IN RE: PETITIONS FOR SPECIAL HEARING *
AND VARIANCE

BEFORE THE

E/S York Rd., S/Side of Lambourne Road

ZONING COMMISSIONER

(21 Lambourne Road, 707, 711, 713, 715 & 717 York Road - Towson Promenade) *

FOR

9th Election District

1 010

5th Council District

BALTIMORE COUNTY

Towson Promenade, LLC, Legal Owner
Petitioner

Case No. 08-007-SPHA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the legal owner, Towson Promenade, LLC, by and through its attorney, Michael H. Davis, Esquire. The Petitioner requests variance relief from Section 201.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) a follows: to permit a building to street centerline setback of 45 feet in lieu of the required 60-feet along York Road; and to permit a 14.8 foot building to property line setback in lieu of the required 30 feet. In addition, special hearing relief is requested to Amend Zoning Case No. 07-139. The subject property and requested relief are more particularly described on the site plan submitted into evidence at the hearing and marked as Petitioner's Exhibit 1.

By way of background, this Hearing Officer/Zoning Commissioner previously approved a development plan for a 379-unit, multi-family, luxury apartments at this site as well as variance relief from Sections 201.3.C.1 and 301.1A to permit street and centerline setbacks from open projections (stairways, connected porches and connected walls) as well as to permit a minimum distance between the centers of facing windows of different apartments on the same lot to be as close to 43 feet in lieu of the required 75 feet. Finally, relief was granted from Section 201.3.E

Date Sy Sylven Record FOR FILLING

Date CONTRACTOR FILING

to permit an amenity open space ratio of 0.143 in lieu of the required 0.2. See Case Nos. IX-638 and 07-139-A.

Appearing at the requisite public hearing in support of the instant requests were Adam Harbin on behalf of the Owner, and its counsel, Michael H. Davis, Esquire. Mitchell J. Kellman, land planner from Century Engineering, Inc., and Charles Main, III, P.E., of Daft-McCune-Walker, Inc., the consultants who prepared the site plan, also attended the hearing on behalf of the Owner. There were no Protestants present. Carroll K. Arconti, the President of the Council of Unit Owners of the Valleys of Towson Condominiums (Valleys of Towson), attended the hearing and supported the variance request. Mr. Davis requested that the Amendment to the Restrictive Covenant Agreement between Towson Promenade, LLC and the Valleys of Towson be attached to the original Order for Case Nos. 1X-638 and 07-139-A and be kept in the Zoning Commissioner's office. John Griffin, another resident of the Valleys of Towson, also attended the hearing. Richard Parsons attended the hearing in his capacity as the Zoning Chairman for the Greater Towson Council of Community Associations (GTCCA). He indicated that the GTCCA had no objection to the variance relief being requested.

There were no adverse Zoning Advisory Committee (ZAC) comments submitted by the County reviewing agencies. In the instant case, the variances previously granted need to be adjusted slightly. The concrete panels needed to construct the garage need to be wider. This has resulted in the need to expand the building and property line setback from 16 feet to 14.8 feet in lieu of the required 30 feet. Likewise, the architectural elements of the building on the York Road frontage protrude slightly into the previously granted variance. Therefore, the building to street centerline setback needs to be adjusted to 45 feet from 49.5 feet in lieu of the required 60 feet along York Road.

Date OF THE CONTRIBUTED FOR FILING

In the previous case, based upon the undisputed testimony and evidence offered, I found that the Developer had satisfied the requirements of Section 307.1 of the B.C.Z.R. for relief to be granted. The property is unique, given its unusual shape and topography. In addition, the property is subject to restrictive covenants inuring to the benefit of the surrounding community.

The building was designed to fit in with the neighboring properties. The Office of Planning wanted the building pushed closer to the street to create a functional street edge that was pedestrian oriented and pedestrian friendly. All of these circumstances drove the need for variance relief. Moreover, I found that strict application of the regulations would be unduly burdensome and restrictive on the proposed redevelopment site and result in practical difficulty upon the Developer. Finally, I find that relief can be granted without detrimental impact on adjacent properties. Two of the adjacent property owners, the Council of Unit Owners and Prospect Hill Cemetery, entered into Covenant Agreements with the Developer and supported the project. This project allows for the tearing down of five under-performing commercial structures and replacing them with a first class residential community. I found and still hold that it (Towson Promenade) will, therefore, be a great benefit to the surrounding neighborhood and the economic development goals of Towson business leaders and the County.

In the instant case as noted above, two of the previous variances are being adjusted slightly. Therefore, I adopt by reference the findings made in the previous case and pursuant to the development and zoning regulations of Baltimore County, the Petition for Variance filed in this Case No. 08-007-SPHA shall also be granted.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this _______ day of September, 2007, that the Petition for Variance seeking relief from Section 201.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit a building to street centerline setback of 45 feet in lieu of the required 60 feet along York Road; and (2) to permit a 14.8 foot building to property line setback in lieu of the required 30 feet, in accordance with the Petitioner's Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Hearing requesting an Amendment to Zoning Case No. 07-139, be and is hereby GRANTED, subject to the following conditions:

1. The Amendment to Restrictive Covenant Agreement dated August 27, 2007, by and between Towson Promenade, LLC and the Council of Unit Owners of the Valleys of Towson Condominium is to be attached to the Order for Case Nos. 1X-638 and 07-139-A and be kept in the Zoning Commissioner's office.

Any appeal of this decision must be taken in accordance with Sections 32-3-401 of the Baltimore County Code.

Zoning Commissioner

for Baltimore County



JAMES T. SMITH, JR. County Executive

September 10, 2007

WILLIAM J. WISEMAN III

Zoning Commissioner

Michael H. Davis, Esquire David H. Karceski, Esquire Venable, LLP 210 Allegheny Avenue Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE

E/S York Rd., S/Side of Lambourne Road

(21 Lambourne Road, 707, 711, 713, 715 & 717 York Road - Towson Promenade)

9th Election District - 5th Council District

Towson Promenade, LLC, Legal Owner- Petitioner

Case No. 08-007-SPHA

Dear Messrs. Davis and Karceski:

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

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

Zoning Commissioner for Baltimore County

WJW:dlw

c: Adam Harbin, 5847 San Felipe, Suite 3600, Houston, TX 77057 Mitchell J. Kellman, Century Engineering, Inc., 10710 Gilroy Road,

Hunt Valley, MD 21031

Charles Main, III, P.E., Daft-McCune-Walker, Inc., 200 East Pennsylvania Avenue, Towson, MD 21286

Carroll K. Arconti, President, Council of Unit Owners of the Valleys of Towson,

31 Lambourne Road, Unit 104, Towson, MD 21204

John Griffin, 31 Lambourne Road, Unit 106, Towson, MD 21204

Richard Parsons, GTCCA, 412 Woodbine Avenue, Towson, MD 21204

People's Counsel; Walt Smith, DPDM; Office of Planning; Case File



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at	BL.	.BM.	BR.	BR-AS	
which is p	resen	tiv z	ned	21 Lamb	ourne Road.

707; York Road, 711 York Road, 713 York Road, 715 York Road and 717 York Road. This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

Special hearing to amend zoning case no. 07-139-A

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 perjury, that I/we are the is the subject of this Petit	legal owner(s) of the	he penalties of a property which
Contract Purchaser/Lessee:		Legal Owner(s):		
		SEE ATTACHED	·	
Name - Type or Print	-	Name - Type or Print		·
Signature	<u> </u>	Signature	-, -	•····
Address	Telephone No.	Name - Type or Print		
City	Zip Code	Signature		
Attomey For Petitioner:				
Michael H. Davis/ David H. Ka	reski	Address		Telephone No.
Harpe-Type of Pring // //		City	State	Zip Code
Signature enable, LLP		Representative to be	,	•
210 Allegheny Avenue 4	10-494-6200	Michael H. Da Name	<u>vis, Esquire</u>	
vidress	Telephone No.	210 Allegheny Address	Avenue 410	
Towson, Maryland 21204		Towson, Maryl	and 21204	Telephone No.
State	Zip Code	City	State	Zip Code
•		OFFICE	USE ONLY	
		ESTIMATED LENGTH	OF HEARING_	
Case No. <u>08-007-5PH</u>	A	UNAVATLABLE FOR H	EARING	
EV 9/15/98	Re	eviewed By	Date	3/07
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Petition for Special Hearing

Legal Owner:

TOWSON PROMENADE, LLC

By:

Judi Hopper

Vice President

5847 San Felipe

Suite 3600

Houston, Texas 77057

(713) 267-2100

Item #007

Description

To Accompany Petition

For A Variance

South of Lambourne Road (Varied Right-of-Way)

East of York Road (66-foot Right-of-Way)

Ninth Election District, Baltimore County, Maryland
5th Council manic District

Beginning for the same in the end of the second of the two following courses and distances, measured from the point formed by the intersection of the centerline of Lambourne Road with the centerline of York Road, (1) Southeasterly along the centerline of York Road, 25 feet, more or less, thence leaving said York Road, (2) Northeasterly 33 feet, more or less, to intersect the southern right-of-way line of said Lambourne Road to the point of beginning, referring all courses of this description to the Grid Meridian established in the Maryland Coordinate System, thence leaving said point of beginning and running with said southerly right-of-way of Lambourne Road, the three following courses and distances: (1) North 58 degrees 14 minutes 51 seconds East 250.00 feet, thence (2) South 31 degrees 55 minutes 46 seconds East 5.00 feet, and thence (3) North 58 degrees 14 minutes 51 seconds East 270.92 feet, thence leaving said Lambourne Road right-of-way, (4) South 31 degrees 45 minutes 09 seconds East 199.10 feet, thence (5) North 58 degrees 14 minutes 51 seconds East 75.39 feet, thence (6) South 07 degrees 41 minutes 36 seconds West 420.66 feet, thence (7) North 74 degrees 00 minutes 09 seconds West 121.14 feet, thence (8) South 51 degrees 20 minutes 17 seconds West 249.43 feet to intersect the eastern right-of-way line of York Road, thence binding on said eastern right-of-way



Daft•McCune•Walker, Inc.

