9/13/11

MANDATE

Court of Special Appeals

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No. 02704, September Term, 2009

Richard Lehnert
vs.
William Cumberland et al.

JUDGMENT: August 11, 2011: Judgment of Circuit Court for Baltimore County affirmed; appellant to pay costs.
Unreported opinion by Woodward, J.

September 12, 2011 Mandate issued.

From the Circuit Court: for **BALTIMORE COUNTY**
00000C094658

STATEMENT OF COSTS:

Appellant(s):	
Lower Court Costs-	60.00
Steno Costs of Appellant-	110.50
Filing Fee of Appellant-	50.00
Brief of Appellant-	208.80
Record Extract-10 COPIES	331.20
Appellee(s):	
Brief of Appellee-	118.80

FILED OCT 19 2011

WBH

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **twelfth** *day of* **September** **2011**

Leslie D. Gradet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

8/11/11

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2704

September Term, 2009

RICHARD LEHNERT

v.

WILLIAM CUMBERLAND, ET AL.

Woodward,
Zarnoch,
Graeff,

JJ.

Opinion by Woodward, J.

Filed: August 11, 2011

Richard Lehnert, appellant, challenges the judgment of the Circuit Court for Baltimore County that affirmed the decision of the Board of Appeals of Baltimore County ("Board") granting appellees', William and Holly Cumberland ("Cumberlands"), request for two variances and request for a special hearing for a non-density transfer of acreage.

On appeal, Lehnert presents three questions[1] for review by this Court, which we have rephrased and consolidated into two questions:

1. Was the Board's decision to grant the Cumberlands' Petition for Variance in accordance with law and supported by substantial evidence?

2. Was the Board's decision to grant the Cumberlands' Petition for Special Hearing in accordance with law and supported by substantial evidence?

For the reasons set forth herein, we shall uphold the Board's decision and thus affirm the judgment of the circuit court.

BACKGROUND

In an opinion dated March 26, 2009, the Board set forth the relevant background facts regarding the case *sub judice*:

> The subject property is located in the 8th Election District – 3rd Councilmanic District of Baltimore County and consists of three (3) lots (Lots Nos. 3, 4 and 7) that were conveyed by two (2) separate

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[1] Lehnert originally presented the following questions for review by this Court:

1. Did the County Board of Appeals err in granting the variance in their Opinion and Order? Did the [Board] err in failing to consider the Cumberlands' property as a whole?

2. Did the [Board] err in granting the Special Hearing request?

Deeds to the [Cumberlands] on April 20, 1976 by the original owner, Linda Green. [I]n October 1975, [] Green had recorded a Plat for residential subdivision purposes, which served to create seven (7) lots. Lots 3, 4 and 7 were included in the original seven (7) lots and were zoned R.D.P., which permitted one (1) dwelling per acre of land. Lots 3, 4 and 7 contain a combined 114.65 +/- acres of land. At present, [the Cumberlands'] lots remain in the exact configuration and contain the same acreage as of the date the [Cumberlands] purchased them. The underlying zoning however has been changed to R.C.2. The R.C.2 zone permits subdivision of an existing lot between two (2) and one-hundred (100) acres to no more than two (2) lots, provided the lot was created prior to November 25, 1979.

Lot 7 contains 5.099 +/- acres and fronts on Belfast Road, along its southern boundary line. Lot 7 is the only one of [the Cumberlands'] lots that fronts on Belfast Road. Lot 3 contains 53.676 +/- acres and is located directly north and east of Lot 7. Lot 4 contains 58.875 +/- acres and is situated directed east of Lot 3 and extends to Interstate 83, which is the eastern most part of [the Cumberlands'] overall property. Lots 3 and 7 are the subjects of the zoning petition filed in the instant case. The requested zoning relief does not apply to Lot 4.

[The Cumberlands'] request approval to transfer 8.07 +/- acres from Lot 3 to Lot 7 and to re-configure the lots in accordance with this transfer. This re-configuration would allow a dwelling to be placed farther back from Belfast Road than is now possible with the current configuration of Lot 7. [The Cumberlands] further request approval to transfer 0.45 +/- acres from Lot 7 to Lot 3 and to re-configure the two (2) lots in accordance with that transfer. This second re-configuration is for access purposes for Lot 3 to Belfast Road.

In addition to the non-density transfer, [the Cumberlands] also filed a Petition for a Variance for the length of purposed in-fee panhandle strips to accommodate Lot 3. [The Cumberlands] intend to subdivide Lot 3 into two (2) lots, Lots 3A and 3B, through the County's development approval process.

The Board also provided background regarding the procedural history:

> This matter comes before the [Board] on an appeal taken by the Office of People's Counsel on April 11, 2008 from an Order of the Zoning Commissioner for Baltimore County, dated March 25, 2008, granting [the Cumberlands'] Request for a Special Hearing, . . . to approve [] non-density transfer[s] . . . and to re-configure lots 3 and 7 in accordance with the transfer[s] granted; . . . and [the Cumberlands'] Request for Variance . . . to allow in-fee panhandle strips of 1,223 feet and 2,274 feet, in lieu of the maximum permitted 1,000 feet.
>
> The Board held a public *de novo* hearing on Wednesday, November 19, 2008 at 10:00 a.m. . . . The Board [] held a public deliberation on Tuesday, February 17, 2009 at 9:00 a.m.

At the November 19, 2008 hearing, the Board heard testimony from (1) Bruce Doak, the Cumberlands' land surveying expert, (2) Dr. Michael Dillon, a neighboring property owner, (3) Curtis Murray, a representative from the Development and Review Section of the Office of Planning for Baltimore County, (4) Diane Knapp, a neighboring property owner, (5) Walter Holland, a neighboring property owner, (6) Lehnert, and (7) Mrs. Cumberland. The Board also accepted into evidence exhibits depicting the location of the property, the proposed variances, and the proposed acreage transfers. In an opinion dated March 26, 2009, the Board "unanimously agree[d] to grant the [Cumberlands]' request for a non-density transfer and panhandle variance."

On April 23, 2009, Lehnert filed a petition for judicial review of the Board's decision in the circuit court. In an opinion and order dated November 24, 2009, the circuit court denied Lehnert's appeal, holding that "the record reflects that all determinations made by the [] Board [] were supported by the record."

On January 25, 2010,[2] Lehnert filed a notice of appeal to this Court. Additional facts will be set forth below as necessary to resolve the questions presented.

DISCUSSION

In *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008), the Court of Appeals provided the standard of review for reviewing the decision of a local zoning body:

> When we review the final decision of an administrative agency, such as the Board of Appeals, we look through the circuit court's . . . decision[], . . . and evaluate [] the decision of the agency. Judicial review of administrative agency action is narrow. The court's task on review is not to substitute its judgment for the expertise of those persons who constitute the administrative agency. In our review, we inquire whether the zoning body's determination was supported by such evidence as a reasonable mind might accept as adequate to support a conclusion. As we have frequently indicated, the order of an administrative agency, such as a county zoning board, must be upheld on review if it is not premised upon an error of law and if the agency's conclusions reasonably may be based upon the facts proven.

Id. at 66-67 (second alteration in original) (internal quotations, citations, and ellipses in original omitted).

"The scope of judicial review of administrative fact-finding is a narrow and highly deferential one. Accordingly, we will affirm a decision on the facts if it is supported by 'substantial evidence.'" *Trinity Assembly of God of Balt. City, Inc. v. People's Counsel for Balt. Cnty.*, 407 Md. 53, 78 (2008) (citations omitted).

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[2] The circuit court's order was not entered until December 30, 2009.

Lehnert contends that the Cumberlands did not produce sufficient evidence for the Board to have found in their favor regarding the Petition for Variance and Petition for Special Hearing. We disagree and will explain.

I.

VARIANCE

In *Cromwell v. Ward*, 102 Md. App. 691 (1995), this Court explained the "two-step process" for obtaining a variance:

> The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is – in and of itself – unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

Id. at 694-95 (footnote omitted).

The Cumberlands' property is governed by the Baltimore County Zoning Regulations ("BCZR"). Section 307.1 of the BCZR provides the Zoning Commissioner of Baltimore

County and the Board with the power to grant variances from area regulations[3] "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 [BCZR] would result in *practical difficulty* or unreasonable hardship." (Emphasis added). A variance may be granted only if it does not "increase [] residential density beyond that otherwise allowable by [BCZR]" and only if in "strict harmony with the spirit and intent of said . . . regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare." *Id.*

In the case *sub judice*, the Cumberlands requested variances for Lot 3 under section 32-4-409(e)(2) of the Baltimore County Code ("BCC"), which states that, "[i]n an RC zone, the panhandle length may not exceed 1,000 feet." The Cumberlands specifically requested the Board "[t]o allow panhandle strips of 1223' (Lot 3A) and 2274' (Lot 3B) in lieu of the maximum permitted 1,000'." On March 26, 2009, the Board granted the Cumberlands' Request for Variance.

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[3] The distinction between a "use" variance and an "area" variance is that a use variance "changes the character of the zoned district" and an area variance changes the height or area requirements and leaves the character of the zoned district unaffected. *Anderson v. Bd. of Appeals, Town of Chesapeake Beach, Md.*, 22 Md. App. 28, 38 (1974). In the case *sub judice*, the Cumberlands asked for an area variance.

A.

Uniqueness

At the November 19, 2008 hearing before the Board, the Cumberlands offered testimony from Doak as an expert in land surveying and zoning regulations. Doak testified that the Cumberlands' lots originated from a 1975 subdivision plan of Green's property and have remained unchanged since the original 1975 subdivision. He explained that, in 1975, the lots had been zoned as "RDP," which allowed the landowner to build one dwelling per acre. He compared the property's 1975 RDP zoning to the property's current "RC2" zoning. According to Doak, RC2 regulations "allow for any lot or any parcel of ground between two and 149[4] acres that was existing as of November 25, 1979 . . . [to] be subdivided one time, creating two lots." Under RC2, Lot 3 could be subdivided into two lots.

With the aid of an aerial photograph exhibit, Doak explained that Lot 3 did not front on Belfast Road or on any other public road. He indicated that Lot 3 had a "mixed use" with "some large stand of forest and . . . some pastures for some hay that's being produced on it."

In addition to the change in zoning, Doak testified that Baltimore County regulations currently required each lot to have its "own strip of ground, ownership to a public road," and because Lot 3 did not front on a public road, he was "try[ing] to create these lots that would

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[4] The current RC2 regulations allows for any lot having a gross area between two and *100* acres to be subdivided into two lots, *see* Baltimore County Zoning Regulations § 1A01.3.B.1 (emphasis added), and not any lot with a gross area between two and *149* acres, as Doak testified.

have in-fee ownership" to meet the regulations. He explained that, when Lot 3 was created in 1975, the BCC did not contain any requirement for properties to have in-fee panhandle strips to a public road. Doak indicated that, to create in-fee strips in accordance with the current regulations and to meet the RC2 goal of "continued use of the property agriculturally," the in-fee strips for the two subdivided lots of Lot 3 must be over the 1,000 feet permitted by the regulations. He concluded that the Cumberlands' situation is "a unique set of circumstances that is providing some difficulty in meeting the current panhandle requirements."

After Doak testified, four witnesses who own properties adjoining or adjacent to the Cumberlands' lots testified about their concerns regarding the Cumberlands' development, primarily dealing with the existing driveway along the west side of Lot 7 to Belfast Road.

Dr. Dillon testified that his concerns arose from the "huge amount of water that comes down" the side road, citing problems of how "passable" the road is and drainage. In his view, "quintupling the use" of the road would make the road "impossible" to use. Knapp testified that her major concern was that the road "goes on [her] side of the property [and] will then be used by five or six additional families," and, because "that road will not be able to handle that," the road would need "major construction," which would have "a huge impact on [her] property." Like Dillon, she also worried about the road having "trouble because of the water." Holland testified that he was "opposed to all the variances and anything else that will . . . increase the flooding." Similarly, Lehnert testified that he was concerned about the

flooding. He also worried about his ability to continue farming on his lot because "[t]he same farmer farms both" the Cumberlands' Lot 4 and Lehnert's lot.

None of the neighbor witnesses presented testimony that disputed the Cumberlands' requested variances.

In its opinion granting the Cumberlands' petition for variances, the Board articulated its findings regarding the "uniqueness" of the property:

> It was [] Doak's opinion that Lot 3 is unique because the requirements for subdivision of residential lots changed subsequent to Lot No. 3's creation in 1975. Similarly the Development Regulations at the time the Plat was recorded did not include the in-fee panhandle length limitation, from which [the Cumberlands'] seek Variance relief.
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> * * *
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> . . . [S]ince Lot 3 is land-locked and without access to a public road, and there are no other lots in the original subdivision of [] Green with similar issues; Lot 3 is unique.
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> * * *
>
> . . . The Board acknowledges that several witnesses testified in opposition to the [Cumberlands'] requests; however, there was no testimony or evidence presented to dispute the [Cumberlands'] request.

Lehnert argues to this Court that the Board erred in granting the variances to the Cumberlands because the Cumberlands failed to present any evidence of uniqueness as required by variance law. Lehnert states that the standard for establishing "uniqueness for a variance" is that the property must have "'an inherent characteristic not shared by other properties in the area.'" (Quoting *Cromwell*, 102 Md. App. at 710). According to Lehnert,

Lot 3 is not unique because "the site is typical of rural land . . . in northern Baltimore County." He further contends that "unique features alone do not satisfy the test," and that, "[w]here 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." (Citation and quotations omitted).

This Court in *Cromwell* discussed the definition of "unique":

> 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, practice restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.

102 Md. App. at 710 (citations omitted).

In proving "uniqueness," the landowner must show "a connection between the property's inherent characteristics and the manner in which the zoning law hurts the landowner." *Trinity Assembly*, 407 Md. at 82.

The Cumberlands presented uncontradicted evidence that, when Lot 3 was created in 1975, it was not subject to the current panhandle regulations that require each property to have an in-fee owned panhandle strip to a public road measuring no more than 1,000 feet in length. Under *Cromwell*, the Cumberlands presented substantial evidence that the panhandle regulations created "an inherent characteristic [in Lot 3] not shared by other properties in the

area." *See* 102 Md. App. at 710. Because the regulations "impact[ed] disproportionately upon" Lot 3 as compared to the surrounding properties, Lot 3 meets the standard for "uniqueness" under Maryland law. *See id.* at 694. Accordingly, we conclude that the Board's determination that Lot 3 was unique is supported by "such evidence as a reasonable mind might accept as adequate to support [its] conclusion." *See Loyola College*, 406 Md. at 67.

B.

Practical Difficulty

At the hearing before the Board, Doak agreed that "a practical difficulty [exists] in creating a panhandle strip that was not greater than 1,000 feet." To make panhandle strips less than 1,000 feet, he explained:

> I'm pointing to proposed Lot 3B, which is currently 30 acres. We would have to make a large portion of the body of this come down and come all the way pretty much to this point here, which would be less than 1,000 feet. So in turn we would have to make [Lot 3B] a very long and narrow and a pretty much totally shaped [sic] property. The same with Lot 3A. We'd have to bring that ownership down to this point, having owned that, and which in turn would take away substantially from the proposed 12 acre lot we have here and the placement of the house.
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> * * *
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> . . . [A]s you can see that that makes for unique shaped lots, as well as lots that do not best utilize the property and because you're now splitting this area here into an area that probably will not be utilized that much or maintained by the people up here.
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> * * *

> . . . [O]ne of the things we took into consideration[is] that by leaving it the way it was we could place this house in this area as to be buffered from [], with the woods here and from [] Lehnert's property, so we're trying to move it as far away from [] Lehnert's property and in turn the same with [D]r. Dillon's property. So we're trying to get it away from these adjoining properties.
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> * * *
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> . . . This being RC2 and predominately an agricultural area, we are trying our best to create ownership that would not impose or would provide or allow for the ownership and the continued use of the property agriculturally. . . . [T]he proposed driveways are going up the property lines, the panhandles are going up the property lines, therefore giving this proposed Lot 3A a larger area. An area that they could use for agricultural use versus having them, that agricultural area split into two ownerships . . . .

Doak agreed that, because the proposed variance would allow for continued agricultural use, it would be "within the spirit and intent of the zoning regulations."

Doak recognized that a public road, Buffalo Run Road, could be accessed without the requested variances, but a trout stream would have to be crossed to access Buffalo Run Road. He testified that the county's Department of Environmental Protection and Resource Management ("DEPRM") "would not want to see [the Cumberlands] cross that stream . . . if we had an alternative route, especially across our own property." Doak elaborated that DEPRM would prefer the Cumberlands not crossing that stream and would require the Cumberlands to secure a variance in order to avoid doing so. He further testified that access to Buffalo Run Road would still require a panhandle length variance for an in-fee strip on one of the subdivided lots of Lot 3.

In its opinion granting the request for variances, the Board made the following findings regarding "practical difficulty":

> [] Doak, when asked if there would be practical difficulty in creating a panhandle strip that was not greater than one thousand (1,000) feet, replied that it would and went on to explain in detail the impact it would have to neighbors and the twelve (12) +/- acres lot.
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> * * *
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> . . . The Board determined that there would be practical difficulty if the [v]ariances were not granted. The Board determined that the practical difficulty is not self-induced, due to the fact that when the lots were originally created, the panhandle driveway requirements were not in place. The Board determined that when determining practical difficulty, the issue is not whether the property owner is not able to do anything with the property if a variance is not granted; it means that the property owner is not able to do the same thing that other property owners in the area are able to do with their properties, if the variance is not granted. In this case there is a practical difficulty for the [Cumberlands] if th[eir] variances are not granted. The Board acknowledges that several witnesses testified in opposition to the [Cumberlands'] requests; however, there was no testimony or evidence presented to dispute the [Cumberlands'] request.

Lehnert argues that the Cumberlands did not present sufficient evidence of practical difficulty as that term is defined and applied in variance law. We disagree.

Area variances, such as in the instant case, are "customarily concerned with 'practical difficulty,'" and not "undue hardship." *Anderson v. Bd. of Appeals, Town of Chesapeake Beach, Md.*, 22 Md. App. 28, 38 (1974). *See also Loyola Fed. Sav. & Loan Ass'n v. Buschman*, 227 Md. 243, 248 (1961). "Where the standard of practical difficulty applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required

under the undue hardship standard." *Anderson*, 22 Md. App. at 39. *See also Buschman*, 227 Md. at 249.

In *McLean v. Soley*, 270 Md. 208 (1973), the Court of Appeals provided three criteria for determining whether "practical difficulty" has been established:

> 1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
>
> 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Id. at 214-15 (quoting 2 Rathkopf, *The Law of Zoning and Planning* (3d ed. 1972) 45-28, 29).

We will address each of these three criteria.

1.

Whether Compliance with the Restriction Would Unreasonably Prevent Use of Property for a Permitted Purpose or Render Conformity with Restrictions Unnecessarily Burdensome

Existence of Variance-Free Alternative

Under BCZR § 1A01.3.B.1, which provides that a "lot having a gross area between

two and 100 acres may be subdivided into . . . two lots," the Cumberlands are entitled to subdivide Lot 3 into two lots. In the proposed subdivision of Lot 3, Lehnert argues that, "[t]he record reflects no facts necessary to allow the Board to grant such an excessive variance," because the Cumberlands could have "provide[d] a panhandle drive that met the . . . [1,000 feet] maximum by amending [the] Site Plan," but rejected it, because they did not "prefer" it.

Under Maryland law, the existence of an alternate subdivision plan, which would not require a variance, does not bar the Board from granting a request for a variance. In *Soley*, the Court of Appeals upheld the Board's grant of a variance from the side yard window setback requirement even though the proposed apartment house-office building project could have been constructed without such variance. 270 Md. at 209-10, 216. Joseph Soley had applied for a variance to retain "the present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." *Id.* at 210 (quotations omitted). The Court held that the criteria for practical difficulty were met because use of the alternate development plan and strict compliance with the side yard requirements would "result in the destruction of the trees." *Id.* at 215.

In *Buschman*, Loyola Federal Savings and Loan Association applied for a height restriction variance to construct an office building and rear parking area, even though such building and parking area could have been built without the variance. 227 Md. at 244, 246. The purpose behind the height restriction regulation was to protect the light and air of the

neighboring properties. *Id.* at 247. The Court of Appeals determined that the evidence supported granting the variance because "the actual interference with light and air for neighboring properties was less than it would have been if . . . [the] building [was] constructed, in accordance with the Regulations and without the need for a variance." *Id.* at 246. The Court concluded that granting the variance would actually "protect[] such light and air," and thus the purpose of the regulations, "better than it would have been protected if a building had been constructed on the same site in strict accord with the Regulations, without any variance at all." *Id.* at 248. Therefore, even where a variance-free alternative existed, the Court upheld the Board's grant of the request for a variance. *Id.* at 251.

In the case *sub judice*, the Cumberlands presented evidence through Doak that, although an alternate plan existed where they could create a panhandle strip for each new lot that was under 1,000 feet in length, it would result in "unique shaped lots" that would not "best utilize the property." Doak testified that such unique shaped lots would likely increase property maintenance issues for future property owners, leaving the property to "not be utilized that much or maintained by the people up here." Doak also stated that the lots would impact the surrounding properties by preventing the placement of the houses far away from the adjoining properties. Finally, Doak explained that, by configuring the lots to avoid the need for a variance, the intent of RC2 zoning regulations for continued agricultural use would be adversely affected. The Cumberlands thus demonstrated that, although an alternate subdivision plan existed, their proposed plan for subdivision with the requested variances

would better serve the neighboring properties and the purpose of the RC2 zoning regulations. Therefore, the Board was not required to deny the Cumberlands' request for variances because an alternate subdivision plan existed that did not necessitate a variance.

Self-Created Hardship

Lehnert further contends that "a panhandle of no more than the permitted one thousand feet [] could have serviced" the Cumberlands' Lots 3 and 4 through Lots 5 and 6. He asserts, however, that Lots 5 and 6 had been sold by the "owner," and thus claims that "any purported 'hardship' or 'difficulty' was clearly created by the owner of the property," and, under Maryland law, a "self-created hardship" is not a ground for a variance.

It is unclear whether Lehnert is arguing that the Cumberlands were the owners of Lots 5 and 6 and thus the selling of Lots 5 and 6 constituted a "self-created hardship," or if he is arguing that Green was the owner of Lots 5 and 6 and her selling of Lots 5 and 6 resulted in a "self-created hardship" for the Cumberlands. Regardless, we disagree with both interpretations of Lehnert's argument. The former interpretation is factually incorrect, because, as explained by Doak, the Cumberlands never owned Lots 5 and 6. The latter interpretation fails, because the Cumberlands' "hardship" did not arise from Green selling Lots 5 and 6, but instead, from the change in zoning regulations. A self-created hardship "do[es] not arise from purchase, but from those actions of the landowner, himself or herself, that create the hardship, rather than the hardship impact, if any, of the zoning ordinance on the property." *Richard Roeser Prof'l Builder, Inc. v. Anne Arundel Cnty., Md.*, 368 Md. 294,

314 (2002). Therefore, any hardship impact on the Cumberlands' property from the change in zoning regulations was not "self-created." *See id.*

Buffalo Run Road Alternative

Lastly, Lehnert contends that the Board was required to view the property as a whole "in determining if a viable use remained." He claims that the Cumberlands' Lot 4 "fronts on a public road, known as Buffalo Run Road," and the Board should have "question[ed] whether the site can be developed with access to [the public road] in lieu of granting a variance for panhandle length." Lehnert asserts that, if a "portion of the subject property [was] added to Lot 4," that "would eliminate the panhandle variance request and still permit development of the site."

Lehnert further argues that the Cumberlands never requested approval by the county to cross the stream in order to access Buffalo Run Road. According to him, Doak testified that only an "alternative analysis" would need to be conducted before the county would approve the access to Buffalo Run Road. Lehnert contends, however, that the Cumberlands chose not to conduct the alternative analysis because it was expensive. He claims that the Cumberlands thus were never precluded by the county from accessing Buffalo Run Road. Lehnert concludes that the instant case is not a situation where the Cumberlands have "no 'reasonable and significant use of the property' unless a variance is granted."[5] (Quoting

[5] To the extent that Lehnert's argument relies on a standard of constitutional taking, that standard does not apply to a Maryland variance case where the "practical difficulty" (continued...)

Belvoir Farms Homeowners Ass'n v. North, 355 Md. 259, 282 (1999)).

Lehnert's argument overlooks certain evidence before the Board. Doak testified that, even if the Cumberlands provided in-fee panhandle strips to Buffalo Run Road, one of the subdivisions of Lot 3 would still require a panhandle length variance for that in-fee strip. Moreover, although the county had not expressly precluded the Cumberlands from providing a panhandle strip and vehicular access to Buffalo Run Road, the county expressed resistance to such access. As Doak testified, DEPRM "would not want to see us cross that stream . . . if we had an alternative route, especially across our own property." Doak emphasized that DEPRM would require the Cumberlands to secure variances, such as those requested here, in order to avoid crossing the stream. Thus, as the Cumberlands explained, they chose not to pursue the Buffalo Run Road alternative, not because it was "expensive," but because (1) it would still require a variance; and (2) the county was resistant to the Cumberlands' crossing the stream.

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[5](...continued)
standard applies. *See Anderson*, 22 Md. App. at 39 (quotations omitted). The "practical difficulty" standard applies in the case *sub judice*, because (1) the requested variance was an area variance and not a use variance, *see id.* at 38, and (2) BCZR § 307.1 permits the applicant to show *either* practical difficulty or unreasonable hardship to qualify for a variance. Where the governing zoning ordinance authorizes the grant of an area variance when "strict compliance with the regulations would result in practical difficulties *or* unreasonable hardship," the requested area variance can be "justified on proof of 'practical difficulty' alone." *Id.* at 40.

2.

Substantial Justice to the Applicant and the Other Property Owners

As indicated above, Lehnert contends that "[t]he record reflects no facts necessary to allow the Board to grant such an excessive variance," because a panhandle of less than 1,000 feet may be created without a variance. Lehnert thus seems to argue that "a lesser relaxation than that applied for would give substantial relief to the [Cumberlands] and be more consistent with justice to [the] other property owners." *See Soley*, 270 Md. at 214 (citation omitted)..

The Cumberlands, however, presented uncontradicted evidence that the grant of the variance would do substantial justice to them and to the neighboring property owners. *See id.* In addition to testifying about the "unique shaped lots" that would result if a variance was not granted, Doak testified that the houses would be located closer to the adjoining properties to the detriment of the neighboring property owners. He stated that a variance would allow for the house on the new lot 3A to be "buffered" by the woods from Lehnert's property.

Doak further explained that the variances would allow for the "continued use of the property agriculturally." As he described, Lot 3 "has a mixed use," with "some large stand of forest and . . . some pastures for some hay [production]." Without the variance, Doak asserted that the agricultural area would have to be "split into two ownerships," thus leaving only a "small portion" of the property for agricultural development. He testified that the

Cumberlands wanted a variance, so they could make the lots of a "size and [] shape . . . to try to protect [the farmland]."

None of the neighboring property owners who testified before the Board presented any testimony that contradicted Doak's testimony that the neighboring property owners would benefit from the variance. As explained above, the other property owners testified about their concerns regarding possible flooding and increased traffic from the new development, which are matters not relevant to a request for a variance.[6]

Therefore, the Cumberlands presented substantial evidence supporting the conclusion that the variance would provide substantial justice to them and to the neighboring property owners.

3.

Whether the Spirit of the Ordinance Will Be Observed and Public Safety and Welfare Secured

Lehnert argues that the Board "erred in its application of the facts to the law, particularly to the intent and purpose of the R.C. 2 Zone." He asserts that the Board did not properly weigh the Office of Planning's and the DEPRM's comments regarding the "environmental impact" from the development of the Cumberlands' property.

There is no indication, however, that the Board did not properly consider the Office

---

[6] Lehnert, however, did express concern that the added development would "forc[e] the farmer out of the area." According to Doak, the variance actually would support agricultural use, and thus Lehnert's farming concerns did not have a factual basis.

of Planning's and DEPRM's concerns about "environmental impact" in applying the facts to the law, and in particular to the intent and purpose of the RC2 Zone. In its order, the Board recognized the "concerns due to . . . [the] wooded area on the lot and because Belfast Road is a scenic route." The Board further acknowledged DEPRM's concern about crossing a stream on the property:

> Doak had testified that for Lot 3 to access Buffalo Run Road, you would have to go through Lot 4. There is a stream that runs through Lot 4 that would have to be crossed to get to Buffalo Run Road. [] Doak testified that DEPRM may not want us to cross that stream. He testified that DEPRM would require an alternative analysis and if there was no other way to access Buffalo Run Road, they might permit, with certain restrictions, to cross the stream.

Furthermore, the Board had before it evidence that Doak had addressed the environmental concerns when he met with the Office of Planning to discuss the property. At the hearing before the Board, Murray testified that, although the Office of Planning had originally opposed the request for variances, it changed its mind after meeting with Doak. Murray explained that the Office of Planning decided to support the variance request, because (1) the Cumberlands planned to improve the property with five units instead of utilizing all six of their density rights; (2) the Cumberlands did not plan to develop a dwelling along Belfast Road, which was a scenic public road; and (3) the driveway that would be used to access the dwelling on Lot 3 was "essentially the same as a farm road" and would not further cause an environmental impact. He concluded that, "with all that taken into consideration, we said we can support your request, because what we initially thought, the

basis that we initially had for denying it was incorrect." Murray recognized that some "environmental impacts" may occur with the variances, but that he was "comfortable" because the environmental impacts would be addressed during a subsequent development review process.

The Cumberlands also presented evidence supporting their contention that "relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." (Quotations omitted). As explained above, Doak testified that the goal of RC2 zoning is the "continued use of the property agriculturally." He asserted that the requested variance would promote the RC2 goal by protecting the land's agricultural use. Specifically, he stated that, without the variances, Lot 3 would have to be subdivided in such a way that the amount of land used for farming would be decreased. The neighboring property owners presented no evidence that conflicted with Doak's conclusion that the variance would be "within the spirit and intent of the zoning regulations." .

C.

Panhandle Driveways versus Panhandle Lots

Lehnert next argues that the Cumberlands are "really seeking relief to create panhandle lots," and not just attempting to obtain a "variance for a panhandle length." He asserts that the Cumberlands must meet the "specific conditions" required for a "panhandle driveway" in order to obtain a panhandle length variance. According to Lehnert, the

Cumberlands failed to meet these conditions, and Doak and the Board ignored this "legal issue."

The Cumberlands respond that Lehnert "confuses 'panhandle driveways' and 'panhandle lots,'" and that the panhandle driveway provisions are "not applicable here." We agree with the Cumberlands.

BCC § 32-4-101 defines a "panhandle driveway" and a "panhandle lot":

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

BCC § 32-4-409(b) provides further guidance regarding the requirement for ownership of an in-fee strip to a public road:

> (b) *In-fee strip; required.*
>
> (1) Except as provided in subsection (c) of this section, the county may permit a panhandle lot if the lot includes an in-fee strip of land for access to the local street.
>
> (2) Panhandle fee strips shall be a minimum of:
>
> (i) 20 feet in width to serve one lot;
>
> (ii) 12 feet in width per lot where two lots are involved;

> (iii) 10 feet in width per lot where three or more lots are involved; or
>
> (iv) 12 feet in width per lot where there are two or more lots in a development that is within the metropolitan area where public water and sewer services are available, planned, or considered.

Doak testified that the regulations require a property owner to "own [a] strip of ground, ownership to a public road . . . owned in-fee by the lot or the proposed lot." He explained that the "regulations do not say that you have to utilize [the in-fee strip] for access. It just says that it has to be owned in-fee by the lot or the proposed lot." Doak asserted that the Cumberlands were obtaining the in-fee strips to "meet the regulations" under BCC §§ 32-4-101(ee) and 32-4-409(b). In other words, the Cumberlands were seeking a variance for the panhandle length to meet the requirements of a panhandle lot, not including a panhandle driveway. Thus, whether the subdivided lots of Lot 3 meet the requirements of a panhandle driveway is irrelevant to the Cumberlands' request for variances in the instant case. Any concerns that the neighboring property owners may have about a panhandle driveway may be raised during the subsequent development review process that governs subdivisions and is not an issue before this Court.

Accordingly, we conclude that the Board's decision to grant the Cumberlands' request for variances was in accordance with the law and supported by substantial evidence.

II.

SPECIAL HEARING

Section 1A00.4.b of the Baltimore County Zoning Commissioner's Policy Manual ("ZCPM") governs non-density transfers of RC-zoned land in Baltimore County, and provides:

> (1) The sale or transfer of small R.C. zoned parcels, usually too small to meet the minimum lot size, for non-density purposes such as access, or agriculture, may be permitted.
>
> (2) In an R.C. 2 zone, a parcel could possibly be transferred from the overall development tract to an adjacent existing lot of record provided that the end result does not permit a re-subdivision into a greater number of lots.
>
> (3) Depending on the use and the size of the parcels, a special hearing before the Zoning Commissioner may be required to determine if a non-density transfer is permitted.

(Underline in original).

The Cumberlands requested a special hearing for two non-density transfers, the transfer of 8.07 +/- acres from Lot 3 to Lot 7 and the transfer of 0.45 +/- acres from Lot 7 to Lot 3.

At the hearing before the Board, Doak stated that Lot 7 has frontage on Belfast Road and is "for the most part . . . wooded" with "some steep slopes on it." He explained that he and the Cumberlands worked with DEPRM and the Office of Planning regarding the exact placement of a house on Lot 7 because DEPRM and the Office of Planning expressed concern about maintaining the scenic quality of Belfast Road and protecting the wooded area.

Because of their concerns, Doak testified that the Cumberlands planned to build only one house on Lot 7, as opposed to the permitted two houses. He indicated that with the 8.07 +/- acre transfer, the agreed upon placement of the house on Lot 7 would protect the scenic route by being out of sight from Belfast Road,[7] and would protect the environmental areas located on Lot 7 by not disturbing any of the forests for the construction of the house. All of the forests on Lot 7 would be in a "protected forest conservation, or forest buffer easement." Regarding the transfer of 0.45 +/- acres from Lot 7 to Lot 3, Doak testified that this transfer would allow for the creation of in-fee panhandle strips to Belfast Road for Lots 3A and 3B, as described in Section I, *supra*.

In its opinion dated March 26, 2009, the Board granted the Cumberlands' request for a non-density transfer:

> Lot 3 is land-locked with no access to a public road. The transfer of 0.45 +/- acres from Lot 7 to Lot 3, will allow the building of a panhandle driveway that will connect Lots 3A and 3B to a public road. Lot 3 will in turn transfer 8.07 +/- acres to Lot 7. As [] Doak testified, Lot 7 is predominantly wooded with steep slopes and Belfast Road is a scenic route. The re-configuration of a portion of Lot 3 to Lot 7, would create a twelve (12) +/- acres lot that will allow one (1) house to be located on Lot 7, away from and out of site of Belfast Road and avoid the extra grading that would be necessary on the current Lot 7. The current zoning on Lot 7 is R.C. 2, which allows the building of two (2) dwellings. The non-density transfer from Lot 3 to Lot 7 will result in one (1) dwelling, a decrease of one (1) dwelling from the two (2) dwellings currently permitted. The non-density transfer from Lot 7 to Lot 3, will not increase the density that Lot 3 is

---

[7] The house, according to Doak, would also be away from the extra grading that would be necessary if the house was located on the current Lot 7.

> permitted with its current zoning of R.C. 2. The Board felt there was no evidence or testimony given that would dispute allowing the two (2) non-density transfers.

Lehnert argues that the Board erred in granting the Cumberlands' Special Hearing request. We disagree and explain.

Requested Transfer of 8.07 +/- Acres from Lot 3 to Lot 7

Doak testified that the requested transfer of 8.07 +/- acres from Lot 3 to Lot 7 would allow the Cumberlands to construct a dwelling on Lot 7 that satisfies the concerns of DEPRM and the Office of Planning. Specifically, after the non-density transfer of acreage, the dwelling will be constructed in a location that would maintain the scenic quality of Belfast Road and provide for forest conservation. This non-density purpose meets the requirement of ZCPM § 1A00.4.b(1).

Furthermore, the transfer of 8.07 +/- acres would not increase the density of Lot 7. Doak testified that, without the transfer of acreage, Lot 7 is 5.099 acres. Under RC2 regulations, a lot between two and 100 acres could be subdivided into only two lots, and thus Lot 7 could be subdivided into two lots. With the addition of 8.07 +/- acres, Lot 7 would consist of 13.169 +/- acres, which still could be divided into only two lots. Therefore, the transfer of 8.07 +/- acres meets the requirement under ZCPM § 1A00.4.b(2), because "the end result does not permit a re-subdivision [of Lot 7] into a greater number of lots."

Requested Transfer of 0.45 +/- Acres from Lot 7 to Lot 3

Doak testified that the requested transfer of 0.45 +/- acres from Lot 7 to Lot 3 allows for the creation of in-fee strips for Lot 3 so that the subdivision of Lot 3 may access a public road. By transferring 0.45 +/- acres, the in-fee strips may be placed in such a way as to promote continued agricultural use on the proposed Lots 3A and 3B. Both access and continued agricultural use are permissible, non-density purposes for transferring RC zoned land under BCZR § 1A00.4.b(1).

The transfer of 0.45 +/- acres would not increase the density of Lot 3, *i.e.*, increase the number of permitted subdivisions for Lot 3. Doak testified that, without the transfer of acreage, Lot 3 is 53.676 acres, and, under the RC2 zone, may be subdivided into only two lots. Once the 0.45 +/- acres is transferred, Lot 3 would be 54.126 +/- acres, which also may be subdivided into only two lots. Therefore, the transfer of 0.45 +/- acres would not result in a subdivision of Lot 3 into a greater number of lots, as required under BCZR § 1A00.4.b(2).

Effect of Ability to Build on Lot 7 on Density Transfer

Finally, Lehnert contends that the Cumberlands must prove "at a minimum, that Lot 7 can support a dwelling." He asserts that the Cumberlands erroneously "presume . . . that since they have the conditional density calculations based on acreage" to construct a dwelling on Lot 7, they could actually construct a dwelling on Lot 7 as it is "presently configure[d]." (Emphasis omitted). Lehnert appears to argue that the Cumberlands may not have enough

density on Lot 7 prior to the transfer in order to build a dwelling thereon and thus are actually asking the Board for a density transfer instead of a non-density transfer.

Under BCZR § 1A01.3.B.1, the "subdivision lot density" is based on the acreage; a lot between two and 100 acres could be subdivided into two lots. Whether a lot is "buildable" is not a requirement for determining density in a RC2 zone and does not change the fact that Lot 7 has a density that permits two lots. Thus we find no merit in Lehnert's argument that the Cumberlands are actually requesting a density transfer for Lot 7.[8]

Accordingly, we conclude that the Board's decision to grant the Cumberlands' request for special hearing for a non-density transfer of acreage was in accordance with the law and supported by substantial evidence.

JUDGMENT OF CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; APPELLANT TO PAY COSTS.

---

[8] Even if the ability to build on Lot 7 was a factor in determining density, Doak testified that "[b]eyond the shadow of a doubt," he believed that the Cumberlands could build on Lot 7. Lehnert did not present any evidence to contradict Doak's testimony that Lot 7 was buildable.

1/25/10

IN THE MATTER OF: THE APPLICATION OF WILLIAM & HOLLY CUMBERLAND LEGAL OWNERS/PETITIONERS FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE N/S OF BELFAST RD., 70 FT. N/OF C/LINE OF OLD BELFAST RD.	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Jefferson Building 105 West Chesapeake Avenue, Suite 203 Towson, Maryland 21204	*	Case No.: 03-C-09-004658
8TH Election District 3RD Councilmanic District	*	
Case No. 08-211-SPHA	*	

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

NOTICE OF APPEAL TO THE COURT OF SPECIAL APPEALS

PETITIONER, RICHARD LEHNERT, 707 OLD BELFAST ROAD, SPARKS-GLENCOE, MD 21152, by and through his attorney, J. Carroll Holzer, P.A. herein files this Notice of Appeal to the Court of Special Appeals pursuant to Rule 8-201 from the Opinion and Order from the Honorable Patrick Cavanaugh filed on December 30, 2009 in the above referenced matter, which is attached hereto.

Petitioner was a party and fully participated in the hearing below. Attached is a check made payable to the Clerk of the Circuit Court for Baltimore County to cover the costs of the appeal.

RECEIVED AND FILED
2010 JAN 25 PM 2:41
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

RECEIVED
JAN 28 2010
BALTIMORE COUNTY
BOARD OF APPEALS

Respectfully submitted,

J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of January, 2010, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to the following: Office of People's Counsel, 105 W. Chesapeake Ave., Room 204, Towson, MD 21204; Baltimore County Board of Appeals, Jefferson Building, 105 West Chesapeake Ave., Suite 203, Towson, MD 21204; Robert Hoffman, Esquire, Venable, LLP, 210 West Pennsylvania Ave., Suite 500, Towson, MD 21204.

J. Carroll Holzer

11/24/09

In the Matter of	*	**IN THE CIRCUIT COURT**
	*	**FOR BALTIMORE COUNTY**
Richard Lehnert	*	**CASE No.:** 03-C-09-004658

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

ORDER

After a full and fair consideration of the Petitioner's Memorandum of Appeal and Petitioner's Response, along with oral argument, it is thereupon this 24th day of **November 2009** by the Circuit Court for Baltimore County, Maryland,

ORDERED that Petitioner's Appeal seeking to reverse the Baltimore County Zoning Appeals Board decision is hereby **DENIED**.

Patrick Cavanaugh

Hon. Patrick Cavanaugh
JUDGE, Baltimore County Circuit Court

RECEIVED
JAN - 6 2010
BALTIMORE COUNTY
BOARD OF APPEALS

FILED DEC 30 2009

cc: J Holzer
R Hoffmon
BOA

EMH

RECEIVED
JAN - 6 2010
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	**IN THE**
	*	**CIRCUIT COURT**
RICHARD LEHNERT	*	**FOR**
	*	**BALTIMORE COUNTY**
	*	**Case No.:** 03-C-09-004658
	*	

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

RICHARD LEHNERT'S APPEAL FROM THE COUNTY BOARD OF APPEALS' DECISION

Question Presented for Appeal

Did the County Board of Appeals err by granting the variance and the Special Hearing Request?

Summary

This Court finds that the Zoning Board of Appeals did not err by granting the requested Special Hearing or by granting the variance. The conclusions drawn from the facts and inferences in the record could be reached by a reasonable mind, and thus, the Zoning Board of Appeals' decision is AFFIRMED.

