

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

DATE: November 3, 2014

TO: David Duvall
Zoning Review Office
Permits, Approvals & Inspections

FROM: Tammy McDiarmid, Legal Secretary
Board of Appeals

SUBJECT: CLOSED APPEAL CASE FILES/CASES DISMISSED

The following cases have been closed as of the above date and are being returned to your office for storage.

<u>Case No:</u>	<u>Case Name:</u>
08-456-X	Prigel Family Creamery
12-091-X	Rainbow Hall, LLC (2 Folders)
13-132-XA	9400 Liberty Limited Partnership

c: Arnold Jablon, Director/Permits, Approvals & Inspections
Michael Field, County Attorney
Nancy West, Assistant County Attorney

7/3/12

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0350

September Term, 2011

LONG GREEN VALLEY
ASSOCIATION, ET AL.

v.

PRIGEL FAMILY CREAMERY, ET AL.

Eyler, Deborah S.,
Wright,
Kehoe,

JJ.

Opinion by Wright, J.

Filed: June 29, 2012

RECEIVED
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BALTIMORE COUNTY
BOARD OF APPEALS

This case arises from a decision of the Baltimore County Board of Appeals (“Board”) upholding the Baltimore County Deputy Zoning Commissioner’s grant of a petition for special exception filed by appellee, Prigel Family Creamery (“Creamery”).¹ The Creamery sought a permit for “a Farm Market; or alternatively for a Farmer’s Roadside Stand” pursuant to the Baltimore County Zoning Regulations (“BCZR”), which appellants, Long Green Valley Association, Carol Trela, John Yoder, Susan Yoder, and Charlotte Pine, opposed. After hearing the matter on October 15, 2009, the Board issued an opinion and order on March 25, 2010, granting the Creamery’s request. Thereafter, appellants and the People’s Counsel for Baltimore County filed motions for reconsideration which the Board denied.

On July 16, 2010, appellants filed a petition for judicial review in the Circuit Court for Baltimore County. After holding a hearing on January 14, 2011, the court issued a memorandum opinion and order on April 5, 2011, affirming the Board’s decision. On April 21, 2011, appellants filed this appeal.

Questions Presented

We have adopted the questions presented by the Creamery:²

¹ Although appellants captioned their appeal against “Bellevale Farms, Inc., *et al.*[,] Respondents,” a review of the record shows that the Creamery was the sole respondent in the proceedings below and is, therefore, the sole appellee before this Court. As counsel for the Creamery explains, “Robert Prigel and his wife own the Bellevale Farm . . . and also the [Creamery], which is located on [Bellevale Farm].”

² The “questions presented” by appellants consisted of arguments and conclusory statements, and not issues or questions to be addressed by this Court.

1. Was the Board of Appeals legally correct in finding that the special exception requirements had been satisfied for the Farm Market?
2. Was the Board of Appeals legally correct in finding that the B.C.Z.R. criteria had been satisfied for the Farmer's Roadside Stand?

For the reasons that follow, we uphold the Board's decision and affirm the judgment of the circuit court.

Facts

The Creamery is located on Bellevale Farm in the Long Green Valley of northeastern Baltimore County. The farm, which is zoned R.C.2 for Agricultural Preservation,³ consists of approximately 200 acres, 180 of which have been placed in an agricultural easement with the Maryland Agricultural Land Preservation Foundation ("MALPF").⁴ Both the Creamery and the farm are owned by the Prigel family. The Prigels have operated a dairy on their farm for several generations.

According to the operator of the dairy, Robert Prigel, Bellevale Farm is "quite different than the average commercial dairy farm in the United States." He explained:

It's patterned more after a New Zealand style dairy. Everything we

³ "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." BCZR § 1A01.1B.

⁴ In a separate legal action filed in the Circuit Court for Baltimore County, some, but not all of the appellants raised issues with regard to MALPF's review of appellee's Deed of Easement. *See Long Green Valley Ass'n v. Bellevale Farms, Inc.*, ___ Md. App. ___, No. 228, Sept. Term, 2009 (June 8, 2012).

have is grass. The cows go out and graze every day.

They get new sections of grass every twelve hours. The daytime, since the pasture[] is pretty much divided, half on the north side, half on the south side of Long Green Road, the cows graze the north side during the day, and the south side in the evening time.

We're also certified organic. . . .

Mr. Prigel stated that approximately 150 cows are milked on a daily basis, for an average of 500 gallons of milk per day. He added that his family sells the majority of the milk wholesale.

On or about March 31, 2006, the Creamery filed a petition for special exception "per BCZR §404.4D and §502.1 to permit a Farm Market; or alternatively for a Farmer's Roadside Stand per BCZR §404.4C." The Prigels intended to sell milk, butter, yogurt, ice cream, jams, beef, pork, chicken, eggs, and crafts, with about 95% of the merchandise being dairy products. The Prigels planned to construct a 10,000 square foot building on the north side of Long Green Road to house the Creamery and retail area. They proposed a parking area on a porous paving surface to accommodate eight vehicles.

Due to the farm's location in the R.C.2 zone and the easement encumbering the bulk of the property, the Prigels sought permission from both the Baltimore County Agricultural Land Preservation Advisory Board ("BCALP") and MALPF. By letter dated October 29, 2007, MALPF informed Mr. Prigel that it "approved the construction of a 7,000 to 10,000 square foot building to house the creamery operation, processing facility and farm store," conditioned upon the following:

Must not interfere with other agricultural or silvicultural operations.
Must not limit future agricultural or silvicultural production.
Easement owner must have an ownership interest in the operation.
Some of the products must come from animals raised or crops grown on site; the remainder from animals or crops indigenous to Maryland.
Facility and parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller.
Parking area must be pervious.
Accessory sales area must not exceed 600 sq. ft.

BCALP also supported the request, stating:

The location is directly across from the existing farmstead and is located immediately adjacent to the road. This is consistent with the practice of protecting prime and productive agricultural soils. . . . The applicant's farm operation gives reasonable indication that he can meet the production requirements for Farmer's Roadside Stand and Farm Market. This request for a building of a maximum of 10,000 square feet that includes the farm market, processing and creamery [is] consistent with the MALPF approval, Baltimore County Zoning, and the Baltimore County Master Plan. This support is conditional upon Mr. Prigel receiving all necessary permits for the processing and creamery operation.

On October 15, 2009, the Board held a hearing regarding the Creamery's request for a special exception. The Creamery presented the testimonies of Mr. Prigel, two experts, a representative of the Greater Long Green Community Association, and immediate neighbors to the farm. Michael Fisher, who was accepted as an expert in landscaping, architecture, zoning, and land development in Baltimore County, opined that the proposed use would not create any congestion in the roads, potential hazards, overcrowding, or interference with existing water provisions. Fisher also testified that the proposed use is "consistent with the R.C.2 agriculture zone" and would not have a detrimental impact on the health, safety, or general welfare of the locality.

Mickey Cornelius, who was accepted as an expert traffic engineer, stated that his company collected traffic volume data on Long Green Road by using a mechanical volume counter. After analyzing the results, he opined that "Long Green Road has fairly minor traffic volumes throughout the day." Taking into consideration the minimal accident activity in the area and "the low volume of traffic that would be expected to be generated by [the proposed Farm Market]," Cornelius concluded that approval of the Creamery's request "would not tend to create any congestion on the road."

William Pennington, a representative of the Greater Long Green Community Association, explained that their association was "organized for the purpose of helping our community maintain its rural and agricultural nature." Pennington testified that their organization has "taken a position . . . in support of the Prigels' objectives." Likewise, Robert Carter, Louis Reichart, James Currens, and Darrell Edwards – all neighbors to Bellevale Farm – expressed their support for granting the special exception.

Appellants presented the testimonies of Edward Blanton, who resides off Long Green Road, and Carol Trela, the secretary of the Long Green Valley Association. Blanton stated that his only concern "ha[s] to do with the traffic," because he started running exclusively on Long Green Road and wanted to minimize the possibility of accidents. Blanton stated that if the Creamery's request was approved, he would support it and become a customer, but he first wanted to make sure that the Prigels have "the legal right to put up a building on that property." Trela testified, on behalf of appellants'

organization, that the Prigels' new building is "out of place" in the valley. She believed that the development is incompatible with the R.C. zoning and with land conservation and that it would bring a lot of traffic into the area. Trela also testified that members of appellants' organization were afraid of losing their water and were concerned about the possible runoff from the farm going into a nearby Class III trout stream.

By opinion and order dated March 25, 2010, the Board granted the Creamery's request for a special exception for a farm market, or in the alternative, for a farmer's roadside stand. The Board found that the Creamery met the special exception standards for a farm market, as the building "will not be injurious to the health safety and welfare of the public nor would it create congestion on Long Green Road or any other nearby roads." According to the Board, the market is not expected to generate the type of traffic that comes with a grocery or convenience store.

Similarly, the Board found that the Creamery met the criteria for a farmer's roadside stand. The Board noted that the majority of the products to be sold will be dairy products from the cows on Bellevale Farm, and the non-agricultural goods "will be in the minority of products sold." The Board further stated:

The Board does not find any merit to [appellants'] argument that the inclusion of the words "grown and produced" in the definition of farmer's roadside stand and farm market in §101.1 of BCZR prohibits the sale of dairy products from either the market or stand. The Board construes the meaning of "grown and produced" to mean that it originates on the farm and/or that it is indigenous to the area. The Board acknowledges that both a farm market and farmer's [roadside] stand are uses which support agricultural [sic]. The [appellants'] argument is essentially that only the

sale of fruits and vegetables qualifies as the product which can be sold from either a market or stand. The Board does not believe that the County Council intended to restrict the sale of dairy products, beef, chicken and eggs, particularly in light of the County Council's recent Bill 34-09 which explicitly stated that a farm market could be used in conjunction with a farmstead creamery to sell dairy products. Moreover, the term "farm product" is not defined in BCZR but has been defined in the Maryland Agriculture Code, §10-601(c) to include eggs and dairy products.

The testimony of Edward Blanton as to the legality of constructing the building in the agricultural easement was countered by the documents from MALPF and Baltimore County which show that permission was obtain[ed] to build within the easement area.

The Board also noted that appellants did not offer any experts to counter the testimony of Fisher and Cornelius. Finally, citing the support of BCALP and the Deputy Zoning Commissioner, the Board concluded that the proposed use is "a small but critical component of the continued operation of one of the last few dairy farms in the county."

In April 2010, appellants and the People's Counsel for Baltimore County filed motions for reconsideration. Following a public deliberation on May 25, 2010, the Board issued an order on June 22, 2010, denying the motions. In pertinent part, the Board stated:

[A]ny Motion for Reconsideration should only be necessary when there has been substantive new case law or enactment of a statute not available previously, which would clearly merit a modification of a Board's previous decision. After careful consideration of both Motions, this Board has decided that the Motions for Reconsideration [do] not point to any fraud, mistake or irregularity in the conduct of the hearing in this case, nor does the Board find there is any indication of the existence of new law or evidence not available to the [appellants] or to People's Counsel at the time of the hearing.

The essence of both Motions center on [MALPF's] decision to permit the [Creamery] to build within the agricultural easement area

* * *

. . . [T]his Board has no jurisdiction to reverse the decision of MALPF. . . .

Additional facts will be provided, as necessary, below.

Discussion

Appellants argue that the Board erred in granting the special exception for the farm market and, to the extent that the Creamery sought permission for a farmer's roadside stand, the Board erred in granting that request as well. According to appellants, the County Council explicitly prohibits the sale of dairy products at a farm market or farmer's roadside stand. In addition, appellants aver that the use intended by the Creamery is commercial in nature and inconsistent with the use of land that is subject to an agricultural easement. Moreover, appellants contend that the Creamery did not satisfy the conditions imposed by MALPF, did not exhibit compliance with the Baltimore County Master Water and Sewage Plan, and did not show, pursuant to BCZR § 502.1, that the use would not impact public health, safety, or welfare in the area.

The Creamery responds by stating that the Board properly granted its request. The Creamery argues that zoning regulations were amended "so that the sale of processed dairy products could be a primary purpose" of farm markets and farmer's roadside stands. Furthermore, the Creamery contends that its intended use falls within "commercial agriculture," which is permitted by the BCZR. The Creamery also notes that it satisfied

the conditions imposed by MALPF and avers that appellants' arguments regarding water and the possible impact on public health, safety, and welfare are unsupported and without merit. We agree with the Creamery.

"On appellate review of the decision of an administrative agency, this Court reviews the agency's decision, not the circuit court's decision." *Halici v. City of Gaithersburg*, 180 Md. App. 238, 248 (2008) (citing *Anderson v. Gen. Cas. Ins. Co.*, 402 Md. 236, 244 (2007)). "Our primary goal is to determine whether the agency's decision is in accordance with the law or whether it is arbitrary, illegal, and capricious." *Md. Dep't of the Env't v. Ives*, 136 Md. App. 581, 585 (2001) (citation omitted). In other words, "[w]e apply a limited standard of review and will not disturb an administrative decision on appeal 'if substantial evidence supports factual findings and no error of law exists.'" *Tabassi v. Carroll County Dep't of Soc. Servs.*, 182 Md. App. 80, 86 (2008) (quoting *Howard County v. Davidsonville Area Civic & Potomac River Ass'ns, Inc.*, 72 Md. App. 19, 34 (1987)).

I. Farm Market

A farm market is defined as:

An accessory or principal building or structure other than a dwelling which is used by one or more farmers for the sale of products grown, or grown and produced, primarily on their own farms or for the sale of other indigenous farm products. A farm market may sell a limited amount of locally produced nonagricultural goods such as handcrafted items, homemade baked goods, homemade preserves, and jams.

BCZR § 101.1. This definition was adopted by the County in 2009 after the County

Council passed Bill 34-09. Prior to 2009, a farm market was defined as a structure “used by one or more farmers for the sale of *produce grown* primarily on their own farms or for the sale of other *locally grown produce*.” (Emphasis added to indicate changes). The previous definition also specifically provided for the sale of “processed dairy products.”

Owners of properties located in R.C.2 zones may request a special exception for a farm market, subject to the following requirements:

1. The owner shall be an agricultural producer.
2. At least 50% of the produce sold annually shall be grown by the owner of the farm market and no more than 10% of the annual sales shall be locally produced nonagricultural goods.
 - a. In the event of a crop failure due to drought, insect damage, disease or other causes beyond the control of the producer as determined by the Agricultural Land Preservation Advisory Board, the 50% minimum may be decreased by the Zoning Commissioner to a degree commensurate with the degree of crop failure.
 - b. In the enforcement of 404.4.D.2, the Zoning Commissioner shall make the determinations in consultation with the Agricultural Land Preservation Advisory Board.
3. A site plan shall be submitted indicating location and type of structure on the lot in question, ingress and egress, parking arrangement and proximity of dwellings on adjacent lots.

BCZR § 404.4D.

In addition, the proposed farm market shall meet the standards outlined in BCZR § 502.1. That section provides:

Before any special exception may be granted, it must appear that the use for

which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air; []
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; []
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor []
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

BCZR § 502.1.

In this case, the Creamery satisfied the requirements of BCZR §§ 404.4D and 502.1. Mr. Prigel, who operates Bellevale Farm, testified that approximately 95% of the merchandise to be sold in the market would be dairy products acquired from the cows on the farm. Meanwhile, Michael Fisher, who was accepted without objection as an expert in landscaping, architecture, zoning, and land development in Baltimore County, stated

that the proposed use would not create any congestion in the roads, potential hazards, overcrowding, or interference with existing water provisions. Fisher testified that the proposed parking area satisfied the surface requirement and noted that the market would not have a detrimental impact on the health, safety, or general welfare of the locality. Mickey Cornelius, who was accepted without objection as an expert traffic engineer, agreed that the proposed farm market "would not tend to create any congestion on the road." Based upon this testimony, there was substantial evidence presented at the hearing to support the Board's findings.

Relying on the changes to the definition of "farm market" brought on by Bill 34-09, appellants argue that the Board should have denied the Creamery's request because "milk is not grown" and therefore, the "sale of milk or milk products is explicitly not provided for by the County Council in its definition." Appellants fail to acknowledge, however, that in addition to amending the definition of "farm market," Bill 34-09 also created BCZR § 404.13 which governs farmstead creameries. As it relates to farm markets and farmer's roadside stands, BCZR § 404.13 provides:

- B. All processing, preparing, and packaging activities of the farmstead creamery and *any farmer's roadside stand or farm market on the premises used to sell the dairy products* shall occupy no more than 10% of the contiguous farm property on which the overall dairying occurs or two acres in area, whichever is less. The milking operation is not included in this limitation.
- C. The combined square footage of all structures or buildings associated with the farmstead creamery as well as *any farmer's roadside stand or farm market on the premises used to sell the dairy products* may

not exceed a total of 12,000 square feet. The milking operation is not included in this limitation.

(Emphasis added).

Based upon the language of BCZR § 404.13, it is evident that the County Council intended for operators of farm markets and farmer's roadside stands to be able to sell dairy products on their premises. Although Bill 34-09 deleted "processed dairy products" from the definition of "farm market," the creation of BCZR § 404.13 indicates, as the Creamery suggests, the intention to make "the sale of processed dairy products . . . a primary purpose." As the Creamery points out, BCZR § 101.1 expanded "the [farm markets'] principal sales items from . . . 'produce grown' to 'products grown or grown and produced' in order to expand sales to more than just fruits and vegetables." And, because the building associated with the Prigels' creamery occupies less than 10% of Bellevale Farm and measures less than 12,000 square feet, the Creamery satisfied the requirements of BCZR § 404.13.

Next, appellants argue that the Board erred in granting the special exception because selling goods at a farm market constitutes a "commercial use" prohibited by Md. Code (1973, 2007 Repl. Vol.), § 2-513(b) of the Agriculture Article ("Agric."). The relevant portion of that section states:

(b) *Use for commercial, industrial, or residential purposes.* –

(1) A landowner whose land is subject to an easement may not use the land for any commercial, industrial, or residential purpose except:

(i) As determined by the [MALPF], for farm- and forest-related uses and home occupations; or

(ii) As otherwise provided under this section.

Agric. § 2-513(b)(1).

In this case, MALPF "*approved* the construction of a 7,000 to 10,000 square foot building to house the creamery operation, processing facility and farm store," subject to seven conditions. (Emphasis added). According to appellants, the Creamery did not meet the last requirement, namely that the "[a]ccessory sales area must not exceed 600 sq. ft." Appellants are mistaken. At the hearing, Mr. Prigel explained the meaning of "accessory sales area" during the following exchange:

[PRIGELS' COUNSEL]: Now, what is meant by accessory sales area?

[MR. PRIGEL]: I believe that is non-agricultural products.

[PRIGELS' COUNSEL]: That's how the commission defines it?

[MR. PRIGEL]: Yes.

[PRIGELS' COUNSEL]: And that's your understanding from further correspondence from members of the commission?

[MR. PRIGEL]: Correct.

[PRIGELS' COUNSEL]: Now, what would be non-agricultural products that you would sell from your farm market?

[MR. PRIGEL]: It would be very few. . . .

* * *

Mixing bowls, platters, and things like that. Woodwork with a lathe.

* * *

I mean, there could be some crafts that - - well, definitely under 600

square feet.

From this testimony, there was sufficient evidence to support the Board's finding that the Creamery's accessory sale area would not exceed 600 square feet and that, therefore, the Creamery met MALPF's requirements.

Lastly, appellants contend that the Creamery failed to comply with the Baltimore County Master Water and Sewage Plan and failed to show that the farm market would not impact public health, safety, or welfare in the area. We disagree. As we previously stated, the Creamery presented expert testimony that the farm market "would not have a detrimental impact on the health, safety, or general welfare of the locality." By contrast, appellants presented no experts to opine on the possible negative impact of the proposed farm market. Likewise, appellants submitted no evidence to support their contention that the Creamery's well did not conform to the County's water and sewer plan. Without any evidence to the contrary, the Board did not err in relying upon testimony presented by the Creamery.

II. Farmer's Roadside Stand

Appellants argue that the Creamery only "presented . . . a request for a Farm Market." They are mistaken. In its petition for special exception, the Creamery clearly stated that it sought to establish a farm market, "or *alternatively* . . . a Farmer's Roadside Stand per BCZR §404.4C." (Emphasis added). This supports the Creamery's allegation that "[t]he Prigels requested both options, with the preference being the Farm Market and

the alternative being the Farmer's Roadside Stand in the event that their petition for the Farm Market was denied."

A "farmer's roadside stand" is defined as:

An accessory structure, barn or other farm building or portion thereof owned and operated by an agricultural producer, used for the sale of indigenous farm products, the majority of which have been grown, or grown and produced, on the premises, on adjacent land or on properties farmed by the same agricultural producer.

BCZR § 101.1. Similar to the "farm market," this present definition was adopted by the County in 2009, after the County Council passed Bill 34-09. Prior to 2009, a farmer's roadside stand was defined as a structure "used for the sale of indigenous farm products, the majority of which have been *grown on the premises . . .*" (Emphasis added to indicate change).

Owners of properties located in R.C.2 zones may request a special exception for a farmer's roadside stand, subject to the following requirements:

1. The stand shall be located on a farm.
2. The owner shall be an agricultural producer.
3. At least 50% of the produce sold annually shall be grown on the premises where the stand is located or on adjacent farms or on other property farmed by the applicant.
 - a. In the event of crop failure due to drought, insect damage, disease or other causes beyond the control of the producer, as determined by the Agricultural Land Preservation Advisory Board, the 50% minimum may be decreased by the Zoning Commissioner to an amount commensurate with the degree of crop failure.

- b. In the enforcement of 404.4C.2, the Zoning Commissioner shall make the determination upon the recommendation of the Agricultural Land Preservation Advisory Board.
- 4. A site plan shall be submitted indicating location and type of structure on the lot in question, ingress and egress, parking arrangement and proximity of dwellings on adjacent lots.
- 5. On the property in question, notice of the application for the use permit shall be conspicuously posted by the Zoning Commissioner for a period of 30 days following the filing of the application.
- 6. If a formal request for a public hearing is not filed, the Zoning Commissioner, without a public hearing, may grant a use permit for a farmer's roadside stand if the proposed use meets all the requirements of this subsection and any other applicable requirements. The use permit may be issued with such conditions or restrictions as determined appropriate by the Zoning Commissioner to satisfy the provisions of this section and to ensure that the farmer's roadside stand is not detrimental to the health, safety or general welfare of the surrounding community.
- 7. If a formal request for a public hearing is filed, the Zoning Commissioner shall schedule a date for the public hearing to be held not less than 15 days following public notice of such hearing in two newspapers of general circulation and not more than 60 days from the date of filing of the requests for public hearing.
- 8. Following the public hearing, the Zoning Commissioner may either deny or grant a use permit conditioned upon:
 - a. His findings following the public hearing; and
 - b. The manner in which the requirements of this section and other applicable requirements are met and any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the farmer's roadside stand is not detrimental to the health, safety or general welfare of the surrounding community and which are deemed necessary to satisfy the objectives of Section 502.1 of these

regulations.

As they apply to this case, the requirements set forth by BCZR § 404.4C for a farmer's roadside stand are similar to the requirements set forth by BCZR § 404.4D for a farm market. As explained above, the Creamery presented evidence that the proposed farm market or farmer's roadside stand would be located on Bellevale Farm and that 95% of the merchandise would be dairy products milked from the cows on the farm. The proposed parking area would satisfy the surface requirement and the building size would comply with the provisions of BCZR § 404.13, as well as the conditions imposed by MALPF.

Because the Board's decision was supported by sufficient evidence, we uphold its grant of the Creamery's petition for special exception. Accordingly, we affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE
COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANTS.**

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BALTIMORE COUNTY
BOARD OF APPEALS

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0228

September Term, 2009

ON MOTION FOR RECONSIDERATION

LONG GREEN VALLEY ASSOCIATION, *et*
al.

v.

BELLEVALE FARMS, INC., *et al.*

Meredith,
Zarnoch,
Kenney III, James A.,
(Retired, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: February 14, 2012

Appellants Long Green Valley ("LGVA") and John and Susan Yoder ("the Yoders") appeal the issuance of a declaratory judgment by the Circuit Court for Baltimore County in favor of appellees: Bellevale Farms, Inc., Bellevale Farms Limited Partnership, Prigel Family Creamery, Inc., and Robert E. and Carol A. Prigel (collectively, "Bellevale"), and the Maryland Agricultural Land Preservation Foundation ("MALPF").¹ Appellants present one question, which we have reworded slightly:

Did the circuit court err in concluding that appellants lack standing to bring an action challenging Bellevale's proposed construction and operation of a creamery in violation of an agricultural preservation easement held by MALPF?

For the reasons that follow, we shall vacate the judgment and remand to the circuit court for further proceedings.

FACTS AND PROCEEDINGS²

Bellevale owns and operates a dairy farm ("Bellevale Farm") on approximately 199 acres located at 4851-53 Long Green Road in the Long Green Valley area of Baltimore County. The Yoders own and operate an adjacent dairy farm.

MALPF is an entity of the Maryland Department of Agriculture. *See* MD. CODE ANN., AGRIC., § 2-502. Section 2-501 of the Agriculture article³ provides,

¹"Appellees" shall refer to both Bellevale and MALPF, and "appellants" shall refer to both LGVA and the Yoders.

²The facts as set out are based on the assertions by the parties in the pleadings and affidavits filed in this case.

³Subtitle 5 of title 2 of the Agriculture article relates to the "Maryland Agricultural Land Preservation Foundation."

(a) *In general.* -- It is the intent of the Maryland General Assembly to preserve agricultural land and woodland in order to:

- (1) Provide sources of agricultural products within the State for the citizens of the State;
- (2) Control the urban expansion which is consuming the agricultural land and woodland of the State;
- (3) Curb the spread of urban blight and deterioration; and
- (4) Protect agricultural land and woodland as open-space land.

To carry out that intent, MALPF is granted the power to (1) "enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes," and (2) to "acquire, by gift, purchase, devise, bequest or grant, easements in gross or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland[.]" *Id.* at § 2-504(2)-(3). Under the statute,

(1) A landowner whose land is subject to an easement may not use the land for any commercial, industrial, or residential purpose *except*:

- (i) As determined by the Foundation, for farm- and forest-related uses and home occupations; or
- (ii) As otherwise provided under this section.

Id. at § 2-513 (emphasis added). _____

_____ LGVA is "a community association representing approximately 300 residents of the Long Green Valley of Baltimore County, and is dedicated to the preservation of open space, farmland, natural resources, historic sites, and the heritage and character of the Long Green

Valley." The Yoders are members of LGVA.

As described in the affidavit of LGVA's secretary,

Over the years, the LGVA has solicited landowners in the Long Green Valley to sell or donate easements on their properties to MALPF, Baltimore County's Agricultural Land Preservation and Rural Legacy programs, the Long Green Conservatory, and other conservancies and trusts. Members of LGVA, [including the Yoders,] in fact, have placed their properties in conservation easements, including MALPF easements. The LGVA has contributed funds towards the purchase of at least one easement.

_____ On January 12, 1997, the State, on behalf of MALPF, purchased an "agricultural preservation easement" on Bellevue Farm for \$796,500. Under the deed of easement ("the Easement Agreement"), it is

the intention of the parties that the said land shall be preserved solely for agricultural use in accordance with the provisions of the Agriculture Article, Title 2, Subtitle 5 . . . and that the covenants, conditions, limitations and restrictions hereinafter set forth, are intended to limit the use of the above described land[.]

The section of the Easement Agreement labeled COVENANTS, CONDITIONS, LIMITATIONS, and RESTRICTIONS states:

[A](1)(a) Except as otherwise provided in this instrument, the above described land may not be used for any commercial, industrial, or residential purpose. . .

[A](3) The grantor reserves the right to use the above described land for any farm use, and to carry on all normal farming practices . . . including any operation directly relating to the processing, storage, or sale of farm, agricultural or woodland products produced on the said above described land

[B](6) If the Grantor has any doubts concerning the easement, covenants, conditions, limitations or restrictions herein contained with respect to any

particular use of the said land, the Grantor may submit a written request to the Grantee for consideration and approval of such use. . . .

[B](9) This easement shall be in perpetuity, or for so long as profitable farming is feasible on the Grantor's land and may be released only by the Grantee as provided by Agriculture Article, Section 2-514[.]

The Easement Agreement also states that it "shall be governed by the laws of the State of Maryland and the parties hereby expressly agree that the courts of the State of Maryland shall have jurisdiction to decide any question arising hereunder after all administrative remedies have been exhausted."

As stated by MALPF's Executive Director,

under the [Easement Agreement], consistent with § 2-513 . . . Bellevale [is] prohibited generally from using the land for any commercial, industrial, or residential purpose. There are, however, exceptions to this general prohibition—one notable exception [is] the ability to use the land, as determined by MALPF, for "farm and forestry related uses and home occupations."

On August 1, 2007, Bellevale filed a request with MALPF seeking,

to construct a 7,000 to 10,000 square foot building to house [a] creamery operation, processing facility and a farm store. As well, [Bellevale is] requesting a parking area that would accommodate fewer than 10 vehicles. The parking area is proposed to be located on Long Green Road with the creamery directly behind it. A short distance of access on an existing farm lane may be needed.

According to MALPF's Executive Director,

[o]n October 23, 2007, MALPF, pursuant to its authority under § 2-513(b)(i), reviewed the . . . request and approved the creamery operation, as proposed to the Board, having determined that the operation was a "farm related use" that complements [Bellevale's] organic dairy operation—a use that is compatible with agriculture and MALPF's program. MALPF took this action after being advised that the Baltimore County Agricultural Land Preservation

Advisory Board already had reviewed [Bellevale's] request and voted favorably on it.

Appellants submit,

[a]fter MALPF's approval of the Creamery Operation on October 23, 2007, [a]ppellants requested that MALPF reconsider its approval and enforce the terms of the Easement Agreement and State and County law. Appellants also requested that the Secretary of Agriculture intervene. Despite these requests, MALPF and the Secretary have refused to take further action to enforce the Easement Agreement and the law.

On April 4, 2008, in Zoning Case No. 2008-0506 ("the Zoning Case"), appellants filed a "Petition for Special Hearing" before the Deputy Zoning Commissioner for Baltimore County in order to determine "whether a dairy processing facility is permitted in an R.C.2 zone[.]" On August 12, 2008, the Deputy Zoning Commissioner found the proposed facility was permitted. Appellants appealed that decision to the Board of Appeals, but later dismissed their appeal.

On May 30, 2008, based on MALPF's approval of the proposed creamery, appellants filed an amended four-count complaint with the Circuit Court for Baltimore County:

- Count I: Writ of Mandamus—MALPF's Failure to Enforce the Easement Agreement
- Count II: Writ of Mandamus—MALPF's Failure to Enforce the Provisions of State and Local Law
- Count III: Declaratory Judgment
- Count IV: Permanent Injunctive Relief

As characterized by appellants, the complaint seeks:

(i) a writ of mandamus ordering MALPF to enforce the terms of the Easement Agreement and provisions of State and County law, (ii) a declaration that the proposed Creamery Operation violates the Easement Agreement, as well as State and County law, because it constitutes a commercial and/or industrial use, and (iii) an order permanently enjoining Bellevale from constructing and operating the Creamery Operation and further violating the Easement Agreement and State and County law.

In response, on June 27, 2008, Bellevale filed a motion to dismiss and/or for summary judgment, averring that appellants "lack standing to bring their equitable claims[.]" After the circuit court issued its Motions Ruling on August 6, 2008, and "HELD [the motion] FOR FURTHER INFORMATION," MALPF filed a motion to dismiss and/or for summary judgment, primarily based on appellants' lack of standing on all counts of the complaint. On October 7, 2008, appellants filed a cross-motion for summary judgment, "request[ing] that the Court find, as a matter of law, that the Creamery Operation is a commercial use that is prohibited by terms of the Easement Agreement."

At the hearing on the motions, the court said,

[I] need to sit down and to make a declaratory judgment on the motion to dismiss, motion for summary judgment, whatever is filed in here, to the effect that this is an issue involving standing . . . [and] the legislature has not indicated one way or another through any historical development or legislative history that I can see, whether or not there should be standing. So that means that we fall back on the issue of whether an easement itself gets standing and they have not said one way or another about that. In fact, they have specifically said that they have appointed somebody in the position called the State of Maryland, the Office of the Attorney General, etcetera to enforce this. Now, the next step is do they as property owners have this right. Well, *Sugarloaf* is very, very interesting because the property owners had that right because they were having a dump there and they were burning all sort of toxic materials and the Butlers and the other people claimed that it was harming their land. So I am not going to say the Court of Appeals is ever going to close the door

completely on saying that these adjacent property owners don't have any right. What I'm saying is I can't see that they have anything different as did occur in *Sugarloaf* because their properties were being destroyed or hurt through toxic substances coming over which is not manifest here because I don't see it, except for the desire not to have competition in this regard, I can't see your clients are in any other position here able to be articulated different from the public. . . .

I, there's two matters of first impression here, that is the right or not of the public to enforce this easement and, secondly, the situation as to whether or not it's going to be considered a charitable trust.

On March 19, 2009, the circuit court issued its **ORDER OF COURT DECLARATORY JUDGMENT**. It stated:

It is ORDERED and DECLARED by the Circuit Court for Baltimore County that [appellants] have no authority under [subtitle 5 of title 2 of] the Agriculture Article of the Annotated Code of Maryland, . . . Maryland law pertaining to easements[,] or otherwise by any other principle or doctrine of law to challenge through direct primary jurisdiction the right of [Bellevale] to construct a creamery operation on property owned by [Bellevale] as they have alleged in their Complaint. [Appellants] have no standing.

It is the right of [appellants] to carry their dispute with [appellees] through the zoning, planning and permit process of land use enacted by the State of Maryland and Baltimore County as those laws pertain to [Bellevale Farm]. Any citizen who qualifies for standing in the administrative process may initiate that process with Baltimore County government. . . .

For reasons more completely explained by this court on the record at the time of the hearing on the open motions, it is determined by this court that neither the legislative history of the MALPF enactment, the wording of the Statutory scheme or any COMAR regulation enacted pursuant to the statute indicate any intent to allow a taxpayer, an adjoining property owner, or any other individual or entity to challenge the decision made by MALPF to approve the creamery operation by direct application of primary jurisdiction with this court. . . .

As a result of a consideration of the pleadings and papers filed in this case and upon a hearing it is **ORDERED** by the Circuit Court for Baltimore County as

follows:

1. [Bellevale's] Motion for Summary Judgment . . . is **GRANTED**.
2. [MALPF's] Motion for Summary Judgment is **GRANTED**.
3. The Motion for Summary Judgment filed by [appellants] . . . is **DENIED**.

Count I (Mandamus for . . . failure by MALPF to enforce an agricultural easement), Count II (Mandamus for an alleged failure by MALPF to enforce provisions of State and Local law), and Count IV (Request for Injunctive Relief) are all dismissed.⁴

DISCUSSION

I. Standard of Review

The circuit court's order issued a declaratory judgment that appellants lacked standing,⁵ granted appellees' motions for summary judgment and also "dismissed" Counts I, II and IV of the complaint.⁶

⁴As to the third count, the circuit court issued a declaratory judgment that appellants had no standing to challenge the creamery operation "through direct primary jurisdiction" of the court.

⁵Standing "should be adjudicated by the circuit court 'through a motion or other appropriate pleading filed . . . to dismiss . . . a party.'" *Sugarloaf Citizens' Ass'n v. Department of Env't*, 344 Md. 271, 292 (1996) (quoting *Morris v. Howard Research & Development Corp.*, 278 Md. 417, 424-25 (1976)). "There are . . . occasions when it may be proper for a circuit court to . . . enter judgment against a plaintiff in an action in which no legal remedy would be available," such as when the plaintiff lacks standing. *Howard v. Montgomery Mut. Ins. Co.*, 145 Md. App. 549, 555 (2002).

⁶When a party relies on material outside the pleadings, as the circuit court did here, a motion to dismiss and/or for summary judgment is converted into a motion for summary judgment. See *120 W. Fayette St., LLLP v. Mayor of Baltimore*, 407 Md. 253, 263 (2009) (continued...)

In *Catalyst Health Solutions, Inc. v. Magill*, 414 Md. 457, 470-72 (2010), the Court of Appeals explained,

The entry of summary judgment is governed by Rule 2-501, which provides in pertinent part:

(f) **Entry of judgment.** The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

As we recently stated in *Gourdine v. Crews*, 405 Md. 722, 735-36, 955 A.2d 769, 777-78 (2008), the standard of review of a grant of such a motion is as follows:

In considering a trial court's grant of a motion for summary judgment, this Court reviews the record in the light most favorable to the non-moving party. *Anderson v. Council of Unit Owners of Gables on Tuckerman Condominium*, 404 Md. 560, 570-71, 948 A.2d 11, 18 (2008); *Rodriguez v. Clarke*, 400 Md. 39, 926 A.2d 736 (2007); *Rhoads v. Sommer*, 401 Md. 131, 148, 931 A.2d 508, 518 (2007) ("We review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the facts against the moving party."); *Harford County v. Saks*, 399 Md. 73, 82, 923 A.2d 1, 6 (2007) (In reviewing a trial court's decision on a motion for summary judgment, "we seek to determine whether any material facts are in dispute and, if they are, we resolve them in favor of the non-moving party."); *Lovelace v. Anderson*, 366 Md. 690, 695, 785 A.2d 726, 728 (2001) (In reviewing a grant of the defendants' motions for summary judgment, "we must review the facts, and all inferences therefrom, in the light

⁶(...continued)
("By relying on material outside of the pleadings when granting the City's motion to dismiss, the Circuit Court, in effect, converted the motion to dismiss into a motion for summary judgment.").

most favorable to the plaintiffs.”). If no material facts are in dispute, this Court must determine whether the Circuit Court correctly entered summary judgment as a matter of law.

Anderson, 404 Md. at 571, 948 A.2d at 18; *Rodriguez*, 400 Md. at 70, 926 A.2d at 754; *Saks*, 399 Md. at 82, 923 A.2d at 6; *Property and Casualty Ins. Guaranty Corp. v. Yanni*, 397 Md. 474, 480-81, 919 A.2d 1, 5 (2007); *Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 451, 910 A.2d 1072, 1079 (2006). On appeal from an order entering summary judgment, we review “only the grounds upon which the trial court relied in granting summary judgment.” *Rodriguez*, 400 Md. at 70, 926 A.2d at 754, quoting *Standard Fire*, 395 Md. at 450, 910 A.2d at 1079; *Eid v. Duke*, 373 Md. 2, 10, 816 A.2d 844, 849 (2003), quoting *Lovelace*, 366 Md. at 695, 785 A.2d at 729.

The standard of review for a declaratory judgment entered as a result of the grant of a motion for summary judgment is “whether that declaration was correct as a matter of law.” *Olde Severna Park Improvement Ass’n, Inc. v. Gunby*, 402 Md. 317, 329, 936 A.2d 365, 371 (2007) (citations omitted). We have held that “[w]hile it is permissible for trial courts to resolve matters of law by summary judgment in declaratory judgment actions,” *Megonnell v. United Services*, 368 Md. 633, 642, 796 A.2d 758, 764 (2002), the court must, in a separate document and in writing, define the rights and obligations of the parties or the status of the thing in controversy. *Lovell Land Inc. v. State Highway Admin.*, 408 Md. 242, 256, 969 A.2d 284, 292 (2009), citing *Union United Methodist v. Burton*, 404 Md. 542, 550, 948 A.2d 1, 5 (2008), *Allstate v. State Farm*, 363 Md. 106, 117 n.1, 767 A.2d 831, 837 n.1 (2001). This requirement is applicable even if the action is not decided in favor of the party seeking the declaratory judgment. *Lovell*, 408 Md. at 256, 969 A.2d at 292, citing *Ashton v. Brown*, 339 Md. 70, 87, 660 A.2d 447, 455 (1995).

II. Standing

As a “threshold issue,” *Norman v. Borison*, 192 Md. App. 405, 420 (2010), a litigant must have standing “to invoke the judicial process in a particular instance.” *Adams v. Manown*, 328 Md. 463, 480 (1992). Standing rests on “a ‘legal interest’ such as ‘one of

property, one arising out of a contract, one protected against tortious invasion, or one founded on a statute which confers a privilege.” *Committee for Responsible Dev. on 25th St. v. Mayor & City Council*, 137 Md. App. 60, 72 (2001) (quoting *Baltimore Steam Co. v. Baltimore Gas & Elec. Co.*, 123 Md. App. 1, 15 (1998)). “Where there exists a party having standing to bring an action or take an appeal, we shall not ordinarily inquire as to whether another party on the same side also has standing.” *Board of License Comm’rs v. Haberlin*, 320 Md. 399, 404 (1990); see also *Garner v. Archers Glen Partners, Inc.*, 405 Md. 43, 54 (2008); *Dorsey v. Bethel A.M.E. Church*, 375 Md. 59, 67 n.1 (2003).

As they did in the circuit court, appellants assert three independent, common law bases for standing in this case. First, “they are intended third party beneficiaries” of the Easement Agreement. Second, “the Easement Agreement created a charitable trust, which is enforceable by interested third parties such as [a]ppellants.” Third, “they will be ‘specially harmed’ by the proposed Creamery Operation in a manner different from the public at large.” We shall address each of these arguments in turn.

A. Third-Party Beneficiary

Appellants argue that they are intended third-party beneficiaries of the Easement Agreement and the restrictive covenant as to the use of Bellevale Farm.⁷ They state that the

⁷The parties characterize the Easement Agreement as a negative easement. “Negative easements involve the payment to the landowner for a termination or extinguishment of a portion of his property rights.” Comment, *Progress and Problems in Wisconsin’s Scenic and Conservation Easement Program*, 1965 Wis. L. Rev. 352, 360 (1965) (quoted in *Hardesty* (continued...))

Easement Agreement was intended to benefit (1) the general public, (2) other property owners who placed their property in easements, and/or (3) persons who own land adjacent to or nearby Bellevalle Farm.

In *First United Pentecostal Church v. Seibert*, 22 Md. App. 434, 440 (1974), we recognized that while “modern courts have refused to be bound by technical rules in determining the right to enforce . . . restrictive agreements . . . they always have required that the covenant be made with or for the benefit of the party seeking to enforce it.” In *Mackubin v. Curtiss-Wright Corp.*, 190 Md. 52 (1948), the Court of Appeals addressed the rights of third-party beneficiaries to enforce a contract:⁸

The original rule of the common law was that privity between the plaintiff and the defendant is requisite to maintain an action on a contract, even though the contract is for the benefit of a third person. There has been a gradual relaxation of this rule. . . . The Courts now generally recognize the right of a third-party beneficiary to sue on a contract made expressly for the benefit of either a donee beneficiary or a creditor beneficiary. A third person is a donee beneficiary where it appears that the purpose of the promisee in obtaining the promise of the performance thereof is to make a gift to the beneficiary or to confer upon him a right against the promisor to some performance neither due nor supposed or asserted to be due from the promisee to the beneficiary. A third person is a creditor beneficiary where no purpose to make a gift appears and performance of the promise will satisfy an actual or supposed or asserted duty of the promisee to the beneficiary, or a right of the beneficiary against the promisee which has been barred by the Statute of Limitations, or by a

⁸(...continued)

v. State Roads Com. of State Highway Administration, 276 Md. 25, 30 (1975)). “A ‘negative easement’ is a restrictive covenant.” Restatement (Third) of Property: Servitudes, § 1.3(3)).

⁹Restrictive agreements or covenants “are a species of contract. Thus, they are interpreted in a like manner as other types of contracts.” *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 682 n.13 (2007).

discharge in bankruptcy, or which is unenforceable because of the Statute of Frauds. . . . [But] before [such] a stranger to a contract can avail himself of the exceptional privilege of suing for a breach thereof, he must at least show that it was intended for his direct benefit. . . . In order to recover it is essential that the beneficiary shall be the real promisee; *i.e.*, that the promise shall be made to him in fact, though not in form. It is not enough that the contract may operate to his benefit. It must clearly appear that the parties intend to recognize him as the primary party in interest and as privy to the promise.

Id. at 56-58 (internal citations omitted). See also *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 2011 Md. App. LEXIS 141, 61-63 (Oct. 26, 2011).

“The primary source for determining whether the parties intended a third party to have standing to enforce the contractual provisions is the language of the contract itself.” *Volcjak v. Washington County Hosp. Ass’n*, 124 Md. App. 481, 509 (1999). In some cases, the contract may clearly express an intended third party beneficiary, see *Schlicht v. Wengert*, 178 Md. 629, 634 (1940), but the absence of a clear expression is not necessarily decisive, for “[i]f the meaning of the instrument is not clear from its terms,” *Bellevue Constr. Co. v. Rugby Hall Community Ass’n*, 321 Md. 152, 157 (1990) (emphasis added), “a party seeking enforcement [may] show an unexpressed intention by inference from . . . the circumstances” surrounding the execution of the contract. *Schlicht* 178 Md. at 634. “Extrinsic evidence is only utilized when the intent of the parties and the purpose of a restrictive covenant cannot be divined from the actual language of the covenant in question[.]” *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 681 (2007) (emphasis added). In such instances, extrinsic evidence “should be considered in arriving at the intention of the parties, and the apparent meaning and object of their stipulations should be gathered from all possible sources.”

Bellevue, 321 Md. at 157-158 (1990) (quoting *Baltimore Butchers Abattoir & Live Stock Co. v. Union Rendering Co.*, 179 Md. 117, 122 (1941)).⁹

"Construction of a contract is generally a matter of law for the court,"¹⁰ including "whether the parties intended a third party to have standing to enforce . . . contractual provisions," *Volcjak v. Washington County Hosp. Ass'n*, 124 Md. App. 481, 509 (1999), although, technically, "[w]ho was intended to benefit from the covenant, with the correlative right to enforce the restrictions, presents a fact question which turns upon the intention of the original parties to the agreement." *First United Pentecostal Church v. Seibert*, 22 Md. App. 434, 440 (1974).¹¹

Here, the Easement Agreement states that it is:

by and between BELLEVALE FARM LIMITED PARTNERSHIP, a Maryland Limited Partnership, party of the first part, "Grantor", and the STATE OF MARYLAND, to the use of the Department of Agriculture on behalf of the Maryland Agricultural Land Preservation Foundation, party of the second part, "Grantee" . . .

⁹"This explication of the method of construing restrictive covenants has been accepted as the standard in Maryland." *City of Bowie*, 398 Md. at 680.

¹⁰"Because this case involves a . . . contract, it requires an interpretation of the relevant terms. In the first instance, absent any ambiguity, this involves a question of law for the court to resolve. . . . When the language of the contract is ambiguous, however, the ambiguity must be resolved by the trier of fact." *Nicholson Air Servs. v. Board of County Comm'rs*, 120 Md. App. 47, 63 (1998) (internal citations omitted).

¹¹Maryland's appellate courts have upheld a circuit court's determination of the intended beneficiaries to a contract at the summary judgment phase. See, e.g., *Volcjak*, 124 Md. App. 481. Moreover, appellants admit in their motions that "whether [appellants] have standing to bring this action" is, "[a]t this juncture," one of the issues "ripe for determination."

Section B(5) of the Easement Agreement provides:

If the easement or any covenant, condition, limitation or restriction herein contained is violated or breached, the *Grantee* may after due notice to the Grantor, the Grantor's personal representatives, successors or assigns, institute an action in equity to enjoin, by *ex parte*, temporary or permanent injunction, such violation or breach; to require the restoration of the above described land to its condition prior to such other legal action as may be necessary to insure compliance with the easement and the covenants, conditions, limitations and restrictions herein contained.

(Emphasis added). Section B(7) further provides that "[t]his easement does not grant the public any right to access or any right of use of the . . . land." Thus, the Easement Agreement clearly states that the State, as the grantee, may enforce the easement, and expressly limits public access and use of the land. There is no express statement in the Easement Agreement that others who have placed their property under MALPF easements, the general public, or adjoining property owners, are intended third-party beneficiaries to the Easement Agreement. There is also no mention of these parties, or of any of the claimed beneficiaries except as they are denied rights in § B(7). "[A]lthough it is not necessary to the creation of third-party beneficiary status that an intended beneficiary be specifically mentioned in the contract . . . the lack of acknowledgment is certainly a factor to consider." *Lovell Land, Inc. v. State Highway Admin.*, 408 Md. 242, 265 (2009).¹²

Appellants do not explain why it is not "clear from its terms" that it was the parties'

¹²Appellees also argue, in the alternative, that pursuant to § 2-504(2)-(3) of the Agriculture article, only MALPF and/or the State is empowered to purchase easements under § 2-501 *et seq.* Thus, by limiting who may *acquire* such interests, they suggest that the legislature also intended to limit who may *enforce* them.

intent that enforcement of the Easement Agreement lies solely with the State. They instead proceed *directly* to extrinsic evidence,¹³ which we only consider if the intent of the parties and the purpose of the contract cannot be determined by the language of the Easement Agreement, to argue that they are intended beneficiaries of the easement. But, even if we assume that the intent of the parties is unclear and we consider the extrinsic evidence submitted by appellants, we are not persuaded that they are anything more than *incidental* beneficiaries of the Easement Agreement, and, as such, are not entitled to enforce the Easement Agreement. See, e.g., *Mackubin v. Curtiss-Wright Corp.*, 190 Md. 52, 57 (1948) (An incidental beneficiary may benefit from the contract, but it “acquires by virtue of the promise no right against the promisor or the promisee.”). As explained in illustration 6 of the Restatement (Third) of Property: Servitudes, § 2.11;

A, B, and C are neighbors. A owns Blackacre, B owns Whiteacre, C owns Greenacre. A conveys Blackacre to D, subject to a covenant that D will maintain the landscaping on Blackacre so that it does not interfere with the view from Whiteacre. The deed states that the covenant runs with the land for the benefit of Whiteacre. Although Greenacre also enjoys a view across Blackacre, the holder of Greenacre is an incidental, not an intended, beneficiary of the servitude.

Finally, relying on cases from other jurisdictions, appellants also argue that, as a community association, LGVA has standing to enforce the Easement Agreement as a conservation easement. See *Friends of the Shawangunks, Inc. v. Clark*, 585 F. Supp. 195,

¹³Appellants point to, among other sources, §§ 2-501 and 2-502 of the Agriculture article, COMAR 15.15.01.01, a fact sheet from MALPF’s website, the Restatement (Third) of Property: Servitudes, § 8.5, and several law review articles.

199-200 (N.D.N.Y. 1984), *rev’d on other grounds*, 754 F.2d 446 (2d Cir. 1985) (organization with the mission to preserve the area in question had standing to enforce an existing conservation easement held by United States Department of the Interior under the Land and Water Conservation Fund Act of 1965); *Tenn. Envtl. Council, Inc. v. Bright Par 3 Assocs.*, 2004 Tenn. App. LEXIS 155 (Tenn. Ct. App. Mar. 8, 2004) (any citizen of Tennessee is a beneficiary of a conservation easement held by the City of Chattanooga pursuant to state law, and able to establish standing).

We, however, have found no Maryland authority, nor do appellants cite to any, to support the grant of standing to a community association that is not the intended beneficiary of the easement. “It has been generally recognized in this State that an association lacks standing to sue where it has no property interest of its own -- separate and distinct from that of its individual members -- which may be affected by any of the alleged acts under attack.” *Citizens Planning & Housing Asso. v. County Executive of Baltimore County*, 273 Md. 333, 345 (1974); see also *Maryland Ass’n of HMO’s v. Health Servs. Cost Review Comm’n*, 356 Md. 581, 589 (1999); Michael Sarbanes & Kathleen Skullney, *Taking Communities Seriously: Should Community Associations Have Standing in Maryland?*, 6 Md. J. Contemp. L. Issues 283 (1995).¹⁴ We also note Bellevale’s observation that, subsequent to the creation

¹⁴ We are aware that the Court of Appeals has recently acknowledged that,

Section 5-204(f) of the Environment Article, enacted by Chapters 650 and 651 of the Maryland Laws of 2009 and effective January 1, 2010, enables a person

(continued...)

of the instant Easement Agreement, it granted an easement identified as a conservation easement on a different part of its property, naming as grantees both MALPF and the Long Green Valley Conservancy, Inc., "a not for profit organization established to preserve

¹⁴(...continued)

to seek judicial review of an administrative determination by the Maryland Department of the Environment regarding certain environmental permits . . . if the person satisfies the federal rubric for standing:

(f) *Judicial review of final determination by Department.* — A final determination by the Department on the issuance, denial, renewal, or revision of any permit under Title 5, Subtitle 5 or Subtitle 9, § 14-105, § 14-508, § 15-808, or § 16-307 of this article is subject to judicial review at the request of any person that:

(i) Meets the threshold standing requirements under federal law;

and

(ii) 1. Is the applicant; or

2. Participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.

Patuxent Riverkeeper v. Md. Dep't of the Env't, 2011 Md. LEXIS 628, *5-6 (Md. Sept. 30, 2011). See *id.* at *10 (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 181 (2000)) ("An environmental group can satisfy standing federally if 'its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'"). Appellants do not seek judicial review under § 5-204(f) of the Environment article. But, if a member of LGVA, such as the Yoders, has standing in its own right, we would not inquire into LGVA's standing.

farmland and the rural character of the Long Green Valley."¹⁵

B. Charitable Trust

Appellants also argue that, as a conservation easement, the Easement Agreement represents a charitable trust enforceable by "any interested person," and confers standing on both LGVA and the Yoders.

Generally speaking, "[a] conservation easement is a legal agreement between a landowner and [a grantee] that restricts the potential uses of the land at issue in order to prevent it from being developed for commercial or industrial uses or for housing developments." *Md. Envtl. Trust v. Gaynor*, 370 Md. 89, 92 n.1 (2002) (internal citations omitted). "Conservation easements—which are held by an individual or an entity—are easements in gross. A person need not own a particular piece of land to enjoy the benefit of a conservation easement." Matthew J. Richardson, Note, *Conservation Easements as Charitable Trusts in Kansas: Striking the Appropriate Balance Among the Grantor's Intent, the Public's Interest, and the Need for Flexibility*, 49 Washburn L. J. 175, 178 (2009).

¹⁵A notarized and signed "Deed of Conservation Easement" is included in the record, which states,

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement") made this 14th day of March 2002, by and between **BELLEVALE FARM LIMITED PARTNERSHIP**, a limited partnership, 4851 Long Green Road, Glen Arm MD 21257 ("Grantor"); and **LONG GREEN VALLEY CONSERVANCY, INC.**, P.O. Box 133, Long Green, MD 21092 and the **MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION**, Maryland Department of Agriculture, State of Maryland, 50 Harry S. Truman Parkway, Annapolis, MD 21401 ("Grantees") [.]

"Although not required by the easement enabling legislation in most states, the vast majority of conservation easements conveyed to date . . . were drafted to protect the particular land they encumber 'in perpetuity.'" Nancy A. McLaughlin, *Conservation Easements: Perpetuity and Beyond*, 34 Ecol. L. Q. 673, 675 (2007). Indeed, because "conservation easements are usually intended to last forever," they "are known as perpetual easements." *Id.* at 674.

In Maryland, § 2-118 of the Real Property article, entitled "Conservation easements; grants to certain trusts," governs conservation easements:

(a) *Creation and enforcement of conservation easements for certain purposes.* -- Any restriction prohibiting or limiting the use of water or land areas, or any improvement or appurtenance thereto, for any of the purposes listed in subsection (b) of this section whether drafted in the form of an easement, covenant, restriction, or condition, creates an incorporeal property interest in the water or land areas, or the improvement or appurtenance thereto, so restricted, which is enforceable in both law and equity in the same manner as an easement or servitude with respect to the water or land areas, or the improvement or appurtenance thereto, if the restriction is executed in compliance with the requirements of this article for the execution of deeds or the Estates and Trusts Article for the execution of wills.

Subsection (b)(8) includes "acts or uses having any relation to the preservation of water or land areas or the improvement or appurtenance thereto" as a proper purpose of a conservation easement.

The Maryland Environmental Trust (MET), which is governed under § 3-201 *et seq.* of the Natural Resources article, is, in Maryland, the "public agency that holds or co-holds most of the conservation easements in the State." Jessica E. Jay, *Third-Party Enforcement of Conservation Easements*, 29 Vt. L. Rev. 757, 773 (2005). See *Md. Envtl. Trust v. Gaynor*,

370 Md. 89, 92 n.1 (2002) ("A conservation easement is a legal agreement between a landowner and MET[.]"). "[B]y accepting donated conservation easements . . . the State undertakes to enforce the restriction [in the easements] in perpetuity." *Id.* at 92.

Easements purchased by MALPF or the State for the benefit of MALPF under subtitle 5 of article 2 of the Agriculture article are described as "agricultural" or "agricultural preservation" easements, *see* MD. CODE ANN., AGRIC. § 2-510(k)(1) ("the Foundation shall notify in writing each landowner who sells an agricultural easement to the Foundation"); *Md. Agric. Land Pres. Found. v. Claggett*, 412 Md. 45, 52 (2009) (conveyance of "an agricultural preservation easement to the Foundation"), including in the Easement Agreement in the instant case. But MALPF also refers to them as "conservation" easements. See MALPF Five-Year Report for FY 2003 through FY 2007, Program Overview ("Including FY 2007 funds, MALPF has now cumulatively purchased or has a pending contract to purchase permanent conservation easements on 1,933 farms with 265,691 acres."); *see also supra* n. 15.

A trust is "a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties in dealing with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it." *From the Heart Church Ministries, Inc. v. Philadelphia-Baltimore Annual Conf*, 184 Md. App. 11, 25 (2009) (quoting Restatement (Second) of Trusts, § 2). "The person who creates a trust is the settlor." *Id.* (quoting Restatement, § 3). "A charitable trust is a fiduciary

relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose.” *Rosser v. Prem*, 52 Md. App. 367, 374 (1982) (quoting Restatement, § 348) (emphasis added). “[R]ecognized as a vehicle to hold trust property for the general public’s benefit,” Jessica E. Jay, *Third-Party Enforcement of Conservation Easements*, 29 Vt. L. Rev. 757, 773 (2005), charitable trusts “should be liberally construed so as to give them effect if possible.” *Rosser*, 52 Md. App. at 380 n.13 (quoting *Baily v. McElroy*, 195 N.E.2d 559, 566 (Ct. App. Ohio, 1963)).

Between private trusts and charitable trusts,

[t]he fundamental distinction . . . is that in the case of a private trust[,] property is devoted to the use of specified persons who are designated as beneficiaries of the trust; whereas in the case of a charitable trust[,] property is devoted to purposes beneficial to the community. . . . There cannot be a private trust unless there is a beneficiary who is definitely ascertained at the time of the creation of the trust or definitely ascertainable within the period of the rule against perpetuities. On the other hand, a charitable trust can be created although there is no definite or definitely ascertainably beneficiary designated, and a charitable trust is not invalid although by the terms of the trust it is to continue for an indefinite or unlimited period.

Restatement, Introductory Note to Chapter 11. See also Charles McHenry Howard, *Charitable Trusts in Maryland*, 1 Md. L. Rev. 105, 105 (1937) (“It is commonly said that charitable trusts have three leading and distinguishing features, viz: 1. They must be for the benefit of the public generally, or some considerable portion of it; 2. Their beneficiaries must necessarily be indefinite; 3. Their duration is not restricted by the rule against perpetuities.”). For example, “a bequest in trust to complete the education of a poor orphan, in whom the

testator had a purely charitable interest, would be a good private trust and enforceable as such, [but] would not be a charitable trust under both the first and second requirements above stated.” *Id.* at 106.

Sections 14-301 and 14-302 of the Estates and Trust article govern charitable trusts. Under § 14-301(a), “[c]ourts of equity have full jurisdiction to enforce trusts for charitable purposes upon suit of the State by the Attorney General or suit of *any person having an interest in enforcement of the trust.*” (Emphasis added). Section 14-302(a) provides,

[i]f a trust for charity is or becomes illegal, or impossible or impracticable of enforcement or if a devise or bequest for charity, at the time it was intended to become effective, is illegal, or impossible or impracticable of enforcement, and if the settlor or testator manifested a general intention to devote the property to charity, a court of equity, on application of any trustee, *or any interested person*, or the Attorney General of the State, may order an administration of the trust, devise or bequest as nearly as possible to fulfill the general charitable intention of the settlor or testator.

(Emphasis added).¹⁶

Section 2-118(e) of the Real Property article refers to both MALPF and §§ 14-301 and 14-302 of the Estates and Trust article:

(e) *Grant to Maryland Agricultural Land Preservation Foundation, Maryland Historical Trust, or Maryland Environmental Trust.* -- If any grant, reservation, dedication, devise, or gift of any nature which clearly indicates the maker’s intention to subject any interest or estate in property to public use for

¹⁶We note that appellants claim that the Yoders and LGVA are “interested” parties who may enforce the Easement Agreement as a charitable trust. As we shall explain, we do not reach the issue of whether appellants are “interested” parties, under §§ 14-301 and 14-302 of the Estates and Trust article, with standing to enforce the Easement Agreement as a charitable trust.

the preservation of agricultural, historic, or environmental qualities *fails to specify a grantee, donee, legatee, or beneficiary to receive the same or specifies a grantee, donee, legatee, or beneficiary who is not legally capable of taking the interest or estate*, it passes to the Maryland Agricultural Land Preservation Foundation, the Maryland Historical Trust, or the Maryland Environmental Trust in any proceedings under §§ 14-301 and 14-302 of the Estates and Trusts Article.¹⁷

(Emphasis added).

The application of charitable trust doctrine to conservation easements is still in its infancy, both nationwide and in Maryland. See Matthew J. Richardson, Note, *Conservation Easements as Charitable Trusts in Kansas: Striking the Appropriate Balance Among the Grantor's Intent, the Public's Interest, and the Need for Flexibility*, 49 Washburn L. J. 175, 188 (2009) ("case law dealing with conservation easements is sparse, and fewer cases specifically address whether such easements create charitable trusts"); Alexander R. Arpad, Comment, *Private Transactions, Public Benefits, and Perpetual Control Over the Use of Real Property: Interpreting Conservation Easements as Charitable Trusts*, 37 Real Prop. Prob. & Tr. J. 91, 94 (2002) ("The proposition that conservation easements may be interpreted as trusts is not entirely novel, but no serious attention has been given to trust law in the literature or the recorded cases on conservation easements.").

¹⁷Appellants do not posit that this case involves a "grant, reservation, dedication, devise, or gift of any nature which clearly indicates the maker's intention to subject any interest or estate in property to public use for the preservation of agricultural, historic, or environmental qualities," which "fails to specify a grantee, donee, legatee, or beneficiary to receive the same or specifies a grantee, donee, legatee, or beneficiary who is not legally capable of taking the interest or estate"

The application of trust law to conservation easements is "not beyond comprehension." Jessica E. Jay, *Third-Party Enforcement of Conservation Easements*, 29 Vt.

L. Rev. 757, 776 (2005). It

depends upon a state's specific public charity statutory or common laws involving charitable trust property, the grantor's intent, and the property subject to the trust. A simplified (perhaps overly so) analysis of the charitable trust doctrine could yield an argument that the doctrine potentially supports attorney general [or third-party] standing to enforce conservation easements when and if a conservation easement is characterized as property held in trust for the public's benefit, akin to any other property of a charitable trust. Extending the doctrine further, a conservation easement grantor's intent in perpetually protecting his or her property through use of a conservation easement would need to suffice as, or be substituted with, the trust creator's intent to create a charitable trust. Further, the land trust holding the conservation easement would have to fit the definition of a public charity or charitable trust in order for the analogy of a conservation easement donated by a property owner to a land trust to property placed in a charitable trust for the public's benefit to be viable.

Id. at 776-777.

The primary benefit of construing a conservation easement as a charitable trust is the doctrine of *cy pres*, which is "[o]ne of the unique features of the law of charitable trusts."

Ronald R. Volkmer, *The Nebraska Uniform Trust Code: Nebraska Trust Law in Transition*, 37 Creighton L. Rev. 61, 79 (2003). Historically,

[u]nder this doctrine, if a donor showed a general intent to devote his gift to charitable purposes; and the gift failed because the specific purpose directed was too indefinite to be carried out, or was otherwise unenforceable; or if the trust while originally useful became subsequently impracticable for further administration . . . the chancery court might direct the application of the charitable fund to some other purpose or purposes which it might determine to be 'near' (*pres*) to the charitable purpose designated by the testator or founder.

Charles McHenry Howard, *Charitable Trusts in Maryland*, 1 Md. L. Rev. 105, 106-107

(1937).¹⁸

Cy pres would also require court approval to modify or terminate conservation easements:

Because [a grantee] holds a . . . perpetual conservation easement in trust for the benefit of the public, it should not be free to simply agree with the owner of the encumbered land to terminate the easement, or modify it in contravention of its purpose, even in exchange for cash or other compensation. Rather, to deviate from the stated purpose of the easement, either through outright termination or by substantially amending the easement, the municipality or land trust should be required to obtain court approval in a *cy pres* proceeding. In such a proceeding: (i) it would have to be established that the charitable purpose of the easement has become "impossible or impractical;" and (ii) if such a showing is made, the court would supervise the modification or termination of the easement, the payment of compensation to the holder equal to the value of the rights relinquished, and the holder's use of such compensation to accomplish similar conservation purposes in some other manner or location.

McLaughlin, 34 Ecol. L. Q. at 681.

In practice, *cy pres* could serve as a basis for extending standing where citizens who are not parties to an easement sue to enforce the easement. Matthew J. Richardson, Note, *Conservation Easements as Charitable Trusts in Kansas: Striking the Appropriate Balance Among the Grantor's Intent, the Public's Interest, and the Need for Flexibility*, 49 Washburn

¹⁸Changing conditions that may make a charitable purpose impossible or impractical include "climate change or changes in the surrounding landscape that may degrade or destroy the conservation attributes for which the encumbered land was protected[.]" Nancy A. McLaughlin, *Conservation Easements: Perpetuity and Beyond*, 34 Ecol. L. Q. 673, 676 (2007).

L. J. 175, 176 (2009)

Those who support treating conservation easements as charitable trusts argue,

[c]onstruing conservation easements as charitable trusts ensures that both the trust settlor's intentions are honored and that the public's interest in the conservation easement is protected. Placing conservation easements within the framework of charitable trust law also allows courts to use *cy pres* to modify or terminate conservation easements that have become impracticable. Applying the doctrine of *cy pres* to conservation easements is a feasible solution to complaints that perpetual conservation easements are impractical, while court oversight protects the public's interest in conservation easements.

Id. at 192.

Nationwide, few cases have examined the application of the charitable trust doctrine to conservation or similar easements. In *Cohen v. Lynn*, 33 Mass. App. Ct. 271 (1992), two grantors conveyed a parcel of land to the City of Lynn to be used "forever for park purposes." *Id.* at 274. The City "appropriated \$12,000 toward the \$20,000 purchase price," and later leased the parcel to the Metropolitan Park Commission for 99 years for park purposes. *Id.* at 276. Upon the expiration of the lease, the City, claiming that the land was "no longer usable for park purposes," sold a portion of the land to a developer. *Id.* at 272. Under a Massachusetts law that granted taxpayers of the city standing to enforce the terms of a trust arising from a conveyance granted to the city, a group of taxpayers sought "a judgment declaring that the conveyance [to the developer] violated the city's obligations under a public charitable trust which they claimed arose in 1893 when the parcel was acquired by deeds which state that the land is to be used 'forever for park purposes.'" *Id.*

On appeal, the Appeals Court of Massachusetts held that the language "forever for

park purposes,” coupled with “[t]he circumstances attending the conveyances to the city[, which] evidence a general plan to dedicate the land permanently to public park purposes,” was sufficient to establish the grantors’ intention to create a charitable trust, even though the grantors had received consideration for the easement. *Id.* at 275. The court observed, “[w]e have found no authority, nor is any cited to us, to the effect that the receipt of substantial consideration prevents a grantor from conveying property to a municipality in such manner as to establish a public charitable trust.” *Id.* at 276.

In *Three Bills, Inc. v. City of Parma*, 111 Ohio App. 3d 740 (1996), a developer, as required by ordinance, “dedicated” a portion of land to the City for “parks and green area purposes.” *Id.* at 743. Later, the City leased the property to a broadcasting company, which built “a communications tower, service road, and maintenance building on the property.” *Id.* The developer filed suit against the City and the broadcasting company “to restore the property to its previous condition and prohibit its use for commercial purposes.” *Id.* “Assuming without deciding that a trust was created” by the dedication of the land, the Court of Appeals of Ohio held that the developer was without standing, because under Ohio case law, settlors and their successors could not sue to enforce a trust. *Id.* at 745. The court noted that “[a] settlor within the meaning of the law of trusts is the person who creates the trust. Thus, for the purposes of this case, [the developer was] the settlor[] of a charitable trust.” *Id.* The court also recognized that

[t]he public, in as much as they are beneficiaries of charitable trusts, have a right to enforce their construction. In the same respect, adjacent property

owners have a special interest, in as much as they are beneficiaries of restrictive covenants, which enable them to maintain an action to enjoin misuse of public lands. Nonetheless, [the developer] did not produce any evidence in the record proving they owned property in [the City], adjacent to the land in question or otherwise, nor did they even allege in the complaint that they owned property in [the City]. . . Accordingly, [the developer] lacks standing to enforce the construction of a charitable trust and to enforce the terms of a restrictive covenant.

Id. at 745-46.

In *Hicks ex rel. Bd. of Trs. of the Scenic Pres. Trust v. Dowd*, 157 P.3d 914 (Wy. 2007), Lowham Limited Partnership owned a ranch in Johnson County, Wyoming. In 1993, it executed a “Deed of Conservation Easement and Quit Claim Deed” transferring one acre of the ranch to the Board of County Commissioners of Johnson County and imposing a conservation easement on the remainder of the ranch. The easement was to be in perpetuity unless “unforeseeable circumstances” rendered the continuation of the conversation easement impossible. In 1997, the Board quitclaimed the one-acre parcel to the Scenic Preserve Trust of Johnson County, “subject to any easements or rights-of-way that have been legally acquired.”

Two years later, Lowham Limited Partnership sold the ranch subject to the conservation easement to the Dowds. Later,

[i]n 2001, coal bed methane development was contemplated by a company that owned mineral interests underlying [the r]anch. As a result, in June of 2002, the Dowds requested that the Board terminate the conservation easement. The Dowds asserted that coal bed methane development was unpreventable, unanticipated, and inconsistent with the terms of the conservation easement. The Dowds proposed that the conservation easement could be extinguished if the Board sold them the one-acre parcel and the conservation easement.

Id. at 917. The Board agreed that the proposed development was inconsistent with the purposes of the conservation easement, and transferred the one-acre tract and the conservation easement to the Dowds.

Hicks, a resident landowner in Johnson County, filed a complaint alleging that the easement "could not be extinguished until it was judicially determined that unforeseeable circumstances made the continuation of the easement impossible." *Id.* The Board and the Dowds moved for summary judgment, alleging that Hicks lacked standing to enforce the terms of the Scenic Preserve Trust. The trial court denied their motion for summary judgment, reasoning: (1) the conservation easement had been transferred to a charitable trust, the Scenic Preserve Trust, and (2) Hicks had standing because the easement was accepted for the benefit of Wyoming citizens.

On appeal, the Supreme Court of Wyoming stated that

[i]n their brief, Appellants do not challenge the district court finding that the Scenic Preserve Trust is a charitable trust. Instead, they agree that the Scenic Preservation Trust is a charitable trust, whether under common law principles or under current statutory law. Given the district court's unchallenged finding, we must agree that the Scenic Preserve Trust is a charitable trust.

Id. at 919. The court found, however, that Hicks did not have standing because he was neither the Attorney General, a settlor, or a "qualified beneficiary" of the trust, as required under a Wyoming law.¹⁹

¹⁹ "Qualified beneficiary" means a beneficiary who is currently entitled to distributions of income or principal from the trust or has a vested remainder interest in the residuary of the (continued...)

Our review of the reported case law²⁰ reveals that only *Hicks* involved a conservation easement, and, in that case, the appellate court was "constrained to agree that a charitable trust was involved because the trial court's finding on that point was never challenged by the parties." C. Timothy Lindstrom, *Conservation Easements, Common Sense and the Charitable Trust Doctrine*, 9 Wyo. L. Rev. 397, 405 (2009). *Three Bills* and *Cohen* involved conveyances and dedications, rather than easements, although "the courts' rationales and charitable trust analyses [may] illustrate how charitable trust law should govern conservation easements." Matthew J. Richardson, Note, *Conservation Easements as Charitable Trusts in Kansas: Striking the Appropriate Balance Among the Grantor's Intent, the Public's Interest*,

¹⁹ (...continued)
trust which is not subject to divestment[.] Wyo. Stat. § 4-10-103(a)(xv).

²⁰ Implying that it has some binding effect on MALPF, appellants also refer us to *Attorney General v. Miller*, Civil Action No. 20-C-98-003486 (Cir. Ct. for Talbot County, 1998) (the "*Myrtle Grove* case"), in which the Maryland Attorney General allegedly advocated a position on the charitable trust issue which is different from what they advocate here. Appellants do not actually argue that that case, which was settled by a consent judgment, and which involves different facts and substantially different parties, precludes MALPF—the only party common to that case and the instant case—from asserting an allegedly contradictory position here. That said, we do not believe that any form of estoppel would arise from that case. See *Colandrea v. Wilde Lake Community Ass'n*, 361 Md. 371 (2000) ("Collateral estoppel is concerned with the issue implications of the earlier litigation of a different case, while *res judicata* is concerned with the legal consequences of a judgment entered earlier in the same cause. The two doctrines are based upon the judicial policy that the losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on issues raised, or that should have been raised.") (citations omitted); *Underwood-Gary v. Mathews*, 366 Md. 660, 667 (2001) ("Judicial estoppel has been defined as a principle that precludes a party from taking a position in a subsequent action inconsistent with a position taken by him or her in a previous action."); *Alexander v. Walter*, 8 Gill 239 (Md. 1849) (Under judicial estoppel, a verdict between parties could not be given in evidence in a later suit that involved a stranger to the first action).

and the Need for Flexibility, 49 Washburn L. J. 175, 192 (2009).

Based on the case law and the relevant statutory authority, and assuming, without deciding, that an agricultural preservation easement purchased by MALPF or the State for the benefit of MALPF qualifies as a "conservation easement," we are not persuaded that the charitable trust doctrine *must* be applied to purchased, nonperpetual agricultural preservation easements, nor even that it *should* be. We explain.

In Maryland, the elements necessary to the creation of a charitable trust are: (1) a fiduciary relationship, (2) duties of trustees, (3) trust property, (4) manifestation of intention, and (5) a charitable purpose. *Rosser v. Prem*, 52 Md. App. 367, 377 (1982) (citing Restatement (Second) of Trusts, § 348).

As to elements (1)-(3), appellants contend:

These elements may be applied with little difficulty [to the Easement Agreement]. First, the conveyance of an agricultural preservation easement creates a fiduciary relationship because MALPF can be said to hold the property in trust for the benefit of the public, and owes an affirmative obligation to ensure that the land is used for the purposes specified in the easement and the law. Second, the Easement Agreement imposes duties on MALPF as trustee. Among other things, MALPF is charged with approving releases of lots from the easement, conducting inspections of the easement property, and enforcing the terms of the agreement. Third, there is trust property, of course, which is defined by property description in the Easement Agreement itself.

Elements (1)-(3) are not expressly disputed by the appellees.

As to the fourth element, "application of the charitable trust doctrine to conservation easements requires finding that the grantor of the easement intended to create such a trust in

the first place." Lindstrom, 9 Wyo. L. Rev. at 402. *See also*

Restatement, § 351 ("A charitable trust is created only if the settlor properly manifests an intention to create a charitable trust."). Comment b to § 351 recognizes that "[n]o particular form of words or conduct is necessary for the manifestation of intention to create a charitable trust. . . . A charitable trust may be created although the settlor does not use the word 'trust' or 'trustee.'" Appellants reference Austin Wakeman Scott & William Franklin Fratcher, *The Law of Trusts* § 2.8, at 50 (4th ed. 1989),²¹ which states:

It is to be noticed that an express trust may arise even though the parties in their own minds did not intend to create a trust. . . . It is the manifestation of intention that controls and not the actual intention where that differs from the manifestation of intention. An express trust may be created even though the parties do not call it a trust, and even though they do not understand precisely what a trust is; it is sufficient if what they appear to have in mind is in its essentials what the courts mean when they speak of a trust.

Appellants argue that "[t]he Easement Agreement, the statutory scheme, and the MALPF program as a whole, all evidence the intent to create" a charitable trust. Here, the Easement Agreement states that it is "the intention of the parties that the said land shall be preserved solely for agricultural use in accordance with the provisions of the Agricultural Article," with no mention of "trust" or "trustee." Section B(5) of the Easement Agreement expressly provides that the grantee, *i.e.*, the State, "to the use of the Department of Agriculture on behalf of" MALPF, may enforce the easement; it does not state any other

²¹This treatise has been described as a "leading treatise on trust law." Nancy A. McLaughlin and W. William Weeks, *In Defense of Conservation Easements: A Response to The End of Perpetuity*, 9 Wyo. L. Rev. 1, 21 (2009).

parties who may enforce the easement. *See supra*. We find the following admonition instructive:

[w]hether a conservation easement conveyance is intended by the grantor to create a charitable trust, . . . even though the deeds of conveyance typically do not contain the words "trust" or "trustee;" even though many easement donors may not know that the intended relationship is called a trust; . . . and even though creation of a charitable trust may add a dimension to the relationship between the landowner and easement holder that neither contemplated and that may substantially complicate that relationship; *is not something to be lightly inferred*.

Lindstrom, 9 Wyo. L. Rev. at 403 (citation and internal quotation marks omitted) (emphasis added).

First, negative easements or restrictive covenants are traditionally based on property law. *See id.* at 400; *see also* Jeffrey A. Blackie, Note, *Conservation Easements and the Doctrine of Changed Conditions*, 40 Hastings L. J. 1187, 1190 (1989) ("Conservation easements do not fit easily into any previously existing category of property interests"); Duncan M. Greene, Comment, *Dynamic Conservation Easements: Facing the Problem of Perpetuity in Land Conservation*, 28 Seattle U. L. Rev. 883, 891 (2005). In addition, it can be argued that in the case of conservation easements, "grantors can reasonably assume that the easements they convey may be modified or terminated in the same manner as other easements, *i.e.*, if both parties to the easement agree," Lindstrom, 9 Wyo. L. Rev. at 404. Therefore, "[o]nly in the event of application of the charitable trust doctrine (or similar doctrines) to easement agreements are the parties precluded from jointly agreeing to amendments" to conservation easements. *Id.* at 408. In this case, the Easement Agreement

expressly provides for modification or termination by agreement of the parties.

Second,

The course of action between landowners and easement holders belies any intent by either party to the easement that the easement conveyance was intended to create a charitable trust under which modification or termination was not a matter, *within the context of existing legal constraints*, solely within the purview of the landowner and the easement holder.

When a landowner conveys a conservation easement, and the holder accepts the easement, they do so subject to the existing law of the state of the conveyance. As a matter of law, those who enter into an agreement are charged with knowledge of and make their agreements subject to, existing law:

Parties to an agreement are presumed to know the law and to have contracted with reference to existing principles of law. These existing principles of law enter into and become a part of a contract as though referenced and incorporated into the terms of the agreement.

Lindstrom, 9 Wyo. L. Rev. at 403-04 (quoting 11 Williston On Contracts § 30:19 (4th ed.)) (other citations omitted) (emphasis in original).

Third, based on our analysis of the caselaw and the referenced scholarship, an important, if not primary rationale for applying the charitable trust doctrine to conservation easements—to prevent termination or modification of an easement without court approval—has not been a great concern:

In the over one hundred years of land trust history, with nearly 1,700 private land trusts now in business, and with over six million acres subject to thousands of privately held conservation easements, *there is only one recorded case of an improper conservation easement termination: that of . . . Hicks v. Dowd*.

Id. at 401 (emphasis in original). This observation undermines the argument that, in regard

to conservation easements,

although municipalities and charitable organizations operate to benefit the public, history has shown that they cannot always be trusted to act in accordance with the public interest. Indeed, municipalities and charitable organizations entrusted with charitable assets will almost inevitably be subject to financial, political, and other pressures that could cause them to act in manners contrary to the public interest.

Nancy A. McLaughlin, *Conservation Easements: Perpetuity and Beyond*, 34 Ecol. L. Q. 673, 700-01 (2007).

Fourth, although the applicability of the charitable trust doctrine may encourage some landowners to convey conservation easements, it may discourage others, as we discuss in more detail below. Compare *id.* at 675 (“Indeed, the promise of permanent protection of cherished land has been a key selling point for land trusts attempting to convince private landowners to donate or sell conservation easements.”), and *id.* at 702 (“Ad hoc, unsupervised modifications and termination of ostensibly ‘perpetual’ conservation easements would significantly undermine public confidence in the use of such easements as a land protection tool and chill future easement sales and donations.”), with Lindstrom, 9 Wyo. L. Rev. at 410 (“[T]he unpredictable and potentially intrusive effect of application of the [charitable trust] doctrine to conservation easements is highly likely, once word gets around, to discourage many landowners from contributing them in the future.”).

Fifth, the application of the charitable trust doctrine to a potentially *nonperpetual* conservation easement, such as the instant Easement Agreement, is particularly problematic, even among proponents of application generally. See McLaughlin, 34 Ecol. L. Q. at 707-712.

Nonperpetual conservation easements include “easements that are drafted to endure indefinitely but expressly grant the holder some level of . . . discretion to simply agree with the owner of the encumbered land to substantially modify or terminate the easement.” *Id.* at 707. We note that § 2-514.1, which was enacted by the General Assembly in 2004, states, “[a]n easement whose purchase is approved by the Board of Public Works on or after October 1, 2004, shall be held by the Foundation in perpetuity.”²²

Here, the Easement Agreement states that “[t]his easement shall be in perpetuity, or for so long as profitable farming is feasible on the Grantor’s land and may be released only by the Grantee as provided by Agriculture Article, Section 2-514[.]” (Emphasis added). In pertinent part, § 2-514 states:

(a) *Legislative intent.* -- It is the intent of the General Assembly that any easement whose purchase is approved by the Board of Public Works on or before September 30, 2004, be held by the Foundation for as long as profitable farming is feasible on the land under easement, and an easement may be

²²The floor report for House Bill 777 of the 2004 General Assembly, which amended § 2-514 and created § 2-514.1, states:

This bill requires an easement to be perpetual if its purchase by [MALPF] is approved by the Board of Public Works on or after October 1, 2004. . . . According to MALPF, the original intent when MALPF was established was that easements would be perpetual. The repurchase option was included to allow the possibility of exceptional circumstances when profitable farming would no longer be possible on a property and the repurchase of its easement restrictions would be consistent with local and State land-use objectives. MALPF advises that most land preservation programs in other states do not have a repurchase option and those that do make it extremely difficult for an easement to be repurchased. In addition, MALPF is the only state easement purchase program that does not have an explicitly perpetual easement.

terminated only in the manner and at the time specified in this section.

(b) *Request for review.* -- Except as provided in subsection (h) of this section, any time after 25 years from the date of purchase of an easement, the landowner may request that the easement be reviewed for possible termination of the easement. . . .

(f) *Repurchase by landowners.* --

(1) If the request for termination is approved, an appraisal of the subject land shall be ordered by the Foundation at the expense of the landowner requesting termination of the easement.

(2) (i) No more than 180 days following the appraisal required under paragraph (1) of this subsection, the landowner may repurchase the easement by paying to the Foundation the difference between the fair market value and the agricultural value of the subject land, as determined by the appraisal.

(ii) For purposes of this paragraph, the agricultural value of the land is determined by the appraisal method that was in effect at the time the easement was acquired by the Foundation, either by the agricultural appraisal formula under § 2-511(d) of this subtitle or by an appraisal that determines the price as of the valuation date which a vendor, willing but not obligated to sell, would accept, and which a purchaser, willing but not obligated to buy, would pay for a farm unit with land comparable in quality and composition to the property being appraised.

The Easement Agreement, which was executed in 1997, is potentially a terminable easement because § 2-514 provides an approach, after twenty-five years, for termination. In that situation, the Easement Agreement and the statute recognize that continuation of the Easement Agreement may become impracticable, and that a return to the pre-easement status is appropriate. Because of the flexibility built into the document and the legislation, there is no need to rely on *cy pres* and the charitable trust doctrine to react to a change of

circumstances. See McLaughlin, 34 Ecol. L. Q. at 710.

Section 2-514's legislative history supports our analysis:

[i]t is recognized that, due to the voluntary nature of the easement purchase program, certain farms may be placed under easement only to find that, in the future, they are surrounded by development. This would place the owner in the awkward position of not being able to farm (because of "people pressure") and not being able to sell for another use (because of the easement). It is conceded that some relief should be available in these cases where the preservation effort has failed.

Senate Finance Committee Floor Report, S.B. 297, 6 (1977). But, "[i]n order to guard against abuse of the ability to terminate easements," § 2-514 "sets forth a rigorous procedure" for terminating easements. *Id.* at 7. This includes "an inquiry . . . conducted by the Foundation to determine the feasibility of profitable farming on the subject land," part of which is an "on-site inspection of the subject land" and "[a] public hearing;" the "approval of the governing body of the county maintaining the subject land;" the "affirmative vote of a majority of the Foundation members at-large, and . . . the approval of the Secretary and State Treasurer." MD. CODE ANN., AGRIC. § 2-514.

There is also the question of whether the Easement Agreement reflects a charitable purpose. We may "consider the language of the instrument along with extrinsic evidence when divining whether a [settlor] has manifested a general charitable intent[.]" *Gallaudet Univ. v. National Soc'y of the Daughters of the Am. Revolution*, 117 Md. App. 171, 206 (1997). "'Charitable purposes' includes all purposes within either the spirit or letter of the statute of 43 Elizabeth ch. 4 (1601), commonly known as the statute of charitable uses." MD.

CODE ANN., EST. & TRUSTS § 14-301(b). Purposes within the statute of charitable uses

are:

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the promotion of health;
- (e) governmental or municipal purposes;
- (f) other purposes the accomplishment of which is beneficial to the community.

Rosser v. Prem, 52 Md. App. 367, 374 (1982) (quoting Restatement (Second) of Trusts, § 368). "The word 'charity' has always been afforded a broad meaning in law. It includes 'substantially any scheme or effort to better the condition of society or any considerable part thereof.'" *Id.* at 380 n.13 (quoting *Wilson v. First National Bank*, 145 N.W. 948, 952 (1914)).

Here, as in *Rosser*, whether Bellevale, as a settlor, "meant to create a charitable trust is not immediately apparent from the language of the [Easement Agreement] itself," but that is not necessarily dispositive. 52 Md. App. at 378.²³ Appellants contend that the "grant or

²³Nor does the legislation or its legislative history indicate what we might ordinarily consider a clear charitable purpose. Section 2-501 of the Agriculture article, which is titled "Legislative intent," provides,

(a) *In general.* -- It is the intent of the Maryland General Assembly to preserve agricultural land and woodland in order to:

- (1) Provide sources of agricultural products within the State for the citizens of the State;
- (2) Control the urban expansion which is consuming the agricultural land and woodland of the State;
- (3) Curb the spread of urban blight and deterioration; and

(continued...)

donation of land to a governmental authority for a public purpose" reflects a charitable intent.

They argue that

[t]he public purpose served by agricultural preservation easements is repeated throughout the statutory and regulatory scheme and promoted in MALPF's own literature—they preserve farmland as a food source for the citizenry, protect wildlife habitat and the water quality of the Chesapeake Bay, and they prohibit uses that are injurious to the environment and public health. Md. Code Ann., Agric. 2-501, -502; COMAR 15.15.01.01; (E. 94-104["MALPF's Five year Report for FY 2003 through FY 2007"]; E. 133-139[MALPF Fact Sheets]; see also E. 279-313[Senate Finance Committee Floor Report on S.B. 297]. Indeed, few programs are so completely infused with a public purpose

²³(...continued)

- (4) Protect agricultural land and woodland as open-space land.

The importance of the economic contributions of farming was also a consideration in the adoption of the MALPF program. According to Craig A. Nielsen, *Preservation of Maryland Farmland: A Current Assessment*, 8 U. Balt. L. Rev. 429 (1979), which is cited in the "Notes" section of § 2-501,

[p]roponents of agricultural preservation in Maryland cite the significant contribution of agriculture to the state's economy as justification for the state's involvement in preservation. There has been much discussion . . . concerning both the effect of agricultural land loss upon our economy and food supply, and the social implications of its conversion to residential use.

Id. at 432. Nielsen also states that

[f]arm owners also face new challenges, largely because counties adjoining Maryland's urban areas have adopted restrictive zoning in order to control costly development and to preserve agricultural land by limiting its development potential. Farm owners faced with this threat may be more inclined to participate in voluntary agricultural preservation programs by requesting the inclusion of their land in preservation districts, or by selling an easement to the state or local government for compensation.

Id. at 460.

and function, are so dedicated expressly to benefitting and protecting the public, and are so narrowly tailored to provide a public benefit in exchange for public cooperation and the payment of taxpayer dollars. *See id.*; *see also* E. 133, 96 (describing cooperative effort of State and citizens to “ensure future availability of agricultural land” and “increase the size of contiguous blocks of preserved farmland”; E. 98, 101 (MALPF program is primarily funded by the real estate transfer taxes that citizens pay to the State; in 2003, MALPF received 17.05 % of the State’s collected transfer taxes and two-thirds of the agricultural transfer taxes) *see also* Restatement (Third) of Trusts § 28(f) (the purposes of a charitable trust include “purposes that are beneficial to the community”); *id.* § 28 cmt. 1 (“[A] trust is charitable if its purpose is to promote . . . environmental quality Thus, a trust to beautify a city or preserve the beauties of nature, or otherwise to add to the aesthetic enjoyment of the community, is charitable.”).

MALPF counters that the State’s purchase of the easement for \$796,500 undermines appellants’ position that this was a charitable donation that could give rise to a charitable trust. We see that appellants do not contend that the purchase price, which is governed by § 2-511 of the Agriculture article, was in some way artificially low so as to suggest a charitable intent.

“[T]he existence of consideration may make a court less likely to find an implied charitable trust to protect the intentions of the grantor.” Alexander R. Arpad, Comment, *Private Transactions, Public Benefits, and Perpetual Control Over the Use of Real Property: Interpreting Conservation Easements as Charitable Trusts*, 37 Real Prop. Prob. & Tr. J. 91, 138-39 (2002). Perhaps it can be said that “[a] land trust that has paid market value for an easement should perhaps be entitled to a presumption that no additional trust duties are owed” *Id.* at 139. On the other hand, the existence of consideration did not prevent the Court of Appeals of Massachusetts from finding a charitable trust in *Cohen v. Lynn*, 33 Mass. App.

Ct. 271, 276 (1992) (“We have found no authority, nor is any cited to us, to the effect that the receipt of substantial consideration prevents a grantor from conveying property to a municipality in such manner as to establish a public charitable trust.”). Some commentators agree. *See* Matthew J. Richardson, Note, *Conservation Easements as Charitable Trusts in Kansas: Striking the Appropriate Balance Among the Grantor’s Intent, the Public’s Interest, and the Need for Flexibility*, 49 Washburn L. J. 175, 195 (2009) (“Applying charitable trust law to conservation easements protects the public’s interest, which exists regardless of whether the easement was donated or purchased.”). As one commentator has observed,

[o]ne reason the topic of consideration cannot be completely ignored here is that every conservation easement transaction has some element of consideration. Ordinarily, a donor wants to see the land protected in a particular way and receives a promise to that effect, if nothing else. In that sense, preservation of property through a conservation easement agreement can be seen as a joint venture. When both parties have made substantial contributions toward a mutual goal of preserving property, the intent of both parties is presumably relevant to determining whether a trust has been established.

Arpad, 37 Real Prop. Prob. & Tr. J. at 139.

That said, we are not persuaded that the Easement Agreement before us reflects a “charitable purpose” or a charitable intent on the part of Bellevalle. Not only was the MALPF program created in part for economic reasons, but the consideration paid by MALPF for the easement—\$796,500—was obviously beneficial to Bellevalle and the continuation of

Bellevale's farming operation so long as it was practical to do so.²⁴ From the "settlor's" viewpoint, any benefit to the public was incidental.

In sum, this case involves a nonperpetual conservation easement purchased for fair market value that expressly provides that it may be terminated after twenty-five years upon satisfaction of certain conditions. We think it unnecessary to our result, and express no opinion as to how the principles generally applicable to charitable trusts would apply to expressly perpetual conservation easements conveyed in whole or in part as charitable gifts, or purchased under other statutes or provisions.

C. Special Harm

Appellants argue that they have standing because the Yoders are neighbors to Bellevale Farm and also because some of LGVA's members reside in the area of Bellevale Farm. Thus, appellants will be "specially harmed" by the creamery operation in a manner different from the public.

In their response to MALPF's motion to dismiss and/or for summary judgment, appellants state that their "claims in the complaint are [not] based entirely on the October 23,

²⁴Nor are we persuaded by appellants' claim that "grantors of easements under the MALPF program, like those who convey a conservation easement, are eligible for a federal charitable tax deduction so long as the easement is granted in perpetuity and for a 'conservation purpose.'" As we have explained previously, easements purchased by MALPF and/or the State before September 30, 2004 are potentially terminable after 25 years. See MD. CODE ANN., AGRIC. § 2-514. "A landowner donating a *nonperpetual* conservation easement would not be eligible for a federal charitable income tax deduction and could be liable for federal gift tax" under I.R.C. § 170(h). Nancy A. McLaughlin, *Conservation Easements: Perpetuity and Beyond*, 34 Ecol. L. Q. 673, 708 n.118 (2007) (emphasis added).

2007 decision to approve the Creamery Operation" or "any failure by MALPF to properly exercise discretionary authority under section 2-513(b)(1)(i)." In their reply brief, appellants characterize the allegation in their complaint that MALPF failed to enforce the Easement Agreement and violated the Easement Agreement and state and county laws as "illegal or *ultra vires* governmental actions."²⁵

Appellants recognize that "[u]nder Maryland common law principles 'if an individual . . . is seeking to redress a public wrong . . . [that individual] has no standing in court unless [he or she] has also suffered some kind of special damage from such wrong differing in character and kind from that suffered by the general public.'" 120 W. Fayette St., LLLP v. Mayor of Baltimore, 407 Md. 253, 270 (2009) (quoting *Medical Waste Assoc. v. Maryland Waste Coalition*, 327 Md. 596, 613 (1992)) (ellipses and brackets from 120 W. Fayette). This "aggrievement" requirement may be satisfied if one "can demonstrate that [a] land use

²⁵In those circumstances where there is no statutory provision for judicial review . . . the Legislature cannot divest the courts of the inherent power they possess to review and correct actions by an administrative agency which are arbitrary, *illegal*, capricious or unreasonable," *Harvey v. Marshall*, 389 Md. 243, 275 (2005) (quoting *Criminal Injuries Compensation Bd. v. Gould*, 273 Md. 486, 500-01 (1975)) (internal quotation marks omitted) (emphasis added), and also inaction. *Id.* at 276. Courts exercise this inherent power

through the writ of mandamus, by injunction or otherwise, to correct abuses of discretion and arbitrary, illegal, capricious or unreasonable acts; but in exercising that power, care must be taken not to interfere with the legislative prerogative, or with the exercise of sound administrative discretion, where discretion is clearly conferred.

Hecht v. Crook, 184 Md. 271, 280-81 (1945).

decision will adversely affect his, her, or its interest, and that such interest is personal or specific, and not shared by the general public." *Id.* (quoting *Bryniarski v. Montgomery Co.*, 247 Md. 137, 144 (1967)).

Relying on *Sugarloaf Citizens' Ass'n v. Department of Env't*, 344 Md. 271 (1996) and *120 W. Fayette*,²⁶ appellants argue that the Yoders' status as neighboring property owners renders them *prima facie* "specially harmed," creating a rebuttable presumption of standing.

In *Sugarloaf*, the dispute concerned

the decision of the Maryland Department of the Environment (the Department) to issue two permits which authorized the construction of a solid waste incinerator near Sugarloaf Mountain in Dickerson, Maryland. A group comprised of local landowners, environmental organizations and citizens' groups challenged the Department's decision by filing in the Circuit Court for Montgomery County an action for judicial review under the Maryland Administrative Procedure Act, Maryland Code (1984, 1995 Repl. Vol.), § 10-222 of the State Government Article. The circuit court dismissed the action on the ground that none of the plaintiffs had standing to seek review of the Department's decision. The Court of Special Appeals affirmed.

344 Md. at 277. Recognizing that *Sugarloaf* was not a "typical zoning matter," *id.* at 298, the Court of Appeals held that

[i]n actions for judicial review of administrative land use decisions, 'an adjoining, confronting or nearby property owner is deemed, *prima facie*, . . . a person aggrieved. The person challenging the fact of aggrievement has the burden of denying such damage . . . and of coming forward with evidence to establish that the petitioner is not, in fact, aggrieved.'

Id. at 297 (quoting *Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137, 145

²⁶ *120 W. Fayette* was filed on the same day as the motions hearing in the instant case.

(1967) (emphasis added).

Before turning to *120 W. Fayette*, we note that in *Bryniarski*,²⁷ which *Sugarloaf* cited extensively, the Court commented, immediately preceding the language quoted above by *Sugarloaf*, that:

1. There is a distinction between the degree of certainty of allegations and proof of aggrievement in cases in equity and in cases involving a petition for a writ of mandamus on one hand, and in statutory appeals from the board to the original court of record on the other.

(a) When the suit is in equity and a declaration nullifying a zoning ordinance for constitutional or other reasons is sought, the allegations by the plaintiff of how he is specially damaged by the zoning ordinance must be definite, and he must meet the burden of showing such special damage by competent evidence. *Richmark Realty Co., Inc. v. Whittliff*, 226 Md. 273, 282, 173 A. 2d 196 (1961); *Loughborough v. Rivermass*, 213 Md. 239, 131 A. 2d 461 (1957); *Cassell v. Mayor & C. C. of Baltimore*, 195 Md. 348, 73 A. 2d 486 (1950); *Bauernschmidt v. Standard Oil Co.*, 153 Md. 647, 139 Atl. 531 (1927)

(b) In a mandamus action the same rule is applicable. *Lawler v. Bart Realty Corp.*, 241 Md. 405, 216 A. 2d 729 (1966).

247 Md. at 144.

In *120 W. Fayette*, "[a]s a taxpayer and neighboring landowner," 120 West Fayette

²⁷ *Bryniarski* was a

zoning appeal involv[ing] the granting by the Montgomery County Board of Appeals (the Board) of the application of the Hillandale Medical Corporation for special exceptions to permit the construction and operation of an apartment hotel on 1.7697 acres of land zoned C-O (commercial-office), and for off-street parking, in conjunction with the apartment hotel use, on 4.1260 acres of adjoining land zoned R-90 (single-family residential).

247 Md. at 138.

filed a declaratory judgment action against the Mayor and City Council of Baltimore, alleging that a Land Disposition Agreement between the City and a developer made pursuant to a proposed urban renewal plan was *ultra vires* or illegal. 407 Md. at 259-60. In doing so, like appellants in this case, 120 West Fayette invoked the primary jurisdiction of the court. On appeal from a grant of summary judgment in favor of the Mayor and City, the Court opined that

[b]ecause "land use . . . is at least one of the prime considerations with which an urban renewal plan is reasonably sure to be concerned," the principles[, as espoused in *Sugarloaf*,] that confer standing upon an adjoining, confronting or neighboring property owner to seek judicial review of land use decisions, logically extend to an adjoining, confronting or neighboring property owner that is challenging a municipalities' allegedly illegal avoidance of urban renewal and procurement ordinances.

Id. at 272 (quoting *Master Royalties Corp. v. Baltimore*, 235 Md. 74, 92 (1964)). It concluded that, because "120 West Fayette's property is located in close proximity to the urban renewal area and . . . [b]ecause, 120 West Fayette has alleged that it will be able to both see and hear the allegedly illegal redevelopment of these properties from its doorsteps, it follows that 120 West Fayette will be directly impacted by and has a direct interest in the redevelopment," and thus has standing. *Id.* at 272-73.

As observed by appellants, *Black's Law Dictionary* defines "land-use regulation" as "[a]n ordinance or other legislative enactment intended to govern the development of real estate." *Id.* at 884 (7th ed. 1999). Like the urban renewal plan in *120 W. Fayette*, "land use . . . is at least one of the prime considerations" in the legislative effort to preserve agriculture

and woodland, and, in that sense, MALPF's approval of a proposed use of Bellevale Farm for a creamery operation is a land use decision. *Id.* at 272. Although not a traditional land-use regulation, the program provides a financial incentive to landowners to voluntarily restrict their land to agricultural and woodland use rather than commercial, industrial, or residential use. See Craig A. Nielsen, *Preservation of Maryland Farmland: A Current Assessment*, 8 U. Balt. L. Rev. 429, 430 (1979) (MALPF "administers a voluntary program for the purchase of development right easements from farm owners. The Foundation affords an opportunity for local governments to coordinate their *land-use* plans with each other and with the state in order to develop a workable comprehensive plan to promote the economic development of Maryland.") (emphasis added); see also *supra* n. 22 ("land-use objectives").

Based on *120 W. Fayette*'s extension of the standing principles of *Sugarloaf* and *Bryniarski* beyond the judicial review arena, it appears that adjoining, confronting or neighboring property owners may have standing to challenge as an illegal or *ultra vires* action the approval of a proposed use of land subject to a MALPF easement.

Appellants, in their amended complaint, assert that the Yoders own property adjacent to Bellevale Farm and that "[appellants] will suffer irreparable harm if [appellees] are permitted to violate the Easement Agreement and the provisions of state and local law."²⁸

²⁸ Appellants did not allege in their complaint exactly how they would be adversely impacted by Bellevale's proposed development. In their briefs, they allege that they "will be the most impacted by the lack of open space and any development of this scenic and historic area," and raise concerns about "stormwater run-off and potential harm to the environment."

(continued...)

In their response to Bellevale's motion to dismiss and/or motion for summary judgment, appellants also state, in the context of their "intended beneficiaries" argument, that they have standing because the Yoders "own land adjacent to or nearby the easement property." In Bellevale's motion to dismiss and/or for summary judgment, it states that the Yoders are "neighbors." And in its answer to the amended complaint, MALPF admits that the Yoders own adjacent property.

