Genesis Health Care
ADAM SKOLNIK – L/O
19 FUSTING AVENUE
1ST E: 1ST C

07-535-5PHXA

~~5/07/08 @ 10 a.m. PP'd~~
6/03/08 @ 10 a.m. Day #1 ✓
7/23/08 @ 10 am Day 2 ✓
7/29/08 @ ~~9 am~~ 10 a.m. Day #3 ✓
10/22/08 @ 9:00 am Del.b. ✓
3/17/09 9:00 Delib on Motion to Reconsider + Response

Opinion Issued
1/16/09
Ruling on Motion
For Reconsideration
Issued 5/21/09

07-535-5PHXA
A

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supplemental

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07-535-5PHXA

12/17/09

PETITION OF GENESIS HEALTHCARE FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
	*	FOR
IN THE CASE OF GENESIS LEGAL OWNERS FOR A PETITION FOR SPECIAL VARIANCE ON PROPERTY LOCATED AT 19 FUSTING AVENUE N/S FUSTING AVENUE, 137' N C/LINE HOWARD AVE	*	BALTIMORE COUNTY
	*	
	*	
1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	
	*	Case No. 03-C-09-07215
PRIOR CASE NO. 07-535-SPHXA BEFORE THE COUNTY OF APPEALS 1ST COUNCILMANIC DISTRICT	*	
	*	

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

MEMORANDUM OPINION

This matter came before the Court for hearing on December 8, 20009, on an administrative appeal from the decisions of the Opinions and Orders, dated January 16, 2009 and May 21, 2009, of the Baltimore County Board of Appeals (CBA) denying a request for variance. The Court has considered the memoranda submitted, along with the arguments of counsel in deciding this appeal.

I. Factual Background

Genesis Healthcare (Genesis) operates a nursing home in Catonsville, MD located at 16 Fusting Ave. Genesis also owns the subject property, an empty lot approximately 67 feet wide by 230 feet deep, zoned D.R. 5.5 (Density Residential), located across the street at 19 Fusting Ave. Located next to 19 Fusting Ave. are a single-family home (23 Fusting Ave.) and a seven unit apartment converted from a single family home. Genesis

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FILED JAN 11 2010

is seeking to convert 19 Fusting Ave. into a parking lot to alleviate what it alleges are overcrowded conditions on its own lot.

Because 23 Fusting Ave. is a single-family home within one hundred fifty feet of the boundary with 19 Fusting Ave., a residential transition area (RTA) is created. *See* Baltimore County Zoning Regulations (BCZR) § 1B01.1.B.1.b(1). An RTA is "a one-hundred-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed." BCZR § 1B01.1.B.1.a(1). "The purpose of an RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types." BCZR § 1B01.1.B.a(2). Because the RTA generated from 23 Fusting Ave. extends onto 19 Fusting Ave. the BCZR requires that any parking lot or structure "shall provide a fifty-foot buffer and seventy-five-foot setback, and a height not to exceed 35 feet within the one-hundred-foot transition area." BCZR § 1B01.1.B.e(5).

Due to the fact that this seventy-five foot setback would extend beyond the sixty-seven foot width of 19 Fusting Ave., Genesis filed three Petitions for special exception, special hearing and variance in May, 2007 to allow the paving of a lot with a thirteen and seven tenths (13.7) foot buffer/setback from the property boundary. In an Opinion dated September 10, 2007 the Deputy Zoning Commissioner granted the petitions subject to certain conditions. A neighbor, Angela Lunczynski, filed a timely appeal to the CBA. The CBA conducted three days of hearings, on June, 2008, July 23, 2008, and July 29, 2008. (Hereinafter "Day 1," "Day 2," and "Day 3" respectively.)

At the hearings Genesis presented two witnesses, Leana Hoover, administrator at the Genesis facility, and Bruce Doak, a licensed surveyor. Ms. Hoover testified that

Genesis had one hundred thirty-eight beds in its facility. Day 1, T. 34. BCZR § 409.6.A.1 sets fourth the standards for off-street parking, requiring one parking space for every three nursing beds. Genesis has fifty-six parking spaces at 16 Fusting Ave. but claimed that there was insufficient parking for staff and visitors. Day 1, T. 64. However Ms. Hoover agreed that similar convalescent facilities had comparable medical attendants visiting the facility and could not identify anything unusual about the 16 Fusting Ave. facility that would generate a disproportionate number of vehicles. Day 1, T. 110.

Mr. Doak was offered as an expert in Baltimore County development and zoning regulations, and presented his opinion why 19 Fusting Ave. was unique. Mr. Doak explained that 19 Fusting Ave. was unique due to the narrowness of the lot as well as its "very unique relationship to the convalescent home across the street." Day 2, T. 49. On cross-examination however, Mr. Doak acknowledged 19 Fusting Ave. was physically and topographically similar to several other properties in the area, and he acknowledged that some of these properties were even narrower. The primary thing that Mr. Doak claimed to make 19 Fusting Ave. unique was the proposed use. Day 2, T. 62-67. Mr. Doak confirmed that the size of the property would not prevent residential use of the property. Day 2. T. 102.

The Protestants of the variance testified at length about their opposition to the proposed parking lot. Additionally, the Protestants testified that the shape of the property was not unique and that several other area properties were of similar shape and size. *See e.g.*, Day 2, T. 218-19; Day 3, T. 28-29.

II. Decision of the CBA

The CBA denied the request for variance, and accordingly also denied the special exception and special hearing, in its Opinion dated January 16, 2009. Essentially the CBA determined that the property was not unique. The CBA found that 19 Fusting Ave. was narrow in width and rectangular in shape, but that this was quite similar to other lots in the area that contained residential structures. The CBA recognized that the narrowness of the lot, in conjunction with the setback requirements for the parking lot itself and the fact that the lot was located across the street from Genesis' nursing home facility, created unique circumstances. However, the CBA determined that the lot's physical characteristics were not unique. Therefore the CBA denied Genesis petition. *See Cromwell v. Ward*, 102 Md. App. 691, 698, 710 (1995) (discussed *infra*).

Genesis filed a Motion for Reconsideration requesting that the CBA reconsider in light of the Court of Appeals decision in *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County*, 407 Md. 53 (2008), defining "unique" as a property with "an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or similar restrictions." *Id.* at 81. Again, the CBA was not convinced by this argument, but rather agreed with People's Counsel, who noted that *Cromwell* had addressed Genesis' assertion when it stated "In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvement upon the property, or upon neighboring property." 102 Md. App. at 710. Therefore, the CBA denied Genesis Motion for Reconsideration in its opinion dated May 21, 2009.

III. Issue Presented

Whether the CBA erred in denying Genesis' request for a variance on the grounds that the property located at 19 Fusting Ave. was not unique.

IV. Standard of Review

"[T]the standard of review of the action of an administrative agency is whether a reasoning mind could have reached the conclusion which the administrative agency reached." *State Ins. Comm'r v. National Bureau of Casualty Underwriters*, 248 Md. 292, 309 (1967). "[T]he order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency's conclusions reasonably may be based upon the facts proven." *People's Counsel v. Mangione*, 316 Md. 491, 496-97 (1989). Once the court determines that the administrative agency applied the proper legal standards, judicial review of the agency's conclusions is then tested by the "substantial evidence test." *See Montgomery County v. Buckman*, 333 Md. 516, 519-20 (1994).

> The substantial evidence standard applicable to the Board's findings of fact and resolution of mixed questions of law and fact, sometimes referred to as the "fairly debatable" test, is implicated by our assessment of whether the record before the Board contained at least "a little more than a scintilla of evidence" to support the Board's scrutinization action. If such substantial evidence exists, even if [the Court] would not have reached the same conclusion as the Board based on all the evidence, [it] must affirm. Stated another way, substantial evidence pushes the Board's decision into the unassailable realm of a judgment call, one for which [the Court] may not substitute [its] exercise of discretion.

Friends of the Ridge v. Baltimore Gase and Electric Co., 120 Md. App. 444, 446 (1998), vacated in part, 352 Md. 645 (1999). However, on pure questions of law, no deference is

given "beyond the weight merited by the persuasive force of the reasoning employed." *Id.* The "fairly debatable test" mentioned above states: "If there is some evidence pointing in each direction, the issue is, by definition, 'fairly debatable,' and the decision of the administrative agency, whichever way it goes, may not be reversed on judicial review as having been arbitrary or capricious." *Futoryan v. Mayor and City Council of Baltimore*, 150 Md. App. 157, 172 (2003).

V. Legal Analysis

BCZR § 307.1 provides the CBA the authority to grant variances only in instances where "special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the [regulations] would result in practical difficulty or unreasonable hardship." The Court of Special Appeals has interpreted § 307.1 to require both the special circumstances and practical difficulty to exist prior to the variance being granted. *See Cromwell v. Ward*, 102 Md. App. 691, 698 (1995). "However, as is clear from the language of the... ordinance, the initial factor must be established before the practical difficulties, if any, are addressed... It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties..." *Id.*

The Court of Appeals recently reaffirmed the requirements to establish the unique nature of the property in *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County, et al.*, 407 Md. 53 (2008). As stated in *Trinity*:

> [T]he 'unique' aspect of a variance requirement does not refer to the extent of improvements on the property, or upon the neighboring property. 'Uniqueness of a property for zoning purposes requires that the subject

> property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or similar restrictions.

407 Md. at 81 (quoting *Lewis v. Dept. of Natural* Resources, 377 Md. 382, 434 (2003)).

Genesis claims that the CBA erred in finding that 19 Fusting Ave. was not unique. Genesis argues that 19 Fusting Ave. is unique based upon the "practical [restriction] imposed by the abutting [property]," at 23 Fusting Ave. First, Genesis points out that 23 Fusting Ave. is the only adjacent property that creates an RTA because it is the only single-family home located within one hundred fifty feet of the property boundary. Second, Genesis notes its desire to build a parking lot at 19 Fusting Ave. Genesis reasons that 19 Fusting Ave. is unique because it is impossible to build the parking lot and comply with the fifty-foot buffer and seventy-five-foot setback required by the RTA due to the fact that the seventy-five-foot setback extends beyond the sixty-seven-foot width of the property. Further, this practical restriction is unique because the RTA would not exist if the house at 23 Fusting Ave. were further than one-hundred-fifty from the property line. Therefore, Genesis reasons that a unique practical restriction exists because but for the location of the house at 23 Fusting Ave. the RTA would not exist and Genesis would not be required to have to maintain a buffer and setback. Thus, Genesis claims the CBA erred in concluding that 19 Fusting Ave. was not unique.

This Court is not convinced by these arguments, and finds that the CBA properly applied the law in determining that 19 Fusting Ave. was not unique. Genesis' expert acknowledged that many properties in the neighborhood and throughout the county were of similar widths as 19 Fusting Ave. The Court of Special Appeals has recognized that

the inability of a property to accommodate the setbacks for a desired use is not evidence of uniqueness under *Cromwell* and § 307.1. *See generally Umerley v. People's Counsel for Baltimore County*, 108 Md. App. 497 (1986) (ruling that a trucking facility which had been operating on property too small to accommodate the required set back was in violating of the BCZR and not eligible for a variance despite the fact that it had been in operation prior to the change in the zoning regulations). "It is not the uniqueness of the plight of the owner, but the uniqueness of the land causing the plight which is the criterion... Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size." *Cromwell*, 102 Md. App. at 719-20.

Genesis' argument that *Trinity*'s holding that uniqueness can be created by "practical restrictions imposed by abutting properties (such as obstructions)" includes the RTA created by the location of the single-family home at 23 Fusting Ave is not persuasive. If the RTA restrictions alone constitute a "practical restriction," then all properties in similar circumstances would arguably be "unique." This would severely compromise the purpose of this zoning restriction.

The CBA properly interpreted the variance case law in analyzing this issue. There was substantial evidence to support the CBA decision. Genesis' desire to build a parking lot at 19 Fusting Ave., on property completely encompassed by a RTA,is not a unique circumstance. Rather the CBA properly applied *Cromwell* and *Trinity* when it looked at the physical characteristics of the subject property itself.

The evidence in the record supports the CBA's findings that other properties in the neighborhood were similarly narrow, and that 19 Fustng Ave. lacked any unusual

physical characteristics. The mere existence of a zoning restriction created by an abutting property does not make a property unique. Because a reasoning mind could have reached the same conclusion as the CBA based upon this evidence, this Court must affirm its decision.

Conclusion

For the reasons stated, the decisions of the CBA comport with the applicable law, and are supported by substantial evidence. Therefore, the decisions are AFFIRMED.

12/17/01
Date

Kathleen Gallogly Cox
Judge

Clerk: Please send copies to all parties.

PETITION OF GENESIS HEALTHCARE FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
	*	FOR
IN THE CASE OF GNESIS LEGAL OWNERS FOR A PETITION FOR SPECIAL VARIANCE ON PROPERTY LOCATED AT 19 FUSTING AVENUE N/S FUSTING AVENUE, 137' N C/LINE HOWARD AVE	*	BALTIMORE COUNTY
	*	
1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	
	*	Case No. 03-C-09-07215
PRIOR CASE NO. 07-535-SPHXA BEFORE THE COUNTY OF APPEALS 1ST COUNCILMANIC DISTRICT	*	
	*	

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

JUDGMENT ORDER

For the reasons stated in this Court's Memorandum Opinion dated December 17, 2009, the decisions of the Baltimore County Board of Appeals dated January 16, 2009 and May 21, 2009 are AFFIRMED.

12/17/09
Date

Kathleen Gallogly Cox
Judge

Clerk: Please send copies to all parties.

cc: L. Schmidt Esq.
C. DeMilio Esq.
M. Tanczyn Esq.

FILED JAN 11 2010

7/14/09

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
GENESIS HEALTHCARE *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS NUMBER: **03-C-09-007215**
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF :
GENESIS HEALTHCARE - CONTRACT *
PURCHASERS, P.G. DEVELOPERS, LLC -
LEGAL OWNERS *
FOR SPECIAL HEARING, SPECIAL
EXCEPTION AND VARIANCE *
ON PROPERTY LOCATED ON THE N/SIDE OF
FUSTING AVENUE, 137' N C/L HOWARD *
AVENUE (19 FUSTING AVENUE)

*

1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT *

Board of Appeals Case No: 07-535-SPHXA *

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

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY

No. 07-535-SPHXA

May 25, 2007	Petition for Special Hearing to approve an amendment to the previous Special Exception granted in Case No.: 5006-XA to add a parking area to a previously approved Assisted Living Facility; Petition for Special Exception to use the property for a convalescent home; and Petition for Variance to permit a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback, filed by Lawrence E. Schmidt, Esquire on behalf of Genesis Healthcare, Petitioners.
June 7	Entry of Appearance filed by People's Counsel for Baltimore County.
July 20	Certificate of Posting.
July 24	Certificate of Publication in newspaper
July 26	ZAC Comments.
August 7	Hearing held before the Deputy Zoning Commissioner
August 20	Petitioner's Hearing Memorandum In Lieu of Closing Argument filed by Lawrence E. Schmidt, Esquire on behalf of Genesis Healthcare, Petitioners.
September 10	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner. Petition for Special Exception was GRANTED approving the use of the subject property as a convalescent home; Petition for Special Hearing was GRANTED approving the amendment to the previous Special Exception to add a parking area to a previously approved Assisted Living Facility; and Petition for Variance was GRANTED permitting a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback. All Petitions were GRANTED with restrictions.
October 5, 2007	Notice of Appeal dated September 21, 2007 filed by Angela M. Lunczynki, Appellant/Protestant.
June 3, 2008	Board convened for hearing, Day #1 – continued to Day 2.
July 23	Board convened for hearing, Day #2 – continued to Day 3.
July 29	Board convened for hearing, Day #3 - concluded.

Exhibits submitted at hearing (three days) before the Board of Appeals:

Petitioner's Exhibit No.

1 – Site Plan – "Plat to accompany Petition Request for Variance, Special Exception and Special Hearing"
2a – Aerial photograph of site
2b – Aerial photograph of site
3 – Plan to accompany photographs
4a-u – Photographs of site from various angles and locations
5 – Petition for Special Exception Case No. 5006-X, (1960), 6 pages
6 – Tax and Zoning Map for Vicinity (Large Board)
7 – Minor Subdivision Plan dated 11/9/06
8 – Title page and Preface of Maryland Stormwater Design Manual Volume I
9 – Department of Public Works, Existing Conditions Drainage Area Map
10 – Soil Publication regarding soil at subject site (4 pages)
11 – Snook Drawing regarding water flow
12 – Baltimore County Photogrammetric Map

Protestants' Exhibit No.

1 – 4 Photographs of site
2 – 4 Photographs of site
3 – Letter dated 7/21/1993 regarding stormwater management (9 pages) FOR ID PURPOSES ONLY
4a-c – Photographs of soil erosion submitted by Protestant at 29 Fusting Ave
5 – Internal Memorandum to Ms. Pat Stack from Lt. John Olow regarding the number of Fire Department calls from subject site.
6 – 4 Photographs of Protestant's home and lot
7 – 4 Photographs from Fusting Avenue toward Ingelside
8a-m – 13 Photographs taken by Protestant of lot
9 – Maryland SDAT Real Property Data Search Map 101, Fusting Avenue (67 pages)
10 – Maryland SDAT Real Property Data Search Map 101, Egges Lane (34 pages)
11 – Letter from David P. Warshaw, Member of Warshaw One, LLC, owner of apartment development "Cherry Tree Manor" opposing "...the Petitioner's request for a Special Variance..."

People's Counsel Exhibit No.

1 – Maryland SDAT Real Property Search, 29 Fusting Avenue (2 pages)

September 8, 2008	Hearing Memorandum in lieu of Closing Argument filed by Lawrence E. Schmidt, Esquire on behalf of Genesis Healthcare, Petitioners.
September 8	Memorandum of People's Counsel for Baltimore County filed by Office of People's Counsel.
September 8	Memorandum of Protestant filed by Michael P. Tanczyn, Esquire on behalf of Angela Lunczynski, Protestant.
October 22	Board convened for public deliberation.
January 16, 2009	Final Opinion and Order issued by the Board in which all Petitions for relief were DENIED.
February 17	Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Genesis Healthcare, Petitioners.
February 20	Response to Motion for Reconsideration filed by Michael P. Tanczyn, Esquire on behalf of Angela Lunczynski, Protestant, that the Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Genesis Healthcare, Petitioners, was untimely and late.
February 23	Letter from Theresa R. Shelton, Administrator of Board of Appeals to Michael P. Tanczyn, Esquire addressing the issue of the timeliness of the filing of the Motion, indicating that the Motion was filed appropriately due a Holiday. The Board would Deliberate the Motion for Reconsideration.
February 23	Letter from Lawrence E. Schmidt, Esquire to Board's Administrator regarding acceptance of the Motion consistent with the Board's administrative practice.
February 24	Letter and attachments dated February 23, 2009 from Michael P. Tanczyn, Esquire supplementing his Response to the Motion for Reconsideration.
February 24	People's Counsel for Baltimore County's Answer to the Motion for Reconsideration filed.

February 25, 2009	Amended Notice of Deliberation to address the Motion for Reconsideration and the Response (timeliness of filing).
February 26	Letter dated February 25, 2009 from Michael P. Tanczyn, Esquire to Theresa R. Shelton, Administrator of Board of Appeals in response to the February 23, 2009 letter, stating his position regarding the Motion for Reconsideration being filed in a timely manner.
March 5	Letter dated March 3, 2009 from Lawrence E. Schmidt, Esquire to Theresa R. Shelton, Administrator of Board of Appeals responding to Michael P. Tanczyn, Esquire's letter dated February 25, 2009 with regard to the timeliness of the filing of the Motion for Reconsideration.
March 17	Board convened for Public Deliberation on Motion for Reconsideration and Response to the Motion being filed in a timely manner. The Board decided that the Motion for Reconsideration was filed in a timely manner and deliberated the Motion.
May 21	Ruling/Opinion on Petitioner's Motion for Reconsideration issued by the Board in which the Motion for Reconsideration was DENIED.
June 19	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Lawrence E. Schmidt, Esquire, on behalf of Genesis Healthcare, Petitioners
June 23	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
June 25	Transcript of testimony filed.
June 29	Certificate of Compliance sent to all parties and interested persons.
June 29	Response to Petition for Judicial review filed in the Circuit Court for Baltimore County by the Office of People's Counsel
July 14	Record of Proceedings filed in the Circuit Court for Baltimore County.

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

Sunny Cannington

Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Ave.
Towson, Maryland 21204
410-887-3180

c: Keith Nause, VP Controller/Genesis Healthcare
Adam Skolnik/PG Developers, LLC
Bruce Doak/Gerhold, Cross & Etzel, Ltd
Natalie Holland/Genesis Health Care
Leena Hoover/Genesis Health Care
Angela Lunczynski
Scott Westcoat
Pat Stack
Brian Nippard
Elera DeBold
Fr. W. Terry Sweeney
William J. Wiseman, III, Zoning Commissioner
Office of People's Counsel
Arnold F. "Pat" Keller, Director/Planning
Timothy Kotroco, Director/PDM
John Beverungen, County Attorney

6/29/09

RECEIVED
JUN 29 2009
BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF **GENESIS HEALTHCARE** FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	
	*	CIRCUIT COURT
IN THE CASE OF **GENESIS HEALTHCARE** LEGAL OWNERS FOR A PETITION FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED AT 19 FUSTING AVENUE N/S FUSTING AVENUE, 137' N C/LINE HOWARD AVE	*	FOR
1st Election District, 1st Councilmanic District	*	BALTIMORE COUNTY
Prior Case No. 07-535-SPHXA Before the County Board of Appeals	*	Case No. 03-C-09-07215

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

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed GENESIS HEALTHCARE, and states that it intends to participate in this action for Judicial Review. The undersigned participated in the proceeding before the County Board of Appeals.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
The Jefferson Building
105 W. Chesapeake Avenue, Room 204
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 2009, a copy of the foregoing Response to Petition for Judicial Review was mailed to Michael Tancyzn, Esquire, 606 Baltimore Avenue, Ste. 106, Towson, MD 21204, Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204, Attorney for Appellant and County Board of Appeals, 105 W. Chesapeake Avenue, Suite 203, Towson, Maryland 21204..

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

6/24/09

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
GENESIS HEALTHCARE *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS NUMBER: 03-C-09-007215
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF :
GENESIS HEALTHCARE - CONTRACT *
PURCHASERS, P.G. DEVELOPERS, LLC -
LEGAL OWNERS *
FOR SPECIAL HEARING, SPECIAL
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ON PROPERTY LOCATED ON THE N/SIDE OF
FUSTING AVENUE, 137' N C/L HOWARD *
AVENUE (19 FUSTING AVENUE)
*
1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT *

Board of Appeals Case No: 07-535-SPHXA *

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

CERTIFICATE OF COMPLIANCE

Madam Clerk:

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

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Ave, Suite 200
Towson, MD 21204

RECEIVED AND FILED
2009 JUN 29 AM 8:46
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Keith Nause, VP Controller
Genesis Health Care
515 Fairmount Avenue
Towson, MD 21204

Adam Skolnik
PG Developers, LLC
8624 Winands Road
Randallstown, MD 21133

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

Natalie Holland
Genesis Health Care
515 Fairmount Avenue
Towson, MD 21204

Leena Hoover
Genesis Health Care
515 Fairmount Avenue
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Michael Tanczyn, Esquire
606 Baltimore Ave., Suite 106
Towson, MD 21204

Angela Lunczynski
23 Fusting Avenue
Catonsville, MD 21228

Scott Westcoat
14 Fusting Avenue
Catonsville, MD 21228

Pat Stack
29 Fusting Avenue
Catonsville, MD 21228

Brian Nippard
19 Egges Lane
Catonsville, MD 21228

Elera DeBold
29 Fusting Avenue
Catonsville, MD 21228

Fr. W. Terry Sweeney
202 Ingleside Avenue
Catonsville, MD 21228

Office of People's Counsel
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Arnold F. "Pat" Keller, Director
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Timothy Kotroco, Director
Office of Permits and Development Mgmt
County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

John E. Beverungen, County Attorney
Office of Law
400 Washington Avenue
Towson, MD 21204

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

I HEREBY CERTIFY that on this 29th day of June, 2009, a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.

Sunny Cannington

Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
410-887-3180

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

June 29, 2009

Michael Tanczyn, Esquire
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Towson, MD 21204

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Ave, Suite 200
Towson, MD 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-09-007215
In the Matter of: Genesis Healthcare
Board of Appeals Case No.: 07-535-SPHXA

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on June 19, 2009 by Lawrence E. Schmidt, Esquire on behalf of Genesis Healthcare in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response with the Circuit Court for Baltimore County within 30 days after the date of this letter. pursuant to the Maryland Rules.

A copy of the Certificate of Notice has been enclosed for your convenience.

Very truly yours,

Sunny Cannington

Sunny Cannington
Legal Secretary

Duplicate Original Cover Letter

Enclosure

cc: Keith Nause, VP Controller/Genesis Healthcare
Bruce Doak/Gerhold, Cross & Etzel, Ltd
Leena Hoover/Genesis Health Care
Angela Lunczynski
Pat Stack
Elera DeBold
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning
John Beverungen, County Attorney
Adam Skolnik/PG Developers, LLC
Natalie Holland/Genesis Health Care
Scott Westcoat
Brian Nippard
Fr. W. Terry Sweeney
Office of People's Counsel
Timothy Kotroco, Director/PDM

6/19/09

PETITION OF: GENESIS HEALTHCARE	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Jefferson Building 105 W. Chesapeake Avenue, Room 203 Towson, MD 21204	*	CIRCUIT COURT FOR BALTIMORE COUNTY
IN THE CASE OF: Genesis Healthcare, Contract Purchaser P.G. Developers, LLC, Legal Owners 19 Fusting Avenue Catonsville, MD 21228	*	Case No. C-09-7215

Case No. CBA-07-535-SPHXA

* *

PETITION FOR JUDICIAL REVIEW

The Appellant, Genesis Healthcare, by and through their attorney, Lawrence E. Schmidt and Gildea & Schmidt, LLC, herein file their Petition for Judicial Review pursuant to Rule 7-203(b) from the Opinion and Order of the County Board of Appeals of Baltimore County in the above referenced matter dated January 16, 2009 and attached hereto. Also this Petition requests Judicial Review of the Ruling/Opinion dated May 21, 2009, denying the Motion for Reconsideration filed by Petitioners and affirming the decision of Case No. 07-535-SPHXA, also attached hereto. The Appellant was party to the agency proceeding and the Motion for Reconsideration and have standing to pursue Judicial Review.

RECEIVED
JUN 23 2009
BALTIMORE COUNTY
BOARD OF APPEALS

FILED JUN 19 2009

Respectfully submitted,

LAWRENCE E. SCHMIDT
Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
410-821-0070
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of **June, 2009**, a copy of the foregoing Response to Petition for Judicial Review was mailed, first-class mail, postage pre-paid to:

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

Carole S. DeMilio, Esquire
Deputy People's Counsel
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson MD 21204

Theresa R. Shelton
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204



LAWRENCE E. SCHMIDT

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

Case Number: 03-C-09-007215

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Jefferson Building
105 W Chesapeake Avenue Room 203
Towson, MD 21204

RECEIVED
JUN 23 2009
BALTIMORE COUNTY
BOARD OF APPEALS

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR; SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

February 25, 2009

VIA FACSIMILE AND U.S. MAIL

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

RE: *In the Matter of: Adam Skolnik, LO / Genesis Health Care*
Case No. 07-535-SPHXA

Dear Mr. Tanczyn:

This office is in receipt of your supplement to your Response to Motion For Reconsideration, which was received in our office on February 24, 2009.

In addition, this office is also in receipt of People's Counsel for Baltimore County's Answer to Motion For Reconsideration, which was received on February 24, 2009.

Enclosed herewith you will find an Amended Notice of Deliberation. The Deliberation scheduled for Tuesday, March 17, 2009 at 9:00 a.m. will address both the Motion for Reconsideration and the Response/Answer to the Motion for Reconsideration, filed by the parties.

Should you have any questions, please call me at 410-887-3180.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Administrator

Enclosure: Amended Notice of Deliberation

c(w/Encl.): Lawrence E. Schmidt, Esquire (via facsimile and U.S. Mail)
People's Counsel for Baltimore County – HAND DELIVERED

2/24/09

RE:	**PETITION FOR SPECIAL HEARING** SPECIAL EXCEPTION & VARIANCE 19 Fusting Avenue; N/S Fusting Avenue, 137' N C/line Howard Avenue 1st Election & 1st Councilmanic Districts Legal Owner(s): P.G. Developers, LLC Contract Purchaser(s): Genesis Healthcare Petitioner(s)	*	**BEFORE THE COUNTY** BOARD OF APPEALS FOR BALTIMORE COUNTY 07-535-SPHXA

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

RECEIVED
FEB 24 2009
BALTIMORE COUNTY
BOARD OF APPEALS

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S ANSWER TO MOTION FOR RECONSIDERATION

People's Counsel files this response to Petitioner's Motion for Reconsideration and states as follows:

1. Petitioner has reiterated the arguments presented at the hearing in this matter and set forth in its Post-Hearing Memorandum. Petitioner uses Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel of Baltimore County, 407 Md. 53 (2008) as a way to circumvent the statement in CBA Rule 10 that the no additional evidence with respect to substantive matters is appropriate in a Motion for Reconsideration. Trinity reinforces Cromwell v. Ward, 102 Md. App. 691 (1995), which the CBA relied on here to deny the variances. Trinity also held the site was not unique, and denied the variances. If anything, Trinity reinforces the CBA decision here; there is no new law on variances under Trinity and the variance standards reaffirmed in Trinity were carefully considered by the CBA and explained in its Opinion.

2. There is nothing in the Trinity decision to support Petitioner's position. Petitioner argues that the adjoining residence creates a "practical restriction imposed by abutting properties" that qualifies as uniqueness. Trinity does not expand this requirement to include the mere presence of an adjoining residence. The "practical restrictions" language used in Cromwell refers to a physical characteristic of the adjoining site (Cromwell actually notes "(such as obstructions)"), not the mere presence of a home on the site. Petitioner overlooks the language in Cromwell which states at 710: ***"In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvement upon the property, or upon neighboring property."*** (emphasis added). Not only is Petitioner's interpretation of the definition of uniqueness completely contrary to the intent and meaning of the language, it

conflicts with the very discussions of uniqueness in Cromwell, which has been referred to favorably and upheld by the Court of Appeals in Trinity.

3. Petitioner's argument has no validity because the heart of every RTA case is the presence of a single family home within the buffer area. The purpose is to "assure that similar housing types are built adjacent to one another . . ." Thus the statute impacts every owner in the same manner. If the variance were granted here based on Petitioner's argument, every RTA variance would have to be granted and the purpose of the statute would be frustrated into oblivion. The Petitioner's interpretation of "practical restriction" would render enforcement of the RTA standards null and void. As Judge Harrell stated in Trinity at page 82, ***"Where a property's physical peculiarities do not cause the landowner to suffer disproportionately due to application of the zoning enactment in question, the property is not "unique" in the law of variances."***

4. In addition, the site has a viable use as a single family residence that does not violate the RTA standards; a preference for another use that requires a variance is not practical difficulty, even if the site were unique. ***"The mere fact that the variance would make the property more profitable is not a sufficient ground to justify relaxation of setback requirements."*** Burns v. City of Baltimore 251 Md. 554 (1968). ***"Financial return ... alone, never justifies a variance."*** Cromwell, at 714-15.

5. The CBA decision in this case is based upon the evidence and the law and should be upheld. As the Court of Special Appeals stated in **Evans v. Shore Communication, 112 Md. App. 284 (1996):**

> ***"In determining whether to grant variance, first consideration cannot be fact that variance is desired and difficulties will exist if it is not granted."***

6. Petitioner here has demonstrated nothing more in its Motion than its same argument made at the hearing and in its Post Hearing Memorandum – it desires the variances and therefore, they should be granted – but there is no factual basis under the standards in Cromwell, and Trinity, nor a legal basis under BCZR 307.1; the CBA Rules, and these appellate cases to reverse the CBA decision and grant the relief.

7. Separately, the attorney for Protestants raises in his Answer to Motion for Reconsideration that the Motion should be dismissed because it was filed beyond the 30 day period to file a Motion for Reconsideration under CBA Rule 10; attached please find three Court

of Appeals decisions, Ivrey v. State, 178 Md. 638 (1940), American Tobacco Co. v. Strickling, 88, Md. 500 (1898) and Winkel v. Geiger, 154 Md. 673 (1928) that support the Protestants' position on this issue.

For these reasons, the Motion for Reconsideration should be denied.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Suite 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of February, 2009, a copy of the foregoing People's Counsel for Baltimore County's Answer to Motion for Reconsideration was mailed to Michael Tancyzn, Esquire, 606 Baltimore Avenue, Ste. 106, Towson, MD 21204 and Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204, Attorney for Petitioner(s).

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
for Baltimore County

Westlaw Delivery Summary Report for COUNSEL,PEOPLE'S

Date/Time of Request:	Monday, February 23, 2009 15:22 Central
Client Identifier:	PEOPLESCOUNSEL
Database:	MD-CS-FIND
Citation Text:	41 A. 1083
Lines:	324
Documents:	1
Images:	0

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41 A. 1083
69 L.R.A. 909, 88 Md. 500, 41 A. 1083
(Cite as: 69 L.R.A. 909, 41 A. 1083)

Court of Appeals of Maryland.
AMERICAN TOBACCO CO.
v.
STRICKLING.
Dec. 20, 1898.

Appeal from court of common pleas; Henry D. Harlan, Judge.

Action by Jessie May Strickling, by her father and next friend, Jesse Strickling, against the American Tobacco Company. There was a judgment for plaintiff, and defendant appeals. Dismissed.

West Headnotes

Labor and Employment 231H ⟹2895

231H Labor and Employment
231HXVII Employer's Liability to Employees
231HXVII(B) Working Conditions and Methods of Performing Work
231Hk2882 Questions of Law or Fact
231Hk2895 k. Knowledge by Employer of Defect or Danger. Most Cited Cases
(Formerly 148Ak236 Employers' Liability, 255k286(25) Master and Servant)
The question whether a master knew or ought to have known of the danger to employees from an unprotected revolving vertical shaft in a place where employees were required to work is properly submitted to the jury, where expert witnesses testified that, by leaving such shaft unprotected, there was danger that accidents would result herefrom, giving a number of instances of such accidents, together with testimony that such a shaft was easily covered, and where the master's superintendent admitted of having read of accidents occurring by persons' clothes being caught by similar shafts.

Time 378 ⟹10(8)

378 Time
378k7 Days
378k10 Sunday or Other Nonjudicial Day
378k10(8) k. Signing, Filing, and Presenting Bills of Exception. Most Cited Cases
Sundays must be included in computing the time for signing bills of exceptions, under Code Pub.Loc.Laws, art. 4, § 170, requiring bills of exceptions to be signed within 30 days after rendition of the verdict or decision.

Time 378 ⟹10(8)

378 Time
378k7 Days
378k10 Sunday or Other Nonjudicial Day
378k10(8) k. Signing, Filing, and Presenting Bills of Exception. Most Cited Cases
If the last of the 30 days is a Sunday, it must likewise be included.

***1084** Argued before MCSHERRY, C. J., and BRISCOE, PAGE, ROBERTS, PEARCE, and BOYD, JJ.William L. Marbury and Carroll T. Bond, for appellant. Thomas G. Hayes, Daniel B. Chambers, and James A. Fechtig, Jr., for appellee.

BOYD, J.

The appellee, Jessie May Striekling, was employed by the American Tobacco Company, the appellant, in one of its factories in Baltimore, and, while engaged in her regular work, was seriously injured, by reason, as she claims, of the negligence of the company. When she first went into the company's employ, in January, 1897, she worked on a sieve,-putting tobacco in a sieve,-but her employment was subsequently changed to sweeping the floors of the factory, and she was so engaged in May, 1897, when she was injured. Among other places she was required to sweep was a room in which there was a smooth, revolving, vertical shaft, which ran from the floor to the ceiling, and which was in an aisle or passageway between the wall and a stationary machine, being about 26 inches from

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141 A. 345
154 Md. 673, 141 A. 345
(Cite as: 154 Md. 673, 141 A. 345)

C

Court of Appeals of Maryland.
WINKEL
v.
HOLLANDER ET AL.
No. 34.

April 4, 1928.

Appeal from Circuit Court No. 2 of Baltimore City; Robert F. Stanton, Judge.

"To be officially reported."

Proceedings between Joseph A. Winkel and Louis Hollander and another. From an order overruling exceptions of the former to the ratification of foreclosure sale, he appeals. On motion to dismiss appeal. Appeal dismissed.

West Headnotes

Time 378 ⇐10(9)

378 Time
378k7 Days
378k10 Sunday or Other Nonjudicial Day
378k10(9) k. Appeal and Error and Other Proceedings for Review. Most Cited Cases
Appeal September 13th, from order July 12th overruling exceptions to ratification of foreclosure sale, held too late, though September 12th was holiday. Code Pub.Gen.Laws 1924, art. 5, § 36.

***345** Argued before BOND, C. J., and URNER, ADKINS, OFFUTT, DIGGES, PARKE, and SLOAN, JJ.Frank Driscoll, of Baltimore (Louis Samuels and G. Clem Graetzel, both of Baltimore, on the brief), for appellant.

Fillmore Cook, of Baltimore, for appellees.

BOND, C. J.

A motion made by the appellees to dismiss this appeal must, in our opinion, be granted. It is an appeal by a purchaser of property at a sale upon foreclosure ***346** of a mortgage under the jurisdiction of the circuit court No. 2 of Baltimore City, from an order overruling his exceptions to the ratification of the sale because of a small difference between the amount of ground rent stated in the advertisement of sale, on the one hand, and the amount paid for a period of years past and that specified in an early conveyance, on the other hand. The order was signed and filed on the 12th day of July, 1927, and the appellant's order for his appeal was sworn to and filed on the 13th day of September, 1927; and by section 36 of article 5 of the Code an appeal from an order of a court of equity is required to be taken and entered "within two months from the date of the decree or order appealed from, and not afterwards."There can be no doubt that according to the rule followed by this court in previous decisions, the 13th day of September was beyond the time limit, "within two months" from the 12th day of July, unless an elimination of one or more days from the count should be possible. Calvert v. Williams, 34 Md. 672, 673; Stiegler v. Eureka Life Insurance Co., 146 Md. 629, 655, 127 A. 397.And the appellant contends that September 12th, the last day of the two months, should be eliminated because that day was a legal holiday in Baltimore City and the office of the clerk of the court was closed. It has twice been decided that the fact that the last day of such a time allowance, longer than seven days, falls on Sunday, does not permit an extension of the time to include the Monday following. American Tobacco Co. v. Strickling, 88 Md. 500, 510, 41 A. 1083, 69 L. R. A. 909;Stiegler v. Eureka Life Insurance Co., supra.And we do not find any sufficient ground for distinguishing between Sunday and a legal holiday on another day, under that rule. Such holidays would be common incidents of almost any two months' period in Maryland; except when Good Friday falls in March or Labor Day falls after the 4th day of September there could be no two months'

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15 A.2d 910
178 Md. 638, 15 A.2d 910
(Cite as: 178 Md. 638, 15 A.2d 910)

C

Court of Appeals of Maryland.
IVREY
v.
STATE.
No. 19.

Oct. 31, 1940.

Appeal from Circuit Court, Anne Arundel County; Ridgely P. Melvin and Wm. H. Forsythe, Jr., Judges.

Harry Ivrey was convicted of perjury, and he appeals.

Appeal dismissed.

West Headnotes

[1] Time 378 ⇐10(11)

378 Time
378k7 Days
378k10 Sunday or Other Nonjudicial Day
378k10(11) k. Criminal Proceedings. Most Cited Cases
(Formerly 378k10(9))
Under rule of Court of Appeals requiring an appeal in criminal case to be taken within 10 days from date of sentence, an appeal taken on May 6, 1940, from a sentence imposed on April 25, 1940, was taken on the eleventh day and was too late, notwithstanding that third and tenth days were Sundays. Const. art. 4, § 18; Court of Appeals Rules, rule 25, § 1.

[2] Time 378 ⇐10(1)

378 Time
378k7 Days
378k10 Sunday or Other Nonjudicial Day
378k10(1) k. In General. Most Cited Cases
When a number of days more than seven is allowed for an act, all Sundays are included in the count, unless expressly excluded.

***638 **910** George B. Woelfel, of Annapolis (Sigmund Levin, of Baltimore, on the brief), for appellant.

Robert E. Clapp, Jr., Asst. Atty. Gen. (William C. Walsh, Atty. Gen., and Marvin I. Anderson, State's Atty., of Annapolis, on the brief), for appellee.

Argued before BOND, C. J., and PARKE, SLOAN, MITCHELL, JOHNSON, and DELAPLAINE, JJ.

BOND, Chief Judge.

[1] This appeal must be dismissed. It is from a conviction and sentence in a criminal case, on a charge of perjury, ***639** and contrary to the rule of court that appeals in criminal cases must be taken within ten days from the date of sentence, this one was taken on the eleventh day. Rule 25, sec. 1. The sentence was imposed on April 25, 1940, and the appeal was taken on May 6, following.

The difference between the tenth day and the eleventh is, of course, small and insignificant in some aspects, but here it is the difference between the two sides of a boundary line, necessarily placed somewhere, and the boundary cannot be maintained if it is to be disregarded for more or less short delays, or because it causes hardship in particular cases if observed. An exception has been made in a case of sentence of death, when the delay was ignored and the questions raised on appeal considered. Rose v. State, 177 Md. 577, 10 A.2d 617. But no other exception can be permitted if the court is to maintain a rule in performance of its constitutional duty to 'prescribe the periods within which appeals may be taken.'Constitution, Art. IV, sec. 18. Ten days is an ample allowance for the mere clerical entry of an appeal.

[2] Necessarily two of the days within the ten that

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LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827
Email: mptlaw@verizon.net

February 23, 2009
#2007-083

County Board of Appeals of Baltimore County
Attn: Mrs. Theresa R. Shelton, Administrator
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

RE: 07-535-SPHX
In the Matter of Adam Skolnik, Legal Owner
Genesis Health Care/Keith Nause, CP

Dear Theresa:

To supplement our Response with regard to the late filing of the Motion for Reconsideration, we enclose two cases which hold for the proposition that when the time period is in excess of seven (7) days, that Sundays are included within the thirty (30) days provided. That is significant because in this case, the 30th day would have fallen on February 15, 2009. Therefore, under the authority of these two cases, the Motion for Reconsideration should have been filed no later than close of business February 13, 2009. Please circulate this to the Board.

Thank you for your assistance in this regard.

Very truly yours,

Michael P. Tanczyn

MPT:aes
Enclosures
cc: Lawrence E. Schmidt, Esquire
Carole S. Demilio, Esquire
Angela Lunczynski

RECEIVED
FEB 24 2009
BALTIMORE COUNTY
BOARD OF APPEALS

Court of Appeals of Maryland.
IVREY
v.
STATE.
No. 19.

Oct. 31, 1940.

Appeal from Circuit Court, Anne Arundel County; Ridgely P. Melvin and Wm. H. Forsythe, Jr., Judges.

Harry Ivrey was convicted of perjury, and he appeals.

Appeal dismissed.

West Headnotes

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378 Time
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378k10 Sunday or Other Nonjudicial Day
378k10(11) k. Criminal Proceedings. Most Cited Cases
(Formerly 378k10(9))
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***638 **910** George B. Woelfel, of Annapolis (Sigmund Levin, of Baltimore, on the brief), for appellant.

Robert E. Clapp, Jr., Asst. Atty. Gen. (William C. Walsh, Atty. Gen., and Marvin I. Anderson, State's Atty., of Annapolis, on the brief), for appellee.

Argued before BOND, C. J., and PARKE, SLOAN, MITCHELL, JOHNSON, and DELAPLAINE, JJ.

BOND, Chief Judge.

[1] This appeal must be dismissed. It is from a conviction and sentence in a criminal case, on a charge of perjury, ***639** and contrary to the rule of court that appeals in criminal cases must be taken within ten days from the date of sentence, this one was taken on the eleventh day. Rule 25, sec. 1. The sentence was imposed on April 25, 1940, and the appeal was taken on May 6, following.

The difference between the tenth day and the eleventh is, of course, small and insignificant in some aspects, but here it is the difference between the two sides of a boundary line, necessarily placed somewhere, and the boundary cannot be maintained if it is to be disregarded for more or less short delays, or because it causes hardship in particular cases if observed. An exception has been made in a case of sentence of death, when the delay was ignored and the questions raised on appeal considered. Rose v. State, 177 Md. 577, 10 A.2d 617. But no other exception can be permitted if the court is to maintain a rule in performance of its constitutional duty to 'prescribe the periods within which appeals may be taken.' Constitution, Art. IV, sec. 18. Ten days is an ample allowance for the mere clerical entry of an appeal.

[2] Necessarily two of the days within the ten that elapsed were Sundays; the third day and the tenth or last were so; and an extension of the time to the Monday after the second Sunday is claimed by analogy to the several statutes or rules that permit the performance on Monday of an act required to be performed on or before a day which falls on Sunday. But it is settled in this State, at least, that when a number of days more than seven is allowed for an act, all Sundays are included in the count, unless expressly excluded. American Tobacco Co. v. Strickling, 88 Md. 500, 508, 510, 41 A. 1083, 69 L.R.A. 909; Yerkes v.

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C

Court of Appeals of Maryland.
YERKES
v.
BOARD OF SUP'RS OF ELECTIONS OF CECIL COUNTY.
No. 127.

Jan. 27, 1922.

Appeal from Circuit Court, Cecil County; Wm. H. Adkins, Philemon B. Hopper, and Lewin W. Wickes, Judges.

"To be officially reported."

Mandamus by Clinton J. Yerkes against the Board of Supervisors of Elections of Cecil County to compel the respondents to entertain an appeal from the canvass of votes at a primary election and to recount and recanvass the votes. Petition dismissed after a demurrer to the answer was overruled, and petitioner appeals. Affirmed.

West Headnotes

Elections 144 ⚿153

144 Elections
144VI Nominations and Primary Elections
144k148 Objections and Contests
144k153 k. Determination by Public Officers. Most Cited Cases
Under 3 Code, art. 33, § 199-B, authorizing a party defeated at a primary election on the face of the returns to petition the supervisors of election for an appeal from and review of the action of the judges, the petition for appeal should be addressed to and filed with the board of election supervisors, and not with the clerk of the circuit court, though no affidavits were filed in support of the appeal, so that the petitioner was required by that section to give bond in an amount fixed by the judge of the circuit court as a condition precedent to the entertainment of the appeal by the supervisors.

Elections 144 ⚿153

144 Elections
144VI Nominations and Primary Elections
144k148 Objections and Contests
144k153 k. Determination by Public Officers. Most Cited Cases
Where a petition to the supervisors of election for an appeal from the decision of the judges of election is unaccompanied by affidavits so that the petitioner is required by 3 Code, art. 33, § 199-B, to give bond in an amount determined by and the sureties approved by the judge of the circuit court sufficient to cover the costs of the recount or recanvass, a copy of the petition for appeal should be filed with the clerk of the circuit court to enable the court to estimate the probable costs of the recanvass asked.

