

IN THE MATTER OF:
BAYWOOD HOTELS – C.P. /
PETITIONER
4508 – 4514 Painters Mill Road
2nd Election District
4th Councilmanic District

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 08-234-SPHXA

* * * * *

OPINION

This matter comes before the Board of Appeals of Baltimore County as an appeal filed by Protestants, the Painters Mill Homeowners Association, Joi Ford-McClain, Lynnee Roane, David and Jacqueline Claxton, and Thomas and Fathim Craven, from a decision of the Zoning Commissioner, dated February 15, 2008, in which Petitioner's requested zoning relief was granted. Petitioner, Baywood Hotels, is the legal owner of two adjoining parcels of land located at 4508 – 4514 Painters Mill Road, in the Owings Mills area of Baltimore County. Petitions for Special Hearing, Special Exception, and Variance were filed for a hotel on the subject property, which is zoned OR-2 (Office Building – Residential). Specifically, Petitioner requested (1) a special hearing to amend the special exception previously approved in Case No. 91-447-SPHXA for a child care center on the property; (2) a special exception, pursuant to *Baltimore County Zoning Regulations* ("BCZR") Section 206.3.B.2.c, for a hotel; (3) a variance from BCZR Sections 206.4 and 1B02.2.A to permit a building height of 59 feet in lieu of the permitted 50 feet; and (4) a variance from BCZR Section 450.4.5(h) to permit three wall-mounted enterprise signs, with a maximum sign face area of 150 square feet each, in lieu of one permitted wall-mounted enterprise sign with a sign face area of 150 square feet. The Zoning Commissioner of Baltimore County granted the requested zoning relief by way of his Order, dated February 15,

Case No. 08-234-SPHXA / Baywood Hotels

2008, which Protestants appealed to this Board. A public hearing was held before this Board on October 16, 2008, and public deliberation was held by the Board at the conclusion of the hearing.

At the outset of the hearing, Thomas Craven reported that he was appearing on behalf of all Protestants who filed the appeal in this matter. Mr. Craven then withdrew the appeal, specifically stating that the Painters Mill Homeowners Association and the other individual Protestants no longer wished to challenge the Zoning Commissioner's approval of the zoning relief requested by Petitioner. Petitioner's attorney, Robert A. Hoffman, next addressed this Board. He explained that Petitioner no longer requires a building height variance to construct the hotel, which alleviates the need for the Petition for Variance, as it pertains to building height. He further explained that Petitioner was revising its Petition for Variance before this Board, in order to modify the wall-mounted signage proposed for the hotel, as discussed below. Mr. Hoffman also referenced a written agreement between Petitioner and Protestants concerning the proposed hotel.

With Protestants having withdrawn their appeal in this matter and with Mr. Hoffman having indicated the height variance is no longer required, the revised sign variance is the only issue that remains before this Board. Because Protestants' appeal from the grant of the Petition for Special Hearing and Petition for Special Exception are no longer before this Board, the Board will dismiss the appeal of those Petitions, with prejudice. The granting of the special exception and special hearing relief by the Zoning Commissioner is, therefore, final. With regard to the Petition for Variance, this Board will dismiss the building height variance as moot. The remaining modified sign variance proceeded with a proffer by Mr. Hoffman, as Mr. Craven did not indicate any opposition to this relief.

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Mr. Hoffman began by explaining that Petitioner's initial Petition for Variance requested three signs, with a maximum sign face area of 150 square feet for each sign, in lieu of the permitted one 150 square foot sign. Petitioner now only requests two signs, with a maximum sign face area of 75 square feet each. Petitioner's Exhibit 1, a site plan for the subject property, indicates that the subject property is 2.17 acres, zoned OR-2, and is presently unimproved. Petitioner proposes to construct a hotel on the subject property, on which Petitioner intends to install wall-mounted enterprise signage for purposes of identifying the use. Mr. Hoffman introduced, as Petitioner's Exhibits 2 and 3, elevations of the proposed hotel building, which indicate the locations on the hotel façades where Petitioner proposes to install the two 75 square foot wall-mounted enterprise signs. However, because BCZR Section 450.4.5(h) only permits one wall-mounted enterprise sign, with a maximum sign face area of 150 square feet, for the entire hotel building, Petitioner has requested a variance.

