Date Served FOR FILING

IN RE: PETITIONS FOR SPECIAL
EXCEPTION, VARIANCE, AND
SPECIAL HEARING
E/S of Painters Mill Road,
200 ft. S of I-795

E/S of Painters Mill Road, 200 ft. S of I-795 3rd Election District 2nd Councilmanic District * BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

State Highway Administration,

Legal Owner

Case No. 06-638-SPHXA

BGE

Contract Purchaser

FINDINGS OF FACT AND CONCLUSIONS OF LAW

*

This matter comes before the Zoning Commissioner of Baltimore County for consideration of Petitions for Special Exception, Variance, and Special Hearing filed by Petitioners State Highway Administration, legal owner of the subject property, and Baltimore Gas and Electric Company ("BGE"), contract purchaser. Specifically, Petitioners have filed a Petition for Special Exception, pursuant to Section 1B01.1.C.15 of the Baltimore County Zoning Regulations (B.C.Z.R.), for approval of a public utility use (electric substation). Petitioners have also filed a Petition for Variance from the requirements of B.C.Z.R. Section 1B01.2.C.1.a to permit a front yard setback for a nonresidential principal building a minimum of 27.8 feet in lieu of the required 70 feet and a rear yard setback for a nonresidential principal building a minimum of 27 feet in lieu of the required 50 feet. Additionally, by way of their Petition for Special Hearing, Petitioners seek a waiver, pursuant to B.C.Z.R. Section 500.6, Section 517.2 (510), of the Baltimore County Building Code¹; and Sections 32-4-414, 32-8-303, 32-4-107, Baltimore County Code (B.C.C.), to grade and construct a retaining wall, electric substation, wetland mitigation facility, and storm drain in the riverine floodplain and to

¹ Section 517.2 has been recodified as Section 3112.0 of the Baltimore County Building Code.

remove a bridge culvert. The subject property and requested relief are more particularly described on the site plan submitted and accepted into evidence as Petitioners' Exhibit 1A/1B.

At the requisite public hearing David H. Karceski, Esquire and Robert A. Hoffman, Esquire, appeared on behalf of Petitioners. A number of individuals appeared in support of the requested relief on behalf of Petitioners. Four individuals attended on behalf of BGE: Kenneth M. Miller and Simi Dhindsa with BGE's Electric System Operations and Planning Department, and Brad A. Davis and Daryl K. Johnson, engineers in the Substations & Distribution Design Department. Del T. Adams attended on behalf of the State of Maryland's Department of Transportation ("MDOT"). Mr. Adams is the Manager of MDOT's Development Services Group within its Office of Real Estate. Additionally, Steve Warfield, a professional engineer with Matis Warfield Inc., who prepared, signed, and scaled the site plan filed in the case was in attendance and Ms. Sally Malena, a licensed landscape architect with Human & Rohde, Inc., also appeared on behalf of Petitioners. Arthur Adler, Esquire and Skip Antonucci with David S. Brown Enterprises, developer of the adjacent Owings Mills Metro Center, appeared as an interested party. There were no protestants present.

Preliminarily it should be noted that there were no adverse Zoning Advisory Committee (ZAC) comments submitted by any County reviewing agency. The Office of Planning provided a comment, dated July 25, 2006, in which it indicated that the property is located within the Owings Mills Growth Area (See Petitioners' Exhibit 5, Owings Mills Growth Area Proposed Land Use Map) and, consistent with Mr. Miller's testimony (discussed below), that there is a need for the substation to accommodate development projects in close proximity to the site. The Office of Planning recommended that Petitioners elevate the electrical substation equipment above the 100-year floodplain level and design the retaining wall and other structures to withstand the possible effects of flooding. Additionally, Planning requested that a

greenway easement note be added on the site plan which Mr. Warfield redlined on the exhibit.

As discussed below, Petitioners addressed these comments to my satisfaction during the hearing.

Testimony and evidence offered by Petitioners indicated that the subject property is an unimproved parcel comprised of approximately 0.899 acres and zoned DR1. From Petitioners' Exhibit 1A/1B, the property is an irregular-shaped parcel, adjacent to and on the east side Painters Mill Road, south of and in close proximity to the Northwest Expressway (I-795). Additionally, a riverine floodplain, labeled "FP" on the site plan, runs through and covers a significant portion of the site.

On this vacant site, Petitioners desire to construct a electric substation to be operated by BGE. The Zoning Regulations permit public utility uses, including electric substations, in the DR1 zone by special exception as requested by Petitioners. The Petition for Variance relates to certain required building setbacks for the one-story switch gear building, labeled "1-STORY BUILDING," from the front and rear property lines. The Petition for Special Hearing relates to the requested disturbance, construction, and improvements to be located in the riverine floodplain.

Kenneth Miller of BGE described in detail the improvements Petitioners intend to construct on site for the electric substation, which will supply electric power for future development projects in this area of Owings Mills. Specifically, two electric transformers, labeled "TRANSFORMER #1" and "TRANSFORMER #2," are shown on each side of the main switch gear building positioned in the middle of the site. Additionally, a retaining wall will be constructed, which runs the length of the property from the northern edge of the site in close proximity to Painters Mill Road behind the switch gear building to the southernmost point of the property. This retaining wall will separate the substation use from a wetland mitigation

area to be created on site. A storm drain pipe will be installed to run under the proposed retaining wall for outfall into the wetland mitigation area by way of a level spreader device. Access to the site will be by way of a proposed driveway connecting to Painters Mill Road, labeled "12' DRIVEWAY ASPHALΤ."

Mr. Miller explained that there is a definite need for a substation at this location to accommodate development in the Owings Mills growth area and identified certain projects the substation will serve including, the Owings Mills Metro Center, a mixed-use, transit-oriented development approved by me in July of 2005, which will contain a public library, a community college center, office and retail, restaurants, a hotel, and 495 residential units. Other projects to be served by the substation include a 450-unit residential component of the Owings Mills Mall; redevelopment of the Rosewood State Hospital property; and other significant projects. Petitioners submitted an aerial photograph identifying these projects as Petitioners' Exhibit 2.

He (Miller) also testified that this substation will be similar in appearance to another existing substation located on Benfield Road in Anne Arundel County. Photographs of this substation were offered as Petitioners' Exhibits 3A through F. Mr. Brad Davis supplemented Mr. Miller's testimony explaining that BGE has certain design and safety specifications with which electric substation layouts must comply, including separations between the switch station gear building and transformers. Mr. Davis confirmed that these design requirements dictate the substation layout provided on Petitioners' Exhibit 1A/1B, which is compliant with BGE's requirements.

Petitioners offered additional testimony regarding the appearance of the substation from Painters Mill Road through a landscape plan prepared by Human and Rohde, Inc. *See* Petitioners' Exhibit 4. Ms. Sally Malena, a licensed landscape architect, testified regarding this plan and identified the landscape planting types and fence, which will screen the electric

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substation from Painters Mill Road. Specific locations for the landscaping and a vinyl fence, eight feet in height, are clearly shown on Petitioners' Exhibit 4.