Elections 144 ⚿153

144 Elections
144VI Nominations and Primary Elections
144k148 Objections and Contests
144k153 k. Determination by Public Officers. Most Cited Cases
If it is permissible to petition the supervisors of election for an appeal through the circuit court, which is required to fix the amount of and to approve the bond given to cover the cost of the recanvass, a copy of the petition filed in the court must be served on the election supervisors within seven days after the election under 3 Code, art. 33, § 199-B, requiring the petition to be made within seven days.

Time 378 ⚿10(9)

378 Time
378k7 Days
378k10 Sunday or Other Nonjudicial Day
378k10(9) k. Appeal and Error and Other Proceedings for Review. Most Cited Cases
(Formerly 378k10(1))
In computing the period of seven days after a primary election within which a petition for appeal must be filed, a Sunday is not to be excluded under the rule that where the period is for less than seven days, so that a Sunday is not necessarily included therein, it will not

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2/20/09

IN THE MATTER OF: ADAM SKOLNIK, Legal Owner GENESIS HEALTH CARE/KEITH NAUSE, CP	*	BEFORE THE BOARD OF APPEALS
19 Fusting Avenue 137' NC/line Howard Avenue	*	OF
	*	BALTIMORE COUNTY
P.G. Developers, LLC *Legal Owners*	*	
Genesis Health Care *Petitioner/Contract Purchaser*	*	Case No.: 07-535-SPHXA
1st Election District 1st Councilmanic District	*	
	*	

RECEIVED
FEB 20 2009
BALTIMORE COUNTY
BOARD OF APPEALS

* * * * * * * * * *

RESPONSE TO MOTION FOR RECONSIDERATION

Now comes ***Angela Lunczynski***, Protestant, by her attorney, ***Michael P. Tanczyn, Esquire***, in response to the Motion for Reconsideration of the Petitioner forwarded to the Board February 17, 2009, and for reasons say:

1. The Motion for Reconsideration is untimely and late, since it was filed thirty two (32) days after the Board's Decision was entered on January 16, 2009. Rule 10 of the Rules of Practice and Procedure of the County Board of Appeals, in mandatory language states: "The Motion shall be filed within thirty (30) days after the date of the original Order." Therefore, the Motion for Reconsideration is untimely as it does not comply with the mandatory time for filing set forth in Rule 10 of the Rules of Procedure.

2. The Baltimore County Charter, Section 603, Rules of Practice and Procedure mandates that the Rules and Regulations of the Board of Appeals, once approved by the County

Council, shall have the force and effect of law.

3. Section 604 of the Charter, Appeals from Decisions of the Board, requires that any appeal from any decision of the County Board of Appeals must be filed within thirty (30) days of the date of decision. That Section concludes "The review proceedings provided by this Section shall be exclusive."

4. Therefore, the Motion for Reconsideration is filed too late and should not be considered by the Board.

5. If the Board were inclined to consider the Motion for Reconsideration and not dismiss it as untimely, the Protestants would note that the argument presented by the Petitioner's able counsel under BCZR Section 307.1 was thoroughly briefed and argued by the Petitioner and considered by the Board in its earlier deliberations. Petitioner's argument is no different from that made in its Post Hearing Memo to the Board which was rejected by the Board. The shape of the Petitioner's lot was remarkably similar to numerous other lots, and in some cases was even wider than many of the other lots within the community which was amply demonstrated by the SDAT exhibits presented by both Petitioner and Protestants and considered by the Board.

6. To the best of Protestants' knowledge, no timely appeal was noted by the Petitioner to the Circuit Court for Baltimore County as a Petition for Judicial Review of the Board's January 16, 2009 Decision.

7. As the evidence before the Board showed, the Petitioner's subject property was part of a three lot subdivision which had been divided and created sometime before the Petitioner bought the property. Petitioner bought the property with all of its attributes and limitations and unsuccessfully attempted to claim that the property was unique from a zoning standpoint which

the Board correctly found it was not. Petitioner's claim that the RTA impacts its property and creates uniqueness because of the location of the improvements on the adjacent property which in the case of Ms. Lunczynski's residence have been there since the 1800's before zoning regulations were enacted. Her improvements were existing well before the Petitioner made its calculated gamble to buy the property and tried to shoehorn a parking lot in there which it knew, or should have known, would not and could not meet the setback requirements. Because of that, the Petitioner took a gamble. So far the gamble has not paid off.

CONCLUSION

For the foregoing reasons, the Protestants request that the Court deny the Motion for Reconsideration as untimely; and in the alternative deny the Motion for Reconsideration for the reasons stated.

Respectfully submitted,

MICHAEL P. TANCZYN, Esquire
606 Baltimore Avenue
Suite 106
Towson, Maryland 21204
410-296-8823
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 2009, a copy of the aforegoing Response to Motion for Reconsideration was mailed, first-class mail, postage pre-paid to: Lawrence E. Schmidt, Esquire, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204; and to Carole S. Demilio, Esquire, Deputy People's Counsel for Baltimore County, Jefferson Building, 105 West Chesapeake Avenue, Room 204, Towson, Maryland 21204.

MICHAEL P. TANCZYN, Esquire

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

February 23, 2009

VIA FACSIMILE AND U.S. MAIL

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

RE: *In the Matter of: Adam Skolnik, LO / Genesis Health Care*
Case No. 07-535-SPHXA

Dear Mr. Tanczyn:

This office is in receipt of your Response to Motion For Reconsideration filed on February 20, 2009.

With respect to the Response that you have filed, the Board of Appeals is open for business Monday – Friday, except on Holidays. No proceeding and/or administrative duties are conducted except on those days. In regards to the filing time period of thirty (30) days, please note that the thirtieth day fell on a Sunday and in the normal course of action the Board would have accepted the Motion on the following Monday. However, the following day (Monday, February 16th) was a Baltimore County Holiday and the offices were closed; thereby necessitating the acceptance of all business/filings on Tuesday, February 17, 2009.

The Board will convene on March 17, 2009 at 9:00 to Deliberate the Motion For Reconsideration as scheduled.

Should you have any questions, please call me at 410-887-3180.

Very truly yours,

Theresa R. Shelton
Administrator

c: Lawrence E. Schmidt, Esquire (via facsimile and U.S. Mail)
People's Counsel for Baltimore County

2/17/09

RECEIVED
FEB 17 2009
BALTIMORE COUNTY
BOARD OF APPEALS

PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
19 Fusting Avenue; N/side of Fusting Avenue 137' N C/line Howard Avenue	*	OF
P.G. Developers, LLC *Legal Owners*	*	BALTIMORE COUNTY
	*	
Genesis Health Care *Petitioner/Contract Purchaser*	*	Case No.: 07-535-SPHXA
1st Election District 1st Councilmanic District	*	

* *

MOTION FOR RECONSIDERATION

Genesis Health Care, Petitioner, by Lawrence E. Schmidt and Gildea & Schmidt, LLC, its attorneys, pursuant to Rule 10 of the County Board of Appeals for Baltimore County's ("Board") Rules of Practice and Procedure, submit this Motion for Reconsideration of the Board's Opinion & Order dated January 16, 2009, and respectively states:

BACKGROUND

Genesis Health Care (hereinafter "Genesis" or "Petitioner") is an entity that provides residential care for the elderly. It operates a number of elderly housing facilities throughout the Baltimore Metropolitan area. One such facility is a 138 bed nursing home/convalescent home located at 16 Fusting Avenue in Catonsville. This facility was originally opened in 1960. At that time, the previous operator/owner obtained Special Exception approval to operate a convalescent home before the Zoning Commissioner of Baltimore County in Case No.: 5006-XA. Although operated continuously for nearly 50 years, Genesis has only relatively recently acquired the property and assumed operation.

Due to the limited amount of parking on the property (56 spaces), Genesis acquired an unimproved lot (19 Fusting Avenue) immediately across the street from the nursing home. This

property is zoned DR 5.5 and is 67 feet wide and 230 feet deep. Genesis proposes to install a small parking lot (23 spaces) in order to provide additional parking. It is anticipated that the parking lot will be used by Genesis employees primarily during the day, in order to free up the existing lot for visiting family of residents, health care providers, clergy, etc. The proposed lot will be buffered from adjacent residential uses with landscaping and a privacy fence.

In order to accomplish its purpose, Genesis filed a Petition for Special Exception, a Petition for Special Hearing and a Petition for Variance with the Zoning Office within the Department of Permits and Development Management. As a nursing home is permitted only by Special Exception in the DR zone and the lot will not be a public lot but rather for exclusive use by the existing nursing home operation, a Petition for Special Exception was filed to permit 19 Fusting Avenue to acquire "Special Exception" status and be used as a component (i.e. parking lot) of the nursing home at 16 Fusting Avenue. The Petition for Special Hearing sought approval for an amendment to the previously granted zoning approval for a nursing home at 16 Fusting Avenue and to incorporate 19 Fusting Avenue and the proposed parking lot thereon into the current operation. It should be noted that accessory parking is permitted as-of-right in this zone pursuant to Baltimore County Zoning Regulation ("BCZR") § 1B01.1.A.18.(d) and that the Special Hearing was necessary due to the accessory parking providing extra spaces for the Special Exception use. Finally, a Variance was requested from BCZR § 1B01.1.B.1.e.5 to allow a 13.7 foot buffer/setback in lieu of the required 50 foot buffer and 75 foot setback for a Residential Transition Area ("RTA").

The Petitions came before Deputy Zoning Commissioner Thomas H. Bostwick for public hearing and by written Opinion and Order dated September 10, 2008, the requested relief was granted. An appeal to the Board was taken of the Deputy Zoning Commissioner's decision by

certain neighbors. After a three day public hearing (June 3, July 23 and July 29, 2008) the Board issued an Opinion & Order on January 16, 2009. Therein, the Board denied the Petitions; specifically stating that, "with the failure of the Petitioners to satisfy the requirements for a Variance, this Board will not address the request for Special Exception and Special Hearing in that they are deemed moot" (*See* Board's Decision, pg. 6).

The Board's written decision can be essentially be bifurcated into three parts. First (pgs. 1-3) the Board provided a brief background of the case and recited what it viewed as the relevant principles of law (e.g. BCZR § 307.1, *Cromwell v. Ward* 102 Md.App. 691 (1995), etc.). Secondly, the Board endeavored to articulate Petitioner's argument as to how the property satisfied the "unique" standard mandated by *Cromwell* (pgs. 3-6). Finally, in a brief conclusion (pg. 6) the Board stated its finding that the property was not unique. Specifically, the Board concluded that the disproportionate impact of the regulation (i.e. a 75 foot setback requirement applicable to a 67 wide lot) does not constitute uniqueness.

Although it respectfully disagrees with the Board's findings, the Petitioner will not endeavor herein to revisit the arguments that it has previously presented to the Board in support of its contention that the property is indeed unique (i.e. its physical properties, including its shape/width, disproportionate impact of the ordinance, the use of the property as part of the nursing home facility across the street, etc.). Rather, the Petitioner requests the Board reconsider its decision in light of the argument presented hereinafter.

ARGUMENT

The Petitioner requests the Board reconsider its decision based upon an analysis of BCZR § 307.1 and Maryland Zoning Law as enumerated by the Court of Appeals in its recently issued decision in the matter of Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel

for Baltimore County, 407 MD. 53, 962 A.2d 404 (2008).[1] A copy of the opinion is attached hereto.

The Board may well be familiar with *Trinity* as the case arose in Baltimore County and was at one time heard by the Board. In *Trinity*, the applicant Church sought Variance relief from certain zoning regulations as they related to signage. After moving up the legal appellate chain from the Zoning Commissioner, Board of Appeals, Circuit Court, and Court of Special Appeals, the Court of Appeals granted certiorari and considered the case.

In its lengthy Opinion, the Court analyzed BCZR § 307.1 and revisited *Cromwell* and other leading zoning cases. The Court succinctly described what constitutes uniqueness in a zoning context stating; "to be 'unique' a property must have an inherent characteristic not shared by other properties in the area, i.e., it shape, typography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by other properties (such as obstructions), or similar restrictions" (*citations* omitted) *Trinity* at pg 81.

Clearly, although a property may most often be determined to be unique based upon a physical characteristic of the land (i.e. shape, topography, etc.); uniqueness may also be found based upon other factors (e.g. historical significance or practical restrictions imposed by abutting properties).

The RTA regulations are contained in BCZR § 1B01.1.B. Therein, the RTA is defined as "a 100 foot area, including any public road or public right-of-way extending from a DR zoned tract boundary into the site to be developed" (*See* BCZR § 1B01.1.B.1.a(1)). The purpose of the RTA "is to assure that similar housing types are built adjacent to one another or that adequate

[1] The Trinity case Opinion was issued on December 24, 2008. This was well after the public hearing on the instant matter, submission of Memorandums and the Board's deliberation.

buffers and screening are provided between dissimilar housing types" (*See* BCZR § 1B01.1.B.1.a(2)).[2] A RTA is "generated" if the property to be developed (in this case, 16 Fusting Avenue, owned by Genesis) is zoned DR (it is) and lies adjacent to land zoned DR 5.5 (it does) which contains a single family dwelling (it does) within 150 feet of the tract boundary (it does).

As a rectangular shaped lot, the Genesis property (obviously) has four sides. To the front/north, it abuts Fusting Avenue, a public road and the nursing home across the street. To the south/rear, it abuts an existing parking lot. To the east, it abuts a 5 story frame building containing 7 apartment units, known as 17 Fusting Avenue. To the west, it abuts 23 Fusting Avenue, which contained a detached single family dwelling. This single family dwelling is within 150 feet of the common tract boundary shared by Genesis property and 23 Fusting Avenue.

The Petitioner's expert witness Mr. Bruce E. Doak, L.S., of Gerhold, Cross & Etzel, Ltd., testified about the generation of the RTA in this case. His testimony on this issue was as follows:

> "Q: Is an RTA defined in the zoning regulations? What actually is an RTA?
> A: It's a – if I may read – the residential transition area RTA is a 100 foot area including any public road or public right-of-way extending from a DR zone tract boundary into the site to be developed.
> Q: Now, let's stop there. Is there an RTA that's applicable to the site, based on that definition?
> A: Yes, sir, there is.
> Q: Why is that?
> A: Because there is – it would be a 100 foot area from this property line, this tract boundary, in this direction.
> Q: You indicated "this tract boundary." So the court reporter gets it –
> A: I apologize.
> Q: -- what tract boundary?
> A: It would be the tract boundary between the subject property at 19 Fusting Avenue and the property for 23

[2] It may be argued that the RTA has no application in this case, as Genesis proposes no house on its property, thus there is no need to provide "adequate buffers and screening between *dissimilar housing types*."

Fusting Avenue.
Q: So the RTA would be generated because of the single family dwelling that is located on 23 Fusting Avenue?
A: That is correct.
Q: Would an RTA, Mr. Doak, be generated from the other side, the 17 Fusting Avenue, the apartment building?
A: No, sir.
Q: Why not?
A: Because RTA is for single family, semi-detached, and one other, but it's not apartment buildings.
Q: So we have an RTA that's generated from the west side of the property, which is a 100 foot area according to the regulations, is that correct?
A: Yes, sir.
(See Transcript, attached, pgs. 44-45, 7/23/08)

Mr. Doak's testimony was uncontradicted. As he stated, the RTA in this case is generated only because the adjacent property, known as 23 Fusting Avenue, is zoned DR, contains a single family detached dwelling, which is located within 150 feet of the common tract boundary.

As the Court observed in *Trinity*, a property is unique if an abutting property imposes practical restrictions upon it. In this case, a neighboring property imposes a setback/buffer requirement that exceeds width of 19 Fusting Avenue. This creates a practical restriction. This is clear when considering what constitutes a "practical restriction." As noted in BCZR § 101.1, words not specifically defined in § 101 must be defined using the definition contained in Webster's Third International Dictionary of the English Language, Unabridged. Webster's defines restriction as "a principle that limits the extent of something." Webster's defines practical as "concerned with actual use" (emphasis added). Surely, the RTA limits the extent of the actual use of the Genesis property, as a permitted use (parking lot) is entirely eliminated.

Based upon the foregoing, the Petitioner requests that this Board find that the subject property is unique based upon the practical restriction imposed by the RTA generated by an abutting property. Simply stated, the RTA requirement imposes a restriction on Petitioner's use

of its property, which is solely caused by the location of an improvement on an abutting property. If the abutting property were not improved with the single family detached dwelling located within 150 feet of the tract boundary, then the Petitioner's proposed parking lot could be built without the need for variance relief. This practical restriction constitutes uniqueness under the reasoning of the *Trinity* court and therefore should be granted as a Variance.

CONCLUSION

For the foregoing reason, the Petition request that this Board find uniqueness and grant the Petition for Variance. Having therefore determined the uniqueness, the Board thereafter should grant the Petition for Variance, as well as, the Petitions for Special Hearing and Special Exception.

Respectfully submitted,

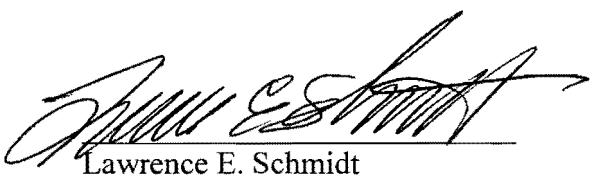
Lawrence E. Schmidt
Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **17th** day of February, 2009, a copy of the foregoing Motion for Reconsideration was mailed, postage prepaid to:

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

Carole S. DeMilio, Esquire
Deputy People's Counsel
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson MD 21204



Lawrence E. Schmidt

Page 42

applicants filed in this case, does it seek to in any way modify or change any of the activity or building or anything on the nursing home property across the street?
A. Not one thing.
Q. So this is essentially an amendment by just the addition of the strip or 19 Fusting as part of the overall nursing home operation?
A. That is correct.
Q. Do you believe that such an amendment to the prior decision that was issued by the zoning authorities back in the county in 1960 would be in my way detrimental to the health, safety or general welfare of the locale?
A. No, sir.
Q. It seems to be an appropriate use under the county zoning regulations, in your view?
A. Yes, sir, it is. It fits very well within the area and the neighborhood.
Q. Now, Mr. Doak, you have also indicated -- next turning to the petition for variance -- that there are no variances that are requested as they relate to the technical requirements for parking under Section 409 of

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the BCZR, is that right?
A. That is correct.
Q. So all the spaces meet the requirements in terms of their dimensions?
A. Yes.
Q. The drive aisle width meets the requirements?
A. Yes, sir, it does.
Q. And I think this was testified at the prior hearing, but we are not asking for a zoning variance as it relates to the number of spaces? There is sufficient parking on the nursing home site to support the number of beds there?
A. There is.
Q. So the petition for variance which is filed in this case, what is that exactly for?
A. It's for the RTA requirements for the subject property, of the subject property.
Q. Let me ask you about them, and I know you bought up, I believe, a copy of the zoning regulations. If you could maybe direct your attention to those. What is an RTA, Mr. Doak? What does RTA stand for, the letters RTA?

Page 44

A. Residential transition area.
Q. Where are the residential transition area requirements found in the zoning regulations?
A. They are found in 1B01.B, and then onto two, and then they go from there.
Q. Is an RTA defined in the zoning regulations? What actually is an RTA?
A. It's a -- if I may read -- the residential transition area RTA is a one-hundred foot area including any public road or public right-of-way extending from a D.R. zoned tract boundary into the site to be developed.
Q. Now, let's stop there. Is there an RTA that's applicable to the site, based on that definition?
A. Yes, sir, there is.
Q. Why is that?
A. Because there is -- it would be a hundred foot area from this property line, this tract boundary, in this direction.
Q. You indicated "this tract boundary." So the court reporter gets it --
A. I apologize.

Page 45

Q. -- what tract boundary?
A. It would be the tract boundary between the subject property at 19 Fusting and the property for 23 Fusting Avenue.
Q. So the RTA would be generated because of the single family dwelling that's located on 23 Fusting?
A. That is correct.
Q. Would an RTA, Mr. Doak, be generated from the other side, the 17 Fusting, the apartment building?
A. No, sir.
Q. Why not?
A. Because RTA is for single family, semi-detached, and one other, but it's not apartment buildings.
Q. So we have an RTA that's generated from the west side of the property, which is a hundred foot area according to the regulations, is that correct?
A. Yes, sir.
Q. How wide is our lot?
A. It is sixty-seven feet wide.
Q. So then would the RTA area encompass the entire lot?

Westlaw.

--- A.2d ----
--- A.2d ----, 2008 WL 5352919 (Md.)
(Cite as: 2008 WL 5352919 (Md.))

H

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Court of Appeals of Maryland.
TRINITY ASSEMBLY OF GOD OF BALTIMORE CITY, INC.
v.
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.
No. 27, Sept. Term, 2008.

Dec. 24, 2008.

Background: Church applied for a variance to county sign law in order to erect 250 square feet electronic changeable copy sign. County deputy zoning commissioner denied the application. Church appealed. After conducting a hearing, the county board of appeals denied church's application. Church appealed, asserting that the denial of its application violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The Circuit Court, Baltimore County, Daniels, J., affirmed, and church appealed. The Court of Special Appeals, 178 Md.App. 232, 941 A.2d 560, affirmed, and church filed petition for writ of certiorari.

Holdings: After granting petition, the Court of Appeals, Harrell, J., held that:
(1) evidence was sufficient to establish that church's use of its property was not unique and that church would not suffer practical difficulty, for purposes of determining whether church was entitled to a variance;
(2) county board of appeals property applied correct legal standard for determining whether church's property was unique;
(3) count board of appeals applied correct standard for determining whether church would suffer practical difficulty; and
(4) county board of appeals' denial of a variance did not impose a substantial burden on religious exercise in violation of RLUIPA.

Affirmed.

West Headnotes

[1] Zoning and Planning 414 ⚿745.1

414 Zoning and Planning
414X Judicial Review or Relief
414X(E) Further Review
414k745 Scope and Extent of Review
414k745.1 k. In General. Most Cited Cases
When reviewing the decision of a local zoning body, the Court of Appeals evaluates directly the agency decision, and, in so doing, applies the same standards of review as the circuit court and intermediate appellate court.

[2] Zoning and Planning 414 ⚿747

414 Zoning and Planning
414X Judicial Review or Relief
414X(E) Further Review
414k745 Scope and Extent of Review
414k747 k. Questions of Fact; Findings. Most Cited Cases
When reviewing the decision of a local zoning body, it is not the function of the Court of Appeals to substitute its assessment of the facts for those of the local zoning board, but merely to evaluate whether the evidence before the board was fairly debatable.

[3] Administrative Law and Procedure 15A ⚿784.1

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions

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SEBASTIAN A. CROSS
CHARLES B. MAREK, III
JASON T. VETTORI

RECEIVED
FEB 17 2009
BALTIMORE COUNTY
BOARD OF APPEALS

February 17, 2009

Via Hand Delivery
Ms. Theresa R. Shelton
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Genesis Health Care/19 Fusting Avenue
Case No.: 07-535-SPHXA

Dear Ms. Shelton:

Enclosed please find an original and three copies of the Petitioner's Motion for Reconsideration for the above referenced matter. This is filed pursuant to Rule 10 of the Rules of Procedure for the County Board of Appeals. The Board's decision was issued on January 16, 2009.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,

Lawrence E. Schmidt

LES: jk
CC: Natalie P. Holland, Genesis Health Care
Michael Tanczyn, Esquire
Carole S. DeMilio, Esquire, Deputy People's Counsel

1/16/09

PETITION FOR SPECIAL HEARING SPECIAL EXCEPTION & VARIANCE 19 Fusting Avenue; N/S Fusting Avenue, 137' N C/line Howard Avenue 1st Election & 1st Councilmanic Districts Legal Owner(s): P.G. Developers, LLC Contract Purchaser(s): Genesis Healthcare Petitioner(s)	*	**BEFORE THE COUNTY**
	*	**BOARD OF APPEALS**
	*	**FOR**
	*	**BALTIMORE COUNTY**
	*	**07-535-SPHXA**

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

OPINION

This case comes as a result of Petitioners, Genesis Health Care ("Genesis") seeking zoning approval in the form of a Variance, Special Exception, and Special Hearing for a parking lot at 19 Fusting Avenue, accessory to its convalescent home located across the road from the subject site. A hearing was held before the Baltimore County Board of Appeals on July 29, 2008.

BACKGROUND

The Genesis nursing home property contains a parking lot consisting of 56 parking spaces. Genesis alleges the need for additional parking and has acquired the subject property and proposes and additional 23 spaces on this property. A convalescent home has been operating at 16 Fusting Avenue under a special exception granted in 1960. The subject property is approximately 67 feet wide and 230 feet deep. The lot is unimproved and is zoned D.R.5.5. The nursing home property contains a parking lot with 56 parking spaces.

Genesis has applied for a variance from Section 1B01.1.B.1.e.5 of the BCZR to allow a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot Residential Transition Area ("RTA") buffer and 75 foot RTA setback. The proposed lot abuts a lot with a

single-family dwelling. While parking lots are a permitted use as of right in the RTA and DR 5.5 zone, the proposed lot would be for a non-public use by the existing nursing home, thus triggering the need for the Special Exception and Special Hearing.

DECISION

As the success of the Petitioners request of zoning approval stand or falls with the determination of the requested variance relief, we shall address that issue first.

Baltimore County Zoning Regulations, Section 307.1, in pertinent part, states as follows:

> "...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."

In *McLean v. Soley*, 270 Md. 216 (1973) the court established the following criteria for determining practical difficulty or unreasonable hardship:

> "1) Whether compliance with the strict letter of the restrictions governing various variances 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."

Further, in *North v. St. Mary's County*, 99 Md.App. 502 (1994) the Court held that

> "...the 'unique' aspect of a variance requirement does not refer to the extent of improvements on the property, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography,

subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls." Id at 514

In the Court of Special Appeals in *Cromwell v. Ward,* 102 Md.App. 691 (1995), wherein the Court writes:

> ...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. **It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...." *Id.* at 698.**

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.... *Id.* at 710.

Petitioner's Argument

Petitioner cites *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 214 A.2d 810 as stating:

> "Where property, due to unique characteristics applicable to it, cannot reasonably be adopted to use in conformity with restrictions. . . hardship arises. . . The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause if the hardship. . ." Id. At 554-55.

Petitioner interprets this language to support their contention that it can be the circumstances surrounding the need for the property that may establish "uniqueness", not

just the characteristics of the property itself.

Petitioner presented the testimony of Bruce Doak to establish the uniqueness of the subject property. He testified as follows:

"Q. Now, Mr. Doak, let me ask, as part of the variance request, have you looked at this property, and do you have any opinion, sir, as to whether the property is unique in any way as it relates to the zoning requirement?

A. Yes, sir, I do.

Q. What is your opinion?

A. It's got a number of different ways that it is unique. Its narrowness of the property. It is very narrow. It is very deep also. Also, it has a very unique relationship to the convalescent home across the street and the shared use of that."
See Pages 48 and 49 of Transcript.

"Q. And how many other lots appear to be rectangular and of the same or narrower width in your Petitioner's Exhibit No. 6?

A. There's a number of them that are rectangular in shape, and a few that are narrower in width than the subject property.

Q. Right on Fusting Avenue, did you examine the deeds to see what the width was for the other lots on Fusting Avenue in the vicinity of this property?

A. I did on the adjoining properties. I did not go any further down Fusting Avenue than the adjoining properties.

Q. Immediately adjoining?

A. Yes, sir, I showed on the plan.

Q. But Petitioner's Exhibit includes many, many more lots?

A. Yes, sir. Many of those were taken from the web site which, in turn, shows property lines on that web site.

Q. But you haven't - - I just want to make sure I understand - - you haven't checked lot widths for any of these other lots other than the two adjacent to 19 Fusting?

A. That is correct.

Q. For the purposes of your opinion and testimony?

A. Yes, sir.

Q. Okay. And the factors - - I want to take them on by one - - you said narrowness of the lot. There are plenty of other lots in this neighborhood that are as narrow, or narrower, than the subject lot is that correct?

A. That is correct.

Q. And the narrowness of this lot was created in the minor subdivision process?

A. That is correct.

Q. What you're saying then is, if it's deeper and has more land, that makes it unique compared to the other lots?

A. We were talking about it being unique in that it provides an ability to have a parking lot as well.

Q. But from a zoning sense, that fact that it's deeper, in your opinion, how does that make it unique?

A. We are talking about in the close vicinity; it's unique because of the size and the depth, compared to the other properties in the area.

Q. Let me ask this question then, to follow directly on that. The depth of a lot doesn't create the need to request any, zero, of the variance request from RTA requirements, does it?

A. No, sir, it does not.

Q. So if we're going to focus on what makes it unique, that causes it to need a variance, you're only claiming the width, is that correct?

A. The use.

Q. Well, wait a minute.

A. The proposed use.

Q. Wait a minute, we'll get to the use. But from a physical standpoint and the other lots in the neighborhood, are they of similar topography to the subject site, in your opinion?

A. Define the neighborhood.

Q. Well, let's just say on that side of Fusting.
A. Yes, site, they are similar.

Q. Similar. So it's not unique from a topographic standpoint, in your opinion.

A. No, sir."

See Pages 62-67 of the Transcript.

It is clear from an examination of the lots in the area in question and further supported by the testimony of Mr. Doak is that there is nothing "unique" about the physical characteristics of the subject lot. The lot is narrow in width and rectangular in shape. It is quite similar to other lots in the area that contain residential structures. Petitioner, relying on its interpretation of *Salisbury Bd. Of Zoning Appeals v. Bounds*, contends that the narrowness of the subject lot makes it unique when considered in conjunction with the setback requirements for the parking lot itself. Additionally, Petitioners contend that the fact the lot is to provide parking for the already existing nursing home across Fusting Avenue, makes the subject property unique as well.

While the Board concedes that these points make constitute "unique" circumstances, we are not satisfied that the subject property has unique physical characteristics that would satisfy the requirements found in *Cromwell* or that *Salisbury Bd. Of Zoning Appeals v. Bounds* calls for a departure from the well-established principles of *Cromwell.*

In that the element of uniqueness has failed to be established by the Petitioners, the Board will not address the remaining factors of the *Cromwell* analysis. Additionally, with the failure of the Petitioners to satisfy the requirements for a Variance, this Board will not address the requests for Special Exception and Special Hearing in that they are deemed moot.

CONCLUSION

This Board is not persuaded that the Petitioners have illustrated uniqueness of its parcel to deviate from standing zoning requirements its property. Consequently, Genesis Health Care's requested Variance relief and request for Special Exception and Special Hearing are DENIED.

ORDER

THEREFORE, IT IS THIS 16 th day of January, 2009 by the County Board of Appeals of Baltimore County;

ORDERED that the Petitioner's request is hereby DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence Stahl, Panel Chair

Andrew M. Belt

Wendell Grier

1/16/09

County Board of Appeals of Baltimore County

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January 16, 2009

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RE: *In the Matter of: P.G. Developers, LLC-Legal Owner and Genesis Healthcare-Contract Purchaser-Petitioners*
Case No.: 07-535-SPHXA

Dear Counsel:

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

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

Very truly yours,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

TRS/klc

Enclosure (Duplicate Original Cover Letter)

c: Adam Skolnik/P.G. Developers, LLC
Keith Nause, Vice President/Genesis Healthcare
Leena Hoover/Genesis Healthcare
Natalie Holland/Genesis Healthcare
Bruce Doak
Angela Lunczynski
Scott Westcoat
Pat Stack
Brian Nippard
Elera DeBold
Fr. W. Terry Sweeney
Office of People's Counsel for Baltimore County
William Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold Keller, Director/Planning

9/8/08

RE:	**PETITION FOR SPECIAL HEARING SPECIAL EXCEPTION & VARIANCE**	*	**BEFORE THE COUNTY**
	19 Fusting Avenue; N/S Fusting Avenue, 137' N C/line Howard Avenue	*	**BOARD OF APPEALS**
	1st Election & 1st Councilmanic Districts	*	**FOR**
	Legal Owner(s): P.G. Developers, LLC		
	Contract Purchaser(s): Genesis Healthcare	*	**BALTIMORE COUNTY**
	Petitioner(s)		
		*	**07-535-SPHXA**

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BOARD OF APPEALS

* * * * * * * * * * *

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

People's Counsel for Baltimore County submits this Memorandum in lieu of closing argument. The issues in this case can be stated as follows:

1. Has the Petitioner ("Genesis") met its burden of proof for a **special exception** under BCZR 502.1 and Schultz v. Pritts 291 Md. 1 (1981) and subsequent supporting case law, for a parking lot accessory to a nursing home use in the D.R. 5.5 zone?

2. Does the inability to comply with the RTA standards for a parking lot make Petitioner ineligible for a special exception?

3. Do the Baltimore County Zoning Regulations permit by right a parking lot accessory to a use permitted only by special exception in the D.R. 5.5 zone?

4(a) Has the Petitioner met its legal burden of proof for a **variance** that the site is unique under the standards in BCZR 307 and Cromwell v. Ward 102 Md. App. 691 (1995) and subsequent supporting case law?

4 (b) Even if the property is unique under the legal standards, has the Petitioner met its legal burden of proof that the unique characteristics create a practical difficulty for the use of the site?

Facts and Overview

Petitioner seeks a special exception for a parking lot at 19 Fusting Avenue, accessory to its convalescent home located across the road from the subject site. A convalescent home has been operating at 16 Fusting Avenue under a special exception

granted in 1960. Pet. Ex #5. (Genesis is a successor to Catonsville Meridan). Genesis only recently purchased the subject site in 2007. Prot. Ex.#9. Special Hearing relief is required because the 1960 approval was limited to the original convalescent home site and to the 1960 site plan with the details approved at the time. Any expansion of the Genesis facility, including the proposed parking lot, or any changes from the site plan in the special exception case, require an amendment to the special exception in the form of a special hearing, as well as a special exception for the exact relief (parking lot) requested in the current petition.

(i) Minimum Number of Required Off-Street Parking Spaces

BCZR 409. 6 A. 1 sets forth the parking requirements for a convalescent home:

> "For continuing care facilities, at least 1 usable off-street parking space shall be provided for each dwelling unit and at least 1 usable off-street parking space shall be proved for each 2 assisted living beds and for each 3 convalescent or nursing beds.
>
> For assisted living facilities, at least 1 usable off-street parking space shall be provided for each 3 beds. [Bill No. 188-1993]."

Ms. Leana Hoover, administrator at this Genesis facility testified there are 138 beds, consisting of 36 Alzheimer's patients and 102 nursing home beds. (Transcript "T." 34). Sadly, the residents are no longer capable of operating a motor vehicle. The parking is for staff and visitors only. There are no other residents other than the patients. According to BCZR 138 convalescent home beds require a total of 46 parking spaces (138/3 = 46). Petitioner admits there are 56 parking spaces on the existing site at 16 Fusting Avenue, well above the zoning requirements. Petitioner admits the requested spaces are for the convenience of employees and visitors.

These facts do not support a variance request under BCZR and variance law for a parking lot at 19 Fusting Avenue. Genesis is not faced with inability to meet its staffing requirements because of inadequate parking. Ms. Hoover admitted the State of Maryland mandates the number of staff required to operate a convalescent home in proportion to its size. This facility meets the State requirements. T. 108-112. Even if maintaining a license were a criteria for a variance, Genesis' license is not in jeopardy due to a parking

deficiency. In addition, Ms. Hoover agreed other convalescent facilities would have comparable visiting staff. T. 110. She did not indicate anything unusual about this facility compared to others that would generate a disproportionate number of vehicles on site. In fact, public transportation is available here and used by the staff; it would not be available at more remote facilities where the parking requirements for 138 beds would be the same. If anything, Genesis should have reduced parking needs because public transportation is available and utilized.

Presumably, other convalescent homes have operated within the parameters of the parking requirements set out in BCZR. Our office is not aware of any proposed changes urged by community groups or nursing home operators. BCZR 409.6A.1 was not established capriciously or whimsically. In fact the attached Bill 188-1993 indicates the assisted living requirements, including parking, were studied not only by the County Council, but also by the Planning Board who issued its report on July 15, 1993.

Legal Analysis

1. Has the Petitioner met its burden of proof for a special exception under BCZR 502.1 and Schultz v. Pritts 291 Md. 1 (1981) and subsequent supporting case law for a parking lot accessory to a nursing home use in the D.R. 5.5 zone?

A special exception is a conditional use. The preface to BCZR 502.1 states:

"Section 502
Special Exception
BCZR 1955

Note: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another . . . All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals. . ."

Schultz v. Pritts 291 Md. 1, 21-22 (1981) states:

"When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as

conditional or special exception uses. . . Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses." (citations omitted).

Petitioner has the burden to prove the proposed special exception use satisfies all the standards in BCZR 502.1:

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

A. Be detrimental to the health, safety or general welfare of the locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
F. Interfere with adequate light and air; [Bill No. 45-1982]
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]
I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone. [Bill No. 74-2000]"

Mr. Bruce Doak, the surveyor, testified for Petitioner on the special exception standards. The appellate courts have been clear that an expert's testimony must go beyond a mere conclusory opinion; rather the expert must provide the underlying facts and reasons to support his position. People's Counsel v. Beachwood 107 Md.App. 627 (1995).

Mr. Doak's testimony must be looked at with careful scrutiny because he was the only witness who discussed BCZR 502.1 for the Petitioner.

In direct examination, Mr. Doak responded that the proposal was not detrimental to the health, safety and welfare of the community because it would "not add traffic but take traffic off Fusting Avenue," provide a "safe parking area" and require "no grading."

Pages 36 and 37 of the Transcript are as follows:

"Q. Do you have an opinion, Mr. Doak, as to whether the proposed use would be detrimental to the health, safety or general welfare of the locality involved?

A. No, sir, it would not.

Q. Why do you say that?

A. It will not add any additional traffic. It will just - - it would have the ability to take traffic off of Fusting Avenue. Also to give people the ability to park in a safe area. There's nothing on it now. There won't be any kind of dwelling. Very little grading will be needed for this proposed site. So I think it will not be detrimental."

This was essentially his response to BCZR 502.1 B that the parking lot would not create congestion in roads, streets or alleys. He also stated perfunctorily that the proposal would not create a fire hazard (502.1 C.) nor overcrowd the land (502.1 D.), nor interfere with provisions for schools, parks, water, sewage etc. (502.1 E.), nor interfere with light or air (502.1 F.), all because there would be no structure. Mr. Doak responded "no" when asked if the proposal is inconsistent with the purposes of the site's zoning classification or inconsistent with the spirit and intent of the Zoning Regulations (502.1 H.). He did not elaborate further.

Page 39 of the Transcript is as follows:

"Q. Would it be inconsistent with the purposes of the property's zoning classification or in any other inconsistent with the spirit and intent of the zoning regulations?

A. No, sir."

Mr. Doak's testimony beckons the admonition of Judge Moylan in Beachwood, *supra* at 650-651 where he cited approvingly a prior Maryland rezoning case: "These naked declarations, unsubstantiated by facts, are insufficient to overcome the presumption of correctness which attaches with the adoption of a comprehensive zoning plan." Likewise, in a special exception (and also variance) case, the burden is on the Petitioner to meet the standards.

On the other hand the citizens who testified discussed numerous concerns that the parking lot would be detrimental to the health, safety and welfare of the neighborhood, including **noise** from car radios and from employees and trespassers conversing on a lot that is both open and used 7 days a week, 24 hours a day, **trash and vandalism** from

miscreants whether lawfully on the lot or not, **obtrusive head lights** entering and exiting from the lot, **parking lot lights,** which cannot likely be both effective and unobtrusive, and are, at the least, out of character in a residential neighborhood, **lack of privacy** due to the proximity of authorized and unauthorized users of the parking lot, **safety concerns** naturally emanating from an unguarded lot openly accessible to the public, providing an unsupervised area for others to **congregate,** including for illegal or disruptive activities. Finally, Petitioner proposes a five foot **fence** on 3 sides of the property. This is also out of character with a residential neighborhood since BCZR 427 B.2 limits a fence height in a D.R. zone to "42 inches in height if situated within 10 ft of the adjoining front yard property line." Petitioner's Site Plan shows a proposed 5ft. high solid panel fence "along the property line." Petitioner is forcing the neighbors to accept an out of character fence in a residential area in order to block the headlights in the parking lot. Such a Faustian dilemma indicates a parking lot for an institutional use across the street is does not belong in the middle of a residential street consisting of single-family detached homes.

The Petitioner would have us believe these concerns are unfounded and speculative at best. However, the neighbors have experienced many of these problems on the existing nursing home site. Moreover, **Ms. Patricia Stavis**, who resides at 32 Melrose Avenue and **Father Terry Sweeney, Pastor of St. Timothy's Church** at 200 Ingleside described these very concerns actually occurring on two parking lots located on uses near Ms. Stavis' home and actually at Father Sweeney's parish house residence which adjoins the Church. Father Sweeney related that young people brazenly and noisily congregate in the Church parking lot to drink alcohol and socialize, undeterred by the Pastor's presence. One can only presume trespassers would act with more impunity on a parking lot where there is no owner on the actual site and where no one resides. It is unfair to place the burden on neighbors to confront trespassers or obtrusive users. And who at the Genesis nursing home would undertake such supervision, particularly in the middle of the night? Nurses? Nurses' aids? Unlikely.

Mr. Thomas Schueler, who resides at 117 Ingleside Avenue, at the corner of Ingleside and Fusting, and **Mrs. Patricia Stack,** who resides at 29 Fusting, expressed

significant concerns that the **extent of impervious surface** for the proposed use would exacerbate the serious flooding problems already existing on Fusting Avenue. Mr. Schueler is an expert employed by the State of Maryland in storm water management. He described the geographic conditions and lack of water management improvements in the area. The result is runoff onto Fusting Avenue from the subject site, on the south side of Fusting, as well as from the exiting Genesis facility, on the north side, and then west on Fusting. There are no curbs and gutters; as a result the flow causes the erosion and flooding in the homes on the south side of Fusting, as experienced personally by Mrs. Stack. Mr. Schueler testified that runoff from the subject site would worsen the flooding conditions and concomitant problems for the residents on Fusting Avenue.

At the least, the parking lot would be 10,000 sq. ft. of impervious surface by Petitioner's own admission. (at least 65% of the site would be paved – Mr. Schueler rated a higher percentage). By way of comparison, Mrs. Stack's 1 ½ story home, garage and driveway contains approximately 1500 sq. ft of impervious surface, or 12% of her 12,000 sq. ft lot. A similar house on the subject site, which is larger than Mrs. Stack's lot, would generate of only 10% impervious surface, compared to the 65%, at a minimum, for the proposed parking lot. PC Ex. #1. Petitioner 's own witness, Mr. Doak, agreed the subject site is suitable for a single family residence that would not trigger the R.T. A. set backs.

Petitioner summoned **Mr. David Snook**, an employee in Baltimore County Public Works Department to testify in rebuttal about the storm water drainage problem on Fusting Avenue. Mr. Snook did not dispute most of the protestants' case, to wit, he acknowledges the runoff problem, that the storm water management pond built in 2007 on the Genesis site needs further corrections, that an inlet to carry the water west on Fusting would have alleviated the drainage runoff but was never constructed. The testimony about the inlet from this witness buttresses protestants' case – it validates the storm water runoff problem described by the citizens and it points out that the failure to attempt to remedy the problem by constructing the inlet does not lie with the protestants but with a third party homeowner. Mr. Snook's response to this ongoing problem was that it was "tough luck" for the neighborhood because the County "did its duty". The end

result is the neighbors bear the burden of the flooding condition that will be exacerbated by an asphalt parking lot. Unlike a home with significantly less impervious surface, the proposed parking lot occupies approximately 3/4th of the 15,000 +sq. ft site.

Mr. Snook's testimony otherwise lacked probative value or was speculative for the following reasons: (i) he raised the spectrum of underlying soil types but admitted he did no boring samples, nor had he seen any for the site; this is a smokescreen because Petitioner was unequivocal that the proposed parking surface is asphalt. Period. To discuss any other surface is speculative at best. Mr. Snook's testimony was specious and does not meet the legal standards for admissibility. It is fundamental evidence law that in order to give an opinion on soil drainage, the foundation as to type of soil, type of asphalt, etc. on which the opinion is based must be in evidence. His comments on the soil were a red herring and a distraction, and must be dismissed. (ii) there are no immediate plans for curbs and gutters on Fusting Avenue - there is nothing in the County's budget or even in the planning stage– it is only being "studied" which carries no time table and could last for decades; again his opinion has no validity under the rules of evidence – it is speculative and thus has no probative value to the issues in the case. (iii) the existing pond for storm water management needs further adjustments and thus is not a panacea to the storm water management problems here – it further buttresses protestants' testimony; (iv) when referred to Mr. Schueler's description of the existing storm water management conditions on Fusting Avenue, Mr. Snook did not refute Mr. Schueler's opinion – Snook admitted the system is "old," ducked the "inadequate" description by saying it is a relative term but did not offer further explanation, failed to address the "sensitive" characterization, and disagreed, but without adequate explanation, with the characterization by Mr. Schueler of the impact of a one inch storm; (v) admitted installation of underground drainage pipes on Frederick Avenue is not possible; (vi) admitted soil erosion, ground level changes, and dirt accumulation on manhole covers are significant and relevant signs of flooding, but never bothered looking for these signs on his site visit, clearly flaws in the credibility of his opinions; (vii) was unaware that the minor subdivision, which he admitted could affect topography, occurred after

Petitioner's exhibit 12, which he relied on in his testimony, was constructed. On the contrary, the homeowners' testimony was based on long-standing personal observations and experiences.

Here all the homes in the area except one are single family dwellings which do not have large parking lots and are older, smaller homes that have less impervious surface. Even 17 Fusting, which is on a 32,700 square foot lot, is actually the same type of single family detached residence as all the other homes, except that it is broken into apartments on the inside. That residence consists of 5000 sq. ft., which even if one floor is only 15% of the lot. Prot. Exh #9. The parking for the apartments is comparable to the other single family residences according to Ms. Lunczynski. Mr. Doak tried to characterize it as an apartment "building" but the Board must look at the pictures and take note of Ms. Lunczynki's testimony, which pointed out the adjoining property appears as a single family detached dwelling, and that even the parking areas appears as a driveway and not a "parking lot."

It is significant in the special exception case to review Protestant's Exh. #9 & #10. **(1)** The SDAT printouts, which depict the lot size, show the neighborhood on Fusting Avenue is built out at a lesser density than the typical and permitted density for D.R. 5.5 neighborhoods. In other words, the lot sizes more closely approximate the D.R. 3.5 zone which require 10,000 sq. ft lots compared to the 6000 sq. ft for D.R. 5.5. BCZR 1B02.3 C. **(2)** It is also significant that the D.R. 5.5 zone permits, subject to a finding of compatibility, town homes and other attached dwellings that often have common asphalt parking areas, all of which create a greater impervious surface than is found in neighborhoods with old, smaller, single-family detached dwellings. **(3)** In addition, the D.R. 5.5 zone requires a smaller lot width, front yard depth and side yard setbacks than the D.R. 3.5 zone. In other words, Fusting Avenue, and some of the adjoining streets, is an old established neighborhood with detached modest single-family dwellings that now happens to be zoned D.R. 5.5. But the facts show it to be more akin to a D.R. 3.5 zone. This makes the area different from other D.R. 5.5 zones and is a significant factor in determining if the detrimental effects of a special exception here are greater than in other

areas in the D.R. 5.5 zone, which contain more impervious surface per area, in addition to having a more efficient storm water management plan.