Mr. Hoffman indicated the need for the variance in this case is driven by the uniqueness of the property. He referred to Petitioner's Exhibit 1 to demonstrate that the subject property is unique by virtue of its irregular shape and relationship to Painters Mill Road. Painters Mill Road, the subject property's only public road frontage, runs diagonally along the property's boundary, in a northeast-southwest direction. Visibility into the site is, therefore, limited for motorists travelling both northbound and southbound along that road; a motorist traveling northbound would only be able to clearly view the front (southern) façade of the proposed hotel, while a motorist traveling southbound would only be able to clearly view the side (eastern) façade of the hotel. Thus, as Mr. Hoffman explained, in order to adequately identify the hotel use to all motorists on the roadway, a sign on each of the two façades visible from the roadway is necessary. Mr. Craven verified this unique aspect of the property, and confirmed that there is, in

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his opinion, a need for two separate wall-mounted signs rather than the one sign permitted by right.

Strict compliance with the BCZR would only permit Petitioner to install one wall-mounted enterprise sign on a single façade of the hotel. This would not allow Petitioner to identify the hotel for motorists travelling in both directions on Painters Mill Road. However, two signs (one on each façade visible from Painters Mill Road) would provide adequate identification of the use, and Mr. Hoffman noted that Petitioner's proposal to install two signs would not have an adverse impact on the surrounding neighborhood. First, the two 75 square foot signs would not exceed the total sign face area permitted under the regulations. In other words, even though Petitioner is proposing two separate signs, they are still not exceeding the 150 square foot limitation of the Zoning Regulations. Additionally, as Mr. Hoffman noted, by splitting the allotted square footage between two smaller signs, the signage will be more aesthetically pleasing to the surrounding area than if Petitioner installed one large sign on the proposed hotel building. Lastly, Mr. Hoffman observed that the proposed signage would be oriented in the direction of existing commercial uses along Painters Mill Road and not the residential uses to the west (or rear) of the subject property.

Having considered the evidence presented, this Board is persuaded that the variance should be granted. The test for a variance was enunciated in *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995), which holds:

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

Id. at 698-99 (emphasis in original). In requiring a finding of “uniqueness,” the Court defined that term, stating:

“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 conditions, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions....”

Id. at 710 (quoting *North v. St. Mary’s County*, 99 Md. App. 502, 514-15, 638 A.2d 1175 (1994)).

Following the test laid out in *Cromwell*, this Board finds that Petitioner’s Exhibit 1 clearly demonstrates the irregular shape of the subject property and the irregular nature of its frontage on Painters Mill Road. It is these site characteristics that render the property unique with regard to the requested sign variance. The Board also agrees that requiring Petitioner to adhere to the County’s sign regulations by installing only one sign would result in a practical difficulty for Petitioner. Furthermore, the grant of the relief will not be detrimental to the surrounding area – the proposed signage will face existing commercial uses across Painters Mill Road to the east and there will be no impact on the residential community to the west of the subject property. Additionally, the total square footage of both signs (75 square feet per sign x 2 = 150 square feet) will not exceed the 150 square foot limit for the one permitted sign in the zone. Therefore, the proposed signs are of an appropriate scale on the hotel building, and their size and location will not be visibly disruptive, as each sign is small in scale in comparison to the length of the building façades on which they are located. In this Board’s opinion, two smaller 75

square-foot signs installed on separate facades of the building will avoid any potential visual impact associated with one larger 150 square foot sign on a single façade of the building.

Pursuant to the Zoning Regulations of Baltimore County and public hearing held in this matter, for the reasons set forth above, the Petition for Variance shall be granted.

