IN RE: **PETITION FOR SPECIAL HEARING** S/W Corner of York Road and Pennsylvania Avenue **(401-435 York Road, 40 West Chesapeake Avenue and 10 West Chesapeake Avenue)** 9th Election District 5th Council District Western Development Corporation, *Legal Owner/Petitioner*	* * * * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY **Case No. 06-677-SPH**

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner of Baltimore County as a Petition for Special Hearing filed by the owner of the property, Western Development Corporation[1], for three (3) adjacent properties located in the central Towson business core. The properties are identified in the Petition as 401-435 York Road/10 West Pennsylvania Avenue (a/k/a Lot 1), 40 West Chesapeake Avenue (a/k/a Lot 2), and 10 West Chesapeake Avenue (a/k/a Lot 3). Special Hearing relief is requested to confirm the maximum permitted building area for existing and potential improvements, as more particularly shown on the site plan. That site plan, which was filed with and attached to the Petition, was accepted into evidence and is marked as Petitioner's Exhibit No. 1.

Appearing at the public hearing was Bradford H. Dockser, on behalf of Western Development Corporation, Harvey Brooks of Jones Lang LaSalle, property managers for the site, and William Monk, a planner with Morris & Ritchie Associates, Inc. The Petitioners were represented by Lawrence E. Schmidt, Esquire and David K. Gildea, Esquire of Gildea & Schmidt, LLC. Also present in support of the request was Richard Parsons on behalf of the Greater Towson Council of Community Associations ("GTCCA") and Andrea Van Arsdale from the Department of Economic Development. Stephen Adams of the Towson Business Association and Marc C. Bowman, a tenant on the subject property, appeared as interested persons. There were no Protestants present.

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[1] Western Development Corporation is a national based company that holds and controls the tract owned by limited liability companies that were established for the purpose of acquisition.

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Date 9-5-06
By

In view of the nature and complexity of the requested relief, testimony and evidence was presented in open hearing through a proffer of counsel. Documentary evidence was also submitted as set forth in the record. The overall property that is the subject of the Petition before me is an accumulation of three (3) lots, which are now under common ownership and/or control. Lot 1 is 1.70 acres in area and contains improvements known as 401-435 York Road and 10 West Pennsylvania Avenue. The buildings that bear these addresses are known as "Towson Commons", a large retail/entertainment/office complex that serves as a centerpiece in the Towson business core district. The improvements that front York Road (i.e. 401-435 York Road) include an existing multiplex cinema, as well as both above and below street grade retail/service businesses. The remaining portion of Lot 1 features a large structure known as 10 West Pennsylvania Avenue. This address is of a nine-story existing office building, as well as a street level retail component. This building has a high rate of occupancy and the primary tenant is the business known as VIPS. Lot 2 is a wide, yet shallow, parcel of land with frontage on Chesapeake Avenue. That lot is 0.26 acres in area, and contains an existing six-story office building known as 40 West Chesapeake Avenue. This building was not part of the original Towson Commons complex, however has been subsequently acquired by the owner. The third property (Lot 3) is situated between Lots 1 and 2 and is 0.84 acres in area. Lot 3 contains an existing multi-level parking garage, which serves not only the uses on the subject properties, but provides as well public parking to the entire Towson core.

It is also to be noted that the overall tract is bifurcated by a public alley known as Bankers Way. The location of this 28-foot wide alley is more particularly shown on the site plan. It enters into the property from the west (originating at Washington Avenue), between Lots 1 and 2. Thereafter, the alley turns 90 degrees to the right (south), and continues onward between Lots 3 and 1 and Lots 2 and 1, until it terminates at Chesapeake Avenue. The underlying ground on which this alley is situated is

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owned by the Petitioner in fee simple, however, is subject to a public access easement. Collectively, the property (including Lots 1, 2 and 3 and Bankers Way) is 2.97 acres in area, zoned BM-CT.

The BM (Business Major) zone permits a variety of uses including retail, office, residential, etc. It is among the most intense business zoning classification (in terms of permissible uses) in the Baltimore County Zoning Regulations (B.C.Z.R.). The CT district (Commercial Town Center) is imposed over the zoning classification and reflects the fact that the property is located within the town center core of Towson.

The zoning/development history of the tract is also significant. As noted above, Lot 1 contains the retail/entertainment/office complex collectively known as Towson Commons. Lot 3 features the public parking garage that serves Towson Commons and the Towson core. The Towson Commons development was the subject of a CRG (County Review Group) plan review and a related zoning case. The CRG was that process utilized by Baltimore County from 1982-1992 for review of proposals for land development. A copy of the minutes of the CRG meeting dated August 3, 1989 were submitted at the hearing (Petitioner's Exhibit 4). Those minutes reflect that the proposed Towson Commons development came before the CRG for consideration. In addition to County staff and representatives of the Developer, a number of interested citizens from the locale appeared and participated at the CRG hearing. Following that hearing, the development plan was approved by the CRG. An appeal of that approval was taken to the County Board of Appeals of Baltimore County but was subsequently dismissed, thereby confirming the CRG decision. Of importance and contemporaneously therewith, the then owners of the property had filed a petition for several zoning variances for the then proposed Towson Commons development. These variances included a request for the relief from the front yard setback requirements, side yard setback requirements, amenity open space requirements and height limitations all as required by the B.C.Z.R. at that time. Those variances were approved at a hearing

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By

before the Baltimore County Zoning Commissioner and then appealed accordingly. The variance relief granted was considered at a de novo hearing before the Board of Appeals. Following approximately five (5) days of public hearing, the Board of Appeals issued a written decision on March 23, 1990 (Petitioner's Exhibit 5). That decision reaffirmed the four (4) variances that were requested. The Board's decision was thereafter appealed to the Circuit Court for Baltimore County. By an Opinion of Court dated April 17, 1990, Dana M. Levitz, Judge, affirmed the Board's grant of the variance relief. Thus, based upon the CRG approval and grant of the zoning variances, the planned entertainment/retail/office complex known as Towson Commons proceeded forward to construction.

A copy of the CRG plan that was approved was offered into evidence in the instant matter as Exhibit 4. The four-page CRG plan included a proximity map, a CRG plan, a building program, and height elevations. The plan also addressed the applicable zoning and development regulations which bind the property. For example, the CRG plan identified landscape requirements, parking requirements, and the intensity of the development permitted, as expressed under floor area ratio requirements. The floor area ratio standards prescribe the maximum building area allowed (as expressed in square feet), based upon the acreage of the property. The plan noted that parking would be provided in part by the existing parking garage that is located on Lot 3. This garage had originally been built by the Baltimore County Revenue Authority but was subsequently acquired by the owners of Towson Commons. Nonetheless, it continues to provide public parking not only for the Towson Commons property, but as previously stated for the entire Towson core. The CRG plan also noted the existence of other County Revenue Authority Garages nearby, including one located adjacent to the public library across York Road, and a second located adjacent to nearby Washington Avenue and York Road.

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By

In addition to the development/zoning history for the Towson Commons property, there is likewise a zoning history for the 40 West Chesapeake Avenue parcel. Specifically, under Case No. 74-239-A, variance relief was granted by Baltimore County to permit front-yard setbacks of zero (0) feet and to reduce the required parking. This relief was granted on June 13, 1974 and permitted the subsequent construction of the office building.

As noted above, the instant matter comes before this Zoning Commissioner at the present time to confirm the maximum permitted building area for both existing and proposed improvements. In this regard, the overall tract is under the ownership and control of Western Development Corporation ("Western"). That is, Western has acquired all three (3) lots, as well as the fee simple interest in the property referred to earlier as Bankers Way. Western is a highly regarded national development company, which has been credited with successfully building suburban/urban redevelopment throughout the United States. The company specializes in high quality mixed-use suburban/urban redevelopment. Given that the subject property is an assemblage of different parcels, the instant petition was filed in order for Western to establish the parameters for any redevelopment of this site.

At the public hearing, Western advised that any future plans for development of the subject properties would be subject to County and public examination under the current development review process. That is, Western welcomes and encourages input from the surrounding property owners, community and neighbors regarding any development. However, as stated above, Western seeks confirmation through the undersigned Commissioner in consideration of the instant Petition of the parameters for existing and proposed development. Obviously, the existing improvements were built following review and approval by Baltimore County and thus, retention of any existing improvements is permitted in accordance with those prior approved plans. In the event Western razes any or all of the existing buildings, any new construction will be subject to review and approval under the current

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By

process. The site plan submitted (Exhibit I) shows the amount of existing building and potential building area available under the applicable floor area ratio standards. Specifically, note number two (2) delineates the area of the overall tract. Note number fifteen (15) identifies the permitted floor area ratio of 5.5, pursuant to B.C.Z.R. Section 235B.3. Note sixteen (16) identifies the maximum building area and note seventeen (17) the existing and potential building area for the subject property. I find that these calculations and data within these notes are correct and therefore approve and ratify that data as shown on the plan (Exhibit I).

I also agree with the property owner that the area of Bankers Way can be utilized in calculating the overall tract area. As noted above, this land is owned in fee by the Petitioner. Although this alley remains subject to the public access easement thereon, the fact of that easement does not prohibit the owner from using the rights associated with such ownership, including utilization of the area of the alley in determining the gross area of its tract.

Moreover, a review of the CRG plan shows that the County (in approving that plan) permitted the then owner to utilize one-half of the right-of-way of the adjacent public streets in determining the gross area of the tract. This has been the long-standing interpretation of the Zoning Office based upon the historic definition of "gross area" when reviewing development on a property with frontage on a public road. In view of the acquisition of Lot 3 (10 West Chesapeake Avenue), the question arises as to whether the current owner can utilize one-half of the width of Chesapeake Avenue, as was done with York Road and Pennsylvania Avenue in the CRG case. I find that an answer to that question is in the affirmative and appropriate here, to ensure a consistent application to the entire site, consistent with the County Zoning Office's long-standing policy.

It is also to be noted that an issue was identified at the hearing regarding the application of B.C.Z.R. Section 235B.7.C to this property. That Section provides that the Director of Permits and Development Management shall exempt a proposed redevelopment from front, side and rear setback

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Date 9-7-06
By

requirements, as well as street centerline setbacks and height limitations, upon a finding by the said Director that the proposed development meets the requirements of B.C.Z.R. Section 235B.7.A. It states that the Director shall certify the exemption in writing and file a copy of the same with the Zoning Commissioner. Subsequent to the hearing, and at the request of the undersigned, representatives of Western and GTCCA met with Director Timothy Kotroco regarding this certification. By copy of correspondence dated August 29, 2006, which has been submitted and received into evidence as Exhibit 9, Director Kotroco certified this project's compliance with the above referenced sections of the B.C.Z.R., and I hereby accept his certification and ratify the same.

Based upon the foregoing, I shall approve the data shown on the site plan (Exhibit 1) and grant the Petition. In so doing, I will ratify the existing CRG plan, find that the owner can utilize the land on which is located Bankers Way and use one half of the right-of-way width of Chesapeake Avenue as it abuts Lot 3. Finally, I accept Director Kotroco's certification as it relates to B.C.Z.R. Section 235.7.

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

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 7th day of September 2006, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) that the Petition for Special Hearing to confirm the maximum permitted building area for existing and potential improvements, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following condition:

1) The owner shall submit any new plans for redevelopment for review pursuant to the current development review process.

Any appeal of this Order shall be taken in accordance with the Baltimore County Code Section 32[illegible]3-401.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

ZONING OFFICE USE ONLY FOR FILING
Date 9-7-06
By D.W.Jones

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

September 7, 2006

WILLIAM J. WISEMAN III
Zoning Commissioner

Lawrence E. Schmidt, Esquire
David Gildea, Esquire
Gildea & Schmidt, Llc
300 E. Lombard Street, Ste. 1440
Baltimore, MD 21202-3228

RE: **PETITION FOR SPECIAL HEARING**
S/W Corner of York Road and Pennsylvania Avenue
(401-435 York Road, 40 West Chesapeake Avenue and 10 West Chesapeake Avenue)
9th Election District – 5th Council District
Western Development Corporation – Legal Owner
Case No. 06-667-SPH

Dear Messrs. Schmidt and Gildea:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted with a restriction, in accordance with the attached Order.

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

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Mr. Bradford H. Dockser, Western Development Corporation
8509 Seven Locks Road, Bethesda, Md. 20817
Mr. Harvey Brooks, Jones Lang LaSalle, 1 West Pennsylvania Avenue,
Suite 210, Towson, Md. 21204
Mr. William Monk, Morris & Ritchie Associates, Inc.
1220-C East Joppa Road, Suite 505, Towson, Md. 21286
Mr. Richard Parsons, Greater Towson Council of Community Associations
412 Woodbine Avenue, Towson, Md. 21204
Mr. Stephen Adams, Towson Business Association
416 York Road, Towson, Md. 21204
Mr. Marc C. Bowman, 1 West Pennsylvania Avenue, Towson, Md. 21204
Ms. Andrea Van Arsdale, Department of Economic Development
People's Counsel; Case File

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 401-435 York Road, 40 W. Chesapeake Ave and 10 W. Chesapeake Ave

which is presently zoned BM-CT

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

or, confirm the maximum permitted building area for existing and proposed improvements, as more particularly shown on the site plan attached hereto.

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address — Telephone No.

City — State — Zip Code

Attorney For Petitioner:

Lawrence E. Schmidt
Name - Type or Print

City

Signature Lawrence E. Schmidt

Gildea & Schmidt, LLC
Company

300 East Lombard Street, Suite 1440 — 410-234-0070
Address — Telephone No.

Baltimore — MD — 21202
City — State — Zip Code

Legal Owner(s):

Please see attached signature page.
Name - Type or Print

Signature

Name - Type or Print

Signature

Address — Telephone No.

City — State — Zip Code

Representative to be Contacted:

Lawrence E. Schmidt
Name

300 East Lombard Street, Suite 1440
Address — Telephone No.

Baltimore — MD — 21202
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 4 HRS

UNAVAILABLE FOR HEARING ?

Reviewed By DROP OFF Date 6/29/06

FILED JL

Case No. 06 677 SPH

REV 9/15/98

RECEIVED FOR FILING
Date 9-7-06
By

ATTACHMENT TO PETITION FOR SPECIAL HEARING

Signature Page

LOT #1:
401-435 York Road and 10 West Pennsylvania Avenue
Legal Owner(s):

_____
Towson Commons, LLC
1054 31st Street NW
Washington, DC 20007-4403

LOT #2:
40 West Chesapeake Avenue
Legal Owner(s):

40 West Chesapeake, LLP
By: MacKenzie Properties, Inc., General Partner

By: _____
Gary T. Gill, Executive Vice President
2328 West Joppa Road, Suite 200
Lutherville-Timonium, MD 21093-4674

Contract Purchaser(s):

_____
Towson Commons, LLC
1054 31st Street NW
Washington, DC 20007-4403

LOT #3:
10 West Chesapeake Avenue
Legal Owner(s):

_____
Towson Commons, LLC
1054 31st Street NW
Washington, DC 20007-4403

MORRIS & RITCHIE ASSOCIATES, INC.

ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS,
AND LANDSCAPE ARCHITECTS

677

June 13, 2006

ZONING DESCRIPTION

Beginning at a point at the intersection of the southerly right of way line of Pennsylvania Avenue, eighty feet wide, which has a curbed paving width of thirty eight feet, and the westerly right of way line of York Road, Maryland Route 45, 66 feet wide, which has a curbed paving width of forty feet, thence the following courses and distances, viz;

South 12°03'28" West 340.17 feet; to the intersection of the westerly right of way line of the aforesaid York Road and the northerly right of way line of Chesapeake Avenue, having a variable width right of way, which has a curbed paving width of thirty five feet, North 82°13'24" West 140.18 feet; North 11°02'20" East 14.75 feet; North 82°30'58" West 11.08 feet; South 07°01'11" West 9.46 feet; North 82°58'49" West 265.00 feet; North 07°01'11" East 11.65 feet; North 82°30'58" West 35.09 feet; North 07°01'36" East 150.18 feet; South 82°59'38" East 139.48 feet; North 11°37'59" East 166.78 feet; South 84°08'29" East 146.90 feet; South 83°04'32" East 180.39 feet to the point of beginning, being in the 400 block of York Road and being located along the westerly side of said York Road.

Containing an area of 129,672 square feet or 2.97 acres of land, more or less, and being located in the Ninth Election District, Fifth Councilmanic District, Baltimore County, Maryland.

James E. Catron
Property Line Surveyor No. 121

STATE OF MARYLAND
JAMES E. CATRON
No. 121
PROPERTY LINE SURVEYOR

P:\12552.02\Survey\Descriptions\12552-Zoning Description Revised.Doc

1220-C East Joppa Road, Suite 505, Towson, MD 21286 (410) 821-1690 Fax: (410) 821-1748 www.mragta.com

Abingdon, MD (410) 515-9000 + Laurel, MD (410) 792-9792 + Towson, MD (410) 821-1690 + Georgetown, DE (302) 855-5734 + Wilmington, DE (302) 326-2200 + York, PA (717) 751-6073

BALTIMORE COUNTY, MARYLAN'
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

677 No. 06

DROP OFF

DATE 6/29/06 ACCOUNT 001 006 6150

AMOUNT $ 325.00

RECEIVED FROM: Gerlach & Schmidt

FOR: Comm. SPH 401-435 YORK RD.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
6/29/2006	6/29/2006	09:38:36	1

REG WB01 WALKIN JRTC JWR
>>RECEIPT # 291141 6/29/2006 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 000706
Recpt Tot $325.00
$325.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

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

Case: # 06-677-SPH
401-435 York Road, 40 West Chesapeake Avenue & 10 West Chesapeake Avenue
Southwest corner of York Road and Pennsylvania Avenue
9th Election District — 5th Councilmanic District
Legal Owner(s): Towson Commons, LLC, & MacKenzie Properties, Inc., General Partner

Special Hearing: to confirm the maximum permitted building area for existing and proposed improvements, as more particularly shown on the site plan attached hereto.

Hearing: Thursday, August 24, 2006 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

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

JT-8/660 August 8 104996

CERTIFICATE OF PUBLICATION

8/10/, 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 8/8/, 2006.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 06-677-SPH

Petitioner/Developer: TOWSON COMMONS LLC

Date of Hearing/Closing: 8-24-2006

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

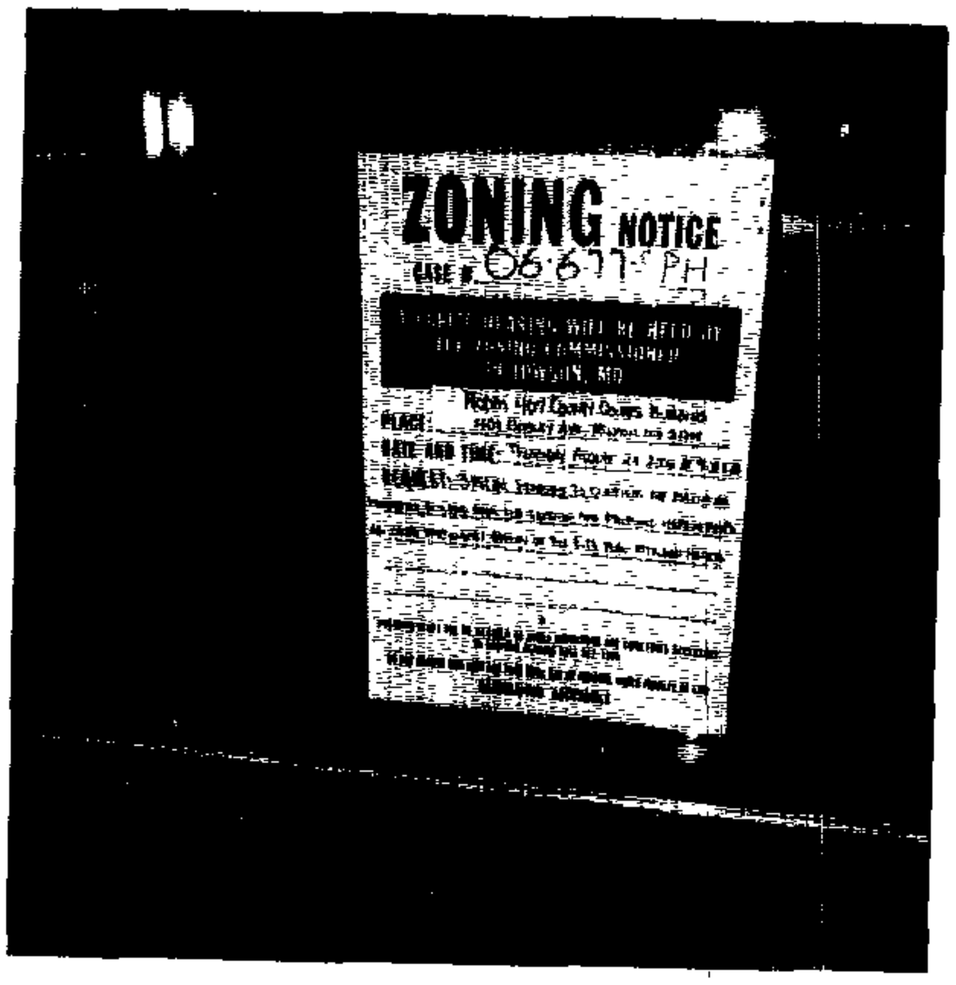
ATTN: Kristen Matthews {(410) 887-3394}

Ladies and Gentlemen:

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

2 SIGNS POSTED 401-435 YORK RD, W. CHESAPEAKE AVE & 10 W. CHESAPEAKE AVE

8-7-06
(Month, Day, Year)



Sincerely,

Robert Black 8-10-06
(Signature of Sign Poster) (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

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

(410) 282-7940
(Telephone Number)

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

July 12, 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: 06-677-SPH
401-435 York Road, 40 West Chesapeake Avenue & 10 West Chesapeake Avenue
Southwest corner of York Road and Pennsylvania Avenue
9th Election District – 5th Councilmanic District
Legal Owners: Towson Commons, LLC, & MacKenzie Properties, Inc., General Partner

Special Hearing to confirm the maximum permitted building area for existing and proposed improvements, as more particularly shown on the site plan attached hereto.

Hearing: Thursday, August 24, 2006 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

C: David Gildea/Lawrence Schmidt, 300 East Lombard St., Ste. 1440, Baltimore 21202
Towson Commons, LLC, 1054 31st Street NW, Washington DC 20007-4403
Gary T. Gill, 2328 West Joppa Road, Ste. 200, Lutherville 21093-4674

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, AUGUST 9, 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.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, August 8, 2006 Issue - Jeffersonian

Please forward billing to:
Lawrence Schmidt
Gildea & Schmidt, LLC
300 E. Lombard Street, Ste. 1440
Baltimore, MD 21202

410-234-0070

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: 06-677-SPH
401-435 York Road, 40 West Chesapeake Avenue & 10 West Chesapeake Avenue
Southwest corner of York Road and Pennsylvania Avenue
9th Election District – 5th Councilmanic District
Legal Owners: Towson Commons, LLC, & MacKenzie Properties, Inc., General Partner

Special Hearing to confirm the maximum permitted building area for existing and proposed improvements, as more particularly shown on the site plan attached hereto.

Hearing: Thursday, August 24, 2006 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

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: 06 677 SPH

Petitioner: TOWSON COMMONS, LLC

Address or Location: 401-435 YORK ROAD, 40 WEST CHESAPEAKE AVE. AND 10 WEST CHESAPEAKE AVE.

PLEASE FORWARD ADVERTISING BILL TO:

Name: LAWRENCE E. SCHMIDT, ESQ.

Address: 300 E. LOMBARD ST., SUITE 1440
BALTIMORE, MD 21202

Telephone Number: (410) 234-0070

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

August 16, 2006

Lawrence E. Schmidt
Gildea & Schmidt, LLC
300 East Lombard Street, Suite 1440
Baltimore, MD 21202

Dear Mr. Schmidt:

RE: Case Number: 06-677-SPH, 401-435 York Road, 40 W. Chesapeake Avenue and 10 W. Chesapeake Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on June 29, 2006.

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

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

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel
Towson Commons, LLC 1054 31st Street NW Washington DC 20007-4403
Gary T. Gill 2328 West Joppa Road, Ste 200 Lutherville 21093

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

Printed on Recycled Paper

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

SHA State Highway Administration Driven to Excel

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

Maryland Department of Transportation

Date: 7.11.02

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

RE: Baltimore County
Item No. 477 JLL

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,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: July 13, 2006

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

SUBJECT: Zoning Advisory Committee Meeting
For July 17, 2006
Item Nos. 623, 638, 674, 675, 676, 677,
678, 679, 680, 683, 684, 685, 686, 687, and 688

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

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS-7132006.doc

BW 8/24

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: July 24, 2006

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

RECEIVED

JUL 27 2006

ZONING COMMISSIONER

SUBJECT: 401-435 York Road

INFORMATION:

Item Number: 6-677

Petitioner: Towson Commons, LLC and Gary T. Gill

Zoning: BM-CT

Requested Action: **Special Hearing**

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

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

Prepared by: Curtis Murray

Division Chief: Kevin Gambrill
AFK/LL: CM

W:\DEVREV\ZAC\6-677.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: June 15, 2006

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

RECEIVED
AUG 1 7 2006
ZONING COMMISSIONER

SUBJECT: 9016 Simms Avenue

INFORMATION:

Item Number: 6-577

Petitioner: David Richard Kocan

Zoning: DR 5.5

Requested Action: **Administrative Variance**

SUMMARY OF RECOMMENDATIONS:
The Office of Planning does not oppose the petitioner's request provided the following conditions are met:

1. Roof pitch and architecture must be consistent with the existing single-family dwelling.
2. North facing side of the proposed addition must be treated with windows and other architectural features.
3. Materials used during construction must be complimentary to the existing single-family dwelling. Materials should be but are not limited to the use of brick and or white lap siding.