In addition to the environmental issues, the homeowners expressed concern that a non-residential parking lot use in such close proximity would have a detrimental impact on the resell value of their homes. This is not a shallow or superficial objection in a special exception case.

In Holbrook, *supra*, the property owner applied for a special exception to permit a mobile home on land zoned for agricultural and limited residential use. The adjoining property owners, the Peters, opposed the relief as detrimental to the value of their home, a new residence of significant value. The Court noted "our inquiry focuses on the evidence of adverse impact on the Peters's property." Id. at 219. The Court continued:

> "As a general matter, we note that the Board justifiably assumed that the conspicuous presence of a mobile home will lower adjacent property values. While a mobile home may justifiably represent a highly valued and attractive possession to its owner, a real estate appraiser might objectively view the same conspicuous trailer as an eyesore and a detriment to neighboring properties of higher value. . . .
>
> Moreover, we believe that the facts and circumstances of this case, evidenced by the undisputed testimony and photographic exhibits, clearly satisfy the *Schultz* standard of particular adverse impact. The Board found that . . . the trailer's continued presence would create "significantly greater adverse effects in this location than were it located in other areas in the zone. . . .
>
> We find no cause to question the Board's conclusion that the mobile home, in this particular location, would impair neighboring property value to a greater extent than it would elsewhere in the zone. Countless locations exist within the zone, and indeed, within Holbrook's own property, where the presence of a mobile home would have no effect whatsoever upon adjoining property values. . . . The Court of Special Appeals failed to acknowledge these potential scenarios. Instead, the intermediate appellate court based its holding on the mistaken premise that, regardless of a mobile home's particular within a zone, its negative impact on the adjacent properties would remain the same."

The CBA should look at least compare the impact of a parking lot that complies with the RTA standards to the proposal here. Ms. Lunczynski aptly characterized her concerns with having a parking lot abut her property. In addition to the adverse effect on

her property value, the witness described how the proximity of an unsupervised public parking lot on the adjoining property would have an adverse effect on her privacy and safety from trespassers, vandals and miscreants. Ms. Lunczynski also related that the Petitioner has left the subject site unkempt and replete with trash and litter, a portent of lack of maintenance in the future. She emphasized that the proposed use is out of character from other homes in the area, including the house at 17 Fusting Avenue that has been converted to apartments but retains its single family exterior appearance.

All of these concerns are at the very heart of the health, safety and welfare standards in BCZR 502.1 and should not be ignored or easily dismissed. In other words, at another location in the D.R. 5.5 zone, such as near a townhouse community with a common paved parking lot shared by all the residents, a parking lot may not be as intrusive and out of character. But a special exception for a business/institutional parking use, which is how a convalescent home appears given its size and scope, in such close proximity to detached single family residents "could be detrimental to the health, safety or general welfare."

These concerns mirror the issues presented in Mangione, *supra at 752-753*, where the Court of Special Appeals upheld a denial of a special exception for a nursing home and quoted the CBA findings: "In sum, the Board concluded that the proposed project would 'overwhelm and dominate the surrounding landscape,' and that it would represent the 'deepest intrusion into the residential community of Dulaney Valley.' The Board found that the project would clearly exacerbate an already worsening storm water runoff situation within that community." The Court of Special Appeals concluded: "Given those facts and circumstances, we believe there was sufficient showing of particular adverse impact as required under *Schultz.*"

The citizens have presented sufficient uncontroverted evidence, or at least sufficient evidence to overcome the Petitioner's burden of proof, that the proposed use would be more detrimental here than at other locations in the zone.

On the other hand, in his testimony to support the special exception, Mr. Doak addressed none of these issues, but rather said the parking lot would eliminate parking on

Fusting Avenue, a "non-issue" for the neighbors who testified they continually observed ample parking on the existing Genesis site.

Other special exception cases support protestants' position. A special exception, is a conditional use, although Petitioners often give the impression the hearing is a technical requirement and the use is tantamount to a permitted use. Schultz v. Pritts, *supra* at 11 (1981); County Comm'rs v. Holbrook 314 Md. 210 (1986). On the contrary, the special exception is subject to compliance with basic special exception standards as well as other statutory prerequisites. Chester Haven L.P. v. Queen Anne's County Board of Appeals 103 Md. App. 324 (1995).

> "[T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Schultz, supra at 22 (emphasis added).

The burden of proof for a special exception remains with the applicant. Turner v. Hammond 270 Md. 41, 55-56 (1973); Futoryan v. Mayor & City Council 150 Md. App. 157 (2003). Judge Davidson wrote in Schultz 291 Md. 1, 15:

> "These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such special exception use irrespective of its location within the zone."

This means that a special exception must be denied where the adverse effects are particular to the location, and above and beyond the normal adverse effects. It should be underlined, in this context, that in order for a special exception to be denied, it is not

necessary that the CBA find that the proposal is in the worst possible location in the county or that it is the most extreme in size and scope. It just has to present some particular adverse effect at this location.

The Court of Special Appeals sustained a denial of a special exception for a rubble fill. Moseman v. Prince George's County, 99 Md.App. 258 (1994). The factors particular to the site included the presence of an existing rubble fill across the street, a narrow and winding access road, the proximity of single family homes, highly erodible soils, risks to well water, and depreciation of property values. There was no evidence that the Moseman site was the worst site in Prince George's County. There may have been other sites as bad or worse. There could have been proposed a larger or more hazardous landfill. But the potential for worse locations or worst case scenarios did not require approval at this location.

Unlike the variance standard where the unique characteristics must be indigenous to the property itself, such as geographic features, the adverse effects to deny a special exception may result from existing uses on the site or from surrounding, off-site conditions, such as traffic or road configurations.

Schultz v. Pritts implements BCZR 502.1 and focuses on whether "neighboring properties in the general neighborhood would be adversely affected." It is elementary that "the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards . . ." The proposed use must not cause "harm or disturbance . . ." or "disruption of the harmony of the comprehensive plan." 291 Md. at 11.

Judge Rita Davidson explained the harm must be particular, *"above and beyond the inherent ones ordinarily associated with such uses"* [in the zone]. 291 Md. at 14. She gave examples of cases involving high-tension wires and funeral homes. The inherently offensive or depressing aspects of these uses do not warrant denial. Otherwise, a special exception could never be granted. On the other hand, she wrote:

> "These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied". 291 Md., at 12.

In Schultz, the court remanded the case to consider traffic access and safety. In County Comm'rs v. Holbrook 314 Md. 210 (1988), the Court applied Schultz to reinstate a zoning board denial of a special exception based on adverse visual impact of a motor home on a residence. In Mangione, the Court of Special Appeals affirmed denial of a nursing home in a residential zone and explicitly noted that *"size and scope of the project are relevant considerations."* 85 Md.App. at 747, n.6. In People's Counsel v. Country Ridge Shopping Center 144 Md.App. 580 (2002), the Court affirmed denial of a pawnshop in a shopping center zoned for business use. In each situation, there was something particular about the project or neighborhood, which justified denial.

In Futoryan v. Mayor & City Council 150 Md. App. 157 (2003), the Court affirmed denial of a conditional use (special exception) for an automobile repair garage in a business zone, Judge Charles Moylan discussed in depth the Schultz standard. He stressed that Schultz *"... was particularly helpful in clarifying the distinction between a permitted and a merely conditional use (or special exception)."* The thrust of Judge Davidson's opinion was that particular adverse neighborhood effects tolerated for uses permitted by right would not be acceptable for a special exception. It is thus false to say that a special exception should be approved where it would be no more harmful (or less harmful) than a potential permitted use. It has to be viewed on its merits. So, where evidence showed how the garage operation was *" ... a detriment to the general welfare of the adjoining residential community,"* it warranted denial of the special exception.

There followed a discussion of the Schultz "locational comparison" test. Futoryan's neighborhood involved an isolated business zone. Judge Moylan explained that Schultz does not dictate automatic approval of a special exception where locational comparison is difficult or impossible. Otherwise, *"a mere conditional use would thereby become a permitted use."*

Several points of comparison may be relevant, such as zoning and character of the surrounding area. So, a special exception acceptable in a commercial or institutional setting may be unacceptable in a residential neighborhood. Another point of comparison involves intensity of use. Judge Moylan advised:

"Even within the same zoning geography, the intensity of the proposed conditional use could also be a factor. A large-scale operation of automobile storage, automobile repair, and body and fender work completely filling, and perhaps spilling over, the entire lot could well be deemed to constitute a degree of adverse influence not constituted by a much smaller automobile repair operation as an auxiliary of a service station."

2. Does the inability to comply with the RTA standards for a parking lot make Petitioner ineligible for a special exception?

There is a further obstacle in Petitioner's case. The special exception or conditional use cannot be granted without variance relief from the RTA setbacks. In the same case, the relief is mutually exclusive – the need for the variances for the RTA makes the site ineligible for a special exception. Chester Haven Beach Partnership v. County Board of Appeals for Queen Anne's County, 103 Md. App. 324 (1995), there was a conditional use with variances, equivalent to the combination special exception/variance situation here. Chester Haven teaches that a conditional use must satisfy the conditions of the law to be approvable. In other words the request for variances disqualifies the conditional use.

More specifically, the special exception must be denied under BCZR 502.1 G. if the relief shall "Be inconsistent with the purposes of the property's zoning classification *nor in any other way inconsistent with the spirit and intent of these Zoning Regulations*". (emphasis added). This is further confirmed if one examines the innate conflict in the burden of proof. The evidence required for a special exception approval is that the site is *the same or similar* to other sites in the zone, i.e. the adverse affects for the use here is no greater than other locations in the zone. On the other hand, the evidence required for approval of a variance is that the site is *so different* from other sites in the zone that its uniqueness creates a practical difficulty if the regulation is applied.

The mutual exclusiveness of the relief is even more obvious if the special exception and variances are so intricately entwined as in the instant case. The very objections to the special exception are based on the purposes of the RTA setbacks. **To grant the special exception on the contention that the parking lot use would have no**

greater detrimental effect when the RTA setbacks are ignored than at a location in the zone where the setbacks are followed is such an illogical application of BCZR that it is erroneous as a matter of law. The combination of special exception and variance relief here requires a denial of both. (This may not be as severe in every case seeking special exception and variance relief, for instance a sign variance may not go to the heart of the special exception use and each Petition could be considered on it own).

3. **Do the Baltimore County Zoning Regulations permit by right a parking lot accessory to a use permitted only by special exception in the D.R. 5.5 zone?**

In short, the answer is no. The issue is raised in this memorandum because of comments made by Petitioner's Counsel at the hearing which appeared to suggest this. A brief review of the applicable zoning regulations confirm that a parking lot accessory to a convalescent home is permitted by special exception only and not by right.

An accessory use is defined in BCZR 101:

> "ACCESSORY USE OR STRUCTURE -- A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot."

An accessory use cannot exist on a lot without a principal use unless provided for in BCZR.

BCZR 409.7 requires that all off-street parking requirements shall be located on the same lot as the structure to which they are accessory or within 300 feet of the building entrance.

BCZR 101.1 list the uses permitted by right in a D.R. 5.5 zone. A stand-alone parking lot is not permitted in the zone by right or by special exception. It is permitted only as accessory to a principal use. Here, the convalescent home is only permitted as special exception, not by right. Thus the parking lot is an accessory special exception use and the Petitioner must satisfy the standards of BCZR 502.1. There can be no dispute that if 19 Fusting Avenue was proposed as a parking lot part in the original special exception

in 1960, BCZR 502.1 would apply. It is the same for an amendment to the special exception.

Petitioner tries to emphasis that because Genesis is a residential facility for the infirmed, the parking lot is a benign residential use. This is misleading. A stand alone parking lot for 23 cars, consisting of between 65% and 80% asphalt could serve office or retail uses prohibited in the D.R. zones or such other prohibited uses as a hotel. The point is the parking lot here is more akin to a stand-alone parking lot, not accessory to a permitted or special exception use on the same lot. This makes the special exception relief more significant and Petitioner should be held to the strict standards in Cromwell.

4(a). Has the Petitioner met its burden of proof for a variance that the site is unique under the standards in BCZR 307 and Cromwell v. Ward, 102 Md.App 691(1995), and subsequent supporting case law?

Petitioner relies on the testimony of Bruce Doak to establish the facts to support a variance. The Petitioner must first prove that the site is unique as that term is defined in Cromwell and then must show that these unique characteristics or features create such a practical difficulty to prevent a reasonable use.

Before Judge Cathell in Cromwell compared the evidence there against the definition of uniqueness and practical difficulty, he pointed out the essence of variance relief in zoning law. He stated at p. 711:

> "One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed."

In the almost 13 years since Cromwell, the appellate courts have not granted a variance under general variance law. Umerley v. People's Counsel 108 Md.App. 497 (1996); Riffin v. People's Counsel 137 Md. App. 90 (2001) Trinity Assembly of God v. People's Counsel for Baltimore County 178 Md. App. 232 (2008), (Writ of Certiorari granted) in Baltimore County, and Montgomery County v. Rotwein 169 Md. App. 716 (2006) and Chesley v. City of Annapolis, 176 Md. App. 413, (2007) all affirmed the denial of variances. A few variances under the Critical Area Law were affirmed or

remanded but after Lewis v. Maryland Department of Natural Resources 377 Md. 382 (2003), which remanded the denial of a critical area variance, the General Assembly amended and tightened the critical area law to curtail variances. The standards in Cromwell continue to be applied in Baltimore County.

The general law of variances, which, as we shall see, Maryland is in accord, is stated as follows:

> " . . . with respect to variances, it is said that a variance is 'designed as an escape hatch from the literal terms of the ordinance which, if strictly applied, would deny a property owner all beneficial use of his land and thus amount to confiscation.'" (citations omitted, emphasis supplied). Young, *American Law of Zoning 4th Edition, Section 20.02.* P. 411, 412.

BCZR 307.1 is likewise in accord with general variance law and the Maryland appellate courts and states that the CBA may grant variances:

> "... only in cases where *special circumstances or conditions exist that are peculiar to the land or structure* which is the subject of the variance request and where strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship." (emphasis added).

Variances are not favored under the law and presumed to be in conflict with the regulations. For these reason, the spirit and intent of the law must be strictly construed. As Judge Cathell pointed out in Cromwell, *supra*:

> "The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.,* A. Rathkopf, 3 The Law of Zoning and Planning Section 38 (1978)." Id. at 703.

Here, Petitioner seeks two variances because he does not comply with the Residential Transition Area (RTA) setback requirements found in BCZR 1B01.1B. The purpose is stated in 1B01.1B 1.a.(2):

> "(2)The purpose of an RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types."

It insures that dissimilar uses, and even different housing types, are separated by a buffer area. An RTA variance requires the same burden of proof as variances from the

general area regulations in the zones. There is no separate RTA variance statute. The CBA must apply BCZR 307, Cromwell and its progeny.

The hearing before the CBA is *de novo*. Petitioner must meet the strict standards for a variance.

> "The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship." Cromwell at 721 (citations omitted).

Petitioner must prove some feature or characteristic of the site is unique; the plight or preferences of the property owner do not constitute uniqueness.

The word "unique" is defined strictly. Otherwise, anyone could make some sort of claim. In Cromwell, the Court stated:

> "In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property.
>
> 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

In the instant case, Mr. Doak's testimony did not reflect in any way the uniqueness standards in Cromwell. He said the lot was rectangular but Protestants Ex. #9, #10, (the SDAT printouts and maps), are clear that all the lots in the area are rectangular.

Pages 48 and 49 of the Transcript are Mr. Doak's direct examination response to uniqueness:

> "Q. Now, Mr. Doak, let me ask, as part of the variance request, have you looked at this property, and do you have any opinion, sir, as to whether the property is unique in any way as it relates to the zoning requirement?
>
> A. Yes, sir, I do.
>
> Q. What is your opinion>
>
> A. It's got a number of different ways that it is unique. Its narrowness of the property. It is very narrow. It is very deep also. Also, it has a very unique relationship to the convalescent home across the street and the shared use of that."

Pages 62-67 of the Transcript contain cross-examination on his position:

> "Q. And how many other lots appear to be rectangular and of the same or narrower width in your Petitioner's Exhibit No. 6?

* * *

A. There's a number of them that are rectangular in shape, and a few that are narrower in width than the subject property.

Q. Right on Fusting Avenue, did you examine the deeds to see what the width was for the other lots on Fusting Avenue in the vicinity of this property?

A. I did on the adjoining properties. I did not go any further down Fusting Avenue than the adjoining properties.

Q. Immediately adjoining?

A. Yes, sir, I showed on the plan.

Q. But Petitioner's Exhibit includes many, many more lots?

A. Yes, sir. Many of those were taken from the web site which, in turn, shows property lines on that web site.

Q. But you haven't - - I just want to make sure I understand - - you haven't checked lot widths for any of these other lots other than the two adjacent to 19 Fusting?

A. That is correct.

Q. For the purposes of your opinion and testimony?

A. Yes, sir.

* * *

Q. Okay. And the factors - - I want to take them on by one - - you said narrowness of the lot. There are plenty of other lots in this neighborhood that are as narrow, or narrower, than the subject lot is that correct?
A. That is correct.

Q. And the narrowness of this lot was created in the minor subdivision process?

A. That is correct.

* * *

Q. What you're saying then is, if it's deeper and has more land, that makes it unique compared to the other lots?

A. We were talking about it being unique in that it provides an ability to have a parking lot as well.

Q. But from a zoning sense, that fact that it's deeper, in your opinion, how does that make it unique?

A. We are talking about in the close vicinity, it's unique because of the size and the depth, compared to the other properties in the area.

Q. Let me ask this question then, to follow directly on that. The depth of a lot doesn't create the need to request any, zero, of the variance request from RTA requirements, does it?

A. No, sir, it does not.

Q. So if we're going to focus on what makes it unique, that causes it to need a variance, you're only claiming the width, is that correct?

A. The use.

Q. Well, wait a minute.

A. The proposed use.

Q. Wait a minute, We'll get to the use. But from a physical standpoint and the other lots in the neighborhood, are they of similar topography to the subject site, in your opinion?

A. Define the neighborhood.

Q. Well, let's just say on that side of Fusting.
A. Yes, site, they are similar.
Q. Similar. So it's not unique from a topographic standpoint, in your opinion.
A. No, sir."

Moreover, the length and width are comparable to nearly every single-family residential lot on Fusting and some surrounding streets. The subject site is nothing if not typical of the neighborhood in terms of its geographical features and characteristics. Moreover, it undisputed the site meets the area and width requirements of the D.R. 5.5 zone for a single family residence, the overwhelmingly dominant use on Fusting and the other interior adjoining streets. Mr. Doak admitted on cross-examination that a single family residence could be constructed on the subject site without the need for a single RTA variance, or any variance or that matter. In other words, the width is not an impediment to construct a single family home that meets the setbacks of the zone.

The further testimony of Mr. Doak at pages 100, 102 of the Transcript confirm that the topography and the width and shape of the lot do not pose any problem for a permitted and viable use for the site- a single family residence:

"Q. So the depth of the property of 228 feet would be more than enough, in your opinion, for a residence, a home built on this site?
A. Yes, ma'am.

* * *

Q. So there's no RTA problem if you put a single family dwelling here.
A. Okay.
Q. Do you agree that a single family dwelling is permitted by right?
A. Yes, ma'am.
Q. Do you agree that the size of the property and the depth, the width, and the area would permit - - is conducive to constructing a single family dwelling?
A. Yes, ma'am.
Q. But for the use that you want, you need an RTA variance?
A. Yes, ma'am."

In fact, Mr. Doak admits that the subject site was created in the minor residential subdivision process, which did not even propose a parking lot on the site.

Petitioner's position conflicts with Umerley, *supra*. Umerley sought variances, claiming the site was too small to accommodate the setback requirements for the existing trucking facility use. Judge Bishop reiterated that the uniqueness of the property must be

different from surrounding properties "such that the uniqueness or peculiarity of the property causes the zoning provision to have a disproportionate impact on the property." Id. 506. The Court held the inability of the site to accommodate the setbacks for a *desired* use, the trucking facility, was not evidence of uniqueness under Cromwell and BCZR 307.

As Judge Cathell pointed out:

> "[I]t is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight which is the criterion . . . Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size." Cromwell at 719-720, (citations omitted) (emphasis supplied).

Here, Mr. Doak also admitted that the topography on the site was identical to sites in the neighborhood. Turning to other uniqueness features recognized by Cromwell, there is no unusual subsurface condition, environmental factor to justify variances for an asphalt parking lot, historic significance, navigable water, nor an obstruction on an adjoining property and Mr. Doak cited no such unique features on the subject site.

It is obvious there is no factual basis to support the uniqueness standard for a variance.

4(b) Even if the property is unique under the legal standards, has the Petitioner met its legal burden of proof that the uniqueness caused practical difficulty?

Since there is no evidence of uniqueness, the Board need not consider whether the uniqueness caused "practical difficulty":

> "We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been – a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists." Cromwell at 721.

Judge Cathell further explained that practical difficulty must be caused by the established uniqueness: ". . . the uniqueness of the property caused the ordinance to have a different impact on it [subject property] than on adjoining property . . . and there is

evidence that the neighboring properties were in any way different than the subject property." Cromwell at 721.

Petitioner alleges a variance is warranted if the lot cannot be developed for the preferred use. But this is not the standard under variance law. Mr. Doak's responses in direct examination fall well below the standard for persuasive evidence:

Pages 52-53 of the Transcript give but a slight mention of practical difficulty although it is Petitioner's burden:

> "Q. Do you have any opinions, sir, as to whether you believe the applicant would suffer any practical difficulty if strict adherence to these regulations were required?
> A. Yes, sir, they would.
> Q. Why?
> A. They would loose the ability to be able to utilize this property to benefit their facility. Th[r]ough Ms. Hoover's testimony, it was stated that it was needed. It is a site that is very useful for this because of its proximity to the convalescent home as well as the width and size of it."

Petitioner's case fails because the witness admitted the lot's width, length and shape would support a single family dwelling under the provisions of the D.R. 5.5 zone without the need to apply the RTA setbacks and without the need for a variance under BCZR 307.

The term "practical difficulty" does not mean the owner cannot use it for a preferred use or the most profitable use. "Mere fact that variance would make property more profitable is not a sufficient ground to justify granting of variance from setback requirements of Baltimore Zoning Ordinance." Easter v. Mayor and City Council of Baltimore, 195 Md. 395 (1950). "Fact that variance of zoning ordinance will make realty more profitable is not sufficient ground to justify variance." Gleason v. Keswick Imp. Ass'n, 197 Md. 46 (1951). Burns v. Mayor & City Council, 251 Md. 554 (1968); Daihl v. County Board of Appeals, 258 Md. 157 (1970); Cromwell, *supra*, quoting Xanthos v. Board of Adjustment, 685 P.2d 1032, 1037 (1985):

> "Hardship is not demonstrated by economic loss alone... Every person requesting a variance can indicate some economic loss. To allow a variance any time any economic loss is alleged would make a mockery of the zoning program."

Moreover, variances for *expansion* are generally not allowed. The Court of Appeals has rejected such requests because their essence is relative advantage or convenience to the property owner. Marino v. Mayor and City Council of Baltimore, 215 Md. 206 (1957) Cleland v. City of Baltimore, 198 Md. 440 (1951); Pem Constr. Co. v. City of Baltimore, 233 Md. 372 (1964).

Long standing zoning principles have rejected variance relief based on convenience and profitability for the property owner as the treatises demonstrate. "Practical difficulty" does not mean:

> (i) Increase profit for the homeowner: "The courts have consistently held that a variance may not be granted solely on the ground that such relief will enable the applicant to make a greater profit." *Young, Anderson's American Law of Zoning 4th Edition,* Section 20.23.
>
> (ii) inconvenience to the applicant if the variance is not granted - " . . . an applicant cannot qualify for an area variance simply by showing that he will be inconvenienced if relief is not granted." *Young, supra* at Section 20.54.
>
> (iii) preferences of the property owner: "To warrant the granting of an area variance there must be something more than a showing that a variance would permit the applicant to select a preferable alternative." *Young, supra.*

Case law has also consistently demonstrated that personal preferences are no substitute for the legal standards required to demonstrate practical difficulty.

In citing prior variance cases in *Cromwell at 707*, Judge Cathell quoted:

> "[statutes] . . . have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property . . ." (citations omitted).

See also Carney v. City of Baltimore, 93 A.2d 74 (1952):

> "A need which will justify an exception to a zoning ordinance must be substantial and urgent and not merely for the convenience of the applicant."

Easter v. Mayor & City Council of Baltimore, 195 Md. 395 (1950):

> "Mere fact that variance would make property more profitable is not a sufficient ground to granting of variance. . ."

Evans v. Shore Communication, 112 Md. App. 284 (1996):

> "In determining whether to grant variance, first consideration cannot be fact that variance is desired and difficulties will exist if it is not granted."

There is no practical difficulty generated here from the "restrictions governing area, set backs, frontage, height, bulk or density" that "would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." McLean v. Soley 270 Md. 208, 214 (1973). In other words, the subject site can be developed with a permitted use – a single family residence, for example – and comply with the restrictions for the zone. Petitioner only recently purchased the site; the RTA restrictions have been a part of development in the D.R. zone since 1992.

In Montgomery County v. Rotwein, *supra,* the Court of Special Appeals in 2006 reinstated and, in effect, affirmed the zoning board's denial of setback variances for a residential garage and walkway in the front yard of the property. The case is interesting because the property owner suffered from some personal health issues and presented a sympathetic picture. They had a carport, and they previously had obtained a variance for a second, enclosed patio. They also had a rear deck, patio, swimming pool, and tennis court.

There were no neighbors who appeared in opposition. There were no apparent public safety issues of any great magnitude. Nevertheless, there were other options available for the property owner, and there was nothing unique about the property which caused the alleged difficulty. It was a matter of the property owner's personal needs or advantage, and that did not justify the variances.

Baltimore County Zoning Regulations comport with the treatises and cases. BCZR 307.1 applies strict standards and places the burden on the petitioner.

The key language in BCZR 307.1 authorizes,

> " ... the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations ... only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. ...Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public safety, health, and welfare." (emphasis added).

The language parallels the uniqueness and practical difficulty standards in Cromwell and subsequent appellate zoning cases. It also emphasizes the concerns of the neighborhood. The negative impact of a parking lot for an institutional use in a residential neighborhood is a valid concern, explained in Chesley v. City of Annapolis, 176 Md. App. 413 (2007). There the petitioner requested setback variances for a garage to be constructed and attached to a new replacement dwelling. The location was chosen to protect the petitioner's wheelchair bound adult son from the elements when he visited his parents. The Department of Planning and Zoning recommended a detached garage instead, in order to maintain a *"public view corridor"* although the new location required setback variances which the planning department supported. The house was constructed while the setback variances were pending. Neighbors opposed the variances, which were denied. Petitioner again amended the plan to request *"a scaled back one story, one car garage in the same location, also requiring a variance to allow a three foot setback, but no side setback variance"* as previously requested in the prior plan. The reduced variance request was also denied, the Board finding *"that no hardship exists, that the claimed hardship was self-created, and that the proposed garage would have a negative impact on the neighborhood."*

In its discussion, the CSA reiterated the settled law stated in Easter v. Mayor of Baltimore, 195 Md. 395, 400 (1950) that *"The burden of showing facts to justify . . . [a] variance rests upon the applicant[.]"* The Court looked particularly whether the "*Board erred in determining both that the Chesleys failed to establish a hardship that was not self-created and that the proposed garage would have a negative impact on the neighborhood."* The CSA upheld the Board.

In Chesley at 435, the CSA applied the proper variance standards when it focused on the *"particular physical surrounding, shape or topographical condition of the specific property."* The Court held the desire to provide a covered environment for Petitioner's son is a convenience, not a hardship: " . . ."*it is generally not a hardship to be without a*

desired convenience or amenity on one's property, because zoning regulations are to be enforced in the absence of a 'substantial and urgent' need for a variance." Id.

The CSA supported the Board's distinction between true hardship required to grant a variance and "mere inconvenience" which does not meet the standard.

We can also point to other decisions of this Board where the CBA has recognized the adverse affects of commercial or institutional intrusion in a residential neighborhood in a request for RTA variance for a rental car agency, In the Matter of Sylvan Cornblatt, Case 05-176-SPHXA. In denying both the special exception and RTA variance, the CBA said on page 6 of its Opinion, "The fact that the property could not be used to park 18 rental cars does not make the property unusable and does not create a hardship on the owner." The CBA also denied RTA variances for a church driveway and parking facility in Windsor Mill Gospel Hall, Case 03-049-A. The CBA remarked on page 14 that: "It is the choice of this institutional use that triggers the RTA regulations and the Petitioner's request for variance from them. . . . We do not therefore find that the Petitioner suffers from practical difficulty in using the property within the D.R. 2 regulations. The Petitioner is not denied beneficial use of the land." The CBA decision was affirmed by the Circuit Court in 2004 in 03-C-04-003473.

Summary

The recommended decision for the County Board of Appeals can be stated aphoristically:

1. Variance – There is no evidence the site is unique under the Cromwell standards. It is not too narrow for the dominant use, permitted by right, - a detached single family residence.

2. Variance – There is no need to decide practical difficulty. If it is addressed, none exists here because the site has a viable use. No one forced Genesis to buy the site before it was approved for a parking lot.

3. Special Exception is moot because a parking lot is not permitted unless variances are approved

4. If special exception is addressed, Petitioner did not meet its burden that the use here has no greater adverse effect than at other locations in the zone. The impact is greater here because the storm water management is deficient and the use would exacerbate a problem. Also the adverse impact is greater here because the locale is detached single family homes with minimal impervious surface, unlike other D.R. 5.5 sites for townhouses with more macadam and perhaps an accessory surface parking lot used in common by all the tenants. In addition, the lack of a buffer plops a 23 vehicle parking lot, used "24/7", without an attendant, and with all its innate intrusions, on the doorstep of the homes in this neighborhood.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of September, 2008, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to Michael Tancyzn, Esquire, 606 Baltimore Avenue, Ste. 106, Towson, MD 21204 and Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204, Attorney for Petitioner(s).

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
for Baltimore County

9/8/08

IN THE MATTER OF: ADAM SKOLNIK, Legal Owner GENESIS HEALTH CARE/KEITH NAUSE, CP 19 Fusting Avenue	*	BEFORE THE BOARD OF APPEALS
	*	OF
1st Election District 1st Councilmanic District	*	BALTIMORE COUNTY
	*	Case No.: 07-535-SPHXA

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

MEMORANDUM OF PROTESTANT
ANGELA LUNCZYNSKI

Now comes ***Angela Lunczynski***, Protestant, by her undersigned Counsel, ***Michael P. Tanczyn, Esquire***, and submits the within Memo to assist the Board in its deliberations and decision in this case.

PROCEDURAL HISTORY

Petitioner filed a Petition for a Special Exception to use the property for a convalescent home per B.C.Z.R. 1B01.C3 as well as a Special Hearing to approve an amendment to the previous Special Exception granted in Case No.: 5006-XA to add a parking area to a previously approved assisted living facility. Petitioner additionally requested a variance from 1B01.1B1(e)5 to permit a parking lot with a 13.7 foot buffer and setback in lieu of the required fifty (50) foot RTA buffer and 75 RTA setback. That matter was heard before the duly appointed Deputy Zoning Commissioner for Baltimore County, who by Order, September 10, 2007, granted the relief requested with six (6) conditions. A timely appeal was filed and the matter was scheduled for hearing and heard before a *de novo* before the Board of Appeals of Baltimore County on June 3, 2008 (T.1), July 23, 2008 (T. 2), and July 29, 2008 (T. 3).

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STATEMENT OF FACTS

Petitioner's Site Plan introduced as Exhibit #1 was noteworthy for not showing many items required on the Zoning Review Hearing checklist propounded by Baltimore County for residential and non-residential properties. A copy of those checklists is attached. The checklist requires twelve (12) copies of a sealed Plat with all information as indicated on the checklist, Page 6. Because Petitioners Petitions requesting zoning relief included a request as well to amend the Special Exception, the Plat requirements stated beginning at checklist Page 11 should have been filed, but for some reason were not put on the Plat by the surveyor, Mr. Doak. Items missing from the Plat as listed on the Plat Requirements are those listed in:

#3, #4 which does not show the nursing home facility as part of the subject site accurately or clearly

#6, Date of Orders for previous zoning which was granted or denied, including what was granted or denied and any restrictions, no CRG or DRC approval dates or waiver numbers are listed

#7, no rights-of-ways are shown on the Plat

#9, the distance from property corner to the nearest intersecting public street center line

#10, street widening right-of-way and easements are not shown

#11, uses and structures within two hundred feet (200') of the property are not zoned on several sides

#12, dimensions, height, number of stories of all existing and proposed buildings on the site including all property lines and building setbacks are not listed

#14, entrances are not shown per Paragraph 14

#15, existing signs are not shown

#16, utilities are not shown

#17, locations of streams and storm water management systems, drainage and pipe systems on or within fifty feet (50') of the property are not shown

#18, gross floor area calculations which must be shown for parking calculations are not shown

#21, location of fire hydrants and distance to the subject property is not shown

#23, required off-street parking and calculations mut be included on the Site Plan for all uses on the property pursuant to Section 409 and the attached general requirements calculations, parking patterns and sample Site Plan

#24, Special Use Requirements - business and industrial parking in a residential zone and all residential transition area requirements regarding uses are not shown

#25, basic service maps identify any existing or impending failure of the basic service maps are not shown. The sample Plat attached to the checklist is very informative as to the detail required and to meet the aforesaid requirements by comparing it to the Petitioner's Exhibit #1.

The Board can readily see that Petitioner's one does not meet those requirements. This was particularly significant because of the variance request of the Petitioner from RTA requirements or setbacks for the proposed off-site parking lot. The RTA requirements in the Baltimore County Zoning Regulations are set forth in Section 1B01.1B1A as a one hundred foot (100') area, including any public road or public right-of-way extending from a D.R. zoned tract boundary into the site to be developed. The purpose of an RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar houses or housing types. An RTA is generated at the property to be developed is D.R. and lies adjacent to Land Zone D.R. 1, D.R. 2, D.R. 3.5, D.R. 5.5 or R.C. In this case, the subject property and the surrounding neighboring properties. The B.C.Z.R. Section relating to variance of RTA in Section 1B01.B1C2, specifically provides "the RTA for a tract may be modified as directed by findings pursuant to Sections 26-206 and 26-2H2 of the Baltimore Code as revised. However, the Hearing Officer may not reduce the amount of RTA unless the Officer specifically finds and determines that such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed."

Because the Plan had the aforesaid deficiencies, Protestants Counsel moved that the matter be continued to allow the Petitioner time to provide the necessary information. (T.1, T-11 to T. 20). However, the Board, after Counsel's argument and discussion between its members denied the request. The Petitioner, through its Counsel, then claimed that the information was

not submitted because the nursing home/Convalescent Center had all the required parking that it needed and that this was additional parking requested for convenience. (T.1, 28-30).

That became significant as the testimony unfolded. Leanna Hoover identified herself as the Administrator of the Genesis nursing home facility at 16 Fusting Avenue, (T. 1-33), with one hundred thirty-eight (138) beds, thirty-six (36) of which were licensed for Alzheimer patients. (T. 34). She identified the approximately one hundred fifty (150) employees as working on the following shifts - 7:00 a.m. - 3:00 p.m. (47), "give or take;" 3:00 p.m. - 11:00 p.m. (about 24); 11:00 p.m. - 7:00 a.m. (about 12). (T. 36). She verbally described fifty-four (54) regular parking spaces and two (2) handicap spaces, not shown on the Petitioner's Plan 236 on the Genesis Facility lot. (T. 236). She had been at this facility for approximately three (3) years as of September, 2008. (T. 38).

In light of the Board's initial ruling that it would not consider existing parking or layout of the original facility, objections were raised to this testimony by Ms. Hoover that it violated the Board's earlier ruling; that across the street, parking facility would rise or fall on its own. (T. 38-39). Petitioner's Counsel reiterated his client's claim that they meet the requirements of Section 409 for parking on the main facility. (T. 46). After a colloquy between all Counsel and members of the Board, when Counsel for the Protestants stated its intention to ask Ms. Hoover questions and show her pictures concerning utilization of the existing parking lot, the Board Chairman said he would not allow that line of inquiry. (T. 52). When asked by a Board member if he would accept a proffer that there were a few parking spots on the Petitioner's lot that have

dumpsters, Petitioner's Counsel first said that he believed dumpsters have been moved out of the parking spots, then that he was not sure until it was pointed out by Protestant's Counsel that Ms. Hoover was shaking her head "no" in response to Petitioner's Counsel's comments. (T. 54). The Board then recessed and after a long recess took a long lunch break. (T. 55). Ms. Hoover's continued testimony in the afternoon was that she had received calls for people who have parked in the fire lanes to move their vehicles and that there are no alternative parking spaces on her space at the facility. (T. 264). She expressed her intent to post the proposed parking lot across the street and mark it as a means to prevent the public from parking there. (T. 68). She testified she did have employees who are dropped off at the site by their families or who use mass transit and visitors who car pool or have someone drop them off. (T. 69). Upon cross-examination, Ms. Hoover admitted that her employee total for all three (3) shifts totaled eighty-three (83) rather than one hundred fifty (150). (T. 70-71). She admitted she had not counted the fifty-six (56) spaces at the original facility, (T. 72), nor did she know where they were located at the facility. (T. 72).

When shown the Protestants pictorial Exhibits #1 and #2, which showed the parking area with the dumpsters on the original facility site, she acknowledged those pictures were accurate. (T. 73). She could not say whether the parking spaces in front of the facility adjacent to Fusting Avenue were or were not included in the fifty-seven (57) that are in the rear (T. 74), nor did she know the name of the engineering firm who had been hired by her company to prepare the Plat. (T. 74-75). When asked if it was important to her to determine how many parking

spaces she had on site and how they were being utilized, she ducked the question, saying it is important for her to advocate on behalf of her family and residents. (T. 75-76). She acknowledged the dumpsters in the parking spaces shown on Protestants Exhibit #1 were not in the spaces when she came to the Center as an Administrator (T. 76), but were placed in those spaces in November, 2007 (T. 76), after the Deputy Zoning Commissioner's Decision in September, 2007. (T. 77). Asked if she considered paving some of the green area to create more parking spaces (T. 79-80), she stated that had been taken into consideration and rejected claiming the residents use the walkway. (T. 80-81). She acknowledged the macadam parking spaces going up to the building on the existing facility were next to the residents rooms (T. 81), which were next to the green unutilized are. (T. 82).

When asked how the proposed additional parking lot would be restricted to the employees, she stated she was contemplating signage that would indicate it was for employees only. (T. 85). She admitted that if a visitor parked there, she would not tell them to move. (T. 86). She admitted she had done no studies to determine how many employees use public transportation or get dropped off (T. 87) and could not give a number of how many of her staff car pool (T. 88), other than guessing (T. 89). She made the decision to move the dumpsters to cover the parking spaces on the existing facility. (T. 90). They kept no logs over the past three (3) years to chronicle any alleged chronic parking shortages. (T. 100-101).

She testified she could not observe from her office the parking spaces in front of the facility parallel to Fusting. (T. 103). When asked what consideration had been given by herself or the management, to utilize the nursing home side to the rear of Fusting Avenue to create more

needed parking as an alternative to locating across the street, she testified she had not been personally involved in any of that. (T. 104-105). She agreed that Fusting had no sidewalks or shoulders and was very narrow with two-way traffic allowed. (T-107). She acknowledged in response to Deputy People's Counsel question that other nursing homes would have the same number of employees that she was required to have (T. 108-109), as well as medical services visiting the site. (T. 109). She testified on re-cross that none of her patients drive with automobiles. (T. 118). That concluded the first day of testimony.

When the proceedings resumed on the Petitioner's case on July 23, 2008, Bruce Doak testified as a land surveyor offered by Petitioner's Counsel as an expert in Baltimore County Development and Zoning Regulation to be asked his expert opinion about Petitions before the Board. (T. II-7). He testified he had been retained by Genesis to prepare the Plan, Petition and everything needed to file for a Zoning Hearing, Special Exception, Special Hearing and Variances. (T. 9). He described the subject parcel as rectangular. (T. 9), vacant, sixty-seven feet (67') wide and two hundred thirty feet (230') deep, (T. 10), zoned D.R. 55 on the South side of Fusting Avenue. He testified Genesis owned other property in the immediate area shown on his Plan at 16 Fusting and he described the improvements there as a two-story masonry building with parking and lawn utilized as a Convalescent Home. (T. 10-11). He introduced Petitioner's aerial photos, 2A and 2B, showing the subject property as well as the building owned by Genesis used as a Convalescent Home (T. 11-12); introduced Petitioner's 3 as a map showing the immediate area of where he took certain pictures which were then introduced as 4A through U, which

depicted the existing Genesis facility and views from its entrances and exits as well as Fusting Avenue and the proposed additional parking lot on the South side of Fusting Avenue and then other buildings in the neighborhood including 4U, the large apartment building which was part of the minor subdivision. He testified that for the proposed parking lot they have drawn in twenty-three (23) spaces with a twenty-two foot (22') drive aisle. (T. 30). He proposed a five foot (5') high privacy fence and noted that the Plan showed an area of 13.7 feet wide on either side to the east and west of the parking and paved area. (T. 31). He testified lighting, although not shown on the Plan would be necessary. (T. 33). He introduced Exhibit #5, the Special Exception approval for the House of the Pines, known as 5006-XA. He testified that when the Special Exception Request was filed in this case, Petitioner filed a Petition for Special Hearing because the Zoning Office felt that was required since this was an affiliation to the property that had the Special Exception previously approved. (T. 40-41).

He testified that the Petition for Variance was from the RTA Requirements. (T. 43). He acknowledged the RTA Requirement would take up the entire width of the lot. (T. 45-46). It would require a fifty foot (50') buffer off the tract line between 19 and 23 Fusting and a seventy-five foot (75') setback for any improvements on the property including any parking lot. (T. 46). He testified as to the uniqueness of the property, in his opinion, that it was unique because it was narrow and very deep. (T. 48). He also believed it was unique because it was the only Convalescent Home he knew of in a D.R. 55 area, where there was proposed parking area across the street from the nursing home. (T. 48-49). He introduced Petitioner's Exhibit #6 showing

other lots and improvements in the area (T. 50-51) and incredibly testified that when asked if there were any other nearby properties, with lot areas of 15,463 sq. ft. that there were not. He acknowledged that the dimensions and shapes of other properties in the areas compared with the subject property are shown on the Plan. (T. 51). When asked what would constitute practical difficulty if the Regulations were adhered to, he stated that Genesis would lose the ability to use this property to benefit their other Facility. (T. 52).

In cross-examination, he acknowledged that the subject property was part of a three (3) lot subdivision, called the PG Homes Subdivision (T. 54-55) and was approved out of a common tract. He acknowledged that the apartment house was an existing building at the time the Subdivision was created (T. 55) and that the macadam parking lot that served the apartment building goes back in time and pre-existed the Subdivision. (T. 56). He agreed the front lot width for 17 Fusting, adjacent lot to the east was set so all the macadam parking would fit on that lot. (T. 56). He agreed that the improvements at 23 Fusting were constructed back in the late 1800's (T. 57) and that he did not know when the improvements on 21 Fusting were built. (T. 57).

He recalled that Ms. Hoover had testified she did not want to create more parking closer to the residents on the other site because it would impact on their quality of life. (T. 57-58). He agreed the RTA Regulations were created by a Bill approved in 1992 (T. 59) and that Genesis purchased this property in 2007. (T. 59).

He acknowledged that the three (3) lot minor subdivision including the subject property was approved for single-family residential dwellings (T. 60) through a minor subdivision. He further acknowledged that the property owner at the time of the Subdivision was entitled to carve

up the property as they saw fit in order to get approval for their lot (T. 61) and he acknowledged that the subject property could be utilized for a single-family dwelling. (T. 61). He agreed that Genesis assumed the risk when they bought the property knowing it could not meet the RTA (T. 61), which he had advised them. He advised them they would require a variance from the RTA Requirements (T. 62). He acknowledged there were a number of lots in the immediate neighborhood that were rectangular in shape and a few that are narrower in width than the subject property. (T. 62-63). He did not consider any properties further down Fusting Avenue than the properties immediately adjoining the subject site, evidencing his narrow definition of neighborhood. (T. 63).

He testified he had not checked lot widths for any of the other lots other than the two (2) adjacent to 19 Fusting for the purpose of his opinion and testimony (T. 63-64), and agreed there were no structures on the site proposed for the parking lot at present. (T. 64-65). He acknowledged there were plenty of other lots in the neighborhood that are as narrow or narrower than the subject lot (T. 65) and that the narrowness of the subject lot was created in the recent minor Subdivision process. (T. 65). He acknowledged that the adjacent properties were as deep as the subject lot in the other two (2) lots that were in the minor Subdivision. (T. 65). When asked why the greater depth of the property, made it unique, he stated it was deeper than compared to the other properties in the area. He acknowledged that the depth of the lot did not create a need to request any of the variance requests from the RTA Requirements. (T. 66-67).

He acknowledged the subject property had similar topography to the other lots on Fusting. (T. 67). When asked how the subject property use as a parking lot could create uniqueness when it was an empty lot, he did not know how to answer that question. (T. 68). He

testified he had never been to the site during a heavy rainstorm or a rainstorm of any consequence (T. 72) and the property owner had not made him aware of any flooding conditions which existed with regard to the existing Convalescent Center and Fusting Avenue. (T. 72). The Chairman of the Board of Appeals Panel then denied inquiry into storm water runoff problems from the existing site and the Chairman reiterated any storm water runoff, including the facility was not something of consequence to the Board. (T. 74). Mr. Doak was unaware whether there was an existing storm water management pond built by Baltimore County when he reviewed his Exhibit #6 on the same side of Fusting Avenue as the existing nursing facility. (T. 74). He was questioned about the waiver for storm water management, Protestants Exhibit #3, for identification, a storm water waiver dated July 21,1993, on behalf of the Genesis project which was not noted on the Petitioner's Exhibit #1.

Ultimately, the Chairman ruled to keep Petitioner's Exhibit #3 out of evidence. (T. 75-84). Mr. Doak, in answer to a question stated the proposed parking lot would take traffic off Fusting Avenue (T. 90), which he interpreted as parking off Fusting Avenue. (T. 90-91). When shown his pictures 4-A through U, he stated he did not see anyone parking on Fusting in those pictures. (T. 91). When asked about the possibility after he was hired of reviewing the existing Convalescent Home property at 16 Fusting to consider adding parking spaces to the Convalescent Center side of the street, the Board allowed the question and Mr. Doak stated he did not. He acknowledged in the hours of darkness the headlights of the cars would shine towards 21 and 23 Fusting. (T. 96). He agreed the 15,000+ sq. ft. on the subject site was more

than enough to satisfy the area requirement for residents in a D.R. 55 zone on the subject property. (T. 98). He agreed that the lot width exceeded the minimum lot width of fifty-five feet (55') for residents in a D.R. 55 zone. (T. 99). Mr. Doak then testified he believed there might be an issue with RTA about building a house on the subject property (T. 101), which position he later abandoned. (T. 102). That concluded Petitioner's case in chief.

