOPER

KEVIN GOMBESKI
27 THOMAS SHILLING COURT
UPPERCO, MARYLAND 21155-9354

THOMAS SHILLING COURT

ZONING POINT OF BEGINING FOR LOT 7

THOMAS E. SPEED
DEBORAH S. SPEED
S.M. No. 4941 folio 419
23 THOMAS SHILLING COURT
18-00-002647
LOT 1
"PINEY BRANCH FARMS"
E.H.K.Jr. No. 42 folio 38

GERRY R. GOBRECHT
LORETTA A. GOBRECHT
E.H.K.Jr. No. 5812 folio 83
22 THOMAS SHILLING COURT
30-00-000232
"PINEY BRANCH FARMS"
E.H.K.Jr. No. 42 folio 38

BRUCE HOOSIER
ANTONELLA M. HOOSIER
S.M. No. 18240 folio 680
22 THOMAS SHILLING COURT
05-14-082250
"PINEY BRANCH FARMS"
E.H.K.Jr. 42 folio 38

ROBERT BARRETT
EGBRA BARRETT
S.M. No. 11726 folio 371
25 THOMAS SHILLING COURT
18-00-002648
LOT 2
"PINEY BRANCH FARMS"
E.H.K.Jr. 42 folio 38

GRACE HAGIN
KEVIN GOMBESKI
S.M. No. 14445 folio 145
P. 49 LOT 6
PLAT REF: 42/38
29 THOMAS SHILLING COURT
18-00-002652

PINEY BRANCH GOLF & COUNTRY CLUB, INC.
R.R.S. No. 4379 folio 464
3501 TRENTON HILL ROAD
05-16-045152

PROPOSED FOREST BUFFER EASEMENT 2.522 AC±

PROPOSED LOT 7A 3.02 AC±

PROPOSED LOT 7B 7.43AC±

EX. WELL

PROPOSED DWELLING

PROPOSED 10,000 SQ. FT. SEPTIC RESERVE AREA

EXISTING 10000 SQ.FT. SEPTIC RESERVE AREA

EXISTING BUILDING SETBACK LINE

DRAINAGE & UTILITY EASEMENT

SINGLE 9" CONC. COVER

R=50.00' L=6.02'
Chd=N87°06'05"W 6.02'
R=50.00' L=6.01'
Chd=S86°00'32"W 6.01'

N00°32'11"W 468.71'
S00°32'11"E 467.96'
S00°32'11"E 467.64'

S06°44'44"W 208.52'
S06°44'44"W 206.90'
N06°44'44"E 207.28'

R=148.00' L=119.94'
Chd=S29°57'46"W 116.64'
R=154.00' L=124.81'
Chd=S29°57'46"W 121.42'
R=160.00' L=129.67'
Chd=N29°57'46"E 126.15'

N23°10'47"E 84.00'
S53°10'47"W 84.00'
S23°10'47"W 84.00'

N03°10'47"E 100.00'
S03°10'47"W 100.00'
S03°10'47"W 100.00'
N03°10'47"E 100.00'

R=130.00' L=125.66'
Chd=S32°10'47"W 122.02'
R=144.00' L=120.64'
Chd=S29°10'47"W 117.14'
R=36.00' L=113.61'
Chd=N24°10'47"E 112.26'

R=148.00' L=219.10'
Chd=N86°04'07"W 199.16'
R=154.00' D=221.75'
Chd=S36°04'16"E 203.08'
R=160.00' L=230.38'
Chd=S86°04'19"E 210.99'

S64°40'21"E 105.78'
S64°40'21"E 265.24'
N64°40'21"W 265.24'
S64°40'21"E 129.21'
N64°40'21"W 112.00'

S17°41'53"E 340.00'
N17°41'53"W 340.00'

S39°23'17"E 25.29'
N71°10'37"W 644.48'
S32°12'05"W 88.31'
S14°18'31"W 45.17'
N06°44'44"E 207.28'
S51°49'55"W 104.00'
S32°10'23"E 84.01'