200 East Pennsylvania Avenue Towson, Maryland 21286 http://www.dmw.com 410 296 3333 Fax 410 296 4705

A Team of Land Planners,

Landscape Architects,

Golf Course Architects,

Engineers, Surveyors &

Environmental Professionals

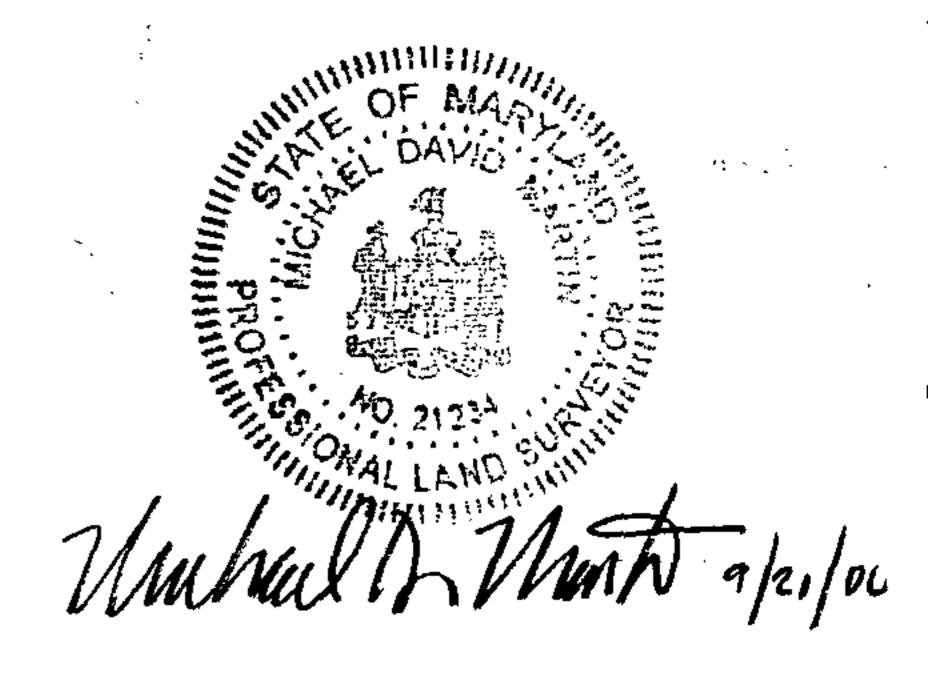
Item Hoo7

line, (9) North 31 degrees 45 minutes 02 seconds West 469.28 feet to the point of beginning; containing 5.352 acres of land, more or less.

THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED TO BE USED FOR CONVEYANCE.

September 21, 2006

Project No. 06047.A (L06047.A)



NOTICE OF ZONING HEARING

The Zoning Committees 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: # 08-007-SPHA

21 Lambourne Road, 707, 711, 713, 715 and 717 York: Road
Exide of York Road, 707, 711, 713, 715 and 717 York: Road
9th Election District — 5th Councilmanic District
Legal Owner(s): Towson Promenade, LLC
Varience: to permit a 45-foot building, to centerline of street satback in lieu of the required 60 feet (along York Road) and to permit a 14.8-foot building to property line setback in lieu of the required 30 feet. Special Hearing: to amend zoning case no. 07-139-A.

Hearing: Tuesday, August 28, 2007 at 9:00 a.m.in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

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

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

JT 8/640 August 14

8/16/1,2007

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md.,

_successive weeks, the first publication appearing once in each of

The Jeffersonian

Arbutus Times

Catonsville Times

Times Towson

Mills Times Owings

NE Booster/Reporter

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LEGAL ADVERTISING

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CERTIFICATE OF POSTING

RE: Case No.: 08-007-SPHA Petitioner/Developer: 104/501/ Date of Hearing/Closing: 8-28-07 **Baltimore County Department of** Permits and Development Management County Office Building, Room 111 111 West Chesapeake Avenue Towson, Maryland 21204 ATTN: _Kristen Matthews {(410)-887-3394} Ladies and Gentlemen: This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: 8-13-07 The sign(s) were posted on (Month, Day, Year) Sincerely, (Signature of Sign Poster) SSG Robert Black (Print Name) 1508 Leslie Road 401 Baster Ave 1 To 1 1 4 SPATE AND THE THEMY ASSES 28 2007 AT 9.00 AD. (Address) REGIST! VARIABLE TO DERMY # 45-THE BY LINE TO Dundalk, Maryland 21222 KING YOUR DIRECTS PERMIT A 17 % FOOT MAKENG TO PROSENT LIRE SA PAR IN LINE WAY & PROMPTO 301 & SPECIAL HEAR ! 10 (City, State, Zip Code) (410) 282-7940 (Telephone Number)

RE:PETITION FOR SPECIAL HEARING
AND VARIANCE

*
21 Lambourne Rd, 707, 711, 713, 715 & 717
York Road; SE cor York & Lambourne Rds *
9th Election & 5th Councilmanic Districts
Legal Owner(s): Concon, LLC & Lambourne*
Road, LLC by J.M. Schapiro, V.P.
Contract Purchaser(s): Hanover R.S. Limited*
Partnership: Kathy K. Binford, V.P.

Petitioner(s)

BEFORE THE

ZONING COMMISSIONER

FOR

BALTIMORE COUNTY

08-007-SPHA

ENTRY OF APPEARANCE

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

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

CAROLE S. DEMILIO

Deputy People's Counsel

Old Courthouse, Room 47

400 Washington Avenue

Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of July, 2007, a copy of the foregoing Entry of Appearance was mailed to, Michael H. Davis & David Karceski, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

RECEIVED

JUL 2 6 2007

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Per....



JAMES T. SMITH, JR. County Executive

July 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: 08-007-SPHA

21 Lambourne Road, 707, 711, 713, 715 and 717 York Road E/side of York Road, s/side of Lambourne Road 9th Election District – 5th Councilmanic District Legal Owners: Towson Promenade, LLC

<u>Variance</u> to permit a 45-foot building, to centerline of street setback in lieu of the required 60 feet (along York Road) and to permit a 14.8-foot building to property line setback in lieu of the required 30 feet. <u>Special Hearing</u> to amend zoning case no. 07-139-A.

Hearing: Tuesday, August 28, 2007 at 9:00 a.m. in Room 407, County Courts Building,

491 Bosley Avenue, Towson 21204

Timothy Kotroco Director

TK:klm

C: Michael Davis, Venable, LLP, 210 Allegheny Avenue, Towson 21204

Judi Hooper, V.P. Towson Promenade, LLC, 5847, San Felipe, Ste. 3600, Houston TX 77057

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, AUGUST 13, 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, August 14, 2007 Issue - Jeffersonian

Please forward billing to:

Amy Dontell 210 Allegheny Avenue Towson, MD 21204 410-494-6244

NOTICE OF ZONING HEARING

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

CASE NUMBER: 08-007-SPHA

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Hearing://Tuesday, August 28, 2007 at 9:00 a.m. in Room 407, County Courts Building,

401 Bestey Avenue, Towson 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

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

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

<u>ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS</u>

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

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

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

For Newspaper Adve	rtising:	
	Number: <u>08-007-SPHA</u>	_
Petitioner:	TONSON PROMONANCE LLC	
Address or Location:	21 Lambourne Road 707, 711, 713, 71 and 717 Year Road	<u>S</u>
_	ADVERTISING BILL TO:	
Address: 210	Now My	-
Telephone Number:	21204- (410) 494-6244	-



JAMES T. SMITH, JR. County Executive

TIMOTHY M. KOTROCO, Director

Department of Permits and

Development Management

August 22, 2007

Michael H. Davis Venable LLP 210 Allegheny Avenue Towson, Maryland 21204

Dear Mr. Davis:

RE: Case Number: 08-007-SPHA, 21 Lambourne Road, 707, 711, 713, 715 and 717 York Road

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on July 3, 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

U. Callibal)

WCR:amf Enclosures

c: People's Counsel

Towson Promenade, LLC Judi Hopper, Vice President 5847 San Felipe, Suite 3600 Houston, Texas 77057

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

July 17, 2007

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

ATTENTION: Zoning Review planners

Distribution Meeting of: July 16, 2007

Item No.: 001, 003, 004, 007, 008, 009, 010, 011, 012, 013, 014, 016, 017, 018, 019

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

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.