Statement of Facts

In October of 1975 Linda Green owned a 237 acre tract of land located just north of Belfast Road and west of Interstate 83 in Baltimore County. She recorded a subdivision plat which created seven (7) lots. In April of 1976, she conveyed Lots 3, 4, and 7 on the plat to the Cumberlands, who are the Respondents in the current proceeding. The 117 acre conveyance was zoned RDP, a zoning classification that permitted one dwelling per acre of land. Under RDP, the Respondents could have

cc: J. Holzer
R. Hoffman
BOA

FILED DEC 30 2009

Emt

subdivided into more than 100 lots, but chose rather to hold onto the land in the exact configuration and acreage to date. However, the zoning has changed to RC 2, which is considered a residential zone. The density permitted in the RC 2 zone is significantly less than that permitted by the prior RDP zoning classification. The RC 2 zone permits subdivision of an existing lot that is between two and 100 acres into no more than two lots. Furthermore, a lot in the RC 2 zone may only be sub-dived if it was created prior to November 25, 1979.

Using the strict density controls of the Baltimore County Zoning Regulations, the land may be sub-divided into six lots. Each of the three lots that comprise the land was created in 1975, years before the 1979 deadline. Because each lot is between two and 100 acres in size, each can be subdivided into two lots. In order to facilitate this sub-division, the Respondents seek certain zoning relief, which pertains only to Lots 3 and 7 of the land.

Respondents, in their Petition for a Special Hearing, requested approval to reconfigure Lots 3 and 7 by way of two non-density land transfers, pursuant to Sections 1A00.4.b(2) and (3) of the Zoning Commissioner's Policy Manual. Specifically, Respondents request approval to transfer 8.07 acres from Lot 3 to Lot 7 and to reconfigure the lots in accordance with this transfer. This would allow a dwelling to be placed on Lot 7 further back from Belfast Road than is now possible with the current configuration of Lot 7. Additionally, the Respondents request approval to transfer .45 acres from Lot 7 to Lot 3 and to reconfigure the two lots in accordance with that transfer. Respondents also filed a Petition for Variance from Section 32-4-409 of the Baltimore County Code for the length of proposed in-fee panhandle strips to accommodate Lot 3. Respondents intend to sub-divide Lot 3 into two lots through the

County's developmental approval process following this zoning case. Specifically, the Respondents request approval of an in-fee panhandle strip 1223 feet in length to serve future Lot 3A and an in-fee panhandle strip 2274 feet in length to serve future Lot 3B, in lieu of the maximum permitted 1000 foot long panhandle.

A hearing was held in March 2008 and the Zoning Commissioner granted the Respondents' zoning relief. Several protestants, along with the People's Counsel for Baltimore County appealed to the Board of Appeals and on November 19, 2008, the Board held a de novo hearing where it determined that the zoning relief was justified and should be granted.

Respondents relied heavily on the testimony of Bruce Doak, an expert witness, as well as various exhibits. The Petitioner cross-examined Mr. Doak and presented the testimony of Mr. Lehnert. Mr. Lehnert testified regarding eight specific issues: (a) the nature of the non-density transfer from Lot 3 to Lot 7; (b) the proposed layout of Lot 7; (c) the differing comments offered by Planning; (d) the inability for the Respondents to access Lot 3 via a different public road; (e) the potential location for a driveway to serve Lot 3; (f) alternative lot layouts; (g) the continued agricultural use of the land; and (h) general concerns over stormwater emanating from the land.

On March 26, 2009, the Board of Appeals issued an Opinion granting the Petitioner for Special Hearing and the Petition for Variance. The Board felt that "there was no evidence or testimony given that would dispute allowing two non-density transfers." (Bd. Op., p. 8). Regarding the variance, the Board found that "there was no testimony or evidence presented to dispute the [Respondents] request." (Bd. Op., p. 9). This Court finds that the record reflects that all determinations made by the Zoning

Board of Appeals were supported by the record, and therefore, the Board's decision is affirmed.

Standard of Review

The standard of review of the action of an administrative agency is "limited to determining whether there is substantial evidence on the record as a whole to support the agency's finding of fact and whether the agency's conclusions of law were correct." Motor Vehicle Administration v. Atterbeary, 368 Md. 480, 796 A. 2d 75, 81 (2002). The agency decision is presumptively correct, and the correctness of an agency's findings of fact must be reviewed under the substantial evidence test. Dept. of Human Resources v. Thompson, 103 Md. App. 175, 652 A.2d 1183 (1995); State Election Board v. Billhimer, 314 Md. 46, 548 A.2d 819 (1988). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Supervisor of Assessments v. Group Health Ass'n, Inc., 308 Md. 151, 159, 517 A.2d 1076 (1986) *quoting* Bulluck v. Pelham Wood Apts., 283 Md. 505, 512, 390 A.2d 1119 (1978). Accordingly, this Court must affirm the Board's findings if substantial evidence exists to conclude that its determinations were reasonable.

A reviewing court may, and should, examine facts found by an agency to see if there is evidence to support each fact found. If evidence exists in the record to support an agency's fact-finding, the reviewing court cannot substitute its assessment of credibility of the evidence for that of the agency, no matter how questionable or conflicting the source of evidence may be. Commissioner, Baltimore City Police Dept. v. Cason, 34 Md. App. 487, 368 A.2d 1067 (1977), *cert. denied*, 280 Md. 728 (1977). It is well settled that the reviewing court should not substitute its judgment for the expertise of the agency, as the agency has a superior ability to understand its own rules and

regulations. Board of Education v. Paynter, 303 Md. 22, 35, 491 A.2d 1186 (1985); Bulluck, 283 Md. 505, 512, 390 A.2d 1119. When an agency infers the existence of a fact that is not supported by direct proof from the record, the reviewing court should examine such an inference to determine if it reasonably flows from other facts that are supported by direct proof. Even though an agency may have been reasonable in drawing a different inference, the court has no power to disagree with the facts so inferred. Id. at 508.

The court should review the agency's conclusion to determine whether "reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could so be reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion." Id.

Discussion

Petitioner first argues that the Board of Appeals erred in granting the variance for the Respondents. Section 307.1 of the Baltimore County Zoning Regulations states that the Board of Appeals may grant a request for a variance "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 BCZR would result in practical difficulty or unreasonable hardship." Variances cannot be granted merely to make the land more profitable for the owner or developer. Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995). Furthermore, the Court held that the general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. Cromwell at 703. Petitioner argues that the property as a whole is not

unique, and that the Respondents are using a variance as the simplest way to make the land more profitable.

At the hearing, Respondents produced testimony that the property is in fact unique and that they would have a practical difficulty strictly complying with the BCZR. At the time Baltimore County approved the subdivision plat for Linda Green in October of 1975, there were no in-fee panhandle requirements like those that apply today. Therefore, the subdivision plan currently will not have access to a public road without the proposed panhandles. The facts make the property unique. Furthermore, without the requested variances, Mr. Doak testified that an irregular configuration would burden future owners with property maintenance issues that could be avoided. Mr. Doak also testified that the planned configuration is more than a preference by the Respondents.

The Board of Appeals held "that there would be practical difficulty if the variances were not granted." (Bd. Op., p. 9). The reasoning the Board gave was that the Respondents are "not able to do the same thing that other property owners in the area are able to do with their properties if the variance is not granted." (Bd. Op., p. 9). Based on the record, it is clear that the Board of Appeals found the testimony of Mr. Doak to be credible. Therefore, the decision of the Board to grant the variances should be upheld.

Next, Petitioner argues that the Board of Appeals erred in granting the Special Hearing Request. Normally, density transfer is prohibited under the BCZR. Petitioner argues that Respondent is attempting to capitalize on density calculations in a Special Hearing seeking density transfer for Lot 7 when Lot 7 does not have density in the first place. However, the Respondents requested non-density transfers meet the policies set forth in Section 1A00.4.b of the ZCPM. A proposed transfer that does not move a density right with the transfer to the recipient lot, which is the proposed transfers at

issue here, complies with Section 1A00.4.b(2). The Respondents produced evidence at the Board hearing to prove that the requested non-density transfers are in accordance with the Regulations. As the Board is the trier of the fact, their decision will not be overturned based on factual arguments.

Ultimately, the Petitioners' argument is one based in fact. The Petitioner argues facts that had already been addressed by the Board of Appeals. Throughout the pleading, Petitioner argues that any uniqueness or practical difficulty the Respondents have is through their own creation. However, the Board of Appeals determined that "the practical difficulty is not self-induced." (Bd. Op., p. 9). The Board specifically found that the subject property was unique and that a practical difficulty existed that prevented the Respondents from being able to meet the panhandle regulations. (Bd. Op., p. 8-9). Because of this finding, this Court cannot and will not overturn the Board's decision based solely on factual arguments that have previously been adjudicated. The Board had the facts before it at the hearing and they made a decision based on those facts, and this Court will now defer to those findings.

If evidence exists in the record to support an agency's fact-finding, the reviewing court cannot substitute its assessment of credibility of the evidence for that of the agency, no matter how questionable or conflicting the source of evidence may be. *See supra*, Commissioner, Baltimore City Police Dept. v. Cason, 34 Md. App. 487, 368 A.2d 1067 (1977). This Court finds that the record reflects that all determinations made by the Zoning Board of Appeals were supported by the record. Therefore, Petitioners Appeal from the Zoning Board of Appeals is DENIED.

Judge Patrick Cavanaugh

11/5/09

Date

CLERK TO NOTIFY

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

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

Case Number: 03-C-09-004658 AA
Administrative Agency : 08211SPHA
C I V I L

In the Matter of Richard Lehnert

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 18th day of June, 2009.

Suzanne Mensh
Clerk of the Circuit Court, per EMN

Date issued: 06/22/09

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
Jefferson Building
105 West Chesapeake Avenue Suite 203
Towson, MD 21204

RECEIVED
JUN 23 2009
BALTIMORE COUNTY
BOARD OF APPEALS

6/18/09

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
RICHARD LEHNERT * CIVIL ACTION
NO.: 03-C-09-004658

FOR JUDICIAL REVIEW OF THE OPINION OF *
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF :
WILLIAM AND HOLLY CUMBERLAND *
– LEGAL OWNERS
FOR SPECIAL HEARING AND VARIANCE *
ON PROPERTY LOCATED ON THE N/SIDE OF
BELFAST ROAD, 70' N/OF C/LINE OF OLD *
BELFAST ROAD

*

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT *

BOARD OF APPEALS CASE NO: 08-211-SPHA *

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

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the 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

RECEIVED AND FILED
2009 JUN 18 AM 9:14
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

No. 08-211-SPHA

November 5, 2007	Petition for Special Hearing and Petition for Variance filed by William and Holly Cumberland. Petition for Special Hearing for the transfer of 8.07 acres, more or less, from Cumberland (Parcel 38, Lot 3) to Cumberland (Parcel 38, Lot 7); for a non-density transfer of 0.45 acres, more or less, from Cumberland (Parcel 38, Lot 7) to Cumberland (Parcel 38, Lot 3); for a transfer of 1 density right from Cumberland (Parcel 38, Lot 7) to Cumberland (Parcel 38, Lot 7A); Reallocation of Density from one parcel to another; and Petition for Variance to allow panhandle strips of 1,223' (Lot 3A) and 2,274' (Lot 3B) in lieu of the maximum permitted 1,000'.
November 21	Entry of Appearance filed by People's Counsel for Baltimore County.
November 27	Notice of Zoning Hearing sent.
December 19	Certificate of Posting.
December 27	Certificate of Publication in newspaper
January 2, 2008	ZAC Comments.
January 10	Hearing held before the Zoning Commissioner
March 25	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Special Hearing was GRANTED approving a non-density transfer of 8.07 acres, more or less, of R.C.2 zoned land from Cumberland (Parcel 38, Lot 3) to Cumberland (Parcel 38, Lot 7) and for a non-density transfer of 0.45 acres, more or less, from Cumberland (Parcel 38, Lot 7) to Cumberland (Parcel 38, Lot 3); Petition for Variance to allow in-fee panhandle strips of 1,223' (Lot 3A) and 2,274' (Lot 3B) in lieu of the maximum permitted 1,000' was GRANTED WITH RESTRICTIONS.
April 11	Notice of Appeal filed by the Office of People's Counsel.
May 28	Certificate of Posting
November 13	Entry of Appearance filed by J. Carroll Holzer, Esquire on behalf of Protestant, Richard Lehnert.
November 19	Hearing before the Board

Exhibits submitted at hearing before the Board of Appeals:

Petitioner's Exhibit No.

1 – Site Plan – Cumberland properties
2 – Record Plat 9/18/75, Recorded 10/2/75 Linda C. Green
3 – Aerial Photograph of Property
4 – County Scenic Routes
5 – Exhibit Plat - Cumberland properties
6 – Exhibit Plat with orange notations (same as No.5)
7 – Copy of Deed – Lot 3
8 – Copy of Deed – Lot 4

Protestants' Exhibit No.

1 – Letter 12/6/07; Denial Letter – Office of Planning
2 – Letter 12/6/07; Approval Letter – Office of Planning
3 – Letter 12/19/07; Wally Lippincott – DEPRM Comments.
4a-e – Pictures taken by Mr. Lehnert

January 7, 2009	Petitioner's Post-Hearing Memorandum filed by Robert A. Hoffman, Esquire and David H. Karceski, Esquire with Venable, LLP on behalf of William and Holly Cumberland, Petitioners.
January 7	People's Counsel for Baltimore County's Memorandum filed by Peter M. Zimmerman, Esquire and Carole S. Demilio, Esquire.
January 7	Closing Brief of Michael Dillon and Eileen Doherty in Opposition to Petition for Special Hearing and Variances filed by Philip J. Kotschenreuther, Esquire with Brown, Brown & Young, P.A. on behalf of Michael Dillon and Eileen Doherty, Protestants.
January 7	Protestant's Memorandum in Lieu of Final Argument filed by J. Carroll Holzer, Esquire on behalf of Richard Lehnert, Protestant.
February 17	Public deliberation held by Board of Appeals.
March 26	Final Opinion and Order issued by the Board in which the Petition for Special Hearing relief was GRANTED; and the Petition for Variance was GRANTED.
April 23	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Richard Lehnert, Protestant.

April 28	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
May 1	Certificate of Compliance sent to all parties and interested persons.
June 18, 2009	Transcript of testimony filed.
June 18, 2009	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: David H. Karceski, Esquire
Robert A. Hoffman, Esquire
William and Holly Cumberland
J. Carroll Holzer, Esquire
Richard Lehnert
Philip Kotschenreuther, Esquire
Michael Dillon and Eileen Doherty
Office of People's Counsel for Baltimore County
John E. Beverungen, County Attorney
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, Director/Office of Planning.

5/27/09

PETITION OF: RICHARD LEHNERT 707 OLD BELFAST ROAD SPARKS-GLENCOE, MARYLAND 21152	*	IN THE CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY JEFFERSON BUILDING – ROOM 203 105 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204	*	FOR BALTIMORE COUNTY
	*	Case No. 03-C-09-004658
IN THE MATTER OF: WILLIAM AND HOLLY CUMBERLAND – LEGAL OWNERS FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE N/SIDE OF BELFAST ROAD, 70' N/OF C/LINE OF OLD BELFAST ROAD	*	
CASE NO. 08-211-SPHA	*	

RECEIVED
MAY 28 2009
BALTIMORE COUNTY
BOARD OF APPEALS

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

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Respondents William and Holly Cumberland, by Robert A. Hoffman and David H. Karceski with Venable LLP, their attorneys, in accordance with Maryland Rule 7-204, submit this Response to the Petition for Judicial Review filed by Richard Lehnert, and state that they intend to participate in this action for judicial review. Respondents were

parties to the above-referenced proceedings before the County Board of Appeals of Baltimore County.

Respectfully submitted,

Robert A. Hoffman
David H. Karceski
Venable LLP
210 Allegheny Avenue
Towson, Maryland 21204
(410) 494-6200
Attorneys for William and Holly Cumberland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of May, 2009, a copy of the foregoing RESPONSE TO PETITION FOR JUDICIAL REVIEW was mailed first class postage prepaid to J. Carroll Holzer, P.A., 508 Fairmount Avenue, Towson, Maryland 21204; and Theresa R. Shelton, Administrator, County Board of Appeals of Baltimore County, The Jefferson Building, 105 W. Chesapeake Avenue, Room 203, Towson, Maryland 21204.

David H. Karceski

TO1DOCS1/272599 v1

5/1/09

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
RICHARD LEHNERT * CIVIL ACTION
NO. : 03-C-09-004658

FOR JUDICIAL REVIEW OF THE OPINION OF *
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF :
WILLIAM AND HOLLY CUMBERLAND *
– LEGAL OWNERS
FOR SPECIAL HEARING AND VARIANCE *
ON PROPERTY LOCATED ON THE N/SIDE OF
BELFAST ROAD, 70' N/OF C/LINE OF OLD *
BELFAST ROAD

*

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT *

BOARD OF APPEALS CASE NO: 08-211-SPHA *

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

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:

William and Holly Cumberland
3550 Cross Creek Lane
Malibu, CA 90265-4926

David H. Karceski, Esquire
Venable, LLP
201 Allegheny Avenue
Towson, MD 21204

RECEIVED AND FILED
2009 MAY -1 AM 10: 12
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Christopher D. Mudd, Esquire
Venable, LLP
201 Allegheny Avenue
Towson, MD 21204

Bruce Doak
320 E. Towsontowne Blvd, Ste 100
Towson, MD 21286

Diane Knapp
800 Belfast Road
Sparks, MD 21152

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

Richard Lehnert
707 Old Belfast Road
Sparks, MD 21152

Bruce Sandler
720 Belfast Road
Sparks, MD 21152

Walter Holland
733 Old Belfast Road
Sparks, MD 21152

George R. Rew
17509 Prettyboy Dam Road
Parkton, MD 21120

Philip Kotschenreuther, Esquire
200 S. Main Street
Bel Air, MD 21014

Dr. Michael Dillon and
Ms. Eileen Doherty
750 Belfast Road
Sparks, MD 21152

Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

William J. Wiseman, III, Zoning Commissioner
The Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, MD 21204

Arnold F. "Pat" Keller, Director
Office of Planning
The Jefferson Building, Suite 101
105 W. Chesapeake Avenue
Towson, MD 21204

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 1st day of May, 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

May 1, 2009

David H. Karceski, Esquire
Christopher D. Mudd, Esquire
Venable, LLP
201 Allegheny Avenue
Towson, MD 21204

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-09-004658
In the Matter of: William and Holly Cumberland
Board of Appeals Case No.: 08-211-SPHA

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on April 23, 2009 by Richard Lehnert, by and through his attorney, J. Carroll Holzer, Esquire, 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.

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review, in 60 days.

In this matter, the Transcripts of testimony have been previously prepared and received from the Court Reporter.

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

Very truly yours,

Sunny Cannington

Sunny Cannington
Legal Secretary

Enclosure

cc: William and Holly Cumberland
Diane Knapp
George R. Rew
Dr. Michael Dillon and Ms. Eileen Doherty
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning
Richard Lehnert
Bruce Sandler
Philip Kotschenreuther, Esquire
Office of People's Counsel
Timothy Kotroco, Director/PDM
John E. Beverungen, County Attorney
Bruce Doak
Walter Holland

4/23/09

IN THE MATTER OF: THE APPLICATION OF WILLIAM & HOLLY CUMBERLAND LEGAL OWNERS/PETITIONERS FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE N/S OF BELFAST RD., 70 FT. N/OF C/LINE OF OLD BELFAST RD.	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Jefferson Building 105 West Chesapeake Avenue, Suite 203 Towson, Maryland 21204	*	Case No.: C-09-4658
8TH Election District 3RD Councilmanic District	*	
Case No. 08-211-SPHA	*	

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

PETITION FOR JUDICIAL REVIEW

PETITIONER, RICHARD LEHNERT, 707 OLD BELFAST ROAD, SPARKS-GLENCOE, MD 21152, by and through his attorney, J. Carroll Holzer, P.A. herein files this Petition for Judicial Review pursuant to Rule 7-203 (b) from the Opinion of the County Board of Appeals for Baltimore County in the above referenced matter rendered on March 26, 2009 which is attached hereto.

Petitioner was a party and fully participated in the hearing below.

RECEIVED
APR 28 2009
BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED AND FILED
2009 APR 23 PM 2:44
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

(410) 825-6961
FAX: (410) 825-4923

Respectfully submitted,

J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2009, a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid to the following: Carole S. Demilio, Esquire, Office of People's Counsel, 105 W. Chesapeake Ave., Room 204, Towson, MD 21204; Baltimore County Board of Appeals, Jefferson Building, 105 West Chesapeake Ave., Suite 203, Towson, MD 21204; Robert Hoffman, Esquire, Venable, LLP, 210 Allegheny Ave., P.O. Box 5517, Towson, MD 21285; and Philip J. Kotschenreuther, Esquire, Brown, Brown & Young, 200 S. Main Street, Bel Air, MD 21014.

J. Carroll Holzer

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-09-004658

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
Jefferson Building
105 West Chesapeake Avenue Suite 203
Towson, MD 21204

3/26/09

IN THE MATTER OF THE APPLICATION OF	*	BEFORE THE
WILLIAM AND HOLLY CUMBERLAND LEGAL OWNER/PETITIONER	*	COUNTY BOARD OF APPEALS
FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE	*	OF
N/SIDE OF BELFAST ROAD, 70 FT. N/OF C/LINE OF OLD BELFAST ROAD	*	BALTIMORE COUNTY
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	CASE NO.: 08-211-SPHA

* * * * * * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals on an appeal taken by the Office of People's Counsel on April 11,2008 from an Order of the Zoning Commissioner for Baltimore County, dated March 25, 2008, granting Petitioner's Request for a Special Hearing, pursuant to Section 500.7 of the *Baltimore County Zoning Regulations* (BCZR), to approve a non-density transfer of 8.07 +/- acres of R.C. 2 zoned land from Cumberland (Parcel 38, Lot 3) to Cumberland (Parcel 38, Lot 7) pursuant to Section 1A00.4B(2) and (3) of the Zoning Commissioner's Policy Manual (Z.C.P.M.), and to re-configure lots 3 and 7 in accordance with the transfer granted; Petitioner's request for a Special Hearing, pursuant to BCZR Section 500.7 to approve a non-density transfer of 0.45 +/- acres of R.C. 2 zoned land from Cumberland (Parcel 38, lot 7) to Cumberland (Parcel 38, lot 3), pursuant to Sections 1A00.4B(2) and (3) of Z.C.P.M. and to re-configure lots 3 and 7 in accordance with the transfer granted; and Petitioner's Request for Variance from Section 32.-4-409(e)(2) of the *Baltimore County Code* (BCC) to allow in-fee panhandle strips of 1, 223 feet and 2,274 feet, in lieu of the maximum permitted 1,000 feet.

The Board held a public *de novo* hearing on Wednesday, November 19, 2008 at 10:00 a.m. Petitioners, William and Holly Cumberland, were represented by Robert A. Hoffman, Esquire and David A. Karceski, Esquire. People's Counsel for Baltimore County was

represented by Carole S. Demilio, Deputy People's Counsel. Protestants, Michael Dillon and Eileen Doherty, were represented by Philip Kotschenreuther, Esquire. Protestants, Diane Knapp, Walter Holland, and Dick Lehnert, were represented by J. Carroll Holtzer, Esquire. In lieu of closing arguments, Counsel for People's Counsel for Baltimore County, Counsel for the Petitioners and Counsel for the Protestants agreed to submit post-hearing Memorandums. The Board of Appeals held a public deliberation on Tuesday, February 17, 2009 at 9:00 a.m. o'clock.

BACKGROUND

The subject property is located in the 8th Election District – 3rd Councilmanic District of Baltimore County and consists of three (3) lots (Lots Nos. 3, 4 and 7) that were conveyed by two (2) separate Deeds to the Petitioners on April 20, 1976 by the original owner, Linda Green. On October 1975, Linda Green had recorded a Plat for residential subdivision purposes, which served to create seven (7) lots. Lots 3, 4 and 7 were included in the original seven (7) lots and were zoned R.D.P., which permitted one (1) dwelling per acre of land. Lots 3, 4 and 7 contain a combined 114.65 +/- acres of land. At present, Petitioner's lots remain in the exact configuration and contain the same acreage as of the date the Petitioner's purchased them. The underlying zoning however has been changed to R.C. 2. The R.C. 2 zone permits subdivision of an existing lot between two (2) and one-hundred (100) acres to no more than two (2) lots, provided the lot was created prior to November 25, 1979.

Lot 7 contains 5.099 +/- acres and fronts on Belfast Road, along its southern boundary line. Lot 7 is the only one of Petitioner's lots that fronts on Belfast Road. Lot 3 contains 53.676 +/- acres and is located directly north and east of Lot 7. Lot 4 contains 58.875 +/- acres and is situated directed east of Lot 3 and extends to Interstate 83, which is the eastern most part of

Petitioner's overall property. Lots 3 and 7 are the subjects of the zoning petition filed in the instant case. The requested zoning relief does not apply to Lot 4.

Petitioner's request approval to transfer 8.07 +/- acres from Lot 3 to Lot 7 and to re-configure the lots in accordance with this transfer. This re-configuration would allow a dwelling to be placed farther back from Belfast Road than is now possible with the current configuration of Lot 7. Petitioner further requests approval to transfer 0.45 +/- acres from Lot 7 to Lot 3 and to re-configure the two (2) lots in accordance with that transfer. This second re-configuration is for access purposes for Lot 3 to Belfast Road.

In addition to the non-density transfer, Petitioners also filed a Petition for a Variance for the length of purposed in-fee panhandle strips to accommodate Lot 3. Petitioner's intend to subdivide Lot 3 into two (2) lots, Lots 3A and 3B, through the County's development approval process.

ISSUES

1) Does the transfer of land between Lot 7 and Lot 3 qualify as non-density transfers?
2) Does Petitioner's Request for Variance satisfy the requirements of B.C.Z.R. Section 307.1?

EVIDENCE AND TESTIMONY

Mr. Hoffman, in his opening statement for the Petitioners, introduced as Petitioner's Exhibit #1, a site plan of the Cumberland properties, dated August 6, 2007, prepared by Gerhold, Cross, Etzel, Ltd., Registered Professional Land Surveyors. He stated that this is not a proposed development plan. He stated that the Petitioners would go through that process if their Petition for the Non-Density transfer and Variance for the panhandle strips were approved. Mr. Hoffman called Bruce E. Doak as his first witness. Mr. Doak testified that he has been a licensed land

surveyor for twenty (20) years and is part owner of Gerhold, Cross, Etzel, Ltd. Mr. Doak was accepted as an Expert Witness in land surveying and zoning regulations. Mr. Hoffman introduced as Petitioner's Exhibit #2, the recorded Plat of the Subdivision of the property of Linda C. Green, dated September 8, 1975, showing the seven (7) lots (Lots Nos.1 – 7). Mr. Doak testified that there had been no changes or subdivision of any of the lots since 1975 and that they were zoned R.D.P. 2 in 1975, which allowed for one (1) dwelling per acre. He testified that Lot 3 is 53.676 +/- acres and Lot 7 is 5.099 +/- acres and Lot 4 is 58.875 +/- acres and that in 1975, under the R.D.P. zoning, you could have over one-hundred (100) units. He testified that the current R.C. 2 regulations allow for any lot or any parcel of ground between two (2) and one-hundred (100) acres, that was existing as of November 25, 1979, to be subdivided one time, creating two (2) lots. He testified that under the R.C. 2 zoning, a total of six (6) lots would to be permitted across the three (3) lots the Cumberland's currently own. Mr. Doak explained in detail the reason for the non-density transfer between Lot 7 and Lot 3. He described Lot 7 as predominately wooded with a driveway that goes up the southwest side of the lot. He said that because of concerns due to steep slopes and wooded area on the lot and because Belfast Road is a scenic route, the re-configuration of Lot 3 to be placed with Lot 7 to create a twelve (12) +/- acres lot, would allow one (1) house to be located on Lot 7, away from and out of site of Belfast Road, and avoid the extra grading that would be necessary on the current Lot 7. It would also reduce the number of houses to be built on Lot 7 from two (2) to (1). He said it would protect the scenic route on Belfast Road. Mr. Hoffman introduced an aerial photograph as Petitioner's Exhibit #3 and the County's Scenic Routes as Petitioner's Exhibit #4.

Mr. Doak testified the reason for the non-density transfer of .45 +/- acres, from Lot 7 to Lot 3 is because currently the Baltimore County Zoning Regulations require that each lot own an in-fee strip of ground having access to a public road. He testified:

> "...so what we are trying to do is create two panhandles that would go through current Lot 7 and would ultimately be for the benefit of the ownership of proposed Lots 3A and 3B".

Mr. Hoffman introduced as Petitioner's Exhibit #5, a Plat of the Cumberland property showing the dimension of the proposed panhandle driveways. Mr. Doak testified that when the property was subdivided in 1975, there were no panhandle regulations. According to People's Counsel's Memorandum, Baltimore County enacted it's first statutory panhandle driveway law in 1982. (B.C.C. 32-4-409) It was Mr. Doak's opinion that Lot 3 is unique because the requirements for subdivision of residential lots changed subsequent to Lot No. 3's creation in 1975. Similarly, the Development Regulations at the time the Plat was recorded did not include the in-fee panhandle length limitation, from which Petitioner's seek Variance relief. Mr. Doak, when asked if there would be practical difficulty in creating a panhandle strip that was not greater than one thousand (1,000) feet, replied that it would and went on to explain in detail the impact it would have to neighbors and the twelve (12) +/- acres lot.

Mr. Kotschenreuther called Dr. Michael Dillon, who lives at 750 Belfast Road. Dr. Dillon testified that his house is located along the west side of Parcel No. 7 and Parcel No. 3. Dr. Dillon described in detail the driveway he uses to access Belfast Road. He testified that the road is about eight (8) feet wide at its narrowest point and quintupling its use would overburden the road. He testified that his property is currently for sale because of a divorce settlement.

Mr. Hoffman called Curtis Murray, who is with the Development and Review Section of the Office of Planning for Baltimore County. Mr. Murray testified that he reviewed the Petition and Site Plan that were filed. Mr. Murray testified that his office initially opposed the transfer of acreage, but that after further discussion with Mr. Doak, decided that the Office of Planning could support the request because the basis for the initial denial was incorrect. (Protestant's Exhibits 1 and 2)

Mr. Holzer called Diane R. Knapp, who lives at 800 Belfast Road. Ms. Knapp testified her property is located on the left side of the current access road used by Dr. Dillon. Her major concern is that if the variance is approved, the road which would be located on her side of the property will be used by five (5) or six (6) additional families and she is concerned that the road would not be able to handle the increased traffic. She would like to see the Petitioner's look at other possibilities of having access to the proposed developed property. Her issues concern the driveway that exists now and it's potential future use by Mrs. Cumberland for these lots.

Mr. Holzer called Walter Holland, who lives at 733 Old Belfast Road. Mr. Holland testifies that he lives directly opposite the existing road that serves Dr. Dillon. He is across Belfast Road. He testified that the property is actually his mother's but that he lives there also. Mr. Holland testified that his major concern was flooding. He said that water comes straight down that road across Belfast Road over Old Belfast Road, down the driveway, next to the house and down the back. His objection concerns the run-off that comes down from the Cumberland and Dillon properties. He is opposed to all the variances and anything else that will increase the flooding.

Mr. Holzer called Charles Lehnert, who lives at 707 Old Belfast Road, which was Lot No. 5 in the original 1975 Plat and is adjacent to the Cumberland Lots No. 4 and No. 3. Mr.

Lehnert said he took some pictures after a rainstorm in 2008. He said water pours down the road and comes on to his ten (10) acres, and he ends up with a pond. (Protestants Exhibits 4A – 4E) Mr. Lehnert, when asked if there was anything he would like to say about this request, either about the panhandles, the density, or the shifting of the density, he replied 'No'. He simply can't see why you have to put a long road in when they can access the site from Buffalo Run Road.

Mr. Hoffman, on cross-examination, asked Mr. Lehnert if he heard the testimony earlier from Mr. Doak about Buffalo Run Road? He said he did. Mr. Doak had testified that for Lot 3 to access Buffalo Run Road, you would have to go through Lot 4. There is a stream that runs through Lot 4 that would have to be crossed to get to Buffalo Run Road. Mr. Doak testified that DEPRM may not want us to cross that stream. He testified that DEPRM would require an alternative analysis and if there was no other way to access Buffalo Run Road, they might permit, with certain restrictions, to cross the stream.

The last witness was Petitioner Holly Cumberland. Ms. Cumberland stated that she now lives in Los Angeles, California and she simply wanted to make a statement:

> "It's more a feeling than anything else. I was less than half the age I am now when I bought this property with my husband. We were in our twenties. We had years to divide that property into very small lots. At that time Baltimore County went around and they talked to people like me and my husband, to farmers, things like that, about wanting to do this RC2. They told us what we could do if we went along with them. I'm sorry. I'm upset. But we did. We absolutely trusted Baltimore County.

It's very hard to have them now not be with me in doing what they promised. We gave up a great deal. We got no tax benefits from that at all. That's what I have to say."

DECISION

Starting with the Special Hearing relief requested, the Board discussed the non-density transfer in steps.

First, Lot 3 is land-locked with no access to a public road. The transfer of 0.45 +/- acres from Lot 7 to Lot 3, will allow the building of a panhandle driveway that will connect Lots 3A and 3B to a public road. Lot 3 will in turn transfer 8.07 +/- acres to Lot 7. As Mr. Doak testified, Lot 7 is predominately wooded with steep slopes and Belfast Road is a scenic route. The re-configuration of a portion of Lot 3 to Lot 7, would create a twelve (12) +/- acres lot that will allow one (1) house to be located on Lot 7, away from and out of site of Belfast Road and avoid the extra grading that would be necessary on the current Lot 7. The current zoning on Lot 7 is R.C. 2, which allows the building of two (2) dwellings. The non-density transfer from Lot 3 to Lot 7 will result in one (1) dwelling, a decrease of one (1) dwelling from the two (2) dwellings currently permitted. The non-density transfer from Lot 7 to Lot 3, will not increase the density that Lot 3 is permitted with its current zoning of R.C. 2. The Board felt there was no evidence or testimony given that would dispute allowing the two (2) non-density transfers.

Second, as to the Variance concerning the length of the two (2) panhandle driveways, the Board discussed whether the property in question, in this case Lot 3, satisfied the requirements of BCZR Section 307.1 and meets the standards set forth in Cromwell v. Ward. The Board held that since Lot 3 is land-locked and without access to a public road, and there are no other lots in the original subdivision of Linda Green with similar issues; Lot 3 is unique. The Board

discussed the issue of practical difficulty/undue hardship. The Board determined that there would be practical difficulty if the Variances were not granted. The Board determined that the practical difficulty is not self-induced, due to the fact that when the lots were originally created. the panhandle driveway requirements were not in place. The Board determined that when determining practical difficulty, the issue is not whether the property owner is not able to do anything with the property if a variance is not granted; it means that the property owner is not able to do the same thing that other property owners in the area are able to do with their properties, if the variance is not granted. In this case there is a practical difficulty for the Petitioners if that variances are not granted. The Board acknowledges that several witnesses testified in opposition to the Petitioner's requests; however, there was no testimony or evidence presented to dispute the Petitioner's request. Most of the testimony concerned the current access road that is used by Dr. Dillon and Mrs. Knapp. As Counsel for the Petitioner, Mr. Hoffman. pointed out repeatedly during the hearing, that road was not an issue in this hearing. He did acknowledge that it might become an issue during the development plan process, but not in this case. The Board concurs.

In conclusion, after a thorough review of the facts, testimony and law, the Board unanimously agrees to grant the Petitioners' request for a non-density transfer and panhandle variance.

ORDER

THEREFORE, IT IS THIS 26th day of March, 2009 by the Board of Appeals of Baltimore County;

ORDERED that, for the reasons stated in the foregoing Opinion, Petitioners' request for Special Hearing to approve a non-density transfer of 8.07 +/- acres of R.C. 2 zoned land from

Cumberland (Parcel 38, Lot 3) to Cumberland (Parcel 38, Lot 7) pursuant to Section 1A00.4B(2) and (3) of the Zoning Commissioner's Policy Manual (Z.C.P.M.), and to re-configure lots 3 and 7 in accordance with the transfer granted; and Petitioners' request for a Special Hearing, pursuant to BCZR Section 500.7 to approve a non-density transfer of 0.45 +/- acres of R.C. 2 zoned land from Cumberland (Parcel 38, lot 7) to Cumberland (Parcel 38, lot 3), pursuant to Sections 1A00.4B(2) and (3) of Z.C.P.M. and to re-configure lots 3 and 7 in accordance with the transfer is hereby **GRANTED**; and it is further

ORDERED that, for the reasons stated in the foregoing Opinion, Petitioners' Request for Variance from Section 32-4-409(e)(2) of the *Baltimore County Code* (BCC) to allow in-fee panhandle strips of 1,223 feet and 2,274 feet, in lieu of the maximum permitted 1,000 feet, is hereby **GRANTED.**

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Edward W. Crizer, Jr., Panel Chairman

Robert W. Witt

Lawrence M. Stahl

3/26/09

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

March 26, 2009

Peter Max Zimmerman
Carole S. Demilio
Office of People's Counsel
105 W. Chesapeake Avenue, Ste 204
Towson, MD 21204

RE: *In the Matter of: William and Holly Cumberland-Legal Owners*
Case No.: 08-211-SPHA

Dear Mr. Zimmerman:

Enclosed please find a copy of the 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/klc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure

c: William and Holly Cumberland
David H. Karceski, Esquire
Christopher D. Mudd, Esquire
Bruce Doak
Bruce Sandler
Philip Kotschenreuther, Esquire
Timothy Kotroco, Director/PDM
William J. Wiseman, III, Zoning Commissioner
Diane Knapp
Walter Holland
J. Carroll Holzer, Esquire
Dick Lehnert
George R. Rew
Dr. Michael Dillon and Ms. Eileen Doherty
Arnold F. Keller, III, Director/Planning
John Beverungen, County Attorney

1/7/09

IN THE MATTER OF WILLIAM AND HOLLY CUMBERLAND	*	BEFORE THE
	*	COUNTY BOARD
PETITIONS FOR SPECIAL HEARING AND VARIANCE FOR PROPERTY LOCATED ON THE N/S OF BELFAST ROAD, N OF OLD BELFAST ROAD	*	OF APPEALS OF
	*	BALTIMORE COUNTY
	*	
8th Election District 3rd Councilmanic District	*	CASE NO. 08-211-SPHA
	*	

* * * * * * * * *

PETITIONERS' POST-HEARING
MEMORANDUM

Petitioners William and Holly Cumberland, by Robert A. Hoffman and David H. Karceski with Venable, LLP, their attorneys, respectfully submit this Post-Hearing Memorandum in support of approval of their requested zoning relief, as follows:

INTRODUCTION

This case involves zoning relief filed by Mr. and Mrs. Cumberland ("Petitioners" or "the Cumberlands") relating to three lots of record they own in northern Baltimore County. Specifically, Petitioners filed Petitions for Special Hearing and Variance for Lots 3, 4, and 7 as shown on Petitioners' site plan (Petitioners' Exhibit 1) and on a record plat for residential subdivision purposes (Petitioners' Exhibit 2). The three lots shall collectively be referred to "Petitioners' Lots" or "the Lots." As indicated on Petitioners' Exhibits 1 and 2, Lot 7 contains 5.099± acres and fronts on Belfast Road along its southern boundary line. Lot 7 is the only one of Petitioners' Lots that fronts on Belfast Road. Lot 3 contains 53.676 ± acres and is located directly north and east of Lot 7. Lot 4

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BOARD OF APPEALS

contains 58.875± acres and is situated directly east of Lot 3 and extends to I-83, which is the eastern-most point of Petitioners' overall property. *See* Petitioners' Exhibit 1. All three lots are zoned RC 2. Petitioner Holly Cumberland is the legal owner of Lots 4 and 7, and William Cumberland, Holly Cumberland's husband, is the legal owner of Lot 3. *See* Petitioners' Exhibits 7 and 8 (L. Green Deeds to Petitioners). Lots 3 and 7 are the subject of the zoning petitions filed in the instant case; the requested zoning relief does not apply to Lot 4. (Transcript of the Proceedings before the Board of Appeals on November 19, 2008, ("T."), pp. 13-14, 54-55)

In their Petition for Special Hearing, the Cumberlands request approval to reconfigure the lot lines for Lots 3 and 7 by way of two non-density land transfers, pursuant to Sections 1A00.4.b(2) and (3) of the Zoning Commissioner's Policy Manual (or "Policy Manual"). Non-density transfers to effect lot reconfigurations are not specifically addressed by the RC 2 zone provisions of the Baltimore County Zoning Regulations ("Zoning Regulations" or "BCZR"). *See* Memorandum Exhibit 1 (RC 2 Zone Area Regulations). Rather, it is the County's Zoning Commissioner's Policy Manual that addresses non-density transfers and outlines the method for approval of such land transfers from one residential lot to an adjacent residential lot.[1] *See* Memorandum Exhibit 2 (Policy Manual). Here, Petitioners specifically requested approval to transfer 8.07± acres from Lot 3 to Lot 7 and to reconfigure the lots in accordance with this transfer. *See* Petition for Special Hearing and Petitioners' Exhibit 1. This lot reconfiguration would allow a dwelling to be placed on Lot 7 further back from Belfast

[1] The 1991 Edition of the Zoning Commissioner's Policy Manual is an administrative supplement to the Baltimore County Zoning Regulations and was adopted by the then Zoning Commissioner for Baltimore County on May 21, 1991. *See* Memorandum Exhibit 2.

Road than is now possible with the current configuration of Lot 7. (T., pp. 22-25 and 130); *see also* Petitioners' Exhibit 1. Additionally, Petitioners request approval to transfer 0.45± acres from Lot 7 to Lot 3 and to reconfigure the two lots in accordance with that transfer. (T., pp. 26-27, 107). This second reconfiguration is for access purposes and will create an in-fee connection for Lot 3 to Belfast Road, along the eastern boundary line of Lot 7. (T., pp. 26-27, 107).

In addition to the non-density transfers, Petitioners filed a Petition for Variance from Section 32-4-409 of the Baltimore County Code ("BCC") for the length of proposed in-fee panhandle strips to accommodate Lot 3. Petitioners intend to subdivide Lot 3 into two lots, Lots 3A and 3B, through the County's development approval process, following the instant zoning case. (T., p. 47). The intended and approximate configuration of the two future lots are shown on Petitioners' Exhibits 1, 3, (Aerial Photograph Exhibit) and 5 (Exhibit Plat – Cumberland Properties). Specifically, Petitioners request approval of an in-fee panhandle strip 1223 feet in length to serve a future dwelling on Lot 3A and an in-fee panhandle strip 2274 feet in length to serve a future dwelling on Lot 3B, in lieu of the maximum permitted 1000 foot long panhandle. *See* Petitioners' Exhibit 5.

On November 19, 2008, the Board of Appeals conducted a *de novo* hearing on the requested special hearing and variance relief. As outlined below, Petitioners produced strong and substantial evidence at the hearing through the testimony of their expert witness, Bruce Doak, and through the introduction of various exhibits, demonstrating that the requested zoning relief is justified and should be granted.