LEGEND

- PROPOSED PERC TEST
- EXISTING WELL
- PROPOSED DWELLING
- EXISTING BUILDING
- SOIL LINE
- WOODS LINE
- PROPOSED PAVING
- EXISTING PAVING
- ZONING LINE
- PROPERTY LINE
- CONTOURS
- SLOPES ≥ 25%

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
GcB2, McB2	Slight	Slight	Moderate: slope
GcC2, McC2	Moderate: slope	Moderate: slope	Severe: slope
Hb	Severe: high water table; flooding hazard.	Severe: high water table; flooding hazard.	Severe: high water table; flooding hazard.
McD2, McE	Severe: slope	Severe: slope	Severe: slope

VARIANCES REQUESTED

BALTIMORE COUNTY CODE

SECTION 32-4-409 (a) (2)
TO ALLOW PANHANDLE STRIPS OF 23'10" (PROPOSED LOT 7A) AND 26'0" (PROPOSED LOT 7B) IN LIEU OF THE MAXIMUM PERMITTED 1,000'

SPECIAL HEARING REQUESTED

BALTIMORE COUNTY CODE

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DENSITY CALCULATIONS LOT 7

GROSS AREA	10.456 Ac.±
NET AREA	10.456 Ac.±
LOTS PERMITTED	2-100 Ac.± = 2 Lots
LOTS PROPOSED	2

STATE OF MARYLAND — BRUCE EDWIN BRAY — NO. 616 REGISTERED PROPERTY LINE SURVEYOR — 5/8/06

REVISION	DATE

PLAT TO ACCOMPANY A PETITION FOR ZONING VARIANCES/SPECIAL HEARING

GOMBESKI PROPERTY

27 THOMAS SHILLING COURT
Deed Ref: S.M. No. 22967 folio 164
Tax Account No.: 18-00-002653
Tax Map 19; Grid 23; Parcel 49 LOT 7
Zoned RC 2; GIS Tile 19B3, 19C3, 25B1, 25C1
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=100' Date: MAY 03, 2006

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

PETITIONER'S EXHIBIT

COMPUTED: | DRAWN: CLM | CHECKED: | FILE: X:\GOMBESKI LOT7\ZONING lot7 REV.pro

Rev 10, 2006 CBA

DENSITY CALCULATIONS

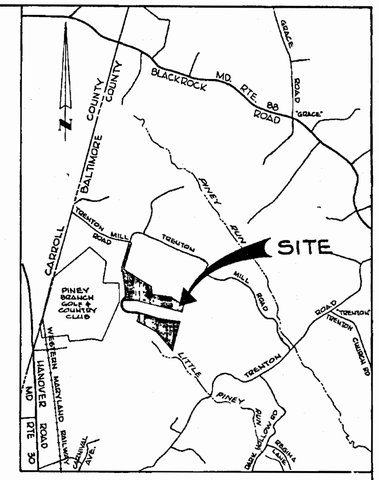
EXISTING ZONING	RC-2 *
MINIMUM LOT SIZE	43,560 SQ FT.
GROSS AREA	38.356 AC±
NET AREA	36.662 AC±
PERMITTED NO. OF LOTS	36
PROPOSED NO OF LOTS	7
GROSS DENSITY	0.182 LOTS / AC.
NET DENSITY	0.190 LOTS / AC.

*PREVIOUSLY ZONED RDP - PRESENTLY ZONED RC-2, TENTATIVE EXTENSION BY THE PLANNING BOARD 2-17-77

TITLE TO PROPERTY BEING SUBDIVIDED RECORDED IN BALTIMORE COUNTY IN LIBERS 5400/414 & 5109/109, AND IN CARROLL COUNTY IN LIBER 298/586