In the afternoon session, Thomas Schueler testified as an expert witness in storm water management from a design cause and effect treatment of the same problem and was admitted without objection. He had resided at 117 Ingleside Avenue for nine (9) years and his property had two hundred feet (200') of frontage on Fusting Avenue. (T. 110). Because of his employment, he had a home office and he was in the area twenty-four (24) hours a day when not traveling. (T. 110). He stated he co-authored the Maryland Storm Water Design Manual which are the Rules and Instructions by which storm water designs are done in Baltimore County and throughout the states as well as writing fifteen (15) other Storm Water Manuals for other states, localities and countries. He was a member of the National Academy of Sciences. He had a Bachelor of Science Degree from George Washington University and post graduate studies with the University of Maryland. The majority of his expertise and experience was acquired during twenty-five (25) years of research and design experience at the Center for Watershed Protection and the Metropolitan Washington Council of Government. (T. 112).

In essence, he was asked to testify what he observed about storm water runoff volume and where it goes on Fusting Avenue. The Chairman allowed that question. (T. 116). Mr. Schueler estimated the current proposed site would go from a currently pervious state to one that would be

roughly eighty percent (80%) impervious with the remainder being highly compacted changing it from a sponge to a macadam or concrete surface. (T. 116-117). He computed that a one-inch rain storm would produce 1,500 cu. ft of runoff from the site once constructed. (T. 117). He testified when that runoff hit Fusting it had two (2) ways to go - either right or left. (T. 117). He pointed out that Fusting did not have curb and gutters and did not have storm drain pipes for modern drainage (T. 118), causing the water, when it rains to travel on the surface, causing erosion at the intersection of the pavement edge and the grass or turf on the property owners lawns. (T. 118).

He was familiar with the location of the recently constructed storm water management facility located on Fusting (T. 120), as one hundred fifty feet (150') from the west property line of the existing Convalescent Center. (T. 121). When asked if the Convalescent Center storm water runoff on the North side of Fusting went to the storm water management pond or whether it goes to the South side of Fusting and toward Egges Lane, he testified that it crosses Fusting and then goes left or right, including westward down towards Egges Lane. (T. 122). He estimated the proposed runoff as ninety percent (90%) more runoff than would occur in the current condition, more than a trivial increase. (T. 123-124). He testified Fusting Avenue was posted to prohibit parking on both sides of the street (T. 124), and that because he has ridden his bike through the area twice a day for the last year, he has rarely seen anyone have a local parking problem on Fusting near the Convalescent Center. (T. 124).

He testified that his neighbors had invested in their homes, put in fences, called in zoning complaints and that the quality of the neighborhood has improved over time as well as property values. (T. 125). He testified to his concern about the proposed parking lot being a cut through

from the nursing home to Frederick Road. He believed the Petitioner's design for the subject parking design for the subject property was really crowded on the site. (T. 128). He believes lots in the neighborhood were rectangular with dimensions close to or approximately that of the subject property (T. 129), and did not see the subject property be unique in any way in terms of the width of the lot.

Protestants next witness was Patricia Stavis, who resided at 32 Melrose Avenue to the rear and to the west of the subject property. (T. 148). She testified as to her experience with the existing commercial parking lot on Melrose Avenue (T. 149), as to the use of the parking lot with use of loud radios, which did not take into consideration the homes in the area. (T. 150), headlights shining in her family room which faces the parking lot. She could not keep her blinds open because people in the parking lot could then see right in her house. (T. 150). She testified the parking lot was approximately thirteen (13) to fifteen feet (15') from her property. (T. 151). She testified about partying in the parking lot trash, liquor bottles, beer cans and vandalism, spray paint on the asphalt of the parking lot, including vulgar pictures. (T. 151). She testified against the proposed parking lot for this facility because it would create the same problem as she has with the existing commercial lot because the nursing home would not police the parking lot twenty-four/seven (24/7) and it would be a gathering place with additional cars coming with their radios on and their lights on. (T. 153). She believed this would negatively affect the property value on her house for resale, saying who would want to live next door to a house with a parking lot next to it and a parking lot behind it. (T. 153).

Next, Rev. Terry Sweeney testified. He was Pastor of St. Timothy's Church located at 200 Ingleside Avenue, just down the street from the Convalescent Center. (T. 162). He testified against the Petitioner's proposal. He testified that the permitted use for the property as a single-family dwelling would be of the best use (T. 164), because of the parking lot impacts. The proposed parking lot would have the neighbors who he described as really good people who are trying and put lots of money into their property and want this to become their home in terms of the neighborhood. (T. 165). He testified that the nursing home has not used St. Timothy's property for overflow property as has been previously testified for visitors (T. 165) on a day-to-day basis.

The next witness was Patricia Stack, who resided at 29 Fusting Avenue with her husband and two (2) children since 1986, for almost twenty-two (22) years. (T. 173). She testified she was at home at least four (4) days a week and was there most of the time and was active in the Community Association. (T. 174). She testified to the Board that her house was located two (2) houses away from the subject property as the third house to the west. (T. 175), and that her observations about storm water runoff into Fusting both from the Convalescent Center and the subject property on Fusting based on the volume and direction caused erosion from that right in front of her house from water which cascades from the nursing home parking lot across Fusting and down to her lot. (T. 176). She testified there was no curb and gutter on Fusting and no storm drain. (T. 177). She was familiar with the storm water management facility built in the last several years on Fusting. (T. 177). She testified that the rain from the rain water runoff from

the Convalescent Center does not travel to the storm water management facility but once it reaches the South side of Fusting, it goes to her property or to the edge of her property where the swale is and the storm water overrides the swale and washes on to her property, washing out and exposing the roots of the hedges and eroding the dirt around the manhole cover bringing debris from the road which further inhibits drainage. (T. 178-179). She testifies her house was built in 1890. (T. 180). She introduced Protestant's pictures 4-A, B and C to demonstrate the erosion. (T. 181). She identified Protestant's Exhibit #3 as storm water waiver, which she had obtained from County officials in the Department of Storm Water Management. (T. 187-188). She was concerned that the proposed parking lot would be an impervious surface three (3) lots up from the same side of the street which would drain and exacerbate an already bad condition. (T. 189). Protestant Exhibit #3 was identified by the witness who attempted to introduce it. The Board declined and refused to accept the Exhibit sustaining the objection of the Petitioner's Counsel. Her proffer was set forth as to the contents of the storm water waiver obtained for Genesis at the nursing home site in 1993, by their engineers. (T. 192-194). Ms. Stack further testified that Fusting Street, would lose its cohesiveness if this were built next to lovely single-family homes with lovely landscaping and that the parking lot would take away from the neighborhood. (T. 195).

She also believed that the activities that were once confined to the back lot of the nursing home for parking will now be brought across the street, which would include comradery after a shift change between the workers loud music from radios, people like to sit and talk. (T. 195).

She believed the parking lot would be attractive to delivery trucks for the nursing home (T. 195-196), and that the parking lot would cause problems for the fire department. (T. 196). Protestants produced as Exhibit #5, a report from the Catonsville Fire Station about calls to the facility for the time periods indicated. (T. 196-197). Ms. Stack testified she has not seen parking on Fusting Avenue from the nursing home and her observations was the cars were going in the back lot and park there. (T. 200). She testified that she had visited the nursing home facility outdoor area several times and she saw parking spaces available on the front of the facility adjacent to Fusting and spaces in the rear were introduced as Protestants Exhibit T. 201. She had noticed in her visits a significant number of spaces open on an existing facility (T. 202), as well as dumpsters placed in the parking spaces on the rear of the lot. (T. 203). Ms. Stack had observed at shift changes, workers stopping in the middle of the street on Fusting to greet each other and basically cars could not get by. (T. 206). Her observations were that there were plenty of unused space in the rear of the existing facility to do any number of things to add parking spaces with adequate room and that Genesis should look to putting their parking elsewhere in order to avoid the expense and congestion that might be caused by putting it on the subject property. (T. 208).

Brian Nippard next testified as a resident at Egges Lane for fourteen (14) years. Prior to that, he lived at 25 Egges Lane and his family has owned the property at 19 Egges Lane since 1918. (T. 218). His residence was built in 1917. He testified the subject property was rectangular like many others in the Community and was in opposition to the Petitioner's request

because their neighborhood was the oldest incorporated neighborhood in Catonsville from approximately 1830 and has experienced over the last ten (10) years a steady issue with the commercial encroachment into the neighborhood. (T. 219). He testified the infrastructure of the neighborhood was extremely old. (T. 220). He was concerned about crime issues due to people cutting through properties and maintained that trash, noise and crime were all issues if the proposed parking lot were approved. (T. 221).

On the third day of hearing, July 29, 2008, Angela Lunczynski testified as the owner/ resident of 23 Fusting. She testified that the home which she purchased was originally constructed by Joseph Fusting in the 1800's. She testified as to her concerns about the proposed parking lot on the subject property with photographs identifying the existing buildings on Fusting, including her home and the apartment house on the other side of the subject property and as well as a series of pictures introduced as Protestants 8A through M, they can buy her showing the view of the subject parking lot from the interior rooms of her home as well as from the property line and the poor condition of the subject property line. She authenticated a study she had prepared using SDAT records for the lots on Fusting which were rectangular and in some cases narrower than the subject lot as well as introduced as Protestant's Exhibit #9, as well as Protestant's Exhibit #10 in SDAT printout study with Deeds of lot widths on Egges Lane.

Fusting	**Year Constructed**	**Lot/Sq. Ft.**	**Lot Width**
2	1910	3,000	50.5
9	1948	7,254	62.0
11	1948	7,254	62.0
14	1917	18,750	125.0

15	2007	15,657	70.0
17	____	31,709	100+
18	1933	12,008	Narrow
19	Vacant	15,463	67.0
21	1956	9,496	67.0
23	1879	10,800	87.0
27	1898	14,805	66.0
29	1890	12,768	96.0

Egges	**Year Constructed**	**Lot/Sq. Ft.**	**Lot Width**
10	1884	29.70	27.5
11	1978	75.78	37.5
14	1738	5300.00	58.8
17	1890	84.96	67.4
25	1884	48.45	51.0
101	1899	13.440	58.0
102	1889	47.04	60.0
103	1928	81.778	59.6

Ms. Lunczynski also tendered a letter from the apartment owner in the neighborhood which was accepted by the Board to be given the weight necessary in which the apartment owner stated he had never seen any parking on Fusting Avenue in the last several years in the vicinity of

the Convalescent Center. Ms. Lunczynski testified about the negative impact on the fair market value of her property. She testified the relaxation of the RTA Standards would be a commercial intrusion into the residential side of the street and would negatively impact her quality of life for the reasons that she and other witnesses had testified. Following her testimony, Protestants rested and the Petitioner called David Snook of the Storm Water Management Department of Baltimore County. The Petitioner brought in the additional Exhibits through him including the minor Subdivision Plan which included the subject property as approved in 2006 or 2007 of PG Developers. Interesting and of note, to the Board on that Subdivision Plan is the proposal for two (2) dry wells on the subject lot for storm water management proposed thereon, even with less impervious surface proposed. Petitioner's Exhibit #8 was a title page of a Storm Water Design Manual regarding Mr. Schueler. Counsel for the Protestants pointed out at the time of the hearing that Mr. Schueler's testimony from Day 2 said that he was a co-author and the name highlighted on the excerpt page tendered by Petitioner's Counsel overlooks the printed names of Mr. Scheuler and Mr. Clayton as co-authors on the second page of the Exhibit. Petitioner's Exhibit #9 was a Public Works document for Baltimore County of a storm water Plat showing flooding and storm water management problems on Fusting Avenue which Mr. Snook testified to. Petitioner's Exhibit #10 was a soils document purporting directly to represent the soils at the site which Mr. Snook, when examined, had no personal knowledge of. Exhibit #11 was a drawing created freehand by Mr. Snook showing water flow entitled a hyrdrograph. Mr. Snook was unaware of the actual storm water flow in times of rain from the existing Genesis facility and

testified that storm water flow could cause erosion of the type testified to by Ms. Stack. Petitioner's Exhibit #12 was a photometric map of Baltimore County utilizing 1953 topography which Mr. Snook was unable to testify, was the existing topography on the site, nor could he testify as any changes in the topography on the subject site since 1953 to the present.

ARGUMENT

Petitioner's request for Special Hearing and for a Special Exception should be denied for the Petitioner who had the burden of proof throughout. Failure to advise the Board as is required by the zoning checklist of what the existing conditions were in terms of existing parking on the Genesis lot. The Board is left to muddle through the testimony of Petitioner's witnesses, particularly Ms. Hoover and Mr. Doak on how many parking spaces are provided at the existing Genesis facility. The Protestant pictures are the only ones offered of the Genesis site illustrate the following:

A. Dumpsters parked in the parking spaces since November 2007, through the conclusion of the hearing.

B. Parking spaces in front of the facility in addition to the fifty-seven (57) identified in the side and rear lot of the facility, many of which are available for use as is demonstrated by the pictures submitted in evidence.

C. That the negative adverse effects visited wherever the parking is provided was a quality of life issue as far as Ms. Hoover was concerned if the parking were to be provided in the green area adjacent to the residents rooms in the facility even though the parking spaces

were shown adjacent to the residents rooms on the existing parking lot adjacent to the facility. A review of the Petitioner's Plat shows areas not included in the parking lot to the West which could be utilized to expand the parking lot according to the Petitioner's and drawings.

The Board is asked to consider the B.C.Z.R. 502.1 testimony of Mr Doak, the engineer, that all those requirements are met while the Petitioner never bothered or intentionally chose not to show the existing conditions or to meet the checklist requirements. This is particularly egregious when one considers the checklist requirement to list storm water waivers which were obtained by the subject site by the nursing home in 1993, a particular importance given, the surface storm water management problems testified to by the people most affected, the neighbors of long-standing duration and for more than a century.

The failure of the Petitioner to show for the existing facility, the improvements and storm water management waivers, blinds the Board to any weighing of the effects of the proposed parking lot on the neighbors against any proposed effects on the proposed facility residents if part of their green becomes "parking spaces." The Board should make no mistake in that regard. In concluding that the nose of the camel, is attempting to come across the street and jeopardize the community, the quality of life of the neighbors who question the stripping of the RTA Standards put into law for their protection to accommodate the demands of the nursing home unsupported by evidence of parking shortfalls. None of Petitioner's witnesses knew that parking was prohibited on Fusting Avenue and that has been partly because it does not serve their purpose to take note of that.

The Petition for Variance from RTA Standards should fail on every count. There is nothing unique about this property. Indeed., Mr. Doak admitted the same and tried to claim uniqueness only if the proposed parking facility was allowed to be built because there are none like it that he is aware of serving a nursing home in a D.R. 55 area. There is good reason why that is the case because the RTA Standards are not to be lightly and cavalierly erased as the Petitioner requests the Board to do. Beyond the failure to prove any uniqueness of the site which should terminate the discussion, the issue of storm water management and human interference with the quality of life of the residents as testified to by the neighbors should cause the Board to deny this request. The Petitioner, in its opening acknowledged that these parking spaces are not required to meet the Zoning Regulations. The Petitioner does not even know how many parking spaces they have on the existing facility since there are pictures of the eight (8) or more parking spaces in front of the building. Those are not included in the Petitioner's parking count.

CONCLUSION

The variance requested will connect the commercial use of the Convalescent Center with the commercial uses on Frederick Avenue. The Board should carefully consider the commercial expansion across the street with the shadow outline of the existing facility undefined and

undisturbed when it rules on this matter. Protestants request that the Board deny the relief requested for the reasons aforesaid.

Respectfully submitted,

MICHAEL P. TANCZYN, Esquire
606 Baltimore Avenue
Suite 106
Towson, Maryland 21204
410-296-8823
Attorney for Protestant,
Angela Lunczynski

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of September, 2008, a copy of the aforegoing Memorandum of Protestant, Angela Lunczynski, was mailed, first-class mail, postage pre-paid to: Lawrence E. Schmidt, Esquire, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204 and Carole S. Demilio, Esquire, Deputy People's Counsel for Baltimore County, Jefferson Building, 105 West Chesapeake Avenue, Room 204, Towson, Maryland 21204.

MICHAEL P. TANCZYN, Esquire

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Email: mptlaw@verizon.net

September 8, 2008
#2007-083

HAND-DELIVERED

Ms. Kathleen C. Bianco, Administrator
County Board of Appeals
of Baltimore County
105 West Chesapeake Avenue
Room 203
Towson, Maryland 21204

RE: 19 Fusting Avenue
Zoning Case No. 07-535SPHXA

Dear Ms. Bianco:

Enclosed herewith please find the Memorandum of the Protestant, Angela Lunczynski filing in this matter.

Thank you for your assistance in this regard.

Very truly yours,

Michael P. Tanczyn

MPT:mlg

Enclosure

cc: Ms. Angela Lunczynski
Carole S. Demilio, Esquire
Deputy People's Counsel
Lawrence E. Schmidt, Esquire

RECEIVED
SEP - 8 2008
BALTIMORE COUNTY
BOARD OF APPEALS

9/8/08

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
19 Fusting Avenue N/side of Fusting Avenue 137 feet north of centerline of Howard Avenue	*	BOARD OF APPEALS OF
	*	BALTIMORE COUNTY
1st Election District 1st Councilmanic District	*	
Petitioner(s)/ Legal Owner(s): Genesis Health Care	*	
	*	CASE NO.: 07-535-SPHXA

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

HEARING MEMORANDUM IN LIEU OF CLOSING ARGUMENT

Lawrence E. Schmidt and Gildea & Schmidt, LLC, attorneys for the Petitioner, Genesis Health Care, submit this post-hearing memorandum in support of the Petitions for Special Exception, Special Hearing, and Variance filed herein and respectfully states:

I. Facts

The underlying facts regarding the petitions are not in dispute. Genesis Health Care (hereinafter "Genesis") owns the subject property, known as 19 Fusting Avenue located in the Catonsville community of Western Baltimore County[1]. The subject property is an irregularly shaped lot, approximately 67 feet wide and 230 feet deep. The lot is presently unimproved and is zoned D.R. 5.5.

Genesis presently operates a nursing home immediately across Fusting Avenue from the subject site on a property known as 16 Fusting Avenue. This nursing home use was

[1] The Petitions indicated that the property was owned by PG Developers, LLC at the time of the filing. Genesis has subsequently settled on the property and is now the legal owner.

originally approved by the Order of Zoning Commissioner Wilsie H. Adams on July 6, 1960. The nursing home has operated on a continuous basis since that time and Genesis acquired the property and assumed management of the nursing home from another elderly housing operator several years ago.

The nursing home building contains 138 beds including 36 Alzheimer beds. This residential use employs approximately 150 people and operates on 3 shifts per day (7:00 a.m.- 3:00 p.m., 3:00 p.m.-11:00 p.m., and 11:00 p.m. -7:00 a.m.). The nursing home property contains a parking lot, which features 56 parking spaces, including 2 handicapped parking spaces. Due to the number of residents, employees, and visitors (including family, physicians, health care professionals, clergy, etc.), Genesis has acquired the subject property and intends to incorporate this property into the nursing home use and to improve the same with a parking lot, which will contain 23 spaces. It is the intent of Genesis for employees to use this lot, freeing the spaces on the Genesis lot at 16 Fusting Avenue for visitors, medical personnel, etc. Testimony offered by representatives of Genesis is the existing lot on the Genesis property is at times overcrowded and cannot handle the volume of parking generated by the facility at peak periods. The reality of this parking situation exists, notwithstanding that the existing lot on 16 Fusting Avenue meets the applicable parking requirements in Section 409 of the Baltimore County Zoning Regulations ("BCZR"). Zoning approval is requested in the form of a Variance, Special Exception, and Special Hearing to approve this proposal.

II. The Variance Request Pursuant to BCZR § 307

A. Introduction

Genesis has applied for a variance from Section 1B01.1.B.1.e.5 of the BCZR to allow a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot Residential Transition Area ("RTA") buffer and 75 foot RTA setback. These RTA buffer and setback requirements are triggered by the fact the the property, on which the proposed lot is to be located, is zoned DR 5.5 and immediately abuts a lot with a single-family dwelling on its western border (23 Fusting Avenue). As defined in the BZCR, the RTA is a 100 foot area extending from a DR zone tract boundary, whose purpose is to assure similar housing types are built adjacent to one another and adequate buffer types and screening are provided between dissimilar housing types. BCZR § 1B01.b.1.a.

Parking lots are permitted land uses in the RTA as per BCZR §§ 1B01.B.1.d.1 and 1B01.B.1.d.3. They are also permitted uses as of right on the DR 5.5 zone, pursuant to Section 1B01.1.A.18(d). However, as discussed below, both a Special Exception and a Special Hearing have also been applied for these spaces, as this parking is not a public lot but, instead, will be part of the nursing home operation Genesis currently operates across Fusting Avenue. As previously stated, this property is subject to a 50 foot RTA buffer and a 75 foot setback, while the lot itself is only 67 feet wide. Therefore, the setback requirement would encompass the entire lot and extend eight feet over to the neighboring eastern boundary. Similarly, the 50 foot buffer would allow only 17 feet of developable space on this extremely narrow lot. As such, this permitted use of a parking lot would be completely prohibited without the requested variances, the

greater of which would be the 75 foot setback from the western boundary of this DR zone. In order to address these setback requirements, Genesis seeks Variance relief pursuant to BCZR § 307.

A. Standard of Review

BCZR § 307, "Variances," provides, in relevant part, that variances from the BCZR's provisions, (*i.e.*, height, area, parking) may be granted only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance... would result in practical difficulty or unreasonable hardship.

In the seminal case regarding variances in Maryland, *Cromwell v. Ward*, 102 Md. 691 (1995), the Court of Special Appeals clarified the practical difficulty/unreasonable hardship test where it stated;

> "The terms 'practical difficulty' and 'unreasonable hardship' are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances, if the property is found to be unique, the practical difficulty standard would apply."[FN] *Cromwell* at 698, 428.

Thus, for an area variance (such as the setback variance requested in this case) the applicant need satisfy either the "practical difficulty" or "unreasonable hardship" criteria.

BCZR § 307 and *Cromwell* identified three required elements for relief to be granted: (1) that the property be determined as unique; (2) that the petitioner will suffer a practical difficulty if relief is denied; and (3) the relief can be granted consistent

with the spirit and intent of the regulations without detrimental impact to adjacent properties. In addition, the *Cromwell* court also found a necessary requirement of a variance request is that the practical difficulty not be self-created. *See Id.*

B. Analysis of the Factors Required by BCZR § 307 and the Caselaw

1. Uniqueness

In *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547, 214 A.2d 810, the Court defined uniqueness in a variance setting:

> "Where property, due to unique characteristics applicable to it, cannot reasonably be adopted to use in conformity with the restrictions... hardship arises... The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship..." [Emphasis in original] *Id.* at 554-55.

Similarly, *Cromwell v. Ward* laid out the necessary elements for a petitioner for variance to prove uniqueness of the land. The Court found, "where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, [this creates] undue difficulty." *Cromwell* at 438, 719 (citing Eugene McQullin, *Municipal Corporations*, § 25.167 (3d ed. rv. 1991)). Therefore, it is not merely the physical features of the land that must be considered in order to determine if a property is unique; rather, it is how those features, as impacted by the operation of the statute, prohibit the use of the land for a permitted purpose. The Court went on to find characteristics that are unique to a parcel of land are the physical characteristics of the lot itself including, "whereby reason of exceptional narrowness, shallowness... or other extraordinary situation or special condition of... property... the literal enforcement... would make it

exceptionally difficult... to comply... and would cause unwarranted hardship and injustice." *Cromwell* at 434, 712 (citing *Ad+Soil, Inc., v. Co. Comm'rs*, 307 Md. 307, 339, 513 A.2d 893 (1986)).

In this case, it is the narrowness of this lot which makes it unique when considered in conjunction with the setback requirements. Narrowness of a lot was specifically listed as an appropriate basis for the granting of a variance by *Cromwell,* and here the setback requirement does not just limit the size of the proposed parking lot, but would eliminate the possibility of the proposed development altogether. The narrowness of this lot in this context is not shared as a common characteristic of the surrounding properties and placing a setback requirement encompassing the entire lot would result in the extraordinary impact of totally prohibiting a permitted use under the zoning code and therefore justifies the granting of a variance.

Another unique characteristic of this lot is the fact this lot will provide parking to an existing nursing home across Fusting Avenue. That is, the Petitioner recognizes that this lot is not a public lot permitted by right; rather, it will become part of a special exception use that was approved nearly 50 years ago. This circumstance also justifies a finding of uniqueness. Bruce Doak, as an expert in zoning in Baltimore County, testified he had no knowledge of any other nursing homes that provide accessory parking across the street from this main property and in fact, no other nursing homes were found in this neighborhood. The subject lot will become, in effect, part of the overall nursing home operation, as is evidenced by the request for Special Exception and Special Hearing relief.

Prohibiting this type of accessory parking is in contravention to the Zoning Regulations that require appropriate parking for all uses. Although the existing operation fulfills the numeric parking requirement on the existing site, this type of accessory parking in residential areas for the residential/institutional use of a nursing home are permitted as of right and therefore the setback variance is prohibiting a use that is otherwise allowed. This type of accessory parking is not required for the residential dwellings in the neighborhood and therefore this parcel is again affected in a manner not shared by surrounding properties.

2. Practical Difficulty

As previously discussed, *Cromwell* and BCZR § 307 require a finding of either practical difficulty or unreasonable hardship. In this case, the practical difficulty arises by Petitioners not being able to use this lot at all for a permitted use. It should be noted that allowable uses in the RTA are listed in BCZR § 1B01.B.1.d, and include a total of 42 individually listed uses, with several subsections permitting accessory uses to these primary uses. As noted through the testimony of Bruce Doak, all but one of these 42 permitted uses would be eliminated by imposing the onerous setbacks on this 67 foot lot. Again, the practical difficulty is disallowing what has been established in the BCZR as permitted and proper for this DR 5.5 zone.

It is anticipated that the opponents will contend that the fact that the subject property could be used for another purpose (i.e. single-family detached dwelling) without a variance disqualifies the Petitioner from obtaining relief here. Such argument is both practically and legally incorrect. Would the opponents contend that a property

owner should be denied a variance when he/she owned a 105 foot wide lot that required 50 foot setbacks? Contending, under those circumstances, that a 5 foot wide (impractical) building could be built without a variance? Moreover, the courts have noted that practical difficulty exists when strict adherence to the regulation would unreasonably prevent the use of property for ***a use***, not ***any use***. *See* e.g. *Montgomery Co. v. Rotwein* 169 Md. App. 716 (2006) and *Anderson v. Board of Appeals* 22 Md. App. 28 (1974).

3. **Spirit and Intent of the Regulations**

To reiterate the previous argument, imposing the RTA buffer and setback requirements would prohibit all but one of the permitted uses that is deemed as correct for a DR 5.5 zone. It cannot be said the Baltimore County legislature created these 42 uses and then would also desire a setback requirement (due to an adjoining property's single-family dwelling) to eliminate all of these uses. This is made clear where one looks to the purpose of the regulations from RTA stated in BCZR § 1B01.B.1.a. This section promulgates in the purpose clause the RTA was created "to assure that similar **housing types** are built adjacent to one another or that adequate buffers and screening are provided between dissimilar **housing types**." This proposed parking area is not a housing type, and therefore arguably should not even be subject to **Residential Transition Area** regulations. BCZR § 1B01.B et seq. was established to ensure housing types would be developed in some cohesive manner, not that parking lots be subject to housing design and style requirements. Through analysis of the BCZR's language itself, a variance is demonstrated as proper as incorporating the required setback would prohibit permitted accessory parking based on regulations for new residential

construction is again contrary to the purpose and intent of the zoning code.

The prominent Maryland variance case entitled *Richard Roeser Professional Builder, Inc. v. Anne Arundel Co.* 368 Md. 294, 793 A.2d 545 (2002) provides further clarity of the reasoning and limitation upon the zoning regulations such as this RTA setback requirement. The *Roeser* court found,

> "Both the Maryland Declaration of Rights and the Fifth Amendment of the United States Constitution guarantee rights to property owners. Property owners start out with unrestricted right to use their land as they see fit. Under the common-law, those rights are limited only by a restriction as to uses that create traditional nuisances. *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992). Our cases, however, and the cases of the Supreme Court of the United States, *see Euclid v. Amber Realty Co.,* 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926), and its progeny, have held that reasonable regulation is constitutional. That said, it must, nonetheless, be recognized that regulation of land, including zoning regulations, are limitations on the full exercise of a property owner's constitutional rights as well as his or her rights under the common-law.
>
> In *Aspen Hill Venture v. Montgomery County Council,* 265 Md. 303, 313-14, 289 A.2d 303, 308 (1972), we quoted from our earlier case of *Landay v. Board of Zoning Appeals,* 173 Md. 460, 466, 196 A. 293, 296 (1938):
>
> > "In such a situation we must not forget the underlying principle that, 'Such ordinances [zoning] are in derogation of the common law right to so use private property as to realize its highest utility, and while they should be liberally construed to accomplish their plain purpose and intent, they should not be

> extended by the implication to cases not clearly within the scope of the purpose and intent manifest in their language.' " *Roeser* at 318-19, 560.

Therefore, although setback regulations are proper, when they extend completely over a property, they extend outside the scope and purpose of the intent and manifest of the BCZR's language creating the RTA, which is to control continuity of housing.

4. Detrimental Impact on Adjacent Properties

The proposed parking lot will clearly not cause any detrimental impact on surrounding properties. In considering this issue, an examination of the surrounding neighborhood is appropriate. (*See* Petitioner's Exhibit No. 2, Aerial Photos) Despite the Protestants' assertions to the contrary, the subject locale is not a pristine community of single-family homes. It is literally a stone's throw from the bustling downtown Catonsville business district which lines either side of Frederick Road. In fact, a large parking lot abuts the site which serves a local business. The subject lot, as noted above, is now part of the Genesis facility, and there is a BGE substation and regional stormwater management facility nearby. Immediately adjacent to the property is a large, newly constructed multiple unit apartment building. It cannot be reasonably asserted this small lot will detrimentally impact the locale or change the character of the neighborhood.

A specific factor that the opponents asserted to support their claim that this use would adversely impact the neighborhood was through the testimony of Thomas

Schueler. He opined that the lot could cause inappropriate stormwater runoff. His assertions were completely unfounded and contradicted.

It should be noted that Mr. Schueler was offered as an expert in stormwater runoff and not as to zoning in Baltimore County. *Trans*, 7/29/2008 pgs. 113-114. In his testimony, he opined that 1500 cubic feet of runoff would be produced by this small site and that this would affect erosion along Fusting Avenue. *Id.* at 117-118. Through cross-examination, it was revealed that Mr. Schueler had never made studies as to the actual site and/or knew the types of soils necessary for any type of stormwater analysis. *Id.* at 130. In fact, Mr. Schueler admitted that it is possible to construct a suitable stormwater management treatment facility in order to handle this runoff, even though he was not familiar with the stormwater management thresholds in Baltimore County. *Id.* at 140. Mr. Schueler stated he thought any additional runoff would be going into a failing system and that these would detrimental impacts of the site.

Mr. Thomas Snook was called as a rebuttal witness to Mr. Schueler's testimony, who was classified as a expert in groundwater management policies. *Id.* at 45-47. Mr. Snook had been working on stormwater management facilities for the past 30 years and was very familiar with the regional stormwater management pond located near the subject site off of Fusting Avenue. *Id.* at 57-58. Furthermore, Mr. Snook was also familiar with the drainage systems in this area of Catonsville, specifically having worked on the pond project off of Fusting Avenue. *Id.* at 58-59. It was Mr. Snook's expert testimony that the existing pond, that was placed by Baltimore County in order to address flooding problems, could handle even a 100 year storm. *Id.* at 59. In fact, Mr.

Snook said that this type of pond was specifically designed to handle problems and excess water off of Fusting Avenue. *Id.* at 68-69. Mr. Snook did not agree with Mr. Schueler's testimony with regard to the amount of runoff and stated any additional runoff could be treated in order to alleviate any detrimental effects from this additional runoff. *Id.* at 82, 92, 94. In this way, Mr. Snook's expert testimony and intimate knowledge of not only this area but stormwater management policies and corrections that have been made in the area totally nullify any of the credibility of Mr. Schueler's testimony, which was not based on analysis of the site and was proven, both through cross-examination and a rebuttal witness, to have provided unreliable mathematical data as to the effects of this runoff.

It should be noted that Mr. Bruce Doak of Gerhold, Cross & Etzel was the only expert in Baltimore County development and zoning. *Trans.*, 7/23/2008, pg. 8. Specifically, Mr. Doak analyzed the detrimental impacts with the required criteria of the Special Exception and Variance requests. As such, he stated this parking lot would actually act as an improvement, as it would not be creating any additional traffic, but would be able to take traffic and parking off of Fusting Avenue. *Id.* at 37. He also saw this parking as correcting a problem from the operation across the street and creating a safer traffic condition along Fusting Avenue, *Id* at 38. Mr. Doak testified that the impacts from this lot would actually be less than if a single-family dwelling were developed in terms of the lighting that would be in place and the screening of headlights with a proposed 5-foot fence along the perimeter. *Id* at 38-39, 42. Stormwater management problems would be dealt with through evaluation by the

Department of Environmental Protection and Resource Management for Baltimore County and it would create an overall safer condition for the community. *Id.* at 42, 92, 97.

5. **No Self-Created Hardship**

During the hearing, there was testimony and evidence presented that Genesis purchased this lot after the subdivision of neighboring parcel, which created the 67 foot wide lot. The claims seem to be made by Appellants that this type of knowledge of a zoning restriction tied to a property before purchase creates a self-created hardship, as they knew they would have to apply for variance relief. This view of purchase with knowledge of a zoning restriction has been denied as being a self-created hardship by the Court of Appeals for Maryland. *Roeser* states this rule very plainly:

> "While it was the general rule at one time 'that one who purchases property with actual or constructive knowledge of the restrictions of a zoning ordinance was barred from securing a variance,' the rule has since been 'altogether abandoned or modified into nonexistence' in most jurisdictions. n3 3 Rathkopf, *The Law of Zoning and Planning* § 38.06(2) (1988)... The modern rule provides that a purchase with knowledge does not preclude the granting of a variance and, at most, is considered a nondeterminative factor in consideration of a variance. Rathkopf at § 38.06. [some citations omitted] *Roeser* at 302-3, 551.
>
> Rathkopf now provides, 'it should not be within the discretion of a board of appeals to deny a variance solely because a purchaser bought with knowledge of zoning restrictions.' *Id.* at 303, 551.

The Court went on to find,

> "Julian Conrad Juergensmeyer and Thomas E. Roberts, *Land Use and Planning Control Law* § 5.17, 211 (West 1998) state: 'The reasons used to deny a variance to one who violates the law and then seeks relief are not applicable to one who purchases with knowledge. In the former, the owner created the hardship; in the latter, the zoning created the hardship, which pre-existed the purchaser's acquisition of title.' *Id* at 305, 552
>
> In Maryland, when title is transferred, it takes with it all the encumbrances and burdens that attach to title; but it also takes with it all the benefits and rights inherent in ownership." *Id* at 319, 561.

As explained though the preceding findings by the Court of Appeals, it was not an action of Genesis that created a need for a variance, but rather, it is in the underlying zone and the existence of a single family dwelling on a neighboring property. The land's characteristics and location have created the need for a variance and not the petitioner. The prior subdivision that was alluded to in the hearing was undertaken by the previous owner and not Genesis. In fact, Genesis has taken no action on this land but to ask for relief that otherwise prohibit development on it.

III. Variance Relief Pursuant to BCZR § 1B01.B.1.c

As an alternative to granting a variance, pursuant to BCZR § 307, the Board could grant variance relief as per BCZR § 1B01.B.1.c. BCZR § 1B01.B.1.c deals specifically with variances of the RTA. This section states the following:

> "c. Variance of RTA.
>
> (1) Notwithstanding the provisions of Section 307, the hearing officer, upon the recommendation of Public Works, Planning, Environmental Protection and Resource Management, Permits

and Development Management, Recreation and Parks, Community Development or the Economic Development Commission, may determine the amount of RTA in cases where a single tract is more than two acres, is vacant, or contains no more than one single-family detached, semidetached or duplex dwelling.

(2) The RTA for a tract may be modified as directed by findings pursuant to § 32-4-402 and the hearing officer's hearing under Article 32, Title 4, Subtitle 2 of the Baltimore County Code. However, the hearing officer may not reduce the amount of RTA unless the officer specifically finds and determines that such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed.

As made clear by this section, there are three ways in which a variance can be granted by the Zoning Commissioner (or, on appeal, the Board of Appeals). First, BCZR § 1B01.B.1.c.1 references the all-encompassing provisions of BCZR § 307, which have been discussed above. Second, this section states that the the Zoning Commissioner (and/or Board of Appeals), upon the recommendation of various County agencies, may determine the amount of RTA in cases where a single tract is vacant, as is the case *sub justice*. Third, BCZR § 1B01.B.1.c.2 goes on to state the hearing officer (and/or Board of Appeals) may make compatibility findings subject to Section 32-4-402 of the Baltimore County Code.

As previously discussed, this is a classic variance case and should be approved as per the elements of BCZR § 307 and the requirements in *Cromwell v. Ward*. However, existing as a vacant lot, the Board of Appeals may also grant this variance as the

amount of setback can be determined after receiving a recommendation from a County agency.

As with every zoning case, the Petitioner's site plan and request was circulated to County agencies for review and recommendation. A Zoning Advisory Committee written recommendation was issued by the Office of Planning to the Zoning Commissioner. This written recommendation stated support for the project, provided certain conditions are met. The Zoning Commissioner's file (including this written recommendation) was forwarded to the Board of Appeals and is part of Board's file.

Therefore, although the variance can be granted under BCZR § 307, relief could be approved per BCZR § 1B01.B.1.c.1. Under this Section, the Board can variance the RTA setback by determining "the amount of RTA in a case where a single tract is... vacant." Under this approach a RTA setback of 13.7 feet is appropriate - represented the width of the proposed buffer from the parking lot to the property line. The Board can so find.

C. Special Exception.

Although a "public" parking lot is listed as a permitted use in the DR zone, the parking at issue in this case is not for public use and will be a component of the nursing home operation. Therefore, a Special Exception for a nursing home for the subject lot (19 Fusting Avenue) is sought. The nursing home was originally approved by Special Exception in 1960. Pursuant to Section 1B01.1.C.3 of the Baltimore County Zoning Regulations ("BCZR"), convalescent homes are permitted uses in the D.R. zone by special exception. Furthermore, section 101 of the BCZR defines nursing homes as "a

facility which provides board, shelter, and nursing care to chronic or convalescent patients. This term also includes facilities which provide domiciliary care within a nursing home." The definition further states that nursing homes were formerly designated within the BCZR as convalescent homes.

It is clear that the Genesis facility at 16 Fusting Avenue is a nursing home and is lawfully operating pursuant to the Special Exception granted in 1960. The proposed parking lot will be restricted for use by Genesis employees and visitors only. The proposed lot is not a public parking lot nor will same be used by any other business in the vicinity. As such, the parking lot is part and parcel of this approved Special Exception use, and, according to the Zoning Office, requires Special Exception approval. Therefore, Special Exception relief is requested so that subject property known as 19 Fusting Avenue can be used as a nursing home, albeit a component of the same (i.e. parking).

It is clear, based on the testimony and evidence offered at the hearing, that the relief meets the Special Exception criteria set forth in Section 502.1 of the BCZR. With proper restrictions, the lot can be used without detrimental impact to the health, safety, and general welfare of the locale. In fact, it will actually be a benefit to not only the operation of the existing nursing home, but also the community at large, for a variety of reasons. First, it will take vehicles of visitors and employees of the facility off the public streets in front of private houses and existing businesses in the area. Due to the absence of available parking on site, visitors to the facility park currently are forced to park elsewhere. The addition of the proposed parking lot will address this concern.

Moreover, the proposed parking lot is compatible with the physical locale and neighborhood. The proposed parking lot immediately abuts (to the rear) a commercial parking lot, which serves businesses fronting Frederick Road. There is a seven-unit apartment building next door and a BGE facility down the street. This is not a secluded neighborhood of detached single-family homes, rather, is an area with a variety of uses. The Petitioner proposes a land use which exists immediately adjacent thereto. The Petitioner also proposes fencing and landscaping around the proposed lot, which will buffer the lot from nearby residences, again creating less of an impact of the lot serving the businesses along Frederick Road. This fencing and landscaping, as well as the proximity of the lot to the nursing home will help prevent individuals (both those going to the nursing home and others) from cutting through private property; which was another complaint that was voiced by neighbors at the hearing.

Insofar as consistency with the zoning regulations, it is to be noted that "parking spaces" is a defined use permitted by right in the D.R. zone pursuant to Section 1B01.1.A.18(d) of the BCZR. Indeed, this section could support a finding that Special Exception relief is not necessary and this parking lot is allowed without the necessity of the filing of a Petition for Special Exception. However, as was pointed out to the Petitioners by the Zoning Office when the petitions were filed, Section 1B01.1A18(d) describes ***accessory*** uses that are permitted as of right. Given that the proposed lot will be on a separate lot of record and not on the same lot as the nursing home building, the lot is technically not an "accessory use" as defined (See Section 101).

Finally, as was clearly stated in the seminal cases of *Schultz v. Pritts*, 291 Md. 1

(1981) and *Mossburg v. Montgomery County*, 107 Md. App. 1 (1995) and applied to the facts in this case; it is not whether the proposed use will have impacts (as impacts are assumed in the first instance in that the use is permitted by Special Exception); it is whether those impacts will be greater here than elsewhere in the zone. Given the property's proximity to the commercial core of Catonsville, the identical uses nearby and character of the existing mixed use neighborhood; it is apparent that Special Exception approval should be granted. In fact, the impacts of this extension will be less than what exists across Fusting Avenue in that there is less traffic (both vehicles and pedestrian) for the lot as it is only accessible by employees and not patients, clergy, family and other independent medical workers. Therefore, not only are the impacts no greater here than other identically zoned land across the street, here the impacts are less than other similarly zoned land in the immediate neighborhood.

D. Special Hearing.

In addition to the Petition for Special Exception, Special Hearing relief is also requested. The filing of this petition was also at the suggestion of the Zoning Office. As noted above, the proposed parking lot will be a component of the Special Exception use previously granted for the nursing home. That Special Exception will thereby be technically amended to the extent that this property is being added to the area previously described in the original case. It is a long settled administrative practice in Baltimore County that Special Hearing relief is also adjudged in accordance with the criteria set forth in Section 502.1 of the BCZR. For all the reasons set forth herein above and during the hearing, the Petitioner avers that the proposal will not be detrimental to

the health, safety, and general welfare of the locale, and should therefore be granted.

Conditions

As discussed at the hearing, the Office of Planning has requested within its Zoning Advisory Committee recommendation the imposition of several conditions, in order to ensure minimal impact of the use on adjacent properties. The Petitioner expressed its consent to the insertion of these conditions in any Order granting approval of the Petitions. The suggested conditions primarily related to landscaping and lighting. As indicated at the hearing, the lot will be setback from side property lines a distance of 13.7 feet. This area will be landscaped and a fence will be installed. Additionally, directed lighting shall be installed. The lighting shall be designed to provide security (a concern expressed by the neighbors) but will be directed downward so as not to reflect or glare onto adjacent properties. Any signage will be appropriately designed to provide notice of the restrictive use of the lot (Genesis employees and visitors only.) Moreover, given the relatively flat grade of the lot, retaining walls are not envisioned and storm water management can be easily addressed. The Petitioner shall consult with DEPRM as required during the permitting process relating to these issues.

Conclusion

For all of these reasons, the Petitioner requests that the Petitions for Special Exception, Special Hearing and Variance be granted. Further, the Petitioner is agreeable to the imposition of a condition requiring its landscaping plan and lighting plan being reviewed and approved by Avery Harden (County Landscape Architect). Moreover, any grading of the site (including the construction of retaining walls; if any) and the

installation of storm water management measures shall be as the direction of DEPRM.

Much of the opponent's case focused on claims that the request would allegedly harm their homes. They argued against this "commercial business" intruding in their neighborhood. Obviously, this use has been in the neighborhood for nearly 50 years, well before the residents moved in. More importantly, the Genesis site is the "home" of 138 individuals. For these individuals, this site is as much "residential" as are the single-family dwellings and apartments that exist in the area. Are they not entitled to an accessible home, where their relatives, friends and caregivers can visit them? The Petitions should be granted.

Respectfully submitted,



Lawrence E. Schmidt
GILDEA & SCHMIDT, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
(410) 821-0070

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 8th day of September, 2008, a copy of the foregoing Hearing Memorandum in Lieu of Closing Argument was mailed, postage pre-paid, to:

Carole S. DeMilio, Esquire
Deputy People's Counsel
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson MD 21204

Michael Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
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Lawrence E. Schmidt

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DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN

SEBASTIAN A. CROSS
CHARLES B. MAREK, III
JASON T. VETTORI

September 8, 2008

Sent Via Hand Delivery
Ms. Kathy Bianco
Court Board of Appeals
Old Court House
400 Washington Avenue
Room 49
Towson, MD 21204

Re: Petitions for Special Hearing, Special Exception and Variance
19 Fusting Avenue
Petitioners/Legal Owners: Genesis Health Care
Case No, 07-535-SPHXA

Dear Ms. Bianco:

Enclosed please find an original and three (3) copies Petitioner's Hearing Memorandum in Lieu of Closing Argument and the transcripts of the proceedings in the above captioned matter. With kind regards, I am

Very truly yours,

Lawrence E. Schmidt

LES: sf
Enclosure

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BALTIMORE COUNTY
BOARD OF APPEALS

5/21/08

RE:	**PETITION FOR SPECIAL HEARING SPECIAL EXCEPTION & VARIANCE**	*	**BEFORE THE COUNTY**
	19 Fusting Avenue; N/S Fusting Avenue, 137' N C/line Howard Avenue	*	**BOARD OF APPEALS**
	1st Election & 1st Councilmanic Districts	*	**FOR**
	Legal Owner(s): P.G. Developers, LLC		
	Contract Purchaser(s): Genesis Healthcare	*	**BALTIMORE COUNTY**
	Petitioner(s)	*	**CASE NO.: 07-535-SPHXA**

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

RULING / OPINION ON PETITIONER'S MOTION FOR RECONSIDERATION

This case comes as a result of Petitioners, Genesis Health Care ("Genesis") seeking zoning approval in the form of a Variance, Special Exception, and Special Hearing for a parking lot at 19 Fusting Avenue, accessory to its convalescent home located across the road from the subject site. A hearing was held before the Baltimore County Board of Appeals on July 29, 2008. Petitioner's Variance request was denied and a Motion for Reconsideration was filed on February 17, 2009.

BACKGROUND

The Genesis Nursing Home property contains a parking lot consisting of 56 parking spaces. Genesis alleges the need for additional parking and has acquired the subject property and proposes and additional 23 spaces on this property. A convalescent home has been operating at 16 Fusting Avenue under a special exception granted in 1960. The subject property is approximately 67 feet wide and 230 feet deep. The lot is unimproved and is zoned D.R.5.5. The nursing home property contains a parking lot with 56 parking spaces.

Petitioner has applied for a variance from Section 1B01.1.B.1.e.5 of the BCZR to allow a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot Residential Transition Area ("RTA") buffer and 75 foot RTA setback. The proposed lot abuts a lot with a single-family dwelling. While parking lots are a permitted use as of right in the RTA and DR 5.5

zone, the proposed lot would be for a non-public use by the existing nursing home, thus triggering the need for the Special Exception and Special Hearing.