ORDER

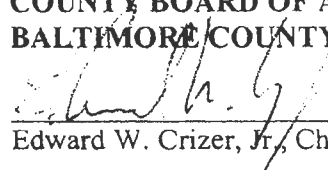
THEREFORE, IT IS ORDERED by the County Board of Appeals of Baltimore County this 4th day of ~~November~~ ^{DECEMBER}, 2008, that Protestants' appeal of the Petition for Special Hearing and Petition for Special Exception are hereby **DISMISSED**, with prejudice; and it is further

ORDERED that the Petition for Variance from BCZR Sections 206.4 and 1B02.2.A to permit a building height of 59 feet in lieu of the permitted 50 feet is hereby **DISMISSED AS MOOT**; and it is further

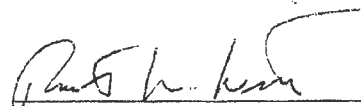
ORDERED that the revised Petition for Variance from BCZR Section 450.4.5(h) to permit two wall-mounted enterprise signs, a maximum of 75 square feet each, in lieu of one permitted 150 square foot sign is hereby **GRANTED**.

Any appeal of this decision must be taken within thirty (30) days.

**COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY**


Edward W. Crizer, Jr., Chairman


Andrew M. Belt


Robert W. Witt

Mr. Arnold Jablon, DAO & Director

November 18, 2011

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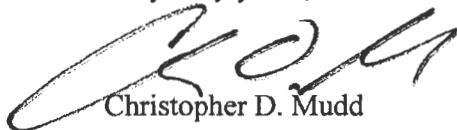
maps, and regulations related to zoning; and (ii) Except for the conduct of hearings under Article 32 of the Code, all other administrative matters assigned to the Zoning Commissioner in Article 32 of the Code, by the Baltimore County Zoning Regulations, or under any other authority.”

Here, the Board of Appeals’ December 4, 2008 order constituted the final decision that would have commenced the two year period in which the special exception was required to be utilized under BCZR §502.3, but for the unavailability of public water and sewer for the Property. When Baywood began to process its permits, it discovered that the Property was not located within the Metropolitan District and, consequently, public water and sewer were not available. In April, 2009, Baywood petitioned to extend the Metropolitan District to include the Property (copy enclosed). Following a 19 month review process, the Baltimore City Council passed legislation on November 22, 2010 extending the Metropolitan District (copy enclosed), which action made public water and sewer available to the Property. Because public water and sewer were not available to the Property until November 22, 2010, BCZR §502.3 requires the Zoning Commissioner to extend the utilization period for the special exception for eighteen months from that date, or until May 22, 2012. Furthermore, according to BCC §3-2-1103, as Director of Permits, Approvals and Inspections, you have the authority to grant this extension, instead of the Zoning Commissioner.

Therefore, at this time, based upon the information outlined above, I ask that you please confirm, by countersignature below, that Baywood has until May 22, 2012 to utilize the special exception that was approved by way of the Board of Appeals’ final order in Case No. 08-234-SPHXA. Furthermore, because the period for utilization of the special exception has not yet expired, please also confirm, by countersignature below, that Baywood may file a petition for special hearing with the Office of Administrative Hearings to request, pursuant to BCZR §502.3, that the period of time in which the special exception must be utilized may be extended to no later than five years after the date of the final Board order, or until December 4, 2013.

With this letter, I have enclosed a check in the amount of \$500.00, made payable to Baltimore County, Maryland, for the fee associated with your review. If you have any questions or require any additional information, please contact me. Thank you for your attention to this matter.

Very truly yours,



Christopher D. Mudd

CDM

Enclosures

Mr. Paul Williams

#306413v1

Agreed and Accepted:



**Arnold Jablon, DAO & Director
Permits, Approvals & Inspections**

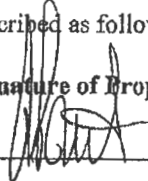
**PETITION FOR EXTENSION OF
METROPOLITAN DISTRICT AREA**

TO: BALTIMORE COUNTY, MARYLAND

I, THE UNDERSIGNED, being the owner of record title to the particularly described area and adjoining the Baltimore County Metropolitan District as hereinabove laid out but outside the boundaries thereof, as constituted by Section 1 of Chapter 539 of the Acts of 1924 and subsequent additions hereby petition the said Baltimore County, Maryland to have included within said Metropolitan District of Baltimore County the following described area situated in the 2nd Election District of Baltimore County, described as follows:

Signature of Property Owner(s):

Street Address of Property:

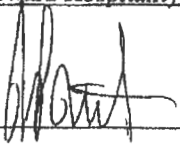


Amit Patel

4508 Painters Mill Road

Owings Mills, MD 21117

Howard Hospitality, Inc.