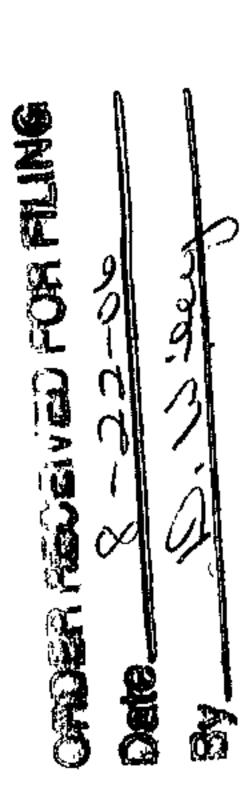
After due consideration of the testimony and evidence presented and the standards outlined in the Baltimore County Zoning Regulation, I am convinced that Petitioners have met their burden with regard to the Petitions for Special Exception, Variance, and Special Hearing as outlined below.

Petition for Special Exception

The proposed electric substation is a listed special exception use in the DR1 zone, and, it, therefore, must meet the requirements of B.C.Z.R. Section 502.1. In addition to this burden of proof, I find that the use is subject to B.C.Z.R. Section 411, entitled "Public Utility Uses," which provides additional requirements for a utility use. The requirements of BCZR Sections 502.1 and 411 are addressed below.

Section 502.1 - Special Exception

Mr. Stephen Warfield, professional engineer, testified that the proposed BGE electric substation meets each of the criteria outlined in B.C.Z.R. Section 502.1. Ms. Malena supplemented Mr. Warfield's testimony with her own expert opinion, as a landscape architect, that the landscaping, shown on Petitioners' Exhibit 4, will provide "an effective screen for the substation use." Petitioner BGE also provided testimony in support of approval of the Petition for Special Exception. Mr. Miller testified, based on his years of experience in BGE's Electric System Operations & Planning Department and his familiarity with electric substation operations, that the substation will not have a detrimental impact on the surrounding area. Based on the testimony provided and on Petitioners' Exhibit 1A/1B, I find that the proposed substation meets the criteria of B.C.Z.R. Section 502.1.A through 1.H, including the



requirement that it will not be detrimental to the health, safety, and general welfare of the locality involved.

Section 411 - Public Utility Uses

Section 411 of the Zoning Regulations provides additional requirements for a utility use. Section 411.1 provides that "[t]he use must be needed for the proper rendition of the public utility's service and the location thereof shall not seriously impair the use of neighboring property." Additionally, Section 411.2 reads that the "public utility buildings and structures, to the extent practicable, shall have an exterior appearance harmonious with the general character of the neighborhood, including architectural treatment, landscaping, screen planting and/or fencing, and plans therefor shall be approved by the Zoning Commissioner." From the testimony and evidence presented, I am convinced that Petitioners have satisfied the requirements of Section 411.

As outlined above, Mr. Miller testified that there is a definite need for this electric substation at this particular location. The Office of Planning's ZAC comment reinforces Mr. Miller's testimony. As identified on Petitioners' Exhibit 2, this substation is necessary to serve several large development projects that are in the development or construction phase in this area of Owings Mills.

With regard to any potential impact on neighboring properties, Mr. Miller confirmed, that, based on his knowledge of electric substation operations, this substation will not seriously impair any neighboring properties and will have an exterior appearance consistent with the character of the neighborhood. Ms. Malena and Mr. Warfield both testified consistent with this opinion.

Based on the testimony and evidence received, I am persuaded that the electric substation meets the requirements of B.C.Z.R. Section 411 and Section 502.1, and, therefore,

provided the exterior appearance of the substation structures is consistent with that of the existing Benfield Road substation and the landscaping and fencing is consistent with Petitioners' Exhibit 4, I will grant the instant Petition for Special Exception.

Petition for Variance

The Zoning Commissioner is permitted to grant variances, pursuant to B.C.Z.R. Section 307, upon finding that special circumstances exist and that requiring strict compliance with the regulations would result in a practical difficulty for the petitioner. Having heard the testimony and considered the requests, I find that sufficient evidence and justification exists to grant the requested variances.

I find that the requested variance relief (front and rear yard nonresidential principal building setbacks) is appropriate in this instance, given the property's unique configuration and on site environmental constraints, and that strict compliance with the Zoning Regulations would result in a practical difficulty and unreasonable hardship. I further find that the relief requested will not result in a detrimental impact to the health, safety or general welfare of the surrounding locale. Thus, the requested variance relief shall be granted.

Petition for Special Hearing

Prior to the public hearing in this matter, David Thomas of the Department of Public Works, indicated, by way of an electronic mail transmission, dated July 17, 2006, to Department Director Edward C. Adams, that the proposed use is a public utility and, therefore, exempt from the riverine floodplain waiver requirements of the Baltimore County Code. He confirmed this exemption, pursuant to B.C.C. Section 32-4-414. Petitioners, at the public hearing for this matter, likewise stated their position that the electric substation is exempt from these requirements. B.C.C. Section 32-4-414 lists the exempt uses, which include "installation

of a pond, culvert, bridge, street, *utility*, or drainage facility that the county finds not detrimental to floodplain management programs."

Taking a somewhat contrary position, Peter M. Zimmerman, People's Counsel for Baltimore County, in a letter dated August 9, 2006, indicated his position that an electric substation does not qualify for the utility use exemption. Mr. Zimmerman, however, stated that he would have no issues with approval of the Petition for Special Hearing if the substation and related improvements are located out of the floodplain area.

I have considered both the position of Baltimore County's Department of Public Works (and Petitioners) and the position of Mr. Zimmerman. From my own reading of B.C.C. Section 32-4-414, it is my interpretation that the exemption contained in B.C.C. Section 32-4-414 does apply to the proposed use although I do not need to reach this issue because I find that Petitioners have satisfactorily proven their entitlement to the requested waiver, and I will grant the Petition for Special Hearing.

In considering the requested waiver, I have reviewed all of Petitioners' exhibits and the witness testimony offered regarding this petition. I note that consideration of the requested waiver is to be viewed under the general standard that waiver actions for construction in a riverine floodplain shall be kept to a minimum. The County Code allows for proposed improvements within riverine floodplains where encroachment in the floodway will not cause and/or increase existing flood elevation. Petitioners, through the testimony of Mr. Warfield, confirmed that the substation and related improvements, as shown on Petitioners' Exhibit 1A/1B, will not cause the existing flood elevation to increase.