Following the reasoning of *120 W. Fayette*, the Yoders would be considered *prima facie* aggrieved, and thus relieved of the burden of *alleging* specific harm. Once appellants alleged, uncontested, that the Yoders were adjacent and/or neighbors to Bellevale Farm, appellees, to challenge "the fact of aggrievement," had "the burden of denying such damage in [their] answer . . . and of coming forward with evidence to rebut the presumption of aggrievement." *120 W. Fayette*, 407 Md. at 271 (citing *Sugarloaf*, 344 Md. at 297). In the circuit court, neither appellee denied that the Yoders will "suffer irreparable harm," or offered "persuasive evidence or argument indicating that [the Yoders] would not be

²⁸(...continued)

It appears that the Yoders also operate a dairy operation. "But mere competition is not an evil which business men may enjoin as a wrong to them." *Cook v. Normac Corp.*, 176 Md. 394, 397 (1939); see also *Kreatchman v. Ramsburg*, 224 Md. 209, 222 (1961) ("the zoning laws give" a party "no standing to" enjoin another's use of land for shopping center purposes "where the sole basis for invoking them is the prevention of competition."); *Eastern Serv. Ctrs., Inc. v. Cloverland Dairy Farms, Inc.*, 130 Md. App. 1, 9 (2000) (dismissing appeal on ground that gas station company's sole motive in challenging the issuance of a zoning construction permit to another gas station company one block away was to prevent competition).

impacted." *Id.* at 273.

Thus, we conclude that the circuit court, without the benefit of *120 W. Fayette*, erred in determining on summary judgment that the Yoders lacked neighbor property owner standing.²⁹ The circuit court, on remand, and after appellees have the opportunity to rebut any presumption of aggrievement, should reconsider the standing issue in light of *120 W. Fayette*.

III. Exhaustion

In its brief, Bellevale avers that "[a]ppellants' lack of administrative success . . . does not grant them any right to pursue their equitable claims that are the subject of this appeal, wherein they effectively seek the same relief from the Circuit Court in a new cause of action." We agree. But to the extent Bellevale is suggesting that the failure to proceed with judicial review in the Zoning Case was a failure to exhaust administrative remedies, we disagree.

As the United States Supreme Court explained in *United States v. Western Pac. R.R. Co.*, 352 U.S. 59, 63-64 (1956),

[t]he doctrine of primary jurisdiction, like the rule requiring exhaustion of administrative remedies, is concerned with promoting proper relationships between the courts and administrative agencies charged with particular

²⁹In *120 W. Fayette*, the Court of Appeals found both taxpayer and neighboring landowner standing. "Maryland law . . . permits taxpayers to bring claims challenging alleged illegal or ultra vires acts of government officials." 407 Md. at 266. Here, appellants did not argue "taxpayer standing" before the circuit court as a basis for conferring standing, but mention it on appeal. "[T]he usual rule is that the appellate court will not consider arguments raised for the first time on appeal[.]" *Jones v. State*, 379 Md. 704, 735 (2004). We will not do so in this case.

regulatory duties. 'Exhaustion' applies where a claim is cognizable in the first instance by an administrative agency alone; judicial interference is withheld until the administrative process has run its course. 'Primary jurisdiction,' on the other hand, applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views.

In our view, appellants did not fail to satisfy their administrative remedies simply because they were unsuccessful in the Zoning Case and did not pursue judicial review. In the Zoning Case, appellants filed a "Petition for Special Hearing" before the Deputy Zoning Commissioner for Baltimore County in order to determine "whether a dairy processing facility is permitted in an R.C.2 zone[.]" The Commissioner determined that the proposed creamery constituted a "farm" as defined in the Baltimore County Zoning Regulations. Here, the merits question is whether the proposed creamery qualifies as a "farm related use" under § 2-513 of the Agriculture article. While these questions may be *similar* and the answer the same in each, they are not the *same* question. As MALPF admits, "Bellevale Farm's development and zoning rights, which were already addressed at the Baltimore County administrative level, are totally separate from Appellee MALPF's permission for the proposed creamery at the Bellevale Farm under the MALPF Easement." It is possible, however, that some aspects of their aggrievement claims, e.g., stormwater runoff or other environmental claims, may have been addressed in the prior administrative proceedings.

CONCLUSION

Although we are not persuaded that appellants have standing under the third-party beneficiary or charitable trust theories, the Yoders, as neighbors to Bellevale Farm, are deemed to be *prima facie* aggrieved under the reasoning of *120 W. Fayette*, subject to appellees rebutting their aggrievement, and thus their standing, on remand.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY VACATED.
CASE REMANDED TO THAT COURT FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE PAID
BY APPELLEES.**

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BALTIMORE COUNTY
BOARD OF APPEALS

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0228

September Term, 2009

LONG GREEN VALLEY ASSOCIATION, *et al.*

v.

BELLEVALE FARMS, INC., *et al.*

Meredith,
Zarnoch,
Kenney III, James A.,
(Retired, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: November 30, 2011

08-456-X 12/1/11

Appellants Long Green Valley ("LGVA") and John and Susan Yoder ("the Yoders") appeal the issuance of a declaratory judgment by the Circuit Court for Baltimore County in favor of appellees: Bellevalle Farms, Inc., Bellevalle Farms Limited Partnership, Prigel Family Creamery, Inc., and Robert E. and Carol A. Prigel (collectively, "Bellevalle"), and the Maryland Agricultural Land Preservation Foundation ("MALPF").¹ Appellants present one question, which we have reworded slightly:

Did the circuit court err in concluding that appellants lack standing to bring an action challenging Bellevalle's proposed construction and operation of a creamery in violation of an agricultural preservation easement held by MALPF?

For the reasons that follow, we shall vacate the judgment and remand to the circuit court for further proceedings.

FACTS AND PROCEEDINGS²

Bellevalle owns and operates a dairy farm ("Bellevalle Farm") on approximately 199 acres located at 4851-53 Long Green Road in the Long Green Valley area of Baltimore County. The Yoders own and operate an adjacent dairy farm.

MALPF is an entity of the Maryland Department of Agriculture. *See* MD. CODE ANN., AGRIC., § 2-502. Section 2-501 of the Agriculture article³ provides,

¹"Appellees" shall refer to both Bellevalle and MALPF, and "appellants" shall refer to both LGVA and the Yoders.

²The facts as set out are based on the assertions by the parties in the pleadings and affidavits filed in this case.

³Subtitle 5 of title 2 of the Agriculture article relates to the "Maryland Agricultural Land Preservation Foundation."

(a) *In general.* -- It is the intent of the Maryland General Assembly to preserve agricultural land and woodland in order to:

- (1) Provide sources of agricultural products within the State for the citizens of the State;
- (2) Control the urban expansion which is consuming the agricultural land and woodland of the State;
- (3) Curb the spread of urban blight and deterioration; and
- (4) Protect agricultural land and woodland as open-space land.

To carry out that intent, MALPF is granted the power to (1) "enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes," and (2) to "acquire, by gift, purchase, devise, bequest or grant, easements in gross or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland[.]" *Id.* at § 2-504(2)-(3). Under the statute,

(1) A landowner whose land is subject to an easement may not use the land for any commercial, industrial, or residential purpose *except*:

- (i) As determined by the Foundation, for farm- and forest-related uses and home occupations; or
- (ii) As otherwise provided under this section.

Id. at § 2-513 (emphasis added).

LGVA is "a community association representing approximately 300 residents of the Long Green Valley of Baltimore County, and is dedicated to the preservation of open space, farmland, natural resources, historic sites, and the heritage and character of the Long Green

Valley." The Yoders are members of LGVA.

As described in the affidavit of LGVA's secretary,

Over the years, the LGVA has solicited landowners in the Long Green Valley to sell or donate easements on their properties to MALPF, Baltimore County's Agricultural Land Preservation and Rural Legacy programs, the Long Green Conservatory, and other conservancies and trusts. Members of LGVA, [including the Yoders,] in fact, have placed their properties in conservation easements, including MALPF easements. The LGVA has contributed funds towards the purchase of at least one easement.

On January 12, 1997, the State, on behalf of MALPF, purchased an "agricultural preservation easement" on Bellevue Farm for \$796,500. Under the deed of easement ("the Easement Agreement"), it is

the intention of the parties that the said land shall be preserved solely for agricultural use in accordance with the provisions of the Agriculture Article, Title 2, Subtitle 5 . . . and that the covenants, conditions, limitations and restrictions hereinafter set forth, are intended to limit the use of the above described land[.]

The section of the Easement Agreement labeled COVENANTS, CONDITIONS, LIMITATIONS, and RESTRICTIONS states:

[A](1)(a) Except as otherwise provided in this instrument, the above described land may not be used for any commercial, industrial, or residential purpose. . .

[A](3) The grantor reserves the right to use the above described land for any farm use, and to carry on all normal farming practices . . . including any operation directly relating to the processing, storage, or sale of farm, agricultural or woodland products produced on the said above described land

[B](6) If the Grantor has any doubts concerning the easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of the said land, the Grantor may submit a written request to the

Grantee for consideration and approval of such use. . . .

[B](9) This easement shall be in perpetuity, or for so long as profitable farming is feasible on the Grantor's land and may be released only by the Grantee as provided by Agriculture Article, Section 2-514[.]

The Easement Agreement also states that it "shall be governed by the laws of the State of Maryland and the parties hereby expressly agree that the courts of the State of Maryland shall have jurisdiction to decide any question arising hereunder after all administrative remedies have been exhausted."

As stated by MALPF's Executive Director,

under the [Easement Agreement], consistent with § 2-513 . . . Bellevale [is] prohibited generally from using the land for any commercial, industrial, or residential purpose. There are, however, exceptions to this general prohibition—one notable exception [is] the ability to use the land, as determined by MALPF, for "farm and forestry related uses and home occupations."

On August 1, 2007, Bellevale filed a request with MALPF seeking,

to construct a 7,000 to 10,000 square foot building to house [a] creamery operation, processing facility and a farm store. As well, [Bellevale is] requesting a parking area that would accommodate fewer than 10 vehicles. The parking area is proposed to be located on Long Green Road with the creamery directly behind it. A short distance of access on an existing farm lane may be needed.

According to MALPF's Executive Director,

[o]n October 23, 2007, MALPF, pursuant to its authority under § 2-513(b)(i), reviewed the . . . request and approved the creamery operation, as proposed to the Board, having determined that the operation was a "farm related use" that complements [Bellevale's] organic dairy operation—a use that is compatible with agriculture and MALPF's program. MALPF took this action after being advised that the Baltimore County Agricultural Land Preservation Advisory Board already had reviewed [Bellevale's] request and voted favorably on it.

Appellants submit,

[a]fter MALPF's approval of the Creamery Operation on October 23, 2007, [a]ppellants requested that MALPF reconsider its approval and enforce the terms of the Easement Agreement and State and County law. Appellants also requested that the Secretary of Agriculture intervene. Despite these requests, MALPF and the Secretary have refused to take further action to enforce the Easement Agreement and the law.

On April 4, 2008, in Zoning Case No. 2008-0506 ("the Zoning Case"), appellants filed a "Petition for Special Hearing" before the Deputy Zoning Commissioner for Baltimore County in order to determine "whether a dairy processing facility is permitted in an R.C.2 zone[.]" On August 12, 2008, the Deputy Zoning Commissioner found the proposed facility was permitted. Appellants appealed that decision to the Board of Appeals, but later dismissed their appeal.

On May 30, 2008, based on MALPF's approval of the proposed creamery, appellants filed an amended four-count complaint with the Circuit Court for Baltimore County:

- Count I: Writ of Mandamus—MALPF's Failure to Enforce the Easement Agreement
- Count II: Writ of Mandamus—MALPF's Failure to Enforce the Provisions of State and Local Law
- Count III: Declaratory Judgment
- Count IV: Permanent Injunctive Relief

As characterized by appellants, the complaint seeks:

(i) a writ of mandamus ordering MALPF to enforce the terms of the Easement Agreement and provisions of State and County law, (ii) a declaration that the proposed Creamery Operation violates the Easement Agreement, as well as State and County law, because it constitutes a commercial and/or industrial

use, and (iii) an order permanently enjoining Bellevale from constructing and operating the Creamery Operation and further violating the Easement Agreement and State and County law.

In response, on June 27, 2008, Bellevale filed a motion to dismiss and/or for summary judgment, averring that appellants "lack standing to bring their equitable claims[.]" After the circuit court issued its Motions Ruling on August 6, 2008, and "HELD [the motion] FOR FURTHER INFORMATION," MALPF filed a motion to dismiss and/or for summary judgment, primarily based on appellants' lack of standing on all counts of the complaint. On October 7, 2008, appellants filed a cross-motion for summary judgment, "request[ing] that the Court find, as a matter of law, that the Creamery Operation is a commercial use that is prohibited by terms of the Easement Agreement."

At the hearing on the motions, the court said,

[I] need to sit down and to make a declaratory judgment on the motion to dismiss, motion for summary judgment, whatever is filed in here, to the effect that this is an issue involving standing . . . [and] the legislature has not indicated one way or another through any historical development or legislative history that I can see, whether or not there should be standing. So that means that we fall back on the issue of whether an easement itself gets standing and they have not said one way or another about that. In fact, they have specifically said that they have appointed somebody in the position called the State of Maryland, the Office of the Attorney General, etcetera to enforce this. Now, the next step is do they as property owners have this right. Well, *Sugarloaf* is very, very interesting because the property owners had that right because they were having a dump there and they were burning all sort of toxic materials and the Butlers and the other people claimed that it was harming their land. So I am not going to say the Court of Appeals is ever going to close the door completely on saying that these adjacent property owners don't have any right. What I'm saying is I can't see that they have anything different as did occur in *Sugarloaf* because their properties were being destroyed or hurt through toxic substances coming over which is not manifest here because I don't see it, except for the desire not to have competition in this regard, I can't see your

clients are in any other position here able to be articulated different from the public. . . .

I, there's two matters of first impression here, that is the right or not of the public to enforce this easement and, secondly, the situation as to whether or not it's going to be considered a charitable trust.

On March 19, 2009, the circuit court issued its **ORDER OF COURT**

DECLARATORY JUDGMENT. It stated:

It is ORDERED and DECLARED by the Circuit Court for Baltimore County that [appellants] have no authority under [subtitle 5 of title 2 of] the Agriculture Article of the Annotated Code of Maryland, . . . Maryland law pertaining to easements[,], or otherwise by any other principle or doctrine of law to challenge through direct primary jurisdiction the right of [Bellevale] to construct a creamery operation on property owned by [Bellevale] as they have alleged in their Complaint. [Appellants] have no standing.

It is the right of [appellants] to carry their dispute with [appellees] through the zoning, planning and permit process of land use enacted by the State of Maryland and Baltimore County as those laws pertain to [Bellevale Farm]. Any citizen who qualifies for standing in the administrative process may initiate that process with Baltimore County government. . . .

For reasons more completely explained by this court on the record at the time of the hearing on the open motions, it is determined by this court that neither the legislative history of the MALPF enactment, the wording of the Statutory scheme or any COMAR regulation enacted pursuant to the statute indicate any intent to allow a taxpayer, an adjoining property owner, or any other individual or entity to challenge the decision made by MALPF to approve the creamery operation by direct application of primary jurisdiction with this court. . . .

As a result of a consideration of the pleadings and papers filed in this case and upon a hearing it is **ORDERED** by the Circuit Court for Baltimore County as follows:

1. [Bellevale's] Motion for Summary Judgment . . . is **GRANTED**.
2. [MALPF's] Motion for Summary Judgment is **GRANTED**.

3. The Motion for Summary Judgment filed by [appellants] . . . is **DENIED.**

Count I (Mandamus for . . . failure by MALPF to enforce an agricultural easement), Count II (Mandamus for an alleged failure by MALPF to enforce provisions of State and Local law), and Count IV (Request for Injunctive Relief) are all dismissed.⁴

DISCUSSION

I. Standard of Review

The circuit court's order issued a declaratory judgment that appellants lacked standing,⁵ granted appellees' motions for summary judgment and also "dismissed" Counts I, II and IV of the complaint.⁶

In *Catalyst Health Solutions, Inc. v. Magill*, 414 Md. 457, 470-72 (2010), the Court of Appeals explained,

⁴As to the third count, the circuit court issued a declaratory judgment that appellants had no standing to challenge the creamery operation "through direct primary jurisdiction" of the court.

⁵Standing "should be adjudicated by the circuit court 'through a motion or other appropriate pleading filed . . . to dismiss . . . a party.'" *Sugarloaf Citizens' Ass'n v. Department of Env't*, 344 Md. 271, 292 (1996) (quoting *Morris v. Howard Research & Development Corp.*, 278 Md. 417, 424-25 (1976)). "There are . . . occasions when it may be proper for a circuit court to . . . enter judgment against a plaintiff in an action in which no legal remedy would be available," such as when the plaintiff lacks standing. *Howard v. Montgomery Mut. Ins. Co.*, 145 Md. App. 549, 555 (2002).

⁶When a party relies on material outside the pleadings, as the circuit court did here, a motion to dismiss and/or for summary judgment is converted into a motion for summary judgment. See *120 W. Fayette St., LLLP v. Mayor of Baltimore*, 407 Md. 253, 263 (2009) ("By relying on material outside of the pleadings when granting the City's motion to dismiss, the Circuit Court, in effect, converted the motion to dismiss into a motion for summary judgment.").

The entry of summary judgment is governed by Rule 2-501, which provides in pertinent part:

(f) **Entry of judgment.** The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

As we recently stated in *Gourdine v. Crews*, 405 Md. 722, 735-36, 955 A.2d 769, 777-78 (2008), the standard of review of a grant of such a motion is as follows:

In considering a trial court's grant of a motion for summary judgment, this Court reviews the record in the light most favorable to the non-moving party. *Anderson v. Council of Unit Owners of Gables on Tuckerman Condominium*, 404 Md. 560, 570-71, 948 A.2d 11, 18 (2008); *Rodriguez v. Clarke*, 400 Md. 39, 926 A.2d 736 (2007); *Rhoads v. Sommer*, 401 Md. 131, 148, 931 A.2d 508, 518 (2007) ("We review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the facts against the moving party."); *Harford County v. Saks*, 399 Md. 73, 82, 923 A.2d 1, 6 (2007) (In reviewing a trial court's decision on a motion for summary judgment, "we seek to determine whether any material facts are in dispute and, if they are, we resolve them in favor of the non-moving party."); *Lovelace v. Anderson*, 366 Md. 690, 695, 785 A.2d 726, 728 (2001) (In reviewing a grant of the defendants' motions for summary judgment, "we must review the facts, and all inferences therefrom, in the light most favorable to the plaintiffs."). If no material facts are in dispute, this Court must determine whether the Circuit Court correctly entered summary judgment as a matter of law.

Anderson, 404 Md. at 571, 948 A.2d at 18; *Rodriguez*, 400 Md. at 70, 926 A.2d at 754; *Saks*, 399 Md. at 82, 923 A.2d at 6; *Property and Casualty Ins. Guaranty Corp. v. Yanni*, 397 Md. 474, 480-81, 919 A.2d 1, 5 (2007); *Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 451, 910 A.2d 1072, 1079 (2006). On appeal from an order entering summary judgment, we review "only the grounds upon which the trial court relied in granting

summary judgment.” *Rodriguez*, 400 Md. at 70, 926 A.2d at 754, quoting *Standard Fire*, 395 Md. at 450, 910 A.2d at 1079; *Eid v. Duke*, 373 Md. 2, 10, 816 A.2d 844, 849 (2003), quoting *Lovelace*, 366 Md. at 695, 785 A.2d at 729.

The standard of review for a declaratory judgment entered as a result of the grant of a motion for summary judgment is “whether that declaration was correct as a matter of law.” *Olde Severna Park Improvement Ass’n, Inc. v. Gunby*, 402 Md. 317, 329, 936 A.2d 365, 371 (2007) (citations omitted). We have held that “[w]hile it is permissible for trial courts to resolve matters of law by summary judgment in declaratory judgment actions,” *Megonnell v. United Services*, 368 Md. 633, 642, 796 A.2d 758, 764 (2002), the court must, in a separate document and in writing, define the rights and obligations of the parties or the status of the thing in controversy. *Lovell Land Inc. v. State Highway Admin.*, 408 Md. 242, 256, 969 A.2d 284, 292 (2009), citing *Union United Methodist v. Burton*, 404 Md. 542, 550, 948 A.2d 1, 5 (2008), *Allstate v. State Farm*, 363 Md. 106, 117 n.1, 767 A.2d 831, 837 n.1 (2001). This requirement is applicable even if the action is not decided in favor of the party seeking the declaratory judgment. *Lovell*, 408 Md. at 256, 969 A.2d at 292, citing *Ashton v. Brown*, 339 Md. 70, 87, 660 A.2d 447, 455 (1995).

II. Standing

As a “threshold issue,” *Norman v. Borison*, 192 Md. App. 405, 420 (2010), a litigant must have standing “to invoke the judicial process in a particular instance.” *Adams v. Manown*, 328 Md. 463, 480 (1992). Standing rests on “a ‘legal interest’ such as ‘one of property, one arising out of a contract, one protected against tortious invasion, or one founded on a statute which confers a privilege.’” *Committee for Responsible Dev. on 25th St. v. Mayor & City Council*, 137 Md. App. 60, 72 (2001) (quoting *Baltimore Steam Co. v. Baltimore Gas & Elec. Co.*, 123 Md. App. 1, 15 (1998)). “Where there exists a party having standing to bring an action or take an appeal, we shall not ordinarily inquire as to whether another party on the same side also has standing.” *Board of License Comm’rs v. Haberlin*,

320 Md. 399, 404 (1990); see also *Garner v. Archers Glen Partners, Inc.*, 405 Md. 43, 54 (2008); *Dorsey v. Bethel A.M.E. Church*, 375 Md. 59, 67 n.1 (2003).

As they did in the circuit court, appellants assert three independent, common law bases for standing in this case. First, “they are intended third party beneficiaries” of the Easement Agreement. Second, “the Easement Agreement created a charitable trust, which is enforceable by interested third parties such as [a]ppellants.” Third, “they will be ‘specially harmed’ by the proposed Creamery Operation in a manner different from the public at large.” We shall address each of these arguments in turn.

A. Third-Party Beneficiary

Appellants argue that they are intended third-party beneficiaries of the Easement Agreement and the restrictive covenant as to the use of Bellevale Farm.⁷ They state that the Easement Agreement was intended to benefit (1) the general public, (2) other property owners who placed their property in easements, and/or (3) persons who own land adjacent to or nearby Bellevale Farm.

In *First United Pentecostal Church v. Seibert*, 22 Md. App. 434, 440 (1974), we recognized that while “modern courts have refused to be bound by technical rules in determining the right to enforce . . . restrictive agreements . . . they always have required that

⁷The parties characterize the Easement Agreement as a negative easement. “Negative easements involve the payment to the landowner for a termination or extinguishment of a portion of his property rights.” Comment, *Progress and Problems in Wisconsin’s Scenic and Conservation Easement Program*, 1965 Wis. L. Rev. 352, 360 (1965) (quoted in *Hardesty v. State Roads Com. of State Highway Administration*, 276 Md. 25, 30 (1975)). “A ‘negative easement’ is a restrictive covenant.” Restatement (Third) of Property: Servitudes, § 1.3(3)).

the covenant be made with or for the benefit of the party seeking to enforce it.” In *Mackubin v. Curtiss-Wright Corp.*, 190 Md. 52 (1948), the Court of Appeals addressed the rights of third-party beneficiaries to enforce a contract:⁸

The original rule of the common law was that privity between the plaintiff and the defendant is requisite to maintain an action on a contract, even though the contract is for the benefit of a third person. There has been a gradual relaxation of this rule. . . . The Courts now generally recognize the right of a third-party beneficiary to sue on a contract made expressly for the benefit of either a donee beneficiary or a creditor beneficiary. A third person is a donee beneficiary where it appears that the purpose of the promisee in obtaining the promise of the performance thereof is to make a gift to the beneficiary or to confer upon him a right against the promisor to some performance neither due nor supposed or asserted to be due from the promisee to the beneficiary. A third person is a creditor beneficiary where no purpose to make a gift appears and performance of the promise will satisfy an actual or supposed or asserted duty of the promisee to the beneficiary, or a right of the beneficiary against the promisee which has been barred by the Statute of Limitations, or by a discharge in bankruptcy, or which is unenforceable because of the Statute of Frauds. . . . [But] before [such] a stranger to a contract can avail himself of the exceptional privilege of suing for a breach thereof, he must at least show that it was intended for his direct benefit. . . . In order to recover it is essential that the beneficiary shall be the real promisee; *i.e.*, that the promise shall be made to him in fact, though not in form. It is not enough that the contract may operate to his benefit. It must clearly appear that the parties intend to recognize him as the primary party in interest and as privy to the promise.

Id. at 56-58 (internal citations omitted).⁹ See also *CR-RSC Tower I, LLC v. RSC Tower I,*

⁸Restrictive agreements or covenants “are a species of contract. Thus, they are interpreted in a like manner as other types of contracts.” *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 682 n.13 (2007).

⁹“The active role of the Maryland Attorney General in [*Md. Envtl. Trust v. Gaynor*, 370 Md. 89 (2002)] indicates that even without explicitly statutory language identifying the Attorney General’s role in conservation easement enforcement, Maryland seemingly has recognized the Attorney General as a legitimate third-party enforcer of conservation (continued...) ”

LLC, 2011 Md. App. LEXIS 141, 61-63 (Oct. 26, 2011).

“The primary source for determining whether the parties intended a third party to have standing to enforce the contractual provisions is the language of the contract itself.” *Volcjak v. Washington County Hosp. Ass’n*, 124 Md. App. 481, 509 (1999). In some cases, the contract may clearly express an intended third party beneficiary, *see Schlicht v. Wengert*, 178 Md. 629, 634 (1940), but the absence of a clear expression is not necessarily decisive, for “[i]f the meaning of the instrument is not clear from its terms,” *Bellevue Constr. Co. v. Rugby Hall Community Ass’n*, 321 Md. 152, 157 (1990) (emphasis added), “a party seeking enforcement [may] show an unexpressed intention by inference from . . . the circumstances” surrounding the execution of the contract. *Schlicht* 178 Md. at 634. “Extrinsic evidence is only utilized when the intent of the parties and the purpose of a restrictive covenant cannot be divined from the actual language of the covenant in question[.]” *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 681 (2007) (emphasis added). In such instances, extrinsic evidence “should be considered in arriving at the intention of the parties, and the apparent meaning and object of their stipulations should be gathered from all possible sources.” *Bellevue*, 321 Md. at 157-158 (1990) (quoting *Baltimore Butchers Abattoir & Live Stock Co. v. Union Rendering Co.*, 179 Md. 117, 122 (1941)).¹⁰

⁹(...continued) easements.” Jessica E. Jay, *Third-Party Enforcement of Conservation Easements*, 29 Vt. L. Rev. 757, 774 (2005).

¹⁰“This explication of the method of construing restrictive covenants has been (continued...) ”

"Construction of a contract is generally a matter of law for the court,"¹¹ including "whether the parties intended a third party to have standing to enforce . . . contractual provisions," *Volcjak v. Washington County Hosp. Ass'n*, 124 Md. App. 481, 509 (1999), although, technically, "[w]ho was intended to benefit from the covenant, with the correlative right to enforce the restrictions, presents a fact question which turns upon the intention of the original parties to the agreement." *First United Pentecostal Church v. Seibert*, 22 Md. App. 434, 440 (1974).¹²

Here, the Easement Agreement states that it is:

by and between BELLEVALE FARM LIMITED PARTNERSHIP, a Maryland Limited Partnership, party of the first part, "Grantor", and the STATE OF MARYLAND, to the use of the Department of Agriculture on behalf of the Maryland Agricultural Land Preservation Foundation, party of the second part, "Grantee"

Section B(5) of the Easement Agreement provides:

If the easement or any covenant, condition, limitation or restriction herein contained is violated or breached, the *Grantee* may after due notice to the

¹⁰(...continued)

accepted as the standard in Maryland." *City of Bowie*, 398 Md. at 680.

¹¹"Because this case involves a . . . contract, it requires an interpretation of the relevant terms. In the first instance, absent any ambiguity, this involves a question of law for the court to resolve. . . . When the language of the contract is ambiguous, however, the ambiguity must be resolved by the trier of fact." *Nicholson Air Servs. v. Board of County Comm'rs*, 120 Md. App. 47, 63 (1998) (internal citations omitted).

¹²Maryland's appellate courts have upheld a circuit court's determination of the intended beneficiaries to a contract at the summary judgment phase. *See, e.g., Volcjak*, 124 Md. App. 481. Moreover, appellants admit in their motions that "whether [appellants] have standing to bring this action" is, "[a]t this juncture," one of the issues "ripe for determination."

Grantor, the Grantor's personal representatives, successors or assigns, institute an action in equity to enjoin, by *ex parte*, temporary or permanent injunction, such violation or breach; to require the restoration of the above described land to its condition prior to such other legal action as may be necessary to insure compliance with the easement and the covenants, conditions, limitations and restrictions herein contained.

(Emphasis added). Section B(7) further provides that "[t]his easement does not grant the public any right to access or any right of use of the . . . land." Thus, the Easement Agreement clearly states that the State, as the grantee, may enforce the easement, and expressly limits public access and use of the land. There is no express statement in the Easement Agreement that others who have placed their property under MALPF easements, the general public, or adjoining property owners, are intended third-party beneficiaries to the Easement Agreement. There is also no mention of these parties, or of any of the claimed beneficiaries except as they are denied rights in § B(7). "[A]lthough it is not necessary to the creation of third-party beneficiary status that an intended beneficiary be specifically mentioned in the contract . . . the lack of acknowledgment is certainly a factor to consider." *Lovell Land, Inc. v. State Highway Admin.*, 408 Md. 242, 265 (2009).¹³

Appellants do not explain why it is not "clear from its terms" that it was the parties' intent that enforcement of the Easement Agreement lies solely with the State. They instead

¹³Appellees also argue, in the alternative, that pursuant to § 2-504(2)-(3) of the Agriculture article, only MALPF and/or the State is empowered to purchase easements under § 2-501 *et seq.* Thus, by limiting who may *acquire* such interests, they suggest that the legislature also intended to limit who may *enforce* them.

proceed *directly* to extrinsic evidence,¹⁴ which we only consider if the intent of the parties and the purpose of the contract cannot be determined by the language of the Easement Agreement, to argue that they are intended beneficiaries of the easement. But, even if we assume that the intent of the parties is unclear and we consider the extrinsic evidence submitted by appellants, we are not persuaded that they are anything more than *incidental* beneficiaries of the Easement Agreement, and, as such, are not entitled to enforce the Easement Agreement. See, e.g., *Mackubin v. Curtiss-Wright Corp.*, 190 Md. 52, 57 (1948) (An incidental beneficiary may benefit from the contract, but it “acquires by virtue of the promise no right against the promisor or the promisee.”). As explained in illustration 6 of the Restatement (Third) of Property: Servitudes, § 2.11,

A, B, and C are neighbors. A owns Blackacre, B owns Whiteacre, C owns Greenacre. A conveys Blackacre to D, subject to a covenant that D will maintain the landscaping on Blackacre so that it does not interfere with the view from Whiteacre. The deed states that the covenant runs with the land for the benefit of Whiteacre. Although Greenacre also enjoys a view across Blackacre, the holder of Greenacre is an incidental, not an intended, beneficiary of the servitude.

Finally, relying on cases from other jurisdictions, appellants also argue that, as a *community association*, LGVA has standing to enforce the Easement Agreement as a conservation easement. See *Friends of the Shawangunks, Inc. v. Clark*, 585 F. Supp. 195, 199-200 (N.D.N.Y. 1984), *rev’d on other grounds*, 754 F.2d 446 (2d Cir. 1985) (organization

¹⁴Appellants point to, among other sources, §§ 2-501 and 2-502 of the Agriculture article, COMAR 15.15.01.01, a fact sheet from MALPF’s website, the Restatement (Third) of Property: Servitudes, § 8.5, and several law review articles.

with the mission to preserve the area in question had standing to enforce an existing conservation easement held by United States Department of the Interior under the Land and Water Conservation Fund Act of 1965); *Tenn. Envtl. Council, Inc. v. Bright Par 3 Assocs.*, 2004 Tenn. App. LEXIS 155 (Tenn. Ct. App. Mar. 8, 2004) (any citizen of Tennessee is a beneficiary of a conservation easement held by the City of Chattanooga pursuant to state law, and able to establish standing).

We, however, have found no Maryland authority, nor do appellants cite to any, to support the grant of standing to a community association that is not the intended beneficiary of the easement. “It has been generally recognized in this State that an association lacks standing to sue where it has no property interest of its own — separate and distinct from that of its individual members — which may be affected by any of the alleged acts under attack.” *Citizens Planning & Housing Asso. v. County Executive of Baltimore County*, 273 Md. 333, 345 (1974); see also *Maryland Ass’n of HMO’s v. Health Servs. Cost Review Comm’n*, 356 Md. 581, 589 (1999); Michael Sarbanes & Kathleen Skullney, *Taking Communities Seriously: Should Community Associations Have Standing in Maryland?*, 6 Md. J. Contemp. L. Issues 283 (1995).¹⁵ We also note Bellevale’s observation that, subsequent to the creation

¹⁵ We are aware that the Court of Appeals has recently acknowledged that,

Section 5-204(f) of the Environment Article, enacted by Chapters 650 and 651 of the Maryland Laws of 2009 and effective January 1, 2010, enables a person to seek judicial review of an administrative determination by the Maryland Department of the Environment regarding certain environmental permits . . . if the person satisfies the federal rubric for standing:

(continued...)

of the instant Easement Agreement, it granted an easement identified as a conservation easement on a different part of its property, naming as grantees *both* MALPF and the Long Green Valley Conservancy, Inc., “a not for profit organization established to preserve farmland and the rural character of the Long Green Valley.”¹⁶

¹⁵(...continued)

(f) *Judicial review of final determination by Department.* — A final determination by the Department on the issuance, denial, renewal, or revision of any permit under Title 5, Subtitle 5 or Subtitle 9, § 14-105, § 14-508, § 15-808, or § 16-307 of this article is subject to judicial review at the request of any person that:

(i) Meets the threshold standing requirements under federal law;

and

(ii) 1. Is the applicant; or

2. Participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.

Patuxent Riverkeeper v. Md. Dep't of the Env't, 2011 Md. LEXIS 628, *5-6 (Md. Sept. 30, 2011). See *id.* at *10 (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 181 (2000)) (“An environmental group can satisfy standing federally if ‘its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.’”). Appellants do not seek judicial review under § 5-204(f) of the Environment article. But, if a member of LGVA, such as the Yoders, has standing in its own right, we would not inquire into LGVA’s standing.

¹⁶A notarized and signed “Deed of Conservation Easement” is included in the record, which states,

(continued...)

B. Charitable Trust

Appellants also argue that, as a conservation easement, the Easement Agreement represents a charitable trust enforceable by “any interested person,” and confers standing on both LGVA and the Yoders.

Generally speaking, “[a] conservation easement is a legal agreement between a landowner and [a grantee] that restricts the potential uses of the land at issue in order to prevent it from being developed for commercial or industrial uses or for housing developments.” *Md. Envtl. Trust v. Gaynor*, 370 Md. 89, 92 n.1 (2002) (internal citations omitted). “Conservation easements—which are held by an individual or an entity—are easements in gross. A person need not own a particular piece of land to enjoy the benefit of a conservation easement.” Matthew J. Richardson, Note, *Conservation Easements as Charitable Trusts in Kansas: Striking the Appropriate Balance Among the Grantor’s Intent, the Public’s Interest, and the Need for Flexibility*, 49 Washburn L. J. 175, 178 (2009). “Although not required by the easement enabling legislation in most states, the vast majority of conservation easements conveyed to date . . . were drafted to protect the particular land

¹⁶(...continued)

THIS DEED OF CONSERVATION EASEMENT (“Conservation Easement”) made this 14th day of March 2002, by and between **BELLEVALE FARMLIMITED PARTNERSHIP**, a limited partnership, 4851 Long Green Road, Glen Arm MD 21257 (“Grantor”); and **LONG GREEN VALLEY CONSERVANCY, INC.**, P.O. Box 133, Long Green, MD 21092 and the **MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION**, Maryland Department of Agriculture, State of Maryland, 50 Harry S. Truman Parkway, Annapolis, MD 21401 (“Grantees”)[.]

they encumber ‘in perpetuity.’” Nancy A. McLaughlin, *Conservation Easements: Perpetuity and Beyond*, 34 Ecol. L. Q. 673, 675 (2007). Indeed, because “conservation easements are usually intended to last forever,” they “are known as perpetual easements.” *Id.* at 674.

In Maryland, § 2-118 of the Real Property article, entitled “Conservation easements; grants to certain trusts,” governs conservation easements:

(a) *Creation and enforcement of conservation easements for certain purposes.* -- Any restriction prohibiting or limiting the use of water or land areas, or any improvement or appurtenance thereto, for any of the purposes listed in subsection (b) of this section whether drafted in the form of an easement, covenant, restriction, or condition, creates an incorporeal property interest in the water or land areas, or the improvement or appurtenance thereto, so restricted, which is enforceable in both law and equity in the same manner as an easement or servitude with respect to the water or land areas, or the improvement or appurtenance thereto, if the restriction is executed in compliance with the requirements of this article for the execution of deeds or the Estates and Trusts Article for the execution of wills.

Subsection (b)(8) includes “acts or uses having any relation to the preservation of water or land areas or the improvement or appurtenance thereto” as a proper purpose of a conservation easement.

The Maryland Environmental Trust (MET), which is governed under § 3-201 *et seq.* of the Natural Resources article, is, in Maryland, the “public agency that holds or co-holds most of the conservation easements in the State.” Jessica E. Jay, *Third-Party Enforcement of Conservation Easements*, 29 Vt. L. Rev. 757, 773 (2005). See *Md. Envtl. Trust v. Gaynor*, 370 Md. 89, 92 n.1 (2002) (“A conservation easement is a legal agreement between a landowner and MET[.]”). “[B]y accepting donated conservation easements . . . the State undertakes to enforce the restriction [in the easements] in perpetuity.” *Id.* at 92.

Easements purchased by MALPF or the State for the benefit of MALPF under subtitle 5 of article 2 of the Agriculture article are described as “agricultural” or “agricultural preservation” easements, *see* MD. CODE ANN., AGRIC. § 2-510(k)(1) (“the Foundation shall notify in writing each landowner who sells an agricultural easement to the Foundation”); *Md. Agric. Land Pres. Found. v. Claggett*, 412 Md. 45, 52 (2009) (conveyance of “an agricultural preservation easement to the Foundation”), including in the Easement Agreement in the instant case. But MALPF also refers to them as “conservation” easements. See MALPF Five-Year Report for FY 2003 through FY 2007, Program Overview (“Including FY 2007 funds, MALPF has now cumulatively purchased or has a pending contract to purchase permanent conservation easements on 1,933 farms with 265,691 acres.”); *see also* note 16, *supra*.

A trust is “a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties in dealing with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.” *From the Heart Church Ministries, Inc. v. Philadelphia-Baltimore Annual Conf.*, 184 Md. App. 11, 25 (2009) (quoting Restatement (Second) of Trusts, § 2). “The person who creates a trust is the settlor.” *Id.* (quoting Restatement, § 3). “A charitable trust is a fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose.” *Rosser v. Prem*, 52 Md. App. 367, 374 (1982) (quoting Restatement, § 348) (emphasis added). “[R]ecognized as a vehicle to hold trust

property for the general public's benefit," Jessica E. Jay, *Third-Party Enforcement of Conservation Easements*, 29 Vt. L. Rev. 757, 773 (2005), charitable trusts "should be liberally construed so as to give them effect if possible." *Rosser*, 52 Md. App. at 380 n.13 (quoting *Baily v. McElroy*, 195 N.E.2d 559, 566 (Ct. App. Ohio, 1963)).

Between private trusts and charitable trusts,

[t]he fundamental distinction . . . is that in the case of a private trust[,] property is devoted to the use of specified persons who are designated as beneficiaries of the trust; whereas in the case of a charitable trust[,] property is devoted to purposes beneficial to the community. . . . There cannot be a private trust unless there is a beneficiary who is definitely ascertained at the time of the creation of the trust or definitely ascertainable within the period of the rule against perpetuities. On the other hand, a charitable trust can be created although there is no definite or definitely ascertainable beneficiary designated, and a charitable trust is not invalid although by the terms of the trust it is to continue for an indefinite or unlimited period.

Restatement, Introductory Note to Chapter 11. *See also* Charles McHenry Howard, *Charitable Trusts in Maryland*, 1 Md. L. Rev. 105, 105 (1937) ("It is commonly said that charitable trusts have three leading and distinguishing features, viz: 1. They must be for the benefit of the public generally, or some considerable portion of it; 2. Their beneficiaries must necessarily be indefinite; 3. Their duration is not restricted by the rule against perpetuities."). For example, "a bequest in trust to complete the education of a poor orphan, in whom the testator had a purely charitable interest, would be a good private trust and enforceable as such, [but] would not be a charitable trust under both the first and second requirements above stated." *Id.* at 106.

Sections 14-301 and 14-302 of the Estates and Trust article govern charitable trusts.

Under § 14-301(a), "[c]ourts of equity have full jurisdiction to enforce trusts for charitable purposes upon suit of the State by the Attorney General or suit of *any person having an interest in enforcement of the trust*." (Emphasis added). Section 14-302(a) provides,

[i]f a trust for charity is or becomes illegal, or impossible or impracticable of enforcement or if a devise or bequest for charity, at the time it was intended to become effective, is illegal, or impossible or impracticable of enforcement, and if the settlor or testator manifested a general intention to devote the property to charity, a court of equity, on application of any trustee, *or any interested person*, or the Attorney General of the State, may order an administration of the trust, devise or bequest as nearly as possible to fulfill the general charitable intention of the settlor or testator.

(Emphasis added).¹⁷

Section 2-118(e) of the Real Property article refers to both MALPF and §§ 14-301 and 14-302 of the Estates and Trust article:

(e) *Grant to Maryland Agricultural Land Preservation Foundation, Maryland Historical Trust, or Maryland Environmental Trust.* -- If any grant, reservation, dedication, devise, or gift of any nature which clearly indicates the maker's intention to subject any interest or estate in property to public use for the preservation of agricultural, historic, or environmental qualities *fails to specify a grantee, donee, legatee, or beneficiary to receive the same or specifies a grantee, donee, legatee, or beneficiary who is not legally capable of taking the interest or estate*, it passes to the Maryland Agricultural Land Preservation Foundation, the Maryland Historical Trust, or the Maryland Environmental Trust in any proceedings under §§ 14-301 and 14-302 of the

¹⁷We note that appellants claim that the Yoders and LGVA are "interested" parties who may enforce the Easement Agreement as a charitable trust. As we shall explain, we do not reach the issue of whether appellants are "interested" parties, under §§ 14-301 and 14-302 of the Estates and Trust article, with standing to enforce the Easement Agreement as a charitable trust.

Estates and Trusts Article.¹⁸

(Emphasis added).

The application of charitable trust doctrine to conservation easements is still in its infancy, both nationwide and in Maryland. See Matthew J. Richardson, Note, *Conservation Easements as Charitable Trusts in Kansas: Striking the Appropriate Balance Among the Grantor's Intent, the Public's Interest, and the Need for Flexibility*, 49 Washburn L. J. 175, 188 (2009) ("case law dealing with conservation easements is sparse, and fewer cases specifically address whether such easements create charitable trusts"); Alexander R. Arpad, Comment, *Private Transactions, Public Benefits, and Perpetual Control Over the Use of Real Property: Interpreting Conservation Easements as Charitable Trusts*, 37 Real Prop. Prob. & Tr. J. 91, 94 (2002) ("The proposition that conservation easements may be interpreted as trusts is not entirely novel, but no serious attention has been given to trust law in the literature or the recorded cases on conservation easements.").

The application of trust law to conservation easements is "not beyond comprehension." Jessica E. Jay, *Third-Party Enforcement of Conservation Easements*, 29 Vt. L. Rev. 757, 776 (2005). It

depends upon a state's specific public charity statutory or common laws

¹⁸Appellants do not posit that this case involves a "grant, reservation, dedication, devise, or gift of any nature which clearly indicates the maker's intention to subject any interest or estate in property to public use for the preservation of agricultural, historic, or environmental qualities," which "fails to specify a grantee, donee, legatee, or beneficiary to receive the same or specifies a grantee, donee, legatee, or beneficiary who is not legally capable of taking the interest or estate"

involving charitable trust property, the grantor's intent, and the property subject to the trust. A simplified (perhaps overly so) analysis of the charitable trust doctrine could yield an argument that the doctrine potentially supports attorney general [or third-party] standing to enforce conservation easements when and if a conservation easement is characterized as property held in trust for the public's benefit, akin to any other property of a charitable trust. Extending the doctrine further, a conservation easement grantor's intent in perpetually protecting his or her property through use of a conservation easement would need to suffice as, or be substituted with, the trust creator's intent to create a charitable trust. Further, the land trust holding the conservation easement would have to fit the definition of a public charity or charitable trust in order for the analogy of a conservation easement donated by a property owner to a land trust to property placed in a charitable trust for the public's benefit to be viable.

Id. at 776-777.

The primary benefit of construing a conservation easement as a charitable trust is the doctrine of *cy pres*, which is "[o]ne of the unique features of the law of charitable trusts." Ronald R. Volkmer, *The Nebraska Uniform Trust Code: Nebraska Trust Law in Transition*, 37 Creighton L. Rev. 61, 79 (2003). Historically,

[u]nder this doctrine, if a donor showed a general intent to devote his gift to charitable purposes; and the gift failed because the specific purpose directed was too indefinite to be carried out, or was otherwise unenforceable; or if the trust while originally useful became subsequently impracticable for further administration . . . the chancery court might direct the application of the charitable fund to some other purpose or purposes which it might determine to be 'near' (*pres*) to the charitable purpose designated by the testator or founder.

Charles McHenry Howard, *Charitable Trusts in Maryland*, 1 Md. L. Rev. 105, 106-107 (1937).¹⁹

¹⁹Changing conditions that may make a charitable purpose impossible or impractical (continued...)

Cy pres would also require court approval to modify or terminate conservation easements:

Because [a grantee] holds a . . . perpetual conservation easement in trust for the benefit of the public, it should not be free to simply agree with the owner of the encumbered land to terminate the easement, or modify it in contravention of its purpose, even in exchange for cash or other compensation. Rather, to deviate from the stated purposed of the easement, either through outright termination or by substantially amending the easement, the municipality or land trust should be required to obtain court approval in a *cy pres* proceeding. In such a proceeding: (i) it would have to be established that the charitable purpose of the easement has become "impossible or impractical;" and (ii) if such a showing is made, the court would supervise the modification or termination of the easement, the payment of compensation to the holder equal to the value of the rights relinquished, and the holder's use of such compensation to accomplish similar conservation purposes in some other manner or location.

McLaughlin, 34 Ecol. L. Q. at 681.

In practice, *cy pres* could serve as a basis for extending standing where citizens who are not parties to an easement sue to enforce the easement. Matthew J. Richardson, Note, *Conservation Easements as Charitable Trusts in Kansas: Striking the Appropriate Balance Among the Grantor's Intent, the Public's Interest, and the Need for Flexibility*, 49 Washburn L. J. 175, 176 (2009).

Those who support treating conservation easements as charitable trusts argue,

[c]onstruing conservation easements as charitable trusts ensures that both the

¹⁹(...continued)
include "climate change or changes in the surrounding landscape that may degrade or destroy the conservation attributes for which the encumbered land was protected[.]" Nancy A. McLaughlin, *Conservation Easements: Perpetuity and Beyond*, 34 Ecol. L. Q. 673, 676 (2007).

trust settlor's intentions are honored and that the public's interest in the conservation easement is protected. Placing conservation easements within the framework of charitable trust law also allows courts to use *cy pres* to modify or terminate conservation easements that have become impracticable. Applying the doctrine of *cy pres* to conservation easements is a feasible solution to complaints that perpetual conservation easements are impractical, while court oversight protects the public's interest in conservation easements.

Id. at 192.

Nationwide, few cases have examined the application of the charitable trust doctrine to conservation or similar easements. In *Cohen v. Lynn*, 33 Mass. App. Ct. 271 (1992), two grantors conveyed a parcel of land to the City of Lynn to be used "forever for park purposes." *Id.* at 274. The City "appropriated \$12,000 toward the \$20,000 purchase price," and later leased the parcel to the Metropolitan Park Commission for 99 years for park purposes. *Id.* at 276. Upon the expiration of the lease, the City, claiming that the land was "no longer usable for park purposes," sold a portion of the land to a developer. *Id.* at 272. Under a Massachusetts law that granted taxpayers of the city standing to enforce the terms of a trust arising from a conveyance granted to the city, a group of taxpayers sought "a judgment declaring that the conveyance [to the developer] violated the city's obligations under a public charitable trust which they claimed arose in 1893 when the parcel was acquired by deeds which state that the land is to be used 'forever for park purposes.'" *Id.*

On appeal, the Appeals Court of Massachusetts held that the language "forever for park purposes," coupled with "[t]he circumstances attending the conveyances to the city[, which] evidence a general plan to dedicate the land permanently to public park purposes," was sufficient to establish the grantors' intention to create a charitable trust, even though the

grantors had received consideration for the easement. *Id.* at 275. The court observed, “[w]e have found no authority, nor is any cited to us, to the effect that the receipt of substantial consideration prevents a grantor from conveying property to a municipality in such manner as to establish a public charitable trust.” *Id.* at 276.

In *Three Bills, Inc. v. City of Parma*, 111 Ohio App. 3d 740 (1996), a developer, as required by ordinance, “dedicated” a portion of land to the City for “parks and green area purposes.” *Id.* at 743. Later, the City leased the property to a broadcasting company, which built “a communications tower, service road, and maintenance building on the property.” *Id.* The developer filed suit against the City and the broadcasting company “to restore the property to its previous condition and prohibit its use for commercial purposes.” *Id.* “Assuming without deciding that a trust was created” by the dedication of the land, the Court of Appeals of Ohio held that the developer was without standing, because under Ohio case law, settlors and their successors could not sue to enforce a trust. *Id.* at 745. The court noted that “[a] settlor within the meaning of the law of trusts is the person who creates the trust. Thus, for the purposes of this case, [the developer was] the settlor[] of a charitable trust.” *Id.* The court also recognized that

[t]he public, in as much as they are beneficiaries of charitable trusts, have a right to enforce their construction. In the same respect, adjacent property owners have a special interest, in as much as they are beneficiaries of restrictive covenants, which enable them to maintain an action to enjoin misuse of public lands. Nonetheless, [the developer] did not produce any evidence in the record proving they owned property in [the City], adjacent to the land in question or otherwise, nor did they even allege in the complaint that they owned property in [the City]. . . . Accordingly, [the developer] lacks standing to enforce the construction of a charitable trust and to enforce the

terms of a restrictive covenant.

Id. at 745-46.

In *Hicks ex rel. Bd. of Trs. of the Scenic Pres. Trust v. Dowd*, 157 P.3d 914 (Wy. 2007), Lowham Limited Partnership owned a ranch in Johnson County, Wyoming. In 1993, it executed a “Deed of Conservation Easement and Quit Claim Deed” transferring one acre of the ranch to the Board of County Commissioners of Johnson County and imposing a conservation easement on the remainder of the ranch. The easement was to be in perpetuity unless “unforeseeable circumstances” rendered the continuation of the conversation easement impossible. In 1997, the Board quitclaimed the one-acre parcel to the Scenic Preserve Trust of Johnson County, “subject to any easements or rights-of-way that have been legally acquired.”

Two years later, Lowham Limited Partnership sold the ranch subject to the conservation easement to the Dowds. Later,

[i]n 2001, coal bed methane development was contemplated by a company that owned mineral interests underlying [the r]anch. As a result, in June of 2002, the Dowds requested that the Board terminate the conservation easement. The Dowds asserted that coal bed methane development was unpreventable, unanticipated, and inconsistent with the terms of the conservation easement. The Dowds proposed that the conservation easement could be extinguished if the Board sold them the one-acre parcel and the conservation easement.

Id. at 917. The Board agreed that the proposed development was inconsistent with the purposes of the conservation easement, and transferred the one-acre tract and the conservation easement to the Dowds.

Hicks, a resident landowner in Johnson County, filed a complaint alleging that the

easement “could not be extinguished until it was judicially determined that unforeseeable circumstances made the continuation of the easement impossible.” *Id.* The Board and the Dowds moved for summary judgment, alleging that Hicks lacked standing to enforce the terms of the Scenic Preserve Trust. The trial court denied their motion for summary judgment, reasoning: (1) the conservation easement had been transferred to a charitable trust, the Scenic Preserve Trust, and (2) Hicks had standing because the easement was accepted for the benefit of Wyoming citizens.

On appeal, the Supreme Court of Wyoming stated that

[i]n their brief, Appellants do not challenge the district court finding that the Scenic Preserve Trust is a charitable trust. Instead, they agree that the Scenic Preservation Trust is a charitable trust, whether under common law principles or under current statutory law. Given the district court’s unchallenged finding, we must agree that the Scenic Preserve Trust is a charitable trust.

Id. at 919. The court found, however, that Hicks did not have standing because he was neither the Attorney General, a settlor, or a “qualified beneficiary” of the trust, as required under a Wyoming law.²⁰

Our review of the reported case law²¹ reveals that only *Hicks* involved a conservation

²⁰“Qualified beneficiary” means a beneficiary who is currently entitled to distributions of income or principal from the trust or has a vested remainder interest in the residuary of the trust which is not subject to divestment[.]” Wyo. Stat. § 4-10-103(a)(xv).

²¹Implying that it has some binding effect on MALPF, appellants also refer us to *Attorney General v. Miller*, Civil Action No. 20-C-98-003486 (Cir. Ct. for Talbot County, 1998) (the “*Myrtle Grove* case”), in which the Maryland Attorney General allegedly advocated a position on the charitable trust issue which is contrary to what they advocate here. Appellants do not actually argue that that case, which was settled by a consent (continued...)

easement, and, in that case, the appellate court was “constrained to agree that a charitable trust was involved because the trial court’s finding on that point was never challenged by the parties.” C. Timothy Lindstrom, *Conservation Easements, Common Sense and the Charitable Trust Doctrine*, 9 Wyo. L. Rev. 397, 405 (2009). *Three Bills* and *Cohen* involved conveyances and dedications, rather than easements, although “the courts’ rationales and charitable trust analyses [may] illustrate how charitable trust law should govern conservation easements.” Matthew J. Richardson, Note, *Conservation Easements as Charitable Trusts in Kansas: Striking the Appropriate Balance Among the Grantor’s Intent, the Public’s Interest, and the Need for Flexibility*, 49 Washburn L. J. 175, 192 (2009).

Based on the case law and the relevant statutory authority, and assuming, without deciding, that an agricultural preservation easement purchased by MALPF or the State for the benefit of MALPF qualifies as a “conservation easement,” we are not persuaded that the

²¹(...continued)
judgment, and which involves different facts and substantially different parties, precludes MALPF—the only party common to that case and the instant case—from asserting an allegedly contradictory position here. That said, we do not believe that any form of estoppel would arise from that case. See *Colandrea v. Wilde Lake Community Ass’n*, 361 Md. 371 (2000) (“Collateral estoppel is concerned with the issue implications of the earlier litigation of a different case, while *res judicata* is concerned with the legal consequences of a judgment entered earlier in the same cause. The two doctrines are based upon the judicial policy that the losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on issues raised, or that should have been raised.”) (citations omitted); *Underwood-Gary v. Mathews*, 366 Md. 660, 667 (2001) (“Judicial estoppel has been defined as a principle that precludes a party from taking a position in a subsequent action inconsistent with a position taken by him or her in a previous action.”); *Alexander v. Walter*, 8 Gill 239 (Md. 1849) (Under judicial estoppel, a verdict between parties could not be given in evidence in a later suit that involved a stranger to the first action).

charitable trust doctrine *must* be applied to agricultural preservation easements, nor even that it *should* be. We explain.

In Maryland, the elements necessary to the creation of a charitable trust are: (1) a fiduciary relationship, (2) duties of trustees, (3) trust property, (4) manifestation of intention, and (5) a charitable purpose. *Rosser v. Prem*, 52 Md. App. 367, 377 (1982) (citing Restatement (Second) of Trusts, § 348).

As to elements (1)-(3), appellants contend:

These elements may be applied with little difficulty [to the Easement Agreement]. First, the conveyance of an agricultural preservation easement creates a fiduciary relationship because MALPF can be said to hold the property in trust for the benefit of the public, and owes an affirmative obligation to ensure that the land is used for the purposes specified in the easement and the law. Second, the Easement Agreement imposes duties on MALPF as trustee. Among other things, MALPF is charged with approving releases of lots from the easement, conducting inspections of the easement property, and enforcing the terms of the agreement. Third, there is trust property, of course, which is defined by property description in the Easement Agreement itself.

Elements (1)-(3) are not expressly disputed by the appellees.

As to the fourth element, "application of the charitable trust doctrine to conservation easements requires finding that the grantor of the easement intended to create such a trust in the first place." Lindstrom, 9 Wyo. L. Rev. at 402. *See also* Restatement, § 351 ("A charitable trust is created only if the settlor properly manifests an intention to create a charitable trust."). Comment b to § 351 recognizes that "[n]o particular form of words or conduct is necessary for the manifestation of intention to create a charitable trust. . . . A charitable trust may be created although the settlor does not use the word 'trust'

or 'trustee.'" Appellants reference Austin Wakeman Scott & William Franklin Fratcher, *The Law of Trusts* § 2.8, at 50 (4th ed. 1989),²² which states:

It is to be noticed that an express trust may arise even though the parties in their own minds did not intend to create a trust. . . . It is the manifestation of intention that controls and not the actual intention where that differs from the manifestation of intention. An express trust may be created even though the parties do not call it a trust, and even though they do not understand precisely what a trust is; it is sufficient if what they appear to have in mind is in its essentials what the courts mean when they speak of a trust.

Appellants argue that "[t]he Easement Agreement, the statutory scheme, and the MALPF program as a whole, all evidence the intent to create" a charitable trust. Here, the Easement Agreement states that it is "the intention of the parties that the said land shall be preserved solely for agricultural use in accordance with the provisions of the Agricultural Article," with no mention of "trust" or "trustee." Section B(5) of the Easement Agreement expressly provides that the grantee, *i.e.*, the State, "to the use of the Department of Agriculture on behalf of" MALPF, may enforce the easement; it does not state any other parties who may enforce the easement. *See supra*. We find the following admonition instructive:

[w]hether a conservation easement conveyance is intended by the grantor to create a charitable trust, . . . even though the deeds of conveyance typically do not contain the words "trust" or "trustee," even though many easement donors may not know that the intended relationship is called a trust; . . . and even though creation of a charitable trust may add a dimension to the relationship between the landowner and easement holder that neither contemplated and that

²²This treatise has been described as a "leading treatise on trust law." Nancy A. McLaughlin and W. William Weeks, *In Defense of Conservation Easements: A Response to The End of Perpetuity*, 9 Wyo. L. Rev. 1, 21 (2009).

may substantially complicate that relationship; *is not something to be lightly inferred.*

Lindstrom, 9 Wyo. L. Rev. at 403 (citation and internal quotation marks omitted) (emphasis added).

First, conservation efforts in the form of negative easements or restrictive covenants are creatures of property law and “the doctrine of charitable trusts is not a part of that law.” *Id.* at 400; *see also* Jeffrey A. Blackie, *Conservation Easements and the Doctrine of Changed Conditions*, 40 Hastings L. J. 1187, 1190 (1989) (“Conservation easements do not fit easily into any previously existing category of property interests”); Duncan M. Greene, *Dynamic Conservation Easements: Facing the Problem of Perpetuity in Land Conservation*, 28 Seattle U. L. Rev. 883, 891 (2005). In addition, it can be argued that in the case of conservation easements, “grantors can reasonably assume that the easements they convey may be modified or terminated in the same manner as other easements, *i.e.*, if both parties to the easement agree,” Lindstrom, 9 Wyo. L. Rev. at 404. Therefore, “[o]nly in the event of application of the charitable trust doctrine (or similar doctrines) to easement agreements are the parties precluded from jointly agreeing to amendments” to conservation easements. *Id.* at 408. In this case, the Easement Agreement expressly provides for modification or termination by agreement of the parties.

Second,

The course of action between landowners and easement holders belies any intent by either party to the easement that the easement conveyance was intended to create a charitable trust under which modification or termination was not a matter, *within the context of existing legal constraints*, solely within

the purview of the landowner and the easement holder.

When a landowner conveys a conservation easement, and the holder accepts the easement, they do so subject to the existing law of the state of the conveyance. As a matter of law, those who enter into an agreement are charged with knowledge of and make their agreements subject to, existing law:

Parties to an agreement are presumed to know the law and to have contracted with reference to existing principles of law. These existing principles of law enter into and become a part of a contract as though referenced and incorporated into the terms of the agreement.

Lindstrom, 9 Wyo. L. Rev. at 403-04 (quoting 11 Williston On Contracts § 30:19 (4th ed.)) (other citations omitted) (emphasis in original).

Third, based on our analysis of the caselaw and the referenced scholarship, an important, if not primary rationale for applying the charitable trust doctrine to conservation easements—to prevent termination or modification of an easement without court approval—has not been a great concern:

In the over one hundred years of land trust history, with nearly 1,700 private land trusts now in business, and with over six million acres subject to thousands of privately held conservation easements, there *is only one recorded case of an improper conservation easement termination*: that of . . . *Hicks v. Dowd*.

Id. at 401 (emphasis in original). This observation undermines the argument that, in regard to conservation easements,

although municipalities and charitable organizations operate to benefit the public, history has shown that they cannot always be trusted to act in accordance with the public interest. Indeed, municipalities and charitable organizations entrusted with charitable assets will almost inevitably be subject to financial, political, and other pressures that could cause them to act in manners contrary to the public interest.

Nancy A. McLaughlin, *Conservation Easements: Perpetuity and Beyond*, 34 Ecol. L. Q. 673, 700-01 (2007).

Fourth, although the applicability of the charitable trust doctrine may encourage some landowners to convey conservation easements, it may discourage others, as we discuss in more detail below. *Compare id.* at 675 (“Indeed, the promise of permanent protection of cherished land has been a key selling point for land trusts attempting to convince private landowners to donate or sell conservation easements.”), *and id.* at 702 (“Ad hoc, unsupervised modifications and termination of ostensibly ‘perpetual’ conservation easements would significantly undermine public confidence in the use of such easements as a land protection tool and chill future easement sales and donations.”), *with Lindstrom*, 9 Wyo. L. Rev. at 410 (“[T]he unpredictable and potentially intrusive effect of application of the [charitable trust] doctrine to conservation easements is highly likely, once word gets around, to discourage many landowners from contributing them in the future.”).

Fifth, the application of the charitable trust doctrine to a potentially *nonperpetual* conservation easement, such as the instant Easement Agreement, is particularly problematic, even among proponents of application generally. *See McLaughlin*, 34 Ecol. L. Q. at 707-712. Nonperpetual conservation easements include “easements that are drafted to endure indefinitely but expressly grant the holder some level of . . . discretion to simply agree with the owner of the encumbered land to substantially modify or terminate the easement.” *Id.* at 707. We note that § 2-514.1, which was enacted by the General Assembly in 2004, states, “[a]n easement whose purchase is approved by the Board of Public Works on or after

October 1, 2004, shall be held by the Foundation in perpetuity.”²³

Here, the Easement Agreement states that “[t]his easement shall be in perpetuity, *or for so long as profitable farming is feasible on the Grantor's land* and may be released only by the Grantee as provided by Agriculture Article, Section 2-514[.]” (Emphasis added). In pertinent part, § 2-514 states:

(a) *Legislative intent.* -- It is the intent of the General Assembly that any easement whose purchase is approved by the Board of Public Works on or before September 30, 2004, be held by the Foundation for as long as profitable farming is feasible on the land under easement, and an easement may be terminated only in the manner and at the time specified in this section.

(b) *Request for review.* -- Except as provided in subsection (h) of this section, any time after 25 years from the date of purchase of an easement, the landowner may request that the easement be reviewed for possible termination of the easement. . . .

(f) *Repurchase by landowners.* --

(1) If the request for termination is approved, an appraisal of the subject land shall be ordered by the Foundation at the expense

²³The floor report for House Bill 777 of the 2004 General Assembly, which amended § 2-514 and created § 2-514.1, states:

This bill requires an easement to be perpetual if its purchase by [MALPF] is approved by the Board of Public Works on or after October 1, 2004. . . . According to MALPF, the original intent when MALPF was established was that easements would be perpetual. The repurchase option was included to allow the possibility of exceptional circumstances when profitable farming would no longer be possible on a property and the repurchase of its easement restrictions would be consistent with local and State land-use objectives. MALPF advises that most land preservation programs in other states do not have a repurchase option and those that do make it extremely difficult for an easement to be repurchased. In addition, MALPF is the only state easement purchase program that does not have an explicitly perpetual easement.

of the landowner requesting termination of the easement.

(2) (i) No more than 180 days following the appraisal required under paragraph (1) of this subsection, the landowner may repurchase the easement by paying to the Foundation the difference between the fair market value and the agricultural value of the subject land, as determined by the appraisal.

(ii) For purposes of this paragraph, the agricultural value of the land is determined by the appraisal method that was in effect at the time the easement was acquired by the Foundation, either by the agricultural appraisal formula under § 2-511(d) of this subtitle or by an appraisal that determines the price as of the valuation date which a vendor, willing but not obligated to sell, would accept, and which a purchaser, willing but not obligated to buy, would pay for a farm unit with land comparable in quality and composition to the property being appraised.

The Easement Agreement, which was executed in 1997, is potentially a terminable easement because § 2-514 provides an approach, after twenty-five years, for termination. In that situation, the Easement Agreement and the statute recognize that continuation of the Easement Agreement may become impracticable, and that a return to the pre-easement status is appropriate. Because of the flexibility built into the document and the legislation, there is no need to rely on *cy pres* and the charitable trust doctrine to react to a change of circumstances. See McLaughlin, 34 Ecol. L. Q. at 710.

Section 2-514's legislative history supports our analysis:

[i]t is recognized that, due to the voluntary nature of the easement purchase program, certain farms may be placed under easement only to find that, in the future, they are surrounded by development. This would place the owner in the awkward position of not being able to farm (because of "people pressure") and not being able to sell for another use (because of the easement). It is conceded that some relief should be available in these cases where the preservation effort has failed.

Senate Finance Committee Floor Report, S.B. 297, 6 (1977). But, "[i]n order to guard against abuse of the ability to terminate easements," § 2-514 "sets forth a rigorous procedure" for terminating easements. *Id.* at 7. This includes "an inquiry . . . conducted by the Foundation to determine the feasibility of profitable farming on the subject land," part of which is an "on-site inspection of the subject land" and "[a] public hearing;" the "approval of the governing body of the county maintaining the subject land;" the "affirmative vote of a majority of the Foundation members at-large, and . . . the approval of the Secretary and State Treasurer." MD. CODE ANN., AGRIC. § 2-514.

There is also the question of whether the Easement Agreement reflects a charitable purpose. We may "consider the language of the instrument along with extrinsic evidence when divining whether a [settlor] has manifested a general charitable intent[.]" *Gallaudet Univ. v. National Soc'y of the Daughters of the Am. Revolution*, 117 Md. App. 171, 206 (1997). "'Charitable purposes' includes all purposes within either the spirit or letter of the statute of 43 Elizabeth ch. 4 (1601), commonly known as the statute of charitable uses." MD. CODE ANN., EST. & TRUSTS § 14-301(b). Purposes within the statute of charitable uses are:

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the promotion of health;
- (e) governmental or municipal purposes;
- (f) other purposes the accomplishment of which is beneficial to the community.

Rosser v. Prem, 52 Md. App. 367, 374 (1982) (quoting Restatement (Second) of Trusts, §

368). "The word 'charity' has always been afforded a broad meaning in law. It includes 'substantially any scheme or effort to better the condition of society or any considerable part thereof.'" *Id.* at 380 n.13 (quoting *Wilson v. First National Bank*, 145 N.W. 948, 952 (1914)).

Here, as in *Rosser*, whether Bellevale, as a settlor, "meant to create a charitable trust is not immediately apparent from the language of the [Easement Agreement] itself," but that is not necessarily dispositive. 52 Md. App. at 378.²⁴ Appellants contend that the "grant or

²⁴Nor does the legislation or its legislative history indicate what we might ordinarily consider a clear charitable purpose. Section 2-501 of the Agriculture article, which is titled "Legislative intent," provides,

(a) *In general.* -- It is the intent of the Maryland General Assembly to preserve agricultural land and woodland in order to:

- (1) Provide sources of agricultural products within the State for the citizens of the State;
- (2) Control the urban expansion which is consuming the agricultural land and woodland of the State;
- (3) Curb the spread of urban blight and deterioration; and
- (4) Protect agricultural land and woodland as open-space land.

The importance of the economic contributions of farming was also a consideration in the adoption of the MALPF program. According to Craig A. Nielsen, *Preservation of Maryland Farmland: A Current Assessment*, 8 U. Balt. L. Rev. 429 (1979), which is cited in the "Notes" section of § 2-501,

[p]roponents of agricultural preservation in Maryland cite the significant contribution of agriculture to the state's economy as justification for the state's involvement in preservation. There has been much discussion . . . concerning both the effect of agricultural land loss upon our economy and food supply, and the social implications of its conversion to residential use.

Id. at 432. Nielsen also states that

(continued...)

donation of land to a governmental authority for a public purpose" reflects a charitable intent.

They argue that

[t]he public purpose served by agricultural preservation easements is repeated throughout the statutory and regulatory scheme and promoted in MALPF's own literature—they preserve farmland as a food source for the citizenry, protect wildlife habitat and the water quality of the Chesapeake Bay, and they prohibit uses that are injurious to the environment and public health. Md. Code Ann., Agric. 2-501, -502; COMAR 15.15.01.01; (E. 94-104["MALPF's Five year Report for FY 2003 through FY 2007"]; E. 133-139[MALPF Fact Sheets]; see also E. 279-313[Senate Finance Committee Floor Report on S.B. 297]. Indeed, few programs are so completely infused with a public purpose and function, are so dedicated expressly to benefitting and protecting the public, and are so narrowly tailored to provide a public benefit in exchange for public cooperation and the payment of taxpayer dollars. See *id.*; see also E. 133, 96 (describing cooperative effort of State and citizens to "ensure future availability of agricultural land" and "increase the size of contiguous blocks of preserved farmland"; E. 98, 101 (MALPF program is primarily funded by the real estate transfer taxes that citizens pay to the State; in 2003, MALPF received 17.05 % of the State's collected transfer taxes and two-thirds of the agricultural transfer taxes) see also Restatement (Third) of Trusts § 28(f) (the purposes of a charitable trust include "purposes that are beneficial to the community"); *id.* § 28 cmt. 1 ("[A] trust is charitable if its purpose is to promote . . . environmental quality Thus, a trust to beautify a city or preserve the beauties of nature, or otherwise to add to the aesthetic enjoyment of the community, is charitable.").

MALPF counters that the State's purchase of the easement for \$796,500 undermines

²⁴(...continued)

[f]arm owners also face new challenges, largely because counties adjoining Maryland's urban areas have adopted restrictive zoning in order to control costly development and to preserve agricultural land by limiting its development potential. Farm owners faced with this threat may be more inclined to participate in voluntary agricultural preservation programs by requesting the inclusion of their land in preservation districts, or by selling an easement to the state or local government for compensation.

Id. at 460.

appellants' position that this was a charitable donation that could give rise to a charitable trust. We see that appellants do not contend that the purchase price, which is governed by § 2-511 of the Agriculture article, was in some way artificially low so as to suggest a charitable intent.

"[T]he existence of consideration may make a court less likely to find an implied charitable trust to protect the intentions of the grantor." Alexander R. Arpad, Comment, *Private Transactions, Public Benefits, and Perpetual Control Over the Use of Real Property: Interpreting Conservation Easements as Charitable Trusts*, 37 Real Prop. Prob. & Tr. J. 91, 138-39 (2002). Perhaps it can be said that "[a] land trust that has paid market value for an easement should perhaps be entitled to a presumption that no additional trust duties are owed" *Id.* at 139. On the other hand, the existence of consideration did not prevent the Court of Appeals of Massachusetts from finding a charitable trust in *Cohen v. Lynn*, 33 Mass. App. Ct. 271, 276 (1992) ("We have found no authority, nor is any cited to us, to the effect that the receipt of substantial consideration prevents a grantor from conveying property to a municipality in such manner as to establish a public charitable trust."). Some commentators agree. See Matthew J. Richardson, Note, *Conservation Easements as Charitable Trusts in Kansas: Striking the Appropriate Balance Among the Grantor's Intent, the Public's Interest, and the Need for Flexibility*, 49 Washburn L. J. 175, 195 (2009) ("Applying charitable trust law to conservation easements protects the public's interest, which exists regardless of whether the easement was donated or purchased."). As one commentator has observed,

[o]ne reason the topic of consideration cannot be completely ignored here is

that every conservation easement transaction has some element of consideration. Ordinarily, a donor wants to see the land protected in a particular way and receives a promise to that effect, if nothing else. In that sense, preservation of property through a conservation easement agreement can be seen as a joint venture. When both parties have made substantial contributions toward a mutual goal of preserving property, the intent of both parties is presumably relevant to determining whether a trust has been established.

Arpad, 37 Real Prop. Prob. & Tr. J. at 139.

That said, we are not persuaded that the Easement Agreement before us reflects a "charitable purpose" or a charitable intent on the part of Bellevale. Not only was the MALPF program created in part for economic reasons, but the consideration paid by MALPF for the easement—\$796,500—was obviously beneficial to Bellevale and the continuation of Bellevale's farming operation so long as it was practical to do so.²³ From the "settlor's" viewpoint, any benefit to the public was incidental.

C. Special Harm

Appellants argue that they have standing because the Yoders are neighbors to Bellevale Farm and also because some of LGVA's members reside in the area of Bellevale Farm. Thus, appellants will be "specially harmed" by the creamery operation in a manner

²³Nor are we persuaded by appellants' claim that "grantors of easements under the MALPF program, like those who convey a conservation easement, are eligible for a federal charitable tax deduction so long as the easement is granted in perpetuity and for a 'conservation purpose.'" As we have explained previously, easements purchased by MALPF and/or the State before September 30, 2004 are potentially terminable after 25 years. See MD. CODE ANN., AGRIC. § 2-514. "A landowner donating a *nonperpetual* conservation easement would not be eligible for a federal charitable income tax deduction and could be liable for federal gift tax" under I.R.C. § 170(h). Nancy A. McLaughlin, *Conservation Easements: Perpetuity and Beyond*, 34 Ecol. L. Q. 673, 708 n.118 (2007) (emphasis added).

different from the public.

In their response to MALPF's motion to dismiss and/or for summary judgment, appellants state that their "claims in the complaint are [not] based entirely on the October 23, 2007 decision to approve the Creamery Operation" or "any failure by MALPF to properly exercise discretionary authority under section 2-513(b)(1)(i)." In their reply brief, appellants characterize the allegation in their complaint that MALPF failed to enforce the Easement Agreement and violated the Easement Agreement and state and county laws as "illegal or *ultra vires* governmental actions."²⁶

Appellants recognize that "[u]nder Maryland common law principles 'if an individual . . . is seeking to redress a public wrong . . . [that individual] has no standing in court unless [he or she] has also suffered some kind of special damage from such wrong differing in character and kind from that suffered by the general public.'" *120 W. Fayette St., LLLP v. Mayor of Baltimore*, 407 Md. 253, 270 (2009) (quoting *Medical Waste Assoc. v. Maryland*

²⁶"In those circumstances where there is no statutory provision for judicial review . . . the Legislature cannot divest the courts of the inherent power they possess to review and correct actions by an administrative agency which are arbitrary, *illegal*, capricious or unreasonable," *Harvey v. Marshall*, 389 Md. 243, 275 (2005) (quoting *Criminal Injuries Compensation Bd. v. Gould*, 273 Md. 486, 500-01 (1975)) (internal quotation marks omitted) (emphasis added), and also inaction. *Id.* at 276. Courts exercise this inherent power

through the writ of mandamus, by injunction or otherwise, to correct abuses of discretion and arbitrary, illegal, capricious or unreasonable acts; but in exercising that power, care must be taken not to interfere with the legislative prerogative, or with the exercise of sound administrative discretion, where discretion is clearly conferred.

Hecht v. Crook, 184 Md. 271, 280-81 (1945).

Waste Coalition, 327 Md. 596, 613 (1992)) (ellipses and brackets from *120 W. Fayette*). This "aggrievement" requirement may be satisfied if one "can demonstrate that [a] land use decision will adversely affect his, her, or its interest, and that such interest is personal or specific, and not shared by the general public." *Id.* (quoting *Bryniarski v. Montgomery Co.*, 247 Md. 137, 144 (1967)).

Relying on *Sugarloaf Citizens' Ass'n v. Department of Env't*, 344 Md. 271 (1996) and *120 W. Fayette*,²⁷ appellants argue that the Yoders' status as neighboring property owners renders them *prima facie* "specially harmed," creating a rebuttable presumption of standing.

In *Sugarloaf*, the dispute concerned

the decision of the Maryland Department of the Environment (the Department) to issue two permits which authorized the construction of a solid waste incinerator near Sugarloaf Mountain in Dickerson, Maryland. A group comprised of local landowners, environmental organizations and citizens' groups challenged the Department's decision by filing in the Circuit Court for Montgomery County an action for judicial review under the Maryland Administrative Procedure Act, Maryland Code (1984, 1995 Repl. Vol.), § 10-222 of the State Government Article. The circuit court dismissed the action on the ground that none of the plaintiffs had standing to seek review of the Department's decision. The Court of Special Appeals affirmed.

344 Md. at 277. Recognizing that *Sugarloaf* was not a "typical zoning matter," *id.* at 298, the Court of Appeals held that

[i]n actions for *judicial review* of administrative *land use* decisions, 'an adjoining, confronting or nearby property owner is deemed, *prima facie*, . . . a person aggrieved. The person challenging the fact of aggrievement has the burden of denying such damage . . . and of coming forward with evidence to establish that the petitioner is not, in fact, aggrieved.'

²⁷*120 W. Fayette* was filed on the same day as the motions hearing in the instant case.

Id. at 297 (quoting *Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137, 145 (1967) (emphasis added)).

Before turning to *120 W. Fayette*, we note that in *Bryniarski*,²⁸ which *Sugarloaf* cited extensively, the Court commented, immediately preceding the language quoted above by *Sugarloaf*, that:

1. There is a distinction between the degree of certainty of allegations and proof of aggrievement in cases in equity and in cases involving a petition for a writ of mandamus on one hand, and in statutory appeals from the board to the original court of record on the other.

(a) When the suit is in equity and a declaration nullifying a zoning ordinance for constitutional or other reasons is sought, the allegations by the plaintiff of how he is specially damaged by the zoning ordinance must be definite, and he must meet the burden of showing such special damage by competent evidence. *Richmark Realty Co., Inc. v. Whittliff*, 226 Md. 273, 282, 173 A. 2d 196 (1961); *Loughborough v. Rivermass*, 213 Md. 239, 131 A. 2d 461 (1957); *Cassell v. Mayor & C. C. of Baltimore*, 195 Md. 348, 73 A. 2d 486 (1950); *Bauernschmidt v. Standard Oil Co.*, 153 Md. 647, 139 Atl. 531 (1927)

(b) In a mandamus action the same rule is applicable. *Lawler v. Bart Realty Corp.*, 241 Md. 405, 216 A. 2d 729 (1966).

247 Md. at 144.

²⁸*Bryniarski* was a

zoning appeal involv[ing] the granting by the Montgomery County Board of Appeals (the Board) of the application of the Hillandale Medical Corporation for special exceptions to permit the construction and operation of an apartment hotel on 1.7697 acres of land zoned C-O (commercial-office), and for off-street parking, in conjunction with the apartment hotel use, on 4.1260 acres of adjoining land zoned R-90 (single-family residential).

247 Md. at 138.

In *120 W. Fayette*, “[a]s a taxpayer and neighboring landowner,” 120 West Fayette filed a declaratory judgment action against the Mayor and City Council of Baltimore, alleging that a Land Disposition Agreement between the City and a developer made pursuant to a proposed urban renewal plan was *ultra vires* or illegal. 407 Md. at 259-60. In doing so, like appellants in this case, 120 West Fayette invoked the primary jurisdiction of the court. On appeal from a grant of summary judgment in favor of the Mayor and City, the Court opined that

[b]ecause “land use . . . is at least one of the prime considerations with which an urban renewal plan is reasonably sure to be concerned,” the principles[, as espoused in *Sugarloaf*,] that confer standing upon an adjoining, confronting or neighboring property owner to seek judicial review of land use decisions, logically extend to an adjoining, confronting or neighboring property owner that is challenging a municipalities’ allegedly illegal avoidance of urban renewal and procurement ordinances.

Id. at 272 (quoting *Master Royalties Corp. v. Baltimore*, 235 Md. 74, 92 (1964)). It concluded that, because “120 West Fayette’s property is located in close proximity to the urban renewal area and . . . [b]ecause, 120 West Fayette has alleged that it will be able to both see and hear the allegedly illegal redevelopment of these properties from its doorsteps, it follows that 120 West Fayette will be directly impacted by and has a direct interest in the redevelopment,” and thus has standing. *Id.* at 272-73.

As observed by appellants, *Black’s Law Dictionary* defines “land-use regulation” as “[a]n ordinance or other legislative enactment intended to govern the development of real estate.” *Id.* at 884 (7th ed. 1999). Like the urban renewal plan in *120 W. Fayette*, “land use . . . is at least one of the prime considerations” in the legislative effort to preserve agriculture

and woodland, and, in that sense, MALPF's approval of a proposed use of Bellevale Farm for a creamery operation is a land use decision. *Id.* at 272. Although not a traditional land-use regulation, the program provides a financial incentive to landowners to voluntarily restrict their land to agricultural and woodland use rather than commercial, industrial, or residential use. See Craig A. Nielsen, *Preservation of Maryland Farmland: A Current Assessment*, 8 U. Balt. L. Rev. 429, 430 (1979) (MALPF "administers a voluntary program for the purchase of development right easements from farm owners. The Foundation affords an opportunity for local governments to coordinate their *land-use* plans with each other and with the state in order to develop a workable comprehensive plan to promote the economic development of Maryland.") (emphasis added); see also *supra* n. 23 ("land-use objectives").

Based on *120 W. Fayette*'s extension of the standing principles of *Sugarloaf* and *Brynarski* beyond the judicial review arena, it appears that adjoining, confronting or neighboring property owners may have standing to challenge as an illegal or *ultra vires* action the approval of a proposed use of land subject to a MALPF easement.

Appellants, in their amended complaint, assert that the Yoders own property adjacent to Bellevale Farm and that "[appellants] will suffer irreparable harm if [appellees] are permitted to violate the Easement Agreement and the provisions of state and local law."²⁹

²⁹Appellants did not allege in their complaint exactly how they would be adversely impacted by Bellevale's proposed development. In their briefs, they allege that they "will be the most impacted by the lack of open space and any development of this scenic and historic area," and raise concerns about "stormwater run-off and potential harm to the environment." It appears that the Yoders also operate a dairy operation. "But mere competition is not an evil (continued...)

In their response to Bellevale's motion to dismiss and/or motion for summary judgment, appellants also state, in the context of their "intended beneficiaries" argument, that they have standing because the Yoders "own land adjacent to or nearby the easement property." In Bellevale's motion to dismiss and/or for summary judgment, it states that the Yoders are "neighbors." And in its answer to the amended complaint, MALPF admits that the Yoders own adjacent property.

Following the reasoning of *120 W. Fayette*, the Yoders would be considered *prima facie* aggrieved, and thus relieved of the burden of *alleging* specific harm. Once appellants alleged, uncontested, that the Yoders were adjacent and/or neighbors to Bellevale Farm, appellees, to challenge "the fact of aggrievement," had "the burden of denying such damage in [their] answer . . . and of coming forward with evidence to rebut the presumption of aggrievement." *120 W. Fayette*, 407 Md. at 271 (citing *Sugarloaf*, 344 Md. at 297). In the circuit court, neither appellee denied that the Yoders will "suffer irreparable harm," or offered "persuasive evidence or argument indicating that [the Yoders] would not be impacted." *Id.* at 273.

²⁹(...continued)
which business men may enjoy as a wrong to them." *Cook v. Normac Corp.*, 176 Md. 394, 397 (1939); see also *Kreatchman v. Ramsburg*, 224 Md. 209, 222 (1961) ("the zoning laws give" a party "no standing to" enjoin another's use of land for shopping center purposes "where the sole basis for invoking them is the prevention of competition."); *Eastern Serv. Ctrs., Inc. v. Cloverland Dairy Farms, Inc.*, 130 Md. App. 1, 9 (2000) (dismissing appeal on ground that gas station company's sole motive in challenging the issuance of a zoning construction permit to another gas station company one block away was to prevent competition).

Thus, we conclude that the circuit court, without the benefit of *120 W. Fayette*, erred in determining on summary judgment that the Yoders lacked neighbor property owner standing.³⁰ The circuit court, on remand, and after appellees have the opportunity to rebut any presumption of aggrievement, should reconsider the standing issue in light of *120 W. Fayette*.

III. Exhaustion

In its brief, Bellevale avers that “[a]ppellants’ lack of administrative success . . . does not grant them any right to pursue their equitable claims that are the subject of this appeal, wherein they effectively seek the same relief from the Circuit Court in a new cause of action.” We agree. But to the extent Bellevale is suggesting that the failure to proceed with judicial review in the Zoning Case was a failure to exhaust administrative remedies, we disagree.

As the United States Supreme Court explained in *United States v. Western Pac. R.R. Co.*, 352 U.S. 59, 63-64 (1956),

[t]he doctrine of primary jurisdiction, like the rule requiring exhaustion of administrative remedies, is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties. ‘Exhaustion’ applies where a claim is cognizable in the first instance by an administrative agency alone; judicial interference is withheld until the administrative process has run its course. ‘Primary jurisdiction,’ on

³⁰In *120 W. Fayette*, the Court of Appeals found both taxpayer and neighboring landowner standing. “Maryland law . . . permits taxpayers to bring claims challenging alleged illegal or ultra vires acts of government officials.” 407 Md. at 266. Here, appellants did not argue “taxpayer standing” before the circuit court as a basis for conferring standing, but mention it on appeal. “[T]he usual rule is that the appellate court will not consider arguments raised for the first time on appeal[.]” *Jones v. State*, 379 Md. 704, 735 (2004). We will not do so in this case.

the other hand, applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views.

In our view, appellants did not fail to satisfy their administrative remedies simply because they were unsuccessful in the Zoning Case and did not pursue judicial review. In the Zoning Case, appellants filed a “Petition for Special Hearing” before the Deputy Zoning Commissioner for Baltimore County in order to determine “whether a dairy processing facility is permitted in an R.C.2 zone[.]” The Commissioner determined that the proposed creamery constituted a “farm” as defined in the Baltimore County Zoning Regulations. Here, the merits question is whether the proposed creamery qualifies as a “farm related use” under § 2-513 of the Agriculture article. While these questions may be *similar* and the answer the same in each, they are not the *same* question. As MALPF admits, “Bellevale Farm’s development and zoning rights, which were already addressed at the Baltimore County administrative level, are totally separate from Appellee MALPF’s permission for the proposed creamery at the Bellevale Farm under the MALPF Easement.” It is possible, however, that some aspects of their aggrievement claims, *e.g.*, stormwater runoff or other environmental claims, may have been addressed in the prior administrative proceedings.

CONCLUSION

Although we are not persuaded that appellants have standing under the third-party beneficiary or charitable trust theories, the Yoders, as neighbors to Bellevale Farm, are

deemed to be *prima facie* aggrieved under the reasoning of *120 W. Fayette*, subject to appellees rebutting their aggrievement, and thus their standing, on remand.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY VACATED.
CASE REMANDED TO THAT COURT FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE PAID
BY APPELLEES.**

3/25/11

RECEIVED
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BALTIMORE COUNTY
BOARD OF APPEALS

LONG GREEN VALLEY
ASSOCIATION, et al.

Petitioners

v.

BELLEVALE FARMS, INC., et al.

Respondents

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 03-C-10-8951

* * * * *

**MEMORANDUM OPINION AND ORDER AFFIRMING
THE DECISIONS OF THE COUNTY BOARD OF APPEALS**

This is a petition for judicial review filed by the Long Green Valley Association, Charlotte Pine, President; and Carol Trela, and John and Susan Yoder (collectively "Petitioners,") arising from decisions by the County Board of Appeals (hereinafter "Board") granting the Respondents', Prigel Family Creamery, Inc., and Robert E. Prigel, Petition for Special Exception for a Farm Market Or, In the Alternative, For a Farmer's Roadside Stand (by Opinion and Order of March 25, 2010) and denying the Petitioners' Motion for Reconsideration (by Ruling of June 22, 2010.)

Petitioners filed a Petition for Judicial Review on July 16, 2010, and oral argument was advanced before this Court on January 14, 2011.

This Court will affirm the decisions of the County Board of Appeals granting the Respondents' Petition for Special Exception for a Farm Market Or, In the Alternative, For a Farmer's Roadside Stand and denying the Petitioners' Motion for Reconsideration.

FACTS AND PROCEDURAL HISTORY

1. Robert E. Prigel, a dairy farmer, and his family own and operate Bellevale Farm, located on Long Green Road in the Long Green area of Baltimore County.

2. Bellevale Farm consists of almost 200 acres of land upon which the Prigel family lives and uses to raise their 150 dairy cows.

3. Approximately 180 acres of the farm land were placed in a perpetual easement held by the Maryland Agricultural Land Preservation Foundation by the Prigel family. In April 2008, the Prigel family was granted a building permit to construct a building on the farm, to be used primarily as a dairy creamery. Some 1,400 sq. ft. of this building was to be used as a farmer's market or farmer's roadside stand.

4. The Respondents filed a Petition for Special Exception for a Farm Market Or, In the Alternative, For a Farmer's Roadside Stand on March 31, 2008.

5. On June 4, 2008, the Zoning Commissioner of Baltimore County held a hearing on the matter and granted the Respondents' Petition with conditions on July 11, 2008.

6. On August 1, 2008, the Petitioners filed a Notice of Appeal to the County Board of Appeals.

7. On October 15, 2009, the Board held a hearing. During that hearing, multiple exhibits were introduced and testimony was taken. Petitioners filed a Post-Hearing memorandum on November 25, 2009. A public hearing was held on January 10, 2010. The Board issued a final Opinion and Order on March 25, 2010, granting Respondents' Petition. Specifically, the Board ordered that Bellvale Farms' request for a Special Exception use pursuant to § 404.4.D and 502.1 of the BCZR to permit a Farm Market be granted; that, in the alternative, its request for confirmation of a Farmer's Roadside Stand pursuant to 404.4.C of the BCZR, which is permitted as of right with a use permit in the RCZ Zone be granted; and that said uses be subject to all conditions imposed by the Agricultural Land Preservation Foundation and the Baltimore County Agricultural Advisory Board.

8. On August 16, 2010, the Petitioners filed a Motion for Reconsideration with the Board. The Board denied the Petitioners' Motion for Reconsideration on June 22, 2010, after convening for a public hearing on the Motion on May 25, 2010.

9. On July 16, 2010, Petitioners filed a Petition for Judicial Review in the Circuit Court for Baltimore County and oral argument was heard on January 14, 2011.

STANDARD OF REVIEW

Judicial review of final zoning actions by an administrative body "is narrow; it is limited [usually] to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine[ing] if the decision is premised upon an erroneous conclusion of law." Montgomery County, Maryland, et al. v. Butler, 417 Md. 271, 283 (2010); *quoting*, Marzullo v. Kahl, 366 Md. 158, 171 (2001); *See also* Physician Quality Assurance v. Banks, 354 Md. 59, 67-68 (1999).

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.

Maryland Reclamation Associates, Inc. v. Harford County, Maryland, et al., 414 Md. 1, 25 (2010). "In reviewing challenges to zoning variance decisions, "[a] court's role is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." Id.

DISCUSSION

Petitioner raises seven (7) issues in this appeal. They are addressed as followed:

- 1. The Board and the Deputy Zoning Commissioner were correct in interpreting the regulations and finding that the definitions of both “Farm Market” and “Farmer’s Roadside Stand” were met.**

The Board’s determinations on these issues were plainly within the ambit of its authority and will not be disturbed. There is substantial evidence within the record to support the Board’s findings and conclusions that Prigle Creamery, Inc., meets both the definitions of a “Farm Market” and “Farmer’s Roadside Stand” as defined in the BCZR.

- 2. The Farm Market special exception was properly granted because the definition of “Farm Market” includes the sale of processed milk, cheese, and ice cream.**

The Board’s determination that a “Farm Market” definitionally includes a market selling milk, cheese, and ice cream, was plainly within the ambit of its authority and will not be disturbed under the deference standard set forth in Montgomery County, Maryland, et al. v. Butler, 417 Md. 271 (2010). Council Bill 34-09 was plainly not enacted to prohibit the sale of dairy products on County farms—rather, it was enacted to permit this use. There is no merit in Petitioners’ argument.

- 3. The sale of dairy products is allowed at a Farm Market pursuant to the BCZR.**

BCZR §404.13, clearly allows for and intends that milk products may be sold at a Farm Market. § 404.13(B) states that:

All processing, preparing, and packaging activities of the farmstead creamery and any farmer’s roadside stand or farm market on the premises used to sell the dairy products shall occupy no more than 10% of the contiguous farm property on which the overall dairying occurs or two acres in area, whichever is less.

The BCZR plainly contemplates that dairy products may be sold at a Farm Market.

- 4. The Board’s refusal, in the context of considering the Motion for Reconsideration, to deny the Petitioners’ Special Exception, based on argument about water and sewage was correct.**

The arguments advanced by the Petitioners under the heading of this "Legal Argument" border on specious. The Court concurs with Respondents that "the Board was correct in not reconsidering the decision based on the inadequate information, improper interpretation, and faulty application of the regulations." Respondents' Memorandum, p. 14.

5. The Respondents met the special exception standards of BCZR 502.1.

The Board carefully considered the evidence in light of each of the nine requirements set forth in BCZR §502.1, prior to granting the Special Exception. No evidence was presented that the proposed use will be detrimental to or inconsistent with the property's zoning regulations. This Court will affirm the Board's decision.

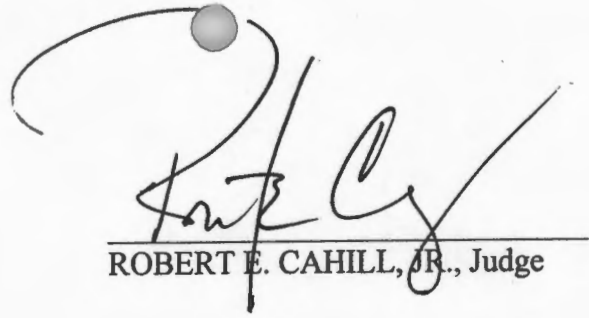
6. The special exception does not violate the terms of the MALPF Easement.

The Board of Appeals was utterly without power or authority to overturn the MALPF decision to permit the Petitioners to build or to otherwise independently interpret or enforce the MALPF easement. Even if the Board had that power or authority, there is no colorable error in the Board's implicit determination that the proposed use was not inconsistent with the terms or purpose of the easement.

7. The special exception does not violate the terms of the MALPF's approval.

The Board's determination that the proposed Farm Market or Farmer's Roadside Stand uses met the conditions which were made a part of the MALPF approval was supported by substantial evidence.

It is therefore, this 26th day of March, 2011, ORDERED that the decisions of the County Board of Appeals granting the Respondents' Petition for Special Exception for a Farm Market Or, In the Alternative, For a Farmer's Roadside Stand and denying Petitioners' Motion for Reconsideration be **AFFIRMED**.



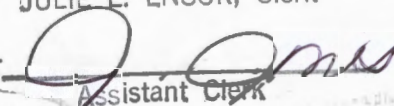
ROBERT E. CAHILL, JR., Judge

Cc: Jennifer Ryan Lazenby, Esq.
John B. Gontrum, Esq.
J. Carroll Holzer, Esq.

True Copy Test

JULIE L. ENSOR, Clerk

Per



Assistant Clerk

CIRCUIT COURT FOR BALTIMORE COUNTY
Julie L. Ensor
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-10-008951

TO: COUNTY BOARD OF APPEALS
Jefferson Building
105 W Chesapeake Ave Suite 203
Towson, MD 21204

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BALTIMORE COUNTY
BOARD OF APPEALS

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

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OCT 20 2010
BALTIMORE COUNTY
BOARD OF APPEALS

County Board Of Appeals
Jefferson Building
105 W Chesapeake Ave Suit
Towson MD 21204

Assignment Date: 10/18/10

Case Title: In the Matter of Long Green Valley Assn, et al
Case No: 03-C-10-008951 AA

Prigel Family Creamery

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..... 11/02/10
 2. All Motions (excluding Motions in Limine) are due by..... 12/05/10
 3. TRIAL DATE is..... 01/14/11
- 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: Charlotte Pine

cc: J Carroll Holzer Esq

cc: John B Gontrum Esq

Issue Date 10/18/10

CIRCUIT COURT FOR BALTIMORE COUNTY
Richard D. Arnold, Jr.
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

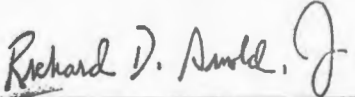
N O T I C E O F R E C O R D

Case Number: 03-C-10-008951 AA
C I V I L

In the Matter of Long Green Valley Assn, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 17th day of September, 2010.


Richard D. Arnold, Jr.
Clerk of the Circuit Court, per Ru



Date issued: 09/22/10

TO: COUNTY BOARD OF APPEALS
Jefferson Building
105 W Chesapeake Ave Suite 203
Towson, MD 21204

RECEIVED
SEP 23 2010
BALTIMORE COUNTY
BOARD OF APPEALS

1/12/10
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
LONG GREEN VALLEY ASSOCIATION,
CHARLOTTE PINE, PRESIDENT; AND
INDIVIDUALS CAROL TRELA, AND JOHN
AND SUSAN YODER

CIVIL ACTION
NO. : 03-C-10-008951

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 :
PRIGEL FAMILY CREAMERY – LEGAL
OWNERS/PETITIONERS
FOR SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE N/S LONG GREEN ROAD,
1500' W OF C/L LONG GREEN VALLEY DR
(4851 LONG GREEN ROAD)

11TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 08-456-X

RECEIVED AND FILED

2010 SEP 17 AM 10:39

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

* * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

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

No. 08-456-X

March 31, 2008	Petition for Special Exception filed by Prigel Family Creamery, Inc., through its attorney, Jennifer Busse, Esquire, to permit a Farm Market or alternatively for a Farmer's Roadside Stand.
April 24	Entry of Appearance filed by People's Counsel for Baltimore County.
May 22	Certificate of Publication in newspaper
May 20	Certificate of Posting.
May 29	ZAC Comments.
June 4	Hearing held before the Zoning Commissioner
July 11	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Special Exception to permit a Farm Market or in the alternative a Farmer's Roadside Stand was GRANTED with conditions.
August 1, 2008	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of Long Green Valley Association, Inc, Roger Hayden, President; Charlotte Pine; Catherine Ebert; and John and Susan Yoder, Appellants.
November 25, 2009	People's Counsel For Baltimore County's Pre-Hearing Memorandum, filed by Peter M. Zimmerman.
October 15, 2009	Board convened for hearing.

Exhibits submitted at hearing before the Board of Appeals:

Petitioner's Exhibit No.

- 1 – Zoning Advisory Committee (ZAC) Comments
- 2 – Curriculum Vitae of Michael W. Fisher
- 3 – Aerial Photograph of Bellevale Farm
- 4 – Zoning Exhibit – Bellevale Farm
- 5 – Revised Site Plan Introduced before the Zoning Commissioner dated 5/28/08
- 6 a-h – Photographs
- 7 – Letter dated 9/26/07 to MALPF

- 8 – Letter dated 10/29/07 to Mr. Prigel, Jr. and Minutes of MALPF dated 10/23/07
- 9 – Section 8 papers for William Pennington
- 10 – Photograph of Creamery from Long Green Road

Protestants' Exhibit No.

- 1 – Rule 8 Papers

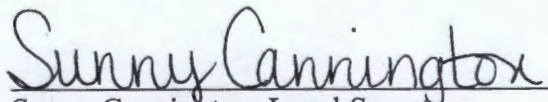
People's Counsel Exhibit No.

- 1 – Membership Map of Greater Long Green Community Association
- 2 – Farmers' Roadside Businesses a Final Report of Baltimore County Planning Board dated 4/18/1991
- 3 – County Council Bill No. 41-92
- 4 – Draft of Legislative Project No.: 8, dated 10/27/08 and amended 1/7/09
- 5 – Draft of Legislative Project No.: 8, dated 10/27/08 and amended 2/5/09
- 6 – Amendments to Baltimore County Zoning Regulations adopted 2/5/09
- 7 – County Council Bill No. 34-09

November 25, 2009	Memorandum of People's Counsel for Baltimore County filed by Peter M. Zimmerman and Carole S. Demilio.
November 30	Petitioner's Memorandum in Support of Petition for Special Exception filed by John B. Gontrum, Esquire on behalf of Petitioners, Prigel Family Creamery, Inc and Robert E. Prigel.
November 30	Memorandum in Lieu of Final Argument of Protestants, Long Green Valley Community Association, et al. filed by J. Carroll Holzer, Esquire.
November 30	Petitioner's Supplemental Memorandum in Response to New Issue Raised by Office of People's Counsel filed by John B. Gontrum, Esquire on behalf of Petitioners, Prigel Family Creamery, Inc and Robert E. Prigel.
January 12, 2010	Board convened for Public deliberation.
March 25	Final Opinion and Order issued by the Board in which the Petition for Special Exception relief was GRANTED.