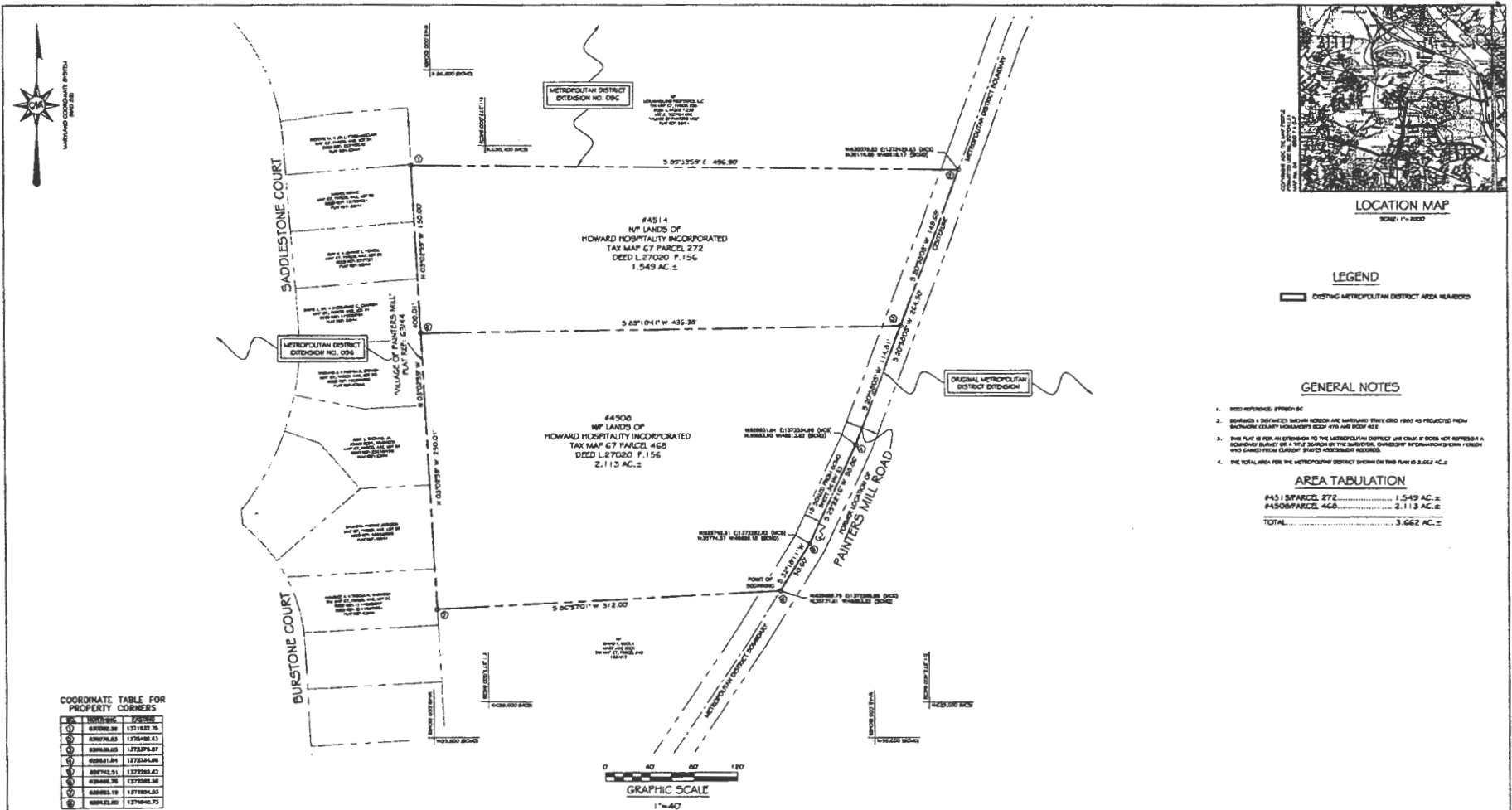
Amit Patel

4514 Painters Mill Road

Owings Mills, MD 21117

Howard Hospitality, Inc.