For further information concerning the matters stated here in, p
410-887-3480.

Prepared by: Curtis Murray

Division Chief: Jeffrey W. Long
AFK/LL: CM

W:\DEVREV\ZAC\6-577.doc

06-577-SPH
8/24/06

RE:	PETITION FOR SPECIAL HEARING 401-435 York Road and 10 W. Chesapeake Ave; SW/Cor York Rd & Pennsylvania Ave 9th Election & 5th Councilmanic Districts Legal Owner(s): Herbert Miller, Lot 1 & Gary Gill, Lot 2 Contract Purchaser(s): Herbert Miller Petitioner(s)	* * * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 06-677-SPH

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of July , 2006, a copy of the foregoing Entry of Appearance was mailed to, Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 300 E. Lombard Street, Suite 1440, Baltimore, MD 21202, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
JUL 17 2006
Per.....

Case #
06-677-SPH

FREQUENT FLYER ATTORNEYS DROP OFF ZONING PETITIONS POLICY PROCEDURES

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

1. The Director of the Office of Permits and Development Management (PDM) allows zoning attorneys who frequently file for zoning hearings and who are capable of filing petitions that comply with all technical aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of an appointment for review by zoning personnel.

2. Any attorney using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. In the event that the petition has not been filed correctly, there is the possibility that another hearing will be required or the zoning commissioner may deny the petition due to errors or incompleteness. All petitions filed in this manner will receive a cursory review and if necessary they will be commented on by zoning personnel prior to the hearing. A corrective memo by zoning review may be placed in the hearing file to be considered by the Hearing Officer.

3. When a petition has been dropped off by the attorney, it will only be reviewed for very basic necessary input, logging, and distribution information.

THE CONFIRMATION PLAN FOR BUILDING AREA SHOWS NO BUILDINGS OR ELEVATIONS. SINCE PARCEL OUTLINES ARE THE ONLY INFORMATION AS TO SETBACKS/LOCATION STAFF CANNOT COMMENT AS TO THESE ISSUES OR OTHERS RELATING TO PARKING ETC.

3/22/05
JLL/rjc

677 To: JLC See Me

GILDEA & SCHMIDT, LLC

300 EAST LOMBARD STREET
SUITE 1440
BALTIMORE, MARYLAND 21202
TELEPHONE 410-234-0070
FACSIMILE 410-234-0072
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D. DUSKY HOLMAN
DHOLMAN@GILDEALLC.COM

JASON T. VETTORI
JVETTORI@GILDEALLC.COM

TOWSON, MD OFFICE
220 BOSLEY AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 410-337-7057

June 26, 2006

Via Hand Delivery
Timothy M. Kotroco
Department of Permits and Development Management
111 W. Chesapeake Avenue
Room 111
Towson, MD 21204

Re: Western Development Corporation/ Towson Commons
Petition for Special Hearing

Dear Mr. Kotroco:

Kindly find enclosed three (3) copies of the Petition for Special Hearing in the above referenced matter, with original signatures, twelve (12) copies of the plat, three (3) copies of the property description, one (1) copy of the official zoning map, 200 ft scale with property outlined and one (1) copy of the advertising and posting requirements. I am also enclosing a check made out in the amount of Three Hundred Twenty Five Dollars ($325.00) for the filing fee. The Petition and attached materials are being dropped off and have not been assigned to a reviewer, nor are there any zoning violations. Please feel free to contact the undersigned should you have any comments, questions or concerns.

Very truly yours,

Jason T. Vettori

JTV: sf
Cc: Joyce Storm, JSS Advisors
Bradford H. Dockser, Western Development Corporation
Gene Sisco, JSS Advisors
William Monk, Morris & Ritchie Associates, Inc.
Harvey S. Brooks, Jr., Jones Lang LaSalle
David K. Gildea, Esquire
Lawrence E. Schmidt, Esquire

TBW 8/24

GILDEA & SCHMIDT, LLC

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JOSEPH R. WOOLMAN, III
JWOOLMAN@GILDEALLC.COM

D. DUSKY HOLMAN
DHOLMAN@GILDEALLC.COM

JASON T. VETTORI
JVETTORI@GILDEALLC.COM

TOWSON, MD OFFICE
220 BOSLEY AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 410-337-7057

RECEIVED

AUG 31 2006

ZONING COMMISSIONER

August 29, 2006

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

Re: Towson Commons
401-435 York Road, 40 W. Chesapeake Avenue & 10 W. Chesapeake Avenue
Request for Exemption
Case No.: 06-677-SPH

Dear Director Kotroco:

The above referenced properties, the subject of Case No. 06-677-SPH, are zoned B. M. (Business Major), with the C. T. (Commercial Town center core) district designation. More specifically, the subject properties lie within the C. T. District of Towson boundaries, as set forth in Section 235B.7.A of the Baltimore County Zoning Regulations ("BCZR")(see Exhibit 1). Attached hereto please find a copy of a zoning map showing the subject properties' orientation within the C. T. District of Towson, and that the proposed building lots do not abut any residential zone lines (see Exhibit 2). The proposed plan is a redevelopment of an existing project for which setback variances have previously been granted. Attached hereto please find a copy of the Opinion in Case No. 90-130-SPHA (see Exhibit 3).

In accordance with BCZR Section 235B.7.C, the Director of Permits and Development Management shall exempt the proposed development from any required front, side or rear yard setback, or any setback from the center line of any street, or any building height limitation upon finding that the proposed development meets the requirements of BCZR Section 235B.7.A. The Director shall certify the exemption in writing and file a copy of the certification with the Zoning Commissioner.

Please certify the following:

1. The proposed development is located in that portion of the C. T. District of Towson bounded by the streets noted in BCZR Section 235B.7.A;

2. The proposed building lot does not abut any residential zone line; and

3. The proposed plan is a redevelopment of an existing project for which setback variances have previously been granted.

Should you require any additional information in finding that the proposed development meets the requirements of BCZR Section 235B.7.A, please notify the undersigned.

Very truly yours,

David K. Gildea

HEREBY CERTIFIED:

_____

Timothy M. Kotroco
Director
Department of Permits and Development Management

CC: William J. Wiseman, III, Zoning Commissioner for Baltimore County
Michael J. Ertel, Greater Towson Council of Community Associations, Inc.
Richard Parsons, Greater Towson Council of Community Associations, Inc.
Joyce Storm, JSS Advisors
Gene Sisco, JSS Advisors
Bradford H. Dockser, Western Development Corporation
William Monk, Morris & Ritchie Associates, Inc.
Harvey S. Brooks, Jones Lang LaSalle
Lawrence E. Schmidt, Esquire
Jason T. Vettori, Esquire

RAE 2
BR AS
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DR 3.5
BM CT
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DR 2
DR 16
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EXHIBIT

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DR 16
Copyright (C) 2005 Baltimore County, Maryland

EXHIBIT 2

IN THE MATTER OF THE APPLICATION OF TOWSON COMMONS LIMITED PARTNERSHIP FOR A SPECIAL HEARING AND VARIANCES ON PROPERTY LOCATED ON THE WEST SIDE YORK ROAD BETWEEN SOUTH SIDE OF PENNSYLVANIA AVENUE AND THE NORTH SIDE OF CHESAPEAKE AVENUE 9th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	: : : : : : : : :	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 90-130-SPHA

COPY

: :

OPINION

In the subject case, the Board is called upon to decide the future of a Towson property of approximately 2.26 acres in gross area. Although this parcel is small when compared with the vast acreage which comprises Baltimore County, the effect of our decision will be far-reaching because of the particular location of the property. Specifically, the site is situated in the middle of the seat of County government and fronts along the west side of York Road, between West Pennsylvania and West Chesapeake Avenues.

The development of this property into the retail/office mixed project to be known as Towson Commons represents a significant cornerstone in the future appearance of Towson. It has been alternatively described by the witnesses before us as "a magnet" for revitalization, "a catalyst" for reinvigoration, and "a centerpiece" for the Towson of the 21st Century. To the litigants, the future of Towson hangs in the balance. As to its past, the long and remarkable history of Towson was documented throughout the 5 days of the Board's hearing of this case. There can be no doubt that Towson, the County seat for Baltimore County and center of much of the County's governmental and business activity, is a desirable and vibrant locale whose integrity must be protected. There can be no question that the residential communities which surround the Towson government/business center are among the most desirable in the State. The impact of Towson Commons on these residential communities, as well as the

EXHIBIT

government and business usage which comprise downtown Towson, is a factor that this Board must weigh carefully. We are not blind to our responsibilities in considering the issues generated by this case, and the impact of our decision on the future generations which will live and work in Towson.

However, all of that being said, the Board must restrict its scope of inquiry to the narrow issues before us. It must be recognized that the Board in this case does not sit as the County Council, the Planning Board, nor in the role we assume when considering a Petition for Reclassification. That is, this case is not about permissible zoning uses; or whether Towson should be a bustling urban center or a more traditional "small town" community. The zoning for this property and the uses permitted thereon as of right under that zoning have been predetermined. Whether Towson adopts a high visibility night-life agenda or whether it retains its present character is not for this Board to decide. Those decisions will be made by the elected officials of this County after input by the citizens thereof and governmental staff.

Rather, our narrow focus is the four Petitions for Variance filed herein by the property owner, Towson Commons Limited Partnership (hereinafter "TCLP"). TCLP proposes to construct a mixed use facility onsite, consisting of retail, office, restaurant, and theatre uses. In order to develop their plan, they request:

(1) A variance from the front yard setback requirements of Section 235.1, Baltimore County Zoning Regulations (hereinafter "B.C.Z.R."), to permit a front yard setback along Pennsylvania Avenue of as close as 0 feet, in lieu of the required 15 feet;

(2) A variance from the side yard setback requirements of Sections 235.2 and 232.2, B.C.Z.R., to permit a corner lot side yard setback along York Road of 4 feet, in lieu of the required 10 feet;

(3) A variance from the height limitations of Sections 235B.5, 234, and 231.d, B.C.Z.R., to permit 125 square feet of the building wall facing Pennsylvania Avenue and adjacent to the existing buildings at 17 West Pennsylvania Avenue to project above a plane sloping inward and upward from the lot line at 1 foot of horizontal distance for each 7.5 feet of vertical distance; and

(4) A variance from the amenity open space requirements of Section 235B.4, B.C.Z.R., to permit 22,880 square feet of amenity open space, in lieu of the required 39,943 square feet.

The matter arrives at the Board on these issues on appeal from the decision of the Deputy Zoning Commissioner which granted the variances, with restrictions, on November 14, 1989. Following that decision, an appeal to the Board was timely filed by Leroy Y. Haile Corporation, Inc. (hereinafter "Haile"); Knollwood-Donnybrook Improvement Association (hereinafter "Knollwood-Donnybrook"); Northeast Towson Improvement Association; and that citizen group known as ACCORD. Subsequently, the appeals by Northeast Towson Improvement Association and ACCORD were voluntarily dismissed; thus, only Haile and Knollwood-Donnybrook remain as Appellants. It is also to be noted that this

project's CRG approval under Case No. CBA-89-165 had been appealed by 17 West Pennsylvania Limited Partnership and Mr. Arthur Kutcher, individually. However, these appeals were likewise dismissed prior to the Board's taking testimony, thereby leaving only the variance appeals at issue.

Before reviewing the extensive testimony and evidence which were offered during the 5 days of hearing before this Board, a statement of the law to which this Board is bound is appropriate. In considering the variances requested, the Board is obligated to apply the standards stated in Section 307 of the B.C.Z.R. In its entirety, Section 307.1 of the B.C.Z.R. reads as follows:

> "The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from offstreet parking regulations and from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, offstreet parking, or sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for such variance." (emphasis added)

The practical difficulty or unreasonable hardship guideline imposed by this regulation has been thoroughly examined and discussed by the appellate courts of this State. In Loyola Federal Savings & Loan Association v. Buschman, 227 Md. 243, 176 A.2d 355 (1961), the Court of Appeals considered this identical regulation. In fact, the Court in that case considered certain variances for

the Loyola Federal Building, which is but a stone's throw from the subject site in central Towson. As the Court noted: "Section 307 of the Regulations uses the two terms [practical difficulty or unreasonable hardship] in the disjunctive." Loyola Federal, p. 358. Thus, by the use of the term "or," Section 307 offers the Petitioner an opportunity to obtain its variance upon satisfaction of either the undue hardship or practical difficulty standard.

The distinction between these standards was clarified by the Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974). Within that opinion, the Court held that the undue hardship standard applies to a petition for a use variance. The Court noted that a use variance, which permits a use on the property other than that specifically permitted in that particular district, requires the imposition of a higher standard. That is, to allow the change of use for a particular property requires the Petitioner to demonstrate real hardship, where the land cannot allow a reasonable return if used only in accordance with the use restrictions of the ordinance.

Compared with this heavy burden, the Court reviewed the practical difficulty standard applicable for area variance. The Court characterized area variances as having a much less drastic effect than use variances; in that they seek relief only from height, area, density, setback, or side line restrictions and would not affect the property's use, per se. Because the Court envisioned the impact of area variances on the surrounding locale to be less than that generated by use variances, the lesser practical difficulty standard applies. The prongs of that standard which must be satisfied by the Petition, as enunciated in Anderson, supra, are as follows:

> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage,

height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."
Anderson, p. 39. See also McLean v. Soley, 270 Md. 208 (1973) at pps 214-215

It also follows from a review of Section 307 of the B.C.Z.R. and these cases that the mere application for a variance does not establish, prima facie, that the Petitioner is seeking relief contrary to the spirit and intent of the zoning regulations. Rather, the requested relief is from the strict terms of those regulations. Petitions for variances constitute a legislatively approved mechanism for a property owner to obtain relief from the hard and fast provisions of the ordinance. The protestants herein often suggested that the mere filing of the Petitions for Variance by TCLP constituted a deviation from the spirit and intent of the zoning regulations which were established to regulate orderly development in the County, and, as such, should be denied. This is simply not so. A request for variance seeks relief from the strict terms of the regulations, is wholly permissible, and should be granted when the property owner satisfies the practical difficulty standard described above.

Turning to the record before us gathered over 5 hearing days, suffice it to say there was extensive testimony both in support of and against the project. The testimony is, of course, contained within the record transcript of the case and what the parties considered crucial is contained within

their Memorandums. Although a detailed synopsis is impossible, a brief review of the salient testimony is in order.

The Board heard from Dean Lopez, a Vice President of LaSalle Partners (a principal in TCLP) and project manager for this site. He presented an overview of the project which he descirbed as containing 190,000 rentable square feet of office use and 100,000 square feet of retail use. He also discussed the evolution of this project and described the efforts made by the property owner to develop Towson Commons in accordance with the terms of the B.C.Z.R. without the need for variances. He specifically described the original proposal; which provided for a ten-story office building and ten theatre screens, and how the plan had been reduced in magnitude and reconfigured to its current version, consisting of an eight-story office complex and eight theatre screens. He opined that the project with its proposed setbacks is compatible with the surrounding locale and that the front yard and side yard setback variances are needed to achieve the desired goal of orienting the retail use toward the adjacent streets.

Lehr Jackson, a retail development expert and a member of TCLP's project team, discussed the retail aspect of the proposed development. Again, he discussed the importance of the project's orientation along Pennsylvania and Chesapeake Avenues and York Road. In order to achieve a continuous flow of appealing retail use, he concurred that the setback variances were necessary.

The Board also received extensive testimony from the project architect, Ron Henderer. He discussed the unique nature of the site, including the sloping of the land in a southerly direction and the rock and water formations underground. He also discussed what he viewed as the impossibility of realigning the office and retail complex to comply with the strict terms of the existing

setback requirements. In his view, such a realignment would prohibit the placement of the theatres as presently proposed and would disrupt the retail configuration. He also stated that strict compliance with the terms of the B.C.Z.R. would cause a loss of viability of the entire project.

Leslie H. Graef, the Executive Director of the Towson Development Corporation, also testified. In his view, the project is "in scale" and appropriate. In his view, "when one looks at the whole project and all of the benefits...one makes a judgement that the variances are minor."

Baltimore County's Director of Economic Development, Richard W. Story, also expressed the County government's approval and enthusiasm for the project. He believes that the project will promote tourism, business and community interests.

Jon Bortz, Senior Vice President of LaSalle Partners, also testified. He echoed much of the testimony of Mr. Lopez. His testimony was significant in that it concentrated on his view that the success or failure of the entire project depended on the mix of office/retail use as shown on the Petitioners' plan. In his view, the viability of the retail/office use proposed here rests upon the configurations of the various components which exist within the project as a whole. If any of these components were altered, the project as a whole would no longer be workable. He opined that the current plan offered the minimum deviation from the strict standards of the B.C.Z.R. which would be practical.

George Gavrelis, a land planning expert employed by the firm of Daft, McCune & Walker, also testified extensively. He described the evolution of the development of that project to be known as Towson Commons, and opined that strict compliance with the B.C.Z.R. would be unnecessarily burdensome. He

also averred that the project would not adversely impact the surrounding area. In this witness's view, the mixed use proposal before the Board could not survive without the variances.

Jack Finkelstein, a retail merchant whose establishment neighbors the surrounding property, also testified. He described the merchant/retail history of Towson and expressed his support for the reinvigoration which this project would bring to the Towson retail core.

Lastly, on behalf of the Petitioners, the Board heard from Barbara Zenker, the Director of Real Estate for General Cinema Theatres. She discussed the requirements of her organization to participate as a tenant in Towson Commons. Presently, her company intends to lease and operate the theatres in Towson Commons. On behalf of her company, she voiced the requirement that any further reduction or realignment of the theatres would cause her company to withdraw from participating in the project. She described how the number of screens proposed has been reduced from ten to eight from the original plan and that any further reductions would be unacceptable. Although she could not describe any mathematical formula which her company employed in determining whether to lease theatres in Towson Commons, she explained the intuitive process used by General Cinemas in making this decision. We are not troubled by the lack of any mathematical formula. Quite simply, it is enough, when considering the case before us, that General Cinemas' position is well-founded on marketing and retail theatre expertise.

On behalf of the protestants, a number of witnesses appeared. They included Leroy Y. Haile, Jr., the principal in the Appellant, Haile Corporation. Mr. Haile described the history of his long-time association with Towson. He also expressed his opposition to Towson Commons. In his view, the size of the

proposed project is objectionable and overwhelming. As with the other protestants, however, Mr. Haile acknowledged the need for retail/office rebirth in the Towson core, but objected to the scale and scope of the proposal presented.

Other witnesses appeared and testified on behalf of the protestants. These included Richard Parsons, who lives in West Towson and is employed by the Baltimore County Public Library; Jean Duvall, of Rodgers Forge; Michael A. Miller, of Northeast Towson; Ruth Cullison, an opponent of the urbanization of Towson; Diane Carliner; and John Latrobe. All of these witnesses voiced similar objections. These protestants all expressed their desire that the Towson environment continue in its present state, and that urbanization and over-development should be discouraged. As we have previously stated within this Opinion, although we admire and respect these sentiments, they are not germaine to the narrow issue before us.

Testimony which we deem relevant from the protestants was offered by George Holback and Arthur Kutcher. Mr. Holback, a registered architect, suggested alternatives which the property owner might adopt in order to achieve the desired mixed use and comply with the zoning regulations. Although, on their face, many of these alternatives seemed reasonable, their viability was not established. On cross-examination, for example, Mr. Holback admitted his naiveté regarding motion picture theatres, marketing strategies, and certain mechanical engineering considerations. Thus, we must question whether these alternatives are practical within the context of the proposed Towson Commons development.

Mr. Kutcher's testimony was also interesting. He has an extensive background in urban planning and designing, as well as architecture. Mr. Kutcher's chief concern with the project as proposed was a fear that it was

incompatible with the surrounding locale. He specifically objected to the width and breadth of that portion of the project which included the theatre operations. In his view, construction of the project as proposed would create a "sunless trench" in the center of Towson. He also felt that the large and imposing 20th Century structure which comprises Towson Commons was not consistent with the 19th Century architecture which comprises much of Towson's core. Again, however, we note Mr. Kutcher's unfamiliarity with the specifics of the proposed project.

In reviewing the evidence before us, the Board gave due consideration to the demeanor and credibility of the witnesses presented. Overall, we were impressed with the detail-oriented testimony offered by the Petitioners and their approach to the inter-dependent requirements of the components which encompass Towson Commons. Although we appreciate the testimony of the protestants, it is of note that that testimony centered upon the aesthetic impact of the project on central Towson. We did not hear from the protestants competent and knowledgeable testimony which was sufficiently detail-oriented as to the particulars of this project. However, we do find as fact that the Petitioners have met their burden of proof.

Applying the law previously set forth to the testimony presented, we make the following findings:

1) As to the variances from the height limitation of 235B.5, 234, and 231.d of the B.C.Z.R., we are persauded that they should be granted. The variance in this instance is minute in nature when compared with the entire project. It requests relief only from a small slice from the plane which slopes inward and upward from the lot line. Granting of same is warranted under the Anderson, supra, test.

2) As to the setback requirements for the front and side yards, we are also persuaded that they should be granted. Applying the tenents expressed in Anderson, supra, and McLean, supra, we believe that adherence to the strict provisions of the B.C.Z.R. would be unnecessarily burdensome to the property owner for the reasons set forth by Mr. Gavrelis. As to the other prongs offered in Anderson, supra, we believe that they too are satisfied. Evidence offered established that the project as contemplated is less in size and scope than would be permitted under the zoning regulations. The record of the case before us also overwhelmingly establishes that the zoning assigned to this locale promotes intensive office/retail use. Based upon the competent and uncontradicted testimony offered by Ms. Zenker and Mr. Bortz, we concur that this project, as presented, could not go forward if the variances were not granted. This would cause substantial injustice to the applicant as well as to the property owners in the Towson area, such as Mr. Finkelstein, who are relying on a new infusion of commercial activity into central Towson to save the decaying present business climate. Lastly, we believe that the spirit of the B.C.Z.R. will be observed and the public safety and welfare secured.

3) As to the amenity open space variance, we are also persuaded that this should be granted. At first blush,

the variance appears to be significant in that TCLP offers only 22,880 square feet of amenity open space in lieu of the required 39,943 square feet. This significant difference of approximately 57 percent could be interpreted to be overwhelmingly deficient of what is required and therefore the variance should be denied. However, an examination of the Towson Commons project as a whole, as provided within the framework of the testimony of Messrs. Gavrelis, Bortz, and Henderer is appropriate. As proposed, the Towson Commons project orients retail space towards the exterior street. By employing this configuration, which in our view enhances the overall aesthetic appearance and compatibility with the neighborhood, the opportunity for the Petitioners to obtain additional amenity open space is reduced. The Petitioners' arguments about the quality of the open space are also well-reasoned. After applying the three-pronged test in Anderson, supra, we believe that the variance should be granted. Strict compliance with the open space requirement would be unduly burdensome on the property owner, and, as stated previously, the proposal's scheme and design are consistent with the locale.

For the aforegoing reasons, the Board shall approve the Petitions for Variance, with restrictions, and will so order.

ORDER

Therefore, it is this 23rd day of March, 1990 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Variance from the front yard setback requirements of B.C.Z.R. Section 235.1 (permitting setback as close as 0 feet in lieu of the required 15 feet); that the Petition for Variance from side yard setback requirements of B.C.Z.R. Sections 235.2 and 232.2 (permitting side yard setbacks of 4 feet in lieu of the required 10 feet); that the Petition from the height limitations of B.C.Z.R. Sections 235B.4, 234, and 231.d (permitting 125 square feet of building wall facing Pennsylvania Avenue to project above a plane sloping inward and upward from the lot line); and that a variance from the amenity open space requirements of B.C.Z.R. Section 235B.4 (permitting 22,880 square feet of amenity open space in lieu of the required 39,943 square feet) all be and are hereby GRANTED subject to the following restrictions:

1. The Petitoner shall landscape the property in accordance with and as required by the Baltimore County Landscaping Manual and as may be required by the Director of Planning and Zoning and the landscaping planner.

2. All signs and the scoring pattern in the brick and concrete at the entrances to the property shall be submitted to the Office of Planning for approval prior to construction.