April 16, 2010	Protestants Motion for Reconsideration filed by J. Carroll Holzer, Esquire on behalf of Protestants.
April 23	People's Counsel Motion for Reconsideration filed by Peter M. Zimmerman, Esquire and Carole S. Demilio, Esquire.
May 7	Petitioner's Response to Protestants and People's Counsel's Motions for Reconsideration.
May 25	Board convened for Public Deliberation on Motions for Reconsideration.
June 22	Ruling on Protestants and People's Counsel's Motions for Reconsideration issued by Board DENYING both Motions.
July 16	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Protestants.
July 20	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
July 20	Certificate of Compliance sent to all parties and interested persons.
August 2	Response to Petition for Judicial Review filed by John B. Gontrum, Esquire on behalf of Prigel Family Creamery, Inc.
September 17	Transcript of testimony filed.
September 17, 2010	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, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Ave.
Towson, Maryland 21204
410-887-3180

- c. John Gontrum, Esquire
Robert and Carol Prigel
Robert E. Prigel
Michael Fisher/Site Resources, Inc
Steve Weber, President/Maryland Farm Direct Market Assoc.
J. Carroll Holzer, Esquire
The Long Green Valley Assoc/Charlotte Pine, President
Susan and John Yoder
Carol Trela
Michael Pierce
Charlotte Pine
Catherine Ebert
Robert Carter
Paul Conczewski
Long Green Valley Church of the Bretheren
Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, III, Director/Planning
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

7/30/10

PETITION OF:
LONG GREEN VALLEY ASSOCIATION,
CHARLOTTE PINE, PRESIDENT; AND
INDIVIDUALS CAROL TRELA, AND
JOHN AND SUSAN YODER

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No: 03-C-10-008951

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:
PRIGEL FAMILY CREAMERY - LEGAL
OWNERS/PETITIONERS FOR SPECIAL
EXCEPTION ON PROPERTY LOCATED
ON THE N/S LONG GREEN ROAD,
1500' W OF C/L LONG GREEN VALLEY
DR (4851 LONG GREEN ROAD)

11TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOA CASE NO. CBA 08-456-X

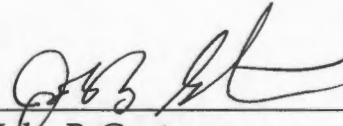
RECEIVED
AUG 02 2010
BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Respondent Prigel Family Creamery, Inc., by John B. Gontrum and Whiteford, Taylor & Preston, LLP, its attorneys, in accordance with Maryland Rule 7-204, submits this Response to the Petition for Judicial Review filed by J. Carroll Holzer, Esquire on behalf of Long Green Valley Association, Charlotte Pine, President, Carole Trela, and John and Susan Yoder, and states that it intends to participate in this action for judicial review. Respondent was a party to the above-referenced proceedings before the County Board of Appeals of Baltimore County.

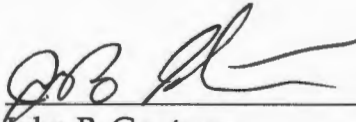
Respectfully Submitted,

A handwritten signature in dark ink, appearing to read 'J.B. Gontrum', written over a horizontal line.

John B. Gontrum
Whiteford, Taylor & Preston L.L.P.
1 West Pennsylvania Avenue, Suite
Towson, Maryland 21204-4515
(410) 832-2000
*Attorney for Prigel Family Creamery,
Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 2010, a copy of the foregoing RESPONSE TO PETITION FOR JUDICIAL REVIEW was mailed to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, Maryland 21204; and Theresa R. Shelton, Administrator, County Board of Appeals of Baltimore County, Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson Maryland 21204.



John B. Gontrum

417300

7/20/10

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
LONG GREEN VALLEY ASSOCIATION,
CHARLOTTE PINE, PRESIDENT; AND
INDIVIDUALS CAROL TRELA, AND JOHN
AND SUSAN YODER

CIVIL ACTION
NO. : 03-C-10-008951

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 :
PRIGEL FAMILY CREAMERY - LEGAL
OWNERS/PETITIONERS
FOR SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE N/S LONG GREEN ROAD,
1500' W OF C/L LONG GREEN VALLEY DR
(4851 LONG GREEN ROAD)

11TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 08-456-X

RECEIVED AND FILED
2010 JUL 20 AM 2:53
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

* * * * *

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:

Robert and Carol Prigel
4855 Long Green Rd
Glen Arm, MD 21057

Robert E. Prigel
4851 Long Green Road
Glen Arm, MD 21057

John Gontrum, Esquire
WHITEFORD, TAYLOR & PRESTON
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, MD 21204

Steve Weber, President
Maryland Farm Direct Market Assoc.
2526 Proctor Lane
Baltimore, MD 21234

Michael Fisher
Site Resources, Inc
114315 Jarrettsville Pike
Phoenix, MD 21131

The Long Green Valley Assoc
Charlotte Pine, President
P.O. Box 91
Baldwin, MD 21013

Carol Trela
5433 Patterson Road
Baldwin, MD 21013

Michael Pierce
7448 Bradshaw Road
Baltimore, MD 21087

Charlotte Pine
13310 Fork Rd
Baldwin, MD 21013

Susan and John Yoder
P.O. Box 399
Phoenix, MD 21131

J. Carroll Holzer, Esquire
HOLZER & LEE
508 Fairmount Avenue
Towson, MD 21236

Catherine Ebert
12815 Kanes Rd
Glen Arm, MD 21057

Robert Carter
P.O. Box 167
4809 Long Green Rd
Glen Arm, MD 21057

Paul Conczewski
12428 Long Green Pike
Glen Arm, MD 21057

Long Green Valley Church of the Brethren
4800 Long Green Rd
Glen Arm, MD 21057

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

Nancy C. West, Assistant County Attorney
Office of Law
400 Washington Avenue
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 20th day of July, 2010, 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

July 20, 2010

John Gontrum, Esquire
WHITEFORD, TAYLOR & PRESTON
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, MD 21204

J. Carroll Holzer, Esquire
HOLZER & LEE
508 Fairmount Avenue
Towson, MD 21236

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-10-008951
In the Matter of: Prigel Family Creamery
Board of Appeals Case No.: 08-456-X

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on July 16, 2010 by J. Carroll Holzer, Esquire on behalf of Long Green Valley Association, Charlotte Pine, President, Carole Trela, and John and Susan Yoder 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 filed by Mr. Holzer, within 60 days. J. Carroll Holzer, Esquire on behalf of Long Green Valley Association, Charlotte Pine, President, Carole Trela, and John and Susan Yoder, having taken the appeal, are responsible for the cost of the transcript of the record and the transcript must be paid for in time to transmit the same to the Circuit Court within the 60 day timeframe as stated in the Maryland Rules.

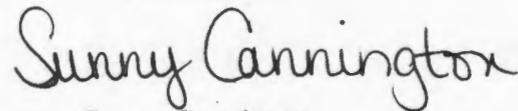
The Court Reporter that must be contacted to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410-837-3027
HEARING DATE: October 15, 2009

This office has also notified Ms. Peatt that a transcript on the above matter is due for filing in the Circuit Court. A copy of the Petition for Judicial Review has been provided to the Court Reporter which will enable her to contact the responsible parties.

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

Very truly yours,



Sunny Cannington
Legal Secretary

Enclosure

cc: Robert and Carol Prigel
Robert E. Prigel
Michael Fisher/Site Resources, Inc
Steve Weber, President/Maryland Farm Direct Market Assoc.
The Long Green Valley Assoc/Charlotte Pine, President
Susan and John Yoder
Carol Trela
Michael Pierce
Charlotte Pine
Catherine Ebert
Robert Carter
Paul Conczewski
Long Green Valley Church of the Bretheren
Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, III, Director/Planning
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

7/15/10

IN THE MATTER OF:
PRIGEL FAMILY CREAMERY
Petitioners/Legal Owner
FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
Jefferson Building
105 W. Chesapeake Ave., Suite 203
Towson, MD 21204

RE: Motion for Reconsideration of
Petition for Special Exception for Farm
Market and/or Farmer's Roadside Stand
County Landmarks List

Case No. 08-456-X

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

Case No. C-16-8951

RECEIVED AND FILED
2010 JUL 16 PM 12:21
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

* * * * *

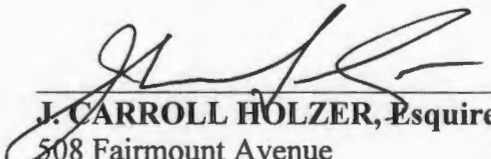
PETITION FOR JUDICIAL REVIEW

LONG GREEN VALLEY ASSOCIATION, CHARLOTTE PINE, PRESIDENT, 13310
Fork Road, Baldwin, MD 21013; and INDIVIDUALS CAROL TRELA, 5433 Patterson Road,
Baldwin, MD 21013; and JOHN and SUSAN YODER, 4603 Long Green Road, Glen Arm, MD
21057, by and through their attorney, J. Carroll Holzer, feeling aggrieved by the Opinion of the
County Board of Appeals rendered on March 25, 2010, and The County Board of Appeals'
Ruling on Protestants' & People's Counsel Motions for Reconsideration dated June 22, 2010 file
this Petition for Judicial Review. The Board's two Decisions are attached hereto.

Petitioners were parties below and fully participated in the proceedings.

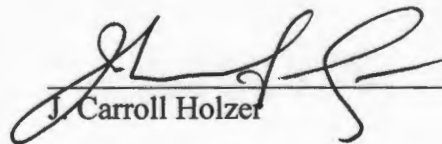
RECEIVED
JUL 20 2010
BALTIMORE COUNTY
BOARD OF APPEALS

Respectfully submitted,


J. CARROLL HOLZER, Esquire
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 15th day of July, 2010 that a copy of the Petition for Judicial review was mailed first class, postage prepaid, to: John Gontrum, Esquire, Whiteford, Taylor & Preston, Towson Commons, Suite 300, One West Pennsylvania Ave., Towson MD, 21204; the County Board of Appeals, 105 West Chesapeake Avenue, Suite 203, Towson, MD 21204; and People's Counsel for Baltimore County, 105 West Chesapeake Ave., Room 204, Towson, MD 21204.


J. Carroll Holzer

CIRCUIT COURT FOR BALTIMORE COUNTY
Richard D. Arnold, Jr.
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-10-008951

TO: COUNTY BOARD OF APPEALS
Jefferson Building
105 W Chesapeake Ave Suite 203
Towson, MD 21204

RECEIVED

JUL 20 2010

BALTIMORE COUNTY
BOARD OF APPEALS

6/22/10
IN THE MATTER OF
PRIEGEL FAMILY CREAMERY

Petitioners Legal Owner/Appellant

4851 Long Green Road, Long Green, MD 21092

RE: Motion for Reconsideration of Petition for
Special Exception for Farm Market
And/or Farmer's Roadside Stand
County Landmarks List

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 08-456-X

* * * * *
RULING ON PROTESTANTS AND PEOPLE'S COUNSEL'S
MOTIONS FOR RECONSIDERATION

This matter comes before the Board on the Motions for Reconsideration filed by Protestants, Long Green Valley Association, Inc. and People's Counsel for Baltimore County's of this Board's Opinion regarding the Petition for Special Exception for Farm Market and/or Farmer's Roadside Stand. A Response in Opposition to the Motion for Reconsideration was filed by John B. Gontrum, Esquire, and Whiteford, Taylor & Preston, LLP, on behalf of the Property Owner. A public deliberation was held on these Motions on May 25, 2010.

This Board rules that any Motion for Reconsideration should only be necessary when there has been substantive new case law or enactment of a statute not available previously, which would clearly merit a modification of a Board's previous decision. After careful consideration of both Motions, this Board has decided that the Motions for Reconsideration does not point to any fraud, mistake or irregularity in the conduct of the hearing in this case, nor does the Board find there is any indication of the existence of new law or evidence not available to the Protestants or to People's Counsel at the time of the hearing.

The essence of both Motions center on the Maryland Agricultural Land Preservation Foundation ("MALPF")'s decision to permit the Petitioner to build within the agricultural easement area previously dedicated by the Petitioner to the State of Maryland.

Prior to the hearing before this Board, the Petitioner had applied to the Baltimore County Land Preservation Board for permission to locate the building which would encompass the Farm Market/Roadside Stand within the agricultural easement area. The Petitioner obtained permission from MALPF on September 26, 2007 along with conditions on the use. Notwithstanding MALPF's approval and the express language in MD Ann. Code, AG, §2-513(b) which permits MALPF to determine whether a farm related use is permitted within the easement area, People's Counsel suggests that this Board reverse the decision of MALPF arguing that MALPF did not articulate its reasons for permitting the building. The Protestants argue that no commercial building is ever permitted within the easement area. This Board acknowledges that the MALPF decision was not appealed.

After a thorough review of the facts, testimony and law in this case, the Board, by a majority of Members who heard the case, has determined that this Board has no jurisdiction to reverse the decision of MALPF with regard to whether a building is permitted within the agricultural easement area. The issue of the correctness of the MALPF decision was not before this Board. At the Board hearing on the merits, Mr. Blanton's testimony was premised upon the fact that he did not believe that the Priegels had obtain permission from MALPF and that, without the proper approval, he was concerned that they would be violating the law against building within the easement area. This Board acknowledged in its Opinion that the proper approval from MALPF was obtained and therefore, Mr. Blanton's concern had been addressed. MALPF has statutory authority to decide such uses as well as the express authority granted to it in the Deed of Easement.

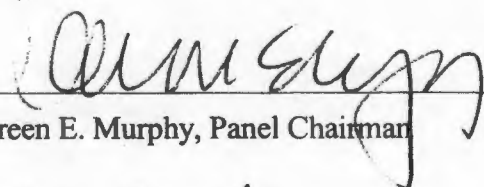
Accordingly, the Motions for Reconsideration filed by the Protestants and People's Counsel are hereby denied. The Board's Opinion and Order issued on March 25, 2010, remains this Board's final decision in this matter.

ORDER

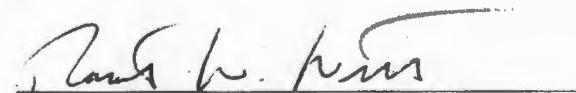
IT IS THEREFORE ORDERED THIS 22nd day of June 2010 that the Protestants' and People's Counsel's Motions for Reconsideration filed in this matter are **DENIED.**

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

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chairman


Wendell H. Grier


Robert W. Witt



County Board of Appeals of Baltimore County

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

June 22, 2010

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

John B. Gontrum, Esquire
WHITEFORD TAYLOR & PRESTON LLP
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, MD 21204

RE: *In the Matter of: Prigel Family Creamery-Legal Owner/Petitioner*
Case No.: 08-456-X

Dear Counsel:

Enclosed please find a copy of the final Ruling on Protestants and People's Counsel's Motions for Reconsideration issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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

Very truly yours,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure

Duplicate Original Cover letter

c: Robert and Carol Prigel
Michael Fisher /Site Resources, Inc.
Roger Hayden, President
Catherine Ebert
Office of People's Counsel
Timothy Kotroco, Director/PDM
Nancy West, Assistant County Attorney

Robert E. Prigel
The Long Green Valley Assn., Inc.
Charlotte Pine
John and Susan Yoder
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning
John E. Beverungen, County Attorney

5/1/10

RECEIVED

MAY - 7 2010

BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: **PETITION FOR SPECIAL
EXCEPTION**

N side Long Green Road, 1,500 feet W
c/l Long Green Valley Drive
(4851 Long Green Road)
11th Election District
3rd Council District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY

Prigel Family Creamery, Inc.;
Robert E. Prigel

* **Case No. 2008-0456-X**

Petitioner

* * * * *

PETITIONER'S RESPONSE
TO PROTESTANTS' AND PEOPLE'S COUNSEL'S
MOTIONS FOR RECONSIDERATION

Both People's Counsel and Protestants have filed Motions for Reconsideration of the decision of the County Board of Appeals of Baltimore County ("the Board") to grant a special exception for a farm market and to approve a farmer's roadside stand for the Bellevale Farm.

INTRODUCTION

Both Motions raise issues not raised in Memoranda or in argument before the Board. Both Motions ask the Board to undertake an interpretation of a private easement between the property owner and the State of Maryland. In order to reconsider as requested in the Motions, the Board would take on the function of courts and/or second guess the determination of Maryland Agricultural Land Preservation Foundation ("MALPF"), a state agency, reviewing its own regulations and laws. At this time, there is neither a ruling from any court nor a determination by MALPF that the requested farm market/farmer's roadside stand is not permitted by the deed of easement.¹ For all of these reasons, the Motions to Reconsider should be denied and this Board should not reconsider its Opinion and Order dated March 25, 2010.

¹ Protestants filed a declaratory judgment and mandamus suit in circuit court to contest the finding of MALPF, but the suit was dismissed by the court. The dismissal has been appealed to the Court of Special Appeals and is under review. No evidentiary hearing has ever occurred.

BALTIMORE COUNTY REGULATIONS

The Baltimore County Zoning Regulations (“B.C.Z.R.”) clearly contemplated that farming and agriculture is a commercial business. The B.C.Z.R. contains several pertinent provisions to this discussion. Section 101 defines “agriculture” to be an inherently commercial operation. Indeed, the definition of “Agriculture, Commercial” clearly establishes agricultural operations as income producing. In addition, the definition includes commercial activities such as “processing, packing, storing, financing, managing, marketing or distributing.” Sales obviously are contemplated for at the heart of the definition is the use of land “to cultivate plants or keep animals for income.” A Farm is similarly defined in Section 101 as the use of land “primarily for commercial agriculture.” Consequently, the zoning regulations promote commerce on a farm.

The purpose of the R.C. 2 zone in which the Bellevale Farm is located is “to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County.” (B.C.Z.R. §1A01.1.B.) One of the legislative findings is 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.” (B.C.Z.R. §1A01.1.A.1.b.) In this context a farmstead creamery is permitted as a matter of right (B.C.Z.R. §1A01.2.B.13.), and a farmer’s roadside stand is also permitted as a matter of right subject to the provisions of Section 404.4. (B.C.Z.R. §1A01.2.B.9.b) A Farm Market is permitted by special exception. (B.C.Z.R. §1A01.2.C.8.) The special exceptions in the R.C. 2 require the Board to make findings as follows: “Uses permitted by special exception. The following uses, only, may be permitted by special exception in any R.C. 2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the

primary agricultural uses in its vicinity....” (B.C.Z.R. §1A01.2.C.) This finding along with the findings in Section 502.1 is required and was made by the Board and by the Deputy Zoning Commissioner.

Section 1A01.4 of the B.C.Z.R. pertains specifically to the MALPF program. It states: “The use or development of land in an agricultural district established in accordance with Title 2, Subtitle 5 of the Agriculture Article of the Annotated Code of Maryland shall be governed by agricultural land preservation provisions enacted by the County Council pursuant to § 2-513 of the Agriculture Article in the case of any conflict between those provisions and these regulations.”

Article 24 of the Baltimore County Code contains the provisions enacted by the county council in response to Section 2-513 of the Agriculture Article. Section 24-2-102 of the Baltimore County Code (“B.C.C.”) refers to permitted agricultural activities in state agriculture districts. Section 24-2-102(a) (2) states:

The following agricultural activities are authorized in state agricultural districts:

- (i) any farm use of land;
- (ii) Operation at any time of any machinery used in farm production or primary processing of agricultural products;
- (iii) All normal agricultural operations performed in accordance with good husbandry practices which do not cause bodily injury or directly endanger human health; and
- (iv) The sale of farm products produced on the farm where the farm products are produced subject to the Baltimore County Zoning Regulations.”

The County Code also provides that certain uses are prohibited including subdivision or use for residential, commercial or industrial purposes. The local agricultural advisory board shall make recommendations to MALPF. (B.C.C. §24-2-102(b) (1) and §24-2-102(b) (4)).

Section 24-2-104 of the B.C.C. states as follows:

Notwithstanding any contrary provisions of the Baltimore County Zoning Regulations, the use and development of the land subject to a state easement shall be in accordance with:

- (1) § 2-513 of the Agriculture Article of the Annotated Code of Maryland; and
- (2) The terms and provisions of the deed of easement.

Consequently, the determinations of MALPF interpreting their easements have the weight of finality with regard to permitted uses.

Section 404.4.D. of the B.C.Z.R. requires at least 50% of the produce sold annually to be grown by the owner of the farm and also contemplates the sale of incidental non-agricultural goods. The enforcement of this provision requires consultation with the Agricultural Land Preservation Advisory Board. These provisions also pertain to a farmer's roadside stand. Both a roadside stand and a farm market are permitted in the R.C. 2. A roadside stand shall be located on a farm, and a farm market must be owned by an agricultural producer.

The regulations are consistent. Farm markets and farmer's roadside stands are commercial in nature. Farm sales are commercial in nature. The two can operate in conjunction. The B.C.Z.R. and the B.C.C. are trying to protect agriculture in Baltimore County. Without creating markets for the farm products, there is no commerce in agriculture. The County Council passed Bill No. 34-2009 purposefully to assist dairy farms in the processing and the sale of their products. That Bill clearly contemplated a farm market and farmer's roadside stand. Section 4004.13.B. states that any stand or farm market used to sell the dairy products shall not occupy more than 10% of the contiguous farm property.

Despite the consistency of the local regulations with the state regulations, the Protestants and People's Counsel maintain that the words "commercial uses" include the sale of farm

products on the farm and that such use is prohibited. If farmers can not sell their products from their farms, it would mean the end of farming as we know it.

THE MALPF EASEMENT

The Deed of Easement, attached hereto as Attachment A, does indeed prohibit commercial uses on the farm, but it makes a critical exception. The Deed of Easement Covenant A. (1) (a) states: "Except as otherwise provided in this instrument, the above described land may not be used for any commercial, industrial, or residential purpose." If it were not for the "otherwise provided" language, a farmer could not live on his own land if that land was covered by an easement. Similarly, sales of farm products are also "otherwise provided". There are several important provisions.

On page 7 of the Deed of Easement (Land Record reference Liber 12239, folio 532) the following statement is made:

The Grantor reserves the right to use the above described land for any farm use, and to carry on all normal farming practices, including the operation at any time of machinery used in farm production or the primary processing of any agricultural products; the right to conduct upon the said land any agricultural operation which is in accordance with good husbandry practices and which does not cause bodily injury or directly endanger human health, including any operation directly relating to the processing, storage or sale of farm, agricultural or woodland products produced on the said above described land; and all other rights and privileges not hereby relinquished, including the Grantor's right of privacy.²

MALPF specifically reserved the sole right to interpret and to approve specific uses. Covenant B (6) on page 9 (Land Record reference Liber 12239, folio 534) states: "If the Grantor has any doubts concerning the easement, covenants and conditions, limitations or restrictions herein

² These provisions are echoed in the Baltimore County Code Section 24-2-102 (a) (2) quoted previously.

contained with respect to any particular use of the said land, the Grantor may submit a written request to the Grantee for consideration and approval of such use.”

The Grantee MALPF has the unfettered right under the easement to approve specific uses. That is exactly what happened in this case. The Grantee made the decision to allow the farm market and farmer’s roadside stand for the sale of products and imposed certain restrictions. No one else is authorized to interpret the easement provisions, not the Protestants, People’s Counsel and the Board. This makes sense, for when one considers the statutory scheme under which the easements were created, it is MALPF who has the authority to purchase an easement and terminate an easement. Annotated Code of Maryland, Agriculture §§ 2-510, 2-514. Thus, only the authority who creates and terminates the easement can review what uses are subject to it or not.

STATE REGULATIONS

Section 2-513 of the Agriculture Article uses the same language quoted above in both the Baltimore County Code and in the easement with respect to permitted uses. In fact, Section 2-513(a) requires that local jurisdictions must adopt the language permitting any farm use, allowing the operation of machinery used in farm production or primary processing and all normal agricultural operations including sale of farm products. If a local jurisdiction does not allow these uses then agricultural easements can not be purchased in the local jurisdiction. It is because of the language of this section that the zoning regulations defer to the county council adoption of the state language and regulations. In the event of any conflict, it is the MALPF determination that matters with respect to prohibiting or granting agricultural uses under an easement.

Section 2-513 also expands on the issue of prohibited commercial and industrial uses.

Section 2-513(b)(1) states:

A landowner whose land is subject to an easement may not use the land for any commercial, industrial or residential purpose except (i) As determined by the Foundation, for farm and forest related uses and home occupations; or (ii) As otherwise provided under this section.

More important, however, to the issue before the Board is Section 2-513.1, which directly pertains to the issue under reconsideration:

- (a) *Scope.* – This section applies only to applications affecting land encumbered by a district agreement or deed of easement created under this subtitle.
- (b) *In general.* – If the Foundation has not authorized approval of the application, a county may deny an application for:
 - (1) A subdivision plat or plan;
 - (2) A building permit, except for:
 - (i) Improvements or accessories to an existing residence; or
 - (ii) A farm building or structure;
 - (3) A nonagricultural conditional use or special exception;
 - or
 - (4) Any other nonagricultural use or activity.

In essence, when the Foundation approves such a use, the local county may not then deny the use as being inconsistent with the easement provisions.

The Code of Maryland Regulations (“COMAR”) 15.15.07 specifically describes the approval process and consideration of MALPF of requests to approve farm uses under an easement. It states:

The Maryland Agricultural Land Preservation Foundation may approve farm, forest or home occupation related uses or activities of eligible landowners on a farm subject to easement restrictions even though the use does not strictly fall within the definition of traditional agricultural use. Each request shall be reviewed by the Foundation based on the criteria provided by this chapter to determine if a landowner’s requested use or activity conflicts with

the overall purpose of the easement to preserve the farm for agricultural use and as open-space land.

There Should Be No Reconsideration

As proven by the above analyses of the easement, as well as the applicable local and state regulations, there is no conflict. There was no error by the MALPF Board, and this Board of Appeals should not be used as a way to review its decision.

The Board properly used the MALPF decision as one of the factors in its consideration of the special hearing/special exception requests. The Petitioner agreed to be bound by the decision and its limiting conditions. Among those conditions was a limitation on non-agricultural products which could be sold to 600 square feet. To appreciate the letter of approval and the conditions it must be recognized that the MALPF Board received a copy of the site plan and the interior describing the farm store within the building as being the approximate size shown on the zoning map. Mr. Lippincott's letter and the recommendations of the advisory committee also make it clear that the farm store sought would be approximately 1,400 square feet. The accessory sales area refers to the area for non-agricultural products within the farm store. It would have made no sense for Mr. Prigel to apply to the MALPF for approval of a 1,400 square foot farm store, receive permission for 600 square feet and reapply to the zoning commissioner for a 1,400 square foot facility. MALPF clearly was referring to accessory sales to the farm products which are further limited to no more than 10% of sales by the Board of Appeals order.³

People's Counsel argues that the MALPF Board order should be ignored because it failed to make appropriate findings and state its considerations. This proceeding, however, is not a

³ It is significant that neither Mr. Lippincott, who appeared at the zoning commissioner level nor the zoning advisory committee had any negative reaction to the proposed sizing of the farm store.

review of the MALPF Board's decision. The MALPF decision was final. It was not appealed and it is binding on the property owner, on the State and, arguably, on the county.

The Court of Special Appeals in *People's Counsel for Baltimore County v. Elm Street Development, Inc.*, 172 Md. App. 690, 917 A.2d 166 (2007), held that agencies required to give recommendations did not have to state their reasons. People's Counsel argued in that case that recommendations are without effect without stated reasoning, and the court rejected that argument. In this case there is nothing in any regulations requiring articulation of in depth reasoning. It is evident from the minutes that the farm had been visited by members of the Board and by staff, site plans reviewed, and issues considered at length. Similarly, like the petitioners in Elm Street it is not incumbent on the petitioners in this case to prove that the MALPF Board is correct. *Id.* at 701-703. Rather there should have been some testimony that they were wrong. There was no such testimony.

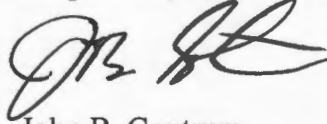
Finally, both People's Counsel and Protestants cite *Maryland Agricultural Land Preservation Foundation v. Claggett*, Court of Appeals, No. 148, September Term 2008, to support their positions. That case, however, has nothing to do with the issue before the Board. It does, however, affirm the fact that the easement is a contract between the state and a property owner. Such contract is not for the benefit of any other third party, and its interpretation is based on statutory authority.

CONCLUSION

In this case, the contract was interpreted between the parties to allow the creamery and the farm store. MALPF has determined they are appropriate farm related uses under the easement. They are no more commercial than the commercial agricultural activities associated with any dairy farm. The essence of any dairy farm is that cows are raised and kept for the

production of dairy products to be sold. That is exactly what is proposed at Bellevale Farm. The Prigels have won the support of the local agricultural advisory board, the Baltimore County agricultural preservation program, the MALPF Board, and the state Department of Agriculture, as well as the overwhelming majority of their neighbors. The arguments of Protestants and People's Counsel seeking reconsideration should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JB Gontrum', written in a cursive style.

John B. Gontrum
Whiteford, Taylor & Preston, LLP
1 West Pennsylvania Avenue, Suite 300
Towson, Maryland 21204
Attorneys for Petitioner

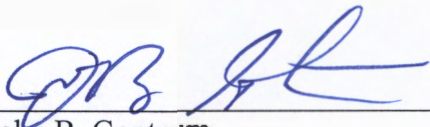
415773

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May, 2010, a copy of the Petitioner's Response to Protestants' and People's Counsel's Motions for Reconsideration was mailed first class, postage pre-paid to:

J. Carroll Holzer, Esq.
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286

Peter Max Zimmerman, Esq.
Carole S. DeMilio
Deputy People's Counsel
Jefferson Building, Room 204
105 W. Chesapeake Avenue
Towson, Maryland 21204



John B. Gontrum

THIS DEED OF EASEMENT made this 13th day of June, 1997, by and between BELLEVALE FARM LIMITED PARTNERSHIP, a Maryland Limited Partnership, party of the first part, "Grantor", and the STATE OF MARYLAND, to the use of the Department of Agriculture on behalf of the Maryland Agricultural Land Preservation Foundation, party of the second part, "Grantee", and containing covenants intended to be real covenants running with the land,

WITNESSETH:

WHEREAS, Title 2 of Subtitle 5 of the Agriculture Article, Annotated Code of Maryland, created the Maryland Agricultural Land Preservation Foundation for the purpose of preserving agricultural land and woodland; and

WHEREAS, by authority of Agriculture Article, Section 2-504(3), Annotated Code of Maryland, the Grantee may purchase agricultural preservation easements to restrict land to agricultural use; and

WHEREAS, the Grantor owns the hereinafter described tracts or parcels of land located in an agricultural preservation district established pursuant to Agriculture Article, Section 2-509, Annotated Code of Maryland, and desires to sell an agricultural preservation easement to the Grantee to restrict the land to agricultural use.

NOW, THEREFORE, in consideration of the sum of Seven Hundred Ninety-Six Thousand Five Hundred Dollars and No Cents, (\$796,500.00) and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor, the successors, personal representatives and assigns of the Grantor, do grant and convey, to the State of Maryland, for the use of the Grantee, its successors and assigns, an agricultural preservation easement in, on and over the hereinafter described tracts or parcels of land, subject to the covenants, conditions, limitations and restrictions hereinafter set forth, so as to constitute an equitable servitude thereon, that is to say:

All that certain tracts or parcels of land situate, lying and being in the Eleventh (11th) Election District of Baltimore County, Maryland, and being more particularly described as follows:

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE Lf DATE 6/2/97

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County

Lf 6/2/97
by Date

26-19344-83
MARYLAND COMMERCIAL TITLE COMPANY
5 LIGHT STREET
SUITE 1000
BALTIMORE, MARYLAND 21202



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

April 26, 2010

Peter Max Zimmerman
People's Counsel for
Baltimore County
Suite 204, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

RE: *In the Matter of: Long Green Valley Association, Inc./*
Prigel Family Creamery, Inc.
Case No. 08-456-X – Motion for Reconsideration

Dear Mr. Zimmerman:

This will acknowledge receipt of your Motion for Reconsideration filed April 23, 2010 in the subject matter. A copy of your Motion for Reconsideration, along with any response that may be filed thereto, will be forwarded to the appropriate Board members for their review and ultimate consideration.

With regard to this request for reconsideration, Rule 10 of the Board's Rules of Practice and Procedure states in part as follows:

...The filing of a motion for reconsideration shall stay all further proceedings in the matter, including the time limits and deadlines for the filing of a petition for judicial review. After public deliberation and in its discretion, the board may convene a hearing to receive testimony or argument or both on the motion. Each party participating in the hearing on the motion shall be limited to testimony or argument only with respect to the motion; the board may not receive additional testimony with respect to the substantive matter of the case. Within 30 days after the date of the board's ruling on the motion for reconsideration, any party aggrieved by the decision shall file a petition for judicial review. The petition for judicial review shall request judicial review of the board's original order, the board's ruling on the motion for reconsideration or both. [Emphasis added.]

A public deliberation has been scheduled for May 25, 2010 and a copy of the notice is attached.

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "Theresa R. Shelton".
Theresa R. Shelton
Administrator

Encl.: Deliberation Notice / Motion for Reconsideration

c: John B. Gontrum, Esquire
Robert and Carol Prigel
J. Carroll Holzer, Esquire

4/23/10

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE COUNTY
4851 Long Green Road; N/S Long Green Rd, *
1,500' W c/line Long Green Drive * BOARD OF APPEALS
11th Election & 3rd Councilmanic Districts
Legal Owner(s): Prigel Family Creamery, Inc* FOR
Petitioner(s) * BALTIMORE COUNTY
* 08-456-X

RECEIVED
APR 23 2010

BALTIMORE COUNTY
BOARD OF APPEALS

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

Pursuant to Rule 10, People's Counsel moves for reconsideration of the County Board of Appeals' ("CBA's") March 25, 2010 opinion and order,

1. The size and scale of the proposed use in the Agricultural (R.C. 2) Zone place it into the "farm market" category. The CBA's finding that it is a "farmer's roadside stand" is mistaken. Furthermore, Petitioner presented the use as fitting the farm market category. On this record, the case involves a farm market.

2. Whether this use is a farmer's roadside stand or a farm market, Baltimore County Zoning Regulation ("BCZR") § 404 delineates both under the rubric of "Agricultural Roadside Business."

3. An Agricultural Roadside Business is plainly a commercial use.

4. The Court of Appeals in Maryland Agricultural Land Preservation Foundation v. Clagett 412 Md. 45 (2009) recently highlighted the importance of following and implementing Maryland law relating to the Maryland Agricultural Land Preservation Foundation ("MALPF") and the use of agricultural easements.

5. The CBA has the authority and responsibility to address the impact of state or federal law on a zoning proposal, up to and including constitutional issues such as preemption Holiday Point Marina v. Anne Arundel County 349 Md. 190, 199 (1998); Prince George's County v. Ray's Used Cars 398 Md. 632, 650-56 (2007); Trinity Assembly of God v. People's Counsel 407 Md. 53 (2008).

6. The CBA's March 25, 2010 opinion relies on compliance with the law relating to MALPF and the use of Petitioner's agricultural easement. But the CBA opinion's discussion is inaccurate, incomplete, and legally insufficient.

7. Maryland Annotated Code Agricultural Article, §2-513(b), attached as Exhibit A, precludes commercial use of land subject to an easement, except as determined by MALPF to be for farm-related purposes. It states,

"(b) Use for commercial, industrial, or residential purposes. –

"(1) A landowner whose land is subject to an easement may not use the land for any commercial, industrial, or residential purpose except:

"(i) As determined by the Foundation (MALPF), for farm and forest related uses and home occupations; or

(ii) As otherwise provided under this section."

8. The June 18, 1997 deed of easement between Bellevale Farm Limited Partnership and the State of Maryland includes, in its Covenants, Conditions, Limitations and Restrictions, Section A.(i)(a),

"Except as otherwise provided in this instrument, the above described land may not be use for any commercial, industrial, or residential purpose."

There does not appear to be any specific provision in the instrument which allows a farm store or, for that matter, a creamery.

9. There is no evidence or indication that a farm store or creamery use was contemplated in 1997, at the time the deed of easement was executed.

10. The Protestants have filed a Motion for Reconsideration, which raises the question whether the proposed agricultural roadside business complies with Maryland law governing agricultural easements. Let us examine the record with the above Maryland law and deed of easement in mind..

11. On September 26, 2007, Wallace Lippincott, Baltimore County Program Administrator wrote to MALPF on September 26, 2007 pertaining to the "creamery operation, processing facility, and farm store for the dairy farm." CBA Exhibit 7, Motion Exhibit B. Mr. Lippincott communicated that the Baltimore

County Agricultural Land Preservation Advisory Board ("BCALPAB") had "reviewed and voted favorably on the request at its August 28, 2007 meeting." The BCALPAB is a board established under Baltimore County Code §§ 3-3-3-1 to 3-3-305. It has all power necessary to carry out Article 24 of the County Code and perform other specified functions. § 3-3-305.

12. Mr. Lippincott wrote that "the proposal is considered an 'agricultural-support' use and is permitted under Baltimore County Zoning Regulations Bill No. 178-79. It is subject to special exception [and] will be subject to a Special Hearing and review by our local Zoning Board." He asked "... the State to review, and, if acceptable, to give preliminary approval of this proposed use before submitting Mr. Prigel's use to Zoning for a Special Hearing." Evidently, Mr. Lippincott viewed the farm store as a "farm market," subject to special exception review.

13. It is noteworthy that "creamery" was at that time listed under BCZR § 253.1.A.18 as a permitted use in the M.L. Zone, and not listed as an "agricultural-support" use. In 2009, the County Council enacted Bill 34 to provide for a "farmstead creamery" use in the R.C. 2 Zone. The farm store proposal was and still is classified as an "agricultural roadside business" under BCZR §404.

14. Mr. Lippincott's letter mentioned a "75%" requirement under MALPF regulations as a minimum for sale of products produced on the farm. There was no detail or documentation concerning this requirement.

15. The letter contained no reference to § 2-513(b) of the Agriculture Article or the need for an exception from the restriction on commercial use.

16. On October 29, 2007, Diana Chasse, MALPF administrator, wrote in turn to Robert Prigel, Jr. of Bellevale Farm, Inc., with a copy to Mr. Lippincott. CBA Exhibit 8, Motion Exhibit C. She referred to an October 23, 2007 Foundation Board meeting and attached minutes pages 18-19. She wrote "to confirm" the MALPF Board's approval of the creamery operation, processing facility, and farm store, subject to six (6) detailed conditions. The minutes reflected Mr. Prigel's description of the operation and a fair amount of discussion.

17. It appears that a missing minutes page 20 is included with the Zoning Advisory Committee comments. We attach it here as Motion Exhibit D. This page refers to questions about compliance with the requirement for impervious surfaces in the parking lot and a hope that "Baltimore County will work it out."

18. The MALPF correspondence and minutes do not explicitly state any finding of fact or reasons to support the granting of an exception under Agriculture Article Section 2-513(b). Nor has MALPF analyzed whether the proposed use is permissible under the June, 1997 deed of easement.

19. More specifically, MALPF has not explained the basis for any exception to the prohibition of commercial use under Maryland law or under covenant A(i)(a) of the deed of easement.

20. The MALPF review and approval was thus incomplete and legally insufficient under Maryland law and the deed of easement.

21. The legitimacy of an agency's findings and conclusions depend on supporting facts and reasoning. United Steelworkers v. Bethlehem Steel Corp. 298 Md. 665 (1984); Maryland Nat'l Capital Park & Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n 412 Md. 73 (2009). If an agency's reasoning is boilerplate or conclusory, there is lacking a foundation for intelligent review.

22. The MALPF approval, in any event, includes the six (6) stated conditions. The last condition states,

"Accessory sales area must not exceed 600 sq. ft."

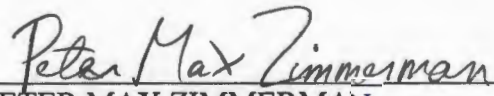
23. Clearly, the zoning proposal conflicts with the MALPF approval. The zoning site plan describes the farm store as occupying 1440 square feet, while the MALPF condition sets a maximum of 600 square feet for the accessory sales area. This alone requires limitation of the zoning approval.

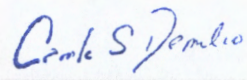
24. The proposed size of the sales area thus conflicts, in addition, with the limitation imposed by MALPF.

25. The CBA's March 25, 2010 opinion relies on the MALPF approval. See pages 3, 4, and 9. But the CBA has failed to take into account the absence and

insufficiency of MALPF's reasoning or analysis. Nor does the CBA opinion take into account the size limit MALPF imposed on the accessory sales area, or other conditions. For these reasons, the record does not support the zoning approval.

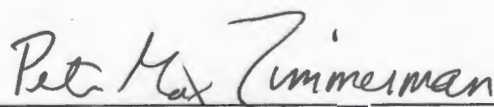
Wherefore, People's Counsel requests asks the County Board of Appeals reconsider this matter to determine whether the law relating to the use of the easement and the easement conditions have been satisfied by the MALPF Board action, and, further, whether the zoning proposal is consistent with that action.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2010, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286 and John B. Gontrum, Esquire, Whiteford, Taylor & Preston, LLP, One W Pennsylvania Avenue, Suite 300, Towson, MD 21204, Attorney for Petitioner(s).


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

§ 2-513. Use of land for which easement purchased.

(a) *Provisions to be included in easement and county regulations.*- Agricultural land preservation easements may be purchased under this subtitle for any land in agricultural use which meets the minimum criteria established under § 2-509 of this subtitle if the easement and county regulations governing the use of the land include the following provisions:

- (1) Any farm use of land is permitted.
- (2) Operation at any time of any machinery used in farm production or the primary processing of agricultural products is permitted.
- (3) All normal agricultural operations performed in accordance with good husbandry practices which do not cause bodily injury or directly endanger human health are permitted including, but not limited to, sale of farm products produced on the farm where such sales are made.

(b) *Use for commercial, industrial, or residential purposes.*-

(1) A landowner whose land is subject to an easement may not use the land for any commercial, industrial, or residential purpose except:

- (i) As determined by the Foundation, for farm and forest related uses and home occupations; or
- (ii) As otherwise provided under this section.

(2) Except as provided in paragraphs (3) and (7) of this subsection, on written application, the Foundation shall release free of easement restrictions only for the landowner who originally sold an easement, 1 acre or less for the purpose of constructing a dwelling house for the use only of that landowner or child of the landowner, up to a maximum of three lots, subject to the following conditions:

(i) The number of lots allowed to be released under this section, except as provided in paragraph (7) of this subsection, may not exceed:

1. 1 lot if the size of the easement property is 20 acres or more but fewer than 70 acres;
2. 2 lots if the size of the easement property is 70 acres or more but fewer than 120 acres; or
3. 3 lots if the size of the easement property is 120 acres or more.

(ii) The resulting density on the property may not exceed the density allowed under zoning of the property before the Foundation purchased the easement.

(iii) The landowner shall pay the State for any acre or portion released at the price per acre that the State paid the owner for the easement.

(iv) Before any conveyance or release, the landowner and the child, if there is a conveyance to a child, shall agree not to subdivide further for residential purposes any acreage allowed to be released. The agreement shall be recorded among the land records where the land is located and shall bind all future

owners.

(v) After certifying that the landowner or child of the landowner has met the conditions provided in subparagraphs (i) through (iv) of this paragraph, the Foundation shall issue a preliminary release which shall:

1. Become final when the Foundation receives and certifies a nontransferable building permit in the name of the landowner or child of the landowner for construction of a dwelling house; or
2. Become void upon the death of the person for whose benefit the release was intended if the Foundation has not yet received a building permit as provided in this subparagraph.

(vi) Any release or preliminary release issued under this paragraph shall include:

1. A statement of the conditions under which it was issued, a certification by the Foundation that all necessary conditions for release or preliminary release have been met, and copies of any pertinent documents;

2. A statement by the landowner or child of the landowner that acknowledges that:

A. Adjacent farmland that is subject to an agricultural land preservation easement may be used for any agricultural purpose and may interfere with the use and enjoyment of the property through noise, odor, vibration, fumes, dust, glare, or other interference;

B. There is no recourse against the effects of any normal agricultural operation performed in accordance with good husbandry practices; and

C. Acknowledgments made under items A and B of this item are binding to any successor or assign of the landowner or child; and

3. A statement that the owner's or child's lot may not be transferred for 5 years from the date of the final release, except on:

A. Approval by the Foundation; or

B. Notwithstanding any conditions on transfers imposed under item 1 of this subparagraph, a lender providing notice to the Foundation of a transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or to a deed in lieu of foreclosure.

(vii) Any release, preliminary release, building permit, or other document issued or submitted in accordance with this paragraph shall be recorded among the land records where the land is located and shall bind all future owners.

(viii) The Foundation may not restrict the ability of a landowner who originally sold an easement to acquire a release under this paragraph beyond the requirements provided in this section.

(3) A landowner may reserve the right to exclude 1 unrestricted lot from an easement in lieu of all owner's and children's lots to which the landowner would otherwise be entitled under paragraph (2) of this subsection, subject to the following conditions:

(i) The resulting density on the property shall be less than the density allowed under zoning of the property before the Foundation purchased the easement;

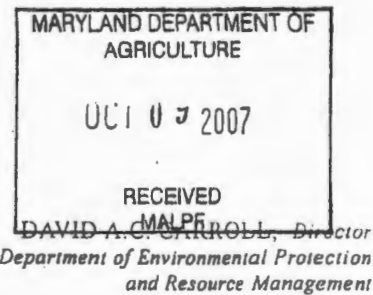
(ii) An unrestricted lot may be subdivided by the landowner from the easement and sold to anyone to

PEOPLES COUNSEL MOTION EXHIBIT A



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive



Mr. Jim Conrad
Maryland Agricultural Land Preservation Foundation
50 Harry S. Truman Parkway
Annapolis, MD 21401

September 26, 2007

RE: Baltimore County - Mr. Robert Prigel. Bellevale Farms, Inc. MALPF #03-83-14C. 180 acres.

Dear Mr. Conrad,

Mr. Robert Prigel of 4851 Long Green Road, Baltimore County is requesting approval to construct a creamery operation, processing facility, and farm store for the dairy farm. The property is currently under a MALPF easement. We would like to place this on the agenda for the October 23, 2007 MALPF Board meeting.

The facility that is planned will be a 7,000 to 10,000 square foot building which will be located off of Long Green Road. It will contain ~ 1500 sq. ft. of retail space selling farm produced milk, cheese, yogurt, butter, and ice cream. The rest of the facility will be used for processing and warehouse space. Mr. Prigel is aware that under MALPF regulations that 75% of the products sold at his stand must be produced on his farm. The approximate location of the new facility is shown on the accompanying aerial maps. The access road will be a Right of Way and the facility will have fewer than 10 parking spaces.

The Baltimore County Agricultural Land Preservation Advisory Board reviewed and voted favorably on the request at their August 28, 2007 meeting. The facility will be located in an area that contains class II soils (HaB2). Although this location contains highly productive soil, the entire farm is comprised mostly of classes I, II, and III soils with very little class IV and the area along Long Green Road where the facility will be located is mainly Class II with some Class I soil.

This proposal is considered an "agricultural-support" use and is permitted under Baltimore County Zoning Regulations Bill No. 178-1979. It is permitted by special exception will be subject to a Special Hearing and review by our local Zoning Board. Baltimore County Staff would like the State to review and, if acceptable, to give preliminary approval of this proposed use before submitting Mr. Prigel's proposal to Zoning for a Special Hearing.



Maryland Department of Agriculture

Office of the Secretary

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
Roger L. Richardson, Secretary
Earl F. Hance, Deputy Secretary

The Wayne A. Cawley, Jr. Building
50 Harry S. Truman Parkway
Annapolis, Maryland 21401
TTY Users: Call via Maryland Relay
Internet: www.mda.state.md.us

Agriculture | Maryland's Leading Industry

410.841.5700 Baltimore/Washington
301.261.8106 Washington, D.C.
410.841.5914 Fax
800.492.5590 Toll Free

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION October 29, 2007

Mr. Robert Prigel, Jr.
Bellevue Farm, Inc.
4851 Long Green Road
Glen Arm, Maryland 21057

Re: MALPF File #03-83-14C

Dear Mr. Prigel:

We appreciate your attendance at the October 23, 2007 Foundation Board meeting. The purpose of this letter is to confirm that the Board approved the construction of a 7,000 to 10,000 square foot building to house the creamery operation, processing facility and farm store. The Board also approved a pervious parking area that would accommodate fewer than 10 vehicles. The parking area is to be located on Long Green Road with the creamery directly behind it.

The approval requires that the structure and the parking lot be in compliance with the following (once built and in the future):

- Must not interfere with other agricultural or silvicultural operations.
- Must not limit future agricultural or silvicultural production.
- Easement owner must have an ownership interest in the operation.
- Some of the products must come from animals raised or crops grown on site; the remainder from animals or crops indigenous to Maryland.
- Facility and parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller.
- Parking area must be pervious.
- Accessory sales area must not exceed 600 sq. ft.

If you have any questions, please feel free to call me at 410-841-5715.

Sincerely,

Diane Chasse

Diane Chasse
Administrator

CC: Wally Lippincott, County Program Administrator

PEOPLE'S COUNSEL MOTION EXHIBIT C

GRA 027 Nov 8

pervious, but it is little challenging. The State has developed many rules to utilize more and more pervious parking and sometimes it might put additional burdens on the farm users. Baltimore County will work it out.

Mr. Doug Wilson stated that he felt the other way. Mr. Doug Wilson believed the State and other institutions are putting the onus on local government, the people who design the parking lot, the handicap associations, etc, to be more respectful of the pervious surfaces. They would have to give more latitude on what will be allowed.

Mr. Lippincott stated that the problem is actually getting them to work. The County continues to work on the issue over time, but the issues continues to be an engineering challenge.

Mr. Colhoun commented that the discussions have been very useful and stated that Mr. Prigel's parking lot is very small compared to others.

F. SOMERSET COUNTY

- | | | | |
|----|----------|-----------------------------------|--------------|
| 1. | 19-08-09 | Gerard and Donna Dumsha | 257.22 acres |
| | | Re-review of easement application | |

At the August 28, 2007 Board meeting, this easement application was approved with the withholding of 9 acres of barrow pits. However, since then, it has been determined that a portion of the property lies within a water and sewer district, and, therefore, additional review is necessary.

According to Somerset County, approximately 24 acres or 9 % of the property lies within the planned water and sewer district. On October 2, 2007, the County Commissioners approved the easement application with the inclusion of these acres. The County administrator reports that sewer and water may still be extended past the proposed easement by keeping it within the right-of-way of the road.

Staff recommends approval based on meeting minimum size and soils criteria. Normally, land located in the planned water and sewer area is not eligible for the program. However, § 2-509 (d) (4) provides an exception if the land "is outstanding in productivity and is of significant size." Staff recommends that the Foundation approve the exception because: 1) the property is relatively large for the county; 2) the soils are excellent quality (100% prime); and 3) the majority of the property lies outside the water and sewer area. It would not serve the interests of the program to require the landowner to exclude the area of the property from the easement. A letter from the Soil Conservation District was attached with the agenda memo.

Tom Lawton, Program Administrator, was available at the meeting. The County's water and sewer plans are fairly general and do not have a specific measurement to give the landowner. The County Zoning is R2 and that is 600 feet from the road. It is the policy of the County that service will be extended in the right-of-way and not across the property.

Mr. Colhoun had stepped out of the meeting at 11:10 am and returned at 11:15 am. Mrs. Vera Mae Schultz, Vice Chair, chaired the meeting in his absence.

Motion #12: To approve the re-review of Gerard and Donna Dumsha's easement application.

Motion: Doug Wilson
Status: **Approved**

Second: James Pelura

PEOPLE'S COUNSEL MOTION EXHIBIT D



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

April 19, 2010

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

RE: *In the Matter of: Long Green Valley Association, Inc./*
Prigel Family Creamery, Inc.
Case No. 08-456-X – Motion for Reconsideration

Dear Mr. Holzer:

This will acknowledge receipt of your Motion for Reconsideration filed April 16, 2010 in the subject matter. A copy of your Motion for Reconsideration, along with any response that may be filed thereto, will be forwarded to the appropriate Board members for their review and ultimate consideration.

With regard to this request for reconsideration, Rule 10 of the Board's Rules of Practice and Procedure states in part as follows:

...The filing of a motion for reconsideration shall stay all further proceedings in the matter, including the time limits and deadlines for the filing of a petition for judicial review. After public deliberation and in its discretion, the board may convene a hearing to receive testimony or argument or both on the motion. Each party participating in the hearing on the motion shall be limited to testimony or argument only with respect to the motion; the board may not receive additional testimony with respect to the substantive matter of the case. Within 30 days after the date of the board's ruling on the motion for reconsideration, any party aggrieved by the decision shall file a petition for judicial review. The petition for judicial review shall request judicial review of the board's original order, the board's ruling on the motion for reconsideration or both. [Emphasis added.]

Therefore, in response to your Motion for Reconsideration, a public deliberation will be scheduled and appropriate notice promptly sent to all parties to this matter.

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

Very truly yours,

A handwritten signature in dark ink, appearing to read "Theresa R. Shelton", is written over the typed name.

Theresa R. Shelton
Administrator

c: John B. Gontrum, Esquire
Robert and Carol Prigel
Office of People's Counsel

4/16/10

IN THE MATTER OF:
PRIGEL FAMILY CREAMERY - PETITIONERS

4851 Long Green Road
Long Green, Maryland 21092

RE: Petition for Special Exception
for Farm Market and/or
Farmer's Roadside Stand

* BEFORE THE
* COUNTY
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: CBA-08-456-X

* * * * *

PROTESTANTS MOTION FOR RECONSIDERATION

FACTS

This case came before the Board on appeal of a final Decision of the Deputy Zoning Commissioner of Baltimore County in which a Petition for Special Exception for a Farm Market, or in the alternative, for a Farmer's Roadside Stand was granted, with restrictions. The Board held a public hearing on October 25, 2009, at which time the Protestants, Long Green Valley Association, Inc., and various individuals were represented by the undersigned. A public deliberation was held by the Board and a written Opinion and Order was filed on March 25, 2010, by the Board.

Protestants hereby request hereby pursuant to the Board rules, a Reconsideration of the Board's Decision relative to the Board's failure to consider matters presented to the Board which will be highlighted more specifically in this Motion for Reconsideration.

Protestants Motion relates to the conflict of the Petitioners zoning proposal for a Farm Market and/or Farmer's Roadside Stand, and the MALPF easement which prohibits use for "any commercial, industrial or residential purpose."

The Board's Opinion on page 3, summarized the evidence presented, particularly the testimony of Mr. Prigel in advising the Board of Appeals that his family had "previously placed one hundred eighty (180) acres of land into a perpetual agricultural easement held by the Maryland Agricultural Land Preservation Foundation (MALPF)." As a result, Prigel was required to apply to the Baltimore County Land Preservation Board for permission to locate a building within the easement area and subsequently obtained their permission. (Petitioner's Exhibit #7). The Board then on page 4, made the following comment upon the evidence presented.

"Conditions were placed on the use of the easement by MALPF, and Mr. Prigel agreed to abide by those conditions if this request is approved."

The Board, in its "Decision" beginning at page 8 referred to the testimony of Protestant Edward Blanton as to the legality of constructing the building in the agricultural easement area, which the Board then countered on page 9 by stating "the documents from MALPF and Baltimore County would show that permission was obtained to build within the easement area. (Petitioner's Exhibit #8)." The Board continued "the Board acknowledges that neither the MALPF Board nor the Baltimore County Agricultural Advisory Board had any reservations about the proposed use." Mr. Prigel agreed to comply with all conditions imposed by the MALPF Board and the Site Plan was revised to incorporate those conditions into the proposal. Further, the Board on page 10 of its Opinion quoted from interoffice correspondence dated May 13, 2008, from Wally Lippincott, Jr. of DEPRM as follows:

"...the purpose of the MALPF and County Agricultural easements are for the protection of the prime and productive soils and fostering of agricultural."

The Board in its Order then stated:

“It is further Ordered that, the said uses shall be subject to the conditions imposed by MALPF and the County Agricultural Advisory Board.”

The evidence presented to the Board by the Protestant Blanton and by the use of the MALPF and by the Board’s consideration of the easement entered into Bellevale Farm Limited Partnership (Prigel) and the State of Maryland, it is clear that this Board’s consideration in granting the Petitioner’s Request for Special Exception to permit a Farm Market and the Petitioner’s request for confirmation of a Farmer’s Roadside Stand was granted in part, if not with the clear understanding, that MALPF and the Baltimore County Agricultural Advisory Board felt this was a permitted use.

ARGUMENT

The Protestants specifically in support of this Motion for Reconsideration would attach the Board’s Opinion and Order as Exhibit A and the Deed of Easement entered into by the Petitioner Bellevale Farm Limited Partnership (Prigel and the State of Maryland) as Exhibit B. The Deed of Easement entered into by Bellevale Farm Limited Partnership on the 12th day of June 1997, clearly recognizes the subject property upon which the Farmer’s Roadside Stand and/or the Farm Market are to be located are within the easement granted under the Deed of Easement aforementioned. The Prigels (as the Grantor), for placing the subject property into said easement received the sum of Seven Hundred Ninety-Six Thousand, Five Hundred Dollars (\$796,500.00) and other valuable consideration as reflected on Exhibit B. The Deed of

Easement under the Section entitled Covenants, Conditions, Limitations and Restrictions, recorded in Baltimore County Land Records, Book and Page No. 0012239-528, states the following:

A. Subject to the reservations hereinafter contained, the Grantor for the Grantor, the successors, personal representations, successors and assigns of the Grantor, covenants and agrees as follows:

(1)(a) Except as otherwise provided in this instrument, the above-described land may not be used for any commercial, industrial, or residential purpose.

The public hearing held before the Board occurred on October 25, 2009, and the case was closed after Memorandums were submitted. On December 22, 2009, the Court of Appeals of Maryland in Case No.: 142, September Term, 2008, decided Maryland Agricultural Land Preservation Foundation, et al., v. Hershell B. Claggett, Sr., attached hereto and incorporated herein as Exhibit C. (412 Md. 45 (2009)).

In that case, a Respondent land owner's grant of an easement to Petitioner, Maryland Agricultural Preservation Foundation restricting use of his land to agricultural purposes permitted the landowner to obtain a release of acreage to construct a dwelling house for his use or that of his child. The terms of the land owner's Deed of Easement and subsequent preliminary release, however did not permit him to transfer that released acreage to a third party free of the agricultural restriction. The purpose of the easement was to maintain the character of the land as agricultural land or woodland. An unrestricted right to sell an owner's lot once released would underline this purpose by facilitating potential real estate speculation through an extensible request to build a dwelling for the Grantor or his child. The easement express language stated that the land owner could construct a dwelling house for the use only of that land owner (or the land owner's child).

The instant case is even more damaging to the purpose of the easement which was to maintain the character of the land as agricultural land and to preclude in the instant case, the use of the land for any "commercial, industrial or residential purpose." Based upon the Claggett case, this Board should reconsider this issue and a determination which would cause a denial of Petitioner's request for a Farmer's Roadside Stand or a Farm Market.

Specifically, the Baltimore County Zoning Regulations §404.4 classify a Farm Market and a Farmer's Roadside Stand as a business. It further defines §404.4 the Farmer's Roadside Stand as a Commercial Agricultural operation. As such, it is incumbent on the Board to consider that the Deed of Easement and the monies received by Prigel therefore, clearly prohibit the said land being used for a commercial purpose. Since this Board considered in its Opinion and summary of the evidence the issue of the MALPF Agreement and the consideration of MALPF and the Baltimore County Land Preservation Board, it should reconsider the effect of its approval upon the recorded easement attached as Exhibit B.

The Board may not dismiss their requirement to review this aspect on the basis that it is a matter for the Circuit Court or other litigation. It is acknowledged that the Board has the right to review these matters in connection with the evidence presented at the October hearing since it relied upon this issue to grant approval for the Farmer's Roadside Stand and Farm Market.

Holiday Point Marina v. Anne Arundel County, 349 Md. 190 (1988); Maryland Reclamation Association v. Harford County, 342 Md. 476 (1996) and Prince George's County v. Ray's Used Cars, 398 Md. 632 (2007).

WHEREFORE, Protestants respectfully request that this Motion for Reconsideration be granted and that a determination be made by the Board that the Deed of Easement precludes the approval of a Farm Market and a Farmer's Roadside Stand.

Respectfully submitted,

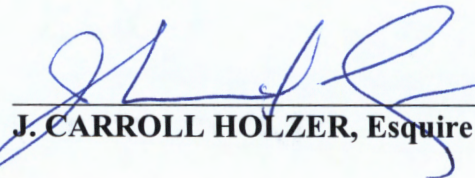


J. CARROLL HOLZER, Esquire

Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of April, 2010, a copy of the foregoing Protestants Motion for Reconsideration and Request for Hearing was mailed first class, postage pre-paid to the following: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Jefferson Building, 105 West Chesapeake Avenue, Room 204, Towson, Maryland 21204 and John B. Gontrum, Esquire, Whiteford, Taylor & Preston, 210 West Pennsylvania Avenue, Towson, Maryland 21204.



J. CARROLL HOLZER, Esquire

IN THE MATTER OF
PRIEGEL FAMILY CREAMERY - PETITIONERS
4851 Long Green Road
Long Green, MD 21092

RE: Petitioner for Special Exception for Farm Market
And/or Farmer's Roadside Stand

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA- 08-456-X

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Deputy Zoning Commissioner of Baltimore County in which a Petition for Special Exception for a farm market or in the alternative, for a farmer's roadside stand, was granted, with restrictions.

A public hearing before this Board was held on October 25, 2009. The Petitioner was represented by John B. Gontrum, Esquire and the law firm of Whiteford, Taylor and Preston. J. Carroll Holzer, Esquire represented Long Green Valley Association, Inc. and various individual protestants. Peter Max Zimmerman, People's Counsel for Baltimore County also participated in the hearing. A public deliberation was held on January 12, 2010.

Statutes

A farm market is allowed by special exception in a R.C. 2 zone pursuant to Section 1A01.2.C.8 of the Baltimore County Zoning Regulations ("BCZR") and subject to the provisions of Section 404.4 of the BCZR. A farmer's roadside stand is permitted of right as an accessory use by Section 1A01.2.B.9.b of the BCZR and subject to Section 404.4 therein.

Section 404.4 reads as follows:

§404.4 Agricultural roadside businesses.

Agricultural roadside businesses are permitted, subject to the following requirements:

* * * *

C. A farmer's roadside stand is permitted as of right with a use permit in R.C.2, R.C. 3, R.C. 4 and R.C. 5 Zones subject to the following conditions:

1. The stand shall be located on a farm.

Exh A

12239 526-537

0012239

DGS FILE No: 03-11-83-14A

THIS DEED OF EASEMENT made this 13th day of June, 1997, by and between BELLEVALE FARM LIMITED PARTNERSHIP, a Maryland Limited Partnership, party of the first part, "Grantor", and the STATE OF MARYLAND, to the use of the Department of Agriculture on behalf of the Maryland Agricultural Land Preservation Foundation, party of the second part, "Grantee", and containing covenants intended to be real covenants running with the land,

WITNESSETH:

WHEREAS, Title 2 of Subtitle 5 of the Agriculture Article, Annotated Code of Maryland, created the Maryland Agricultural Land Preservation Foundation for the purpose of preserving agricultural land and woodland; and

WHEREAS, by authority of Agriculture Article, Section 2-504(3), Annotated Code of Maryland, the Grantee may purchase agricultural preservation easements to restrict land to agricultural use; and

WHEREAS, the Grantor owns the hereinafter described tracts or parcels of land located in an agricultural preservation district established pursuant to Agriculture Article, Section 2-509, Annotated Code of Maryland, and desires to sell an agricultural preservation easement to the Grantee to restrict the land to agricultural use.

NOW, THEREFORE, in consideration of the sum of Seven Hundred Ninety-Six Thousand Five Hundred Dollars and No Cents, (\$796,500.00) and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor, the successors, personal representatives and assigns of the Grantor, do grant and convey, to the State of Maryland, for the use of the Grantee, its successors and assigns, an agricultural preservation easement in, on and over the hereinafter described tracts or parcels of land, subject to the covenants, conditions, limitations and restrictions hereinafter set forth, so as to constitute an equitable servitude thereon, that is to say:

All that certain tracts or parcels of land situate, lying and being in the Eleventh (11th) Election District of Baltimore County, Maryland, and being more particularly described as follows:

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE Lf DATE 6/2/97

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County

Lf 6/2/97
By Date

-1-

2013344-83
MARYLAND COMMERCIAL TITLE COMPANY
5 LIGHT STREET
SUITE 1000
BALTIMORE, MARYLAND 21202

E-LB

HEADNOTE:

Maryland Agricultural Land Preservation Foundation, et al. v. Herschell B. Claggett, Sr.,
No. 142, September Term, 2008

REAL PROPERTY LAW - LIMITED USE RIGHTS - AGRICULTURAL EASEMENTS - CONTRACT INTERPRETATION

Respondent landowner's grant of an easement to Petitioner Maryland Agricultural Land Preservation Foundation restricting use of his land to agricultural purposes permitted the landowner to obtain a release of acreage to construct a dwelling house for his use or that of his child. The terms of the landowner's Deed of Easement and subsequent Preliminary Release, however, did not permit him to transfer that released acreage to a third-party free of the agricultural restriction. The purpose of the easement was to maintain the character of the land as agricultural land or woodland. An unrestricted right to sell an owner's lot once released would undermine this purpose by facilitating potential real estate speculation through an ostensible request to build a dwelling for the grantor or his children. The Easement's express language stated that the landowner could construct a "dwelling house for the use *only* of that [landowner] or the [landowner's] child." Thus, the landowner could not transfer the dwelling constructed on his requested lot to a third-party without first obtaining approval from the Maryland Agricultural Land Preservation Foundation.

ExhC

3/25/10

IN THE MATTER OF
PRIEGEL FAMILY CREAMERY - PETITIONERS
4851 Long Green Road
Long Green, MD 21092

RE: Petitioner for Special Exception for Farm Market
And/or Farmer's Roadside Stand

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA- 08-456-X

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Deputy Zoning Commissioner of Baltimore County in which a Petition for Special Exception for a farm market or in the alternative, for a farmer's roadside stand, was granted, with restrictions.

A public hearing before this Board was held on October 25, 2009. The Petitioner was represented by John B. Gontrum, Esquire and the law firm of Whiteford, Taylor and Preston. J. Carroll Holzer, Esquire represented Long Green Valley Association, Inc. and various individual protestants. Peter Max Zimmerman, People's Counsel for Baltimore County also participated in the hearing. A public deliberation was held on January 12, 2010.

Statutes

A farm market is allowed by special exception in a R.C. 2 zone pursuant to Section 1A01.2.C.8 of the Baltimore County Zoning Regulations ("BCZR") and subject to the provisions of Section 404.4 of the BCZR. A farmer's roadside stand is permitted of right as an accessory use by Section 1A01.2.B.9.b of the BCZR and subject to Section 404.4 therein.

Section 404.4 reads as follows:

§404.4 Agricultural roadside businesses.

Agricultural roadside businesses are permitted, subject to the following requirements:

* * * *

C. A farmer's roadside stand is permitted as of right with a use permit in R.C.2, R.C. 3, R.C. 4 and R.C. 5 Zones subject to the following conditions:

1. The stand shall be located on a farm.

2. The owner shall be an agricultural producer.

3. At least 50% of the produce sold annually shall be grown on the premises where the stand is located or on adjacent farms or on other property farmed by the applicant.

* * * *

D. Farm Market: special exception standards. A farm market is subject to a special exception approval in R.C.2, R.C.3, R.C.4, R.C. 20 and R.C. 50 Zones and shall meet the standards outlined in Section 502.1 of these regulations. In addition to these requirements, a farm market is subject to the following requirements:

1. The owner shall be an agricultural producer.

2. At least 50% of the produce sold annually shall be grown by the owner of the farm market and no more than 10% of the annual sales shall be locally produced nonagricultural goods.

* * * *

The statutory definitions of farmer's market and farmer's roadside stand are contained within Section 101 of the BCZR as follows:

FARMER'S ROADSIDE STAND – An accessory structure owned and operated by an agricultural producer, used for the sale of indigenous farm products, the majority of which have been grown, or grown and produced, on the premises, on adjacent land or on properties farmed by the same agricultural producer.

FARM MARKET – An accessory or principal building or structure other than a dwelling which is used by one or more farmers for the sale of products grown, or grown and produced, primarily on their own farms or for the sale of other indigenous farm products. A farm market may sell a limited amount of locally produced nonagricultural goods such as handcrafted items, homemade baked goods, homemade preserves and jams.

(County Council Bill 34-2009).

The special exception standards are found in §502.1 of BCZR and read as follows:

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

A. Be detrimental to the health, safety or general welfare of the locality involved;

- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

Evidence

The Petitioners, Robert E. Priegel and his family, are 4th generation farmers of a dairy farm called Bellevale Farm located at 4851 Long Green Road in the Long Green area of Baltimore County (the "Property"). The zoning is RC2. Long Green Road is a scenic road. Mr. Priegel testified that he has been managing the farm since graduating from high school in 1980. The farm consists of 210 acres with 35 acres of woods and 75 acres of pastures and barns. The farm contains 150 Jersey dairy cows which are milked twice daily – once in the morning and once in the evening. The Priegel farm produces an average of 500 gallons of milk per day.

The milk produced from the cows is certified organic milk. This means that the cows graze on only certified organic feed. The restrictions on organic milk production are very rigid for a farmer. The Priegels do not use herbicides, antibiotics or chemical fertilizers. The Priegels move the cows around the pastures every 12 hours so that they can graze on a new section of grass. The cows graze on the grass on the north side of Long Green Road during the day and on the south side in the evening. Currently, the milk is sold primarily to Horizon Organic Dairy Company which transports the milk to the processing plant in Buffalo, New York.

Mr. Priegel explained that his family had previously placed 180 acres of land into a perpetual agricultural easement held by the Maryland Agricultural Land Preservation Foundation ("MALPF"). As a result, he had to apply to the Baltimore County Land Preservation Board for permission to locate the

building within the easement area. He obtained their permission on September 26, 2007. (Pet. Ex. 7). Conditions were placed on the use of the easement by MALPF and Mr. Priegel agreed to abide by those conditions if this request is approved. He also agrees to comply with the requirements found in §404.4D of the BCZR such that at least 50% of the produce sold annually shall be grown by him and no more than 10% of the annual sales shall be locally produced nonagricultural goods.

In April of 2008, the Priegels obtained a building permit to construct a building on their Farm. The location ultimately selected was determined by the location of a well which would supply water since water was needed for the building. Baltimore County Health Department also requested that the building be located away from the dairy barns. The building measures a total of 10,000 sq. ft. Within that 10,000 sq.ft., the Priegels propose to use only 1400 sq. ft. on the first floor for the farmer's market or farmer's road side stand. The remainder of the building will be used for a dairy creamery where the Priegels process the milk from their cows.

Mr. Priegel testified that he proposes to sell from the farm market all of the dairy that he produces from his Farm including ice cream, milk, and cheese. He also proposes to sell beef, chickens, eggs, pork as well as woodworking, platters, crafts, jams, breads and pies. The later products may or may not be produced on his farm. He does currently have some steer on his farm. The Priegels would like to provide other local farmers the opportunity to sell their products at the market. The market will be operated by the Priegel family who reside on the Farm.

Mr. Priegel testified as to the special exception factors contained in §502.1. He stated that the Market will not cause congestion on the roads. His cows are still herded across Long Green Road in the morning and afternoon to vary their grazing pastures. There is no concern about the danger of fire as the building was built to code although the inside of the building is not yet complete. The building will not overcrowd the land as it is one building amongst many acres of farmland. The target audience for the products sold at the market are the Priegel's neighbors. Mr. Priegel pointed out that the market is not a destination stop but rather a stop that customers may come to on their way through to another destination. Mr. Priegel does not anticipate that the market would generate that much interest.

He further testified that there was no negative impact on schools, water or sewers and no impact on light or air. He believes that the use is consistent with the RC2 zoning uses which are intended to support agriculture. Toward this end, a farm market would support the products sold by the local farmers. The market and creamery allow one of the few remaining dairy farms in Maryland to survive. The sale of organic milk produced by the Priegels at their Market allows them to capture the retail value of the product rather than selling it wholesale to Horizon Dairy.

Mr. Priegel also mentioned that the market was not inconsistent with the impermeable surface and vegetative retention provisions contained in the BCZR as the building occupies less than 2% of the site. Further, there is no detriment to either environmental or natural resources on the site including the stream. The Priegels do not plow or till the grass. Finally, he sees only a positive impact on the health, safety and general welfare of the area.

In support of the market was William Pennington who testified on behalf of Greater Long Green Community Association. The 247 member organization whose members live in the areas of Little Gun Powder River, Manor Road, Sweet Air and Loch Raven Reservoir are in support of the market. In addition, the Board heard from Robert Carter, 4809 Long Green Road; Louis Reichart, 4814 Long Green Road; James Currens, 4825 Long Green Road and Darrell Calvin Edwards, 4709 Long Green Road who all testified in favor of the market.

Michael Fisher of Site Resources testified for the Priegels. He was accepted by the Board as an expert in landscape architecture as well as an expert in zoning and land development in Baltimore County. Mr. Fisher testified that the Property is located in the center of Long Green Road. The majority of the Farm is pasture for the cows. He stated that the nearest residence to the Priegel Farm is 2/10 of a mile or 1000 feet away.

The entire building measures 10,000 sq ft. The depth of the building is 24 ft. and the width is 60 ft. The proposal for the farm market and/or road side stand is to use only 1440 sq ft. of space within the building on the first floor which faces Long Green Road. The building, when viewing it from the front, is set down off Long Green Road such that the roof appears to be close to eye level. A parking lot

is located in front of the Building and has a porous paving surface. Mr. Fisher also pointed out that there are no variances being requested.

Mr. Fisher added that, if the farm market is approved, a landscaping plan will be filed. The proposed lighting for the building is to use wall mounted lights similar to those used on a residence. The proposed hours of operation are from 9:00 a.m. to sun down. There will be a sign measuring approximately 4x4 which will not be illuminated.

Mr. Fisher testified as to each of the special exception factors listed in §502.1 of BCZR. He stated that there would be no detriment to the health, safety or general welfare of the Long Green area. As to the roads streets and alleys, he explained using the photographs that he took (Pet. Ex 6A- 6H) that Long Green Road is a 2 way road which is both marked and striped. There is no problem with traffic. Site distances were good in all directions.

As for the potential hazard from fire, panic or other danger, he emphasized that Long Green Fire Station was close by. As for the potential for the market to overcrowd the land, there is no overcrowding as there is only 1 building at issue with 8 parking spaces. The market also would not interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements as the Property utilizes private well and septic. There will be no interference with adequate light and air as this was only a 1 story building and the nearest farm was 2/10th mile away.

Further, he stated that the proposal is both consistent with the purposes of the property's zoning classification and with the spirit and intent of the Zoning Regulations as a dairy creamery, and connecting farm market, are consistent with the RC2 agricultural zone. In addition, the building, and more specifically, the parking lot, were not inconsistent with the impermeable surface and vegetative retention provisions of the Zoning Regulations as the parking lot was dust free and made of a permeable surface. Finally, there is no negative environmental impact with locating the market on the Farm. Due to the topography, there would be limited run-off. There is stream located approximately 900 feet behind the building. Any runoff would be dissipated before it reaches the stream. There are no flood plain issues.

On cross examination, Mr. Fisher admitted that the building permit applied for by the Priegels was for a pole barn and that the barn was initially intended to be located on the southside of Long Green

Road. When questioned about the 8 parking spaces, Mr. Fisher explained that while no analysis was conducted, he did not believe that the use would generate more than 8 customers at a time. However, there was also a parking space along the service driveway, if needed.

Mr. Fisher was questioned about the stream and he indicated that it was a Class III Stream. As for the septic system, there was no bathroom or water fountain on the plan for customers of the market. There also was no public access between the market and creamery.

Mickey Cornelius of the Traffic Group, Inc. testified as an expert in traffic counts. He testified that the peak traffic hours for this site would be after peak hours in morning and between 3:00 to 5:00 pm when people are traveling home from work. He testified that the market is a pass through destination for local traffic. Mr. Cornelius also testified that there is no documented traffic study for this particular type of use. He did obtain information from a larger farm market in Harford County called "Brooms Bloom Dairy" which sells dairy products but has dine-in seating. The peak hours for that site is between 3:00 to 5:00 p.m.

It was Mr. Cornelius' opinion that there will be no congestion on Long Green Road caused by the Market. The basis for his opinion was that there is currently a low volume of traffic on Long Green Road and this use is not the type of use that would generate much more. In addition, he explained that traffic accidents are nearly non-existent on Long Green Road. There was 1 accident for each year 2007 and 2008 and no accidents in 2006.

On cross examination, Mr. Cornelius added that while Long Green is a curvy road, it is flat. Therefore, site distances are not a problem. While there is no shoulder on Long Green, it is a 20' wide road. It is not classified as a major commuter road within the Baltimore County Road Classification system. The addition of the market will not change the nature of this quiet rural road. He testified that even if the market generated 100 trips per hour, Long Green Road could handle it.

Testifying in opposition to the Market was Edward Blanton, Jr., 1525 Long Green Road. Mr. Blanton has lived at that address for 45 years. His main concern was that there would be too much traffic generated by the market. He commented that there is already heavy traffic between 6:30 - 10:00 am and from 3:00 to 6:00 p.m. Contrary to Mr. Cornelius' testimony, Mr. Blanton testified that there were 3

accidents in front of his house within 6 months. He was also concerned that the Priegels were not permitted to construct a building within the agricultural easement which they had previously dedicated. However, Mr. Blanton added that he would be in favor of the market if the Priegels are legally allowed to do it within the easement area.

Also testifying in opposition was Carol Trella, 5433 Pasterson Road, Baldwin, MD. She served as the Secretary of Long Green Valley Association for 20 years. Mr. Priegel came to the Association to ask for support for the market. Ms. Trella testified as an individual citizen that she was concerned about additional traffic and that she was opposed to the large size of the building which seemed to her to be out of place on this quiet rural road.

Decision

In accordance with BCC, §603, entitled "Rules of Practice and Procedure", a de novo hearing before this Board was held. Both sides had the opportunity to present their respective positions. After reviewing all of the testimony and evidence presented, the Board has determined that the Petitioner's request for a farm market and its request for a farmer's road side stand should be granted.

The Board finds that the Petitioner met the special exception standards for a farm market through the testimony presented which the Board finds credible. The use of 1440 sq. ft. of space on the first floor of a 10,000 sq. ft. building will not be injurious to the health, safety or welfare of the public nor would it create congestion on Long Green Road or on any other nearby roads. The Board finds that Long Green Road is equip to handle additional traffic, if any, that is generated by the market. It is a flat road which is striped and wide enough for even 100 additional vehicles visiting the market per day. The Board does not find that the market will generate the type of traffic that comes with a grocery store or convenience store. The Board finds credible the testimony of each of the Petitioner's witnesses (Mr. Priegel, Michael Fisher and Mickey Cornelius) as to the specific examples of each of special exception factors listed in §502.1 as previously set forth herein, and without repeating those here, and the Board incorporates those into this decision. The Board notes that the Protestants did not offer any expert testimony to counter the testimony of either Mr. Fisher or Mr. Cornelius.

In addition to the market, this Board finds that the Petitioner has met the criteria for a farmer's road side stand as set forth in §404.4 C. The Board finds, based on the testimony of Mr. Priegel, that the Priegels will meet the 50% requirement set forth in Subsection C3. The majority of the products sold by the Priegels at the market and/or the stand will be their dairy products from the cows which graze in their pastures. Thus, the Board finds that this market or stand will sell the majority of products grown and produced at Bellvale Farm. The other non-agricultural goods which are anticipated to be sold, such as the items made by the father of Mr. Priegel, or the pies and jams made by other local farmers, are incidental products which will be in the minority of products sold.

The Board does not find any merit to Protestants' argument that the inclusion of the words "grown and produced" in the definition of farmer's roadside stand and farm market in §101.1 of BCZR prohibits the sale of dairy products from either the market or stand. The Board construes the meaning of "grown and produced" to mean that it originates on the farm and/or that it is indigenous to the area. The Board acknowledges that both a farm market and farmer's road side stand are uses which support agricultural. The Protestants' argument is essentially that only the sale of fruits and vegetables qualifies as the product which can be sold from either a market or a stand. The Board does not believe that the County Council intended to restrict the sale of dairy products, beef, chicken and eggs, particularly in light of the County Council's recent Bill 34-09 which explicitly stated that a farm market could be used in conjunction with a farmstead creamery to sell dairy products. Moreover, the term "farm product" is not defined in BCZR but has been defined in the Maryland Agriculture Code, §10-601(c) to include eggs and dairy products.

The testimony of Edward Blanton as to the legality of constructing the building in the agricultural easement was countered by the documents from MALPF and Baltimore County which show that permission was obtain to build within the easement area. (Pet. Exhs. 8). The Board acknowledges that neither the MALPF Board nor the Baltimore County Agricultural Advisory Board had any reservations about the proposed use. Mr. Priegel agreed to comply with all conditions imposed by the MALPF Board and the Site Plan was revised to incorporate those conditions into the proposal.

This Board agrees with the Petitioner that the proposed use, an accessory use to the farm and part of the creamery, is a small but critical component of the continued operation of one of the last few dairy farms in Baltimore County. Likewise, while viewing the evidence presented before the Board de novo and having made its decision based on the evidence presented at the hearing, the Board highlights the opinion of the Deputy Zoning Commissioner in this case wherein he stated: "It is hard to imagine a negative impact stemming from the operation of a family-run farm stand in the middle of many acres of farmland owned by that same family." The agricultural community is a business which needs to maintain productivity and profitability like any other business.

Quoting from the Inter-Office Correspondence dated May 13, 2008 from Wally Lippincott, Jr. of DEPRM to Development Coordination as contained within Pet. Ex. 1:

There is a trend in agriculture, particularly in the Northeast and MidAtlantic, to grow and process products that can be sold locally and to grow organic or hormone free products. This appears to be improving the viability of farming in Maryland where otherwise our farms are at a disadvantage to large factory farms of the Midwest and South.

Over the last 20 years dairy farms in Maryland and Baltimore County in particular have been particularly hard hit by this trend. The number of dairy farms has declined from approximately 20 farms in the late 1980's to less than 10 today. Dairy farms are significant contributors to the local agricultural industry because of their inputs back into the economy. The Priegel's request for innovations to their dairy operation while difficult for people to accept is part of the need for agriculture to change in order to survive. The purpose of the MALPF and County Agricultural Easements are for the protection of the prime and productive soils and fostering of agriculture.

For the reasons stated herein and based on the evidence presented, this Board is persuaded that granting the Petitioner's request for a Farm Market and Farmer's Road Side Stand furthers the goal of supporting a local, family owned dairy farm which will produce and sell organic products to the public.

ORDER

THEREFORE, IT IS THIS 25th day of March, 2010 by the County Board of Appeals of Baltimore County

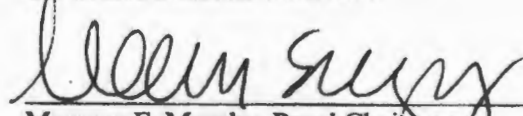
ORDERED that Petitioner's request for a Special Exception use pursuant to §404.4.D and 502.1 of the BCZR to permit a Farm Market be and the same is hereby **GRANTED**; and

IT IS FURTHER ORDERED, that, in the alternative, Petitioner's request for confirmation of a Farmer's Roadside Stand pursuant to §404.4.C of the BCZR, which is permitted as of right with a use permit in the RC 2 Zone, be and is hereby **GRANTED**; and

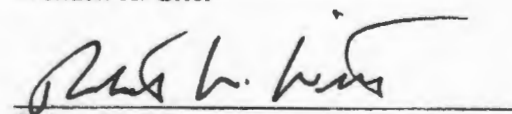
IT IS FURTHER ORDERED, that the said uses shall be subject to the conditions imposed by MALPF and the Baltimore County Agricultural Advisory Board.

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**


Maureen E. Murphy, Panel Chairman


Wendell H. Grier


Robert W. Witt



County Board of Appeals of Baltimore County

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March 25, 2010

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RE: *In the Matter of: Long Green Valley Association, Inc./*
Prigel Family Creamery, Inc.
Case No. 08-506-SPH and 08-456-X

Dear Counsel:

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

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

Very truly yours,

Theresa R. Shelton
Administrator

/trs

Duplicate Original
Enclosure: Opinion

c (w/Encl.): The Long Green Valley Assn., Inc.
Roger Hayden, President Charlotte Pine Catherine Ebert John and Susan Yoder

Robert E. Prigel / Robert and Carol Prigel
Michael Fisher /Site Resources, Inc.

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, Director/Planning
Nancy West, Assistant County Attorney
John E. Beverungen, County Attorney

11/20/09

RECEIVED
NOV 30 2009

IN RE: **PETITION FOR SPECIAL
EXCEPTION**

N side Long Green Road, 1,500 feet W
c/l Long Green Valley Drive
(4851 Long Green Road)
11th Election District
3rd Council District

Prigel Family Creamery, Inc.;
Robert E. Prigel
Petitioner

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 2008-0456-X
*

BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

**PETITIONER'S MEMORANDUM IN SUPPORT OF
PETITION FOR SPECIAL EXCEPTION**

STATEMENT OF THE CASE

Prigel Family Creamery, Inc. and Robert E. Prigel filed a Petition for Special Exception to the Zoning Commissioner of Baltimore County, seeking permission for a Farm Market or, alternatively, for a Farmer's Roadside Stand in accord with Section 404.4 of the Baltimore County Zoning Regulations (hereinafter cited as the "BCZR") in a R.C. 2 zone.

After a public hearing, the Deputy Zoning Commissioner of Baltimore County issued his Findings of Fact and Conclusions of Law on July 11, 2008, which granted the Special Exception for the Farm Market and confirmed the use of the site for a Farmer's Roadside Stand pursuant to Section 404.4.C of the BCZR. A copy of the Findings of Fact and Conclusions of Law is attached hereto as **Attachment A**. The Deputy Commissioner of Zoning also attached conditions to the approvals. *See Attachment A.*

The Protestants, by and through their counsel, J. Carroll Holzer, Esquire, appealed the Findings of Fact and Conclusions of Law. An evidentiary hearing was held before the County Board of Appeals of Baltimore County on October 15, 2009.

LEGISLATIVE HISTORY AND REGULATIONS

A Farm Market is allowed by special exception in a R.C. 2 zone pursuant to Section 1A01.2.C.8 of the BCZR and subject to the provisions of Section 404.4 of the BCZR. A Farmer's Roadside Stand and produce stand is permitted of right as an accessory use in a R.C. 2 zone by Section 1A01.2.B.9.b of the BCZR and subject to the provisions of Section 404.4 of the BCZR. Copies of the Regulations permitting the uses are attached as **Attachment B**.

Section 101 of the BCZR defines a Farmer's Roadside Stand and a Farm Market as follows:

FARMER'S ROADSIDE STAND --- An accessory structure owned and operated by an agricultural producer, used for the sale of indigenous farm products, the majority of which have been grown, **or grown and produced**, on the premises, on adjacent land or on properties farmed by the same agricultural producer.

FARM MARKET --- An accessory or principal building or structure other than a dwelling which is used by one or more farmers for the sale of **products** grown, **or grown and produced**, primarily on their own farms or for the sale of other **indigenous farm products**. A farm market may sell a limited amount of locally produced nonagricultural goods such as handcrafted items, homemade baked goods, homemade preserves, and jams.

[Bold added to indicate the changed language from the previous versions of the definitions].

These definitions were recently adopted by County Council Bill 34-2009. A copy of Council Bill 34-2009 and the Planning Staff Report is attached hereto as **Attachment C**. Prior to the enactment of Council Bill 34-2009 the old definitions read as follows:

FARMER'S ROADSIDE STAND --- An accessory structure owned and operated by an agricultural producer, used for the sale of indigenous farm products, the majority of which have been grown on the premises, on adjacent land or on properties farmed by the same agricultural producer.

FARM MARKET --- An accessory or principal building or structure other than a dwelling which is used by one or more

farmers for the sale of produce grown primarily on their own farms or for the sale of other locally grown produce. A farm market may sell a limited amount of locally produced nonagricultural goods such as handcrafted items, homemade baked goods, homemade preserves, jams and processed dairy products.

[Underlining added to indicate provisions changed with the current definitions].

The amendments to the definitions enacted earlier this year were significant. The words “or grown and produced” were added to the definition of a Farmer’s Roadside Stand to clarify the fact that not only grown produce, such as fruits and vegetables, but also other farm products, such as milk products, could be sold at a roadside stand. For that same reason, the word “produce” was deleted from the definition of Farm Market. The phrases “locally grown produce” and “and processed dairy products” were deleted, and the phrases “or grown and produced” and “indigenous farm products” were added.

The desire to include the sale of dairy products into these definitions is even more evident when Council Bill 34-2009 is read in its entirety. Its primary purpose was to clarify the right to have a creamery as a matter of right use in certain agricultural zones. The Staff Report stated:

By updating the zoning code for the R.C. zones and clarifying the term creamery, the R.C. zones will protect the County’s agricultural industry so that the area maintains its importance as an industrial base for the farming industry. Additionally, it will promote the use of local, fresh products by County citizens as well as decrease our contributions to global warming.

See Attachment C. A definition of “Farmstead Creamery” consequently was added to the BCZR, which permitted the making, processing and preparation of “dairy products”. Limitations on the size of a Farm Market or Farmer’s Roadside Stand when used in conjunction with the Farmstead Creamery are contained in BCZR § 404.13. *See Attachment C.*

Prior to the enactment of Council Bill 34-2009, the most recent legislation addressing Farm Markets and Farmer’s Roadside Stands was in Council Bill 41-92. A copy of Council Bill

41-92 and Planning Board/Staff Report is attached as **Attachment D**. The transmittal letter from the Office of Planning and the Planning Board to the County Council stated that the regulations were proposed as the result of a report finding “the Zoning Regulations internally inconsistent, obsolete and unable to accommodate the needs of contemporary agricultural operations.” At the time of the enactment of Council Bill 41-92, a Farmer’s Roadside Stand had been defined in 1955 as: “An accessory structure for the sale of articles grown or produced on the premises.” Instead of a Farm Market, a “Farmers’ Co-op Roadside Stands” was defined as “[a] principal building other than a dwelling which is used by one or more individuals commonly engaged in the sale of mutually grown seasonal produce from their respective farms or satellite farms.”¹

Although Council Bill 34-2009 added a new section 404.13 to the BCZR pertaining to farmstead creameries and referring to the sale of the products at farm markets and farmer’s roadside stand, Sections 404.4.C and 404.4.D pertaining to roadside stands and farm markets were not amended. A copy of Sections 404.4.C and 404.4.D are attached as **Attachment E**.

It also should be noted that a separate piece of legislation, which emphasized the business aspects of agriculture, was adopted in Council Bill No. 51-1993. It amended the definition of “farm” and added a definition of “agriculture, commercial”. Included in the definition of “agriculture, commercial” is “ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing provided that any such activity shall be secondary to the principal agricultural operations.” A copy of County Council Bill No. 51-1993 is attached as **Attachment F**. The definition of “farm” specifically included tracts of land greater than three (3) acres used primarily for commercial agriculture.

¹ Oddly, even though the Farmers’ Co-op Roadside Stand was allowed only by special exception in the R.C. 2 zone, it appears to have been more restrictive as to what could be sold than the accessory Farmer’s Roadside Stand allowed as a matter of right.

STATEMENT OF LAW

A. EVIDENCE

Section 603 of the Baltimore County Charter provides that all hearings before the Board are de novo, and consequently the opinion of the Deputy Zoning Commissioner is entitled only to such weight as the Board might wish to grant the reasoning contained in it. Similarly, the Board is entitled to consider the recommendations and reports of the staff of the county agencies in the record, but they are not controlling. *See* Shell Oil Co. v. City of Baltimore, 225 Md. 463, 472, 171 A.2d 234, 238 (1961); Boehm v. Anne Arundel County, 54 Md. App. 497, 459 A.2d 590 (1983). Both *Shell Oil* and *Boehm* also stand for the proposition that although the opinions of the Zoning Commissioner and county agencies are not controlling, they do constitute expert opinions based on the facts then presented.

Rule 7 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals provides that documents and records of the agency shall be made a part of the record, and they are, therefore, subject to the Board's consideration. Documents alone may provide substantial basis for an administrative decision. Cremins v. County Commissioners of Washington County, 164 Md. App. 426, 445-447, 883 A.2d 966, 978-979 (2005). On the other hand, petitions of objection to a proposal by residents constitute zoning by plebiscite and are not entitled to weight. Furthermore, testimony by lay witnesses unsupported by factual evidence amounting to fear and dislike is also not entitled to any weight. *See* Rockville Fuel and Feed Company v. Board of Appeals of the City of Gaithersburg, 257 Md. 183, 192-193, 262 A.2d 499, 504-505 (1970).

B. USE PERMIT FOR FARMER'S ROADSIDE STAND

Standards for issuance of a use permit for a farmer's roadside stand are similar to those of a special exception but without the need for the specific findings of Section 502.1 of the BCZR.

A use permit in Baltimore County has a status between uses permitted as of right and uses permitted by special exception. A Farmer's Roadside Stand is a use permitted by right in a R.C. 2 zone pursuant to BCZR §1A01.2B.9.b., but under the circumstances described in BCZR Section 404.4.C, a public hearing may be requested. A use permit is not subject, however, to the special exception standards. See Marek v. Baltimore County Board of Appeals, 218 Md. 351, 146 A.2d 875 (1958). The standard is implicitly that contained in BCZR Section 404.4.C.6, which states that if a public hearing is not requested then the use permit may be granted "with such conditions or restrictions as determined appropriate by the Zoning Commissioner to satisfy the provisions of this section and to ensure that the farmer's roadside stand is not detrimental to the health, safety or general welfare of the surrounding community." Consequently, Section 502.1 is not directly applicable. Rather, evidence pertaining to the issue of whether the use overall would be detrimental to the health, safety or general welfare of the community is appropriate.

In addition, there has been a legislative determination that a use requiring a use permit is a use permitted as of right within the zone despite whatever less desirable attributes it may have. Like a special exception use there must be some unique characteristic of the property for which the use permit is requested which creates an adverse condition greater than would otherwise be expected elsewhere in the zone. People's Counsel for Baltimore County v. Loyola College in Maryland, 406 Md. 54, 956 A.2d 166 (2008).

C. SPECIAL EXCEPTION FOR FARM MARKET

Like any special exception request, before the use of a Farm Market may be granted there must be findings pursuant to BCZR § 502.1. In addition, Farm Market special exceptions in a R. C. 2 zone require a finding pursuant to BCZR § 1A01.2.C "that the use would not be detrimental

to the primary agricultural uses in its vicinity” and a finding pursuant to BCZR § 404.4.D that the standards contained therein have been met.

The requirements for the Section 502.1 findings and the special exception standards for evaluation were extensively discussed in People’s Counsel for Baltimore County v. Loyola College in Maryland, 406 Md. 54, 956 A.2d 166 (2008). “Within each individual factor, including the general factor in § 502.1(A) of the BCZR, lurks another test, the Schultz v. Pritts standard.... In this respect, the Schultz analytical paradigm is not a second, separate test (in addition to the statutory requirements) that an applicant must meet in order to qualify for the grant of a special exception.” Id. at 68-69. Rather, each of the factors contained in Section 502.1 should be read in conjunction with the Schultz analysis.

The Court in Schultz analyzed the case law and stated:

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

Schultz v. Pritts, 291 Md. 1, 15, 432 A.2d 1319, 1327 (1981) (emphasis added).

In People’s Counsel for Baltimore County v. Loyola College in Maryland, 406 Md. 54, 956 A.2d 166 (2008), the Court stated:

As noted previously and frequently, a special exception is a valid zoning mechanism that delegates to an administrative board a

limited authority to permit enumerated uses which the legislative body has determined can, *prima facie*, properly be allowed in a specified use district, absent any fact or circumstance in a particular case which would change this presumptive finding.

Id. at 105-106.

The Court went on to state:

The local legislature, when it determines to adopt or amend the text of a zoning ordinance with regard to designating various uses as allowed only by special exception in various zones, considers in a generic sense that certain adverse effects, at least in type, potentially associated with (inherent to, if you will) these uses are likely to occur wherever in the particular zone they may be located....The inherent effects notwithstanding, the legislative determination necessarily is that the uses conceptually are compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur.

Id. at 106. With regard to the criteria in BCZR § 502.1, therefore, there is a presumption that the criteria have been met absent any fact which would change the presumptive finding.

STATEMENT OF THE FACTS

The Petitioners are seeking approval for either a special exception for a farm market or, failing that approval, for a farmer's roadside stand for the sale of dairy products and other agricultural products and such accessory items as permitted by law. The farm market would contain 1,440 square feet of retail space, and the special exception request includes this area and an area adjacent to the store.

The Prigel family through various entities owns Bellevale Farm, a tract of land containing almost 200 acres in the Long Green Valley. The land has been in the Prigel family for over 100 years and is currently operated as a dairy farm. Approximately 180 acres of the farm is in a Maryland agricultural land preservation easement.

The farm is located on both the north and south sides of Long Green Road. Currently, the Prigel cattle cross Long Green Road twice a day as part of their grazing and milking routine. That pattern will continue.

In accord with the terms of the easement and with the BCZR, the Petitioner went before the Baltimore County Land Preservation Advisory Board in 2007 for permission to build a creamery building and farm market. The Advisory Board recommended approval of the building and market as supportive of the commercial agriculture use of the area. **Petitioner Exhibit 7.** Subsequently, in 2008 the Petitioner went before the Maryland Agricultural Land Preservation Foundation Board ("MALPF") with the same request, and MALPF also recommended approval with conditions. More specifically, MALPF placed a restriction on the size of the building and restricted the sale of non-agricultural products with respect to the farm market. **Petitioner Exhibit 8.**

The site plan prepared by Site Resources on behalf of the Petitioner complies with the restrictions imposed by the MALPF Board and with the comments of the Baltimore County Office of Planning. **Petitioner Exhibit 5.** It shows a total building area of less than 10,000 square feet with 8 parking spaces for retail space. As the photographs introduced depict, the shell of the building has been completed under a building permit issued by Baltimore County. **Petitioner Exhibits 6 and 9.** There is no pending case attacking the permit or the propriety of the building.

Expert testimony from Mike Fisher, the Landscape Architect, and from Mickey Cornelius, a traffic engineer, was that the proposed farm market located within the existing building would not be injurious to the public health, safety or general welfare, nor would it create congestion in the local roads.

Mr. Cornelius testified specifically that Long Green Road is properly sized to handle the traffic that would come from this facility. The road is not deficient, and there would be no need for any traffic control measures beyond that which currently exist. Indeed, he testified that the traffic would not be substantial and would be at times of the day and week when existing traffic would not be at its peak. Consequently, the farm market and/or the farm stand would not create congestion in the roads of the county. As Mr. Cornelius testified, and the photos introduced depict, there is more than ample site distance for the access and exit from the site so that it will not create any hazard.

County comments in the file echo the opinions of these experts. The Office of Planning commented: "Agriculture and agricultural production of local products are vital for the agricultural industry of the County and consistent with the master plan and land preservation."

Petitioner Exhibit 1. The conditions added to the recommendation were all accepted by the Petitioner.

The May 18, 2008 comment from the Department of Environmental Protection and Resource Management ("DEPRM"), which oversees the agricultural preservation program, is particularly important, for it pertains to existing farm operation and the fact that the market will be supportive of existing agriculture in the area. This comment, from the agency most directly charged with supporting agriculture, states that the use not only will not be a detriment to the agriculture base of the community but it will also support the existing agricultural infrastructure. The comment stated: "The Prigel's request for innovations to their dairy operation while difficult for people to accept is part of the need for agriculture to change in order to survive. The purpose of the MALPF and County Agricultural Easements are for the protection of the prime and productive soils and the fostering of agriculture." **Petitioner Exhibit 1.**

Mr. Prigel testified that the farm market will operate only during daytime hours. He anticipates that only one full time employee plus one part time employee will necessary and that those employees will likely be members of the Prigel family. It is Mr. Prigel's goal with the creamery to market directly the milk produced by his cows rather than to sell it to a distributor. The vast majority of the dairy products would be wholesaled by him to markets, but he believes that some sales would be on the premises. He expects to sell primarily to his neighbors.

In cross-examination Mr. Prigel testified that, in addition to the dairy products, he would also like to sell products such a pies, jams and preserves, as well as local crafts. The MALPF Board limited such uses to no more than 600 square feet of space. **Petitioner Exhibit 8.** The BCZR limits such uses to no more than 10% of the annual sales. Mr. Prigel stated that he would like to be bound by the same restrictions and limits as other farm markets with respect to such sales.

Mr. Prigel also testified in cross-examination that the vast majority of dairy sales would be from milk produced by his cows. He pointed out, however, that there may be times when his cows will not produce milk at a sufficient volume and he, therefore, would like the right to sell other agricultural produce to the extent permitted by law. BCZR §§ 404.4C and 404.4D permit sales of up to 50% of the produce sold annually to be from off site.² BCZR § 404.13 also contains limitations on the area by combining the square footage of the sales area with the creamery.

² On cross-examination, reference was made to Mr. Lippincott's letter contained in **Petitioner Exhibit 7** wherein a reference was made to a 75% on-site production requirement under the MALPF regulations. That letter was composed in 2007. The current regulations in the Code of Maryland Regulations do not appear to contain that restriction. Mr. Lippincott's letter of May 13, 2008 also limits the farm market to 50% of sales of on-site products. **Petitioner Exhibit 1.** Mr. Prigel stated that he would abide by whatever the regulations require, whether it is 75% or 50%. A copy of the current MALPF regulation is attached as **Attachment G.**

The farm store site has been modified to comply with both the MALPF Board and Planning Office comments. Mr. Prigel has never anticipated that the farm store will generate a high percentage of his sales or that it will ever be particularly crowded. He suggested to the MALPF Board that less than 10 spaces should be sufficient to accommodate customers based on the size of the store. The BCZR § 409.6 requires 5 spaces per every 1,000 square feet, and 8 spaces are shown on **Petitioner Exhibit 5**. Although he is providing the number of porous paved spaces approved by both the MALPF Board and by zoning and planning, there is ample property surrounding the building for overflow parking should it be necessary. There were no adverse agency comments on the parking in the file.

The Prigels also have received approvals from the county for well and septic reserve areas. The market itself will not need the septic reserve area, for all sink water will be recycled as approved by the state. Lighting and signage will conform to the planning comments. Mr. Prigel foresaw no issues with regard to traffic, and believed it would still be safe for his cattle to continue to cross the road.

In addition to the expert testimony and exhibits presented by the Prigels, several neighbors to the project testified in favor. As Mr. Prigel noted in his testimony, not only does his property adjoin the site across Long Green Road, but other family members have residences abutting the property to the east. The adjacent neighbors to the west also testified in favor of the proposed farm market. In fact, the support of the community of this project was well presented at the hearing.

Two witnesses, Mr. Ed Blanton and Ms. Carol Trella, spoke in opposition to the farm market. Mr. Blanton lives several properties away on the south side of Long Green Road. His concerns included the traffic to the site. He testified that he stopped running on Long Green

Road about ten (10) years ago because of increased traffic. He agreed with Mr. Cornelius that traffic is busiest in the morning and afternoon commute hours. He expressed concern over the sufficiency of the parking for the people he expects to come to the store. He also took issue with the placement of the creamery use and the farm market in the agriculture easement and did not believe it to be legal. Mr. Blanton testified that he has no problem with the use itself and that he will be a customer if the use is permitted. Mr. Blanton held himself out as a friend of the Prigels, and he wished them well. He did not want to see the Petitioner go to the expense of building the building only to have to tear it down.