The Board denied Petitioner's request for variance citing the failure to establish "uniqueness" as enunciated in *Cromwell v. Ward,* 102 Md.App. 691 (1995). Petitioner has now filed a Motion for Reconsideration in light of the Court of Appeals recent decision in *Trinity Assembly of God of Baltimore City, Inc.* v. *People's Counsel for Baltimore County*, 407 Md. 53, 962 A.2d 404 (2008).

DECISION

The success of the Petitioners request of zoning approval and subsequent Motion for Reconsideration stand or falls with the determination of the requested variance relief.

Baltimore County Zoning Regulations, Section 307.1, in pertinent part, states as follows:

> "...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."

In *McLean v. Soley*, 270 Md. 216 (1973) the court established the following criteria for determining practical difficulty or unreasonable hardship:

> "1) Whether compliance with the strict letter of the restrictions governing various variances 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."

Further, in *North v. St. Mary's County*, 99 Md. App. 502 (1994) the Court held that

> "...the 'unique' aspect of a variance requirement does not refer to the extent of improvements on the property, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls." Id at 514

In the Court of Special Appeals in *Cromwell v. Ward,* 102 Md.App. 691 (1995), wherein the Court writes:

> ...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. **It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...." *Id.* at 698.**

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.... *Id.* at 710.

Petitioner's Argument

Petitioner now requests the Board reconsider it decision based upon an analysis of BCZR 307.1 and Maryland Zoning Law as enumerated by the Court of Appeals in its Recently issued decision in the matter of *Trinity Assembly of God of Baltimore City, Inc.* v. *People's Counsel for Baltimore County*, 407 Md. 53, 962 A.2d 404 (2008).

Petitioner cites the Courts opinion in *Trinity* which states "to be unique a property must have an inherent characteristic not shared by other properties in the area, i.e., its shape, typography, subsurface condition, environmental factors, historical significant, access or non—access to navigable waters, **practical restrictions imposed by other properties** (such as obstructions), or similar restrictions". *Trinity* at p. 81.

Petitioners argues that the term "practical restriction" used in the Courts definition of uniqueness is applicable to the fact that subject property falls with a RTA, thus making the subject property unique, thus qualifying for the requested variance. The Board disagrees with this interpretation. As astutely noted by People's Counsel in its Answer to Petitioner's Motion for Reconsideration, *Cromwell* confronts such an assertion by stating " In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvement upon the property, or upon neighboring property." *Cromwell v. Ward* 102 Md.App. at 710.

The Board is not convinced that the subject property falling within the RTA constitutes uniqueness. As the purpose of the RTA is to "assure that similar housing types are built adjacent to another", the RTA designation impacts all adjacent property owners in the same fashion and does not uniquely impact the subject property. If the Board were to subscribe to such reasoning, the very purpose of the RTA would be defeated.

While the Board still concedes that the Petitioner's situation my constitute "unique" circumstances, we are not satisfied that the subject property has unique physical characteristics that would satisfy the requirements found in *Cromwell* nor do we find that the Court's decision in Trinity contains any departure from *Cromwell* which was cause this Board to reverse its previous decision.

CONCLUSION

This Board is not persuaded that the Petitioners have illustrated that the Court of Appeals' decision in *Trinity Assembly of God of Baltimore City, Inc.* v. *People's Counsel for Baltimore County*, 407 Md. 53, 962 A.2d 404 (2008) has departed from the tenants of *Cromwell v. Ward*, 102 Md.App. 691 (1995), upon which the Board's prior decision was based. Consequently, Genesis Health Care's Motion for Reconsideration is **DENIED.**

ORDER

THEREFORE, IT IS THIS 21st day of May, 2008 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioner's Motion for Reconsideration is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chair

Andrew M. Belt

Wendell H. Grier

5/21/08

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
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May 21, 2009

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Towson, MD 21204

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Ste 106
Towson, MD 21204

RE: *In the Matter of: Genesis Healthcare*
Case No.: 07-535-SPHXA

Dear Counsel:

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

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

Very truly yours,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

Duplicate Original Cover Letter

TRS/klc
Enclosure

c: Angela Lunczynski
Pat Stack
Keith Nause, VP Controller/Genesis Health Care
Bruce Doak, Gerhold, Cross & Etzel, Ltd.
Leena Hoover/Genesis Health Care
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning
Scott Westcoat
Brian Nippard
Adam Skolnik/ PG Developers, LLC
Natalie Holland/Genesis Health Care
Office of People's Counsel
Timothy Kotroco, Director/PDM
John E. Beverungen, County Attorney

9/10/07

IN RE: PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING & VARIANCE	*	BEFORE THE
N side Fusting Avenue, 137 feet N c/l Howard Avenue	*	DEPUTY ZONING
(19 Fusting Avenue)	*	COMMISSIONER
1st Election District		
1st Councilmanic District	*	FOR BALTIMORE COUNTY
Adam Skolnik, Member P G Developers, LLC *Legal Owner*	*	
	*	
Keith Nause, VP, Controller, Genesis Health Care *Contract Purchaser*	*	**Case No. 07-535-SPHXA**

* *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before this Deputy Zoning Commissioner for consideration of the Petitions for Special Exception, Special Hearing and Variance filed by the legal owner of the subject property, PG Developers, LLC, and the Contract Purchaser, Genesis Health Care, for property located at 19 Fusting Avenue[1]. The requested relief is stated on the Petitions as follows:

- The Special Exception is to use the property for a convalescent home as per Section 1B01.C.3 of the Baltimore County Zoning Regulations (B.C.Z.R.).
- The Special Hearing is to approve an amendment to the previous Special Exception granted in Case No. 5006-XA to add a parking area to a previously approved Assisted Living Facility.
- The Variance request is from Section 1B01.1.B.1.e.5 of the B.C.Z.R. to permit a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback.

[1] The Petitions indicate that PG Developers is the legal property owner and that Genesis Health Care is the Contract Purchaser. However, since the filing of the Petitions, the sale has been settled and Genesis Health Care is now the legal property owner of 19 Fusting Avenue. Therefore, Genesis shall be referred to as Petitioner in these matters.

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Appearing at the requisite public hearing in support of the Special Hearing, Special Exception, and Variance relief requests were Leana Hoover and Natalie Holland on behalf of Petitioner Genesis Health Care, their attorney, Lawrence E. Schmidt, Esquire, and Bruce Doak, the consultant who prepared the site plan. Appearing as interested citizens in opposition to the requested relief were Scott Westcoat of 14 Fusting Avenue, Pat Stack of 29 Fusting Avenue, Douglas Hamilton and Angela Lunczynski of 23 Fusting Avenue, and Brian Nippard of 19 Egges Lane.

Testimony and evidence offered by Petitioner at the hearing revealed that the subject property is a rectangular-shaped parcel, approximately 67 feet wide by 230 feet deep, located in the Catonsville area of Baltimore County. The parcel is an unimproved, vacant piece of land. Petitioner's requested relief and a detailed description of the subject property are more fully depicted on the site plan, which was marked and accepted into evidence as Petitioner's Exhibit 1.

Situated directly across the street from the subject property is a property (approximately two acres) with improvements located at 16 Fusting Avenue. Petitioner operates a nursing home facility at this location, which is known as "Catonsville Commons." The nursing home facility has been at that location for a very long time, having obtained special exception relief to approve the use of the land as a nursing home in 1960 from Zoning Commissioner Wilsie H. Adams in Case No. 5006-XA. The Petition and Order granting the special exception was marked and accepted into evidence as Petitioner's Exhibit 2. The property has been used continuously as a nursing home since that time.

Currently, the nursing home facility consists of 138 beds, including 36 beds for patients suffering from Alzheimer's disease. At the time of the hearing, 124 beds were occupied with patients. Petitioners referred to the facility as more than just an "assisted living" facility, as that term is often used synonymously with the term "nursing home." In reality, the facility provides

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comprehensive, around the clock care for its patients, consistent with the definition of "nursing home" (formerly "convalescent home") found in Section 101 of the B.C.Z.R.

Petitioner filed the instant petitions because it is in need of additional parking for the nursing home facility at 16 Fusting Avenue. There are 150 employees working at the facility including caregivers and medical personnel, custodial employees, and administrative staff. This also includes staff working three shifts from 7:00 AM to 3:00 PM (47 employees), 3:00 PM to 11:00 PM (24 employees), and 11:00 PM to 7:00 AM (12 employees). Petitioner does not desire to make any changes to the nursing home operation nor does Petitioner desire to expand or alter the nursing home facility. However, presently, Petitioner has 54 regular parking spaces and two handicapped spaces on-site. According to Petitioner, approximately 25% – 30% of the residents at the facility previously resided in the Catonsville area, and often have friends and family members visiting, in addition to the employees at the facility. Due to the congestion, employees and visitors are often forced to park on the residential streets nearby. In addition, Petitioner expressed concerns about having adequate space for ingress and egress of emergency vehicles responding to calls for service.

As a result of the expanding and evolving needs of the facility, Petitioner realized it needed additional parking space. Thus, Petitioner purchased the subject property across the street in July 2007 when it became available for sale. The Special Exception relief is requested so that the subject property can be used as a nursing home, though as a component of the current nursing home at 16 Fusting Avenue, and more specifically, for the limited purpose of parking for employees and visitors of the nursing home only. In doing so, Petitioner also desires by way of Special Hearing to amend the special exception granted in 1960, in order to meld it with the subject property and incorporate the property's permitted use as a parking lot with the current nursing home special exception use, to the extent that the subject property will add to the area

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previously described in the original case. Petitioner indicated this was filed at the suggestion of the Zoning Review Office. As to the request for Variance relief, this is related to the residential transition area (RTA) requirements. One of the purposes of the RTA is to assure that adequate buffers and screening are provided between dissimilar housing types. Section 1B01.1.B.1.e.5 of the B.C.Z.R. generally requires that parking lots as an accessory use provide 50 foot buffers and 75 foot setbacks. Due to the size and configuration of the subject property, Petitioner desires a buffer and setback of 13.7 feet.

In support of the requests for relief, Petitioner offered two aerial photographs of the site and the surrounding area, which were marked and accepted into evidence as Petitioner's Exhibits 3A and 3B. These photographs show a mixed residential and commercial use of properties in the area. There is abundant commercial use south of Melrose Avenue, as well as a mix of commercial and residential uses along Fusting Avenue near Egges Lane and Ingleside Avenue. There is a large commercial parking lot that abuts the subject property, an apartment building next door, and a BGE facility down the street on Fusting Avenue, in addition to the nursing home facility that is the subject of these Petitions. Also marked and accepted into evidence as Petitioner's Exhibits 4A through 4U were photographs of the subject property and the surrounding properties, including the apartment building next door, the view of the single-family home on the other side, and views of the area looking west on Fusting Avenue, as well as looking east. These photographs also show the mixed residential and commercial use of the area on and around Fusting Avenue.

Also testifying in support of the requests for relief, and as an expert in land surveying and property development in Baltimore County, was Mr. Doak, Petitioner's consultant. Mr. Doak indicated that the design of the proposed parking lot, as depicted on the site plan, would be in keeping with the aesthetics of the neighborhood. He indicated that the design of the parking lot

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could have resulted in 46 spaces, with 23 on each side of the property, but that Petitioner did not wish to overcrowd the property with parking, and only desired enough parking on the property to meet their needs. Mr. Doak indicated the parking area would be surrounded by a wood-panel privacy fence approximately five feet high and would be buffered by plantings. He also stated the landscaping and fencing design would comply with the Zoning Advisory Committee (ZAC) comments submitted by the Office of Planning. Lighting would be limited to the area of the parking lot and would consist of the lowest wattage lights shining only on the parked vehicles.

Mr. Doak also offered his expert opinion that the proposed parking lot meets the criteria set forth in Section 502.1 of the B.C.Z.R., including the following: that the lot can be used without detrimental impact to the health, safety, and general welfare of the locale; that it will not create congestion on the roads because it will take vehicles of visitors and employees off the public streets in front of homes and businesses in the area, and will keep those persons from encroaching on private property; that the proposed parking lot is compatible with the physical locale and neighborhood in that the subject property immediately abuts an existing commercial parking lot and an apartment building, and is across the street from the existing nursing home facility and on the same street as a BGE facility; and that the proposed use of the property is consistent with the zoning regulations because "parking spaces" is a defined use permitted by right in the D.R. zone pursuant to Section 1B01.1.A.18.a of the B.C.Z.R.

Following Petitioner's case, a number of nearby neighbors offered testimony in opposition to the requests for relief. These neighbors did not have a particular grievance toward the operation of the nursing home itself, but opposed a parking lot on the vacant land across the street from the nursing home, and opposed any potential expansion of the nursing home facility in any manner whatsoever.

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Mr. Nippard was the first to testify and indicated that his family has resided nearby on Egges Lane since 1918. He stated that the commercial parking lot north of Melrose Avenue was considered to be the last line of commercialization in that area. He viewed the proposed parking lot on the subject property as a vagrancy issue, and that it would result in people encroaching on private property. Mr. Hamilton testified that he lives next door to the subject property and that his property will be negatively impacted by constant traffic, by headlights from cars coming into and out of the parking lot, and by the illumination of the parking lot lighting. He also indicated that a dedicated parking lot across the street from the nursing home would result in a steady stream of cars coming and going, thereby increasing the traffic. Ms. Lunczynski also lives next door and testified that the residential quality of life in the neighborhood has increased in recent years, with people moving into the neighborhood and taking an interest in their homes and the overall appearance of the neighborhood. She indicated that her decision to move into the neighborhood was based on the understanding that the neighborhood was on the upswing, and that the area was "being zoned more residential." Ms. Lunczynski also stated that many residents have invested in their properties recently to upgrade them, and that a parking lot next door would not only be an eyesore, but would also contribute to more noise and traffic on Fusting Avenue, and would have a negative effect on property values.

Ms. Stack lives at the corner of Fusting Avenue and Egges Lane. She was not in favor of a parking lot on the subject property and wondered if Petitioner had looked at alternatives to alleviating their parking situation on their site. This included using available space on their existing property to its most efficient use in order to garner more parking spaces. She also inquired as to the feasibility of Petitioner's employees car-pooling to alleviate the parking shortage. In general, Ms. Stack was opposed to the parking lot, believing that it will cause property values to decline. She stated that she loves her home and the neighborhood and the

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schools, as well as the convenience, and worries that a parking lot in the neighborhood would contribute to a decline in the neighborhood.

The final witness to testify in opposition to Petitioner's requested relief was Mr. Westcoat. Mr. Westcoat lives next door to the nursing home. He believes that the imposition of a parking lot in this largely residential neighborhood is not a good use of the subject property. He believes the best use is residential. Although neighbors knew of the nursing home when they moved to the area, the proposed parking lot is something that was not contemplated, and is an unfair intrusion. He indicated that it was the understanding of the neighborhood that the previous owner of the property, Charter Homes, LLC, was going to build a single-family home on the property, and that they were all very surprised to learn of Petitioner's purchase and intention to use it as a parking lot. Mr. Westcoat also questioned the financial wisdom of utilizing the subject property as a parking lot, when it would likely be worth more as a single-family residence, and again indicated a parking lot was not the best use of the property. He also felt the buffer between residential and commercial should be maintained at Melrose Avenue, with properties north of Melrose Avenue maintaining a residential character, free from further commercial uses.

Also considered as evidence in opposition to the petitions for relief were emails from interested citizens. This included an email dated August 3, 2007 from Pat Turner of 32 Melrose Avenue, which was marked and accepted into evidence as Protestant's Exhibit 1, and an email dated July 26, 2007 from Helen Sheeler of 6 Howard Avenue, which was marked and accepted into evidence as Protestant's Exhibit 2. These emails, like the nearby neighbors who testified, opposed Petitioner's proposed use of the subject property as a parking lot, and reiterated many of the opinions articulated by the witnesses concerning traffic, quality of life, and potential property devaluation issues.

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Date 9-10-07
By B

The Zoning Advisory Committee (ZAC) comments are contained within the case file and are made a part of the record of this case. The ZAC comment letter received from the Office of Planning dated June 11, 2007 indicates that it does not oppose Petitioner's request and indicates that a landscaping and fencing plan should be submitted to the Baltimore County landscape architect for review and approval, and that details of signs, lighting and retaining walls should be submitted to Planning for review and approval. Finally, Planning advised that the Department of Environmental Protection and Resource Management (DEPRM) should provide comments and review of the grading and storm water management associated with this project.

This is certainly not an easy case to decide, mainly due to the competing interests at stake in this matter. On one side, there is Petitioner, Genesis Health Care, engaged in the legitimate nursing home business and performing a valuable service in the community for almost 50 years at the Fusting Avenue location. On the other is the residential community that takes very strong issue against the furtherance of any additional commercialization of the area in which they live. Both sides make very convincing points in support of their respective positions. That being said, I am persuaded, based on the testimony and evidence offered, that Petitioner has made its case and is entitled to the requested relief, subject to the imposition of restrictions.

As to the Special Exception, I find that, consistent with the special exception granted in 1960, the facility operated by Petitioner meets the definition of a "nursing home" as contained in Section 101 of the B.C.Z.R. I also find that the proposed parking lot will be used as a component of the nursing home, in that it will be used only by Genesis employees and visitors as an addition or extension of the present parking at the facility, and not for the public's use or by any other businesses in the vicinity. Hence, the proposed parking lot is part and parcel of the previously approved special exception use. In addition, I find that the proposed parking lot meets the principles and conditions of Section 502.1 of the B.C.Z.R. In particular, I agree with

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By BJ

Petitioner that this proposed parking lot directly across the street from the nursing home will actually help contain the breadth of traffic in and around the community to the immediate area in front of the nursing home. I find that the design and layout of the parking lot depicted on Petitioner's Exhibit 1 is compatible with the physical locale and the mixed use of residential and commercial structures in the neighborhood.

I also find that the use of the property as a parking lot immediately adjacent to the nursing home, though understandably not preferred by some residents in the community -- especially those situated very nearby -- is nonetheless a use consistent with the applicable zoning regulations. Section 1B01.1.A.18.d of the B.C.Z.R. delineates "parking spaces" as a defined use permitted by right in the D.R. zone. Finally, in applying the standard set forth in *Schultz v. Pritts*, 432 A.2d 1319, 291 Md. 1 (1981) and *Mossburg v. Montgomery County*, 666 A.2d 1253, 107 Md. App. 1 (1995) -- that is, whether there are facts and circumstances that show that a particular use at a particular location would have any adverse effects above and beyond those inherently associated with such special exception use irrespective of its location within the zone, I find the subject property's proximity to the commercial businesses in Catonsville, as well as the commercial uses nearby make the impact of the proposed parking lot on the property coextensive with its potential impact at other locations in the zone.

As to the Special Hearing request to amend the original special exception from 1960, in granting the instant special exception to add the use of the subject property as a parking lot for the area described in the previous special exception case, I have found that the request meets the principles and conditions of Section 502.1 of the B.C.Z.R., as is also required for special hearing relief. As such, in this context, the special hearing relief naturally flows from the granting of the instant special exception.

ORDER RECEIVED FOR FILING
9-10-07
PB

As to the Variance request, this is considered in accordance with the criteria set forth in Section 307 of the B.C.Z.R. and by the Court of Special Appeals in *Cromwell v. Ward*, 651 A.2d 424, 102 Md. App. 691 (1995), which articulates a three-prong test. First, it must be determined whether the property's peculiar characteristics or unusual circumstances make it unique. If so, then the second prong is whether a petitioner will suffer practical difficulty or unnecessary hardship if relief is denied. The third prong is whether the relief can be granted consistent with the spirit and intent of the regulations without detrimental impact to adjacent properties.

In the instant case, I find the property is unique in a zoning sense due to its width. The property is only 67 feet wide, which is not much bigger than the required 50 foot buffer and is actually smaller than the required 75 foot setback, thus strict adherence to the requirements is impossible. I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship because it would deprive Petitioner of a permitted use, which is both consistent with the zoning regulations and meets the guidelines and principles of Section 502.1 of the B.C.Z.R. Finally, I find this variance can be granted consistent with the spirit and intent of said regulations, especially with the imposition of restrictions limiting the scope of such use.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence offered at the hearing, I find that Petitioner's requests for special exception, special hearing, and variance should be granted.

THEREFORE, IT IS ORDERED, this 10th day of September, 2007, by the Deputy Zoning Commissioner, that Petitioner's request for Special Exception to use the subject property as a convalescent home (consistent with the definition of "nursing home" found in Section 101 of the B.C.Z.R.) pursuant to Section 1B01.C.3 of the B.C.Z.R. be and is hereby GRANTED; and

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Date 9-10-07
By PB

IT IS FURTHER ORDERED that Petitioner's request for Special Hearing to approve an amendment to the previous Special Exception granted in Case 5006-XA to add a parking area to a previously approved Assisted Living Facility be and is hereby GRANTED; and

IT IS FURTHER ORDERED, that Petitioner's request for Variance from Section 1B01.1.B.1.e.5 of the B.C.Z.R. to permit a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback be and is hereby GRANTED.

These petitions are granted subject to the following restrictions, all of which are conditions precedent to the granting of the relief:

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

2. Petitioner shall provide a plan showing the location and details of all proposed landscaping and fencing, and shall submit such plan to Avery Harden, Baltimore County Landscape Architect, subject to his review and approval.

3. Petitioner shall provide details of any proposed signs, lighting and retaining walls to the Office of Planning, subject to its review and approval. Petitioner shall place signs, as approved by Planning, indicating the lot is restricted to Petitioner's employees and visitors only.

4. Petitioner shall provide a grading and storm water management plan to the Department of Environmental Protection and Resource Management (DEPRM) in order to allow DEPRM to provide comments and review of any grading and storm water management issues associated with this project. Petitioner shall also comply with any comments or recommendations of DEPRM in connection with its review.

5. It is expressly understood that the granting of the Special Exception, Special Hearing, and Variance Petitions herein is limited to the use of the subject property for parking only, in a manner consistent with the design depicted in Petitioner's Exhibit 1. The granting of this relief shall in no way be construed as an expansion of the use of the property for any other purpose than for parking, attendant to Petitioner's operation of the nursing home facility across the street. Any attempt to alter, expand, or otherwise change the use of the subject property for any other purpose, other than possibly residential, is prohibited.

6. Petitioner shall continuously maintain the property in keeping with the quality and aesthetics of the neighborhood, and in compliance with all County Code laws and regulations.

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Date 9-10-07
By BJ

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

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

ORDER RECEIVED FOR FILING
9-10-07
BY

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

THOMAS H. BOSTWICK
Deputy Zoning Commissioner

September 10, 2007

LAWRENCE E. SCHMIDT, ESQUIRE
GILDEA & SCHMIDT, LLC
600 WASHINGTON AVENUE, SUITE 200
TOWSON, MD 21204

Re: Petitions for Special Hearing, Special Exception and Variance
Case No. 07-535-SPHXA
Property: 19 Fusting Avenue

Dear Mr. Schmidt:

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

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

Very truly yours,

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz
Enclosure

c: Bruce Doak, Gerhold Cross & Etzel, Ltd., 320 E. Towsontown Blvd., Suite 100, Towson, MD 21286
Natalie Holland, 515 Fairmont Avenue, Towson MD 21204
Leena Hoover, Genesis Health Care, 16 Fusting Avenue, Catonsville MD 21228
Scott Westcoat, 14 Fusting Avenue, Catonsville MD 21228
Pat Stack, 29 Fusting Avenue, Catonsville MD 21228
Douglas Hamilton and Angela Lunczynski, 23 Fusting Avenue, Catonsville MD 21228
Brian Nippard, 19 Egges Lane, Catonsville MD 21228

8/20/07

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
19 Fusting Avenue N/side of Fusting Avenue 137 feet north of centerline of Howard Avenue	*	ZONING COMMISSIONER OF
	*	BALTIMORE COUNTY
1st Election District 1st Councilmanic District	*	
Petitioner(s)/ Legal Owner(s): Genesis Health Care	*	
	*	CASE NO.: 07-535-SPHXA

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

HEARING MEMORANDUM IN LIEU OF CLOSING ARGUMENT

Lawrence E. Schmidt and Gildea & Schmidt, LLC, attorneys for the Petitioner, Genesis Health Care, submit this post-hearing memorandum in support of the Petitions for Special Exception, Special Hearing, and Variance filed herein and respectfully states:

I. Facts

The underlying facts regarding the petitions are not in dispute. Genesis Health Care (hereinafter "Genesis") owns the subject property, known as 19 Fusting Avenue located in the Catonsville community of Western Baltimore County[1]. The subject property is rectangular shaped lot, approximately 67 feet wide and 230 feet deep. The lot is presently unimproved and is zoned D.R. 5.5.

Genesis presently operates a nursing home immediately across Fusting Avenue from the subject site on a property known as 16 Fusting Avenue. This nursing home use was

[1] The Petitions indicated that the property was owned by PG Developers, LLC at the time of the filing. Genesis has subsequently settled on the property and is now the legal owner.

originally approved by the Order of Zoning Commissioner Wilsie H. Adams on July 6, 1960. The nursing home has operated on a continuous basis since that time and Genesis acquired the property and assumed management of the nursing home several years ago.

The nursing home building contains 138 beds including 36 Alzheimer beds. This residential use employs approximately 150 people and operates on 3 shifts per day (7:00 a.m.- 3:00 p.m., 3:00 p.m.-11:00 p.m., and 11:00 p.m. -7:00 a.m.). The nursing home property contains a parking lot, which features 56 parking spaces, including 2 parking spaces. Due to the number of nursing residents, employees, and visitors (including family, physicians, clergy, etc.), Genesis has acquired the subject property and intends to develop the same with a parking lot, which will contain 23 spaces. It is the intent of Genesis for employees to use this lot, thereby providing space on the existing Genesis property/lot for guests. Testimony offered by representatives of Genesis is that the existing lot on the Genesis property is overcrowded and insufficient. Zoning relief through the Petitions filed herein is requested to approve the parking lot as proposed.

II. Relief Requested

A. Special Exception.

As noted above, the nursing home was originally approved by Special Exception in 1960. Pursuant to Section 1B01.1.C.3 of the Baltimore County Zoning Regulations ("BCZR"), convalescent homes are permitted uses in the D.R. zone by special exception. Furthermore, section 101 of the BCZR defines nursing homes as "a facility which provides board, shelter, and nursing care to chronic or convalescent patients. This term also includes facilities which provide domiciliary care within a nursing home." The

definition further states that nursing homes were formerly designated within the BCZR as convalescent homes.

It is clear that the Genesis facility at 16 Fusting Avenue is a nursing home and is lawfully operating pursuant to the Special Exception granted in 1960. The proposed parking lot will be restricted for use by Genesis employees and visitors only. The proposed lot is not a public parking lot nor will same be used by any other business in the vicinity. As such, the parking lot is part and parcel of this approved Special Exception use, and, according to the Zoning Office, requires Special Exception approval. Therefore, Special Exception relief is requested so that subject property known as 19 Fusting Avenue can be used as a nursing home, albeit a component of the same (i.e. parking).

It is clear, based on the testimony and evidence offered at the hearing, that the relief meets the Special Exception criteria set forth in Section 502.1 of the BCZR. With proper restrictions, the lot can be used without detrimental impact to the health, safety, and general welfare of the locale. In fact, it will actually be a benefit to not only the operation of the existing nursing home, but also the community at large, for a variety of reasons. First, it will take vehicles of visitors and employees of the facility off the public streets in front of private houses and existing businesses in the area. Due to the absence of available parking on site, visitors to the facility park currently are forced to park elsewhere. The addition of the proposed parking lot will address this concern. Moreover, the proposed parking lot is compatible with the physical locale and neighborhood. The proposed parking lot immediately abuts (to the rear) a commercial

parking lot, which serves businesses fronting Frederick Road. There is a seven-unit apartment building next door and a BGE facility down the street. This is not a secluded neighborhood of detached single-family homes, rather, is an area with a variety of uses. The Petitioner proposes a land use which exists immediately adjacent thereto! The Petitioner also proposes fencing and landscaping around the proposed lot, which will buffer the lot from nearby residences. This fencing and landscaping, as well as the proximity of the lot to the nursing home will help prevent individuals (both those going to the nursing home and others) from cutting through private property; which was another complaint that was voiced by neighbors at the hearing.

Insofar as consistency with the zoning regulations, it is to be noted that "parking spaces" is a defined use permitted by right in the D.R. zone pursuant to Section 1B01.1.A.18(d) of the BCZR. Indeed, this section could support a finding that Special Exception relief is not necessary and this parking lot is allowed without the necessity of the filing of a Petition for Special Exception. However, as was pointed out to the Petitioners by the Zoning Office when the petitions were filed, Section 1B01.1A18(d) describes ***accessory*** uses that are permitted as of right. Given that the proposed lot will be on a separate lot of record and not on the same lot as the nursing home building, the lot is technically not an "accessory use" as defined (See Section 101).

Finally, as was clearly stated in the seminal cases of **Schultz v. Pritts**, 291 Md. 1 (1981) and **Mossburg v. Montgomery County**, 107 Md. App. 1 (1995) and applied to the facts in this case; it is not whether the proposed use will have impacts (as impacts are assumed in the first instance in that the use is permitted by Special Exception); it is

whether those impacts will be greater here than elsewhere in the zone. Given the property's proximity to the commercial core of Catonsville, the identical uses nearby and character of the existing mixed use neighborhood; it is apparent that Special Exception approval should be granted.

B. Special Hearing.

In addition to the Petition for Special Exception, Special Hearing relief is also requested. The filing of this petition was also at the suggestion of the Zoning Office. As noted above, the proposed parking lot will be a component of the Special Exception use previously granted for the nursing home. That Special Exception will thereby be technically amended to the extent that this property is being added to the area previously described in the original case. It is a long settled administrative practice in Baltimore County that Special Hearing relief is also adjudged in accordance with the criteria set forth in Section 502.1 of the BCZR. For all the reasons set forth herein above and during the hearing, the Petitioner avers that the proposal will not be detrimental to the health, safety, and general welfare of the locale, and should therefore be granted.

C. Variance.

The final approval sought in connection with this case relates to a variance from the applicable RTA (Residential Transition Area) standards as contained in the BCZR (See 1B01.1B.1.e.5). These regulations require certain buffers and setbacks for properties subject to the RTA requirements. It is well settled that Variance relief shall be considered in accordance with the criteria set forth in Section 307 of the BCZR and as set forth in the case law as construed by the appellate courts of this state (see e.g. **Cromwell**

vs. Ward, 102 Md. 691 (1995). Therein, a three-pronged test must be applied. First, the property must be determined to be unique; second, that the Petitioner will suffer a practical difficulty if relief is denied; and third, can relief be granted consistent with the spirit and intent of the regulations and without detrimental impact to adjacent properties?

The uniqueness of this property as relevant to the requirements in this case is obvious and due to its width. As shown on the site plan (Petitioner's Exhibit 1) the property is but 67 feet wide, less than the minimum RTA buffer. That is, strict adherence to the requirements is impossible, as the entire width of the site is less than the minimum required.

Insofar as second prong, the Petitioner's inability to reasonably use this property for a permitted use without variance relief constitutes practical difficulty. Finally, as set forth above, the proposal is both consistent with the zoning regulations and will not cause detrimental impact on the adjoining properties. For all these reasons, relief herein requested should be granted as the Petitioner's request has satisfied the applicable provisions of law.

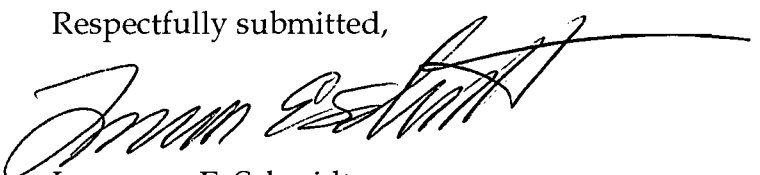
Conditions

As discussed at the hearing, the Office of Planning has requested within its Zoning Advisory Committee comment the imposition of several conditions, in order to ensure minimal impact of the use on adjacent properties. The Petitioner expressed its consent to the insertion of these conditions in any Order granting approval of the Petitions. The suggested conditions primarily related to landscaping and lighting. As

indicated at the hearing, the lot will be setback from side property lines a distance of 13.7 feet. This area will be landscaped and a fence will be installed. Additionally, directed lighting shall be installed. The lighting shall be designed to provide security (a concern expressed by the neighbors) but will be directed downward so as not to reflect or glare onto adjacent properties. Any signage will be appropriately designed to provide notice of the restrictive use of the lot (Genesis employees and visitors only.) Moreover, given the relatively flat grade of the lot, retaining walls are not envisioned and storm water management can be easily addressed. The Petitioner shall consult with DEPRM as required during the permitting process relating to these issues.

For all of these reasons, the Petitioner requests that the Petitions for Special Exception, Special Hearing and Variance be granted. Further, the Petitioner is agreeable to the imposition of a condition requiring its landscaping plan and lighting plan being reviewed and approved by Avery Harden (County Landscape Architect). Moreover, any grading of the site (including the construction of retaining walls; if any) and the installation of storm water management measures shall be as the direction of DEPRM.

Respectfully submitted,



Lawrence E. Schmidt

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 20th day of August, 2007, a copy of the foregoing Hearing Memorandum in Lieu of Closing Argument was mailed, postage pre-paid, to:

Scott Westcoat
14 Fusting Avenue
Catonsville, MD 21228

Pat Stack
29 Fusting Avenue
Catonsville, MD 21228

Douglas Hamilton
23 Fusting Avenue
Catonsville, MD 21228

Angela Lunczynski
23 Fusting Avenue
Catonsville, MD 21228

Brian Nippard
19 Egges Lane
Catonsville, MD 21228

Lawrence E. Schmidt

GILDEA & SCHMIDT, LLC

DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN

SEBASTIAN A. CROSS
F. GILLIS GREEN
ERIC N. LAMB
CHARLES B. MAREK, III
DAMIAN C. O'DOHERTY
JASON T. VETTORI

600 WASHINGTON AVENUE
SUITE 200
TOWSON, MARYLAND 21204
TELEPHONE 410-821-0070
FACSIMILE 410-821-0071
www.gildeallc.com

ANNAPOLIS, MD OFFICE
95 CATHEDRAL STREET
SUITE 100
ANNAPOLIS, MARYLAND 21401
TELEPHONE 410-295-0070

August 20, 2007

Via Hand Delivery

Thomas H. Bostwick
Deputy Zoning Commissioner
Office of the Zoning Commissioner
401 Bosley Avenue, Suite 405
County Courts Building
Towson MD 21204

RECEIVED
AUG 20 2007
BY:----------

Re: Genesis Health Care/19 Fusting Avenue
Case No.: 07-535-SPHXA

Dear Deputy Commissioner Bostwick:

Enclosed herein please find a Hearing Memorandum in Lieu of Closing Argument on behalf of the Petitioner in the above captioned case. With kind regards, I am

Very truly yours,

Lawrence E. Schmidt

LES: sf
Enclosure
CC: Scott Westcoat
Pat Stack
Douglas Hamilton
Angela Lunczynski
Brian Nippard
Natalie P. Holland, Genesis Health Care

FRANCIS & PHYLLIS COPPERSMITH
– L/O – Michael Snyder – C/P
5319 QUEENSALL ROAD – 4TH F. 3RD C.

~~06-676-SPH~~

8/01/07 @ 10 am ~~ptd~~

10/~~16~~/07 @ ~~10~~ a.m. 06-676-SPH

appeal w/d 10-16-07

(Note: 06-675-SPH still active)

Issued November 7, 2007

(Dismissal)

20070535 "A"

supplemental

~~06-676-SPH~~

[redacted] & COOPERSMITH
PROPERTIES

~~06-675-SPH~~ & 06-676-SPH

(2)

~~06-676-SPH~~

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 19 Fusting Avenue

which is presently zoned D.R. 5.5

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

1. An amendment to the previous Special Exception granted in Case 5006-XA to add a parking area to a previously approved Assisted Living Facility; and,

2. For such other and further relief as may be determined necessary by the Zoning Commissioner.

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:

Keith Nause, VP, Controller, Genesis Health Care
Name - Type or Print

Keith Nause
Signature

515 Fairmount Avenue (410) 494-8166
Address Telephone No.

Towson MD 21204
City State Zip Code

Attorney For Petitioner:

Lawrence E. Schmidt
Name - Type or Print

Signature

Gildea & Schmidt, LLC
Company

600 Washington Avenue, Suite 200 (410) 821-0070
Address Telephone No.

Towson MD 21204
City State Zip Code

Legal Owner(s):

Adam Skolnik, Member, P G Developers, LLC
Name - Type or Print

Signature

Name - Type or Print

Signature

3230 Bethany Lane, Suite 8
Address Telephone No.

Ellicott City MD 21042
City State Zip Code

Representative to be Contacted:

Lawrence E. Schmidt
Name

600 Washington Avenue, Suite 200 (410) 821-0070
Address Telephone No.

Towson MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 07-535-SPHXA

REV 9/15/98

FEES RECEIVED FOR FILING
9-10-07

Reviewed By LTM Date 5/25/07

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at: 19 Fusting Avenue

which is presently zoned: D.R. 5.5

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

1. 1B01.1B.1.e.5 (BCZR) to allow a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback; and,
2. For such other and further relief as may be determined necessary by the Zoning Commissioner.

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

To be presented at hearing.

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

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

Contract Purchaser/Lessee:

Keith Nause, VP, Controller, Genesis Health Care
Name - Type or Print

Keith Nause
Signature

515 Fairmount Avenue — (410) 494-8166
Address — Telephone No.

Towson — MD — 21204
City — State — Zip Code

Attorney For Petitioner:

Lawrence E. Schmidt
Name - Type or Print

Signature

Gildea & Schmidt, LLC
Company

600 Washington Avenue, Suite 200 — (410) 821-0070
Address — Telephone No.

Baltimore — MD — 21202
City — State — Zip Code

Legal Owner(s):

Adam Skolnik, Member, BG Developers, LLC
Name - Type or Print

Signature

Name - Type or Print

Signature

3230 Bethany Lane, Suite 8
Address — Telephone No.

Ellicott City — MD — 21042
City — State — Zip Code

Representative to be Contacted:

Lawrence E. Schmidt
Name

600 Washington Avenue, Suite 200 — (410) 821-0070
Address — Telephone No.

Towson — MD — 21204
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 07-535-SPHXA

RECEIVED FOR FILING Reviewed By LTM Date 5/25/07

9-10-07

REV 9/15/98

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 19 Fusting Ave

which is presently zoned D.R. 5.5

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

To use the herein described property for a convalescent home as per BCZR section 1B01.C3

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

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

Contract Purchaser/Lessee:

Keith Nause, VP, Controller, Genesis Health Care
Name - Type or Print

Keith Nause
Signature

515 Fairmount Avenue (410) 494-81(
Address Telephone No.

Towson MD 21204
City State Zip Code

Attorney For Petitioner:

Lawrence E. Schmidt
Name - Type or Print

Larry Schmidt SC
Signature

Gildea & Schmidt, LLC
Company

600 Washington Avenue, Suite 200 (410) 821-0070
Address Telephone No.

Towson MD 21204
City State Zip Code

Legal Owner(s):

Adam Skolnik, Member, P/G Developers, LLC
Name - Type or Print

Signature

Name - Type or Print

Signature

3230 Bethany Lane, Suite 8
Address Telephone No.

Ellicott City MD 21042
City State Zip Code

Representative to be Contacted:

Lawrence E. Schmidt
Name

600 Washington Avenue, Suite 200 (410) 821-0070
Address Telephone No.

Towson MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By LTM Date 5/25/07

Case No. 07-535-SPHXA

REV 09/15/98

ORDER RECEIVED FOR FILING

Date 9-10-07

By _____

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

May 21, 2007

ZONING DESCRIPTION
P. G. DEVELOPERS, LLC PROPERTY
17 Fusting Avenue
Baltimore County, Maryland

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

Beginning at a point on the south side of Fusting Avenue which is 30 feet wide at the distance of 225 feet west of the centerline of the nearest improved intersecting street Howard Avenue which is 24 feet wide. "Being lot #19 in the minor subdivision of "#17 Fusting Avenue"" as recorded at PDM, thence leaving Fusting Avenue

South 16°17'45" East 228.64 feet,
South 74°42'40" West 67.36 feet,
North 16°17'45" West 230.55 feet,
North 76°19'59" East 67.62 feet to the point of beginning.

Containing 15463 sq. ft. of land, more or less.

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

STATE OF MARYLAND
BRUCE EDWIN DORR
No. 21406

5/22/07

#535

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

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

May 21, 2007

ZONING DESCRIPTION
CATONSVILLE MERIDIAN LIMITED PARTNERSHIP PROPERTY
16 Fusting Avenue
Baltimore County, Maryland

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

Beginning at a point on the north side of Fusting Avenue which is 30 feet wide at the distance of 137 feet west of the centerline of the nearest improved intersecting street Howard Avenue which is 24 feet wide, running thence

South 83°15'00" West 239.50 feet.
North 22°09'00" West 318.80 feet.
North 79°28'00" East 318.65 feet.
South 07°50'00" East 328.40 feet to the point of beginning.

Containing 2.05 acres of land, more or less.

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

#535

STATE OF MARYLAND
JAMES EDWIN DOYLE
NO. 21...
REGISTERED
PROFESSIONAL LAND SURVEYOR
5/22/07

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: 07-535-SPHXA

Petitioner: Genesis Health Care

Address or Location: ~~515 Fairmount~~ 19 Fusting Ave

PLEASE FORWARD ADVERTISING BILL TO:

Name: Gildea & Schmidt

Address: 600 Washington Ave, Suite 200
Towson Md 21202

Telephone Number: 410-821-0070

Revised 7/11/05 - SCJ

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 27948

DATE 5/25/07 ACCOUNT 1001.006150

AMOUNT $ 200.00

RECEIVED FROM: GILDEA + SCHMIDT, LLC

FOR: CRG 535-SPEIXA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

[illegible] TIME [illegible]

[illegible]

Recpt Tot [illegible]

[illegible] CK [illegible]

[illegible] Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

June 26, 2007
TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

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: 07-535-SPHXA
19 Fusting Avenue
N/side of Fusting Avenue, 137 feet north of centerline of Howard Avenue
1st Election District – 1st Councilmanic District
Legal Owners: Adam Skolnik, PG Developers, LLC

Special Hearing to approve an amendment to the previous Special Exception granted in Case 05-006-XA to add a parking area to a previously approved Assisted Living Facility. Special Exception to use the herein described property for a convalescent home as per NCZR Section 1B01.C3. Variance to permit a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback.

Hearing: Thursday, August 2, 2007 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204
Adam Skolnik, PG Developers, LLC, 3230 Bethany Lane, Ste. 8, Ellicott City 21042
Keith Nause, Genesis Health Care, 515 Fairmount Avenue, Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, JULY 18, 2007.**
(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, July 17, 2007 Issue - Jeffersonian

Please forward billing to:
Gildea & Schmidt
600 Washington Avenue, Ste. 200
Towson, MD 21204

410-821-0070

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:

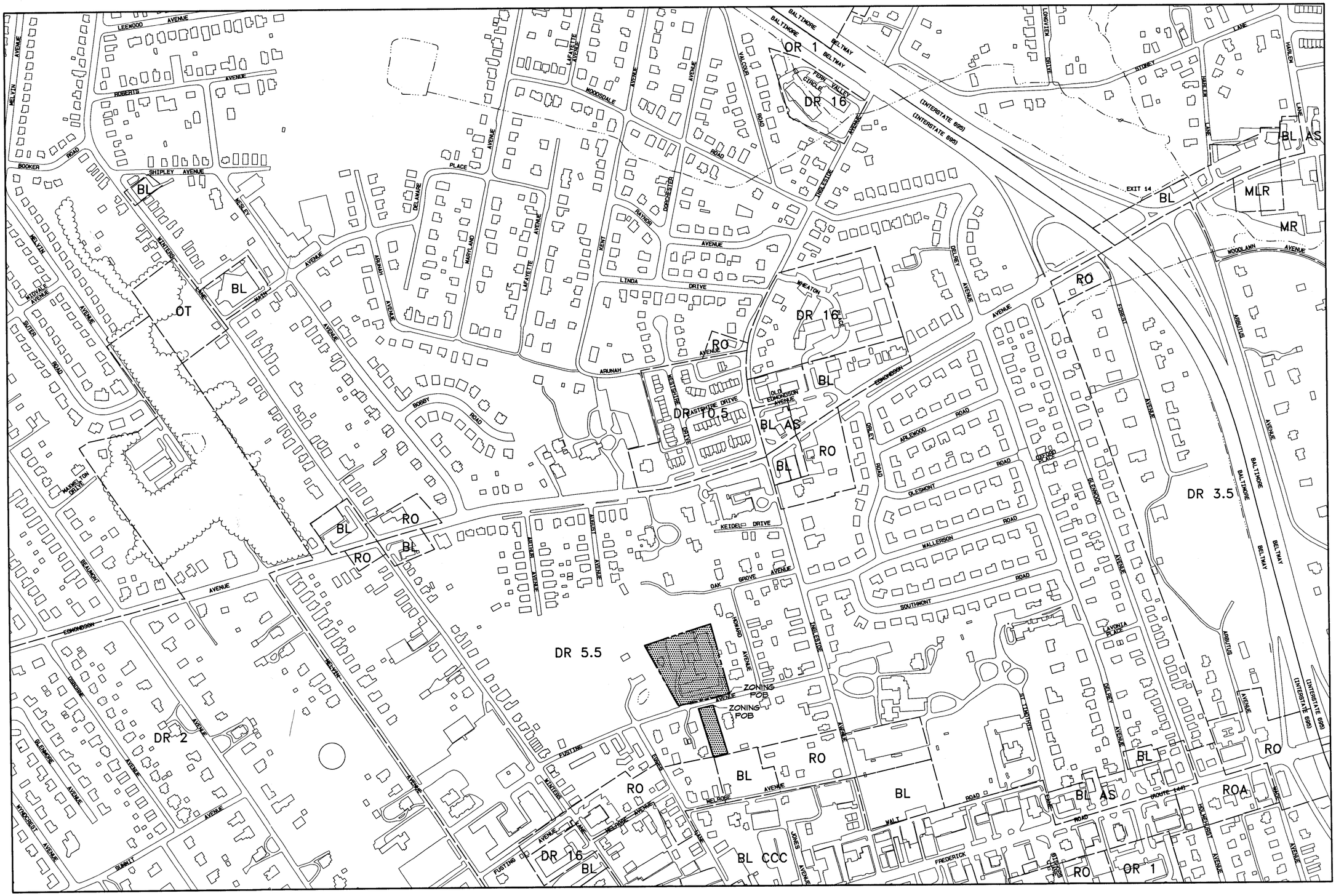
CASE NUMBER: 07-535-SPHXA
19 Fusting Avenue
N/side of Fusting Avenue, 137 feet north of centerline of Howard Avenue
1st Election District – 1st Councilmanic District
Legal Owners: Adam Skolnik, PG Developers, LLC

Special Hearing to approve an amendment to the previous Special Exception granted in Case 05-006-XA to add a parking area to a previously approved Assisted Living Facility. Special Exception to use the herein described property for a convalescent home as per NCZR Section 1B01.C3. Variance to permit a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback.