3. That the final landscaping plan shall be maintained at all times by Petitioners and/or subsequent property owners.

4. The Petitioners shall implement, at their expense, any improvements as may be required by the State Highway Administration and/or

the Baltimore County Bureau of Traffic Engineering to assure safe pedestrian travel at the intersections of York Road and Pennsylvania Avenue, and York Road and Chesapeake Avenue.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

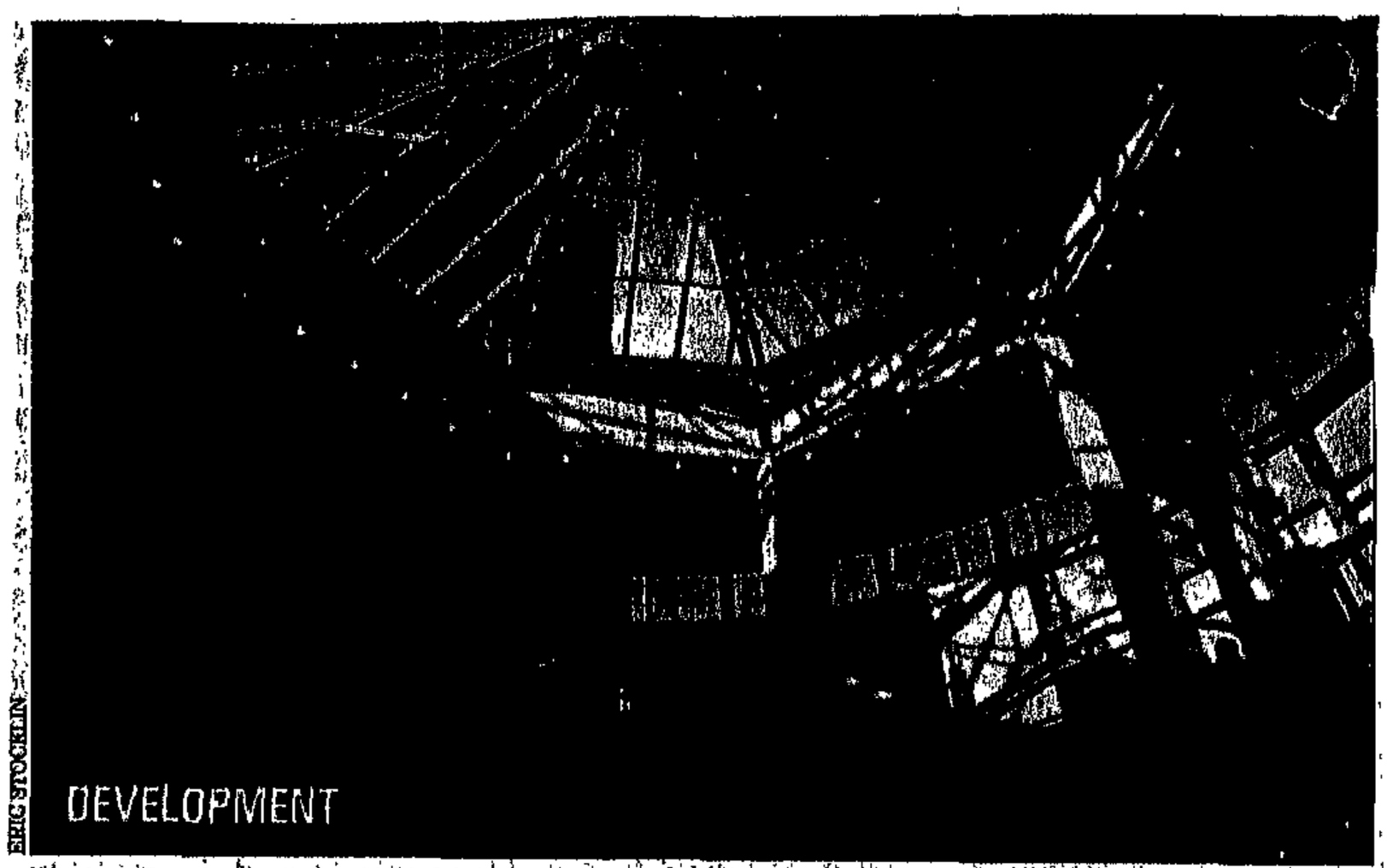
Lawrence E. Schmidt, Acting Chairman

Michael B. Sauer

John G. Disney

BW 8/24

The Daily Record
July 24, 2006



ERIC STOCKLIN

Western Development Corp., the Washington-based firm that bought Towson Commons, above, in October, is petitioning for permission to use several properties the mall acquired over the years in the redevelopment.

Owner of struggling Towson shopping mall eyes expansion

BY JAMES MOSHER
Daily Record Business Writer

The company looking to revamp the struggling Towson Commons mall will seek clearance next month from government officials to use nearby properties in a redevelopment that could greatly increase the size of the shopping center and office complex.

Western Development Corp., the Washington-based firm that bought Towson Commons in October, is petitioning for permission to use several properties the mall acquired over the years in the redevelopment. The matter is to be heard by Zoning Commissioner William J. Wiseman III on Aug. 24.

Among the properties Western Development would like to include is the Lafayette Building, a sizable retail and office complex at 40 W. Chesapeake Ave. next door to the mall. If most of the properties end up as retail space, the mall's shopping area would more than double in size.

"They [Western Development executives] are just looking to establish the parameters for their redevelopment," said Lawrence E. "Larry" Schmidt, a partner at the law firm **Gildea & Schmidt** LLC, which is representing the developer. "They didn't want to pay some engineer to come up with some beautiful designs that couldn't be used within the framework."

Schmidt said he wasn't sure what the total square footage would be if the zoning commissioner clears all the properties for use. Designs will be unveiled sometime after Wiseman renders a decision, the attorney said. No plans will be finalized until the decision is issued, said Schmidt, himself a former zoning commissioner.

Bradford Dockser, Western Development's executive vice president and chief operating officer, met earlier this month with county government officials to discuss the project. Dockser declined to give his vision for the project, delegating the matter to an associate who was on vacation.

Western Development last year pledged a $30 million renovation of Towson Commons, which fronts busy York Road and is less than a quarter-mile from fast-growing **Towson University**.

Speculation has been that the mall's 221,000-square-foot office complex, historically a strong performer, might be expanded. Its moribund 103,000-square-foot retail portion has had trouble keeping tenants, except for an AMC movie theater, the shopping area's most successful

SEE TOWSON COMMONS PAGE 10A

Towson Commons

Continued from page 1A

business. The movie complex might be expanded, some real estate experts have ventured to guess.

Although legally it could treat redevelopment plans as an amendment to the mall's original 1990 development plan, Western Development plans to go through a complete examination of its proposals, including a public hearing, Schmidt said.

"Western is committed to going through the entire public process," the attorney said. "They want the community to know what they're doing and support the project."

Meanwhile, the mall's on-site supervisor said community and government projects to better manage traffic and improve pedestrian walking paths are necessary for any redevelopment to succeed. He also sees those changes as key to revitalizing the county seat's entire downtown business district.

"They will create easier transitions to the mall," said General Manager Harvey S. Brooks Jr., who is employed by **Jones Lang LaSalle** Inc., the Chicago-based leasing agent for Towson Commons. "That foundation needs to exist before any meaningful development or redevelopment can occur."

Brooks recently took over the one-year rotating presidency of the **Greater Towson Committee** Inc., a development advocacy group. Brooks, who was the GTC's transportation vice president during the last fiscal year before taking over the presidency from attorney C. William "Bud" Clark on July 1, said traffic and "walkability" concerns will be at the top of his "to-do" list.

He is also a member of **Tomorrow's Towson** Inc., a committee of business and residential leaders that worked with a team of professionals known as the Urban Design Assistance Team to formulate ideas for improving Towson's central commerce area.

A space in the Towson Commons vacated by a Borders Group Inc. book and music store was used as a studio by the UDAT team during its June 7-13 sessions. Brooks found the UDAT worthwhile.

"It was very useful, very positive," he said. "We all got know each other a little better. We found out that we agree on most of what we want for Towson."

to the Census Bureau, 7,918 people will turn 60 each day in 2006. That amounts to about 330 every hour. Increasingly, individ-
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personal savings to main-
style through retirement.
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you may have given a lot
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for the duration of your re-
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ERIC STOCKLIN

Western Development Corp., owner of the Towson Commons shopping and office complex, above, is looking to expand by including nearby properties. The redevelopment plan has the support of the Greater Towson Council of Community Associations Inc., and should receive formal county approval soon.

BY JAMES MOSHER
Daily Record Business Writer

A request by a Towson mall owner to include nearby properties it owns in one single redevelopment plan is likely to be approved by Baltimore County's top zoning official this week.

Zoning Commissioner William J. Wiseman III last week heard a petition presented by Lawrence E. Schmidt, attorney for **Western Development** Corp., owner of the Towson Commons shopping and office complex. Wiseman said he needs to check some final details with Timothy M. Kotroco, director of the county's **Department of Permits and Development Management**, before issuing a formal approval.

"But it looks good," the commissioner said.

Western Development, which bought the struggling Towson Commons nearly a year ago, is seeking to use properties including a large office plaza known as the Lafayette Building at 40 W. Chesapeake Ave., next door to the mall. At the time of the mall's purchase, Washington, D.C.-based Western Development said it was considering a redevelopment valued at about $30 million.

Citizen activists affiliated with the **Greater Towson Council of Community Associations** Inc., an umbrella group for residential associations, expressed support for the expansion concept after the developer promised to go through public vetting of its plans and the entire governmental process.

In another Towson zoning matter, Wiseman said he is expecting to adjourn hearings Wednesday morning after the **Country Club of Maryland**, another client of Schmidt's, publicly presents revised plans for a housing development it wishes to see built on part of its golf course.

The hearings will likely reconvene Sept. 8 after county agencies and neighborhood associations have had time to study the plans in detail, the commissioner said.

The club has been negotiating with leaders of the **Idlewylde Community Association** and the government with an eye toward reducing the scope of a development that was once as large as 56 homes on 16 acres. The latest revisions are expected to show a plan of 36 homes.

As of Friday afternoon, Wiseman said he still hadn't seen the new plans.

AGRICULTURE

Ag businesses to get boost from resource center, Smith says

BY [illegible]
Daily Record Business Writer

A plan to go [illegible] parks and resource centers is expected to maintain and spur farming-related businesses in Baltimore County, the area's top elected official said Friday.

"Agriculture is a rapidly changing business sector and as a business-friendly county, we want to encourage the stability and growth of our agricultural businesses," County Executive James T. Smith Jr. said in announcing his government has paid $3.85 million for a 149-acre farm

Smith's recent pattern of paying increased public attention to environmental concerns bolsters the "green" portion of his renaissance program. Amid criticism that land development has gotten out of hand, the executive has said he is looking to establish more parks and open space and continue those efforts if he is re-elected to a second term in November.

"This is a natural extension of our emphasis on preserving farmland and protecting rural resources," Smith said.

MANUFACTURING

Phoenix Color to add building, jobs

BY LOUIS LLOVIO
Daily Record Business Writer

Hagerstown, while the Rockaway/Phoenix Asia division is in

PLEASE PRINT CLEARLY

CASE NAME 06-677 SPH
CASE NUMBER
DATE 8/24/06

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Richard Parsons	412 Woodbine Ave	21204	RParsons@BCPL.net
MARC C. BOWMAN	1 W. PENN. AVE	21204	MARC-B@VIPS.com
Stephen Adams	416 York Rd	21204	jsa37@earthlink.net
ANDREA J. VAN ARSDALE	Economic Development	MS 2M07	

PLEASE PRINT CLEARLY

CASE NAME 06-677 SPH
CASE NUMBER
DATE 8/24/06

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
David Gildea	300 E. Lombard Suite 1440	Balt. MD. 21202	davidgildea@gildeallc.com
Harvey Brooks	1 W. Penn. Ave. Ste 210	Towson, MD 21204	hsbrooks@towsoncommons.com
Brad Dockser	8509 Seven Locks Rd	Bethesda, MD 20817	brad@westdev.com
Lawrence E Schmidt	300 E Lombard St	Balto MD 21202	lschmidt@gilkeallc.com

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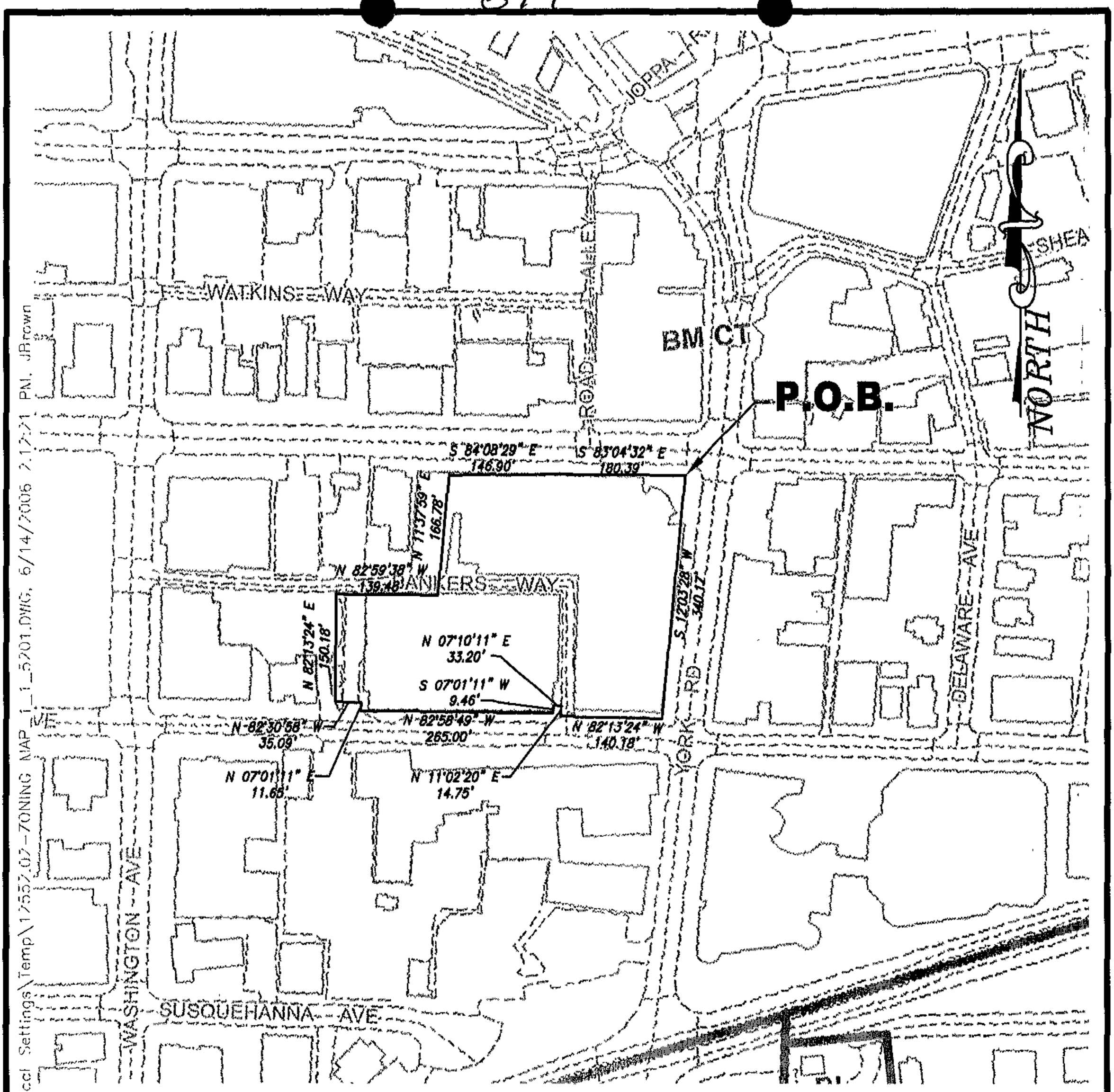

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

MRA

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MARYLAND 21286
(410) 821-1690
FAX: (410) 821-1748

MRAGTA.COM

ZONING MAP TO ACCOMPANY PETITION FOR SPECIAL HEARING APPLICATION

LOTS 1, 2, AND 3 (A.K.A.TOWSON COMMONS AND LAFAYETTE BUILDING)

BALTIMORE COUNTY, MARYLAND

SCALE: 1" = 200'	DATE: 6-14-06	DRAWN BY: JAB	DESIGN BY: ---	REVIEW BY: WPM	JOB NO. 12552.04

Documents\JBrown.M&R\Local Settings\Temp\12552.07-ZONING MAP 1_1_5701.DWG, 6/14/2006 2:12:21 PM, JBrown

Case No.: 06-677-SPH TOWSON COMMONS

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	SITE PLAN TO ACCOMPANY PETITION	
No. 2	CRG PLAN - 1989 (4 PAGES)	
No. 3	COLORIZED SITE PLAN	
No. 4	MINUTES - CRG 8/3/89	
No. 5	3/23/90 - BRD OF APPEALS OPINION	
No. 6	CIRCUIT COURT DECISION - 90CG1513	
No. 7	Photographs EXHIBITS A thru I	
No. 8	GTCCA LETTER	
No. 9	CERTIFICATION - BCZR SECTION 235B.7.A FROM TIMOTHY KOTROCO 8/29/06	
No. 10		
No. 11		
No. 12		

COUNTY REVIEW GROUP MEETING SUMMARY

Thursday, August 3, 1989

TOWSON COMMONS IX-342

District 9 C4

RECEIVED AUG 24 1989 OFFICE OF PLANNING AND ZONING

COUNTY REVIEW GROUP - THOSE PRESENT

C. Thomas Watson, Chairman - Dept. of Public Works
Joe Maranto, Co-Chairman - Office of Current Planning

AGENCY REPRESENTATIVES

James R. Logan	- Developer Engineering Division
Diane Itter	- Office of Planning and Zoning
Larry Brocato	- State Highway Administration
Craig Forrest	- Office of Planning and Zoning
Tracy A. Gingher	- Councilwomen Bachur's Aide
Larry Pilson	- DEPRM
Rahim Famili	- Traffic Engineering
Jeff Broczkowski	- DEPRM/Storm Water Management

DEVELOPER AND/OR REPRESENTATIVES

Ed Haile	- Daft-McCune-Walker, Inc.
Jean Tansey	- Daft-McCune-Walker, Inc.
Dean Lopez	- LaSalle Partners
John Bortz	- LaSalle Partners
Lynn Azamar	- LaSalle Partners
Rod Henderer	- RTKL Associates
John Howard	- Venable Batcher and Howard

INTERESTED CITIZENS

Larry Carson, Evening Sun
Susan Thornton, Towson Times
Joseph A. Varvaro, 404 York Road, Angels Grotto Pub
Edward Tuttle, Jr., 13 E. Chesapeake Ave., Chesapeake Liquors
Arthur Katcher, 7728 Greenview Terrace, Towson, Md.
Nancy Paige, 233 E. Redwood Street
Les Graef, TDC, 29 West Susquehanna Avenue, Towson, Md.

Mr. Watson, Chairman, opened the meeting at 9:15 a.m., introduced the staff and explained the purpose of the meeting. Mr. Haile and Mr. Lopez presented the plan.

PETITIONER'S

EXHIBIT NO. 4

Mr. Maranto summarized the staff comments submitted from Fire Department, Developers Engineering Division, Storm Water Management, Department of Environmental Protection and Resource Management (DEPRM), State Highway Administration, Office of Planning and Zoning, Bureau of Traffic Engineering, Department of Recreation and Parks, Bureau of Sanitation and Bureau of Land Acquisition. These comments have been made a part of this summary, and a copy was also given to the developer and developer's engineer.

Staff comments to be addressed:

Traffic - Post sign on Chesapeake Avenue. Curb return radii at entrances on Pennsylvania and Chesapeake Avenues. Correct the ADT's.

Developers Engineering Division - Pennsylvania Avenue: Show proposed 42' paving from north curb line.

The citizens were invited to comment:

Les Graef - Pleased with the developer and the project. Glad that retail store fronts are facing York Road. Glad that the building facing York Road is not tall.

Arthur Kutcher - Amenity Open Space - 43,000 s.f. is required but only 25,000 s.f. is shown. Parking project is 80 spaces short of that required, even after the break given for being in a "Town Center". Too many variances are required relative to setbacks. The overall scheme is too large for downtown Towson. The CRG should require more detailed information concerning type of buildings, color scheme, height, etc.

Nancy Paige - Are the ADT's correct? What improvements are planned for Pennsylvania Avenue? How will shortage of parking be handled? What is status of Storm Water Management?

Citizen comments were then reviewed:

Wes Guckert - Explained that the ADT's will increase slightly due to matinees at the cinema.

Ed Haile - Explained that the developer is working with the Revenue Authority to obtain needed parking spaces. Stated that the size of the project is less than allowed by zoning. Also stated that a waiver was granted for Storm Water Management.

Tom Watson - Explained Pennsylvania Avenue improvements.

Joe Maranto- Stated that variances are allowed to be applied for, even Amenity Open Space. He also explained what the CRG requires for building description at this level of approval.

County staff comments were then reviewed:

Traffic - Engineer will comply.

Developers Engineering Division - Engineer will show the reconstruction of the existing curb on the south side of Pennsylvania Avenue and work out the widening issue with Public Works.

CONCLUSION: The plan was approved, the appeal process was explained and the meeting was adjourned at 10:00.

IN THE MATTER OF THE APPLICATION OF TOWSON COMMONS LIMITED PARTNERSHIP FOR A SPECIAL HEARING AND VARIANCES ON PROPERTY LOCATED ON THE WEST SIDE YORK ROAD BETWEEN SOUTH SIDE OF PENNSYLVANIA AVENUE AND THE NORTH SIDE OF CHESAPEAKE AVENUE 9th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	: : : : : : : : :	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 90-130-SPHA

COPY

: : : :

government and business usage which comprise downtown Towson, is a factor that this Board must weigh carefully. We are not blind to our responsibilities in considering the issues generated by this case, and the impact of our decision on the future generations which will live and work in Towson.

However, all of that being said, the Board must restrict its scope of inquiry to the narrow issues before us. It must be recognized that the Board in this case does not sit as the County Council, the Planning Board, nor in the role we assume when considering a Petition for Reclassification. That is, this case is not about permissible zoning uses; or whether Towson should be a bustling urban center or a more traditional "small town" community. The zoning for this property and the uses permitted thereon as of right under that zoning have been predetermined. Whether Towson adopts a high visibility night-life agenda or whether it retains its present character is not for this Board to decide. Those decisions will be made by the elected officials of this County after input by the citizens thereof and governmental staff.

Rather, our narrow focus is the four Petitions for Variance filed herein by the property owner, Towson Commons Limited Partnership (hereinafter "TCLP"). TCLP proposes to construct a mixed use facility onsite, consisting of retail, office, restaurant, and theatre uses. In order to develop their plan, they request:

(1) A variance from the front yard setback requirements of Section 235.1, Baltimore County Zoning Regulations (hereinafter "B.C.Z.R."), to permit a front yard setback along Pennsylvania Avenue of as close as 0 feet, in lieu of the required 15 feet;

(2) A variance from the side yard setback requirements of Sections 235.2 and 232.2, B.C.Z.R., to permit a corner lot side yard setback along York Road of 4 feet, in lieu of the required 10 feet;

(3) A variance from the height limitations of Sections 235B.5, 234, and 231.d, B.C.Z.R., to permit 125 square feet of the building wall facing Pennsylvania Avenue and adjacent to the existing buildings at 17 West Pennsylvania Avenue to project above a plane sloping inward and upward from the lot line at 1 foot of horizontal distance for each 7.5 feet of vertical distance; and

(4) A variance from the amenity open space requirements of Section 235B.4, B.C.Z.R., to permit 22,880 square feet of amenity open space, in lieu of the required 39,943 square feet.

The matter arrives at the Board on these issues on appeal from the decision of the Deputy Zoning Commissioner which granted the variances, with restrictions, on November 14, 1989. Following that decision, an appeal to the Board was timely filed by Leroy Y. Haile Corporation, Inc. (hereinafter "Haile"); Knollwood-Donnybrook Improvement Association (hereinafter "Knollwood-Donnybrook"); Northeast Towson Improvement Association; and that citizen group known as ACCORD. Subsequently, the appeals by Northeast Towson Improvement Association and ACCORD were voluntarily dismissed; thus, only Haile and Knollwood-Donnybrook remain as Appellants. It is also to be noted that this

project's CRG approval under Case No. CBA-89-165 had been appealed by 17 West Pennsylvania Limited Partnership and Mr. Arthur Kutcher, individually. However, these appeals were likewise dismissed prior to the Board's taking testimony, thereby leaving only the variance appeals at issue.

Before reviewing the extensive testimony and evidence which were offered during the 5 days of hearing before this Board, a statement of the law to which this Board is bound is appropriate. In considering the variances requested, the Board is obligated to apply the standards stated in Section 307 of the B.C.Z.R. In its entirety, Section 307.1 of the B.C.Z.R. reads as follows:

> "The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from offstreet parking regulations and from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, offstreet parking, or sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for such variance." (emphasis added)

The practical difficulty or unreasonable hardship guideline imposed by this regulation has been thoroughly examined and discussed by the appellate courts of this State. In Loyola Federal Savings & Loan Association v. Buschman, 227 Md. 243, 176 A.2d 355 (1961), the Court of Appeals considered this identical regulation. In fact, the Court in that case considered certain variances for

the Loyola Federal Building, which is but a stone's throw from the subject site in central Towson. As the Court noted: "Section 307 of the Regulations uses the two terms [practical difficulty or unreasonable hardship] in the disjunctive." Loyola Federal, p. 358. Thus, by the use of the term "or," Section 307 offers the Petitioner an opportunity to obtain its variance upon satisfaction of either the undue hardship or practical difficulty standard.

The distinction between these standards was clarified by the Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974). Within that opinion, the Court held that the undue hardship standard applies to a petition for a use variance. The Court noted that a use variance, which permits a use on the property other than that specifically permitted in that particular district, requires the imposition of a higher standard. That is, to allow the change of use for a particular property requires the Petitioner to demonstrate real hardship, where the land cannot allow a reasonable return if used only in accordance with the use restrictions of the ordinance.