CURVE DATA

NO.	Δ	RADIUS	LENGTH	TANGENT	CH. BRNG.	DIST.
1	82°30'00"	148.00'	213.10'	129.79'	N 36°04' 13" W	195.17'
2	82°30'00"	160.00'	230.38'	140.32'	N 36°04' 13" W	210.99'
3	82°30'00"	172.00'	247.66'	150.84'	N 36°04' 13" W	226.81'
4	48°00'00"	138.00'	115.61'	61.44'	N 29°10' 47" E	112.26'
5	48°00'00"	150.00'	125.66'	66.78'	N 29°10' 47" E	122.02'
6	48°00'00"	162.00'	135.72'	72.13'	N 29°10' 47" E	131.78'
7	46°26'03"	136.00'	110.22'	58.34'	N 29°57' 45" E	107.23'
8	46°26'03"	148.00'	119.94	63.49'	N 29°57' 45" E	116.69'
9	46°26'03"	160.00'	129.67'	68.63'	N 29°57' 45" E	126.15'
10	240°00'00"	50.00	209.44	—	—	—
11	52°43'40"	50.00'	46.01'	24.78'	N 05°49' 30" W	44.41'



VICINITY MAP
SCALE: 1" = 2000'

E.H.K., JR. 42 FOLIO 38
Filed for record
Date DEC 9 1977
Test:
Clerk

NOTE: REFUSE COLLECTION, SNOW REMOVAL, AND ROAD MAINTENANCE ARE PROVIDED TO THE JUNCTION OF THE PANHANDLE AND THE STREET RIGHT-OF-WAY LINE ONLY, AND NOT ONTO THE PANHANDLE LOT DRIVEWAYS.

NOTE: BEARINGS, DISTANCES, AND COORDINATES SHOWN HEREON ARE BASED ON AN OUTLINE SURVEY PREPARED BY C. A. MYERS, SURVEYOR, UPPERCO, MD. DATED JULY 27, 1971.

LOCH RAVEN WATERSHED DRAINAGE AREA

OWNERS CERTIFICATE

THE REQUIREMENTS OF SECTION 72-B, ARTICLE 17, OF THE ANNOTATED CODE OF MARYLAND (FLACK 1947 SUPPLEMENT) AS FAR AS THEY RELATE TO THE MAKING OF THIS PLAT, HAVE BEEN COMPLIED WITH.

Margaret B. Smock
per Robert S. Knotts Jr. Att.
OWNER MARGARET B. SMOCK — DATE 9/22/77

SURVEYOR'S CERTIFICATE

I, WILLIAM T. SADLER, A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE LAND SHOWN HEREON HAS BEEN LAID OUT AND THE PLAT THEREOF PREPARED IN ACCORDANCE WITH THE LAW RELATING TO THE SUBDIVISION OF LAND KNOWN AS HOUSE BILL 459, CHAPTER 1016 OF THE ACTS OF 1945 AND SUBSEQUENT ACTS AMENDATORY THEREOF.

PROFESSIONAL LAND SURVEYOR NO 7130 — DATE

NOTES

THE STREETS AND OR ROADS 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 THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED, THEIR HEIRS AND ASSIGNS.

COORDINATES SHOWN ON THIS PLAT ARE BASED UPON ASSUMED DATUM.

APPROVED BY BALTIMORE COUNTY HEALTH DEPARTMENT

DEPUTY STATE & COUNTY HEALTH OFFICER — DATE

APPROVED BY BALTIMORE COUNTY PLANNING BOARD

DIRECTOR — DATE

APPROVED AS TO ALIGNMENT AND LOCATION OF STREETS

ROADS ENGINEER OF BALTIMORE CO., MD. — DATE

PINEY BRANCH FARMS

FIFTH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND

W. T. SADLER, INC.
SURVEYORS
505 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND - 21204

SCALE 1" = 100'
DATE 2-7-1975
JOB NO. 236

MSA 5541236-7633

42/38

OBA

PETITIONER'S EXHIBIT 2

DENSITY CALCULATIONS

EXISTING ZONING	RC-2 *
MINIMUM LOT SIZE	43,560 SQ FT.
GROSS AREA	38.356 AC±
NET AREA	36.662 AC±
PERMITTED NO. OF LOTS	36
PROPOSED NO OF LOTS	7
GROSS DENSITY	0.182 LOTS / AC.
NET DENSITY	0.190 LOTS / AC.