Ms. Trella spoke on her behalf and on behalf of the Long Green Valley Association. She is not an immediate neighbor of the property. She does not believe that the use is permitted under the agriculture easement and disagrees with the MALPF Board. She believes that the farm store will bring traffic to the area and that the farm store is not needed because of the other outlets that sell produce on the area. She testified that the building should not be allowed because the area is rural and historic. Ms. Trella did have trouble reading the site plan and identifying the properties on it.

DISCUSSION

This is a unique case, probably most unique because of the unified support of every county and state agency for the proposed special exception. Because Mr. Prigel committed 180 acres of his land to a Maryland agricultural land preservation easement, he had to obtain the support of the MALPF Board. As the minutes of their meeting and letter indicate, MALPF had no reservations about the use of the site for the proposed farm market or about its impacts on the agricultural community. **Petitioner Exhibit 8.** Baltimore County's Agricultural Advisory

Board likewise had absolutely no reservations about the proposed use. **Petitioner Exhibit 7.** DEPRM also wholeheartedly supported the farm market.

The Baltimore County Council approved Council Bill 34-2009, which explicitly stated that a farm market could be used in conjunction with a farmstead creamery and sell dairy products. As Mr. Lippincott noted in his submittal to the MALPF Board, dairy farms have vanished at an alarming rate in Baltimore County, and there are only a few viable dairy farms left. **Petitioner Exhibit 7.** The County Council was willing to take steps while this case was pending and after the Deputy Zoning Commissioner's Order to make clear that such uses should be preserved, had value to the County, and that a farm market selling the dairy products was an acceptable component of the creamery.

Community support for the proposal has also been overwhelming. Mr. Pennington and Mr. Prigel both testified with respect to the outpouring of support for the proposal. There was no testimony from any immediate neighbor of the project in opposition. Indeed, the immediate neighbors, who were not members of the Prigel family, testified in support of the Petition.

The law provides that a special exception use is a permitted use subject to a hearing. In this case, every expert and agency opinion offered is that the proposed use of the Prigel property not only complies with BCZR § 1A01.2.C in that it is not "detrimental to the agricultural uses in its vicinity" but that it is either supportive of those uses or essential to the continued operation of those uses.

Mr. Blanton testified that he did not believe the use complied with the terms of Mr. Prigel's agricultural easement. Not only did Baltimore County's department charged with reviewing such agreements disagree, but the MALPF Board and the Maryland Department of Agriculture, the party to the easement, disagree. On this issue Mr. Blanton is just wrong. In any

event, the interpretation of a private easement agreement is not an issue that can be litigated before the Board of Appeals.

Section 1A01.1B of the BCZR states: "The R.C. 2 zoning classification is established pursuant to the legislative findings above 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." Section 1A01.2.A further states: "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." The proposed use, an accessory use to the farm and part of the creamery, is a small but critical component to the continued operation of one of the last few dairy farms in Baltimore County. Consequently, there must be strong evidence to rebut the presumption that such a use at this location will not be injurious to the public health, safety or general welfare. In this case there is no evidence.

A farm market may be expected to generate traffic because, after all, people are expected to come to the market to purchase farm products. There was expert testimony that Long Green Road is more than capable of handling the additional traffic. There was no testimony that the use would tend to create congestion in Long Green Road over and above the traffic that one would normally expect from a small store of 1,440 square feet selling local farm produce. The traffic that is generated would be at off-peak hours. Mr. Blanton noticed that the traffic had increased over his many years on Long Green Road, but primarily during the peak commuting hours. Consequently, the traffic generated by the store would not create congestion on the roadway. The impact of any congestion would probably fall most heavily on the Prigels given the movements of their cattle across the road, but clearly with all of their experience and background

in the area they did not foresee any congestion to the road and neither did the other immediate neighbors to the property who testified in favor of the project. Furthermore, no one contested that the entrance was safely located with more than adequate site distance. There was no peculiar characteristic of the road or of the property cited which would create an unsafe condition with the proposed use.

The parking capacity was raised by the two opponents to the proposed use who testified. Clearly, the parking meets the zoning requirements. Apparently, the opponents fear that the use will be more successful than Mr. Prigel anticipates, for he never believed from the time of his first submittal that more than a few parking spaces would be needed. As the site plan shows, there is room for additional parking along the side of the building within the area of the special exception. Given the fact that Mr. Prigel intends for only a small portion of his product to be marketed at retail, it cannot be said that there is any fact which indicates that the parking is not sufficient or that parking would create congestion in the roads or streets.

No one really raised any issues with respect to the other criteria under Section 502.1. Ms. Trella spoke of environmental concerns but produced no evidence that there would be any adverse impact to the environment from the farm market. The short answer to such concerns is that the use will be required by state and local regulations to operate in conformance with the regulations. It cannot be presumed to operate in violation of the regulations.

That answer is also the answer to the issue posed by Mr. Holzer in his questions of how will the 50% of local sales and 10% of non-agricultural produce sales be monitored. The zoning regulations impose a requirement that 50% of the produce sold be produced on the premises. Actually, it is fairly simple to observe if this rule is being kept simply by going in the store. It is fairly obvious if the milk and cheese is coming from the adjacent creamery or not. If the store is

selling produce that is not part of the farm that also can be visually determined. The MALPF Board put a square footage requirement on the sales of non-agricultural products, and that also is pretty easy to determine. The Baltimore County Code also gives the Hearing Officer and DEPRM the power to subpoena documents and to conduct discovery. Baltimore County Code §3-6-206. In any event, the Prigel Family Creamery will be required by the Code to comply. The Board certainly cannot refuse to grant the special exception based on a fear that the Code may not be enforced and should not impose conditions that the law did not place on enforcement.

In Rockville Fuel & Feed Co. v. Board of Appeals of City of Gaithersburg, 257 Md. 183, 262 A. 2d 499 (1970), the Court characterized the testimony in opposition to a proposed concrete plant as “two lay witnesses and a petition objecting to the proposed use signed by 240 residents of Gaithersburg.” With regard to the petition the Court observed: “... zoning is not a plebiscite.” One witness testified that he was concerned over truck traffic to the plant because it would irritate his tenants and might cause structural damage to his buildings. A structural engineer with expert qualifications testified that he was wrong. The other protestant testified that the trucks would create dust and that the heavy trucks would adversely affect traffic in the area. He further opined: “I don’t think it (the proposed plant) belongs in the center of Gaithersburg.” His fears were also refuted by experts. The Court summarized the testimony and evidence by stating: “All this in effect amounted to no evidence at all.” Id. at 192-193. Similarly, the opposition’s evidence amounted to no evidence at all.

Like Rockville, the opposition offered two lay witnesses who believe that the proposed use does not belong in the Long Green Valley because it smacks of commercialism and may bring traffic to the area. The opposition offered no independent expert or any agency opinion to support their beliefs. The Petitioners, on the other hand, have presented opinions of state and

local boards and agencies, charged with the protection of agriculture and expert in their field, unreservedly stating that this use is not only desirable at this location but also necessary for the preservation of agriculture. The Petitioners presented an expert traffic engineer, who looked at the traffic patterns, and stated without equivocation that the proposed farm market would not create congestion in Long Green Road. The immediate neighbors agreed. Furthermore, the relatively new Greater Long Green Association, comprised of many local residents, expressed the opinion that the use would not be detrimental to the health safety and general welfare.

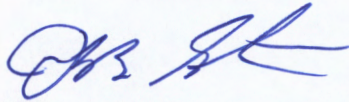
Except for the traffic expert's evaluation, the Deputy Zoning Commissioner's Findings of Fact were based on the same evidence submitted by Petitioners in that case and murky law, which had not yet been clarified by the current regulations. *See Attachment A.* On Page 11, the Deputy Zoning Commissioner stated: "It is hard to imagine a negative impact stemming from the operation of a family-run dairy farm stand in the middle of many acres of farmland owned by that same family." He also stated:

Finally, and perhaps most importantly, I find that granting the special exception is consistent with the purposes of the agricultural R.C. 2 Zone, and furthers the spirit and intent of the B.C.Z.R. [quotation of BCZR § 1A01.1.B previously quoted omitted]... Unfortunately, it has become more and more difficult for R.C. 2 Zones to maintain their agricultural integrity, and for agricultural businesses to maintain their productivity and profitability. Frankly, I was somewhat surprised at the public hearing to find that Petitioners maintain the only organic dairy farm in Baltimore County. Mr. Prigel's testimony detailed the difficulty in maintaining an agricultural business, and this difficulty is only compounded by the fact that Petitioners take on increased demands and costs to meet the requirements of certified organic products. At this point, Baltimore County residents do not even have an option to buy locally produced organic dairy products, but are limited to purchasing products from larger company labels such as Horizon Organic. I find that granting this special exception will further the goal of the local, family-owned dairy farm that hopes to produce and sell organic products directly to member of the public from the center of their 280 [sic] acre farm. It is hard to imagine

anything more in line with the spirit and intent of the R.C. 2 Zone. In fact, given the aforementioned evidence and considering all of the circumstances, it would border on the ridiculous not to grant the requested relief.”

See Attachment A at pp. 12-13. Petitioners certainly concur with these findings and believe that based on the evidence in the record that the relief sought in the special exception opinion should be granted.

Respectfully submitted,



John B. Gontrum
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue
Towson Commons, Suite 300
Towson, Maryland 21204
410-832-2000

**IN RE: PETITION FOR SPECIAL
EXCEPTION**

N side Long Green Road, 1,500 feet W
c/1 Long Green Valley Drive
11th Election District
3rd Councilmanic District
(4851 Long Green Road)

Prigel Family Creamery, Inc.; Robert E. Prigel
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **Case No. 2008-0456-X**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by Robert E. Prigel on behalf of the legal owner of the proposed retail farming operation, Prigel Family Creamery, Inc. (hereinafter referred to collectively as "Petitioners").¹ Petitioners are requesting a special exception use pursuant to Sections 404.4.D and 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a Farm Market. Alternatively, Petitioners are requesting confirmation of a Farmer's Roadside Stand pursuant to Section 404.4.C of the B.C.Z.R., which is permitted as of right with a use permit in the R.C.2 Zone. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.²

Appearing at the requisite public hearing in support of the requested relief were Petitioners Robert E. Prigel and his family, Petitioners' attorneys, John B. Gontrum, Esquire and Jennifer R. Busse, Esquire, with Whiteford, Taylor & Preston, LLP, and Michael Fisher, a

¹ Evidence demonstrated that the legal owner of the subject property is Bellevale Farm, LP. The legal owner of the proposed dairy processing center and retail store is Prigel Family Creamery, Inc. Since the requested relief is limited to the proposed use of a portion of the structure owned by Prigel Family Creamery, Inc., the Petition was filed on behalf of that legal entity.

² The site plan submitted at the hearing was updated as of May 28, 2008. The prior site plan, which was dated March 31, 2008, was primarily revised to accurately reflect the size of the structure that will house the proposed dairy processing center. That portion of the structure was reduced from 9,240 square feet to 8,520 square feet on the

§ 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]**
 2. Farms and limited acreage wholesale flower farms (Section 404). **[Bill Nos. 178-1979; 51-1993]**
 3. Open space, common. **[Bill No. 178-1979]**
 4. Public schools. **[Bill Nos. 63-1980; 47-1982; 47-1985]**
 5. Streets and ways. **[Bill No. 178-1979]**
 6. Telephone, telegraph, electrical-power or other lines or cables, provided that any such line or cable is underground; underground gas, water or sewer mains or storm drains; or other underground conduits, except interstate or international pipelines. **[Bill No. 178-1979]**
 7. Trailers, provided that any trailer allowed under this provision must be used or stored in accordance with the provisions of Subsection B, C, E or F of Section 415.1 and Section 415.2.A.1 or 415.3.C.1, as applicable. **[Bill No. 178-1979]**
 8. Antennas used by CATV systems operated by companies franchised under Article 25 of the Baltimore County Code, if situated on property owned by the county, state or federal government or by a governmental agency. **[Bill Nos. 220-1981; 137-2004]**
 9. Accessory uses or structures, including, but not limited to, the following:
 - a. Excavations, uncontrolled. **[Bill No. 178-1979]**
 - b. Farmer's roadside stand and produce stand, subject to the provisions of Section 404.4. **[Bill Nos. 178-1979; 41-1992]**
 - c. Home occupations (see Section 101). **[Bill Nos. 124-1978; 178-1979]**
 - d. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident employee. **[Bill Nos. 78-1979; 105-1982; 65-1999]**

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.

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2009, Legislative Day No. 8

Bill No. 34-09

Joseph Bartenfelder, Chairman and Councilmembers Olszewski & Oliver
By Request of County Executive

By the County Council, April 20, 2009

A BILL
ENTITLED

AN ACT concerning

Zoning Regulations - Farmstead creamery

FOR the purpose of permitting farmstead creameries as of right in certain zones; placing certain limitations on the use of a farmstead creamery; clarifying certain law regarding agricultural uses in certain zones; defining a certain term; amending certain definitions; and generally relating to the use of creameries in certain zones.

By adding

Sections 101.1 (Definition of "Farmstead creamery"), 1A01.2.B.13, 1A01.5, 1A02.2.A.13, 1A03.3.A.13, 1A05.2.A.11, 1A05.6, 1A08.3.A.9, 1A09.3.A.9, and 404.13
Baltimore County Zoning Regulations, as amended

By repealing and reenacting, with amendments

Sections 101.1 (Definitions of "Farmer's roadside stand" and "Farm market") and ~~253.1.A.18~~
Baltimore County Zoning Regulations, as amended

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

Attachment D

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1992, LEGISLATIVE DAY NO. 5

BILL NO. 41-92

MR. C. A. DUTCH RUPPERSBERGER, III, COUNCILMAN

BY THE COUNTY COUNCIL, MARCH 2, 1992

AN ACT concerning

Agricultural Operations

FOR the purpose of amending the Baltimore County Zoning Regulations in order to clarify and classify the various types of farming, forestry, nursery and agricultural related operations and activities in order to preserve and maintain such operations and activities, defining terms, permitting certain agricultural operations and activities in certain zones of the County as of right or by Special Exception, placing certain conditions upon some operations and activities, and generally relating to the regulation of all forms of agricultural related operations and activities in Baltimore County.

BY repealing

Section 101 - Definitions, the definitions of "Farm (Limited - Acreage Wholesale Flower Farm)" and "Farmers' Co-op Roadside Stands" and Sections 404.1 and 404.6

Baltimore County Zoning Regulations, as amended

BY renumbering

Sections 404.2, 404.3, 404.4, 404.5 to be Sections 404.5, 404.6, 404.7, 404.8

Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill



§ 404.3. Landscape service operations.

A landscape service operation is subject to the following regulations:

- A. The outdoor storage area of materials used for landscaping purposes, including but not limited to, tools, drainage pipes, railroad ties, decorative stones, mulch and fertilizers shall be compatible with surrounding uses and screened from residentially zoned or used properties as specified in Section 404.1C.
- B. A landscape service operation may plant horticultural materials on-site. However, such plants may only be sold as an integral part of a landscape design, and may not be sold to the retail customer.
- C. Landscape service operations require a special exception approval in R.C.2, R.C.3 and R.C.4 and R.C.6 Zones and shall meet the requirements outlined in Section 502.1 of these regulations. In addition to these requirements, a landscape service operation is subject to the following standards: **[Bill No. 73-2000]**
 1. The site shall be of sufficient size and properly designed to insure protection of existing neighboring dwellings from noise, dust, glare and other nuisance factors.
 2. Location of the vehicle parking and equipment storage area shall be compatible with surrounding uses and shall be screened from residentially zoned or used properties as specified in Section 404.1C.

§ 404.4. Agricultural roadside businesses.

Agricultural roadside businesses are permitted, subject to the following requirements:

- A. Setbacks. A farm market and a farmer's roadside stand shall be set back at least 35 feet from the nearest edge of the street pavement. A produce stand shall be located in such a manner that convenient ingress, egress and adequate parking are provided.
- B. Signage. Signs are permitted, subject to Section 450. **[Bill No. 89-1997]**
- C. A farmer's roadside stand is permitted as of right with a use permit in R.C.2, R.C.3, R.C.4 and R.C.5 Zones subject to the following conditions:
 1. The stand shall be located on a farm.
 2. The owner shall be an agricultural producer.
 3. At least 50% of the produce sold annually shall be grown on the premises where the stand is located or on adjacent farms or on other property farmed by the applicant.
 - a. In the event of crop failure due to drought, insect damage, disease or other causes beyond the control of the producer, as determined by the Agricultural Land Preservation Advisory Board, the 50% minimum may be decreased by the Zoning Commissioner to an amount commensurate with the degree of crop failure.

Attachment F

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
LEGISLATIVE SESSION 1993, LEGISLATIVE DAY NO. 8

BILL NO. 51-93

MR. C. A. DUTCH RUPPERSBERGER, III, COUNCILMAN

BY THE COUNTY COUNCIL, APRIL 19, 1993

A BILL ENTITLED

AN ACT concerning

Agriculture

FOR the purpose of amending the Zoning Regulations in order to define terms relating to agricultural uses; placing limitations on the stabling and pasturing of animals; providing certain height exceptions; providing requirements for farms in D.R. and R.C. 5 zones; repealing provisions dealing with satellite farms and farmettes; permitting a winery or bottled water plant by Special Exception in certain zones; and generally relating to farm and commercial agriculture activities in Baltimore County.

BY repealing

Section 101 - Definitions, the definitions of "farm", as that definition appears twice, "farm, satellite" and "farmette" and Sections 1A02.2.A.4 and 1A04.2.A.4

Baltimore County Zoning Regulations, as amended

BY adding

Section 101 - Definitions, the definitions, alphabetically, of "Agriculture, Commercial" and "Farm" and Sections 100.6, 1A03.3.B.15 and 404.9 and 404.10

Baltimore County Zoning Regulations, as amended

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

Jennifer R. Busse
Whiteford, Taylor & Preston L.L.P.
210 W. Pennsylvania Ave. 4th Floor
Towson, Md 21204

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management
May 29, 2008

Dear: Jennifer R. Busse

RE: Case Number 2008-0456-X, Address: 4851 Long Green Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 31, 2008. 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
Robert E. Prigel, Prigel Family Creamery, INC., 4851 Long Green Rd., Glen Arm, MD
21057

Zoning : RC2

Election District: 11

Councilmanic District: 3

6. Parking provided: 8 spaces (including 1 handicap sp.)
7. Any proposed sign to be in accordance with Baltimore County regulations.
8. Site is not within the 100 Yr. Flood Plain as shown on FIRM 240010 0260 B.
9. Previous Zoning Cases
5722
68-271X
XI-351 - Created Lot 1 and 1 Parcel
10. Paving to be durable and dust free.

EXHIBIT I

Revised Plan To Accompany Request for Special Exception

Bellevale Farm

PROPERTY OF

Robert Prigel

11th ELECTION DIST, BALTIMORE COUNTY, MD

REVISIONS

5/29/08 Revise bldg. size, note under construction.

Add durable paving note. Add approx. boundary lines

to show adjoining parcels and dimensions to adj. dwellings.

6/03/08 Revise area for septic system based on perc test results


SITE RESOURCES
i n c o r p o r a t e d
Comprehensive Land Planning & Site Design Services

14315 Jarrettsville Pike • Phoenix, Maryland 21131
(410) 683-3388 • fax (410) 683-3389

DRAWN BY: CGS

CONTRACT NO.:

DESIGNED BY: SRI

SCALE: 1" = 50'

CHECKED BY: SRI

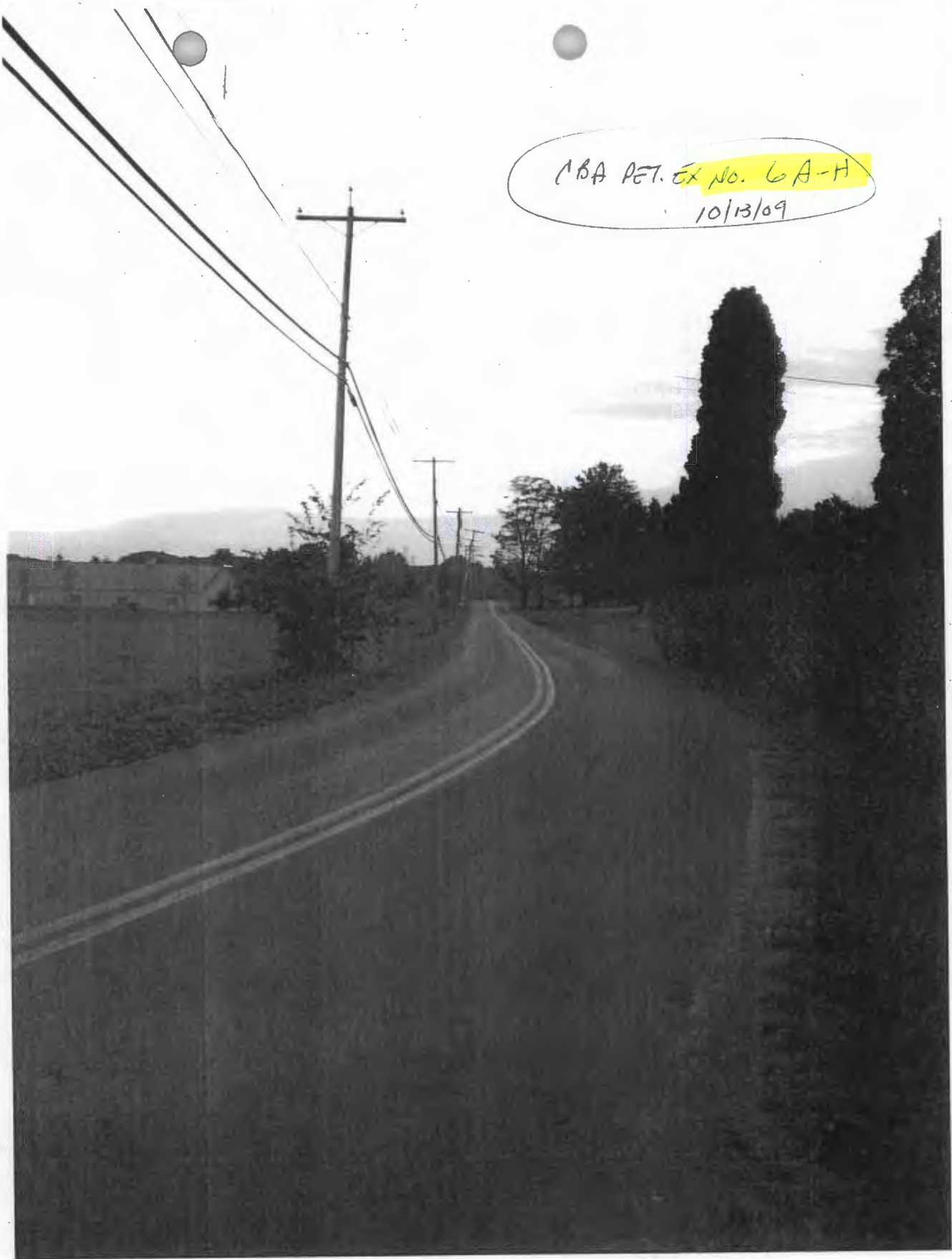
SRI PROJECT NO: 07089

DATE: 5/28/08

SHEET | OF |

CBA PET EX NO. 5

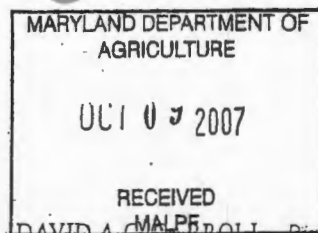
1BA PET. EX NO. 6A-H
10/13/09





BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive



DAVID A. CHITROLL, Director
Department of Environmental Protection
and Resource Management

Mr. Jim Conrad
Maryland Agricultural Land Preservation Foundation
50 Harry S. Truman Parkway
Annapolis, MD 21401

September 26, 2007

RE: Baltimore County - Mr. Robert Prigel. Bellevale Farms, Inc. MALPF #03-83-14C. 180 acres.

Dear Mr. Conrad,

Mr. Robert Prigel of 4851 Long Green Road, Baltimore County is requesting approval to construct a creamery operation, processing facility, and farm store for the dairy farm. The property is currently under a MALPF easement. We would like to place this on the agenda for the October 23, 2007 MALPF Board meeting.

The facility that is planned will be a 7,000 to 10,000 square foot building which will be located off of Long Green Road. It will contain ~ 1500 sq. ft. of retail space selling farm produced milk, cheese, yogurt, butter, and ice cream. The rest of the facility will be used for processing and warehouse space. Mr. Prigel is aware that under MALPF regulations that 75% of the products sold at his stand must be produced on his farm. The approximate location of the new facility is shown on the accompanying aerial maps. The access road will be a Right of Way and the facility will have fewer than 10 parking spaces.

The Baltimore County Agricultural Land Preservation Advisory Board reviewed and voted favorably on the request at their August 28, 2007 meeting. The facility will be located in an area that contains class II soils (HaB2). Although this location contains highly productive soil, the entire farm is comprised mostly of classes I, II, and III soils with very little class IV and the area along Long Green Road where the facility will be located is mainly Class II with some Class I soil.

This proposal is considered an "agricultural-support" use and is permitted under Baltimore County Zoning Regulations Bill No. 178-1979. It is permitted by special exception will be subject to a Special Hearing and review by our local Zoning Board. Baltimore County Staff would like the State to review and, if acceptable, to give preliminary approval of this proposed use before submitting Mr. Prigel's proposal to Zoning for a Special Hearing.



Maryland Department of Agriculture

Office of the Secretary

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
Roger L. Richardson, Secretary
Earl F. Hance, Deputy Secretary

The Wayne A. Cawley, Jr. Building
50 Harry S. Truman Parkway
Annapolis, Maryland 21401
TTY Users: Call via Maryland Relay
Internet: www.mda.state.md.us

Agriculture - Maryland's Leading Industry

410.841.5700 Baltimore/Washington
301.261.8106 Washington, D.C.
410.841.5914 Fax
800.492.5590 Toll Free

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

October 29, 2007

Mr. Robert Prigel, Jr.
Bellevue Farm, Inc.
4851 Long Green Road
Glen Arm, Maryland 21057

Re: MALPF File #03-83-14C

Dear Mr. Prigel:

We appreciate your attendance at the October 23, 2007 Foundation Board meeting. The purpose of this letter is to confirm that the Board approved the construction of a 7,000 to 10,000 square foot building to house the creamery operation, processing facility and farm store. The Board also approved a pervious parking area that would accommodate fewer than 10 vehicles. The parking area is to be located on Long Green Road with the creamery directly behind it.

The approval requires that the structure and the parking lot be in compliance with the following (once built and in the future):

- Must not interfere with other agricultural or silvicultural operations.
- Must not limit future agricultural or silvicultural production.
- Easement owner must have an ownership interest in the operation.
- Some of the products must come from animals raised or crops grown on site; the remainder from animals or crops indigenous to Maryland.
- Facility and parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller.
- Parking area must be pervious.
- Accessory sales area must not exceed 600 sq. ft.

If you have any questions, please feel free to call me at 410-841-5715.

Sincerely,

Diane Chasse

Diane Chasse
Administrator

CC: Wally Lippincott, County Program Administrator

CBA PET. EX. NO. 8

11/30/09

RECEIVED

NOV 30 2009

BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: **PETITION FOR SPECIAL
EXCEPTION**

N side Long Green Road, 1,500 feet W
c/l Long Green Valley Drive
(4851 Long Green Road)
11th Election District
3rd Council District

Prigel Family Creamery, Inc.;
Robert E. Prigel
Petitioner

* BEFORE THE

* BOARD OF APPEALS

* OF

* BALTIMORE COUNTY

* **Case No. 2008-0456-X**

*

* * * * *
PETITIONER'S SUPPLEMENTAL MEMORANDUM IN RESPONSE TO NEW ISSUE
RAISED BY OFFICE OF PEOPLE'S COUNSEL

In the Memorandum of People's Counsel for Baltimore County a new issue not raised before the Board was presented with respect to "Consistency with the Master Water and Sewerage Plan" and a request that the use file an amendment with the Master Water and Sewerage Plans based on possible water consumption.

The Office of People's Counsel cites to Section 9-501 et seq of the Environment Article of the Annotated Code of Maryland. Section 9-501 (j) defines a Multiuse water supply system as follows:

"Multiuse water supply system" means an individual water supply system that:

- (1) Has the capacity to supply more than 5,000 gallons of water a day; and
- (2) **Serves a number of individuals."**

[emphasis added]

This case does not involve a Multiuse water supply system as defined. There are numerous private wells in Baltimore County that yield 13 gallons or more per minute and do not require amendments to the Master water plan. One reason is that the wells do not serve a number of individuals. They are private wells, not part of a system.

In this case Mr. Prigel also testified that the only water to be used in the farm market would be for the sink, and that would hardly qualify for a major amendment to the

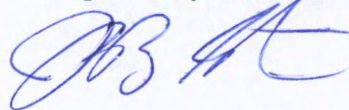
water plan. The definition relied upon by People's Counsel neither matches this situation nor should it be applied to it. No county agency has commented that there would be any such impact.

Finally, it should be observed that as a farm operation there are many more gallons of water used in daily operation than proposed for the farm market. Farms are specifically exempt from the requirement of a water appropriation permit. Section 5-502 of the Environment Article states that virtually every person is required to obtain a permit to appropriate any groundwater of the state. However, Section 5-502 (b) exempts "agricultural purposes, if the average annual water use is less than 10,000 gallons per day ..."

In this case no one asked whether Mr. Prigel had a permit as a farm to withdraw water and no evidence was produced that he would be operating in violation of any permits or conditions.

Like other issues raised at hearing pertaining to the future operation it must be assumed that the operation will occur with all necessary state and local permits. Clearly the applicable section pertains to agricultural use and actual usage - not to community water systems, and it must be assumed that it will operate appropriately.

Respectfully submitted,



John B. Gontrum

11/30/09

RE: PETITION FOR SPECIAL EXCEPTIOFN * BEFORE THE
4851 Long Green Road, N/S Long Green Road * COUNTY
1,500' W e/line Long Green Drive * BOARD OF APPEALS
11th Election District *
3rd Councilmanic District *

Legal Owner(s): Prigel Family Creamery, Inc. * FOR

Petitioner(s) * BALTIMORE COUNTY

Case No.: 04-456-X

08-456-X

* * * * *

**MEMORANDUM IN LIEU OF FINAL ARGUMENT
OF PROTESTANTS LONG GREEN VALLEY COMMUNITY ASSOCIATION, et al.**

Long Green Valley Association and individuals, Ed Blanton, Carol Trela, Cathy Ebert and Susan Yoder, Protestants, by and through their attorney, **J. Carroll Holzer**, Esquire, Holzer & Lee, files this brief Memorandum.

I.

STATEMENT OF THE CASE

The Prigel Family Creamery, Inc., by Robert E. Prigel, filed a Petition for Special Exception before the Zoning Commissioner of Baltimore County for the property located at 4851 Long Green Road, which is currently zoned R.C. 2.

The Petition for Special Exception is per Baltimore County Zoning Regulations §404.4D and §502.1 to permit a Farm Market (FM); or alternatively for a Farmers Roadside Stand (FRS) per Baltimore County Zoning Regulations §404.4C.

The Protestants filed an appeal from the Decision of the Deputy Zoning Commissioner and brought this matter to the County Board of Appeals for a *de novo* hearing dated August 1, 2008.

RECEIVED
NOV 30 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**

II.

STATEMENT OF FACTS

The requested Special Exception was heard *de novo* by the Board on October 14, 2009, with Memos to be submitted on Monday, November 30, 2009.

Protestants hereby adopt and incorporate herein the Memorandum of People's Counsel for Baltimore County filed in this matter and submit the following additional comments.

The Petitioner presented as its first witness, Mr. Michael Fisher of Site Resources, Inc., who drafted Petitioner's Exhibit #2, the Site Plan submitted in this case. He described the neighborhood by the use of Petitioners Exhibit #3-Aerial photo and Petitioners Exhibit #4-Zoning Map. He described the Prigel farm as a 196 acres with Farm Market access on the North side of Long Green Road. Petitioners Exhibit #6A, etc. are photographs of the proposed Farm Market. He described the site as containing eight (8) parking places and no lighting poles. He described the hours of operation from sunup to sundown. He acknowledged that there would be truck docks located at the rear of the facility to accommodate the proposed Creamery and that both Creamery facility and the Farm Market would operate on well and septic. He acknowledged in Petitioners Exhibit #3 that a Class III stream was located at the rear of the property. He further described that there would be no restroom facilities for the Farm Market. Robert Prigel was the second witness presented by the Petitioner who testified that it operated a farm of 210 acres for forty-seven (47) years on the site and that the operation on his property is that of a dairy farm. He testified that on the North side of Long Green Road, it is seventy-five (75) acres of pasture and the Farm Market. That he milks approximately 150 Jersey cows

and that they graze on the north side of Long Green Road during the day and on the south side in the evening. His home and barn and other outbuildings are on the South side of Long Green Road.

The Board will note that his building permit for a "pole barn" (which turned into the Creamery and Farm Market) was to be located on the South side of Long Green Road. The permit has never been corrected and the County has not seen fit to question the contradiction. He testified his dairy farm is organic and that currently Horizon Dairy receives all of the milk produced in either Virginia or Vermont.

He testified that he proposed to sell from the Farm Market ice cream, milk, cheese, beef, chickens, eggs, pork, in addition to woodworking, platters, crafts, jams, breads, pies. He testified the proposed hours would be from 9:00 a.m. to dusk with lighting around the building with a 4 x 4 signed not lighted. He testified that the Creamery behind the Farm Market, but as part of the same building, would produce "dairy products" and that the Farm Market would sell ninety to ninety-five percent (90-95%) of dairy products.

The Petitioner produced a number of neighbors who supported the proposed Farm Market.

The Office of People's Counsel for Baltimore County produced documentation in the form of the Baltimore County Planning Board report dated April 18, 1991, People's Counsel Exhibit #2 (Bill 41-92), People's Counsel Exhibit #3, People's Counsel Exhibit #5 (February 5, 2009, Creamery), People's Counsel Exhibit #6 (Planning Board Report dated February 5, 2009), and People's Counsel Exhibit #7 (Bill 34-09).

Protestants produced testimony of Mr. Ed Blanton, a member of the Long Green Valley Association and a neighboring property owner and Carol Trela, Secretary to the Long Green Valley who testified against the proposal for many reasons as expressed in her testimony.

III.

QUESTIONS PRESENTED

1. That the Petitioners request is for a Farmers Market and not for Farmers Roadside Stand. The Petitioners entire case was presented as a request for Farmers Market. The size and scope of the Petitioners request eliminates as a practical application a Farmers Roadside Stand.
2. The Farmers Market definition requires, pursuant to Bill 34-09, in §101 Definitions that “products grown or grown and produced primarily on their own farm. Protestants submit that processed milk, cheese and ice cream is not grown, therefore does not fit the definition.
3. That Bill 34-09 passed by the County Council in 2009, specifically eliminates from the definition of Farm Market “processed dairy products” thereby showing the legislative intent to remove dairy products from the sale at a Farm Market.
4. The Petitioner must obtain consistency with the master water and sewage plant which has not been done.
5. The Request does not meet the §502.1 standards of the Baltimore County Zoning Regulations (B.C.Z.R.).

IV.

LEGAL ARGUMENT

Introduction

The Memorandum of People’s Counsel for Baltimore County has framed the history of requests under the Baltimore County Zoning Regulations for Farmers Market and/or Farmers Roadside Stand. (This Memo shall continue the use of FM as the designation for Farm Market

and FRS as the designation for Farmers Roadside Stand). People's Counsel has properly pointed out that unless a use is listed as permitted by right or Special Exception in a zone, it is prohibited. See Baltimore County Zoning Regulation §102.1; *Kowalski v. Lamar*, 25 Md. App. 493 (1975) and more recently *People's Counsel v. Surina*, 400 Md. 662 (2007).

While the Prigel Family Creamery (hereinafter "Prigel") Petitioner requests a Special Exception for a Farm Market or in the alternative, a Farmers Roadside Stand; at the hearing before the Board as reflected in the Transcript, all of Petitioners witnesses and testimony as well as the presentation of Counsel, framed the proposed Prigel use as a Farm Market. Protestants agree with People's Counsel that this Memo need only address the issue of Farm Market.

A Farm Market is permitted by Special Exception under Baltimore County Zoning Regulations §1A.01.2.C.8 and also subject to §404.4, thus the Board must review §404.4.D as well as the Special Exception criteria in reviewing this request under Baltimore County Zoning Regulations under §502.1.

People's Counsel points out the developmental history of Farm Markets and Protestants here would specifically refer in the following legal arguments and issues presented, the Board to the most recent legislation of Bill 34-09 passed by the Baltimore County Council with particular attention to the definition section of §101.1 wherein Farm Market is defined and modified from its previous form.

Legal Argument #1

- 1. That the Petitioners request is for a Farmers Market and not for Farmers Roadside Stand. The Petitioners entire case was presented as a request for Farmers Market. The size and scope of the Petitioners request eliminates as a practical application a Farmers Roadside Stand.**

The evidence presented to the Board establishes that the proposed one-story building, which is actually constructed at this point, is sixty feet (60') wide by one hundred sixty-six feet (166') long and contains a dairy processing facility of 8,520 sq. ft. with proposed retail space of 1,440 sq. ft. along with proposed parking for eight (8) vehicles north of the Long Green Road. As People's Counsel has pointed out farmers roadside stand to everyone's common knowledge are typically and seasonally temporary as testified by Protestants, Carol Trela and Ed Blanton. People's Counsel has defined "stand" as a "small often open air structure for small retail business as in cigar stand, roadside fruit stand, hot dog stand, news stand, etc." This facility cannot be considered seasonal or temporary or small in the context that the retail space is an integral part of the overall Creamery which consists of approximately 10,000 sq. ft.

Also, a review of the Transcript makes it clear from the presentation of Petitioners witnesses that their request is for a Farm Market and thus, this Board should reject the alternative requested by the Petitioners for a Farmers Roadside Stand.

WHEREFORE, the Board should review the Petitioners request as a Farm Market.

2. **Farmers Market definition requires, pursuant to Bill 34-09, in §101 Definitions that “products grown or grown and produced primarily on their own farm. Protestants submit that processed milk, cheese and ice cream is not grown, therefore does not fit the definition.**

A review of §101.1 definition of Farm Market as contained in Bill 34-09, passed by the County Council on April 20, 2009, is the most recent expression of the Council’s intent in regard to the issue and definition of Farm Market. The definition is set forth as follows:

Farm Market – an accessory or principal building or structure other than a dwelling that is used by one or more farmers for the sale of [produce] Products grown WERE GROWN AND PRODUCED primarily on their own farms or for the sale of other [locally grown produce] INDIGENOUS FARM PRODUCTS. A Farm Market may sell a limited amount of locally produced non-agricultural goods such as hand-craft items, homemade baked goods, homemade preserves, and jams [and processed dairy products].

Protestants raise the second issue that the Farm Market definition requires products to be “grown” or “grown and produced”... Webster’s Third International Dictionary defines the word “grown” as “to cause to grow: cultivate, produce (crop), (wheat). Additionally, Webster’s New Collegiate defines grown as cultivated or produced in a special way or locality, covered or surrounded with vegetation.” Webster’s further defines the word “milk” as “secreted by the mammary glands of female animals, fluid secreted by mammary glands of female animals for the nourishment of their young. It further defines milk as “to press or draw milk from the breast or udders by the hand or by mechanical device.”

One can see that the word “grown” implies a product that is grown from the soil such as tobacco, beans, corn, potatoes, typical farm products that have been for generations sold at Farm Markets. Protestants submit that the definition of “milk” establishes that milk is not grown, but

it is drawn from the breast or udders or as a verb "milking" to draw something. Milk is a fluid secreted by mammary glands of females for their nourishment of their young or cows milk used for food by humans. Milk is not grown. As a result, the definition in §101.1 for Farm Market defines the traditional vegetables and wheat type of items grown from the soil and does not include milk which is not grown, but which is secreted or sucked from an animal. Thus, sale of milk or milk products is explicitly not provided for by the County Council in its definition.

WHEREFORE, the Board should deny the Special Exception for a Farm Market which purports to sell milk or milk products as ninety-five percent (95%) of its business as testified to by Prigel.

- 3. That Bill 34-09 passed by the County Council in 2009, specifically eliminates from the definition of Farm Market "processed dairy products" thereby showing the legislative intent to remove dairy products from the sale at a Farm Market.**

Legal Argument II is further bolstered by the fact that the County Council of Baltimore County for 2009, in its passage of Bill 34-09 paid specific attention to this issue raised in Legal Issue II and explicitly addressed it by the deletion of processed dairy products from the previous definition under Farm Market. The Council eliminated the words "[processed dairy products]." The County Council in eliminating "processed dairy products" from its definition of Farm Market in 2009 explicitly, and directly and emphatically denied the sale of processed dairy products at a Farm Market.

Protestants submit that if, under Legal Issue III, the Board is not convinced that the sale of dairy products is not permitted at a farm store, then the answer is provided by the County Council in its deletion from Farm Market definition, as recently as April 2009. It can be of no further discussion that dairy products are permitted to be sold at a Farm Market and this Board should deny the Special Exception.

4. The Petitioner must obtain consistency with the Master water and sewage plan which has not been done.

The Protestants adopt the legal foundation advanced in the Memorandum of People's Counsel related to consistency with the Master Water and Sewage Plan.

The Master Plan for Baltimore County incorporates the Master Water and Sewer Plan. As People's Counsel points out, under Maryland Law, any facility with the capability of generating more than 5,000 gallons per day is defined as a multi-use water or sewage facility, citing Environmental Articles §9-501, *et seq.* Any such facility must be identified and included in the County's Master Water and Sewage Plan. People's Counsel, in cross-examination of Robert Prigel obtained his testimony that the well associated with the proposed use has a capacity of 13 gallons per minute. This computes to 18,720 gallons per day. At the present time, there has been no testimony, evidence or documentation to establish that this facility has been included in the County's Master Water and Sewage Plan, which would be a prerequisite to implementation of any Special Exception.

Protestants submit that until the Board is presented with evidence to support this requirement that the Board should deny the request for Special Exception.

**5. The Request does not meet the §502.1 standards of the
Baltimore County Zoning Regulations (B.C.Z.R.).**

As commented upon by People's Counsel in his Memorandum discussing the 502.1 criteria for Special Exception, the Protestants through both Carol Trela on behalf of the Long Green Community Association and Ed Blanton, a neighboring property owner have testified as to the fact that this alleged "pole barn" which was from the beginning intended by the Petitioner to be a creamery and a Farm Market, was placed on agriculturally suited land on the north side of Long Green Road. As Carol Trela testified, the Protestants submitted that a more appropriate location would have been on the south side of Long Green Road adjacent to the house and other farm buildings as per the building permit issued in this matter required.

Ms. Trela's testimony is informative relative to the 502.1 criteria in that the pictures presented by the Petitioners depict a commercial operation located in the heart of Long Green Valley, much of which is protected by agricultural easement. It creates a central commercial operation in the midst of preserved farm land which is inconsistent with the neighborhood and the efforts of many of the residents of the Long Green Valley to preserve its agricultural heritage.

As People's Counsel has pointed out, the location of the facility has created an adverse visual impact on the historic rural valley of Long Green. People's Counsel has cited the Board of County Commissioners v. Holbrook, 314 Md. 210 (1988). In that case, the Board of County Commissioners for Cecil County denied a Special Exception request to locate a mobile home in a rural agricultural area. It was determined by the Cecil County Board that it would substantially diminish adjacent property values and create significantly greater adverse effects in this location than if it were located in other areas similarly zoned. The Court in Holbrook reiterated that the

standard for determining whether to grant a Special Exception is whether the use would cause an adverse effect among the joining and surrounding properties unique and different in kind or degree than that inherently associated with such use regardless of its location within the zone. In that case, the denial was justified in assuming that the presence of a mobile home on a small lot in close proximity to more expensive homes would adversely impact adjacent property values. The subject mobile home, in full view of a neighboring residence, located close to the property was ruled to have a debilitating effect on the neighbors property value, which it would not have had if located in the woods or located behind the hill where it would not have been readily visible.

The case is analogous to this situation where had the building permit which required location on the south side of Long Green Road and a pole barn been complied with, it would have been contained within the existing farm buildings and would have less of a visual impact on the valley and the neighboring properties.

Here, the building sticks out like a sore commercial thumb on the north side of the Long Green Road in what was a pastoral setting with nothing more than dairy cattle until the creamery and the farm store was built.

The Board should deny the Special Exception for a Farm Market on the basis of its visual impact under §502.1 criteria in a commercial enterprise in another agricultural area.

IV.

CONCLUSION

The Special Exception for a Farm Market to sell processed dairy products at the subject site should be DENIED.

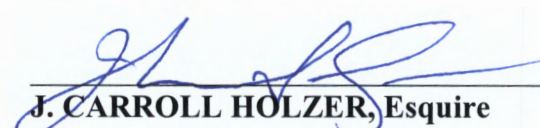


J. CARROLL HOLZER, Esquire

Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of November 2009, a copy of the foregoing Memorandum in Lieu of Final Argument of Protestants Long Green Valley Community Association, *et al.* was mailed first class, postage pre-paid to the following: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Jefferson Building, 105 West Chesapeake Avenue, Room 204, Towson, Maryland 21204 and John B. Gontrum, Esquire, Whiteford, Taylor & Preston, 210 West Pennsylvania Avenue, Towson, Maryland 21204.



J. CARROLL HOLZER, Esquire

8/1/08

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE DEPUTY
N Side Long Green Road, 1500 feet W		
C/l Long Green Valley Dr.	*	ZONING COMMISSIONER
(4851 Long Green Road)		
	*	OF BALTIMORE COUNTY
11th Election District		
3rd Councilmanic District	*	
Prigel Family Creamery, Inc.; Robert Prigel		
Petitioners & Legal Owners	*	Case No.: 2008-0456-X

* * * * *

NOTICE OF APPEAL

THE LONG GREEN VALLEY ASSOCIATION, INC., PO BOX 91, BALDWIN, MD 21013, ROGER HAYDEN, PRESIDENT; CHARLOTTE PINE, 13310 FORK ROAD, BALDWIN, MD, 21013; CATHERINE EBERT, 12815 KANES ROAD, GLEN ARM, MD 21057; AND JOHN & SUSAN YODER, PO BOX 399, PHOENIX, MD 21131, Appellants in the above captioned matter, by and through their attorney, J. Carroll Holzer, P.A., feeling aggrieved by the decision of the Deputy Zoning Commissioner in Case No. 2008-0456-X, hereby note an appeal to the County Board of Appeals from Findings of Fact and Conclusions of Law dated July 11, 2008 attached hereto, and incorporated herein as **Exhibit #1**.

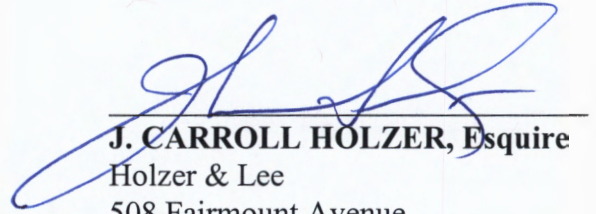
Filed concurrently with this Notice of Appeal is Appellants' check made payable to Baltimore County to cover the costs of the appeal. Appellants were parties below and fully participated in the proceedings.

RECEIVED

AUG 01 2008

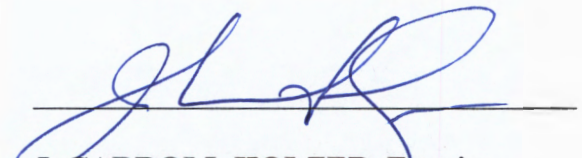


Respectfully submitted,


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of August, 2008, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to John B. Gontrum, Esquire, Whiteford, Taylor & Preston, LLP, 210 W. Pennsylvania Ave., Towson, MD 21204; County Board of Appeals, Jefferson Building, Suite 203, 105 W. Chesapeake Ave., Towson, MD 21204; and People's Counsel for Baltimore County, Jefferson Building, Room 204, 105 W. Chesapeake Ave., Towson, M, 21204.


J. CARROLL HOLZER, Esquire

IN RE: PETITION FOR SPECIAL
EXCEPTION

N side Long Green Road, 1,500 feet W
c/l Long Green Valley Drive
11th Election District
3rd Councilmanic District
(4851 Long Green Road)

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY

Prigel Family Creamery, Inc.; Robert E. Prigel
Petitioner

* Case No. 2008-0456-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by Robert E. Prigel on behalf of the legal owner of the proposed retail farming operation, Prigel Family Creamery, Inc. (hereinafter referred to collectively as "Petitioners").¹ Petitioners are requesting a special exception use pursuant to Sections 404.4.D and 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a Farm Market. Alternatively, Petitioners are requesting confirmation of a Farmer's Roadside Stand pursuant to Section 404.4.C of the B.C.Z.R., which is permitted as of right with a use permit in the R.C.2 Zone. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.²

Appearing at the requisite public hearing in support of the requested relief were Petitioners Robert E. Prigel and his family, Petitioners' attorneys, John B. Gontrum, Esquire and

¹ Evidence demonstrated that the legal owner of the subject property is Bellevale Farm, LP. The legal owner of the proposed dairy processing center and retail store is Prigel Family Creamery, Inc. Since the requested relief is limited to the proposed use of a portion of the structure owned by Prigel Family Creamery, Inc., the Petition was filed on behalf of that legal entity.

² The site plan submitted at the hearing was updated as of May 28, 2008. The prior site plan, which was dated March 31, 2008, was primarily revised to accurately reflect the size of the structure that will house the proposed dairy processing center. That portion of the structure was reduced from 9,240 square feet to 8,520 square feet on the updated site plan. There was no change to the dimensions of the area proposed for the farm market or roadside stand.

7/11/08

**IN RE: PETITION FOR SPECIAL
EXCEPTION**

N side Long Green Road, 1,500 feet W
c/l Long Green Valley Drive
11th Election District
3rd Councilmanic District
(4851 Long Green Road)

Prigel Family Creamery, Inc.; Robert E. Prigel
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **Case No. 2008-0456-X**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by Robert E. Prigel on behalf of the legal owner of the proposed retail farming operation, Prigel Family Creamery, Inc. (hereinafter referred to collectively as "Petitioners").¹ Petitioners are requesting a special exception use pursuant to Sections 404.4.D and 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a Farm Market. Alternatively, Petitioners are requesting confirmation of a Farmer's Roadside Stand pursuant to Section 404.4.C of the B.C.Z.R., which is permitted as of right with a use permit in the R.C.2 Zone. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.²

Appearing at the requisite public hearing in support of the requested relief were Petitioners Robert E. Prigel and his family, Petitioners' attorneys, John B. Gontrum, Esquire and

¹ Evidence demonstrated that the legal owner of the subject property is Bellevale Farm, LP. The legal owner of the proposed dairy processing center and retail store is Prigel Family Creamery, Inc. Since the requested relief is limited to the proposed use of a portion of the structure owned by Prigel Family Creamery, Inc., the Petition was filed on behalf of that legal entity.

² The site plan submitted at the hearing was updated as of May 28, 2008. The prior site plan, which was dated March 31, 2008, was primarily revised to accurately reflect the size of the structure that will house the proposed dairy processing center. That portion of the structure was reduced from 9,240 square feet to 8,520 square feet on the updated site plan. There was no change to the dimensions of the area proposed for the farm market or roadside stand.

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Jennifer R. Busse, Esquire, with Whiteford, Taylor & Preston, LLP, and Michael Fisher, a professional landscape architect and principal with Site Resources, Inc. who prepared the site plan. As evidenced by the number of persons in attendance at the hearing, the issues presented in this case generated significant public interest, and approximately 60 neighbors and residents from the surrounding community appeared in support of the requested relief. The names and addresses of these individuals are too numerous to list here, but can be found on the "Petitioner's Sign-In Sheet" that is contained in the case file. Also appearing and testifying in support of the requested relief were Steve Weber, President of the Maryland Farm Direct Market Association, and three additional citizens, Robert Carter, Seth Revelle, and Paul Conczewski. Appearing on behalf of Baltimore County agencies were Chris McCollum with the Department of Economic Development and Wally Lippincott, Jr. with the Department of Environmental Protection and Resource Management (DEPRM). The interest of the public is also reflected in a Petition signed by 24 members of the Long Green Valley Church of the Brethren, which was marked and accepted into evidence as Petitioners' Exhibit 4.

The views of Protestants are equally supported in the record, as J. Carroll Holzer, Esquire appeared and represented the Long Green Valley Association, Inc. and several named individuals who opposed the requested relief, including Charlotte Pine, Carol Trela, Katherine Ebert, and Ed Blanton. Several additional citizens were listed on the "Citizen's Sign-In Sheet" that is contained in the case file.

At the outset of the hearing, Petitioners made a preliminary Motion to Quash a Subpoena Duces Tecum that was issued at the request of Protestants' attorney, Mr. Holzer, on May 27, 2008. The subpoena commanded the Prigel Family Creamery to produce the federal and state tax returns of Bellevale Farm, LP or Prigel Family Creamery for the past three years. Mr.

Gontrum argued that Petitioners should not be burdened with producing the requested records and that the documents are irrelevant and immaterial to the analysis of a proposed roadside stand or farm market that has yet to begin operations. On behalf of Protestants, Mr. Holzer replied that the requested documents were relevant since the criteria for a roadside stand includes a provision establishing that over 50% of the products sold at the stand are to be grown on the premises where the stand is located. After careful consideration, I determined that the Motion to Quash should be granted. While I respect Protestants' position, the burden to establish the criteria for a roadside stand remains squarely on the Petitioners. In the interest of justice, I found that Petitioners should not be required to release the personal information contained in the prior tax records of their family business when the proposed stand has yet to open its doors and the 50% requirement could be addressed in a less invasive manner. Mr. Holzer also subpoenaed a Memorandum from the Department of Economic Development, as well as the Prigel Family Creamery business plan, which were produced by Mr. McCollum and marked and accepted into evidence without objection as Protestants' Exhibits 2 and 3, respectively.

Testimony describing the subject property and proposed use under the Petition for Special Exception was offered by Michael Fisher and Robert Prigel. The evidence revealed that the subject property is an irregular-shaped property containing approximately 280 acres of land zoned R.C.2. The property is situated between Manor Road to the west and Long Green Pike to the east and is bisected by Long Green Road in the Glen Arm area of Baltimore County. Petitioners submitted an aerial photograph of the farm, which was marked and accepted into evidence as Petitioners' Exhibit 2. While the photograph correctly reflects the boundary of the subject property, it does not fully portray the current state of the property since it was taken prior to the construction of the structure that would house the proposed farm market or roadside stand

and dairy processing facility. Thus, pursuant to Mr. Holzer's appropriate objection, the photograph was admitted for the limited purpose of showing the boundary of the subject property. The photograph also shows the rural and agricultural character of the Long Green Valley. Protestants submitted four photographs that provided additional insight into the current state of the structure and surrounding property. The photographs were marked and accepted into evidence as Protestants' Exhibits 1A through 1D. As the photographs and testimony indicated, the property primarily consists of open fields which Petitioners use on a rotational basis for dairy farming operations.

As depicted on the site plan, the subject property is currently being improved with an approximately 10,000 square foot structure on the north side of Long Green Road. Petitioners have already received the necessary building permits to begin this construction. The majority of the structure will be used as a dairy processing center, and the only portion of the building pertaining to the instant special exception case is the 1,440 square foot section that will face Long Green Road. The area at issue in this case totals approximately one half acre and is outlined on the site plan with a dark line in the shape of a rectangle (*See*, Petitioners' Exhibit 1). Including the front section of the building, Petitioners are also requesting the special exception to permit the construction of a 130 foot wide by 105 foot deep parking area containing eight spaces, including one handicapped space, and an access way that will be mostly 22 feet wide, but will extend to 35 feet wide near the parking area to enable cars to safely maneuver. The access way and parking area will be constructed with a dust free, environmentally friendly pervious paving surface. The proposed farmer's market or roadside stand will comply with all required setbacks and will not require any variance relief. To the east, Petitioners indicate the proposed use will be approximately 620 feet away from the nearest property and to the west approximately 1,000 feet.

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Additionally, the well and septic system that will serve the property, which are respectively located to the northwest and east of the area in question, have already received necessary approvals.

Further evidence revealed that the Prigel family utilizes the subject property to operate the only organic dairy farm in Baltimore County. In 1996, the family placed 180 acres of farmland into a perpetual agricultural easement held by the Maryland Agricultural Land Preservation Foundation (MALPF). In 2002, the Prigels placed another 80 acres of woods into a permanent easement with the Long Green Valley Conservancy, to be included in Maryland's Rural Legacy program. Nearly the entire farm at issue in this case is dedicated to pasture that the Prigel family uses to care for approximately 180 dairy cows. Mr. Prigel testified that twice each day the family milks about 150 cows that produce approximately 500 gallons of milk per day. As organic dairy farmers, the Prigels do not use any antibiotics -- they raise free-range cows that openly graze on a rotational basis in order to naturally spread nutrients throughout the property.

Currently, the Prigel family sells the majority of their milk to the Horizon Organic Dairy Company, which transports the milk via tractor-trailer to a processing plant in Buffalo, New York and then sells the milk throughout the country under the Horizon label. According to the company's Website, Horizon Organic is the nation's leading brand of certified organic milk, with a full line of USDA certified organic dairy products. Mr. Prigel testified that the existing operation causes a significant profit margin to pass on to Horizon, and the Prigels would like to capture these profits by processing and selling their product locally under the Prigel Family Creamery label. According to Mr. Prigel, the farming business has become increasingly difficult, especially for smaller, family-owned farms, and the ability to sell their products locally in a small retail store would greatly improve the farm's competitive position. The Prigels

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propose to produce and sell approximately five products at the farm market or roadside stand, including milk, butter, cheese, yogurt and ice cream. If possible, all of the products sold would be produced and packaged on the premises. It is anticipated that the hours of operation would be 9:00 AM to 9:00 PM during the summer months, with closing at approximately 6:00 PM during the off-season. Mr. Prigel testified that the family has explored the opportunity to work with the Cowgirl Creamery Company to learn about making and marketing cheese, which Mr. Prigel commented is "as much a science as it is an art;" however, contrary to the aforementioned Prigel Family Creamery business plan, Mr. Prigel indicated he does not anticipate entering into a formal relationship with Cowgirl Creamery. If the requested relief were granted, the farming and retail store would remain entirely family run, with the Prigels possibly hiring several experienced employees to operate the portion of the structure that will function as a dairy processing plant.

In support of the requested relief, Mr. Fisher, Petitioners' landscape architect and site planning consultant, provided expert testimony concerning the requested special exception and its potential effects on the criteria set forth in Section 502.1 of the B.C.Z.R. In particular, in considering the proposed use and the location of the property in the R.C.2 Zone, Mr. Fisher opined that the special exception use of the property for a farm market would not have any detrimental impact on the health, safety, or general welfare of the locale; would not create congestion in roads or streets, and would not create a potential hazard from fire, panic or other danger. Additionally, given the 280 acres of land, the approximately one-half acre special exception area would not overcrowd the land. In addition, the use would not interfere with the provision of public services or with adequate light and air, and would not be inconsistent with the property's agricultural zoning classification or with the spirit and intent of the B.C.Z.R., and would not be detrimental to any other applicable special exception criteria. In fact, Mr. Fisher

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testified that the special exception use as a farm market would be wholly consistent with the agricultural goals of the R.C.2 Zone, which includes dairying. In short, this use would support that goal.

Also testifying in support of the requested relief was Chris McCollum with the Baltimore County Department of Economic Development. Mr. McCollum is an Agricultural Liaison and is familiar with Petitioners' plans for the property, including the request for a use permit for a farmer's roadside stand and the special exception request for a farm market. Although his department did not submit a written comment concerning this particular case, Mr. McCollum testified that his department is in support of Petitioners' use permit and special exception requests. To that end, the Department of Economic Development is financing \$250,000.00 toward the creamery/dairy processing facility in order to assist Petitioners in their efforts to expand into production of organic milk products. Mr. McCollum testified that his department views the proposed retail component of the creamery as part of the overall vision of marketing and selling its product offerings to wholesale purchasers as well as directly to the general public. This also furthers the goal of agricultural use of the land and agricultural preservation, while also meeting the evolving changes in the dairy industry. A copy of a Memorandum dated April 18, 2008 from Stan Jacobs, Chief Financial Officer, to the Baltimore County Loan Review Committee was marked and accepted into evidence as Protestants' Exhibit 2. A copy of the Prigel Family Creamery Business and Plan and Financials dated January 18, 2008 was also marked and accepted into evidence as Protestants' Exhibit 3.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated April 29, 2008, which indicate that agriculture and agricultural production of local products are vital for

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the agricultural industry of the County and consistent with the master plan and land preservation. The comment noted that the subject property is located in a rural legacy area and along a scenic road, therefore, certain items need to be addressed, which will be expounded upon further in this Order. Comments from the Department of Environmental Protection and Resource Management (DEPRM) dated May 19, 2008 indicate that Petitioners must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands, and Floodplains. In addition, the comment from Wally Lippincott with DEPRM dated May 13, 2008 supports Petitioners' request for a farm market or roadside stand. Mr. Lippincott noted that the proposed location is directly across from the existing farmstead and is located immediately adjacent to the road, which is consistent with the practice of protecting prime and productive agricultural soils by locating buildings near the road and/or within existing farmsteads. He also noted that Petitioners' existing farm operation gives reasonable indication that it can meet the production requirements for a farm market or farmer's roadside stand.

A brief discussion of the regulations governing this proceeding is warranted due to the somewhat unusual procedure and the overlapping nature of the requested relief.³ Section 1A01.2.B.9.b of the B.C.Z.R. permits as a matter of right a farmer's roadside stand and produce stand in all R.C.2 Zones, subject to the provisions of Section 404.4 of the B.C.Z.R. Section 1A01.2.C.8 of the B.C.Z.R. permits by special exception a farm market, subject to the provisions of Section 404.4 of the B.C.Z.R. A farmer's roadside stand is defined in Section 101 of the B.C.Z.R. as:

An accessory structure owned and operated by an agricultural producer, used for the sale of indigenous farm products, the majority of which have been grown on

³ After reviewing all available Zoning Commissioner findings and past applications for use permits received by PADM, it appears that this is only the second time that the Zoning Commissioner's Office has ever held a formal public hearing to review a request for a use permit for a farmer's roadside stand. Almost every other application has been reviewed by PADM without a formal public hearing, and a number of sizeable structures have been approved for locations such as 7110 Mt. Vista Road and 1701 Greenspring Road.

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the premises, on adjacent land or on properties farmed by the same agricultural producer.

A farm market is defined in Section 101 of the B.C.Z.R. as:

An accessory or principal building or structure other than a dwelling which is used by one or more farmers for the sale of produce grown primarily on their own farms or for the sale of other locally grown produce. A farm market may sell a limited amount of locally produced nonagricultural goods such as handcrafted items, homemade baked goods, homemade preserves, jams and processed dairy products.

In the instant case, Petitioners are requesting a special exception to utilize the area identified on the site plan for a farm market. In considering this request, a threshold issue must be determined as to whether Petitioners' proposed use fits within the aforementioned definition of a farm market. As stated in the definition, a farm market contemplates a structure used by one or more farmers for the "sale of produce" or "locally produced nonagricultural goods." The B.C.Z.R. does not specifically define "produce;" hence, pursuant to Section 101 of the B.C.Z.R., any word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged (Webster's). Webster's defines "produce" as "something that is brought forth or yielded either naturally or as a result of effort or work." It also means "agricultural products." Although there is no specific definition of "agricultural products" in the B.C.Z.R., the term "agriculture, commercial" is defined in Section 101 of the B.C.Z.R. as:

The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to § 8-209 of the Tax-Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, *dairying*, pasturage agriculture, horticulture, floriculture, aquiculture, apiculture, viticulture, forestry, animal and poultry husbandry, the operation of an equestrian center, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations. (emphasis added).

In addition, the definition of "farm" in Section 101 of the B.C.Z.R. includes "[t]hree acres or more of land, and any improvements thereon, used primarily for commercial agriculture." Clearly, the sale of products from Petitioners' farm, which is used primarily for commercial agriculture in the form of dairying (defined by Webster's as "the business of conducting a dairy"), and which proposes to sell the fruits of the dairying to the public, constitutes the "sale of produce" within the definition of a farm market.

It should be noted that it is difficult to fully understand Protestants' opposition to Petitioners' special exception request, primarily because Protestants' attorney, Mr. Holzer -- other than cross examining Petitioners' witnesses -- declined the opportunity to call any witnesses or present any substantive evidence at the public hearing. Protestants' arguments are further muddled by the fact that Petitioners submitted a detailed letter from the Board of Directors of the Long Green Valley Association dated September 27, 2007, which explains the Board's unanimous decision to support the Prigel family in building a creamery and roadside store. The letter was marked and accepted into evidence as Petitioners' Exhibit 3A. Petitioners then submitted an additional letter dated March 27, 2008, which simply states without further explanation that the Board had held an emergency meeting and reversed its decision. The letter was marked and accepted into evidence as Petitioners' Exhibit 3B. Nevertheless, after reviewing the testimony and evidence in the case file, it appears that the crux of Protestants opposition concerns the location and size of the building that is under construction and the impact of the dairy processing center on the surrounding locale.

As to the relevant special exception criteria, initially, I find that the proposed farm market will not be detrimental to the health, safety or general welfare of the locality involved. It is important to note that while a 10,000 square foot building is under construction, the requested

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relief pertains only to the 1,440 square foot section of the front of the building. Petitioners have already received the necessary approval to build the structure, and the issuance of building permits will not be reconsidered by this Deputy Zoning Commissioner in this Petition for Special Exception. The remainder of the special exception concerns the access way and parking area, which Petitioners are constructing out of an environmentally friendly, dust free, pervious paving surface. For the purposes of this special exception, I am persuaded that the retail space of the newly constructed building, and accompanying access way and parking area, which total approximately one half acre, will not have any negative affect on the surrounding locale. The farm market is centrally located on a 280 acre farm that is primarily dedicated to open fields and pasture, and Petitioners have made an effort to construct an environmentally responsive access way and parking area. It is hard to imagine a negative impact stemming from the operation of a family-run organic dairy farm stand in the center of many acres of farmland owned by that same family.

I also find that the requested relief will not tend to create congestion in the roads or streets in the surrounding area. The testimony at the public hearing was unequivocal that any increase in traffic would be negligible since the farm market is centrally located in a rural setting on a 280 acre farm primarily dedicated to open fields and pastures. Also, the photographs submitted by Protestants demonstrate that Long Green Road is a flat rural road without any apparent visual obstructions near the site of the proposed access way to the market (*See*, Protestants' Exhibits 1A through 1D). Even if Petitioners received a steady inflow of customers, it does not appear that traffic or congestion would pose a problem.

I further find that the requested relief will not create any potential hazard from fire, panic or other danger, and that the proposed structure will not tend to overcrowd land and cause an

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undue concentration of population. There was no evidence that the farm market would cause any fire hazard as it will be located approximately one mile from a nearby firehouse and is situated on a 280 acre property in an agricultural R.C.2 zone. The farm market will be used to sell farm products and will not be used as a residence. Thus, I am convinced it will not have any effect on the population concentration of the surrounding locale.

After careful consideration, I also find that the proposed farm market will not interfere with adequate provisions for any public facilities such as schools, parks, water or sewerage, that the structure will not interfere with adequate light and air, and that Petitioners have already gained approval for water and sewer use and have taken steps to minimize the environmental impact of the requested relief.

Finally, and perhaps most importantly, I find that granting the special exception is consistent with the purposes of the agricultural R.C.2 Zone, and furthers the spirit and intent of the B.C.Z.R. As set forth in Section 1A01.1.B of the B.C.Z.R., the R.C.2 Zone was established "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." Unfortunately, it has become more and more difficult for R.C.2 Zones to maintain their agricultural integrity, and for agricultural businesses to maintain their productivity and profitability. Frankly, I was somewhat surprised at the public hearing to find that Petitioners maintain the only organic dairy farm in Baltimore County. Mr. Prigel's testimony detailed the difficulty in maintaining an agriculture business, and this difficulty is only compounded by the fact that Petitioners take on increased demands and costs to meet the requirements of certified organic products. At this point, Baltimore County residents do not even have an option to buy locally produced organic dairy products, but are limited to purchasing products from larger

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company labels such as Horizon Organic. I find that granting this special exception will further the goal of the local, family-owned dairy farm that hopes to produce and sell organic products directly to members of the public from the center of their 280 acre farm. It is hard to imagine anything more in line with the spirit and intent of the R.C.2 Zone. In fact, given the aforementioned evidence and considering all the circumstances, it would border on the ridiculous not to grant the requested relief.

All of the testimony at the public hearing, including that of Chris McCollum from the Baltimore County Department of Economic Development, Steve Weber from the Maryland Farm Direct Market Association (who testified that the Prigel family reflects everything that is good about public policy in preserving property for grazing and paving the way for local organic dairy farming), and Robert Carter, Seth Revelle, and Paul Conczewski (each of whom testified as interested citizens that the Prigel family set the standard for rural legacy and agricultural preservation), leads me overwhelmingly to find that the requested relief should be granted. Mr. Prigel is part of the fourth generation of his family to run their dairy farm, and it is my hope that granting this relief will permit the family to maintain a competitive business that can continue to be passed on to future family generations.

Since the Prigel farm is entirely family run and is composed of the sale of dairy products primarily from their own farm, the retail portion of the proposed business appears to be aptly described as a farm market. In my judgment, a farm market clearly grants the sale of dairy products as well as permitting additional items for sale such as crafts, jams and processed dairy products. Although a farm market is a more expansive use, and requires a more expansive burden of proof than a roadside stand, it is certainly justified under the evidence produced at the zoning hearing. It also is not relief in conflict with that granted by the Maryland Agricultural

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Land Preservation Foundation (MALPF), which approved a motion "to approve the request of Bellevale Farm, Inc. to allow a creamery operation, processing facility and farm store on an easement property subject to the parking lot being pervious." The MALPF approval also permitted up to 600 square feet of sales area for the sales of accessory, non-agricultural items, which is consistent with the concept of a farm market. Hence, the special exception for a farm market shall be granted.

In granting Petitioners' special exception request, I will also acknowledge Petitioners' right to have the farmer's roadside stand at this location. Since the definition of a roadside stand limits the type of products that may be sold to "indigenous farm products" a brief discussion of the breadth of items falling within this definition is also warranted. The term "farm product" is not defined in the B.C.Z.R. but has been defined in the Maryland Agriculture Code to include eggs and dairy products (*See*, Md. Agriculture Code Ann., § 10-601(c)). Additionally, while the Court of Appeals has not directly defined the term, several states have interpreted similar regulations pertaining to farm products to include milk, cheese, and ice cream. *See Deutschmann v. Board of Appeals of Canton*, 325 Mass. 297, 299-300 (1950) (holding that the fact that milk, milk shakes, ice cream and cheese were not in their natural state does not mean that they cease to be products raised on the farm of their owner who seeks to sell them); *Parrish v. Board of Appeal of Sharon*, 351 Mass. 561, 565-67 (1967) (holding that ice cream milk and cream came within the zoning ordinance's requirement of selling "products raised on the premises only"). Thus, I am convinced that the sale of milk, butter, cheese, yogurt and ice cream falls within the definition of indigenous farm products envisioned in Section 101 of the BCZR.

Pursuant to Section 1A01.2.B.9.b of the B.C.Z.R., farmer's roadside stands are generally permitted as of right in an R.C.2 Zone subject to the provisions of Section 404.4. This particular

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request was filed in the alternative and generated significant public interest so a public hearing was scheduled. Still, the request must meet the requirements of Section 404.4, namely that at least 50% of the products sold at the stand must be grown on the premises where the stand is located or on adjacent farms or on other property farmed by the applicant. Mr. Prigel stated a number of times throughout his testimony that all of the products sold at the proposed stand would be grown and processed on the premises, and that he would comply with whatever regulations and restrictions the Deputy Zoning Commissioner saw fit. There was no testimony that the roadside stand would be used to sell products that were not indigenous to the Prigel family farm. Since the requirements of Section 404.4 had been met⁴ and a public hearing was scheduled, Section 404.4.C.8 of the B.C.Z.R. dictates that the question for the Zoning Commissioner becomes whether a use permit should be granted based on the findings at the public hearing, the impact on the health, safety or general welfare of the surrounding community, and all other criteria necessary to satisfy the objectives of Section 502.1 of the B.C.Z.R. For the aforementioned reasons pertaining to the granting of the special exception for the farm market, I am likewise persuaded that the relief requested by the Petitioners for a use permit for a farmer's roadside stand should be granted as well.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners' special exception request should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 11th day of July, 2008 that Petitioner's request for Special Exception use

⁴ Protestants did not raise any issue with the other requirements of Section 404.4 such as the 35-foot street pavement setback and the existence of the proposed structure on a farm owned by an agricultural producer.

pursuant to Sections 404.4.D and 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a Farm Market be and is hereby GRANTED; and

IT IS FURTHER ORDERED that, in the alternative, Petitioner's request for confirmation of a Farmer's Roadside Stand pursuant to Section 404.4.C of the B.C.Z.R., which is permitted as of right with a use permit in the R.C.2 Zone, be and is hereby GRANTED.

Petitioners' use of the property is subject to the following restrictions, which are conditions precedent to the relief granted herein:

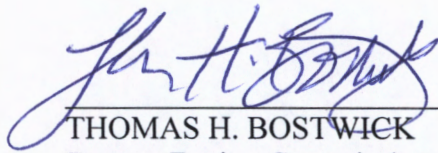
1. Petitioners may apply for the necessary building or use permits, as applicable, and be granted same upon receipt this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners shall plant a row of vegetation around the proposed parking area and buildings to provide visual buffer from the scenic road, as well as the following:
 - a. All fences and walls shall harmonize with the surroundings and create the least visual impact.
 - b. Vegetation shall be used to buffer the fences or walls.
 - c. Indigenous species or ones commonly found in the area should be used when landscaping.
 - d. Planting designs shall reinforce the character of the site.
3. Petitioners shall provide to the Office of Planning architectural elevations of the proposed structure to include building materials and colors.
4. Petitioners shall provide to the Office of Planning a landscape plan.
5. The signage for the operation shall be no more than 25 square feet in size and cannot be lighted.
6. Petitioners shall provide location and screening for the dumpsters.
7. The hours of operation shall be from sunlight to sundown to minimize the impact on the surrounding residential community.

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8. 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).
9. The use of the property for a Farm Market granted herein shall comply in all respects with the provisions of Section 404.4.D.1 – 3 of the B.C.Z.R.
10. In the event, alternatively, that a use permit is issued for a Farmer's Roadside Stand, it shall comply in all respects with the provisions of Section 404.C.1 – 4 of the B.C.Z.R.

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


THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

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BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

THOMAS H. BOSTWICK
Deputy Zoning Commissioner

July 11, 2008

JOHN B. GONTRUM, ESQUIRE
JENNIFER R. BUSSE, ESQUIRE
WHITEFORD, TAYLOR & PRESTON, L.L.P.
210 W. PENNSYLVANIA AVENUE
TOWSON, MD 21204

Re: Petitions for Special Exception
Case No. 08-456-X
Property: 4851 Long Green Road

Dear Mr. Gontrum and Ms. Busse:

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

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas H. Bostwick".

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz
Enclosure

- c: Michael Fisher, Site Resources, Inc., 114315 Jarrettsville Pike, Phoenix MD 21131
Chris McCollum, Baltimore County Department of Economic Development
Wally Lippincott, Jr., Baltimore County Department of Environmental Protection and Resource Management
J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286
Please See Attached List



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

Jennifer R. Busse
Whiteford, Taylor & Preston L.L.P.
210 W. Pennsylvania Ave. 4th Floor
Towson, Md 21204

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management
May 29, 2008

Dear: Jennifer R. Busse

RE: Case Number 2008-0456-X, Address: 4851 Long Green Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 31, 2008. 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,

A handwritten signature in dark ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel
Robert E. Prigel, Prigel Family Creamery, INC., 4851 Long Green Rd., Glen Arm, MD
21057

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: April 16, 2008

FROM: Dennis A. Kennedy, Supervisor
^{DAK}
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For April 21, 2008
Item Nos. 08-450, 451, 452, 453, 454,
456, 457, 458, 459, 460, 462, 463, 464,
465, 466, 468, 469.

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

DAK:CEN:lrk

cc: File

ZAC- 04162008-NO COMMENTS



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

John D. Porcari, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: April 14, 2008

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

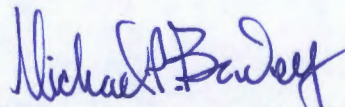
RE: Baltimore County
Item No. 8-456-X
PRIGEL FAMILY CEMETERY, INC.
SPECIAL EXCEPTION
4851 LONG GREEN ROAD

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. 8-457-A.

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,


For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone: 410.545.0300 • www.marylandroads.com

6/4
10AM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: April 29, 2008

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

SUBJECT: 4851 Long Green Road

INFORMATION:

Item Number: 8-456

Petitioner: Prigel Family Creamery, Inc.

Zoning: RC 2

Requested Action: Special Exception

RECEIVED
MAY 05 2008

BY:-----

The petitioner requests a special exception per the BCZR Sections 404.4D and 502.1 to permit a Farm Market or alternatively for a Farmer's Roadside Stand per BCZR Section 404.4C.

SUMMARY OF RECOMMENDATIONS:

Agriculture and agricultural production of local products are vital for the agricultural industry of the County and consistent with the master plan and land preservation.

The above property is located in a rural legacy area and along a scenic road; therefore the following items need to be addressed.

1. A row of vegetation needs to be planted around the proposed parking area and buildings to provide visual buffer from the scenic road.

- All fences and walls need to harmonize with the surroundings and create the least visual impact.
- Vegetation should be used to buffer the fences or walls.
- Indigenous species or ones commonly found in the area should be used when landscaping.
- Planting designs should reinforce the character of the site.

2. Provide architectural elevations of the proposed structure to include building materials and colors.

3. Provide a landscape plan.

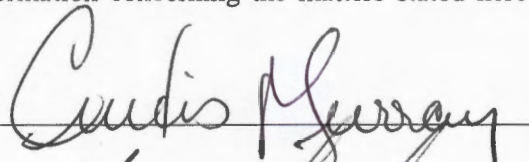
4. The signage for the operation can be no more than 25 square feet in size and cannot be lighted.

5. Provide location and screening for the dumpsters.

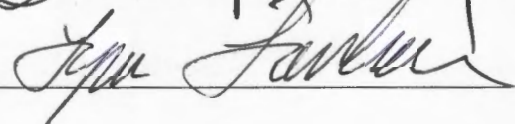
6. The hours of operation should be from sunlight to sundown, to minimize the impact on the surrounding residential community.

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

Reviewed by:



Division Chief:
AFK/LL: CM



BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED
MAY 19 2008

BY:.....

TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination *JWL*
DATE: May 19, 2008
SUBJECT: Zoning Item # 08-456-SPH
Address 4851 Long Green Rd.
(Prigel Property)

Zoning Advisory Committee Meeting of April 14, 2008

_____ 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).

_____ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

1. A Farm Plan was updated in 12/11/07 for compliance with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.
2. See attached comments from W.S. Lippincott; Agricultural Preservation.

Reviewer: J. Russo

Date: 4/24/08

BALTIMORE COUNTY, MARYLAND

ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Inter-Office Correspondence

TO: Development Coordination DATE: May 13, 2008 *JWL*
FROM: Wally Lippincott, Jr.
SUBJECT: Prigel Farm – Zoning Hearing 08-456- X

Background: The Prigel family has operated a dairy on their farm in Long Green Valley for several generations. The family in a commitment to agriculture and land preservation placed the 180 acres on which this request is being made into a perpetual agricultural easement held by the Maryland Agricultural Land Preservation Foundation. They placed another portion of their land into a permanent easement with the Maryland Rural Legacy Program. They have operated an innovative dairy operation for years and have hosted many tours of groups interested in seeing a dairy operation that is an alternative to intensive large scale contained animal operations.

There is a trend in agriculture, particularly in the Northeast and MidAtlantic, to grow and process products that can be sold locally and to grow organic or hormone free products. This appears to be improving the viability of farming in Maryland where otherwise our farms are at a disadvantage to large factory farms of the Midwest and South.

Over the last 20 years dairy farms in Maryland and Baltimore County in particular have been particularly hard hit by this trend. The number of dairy farms has declined from approximately 20 farms in the late 1980's to less than 10 today. Dairy farms are significant contributors to the local agricultural industry because of their inputs back into the economy. The Prigel's request for innovations to their dairy operation while difficult for people to accept is part of the need for agriculture to change in order to survive. The purpose of the MALPF and County Agricultural Easements are for the protection of the prime and productive soils and the fostering of agriculture.

This property is zoned RC – Agricultural Preservation and is within a Master Plan designated Agricultural Preservation Area. Furthermore, the County, Federal and State Governments with some assistance from the private sector have invested significant public funds in the preservation of farms such as this for agricultural production.

Request: Mr. Robert Prigel has requested approval for a Farm Market or Farmers Roadside Stand on the farm in order to sell dairy products produced on site. Because the land is under a MALPF easement the request had to go before the State Board for consideration.

He initially brought the concept to the Baltimore County Agricultural Land Preservation Advisory Board on March 20, 2007 (see minutes). His operation is well known and there was no question about his ability to produce milk for onsite sales. Mr. Prigel formally submitted his request for a recommendation on August 28, 2007 (see minutes). The Board voted to recommend Mr. Prigel's request to sell dairy products and grass fed meats on the farm. The location was part of the request and the Board raised no objections to the proposed location.

Mr. Prigel went before the MALPF Board on October 23, 2007 and received approval subject to the conditions indicated on the attached copy of the Minutes from the MALPF Meeting of 10-23-07. Those conditions include:

"Some of the products must come from animals raised or crops grown on site; the remainder from animals or crops indigenous to Maryland."

"Facility and parking area must cover no more than 2% of the easement/district, or two acres whichever is smaller."

"Parking area must be pervious."

"Accessory sales area must not exceed 600 sq feet."

In addition Mr. Prigel represented that the building would not exceed 10,000 sq ft.

The motion that was approved was as follows: To approve the request of Bellevale Farm (Prigel), to allow a creamery operation, processing facility and farm store on an easement property subject to the parking lot being pervious.

The County requirements for a Farm Market and Roadside Stand are in addition to the State easement requirements. The County requires the sale of a minimum of 50% of products grown on the premises, adjacent or other farms operated by the applicant for Farmers Roadside Stand (BCZR 404.4.C.3) or in the case of a Farm Market 50% grown by the owner of the market and no more than 10% locally produced nonagricultural products.

Recommendation: Support the request for a Farm Market or Roadside Stand in the location as proposed. The location is directly across from the existing farmstead and is located immediately adjacent to the road. This is consistent with the practice of protecting prime and productive agricultural soils by locating buildings near the road and/or within existing farmsteads. The applicant's farm operation gives reasonable indication that he can meet the production requirements for a Farmer's Roadside Stand and Farm Market. This request for a building of a maximum of 10,000 square feet that includes the farm market, processing and creamery to be consistent with the MALPF approval, Baltimore County Zoning, and the Baltimore County Master Plan. The support is conditional upon Mr. Prigel receiving all necessary permits for the processing and creamery operation.

The interest will be paid over a 25 year period and the principal will be paid at the end of the term. The principal will be taxable. This program will follow the same guidelines as the easement program but will require the landowners to discount their easement offers.

Board Statement: *The Board has serious concerns about discounting in the IPA program. They feel that it will discourage participation and eliminate the value of the easement.*

3. Mr. David Smith. 64.61 acres. 16701 Yeoho Road, Sparks, MD. Mr. Smith's proposal for a Farmer's Roadside Stand on his property on Yeoho Road.

Discussion: *The Board and Staff discussed the proposal and the issues that have been raised by the public regarding size of the stand and products sold there. Mr. Smith has been to several public hearings regarding this proposal. The Board recommends clarifying what they approved based on what was presented to them regarding the stand and what Mr. Smith grows and sells.*

IV. NEW BUSINESS

Easement Issues

a. Mr. Robert Prigel. 180 acres. Bellevalle Farm, 4851 Long Green Road, Glen Arm, MD. Mr. Prigel has a family dairy with grass fed livestock. He would like to have retail sales of cheeses and ice cream and would like to address the Board for their input and suggestions.

Discussion: *Mr. Prigel would like to have an additional revenue source for his farm. The farm is presently under a MALPF easement and he is asking for the BCALPA Board's input for the venture. He is proposing a processing facility for milk produced by the farm and a retail facility (roadside stand) to sell products. The products would be: milk, cheese, ice cream, and grass fed beef. According to the MALPF guidelines he stated that the requirement is that he must have 75% of his own products for sale and meet local health and regulatory regulations. His goal is to sell organic farm products and he is transitioning to organic farming in April. Becoming certified organic takes 1 year. He is asking whether there are any problems or issues with his proposal.*

Board and Staff discussion: *These recommendations were discussed with Mr. Prigel. This proposal must meet County regulations and have community support. Notification must also be given to the Health Department for their inspections. A question was asked whether the processing will be visible to the public. Mr. Prigel replied that it will be visible. Staff replied that any offsite processing would have to be addressed and relate to sales. Chairman Greene stated that this is a direct marketing venture to the public and that this is something that the Board has thought about and*

would like to support. He also recommended that Mr. Prigel get the support of the Economic Development Office.

b. MALPF FY'07 Applicant Request: Mr. Stephen Pieper. 100.17 acres. ES Old York Road NE of Stockton Road, Monkton, Md. Mr. Pieper is requesting approval of a possible relocation of the existing owner's lot and child's lots on the property.

Review standards: Elizabeth Weaver, Administrator of MALPF indicated that no changes can be made while under consideration for a pending easement. There are two things that an applicant may do: 1) the applicant may get a recommendation from the local Board but any changes must wait until the easement is settled, or 2) the applicant may withdraw the application make the changes to the locations and re-apply in FY '08.

This request has been made before of prior Boards. Concerns have been for the impact of location and access roads on productive capability on the farm.

Discussion: *Mr. Pieper is trying to work with the Board and staff to site the house location. Mr. Pieper wants advice on the site location and whether it's appropriate with low impact on the farm operation. He is presently favoring the corners of the property that border Old York Road.*

Staff discussion: *The Board and staff discussed the site of the proposed owner's house and whether it was possible to make the house non-subdividable from the farm. Chairman Greene emphasized the importance of this. Wally Lippincott stated that Mr. Pieper needs to show precisely where the acre for the house is on the property before this request can go the State MALPF Board and he asked Mr. Pieper to clearly define the lot area on a site plan or plat and asked that this be done by a surveyor. The child's lot proposal cannot be discussed until this property is under easement.*

Motion: The Board recommends approval of the location of the owner's lot with the condition that the lot is non-subdividable. This is a clarification of the location of the owner's lot.

Motion made by: David Hayden

Second: David Sparks

Decision: Unanimous approval

Tenant House Requests/Reduced Acreage Farms

a. County Request: Mr. James Dasher and Mrs. Edith Dasher 97.24 acres. 14045 Mantua Mill Road, Reisterstown, MD. Mr. and Mrs. Dasher are requesting approval of a tenant trailer on the 16.68 acre parcel. This is a current farming operation and the Dashers plan to establish a goat dairy and creamery and expand their chicken operation.

proposal will go to the DRC with a letter of recommendation from the Ag Board.

Motion: The Board recommends approval of the Agricultural Subdivision proposal made by Mr. and Mrs. Morris.

Motion made by: Harriet McGinnis **Second:** David Hayden
Decision: Unanimous

2) MALPF Easement Requests

a. Mr. Robert Prigel. Bellevale Farms, Inc. MALPF #03-11-83-14C. 180 acres. 4851 Long Green Road. Mr. Prigel is requesting the Board's recommendation for a proposal to construct a creamery operation and processing facility for his dairy farm. The facility that is planned will be a 7,000 square foot pole building which will be located off of Long Green Road and the cow lane. It will contain ~ 1500 sq. ft. of retail space (a Farmer's Roadside Stand) selling milk, cheese, yogurt, butter, and ice cream. Grass fed meats will also be sold at the stand. The rest of the facility will be used for processing and warehouse space. Mr. Prigel is aware that under MALPF regulations that 75% of the products sold at his stand must be produced on his farm.

Discussion: Mr. Prigel outlined his formal request for adding a creamery operation and processing facility to his dairy operation. He is proposing a building that is approximately 10,000 square feet (70' x 120'). Parking for the retail facility will be on approximately ½ acre and the operation will employ 6 people, hopefully family members. This issue will be further discussed at the September 18, 2007 Long Green Valley Association Meeting. Mr. Prigel was informed that he will need to define the processing operation for the State MALPF Board, especially any issues that may come up with the Baltimore County Health department. He will also need a perc test on the site before moving forward with the proposal. This will go forward to the October 2007 MALPF Board for their meeting and recommendation/approval.

Motion: The Board recommends approval of the creamery/processing facility as proposed.

Motion made by: David Hayden **Second:** Pat Patterson
Decision: Unanimous

V. POLICY ISSUES/ MISCELLANEOUS/ CORRESPONDENCE

about the development rights. Further, Ms. Forrester pointed out that the Foundation cannot change its policy in the middle of the easement cycle.

Ms. Forrester commented that as of July 1, 2007, the date of the appraisal under statute, there were no development rights on the property. The appraisers have to be informed about the development rights.

Ms. Buckle stated that she believed the MALPF Board would face lot of issues like the current one. Earlier the MALPF Board reviewed all such issues when the property entered the program as a district. These things now have to be worked out before the deadline.

Mr. Doug Wilson agreed and stated the Foundation has to think about the process without the requirement of a district. 90% of the issues would have been resolved when the Foundation evaluated the district application. There has to be some modifications or changes in the way the easement applications are evaluated for the program.

Ms. Forrester pointed out that the district agreement on the property was not correctly recorded. The district agreement was never signed by the MALPF Board and was not completed. It was incorrectly recorded by the Baltimore County. Ms. Forrester was concerned about the State benefit or the County benefit associated with this agreement.

Ms. Chasse agreed and stated that the district agreement should not have been recorded because the Equine Committee's report was not yet ready. Mr. Lippincott stated that one has to apply for the County tax credit to receive the tax benefit and Land Preservation Trust has not applied.

Motion #10: To rescind the previous exclusion of 50 acres around the racetrack.

Motion:	Doug Wilson	Second:	Joe Tassone
Opposed:	Vera Mae Schultz		
Status:	Approved		

2. 03-83-14c Bellevale Farm, Inc. (Prigel) 83-03 180 acres
Request to allow a creamery operation, processing facility and farm store on an easement property

Mr. Robert Prigel, of Bellevale Farm, Inc., is the original owner of the easement property. The current request is to allow a creamery operation, processing facility and farm store on an easement property. There is one pre-existing dwelling on the farm.

According to Baltimore County, Mr. Prigel would like to construct a 7,000 to 10,000 square foot building to house the creamery operation, processing facility and a farm store. As well, he is requesting a parking area that would accommodate fewer than 10 vehicles. The parking area is proposed to be located on Long Green Road with the creamery directly behind it. A short distance of access on an existing farm lane may be needed.

The request was approved by the local advisory board. Mr. Prigel would be required to obtain a special exception because county regulations do not allow the proposed activity in the area where the farm is located.

According to the Uses Table which was approved by the Board the following are the considerations for review:

- Must not interfere with other agricultural or silvicultural operations.
- Must not limit future agricultural or silvicultural production.
- Easement or district owner must have an ownership interest in the operation.

Some of the products must come from animals raised or crops grown on site; the remainder from animals or crops indigenous to Maryland.

Facility and parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller.

Parking area must be pervious.

Accessory sales area must not exceed 600 sq. ft.

Foundation staff recommends approval of the request subject to the parking lot being pervious.

Robert Prigel and Carmela Iacovelli, Natural Resource Specialist, were present at the meeting. Mr. Prigel handed out aerial maps of his property.

Mr. Colhoun stated that he had visited the farm and believed the aerial map being circulated by Mr. Prigel accurately depicts the building and how it is going to be located on the property. The building is rectangular and is going to be parallel to the farm configuration.

Ms. Iacovelli stated that there were some concerns about the nature of the parking lot. The County Zoning requires a dust-less and durable parking surface. Ms. Iacovelli spoke to the staff at the County Zoning and they said that the owners could put in hard surface. The only downside of the requirement is that it could be expensive because it is a block with grass in the center which is pervious.

Mr. Prigel stated that his family has been dairy farming in Maryland for generations, and he is the fourth generation dairy farmer in Baltimore County. His family's future generation is also interested in farming. Currently Baltimore County has around eight or nine dairy farms remaining; dairy farming in Maryland has declined over the past twenty five years. People have to compete with farms in Russia, India and worldwide. Mr. Prigel has a comparatively small farm and stated that it is very difficult for small family dairy farms to compete with large corporate dairies. The farm is undergoing transition to become organic, and their desire is to construct a processing facility to process milk.

Mrs. Schultz pointed out that one of the Uses Committee's recommendations is that the parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller. Mrs. Schultz wanted to know if Mr. Prigel has considered this requirement.

Mr. Prigel stated that his facility is not more than 10,000 square foot and the parking lot is very small.

Motion #11: To approve the request of Bellevale Farm, Inc., to allow a creamery operation, processing facility and farm store on an easement property subject to the parking lot being pervious.

Motion: Joe Tassone
Status: **Approved**

Second: Jerry Klasmeier

Mr. Doug Wilson commented that there would be a problem if, during the easement inspections, it is discovered that the parking area is of impervious surface. The parking lot being pervious is the Foundation's requirement. Baltimore County would have to plan and have someone from the Health Department visit the property and help the client.

Mr. Amoss pointed out that the County may also have some provisions for impervious surfaces to meet the handicap requirements.

Mr. Lippincott stated that the County is trying to make the whole parking area totally

pervious, but it is little challenging. The State has developed many rules to utilize more and more pervious parking and sometimes it might put additional burdens on the farm users. Baltimore County will work it out.

Mr. Doug Wilson stated that he felt the other way. Mr. Doug Wilson believed the State and other institutions are putting the onus on local government, the people who design the parking lot, the handicap associations, etc, to be more respectful of the pervious surfaces. They would have to give more latitude on what will be allowed.

Mr. Lippincott stated that the problem is actually getting them to work. The County continues to work on the issue over time, but the issues continues to be an engineering challenge.

Mr. Colhoun commented that the discussions have been very useful and stated that Mr. Prigel's parking lot is very small compared to others.

F. SOMERSET COUNTY

- | | | | |
|----|----------|-----------------------------------|--------------|
| 1. | 19-08-09 | Gerard and Donna Dumsha | 257.22 acres |
| | | Re-review of easement application | |

At the August 28, 2007 Board meeting, this easement application was approved with the withholding of 9 acres of barrow pits. However, since then, it has been determined that a portion of the property lies within a water and sewer district, and, therefore, additional review is necessary.

According to Somerset County, approximately 24 acres or 9 % of the property lies within the planned water and sewer district. On October 2, 2007, the County Commissioners approved the easement application with the inclusion of these acres. The County administrator reports that sewer and water may still be extended past the proposed easement by keeping it within the right-of-way of the road.

Staff recommends approval based on meeting minimum size and soils criteria. Normally, land located in the planned water and sewer area is not eligible for the program. However, § 2-509 (d) (4) provides an exception if the land "is outstanding in productivity and is of significant size." Staff recommends that the Foundation approve the exception because: 1) the property is relatively large for the county; 2) the soils are excellent quality (100% prime); and 3) the majority of the property lies outside the water and sewer area. It would not serve the interests of the program to require the landowner to exclude the area of the property from the easement. A letter from the Soil Conservation District was attached with the agenda memo.

Tom Lawton, Program Administrator, was available at the meeting. The County's water and sewer plans are fairly general and do not have a specific measurement to give the landowner. The County Zoning is R2 and that is 600 feet from the road. It is the policy of the County that service will be extended in the right-of-way and not across the property.

Mr. Colhoun had stepped out of the meeting at 11:10 am and returned at 11:15 am. Mrs. Vera Mae Schultz, Vice Chair, chaired the meeting in his absence.

Motion #12: To approve the re-review of Gerard and Donna Dumsha's easement application.

Motion: Doug Wilson
Status: **Approved**

Second: James Pelura

MEMO TO THE FILE

Mr. Richards was informed that in the opinion of this reviewer, the proposed Farmer's Roadside Stand at 4851 Long Green Road was in fact a Farm Market as per the definitions in Section 101, BCZR. A Farm Market requires a Special Exception in the RC-2 zone. Mr. Richards determined that the applicant could file his application for a Farmer's Roadside Stand.

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
4851 Long Green Road; N/S Long Green Rd, * ZONING COMMISSIONER
1,500' W c/line Long Green Drive *
11th Election & 3rd Councilmanic Districts
Legal Owner(s): Prigel Family Creamery, Inc* FOR
Petitioner(s) * BALTIMORE COUNTY
* 08-456-X

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and 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
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED

APR 24 2008

Per.....

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of April, 2008, a copy of the foregoing Entry of Appearance was mailed to Jennifer R. Busse, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE COUNTY
4851 Long Green Road; N/S Long Green Rd, *
1,500' W c/line Long Green Drive * BOARD OF APPEALS
11th Election & 3rd Councilmanic Districts
Legal Owner(s): Prigel Family Creamery, Inc* FOR
Petitioner(s) * BALTIMORE COUNTY
* 08-456-X

* * * * *

ENTRY OF APPEARANCE

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

RECEIVED

SEP 30 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of September, 2009, a copy of the foregoing Entry of Appearance was mailed to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286 and John Gontrum, Esquire and Jennifer R. Busse, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

5025 Long Green Road
Glen Arm, MD 21057
February 29, 2008

Baltimore County Zoning Office
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: 4851 Long Green Road
Farmer's Roadside Stand

Dear Sir/ Madam:

On behalf of myself and other neighbors who believe we have been misled about a proposed roadside stand at this site, I object to and would like to file a formal protest to the construction and/or operation of this alleged farmer's roadside stand.

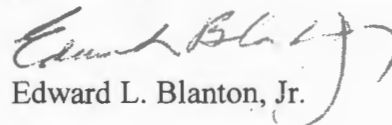
I request that a public hearing be scheduled so that I and my neighbor may appear and present the reasons for our opposition.

The owners of this farm have granted conservation easements on this property for which they were compensated, either in the form of monetary payments or tax write-offs. The sign was posted on the south side of Long Green Road, beside the dirt road leading back to their dairy barns. The requested use was a farmer's roadside stand, and no one objected to a road side stand erected on the south side of the road.

Upon inquiry, we find that what the Prigels intend to build is a large creamery, heated, air conditioned, with public toilets and parking spaces for customers, on the north side of the road, on pasture land which we all assumed was safe from development of this type forever. If approved, this would be the first commercial use between the Loch Raven Reservoir and Baldwin Maryland, replacing the dairy store Cloverland Dairy Farms erected on its old farm on Dulaney Valley Road, which was objected to by the Long Green Valley Association and eventually closed.

If it was wrong for Cloverland to sell milk and ice cream on its property on Dulaney Valley Road, it is even worse for the Prigels to do it on in the middle of Historic Long Green Valley in the middle of approximately 5000 acres of conserved land paid for by Maryland taxpayers. My check for \$50 is enclosed to reimburse, I assume, the government for the trouble of scheduling the public meeting.

Sincerely,


Edward L. Blanton, Jr.



FORMAL DEMAND FOR HEARING

CASE NUMBER: Farmers Roadside Stand

Address: 4851 Long Green Rd.

Petitioner(s): Robert Priegel

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I/We Edward Blanton, Jr.
Name - Type or Print

☒ Legal Owner OR ☐ Resident of

5025 Long Green Rd.
Address

Glen Arm MD 21057
City State Zip Code

410.592.9171
Telephone Number

which is located approximately 400 feet from the property, which is the subject of the above petition, **do hereby formally demand that a public hearing be set in this matter.**

ATTACHED IS THE REQUIRED PROCESSING FEE FOR THIS DEMAND.

Edward J. Blanton Jr. 2/29/08
Signature Date

Signature Date
Revised 9/18/98 - wcr/scj



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

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

March 3, 2008

Robert Prigel
4851 Long Green Road
Glen Arm, MD 21057-9725

Dear: Mr. Prigel:

RE: Demand for Public Hearing-Farmer's Roadside Stand; 4851 Long Green Road

The purpose of this letter is to officially notify you that the posting of the subject property has resulted in a timely demand submitted on February 29, 2008 for a public hearing concerning your proposed Farmer's Roadside Stand. I regret to inform you that we are withholding approval of your Use Permit because it has been superseded by said demand for a public hearing, pursuant to Section 424.4.A.3 of the Baltimore County Zoning Regulations (BCZR).

If you wish to proceed with your request, you must file for a zoning Special Exception (public hearing) for a Farm Market without delay. Section 101, BCZR defines a Farm Market as an accessory structure, which sells at retail, processed dairy products among other items. The filing fee for the Special Exception is \$380.00. There is also a requirement the hearing be advertised for which you will be billed later by Patuxent Publishing. The property must be reposted with the hearing date, time, and location. I am enclosing the filing procedure, including the required forms and checklist, and when completed, you must call 410-887-3391 for an appointment to file your petition. A revised scaled site plan sealed by an engineer, surveyor, or landscape architect must be submitted, in accordance with the checklist.

If you decide to withdraw your request, please notify us in writing within 30 days using the above captioned reference so that the Use Permit file can be closed. It may be more expedient to first proceed with the construction of the dairy processing facility, which will need to undergo review by the Development Review Committee (DRC). While the facility is under construction, you may then wish to pursue the Special Exception for a farm market. If you need any further explanation or additional information, I may be reached at 410-887-3391.

Sincerely,

Bruno Rudaitis
Zoning Review

Enclosures
C: Protestants

APPEAL

Petition for Special Exception
4851 Long Green Road
N/s Long Green Rd., 1500' w c/l Long Green Valley Dr.
11th Election District – 3rd Councilmanic District
Legal Owners: Prigel Family Creamery, Inc.