Additional Forms available from:
Baltimore County, Maryland, Department of Public Works
Director's Office, Room 307, County Office Building
111 W. Chesapeake Avenue, Towson, MD 21204



Professional Certification: I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed Property and Casualty Underwriter under the laws of the State of Maryland, License No. 379, Expiration Date: OCT. 2019

CITY OF BALTIMORE												REVISION - CITY OF BALTIMORE					
DATE		NAME, RANK OF OFFICER AND INFORMATION				DATE		SPECIALTY, RPT. OF PUBLIC WORKS				DATE		CNA			
ONLY WHEN A REVISION IS MADE, THE RANK OF OFFICER AND INFORMATION												ONLY WHEN A REVISION IS MADE, THE RANK OF OFFICER AND INFORMATION				ONLY WHEN A REVISION IS MADE, THE RANK OF OFFICER AND INFORMATION	
SUBJECT FOR RECORD		REVISION				DATE		P. M. & NO.		RE-APPROVED		POSITION SHEETS		CNA			
SHEET/THREE		NAME		REASON FOR REVISION FOR C.D. CHANGES		SHEET/THREE		DATE OF REV.		REASON		SHEET/THREE		CNA			
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SNA, INC.		SNA, INC.		REASON FOR REVISION AND INFORMATION		SNA, INC.		SNA, INC.		SNA, INC.		SNA, INC.		CNA			
SUBJECT FOR RECORD		REVISION				DATE		P. M. & NO.		RE-APPROVED		POSITION SHEETS		CNA			
SHEET/THREE		NAME		REASON FOR REVISION FOR C.D. CHANGES		SHEET/THREE		DATE OF REV.		REASON		SHEET/THREE		CNA			
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SNA, INC.		SNA, INC.		REASON FOR REVISION AND INFORMATION		SNA, INC.		SNA, INC.		SNA, INC.		SNA, INC.		CNA			
SUBJECT FOR RECORD		REVISION				DATE		P. M. & NO.		RE-APPROVED		POSITION SHEETS		CNA			
SHEET/THREE		NAME		REASON FOR REVISION FOR C.D. CHANGES		SHEET/THREE		DATE OF REV.		REASON		SHEET/THREE		CNA			
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SNA, INC.		SNA, INC.		REASON FOR REVISION AND INFORMATION		SNA, INC.		SNA, INC.		SNA, INC.		SNA, INC.		CNA			

BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS BUREAU OF ENGINEERING & CONSTRUCTION

METROPOLITAN DISTRICT EXTENSION

SUBDIVISION: HOWARD HOSPITALITY, INC. LANDS

COUNCILMANIC DISTRICT 2C4

SHEET DESIGNATION	CONTRACT NO.
	JOB ORDER NO.
	SHEET _____ OF _____
	DRAWING NO.
	EXT. 162
	PLT.





4514 Painters Mill Road

CITY OF BALTIMORE
ORDINANCE 10 - 387
Council Bill 10-0498

Introduced by: The Council President
At the request of: The Administration (Department of Public Works)
Introduced and read first time: May 3, 2010
Assigned to: Judiciary and Legislative Investigations Committee
Committee Report: Favorable
Council action: Adopted
Read second time: November 8, 2010

AN ORDINANCE CONCERNING

**Metropolitan District of Baltimore County --
Extension 162**

FOR the purpose of consenting to and approving a petition to extend the Metropolitan District of Baltimore County to a certain tract of land; and providing for a special effective date.

By direction of

**Article 3 - Baltimore County
Section(s) 498 through 528
Code of Public Local Laws of Maryland
(1955 Everstine Edition)**

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Mayor and City Council of Baltimore consents to and approves the petition to extend the Metropolitan District of Baltimore County to a tract of land, consisting of approximately 3.662 acres, located in the 2C4 Election District of Baltimore County in the vicinity of the west side of Painters Mill Road, north of Lyons Mill Road, as more particularly shown on the plat labeled Extension 162 and filed with the Department of Public Works of Baltimore County.