Compared with this heavy burden, the Court reviewed the practical difficulty standard applicable for area variance. The Court characterized area variances as having a much less drastic effect than use variances; in that they seek relief only from height, area, density, setback, or side line restrictions and would not affect the property's use, per se. Because the Court envisioned the impact of area variances on the surrounding locale to be less than that generated by use variances, the lesser practical difficulty standard applies. The prongs of that standard which must be satisfied by the Petition, as enunciated in Anderson, supra, are as follows:

> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage,

height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."
Anderson, p. 39. See also McLean v. Soley, 270 Md. 208 (1973) at pps 214-215

It also follows from a review of Section 307 of the B.C.Z.R. and these cases that the mere application for a variance does not establish, prima facie, that the Petitioner is seeking relief contrary to the spirit and intent of the zoning regulations. Rather, the requested relief is from the strict terms of those regulations. Petitions for variances constitute a legislatively approved mechanism for a property owner to obtain relief from the hard and fast provisions of the ordinance. The protestants herein often suggested that the mere filing of the Petitions for Variance by TCLP constituted a deviation from the spirit and intent of the zoning regulations which were established to regulate orderly development in the County, and, as such, should be denied. This is simply not so. A request for variance seeks relief from the strict terms of the regulations, is wholly permissible, and should be granted when the property owner satisfies the practical difficulty standard described above.

Turning to the record before us gathered over 5 hearing days, suffice it to say there was extensive testimony both in support of and against the project. The testimony is, of course, contained within the record transcript of the case and what the parties considered crucial is contained within

their Memorandums. Although a detailed synopsis is impossible, a brief review of the salient testimony is in order.

The Board heard from Dean Lopez, a Vice President of LaSalle Partners (a principal in TCLP) and project manager for this site. He presented an overview of the project which he descirbed as containing 190,000 rentable square feet of office use and 100,000 square feet of retail use. He also discussed the evolution of this project and described the efforts made by the property owner to develop Towson Commons in accordance with the terms of the B.C.Z.R. without the need for variances. He specifically described the original proposal; which provided for a ten-story office building and ten theatre screens, and how the plan had been reduced in magnitude and reconfigured to its current version, consisting of an eight-story office complex and eight theatre screens. He opined that the project with its proposed setbacks is compatible with the surrounding locale and that the front yard and side yard setback variances are needed to achieve the desired goal of orienting the retail use toward the adjacent streets.

Lehr Jackson, a retail development expert and a member of TCLP's project team, discussed the retail aspect of the proposed development. Again, he discussed the importance of the project's orientation along Pennsylvania and Chesapeake Avenues and York Road. In order to achieve a continuous flow of appealing retail use, he concurred that the setback variances were necessary.

The Board also received extensive testimony from the project architect, Ron Henderer. He discussed the unique nature of the site, including the sloping of the land in a southerly direction and the rock and water formations underground. He also discussed what he viewed as the impossibility of realigning the office and retail complex to comply with the strict terms of the existing

setback requirements. In his view, such a realignment would prohibit the placement of the theatres as presently proposed and would disrupt the retail configuration. He also stated that strict compliance with the terms of the B.C.Z.R. would cause a loss of viability of the entire project.

Leslie H. Graef, the Executive Director of the Towson Development Corporation, also testified. In his view, the project is "in scale" and appropriate. In his view, "when one looks at the whole project and all of the benefits...one makes a judgement that the variances are minor."

Baltimore County's Director of Economic Development, Richard W. Story, also expressed the County government's approval and enthusiasm for the project. He believes that the project will promote tourism, business and community interests.

Jon Bortz, Senior Vice President of LaSalle Partners, also testified. He echoed much of the testimony of Mr. Lopez. His testimony was significant in that it concentrated on his view that the success or failure of the entire project depended on the mix of office/retail use as shown on the Petitioners' plan. In his view, the viability of the retail/office use proposed here rests upon the configurations of the various components which exist within the project as a whole. If any of these components were altered, the project as a whole would no longer be workable. He opined that the current plan offered the minimum deviation from the strict standards of the B.C.Z.R. which would be practical.

George Gavrelis, a land planning expert employed by the firm of Daft, McCune & Walker, also testified extensively. He described the evolution of the development of that project to be known as Towson Commons, and opined that strict compliance with the B.C.Z.R. would be unnecessarily burdensome. He

also averred that the project would not adversely impact the surrounding area. In this witness's view, the mixed use proposal before the Board could not survive without the variances.

Jack Finkelstein, a retail merchant whose establishment neighbors the surrounding property, also testified. He described the merchant/retail history of Towson and expressed his support for the reinvigoration which this project would bring to the Towson retail core.

Lastly, on behalf of the Petitioners, the Board heard from Barbara Zenker, the Director of Real Estate for General Cinema Theatres. She discussed the requirements of her organization to participate as a tenant in Towson Commons. Presently, her company intends to lease and operate the theatres in Towson Commons. On behalf of her company, she voiced the requirement that any further reduction or realignment of the theatres would cause her company to withdraw from participating in the project. She described how the number of screens proposed has been reduced from ten to eight from the original plan and that any further reductions would be unacceptable. Although she could not describe any mathematical formula which her company employed in determining whether to lease theatres in Towson Commons, she explained the intuitive process used by General Cinemas in making this decision. We are not troubled by the lack of any mathematical formula. Quite simply, it is enough, when considering the case before us, that General Cinemas' position is well-founded on marketing and retail theatre expertise.

On behalf of the protestants, a number of witnesses appeared. They included Leroy Y. Haile, Jr., the principal in the Appellant, Haile Corporation. Mr. Haile described the history of his long-time association with Towson. He also expressed his opposition to Towson Commons. In his view, the size of the

proposed project is objectionable and overwhelming. As with the other protestants, however, Mr. Haile acknowledged the need for retail/office rebirth in the Towson core, but objected to the scale and scope of the proposal presented.

Other witnesses appeared and testified on behalf of the protestants. These included Richard Parsons, who lives in West Towson and is employed by the Baltimore County Public Library; Jean Duvall, of Rodgers Forge; Michael A. Miller, of Northeast Towson; Ruth Cullison, an opponent of the urbanization of Towson; Diane Carliner; and John Latrobe. All of these witnesses voiced similar objections. These protestants all expressed their desire that the Towson environment continue in its present state, and that urbanization and over-development should be discouraged. As we have previously stated within this Opinion, although we admire and respect these sentiments, they are not germaine to the narrow issue before us.

Testimony which we deem relevant from the protestants was offered by George Holback and Arthur Kutcher. Mr. Holback, a registered architect, suggested alternatives which the property owner might adopt in order to achieve the desired mixed use and comply with the zoning regulations. Although, on their face, many of these alternatives seemed reasonable, their viability was not established. On cross-examination, for example, Mr. Holback admitted his naiveté regarding motion picture theatres, marketing strategies, and certain mechanical engineering considerations. Thus, we must question whether these alternatives are practical within the context of the proposed Towson Commons development.

Mr. Kutcher's testimony was also interesting. He has an extensive background in urban planning and designing, as well as architecture. Mr. Kutcher's chief concern with the project as proposed was a fear that it was

incompatible with the surrounding locale. He specifically objected to the width and breadth of that portion of the project which included the theatre operations. In his view, construction of the project as proposed would create a "sunless trench" in the center of Towson. He also felt that the large and imposing 20th Century structure which comprises Towson Commons was not consistent with the 19th Century architecture which comprises much of Towson's core. Again, however, we note Mr. Kutcher's unfamiliarity with the specifics of the proposed project.

In reviewing the evidence before us, the Board gave due consideration to the demeanor and credibility of the witnesses presented. Overall, we were impressed with the detail-oriented testimony offered by the Petitioners and their approach to the inter-dependent requirements of the components which encompass Towson Commons. Although we appreciate the testimony of the protestants, it is of note that that testimony centered upon the aesthetic impact of the project on central Towson. We did not hear from the protestants competent and knowledgeable testimony which was sufficiently detail-oriented as to the particulars of this project. However, we do find as fact that the Petitioners have met their burden of proof.

Applying the law previously set forth to the testimony presented, we make the following findings:

1) As to the variances from the height limitation of 235B.5, 234, and 231.d of the B.C.Z.R., we are persauded that they should be granted. The variance in this instance is minute in nature when compared with the entire project. It requests relief only from a small slice from the plane which slopes inward and upward from the lot line. Granting of same is warranted under the Anderson, supra, test.

2) As to the setback requirements for the front and side yards, we are also persuaded that they should be granted. Applying the tenents expressed in Anderson, supra, and McLean, supra, we believe that adherence to the strict provisions of the B.C.Z.R. would be unnecessarily burdensome to the property owner for the reasons set forth by Mr. Gavrelis. As to the other prongs offered in Anderson, supra, we believe that they too are satisfied. Evidence offered established that the project as contemplated is less in size and scope than would be permitted under the zoning regulations. The record of the case before us also overwhelmingly establishes that the zoning assigned to this locale promotes intensive office/retail use. Based upon the competent and uncontradicted testimony offered by Ms. Zenker and Mr. Bortz, we concur that this project, as presented, could not go forward if the variances were not granted. This would cause substantial injustice to the applicant as well as to the property owners in the Towson area, such as Mr. Finkelstein, who are relying on a new infusion of commercial activity into central Towson to save the decaying present business climate. Lastly, we believe that the spirit of the B.C.Z.R. will be observed and the public safety and welfare secured.

3) As to the amenity open space variance, we are also persuaded that this should be granted. At first blush,

the variance appears to be significant in that TCLP offers only 22,880 square feet of amenity open space in lieu of the required 39,943 square feet. This significant difference of approximately 57 percent could be interpreted to be overwhelmingly deficient of what is required and therefore the variance should be denied. However, an examination of the Towson Commons project as a whole, as provided within the framework of the testimony of Messrs. Gavrelis, Bortz, and Henderer is appropriate. As proposed, the Towson Commons project orients retail space towards the exterior street. By employing this configuration, which in our view enhances the overall aesthetic appearance and compatibility with the neighborhood, the opportunity for the Petitioners to obtain additional amenity open space is reduced. The Petitioners' arguments about the quality of the open space are also well-reasoned. After applying the three-pronged test in Anderson, supra, we believe that the variance should be granted. Strict compliance with the open space requirement would be unduly burdensome on the property owner, and, as stated previously, the proposal's scheme and design are consistent with the locale.

For the aforegoing reasons, the Board shall approve the Petitions for Variance, with restrictions, and will so order.

ORDER

Therefore, it is this 23rd day of March, 1990 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Variance from the front yard setback requirements of B.C.Z.R. Section 235.1 (permitting setback as close as 0 feet in lieu of the required 15 feet); that the Petition for Variance from side yard setback requirements of B.C.Z.R. Sections 235.2 and 232.2 (permitting side yard setbacks of 4 feet in lieu of the required 10 feet); that the Petition from the height limitations of B.C.Z.R. Sections 235B.4, 234, and 231.d (permitting 125 square feet of building wall facing Pennsylvania Avenue to project above a plane sloping inward and upward from the lot line); and that a variance from the amenity open space requirements of B.C.Z.R. Section 235B.4 (permitting 22,880 square feet of amenity open space in lieu of the required 39,943 square feet) all be and are hereby GRANTED subject to the following restrictions:

1. The Petitoner shall landscape the property in accordance with and as required by the Baltimore County Landscaping Manual and as may be required by the Director of Planning and Zoning and the landscaping planner.

2. All signs and the scoring pattern in the brick and concrete at the entrances to the property shall be submitted to the Office of Planning for approval prior to construction.

3. That the final landscaping plan shall be maintained at all times by Petitioners and/or subsequent property owners.

4. The Petitioners shall implement, at their expense, any improvements as may be required by the State Highway Administration and/or

the Baltimore County Bureau of Traffic Engineering to assure safe pedestrian travel at the intersections of York Road and Pennsylvania Avenue, and York Road and Chesapeake Avenue;.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

Michael B. Sauer

John G. Disney

LEROY Y. HAILE, INC.

Appellant

IN THE MATTER OF THE APPLICATION OF TOWSON COMMONS LIMITED PARTNERSHIP

vs.

TOWSON COMMONS LIMITED PARTNERSHIP,

Appellee

TOWSON COMMONS #90-130-SPHA CIRCUIT COURT
AFFIRMED C.B. of A. (Judge Levitz)

IN THE

CIRCUIT COURT

FOR BALTIMORE COUNTY

Case No. 90CG1513

79/313

* * * * * * * * * *

OPINION OF COURT

This matter comes before the court on the appeal by Leroy Y. Haile, Incorporated from the decision of the Board of Appeals dated March the 23rd, 1990 granting three zoning variances, specifically a variance of the Pennsylvania Avenue setback requirement, a variance from the York Road setback requirement, and a variance from the amenity open space requirement of the Zoning Code. The Board of Appeals heard five days of testimony regarding these variances. After hearing that testimony the Board issued a written opinion extensively detailing their decision.

Upon an appeal to this court this court's function is to determine whether that decision was arbitrary, capricious, without substantial justification or illegal. This court does not decide conflicts in testimony. This court does not

FILED MAY 21 1990

True Copy Test
SUZANNE Mitchell, Clerk
Diane Fisher
Assistant Clerk

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PETITIONER'S EXHIBIT NO. 6

substitute its judgment for the judgment of the Board of Appeals. It's difficult for me to review the record in this case and understand how there can be a legitimate question about the substantial evidence being presented to the Board.

The variances granted in this case involve a 15 foot variance regarding the Pennsylvania Avenue setback, a six foot variance regarding the York Road setback, a modest variance regarding the amenity open space requirement. In short, the variances granted in this case are certainly minimal and modest. They are area variances, not use variances. There is extensive evidence in the record showing extreme practical difficulty of the developer if these variances are not granted. There is extensive evidence in the record to show that the three variances granted were based not upon mere economic loss of profit, with the emphasis being on the word mere, but upon other substantial evidence.

Parenthetically, it is difficult for this Court to accept the statement made by Appellant's counsel regarding the motivation for the Appellant's spending of thousands of dollars to protest these minimal variances. Regardless of what the motivation of the Appellant is for the filing and the prosecuting of these appeals, both to the Board of Appeals and to this court and who knows where else, it is this Court's view that this case is not difficult to decide based on the extensive record created by the Board of Appeals.

The Board's decision is not arbitrary. The Board's decision is not capricious. The Board's decision is with substantial justification. And the Board's decision is legal. This court therefore orders that the decision of the Board of Appeals be affirmed, and I am issuing that opinion as of this minute. The appeal of the appellant is therefore denied. Costs to be paid by the appellant. That concludes the matter.

4/17/90
Date

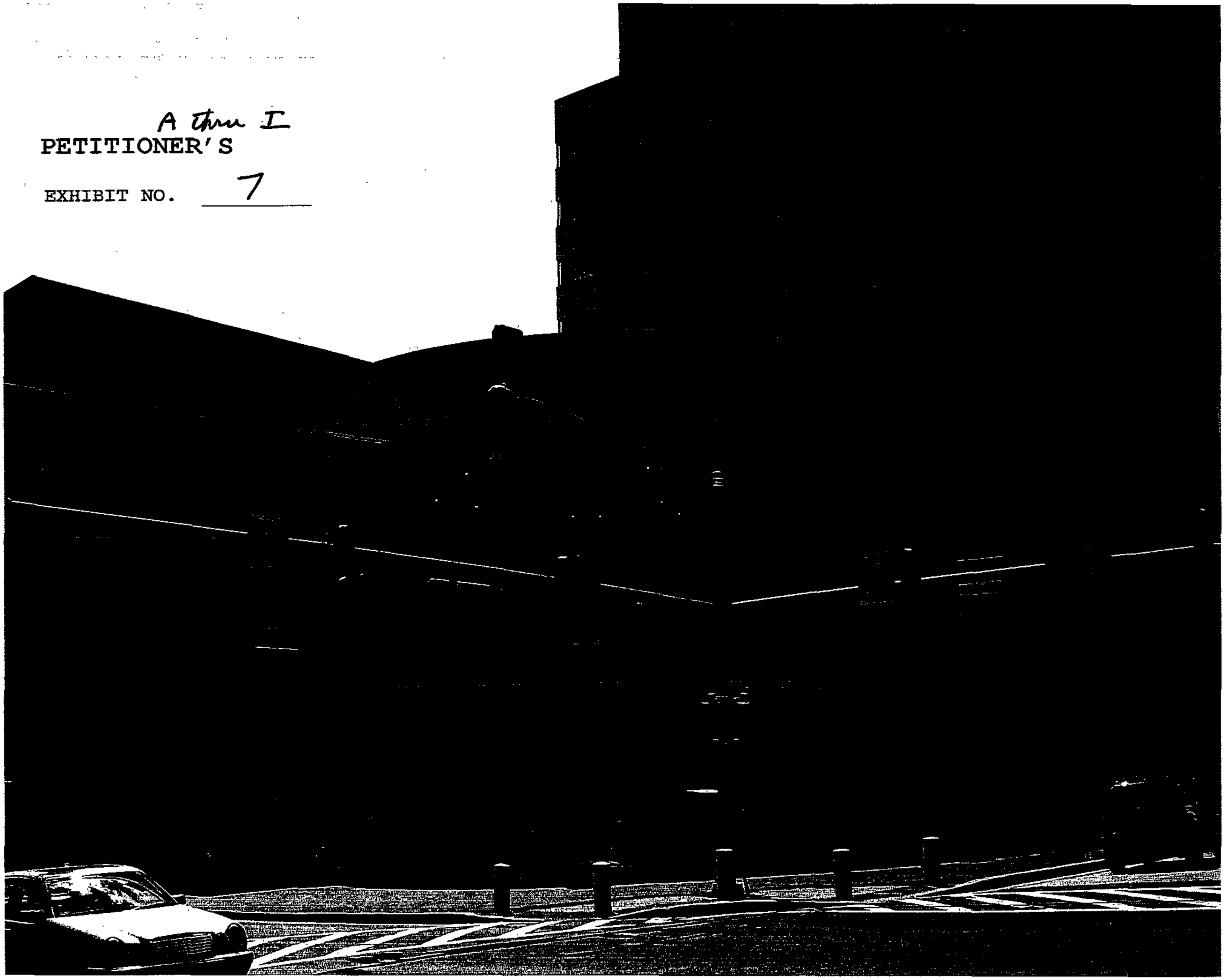
DANA M. LEVITZ, JUDGE

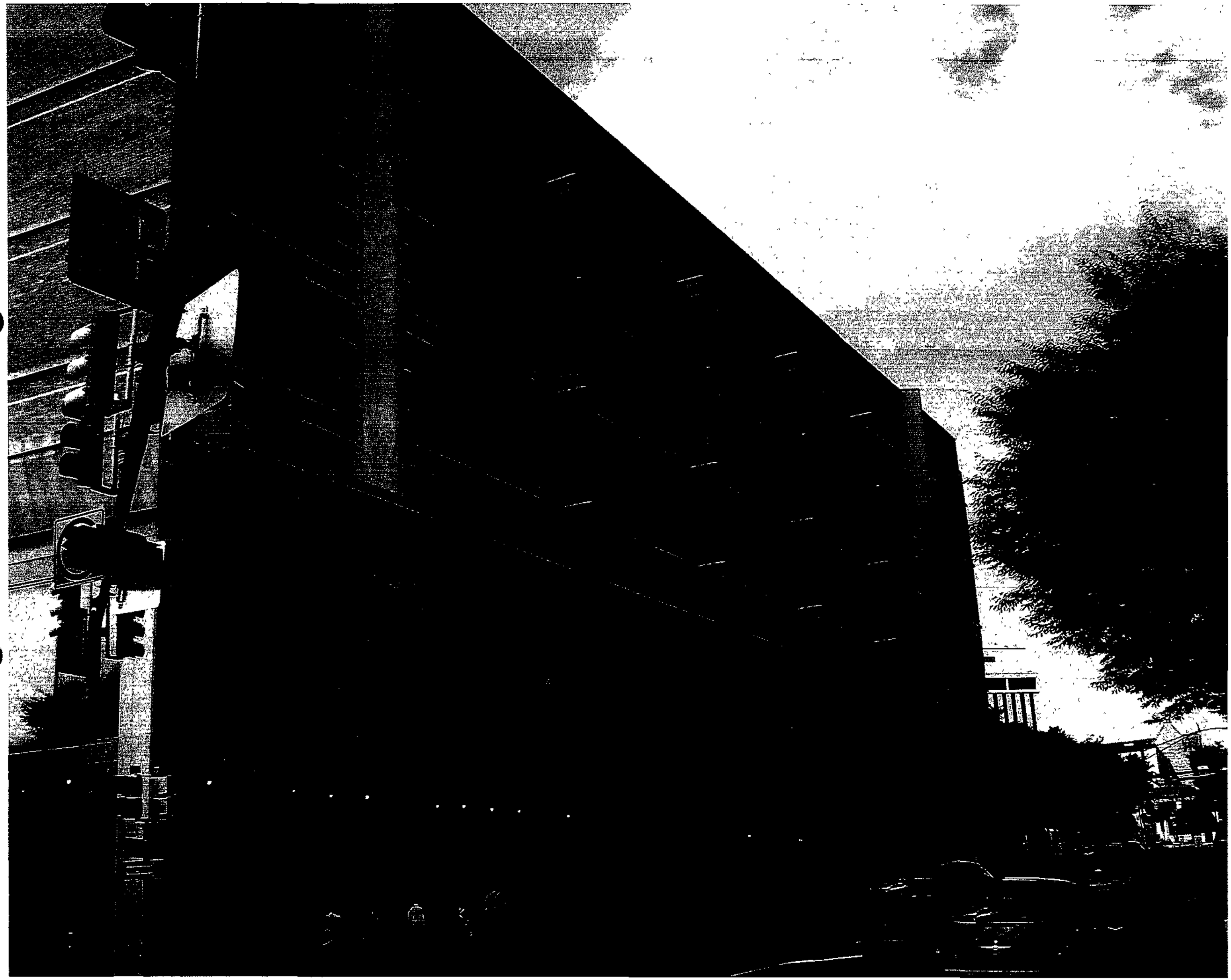
Copies to: Rudolph E. DeMeo, Esq.
Cynthia M. Hahn, Esq.