I find that Petitioners have satisfied the requirements of Sections 32-4-107, 32-4-414, and 32-8-303 of the County Code and that failure to grant the waiver would result in an exceptional hardship, other than economic hardship. Indeed, Petitioners have taken great

efforts to comply with all applicable requirements of the Baltimore County Code and Building Code. In my view, the proposed improvements are consistent with sound floodplain management and approval of this waiver will not result in any adverse impact on downstream properties. As Mr. Warfield explained, the substation will be located above the 100-year floodplain level and be suitably designed to withstand the possible effects of flooding, in accordance with the Office of Planning's ZAC comment. Mr. Warfield further explained that the on-site riverine floodplain area will shift as a result of the site improvements necessary to construct the substation, and the substation will, in fact, be located outside of what will be the newly configured floodplain area. Based on Mr. Warfield's testimony and the exhibits accepted in this case, I find that the requested waiver will not increase flood heights, impact public safety, incur extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local and state laws and ordinances as noted in Section 32-8-303 of the County Code. There is, therefore, good and sufficient cause to grant the waiver.

Pursuant to the Zoning Regulations of Baltimore County, the advertising and posting of the property, and public hearing held thereon and for the reasons set forth above, the Petitions for Special Exception, Variance, and Special Hearing shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this ______ day of August, 2006, that the Petition for Special Exception for a public utility use (electric substation), pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.) Sections 1B01.1.C.15 and 411, be and is hereby GRANTED in accordance with the site plan accepted as Petitioners' Exhibit 1A/1B; and

IT IS FURTHER ORDERED that relief from B.C.Z.R. 1B01.2.C.1.a to allow a front yard setback for a nonresidential principal building a minimum of 27.8 feet in lieu of the required 70, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that relief from B.C.Z.R. 1B01.2.C.1.a to allow a rear yard setback for a nonresidential principal building a minimum of 27 feet in lieu of the required 50, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking approval of a waiver pursuant to B.C.Z.R. Section 500.6, of Section 3112.0 (formerly Section 517.2 (510)) of the Baltimore County Building Code, and Sections 32-4-414, 32-8-303, 32-4-107 of the Baltimore County Code to grade and construct a retaining wall, electric substation, wetland mitigation facility, and storm drain in the riverine floodplain and remove a bridge culvert in accordance with Petitioner's Exhibit 1A/1B, be and is hereby GRANTED, subject to the following restrictions:

- 1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2. When applying for any permits, the site plan filed must reference this case and set form and address the restrictions of this order.

WILLIAM J. WISEMAN, III, Zoning Commissioner for Baltimore County

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WJW/pz



JAMES T. SMITH, JR. County Executive

August 23, 2006

WILLIAM J. WISEMAN III

Zoning Commissioner

Robert A. Hoffman, Esquire Venable, Baetjer & Howard, LLP 210 Allegheny Avenue Towson, MD 21204

RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE

E/S of Painters Mill Road, 200 feet south of I-795 3rd Election District — 2nd Council District State Highway Administration, Legal Owner BGE, Contract Purchaser Case No. 06-598-SPHXA

Dear Mr. Hoffman:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing, Special Exception 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,

Zoning Commissioner for Baltimore County

AMT. WISEMAN, III

WJW:pz

cc: Joseph M. Miklochik, Director of the Office of Real Estate, State Highway Administration, 211 East Madison Street, M-301, Baltimore MD 21202

Brad Davis, Lord Baltimore Building - RBC, 2900 Lord Baltimore Drive, Baltimore MD 21244

Del Adams, 7201 Corporate Center Drive, Hanover MD 21076

David Karceski, Esquire, Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson, MD 21204 Simi Dhindsa and Kenneth Miller, BGE Electrical Systems Operations & Planning Dept., 7309 Windsor Mill Road, Baltimore MD 21117

Daryl Johnson, 2203 Lawnwood Circle, Baltimore MD 21207

Skip Antonucci, 100 Painters Mill Road, Suite 1100, Owings Mills MD 21117

Henry Leskinen, 1527 York Road, 2nd Floor, Lutherville MD 21093

Steve Warfield, 10540 York Road, Suite M, Hunt Valley, MD 21030

Sally Malena, 512 Virginia Avenue, Towson MD 21286



8

Date

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

E/S Painters Mill Road, for the property located at 200 feet south of 1-795

which is presently zoned DR. 1

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

SEE ATTACHED

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County. I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition. Contract Purchaser/Lessee: Legal Owner(s): SEE ATTACHED SEE ATTACHED Name - Type or Print Name - Type or Print Signature Signature Address Telephone No. Name - Type or Print City State Zip Code Signature Attorney For Petitioner: Address Telephone No. Robert A. Hoffman Name Type or Print City State Zip Code Representative to be Contacted: Signature <u>Venable LLP</u> Robert A. Hoffman Company Name O|Allegheny Avenue 410 494 6200 210 Allegheny Avenue 410 494 6200 Address Telephone No. Address Telephone No. Towson, Maryland 21204 Towson, Maryland 21204 State Zip Code City Zip Code State OFFICE USE ONLY ESTIMATED LENGTH OF HEARING _____ Case No. 06-638-50/1-XM UNAVAILABLE FOR HEARING Reviewed By _____ Date ____ T 22 9/15 98

ATTACHMENT TO PETITION FOR SPECIAL HEARING

E/S Painters Mill Road, 200 feet south of 1-795

A waiver pursuant to Section 500.6, BCZR, Section 517.2 (510.2), Building Code; and Sections 32-4-414, 32-8-303, 32-4-107, Baltimore County Code to grade and construct a retaining wall, electric substation, wetland mitigation facility, and storm drain in the riverine floodplain and remove a bridge culvert.

PETITION FOR SPECIAL HEARING SIGNATURE PAGE

E/S of Painters Mill Road, 200 feet south of I-795

LEGAL OWNER:

State Highway Administration

Joseph M. Miklochik

Director of the Office of Real Estate

State Highway Administration

211 East Madison Street

M-301

Baltimore, MD 21202

(410) 545-2828



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Petition for Special Exception

to the Zoning Commissioner of Baltimore Count

E/S Painters Mill Road, for the property located at 200 feet south of 1-795

which is presently zoned DR. 1

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, it owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use herein described property for

> a public utility use (electric substation), pursuant to Section 1B01.1.C.15 of the Baltimore County Zoning Regula-tions.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Exception, advertising, posting, etc. and further agree to and are to be bounded by zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

		I/We do solemnly declare perjury, that I/we are the is the subject of this Petit	iedal owner(s) of the	he penalties of e property which
Contract Purchaser/Lessee:		Legal Owner(s):		
SEE ATTACHED		SEE ATTACHED		
Name - Type or Print		Name - Type or Print		····
Signature	···	Signature	<u></u>	······································
Address	phone No.	Name - Type or Print		
City	Zip Code	Signature		· · · · · · · · · · · · · · · · · · ·
Attorney For Petitioner:				
Robert A. Hoffman		Address		Telephone No.
Signature Name - Type or Print A Man / M		City	State	Zıp Code
Signature		Representative to b	e Contacted:	
Venable LLP	·	<u>Robert A. Hoffm</u>	ıan	
210 Allegheny Avenue 440-494-	6200	Name		101 Caaa
	hone No.	210 Allegheny A Address		- 494-6200 Telephone No.
	Zip Code	Towson, Marylan City		7:2-5
		City .	State	Zip Code
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20 09115198		Reviewed By	Date _	· · · · · · · · · · · · · · · · · · ·