*PREVIOUSLY ZONED RDP- PRESENTLY ZONED RC-2, TENTATIVE EXTENSION BY THE PLANNING BOARD 2-17-71

TITLE TO PROPERTY BEING SUBDIVIDED RECORDED IN BALTIMORE COUNTY IN LIBERS 5490/416 & 5109/108, AND IN CARROLL COUNTY IN LIBER 288/586

CURVE DATA

NO.	Δ	RADIUS	LENGTH	TANGENT	CH. BRNG.	DIST.
1	82°30'00"	148.00'	213.10'	129.78'	N 39°04' 13" W	195.17'
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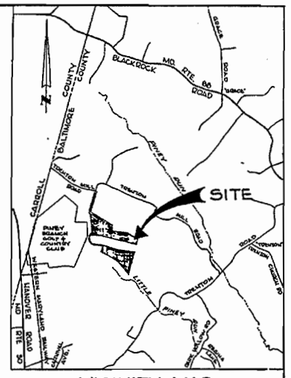
4	48°00'00"	138.00'	115.91'	61.44'	N 29°10' 47" E	112.56'
5	48°00'00"	150.00'	125.66'	66.75'	N 29°10' 47" E	122.02'
6	48°00'00"	162.00'	135.72'	72.13'	N 29°10' 47" E	131.78'
7	46°26'03"	136.00'	110.22'	58.34'	N 29°57' 45" E	107.23'
8	46°26'03"	148.00'	119.94'	63.49'	N 29°57' 45" E	116.69'
9	46°26'03"	160.00'	129.67'	68.63'	N 29°57' 45" E	126.15'
10	240°00'00"	5.00'	20.94	—	—	—
11	52°43'40"	50.00'	46.01'	24.78'	N 08°49' 30" W	44.41'



VICINITY MAP
SCALE: 1" = 2000'

E.H.K. JR. 42 FOLIO 38
Plat for recor...
Date DEC 9 1977
Book

NOTE: REFUSE COLLECTION, SNOW REMOVAL AND ROAD MAINTENANCE ARE PROVIDED TO THE JUNCTION OF THE PANHANDLE AND THE STREET RIGHT-OF-WAY LINE ONLY, AND NOT ONTO THE PANHANDLE LOT DRIVEWAYS.

NOTE: BEARINGS, DISTANCES, AND COORDINATES SHOWN HEREON ARE BASED ON AN OUTLINE SURVEY PREPARED BY C. A. MYERS, SURVEYOR, UPPERCO, MD. DATED JULY 27, 1971.

OWNERS CERTIFICATE

THE REQUIREMENTS OF SECTION 72-B, ARTICLE 17, OF THE ANNOTATED CODE OF MARYLAND (FLACK 1947 SUPPLEMENT) AS FAR AS THEY RELATE TO THE MAKING OF THIS PLAT, HAVE BEEN COMPLIED WITH.

Margaret B. Smock
By Robert J. Kuehl, Pres.
OWNER MARGARET B. SMOCK — DATE 9/22/71

SURVEYOR'S CERTIFICATE

I, WILLIAM T. SADLER, A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE LAND SHOWN HEREON WAS PROPERLY LAID OUT AND THE PLAT THEREOF PREPARED IN ACCORDANCE WITH THE LAW RELATING TO THE SUBDIVISION OF LAND KNOWN AS HOUSE BILL 395, CHAPTER 1016 OF THE ACTS OF 1945 AND SUBSEQUENT ACTS AMENDATORY THEREOF.

PROFESSIONAL LAND SURVEYOR NO 1790 — DATE

NOTES

THE STREETS AND OR ROADS 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 THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED, THEIR HEIRS AND ASSIGNS.

COORDINATES SHOWN ON THIS PLAT ARE BASED UPON ASSUMED DATUM.