> Acting Lieutenant William F. Connolly Jr. Fire Marshal's Office (O) 410-887-4881 (C) 443-829-29 MS-1102F

cc: File



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

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

DATE: July 18, 2007

Department of Permits & Development

Management

FROM:

Dennis A. Kennedy, Supervisor W. J. Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For July 20, 2007

Item Nos. 07-470, 08-001, 002, 003, 004, 005, 006(00), 008, 009, 011, 012, 013, 014,

015, 016, 017, 018 and 019

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

DAK:CEN:cab

cc: File

ZAC-NO COMMENTS-07202007.doc

Bus 8/28

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

DATE: August 13, 2007

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT:

21 Lambourne Road

INFORMATION:

Item Number:

8-007

Petitioner:

Michael H Davis

Zoning:

BL, BM, BR and BR-AS

Requested Action:

Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning has reviewed the petitioner's request, revised pattern book dated June 5, 2007 and accompanying site plan. This office supports the petitioner's request. The petitioner has revised the pattern book to illustrate that the area dedicated for streetscape remains consistent with the approved development plan, e.g. the setback from building to curb is the same. Final selection of pavers, banding, planters versus tree grates shall be reviewed and approved by the Office of Planning prior to permit.

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

Reviewed by:

Division Chief:

AFK/LL: CM

CEASE PRINT CLEARLY

ME	WBER_	
NAM	E NUI	111
CASE	CASE	DATE

CITIZEN'S SIGN-IN SHEET

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CITY, STATE, ZIP	Towson Ad rivey-820	Twsm Md 21204	Towson 40, 21204									
ADDRESS	31 Lambourne R	412 mondlow	R RY CL									
NAME	Carroll Arconti Pes	1 than & Parsons "40	24x Gas									

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CASE NAME CASE NUMBER DATE

PETITIONER'S SIGN-IN SHEET

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IN RE: DEVELOPMENT PLAN HEARING AND PETITION FOR VARIANCE

E/S York Rd. @ SE Corner Lambourne Rd. *

(Towson Promenade)

9th Election District

5th Council District

Concon, LLC, and

Lambourne Road, LLC, Legal Owners

Hanover R.S. Ltd., Partnership, Developer/Petitioners

BEFORE THE

HEARING OFFICER

FOR

BALTIMORE COUNTY

Case Nos. IX-638 & 07-139-A

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before the Hearing Officer/Zoning Commissioner for a combined hearing pursuant to Section 32-4-230 of the Baltimore County Code (B.C.C.). That Section permits an applicant to request development plan approval and zoning relief through a single public hearing. Pursuant to the Development Regulations codified in Article 32, Title 4 thereof, the Developer seeks approval of a redlined development plan prepared by Daft-McCune-Walker, Inc., for the proposed development of the subject property with a 379-unit, multi-family, luxury apartment complex. In addition, variance relief is requested from Section 201.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit a building to street centerline setback of 45 feet in lieu of the required 60 feet along Lambourne Road; (2) to permit a building to street centerline setback of 49.5 feet in lieu of the required 60 feet along York Road; (3) to permit a 16 foot building to property line setback in lieu of the required 30 feet; (4) from Sections 201.3.C.1 and 301.1.A to permit a street line setback as close as 4 feet in lieu of the required 11.25 feet and a street centerline setback as close as 34 feet in lieu of the required 45 feet for open projections (stairways, connected porches and connected walls); (5) from

Section 201.3.C.2 of the B.C.Z.R., to permit a 43 foot minimum distance between the centers of facing windows of different apartments of the same lot in lieu of the required 75 feet; and (6) from Section 201.3.E of the B.C.Z.R., to permit an amenity open space ratio of 0.143 in lieu of the required 0.2. The proposed development and requested relief are more particularly described on the six-page redlined development plan submitted at the hearing which was accepted and marked as Developer's Exhibit 1A – 1F.

The proposed development has been the subject of extended proceedings pursuant to the development review process, codified in Article 32 of the B.C.C. Initially, the Developer submitted a Concept Plan of the proposed development reviewed at a conference held on July 24, 2006. The Concept Plan is a schematic representation of the proposed subdivision and is examined by and between representatives of the Developer and reviewing County agencies at the Concept Plan Conference (CPC). Thereafter, as required, a Community Input Meeting (CIM) is scheduled during evening hours at a location near the property to provide residents in the area an opportunity to review and comment on the Plan. In this case, the CIM was held on August 22, 2006 at the Towson Public Library. Subsequently, a development plan is prepared, based upon the comments received at the CPC and the CIM, and submitted for further review at a Development Plan Conference (DPC) which is again held between the Developer's consultants and reviewing County agencies. In this case, the DPC was held on November 15, 2006. At the DPC, comments are provided by the appropriate County reviewing agencies and a revised development plan (the redlined plan) incorporating these comments is submitted at the Hearing Officer's Hearing, which in this case was held before me on December 7, 2006.

Appearing at the hearing in support of the project were John Aldridge, Brandt Bowden and Bart Morey on behalf of the Owners/Developer, Hanover R.S. Limited Partnership, and its

counsel, Michael H. Davis, Esquire and David H. Karceski, Esquire. The Developer presented as expert witnesses Thomas E. Wolfe, a Licensed Landscape Architect, Mitchell J. Kellman, Land Planner, and Charles Main, III, all with Daft-McCune-Walker, Inc., the consultants who prepared the development plan. There were no Protestants present. J. Carroll Holzer, Esquire entered his appearance on behalf of the Council of Unit Owners of the Valleys of Towson Condominium (the Association), an adjacent property owner to the proposed development. Mr. John Hughes and John Griffin attended the hearing as representatives of the Association. The Association and the Owners/Developers entered into a Restrictive Covenant Agreement and jointly requested that this executed Covenant Agreement be received into evidence and the record of the case as Developer's Exhibit 6. The terms of that Agreement will not be listed at length herein, but shall be incorporated as a condition to the approval of the Plan.

Bruce Campbell also appeared on behalf of the Prospect Hill Cemetery of Towson, Inc. (Prospect Hill), another neighboring property owner adjacent to the proposed development. Mr. Davis and Mr. Campbell informed the Hearing Officer that Prospect Hill had also entered into a Restrictive Covenant Agreement with the Owners/Developer. Mr. Campbell stated on the record of this case that Prospect Hill had no concerns with the development plan receiving approval. Richard Parsons also attended the hearing in his capacity as Zoning Chairman for Greater Towson Council of Community Associations. In addition, it is noted that a letter of support was received from Cynthia W. Bledsoe, Executive Director of the Greater Towson Committee, Inc., and accepted into evidence as Petitioner's Exhibit No. 7.

Numerous representatives of the various County agencies who reviewed the Plan for compliance with the various requirements and standards for development in Baltimore County attended the hearing. These representatives included from the Department of Permits and

Development Management, Dennis Kennedy, a Professional Engineer within the Development Plans Review division of the Department of Public Works, Donald A. Gabriel, Land Acquisition, and Joe Merrey, Office of Zoning. Also appearing and intimately involved in the evolution of the development plan were Jennifer German, Office of Planning (OP), Bruce Gill, Department of Recreation and Parks, and Jeff Livingston, Department of Environmental Protection and Research Management (DEPRM). Furthermore, Steven C. Makowski, Bureau of Solid Waste Management, appeared later in the hearing to clarify an issue regarding trash collection service to the project. In addition, Andrea Van Arsdale, Department of Economic Development, appeared and testified in support of the project. Finally, written comments were received from Lt. Roland Bosley, Jr., Baltimore County Fire Department, and Steve Foster on behalf of the Maryland State Highway Administration (SHA). These and other agency remarks are contained in the case file.

Testimony and evidence disclose that the subject property is an irregularly shaped tract with frontage on a state road, York Road, and a county road, Lambourne Road, at the edge of the urban center of Towson. The lot contains approximately 5.352 acres, split zoned B.L., B.M., B.R. and B.R.-A.S., and adjoins R.A.E.2 zoning. The R.A.E.2 zone (Resident, Apartment, Elevator, 80.0 density units per acre) is one of the highest density residential zones in Baltimore County. The property has five existing commercial buildings that will be razed. As more particularly shown on the redlined plan, the Developer proposes a redevelopment of the site with 379 luxury apartments, which will be housed in one building that will incorporate three courtyards and a parking structure located within the interior of the building. The building will serve as its own community with its own common areas, elevators, trash shoots and secured

parking areas. The main access to the parking structure will be from York Road, with a secondary access from Lambourne Road.