STATEMENT OF FACTS

In October of 1975, the then legal owner of the subject lots, Linda Green, recorded a plat for residential subdivision purposes, which served to create seven lots, including Petitioners' Lots 3, 4, and 7. (T., p. 13); *see also* Petitioners' Exhibit 2. After recordation of her plat, in April of 1976, Ms. Green conveyed Lots 3, 4, and 7 to Petitioners by two separate deeds, both of which are dated April 20, 1976. *See* Petitioners' Exhibits 7 and 8. The property was then zoned RDP, a zoning classification that permitted one dwelling per acre of land. (T., p. 17). At that time, Lots 3, 4, and 7 contained a combined 114.65± acres of land, and, under the RDP zone regulations in effect, more than 100 dwellings would have been permitted across the three Cumberland lots. (T., pp. 17-18).

Despite the substantial development potential available under the RDP zone, as Ms. Cumberland testified, Petitioners chose not to utilize the significant density permitted under that prior zoning classification. (T., p. 167); *see also* Petitioners' Exhibit 3. At present, Petitioners' Lots remain in the exact configuration and contain the same acreage as of the date Petitioners purchased them; however, the underlying zoning has been changed to RC 2. (T., pp. 14, 16).

The RC 2 zone is a residential zone, according to BCZR Section 101, which defines "residential zone" as "[a] zone classified as *R.C.*, D.R., R.O., or R.A.E." *See* Memorandum Exhibit 3 (BCZR Section 101). Bruce Doak, whom this Board accepted as an expert in the application of the BCZR and the Development Regulations, likewise described the RC 2 zoning classification as a "residential zone" and further confirmed that farming operations are not required in this zone. (T., p. 109). The residential density

permitted by the RC 2 zone, however, is significantly less than that permitted by the prior RDP zoning classification. (T., pp. 17-18).

Section 1A01.3.B.1 of the Zoning Regulations, which governs density in the RC 2 zone, states:

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

See Memorandum Exhibit 1. The RC 2 zone, therefore, permits subdivision of an existing lot, between two (2) and one hundred (100) acres, into no more than two lots, provided the lot was created prior to November 25, 1979. (p. 18). As Mr. Doak confirmed, each of Petitioners' Lots at 53.676± acres (Lot 3), 58.875± acres (Lot 4), and 5.099± acres (Lot 7) may be subdivided once into two lots each, for a total of six residential lots across the entire tract. (T., pp. 18, 21). Although permitted a total of six dwellings, with the requested zoning relief, Petitioners intend to seek development plan approval for only five, with only one dwelling to be constructed on Lot 7. (T., p. 23) Construction of one dwelling on Lot 7 would be consistent with Condition No. 1 of the Zoning Commissioner's Order in this case below, which indicates that a dwelling may not be located on Lot 7 in its existing configuration. Furthermore, it is consistent with the Office of Planning's preference that Lot 7 only have one dwelling away from Belfast Road. (T., pp. 128-131)

Petitioners have indicated the proposed dwelling locations on Petitioners' Exhibits 1, 3, and 5. Mr. Doak explained that these dwellings locations and other related improvements, including driveway locations, are approximate and for informational

purposes only; the final locations will be subject to review and approval through the County development approval process that will follow this zoning case. (T., pp. 47, 69-70). With this caveat, he testified regarding the proposed subdivision of the lots and possible dwelling locations.

Lot 7 fronts on Belfast Road, which has been designated by the *Baltimore County 2010 Master Plan* as a "scenic route." *See* Petitioners' Exhibit 4 (2010 Master Plan Scenic Routes Map). Lot 7 is mostly "wooded" and "has some steep slopes on it." (T., p. 18). As Mr. Doak explained, the current configuration of Lot 7 would require any proposed dwelling(s) to be placed closer to Belfast Road and would result in substantial clearing of the lot. (T., pp. 18, 22-25); *see also* Petitioners' Exhibit 3. By comparison, the requested non-density transfer of 8.07± acres from Lot 3 to Lot No. 7 would enable Petitioners to choose the most appropriate location for a dwelling further back from Belfast Road and away from existing wooded areas. (T., pp. 22-25).

With regard to Lot 3, Mr. Doak also explained that Petitioners' Exhibits 1, 3, and 5 show two dwelling locations on existing Lot 3 – one that is intended for Lot 3A and a second intended for Lot 3B. These lots, however, would not comply with the requirement contained in BCC Section 32-4-409 that residential lots have an in-fee strip to a public road, which would be Belfast Road. (T., p. 27) If the non-density transfer of 0.45± acres from Lot No. 7 to Lot No. 3 is approved by this Board, establishment of an in-fee strip may be made for Lot 3 on the east side of Lot 7.

Additionally, for Lots 3A and 3B as shown on Petitioners' Exhibits 1, 3, and 5, variance relief is also necessary due to the length of the panhandle strips that would be created to provide the lots with an in-fee connection to Belfast Road. (T., p. 107). BCC

Section 32-4-409(e)(2) ordinarily requires that a panhandle strip not exceed 1000 feet. For Lot 3A, an in-fee panhandle strip of 1223 feet in length is requested, and, for Lot 3B, an in-fee panhandle strip of 2274 feet in length is requested in lieu of the maximum permitted 1000 foot length. It is important to note, as Mr. Doak testified before this Board, that creation of an in-fee strip to a public road does not necessarily mean that vehicular access to the lot will be in that same location. (T., pp. 27-28, 107-108) Vehicular access is not required in the same location as an established in-fee connection to a public road. (T., pp. 27-28, 92-93, 107-108) The actual location of vehicular access from Lot 3 to Belfast Road will be approved in the future through the County's development plan approval process.

Curtis Murray testified on behalf of the Office of Planning in support of the requested zoning relief. As Mr. Murray explained, prior to the hearing before the Zoning Commissioner, the Office of Planning issued two Zoning Advisory Committee ("ZAC") comments in this case. *See* Protestants' Exhibits 1 and 2. In its initial ZAC comment, dated December 6, 2007, Planning did not support the requested 8.07± acre non-density transfer from Lot 3 to Lot 7 because Lot 7 appeared to be "unbuildable." *See* Protestants' Exhibit 1. Also, Planning did not support the 0.45± acre non-density transfer and the corresponding variance for an in-fee panhandle strip to serve Lot 3B, because this relief would allow for a dwelling on Lot 3B, which would create "too much environmental impact." *See* Id.

Following a meeting with Mr. Doak and a further, more in depth review of Petitioners' No. 1, Planning issued a revised ZAC comment. Mr. Murray provided the following explanation at the Board's hearing of why this revised comment was issued:

> After [issuance of the initial ZAC comment], Mr. Doak came in, sat down with us. He explained that this property has six density rights. We initially thought there were only four. We, he also said that the petitioner plans to improve this property with five units, only utilizing five of those six density units, which was something that we appreciated.
>
> He also said that petitioner does not plan to develop a dwelling along Belfast Road, which was something that we appreciated because it is scenic. And he also advised us that the stream that we thought was going to be environmentally impacted [by proposed Lot 3B] was an intermittent stream, . . . and he also said . . . it was piped with a farm road over top of it. So we thought that the driveway would be used to access the dwelling that's going to be on Lot 3 was essentially the same as a farm road. Its not going to further cause an environmental impact. That was our opinion.
>
> So with all that taken into consideration, we said we can support your request, because what we initially thought, the basis that we initially had for denying it was incorrect. If that makes sense to the Board.

(T., pp. 128-131).[2] *See* Protestants' No. 2. Mr. Murray confirmed that the Office of Planning no longer opposed the requested relief because "this proposal will come before the county at a later time for major subdivision review" and that "technical comments will be made by county reviewing agencies" at that time. (T., p. 131).

I. BASED ON THE OVERWHELMING EVIDENCE PRESENTED BY PETITIONERS, THE BOARD OF APPEALS SHOULD GRANT THE REQUESTED SPECIAL HEARING RELIEF.

By way of the Petition for Special Hearing, Petitioners requests approval of two non-density transfers of land. *See* Petitioners' Exhibit 1. As stated above, requests for non-density transfers of RC zoned land in Baltimore County are governed by Section 1A00.4.b of the Zoning Commissioner's Policy Manual, which reads, in pertinent part, as follows:

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[2] Curtis Murray explained to the Board the discrepancy in the date of the two ZAC comments, which were mistakenly dated the same date (December 6, 2007). In actuality, the revised comment was issued, in his words, "maybe a month " later. (T., p. 126).

1A00.4.b (1) The sale or transfer of small R.C. zoned parcels, usually too small to meet the minimum lot size, for non-density purposes such as access, or agriculture, may be permitted.

(2) In an R.C.2 zone, a parcel could be transferred from the overall development tract to an adjacent existing lot of record provided that the end result does not permit a re-subdivision into a greater number of lots.

(3) Depending on the use and the size of the parcels, a special hearing before the Zoning Commissioner may be required to determine if a non-density transfer is permitted.

See Memorandum Exhibit No. 2.

As will be explained in greater detail below, Petitioners' requested non-density transfers meet each of these policies. First, according to Section 1A00.4.b(1), RC 2 zoned land may be transferred to an adjacent lot provided it is for a "non-density" purpose. Subsection (1) suggests, by example, that a lot "usually too small to meet the minimum lot size" would be indicative of a non-density purpose. While it may be common for transfer areas to be less than the applicable minimum lot size (1 acre in the RC 2 zone), the Policy Manual does not require this by inclusion of the word "usually." *See* Section 1A00.4.b(1). Second, Section 1A00.4.b(2) is specific to the RC 2 zone and requires that a requested non-density transfer not allow for subdivision of a recipient lot into a greater number of lots than would otherwise have been permitted without the requested land transfer. A proposed transfer that does not move a density right with the transfer to the recipient lot, - the proposed transfers at issue here do not - complies with Section 1A00.4.b(2). A public hearing may be required for a requested non-density transfer under Section 1A00.4.b(3) of the Policy Manual to determine whether a desired transfer of land is, indeed, for non-density purposes. Here, Petitioners filed for a public hearing to request the two subject non-density transfers, pursuant to this subsection.

Petitioners produced strong and substantial evidence at the hearing before this Board to prove that the requested non-density transfers are in accordance with the considerations contained in Section 1A00.4.b of the Zoning Commissioner's Policy Manual. Protestants did not produce any credible evidence, expert or otherwise, to the contrary.

A. Petitioners' Requested Transfer of 0.45± Acres from Lot 7 to Lot 3 Meets the Requirements of a Non-density Transfer.

For the benefit of Lot 3, Petitioners requested a non-density transfer of 0.45± acres of RC zoned land from Lot 7 to Lot 3. This requested transfer area is narrow in width and runs along the entire eastern boundary line of existing Lot 7 from Lot 7's frontage on Belfast Road to its common boundary line with Lot 3. *See* Petitioners' Exhibit 1. The non-density purpose of this transfer is evident from the shape and location of the transfer area in relation to Lot 3 and Belfast Road. Its only viable use is to establish an in-fee strip for Lot 3 to a public road, as is required by the Baltimore County Code. Indeed, access is listed in Section 1A00.4.b(1) of the Policy Manual as an appropriate non-density purpose, and, as such, this transfer is consistent with Subsection (1).

With regard to Section 1A00.4.b(2), Lot 3 is now 53.676± acres in size. *See* Petitioners' Exhibit 1. As such, the RC 2 zone area regulations permit Lot 3 to be subdivided once, into two lots, and would allow a single-family dwelling on each subdivided lot. (T., p. 18); *see also* Petitioners' Exhibit 1. If the Board approves the proposed transfer, the total acreage of Lot 3 will minimally increase and *not* enable Petitioners to subdivide Lot 3 into any more than the two residential lots already

permitted.[3] This proposed transfer will, therefore, not enable Petitioners to subdivide Lot 3 into a "greater number of lots" if approved. This provides further indication that the transfer is for "non-density purposes" and, as such, is consistent with the Policy Manual. Being consistent with the Policy Manual, the Board should grant Petitioners' Petition for Special Hearing requesting the 0.45± acre non-density transfer.

B. Petitioners' Requested Transfer of 8.07± Acres from Lot 3 to Lot 7 Also Meets the Requirements of a Non-density Transfer.

For the benefit of Lot 7, Petitioners requested a non-density transfer of 8.07± acres of RC zoned land from Lot 3 to Lot 7. As described above, the portion of Lot 3 to be transferred is located directly to the north of existing Lot 7, approximately 830± feet to the north of Belfast Road. *See* Petitioners' Exhibit 5. Mr. Doak identified the non-density purpose for this requested transfer. (T., pp. 22-25). He explained that this transfer would allow Petitioners to construct a dwelling, permitted now on existing Lot 7, "out of sight" from Belfast Road and, because the lot is "predominantly forested," in a location that would avoid disturbance of large stands of forest located on the lot. (T., pp. 18, 21-23); *see also* Petitioners' Exhibit 3. He confirmed that the Office of Planning supports the non-density transfer because the transfer would allow for a dwelling location on Lot 7 that is more respectful of Belfast Road's scenic route status. (T., pp. 23-24). In exchange for this lot location, which is more appropriate from a planning perspective, Mr. Doak explained to this Board that Petitioners are willing to forfeit one of the two density rights associated with Lot 7 to construct only one residential dwelling on the lot. (T., p. 22). Based on the evidence presented, it is clear that Petitioners intention in

[3] In order for Lot 3 to gain an additional subdivision right, it must be *at least* 150 acres in size; however, the proposed addition of the 0.45± acres from Lot 7 will only increase the size of Lot 3 to 54± acres.

requesting the 8.07± acre non-density transfer is to facilitate a non-density shift of acreage and reconfiguration of Lot 7, which is consistent with Section 1A00.4.b(1) of the Policy Manual.

With regard to Section 1A00.4.b(2), Lot 7 is now 5.099 ± acres in size. *See* Petitioners' Exhibit 1. As such, the RC 2 zone area regulations permit Lot 7 to be subdivided once, into two lots, and would allow a single-family dwelling to be built on each subdivided lot. (T., p. 18); *see also* Petitioners' Exhibit 1. If the Board approves the proposed transfer, the total acreage of Lot 7 will increase to 13.169± acres (minus the 0.45± acre transfer, if approved), which would not enable Petitioners to subdivide Lot 7 into any more than the 2 residential lots already permitted.[4] This proposed transfer will, therefore, not enable Petitioners to subdivide Lot 7 into a "greater number of lots" if approved. This provides further indication that the transfer is for "non-density purposes" and, as such, is consistent with the Policy Manual. Being consistent with the Policy Manual, the Board should grant Petitioners' Petition for Special Hearing requesting the 8.07± acre non-density transfer.

Protestants were unable to produce any credible evidence or testimony, expert or otherwise, to contradict Petitioners' position that the proposed non-density transfers are consistent with the Policy Manual. Therefore, the Board must approve the Petition for Special Hearing.

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[4] In order for Lot 7 to gain an additional subdivision right, it must be *at least* 150 acres in size; however, as stated, the proposed addition of the 8.04± acres from Lot 3 will not increase Lot 7 to anywhere near that acreage.

II. PETITIONERS PRODUCED STRONG AND SUBSTANTIAL EVIDENCE DEMONSTRATING THEIR ENTITLEMENT TO THE REQUESTED VARIANCE RELIEF.

In anticipation of the intended subdivision of Lot 3 into Lots 3A and 3B, Petitioners request variance relief for the establishment of in-fee strips of land from each lot to Belfast Road. Specifically, Petitioners seek the following variances: (1) variance from BCC Section 32-4-409(e)(2) to allow a panhandle strip to serve Lot 3A having a length of 1223 feet in lieu of the maximum permitted 1000 feet; and (2) variance from BCC Section 32-4-409(e)(2) to allow a panhandle strip to serve Lot 3B having a length of 2274 feet in lieu of the maximum permitted 1000 feet.

Petitioners produced strong and substantial evidence at the hearing before this Board to prove that the requested variances are warranted. Protestants failed to produce any credible evidence, expert or otherwise, to the contrary. Certain property owners in the vicinity of Petitioners' Lots did testify in opposition to the requested relief, but, as justification, they raised issues that need to be addressed by Baltimore County agencies and the Hearing Officer during the development plan process rather than by the Board. For instance, Dr. Dillon and Ms. Knapp stated their concern for additional vehicular trips that may be added to the existing driveway if approval of five new dwellings is obtained through the development plan process. (T., pp. 111-119, 132-134). Petitioners would point out that Dr. Dillon's property is for sale, and the sale documents advertise that the lot may be subdivided into two lots, negating any real concern he may have in this regard. (T., pp. 101-102, 121) At any rate, issues relating to traffic will be considered during the development plan approval process. Walter Holland and Charles Lehnert both expressed concern regarding storm water runoff in the vicinity of Petitioners' Lots that may occur

with development of Petitioners' Lots. (T., pp. 136-143, 149-156). Mr. Holland indicated that, if his stormwater concerns could be resolved during the development process, he would "probably not" object to the requested relief. (T., p. 146). These examples highlight that any real areas of concern will be addressed during the development plan process required to subdivide the Lots; they are not, however, issues to be decided in this case. In fact, Mr. Holzer, counsel for Mr. Lehnert, acknowledged that the testimony of the neighboring property owners should serve to provide Petitioners "advanced knowledge" of certain concerns now. (T., pp. 154-155).

Burden of Proof for Petition for Variance

On appeal from the Zoning Commissioner, a request for variance relief is heard *de novo* by the Board of Appeals. In Baltimore County, the Board of Appeals may grant a request for a variance "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." BCZR Section 307.1. The proper application of Section 307.1 requires the Board to determine first that the property where a use is proposed is unique and that such "uniqueness" causes a disproportionate impact in terms of the application of the Zoning Regulations. *Cromwell v. Ward*, 102 Md. App. 691, 694, 651 A.2d 424 (1995). Second, the Board must determine whether those unique circumstances make it practically difficult for the owner to utilize the property for a permitted use without coming into conflict with the Zoning Regulations. *Id.* at 694-695.

Proving practical difficulty is *not* intended to be a particularly stringent test. Simply put, practical difficulty means that, given the balance of interests of the property

owner, neighboring property owners, and the public in general, requiring strict compliance with the zoning regulations would unnecessarily burden the property owner when the owner attempts to use the property for a permitted use. *McLean v. Solely*, 270 Md. 208, 214-215, 310 A.2d 783 (1973). In determining whether a practical difficulty exists, deserving of a variance, the Board of Appeals should, therefore, consider: whether requiring conformity with the applicable zoning regulations would be unnecessarily burdensome; whether granting the variance would do substantial justice; and whether the requested variance would be consistent with the spirit of the ordinance and the interests of public safety and welfare. *Id.*

A. The Overwhelming Evidence Confirms that the Property is Unique.

A review of the record produced before the Board of Appeals, including the strong testimony of Mr. Doak regarding the variance requests, brings into focus the uniqueness of Petitioners' Lot 3. (T., pp. 29-41). As Mr. Doak explained, the history of Lot 3, in relation to the County Code provision from which Petitioners have requested a variance, is what renders the lot unique. (T., pp. 32-33). Baltimore County approved the subdivision plat for Linda Green in October of 1975, which, as explained above, created Petitioners' Lot 3. *See* Petitioners' Exhibit 2. At that time, the applicable development regulations in the County Code contained no in-fee panhandle requirements. (T., p. 32).

The creation of Petitioners' Lots (including Lot 3), therefore, pre-dated the panhandle regulations contained in the current Edition of the County Code. In 1975, the County reviewed the record plat for compliance with the provisions of the County Code then in effect and approved it for creation of residential lots that could be further subdivided without the ability to request and/or the need to have the relief requested in

this petition. (T., p. 32) It was, therefore, Mr. Doak's expert opinion that Lot 3 is unique because the requirements for subdivision of residential lots changed subsequent to the Lot's creation in 1975. (T., p. 32) Similarly, the Development Regulations at the time of plat recordation did not include the in-fee panhandle length limitation from which Petitioners now seek variance relief.

B. The Evidence Confirms that the Cumberlands had a Practical Difficulty in Strictly Complying with the Baltimore County Zoning Regulations.

Having presented clear and convincing evidence that Lot 3 is unique, Petitioners next demonstrated that, as a result of Lot 3's history or special circumstances, requiring strict compliance with the Zoning Regulations would result in a practical difficulty for Petitioners. Without the requested variances, Petitioners would not be permitted to subdivide Lot 3 into Lots 3A and 3B consistent with the configuration shown on Petitioners' Exhibit 1. (T. pp. 32-35). Instead, Petitioners would be forced to reconfigure proposed Lots 3A and 3B so that the southernmost portion of each lot would be located within 1000 feet of a public roadway. As explained below, this alternative configuration is problematic for several reasons.

Mr. Doak prepared an exhibit to show this Board the practical difficulty that compliance with the current Code provisions would create for Petitioners. On Petitioners' Exhibit 3, Mr. Doak marked alternative lot lines for Lots 3A and 3B (referred to as the "orange-green configuration") that would comply with BCC Section 32-4-409. (*See, e.g.,* T. p. 36). The configuration of alternate Lot 3A is highlighted in green on Petitioners' Exhibit 3, while the alternate Lot 3B is highlighted in orange. These alternative lot configurations show the boundary lines of both lots extended in a southerly

direction, toward Belfast Road, next to each other, like pieces of the same pie. In Mr. Doak's experience, lots in this irregular configuration would burden future owners with property maintenance issues that may otherwise be avoided with the grant of the requested variances. (T., p. 35).

In addition, Mr. Doak explained that Lots 3A and 3B, in the configurations requested by Petitioners, would allow the future owners of those lots to farm the lots if desired. (T., pp. 39-40). If the Board denies the requested variances, Mr. Doak opined that the forced, "pie-shaped" configuration of Lots 3A and 3B would not be conducive to agricultural use. (T., pp. 39-40, 66, 75).

Counsel for Mr. Lehnert suggested that Petitioners have created their own practical difficulty suggesting that, if Lot 3A and 3B accessed Buffalo Run Road to the northwest of Lot 3, rather than Belfast Road, no variance relief would be required for subdivision of Lot 3. In his words, access for Lots 3A and 3B to Belfast Road instead of Buffalo Run Road is no more than a "preference" by Petitioners. (T., p. 60). On cross-examination, Mr. Doak dispelled this notion of preference by informing the Board that a stream exists between Lot 3 and Buffalo Run Road. (T., p. 58); *see also* Petitioners' Exhibit 6. Rather than cross the stream with a road to Buffalo Run Road, DEPRM would "require" Mr. Doak to apply for the subject variances for Lot 3, due to the presence of this stream. (T., p. 59). This testimony further confirms Petitioners' practical difficulty in complying with BCC Section 32-4-409.

Additionally, on re-direct examination, Mr. Doak clarified for this Board that, even if Petitioners were to provide in-fee access strips to Buffalo Run Road, instead of Belfast Road, variance relief for the same purpose, i.e., a panhandle strip longer than

1000 feet, would still be required for Lot 3A. (T., p. 108). Petitioners would, therefore, be in the same position they are now before this Board, in need of panhandle length variance relief.

C. The Grant of Petitioners' Requested Variances will not Adversely Affect the Public Health, Safety, or General Welfare.

The variances requested by Petitioners would not adversely affect the public health, safety, or general welfare of the surrounding residential lots. In fact, the evidence demonstrates that the proposed subdivision of Lots 3A and 3B, as shown and indicated on Petitioners' No. 1, would effectively *minimize* any such impact. As Mr. Doak testified, the lot configurations shown on Petitioners' Exhibit 1 would provide more of a buffer for adjacent property owners from any proposed dwellings. (T., pp. 35-36). It would also be consistent with the goals of the RC 2 zone. (T., pp. 39-40).

On the contrary, requiring Petitioners' to configure Lots 3A and 3B in the "orange-green configuration" could result in some adverse impact on adjacent properties, because it would require dwelling locations closer to the adjacent properties. (T., p. 36). Additionally, Mr. Doak testified that the "orange-green configuration" would be detrimental to potential future agricultural use of the subject property, because it would inefficiently divide Lot 3, creating smaller areas that would be more difficult (and less desirable) to farm. (T. pp. 65-66). Finally, if, as Protestants suggest, Petitioners were to seek to provide in-fee and vehicular access to Buffalo Run Road, instead of Belfast Road, that would necessitate a stream crossing, with the potential for environmental impact. *See* Petitioners' Exhibit 6.

Based on this evidence, it is clear that the requested variance will have no adverse effects on the health, safety, or general welfare, particularly when compared to the alternative suggested by Protestants.

It should also be noted that Petitioners' preferred layout for Lots 3A and 3B is within the spirit and intent of the RC 2 Zoning Regulations. As mentioned above, there is no requirement to farm RC 2-zoned land; however, Section 1A01.b.1 of the Zoning Regulations indicates that conditions favorable to continued agricultural use should be fostered in the RC 2. (T., p. 109); *see also* Memorandum Exhibit 1. Mr. Doak explained that he designed Petitioners' Lots 3A and 3B, as shown on Petitioners' Exhibits 1 and 3, with this goal in mind. (T., pp. 39-40) Lots 3A and 3B are configured to have as large an area as possible in single ownership in the event they are used for agricultural purposes. (T., pp. 39-40) It is on this basis that Mr. Doak confirmed for this Board that Lots 3A and 3B, as Petitioners propose, are within the spirit and intent of the RC 2 zone. (T., p. 39)

CONCLUSION

As outlined above, Petitioners demonstrated their entitlement to the requested zoning relief through strong and substantial evidence. Petitioners, therefore, respectfully request that the Board of Appeals approve the Petition for Variance for future Lots 3A and 3B and the Petition for Special Hearing for the reconfiguration of Lots 3 and 7, as shown on Petitioners' Exhibit 1.

Respectfully submitted,

Robert A. Hoffman /dlk

ROBERT A. HOFFMAN

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 2009, a copy of the foregoing PETITIONERS' POST-HEARING MEMORANDUM was mailed, first-class delivery, postage prepaid, to J. Carroll Holzer, 508 Fairmount Avenue, Towson, Maryland, 21286, Attorney for Mr. Lehnert, Philip Kotschenreuther, 102 West Pennsylvania Avenue, Towson, Maryland, 21204, Attorney for Dr. Dillon, and Carole S. Demilio, Deputy People's Counsel, Jefferson Building, Room 204, 105 West Chesapeake Avenue, Towson, Maryland 21204.

ROBERT A. HOFFMAN

TO1DOCS1/266349

REVISED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 2009, a copy of the foregoing PETITIONERS' POST-HEARING MEMORANDUM was mailed, first-class delivery, postage prepaid, to J. Carroll Holzer, 508 Fairmount Avenue, Towson, Maryland, 21286, Attorney for Mr. Lehnert, Philip Kotschenreuther, 200 South Main Street, Bel Air, Maryland 21014, Attorney for Dr. Dillon, and Carole S. Demilio, Deputy People's Counsel, Jefferson Building, Room 204, 105 West Chesapeake Avenue, Towson, Maryland 21204.

ROBERT A. HOFFMAN

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BALTIMORE COUNTY
BOARD OF APPEALS

Section 1A01
R.C.2 (Agricultural) Zone

1A01.1 General provisions.

A. Legislative statement of findings.

1. Declaration of findings. It is found:

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

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

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

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

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

f. That Baltimore County has certain wetlands along Chesapeake Bay and its tributaries which serve as breeding grounds and nursery areas for the bay's biotic life; and

g. That Baltimore County possesses numerous areas which are highly suitable for urban development, including residential subdivisions which are not located in areas of productive agricultural land.

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

1A01.2 Use regulations.

A. Preferred use permitted as of right. Agricultural operations, when conducted in accordance with good and reasonable husbandry practices, shall be afforded preferential treatment over and above all other permitted uses in R.C.2 Zones.

B. Uses permitted as of right.[3] The following uses only are permitted as of right in all R.C.2 Zones: **[Bill No. 178-1979]**

1. Dwellings, one-family detached. **[Bill No. 178-1979]**

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[3] **Editor's Note: "Churches and schools for agriculture training," originally included in this section by Bill No. 98-1975, were moved to Section 1A01.2.C by Bill No. 178-1979.**

MEMORANDUM EXHIBIT NO. 1

1991 Edition

Baltimore County

Zoning Commissioner's Policy Manual

adopted MAY 21,1991

Administrative Supplement to the Baltimore County Zoning Regulations

MEMORANDUM EXHIBIT NO. 2

1/7/09

IN THE MATTER OF: William & Holly Cumberland	*	BEFORE THE
	*	COUNTY
Petitioners	*	BOARD OF APPEALS
PETITION FOR SPECIAL HEARING AND VARIANCE N/W Side of Belfast Road 70 Feet North of C/Line of Old Belfast Road	*	OF
	*	BALTIMORE COUNTY
	*	Case No.: 08-211-SPHA
8th Election District 3rd Councilmanic District	*	
WILLIAM G. CUMBERLAND, *et ux.*	*	
Petitioners	*	

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

PROTESTANT'S MEMORANDUM IN LIEU OF FINAL ARGUMENT

Richard Lehnert, 707 Old Belfast Road, Sparks-Glencoe, Maryland 21152, by his attorney, ***J. Carroll Holzer, Esquire***, Holzer & Lee, hereby submits this Memorandum in lieu of Final Argument before the County Board of Appeals and says:

I.

STATEMENT OF THE CASE

This matter came before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed for Holly Cumberland and her husband, William G. Cumberland, through their attorney, Robert Hoffman. Special Hearing relief was filed pursuant to §500.7 of the Baltimore County Zoning Regulations to approve a non-density transfer of 8.07 acres more or less of R.C. 2 zoned land from Cumberland (Parcel 38, Lot 3) to

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BOARD OF APPEALS

Cumberland (Parcel 38, Lot 7); pursuant to §1A00.4.B(2 and 3) of the Zoning Commissioner's Policy Manual and to reconfigure Lots 3 and 7 in accordance with the transfer; and a non-density transfer of 0.45 acres more or less of R.C. 2 zoned land from Cumberland (Parcel 38, Lot 7) to Cumberland (Parcel 38, Lot 3); pursuant to §1A00.4.B(2 and 3) of the Zoning Commissioner's Manual and to reconfigure Lots 3 and 7 in accordance with the transfer. Lots involved are owned by Petitioners. Secondly, Petitioners request a variance from §32-4-409(e)(2) of the Baltimore County Code to allow in fee panhandle strips of 1,223 feet (Lot 3A) and 2,274 feet (Lot 3B), in lieu of the maximum permitted 1,000 feet. The Protestant, Dick Lehnert appeared before the Zoning Commissioner and opposed the request. The Zoning Commissioner dismissed the testimony of several Protestants concerning this request as well as various comments of the Office of Planning, the Department of Environmental Protection and Resource Management regarding development related comments. The Zoning Commissioner apparently deferred all issues relative to the requirement that this subdivision must proceed through the full development hearing for a five (5) lot subdivision and on March 25, 2008, granted this Special Hearing and Variance. An appeal filed by the People's Counsel to this Board. The Protestant, Lehnert entered his appearance before this Board and participated and testified in regard to his opposition to the requested Special Hearing and Variance approvals.

II.

FACTS

The Plan to accompany the Variance and Special Hearing request illustrates the total property owned by the Petitioners, William and Holly Cumberland. It includes Parcel 38, Lots 4, 3 and 7. Lot 4 will be divided into two (2) lots consisting of Lot 4 and Lot 4A. Lot 3 will be

divided into two (2) lots consisting of Lot 3A and Lot 3B. Part of Lot 3 will be split off and added to Lot 7 to create Lot 7A. The subdivision requested in this Plan will require a major Development Plan consisting of five (5) lots. At present, all of the property is undeveloped and subject to control by the Cumberlands.

While Petitioner submits that Lot 4 is not part of the requested instant relief, it is clear that it is part of the proposed five (5) lot subdivision.

Relief is request for two (2) non-density transfers. One from Lot 3 to add to Lot 7 and .45 of an acre to permit in fee access to Lot 3.

Protestant, Dick Lehnert owns property contiguous to Lot 4 as well as to Lot 3A and objects to not only the subdivision proposed, but to the granting of the variance for the panhandles which have been requested and the requested relief for the non-density transfers.

The only witness for the Petitioners was Bruce Doak, a land surveyor. Holly Cumberland testified, but not to any facts or substantive issues in regard to this case. Curtis Murray was called and testified as a County Representative and attempted to explain the Planning Staff's reversal of its conflicting opinions issued on December 6, 2007, which first recommended denial of the Special Hearing as well as the variance and then subsequently reversed its position. It is important to note that Murray did not testify in regard to the variance request, nor as to any facts or opinion which would support the grant of the variance.

Thus, Doak is the only witness before the Board for the variance request and he provided only limited testimony in regard to the variance request for the panhandle driveways of 1,223 feet for Lot 3A and 2,274 feet for Lot 3B. The Transcript of the proceedings before the Board will reflect no testimony as to the required criteria for granting a variance pursuant to B.C.Z.R. §307.1.

Protestants Lehnert, Diane Robbins Knapp and Walter Holland testified against the grant of a variance for multiple reasons. Knapp, Holland and Lehnert were concerned about existing flooding and drainage coming down the existing road which would be further impacted by the variances if granted.

More importantly, Lehnert raised two (2) other issues in regard to the variance request. First, that Buffalo Run provided suitable access for the development of these lots and access was available to Buffalo Run through Petitioners own property consisting of Lot 4 to the proposed Lot 3B and secondly, that there were lesser alternatives to the grant of the existing requested variances as testified by Petitioner's own expert and only witness Bruce Doak.

III.

QUESTION PRESENTED

1. **Did the Petitioner establish, pursuant to §307, Baltimore County Zoning Regulations that a variance should be granted?**

IV.

LEGAL ARGUMENT

1. **Did the Petitioner establish, pursuant to §307, Baltimore County Zoning Regulations that a variance should be granted?**

Like most variance cases, this one is driven by choice and desire, not by legitimacy or necessity. Petitioners case is based on their desire to do something out of their choice, not of necessity. They own all of the land shown on their Plan. The property is currently undeveloped. They can comply with all zoning and development laws.

This illustrates a problem endemic to most variance cases.[1] Property owners want to do something. Then they learn there is a conflict with zoning law, but there is a variance process. It looks easy. All they have to say is that the property is unique and that there is practical difficulty. To them, not being able to do what they want to do seems like their situational practical difficulty. They usually retain a team of "experts," who act as players on a stage. "Experts" provide encouragement and support. They can translate any inability to comply with the law into a unique practical difficulty. They can manipulate language to seek a result. It is a form of public relations advocacy. If played out successfully, then one variance would lead to another and zoning law would collapse like a house of cards. See *Easter v. Mayor & City Council*, 195 Md. 395 (1950).

The Meriam-Webster online dictionary definition, refers to "zoning *variance*" in item (4),

> "Variance – Main entry – var-i-ance, Pronunciation: (ver-e-an(t)s; Function: Noun; Date: 14th Century; (1) the fact, quality, or state of being variable or variant: difference, variation,<yearly *variance* in crops.>; (2) the fact or state of being in disagreement: dissention, dispute; (3) a disagreement between two parts of the same legal proceeding that must be consonant; (4) a license to do some act contrary to the usual role, <a zoning *variance*>; (5) the square of the standard deviation; synonyms, see discord – at variance: not in harmony or agreement" (www.meriam-webster.com).

In the Baltimore County Zoning Regulations, BCZR §307.1 states, in pertinent part:

> "The Zoning Commissioner of Baltimore County, and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, and from sign regulations only in cases where special circumstances 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

[1] The following legal analysis is compliments of the Office of People's Counsel.

> spirit and intent of said height, area, off-street parking or sign regulations, an only in such manner as to grant relief without injury to the public health, safety, and welfare. They shall have no power to grant any other variances." Emphasis supplied.

This standard requires proof of the following:

1. That the land or structure is "unique," a zoning term of art;

2. That the uniqueness "results" in "practical difficulty" pertinent to zoning compliance;

3. That there is true "practical difficulty," another zoning term of art, and

4. That any such "practical difficulty" is not self-created, subject to recent Court of Appeals decisions.

5. That there will be no injury to the public safety, health and welfare.

Historically, a variance functions to allow a property owner a reasonable permitted use of property. 3 Young, *Anderson's American Law of Zoning 4th*, §20.02, at 411 (1996):

> "The underlying purposes of administrative relief have been discussed in an earlier chapter, but specifically, 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."

6. That if a variance is to be granted, it is the ***minimum*** necessary to afford relief.

The three-pronged test under Maryland case law

The first inquiry here is whether the property is peculiar or "unique." If evidence of uniqueness is insufficient or unpersuasive, the inquiry ends there. *Cromwell v. Ward*, 102 Md. App. 691 (1995); *Umerley v. People's Counsel*, 108 Md. App. 497 (1996); *Riffin v. People's Counsel*, 137 Md. App. 90, cert. denied, 363 Md. 660 (2001). If this threshold is passed, the next

question is whether the unique condition results in "practical difficulty" *McLean v. Soley* 270 Md. 208, 213-15 (1973). This also brings into play the further issue of impact on public safety and welfare.

The word "unique" is defined carefully. Otherwise, anyone could make some sort of claim. In *Cromwell*, 102 Md. App. at 710 (1995), 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 require 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 *McLean*, 270 Md. 208, 214-15 (1973), the Court established three interrelated criteria to determine "practical difficulty:"

> "In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon the neighboring property.
>
> 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not share 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 *McLean*, 270 Md. 208, 214-15 (1973), the Court established three interrelated criteria to determine "practical difficulty:"

> "(1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> (2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
>
> (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

McLean incorporates the "public safety and welfare" criterion as a distinct but related element of "practical difficulty." B.C.Z.R. §307.1 identifies public health, safety, and welfare separately. It makes sense intellectually to view it as either different from the concern about unreasonable prevention of or burdening the use of property or as a kind of umbrella. It is, in a sense, either the third prong or the ultimate police power objective.

Many zoning petitioners assume the word "variance" implies a minor adjustment (like Webster's "variable," "variant," or "variation"). But Judge Cathell explained with depth in *Cromwell* that zoning controls must not lightly be disregarded. Otherwise, the structure of zoning law would collapse like a house of cards.

Protestant submits that the Petitioner failed to provide sufficient evidence to support the grant of a variance to the panhandle requirements from §32-4-409(e)(2) of the Baltimore County Code. Also see *Trinity Assembly of God, Inc. v. People's Counsel, et al.,* No. 27, September Term 2008, filed December 24, 2008.

In order to grant a variance to the two (2) panhandle drives requested, one must establish that the conditions are unique and peculiar to the land or structure which is the subject of the variance request. That practical difficulty or unreasonable hardship is required that it shall be granted only if in strict harmony with the spirit and intent of said Regulations and without harm to public, health, safety and general welfare and shall be the minimum necessary in order to provide relief in question. Protestant's first point is that in reviewing the testimony of the only witness called to establish the variance, Bruce Doak failed to address all of the requirements of §307. In fact, his testimony established that this was not the ***minimum*** amount of variance necessary to provide relief since there was another way to provide a panhandle drive that met the 1,000 foot maximum by amending his Site Plan. (See Exhibit 6, the orange and green alternative).

While Doak expressed a desire not to do it in that fashion, his clear testimony was that it could be done and still accomplish the purpose of providing access to Lots 3A and 3B. The law requires that he must request the minimum necessary and he has acknowledged that he is asking for more than the minimum. His only basis for requesting the greater length was to provide for a more aesthetic or pleasing lot which the Petitioners could sell. Protestants submit that is not a sufficient reason to justify granting a variance or, in the alternative, providing a variance for more than the maximum allowed.

A second method of avoiding the excessive variance requested would be to seek in the Petitioners Plan, access from Buffalo Run Road across Lot 4 owned by the Petitioners to access Lot 3B. Doak testified that he did not request from the County the right to utilize Buffalo Run

Road and there is no verification that the County would ***not*** permit the use of Buffalo Run Road as an access to Lot 3B. Thus, the Petitioners total testimony reflects the failure to exhaust their possible remedies before requesting and being granted such an excessive length. Thus, the evidence presented by the Petitioner fails to meet the necessary standard required by the Code, the Zoning Regulations and the case law. The record will reflect no facts necessary to allow the Board to grant such an excessive variance.

Finally, there is an additional reason as to why the variance to the panhandle driveway should not be permitted and that is, this is a self-created practical difficulty or hardship. In this particular case, it is clear that the Petitioners own Lots 3, 4 and 7, and can thus, provide a major subdivision which satisfies the Development and Zoning Regulations of the County.

V.

CONCLUSION

Protestant respectfully requires the Board to deny the request for variances and to deny the Special Hearing relief.

Respectfully submitted,

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January 7, 2009

VIA HAND DELIVERY

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

Re: In the Matter of William and Holly Cumberland - Petitioners
Case No.: 08-211-SPHA

Gentlemen:

Enclosed please find the original and three (3) copies of the Closing Brief of Michael Dillon and Eileen Doherty in Opposition to Petition for Special Hearing and Variances in the above referenced matter.

Thank you for your attention to this matter.

Very truly yours,

Philip J. Kotschenreuther

PJK:lh
enclosures

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BOARD OF APPEALS

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF: *

WILLIAM AND HOLLY CUMBERLAND *
Petitioners

* Case Number: 08-211-SPHA

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

CLOSING BRIEF OF MICHAEL DILLON AND EILEEN DOHERTY IN OPPOSITION TO PETITION FOR SPECIAL HEARING AND VARIANCES

Michael Dillon and Eileen Doherty, Protestants, by their attorneys, Philip J. Kotschenreuther, Esquire and Brown, Brown & Young, a Professional Association, file this Closing Brief in Opposition to the Petition of William Cumberland and Holly Cumberland for Special Hearing and Variances, and state:

I. Introduction and Facts

Petitioners have filed Petitions for (a) variances from Section 32-4-409(e)(2) of the Baltimore County Code to allow panhandle strips of 1223 feet (Lot 3A) and 2274 feet (Lot 3B) in lieu of the maximum permitted 1,000 feet and (b) special hearings to allow non-density transfers between Lot 3 and Lot 7 and reconfiguring of Lots 3 and 7 in accordance with the transfers.

The Petitioners' properties are located in an R.C. 2 zone in Sparks, Baltimore County.

Although a portion of the Petitioners' properties border along Buffalo Run Road, they have proposed and configured five (5) lots so that ingress and egress is available only on Belfast Road. Petitioners have assumed that they cannot access Buffalo Run Road because any access to Buffalo Run Road would have to cross Piney Creek. Petitioners have not made any requests or obtained any advice or decision from Baltimore County or any other applicable governmental agencies regarding access to Buffalo Run Road. Petitioners' assumption appeared to be based upon a desire to avoid

additional expense in the development of several of the proposed lots.

The Petitioners' expert witness admitted that the lots could have been configured in a manner not requiring variances from the panhandle requirements. The Petitioners' expert also admitted that by configuring the five (5) lots as proposed, with ingress and egress being limited only to Belfast Road, the amount of traffic along an existing access driveway would be quintupled. One of the Protestants testified that such an increase in traffic on the access driveway would cause a substantial adverse impact and overburden the access driveway.