PETITION FOR SPECIAL EXCEPTION SIGNATURE PAGE

E/S of Painters Mill Road, 200 feet south of I-795

LEGAL OWNER:

State Highway Administration

Joseph M. Miklochik

Director of the Office of Real Estate

State Highway Administration

211 East Madison Street

M-301

Baltimore, MD 21202

(410) 545-2828

PETITION FOR VARIANCE SIGNATURE PAGE

E/S of Painters Mill Road, 200 feet south of I-795

CONTACT PURCHASER:

BGE

Lord Baltimore Building - RBC 2900 Lord Baltimore Drive Baltimore, Maryland 21244 (410) 597-6773

By: Ossie Tate, Jr., Manager

Matis Warfield

consulting engineers

ZONING DESCRIPTION to Accompany Petition For Special Hearing, Special Exception & Variance Request

Beginning at a point on the east side of Painters Mill Road, which is of variable width, at the distance of 340(+/-)-feet south of the centerline of the nearest improved intersecting street, Interstate 795 Northwest Expressway, which is of variable width. Thence the following courses and distances:

```
R=122.00', L=56.11', CHD=S 24° 03' 21" E 55.61';
S 35° 29' 55" E 9.12';
S 17° 56′ 28″ W 4.93′;
S 02° 49' 54" E 129.08';
S 02° 50′ 05" E 61.64';
R=525.00', L=53.58', CHD=S 00° 05' 21" W 53.56';
S 02° 58' 29" E 86.97':
R=200.00', L=38.46', CHD=N 89° 46' 17" W 38.40';
R=125.00', L=60.68', CHD=S 81° 49' 48" W 60.09';
R=25.00', L=43.71', CHD=S 17° 50' 08" W 38.35';
R=25.00', L=41.88', CHD=$ 15° 44' 43" W 37.16';
S 63° 44′ 30″ W 43.70′;
S 75° 11' 02" W 43.09';
N 28° 03' 23" E 69.26';
N 20° 26' 14" W 28.05';
N 26° 02' 52" E 38.65'
```

R=1346.23', L=402.68', CHD=N 17° 28' 43" E 401.18'



To the place of beginning,

Containing 0.8992-acres±, and located in the 3rd Election District. No address is currently assigned to this property.

THIS DESCRIPTION COMPILED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED TO BE USED FOR CONVEYANCES OR AGREEMENTS

Matis Warfield, Inc.

10540 york road • suite m • hunt valley, maryland 21030 phone 410-683-7004 • facsimile 410-683-1798 www.matiswarfield.com

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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: #06-638-SPHXA

East side of Painters Mill Road, 200 feet south of I-795 3rd Election District — 2nd Councilmanic District Legal Owner(s): State Highway Administration, Joseph Miklochik, Director

Contract Purchaser: BGE by Ossle Tate, Jr., Manager Variance: to permit a front yard setback for a nonrest-dential principal building a minimum of 27.8 feet in lieu of the required 70 feet. To permit a rear yard setback for nonresidential principal building a minimum of 27 feet in lieu of the required 50 feet. Special Exception: to permit utility use (electric substation). Special Hearing: to permit a walver pursuant to Baitimore County Code to grade and construct a retaining wall electric substation wetand construct a retaining wall, electric substation, wet-land mitigation facility, and storm drain in the riverine

floodplain and remove a bridge culvert.

Hearing: Wednesday, August 9, 2006 at 2:00 p.m. in
Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Com-

missioner's Office at (410) 887-3868/4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391. JT 7/731 July 25 103127

CERTIFICATE OF PUBLICATION

727,2006
THIS IS TO CERTIFY, that the annexed advertisement was published
n the following weekly newspaper published in Baltimore County, Md.,
once in each ofsuccessive weeks, the first publication appearing on $\frac{1}{25}$, $\frac{200}{25}$.
The Jeffersonian
Arbutus Times
☐ Catonsville Times
Towson Times
Owings Mills Times
□ NE Booster/Reporter
☐ North County News
S. Wilking
LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 06-638-SPHXA

Petitioner/Developer: BGE BY

OSSIE TATE, MGR.

Date of Hearing/Closing: 4052, 2006.

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

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

Ladies and Gentlemen:

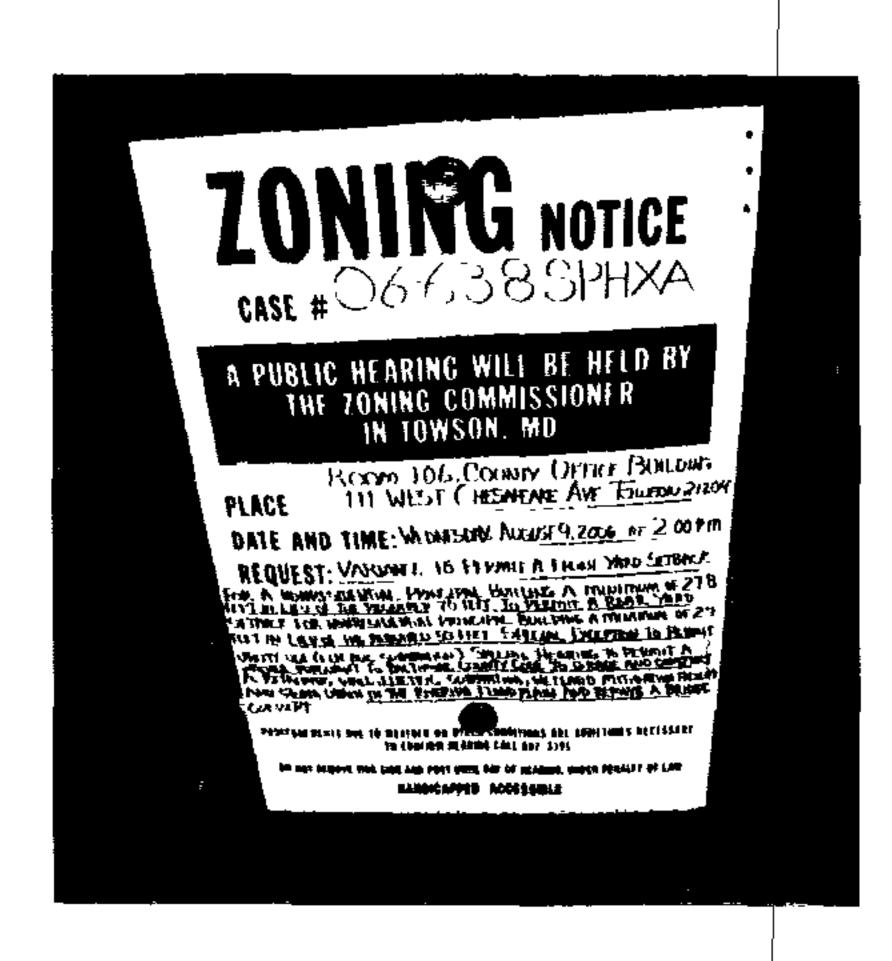
This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:

EASTSIDE OF PAINTERS MILL RD, ZOOFT

The sign(s) were posted on

(Month, Day, Year)

Sincerely,



Robert Black 7-20.	Q
(Signature of Sign Poster) (Date)	'
SSG Robert Black	
(Print Name)	
1508 Leslie Road	د و
(Address)	•
Dundalk, Maryland 21222	
(City, State, Zip Code)	
(410) 282-7940	
(Telephone Number)	

Department of Permits Ad 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

July 11, 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: 06-638-SPHXA

Eastside of Painters Mill Road, 200 feet south of I-795

3rd Election District – 2nd Councilmanic District

Legal Owners: State Highway Administration, Joseph Miklochik, Director

Contract Purchaser: BGE by Ossie Tate, Jr., Manager

<u>Variance</u> to permit a front yard setback for a nonresidential principal building a minimum of 27.8 feet in lieu of the required 70 feet. To permit a rear yard setback for nonresidential principal building a minimum of 27 feet in lieu of the required 50 feet. <u>Special Exception</u> to permit utility use (electric substation). <u>Special Hearing</u> to permit a waiver pursuant to Baltimore County Code to grade and construct a retaining wall, electric substation, wetland mitigation facility, and storm drain in the riverine floodplain and remove a bridge culvert.

Hearing: Wednesday, August 9, 2006 at 2:00 p.m. in Room 106, County Office Building,

111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco

Muthy Kotroco

Director

TK:klm

C: Robert Hoffman, 210 Allegheny Avenue, Towson 21204

Joseph Miklochik, State Highway, 211 East Madison Street, M-301, Baltimore 21202

Ossie Tate, Jr., 2900 Lord Baltimore Drive, Baltimore 21244

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, JULY 25, 2006.

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



Visit the County's Website at www.baltimorecountyonline.info

TO:

PATUXENT PUBLISHING COMPANY

Tuesday, July 25, 2006 Issue - Jeffersonian

Please forward billing to:

Amy Dontell Venable, LLP 210 Allegheny Avenue Towson, MD 21204

410-494-6244

NOTICE OF ZONING HEARING

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

CASE NUMBER: 06-638-SPHXA

Eastside of Painters Mill Road, 200 feet south of I-795

3rd Election District – 2nd Councilmanic District

Legal Owners: State Highway Administration, Joseph Miklochik, Director

Contract Purchaser: BGE by Ossie Tate, Jr., Manager

Variance to permit a front yard setback for a nonresidential principal building a minimum of 27.8 feet in lieu of the required 70 feet. To permit a rear yard setback for nonresidential principal building a minimum of 27 feet in lieu of the required 50 feet. Special Exception to permit utility use (electric substation). Special Hearing to permit a waiver pursuant to Baltimore County Code to grade and construct a retaining wall, electric substation, wetland mitigation facility, and storm drain in the riverine floodplain and remove a bridge culvert.

Hearing: Wednesday, August 9, 2006 at 2:00 p.m. in Room 106, County Office Building,

11) West Chesapeake Avenue, Towson 21204

WILLIAM J. WISEMAN III

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (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:	06-638-5PHXA
Petitioner: State His	
Address or Location: E/S Pa	with 11/1/ Road, 200 Feet 5000 of I-795
PLEASE FORWARD ADVERTISIN	IG BILL, TO:
Name: Amy //	ovill.
Address: 2/0 A//E	gheny Avenue
TOWN	Mary Land 21209
Telephone Number: 410)494-6244

Revised 7/11/05 - SCJ



JAMES T. SMITH, JR. County Executive

TIMOTHY M. KOTROCO, Director

Department of Permits and
Development Management

Robert A. Hoffman Venable LLP 210 Allegheny Avenue Towson, MD 21204

Dear Mr. Hoffman:

RE: Case Number: 06-638-SPHXA, E/S Painters Mill Road, 200 feet south of I-795

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

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

U. Callahal)

WCR:amf

Enclosures

c: People's Counsel

Joseph Miklochik State Highway Administration 211 East Madison Street, M-301 Baltimore 21202

Ossie Tate, Jr. 2900 Lord Baltimore Drive Baltimore 21244

Fire Department

700 East Joppa Road Towson, Maryland 21286-5500 Tel: 410-887-4500



Baltimore County

James T Smith, Jr, County Executive John J Hohman, Chief

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

July 13,2006

ATTENTION: Zoning Review Planners

Distribution Meeting of: July 10,2006

Item No.: (638), 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687 and 688.

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

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

Acting Lieutenant Don W. Muddiman Fire Marshal's Office 410-887-4880 MS-1102F



BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Ti nothy M. Kotroco, Director

DATE: July 13, 2006

Department of Permits & Development

M: nagement

FROM:

De mis A. Kennedy, Supervisor

Bu eau of Development Plans Review

SUBJECT:

To sing Advisory Committee Meeting

To July 17, 2006 ten Nos. 623,(638), 674, 675, 676, 677, 571, 679, 680, 683, 684, 685, 686, 687, and 688

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have 10 comments.

DAK:CEN:clw

cc: File

ZAC-NO COMMEN' 'S-I 7132006.doc

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



ГО:	Timothy M. Kotroco	•
FROM:	Dave Lykens, DEPRM -	Development Coordination JWL
DATE:	July 21, 2006	
SUBJECT:	Zoning Item # 06-638 Address e/side Pai	-SPHXA nter's Mill Road 200' s of I-795
Zonir	ng Advisory Committee Me	eeting of July 10, 2006
	Department of Environment nents on the above-reference	tal Protection and Resource Management has no eed zoning item.
· ··· · · · · · · · · · · · · · · · ·	*	tal Protection and Resource Management offers above-referenced zoning item:
<u>X</u>	Protection of Water Qua	erty must comply with the Regulations for the lity, Streams, Wetlands and Floodplains (Sectio 20 of the Baltimore County Code).
		perty must comply with the Forest s (Sections 33-6-101 through 33-6-122 of the .
	- - • •	perty must comply with the Chesapeake Bay s (Sections 33-2-101 through 33-2-1004, and ltimore County Code).
Addit	tional Comments:	
Revie	ewer: Tom Panzarella	Date: July 21, 200

BALTIMOR E COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits and

Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT:

East side of Painters Mill Road 200 feet south of I-795

INFORMATION:

DATE: July 25, 2006

Item Number:

6-638

AUG 0 9 2006

Petitioner:

State Highway Administration

Zoning:

DR 1

ZONING COMMISSIONER

Requested Action:

Special Exception, Special Hearing and Variance

The property in question is an irregularly shaped parcel located on the south side of Painters Mill Road in the Owings Mills growth area, and is designated as Owings Mills corporate campus in Master Plan 2010. The property is across from the Owings Mills metro parking lot and the new Town Center construction. More than 50 % of the property is within a riverine floodplain of Gwynns Falls.