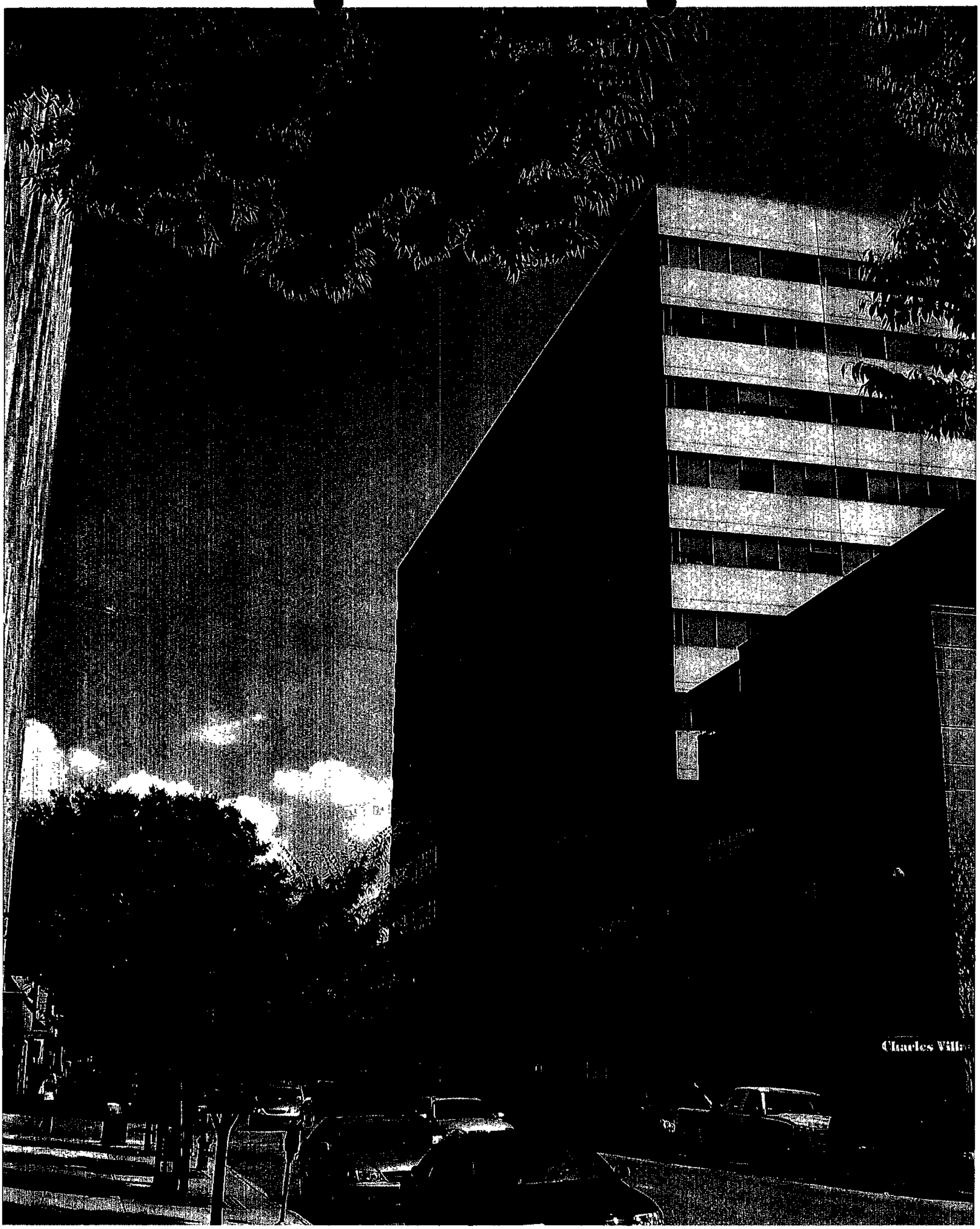
A thru I

PETITIONER'S

EXHIBIT NO. 7



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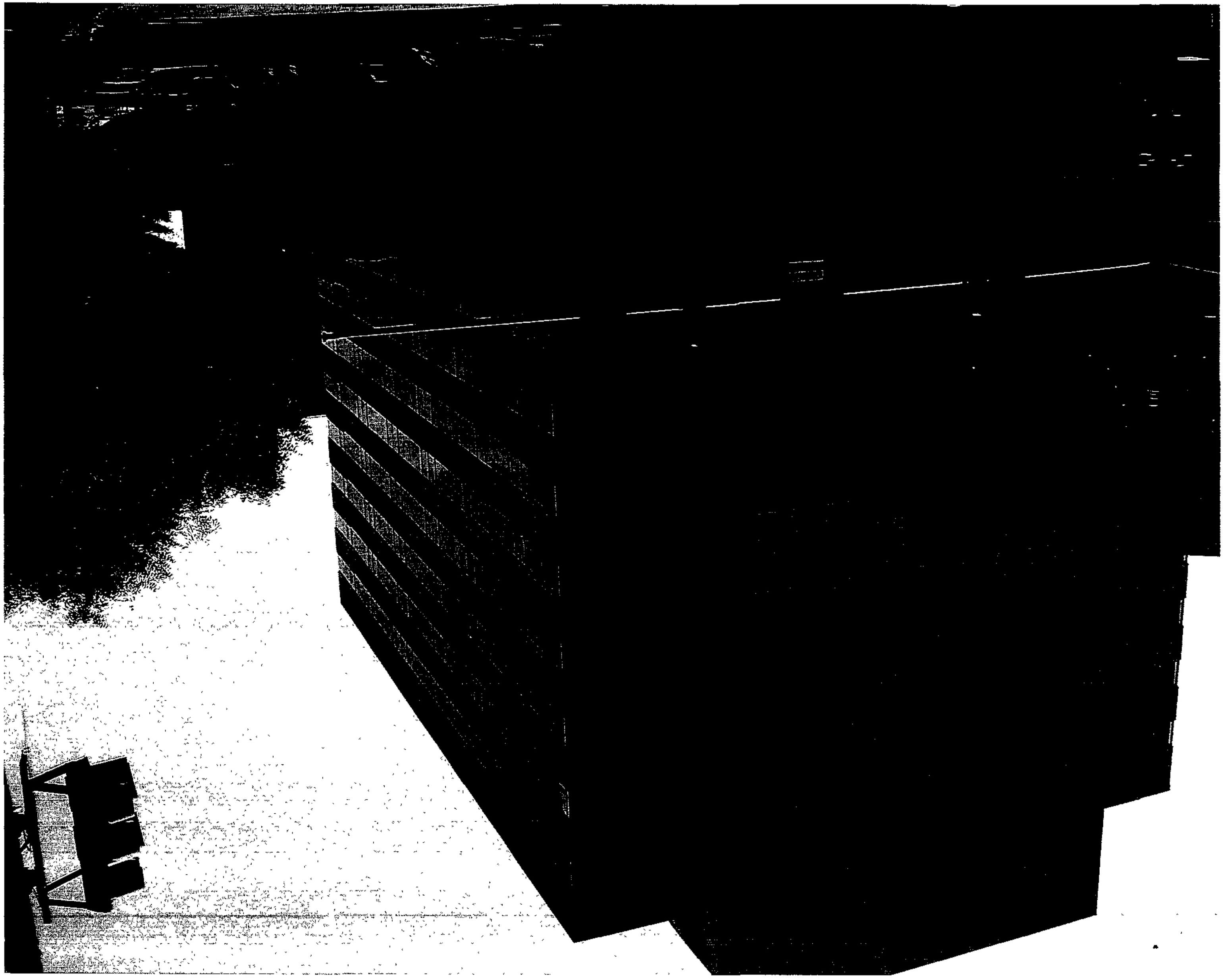

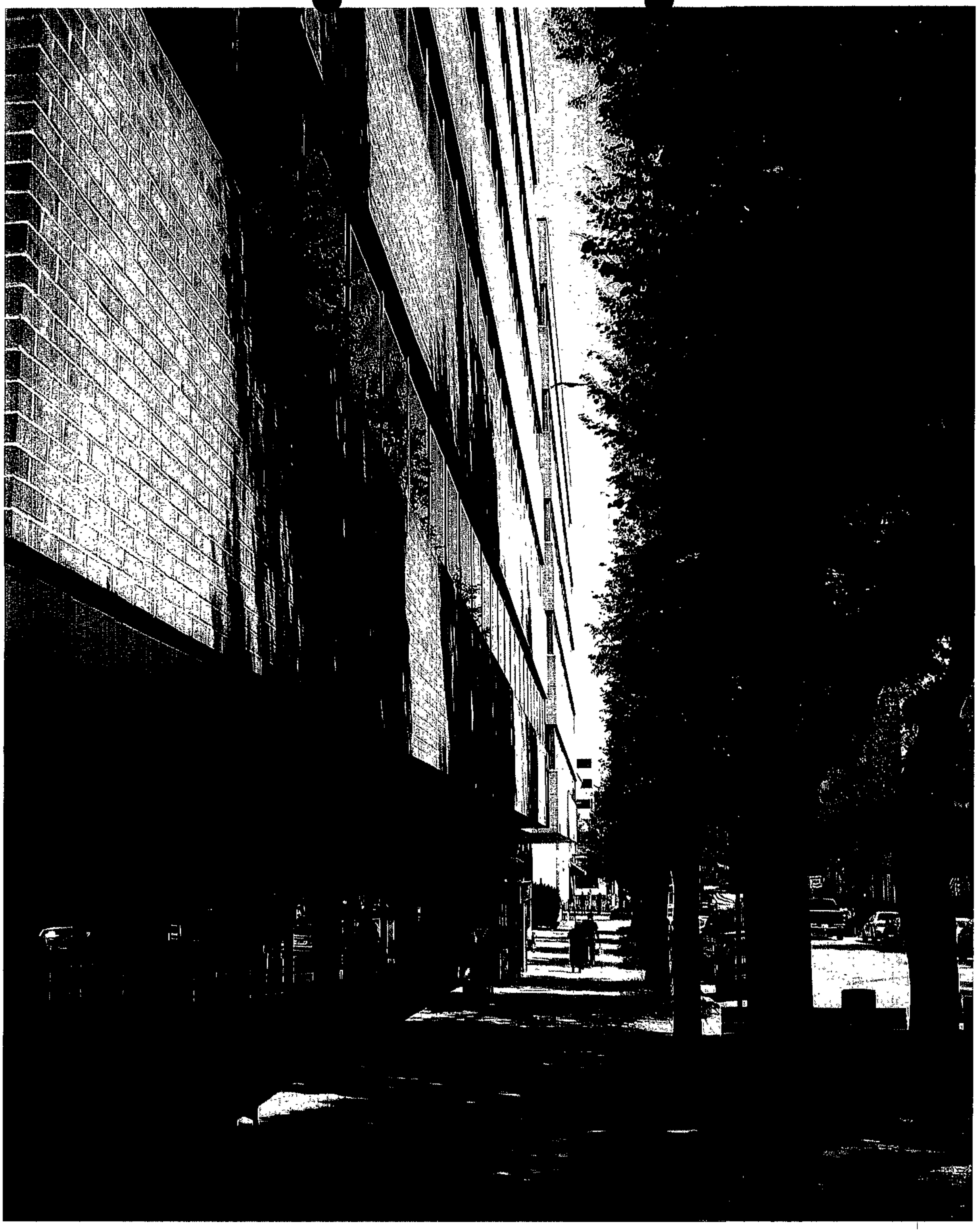

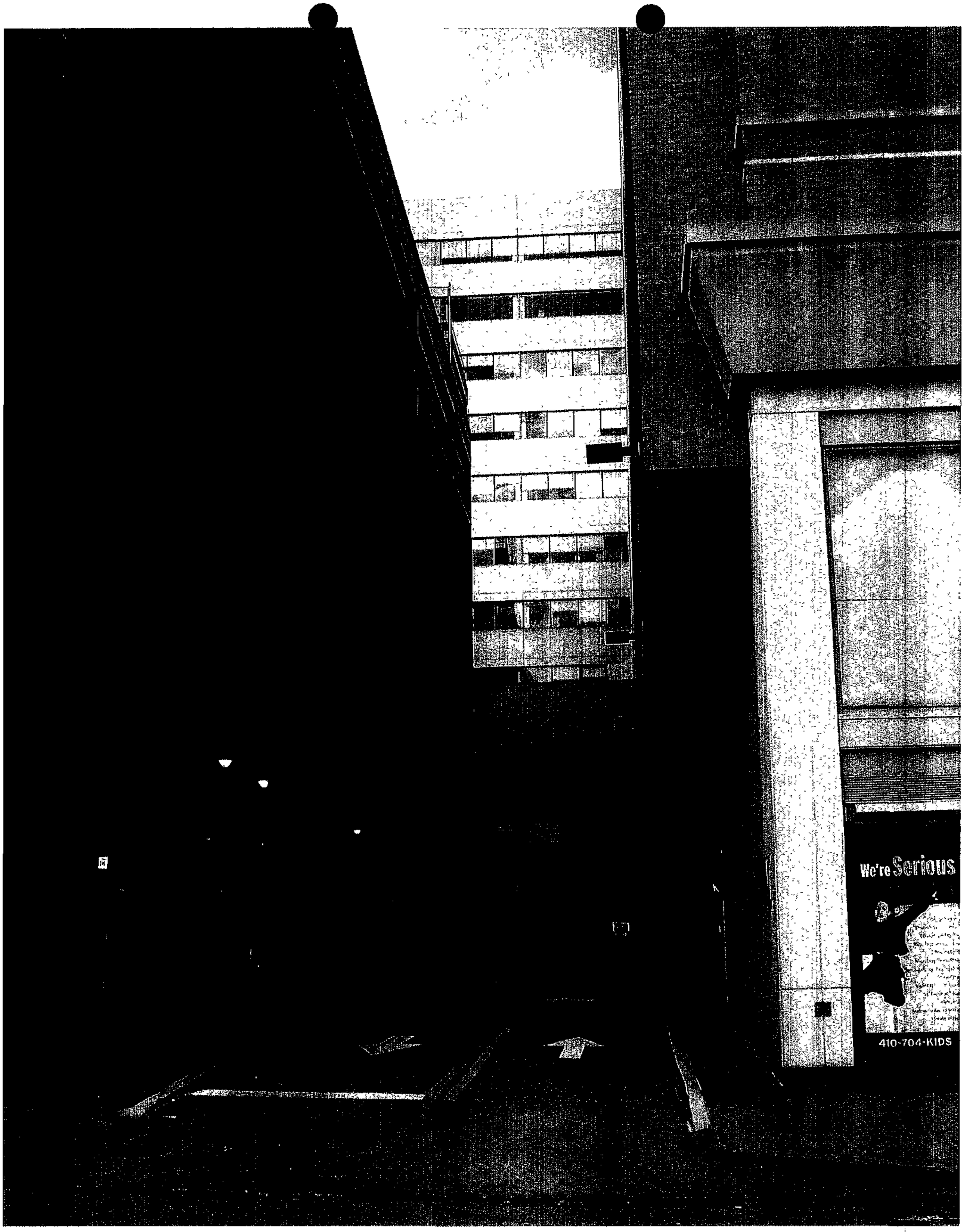
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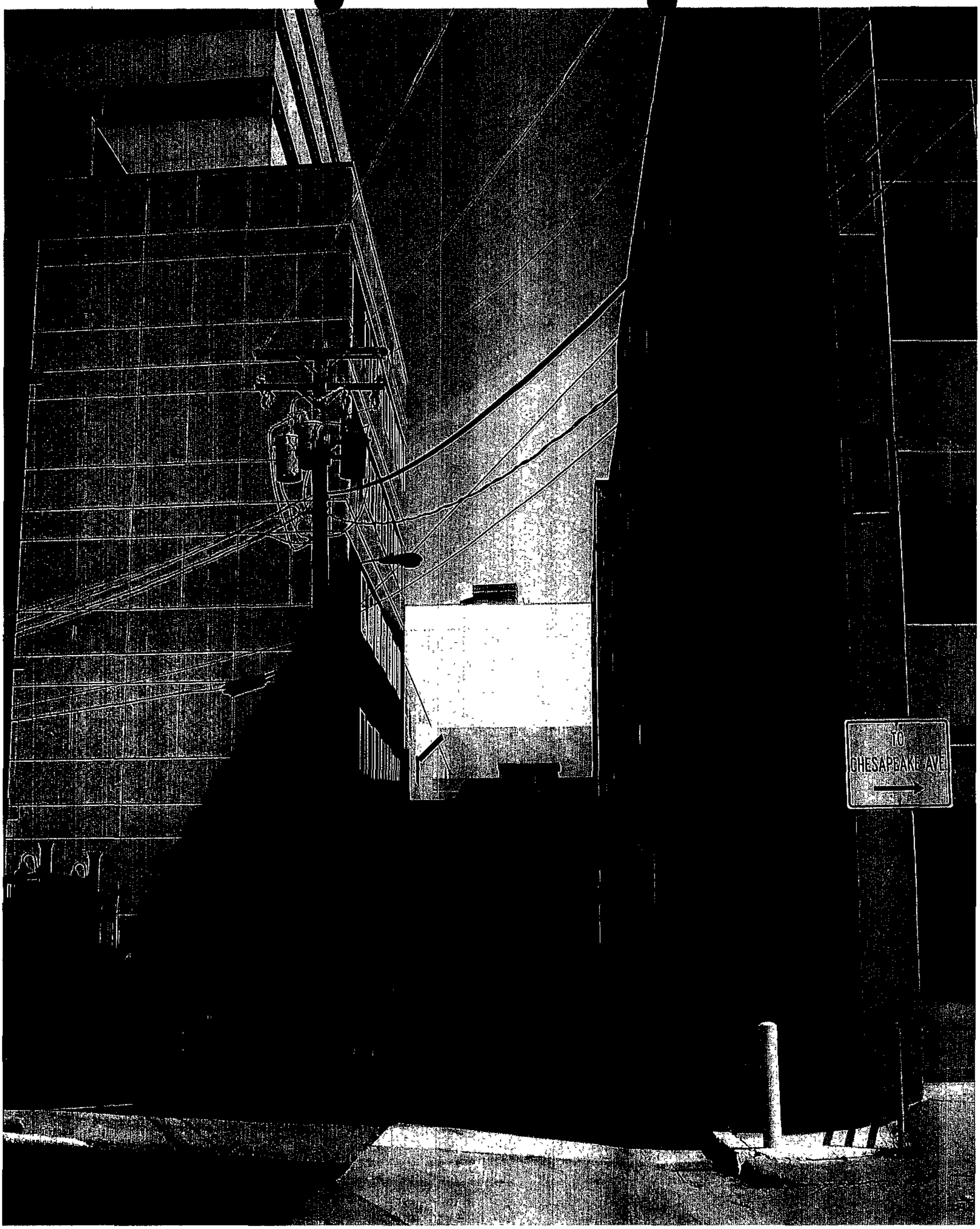
TO
CHESAPEAKE AVE

ABW 8/24
06-667-SPH

The Greater Towson Council of Community Assoc., Inc

GTCCA

Online at: www.gtcca.org

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AUG 15 2006

ZONING COMMISSIONER

August 9, 2006

William J. Wiseman, III
Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson MD 21204

Re: Case No.: 06-0667-SPH - Towson Commons
401-435 York Road, 40 W. Chesapeake Avenue & 10 W. Chesapeake Avenue

Dear Mr. Wiseman:

I am writing to you to express our organization's support of the Petition for Special Hearing for the Towson Commons complex. A petition has been filed to confirm the maximum permitted building area for the existing and proposed improvements.

We commend Western for opting to follow an open, public process, when an amendment to the CRG was available to them. This project will undoubtedly affect Towson and the surrounding communities for years to come, and we appreciate Western's willingness to make the community a participant in the process. GTCCA understands Western and its lenders need to confirm the maximum permitted building area in order to finance a project of this scale. As such, filing a Petition, in lieu of simply asking for an opinion/verification letter further demonstrates a willingness to work with the community.

GTCCA understands that the Towson Commons project will be subject to an array of issues as this redevelopment proceeds through the regulatory approval process including Design Review Panel.

In conclusion, the GTCCA applauds Western for opting to make the community part of the process and supports its Petition for Special Hearing.

Sincerely,

Michael P. Ertel
President

cc: Councilman Vincent J. Gardina
Harvey S. Brooks, Jones Lang LaSalle
David K. Gildea, Esquire

PETITIONER'S
EXHIBIT NO. 8

GILDEA & SCHMIDT, LLC

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TELEPHONE 410-234-0070
FACSIMILE 410-234-0072
www.gildeallc.com

TOWSON, MD OFFICE
220 BOSLEY AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 410-337-7057

August 29, 2006

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

Re: Towson Commons
401-435 York Road, 40 W. Chesapeake Avenue & 10 W. Chesapeake Avenue
Request for Exemption
Case No.: 06-677-SPH

Dear Director Kotroco:

The above referenced properties, the subject of Case No. 06-677-SPH, are zoned B. M. (Business Major), with the C. T. (Commercial Town center core) district designation. More specifically, the subject properties lie within the C. T. District of Towson boundaries, as set forth in Section 235B.7.A of the Baltimore County Zoning Regulations ("BCZR")(see Exhibit 1). Attached hereto please find a copy of a zoning map showing the subject properties' orientation within the C. T. District of Towson, and that the proposed building lots do not abut any residential zone lines (see Exhibit 2). The proposed plan is a redevelopment of an existing project for which setback variances have previously been granted. Attached hereto please find a copy of the Opinion in Case No. 90-130-SPHA (see Exhibit 3).

In accordance with BCZR Section 235B.7.C, the Director of Permits and Development Management shall exempt the proposed development from any required front, side or rear yard setback, or any setback from the center line of any street, or any building height limitation upon finding that the proposed development meets the requirements of BCZR Section 235B.7.A. The Director shall certify the exemption in writing and file a copy of the certification with the Zoning Commissioner.

PETITIONER'S
EXHIBIT NO. 9

Please certify the following:

1. The proposed development is located in that portion of the C. T. District of Towson bounded by the streets noted in BCZR Section 235B.7.A; TMK

2. The proposed building lot does not abut any residential zone line; and TMK

3. The proposed plan is a redevelopment of an existing project for which setback variances have previously been granted. TMK

Should you require any additional information in finding that the proposed development meets the requirements of BCZR Section 235B.7.A, please notify the undersigned.

Very truly yours,

David K. Gildea

HEREBY CERTIFIED:

Timothy Kotroco

Timothy M. Kotroco
Director
Department of Permits and Development Management

CC: William J. Wiseman, III, Zoning Commissioner for Baltimore County
Michael J. Ertel, Greater Towson Council of Community Associations, Inc.
Richard Parsons, Greater Towson Council of Community Associations, Inc.
Joyce Storm, JSS Advisors
Gene Sisco, JSS Advisors
Bradford H. Dockser, Western Development Corporation
William Monk, Morris & Ritchie Associates, Inc.
Harvey S. Brooks, Jones Lang LaSalle
Lawrence E. Schmidt, Esquire
Jason T. Vettori, Esquire

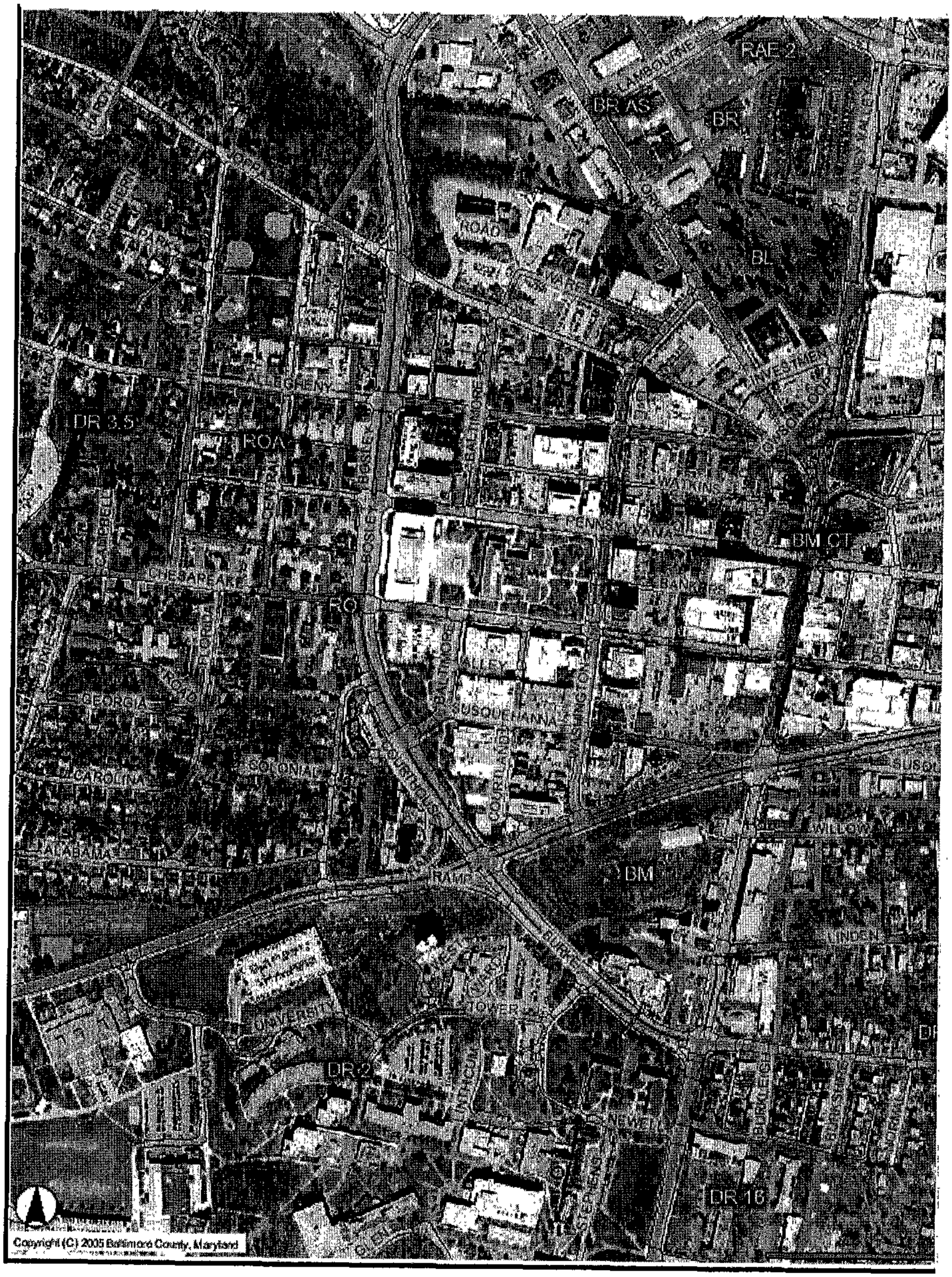
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EXHIBIT 1

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EXHIBIT 2

IN THE MATTER OF THE APPLICATION OF TOWSON COMMONS LIMITED PARTNERSHIP FOR A SPECIAL HEARING AND VARIANCES ON PROPERTY LOCATED ON THE WEST SIDE YORK ROAD BETWEEN SOUTH SIDE OF PENNSYLVANIA AVENUE AND THE NORTH SIDE OF CHESAPEAKE AVENUE 9th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	: : : : : : : : : :	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 90-130-SPHA

COPY

: :

O P I N I O N

In the subject case, the Board is called upon to decide the future of a Towson property of approximately 2.26 acres in gross area. Although this parcel is small when compared with the vast acreage which comprises Baltimore County, the effect of our decision will be far-reaching because of the particular location of the property. Specifically, the site is situated in the middle of the seat of County government and fronts along the west side of York Road, between West Pennsylvania and West Chesapeake Avenues.

The development of this property into the retail/office mixed project to be known as Towson Commons represents a significant cornerstone in the future appearance of Towson. It has been alternatively described by the witnesses before us as "a magnet" for revitalization, "a catalyst" for reinvigoration, and "a centerpiece" for the Towson of the 21st Century. To the litigants, the future of Towson hangs in the balance. As to its past, the long and remarkable history of Towson was documented throughout the 5 days of the Board's hearing of this case. There can be no doubt that Towson, the County seat for Baltimore County and center of much of the County's governmental and business activity, is a desirable and vibrant locale whose integrity must be protected. There can be no question that the residential communities which surround the Towson government/business center are among the most desirable in the State. The impact of Towson Commons on these residential communities, as well as the

EXHIBIT 3

government and business usage which comprise downtown Towson, is a factor that this Board must weigh carefully. We are not blind to our responsibilities in considering the issues generated by this case, and the impact of our decision on the future generations which will live and work in Towson.