Petitioners failed to introduce any evidence that their property was, in and of itself, unique and unusual in a manner different from the nature of the properties in the Sparks area of Baltimore County. Petitioners instead attempted, through the testimony of their expert witness, to convince the County Board of Appeals that the primary use of these properties in the R.C. 2 zone was residential use. This attempt is incongruent with the express primary purpose of the R.C. 2 agricultural zone, as explained in the Baltimore County Zoning Regulations and Maryland appellate decisions.

Protestants produced as their Exhibit No. 1 a December 6, 2007 Inter-Office Memo from the County's Office of Planning. The Memo did not support the special hearing request because the creation of Lot 3B created too much environmental impact. The variance request of 2,274 feet for Lot 3B was not supported for the same reason. The Memo supported the variance request of 1,223 feet for Lot 3A only if there were four (4) buildable lots instead of five (5) and Lot 3B was abandoned. Later on the same day, the County's Office of Planning reversed its position on the special hearing and variances, without explanation (Protestants' Exhibit 2).

Protestants also produced as their Exhibit 3, a December 19, 2007 Inter-Office Memo from the County's Department of Environmental Protection and Resource Management. This Memo

noted that the density reallocation was not supported by the Baltimore County Zoning Regulations. The Department withheld its support for the Petitioners' requests unless the Petitioners agreed to place the properties under agricultural conservation easements or a land trust. The Petitioners' expert witness testified such action had not been taken and was not contemplated.

This Closing Brief will primarily consider the variances sought by the Petitioners.

II. Legal Standard for Variances and Discussion

The length of a panhandle in an RC zone may not exceed 1,000 feet. Baltimore County Code, Section 32-4-409(e)(2). The maximum permitted length of a panhandle is subject to variance under Section 307 of the Baltimore County Zoning Regulations. Baltimore County Code, Section 32-4-409(e)(3).

Section 307 of the Baltimore County Zoning Regulations states in pertinent part that:

> "The ... County Board of Appeals ... shall have ... the power to 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 for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances." Baltimore County Zoning Regulations, Section 307.1.

A close reading of Section 307.1 of the Baltimore County Zoning Regulations requires any variance request to pass four (4) tests before it can be granted. Those tests are:

a. "special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request";

b. "strict compliance with the Zoning Regulations for Baltimore County would result in

practical difficulty or unreasonable hardship";

c. "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

d. "such variance shall be granted ... only in such manner as to grant relief without injury to public health, safety and general welfare."

Baltimore County Zoning Regulations, Section 307.1.

Section 307.1 expressly provides that the County Board of Appeals "shall have no power to grant any other variances." Baltimore County Zoning Regulations, Section 307.1.

The Maryland Court of Special Appeals noted in Cromwell v. Ward, 102 Md.App. 691, 651 A.2d 424 (1995) that granting variances should be done only in exceptional circumstances. In Cromwell, supra., the Court of Special Appeals wrote:

> "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 § 38 (1979)." Cromwell, supra., 102 Md.App. 691 at 703, 651 A.2d 424 at 430.

The Court of Special Appeals further noted in that case that at that time (in 1995):

> "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. The cases are *McLean, supra; Stacy, supra; Sapero, supra; Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra.* All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago." Cromwell, supra., 102 Md.App. 703 at 711, 651 A.2d 424 at 434.

After noting in Cromwell, supra. that variances are rarely appropriate, the Court of Special Appeals reviewed the Baltimore County Zoning Regulations and the criteria necessary to examine

when evaluating a variance request under those regulations. In Cromwell, supra., the Court of Special Appeals discussed the first two (2) steps of the multi-step analysis required before granting a variance under Section 307 of the Baltimore County regulations. The Maryland Court wrote:

> ".... appellant expands in his arguments supporting the questions and argues that
>
> [t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property,* must be the proximate cause of the hardship [Emphasis added.]
>
> and
> Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request.... [Emphasis added.]
>
> and
> Mr. Ward's property *is not unique* from the others in the Ruxton area. [Emphasis added.]
>
> Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.,* it is at least a two-step process. The first step requires a finding that the property ... is--in and of itself--unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.,* a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance..." Cromwell, supra., 102 Md.App. 691 at 694-5, 651 A.2d 424 at 426.

After discussing the importance of finding that a property is in and of itself unique and unusual in a manner different from the nature of the surrounding properties, the Maryland appellate court cautioned Baltimore County zoning authorities at the time (in 1995) and stated:

> "What we have recently observed in Baltimore County, and in other jurisdictions as

well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty." Cromwell, supra., 102 Md.App. 691 at 694-5, 651 A.2d 424 at 426.

After expressing this caution, the Maryland Court of Special Appeals expounded further on the issue of uniqueness, and stated:

"... in the zoning context, the term "unique" has a customized meaning:

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. Cromwell, supra., 102 Md.App. 691 at 710, 651 A.2d 424 at 433-4.

In conclusion, the Court of Special Appeals noted:

"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, supra., 102 Md.App. 691 at 721, 651 A.2d 424 at 439.

The Petitioners have failed to produce any evidence that Lots 3A and 3B have any peculiar characteristic relating only and uniquely to their properties and not to other properties in the Sparks area of Baltimore County, Maryland. Further, the Petitioners have failed to produce evidence that this unique characteristic, when taken in conjunction with Baltimore County's panhandle

requirement, causes a more severe impact on the Petitioners' properties. These matters are preliminary to any consideration of whether practical difficulty or hardship exists for the Petitioners' Lots.

In Cromwell, supra., in the absence of such evidence, the Maryland Court of Special Appeals held:

> "There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's impact upon the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal." Cromwell, supra., 102 Md.App. 691 at 726, 651 A.2d 424 at 441.

Without such evidence from the Petitioners in this pending matter, the Board must deny the variances requested. Otherwise, without such evidence, granting of the variances would be arbitrary and illegal.

With respect to the remaining standards of Section 307.1, the Maryland Court of Appeals discussed the remaining standards in Daihl v. County Bd. of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227 (1970). In Daihl, supra., the Maryland high court stated:

> "However, we differ with the lower court in its affirmance of the action of the Board in granting the requested variances as to Lots Nos. 10 through 19. Section 307 of the Zoning Ordinance expressly provides that, 'the Zoning Commissioners of Baltimore County and the Board of Appeals * * * shall have * * * the power to grant variances from height and area regulations, * * * only in cases where strict compliance with the Zoning Regulations in Baltimore County would result in practical difficulty or unreasonable hardships. 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 substantial injury to public health,

safety, and general welfare. * * *'

> The Board predicated its granting of the variances on the basis that they were 'reasonable and essential to prevent practical difficulty and hardship in developing the property.' However, there is nothing in the record which would indicate the exact type of structure that the petitioners intended to construct on Lots 10 through 19, other than that it would be in keeping with the general architectural scheme prevalent in the industrial park.
>
> We cannot overlook the fact that in the instant case there are substantial residential properties within the immediate area. The appellant Becky resides 350 feet from Lots 10 through 19. The appellant Daihl is constructing a $33,000 home, 186 feet from Lots 10 through 19. There is another residence between Daihl's home and Lots 10 through 19. Appellant Young resides on Lot No. 26. The evidence is such as would lead a reasonable man to the belief that the granting of these variances may well affect the aesthetic ambience of the residentially zoned properties which lie in the immediate area. For this reason we are of the opinion that the granting of these variances would be in disharmony with the 'spirit and intent * * * of * * * the regulations * * *.' " Daihl, supra., 258 Md. 157 at 166-7, 265 A.2d 227 at 231-2.

As in Daihl, supra., the County Board of Appeals cannot overlook the adverse environmental impact and agricultural resource protection addressed by Baltimore County agencies and the substantial adverse impact and overburdening of the existing driveway caused by the quintupling of traffic resulting from the lot configurations and panhandles proposed by the Petitioners.

Notwithstanding the testimony of the Petitioners' expert regarding the primacy of residential use of the proposed lots, which lie in an R.C. 2 zone, the County's zoning regulations and appellate courts have stated otherwise. In Security Management Corp. v. Baltimore County, Md., 104 Md.App. 234, 655 A.2d 1326 (1995), the Court of Special Appeals summarized the historical development of RC zones in Baltimore County:

> "In 1976, as part of the comprehensive zoning process, the County Council created four resource conservation zones. In creating those zones, the County Council found, generally, that development in the rural areas of the county had been taking place at an increasing rate and without the framework of a land use plan or other planning components; that, as a result, the development "has formed very undesirable land use

patterns," that a significant amount of "urban sprawl" was occurring along highways in the rural areas as tracts immediately fronting along the highways were "lotted off;" and that such development was detrimental in a number of respects, including the loss of "critical watershed areas."

Among the stated purposes of these zones were discouragement of the then-existing land use patterns, creation of a framework for orderly development, provision of "suitable" areas for rural-suburban development, protection of natural and man-made resources from the compromising effects of development, protection of areas desirable for more intensive future development by regulating undesirable forms of interim development, and conservation of land and water resources.

The four resource conservation zone created as part of the county zoning-agricultural (RC-2), deferral of planning and development (RC-3), watershed protection (RC-4), and rural-residential (RC-5)-still exist...." Security Management Corp., supra., 104 Md.App. 234 at 237, 655 A.2d 1326 at 1327.

The Court of Appeals, in People's Counsel for Baltimore County v. Surina, 400 Md. 662, 929 A.2d 899 (2007), reviewed the primary purpose of the R.C. 2 zone in Baltimore County, writing:

"***A. The R.C. 2 Rural-Agricultural Zone***
The R.C. 2 agricultural zone's primary purpose is to "foster conditions favorable to continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses." BCZR § 1A01.1.B.[FN21] This stated purpose is based on the premise:

> FN21. The R.C. 2 zone was established for the purpose of preserving agricultural land, as opposed to the R.C. 3 mixed-use agricultural classification, which was established in order to "foster conditions favorable to agricultural and residential use of the land while still maintaining the rural character of the area." BCZR § 1A02.1.A.

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

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

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

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

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

* * * * * *

g. That Baltimore County possesses numerous areas which are highly suitable for urban development, including residential subdivisions which are not located in areas of productive agricultural land.

BCZR § 1A01.1.A." People's Counsel for Baltimore County, supra., 400 Md. 662 at 684-5, 929 A.2d 899 at 912.

In light of the fact that the R.C. 2 zone was established for the purpose of preserving agricultural land, the comments of the County's Department of Environmental Protection and Resource Management withholding its support for the Petitioners' requests must be heavily weighted by the County Board of Appeals. In addition, the initial concerns of the County's Office of Planning of "too much environmental impact" must be accorded great respect. The later reversal of the Office of Planning, without any supporting explanation, must be viewed with suspicion in light of the paramount purpose of the R.C. 2 zone being the preservation of agricultural land.

In Daihl, supra., Maryland's highest court discussed the matter of financial hardship in a variance request. The Maryland Court of Appeals stated:

"The 'difficulties' and 'hardships' to which the Board referred, although not spelled out, obviously were thought to be of such a nature that, if not overcome, would have resulted in the petitioners sustaining some financial hardship in their efforts to develop the property and in their future use of it. In Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 400, 73 A.2d 491, 492 (1950) we said: 'The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. Garden View Homes v. Board of Adjustment, 137 N.J.L. 44, 57 A.2d 677.' In that same opinion Judge Henderson, later Chief Judge, also stated: '* * * but we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan.' See also Burns v. Mayor and City Council of Baltimore, 251 Md. 554, 558, 248 A.2d 103 (1968), and City of Baltimore v. Polakoff, 233 Md. 1, 194 A.2d 819 (1963). As

we view the law, we think the granting of the variances by the Board was arbitrary and capricious." Daihl, supra., 258 Md. 157 at 167, 265 A.2d 227 at 232.

The profitability of the Petitioners' proposed configuration of lots is not sufficient ground for granting Petitioners' request for variances. Consideration of profits must take a back seat to whether the variances are in strict harmony with the spirit and intent of the variance regulations and do not injure the public health, safety and general welfare.

III. Conclusion

For the reasons stated herein, the Petitioners' requests for (a) variances from Section 32-4-409(e)(2) of the Baltimore County Code to allow panhandle strips of 1223 feet (Lot 3A) and 2274 feet (Lot 3B) in lieu of the maximum permitted 1,000 feet and (b) special hearings to allow non-density transfers between Lot 3 and Lot 7 and reconfiguring of Lots 3 and 7 in accordance with the transfers must be denied.

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CERTIFICATE OF SERVICE

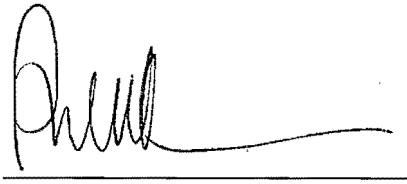
I HEREBY CERTIFY that on this 7th day of January, 2009 a copy of the foregoing Closing

Brief was mailed first-class mail, postage prepaid, to:

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Philip J. Kotschenreuther, Esquire

1/7/09

RE: PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE COUNTY
Belfast Road; NW/S Belfast Road, 70' N c/line of Old Belfast Road	*	BOARD OF APPEALS
8th Election & 3rd Councilmanic Districts	*	FOR
Legal Owner(s): William & Holly Cumberland		
Petitioner(s)	*	BALTIMORE COUNTY
	*	08-211-SPHA

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MEMORANDUM

People's Counsel's Position and Facts

The Petitioner seeks Special Hearing and Variance relief to create 5 building lots for single family dwellings. The Petitioner could create fewer, but larger lots in compliance with the zoning and development regulations, particularly the maximum panhandle length. In the minds of developers, density is paramount, and all other regulations are viewed as secondary, subject to variances to achieve maximum density. Here, Petitioner requests the relief to maximize the density as a sort of "right" irrespective of other equally significant standards in the zoning and development process. But it is clear under BCZR and the Baltimore County Code (BCC) that density based on acreage is conditional; utilizing density in the development of a site also requires compliance with other zoning and code standards and restrictions. BCZR 600 states:

> "In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience and general welfare."

Moreover, property owners and developers often mistakenly equate common geographic conditions as a type of uniqueness under the variance standards. There is no evidence of uniqueness here since the site is typical of rural land near York Road in northern Baltimore County, as well as other R.C. 2 zoned sites in the northern County.

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BOARD OF APPEALS

Here, the Petitioner can develop the site within the parameters of the panhandle Statute if she does not further subdivide the site or if she combines lots in a way that complies with the regulations and statutes.

The subject site is part of a 1975 subdivision creating 7 lots known as "Subdivision of the Property of Linda C. Green." (Petitioner's Exhibit #2). Petitioner purchased the site from Linda Green in 1976. At some point Lots 5 & 6, with road frontage on Belfast Road, a public street to the south of the site, were sold. Also, Lots 1 & 2 were sold. Petitioner presently retains Lots 7, 3, and 4, all of which are zoned R.C. 2. Petitioner now desires to re-subdivide the remaining 3 Lots. She claims Lot 4 is not part of this relief but admits it will be further subdivided to create 2 separate building lots. This fact is not irrelevant to the relief requested and the relief must be at least considered in the context of the entire 1975 subdivision. In Annapolis v. Waterman, 357 Md. 484, 745 A.2d 1000 (2000), a takings case, the developers sued the city of Annapolis for a regulatory taking, when the City required certain portions of the site (Lot 1) be dedicated for public recreation as a condition for approval of the subdivision. The developer argued that the denial of a dwelling on lot 1 must be the measure of damages. Damages in a regulatory takings case is defined as "whether there was loss of all viable economic use." The Court of Appeals disagreed that lot 1 is viewed in isolation and held that damages, if any, must be viewed in the context of the use on the entire site, or a phase of the development. In other words, to assess damages, if any, it is necessary to look at the use of the entire property, not just the lot dedicated for public use. If the entire site is considered, the damages claimed by the developer would be significantly reduced or eliminated altogether. Judge Cathell explained:

> **"The trial court also erred by not including *at least* the entire third-phase property (all of Lot 4, including the duplex lots). In considering whether a regulatory taking has left remaining viable economic use of the property, the property to be assessed for economically viable use is, as we have said, the entire tract of land, not just the proposed new corner Lot 1 . . ."**

Judge Cathell cited the language in the famous Supreme Court case involving air space above Grand Central Station, Penn Central Transportation co. v. New York City, 438 U.S. 104 (1978):

> **'Taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. . . . the Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole. . . ."** (emphasis added) (citations omitted).

Waterman at 528 also quoted Keystone Bituminous Coal Ass'n v. DeBenedictis 480 U.S. 470 that required the property be viewed as a whole in determining if a viable use remained.

Here, Lot 4 fronts on a public road, known as Buffalo Run Road, and is not a panhandle lot. In light of the practical difficulty standard for which the Petitioner has the burden of proof, it is incumbent on this Board to question whether the site can be developed with access to Buffalo Run in lieu of granting a variance for panhandle length. For example, a portion of the subject property could be added to Lot 4 with road frontage. This would eliminate the panhandle variance request and still permit development of the site. Instead, Petitioner chooses to subdivide to create as many lots as possible in order to maximize her profit. It has long been held that financial considerations do not justify a variance.

"Mere fact that variance would make property more profitable is not a sufficient ground to granting of variance. . ." Easter v. Mayor & City Council of Baltimore, 195 Md. 395 (1950)

This is not a case where the Petitioner has no "reasonable and significant use of the property" unless a variance is granted as the Court discussed in denying a critical area variance in Belvoir Farms Homeowners Ass'n, Inc. v. North, 355 Md. 259, 282 (1999); rather the variance is requested to create the preferred lot configuration of a subdivision in order to maximize the density that exists on paper for the acreage. As is often the case in the rural areas, other equally significant BCC and BCZR standards and restrictions may limit the "paper" density on a site. While such regulations are often minimized by

property owners and developers, they should not be subordinated or minimized by the CBA.

Variance Overview

As this Board is well aware, variances cannot be granted merely to make the land more profitable for the owner or developer. In citing prior variance cases in *Cromwell at 707*, Judge Cathell quoted:

> **"[statutes] . . . have been held not to authorize a granting** [of a variance] **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."

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."

Panhandle Law

The panhandle statute is found in BCC 32-4-409. Our research reflects that the County enacted its first statutory panhandle driveway law in 1982. The current law is the product of subsequent amending legislation and has been in place for many years. The applicable law relating to amendments of subdivision plans and plats was enacted in 1970 (Bill 100) and extended to the R.C. Zones in 1975 (Bill 98). The subdivision of any new lot in the R.C. 2 Zone and other zones is subject to the panhandle driveway law. The creation of a new lot here must satisfy the same standards applicable to the creation of any other new lot in the R.C. 2 and other zones.

It is noteworthy that the County Council recognized the differences, including size, between land zoned Density Residential (D.R.), where the length is limited to 500 ft. and land zoned Resource Conservation (R.C.), where the length is limited to 1000 ft. In other words, the Council acknowledged that lots in rural areas may be set back further from the public roads that lots in the suburbs, but the Council did not permit unlimited

lengths in the R.C. zones. The relief here begs the classic question under variance law – how does the statute impact this Petitioner *vis a vis* other property owners in the zone? We believe there is no disproportionate impact. The owners created the layout of the lots in this subdivision and the owners chose to sell lots 5 & 6 fronting on Belfast Road without regard to access for the interior lots. If this impedes maximum development, it is self-created and not the result of "**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,**" that is required to establish uniqueness for a variance under Cromwell.

Variance Law

The principles of BCZR 307.1 and Cromwell remain the steadfast strict standards for variance cases in Baltimore County. On December 24, 2008, the Court of Appeals again reaffirmed these standards and reiterated Judge Cathell's opinion in Cromwell in affirming this Board's denial of a sign variance in Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County, et al. ____ Md. _____ (2008). In discussing variance law in general, Judge Harrell quoted extensively from Cromwell:

> **"The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *Cromwell v. Ward, 102 Md. App. 691,703, 651A.2d 424, 430 (1995).*"**

Judge Harrell continued with Cromwell:

> **"The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is - in and of itself - unique and unusual in a manner different from the nature or surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon the property. Unless there is a finding that the property is unique, unusual or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, i.e., a determination of whether practical difficulty and/or unreasonable hardship, resulting from a disproportionate impact of the ordinance caused by the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance."**

Judge Harrell also astutely pointed out that unique features alone do not satisfy the test. Rather, there must be:

> **". . . a connection between the property's inherent characteristics and the manner in which the zoning law hurts the landowner or user. 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. For example, if a property has physical characteristics that might justify variance relief from drainage or sewage regulations, those attributes probably would have no bearing on how the property is affected by an ordinance establishing the maximum height for a fence."**

In the instant case, there is nothing unique about the site – its size is certainly not unique from other sites in the rural areas of northern Baltimore County, nor does its topography have any relationship to panhandle length.

There is also evidence that the existing conditions were actually created by the owner of the site. As the Petitioner pointed out in her case, the site is part of a 1975 "Subdivision of the Property of Linda C. Green". (Pet. Exhibit # 2). Lots 5 and 6 that fronted on Belfast Road were sold, leaving the remaining lots to the rear. Based on the scale in Pet. Exhibit # 1, it appears a panhandle of no more than the permitted 1000 ft could have serviced Lots 2,3, and 4 through lots 5 and 6. Thus, any purported "hardship" or "difficulty" was clearly created by the owner of the property and is not grounds for a variance. This bar to a variance where there is a self-created hardship was recently reaffirmed by the Court of Special Appeals in Chesley v. City of Annapolis, 176 Md. App. 413, 437(2007): **"Thus the 'typical type of self-created hardship [is] . . . an act of commission by the owner[.]'"** (citations omitted) . . . a **"(subdivision that created unbuildable lot was self-inflicted condition creating variance request; *Randolph Hills, Inc. v. Montgomery County,* 264 Md. 78, 83 (1972)."**

In Cromwell, Judge Cathell referenced approvingly decisions from other jurisdictions in describing uniqueness:

> "("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property . . .*"). . . A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area . . . [Applicant] Indialantic's zoning

restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance." (citations omitted).

Judge Cathell further 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).

There is no evidence in the instant case that the site differs from any other in northern Baltimore County. While the panhandle statute permits variance relief for length there is no relaxation of these strict standards for panhandle length, *vis a vis* other types of variances. Moreover, although a waiver, which may arguably be seen as less stringent than a variance, is permitted from panhandle standards other than length, the County Council was clear that variance standards would apply to a deviation from the length, impressing the importance of limiting the driveway in the R.C. zones to 1000 ft. As Judge Cathell pointed out at p. 711 in Cromwell:

> "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), affirmed _____ Md. _____ (2008) 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 law forbids dispensation of variances for convenience, financial advantage, or other personal needs. These are not substitutes for the standard of practical difficulty. In Trinity, *supra*, Judge Harrell upheld this Board's application of the factors in McLean v. Solely, 270 Md. 208 (1973) and stated, "**The Board's use of the *McLean* test was not error.**"

Moreover, a property owner may not properly avoid land use restrictions applicable to all property owners in the area. Riffin v. People's Counsel 137 Md. App. 90 (2001). Here, there is a specific law enacted to control and curb the use of panhandle driveways.

The general law of variances, with 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.

In the instant case, the Petitioner's surveyor, Mr. Bruce Doak, presented no evidence of uniqueness or practical difficulty as those terms are defined and applied in variance law. He described the proposed subdivision in terms of "permitted density" but

ignored the panhandle restrictions. Separately, Mr. Curtis Martin from the Office of Planning, who also testified, did not address the variance standards of uniqueness and practical difficulty.

Finally, our office submitted a comprehensive Memorandum with the County Board of Appeals in Case 07-535-SPHXA on variance law. In the interest of brevity, we will not repeat the general case law on variances beyond what has been highlighted in this Memorandum. For the Board's convenience, the pertinent pages of the Memorandum in the prior case, are attached to this Memorandum as Exhibit A.

Panhandle Statute

The issue here is more than a variance for a panhandle length. The Petitioner is really seeking relief to create panhandle lots. Therefore, in addition to the traditional variance standards, the relief must be reviewed in the context of the specific conditions that must be satisfied before a panhandle lot is permitted in Baltimore County.

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

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

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

The main substantive provisions are in Code Sec. 32-4-409. BCC 32-4-409 (a) (1) and (2) states the essential purpose of the law to allow panhandle driveways only in limited circumstances, where it passes all of the following tests:

"(a) *In general.*

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

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

Does the variance request to exceed the permitted panhandle length comply with these standards? There is no evidence that the panhandle lots to be created by a longer panhandle driveway meet the test. In fact, these standards were completely ignored by Petitioner's witness, the surveyor, Mr. Bruce Doak. On the other hand, the protestants' evidence confirms that the proposed plan conflicts with the prerequisites for a panhandle lot:

(i) This is not a case where the shape of *existing* lots necessitates a longer panhandle; Petitioner is *creating* lots and concomitantly the longer panhandle access. Petitioner cannot create the alleged "predicament" and then seek to benefit from it with a variance; that is a "self-created" hardship in its truest sense; a self-created hardship will not support a variance. as the Court of Special Appeals discussed in Chesley v. City of Annapolis, *supra.* Here, Petitioner chooses to further subdivide her property in a manner that does not comport with the panhandle law; by all accounts it is a self-created hardship.

(ii) There is no evidence whatsoever that the site contains "environmentally sensitive areas"; the topography is typical of northern Baltimore County; Mr. Doak mentioned a stream in speculation but there was no definitive

evidence of a stream on the property, including no reference on the site plan; even if a stream exists, the variance is driven by the Petitioner's desire to subdivide; the alleged stream is a red herring.

(iii) The proposed panhandle driveway will have an adverse impact on runoff and drainage as well as safety concerns as described the protestants.

(iv) The protestants described the negative impact of the proposed panhandle development on traffic safety and drainage.

(v) Furthermore, Petitioner never definitively established why the adjacent Buffalo Run Road, a public road running north/south parallel to I-83 and connecting to Cold Bottom Road, another public street, could not provide access. As noted, Mr. Doak alluded to a stream but produced no evidence, other than his uncorroborated testimony and speculation on DEPRM's position. It is significant that there was no report from DEPRM, nor testimony from a DEPRM, to support Petitioner's position.

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

The Special Hearing Request

Mr. Doak testified the special hearing relief to transfer density merges a portion of Lot 3 with Lot 7 on its northwestern boundary in order to place the dwelling further back from Belfast Road, a scenic road under the Master Plan, in compliance with the comments of the Office of Planning ("OPZ"). Normally, density transfer is prohibited under Baltimore County zoning regulations. If the relief here is more like a lot line adjustment, in order to protect the scenic road, Petitioner must prove, at a minimum, that Lot 7 can support a dwelling and that the proposal will not increase the number of dwellings that could be constructed on Lots 7 and 3. Under Petitioner's proposal, Lot 3 will have two dwellings, the maximum permitted on the site. It is unclear if a dwelling could be constructed on Lot 7 in compliance with area and setback requirements in the

R.C. 2 zone. So again the Petitioner's case may very well presume, erroneously, that since she has the conditional density calculations based on acreage with no consideration as to whether a dwelling could be constructed on Lot 7 as it is presently configured, such density can be utilized on the newly configured Lot 7A. The Petitioner cannot capitalize on such density calculations in a special hearing seeking density transfer if she does not, in actuality, have density on Lot 7 to start with. It must not be forgotten that Petitioner proposes to construct two dwellings on Lot 3, the maximum number; this means Petitioner must rely on density for Lot 7 for its proposal to construct a dwelling on Lot 7A.

Moreover, if the Petitioner proposes to adjust the lot line between Lots 3 and 7, why can't she reconfigure the lots to eliminate the need for a variance for the panhandle length? For example, Lot 3 could be divided so that a part of Lot 3 is added to Lot 7 as proposed for one dwelling, and the remainder of Lot 3 is added to Lot 4 which fronts on Buffalo Run Road, for 2 dwellings. This would reduce the number of dwelling overall by no more than two dwellings, but would appear to eliminate the need for a variance. This also refutes any claim of practical difficulty since the Petitioner would have a viable use for the site. As stated above, is no guarantee that a property owner is entitled to the most profitable use, only a reasonable use. Easter, *supra.*

Summary

The site was partially developed under the 1975 subdivision plat and the balance remained undeveloped by this owner since 1976. No thought was given to access for the interior lots or to orientation to Buffalo Run Road when the subdivision was created and lots on Belfast Road were sold. Nonetheless, Petitioner is not content to utilize the remaining lots under the 1975 Plat but insists on re-subdivision. The desire to re-subdivide and the sale of the lots fronting on Belfast Road without consideration of access for the interior lots both contribute to the existing condition; none of these facts satisfy the test for variance relief. The desire to re-subdivide generates the special hearing relief. There is nothing unique about the property that causes any practical

difficulty. For these reasons, the Petition for Variance should be denied and the Petition for Special Hearing rendered moot.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

C. 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 7th day of January, 2009, a copy of the People's Counsel for Baltimore County's Memorandum was mailed J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286, Phillip Kotschenreuther, Esquire, 200 South Main Street, Bel Air, MD 21014, Robert A Hoffman, Esquire and David Karceski, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

C. Demilio

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

[redacted] 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:

Exhibit A

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE** – N/west side of Belfast Road, 70' N of c/line of Old Belfast Road **(Belfast Road)** 8th Election District 3rd Council District	*	BEFORE THE ZONING COMMISSIONER OF BALTIORE COUNTY
William G. Cumberland, et ux Petitioners	*	**Case No. 08-211-SPHA**

* * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and for Variance filed by Holly Cumberland, and her husband, William G. Cumberland, through their attorneys, David H. Karceski and Christopher D. Mudd with Venable LLP. Special hearing relief was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve (i) a non-density transfer of 8.07 acres, more or less, of R.C.2 zoned land from Cumberland (Parcel 38, Lot 3) to Cumberland (Parcel 38, Lot 7); pursuant to Sections 1A00.4.B(2) and (3) of the Zoning Commissioner's Policy Manual (Z.C.P.M.), and to reconfigure Lots 3 and 7 in accordance with the transfer; and (ii) a non-density transfer of 0.45 acres, more or less, of R.C.2 zoned land from Cumberland (Parcel 38, Lot 7) to Cumberland (Parcel 38, Lot 3), pursuant to Sections 1A00.4.B(2) and (3) of the Zoning Commissioner's Policy Manual (Z.C.P.M.), and to reconfigure Lots 3 and 7 in accordance with the transfer. The two lots involved in this request are owned by the Petitioners. In addition, Petitioners request a variance from Section 32-4-409(e)(2) of the Baltimore County Code (B.C.C.) to allow in-fee panhandle strips of 1,223 feet (Lot 3A) and 2,274 feet (Lot 3B), in lieu of the maximum permitted 1,000 feet. The subject property and requested relief are more particularly described

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on the amended redlined site plan, which was submitted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Holly Cumberland, property owner, and Bruce E. Doak, a property line surveyor with Gerhold, Cross & Etzel, Ltd., the engineering firm that prepared the site plan for the subject property. Mr. Doak has testified before me numerous times in zoning cases regarding non-density transfer and variance requests. I accepted Mr. Doak in his capacity as a property line surveyor with expertise in interpretation of the Baltimore County zoning regulations and development regulations. David H. Karceski, Esquire and Christopher D. Mudd, Esquire appeared as attorneys for the Petitioners. Several Protestants and interested persons appeared in opposition to the request, including Diane Knapp, Dick Lehnert, Eileen Doherty, Dr. Michael Dillon, Bruce Sandler, Walter Holland, and George R. Rew. These individuals identified themselves as residential property owners in the vicinity of the site. Two Protestants, Dr. Michael Dillon and his wife, Eileen Doherty, were represented at the hearing by Philip Kotschenreuther, Esquire, with Brown, Brown & Young.

The testimony and evidence offered disclosed that the Petitioners own 117 acres of land, more or less, located north of Belfast Road and west of Interstate 83 (I-83) in the Sparks area of Baltimore County. The subject property is zoned R.C.2 in its entirety and comprised of three (3) separate lots (Parcel 38, Lots 3, 4, and 7), which are presently unimproved. Only two of the three lots (Lots 3 and 7) are the subject of the petitions filed in the instant case. Lot 3 is shaded in green on Petitioner's Exhibit 1 and Lot 7 is shaded in purple. Lot 4, outlined in blue on the site plan, is not subject to this hearing. Lot 4 is located east of and adjacent to Lot 3 and between it and I-83. Petitioners' intention is to transfer 0.45 acres from Lot 7 to Lot 3 in order to

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establish in-fee access for Lot 3 to Belfast Road, and to transfer 8.07 acres from Lot 3 to Lot 7 and reconfigure that lot accordingly. Mr. Doak described the current use of Petitioners property as unimproved. The land in the vicinity of Petitioners is likewise zoned R.C.2 and improved with single-family residential homes.

Petition for Special Hearing

Generally, non-density transfers are permitted for R.C.2-zoned land provided they do not result in an increase in the available residential density associated with the transferring and recipient parcels. Mr. Doak testified before me on this point and, in doing so, referred to the Baltimore County Zoning Regulations (B.C.Z.R.). Specifically, he referred to Section 1A01.3.B.1, which addresses permitted residential density in the R.C.2 zone. This section provides, in pertinent part, as follows:

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

As Mr. Doak testified and as confirmed by two deeds submitted into evidence as Petitioners' Exhibits 3A and 3B, Lots 3 and 7 are each between 2 and 100 acres and, therefore, each may now be subdivided into no more than two (2) lots, for a total of four (4) available density units. Additionally, Lot 4, located east of these lots, contains 58.875 acres and, therefore, may also now be subdivided into two (2) lots. In total, six (6) residential density units are permitted on Petitioners property, as shown on Exhibit No. 1. However, Petitioners plan to propose only five (5) residential dwelling locations on the overall property, one less than the maximum number of dwelling units permitted. Even though the lots will be improved with single-family homes, the majority of the subject property will remain undisturbed.

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In addition to identifying the proposed non-density transfers and locations for the in-fee panhandle strips, Petitioners' Exhibit 1 provides preliminary locations for residential dwellings, well and septic areas, driveways, and possible easement areas that may be conveyed to the County. Mr. Doak explained that this level of detail is not required in association with the requested relief and that the suggested dwelling, driveway, and septic and well locations have not been reviewed or approved by any Baltimore County reviewing agencies. Instead, Petitioners would undertake this review as part of the County's subdivision process.[1] Although Petitioners proposed subdivision is not before me, Mr. Doak explained that the zoning relief requested by Petitioners is related to future subdivision and residential development of the property. A summary of the possible subdivision of Petitioners property as shown on Petitioners' Exhibit 1, therefore, helps put the requested zoning relief into context. Specifically, the proposed subdivision would occur as follows: Lot 4 (which is presently 58.875 acres) would be subdivided into Lot 4A (30 acres, with frontage on Buffalo Run Road) and Lot 4B (28.875 acres, with frontage along Buffalo Run Road and Interstate 83); Lot 3 (presently 53.676 acres) would be subdivided into Lot 3A (16 acres) and Lot 3B (30 acres), and Lot 7 (presently 5.099 acres) would become Lot 7A (12.7 acres).

When subdividing property for residential lots, the development regulations require that all proposed lots have frontage along a public right-of-way, even if such frontage is created by way of an in-fee panhandle strip. In order for proposed Lots 3A and 3B to have frontage along a public road (Belfast Road), Petitioners have requested a non-density transfer between Lots 3 and 7. Specifically, Petitioners propose non-density transfers of 0.45 acres from Lot 7 to Lot 3 and a

[1] The issues raised in the petitions are pursuant to the authority granted in Section 500.7 of the B.C.Z.R. Thus, my decision in this matter is based on the zoning of the subject property, the proposed uses on each parcel and other zoning defined issues. I do not have the authority, nor will this decision attempt, to determine issues of processing limited exemptions from the department regulations which have been relegated by the County Council to the Development Review Committee. *See Long Meadow Association, Inc., et al v. Druid Ridge LLP, et al.* Court of Special Appeals No. 1801 (2005) and County Council Bill 54-05.

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corresponding reconfiguration of Lots 3 and Lot 7, which will establish Belfast Road frontages for these lots. The non-density transfer of 8.07 acres from Lot 3 to Lot 7 will result in an additional reconfiguration of these lots.

It should be noted that a Zoning Advisory Committee (ZAC) comment was received from the Office of Planning regarding the requested relief. Planning indicated that it does not oppose Petitioners request, provided that the Zoning Commissioner place a condition in the Order that "no development shall occur on the 5.099 acres located closest to Belfast Road." The Office of Planning's comment relates to the visibility into the property from Belfast Road. Consistent with Planning's position, Petitioners have indicated their desire to respect the undisturbed view of Petitioners frontage along Belfast Road. After due consideration of this comment, along with the testimony and evidence presented on the Petition for Special Hearing, I will impose an appropriate condition to this Order regarding the Office of Planning's position.

In addition to the density controls set forth in the R.C.2 zoning regulations, the Zoning Commissioner's Policy Manual (Z.C.P.M.) addresses non-density transfers of R.C. zoned land. Section 1A00.4.b, entitled "Sale or Transfer of Small Parcels," states, in pertinent part, as follows:

> 2. In an RC-2 zone, a parcel could possibly be transferred from the overall development tract to an adjacent existing lot of record provided that the end result does not permit a re-subdivision into a greater number of lots; and
>
> 3. Depending on the use and the size of the parcels, a special hearing before the Zoning Commissioner may be required to determine if a non-density transfer is permitted.

Mr. Doak provided testimony that the proposed transfers in this case qualify as non-density transfers. Petitioners are not creating any additional lots and will not acquire any additional rights of subdivision; Lot 7 and Lot 3 are presently capable of subdivision into two (2) lots each, and that will not change after the transfer. In fact, Petitioners only propose three (3) dwellings

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on these lots, not four (4). Additionally, I note that, without the proposed non-density transfer to Lot 7, any development Petitioners would undertake on Lot 7 would require building a residential dwelling on the front 5.099 acres of that lot, which the Office of Planning and certain individuals in the surrounding community have expressly opposed. By permitting these non-density transfers, Petitioners will be able to locate the house on the portion of reconfigured Lot 7 preferred by the Office of Planning, and to appropriately subdivide and develop Lot 3. Furthermore, in my judgment, the two non-density transfers will not have an adverse impact on the surrounding area or be inconsistent with the purposes of the R.C.2 zoning classification.

Petition for Variance

In addition to the special hearing, Petitioner has requested a variance from Section 32-4-409(e)(2) of the B.C.C. to allow in-fee panhandle strips of 1,223 feet and 2,274 feet, in lieu of the maximum permitted 1,000 feet. As shown on Petitioners Exhibit 1, the 2,274 foot strip would connect proposed Lot 3B to Belfast Road and the 1,223 foot strip would connect proposed Lot 3A to Belfast Road. Again, granting this requested relief would merely give Petitioners the ability to serve Lot 3 with in-fee panhandle strips; it would not have the effect of actually subdividing the lot or establishing driveway locations for Lots 3A and 3B. Establishment of new subdivision lines and/or driveway locations would only be established subsequent to this hearing through the County's development process.

The site plan and a copy of the applicable Baltimore County tax map, submitted as Petitioners Exhibit 2, together demonstrate the irregular configuration of Lots 3 and 7 and the limited amount of frontage for Lot 7 along Belfast Road. Petitioners' Exhibit 1 also indicates that Lot 3 now has no frontage on a public roadway. Mr. Doak testified that none of the lots on the subject property would be accessible via Buffalo Run Road because of certain environmental

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constraints and, therefore, access is limited to Belfast Road. According to Mr. Doak, a strict interpretation of the County's panhandle regulations would create a practical difficulty for Petitioners because there could be no adequate access provided to proposed Lot 3A or Lot 3B. Furthermore, he opined that the creation of the proposed in-fee panhandle strips would not interfere with any agricultural uses in the vicinity or have any adverse impact of the surrounding area.

Several Protestants cross-examined Mr. Doak and offered their own testimony during the hearing. While I appreciate the active participation by the Protestants, the majority of their concerns related to the ultimate location of driveways for the lots to be created on the subject property. As I explained during the hearing, that issue is for another day. Petitioners will have to separately go through the development process, including participation in community input meetings, meetings with County agencies, and another public hearing. I find that the issues raised by the Protestants in this matter will be more appropriately addressed during that process. I heard nothing from Protestants that would persuade me to deny the requested relief.

Therefore, having considered all of the evidence and proffered testimony on this issue, I am persuaded to grant the Petition for Variance. Based on my review of the site plan and additional evidence, I find the requirements of B.C.Z.R. Section 307.1 to be satisfied. The proposed in-fee panhandle strips are appropriate given the uniqueness of the site. Furthermore, I find that, without the grant of a variance, Petitioners would suffer the practical difficulty of being unable to adequately access the proposed lots. Lengthening the in-fee panhandle strips will not adversely affect the surrounding properties.

In addition to the comment I received from the Office of Planning, the Department of Environmental Protection and Resource Management (DEPRM) provided some general

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development-related comments, all of which will be addressed during the development process. Of particular note at this time is DEPRM's comment regarding agricultural preservation and, in particular, DEPRM's request that Petitioners agree, "to place the entire property under conservation easements with the County or a land trust." Based on my review of the site plan and testimony explaining the proposed development, I find that there is no need to impose a conservation easement on the property as part of this zoning case.

As discussed above, the subject property is capable of being subdivided into six (6) lots, but Petitioners, as shown on its site plan, propose only five (5) residential lots. Additionally, Petitioners offer to place the easternmost portion of the overall property in easement, which is labeled "PROPOSED SCENIC EASEMENT" on Petitioners' Exhibit 1. This easement area would be of a substantial width and covers Petitioners entire frontage along I-83. Furthermore, the Office of Planning has requested and Petitioners have agreed not to locate a residential dwelling along Belfast Road. With these limitations placed on residential dwelling locations, a separate conservation easement is not necessary. I will, however, impose conditions to my Order to ensure that a residential dwelling is not located along Petitioners frontage on Belfast Road or Petitioners frontage on I-83. Of course, DEPRM has the opportunity to make this comment again as part of the subdivision process for Petitioners property.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 25th day of March 2008 that the Petition for Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve a non-density transfer of 8.07 acres, more or less, of R.C.2 zoned land from Cumberland (Parcel 38, Lot 3) to

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Cumberland (Parcel 38, Lot 7), pursuant to Sections 1A00.4.B(2) and (3) of the Zoning Commissioner's Policy Manual (Z.C.P.M.), and to reconfigure Lots 3 and 7 in accordance with the transfer is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Hearing, pursuant to B.C.Z.R. Section 500.7, to approve a non-density transfer of 0.45 acres, more or less, of R.C.2 zoned land from Cumberland (Parcel 38, Lot 7) to Cumberland (Parcel 38, Lot 3), pursuant to Sections 1A00.4.b(2) and (3) of the Zoning Commissioner's Policy Manual (Z.C.P.M.), and to reconfigure Lots 3 and 7 in accordance with the transfer is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance from Section 32-4-409(e)(2) of the Baltimore County Code (B.C.C.) to allow in-fee panhandle strips of 1,223 feet and 2,274 feet, in lieu of the maximum permitted 1,000 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1. If Petitioners obtain subdivision approval for the overall property (Lots 3, 4, and 7), a residential dwelling may not be located within the 5.099-acre portion of Lot 7 shown on Petitioners' Exhibit 1. Any accessory structures proposed within this 5.099-acre area must comply with B.C.Z.R. Section 400.