Case No.: 2008-0456-X

Petition for Special Exception (March 31, 2008)

Zoning Description of Property

Notice of Zoning Hearing (April 21, 2008)

Certification of Publication (The Jeffersonian – May 20, 2008)

Certificate of Posting (May 19, 2008) by Robert Black

Entry of Appearance by People's Counsel (April 24, 2008)

Petitioner(s) Sign-In Sheet – 4 Sheets

County Representative Sign-In Sheet – 1 Sheet

Citizen(s) Sign-In Sheet – 1 Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibit

1. Site Plan
2. Aerial Photo
3. Letters (A & B)
4. Petition from Church

RECEIVED

SEP 24 2008

**BALTIMORE COUNTY
BOARD OF APPEALS**

Protestants' Exhibits:

1. Photos (A thru D)
2. Memo from Economic Development
3. Prigel Creamery Business Plan

Miscellaneous (Not Marked as Exhibit)

1. Memo to File
2. Letters of opposition (4)
3. Letter from J. Carroll Holzer on behalf of LGVA (4-18-08)
4. Subpoena 's (6)
5. Letter from John Gontrum (7-1-08)

Deputy Zoning Commissioner's Order (GRANTED – July 11, 2008)

Notice of Appeal received on August 1, 2008 from J. Carroll Holzer for LGVA

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
See Attached Letter

date sent September 24, 2008, klm



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

~~XXXXXXXXXXXXXX~~

jcholzer@cavtel.net

April 18, 2008
#7778

HAND DELIVERED

Mr. Timothy Kotroco, Director
Permits & Development Management
111 Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
APR 23 2008

BY:.....

RE: *Building Permit # B683063*
Applicant: Robert Prigel and Bellevale Farm, Ltd
4851 Long Green Road

Dear Mr. Kotroco:

I represent The Long Green Valley Association and several named individuals in reference to the above named property owner. In November, 2007, Bellevale Farm, Ltd, through Bob Prigel submitted an application for a building permit to construct a pole building for "milk processing" which consists of 9,240 square feet. I have attached a copy of the three page site plan prepared by Conestoga Buildings and submitted to the County last November.

In late March or early April, the Prigel Family Creamery filed a Petition for Special Exception, through their attorney, Jennifer Busse, "to permit a Farm Market; or alternately for a Farmer's Roadside Stand. (See Petition for Special Exception attached hereto and incorporated herein) On behalf of my clients, I filed a Petition for Special Hearing on April 4, 2008, asking the Zoning Commissioner whether a dairy processing facility is permitted in an R.C. 2 Zone and whether the property owner may lease the dairy processing facility to a third party?

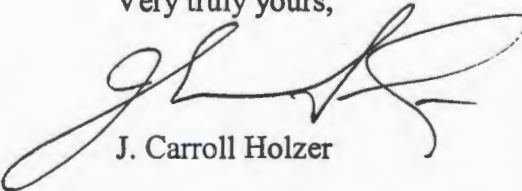
Coincidentally on April 4, 2008, your Department issued a building permit to construct a pole building at 4851 Long Green Road. From a review of the plans for the pole building, there is no detail about the use of the building, need for water and plumbing, etc. particularly since the Prigel Family Creamery seeks a Special Exception for a Farm Market or Farmer's Roadside Stand. The plans also do not show any equipment to be contained within the structure, but it is obvious from their Petition for Special Exception that equipment will be required for a creamery, as well as a retail area.

Finally, the plans that accompanied the building permit application does not reflect any parking areas, whereas the plat accompanying the Petition for Special Exception articulates the true purpose of the "pole building." It is clear that the plat submitted with the building permit application failed to reflect the true intent of the pole building.

It is my clients' position that in reviewing the permit application and the supporting construction drawings, as well as the Prigel's Petition for Special Exception that there is a significant issue surrounding the use of the pole building by the Prigels that is not clarified by the documents already presented to the County. My clients also believe that the zoning hearings, which to date have not be scheduled, will address the issue of the use and purpose of the facility and whether it is permitted in an R.C. 2 Zone.

For all the foregoing reasons, Petitioners/Protestants respectfully request that Baltimore County suspend or revoke permit number B683063 until the Zoning Commissioner addresses the questions raised in not only the Prigel's Petition for Special Exception, but the Petition for Special Hearing filed by The Long Green Valley Association and the named individuals.

Very truly yours,



J. Carroll Holzer

JCH:mlg

cc: William Wiseman, Zoning Commissioner
David Carroll, Director DEPRM
Doug Swam, PDM
LGVA, Inc.
Jennifer Busse, Esq.

IN THE MATTER OF:
PRIGEL FAMILY CREAMERY

(4851 Long Green Road)

N/side Long Green Road

11th Election District

3rd Councilmanic District

Legal Owners:

Prigel Family Creamery, Inc., Robert Prigel

* BEFORE THE ZONING
*
* COMMISSIONER OF
*
* BALTIMORE COUNTY
*
* Case No. 2008-0456-X

* * * * *

SUBPOENA DUCES TECUM

Please process in accordance with Zoning Commission Rule IV (c).

TO: David Iannucci, Director

Baltimore County Dept. of Economic Development

400 Washington Ave., Mezzanine

Towson, MD 21204

YOU ARE HEREBY COMMANDED TO: ☐ Personally appear; ☐ Produce documents and or objects only;

☒ Personally appear and produce documents or objects;

at Room 106, County Office Bldg. 111 W. Chesapeake Ave, Towson, MD

(Place where attendance is required)

on Wednesday, the 4th day of June, 2008 at 10: 00 a.m. for such witness' testimony and continuing thereafter as necessary without need for separate subpoena for such witness' testimony as determined by the Zoning Commissioner. The witness can be "on call" and available in their office until called to appear as a witness.

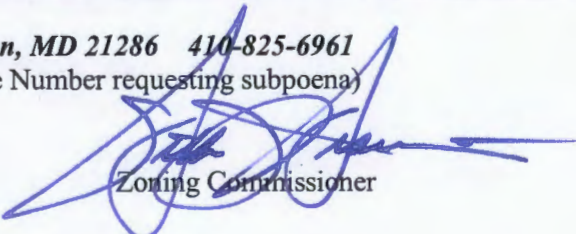
YOU ARE COMMANDED TO produce the following documents or objects:

Information on loans/grants to Bob & Carol Prigel; Bellevale Farm Ltd. Partnership; Bellevale Farm, Inc.; Prigel Family Creamery, Inc.; Cowgirl Creamery; Tomales Bay Foods. Copy of Prigel business plan and equipment required. Certification of compliance with federal & state regulations.

J. Carroll Holzer, 508 Fairmount Ave., Towson, MD 21286 410-825-6961

(Name of Party or Attorney, Address and Phone Number requesting subpoena)

Date 5-27-08


Zoning Commissioner

SHERIFF'S RETURN

☐- Served and copy delivered on date indicated below.

☐- Unserved, by reason of

Date: _____

Fee: \$

SHERIFF

IN THE MATTER OF:
PRIGEL FAMILY CREAMERY
(4851 Long Green Road)
N/side Long Green Road
11th Election District
3rd Councilmanic District
Legal Owners:
Prigel Family Creamery, Inc., Robert Prigel

* BEFORE THE ZONING
*
* COMMISSIONER OF
*
* BALTIMORE COUNTY
*
* Case No. 2008-0456-X

* * * * *

SUBPOENA DUCES TECUM

Please process in accordance with Zoning Commission Rule IV (c).
TO: Prigel Family Creamery
C/o Jennifer Busse, Esquire
Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Ave., 4th Floor
Towson, MD 21204

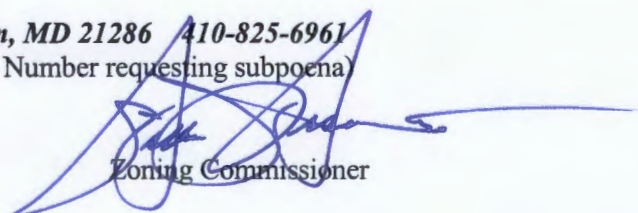
YOU ARE HEREBY COMMANDED TO: ☐ Personally appear; ☐ Produce documents and or objects only;
☒ Personally appear and produce documents or objects;
at Room 106, County Office Bldg. 111 W. Chesapeake Ave, Towson, MD
(Place where attendance is required)

on Wednesday, the 4th day of June, 2008 at 10: 00 a.m. **for such witness' testimony and continuing thereafter as necessary without need for separate subpoena for such witness' testimony as determined by the Zoning Commissioner. The witness can be "on call" and available in their office until called to appear as a witness.**

YOU ARE COMMANDED TO produce the following documents or objects:
Federal and state tax returns of Bellevale Farm, Ltd. Partnership; Bellevale Farm, Inc.; or Prigel Family Creamery for the past three years.

J. Carroll Holzer, 508 Fairmount Ave., Towson, MD 21286 410-825-6961
(Name of Party or Attorney, Address and Phone Number requesting subpoena)

Date 5-27-08


Zoning Commissioner

SHERIFF'S RETURN

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☐- Unserved, by reason of

Date: _____

Fee: \$

SHERIFF

IN THE MATTER OF:
PRIGEL FAMILY CREAMERY
(4851 Long Green Road)
N/side Long Green Road
11th Election District
3rd Councilmanic District
Legal Owners:
Prigel Family Creamery, Inc., Robert Prigel

* BEFORE THE ZONING
*
* COMMISSIONER OF
*
* BALTIMORE COUNTY
*
* Case No. 2008-0456-X

* * * * *

SUBPOENA DUCES TECUM

Please process in accordance with Zoning Commission Rule IV (c).
TO: Wally Lippincott
DEPRM
County Courts Bldg., 4th Floor
Towson, MD 21204

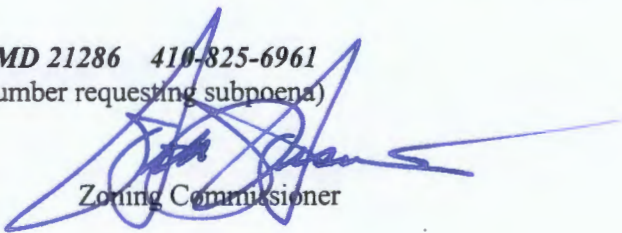
YOU ARE HEREBY COMMANDED TO: () Personally appear; () Produce documents and or objects only;
(X) Personally appear and produce documents or objects;
at Room 106, County Office Bldg. 111 W. Chesapeake Ave, Towson, MD
(Place where attendance is required)

on Wednesday, the 4th day of June, 2008 at 10: 00 a.m. for such witness' testimony and continuing thereafter as necessary without need for separate subpoena for such witness' testimony as determined by the Zoning Commissioner. The witness can be "on call" and available in their office until called to appear as a witness.

YOU ARE COMMANDED TO produce the following documents or objects:
Information on loans/grants to Bob & Carol Prigel; Bellevale Farm Ltd. Partnership; Bellevale Farm, Inc.; Prigel Family Creamery, Inc.; Cowgirl Creamery; Tomales Bay Foods. Copy of Prigel business plan and equipment required. Description of Prigel current operation (no. of cows, production, etc.) Does business plan call for importation of milk or milk products? All County files regarding proposed creamery and its operation.

J. Carroll Holzer, 508 Fairmount Ave., Towson, MD 21286 410-825-6961
(Name of Party or Attorney, Address and Phone Number requesting subpoena)

Date 5-27-08


Zoning Commissioner

SHERIFF'S RETURN

()- Served and copy delivered on date indicated below.
()- Unserved, by reason of

Date: 5-27-08

Fee: \$

SHERIFF

IN THE MATTER OF:
PRIGEL FAMILY CREAMERY
(4851 Long Green Road)
N/side Long Green Road
11th Election District
3rd Councilmanic District
Legal Owners:
Prigel Family Creamery, Inc., Robert Prigel

* BEFORE THE ZONING
*
* COMMISSIONER OF
*
* BALTIMORE COUNTY
*
* Case No. 2008-0456-X

* * * * *

SUBPOENA DUCES TECUM

Please process in accordance with Zoning Commission Rule IV (c).
TO: Alan Taylor, Director
MD Dept. of Health & Mental Hygiene
Division of Milk Control, Office of Food Protection & Consumer Health
6 St. Paul Street, Suite 1301
Baltimore, MD 21202-1608

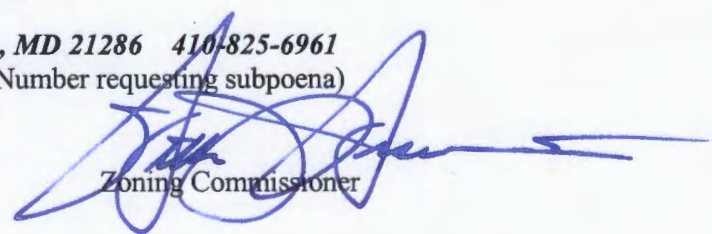
YOU ARE HEREBY COMMANDED TO: ☐ Personally appear; ☐ Produce documents and or objects only;
☒ Personally appear and produce documents or objects;
at Room 106, County Office Bldg. 111 W. Chesapeake Ave, Towson, MD
(Place where attendance is required)

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YOU ARE COMMANDED TO produce the following documents or objects:
Any applications of Bellevale Farm, Ltd. Partnership; Bellevale Farm, Inc.; or Prigel Family Creamery.
Any floor plans, equipment or operating procedure

J. Carroll Holzer, 508 Fairmount Ave., Towson, MD 21286 410-825-6961
(Name of Party or Attorney, Address and Phone Number requesting subpoena)

Date 5-27-08


Zoning Commissioner

SHERIFF'S RETURN

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☐ - Unserved, by reason of

Date: _____

Fee: \$

SHERIFF

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PRIGEL FAMILY CREAMERY
(4851 Long Green Road)
N/side Long Green Road
11th Election District
3rd Councilmanic District
Legal Owners:
Prigel Family Creamery, Inc., Robert Prigel

* BEFORE THE ZONING
*
* COMMISSIONER OF
*
* BALTIMORE COUNTY
*
* Case No. 2008-0456-X

* * * * *

SUBPOENA DUCES TECUM

Please process in accordance with Zoning Commission Rule IV (c).
TO: Director
Office of the Board of Regents
University System of Maryland
3300 Metzerott Road
Adelphi, MD 21783

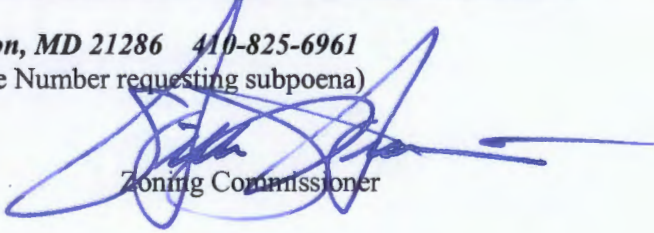
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J. Carroll Holzer, 508 Fairmount Ave., Towson, MD 21286 410-825-6961
(Name of Party or Attorney, Address and Phone Number requesting subpoena)

Date **5-27-08**


Zoning Commissioner

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☐ - Unserved, by reason of

Date: _____

Fee: \$

SHERIFF

IN THE MATTER OF:
PRIGEL FAMILY CREAMERY
(4851 Long Green Road)
N/side Long Green Road
11th Election District
3rd Councilmanic District
Legal Owners:
Prigel Family Creamery, Inc., Robert Prigel

* BEFORE THE ZONING
*
* COMMISSIONER OF
*
* BALTIMORE COUNTY
*
* Case No. 2008-0456-X

* * * * *

SUBPOENA DUCES TECUM

Please process in accordance with Zoning Commission Rule IV (c).

TO: Stephen McHenry, Executive Director
MD Agricultural & Resource Based Development Corp.
1410 Forest Drive, Suite 28
Annapolis, MD 21403

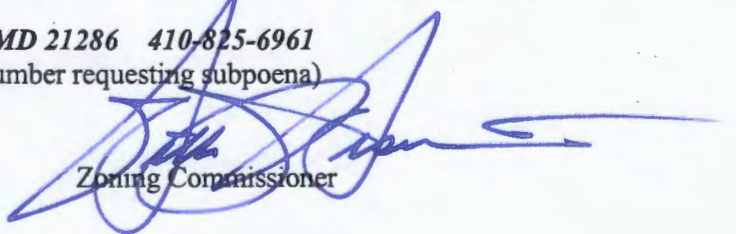
YOU ARE HEREBY COMMANDED TO: ☐ Personally appear; ☐ Produce documents and or objects only;
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(Place where attendance is required)

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J. Carroll Holzer, 508 Fairmount Ave., Towson, MD 21286 410-825-6961
(Name of Party or Attorney, Address and Phone Number requesting subpoena)

Date 5-27-08


Zoning Commissioner

SHERIFF'S RETURN

☐ - Served and copy delivered on date indicated below.
☐ - Unserved, by reason of

Date: 5-27-08

Fee: \$

SHERIFF

WHITEFORD, TAYLOR & PRESTON L.L.P.

JOHN B. GONTRUM
DIRECT LINE (410) 832-2055
DIRECT FAX (410) 339-4058
JGontrum@wtplaw.com

TOWSON COMMONS, SUITE 300
ONE WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5025
MAIN TELEPHONE (410) 832-2000
FACSIMILE (410) 832-2015

BALTIMORE, MD
COLUMBIA, MD
FALLS CHURCH, VA
TOWSON, MD
WASHINGTON, DC
WILMINGTON, DE*

WWW.WTPLAW.COM
(800) 987-8705

June 30, 2008

Thomas H. Bostwick, Esquire
Deputy Zoning Commissioner
Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

**Re: Bellevale Farm
Case No. 08-456-X**

Dear Mr. Bostwick:

As you may recall, two issues were before you in the above referenced case. The first issue pertained to the request for a special exception for a farm market, and the other issue was whether a use permit for a farmer's roadside stand was permitted for the requested use of the sale of dairy products. The current definitions of the uses set forth in the Baltimore County Zoning Regulations (BCZR) were contained in County Council Bill 41-1992, which stated as its purpose: "to clarify and classify the various types of farming, forestry, nursery and agricultural related operations and activities in order to preserve and maintain such operations and activities...." The legislation clearly was intended to broaden the uses allowed farmers.

Roadside Stand

The farmer's roadside stand definition originally appeared in the 1955 code. It defined a roadside stand as follows: "An accessory structure for the sale of articles grown or produced on the premises." The definition first restricts sales to items produced on the premises so that other items not produced on the premises may not be sold. Second, the definition also allows the sale of both articles "grown" such as fruits

and vegetables and items "produced" which presumably would be items not grown such as dairy products, honey, jams and jellies, etc.

County Council Bill 41-1992 repealed and redefined a farmer's roadside stand as:

"An accessory structure owned and operated by an agricultural producer, used for the sale of indigenous farm products, the majority of which have been grown on the premises, on adjacent land or on properties farmed by the same agricultural producer."

Section 404 of the BCZR was amended to permit up to 50% of the produce to be brought in from other locations. This was a major shift in the regulations and allowed farmer's roadside stands not only to sell items from other premises farmed by the producer but also to sell products that may not even be grown or produced in Maryland. Consequently, it is clear that the new definition was not meant to be more restrictive than the old definition, but more permissive. Furthermore, under the 1992 regulations a use permit became necessary for a permanent roadside stand with the possibility of a hearing process. The regulations consequently gave greater public input in exchange for greater flexibility in the products to be sold.

Bill 41-1992 also added several definitions to the zoning regulations including that of "indigenous crops" which are defined to be "produce which can be grown in the area under natural conditions, without the help of controlled-environmental structures." Unfortunately, although the council defined the term, it is nowhere used in the zoning regulations. It only serves to muddy the interpretive waters. The term "produce stand" was also defined in Bill 41-1992 as: "An accessory structure or a vehicle temporarily placed on a farm property for the sale of indigenous produce, all of which has been grown or produced on that property or on adjacent land, or on properties farmed by the same agricultural producer." This definition is broader than the original "farmer's roadside stand" definition but pertains to temporary uses. Like the original definition it couples the words "grown or produced".

It is easy to become mired in the distinctions between "crops", "produce" and "products"; the lack of clarity in the definitions is certainly not helpful. It would appear that the words "products" and "produce" are interchangeable, and perhaps the reason why the term "indigenous crops" was not used in the other definitions is that ultimately it was found to be too restrictive. Webster's Third New International Dictionary defines "produce" in a general way to be products which are either brought forth or yielded "either naturally or as a result of effort and work." This general definition seems to be in keeping with the adoption of the definition of "agriculture,

commercial" subsequently enacted in 1993, which "includes the production of field crops, dairying, pasturage agriculture...." This definition also includes ancillary activities such as "processing, packing, storing, financing, managing, marketing or distributing...." In the expansive definition of farms is the marketing and distribution of products brought about through commercial agriculture.

If the county council had meant to restrict farmer's roadside stands to the sale of indigenous crops it would have said so. Instead, it restricted the roadside stand to the sale of produce or products produced on the farm. In this case the dairy products are produced on the farm and would seem as a matter of common sense, as well as in furtherance of the stated desire to continue the uses in Baltimore County, to be permitted. Zoning restrictions against the use of property are in derogation of the common law right to use property so as to realize its highest utility. *Bennett v. Zelinsky*, 163 Md. App. 292, 878 A.2d 670 (2005). Consequently, they should be construed in their broadest sense to effectuate their regulatory purpose but language should not be read into them restricting uses beyond that which was clearly intended. In this case the clear intent was to broaden the scope of what could be sold in farmer's roadside stands and also in farm markets.

Farm Market

In Bill 98-1975, which adopted the R.C. zones, the definition of Farmers' Co-op Roadside Stands was introduced to the zoning regulations. It was defined as follows:

"A principal building other than a dwelling which is used by one or more individuals commonly engaged in the sale of mutually grown seasonal produce from their respective farms or satellite farms."

The limitations of this use are obvious. This definition was repealed when the farming regulations were overhauled in Council Bill 41-1992.

The definition of a "farm market" was intended to be broadened from that of a farmers' co-op stand, particularly as it permitted the sale of non-agricultural goods and the sale of other locally grown produce which did not have to be the result of a co-op arrangement. Like the co-op stands the use was permitted by special exception in the R.C. 2 zone. Dairy products are included in the non-agricultural items. Perhaps, it was envisioned that farm markets would have dairy cases selling products unrelated to those grown or made on the farm. Perhaps also, the inclusion of dairy products in the non-agricultural items is because the definition of "agriculture, commercial" had not yet

been adopted amending the BCZR to include "dairying" and the consequent sale of dairy products as commercial agriculture.

When the definitions of "farm market" and "farmer's roadside stand" are read in the context of what is meant by commercial agriculture then clearly the sale of agricultural products either in a farmer's roadside stand or in a farm market whether crops, or other produce of apiculture or of viticulture would be included. It should be recognized that prior to 1993 the only applicable definition of "farm" was of a tract of land "primarily devoted to agriculture, included but not limited to raising of crops, dairy, forestry, livestock and poultry farming; horse breeding, training and stabling; grazing; commercial greenhousing, flower farms and nurseries...."

The 1993 definition of "agriculture, commercial" was intended to emphasize the business and commercial aspects of agriculture. Because "dairying" is not defined in the BCZR, Webster's dictionary becomes the applicable reference. "Dairying" is defined in Webster's as "the business of conducting a dairy". Webster's defines a dairy to be "a room, building, or establishment where milk is kept and butter or cheese is made" and "the department of farming or of a farm that is concerned with the production of milk, butter, and cheese and also "a dairy farm: *collectively*: the cows of a farm, and, finally, an establishment for the sale or distribution of milk or milk products." If Webster's is strictly followed, then no use permit or special exception would be necessary to sell dairy products produced on the farm, for it would be part of the business of conducting a dairy. The regulations as they exist today, therefore, clearly intended to allow the sale of dairy products in both a farmer's roadside stand and in a farm market.

Section 404

Section 404 was substantially rewritten in Bill 41-1992. Prior to enactment of 41-1992, Section 404 only referred to the required setback of farmers' roadside stands. These were purely accessory structures allowed as of right in the R.C. 2 zone.

Section 404.4C now requires that farmers' roadside stands be approved only by use permit. A site plan must be filed, and the use permit should be issued with such conditions as will "ensure that the use will not be detrimental to the health, safety or general welfare of the community." Indeed, the BCZR now requires that if a hearing occurs that the zoning commissioner must make findings and conditions that are based on the special exception objectives. Although there is no need for a *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981) evaluation because the use is permitted as of right, in the event that an issue is raised at public hearing, the project must still meet the Section

502.1 standards. The burdens of production and proof are satisfied by the Petitioner upon filing for the application because there is an assumption that the use is permitted. Only upon a request for public hearing and a showing by Protestants or by county agencies with respect to specific criteria of Section 502.1 does the burden shift back to the Petitioner to demonstrate that the objectives of Section 502.1 have been met.

A farm market, however, according to Section 404.4D must meet the special exception standards as well as the standards in Section 502.1. In short, under this provision the Petitioner has the initial burdens of both production and proof like in a typical special exception.

No special exception or use permit condition, however, can be contrary to the terms of the agricultural easement or the regulations adopted by the County Council pursuant to Section 2-513 of the Agriculture Article of the Annotated Code of Maryland, for those provisions govern the use and development of land in the case of any conflict (BCZR Section 1A01.4).

Summary

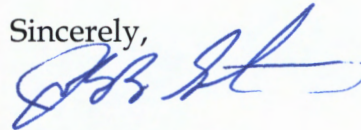
The Bellevale Farm application initially was for a farmer's roadside stand under the interpretation that dairy products were indigenous products permitted to be sold as a matter of right. It is clear, however, that dairy products are not crops or fruits or vegetables and in that respect differ from the produce usually sold at other roadside stands. When the hearing on the roadside stand was requested, Petitioner was also given the opportunity to file for a special exception for a farm market, which clearly grants the sale of dairy products as well as permit additional items for sale such as crafts. Although a farm market is a more expansive use, and requires a more expansive burden of proof than a roadside stand, it is certainly justified under the evidence produced at the zoning hearing. It also is not relief in conflict with that granted by the Maryland Agricultural Land Preservation Foundation ("MALPF") which approved a motion "to approve the request of Bellevale Farm, Inc. to allow a creamery operation, processing facility and farm store on an easement property subject to the parking lot being pervious." The MALPF approval also permitted up to 600 square feet of sales area for the sales of accessory, non-agricultural items, which is consistent with the concept of a farm market.

In this case Petitioner respectfully requests granting the petition for special exception for farm market, as well as acknowledging the right to have the farmer's roadside stand, at this location. The special exception relief requested by Petitioner is independent of the issue of the farmer's roadside stand and must be separately

Thomas H. Bostwick, Esquire
July 1, 2008
Page 6

reviewed. A special exception may either be granted or denied, and if denied, may not be sought again for 18 months per BCZR Section 500.12. The approval of this use would allow the uses requested by Petitioner. There was no testimony or evidence adverse to Petitioner's testimony with respect to Section 502.1 and the impact of the use at this particular location within the zone. Petitioner believes it has met its burdens of production and proof to justify the proposed use.

Sincerely,



John B. Gontrum

JBG:jbg
cc. J. Carroll Holzer, Esquire
People's Counsel for Baltimore County

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

March 27, 2008

The Board of Directors of the Long Green Valley Association held an emergency meeting on March 26, 2008 and voted to withdraw their letter of support written on September 27, 2007 to Mr. Robert Prigel regarding his farmer's roadside stand/creamery on 4851 Long Green Road in Glen Arm Maryland.

Sincerely,



Carol Trela, Secretary

cc.

Mr. Robert Prigel, III
Mr. Robert Prigel, Sr,
Baltimore County Zoning Office
Long Green Valley Conservancy, Mr. John Wilkerson, President
Mr. Edward L. Blanton, Jr.
Mrs. Susan Yoder
Mr. Wally Lippencott
Mr. Bruno Rudaitis, Zoning Review
Mr. Bryan McIntire
Department of Agriculture
Maryland Historic Trust
Mr. Carroll Holzer

faxed to J. Bussey
3/31/08

410-339-4627

Long Green Valley Conservancy, Inc.
PO Box 37
Hydes, MD. 21082

Baltimore County Zoning
111 W. Chesapeake Ave.
Towson MD. 21204

RE: 4851 Long Green Road
Farmer's Roadside Stand

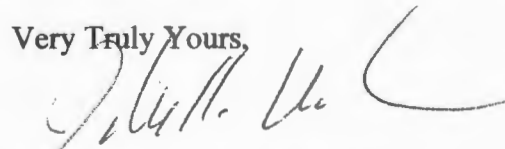
Dear Sir,

This letter is to advise you that the Long Green Valley Conservancy is adamantly opposed to the Prigel's (a.k.a. Bellevale Farm, LLC) plan to build a creamery on the *NORTH* side of Long Green Road. The Conservancy has just learned that the proposed "roadside stand" will actually be a 10,000 Sq. foot building with heating, air conditioning, seating, bathrooms and public parking. It is difficult to comprehend how a building of this magnitude could ever qualify as a "roadside stand". Obviously calling it a "roadside stand" is an attempt to circumvent the special exception and public hearing requirements that our community should be entitled to.

Further, the proposed site on the *NORTH* side of Long Green Pike is in the middle of open space, on pastureland, along a beautiful scenic drive. This view shed deserves to be preserved. It is open space that has existed for hundreds of years and in fact was a major contributing factor to the Long Green Valley's designation as a National Historic District by the National Register of Historic Places. Long Green Road is in the heart of the National Historic District and in the middle of lands that the community and the Conservancy have worked very hard to preserve. We now have over half of the Historic District permanently preserved with more acres to follow.

There are other options for the Prigels' creamery location that would not result in the elimination of open space. The Conservancy applauds the Prigel's farm designation as "certified organic" and support their farming operation, including the proposed creamery, however not in this location and not involving the destruction of scenic open space. Thank you for your time and consideration.

Very Truly Yours,



John K. Wilkerson, President
Long Green Valley Conservancy, Inc.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Prigel Family Creamery – Legal Owner

08-456-X

DATE: May 25, 2010

BOARD/PANEL: Maureen E. Murphy
Wendell H. Grier
Robert W. Witt

RECORDED BY: Theresa R. Shelton, Administrator

PURPOSE: To deliberate the following:

1. Motion for Reconsideration filed by Protestant and People's Counsel for Baltimore County.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- That Protestants essentially stated that the decision/determination of the Maryland Agricultural Land Preservation Foundation ("MALPF") was wrong.
- Protestant's view that decision/determination of MALPF should have been more in-depth
- That this argument was not presented in Closing Memos
- The MALPF was discussed during the hearing and there was evidence presented
- Prigel sought the permission of MALPF; and will abide by the conditions set forth
- The Deed of Easement gave an exception and stated "Except as otherwise provided..."
- MALPG is the Grantee and can approve specific uses under an easement
- MALPG is the Grantee, made the decision and no one else is authorized to interpret
- MALPG is the only authority; the Board does not have the authority to change the position of the MALPG
- MALPG controls the easement and has the authority as to what can and can not go in
- Scope – when the Foundation approves a use, the local county may not deny the use
- People's Counsel argument that MALPF did not explain the decision with more specific reasoning – MALPG knows what it is doing
- No new evidence or law presented

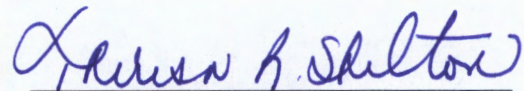
08-456-X

MINUTES OF DELIBERATION ON MOTION FOR RECONSIDERATION

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Protestant's and People's Counsel for Baltimore County Motions for Reconsideration.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,



Theresa R. Shelton

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Prigel Family Creamery – Legal Owner

08-456-X

DATE: January 12, 2010

BOARD/PANEL: Maureen E. Murphy
Wendell H. Grier
Robert W. Witt

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Exception to permit a Farm Market or in the alternative a Farmer's Roadside stand on the subject property.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed the facts of this case. The Petitioners requested a Special Exception to allow a Farmer's Market on the subject property. If they did not qualify for the Special Exception, the Petitioners requested they be allowed to have a Farmer's Roadside Stand which is allowed by right in the current zone. Therefore the issue before the Board was whether to approve a Farmer's Market, Farmer's Roadside Stand or neither.
- The Petitioners provided, in their memorandum, copies of recent legislation by the County Council wherein the definitions of Farmer's Market and Farmer's Roadside Stand changed. The definition of Farmer's Market used to allow the sale of vegetables, produce and processed dairy products which were being grown and sold on the property. The definition changed eliminating the processed dairy products and replacing it with indigenous farm products.
- The Board reviewed that the Farmer's Roadside stand is allowed on the subject property as it is currently zoned and therefore, the Petitioners do not require a Special Exception to allow the Roadside stand.
- The Board reviewed the Memorandum of People's Counsel wherein an issue was presented that was not presented at the hearing. People's Counsel argues that with regard to the Master Water and Sewerage Plan, "[u]nder Maryland law, 'any facility with the capability of generating more than 5,000 gallons per day is defined as a multiuse water or sewerage facility.'" The Board agreed with the Petitioner that the request does not permit multiuse.
- The Board discussed 5 issues presented by the Protestants in their Memorandum. The first issue being that the Petitioners were requesting a Farmer's Market and the size and

scope of the Petitioner's request eliminates the request for a Farmer's Roadside stand. The Board determined that this argument was not relevant because the request for a Farmer's Market and the request for a Farmer's Roadside stand stand on their own. The Board decided these requests could not be meshed together as they are each under separate regulations.

- The second issue presented by Protestants is that the definition of Farmer's Market requires that "products grown or grown and produced primarily on their own farm" be sold. Protestants argue that dairy products are not grown. The Board determined that dairy products are not grown but they are produced and therefore they do meet the standards of the regulations.
- Third, the Protestant presented that the new legislation eliminated "processed dairy products" and therefore the sale of dairy products is no longer allowed on the property. The Board determined that the new legislation did not eliminate the sale of dairy products, the intention was not to remove dairy products from sale at a Farmer's Market as the Protestants argue, the intent was to clarify the previous definition with regard to dairy products.
- The fourth issue presented by the Protestant was that the Petitioner must obtain consistency with the master water and sewage plant. The Board determined that the Petitioners were not required to obtain consistency as the requested Farm Market is not a multi-use building.
- The last issue presented by Protestants was the request did not meet the Special Exception standards in the Regulations. The Board determined that the Petitioners presented evidence on each of the requirements for the requested Special Exception and the evidence presented did meet the standards of the Regulations.
- At the hearing before the Board, the Protestants were also concerned with traffic issues. The Board reviewed testimony and evidence presented and have determined that the location for proposed Market or Stand is ideal due to line of sight and access. The Board also determined that the location is not subject to many traffic accidents and the impact would be minimal.
- The Board determined that the Protestants and People's Counsel did not present any evidence to prevent the Farmer's Market or Roadside stand. Both the Market and Stand requests conform to the Regulations and a farmer has a right and should have the opportunity to sell his products on his own.

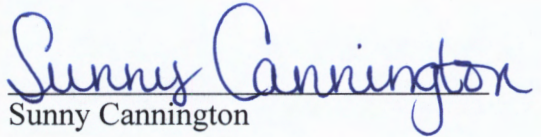
DECISION BY BOARD MEMBERS: The Board determined that the requested Farmer's Market meets the regulation standards to grant a Special Exception.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to GRANT the requested Petition for Special Exception to allow a

Farmer's Market on the subject property or in the alternative, a Farmer's Roadside Stand as requested by the Petitioners.

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

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE _____

Pelittones
~~CITIZEN'S~~ SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Curtis R. Childs ✓	263 Ridge Ave	Towson, MD 21286	CurtisRChilds@comcast.net
Ann Childs ✓	4931 Long Green Rd	Glen Arm, MD 21057	AnnChilds@bellsouth.com
Leo Childs ✓	4853 Long Green Rd.	Glen Arm, MD 21057	leachib15@comcast.net
David & Lucy Smith ✓	16701 York Rd	SPARKS, MD 21152	mail@OurSpringfieldFarm.com
Thomas & Tracie Connell ✓	1996 Yellow Mill Rd.	Washington, MD 21034	
Robert Tracie ✓	4851 Long Green Rd	Glen Arm, MD 21057	
John Langstaff ✓	2717 Hunting Ridge Ct	Bethesda, MD 21013	
David M. Childs Jr ✓	4931 Long Green Rd	Glen Arm, MD 21057	dmchilds@bellsouth.com
David Childs Jr ✓	12718 Manor Rd	Glen Arm, MD 21057	DavidJr@Childsbrokerage.com
Scott Childs ✓	4853 Long Green Rd	Glen Arm, MD 21057	scotchilds@comcast.net
Paul Morones ✓	13731 Fox Rd	Pandora, MD 21013	
John A. Butcher ✓	12435 Manor Rd	Glen Arm, MD 21057	JohnA@1981@comcast.net
John A. Butcher ✓	" "	" "	
Thomas R. Butcher ✓	4511 Long Green Rd	Glen Arm, MD 21057	frank17@comcast.net
John Connell ✓	12000 Glen Arm Rd	" "	
Everett Spradell ✓	4407 Long Green Rd	Glen Arm, MD 21057	everett@del.com
Randy Tulliver ✓	5630 Spahn Rd	Glen Arm, MD 21057	
Scott Corey ✓	12657 Long Green Rd	Hagerstown, MD 21092	scor@keyteach.com
Joe Connell ✓	11940 Glen Arm Rd.	Glen Arm, MD 21057	zzwishbone@aol.com
Pat Reedy ✓	8727 Baker Ave	Baltimore, MD 21234	PTReedy@verizon.net

PLEASE PRINT CLEARLY

CASE NAME

CASE NUMBER 08-456-X

DATE

Petitioner'sCITIZEN'S SIGN-IN SHEET

NAME

ADDRESS

CITY, STATE, ZIP

E-MAIL

Bobby Prigel	4851 Long Green Rd	Glen Arm Md 21057	REPrigel@aol.com
Robert Carter ✓	4859 " "	" " " "	MARLAND CARP & YARD.COM
Barbara Ammer ✓	12206 Long Green Pike	" " " "	bobbie1gp@comcast.net
Kriste M. Burtra ✓	12206 Long Green Pike	" " " "	Kriste Kurb@comcast.net
MARGIE GLADFELTER	13621 MANOR ROAD	BALDWIN, MD 21013	
Corrinne Dignel	4830 Long Green Rd	Glen Arm MD 21057	Caprigel@comcast.net
Orange, Chahard ✓	7200 Midway	Cockeysville Md. 21030	
Henry Cronk Jr. dt ✓	" " "	" " "	h3cron@msn.com
Tom Albright ✓	15630 Old Y.-H Rd	Monkton Md 21111	AlbrightFarmInc@aol.com
Shirley S. Robert ✓	307 Chestnut Ave	Hawthorne, PA 19343	
Carol S. Trugel ✓	4855 Long Green Rd	Glen Arm MD 21057	
Wilbur Joynell ✓	4845 Long Green Rd	Glen Arm MD 21057	
Port Pugh Jr. ✓	4855 Long Green Rd	Glen Arm Md 21057	
James M. Curren ✓	4825 Long Green Rd	Glen Arm Md 21057	
LEONARD HOUSE ✓	5006 Long Green Road	Glen Arm ma 21057	LHouse3254@msn.com
Kate House ✓	" "	" "	" "
Loretta Lazzell ✓	3700 Blenheim Rd 21131	Phoenix Md 21131	Lazzell8@comcast.net
Charles Sheats ✓	11836 Yecko Rd	Sparks 21152	
Dennis Adams ✓	5501 Sweet Ln Rd.	Brown 21013	dca5501@yahoo.com

PLEASE PRINT CLEARLY

Petitioners

~~CHARTER~~ SIGN-IN SHEET

CASE NAME _____
CASE NUMBER _____
DATE _____

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Steve Weber ✓	25267 ROCTON LANE	PARKVILLE 21239	WobersFARM@COMcast
DAVID MARTIN ✓	1840 YORK RD, Suite J	Timonium, md. 21093	dmarti@ymail.com
North Willis Farm ✓	1840 YORK Rd Suite J	Timonium md 21093	Kwillis@MAFC.com
Tracy L Stolins ✓	11502 Wallace Dr	Glen Arm MD 21057	
Robert Amrein ✓	12208 Long Green Pike	Glen Arm md 21057	
Elizabeth Fazzini ✓	12330 Long Green Pike	Glen Arm MD 21057	
Peter Haynes ✓	12701 Kanes Rd.	Glen Arm MD 21057	
John Choles ✓	1527 York Rd	Timonium MD 21093	espisc@aol.com
Ann Marie Helgasen ✓	1538 Kerr Road	Whiteford, MD 21160	Ann
Steve Helgasen ✓	1538 Kerr Road	Whiteford, MD 21160	
Sub Revette ✓	5603 Sweet Air Rd	Baldwin, MD 21013	
Joan Adams ✓	5501 Sweet Air Rd	Baldwin MD 21013	
Darrell Edwards ✓	4709 Long Green Road	Glen Arm, MD 21057	darrell6934@hotmail.com
JEFF EDWARDS ✓	4709 Long Green Road	Glen Arm, MD 21057	JEFFEDWARDS64@aol.com
Joy Edwards ✓	4709 Long Green Rd.	Glen Arm, MD 21057	
Kathleen Trachsel ✓	4711 Long Green Rd	Glen Arm, MD 21057	
Susan Opdahl ✓	5000 Long Green Rd.	Glen Arm, MD 21057	
Whitney Opdahl ✓	5000 Long Green Rd	Glen Arm, MD 21057	ndo001@mcDaniel.edu
PAUL SONCZEWSKI ✓	12428 Long Green Pike	GLEN ARM, MD 21057	psonczeni@comcast.com
GARY MILLER ✓	3 VALLEY GREEN CT	PHOENIX MD 21131	frogie@att.net

CASE NAME _____
CASE NUMBER _____
DATE _____

GIBSON'S SIGN-IN SHEET

[illegible]

CASE NAME _____
CASE NUMBER 08-456-X
DATE _____

[illegible]



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 4851 Long Green 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 Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

Please 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 Exception, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

N/A
Name - Type or Print
Signature
Address Telephone No.
City State Zip Code

Attorney For Petitioner:

Jennifer R. Busse
Name - Type or Print
Signature
Whiteford, Taylor & Preston L.L.P.
Company
210 W. Pennsylvania Ave, 4th Floor 410 832-2000
Address Telephone No.
Towson, MD 21204
City State Zip Code

Legal Owner(s):

Prigel Family Creamery, Inc.
Name - Type or Print
Signature
Robert E. Prigel
Name - Type or Print
Signature
4851 Long Green Road (410) 592-6014
Address Telephone No.
Glen Arm, MD 21057
City State Zip Code

Representative to be Contacted:

Jennifer R. Busse
Name
210 W. Pennsylvania Ave, 4th Floor 410 832-2000
Address Telephone No.
Towson, MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____
UNAVAILABLE FOR HEARING _____

Reviewed By BK Date 3/21/08

Case No 2008-0156-X

REV 06/15/98

RECEIVED FOR FILES
7.11.08
PM

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: 2008-0456-X

4851 Long Green Road

N/side of Long Green Road, 1,500 feet west of centerline of Long Green Valley Drive

11th Election District—3rd Councilmanic District

Legal Owner(s): Prigel Family Creamery, Inc., Robert Prigel

Special Exception: to permit a Farm Market, or alternatively for a Farmers Roadside Stand per BCZR 404.4C.

Hearing: Wednesday, June 4, 2008 at 10:00 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 accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

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

JT 5/698 May 20

173597

CERTIFICATE OF PUBLICATION

5/22/, 2008

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 5/20/, 2008.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

J. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No: 2008-0456-X

Petitioner/Developer: PRIGEL

FAMILY CREAMERY, INC
ROBERT PRIGEL PRIGEL
Date of Hearing/Closing: JUNE 4, 2008

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

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

Ladies and Gentlemen:

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

4851 LONG GREEN ROAD

The sign(s) were posted on

5-19-08
(Month, Day, Year)

Sincerely,

Robert Black
(Signature of Sign Poster)

5-20-08
(Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)



Requested: September 29, 2008

APPEAL SIGN POSTING REQUEST

CASE NO.: 08-456-X

138-140 Eastern Blvd

11th ELECTION DISTRICT

APPEALED: 8/1/2008

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

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

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
The Jefferson Building, Suite 203
102 W. Chesapeake Avenue
Towson, MD 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 08-456-X

LEGAL OWNER: Prigel Family Creamery, Inc. (Robert Prigel)

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

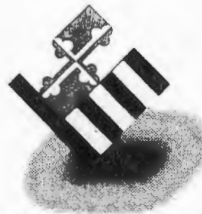
4851 LONG GREEN ROAD
N/S LONG GREEN ROAD, 1500' W C/L LONG GREEN VALLEY DR.

The sign was posted on _____, 2008.

By: _____
(Signature of Sign Poster)

(Print Name)

To: Adam
From: Kristen



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

April 21, 2008
TIMOTHY M. KOTROCO, Director
Department of Permits and
Development Management

NOTICE OF ZONING HEARING

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

CASE NUMBER: 2008-0456-X

4851 Long Green Road

N/side of Long Green Road, 1,500 feet west of centerline of Long Green Valley Drive

11th Election District – 3rd Councilmanic District

Legal Owners: Prigel Family Creamery, Inc., Robert Prigel

Special Exception to permit a Farm Market, or alternatively for a Farmers Roadside Stand per BCZR 404.4C.

Hearing: Wednesday, June 4, 2008 at 10:00 a.m. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204

Handwritten signature of Timothy Kotroco.

Timothy Kotroco
Director

TK:klm

C: Jennifer Busse, 210 W. Pennsylvania Avenue, 4th Fl., Towson 21204
Robert Prigel, 4851 Long Green Road, Glen Arm 21057

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, MAY 20, 2008.**
- (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.

WHITEFORD, TAYLOR & PRESTON L.L.P.

JENNIFER R. BUSSE
DIRECT LINE (410) 832-2077
DIRECT FAX (410) 339-4027
jbusse@wtplaw.com

TOWSON COMMONS, SUITE 300
ONE WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5025
MAIN TELEPHONE (410) 832-2000
FACSIMILE (410) 832-2015

BALTIMORE, MD
COLUMBIA, MD
FALLS CHURCH, VA
TOWSON, MD
WASHINGTON, DC
WILMINGTON, DE*

WWW.WTPLAW.COM
(800) 987-8705

September 19, 2008

Edward W. Crizer, Jr., Chairman
Board of Appeals for Baltimore County
Suite 203, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

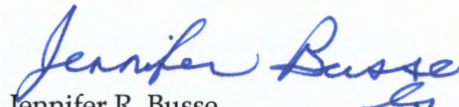
Re: Case Nos. 2008-0456-X (Special Exception for Farmer's Market);
Case No. 08-456-X (Petition for Special Hearing Questioning the Use of the
Property)
Our File 82999.1

Dear Mr. Crizer:

This office represents the owner of the property affected by the two (2) above-referenced zoning cases. Both of them are on appeal to the Board of Appeals, but have not yet been scheduled for a Hearing. The case involving the Special Exception for the Farmer's Market was heard by the Deputy Zoning Commissioner first. However, we are respectfully requesting that the other Hearing, the one calling into question the ability for a creamery to exist at the property, be scheduled for a Hearing before this Board first. We make this suggestion because we believe taking the use question first would be most efficient. Specifically, if the Board rules that the use is not allowed, then very likely the special exception for the Farmer's Market question will be moot.

Thank you for your consideration of this request. Please do not hesitate to contact me with any questions or concerns.

Sincerely,


Jennifer R. Busse

JRB:tdm

cc: Mr. and Mrs. Prigel
John B. Gontrum, Esq.
Peter Max Zimmerman, Esq.
J. Carol Holzer, Esq.
Kathy Bianco, Administrator

404760

RECEIVED
SEP 22 2008

BALTIMORE COUNTY
BOARD OF APPEALS

WHITEFORD, TAYLOR & PRESTON L.L.P.

JENNIFER R. BUSSE
DIRECT LINE (410) 832-2077
DIRECT FAX (410) 339-4027
jbusse@wtplaw.com

TOWSON COMMONS, SUITE 300
ONE WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5025
MAIN TELEPHONE (410) 832-2000
FACSIMILE (410) 832-2015

BALTIMORE, MD
COLUMBIA, MD
FALLS CHURCH, VA
TOWSON, MD
WASHINGTON, DC
WILMINGTON, DE*

WWW.WTPLAW.COM
(800) 987-8705

September 19, 2008

Edward W. Crizer, Jr., Chairman
Board of Appeals for Baltimore County
Suite 203, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

Re: Case Nos. 2008-0456-X (Special Exception for Farmer's Market);
Case No. 2008-506-SPH (Petition for Special Hearing Questioning the Use
of the Property)
Our File 82999.1

Dear Mr. Crizer:

We are in receipt of Mr. Holzer's letter dated September 22, 2008 wherein he requests hearings on the above-referenced matters be combined. We strongly object to any such combination of hearings. These two cases involve different burdens of proof and production, and while we agree that typically combining hearings is most efficient, in this particular case combining hearings will more likely complicate the matters. We have requested that the Petition for Special Hearing (regarding the use of the property as a creamery) be heard first because without that being approved, the special exception request for a farmer's market most likely will become moot. The underlying ability to use the property as a creamery is logically the first and most important matter to be decided.

Thank you for your attention to this matter.

Sincerely,

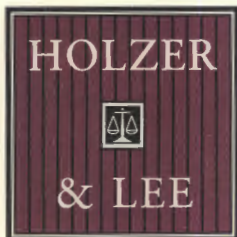
Jennifer R. Busse

JRB:tdm

cc: Mr. and Mrs. Prigel
John B. Gontrum, Esq.
Peter Max Zimmerman, Esq.
J. Carol Holzer, Esq.
Kathleen Bianco, Administrator

404760v2

RECEIVED
SEP 30 2008
BALTIMORE COUNTY
BOARD OF APPEALS



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@PCPL.NET~~
jcholzer@cavtel.net

September 22, 2008
#7778

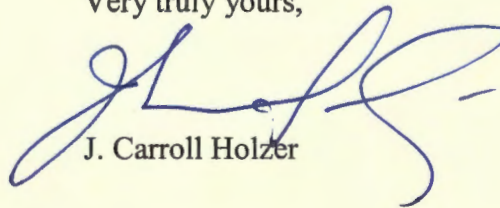
Mr. Edward W. Crizer, Jr.
Chairman
Baltimore County Board of Appeals
Jefferson Building
105 West Chesapeake Avenue
Second Floor
Towson, Maryland 21204

RE: Case Nos.: 2008-0456-X (Special Exception for Farmer's Market
Case No.: 08456-X (Petition for Special Hearing – Use of Property)
Your File No: 82999.1

Dear Mr. Crizer:

I received a letter from Jennifer Busse dated September 19, 2008. I previously suggested that both cases be put in for a joint hearing and I would suggest that it would prevent us from having two separate hearings.

Very truly yours,



J. Carroll Holzer

JCH:mlg

cc: John Gontrum, Esquire
Ms. Susan Yoder

RECEIVED
SEP 23 2008
BALTIMORE COUNTY
BOARD OF APPEALS



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
September 24, 2008
*Department of Permits and
Development Management*

John Gontrum
Jennifer Busse
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. Gontrum:

RE: Case: 08-456-X, 4851 Long Green Road

Please be advised that an appeal of the above-referenced case was filed in this office on August 1, 2008 by J. Carroll Holzer on behalf of the Long Green Valley Association, etc. 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
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Michael Fisher, 114315 Jarrettsville Pike, Phoenix 21131
Chris McCollum, Economic Development
Wally Lippincott, Jr., DEPRM
J. Carroll Holzer, 508 Fairmount Avenue, Towson 21236
See Attached List



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**

October 28, 2008

NOTICE OF ASSIGNMENT

CASE #: 08-456-X

IN THE MATTER OF: PRIGEL FAMILY CREAMERY, INC. -
LEGAL OWNER /PETITIONER
4851 Long Green Road 11th E; 3rd C

7/11/2008 - D.Z.C.'s decision in which requested zoning relief was **GRANTED**
with conditions.

NOTE: This matter is being scheduled and will be heard based upon the outcome of related Case No. 08-506-SPH, which is scheduled to be heard on 2/05/2009.

ASSIGNED FOR:

THURSDAY, MARCH 12, 2009, 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: Counsel for Appellants /Protestants
Appellants /Protestants

: J. Carroll Holzer, Esquire
: The Long Green Valley Assn., Inc.
Roger Hayden, President
Charlotte Pine Catherine Ebert
John and Susan Yoder

Counsel for Legal Owner /Petitioner

: John B. Gontrum, Esquire
Jennifer R. Busse, Esquire
: Robert E. Prigel
Robert and Carol Prigel

Legal Owner /Petitioner

Michael Fisher /Site Resources, Inc.

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

*due PP
30 days change
Case No. 08-506-SPH
due pending*



County Board of Appeals of Baltimore County

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

**Hearing Room #2, Jefferson Building
105 W. Chesapeake Ave., Second Floor
(Adjacent to Suite 203)**

January 27, 2009

NOTICE OF POSTPONEMENT

CASE #: 08-506-SPH

IN THE MATTER OF: LONG GREEN VALLEY ASSOCIATION, INC.,
ET AL – PROTESTANTS /PETITIONERS; PRIGEL FAMILY
CREAMERY, LEGAL OWNER
4851 Long Green Road 11th E; 3rd C

8/12/2008 - D.Z.C.'s decision in which Protestants' special hearing request
was DENIED in part and dismissed in part; proposed facility is permitted in
R.C. 2 zone

NOTE: Related Case No. 08-456-X/ pending outcome of 08-506-SPH

This matter was scheduled for Thursday, February 5, 2009 and has been postponed. This postponement has
been granted over the objection of Counsel for the Legal Owner; **TO BE RE-ASSIGNED.**

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.

Theresa R. Shelton, Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants (Petitioners in this matter) : The Long Green Valley Assn., Inc.
Roger Hayden, President
Charlotte Pine Catherine Ebert
John and Susan Yoder

Counsel for Legal Owner

: John B. Gontrum, Esquire
Jennifer R. Busse, Esquire

Legal Owner

: Robert E. Prigel
Robert and Carol Prigel

Michael Fisher /Site Resources, Inc.

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM



County Board of Appeals of Baltimore County

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TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

**Hearing Room #2, Jefferson Building
105 W. Chesapeake Ave., Second Floor
(Adjacent to Suite 203)**

January 27, 2009

NOTICE OF POSTPONEMENT

CASE #: 08-456-X

IN THE MATTER OF: PRIGEL FAMILY CREAMERY, Inc.
LEGAL OWNER /PETITIONER

4851 Long Green Road 11th E; 3rd C

8/12/2008 - D.Z.C.'s decision in which requested zoning relief was GRANTED with conditions.

NOTE: Related Case No. 08-506-SPH

This matter was scheduled for Thursday, March 12, 2009 and has been postponed. **TO BE RE-ASSIGNED.**

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.

Theresa R. Shelton
Administrator

c: Counsel for Appellants /Protestants	: J. Carroll Holzer, Esquire
Appellants /Protestants (Petitioners in this matter)	: The Long Green Valley Assn., Inc. Roger Hayden, President Charlotte Pine Catherine Ebert John and Susan Yoder

Counsel for Legal Owner	: John B. Gontrum, Esquire
Legal Owner	: Jennifer R. Busse, Esquire
	: Robert E. Prigel
	Robert and Carol Prigel

Michael Fisher /Site Resources, Inc.

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM



County Board of Appeals of Baltimore County

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

January 27, 2009

Via Facsimile

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

Re: *In the Matter of: Prigel Family Creamery, Inc.* – Legal Owner
Case No. 08-506-SPH

Dear Mr. Holzer:

This letter will acknowledge receipt of your Hand Delivered letter dated January 21, 2009 wherein you request a postponement of the subject case scheduled for hearing on Thursday, February 5, 2009, due to an Amendment to the Baltimore County Zoning Regulations that has been introduced by the Baltimore County Planning Office, which would directly impact the decision of the Board.

Your request for postponement is granted at this time, and this matter will be reassigned. However, it is to be noted that this postponement has been granted over the objection of John B. Gontrum, Counsel for the Legal Owner, pursuant to his letter dated January 26, 2009 and received via facsimile by this office on that date.

In addition, the matter scheduled for Thursday, March 12, 2009, Case No.: 08-456-X; which was scheduled separately, but was being heard based upon the outcome of this related case, is also being postponed and will be re-assigned.

Enclosed is a copy the Notice of Postponement for the above referenced case number and a copy of the Notice of Postponement for Case No.: 08-456-X. Please note that no further postponements will be granted in this matter except under extraordinary circumstances and upon review by the Board.

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

Very truly yours,

A handwritten signature in cursive script that reads "Theresa R. Shelton".

Theresa R. Shelton
Administrator

Enclosures: Notice of Postponement (2)

c: John B. Gontrum, Esquire (via Facsimile)
Office of People's Counsel
Robert E. Prigel
Catherine Ebert
Susan Yoder

COUNTY BOARD OF APPEALS

JEFFERSON BUILDING •
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
PHONE: 410-887-3180 • FAX: 410-887-3182

FACSIMILE TRANSMITTAL SHEET

January 27, 2009

TO AND FAX NUMBER:

J. CARROLL HOLZER, ESQUIRE
FAX : 410-825-4923

JOHN B. GONTRUM, ESQUIRE
FAX : 410-339-4058

FROM:

THERESA R. SHELTON
FAX : 410-887-3182

TELEPHONE : 410-887-3180

TOTAL NO. OF PAGES INCLUDING
COVER:
FOUR (4)

RE: POSTPONEMENT -
PRIGEL FAMILY CREAMERY

URGENT FOR REVIEW FOR YOUR RECORDS PLEASE REPLY PLEASE RECYCLE

PERSONAL AND CONFIDENTIAL

ATTACHED IS A COPY OF THE NOTICE(s) OF POSTPONEMENT (2) GOING OUT VIA USPS THIS DATE - POSTPONING THE SUBJECT MATTER(s) FROM THE SCHEDULED DATE(s) OF FEBRUARY 5, 2009 AND MARCH 12, 2009, RESPECTIVELY.

TO BE RE-ASSIGNED.

THANK YOU.

This message is intended only for the addressee and may contain information that is privileged and/or confidential in nature. If the reader is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, and/or received this communication in error, please notify the sender immediately by telephone and return the original message to the sender.



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

June 8, 2009

NOTICE OF RE-ASSIGNMENT

CASE #: 08-506-SPH IN THE MATTER OF: LONG GREEN VALLEY ASSOCIATION, INC.,
ET AL – PROTESTANTS /PETITIONERS;
PRIGEL FAMILY CREAMERY, LEGAL OWNER
4851 Long Green Road 11th E; 3rd C

8/12/2008 - D.Z.C.'s decision in which Protestants' special hearing request was DENIED in part and dismissed in part; proposed facility is permitted in R.C. 2 zone

NOTE: Related Case No. 08-456-X will be scheduled for a hearing, pending outcome of 7/1/09 hearing.

RE-ASSIGNED FOR: WEDNESDAY, JULY 1, 2009, 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.

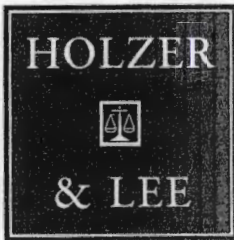
IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Theresa R. Shelton, Administrator

c:	Counsel for Appellants /Protestants	: J. Carroll Holzer, Esquire
	Appellants /Protestants (Petitioners in this matter)	: The Long Green Valley Assn., Inc. Roger Hayden, President
		Charlotte Pinc Catherine Ebert John and Susan Yoder
	Counsel for Legal Owner	: John B. Gontrum, Esquire
		: Jennifer R. Busse, Esquire
	Legal Owner	: Robert E. Prigel / Robert and Carol Prigel
	Michael Fisher /Site Resources, Inc.	

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, Director/Planning
Nancy West, Assistant County Attorney
John E. Beverungen, County Attorney



LAW OFFICES

J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

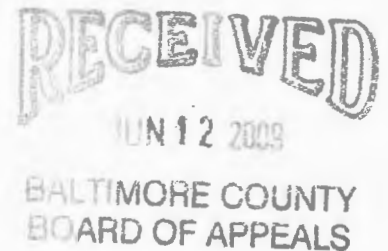
THE 508 BUILDING

508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923

E-MAIL: JCHOLZER@CGLP.NET
XXXXXXXXXXXX
jcholzer@cavtel.net

June 11, 2009
#7778

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



RE: *In the Matter of Petition for Special Hearing*
4851 Long Green Road
Long Green Valley Association, Inc.
Charlotte Pine, Catherine Ebert, John & Susan Yoder, Petitioners
11th Election District
3rd Councilmanic District
Case No.: 2008-0506-SPH

Dear Ms. Shelton:

Please be advised that you have scheduled the above-captioned case for Wednesday, July 1, 2009. Unfortunately, I have a previous vacation scheduled in North Carolina from July 1, 2009 through July 6, 2009. I would therefore request that you reschedule the case. I would also advise that I will be out of the office on Friday, July 31, 2009 through Monday, August 10, 2009.

I would therefore request that you reschedule the hearing at convenient time in the future.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: John Gontrum, Esquire
Ms. Susan Yoder
Ms. Cathy Ebert



County Board of Appeals of Baltimore County

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

**Hearing Room #2, Jefferson Building
105 W. Chesapeake Ave., Second Floor
(Adjacent to Suite 203)**

June 15, 2009

SECOND NOTICE OF POSTPONEMENT

CASE #: 08-506-SPH

IN THE MATTER OF: LONG GREEN VALLEY ASSOCIATION, INC.,
ET AL – PROTESTANTS /PETITIONERS; PRIGEL FAMILY
CREAMERY, LEGAL OWNER
4851 Long Green Road 11th E; 3rd C

8/12/2008 - D.Z.C.'s decision in which Protestants' special hearing request
was DENIED in part and dismissed in part; proposed facility is permitted in
R.C. 2 zone

NOTE: Related Case No. 08-456-X/ pending outcome of 08-506-SPH

This matter was scheduled for Wednesday, July 1, 2009 and has been postponed due to a scheduling conflict.

TO BE RE-ASSIGNED TO AN AGREED DATE BY COUNSEL.

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.

Theresa R. Shelton, Administrator

c:	Counsel for Appellants /Protestants	: J. Carroll Holzer, Esquire
	Appellants /Protestants (Petitioners in this matter)	: The Long Green Valley Assn., Inc. Roger Hayden, President
		Charlotte Pine Catherine Ebert John and Susan Yoder
	Counsel for Legal Owner	: John B. Gontrum, Esquire
		: Jennifer R. Busse, Esquire
	Legal Owner	: Robert E. Prigel / Robert and Carol Prigel
	Michael Fisher /Site Resources, Inc.	

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, Director/Planning
Nancy West, Assistant County Attorney
John E. Beverungen, County Attorney



County Board of Appeals of Baltimore County

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

June 22, 2009

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

John B. Gontrum, Esquire
Jennifer R. Busse, Esquire
WHITEFORD TAYLOR & PRESTON LLP
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, MD 21204

RE: *In the Matter of: Long Green Valley Association, Inc./*
Prigel Family Creamery, Inc.
Case No. 08-506-SPH and 08-456-X

Dear Counsel:

The above referenced cases need to be re-assigned to a mutually agreeable date.

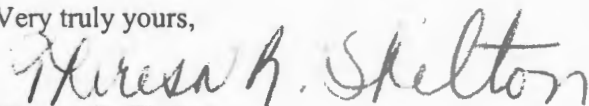
The Board sits on Tuesday, Wednesday and Thursday of each week. The docket is currently scheduled through the end of September 2009. Pending confirmation from your respective offices, as to availability, I will hold the following six (6) dates for the scheduling of these two (2) cases. Each matter will be scheduled to a specific date and the cases will not be combined. Please let me know as soon as possible, which two dates you are available from the list below:

Thursday, October 8, 2009 at 10:00 a.m.
Wednesday, October 14, 2009 at 10:00 a.m.
Thursday, October 15, 2009 at 10:00 a.m.
Thursday, October 29, 2009 at 10:00 a.m.
Tuesday, November 3, 2009 at 10:00 a.m.; and
Wednesday, November 4, 2009 at 10:00 a.m.

Upon notification from you as to which two dates are available for everyone, a notice will be sent, reassigning each case matter to the confirmed date. Please contact this office upon receipt of this letter to confirm availability.

Thanking you in advance for your time and cooperation in this matter. Should you have any questions, please call me at 410-887-3180.

Very truly yours,


Theresa R. Shelton
Administrator

Duplicate Original

c: Roger Hayden, President / Long Green Valley Association
Robert E. Prigel / Robert and Carol Prigel



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

July 16, 2009

NOTICE OF ASSIGNMENT – AGREED DATE

CASE #: 08-456-X

IN THE MATTER OF: PRIGEL FAMILY CREAMERY –
LEGAL OWNER; - PETITIONERS
4851 Long Green Road 11th E; 3rd C

Petition for Special Exception to permit a farm market pursuant to Section 404.4D and 502.1 of the BCZR; or in the alternative confirmation of a Farmer's Roadside Stand pursuant to Section 404.4C.
7/11/08 – Request for Special Exception GRANTED with restrictions by Deputy Zoning Director .

ASSIGNED FOR: THURSDAY, OCTOBER 15, 2009, 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.

Theresa R. Shelton, Administrator

c: Counsel for Legal Owner	: John B. Gontrum, Esquire Jennifer R. Busse, Esquire
Legal Owner	: Robert E. Prigel Robert and Carol Prigel
Counsel for Appellants /Protestants Appellants /Protestants	: J. Carroll Holzer, Esquire : The Long Green Valley Assn., Inc. Roger Hayden, President Charlotte Pine Catherine Ebert John and Susan Yoder
Michael Fisher /Site Resources, Inc.	

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
John E. Beverungen, County Attorney

Arnold F. "Pat" Keller, Director/Planning
Nancy West, Assistant County Attorney



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
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TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

November 30, 2009

NOTICE OF DELIBERATION

CASE #: 08-456-X

IN THE MATTER OF: LONG GREEN VALLEY ASSOCIATION, INC.,
ET AL - PROTESTANTS /PETITIONERS;
PRIGEL FAMILY CREAMERY, LEGAL OWNER
4851 Long Green Road 11th E; 3rd C

Having concluded this matter on 10/15/09 and closing brief received on 11/30/09; a public deliberation has been scheduled for the following date /time:

DATE AND TIME: **TUESDAY, JANUARY 12, 2010 at 9:00 a.m.**

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

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.

Theresa R. Shelton
Administrator

c:	Counsel for Appellants /Protestants	: J. Carroll Holzer, Esquire
	Appellants /Protestants (Petitioners in this matter)	: The Long Green Valley Assn., Inc. Roger Hayden, President
		Charlotte Pine Catherine Ebert John and Susan Yoder
	Counsel for Legal Owner	: John B. Gontrum, Esquire
		: Jennifer R. Busse, Esquire
	Legal Owner	: Robert E. Prigel / Robert and Carol Prigel
	Michael Fisher /Site Resources, Inc.	

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, Director/Planning
Nancy West, Assistant County Attorney
John E. Beverungen, County Attorney



County Board of Appeals of Baltimore County

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TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

April 20, 2010

NOTICE OF DELIBERATION / MOTION FOR RECONSIDERATION

CASE #: 08-456-X

IN THE MATTER OF: LONG GREEN VALLEY ASSOCIATION, INC.,
ET AL – PROTESTANTS /PETITIONERS;
PRIGEL FAMILY CREAMERY, LEGAL OWNER
4851 Long Green Road 11th E; 3rd C

This matter concluded on 10/15/09 and closing briefs received on 11/30/09; a public deliberation was held 1/12/10 and the Opinion/Order was issued 3/25/10. A Motion for Reconsideration was filed on 4/16/10. The public deliberation has been scheduled as follows:

DATE AND TIME: **TUESDAY, MAY 25, 2010 at 9:00 a.m.**

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

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.

Theresa R. Shelton
Administrator

c:	Counsel for Appellants /Protestants	: J. Carroll Holzer, Esquire
	Appellants /Protestants (Petitioners in this matter)	: The Long Green Valley Assn., Inc. Roger Hayden, President
		Charlotte Pine Catherine Ebert John and Susan Yoder
	Counsel for Legal Owner	: John B. Gontrum, Esquire
		: Jennifer R. Busse, Esquire
	Legal Owner	: Robert E. Prigel / Robert and Carol Prigel
	Michael Fisher /Site Resources, Inc.	

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, Director/Planning
Nancy West, Assistant County Attorney
John E. Beverungen, County Attorney

Case No.:

08-456-X

Exhibit Sheet

Petitioner/Developer

Protestant

✓	No. 1	Site Plan	(A-D) PHOTOS of building under construction	✓
✓	No. 2	AERIAL PHOTO ^{shows} boundary farm	MEMO FROM ECON. DEVELOPMENT	✓
✓	No. 3	(A) Letters Long Green Assoc	PRINGEL CREAMERY BUS. PLAN	✓
✓	No. 4	PETITION FROM CHURCH		
	No. 5			
	No. 6			
	No. 7			
	No. 8			
	No. 9			
	No. 10			
	No. 11			
	No. 12			



PROTESTANT' S

EXHIBIT NO. 2

MEMORANDUM

TO: Baltimore County Loan Review Committee

FROM: Stan Jacobs-Chief Financial Officer

RE: Prigel Family Creamery, Inc./Bellevale Farm

DATE: April 18, 2008

Request

Prigel Family Creamery, Inc. is requesting a \$250,000 ten-year term loan with a 20-year amortization from the County's Revolving Loan Fund. The loan will have a fixed rate of 2 %. Proceeds of the loan will be used towards the costs associated with the construction of a 10,000 square foot building and for the purchase of equipment. The building will be used to process organic milk products including yogurt, ice cream, cheese and butter. The organic milk will be purchased from Bellevale Farms which is also owned by the Prigel Family. The property is located on Long Green Road in Glen Arm, Maryland.

The remainder of the project will be financed with a \$400,000 ten-year term loan from M&T Bank. The State of Maryland through the Maryland Agricultural Development Corporation will provide a ten-year \$250,000 term loan at 2%. Robert Prigel will contribute \$100,000 towards the total project cost of \$1 million.

Borrower Description

Prigel Family Creamery, Inc. was formed in 2008 for the purpose of processing and selling organic milk products. Robert Prigel owns 51% of PFCI and his wife Pam, owns 49%.

Bellevale Farms, Inc. is a 260 acre dairy farm located in Glen Arm, Maryland. The dairy farm has been owned and operated by the Prigel family since 1906. During 2007, the farm started the process of converting the dairy operation to a certified organic dairy. This will allow the dairy to market its milk as organically produced. The farm received organic certification from the Maryland Department of Agriculture in April 2008. The farm has a two-year contract with Horizon Organic Dairy to purchase the organic milk that is produced at Bellevale Farms. The organic milk will sell for approximately \$30.00/100wt vs. \$18.00/100wt for non-organic milk. Robert and Pam Prigel each own 50% of the corporation.

Bellevale Farms, Ltd. is a partnership between Robert Prigel and Pam Prigel. Robert owns 55% and Pam owns 45%. This entity owns the farm and leases it to Bellevale Farms, Inc.

Collateral

The subject property is known as 4851 Long Green Road Glen Arm, Maryland. Bellevale Farm is a 260 acre dairy farm. The farm is improved by a residence, barn, milking parlor and several other out buildings. The County and State will share a second lien position on the farm and all equipment. The current assessed value is \$700,000. The owner estimates that the value is \$15,000 per acre. Assuming a value of \$10,000 per acre, the estimated value is \$2.6 million. The property is free and clear of all liens.

Guarantors

Bellevale Farm, Ltd.
Bellevale Farm, Inc.
Robert and Pam Prigel

Recommendation

Staff recommends approval of the loan to Prigel Family Creamery, Inc. as it will give the Prigel family the opportunity to expand into the production of organic milk products. The Prigel family has operated a dairy in Baltimore County since 1906 and has managed to ride the ups and downs of milk prices.

The farm has taken the initiative to convert from a traditional dairy to an organic dairy and has recently received certification as an organic dairy from the State Department of Agriculture. This certification will allow the dairy to realize the premium that is paid for organic milk which, should return the dairy to profitability. Should the creamery not be successful, the dairy should be able to cover the debt service as the dairy could continue to sell the organic milk to Horizon Organic Dairy.

Prigel Family Creamery
Business Plan and Financials

PROTESTANT' S

EXHIBIT NO.

3



Robert E. Prigel, Jr., President

January 18, 2008

Confidentiality Agreement

The undersigned reader acknowledges that the information provided by _____ in this business plan is confidential; therefore, reader agrees not to disclose it without the express written permission of _____.

It is acknowledged by reader that information to be furnished in this business plan is in all respects confidential in nature, other than information which is in the public domain through other means and that any disclosure or use of same by reader, may cause serious harm or damage to _____.

Upon request, this document is to be immediately returned to _____.

Signature

Name (typed or printed)

Date

This is a business plan. It does not imply an offering of securities.

The Company

General

PFCI will produce and sell a variety of wholesome, organic dairy products to the central Mid-Atlantic marketplace. The initial purpose of the company is to provide a local retail and wholesale marketing outlet for Bellevale Farms' organic milk, but the concept may, over time, expand into other organic products such as organic, grass-fed meats.

The growth in organic markets as well as a need to improve Bellevale's position in the Maryland/Pennsylvania/Delaware milk market has precipitated Bellevale's move into organic products in an effort to remain competitive and improve its profitability. In addition, capacity and margin constraints found in the production and distribution of straight milk through traditional distribution channels for dairy farmers has necessitated a creative move into alternative markets.

In addition, dairy farmers are increasingly finding themselves in a position in which there is no direct correlation between retail and wholesale pricing. PFCI provides Bellevale with the ability to control its product distribution and related pricing.

The demand for organic products in the U.S. has provided an opportunity for PFCI to further expand and define Bellevale's production methods and allows for expansion into new markets.

The formal corporate structure of PFCI has yet to be determined, but ownership of the business will be closely held.

History/Background

Bellevale Farm sits on 260 acres nestled in the beautiful Long Green Valley located in northeast Baltimore County and is approximately 15 miles from Baltimore City and 15 miles from Interstate 95. The farm has been owned by the Prigel family since 1906 when John Mathias Prigel purchased the first 180 acres. Prigel began working on the farm in 1895 as a sharecropper.



The farm is one of the few remaining active dairy farms in this region of Maryland and has always been focused on the production of dairy and vegetable products.

Robert E. Prigel, Jr. currently oversees the daily operation of the farm.

Bellevale Farm has a history of being innovative and on the leading edge of the use of technology and alternative farming methods. For example, the Prigels began using DHIA (national record-keeping system) and artificial insemination in 1945 when most dairy farms did not begin utilizing these procedures until at least the late 60's. In addition, we introduced computerized feeding in 1985.

Prigel Family Creamery

Business Plan

In 1989, Bellevale Farm became the second Maryland operation to become a Management Intensive Grazing (MIG) dairy farm. "On a MIG dairy farm, portable electric fencing is used to subdivide pastures into small areas called paddocks. Cows are moved to a fresh paddock once or twice a day. Grazed forage is the primary source of protein and energy for the cows, eliminating the need for crop production and its expensive, energy-demanding infrastructure. By grazing, the cows themselves, rather than machines, harvest the feed and spread the manure. Because the grazing lifestyle is less stressful on cows, veterinary bills are substantially lower than for confined animals. Although a cow under MIG typically produces less milk than one under confined feeding, it requires far less expense to maintain."

("Fact Sheet: Management Intensive Grazing: Environmental Impacts and Economic Benefits", Ray R. Weil and Rachel E. Gilker, Department of Natural Science and Landscape Architecture, University of Maryland, College Park)

The switch to intensive grazing has been the key to Bellevale's ability to remain competitive in an otherwise extremely difficult marketplace that has seen the consistent demise of farms of similar size. Twenty-five years ago, Maryland had approximately 6,000 dairy farms. That number has dwindled to approximately 600 today.

The move to develop this new production facility is the next logical step for Bellevale in order to stay ahead of the curve and utilize its existing and develop new competitive advantages in a changing marketplace.

The Prigel family has been actively involved in its relationship with the local community associations and participates in land preservation activities. These relationships have proven helpful in the recent past in the development of the plans for these new facilities and the Long Green Valley Association has heartily endorsed the project plans to date. (Reference page 25 of this document.)

The organic certification process is underway with the cows being certified by April 15, 2008. It is anticipated that the land will be certified at the same time. The certification process is administered by the Maryland Department of Agriculture under the regulations of the USDA. Certification requires that Bellevale not use prohibited substances (chemical fertilizers, pesticides, sludge, etc.) for the preceding 3 years and such substances will not be used in the ongoing operations of the farm subject to the allowable uses outlined in the regulations.

Facilities

PFCI anticipates commencing operations in June, 2008 and will be located on the premises of Bellevale Farms at 4851 Long Green Road, Glen Arm, Maryland 21057.

The production/retail facility will be constructed on a 75 acre field that is located on the north side of Long Green Road directly across from the farm operations. The facility will be a 10,680 square foot pole barn structure encased in metal siding with architectural accents that will more closely match the architectural styles of the surrounding structures in the area.

This facility will be comprised of a 1,500 square foot cheese processing area with the remainder devoted to milk processing, warehousing and retail. The cheese



Proposed site of the processing facility facing east on Long Green Road.

Prigel Family Creamery

Business Plan

Initial retail product offerings will include

- Liquid milk
- Butter
- Yogurt
- Ice Cream
- Cheeses

Future product offerings may include locally-grown organic, grass-fed meats and brick oven breads, but these products are not included within the context of this plan.

Cowgirl Creamery

Founded in 1997, Cowgirl Creamery operates a cheese production facility in West Marin County in Point Reyes Station, California. In addition, Cowgirl operates a mail order cheese business and three retail stores in San Francisco, Point Reyes Station and Washington, DC. Additional information regarding Cowgirl Creamery is attached as an addendum to this plan.

PFCI has entered into an agreement with Cowgirl Creamery whereby Cowgirl will purchase milk for its cheese production from Bellevale Farm and rent the cheese production facility in Glen Arm from PFCI. In return, Cowgirl will provide PFCI with ready access to fresh, organic cheeses produced from Bellevale's organic milk. In addition, PFCI will sell liquid milk to Cowgirl for sale in its Washington, DC retail store/coffee house.

PFCI will have access to purchase these cheeses from Cowgirl for sale in its retail facility and carrying joint branding. Any additional production by Cowgirl will be sold through its own retail outlets.

Initial estimates indicate that Cowgirl will require approximately 7,200 gallons of raw milk per month within the first 12 months. Cowgirl also has requested approximately 1,000 gallons of raw milk per month for use in its Washington, DC- based coffee house.

Milk for use in the cheese production will be sold to Cowgirl at \$34.00 per hundred pound and milk sold for use in the coffee houses will be sold for \$45.00 per hundred pounds.

PFCI currently has a letter of intent from Cowgirl Creamery which is included as an addendum to this document.

Wholesale sales

PFCI intends to market its main product offerings of yogurt and ice cream to both local and national chain markets. In terms of local markets, PFCI will be looking to distribute its product to area markets such as Graul's and Klein's. In terms of national markets, PFCI will be looking to distribute to Wegman's and Whole Foods both of whom cater to local produce markets. Whole Foods also has the added advantage of providing a distribution channel to its other stores via delivery to the local chain by the producer.

As product offerings become available, we will begin more intensive discussions with each of these players to determine the best fit for both parties.

Production Process

The entire production process is founded on the estimate that Bellevale Farms can and will provide approximately 21,000 gallons of raw milk per month. From that amount, we are estimating that Cowgirl Creamery will require upwards of 7,200 gallons per month and PFCI

direct milk processing and sales will require approximately 500 gallons per month. This then leaves 14,200 gallons for processing of the remaining products.

From that starting point, we are planning to allocate 80% of available milk to the processing of yogurt and the remaining 20% will be directed to the processing of ice cream and butter.

Yogurt - Yogurt production begins with raw milk which is first pasteurized and introduced into a separator in which the milk is separated from the cream. The milk will be standardized with regard to the desired fat content by the re-introduction of cream. It will then be homogenized with cultures introduced. Flavorings will be added directly to the container with incubation of the cultures taking place within the container. Incubation time can depend on the ambient temperatures, but can typically take between 10 and 12 hours. Distribution of a finished product can take place within 3 days of the start of the production process.

The by-product of residual cream left over from the yogurt production will then be used in the production of butter and ice cream in the ratio of 15%/85%, respectively.

Butter - Butter production will typically result in a combination of two products, butter and buttermilk in a ratio of 85%/15%. For purposes of this plan, approximately 40% of the resultant buttermilk will be introduced into the production of ice cream and the remainder will be considered spoilage.

Ice Cream - A gallon of ice cream will require approximately 2 quarts of cream and 1 quart of buttermilk. The additional 25% is comprised of flavorings, sweeteners and air utilized to increase the overall volume of the product.

Packaging - At this time we anticipate handling all product packaging within our production facility. Printing of labels and containers will be outsourced and all handling, packaging and storage will take place at PFCI. The new facility will include a 600 square foot cooler, a 300 square foot freezer and approximately 3,000 square feet of warehousing space.

All equipment required for the production and packaging of these products is included in this plan and is outlined in the addendum.

Distribution

All products produced by PFCI will be sold through wholesale outlets and PFCI's retail facility. All pricing included in the financial section of this plan assumes wholesale pricing only.

Competition

Competitive Landscape

In a general sense, the organic market is continuing to mature and, therefore, has a number of established players. However, the ability to market and distribute these products via PFCI's retail location as well as established wholesale channels will, we believe, provide us with the necessary competitive edge in this geographic region.

The mid-Atlantic region is beginning to see an increased presence of organic product providers. Trickling Springs in Chambersburg, PA (approximately 90 miles from Glen Arm) is the only known organic creamery in the immediate area. At the present time, PFCI will be the only Maryland-based organic creamery.

Though not a creamery, there is a Whole Foods retail store located in Mt. Washington which is approximately 25 miles from Long Green. However, this location is only carrying national brands.

In addition, in 1995, Bellevale began to change its herd population from Holstein cows which are typically a higher volume cow to Jerseys which, although producing less volume, produce milk with a higher fat and protein content. These factors are the key to successful ice cream, yogurt and cheese production.



Short Term Risk

Market Outreach - The largest short term risk is clearly our ability to convince the wholesale distributors of the value of our products. This will be mitigated by maintaining consistent contacts with the wholesalers of choice and integrating their feedback so as to improve the products.

Food Safety - Food safety risks would include the introduction of human pathogens such as e coli. We will address this through the development and consistent execution of a HACCP (Hazard Analysis Critical Control Point) plan and required education of cleanliness standards for and demonstration of these skills by all employees.

Labor - We believe that finding and retaining the highest level of personnel in all facets of the business will be critical to our success. In addition, given that this is a family operation with the desire for a strong local presence, we will be employing family members as much as possible and practical.

The training and development of production personnel, in particular, will be accomplished through both formal education channels as well as hands-on training. In the initial phases of the business, we anticipate employing the services of an outside consultant who will assist us in the development and refinement of the development process.

Long Term Risk

Long term risk is predominantly found in the maturation of the organic market itself. In this situation, the possibility exists of losing the higher pricing opportunities currently afforded this product type and market. However, we also believe that by retaining a local presence and flavor, we can mitigate this risk.

In addition, any substantive economic downturn or event which minimizes disposable income to the market that we are trying to reach may adversely affect results if the perceived value of the product does not exceed the economic value.

Market Analysis

U.S retail sales of organic milk have been on a consistent growth trend since the mid -1990's with sales exceeding \$1 billion in 2005 which represented a 25% growth rate over 2004. By contrast, sales of overall milk products have remained fairly constant since the mid-1980's. By 2006, organic milk and ice cream products comprised approximately 6% of retail milk sales.

Increasing interest and demand for organic milk products has, in the past, generated significant shortages suggesting that consumer demand is unmet at certain price points. This

shortage has prompted a number of retail grocers and big box retailers to distribute organic milk. These retailers typically carry nationally known organic products such as Organic Valley or Horizon Organic so branding is becoming increasingly important in this marketplace.

According to the USDA study on "Retail and Consumer Aspects of the Organic Milk Market", the following household characteristics would typify the most likely organic milk consumer:

- Region: East or West Coast
- Education: College graduate or Post College
- Age: Under 55
- Household Income: Annual income of at least \$70,000

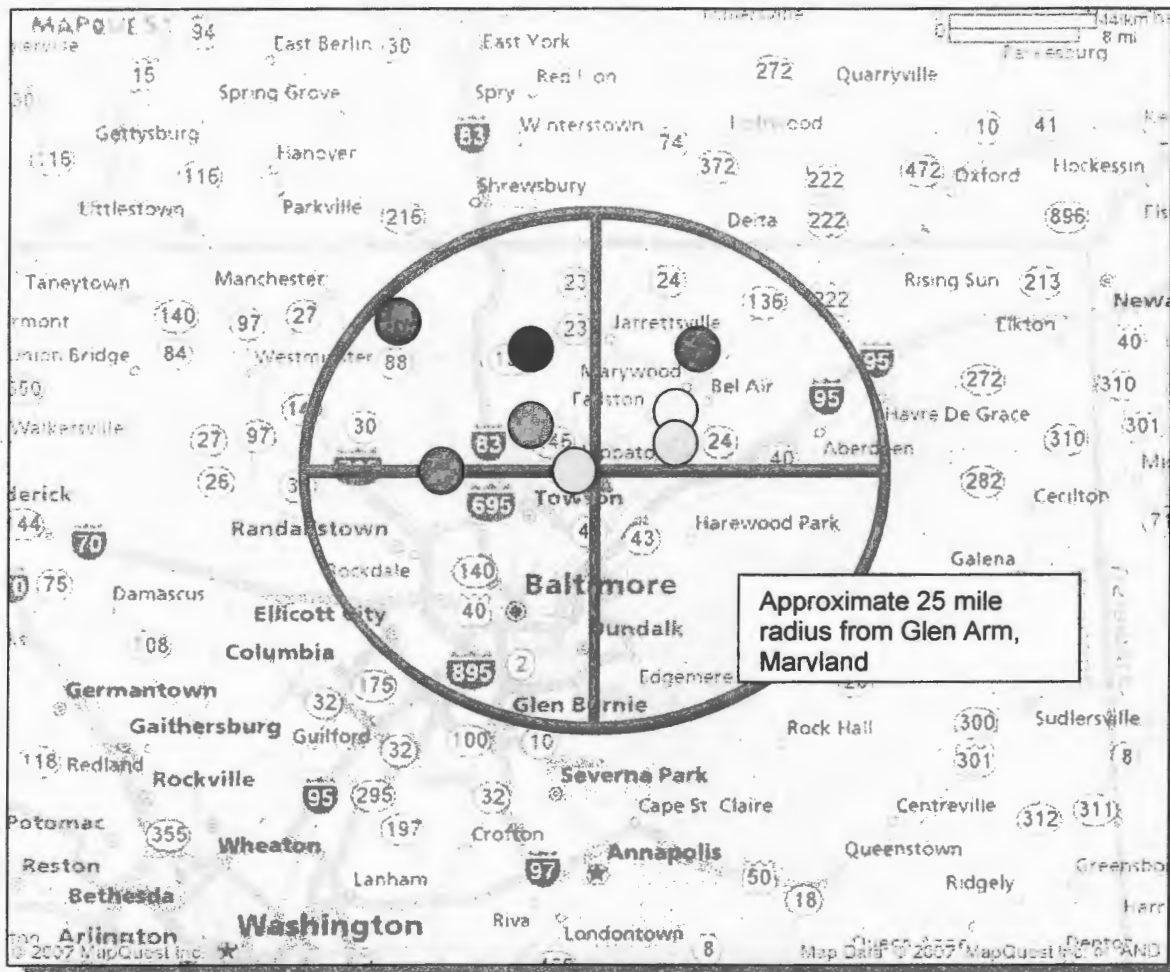
Given our location and timing of entrance into the marketplace, PFCI believes that we are strategically placed to address the needs of these groups.

According to the statistics derived from the U.S. Bureau of the Census (2002) as shown on the following page, there are over 100,000 households in the Baltimore area that meet the aforementioned household characteristics for organic milk consumers. This estimate only takes into account eight of the largest suburban communities within a 25 mile radius of Glen Arm, Maryland. The 2002 Census data did not consider or specifically identify communities in Northern Baltimore County the inclusion of which could easily increase the estimate of households.

In terms of pricing, the East coast market has been able to command the highest premium of organic milk over conventional milk compared to all other regions. In 2004, that premium averaged over \$2.50 per half gallon or 126%. The national average at that time was \$1.99 or 98%. Some of the aforementioned regional differences may be attributed to the fact that the East and West coasts have had access to organic products for a longer period of time.

- Market Analysis derived from U. S. Department of Agriculture report "Retail and Consumer Aspects of the Organic Milk Market", May, 2007

Prigel Family Creamery Business Plan



Demographics Summary

	A Kingsville	B Parkville	C Towson	Lutherville	Bel Air	Cockeysville	Pikesville	Reisterstown
Distance	6.25	7	7	9	11	15	16	25
Median Age	42.4	37.6	37.6	45.5	34.9	33.1	45.4	34.6
Owner occupied	93.5	65.8	59.7	82.8	80.7	33	69.3	65
College	43.8	25.4	57.2	50.8	46.1	52.5	54.6	34.9
Household income >\$75K	53.7	17	34.4	49.9	37.3	25.1	39	24.9
No of Households	79,100	2,219	7,263	3,252	5,610	2,304	4,960	2,167
Median Household Income	\$ 78,025	\$ 41,410	\$ 53,775	\$ 61,573	\$ 62,064	\$ 43,681	\$ 58,598	\$ 47,587

Source: U.S Bureau of the Census; 2002 Census, Profile of General Demographic Characteristics: 2000

Buying Locally Produced Goods

In addition to the move to organic products, PFCI also has the added benefit of being able to take advantage of the increasing trend toward buying locally-produced agricultural products.

"The trend toward smaller farming can be seen locally in farm Census data. While the number of farms in Maryland has fallen from 39,000 in 1950 to about 12,200 in 2002, the number of niche

farms of 10 to 49 acres grew from 3,979 in 1992 to 4,412 in 2002. In Virginia, such farms grew from 10,361 in 1992 to 14,082 in 2002."

"Whole Foods recently announced a heightened focus on buying local produce, including a \$10 million budget to promote local agriculture, following pressure from author Michael Pollan, who has called into question the wisdom of industrial organics. Of course, nothing is ever truly easy in farming territory, particularly when it comes to the increasing development of houses, each bigger than the last one. Grohsgal understands his land is worth more to developers than it is to him as a farm. He turns home builders away anyway. "I know it's worth a fortune," he said, "but if we always sell to developers, our nation will just stop growing food."

- A Growing Trend: Small, Local and Organic: Popularity of Farmers Markets, Natural Grocery Stores Helps Cultivate a Rise in Niche Farms, Michael S. Rosenwald, Washington Post Staff Writer, Monday, November 6, 2006; Page D01

According to an article in the December, 2007 edition of the Carroll County Times (a local periodical from Carroll County in Maryland), buying local is sometimes preferred over organic.

"What's more important than buying organic is buying local, Harbold said. Buying local cuts down on vehicle emissions from shipping, he said. Buying local produce also helps support local economies, he said, and allows consumers to build relationships with their food producers, ask for different products and learn more about how things are grown or raised.

Jackie Miller, owner of the organic farm De La Tierra Gardens in Harney, is also manager of the Downtown Westminster Farmers Market. The market is unique in that it requires producers to sell their own goods, not just items they may have picked up from other regional farms. And while it isn't required that producers be organic, there are multiple organic or all-natural farmers who have made this market one of their major sales outlets.

"I do feel local is more important than organic," Miller said. "Organic is sort of a personal preference for health and the health of the environment, but I think it's more important to keep the source of food local."

- Carroll County Times, December 21, 2007, by Carrie Ann Knauer,

We see this combination of both organic and locally-produced goods as being the right combination to bring a significant competitive advantage to PFCI.

Strategy and Implementation

Our strategy is based on serving the organic dairy product needs found with the higher income consumer.

We will focus on connecting and serving these customers' needs through the following strategic initiatives.

- We will direct our marketing and sales efforts utilizing only those mediums and methods that will connect us with our target customers.
- We will focus our selling towards meeting customer needs and at the same time remaining focused on products with which we have substantial experience.
- We will stay in contact with market opportunities in order to be able to be the first to bring new and innovative products to this marketplace.
- We will utilize technology effectively in the processing of our business so as to protect our investments and reduce our costs of operations.

Marketing Strategy

The primary marketing strategy of Prigel Family Creamery centers on creating a distinct experience for our customers both in terms of quality of product and the atmosphere in which that product is delivered.

Print ads – Keeping our name in front of the existing and potential customer is critical in generating both new and repeat business. This effort will initially be confined to local publications in order to strengthen name and brand recognition.

Branding – We will develop a customized logo that aids in brand awareness through both creative design and connection with both the name and the product focus.

Website – The website will be informational only with the intent of a) educating prospective customers and b) drawing interest to the retail facility. There is no foreseeable intention of selling products via the website.

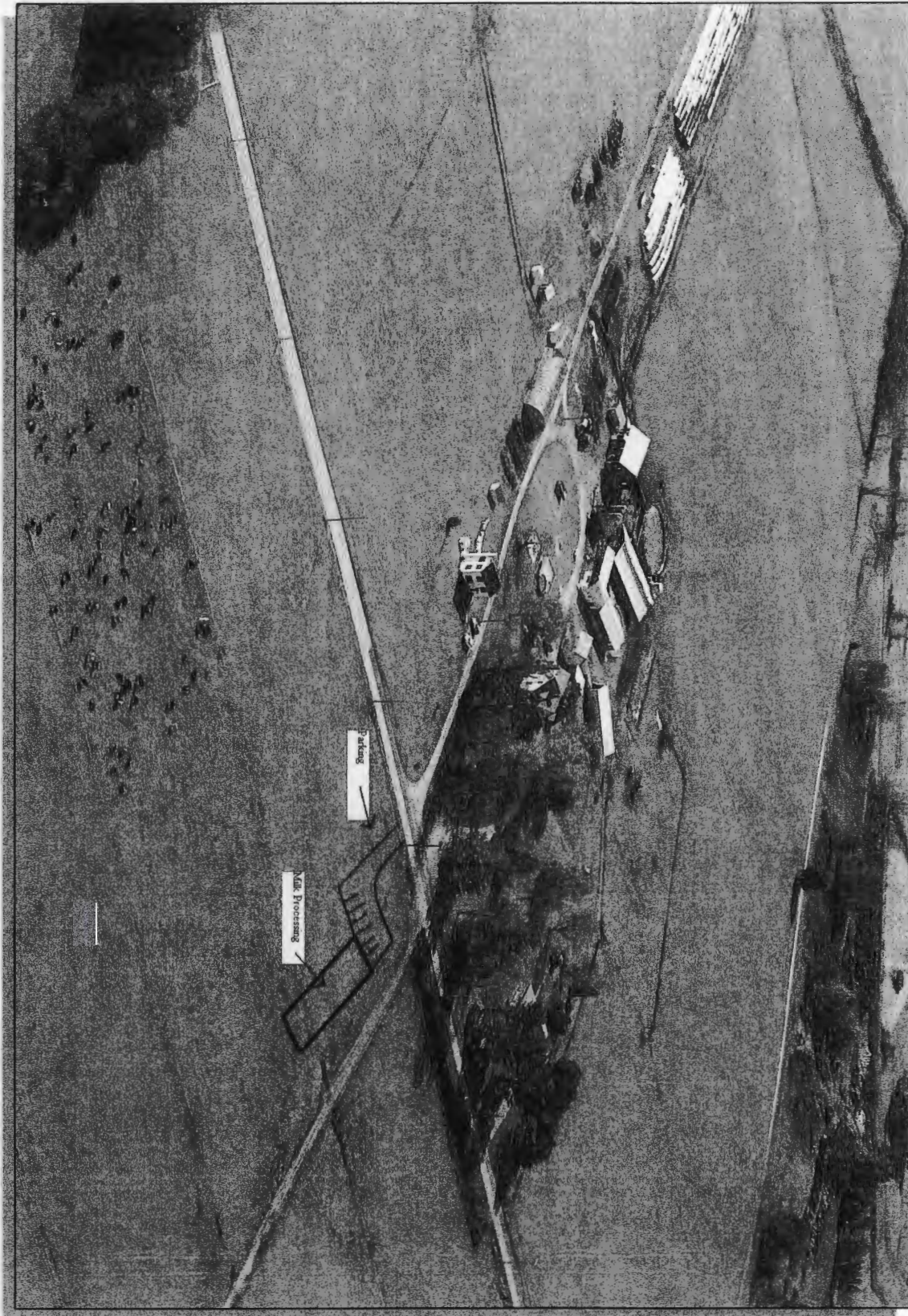
Open House/Grand Opening – We will host a grand opening event which will most likely take place in June to optimize turnout. Our purpose in this event will be introduction and/or further strengthening of existing relationships.

Direct mail – The website will also be used as a method of compiling a mailing list for use in direct mailings.

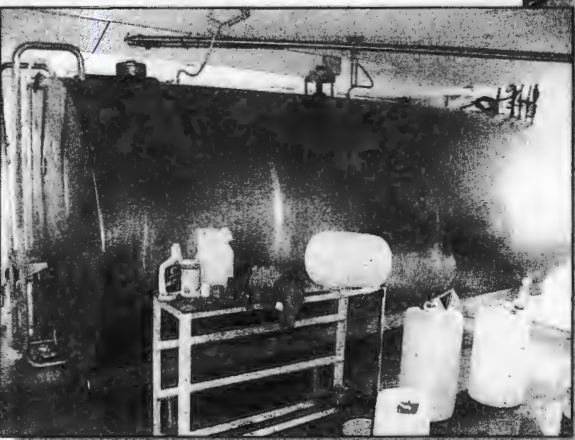
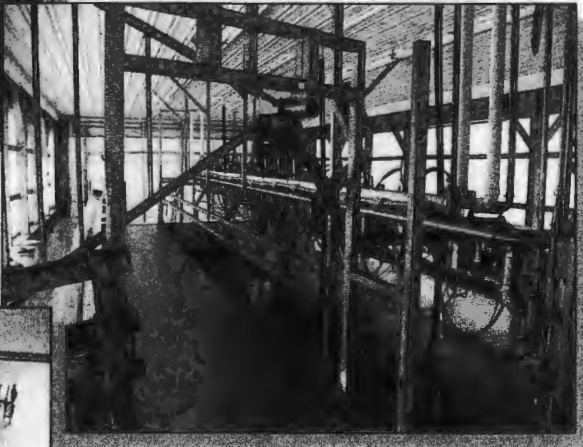
Local Events – We will participate in local events in conjunction with other local establishments where our products will appeal to the event participants and would dovetail with other participating vendors.

Apparel – All sales personnel will be attired in appropriate clothing displaying both the logo and company name.

Ariel Photo of Bellevale Farm



Various Photos of Bellevale Farm





Letter of Support from Long Green Valley Association

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

*Mr. and Mrs. Robert Prigel, III.
Mr. Matt and Bobby Prigel
Mr. and Mrs. Robert Prigel, Sr.
4851 Long Green Road
Glen Arm, Maryland 21057
September 27, 2007*

Dear Prigel family,

The Board of Directors of the LGVA would like to thank you for attending the monthly meeting on September 18, 2007 to outline the future plans and changes you will be making to your dairy farm. The board members are aware of your family's long history in the valley and your dedication to preserving the rural character of the area through good farming practices.

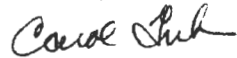
Your farm not only has the distinction of being the first property placed in the Long Green Valley Conservancy, but is known throughout the area for receiving awards for best farming practices and for being environmentally sensitive to the rural nature of the valley.

The board voted unanimously to support your family in its future plans for the dairy farm including: the building of a creamery to process milk, cheese, yogurt, and ice cream; the construction of a road side store from which these items will be sold directly to the public; the construction of a parking area that will be environmentally friendly; landscaping that will use natural screening; and the conversion of the farm to all organic.

If the association can be of any help to you now or in the future please feel free to contact us. Your goals with future changes to the

dairy farm are consistent with LGVA's mission which is to preserve the valley's agriculture and rural character for the benefit of future generations.

Sincerely,



Carol Trela, Secretary

Letter of Intent from Cowgirl Creamery



PROJECT DESCRIPTION
COWGIRL CREAMERY
BELLE VALE DAIRY
GLEN ARM, MARYLAND
11/1/07

Description of Operation

COWGIRL CREAMERY

88 Fourth Street

PO Box 594

Point Reyes Station, CA 94956

415.663.9335

WHOLESALE & MAIL ORDER

105 H Street

Petaluma, CA 94952

Toll free: 866.433.7834

COWGIRL CREAMERY

CHEESE SHOPS

The Ferry Building

1 Embarcadero, #17

San Francisco, CA 94115

415.362.9354

Penn Quarter

919 F Street NW

Washington, D.C. 20004

202.393.6800

Production

Founded in 1997, Cowgirl Creamery operates a cheese production facility in West Marin County, in Point Reyes Station, California. All of the cheese produced at the creamery is made by hand in small batches, with certified organic milk from the Straus dairy, just ten miles north of the creamery. Because of increased production demands on the small creamery in Point Reyes Station, a larger facility is in the construction phase right now and will be complete in January, 2008. The plan is to continue to produce cheese in Point Reyes Station, but to move the bulk of the west coast cheese production to the new facility.

Distribution, Marketing and Retail

In 2001, the wholesale division and business offices of Cowgirl Creamery moved to Foundry Wharf in Petaluma, California. The warehouse provides storage for cheese and houses the company offices and distribution division. On the west coast, Cowgirl Creamery is known as an important producer and distributor of artisan cheese.

In addition, Cowgirl Creamery operates a mail order cheese business and three retail stores in San Francisco, Point Reyes Station and Washington, D.C. The stores act as a marketing tool for the promotion of hand made artisan cheese.

An East Coast Presence

In June of 2006, the company expanded to the east coast with the intention of creating a wholesale, production and retail cheese company that mirrors the operation in California. The first phase of the expansion began in June, 2006 with the opening of a retail shop in downtown Washington D.C. The new Cowgirl Creamery Cheese Shop is slowly becoming known as a purveyor of quality hand made cheese and sales are growing at an average of 12% per month.

Prigel Family Creamery

Business Plan



COWGIRL CREAMERY

80 Fourth Street

PO Box 594

Point Reyes Station, CA 94956

415.663.9335

WHOLESALE & MAIL ORDER

105 H Street

Petaluma, CA 94952

Toll free: 866.433.7834

COWGIRL CREAMERY

CHEESE SHOPS

The Ferry Building

1 Embarcadero, #17

San Francisco, CA 94115

415.362.9354

Penn Quarter

919 F Street NW

Washington, D.C. 20004

202.393.6888

COWGIRLCREAMERY.COM

Cowgirl Creamery at Belle Vale Dairy

Phase two will be to begin producing cheese near the shop. On a search for great milk in the Washington Metropolitan area, we were introduced to the Prigel family in the Long Green Valley, just north of Baltimore. The land and the animals at the Prigel's dairy are loved and cared for and the result is some of the best milk we have tasted. The opportunity to use this milk in the production of Cowgirl Creamery cheeses will give us the most important element needed in the creation of quality cheese on the east coast.