Hearing: Thursday, August 2, 2007 at 9:00 a.m. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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



ZONING MAP

GIS TILE: 101A1

SCALE: 1" = 200'

#535

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: # 07-535-SPHXA
19 Fusting Avenue
N/side of Fusting Avenue, 137 feet north of centerline of Howard Avenue
1st Election District - 1st Councilmanic District
Legal Owner(s): Adam Skolnik, PG Developers, LLC

Special Hearing: to approve an amendment to the previous Special Exception granted in Case 05-006-XA to add a parking area to a previously approved Assisted Living Facility. **Special Exception:** to use the herein described property for a convalescent home as per NCZR Section 1B01.C3. **Variance:** to permit a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback.

Hearing: Tuesday, August 7, 2007, at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

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

JT 7/720 July 24 142898

CERTIFICATE OF PUBLICATION

7/26, 2007

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 7/24, 2007.

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

S. Wilkinson

LEGAL ADVERTISING

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

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

CERTIFICATE OF POSTING

RE: CASE# 07-535-SPHXA
PETITIONER/DEVELOPER:
Adam Skolnik, PG Developers, LLC
DATE OF HEARING: August 7, 2007

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

ATTENTION: KRISTEN MATTHEWS

LADIES AND GENTLEMEN:

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

LOCATION:
19 Fusting Avenue

(see page 2 for full size photo)

POSTED ON: July 20, 2007

SIGNATURE OF SIGN POSTER

John Dill

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


ZONING NOTICE
CASE # :07-535-SPHXA
A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD.
PLACE: Room 407 County.Courts Building 401 Bosley Avenue, Towson, MD
2:00 PM, Tuesday, August 7, 2007
Special Hearing: to approve an amendment to the previous Special Exception granted in Case 05-006-XA to add a parking area approved Assisted Living Facility. Special Exception: to use the herein described property for a convalescent home as per NCZR Section 1B01.C3. Variance: to permit a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback.
POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY TO CONFIRM HEARING.
CALL 410-887-3391 THE DAY BEFORE THE SCHEDULED HEARING DATE
DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW
HEARINGS ARE HANDICAPPED ACCESSIBLE


ZONING NOTICE

41 D3

Requested: Nov 26 2007

APPEAL SIGN POSTING REQUEST

CASE NO. 07-535-SPHXA

19 FUSTING AVENUE

N/s of Fusting Ave., 137' N c/l Howard Ave.

1st ELECTION DISTRICT APPEALED: 10/05/2007

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

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

CERTIFICATE OF POSTING

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

Attention: Kathleen Bianco
Administrator

CASE NO.: 07-535-SPHXA

LEGAL OWNER: **ADAM SKOLNIK**

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

19 FUSTING AVENUE

N/s of Fusting Ave., 137' N c/l Howard Ave.

The sign was posted on 4-5-08, 2007.

By: _____
(Signature of Sign Poster)

MSTUART Kelly
(Print Name)

PHOTOGRAPHIC RECORD

Citation/Case No.: _____

Date of Photographs: _____



I HEREBY CERTIFY that I took the _____ photographs set out above, and that these photographs
(number of photos)
fairly and accurately depict the condition of the property that is the subject of the above-referenced citation/case number on the date set out above.

_____
Enforcement Officer

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

June 26, 2007

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

NEW 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: 07-535-SPHXA
19 Fusting Avenue
N/side of Fusting Avenue, 137 feet north of centerline of Howard Avenue
1st Election District – 1st Councilmanic District
Legal Owners: Adam Skolnik, PG Developers, LLC

Special Hearing to approve an amendment to the previous Special Exception granted in Case 05-006-XA to add a parking area to a previously approved Assisted Living Facility. Special Exception to use the herein described property for a convalescent home as per NCZR Section 1B01.C3. Variance to permit a parking lot with a 13.7 foot buffer and setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback.

Hearing: Tuesday, August 7, 2007 at 2:00 p.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204
Adam Skolnik, PG Developers, LLC, 3230 Bethany Lane, Ste. 8, Ellicott City 21042
Keith Nause, Genesis Health Care, 515 Fairmount Avenue, Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, JULY 23, 2007.**
(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.

Angela Lunczynski/US/CCE
04/14/2008 02:35 PM

To kbianco@baltimorecountymd.gov
cc
bcc
Subject Case#07-535-SPHXA

Ms. Bianco,

Per our brief conversation today, I will be faxing and mailing you a hard copy letter tomorrow to reiterate my need to postpone our May 7,2008 hearing date to work requirements. I work for Coca Cola Enterprises and have recently been assigned to help in our Canadian Business unit. I will be spending time there next week, and then I am slated to be there again the week of May 5 through the 9th. I have appointments with vendors and staff during this week, and am meeting other people from the U.S. there that week. I would greatly appreciate your help in rescheduling the current set date for the week of June 3,2008.

Thank you in advance for your help.

Angela Lunczynski
New Email Address: angelalunczynski@cokecce.com
NEBU-Procurement
O 410.684.7288
C 443.481.8964
F 410-684-7190

RECEIVED
APR 15 2008
BALTIMORE COUNTY
BOARD OF APPEALS

Kathleen Bianco - Case#07-53[redacted]PHXA

From: <angelalunczynski@cokecce.com>
To: <kbianco@baltimorecountymd.gov>
Date: 4/14/2008 2:36 PM
Subject: Case#07-535-SPHXA

Ms. Bianco,

Per our brief conversation today, I will be faxing and mailing you a hard copy letter tomorrow to reiterate my need to postpone our May 7,2008 hearing date to work requirements. I work for Coca Cola Enterprises and have recently been assigned to help in our Canadian Business unit. I will be spending time there next week, and then I am slated to be there again the week of May 5 through the 9th. I have appointments with vendors and staff during this week, and am meeting other people from the U.S. there that week. I would greatly appreciate your help in rescheduling the current set date for the week of June 3,2008.

Thank you in advance for your help.

Angela Lunczynski
New Email Address: angelalunczynski@cokecce.com
NEBU-Procurement
O 410.684.7288
C 443.481.8964
F 410-684-7190

RECEIVED
APR 14 2008
BALTIMORE COUNTY
BOARD OF APPEALS

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

Hearing Room #2, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue

April 16, 2008

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 07-535-SPHXA

IN THE MATTER OF: ADAM SKOLNIK – Legal Owner;
GENESIS HEALTH CARE /KEITH NAUSE - CP
19 Fusting Avenue 1st Election District; 1st Councilmanic District

9/10/2007 – D/Z.C.'s decision in which requested zoning relief was **GRANTED** with restrictions

which was scheduled for hearing on 5/07/08 has been POSTPONED at the request of Appellant /Protestant due to previously arranged schedule conflict; and has been

REASSIGNED FOR: **TUESDAY, JUNE 3, 2008 AT 10:00 a.m.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Appellant /Protestant : Angela Lunczynski
Protestants : Scott Westcoat
Pat Stack
Brian Nippard

Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Petitioners : Genesis Health Care
Keith Nause, VP /Controller
: Adam Skolnik, Member
/PG Developers LLC

Bruce Doak / Gerhold Cross & Etzel LTD
Natalie Holland
Leena Hoover
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Angela Lunczynski/US/CCE
04/14/2008 02:35 PM

To kbianco@baltimorecountymd.gov
cc
bcc
Subject Case#07-535-SPHXA

Ms. Bianco,

Per our brief conversation today, I will be faxing and mailing you a hard copy letter tomorrow to reiterate my need to postpone our May 7,2008 hearing date to work requirements. I work for Coca Cola Enterprises and have recently been assigned to help in our Canadian Business unit. I will be spending time there next week, and then I am slated to be there again the week of May 5 through the 9th. I have appointments with vendors and staff during this week, and am meeting other people from the U.S. there that week. I would greatly appreciate your help in rescheduling the current set date for the week of June 3,2008.

Thank you in advance for your help.

Angela Lunczynski
New Email Address: angelalunczynski@cokecce.com
NEBU-Procurement
O 410.684.7288
C 443.481.8964
F 410-684-7190

RECEIVED
APR 2 1 2008
BALTIMORE COUNTY
BOARD OF APPEALS

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

Hearing Room #2, Jefferson Building
105 W. Chesapeake Avenue, Second Floor
(next to Suite 203)

June 4, 2008

NOTICE OF ASSIGNMENT /Day #2

CASE #: 07-535-SPHXA

IN THE MATTER OF: ADAM SKOLNIK – Legal Owner;
GENESIS HEALTH CARE /KEITH NAUSE - CP
19 Fusting Avenue 1st Election District; 1st Councilmanic District

from Day #1 -- 6/03/08

9/10/2007 – D/Z.C.'s decision in which requested zoning relief was **GRANTED** with restrictions

After one day of hearing on 6/03/08, the following matter has been scheduled for day #2 on 7/23/08, and also for day #3 (one hour only /one witness) on 7/29/08, as follows and as agreed by Counsel and the Board:

ASSIGNED FOR: **WEDNESDAY, JULY 23, 2008 ~~at 10:00~~ a.m. /Day #2 and**
TUESDAY, JULY 29, 2008 at ~~9:00 a.m.~~ 10 am /Day #3 (1 hour)

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

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

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

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

Kathleen C. Bianco, Administrator

---

c: Counsel for Appellant : Michael P. Tanczyn, Esquire
Appellant /Protestant : Angela Lunczynski
Protestants : Scott Westcoat
Pat Stack
Brian Nippard

Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Petitioners : Genesis Health Care
Keith Nause, VP /Controller
: Adam Skolnik, Member / PG Developers LLC

Bruce Doak / Gerhold Cross & Etzel LTD
Natalie Holland
Leena Hoover
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Elera DeBold
Fr. W. Terry Sweeney

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

Hearing Room #2, Jefferson Building
105 W. Chesapeake Avenue, Second Floor
(next to Suite 203)

July 23, 2008

NOTICE OF ASSIGNMENT /Day #3 /Change in Start Time

CASE #: 07-535-SPHXA

IN THE MATTER OF: ADAM SKOLNIK – Legal Owner;
GENESIS HEALTH CARE /KEITH NAUSE - CP
19 Fusting Avenue 1st Election District; 1st Councilmanic District

from Day #2 – 7/23/08

9/10/2007 – D/Z.C.'s decision in which requested zoning relief was **GRANTED** with restrictions

Upon conclusion of Day #2 this date, the start time for Day #3 has been moved to a later time, with no change in date and with agreement of counsel and the Board; and has been

REASSIGNED FOR: **TUESDAY, JULY 29, 2008 at 10:00 a.m. /Day #3**

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

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

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

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

Kathleen C. Bianco, Administrator

---

c: Counsel for Appellant : Michael P. Tanczyn, Esquire
Appellant /Protestant : Angela Lunczynski
Protestants : Scott Westcoat
Pat Stack
Brian Nippard

Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Petitioners : Genesis Health Care
Keith Nause, VP /Controller
: Adam Skolnik, Member / PG Developers LLC

Bruce Doak / Gerhold Cross & Etzel LTD
Natalie Holland
Leena Hoover
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Elera DeBold
Fr. W. Terry Sweeney

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

Change time to 9:00 am
Amended Notice 7/30/08

July 29, 2008

NOTICE OF DELIBERATION

IN THE MATTER OF:

GENESIS HEALTH CARE /KEITH NAUSE –Petitioner;
(ADAM SKOLNIK – LO at Petition)
Case No-07-535-SPHXA

which was heard by the Board on 6/03; 7/23; and 7/29/08 has been scheduled for public deliberation on the following date and time:

DATE AND TIME : **WEDNESDAY, OCTOBER 22, 2008, at 10:00 a.m.**

LOCATION : **Hearing Room #2, Second Floor**
Jefferson Building, 105 W. Chesapeake Avenue

NOTE: Closing briefs are due on Monday, September 8, 2008
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

c:
Counsel for Appellant : Michael P. Tanczyn, Esquire
Appellant /Protestant : Angela Lunczynski
Protestants : Scott Westcoat
Pat Stack
Brian Nippard

Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Petitioners : Genesis Health Care
Keith Nause, VP /Controller
: Adam Skolnik, Member / PG Developers LLC

Bruce Doak / Gerhold Cross & Etzel LTD
Natalie Holland
Leena Hoover
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Elera DeBold
Fr. W. Terry Sweeney

Copy to: 2-4-5

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

July 30, 2008

AMENDED NOTICE OF DELIBERATION
AS TO TIME ONLY
(No other changes to be made)

IN THE MATTER OF:

GENESIS HEALTH CARE /KEITH NAUSE –Petitioner;
(ADAM SKOLNIK – LO at Petition)
Case No-07-535-SPHXA

which was heard by the Board on 6/03; 7/23; and 7/29/08 has been scheduled for public deliberation on the following date and time; PLEASE NOTE THAT **THIS AMENDED NOTICES CHANGES ONLY THE TIME TO 9:00 A.M.; date to remain as originally scheduled:**

DATE AND TIME : **WEDNESDAY, OCTOBER 22, 2008, at 9:00 a.m.**

LOCATION : **Hearing Room #2, Second Floor**
Jefferson Building, 105 W. Chesapeake Avenue

NOTE: Closing briefs are due on Monday, September 8, 2008
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellant : Michael P. Tanczyn, Esquire
Appellant /Protestant : Angela Lunczynski
Protestants : Scott Westcoat
Pat Stack
Brian Nippard

Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Petitioners : Genesis Health Care
Keith Nause, VP /Controller
: Adam Skolnik, Member / PG Developers LLC

Bruce Doak / Gerhold Cross & Etzel LTD
Natalie Holland
Leena Hoover
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Elera DeBold
Fr. W. Terry Sweeney

Copy to: 2-4-5

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

February 25, 2009

AMENDED NOTICE OF DELIBERATION

Motion for Reconsideration and Response/Answer to Motion For Reconsideration

AMENDED TO INCLUDE 'RESPONSE/ANSWER' TO MOTION FOR RECONSIDERATION ONLY

Date and time remain as scheduled.

IN THE MATTER OF:

GENESIS HEALTH CARE /KEITH NAUSE –Petitioner;
(ADAM SKOLNIK – LO at Petition)
Case No-07-535-SPHXA

DATE AND TIME : TUESDAY, MARCH 17, 2009, at 9: 00 a.m.

LOCATION : Hearing Room #2, Second Floor (next to Suite 203)
The Jefferson Building, 105 W. Chesapeake Avenue

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

Theresa R. Shelton, Administrator

c: Counsel for Appellant : Michael P. Tanczyn, Esquire
Appellant /Protestant : Angela Lunczynski
Protestants : Scott Westcoat / Pat Stack /Brian Nippard

Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Petitioners : Genesis Health Care
Keith Nause, VP /Controller
: Adam Skolnik, Member / PG Developers LLC

Bruce Doak / Gerhold Cross & Etzel LTD
Natalie Holland
Leena Hoover
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Elera DeBold
Fr. W. Terry Sweeney

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

February 18, 2009

NOTICE OF DELIBERATION /Motion for Reconsideration

IN THE MATTER OF:

GENESIS HEALTH CARE /KEITH NAUSE –Petitioner;
(ADAM SKOLNIK – LO at Petition)
Case No-07-535-SPHXA

In response to the filing of a Motion for Reconsideration by Lawrence, E. Schmidt, Esquire, counsel for the Petitioner, a public deliberation has been scheduled for the following date and time pursuant to Board Rule 10, which states as follows:

Rule 10. Motion for Reconsideration.

A party may file a motion for reconsideration of an order of the board of appeals. The motion shall be filed within thirty (30) days after the date of the original order. The motion shall state with specificity the grounds and reasons for the motion. **The filing of a motion for reconsideration shall stay all further proceedings in the matter, including the time limits and deadlines for the filing of a petition for judicial review.** After public deliberation and in its discretion, the board may convene a hearing to receive testimony or argument or both on the motion. Each party participating in the hearing on the motion shall be limited to testimony or argument only with respect to the motion; the board may not receive additional testimony with respect to the substantive matter of the case. Within 30 days after the date of the board's ruling on the motion for reconsideration, any party aggrieved by the decision shall file a petition for judicial review. The petition for judicial review shall request judicial review of the board's original order, the board's ruling on the motion for reconsideration or both. **[Bill 50-05] [Emphasis added.]**

DATE AND TIME : TUESDAY, MARCH 17, 2009, at 9: 00 a.m.

LOCATION : Hearing Room #2, Second Floor (next to Suite 203)
The Jefferson Building, 105 W. Chesapeake Avenue

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

Theresa R. Shelton, Administrator

c: Counsel for Appellant : Michael P. Tanczyn, Esquire
Appellant /Protestant : Angela Lunczynski
Protestants : Scott Westcoat / Pat Stack /Brian Nippard

Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Petitioners : Genesis Health Care
Keith Nause, VP /Controller
: Adam Skolnik, Member / PG Developers LLC

Bruce Doak / Gerhold Cross & Etzel LTD
Natalie Holland
Leena Hoover
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Elera DeBold
Fr. W. Terry Sweeney

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

July 26, 2007

Lawrence E. Schmidt
Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204

Dear Mr. Schmidt:

RE: Case Number: 07-535-SPHXA, 19 Fusting Avenue

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 25, 2007. This letter is not an approval, but only a **NOTIFICATION.**

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

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

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf
Enclosures
c: People's Counsel
Adam Skolnik, Member P G Developers, LLC 3230 Bethany Lane, Suite 8 Ellicott City 21042
Keith Nause, VP, Controller Genesis Health Care 515 Fairmount Avenue Towson 21204

Martin O'Malley, *Governor*
Anthony G. Brown, *Lt. Governor*

SHA State Highway Administration
Maryland Department of Transportation

John D. Porcari, *Secretary*
Neil J. Pedersen, *Administrator*

Date:

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

RE: Baltimore County
Item No. 7-535-SPHXA
19 Fusting Avenue
Adam Skolnik Property
Special Hearing
Special Exception
Variance

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 7-535-SPHXA

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-2803 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

Michael Bailey

For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: June 11, 2007

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

SUBJECT: Zoning Advisory Petition(s): **Case(s) 07-535- Variance, Special exception and Special hearing**

The Office of Planning has reviewed the above referenced case(s) and does not oppose the petitioner's requests provided the following conditions are met:

- Provide a plan showing the location and details of all proposed landscaping and fencing. Submit such plan to Avery Harden, Baltimore County Landscape architect for review and approval.
- Provide details of any proposed signs, lighting and retaining walls to the Office of Planning for review and approval.
- It is advised that DEPRM provide comments and review of the grading and storm water management associated with this project.

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

Prepared By: _____

Division Chief: _____

CM/LL

W:\DEVREV\ZAC\7-535.doc

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

June 14, 2007

ATTENTION: Zoning Review Planners

Distribution Meeting Of: June 04, 2007

535

Item Number: 526 Through 541

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

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

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

cc: File

Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: June 7, 2007

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

SUBJECT: Zoning Advisory Committee Meeting
For June 11, 2007
Item Nos. 07-526, 527, 528, 529, 530, 532, 533, 535, 536, 537, 538, and 540

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-06072007.doc

RE:	PETITION FOR SPECIAL HEARING SPECIAL EXCEPTION & VARIANCE 19 Fusting Avenue; N/S Fusting Avenue, 137' N C/line Howard Avenue 1st Election & 1st Councilmanic Districts Legal Owner(s): P.G. Developers, LLC Contract Purchaser(s): Genesis Health Care Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 07-535-SPHXA

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

RECEIVED
JUN 07 2007
Per.....

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of June, 2007, a copy of the foregoing Entry of Appearance was mailed to Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

August 8, 2007

THOMAS H. BOSTWICK
Deputy Zoning Commissioner

LAWRENCE E. SCHMIDT, ESQUIRE
GILDEA & SCHMIDT, LLC
600 WASHINGTON AVENUE, SUITE 200
TOWSON, MD 21204

RE: Genesis Health Care – 19 Fusting Avenue
Case no. 07-535-SPHXA

Dear Mr. Schmidt:

I am writing in connection with the above-referenced matter, and the hearing that took place yesterday, August 7, 2007 at 2:00 PM. Please provide me with a written Memorandum which outlines the legal support for the zoning relief you are requesting on behalf of your client. Please provide this within the next ten (10) days.

By copy of this letter, I am notifying all interested parties in attendance at yesterday's hearing and inviting those persons to also submit any written Memorandum in support of their positions taken at the hearing within ten (10) days.

Thank you for your cooperation and attention to this important matter.

Sincerely,

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

c: Scott Westcoat, 14 Fusting Avenue, Catonsville MD 21228
Pat Stack, 29 Fusting Avenue, Catonsville MD 21228
Douglas Hamilton, 23 Fusting Avenue, Catonsville MD 21228
Angela Lunczynski, 23 Fusting Avenue, Catonsville MD 21228
Brian Nippard, 19 Egges Lane, Catonsville MD 21228

Angela Lunczynski
23 Fusting Ave.
Catonsville, Md 21228
410-744-1971
C- 410-476-7522
W- 410-684-7288

September 21, 2007

Baltimore County Zoning Commission
Att: Thomas H. Bostwick, Deputy Zoning Commissioner for Baltimore County
111 West Chesapeake Ave.
Room 111
Towson, Maryland 21204

Dear Mr. Bostwick,

I am appealing your decision to approve the petition for Special Exception and Variance in Case # 07-535-SPHXA, dated September 10, 2007.

Regards,

Angela M Lunczynski

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OCT 05 2007
Per

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

October 23, 2007

Lawrence Schmidt
Gildea & Schmidt
600 Washington Avenue, Ste. 200
Towson,MD 21204

Dear Mr. Schmidt:

RE: Case: 07-535-SPHXA, 19 Fusting Avenue

Please be advised that an appeal of the above-referenced case was filed in this office on October 5, 2007 by Angela Lunczynski. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Bruce Doak, 320 E. Towsontown Blvd., Ste. 100, Towson 21286
Natalie Holland, 515 Fairmount Avenue, Towson 21204
Leena Hoover, Genesis Health Care, 16 Fusting Avenue, Catonsville 21228
Scott Westcoat, 14 Fusting Avenue, Catonsville 21228
Pat Stack, 29 Fusting Avenue, Catonsville 21228
Douglas Hamilton & Angela Lunczynski, 23 Fusting Avenue, Catonsville 21228
Brian Nippard, 19 Egges Lane, Catonsville 21228

APPEAL

Petition for Special Hearing, Special Exception & Variance
19 Fusting Avenue
N/side of Fusting Avenue, 137' N c/l Howard Avenue
1st Election District – 1st Councilmanic District
Adam Skolnik – Owner
Keith Nause (Genesis Health Care) – Contract Purchaser

Case No.: 07-535-SPHXA

✓ Petition for Special Hearing/Special Exception/Variance (May 25, 2007)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (June 26, 2007)

✓ Certification of Publication (The Jeffersonian – July 24, 2007)

✓ Certificate of Posting (July 20, 2007) by John Dill

✓ Entry of Appearance by People's Counsel (June 7, 2007)

✓ Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet – None

✓ Citizen(s) Sign-In Sheet – One Sheet

✓ Zoning Advisory Committee Comments

Petitioners' Exhibit
- ✓ 1. Site Plan
- ✓ 2. Zoning Decision
- ✓ 3. (A & B) Photos
- ✓ 4. Site Plan & Photos (A thru U)

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OCT 24 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Protestants' Exhibits:
- ✓ 1. Email from Pat Turner
- ✓ 2. Email from Helen Sheeler
- ✓ 3. Email from Angela Lunczynski

Miscellaneous (Not Marked as Exhibit)
- ✓ 1. Letter from Deputy Zoning Commissioner dated August 8, 2007
- ✓ 2. Email dated 8/8/07 from Angela Lunczynski
- ✓ 3. Email dated 8/8/07 from Marilou Judd
- ✓ 4. Email dated 8/9/07 from Scott Westcoat
- ✓ 5. Hearing Memorandum in Lieu of Closing Argument from Lawrence Schmidt

✓ Deputy Zoning Commissioner's Order (GRANTED w/restrictions – 9/10/07))

✓ Notice of Appeal received on October 5, 2007 from Angela Lunczynski

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Lawrence Schmidt
Adam Skolnik
Keith Nause
Bruce Doak
Natalie Holland
Leena Hoover
Scott Westcoat
Pat Stack
Douglas Hamilton & Angela Lunczynski
Brian Nippard

date sent October 24, 2007, klm

IN THE MATTER OF:	*	BEFORE THE
Adam Skolnik – *Legal Owner*	*	COUNTY BOARD OF APPEALS
Genesis Health Care/Keith Nause – CP 19 Fusting Avenue	*	OF BALTIMORE COUNTY
	*	Case No.: 07-535-SPHXA
1st Election District 1st Councilmanic District		

* *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday, July 29, 2008, at 11:00 a.m. in Hearing Room #2, Jefferson Building, located at 105 W. Chesapeake Avenue, Second Floor, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and scheduled by the Board.

Witness: David Snook
Address: 111 W. Chesapeake Avenue, Suite 307
Towson, MD 21204

Requested by:

Name: Lawrence E. Schmidt, as attorney for Genesis Health Care, Inc.
Firm: Gildea & Schmidt, LLC

Address: 600 Washington Avenue, Suite 200
Towson, MD 21204

The witness named above is hereby ORDERED to so appear before the County Board of Appeals. The Board requests (_) the Sheriff, (X) Private Process Server, to issue the summons set forth herein.

Sunny Cannington
County Board of Appeals of Baltimore County

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JUL 24 2008
BALTIMORE COUNTY
BOARD OF APPEALS

GILDEA & SCHMIDT, LLC
600 WASHINGTON AVENUE
SUITE 200
TOWSON, MARYLAND 21204
TELEPHONE 410-821-0070
FACSIMILE 410-821-0071
www.gildeallc.com

DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN

SEBASTIAN A. CROSS
CHARLES B. MAREK, III
JASON T. VETTORI

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FEB 23 2009
BALTIMORE COUNTY
BOARD OF APPEALS

February 23, 2009

Ms. Theresa R. Shelton
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Genesis Health Care/19 Fusting Avenue
Case No.: 07-535-SPHXA

Dear Ms. Shelton:

Thank you for the copy of your letter to Mr. Tanczyn of today's date advising that my Motion for Reconsideration in the above matter was timely filed.

Not only is the Board's acceptance of the Motion consistent with its' administrative practice; it is also consistent with the mandatory provisions of law. Baltimore County Code, Section 1-2-203, provides that a period of time shall be calculated as provided in the Maryland Rules of Procedure, specifically, Rule 1-203. That Rule clearly states that if the deadline for the filing of a pleading or paper falls on a weekend or holiday, then the deadline is extended until the next day that the Court is open for business. Thus, the filing of the Motion on Tuesday, February 17, 2009 was appropriate and timely.

This is to further acknowledge that the Board will conduct its' deliberation on March 17, 2009 at 9:00 a.m.

Thank you for your cooperation regarding this matter and past courtesies.

Very truly yours,

Lawrence E. Schmidt

LES: jk
CC: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Michael P. Tanczyn, Esquire
Natalie P. Holland, Genesis Health Care

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE
SUITE 200
TOWSON, MARYLAND 21204
TELEPHONE 410-821-0070
FACSIMILE 410-821-0071
www.gildeallc.com

DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN

SEBASTIAN A. CROSS
CHARLES B. MAREK, III
JASON T. VETTORI

RECEIVED
MAR - 5 2009
BALTIMORE COUNTY
BOARD OF APPEALS

March 3, 2009

Ms. Theresa R. Shelton
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Genesis Health Care/19 Fusting Avenue
Case No.: 07-535-SPHXA

Dear Ms. Shelton:

I have no desire to further add to the Board's paper file for this matter. Nonetheless, I feel compelled to briefly respond to Mr. Tanczyn's letter of February 25, 2009, and People's Counsel's answer to my Motion for Reconsideration:

1. Mr. Tanczyn arguments regarding the computation of time (as endorsed by People's Counsel) are without merit. A simple reading of Maryland Rule 1-203(a) (as adapted by BCC § 1-2-203) will suffice. The operative "event" in this case is the Board's Order of January 16, 2009. The time limit for the Motion for Reconsideration occurs after that event, not before. This matter is not governed by Rule 1-203(b) as is, for example, the time limits for the filing of memorandum before a hearing as set out in Rule 7-107. The cases cited by People's Counsel, which were decided before the adoption of the current Maryland Rules, have no application.

2. Contrary to People's Counsel's assertion, I am offering no additional evidence. The Motion for Reconsideration is new legal argument (that a "practical restriction" causes the subject property to be unique) that the Board did not previously consider. This argument was enunciated in Trinity Assembly of God of Baltimore County, Inc. v. People's Counsel of Baltimore County, 407 Md. 53 (2008). As the Trinity opinion was issued after the hearing and deliberation, I am asking the Board to reconsider the matter in light of same.

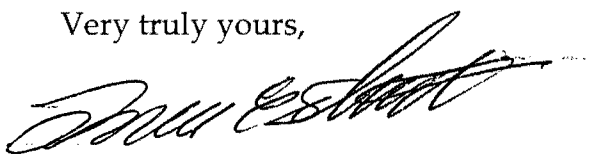
3. The "practical restriction" imposed by the neighboring property on the Genesis lot is not simply the existence of the single family dwelling. It is the fact, as stated in the

RTA regulations, that this dwelling is within 150 feet of the property line. In my view, this creates a practical restriction, as contemplated by the Trinity Court.

4. Finally, contrary to People's Counsel's assertion, my argument does not require that every RTA variance be granted. The argument relates solely to one prong of the test which need be applied; namely whether the property is unique. Moreover, this argument is valid only in limited circumstances, i.e. when the adjacent property features a detached dwelling within 150 feet of a property line, when the subject property is proposed for a parking lot, when the subject property is narrower than 75 feet, etc. Only when all of these facts exist is my argument valid. Finally, my argument does not relate to financial return or economics, rather if the property can be used for an expressly permitted purpose.

I believe it necessary that the above points be emphasized in the record of this case. Thank you for your consideration and past courtesies.

Very truly yours,



Lawrence E. Schmidt

LES: jk
CC: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Carole S. DeMilio, Esquire, Deputy People's Counsel for Baltimore County
Michael P. Tanczyn, Esquire
Natalie P. Holland, Genesis Health Care

GILDEA & SCHMIDT, LLC
600 WASHINGTON AVENUE
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TELEPHONE 410-821-0070
FACSIMILE 410-821-0071
www.gildeallc.com

DAVID K. GILDEA
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SEBASTIAN A. CROSS
CHARLES B. MAREK, III
JASON T. VETTORI

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JUN 25 2009
BALTIMORE COUNTY
BOARD OF APPEALS

June 25, 2009

Via Hand Delivery
Ms. Theresa R. Shelton
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Genesis Health Care/19 Fusting Avenue
Case No.: 07-535-SPHXA

Dear Ms. Shelton:

As we discussed, enclosed please find the County Board of Appeals transcripts for the June 3, 2008, July 23, 2008 and July 29, 2008 hearing dates held for the above matter to be included in the record transmitted to the Circuit Court for Baltimore County. As these transcripts were already prepared, it is not required for the Court Reporter to prepare another copy for the purpose of the appeal. Thank you for your cooperation in this matter.

Very truly yours,

Lawrence E. Schmidt

LES: jkl
Enclosures

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827
Email: mptlaw@verizon.net

RECEIVED
FEB 26 2009
BALTIMORE COUNTY
BOARD OF APPEALS

February 25, 2009
#2007-083

County Board of Appeals of Baltimore County
Attn: Mrs. Theresa R. Shelton, Administrator
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

RE: Genesis Health Care
19 Fusting Avenue
Case 07-535 SPHXA

Dear Ms. Shelton:

Thank you for your letter of February 23, 2009. I would like to respond to that letter as Mr. Schmidt did by his February 23, 2009 letter which I received today in the mail. Our position that the Motion for Reconsideration was not timely filed is based on the plain language of the Board of Appeals, Rule 10, Motion for Reconsideration. The Rule requires that the Motion "shall be filed within thirty (30) days after the date of the original Order." The word "within" used in the Rule would be rendered meaningless by the interpretation stated in your response of February 23, 2009. It is also important for the Board to remember and consider that Md. Rule 1-203, Section B, is applicable to this circumstance which states: "the latest date for filing is included in the determination unless it is a Saturday, Sunday or holiday, in which event the latest day is the first preceding day which is not a Saturday, Sunday or holiday. Giving effect to the word "within," and not treating it as surplusage which is a cardinal rule of the statutory construction would mean that the Motion for Reconsideration would have been timely filed as received by the Board by close of business on February 13, 2009.

The word "within" was intentionally included in the Rule when enacted into law. Because a party contemplating an appeal is required to file an appeal within thirty (30) days of the Board's Order, the requirement to file a motion for reconsideration within thirty (30) days will allow all parties to a case to know that a motion for reconsideration has been filed and the time within which to note an appeal has been extended. The following example will illustrate this point.

If the Board of Appeals in considering either consolidated cases involving the same property or multiple petitions for zoning relief entered Order that some relief would be granted and some relief would be denied, numerous appeals would be possible presuming it was a contested case. As the Board is aware, the parties are allowed to appeal some part of a decision and can specifically limit their appeals to only part of the Board's decision. It would be unfair

under those circumstances, for only one side to file a Motion for Reconsideration after the 30 day period because had the Motion for Reconsideration been filed within the thirty days called for in the Rule, the other side might have noted its own Motion for Reconsideration on other items decided adversely to its position. Board Rule 10 is designed as written to set up an orderly method which would allow in the example presently before the Board, all parties to know that a Motion for reconsideration was filed within the 30 days which would afford them an additional day or two consider their options on any decision of the Board decided adversely to their position including a petition for judicial review. If the Board simply analyzes the statute with and without the word "within," included, the Board can draw its own conclusions as to the "within 30 days" requirement in mandatory language as stated in the Rule. If the Rule stated by contrast "a party has thirty days to file a Motion for Reconsideration," that would be different. But that is not what this Rule says, and therefore, we continue to hold the position that the Motion for Reconsideration was untimely filed.

Please bring this to the attention of the Board so that they can consider it when they deliberate on March 17, 2009.

Very truly yours,

Michael P. Tanczyn

MPT:aes
cc: Lawrence E. Schmidt, Esquire
Carole S. Demilio, Esquire
Angela Lunczynski

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Office and Print Center

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DAY ONE

Fax Cover Sheet

Date 7/23/08

Number of pages 1 (including cover page)

To:

Name BOARD OF APPEALS

Company JEFFERSON BL. 6.2ND FLOOR Suite 203

Telephone —

Fax 410-887-3182

From:

Name Jessie Bruce

Company resident 16 Howard Ave Balto. Md 21228

Telephone 410-747-8842

Comments re: case #07-535-SPHXA Genesis Healthcare

7 90363 00711 1 Fax - Local Send

7 0363 00714 2 Fax - Domestic Send

7 90363 01476 8 DOMESTIC Send Addl Pages

7 90363 00720 3 Fax - International Send

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DAY ONE

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JUL 24 2008
BALTIMORE COUNTY
BOARD OF APPEALS

TO:
BOARD OF APPEALS
JEFFERSON BLDG 2ND fl
Suite 203
105. W. Chesapeake Ave
Towson, Md. 21204

July 22nd 2004

RE: CASE#
07-535-SPHXA
General Healthcare

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POST - HEARING
DAY ONE

To Whom it concerns.

I am formally filing a complaint to be documented against the new parking lot proposed for the middle of Fusting Ave. I have lived in Catonsville all my life, am a homeowner and am very concerned about Catonsville's development. I've taken an active participation in the neighborhood association and I believe the allowance will bring more traffic, increased transience, loiterers, vandalism, noise, aggressive drivers, all of which the neighborhood is saturated with already.

I am asking you not to allow the exception. This would only allow more businesses creeping further into the neighborhood.

RECEIVED
POST - HEARING
DAY ONE

Sincerely,
Janice Mease
162 Howard Ave
Balto. Md. 21228
410-747-8842

Thomas Bostwick - Case number 07-535-SPHXA

From: Scott Westcoat <scott@asgsports.com>
To: <tbostwick@baltimorecountymd.gov>
Date: 08/09/07 12:33 PM
Subject: Case number 07-535-SPHXA
CC: <bccdistrict1@comcast.net>, <jimsmith@baltimorecountymd.gov>, <james.malone@house.state.md.us>, <steven.deboy@house.state.md.us>, <senator@sarbanes.senate.gov>, <governor@gov.state.md.us>, <senator@mikulski.senate.gov>

Mr Bostwick,

I wanted to take the time to thank you for the forum in which citizens from the Central Catonsville neighborhood surrounding the 19 Fusting Avenue property, were given as an opportunity to raise concerns and question the legality of amending the current zoning by attaching to the previous 47 year old, amended ruling allowing a nursing home facility to operate in a DR 5.5 zone.

As it was very apparent, the matter is extremely polarized in the feelings that the best use of the 19 Fusting Avenue property would for it to become a parking lot given the current renaissance that the immediate area has experienced. I personally have lived in the neighborhood with my wife and 2 children, both under the age of 7, for the past 11 years. I can only directly attribute this to the influx of home owners as opposed to real estate investors. It is the single family home owners who have taken the time to create more of a neighborhood feel that can only come from pride in ownership and having a true vested interest in their real property value.

With the amendment that is being sought and the significant investment that Genesis has already undertaken and additional steps they are proposing to develop a "very unique", highly modified parcel of residentially zoned land, does not seem like a prudent use of funds given the fact that the net space gain is modest at best. I am afraid that this is just another encroachment into the current DR 5.5 zoning that seems to be an invitation for future variances, amendments and expansion that further deviates from the programs that are actually working during the revitalization of our older neighborhood.

I appreciate the opportunity to voice some of my personal concerns as it was disheartening and actually quite insulting to hear the retained legal council for the Genesis Group arrogantly state that "WE OWN THE PROPERTY" AND WE SEE THE BEST USE AS A PARKING LOT. This without any input or even an attempt to reach out to the homeowners that surround their newly purchased property that was advertised as a SINGLE FAMILY HOME up until their $199K purchase with the sole intention of redevelopment.

I do question the actual NEED for such an undertaking given the current usage of existing facility parking spaces that go unused on a regular basis. The property does currently have designated, easily accessed Ambulance, Doctor and visitor parking spaces, The staff/emergency entrance that faces Fusting Avenue does have a posted Fire Lane available for Emergency Vehicles but it is this area that seems to be used as convenient parking for staff rather than parking in unused spaces in the rear of the facility.

We can only hope that your verdict takes into consideration the spirit of the current zoning of the property when applying the letter of the law as to provide for the future stability of this community.

Very truly yours,

Scott Westcoat
14 Fusting Avenue
Catonsville, MD 21228
443.277.2600

Scott Westcoat
ASG Sports, Inc.
First Mariner Arena
201 W Baltimore St.
Baltimore, MD 21201

P-443.277.2600

www.asgsports.com

Thomas Bostwick - Fw: Case number 07-535-SPHXA

From: <Mjudd@Samuel.com>
To: <tbostwick@baltimorecountymd.gov>
Date: 08/08/07 4:26 PM
Subject: Fw: Case number 07-535-SPHXA
CC: <wwiseman@baltimorecountymd.gov>

Sir,

I, along with many of my neighbors are extremely upset and disturbed by this parking lot situation for Genesis. I live at 21 Fusting Ave. and already have one parking lot behind my house. I am a single mom, trying to raise two small boys. I am concerned that if a parking lot is made at 19 Fusting Ave, it will endanger the safety of my children. This parking lot will be right next to my house. One of the reasons I bought my house is because it is directly behind 23 Fusting and you cannot see my house from the street, making me feel safe. With this parking lot, not only will people see my house, they will be able to: cut through my yard, be loud during shift change (waking up my children), have the opportunity to break into my home or my vehicle, vandalize my property, litter in my yard, etc. My biggest issue is the safety of my children. There may not be anything that I or anyone else can do to stop this, but please keep in mind, when making this decision, how it will affect the neighbors that live in the neighborhood.

My 6 and 2 year old boys love being able to go out in the yard and play. I can watch them from my front my porch and know they are OK. With a parking lot right there, I fear this might not be possible. Not all, but some of the employees at Genesis are loud, rude, and obnoxious. They speed down our road, turn car radios all the way up, and speak loudly on their cell phones as it is. And that is from across the street! I can only imagine how it will be when they are right there, next to my house. I do not want to put my children in danger, and if you have children, I am sure you understand what I am talking about. The world is already scary enough, this is just added stress to hard-working families that do not need it and can't afford to move.

Please try to understand where we are coming from and help us.

Thank you.

Marilou Judd
Samuel Son & Company
(Tel) 410-234-2828 Ext. 103

----- Forwarded by Marilou Judd/USA/Samuel on 08/08/2007 03:33 PM -----

angelalunczynski@na.cokecce.com

08/08/2007 03:26 PM

To tbostwick@baltimorecountymd.gov

cc mjudd@samuel.com, scott@asgsports.com, btnip@aol.com, bccdistrict1@comcast.net, steven.deboy@house.state.md.us, james.malone@house.state.md.us, edward.kasemeyer@senate.state.md.us, senator@mikulski.senate.gov, senator@sarbanes.senate.gov, governor@gov.state.md.us

Subject Case number 07-535-SPHXA

I'd like to take a moment to thank you for taking the time to listen to a few of the concerned residents, that surround 19 Fusting Ave. Few of us were able to take the time from work, and we appreciate your allowing us the

opportunity to express our concerns. I'll apologize now as brevity in writing is not my strong suit. Your patience now as it was yesterday is very much appreciated. Those of us who spoke are not professionals, and the process was a bit foreign to us.

We live in the environment created by our neighbors every day, and as our neighbors have an impact on both our physical, and fiscal qualities of life, you can imagine tensions were a bit high and we were all very apprehensive. We realize that the issue at hand is a legal one, and we will anxiously await your interpretation of the law governing the "Exception" applied in 1960 to the property at 16 Fusting Ave. and the current owner, Meridian's right to apply that "Exception" to any property they buy and deem as part of the Convalescent Home. We are very concerned that this is purely profit motivated and that the creation of the excess parking spaces will make future zoning variances for expansion of the Convalescent home even easier to get. I'm sure that it was not arrogance alone that guided the decision of Meridian to invest $190,000 plus considerable expenses for professional services, on the lot at 19 Fusting. I do not believe that a business would act only on the premise of deep pockets and connections to win a variance that will in the end provide them no further return. Thus, Mr. Schmidt must truly believe that the center has a legal right to put a parking lot, without the proper set backs, on this lot. Genesis must believe that the funds they are investing now will be returned in greater profitability later, I'm sure they know what there ROI is and when it will be met. I truly hope that if this parking lot comes to fruition that the neighbors, who have painstakingly worked to build a home for their families, will be taken into consideration with as much regard for limitations on future expansion, enforceable guidelines for care and maintenance of the lot, and guidelines for execution with as little impact to the community as possible. I hope that the ruling will identify future maintenance requirements (cleanliness, immediate removal of any graffiti, and immediate repair of anything that deteriorates), heavy landscaping, low lighting if at all, and the addition of speed bumps on Fusting. I also believe that the financial impact on adjacent residents should be a consideration.

I physically watched the gentleman as he removed the yellow Charter Homes LLC, Single Family home for Sale sign, that had been posted, and hammered in the Hearing posting. I know this is inconsequential to the legality of the zoning of the property. However, the property transferred on June 21, 2007 according to real property records, which means that assuming absolutely no leg work was done by legal council for Meridian prior to June 21, those people who want to act in a manner not in compliance with the zoning laws had at the very least 47 days to prepare for this hearing. Those of us in compliance, being protected by the zoning laws, had 17, during which time we had to find some hours not already allocated to other obligations to prepare to defend the aesthetic, and financial values of our homes and our community.

Two brief side notes. 1.) The Jeffersonian, is a Towson, MD based newspaper, 409 Washington St., Towson, Md. distributed on Tuesday and Thursday only, with a circulation rate of "around 10,000", as stated by the classified agent I spoke with at The Jeffersonian. Also, the paper is distributed in majority by subscription only, with only 2 newsstand locations in the 21228 zip code (Royal Farms on Edmonson, and 7/11 on Rolling Rd). The paper is geared toward business owners, not regular citizens, see below.

The Jeffersonian

The Jeffersonian - Baltimore County's Business Newspaper.
www.the**jeffersonian**.com/

2.) I found it quite distressing that the only way information could be distributed to me was for me to take more time off of work and visit the county court house. Yet, Mr. Schmidt, who has the advantage of knowing everyone in and on the zoning commission, as he once sat upon it, was "forwarded" email correspondence from the Protestants by employees of the zoning commission, giving him ample time to rebut any issues brought up by them. As well, his hours spent visiting the court house are billable, ours, the Protestants, are not.

Thank you again for your time and your patience.

Regards,

Angela Lunczynski

NEBU-Procurement
O 410.684.7288
C 410.476.7522
F 410-684-7190

Thomas Bostwick - Case number 07-535-SPHXA

From: <angelalunczynski@na.cokecce.com>
To: <tbostwick@baltimorecountymd.gov>
Date: 08/08/07 3:27 PM
Subject: Case number 07-535-SPHXA
CC: <mjudd@samuel.com>, <scott@asgsports.com>, <btnip@aol.com>, <bccdistrict1@comcast.net>, <steven.deboy@house.state.md.us>, <james.malone@house.state.md.us>, <edward.kasemeyer@senate.state.md.us>, <senator@mikulski.senate.gov>, <senator@sarbanes.senate.gov>, <governor@gov.state.md.us>

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Regards,

Angela Lunczynski
NEBU-Procurement
O 410.684.7288
C 410.476.7522
F 410-684-7190

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

TO: Larry S..
Wendell
Andy

DATE: March 2, 2009

FROM: Theresa

RE: Deliberation – Motion for Reconsideration and Answer to Motion for Reconsideration (filed untimely)

Genesis Health Care / 07-535-SPHXA

Attached is the following:

1) Motion for Reconsideration filed by Mr. Schmidt – already provided
2) Response that Motion was Untimely
3) My letter dated 2/23/09, explaining that the 30th day was a Sunday, then Monday was a Holiday and the Motion was received when the Office opened on Tuesday
4) Letter from Mr. Schmidt dated 2/23/09 RE: Boards acceptance of Motion
5) Supplement to Response to Motion citing cases filed by Mr. Tanczyn
6) People's Counsel Answer to Motion w attachments; and finally
7) Ltr and Amedned Notice to include Response in Deliberation
8) Ltr from Mr. Tanczyn, dtd 2/25/2009 RE: word usage 'within'
9) Reply from Mr. Schmidt

Thank you

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence
Phone: 410-887-3180 Fax: 410-887-3182

DATE: March 8, 2010

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Sunny Cannington, Legal Secretary
Board of Appeals

SUBJECT: CLOSED APPEAL CASE FILES/CASES DISMISSED

The following cases have been closed as of the above date and are being returned to your office.