Pursuant to B.C.C. Section 32-4-227, which regulates the conduct of the Hearing Officer's Hearing, I am required to first identify any unresolved agency comments or issues. As will be discussed in greater detail below, Michael Davis, Esquire, attorney for the Developer, indicated that there were no unresolved issues. The redlined plan, Exhibit 1A-1F addressed all outstanding comments. I then asked the particular agencies to comment. Their responses are summarized as follows:

Zoning Review - Joseph Merrey appeared as the representative of the Zoning Review Office and indicated that, assuming the requested variances are granted, his office has no outstanding issues with the redlined development plan.

Department of Environmental Protection and Resource Management (DEPRM) Jeff Livingston appeared on behalf of DEPRM and stated that the reviewing sections within his
Department had reviewed Exhibits 1A-1F and confirmed that the Storm Water Management and
Ground Water Management sections had no outstanding issues. Also, he confirmed that the
Environmental Impact Review section had no outstanding issues.

Office of Planning - Jennifer German appeared on behalf of the Office of Planning and indicated that all her Departments' comments had been addressed on the redlined development plan. The Pattern Book had been reviewed and accepted. See Baltimore County Exhibit 2. Moreover, a revised School Impact Analysis Report and Performance Standards Findings (B.C.Z.R. Section 260) was received as Baltimore County Exhibit 3 and confirmed compliance. Ms. German testified that the Director, Arnold 'Pat' Keller, supports the requested variances for street and building setbacks.

Department of Public Works – Dennis Kennedy of the Bureau of Plans Review, of the Department of Public Works (DPW), testified that the Bureau of Solid Waste Management had approached him and raised a potential unresolved issue regarding trash collection. During the hearing, Steven L. Makowski, Supervisor of the Bureau of Solid Waste Management, resolved the issue by having the Developer's Landscape Architect add a redlined comment stating, "this project will go with commercial (private) trash collection services." Accordingly, Mr. Kennedy wrote to me on December 8, 2006 stating that all of DPW's concerns and comments were addressed by the Developer and recommended plan approval.

Department of Recreation and Parks - Bruce Gill of the Department of Recreation and Parks confirmed during the hearing that his Department had reviewed the redlined development for the Towson Promenade and determined there were no outstanding issues. He confirmed that the Developer had received a waiver from the requirement to provide local open space for the project in accordance with B.C.C. Section 32-6-108(c). See County Exhibit 1.

Bureau of Land Acquisition - Donald A. Gabriel appeared on behalf of the Bureau of Land Acquisition and testified that the redlined development plan addressed all issues and that he was satisfied.

State Highway Administration - Steve Foster of the Maryland State Highway Administration issued a revised Development Plan Conference comment on November 21, 2006 indicating that his agency had reviewed the Traffic Impact Study Report prepared by The Traffic Group and concurs with the report findings and had no objection to approval of the Plan. See County Exhibit No. 4. Mickey Cornelius, with The Traffic Group, Inc., also in attendance, confirmed that the surrounding roadway network could support the proposed development.

Counsel for the Developer presented Thomas Wolfe with Daft-McCune & Walker, Inc. to explain the Plan and redevelopment to take place at this site. He testified that the site is severely restrained by very sharp slopes in two directions, moving north down York Road from the Towson Circle and also down Lambourne Road from York Road. See Petitioner's Exhibit No. 4. Mr. Wolfe explained that this redevelopment would replace five underperforming commercial buildings that would be demolished. See Petitioner's Exhibit No. 2, Pages 12-18. In summary, Mr. Wolfe testified that the redlined plan complies with all development plan comments, notes, rules, regulations and standards and should, on this basis, be approved.

Mr. Brandt Bowden, the Developer's representative, also testified for the endorsement of the Plan. He explained that the site presented some very unique constraints. In fact, the Developer has never dealt with a property with such dramatic grade changes in two separate directions. See Petitioner's Exhibit 2, Page 58. Mr. Bowden further testified that the Developer designed the building so as to be in character with the neighboring apartment properties, Dulaney Cresant and the Valleys of Towson Condominium. Those buildings are four to five stories in height. The design of the subject apartment building is, therefore, not entirely vertical but was designed to be more compatible with neighboring structures and providing transitioning from the "urban center" of Towson to the south with the more suburban appearances found north of the site.

The result of the Developer's design efforts is a building edge in close proximity to York and Lambourne Roads. Consistent with the Office of Planning's comments, the proposed building edge provides for a pedestrian-friendly connection to other neighboring properties and the Towson core. Even with the buildings moved closer to the street, the proposed sidewalks are twice as wide as the existing sidewalk. Mr. Bowden also explained that the Planning Office

wanted the building edge to promote activity along its frontages. Therefore, first floor units are equipped with well-designed porches and stairs that connect to the sidewalk with doors that open to the street. Landscape planter areas are also shown on the Plan to this end. The whole purpose of the building design is to create a functional street edge, that is pedestrian oriented and pedestrian friendly.

Finally, Mr. Bowden explained the high quality amenities that are included in this development, including a 10,000 square foot clubhouse, an athletic facility and three large courtyards. See Petitioner's Exhibit 2, Page 24-26 and 61-62. Mr. Bowden also believed that his residents would find downtown Towson to be a major amenity and impetus for moving into this development.

The Developer produced strong and substantial evidence that the development plan fully complies with all requirements, regulations, and standards for development in Baltimore County. Thus, the six-page development plan with the redlined changes should be approved, subject to the ongoing review process mandated by Phase II of the review process.

ZONING RELIEF

As noted above, the Developer has requested a series of variances from Section 201.3.C.1 allowing street and centerline setbacks on Lambourne Road and York Road and a building to property line setback. In addition, relief is requested from Sections 201.3.C.1 and 301.1.A to permit street and centerline setbacks from open projections (stairways, connected porches and connected walls) as well as to permit a minimum distance between the centers of facing windows of different apartments on the same lot to be as close to 43 feet in lieu of the required 75 feet. Finally, relief is requested from Section 201.3.E to permit an amenity open space ratio of 0.143 in lieu of the required 0.2.

There were no adverse Zoning Advisory Committee (ZAC) comments submitted by the County reviewing agencies. As indicated above, the Office of Planning supports the Petition for Variance as testified to by Jennifer German, the project planner from that Office.

In support of the requested variance, Petitioner offered the testimony of Mitchell J. Kellman, an expert land planner, Brandt Bowden, and Andrea Van Arsdale from the Department of Economic Development. The testimony related to the split zoning of the site and the unique nature of the property with its difficult topography. See Petitioner's Exhibit 4. Additionally, Mr. Bowden testified that the Developer wanted the design of the building to be user friendly and consistent with neighboring properties. Mr. Parson, in his capacity as Zoning Chair for Greater Towson Council of Community Associations, did not oppose the requested relief and commented that his association supports the revitalization effort and views this proposal as a "gateway project". Ms. Van Arsdale concurred and testified that the County strongly supported the variances and that the design creates the type of street edge that is needed in the Towson core.

Based upon the undisputed testimony and evidence offered, I find that the Developer has satisfied the requirements of Section 307.1 of the B.C.Z.R. for relief to be granted. The property is unique, given its unusual shape and topography. In addition, the property is subject to restrictive covenants inuring to the benefit of the surrounding community.

The building was designed to fit in with the neighboring properties. The Office of Planning wanted the building pushed closer to the street to create a functional street edge that was pedestrian oriented and pedestrian friendly. All of these circumstances drive the need for variance relief. Moreover, I find that strict application of the regulations would be unduly burdensome and restrictive on the proposed redevelopment site and result in practical difficulty

upon the Developer. Finally, I find that relief can be granted without detrimental impact on adjacent properties. Two of the adjacent property owners, the Council of Unit Owners and Prospect Hill Cemetery entered into Covenant Agreements with the Developer and supported the project. This project is tearing down five under performing commercial structures and replacing them with a first class residential community. I find that it will, therefore, be a great benefit to the surrounding neighborhood and the economic development goals of Towson business leaders and the County.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Article 32, Title 4, of the Baltimore County Code, the development plan shall be approved consistent with the comments contained herein and the Petition for Variance filed in Case No. 07-139-A shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner/Hearing Officer for Baltimore County, this day of December, 2006, that the amended, redlined development plan for TOWSON PROMENADE, identified herein as Petitioner's Exhibits IA-IF, be and is hereby APPROVED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 201.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit a building to street centerline setback of 45 feet in lieu of the required 60 feet along Lambourne Road; (2) to permit a building to street centerline setback of 49.5 feet in lieu of the required 60 feet along York Road; (3) to permit a 16 foot building to property line set back in lieu of the required 30 feet; (4) from Sections 201.3.C.1 and 301.1.A to permit a street line setback as close as 4 feet in lieu of the required 11.25 feet and a street centerline setback as close as 34 feet in lieu of the required 45 feet for open projections (stairways, connected porches and connected walls);

(5) from Section 201.3.C.2 of the B.C.Z.R., to permit a 43 foot minimum distance between the centers of facing windows of different apartments of the same lot in lieu of the required 75 feet and finally (6) from Section 201.3.E. of the B.C.Z.R., to permit an amenity open space ratio of 0.143 in lieu of the required 0.2, in accordance with the Petitioner's Exhibit IC, be and is hereby GRANTED, subject to the following conditions:

1. The Restrictive Covenant Agreement dated December 5, 2006, by and between Concon, LLC, Lambourne Road, LLC, Towson Promenade, LLC and the Council of Unit Owners of the Valleys of Towson Condominium (Petitioner's Exhibit 6) is hereby incorporated herein by reference as a condition to the approval of the development plan. The squared will be attached to the Original Order Puppen in the 2007 Community of the Co

 Compliance with the attached Zoning Advisory Committee (ZAC) comment submitted by the Department of Environmental Protection and Resource Management (DEPRM) relative to the Forest Conservation Regulations, dated October 12, 2006.