The petitioner requests a special exception for public utility use within a DR1 zone in order to construct a proposed 27' x 63'sub-station within the riverine floodplain. Relief is also sought from numerous sections of the code that refer to construction with the riverine floodplain and the BCZR. The aforementioned public utility substation will serve the Owings Mills Growth Area. There are many anticipated development projects in close proximity to the subject site. In order to foster this growth as intended, this substation is necessary.

SUMMARY OF RECOMMENDATIONS:

If the special exception, special hearing and variances are granted, the electrical equipment must be elevated above the 100-year floodplain level. Retaining walls and other structures should be suitably designed to withstand the possible effects of flooding. Additionally, a greenway casement and note must be clearly labeled on the site plan.

For further information concerning the matters stated here in, please contact Diana Itter at 410-887-3480.

acrael

Prepared by:

Division Chief:

AFK/LL: CM

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



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

Maryland Department of Transportation

RE:

Date: 6.20.01

Baltimore County

Item No. **438**

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

Dear Ms. Matthews:

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

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

Very truly yours,

Steven D. Foster, Chief

Engineering Access Permits Division



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

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

BPR

Maryland Department of Transportation

Date:

RE:

7.11.06

Baltimore County

Item No. 638

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

Dear. Ms. Matthews:

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

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

Very truly yours,

Steven D. Foster, Chief

1.1. South

Engineering Access Permits Division

RE: PETITION FOR SPECIAL HEARING

SPECIAL EXCEPTION & VARIANCE

E/S Painters Mill Road, 200' S of I-795

3rd Election & 2nd Councilmanic Districts

Legal Owners: State Highway Administration*

Contract Purchaser(s): BGE by Ossie Tate

Petitioner(s)

BEFORE THE

ZONING COMMISSIONER

FOR

BALTIMORE COUNTY

06-638-SPHXA

* * * * * * * * * *

ENTRY OF APPEARANCE

*

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

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

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 17th day of Ju;y, 2006, a copy of the foregoing Entry of Appearance was mailed to Robert A Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

RECEIVED

1111 1 7 2006

Per

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Lemmerman



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

People's Counsel

CAROLE S. DEMILIO Deputy People's Counsel

August 9, 2006

SENT VIA HAND DELIVERY
William J. Wiseman, III, Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re:

Petition for Special Hearing, Exception and Variance

State Highway Administration, Owner & BGE, Contract Purchaser - Petitioners

Case No: 06-638-SPHXA

Dear Mr. Wiseman:

Upon review of this file, we mitigation facility, and storm drain is in the riverine floodplain. As is this office's custom, we asked David Thomas, Assistant to the viewpoint.

In the riverine floodplain. As is this office's custom, we Director of Public Works (DPW), for his department's

Attached is his reply dated July 25, 2006, along with an email dated July 17, 2006. They reflect DPW's position that the facility is exempt from the requirements of Code Sec. 32-4-414 based on the assurance "from the developer's engineer that the facility will be designed to withstand the effect of flooding and the electrical equipment will be elevated out of the floodplain."

We do not believe that an electric substation is within the intended exception under Code Sec. 32-4-414. Therefore, it would have to satisfy the waiver standards applicable to construction in the floodplain.

If, however, the facility is located out of the floodplain based on proper engineering acceptable to DPW, then this problem may be resolved. At the very least, therefore, as suggested should be a statement or condition in the Commissioner's Order which includes this requirement

William J. Wiseman, III, Zoning Commissioner August 9, 2006 Page 2

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman

People's Counsel for Baltimore County

Carole S. Demilio

Deputy People's Counsel for Baltimore County

Enclosures PMZ/CSD/rmw

cc: Robert A Hoffman, Esquire

David L. Thomas, Assistant to Director of DPW

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

To:

Peter Max Zimmerman, Peoples Counsel

From:

David L. Thomas, assistant to the Director, DPW

Date:

July 25, 2006

Subject:

BGE Electric Substation – Metro Center (SHA Property)

Case No. 06-638-SPHXA

Development in Riverine Floodplain

This is in response to your memo of July 24, 2006 concerning floodplain requirements for the subject electrical utility facility.

Section 32-4-414 of the County Code lists exceptions to the prohibition of development in riverine floodplain in paragraph c(2):

- (c) Development in floodplain prohibited; exceptions. The county may not permit development in a riverine floodplain except for:
 - (1) The establishment of property subdivision lines; and
- (2) The installation of a pond, culvert, bridge, street, utility, or drainage facility that the county finds is not detrimental to floodplain management programs.

The Director of Public Works, Edward Adams, has found that subject of this waiver is in fact a utility and is therefore except from the prohibition in 32-4-414 and will be not detrimental to floodplain management programs, based on an assurance from the developer's engineer that the facility will be designed to withstand the effects of flooding and the electrical equipment will be elevated out of the floodplain (see attached e-mail).

It may be appropriate to include a statement of this assurance in the Zoning Commissioner's order and/or permit site plan notes for the subject project.

If there are questions, please feel free to contact me at 410.887.3984.

DLT/s

Attachments

From:

David Thomas

To:

Adams, Edward

Date:

7/17/2006 9:35:14 AM

Subject:

Owings Mills Center - Electric substation in floodplain

Ed,

As we discussed two Thursdays ago, I contacted Steve Warfield to advise that the electric substation in the Gwynns Falls floodplain is being considered a utility and therefore exempt under 32-4-414 BCC. Steve has assured me (via voicemail 7/14/06) that the electrical equipment will be elevated out of the floodplain, and the retaining walls and other structures will be suitably designed to withstand the effects of flooding.