Case No:	Case Name:
07-535-SPHXA	Genesis Healthcare – Contract Purchaser (Adam Skolnik-Legal Owner)

TRANSMISSION VERIFICATION REPORT

TIME : 10/28/2008 13:47
NAME : BOARD OF APPEALS
FAX : 4108873182
TEL : 4108873180
SER.# : 000K7N258308

DATE,TIME	10/28 13:46
FAX NO./NAME	94108210071
DURATION	00:00:41
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

Post-it® Fax Note 7671	Date 10 28 08 # of pages ▶ 2
To Larry Schmidt	From Sunny
Co./Dept.	Co. Bd of Appeals
Phone # 410-821-0070	Phone # 410-887-3180
Fax # 410-821-0071	Fax # 410-887-3182

Cancels

Minutes faxed to Larry Schmidt

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: GENESIS HEALTHCARE 07-535-SPHXA
KEITH NAUSE-LEGAL OWNER

DATE: October 22, 2008

BOARD/PANEL: Lawrence Stahl
Andrew Belt
Wendell Grier

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate an appeal of the following:

1. Petition for Variance to allow parking lot with a 13.7' buffer and setback in lieu of the required 50' RTA setback.
2. Petition for Special Hearing to amend the previous Special Exception granted in Case 5006-XA to add a parking area to a previously approved Assisted Living Facility
3. Petition for Special Exception to use property for a convalescent home.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board debated Uniqueness under Cromwell v. Ward and found that the testimony and evidence provided indicates that the physical characteristics of the property do not make the property unique. It was argued that the property was narrow and therefore unique, however, based on testimony and evidence, numerous other properties in the area are also narrow.
- The Board reviewed the statute, 1B01.B.1.c, a Variance of an RTA requires a recommendation from several County agencies and a hearing officer decision with requirements. The hearing officer must determine if the variance will cause an adverse effect on the surrounding community.
- The Board found that the statute argument was not made below. While this is a de novo hearing, no evidence was presented at the hearing to warrant the Variance under 1B01.B.1.c.
- The arguments were consistently made that the circumstances of the property make the property unique. The Board argued that this was a circuitous argument. The property owner cannot claim that the variance should be granted because while the property is not unique the use of the property will be unique if the Board lets it happen.
- The Board found that the decision of the Variance would determine whether the Special Hearing and Special Exception relief needed to be addressed.

DECISION BY BOARD MEMBERS: The property does not meet the uniqueness requirements of Cromwell v. Ward. The granting of the variance would have an adverse effect on several of the properties in the surrounding community. The evidence and testimony does not support the granting of a variance for this property under the statute 1B01.B.1.c. The Board also decided that the Variance was the decision that would effect whether they moved forward with the Special Hearing or Special Exception.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Variance. The Board also agreed that the Special Hearing and Special Exception were rendered MOOT due to the denial of the Variance.

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

Respectfully Submitted,

Sunny Cannington

Sunny Cannington

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: GENESIS HEALTHCARE 07-535-SPHXA
KEITH NAUSE-LEGAL OWNER

DATE: March 17, 2009

BOARD/PANEL: Lawrence Stahl
Andrew Belt
Wendell Grier

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of the Petitioners; and
2. Response to Motion for Reconsideration filed by Michael Tanczyn, Esquire on behalf of the Protestants.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The first issue discussed was whether the Motion for Reconsideration was filed in a timely manner. The Board felt that it was.
- Generally the law requires that fraud, mistake, irregularity, new law or new evidence not known about at the original hearing, be presented in order to grant a Motion for Reconsideration.
- In this instance, new law has been presented. The Court of Appeals issued an Opinion in *Trinity Assembly of God v. People's Counsel* after the hearing and deliberation in this matter. In that case, the Court discusses the requirements to grant a variance. The Board feels that while the issues discussed by the Court are relevant to Variances, they do not apply to this particular case because of the RTA zoning on the adjacent properties.
- The Board stands by their original decision which was that the land itself needs to have some peculiarity that makes it unique in relation to other properties in the area. By arguing that the Zoning of the adjacent parcel makes the subject property unique or that the use of the property will make the property unique does not fit the requirements of *Cromwell v. Ward.* The RTA zoning was made to grant certain distances that other zones do not need. Granting a variance in an RTA zone would nullify the RTA zoning.

DECISION BY BOARD MEMBERS: The Board members decided that the Motion for Reconsideration was filed in a timely manner. The Board feels that while new law was

presented to support the Motion for Reconsideration, the new law does not change anything in this particular case.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Motion for Reconsideration.

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

Respectfully Submitted,

Sunny Cannington

Sunny Cannington

PLEASE PRINT CLEARLY

CASE NAME Guess's
CASE NUMBER 07-535-SPHA
DATE 8/9/07

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Lawrence E Schmidt	600 Washington Ave Ste 200	Towson MD 21204	
Leana Hoyet	16 Fusting Ave	Catonsville, MD 21228	
Bruce Doak	320 E. Towsontown Blvd	Towson Md 21286	
Gormley Cross & Eitel			
Natalie Holland	515 Fairmount Ave Towson MD		

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER 07-535-SPHA
DATE 8/7/07

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
SCOTT WESTCOAT	14 Fusting Ave.	Catonsville, MD 21228	westcoat@mac.com
Pat Stack	29 Fusting Ave.	" " 21228	
DOUGLAS HAMILTON	23 FUSTING AVE	CATONSVILLE MD 21228	dhamiltonili@gmail.com
ANGELA LUNCZYNSKI	23 FUSTINGAVE.	CATONSVILLE MD 21228	matsmaven@yahoo.com
BRIAN NIPPARD	19 EGGES LANE	CATONSVILLE, MD 21228	btwip@aol.com

Board of Appeals Hearing — June 3, 2008

Case # 07-535-SPHXA

Protestants:

Patricia A. Stack	29 Fusting Ave, 21228
Elena DeBoldel	29 Fusting Ave, 21228
Brian Nippard	19 Eggles Lane 21228
ANGELA LUNCZYNSKI	23 FUSTING AVE
FR. W. Terry Sweeney	202 Ingleside Ave 21228
SCOTT A. WESTCOAT	14 Fusting Ave. 21228

PETITIONER'S EXHIBITS

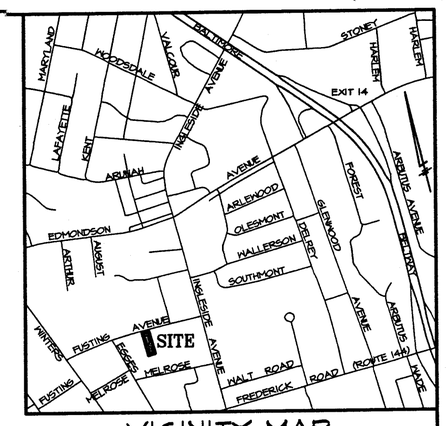
20070535 "A"
supplemental

(3)

Verified 7-23-08 Verified 7/29/08

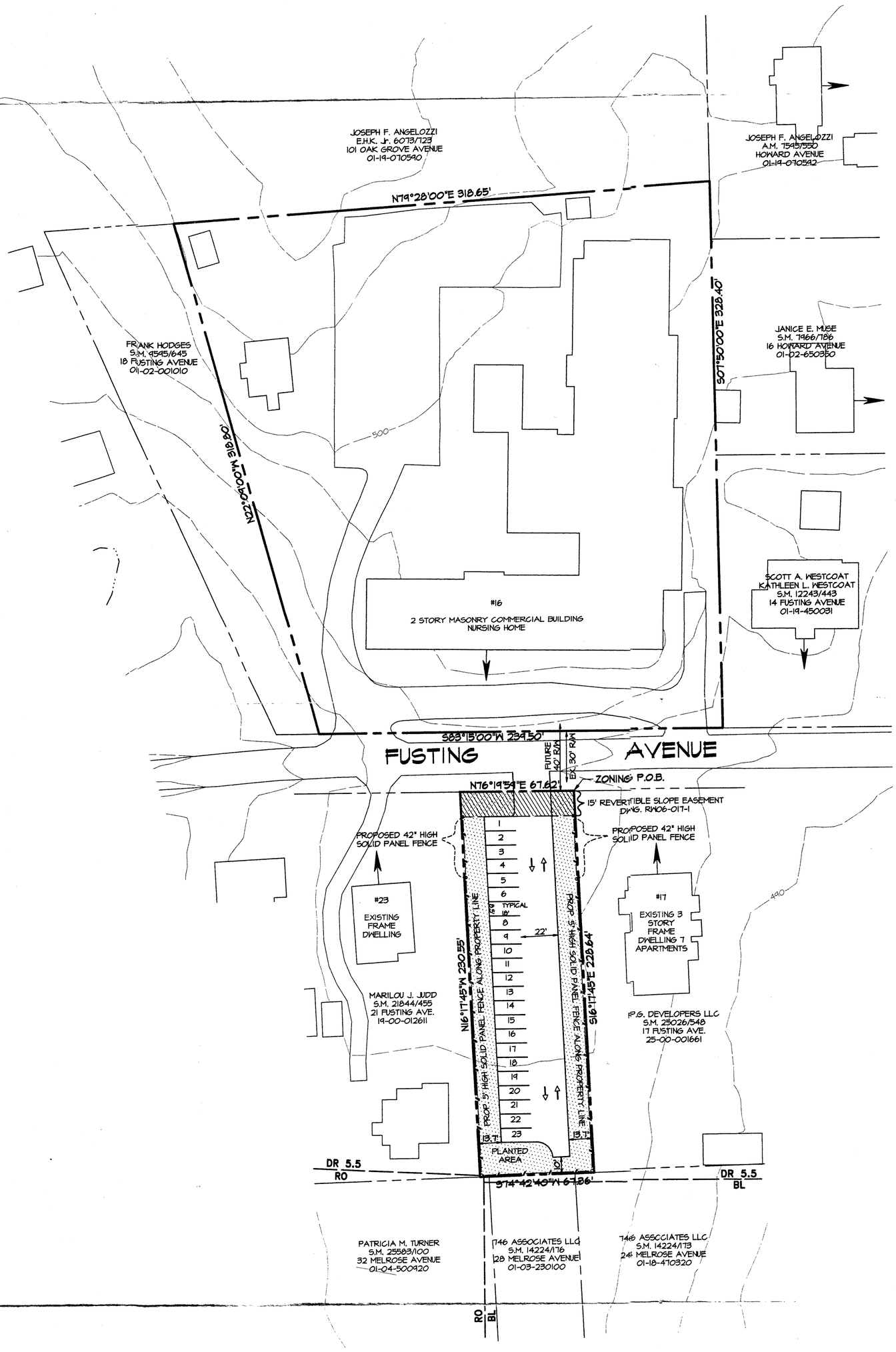
Petition Ex 7/23/08

1. Site Plan - Plat to Accompany - Spec Ex.
2. Aerial Photo of Site A-B
3. Plat to accompany photos
4. Photos of Site - 4A-U
5. Petition for Special Exception
6. Tax/Zoning Map for Subject Vicinity - Large Board - IN EXHIBIT BIN-CLOSET
7. Minor Sub Div. Plan
8. Title Page of Md. Storm Water Design Manual - Tim Shuller
9. Public Work - Storm water Plat
10. Soil Publication regarding Soil at Site
11. Small Drawing regarding water flow / Hydro Graph /
12. Balto. Photometric Map



VICINITY MAP
1" = 2000'

DEED S.M. 25026/542



GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM DEED S.M. 25026/542.
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 101A1.
3. CENSUS TRACT 401000, REGIONAL PLANNING DISTRICT 324
   WATERSHED PATAPSCO SUBSEWERSHED 76
   SCHOOL DISTRICT: ELEMENTARY - CATONSVILLE E.S.; MIDDLE - ARBUTUS M.S.;
   HIGH - CATONSVILLE H.S.
   A.D.C. MAP & GRID 41 D3
4. THERE IS A KNOWN PRIOR ZONING CASE ON THE SUBJECT PROPERTY. #5006-XA
5. REVISION OF PLAT "MINOR SUBDIVISION #17 FUSTING AVENUE" PDM PROJECT No. 05-077-M
6. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
7. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
8. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
9. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PUBLIC WATER AND SEWER SYSTEMS.
10. THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.

LEGEND

- PLANTED AREA
- EXISTING BUILDING
- EXISTING PAVING
- PROPOSED PAVING
- ZONING LINE
- PROPERTY LINE
- CONTOURS

VARIANCE REQUESTED

1B01.1B.1.e.5 (B.C.Z.R.) TO ALLOW A PARKING LOT WITH A 13.7 FOOT BUFFER AND SETBACK IN LIEU OF THE REQUIRED 50 FOOT RTA BUFFER AND 75 FOOT RTA SETBACK

SPECIAL HEARING REQUESTED

AN AMENDMENT TO THE PREVIOUS SPECIAL EXCEPTION GRANTED IN CASE 5006-XA TO ADD PARKING AREA TO A PREVIOUSLY APPROVED ASSISTED LIVING FACILITY

SPECIAL EXCEPTION REQUESTED

TO USE THE HEREIN DESCRIBED PROPERTY FOR A CONVALESCENT HOME AS PER SECTION B.C.Z.R. SECTION 1B01.C3

STATE OF MARYLAND
BRUCE EDWIN DOAK
No. 831
REGISTERED
PROPERTY LINE SURVEYOR
5/22/07

PLAT TO ACCOMPANY A REQUEST FOR VARIANCE A SPECIAL EXCEPTION AND A SPECIAL HEARING

P.G. DEVELOPERS, LLC PROPERTY

19 FUSTING AVENUE
Deed Ref: S.M. No. 25026 folio 542
Tax Account No.: 25-00-001660
Tax Map 101; Grid 8; Parcel 1318
16 FUSTING AVENUE
Deed Ref: E.H.K. Jr. No. 7236 folio 210
Tax Account No.: 01-08-652440
Tax Map 101; Grid 2; Parcel 33
Zoned DR 5.5; GIS Tile 101A1
1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=40' Date: MAY 2, 2007

REVISION	DATE
REVISIONS REQUESTED DURING ZONING SUBMITTAL	5/16/07

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

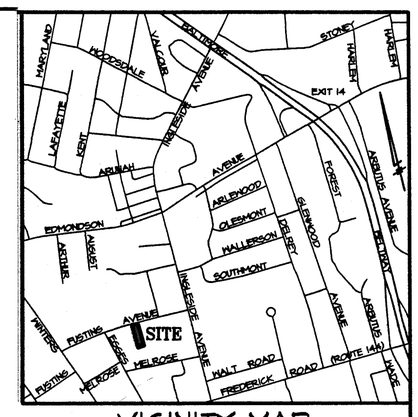
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PETITIONER'S
EXHIBIT NO. 1
BOARD



Bd App Rt 6v 24 Sub. 7/23/08

Bd App. Pt + Ex 2B
Wml 7/23/08



VICINITY MAP
1" = 2000'

DEED S.M. 25026/542

JOSEPH F. ANGELOZZI
E.H.K. Jr. 6073/123
101 OAK GROVE AVENUE
01-19-070540

JOSEPH F. ANGELOZZI
A.M. 7545/550
HOWARD AVENUE
01-19-070542

N79°28'00"E 318.65'

FRANK HODGES
S.M. 9545/645
18 FUSTING AVENUE
01-02-001010

N21°08'00"W 305.22'

S07°50'00"E 328.40'

JANICE E. MUSE
S.M. 7966/186
16 HOWARD AVENUE
01-02-650350

500

#16
2 STORY MASONRY COMMERCIAL BUILDING
NURSING HOME

SCOTT A. WESTCOAT
KATHLEEN L. WESTCOAT
S.M. 12243/443
14 FUSTING AVENUE
01-19-450031

S83°15'00"W 239.50'

FUSTING AVENUE

FUTURE 40' R/W

30' R/W

ZONING P.O.B.

N76°19'54"E 67.82'

15' REVERTIBLE SLOPE EASEMENT
DWG. R-06-017-1

PROPOSED 42" HIGH SOLID PANEL FENCE

PROPOSED 42" HIGH SOLID PANEL FENCE

#23
EXISTING FRAME DWELLING

#17
EXISTING 3 STORY FRAME DWELLING & APARTMENTS

1 2 3 4 5 6 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23

TYPICAL 18'

22'

PROP. 5' HIGH SOLID PANEL FENCE ALONG PROPERTY LINE

N16°17'45"W 230.55'

S16°17'45"E 228.64'

PROP. 5' HIGH SOLID PANEL FENCE ALONG PROPERTY LINE

13.7'

PLANTED AREA

MARILOU J. JUDD
S.M. 2184/455
21 FUSTING AVE.
19-00-012611

P.G. DEVELOPERS LLC
S.M. 25026/548
17 FUSTING AVE.
25-00-001661

DR 5.5
RO

DR 5.5
BL

S74°42'40"W 67.86'

PATRICIA M. TURNER
S.M. 25583/100
32 MELROSE AVENUE
01-04-500420

746 ASSOCIATES LLC
S.M. 14224/176
28 MELROSE AVENUE
01-03-230100

746 ASSOCIATES LLC
S.M. 14224/173
24 MELROSE AVENUE
01-18-470320

RO
BL

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM DEED S.M. 25026/542.
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 101A1.
3. CENSUS TRACT 401000 REGIONAL PLANNING DISTRICT 324
   WATERSHED PATAPSCO, SUBSEWERSHED 76
   SCHOOL DISTRICT: ELEMENTARY - CATONSVILLE E.S.; MIDDLE - ARBUTUS M.S.;
   HIGH - CATONSVILLE H.S.
   A.D.C. MAP & GRID 41 D3
4. THERE IS A KNOWN PRIOR ZONING CASE ON THE SUBJECT PROPERTY. #5006-XA
5. REVISION OF PLAT "MINOR SUBDIVISION #17 FUSTING AVENUE" PDM PROJECT No. 05-077-M
6. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
7. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
8. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
9. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PUBLIC WATER AND SEWER SYSTEMS.
10. THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.

LEGEND

PLANTED AREA
EXISTING BUILDING
EXISTING PAVING
PROPOSED PAVING
ZONING LINE
PROPERTY LINE
CONTOURS

PETITIONER'S EXHIBIT NO. 3

VARIANCE REQUESTED

1B01.1B.1.e.5 (B.C.Z.R.) TO ALLOW A PARKING LOT WITH A 13.7 FOOT BUFFER AND SETBACK IN LIEU OF THE REQUIRED 50 FOOT RTA BUFFER AND 75 FOOT RTA SETBACK

SPECIAL HEARING REQUESTED

AN AMENDMENT TO THE PREVIOUS SPECIAL EXCEPTION GRANTED IN CASE 5006-XA TO ADD PARKING AREA TO A PREVIOUSLY APPROVED ASSISTED LIVING FACILITY

SPECIAL EXCEPTION REQUESTED

TO USE THE HEREIN DESCRIBED PROPERTY FOR A CONVALESCENT HOME AS PER SECTION B.C.Z.R. SECTION 1B01.C3

STATE OF MARYLAND
BRUCE EDWIN DOAK
NO. 531
REGISTERED
PROPERTY LINE SURVEYOR
5/22/07

Plan to Accompany Photographs

PLAT TO ACCOMPANY A REQUEST FOR VARIANCE A SPECIAL EXCEPTION AND A SPECIAL HEARING

P.G. DEVELOPERS, LLC PROPERTY

19 FUSTING AVENUE
Deed Ref: S.M. No. 25026 folio 542
Tax Account No.: 25-00-001660
Tax Map 101; Grid 8; Parcel 1318
16 FUSTING AVENUE
Deed Ref: E.H.K. Jr. No. 7236 folio 210
Tax Account No.: 01-08-652440
Tax Map 101; Grid 2; Parcel 33
Zoned DR 5.5; GIS Tile 101A1
1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=40' Date: MAY 2, 2007

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

REVISION	DATE
REVISIONS REQUESTED DURING ZONING SUBMITTAL	5/16/07

COMPUTED: DRAWN: SMH CHECKED: FILE: X:\Genesis\ZONING PLAT REVISED.dgn

PETITIONER'S EXHIBIT NO. Photo 3 & 4



PETITIONER'S

EXHIBIT NO. 4A-U

Bd. App. Pet Ex 4A wd 7/23/08

(B)



Bd. App Pet Ex YB Wed 7/23/08



Bd. App. Pet. Ex 4c Wed 7/23/08

(D)



Bd. App. Pet. Ex 4d. Wed 7/23/08

E



Bd. App. Pet Ex 4e Wed 7/23/08

(F)



Bd. App. Pet Ex 4f Wed 7/23/08



Bd. App. Pet Ex 4g Wed 7/23/08

(4)



Bd. App. Rt. Ex 4h Wed 7/23/08



Bd. App. Pet Ex 4; Wed 7/23/08



Bd. App. Pet. Ex 4; Wed 7/23/08



Bd. App. Pet. Ex 4k Wed 7/23/08

(L)



Bd. App. Pet. Ex 4L Wed 7/23/08

(M)



Bd. App. Pet Ex 4m Wed 7/23/08



Bd App Pet Ex 4n Wed 7/23/08



Bd. App Pet Ex 40 Wed 7/23/08



Bd. App. Pet. Ex 4p Wed 7/23/08



Bd. App. Pet Ex 40 Wed 7/23/08

(B)



Bd. App. Pet Ex 4r Wed 7/23/08



Bd. App. Pet Ex 4s Wed 7/23/08

(T)



Bd. App. Pet. Ex 47 Wed 7/23/08



Bd. App Pet. Ex 4u Wed 7/23/08

Petitioner No 5

3474

#5006-X

5006-X

PETITION FOR SPECIAL EXCEPTION

IN THE MATTER OF :
House in the Pines, Inc. :
:
:
For a Special Exception :
To The Zoning Commissioner of Baltimore County

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY

MAP #1
SEC. 2-A
"X" A
6/20/60

House in the Pines, Inc. Legal Owner

Contract Purchaser

hereby petition for a Special Exception, under the Zoning Regulations and Restrictions passed by the County Commissioners of Baltimore County, agreeable to Chapter 877 of the Acts of the General Assembly of Maryland of 1943, for a certain permit and use, as provided under said Regulations and Act, as follows:

A Special Exception to use the land (and improvements now or be erected thereon) hereinafter described for A Nursing Home

BEGINNING for the same on the northernmost side of Fusting Avenue at a point distant one hundred twenty-five feet westerly from the corner formed by the intersection of the northernmost side of Fusting Avenue with the westernmost side of Howard Avenue twenty-four feet wide; said point of beginning being at the end of the third line of the land described in a deed from Helen Russell to Virginia Threadgill, dated March 8, 1929 and recorded among the Land Records of BaltimoreCounty in Liber L.McL.M. No. 818, folio 106; and runningthence binding on the northernmost side of Fusting Avenue, as now surveyed, south eighty-three degrees fifteen minutes west two hundred thirty-nine and fifty one-hundredths feet to the beginning of said land; thence binding on the first and second lines thereof and along an old fence north twenty-two degrees nine minutes west three hundred eighteen and eighty one-hundredths feet and north seventy-nine degrees twenty-eight minutes east three hundred eighteen and sixty-five one-hundredths feet to a point distant one hundred twenty-five feet westerly from the westernmost side of Howard Avenne, and thence binding on the third line of said land and parallel with Howard Avenue, south seven degrees fifty minutes east three hundred and twenty-eight and forty one-hundredths feet to the place of beginning. Containing two and forty-five one-thousandths acres of land, more or less.

Saving and excepting, however, all that property described in a Deed from Harry C. Carter and wife to Henry Selby Nimocks and wife dated June 6, 1936 and recorded among the Land Records of BaltimoreCounty in Liber C.W.B.Jr. No. 975, folio 241, etc.

BEING the same lot of ground described in a Deed from E McClure Rouzer to A. Mildred Calmen dated July 30, 1945 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1396, folio 157.

1-5164

9 30 A.M. 7-1-60

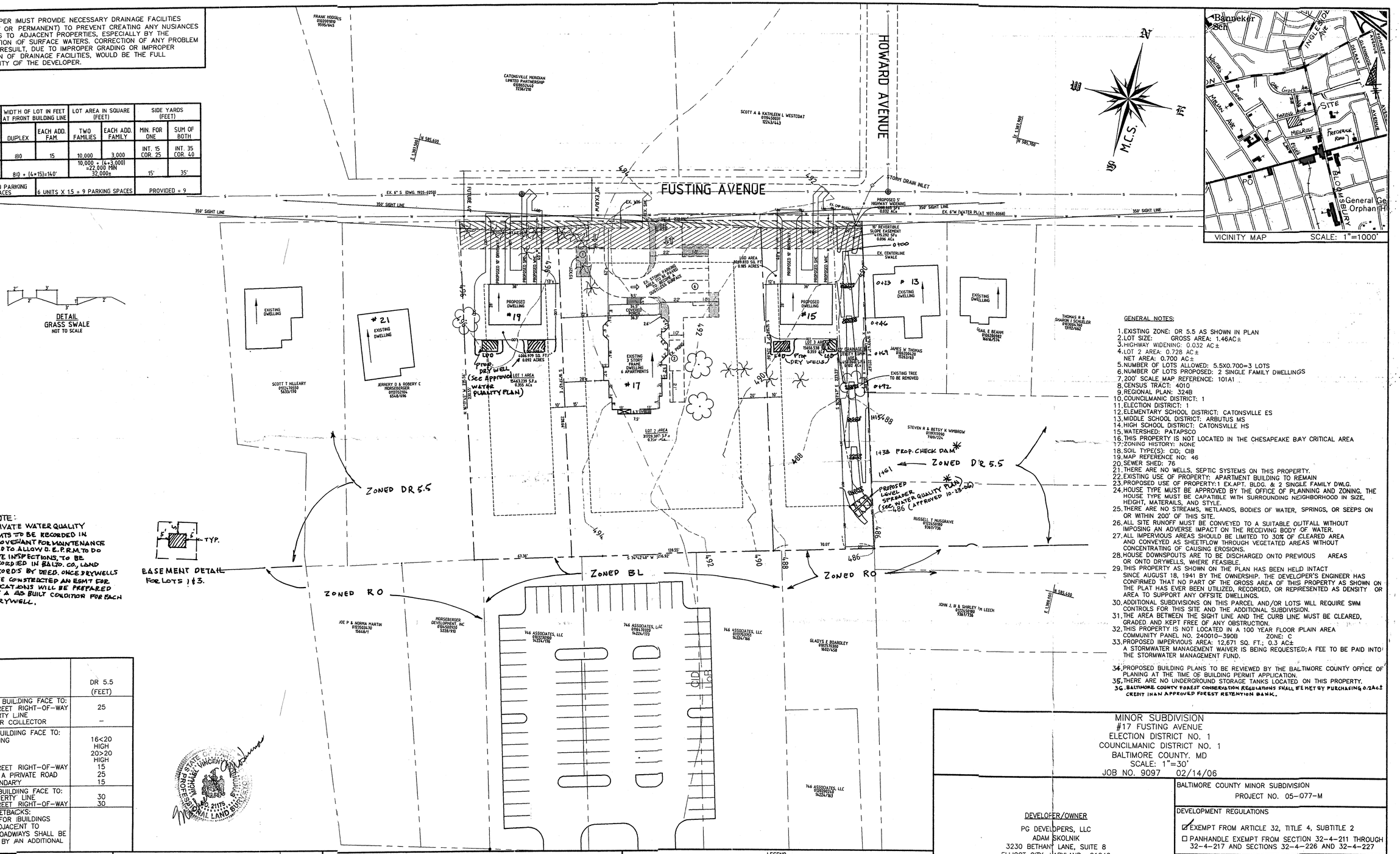
Howard Ave.

5006-X

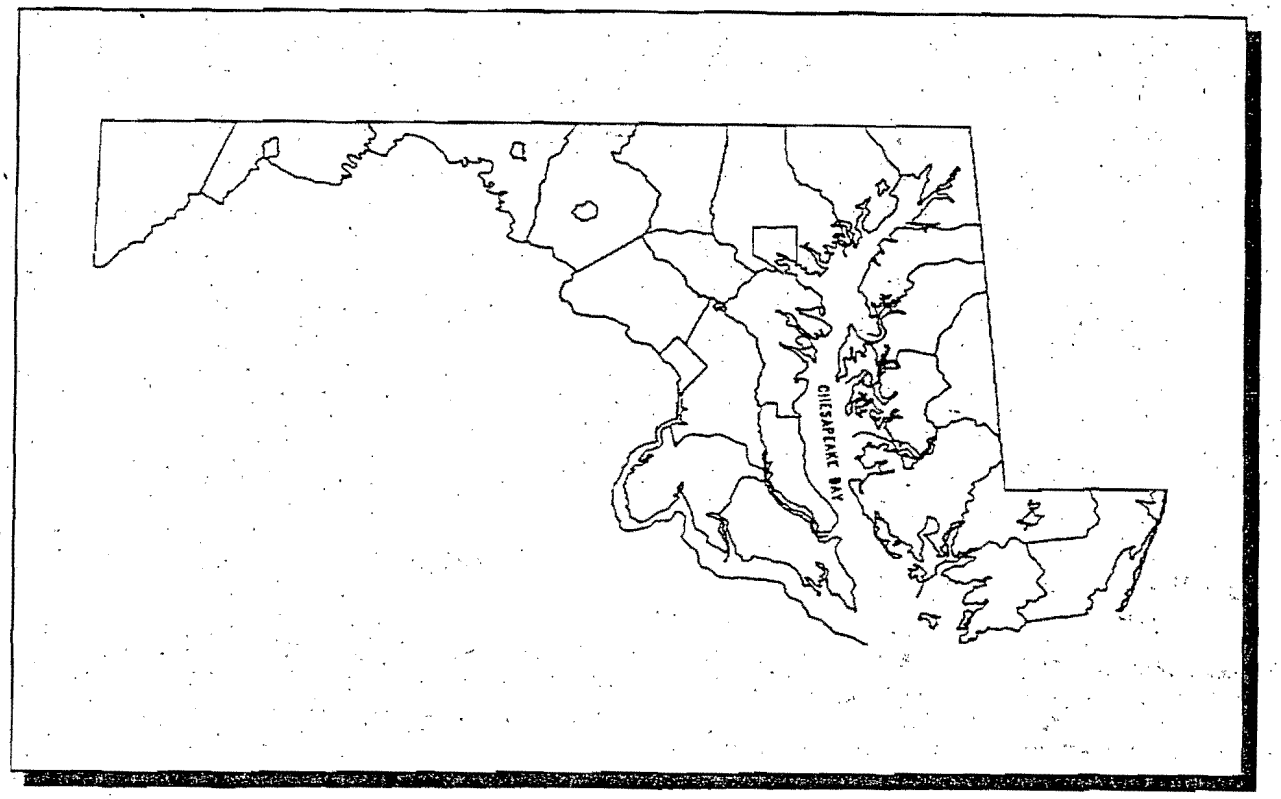
Bd. App. Pet Ex 5 Wed 7/23/58

THE DEVELOPER IMUST PROVIDE NECESSARY DRAINAGE FACILITIES (TEMPORARY OR PERMANENT) TO PREVENT CREATING ANY NUISIANCES OR DAMAGES TO ADJACENT PROPERTIES, ESPECIALLY BY THE CONCENTRATION OF SURFACE WATERS. CORRECTION OF ANY PROBLEM WHICH MAY RESUILT, DUE TO IMPROPER GRADING OR IMPROPER INSTALLATION OF DRAINAGE FACILITIES, WOULD BE THE FULL RESPONSIBILITY OF THE DEVELOPER.

ZONE	WIDTH OF LOT IN FEET AT FIRONT BUILDING LINE: DUPLEX	EACH ADD. FAM.	LOT AREA IN SQUARE (FEET): TWO FAMILIES	EACH ADD. FAMILY	SIDE YARDS (FEET): MIN. FOR ONE	SUM OF BOTH
REQ'D D.R. 5.5	80	15	10,000	3,000	INT. 15 COR. 25	INT. 35 COR. 40
PROV'D	80 + (4*15)=140'		10,000 + (4+3,000) =22,000 MIN 32,000±		15'	35'
REQUIRED PARKING SPACES	6 UNITS X 1.5 = 9 PARKING SPACES				PROVIDED = 9	


FUSTING AVENUE
HOWARD AVENUE
350' SIGHT LINE
EX. 8" S. (DWG. 1925-0259)
EX. WM
STORM DRAIN INLET
PROPOSED 5' HIGHWAY WIDENING 4086.889 SF± 0.032 AC±
EX. 6"W (WATER PL AT 1937-0068)
8' REVERSIBLE SLOPE EASEMENT 4178.292 SF± 0.096 AC±
EX. CENTERLINE SWALE
PROPOSED DWELLING #19
PROPOSED DWELLING #15
EXISTING DWELLING #21
EXISTING 3 STORY FRAME DWELLING 6 APARTMENTS #17
EXISTING DWELLING #13
EXISTING DWELLING
EXISTING TREE TO BE REMOVED
LOD AREA 39,819.833 SQ. FT. 0.185 ACRES
LOT 1 AREA 25463.239 S.F.± 0.355 AC±
LOT 2 AREA 31729.387 S.F.± 0.729 AC±
LOT 3 AREA 15655.538 S.F.± 0.359 AC±
4086.939 SQ. FT.± 0.092 ACRES
PROP. DRY WELL (See Approved WATER QUALITY PLAN)
PROP. DRY WELLS
PROP. CHECK DAM
PROPOSED LEVEL SPREADER (See WATER QUALITY PLAN) 486 (APPROVED 10-23-06)
ZONED DR 5.5
ZONED BL
ZONED RO
SCOTT T HILLEARY 0105176950 5633/170
JERRERY D & ROBERY C MORSBERGER 0107252104 6548/696
JOE P & NORMA MARTIN 0113563470 1566/89
MORSEBERGER DEVELOPMENT, INC 0104509920 5228/190
746 ASSOCIATES, LLC 0783539700 14224/176
746 ASSOCIATES, LLC 07861.78233 14224/173
746 ASSOCIATES, LLC 0113753751 14224/166
746 ASSOCIATES, LLC 0113753743 14224/183
GLADYS F BRADLEY 0107535300 1402/458
JOHN J. III & SHIRLEY 'M LEECH 0127450980 5387/738
STEVEN R & BETSY K WIMBROW 0119731090 1769/224
RUSSELL T MUSGRAVE 0127450980 5387/738
GAIL E BEAMM 0106350982 1692/576
THOMAS R & SHARON E SCHUELER 0107535760 1317/462
JAMES W THOMAS 0118209630 1203/303
FRANK HODGES 0102001810 999/645
CATONSVILLE MERIDIAN LIMITED PARTNERSHIP 0118054400 7236/218
SCOTT A & KATHLEEN L WESTCOAT 0119450931 1224.3/443
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MARYLAND STORMWATER DESIGN MANUAL
VOLUME ONE



Prepared for:

Water Management Administration
Maryland Department of the Environment

Prepared by:

Center for Watershed Protection, Inc.
Environmental Quality Resources, Inc.
and
Loiederman Associates, Inc.

December 10, 1997

*** FINAL REVIEW DRAFT * FINAL REVIEW DRAFT * FINAL REVIEW DRAFT ***

Petitioner's No 8

POND SITE

WINTERS LANE

FUTURE CONNECTIONS TO BLOOMSBURY AVE

BLOOMSBURY COMMUNITY CTR.

Approved for SWM & Small Pond 6-6-2000
APPROVED: [signature], Chief
Storm Water Management Division
BALTO. CO. DEPT. OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

RECENTLY CORRECTED

IMMINENT CORRECTIONS

ON-GOING PROBLEMS

PROBLEM AREAS CORRECTED BY FUSTING POND

CITY OF BALTIMORE

DIRECTOR DEPT. OF PUBLIC WORKS — DATE

CHIEF, WATER ENG. DIVISION BUR. OF WATER AND WASTEWATER — DATE

DATE	RIGHT OF WAY	REF.	ROAD PERMIT AND GRADES	P. W. A. DIR. NO.	CONTRACT NO.	REVISED AS PER RECORD PRINT J.O.	DRAFTSMAN	DATE
			PERMIT REQUESTED PERMIT NUMBER GRADE ESTABLISHED PROFILE NUMBER	8744				

SEAL	BUREAU OF ENGINEERING	HIGHWAYS	STRUCTURES	STORM DRAIN	WATER	SEWER	FIELD ENGINEER	BUREAU OF ENGINEERING	DEPARTMENT OF PUBLIC WORKS	LEVEL BK.	KEY SHEET
DESIGNED WMG/DMS											H-NE
DRAWN WS	REVIEWED	NCB	NLC	SAW	BFK	JER	VSK				
CHECKED DAS	DATE	3/21/00	3/21/00	3/21/00	8/21/00	3/21/00	3/22/00	DATE 3/23/00	DATE 3/23/00	DETAIL BK.	POSITION SHEET
ENGINEER [signature]								CHIEF	Assistant Director		8, 9SW23
DATE 3-16-2000 LIC. NO. 10742											

DATE	REVISION	BY

SCALE: PLAN 1" = 200'; PROFILE HOR. – VERT. –

BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS BUREAU OF ENGINEERING

EXISTING CONDITIONS DRAINAGE AREA MAP

FUSTING AVENUE POND No 9

SUBDIVISION CATONSVILLE — EL. DISTRICT NO. 1C1

BALTIMORE COUNTY TYPE NUMBER 1

JOB ORDER NO.	SHEET 8 OF 16	DWG. NO.	FILE: 4
4-2-934		98-1178	

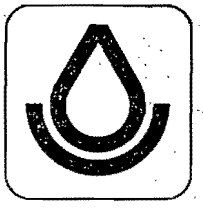
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SNOOK

SOIL SURVEY

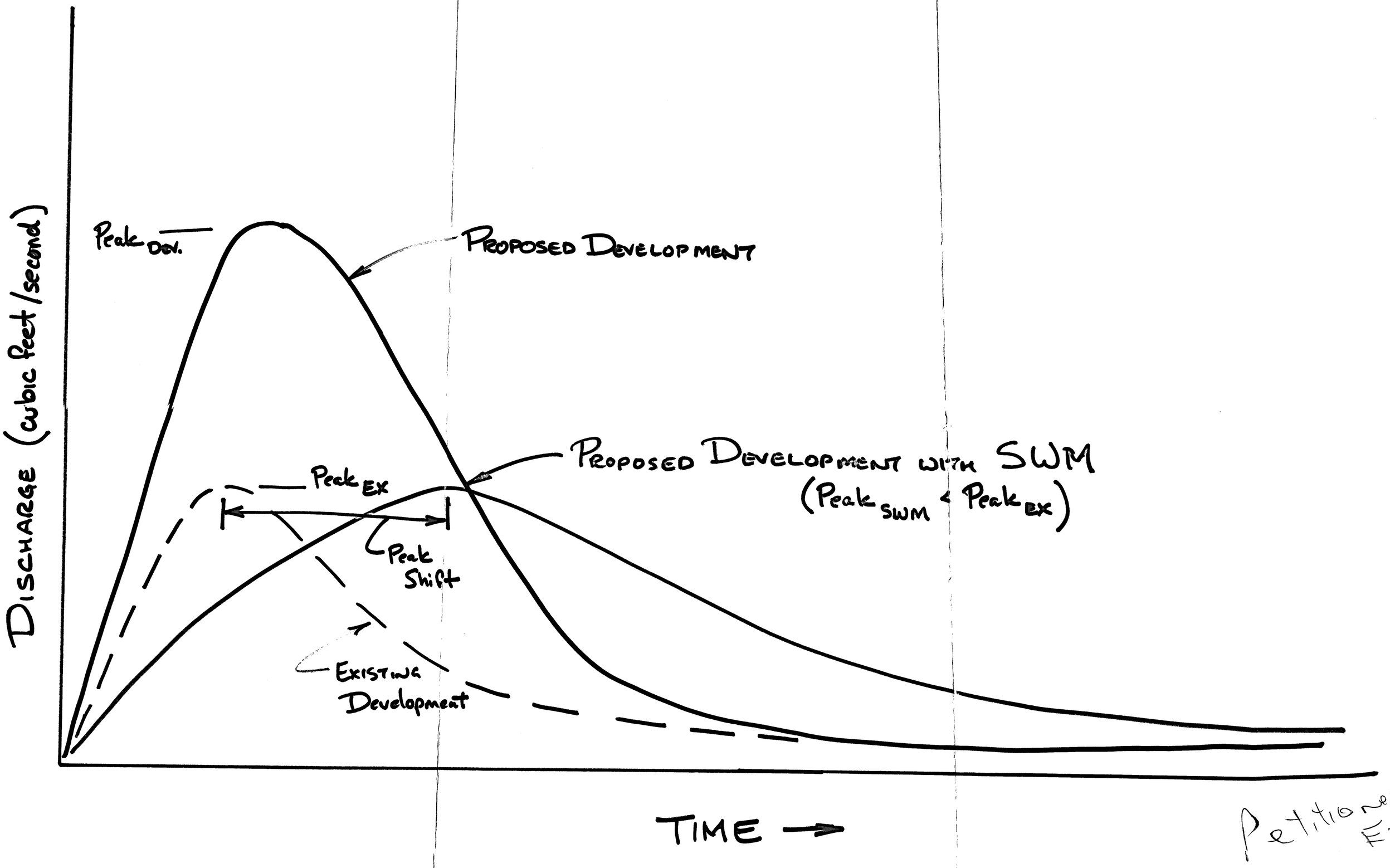
Baltimore County Maryland

Compliments of
Congressman Paul S. Sarbanes



UNITED STATES DEPARTMENT OF AGRICULTURE
Soil Conservation Service
In cooperation with
MARYLAND AGRICULTURAL EXPERIMENT STATION

Pittleoney
NO 10


Discharge (cubic feet/second)
Peak DEV.
PROPOSED DEVELOPMENT
PROPOSED DEVELOPMENT WITH SWM
(Peak SWM < Peak EX)
Peak EX
Peak Shift
EXISTING Development
TIME →

H-NE G-NW
H- SE G-SW
H-

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS		SCALE	LOCATION	SHEET
BY	DATE	1" = 200'	CATONSVILLE	SW 3-F
		DATE OF PHOTOGRAPHY APRIL 1953		

Topography Compiled By Photogrammetric Methods
AERO SERVICE CORPORATION—PHILADELPHIA, PA.

SW 3-F

PROTESTANT'S EXHIBITS

20070535 "A"

supplemental

4

Verified 6/03/08
Verified 7/23/08
Verified 7/29/08

EXHIBITS

In the Matter of Adam Stolnik
Case 07-535-SPHXA

Exh. 6A Protestants
1. Photos (color) of pictures of site
2. " " " " "
3. ID only - Letter regarding Storm Water Management
4. -abc - Photos of erosion by Protestant 129 Fasting
5. - Letter from Fire Dept
6. - Protestant's Home & Lot - Photos
7. - Photo - Photos from Fasting Ave toward Ingleside
8. A-M Photos taken by Protestant of Lot
9. SDAT Records - Fasting + Card Records
10. SDAT Eggen Lane - + Card Records
11. Apartment Owners Letter

Prot Ex 1
Thurs 5/29/2008













Bd App
Pet
Ex 2

Thurs
5/29/2008





GERARD A. BAXTER, INC.
221 SOUTH MAIN STREET
BEL AIR, MARLAND 21014

ARCHITECTS

A.I.A. (410) 879-1733 (410) 838-4312
FAX (410) 893-2099

GERARD A. BAXTER
PAUL D. EDMEADES

JOHN F. SALONY

July 21, 1993

RECEIVED
JUL 23 1993
ENG. SERV.

Baltimore County
Department of Environmental Protection
and Resource Management
401 Bosely Avenue
Towson, Maryland 21204

att: Mr. Thomas L. Vidmar
Bureau Chief, Engineering Services

re: Meridian Nursing Center
Catonsville

Prelim & 3rd
I.D. only

Dear Mr. Vidmar:

This letter is intended to serve as our application for a storm water management waiver for the project referenced above. Enclosed please find three copies of site plan Sheet A-1, dated July 15, 1993, and prints of aerial photography of the site and surrounding area.

It is our understanding that this project will qualify for a waiver if the following circumstances apply:

1) The site area is less than 2 acres.

2) The area of disturbance is less than 20,000 sq. ft.

3) The area surrounding the site is fully developed in relation to current zoning.

Items 1 and 2 definitely apply to this site: Please refer to the area analysis on Sheet A-1. It appears likely that item 3 also applies.

We are not submitting hydrologic calculations at this time because it is our understanding that they are not required if the items listed above apply. Water quality management will continue to be addressed through the use of grassy swales.

29 Fusting - Erosion from storm water run off
Soil and asphalt pieces in swail

Sat Jul 19, 2008









Front
BOA 4A
7/23/08



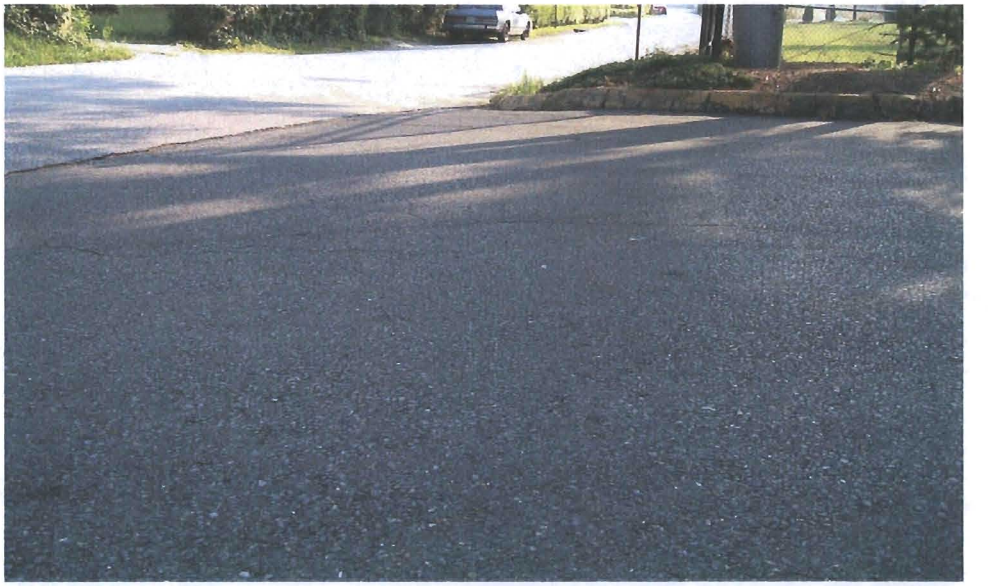
29 Footing soil in pedestal

Ext Jul 19, 2008

Street guarding and drive entrance
. guarding 16 Flustering

Sat Jul 19 2008





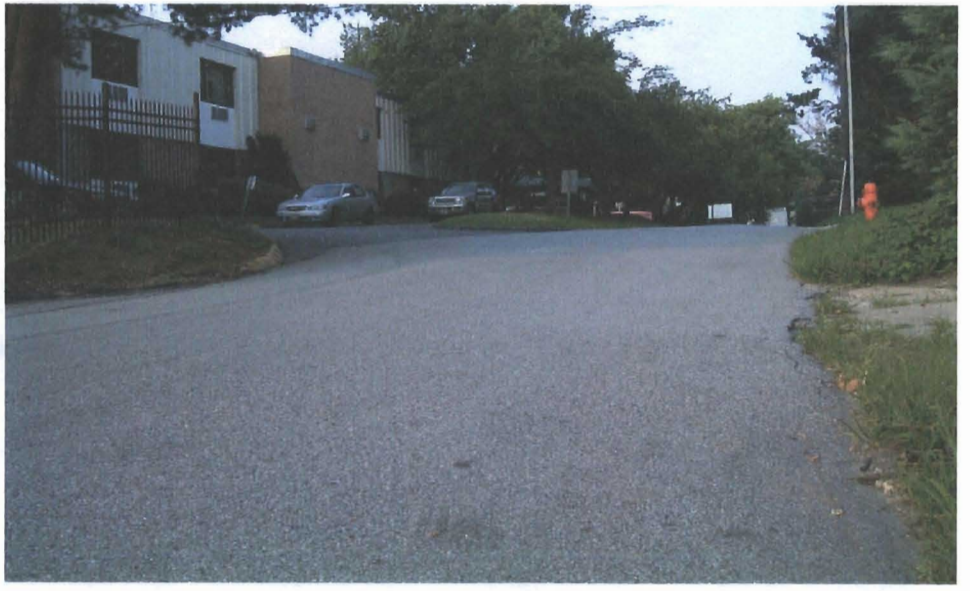




Pmt BOA
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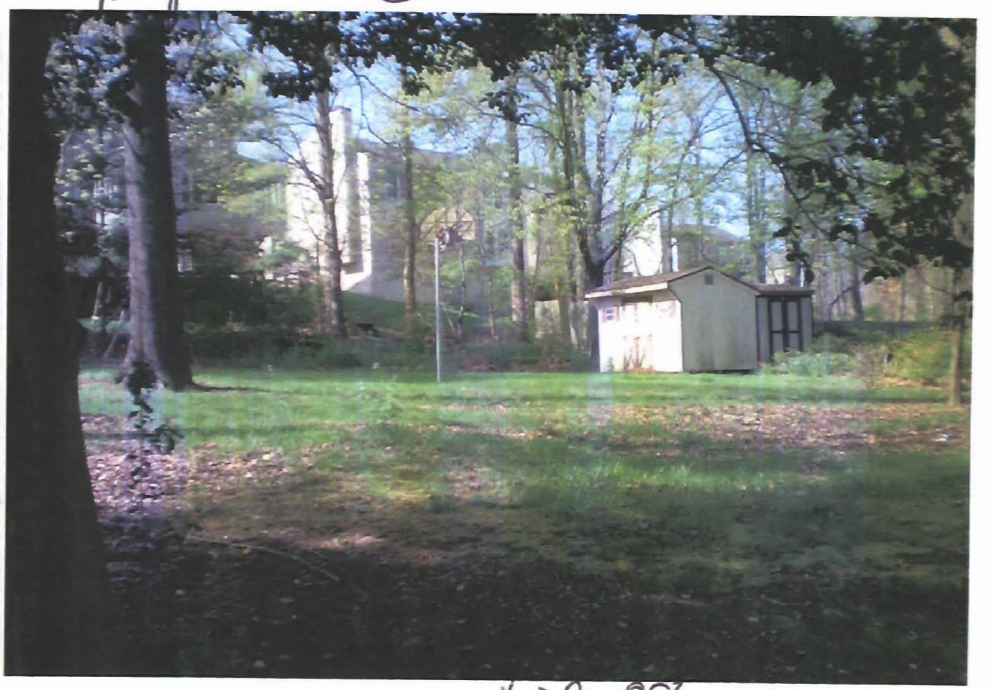
Street grading at 27 & 29 Fustey Sat Jul 19, 2008





Post BOA
4C

Resp. C. #6



4-28-08

INTERNAL MEMORANDUM

PAGE 1 OF 1 PAGES	PRIORITY:	☒ ROUTINE	☐ TIME-SENSITIVE

TO: Ms. Pat Stack		SUBJECT: Station 4 calls to 16 Fustings Ave. Catonsville Commons	
DATE: 7/9/08	FROM (PRINT RANK/NAME): LT John Olow	STATION/SHIFT: 4-D	SIGNATURE: LT. John Olow

In response to your statistical request, Station 4 responded to 16 Fustings Ave. site of the Catonsville Commons nursing facility, approximately 78 times between January 2008 and July 2008.