Any appeal of this decision must be taken in accordance with Sections 32-3-401 and 32-

4-281 of the Baltimore County Code.

Zoning Commissioner/ Hearing Officer

for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO:

Timothy M. Kotroco

FROM:

Dave Lykens, DEPRM - Development Coordination 344

DATE:

October 12, 2006

SUBJECT:

Zoning Item # 07-139-A

Address

707, 711, 713, 715, 717 York Road

(Concon, LLC & Lambourne Road, LLC)

Zoning Advisory Committee Meeting of October 2, 2006

- The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.
- The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:
 - Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
 - Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
 - Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and other Sections, of the Baltimore County Code).

Additional Comments:

Reviewer:

Michael S. Kulis

Date: October 10, 2006

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "Agreement") is made this day of <u>Deember</u>, 2006 by and between CONCON LLC, a Maryland limited liability company, and LAMBOURNE ROAD, LLC, a Maryland limited liability company (collectively, "Owner"), TOWSON PROMENADE, LLC, a Texas limited liability company, and/or its successors or assign (collectively "Developer") and COUNCIL OF UNIT OWNERS OF THE VALLEYS OF TOWSON CONDOMINIUM (the "Association").

Recitals

- A. Owner has fee simple title to those parcels of property known as 21 Lambourne Road and 707, 711, 713, 715 and 717 York Road (collectively, the "Developer Property"). Hanover R.S. Limited Partnership ("Hanover") has a contractual right to acquire the Developer Property pursuant to terms and provisions of that certain Agreement of Sale dated effective as of March 9, 2006, executed by and between Owner and Hanover. Hanover has assigned to Developer its rights and interests to the Agreement of Sale.
- B. The Association's members own condominium units and the related common elements on a parcel of land adjacent to the Developer Property (the "Association Property").
- C. Developer proposes to develop the Developer Property for use as a residential development complex (the "Proposed Use").
- D. The Association is willing to agree to support and not oppose the Proposed Use of the Developer Property if use thereof is otherwise restricted in certain respects as set forth herein.
- E. Owner is willing to place, and Developer is willing to accept, certain restrictions upon the use and development of the Developer Property pursuant to certain conditions as hereinafter set forth.
- F. In order to make the covenants, restrictions and conditions contained in this Agreement binding and in full force and effect upon the Developer Property and upon the present and future owners and occupants thereof, the parties have entered into this Agreement to the end and with the intent that Developer, its successors and assigns, will hold, utilize and hereinafter convey the Developer Property subject to the said covenants, restrictions and conditions contained herein.

Agreements

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated by reference herein, the mutual promises herein made, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

DEVELOPER'S

- Restrictive Covenant Agreement dated August 30, 2004, by and between Consolidated Hampton, LLC, (the predecessor to Lambourne Road, LLC), Concon, LLC and Council of Unit Owners of The Valleys of Towson Condominium (the "Original Agreement"), filed in Liber 20728, folio 425 of the Land Records of Baltimore County. The Original Agreement shall be terminated and no longer of further force or effect unless the Development Plan does not receive final, non-appealable approval of the applicable Governmental Agencies (as hereinafter defined) or the Developer does not acquire the Developer Property. In that case, this Agreement shall automatically terminate and be no further force or effect and the Original Agreement shall control.
- 2. <u>Developer Obligations and Limitations</u>. In the event that the Developer Property is developed by Developer for the Proposed Use, then Developer agrees that such development shall be substantially in accordance with the Red-Lined Development Plan attached hereto as Exhibit 1 (the "Development Plan"), subject to reasonable modifications that may be implemented by Developer that do not materially alter the general scheme or conceptual design of the development, or modifications that are required by Baltimore County. In connection with the Proposed Use, Developer agrees as follows:
- (a) Except as contemplated in subparagraph (b), (c) and (g) below, Developer agrees that it shall not have any vehicular access or propose any pedestrian access to the Developer Property through the Association Property.
- (b) At the start of grading the Developer Property, Developer, at Developer's expense, shall seek approval from Baltimore County for installation of a clicker operated vertical lift security gate at the Yorkward Road entrance to the parking lot on the Association Property. The Developer shall furnish two (2) clickers for each condominium unit. The Association hereby grants to Developer easement rights in and to the Association Property to install such facilities. Prior to the installation, the Developer agrees to provide to the Association drawings and specifications for the base security gate system for the Association's review and approval, which approval shall not be unreasonably withheld or delayed. The Association agrees it shall pay for the cost of any upgrades or any additional features desired by the Association to augment the base security gate system. Developer shall assign to the Association any manufacturer's warranties on the security gate, to the extent assignable, but Developer shall have no maintenance, repair or replacement obligations in connection therewith.
- (c) After final completion of the improvements in connection with the Proposed Use, Developer shall wash the exterior of the windows of the condominium building on the Association Property as a one-time courtesy to the Association.
- (d) Developer, at its expense, shall retain a regional or national engineering or traffic safety firm to conduct a traffic study in connection with Developer's development of the Developer Property for the Proposed Use. Developer shall provide a copy of the traffic study to the Association.

- (e) Developer agrees to comply with all requirements of Baltimore County with respect to surface water drainage from the Developer Property. Since Developer is not connecting into the storm water management system under the Association Property, Developer shall close the opening connecting the Developer Property to the Association's system.
- (f) Developer agrees to submit to Baltimore County for approval a lighting plan for outdoor pole lighting in connection with the Proposed Use on the Developer Property (the "Lighting Plan"). The Lighting Plan shall provide that all outdoor lighting shall be designed, located and shielded so as to minimize to the greatest reasonable extent possible direct light sources onto the Association Property. Any development of the Developer Property for the Proposed Use shall be accomplished substantially in accordance with the Lighting Plan, subject to any modifications as required by Baltimore County.
- The Association has approved a buffer and fence plan in connection with (g) the Proposed Use of the Developer Property See Exhibit 2 attached hereto. The retaining wall along the property line of the Developer Property and along the fire lane of the Developer Property shall be of natural stone. See Exhibit 3. The retaining wall shall be of varying heights depending on the final grades. In connection with Developer's development of the Developer Property, Developer, at Developer's expense, will construct a six-foot (6') black pre-fabricated aluminum fence on top of the retaining wall from Lambourne Road to the beginning of the parking lot on the Association Property. See Exhibit 4. Developer shall also construct a six foot (6') black aluminum fence and gate from the retaining wall to the Association building. See Exhibit 2. Association hereby grants Developer, its agents, employees and contractors, easement rights to enter the Association Property to construct said fence and gate. In connection with Developer's development of the Developer Property, Developer, at Developer's expense, will construct a seven-foot (7') wooden fence from the beginning of the parking lot on the Association Property to the property line of the Association Property. See Exhibit 5. The fences shall be located substantially in the locations as shown on Exhibit 2. The retaining wall and fences will be maintained by the Developer. Developer shall plant a white pine tree approximately seven feet (7') in height approximately every eight feet (8') on the Association Property, in front of the fences and retaining wall, as shown on Exhibit 2. The Association hereby grants Developer, its agents, employees and contractor easement rights to enter the Association Property to plant and replace, if necessary, said white pine trees. Developer also agrees to replace the aforementioned white pine trees on the Association Property that die within the first year following the initial planting by Developer, provided that the Association properly waters and maintains such plantings.
- (h) Developer agrees that following completion of the construction activities on Developer Property in connection with development for the Proposed Use that loading and unloading of trucks shall only be permitted on the ground level (i.e. the lowest level) of the Developer Property in that area identified as the "Loading Zone" on the Development Plan. The Developer agrees that no trucks shall be permitted to load and unload between the hours of 10 p.m. and 6 a.m. or to park with their engines running between the hours of 10 p.m. to 6 a.m.
- (i) Developer agrees that any dumpsters or other trash containers located on the ground level of the Developer Property shall be limited to the location identified on the

Development Plan as "Trash." Trash trucks shall only be permitted to pick up trash between the hours of 6:00 a.m. and 6:00 p.m.