Bobby Prigel has agreed to lease Cowgirl Creamery 1,500 square feet of production space in his new creamery. We plan on purchasing a 200 gallon cheese making vat and will install a 400 square foot aging room inside the production space. All of the milk used in the cheese making operation will be purchased from the Prigel's dairy.

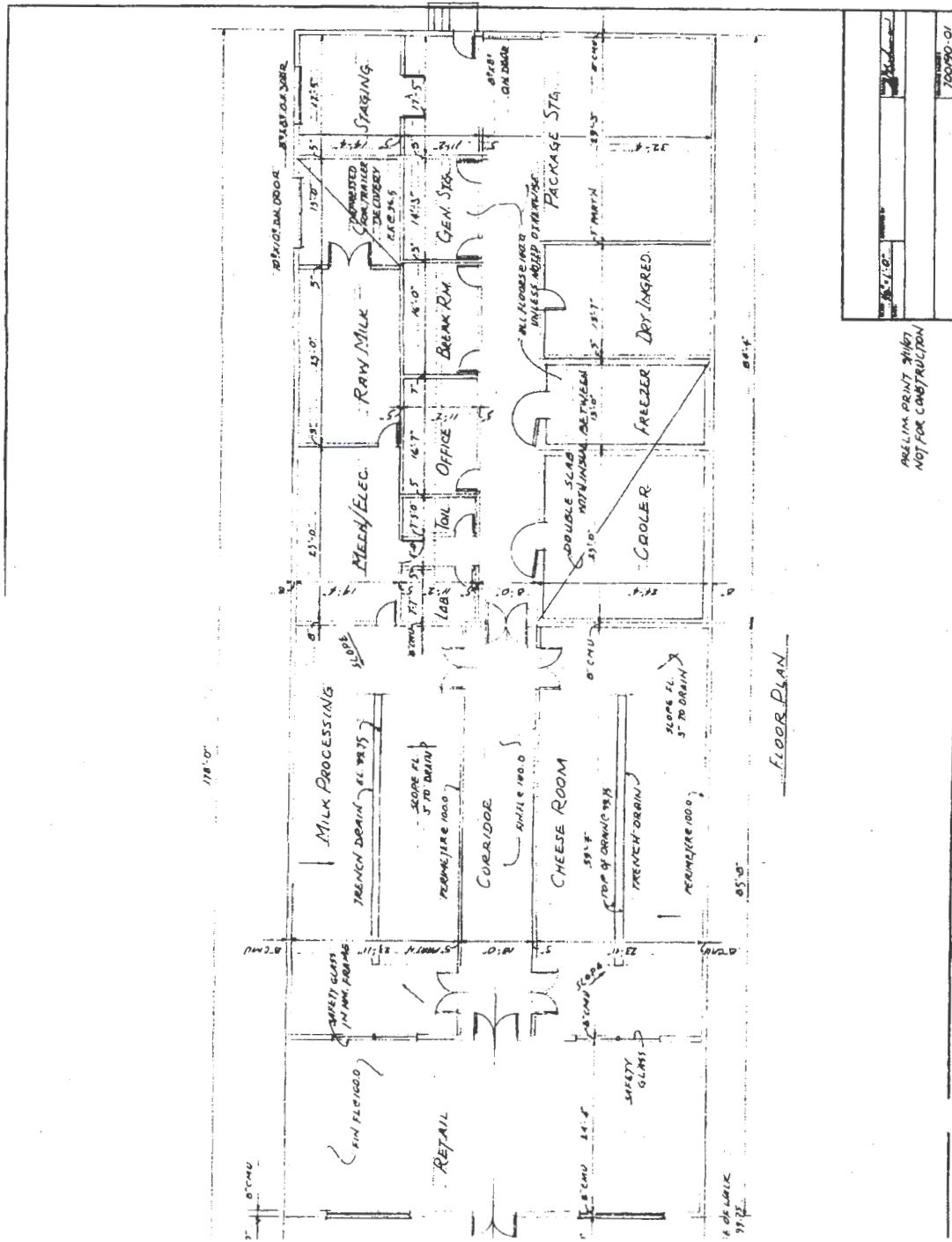
Cowgirl Creamery will pay market prices for organic milk and cream.

Rent for the 1,500 square foot calculated to include tenant improvements that are installed by the landlord.

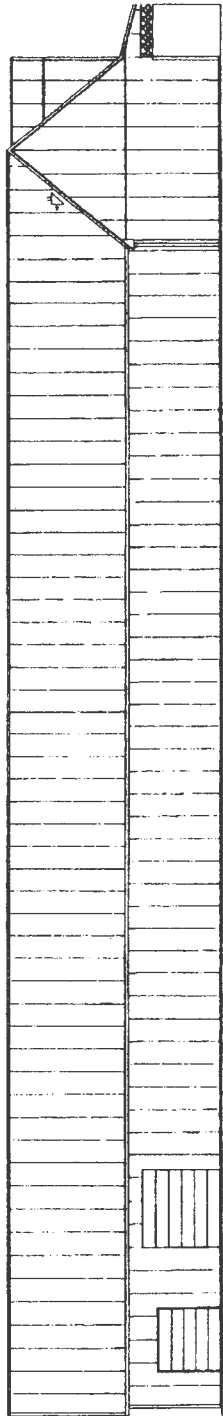
*Sincerely,
Sue Conley
Cowgirl Creamery
founder/owner*

Prigel Family Creamery Business Plan

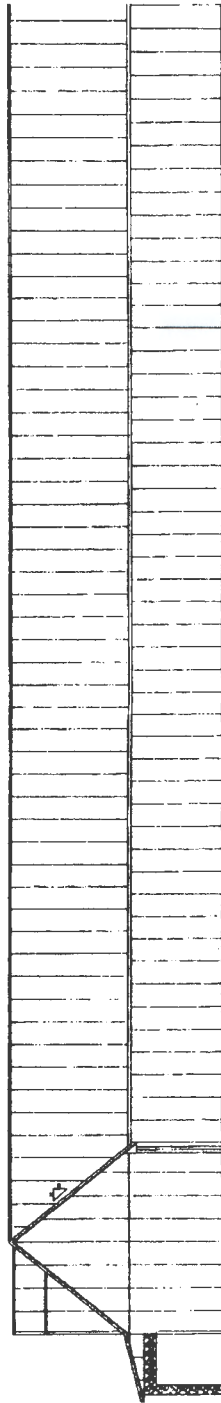
Proposed Floorplan of Processing and Retail Facility



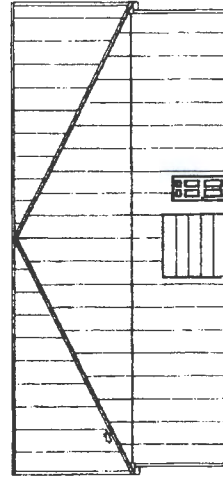
Prigel Family Creamery Business Plan



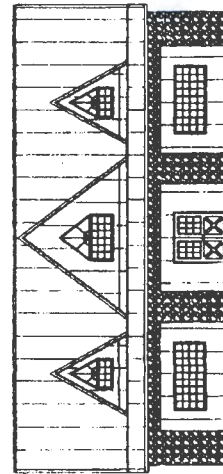
Left Elevation



Back Elevation



Back Elevation



Front Elevation

Constoga Buildings		Constoga Farm, LLC	
1-800-344-9444		4801 Lakeshore Dr.	
PO Box 117		PO Box 117	
Scale: 1/4" = 1'-0"		Scale: 1/4" = 1'-0"	
Sheet: 1 of 1		Sheet: 1 of 1	

GREATER LONG GREEN COMMUNITY ASSOCIATION
P.O. Box 164 Glen Arm, Maryland 21057

RESOLVED: That at a special meeting of the Greater Long Green Community Association held on October 13, 2009, it was decided by the Association that responsibility for review and action on all zoning matters for the period October, 2009-September 2010 be placed in the Executive Board of Directors consisting of the following members, each of whom is hereby authorized to testify on behalf of the Association before the County Board of Appeals of Baltimore County or other duly constituted zoning agency, body, or commission:

Officers:

Chairperson	David Childs
Vice-Chairperson	Stephen Kiel
Secretary	Darrell Edwards
Treasurer	Margo Kelly
Spokesperson	Roger Hayden

Executive Board At- Large Members:

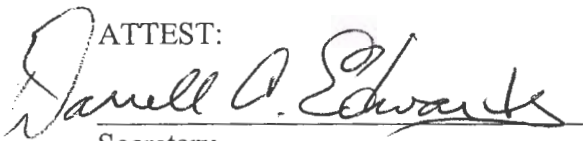
Two Year Term: One Year Term:

Barbara Amrein	Kathy Gabriel
Ann Blouse	Gerry McCloskey
Ron Carter	Howard Phelps
Tom Kelly	Bill Pennington
Bob Rigger	Paul Weber

AS WITNESS OUR HANDS AND SEAL THIS 13 day of October, 2009

Greater Long Green Community Association (Seal)

ATTEST:


Secretary


Chairperson

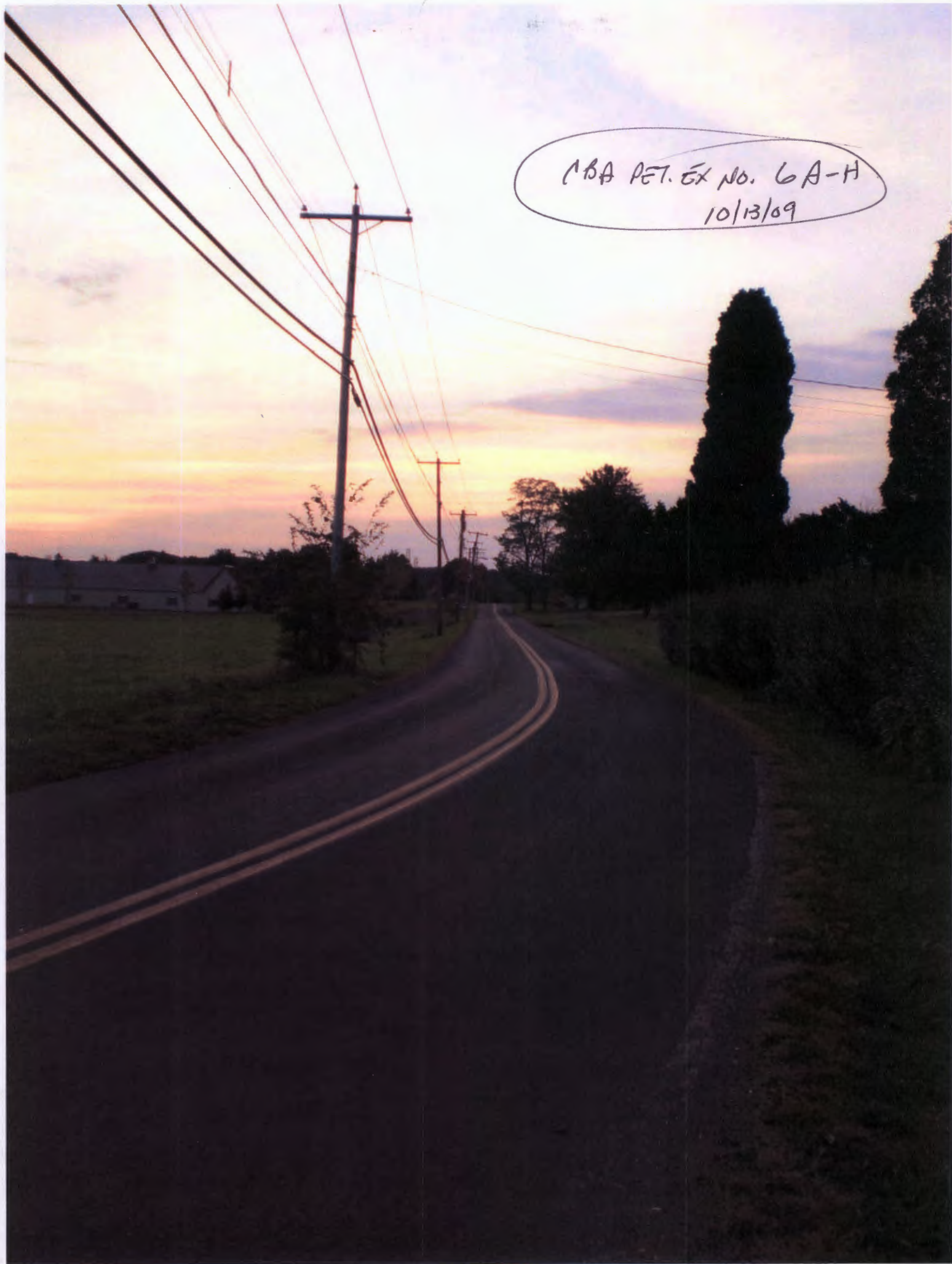
CBA PET. EX. NO. 9



Looking at the site from Long Green Road

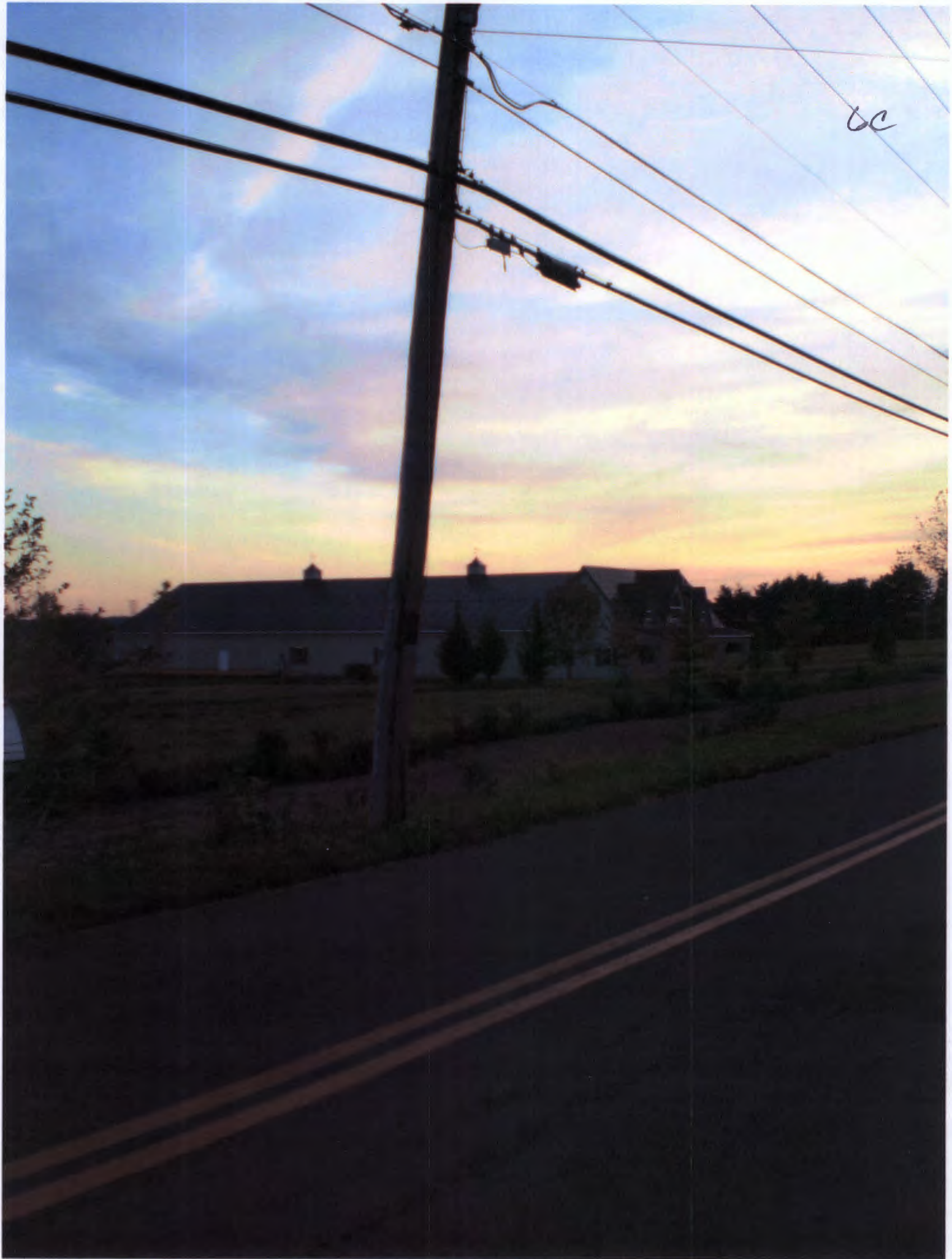
CBA PET. EX. NO. 10

MBA PET. EX NO. 6A-H
10/13/09



6B

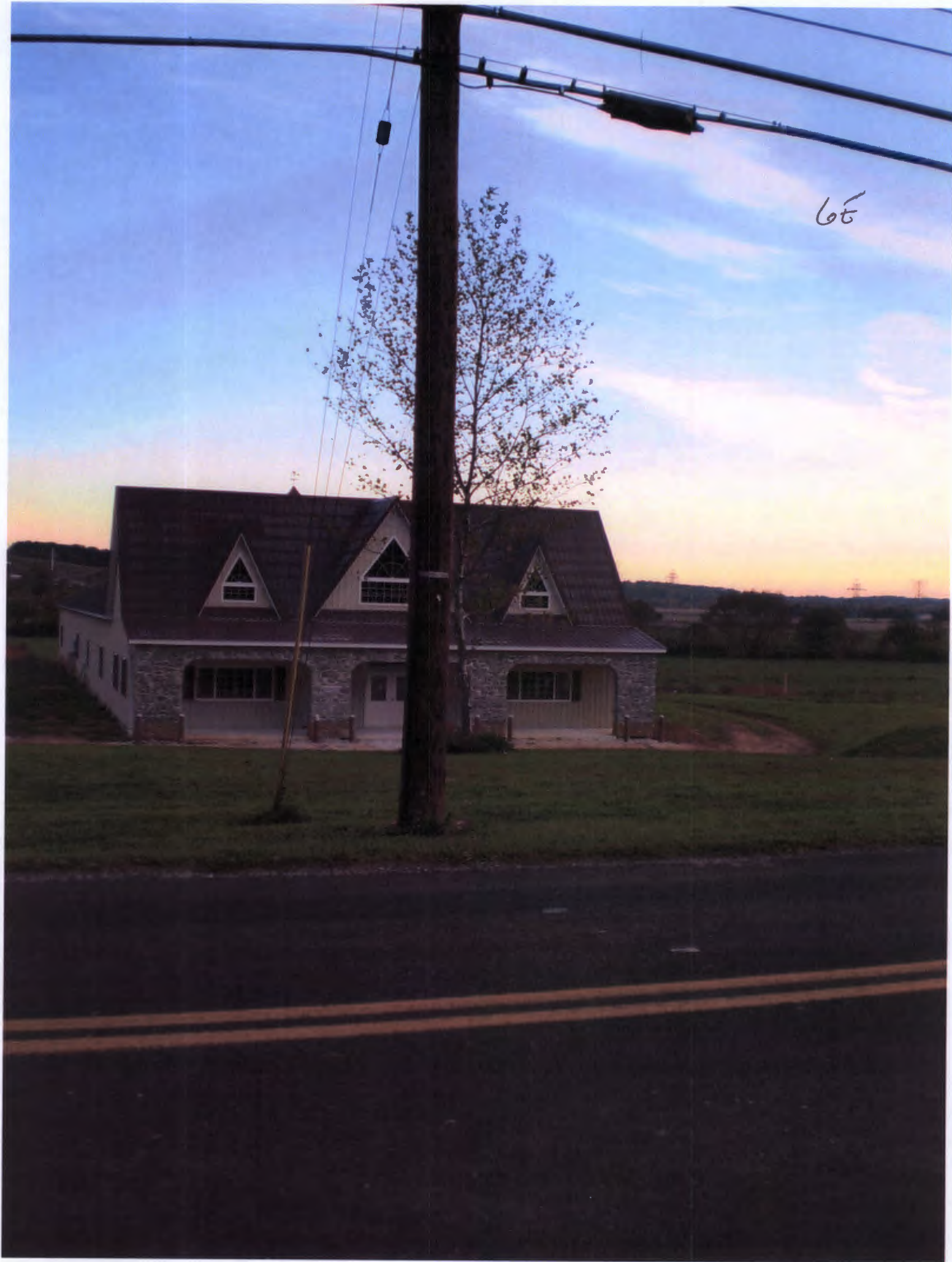




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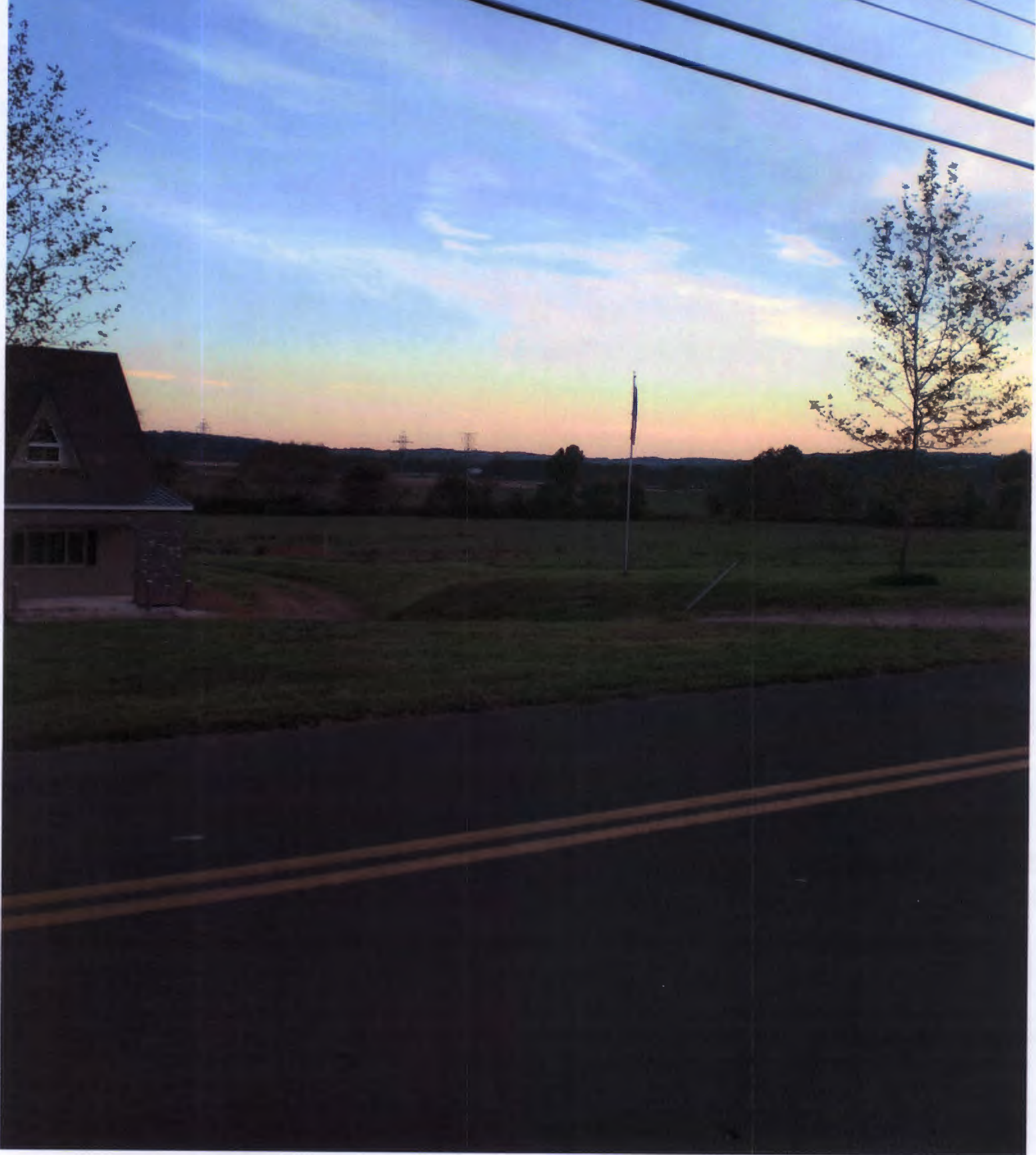
10/13/09



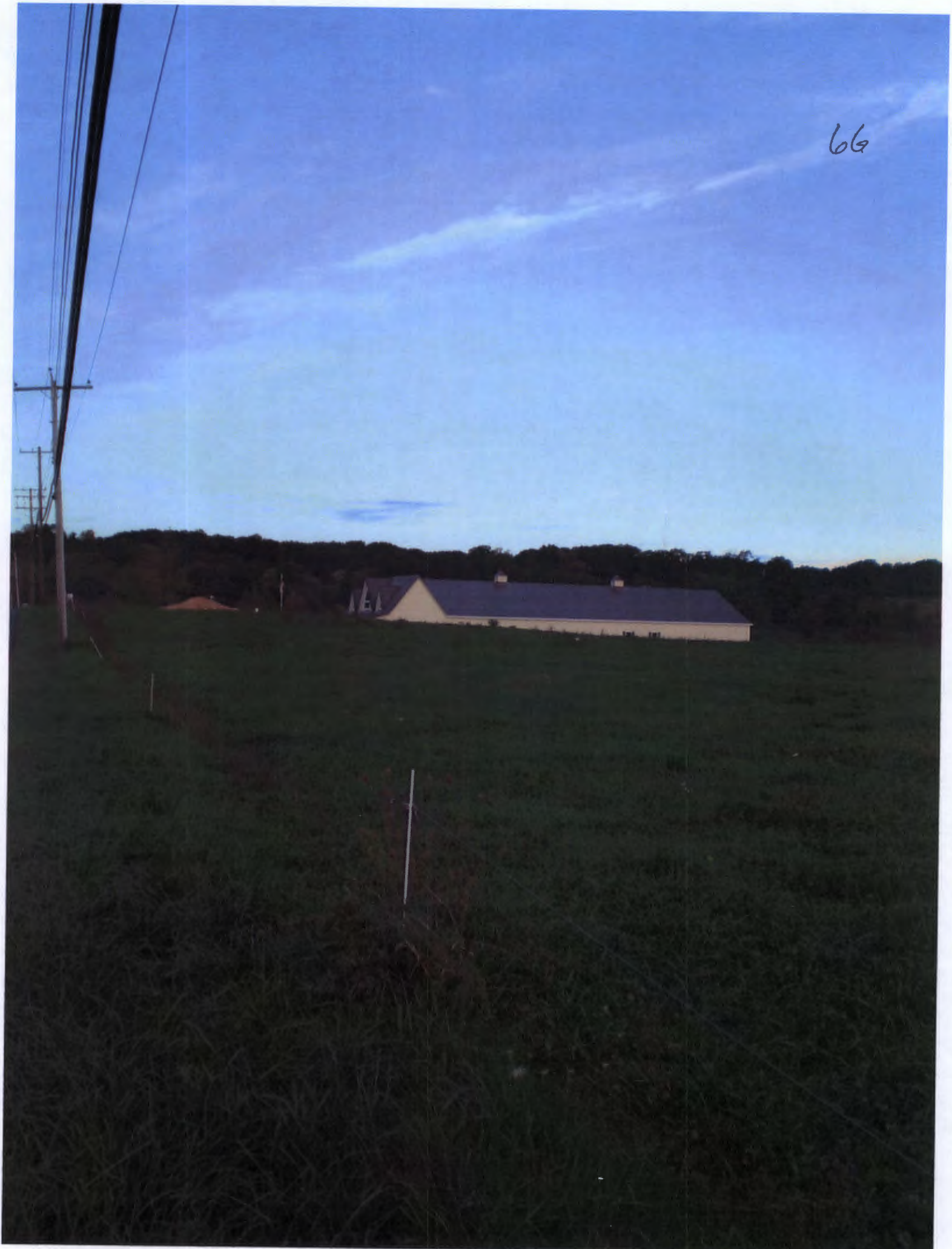


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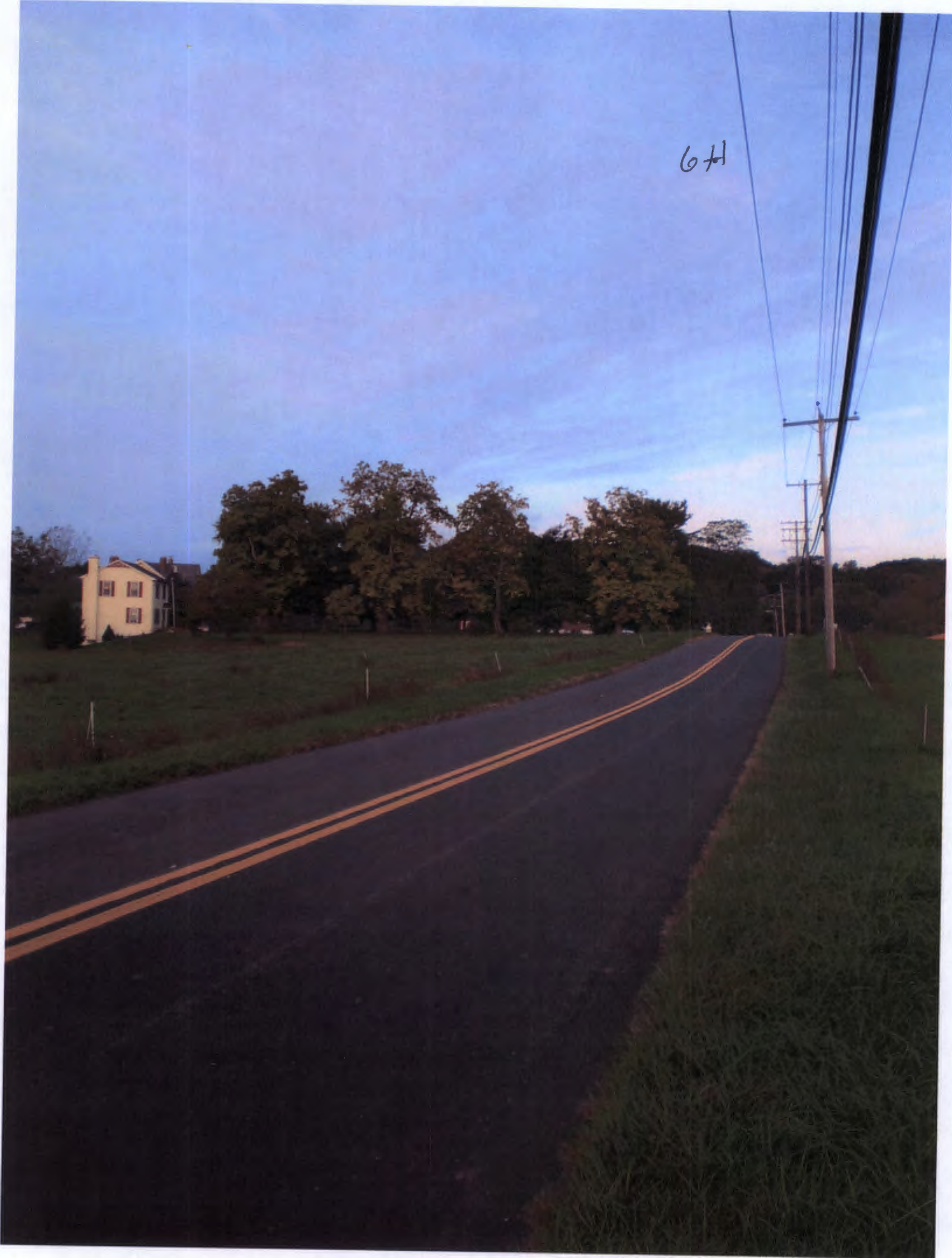
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66



641



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Mr. Doug Wilson stated that he felt the other way. Mr. Doug Wilson believed the State and other institutions are putting the onus on local government, the people who design the parking lot, the handicap associations, etc, to be more respectful of the pervious surfaces. They would have to give more latitude on what will be allowed.

Mr. Lippincott stated that the problem is actually getting them to work. The County continues to work on the issue over time, but the issues continues to be an engineering challenge.

Mr. Colhoun commented that the discussions have been very useful and stated that Mr. Prigel's parking lot is very small compared to others.

F. SOMERSET COUNTY

- | | | | |
|----|----------|-----------------------------------|--------------|
| 1. | 19-08-09 | Gerard and Donna Dumsha | 257.22 acres |
| | | Re-review of easement application | |

At the August 28, 2007 Board meeting, this easement application was approved with the withholding of 9 acres of barrow pits. However, since then, it has been determined that a portion of the property lies within a water and sewer district, and, therefore, additional review is necessary.

According to Somerset County, approximately 24 acres or 9 % of the property lies within the planned water and sewer district. On October 2, 2007, the County Commissioners approved the easement application with the inclusion of these acres. The County administrator reports that sewer and water may still be extended past the proposed easement by keeping it within the right-of-way of the road.

Staff recommends approval based on meeting minimum size and soils criteria. Normally, land located in the planned water and sewer area is not eligible for the program. However, § 2-509 (d) (4) provides an exception if the land "is outstanding in productivity and is of significant size." Staff recommends that the Foundation approve the exception because: 1) the property is relatively large for the county; 2) the soils are excellent quality (100% prime); and 3) the majority of the property lies outside the water and sewer area. It would not serve the interests of the program to require the landowner to exclude the area of the property from the easement. A letter from the Soil Conservation District was attached with the agenda memo.

Tom Lawton, Program Administrator, was available at the meeting. The County's water and sewer plans are fairly general and do not have a specific measurement to give the landowner. The County Zoning is R2 and that is 600 feet from the road. It is the policy of the County that service will be extended in the right-of-way and not across the property.

Mr. Colhoun had stepped out of the meeting at 11:10 am and returned at 11:15 am. Mrs. Vera Mae Schultz, Vice Chair, chaired the meeting in his absence.

Motion #12: To approve the re-review of Gerard and Donna Dumsha's easement application.

Motion:	Doug Wilson	Second:	James Pelura
Status:	Approved		



Maryland Department of Agriculture

Office of the Secretary

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
Roger L. Richardson, Secretary
Earl F. Hance, Deputy Secretary

The Wayne A. Cawley, Jr. Building
50 Harry S. Truman Parkway
Annapolis, Maryland 21401
TTY Users: Call via Maryland Relay
Internet: www.mda.state.md.us

Agriculture | Maryland's Leading Industry

410.841.5700 Baltimore/Washington
301.261.8106 Washington, D.C.
410.841.5914 Fax
800.492.5590 Toll Free

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION October 29, 2007

Mr. Robert Prigel, Jr.
Bellevale Farm, Inc.
4851 Long Green Road
Glen Arm, Maryland 21057

Re: MALPF File #03-83-14C

Dear Mr. Prigel:

We appreciate your attendance at the October 23, 2007 Foundation Board meeting. The purpose of this letter is to confirm that the Board approved the construction of a 7,000 to 10,000 square foot building to house the creamery operation, processing facility and farm store. The Board also approved a pervious parking area that would accommodate fewer than 10 vehicles. The parking area is to be located on Long Green Road with the creamery directly behind it.

The approval requires that the structure and the parking lot be in compliance with the following (once built and in the future):

- Must not interfere with other agricultural or silvicultural operations.
- Must not limit future agricultural or silvicultural production.
- Easement owner must have an ownership interest in the operation.
- Some of the products must come from animals raised or crops grown on site; the remainder from animals or crops indigenous to Maryland.
- Facility and parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller.
- Parking area must be pervious.
- Accessory sales area must not exceed 600 sq. ft.

If you have any questions, please feel free to call me at 410-841-5715.

Sincerely,

Diane Chasse
Administrator

CC: Wally Lippincott, County Program Administrator

CRA PET. EX. NO. 8

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
MINUTES
October 23, 2007**

TRUSTEES PRESENT:

Daniel Colhoun, Chairman
Vera Mae Schultz, Vice Chairman
John W. Draper, Jr.
Jerry Klasmeier, representing Comptroller Peter Franchot
Dr. James Pelura
Joe Tassone, representing Secretary Richard E. Hall, Department of Planning
Doug Wilson, representing Secretary Roger L. Richardson, Department of Agriculture

TRUSTEES ABSENT:

Howard S. Freedlander, representing Treasurer Nancy Kopp
Robert F. Stahl, Jr.,
Christopher H. Wilson

OTHERS PRESENT:

Bill Amoss, Harford County, Program Administrator
Anne Bradley, Frederick County, Ag. Preservation Planner
Rob Burk, Executive Director, Horse Industry Board, Maryland Department of Agriculture
Pam Bush, Department of Natural Resources, Senior Policy Analyst
Vince Berg, Citizen, Montgomery County
Elizabeth Brown, Landowner, Frederick County
Tammy Buckle, Caroline County, Program Administrator
Diane Chasse, MALPF Administrator
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Veronica Cristo, Calvert County, Rural Planner
Rama Dilip, MALPF Secretary
James Evans, Landowner, Inverness Farm, Montgomery County
Charles Fenwick, Jr., Representative for Land Preservation Trust/Shawan Downs, Baltimore County
Nancy Forrester, Assistant Attorney General, Department of General Services
Billy Gorski, Ag. Program Planner, Anne Arundel County
→ David Greene, Chair, Baltimore County Advisory Board, Baltimore County
Buddy Hance, Deputy Secretary, Maryland Department of Agriculture
Sibbald Hereth, Landowner, Howard County
Edward Hereth, Landowner, Howard County
Rob Hoffman, Representative for Land Preservation Trust/Shawan Downs, Baltimore County
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Dale Hutchins, Landowner, Calvert County
Carmela Iacovelli, Baltimore County, Natural Resource Specialist
→ Joy Levy, Howard County, Program Administrator
Wally Lippincott, Jr., Baltimore County, Program Administrator
Carla Martin, Kent County, Program Administrator
Elta Martin, Landowner, Frederick County
Daniel Rosen, Planner, Maryland Department of Planning
Charles Rice, Charles County, Program Administrator
Caythee and Charles Ruby, Landowners, Frederick County
Donna Sasscer, St. Mary's County, Program Administrator
Ned Sayre, Harford County, Program Assistant
Steward B. Smith, Prince George's County, Soil Conservation District
Donna K. Landis-Smith, Queen Anne's County, Program Administrator
Samantha Stoney, Howard County, Planner
Elizabeth Weaver, MALPF Administrator

pervious, but it is little challenging. The State has developed many rules to utilize more and more pervious parking and sometimes it might put additional burdens on the farm users. Baltimore County will work it out.

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F. SOMERSET COUNTY

1.	19-08-09	Gerard and Donna Dumsha	257.22 acres
		Re-review of easement application	

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According to Somerset County, approximately 24 acres or 9 % of the property lies within the planned water and sewer district. On October 2, 2007, the County Commissioners approved the easement application with the inclusion of these acres. The County administrator reports that sewer and water may still be extended past the proposed easement by keeping it within the right-of-way of the road.

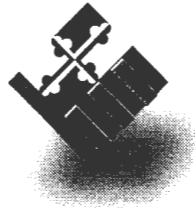
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Mr. Colhoun had stepped out of the meeting at 11:10 am and returned at 11:15 am. Mrs. Vera Mae Schultz, Vice Chair, chaired the meeting in his absence.

Motion #12: To approve the re-review of Gerard and Donna Dumsha's easement application.

Motion:	Doug Wilson	Second:	James Peiura
Status:	Approved		



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

Jennifer R. Busse
Whiteford, Taylor & Preston L.L.P.
210 W. Pennsylvania Ave. 4th Floor
Towson, Md 21204

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management
May 29, 2008

Dear: Jennifer R. Busse

RE: Case Number 2008-0456-X, Address: 4851 Long Green Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 31, 2008. 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
Robert E. Prigel, Prigel Family Creamery, INC., 4851 Long Green Rd., Glen Arm, MD
21057

CBA PET. EX No. 1

BALTIMORE COUNTY, MARYLAND

ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Inter-Office Correspondence

TO: Development Coordination DATE: May 13, 2008
FROM: Wally Lippincott, Jr.
SUBJECT: Prigel Farm – Zoning Hearing 08-456- X

Background: The Prigel family has operated a dairy on their farm in Long Green Valley for several generations. The family in a commitment to agriculture and land preservation placed the 180 acres on which this request is being made into a perpetual agricultural easement held by the Maryland Agricultural Land Preservation Foundation. They placed another portion of their land into a permanent easement with the Maryland Rural Legacy Program. They have operated an innovative dairy operation for years and have hosted many tours of groups interested in seeing a dairy operation that is an alternative to intensive large scale contained animal operations.

There is a trend in agriculture, particularly in the Northeast and MidAtlantic, to grow and process products that can be sold locally and to grow organic or hormone free products. This appears to be improving the viability of farming in Maryland where otherwise our farms are at a disadvantage to large factory farms of the Midwest and South.

Over the last 20 years dairy farms in Maryland and Baltimore County in particular have been particularly hard hit by this trend. The number of dairy farms has declined from approximately 20 farms in the late 1980's to less than 10 today. Dairy farms are significant contributors to the local agricultural industry because of their inputs back into the economy. The Prigel's request for innovations to their dairy operation while difficult for people to accept is part of the need for agriculture to change in order to survive. The purpose of the MALPF and County Agricultural Easements are for the protection of the prime and productive soils and the fostering of agriculture.

This property is zoned RC – Agricultural Preservation and is within a Master Plan designated Agricultural Preservation Area. Furthermore, the County, Federal and State Governments with some assistance from the private sector have invested significant public funds in the preservation of farms such as this for agricultural production.

Request: Mr. Robert Prigel has requested approval for a Farm Market or Farmers Roadside Stand on the farm in order to sell dairy products produced on site. Because the land is under a MALPF easement the request had to go before the State Board for consideration.

He initially brought the concept to the Baltimore County Agricultural Land Preservation Advisory Board on March 20, 2007 (see minutes). His operation is well known and there was no question about his ability to produce milk for onsite sales. Mr. Prigel formally submitted his request for a recommendation on August 28, 2007 (see minutes). The Board voted to recommend Mr. Prigel's request to sell dairy products and grass fed meats on the farm. The location was part of the request and the Board raised no objections to the proposed location.

Mr. Prigel went before the MALPF Board on October 23, 2007 and received approval subject to the conditions indicated on the attached copy of the Minutes from the MALPF Meeting of 10-23-07. Those conditions include:

"Some of the products must come from animals raised or crops grown on site; the remainder from animals or crops indigenous to Maryland."

"Facility and parking area must cover no more than 2% of the easement/district, or two acres whichever is smaller."

"Parking area must be pervious."

"Accessory sales area must not exceed 600 sq feet."

In addition Mr. Prigel represented that the building would not exceed 10,000 sq ft.

The motion that was approved was as follows: To approve the request of Bellevale Farm (Prigel), to allow a creamery operation, processing facility and farm store on an easement property subject to the parking lot being pervious.

The County requirements for a Farm Market and Roadside Stand are in addition to the State easement requirements. The County requires the sale of a minimum of 50% of products grown on the premises, adjacent or other farms operated by the applicant for Farmers Roadside Stand (BCZR 404.4.C.3) or in the case of a Farm Market 50% grown by the owner of the market and no more than 10% locally produced nonagricultural products.

Recommendation: Support the request for a Farm Market or Roadside Stand in the location as proposed. The location is directly across from the existing farmstead and is located immediately adjacent to the road. This is consistent with the practice of protecting prime and productive agricultural soils by locating buildings near the road and/or within existing farmsteads. The applicant's farm operation gives reasonable indication that he can meet the production requirements for a Farmer's Roadside Stand and Farm Market. This request for a building of a maximum of 10,000 square feet that includes the farm market, processing and creamery ~~to be is~~ consistent with the MALPF approval, Baltimore County Zoning, and the Baltimore County Master Plan. The support is conditional upon Mr. Prigel receiving all necessary permits for the processing and creamery operation.



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

John D. Porcari, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: APRIL 4, 2008

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

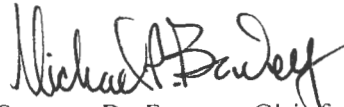
RE: Baltimore County
Item No. 8-456-X
PRIGEL FAMILY/GEARMAN, INC.
SPECIAL EXCEPTION
4851 LONG GREEN ROAD

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. 8-457-A.

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,


For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

My telephone number toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech: 1 800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone: 410.545.0300 • www.marylandroads.com

CASE #08-42-X

PETITIONERS' EXHIBITS

Verified
10/19/09
KAC

1. ZONING ADVISORY COMMITTEE (ZAC) COMMENTS
2. MICHAEL W. FISHER'S RESUME
3. AERIAL PHOTO - BELLEVUE FARM
4. ZONING EXHIBIT - BELLEVUE FARM.
5. REVISED SITE PLAN 5/28/08 INTRODUCED BEFORE THE DZC.
6. A-H PHOTOS
7. LETTER DATED 9/26/07 TO MALPF.
8. LETTER DATED 10/29/07 TO MR. PRIGER, JR. AND MINUTES OF MALPF DATED 10/23/07.
9. SECTION 8 PAPERS FOR WILLIAM PENNINGTON
10. PHOTO OF CREAMERY FROM LONG GREEN ROAD

Michael W. Fisher
Principal



Mr. Fisher's experience working closely with allied professionals such as architects, land use attorneys, financing entities, engineers and environmental specialists has provided him with a unique understanding and range of skills required to provide the complete scope of services needed for today's sophisticated development. It has also equipped him to coordinate the various site-related services involved in a project. Specific experience includes both public and private projects. Public work has included educational facilities, community centers, public buildings, fire protection and fire training facilities, parks and libraries, as well as federal government research and development facilities, and state institutions. Mr. Fisher has extensive experience with campus design for private schools, higher education campuses, hospitals, and large scale recreation facility planning. He maintains extensive knowledge of local policies and procedures for many of the counties throughout Maryland, and continues to expand his value to clients by increasing their understanding of the site aspects of LEED and environmentally sensitive and sustainable design.

Professional Registration

Landscape Architect – Maryland, No. 544
CLARB Certification – Council of Landscape
Architectural Registration Boards
Maryland State Board of Examiners
for Landscape Architecture –
Appointed 2003; Board Chair – 2008-2009

Education

B.S., Landscape Architecture,
The Pennsylvania State University, 1978
B. Landscape Architecture,
The Pennsylvania State University, 1979

Years Experience

With this firm: 15
With other firms: 16

Professional Associations

American Society of Landscape Architects
American Institute of Architects, Baltimore Affiliate
USGBC – Maryland and Northern Chesapeake
Chapters
Building Congress and Exchange of Maryland
Maryland Chamber of Commerce
Greater Baltimore Economic Forum
Greater Harford Committee
Northern Maryland Technology Council
Harford Leadership Academy
Harford County Chamber of Commerce
Cecil County Chamber of Commerce
YMCA of Harford County
Board of Directors – 1990–2000
Redeemer Classical Christian School
Board of Directors 2006–2009

Professional Background

Site Resources, Inc.
Land Planners/Landscape Architects/Civil Engineers
Phoenix, Maryland
Principal, 1994 - Present

Daft McCune Walker, Inc.
Landscape Architects/Planners/Engineers
Towson, Maryland
Senior Associate, 1986-1994

Gaudreau, Inc.
Architects/Planners/Engineers
Baltimore, Maryland
Associate 1981-1986

David L. Gregory & Associates
Engineers/Landscape Architects
Towson, Maryland
Landscape Architect 1979-1981

Representative Experience

Franklin Square Hospital Center – various projects
St. Joseph Medical Center – various projects
University of Maryland Medical Center – various projects
Sheppard Pratt Replacement Hospital
Baltimore County Club
Aberdeen Proving Ground Advanced Chemistry Lab
Bowie State University - Fine and Performing Arts Center
University of Maryland College Park – various projects
Maryland Fire and Rescue Institute – multiple sites
McCormick Spice Milling and Distribution Center
AAI Corporation Headquarters
Shawan Downs Land Preservation and Steeplechase
Boys Latin School – various projects

CBA REF EX. NO. 2

Baltimore County - My Neighborhood



SITE RESOURCES
 incorporated
 Comprehensive Land Planning & Site Design Services

14315 Jarrettsville Pike • Phoenix, Maryland 21131
 (410) 683-3388 • fax (410) 683-3389

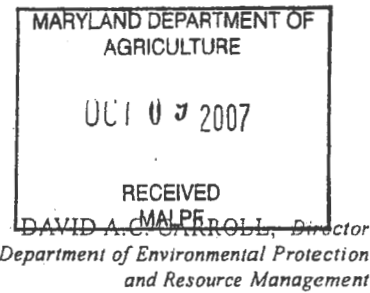
EXISTING ZONING EXHIBIT
 BELLEVALE FARM

SRI PROJ. NO.:	07089	DATE:	10/14/09	SCALE:	APPROX. 1"=700'
DESIGNED BY:	JLT	DRAWN BY:	JLT	CHECKED BY:	JLT
				SHEET	1 OF 1

CBA PET. EX. NO. 4



JAMES T. SMITH, JR.
County Executive



Mr. Jim Conrad
Maryland Agricultural Land Preservation Foundation
50 Harry S. Truman Parkway
Annapolis, MD 21401

September 26, 2007

RE: Baltimore County - Mr. Robert Prigel. Bellevale Farms, Inc. MALPF #03-83-14C. 180 acres.

Dear Mr. Conrad,

Mr. Robert Prigel of 4851 Long Green Road, Baltimore County is requesting approval to construct a creamery operation, processing facility, and farm store for the dairy farm. The property is currently under a MALPF easement. We would like to place this on the agenda for the October 23, 2007 MALPF Board meeting.

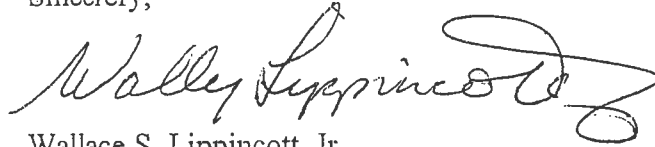
The facility that is planned will be a 7,000 to 10,000 square foot building which will be located off of Long Green Road. It will contain ~ 1500 sq. ft. of retail space selling farm produced milk, cheese, yogurt, butter, and ice cream. The rest of the facility will be used for processing and warehouse space. Mr. Prigel is aware that under MALPF regulations that 75% of the products sold at his stand must be produced on his farm. The approximate location of the new facility is shown on the accompanying aerial maps. The access road will be a Right of Way and the facility will have fewer than 10 parking spaces.

The Baltimore County Agricultural Land Preservation Advisory Board reviewed and voted favorably on the request at their August 28, 2007 meeting. The facility will be located in an area that contains class II soils (HaB2). Although this location contains highly productive soil, the entire farm is comprised mostly of classes I, II, and III soils with very little class IV and the area along Long Green Road where the facility will be located is mainly Class II with some Class I soil.

This proposal is considered an "agricultural-support" use and is permitted under Baltimore County Zoning Regulations Bill No. 178-1979. It is permitted by special exception will be subject to a Special Hearing and review by our local Zoning Board. Baltimore County Staff would like the State to review and, if acceptable, to give preliminary approval of this proposed use before submitting Mr. Prigel's proposal to Zoning for a Special Hearing.

Thank you very much. If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, reading "Wallace S. Lippincott, Jr.", with a large, stylized flourish at the end.

Wallace S. Lippincott, Jr.
Program Administrator

c. Mr. David Greene, Chairman BCALPAB
Mr. Robert Prigel, Landowner

proposal will go to the DRC with a letter of recommendation from the Ag Board.

Motion: The Board recommends approval of the Agricultural Subdivision proposal made by Mr. and Mrs. Morris.

Motion made by: Harriet McGinnis **Second:** David Hayden
Decision: Unanimous

2) MALPF Easement Requests

a. Mr. Robert Prigel. Bellevale Farms, Inc. MALPF #03-11-83-14C. 180 acres. 4851 Long Green Road. Mr. Prigel is requesting the Board's recommendation for a proposal to construct a creamery operation and processing facility for his dairy farm. The facility that is planned will be a 7,000 square foot pole building which will be located off of Long Green Road and the cow lane. It will contain ~ 1500 sq. ft. of retail space (a Farmer's Roadside Stand) selling milk, cheese, yogurt, butter, and ice cream. Grass fed meats will also be sold at the stand. The rest of the facility will be used for processing and warehouse space. Mr. Prigel is aware that under MALPF regulations that 75% of the products sold at his stand must be produced on his farm.

Discussion: Mr. Prigel outlined his formal request for adding a creamery operation and processing facility to his dairy operation. He is proposing a building that is approximately 10,000 square feet (70' x 120'). Parking for the retail facility will be on approximately ½ acre and the operation will employ 6 people, hopefully family members. This issue will be further discussed at the September 18, 2007 Long Green Valley Association Meeting. Mr. Prigel was informed that he will need to define the processing operation for the State MALPF Board, especially any issues that may come up with the Baltimore County Health department. He will also need a perc test on the site before moving forward with the proposal. This will go forward to the October 2007 MALPF Board for their meeting and recommendation/approval.

Motion: The Board recommends approval of the creamery/processing facility as proposed.

Motion made by: David Hayden **Second:** Pat Patterson
Decision: Unanimous

V. POLICY ISSUES/ MISCELLANEOUS/ CORRESPONDENCE

CASE # 08-432-X

PROTESTANTS EXHIBITS

Verified
10/19/09
KRC

1. RULE 8 REQUIREMENT

AFFIDAVIT

**STATE OF MARYLAND
BALTIMORE COUNTY, SS:**

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member
of the (Board of Directors) (Zoning Committee) of the
Long Green Valley Association.

ATTEST:

Long Green Valley Association

Carey J. Hill

Secretary

James R. Hill

President

DATE: 10-14-09

CBA Prot Exh
#1 ID

LGVA

ASSOCIATION

RESOLVED:

That the position of the

LGVA

Association as adopted by the (Board of Directors)

(Zoning Committee) on the zoning matter known as:

08-456-X

is that:

as reported by C. Treia

AS WITNESS OUR HANDS AND SEAL THIS 10 day of

15

2009

ATTEST:

LGVA

Association

Carey L. H.

Secretary

C. Pine

President

Long Green Valley

ASSOCIATION

RESOLVED: That at the SEVERAL MONTHLY meeting of the LGVA Association held on MONTHLY - 1st Tuesday [DATE], it was decided by the Association that responsibility for review and action on all zoning matters for the period (UNTIL ISSUE IS RESOLVED) be placed in the (Board of Directors) (Zoning Committee) consisting of the following members, each of whom is hereby authorized to testify on behalf of the Association before the County Board of Appeals or other duly constituted zoning agency, body, or commission:

AS WITNESS OUR HANDS AND SEAL THIS 10 day of 15, 2009

ATTEST:

LGVA Association

[Signature]
Secretary

C. Pene
President

CASE #08-42X

PEOPLE'S COUNSEL

Verified
10/19/09
KRC

1. MEMBERSHIP MAP OF GREATER LONG GREEN COMM. ASSOC.
2. FARMERS' LEASING BUSINESSES
3. BILL NO. 41-92 COUNTY COUNCIL
4. DRAFT - LEGISLATIVE PROJECT NO. 8
5. DRAFT - LEGISLATIVE PROJECT NO. 8
6. AMENDMENTS TO BCZR ADOPTED 2/5/09
7. BILL NO. 34-09

PC Ex: 1

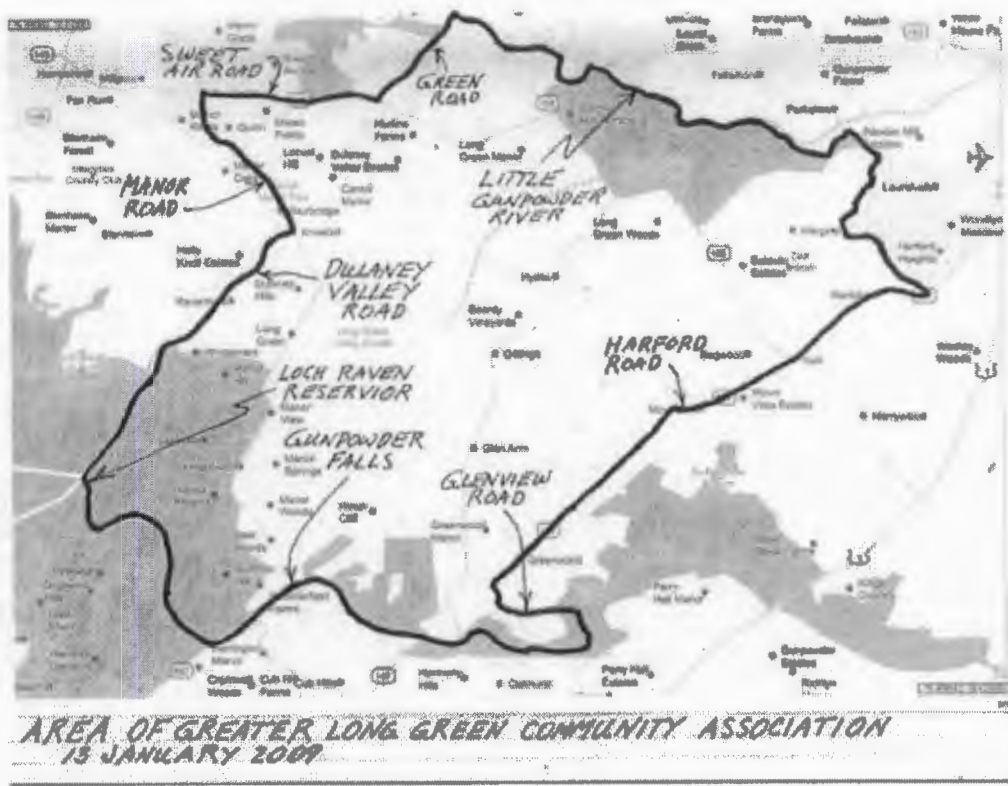
Membership

Membership is open to all persons, at least 18 years old, who live, own property, or operate a business or institution within the Association boundaries.

A member is any person who meets one of the above qualifications and has paid their current dues of \$25 per year. There is no limit as to the number of members per household, business, or institution.

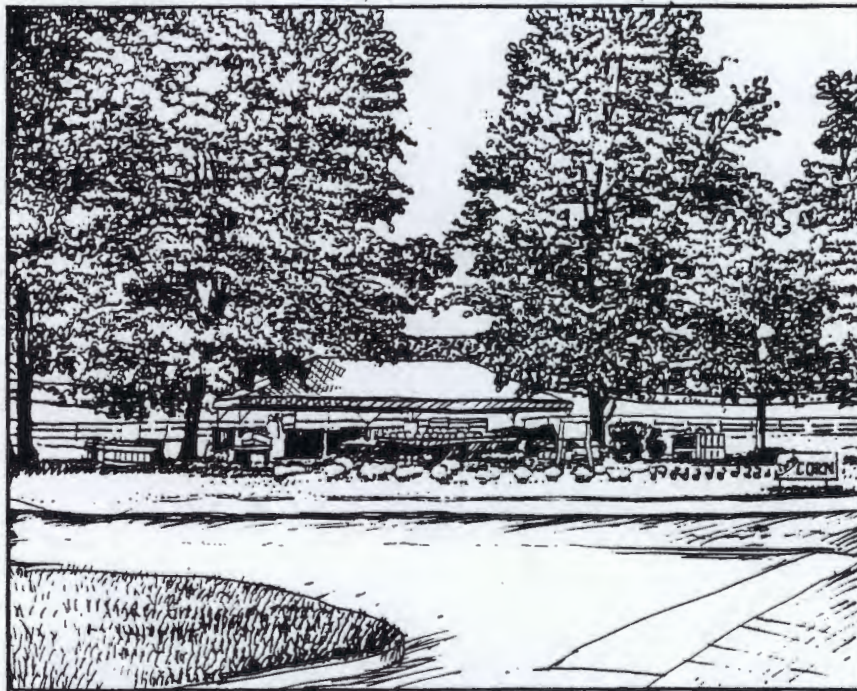
We invite you to join us in this new organization and help make your community all that its residents think it should be!

Membership Form



CBA PC EX. NO. 1

Proposed Amendments To
The Baltimore County
Zoning Regulations
Regarding



FARMERS' ROADSIDE BUSINESSES

A Final Report of
The Baltimore County
Planning Board

CBA PC EX, NO. 2

April 18, 1991

PROPOSED AMENDMENTS TO THE
BALTIMORE COUNTY ZONING REGULATIONS
REGARDING FARMING, FORESTRY ACTIVITIES
AND AGRICULTURAL RELATED BUSINESSES

PART 1: FARMERS' ROADSIDE BUSINESSES

A Staff Report of the Baltimore County
Office of Planning and Zoning and
the Department of Environmental Protection
and Resource Management
April 29, 1991

PROJECT DESCRIPTION

Council Resolution 29-90 (Attachment 1) requests the Planning Board to consider amendments to the Zoning Regulations to clarify regulations dealing with farming, forestry activities and agricultural related operations. Because of the wide range of issues associated with this Resolution, staff is responding with four reports. This report provides an introduction for the entire project and recommends possible amendments to the Zoning Regulations regarding farmer's roadside markets and stands.

INTRODUCTION

Council Resolution 29-90 responds to problems raised by the County's farmers and agricultural related businessmen in a report submitted to Council in June, 1988. This report documented that the County's Zoning Regulations are internally inconsistent, obsolete and unable to accommodate the needs of contemporary agricultural operations. The Regulations undermine efforts to maintain productive agricultural operations.

Baltimore County is committed to preserving and maintaining agriculture. This commitment is stated in the 1989-2000 Master Plan. The County's commitment to agricultural preservation is shown through its strong agricultural zoning -- in the R.C.2 zone, a 50 acre minimum is required for any lot after the first subdivision of a tract into two lots. The County participates actively in the Maryland Agricultural Land Preservation Foundation (MALPF) by purchasing development rights so that the land will be maintained in agriculture. Further, Council has adopted Bill 134-89 which allows the Department of Environmental Protection and Resource Management (DEPRM) to review site plans in order to protect prime and productive soils. The bill was renewed in December 1990 and will be in effect until 1992.

To the extent that the Zoning Regulations conflict with the County's obligation to encourage agricultural uses, it is important that the Regulations be examined and revamped in order to implement County goals regarding agricultural preservation.

The response to Council Resolution 29-90 is being prepared by staff of the Office of Planning and Zoning and DEPRM. To prepare the response, the committee which wrote the June, 1988 report to the Council was reconvened. The "Agricultural Committee" met throughout the spring and summer of 1990 with representatives of the Office of Planning, Zoning Office and DEPRM. The goals of the group were to delineate changes in the agricultural industry and to formulate a new set of agricultural Zoning Regulations.

Four reports, addressing the following general areas, are being prepared:

- 1) Farmers' roadside businesses (currently defined as "Farmers' Co-op Roadside Stands" and "Farmer's Roadside Stands");
- 2) Businesses supporting or related to agriculture including limited-acreage flower farms, horticultural nurseries and landscape service operations;
- 3) Traditional agricultural operations including the definitions of commercial agriculture and farm, as well as the activities permissible in these operations;
- 4) Forestry resources, including a definition of forestry, firewood operations and specific regulations defining the types of forestry activities allowed.

The proposed amendments to the Zoning Regulations are intended to encourage the preservation of agriculture by providing the ability to operate a range of agricultural uses and agricultural support uses within R.C. zones. The proposed revisions would help eliminate pressure to seek zoning re-classifications to Business or Manufacturing zones, which result in spot zoning and development of uses which are not compatible with agriculture.

ROADSIDE BUSINESSES

Purpose and Policies

The purpose behind the agricultural committee meetings was to formulate policies from which Zoning Regulations that foster economic opportunities for agricultural producers in Baltimore County could be developed. The meetings were productive and uncovered a wealth of information. It became obvious that existing regulations

are conflicting in their application as well as obsolete and thus are unable to accommodate the needs of contemporary agricultural businesses.

Section 101 of the Baltimore County Zoning Regulations currently provides two definitions for agricultural roadside businesses:

Farmers' Co-op Roadside Stands: A principal building other than a dwelling which is used by one or more individuals commonly engaged in the sale of mutually grown seasonal produce from their respective farms or satellite farms. {Bill No. 98, 1975.}

Farmer's Roadside Stand: An accessory structure for the sale of articles grown or produced on the premises. {B.C.Z.R., 1955}

The current definitions for farmers' co-op roadside stand and farmers' roadside stand describe the types of goods that can be sold as "articles grown on the premises" and as "seasonal produce from their respective farms". The definitions fail to describe the goods actually sold at roadside businesses, which brings many operators in violation of the Zoning Regulations. Produce stands as well as farmers' roadside stands sell crops which are not locally grown. While most of the "imported" articles are crops indigenous to the north Atlantic region some roadside stands also sell exotic fruits such as bananas, kiwi fruit or citrus fruit. Farmers' co-op roadside stands also offer nonagricultural products, such as snacks, sodas, cigarettes, etc., as well as agriculturally related items like handicrafts, baked goods and jams.

The problem presented to the Planning Board was to delineate those marketing trends considered vital to the economic survival of a roadside business from activities that give farmers an unfair financial advantage over commercial retail operations. That meant a consensus had to be reached regarding the type of produce that should be sold at roadside stands. The Planning Board recognized that agricultural retail businesses have to be run in a business-like fashion enabling them to compete in the market. Not only do roadside businesses have to compete with local supermarkets, but some roadside stands and most farm markets need to be operable on a year-round basis. That reality necessitates the sale of articles other than owner produced crops. On the other hand, regulations should not be so lax that they induce farmers to curtail or cease production of local crops and supplement sales with imported products. Such practice would not only subvert the objectives of the agricultural protection program, but would grant farmers an unfair financial advantage over potentially competing retail businesses that cannot obtain commercial zoning in R.C. areas.

Committee members agreed that the objective of agricultural zoning legislation should be the promotion of owner produced crops

and the limitation of produce not locally grown. The goals whereby the appropriateness of Zoning Regulations would be measured are as follows:

To provide an opportunity for agricultural producers to sell their products;

To provide local markets for the sale of agricultural crops which have been produced in Baltimore County;

To limit the sale of crops not grown locally.

Discussion

Roadside retail operations are one way whereby farmers sell their produce. For some farmers a roadside stand is the primary mode for selling their crops and thus vital to economic survival. However, the harvesting season in Baltimore County is short. It generally lasts from the middle of July to the end of October. As a result, farmers who depend on roadside stands as the primary source of income supplement the sale of their own produce with out-of-state crops during the off-season. Even during the harvesting season, farmers sell the produce of other County and/or out-of-state farms to meet consumer demand.

Discussions with members of the agricultural committee, community leaders, Planning Board and planning staff members, as well as examination of Zoning Regulations from local governments and jurisdictions beyond the boundaries of Maryland, lead to the following findings:

- 1) Roadside stands can be categorized into three groups:
 - a) stands which are of a temporary nature and only sell owner-produced crops during the harvesting season;
 - b) stands which operate roughly from April to November, selling owner-produced crops as well as local and indigenous produce and c) markets which may be owned by one or several producers but which sell a set amount of local produce as well as produce from other regions.
- 2) The sale of produce not grown on the premises is essential for the operation of some roadside stands, that is, in order to stay competitive, farmers have to sell produce during the off-season and on occasion supplement their own output with locally produced crops during harvesting season.
- 3) While the sale of crops not grown in the farm where the stand is located is acceptable, produce sold at roadside stands should be indigenous to the north Atlantic region. The sale of tropical fruits and exotic vegetables and items

which could not be grown in the Baltimore County area should not be permitted.

- 4) Operators of farm markets must be agricultural producers. A specified percentage of the produce sold must be owner produced. The function of such an operation is to provide the owner as well as other Baltimore County farmers with an outlet for their crops without giving them an unfair advantage over commercial operations.
- 5) The limited sale of agriculturally related produce, such as homemade breads, jams, handicraft items etc. is acceptable in light of the fact that such products are compatible with a farm market.
- 6) It is difficult for zoning inspectors to enforce the percentage limitations on the type of goods sold. However, some form of limitation is necessary to prevent the commercialization of agricultural retail businesses. Percentage limitations are incorporated into the use permit and special exception requirements of farmer's roadside stands and farm markets. In enforcing these provisions, the Zoning Commissioner would consult the Baltimore County Agricultural Land Preservation Advisory Board for a recommendation. That board would also be entrusted with lowering the percentage requirement in the case of drought, insect damage, disease or other causes beyond the control of the producer.

Based on the findings, the Planning Board proposes three categories for agricultural roadside businesses:

- 1) Produce Stand, a temporary structure or vehicle temporarily placed on the site from which owner produced goods and crops from adjoining lands can be sold. A produce stand should be permitted as a matter of right in all R.C. zones.
- 2) Farmer's Roadside Stand, an accessory structure used for the sale of local (for definition see page 7) crops. A 50 percent limit should be placed on the sale of crops which have not been owner-produced. This operation will require a use permit.
- 3) Farm Market, an agricultural business, run by one or more producers to sell farm crops. At least 50 percent of the crops sold should be produced by the farm market operator. This type of business would be permitted by special exception in R.C.2, R.C.3 and R.C.4 zones.

Some members of the Planning Board perceived the proposed regulations as too restrictive for farmers. However, the definitions and stipulations had been worked out jointly with the members of the

Agricultural Committee and the farm representatives understand that the same regulations which place limitations on their operations also give them commercial rights. Furthermore, under the proposed regulations farmers could sell items which they previously were not permitted to sell.

Since several community leaders opposed farm markets in R.C.5 zones, the Planning Board recommends not permitting that use in Rural Residential zones. No farm markets exist presently in R.C.5 zones. Farmers interested in operating a farm market in a R.C.5 zone have the option of applying for R.C.C. zoning (Resource Conservation Commercial). That is, the appropriateness of such an operation would be evaluated on a case by case basis.

Community leaders as well as Planning Board members expressed concern regarding the regulations which govern street hucksters and peddlers. According to the Baltimore County Code, Title 14, Art. I, street peddlers and hucksters are only permitted to sell after acquiring a license. The Zoning Regulations do not apply to these stands.

RECOMMENDATIONS -- Farmers' Roadside Businesses

The Baltimore County Zoning Regulations, 1955, as amended should be further amended as shown below. {Brackets} indicate text to be deleted and **bold** indicates text to be added.

1. In Section 101, delete the definition of Farmers' Co-op Roadside Stands which reads as follows.

{Farmers' Co-op Roadside Stands: A principal building other than a dwelling which is used by one or more individuals commonly engaged in the sale of mutually grown seasonal produce from their respective farms or satellite farms.
[Bill No. 98, 1975.]}

2. In Section 101, modify the definition of Farmers' Roadside Stand as follows:

Farmer's Roadside Stand: An accessory structure owned and operated by an agricultural producer, used for the sale of {articles grown or produced on the premises} **indigenous farm products the majority of which have been grown on the premises, adjacent land or on properties farmed by the same agricultural producer.**

3. In Section 101, add the following definitions:

Indigenous Crops: Produce which can be grown in the area under natural conditions, without the help of controlled-environment structures.

Locally Grown Produce: Crops which have been produced in Baltimore County or its immediate vicinity. The following areas shall be considered as immediate vicinity: Maryland, Pennsylvania, West Virginia and Delaware.

Produce Stand: An accessory structure or a vehicle temporarily placed on a farm property for the sale of indigenous produce all of which has been grown or produced on that property, adjacent land or on properties farmed by the same agricultural producer.

Farm Market: An accessory or principal building or structure other than a dwelling which is used by one or more farmers for the sale of produce grown primarily on their own farms or for the sale of other locally grown produce. A farm market may sell a limited amount of locally produced nonagricultural goods such as handcrafted items, homemade baked goods, homemade preserves, jams and processed dairy products. [Bill No. 98, 1975]

4. In Section 404, delete paragraph 404.6 which reads as follows:

{404.6--Farmers' roadside stands must be set back at least 35 feet from the nearer edge of the street pavement.
[B.C.Z.R., 1955; Bill No. 85, 1967.]}

Add a new Paragraph 404.3. and re-number the remaining paragraphs accordingly.

Section 404.3. Agricultural roadside businesses shall be permitted subject to the following requirements:

- A. Setbacks. A farm market and a farmer's roadside stand must be set back at least 35 feet from the nearest edge of the street pavement. A produce stand must be located in such a manner that convenient ingress, egress and adequate parking are provided.
- B. Signage. Produce Stand, Farmer's Roadside Stand and Farm Market--Total signage area may not exceed 25 square feet per side, not to exceed two sides. Signs must be erected and maintained on the lot where the business is located.
- C. A farmer's roadside stand is permitted as of right with a use permit in R.C.2, R.C.3, R.C.4 and R.C.5 subject to the following conditions:
 - 1) The owner shall be an agricultural producer.

- 2) At least 50% of the produce sold annually will be grown on the premises where the stand will be located, or on adjacent farms or on other property farmed by the applicant.
 - a) In the event of crop failure due to drought, insect damage, disease, or other causes beyond the control of the producer, as determined by the Agricultural Land Preservation Advisory Board, the 50% minimum may be decreased by the Zoning Commissioner to an amount commensurate with the degree of crop failure.
 - b) In the enforcement of 404.3.C.2 the Zoning Commissioner shall make the determination upon the recommendation of the Agricultural Land Preservation Advisory Board.
- 3) A site plan shall be submitted indicating location and type of structure on the lot in question, ingress and egress, parking arrangement, and proximity of dwellings on adjacent lots.
- 4) On the property in question, notice of the application for the use permit shall be conspicuously posted by the Zoning Commissioner, for a period of thirty days following the filing of the application.
- 5) If a formal request for a public hearing is not filed, the Zoning Commissioner, without a public hearing, may grant a use permit for a farmer's roadside stand if the proposed use meets all the requirements of this subsection and any other applicable requirements. Such use permit may be issued with such conditions or restrictions as determined appropriate by the Zoning Commissioner to satisfy the provisions of 404.3 above and to ensure that the farmer's roadside stand will not be detrimental to the health, safety or general welfare of the surrounding community.
- 6) If a formal request for a public hearing is filed, the Zoning Commissioner shall schedule a date for the public hearing, such hearing to be held not less than 15 days following public notice of such hearing in two newspapers of general circulation and not more than 60 days from the date of filing of the requests for public hearing.
- 7) Following the public hearing, the Zoning Commissioner may either deny or grant a use permit conditioned upon:
 - a. his findings following the public hearing;

- b. the manner in which the requirements of subsection 404.3 and other applicable requirements are met and any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the farmer's roadside stand will not be detrimental to the health, safety or general welfare of the surrounding community and which are deemed necessary to satisfy the objectives of Section 502.1 of these regulations.

D. Farm Market - Special Exception Standards

A Farm Market is subject to a special exception approval in R.C.2, R.C.3 and R.C.4 Zones and must meet the standards outlined in Section 502.1. of these Regulations. In addition to these requirements, a farm market is subject to the following requirements:

- 1) The owner shall be an agricultural producer.
 - 2) At least 50% of the produce sold annually shall be grown by the owner of the farm market and no more than 10% of annual sales shall be locally produced nonagricultural goods.
 - a) In the event of a crop failure due to drought, insect damage, disease or other causes beyond the control of the producer as determined by the Agricultural Land Preservation Advisory Board, the 50% minimum may be decreased by the Zoning Commissioner to a degree commensurate with the degree of crop failure.
 - b) In the enforcement of 404.3.D.2, the Zoning Commissioner shall make the determinations in consultation with the Agricultural Land Preservation Advisory Board.
 - 3) A site plan shall be submitted indicating location and type of structure on the lot in question, ingress and egress, parking arrangement, and proximity of dwellings on adjacent lots.
5. In Subsection 1A01.2.B (Uses permitted as of right in R.C.2 zones) modify paragraph 7a as follows:
- 7a. Farmer's Roadside Stand and Produce Stand, subject to the provisions of Subsection 404.3

6. In Subsection 1A01.2.C (Uses permitted by special exception in R.C.2 zones) modify paragraph 8 as follows:
 8. Farm{ers' Co-op Roadside Stand} **Market, subject to the provisions of Subsection 404.3**
7. In Subsection 1A02.2.A (Uses permitted by right in R.C.3 zones) modify paragraph 10b as follows:
 - 10b. Farmer's Roadside Stand and Produce Stand subject to the provisions of Subsection 404.3
8. In Subsection 1A02.2.B (Uses permitted by special exception in R.C.3 zones) modify paragraph 9 as follows:
 9. Farm{ers' Co-op Roadside Stand} **Market, subject to the provisions of Subsection 404.3**
9. In Subsection 1A03.3.A (Uses permitted by right in R.C.4 zones) modify paragraph 6b as follows:
 - 6b. Farmer's Roadside Stand and Produce Stand subject to the provisions of Subsection 404.3
10. In Subsection 1A03.3.B (Uses permitted by special exception in R.C.4 zones) add as paragraph 15:
 15. **Farm Market, subject to the provisions of Subsection 404.3**
11. In Subsection 1A04.2.A (Uses permitted by right in R.C.5 zones) modify paragraph 11b as follows:
 - 11b. Farmer's Roadside Stand and Produce Stand subject to the provisions of Subsection 404.3
12. In Subsection 1A05.2.A.4.--Table of Land Use Regulations (Uses permitted by right in R.C.20 and R.C.50 zones) add:
 4. Agriculture and agricultural uses including farms, satellite farms, farmettes, and limited acreage wholesale flower farms, **produce stands**, farmers' roadside stands, subject to the provisions of Section 38-23 of the Baltimore County Code.
13. In Subsection 1A05.2.A.5.--Table of Land Use (Uses permitted by special exception in R.C.20 and R.C.50 zones) amend:
 5. {Farmers' co-op roadside stands} **Farm Market**

14. In Subsection 1A05.2.F.1.---Table of Land Use Regulations (Accessory Uses permitted by right in R.C.20 and R.C.50 zones) add:
 1. Buildings, structures, and uses accessory to agriculture, including but not limited to barns, silos, stables, feed yards; farmers' roadside stands, **produce stands**; tenant houses, including trailers used as tenant houses.
15. In Subsection 1A06.2.A.1. (Uses permitted by right in R.C.C. zones) amend:
 1. Agriculturally related retail, office and service uses: Agricultural supply and feed store; Auction building; {Farmers' co-op; Farmers' market} **Farm Market**; Garden Center;
16. In Subsection 1A06.2.C.1. (Accessory uses permitted by special exception in R.C.C. zones) delete:
 1. Agricultural related uses; Farmers' roadside stands; Intermittent outdoor sales; Cut flowers or live plants; {Farmers' co-op roadside stands} Fish; shellfish and meats; Fruits and vegetables.

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
LEGISLATIVE SESSION 1990, LEGISLATIVE DAY NO. 9
RESOLUTION NO. 29-90

COUNCILMEMBERS RUPPERSBERGER & EVANS

BY THE COUNTY COUNCIL, MAY 7, 1990

A Resolution of the Baltimore County Council to request the Planning Board to consider proposing amendments to the Baltimore County Zoning Regulations in order to clarify the various zoning regulations dealing with farming, forestry activities, and agricultural related operations.

WHEREAS, the Baltimore County Planning Board from time to time considers certain revisions to the Baltimore County Zoning Regulations; and

WHEREAS, the Baltimore County Zoning Regulations currently regulate the location of farms and the permitted activities thereon; and

WHEREAS, the Zoning Regulations also regulate the location of a variety of agricultural related businesses and the permitted activities thereon; and

WHEREAS, the number and complexity of these regulations has grown over the years so that certain conflicts sometimes arise in the application of the regulations or the policies derived therefrom; and

WHEREAS, the Baltimore County Council, in response to concerns raised regarding these regulations and policies, and in recognition of the key role which the agriculture industry plays in Baltimore County, had requested that a committee be formed to evaluate these issues; and

WHEREAS, such a zoning committee was formed and did conduct a number of meetings in order to study this issue; and

WHEREAS, the zoning committee has made certain recommendations to the Baltimore County Council relating to agricultural operations in Baltimore County; and

WHEREAS, these recommendations, if implemented, require a number of amendments to be made to the Baltimore County Zoning Regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Baltimore County Planning Board be and it is hereby requested to consider proposing amendments to the Baltimore County Zoning Regulations in order to clarify the various zoning regulations dealing with farming and agricultural related operations; and

BE IT FURTHER RESOLVED that the Planning Board be and it is hereby requested to separate its consideration and its recommendations into three general areas:

- 1) Regulations dealing with traditional agricultural operations including the definitions of farm and specific types of farms and the activities permissible in these traditional operations;
- 2) Forestry resources, including a definition of forestry and specific regulations defining the types of forestry activities allowed; and
- 3) Retail agricultural businesses, including roadside stands, nurseries, retail greenhouses, landscape services, etc., including definitions of these businesses and the regulations governing the types of activities permissible in connection with these businesses.



Baltimore County Government
Office of Planning and Zoning
Towson, MD 21204
887-3211

LEGISLATIVE SESSION 1992, LEGISLATIVE DAY NO. 5

BILL NO. 41-92

MR. C. A. DUTCH RUPPERSBERGER, III, COUNCILMAN

BY THE COUNTY COUNCIL, MARCH 2, 1992

AN ACT concerning

Agricultural Operations

FOR the purpose of amending the Baltimore County Zoning Regulations in order to clarify and classify the various types of farming, forestry, nursery and agricultural related operations and activities in order to preserve and maintain such operations and activities, defining terms, permitting certain agricultural operations and activities in certain zones of the County as of right or by Special Exception, placing certain conditions upon some operations and activities, and generally relating to the regulation of all forms of agricultural related operations and activities in Baltimore County.

BY repealing

Section 101 - Definitions, the definitions of "Farm (Limited - Acreage Wholesale Flower Farm)" and "Farmers' Co-op Roadside Stands" and Sections 404.1 and 404.6

Baltimore County Zoning Regulations, as amended

BY renumbering

Sections 404.2, 404.3, 404.4, 404.5 to be Sections 404.5, 404.6, 404.7, 404.8

Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
~~Underlining~~ indicates amendments to bill.

CBA PC & NO. 3



Section 101 - Definitions, the definition of "Farmers' Roadside Stand" and Sections 1A01.2.B.7b., 1A01.2.C.8., 1A02.2.A.10b., 1A02.2.B.9., 1A03.3.A.6b., 1A04.2.A.11b., 1A05.2.A.4. and 5., 1A05.2.F.1., 1A06.2.A.1., 1A06.2.C.1., 1B01.1.A.7., and 230.9, the listing of "garden shop"

Baltimore County Zoning Regulations, as amended

BY adding

Section 101 - Definitions, the definitions, alphabetically, of "Controlled - Environment Structure", "Farm (Limited - Acreage Wholesale Flower Farm)", "Farm Market", "Garden Center", "Indigenous Crops", "Landscape Service Operation", "Locally Grown Produce", "Nursery, horticultural", and "Produce Stand" and Sections 1A01.2.C.10B and 11A., 1A02.2.B.14B. and 14C., 1A03.3.B.7B., 7C. and 15., 1A04.2.B.8B., 1A05.2.A.10, 1A06.2.B., the listing of Landscape Service Operations, alphabetically, and Sections 404.1, 404.2, 404.3 and 404.4

Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council has received two final reports from the Planning Board, dated April 18, 1991 and May 16, 1991 respectively, concerning the subject legislation and held a public hearing thereon on September 26, 1991, now, therefore

1. SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY,
2. MARYLAND, that Section 101-Definitions, the definitions of "Farm
3. (Limited-Acreage Wholesale Flower Farm)" and "Farmers' Co-op Roadside Stands"
4. and Sections 404.1 and 404.6 of the Baltimore County Zoning Regulations, as
5. amended, be and they are hereby repealed.

1. SECTION 2. AND BE IT FURTHER ENACTED, that Sections 404.2, 404.3,
2. 404.4, and 404.5 of the Baltimore County Zoning Regulations, as amended, be and
3. they are hereby renumbered to be Sections 404.5, 404.6, 404.7, and 404.8.

4. SECTION 3. AND BE IT FURTHER ENACTED, that Section 101 - Definitions,
5. the definition of "Farmers' Roadside Stand" and Sections 1A01.2.B.7b.,
6. 1A01.2.C.8., 1A02.2.A.10b., 1A02.2.B.9., 1A03.3.A.6b., 1A04.2.A.11b.,
7. 1A05.2.A.4. and 5., 1A05.2.F.1., 1A06.2.A.1., 1A06.2.C.1., 1B01.1.A.7., and
8. 230.9, the listing of "garden shop", of the Baltimore County Zoning
9. Regulations, as amended, be and they are hereby repealed and re-enacted, with
10. amendments, to read as follows:

11. Section 101 - Definitions

12. Farmer's Roadside Stand: An accessory structure OWNED AND OPERATED BY
13. AN AGRICULTURAL PRODUCER, USED for the sale of {articles grown or produced on
14. the premises} INDIGENOUS FARM PRODUCTS THE MAJORITY OF WHICH HAVE BEEN GROWN ON
15. THE PREMISES, ADJACENT LAND OR ON PROPERTIES FARMED BY THE SAME AGRICULTURAL
16. PRODUCER.

17. Section 1A01 - R.C. 2 Zones

18. 1A01.2.B. Uses permitted as of right.

19. 7. Accessory uses or structures, including but not limited to the
20. following:

21. b. {Farmers'} FARMER'S roadside stand[s] AND PRODUCE STAND,
22. SUBJECT TO THE PROVISIONS OF SECTION 404.4. {(see Section 404)}

23. 1A01.2.C. Uses permitted by Special Exception.

24. 8. {Farmer's co-op roadside stands} FARM MARKET, SUBJECT TO THE
25. PROVISIONS OF SECTION 404.4.

1. Section 1A02 - R.C. 3 Zones
2. 1A02.2.A. Uses permitted as of right.
3. 10. Accessory uses or structures, including, but not limited to the
4. following:
5. b. {Farmers'} FARMER'S roadside stand{s} AND PRODUCE STAND
6. (subject to the provisions of Section {404.6} 404.4)
7. 1A02.2.B. Uses permitted by Special Exception.
8. 9. {Farmers Co-op roadside stand.} FARM MARKET, SUBJECT TO THE
9. PROVISIONS OF SECTION 404.4
10. Section 1A03 - R.C. 4 Zones
11. 1A03.3.A. Uses permitted as of right.
12. 6. Accessory uses or structures, including, but not limited to the
13. following:
14. b. {Farmers'} FARMER'S roadside stand{s} AND PRODUCE STAND,
15. SUBJECT TO THE PROVISIONS OF SECTION 404.4
16. Section 1A04 - R.C. 5 Zone
17. 1A04.2.A. Uses permitted as of right.
18. 11. Accessory uses or structures, including, but not limited to,
19. the following:
20. b. {Farmers'} FARMER'S roadside stand{s} AND PRODUCE STAND
21. (subject to the provisions of Section {404.6} 404.4)

Section 1A05 - R.C. 20 AND R.C. 50 ZONES

1A05.2.A.

		ZONE	
		R.C. 20	R.C. 50
4.	Agriculture and agricultural uses		
including farms, satellite farms, farmettes, and			
limited acreage wholesale flower farms, PRODUCE		P	P
STANDS, farmers' roadside stands, subject to the			
provisions of Section 38-23 of the Baltimore County			
Code.			

5.	{Farmers' co-op roadside stands} FARM	SE	SE
MARKET			

1A05.2.F. Accessory Uses.

1. Buildings, structures, and uses accessory to agriculture, including, but not limited to, barns, silos, stables, feed yards; farmers' roadside stands, PRODUCE STANDS; tenant houses, including trailers used as tenant houses.

Section 1A06 - R.C.C. Zones

1A06.2.A. Uses permitted as of right.

1. Agriculturally related retail, office and service uses: Agricultural supply and feed store; Auction buildings; {Farmers' co-op; Farmers' market} FARM MARKET; Garden Center; PRODUCE STAND IN ASSOCIATION WITH A FARM; Veterinarian's office; Veterinarium.

1A06.2.C. Accessory uses or structures.

1. Agricultural related uses; {Farmers'} FARMER'S roadside stand(s); PRODUCE STAND; Intermittent outdoor sales; Cut flowers or live plants; {Farmers' co-op roadside stands} Fish; shellfish and meats; Fruits and vegetables.

1. Section 1B01.1 - General Use Regulations in D.R. Zones
2. 1B01.1.A. Uses permitted as of right.
3. 7. Farms, PRODUCE STAND IN ASSOCIATION WITH A FARM, or
4. limited-acreage wholesale flower farms (see Section 404).

5. B.L. Zone - Business, Local
6. Section 230 - Use Regulations
7. The following uses only are permitted:
8. 230.9
9. {Garden shop, with associated outdoor sales area} GARDEN CENTER

10. SECTION 4. AND BE IT FURTHER ENACTED, that Section 101 - Definitions,
11. the definitions, alphabetically, of "Controlled - Environment Structure", "Farm
12. (Limited - Acreage Wholesale Flower Farm)", "Farm Market", "Garden Center",
13. "Indigenous Crops", "Landscape Service Operation", "Locally Grown Produce",
14. "Nursery, horticultural", and "Produce Stand", and Sections 1A01.2.C.10B and
15. 11A., 1A02.2.B.14B. and 14C., 1A03.3.B.7B., 7C. and 15., 1A04.2.B.8B.,
16. 1A05.2.A.10., 1A06.2.B., the listing of Landscape Service Operations,
17. alphabetically, and Sections 404.1, 404.2, 404.3 and 404.4 be and they are
18. hereby added to the Baltimore County Zoning Regulations, as amended, to read as
19. follows:

20. Section 101 - Definitions
21. CONTROLLED-ENVIRONMENT STRUCTURE: A TEMPORARY OR PERMANENT STRUCTURE
22. ENCLOSED BY GLASS OR PLASTIC, UTILIZED EXCLUSIVELY TO CULTIVATE PLANTS, TO
23. PROTECT PLANTS FROM THE ELEMENTS, OR TO PRODUCE PLANTS OUT OF SEASON.
24. FARM: (LIMITED-ACREAGE WHOLESALE FLOWER FARM): A LIMITED-ACREAGE
25. WHOLESALE FLOWER FARM IS LESS THAN 3 ACRES OF LAND, AND ANY IMPROVEMENTS

1. THEREON AND IS PRIMARILY USED FOR THE GROWING OF FLOWERS AND SMALL PLANTS AND
2. THEIR WHOLESALE DISTRIBUTION.

3. FARM MARKET: AN ACCESSORY OR PRINCIPAL BUILDING OR STRUCTURE OTHER
4. THAN A DWELLING WHICH IS USED BY ONE OR MORE FARMERS FOR THE SALE OF PRODUCE
5. GROWN PRIMARILY ON THEIR OWN FARMS OR FOR THE SALE OF OTHER LOCALLY GROWN
6. PRODUCE. A FARM MARKET MAY SELL A LIMITED AMOUNT OF LOCALLY PRODUCED
7. NONAGRICULTURAL GOODS SUCH AS HANDCRAFTED ITEMS, HOMEMADE BAKED GOODS, HOMEMADE
8. PRESERVES, JAMS AND PROCESSED DAIRY PRODUCTS.

9. GARDEN CENTER: A PLACE OF BUSINESS WHERE GARDEN RELATED PRODUCTS,
10. HORTICULTURAL MATERIALS OR PRODUCE ARE SOLD TO THE RETAIL CUSTOMER. A GARDEN
11. CENTER MAY INCLUDE A NURSERY OR CONTROLLED-ENVIRONMENT STRUCTURES.

12. INDIGENOUS CROPS: PRODUCE WHICH CAN BE GROWN IN THE AREA UNDER
13. NATURAL CONDITIONS, WITHOUT THE HELP OF CONTROLLED-ENVIRONMENT STRUCTURES.

14. LANDSCAPE SERVICE OPERATION: AN OPERATION PRIMARILY ENGAGED IN THE
15. DESIGNING, INSTALLING, PLANTING OR MAINTAINING OF LAWNS, GARDENS OR OTHER
16. PLANTINGS AT OFF-SITE COMMERCIAL OR RESIDENTIAL USES.

17. LOCALLY GROWN PRODUCE: CROPS WHICH HAVE BEEN PRODUCED IN BALTIMORE
18. COUNTY OR ITS IMMEDIATE VICINITY. THE FOLLOWING AREAS SHALL BE CONSIDERED AS
19. IMMEDIATE VICINITY: MARYLAND, PENNSYLVANIA, WEST VIRGINIA AND DELAWARE.

20. NURSERY, HORTICULTURAL: AN AGRICULTURAL OPERATION PRIMARILY ENGAGED
21. IN THE PRODUCTION AND MARKETING OF TREES, SHRUBS AND PLANTS. THE PLANT
22. MATERIALS MAY BE PRODUCED ON THE PREMISES AND MAY BE PURCHASED ELSEWHERE AT ANY
23. STAGE OF MATURITY FOR FURTHER PRODUCTION. HORTICULTURAL NURSERIES MAY ENGAGE
24. IN ACCESSORY USES SUCH AS STORAGE OF PLANT MATERIALS, SALE OF PRODUCTS
25. NECESSARY FOR THE HEALTH OF THE NURSERY STOCK, AND PROVISION OF LIMITED
26. LANDSCAPE SERVICES. A NURSERY WHICH SELLS PLANT MATERIALS GROWN EXCLUSIVELY
27. ON-SITE AND WHICH DOES NOT OFFER ANY OF THE ACCESSORY SERVICES PERMITTED AT
28. HORTICULTURAL NURSERIES, SHALL BE CONSIDERED A FARM.

1. PRODUCE STAND: AN ACCESSORY STRUCTURE OR A VEHICLE TEMPORARILY PLACED
2. ON A FARM PROPERTY FOR THE SALE OF INDIGENOUS PRODUCE ALL OF WHICH HAS BEEN
3. GROWN OR PRODUCED ON THAT PROPERTY, OR ON ADJACENT LAND, OR ON PROPERTIES
4. FARMED BY THE SAME AGRICULTURAL PRODUCER.

5. Section 1A01 - R.C. 2 ZONES

6. 1A01.2.C. Uses permitted by Special Exception.

7. 10B. HORTICULTURAL NURSERIES, SUBJECT TO THE PROVISIONS OF SECTION
8. 404.1 AND 404.2

9. 11A. LANDSCAPE SERVICE OPERATIONS, SUBJECT TO PROVISIONS OF
10. SECTION 404.1 AND 404.3

11. Section 1A02 - R.C. 3 ZONES

12. 1A02.2.B. Uses permitted by Special Exception.

13. 14B. HORTICULTURAL NURSERIES, SUBJECT TO THE PROVISIONS OF SECTION
14. 404.1 AND 404.2

15. 14C. LANDSCAPE SERVICE OPERATIONS, SUBJECT TO THE PROVISIONS OF
16. SECTION 404.1 and 404.3

17. Section 1A03 - R.C. 4 ZONES

18. 1A03.3.B. Uses permitted by Special Exception

19. 7B. HORTICULTURAL NURSERIES, SUBJECT TO THE PROVISIONS OF SECTION
20. 404.1 and 404.2

21. 7C. LANDSCAPE SERVICE OPERATIONS, SUBJECT TO THE PROVISIONS OF
22. SECTION 404.1 and 404.3

23. 15. FARM MARKET, SUBJECT TO THE PROVISIONS OF SECTION 404.4

1. Section 1A04 - R.C. 5 ZONE
2. 1A04.2.B. Uses permitted by Special Exception.
3. 8B. HORTICULTURAL NURSERIES, SUBJECT TO THE PROVISIONS OF SECTION
4. 404.1 AND 404.2

5. Section 1A05 - R.C. 20 AND R.C. 50 ZONES

6. Section 1A05.2.A.

ZONE

7. R.C. 20 R.C. 50

8. 10. HORTICULTURAL NURSERIES SE SE

9. Section 1A06 - R.C.C. ZONES

0. 1A06.2.B. Uses permitted by Special Exception:

1. LANDSCAPE SERVICE OPERATIONS (SUBJECT TO THE PROVISIONS OF SECTION 404.1
2. and 404.2)

3. SECTION 404 --FARM AND AGRICULTURAL OPERATIONS

4. 404.1-- LIMITED ACREAGE WHOLESALE FLOWER FARMS, HORTICULTURAL NURSERIES
5. AND LANDSCAPE SERVICE OPERATIONS ARE SUBJECT TO THE FOLLOWING REQUIREMENTS:

6. A. INTERNAL ROADWAYS SHALL BE LOCATED AT LEAST 25 FEET FROM ANY
7. PROPERTY LINE OTHER THAN A STREET RIGHT-OF-WAY LINE.

8. B. CONTROLLED-ENVIRONMENT STRUCTURES AND ACCESSORY STRUCTURES
9. SHALL BE LOCATED AT LEAST 50 FEET FROM ANY PROPERTY LINE, INCLUDING ANY
10. RIGHT-OF-WAY LINE.

11. C. THE LOADING OR UNLOADING OF VEHICLES FOR THE PURPOSE OF
12. SHIPPING AND RECEIVING GOODS SHALL TAKE PLACE AT LEAST 100 FEET FROM ANY
13. PROPERTY LINE ADJACENT TO A RESIDENTIALLY ZONED OR USED PROPERTY AND SHALL BE
14. SCREENED WITH PLANTINGS THAT PROVIDE A YEAR-ROUND VISUAL SCREEN UPON MATURITY.

IF THE LOADING ACTIVITIES ARE CARRIED ON WITHIN A FULLY ENCLOSED STRUCTURE, SUCH ACTIVITIES MAY TAKE PLACE UP TO 50 FEET FROM ANY PROPERTY LINE.

D. ONE FREESTANDING SIGN WITH AN AGGREGATE SURFACE AREA OF NO MORE THAN 25 SQUARE FEET PER SIDE, NOT TO EXCEED TWO SIDES, IS PERMITTED AND SHALL BE INTEGRATED WITH THE LANDSCAPING.

E. A SIGN MAY NOT BE ILLUMINATED.

F. NOTWITHSTANDING SECTION 1A01.3, 1A02.3, 1A03.4, 1A04.3, AND 102.2, INTERNAL SET-BACKS BETWEEN CONTROLLED-ENVIRONMENT STRUCTURES SHALL BE AT LEAST FIVE FEET, EXCEPT THAT A FIRE LANE OF 20 FEET MINIMUM WIDTH SHALL BE PROVIDED AFTER EVERY THREE STRUCTURES.

G. FOR LIMITED ACREAGE FLOWER FARMS AND HORTICULTURAL NURSERIES, THE SALES AREA FOR PLANTS AND TREES COMING ONTO THE PROPERTY IN BALLS, CONTAINERS, OR IN ANY OTHER MANNER FOR THE PURPOSE OF IMMEDIATE SALE MAY NOT EXCEED 10 PERCENT OF THE GROSS AREA OF THE SITE OR A MAXIMUM OF 5 ACRES, WHICHEVER IS LESS. FOR THE PURPOSE OF THIS SECTION, "IMMEDIATE SALE" MEANS PLANTS WHICH HAVE BEEN GROWN OFF-SITE AND WHICH, WHEN TRANSPORTED TO A SITE, ARE AVAILABLE FOR SALE WITHOUT FURTHER PROCESSING.

404.2--A HORTICULTURAL NURSERY IS SUBJECT TO THE FOLLOWING REGULATIONS:

A. THE STORAGE AND DISPLAY AREA OF MATERIALS USED FOR LANDSCAPING PURPOSES AND AGRICULTURALLY RELATED PRODUCTS NECESSARY FOR MAINTAINING THE HEALTH OF NURSERY STOCK MAY NOT EXCEED 10 PERCENT OF THE NURSERY OR A MAXIMUM OF ONE ACRE, WHICHEVER IS LESS, AND SHALL BE SCREENED AS SPECIFIED IN SECTION 404.1C. RELATED PRODUCTS INCLUDE BUT ARE NOT LIMITED TO RAILROAD TIES, DECORATIVE STONES, MULCH AND FERTILIZERS.

B. HORTICULTURAL NURSERIES REQUIRE SPECIAL EXCEPTION APPROVAL IN R.C. 2, R.C. 3, R.C. 4 AND R.C. 5 ZONES AND SHALL MEET THE REQUIREMENTS OUTLINED IN SECTION 502.1 OF THESE REGULATIONS. IN ADDITION TO THESE REQUIREMENTS, HORTICULTURAL NURSERIES ARE SUBJECT TO THE FOLLOWING STANDARDS:

1. 1. LANDSCAPE SERVICES MUST BE ACCESSORY TO THE PRODUCTION OF
2. NURSERY STOCK. THE NUMBER OF PIECES AND TYPE OF LANDSCAPING EQUIPMENT SHALL BE
3. LIMITED BY THE ZONING COMMISSIONER ACCORDING TO SITE CONSTRAINTS AND
4. COMPATIBILITY WITH SURROUNDING USES.

5. 2. THE LOCATION OF VEHICLE PARKING, EQUIPMENT AND MATERIAL
6. STORAGE SHALL BE COMPATIBLE WITH THE SURROUNDING USES AND SHALL BE SCREENED
7. FROM RESIDENTIALLY USED OR ZONED PROPERTIES AS SPECIFIED IN 404.1.C.

8. 404.3--A LANDSCAPE SERVICE OPERATION IS SUBJECT TO THE FOLLOWING
9. REGULATIONS:

10. A. THE OUTDOOR STORAGE AREA OF MATERIALS USED FOR LANDSCAPING
11. PURPOSES, INCLUDING BUT NOT LIMITED TO, TOOLS, DRAINAGE PIPES, RAILROAD TIES,
12. DECORATIVE STONES, MULCH, AND FERTILIZERS SHALL BE COMPATIBLE WITH SURROUNDING
13. USES AND SCREENED FROM RESIDENTIALLY ZONED OR USED PROPERTIES AS SPECIFIED IN
14. SECTION 404.1.C.

15. B. A LANDSCAPE SERVICE OPERATION MAY PLANT HORTICULTURAL MATERIALS
16. ON-SITE. HOWEVER, SUCH PLANTS MAY ONLY BE SOLD AS AN INTEGRAL PART OF A
17. LANDSCAPE DESIGN, AND MAY NOT BE SOLD TO THE RETAIL CUSTOMER.

18. C. LANDSCAPE SERVICE OPERATIONS REQUIRE A SPECIAL EXCEPTION
19. APPROVAL IN R.C. 2, R.C. 3 AND R.C. 4 ZONES AND SHALL MEET THE REQUIREMENTS
20. OUTLINED IN SECTION 502.1 OF THESE REGULATIONS. IN ADDITION TO THESE
21. REQUIREMENTS, A LANDSCAPE SERVICE OPERATION IS SUBJECT TO THE FOLLOWING
22. STANDARDS:

23. 1. THE SITE SHALL BE OF SUFFICIENT SIZE AND PROPERLY DESIGNED
24. TO INSURE PROTECTION OF EXISTING NEIGHBORING DWELLINGS FROM NOISE, DUST, GLARE
25. AND OTHER NUISANCE FACTORS.