2. The Petitioners may apply for their subdivision and are required to proceed to the Development Review Committee (DRC) for a limited exemption under B.C.C. Section 32-4-106(a)(1)(viii) concerning the lot line adjustments.

3. Within 120 days of the approval of the subdivision, the Petitioners shall record new deeds in the Land Records of Baltimore County, which will reference this case and the one density limitation applicable to Lot 7.

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By B

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

March 25, 2008

WILLIAM J. WISEMAN III
Zoning Commissioner

David Karceski, Esquire
Christopher D. Mudd, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**
N/west side of Belfast Road, 70' N of c/line of Old Belfast Road
(Belfast Road)
8th Election District - 3rd Council District
William G. Cumberland, et ux - Petitioners
Case No. 08-211-SPHA

Dear Messrs. Karceski and Mudd:

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

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

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Bruce E. Doak, Gerhold, Cross & Etzel, Ltd., 320 East Towsontown Boulevard, Suite 100, Towson, MD 21286
Holly and William G. Cumberland, 3550 Cross Creek Lane, Malibu, CA 90265-4926
Diane Knapp, 800 Belfast Road, Sparks, MD 21152
Dick Lehnert, 707 Old Belfast Road, Sparks, MD 21152
Philip J. Kotschenreuther, Esquire, Brown, Brown & Young, 200 South Main Street, Bel Air, MD 21014
Dr. Michael Dillon & Eileen Doherty, 750 Belfast Road, Sparks, MD 21152
Bruce Sandler, 720 Belfast Road, Sparks, MD 21152
Walter Holland, 733 Old Belfast Road, Sparks, MD 21152
George R. Rew, 17509 Prettyboy Dam Road, Parkton, MD 21120
People's Counsel; Office of Planning; DEPRM; Development Plans Review
Development Review Committee; Case File

Petition for Special Hearing (Flood)

to the Zoning Commissioner of Baltimore County

for the property located at BELFAST RD.

which is presently zoned RC 2

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

SEE ATTACHED

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

HOLLY CUMBERLAND
Name - Type or Print
Holly Cumberland
Signature

WILLIAM G. CUMBERLAND
Name - Type or Print
William Cumberland
Signature

Address Telephone No.

City State Zip Code

Representative to be Contacted:

GERHOLD, CROSS & ETZEL LTD
Name

320 E TOWSONTOWN BLVD 410-823-4470
Address Telephone No.

TOWSON MD 21286
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By A. Tsui Date 11/05/07

Case No. 08-211-SPHA

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By DW

REV 9/15/98

BELFAST ROAD

SPECIAL HEARING REQUESTED

FOR A TRANSFER OF 8.07 ACRES MORE OR LESS FROM CUMBERLAND (Parcel 38 Lot 3) TO CUMBERLAND (Parcel 38 Lot 7)

FOR A NON-DENSITY TRANSFER OF 0.45 ACRES MORE OR LESS FROM CUMBERLAND (Parcel 38 Lot 7) TO CUMBERLAND (Parcel 38 Lot 3)

FOR A TRANSFER OF 1 DENSITY RIGHT FROM CUBBERLAND (Parcel 38 Lot 7) TO CUMBERLAND (Parcel 38 Lot 7A)

REALLOCATION OF DENSITY FROM ONE PARCEL TO ANOTHER

08-211-SPHA

FLOOD

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at BELFAST ROAD

which is presently zoned RC 2

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

SEE ATTACHED

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

SEE ATTACHED

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

HOLLY CUMBERLAND
Name - Type or Print

Holly Cumberland
Signature

WILLIAM G. CUMBERLAND
Name - Type or Print

William Cumberland
Signature

Address Telephone No.

City State Zip Code

Representative to be Contacted:

Gerhold, Cross & Etzel, Ltd.
Name

320 E. Towsontown Blvd #100 410 823-4470
Address Telephone No.

Towson MD 21286
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Case No. 08-211-SPHA

Reviewed By A. Isaac Date 11/05/07

RZ1 9/15/93

ORDER RECEIVED FOR FILING
Date 3-25-08
By DW

BELFAST ROAD

VARIANCE REQUESTED

BALTIMORE COUNTY CODE

SECTION 32-4-409 (e) (2)
TO ALLOW PANHANDLE STRIPS OF 1223' (LOT 3A) AND 2274' (LOT 3B) IN LIEU OF THE MAXIMUM PERMITTED 1,000'

08-211-SPHA

FLood

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at BELFAST RD.

which is presently zoned RC 2

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

SEE ATTACHED

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

HOLLY CUMBERLAND
Name - Type or Print

Holly Cumberland
Signature

WILLIAM G. CUMBERLAND
Name - Type or Print

William G. Cumberland
Signature

Address Telephone No.

City State Zip Code

Representative to be Contacted:

GERHOLD, CROSS & ETZEL LTD
Name

320 E TOWSONTOWN BLVD 410-823-4470
Address Telephone No.

TOWSON MD 21286
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By A. Tsui Date 11/05/07

Case No. 08-211-SPHA

REV 9/15/98

ORDER RECEIVED FOR FILING
Date 3-25-08
By DW

BELFAST ROAD

SPECIAL HEARING REQUESTED

FOR A TRANSFER OF 8.07 ACRES MORE OR LESS FROM CUMBERLAND (Parcel 38 Lot 3) TO CUMBERLAND (Parcel 38 Lot 7).

FOR A NON-DENSITY TRANSFER OF 0.45 ACRES MORE OR LESS FROM CUMBERLAND (Parcel 38 Lot 7) TO CUMBERLAND (Parcel 38 Lot 3)

FOR A TRANSFER OF 1 DENSITY RIGHT FROM CUBBERLAND (Parcel 38 Lot 7) TO CUMBERLAND (Parcel 38 Lot 7A)

REALLOCATION OF DENSITY FROM ONE PARCEL TO ANOTHER

08-211-SPHA

FLOOD

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at BELFAST ROAD

which is presently zoned RC 2

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

SEE ATTACHED

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

SEE ATTACHED

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

HOLLY CUMBERLAND
Name - Type or Print
Holly Cumberland
Signature

WILLIAM G. CUMBERLAND
Name - Type or Print
William G. Cumberland
Signature

Address Telephone No.

City State Zip Code

Representative to be Contacted:

Gerhold, Cross & Etzel, Ltd.
Name

320 E. Towsontown Blvd #100 410 823-4470
Address Telephone No.

Towson MD 21286
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING
Reviewed By A-Tsui Date 11/05/07

Case No. 08-211-SPHA

ORDER RECEIVED FOR FILING
Date 3-25-08
By DW

REV 9/15/98

BELFAST ROAD

VARIANCE REQUESTED

BALTIMORE COUNTY CODE

SECTION 32-4-409 (e) (2)
TO ALLOW PANHANDLE STRIPS OF 1223' (LOT 3A) AND 2274' (LOT 3B) IN LIEU OF THE MAXIMUM PERMITTED 1,000'

08-211-SPHA

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

November 5, 2007

ZONING DESCRIPTION
Holly Cumberland property
Belfast Road
Baltimore County, Maryland

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

Beginning for the same at a point on the centerline of Belfast Road (35 feet offset from center line) being Northeasterly 70 feet ± from the intersection with Old Belfast Road with Belfast Road and running thence,

1) North 51 degrees 53 minutes 24 seconds West 436.44 feet,
2) North 76 degrees 30 minutes West 129.39 feet,
3) Curve to the left Radius 205.04 feet, Arch 130.73 feet, South 85 degrees 14 minutes 03 seconds West 128.53 feet,
4) Curve to the right Radius 105.04 feet, Arch 139.88 feet, North 74 degrees 52 minutes 55 seconds West 129.77 feet,
5) North 36 degrees 43 minutes 39 seconds West 5.16 feet,
6) North 47 degrees 22 minutes 20 seconds East 169.19 feet,
7) North 41 degrees 03 minutes 54 seconds East 255.42 feet,
8) South 33 degrees 44 minutes 08 seconds East 34.98 feet,
9) South 77 degrees 47 minutes 07 seconds East 108.90 feet,
10) South 48 degrees 14 minutes 20 seconds East 245.83 feet,
11) South 51 degrees 34 minutes 30 seconds East 179.85 feet,
12) South 40 degrees 23 minutes East 260.15 feet,
13) Curve to the left Radius 1090.13 feet, Arch 266.37 feet, South 58 degrees 23 minutes West 265.71 feet to the point of beginning.

Containing 5.099 Acres of land, more or less.

08-211-SPHA

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 DOAK
NO. 21401
REGISTERED
PROPERTY LINE SURVEYOR

11/05/07

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

November 5, 2007

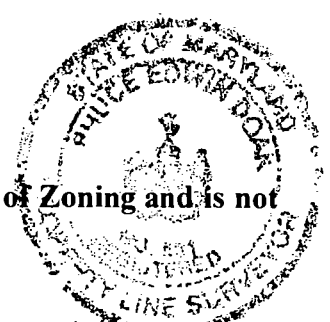
ZONING DESCRIPTION
William G. Cumberland property
Belfast Road
Baltimore County, Maryland

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

Beginning for the same at a point on the centerline of Belfast Road (35 feet offset from center line) being Northeasterly 70 feet ± from the intersection with Old Belfast Road with Belfast Road and running thence,

1) North 51 degrees 53 minutes 24 seconds West 436.44 feet,
2) North 76 degrees 30 minutes West 129.39 feet,
3) Curve to the left Radius 205.04 feet, Arch 130.73 feet, South 85 degrees 14 minutes 03 seconds West 128.53 feet,
4) Curve to the right Radius 105.04 feet, Arch 139.88 feet, North 74 degrees 52 minutes 55 seconds West 129.77 feet,
5) North 36 degrees 43 minutes 39 seconds West 5.16 feet,
6) North 47 degrees 22 minutes 20 seconds East 169.19 feet,
7) North 41 degrees 03 minutes 54 seconds East 255.42 feet,
8) North 38 degrees 26 minutes East 290.0 feet,
9) North 48 degrees 40 minutes East 225.0 feet,
10) North 48 degrees 40 minutes East 312.12 feet,
11) North 19 degrees 55 minutes 48 seconds West 487.89 feet,
12) North 20 degrees 14 minutes 27 seconds West 52.09 feet,
13) North 17 degrees 04 minutes 30 seconds West 735.90 feet,
14) North 29 degrees 56 minutes 01 seconds West 131.36 feet,
15) North 34 degrees 54 minutes 58 seconds West 907.68 feet,
16) South 60 degrees 42 minutes 14 seconds West 231.0 feet,
17) North 50 degrees 47 minutes 46 seconds West 346.50 feet,
18) South 21 degrees 44 minutes 39 seconds West 431.23 feet,
19) South 22 degrees 27 minutes 18 seconds East 1927.77 feet,

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



08-211-SPHA

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

20) South 24 degrees 47 minutes 31 seconds East 15.41 feet,
21) South 46 degrees 54 minutes 57 seconds West 529.46 feet,
22) South 36 degrees 43 minutes 57 seconds East 471.39 feet,
23) South 43 degrees 43 minutes 14 seconds East 68.5 feet,
24) Curve to the left Radius 121.71 feet, Arch 162.08 feet, South 74 degrees 52 minutes 55 seconds East 150.36 feet,
25) Curve to the right Radius 188.38 feet, Arch 120.11 feet, North 85 degrees 14 minutes 03 seconds East 118.08 feet,
26) South 76 degrees 30 minutes East 125.76 feet,
27) South 51 degrees 53 minutes 24 seconds East 428.16 feet,
28) Curve to the left Radius 1090.13 feet, Arch 17.30 feet, South 58 degrees 23 minutes West 17.30 feet to the point of beginning.

Containing 53.676 Acres of land, more or less.

11/05/07

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

08-211-SPHA

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: # 08-211-SPHA
Belfast Road
N/west side of Belfast Road, 70 feet north of the centerline of Old Belfast Road
8th Election District - 3rd Councilmanic District
Legal Owner(s): William G. & Holly Cumberland

Special Hearing: for a transfer of 8.07 acres more or less from Cumberland (Parcel 38 Lot 3) to Cumberland (Parcel 38 Lot 7). To allow a non-density transfer of 0.45 acres more or less from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 3). To allow a transfer of 1 density right from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 7A). Reallocation of density from one parcel to another. **Variance:** to allow panhandle strips of 1,223 feet (Lot A) and 2,274 feet (Lot 3B) in lieu of the maximum permitted 1,000 feet.
Hearing: Thursday, January 10, 2008 at 9:00 a.m. in Room 106 County Office Building, 111 W. Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning 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.
12/417 Dec. 27 159011

CERTIFICATE OF PUBLICATION

12/27/, 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 12/27/,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#08-211-SPHA
PETITIONER/DEVELOPER:
William G. & Holly Cumberland
DATE OF HEARING: January 10, 2008

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:
Belfast Road

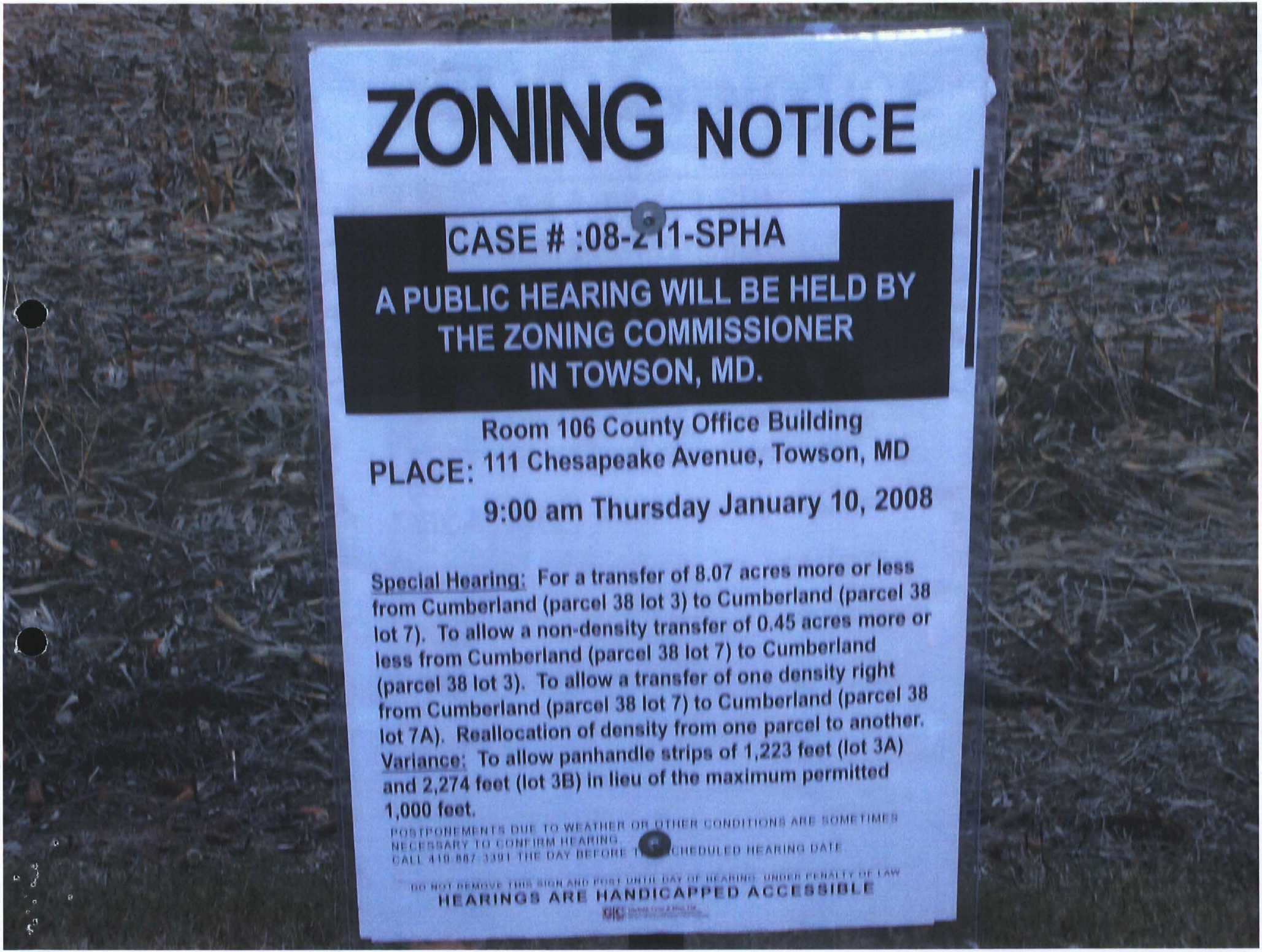
(see page 2 for full size photo)

POSTED ON: 12/19/07

SIGNATURE OF SIGN POSTER

Bruce E. Doak

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


ZONING NOTICE
CASE # :08-211-SPHA
A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD.
PLACE: Room 106 County Office Building 111 Chesapeake Avenue, Towson, MD
9:00 am Thursday January 10, 2008
Special Hearing: For a transfer of 8.07 acres more or less from Cumberland (parcel 38 lot 3) to Cumberland (parcel 38 lot 7). To allow a non-density transfer of 0.45 acres more or less from Cumberland (parcel 38 lot 7) to Cumberland (parcel 38 lot 3). To allow a transfer of one density right from Cumberland (parcel 38 lot 7) to Cumberland (parcel 38 lot 7A). Reallocation of density from one parcel to another.
Variance: To allow panhandle strips of 1,223 feet (lot 3A) and 2,274 feet (lot 3B) in lieu of the maximum permitted 1,000 feet.
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

Requested: May 22, 2008

APPEAL SIGN POSTING REQUEST

CASE NO.: 08-211-SPHA

Belfast Road

8th ELECTION DISTRICT APPEALED: 4/11/2008

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

*****COMPLETE AND RETURN BELOW INFORMATION******

CERTIFICATE OF POSTING

12 C6

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 08-211-SPHA

LEGAL OWNER: **WILLIAM G. CUMBERLAND**

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

BELFAST ROAD

NW/S BELFAST RD, 70' N of c/line OLD BELFAST RD

The sign was posted on 5/28, 2008.

By: SK | JC
(Signature of Sign Poster)

Chen & Kelly
(Print Name)


ZONING APPEAL
PUBLIC HEARING
410-887-3180
05.28.2008 10:30


05.28.2008 10:29

From: Claudia Fischer
To: Freund, Gary; Mohler, Mike
Date: 06/03/08 10:46 AM
Subject: Fwd: Sign Posting

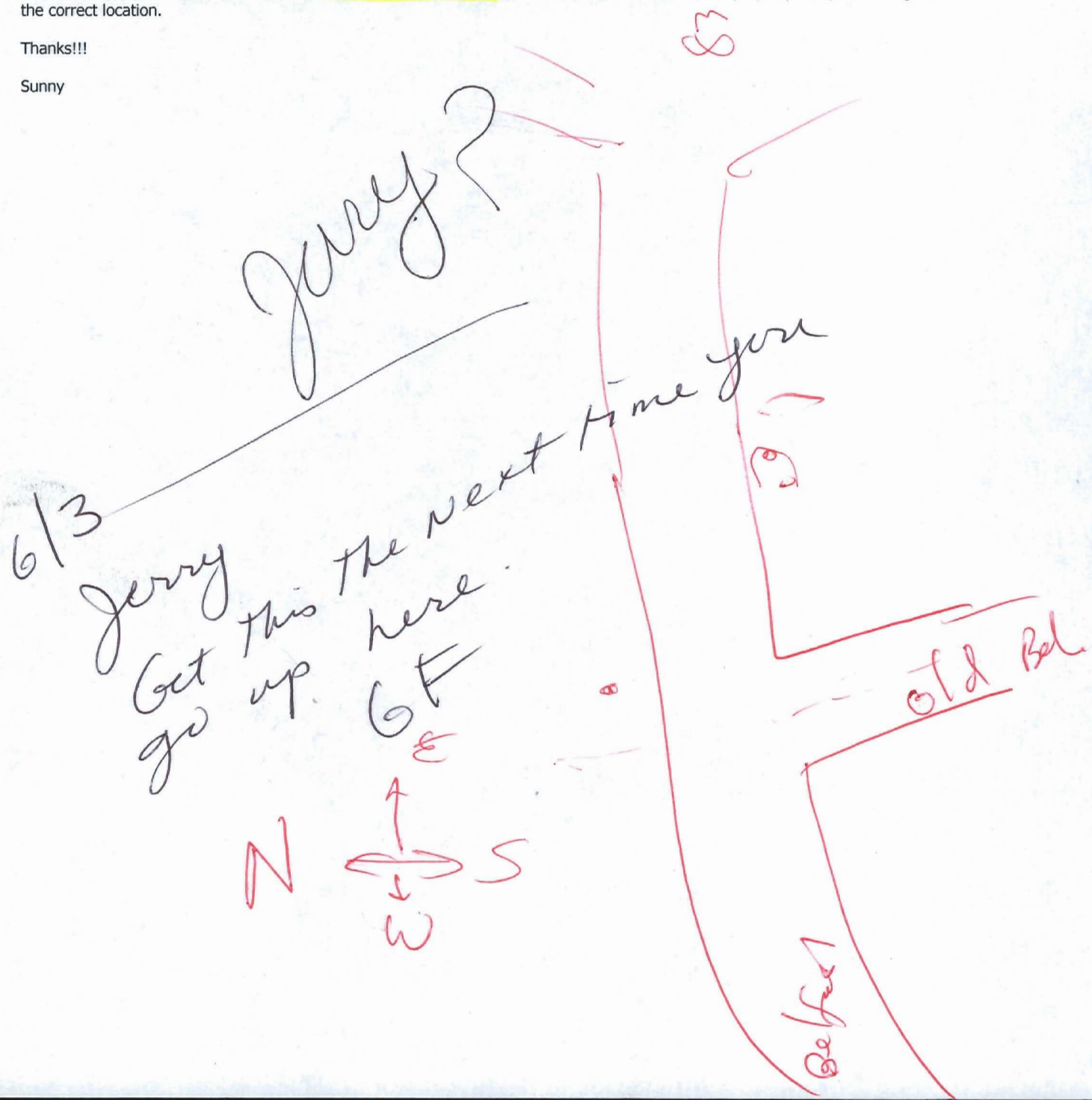
>>> Mark Gawel 06/03/08 10:43 AM >>>

>>> Krysundra Cannington 6/2/2008 11:41 AM >>>
Mark,

We received a telephone call today from a neighbor who indicated that the sign was posted on his property instead of the intended property. The sign was posted on the property located on the Southside of Belfast Road. The correct location for the posted sign is: **Northside**of Belfast Road, 70 ft n/of c/line of Old Belfast Road. Please have someone return to the property and post the sign in the correct location.

Thanks!!!

Sunny




06.04.2008 12:56


ZONING APPEAL
PUBLIC HEARING
08-211SPHA
410-887-3180
06.04.2008 12:57

Department of Permits and Development Management

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

Baltimore County

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

November 27, 2007

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: 08-211-SPHA
Belfast Road
N/west side of Belfast Road, 70 feet north of the centerline of Old Belfast Road
8th Election District – 3rd Councilmanic District
Legal Owners: William G & Holly Cumberland

Special Hearing for a transfer of 8.07 acres more or less from Cumberland (Parcel 38 Lot 3) to Cumberland (Parcel 38 Lot 7). To allow a non-density transfer of 0.45 acres more or less from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 3). To allow a transfer of 1 density right from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 7A). Reallocation of density from one parcel to another. Variance to allow panhandle strips of 1,223 feet (Lot A) and 2,274 feet (Lot 3B) in lieu of the maximum permitted 1,000 feet.

Hearing: Thursday, January 10, 2008 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Mr. & Mrs. Cumberland, 3550 Cross Creek Lane, Malibu CA 90265-4926
Gerhold, Cross & Etzel, 320 E. Towsontown Blvd., #100, Towson 21286

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WED., DECEMBER 26, 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.

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

August 7, 2008

NOTICE OF ASSIGNMENT

CASE #: 08-211-SPHA

IN THE MATTER OF: WILLIAM AND HOLLY CUMBERLAND -
Legal Owners /Petitioners
Belfast Road N of Old Belfast Road 8th E; 3rd C

3/25/2008 – Z.C.'s decision in which requested special hearing relief was **GRANTED** with restrictions.

ASSIGNED FOR: **WEDNESDAY, NOVEMBER 19, 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 : Office of People's Counsel

Counsel for Petitioner /Legal Owner : David H. Karceski, Esquire
Christopher D. Mudd, Esquire

Petitioners /Legal Owners : William G. and Holly Cumberland
Bruce E. Doak /Gerhold, Cross & Etzel, Ltd.

Diane Knapp Bruce Sandler George R.Rew
Dick Lehnert Walter Holland

Counsel for Dr. Michael Dillon and Eileen Doherty : Philip Kotschenreuther, Esquire
Dr. Michael Dillon
Eileen Doherty

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

J Carroll Holzer Esq
counsel for Mr. Lehnert
entered 11/13/08

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

November 20, 2008

NOTICE OF DELIBERATION

IN THE MATTER OF:

WILLIAM AND HOLLY CUMBERLAND - Petitioners
Case No. 08-211-SPHA

Having heard this matter on 11/19/2008, public deliberation has been scheduled for the following date /time:

DATE AND TIME : **TUESDAY, FEBRUARY 17, 2008 at 9:00 a.m.**

LOCATION : Hearing Room #2, Jefferson Building
105 W. Chesapeake Avenue, Second Floor
(adjacent to Suite 203)

NOTE: Closing Briefs are due on Wednesday, January 7, 2009
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

c: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : David H. Karceski, Esquire
Christopher D. Mudd, Esquire

Petitioners /Legal Owners : William G. and Holly Cumberland
Bruce E. Doak /Gerhold, Cross & Etzel, Ltd.

Diane Knapp Bruce Sandler George R.Rew Walter Holland

Counsel for Dr. Michael Dillon and Eileen Doherty : Philip Kotschenreuther, Esquire
Counsel for Dick Lehnert : J. Carroll Holzer, Esquire
Dr. Michael Dillon
Eileen Doherty

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

C: 7-2-6

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

January 2, 2008

Holly Cumberland
William G. Cumberland
3550 Cross Creek Lane
Malibu, CA 90265-4926

Dear Mr. and Mrs. Cumberland:

RE: Case Number: 08-211-SPHA, Belfast Road

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on November 5, 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
Gerhold, Cross & Etzel, Ltd 320 E. Towsontowne Blvd., #100 Towson 21286

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: 11/20/2007

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

RE: Baltimore County
Item No. 8-211-SPHA
BELFAST ROAD
CUMBERLAND PROPERTY
VARIANCE
SPECIAL HEARING

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. 8-211 SPHA

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 P. Bailey

For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

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

November 16, 2007

ATTENTION: Zoning Review Planners

Distribution Meeting Of: November 20, 2007

211

Item Number: Item Numbers 196, 206 through 216

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
410-887-4880 (C)443-829-2946
MS-1102F

cc: File

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: November 9, 2007

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

SUBJECT: Zoning Advisory Committee Meeting
For November 20, 2007
Item Nos. 08-195, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, and 216

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-11092007.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 6, 2007

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

RECEIVED
JAN 10 2008
BY:

SUBJECT: Belfast Road

INFORMATION:

Item Number: 8-211

Petitioner: Holly Cumberland

Zoning: RC 2

Requested Action: **Variance and Special Hearing**

The petitioner requests a variance from Section 32-4-409 (e) (2) of the Baltimore County Code to allow panhandle strips of 1,223 and 2,274 feet in lieu of the maximum permitted 1,000 ft. A special hearing for a transfer of 8.07 acres more or less from Cumberland (Parcel 38 Lot 3) to Cumberland (Parcel 38 Lot 7), for a non-density transfer of 0.45 acres more or less from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 3) and for a transfer of 1 density right from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 7A), reallocation of density from one parcel to another.

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose the petitioner's request for Variance and Special Hearing. It is this office's understanding that this proposal will come before the county at a later time for major subdivision review. At that time technical comments will be made by county review agencies.

Nonetheless, this office requests that the Zoning Commissioner place a condition on the approval of the special hearing and variance that no development shall occur on the parcel described as Parcel 38 Lot 7 5.099 ac± on the plan accompanying the subject request.

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

Reviewed by: Curtis M Murray

Division Chief: Lynn Lanham
AFK/LL: CM

Post-it® Fax Note 7671	Date	# of pages ▶
To Bill Wiseman	From Mary Ann	
Co./Dept.	Co.	
Phone # for	Phone #	
Fax #	Fax #	

W:\DEVREV\ZAC\8-211.doc

BW
1-10-08
9AM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 6, 2007

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

RECEIVED
DEC 10 2007
BY:

SUBJECT: Belfast Road

INFORMATION:

Item Number: 8-211

Petitioner: Holly Cumberland

Zoning: RC 2

Requested Action: **Variance**

REVISED
5th
NEW Comment

The petitioner requests a variance from Section 32-4-409 (e) (2) of the Baltimore County Code to allow panhandle strips of 1,223 and 2,274 feet in lieu of the maximum permitted 1,000 ft. A special hearing for a transfer of 8.07 acres more or less from Cumberland (Parcel 38 Lot 3) to Cumberland (Parcel 38 Lot 7), for a non-density transfer of 0.45 acres more or less from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 3) and for a transfer of 1 density right from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 7A), reallocation of density from one parcel to another.

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not support the special hearing for a transfer of 8.07 acres more or less from Parcel 38 Lot 3 to Parcel 38 Lot 7 and for a non-density transfer of 0.45 acres more or less from, Parcel 38 Lot 7 to Cumberland Parcel 38 Lot 3, and for a transfer of 1 density right from Parcel 38 Lot 7, to Parcel 38 Lot 7A. The Office feels that this transfer to create Lot 3B creates too much of an environmental impact. The Office also believes that Lot 7 Parcel 38 appears to be unbuildable, therefore there are actually 4 total density rights, not 6 and the plan that they have submitted would give them 5 rights with this transfer.

Therefore this office also does not support the variance from Section 32-4-409 (e) (2) of the BCC to allow a panhandle strip of 2,274 feet (Lot 3B) in lieu of the maximum permitted 1,000 ft for the same reasons. The Office would however support the density transfer from Parcel 37 Lot 7 to Parcel 38 Lot 7A and the variance of 1,223 for a panhandle strip, if there were only 4 buildable lots instead of 5 and that Lot 3B was abandoned.

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

Reviewed by: _____

Division Chief: _____
AFK/LL: CM

BW 1/10
9AM

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED
JAN 11 2008
BY:.....

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination JWL

DATE: January 11, 2008

SUBJECT: Zoning Item # 08-211-SPHA
Address N/west side of Belfast Road 70' north of the centerline of Old Belfast Road
(Cumberland Property)

Zoning Advisory Committee Meeting of November 12, 2007

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

__X__ 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).

__X__ 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:

1. An Alternatives Analysis is required for any road or utility impacts to the Forest Buffer.

2. A Forest Retention Investigation report may be required to develop lot 3 as proposed.

3. see attached comments from Agricultural Preservation

Reviewer: Jonathan Bowman Date: 12/21/07

S:\Devcoord\1 ZAC-Zoning Petitions\ZAC 2008\ZAC 08-211-SPHA.doc

BALTIMORE COUNTY, MARYLAND

ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Inter-Office Correspondence

TO: Development Coordination DATE: December 19, 2007

FROM: Wally Lippincott, Jr.

SUBJECT: Cumberland, Belfast Road, SpH 08-211

This property is located in an Agricultural Preservation Area and is within the viewshed of I-83. The County has committed significant resources to the protection of natural and scenic resources in this area through various easement programs and natural resource protection programs.

The requests raise the concerns over the impact to sensitive stream and forest resources by the proposed access to Lot 3 and the implications of the density allocation. This comment will focus on the density allocation issue.

The proposal seeks to transfer one density unit from one parcel to another. While density transfers are not provided for in the BCZR, County policies have allowed the consideration of reallocation for protection of agricultural resources.

The proposal for the density reallocation does not have any direct benefit to agricultural resource protection, however, placing all the proposed lots under a permanent preservation easements that eliminates any remaining or future residential development would benefit the overall conservation purposes.

Recommendation: From an Agricultural Preservation perspective the request can be supported if the landowner agrees to place the entire property under conservation easements with the County or a land trust.

RE: PETITION FOR SPECIAL HEARING AND VARIANCE Belfast Road; NW/S Belfast Road, 70' N c/line of Old Belfast Road 8th Election & 3rd Councilmanic Districts Legal Owner(s): William & Holly Cumberland Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 08-211-SPHA

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of November, 2007, a copy of the foregoing Entry of Appearance was mailed Gerhold, Cross & Etzel, Ltd, 320 E. Towsontown Blvd, Suite 100, Towson, MD 21286 , Representative for Petitioner(s).

RECEIVED
NOV 21 2007
Per.....

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

April 11, 2008

RECEIVED
APR 11 2008
Per

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

Re: PETITION FOR SPECIAL HEARING & VARIANCE
NW/S of Belfast Road, 70' N of c/line Old Belfast Road
(Belfast Road)
8th Election District; 3rd Council District
William Cumberland, et ux. - Petitioners
Case No.: 08-211-SPHA

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated March 25, 2008 by the Baltimore County Zoning Commissioner.

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

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: David H.Karceski, Esquire
Christopher D. Mudd, Esquire
Philip Kotschenreuther, Esquire

BALTIMORE COUNTY
MARYLAND

May 15, 2008

JAMES T. SMITH, JR.
County Executive

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

David Karceski
Christopher Mudd
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

RECEIVED
MAY 20 2008
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Messrs. Karceski & Mudd:

RE: Case: 08-211-SPHA, Belfast Road

Please be advised that an appeal of the above-referenced case was filed in this office on April 11, 2008 by People's Counsel of Baltimore County. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Bruce Doak, GC & E, 320 E. Towsontown Blvd., Ste. 100, Towson 21204
Holly & William Cumberland, 3550 Cross Creek Lane, Malibu CA 90265-4926
Dianne Knapp, 800 Belfast Road, Sparks 21152
Dick Lehnert, 707 Old Belfast Road, Sparks 21152
Philip Kotschenreuther, 200 South Main Street, Bel Air 21014
Dr. Michael Dillon & Eileen Doherty, 750 Belfast Road, Sparks 21152
Bruce Sandler, 720 Belfast Road, Sparks 21152
Walter Holland, 733 Old Belfast Road, Sparks 21152
George Rew, 17509 Prettyboy Dam Road, Parkton 21120

APPEAL

Petition for Special Hearing & Variance
Belfast Road
N/side of Belfast Rd., 70 ft. n/of c/line of Old Belfast Road
8th Election District – 3rd Councilmanic District
Legal Owners: William & Holly Cumberland

Case No.: 08-211-SPHA

✓ Petition for Special Hearing & Variance (November 5, 2007)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (November 27, 2007)

✓ Certification of Publication (The Jeffersonian – December 27, 2007)

✓ Certificate of Posting (December 19, 2007) by Bruce Doak

✓ Entry of Appearance by People's Counsel (November 21, 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. Revised Red Lined Site Plan
2. Tax map
3. Deeds for subsequent properties
4. My Neighborhood Map
5. Proposed Subdivision Plat

✓ Protestants' Exhibits:
1. Collective Photos (A – G)
2. Zoning Map
3. Photos (A & B)

Miscellaneous (Not Marked as Exhibit)

✓ Zoning Commissioner's Order (GRANTED – March 25, 2008)

✓ Notice of Appeal received on April 11, 2008 by People's Counsel

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
Bruce Doak, GC & E, 320 E. Towsontown Blvd., Ste. 100, Towson 21204 86
Holly & William Cumberland, 3550 Cross Creek Lane, Malibu CA 90265-4926
~~Dianne Knapp, 800 Belfast Road, Sparks 21152~~
Dick Lehnert, 707 Old Belfast Road, Sparks 21152
Philip Kotschenreuther, 200 South Main Street, Bel Air 21014
Dr. Michael Dillon & Eileen Doherty, 750 Belfast Road, Sparks 21152
Bruce Sandler, 720 Belfast Road, Sparks 21152
Walter Holland, 733 Old Belfast Road, Sparks 21152
George Rew, 17509 Prettyboy Dam Road, Parkton 21120

date sent May 15, 2008, klm

J Carroll Holzer Esq
counsel for Mr. Lehnert
entered 11/13/08

DAVID H KARCESKI ESQUIRE
VENABLE LLP
210 ALLEGHENY AVENUE
TOWSON MD 21204

CHRISTOPHER D MUDD ESQUIRE
VENABLE LLP
210 ALLEGHENY AVENUE
TOWSON MD 21204

WILLIAM AND HOLLY CUMBERLAND
3550 CROSS CREEK LANE
MALIBU CA 90265-4926

BRUCE E DOAK
GERHOLD CROSS & ETZEL LTD
320 E TOWSONTOWN BOULEVARD
SUITE 100
TOWSON MD 21286

DIANE KNAPP
800 BELFAST ROAD
SPARKS MD 21152

DICK LEHNERT
707 OLD BELFAST ROAD
SPARKS MD 21152

BRUCE SANDLER
720 BELFAST ROAD
SPARKS MD 21152

WALTER HOLLAND
733 OLD BELFAST ROAD
SPARKS MD 21152

GEORGE R REW
17509 PRETTYBOY DAM ROAD
PARKTON MD 21120

PHILIP KOTSCHENREUTHER ESQUIRE
200 S MAIN STREET
BEL AIR MD 21014

DR MICHAEL DILLON AND EILEEN DOHERTY
750 BELFAST ROAD
SPARKS MD 21152

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

RECEIVED
JUL 28 2009
BALTIMORE COUNTY
BOARD OF APPEALS

County Board Of Appeals Of Baltimore County The Jefferson Building
105 West Chesapeake Avenu
Towson MD 21204

Assignment Date: 07/27/09

Case Title: In the Matter of Richard Lehnert
Case No: 03-C-09-004658 AA

William Cumberland

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 08/11/09
2. All Motions (excluding Motions in Limine) are due by..... 09/18/09
3. TRIAL DATE is..... 10/28/09
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned; 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., **cameras and recording equipment are strictly prohibited** in courtrooms

and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: J Carroll Holzer Esq
cc: Robert Hoffman
Issue Date 07/27/09

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

November 13, 2008

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

RE: *In the Matter of: William G. Cumberland, et ux -Petitioners*
Case No. 08-211-SPHA

Dear Mr. Holzer:

This will acknowledge receipt of your Entry of Appearance filed November 13, 2008, in the subject matter.

Please be advised that you have been added to our case file as counsel for Mr. Dick Lehnert, and that you will receive copies of all future correspondence and notices in this matter.

Please call me if I can be of any further assistance.

Very truly yours,

Kathleen C. Bianco
Administrator

c: David Karceski, Esquire
Office of People's Counsel
Dick Lehnert

HOLZER & LEE

LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET
xxxxxxxxxxxxxxxxxx
jcholzer@cavtel.net

November 11, 2008
#7564

Ms. Kathleen Bianco, Administrator
Baltimore County Board of Appeals
Jefferson Building
105 West Chesapeake Avenue
Second Floor, Suite 203
Towson, Maryland 21204

RE: Petitions for Special Hearing and Variance
N/west side of Belfast Rod,
70' N of c/line of Old Belfast Road
(Belfast Road)
8th Election District
3rd Councilmanic District
William G. Cumberland, et ux., Petitioners
Case No.: 08-211-SPHA

Dear Ms. Bianco:

Please enter my appearance in the above-captioned case currently scheduled for Wednesday, November 19, 2008, on behalf of Mr. Dick Lehnert, 707 Old Belfast Road, Sparks, Maryland 21152 and others.

Very truly yours,

J. Carroll Holzer

JCH:mlg

Enclosure

cc: David Karceski, Esquire
Mr. Dick Lehnert

RECEIVED
NOV 13 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

November 17, 2008

Sent via facsimile (410) 760-0630

Hunt Reporting Company
12 Crain Highway, NW
Glen Burnie, MD 21061
Attention: Louise

Re: *In the Matter of:* *William Cumberland, et ux.-Legal Owners*
Case No.: 07-211-SPHA
Court Reporter Services/Contract No: 43148
Wednesday November 19, 2008 at 10:00 a.m.

Dear Louise:

Per our conversation today, this letter is to confirm that your agency will provide court reporter services for the subject hearing scheduled before the Board of Appeals on Wednesday November 19, 2008, beginning at 10:00 a.m., at the rate of $50.00 per hour. As indicated to you previously, this hearing is expected to last approximately four (4) hours.

I've also enclosed a copy of the Notice of Assignment for the subject hearing. The Board's **hearing room is located in The Jefferson Building, 105 W. Chesapeake Avenue, Hearing Room #2 (next to Suite 203/Second floor), Towson, MD 21204.**

Services are to be billed to Baltimore County Office of Budget and Finance – Disbursements, 400 Washington Avenue, Room 148, Towson, MD 21204, in accordance with Contract # 43148. PLEASE SEND THE INVOICE FOR THESE SERVICES TO THE OFFICE OF BUDGET AND FINANCE DIRECTLY.

Should you have any questions, please feel free to contact me. In addition, it is my understanding that you will contact this office at the above number the day before the hearing. Please have your court reporter will check in at Suite 203 prior to the scheduled hearing on that day.

Very truly yours,

Kathleen Bianco/KC
Kathleen C. Bianco

Enclosure
KCB/klc

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: WILLIAM AND HOLLY CUMBERLAND 08-211-SPHA

DATE: February 17, 2009

BOARD/PANEL: Edward Crizer, Jr.
Lawrence Stahl
Robert Witt

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Special Hearing relief to approve (1) a non-density transfer of 8.07 acres, more or less, of R.C. 2 zoned land from Cumberland (Parcel 38, Lot 3) to Cumberland (Parcel 38, Lot 7), and to reconfigure Lots 3 and 7 in accordance with the transfer; and (2) a non-density transfer of 0.45 acres, more or less, of R.C. 2 zoned land from Cumberland (Parcel 38, Lot 7) to Cumberland (Parcel 38, Lot 3), and to reconfigure lots 3 and 7 in accordance with the transfer.

2. Variance relief requested to allow two in-fee panhandle strips of 1,223 feet and 2,274 feet, in lieu of the maximum permitted 1,000 feet. The two in-fee panhandle strips both lead to the same lot (Lot 3) for possible future subdivision.

3. Is the property unique pursuant to the conditions set forth in Cromwell vs. Ward?

4. If the property is unique pursuant to the conditions set forth in Cromwell vs. Ward; will failure to grant the Variance present a practical difficulty or unusual hardship on the property owner?

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- Starting with the Special Hearing relief requested, the Board discussed the non-density transfer in steps. First Lot 3 is land locked with no access to a public road. The transfer from lot 7 to lot 3 will allow the building of a driveway that will connect both lots to the public road. Lot 3 will in turn transfer 8 acres to lot 7. The current classification of the lot limits the building of any dwelling on the property even though the zoning allows for two dwellings per lot. The non-density transfer from lot 3 to lot 7 will allow the building of one dwelling on the property instead of none.
- The Board held extensive discussion on the Variances and whether the property meets the standards of Cromwell v. Ward.
- The Variance relief would only impact Lot 3.