However, all of that being said, the Board must restrict its scope of inquiry to the narrow issues before us. It must be recognized that the Board in this case does not sit as the County Council, the Planning Board, nor in the role we assume when considering a Petition for Reclassification. That is, this case is not about permissible zoning uses; or whether Towson should be a bustling urban center or a more traditional "small town" community. The zoning for this property and the uses permitted thereon as of right under that zoning have been predetermined. Whether Towson adopts a high visibility night-life agenda or whether it retains its present character is not for this Board to decide. Those decisions will be made by the elected officials of this County after input by the citizens thereof and governmental staff.

Rather, our narrow focus is the four Petitions for Variance filed herein by the property owner, Towson Commons Limited Partnership (hereinafter "TCLP"). TCLP proposes to construct a mixed use facility onsite, consisting of retail, office, restaurant, and theatre uses. In order to develop their plan, they request:

(1) A variance from the front yard setback requirements of Section 235.1, Baltimore County Zoning Regulations (hereinafter "B.C.Z.R."), to permit a front yard setback along Pennsylvania Avenue of as close as 0 feet, in lieu of the required 15 feet;

(2) A variance from the side yard setback requirements of Sections 235.2 and 232.2, B.C.Z.R., to permit a corner lot side yard setback along York Road of 4 feet, in lieu of the required 10 feet;

(3) A variance from the height limitations of Sections 235B.5, 234, and 231.d, B.C.Z.R., to permit 125 square feet of the building wall facing Pennsylvania Avenue and adjacent to the existing buildings at 17 West Pennsylvania Avenue to project above a plane sloping inward and upward from the lot line at 1 foot of horizontal distance for each 7.5 feet of vertical distance; and

(4) A variance from the amenity open space requirements of Section 235B.4, B.C.Z.R., to permit 22,880 square feet of amenity open space, in lieu of the required 39,943 square feet.

The matter arrives at the Board on these issues on appeal from the decision of the Deputy Zoning Commissioner which granted the variances, with restrictions, on November 14, 1989. Following that decision, an appeal to the Board was timely filed by Leroy Y. Haile Corporation, Inc. (hereinafter "Haile"); Knollwood-Donnybrook Improvement Association (hereinafter "Knollwood-Donnybrook"); Northeast Towson Improvement Association; and that citizen group known as ACCORD. Subsequently, the appeals by Northeast Towson Improvement Association and ACCORD were voluntarily dismissed; thus, only Haile and Knollwood-Donnybrook remain as Appellants. It is also to be noted that this

project's CRG approval under Case No. CBA-89-165 had been appealed by 17 West Pennsylvania Limited Partnership and Mr. Arthur Kutcher, individually. However, these appeals were likewise dismissed prior to the Board's taking testimony, thereby leaving only the variance appeals at issue.

Before reviewing the extensive testimony and evidence which were offered during the 5 days of hearing before this Board, a statement of the law to which this Board is bound is appropriate. In considering the variances requested, the Board is obligated to apply the standards stated in Section 307 of the B.C.Z.R. In its entirety, Section 307.1 of the B.C.Z.R. reads as follows:

> "The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from offstreet parking regulations and from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, offstreet parking, or sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for such variance." (emphasis added)

The practical difficulty or unreasonable hardship guideline imposed by this regulation has been thoroughly examined and discussed by the appellate courts of this State. In Loyola Federal Savings & Loan Association v. Buschman, 227 Md. 243, 176 A.2d 355 (1961), the Court of Appeals considered this identical regulation. In fact, the Court in that case considered certain variances for

the Loyola Federal Building, which is but a stone's throw from the subject site in central Towson. As the Court noted: "Section 307 of the Regulations uses the two terms [practical difficulty or unreasonable hardship] in the disjunctive." Loyola Federal, p. 358. Thus, by the use of the term "or," Section 307 offers the Petitioner an opportunity to obtain its variance upon satisfaction of either the undue hardship or practical difficulty standard.

The distinction between these standards was clarified by the Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974). Within that opinion, the Court held that the undue hardship standard applies to a petition for a use variance. The Court noted that a use variance, which permits a use on the property other than that specifically permitted in that particular district, requires the imposition of a higher standard. That is, to allow the change of use for a particular property requires the Petitioner to demonstrate real hardship, where the land cannot allow a reasonable return if used only in accordance with the use restrictions of the ordinance.

Compared with this heavy burden, the Court reviewed the practical difficulty standard applicable for area variance. The Court characterized area variances as having a much less drastic effect than use variances; in that they seek relief only from height, area, density, setback, or side line restrictions and would not affect the property's use, per se. Because the Court envisioned the impact of area variances on the surrounding locale to be less than that generated by use variances, the lesser practical difficulty standard applies. The prongs of that standard which must be satisfied by the Petition, as enunciated in Anderson, supra, are as follows:

> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage,

height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."
Anderson, p. 39. See also McLean v. Soley, 270 Md. 208 (1973) at pps 214-215

It also follows from a review of Section 307 of the B.C.Z.R. and these cases that the mere application for a variance does not establish, prima facie, that the Petitioner is seeking relief contrary to the spirit and intent of the zoning regulations. Rather, the requested relief is from the strict terms of those regulations. Petitions for variances constitute a legislatively approved mechanism for a property owner to obtain relief from the hard and fast provisions of the ordinance. The protestants herein often suggested that the mere filing of the Petitions for Variance by TCLP constituted a deviation from the spirit and intent of the zoning regulations which were established to regulate orderly development in the County, and, as such, should be denied. This is simply not so. A request for variance seeks relief from the strict terms of the regulations, is wholly permissible, and should be granted when the property owner satisfies the practical difficulty standard described above.

Turning to the record before us gathered over 5 hearing days, suffice it to say there was extensive testimony both in support of and against the project. The testimony is, of course, contained within the record transcript of the case and what the parties considered crucial is contained within

their Memorandums. Although a detailed synopsis is impossible, a brief review of the salient testimony is in order.

The Board heard from Dean Lopez, a Vice President of LaSalle Partners (a principal in TCLP) and project manager for this site. He presented an overview of the project which he descirbed as containing 190,000 rentable square feet of office use and 100,000 square feet of retail use. He also discussed the evolution of this project and described the efforts made by the property owner to develop Towson Commons in accordance with the terms of the B.C.Z.R. without the need for variances. He specifically described the original proposal; which provided for a ten-story office building and ten theatre screens, and how the plan had been reduced in magnitude and reconfigured to its current version, consisting of an eight-story office complex and eight theatre screens. He opined that the project with its proposed setbacks is compatible with the surrounding locale and that the front yard and side yard setback variances are needed to achieve the desired goal of orienting the retail use toward the adjacent streets.

Lehr Jackson, a retail development expert and a member of TCLP's project team, discussed the retail aspect of the proposed development. Again, he discussed the importance of the project's orientation along Pennsylvania and Chesapeake Avenues and York Road. In order to achieve a continuous flow of appealing retail use, he concurred that the setback variances were necessary.

The Board also received extensive testimony from the project architect, Ron Henderer. He discussed the unique nature of the site, including the sloping of the land in a southerly direction and the rock and water formations underground. He also discussed what he viewed as the impossibility of realigning the office and retail complex to comply with the strict terms of the existing

setback requirements. In his view, such a realignment would prohibit the placement of the theatres as presently proposed and would disrupt the retail configuration. He also stated that strict compliance with the terms of the B.C.Z.R. would cause a loss of viability of the entire project.

Leslie H. Graef, the Executive Director of the Towson Development Corporation, also testified. In his view, the project is "in scale" and appropriate. In his view, "when one looks at the whole project and all of the benefits...one makes a judgement that the variances are minor."

Baltimore County's Director of Economic Development, Richard W. Story, also expressed the County government's approval and enthusiasm for the project. He believes that the project will promote tourism, business and community interests.

Jon Bortz, Senior Vice President of LaSalle Partners, also testified. He echoed much of the testimony of Mr. Lopez. His testimony was significant in that it concentrated on his view that the success or failure of the entire project depended on the mix of office/retail use as shown on the Petitioners' plan. In his view, the viability of the retail/office use proposed here rests upon the configurations of the various components which exist within the project as a whole. If any of these components were altered, the project as a whole would no longer be workable. He opined that the current plan offered the minimum deviation from the strict standards of the B.C.Z.R. which would be practical.

George Gavrelis, a land planning expert employed by the firm of Daft, McCune & Walker, also testified extensively. He described the evolution of the development of that project to be known as Towson Commons, and opined that strict compliance with the B.C.Z.R. would be unnecessarily burdensome. He

also averred that the project would not adversely impact the surrounding area. In this witness's view, the mixed use proposal before the Board could not survive without the variances.

Jack Finkelstein, a retail merchant whose establishment neighbors the surrounding property, also testified. He described the merchant/retail history of Towson and expressed his support for the reinvigoration which this project would bring to the Towson retail core.

Lastly, on behalf of the Petitioners, the Board heard from Barbara Zenker, the Director of Real Estate for General Cinema Theatres. She discussed the requirements of her organization to participate as a tenant in Towson Commons. Presently, her company intends to lease and operate the theatres in Towson Commons. On behalf of her company, she voiced the requirement that any further reduction or realignment of the theatres would cause her company to withdraw from participating in the project. She described how the number of screens proposed has been reduced from ten to eight from the original plan and that any further reductions would be unacceptable. Although she could not describe any mathematical formula which her company employed in determining whether to lease theatres in Towson Commons, she explained the intuitive process used by General Cinemas in making this decision. We are not troubled by the lack of any mathematical formula. Quite simply, it is enough, when considering the case before us, that General Cinemas' position is well-founded on marketing and retail theatre expertise.

On behalf of the protestants, a number of witnesses appeared. They included Leroy Y. Haile, Jr., the principal in the Appellant, Haile Corporation. Mr. Haile described the history of his long-time association with Towson. He also expressed his opposition to Towson Commons. In his view, the size of the

proposed project is objectionable and overwhelming. As with the other protestants, however, Mr. Haile acknowledged the need for retail/office rebirth in the Towson core, but objected to the scale and scope of the proposal presented.

Other witnesses appeared and testified on behalf of the protestants. These included Richard Parsons, who lives in West Towson and is employed by the Baltimore County Public Library; Jean Duvall, of Rodgers Forge; Michael A. Miller, of Northeast Towson; Ruth Cullison, an opponent of the urbanization of Towson; Diane Carliner; and John Latrobe. All of these witnesses voiced similar objections. These protestants all expressed their desire that the Towson environment continue in its present state, and that urbanization and over-development should be discouraged. As we have previously stated within this Opinion, although we admire and respect these sentiments, they are not germaine to the narrow issue before us.

Testimony which we deem relevant from the protestants was offered by George Holback and Arthur Kutcher. Mr. Holback, a registered architect, suggested alternatives which the property owner might adopt in order to achieve the desired mixed use and comply with the zoning regulations. Although, on their face, many of these alternatives seemed reasonable, their viability was not established. On cross-examination, for example, Mr. Holback admitted his naiveté regarding motion picture theatres, marketing strategies, and certain mechanical engineering considerations. Thus, we must question whether these alternatives are practical within the context of the proposed Towson Commons development.

Mr. Kutcher's testimony was also interesting. He has an extensive background in urban planning and designing, as well as architecture. Mr. Kutcher's chief concern with the project as proposed was a fear that it was

incompatible with the surrounding locale. He specifically objected to the width and breadth of that portion of the project which included the theatre operations. In his view, construction of the project as proposed would create a "sunless trench" in the center of Towson. He also felt that the large and imposing 20th Century structure which comprises Towson Commons was not consistent with the 19th Century architecture which comprises much of Towson's core. Again, however, we note Mr. Kutcher's unfamiliarity with the specifics of the proposed project.

In reviewing the evidence before us, the Board gave due consideration to the demeanor and credibility of the witnesses presented. Overall, we were impressed with the detail-oriented testimony offered by the Petitioners and their approach to the inter-dependent requirements of the components which encompass Towson Commons. Although we appreciate the testimony of the protestants, it is of note that that testimony centered upon the aesthetic impact of the project on central Towson. We did not hear from the protestants competent and knowledgeable testimony which was sufficiently detail-oriented as to the particulars of this project. However, we do find as fact that the Petitioners have met their burden of proof.

Applying the law previously set forth to the testimony presented, we make the following findings:

1) As to the variances from the height limitation of 235B.5, 234, and 231.d of the B.C.Z.R., we are persauded that they should be granted. The variance in this instance is minute in nature when compared with the entire project. It requests relief only from a small slice from the plane which slopes inward and upward from the lot line. Granting of same is warranted under the Anderson, supra, test.

2) As to the setback requirements for the front and side yards, we are also persuaded that they should be granted. Applying the tenents expressed in Anderson, supra, and McLean, supra, we believe that adherence to the strict provisions of the B.C.Z.R. would be unnecessarily burdensome to the property owner for the reasons set forth by Mr. Gavrelis. As to the other prongs offered in Anderson, supra, we believe that they too are satisfied. Evidence offered established that the project as contemplated is less in size and scope than would be permitted under the zoning regulations. The record of the case before us also overwhelmingly establishes that the zoning assigned to this locale promotes intensive office/retail use. Based upon the competent and uncontradicted testimony offered by Ms. Zenker and Mr. Bortz, we concur that this project, as presented, could not go forward if the variances were not granted. This would cause substantial injustice to the applicant as well as to the property owners in the Towson area, such as Mr. Finkelstein, who are relying on a new infusion of commercial activity into central Towson to save the decaying present business climate. Lastly, we believe that the spirit of the B.C.Z.R. will be observed and the public safety and welfare secured.

3) As to the amenity open space variance, we are also persuaded that this should be granted. At first blush,

the variance appears to be significant in that TCLP offers only 22,880 square feet of amenity open space in lieu of the required 39,943 square feet. This significant difference of approximately 57 percent could be interpreted to be overwhelmingly deficient of what is required and therefore the variance should be denied. However, an examination of the Towson Commons project as a whole, as provided within the framework of the testimony of Messrs. Gavrelis, Bortz, and Henderer is appropriate. As proposed, the Towson Commons project orients retail space towards the exterior street. By employing this configuration, which in our view enhances the overall aesthetic appearance and compatibility with the neighborhood, the opportunity for the Petitioners to obtain additional amenity open space is reduced. The Petitioners' arguments about the quality of the open space are also well-reasoned. After applying the three-pronged test in Anderson, supra, we believe that the variance should be granted. Strict compliance with the open space requirement would be unduly burdensome on the property owner, and, as stated previously, the proposal's scheme and design are consistent with the locale.

For the aforegoing reasons, the Board shall approve the Petitions for Variance, with restrictions, and will so order.

ORDER

Therefore, it is this 23rd day of March, 1990 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Variance from the front yard setback requirements of B.C.Z.R. Section 235.1 (permitting setback as close as 0 feet in lieu of the required 15 feet); that the Petition for Variance from side yard setback requirements of B.C.Z.R. Sections 235.2 and 232.2 (permitting side yard setbacks of 4 feet in lieu of the required 10 feet); that the Petition from the height limitations of B.C.Z.R. Sections 235B.4, 234, and 231.d (permitting 125 square feet of building wall facing Pennsylvania Avenue to project above a plane sloping inward and upward from the lot line); and that a variance from the amenity open space requirements of B.C.Z.R. Section 235B.4 (permitting 22,880 square feet of amenity open space in lieu of the required 39,943 square feet) all be and are hereby GRANTED subject to the following restrictions:

1. The Petitoner shall landscape the property in accordance with and as required by the Baltimore County Landscaping Manual and as may be required by the Director of Planning and Zoning and the landscaping planner.

2. All signs and the scoring pattern in the brick and concrete at the entrances to the property shall be submitted to the Office of Planning for approval prior to construction.

3. That the final landscaping plan shall be maintained at all times by Petitioners and/or subsequent property owners.

4. The Petitioners shall implement, at their expense, any improvements as may be required by the State Highway Administration and/or

the Baltimore County Bureau of Traffic Engineering to assure safe pedestrian travel at the intersections of York Road and Pennsylvania Avenue, and York Road and Chesapeake Avenue.

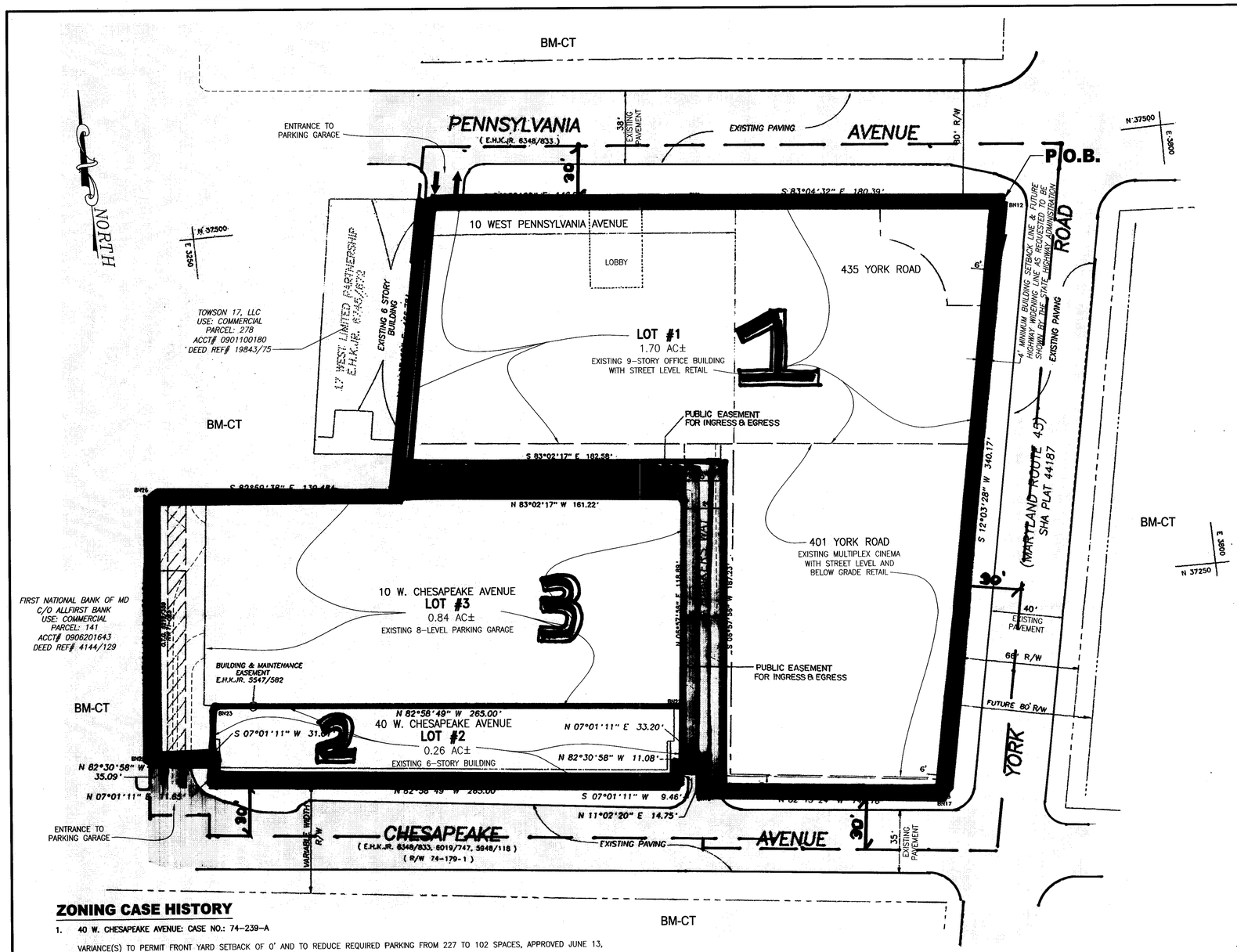
Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

Michael B. Sauer

John G. Disney



PROPERTY OWNERSHIP

LOT #1 OWNER: **401-435 YORK ROAD AND 10 WEST PENNSYLVANIA AVENUE**
TOWSON COMMONS, LLC
1054 31ST STREET NW
WASHINGTON, DC 20007-4403
DEED REFERENCE: 22729/024
TAX MAP: 70
PARCEL: 16

LOT #2 OWNER: **40 WEST CHESAPEAKE AVENUE**
40 WEST CHESAPEAKE, LLC
2328 WEST JOPPA ROAD, SUITE 200
LUTHERVILLE TIMONIUM, MD 21093-4674
DEED REFERENCE: 11969/438
TAX MAP: 70
PARCEL: 136

CONTRACT PURCHASER: TOWSON COMMONS, LLC
1054 31ST STREET NW
WASHINGTON, DC 20007-4403

LOT #3 OWNER: **10 WEST CHESAPEAKE AVENUE**
PARKING GARAGE
TOWSON COMMONS, LLC
1054 31ST STREET NW
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DEED REFERENCE: 22729/024
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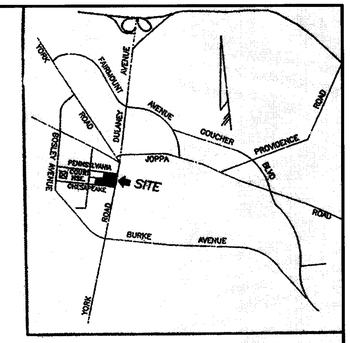

LOCATION MAP
SCALE: 1" = 2000'

GENERAL NOTES:

1. ZONING: BM-CT
2. PROPERTY AREA:

LOT #1	74,071 SF	=	1.70 AC±
LOT #2	11,455 SF	=	0.26 AC±
LOT #3	36,764 SF	=	0.84 AC±
BANKERS WAY	7,540 SF	=	0.17 AC±
TOTAL PROPERTY AREA:	129,672 SF	=	2.97 AC±
INCLUDES 30' WITHIN ADJACENT PUBLIC ROADS, (PENNSYLVANIA AVENUE, YORK ROAD, AND CHESAPEAKE AVENUE)	35,994 SF	=	0.82 AC±
TOTAL: PROPERTY AND 30' WITHIN ADJACENT PUBLIC ROADS	165,666 SF	=	3.79 AC±

3. BALTIMORE COUNTY SOILS SURVEY MAP: 35
4. ZONING MAP: 070A2
5. PLAT REFERENCE: S.M. 62-115
6. CENSUS TRACT: 4907.3, 4909.0
7. WATERSHED: 12
8. SUBSEWERSHED: 55
9. SEWAGE PLAN DESIGNATION: S1
10. WATER SUPPLY PLAN DESIGNATION: W1
11. REGIONAL PLANNING DISTRICT: 315
12. ELECTION DISTRICT: 9TH
    COUNCILMANIC DISTRICT: 5TH
13. EXISTING USE: RETAIL, OFFICE, STRUCTURED PARKING (GARAGE)
14. POTENTIAL USE: UNDETERMINED USES AS PERMITTED BY BCZR
15. FLOOR AREA RATIO (F.A.R.):
    MAXIMUM ALLOWED - 5.5
16. MAXIMUM PERMITTED BUILDING AREA: (5.5 X 165,666 SF) (PER NOTE #2) = 911,163 SF
17. EXISTING AND POTENTIAL BUILDING AREA:
    LOTS 1 AND 3 (PER APPROVED 3RD REFINED CRG PLAN) = 402,085 SF
    LOT 2 = 68,290 SF
    TOTAL EXISTING: = 470,375 SF
    POTENTIAL BUILDING AREA PERMITTED: (911,163 SF - 470,375 SF) = 440,788 SF
18. PURSUANT TO BCZR SECTION 235 B.7.C.1, NO RELIEF FROM HEIGHT LIMITATIONS OR SETBACKS IS REQUIRED.
19. THIS SITE IS SERVICED BY PUBLIC WATER AND SEWER.
20. LANDSCAPING SHALL COMPLY WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL
21. THE SITE IS NOT WITHIN A MORATORIUM AREA OR IN AN AREA WHERE FAILURE OF BASIC SERVICES MAPS CURRENTLY EXISTS PER SECTION 4A02 (BCZR).
22. THE SITE IS NOT IN A 100 YEAR FLOODPLAIN.
23. THIS SITE IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
24. THERE ARE NO NON-TIDAL WETLANDS ON THIS SITE.
25. THERE ARE NO FOREST BUFFERS ON THIS SITE.
26. THERE ARE NO KNOWN REGULATED PLANT OR WILDLIFE COMMUNITIES ASSOCIATED WITH THIS SITE.
27. THERE ARE NO KNOWN HISTORICAL STRUCTURE, DISTRICT, OR ARCHEOLOGICAL AREAS ASSOCIATED WITH THIS SITE.
28. THERE ARE NO KNOWN EXISTING WELLS OR SEPTIC FIELDS WITHIN 100' OF THIS PROPERTY
29. BUILDING CONSTRUCTION SHALL COMPLY WITH BUILDING AND FIRE CODE REQUIREMENTS.
30. ALL LIGHTING SHALL CONFORM TO IES STANDARDS (ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA) MAXIMUM HT. 18' PER SECTION 405.4.C.1.D (BCZR)
31. SIGNAGE: PROPOSED SIGNAGE SHALL BE IN COMPLIANCE WITH B.C.Z.R. SECTION 450.

RELIEF REQUESTED

SPECIAL HEARING TO CONFIRM THE MAXIMUM PERMITTED BUILDING AREA FOR EXISTING AND POTENTIAL IMPROVEMENTS, AS MORE PARTICULARLY SHOWN ON THE SITE PLAN ATTACHED HERETO.