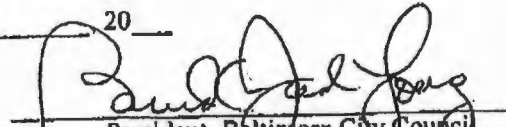
SECTION 2. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the date it is enacted.

EXPLANATION: CAPITALS indicate matter added to existing law.
(Brackets) indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

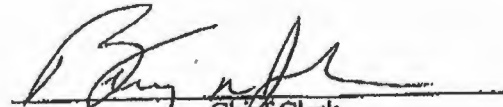
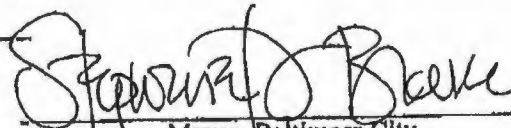
Council Bill 10-0498

C.P.C. - 01
NOV 18 2010

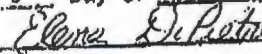
Certified as duly passed this _____ day of _____, 20____


President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,

this _____ day of ~~Nov 18 2010~~, 20____
Chief ClerkApproved this **NOV 22 2010** day of _____, 20____
Mayor, Baltimore City

Reviewed for Form and Legal Sufficiency

This 18th Day of November 2010
Assistant Solicitor**A TRUE COPY****Edward J. Gallagher**
Director of Finance

**BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT**

No. **76024**

Date: **11/20/11**

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0100		6150				500.00

Total: **500.00**

Rec From: **Venable**

For: **4508-4514 Painters Mill Rd**
Case - 08-234 SPHX

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

**CASHIER'S
VALIDATION**

M&T Bank
Baltimore, MD 21201

VENABLE^{LLP}
Towson Operating Account
210 West Pennsylvania Ave.
Suite 500
Towson, MD 21204

T 600622

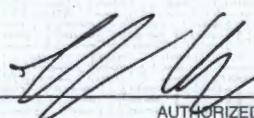
7-11
520

DATE CHECK NO. AMOUNT
11/18/11 600622 \$500.00

Five hundred dollars and no cents

PAY
TO THE
ORDER
OF

Baltimore County, MD


AUTHORIZED SIGNATURE

VOID AFTER 180 DAYS

AUTHORIZED SIGNATURE
(TWO SIGNATURES REQUIRED OVER \$25,000)

⑈600622⑈ ⑆052000113⑆ 9851847187⑈

November 18, 2011

Mr. Arnold Jablon, Deputy County
Administrative Officer
Director, Baltimore County Department of
Permits, Approvals and Inspections
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baywood Hotels
4508 – 4514 Painters Mill Road
Case No. 08-234-SPHXA

Dear Mr. Jablon:

This firm represents Baywood Hotels, owner of the above-referenced property (the "Property"), located in the Owings Mills area of Baltimore County. In Case No. 08-234-SPHXA, petitions for special exception, special hearing, and variance were granted for a hotel on the Property, which relief was appealed to the Board of Appeals. Following the hearing before the Zoning Commissioner, protestants withdrew their appeals of the special exception and special hearing relief, and the variance relief was amended by Baywood. Ultimately, the Board of Appeals issued a final order on December 4, 2008 (copy enclosed), dismissing the appeals of the special exception and special hearing, and granting the amended variance relief. That decision was not appealed. I am writing to request that you verify the duration of the time period in which Baywood is required to utilize its special exception and to confirm that Baywood may request an extension of the utilization period.

As you are aware, Section 502.3 of the Baltimore County Zoning Regulations ("BCZR") governs the utilization of special exceptions. It states, in pertinent part: (i) "A special exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void"; (ii) "After a final order granting a special exception, the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the special exception is not thereby extended for a period of more than five years from the date of the final order granting same"; and (iii) "[I]n any case where a special exception in effect on or after January 1, 1957, cannot be utilized within the maximum allowable time because of inadequacy or unavailability of public sewer or water facilities, the Zoning Commissioner shall extend such time for utilization to a date 18 months after such facilities become adequate and available." Furthermore, Section 3-2-1103 of the Baltimore County Code ("BCC") states: "The Department of Permits, Approvals and Inspections shall administer and enforce....(i) All laws,