- The Board held that due to the fact that Lot 3 is land locked without access to a public road, and no other property in the area has similar issues, the property is unique.
- The Board discussed the requirement that the minimum relief necessary, should be granted. The Board debated the length of the panhandle driveway and whether it met the standards for minimum relief necessary.
- The Board then discussed the practical difficulty/undue hardship issue. The Board determined that in this case, the practical difficulty is not self-induced due to the fact that when the lots were originally created, the panhandle driveway laws were not in place. The Board also determined that when determining practical difficulty, the issue to remember is that practical difficulty does not mean that the property owner is not able to do anything with the property if a variance is not granted, it means that the property owner is not able to do the same things other property owners in the area are able to do with their properties if the variance is not granted. In this case, there is a practical difficulty for the Petitioners if a variance is not granted.

DECISION BY BOARD MEMBERS: The property is unique due to the fact that it is land locked without access to a public road and no other property in the area is land locked without access to a public road.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to GRANT the Special Hearing requests for non-density transfer and GRANT the Variance requests for two panhandle driveways of 1,223 feet and 2,274 feet in lieu of the maximum 1,000 feet.

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

RICHARD LEHNERT	*	IN THE CIRCUIT COURT
	*	FOR BALTIMORE COUNTY
VS	*	CIVIL
	*	DOCKET SM
	*	CASE NO. C09-4658
WILLIAM CUMBERLAND et al		

NOTICE OF APPEAL
SENT TO
THE COURT OF SPECIAL APPEALS

In Accordance With Rule 8-412, the Above Captioned Appeal Was Transmitted To The Court of Special Appeals On May 10, 2010 .

Jan Dardozzi
Judy Jeeter
Appeal Clerks

RECEIVED
MAY 11 2010
BALTIMORE COUNTY
BOARD OF APPEALS

RICHARD LEHNERT	*	IN THE CIRCUIT COURT
	*	FOR BALTIMORE COUNTY
VS	*	CIVIL
	*	DOCKET SM
WILLIAM CUMBERLAND et al	*	CASE NO. C09-4658

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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

RECEIVED
MAY 11 2010
BALTIMORE COUNTY
BOARD OF APPEALS

05/10/10

Case Number: 03-C-09-004658 AA OTH
Date Filed: 04/23/2009
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :
CTS Start : 04/23/09 Target : 10/20/10

In the Matter of Richard Lehnert

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	08211SPHA
Case Folder ID	C09004658V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
PET	001	Lehnert, Richard	Party ID: 1375645	CT DO 12/30/09	04/27/09
		Mail: 707 Old Belfast Road Sparks Glencoe, MD 21152	04/27/09		04/27/09 KTW
		Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 04/23/2009		04/27/09
RES	001	Cumberland, William	Party ID: 1375694	CT DO 12/30/09	04/27/09

Attorney: 0017717 Hoffman, Robert
210 Allegheny Ave
P O Box 5517
Towson, MD 21204
(410)494-6200

Appear: 06/16/2009 06/16/09

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
RES	002	Cumberland, Holly		CT DO 12/30/09	04/27/09
			Party ID: 1375697		

Attorney: 0017717 Hoffman, Robert
210 Allegheny Ave
P O Box 5517
Towson, MD 21204
(410)494-6200

Appear: 06/16/2009 06/16/09

ADA	001	County Board Of Appeals Of Baltimore County The		CT DO 12/30/09	04/27/09
			Party ID: 1375650		

Mail: Jefferson Building
105 West Chesapeake Avenue Suite 203
Towson, MD 21204

04/27/09 04/27/09 KTW

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text	SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec				
10/28/09	09:30A	CR05	Civil Non-Jury Trial	Y		PC 01 /01		JMO
Held/Concluded			10/28/09 H P.Cavanaugh.	Y				

Stenographer(s): Marina Coyle

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	Activity User	Activity Date
12/30/09	DO	Decree or Order	CT	AFTER TRIAL/HEARING	EMH	12/30/09

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	04/27/09	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review w/exhibits	04/23/09	04/27/09	PET001	TBA		12/30/09	KTW EMH
0001001	Response To Petition for Judicial Review Filed by RES001-Cumberland, RES002-Cumberland	05/27/09	06/16/09	RES001	TBA		12/30/09	NF EMH
0001002	Memorandum In Opposition to Petition For Judicial Review Filed by RES001-Cumberland, RES002-Cumberland	08/19/09	08/24/09	RES001	TBA		12/30/09	KTW EMH
0002000	Certificate Of Compliance	05/01/09	05/18/09	PET001	TBA		12/30/09	KET EMH
0003000	Transcript of Record from Adm Agency *	06/18/09	06/22/09	ADA001	TBA		12/30/09	EMH EMH
0004000	Notice of Transcript of Record Sent	06/22/09	06/22/09	ADA001	TBA		06/22/09	EMH
0005000	Notice of Transcript of Record Sent	06/22/09	06/22/09	PET001	TBA		06/22/09	EMH
0006000	Notice of Transcript of Record Sent	06/22/09	06/22/09	RES001	TBA		06/22/09	EMH
0007000	Scheduling Order	07/27/09	07/27/09	000	TBA		07/27/09	JMO
0008000	Memorandum	07/17/09	07/28/09	PET001	TBA		07/28/09	SAP
0009000	Open Court Proceeding Oct.28,2009 Hon.Patrick Cavanaugh Hearing had in re:Administrative appeal.Decision held sub-curia. Opinion and Order to be filed.	10/28/09	10/28/09	000	PC		12/30/09	BH EMH
0010000	Opinion of the Court	12/30/09	12/30/09	000	PC	Ruled	12/30/09	EMH
0011000	Order of Court denying appeal to reverse Balt Co Zoning Appeals Board decision	12/30/09	12/30/09	000	PC	Denied	12/30/09	EMH
0012000	Docket entries sent to Baltimore County Board of Appeals	01/04/10	01/04/10	000	TBA			CVM
0013000	Notice of Appeal to COSA or COA (13/L3-13) *	01/25/10	01/25/10	PET001	TBA			LAC
0014000	Pre Trial Hearing Letter Issued	01/25/10	01/25/10	000	TBA		01/25/10	JD
0015000	Order to proceed w/out prehearing conf.	03/16/10	03/16/10	000	TBA			JD
0016000	Original Record sent to COSA Sent Certified Mail, 1 Volume, 1 Transcript, 1 Brown Accordion	05/10/10	05/10/10	000	TBA			JD

Folder Containing Exhibits # 7006 3450 0003 3459 5147

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	05/27/09	0	no	no	DANS	D	001	001
1YRT	One Year Tickle (Jud	CLOSED	04/23/10	365	no	no	DAAA	D	001	000
EXPU	Exhibit Pickup Notic	CLOSED	02/28/10	30	no	no			000	000
SLMR	Set List For Motions	CANCEL	09/10/09	22	no	no	MOPP	D	001	002
SLTR	Set List For Trial	CANCEL	05/27/09	0	yes	no	1ANS	T	001	001
SLTR	Set List For Trial	Done	06/18/09	0	yes	yes	DTRA	D	003	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ADA		001	County Board Of Appeals Of Ba					
000		B	BOX 658/CBA TRANSC		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 07/27/09 Order Date : 07/27/09
Start Date : 07/27/09 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		08/11/09	12/30/09	CLOSED
All Motions (excluding Motions in Limine		09/18/09	12/30/09	CLOSED
TRIAL DATE is	10/28/09	10/25/09	10/28/09	REACHED

ACCOUNTING SUMMARY

NON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct	Desc	Oblig	Payment	Total	MOP	Balance
04/24/09	200900009539/CPW	1102	CF-Civil Fil	.00	80.00	-80.00	CK	-80.00
04/24/09	200900009539/CPW	1500	Appearance F	.00	10.00	-10.00	CK	-90.00
04/24/09	200900009539/CPW	1265	MLSC	.00	25.00	-25.00	CK	-115.00
04/27/09		1102	CF-Civil Fil	80.00	.00	80.00		-35.00
04/27/09		1265	MLSC	25.00	.00	25.00		-10.00
04/27/09		1500	Appearance F	10.00	.00	10.00		.00
01/25/10	201000001956/CPW	1151	Ct Sp App Fe	.00	50.00	-50.00	CK	-50.00
01/25/10	201000001956/CPW	1161	CF-Appeal Fe	.00	60.00	-60.00	CK	-110.00

01/04/10 INVOICE# 2010000002/AL TOTAL: $10.00 STATUS: PAID
PARTY: Richard Lehnert

Invoice Mailed on 01/04/10
Invoice Created on 01/04/10
PAID on 02/02/10

Date	Rcpt/Initials	Acct	Desc	Oblig	Payment	Total	MOP	Balance
01/04/10		1500	Appearance F	10.00	.00	10.00		10.00
02/01/10	201000002600/MAB	1500	Appearance F	.00	10.00	-10.00	CK	.00

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Facsimile Cover Sheet

Phone: 410-887-3180 Fax: 410-887-3182

To: Lynn

Fax: 410-893-0402

From: Sunny Cannington, Legal Secretary

Date: January 5, 2009

Number of Pages (Including cover): 3

Re: Cumberland, Case No.: 08-211-SPHA

As per your request, attached please find a copy of the Petitioner's Exhibits, which lists 8 Exhibits and Protestant's Exhibits, which lists 4. Should you have any questions, please do not hesitate to contact me.

Thank you.

Lynn Brown, Brown & Young 11/19 Exhibits List of Fax 410 893-0402

# of Exhibits 08-211-SPH Cumberland 4

PLEASE PRINT CLEARLY

CASE NAME Cumberland
CASE NUMBER 08-211-SPHA
DATE 1/10/08

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
✓ Bruce E. Doak	320 E. Towsontown Blvd.	Towson, Md 21286	
Gerhold Cross & Etzel			
✓ David Karceski	210 Allegheny Ave	Towson, MD 21204	dk@karceski.com
✓ Chris Mudd	"	"	cdmudd@verizon.net
✓ Holly Cumberland	3550 Cross Creek Lane	Malibu, CA 90265	

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE 12/10/08

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
✓ Diane Knapp	800 Belfast Road	Sparks, MD 21152	catknapp@earthlink.net
✓ DICK LEHNERT	707 OLD BELFAST RD	" " "	SCHMEO@VERIZON.NET
✓ Philip Kotschenreuther Esq	200 South Main Street	Bel Air, MD 21014	pjk@lawbrown.com
✓ Eileen Doherty	750 Belfast Rd	Sparks MD 21152	doherty.eileen@[illegible].com
Michael Dillon	750 Belfast Rd	Sparks MD 21152	mdillonmd@[illegible].net
✓ Bruce Sandler	720 Belfast Rd	" "	bsandler720@aol.com
✓ [illegible] Hoffman	773 Old Belfast Rd	Sparks Md 21152	
✓ GEORGE R REW	17509 PRETTYBOY DAM RD	PARKTON, MD 21120 9637	LAURARETTMANREW@AOL.COM
~~Mrs. Patricia B Dillon also present~~			
(EILEEN Doherty is DR DILLONS WIFE)			

BROWN, BROWN & YOUNG
A Professional Association of Trial, Business and Personal Lawyers • Founded 1901

200 South Main St.
Bel Air, MD 21014
410-838-5500
410-879-2220
410-893-0402 Fax



212 East Main St.
Elkton, MD 21921
410-392-3900
410-398-7792 Fax

PHILIP J. KOTSCHENREUTHER
PJK@lawbrown.com E-mail • www.lawbrown.com Web site

Represents DR and MRS DILLON

08-211-SPHA

PROTESTANT'S EXHIBITS

✓	1.	LETTER 12/6/07	DENIAL LETTER - OFFICE OF PLANNING
✓	2	LETTER 12/6/07	APPROVAL LETTER - OFFICE OF PLANNING
✓	3.	LETTER 12/19/07	WALLY LIPPINCOTT DEPRM COMMENTS
✓	4. A-E	PICTURES TAKEN BY MR. LEHNERT.	

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 6, 2007

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

SUBJECT: Belfast Road

INFORMATION:

Item Number: 8-211

Petitioner: Holly Cumberland

Zoning: RC 2

Requested Action: Variance

The petitioner requests a variance from Section 32-4-409 (e) (2) of the Baltimore County Code to allow panhandle strips of 1,223 and 2,274 feet in lieu of the maximum permitted 1,000 ft. A special hearing for a transfer of 8.07 acres more or less from Cumberland (Parcel 38 Lot 3) to Cumberland (Parcel 38 Lot 7), for a non-density transfer of 0.45 acres more or less from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 3) and for a transfer of 1 density right from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 7A), reallocation of density from one parcel to another.

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not support the special hearing for a transfer of 8.07 acres more or less from Parcel 38 Lot 3 to Parcel 38 Lot 7 and for a non-density transfer of 0.45 acres more or less from, Parcel 38 Lot 7 to Cumberland Parcel 38 Lot 3, and for a transfer of 1 density right from Parcel 38 Lot 7, to Parcel 38 Lot 7A. The Office feels that this transfer to create Lot 3B creates too much of an environmental impact. The Office also believes that Lot 7 Parcel 38 appears to be unbuildable, therefore there are actually 4 total density rights, not 6 and the plan that they have submitted would give them 5 rights with this transfer.

Therefore this office also does not support the variance from Section 32-4-409 (e) (2) of the BCC to allow a panhandle strip of 2,274 feet (Lot 3B) in lieu of the maximum permitted 1,000 ft for the same reasons. The Office would however support the density transfer from Parcel 37 Lot 7 to Parcel 38 Lot 7A and the variance of 1,223 for a panhandle strip, if there were only 4 buildable lots instead of 5 and that Lot 3B was abandoned.

CBA. Pro. Exh. No. 1

BALTIMORE COUNTY, MARYLAND

ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

DEPT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT
RECEIVED

Inter-Office Correspondence

TO: Development Coordination DATE: December 19, 2007

FROM: Wally Lippincott, Jr.

SUBJECT: Cumberland, Belfast Road, SpH 08-211

This property is located in an Agricultural Preservation Area and is within the viewshed of I-83. The County has committed significant resources to the protection of natural and scenic resources in this area through various easement programs and natural resource protection programs.

Lot 3

The requests raise the concerns over the impact to sensitive stream and forest resources by the proposed access to Lot 3 and the implications of the density allocation. This comment will focus on the density allocation issue.

The proposal seeks to transfer one density unit from one parcel to another. While density transfers are not provided for in the BCZR, County policies have allowed the consideration of reallocation for protection of agricultural resources.

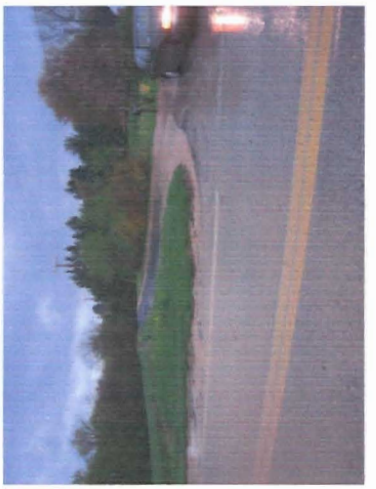
The proposal for the density reallocation does not have any direct benefit to agricultural resource protection, however, placing all the proposed lots under a permanent preservation easements that eliminates any remaining or future residential development would benefit the overall conservation purposes.

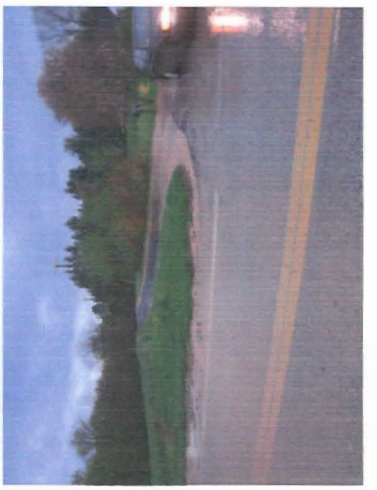
Recommendation: From an Agricultural Preservation perspective the request can be supported if the landowner agrees to place the entire property under conservation easements with the County or a land trust.

CBA Pro. Exh. No. 3

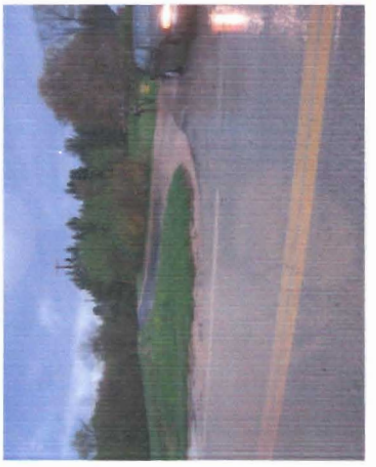














PR 4-A















Pho 4.B













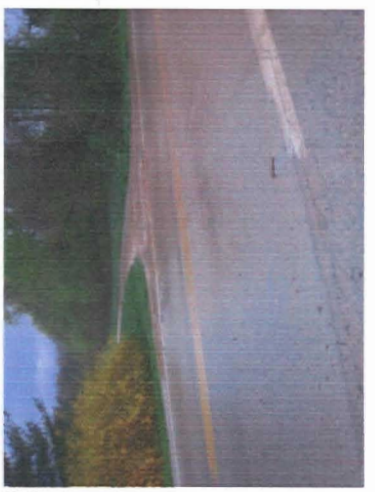


Pho 4-C

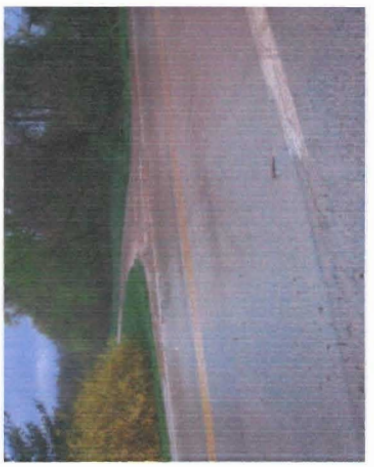


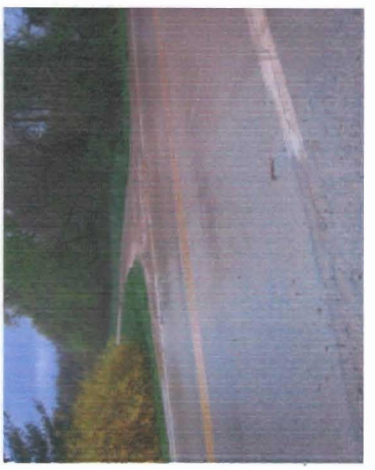






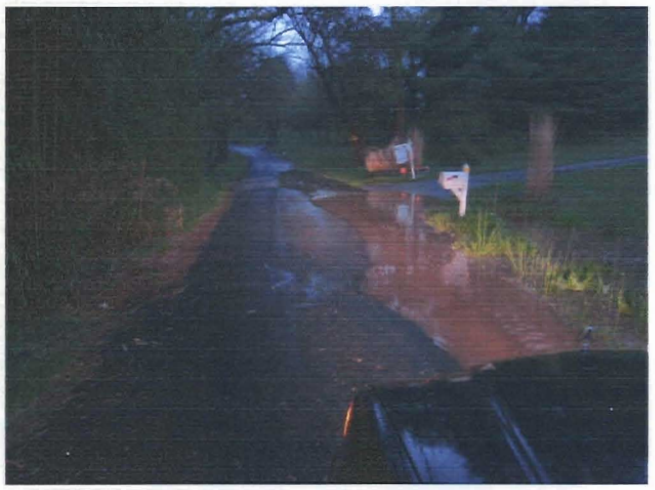






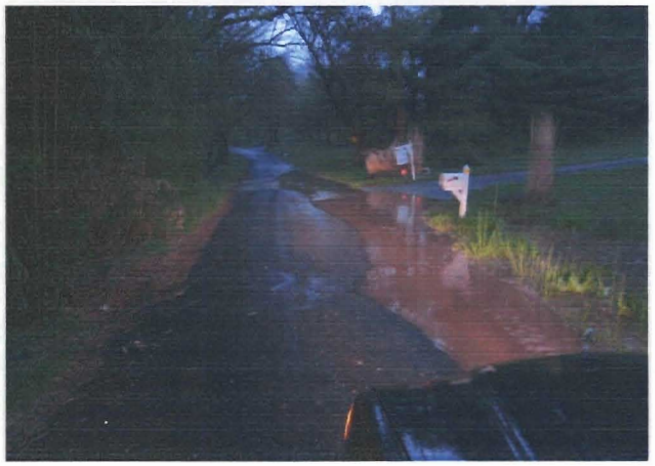
PRO-47















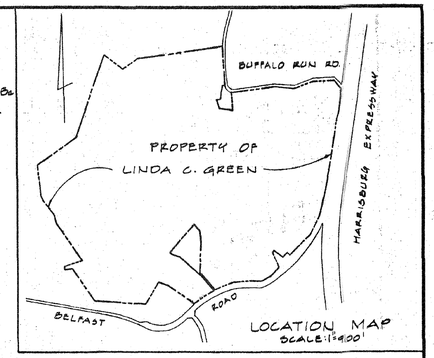
PRO- 4-E

08-211-SPHA

PETITIONERS EXHIBITS

✓	1.	SITE PLAN - CUMBERLAND PROPERTIES
✓ ✓	2	RECORD PLAT 9/18/75 RECORDED 10/2/75 LINDA C. GREEN
✓ ✓	3.	AERIAL PHOTO OF PROPERTY.
✓ ✓	4.	COUNTY SCENIC ROUTES.
✓ ✓	5.	EXHIBIT PLAT - CUMBERLAND PROPERTIES
✓ ✓	6.	EXHIBIT PLAT WITH ORANGE NOTATIONS. (SAME AS NO. 5)
✓ ✓	7.	COPY OF DEED - LOT 3.
✓ ✓	8.	COPY OF DEED - LOT 4.

Note: These Lots As Shown Are Lots For Agriculture Use Only. If Any Of These Tracts Will Be Used For Building Purposes In The Future Percolation Tests Must Be Conducted And A Water Well Must Be Drilled Prior To Issuance Of Building Permits.



LEGEND

Property Outline
Lot Lines
Lot Numbers
Stone Monuments — (1) — ⊙ - Stone

TABULATION

Gross Area	237.607	Ac.±
Area In 25' Widening Strip	1.216	Ac.±
Area In Lots & Parcel 'A'	236391	Ac.±
No. Of Lots	7	Lots
Gross Residential Density	.03	Lots/Ac.
Existing Zoning	R.D.P.	

CURVE DATA

Curve	Radius	Δ	Length	Tangent	Chord
A	205.04'	36°51'50"	132.75'	68.88'	S85°14'03.5"W - 128.59'
B	105.04'	76°17'56"	139.88'	82.51'	N74°52'55"W - 129.77'
C	155.04'	76°17'56"	206.46'	121.79'	N74°52'55"W - 191.54'
D	158.04'	36°51'53"	98.85'	51.17'	S85°14'03.5"W - 97.19'
E	171.71'	36°51'53"	109.48'	56.67'	S85°14'03.5"W - 107.64'
F	188.38'	36°51'53"	120.11'	62.17'	N85°14'03.5"E - 118.08'
G	121.71'	76°17'56"	162.08'	95.60'	N74°52'55"W - 150.36'
H	136.38'	76°17'56"	184.27'	108.69'	N74°52'55"W - 170.95'
I	1090.13'	14°00'00"	266.37'	133.85'	S58°23'00"W - 265.71'
J	1090.13'	7°54'10"	150.36'	75.50'	S64°39'28"W - 150.24'

E.H.K., JR. 38 FOLIO 139
Filed for record
Date: OCT 2 1975
Test:
Clerk

SUBDIVISION OF THE PROPERTY OF LINDA C. GREEN

Baltimore County Md.
Scale: 1" 200'

Election District No 8
Date: Sept. 18, 1975

OWNER & DEVELOPER
Linda C. Green
Gaist Road
Algonor, Md. 21071

INSET 'A'
Scale: 1" = 100'

INSET 'B'
Scale: 1"=100'

NOTE:
Refuse Collection, Snow Removal & Road Maintenance Are Provided To The Junction Of The Panhandle And The Road Right-Of-Way Only & Not Onto The Panhandle Lot Driveway.

NOTE:
Cross - Hatched Area Running From Lot 2 To Belfast Rd. Denotes 50' Road Right-Of-Way Owned Jointly For The Use In Common By The Owners Of Lot 1, 2 & 3 Not To Be Dedicated For Public Use At This Time.

NOTE: COORDINATES AND BEARINGS SHOWN ON THIS PLAT ARE REFERRED TO AN ASSUMED GRID SYSTEM ESTABLISHED BY GEO. W. STEPHENS, JR. & ASSOC., INC.

NOTE: THE STREETS AND/OR ROADS AS SHOWN HEREON AND THE MENTION THEREOF IN DEEDS ARE FOR THE PURPOSE OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE, THE FEE SIMPLE TITLE TO THE BEDS THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED, THEIR HEIRS AND ASSIGNS.

OWNERS CERTIFICATE: CERTIFICATION IS HEREBY MADE THAT ALL THE REQUIREMENTS OF SECTION 3-108 ARTICLE 21 OF THE ANNOTATED CODE OF MARYLAND 1947 AND ALL SUPPLEMENTS THERETO HAVE BEEN COMPLIED WITH ON THIS PLAT.
Linda C. Green 9/19/75 DATE

SURVEYORS CERTIFICATE: CERTIFICATION IS HEREBY MADE THAT THIS PLAT WAS COMPUTED BY G. W. STEPHENS, JR. & ASSOCIATES INC. AND THAT IT MEETS THE REQUIREMENTS OF SECTION 3-108 ARTICLE 21 OF THE ANNOTATED CODE OF MARYLAND 1947 SUPPLEMENT AND ALL SUPPLEMENTS THERETO.
REG. NO. 4256 9/19/75 DATE

STATE OF MARYLAND — JOHN WILLIAM STEPHENS — NO. 4256 — REGISTERED LAND SURVEYOR

APPROVED BY BALTIMORE COUNTY HEALTH DEPARTMENT
DEPUTY STATE & COUNTY HEALTH OFFICER — DATE 10/1/75

APPROVED BY BALTIMORE COUNTY PLANNING BOARD
DIRECTOR — DATE 10/1/75

APPROVED AS TO ALIGNMENT AND LOCATION OF STREETS
ROADS ENGINEER OF BALTIMORE CO. MD. — DATE 10/1/75

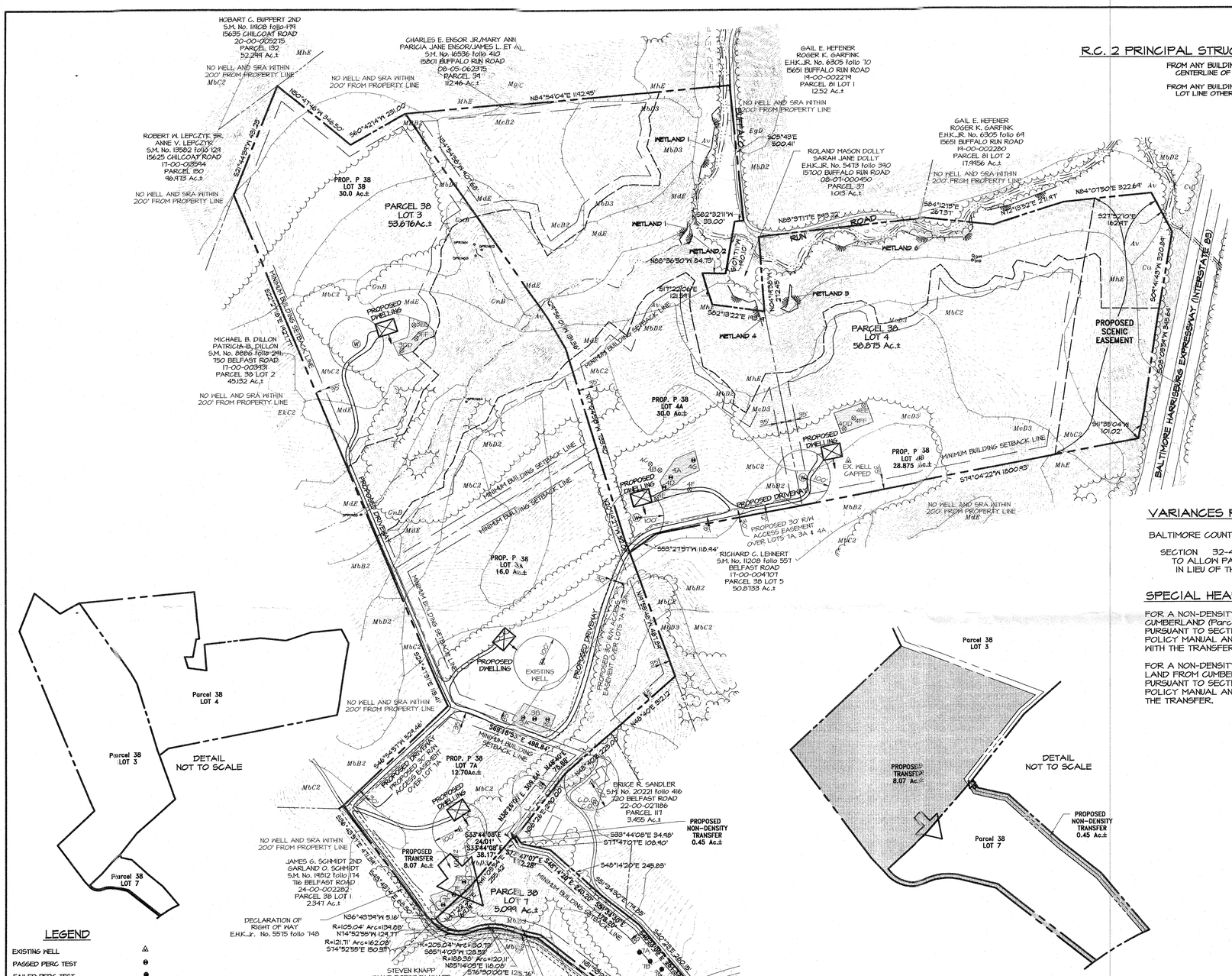
GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
TOWSON, MARYLAND 21204 — BEL AIR, MARYLAND 21014

P.W.A. COMPLETED NONE O.H.L.
FINAL PLAT CHECKED:
PLANNING
ENGINEERING
DATE 9/26/75

COMPUTED BY: W.M. CHECKED BY: H.F.S.
DRAWN BY: G.R.A. W.O. NO.: 3674

P 50756.MT MSA SSU 1936-5902. 38-139

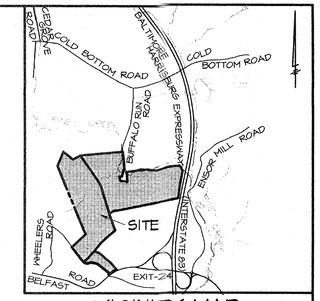
CBA P67 EXH NO 2



R.C. 2 PRINCIPAL STRUCTURE OR DWELLING SETBACKS

FROM ANY BUILDING FACE TO, CENTERLINE OF ANY STREET	75'
FROM ANY BUILDING FACE TO, LOT LINE OTHER THAN A STREET LINE	35'

PLAT REF
E.H.K.JR. 38 FOLIO 139



VICINITY MAP
1" = 2000'

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM A DEED
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILES 28A3, 28A2
3. THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No. 13.
4. CENSUS TRACT 408200 REGIONAL PLANNING DISTRICT 304
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT: ELEMENTARY - SPARKS E.S.; MIDDLE - HEREFORD M.S.; HIGH - HEREFORD H.S.
   A.D.C. MAP & GRID 12 D5
5. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
6. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PRIVATE WELLS AND SEPTIC SYSTEMS.
7. ACCESS TO THE PROPOSED DWELLINGS ON LOTS 3A, 3B, 4A AND 4B WILL UTILIZED THE EXISTING DRIVEWAY, IF ACCESS VIA THAT TRIVEWAY IS NOT POSSIBLE AN ADDITIONAL DRIVEWAY WILL BE ADDED TO PROVIDE ACCESS .
8. ACCESS TO LOTS 3B, 4A AND 4C WILL BE PROVIDED VIA A RECIPROCAL ACCESS EASEMENT.
9. THE SUBJECT PROPERTY IS IN THE NATIONAL REGISTER DISTRICT.
10. THE NORTH EAST SIDE OF THE SUBJECT PROPERTY ALONG THE PINEY CREEK IS WITHIN A 100 YEAR FLOOD PLAIN.
11. A DWELLING WILL NOT BE PLACED ON THE 5.099 ACRES PORTION OF LOT 7 AS PER THE OFFICE OF PLANNING AND COMMENT DATED DECEMBER 6, 2001 (REVISED).
12. ACCESSORY STRUCTURE MUST COMPLY WITH SECTION 401 OF B.C.Z.R.

VARIANCES REQUESTED

BALTIMORE COUNTY CODE

SECTION 32-4-409 (e) (2)
TO ALLOW PANHANDLE STRIPS OF 1223' (LOT 3A) AND 2274' (LOT 3B) IN LIEU OF THE MAXIMUM PERMITTED 1,000'

SPECIAL HEARING REQUESTED

FOR A NON-DENSITY TRANSFER OF 8.07 ACRES, MORE OR LESS, FROM CUMBERLAND (Parcel 38 Lot 3) TO CUMBERLAND (Parcel 38 Lot 7) PURSUANT TO SECTIONS 1A00.4.b.(2) AND (3) OF THE ZONING COMMISSIONER'S POLICY MANUAL AND TO RECONFIGURE LOTS 3 AND 7 IN ACCORDANCE WITH THE TRANSFER.

FOR A NON-DENSITY TRANSFER OF 0.45 ACRES, MORE OR LESS, OF RC-2 ZONED LAND FROM CUMBERLAND (Parcel 38 Lot 7) TO CUMBERLAND (Parcel 38 Lot 3) PURSUANT TO SECTIONS 1A00.4.b.(2) AND (3) OF THE ZONING COMMISSIONER'S POLICY MANUAL AND TO RECONFIGURE LOTS 7 AND 3 IN ACCORDANCE WITH THE TRANSFER.

DENSITY CALCULATIONS

GROSS AREA LOT 3	53.676 Ac.±
LOTS PERMITTED LOT 3	2-100 Ac.± = 2 Lots
LOTS PROPOSED	2
GROSS AREA LOT 4	50.875 Ac.±
LOTS PERMITTED	2-100 Ac.± = 2 Lots
LOTS PROPOSED	2
GROSS AREA LOT 7	5.099 Ac.±
LOTS PERMITTED	2-100 Ac.± = 2 Lots
LOTS PROPOSED	1

OWNER\DEVELOPER

WILLIAM G. CUMBERLAND
HOLLY CUMBERLAND
3950 CROSS CREEK LA
MALIBU, CALIFORNIA 90265-4926
310-456-2127

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
McB2, MbB2	Slight	Slight	Moderate: slope
EkC2, MbC2	Moderate: slope	Moderate: slope	Severe: slope
Cu	Severe: moderately high water table; flooding hazard.	Severe: flooding hazard	Severe: flooding hazard
GnB	Severe: high water table; moderately slow permeability.	Severe: high water table	Severe: high water table
Av	Severe: high water table; flooding hazard.*	Severe: high water table; flooding hazard.	Severe: high water table; flooding hazard.
McD2, MbD3 MbD2, MdE McD3	Severe: slope	Severe: slope	Severe: slope
GnB2	Slight *	Slight	Moderate: slope
MhE, EgD	Severe: slope *	Severe: slope	Severe: slope
MgC	Slight to moderate: slope	Moderate: stoniness; slope	Severe: slope

* Strong possibility of polluting nearby springs, wells, ponds, streams, or other surface or underground water sources.

08-211-SPHA
PLAN TO ACCOMPANY A VARIANCE AND A SPECIAL HEARING REQUEST
CUMBERLAND PROPERTIES

BELFAST ROAD
"SUBDIVISION OF THE PROPERTY OF LINDA C. GREEN"
Deed Ref: E.H.K.,Jr. No. 5625 #olio 676
Tax Account No.: 17-00-006142
Zoned R.C.2 GIS Tile 28 A3, 28 A2
Tax Map 28; Grid 19; Parcel 38 Lot 3
"SUBDIVISION OF THE PROPERTY OF LINDA C. GREEN"
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Tax Account No.: 17-00-006141
Zoned R.C.2 GIS Tile 28 A3, 28 A2
Tax Map 28; Grid 19; Parcel 38 Lot 7
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND
BRUCE EDWIN DORN
NO. 5215
REGISTERED
PROPERTY LINE SURVEYOR
11/18/08

Scale: 1"=200' Date: AUGUST 06, 2007

REVISION	DATE
REVISION per Zoning Hearing	11/18/08
REVISION per Human & Rohde, FBE, Wetland Delineation and springs location	01/04/08
REVISION per owner request	10/19/07
REVISION per request of Molly Lippincott	10/09/07
REVISION per Rob Powell	09/12/07
REVISION per Rob Powell	09/10/07

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

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Pet Exh 1

OBA Pet. Ex. No. 1



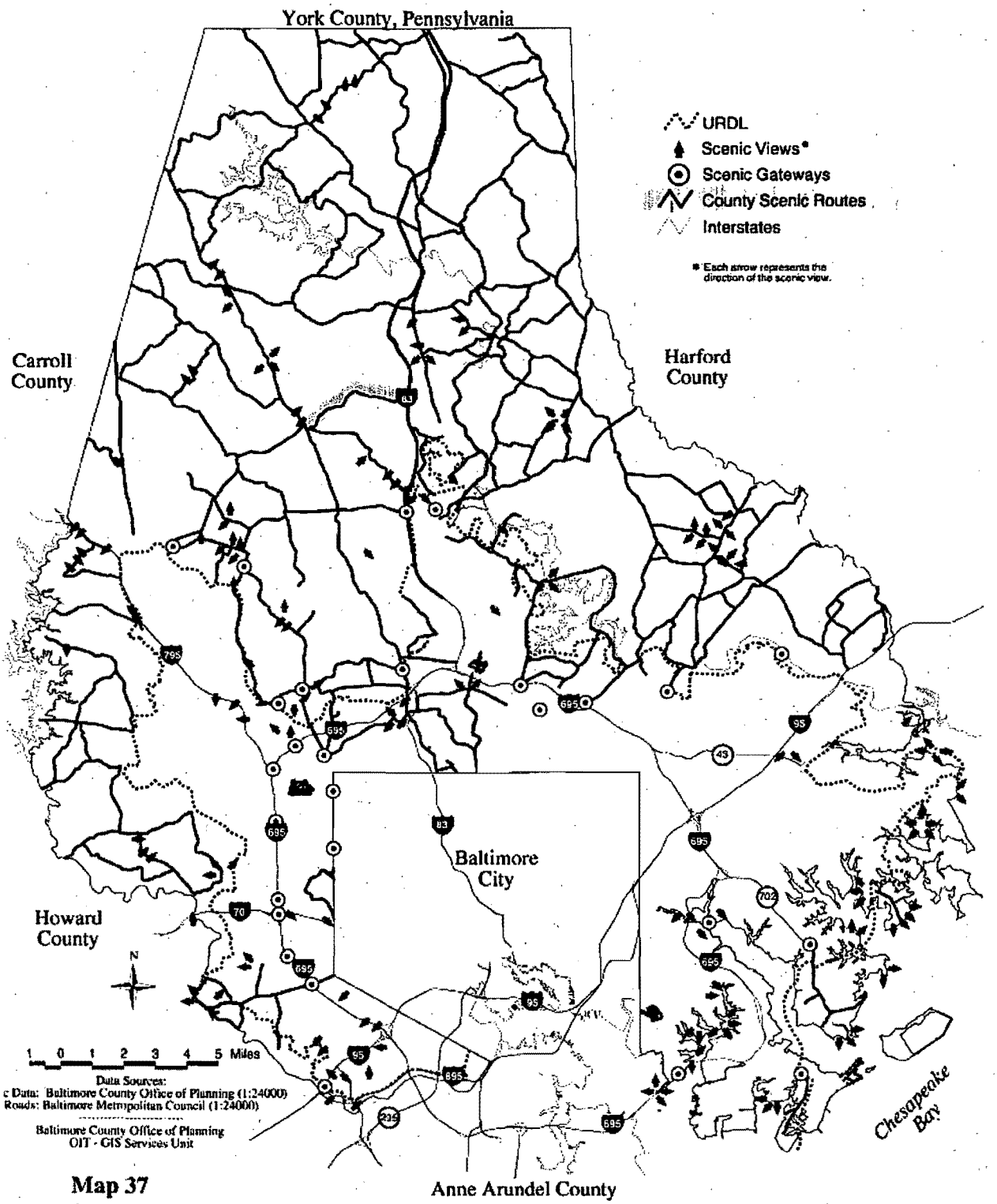
MARYLAND COORDINATE SYSTEM
NAD83(1991)

ZONING MAP

GIS TILE: 028A2, 028A3

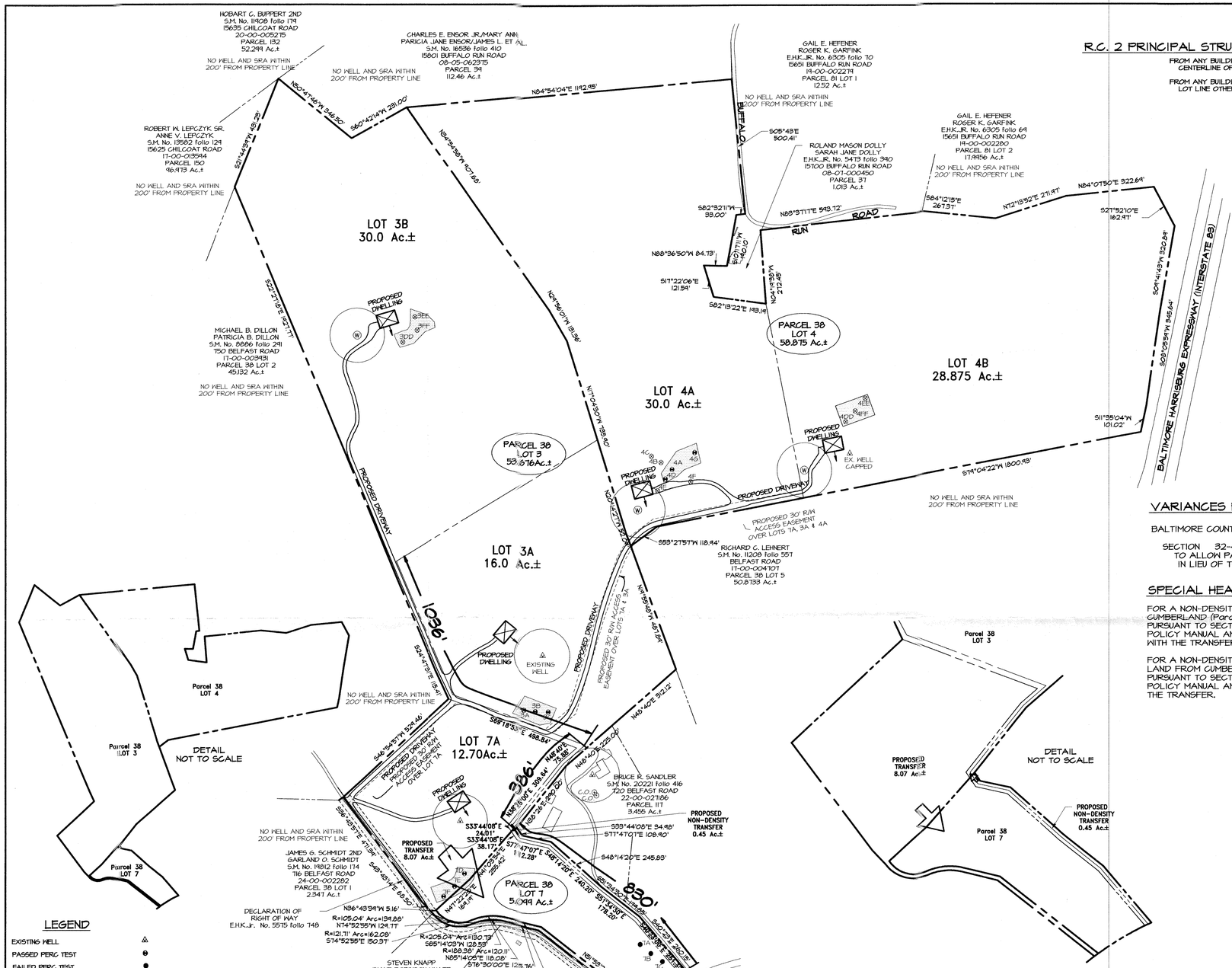
SCALE: 1" = 200'

PETITIONER EXHIBIT #3



Map 37
Scenic Resources

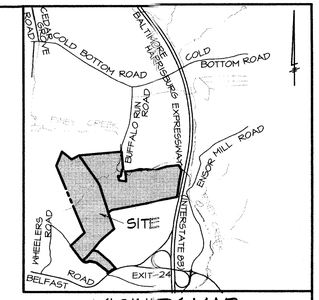
CBA PET. EX. NO 4



R.C. 2 PRINCIPAL STRUCTURE OR DWELLING SETBACKS

FROM ANY BUILDING FACE TO, CENTERLINE OF ANY STREET — 75'

FROM ANY BUILDING FACE TO, LOT LINE OTHER THAN A STREET LINE — 35'



VICINITY MAP
1" = 2000'

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM A DEED
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILES 28A3, 28A2
3. THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No. 13.
4. CENSUS TRACT 408200 REGIONAL PLANNING DISTRICT 304
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT: ELEMENTARY - SPARKS E.S., MIDDLE - HEREFORD M.S., HIGH - HEREFORD H.S.
   A.D.C. MAP & GRID 12 D5
5. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
6. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PRIVATE WELLS AND SEPTIC SYSTEMS.
7. ACCESS TO THE PROPOSED DWELLINGS ON LOTS 3A, 3B, 4A AND 4B WILL UTILIZED THE EXISTING DRIVEWAY, IF ACCESS VIA THAT TRIVEWAY IS NOT POSSIBLE AN ADDITIONAL DRIVEWAY WILL BE ADDED TO PROVIDE ACCESS.
8. ACCESS TO LOTS 3B, 4A AND 4B WILL BE PROVIDED VIA A RECIPROCAL ACCESS EASEMENT.
9. THE SUBJECT PROPERTY IS IN THE NATIONAL REGISTER DISTRICT.
10. THE NORTH EAST SIDE OF THE SUBJECT PROPERTY ALONG THE PINEY CREEK IS WITHIN A 100 YEAR FLOOD PLAIN.
11. A DWELLING WILL NOT BE PLACED ON THE 5.099 ACRES PORTION OF LOT 7 AS PER THE OFFICE OF PLANNING AND COMMENT DATED DECEMBER 6, 2007 (REVISED).
12. ACCESSORY STRUCTURE MUST COMPLY WITH SECTION 401 OF B.C.Z.R.