PETITIONER'S
EXHIBIT NO. 3

ZONING CASE HISTORY

1. **40 W. CHESAPEAKE AVENUE: CASE NO.: 74-239-A**

   VARIANCE(S) TO PERMIT FRONT YARD SETBACK OF 0' AND TO REDUCE REQUIRED PARKING FROM 227 TO 102 SPACES, APPROVED JUNE 13, 1974.

2. **401-435 YORK ROAD: CASE NO.: 90-130-SPHA**

   A. ON NOVEMBER 14, 1989, THE DEPUTY ZONING COMMISSIONER GRANTED THE VARIANCES SET FORTH BELOW, SUBJECT TO CERTAIN RESTRICTIONS, BUT DISMISSED THE SPECIAL HEARING RELIEF REQUESTED.

   B. ON MARCH 23, 1990, THE BOARD OF APPEALS GRANTED THE REQUESTED VARIANCES FROM BCZR SECTIONS:

      1. 235.1 - TO PERMIT A FRONT YARD SETBACK OF 0 FEET ALONG PENNSYLVANIA AVENUE IN LIEU OF THE REQUIRED 15 FEET.
      2. 235.1 - TO PERMIT A STREET CORNER SETBACK OF 4 FEET IN LIEU OF THE REQUIRED 10 FEET ON YORK ROAD.
      3. 231.D AND 235B.5 - TO PERMIT 125 FEET OF THE BUILDING TO PROJECT 30 FEET ABOVE AND 8 FEET BEYOND A PLANE SLOPING INWARD AND UPWARD AT A 1 TO 7.5 SLOPE.
      4. 235B.4 - TO PERMIT 22,880 SQUARE FEET OF AMENITY OPEN SPACE IN LIEU OF THE REQUIRED 39,943 SQUARE FEET.

   THE BOARD OF APPEALS GRANTED THE ABOVE REFERENCED VARIANCES SUBJECT TO THE FOLLOWING RESTRICTIONS:

   1. THE PETITIONER SHALL LANDSCAPE THE PROPERTY IN ACCORDANCE WITH AND AS REQUIRED BY THE BALTIMORE COUNTY LANDSCAPING MANUAL AND AS MAY BE REQUIRED BY THE DIRECTOR OF PLANNING AND ZONING AND THE LANDSCAPE PLANNER.
   2. ALL SIGNS AND THE SCORING PATTERN IN THE BRICK AND CONCRETE AT THE ENTRANCES TO THE PROPERTY SHALL BE SUBMITTED TO THE OFFICE OF PLANNING FOR APPROVAL PRIOR TO CONSTRUCTION.
   3. THAT THE FINAL LANDSCAPING PLAN SHALL BE MAINTAINED AT ALL TIMES BY PETITIONER AND/OR SUBSEQUENT PROPERTY OWNERS.
   4. THE PETITIONERS SHALL IMPLEMENT, AT THEIR EXPENSE, ANY IMPROVEMENTS AS MAY BE REQUIRED BY THE STATE HIGHWAY ADMINISTRATION AND/OR THE BALTIMORE COUNTY BUREAU OF TRAFFIC ENGINEERING TO ASSURE SAFE PEDESTRIAN TRAVEL AT THE INTERSECTIONS OF YORK ROAD AND PENNSYLVANIA AVENUE, AND YORK ROAD AND CHESAPEAKE AVENUE.

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MARYLAND 21286
(410) 821-1690
FAX: (410) 821-1748
MRAGTA.COM

PLAN TO ACCOMPANY PETITION FOR
SPECIAL HEARING APPLICATION
LOTS 1, 2, AND 3
(A.K.A.TOWSON COMMONS AND LAFAYETTE BUILDING)
401 - 435 YORK ROAD AND 40 WEST CHESAPEAKE AVENUE

9TH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND 5TH COUNCILMANIC DISTRICT

DATE	REVISIONS	
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		SCALE: 1"= 30'
		DATE: 06/07/06
		DRAWN BY: JAB
		DESIGN BY: WPM
		REVIEW BY: WPM
		SHEET: 1 OF 1

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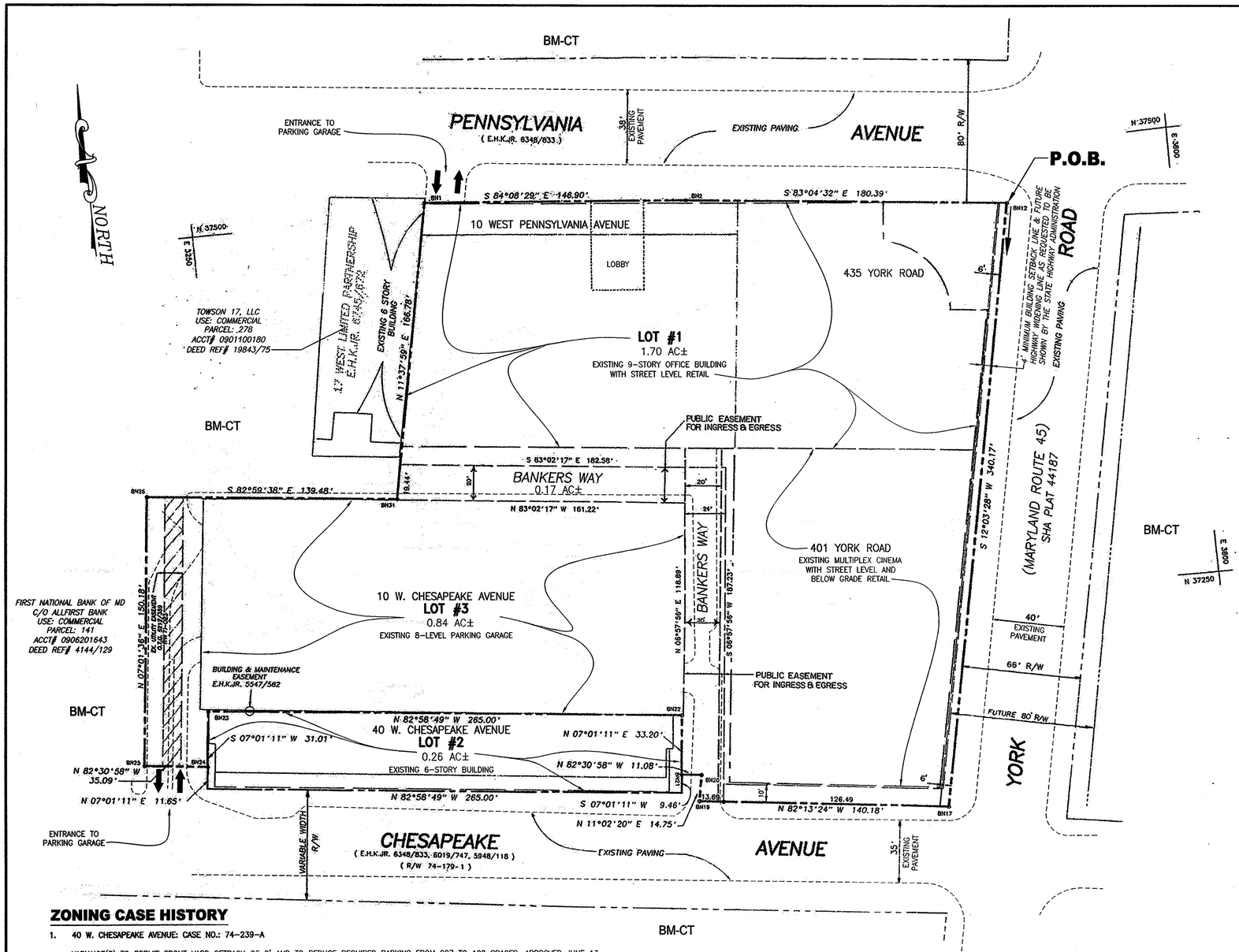

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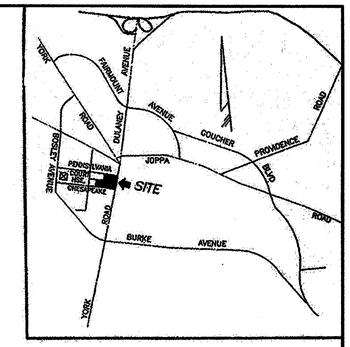

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   1. 235.1 – TO PERMIT A FRONT YARD SETBACK OF 0 FEET ALONG PENNSYLVANIA AVENUE IN LIEU OF THE REQUIRED 15 FEET.
   2. 235.1 – TO PERMIT A STREET CORNER SETBACK OF 4 FEET IN LIEU OF THE REQUIRED 10 FEET ON YORK ROAD.
   3. 231.D AND 235B.5 – TO PERMIT 125 FEET OF THE BUILDING TO PROJECT 30 FEET ABOVE AND 8 FEET BEYOND A PLANE SLOPING INWARD AND UPWARD AT A 1 TO 7.5 SLOPE.
   4. 235B.4 – TO PERMIT 22,880 SQUARE FEET OF AMENITY OPEN SPACE IN LIEU OF THE REQUIRED 39,943 SQUARE FEET.

   THE BOARD OF APPEALS GRANTED THE ABOVE REFERENCED VARIANCES SUBJECT TO THE FOLLOWING RESTRICTIONS:

   1. THE PETITIONER SHALL LANDSCAPE THE PROPERTY IN ACCORDANCE WITH AND AS REQUIRED BY THE BALTIMORE COUNTY LANDSCAPING MANUAL AND AS MAY BE REQUIRED BY THE DIRECTOR OF PLANNING AND ZONING AND THE LANDSCAPE PLANNER.
   2. ALL SIGNS AND THE SCORING PATTERN IN THE BRICK AND CONCRETE AT THE ENTRANCES TO THE PROPERTY SHALL BE SUBMITTED TO THE OFFICE OF PLANNING FOR APPROVAL PRIOR TO CONSTRUCTION.
   3. THAT THE FINAL LANDSCAPING PLAN SHALL BE MAINTAINED AT ALL TIMES BY PETITIONER AND/OR SUBSEQUENT PROPERTY OWNERS.
   4. THE PETITIONERS SHALL IMPLEMENT, AT THEIR EXPENSE, ANY IMPROVEMENTS AS MAY BE REQUIRED BY THE STATE HIGHWAY ADMINISTRATION AND/OR THE BALTIMORE COUNTY BUREAU OF TRAFFIC ENGINEERING TO ASSURE SAFE PEDESTRIAN TRAVEL AT THE INTERSECTIONS OF YORK ROAD AND PENNSYLVANIA AVENUE, AND YORK ROAD AND CHESAPEAKE AVENUE.

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MARYLAND 21286
(410) 821-1690
FAX: (410) 821-1748
MRAGTA.COM

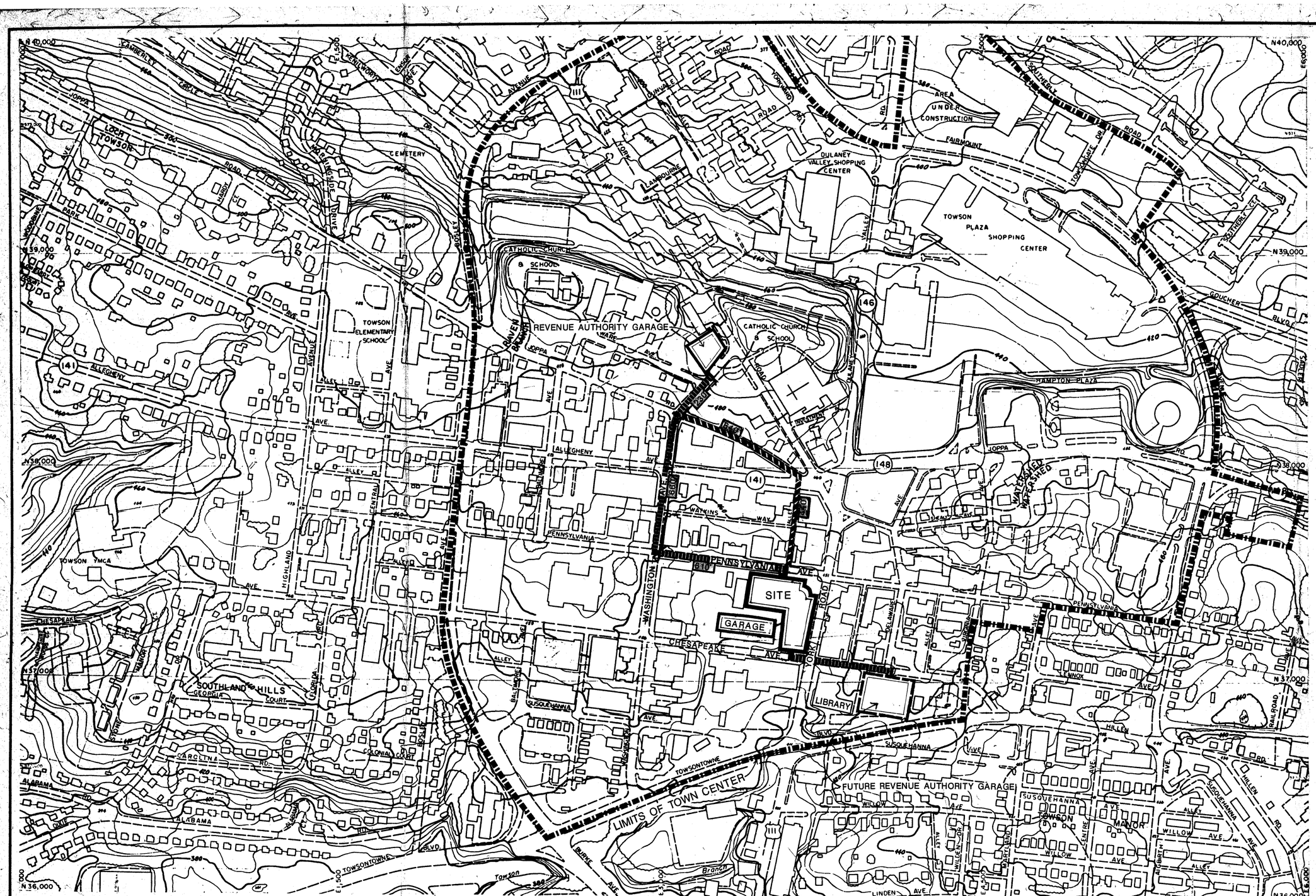
STATE OF MARYLAND REGISTERED PROFESSIONAL ENGINEER 14003 — 6/22/06

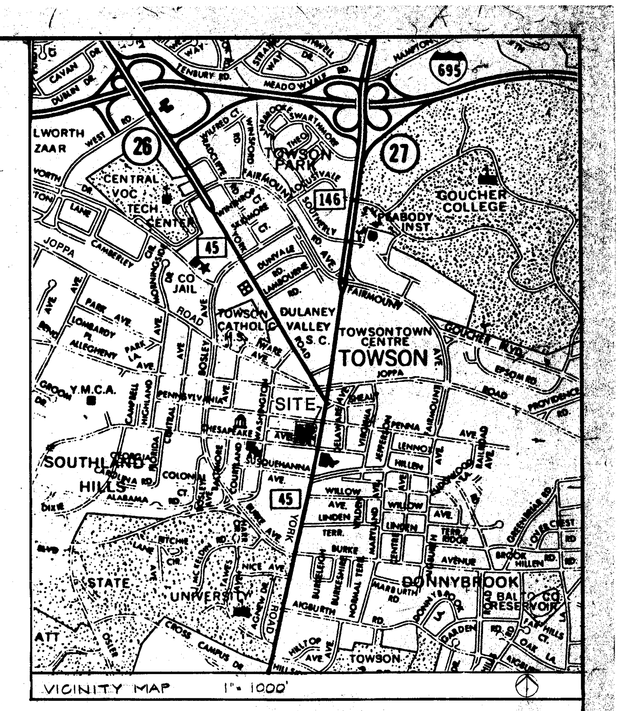
PLAN TO ACCOMPANY PETITION FOR
SPECIAL HEARING APPLICATION
LOTS 1, 2, AND 3
(A.K.A.TOWSON COMMONS AND LAFAYETTE BUILDING)
401 – 435 YORK ROAD AND 40 WEST CHESAPEAKE AVENUE

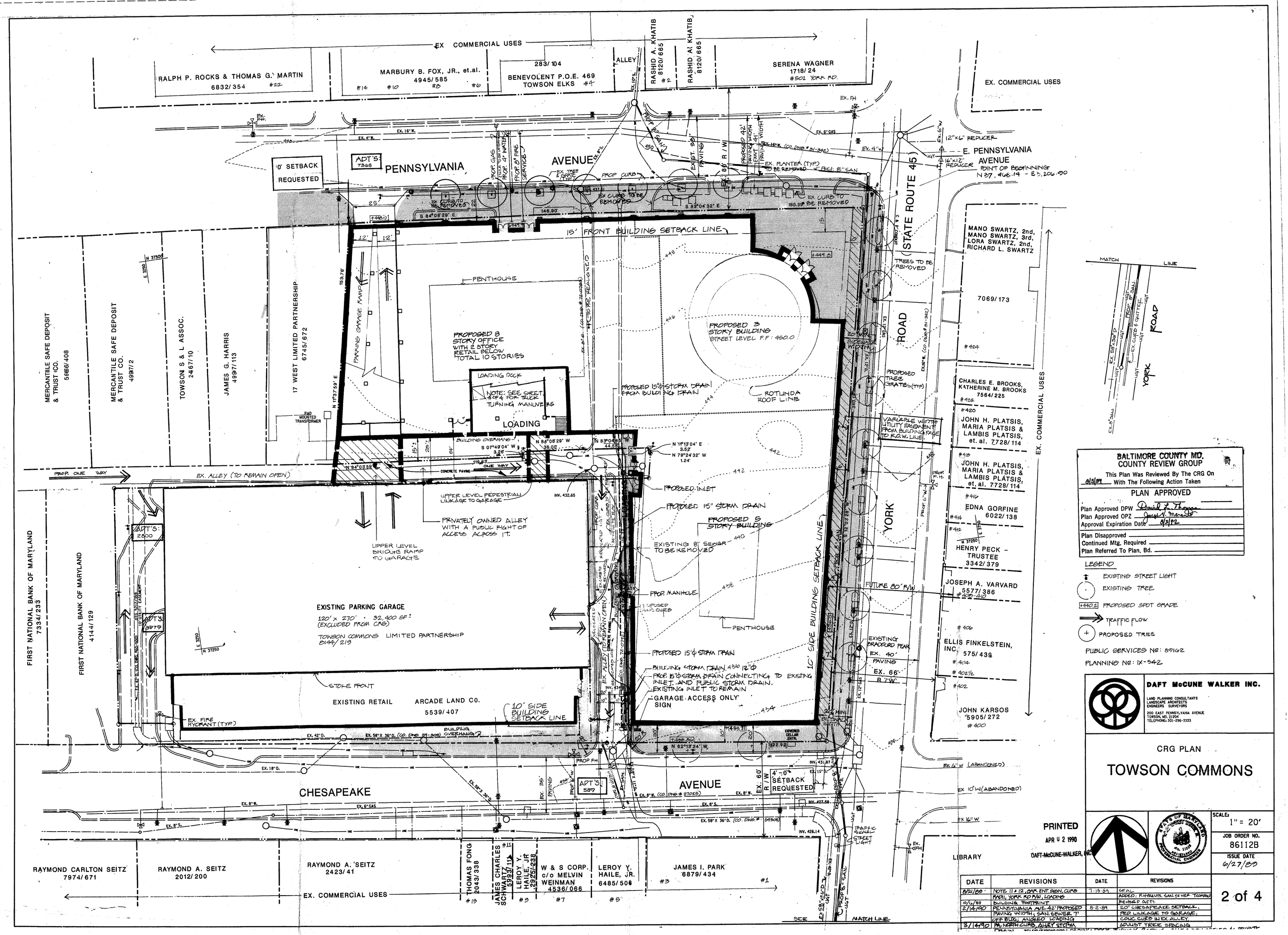
9TH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND 5TH COUNCILMANIC DISTRICT

DATE	REVISIONS		
			JOB NO.: 12552.02
			SCALE: 1"= 30'
	PETITIONER'S		DATE: 06/07/06
	EXHIBIT NO. No 1		DRAWN BY: JAB
			DESIGN BY: WPM
			REVIEW BY: WPM
			SHEET: 1 OF 1

P:\12552.02\PLANNING\PLOT\SPECIAL EXEMPTION\12552.02-SPECIAL HEARING 01.dwg, 6/22/2006 12:37:31 PM, JBrown




VICINITY MAP 1" = 1000'
TOWSON PARK
GOUCHER COLLEGE
PEABODY INST.
TOWSONTOWN CENTRE
TOWSON
SITE
DULANEY VALLEY H.S.C.
TOWSON CATHOLIC H.S.
CENTRAL VOC. TECH. CENTER
CO. JAIL
Y.M.C.A.
SOUTHLAND HILLS
STATE UNIVERSITY
BONNYBROOK
LYNBROOK
LYNDHURST
LYNDEN
LYNDON
LYNN
LYNNHAVEN
LYNNHURST
LYNNWOOD
LYNNWOOD TERR.
LYNNWOOD RD.
LYNNWOOD AVE.
LYNNWOOD PL.
LYNNWOOD CT.



BALTIMORE COUNTY MD.
COUNTY REVIEW GROUP

This Plan Was Reviewed By The CRG On 8/3/89 With The Following Action Taken

PLAN APPROVED

Plan Approved DPW David L. Thomas
Plan Approved OPZ Joseph N. Merrey
Approval Expiration Date 8/3/92
Plan Disapproved
Continued Mtg. Required
Plan Referred To Plan, Bd.

LEGEND

- EXISTING STREET LIGHT
- EXISTING TREE
- 440.2 PROPOSED SPOT GRADE
- TRAFFIC FLOW
- PROPOSED TREE

PUBLIC SERVICES Nº: 89162

PLANNING Nº: IX-542

DAFT McCUNE WALKER INC.

LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS SURVEYORS

200 EAST PENNSYLVANIA AVENUE
TOWSON, MD. 21204
TELEPHONE: 301-296-3333

CRG PLAN

TOWSON COMMONS

PRINTED
APR 02 1990
DAFT-McCUNE-WALKER, INC.