- Developer in connection with the construction of the improvements for the Proposed Use shall be restored to substantially the same condition prior to such damage. Developer shall use sod and not seed to replace any areas on the Association Property that are disturbed by Developer. Developer shall be responsible for all costs in connection with work done on the development of the Developer Property and any work required under this Paragraph. Any repair work required by this paragraph shall be done in a reasonable time frame, not to exceed ninety (90) days after receipt of written notice from the Association of any such damage caused by Developer (subject to delays caused by winter weather or other force majeure events).
- 4. <u>Association Consideration</u>. In consideration of the obligations of the Developer and imposition of the restrictions upon the Developer Property set forth in Paragraphs 1 and 2 above, the Association agrees and covenants that it shall publicly support, and provide written notice of support to the necessary Governmental Agencies (as hereinafter defined) on behalf of Developer, and shall neither oppose nor appeal Developer in the development and improvement of the Developer Property for the Proposed Use (which shall be in substantial conformance with the Development Plan), before any and all governmental bodies or agencies, whether legislative, administrative or judicial, having jurisdiction, including generally, but not limited to hearings, appeals and any other action at any level, including but not limited to zoning reclassification, zoning approvals, hearings before the Hearing Officer of Baltimore County (or alternative approvals in lieu thereof), Department of Environmental Protection and Resource Management, the Zoning Commissioner and the County Board of Appeals, before the County Council, or before any other entity whose approval may be required for the subdivision of the Developer Property, and the use, development and improvement of the Developer Property (collectively, the "Governmental Agencies") as presently described by this Agreement
- 5. <u>Hearing Officer.</u> The Association and Developer acknowledge and agree that the Hearing Officer shall incorporate this Agreement into the Order approving the Development Plan.
- 6. <u>Binding Effect: Duration.</u> This Agreement shall automatically terminate and be of no further force or effect if the Development Plan does not receive final, nonappealable approval of the applicable Governmental Agencies or the Developer does not acquire the Developer Property. Within thirty (30) days of execution of this Agreement, this Agreement shall be recorded by Owner or Developer, at its expense, among the Land Records of Baltimore County; and, the same shall run with and be binding upon the Developer Property and upon the Association and upon each of the unit owners of the Association and shall inure to the benefit of each of the parties respectively, their successors, personal representatives, heirs and assigns. If Owner or Developer does not record this Agreement within thirty (30) days after the execution of this Agreement, the Association may record the same at Developer's expense.

Notwithstanding the above, this Agreement and the obligations, covenants and restrictions contained herein shall cease and be of no further force and effect at the expiration of

twenty (20) years from the date hereof, unless renewed by written agreement executed by the Association and the owner of the Developer Property.

Notwithstanding that the term of this Agreement is twenty (20) years, neither Developer nor Owner shall be subject to the obligations or limitations herein contained and this Agreement shall automatically terminate and be no further force and effect if the Developer Property is not developed by the Developer for the Proposed Use or if the improvements on the Developer Property are demolished or destroyed due to a casualty.

7. Enforcement. In the event of a material breach or threatened breach hereof, either party may enforce this Agreement. The parties acknowledge that remedies at law may be inadequate to protect them from a material breach or threatened breach of this Agreement. Each party expressly agrees that in addition to all remedies available at law or in equity (including an action for only actual damages), the other party shall be entitled to seek and receive injunctive relief to address any material breach of this Agreement by the other, including reasonable attorney's fees. Notwithstanding either party's right to enforce this Agreement, each party shall provide the other written notice of an alleged breach, and the breaching party shall have the right within thirty (30) days of receipt of written notice to correct or commence to cure and diligently pursue to completion the alleged violation, prior to the institution of any action or proceeding by the non-breaching party.

8. Miscellaneous Provisions

- (a) This Agreement may be executed in multiple counterparts.
- (b) This Agreement contains the entire understanding of the parties as to the matters set forth herein. Any amendments must be in writing, signed by all parties hereto, or their respective successors or assigns.
- (c) Each of the parties hereby warrant and represent that each has legal title and authority to bind themselves and/or their respective properties, and that all necessary action required to be taken by their respective charters, by-laws or other organizational documents to authorize the execution of this Agreement has been taken.
- (d) All notices to be given hereunder shall be in writing. If the United States mail is used, it shall be sent by certified mail, return receipt requested, postage prepaid, and shall be deemed delivered on the third business day following the date of mailing. For the purposes of such notices the respective addresses of the parties shall be as set forth below that party's signature.
- (e) If any provision or part of any provision of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity or unenforceability shall not effect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision on part thereof had never been contained therein, but only to the extent of its invalidity, illegality or unenforceability.

(f) Upon request of Developer, the Association at any time and from time to time shall execute, acknowledge, and deliver to Developer, no later than ten (10) days after Developer's request therefor, an estoppel certificate that may be conclusively relied upon by a prospective lender, purchaser, or encumbrancer of Developer's interest in the Developer Property, certifying whether or not Developer has complied with all of the Developer's obligations under this Agreement and whether or not there are any uncured defaults in Developer's performance hereunder.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

WITNESS:

LAMBOURNE ROAD, LLC
By: Continental Realty Investors Corp., Manager

By: (SEAL)

Name: Schapiro, Vice President ManagingaMention

Address: 1427 Clarkview Rd., Ste. 500

Baltimore, MD 21209

CONCON LLC

Continental Realty Investors Corp., Manager

By: (SEAL)

Schapiro Vice President

Address: 1427 Clarkview Rd., Ste. 500

Baltimore, MD 21209

TOWSON PROMENADE, LLC a Texas limited liability company

By: Hanover/MetLife Master Limited Partnership, its sole member

> By: THC Development Partners 2000

> > LP, its general partner

THC Capital G.P. LLC, its general By:

partner

Vice President

Address: 5847 San Felipe, Suite 3600

Houston, Texas 77057

COUNCIL OF UNIT OWNERS OF THE VALLEYS OF TOWSON CONDOMINIUM

John 36. Siffi By: Coarsay Marcoute (SEAL)
Name: Carroil K. Arcout:
President
Address: 31 Lambourne Rd. Towson, and 21004
ACKNOWLEDGMENTS
STATE OF MARYLAND)
·) ss:
COUNTY/GEEN OF BALTIMORE)
I HEREBY CERTIFY that on this 6th day of <u>December</u> , 2006, before me, the undersigned Notary Public of the State aforesaid, personally appeared <u>J.M. Schapiro</u> and acknowledged himselfderself
[NOTARIAL SEAL] Notary Public Notary Public
My Commission Expires: $\frac{5}{1}\frac{3007}{3007}$

COUNCIL OF UNIT OWNERS OF THE VALLEYS OF TOWSON CONDOMINIUM (SEAL) Name: President Address: **ACKNOWLEDGMENTS** STATE OF MARYLAND SS: COUNTY/GHEY OF I HEREBY CERTIFY that on this 6th day of December 2006, before me, the undersigned Notary Public of the State aforesaid, personally appeared and acknowledged himself horself to the and acknowledged himself horself to the and acknowledged himself horself to the angle of the acknowledged himself horself to the acknowledged himself horself horself horself has been acknowledged himself horself horself horself has been acknowledged himself horself horself horself has been acknowledged himself horself horself horself horself has been acknowledged himself horself horself has been acknowledged himself ha J.M. Schapiro LAMBOURNE ROAD, LLC, a Maryland limited liability company, and that he/she as a duly authorized Member being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of LAMBOURNE ROAD, LLC by himselfdansekkaskalMendorx as Vice President** **of Continental Realty Investors Corp., Manager IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal. [NOTARIAL SEAL]

STATE OF MARYLAND)	
) ss:	
COUNTY/GKKY OF BALTIMORE	_)	
•	to be a Vice President/of CO he/she as a duly authorized Vinent for the purposes thereing the President** estors Corp., Manager	ONCON LLC, a Maryland ice President being authorized to n contained by signing the name
		THE WAY OF THE PARTY OF THE PAR
•		WASY AME
STATE OF TEXAS)		
COUNTY/CITY OF HARRIS)) ss:	•
I HEREBY CERTIFY that or me, the undersigned Notary Public of and acknowledged himself/herself to limited liability company as general partner limited partnership as general partner limited partnership as sole member of liability company, and that he/she bet for the purposes therein contained by himself/herself in the capacity herein	f the State aforesaid, personal be Vice President of THC Copartner of THC Development of Hanover/MetLife Master of TOWSON PROMENADING authorized to do so, exect signing the name of TOWSO	Capital G.P. LLC, a Delaware at Partners 2000 LP, a Texas r Limited Partnership, a Texas E, LLC, a Texas limited outed the foregoing instrument ON PROMENADE, LLC, by
IN WITNESS WHEREOF, I	$\int_{0}^{\infty} dx$	
NOTARIAL SEAL! SHIRLEY BANKS ROBINSON Notary Public, State of Texas Hy Cosmission Expires Narch 16, 2007	Notary Public	anks Kolumson
My Commission Expires: 3-16-2	-007	