VARIANCES REQUESTED

BALTIMORE COUNTY CODE

SECTION 32-4-409 (e) (2)
TO ALLOW PANHANDLE STRIPS OF 1223' (LOT 3A) AND 2274' (LOT 3B) IN LIEU OF THE MAXIMUM PERMITTED 1,000'

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GROSS AREA LOT 7	5.099 Ac.±
LOTS PERMITTED	2-100 Ac.± = 2 Lots
LOTS PROPOSED	1

OWNER\DEVELOPER

WILLIAM G. CUMBERLAND
HOLLY CUMBERLAND
3350 CROSS CREEK LA
MALIBU, CALIFORNIA 90265-4926
310-456-2127

SOIL TYPES & LIMITATIONS

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McD2, MdD3 MdD2, MdE McD3	Severe: slope	Severe: slope	Severe: slope
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MnE, EgD	Severe: slope *	Severe: slope	Severe: slope
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* Strong possibility of polluting nearby springs, wells, ponds, streams, or other surface or underground water sources.

REVISION	DATE
REVISION per Zoning Hearing	11/18/08
REVISION per Human & Rohde, FBE, Wetland delineation and springs location	01/04/08
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REVISION per request of Wally Lippincott	10/09/07
REVISION per Rob Powell	09/12/07
REVISION per Rob Powell	04/10/07

EXIBIT PLAT

CUMBERLAND PROPERTIES

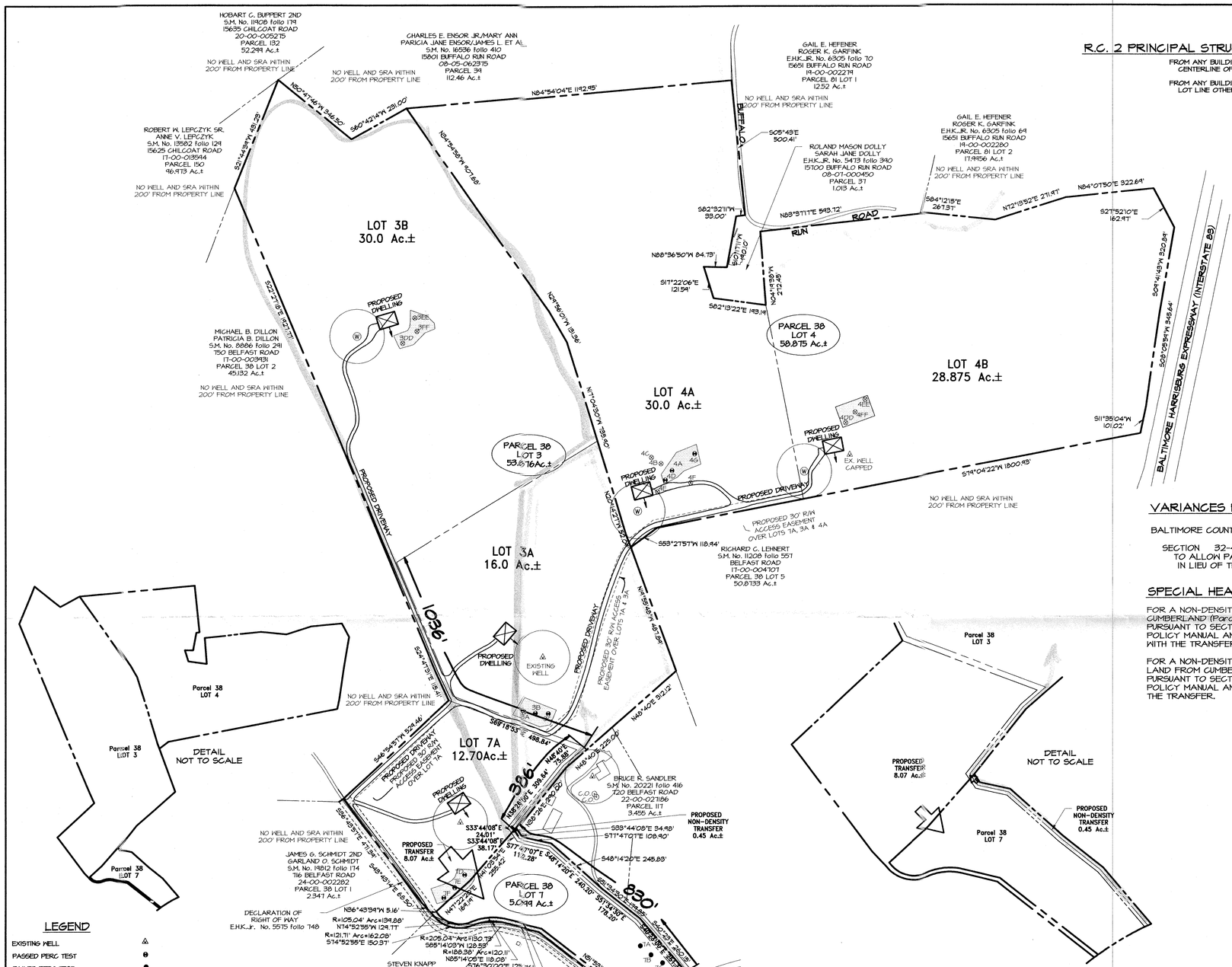
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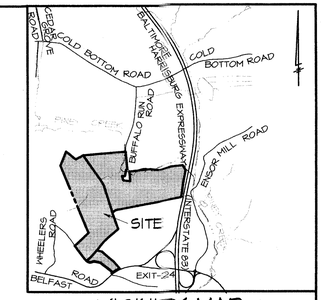
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CBA Pet. Ex. No 5



R.C. 2 PRINCIPAL STRUCTURE OR DWELLING SETBACKS

FROM ANY BUILDING FACE TO; CENTERLINE OF ANY STREET	75'
FROM ANY BUILDING FACE TO; LOT LINE OTHER THAN A STREET LINE	35'



VICINITY MAP
1" = 2000'

GENERAL NOTES

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FOR A NON-DENSITY TRANSFER OF 0.45 ACRES, MORE OR LESS, OF RC-2 ZONED LAND FROM CUMBERLAND (Parcel 38 Lot 7) TO CUMBERLAND (Parcel 38 Lot 3) PURSUANT TO SECTIONS 1A00.4.b.(2) AND (3) OF THE ZONING COMMISSIONER'S POLICY MANUAL AND TO RECONFIGURE LOTS 7 AND 3 IN ACCORDANCE WITH THE TRANSFER.

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OWNER\DEVELOPER

WILLIAM G. CUMBERLAND
HOLLY CUMBERLAND
3550 CROSS CREEK LA
MALIBU, CALIFORNIA 90265-4926
310-456-2127

LEGEND

EXISTING WELL
PASSED PERC TEST
FAILED PERC TEST
EXISTING CLEANOUT
PROPOSED PERC TEST
PROPOSED WELL AREA
PROPOSED DWELLING
EXISTING BUILDING
SOIL LINE
WOODS LINE
EXISTING PAVING
PROPOSED PAVING
ZONING LINE
PROPERTY LINE
CONTOURS
SLOPES ≥ 25%

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES w/BASEMENT	STREETS & PARKING
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BkC2, MbC2	Moderate: slope	Moderate: slope	Severe: slope
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McD2, MbD3 MbD2, MdE McD3	Severe: slope	Severe: slope	Severe: slope
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MhE, EgD	Severe: slope *	Severe: slope	Severe: slope
MgC	Slight to moderate: slope	Moderate: stoniness; slope	Severe: slope

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REVISION	DATE
REVISION per Zoning Hearing	11/18/08
REVISION per Human & Rohde, FBE, Wetland Delineation and springs location	01/04/08
REVISION per owner request	10/19/07
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REVISION per Rob Powell	09/12/07
REVISION per Rob Powell	08/10/07

EXIBIT PLAT

CUMBERLAND PROPERTIES

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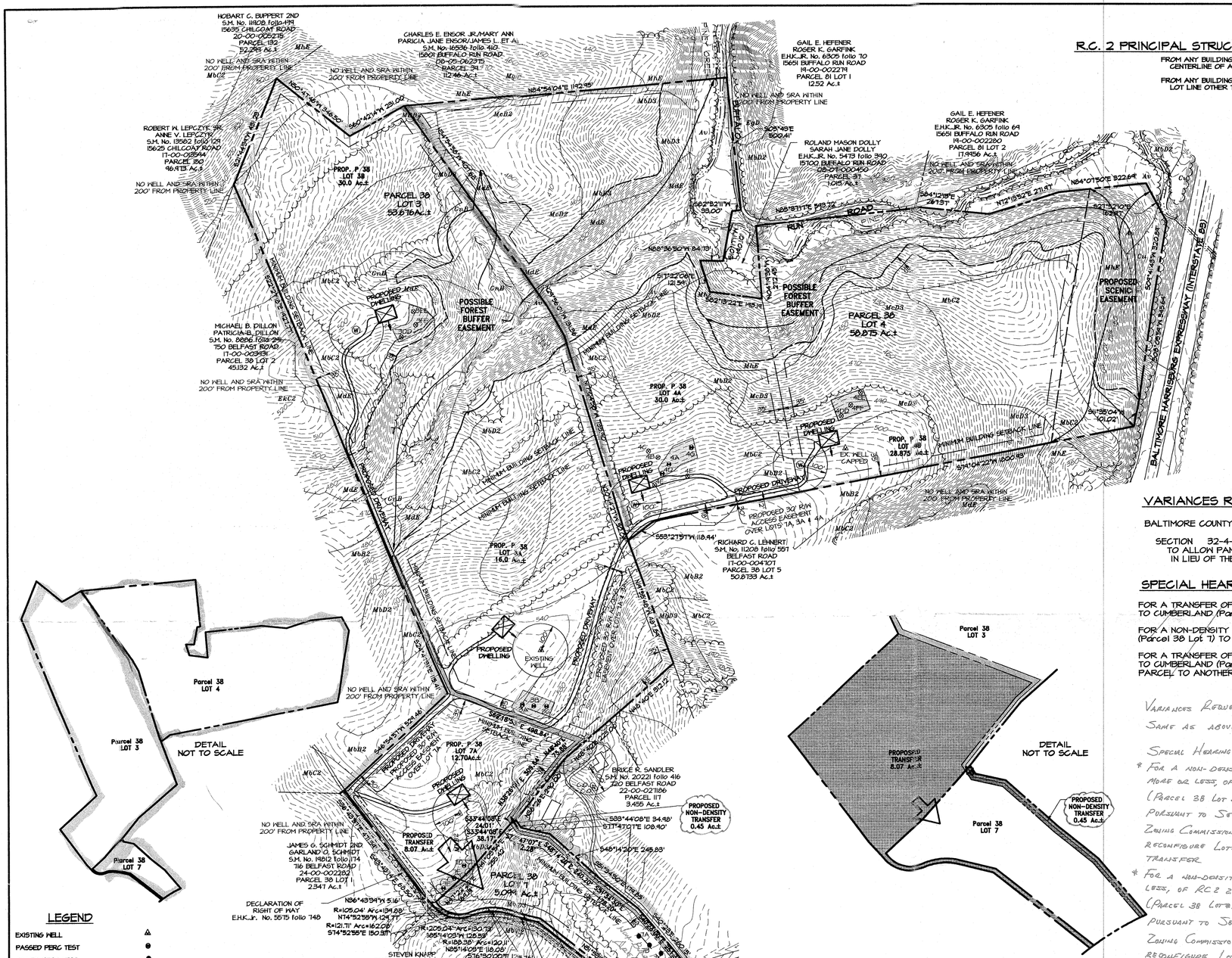
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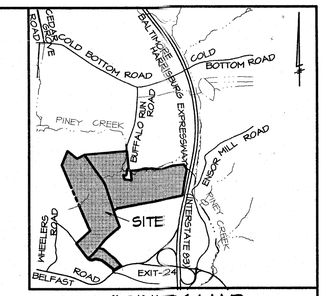
PETITIONERS EXHIBIT #6

Case No.: 08-211-SPHA BELFAST ROAD

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	REVISED RED LINED SITE PLAN 11/05/07	Collectively - Photograph 1A thru 1G - Taken by Ms Kropp
No. 2	TAX MAP	ZONING MAP
No. 3	DEEDS FOR SUBJECT PROPERTIES 3A - LOT 40 - 58,875 ± S.F. 3B - LOT 3 - 53,676 ± S.F.	3A - Photo - to NE 3C - stream 3B - Photo - to SE 3D - stream
No. 4	My Neighborhood MAP defining neighborhood	
No. 5	PROPOSED SUBDIVISION PLAT DENOTING LOTS.	
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		





VICINITY MAP
1" = 2000'

VARIANCES REQUESTED

BALTIMORE COUNTY CODE

SECTION 32-4-409 (a) (2)
TO ALLOW PANHANDLE STRIPS OF 1223' (LOT 3A) AND 2274' (LOT 3B) IN LIEU OF THE MAXIMUM PERMITTED 1,000'

SPECIAL HEARING REQUESTED

FOR A TRANSFER OF 7.710 ACRES MORE OR LESS FROM CUMBERLAND (Parcel 38 Lot 3) TO CUMBERLAND (Parcel 38 Lot 7) 8.07

FOR A NON-DENSITY TRANSFER OF 0.485 ACRES MORE OR LESS FROM CUMBERLAND (Parcel 38 Lot 7) TO CUMBERLAND (Parcel 38 Lot 3)

FOR A TRANSFER OF 1 DENSITY RIGHT FROM CUBBERLAND (Parcel 38 Lot 7) TO CUMBERLAND (Parcel 38 Lot 7A) RE-ALLOCATION OF DENSITY FROM ONE PARCEL TO ANOTHER

GENERAL NOTES

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3. THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No. 13.
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11. A DWELLING WILL NOT BE PLACED ON THE 5.989 ACRE PORTION OF LOT 7 AS PER THE OFFICE OF PLANNING'S COMMENT DATED DECEMBER 6, 2007 (REVISED). OK NOT DIRECTED
12. ACCESSORY STRUCTURES MUST COMPLY WITH SEC. 400 BCZR

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OWNER\DEVELOPER

WILLIAM G. CUMBERLAND
HOLLY CUMBERLAND
3550 CROSS CREEK LA
MALIBU, CALIFORNIA 90265-6926
310-456-2127

Variances Requested:

Same as above

Special Hearing Requested:

* For a non-density transfer of 8.07 acres, more or less, of RC 2 zoned land from Cumberland (Parcel 38 Lot 3) to Cumberland (Parcel 38 Lot 7) pursuant to Sections 1A00.4.b.(2) and (3) of the Zoning Commissioner's Policy Manual and to reconfigure Lots 3 and 7 in accordance with the transfer.
* For a non-density transfer of 0.45 acres, more or less, of RC 2 zoned land from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 3) pursuant to Sections 1A00.4.b.(2) and (3) of the Zoning Commissioner's Policy Manual and to reconfigure Lots 7 and 3 in accordance with the transfer.

SOIL TYPES & LIMITATIONS

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STATE OF MARYLAND — STEVEN EDWIN OTZEL — No. 871 — REGISTERED PROPERTY LINE SURVEYOR — 11/26/07

PLAN TO ACCOMPANY A VARIANCE AND A SPECIAL HEARING REQUEST

CUMBERLAND PROPERTIES

BELFAST ROAD
"SUBDIVISION OF THE PROPERTY OF LINDA C. GREEN"
Deed Ref: E.H.K.,Jr. No. 5625 folio 676
Tax Account No.: 17-00-006142
Zoned R.C.2 GIS Tile 28 A3, 28 A2
Tax Map 28; Grid 19; Parcel 38 Lot 3
"SUBDIVISION OF THE PROPERTY OF LINDA C. GREEN"
Deed Ref: E.H.K.,Jr. No. 5625 folio 674
Tax Account No.: 17-00-006139
Zoned R.C.2 GIS Tile 28 A3, 28 A2
Tax Map 28; Grid 19; Parcel 38 Lot 4
"SUBDIVISION OF THE PROPERTY OF LINDA C. GREEN"
Deed Ref: E.H.K.,Jr. No. 5625 folio 674
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Zoned R.C.2 GIS Tile 28 A3, 28 A2
Tax Map 28; Grid 19; Parcel 38 Lot 7
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=200' Date: AUGUST 06, 2007

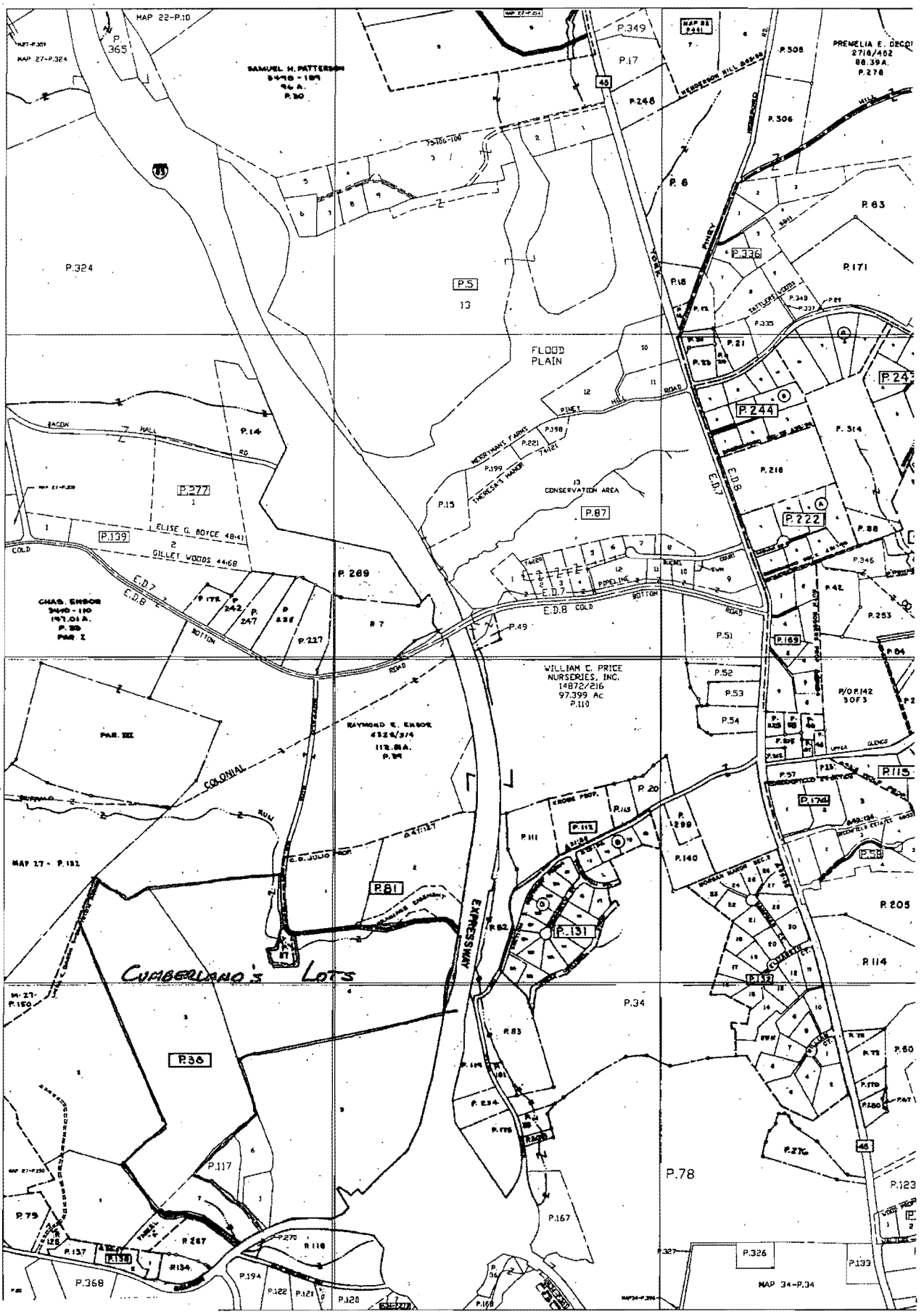
REVISION	DATE
REVISION per owner request	10/19/07
REVISION per request of Molly Lippincott	10/09/07
REVISION per Rob Powell	09/12/07
REVISION per Rob Powell	09/10/07

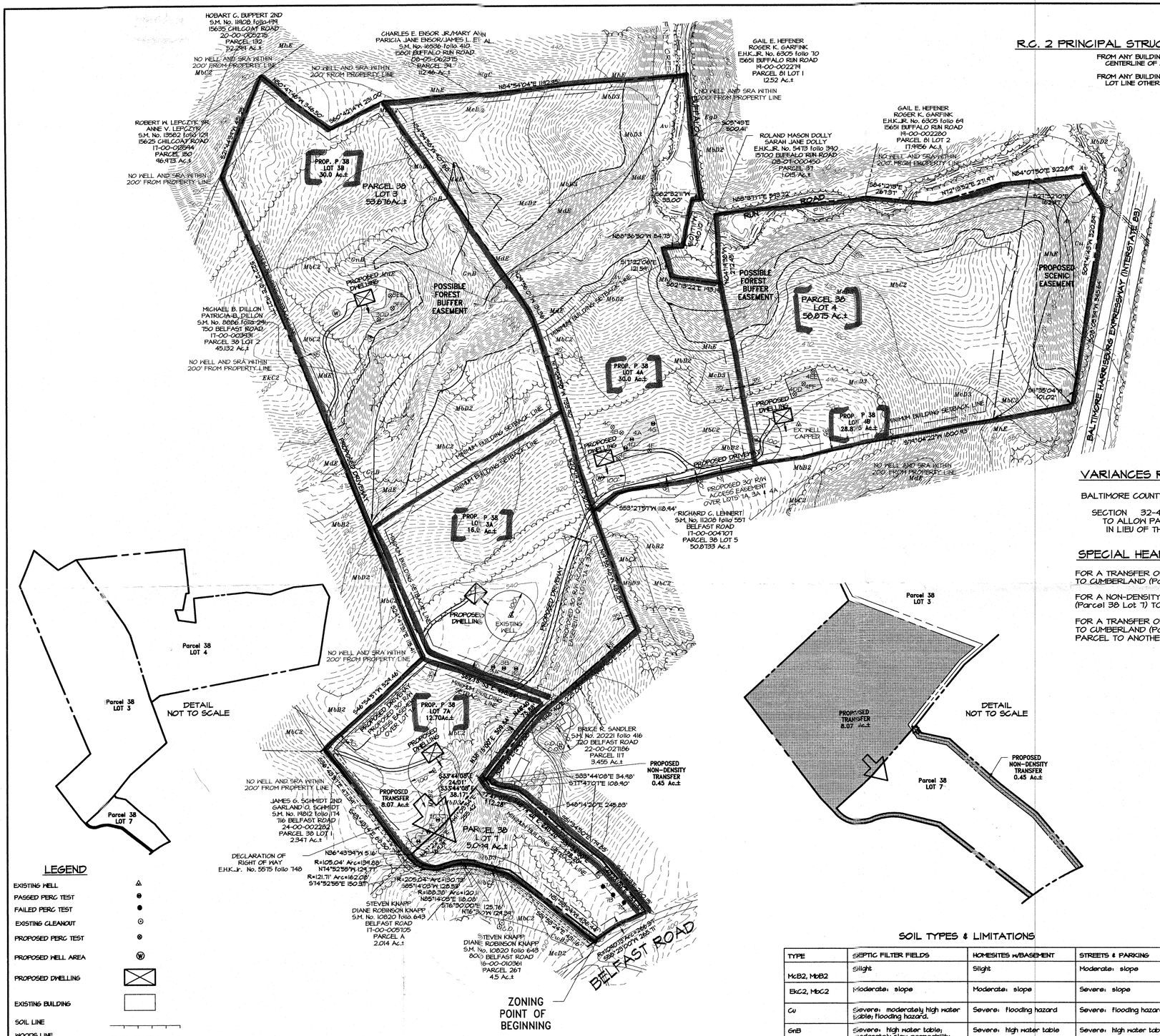
COMPUTED: DRAWN: C.L.M. CHECKED: FILE:

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

PETITIONER'S EXHIBIT NO. 1

212370.2mN
427457.5mE

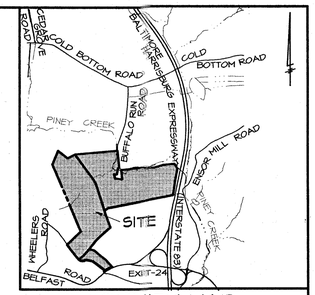

MAP 22-P.10
P.365
MAP 27-P.324
SAMUEL H. PATTERSON
3448 - 189
96 A.
P.30
P.324
P.5
13
P.349
P.17
P.246
P.8
P.306
P.308
PREMELIA E. DECOT
2718/462
88.39A.
P.278
P.63
P.336
P.171
P.18
P.21
P.244
P.314
P.218
P.222
P.88
P.345
P.42
P.253
P.169
P.84
P.14
P.277
P.139
ELISE G. BOYCE 48-41
2
GILLET WOODS 44168
P.289
CHAS. ENSOR
3440 - 110
197.01 A.
P.30
PAR. I
P.7
P.49
P.51
P.52
P.53
P.54
P.115
P.1744
P.58
P.205
P.114
P.20
P.140
P.111
P.81
P.82
P.131
P.34
P.83
P.234
P.36
P.117
P.79
P.78
P.167
P.123
P.326
P.133
MAP 34-P.34
P.368
P.194
P.122
P.121
P.120
P.116
P.134
P.137
P.60
P.270
P.87
P.15
P.199
P.398
P.221
P.7
P.242
P.247
P.227
P.49
P.139
P.277
P.198
P.199
P.221
P.398
P.15
P.87
P.345
P.169



R.C. 2 PRINCIPAL STRUCTURE OR DWELLING SETBACKS

FROM ANY BUILDING FACE TO, CENTERLINE OF ANY STREET	75'
FROM ANY BUILDING FACE TO, LOT LINE OTHER THAN A STREET LINE	35'

PLAT REF.
E.H.K.JR. 38 FOLIO 139



VICINITY MAP
1" = 2000'

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM A DEED
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILES 28A3, 28A2
3. THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No. 13.
4. CENSUS TRACT 408200 REGIONAL PLANNING DISTRICT 304
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT: ELEMENTARY - SPARKS E.S., MIDDLE - HEREFORD M.S., HIGH - HEREFORD H.S.
   A.D.C. MAP & GRID 12 D5
5. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
6. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PRIVATE WELLS AND SEPTIC SYSTEMS.
7. ACCESS TO THE PROPOSED DWELLINGS ON LOTS 3A, 3B, 4A AND 4B WILL UTILIZED THE EXISTING DRIVEWAY, IF ACCESS VIA THAT TRIVEWAY IS NOT POSSIBLE AN ADDITIONAL DRIVEWAY WILL BE ADDED TO PROVIDE ACCESS .
8. ACCESS TO LOTS 3B, 4A AND 4C WILL BE PROVIDED VIA A RECIPROCAL ACCESS EASEMENT.
9. THE SUBJECT PROPERTY IS IN THE NATIONAL REGISTER DISTRICT.
10. THE NORTH EAST SIDE OF THE SUBJECT PROPERTY ALONG THE PINEY CREEK IS WITHIN A 100 YEAR FLOOD PLAIN.

VARIANCES REQUESTED

BALTIMORE COUNTY CODE

SECTION 32-4-409 (a) (2)
TO ALLOW PANHANDLE STRIPS OF 1223' (LOT 3A) AND 2274' (LOT 3B)
IN LIEU OF THE MAXIMUM PERMITTED 1,000'

SPECIAL HEARING REQUESTED

FOR A TRANSFER OF 7.70 ACRES MORE OR LESS FROM CUMBERLAND (Parcel 38 Lot 3) TO CUMBERLAND (Parcel 38 Lot 7)

FOR A NON-DENSITY TRANSFER OF 0.45 ACRES MORE OR LESS FROM CUMBERLAND (Parcel 38 Lot 7) TO CUMBERLAND (Parcel 38 Lot 3)

FOR A TRANSFER OF 1 DENSITY RIGHT FROM CUBBERLAND (Parcel 38 Lot 7) TO CUMBERLAND (Parcel 38 Lot 7A) REALLOCATION OF DENSITY FROM ONE PARCEL TO ANOTHER

DENSITY CALCULATIONS

GROSS AREA LOT 3	53.676 Ac.±	
LOTS PERMITTED LOT 3	2-100 Ac.± = 2 Lots	
LOTS PROPOSED	2	
GROSS AREA LOT 4	50.875 Ac.±	
LOTS PERMITTED	2-100 Ac.± = 2 Lots	
LOTS PROPOSED	2	
GROSS AREA LOT 7	5.099 Ac.±	
LOTS PERMITTED	2-100 Ac.± = 2 Lots	
LOTS PROPOSED	1	

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
McB2, MdB2	Slight	Slight	Moderate: slope
EkC2, MbC2	Moderate: slope	Moderate: slope	Severe: slope
Cu	Severe: moderately high water table; flooding hazard.	Severe: flooding hazard	Severe: flooding hazard
GnB	Severe: high water table; moderately slow permeability.	Severe: high water table	Severe: high water table
Av	Severe: high water table; flooding hazard.*	Severe: high water table; flooding hazard.	Severe: high water table; flooding hazard.
McD2, MdD3 MbD2, MdE McD3	Severe: slope	Severe: slope	Severe: slope
GnB2	Slight *	Slight	Moderate: slope
MnE, EgD	Severe: slope *	Severe: slope	Severe: slope
MgC	Slight to moderate: slope	Moderate: stoniness; slope	Severe: slope

* Strong possibility of polluting nearby springs, wells, ponds, streams, or other surface or underground water sources.

OWNER\DEVELOPER

WILLIAM G. CUMBERLAND
HOLLY CUMBERLAND
3550 CROSS CREEK LA
MALIBU, CALIFORNIA 90265-4926
310-456-2127

PLAN SHOWING PROPOSED LOTS

PLAN TO ACCOMPANY A VARIANCE
AND A SPECIAL HEARING REQUEST

CUMBERLAND PROPERTIES

BELFAST ROAD
"SUBDIVISION OF THE PROPERTY OF LINDA C. GREEN"
Deed Ref: E.H.K.,Jr. No. 5625 folio 676
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Tax Map 28; Grid 19; Parcel 38 Lot 7
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND
STEVEN EDWIN DEAN
No. 21351
REGISTERED PROPERTY LINE SURVEYOR
11/05/07

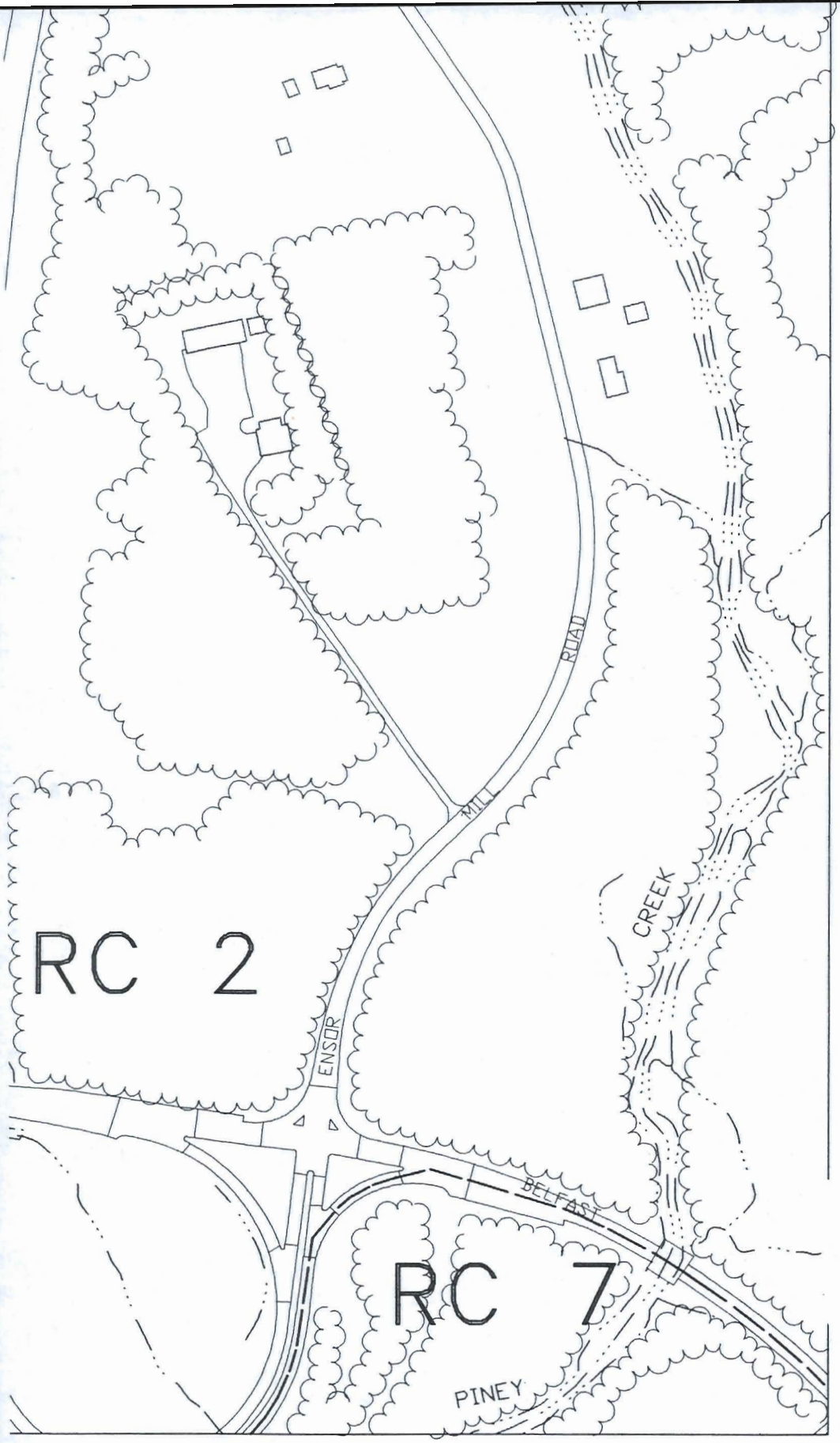
Scale: 1"=200' Date: AUGUST 06, 2007

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

REVISION	DATE
REVISION per owner request	10/19/07
REVISION per request of Wally Lippincott	10/09/07
REVISION per Rob Powell	09/12/07
REVISION per Rob Powell	09/10/07
REVISION	DATE

COMPUTED: | DRAWN: C.L.M. | CHECKED: | FILE: X:\Cum

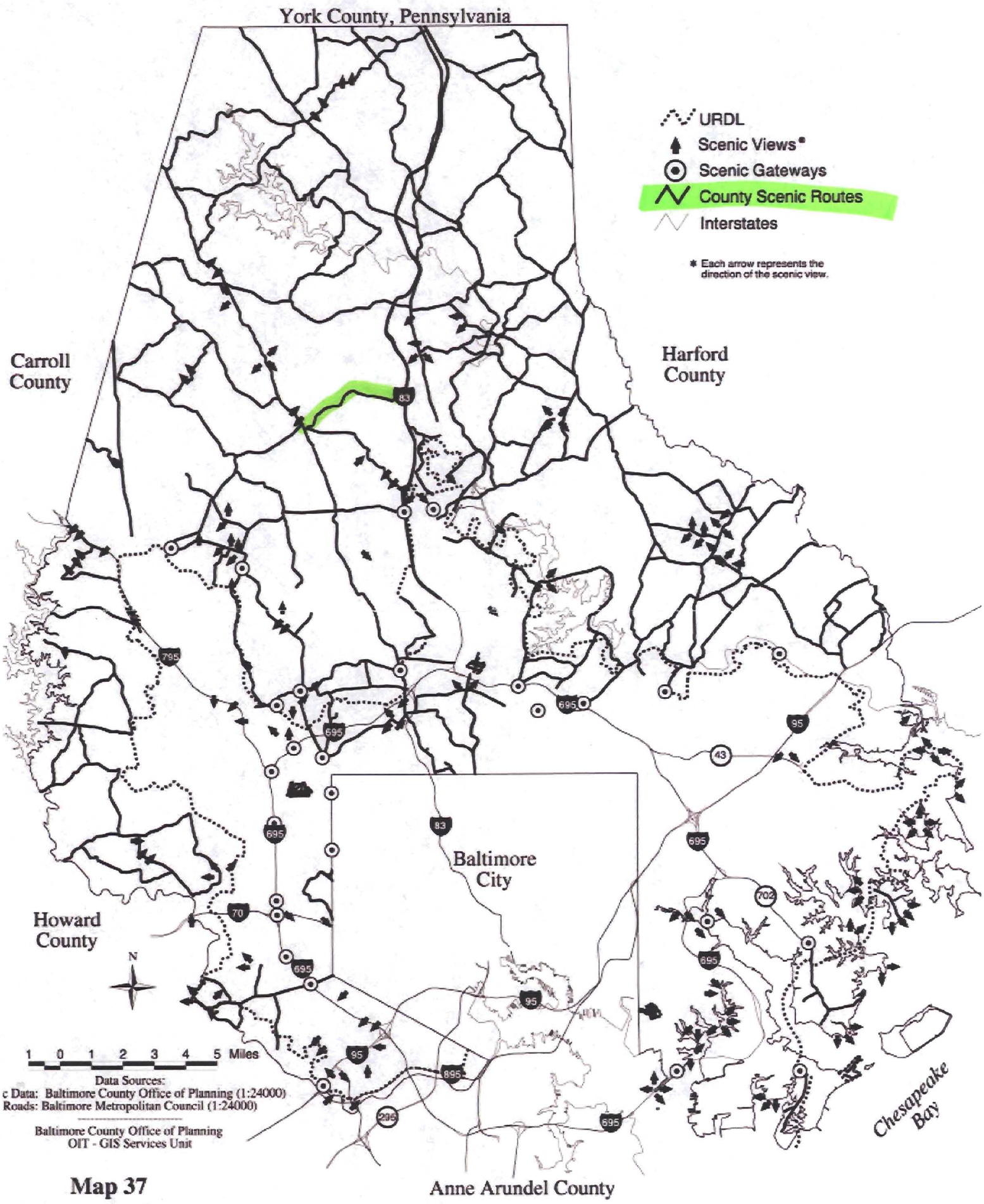
PETITIONER'S
EXHIBIT NO. 5



PROTESTANT'S

EXHIBIT NO. 2

SCALE: 1" = 200'



Map 37
Scenic Resources

ABA PET. EX. NO 4

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF:	:	CASE NO. 08-211-SPHA
WILLIAM AND HOLLY CUMBERLAND	:	

Wednesday, November 19, 2008

Pursuant to Notice, the above-entitled hearing was held before the Baltimore County Board of Appeals, located at 105 West Chesapeake Avenue, Suite 203, Towson, Maryland, 21204, there being present on behalf of the respective parties:

MEMBERS OF THE BOARD:

EDWARD CRIZER, JR., CHAIRMAN
LAWRENCE STAHL
ROBERT WITT

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: 08-211-SPHA

Petitioner: HOLLY CUMBERLAND

Address or Location: 3550 CROSS CREEK LA, MALIBU CALIFORNIA 90265-4926

PLEASE FORWARD ADVERTISING BILL TO:

Name: HALLY CUMBERLAND

Address: 3550 CROSS CREEK LA. MALIBU CALIFORNIA 90265-4926

Telephone Number: 310-456-2127

Revised 7/11/05 - SCJ

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#08-211-SPHA
PETITIONER/DEVELOPER:
William G. & Holly Cumberland
DATE OF HEARING: January 10, 2008

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:
Belfast Road

(see page 2 for full size photo)

POSTED ON: 12/19/07

SIGNATURE OF SIGN POSTER

Bruce E. Doak

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

Department of Permits and Development Management

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

Baltimore County

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

November 27, 2007

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: 08-211-SPHA
Belfast Road
N/west side of Belfast Road, 70 feet north of the centerline of Old Belfast Road
8th Election District – 3rd Councilmanic District
Legal Owners: William G & Holly Cumberland

Special Hearing for a transfer of 8.07 acres more or less from Cumberland (Parcel 38 Lot 3) to Cumberland (Parcel 38 Lot 7). To allow a non-density transfer of 0.45 acres more or less from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 3). To allow a transfer of 1 density right from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 7A). Reallocation of density from one parcel to another. Variance to allow panhandle strips of 1,223 feet (Lot 3A) and 2,274 feet (Lot 3B) in lieu of the maximum permitted 1,000 feet.