26. 2. LOCATION OF THE VEHICLE PARKING AND EQUIPMENT STORAGE AREA
27. SHALL BE COMPATIBLE WITH SURROUNDING USES AND SHALL BE SCREENED FROM
28. RESIDENTIALLY ZONED OR USED PROPERTIES AS SPECIFIED IN SECTION 404.1.C.

1. 404.4--AGRICULTURAL ROADSIDE BUSINESSES ARE PERMITTED SUBJECT TO THE
2. FOLLOWING REQUIREMENTS:

3. A. SETBACKS. A FARM MARKET AND A FARMER'S ROADSIDE STAND SHALL BE
4. SET BACK AT LEAST 35 FEET FROM THE NEAREST EDGE OF THE STREET PAVEMENT. A
5. PRODUCE STAND SHALL BE LOCATED IN SUCH A MANNER THAT CONVENIENT INGRESS, EGRESS
6. AND ADEQUATE PARKING ARE PROVIDED.

7. B. SIGNAGE. PRODUCE STAND, FARMER'S ROADSIDE STAND AND FARM
8. MARKET--TOTAL SIGNAGE AREA MAY NOT EXCEED 25 SQUARE FEET PER SIDE, NOT TO
9. EXCEED TWO SIDES. SIGNS SHALL BE ERECTED AND MAINTAINED ON THE LOT WHERE THE
10. BUSINESS IS LOCATED.

11. C. A FARMER'S ROADSIDE STAND IS PERMITTED AS OF RIGHT WITH A USE
12. PERMIT IN R.C. 2, R.C. 3, R.C. 4 AND R.C. 5 ZONES SUBJECT TO THE FOLLOWING
13. CONDITIONS:

14. 1. THE STAND SHALL BE LOCATED ON A FARM.
15. 2. THE OWNER SHALL BE AN AGRICULTURAL PRODUCER.
16. 3. AT LEAST 50% OF THE PRODUCE SOLD ANNUALLY SHALL BE GROWN
17. ON THE PREMISES WHERE THE STAND IS LOCATED, OR ON ADJACENT FARMS OR ON OTHER
18. PROPERTY FARMED BY THE APPLICANT.

19. A. IN THE EVENT OF CROP FAILURE DUE TO DROUGHT, INSECT
20. DAMAGE, DISEASE, OR OTHER CAUSES BEYOND THE CONTROL OF THE PRODUCER, AS
21. DETERMINED BY THE AGRICULTURAL LAND PRESERVATION ADVISORY BOARD, THE 50%
22. MINIMUM MAY BE DECREASED BY THE ZONING COMMISSIONER TO AN AMOUNT COMMENSURATE
23. WITH THE DEGREE OF CROP FAILURE.

24. B. IN THE ENFORCEMENT OF ~~404-4-6-2~~ 404.4.C.3, THE
25. ZONING COMMISSIONER SHALL MAKE THE DETERMINATION UPON THE RECOMMENDATION OF THE
26. AGRICULTURAL LAND PRESERVATION ADVISORY BOARD.

1. 3. A SITE PLAN SHALL BE SUBMITTED INDICATING LOCATION AND
2. TYPE OF STRUCTURE ON THE LOT IN QUESTION, INGRESS AND EGRESS, PARKING
3. ARRANGEMENT, AND PROXIMITY OF DWELLINGS ON ADJACENT LOTS.

4. 4. ON THE PROPERTY IN QUESTION, NOTICE OF THE APPLICATION FOR
5. THE USE PERMIT SHALL BE CONSPICUOUSLY POSTED BY THE ZONING COMMISSIONER FOR A
6. PERIOD OF THIRTY DAYS FOLLOWING THE FILING OF THE APPLICATION.

7. 5. IF A FORMAL REQUEST FOR A PUBLIC HEARING IS NOT FILED, THE
8. ZONING COMMISSIONER, WITHOUT A PUBLIC HEARING, MAY GRANT A USE PERMIT FOR A
9. FARMER'S ROADSIDE STAND IF THE PROPOSED USE MEETS ALL THE REQUIREMENTS OF THIS
10. SUBSECTION AND ANY OTHER APPLICABLE REQUIREMENTS. THE USE PERMIT MAY BE ISSUED
11. WITH SUCH CONDITIONS OR RESTRICTIONS AS DETERMINED APPROPRIATE BY THE ZONING
12. COMMISSIONER TO SATISFY THE PROVISIONS OF THIS SECTION AND TO ENSURE THAT THE
13. FARMER'S ROADSIDE STAND IS NOT DETRIMENTAL TO THE HEALTH, SAFETY OR GENERAL
14. WELFARE OF THE SURROUNDING COMMUNITY.

15. 6. IF A FORMAL REQUEST FOR A PUBLIC HEARING IS FILED, THE
16. ZONING COMMISSIONER SHALL SCHEDULE A DATE FOR THE PUBLIC HEARING TO BE HELD NOT
17. LESS THAN 15 DAYS FOLLOWING PUBLIC NOTICE OF SUCH HEARING IN TWO NEWSPAPERS OF
18. GENERAL CIRCULATION AND NOT MORE THAN 60 DAYS FROM THE DATE OF FILING OF THE
19. REQUESTS FOR PUBLIC HEARING.

20. 7. FOLLOWING THE PUBLIC HEARING, THE ZONING COMMISSIONER MAY
21. EITHER DENY OR GRANT A USE PERMIT CONDITIONED UPON:

22. A. HIS FINDINGS FOLLOWING THE PUBLIC HEARING; AND
23. B. THE MANNER IN WHICH THE REQUIREMENTS OF THIS SECTION
24. AND OTHER APPLICABLE REQUIREMENTS ARE MET AND ANY ADDITIONAL REQUIREMENTS AS
25. DEEMED NECESSARY BY THE ZONING COMMISSIONER IN ORDER TO ENSURE THAT THE
26. FARMER'S ROADSIDE STAND IS NOT DETRIMENTAL TO THE HEALTH, SAFETY OR GENERAL
27. WELFARE OF THE SURROUNDING COMMUNITY AND WHICH ARE DEEMED NECESSARY TO SATISFY
28. THE OBJECTIVES OF SECTION 502.1 OF THESE REGULATIONS.

1. D. FARM MARKET - SPECIAL EXCEPTION STANDARDS.

2. A FARM MARKET IS SUBJECT TO A SPECIAL EXCEPTION APPROVAL IN R.C. 2,
3. R.C. 3, R.C. 4, R.C. 20 AND R.C. 50 ZONES AND SHALL MEET THE STANDARDS OUTLINED
4. IN SECTION 502.1. OF THESE REGULATIONS. IN ADDITION TO THESE REQUIREMENTS, A
5. FARM MARKET IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

6. 1. THE OWNER SHALL BE AN AGRICULTURAL PRODUCER.

7. 2. AT LEAST 50% OF THE PRODUCE SOLD ANNUALLY SHALL BE GROWN
8. BY THE OWNER OF THE FARM MARKET AND NO MORE THAN 10% OF ANNUAL SALES SHALL BE
9. LOCALLY PRODUCED NONAGRICULTURAL GOODS.

10. A. IN THE EVENT OF A CROP FAILURE DUE TO DROUGHT, INSECT
11. DAMAGE, DISEASE OR OTHER CAUSES BEYOND THE CONTROL OF THE PRODUCER AS
12. DETERMINED BY THE AGRICULTURAL LAND PRESERVATION ADVISORY BOARD, THE 50%
13. MINIMUM MAY BE DECREASED BY THE ZONING COMMISSIONER TO A DEGREE COMMENSURATE
14. WITH THE DEGREE OF CROP FAILURE.

15. B. IN THE ENFORCEMENT OF 404.4.D.2, THE ZONING
16. COMMISSIONER SHALL MAKE THE DETERMINATIONS IN CONSULTATION WITH THE
17. AGRICULTURAL LAND PRESERVATION ADVISORY BOARD.

18. 3. A SITE PLAN SHALL BE SUBMITTED INDICATING LOCATION AND
19. TYPE OF STRUCTURE ON THE LOT IN QUESTION, INGRESS AND EGRESS, PARKING
20. ARRANGEMENT, AND PROXIMITY OF DWELLINGS ON ADJACENT LOTS.

21. SECTION 5. AND BE IT FURTHER ENACTED, that this Act shall take effect
22. forty-five days after its enactment.

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ing activities on any farm
on which the overall

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12. Delete section 1A09.8 for the R.C. 8 20

Inconveniences arising from agricultural operations may be subject to increased agricultural operations. These may include operation of machinery during any time of day or night, the disposal of manure and the application of fertilizers, soil amendments, herbicides, pesticides, and other agricultural products. Consider an agricultural operation to be an operation that complies with these regulations and environmental requirements.

Update the following to section 253.1A

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Amendments to the Baltimore County Zoning Regulations
A Staff Report of the Baltimore County Office of Planning
October 27, 2008
Amended January 7, 2009
Le... Project No. 8

PROJECT DESCRIPTION

This report pertains to the Baltimore County Zoning Regulations with respect to creameries.

BACKGROUND

The agricultural industry is an integral part of Baltimore County's economy and in order for the County's farm industry to prevail a variety of uses must be permitted as of right in these zones. One of these uses includes creameries. As of today, the process of dairying or the use of creameries in the Resource Conservation (R.C.) zones is not clearly defined. By updating the zoning code for the R.C. zones and clarifying the term creamery, the R.C. zones will protect the County's agricultural industry so that the area maintains its importance as an industrial base for the farming industry. Additionally, it will promote the use of local, fresh products by County citizens as well as decrease our contributions to global warming.

RECOMMENDATIONS

Strike-through indicates material to be deleted. Bold indicates material to be added.

1. Add the following definitions to section 101:
Creamery -- An establishment where dairy products such as milk, butter, cheese, ice cream and yogurt are made or where dairy products are prepared or sold. Creameries in R.C. zones are only permitted in conjunction with commercial agriculture or a farm.
2. Amend the following definitions in section 101:
Agriculture Commercial -- The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to § 8-209 of the Tax-Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, floriculture, aquaculture, apiculture, viticulture, forestry, animal and poultry husbandry, the operation of an equestrian center, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing.

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managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations. [Bill Nos. 51-1993; 24-2002]

FARM MARKET -- An accessory or principal building or structure other than a dwelling which is used by one or more farmers for the sale of produce products grown or grown and produced primarily on their own farms or for the sale of other locally grown and produced nonagricultural goods such as handcrafted items, homemade baked goods, homemade preserves, and jams and processed dairy products. [Bill No. 41-1992]

FARMER'S ROADSIDE STAND -- An accessory structure owned and operated by an agricultural producer, used for the sale of indigenous farm products, the majority of which have been grown or produced primarily on the premises, on adjacent land or on properties farmed by the same agricultural producer. [Bill No. 41-1992EN]

3. Add section 1A00.6:
Inconveniences arising from agricultural operations. Any dwelling in an R.C. zone may be subject to inconveniences or discomforts arising from agricultural operations at any time during the day or night. These may include noise, odors, fumes, dust, the operation of machinery (including aircraft), the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. The County shall not consider an agricultural operation to be a public or private nuisance if the operation complies with these regulations and all federal, state or county health or environmental requirements.

4. Update the following to section 1A01.2.B for the R.C. 2 zone:
B. Uses permitted as of right. The following uses only are permitted as of right in all R.C.2 Zones: [Bill No. 178-1979]
13. Creamery. Processing, packaging and marketing of dairy products shall occupy no more than 10% of the farm and shall occur on 2 acres in area, which shall be used for dairying.
5. Update the following to section 1A01.2.B for the R.C. 2 zone:
13. Creamery. Processing, packaging and marketing of dairy products shall occupy no more than 10% of the farm and shall occur on 2 acres in area, which shall be used for dairying.
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Legislative Project No. 8

Amendments to the Baltimore County Zoning Regulations

A Staff Report of the Baltimore County Office of Planning

October 27, 2008

Amended January 7, 2009

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~~Strike through~~ indicates material to be deleted. **Bold** indicates material to be added.

1. Add the following definitions to section 101:

Creamery -- An establishment where dairy products such as milk, butter, cheese, ice cream and yogurt are made or where dairy products are prepared or sold. Creameries in R.C. zones are only permitted in conjunction with commercial agriculture or a farm.

2. Amend the following definitions in section 101:

Agriculture Commercial -- The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to § 8-209 of the Tax-Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, dairying (including creameries), pasturage agriculture, horticulture, floriculture, aquiculture, apiculture, viticulture, forestry, animal and poultry husbandry, the operation of an equestrian center, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing,

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managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations. [Bill Nos. 51-1993; 24-2002]

FARM MARKET -- An accessory or principal building or structure other than a dwelling which is used by one or more farmers for the sale of produce products grown or grown and produced primarily on their own farms or for the sale of other locally grown produce. A farm market may sell a limited amount of locally produced nonagricultural goods such as handcrafted items, homemade baked goods, homemade preserves, and jams and processed dairy products. [Bill No. 41-1992]

FARMER'S ROADSIDE STAND -- An accessory structure owned and operated by an agricultural producer, used for the sale of indigenous farm products, the majority of which have been grown or produced primarily on the premises, on adjacent land or on properties farmed by the same agricultural producer. [Bill No. 41-1992EN]

3. Add section 1A00.6:

Inconveniences arising from agricultural operations. Any dwelling in an R.C. zone may be subject to inconveniences or discomforts arising from agricultural operations at any time during the day or night. These may include noise, odors, fumes, dust, the operation of machinery (including aircraft), the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. The County shall not consider an agricultural operation to be a public or private nuisance if the operation complies with these regulations and all federal, state or county health or environmental requirements.

4. Update the following to section 1A01.2.B for the R.C. 2 zone:

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

13. Creamery. Processing, packaging and marketing activities on any farm shall occupy no more than 10% of the farm property on which the overall dairying occurs or 2 acres in area, whichever is less.

5. Update the following to section 1A02.2.A for the R.C. 3 zone:

13. Creamery. Processing, packaging and marketing activities on any farm shall occupy no more than 10% of the farm property on which the overall dairying occurs or 2 acres in area, whichever is less.

6. Update the following to section 1A03.3.A for the R.C. 4 zone:

COBA PC EX. NO. 4

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11. Creamery. Processing, packaging and marketing activities on any farm shall occupy no more than 10% of the farm property on which the overall dairying occurs or 2 acres in area, whichever is less.

7. Delete section 1A03.8 from the R.C. 4 zone:

Inconveniences arising from agricultural operations. [Bill Nos. 113-1992; 107-1994] Any dwelling in an R.C. 4 Zone may be subject to inconveniences or discomforts arising from agricultural operations, including but not limited to noise, odors, fumes, dust, the operations of machinery of any kind during any twenty-four hour period (including aircraft), the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. The county shall not consider an agricultural operation to be a public or private nuisance if the operation complies with these regulations and all federal, state or county health or environmental requirements.

8. Update the following to section 1A05.2 for the R.C. 50 zone:

11. Creamery. Processing, packaging and marketing activities on any farm shall occupy no more than 10% of the farm property on which the overall dairying occurs or 2 acres in area, whichever is less.

R.C. 50
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9. Update the following to section 1A08.3.A for the R.C. 7 zone:

9. Creamery. Processing, packaging and marketing activities on any farm shall occupy no more than 10% of the farm property on which the overall dairying occurs or 2 acres in area, whichever is less.

10. Delete section 1A08.7 for the R.C. 7 zone:

Inconveniences arising from agricultural operations. Any dwelling in an R.C. 7 Zone may be subject to inconveniences or discomforts arising from agricultural operations, including noise, odors, fumes, dust, the operation of machinery or aircraft of any kind during any twenty-four hour period, the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides.

11. Update the following to section 1A09.3.A for the R.C. 8 zone:

9. Creamery. Processing, packaging and marketing activities on any farm shall occupy no more than 10% of the farm property on which the overall dairying occurs or 2 acres in area, whichever is less.

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12. Delete section 1A09.8 for the R.C. 8 zone:

Inconveniences arising from agricultural operations. Any dwelling in an R.C. 8 or adjacent zone may be subject to inconveniences or discomforts arising from agricultural operations. These may include noise, odors, fumes, dust, the operation of machinery during any twenty-four hour period, the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. The County shall not consider an agricultural operation to be a public or private nuisance if the operation complies with these regulations and all federal, state or county health or environmental requirements.

13. Update the following to section 253.1A, which discusses uses permitted in the M.L. zone:

18. Food products manufacture, compounding, packaging or treatment not located on a farm, including but not limited to wholesale bakeries; canning plants or packing houses for canning, packing or processing of vegetables; creameries or milk-pasteurization or distributing stations; or cold-storage plants.

14. Update the following to section 500:

500.6 In addition to his aforesaid powers, the Zoning Commissioner shall have the power, upon notice to the parties in interest, to conduct hearings involving any violation or alleged violation or noncompliance with any zoning regulations, or the proper interpretation thereof, and to pass his order thereon, subject to the right of appeal to the County Board of Appeals as hereinafter provided. In the case of agricultural land which is under a County agricultural easement, a request for a determination of the zoning commissioner will be referred to the Baltimore County Agricultural Land Preservation Advisory Board for review and recommendation to the Director of Permits and Development Management. The Director of Permits and Development Management's decision shall be final and an appeal shall require mediation, to be paid by the appellant, prior to any court decision.

500.7 The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations. In the case of

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agricultural land which is under a County agricultural easement, refer to section 500.6.

With respect to any zoning petition other than a petition for a special exception, variance or reclassification, the Zoning Commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing. If the petition relates to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. Whether or not a specific property is involved, notice shall be given for the same period of time in at least two newspapers of general circulation in the county. The notice shall describe the property, if any, and the action requested in the petition. Upon establishing a hearing date for the petition, the Zoning Commissioner shall promptly forward a copy thereof to the Director of Planning (or his deputy) for his consideration and for a written report containing his findings thereon with regard to planning factors. [Bill No. 18-1976]

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Legislative Project No. 8

Amendments to the Baltimore County Zoning Regulations

A Staff Report of the Baltimore County Office of Planning
October 27, 2008

Amended January 7, 2009
Amended February 5, 2009

PROJECT DESCRIPTION

This report pertains the Baltimore County Zoning Regulations with respect to creameries.

BACKGROUND

The agricultural industry is an integral part of Baltimore County's economy and in order for the County's farm industry to prevail a variety of uses must be permitted as of right in these zones. One of these uses includes creameries. As of today, the process of dairying or the use of creameries in the Resource Conservation (R.C.) zones is not clearly defined. By updating the zoning code for the R.C. zones and clarifying the term creamery, the R.C. zones will protect the County's agricultural industry so that the area maintains its importance as an industrial base for the farming industry. Additionally, it will promote the use of local, fresh products by County citizens as well as decrease our contributions to global warming.

RECOMMENDATIONS

~~Strike through~~ indicates material to be deleted. **Bold** indicates material to be added.

1. Add the following definitions to section 101:

Creamery -- An establishment where dairy products such as milk, butter, cheese, ice cream and yogurt are made, processed or prepared.

2. Amend the following definitions in section 101:

FARM MARKET -- An accessory or principal building or structure other than a dwelling which is used by one or more farmers for the sale of ~~produce products~~ grown or grown and produced primarily on their own farms or for the sale of other ~~locally-grown produce~~ **indigenous farm products**. A farm market may sell a limited amount of locally produced nonagricultural goods such as handcrafted items, homemade baked goods, homemade preserves, and jams and processed dairy products. [Bill No. 41-1992]

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FARMER'S ROADSIDE STAND -- An accessory structure owned and operated by an agricultural producer, used for the sale of indigenous farm products, the majority of which have been grown or grown and produced on the premises, on adjacent land or on properties farmed by the same agricultural producer. [Bill No. 41-1992EN]

3. Update the following to section 1A01.2.B for the R.C. 2 zone:

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

13. Creamery, subject to the provisions of §404.13.

4. Add section 1A01.5 for the R.C. 2 zone:

Inconveniences arising from agricultural operations. Any dwelling in an R.C. 2 zone may be subject to inconveniences or discomforts arising from agricultural operations, including but not limited to noise, odors, fumes, dust, the operations of machinery of any kind during any twenty-four-hour period (including aircraft), the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. The county shall not consider an agricultural operation to be a public or private nuisance if the operation complies with these regulations and all federal, state or county health or environmental requirements.

5. Update the following to section 1A02.2.A for the R.C. 3 zone:

13. Creamery, subject to the provisions of §404.13.

6. Update the following to section 1A03.3.A for the R.C. 4 zone:

11. Creamery, subject to the provisions of §404.13.

7. Update the following to section 1A05.2 for the R.C. 50 zone:

11. Creamery, subject to the provisions of §404.13. R.C. 50
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8. Add section 1A05.6 for the R.C. 50 zone:

Inconveniences arising from agricultural operations. Any dwelling in an R.C. 50 zone may be subject to inconveniences or discomforts arising from agricultural operations, including but not limited to noise, odors, fumes, dust, the operations of machinery of any kind during any twenty-four-hour period (including aircraft), the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. The county shall not consider an agricultural operation to be a public or private nuisance if the operation complies with these regulations and all federal, state or county health or environmental requirements.

9. Update the following to section 1A08.3.A for the R.C. 7 zone:

9. Creamery, subject to the provisions of §404.13.

10. Update the following to section 1A09.3.A for the R.C. 8 zone:

9. Creamery, subject to the provisions of §404.13.

11. Update the following to section 253.1A, which discusses uses permitted in the M.L. zone:

18. Food products manufacture, compounding, packaging or treatment not located on a farm, including but not limited to wholesale bakeries; canning plants or packing houses for canning, packing or processing of vegetables; creameries or milk-pasteurization or distributing stations; or cold-storage plants.

12. Add section 404.13 to provide restrictions on the use of creameries:

§ 404.13 Creameries in R.C. zones are subject to the following requirements.

A. The majority of the dairy products produced by the creamery must be from milk produced on the premises, on adjacent land, or on properties farmed by the same agricultural producer.

B. All of the processing, preparing and packaging activities of the creamery, and any farmer's roadside stand or farm market on the premises used to sell the dairy products, shall occupy no more than 10% of the farm property on which the overall dairying occurs, or 2 acres in area, whichever is less. The milking operation is not included in this limitation.

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C. The total square footage of all structures or buildings associated with the creamery and any farm stand or farm market on the premises used to sell the dairy products shall not exceed 12,000 square feet. The milking operation is not included in this limitation.

D. Buildings which exceed the requirements of Section 404.13.C may be permitted by special exception.

E. Signage shall be in accordance with Section 450, Signs, but may not be internally illuminated.

Amendments to the Baltimore County Zoning Regulations

As Adopted by the Baltimore County Planning Board on February 5, 2009

PROJECT DESCRIPTION

This report pertains the Baltimore County Zoning Regulations with respect to creameries.

BACKGROUND

The agricultural industry is an integral part of Baltimore County's economy and in order for the County's farm industry to prevail a variety of uses must be permitted as of right in these zones. One of these uses includes creameries. As of today, the process of dairying or the use of creameries in the Resource Conservation (R.C.) zones is not clearly defined. By updating the zoning code for the R.C. zones and clarifying the term creamery, the R.C. zones will protect the County's agricultural industry so that the area maintains its importance as an industrial base for the farming industry. Additionally, it will promote the use of local, fresh products by County citizens as well as decrease our contributions to global warming.

RECOMMENDATIONS

~~Strike through~~ indicates material to be deleted. **Bold** indicates material to be added.

1. Add the following definitions to section 101:

Creamery -- An establishment where dairy products such as milk, butter, cheese, ice cream and yogurt are made, processed or prepared.

2. Amend the following definitions in section 101:

FARM MARKET -- An accessory or principal building or structure other than a dwelling which is used by one or more farmers for the sale of ~~produce~~ **products** grown ~~or grown~~ **and produced** primarily on their own farms or for the sale of other ~~locally grown produce~~ **indigenous farm products**. A farm market may sell a limited amount of locally produced nonagricultural goods such as handcrafted items, homemade baked goods, homemade preserves, ~~and jams and processed dairy products.~~ [Bill No. 41-1992]

FARMER'S ROADSIDE STAND -- An accessory structure owned and operated by an agricultural producer, used for the sale of indigenous farm products, the majority of which have been grown **or grown and produced** on the premises, on

adjacent land or on properties farmed by the same agricultural producer. [Bill No. 41-1992EN]

3. Update the following to section 1A01.2.B for the R.C. 2 zone:

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

13. Creamery, subject to the provisions of ♣404.13.

4. Add section 1A01.5 for the R.C. 2 zone:

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5. Update the following to section 1A02.2.A for the R.C. 3 zone:

13. Creamery, subject to the provisions of ♣404.13.

6. Update the following to section 1A03.3.A for the R.C. 4 zone:

11. Creamery, subject to the provisions of ♣404.13.

7. Update the following to section 1A05.2 for the R.C. 50 zone:

11. Creamery, subject to the provisions of ♣404.13. R.C. 50
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8. Add section 1A05.6 for the R.C. 50 zone:

Inconveniences arising from agricultural operations. Any dwelling in an R.C. 50 zone may be subject to inconveniences or discomforts arising from agricultural operations, including but not limited to noise, odors, fumes, dust, the operations of machinery of any kind during any twenty-four-hour period (including aircraft), the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. The county shall not consider an agricultural operation to be a public or private nuisance if the operation complies with these regulations and all federal, state or county health or environmental requirements.

9. Update the following to section 1A08.3.A for the R.C. 7 zone:

9. Creamery, subject to the provisions of ♣404.13.

10. Update the following to section 1A09.3.A for the R.C. 8 zone:

9. Creamery, subject to the provisions of ♣404.13.

11. Update the following to section 253.1A, which discusses uses permitted in the M.L. zone:

18. Food products manufacture, compounding, packaging or treatment not located on a farm, including but not limited to wholesale bakeries; canning plants or packing houses for canning, packing or processing of vegetables; creameries or milk-pasteurization or distributing stations; or cold-storage plants.

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♣ 404.13 Creameries in R.C. zones are subject to the following requirements.

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B. All of the processing, preparing and packaging activities of the creamery, and any farmer's roadside stand or farm market on the premises used to sell the dairy products, shall occupy no more than 10% of the farm property on which the overall dairying occurs, or 2 acres in area, whichever is less. The milking operation is not included in this limitation.

C. The combined square footage of all structures or buildings associated with the creamery as well as any farmer's roadside stand or farm market on the premises used to sell the dairy products shall not exceed a total of 12,000 square feet. The milking operation is not included in this limitation

D. Buildings which exceed the requirements of Section 404.13.C may be permitted by special exception.

E. Signage shall be in accordance with Section 450, Signs, but may not be internally illuminated.

RESIDENTS IN SUPPORT
OF SPECIAL EXCEPTION
FOR PRIGEL FAMILY CREAMERY

<u>NAME:</u>	<u>Address</u>
Keith Wills	P.O. Box 648 Bel Air MD 21014
Kenneth T. Wilson	4120 Loch Lomond Dr Nottingham, MD 21236
Wanda J. Wilson	" "
Darrell Edwards	4709 Long Green Road Glen Arm, MD 21057
ED KELLY	HYDRES RD 13342 LONG GREEN PIKE 21082
Bill Pennington	13325- 2 Fox Rd 21013
PAT REDDY	8727 BAKER AVE PARKVILLE 21234
CAROL PRIGEL	4930 Long Green Rd Glen Arm MD 21057
SCOTT CHILOS	4853 Long Green Rd, Glen Arm MD 21057
Leah Childs	4853 Long Green Rd Glen Arm 21057

DAVID SMITH

16701 YEOW RD, SPARKS, MD 21152

Robin Castillo
Carol & Bob Prigel

6415 Mt. Vista RD. 21057
~~4855 Long Green Rd~~ 21057

Robert B Carter

4809 Long Green Rd 21057

Paul L. Kerchant 4814 Long Green Rd
Joseph Cerone 4828 Long Green Rd
~~Robert Prigel Jr~~ ~~4855 Rd~~

David Childs 4931 Long Green Rd. 21057

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE COUNTY
 4851 Long Green Road; N/S Long Green Rd,
 1,500' W c/line Long Green Drive * BOARD OF APPEALS
 11th Election & 3rd Councilmanic Districts
 Legal Owner(s): Prigel Family Creamery, Inc* FOR
 Petitioner(s) * BALTIMORE COUNTY
 * 08-456-X

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BALTIMORE COUNTY
BOARD OF APPEALS

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

People's Counsel for Baltimore County files this memorandum. It is organized along the lines of the issues presented for decision by the County Board of Appeals.

Name That Use: Farmer's Roadside Stand or Farmers' Market

In zoning cases, the question is frequently presented as to the definition, identification or naming of the use. This is one of those cases. The current law governing farm market ("FM") and farmers' roadside stand ("FRS") uses is traceable to Bill 41-92. Recently, Bill 34-09 enacted several amendments, while at the same time including new provisions for creameries.

The Prigel Family Creamery ("Prigel") petition requests a special exception for a farm market or, alternatively, for a use permit for a farmers' roadside stand. At the hearing, petitioner framed the proposed use as a farm market. Based on the record, it also appears to this office that the proposed use, if permissible, must satisfy the requirements for approval of a farm market.

Unless a use is listed as permitted by right or special exception in a zone, it is prohibited. BCZR § 102.1. Kowalski v. Lamar 25 Md. App. 493 (1975); People's Counsel v. Surina 400 Md. 662 (2007). The Prigel farm is in the R.C. 2 (Agricultural Zone), which is addressed in BCZR § 1A01.

An FRS is permitted by right as an accessory use under BCZR § 1A01.2.B.9.b, subject to BCZR § 404.4 (which deals with agricultural roadside businesses). This requires a use permit under BCZR § 404.4.C.

An FM is permitted by special exception under BCZR § 1A01.2.C.8, again subject to BCZR § 404.4. This involves not only the usual BCZR § 502.1 special exception standards, but also additional standards under BCZR § 404.4.D.

There are several definitional requirements for the FRS and FM uses in BCZR § 101.1. Among other things, both an FRS and FM require the sale of “indigenous farm products” which are “grown, or grown and produced.” Separately, BCZR §§ 404.4.C.3 and 404.4.D.2 require “at least 50% of the produce sold annually” to be “grown on the premises.” Each of these latter provisions contains an exception to the 50% requirement “In the event of [specified types of] a crop failure. “ These provisions also require, respectively, the “recommendation of” or “consultation with” the Baltimore County Agricultural Land Advisory Board.

Bill 34-09 adds the words “or grown and produced” to “grown” in both BCZR § 101.1 definitions. It leaves unchanged the BCZR §§ 404.C.3 and 404.4.D.2 requirements that “produce” be “grown on the premises.”

The FM definition allows “... a farm market to sell a limited amount of locally produced nonagricultural goods” As enacted in Bill 41-92, and amended by Bill 34-09, these include “... handcrafted items, homemade baked goods, homemade preserves, jams, and dairy products.” The 2009 legislation deleted “dairy products” from this list.

In this context, the size and scale of Prigel’s retail operation places it, at the very least, in the farm market category. It is too large to be considered a mere “stand.” It should be underlined that the word “stand” implies a modest operation. The Webster’s Third New International Dictionary includes among its items

“**5a** : a small often open-air structure for a small retail business <*cigar* --- > <*roadside fruit* --- > <*hot dog* ->; *specif* : NEWSSTAND <after the latest edition hit the ----s>”

Several witnesses observed that farmers’ roadside stands in the north county are typically seasonal and temporary. In contrast, the proposed retail facility, in conjunction with the creamery, does not fit the established meaning of the word “stand.” Rather, it passes the threshold of a full-fledged permanent market.

Special exception standards: location and visual impact

In this context, we discuss the special exception and other requirements applicable to farm markets under BCZR § 502.1 and, here, BCZR § 404.4.D. The initial burden of proof is on the applicant to produce evidence to satisfy the relevant statutory criteria. Turner v. Hammond 270 Md. 43, 54-55 (1973); Schultz v. Pritts 291 Md. 1 (1981); People's Counsel for Baltimore County v. Loyola College 406 Md. 54 (2008). Among the BCZR § 502.1 criteria are, respectively, the impact on public health, safety, or welfare and the consistency with the purposes of the property's zoning classification. BCZR §§ 502.1.a and g. We have already identified the BCZR § 404.4.D criteria.

The proposed location is on the north side of Long Green Road, indeed, the exterior of the building is complete. Ironically, the building permit application had described the facility as a "barn" and located it on the south of the road, within the family's compound of farm and residential buildings. Evidently, the family decided that it would be offensive to place the industrial and commercial facility in proximity to their homes. So, what began as a barn on the south side has metamorphosed into a different kind of facility on the north side, which is an open area of the Long Green Valley.

Unfortunately, this has led to an issue arising as to the adverse visual impact. The Long Green Valley Association (LGVA), through Carol Trela, has articulated the objection to the impact on the historic rural valley. She has also noted that the entire property is subject to an agricultural easement.

The Court of Appeals has confirmed that adverse visual impact may be considered and is sometimes determinative in special exception cases. Board of County Comm'rs v. Holbrook 314 Md. 210 (1986). Accordingly, the County Board of Appeals should evaluate the particular aesthetic visual impact.

Separately, it does appear that Long Green Road is relatively straight, and that there are no access or sight distance problems. The LGVA does question the adequacy of the parking lot if the store becomes quite popular. To the Petitioner's credit, its proposal does not involve the destruction of any forest.

Consistency with the Master Water and Sewerage Plan

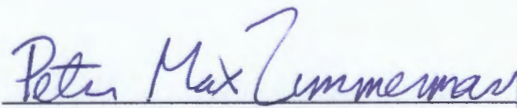
The Master Plan incorporates the Master Water and Sewerage Plan. The question of water supply frequently arises in rural areas. Under Maryland law, any facility with the capability of generating more than 5000 gallons per day is defined as a multiuse water or sewerage facility. Environment Article, § 9-501, et seq. Any such facility must be identified and included in the county's master water and sewerage plan.

Robert Prigel testified that the well associated with the proposed use has a capacity of 13 gallons per minute. This computes to 18,720 gallons per day. There is no evidence that the facility has been included in the county's master water and sewerage plan. This would be a prerequisite to implement any special exception.

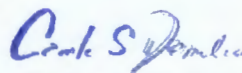
In the event that the County Board of Appeals otherwise determines that the proposal satisfies the special exception standards, the CBA must impose as a condition a prerequisite that the Petitioner obtain approval of an amendment to the Baltimore County Master Water and Sewerage Plan for a multiuse water and sewerage facility.

Conclusion

The County Board of Appeals should review whether the proposed farm market satisfies the criteria of BCZR § 502.1 and 404.4.D. It should also require compliance with the Master Water and Sewerage Plan.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2009, Legislative Day No. 8

Bill No. 34-09

Joseph Bartenfelder, Chairman and Councilmembers Olszewski & Oliver
By Request of County Executive

By the County Council, April 20, 2009

A BILL
ENTITLED

AN ACT concerning

Zoning Regulations - Farmstead creamery

FOR the purpose of permitting farmstead creameries as of right in certain zones; placing certain limitations on the use of a farmstead creamery; clarifying certain law regarding agricultural uses in certain zones; defining a certain term; amending certain definitions; and generally relating to the use of creameries in certain zones.

By adding

Sections 101.1 (Definition of "Farmstead creamery"), 1A01.2.B.13, 1A01.5, 1A02.2.A.13, 1A03.3.A.13, 1A05.2.A.11, 1A05.6, 1A08.3.A.9, 1A09.3.A.9, and 404.13
Baltimore County Zoning Regulations, as amended

By repealing and reenacting, with amendments

Sections 101.1 (Definitions of "Farmer's roadside stand" and "Farm market") and ~~253.1.A.18~~
Baltimore County Zoning Regulations, as amended

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

1 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE
2 COUNTY, MARYLAND, that Sections 101.1 (Definition of "Farmstead creamery"),
3 1A01.2.B.13, 1A01.5, 1A02.2.A.13, 1A03.3.A.13, 1A05.2.A.11, 1A05.6, 1A08.3.A.9,
4 1A09.3.A.9, and 404.13, are hereby added to the Baltimore County Zoning Regulations, as
5 amended, to read as follows:

Section 101. Definitions

§ 101.1 Word usage; definitions

8 FARMSTEAD CREAMERY – AN ESTABLISHMENT THAT IS PART OF A
9 COMMERCIAL DAIRY FARM, WHERE DAIRY PRODUCTS SUCH AS MILK, BUTTER,
10 CHEESE, ICE CREAM, AND YOGURT ARE MADE, PROCESSED, OR PREPARED.

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

§1A01.2

B. Uses permitted as of right.

The following uses only are permitted as of right in all R.C.2 Zones:

16 13. FARMSTEAD CREAMERY, SUBJECT TO THE PROVISIONS OF
17 SECTION 404.13.
18 §1A01.5
19 INCONVENIENCES ARISING FROM AGRICULTURAL OPERATIONS. ANY DWELLING
20 ~~IN~~ BUSINESS OR USE IN OR NEAR AN R.C. 2 ZONE MAY BE SUBJECT TO
21 INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL
22 OPERATIONS, INCLUDING BUT NOT LIMITED TO NOISE, ODORS, FUMES, DUST,
23 THE OPERATIONS OF MACHINERY OF ANY KIND DURING ANY TWENTY-FOUR-

CBA PC. EX NO. 7

1 HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF
2 MANURE AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL
3 FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. THE COUNTY
4 SHALL NOT CONSIDER AN AGRICULTURAL OPERATION TO BE A PUBLIC OR
5 PRIVATE NUISANCE IF THE OPERATION COMPLIES WITH THESE REGULATIONS
6 AND ALL FEDERAL, STATE OR COUNTY HEALTH OR ENVIRONMENTAL
7 REQUIREMENTS.

8 Section 1A02
9 R.C. 3 (Deferral of Planning and Development) Zone

10 § 1A02.2

11 A. Uses permitted as of right. The following uses, only, are permitted as of right in R.C.3

12 Zones:

13 13. FARMSTEAD CREAMERY, SUBJECT TO THE PROVISIONS OF
14 SECTION 404.13.

15 Section 1A03
16 R.C. 4 (Watershed Protection) Zone

17 § 1A03.3

18 A. Uses permitted as of right. The following uses, only, are permitted as of right in R.C.4

19 Zones:

20 13. FARMSTEAD CREAMERY, SUBJECT TO THE PROVISIONS OF
21 SECTION 404.13.

22 Section 1A05

1 R.C. 20 (Critical Area) and R.C. 50 (Critical Area, Agricultural) Zones

2 § 1A05.2

3 In the R.C.20 and R.C.50 Zones, the letter "P" in the following table indicates a land use
4 permitted by right in the respective zone(s), and the letters "SE" indicate a use permitted by
5 special exception pursuant to Section 502.7:

	Zone
	R.C.20 R.C.50

6 A. Natural resources and agricultural uses.

7 11. FARMSTEAD CREAMERY, SUBJECT TO THE

8 PROVISIONS OF § 404.13.

P

9 § 1A05.6

10 INCONVENIENCES ARISING FROM AGRICULTURAL OPERATIONS. ANY DWELLING
11 ~~IN BUSINESS OR USE IN OR NEAR~~ AN R.C. 50 ZONE MAY BE SUBJECT TO
12 INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL
13 OPERATIONS, INCLUDING BUT NOT LIMITED TO NOISE, ODORS, FUMES, DUST,
14 THE OPERATIONS OF MACHINERY OF ANY KIND DURING ANY TWENTY-FOUR-
15 HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF
16 MANURE AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL
17 FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. THE COUNTY
18 SHALL NOT CONSIDER AN AGRICULTURAL OPERATION TO BE A PUBLIC OR
19 PRIVATE NUISANCE IF THE OPERATION COMPLIES WITH THESE REGULATIONS

D. THIS SECTION IS NOT SUBJECT TO THE VARIANCE PROVISIONS OF

SECTION 307.

E. SIGNAGE SHALL BE IN ACCORDANCE WITH SECTION 450, BUT MAY NOT BE INTERNALLY ILLUMINATED.

SECTION 2. BE IT FURTHER ENACTED, that Sections 101.1 (Definitions of "Farmer's roadside stand" and "Farm market") and 253.1.A.18 of the Baltimore County Zoning Regulations, as amended, are hereby repealed and reenacted, with amendments, to read as follows:

Section 101
Definitions

§ 101.1 Word usage; definitions

FARMER'S ROADSIDE STAND – An accessory structure owned and operated by an agricultural producer, used for the sale of indigenous farm products, the majority of which have been grown OR GROWN AND PRODUCED on the premises, on adjacent land or on properties farmed by the same agricultural producer.

FARM MARKET – An accessory or principal building or structure other than a dwelling which is used by one or more farmers for the sale of [produce] PRODUCTS grown OR GROWN AND PRODUCED primarily on their own farms or for the sale of other [locally grown produce]

INDIGENOUS FARM PRODUCTS. A farm market may sell a limited amount of locally produced nonagricultural goods such as handcrafted items, homemade baked goods, homemade preserves, AND jams [and processed dairy products].

Section 253
Manufacturing, Light (M.L.) Zone
Use Regulations

~~§ 253.1~~

~~The uses listed in this section, only, shall be permitted as of right in M.L. Zones, subject to any conditions hereinafter prescribed.~~

~~A. The following industrial uses:~~

~~18. Food products manufacture, compounding, packaging or treatment NOT LOCATED ON A FARM, including but not limited to wholesale bakeries, canning plants or packing houses for canning, packing or processing of vegetables, creameries or milk-pasteurization or distributing stations, or cold-storage plants.~~

SECTION 3. AND BE IT FURTHER ENACTED, that this Act, having been passed by the affirmative vote of five members of the County Council shall take effect June 3, 2009.

b03409.wpd

From: "Alan Zukerberg" <apzuk@verizon.net>
To: "Peter Zimmerman" <peoplescounsel@baltimorecountymd.gov>
Date: 10/13/2009 10:54 AM
Subject: 520 Reisterstown Rd

Pete: Please let me know if the postponement has been requested and will the Board give us a chance to have input into the new date?

Pikesville Communities Corporation

Alan P. Zukerberg, President

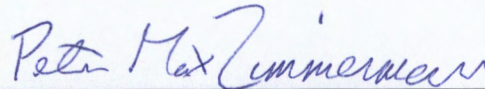
7919 Long Meadow Rd

Pikesville, MD 21208

410.484.5047

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of November, 2009, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286 and John B. Gontrum, Esquire, Whiteford, Taylor & Preston, LLP, One W Pennsylvania Avenue, Suite 300, Towson, MD 21204, Attorney for Petitioner(s).



PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

~~10/23/07~~
5 of 6

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

Mr. and Mrs. Robert Prigel, III.
Mr. Matt and Bobby Prigel
Mr. and Mrs. Robert Prigel, Sr.
4851 Long Green Road
Glen Arm, Maryland 21057
September 27, 2007

Dear Prigel family,

The Board of Directors of the LGVA would like to thank you for attending the monthly meeting on September 18, 2007 to outline the future plans and changes you will be making to your dairy farm. The board members are aware of your family's long history in the valley and your dedication to preserving the rural character of the area through good farming practices.

Your farm not only has the distinction of being the first property placed in the Long Green Valley Conservancy, but is known throughout the area for receiving awards for best farming practices and for being environmentally sensitive to the rural nature of the valley.

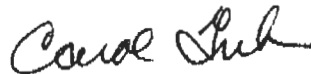
The board voted unanimously to support your family in its future plans for the dairy farm including: the building of a creamery to process milk, cheese, yogurt, and ice cream; the construction of a road side store from which these items will be sold directly to the public; the construction of a parking area that will be environmentally friendly; landscaping that will use natural screening; and the conversion of the farm to all organic.

If the association can be of any help to you now or in the future please feel free to contact us. Your goals with future changes to the


6 of 6

dairy farm are consistent with LGVA's mission which is to preserve the valley's agriculture and rural character for the benefit of future generations.

Sincerely,


Carol Trela, Secretary

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

March 27, 2008

The Board of Directors of the Long Green Valley Association held an emergency meeting on March 26, 2008 and voted to withdraw their letter of support written on September 27, 2007 to Mr. Robert Prigel regarding his farmer's roadside stand/creamery on 4851 Long Green Road in Glen Arm Maryland.

Sincerely,



Carol Trela, Secretary

cc.

Mr. Robert Prigel, III
Mr. Robert Prigel, Sr,
Baltimore County Zoning Office
Long Green Valley Conservancy, Mr. John Wilkerson, President
Mr. Edward L. Blanton, Jr.
Mrs. Susan Yoder
Mr. Wally Lippencott
Mr. Bruno Rudaitis, Zoning Review
Mr. Bryan McIntire
Department of Agriculture
Maryland Historic Trust
Mr. Carroll Holzer

1

faxed to J. Bussey
5/31/08

410-339-4027

PETITIONER' S

EXHIBIT NO.

3B

PRIGEL MILK PROCESSING

Living and worshiping in Long Green Valley we enjoy two (2) very distinct parts of America: the first being the unspoiled view of the rolling hills and the green fields of rural Baltimore County, the second being this rural vista interlaced with the American Farmer. The American Farmer struggles to exist due to the ability to make a decent profit when getting competition from very large farms and the rising cost of land.

The Prigel Family has been in Long Green Valley for over one hundred years and practices it's land stewardship in a conscientious and conservation minded fashion. In order to increase their profit and continue to exist they are building a milk processing unit which is to include a proposed retail area , of that building. We the signed below, support their efforts of the processing unit AND the retail area. We support The American Farmer and the Prigel effort to continue to exist and to keep their part of the "AMERICAN PIE" in Long Green Valley.

Paul F. Le...

Phil Haynes

Kathleen Nuttall

Paul Miller

Jacquelyn H. Reed

Mary M. Stephen

Loid Webb

Kay E. Kearns

Ma Mae Tombaugh.

Linda Imajewski

Carl Palmer

Lillie Mae Palmer

Janet Bowman

Ken Bowman

Grace Miller

Ronald Webb

Long Green Valley

CHURCH OF THE BRETHREN

4800 LONG GREEN ROAD, GLEN ARM, MARYLAND 21057

OFFICE: 410-592-9300

Mill Host
Jois Host
Bonnie Hedrick
Bruce Hedrick
Lucille Groves
Kel Hiler

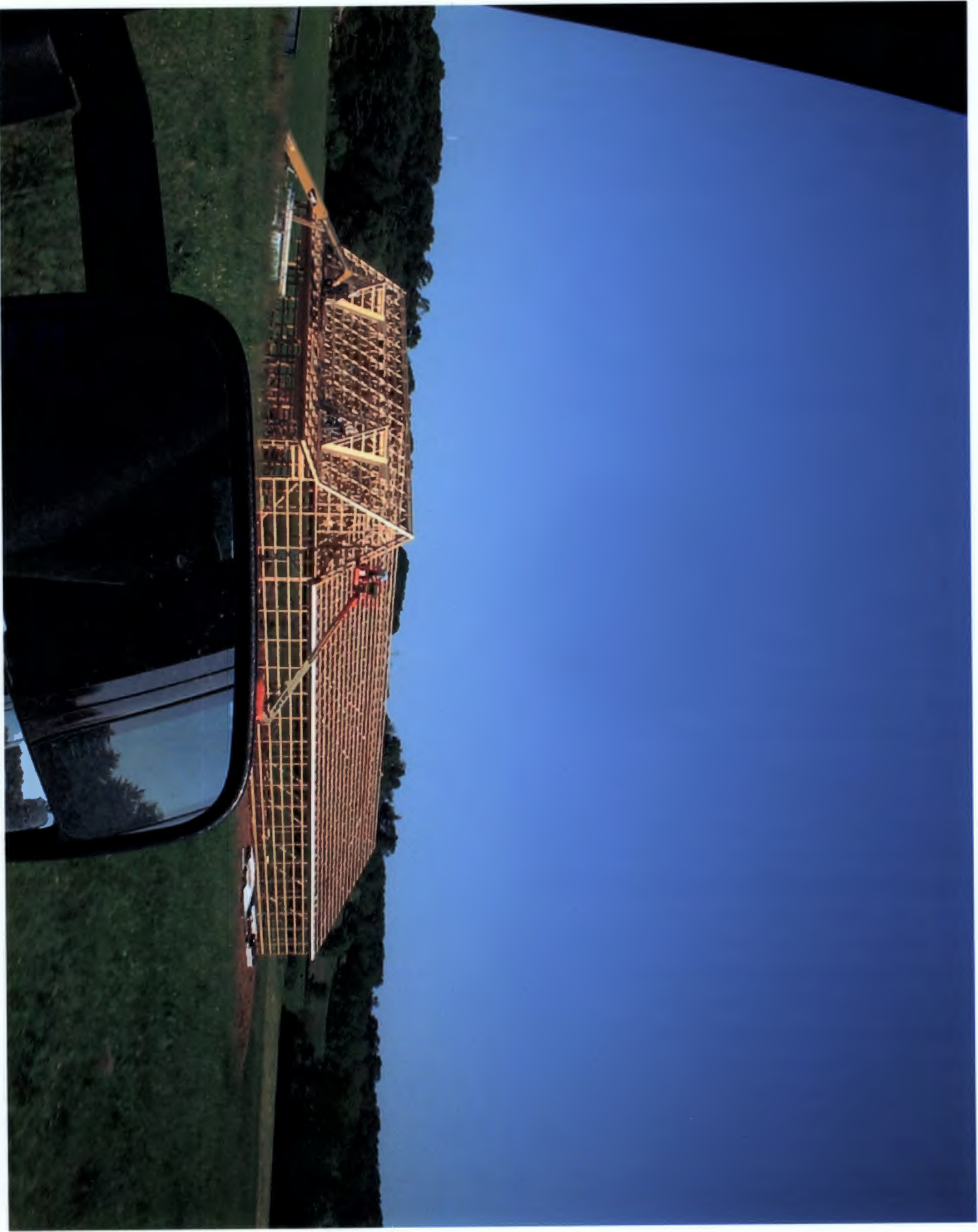
Stan Groves
Israel Rosas





PROTESTANT' S

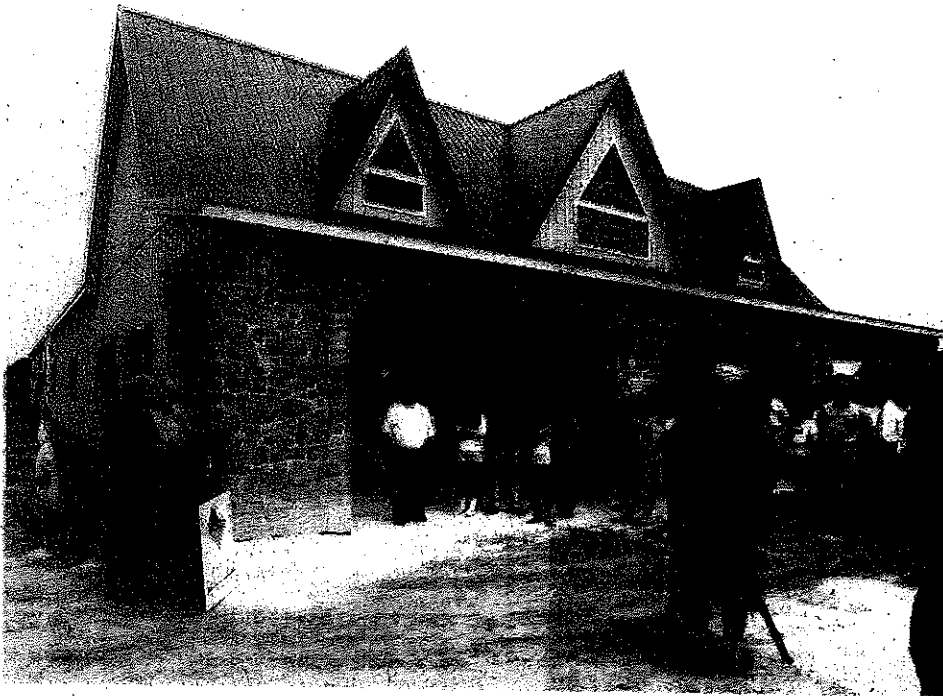
EXHIBIT NO. 1A-D







AROUND THE REGION



BARBARA HADDOCK TAYLOR/BALTIMORE SUN PHOTO
Baltimore County Executive James T. Smith Jr. (left) announces a \$250,000 loan to Bobby and Pam Prigel, allowing them to complete their creamery in Long Green Valley.

Balto. Co. loan helps complete creamery

By Mary Gail Hare

MARY.GAIL.HARE@BALTSUN.COM

Bobby and Pam Prigel are moving forward with construction of a creamery on their Long Green Valley property, where they will sell organic dairy products made from milk produced by their herd at Bellevale Farms.

A \$250,000 low-interest loan from Baltimore County, announced Tuesday, will help them complete and equip a 10,000-square-foot pole barn on Long Green Road.

"This puts the finishing touches on this project," Bobby Prigel told a gathering of officials and friends at the farm, promising to invite them back next spring for ice cream. "They will be pouring the concrete floor Friday."

The Prigel family has lived and worked on the 260-acre farm since 1895 and began an organic operation there three years ago. In May, the Baltimore County Council passed a zoning regulation that would allow Bobby Prigel to sell organic products despite the objections of some land preservationists, who argued that the law would open the door to factory operations.

The exterior of the creamery building resembles a farmhouse, with its wide front porch, stone facade and dormer windows. But until May, a shell was all the Prigels

had to show for their \$1 million investment.

In announcing the loan, County Executive James T. Smith Jr. said the creamery "blends in perfectly with the county's commitment to agriculture," which he said must be "an ever-evolving industry."

Rob Deford, owner of Boordy Vineyards and a longtime neighbor, said the creamery fits into the mix of residences, farms and businesses in the Long Green Valley, and he predicted its success.

"Farms today have to put their label on something and manage their own destiny," Deford said. "An operation like this puts land to profitable use. Farms cannot be parks; they are working landscapes."

Smith said that allowing the family farm to process and sell its own products directly to consumers will ensure its fiscal health and help the county in its efforts to safeguard farmland from development.

The creamery, which will feature ice cream, yogurt, cheese and butter, will sell only organic and locally grown products.

"I want to see the creamery happen for my husband and for the next generation of our family," said Pam Prigel, who treated her guests to homemade oatmeal cookies and iced tea Tuesday. "It means we will keep Bellevale Farms going into the future."

2 firefighters inj battling blaze

Two firefighters suffered minor injuries while battling a fire Tuesday morning in a rowhouse, according to a spokesman. The fire began in the 200 block of St. Ma brought under control 2 Chief Kevin Cartwright, firefighter suffered a small another injured an elbow Cartwright. Fire officials cause of the blaze. A ma alerted authorities to began on the second floor

— Brent Jones

Good weather, draw big crowd

Buoyed by good weather by the alter Baltimore's annual free drew its largest crowd in to organizers. There are Tracy Baskerville, spoke more Office of Promotio believe 385,000 people ca biggest audience Satur 225,000 turned out. At between 200,000 and 300. The most interest was Robert Randolph and organizers believe drew ville said so many people many could only hear t Dance shows at the Lyri out and a new offerin Festival shorts at the C least three-quarters full bike lockup was also full area that offered shade, sages for a daily rate of \$2

— Meredith Cohn

Annapolis police classic car show

The Annapolis Police to hold a National Classic Car Show on Saturday scheduled from 9 a.m. to 4 p.m. at Heritage Park at 1103 Smt cars will compete for the M and the department's par event are car clubs Wheels Side Mustangs. Activities include a display of emergency dog demonstration, a jur moon bounce. There will a Proceeds benefit the Bo Annapolis and Anne Aru date is Sunday. Informati lin@annapolis.gov

— Andrea F. Siegel

RE: PETITION FOR SPECIAL EXCEPTIOFN * BEFORE THE
 4851 Long Green Road, N/S Long Green Road *
 1,500' W e/line Long Green Drive * COUNTY
 11th Election District *
 3rd Councilmanic District * BOARD OF APPEALS

 Legal Owner(s): Prigel Family Creamery, Inc. * FOR

 Petitioner(s) * BALTIMORE COUNTY

 * Case No.: 04-456-X
 * 08-456-X

* * * * *

**MEMORANDUM IN LIEU OF FINAL ARGUMENT
 OF PROTESTANTS LONG GREEN VALLEY COMMUNITY ASSOCIATION, et al.**

Long Green Valley Association and individuals, Ed Blanton, Carol Trela, Cathy Ebert and Susan Yoder, Protestants, by and through their attorney, *J. Carroll Holzer*, Esquire, Holzer & Lee, files this brief Memorandum.

I.

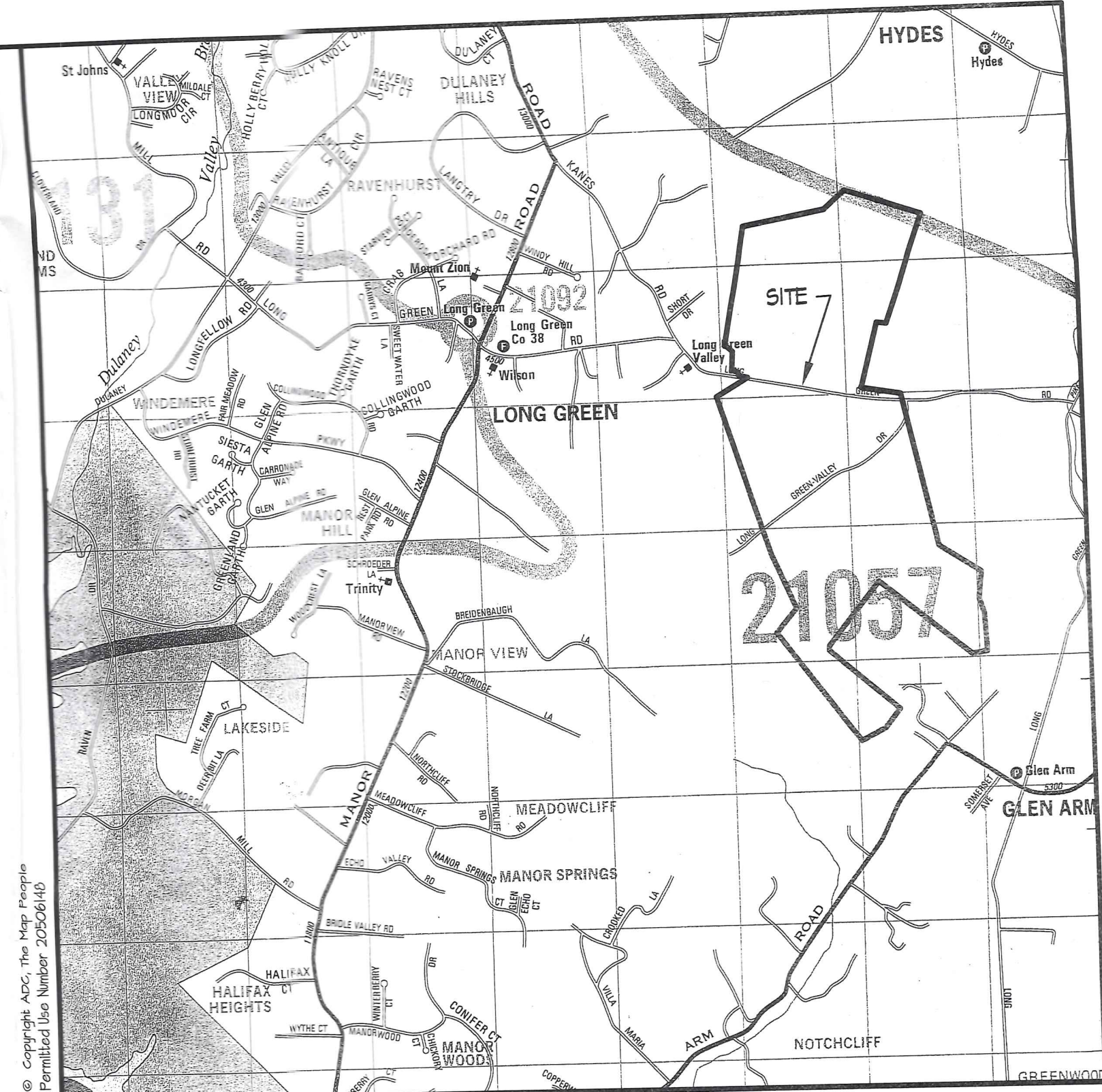
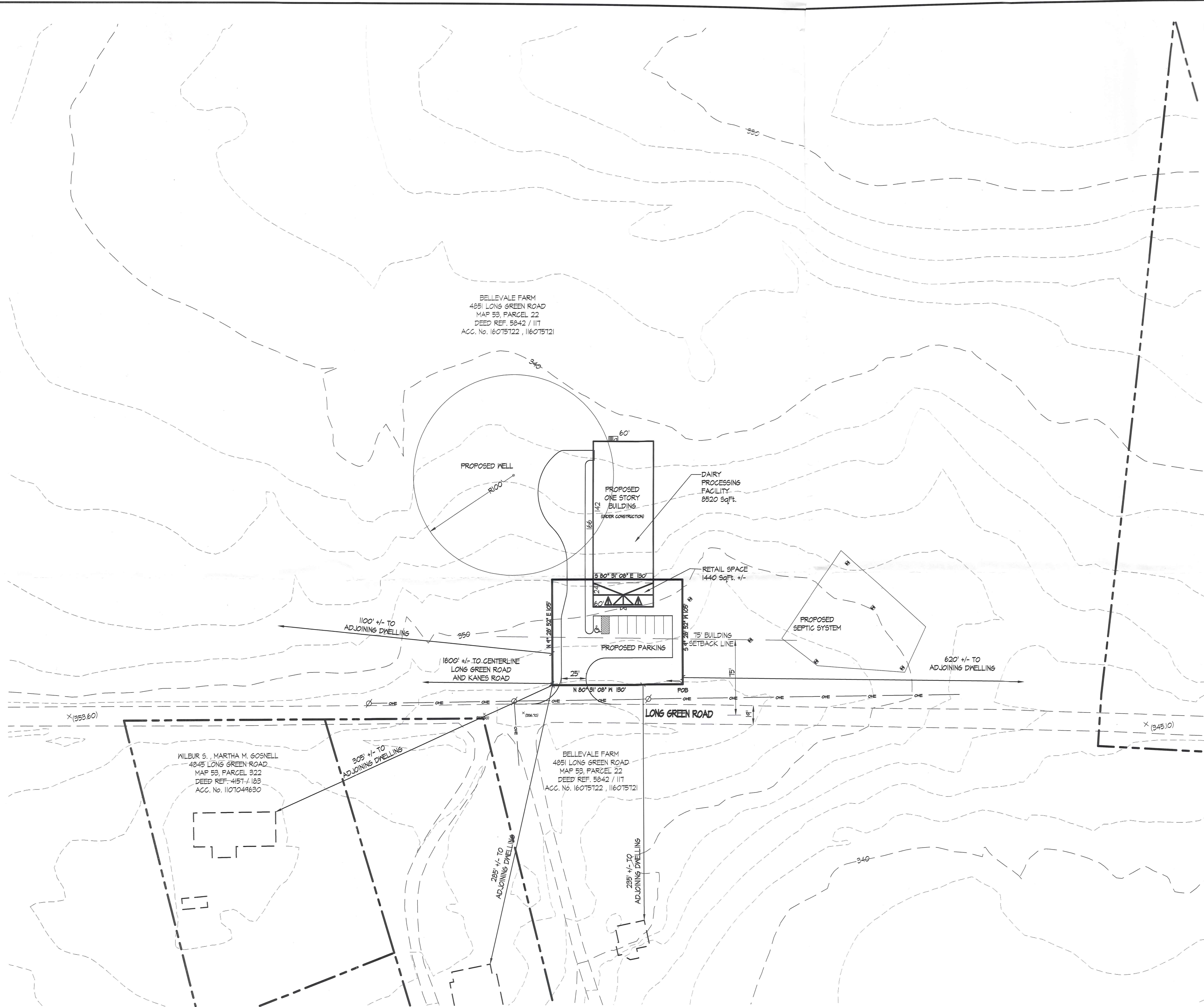
STATEMENT OF THE CASE

The Prigel Family Creamery, Inc., by Robert E. Prigel, filed a Petition for Special Exception before the Zoning Commissioner of Baltimore County for the property located at 4851 Long Green Road, which is currently zoned R.C. 2.

The Petition for Special Exception is per Baltimore County Zoning Regulations §404.4D and §502.1 to permit a Farm Market (FM); or alternatively for a Farmers Roadside Stand (FRS) per Baltimore County Zoning Regulations §404.4C.

The Protestants filed an appeal from the Decision of the Deputy Zoning Commissioner and brought this matter to the County Board of Appeals for a *de novo* hearing dated August 1, 2008.

RECEIVED
 NOV 30 2009
 BALTIMORE COUNTY
 BOARD OF APPEALS



VICINITY MAP

- NOTES
1. Property Owner: Bellevale Farm
C/O Robert Prigel
4851 Long Green Road
Glen Arm, Maryland 21057 - 9125
410-592-6014
 2. Site Area : 180.469 Ac ±
+ 15.14 Ac ±
195.609 Ac ? Total
 3. Existing Use: Agricultural
 4. Proposed Use: Farmer's Roadside Stand
 5. Site Data: Tax Map 53, Grid 11, Parcel 22
Tax Acct. No.: 116075122, 116075121
Deed Reference: 5842 / 117

Zoning : RC2
Election District: 11
Councilmanic District: 3
 6. Parking provided: 8 spaces (including 1 handicap sp.)
 7. Any proposed sign to be in accordance with Baltimore County regulations.
 8. Site is not within the 100 Yr. Flood Plain as shown on FIRM 240010 0260 B.
 9. Previous Zoning Cases
5722
68-271X
XI-351 - Created Lot 1 and 1 Parcel
 10. Paving to be durable and dust free.

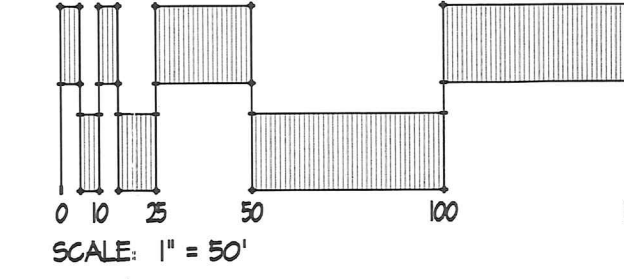
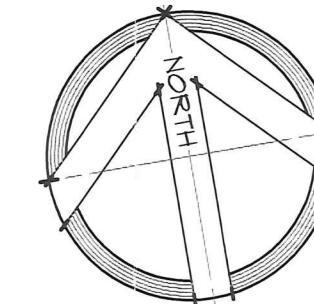
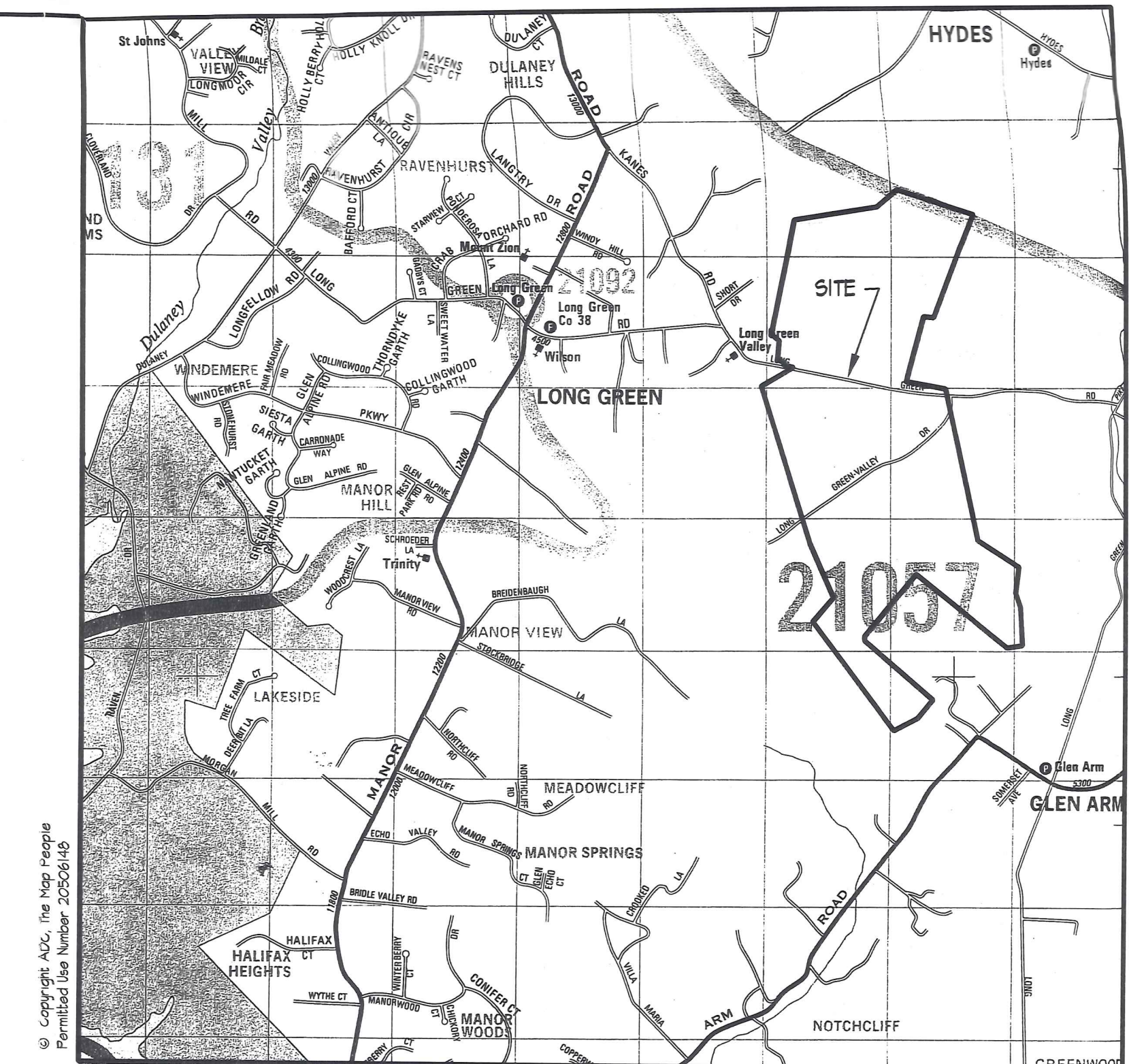
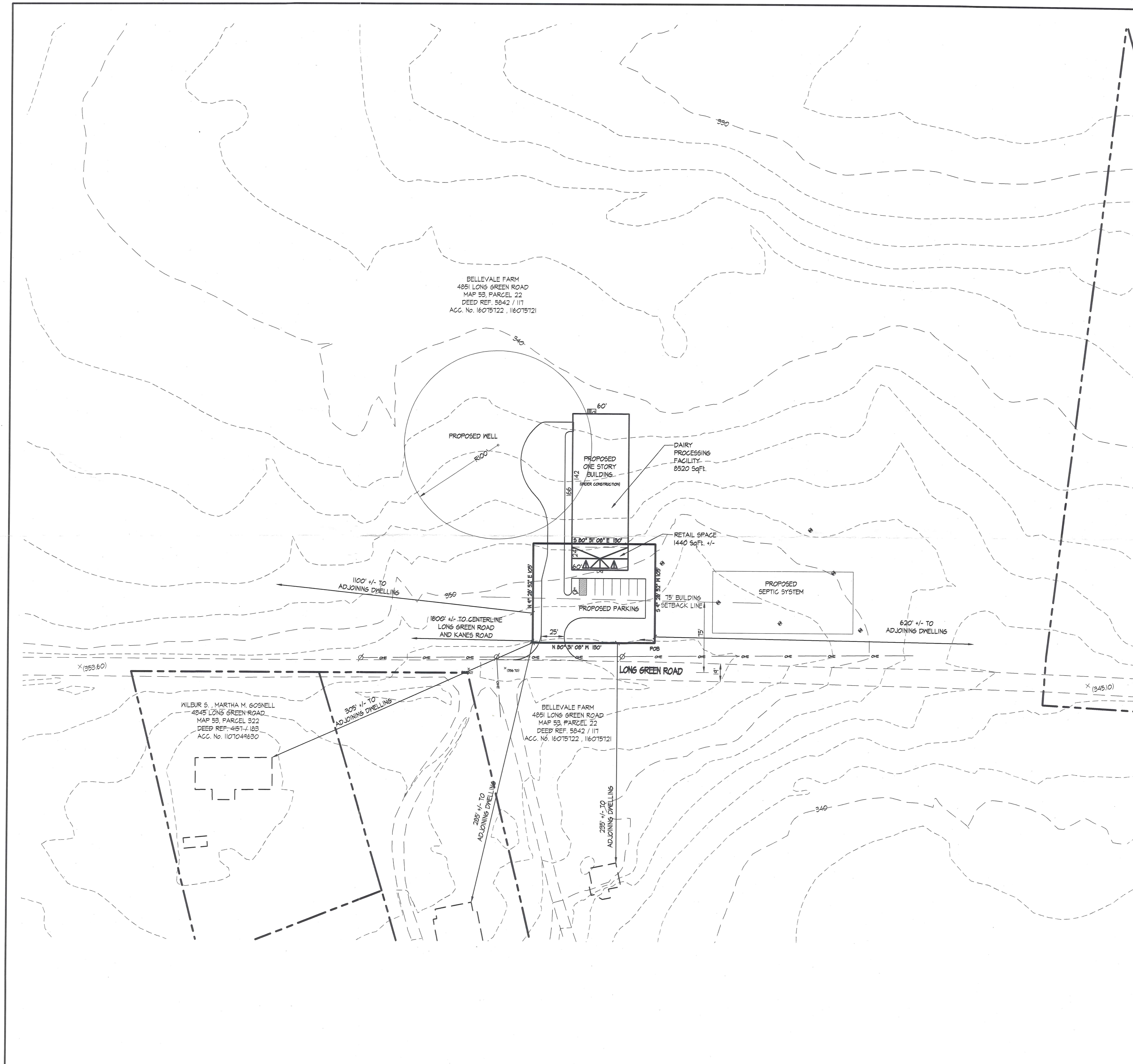


EXHIBIT 1 Revised Plan To Accompany Request for Special Exception	
Bellevale Farm	
PROPERTY OF Robert Prigel 11th ELECTION DIST, BALTIMORE COUNTY, MD	
REVISIONS	
5/29/08 Revise bldg. size, note under construction. Add durable paving note. Add approx. boundary lines to show adjoining parcels and dimensions to adj. dwellings.	
6/03/08 Revise area for septic system based on perc test results	
 SITE RESOURCES incorporated Comprehensive Land Planning & Site Design Services 14315 Jarrattsville Pike • Phoenix, Maryland 21131 (410) 683-3388 • fax (410) 683-3389	
DRAWN BY: C65	CONTRACT NO.:
DESIGNED BY: SRI	SCALE: 1" = 50'
CHECKED BY: SRI	SRI PROJECT NO: 07089
DATE: 5/28/08	SHEET 1 OF 1

CBA P&T EX NO. 5



VICINITY MAP

NOTES

- Property Owner: Bellevue Farm
C/O Robert Frigel
4851 Long Green Road
Glen Arm, Maryland 21057 - 9725
410-542-6014
- Site Area : 180.469 Ac ±
+ 15.14 Ac ±
195.609 Ac ± Total
- Existing Use: Agricultural
- Proposed Use: Farmer's Roadside Stand
- Site Data: Tax Map 53, Grid II, Parcel 22
Tax Acct. No.: 116075122, 116075121
Deed Reference: 5842 / 117
Zoning: RC2
Election District: II
Councilmanic District: 3
- Parking provided: 8 spaces (including 1 handicap sp.)
- Any proposed sign to be in accordance with Baltimore County regulations.
- Site is not within the 100 Yr. Flood Plain as shown on FIRM 240010 0260 B.
- Previous Zoning Cases
5722
65-271X
XI-351 - Created Lot I and I Parcel
- Paving to be durable and dust free.

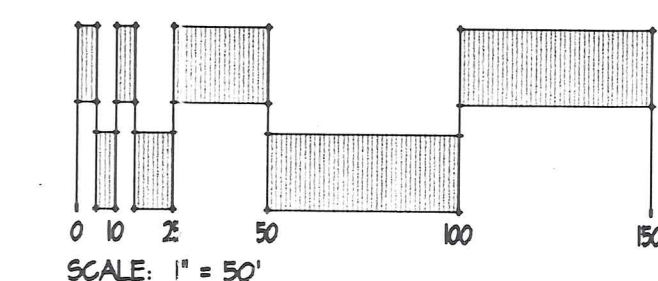
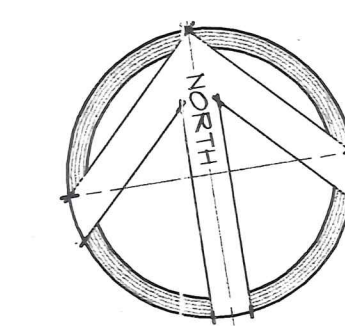


EXHIBIT I Revised Plan To Accompany Request for Special Exception	
Bellevue Farm	
PROPERTY OF Robert Frigel 11th ELECTION DIST, BALTIMORE COUNTY, MD	
REVISIONS	
5/29/08 Revise bldg. size, note under construction. Add durable paving note. Add approx. boundary lines to show adjoining parcels and dimensions to adj. dwellings.	
PETITIONER'S EXHIBIT NO. <u>1</u>	
DRAWN BY: CGS	CONTRACT NO.:
DESIGNED BY: SRI	SCALE: 1" = 50'
CHECKED BY: SRI	SRI PROJECT NO: 07089
DATE: 5/28/08	SHEET 1 OF 1

REVISED 08-456-X

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE DEPUTY
N Side Long Green Road, 1500 feet W		
C/I Long Green Valley Dr.	*	ZONING COMMISSIONER
(4851 Long Green Road)		
	*	OF BALTIMORE COUNTY
11th Election District		
3rd Councilmanic District	*	
Prigel Family Creamery, Inc.; Robert Prigel		
Petitioners & Legal Owners	*	Case No.: 2008-0456-X

* * * * *

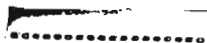
NOTICE OF APPEAL

THE LONG GREEN VALLEY ASSOCIATION, INC., PO BOX 91, BALDWIN, MD 21013, ROGER HAYDEN, PRESIDENT; CHARLOTTE PINE, 13310 FORK ROAD, BALDWIN, MD, 21013; CATHERINE EBERT, 12815 KANES ROAD, GLEN ARM, MD 21057; AND JOHN & SUSAN YODER, PO BOX 399, PHOENIX, MD 21131, Appellants in the above captioned matter, by and through their attorney, J. Carroll Holzer, P.A., feeling aggrieved by the decision of the Deputy Zoning Commissioner in Case No. 2008-0456-X, hereby note an appeal to the County Board of Appeals from Findings of Fact and Conclusions of Law dated July 11, 2008 attached hereto, and incorporated herein as **Exhibit #1**.

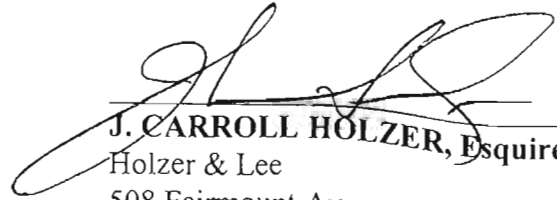
Filed concurrently with this Notice of Appeal is Appellants' check made payable to Baltimore County to cover the costs of the appeal. Appellants were parties below and fully participated in the proceedings.

RECEIVED

AUG 01 2008

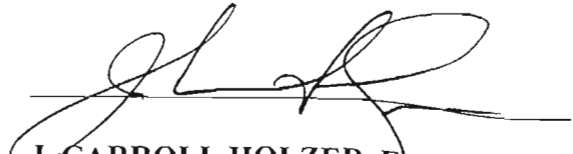


Respectfully submitted,


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of August, 2008, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to John B. Gontrum, Esquire, Whiteford, Taylor & Preston, LLP, 210 W. Pennsylvania Ave., Towson, MD 21204; County Board of Appeals, Jefferson Building, Suite 203, 105 W. Chesapeake Ave., Towson, MD 21204; and People's Counsel for Baltimore County, Jefferson Building, Room 204, 105 W. Chesapeake Ave., Towson, M, 21204.


J. CARROLL HOLZER, Esquire

**IN RE: PETITION FOR SPECIAL
EXCEPTION**

N side Long Green Road, 1,500 feet W
c/l Long Green Valley Drive
11th Election District
3rd Councilmanic District
(4851 Long Green Road)

Prigel Family Creamery, Inc.; Robert E. Prigel
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY

* **Case No. 2008-0456-X**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by Robert E. Prigel on behalf of the legal owner of the proposed retail farming operation, Prigel Family Creamery, Inc. (hereinafter referred to collectively as "Petitioners").¹ Petitioners are requesting a special exception use pursuant to Sections 404.4.D and 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a Farm Market. Alternatively, Petitioners are requesting confirmation of a Farmer's Roadside Stand pursuant to Section 404.4.C of the B.C.Z.R., which is permitted as of right with a use permit in the R.C.2 Zone. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.²

Appearing at the requisite public hearing in support of the requested relief were Petitioners Robert E. Prigel and his family, Petitioners' attorneys, John B. Gontrum, Esquire and

¹ Evidence demonstrated that the legal owner of the subject property is Bellevale Farm, LP. The legal owner of the proposed dairy processing center and retail store is Prigel Family Creamery, Inc. Since the requested relief is limited to the proposed use of a portion of the structure owned by Prigel Family Creamery, Inc., the Petition was filed on behalf of that legal entity.

² The site plan submitted at the hearing was updated as of May 28, 2008. The prior site plan, which was dated March 31, 2008, was primarily revised to accurately reflect the size of the structure that will house the proposed dairy processing center. That portion of the structure was reduced from 9,240 square feet to 8,520 square feet on the updated site plan. There was no change to the dimensions of the area proposed for the farm market or roadside stand.

RECEIVED FOR FILE
7-11-08
P3

Jennifer R. Busse, Esquire, with Whiteford, Taylor & Preston, LLP, and Michael Fisher, a professional landscape architect and principal with Site Resources, Inc. who prepared the site plan. As evidenced by the number of persons in attendance at the hearing, the issues presented in this case generated significant public interest, and approximately 60 neighbors and residents from the surrounding community appeared in support of the requested relief. The names and addresses of these individuals are too numerous to list here, but can be found on the "Petitioner's Sign-In Sheet" that is contained in the case file. Also appearing and testifying in support of the requested relief were Steve Weber, President of the Maryland Farm Direct Market Association, and three additional citizens, Robert Carter, Seth Revelle, and Paul Conczewski. Appearing on behalf of Baltimore County agencies were Chris McCollum with the Department of Economic Development and Wally Lippincott, Jr. with the Department of Environmental Protection and Resource Management (DEPRM). The interest of the public is also reflected in a Petition signed by 24 members of the Long Green Valley Church of the Brethren, which was marked and accepted into evidence as Petitioners' Exhibit 4.

The views of Protestants are equally supported in the record, as J. Carroll Holzer, Esquire appeared and represented the Long Green Valley Association, Inc. and several named individuals who opposed the requested relief, including Charlotte Pine, Carol Trela, Katherine Ebert, and Ed Blanton. Several additional citizens were listed on the "Citizen's Sign-In Sheet" that is contained in the case file.

At the outset of the hearing, Petitioners made a preliminary Motion to Quash a Subpoena Duces Tecum that was issued at the request of Protestants' attorney, Mr. Holzer, on May 27, 2008. The subpoena commanded the Prigel Family Creamery to produce the federal and state tax returns of Bellevalle Farm, LP or Prigel Family Creamery for the past three years. Mr.

Gontrum argued that Petitioners should not be burdened with producing the requested records and that the documents are irrelevant and immaterial to the analysis of a proposed roadside stand or farm market that has yet to begin operations. On behalf of Protestants, Mr. Holzer replied that the requested documents were relevant since the criteria for a roadside stand includes a provision establishing that over 50% of the products sold at the stand are to be grown on the premises where the stand is located. After careful consideration, I determined that the Motion to Quash should be granted. While I respect Protestants' position, the burden to establish the criteria for a roadside stand remains squarely on the Petitioners. In the interest of justice, I found that Petitioners should not be required to release the personal information contained in the prior tax records of their family business when the proposed stand has yet to open its doors and the 50% requirement could be addressed in a less invasive manner. Mr. Holzer also subpoenaed a Memorandum from the Department of Economic Development, as well as the Prigel Family Creamery business plan, which were produced by Mr. McCollum and marked and accepted into evidence without objection as Protestants' Exhibits 2 and 3, respectively.

Testimony describing the subject property and proposed use under the Petition for Special Exception was offered by Michael Fisher and Robert Prigel. The evidence revealed that the subject property is an irregular-shaped property containing approximately 280 acres of land zoned R.C.2. The property is situated between Manor Road to the west and Long Green Pike to the east and is bisected by Long Green Road in the Glen Arm area of Baltimore County. Petitioners submitted an aerial photograph of the farm, which was marked and accepted into evidence as Petitioners' Exhibit 2. While the photograph correctly reflects the boundary of the subject property, it does not fully portray the current state of the property since it was taken prior to the construction of the structure that would house the proposed farm market or roadside stand

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and dairy processing facility. Thus, pursuant to Mr. Holzer's appropriate objection, the photograph was admitted for the limited purpose of showing the boundary of the subject property. The photograph also shows the rural and agricultural character of the Long Green Valley. Protestants submitted four photographs that provided additional insight into the current state of the structure and surrounding property. The photographs were marked and accepted into evidence as Protestants' Exhibits 1A through 1D. As the photographs and testimony indicated, the property primarily consists of open fields which Petitioners use on a rotational basis for dairy farming operations.

As depicted on the site plan, the subject property is currently being improved with an approximately 10,000 square foot structure on the north side of Long Green Road. Petitioners have already received the necessary building permits to begin this construction. The majority of the structure will be used as a dairy processing center, and the only portion of the building pertaining to the instant special exception case is the 1,440 square foot section that will face Long Green Road. The area at issue in this case totals approximately one half acre and is outlined on the site plan with a dark line in the shape of a rectangle (*See*, Petitioners' Exhibit 1). Including the front section of the building, Petitioners are also requesting the special exception to permit the construction of a 130 foot wide by 105 foot deep parking area containing eight spaces, including one handicapped space, and an access way that will be mostly 22 feet wide, but will extend to 35 feet wide near the parking area to enable cars to safely maneuver. The access way and parking area will be constructed with a dust free, environmentally friendly pervious paving surface. The proposed farmer's market or roadside stand will comply with all required setbacks and will not require any variance relief. To the east, Petitioners indicate the proposed use will be approximately 620 feet away from the nearest property and to the west approximately 1,000 feet.

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Additionally, the well and septic system that will serve the property, which are respectively located to the northwest and east of the area in question, have already received necessary approvals.

Further evidence revealed that the Prigel family utilizes the subject property to operate the only organic dairy farm in Baltimore County. In 1996, the family placed 180 acres of farmland into a perpetual agricultural easement held by the Maryland Agricultural Land Preservation Foundation (MALPF). In 2002, the Prigels placed another 80 acres of woods into a permanent easement with the Long Green Valley Conservancy, to be included in Maryland's Rural Legacy program. Nearly the entire farm at issue in this case is dedicated to pasture that the Prigel family uses to care for approximately 180 dairy cows. Mr. Prigel testified that twice each day the family milks about 150 cows that produce approximately 500 gallons of milk per day. As organic dairy farmers, the Prigels do not use any antibiotics -- they raise free-range cows that openly graze on a rotational basis in order to naturally spread nutrients throughout the property.

Currently, the Prigel family sells the majority of their milk to the Horizon Organic Dairy Company, which transports the milk via tractor-trailer to a processing plant in Buffalo, New York and then sells the milk throughout the country under the Horizon label. According to the company's Website, Horizon Organic is the nation's leading brand of certified organic milk, with a full line of USDA certified organic dairy products. Mr. Prigel testified that the existing operation causes a significant profit margin to pass on to Horizon, and the Prigels would like to capture these profits by processing and selling their product locally under the Prigel Family Creamery label. According to Mr. Prigel, the farming business has become increasingly difficult, especially for smaller, family-owned farms, and the ability to sell their products locally in a small retail store would greatly improve the farm's competitive position. The Prigels

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propose to produce and sell approximately five products at the farm market or roadside stand, including milk, butter, cheese, yogurt and ice cream. If possible, all of the products sold would be produced and packaged on the premises. It is anticipated that the hours of operation would be 9:00 AM to 9:00 PM during the summer months, with closing at approximately 6:00 PM during the off-season. Mr. Prigel testified that the family has explored the opportunity to work with the Cowgirl Creamery Company to learn about making and marketing cheese, which Mr. Prigel commented is "as much a science as it is an art;" however, contrary to the aforementioned Prigel Family Creamery business plan, Mr. Prigel indicated he does not anticipate entering into a formal relationship with Cowgirl Creamery. If the requested relief were granted, the farming and retail store would remain entirely family run, with the Prigels possibly hiring several experienced employees to operate the portion of the structure that will function as a dairy processing plant.

In support of the requested relief, Mr. Fisher, Petitioners' landscape architect and site planning consultant, provided expert testimony concerning the requested special exception and its potential effects on the criteria set forth in Section 502.1 of the B.C.Z.R. In particular, in considering the proposed use and the location of the property in the R.C.2 Zone, Mr. Fisher opined that the special exception use of the property for a farm market would not have any detrimental impact on the health, safety, or general welfare of the locale; would not create congestion in roads or streets, and would not create a potential hazard from fire, panic or other danger. Additionally, given the 280 acres of land, the approximately one-half acre special exception area would not overcrowd the land. In addition, the use would not interfere with the provision of public services or with adequate light and air, and would not be inconsistent with the property's agricultural zoning classification or with the spirit and intent of the B.C.Z.R., and would not be detrimental to any other applicable special exception criteria. In fact, Mr. Fisher

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testified that the special exception use as a farm market would be wholly consistent with the agricultural goals of the R.C.2 Zone, which includes dairying. In short, this use would support that goal.

Also testifying in support of the requested relief was Chris McCollum with the Baltimore County Department of Economic Development. Mr. McCollum is an Agricultural Liaison and is familiar with Petitioners' plans for the property, including the request for a use permit for a farmer's roadside stand and the special exception request for a farm market. Although his department did not submit a written comment concerning this particular case, Mr. McCollum testified that his department is in support of Petitioners' use permit and special exception requests. To that end, the Department of Economic Development is financing \$250,000.00 toward the creamery/dairy processing facility in order to assist Petitioners in their efforts to expand into production of organic milk products. Mr. McCollum testified that his department views the proposed retail component of the creamery as part of the overall vision of marketing and selling its product offerings to wholesale purchasers as well as directly to the general public. This also furthers the goal of agricultural use of the land and agricultural preservation, while also meeting the evolving changes in the dairy industry. A copy of a Memorandum dated April 18, 2008 from Stan Jacobs, Chief Financial Officer, to the Baltimore County Loan Review Committee was marked and accepted into evidence as Protestants' Exhibit 2. A copy of the Prigel Family Creamery Business and Plan and Financials dated January 18, 2008 was also marked and accepted into evidence as Protestants' Exhibit 3.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated April 29, 2008, which indicate that agriculture and agricultural production of local products are vital for

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the agricultural industry of the County and consistent with the master plan and land preservation. The comment noted that the subject property is located in a rural legacy area and along a scenic road, therefore, certain items need to be addressed, which will be expounded upon further in this Order. Comments from the Department of Environmental Protection and Resource Management (DEPRM) dated May 19, 2008 indicate that Petitioners must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands, and Floodplains. In addition, the comment from Wally Lippincott with DEPRM dated May 13, 2008 supports Petitioners' request for a farm market or roadside stand. Mr. Lippincott noted that the proposed location is directly across from the existing farmstead and is located immediately adjacent to the road, which is consistent with the practice of protecting prime and productive agricultural soils by locating buildings near the road and/or within existing farmsteads. He also noted that Petitioners' existing farm operation gives reasonable indication that it can meet the production requirements for a farm market or farmer's roadside stand.

A brief discussion of the regulations governing this proceeding is warranted due to the somewhat unusual procedure and the overlapping nature of the requested relief.³ Section 1A01.2.B.9.b of the B.C.Z.R. permits as a matter of right a farmer's roadside stand and produce stand in all R.C.2 Zones, subject to the provisions of Section 404.4 of the B.C.Z.R. Section 1A01.2.C.8 of the B.C.Z.R. permits by special exception a farm market, subject to the provisions of Section 404.4 of the B.C.Z.R. A farmer's roadside stand is defined in Section 101 of the B.C.Z.R. as:

An accessory structure owned and operated by an agricultural producer, used for the sale of indigenous farm products, the majority of which have been grown on

³ After reviewing all available Zoning Commissioner findings and past applications for use permits received by PADM, it appears that this is only the second time that the Zoning Commissioner's Office has ever held a formal public hearing to review a request for a use permit for a farmer's roadside stand. Almost every other application has been reviewed by PADM without a formal public hearing, and a number of sizeable structures have been approved for locations such as 7110 Mt. Vista Road and 1701 Greenspring Road.

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the premises, on adjacent land or on properties farmed by the same agricultural producer.

A farm market is defined in Section 101 of the B.C.Z.R. as:

An accessory or principal building or structure other than a dwelling which is used by one or more farmers for the sale of produce grown primarily on their own farms or for the sale of other locally grown produce. A farm market may sell a limited amount of locally produced nonagricultural goods such as handcrafted items, homemade baked goods, homemade preserves, jams and processed dairy products.

In the instant case, Petitioners are requesting a special exception to utilize the area identified on the site plan for a farm market. In considering this request, a threshold issue must be determined as to whether Petitioners' proposed use fits within the aforementioned definition of a farm market. As stated in the definition, a farm market contemplates a structure used by one or more farmers for the "sale of produce" or "locally produced nonagricultural goods." The B.C.Z.R. does not specifically define "produce;" hence, pursuant to Section 101 of the B.C.Z.R., any word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged (Webster's). Webster's defines "produce" as "something that is brought forth or yielded either naturally or as a result of effort or work." It also means "agricultural products." Although there is no specific definition of "agricultural products" in the B.C.Z.R., the term "agriculture, commercial" is defined in Section 101 of the B.C.Z.R. as:

The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to § 8-209 of the Tax-Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, *dairying*, pasturage agriculture, horticulture, floriculture, aquiculture, apiculture, viticulture, forestry, animal and poultry husbandry, the operation of an equestrian center, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations. (emphasis added).

In addition, the definition of "farm" in Section 101 of the B.C.Z.R. includes "[t]hree acres or more of land, and any improvements thereon, used primarily for commercial agriculture." Clearly, the sale of products from Petitioners' farm, which is used primarily for commercial agriculture in the form of dairying (defined by Webster's as "the business of conducting a dairy"), and which proposes to sell the fruits of the dairying to the public, constitutes the "sale of produce" within the definition of a farm market.

It should be noted that it is difficult to fully understand Protestants' opposition to Petitioners' special exception request, primarily because Protestants' attorney, Mr. Holzer -- other than cross examining Petitioners' witnesses -- declined the opportunity to call any witnesses or present any substantive evidence at the public hearing. Protestants' arguments are further muddled by the fact that Petitioners submitted a detailed letter from the Board of Directors of the Long Green Valley Association dated September 27, 2007, which explains the Board's unanimous decision to support the Prigel family in building a creamery and roadside store. The letter was marked and accepted into evidence as Petitioners' Exhibit 3A. Petitioners then submitted an additional letter dated March 27, 2008, which simply states without further explanation that the Board had held an emergency meeting and reversed its decision. The letter was marked and accepted into evidence as Petitioners' Exhibit 3B. Nevertheless, after reviewing the testimony and evidence in the case file, it appears that the crux of Protestants opposition concerns the location and size of the building that is under construction and the impact of the dairy processing center on the surrounding locale.

As to the relevant special exception criteria, initially, I find that the proposed farm market will not be detrimental to the health, safety or general welfare of the locality involved. It is important to note that while a 10,000 square foot building is under construction, the requested

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relief pertains only to the 1,440 square foot section of the front of the building. Petitioners have already received the necessary approval to build the structure, and the issuance of building permits will not be reconsidered by this Deputy Zoning Commissioner in this Petition for Special Exception. The remainder of the special exception concerns the access way and parking area, which Petitioners are constructing out of an environmentally friendly, dust free, pervious paving surface. For the purposes of this special exception, I am persuaded that the retail space of the newly constructed building, and accompanying access way and parking area, which total approximately one half acre, will not have any negative affect on the surrounding locale. The farm market is centrally located on a 280 acre farm that is primarily dedicated to open fields and pasture, and Petitioners have made an effort to construct an environmentally responsive access way and parking area. It is hard to imagine a negative impact stemming from the operation of a family-run organic dairy farm stand in the center of many acres of farmland owned by that same family.

I also find that the requested relief will not tend to create congestion in the roads or streets in the surrounding area. The testimony at the public hearing was unequivocal that any increase in traffic would be negligible since the farm market is centrally located in a rural setting on a 280 acre farm primarily dedicated to open fields and pastures. Also, the photographs submitted by Protestants demonstrate that Long Green Road is a flat rural road without any apparent visual obstructions near the site of the proposed access way to the market (*See*, Protestants' Exhibits 1A through 1D). Even if Petitioners received a steady inflow of customers, it does not appear that traffic or congestion would pose a problem.

I further find that the requested relief will not create any potential hazard from fire, panic or other danger, and that the proposed structure will not tend to overcrowd land and cause an

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undue concentration of population. There was no evidence that the farm market would cause any fire hazard as it will be located approximately one mile from a nearby firehouse and is situated on a 280 acre property in an agricultural R.C.2 zone. The farm market will be used to sell farm products and will not be used as a residence. Thus, I am convinced it will not have any effect on the population concentration of the surrounding locale.

After careful consideration, I also find that the proposed farm market will not interfere with adequate provisions for any public facilities such as schools, parks, water or sewerage, that the structure will not interfere with adequate light and air, and that Petitioners have already gained approval for water and sewer use and have taken steps to minimize the environmental impact of the requested relief.

Finally, and perhaps most importantly, I find that granting the special exception is consistent with the purposes of the agricultural R.C.2 Zone, and furthers the spirit and intent of the B.C.Z.R. As set forth in Section 1A01.1.B of the B.C.Z.R., the R.C.2 Zone was established "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." Unfortunately, it has become more and more difficult for R.C.2 Zones to maintain their agricultural integrity, and for agricultural businesses to maintain their productivity and profitability. Frankly, I was somewhat surprised at the public hearing to find that Petitioners maintain the only organic dairy farm in Baltimore County. Mr. Prigel's testimony detailed the difficulty in maintaining an agriculture business, and this difficulty is only compounded by the fact that Petitioners take on increased demands and costs to meet the requirements of certified organic products. At this point, Baltimore County residents do not even have an option to buy locally produced organic dairy products, but are limited to purchasing products from larger

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company labels such as Horizon Organic. I find that granting this special exception will further the goal of the local, family-owned dairy farm that hopes to produce and sell organic products directly to members of the public from the center of their 280 acre farm. It is hard to imagine anything more in line with the spirit and intent of the R.C.2 Zone. In fact, given the aforementioned evidence and considering all the circumstances, it would border on the ridiculous not to grant the requested relief.

All of the testimony at the public hearing, including that of Chris McCollum from the Baltimore County Department of Economic Development, Steve Weber from the Maryland Farm Direct Market Association (who testified that the Prigel family reflects everything that is good about public policy in preserving property for grazing and paving the way for local organic dairy farming), and Robert Carter, Seth Revelle, and Paul Conczewski (each of whom testified as interested citizens that the Prigel family set the standard for rural legacy and agricultural preservation), leads me overwhelmingly to find that the requested relief should be granted. Mr. Prigel is part of the fourth generation of his family to run their dairy farm, and it is my hope that granting this relief will permit the family to maintain a competitive business that can continue to be passed on to future family generations.

Since the Prigel farm is entirely family run and is composed of the sale of dairy products primarily from their own farm, the retail portion of the proposed business appears to be aptly described as a farm market. In my judgment, a farm market clearly grants the sale of dairy products as well as permitting additional items for sale such as crafts, jams and processed dairy products. Although a farm market is a more expansive use, and requires a more expansive burden of proof than a roadside stand, it is certainly justified under the evidence produced at the zoning hearing. It also is not relief in conflict with that granted by the Maryland Agricultural

Land Preservation Foundation (MALPF), which approved a motion "to approve the request of Bellevalle Farm, Inc. to allow a creamery operation, processing facility and farm store on an easement property subject to the parking lot being pervious." The MALPF approval also permitted up to 600 square feet of sales area for the sales of accessory, non-agricultural items, which is consistent with the concept of a farm market. Hence, the special exception for a farm market shall be granted.

In granting Petitioners' special exception request, I will also acknowledge Petitioners' right to have the farmer's roadside stand at this location. Since the definition of a roadside stand limits the type of products that may be sold to "indigenous farm products" a brief discussion of the breadth of items falling within this definition is also warranted. The term "farm product" is not defined in the B.C.Z.R. but has been defined in the Maryland Agriculture Code to include eggs and dairy products (*See*, Md. Agriculture Code Ann., § 10-601(c)). Additionally, while the Court of Appeals has not directly defined the term, several states have interpreted similar regulations pertaining to farm products to include milk, cheese, and ice cream. *See Deutschmann v. Board of Appeals of Canton*, 325 Mass. 297, 299-300 (1950) (holding that the fact that milk, milk shakes, ice cream and cheese were not in their natural state does not mean that they cease to be products raised on the farm of their owner who seeks to sell them); *Parrish v. Board of Appeal of Sharon*, 351 Mass. 561, 565-67 (1967) (holding that ice cream milk and cream came within the zoning ordinance's requirement of selling "products raised on the premises only"). Thus, I am convinced that the sale of milk, butter, cheese, yogurt and ice cream falls within the definition of indigenous farm products envisioned in Section 101 of the BCZR.