APPROVED BY BALTIMORE COUNTY HEALTH DEPARTMENT

DEPUTY STATE & COUNTY HEALTH OFFICER — DATE

APPROVED BY BALTIMORE COUNTY PLANNING BOARD

DIRECTOR — DATE

APPROVED AS TO ALIGNMENT AND LOCATION OF STREETS

ROADS ENGINEER OF BALTIMORE CO., MD. — DATE

PINEY BRANCH FARMS

FIFTH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND

W. T. SADLER, INC.
SURVEYORS
505 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND - 21204

SCALE	1" = 100'
DATE	2-7-1975
JOB NO.	276

MSA S541236-1433 — 42/31

ALL-STATE LEGAL®
PETITIONER'S EXHIBIT
2

Plan Sheet: ***019B3***

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

Buildings — Streams — Vegetation
Zoning — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

	019B2	019C2	020A2	020B2
	019B3	019C3	020A3	020B3
	025B1	025C1	026A1	026B1

Scale

1" = 200'

0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

OBA People's Counsel No. 13

27 Thomas Shilling Ct

Produced by Baltimore County GIS Services Unit
Date: December 28, 2006
Date of Imagery: April 2005

1 inch equals 100 feet

The Cadastral Information on this Plot was compiled from existing deed information. This Information is not to be considered authoritative. The Survey Information was not field checked and Certified by a licensed land surveyor.

People's Couns. Exh 3
06-589-SPHA

N
W E
S

(SHEET NW 28-K)

N 108,000 — W 66,000 — N641,000 — E 843,000

W 64,500 — W 63,000 — W 61,500 — N 108,000 — W 60,000 — N641,000 — E 848,000

N 107,000

R . D . P .

CO
CO
CARROLL
BALTIMORE

PRIVATE

R.D.

G-110

B-9

C-10

N 106,000

(SHEET N.W. 27-J)

TRENTON

MILL

R . D . P .

R . D . P .

N 105,000

N 638,000

R.D.

63-332-SPH

R.D.

PVT.

87-142-SPH
81-84-SPH
64-13-X
88-39-SPH
90-466-SPHA
(91-20)

PINEY BRANCH
GOLF AND COUNTRY
CLUB

WESTERN MD. R.R.

30

N 104,000 — W 66,000 — E 843,000 — W 64,500 — W 63,000 — W 61,500 — E 848,000 — W 60,000 — N 104,000

SHEET N.W. 26-K

FF-SE

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY, MARYLAND

REVISIONS			SCALE	LOCATION	SHEET
	BY	DATE	1" = 200'	NORTHWEST OF TRENTON	N.W. 27-K
			DATE OF PHOTOGRAPHY APRIL 1961		
Compiled By Photogrammetric Methods MAPS, INCORPORATED - BALTIMORE 22, MARYLAND					

CBA
PEOPLES' COMPLEX
EXIT NO 4

1971

(SHEET NW 28-K)

N 108,000 — E 843,000 — N 641,000 — W 66,000 — W 64,500 — W 63,000 — W 61,500 — W 60,000

N 107,000

N 106,000

N 105,000

N 104,000

CARROLL
BALTIMORE
CO
CO

R . C . 2

PRIVATE

TRENTON

MILL

RD.

PVT.

RD.

R . C . 2.

80-184-SPH
N 104,670
W 61,290

SEE (V-50)

WESTERN MD. R.R.

30

SHEET N.W. 26-K

SHEET N.W. 27-J

FF - SE

1976 COMPREHENSIVE ZONING MA.
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
OCT. 7, 1976 & OCT. 8, 1976
BILL NOS. 108-76, 109-76, 110-76, 11
112-76, 113-76, and 114-76

CHAIRMAN COUNTY COUN

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY, MARYLAND

REVISIONS			SCALE	LOCATION	SHEET
	BY	DATE	1" = 200'	NORTHWEST OF TRENTON	N. W. 27-K
			DATE OF PHOTOGRAPHY APRIL 1961		
Compiled By Photogrammetric Methods MAPS, INCORPORATED - BALTIMORE 22, MARYLAND					

CBA
People's Counsel
Exh. No. 5

1976