Hearing: Thursday, January 10, 2008 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Mr. & Mrs. Cumberland, 3550 Cross Creek Lane, Malibu CA 90265-4926
Gerhold, Cross & Etzel, 320 E. Towsontown Blvd., #100, Towson 21286

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WED., DECEMBER 26, 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
Thursday, December 27, 2007 Issue - Jeffersonian

Please forward billing to:
Holly Cumberland 310-456-2127
3550 Cross Creek Lane
Malibu, California 90265-4926

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: 08-211-SPHA
Belfast Road
N/west side of Belfast Road, 70 feet north of the centerline of Old Belfast Road
8th Election District – 3rd Councilmanic District
Legal Owners: William G & Holly Cumberland

Special Hearing for a transfer of 8.07 acres more or less from Cumberland (Parcel 38 Lot 3) to Cumberland (Parcel 38 Lot 7). To allow a non-density transfer of 0.45 acres more or less from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 3). To allow a transfer of 1 density right from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 7A). Reallocation of density from one parcel to another. Variance to allow panhandle strips of 1,223 feet (Lot A) and 2,274 feet (Lot 3B) in lieu of the maximum permitted 1,000 feet.

Hearing: Thursday, January 10, 2008 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.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 6, 2007

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

RECEIVED
JAN 10 2008
BY:

SUBJECT: Belfast Road

INFORMATION:

Item Number: 8-211

Petitioner: Holly Cumberland

Zoning: RC 2

Requested Action: **Variance and Special Hearing**

The petitioner requests a variance from Section 32-4-409 (e) (2) of the Baltimore County Code to allow panhandle strips of 1,223 and 2,274 feet in lieu of the maximum permitted 1,000 ft. A special hearing for a transfer of 8.07 acres more or less from Cumberland (Parcel 38 Lot 3) to Cumberland (Parcel 38 Lot 7), for a non-density transfer of 0.45 acres more or less from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 3) and for a transfer of 1 density right from Cumberland (Parcel 38 Lot 7) to Cumberland (Parcel 38 Lot 7A), reallocation of density from one parcel to another.

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose the petitioner's request for Variance and Special Hearing. It is this office's understanding that this proposal will come before the county at a later time for major subdivision review. At that time technical comments will be made by county review agencies.

Nonetheless, this office requests that the Zoning Commissioner place a condition on the approval of the special hearing and variance that no development shall occur on the parcel described as Parcel 38 Lot 7 5.099 ac± on the plan accompanying the subject request.

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

Reviewed by: Curtis N Murray

Division Chief: Lynn Lanham
AFK/LL: CM

Post-it® Fax Note	7671	Date	# of pages ▶
To Bill Wiseman		From Vinnie	
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

W:\DEVREV\ZAC\8-211.doc

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
	Belfast Road; NW/S Belfast Road, 70' N c/line of Old Belfast Road	*	ZONING COMMISSIONER
	8th Election & 3rd Councilmanic Districts	*	FOR
	Legal Owner(s): William & Holly Cumberland Petitioner(s)	*	BALTIMORE COUNTY
		*	08-211-SPHA

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of November, 2007, a copy of the foregoing Entry of Appearance was mailed Gerhold, Cross & Etzel, Ltd, 320 E. Towsontown Blvd, Suite 100, Towson, MD 21286 , Representative for Petitioner(s).

RECEIVED
NOV 21 2007
Per

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

BALTIMORE COUNTY
MARYLAND

May 15, 2008

JAMES T. SMITH, JR.
County Executive

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

David Karceski
Christopher Mudd
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

Dear Messrs. Karceski & Mudd:

RE: Case: 08-211-SPHA, Belfast Road

Please be advised that an appeal of the above-referenced case was filed in this office on April 11, 2008 by People's Counsel of Baltimore County. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Bruce Doak, GC & E, 320 E. Towsontown Blvd., Ste. 100, Towson 21204
Holly & William Cumberland, 3550 Cross Creek Lane, Malibu CA 90265-4926
Dianne Knapp, 800 Belfast Road, Sparks 21152
Dick Lehnert, 707 Old Belfast Road, Sparks 21152
Philip Kotschenreuther, 200 South Main Street, Bel Air 21014
Dr. Michael Dillon & Eileen Doherty, 750 Belfast Road, Sparks 21152
Bruce Sandler, 720 Belfast Road, Sparks 21152
Walter Holland, 733 Old Belfast Road, Sparks 21152
George Rew, 17509 Prettyboy Dam Road, Parkton 21120

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

April 11, 2008

RECEIVED
APR 11 2008
Per

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

Re: PETITION FOR SPECIAL HEARING & VARIANCE
NW/S of Belfast Road, 70' N of c/line Old Belfast Road
(Belfast Road)
8th Election District; 3rd Council District
William Cumberland, et ux. - Petitioners
Case No.: 08-211-SPHA

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated March 25, 2008 by the Baltimore County Zoning Commissioner.

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

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: David H.Karceski, Esquire
Christopher D. Mudd, Esquire
Philip Kotschenreuther, Esquire

APPEAL

Petition for Special Hearing & Variance
Belfast Road
N/side of Belfast Rd., 70 ft. n/of c/line of Old Belfast Road
8th Election District – 3rd Councilmanic District
Legal Owners: William & Holly Cumberland

Case No.: 08-211-SPHA

Petition for Special Hearing & Variance (November 5, 2007)

Zoning Description of Property

Notice of Zoning Hearing (November 27, 2007)

Certification of Publication (The Jeffersonian – December 27, 2007)

Certificate of Posting (December 19, 2007) by Bruce Doak

Entry of Appearance by People's Counsel (November 21, 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. Revised Red Lined Site Plan
2. Tax map
3. Deeds for subsequent properties
4. My Neighborhood Map
5. Proposed Subdivision Plat

Protestants' Exhibits:
1. Collective Photos (A – G)
2. Zoning Map
3. Photos (A & B)

Miscellaneous (Not Marked as Exhibit)

Zoning Commissioner's Order (GRANTED – March 25, 2008)

Notice of Appeal received on April 11, 2008 by People's Counsel

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
Bruce Doak, GC & E, 320 E. Towsontown Blvd., Ste. 100, Towson 21204
Holly & William Cumberland, 3550 Cross Creek Lane, Malibu CA 90265-4926
Dianne Knapp, 800 Belfast Road, Sparks 21152
Dick Lehnert, 707 Old Belfast Road, Sparks 21152
Philip Kotschenreuther, 200 South Main Street, Bel Air 21014
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Bruce Sandler, 720 Belfast Road, Sparks 21152
Walter Holland, 733 Old Belfast Road, Sparks 21152
George Rew, 17509 Prettyboy Dam Road, Parkton 21120

date sent May 15, 2008, klm

Case No.: 08-211-SPHA BELFAST ROAD

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	REVISED RED LINED SITE PLAN 11/05/07	Collectively - Photograph IA thru IG - Taken by Ms Knipp
No. 2	TAX MAP	ZONING MAP
No. 3	DEEDS FOR SUBJECT PROPERTIES 3A - LOT 2 - 58,875 ± SQ FT 3B - LOT 3 - 53,676 ± SQ FT	3A - Photo - to NE 3C - stream 3B - Photo - to SE 3D - stream
No. 4	My Neighborhood MAP defining neighborhood	
No. 5	PROPOSED SUBDIVISION PLAT DENOTING Lots.	
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

212370.2mN
427457.5mE

22

212369.5mN
432944.0mE

636

633

27

29

630

627

624

890-624

MAP NO. 28

PETITIONER'S

EXHIBIT NO. 2

THESE MAPS ARE PROTECTED BY COPYRIGHT. THEY MAY NOT BE COPIED OR REPRODUCED IN ANY FORM INCLUDING ELECTRONIC MEANS SUCH AS: DIGITIZING, SCANNING, VECTORIZING, OR IMAGE PROCESSING, OR BY ANY SYSTEM NOW KNOWN OR TO BE INVENTED WITHOUT PERMISSION IN WRITING FROM THE MARYLAND DEPARTMENT OF PLANNING.

SCALE IN FEET

600 0 600 1200 1800

34

MARYLAND DEPARTMENT OF PLANNING
PROPERTY MAPPING SECTION

The information shown on this map has been compiled from deed descriptions and plats and is not an actual survey. It should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning, Property Mapping Section, Room 1141, 301 W. Preston St., Baltimore, MD 21201-2365.

SCALE 1"=600' (RF 1:7200)

REVISED TO:	DATE	BY	USER
	JUN '06	RWB	

LAST P. NO.	QUARTER-QUADRANGLE	DATE OF PHOTO	BHA GRID

PROPERTY LINE
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE
CONTIGUOUS OWNERSHIP
PARCEL NUMBERS/MAPS - PLATS (ASSIGNED TO IDENTIFY OWNERSHIP, MAY BE PURCHASED BY A MAP NUMBER)

MDP Maryland Department of Planning

893 896 899 905 908

208710.8mN
432944.0mE

BALTIMORE COUNTY,
MARYLAND

T-2
THE TITLE GUARANTEE COMPANY
(Individual Form)

LIBER 5625 PAGE 674

App. H-89568

This Deed, Made this 20th day of APRIL, in the year one thousand nine hundred and seventy - six, by and between LINDA C. GREEN, party of the first part, Grantor; and HOLLY CUMBERLAND, party of the second part, Grantee.

APR 21-76 22C037A ***837.00
APR 21-76 22C037C ***330.00
APR 21-76 22C036C ***500.00
APR 21-76 22C035C *****7.00

Witnesseth: that in consideration of the sum of Five Dollars, and other valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant, convey, and assign unto the said Grantee, her heirs, personal representatives and assigns, in fee simple, all ——— those three ——— lot(s) of ground situate in the Eighth Election District of Baltimore County ——— in the State of Maryland, and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot No. 4, containing 58.875 acres, more or less; Lot No. 6, containing 5.821 acres, more or less; and Lot No. 7, containing 5.099 acres, more or less, all as shown on Plat entitled "Subdivision of the Property of Linda C. Green", which plat is recorded among the Land Records of Baltimore County in Plat Book EHK,JR No. 38, folio 139.

FOR TITLE to the within Grantor, see the following:

DEED dated December 22, 1969 and recorded among the Land Records of Baltimore County in Liber OTG No. 5061, folio 508, from G.R.B., Inc. to Linda C. Kelley, now known as Linda C. Green.

DEED dated June 18, 1973 and recorded among the Land Records of Baltimore County in Liber EHK,JR No. 5368, folio 393, from Charles W. Held, Jr., et al, Trustees, to Linda Cooper Green.

DEED dated January 25, 1974 and recorded among the Land Records of Baltimore County in Liber EHK,JR No. 5422, folio 759, from John C. Evelius, Personal Representative, to Linda C. Green.

SUBJECT to and with the benefits of certain Declaration of Right of Way dated October 14, 1975 and recorded among the Land Records of Baltimore County in Liber EHK,JR No. 5575, folio 748 by and between the within Grantor and Isadore Lee Finkelstein and wife.

SUBJECT ALSO to and with the benefits of the roads, easements, rights, reservations, etc. shown on the above referred to plat entitled "Subdivision of the Property of Linda C. Green" recorded among the Land Records of Baltimore County in Plat Book EHK,JR No. 38, folio 139.

3182 15 APR 21 1500.00 MBC

IN CIRCUIT COURT (Land Records) BOOK CE 82-5625, PG 674, Filed: 04/21/1976, Time: 15:03:00

PETITIONER'S

EXHIBIT NO. 3A & B

LOT 3

Y-2
THE TITLE GUARANTEE COMPANY
(Individual Form)

App. H- 89568

LIBER 5625 PAGE 676

This Deed, Made this 20th day of APRIL, in the year one thousand nine hundred and seventy - six, by and between LINDA C. GREEN, party of the first part, Grantor; and WILLIAM G. CUMBERLAND, party of the second part, Grantee.

APR 21-76 228040 ***837.00
APR 21-76 228040 ***330.00
APR 21-76 228040 ***500.00
APR 21-76 228040 *****7.50

Witnesseth: that in consideration of the sum of Five Dollars, and other valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant, convey, and assign unto the said Grantee, his heirs, personal representatives and assigns, in fee simple, all ——

——— that ——— lot(s) of ground situate in the Eighth Election District of Baltimore County ——— in the State of Maryland, and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot No. 3, containing 53.676 acres, more or less, as shown on Plat entitled "Subdivision of the Property of Linda C. Green", which plat is recorded among the Land Records of Baltimore County in Plat Book EHK,JR No. 38, folio 139.

FOR TITLE to the within Grantor, see the following:

DEED dated December 22, 1969 and recorded among the Land Records of Baltimore County in Liber OTG No. 5061, folio 508, from G.R.B., Inc. to Linda C. Kelley, now known as Linda C. Green.

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SUBJECT to and with the benefits of certain Declaration of Right of Way dated October 14, 1975 and recorded among the Land Records of Baltimore County in Liber EHK,JR No. 5575, folio 748, by and between the within Grantor and Isadore Lee Finkelstein and wife.

SUBJECT ALSO to and with the benefits of the roads, easements, rights, reservations, etc. shown on the above referred to plat entitled "Subdivision of the Property of Linda C. Green", recorded among the Land Records of Baltimore County in Plat Book EHKJR No. 38, folio 139.

MB2 1 64APR 21 1500.00 MEC

Petitioner's
3B

T-2

THE TITLE GUARANTEE COMPANY

(Individual Form)

App. H- 89568

LIBER 5625 PAGE 676

This Deed, Made this 20th day of APRIL, in the year one thousand nine hundred and seventy - six, by and between LINDA C. GREEN, party of the first part, Grantor; and WILLIAM C. CUMBERLAND, party of the second part, Grantee.

APR 21-76 Z290[illegible] ***837.00
APR 21-76 Z290[illegible] ***330.00
APR 21-76 Z290[illegible] ***500.00
APR 21-76 Z290[illegible] *****7.00

Witnesseth: that in consideration of the sum of Five Dollars, and other valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant, convey, and assign unto the said Grantee, his heirs, personal representatives and assigns, in fee simple, all ——— that ——— lot(s) of ground situate in the Eighth Election District of Baltimore County ——— in the State of Maryland, and described as follows, that is to say:

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DEED dated January 25, 1974 and recorded among the Land Records of Baltimore County in Liber EHK,JR No. 5422, folio 759, from John C. Evelius, Personal Representative, to Linda C. Green.

SUBJECT to and with the benefits of certain Declaration of Right of Way dated October 14, 1975 and recorded among the Land Records of Baltimore County in Liber EHK,JR No. 5575, folio 748, by and between the within Grantor and Isadore Lee Finkelstein and wife.

SUBJECT ALSO to and with the benefits of the roads, easements, rights, reservations, etc. shown on the above referred to plat entitled "Subdivision of the Property of Linda C. Green", recorded among the Land Records of Baltimore County in Plat Book EHKJR No. 38, folio 139.

MD 21 6 APR 21 1500.00 MBL

CBA Pet Ex. #7

T-2
THE TITLE GUARANTEE COMPANY
(Individual Form)

LIBER 5625 PAGE 674

App. H-89568

This Deed, Made this 20th day of APRIL, in the year one thousand nine hundred and seventy - six, by and between LINDA C. GREEN, party of the first part, Grantor; and HOLLY CUMBERLAND, party of the second part, Grantee.

TR 21-76 Z280378 ***837.00
TR 21-76 Z280379 ***330.00
TR 21-76 Z280380 ***500.00
TR 21-76 Z280381 *****7.00

Witnesseth: that in consideration of the sum of Five Dollars, and other valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant, convey, and assign unto the said Grantee, her heirs, personal representatives and assigns, in fee simple, all ——— those three ——— lot(s) of ground situate in the Eighth Election District of Baltimore County ——— in the State of Maryland, and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot No. 4, containing 58.875 acres, more or less; Lot No. 6, containing 5.821 acres, more or less; and Lot No. 7, containing 5.099 acres, more or less, all as shown on Plat entitled "Subdivision of the Property of Linda C. Green", which plat is recorded among the Land Records of Baltimore County in Plat Book EHK,JR No. 38, folio 139.

FOR TITLE to the within Grantor, see the following:

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DEED dated June 18, 1973 and recorded among the Land Records of Baltimore County in Liber EHK,JR No. 5368, folio 393, from Charles W. Held, Jr., et al, Trustees, to Linda Cooper Green.

DEED dated January 25, 1974 and recorded among the Land Records of Baltimore County in Liber EHK,JR No. 5422, folio 759, from John C. Evelius, Personal Representative, to Linda C. Green.

SUBJECT to and with the benefits of certain Declaration of Right of Way dated October 14, 1975 and recorded among the Land Records of Baltimore County in Liber EHK,JR No. 5575, folio 748 by and between the within Grantor and Isadore Lee Finkelstein and wife.

SUBJECT ALSO to and with the benefits of the roads, easements, rights, reservations, etc. shown on the above referred to plat entitled "Subdivision of the Property of Linda C. Green" recorded among the Land Records of Baltimore County in Plat Book EHK,JR No. 38, folio 139.

MAR 21 1500.00 MK

CBA PET. EX. NO. 8

BA CIRCUIT COURT (Land Records) [MSA CE 62-5480] EHK 5625, p. 0674. Printed 10/27/2008. Online 11/20/2006.

Together with the buildings and improvements thereupon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

To have and to hold the said described lot(s) of ground and premises, unto and to the use of the said Grantee, his heirs, personal representatives and assigns, in fee simple.

And the said Grantor covenants to warrant specially the property hereby granted and conveyed, and to execute such further assurances of said land as may be requisite.

Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

Witness the hand(s) and seal(s) of the said grantor(s):

WITNESS:

Doris M. Daniel
DORIS M. DANIEL

Linda C. Green [Seal]
LINDA C. GREEN

_____ [Seal]

State of Maryland, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 20th day of APRIL, 19 76, before me, a Notary Public of the State aforesaid, personally appeared

LINDA C. GREEN

known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, who signed the same in my presence, and acknowledged that she executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Doris M. Daniel
DORIS M. DANIEL Notary Public

My commission expires: July 1, 1978

DORIS M. DANIEL NOTARY PUBLIC BALTIMORE CO., MD.

Rec'd for record APR 21 1976 at 11:23 AM
Per Elmer H. Kahline, Jr. Clerk
Mail to CHESAPEAKE GUARANTEE COMPANY
Receipt No. 7200

BA CIRCUIT COURT (Land Records) [MSA CE 62-5460] EHK 5625, p. 0677. Printed 01/09/2026. Online 11/29/2006.

LIBER 5625 PAGE 675

Together with the buildings and improvements thereupon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

To have and to hold the said described lot(s) of ground and premises, unto and to the use of the said Grantee, her heirs, personal representatives and assigns, in fee simple.

And the said Grantor covenants to warrant specially the property hereby granted and conveyed, and to execute such further assurances of said land as may be requisite.

Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

Witness the hand(s) and seal(s) of the said grantor(s):

WITNESS:

Doris M. Daniel
DORIS M. DANIEL

Linda C. Green [Seal]
LINDA C. GREEN

[Seal]

State of Maryland, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 20th day of APRIL, 1976, before me, a Notary Public of the State aforesaid, personally appeared LINDA C. GREEN known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, who signed the same in my presence, and acknowledged that she executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Doris M. Daniel
DORIS M. DANIEL Notary Public
My commission expires: July 1, 1978

DORIS M. DANIEL NOTARY PUBLIC BALTIMORE CO., MD.

11:30 AM

Rec'd for record APR 21 1976 at
Per Elmer H. Kahline, Jr., Clerk
Mail to THE TITLE GUARANTEE COMPANY
Receipt No. $ 7.00

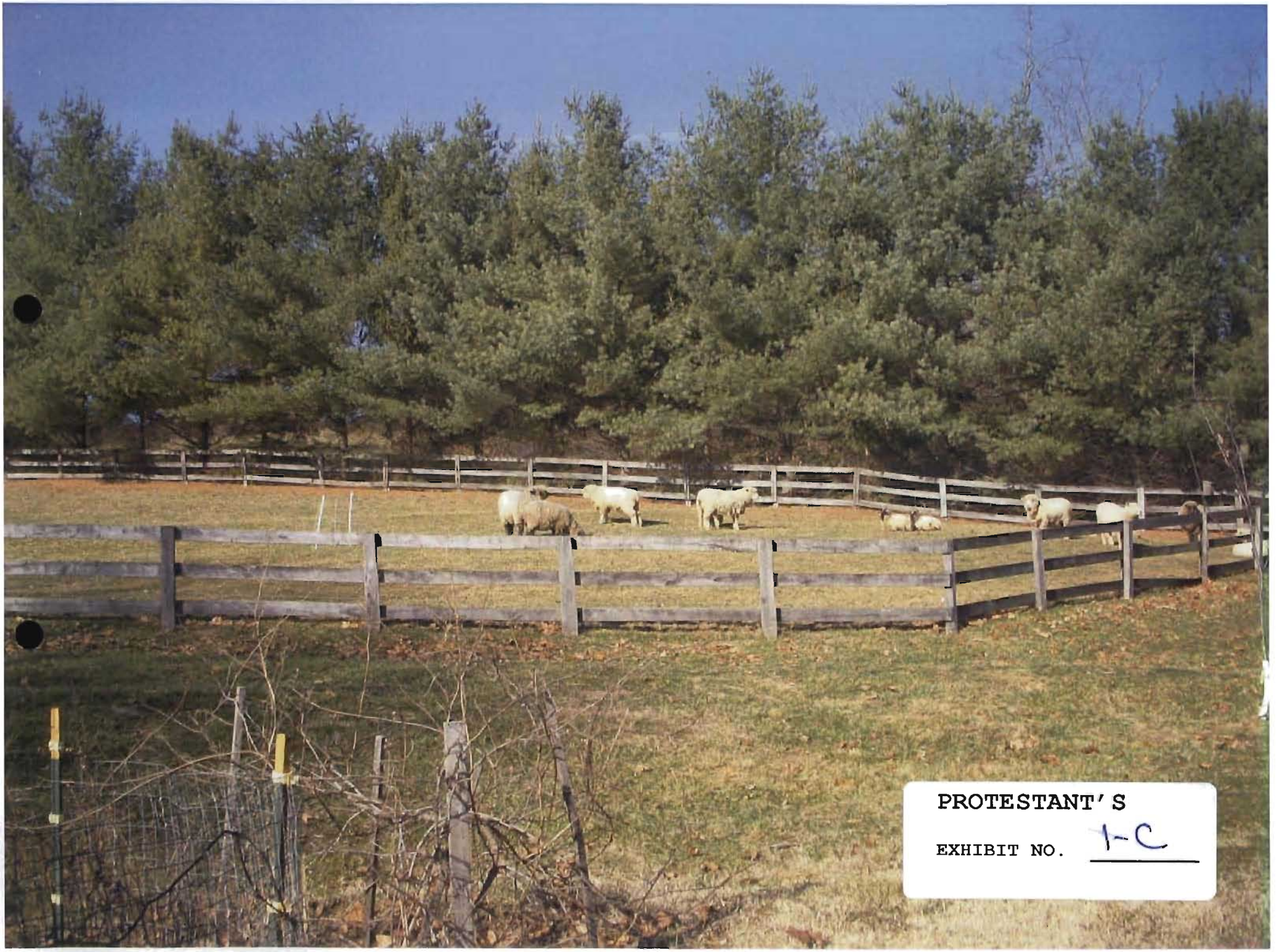


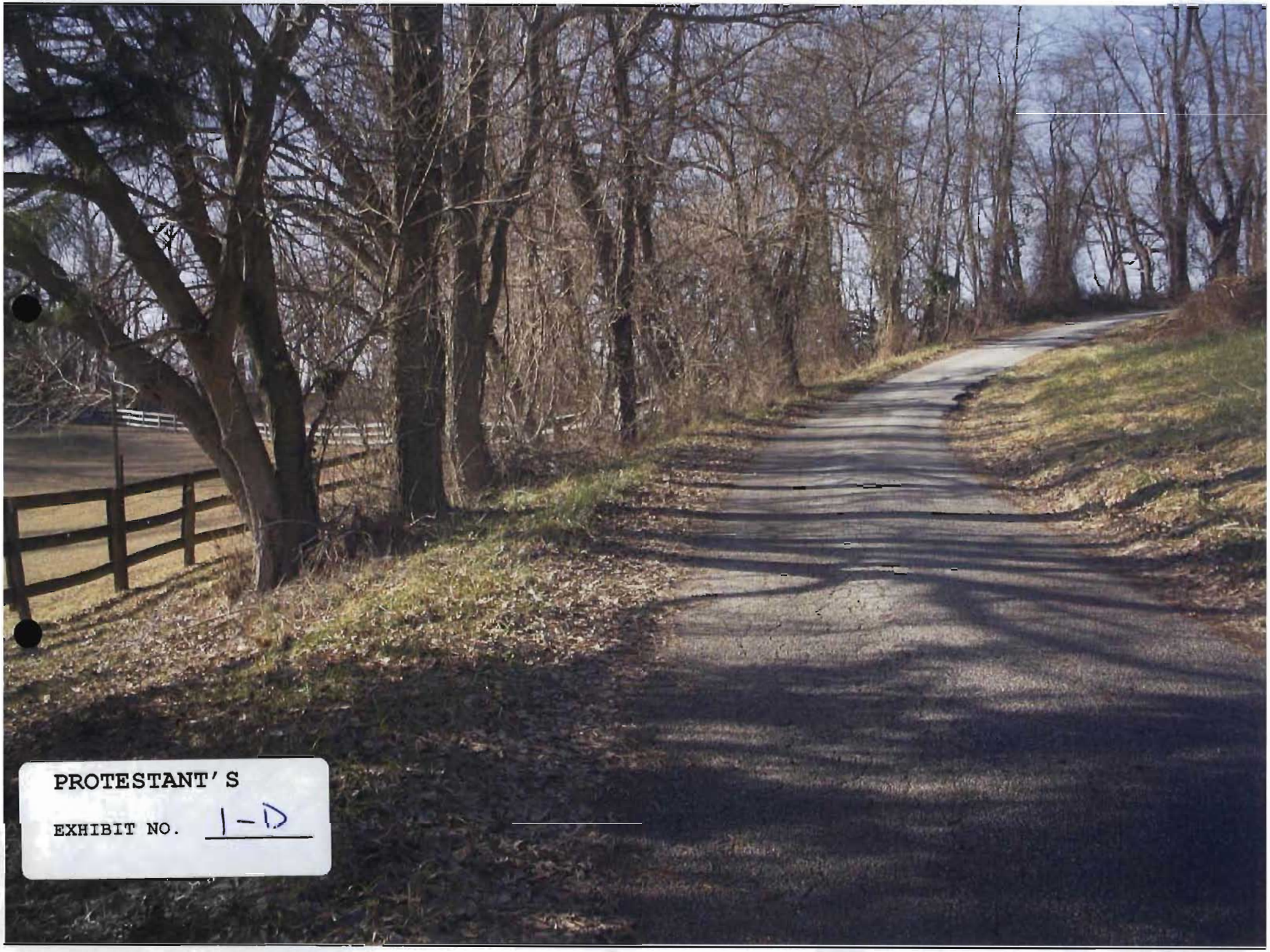
PETITIONER'S

EXHIBIT NO. 4


PROTESTANT'S
EXHIBIT NO. 1-A


PROTESTANT'S
EXHIBIT NO. 1-B


PROTESTANT'S
EXHIBIT NO. 1-C


PROTESTANT'S
EXHIBIT NO. 1-D


PROTESTANT'S
EXHIBIT NO. 1-E


PROTESTANT'S
EXHIBIT NO. 1-F


PETITIONER'S
Protestants
EXHIBIT NO. 1-CT

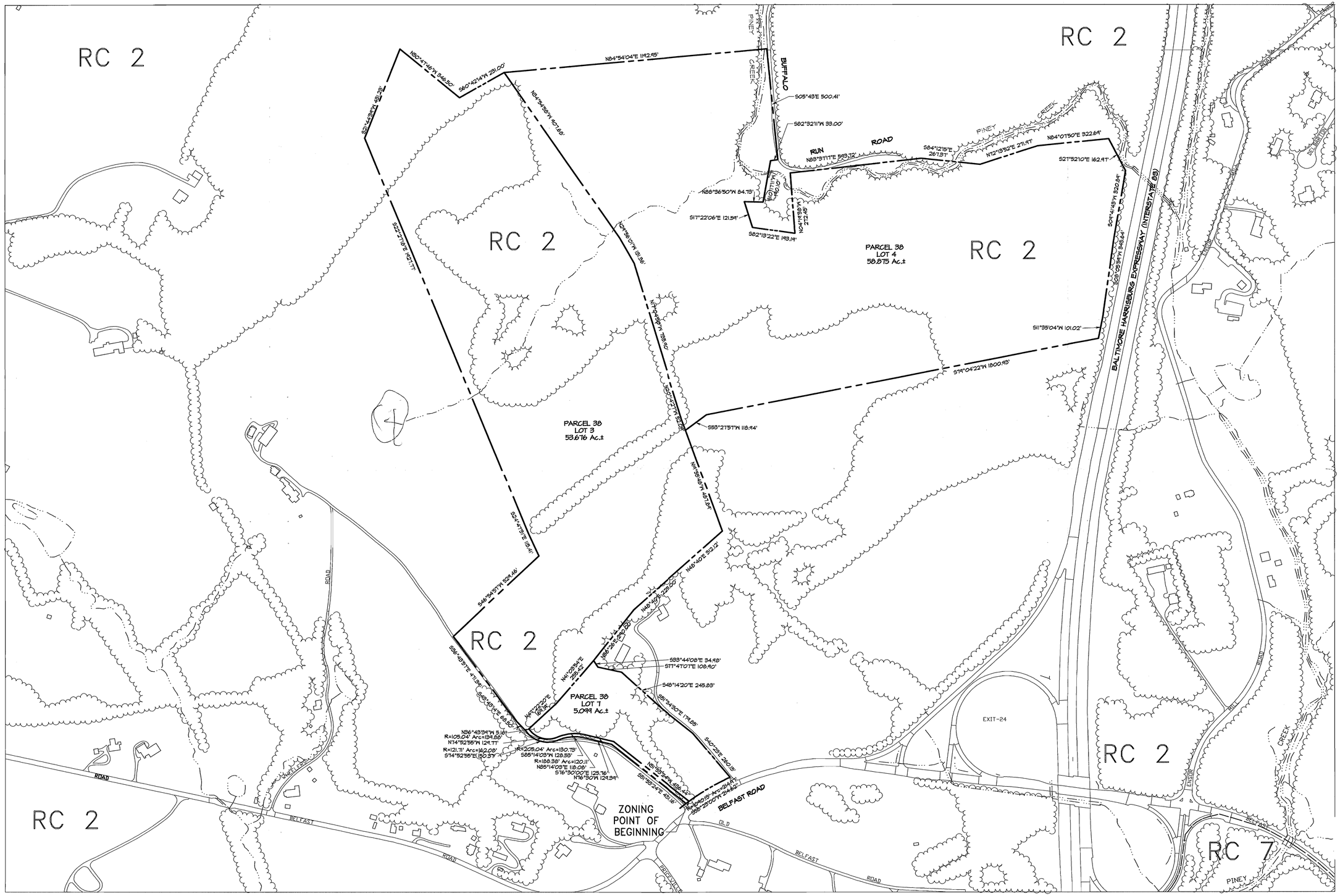

PROTESTANT'S
EXHIBIT NO. 3-A


PROTESTANT'S
EXHIBIT NO. 3-B


PROTESTANT'S
EXHIBIT NO. 3-C


PROTESTANT'S
EXHIBIT NO. 3-D


PROTESTANT'S
EXHIBIT NO. 3E



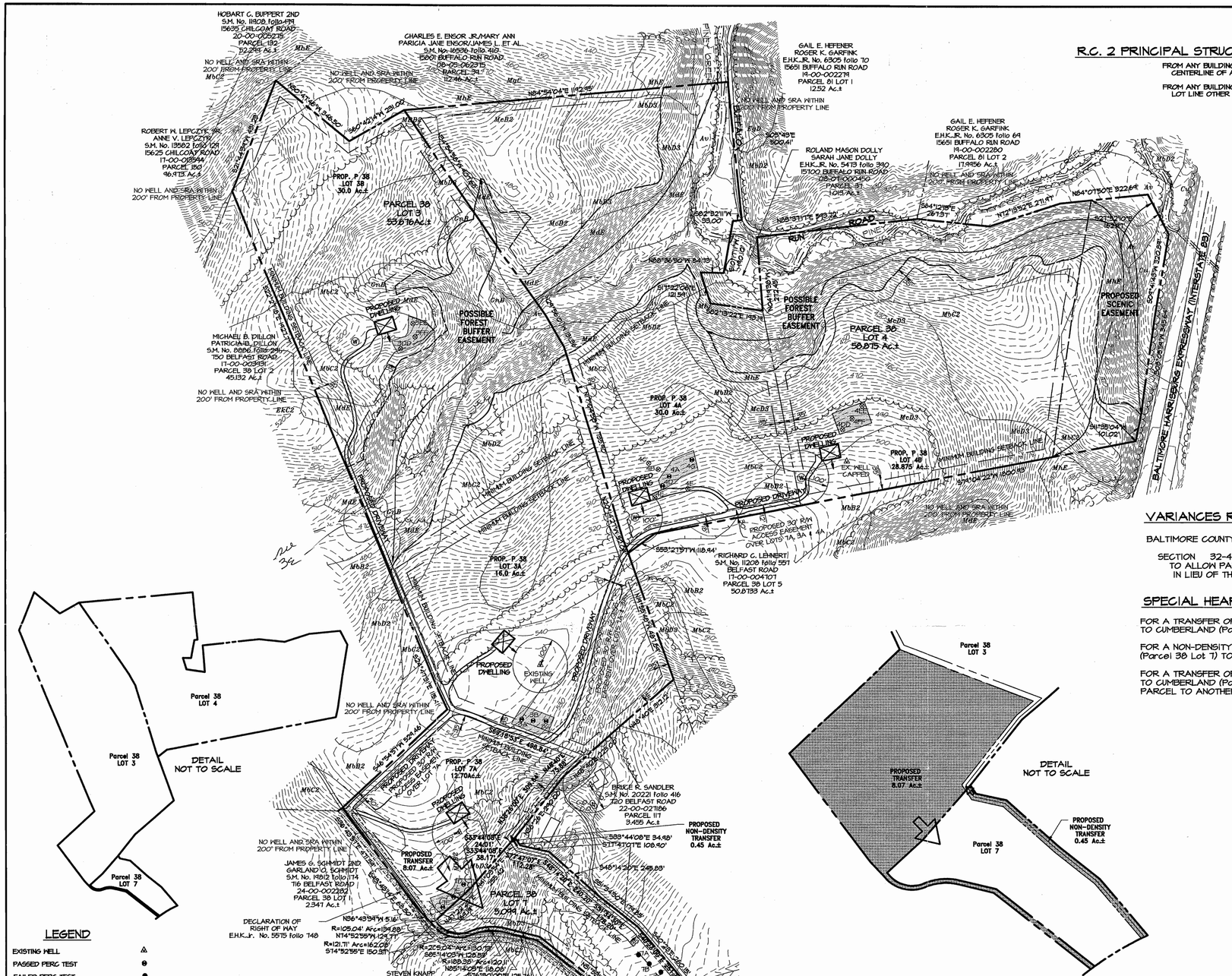
ZONING MAP

GIS TILE: 5|A|

SCALE: 1" = 200'

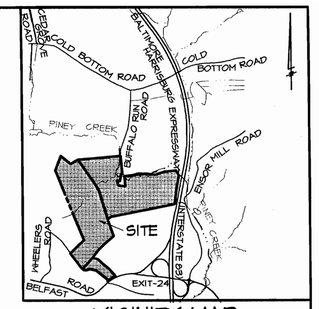
PROTESTANT'S
EXHIBIT NO. 2

08-211-SPHA



R.C. 2 PRINCIPAL STRUCTURE OR DWELLING SETBACKS

FROM ANY BUILDING FACE TO, CENTERLINE OF ANY STREET	75'
FROM ANY BUILDING FACE TO, LOT LINE OTHER THAN A STREET LINE	35'



VICINITY MAP
1" = 2000'

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM A DEED
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILES 28A3, 28A2
3. THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No. 13.
4. CENSUS TRACT 408200 REGIONAL PLANNING DISTRICT 304
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT, ELEMENTARY - SPARKS ES., MIDDLE - HEREFORD M.S., HIGH - HEREFORD H.S.
   A.D.C. MAP & GRID 12 D5
5. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
6. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PRIVATE WELLS AND SEPTIC SYSTEMS.
7. ACCESS TO THE PROPOSED DWELLINGS ON LOTS 3A, 3B, 4A AND 4B WILL UTILIZED THE EXISTING DRIVEWAY, IF ACCESS VIA THAT TRIVEWAY IS NOT POSSIBLE AN ADDITIONAL DRIVEWAY WILL BE ADDED TO PROVIDE ACCESS .
8. ACCESS TO LOTS 3B, 4A AND 4C WILL BE PROVIDED VIA A RECIPROCAL ACCESS EASEMENT.
9. THE SUBJECT PROPERTY IS IN THE NATIONAL REGISTER DISTRICT.
10. THE NORTH EAST SIDE OF THE SUBJECT PROPERTY ALONG THE PINEY CREEK IS WITHIN A 100 YEAR FLOOD PLAIN.

VARIANCES REQUESTED

BALTIMORE COUNTY CODE

SECTION 32-4-409 (a) (2)
TO ALLOW PANHANDLE STRIPS OF 1223' (LOT 3A) AND 2274' (LOT 3B)
IN LIEU OF THE MAXIMUM PERMITTED 1,000'

SPECIAL HEARING REQUESTED

FOR A TRANSFER OF 7.70 ACRES MORE OR LESS FROM CUMBERLAND (Parcel 38 Lot 3) TO CUMBERLAND (Parcel 38 Lot 7)

FOR A NON-DENSITY TRANSFER OF 0.45 ACRES MORE OR LESS FROM CUMBERLAND (Parcel 38 Lot 7) TO CUMBERLAND (Parcel 38 Lot 3)

FOR A TRANSFER OF 1 DENSITY RIGHT FROM CUBBERLAND (Parcel 38 Lot 7) TO CUMBERLAND (Parcel 38 Lot 7A) REALLOCATION OF DENSITY FROM ONE PARCEL TO ANOTHER

DENSITY CALCULATIONS

GROSS AREA LOT 3	53.676 Ac.±
LOTS PERMITTED LOT 3	2-100 Ac.± = 2 Lots
LOTS PROPOSED	2
GROSS AREA LOT 4	58.875 Ac.±
LOTS PERMITTED	2-100 Ac.± = 2 Lots
LOTS PROPOSED	2
GROSS AREA LOT 7	5.099 Ac.±
LOTS PERMITTED	2-100 Ac.± = 2 Lots
LOTS PROPOSED	1

OWNER\DEVELOPER

WILLIAM G. CUMBERLAND
HOLLY CUMBERLAND
3550 CROSS CREEK LA
MALIBU, CALIFORNIA 90265-4926
310-456-2127

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
McB2, MbB2	Slight	Slight	Moderate: slope
BkC2, MbC2	Moderate: slope	Moderate: slope	Severe: slope
Cu	Severe: moderately high water table; flooding hazard.	Severe: flooding hazard	Severe: flooding hazard
GnB	Severe: high water table; moderately slow permeability.	Severe: high water table	Severe: high water table
Av	Severe: high water table; flooding hazard.*	Severe: high water table; flooding hazard.	Severe: high water table; flooding hazard.
McD2, MbD3 MbD2, MdE McD3	Severe: slope	Severe: slope	Severe: slope
GnB2	Slight *	Slight	Moderate: slope
MnE, EgD	Severe: slope *	Severe: slope	Severe: slope
MgC	Slight to moderate: slope	Moderate: stoniness; slope	Severe: slope

* Strong possibility of polluting nearby springs, wells, ponds, streams, or other surface or underground water sources.

PLAN TO ACCOMPANY A VARIANCE
AND A SPECIAL HEARING REQUEST

CUMBERLAND PROPERTIES

BELFAST ROAD
"SUBDIVISION OF THE PROPERTY OF LINDA C. GREEN"
Deed Ref: E.H.K.,Jr. No. 5625 folio 676
Tax Account No.: 17-00-006142
Zoned R.C.2 GIS Tile 28 A3, 28 A2
Tax Map 28; Grid 19; Parcel 38 Lot 3
"SUBDIVISION OF THE PROPERTY OF LINDA C. GREEN"
Deed Ref: E.H.K.,Jr. No. 5625 folio 674
Tax Account No.: 17-00-006139
Zoned R.C.2 GIS Tile 28 A3, 28 A2
Tax Map 28; Grid 19; Parcel 38 Lot 4
"SUBDIVISION OF THE PROPERTY OF LINDA C. GREEN"
Deed Ref: E.H.K.,Jr. No. 5625 folio 674
Tax Account No.: 17-00-006141
Zoned R.C.2 GIS Tile 28 A3, 28 A2
Tax Map 28; Grid 19; Parcel 38 Lot 7
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND — STEVE EDWARD ETZEL — 21400 REGISTERED PROPERTY LINE SURVEYOR — 11/05/07

Scale: 1"=200' Date: AUGUST 06, 2007

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

REVISION	DATE
REVISION per owner request	10/19/07
REVISION per request of Molly Lippincott	10/09/07
REVISION per Rob Powell	09/12/07
REVISION per Rob Powell	09/10/07

COMPUTED: | DRAWN: C.L.M. | CHECKED: | FILE:X:\Cumberland\zoning.pro

08-211-SPHA