Pursuant to Section 1A01.2.B.9.b of the B.C.Z.R., farmer's roadside stands are generally permitted as of right in an R.C.2 Zone subject to the provisions of Section 404.4. This particular

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request was filed in the alternative and generated significant public interest so a public hearing was scheduled. Still, the request must meet the requirements of Section 404.4, namely that at least 50% of the products sold at the stand must be grown on the premises where the stand is located or on adjacent farms or on other property farmed by the applicant. Mr. Prigel stated a number of times throughout his testimony that all of the products sold at the proposed stand would be grown and processed on the premises, and that he would comply with whatever regulations and restrictions the Deputy Zoning Commissioner saw fit. There was no testimony that the roadside stand would be used to sell products that were not indigenous to the Prigel family farm. Since the requirements of Section 404.4 had been met⁴ and a public hearing was scheduled, Section 404.4.C.8 of the B.C.Z.R. dictates that the question for the Zoning Commissioner becomes whether a use permit should be granted based on the findings at the public hearing, the impact on the health, safety or general welfare of the surrounding community, and all other criteria necessary to satisfy the objectives of Section 502.1 of the B.C.Z.R. For the aforementioned reasons pertaining to the granting of the special exception for the farm market, I am likewise persuaded that the relief requested by the Petitioners for a use permit for a farmer's roadside stand should be granted as well.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners' special exception request should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 11th day of July, 2008 that Petitioner's request for Special Exception use

⁴ Protestants did not raise any issue with the other requirements of Section 404.4 such as the 35-foot street pavement setback and the existence of the proposed structure on a farm owned by an agricultural producer.

pursuant to Sections 404.4.D and 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a Farm Market be and is hereby GRANTED; and

IT IS FURTHER ORDERED that, in the alternative, Petitioner's request for confirmation of a Farmer's Roadside Stand pursuant to Section 404.4.C of the B.C.Z.R., which is permitted as of right with a use permit in the R.C.2 Zone, be and is hereby GRANTED.

Petitioners' use of the property is subject to the following restrictions, which are conditions precedent to the relief granted herein:

1. Petitioners may apply for the necessary building or use permits, as applicable, and be granted same upon receipt this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners shall plant a row of vegetation around the proposed parking area and buildings to provide visual buffer from the scenic road, as well as the following:
 - a. All fences and walls shall harmonize with the surroundings and create the least visual impact.
 - b. Vegetation shall be used to buffer the fences or walls.
 - c. Indigenous species or ones commonly found in the area should be used when landscaping.
 - d. Planting designs shall reinforce the character of the site.
3. Petitioners shall provide to the Office of Planning architectural elevations of the proposed structure to include building materials and colors.
4. Petitioners shall provide to the Office of Planning a landscape plan.
5. The signage for the operation shall be no more than 25 square feet in size and cannot be lighted.
6. Petitioners shall provide location and screening for the dumpsters.
7. The hours of operation shall be from sunlight to sundown to minimize the impact on the surrounding residential community.

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8. 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).
9. The use of the property for a Farm Market granted herein shall comply in all respects with the provisions of Section 404.4.D.1 – 3 of the B.C.Z.R.
10. In the event, alternatively, that a use permit is issued for a Farmer's Roadside Stand, it shall comply in all respects with the provisions of Section 404.C.1 – 4 of the B.C.Z.R.

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

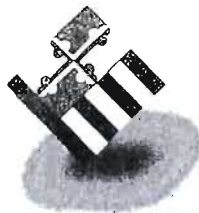
Order.


THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

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BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

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

March 3, 2008

Robert Prigel
4851 Long Green Road
Glen Arm, MD 21057-9725

Dear: Mr. Prigel:

RE: Demand for Public Hearing-Farmer's Roadside Stand; 4851 Long Green Road

The purpose of this letter is to officially notify you that the posting of the subject property has resulted in a timely demand submitted on February 29, 2008 for a public hearing concerning your proposed Farmer's Roadside Stand. I regret to inform you that we are withholding approval of your Use Permit because it has been superseded by said demand for a public hearing, pursuant to Section 424.4.A.3 of the Baltimore County Zoning Regulations (BCZR).

If you wish to proceed with your request, you must file for a zoning Special Exception (public hearing) for a Farm Market without delay. Section 101, BCZR defines a Farm Market as an accessory structure, which sells at retail, processed dairy products among other items. The filing fee for the Special Exception is \$380.00. There is also a requirement the hearing be advertised for which you will be billed later by Patuxent Publishing. The property must be reposted with the hearing date, time, and location. I am enclosing the filing procedure, including the required forms and checklist, and when completed, you must call 410-887-3391 for an appointment to file your petition. A revised scaled site plan sealed by an engineer, surveyor, or landscape architect must be submitted, in accordance with the checklist.

If you decide to withdraw your request, please notify us in writing within 30 days using the above captioned reference so that the Use Permit file can be closed. It may be more expedient to first proceed with the construction of the dairy processing facility, which will need to undergo review by the Development Review Committee (DRC). While the facility is under construction, you may then wish to pursue the Special Exception for a farm market. If you need any further explanation or additional information, I may be reached at 410-887-3391.

Sincerely,

A handwritten signature in cursive script, reading "Bruno Rudaitis".

Bruno Rudaitis
Zoning Review

Enclosures
C: Protestants



FORMAL DEMAND FOR HEARING

CASE NUMBER: Farmers Roadside Stand

Address: 4851 Long Green Rd.

Petitioner(s): Robert Pri gel

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I/We Edward Blanton, Jr.
Name - Type or Print

☒ Legal Owner OR ☐ Resident of
5025 Long Green Rd.
Address

Glen Arm MD 21057
City State Zip Code

410-592-9171
Telephone Number

which is located approximately 400 feet from the
property, which is the subject of the above petition, **do hereby**
formally demand that a public hearing be set in this matter.

**ATTACHED IS THE REQUIRED PROCESSING FEE FOR THIS
DEMAND.**

Edward F. Blanton Jr. 2/29/08
Signature Date

Signature Date
Revised 9/18/98 - wcr/scj



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 4851 Long Green 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 Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

Please 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 Exception, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

N/A

Name - Type or Print

Signature

Address

City

State

Zip Code

Attorney For Petitioner:

Jennifer R. Busse

Name - Type or Print

Signature

Whiteford, Taylor & Preston L.L.P.

Company

210 W. Pennsylvania Ave, 4th Floor 410 832-2000

Address

Towson, MD 21204

City

State

Zip Code

Case No.

2008-0456-X

REV 09/15/98

Legal Owner(s):

Creamery
Prigel Family Creamery, Inc.

Name - Type or Print

Signature

Robert E. Prigel

Name - Type or Print

Signature

4851 Long Green Road

(410) 592-6014

Address

Telephone No.

Glen Arm, MD 21057

State

Zip Code

Representative to be Contacted:

Jennifer R. Busse

Name

210 W. Pennsylvania Ave, 4th Floor 410 832-2000

Address

Telephone No.

Towson, MD 21204

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By

sh

Date

2/7/08

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Attachment to Petition for Special Exception
4851 Long Green Rd.
R.C. 2

Petition for Special Exception per BCZR §404.4D and §502.1 to permit a Farm Market; or alternatively for a Farmer's Roadside Stand per BCZR §404.4C.

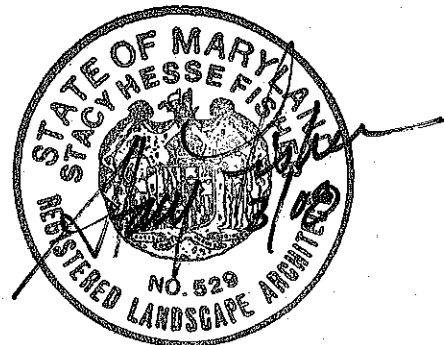


March 31, 2008

**ZONING DESCRIPTION
4851 LONG GREEN ROAD
11TH ELECTION DISTRICT AND THE 3RD COUNCILMANIC
DISTRICT OF BALTIMORE COUNTY, MARYLAND**

Beginning at the point of intersection of the centerline of Long Green Road and the westernmost limit of the Baltimore Gas & Electric right-of-way thence proceeding westerly along the centerline of Long Green Road for a distance of approximately 778' to a point on the centerline then proceeding on a bearing of North 9° 28' 52" West 30 feet +/- to the point of beginning. Thence North 80°31'08" West a distance of 130.00'; thence North 09°28'52" East a distance of 105.00'; thence South 80°31'08" East a distance of 130.00'; thence South 09°28'52" West a distance of 105.00'; which is the point of beginning, having an area of 13,650.00 square feet, or 0.313 acres more or less.

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



14315 Jarrettsville Pike, P.O. Box 249 Phoenix, MD 21131-0249

(410) 683-3388 • fax (410) 683-3389

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: 2008-0456-X
Petitioner: Prigel Family Creamery, Inc.
Address or Location: 4851 Long Green Rd.

PLEASE FORWARD ADVERTISING BILL TO:

Name: Jennifer R. Busse, Esq. c/o Whitford, Taylor & Preston
Address: 210 W. Pennsylvania Ave., Ste 400
Towson, MD 21204
Telephone Number: 410 832 2077

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS RECEIPT

No. **12124**

Date: 3/31/08

PAID RECEIPT

BUDGET ACTUAL FUND MM
 3/31/2008 3/31/2008 11/27/02 2

ITEM 505 MAINT INCL DR
 >>RECEIPT # 438709 3/31/2008 OFLH

Fund	Agcy	Orgn	Sub Orgn	Rev Source	Sub Rev	Rept Catg	BS Acct	Amount
001	001							1,300.00

Dept 5 528 ZONING VERIFICATION
 012124

Receipt Tot 1300.00

4380.00 OF 9.00 CA

Baltimore County, Maryland

Total: 1,300.00

Rec

From: Ch 1-46

meta LLP

For:

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

**CASHIER'S
 VALIDATION**

Item # 456

TO: PATUXENT PUBLISHING COMPANY
Tuesday, May 20, 2008 Issue - Jeffersonian

Please forward billing to:

Jennifer Busse
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, 4th Fl
Towson, MD 21204

410-832-2000

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: 2008-0456-X

4851 Long Green Road

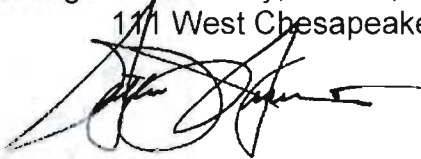
N/side of Long Green Road, 1,500 feet west of centerline of Long Green Valley Drive

11th Election District – 3rd Councilmanic District

Legal Owners: Prigel Family Creamery, Inc., Robert Prigel

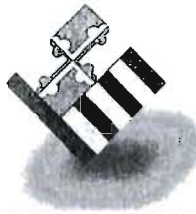
Special Exception to permit a Farm Market, or alternatively for a Farmers Roadside Stand per BCZR 404.4C.

Hearing: Wednesday, June 4, 2008 at 10:00 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

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

Jennifer R. Busse
Whiteford, Taylor & Preston L.L.P
210 W. Pennsylvania Ave. 4th Floor
Towson, Md 21204

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management
May 28, 2008

Dear: Jennifer R. Busse

RE: Case Number 2008-0456-X, Address: 4851 Long Green Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 31, 2008. 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,

A handwritten signature in dark ink, appearing to read "W. Carl Richards, Jr.".

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel
Robert E. Prigel, Prigel Family Creamery, INC., 4851 Long Green Rd., Glen Arm, MD
21057

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: April 16, 2008

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

SUBJECT: Zoning Advisory Committee Meeting
For April 21, 2008
Item Nos. 08-450, 451, 452, 453, 454,
456, 457, 458, 459, 460, 462, 463, 464,
465, 466, 468, 469.

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

DAK:CEN:lrk

cc: File



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

John D. Porcari, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: APRIL 4, 2008

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

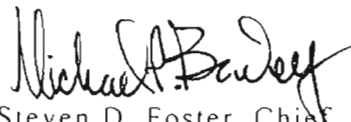
RE: Baltimore County
Item No. 8-456-X
PRIGEL FAMILY/GEARMORE, INC.
SPECIAL EXCEPTION
4851 LONG GREEN ROAD

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. 8-457-A.

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,


For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: April 29, 2008

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

SUBJECT: 4851 Long Green Road

INFORMATION:

Item Number: 8-456

Petitioner: Prigel Family Creamery, Inc.

Zoning: RC 2

Requested Action: Special Exception

RECEIVED
MAY 05 2008

BY:

The petitioner requests a special exception per the BCZR Sections 404.4D and 502.1 to permit a Farm Market or alternatively for a Farmer's Roadside Stand per BCZR Section 404.4C.

SUMMARY OF RECOMMENDATIONS:

Agriculture and agricultural production of local products are vital for the agricultural industry of the County and consistent with the master plan and land preservation.

The above property is located in a rural legacy area and along a scenic road; therefore the following items need to be addressed.

1. A row of vegetation needs to be planted around the proposed parking area and buildings to provide visual buffer from the scenic road.

- All fences and walls need to harmonize with the surroundings and create the least visual impact.
- Vegetation should be used to buffer the fences or walls.
- Indigenous species or ones commonly found in the area should be used when landscaping.
- Planting designs should reinforce the character of the site.

2. Provide architectural elevations of the proposed structure to include building materials and colors.

3. Provide a landscape plan.

4. The signage for the operation can be no more than 25 square feet in size and cannot be lighted.

5. Provide location and screening for the dumpsters.

6. The hours of operation should be from sunlight to sundown, to minimize the impact on the surrounding residential community.

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

Reviewed by:

Candis Murray

Division Chief:
AFK/LL: CM

Jim Fawcett

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED
MAY 19 2008

BY:

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination *JWL*

DATE: May 19, 2008

SUBJECT: Zoning Item # 08-456-SPH
Address 4851 Long Green Rd.
(Prigel Property)

Zoning Advisory Committee Meeting of April 14, 2008

- _____ 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).
- _____ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

1. A Farm Plan was updated in 12/11/07 for compliance with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.
2. See attached comments from W.S. Lippincott; Agricultural Preservation.

Reviewer: J. Russo

Date: 4/24/08

BALTIMORE COUNTY, MARYLAND
ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Inter-Office Correspondence

TO: Development Coordination DATE: May 13, 2008 *JWL*
FROM: Wally Lippincott, Jr.
SUBJECT: Prigel Farm – Zoning Hearing 08-456- X

Background: The Prigel family has operated a dairy on their farm in Long Green Valley for several generations. The family in a commitment to agriculture and land preservation placed the 180 acres on which this request is being made into a perpetual agricultural easement held by the Maryland Agricultural Land Preservation Foundation. They placed another portion of their land into a permanent easement with the Maryland Rural Legacy Program. They have operated an innovative dairy operation for years and have hosted many tours of groups interested in seeing a dairy operation that is an alternative to intensive large scale contained animal operations.

There is a trend in agriculture, particularly in the Northeast and MidAtlantic, to grow and process products that can be sold locally and to grow organic or hormone free products. This appears to be improving the viability of farming in Maryland where otherwise our farms are at a disadvantage to large factory farms of the Midwest and South.

Over the last 20 years dairy farms in Maryland and Baltimore County in particular have been particularly hard hit by this trend. The number of dairy farms has declined from approximately 20 farms in the late 1980's to less than 10 today. Dairy farms are significant contributors to the local agricultural industry because of their inputs back into the economy. The Prigel's request for innovations to their dairy operation while difficult for people to accept is part of the need for agriculture to change in order to survive. The purpose of the MALPF and County Agricultural Easements are for the protection of the prime and productive soils and the fostering of agriculture.

This property is zoned RC – Agricultural Preservation and is within a Master Plan designated Agricultural Preservation Area. Furthermore, the County, Federal and State Governments with some assistance from the private sector have invested significant public funds in the preservation of farms such as this for agricultural production.

Request: Mr. Robert Prigel has requested approval for a Farm Market or Farmers Roadside Stand on the farm in order to sell dairy products produced on site. Because the land is under a MALPF easement the request had to go before the State Board for consideration.

He initially brought the concept to the Baltimore County Agricultural Land Preservation Advisory Board on March 20, 2007 (see minutes). His operation is well known and there was no question about his ability to produce milk for onsite sales. Mr. Prigel formally submitted his request for a recommendation on August 28, 2007 (see minutes). The Board voted to recommend Mr. Prigel's request to sell dairy products and grass fed meats on the farm. The location was part of the request and the Board raised no objections to the proposed location.

Mr. Prigel went before the MALPF Board on October 23, 2007 and received approval subject to the conditions indicated on the attached copy of the Minutes from the MALPF Meeting of 10-23-07. Those conditions include:

"Some of the products must come from animals raised or crops grown on site; the remainder from animals or crops indigenous to Maryland."

"Facility and parking area must cover no more than 2% of the easement/district, or two acres whichever is smaller."

"Parking area must be pervious."

"Accessory sales area must not exceed 600 sq feet."

In addition Mr. Prigel represented that the building would not exceed 10,000 sq ft.

The motion that was approved was as follows: To approve the request of Bellevale Farm (Prigel), to allow a creamery operation, processing facility and farm store on an easement property subject to the parking lot being pervious.

The County requirements for a Farm Market and Roadside Stand are in addition to the State easement requirements. The County requires the sale of a minimum of 50% of products grown on the premises, adjacent or other farms operated by the applicant for Farmers Roadside Stand (BCZR 404.4.C.3) or in the case of a Farm Market 50% grown by the owner of the market and no more than 10% locally produced nonagricultural products.

Recommendation: Support the request for a Farm Market or Roadside Stand in the location as proposed. The location is directly across from the existing farmstead and is located immediately adjacent to the road. This is consistent with the practice of protecting prime and productive agricultural soils by locating buildings near the road and/or within existing farmsteads. The applicant's farm operation gives reasonable indication that he can meet the production requirements for a Farmer's Roadside Stand and Farm Market. This request for a building of a maximum of 10,000 square feet that includes the farm market, processing and creamery to be consistent with the MALPF approval, Baltimore County Zoning, and the Baltimore County Master Plan. The support is conditional upon Mr. Prigel receiving all necessary permits for the processing and creamery operation.

The interest will be paid over a 25 year period and the principal will be paid at the end of the term. The principal will be taxable. This program will follow the same guidelines as the easement program but will require the landowners to discount their easement offers.

Board Statement: *The Board has serious concerns about discounting in the IPA program. They feel that it will discourage participation and eliminate the value of the easement.*

3. Mr. David Smith. 64.61 acres. 16701 Yeoho Road, Sparks, MD. Mr. Smith's proposal for a Farmer's Roadside Stand on his property on Yeoho Road.

Discussion: *The Board and Staff discussed the proposal and the issues that have been raised by the public regarding size of the stand and products sold there. Mr. Smith has been to several public hearings regarding this proposal. The Board recommends clarifying what they approved based on what was presented to them regarding the stand and what Mr. Smith grows and sells.*

IV. NEW BUSINESS

Easement Issues

a. Mr. Robert Prigel. 180 acres. Bellevale Farm, 4851 Long Green Road, Glen Arm, MD. Mr. Prigel has a family dairy with grass fed livestock. He would like to have retail sales of cheeses and ice cream and would like to address the Board for their input and suggestions.

Discussion: *Mr. Prigel would like to have an additional revenue source for his farm. The farm is presently under a MALPF easement and he is asking for the BCALPA Board's input for the venture. He is proposing a processing facility for milk produced by the farm and a retail facility (roadside stand) to sell products. The products would be: milk, cheese, ice cream, and grass fed beef. According to the MALPF guidelines he stated that the requirement is that he must have 75% of his own products for sale and meet local health and regulatory regulations. His goal is to sell organic farm products and he is transitioning to organic farming in April. Becoming certified organic takes 1 year. He is asking whether there are any problems or issues with his proposal.*

Board and Staff discussion: *These recommendations were discussed with Mr. Prigel. This proposal must meet County regulations and have community support. Notification must also be given to the Health Department for their inspections. A question was asked whether the processing will be visible to the public. Mr. Prigel replied that it will be visible. Staff replied that any offsite processing would have to be addressed and relate to sales. Chairman Greene stated that this is a direct marketing venture to the public and that this is something that the Board has thought about and*

would like to support. He also recommended that Mr. Prigel get the support of the Economic Development Office.

b. MALPF FY'07 Applicant Request: Mr. Stephen Pieper. 100.17 acres. ES Old York Road NE of Stockton Road, Monkton, Md. Mr. Pieper is requesting approval of a possible relocation of the existing owner's lot and child's lots on the property.

Review standards: Elizabeth Weaver, Administrator of MALPF indicated that no changes can be made while under consideration for a pending easement. There are two things that an applicant may do: 1) the applicant may get a recommendation from the local Board but any changes must wait until the easement is settled, or 2) the applicant may withdraw the application make the changes to the locations and re-apply in FY '08.

This request has been made before of prior Boards. Concerns have been for the impact of location and access roads on productive capability on the farm.

Discussion: *Mr. Pieper is trying to work with the Board and staff to site the house location. Mr. Pieper wants advice on the site location and whether it's appropriate with low impact on the farm operation. He is presently favoring the corners of the property that border Old York Road.*

Staff discussion: *The Board and staff discussed the site of the proposed owner's house and whether it was possible to make the house non-subdividable from the farm. Chairman Greene emphasized the importance of this. Wally Lippincott stated that Mr. Pieper needs to show precisely where the acre for the house is on the property before this request can go the State MALPF Board and he asked Mr. Pieper to clearly define the lot area on a site plan or plat and asked that this be done by a surveyor. The child's lot proposal cannot be discussed until this property is under easement.*

Motion: The Board recommends approval of the location of the owner's lot with the condition that the lot is non-subdividable. This is a clarification of the location of the owner's lot.

Motion made by: David Hayden

Second: David Sparks

Decision: Unanimous approval

Tenant House Requests/Reduced Acreage Farms

a. County Request: Mr. James Dasher and Mrs. Edith Dasher 97.24 acres. 14045 Mantua Mill Road, Reisterstown, MD. Mr. and Mrs. Dasher are requesting approval of a tenant trailer on the 16.68 acre parcel. This is a current farming operation and the Dashers plan to establish a goat dairy and creamery and expand their chicken operation.

proposal will go to the DRC with a letter of recommendation from the Ag Board.

Motion: The Board recommends approval of the Agricultural Subdivision proposal made by Mr. and Mrs. Morris.

**Motion made by: Harriet McGinnis Second: David Hayden
Decision: Unanimous**

2) MALPF Easement Requests

a. Mr. Robert Prigel. Bellevalle Farms, Inc. MALPF #03-11-83-14C. 180 acres. 4851 Long Green Road. Mr. Prigel is requesting the Board's recommendation for a proposal to construct a creamery operation and processing facility for his dairy farm. The facility that is planned will be a 7,000 square foot pole building which will be located off of Long Green Road and the cow lane. It will contain ~ 1500 sq. ft. of retail space (a Farmer's Roadside Stand) selling milk, cheese, yogurt, butter, and ice cream. Grass fed meats will also be sold at the stand. The rest of the facility will be used for processing and warehouse space. Mr. Prigel is aware that under MALPF regulations that 75% of the products sold at his stand must be produced on his farm.

Discussion: Mr. Prigel outlined his formal request for adding a creamery operation and processing facility to his dairy operation. He is proposing a building that is approximately 10,000 square feet (70' x 120'). Parking for the retail facility will be on approximately ½ acre and the operation will employ 6 people, hopefully family members. This issue will be further discussed at the September 18, 2007 Long Green Valley Association Meeting. Mr. Prigel was informed that he will need to define the processing operation for the State MALPF Board, especially any issues that may come up with the Baltimore County Health department. He will also need a perc test on the site before moving forward with the proposal. This will go forward to the October 2007 MALPF Board for their meeting and recommendation/approval.

Motion: The Board recommends approval of the creamery/processing facility as proposed.

**Motion made by: David Hayden Second: Pat Patterson
Decision: Unanimous**

V. POLICY ISSUES/ MISCELLANEOUS/ CORRESPONDENCE

MEMO TO THE FILE

Mr. Richards was informed that in the opinion of this reviewer, the proposed Farmer's Roadside Stand at 4851 Long Green Road was in fact a Farm Market as per the definitions in Section 101, BCZR. A Farm Market requires a Special Exception in the RC-2 zone. Mr. Richards determined that the applicant could file his application for a Farmer's Roadside Stand.

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
4851 Long Green Road; N/S Long Green Rd, * ZONING COMMISSIONER
1,500' W c/line Long Green Drive *
11th Election & 3rd Councilmanic Districts *
Legal Owner(s): Prigel Family Creamery, Inc* FOR
Petitioner(s) *
* BALTIMORE COUNTY
*
* 08-456-X

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and 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
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED

APR 24 2008

Per _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of April, 2008, a copy of the foregoing Entry of Appearance was mailed to Jennifer R. Busse, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CASE NAME _____
CASE NUMBER 08-456-X
DATE _____

~~CITIZEN'S~~ SIGN-IN SHEET

[illegible]

Politik

CASE NUMBER

DATE _____

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Steve Webb ✓	2526 Proctor Lane	Baltimore MD	wbb@att.net
✓			i@ymail.com
✓	1840 York Ave.	Glen Arm, MD 21057	Kw...@comcast.net
✓	322 N. ...	Glen Arm, MD 21057	
✓	12 ...		
✓	12701 K ...		
✓			
✓			
✓			
✓	Road	Glen Arm, MD 21057	darrill6934@hotmail.com
✓	4709 Long Green Rd.	Glen Arm, MD 21057	
✓	5000 Long Green Rd.	Glen Arm, MD 21057	
Whitney Optahl ✓	5000 Long Green Rd.	Glen Arm, MD 21057	ndo@jpl.nasa.gov
Paul Sonczewski ✓	12429 Long Green Pk.	Glen Arm, MD 21057	psonczewski@comcast.com
GARY MILLER ✓	3 VALLEY GREEN CT	PHOENIX MD 21131	frogie@att.net

CASE NAME _____
CASE NUMBER _____
DATE _____

Feb. 1. 1915

[illegible]

CASE NAME _____
CASE NUMBER 08-456-X
DATE _____

[illegible]

about the development rights. Further, Ms. Forrester pointed out that the Foundation cannot change its policy in the middle of the easement cycle.

Ms. Forrester commented that as of July 1, 2007, the date of the appraisal under statute, there were no development rights on the property. The appraisers have to be informed about the development rights.

Ms. Buckle stated that she believed the MALPF Board would face lot of issues like the current one. Earlier the MALPF Board reviewed all such issues when the property entered the program as a district. These things now have to be worked out before the deadline

Mr. Doug Wilson agreed and stated the Foundation has to think about the process without the requirement of a district. 90% of the issues would have been resolved when the Foundation evaluated the district application. There has to be some modifications or changes in the way the easement applications are evaluated for the program

Ms. Forrester pointed out that the district agreement on the property was not correctly recorded. The district agreement was never signed by the MALPF Board and was not completed. It was incorrectly recorded by the Baltimore County. Ms. Forrester was concerned about the State benefit or the County benefit associated with this agreement.

Ms. Chasse agreed and stated that the district agreement should not have been recorded because the Equine Committee's report was not yet ready. Mr. Lippincott stated that one has to apply for the County tax credit to receive the tax benefit and Land Preservation Trust has not applied

Motion #10. To rescind the previous exclusion of 50 acres around the racetrack.

Motion:	Doug Wilson	Second:	Joe Tassone
Opposed:	Vera Mae Schultz		
Status:	Approved		

2. 03-83-14c Bellevale Farm, Inc. (Prigel) 83-03 180 acres
Request to allow a creamery operation, processing facility and farm store on an easement property

Mr. Robert Prigel, of Bellevale Farm, Inc., is the original owner of the easement property. The current request is to allow a creamery operation, processing facility and farm store on an easement property. There is one pre-existing dwelling on the farm.

According to Baltimore County, Mr. Prigel would like to construct a 7,000 to 10,000 square foot building to house the creamery operation, processing facility and a farm store. As well, he is requesting a parking area that would accommodate fewer than 10 vehicles. The parking area is proposed to be located on Long Green Road with the creamery directly behind it. A short distance of access on an existing farm lane may be needed.

The request was approved by the local advisory board. Mr. Prigel would be required to obtain a special exception because county regulations do not allow the proposed activity in the area where the farm is located.

According to the Uses Table which was approved by the Board the following are the considerations for review.

- Must not interfere with other agricultural or silvicultural operations
- Must not limit future agricultural or silvicultural production.
- Easement or district owner must have an ownership interest in the operation

Some of the products must come from animals raised or crops grown on site; the remainder from animals or crops indigenous to Maryland.

Facility and parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller.

Parking area must be pervious.

Accessory sales area must not exceed 600 sq. ft.

Foundation staff recommends approval of the request subject to the parking lot being pervious.

Robert Prigel and Carmela Iacovelli, Natural Resource Specialist, were present at the meeting. Mr. Prigel handed out aerial maps of his property.

Mr. Colhoun stated that he had visited the farm and believed the aerial map being circulated by Mr. Prigel accurately depicts the building and how it is going to be located on the property. The building is rectangular and is going to be parallel to the farm configuration.

Ms. Iacovelli stated that there were some concerns about the nature of the parking lot. The County Zoning requires a dust-less and durable parking surface. Ms. Iacovelli spoke to the staff at the County Zoning and they said that the owners could put in hard surface. The only downside of the requirement is that it could be expensive because it is a block with grass in the center which is pervious.

Mr. Prigel stated that his family has been dairy farming in Maryland for generations, and he is the fourth generation dairy farmer in Baltimore County. His family's future generation is also interested in farming. Currently Baltimore County has around eight or nine dairy farms remaining, dairy farming in Maryland has declined over the past twenty five years. People have to compete with farms in Russia, India and worldwide. Mr. Prigel has a comparatively small farm and stated that it is very difficult for small family dairy farms to compete with large corporate dairies. The farm is undergoing transition to become organic, and their desire is to construct a processing facility to process milk.

Mrs. Schultz pointed out that one of the Uses Committee's recommendations is that the parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller. Mrs. Schultz wanted to know if Mr. Prigel has considered this requirement.

Mr. Prigel stated that his facility is not more than 10,000 square foot and the parking lot is very small.

Motion #11: To approve the request of Bellevale Farm, Inc., to allow a creamery operation, processing facility and farm store on an easement property subject to the parking lot being pervious.

Motion:	Joe Tassone	Second:	Jerry Klasmeier
Status:	Approved		

Mr. Doug Wilson commented that there would be a problem if, during the easement inspections, it is discovered that the parking area is of impervious surface. The parking lot being pervious is the Foundation's requirement. Baltimore County would have to plan and have someone from the Health Department visit the property and help the client.

Mr. Amoss pointed out that the County may also have some provisions for impervious surfaces to meet the handicap requirements.

Mr. Lippincott stated that the County is trying to make the whole parking area totally

pervious, but it is little challenging. The State has developed many rules to utilize more and more pervious parking and sometimes it might put additional burdens on the farm users. Baltimore County will work it out.

Mr. Doug Wilson stated that he felt the other way. Mr. Doug Wilson believed the State and other institutions are putting the onus on local government, the people who design the parking lot, the handicap associations, etc, to be more respectful of the pervious surfaces. They would have to give more latitude on what will be allowed.

Mr. Lippincott stated that the problem is actually getting them to work. The County continues to work on the issue over time, but the issues continues to be an engineering challenge.

Mr. Colhoun commented that the discussions have been very useful and stated that Mr. Prigel's parking lot is very small compared to others.

F. SOMERSET COUNTY

1	19-08-09	Gerard and Donna Dumsha	257.22 acres
		Re-review of easement application	

At the August 28, 2007 Board meeting, this easement application was approved with the withholding of 9 acres of barrow pits. However, since then, it has been determined that a portion of the property lies within a water and sewer district, and, therefore, additional review is necessary.

According to Somerset County, approximately 24 acres or 9 % of the property lies within the planned water and sewer district. On October 2, 2007, the County Commissioners approved the easement application with the inclusion of these acres. The County administrator reports that sewer and water may still be extended past the proposed easement by keeping it within the right-of-way of the road.

Staff recommends approval based on meeting minimum size and soils criteria. Normally, land located in the planned water and sewer area is not eligible for the program. However, § 2-509 (d) (4) provides an exception if the land "is outstanding in productivity and is of significant size." Staff recommends that the Foundation approve the exception because 1) the property is relatively large for the county; 2) the soils are excellent quality (100% prime); and 3) the majority of the property lies outside the water and sewer area. It would not serve the interests of the program to require the landowner to exclude the area of the property from the easement. A letter from the Soil Conservation District was attached with the agenda memo.

Tom Lawton, Program Administrator, was available at the meeting. The County's water and sewer plans are fairly general and do not have a specific measurement to give the landowner. The County Zoning is R2 and that is 600 feet from the road. It is the policy of the County that service will be extended in the right-of-way and not across the property.

Mr. Colhoun had stepped out of the meeting at 11:10 am and returned at 11:15 am. Mrs. Vera Mae Schultz, Vice Chair, chaired the meeting in his absence.

Motion #12:	To approve the re-review of Gerard and Donna Dumsha's easement application		
-------------	--	--	--

Motion:	Doug Wilson	Second:	James Pelura
Status:	Approved		

Long Green Valley Conservancy, Inc.
PO Box 37
Hydes, MD. 21082

Baltimore County Zoning
111 W. Chesapeake Ave.
Towson MD. 21204

RE: 4851 Long Green Road
Farmer's Roadside Stand

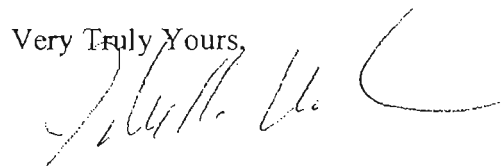
Dear Sir,

This letter is to advise you that the Long Green Valley Conservancy is adamantly opposed to the Prigel's (a.k.a. Bellevale Farm, LLC) plan to build a creamery on the *NORTH* side of Long Green Road. The Conservancy has just learned that the proposed "roadside stand" will actually be a 10,000 Sq. foot building with heating, air conditioning, seating, bathrooms and public parking. It is difficult to comprehend how a building of this magnitude could ever qualify as a "roadside stand". Obviously calling it a "roadside stand" is an attempt to circumvent the special exception and public hearing requirements that our community should be entitled to.

Further, the proposed site on the *NORTH* side of Long Green Pike is in the middle of open space, on pastureland, along a beautiful scenic drive. This view shed deserves to be preserved. It is open space that has existed for hundreds of years and in fact was a major contributing factor to the Long Green Valley's designation as a National Historic District by the National Register of Historic Places. Long Green Road is in the heart of the National Historic District and in the middle of lands that the community and the Conservancy have worked very hard to preserve. We now have over half of the Historic District permanently preserved with more acres to follow.

There are other options for the Prigels' creamery location that would not result in the elimination of open space. The Conservancy applauds the Prigel's farm designation as "certified organic" and support their farming operation, including the proposed creamery, however not in this location and not involving the destruction of scenic open space. Thank you for your time and consideration.

Very Truly Yours,



John K. Wilkerson, President
Long Green Valley Conservancy, Inc.

5025 Long Green Road
Glen Arm, MD 21057
February 29, 2008

Baltimore County Zoning Office
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: 4851 Long Green Road
Farmer's Roadside Stand

Dear Sir/ Madam:

On behalf of myself and other neighbors who believe we have been mislead about a proposed roadside stand at this site, I object to and would like to file a formal protest to the construction and/or operation of this alleged farmer's roadside stand.

I request that a public hearing be scheduled so that I and my neighbor may appear and present the reasons for our opposition.

The owners of this farm have granted conservation easements on this property for which they were compensated, either in the form of monetary payments or tax write-offs. The sign was posted on the south side of Long Green Road, beside the dirt road leading back to their dairy barns. The requested use was a farmer's roadside stand, and no one objected to a road side stand erected on the south side of the road.

Upon inquiry, we find that what the Prigels intend to build is a large creamery, heated, air conditioned, with public toilets and parking spaces for customers, on the north side of the road, on pasture land which we all assumed was safe from development of this type forever. If approved, this would be the first commercial use between the Loch Raven Reservoir and Baldwin Maryland, replacing the dairy store Cloverland Dairy Farms erected on its old farm on Dulaney Valley Road, which was objected to by the Long Green Valley Association and eventually closed.

If it was wrong for Cloverland to sell milk and ice cream on its property on Dulaney Valley Road, it is even worse for the Prigels to do it on in the middle of Historic Long Green Valley in the middle of approximately 5000 acres of conserved land paid for by Maryland taxpayers. My check for \$50 is enclosed to reimburse, I assume, the government for the trouble of scheduling the public meeting.

Sincerely,



Edward L. Blanton, Jr.

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

March 27, 2008

The Board of Directors of the Long Green Valley Association held an emergency meeting on March 26, 2008 and voted to withdraw their letter of support written on September 27, 2007 to Mr. Robert Prigel regarding his farmer's roadside stand/creamery on 4851 Long Green Road in Glen Arm Maryland.

Sincerely,



Carol Trela, Secretary

cc.

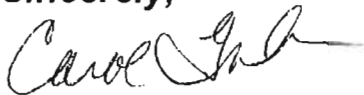
*Mr. Robert Prigel, III
Mr. Robert Prigel, Sr,
Baltimore County Zoning Office
Long Green Valley Conservancy, Mr. John Wilkerson, President
Mr. Edward L. Blanton, Jr.
Mrs. Susan Yoder
Mr. Wally Lippencott
Mr. Bruno Rudaitis, Zoning Review
Mr. Bryan McIntire
Department of Agriculture
Maryland Historic Trust
Mr. Carroll Holzer*

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P.O. Box 91
Baldwin, Maryland 21013

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Sincerely,



Carol Trela, Secretary

cc.

*Mr. Robert Prigel, III
Mr. Robert Prigel, Sr,
Baltimore County Zoning Office
Long Green Valley Conservancy, Mr. John Wilkerson, President
Mr. Edward L. Blanton, Jr.
Mrs. Susan Yoder
Mr. Wally Lippencott
Mr. Bruno Rudaitis, Zoning Review
Mr. Bryan McIntire
Department of Agriculture
Maryland Historic Trust
Mr. Carroll Holzer*

Case No.:

08-456-X

Exhibit Sheet

Petitioner/Developer

Protestant

✓	No. 1	Site Plan	(A-D) PHOTOS of building under construction ✓
✓	No. 2	AERIAL PHOTO ^{shows} boundary farm	MEMO FROM ECON. DEVELOPMENT ✓
✓	No. 3	(A) Letters Long Green Assoc	PRINGEL CREAMERY BUS. PLAN ✓
✓	No. 4	PETITION FROM CHURCH	
	No. 5		
	No. 6		
	No. 7		
	No. 8		
	No. 9		
	No. 10		
	No. 11		
	No. 12		

Tax Acct. NO.: 1100 15122, 1100 15121

Deed Reference: 5842 / 117

Zoning: RC2

Election District: 11

Councilmanic District: 3

6. Parking provided: 8 spaces (including 1 handicap sp.)
7. Any proposed sign to be in accordance with Baltimore County regulations.
8. Site is not within the 100 Yr. Flood Plain as shown on FIRM 240010 0260 B.
9. Previous Zoning Cases
5722
68-271X
XI-351 - Created Lot 1 and 1 Parcel
10. Paving to be durable and dust free.

EXHIBIT I

Revised Plan To Accompany Request for Special Exception

Bellevale Farm

PROPERTY OF

Robert Prigel

11th ELECTION DIST, BALTIMORE COUNTY, MD

REVISIONS

5/29/08 Revise bldg. size, note under construction.

Add durable paving note. Add approx. boundary lines to show adjoining parcels and dimensions to adj. dwel

PETITIONER'S

EXHIBIT NO. 1

SITE RESOURCE
incorporate

Comprehensive Land Planning & Site Design Se

14315 Jarrettsville Pike • Phoenix, Maryland
(410) 683-3388 • fax (410) 683-3381

DRAWN BY: CGS

CONTRACT NO.:

DESIGNED BY: SRI

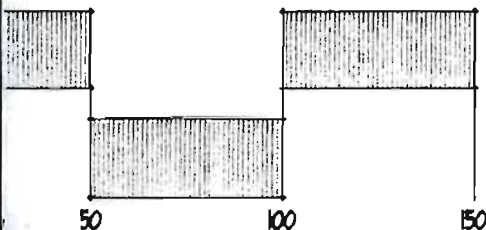
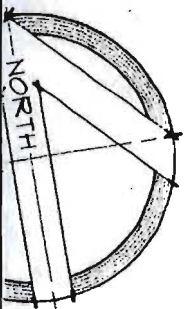
SCALE: 1" = 50'

CHECKED BY: SRI

SRI PROJECT NO: 07086

DATE: 5/28/08

SHEET 1 OF 1



1" = 50'

REVISED

08-456-X



EXHIBIT 2
AERIAL PHOTO

Bellevale Farm

PROPERTY OF
Robert Prigel
11th ELECTION DIST, BALTIMORE COUNTY, MD

REVISIONS

PETITIONER'S

EXHIBIT NO. 2

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED
OR APPROVED BY ME, AND THAT I AM A DULY LICENSED
PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF
MARYLAND, LICENSE NO. 13876, EXPIRATION DATE: 03/24/10

DRAWN BY: sri

DESIGNED BY: sri

CHECKED BY: SGC

DATE: 05/28/08


SITE RESOURCE
i n c o r p o r a t e d
Comprehensive Land Planning & Site Design

14315 Jarrettsville Pike • Phoenix, Md
(410) 683-3388 • fax (410) 683-3389

CONTRACT NO.:

SCALE: 1" = 40'

SRI PROJECT NO: 076

SHEET

5 of 6

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

Mr. and Mrs. Robert Prigel, III.
Mr. Matt and Bobby Prigel
Mr. and Mrs. Robert Prigel, Sr.
4851 Long Green Road
Glen Arm, Maryland 21057
September 27, 2007

Dear Prigel family,

The Board of Directors of the LGVA would like to thank you for attending the monthly meeting on September 18, 2007 to outline the future plans and changes you will be making to your dairy farm. The board members are aware of your family's long history in the valley and your dedication to preserving the rural character of the area through good farming practices.

Your farm not only has the distinction of being the first property placed in the Long Green Valley Conservancy, but is known throughout the area for receiving awards for best farming practices and for being environmentally sensitive to the rural nature of the valley.

The board voted unanimously to support your family in its future plans for the dairy farm including: the building of a creamery to process milk, cheese, yogurt, and ice cream; the construction of a road side store from which these items will be sold directly to the public; the construction of a parking area that will be environmentally friendly; landscaping that will use natural screening; and the conversion of the farm to all organic.

If the association can be of any help to you now or in the future please feel free to contact us. Your goals with future changes to the

~~1429~~
6 of 6

dairy farm are consistent with LGVA's mission which is to preserve the valley's agriculture and rural character for the benefit of future generations.

Sincerely,

Carol Trela

Carol Trela, Secretary

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

March 27, 2008

The Board of Directors of the Long Green Valley Association held an emergency meeting on March 26, 2008 and voted to withdraw their letter of support written on September 27, 2007 to Mr. Robert Prigel regarding his farmer's roadside stand/creamery on 4851 Long Green Road in Glen Arm Maryland.

Sincerely,



Carol Trela, Secretary

cc.

Mr. Robert Prigel, III
Mr. Robert Prigel, Sr,
Baltimore County Zoning Office
Long Green Valley Conservancy, Mr. John Wilkerson, President
Mr. Edward L. Blanton, Jr.
Mrs. Susan Yoder
Mr. Wally Lippencott
Mr. Bruno Rudaitis, Zoning Review
Mr. Bryan McIntire
Department of Agriculture
Maryland Historic Trust
Mr. Carroll Holzer

1

*faxed to J. Bussey
5/31/08*

410-339-4027

PETITIONER'S

EXHIBIT NO.

3B

PRIGEL MILK PROCESSING

Living and worshipping in Long Green Valley we enjoy two (2) very distinct parts of America: the first being the unspoiled view of the rolling hills and the green fields of rural Baltimore County, the second being this rural vista interlaced with the American Farmer. The American Farmer struggles to exist due to the ability to make a decent profit when getting competition from very large farms and the rising cost of land.

The Prigel Family has been in Long Green Valley for over one hundred years and practices it's land stewardship in a conscientious and conservation minded fashion. In order to increase their profit and continue to exist they are building a milk processing unit which is to include a proposed retail area , of that building. We the signed below, support their efforts of the processing unit AND the retail area. We support The American Farmer and the Prigel effort to continue to exist and to keep their part of the "AMERICAN PIE" in Long Green Valley.

Paul F. Le...

John Haynes

Kathleen Nuttall

Paul Miller

Jacquelyn H. Reed

Mary M. Stephen

Loid Webb

Kay E. Kearns

John M. Tombaugh

Linda Smayda

Grace Miller

Ronald Webb

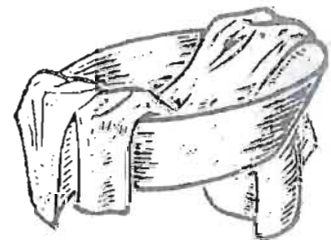
Long Green Valley

CHURCH OF THE BRETHREN

4800 LONG GREEN ROAD, GLEN ARM, MARYLAND 21057

OFFICE: 410-592-9300

Will Host
Lois Host
Bonnine Hedrick
Bruce Hedrick
Lucille Groves
Kel Hln



SERVANTS IN GOD'S WORLD

Case No.:

08-456-X

Exhibit Sheet

Petitioner/Developer

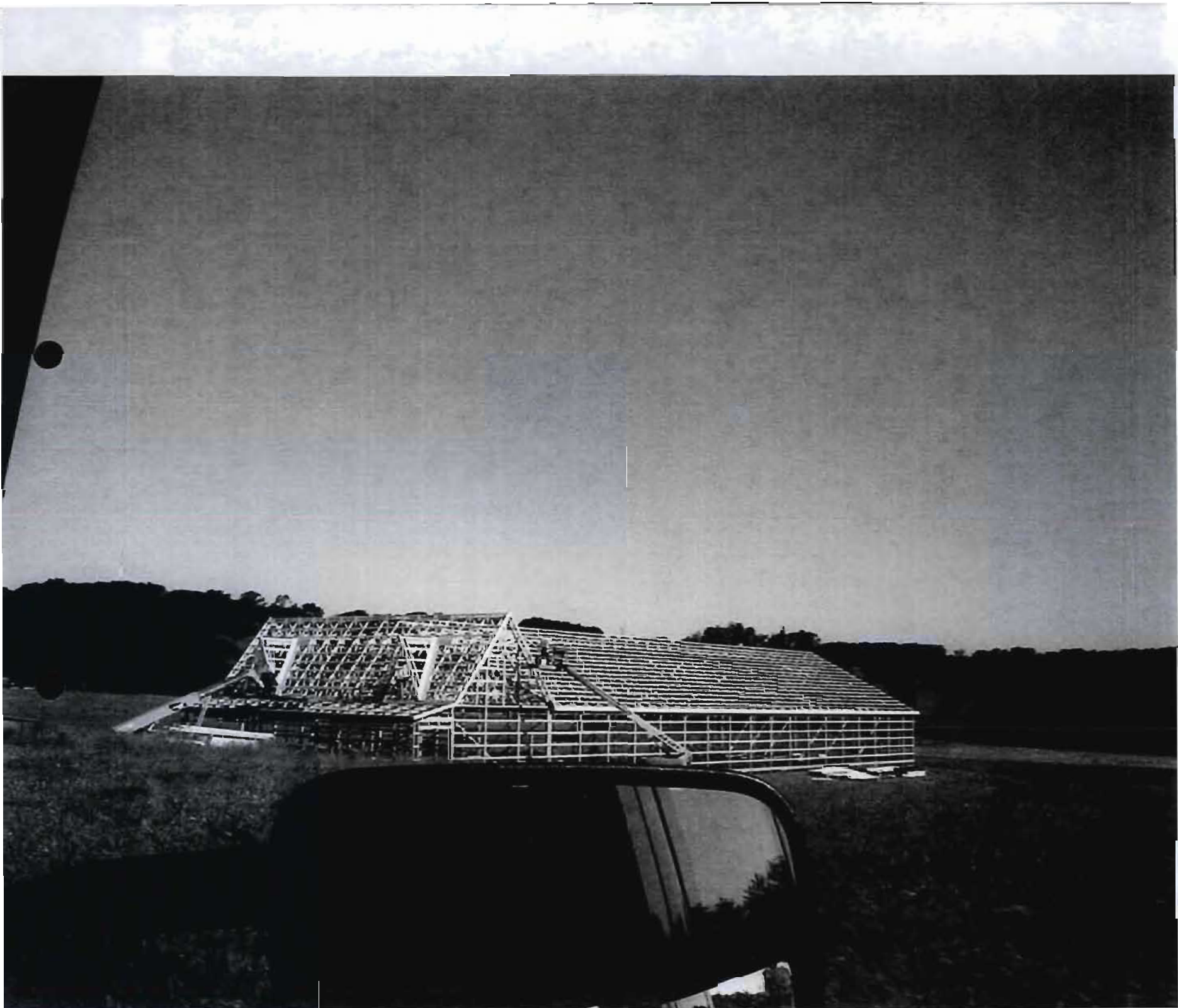
Protestant

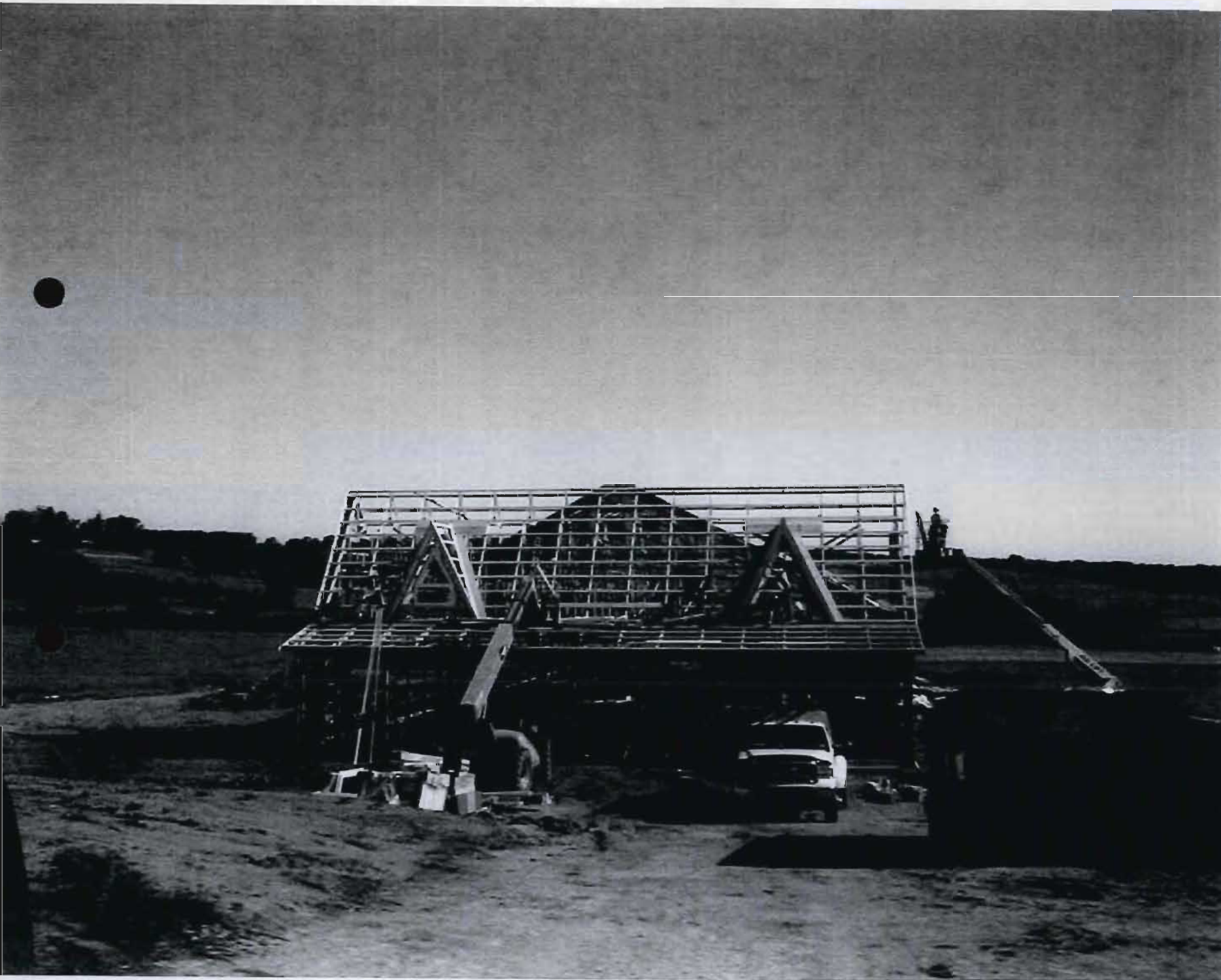
✓	No. 1	Site Plan	(A-D) PHOTOS of building under construction	✓
✓	No. 2	AERIAL PHOTO ^{shows} boundary farm	MEMO FROM ECON. DEVELOPMENT	✓
✓	No. 3	(A) Letters Long Green Assoc	PRINGEL CREMERY BUS. PLAN	✓
✓	No. 4	PETITION FROM CHURCH		
	No. 5			
	No. 6			
	No. 7			
	No. 8			
	No. 9			
	No. 10			
	No. 11			
	No. 12			



PROTESTANT'S

EXHIBIT NO. 1A-0









BALTIMORE COUNTY
MARYLAND

PROTESTANT' S

EXHIBIT NO.

2

MEMORANDUM

TO: Baltimore County Loan Review Committee
FROM: Stan Jacobs-Chief Financial Officer
RE: Prigel Family Creamery, Inc./Bellevale Farm
DATE: April 18, 2008

Request

Prigel Family Creamery, Inc. is requesting a \$250,000 ten-year term loan with a 20-year amortization from the County's Revolving Loan Fund. The loan will have a fixed rate of 2 %. Proceeds of the loan will be used towards the costs associated with the construction of a 10,000 square foot building and for the purchase of equipment. The building will be used to process organic milk products including yogurt, ice cream, cheese and butter. The organic milk will be purchased from Bellevale Farms which is also owned by the Prigel Family. The property is located on Long Green Road in Glen Arm, Maryland.

The remainder of the project will be financed with a \$400,000 ten-year term loan from M&T Bank. The State of Maryland through the Maryland Agricultural Development Corporation will provide a ten-year \$250,000 term loan at 2%. Robert Prigel will contribute \$100,000 towards the total project cost of \$1 million.

Borrower Description

Prigel Family Creamery, Inc. was formed in 2008 for the purpose of processing and selling organic milk products. Robert Prigel owns 51% of PFCI and his wife Pam, owns 49%.

Bellevale Farms, Inc. is a 260 acre dairy farm located in Glen Arm, Maryland. The dairy farm has been owned and operated by the Prigel family since 1906. During 2007, the farm started the process of converting the dairy operation to a certified organic dairy. This will allow the dairy to market its milk as organically produced. The farm received organic certification from the Maryland Department of Agriculture in April 2008. The farm has a two-year contract with Horizon Organic Dairy to purchase the organic milk that is produced at Bellevale Farms. The organic milk will sell for approximately \$30.00/100wt vs. \$18.00/100wt for non-organic milk. Robert and Pam Prigel each own 50% of the corporation.

Bellevale Farms, Ltd. is a partnership between Robert Prigel and Pam Prigel. Robert owns 55% and Pam owns 45%. This entity owns the farm and leases it to Bellevale Farms, Inc.

Collateral

The subject property is known as 4851 Long Green Road Glen Arm, Maryland. Bellevale Farm is a 260 acre dairy farm. The farm is improved by a residence, barn, milking parlor and several other out buildings. The County and State will share a second lien position on the farm and all equipment. The current assessed value is \$700,000. The owner estimates that the value is \$15,000 per acre. Assuming a value of \$10,000 per acre, the estimated value is \$2.6 million. The property is free and clear of all liens.

Guarantors

Bellevale Farm, Ltd.
Bellevale Farm, Inc.
Robert and Pam Prigel

Recommendation

Staff recommends approval of the loan to Prigel Family Creamery, Inc. as it will give the Prigel family the opportunity to expand into the production of organic milk products. The Prigel family has operated a dairy in Baltimore County since 1906 and has managed to ride the ups and downs of milk prices.

The farm has taken the initiative to convert from a traditional dairy to an organic dairy and has recently received certification as an organic dairy from the State Department of Agriculture. This certification will allow the dairy to realize the premium that is paid for organic milk which, should return the dairy to profitability. Should the creamery not be successful, the dairy should be able to cover the debt service as the dairy could continue to sell the organic milk to Horizon Organic Dairy.

Prigel Family Creamery
Business Plan and Financials

PROTESTANT' S

EXHIBIT NO.

3



Robert E. Prigel, Jr., President

January 18, 2008

Confidentiality Agreement

The undersigned reader acknowledges that the information provided by _____ in this business plan is confidential; therefore, reader agrees not to disclose it without the express written permission of _____.

It is acknowledged by reader that information to be furnished in this business plan is in all respects confidential in nature, other than information which is in the public domain through other means and that any disclosure or use of same by reader, may cause serious harm or damage to _____.

Upon request, this document is to be immediately returned to _____.

Signature

Name (typed or printed)

Date

This is a business plan. It does not imply an offering of securities.

The Company

General

PFCI will produce and sell a variety of wholesome, organic dairy products to the central Mid-Atlantic marketplace. The initial purpose of the company is to provide a local retail and wholesale marketing outlet for Bellevale Farms' organic milk, but the concept may, over time, expand into other organic products such as organic, grass-fed meats.

The growth in organic markets as well as a need to improve Bellevale's position in the Maryland/Pennsylvania/Delaware milk market has precipitated Bellevale's move into organic products in an effort to remain competitive and improve its profitability. In addition, capacity and margin constraints found in the production and distribution of straight milk through traditional distribution channels for dairy farmers has necessitated a creative move into alternative markets.

In addition, dairy farmers are increasingly finding themselves in a position in which there is no direct correlation between retail and wholesale pricing. PFCI provides Bellevale with the ability to control its product distribution and related pricing.

The demand for organic products in the U.S. has provided an opportunity for PFCI to further expand and define Bellevale's production methods and allows for expansion into new markets.

The formal corporate structure of PFCI has yet to be determined, but ownership of the business will be closely held.

History/Background

Bellevale Farm sits on 260 acres nestled in the beautiful Long Green Valley located in northeast Baltimore County and is approximately 15 miles from Baltimore City and 15 miles from Interstate 95. The farm has been owned by the Prigel family since 1906 when John



Mathias Prigel purchased the first 180 acres. Prigel began working on the farm in 1895 as a sharecropper.

The farm is one of the few remaining active dairy farms in this region of Maryland and has always been focused on the production of dairy and vegetable products.

Robert E. Prigel, Jr. currently oversees the daily operation of the farm.

Bellevale Farm has a history of being innovative and on the leading edge of the use of technology and alternative farming methods. For example, the Prigels began using DHIA (national record-keeping system) and artificial insemination in 1945 when most dairy farms did not begin utilizing these procedures until at least the late 60's. In addition, we introduced computerized feeding in 1985.

In 1989, Bellevale Farm became the second Maryland operation to become a Management Intensive Grazing (MIG) dairy farm. "On a MIG dairy farm, portable electric fencing is used to subdivide pastures into small areas called paddocks. Cows are moved to a fresh paddock once or twice a day. Grazed forage is the primary source of protein and energy for the cows, eliminating the need for crop production and its expensive, energy-demanding infrastructure. By grazing, the cows themselves, rather than machines, harvest the feed and spread the manure. Because the grazing lifestyle is less stressful on cows, veterinary bills are substantially lower than for confined animals. Although a cow under MIG typically produces less milk than one under confined feeding, it requires far less expense to maintain."

("Fact Sheet: Management Intensive Grazing: Environmental Impacts and Economic Benefits", Ray R. Weil and Rachel E. Gilker, Department of Natural Science and Landscape Architecture, University of Maryland, College Park)

The switch to intensive grazing has been the key to Bellevale's ability to remain competitive in an otherwise extremely difficult marketplace that has seen the consistent demise of farms of similar size. Twenty-five years ago, Maryland had approximately 6,000 dairy farms. That number has dwindled to approximately 600 today.

The move to develop this new production facility is the next logical step for Bellevale in order to stay ahead of the curve and utilize its existing and develop new competitive advantages in a changing marketplace.

The Prigel family has been actively involved in its relationship with the local community associations and participates in land preservation activities. These relationships have proven helpful in the recent past in the development of the plans for these new facilities and the Long Green Valley Association has heartily endorsed the project plans to date. (Reference page 25 of this document.)

The organic certification process is underway with the cows being certified by April 15, 2008. It is anticipated that the land will be certified at the same time. The certification process is administered by the Maryland Department of Agriculture under the regulations of the USDA. Certification requires that Bellevale not use prohibited substances (chemical fertilizers, pesticides, sludge, etc.) for the preceding 3 years and such substances will not be used in the ongoing operations of the farm subject to the allowable uses outlined in the regulations.

Facilities

PFCI anticipates commencing operations in June, 2008 and will be located on the premises of Bellevale Farms at 4851 Long Green Road, Glen Arm, Maryland 21057.

The production/retail facility will be constructed on a 75 acre field that is located on the north side of Long Green Road directly across from the farm operations. The facility will be a 10,680 square foot pole barn structure encased in metal siding with architectural accents that will more closely match the architectural styles of the surrounding structures in the area.

This facility will be comprised of a 1,500 square foot cheese processing area with the remainder devoted to milk processing, warehousing and retail. The cheese



Proposed site of the processing facility facing east on Long Green Road.

Initial retail product offerings will include

- Liquid milk
- Butter
- Yogurt
- Ice Cream
- Cheeses

Future product offerings may include locally-grown organic, grass-fed meats and brick oven breads, but these products are not included within the context of this plan.

Cowgirl Creamery

Founded in 1997, Cowgirl Creamery operates a cheese production facility in West Marin County in Point Reyes Station, California. In addition, Cowgirl operates a mail order cheese business and three retail stores in San Francisco, Point Reyes Station and Washington, DC. Additional information regarding Cowgirl Creamery is attached as an addendum to this plan.

PFCI has entered into an agreement with Cowgirl Creamery whereby Cowgirl will purchase milk for its cheese production from Bellevale Farm and rent the cheese production facility in Glen Arm from PFCI. In return, Cowgirl will provide PFCI with ready access to fresh, organic cheeses produced from Bellevale's organic milk. In addition, PFCI will sell liquid milk to Cowgirl for sale in its Washington, DC retail store/coffee house.

PFCI will have access to purchase these cheeses from Cowgirl for sale in its retail facility and carrying joint branding. Any additional production by Cowgirl will be sold through its own retail outlets.

Initial estimates indicate that Cowgirl will require approximately 7,200 gallons of raw milk per month within the first 12 months. Cowgirl also has requested approximately 1,000 gallons of raw milk per month for use in its Washington, DC- based coffee house.

Milk for use in the cheese production will be sold to Cowgirl at \$34.00 per hundred pound and milk sold for use in the coffee houses will be sold for \$45.00 per hundred pounds.

PFCI currently has a letter of intent from Cowgirl Creamery which is included as an addendum to this document.

Wholesale sales

PFCI intends to market its main product offerings of yogurt and ice cream to both local and national chain markets. In terms of local markets, PFCI will be looking to distribute its product to area markets such as Graul's and Klein's. In terms of national markets, PFCI will be looking to distribute to Wegman's and Whole Foods both of whom cater to local produce markets. Whole Foods also has the added advantage of providing a distribution channel to its other stores via delivery to the local chain by the producer.

As product offerings become available, we will begin more intensive discussions with each of these players to determine the best fit for both parties.

Production Process

The entire production process is founded on the estimate that Bellevale Farms can and will provide approximately 21,000 gallons of raw milk per month. From that amount, we are estimating that Cowgirl Creamery will require upwards of 7,200 gallons per month and PFCI

direct milk processing and sales will require approximately 500 gallons per month. This then leaves 14,200 gallons for processing of the remaining products.

From that starting point, we are planning to allocate 80% of available milk to the processing of yogurt and the remaining 20% will be directed to the processing of ice cream and butter.

Yogurt - Yogurt production begins with raw milk which is first pasteurized and introduced into a separator in which the milk is separated from the cream. The milk will be standardized with regard to the desired fat content by the re-introduction of cream. It will then be homogenized with cultures introduced. Flavorings will be added directly to the container with incubation of the cultures taking place within the container. Incubation time can depend on the ambient temperatures, but can typically take between 10 and 12 hours. Distribution of a finished product can take place within 3 days of the start of the production process.

The by-product of residual cream left over from the yogurt production will then be used in the production of butter and ice cream in the ratio of 15%/85%, respectively.

Butter – Butter production will typically result in a combination of two products, butter and buttermilk in a ratio of 85%/15%. For purposes of this plan, approximately 40% of the resultant buttermilk will be introduced into the production of ice cream and the remainder will be considered spoilage.

Ice Cream – A gallon of ice cream will require approximately 2 quarts of cream and 1 quart of buttermilk. The additional 25% is comprised of flavorings, sweeteners and air utilized to increase the overall volume of the product.

Packaging – At this time we anticipate handling all product packaging within our production facility. Printing of labels and containers will be outsourced and all handling, packaging and storage will take place at PFCI. The new facility will include a 600 square foot cooler, a 300 square foot freezer and approximately 3,000 square feet of warehousing space.

All equipment required for the production and packaging of these products is included in this plan and is outlined in the addendum.

Distribution

All products produced by PFCI will be sold through wholesale outlets and PFCI's retail facility. All pricing included in the financial section of this plan assumes wholesale pricing only.

Competition

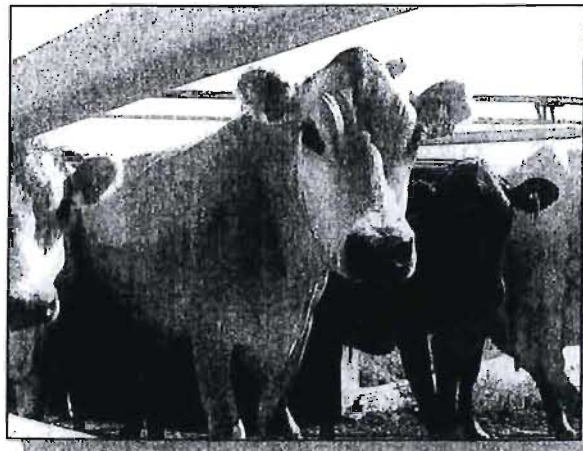
Competitive Landscape

In a general sense, the organic market is continuing to mature and, therefore, has a number of established players. However, the ability to market and distribute these products via PFCI's retail location as well as established wholesale channels will, we believe, provide us with the necessary competitive edge in this geographic region.

The mid-Atlantic region is beginning to see an increased presence of organic product providers. Trickle Springs in Chambersburg, PA (approximately 90 miles from Glen Arm) is the only known organic creamery in the immediate area. At the present time, PFCI will be the only Maryland-based organic creamery.

Though not a creamery, there is a Whole Foods retail store located in Mt. Washington which is approximately 25 miles from Long Green. However, this location is only carrying national brands.

In addition, in 1995, Bellevue began to change its herd population from Holstein cows which are typically a higher volume cow to Jerseys which, although producing less volume, produce milk with a higher fat and protein content. These factors are the key to successful ice cream, yogurt and cheese production.



Short Term Risk

Market Outreach - The largest short term risk is clearly our ability to convince the wholesale distributors of the value of our products. This will be mitigated by maintaining consistent contacts with the wholesalers of choice and integrating their feedback so as to improve the products.

Food Safety - Food safety risks would include the introduction of human pathogens such as e coli. We will address this through the development and consistent execution of a HACCP (Hazard Analysis Critical Control Point) plan and required education of cleanliness standards for and demonstration of these skills by all employees.

Labor - We believe that finding and retaining the highest level of personnel in all facets of the business will be critical to our success. In addition, given that this is a family operation with the desire for a strong local presence, we will be employing family members as much as possible and practical.

The training and development of production personnel, in particular, will be accomplished through both formal education channels as well as hands-on training. In the initial phases of the business, we anticipate employing the services of an outside consultant who will assist us in the development and refinement of the development process.

Long Term Risk

Long term risk is predominantly found in the maturation of the organic market itself. In this situation, the possibility exists of losing the higher pricing opportunities currently afforded this product type and market. However, we also believe that by retaining a local presence and flavor, we can mitigate this risk.

In addition, any substantive economic downturn or event which minimizes disposable income to the market that we are trying to reach may adversely affect results if the perceived value of the product does not exceed the economic value.

Market Analysis

U.S retail sales of organic milk have been on a consistent growth trend since the mid -1990's with sales exceeding \$1 billion in 2005 which represented a 25% growth rate over 2004. By contrast, sales of overall milk products have remained fairly constant since the mid-1980's. By 2006, organic milk and ice cream products comprised approximately 6% of retail milk sales.

Increasing interest and demand for organic milk products has, in the past, generated significant shortages suggesting that consumer demand is unmet at certain price points. This

shortage has prompted a number of retail grocers and big box retailers to distribute organic milk. These retailers typically carry nationally known organic products such as Organic Valley or Horizon Organic so branding is becoming increasingly important in this marketplace.

According to the USDA study on "Retail and Consumer Aspects of the Organic Milk Market", the following household characteristics would typify the most likely organic milk consumer:

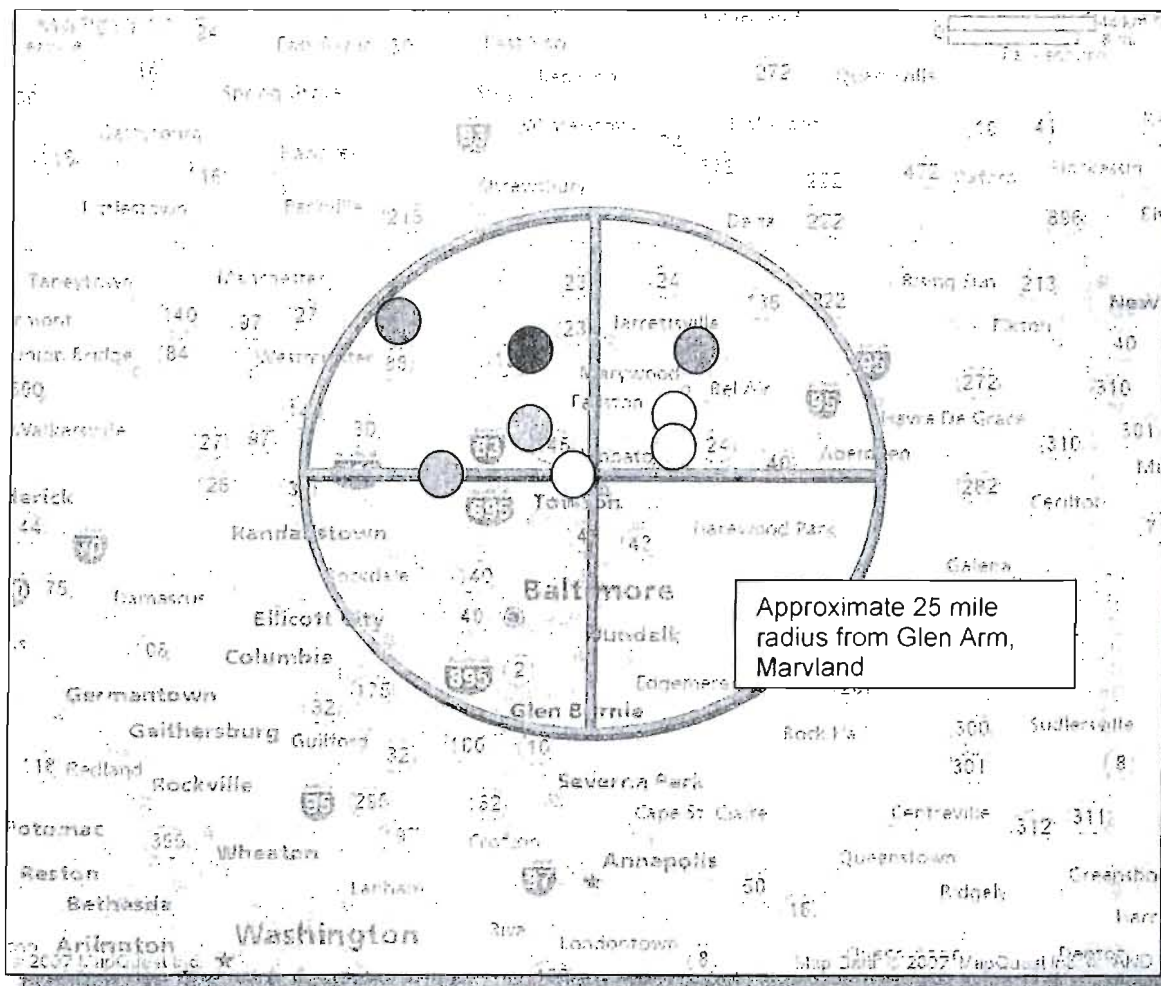
- Region: East or West Coast
- Education: College graduate or Post College
- Age: Under 55
- Household Income: Annual income of at least \$70,000

Given our location and timing of entrance into the marketplace, PFCI believes that we are strategically placed to address the needs of these groups.

According to the statistics derived from the U.S. Bureau of the Census (2002) as shown on the following page, there are over 100,000 households in the Baltimore area that meet the aforementioned household characteristics for organic milk consumers. This estimate only takes into account eight of the largest suburban communities within a 25 mile radius of Glen Arm, Maryland. The 2002 Census data did not consider or specifically identify communities in Northern Baltimore County the inclusion of which could easily increase the estimate of households.

In terms of pricing, the East coast market has been able to command the highest premium of organic milk over conventional milk compared to all other regions. In 2004, that premium averaged over \$2.50 per half gallon or 126%. The national average at that time was \$1.99 or 98%. Some of the aforementioned regional differences may be attributed to the fact that the East and West coasts have had access to organic products for a longer period of time.

- Market Analysis derived from U. S. Department of Agriculture report "Retail and Consumer Aspects of the Organic Milk Market", May, 2007



Demographics Summary

	A	B	C	D	E	F	G	H
	Kingsville	Parkville	Towson	Lutherville	Bel Air	Cockeysville	Pikesville	Reisterstown
Distance	6.25	7	7	9	11	15	16	25
Median Age	42.4	37.6	37.6	45.5	34.9	33.1	45.4	34.6
Owner occupied	93.5	65.8	59.7	82.8	80.7	33	69.3	65
College	43.8	25.4	57.2	50.8	46.1	52.5	54.6	34.9
Household income >\$75K	53.7	17	34.4	49.9	37.3	25.1	39	24.9
No of Households	79,100	2,219	7,263	3,252	5,610	2,304	4,960	2,167
Median Household Income	\$ 78,025	\$ 41,410	\$ 53,775	\$ 61,573	\$ 62,064	\$ 43,681	\$ 58,598	\$ 47,587

- Source: U.S Bureau of the Census; 2002 Census, Profile of General Demographic Characteristics: 2000

Buying Locally Produced Goods

In addition to the move to organic products, PFCI also has the added benefit of being able to take advantage of the increasing trend toward buying locally-produced agricultural products.

"The trend toward smaller farming can be seen locally in farm Census data. While the number of farms in Maryland has fallen from 39,000 in 1950 to about 12,200 in 2002, the number of niche

farms of 10 to 49 acres grew from 3,979 in 1992 to 4,412 in 2002. In Virginia, such farms grew from 10,361 in 1992 to 14,082 in 2002."

"Whole Foods recently announced a heightened focus on buying local produce, including a \$10 million budget to promote local agriculture, following pressure from author Michael Pollan, who has called into question the wisdom of industrial organics. Of course, nothing is ever truly easy in farming territory, particularly when it comes to the increasing development of houses, each bigger than the last one. Grohsgal understands his land is worth more to developers than it is to him as a farm. He turns home builders away anyway. "I know it's worth a fortune," he said, "but if we always sell to developers, our nation will just stop growing food."

- A Growing Trend: Small, Local and Organic: Popularity of Farmers Markets, Natural Grocery Stores Helps Cultivate a Rise in Niche Farms, Michael S. Rosenwald, Washington Post Staff Writer, Monday, November 6, 2006; Page D01

According to an article in the December, 2007 edition of the Carroll County Times (a local periodical from Carroll County in Maryland), buying local is sometimes preferred over organic.

"What's more important than buying organic is buying local, Harbold said. Buying local cuts down on vehicle emissions from shipping, he said. Buying local produce also helps support local economies, he said, and allows consumers to build relationships with their food producers, ask for different products and learn more about how things are grown or raised.

Jackie Miller, owner of the organic farm De La Tierra Gardens in Harney, is also manager of the Downtown Westminster Farmers Market. The market is unique in that it requires producers to sell their own goods, not just items they may have picked up from other regional farms. And while it isn't required that producers be organic, there are multiple organic or all-natural farmers who have made this market one of their major sales outlets.

"I do feel local is more important than organic," Miller said. "Organic is sort of a personal preference for health and the health of the environment, but I think it's more important to keep the source of food local."

- Carroll County Times, December 21, 2007, by Carrie Ann Knauer,

We see this combination of both organic and locally-produced goods as being the right combination to bring a significant competitive advantage to PFCI.

Strategy and Implementation

Our strategy is based on serving the organic dairy product needs found with the higher income consumer.

We will focus on connecting and serving these customers' needs through the following strategic initiatives.

- We will direct our marketing and sales efforts utilizing only those mediums and methods that will connect us with our target customers.
- We will focus our selling towards meeting customer needs and at the same time remaining focused on products with which we have substantial experience.
- We will stay in contact with market opportunities in order to be able to be the first to bring new and innovative products to this marketplace.
- We will utilize technology effectively in the processing of our business so as to protect our investments and reduce our costs of operations.

Marketing Strategy

The primary marketing strategy of Prigel Family Creamery centers on creating a distinct experience for our customers both in terms of quality of product and the atmosphere in which that product is delivered.

Print ads – Keeping our name in front of the existing and potential customer is critical in generating both new and repeat business. This effort will initially be confined to local publications in order to strengthen name and brand recognition.

Branding – We will develop a customized logo that aids in brand awareness through both creative design and connection with both the name and the product focus.

Website – The website will be informational only with the intent of a) educating prospective customers and b) drawing interest to the retail facility. There is no foreseeable intention of selling products via the website.

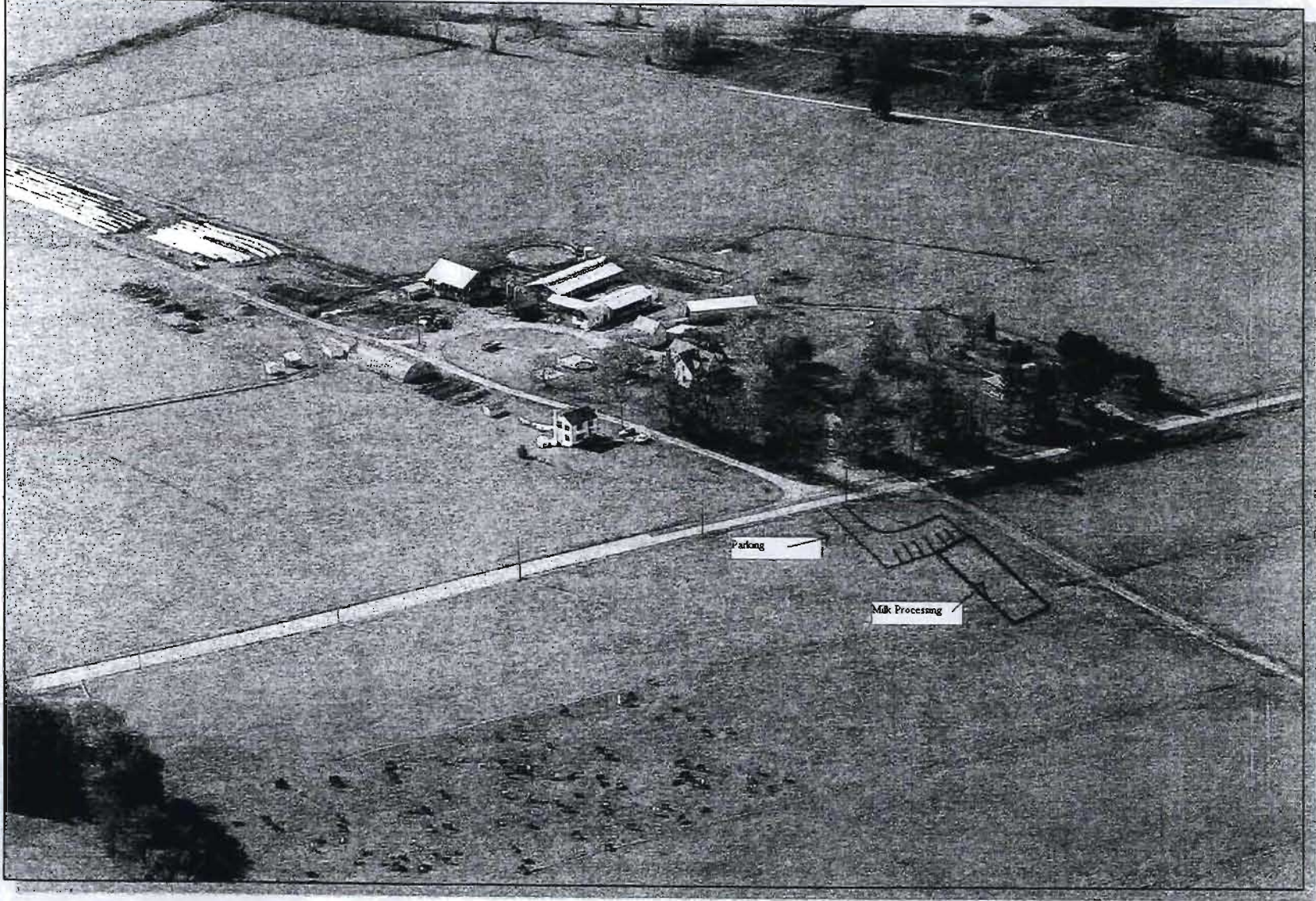
Open House/Grand Opening – We will host a grand opening event which will most likely take place in June to optimize turnout. Our purpose in this event will be introduction and/or further strengthening of existing relationships.

Direct mail – The website will also be used as a method of compiling a mailing list for use in direct mailings.

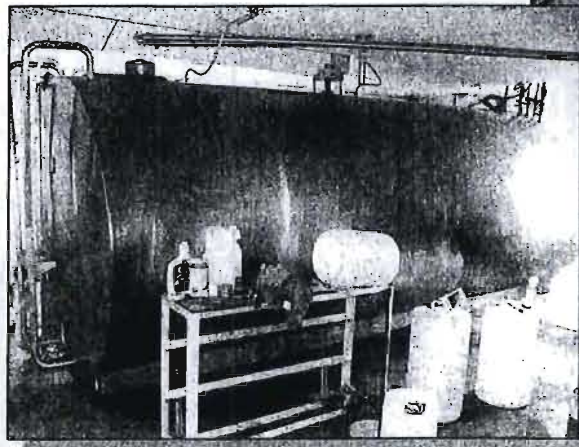
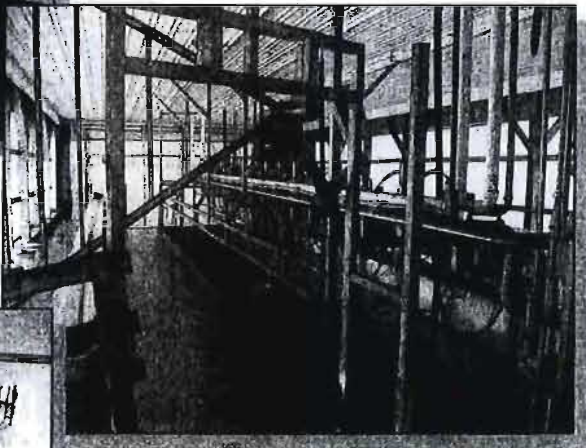
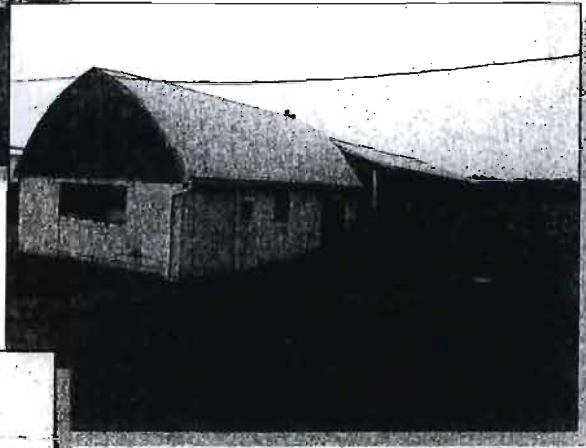
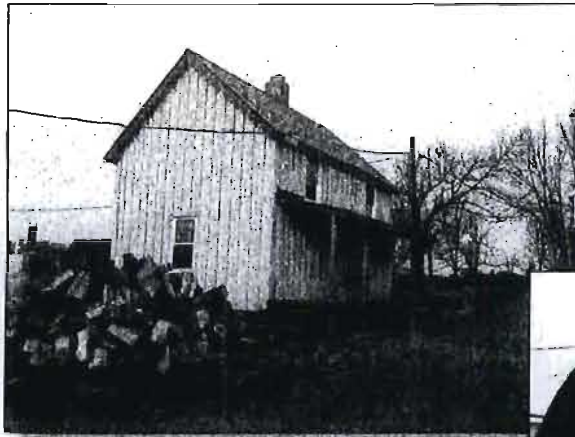
Local Events – We will participate in local events in conjunction with other local establishments where our products will appeal to the event participants and would dovetail with other participating vendors.

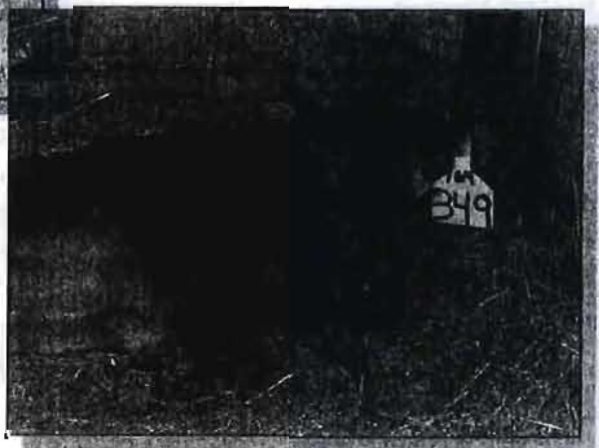
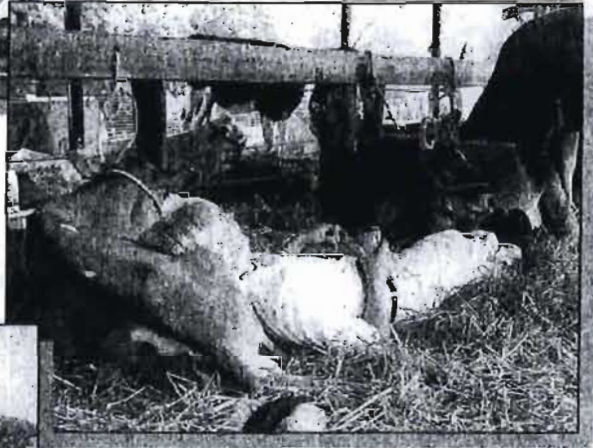
Apparel – All sales personnel will be attired in appropriate clothing displaying both the logo and company name.

Aerial Photo of Bellevale Farm



Various Photos of Bellevale Farm





Letter of Support from Long Green Valley Association

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

*Mr. and Mrs. Robert Prigel, III.
Mr. Matt and Bobby Prigel
Mr. and Mrs. Robert Prigel, Sr.
4851 Long Green Road
Glen Arm, Maryland 21057
September 27, 2007*

Dear Prigel family,

The Board of Directors of the LGVA would like to thank you for attending the monthly meeting on September 18, 2007 to outline the future plans and changes you will be making to your dairy farm. The board members are aware of your family's long history in the valley and your dedication to preserving the rural character of the area through good farming practices.

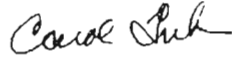
Your farm not only has the distinction of being the first property placed in the Long Green Valley Conservancy, but is known throughout the area for receiving awards for best farming practices and for being environmentally sensitive to the rural nature of the valley.

The board voted unanimously to support your family in its future plans for the dairy farm including: the building of a creamery to process milk, cheese, yogurt, and ice cream; the construction of a road side store from which these items will be sold directly to the public; the construction of a parking area that will be environmentally friendly; landscaping that will use natural screening; and the conversion of the farm to all organic.

If the association can be of any help to you now or in the future please feel free to contact us. Your goals with future changes to the

dairy farm are consistent with LGVA's mission which is to preserve the valley's agriculture and rural character for the benefit of future generations.

Sincerely,



Carol Trela, Secretary

Letter of Intent from Cowgirl Creamery



**PROJECT DESCRIPTION
COWGIRL CREAMERY
BELLE VALE DAIRY
GLEN ARM, MARYLAND
11/1/07**

Description of Operation

COWGIRL CREAMERY

88 Fourth Street

PO Box 594

Point Reyes Station, CA 94956

415.463.9335

WHOLESALE & MAIL ORDER

105 H Street

Petaluma, CA 94952

Toll free: 866.433.7834

COWGIRL CREAMERY

CHEESE SHOPS

The Ferry Building

1 Embarcadero, #17

San Francisco, CA 94115

415.362.9354

Penix Quarter

919 F Street NW

Washington, D.C. 20004

202.393.6880

Production

Founded in 1997, Cowgirl Creamery operates a cheese production facility in West Marin County, in Point Reyes Station, California. All of the cheese produced at the creamery is made by hand in small batches, with certified organic milk from the Straus dairy, just ten miles north of the creamery. Because of increased production demands on the small creamery in Point Reyes Station, a larger facility is in the construction phase right now and will be complete in January, 2008. The plan is to continue to produce cheese in Point Reyes Station, but to move the bulk of the west coast cheese production to the new facility.

Distribution, Marketing and Retail

In 2001, the wholesale division and business offices of Cowgirl Creamery moved to Foundry Wharf in Petaluma, California. The warehouse provides storage for cheese and houses the company offices and distribution division. On the west coast, Cowgirl Creamery is known as an important producer and distributor of artisan cheese.

In addition, Cowgirl Creamery operates a mail order cheese business and three retail stores in San Francisco, Point Reyes Station and Washington, D.C. The stores act as a marketing tool for the promotion of hand made artisan cheese.

An East Coast Presence

In June of 2006, the company expanded to the east coast with the intention of creating a wholesale, production and retail cheese company that mirrors the operation in California. The first phase of the expansion began in June, 2006 with the opening of a retail shop in downtown Washington D.C. The new Cowgirl Creamery Cheese Shop is slowly becoming known as a purveyor of quality hand made cheese and sales are growing at an average of 12% per month.



COWGIRL CREAMERY

80 Fourth Street

PO Box 594

Petaluma Bay Station, CA 94956

415.443.9335

WHOLESALE & MAIL ORDER

105 H Street

Petaluma, CA 94952

Toll free: 866.433.7334

COWGIRL CREAMERY

CHEESE SHOPS

The Ferry Building

1 Embarcadero, #17

San Francisco, CA 94115

415.362.9354

Penn Quarter

919 F Street NW

Washington, D.C. 20004

202.393.6888

COWGIRLCREAMERY.COM

Cowgirl Creamery at Belle Vale Dairy

Phase two will be to begin producing cheese near the shop. On a search for great milk in the Washington Metropolitan area, we were introduced to the Prigel family in the Long Green Valley, just north of Baltimore. The land and the animals at the Prigel's dairy are loved and cared for and the result is some of the best milk we have tasted. The opportunity to use this milk in the production of Cowgirl Creamery cheeses will give us the most important element needed in the creation of quality cheese on the east coast.

Bobby Prigel has agreed to lease Cowgirl Creamery 1,500 square feet of production space in his new creamery. We plan on purchasing a 200 gallon cheese making vat and will install a 400 square foot aging room inside the production space. All of the milk used in the cheese making operation will be purchased from the Prigel's dairy.

Cowgirl Creamery will pay market prices for organic milk and cream.

Rent for the 1,500 square foot calculated to include tenant improvements that are installed by the landlord.

Sincerely,
Sue Conley
Cowgirl Creamery
founder/owner



Plan Sheet: 053C1

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

- Zoning
- Streams
- Vegetation
- Buildings
- Roads
- Rail Lines

Baltimore County Office of Planning and Zoning Official Zoning Map

044A3	044B3	044C3	045A3	045B3
053A1	053B1	053C1	054A1	054B1
053A2	053B2	053C2	054A2	054B2

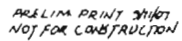
Scale

1" = 200'

0 100 200 400
Feet

1

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





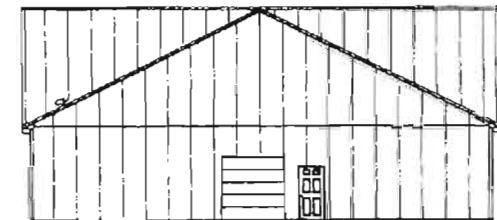
Left Elevation



Right Elevation



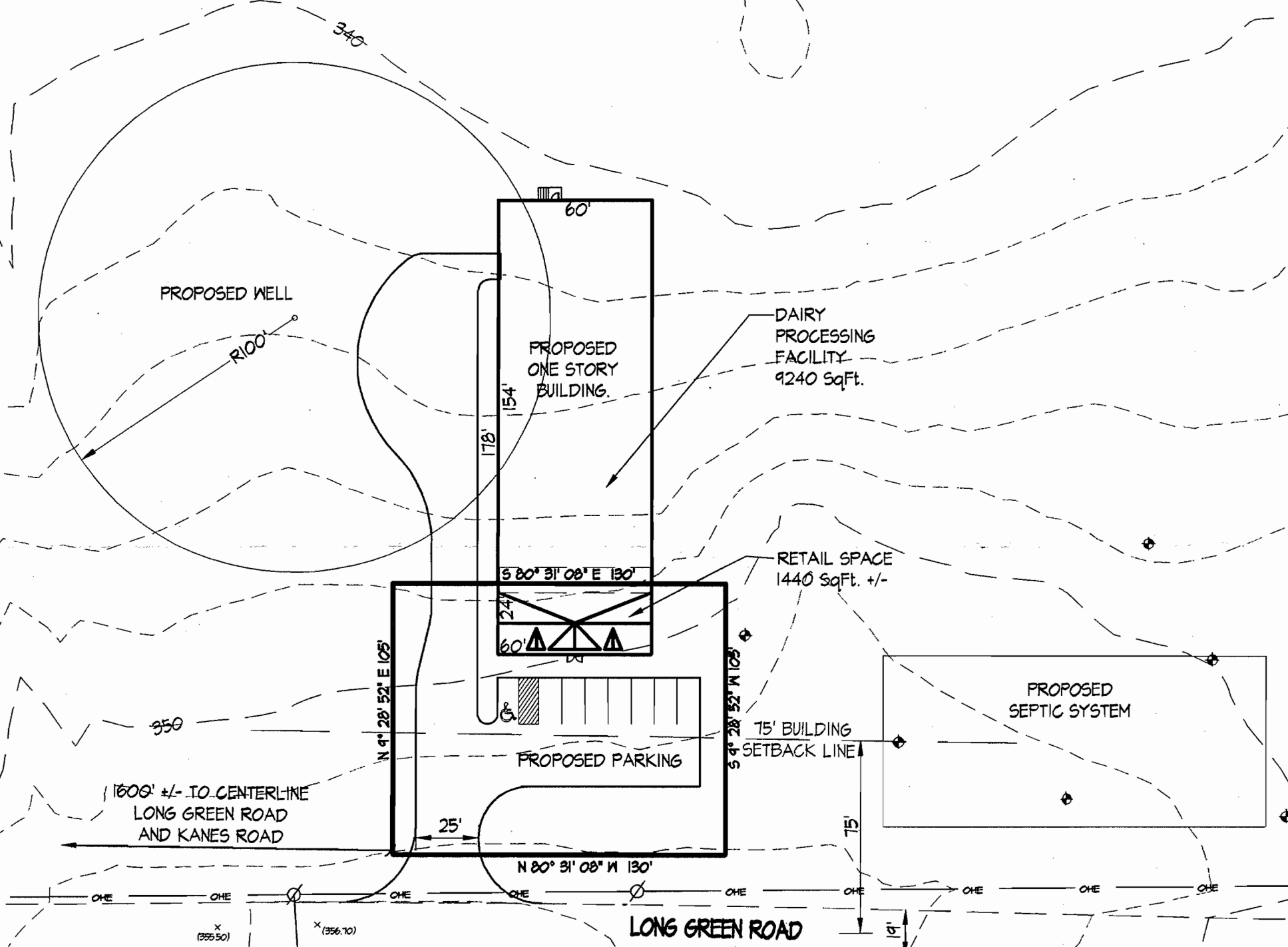
Front Elevation



Back Elevation

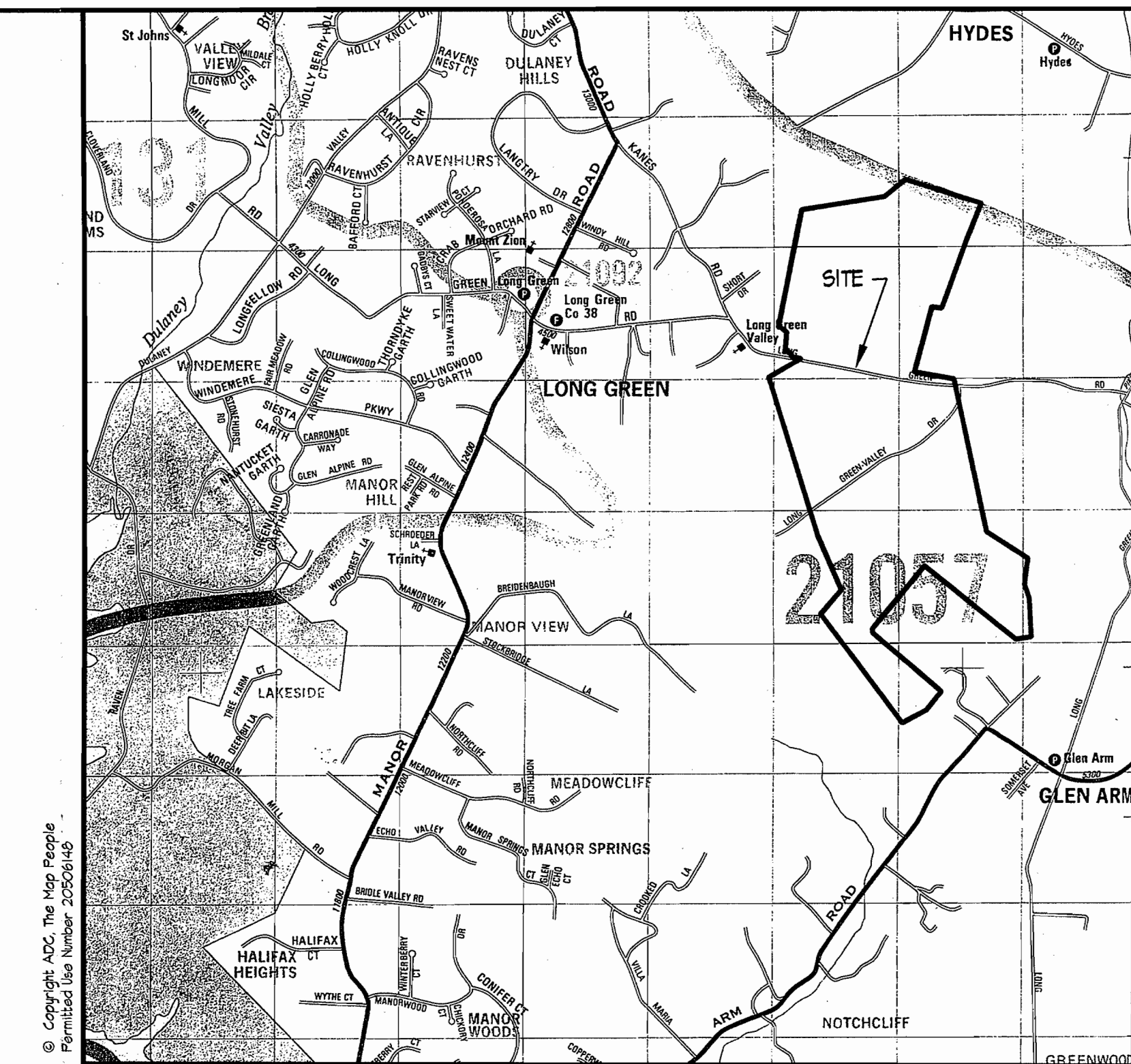
 CONSTOGA Buildings 100 Glen Road • New Market, MD 20781 1-800-544-9464	Subcontractor Form Use JOB NAME: <u> </u>		JOB SITE: <u> </u>
	JAMES L. LANE, General Bldg. JLL@CONSTOGA.COM		JLL JLL
	SCALE: <u>1/4" = 1'-0"</u>		USE ARCHITECT'S IMPROVEMENTS
	SHEET: <u>1</u> OF <u>1</u>		DRAWN BY: <u> </u>

BELLEVUE FARM
4851 LONG GREEN ROAD
MAP 53, PARCEL 22
DEED REF. 5842 / 117
ACC. No. 16075122, 116075121



WILBUR S., MARTHA M. GOSNELL
4845 LONG GREEN ROAD
MAP 53, PARCEL 322
DEED REF. 4151 / 183
ACC. No. 1107044630

BELLEVUE FARM
4851 LONG GREEN ROAD
MAP 53, PARCEL 22
DEED REF. 5842 / 117
ACC. No. 16075122, 116075121



VICINITY MAP

1"=2000'

NOTES

- Property Owner: Bellevue Farm
C/O Robert Prigel
4851 Long Green Road
Glen Arm, Maryland 21057 - 4725
410-592-6014
- Site Area : ~~180.469 AC~~ 0.313 AC. $\pm$ ~~15.14 AC~~ ~~195.609 AC~~ $\pm$ Total
- Existing Use: Agricultural
- Proposed Use: ~~Farmer's Roadside Stand~~ *Farm Market, or alternatively*
- Site Data: Tax Map 53, Grid 11, Parcel 22
Tax Acct. No.: 1116075122, 116075121
Deed Reference: 5842 / 117

Zoning: RC2
Election District: 11
Councilmanic District: 3
- Parking provided: 8 spaces (including 1 handicap sp.)
- Any proposed sign to be in accordance with Baltimore County regulations.
- Site is not within the 100 Yr. Flood Plain as shown on FIRM 240010 0260 B.
- Previous Zoning Cases
5122
68-21X
XI-351 - Created Lot 1 and 1 Parcel

Plan To Accompany Request for Special Exception

Belleve Farm

PROPERTY OF
Robert Prigel
11th ELECTION DIST, BALTIMORE COUNTY, MD

REVISIONS



SITE RESOURCES
INCORPORATED
Comprehensive Land Planning & Site Design Services
14315 Jarrettville Pike • Phoenix, Maryland 21131
(410) 683-3388 • Fax (410) 683-3389

DRAWN BY: C65	CONTRACT NO.:
DESIGNED BY: SRI	SCALE: 1" = 50'
CHECKED BY: SRI	SRI PROJECT NO: 07084
DATE: 3/31/08	SHEET 1 OF 1