Dave Thomas

CC:

Kennedy, Dennis; Steve Warfield; Walsh, Steven

CASE NAME BGES CASE NUMBER OF DATE 811

PETITIONER'S SIGN-IN

NSH

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A. DAUES	2900 LORD BALTTMORE DE.	BALT-MORE, MO. 2117	brad davisa Constellation com
ni Dhindoa	7309 Windson Mill Rd	Rathmere MD-21117	Van
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p paterven	it o Physicals have los Suite 100	0 WIND MWS MD 11117	Stypo Bruds Barris . com
enry Leskinen	1527 York Rd, 2nd Floor	"Lutherville, MD 21093	espiemail@aol.com
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Case No.:

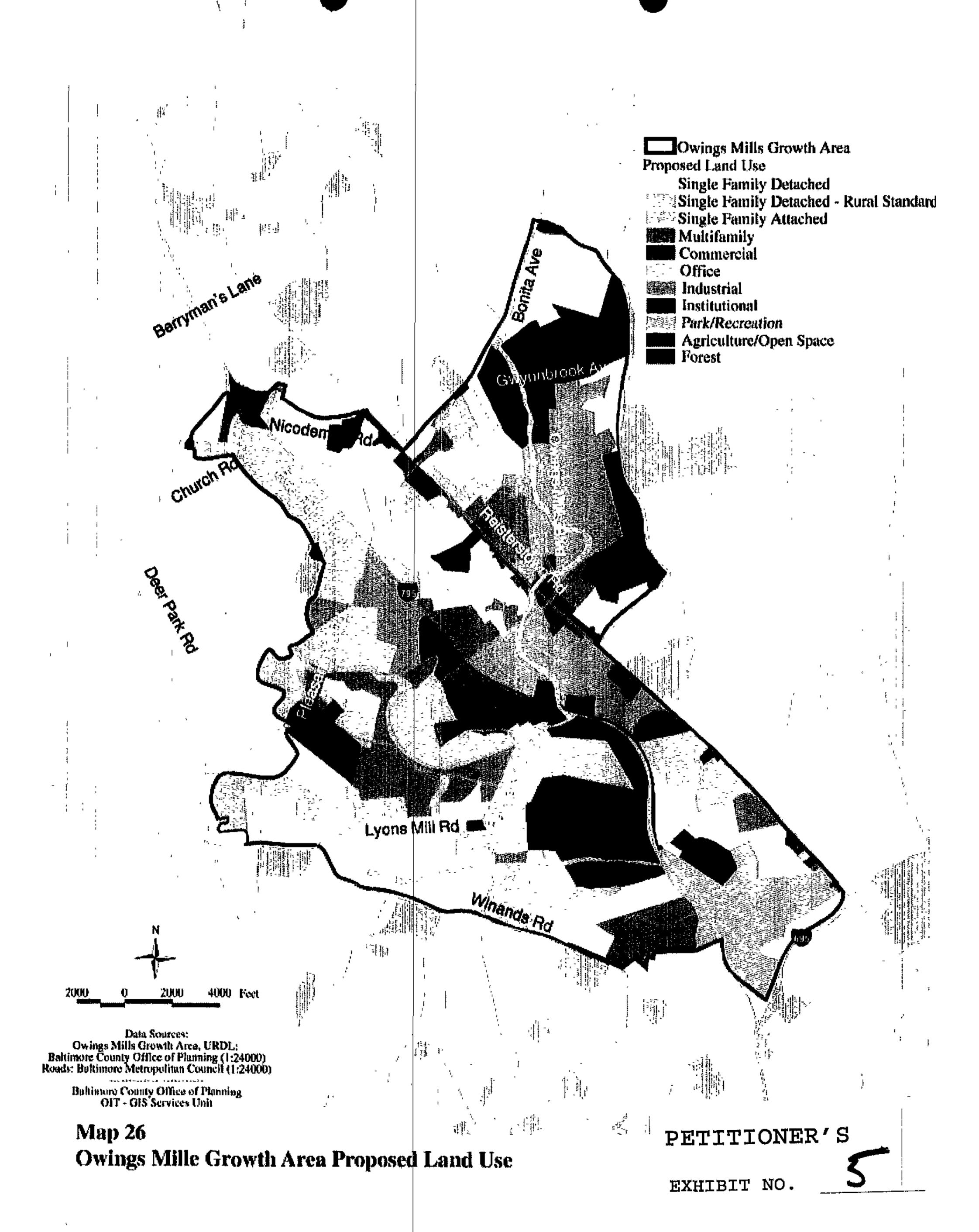
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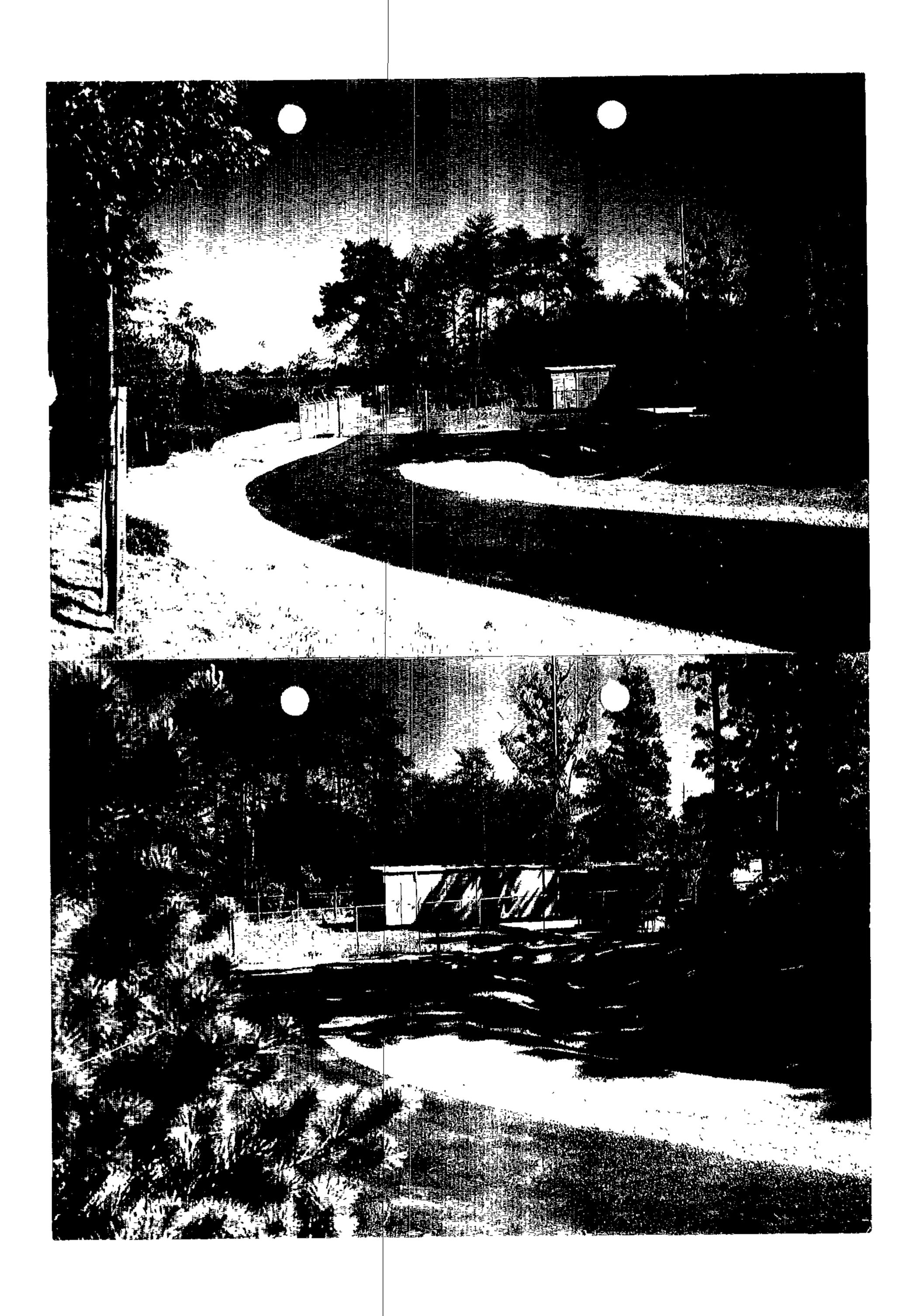
Exhibit Sheet