I HEREBY CERTIFY that on this b day of Lumber, 2006, before me, the undersigned Notary Public of the State aforesaid, personally appeared Canadle X. Angule and acknowledged himself/herself to be the President of COUNCIL OF UNIT OWNERS OF THE VALLEYS OF TOWSON CONDOMINIUM, a corporation, and that he/she as duly authorized President being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of COUNCIL OF UNIT OWNERS OF THE VALLEYS OF TOWSON CONDOMINIUM by thimself/herself as the President.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

[NOTARIAL SEAL]

STATE OF MARYLAND

My Commission Expires: 10-01-09

::ODMA\PCDOCS\TO1DOCS1\237028\5

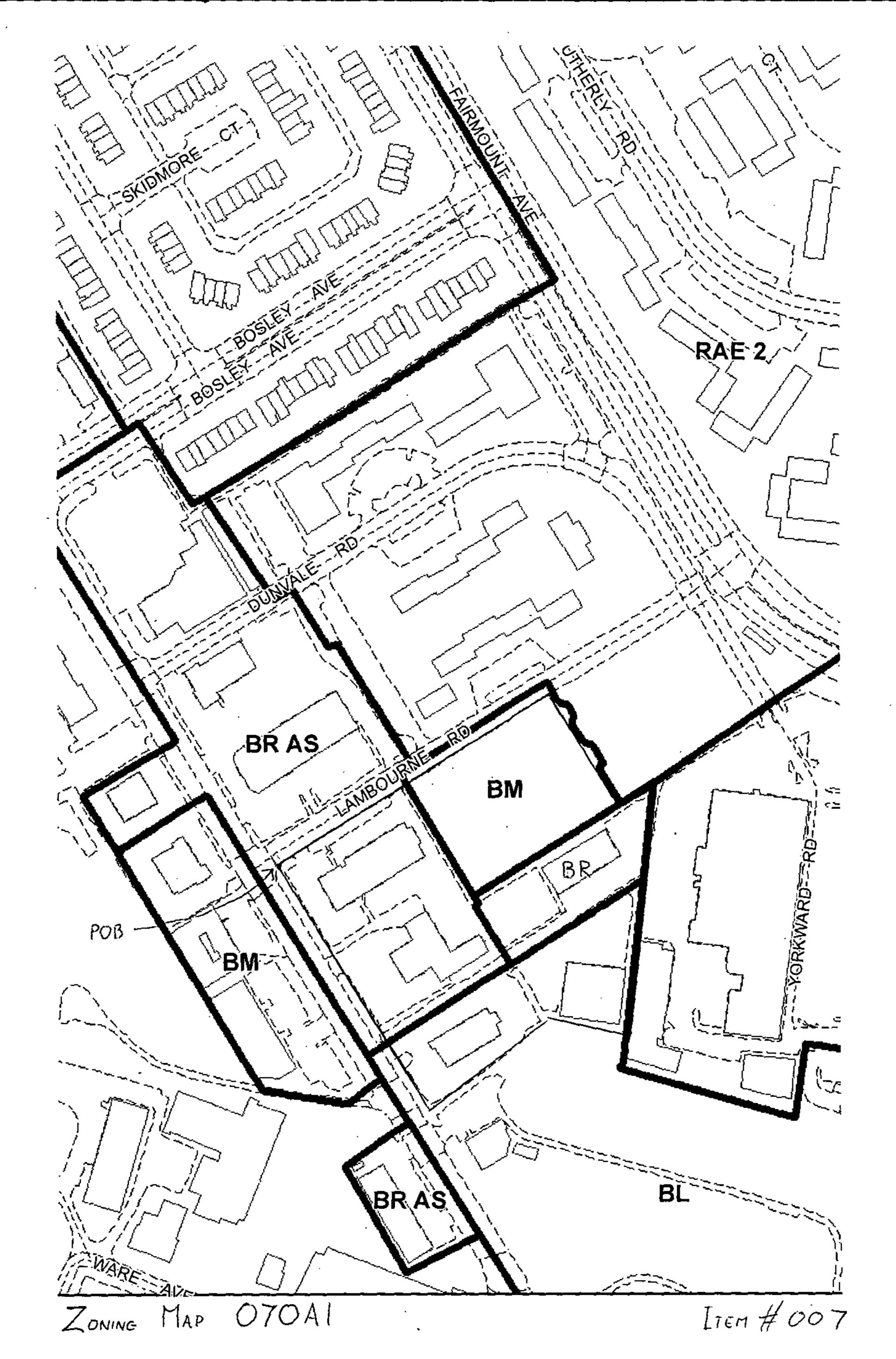
Case No.: 08-007- SPHA 21 Cambourne Road

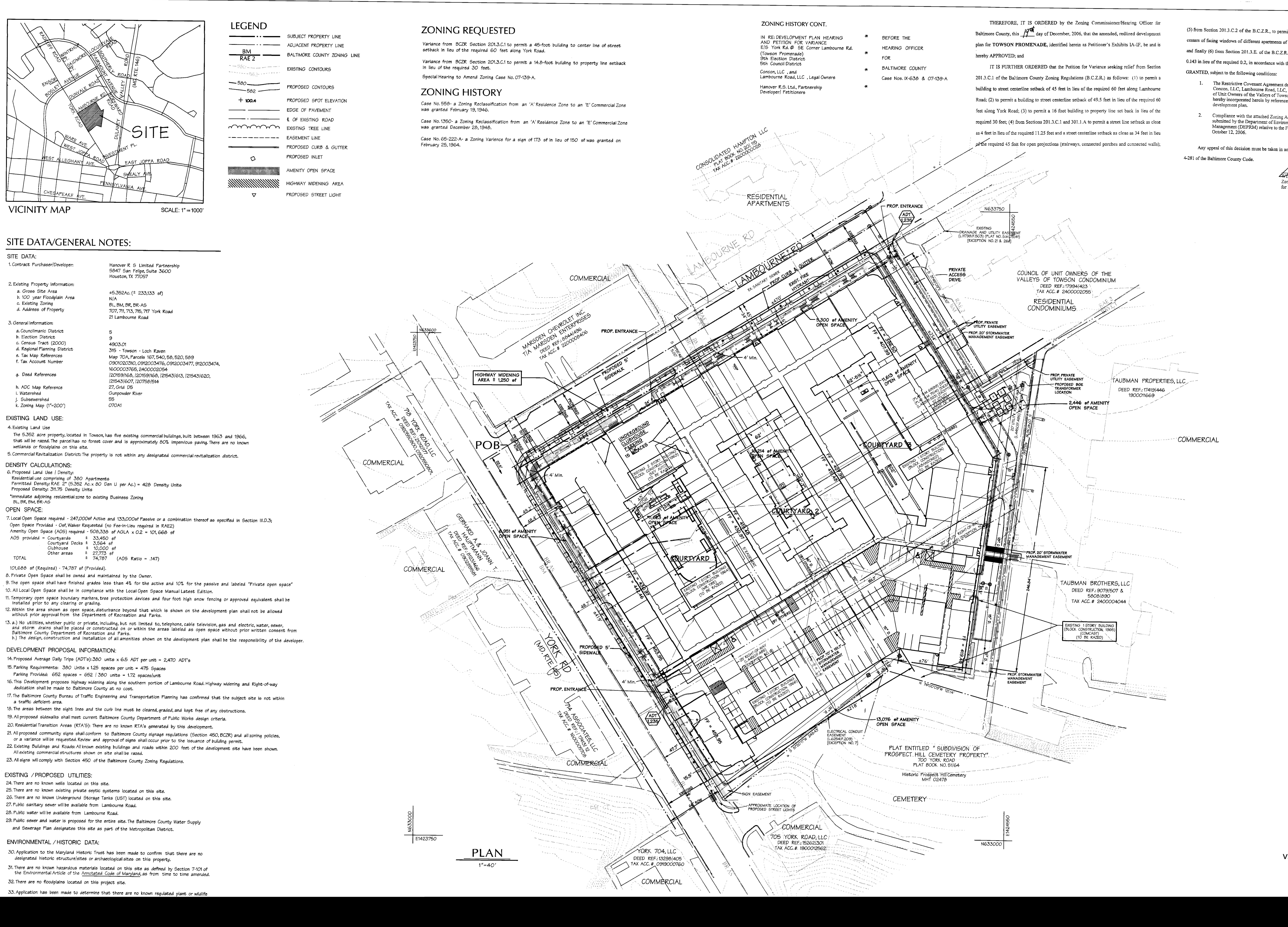
Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	SEALEID SITE PLAN 8-24-07	
No. 2	8-24-07	
No. 3		
No. 4		
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		