STATE OF MARYLAND — No. 1108 — ARCHITECT — PROFESSIONAL ENGINEER

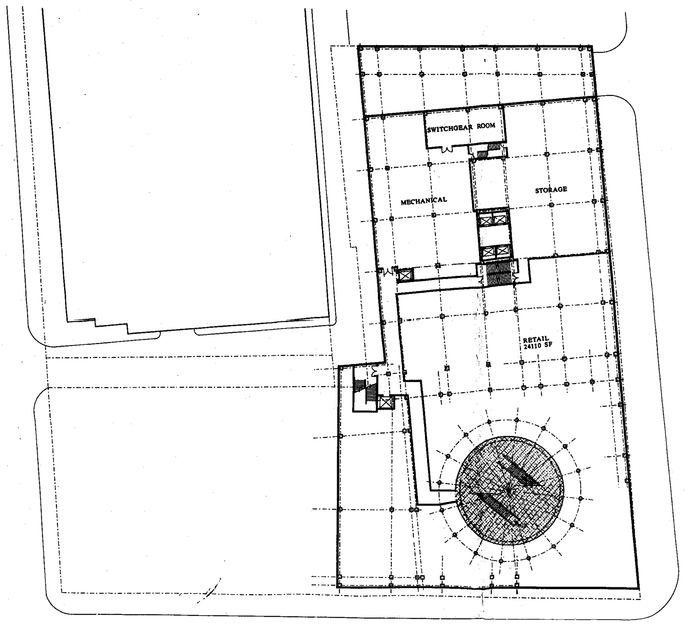
SCALE: 1" = 20'

JOB ORDER NO. 86112B

ISSUE DATE 6/27/89

DATE	REVISIONS	DATE	REVISIONS
8/21/89	NOTE 11 & 12, GAR. ENT. SIGN, CURB	7-13-89	GFAL
	PA 211, YORK RD R/W, LOADING		ADDED: F.H. TRUNCS, SAN. SEWER, TEL. CONDUIT
10/6/89	BUILDING FOOTPRINT		REVISED ACFT.
2/14/90	PENNSYLVANIA AVE. 42' PROPOSED	8-2-89	20' CHESAPEAKE SETBACK,
	PAVING WIDTH, SAN. SEWER, 7'		PED. LINKAGE TO GARAGE,
	OFF BLDG, ANGLED LOADING		CONC. CURB IN EX. ALLEY,
3/14/90	PA. NORTH CURB, ALLEY STORM		ADJUST TREE SPACING

2 of 4



LOWER LEVEL

A. Excluded from Gross Floor Area

1. Switch Gear Room 800 SF
2. Below Grade Mechanical and Storage Space 14,820 SF

Subtotal 15,620 SF

B. Included in Gross Floor Area

1. Lower Level Amenity Open Space 2,122 SF
2. General Retail Space 27,230 SF

Subtotal 29,352 SF

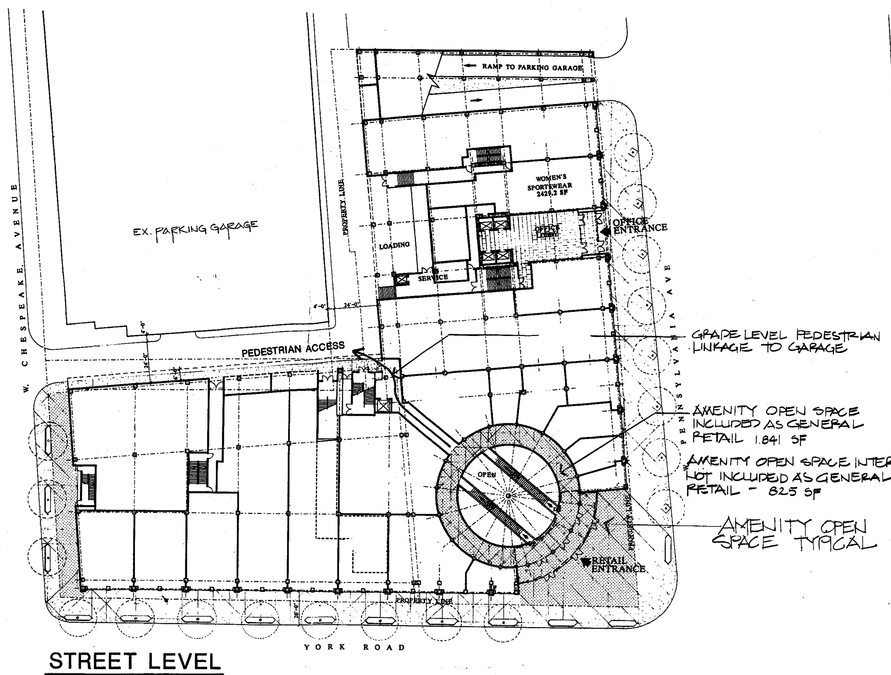
4. Required Parking @ 3 Spaces/1,000 SF = 88.1 spaces

C. Total Lower Level Floor Area 44,972 SF

D. Area Included in Adjusted Gross Floor Area

1. All Space But Mechanical/Storage Space 29,352 SF

E. Amenity Open Space 2,122 SF



STREET LEVEL

A. Excluded from Gross Floor Area

1. Ramp to Parking Garage 3,314 SF
2. Transformer Areas Open on Side 300 SF
3. Office Lobby, No Direct Tie to Stores 1,579 SF
4. Interior Amenity Open Space Not in Front of Stores 825 SF
5. Stairwell to Theatres 785 SF

Subtotal 6,803 SF

B. General Retail Gross Floor Area

1. Amenity Open Space in Front of Stores 1,848 SF
2. General Retail Space 40,775 SF
3. General Retail Space 6,282 SF

General Retail Subtotal 48,905 SF

4. Required Parking at 3 Spaces/1,000 SF = 146.7 Spaces

C. General Office Gross Floor Area, Ground Level

1. Horizontal and Vertical Circulation, Loading Area and Service/Fire Center 5,739 SF
2. Required Parking at 3.3 Spaces/1,000 SF = 18.9 Spaces

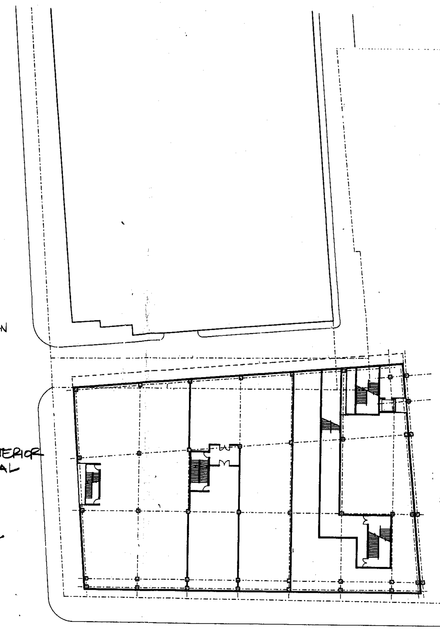
D. Total Street Level Floor Area 61,447 SF

E. Area Included in Adjusted Gross Floor Area 61,447 SF

F. Amenity Open Space

1. Interior at Rotunda 2,673 SF
2. Street Level, Pennsylvania Avenue 2,830 SF
3. Street Level, W. Chesapeake Avenue 1,300 SF

Street Level Amenity Open Space 6,803 SF



RETAIL MEZZANINE LEVEL

A. Excluded from gross floor area part of theatre area which bases required parking on the number of seats.

1. Horizontal and Vertical Circulation to Theatre Area 2,120 SF

B. Included in Gross Floor Area

1. Upper Level General Retail 23,420 SF
2. Required Parking at 3 Spaces/1,000 SF = 70.3 Spaces

C. Total Mezzanine Floor Area 25,540 SF

D. Area Included in Adjusted Gross Floor Area 25,540 SF

PARKING SUMMARY F.A.R. A.O.S.

REQUIRED PARKING, UNADJUSTED BY LEVEL AND USE

1.	Lower Level Retail	29,352 SF	88.1 Spaces
2.	Street Level Retail	48,905 SF	146.7 Spaces
3.	Street Level Office	5,739 SF	18.9 Spaces
4.	Retail Mezzanine	23,420 SF	70.3 Spaces
5.	Cinema/Theatres	2,600 seat max.	650 Spaces
6.	Food Court Restaurants	18,428 SF	——
7.	Office Tower	189,890 SF	379.8 Spaces
8.	Office Tower Penthouse (Covered)	5,897 SF	11.8 Spaces
	Total Unadjusted Required Spaces		1,367 Spaces

SUMMARY OF REQUIRED PARKING BY USE

1.	General Retail	306 Spaces
2.	General Offices	411 Spaces
3.	Theatre	650 Spaces
	Total	1,367 Spaces

SHARED PARKING ADJUSTMENT

Use/Spaces	Weekday 6-6	Weekday 6-12	Weekend 6-6	Weekend 6-12
Office 411 Spaces	100% 411	10% 42	10% 42	5% 21
Theatre 650 Spaces	40% 260	100% 650	80% 520	100% 650
Retail 306 Spaces	100% 306	100% 306	100% 306	100% 306
Totals	977	998	868	977

B. Shared Parking Adjustment Reduces Required Parking from 1,367 Spaces to 998 Spaces

C. Spaces Available 1,000 Spaces

SUMMARY, ADJUSTED GROSS FLOOR AREA

Level	
1. Lower Level	29,352 SF
2. Street Level	61,447 SF
3. Retail Mezzanine Level	23,540 SF
4. Second Level Pennsylvania Avenue	60,195 SF
5. Theatre Mezzanine Level	3,300 SF
6. Theatre, Third Level	26,466 SF
7. Office Tower	189,890 SF
8. Office Penthouse	5,897 SF
Total Adjusted Gross Floor Area	402,085 SF

FLOOR AREA RATIO CALCULATIONS

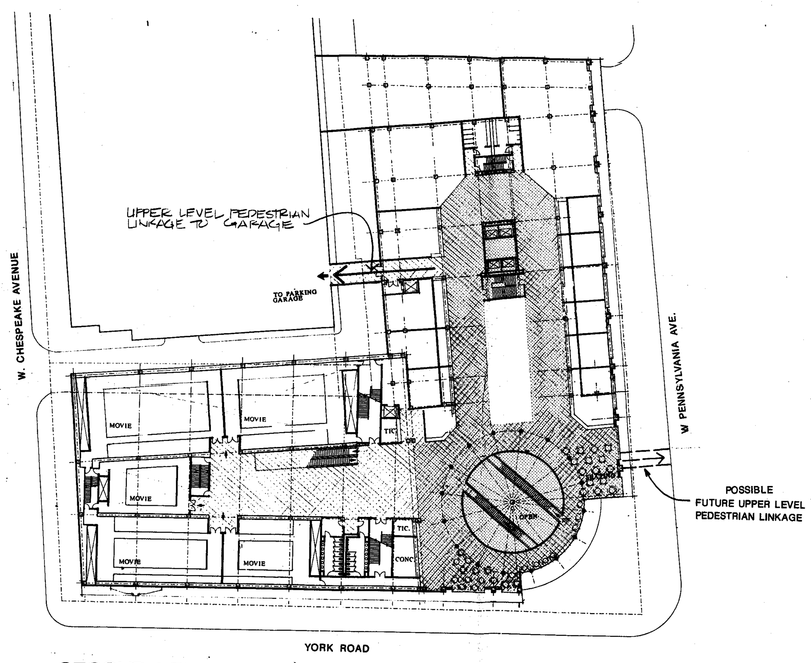
1. Net Site Area (Excludes Garage)	72,745 SF
2. 30 Feet of Adjoining Street Right-of-Way	25,988 SF
3. Gross Site Area	98,733 SF
4. Maximum Permitted Floor Area at F.A.R. 3.5	345,032 SF
5. Proposed Adjusted Gross Floor Area	402,085 SF
6. Proposed Floor Area Ratio (F.A.R.)	4.1 F.A.R.

AMENITY OPEN SPACE CALCULATIONS (AOS)

1. Total Adjusted Gross Floor Area	402,085 SF
2. Above Grade Floor Area for Access to Off-Street Parking	
a. Street Level Ramp to Garage	3,314 SF
b. Required AOS at 0.02	66 SF
3. Balance of Floor Area	398,771 SF
4. Required AOS at 0.1	39,877 SF
5. Total Required Amenity Open Space	39,943 SF
6. Amenity Open Space Provided	
a. Street Level	4,130 SF
b. Street Level Rotunda	2,673 SF
c. Lower Level Rotunda	2,122 SF
d. Second Level Rotunda and Court	13,538 SF
e. Office Tower, 3rd Level Balcony	417 SF
Total Amenity Open Space Provided	22,880 SF
7. Variance Required	17,063 SF

Rotunda Area: 7,500 square feet
Amenity Open Space: 15,380 square feet.

BALTIMORE COUNTY, MD.
COUNTY REVIEW GROUP
This Plan Was Reviewed By The CRG On 8/3/89
With The Following Action Taken
PLAN APPROVED
Plan Approved DPW David L. Thomas
Plan Approved OPZ Joseph Y. Merenda
Approval Expiration Date 8/3/92
Plan Disapproved
Continued Mtg. Required
Plan Referred To Plan. Bd.



SECOND LEVEL

A. Theatre Section - Excluded from gross floor area because parking provided on seat basis.

1. Theatre, Lobby Space, Vertical Circulation 38,665 SF
2. Required Total Parking Theatre (2,600 Maximum Seats at 1/4 Seats) 650 Spaces

B. Other Area Not Included in Gross Floor Area

1. Pedestrian Ramp to Garage 348 SF
2. Office Elevators and Stairwell 1,222 SF

Subtotal 1,570 SF

C. Restaurant Area Included in Gross Floor with No Parking Requirement

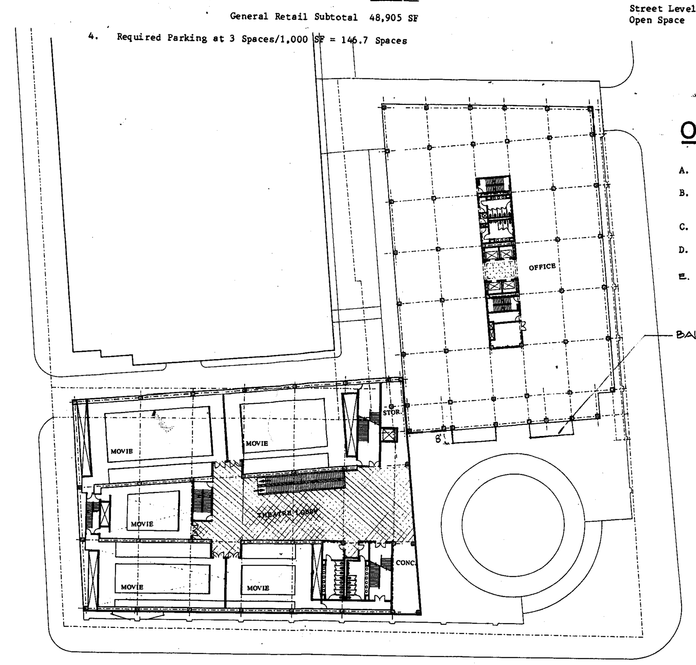
1. Food Court Including Associated Vertical Circulation, Restrooms, Seating Area 18,428 SF

D. Amenity Open Space 13,538 SF

E. Required Parking - B, C and D = 0 Spaces

F. Total Second Level Floor Area 60,195 SF

G. Area Included in Adjusted Gross Floor Area 60,195 SF



THIRD LEVEL

A. Theatre Area

1. Circulation, Theatre Lobby and Screens 26,466 SF

B. Area in Theatre Adjusted Gross Floor Area 26,466 SF

(Required parking already included in maximum 2,600 theatre seats.)

OFFICE LEVELS

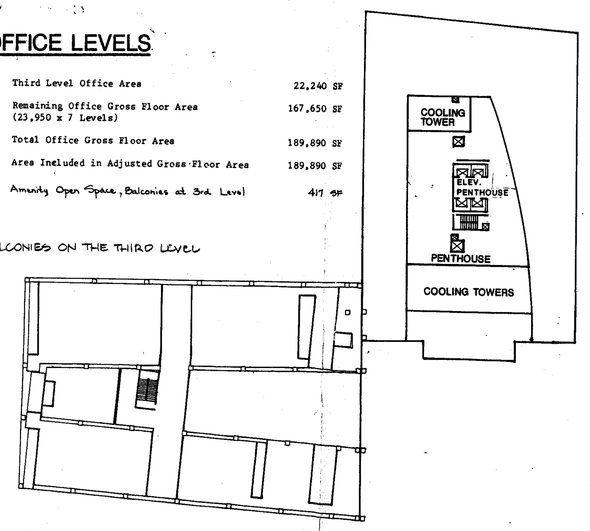
A. Third Level Office Area 22,240 SF

B. Remaining Office Gross Floor Area (23,950 x 7 Levels) 167,650 SF

C. Total Office Gross Floor Area 189,890 SF

D. Area Included in Adjusted Gross Floor Area 189,890 SF

E. Amenity Open Space, Balconies at 3rd Level 417 SF



ROOF / PENTHOUSE

A. Roof Plan Areas, Office Tower

1. Uncovered Cooling Towers	5,222 SF
2. Covered Roof Penthouse Area	6,777 SF
3. Excluded Elevator and Stair Bulkhead	880 SF
4. Net Gross Floor Area	5,897 SF
6. Required Parking at 2 Spaces/1,000 SF = 5.9 spaces	

B. Roof Penthouse Area Included in Adjusted Gross Floor Area 5,897 SF

1. Total Footprint Area of Roof	23,950 SF
2. 25 Percent of Roof Area	5,988 SF

THEATRE MEZZANINE LEVEL

A. Vertical Circulation and Hallways 3,300 SF

(No Parking Requirement, Included in 2,600 Maximum Number of Theatre Seats)

B. Area Included in Adjusted Gross Floor Area 3,300 SF

PRINTED
APR 02 1990
DAFT-McCUNE-WALKER, INC.

10/16 AMENDMENT TO PETITION 90-150-SPHA MADE @ 10/10/89 HEARING

DAFT · McCUNE · WALKER INC.
LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS & SURVEYORS
200 E. PENNSYLVANIA AVE.
TOWSON, MD. 21204
TELEPHONE: (301) 296-3333

BUILDING PROGRAM

TOWSON COMMONS

CRG PLAN

SCALE: 1" = 40'

JOB ORDER NO. 86112-F

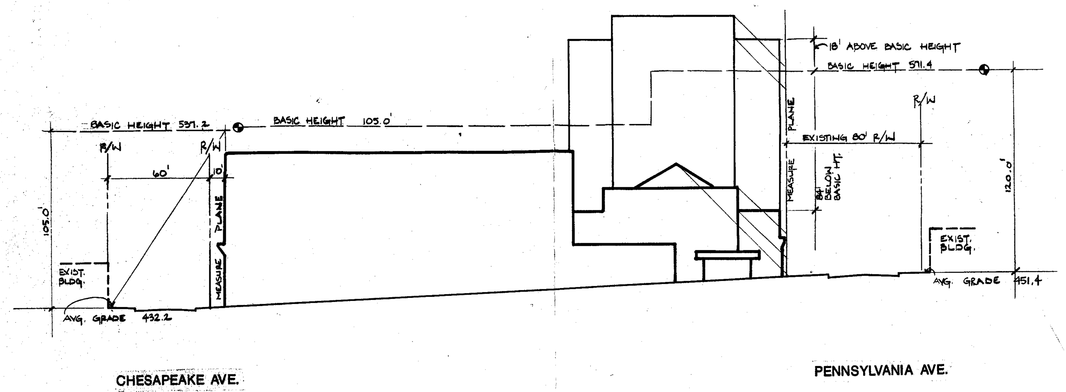
ISSUE DATE 6/27/89

DATE	REVISIONS
7.13.89	SEAL
7.28.89	AMENITY OPEN SPACE CLARIFICATION NOTES TO STREET LEVEL PLAN & PEDESTRIAN UPPER LEVEL LINKAGE
10-6-89	FLOORSPACE, CALCULATIONS

3 of 4

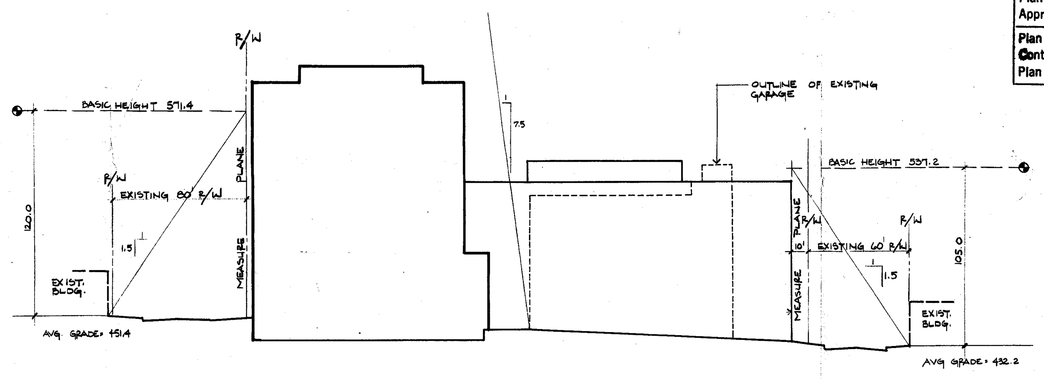
NOTE: THESE FIGURES AND USES ARE SCHEMATIC AND MAY CHANGE.

OFFICE TOWER, ROTUNDA AND THEATER COOLING TOWER ALL PROJECT DOWNWARD 45° AND ARE BELOW BASIC HEIGHT AT MEASURE PLANE ON YORK ROAD.



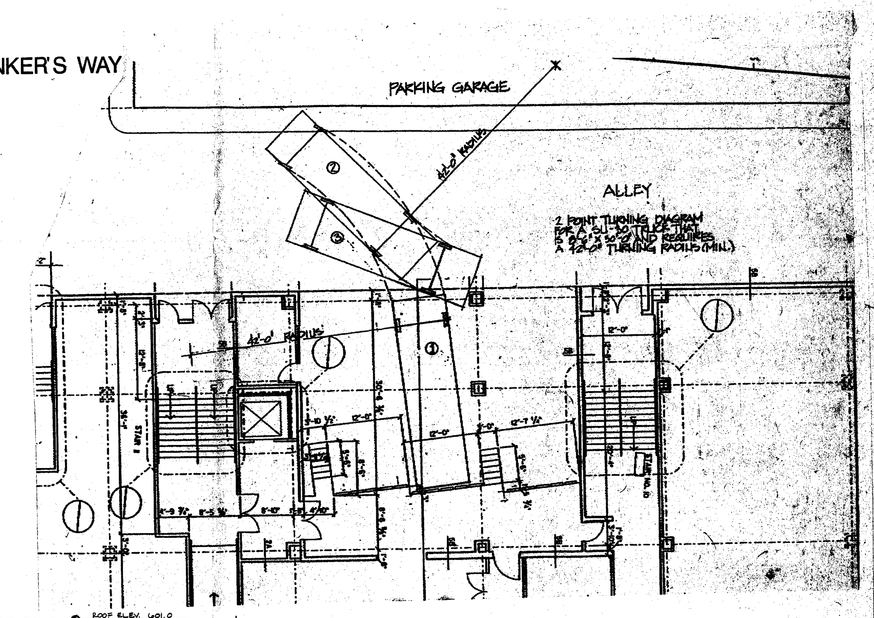
CHESAPEAKE AVE. PENNSYLVANIA AVE.

EAST ELEVATION • YORK ROAD



PENNSYLVANIA AVE BANKER'S ALLEY CHESAPEAKE AVE.

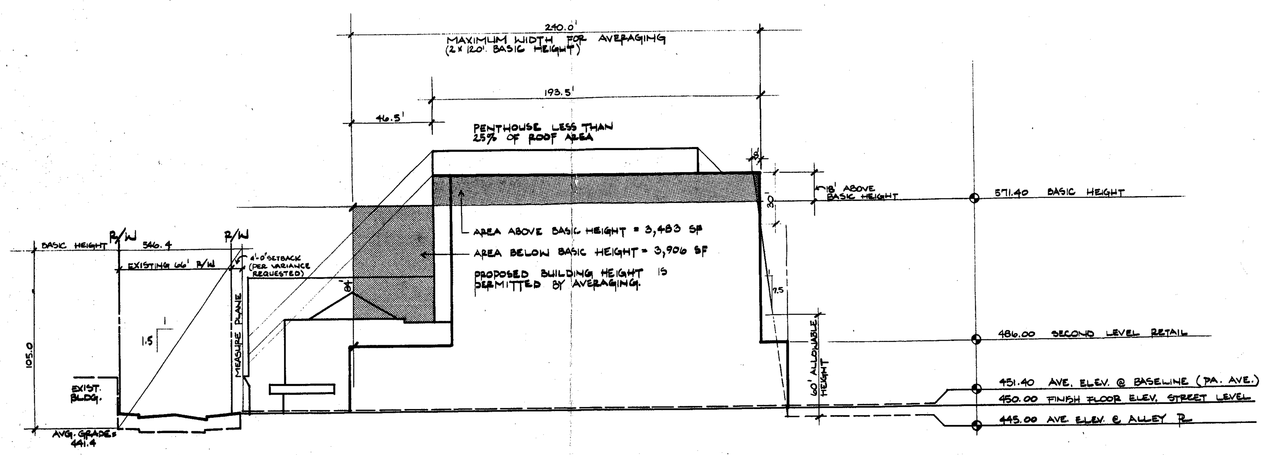
WEST ELEVATION • BANKER'S WAY



LOADING DOCK TURNING DIAGRAM

SCALE 3/32"=1'-0"

NOTE:
ROTUNDA, THEATRE AND COOLING TOWER ALL PROJECTED DOWNWARD AT 45° ARE BELOW ROOF AT SECOND LEVEL, PA. AVE.

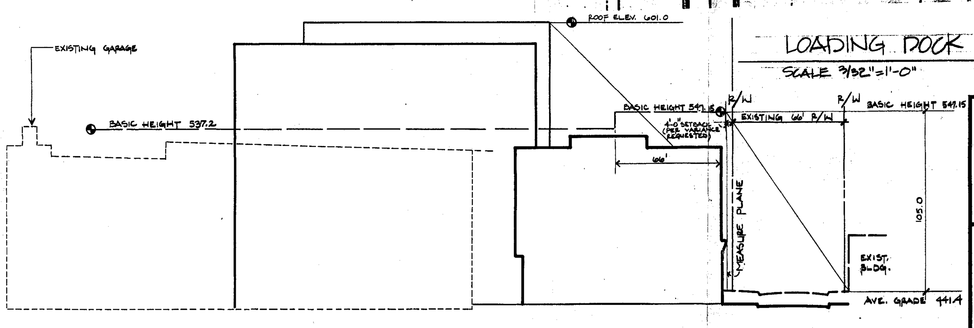


YORK RD. PENNSYLVANIA AVE.

HEIGHT AVERAGING

NORTH ELEVATION • PENNSYLVANIA AVE.

BASIC HEIGHT IS ILLUSTRATED BY A 1 TO 1½ ANGLE BEGINNING AT AN AVERAGE GRADE OPPOSITE EIGHT-OF-WAY TO THE MEASURE PLANE. THIS ACHIEVES THE SAME RESULT AS USING A 45° ANGLE AND INCREASING THE RESULT BY 1.5.



YORK RD.

SOUTH ELEVATION • CHESAPEAKE AVE.

BALTIMORE COUNTY MD.
COUNTY REVIEW GROUP
This Plan Was Reviewed By The CRG On 8/8/89 With The Following Action Taken

PLAN APPROVED
Plan Approved DPW
Plan Approved OPZ
Approval Expiration Date 8/8/90
Plan Disapproved
Continued Mtg. Required
Plan Referred To Plan. Bd.

DAFT · McCUNE · WALKER INC.
LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS
530 E. JOPPA ROAD
TOWSON, MD. 21204
TELEPHONE: (301) 296-3333

HEIGHT TENT ELEVATIONS

TOWSON COMMONS

CRG PLAN

PRINTED APR 0 2 1990
DAFT-McCUNE-WALKER, INC.

STATE OF MARYLAND REGISTERED PROFESSIONAL ENGINEER No. 12000

SCALE: 1"=1'
JOB ORDER NO. 88116
ISSUE DATE 6/27/89

DATE	REVISIONS
8-4-89	CORRECTED PER LATEST PLANS
3-14-90	LOADING DOCK TURNING DIAGRAM

4 of 5