Petitioner/Developer

Protestant

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









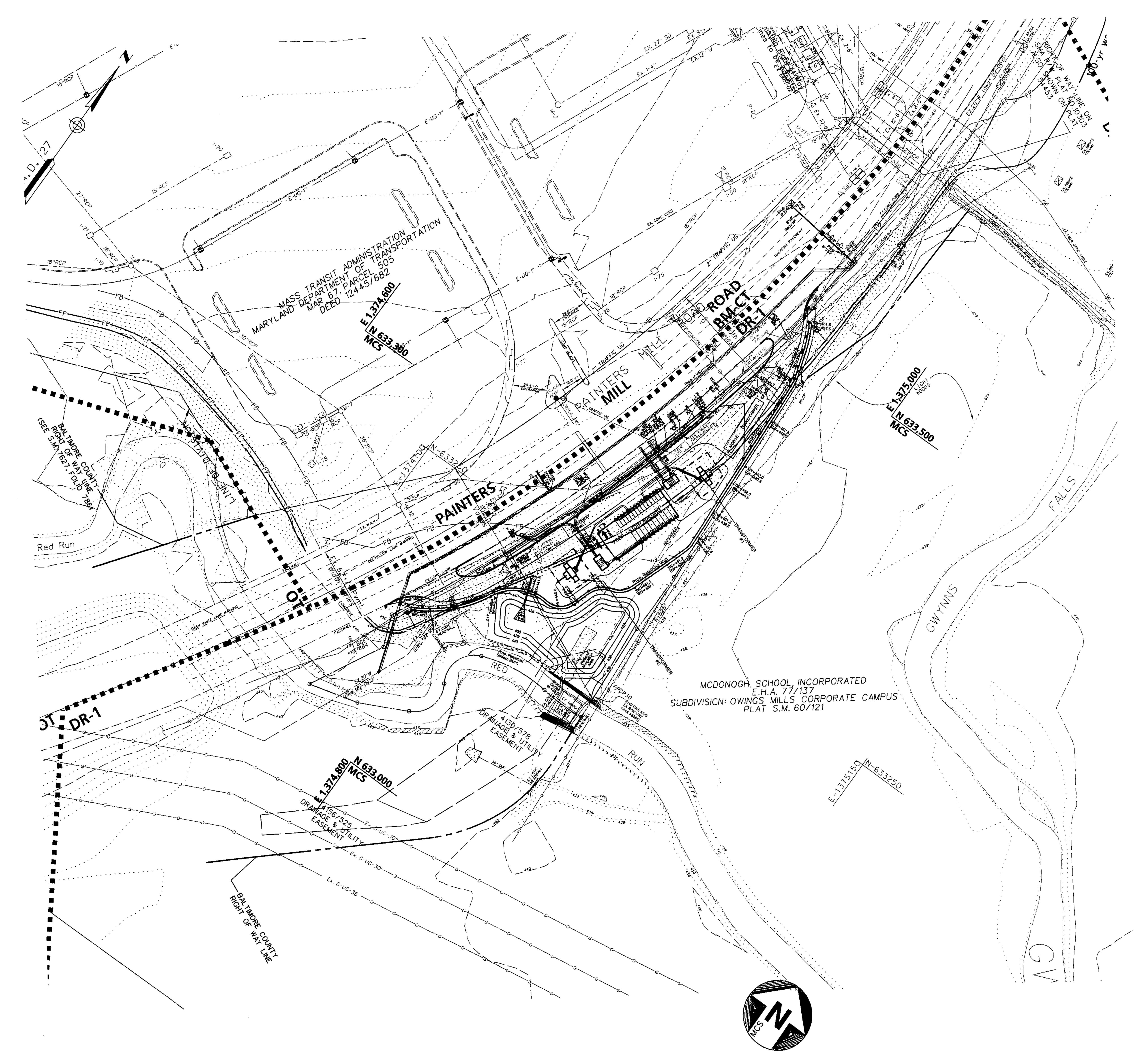






- PETITIONER'S

EXHIBIT NO.

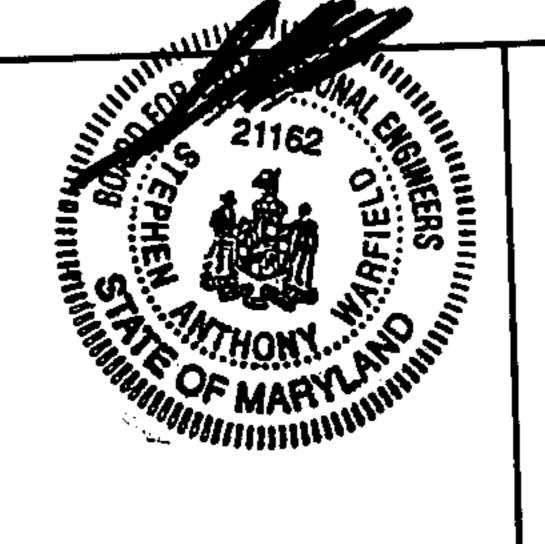


COMPOSITE PLAN VIEW SCALE: 1"=50'

MATIS WARFIELD, INC.
CONSULTING ENGINEERS

mwi file: 2006011... sht-zoning-hearing-02.dgn

10540 YORK ROAD, SUITE M HUNT VALLEY, MD 21030 PHONE: 410-683-7004 FAX: 410-683-1798



DATE	ISSUE	\dashv
01/31/06	PLOT DATE	_
05/30/06	PLOT DATE	_
06/07/06	PLOT DATE	_

OWNER:
CHRISTIAN LARSON
DIRECTOR OF OFFICE OF REAL ESTATE
STATE HIGHWAY ADMINISTRATION
211 E. MADISON STREET, M301
BALTHMORE, MD 21202

SITE LOCATION INFORMATION:
EAST SIDE OF PAINTERS MILL ROAD
APPROXIMATELY 200 FEET SOUTH OF I-795
BALTIMORE COUNTY, MARYLAND

PLAN TO ACCOMPANY SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE HEARING

METRO CENTER AT OWINGS MILLS
ELECTRIC SUBSTATION
NO ADDRESS CURRENTLY ASSIGNED TO THIS PARCEL
BALTIMORE COUNTY, MARYLAND
MAY 25, 2006

WARRIANCE FIEARING
COUNCILM
PORTION OF WORK

ZON-2

SHEET

NO. 2 OF 2