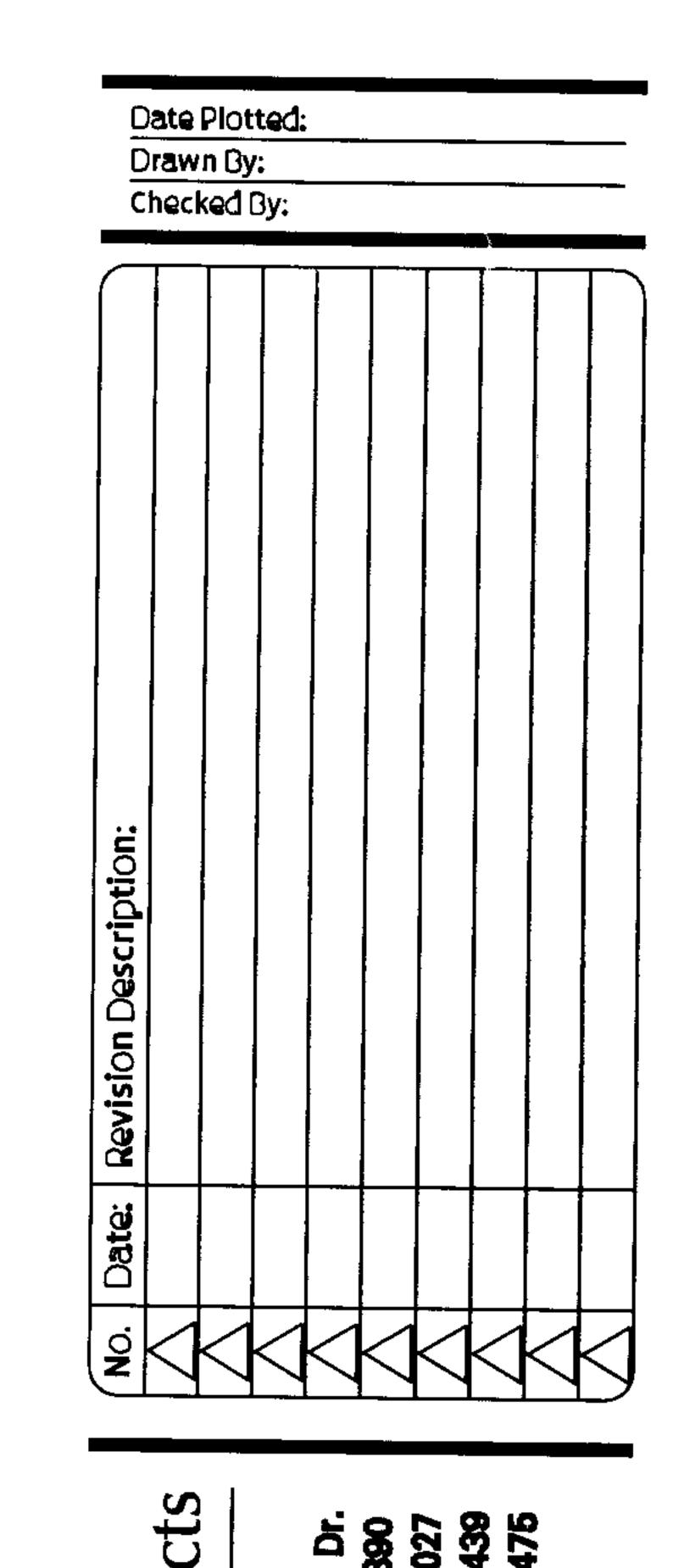
(5) from Section 201.3.C.2 of the B.C.Z.R., to permit a 43 foot minimum distance between the centers of facing windows of different apartments of the same lot in lieu of the required 75 feet and finally (6) from Section 201,3.E. of the B.C.Z.R., to permit an amenity open space ratio of 0.143 in lieu of the required 0.2, in accordance with the Petitioner's Exhibit IC, be and is hereby

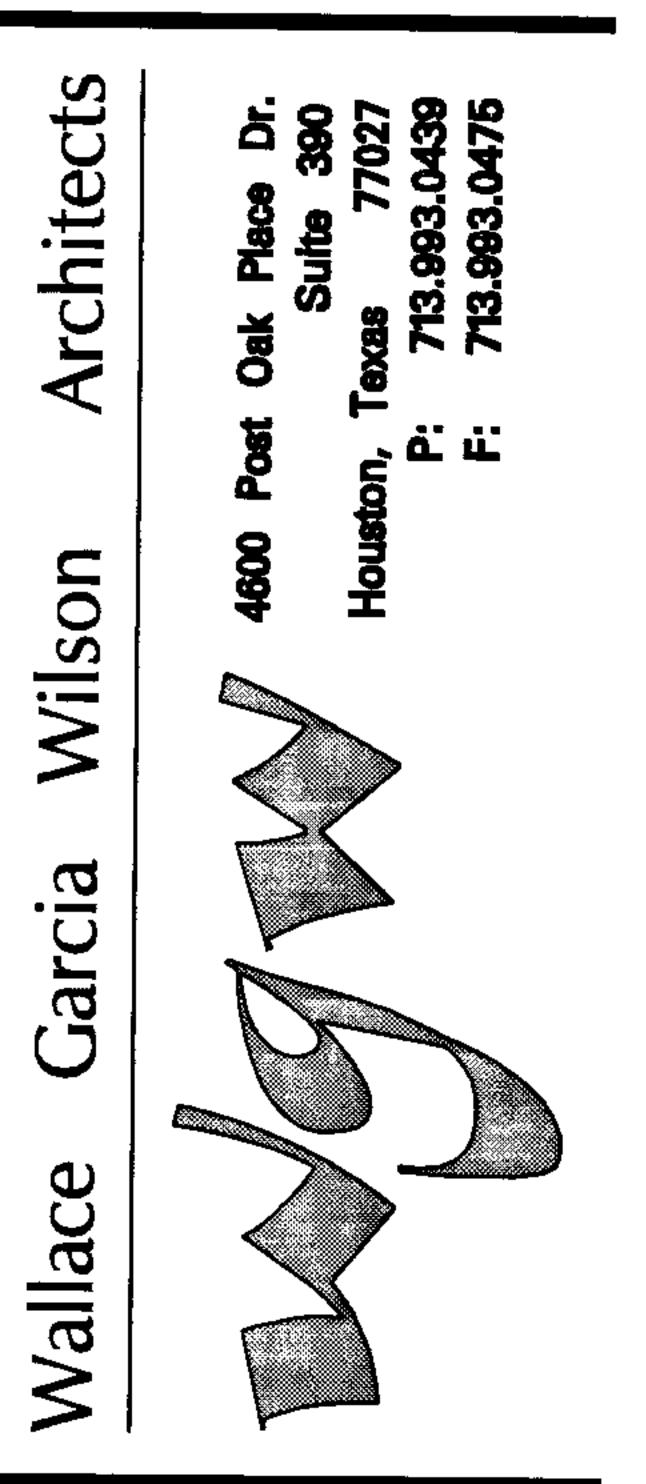
The Restrictive Covenant Agreement dated December 5, 2006, by and between Concon, LLC, Lambourne Road, LLC, Towson Promenade, LLC and the Council of Unit Owners of the Valleys of Towson Condominium (Petitioner's Exhibit 6) is hereby incorporated herein by reference as a condition to the approval of the

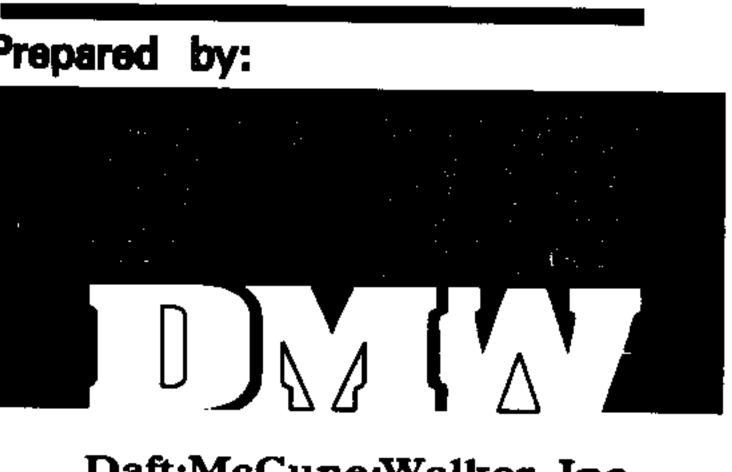
Compliance with the attached Zoning Advisory Committee (ZAC) comment submitted by the Department of Environmental Protection and Resource Management (DEPRM) relative to the Forest Conservation Regulations, dated October 12, 2006.

Any appeal of this decision must be taken in accordance with Sections 32-3-401 and 32-

WILLIAM J WISEMAN, III
Zoning Commissioner/ Hearing Officer







Daft·McCune·Walker, Inc.

200 East Pennsylvania Avenue Towson, Maryland 21286 410.296.3333 Fax 296.4705 www.dmw.com

> A Team of Land Planners, Landscape Architects, Engineers, Surveyors & Environmental Professionals



Towson Promenade Site Plan to Accompany

Variance and Special Hearing

York Road & Lambourne Road Towson, Maryland 9th Election District 5th Councilmanic Dist.