For the time period between July 2004 and July 2008, we determined approximately 520 calls were made to the aforementioned address for an average of 130 calls a year.

LT John Olow
Station 4, Baltimore County Fire Dept.
756 Frederick Rd
Catonsville, Maryland 21228

	Chain of Command Signature	Rank	Date	Comments
1.				
2.				
3.				
4.				
5.				
6.				

Bd. App. Ex Pet. 7

Pet BOA

Form 58 (Revised 2/01).







Bd App Pmt
Ex 6
Thurs 5/29/2008





Bd app
Pmt Ex
Thurs
5/29/2008





Protestants 8A-8M

13 photos

07-5-35-SPHXA

Genesis/Skolnik

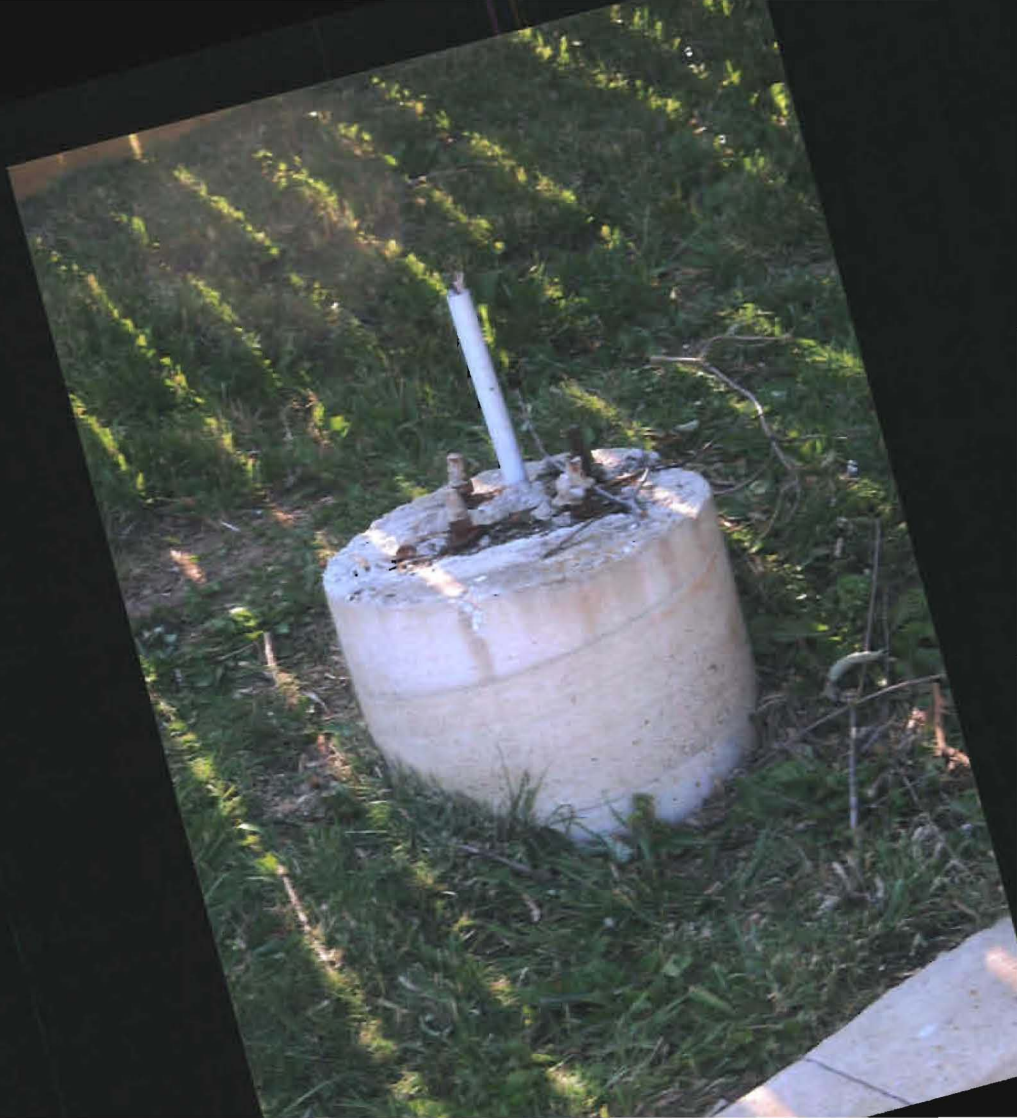












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Prof

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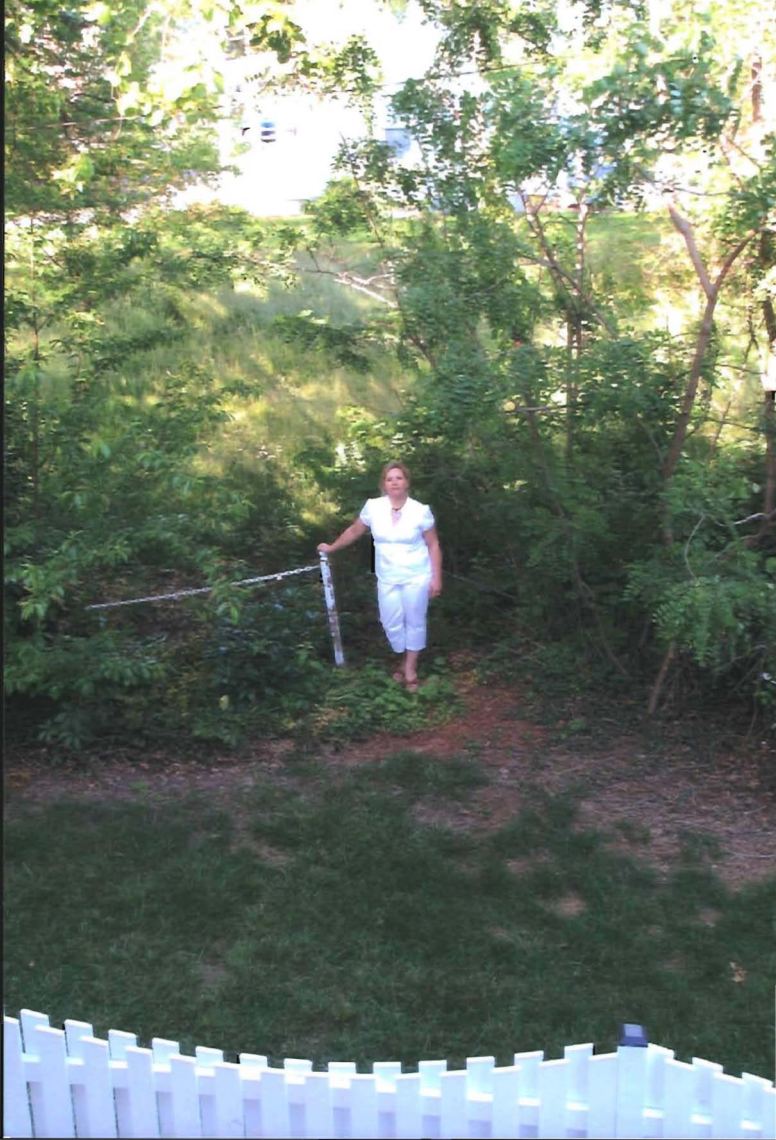








Prat














NOTICE
535-SPHXA
WILL BE HELD BY
OMMISSIONER
SON, D.
nty Courts Building
enue, Owson, MD
M, Tuesday, August 7, 2007
ve an amendment to the
granted in Case 05-006-XA
ved Assisted Living
to use the herein
valescent home as per
ance: to permit a parking
d setback in lieu of the

Charles
Parrish
443.253.3886



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw4.3)

Go Back
View Map
New Search

Page 1 of 1

Name	Account	Street	OWN OCC	Map	Parcel
LEWIS LAURA N	01 0112001960	2 FUSTING AVE	H	101	1411
BEAHM GAIL E	01 0106200982	9 FUSTING AVE	H	101	1337
THOMAS WILLIAM JA	01 0106200420	11 FUSTING AVE	H	101	702
WESTCOAT SCOTT A	01 0119450031	14 FUSTING AVE	H	101	1004
WINGREEN MAUREEN	01 2500001662	15 FUSTING AVE	H	101	2167
CATONSVILLE MERID	01 0108652440	16 FUSTING AVE	N	101	33
P G DEVELOPERS LL	01 2500001661	17 FUSTING AVE	N	101	1316
HODGES FRANK	01 0102001010	18 FUSTING AVE	H	101	393
CATONSVILLE MERID	01 2500001660	19 FUSTING AVE	N	101	1318
JUDD MARILOU J	01 1900012611	21 FUSTING AVE	H	101	315
LUNCZYNSKI ANGELA	01 0119716510	23 FUSTING AVE	H	101	314
BALTIMORE GAS & E	01 2300008140	24 FUSTING AVE	N	101	1708
BALTIMORE GAS & E	01 2300008139	26 FUSTING AVE	N	101	1708
DUVALL MARY ANN	01 0102470550	27 FUSTING AVE	H	101	185
DEBOLD DANIEL T	01 0120800670	29 FUSTING AVE	H	101	1384
BARNES ESTHER J	01 0103000932	104 FUSTING AVE	N	101	1415
WARSHAW ONE LLC	01 0123000461	106 FUSTING AVE	N	101	242
OKE VICTOR O	01 0119073580	107 FUSTING AVE	N	101	1637

Prot 9

Bd. App. Prot 9 7/24/08

reach out .. .. to homebuyers

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw3.1)

Go Back
View Map
New Search

Page 1 of 1

Name	Account	Street	OWN OCC	Map	Parcel
BALTIMORE COUNTY	01 0106200000	EGGES LN	N	101	1604
CHRISTIAN DAVID C	01 0119073510	10 EGGES LN	H	101	1615
JENNINGS OMER S3R	01 0113550661	11 EGGES LA	N	101	1301
WATT LISA	01 0116001820	12 EGGES LA	N	101	1974
CORNELIUS BETTY A	01 0108650420	14 EGGES LA	H	101	940
SCHROETER CHRISTI	01 0119850240	15 EGGES LN	H	101	1608
TURPIN ANNMARIE	01 0106450340	17 EGGES LN	N	101	1060
COMMUNITY BEHAVIO	01 2300007227	18 EGGES LN	N	101	1604
NIPPARD BRIAN T	01 0107580420	19 EGGES LA	H	101	1606
HAIN WILLIAM H	01 0110001320	23 EGGES LA	H	101	1607
BRIGHT JOHN M	01 0118000490	25 EGGES LA	N	101	87
SCHWARTZ WILLIAM	01 0114400310	27 EGGES LA	H	101	1516
TREUTH JOHN WILLI	01 0102003810	101 EGGES LA	H	101	1290
JOHNS CHRISTINE G	01 2200022594	102 EGGES LA	H	101	1605
TYLER EDWARD A	01 0120000100	103 EGGES LA	H	101	1603
MAUBOULES LORETTA	01 0111350340	104 EGGES LA	H	101	313
WARSHAW ONE LLC	01 0123000460	105 EGGES LN	N	101	1505

Bd. Appeals
Protest 10
7/29/08

Warshaw One, LLC
13 South Beaumont Avenue
Catonsville, Maryland 21228-5024
Phone/fax (410) 744-0845

June 2, 2008

Deputy Zoning Commissioner for Baltimore County
105 West Chesapeake Avenue
Hearing Room 2
Towson, MD 21204

Re: Case # 07-535-SPHXA

To Whom it may concern:

I am writing in opposition to the Petitioner's request for a Special Variance to allow the use of the subject property as a parking lot for the Catonsville Commons nursing home.

Warshaw One, LLC has been the owner of the apartment development known as Cherry Tree Manor, located at 105 Egges Lane, 2 & 4 Milbert Court and 106 & 108 Fusting Avenue since July, 2007. I personally have been on site well over 100 times and have never seen an instance where anyone from the nursing home has used street parking at or near our apartments. Additionally, on-street parking is somewhat limited for our tenants, and they would be very vocal about others using the available space. I have heard no such complaints, which supports my sense that nursing home traffic is not parking anywhere near our property.

I also have witnessed, over the years, the revitalization of Fusting Avenue and question the wisdom of allowing more commercial development directly next to existing residences. If the mission of the nursing home is evolving, requiring more staff and parking, perhaps they should consider relocating to a more appropriate space, rather than expanding outward at the present location.

Sincerely,

David P. Warshaw

David P. Warshaw, Member - Warshaw One, LLC

Bd. App. Prot. 11 7/29/08

EXHIBITS

—

TRANSCRIPTS

20070535 "A"

supplemental

(5)

Case No.: 07-535-SPHXA

Exhibit Sheet

Petitioner/Developer | Protestant

No. 1	Site Plan	email from Pat Turner dated 8/3/07
No. 2	Zoning Decision	email from Helen Sheeler dated 7/26/07
No. 3 A-B	A - Aerial Photo B - Aerial Photo	email dated 7/25/07 from Angela Lukczynski
No. 4 A-U	Photos of area + related site plan	
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

PETITION FOR SPECIAL EXCEPTION

2474

#5006-X

MAP #1 SEC. 2-A "X" 1 6/20/60

IN THE MATTER OF :

House in the Pines, Inc. :

For a Special Exception :

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

To The Zoning Commissioner of Baltimore County

House in the Pines, Inc. Legal Owner

Contract Purchaser

hereby petition for a Special Exception, under the Zoning Regulations and Restrictions passed by the County Commissioners of Baltimore County, agreeable to Chapter 877 of the Acts of the General Assembly of Maryland of 1943, for a certain permit and use, as provided under said Regulations and Act, as follows:

A Special Exception to use the land (and improvements now or be erected thereon) hereinafter described for A Nursing Home

BEGINNING for the same on the northernmost side of Fusting Avenue at a point distant one hundred twenty-five feet westerly from the corner formed by the intersection of the northernmost side of Fusting Avenue with the westernmost side of Howard Avenue twenty-four feet wide; said point of beginning being at the end of the third line of the land described in a deed from Helen Russell to Virginia Threadgill, dated March 8, 1929 and recorded among the Land Records of BaltimoreCounty in Liber L.McL.M. No. 818, folio 106; and runningthence binding on the northernmost side of Fusting Avenue, as now surveyed, south eighty-three degrees fifteen minutes west two hundred thirty-nine and fifty one-hundredths feet to the beginning of said land; thence binding on the first and second lines thereof and along an old fence north twenty-two degrees nine minutes west three hundred eighteen and eighty one-hundredths feet and north seventy-nine degrees twenty-eight minutes east three hundred eighteen and sixty-five one-hundredths feet to a point distant one hundred twenty-five feet westerly from the westernmost side of Howard Avenue, and thence binding on the third line of said land and parallel with Howard Avenue, south seven degrees fifty minutes east three hundred and twenty-eight and forty one-hundredths feet to the place of beginning. Containing two and forty-five one-thousandths acres of land, more or less.

Saving and excepting, however, all that property described in a Deed from Harry C. Carter and wife to Henry Selby Simocks and wife dated June 6, 1936 and recorded among the Land Records of BaltimoreCounty in Liber C.W.B.Jr. No. 975, folio 241, etc.

BEING the same lot of ground described in a Deed from E McClure Houzer to A. Mildred Calmes dated July 30, 1945 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1396, folio 157.

ESTIMATED

9 30 A.M. 11-21-60

PETITIONER'S EXHIBIT NO. 2

5006-X

#5006-X

ORDERED by the Zoning Commissioner of Baltimore County this 24th day of May, 19 60, that the subject matter of this petition be advertised in a newspaper of general circulation throughout Baltimore County and that the property be posted, as required by the Zoning Regulations and Act of Assembly aforesaid, and that a public hearing thereon be had in the office of the Zoning Commissioner of Baltimore County, Maryland, on the 6th day of July, 19 60, at 9:30 o'clock A.M.

MAP ✓
#1
SEC. 2-A
"X" ✓
6/20/60

Zoning Commissioner
of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition for a special exception to use the property described therein for a Nursing Home, and it appearing that by reason of location, the safety, health and the general welfare of the locality not being detrimentally affected, the special exception should be granted, therefore:

It is this 6th day of July, 1960, by the Zoning Commissioner of Baltimore County, ORDERED that the aforesaid special exception should be and the same is hereby granted, subject, however, to approval of final plans for the development of said property by the Office of Planning of Baltimore County.

Wilbur H. Adams
Zoning Commissioner
of Baltimore County

2474

#5006-XA

PETITION FOR SPECIAL EXCEPTION

IN THE MATTER OF :

House in the Pines, Inc. :

For a Special Exception :

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY

MAP
#1
SEC. 2-A
"X" A
6/24/60

To The Zoning Commissioner of Baltimore County

House in the Pines, Inc. Legal Owner

Contract
Purchaser

lations

HOUSE IN THE PINES, INC.

Eugene [illegible] President

Legal Owner

16 Frestung Ave

Catonsville 28 Md

Contract Purchaser

1-SIGN

1 ST

TELEPHONE VAlley 5-3000

INVOICE

BALTIMORE COUNTY, MARYLAND

No. 3414

OFFICE OF FINANCE

Division of Collection and Receipts

COURT HOUSE
TOWSON 4, MARYLAND

Date 7/21/60

TO: Banner in the Pines, Inc.
16 Posting Ave.
Catonsville 28, Maryland

BILLED BY Zoning Department

PLEASE CREDIT TO ACCOUNT NO. 01622

DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE

QUANTITY		TOTAL AMOUNT $50.00 COST
	Petition for Special Exception	$50.00
	P.[illegible] — Baltimore County, Md. — [illegible] Planning	
	>-2560 >502 • • • ILL—	5000
	>-2560 >502 • • • ILL—	5000

3

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

#5006

District 1st Date of Posting 6-22-60

Posted for: Special Exception for Advertising Device

Petitioner: House in the Pines, Inc.

Location of property: W/S Stanley Lane 125 ft. East of Hanover Rd. and 1/2 mile Northeast of Arbutus

Location of Signs: Posted on property at Stanley Lane and Hanover Rd.

Remarks:

Posted by Signature Date of return: 6-23-60

INVOICE

TELEPHONE VALLEY 3-3000

BALTIMORE COUNTY, MARYLAND

No. 2896

OFFICE OF FINANCE

Division of Collection and Receipts

COURT HOUSE

TOWSON 4, MARYLAND

DATE 7/5/60

TO: House in the Pines
16 Posting Ave.
Baltimore 28, Md.

BILLED BY: Zoning

DEPOSIT TO ACCOUNT NO. 01622

TOTAL AMOUNT $ 30.00

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
1	Advertising and sign-Use in the Pines	30.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND

PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

ZONING DEPARTMENT
OF BALTIMORE COUNTY
PETITION FOR
SPECIAL EXCEPTION
1st DISTRICT

Pursuant to a petition filed with the *Zoning Commissioner* of Baltimore County for a Special Exception to use the property hereinafter described for Nursing Home, the Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland:

Wednesday, July 6, 1960
at 9:30 A.M.

to determine whether or not the *Special Exception petitioned for* as aforesaid should be granted, the property in said petition being particularly described as follows:

All that parcel of land in the First District of Baltimore County, beginning for the same on the Northernmost side of Fusting Avenue at a point distant 125 feet Westerly from the corner formed by the intersection of the Northernmost side of Fusting Avenue with the Westernmost side of Howard Avenue 24 feet wide; said point of beginning being at the end of the third line of the land described in a deed from Helen Russell to Virginia Threadgill, dated March 5, 1929 and recorded among the *Land Records of Baltimore County* in Liber L.M.L.M. No. 818, folio 104; and running thence binding on the Northernmost side of Fusting Avenue, as now surveyed, South 68 degrees 15 minutes West 239.51 feet to the beginning of said land; thence binding on the first and second lines thereof and along an old fence North 22 degrees 3 minutes West 318.51 feet and North 79 degrees 23 minutes East 318.65 feet to a point distant 125 feet Westerly from the Westernmost side of Howard Avenue, and thence binding on the third line of said land and parallel with Howard Avenue, South 21 degrees [illegible] minutes East [illegible] feet to the place of beginning. Containing two and forty-five one-thousandths acres of land, more or less, but excepting, however, all the property described in a Deed from Harry C. Carter and wife, to Emory Selby Nimsell and wife, dated June 6, 1946 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. [illegible] folio [illegible] and also excepting the same lot of ground described in a Deed from E. McClure Bentley and Mildred Calmus Bentley, his wife, dated [illegible] and recorded among the Land Records of Baltimore County in Liber [illegible] folio [illegible] as shown on plat plan filed with the Zoning Department.

Being the property of Hayes, Inc. as shown on plat plan filed with the Zoning Department.

BY ORDER OF
WILSIE H. ADAMS
ZONING COMMISSIONER
OF BALTIMORE COUNTY

June 17-1.

OFFICE OF
THE BALTIMORE COUNTIAN

THE COMMUNITY NEWS
Pikesville, Md

THE COMMMUNITY PRESS
Dundalk, Md.

THE HERALD - ARGUS
Catonsville, Md.

No. 1 Newburg Avenue CATONSVILLE, MD.

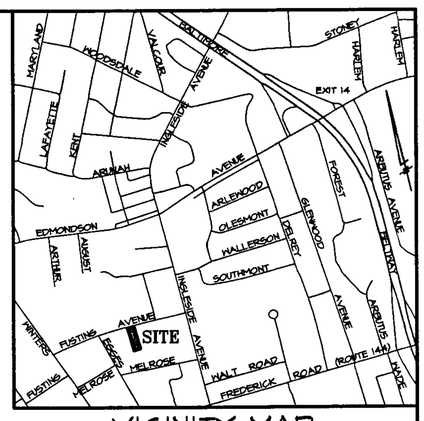
June 25, 1960.

THIS IS TO CERTIFY, that the annexed advertisement of Wilsie H. Adams, Zoning Commisioner of Baltimore County

was inserted in THE BALTIMORE COUNTIAN, a group of three weekly newspapers published in Baltimore County, Maryland, once a week for 2 successive weeks before the 25th day of June, 1960, that is to say the same was inserted in the issues of June 17-24, 1960.

THE BALTIMORE COUNTIAN

By Paul J. Morgan
Editor and Manager



VICINITY MAP
1" = 2000'

DEED S.M. 25026/542

JOSEPH F. ANGELOZZI
E.H.K. Jr. 6073/123
101 OAK GROVE AVENUE
01-19-070590

JOSEPH F. ANGELOZZI
A.M. 7545/550
HOWARD AVENUE
01-19-070592

N79°28'00"E 318.65'

FRANK HODGES
S.M. 9545/645
18 FUSTING AVENUE
01-02-001010

N20°40'00"W 318.80'

S07°50'00"E 328.40'

JANICE E. MUSE
S.M. 7466/186
16 HOWARD AVENUE
01-02-650350

500

#16
2 STORY MASONRY COMMERCIAL BUILDING
NURSING HOME

SCOTT A. WESTCOAT
KATHLEEN L. WESTCOAT
S.M. 12243/443
14 FUSTING AVENUE
01-19-450031

S83°15'00"W 239.50'

FUSTING AVENUE

FUTURE 40' R/W
EX. 30' R/W

N76°19'54"E 67.62'

ZONING P.O.B.

15' REVERTIBLE SLOPE EASEMENT
DNG. RM06-0117-1

PROPOSED 42" HIGH SOLID PANEL FENCE

PROPOSED 42" HIGH SOLID PANEL FENCE

#23
EXISTING FRAME DWELLING

MARILOU J. JUDD
S.M. 21844/455
21 FUSTING AVE.
19-00-012611

N16°17'45"W 230.55'

PROP. 5' HIGH SOLID PANEL FENCE ALONG PROPERTY LINE

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23

TYPICAL 18'

22'

PROP. 5' HIGH SOLID PANEL FENCE ALONG PROPERTY LINE

S16°17'45"E 228.64'

#17
EXISTING 3 STORY FRAME DWELLING 7 APARTMENTS

P.G. DEVELOPERS LLC
S.M. 25026/548
17 FUSTING AVE.
25-00-001661

13.7'

13.7'

PLANTED AREA

10'

DR 5.5
RO

S74°42'40"W 67.36'

DR 5.5
BL

PATRICIA M. TURNER
S.M. 25583/100
32 MELROSE AVENUE
01-04-500920

746 ASSOCIATES LLC
S.M. 14224/176
28 MELROSE AVENUE
01-03-230100

746 ASSOCIATES LLC
S.M. 14224/173
24 MELROSE AVENUE
01-18-473320

RO
BL

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM DEED S.M. 25026/542.
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 101A1.
3. CENSUS TRACT 401000 REGIONAL PLANNING DISTRICT 324
   WATERSHED PATAPSCO SUBSEWERSHED 76
   SCHOOL DISTRICT; ELEMENTARY - CATONSVILLE E.S.; MIDDLE - ARBUTUS M.S.;
   HIGH - CATONSVILLE H.S.
   A.D.C. MAP & GRID 41 D3
4. THERE IS A KNOWN PRIOR ZONING CASE ON THE SUBJECT PROPERTY. #5006-XA
5. REVISION OF PLAT "MINOR SUBDIVISION #17 FUSTING AVENUE" PDM PROJECT No. 05-077-M
6. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
7. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
8. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
9. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PUBLIC WATER AND SEWER SYSTEMS.
10. THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.

LEGEND

- PLANTED AREA
- EXISTING BUILDING
- EXISTING PAVING
- PROPOSED PAVING
- ZONING LINE
- PROPERTY LINE
- CONTOURS

VARIANCE REQUESTED

1B01.1B.1.e.5 (B.C.Z.R.) TO ALLOW A PARKING LOT WITH A 13.7 FOOT BUFFER AND SETBACK IN LIEU OF THE REQUIRED 50 FOOT RTA BUFFER AND 75 FOOT RTA SETBACK

SPECIAL HEARING REQUESTED

AN AMENDMENT TO THE PREVIOUS SPECIAL EXCEPTION GRANTED IN CASE 5006-XA TO ADD PARKING AREA TO A PREVIOUSLY APPROVED ASSISTED LIVING FACILITY

SPECIAL EXCEPTION REQUESTED

TO USE THE HEREIN DESCRIBED PROPERTY FOR A CONVALESCENT HOME AS PER SECTION B.C.Z.R. SECTION 1B01.C3

STATE OF MARYLAND
BRUCE EDWIN DOAK
NO. 531
REGISTERED
PROPERTY LINE SURVEYOR
5/22/07

PLAT TO ACCOMPANY A REQUEST FOR VARIANCE A SPECIAL EXCEPTION AND A SPECIAL HEARING

P.G. DEVELOPERS, LLC PROPERTY

19 FUSTING AVENUE
Deed Ref: S.M. No. 25026 folio 542
Tax Account No.: 25-00-001660
Tax Map 101; Grid 8; Parcel 1318
16 FUSTING AVENUE
Deed Ref: E.H.K. Jr. No. 7236 folio 210
Tax Account No.: 01-08-652440
Tax Map 101; Grid 2; Parcel 33
Zoned DR 5.5; GIS Tile 101A1
1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

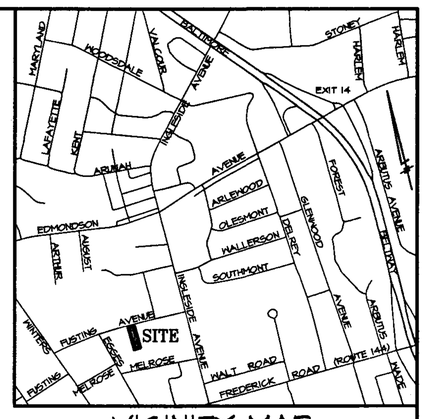
Scale: 1"=40' Date: MAY 2, 2007

REVISION	DATE
REVISIONS REQUESTED DURING ZONING SUBMITTAL	5/16/07

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

COMPUTED: | DRAWN: SMH | CHECKED: | FILE: X:\Genesis\ZONING PLAT REVISED.dgn

#535



VICINITY MAP
1" = 2000'

DEED S.M. 25026/542

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1B01.1B.1.e.5 (B.C.Z.R.) TO ALLOW A PARKING LOT WITH A 13.7 FOOT BUFFER AND SETBACK IN LIEU OF THE REQUIRED 50 FOOT RTA BUFFER AND 75 FOOT RTA SETBACK

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STATE OF MARYLAND
BRUCE EDWIN DOAK
NO. 531
REGISTERED
PROPERTY LINE SURVEYOR
5/22/07

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Scale: 1"=40' Date: MAY 2, 2007

REVISION	DATE
REVISIONS REQUESTED DURING ZONING SUBMITTAL	5/16/07

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

COMPUTED: | DRAWN: SMH | CHECKED: | FILE: X:\Genesis\ZONING PLAT REVISED.dgn

#535

Thomas Bostwick - Against case #07-535-SPHXA code NCZR1301.C3

From: "Turner, Pat" <Pat.Turner@omfn.com>
To: <wwiseman@baltimorecountymd.gov>
Date: 08/03/07 7:44 AM
Subject: Against case #07-535-SPHXA code NCZR1301.C3
CC: <tbostwick@baltimorecountymd.gov>

Charter Homes Inc. of Maryland was to build a new home at 19 Fusting Ave. which would bring growth to the community instead they want to sell the land to Genesis Convalescent Home which is across the street. Genesis Convalescent Home now is seeking a permit for a variance to build a Parking Lot instead. The variance would grant them a OFT Buffer and only a 13.7 ft set back.

This is a bad idea

This parking lot would be between two homes

Property devaluation

Higher traffic volume, the traffic is already high, too many people drive aggressively coming and going and they play there radios at unreasonable decibels at shift change

Increase Transient population with no connections to the neighborhood

As well as a collection area for bored or unsupervised teens

Thank you for your attention

Pat Turner
32 Melrose Ave
Catonsville MD 21228

Home phone number 410-747-1972

This email is confidential, intended only for the named recipient(s) above and may contain information that is privileged. If you have received this message in error or are not the named recipient(s), please notify the sender immediately or call 888-697-5433 and delete this email message from your computer as any and all unauthorized distribution or use of this message is strictly prohibited. Thank You.

PROTESTANT'S
EXHIBIT NO. 1

From: "LESLIE E SHEELER" <safetypest@msn.com>
To: <wwiseman@baltimorecountymd.gov>
Date: 07/26/07 7:45:20 AM
Subject: Case #07-535-SPHXA in connection to Code NCZR 1301.C3

Good Morning Mr.. Wiesman,

I received information from a new neighbor yesterday in regards to the above proper case. Charter Homes, Inc. of Maryland was to build a new home at approximately 19 Fusting Avenue in Catonsville, MD.

I moved to Maryland in July of 2003 and purchased the property at 6 Howard Avenue, Catonsville, MD. which is adjacent to Fusting Avenue. Since that time, a neighborhood in need of renovation has seen rentals turned into single family owned properties, renovation and pride of ownership, and new homes being built in the community. It has been wonderful to see the community's progress from a haven for transients, drug trafficking and aggressive drivers to a safe and warm neighborhood that is enjoyed by children, families and pets, and exercise enthusiasts who frequent our community.

When I learned about the proposal to build a parking lot on the property on Fusting, I became incensed. I have witnessed the damage brought about by unsupervised teens; by aggressive drivers with stereos blasting at unreasonable decibels at all hours of the night; by transients living behind my property and in the vacant lots on Fusting. This parking lot would be secluded and would only invite these ills to re-enter our neighborhood.

Children and pets play in this neighborhood. Family's enjoy the out of doors and social gatherings with neighbors. We no longer have graffiti, drugs and crime. Aggressive drivers have dwindled due to the congestion of walkers and out-door-lovers now using the street as a peaceful and safe place to enjoy the community.

I urge you to visit this neighborhood before you make any decisions on the feasibility of this new venture. We are making a safe place and a place of pride in Catonsville. Please do not allow that to be destroyed by placing a public parking lot in this area.

Sincerely,
Helen Leslie Sheeler
6 Howard Avenue
Catonsville, MD 21228
410-869-1790

CC: <tbostwick@baltimorecountymd.gov>

PROTESTANT'S
EXHIBIT NO. 2

Patricia Zook - Fwd: Zoning Commission Question

From: Thomas Bostwick
To: Zook, Patricia
Date: 7/25/2007 2:46 PM
Subject: Fwd: Zoning Commission Question

Gentleman,

I regret the interruption to your day but some of my neighbors and I are greatly concerned about a variance request that has been posted in our back yards.
This is in regard to case 07-535-SPHXA. We have all watched as our street has tried to bounce back from dilapidation, and slowly transformed itself back into an area where families would like to live. Many of us have put all of our savings, and even refinanced our homes in order to make improvements. We had been led to believe by prior postings that the street was taking another step forward when Charter Homes, LLC posted that they would be building townhomes on the property, and then they posted that they would build two single family homes on the property. We believed the company would be adding to the quality of life on our street, adding an additional residence to the street.

However to our great dismay, we recently found out that the property was sold to Genesis Convalescent home, who evidently bought the property to build a parking lot even though they new it was not zoned for such. That's a big risk to take unless your very sure that you have enough clout to change the zoning. The setbacks requested would mean that my neighbor at 21 Fusting Ave and I would be staring right at the parking lot. They are requesting 0 RTF and only a 13.7ft setback. This will completely destroy the value of our homes and the enjoyment we get from our yards. How would you feel if your neighbors sold an empty lot right next to you to put in a parking lot? A variance was allowed a few years ago for a parking lot behind 21 Fusting. This has led to an innumerable amount of people cutting through our yards since we haven't had the money to put up fences. We have transient folks from the center trespassing on our property all the time as they cut between the streets to get something to eat or headed to and from bus stops. At shift change people speed loudly down our street, they play loud music, and they show blatant disregard for the neighbors.

My neighbors and I will suffer financially, and emotionally if this variance is allowed. We all work, and have worked very hard for our homes. We purchased our properties based on the area around us being zoned more residential. Now at the drop of a hat, that is in danger. The regulations are clearly set up in support of the developers with deep pockets. My neighbors and I work from the hours of 9-5. We were given barely 14 days notice of a scheduled hearing on a Tuesday afternoon at 2:00. My neighbor behind me is a single mom with two small children. This is huge to her. I am also a single woman, working to maintain my home and finances, and security. We were also very unhappy to hear that we would have to take even more time off to come to the office to view the plans for the parking lot. When the developers have nothing else to do, this is what they do for a living.

We just don't know where to turn, we don't have the deep pockets nor the lawyers on retainer that the Convalescent Home has. Our residential surrounding, which we believed to be protected by zoning regulations may be changed within less than a month with no concern for our emotional, physical or financial welfare.

Any advice you can give would be greatly appreciated. If you were in our shoes what would you do?

Regards,

Angela Lunczynski
NEBU-Procurement
O 410.684.7288
C 410.476.7522
F 410-684-7190

PROTESTANT'S
EXHIBIT NO. 3

Verified 7-23-08

Verified 7/29/08

People Council

P.C. 1 - SDAT of 29 Fusty

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw2.3)

Go Back
View Map
New Search

Account Identifier: District - 01 Account Number - 0120800670

Owner Information

Owner Name:	DEBOLD DANIEL T STACK PATRICIA A	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	29 FUSTING AV BALTIMORE MD 21228	**Deed Reference:**	1) / 7329/ 401 2)

Location & Structure Information

Premises Address	Legal Description
29 FUSTING AVE	LT SES FUSTING AV SE COR EGGES AV

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
101	7	1384						1	Plat Ref:

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1890	1,345 SF	12,768.00 SF	04

Stories	Basement	Type	Exterior
1	NO	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2007	Phase-in Assessments As Of 07/01/2007	As Of 07/01/2008
Land	39,190	113,440		
Improvements:	81,240	93,370		
Total:	120,430	206,810	149,223	178,016
Preferential Land:	0	0	0	0

Transfer Information

Seller: STACK W STEWART,JR	**Date:** 10/03/1986	**Price:** $74,900
Type: IMPROVED ARMS-LENGTH	**Deed1:** / 7329/ 401	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2007	07/01/2008
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

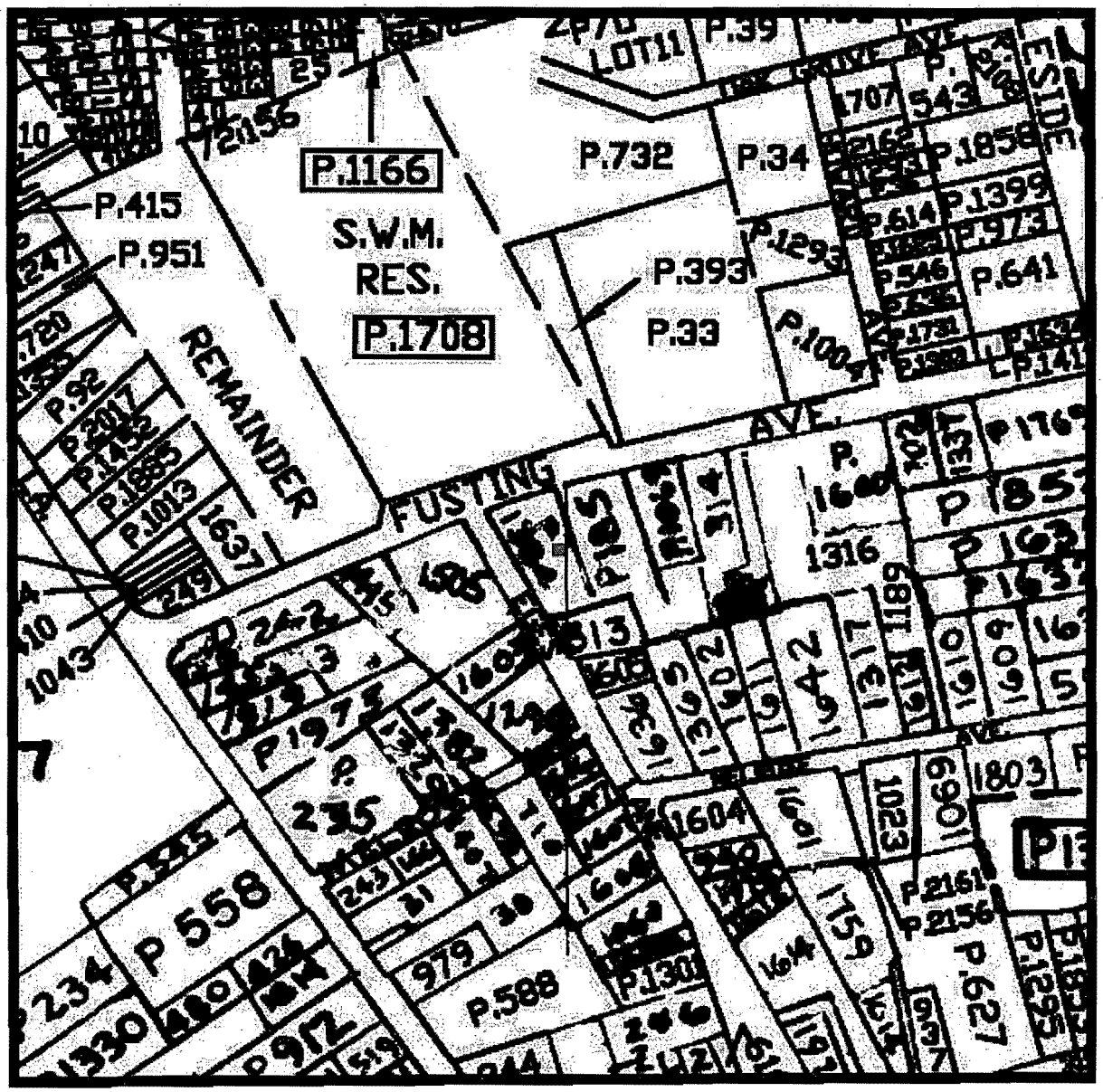
Special Tax Recapture:
* NONE *

Bd. App. P.C. Ex 1 7/23/08

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

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District - 01 **Account Number** - 0120800670



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

ZONING HEARING CHECKLIST

Revised 01/29/01

This checklist is provided to you, **for you information only, and is not to be considered legal advice**.

First, and most importantly: You must understand that the relief you have requested is a quasi-judicial decision and you are responsible for meeting the burden of law required by the Baltimore County Zoning Regulations (BCZR). A judicial hearing is an adversary process and, therefore, there may be opposition to your request. During a judicial hearing, the parties will be permitted to testify, present evidence, and cross-examine witnesses. Either the Zoning Commissioner or the Deputy Zoning Commissioner will rule on the evidence and testimony to determine whether or not the petition will be granted.

Second: You must understand that if a hearing is required, you are permitted to have representation by an attorney of your choice. You are not required to have an attorney, but it is recommended that you consider obtaining legal representation. But, if you are incorporated, it is considered **a requirement, that you be represented by an attorney**.

Third: It is strongly recommended that you read and understand the requirements of the BCZR.

Fourth: No employee of the Department of Permits and Development Management (PDM) may provide legal advice to anyone. The representatives and opinions of any employee are not to be construed as definitive in any case. Only the decision of the Zoning Commissioner rendered after the statutory required public hearing is considered dispositive in matters relating to the interpretation of the BCZR.

Even though there may not be opposition in a given case, your request may be denied.

For further information or to make an appointment, please contact:

Zoning Review
Department of Permits & Development Management
111 W. Chesapeake Avenue, Room 111
Towson, MD 21204
Telephone: 410-887-3391

NON-RESIDENTIAL PROPERTIES

VARIANCES
SPECIAL HEARINGS
SPECIAL EXCEPTIONS

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1993, LEGISLATIVE DAY NO. 23

BILL NO. 188-93

MR. WILLIAM A. HOWARD, IV, COUNCILMAN

BY THE COUNTY COUNCIL, DECEMBER 20, 1993

A BILL

ENTITLED

AN ACT concerning

Assisted Living Facilities and Group Senior Assisted Housing

FOR the purpose of providing for the establishment of various types of housing facilities for the elderly; defining terms; authorizing elderly housing uses in residential zones by right, use permit and special exception; authorizing Group Senior Assisted Housing; Assisted Living Facilities. Class A in the RC 5 zone by right; excepting Group Senior Assisted Housing; Assisted Living Facilities, Class A from residential transition and development plan requirements; establishing parking requirements; establishing density requirements and performance standards for Group Senior Assisted Housing Assisted Living Facilities; and generally related to Assisted Living Facilities. and Group Senior Assisted Housing

BY adding

Section 101; the definitions of "Group Senior Assisted Housing"; "Group Senior Assisted Housing; Class A" and "Group Senior Assisted Housing; Class B"

Baltimore County Zoning Regulations; as amended

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.

IN THE MATTER OF:	*	BEFORE THE
ADAM SKOLNIK - Legal Owner;	*	COUNTY BOARD OF APPEALS
GENESIS HEALTH CARE/	*	OF
KEITH NAUSE - CP	*	BALTIMORE COUNTY
19 Fusting Avenue	*	Case #: 07-535-SPHXA
1st Election District	*	June 3, 2008
1st Councilmanic District	*	

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals, in the Jefferson Building, Second Floor, 105 West Chesapeake Avenue, Towson, Maryland 21204, at 10:25 a.m., June 3, 2008.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF:	*	BEFORE THE
ADAM SKOLNIK - Legal Owner;	*	COUNTY BOARD OF APPEALS
GENESIS HEALTH CARE/	*	OF
KEITH NAUSE - CP	*	BALTIMORE COUNTY
19 Fusting Avenue	*	Case #: 07-535-SPHXA
1st Election District	*	July 23, 2008
1st Councilmanic District	*	

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals, in the Jefferson Building, Second Floor, 105 West Chesapeake Avenue, Towson, Maryland 21204, at 10:15 a.m., July 23, 2008.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

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COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

IN RE:

GENISUS HEALTHCARE

No. 07535SPHXA

Tuesday, July 29, 2008

The above-referenced public hearing was held on July 29, 2008 at 105 W. Chesapeake Avenue, Suite 205, Towson, Maryland, 21204, commencing at 10:00 a.m. This is an excerpt from that case.

BOARD OF APPEALS MEMBERS PRESENT:

LAWRENCE M. STAHL
WENDELL H. GRIER
ANDREW M. BELT

ORIGINAL

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